

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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Elizabeth A. Brown
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CHARLES JOSEPH MAKI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Sup. Ct. Case No. 84485

Case No. CR94-0345

Dept. 8

RECORD ON APPEAL

VOLUME 4 OF 10

DOCUMENTS

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Case No. CR94-0345

Department No. 8

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

HONORABLE STEVEN R. KOSACH

THE STATE OF NEVADA,

Plaintiff,

vs.

Trial

CHARLES JOSEPH MAKI,

Defendant.

-----/

TRANSCRIPT OF PROCEEDINGS

April 11 & 12, 1994

Reno, Nevada

APPEARANCES:

For the State:

Dan Greco
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant:

Janet Schmuck
Deputy Public Defender
195 South Sierra Street
Reno, Nevada

Reported by:

Isolde Zihn, CCR #87

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1 RENO, NEVADA, MONDAY, APRIL 11, 1994, 10:35 A.M.

2 THE COURT: Good morning.

3 This is case number CR94-0345, State of Nevada
4 versus Charles Maki.

5 Mr. Maki is present with counsel, Miss Janet
6 Schmuck. The State is represented by Mr. Dan Greco.

7 It's my understanding we have a couple of matters
8 to take up outside of the presence of the jury this
9 morning.

10 Go ahead, Miss Schmuck.

11 MS. SCHMUCK: Thank you, your Honor.

12 As the Court will note, on April 4th the defense
13 filed two motions. There was a motion in limine with
14 respect to prior convictions in this case, and there's also
15 a motion in limine with respect to prior bad acts in this
16 case.

17 We would ask that--I am prepared to submit on the
18 arguments and on the briefs, your Honor, and ask that an
19 order be issued today precluding any mention of those prior
20 convictions or prior bad acts with respect to this case.

21 THE COURT: Okay.

22 MR. GRECO: Your Honor, as to the prior bad acts,
23 we've already taken care of that via the stipulation we
24 filed Friday. All mention by the defendant on that

1 videotape of his prior prison connections or prison terms
2 are now gone. So I see that term as being moot.

3 His prior convictions I have in hand. And if he
4 takes the stand, then I'm going to be introducing them. If
5 he doesn't take the stand, then I'm not. I certainly am not
6 going to mention them or show them during my case in chief.

7 THE COURT: That will be the order. Everything
8 that-- Mr. Maki, you mentioned in the tape--you might
9 remember, it was in the context you were talking to the
10 police officers, "I've done some bad things. I've been in
11 prison. I've done some assaults," or words to that effect.
12 Do you remember that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All that will be stricken from the
15 tape.

16 THE DEFENDANT: Okay.

17 THE COURT: But if you take the witness stand--and
18 you certainly can take the witness stand--if you take the
19 witness stand, then the prosecution is allowed to bring up
20 your prior record. That's basically what it amounts to.

21 Okay. Then we have something else?

22 MS. SCHMUCK: Your Honor, further, I would just
23 like to address the Court on one or two other issues.

24 One is that I was made aware on Friday morning by

1 the district attorney that he had pictures of a physical
2 examination of the two small children in this case. I have
3 seen those pictures now. I had not been aware before that
4 there were pictures that were going to be presented here at
5 the trial.

6 I am concerned, your Honor, and wish to make a
7 record that the defense has not had an opportunity to have
8 its own expert view those pictures and provide an opinion
9 for the Court. And with that in mind, I'm going to ask for
10 a continuance so that we would be able to get copies of the
11 pictures and have a defense expert take a look at the
12 pictures and be able to provide information to the Court.

13 If the Court is not inclined to grant a
14 continuance, your Honor, I'm going to ask that the district
15 attorney not be able to use the pictures in their case, and
16 just simply have Miss Peele testify with respect to her
17 report and not use the pictures at all.

18 THE COURT: Okay. Can I see the pictures, please?

19 MR. GRECO: Yes, your Honor.

20 Your Honor, I am envisioning using only the first
21 of the four pictures there that are in front of you.

22 THE COURT: All right. Go ahead.

23 MR. GRECO: Your Honor, in response to Miss
24 Schmuck's comments, Judge, I received those at a pre-trial

1 conference from Cathy Peele very late Thursday afternoon.
2 At about 4:30 she handed them to me. So the first thing in
3 the morning I called Miss Schmuck's office and let them know
4 I had the photos, and they were welcome to come take a look
5 at them anytime that day. In fact, Miss Schmuck's secretary
6 called me back and said she might avail herself of that
7 opportunity.

8 Miss Schmuck asked me about copies, Judge. And the
9 problem is, as you will see during the testimony, the way
10 those are printed out, there is a video called a coloscopy,
11 c-o-l-o-s-c-o-p-y, performed. They run the tape. She
12 freezes certain frames, then she pushes a button, and the
13 prints come out. She brought them over. I asked her to
14 make another set when she comes to the court so I can
15 provide the defense with them.

16 That first photo showing the folded-over and
17 grossly enlarged hymen on the little girl, Summer, that's
18 all mentioned in her report. That is exactly what her
19 report says. The hymen is folded over and it is on itself
20 and it is enlarged, is, I believe, what the report says. So
21 it's simply going to be showing what is in the report.

22 Judge, I didn't have them before Thursday
23 afternoon. As soon as I did, I let Miss Schmuck know.

24 Judge, I would ask that you deny the request, but

1 alternatively, if you must, I can proceed without them. I
2 can simply have her tell what she saw. I think they are
3 probative, and I think they will really assist the jury. I
4 just didn't have them any earlier.

5 THE COURT: Any response?

6 MS. SCHMUCK: My response, your Honor, is that I
7 believe we did have a hearing, an evidentiary hearing in
8 this case on March 11th, at which I made an oral motion for
9 discovery, and specifically requested any doctors' reports
10 or any reports from the SAINTS representative.

11 I did, for the Court's information, receive the
12 SAINTS exam report a little over two weeks ago. But in the
13 meantime, I had filed a motion to compel discovery,
14 indicating that I wished any results of the doctor's exam or
15 the SAINTS exam. So for the record, your Honor, we have
16 requested anything like this, and we have requested it well
17 prior to the beginning of this trial date.

18 THE COURT: Okay. The motion for continuance is
19 denied.

20 The photos we will take up at the time of the
21 report. I don't mean to say that I'm hedging on that, but
22 if it consistently flows with the testimony, the pictures
23 will be admitted. The photo will be admitted. But I am
24 going to reserve judgment based on what I hear from the

1 expert that's going to testify. And if that is the case,
2 Miss Schmuck, you certainly can--you certainly can take this
3 photo and go ahead and consult with anybody tonight,
4 tomorrow, that type of thing.

5 MS. SCHMUCK: Just for the Court's information, I
6 would like to make you aware one of problems we do have is
7 we have to send them to--I know there's several experts that
8 my office has used, and it's not possible to get it done
9 overnight. Usually it takes a couple weeks. We have to get
10 them to California. I know of one person in particular we
11 have used in northern California in the past.

12 THE COURT: Okay. Thank you for you that.

13 I have a letter from Mr. Maki dated April 3rd,
14 1994, asking that another attorney be appointed in this
15 case. We'll go ahead and note that letter.

16 Mr. Maki, do you have anything to add to this
17 letter?

18 THE DEFENDANT: No, your Honor. I think it's self-
19 explanatory. I just don't feel that Miss Schmuck is
20 representing me right at this point. We just have a lot of
21 conflict of interests.

22 THE COURT: My only comment to that, Mr. Maki, is
23 Miss Schmuck has done everything she can, in looking at it
24 objectively, the motions, that type of thing, she's done a

1 good job. She is a public defender. You don't have a
2 choice amongst public defenders.

3 THE DEFENDANT: Right.

4 THE COURT: You can go out and hire F. Lee Bailey,
5 you understand, a famous attorney, that type of thing.
6 Obviously that's not going to happen with your finances.

7 I'm going to deny your motion for substituted
8 counsel or new counsel.

9 The letter will be filed in.

10 THE DEFENDANT: If the Court please, no disrespect
11 to her. I think she was doing a fine job. Just like I say,
12 personal conflict of interest is all it is, your Honor.

13 THE COURT: Okay. Thank you.

14 MS. SCHMUCK: Your Honor, just one other thing.
15 Excuse me for interrupting.

16 I wanted to make the Court aware that I do have an
17 investigator from my office sitting at counsel table with
18 us. That's primarily to aid Mr. Maki. If he has a problem
19 hearing what is going on, that he can write out any
20 questions. That Mr. Ford can help him and can relay that
21 information to me.

22 I would also make the Court aware that I have
23 determined that the hearing aid that we were trying to find
24 is with a Dr. Timmer here in town, and may possibly be

1 available after 11:30 this morning. If it is so, I will
2 have another investigator go over and pick it up.

3 THE COURT: It might be Dr. Trimmer. I know Dr.
4 William Trimmer. Big guy. His son plays football with my
5 son. He's an ear, nose and throat doctor. I think that is
6 who it is, Dr. Trimmer.

7 THE DEFENDANT: Yes.

8 MR. GRECO: I would just add for the record he is
9 wearing one hearing aid now, which I believe is one more
10 than he had at the preliminary hearing. So he does have a
11 hearing aid in his ear right now.

12 THE COURT: We can go off the record for a second.

13 (Discussion off the record.)

14 THE COURT: Okay. Amber, why don't you bring in
15 the panel.

16 Come on in, ladies and gentlemen. Make yourselves
17 comfortable. My apologies for starting so late. Monday
18 mornings sometimes around here are very, very hectic.

19 There's some more seats right over here in the
20 front. Since there's a lot of us, we can occupy the front
21 row. I see three. I see four more seats over here.

22 Rick, why don't you get those chairs. There's four
23 people. We've got a couple more chairs. Gentlemen, there's
24 a couple of chairs here. You can go ahead, be seated. We

1 can accommodate everybody.

2 Okay. Good morning, everybody. Again, please, my
3 apologies for starting so late. We usually start at around
4 10:00 a.m. However, I had a couple other matters that I had
5 to take up. Please accept my apologies for starting late.

6 My name is Steve Kosach. I'm a district judge for
7 the State of Nevada. This is the Second Judicial District
8 Court for the State of Nevada. You are in Department 8. If
9 you-- It's like airline tickets. If you're on the wrong
10 plane, you might want to go to another department now. But
11 this is Department 8.

12 This is the time and place set for case number
13 CR94-0345. The case is entitled, "State of Nevada versus
14 Charles Maki."

15 Let the record show that the defendant, Mr. Charles
16 Maki, is present with counsel, Ms. Janet Schmuck. The State
17 is represented by Mr. Dan Greco.

18 I'd like to introduce everybody in the courtroom,
19 my staff.

20 Immediately in front of me is our court reporter,
21 Ms. Isolde Zihn.

22 To my left is the court clerk, Ms. Lisa Romero
23 Lopez.

24 To her left is my law clerk, Mr. Rick Williams.

1 To his left is Mr. Steve Kelly, one of the deputy
2 sheriffs in Washoe County.

3 Miss Amber Dause, the redhead smiling, is also a
4 deputy sheriff here.

5 And they will be the parties in the courtroom all
6 the time.

7 What we're going to do right now is have the clerk,
8 Ms. Romero Lopez, call the roll. Please answer if you're
9 present to your name.

10 (The jury was duly impaneled
11 and sworn.)

12 THE COURT: Okay. A couple of things, ladies and
13 gentlemen. Let me tell you what's going to take place.

14 First of all, we're going to go to lunch. I'll say
15 we'll be back at-- I'm going to say we'll be back at 2:00.
16 Usually take an hour and a half. But-- No. Let's make it
17 2:15. I don't want to be confusing. Let's make it 2:15.
18 We've been here for a while. I have got to take my car into
19 the repair shop anyway. I just remembered it. So we'll be
20 back at 2:15.

21 One of the things I want to advise you of is this:
22 To guard against even the appearance of impropriety, the
23 lawyers in this case will not speak to you or acknowledge
24 your presence if they happen to see you in the hallway or

1 elevator in the courthouse, or, for that matter, on the
2 street.

3 There is in the jury room for your
4 convenience--Amber will take you to the jury room when
5 you're excused here--there are on the conference table in
6 the jury room convention-type badges which say "Juror" on
7 them. I will ask that you pick one of these up, wear it
8 while you're in the courthouse so you will be identified as
9 a juror, and hopefully some person connected with the case,
10 a witness or some other person, will not say something in
11 your presence which might tend to compromise you as a fair
12 and impartial juror.

13 When you come to court in the morning, usually
14 we'll start around 10:00. We'll be done around 5:00. I
15 don't like to interrupt a witness in the middle. We
16 sometimes can interrupt a witness after direct examination
17 and before cross, but, you know, if we go at 5:15, 5:30,
18 it's just because I don't want to interrupt. You will be
19 home by 6:00 p.m. easily. The case will probably take
20 through Wednesday.

21 The case will go something like this. The State
22 will open with an opening argument. They're going to tell
23 you what they believe they're going to prove. The defense
24 then may or may not. Does not make any significant reason

1 or difference whatsoever. Defense may make an opening
2 statement at this time. If they choose not to, they may
3 make one later on. But they don't have to.

4 But the prosecution will call their witnesses. The
5 defense will cross-examine. There will be what I call
6 redirect and recross. That's one more chance to clean up or
7 clear up anything that was done. A lot of time we don't
8 want to go re, re, re, re kind of thing. Just takes too
9 long, banter back and forth. But direct examination by the
10 person that's calling the witness, then cross-examination by
11 the other party. Then there is a redirect and then there is
12 a recross. And those are governed by specific rules.

13 Once the evidence and the testimony is completed
14 the State will rest. Then the defense may or may not--no
15 legal significance whatsoever can be taken from it--may or
16 may not put on a case. What I mean by "Put on a case," call
17 the witness, call the defendant, call whomever. They do not
18 have to do that. It's totally up to them.

19 Once that is done, then there will be closing
20 arguments-- Excuse me. There will be jury instructions.
21 Then there will be closing arguments, and then the case will
22 be submitted to you. As we said, the case will probably go
23 through Wednesday.

24 You may, if you desire, take notes. If you were a

1 good notetaker in school, if you were a good notetaker in
2 college, high school, college, that type of thing, go ahead
3 and take notes if you want to. However, I'm going to give
4 you an admonition that you cannot consult with each other at
5 all during the course of this trial until the case is given
6 to you. So, therefore, if you ever--if you feel like, you
7 know, comparing notes, you can't do it. So that might be
8 some reason why you wouldn't take notes.

9 If you see me take notes--you're all looking at me,
10 the witness is right here, so if you're looking at the
11 witness, you may see me write down something. Do not take
12 any significance in that whatsoever, please. I may be
13 writing down my grocery list or laundry list or something.
14 I just want you to be aware that just because I start taking
15 notes doesn't mean it's a real important part of the trial
16 or something like that.

17 I think that's it basically. We're going to go
18 ahead and break for lunch. I will give you this
19 admonition: To not discuss this case amongst yourselves or
20 anybody else. Please don't form any conclusions on this
21 case until it's submitted to you. Please don't read, look
22 at or listen to any news media accounts of this case should
23 there be any.

24 We'll be in recess until 2:15 this afternoon. Just

1 come on in. Come on to the jury room. Amber will take you
2 there now. Come back to the jury room. We'll call you in,
3 and then they'll buzz me, and we'll get started.

4 Everybody have a pleasant lunch.

5 (Recess.)

1 RENO, NEVADA, MONDAY, APRIL 11, 1994, 2:15 P.M.

2 THE CLERK: State's 1, 2 and 3 and Defendant's A
3 through F were marked.

4 (State's Exhibits 1, 2 and 3
5 and Defendant's Exhibit A-F
6 were marked for
7 identification.)

8 THE COURT: Good afternoon to you all.

9 The jury is present. Mr. Maki is present. Counsel
10 are present. Mr. Greco is present.

11 Proceed. Go ahead, Mr. Greco.

12 MR. GRECO: Thank you, your Honor.

13 Ladies and gentlemen, you're going to hear about
14 seven or eight different names during this trial, but
15 there's going to be three primary players involved. And
16 those three players are Desiree Rohrback Menees, Summer
17 Rohrback Menees, and the defendant, Charles Joseph Maki.

18 On January 18th of this year Desiree was at home at
19 her apartment on Nevada Street here in Reno. You'll hear
20 the exact address during the trial. She lives there with
21 her sister, Summer, and her dad, Gary Menees.

22 On that date her father was talking to her, and
23 Desiree suddenly began crying. This crying went on for a
24 while. You'll hear about that from her testimony. She told

1 her dad a secret that she had been holding back from him for
2 about a month.

3 She told her dad that the previous month in
4 December she had been sexually assaulted and molested by
5 this man.

6 And she told her dad she hadn't told him right away
7 because she felt embarrassed, and she felt humiliated, and
8 she felt guilty.

9 Now, that wasn't the only bad news that day he got
10 in January. After he learned what had happened to Desiree
11 he sat down and talked with Summer as well. And Summer told
12 him that she, too, had been sexually assaulted by this man
13 the previous month in December.

14 You're going to meet both Desiree and Summer during
15 this trial. The two girls were seven and nine years old.
16 Summer was seven, Desiree was nine, when these events
17 happened in December. Now, they both had a birthday since
18 then, so when they testify to their ages, they are going to
19 tell you here in court they are now eight and ten.

20 In any event, Desiree is going to testify first.
21 She will tell you that she and her sister and her dad have
22 lived at that apartment for a long time. And in 1993 the
23 defendant, Charles Maki, moved in next door to them. They
24 lived in 7, I believe. The defendant lived next door in

1 apartment number 8.

2 Now, the defendant almost immediately became
3 friendly with the girls and with Gary when he moved in.
4 You'll hear them tell you that he gave the girls some
5 candy. He gave them ice cream and popsicles. And they
6 would frequently go over to his house to play with his dog.
7 They liked petting his dog. He had a German Shepherd. He
8 would allow them to do that.

9 Now, on a couple of dates in December the girls'
10 regular babysitter was not available to watch them during
11 the day when Gary went to work when they were out of
12 school. So Gary asked the defendant to babysit the girls
13 for him.

14 Now, you're going to meet Mr. Gary Menees here in
15 court. You'll see him, and you will hear him. You'll see
16 that he's a very trusting individual. And at this point in
17 time in December he had no reason not to trust the
18 defendant. He had helped the defendant when he moved in.

19 The defendant did not have a lot of money, so Gary
20 had given him some utensils, some type of minor furniture,
21 and helped him move in. But at this point in time they are
22 friends. He has no reason to distrust him.

23 On one of those days in December when the defendant
24 was babysitting the girls he is sitting in the living room

1 of his apartment with Desiree and Summer. Both girls have
2 on nighties. And the defendant began--begins reaching
3 underneath the nightie of Desiree, who is sitting right next
4 to him. He starts fondling the exterior of her vagina. She
5 had underwear on, so it was over her panties. He does that
6 for a while.

7 Then he tells Summer, "Go next door and get me some
8 milk." So Summer gets up and leaves, and she goes next door
9 into the Menees' apartment.

10 When Summer leaves, the defendant takes off the
11 robe he was wearing, and he has nothing else on underneath
12 it. He immediately lifts up Desiree's nightgown all the
13 way, pulls down her underwear, and he gets on top of her.
14 She'll tell you that he then inserted his penis a
15 small--short distance--she'll say about an inch or so--into
16 her vagina.

17 Now, Desiree will tell you that the defendant began
18 moving his penis in and out of her vagina. Of course, I use
19 words that are kind of sanitized and, of course, adult
20 language. You're going to hear these two little girls use
21 some different language. I'd simply ask that you remember
22 they're children and bear with them.

23 In any event, she's going to tell you that she told
24 him "No," and she's going to tell you she told him "Stop."

1 But he wouldn't stop. He didn't listen to her.

2 Now, this goes on for a short period of time. Then
3 they hear the screen door to the apartment next door, the
4 Menees' apartment, they hear it opening and closing. They
5 hear the bang. It's Summer coming back. When they hear
6 that, the defendant gets off Desiree, he pulls out of her
7 and stands up.

8 When Summer walks back in, the defendant tells her,
9 "Go back and get me some warm milk. Go back to your
10 apartment." So Summer leaves, and the defendant gets right
11 back on top of Desiree. He inserts his penis into her
12 vagina a second time. Again he begins moving in and out.
13 Again Desiree tells him "No, stop," but he's not listening
14 to her.

15 This goes on for another short period of time. And
16 again they hear the screen door bang next door. It's Summer
17 coming out of the Menees' apartment this time. The
18 defendant gets off of Desiree again. He stands up.

19 This time Summer comes in, and she actually has the
20 milk that he asked for, and she gives it to the defendant.

21 Now, Desiree is also going to tell you that during
22 the second penetration the defendant made her fondle and rub
23 his penis and testicles.

24 She's also going to tell you that during one of

1 those two events the defendant was kissing, and she'll say
2 sucking, on her right breast. Of course, in regard to all
3 of those acts, all four of them, Desiree will tell you she
4 absolutely did not want him doing that to her. She told him
5 to stop, she told him "No," but he would not listen to her.

6 Now, shortly after Summer came back for the second
7 time with that milk, Desiree left the apartment, and she
8 went over next door to her own apartment. She'll tell you
9 she did that because she wanted to get away from the
10 defendant. But the defendant wouldn't let her get away. He
11 gets up, walks over, and follows her over, arrives a minute
12 or two after she does, and he walks into the front area of
13 the apartment. It was either kitchen or living room where
14 Desiree is.

15 He takes Desiree, and he takes her into the
16 bedroom, and he lays her down on one of the two little beds
17 there. The girls had both their beds in that bedroom. In
18 fact, it was--they were bunk beds. It was the lower of the
19 two bunk beds.

20 He proceeds to do exactly the same thing that he
21 did before. He penetrates her with his penis one more
22 time. He does the same things as before, moving it in and
23 out. And again she feels it inside of her.

24 Now, this time after he pulls his penis out of her

1 he then sticks his finger, she will tell you right index
2 finger, takes his finger and inserts it into her vagina,
3 moving it in and out, in and out. Again, all of this is
4 against her will.

5 Now, eventually Desiree will tell you she was able
6 to get away from him. She runs out into the front area of
7 the apartment, and she goes and she opens the front door.
8 She opens it, and she slams it shut. But she doesn't
9 leave. What she does do is she runs back into the kitchen
10 and hides. She'll tell you she did that because she wanted
11 this man out of her apartment. She was trying to trick
12 him. And, in fact, her trick worked. A short time later he
13 leaves the apartment.

14 Now, Desiree will also tell you during the assaults
15 on this day at one point the defendant asked her to place
16 her mouth over his penis. She refuses to do that. He does
17 not make her do that, but he did ask her to do that.

18 You'll also hear that during these assaults the
19 defendant told her things like, "Don't tell anybody." At
20 one point he says, "Don't tell anybody, or I'll go to jail."
21 He did not want her telling anyone what happened. And as I
22 mentioned before, it was about a month until she told her
23 father in January what had happened to her.

24 Now, Desiree, of course, was not Mr. Maki's only

1 victim. He also assaulted Summer, who, again, was seven
2 years old in December. While he was alone with Summer, he
3 lifted up her nightie, and he pulled down the--I think she
4 calls them sunflower stretch pants that she was wearing.
5 Then he pulled down her underwear down around her ankles.

6 And Summer will tell you that the defendant did
7 something then that she thought was really weird. Those are
8 her words. He took his finger, his index finger, again, his
9 right index finger, same one he used on Desiree, licked it
10 with his own saliva, then began rubbing it in a circular
11 motion around the exterior of Summer's vagina.

12 This goes on for a period of time. And the
13 defendant then, his robe is off, he's naked again, he takes
14 his penis and begins rubbing his penis in a circular motion
15 again around the exterior of Summer's vagina. This also
16 goes on for a period of time. Finally he inserts his penis
17 into Summer's vagina.

18 Summer will tell you it only went in about that
19 far. She knows it was inside. She could feel it inside.
20 And it hurt. And as soon as the defendant did the first act
21 to her with his finger, Summer was immediately saying "Stop,
22 no, no, don't do this." But the defendant would not listen
23 to her. He just kept on going.

24 Now, as I mentioned in the beginning, Gary Menees

1 found out about this from Desiree on January 18th of this
2 year. The next morning, January 19th, the girls are taken
3 down to the Reno Police Department. They're interviewed by
4 Detective Jim Stegmaier. You will see Stegmaier here. He's
5 a Reno Police detective. He's been with the force five or
6 six years. He is assigned to the sex crimes unit. All he
7 handles are cases like this and sex cases involving adult
8 victims.

9 He interviews the two little girls that morning.
10 They tell him things I've told you and some additional
11 things as well. And he decides to contact the defendant for
12 an interview. So Stegmaier meets the defendant. They
13 arrange to go down to the Reno Police Department Station,
14 where the defendant submits to an interview.

15 Now, ladies and gentlemen, that interview was
16 videotaped. Stegmaier will describe for you how there's a
17 camera up near the roof area of that particular suspect
18 interview room. The defendant did not know he was being
19 videotaped. Stegmaier will tell you his practice is when he
20 interviews all suspects he does not tell them there's a
21 camera there. Based upon the training he has received,
22 based upon his experience, he has found that the suspects
23 are usually a little more candid and a little more willing
24 to tell the full truth if they don't think they're being

1 recorded for posterity sake. That fact will become
2 important in a few minutes.

3 And the videotape reminds me of one other subject,
4 too. You're going to see the defendant sitting here
5 throughout this trial in front of you. He's dressed
6 nicely. He's going to be sitting there quietly and politely
7 throughout the trial. But when you see the videotape,
8 you're going to get a much different picture of Charles
9 Maki.

10 When you watch that videotape, take a look at what
11 he's wearing, take a look at what he says, and take a look
12 at how he says it. And then compare that to the quiet
13 individual sitting here in court. I think the contrast is
14 important, and it will be enlightening for you.

15 In any event, during the first five minutes of that
16 videotaped interview you're going to see that he does not
17 admit anything. He adamantly denies touching either of
18 those two girls at any time. But as the interview goes on,
19 things begin to change. About five minutes into the
20 interview he starts making equivocal statements. He says
21 things like, "I don't know what happened." And he says, "I
22 had a buzz, and I don't remember what happened." So he's
23 moving from straight denial to equivocal statements. In a
24 short distance further into the interview he begins making

1 outright admissions of guilt.

2 Most importantly, he admits that he took his penis
3 in his own hand and he rubbed it on Desiree's vagina.

4 He admits that he was, quote, guilty regarding
5 Desiree. When Stegmaier asked him, "Well, what do you mean
6 by that? What exactly did you do to Desiree?" his exact
7 response was, "Probably what Desiree told you."

8 And he admits that he allowed Summer to wash him in
9 the shower. He admits that she washed his legs or back, and
10 in his words, she might have--the "might have" is his
11 words--touched his testicles.

12 The defendant makes some other admissions as well
13 regarding those two little girls. You will hear about all
14 those when you listen to the videotape.

15 At this point Stegmaier has heard enough. In his
16 own mind he's starting to think about arresting this man.
17 So he reads him his constitutional rights. He tells the
18 defendant he has a right to an attorney. He has the right
19 to a free attorney if he can't afford one. And he tells him
20 that he doesn't have to talk to him if he doesn't want to.
21 So after the defendant is read those rights the defendant
22 says, "I don't want to talk anymore."

23 Bohach and Stegmaier leave the room. You'll see
24 the defendant sitting there alone in that room. And while

1 he's sitting there alone, not realizing there's a videotape
2 running above him, he begins to make a series of spontaneous
3 admissions of guilt. He says things like "Why? Why? The
4 stupidest thing." He says "Why, why? I don't believe I did
5 this." And when he says it, watch what he is doing. He's
6 alternately looking skyward like this, or putting his head
7 down in his hands or fidgeting. Take a look at his face and
8 his gestures, which show guilt just as much as his words do,
9 while he's sitting there.

10 And finally at the very end of the videotape you're
11 going to see Detective Stegmaier's partner, John Bohach, in
12 the room. You will see that Bohach is asking the defendant
13 the routine questions he needs to ask him for booking
14 purposes to fill out the booking or probable-cause form. In
15 fact, I believe you'll see Bohach actually writing on the
16 videotape. He's asking him things like his name, his date
17 of birth, how long he's lived in Nevada, what his Social
18 Security number is, and other basic information like that.

19 While Bohach is doing these things, the defendant
20 suddenly makes some more spontaneous admissions. They have
21 nothing to do with those routine questions that Bohach is
22 asking him. He tells Bohach, "I had to get this off my
23 chest." He says, "I did something wrong." And he says
24 words to the effect of, "My lawsuit with SIIS," workmen's

1 comp, "just went down the drain." Again, all those
2 statements are simply blurted out by him. They're not in
3 response to anything Bohach was asking him.

4 Now, ladies and gentlemen, you're going to hear
5 some other interesting evidence in the case as well. You're
6 going to hear that on the night of his arrest the defendant
7 telephoned Gary Menees three or four hours after his arrest,
8 and over the telephone he makes some additional admissions
9 of guilt to Gary Menees.

10 He admits that he was wrong for touching the
11 girls. He tells them it was his fault, and "Don't blame the
12 girls." And he says he was sorry.

13 Now, he makes some additional statements as well.
14 And you'll hear those.

15 And the other primary evidence you'll hear in the
16 case is from Cathy Peele. Now, Cathy is the director of the
17 Washoe County Sexual Assault Investigation Team. She's been
18 the director for quite some time. The physical exam of the
19 girls in this case occurred on January 24th, so five days
20 after Stegmaier became involved in the case. You'll hear
21 about the results of the exam, and particularly regarding
22 the damage and deformity to the little girl's hymen.

23 To be very brief, she'll tell you that her hymen
24 was enlarged and folded over on itself, and that that and

1 some other finding she makes tell her that in her opinion
2 the little girl had been subjected to sexual abuse.

3 Now, again in terms of Gary Menees and Cathy Peele,
4 I don't want to go into their testimony in great detail at
5 this point simply for time's sake, but you'll hear
6 everything during their testimony.

7 Now, at the conclusion of the case the lawyers are
8 going to address you one more time. And when we do, I'm
9 going to be asking that you return verdicts of guilty on
10 each of the counts alleged in the information. But as you
11 sit here through the trial, I want you to remember a couple
12 of important things.

13 First the statements of the lawyers, Miss Schmuck
14 and myself, are not evidence, including these opening
15 statements. The only evidence you should properly consider
16 is the testimony from those witnesses up there on the stand,
17 the videotapes that are admitted into evidence, and any
18 other exhibits that the judge allows in during the trial.
19 But what the lawyers say is not evidence and should not be
20 considered by you as such.

21 And second and finally, throughout this trial
22 you're going to see two or actually three people seated at
23 defense table, the two primaries being Janet Schmuck, the
24 defense attorney, and the defendant, Charles Maki. You're

1 only going to see one person seated at my table, myself.
2 But, remember, I have a client, too. I represent the people
3 of the State of Nevada, including those two little girls.
4 And I simply ask that you give my client just as fair a
5 shake as I know that you're going to give the defendant in
6 this case.

7 Thank you.

8 THE COURT: Thank you, Mr. Greco.

9 Miss Schmuck, do you care to have an opening
10 statement at this time?

11 MS. SCHMUCK: Yes, I do, your Honor.

12 THE COURT: Go ahead.

13 MS. SCHMUCK: If it please the Court, ladies and
14 gentlemen of the jury. This is my first opportunity to
15 address you. And I'm going to make it brief this afternoon
16 because we have spent some time this morning. I think it's
17 been very interesting for all of us in finding a jury of
18 reasonable people.

19 You've heard Mr. Greco outline the State's case.
20 The evidence that he has outlined for the State's case is
21 based upon his understanding of the story. Now, every case
22 has a story. And there's going to be a story behind this
23 case as well.

24 The evidence he outlined is based upon his

1 understanding of the story. That's not Mr. Maki's
2 understanding of the story.

3 As this trial proceeds, you're going to hear
4 witnesses, and you'll hear them testify. You're going to
5 hear more than enough talking, I'm sure, from Mr. Greco and
6 I. You should not judge Mr. Maki based on my words or what
7 the district attorney says. You must judge him based simply
8 on the testimony that you hear here.

9 You will hear information attained from both direct
10 examination and cross-examination. They should be weighed
11 equally.

12 Mr. Maki does not have to prove anything in this
13 trial. He can rely solely on the State's inability to prove
14 its case. He doesn't have to call any witnesses. He
15 doesn't have to testify. He doesn't have to do anything.
16 The burden is completely on the State, because that's the
17 way our system works.

18 I want you to listen very carefully to all the
19 evidence. Do not make any determinations until you've heard
20 all the evidence and until you've had time to consider all
21 of the evidence and weigh it accordingly.

22 We know that you're reasonable people, and it's our
23 contention that the State will not be able to meet its
24 burden. That burden is to prove beyond a reasonable doubt

1 that Mr. Maki committed the crimes of which he's accused.

2 Thank you.

3 THE COURT: Thank you, Miss Schmuck.

4 Mr. Greco, would you call your first witness,
5 please.

6 MR. GRECO: Your Honor, may we approach?

7 (Discussion at the bench.)

8 THE COURT: Ladies and gentlemen, we have a legal
9 matter to take up outside of your presence. This is what I
10 meant about the law and the facts. So I've got to determine
11 something before you hear it, if you are going to hear it.
12 So I am going to ask that you be excused and go ahead and
13 get into the jury room. We shouldn't be too long.

14 So why don't you just go ahead and remember the
15 admonition and go ahead and be excused into the jury room.
16 Officer Kelly will take you in.

17 (The following proceedings
18 were had without the presence
19 of the jury:)

20 MR. GRECO: Your Honor, the State would call
21 Desiree Menees.

22 THE COURT: Come on forward, please, Desiree.

23 Desiree, here's the witness stand right here.
24 Would you come on up. And you can remain standing. Please

1 face this young lady and raise your right hand to be sworn.

2 (Witness sworn.)

3 MR. GRECO: May I approach, your Honor?

4 THE COURT: Yes.

5 DESIREE ROHRBACK MENEES,

6 called as a witness on behalf of the State,

7 first having been duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. GRECO:

11 Q. Desiree, I want you to speak right into that
12 microphone. Okay?

13 Would you tell us what your name is.

14 A. Desiree.

15 Q. And how do you spell Desiree?

16 A. D-e-s-i-r-e-e.

17 Q. What is your last name?

18 A. Rohrback.

19 Q. How do you spell that?

20 A. R-o-h-r-b-a-c-k.

21 Q. Do you have another last name, too?

22 A. Menees.

23 Q. How do you spell that one?

24 A. M-e-n-e-e-s.

1 Q. What grade are you in, Desiree?

2 A. Fourth.

3 Q. Do you know the difference between the truth and a
4 lie?

5 A. Yes.

6 Q. Is the truth something that happened?

7 A. Yes.

8 Q. Can you give me an example of what the truth is?

9 A. If you broke something, and you said you did,
10 that's the truth.

11 Q. Okay. And how about a lie? Is a lie something
12 that happened, Desiree?

13 A. No.

14 Q. Can you talk a little louder?

15 MS. SCHMUCK: Your Honor, I was just going to
16 indicate Mr. Maki has told me that he's not able to hear,
17 so.

18 THE COURT: We're going to turn on the microphone.

19 MS. SCHMUCK: Thank you.

20 THE COURT: And let me know if you can hear after
21 the microphone is turned on. After the car goes by.

22 MR. GRECO: I think it's on, your Honor.

23 BY MR. GRECO:

24 Q. Desiree, if I told you that the shirt I have on--

1 Can you see that from there?

2 A. Yes.

3 Q. If I said my shirt is pink, is that the truth or a
4 lie?

5 A. A lie.

6 Q. How come it's a lie?

7 A. Because your shirt is white.

8 Q. Okay. And if I told you that this lady here typing
9 down on that machine had blonde hair, would that be true or
10 would that be a lie?

11 A. A lie.

12 Q. Why is that?

13 A. Because she has brown hair.

14 Q. And if I said that you go to Peavine Elementary
15 School, is that the truth, or is that a lie?

16 A. Truth.

17 THE COURT: Excuse me just a second.

18 Can you hear, Mr. Maki?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay.

21 BY MR. GRECO:

22 Q. Now, Desiree, do you remember Janet from the
23 preliminary hearing a few months ago in the Justice Court?

24 A. Yes.

1 Q. If Janet and I ask you some questions, will you
2 tell us the truth?

3 A. Yes.

4 Q. To each and every question we ask you?

5 A. Yes.

6 MR. GRECO: Your Honor, at this point I would ask
7 that the child be deemed competent to testify for purposes
8 of this trial.

9 THE COURT: Okay. Any questions?

10 MS. SCHMUCK: No, your Honor. I have no
11 questions.

12 THE COURT: Okay. I think Desiree is certainly
13 competent to testify.

14 We can go ahead and call the jury back in, please.

15 Desiree, you can stay right there, sweetie.

16 Desiree, if you want a glass of water or something,
17 you just tell me.

18 (The following proceedings
19 were had with the presence of
20 the jury:)

21 THE COURT: Okay. Welcome back, ladies and
22 gentlemen.

23 On the witness stand we have Miss Desiree Menees.
24 And she has been sworn, and she is under oath.

1 Go ahead, Mr. Greco.

2 BY MR. GRECO:

3 Q. Would you tell these people what your name is.

4 A. Desiree.

5 Q. And what is your last name?

6 A. Menees.

7 Q. Okay. Do you have another last name you go by,
8 too?

9 A. Rohrback.

10 Q. Desiree, how old are you?

11 A. 10.

12 Q. And when is your birthday?

13 A. January 13th.

14 Q. So how old were you back in December?

15 A. Nine.

16 Q. What is your dad's name?

17 A. Gary Menees.

18 Q. And do you live with him?

19 A. Yes.

20 Q. At what address?

21 A. 1015 Nevada Street.

22 Q. Do you live in an apartment there?

23 A. Yes.

24 Q. What apartment number do you live in?

1 A. 7.

2 Q. Now, who else lives with you there besides your
3 dad?

4 A. My sister, Summer.

5 Q. Does your mom live with you there?

6 A. No.

7 Q. Where does your mom live?

8 A. Tracy, California.

9 Q. Now, I noticed you used two last names before. Is
10 Rohrbach your mom's name?

11 A. Yes.

12 Q. Do you use that sometime?

13 A. Most of the time.

14 Q. And do you use Menees sometime?

15 A. Sometimes.

16 Q. Now, Desiree did you live at that same apartment
17 over on Nevada Street back in December?

18 A. Yes.

19 Q. And can you remember who lived next door to you in
20 apartment number 8 back in December?

21 A. Chuck.

22 Q. Okay. Do you know Chuck's last name?

23 A. No.

24 Q. Do you see Chuck here in the courtroom today?

1 A. Yes.

2 Q. Would you point him out for me.

3 Can you look at him when you point him out,

4 Desiree? Would you do it again?

5 What color shirt does he have on?

6 A. Blue.

7 Q. And does he have a mustache?

8 A. Yes.

9 MR. GRECO: Your Honor, would the record reflect
10 that she identified the defendant, Charles Maki?

11 THE COURT: Okay.

12 BY MR. GRECO:

13 Q. Now, Desiree, before Chuck babysat you in December,
14 did you used to like him?

15 A. Yes.

16 Q. Did he ever give you things?

17 A. Yes.

18 Q. What kind of things did he give you?

19 A. Popsicles.

20 Q. Okay. Did he give you anything else that you can
21 remember?

22 A. No.

23 Q. Desiree, when Chuck babysat you in December, did
24 Chuck ever do some bad things to you?

1 A. Yes.

2 Q. Where were you when the first bad thing happened?

3 A. At Chuck's house.

4 Q. In his apartment?

5 A. Yes.

6 Q. And was he babysitting you?

7 A. Yes.

8 Q. And what were you wearing that day?

9 A. A long nightgown.

10 Q. Okay. Did you have on anything underneath it?

11 A. Uh-huh.

12 Q. What was that?

13 A. My underwear.

14 Q. Panties?

15 A. Yeah.

16 Q. Okay. And what was--well, what time of the day was

17 this, Desiree?

18 A. Around 9:00.

19 Q. In the morning?

20 A. Yes.

21 Q. And what did Chuck have on?

22 A. His robe.

23 Q. Okay. What was the first thing that was bad that

24 Chuck did to you that morning?

1 A. He started rubbing on my private part.

2 Q. Okay. What did he rub with?

3 A. His pointer finger.

4 Q. Did he rub over your panties or underwear?

5 A. Yes.

6 Q. Okay. What part of you did he rub?

7 A. My private.

8 Q. Okay. Do you know any other words for your
9 private?

10 A. Vagina.

11 Q. Where did you hear the word "vagina"?

12 A. From my parents and at school.

13 Q. Okay. And would you point out for these people
14 where that is so they know what you're talking about. Is it
15 where you go potty from?

16 A. Yes.

17 Q. Now, when Chuck first started rubbing you over your
18 underwear, was Summer in the room at that point?

19 A. Yes.

20 Q. Did he tell Summer to go somewhere?

21 A. He asked her to go over to our apartment and get
22 some warm milk.

23 Q. So your apartment next door?

24 A. Yes.

1 Q. And did Summer leave?

2 A. Yes.

3 Q. And when Summer left, did something happen to you?

4 A. Yes.

5 Q. What happened?

6 A. Chuck started humping me.

7 Q. Okay. Now, that's kind of a funny word, "humping."

8 Where did you hear that one? Is that from school?

9 A. I think so.

10 Q. Is that what the kids at school call it?

11 A. Yes.

12 Q. What exactly did he do when you say he was humping
13 you?

14 A. He was moving up and down.

15 Q. Okay. Did he touch--did he put something in your
16 vagina?

17 A. Uh-huh.

18 Q. What did he put in your vagina?

19 A. His penis.

20 Q. And did you learn that word in school, too?

21 A. Yeah.

22 Q. Desiree, have you had any health classes or biology
23 classes or something like that?

24 A. Yes.

1 Q. What kind of class have you had about body parts?

2 A. Share.

3 Q. What is Share?

4 A. It's a program where a lady teaches you things
5 about your body.

6 Q. And have you heard about what a penis is in
7 school?

8 A. Uh-huh.

9 Q. Is a penis on a woman or a man?

10 A. A man.

11 Q. Okay. Where is the penis located?

12 A. Around where he goes to the bathroom.

13 Q. Okay. Let's just imagine you were a boy. Can you
14 show us where your penis would be. Same place where your
15 vagina is?

16 A. Yes.

17 Q. Did Chuck's penis look a lot different than your
18 vagina?

19 A. Yes.

20 Q. All right. Now, when you say-- Did he--well, did
21 he move his penis in and out of your vagina?

22 A. Yes.

23 Q. Could you feel it inside of you?

24 A. A little.

1 Q. Okay. How far did it go inside of you?

2 A. About an inch or so.

3 Q. Okay. Can you show us with your fingers what it
4 felt like? Maybe about that much.

5 Now, did you want him to put his penis inside your
6 vagina?

7 A. No.

8 Q. Did you tell him "No"?

9 A. Yeah.

10 Q. You did tell him "No"? And did Chuck stop right
11 away when you told him "No"?

12 A. No.

13 Q. When Chuck was doing this to you the first time,
14 did he say anything to you?

15 A. Yes.

16 Q. What did he say?

17 A. He said, "Does this feel good?"

18 Q. And what did you say to him when he told you that?

19 A. "No."

20 Q. Now, how long did he have his penis inside your
21 vagina the first time?

22 A. Ten minutes or so.

23 Q. Would you like a glass of water, Desiree?

24 I just want you to take your time and relax. Just

1 real slowly drink that. Okay? Just relax for a few
2 minutes.

3 Desiree, I want you to look at me. Okay? Just try
4 and relax.

5 Desiree, at some point did Chuck stop pushing his
6 penis in and out of your vagina?

7 A. When my sister came back in the room.

8 Q. Okay. How did you know your sister was coming back
9 in the room?

10 A. Chuck heard our screen door shut.

11 Q. The screen door back to your apartment?

12 A. Yes.

13 Q. And what did Chuck do when you heard that?

14 A. He got off of me.

15 Q. All right. Did Summer, in fact, come inside to
16 Chuck's apartment?

17 A. Yes.

18 Q. And when she came inside, did Chuck let her stay
19 there?

20 A. No.

21 Q. What did Chuck do?

22 A. He told her to go back and get warm milk.

23 Q. Go back to your apartment?

24 A. Yes.

1 Q. And did Summer leave again?

2 A. Yes.

3 Q. And after Summer left what happened next?

4 A. He did the same thing to me.

5 Q. Did he put his penis inside your vagina?

6 A. Yes.

7 Q. Did he move it in and out?

8 A. Yes.

9 Q. Could you feel it inside you?

10 A. A little.

11 Q. And how long was it inside you the second time?

12 A. Fifteen seconds, I guess. I'm not sure.

13 Q. Did it hurt?

14 A. Yes.

15 Q. Why did Chuck stop this second time?

16 A. My sister came in with the warm milk.

17 Q. Did she give it to him?

18 A. Yes.

19 Q. Now, Desiree, during those first two times he put

20 his penis inside you did he make you touch any part of his

21 body that you didn't want to?

22 A. Yes.

23 Q. What did he make you touch?

24 A. His penis.

- 1 Q. How did he make you touch it?
- 2 A. He took my hand and just made me rub it.
- 3 Q. Did you want to do that?
- 4 A. No.
- 5 Q. Was that during the first or the second time that
- 6 he put his penis inside you?
- 7 A. Second.
- 8 Q. Now, Desiree, after the second time, when Summer
- 9 came back in with the milk and gave it to him, did you stay
- 10 in Chuck's apartment?
- 11 A. No.
- 12 Q. Where did you go?
- 13 A. To my house.
- 14 Q. Why did you go to your house?
- 15 A. Because I didn't want him to do that to me again.
- 16 Q. And were you left alone at your house?
- 17 A. Yes.
- 18 Q. Okay. Did somebody come over a short time later?
- 19 A. Yes.
- 20 Q. Who came over?
- 21 A. Chuck.
- 22 Q. Did he come inside?
- 23 A. Yes.
- 24 Q. Did he take you somewhere?

1 A. Yes.

2 Q. Where did he take you?

3 A. To our room.

4 Q. To your room, your bedroom?

5 A. Yes.

6 Q. Did he put you down on something?

7 A. Yes.

8 Q. What did he put you down on?

9 A. My sister's bed.

10 Q. Do you have bunk beds?

11 A. Yes.

12 Q. Is your sister's the higher bunk bed or the lower

13 bunk bed?

14 A. Lower.

15 Q. And when he put down on the bunk bed, did he do

16 something bad to you?

17 A. Yes.

18 Q. What did he do?

19 A. He did the same thing he did to me the first time

20 and the second time.

21 Q. Did he put his penis inside you?

22 A. Yes.

23 Q. Could you feel it inside your vagina?

24 A. Yes.

- 1 Q. Did he move it in and out?
- 2 A. Yes.
- 3 Q. How far did it go in this time?
- 4 A. I'm not sure.
- 5 Q. Can you show us with your fingers?
- 6 A. (Indicating.)
- 7 Q. I forgot to ask you. On the second time back at
- 8 his apartment, how far did he put his penis inside you that
- 9 time?
- 10 A. About the same amount as the first time.
- 11 Q. Now, Desiree, going back to your apartment, when
- 12 you're in your bedroom on Summer's bed, how long did he have
- 13 his penis inside you that time?
- 14 A. Twenty seconds or so.
- 15 Q. Okay. Did he eventually pull his penis out of
- 16 you?
- 17 A. Uh-huh. Yes.
- 18 Q. After he did that did he do something else bad to
- 19 you?
- 20 A. Yes.
- 21 Q. What did he do that was bad?
- 22 A. He rubbed my private again.
- 23 Q. Okay. With what?
- 24 A. With his right pointer finger.

1 Q. Would you hold up that so we can see what you're
2 talking about when you say "pointer finger." Your finger
3 next to your thumb there?

4 A. Yes.

5 Q. Did he put his finger inside you?

6 A. Yes.

7 Q. Did he move it in and out?

8 A. Yes.

9 Q. Did that hurt?

10 A. Yes.

11 Q. How long did he do that for?

12 A. I'm not sure.

13 Q. Okay. Desiree, can you show us where your chest
14 area is?

15 A. (Indicating.)

16 Q. Okay. What do you call that?

17 A. Boobs.

18 Q. Okay. That's fine. That's what a lot of people
19 call it. Desiree, at any time during any of the times he
20 was doing bad things to you, did he ever touch your boobs in
21 a bad way?

22 A. Yes.

23 Q. What did he do?

24 A. He sucked on my right one.

1 Q. Okay. And how long did he do that for?

2 A. Maybe three seconds.

3 Q. Did you want him to do that?

4 A. No.

5 Q. Did you like that?

6 A. No.

7 Q. Was that at his apartment, or was that at your
8 apartment?

9 A. Mine.

10 Q. Now, Desiree, did Chuck ever ask you to put his
11 penis inside your mouth?

12 A. Yes.

13 Q. Did you do that?

14 A. No.

15 Q. During the entire time he was doing all these
16 things to you, did he ever say anything to you about--did he
17 ever say anything to you about other than what you've talked
18 about before?

19 A. He told me not to tell anyone.

20 Q. Did he say what would happen if you told someone?

21 A. Yes.

22 Q. What did he tell you would happen?

23 A. He said he'd have to go to prison or jail.

24 MR. GRECO: Your Honor, I would ask that the

1 defendant be admonished to keep quiet while she's
2 testifying. He just uttered the word "Bullshit," your
3 Honor, and I would request that you warn him very thoroughly
4 not to make any comments again while this child is
5 testifying.

6 THE COURT: The warning is made.

7 THE DEFENDANT: I apologize, your Honor. It was my
8 fault. I shouldn't have made a comment.

9 BY MR. GRECO:

10 Q. Desiree, I want you to you look at me. Okay?

11 Desiree, did you tell your dad what happened right
12 away?

13 A. No.

14 Q. How come you didn't tell your dad right away?

15 A. I was scared.

16 Q. Were you embarrassed?

17 A. Yes.

18 Q. Did you feel bad?

19 A. Yes.

20 Q. Can you remember when you finally did tell your
21 dad?

22 A. In January.

23 Q. Okay. Well, do you remember the day you told him?

24 A. No.

1 Q. Okay. Was it the day before he went down to see
2 Jim Stegmaier at the Reno Police Department?

3 A. Yes.

4 Q. Were you crying when you told your dad?

5 A. Yes.

6 Q. Did you feel better after you told him?

7 A. Yes.

8 MR. GRECO: That's all I have, your Honor.

9 THE COURT: Thank you.

10 Miss Schmuck.

11 MS. SCHMUCK: Thank you.

12 CROSS-EXAMINATION

13 BY MS. SCHMUCK:

14 Q. Hi, Desiree. We've talked before, haven't we?

15 A. Yes.

16 Q. Desiree, how many times did Chuck babysit you and
17 Summer; do you remember?

18 A. He never babysat me and Summer.

19 Q. Okay. Well, did he babysit you and then separately
20 Summer?

21 A. Not that I can remember.

22 Q. Okay. Well, on that particular day that you've
23 just talked to Mr. Greco about, was Chuck babysitting you
24 that day?

1 A. Half. Half the day.

2 Q. So was that the only time that he ever babysat
3 you?

4 A. No.

5 Q. Okay. Do you remember any other times that he
6 babysat you?

7 A. He babysat me when I didn't have anyone to watch me
8 Mondays and Tuesdays.

9 Q. So did that happen a couple of times, or did it
10 only happen one time? When he babysat you on Mondays and
11 Tuesdays?

12 A. It happened lots of times.

13 Q. Okay. Now, you just talked to Mr. Greco about on a
14 particular day when Chuck babysat you and something bad
15 happened. Was that the only time it happened?

16 A. Yes.

17 Q. What time did you go over to Chuck's apartment that
18 morning?

19 A. Around 9:00.

20 Q. 9:00 o'clock?

21 A. Yes.

22 Q. Do you remember if when you went over that morning
23 was the sun shining?

24 A. Yes.

1 Q. So it was light outside?

2 A. Yes.

3 Q. When you got over to Chuck's apartment, when you
4 went over there at about 9:00 o'clock, was Summer with you
5 then?

6 A. Yes.

7 Q. So you went over there together?

8 A. Yes.

9 Q. Where was Chuck when you got to the apartment?

10 A. He was walking behind us to his apartment.

11 Q. So did he come--did he come over to your dad's and
12 your apartment to get you?

13 A. Yes.

14 Q. So then you walked back over with him?

15 A. Yes.

16 Q. How long had your dad been gone by then?

17 A. An hour or so.

18 Q. Okay. So did you and Summer wake up when Chuck
19 came over?

20 A. No.

21 Q. You were already awake when he got there?

22 A. Yes.

23 Q. So you went over to Chuck's apartment. What did
24 you do when you got to Chuck's apartment?

1 A. We laid down and watched a movie.
2 Q. Okay. Where were you laying down?
3 A. On the couch.
4 Q. And where was the couch in Chuck's apartment?
5 A. By the wall.
6 Q. And was that in a living room?
7 A. Yes.
8 Q. Do you remember if that room had windows?
9 A. In the dining room.
10 Q. There were windows in the dining room?
11 A. Just one.
12 Q. Okay. Were there any windows in the living room?
13 A. One.
14 Q. Do you remember if the window had a curtain on it?
15 A. It had--yeah, a curtain.
16 Q. Was the curtain opened or closed?
17 A. It was opened a little.
18 Q. It was open a little. So was there lots of light
19 in the room?
20 A. Yes.
21 Q. Was--were there lights on?
22 A. Yes.
23 Q. So you and Summer laid down on the couch.
24 A. Yes.

1 Q. Where was Chuck?

2 A. On the couch.

3 Q. Did you all lay down together on the couch?

4 A. Yes.

5 Q. Was that something unusual to do?

6 A. I guess.

7 Q. Had you ever done that before with Chuck?

8 A. I don't know.

9 Q. Okay. So do you remember if-- Was this a big couch
10 you were all laying on?

11 A. Yes.

12 Q. So it was big enough for everybody?

13 A. Yes.

14 Q. How long were you laying on the couch before Summer
15 went back to your house to get the milk?

16 A. I don't know.

17 Q. Were you watching a movie?

18 A. Yes.

19 Q. Do you remember what movie you were watching?

20 A. "Santa Claus."

21 Q. Had you watched most of the movie by that time when
22 Summer left?

23 A. It was in the middle.

24 Q. Okay. And Chuck was watching the movie with you?

1 A. Yes.

2 Q. Did he fall asleep?

3 A. No.

4 Q. So Summer left your apartment.

5 A. Yes.

6 Q. I mean, Chuck's apartment. I'm sorry.

7 A. Yes.

8 Q. She went to your apartment. How long was she
9 gone?

10 A. I don't know.

11 Q. Was she--did she come back before the movie was
12 over?

13 A. Yes.

14 Q. Now, you said that after Summer left that Chuck
15 touched you.

16 A. Yes.

17 Q. Okay. How did he touch you?

18 A. He started humping me.

19 Q. Okay. Desiree, do you remember what Chuck was
20 wearing?

21 A. His robe.

22 Q. Okay. Did he take his robe off when he started
23 doing this to you?

24 A. Yes.

1 Q. Did he--what did he have on underneath his robe?

2 A. Nothing.

3 Q. So he was naked underneath his robe?

4 A. Yes.

5 Q. Do you remember, Desiree, what you said to Chuck
6 when he started doing that?

7 A. "Stop."

8 Q. Okay. Do you think he heard you?

9 A. No.

10 Q. Did you say anything else to him?

11 A. No.

12 Q. How long was his penis in your vagina? Could you
13 just estimate the time?

14 A. I think-- I'm not sure.

15 Q. Do you think--was the movie still on while this was
16 happening?

17 A. Yes.

18 Q. I believe you told Mr. Greco then that Summer came
19 back.

20 A. Yes.

21 Q. Is that right? Did Summer bring the milk with her
22 when she came back?

23 A. No.

24 Q. When she came back then, she didn't have the milk.

1 Did she start watching the movie again?

2 A. No.

3 Q. What did she do?

4 A. Chuck told her to go back to the apartment and get
5 his warm milk.

6 Q. Okay. Warm milk.

7 A. Yes.

8 Q. Why warm milk; do you know?

9 A. No.

10 Q. Your sister left and went back to your apartment.

11 A. Yes.

12 Q. Do you know how long she stayed that time?

13 A. No.

14 Q. What did Chuck do when she left?

15 A. The same thing.

16 Q. Okay. Could you tell us then exactly what that
17 was?

18 A. He just kept humping me again.

19 Q. Now, Desiree, when Summer came back that first time
20 and she didn't have the milk with her, and she came into the
21 apartment, did Chuck have any clothes on?

22 A. He just had his--he put his robe back on.

23 Q. So he had put his robe back on when Summer came
24 in?

1 A. Yes.

2 Q. When Summer left again, did Chuck take his robe
3 off?

4 A. Yes.

5 Q. Did Summer eventually come back with the warm
6 milk?

7 A. The second time? Yes.

8 Q. So she brought the warm milk. Is that--did you
9 leave then? Did you leave Chuck's apartment?

10 A. Yes.

11 Q. Did Summer go with you when you left?

12 A. No.

13 Q. Did you talk to your sister at all?

14 A. When we were getting dressed after Chuck did that
15 to me the third time.

16 Q. But I meant when she came into Chuck's apartment
17 with the warm milk, did you talk to her at all then?

18 A. No.

19 Q. You just left and went back to your apartment?

20 A. Yes.

21 Q. What did you do when you got back to your
22 apartment?

23 A. I watched TV and colored.

24 Q. Do you know how long you watched TV and colored?

1 A. No.

2 Q. Did Summer come back to the apartment after that?

3 A. No.

4 Q. She just--do you know where she was?

5 A. At Chuck's apartment.

6 Q. So at some point you told Mr. Greco then Chuck came

7 to your apartment?

8 A. Yes.

9 Q. Was Summer with him?

10 A. No.

11 Q. Do you know where she was?

12 A. At his apartment.

13 Q. So she stayed at his apartment, and Chuck came to

14 your apartment?

15 A. Yes.

16 Q. Now, you were coloring and watching TV when Chuck

17 came in?

18 A. Yes.

19 Q. What did he do?

20 A. He brought me to my room.

21 Q. Do you remember what Chuck was wearing at that

22 point?

23 A. His robe.

24 Q. He still had his robe on?

1 A. Yes.

2 Q. Okay. So he took you into your room and Summer's
3 room?

4 A. Yes.

5 Q. Did he take off the robe?

6 A. Yes.

7 Q. Were the lights on in that room?

8 A. No.

9 Q. Was it dark in there?

10 A. It was shady.

11 Q. So is there a window in that room?

12 A. Yes.

13 Q. Were the curtains open?

14 A. No.

15 Q. So they were closed, and so it was rather shady
16 there?

17 A. Yes.

18 Q. Could you see the bed in the room?

19 A. Yes.

20 Q. Okay. Could you see Chuck?

21 A. Yes.

22 Q. You told the district attorney that Chuck put his
23 penis inside of you in your room, and that lasted for about
24 20 seconds?

1 A. Yes.

2 Q. Did it hurt?

3 A. Yes.

4 Q. Desiree, after all of this happened, did you--did
5 it--like that afternoon, do you remember if something hurt
6 that afternoon?

7 A. No.

8 Q. It didn't hurt? Okay. You didn't hurt in your
9 vagina?

10 A. I don't remember.

11 Q. You don't remember. Do you ever remember it
12 hurting at any time after that?

13 A. Um-hum.

14 Q. Do you ever remember it being difficult to sit
15 down?

16 A. No.

17 Q. You also told the district attorney that Chuck
18 asked you to touch his penis.

19 A. Yes.

20 Q. Where did you-- Did you touch his penis?

21 A. He took my hand and made me touch it.

22 Q. Where did he make you touch his penis?

23 A. I don't know.

24 Q. Now, Desiree, I know we have talked before. Do you

1 remember when Chuck made you touch his penis, was--do you
2 remember if his penis was up, or was it down?

3 A. It was straight.

4 Q. It was straight. Okay.

5 A. Yes.

6 Q. Up? Or was it up, or was it down?

7 A. It was in the middle.

8 Q. Do you remember the first time when he put his
9 penis inside of you, could you see it?

10 A. No.

11 Q. You didn't see it then?

12 A. No.

13 Q. Did you see it the second time?

14 A. No.

15 Q. What about the third time?

16 A. No.

17 Q. Did you see it when you touched his penis, when he
18 put your hands on his penis?

19 A. Yes.

20 Q. Do you remember what it looked like other than
21 whether it was up or down?

22 A. It was hairy.

23 Q. Do you remember what color it was?

24 A. Peach.

1 Q. Peach?

2 MS. SCHMUCK: No further questions at this point,
3 your Honor.

4 THE COURT: Thank you.

5 Any redirect?

6 MR. GRECO: Just a few, your Honor.

7 REDIRECT EXAMINATION

8 BY MR. GRECO:

9 Q. Desiree, do you remember telling Janet a few
10 minutes ago that, when she asked you if it was up or down,
11 that it was about halfway?

12 A. Yes.

13 Q. Why don't you take your finger, and using this as
14 a down, and say that as an up, what do you mean about
15 halfway?

16 A. Like that.

17 Q. Just pointing out that way?

18 A. Yes.

19 Q. So it wasn't pointing down to the ground, was it?

20 A. Um-hum.

21 Q. Desiree, had anybody ever done anything like that
22 to you before?

23 A. No.

24 Q. Did you know what was happening to you? Did you

1 understand what was happening?

2 A. No.

3 Q. Oh. And, Désiree, after you left Chuck's apartment
4 and went over to your own apartment, when he put his penis
5 inside you, and his finger, after he put his finger inside
6 you, did you leave that room?

7 A. Yes.

8 Q. You left your bedroom?

9 A. Yes.

10 Q. Where did you go?

11 A. I ran and opened the living room door and shut it
12 and ran in the kitchen.

13 Q. Is the living room door that you open and shut, is
14 that the door to outside?

15 A. Yes.

16 Q. And if you open and shut it, why didn't you go
17 outside?

18 A. I didn't.

19 Q. But why didn't you?

20 A. Why did I do that?

21 Q. Well, let me ask it a different way, because I
22 didn't ask that very good.

23 How come you opened the door, but then ran back
24 inside?

1 A. Because I wanted him to think I ran outside.

2 Q. Okay. Did that work?

3 A. Yes.

4 Q. Did Chuck go outside?

5 A. Yes.

6 Q. And are you sure everything happened that you
7 talked about in December?

8 A. Yes.

9 Q. Of 1993?

10 A. Yes.

11 MR. GRECO: That's all I have, your Honor.

12 THE COURT: Any recross?

13 MS. SCHMUCK: Thank you, your Honor.

14 RECROSS-EXAMINATION

15 BY MS. SCHMUCK:

16 Q. Desiree, after these things that you've described
17 happened, did you get together with Chuck and your sister
18 and go someplace?

19 A. Yes.

20 Q. Where did you go?

21 A. We went for a walk.

22 Q. Were you taking Chuck's dog for a walk?

23 A. Yes.

24 Q. Desiree, you had stated that you took, I think--I

1 forget what you called it--a sex-education class?

2 A. Yes.

3 Q. Is that what you called it? When you took that
4 class at school, was that the first time that you had ever
5 seen a penis or seen a picture of a penis?

6 A. They only showed us the girl's body.

7 Q. So they didn't show you the boy's body?

8 A. No.

9 Q. Had you ever seen a penis before you saw Chuck's
10 penis?

11 A. Yes.

12 Q. Where did you see it?

13 A. When I was real little.

14 Q. And whose penis did you see?

15 A. My dad's.

16 MS. SCHMUCK: I have no further questions, your
17 Honor.

18 THE COURT: Anything else, Mr. Greco?

19 MR. GRECO: No, your Honor.

20 THE COURT: Okay. Thank you, Desiree. You can
21 step down. You can be excused.

22 (Witness excused.)

23 MR. GRECO: May we approach again, your Honor?

24 (Discussion at the bench.)

1 THE COURT: Ladies and gentlemen, let's take a
2 break. Remember the admonition.

3 Let's take, I'd say, about 10, 15 minutes. You can
4 be excused now. I've got one other thing I have to do.

5 We are going to take up one thing. I'm just going
6 to excuse the jurors.

7 Go ahead. You can go.

8 (The following proceedings
9 were had without the presence
10 of the jury:)

11 MR. GRECO: The State would call Summer Menees,
12 your Honor.

13 Summer, I want you to sit in that chair up there.
14 Is that comfortable?

15 THE WITNESS: Yeah.

16 MR. GRECO: Okay. Now, Summer, when I'm talking to
17 you, I want you to speak right into that microphone. Okay?

18 THE COURT: Excuse me. I want to have her sworn.

19 MR. GRECO: I'm sorry, your Honor.

20 THE COURT: Summer, sweetie, see this lady right
21 here? Would you stand and face her. Please raise your
22 right hand. She's going to give you an oath to make sure
23 that you tell the truth. Okay?

24 (Witness sworn.)

1 THE CLERK: Thank you. Please be seated.

2 THE COURT: Okay. Go ahead.

3 SUMMER MENEES,

4 called as a witness on behalf of the State,

5 first having been duly sworn,

6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. GRECO:

9 Q. Can you tell us your name?

10 A. Summer.

11 Q. And what is your last name, Summer?

12 A. Menees.

13 Q. And what grade are you in?

14 A. Second.

15 Q. Summer, do you know the difference between the
16 truth and a lie?

17 A. Yes.

18 Q. And is the truth something that happened?

19 A. Yes.

20 Q. How about a lie? Is a lie something that
21 happened?

22 A. No.

23 Q. If I said you're a girl, is that the truth, or is
24 that a lie?

1 A. The truth.

2 Q. And if I said that this lady's hair down here-- Can
3 you see her from up there?

4 A. Yes.

5 Q. If I said her hair is blonde, is that the truth or
6 is that a lie?

7 A. A lie.

8 Q. How come it's a lie?

9 A. Because it's brown.

10 Q. If I were to say you go to junior high school, is
11 that true, or is that a lie?

12 A. A lie.

13 Q. How come that's a lie?

14 A. Because I'm only in second grade.

15 Q. Can you see my coat from there?

16 A. Yes.

17 Q. If I told you my coat was purple, is that the
18 truth, or is that a lie?

19 A. A lie.

20 Q. Why is that?

21 A. Because it's gray.

22 Q. Okay. And do you remember Janet from the
23 preliminary hearing over in the other court across the
24 street a few months ago?

1 A. Yes.

2 Q. If Janet and I ask you some questions, will you
3 tell us the truth?

4 A. Yes.

5 Q. To every question we ask?

6 A. Yes.

7 Q. Even if the questions are kind of hard to talk
8 about?

9 A. Yes.

10 Q. You promise?

11 A. Promise.

12 MR. GRECO: Your Honor, at this point I would ask
13 that the child be deemed competent to testify.

14 THE COURT: Do you have any questions, Miss
15 Schmuck?

16 MS. SCHMUCK: I don't have any questions, your
17 Honor.

18 THE COURT: Yes, I think Summer is competent to
19 testify.

20 Summer, that means that you can testify. Okay?

21 We're going to take a little break now. Do you
22 mind doing that right now?

23 THE WITNESS: Yeah.

24 THE COURT: I am going to take a break. We are

1 going to leave here. Why don't you go ahead with Mr. Greco
2 and make yourself comfortable. We'll be back in about 10 or
3 10 minutes. Okay?

4 We will be in recess.

5 THE WITNESS: Okay.

6 (Recess.)

7 THE COURT: The jury is present. Mr. Maki is
8 present with counsel, and Mr. Greco is present.

9 We can proceed.

10 MR. GRECO: Your Honor, the State would call Summer
11 Menees.

12 THE COURT: Okay. As in the first case, ladies and
13 gentlemen, Summer has been sworn in, and she's ready to
14 proceed.

15 MR. GRECO: May I approach the witness, your
16 Honor?

17 THE COURT: Certainly.

18 BY MR. GRECO:

19 Q. Would you tell us what your name is.

20 A. Summer.

21 Q. And, Summer, what is your last name?

22 A. Menees.

23 Q. And how old are you, Summer?

24 A. Eight.

1 Q. And when is your birthday?

2 A. February 28th.

3 Q. And so how old were you back in December?

4 A. Seven-and-a-half.

5 Q. What grade are you in, Summer?

6 A. Second.

7 Q. And where do you go to school?

8 A. Peavine.

9 Q. What is your favorite subject over there at
10 Peavine?

11 A. Math.

12 Q. Do you know what six plus six is?

13 A. 12.

14 Q. Good. Do you know what 10 plus 10 is?

15 A. 20.

16 Q. Have you learned your ABC's yet?

17 A. Yes.

18 Q. Can you tell us those?

19 A. A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q,
20 R, S, T, U, V, W, X, Y and Z. Now I know my ABC's. Next
21 time why don't you sing them with me?

22 THE COURT: Go ahead, Mr. Greco. Want to sing?

23 BY MR. GRECO:

24 Q. Well, that was very good, but I don't sing as good

1 as you. But I am not going to do that.

2 Can you tell us where you live, Summer?

3 A. Nevada Street.

4 Q. Do you know your address?

5 A. 1015.

6 Q. 1015. Do you live in an apartment there?

7 A. Yes.

8 Q. What number do you live in?

9 A. 7.

10 Q. And who lives with you there at number 7?

11 A. My dad and my sister.

12 Q. Okay. What is your sister's name?

13 A. Desiree.

14 Q. And did you live in that same apartment number 7
15 back in December?

16 A. Yes.

17 Q. Now, can you remember back in December who lived in
18 apartment number 8 right next door to you?

19 A. Yes.

20 Q. Who was that?

21 A. Chuck.

22 Q. Do you know Chuck's last name?

23 A. No.

24 Q. Okay. Do you see the man you're talking about,

1 Chuck, in the court?

2 Okay. Would you point him out for these people?

3 A. (Indicating.)

4 Q. Summer, you have to look at who you're pointing out
5 at so we know who you're looking at. What color shirt does
6 he have on?

7 A. Green.

8 Q. Does he have a mustache?

9 A. Yes.

10 MR. GRECO: Your Honor, would the record reflect
11 she identified the defendant, Charles Maki?

12 THE COURT: Yes.

13 BY MR. GRECO:

14 Q. Summer, did Chuck ever babysit you in December?

15 A. Yes.

16 Q. And who else did he babysit besides you?

17 A. My sister.

18 Q. Desiree?

19 A. Yes.

20 Q. All right. Now, before December did you like
21 Chuck?

22 A. Yes.

23 Q. Did Chuck ever give you anything before December,
24 like any gifts or anything like that?

1 A. Candy.

2 Q. Okay. Did you like that?

3 A. Yeah.

4 Q. Okay. Did Chuck have a dog?

5 A. Yes.

6 Q. Do you know what kind of dog it was?

7 A. German Shepherd.

8 Q. And where did he keep his dog?

9 A. In his house.

10 Q. Did he let you play with his dog?

11 A. Yes.

12 Q. Was that fun?

13 A. Yes.

14 Q. Did you like that?

15 A. Yes.

16 Q. Now, Summer, can you recall-- Well, did Chuck

17 babysit you in December?

18 A. Yes.

19 Q. Can you recall any time in December when Chuck was

20 babysitting you that he did some bad things to you?

21 A. Yes.

22 Q. Did he do the bad things all in one day?

23 A. No.

24 Q. Okay. Tell us the first thing, the first bad thing

1 that Chuck did to you. What did he do to you?

2 A. He pulled down my pants and stuff.

3 Q. Okay. On that date what were you wearing? What
4 kind of pants?

5 A. Stretch pants and my nightie shirt and my slippers.

6 Q. Did you have on any underwear underneath the
7 pants?

8 A. Yes.

9 Q. Were they panties, little girls' underwear?

10 A. Yes.

11 Q. And what did he do again now with your pants? He
12 pulled them off?

13 A. Yes.

14 Q. Did he pull your underwear off, too?

15 A. Yes.

16 Q. And did he touch you some way?

17 A. Yes.

18 Q. What did Chuck do?

19 A. He spit on his finger and rubbed it around my
20 private part.

21 Q. Did you want him to do that?

22 A. No.

23 Q. Did you think that was gross?

24 A. Yes.

1 Q. Did you tell him not to do that?

2 A. No.

3 Q. Well, did you say anything to him?

4 A. I said, "That's enough."

5 Q. And how long did he do that for?

6 A. I think about five minutes or something. And

7 then--

8 Q. Can you remember which finger Chuck used?

9 A. His pointy.

10 Q. His what?

11 A. Pointy finger.

12 Q. Can you show us what a pointy finger is?

13 A. (Indicating.)

14 Q. All right. Where did he touch it to, again?

15 A. Around my private part.

16 Q. Okay. Can you show these people where your private
17 part is? Is that where you go potty?

18 A. Yes.

19 Q. Summer, after Chuck touched you with his finger,
20 did he touch you with any other part of his body that same
21 day?

22 A. Yes.

23 Q. What did he do next?

24 A. He rubbed his private around my private part.

1 Q. All right. Now, where was Chuck's private part?

2 A. On mine.

3 Q. All right. But on his body. Where is a private
4 part on a boy or man's body?

5 A. Same place.

6 Q. Same place. All right. Does it look like your
7 private part?

8 A. No.

9 Q. Did it look a lot different?

10 A. Yes.

11 Q. When he touched his private part to your private
12 part--well, how did he--was he holding his private part?

13 A. Yes.

14 Q. Is that how he touched it to yours?

15 A. Yes.

16 Q. What did he do with it when he touched it to your
17 private part?

18 A. He rubbed it around.

19 Q. Did you want him to do that?

20 A. No.

21 Q. Did you tell him not to do that?

22 A. That's when I told him, "That's enough."

23 Q. And how long did he rub his private part around
24 yours for?

1 A. About 10 seconds or something.

2 Q. And after he had done that--well, did he put his
3 private part inside your private part?

4 A. A little.

5 Q. Was that the same day?

6 A. Yeah.

7 Q. Was that after he had rubbed it around the outside
8 of your private part?

9 A. Yes.

10 Q. When he put it inside, you say a little, how
11 much--how far did it go inside your private part?

12 A. That far, (indicating.)

13 Q. Could you feel it actually inside you?

14 A. Yes.

15 Q. Now, I think you said a little while ago, you said
16 something about it didn't all happen on one day. Did he try
17 and do something else on another day?

18 A. He tried to do the same thing on another day.

19 Q. Was this after the first day?

20 A. Yes.

21 Q. And did you--well, did he do the same things
22 again?

23 A. He tried to, but I said "No."

24 Q. And what did he try and do exactly? What did he

1 want to do?

2 A. Wanted me to touch his private part.

3 Q. Did you--you did not do that?

4 A. No.

5 Q. Why didn't you do that?

6 A. Because I don't like it.

7 Q. Now, Summer, when Chuck had his private part inside
8 your private part, what did he do with it?

9 A. He moved it up and down.

10 Q. Was he moving it in and out of your private part?

11 A. No. Going side by side.

12 Q. But it was inside your private part?

13 A. Yes.

14 Q. Now, when Chuck did those things to you with his
15 finger, his pointy finger, and with his private part, was
16 Desiree in the room where you were at when it happened?

17 A. No.

18 Q. Where were you when it happened? In what room?

19 A. His room.

20 Q. In his apartment. Can you recall which room in his
21 apartment you were in?

22 A. His bedroom.

23 Q. Now, after he did these bad things to you, did he
24 say anything to you about whether or not you could tell

1 other people?

2 A. He said, "Don't tell anybody, or else I'll have to
3 go to jail."

4 Q. Summer, did you tell your dad, Gary, what happened
5 to you right away?

6 A. No, not right away.

7 Q. Did Desiree eventually tell your dad some bad
8 things had happened to her?

9 A. Yes.

10 Q. Was that in January?

11 A. Yeah.

12 Q. And were you there the day Desiree told your dad
13 what had happened to her?

14 A. Yeah. I wasn't in the room, though.

15 Q. Did you and your dad sit down and talk about the
16 things that happened to you?

17 A. Yes.

18 Q. And do you remember the morning after you told your
19 dad going down to the police station and seeing Detective
20 Stegmaier?

21 A. Yes.

22 Q. Can you remember what his first name was?

23 A. Stegmaier?

24 Q. Okay. Do you know what his first name was? If you

1 don't, that's fine.

2 A. No.

3 Q. Okay. Do you remember Detective Stegmaier
4 interviewing you?

5 A. Yes.

6 Q. Did you know you were being videotaped on a
7 camera?

8 A. Yes.

9 Q. Did you tell Detective Stegmaier the truth?

10 A. Yes.

11 Q. To each and every single question he asked you?

12 A. Yes.

13 MR. GRECO: That's all I have, your Honor.

14 THE COURT: Thank you.

15 Miss Schmuck.

16 MS. SCHMUCK: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MS. SCHMUCK:

19 Q. Hi, Summer.

20 A. Hi.

21 Q. You remember me?

22 A. Yeah.

23 Q. Summer, when you were just describing these things
24 that happened to the district attorney, do you remember when

1 they happened?

2 A. Yes.

3 Q. When did they happen?

4 A. In the morning.

5 Q. Do you remember if they happened before Christmas
6 last year?

7 A. I'm not sure.

8 Q. Okay. Do you remember it being close to Christmas
9 at all?

10 A. Yes.

11 Q. So it was sometime close to Christmas?

12 A. Yes.

13 Q. Do you remember if it was before Christmas?

14 A. No.

15 Q. Okay. How often did Chuck babysit you?

16 A. About four or five times.

17 Q. Was there a certain day of the week that he would
18 babysit you?

19 A. No.

20 Q. So it could be any day of the week?

21 A. Yes.

22 Q. Okay. You said this--the events that you were
23 describing to the D.A. occurred about 9:00 o'clock in the
24 morning?

1 A. I think so.

2 Q. Okay. Do you remember what day of the week that
3 was?

4 A. When he did it to me? Sunday.

5 Q. It was a Sunday. Okay. Did your dad have to work
6 that day?

7 A. Yes.

8 Q. And did you wake up that morning when your dad was
9 still at home?

10 A. Yes.

11 Q. So your dad was there?

12 A. Yes.

13 Q. Did you talk to your dad about where you were going
14 to stay that day?

15 A. Yes.

16 Q. Okay. Did you know that you were going over to
17 Chuck's house?

18 A. No.

19 Q. Okay. How did you know then to go to Chuck's
20 house?

21 A. Well, we can stay at our house or go over to his
22 house.

23 Q. Sometimes when Chuck babysits you, do you just stay
24 at your house?

1 A. Sometimes I do.

2 Q. Sometimes when Chuck babysits you, do you stay at
3 your house, and he stays at his house?

4 A. Yes.

5 Q. Does it work that way?

6 A. Yes.

7 Q. But on this morning did you go over to Chuck's
8 house?

9 A. Yes.

10 Q. When you got over to Chuck's house, was he there?

11 A. Yes.

12 Q. Where was he when you got there?

13 A. In his living room.

14 Q. In his living room. Do you remember what he was
15 wearing?

16 A. A bathrobe and his underwear.

17 Q. What did you do when you got over to the house?

18 A. I sat down on his couch.

19 Q. And what did-- Was Desiree there?

20 A. Yes.

21 Q. Did she sit on the couch?

22 A. Yes.

23 Q. Okay. Did you all do something?

24 A. Well, Desiree was laying with Chuck, and I was

1 laying on top of the couch.

2 Q. Well, where were Desiree and Chuck?

3 A. On where you sit, that part.

4 Q. Okay. So they were sitting on the couch?

5 A. Yeah. I mean, they were laying on the couch.

6 Q. They were laying on the couch, and you were sitting
7 on the couch?

8 A. I was laying, too. I wasn't with them.

9 Q. You weren't with them?

10 A. I was. Still on the same couch, but I was on top.

11 Q. What were you on top of?

12 A. The top of the couch.

13 Q. You mean, like the back of the couch?

14 A. Yeah.

15 Q. Okay. Were you all doing something?

16 A. Watching TV.

17 Q. Do you remember what you were watching?

18 A. Christmas Movie.

19 Q. Is that what it was?

20 A. I don't know the name of what it was called.

21 Q. But it was a Christmas movie?

22 A. Yes.

23 Q. How long did you watch the Christmas movie?

24 A. I think for an hour.

1 Q. Did you watch the whole movie?

2 A. Yes.

3 Q. So you saw the whole movie?

4 A. Yes.

5 Q. After the movie was finished, what happened?

6 A. Well, we went over to our house.

7 Q. Okay. All of you?

8 A. No. Just me and Desi.

9 Q. You and Desiree. Okay. Did you--you went over to

10 your house. Did you watch TV at your house?

11 A. Yes.

12 Q. Did Chuck come over to your house?

13 A. Yes.

14 Q. Then what happened? Did anything happen when he

15 came to your house?

16 A. No.

17 Q. Did you watch TV there?

18 A. Yes.

19 Q. Did you watch another movie?

20 A. No.

21 Q. You talked about Chuck doing something bad to you--

22 A. Yes.

23 Q. --to the D.A. When Chuck did something bad to you,

24 did he have any clothes on?

1 A. No.

2 Q. So he didn't have his robe on?

3 A. No.

4 Q. And he didn't have his underwear on?

5 A. No.

6 Q. Did he have anything on?

7 A. No.

8 Q. Could you see his penis?

9 A. Yes.

10 Q. Do you remember what it looked like?

11 A. Yes.

12 Q. What did it look like?

13 A. Around it was hairy, and it was long a little.

14 Q. Do you remember what color it was?

15 A. Same color as his whole body.

16 Q. You also talked about Chuck using his finger.

17 A. Yes.

18 Q. Now, I didn't see you because I was sitting down,

19 but could you show me which finger he used?

20 A. (Indicating.)

21 Q. That is what you call the pointy finger?

22 A. Yes.

23 MS. SCHMUCK: I think the record should indicate

24 that was an index finger.

1 THE COURT: Okay.
2 MS. SCHMUCK: No further questions, your Honor.
3 THE COURT: Any redirect, Mr. Greco?
4 MR. GRECO: No questions, your Honor.
5 THE COURT: Thank you, Summer. You can step down,
6 and you can be excused, sweetie.

7 (Witness excused.)

8 MR. GRECO: The State would call Gary Menees next.
9 Gary, step up to the front of the courtroom, and
10 they'll swear you in.

11 THE COURT: Come on up here, sir.

12 THE CLERK: Mr. Menees, before you have a seat,
13 please raise your right hand to be sworn.

14 (Witness sworn.)

15 MR. GRECO: Your Honor, may I use the podium?

16 THE COURT: Yes.

17 GARY MENEES,
18 called as a witness on behalf of the State,
19 first having been duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GRECO:

23 Q. Would you please state your name.

24 A. Gary Menees.

1 Q. And where do you reside?
2 A. 1015 Nevada Street.
3 Q. Is that an apartment complex?
4 A. Number 7, yes.
5 Q. And is that within the City of Reno?
6 A. Yes.
7 Q. In Washoe County, Nevada?
8 A. Yes.
9 Q. And are you married?
10 A. No.
11 Q. Do you have any children?
12 A. Two young girls.
13 Q. What are their names?
14 A. Desiree and Summer.
15 Q. And what is their last name?
16 A. Rohrback.
17 Q. Now, do they occasionally use the name Menees as
18 well?
19 A. Yes.
20 Q. And why do they use the name Rohrback?
21 A. That's their mother's name.
22 Q. Is that your ex-girlfriend?
23 A. Yes.
24 Q. What is your ex-girlfriend's full name?

1 A. Marletta Rohrback.
2 Q. In what city does she reside?
3 A. Tracy, California.
4 Q. How old is Desiree?
5 A. 10.
6 Q. How old is Summer?
7 A. Eight.
8 Q. And do both those children live with you now?
9 A. Yes, they do.
10 Q. Did they live with you in December--
11 A. Yes.
12 Q. --of 1993? Was the answer to that yes?
13 A. Yes.
14 Q. And how long have you lived at that particular unit
15 number 7?
16 A. Six years.
17 Q. Now, referring your attention back to December of
18 1993, can you recall who was residing in unit number 8 next
19 door to you?
20 A. Chuck Maki.
21 Q. And do you see Chuck Maki in the court?
22 A. Yes, I do.
23 Q. Would you point him out.
24 A. Right here.

1 Q. And what color shirt does he have on?

2 A. Green.

3 Q. Does he have a mustache?

4 A. Yeah.

5 MR. GRECO: Your Honor--

6 BY MR. GRECO:

7 Q. Is that the table labeled "Defendant"?

8 A. Yes.

9 MR. GRECO: Your Honor, would the record reflect
10 that he identified the defendant, Charles Maki?

11 THE COURT: That's fine.

12 BY MR. GRECO:

13 Q. Now, when did the defendant first move into that
14 apartment number 8?

15 A. March or April, I think.

16 Q. Of 1993?

17 A. Yes, '93.

18 Q. And were Desiree and Summer living with you at that
19 time?

20 A. Yes, they were.

21 Q. Did you help the defendant out in any way when he
22 moved in?

23 A. Yes. Financially, furniture-wise, utensils,
24 sometimes food.

1 Q. Did you become friendly with the defendant?

2 A. Yes.

3 Q. Did the defendant become friendly with your girls?

4 A. Yeah.

5 Q. Describe what the defendant did when you say he
6 became friendly with the girls?

7 A. He'd let them play with his dog, and he'd keep
8 popsicles in the freezer. He had a niece that would come
9 over. The girls liked him. They trusted him. So did I.

10 Q. And did you allow the defendant to babysit your two
11 girls on more than one occasion in December?

12 A. Yes.

13 Q. And--well, was he their regular babysitter?

14 A. No, he wasn't.

15 Q. Why did you have to ask the defendant to babysit
16 the girls in December?

17 A. Because the regular babysitter was unavailable at
18 the time.

19 Q. And did you pay Mr. Maki when he watched your
20 girls?

21 A. Yes, I did.

22 Q. Now, referring your attention to January 18th of
23 this year, on this date did you receive some disturbing news
24 from one of your girls?

1 A. Yes.

2 Q. Which girl? Which of the girls was it, Gary?

3 A. Desiree.

4 Q. And when Desiree gave you this news, would you
5 describe her emotional state for the jury.

6 A. It's about like mine is right now.

7 Q. Was she crying?

8 A. Crying.

9 Q. And without getting into the content at this point
10 of what exactly Desiree said to you--

11 A. She said Chuck had touched her--well--

12 Q. Let me stop you there because you didn't understand
13 me. Without getting into her specific statements, did she
14 talk about Mr. Chuck Maki?

15 A. Yeah.

16 Q. And did she tell you that he had done certain
17 things to her?

18 A. Yes.

19 Q. What did you do after you finished your
20 conversation with Desiree?

21 A. Well, I knew what I had to do, so I called 911.

22 Q. And did a Reno patrol officer come to your
23 residence shortly thereafter?

24 A. About 20 minutes.

1 Q. Now, referring your attention to the next morning
2 of January 19th of this year, did you take the girls down to
3 the Reno Police Department?

4 A. Yes.

5 Q. For what purpose?

6 A. So they could be interviewed.

7 Q. And do you recall who the detective was who
8 interviewed your girls?

9 A. Yes. Jim Stegmaier.

10 Q. What time did you arrive at the police department?

11 A. 11:00 a.m.

12 Q. Can you recall at approximately what time the
13 interview of your girls were finished?

14 A. Somewhere between 12:00 and 12:30.

15 Q. And sometime later that day did you learn that the
16 defendant had been arrested by Detective Stegmaier?

17 A. Yes.

18 Q. How did you learn that?

19 A. He had called me. Detective Stegmaier called me.

20 Q. Now, Mr. Menees, later that evening did the
21 defendant, Charles Maki, telephone you?

22 A. Yes, he did.

23 Q. And can you recall at approximately what time that
24 was?

1 A. Somewhere between 4:00 and 6:00.

2 Q. In the afternoon?

3 A. Yes.

4 Q. And did he talk to you about his situation?

5 A. Yes, he did.

6 Q. And what statements did the defendant make to you
7 over the telephone?

8 A. Well, I answered the phone. He was crying and told
9 me not to hang up. He had to talk to me. And said he was
10 very sorry for what he had done.

11 Q. Did he mention Desiree and Summer specifically when
12 he said--

13 A. He said my girls. You know, "I'm sorry for what I
14 did to the girls." He didn't know why he did it, but he did
15 it.

16 Q. Did he say anything else?

17 A. And he was sorry he screwed up a friendship.

18 Q. Did he say any statements regarding placing blame
19 in the matter?

20 A. Yeah. He told me not to blame my girls.

21 Q. And did he say anything else to you that you can
22 remember?

23 A. Or myself.

24 Q. Anything else?

1 A. He said that he wouldn't hurt those girls for the
2 world.

3 Q. Did he tell you he loved them?

4 A. Yeah.

5 Q. Now, after that telephone call in the evening of
6 January 19th did the defendant ever call you again?

7 A. Four days later.

8 Q. So that would be January 23rd?

9 A. Yeah. On a Sunday.

10 Q. And did his story or his comments change this time
11 when he talked to you on the telephone?

12 A. Yes, he did. He asked me to drop the charges.

13 Q. And did you tell him you were going to drop the
14 charges?

15 A. No.

16 Q. When you say he asked, did he plead with you?

17 A. Yes, he did. He practically begged me to. He told
18 me that he didn't know what he was saying when he admitted
19 what he did. The only thing he admitted to was being in the
20 shower, and Summer coming in and washing his back and legs
21 for him.

22 Q. That was on the second telephone call?

23 A. That was on the second one. It's the only one he
24 said he could remember.

1 Q. Did he suggest or imply that your girls might be
2 lying on this second telephone call?

3 A. Yes, he did.

4 Q. What did he say specifically?

5 A. He said he didn't know why they were lying. And I
6 told him they weren't lying. And he suggested that they
7 were mad at him because they--he wouldn't let the neighbor
8 kids come up into my apartment without adult supervision.
9 And that's the only thing that he told me he could think of
10 why the girls would be lying.

11 Q. And how many times did he ask you to drop the
12 charges?

13 A. Twice, right at the end of our conversation. I
14 told him "No." And I asked him please not to call me
15 again.

16 Q. And did he say why he was asking you to drop the
17 charges, anything in addition to what you've already told
18 us?

19 A. Well, when he first asked me, he said it was his
20 attorney's idea, but he told me that he might be looking at
21 a long time--

22 Q. Let me stop you there. You've answered my
23 question.

24 And after you told him that your girls are not

1 liars, did that end the conversation?

2 A. No. I just told him--told him he was lying, and
3 they weren't.

4 Q. And how did you respond to that?

5 A. Me? How did I respond?

6 Q. No. How did the defendant respond?

7 A. He just told me they were lying.

8 Q. And after that telephone call did the defendant
9 ever call you again?

10 A. No, he didn't.

11 MR. GRECO: That's all I have, your Honor.

12 THE COURT: Thank you.

13 Miss Schmuck.

14 MS. SCHMUCK: Thank you, your Honor.

15 CROSS-EXAMINATION

16 BY MS. SCHMUCK:

17 Q. Mr. Menees.

18 A. Yeah.

19 Q. In the first conversation that you had with Mr.
20 Maki, you told the district attorney that he said he was
21 sorry; is that correct?

22 A. That's what he said, yes.

23 Q. Did he say specifically what he was sorry about?

24 A. No. He just--he just said he was sorry for what he

1 had done to the girls.

2 Q. Okay. But he didn't tell you specifically what had
3 happened?

4 A. No.

5 Q. Were you aware at any time when Mr. Maki would stay
6 with the girls of any other boys coming into your house?

7 A. No, none at all, because no children are allowed up
8 there without adult supervision.

9 Q. So as far as you know, no one else came into your
10 apartment when Mr. Maki was staying with the girls?

11 A. Yes, ma'am.

12 Q. At the time that Mr. Maki came to live at this--the
13 apartment-- Number 8, I think is what you said.

14 A. Yes.

15 Q. Was he working?

16 A. No. He was disabled.

17 Q. So did he--he stayed home most of the time?

18 A. Most of the time, yes. He was inside. He'd go
19 outside with his dog, walk around the neighborhood. But
20 most of the time he was there. And he'd come over and
21 visit. He'd be bored.

22 Q. When you say he was disabled, could you describe
23 what you meant by that.

24 A. Well, he had an accident. He fell through a

1 skylight. That's what he told me. He was pretty well
2 broken up. Had metal pins in his back and his legs. So I
3 felt kind of sorry for him.

4 Q. Was he able to get around okay?

5 A. Yeah. Yeah.

6 Q. Do you ever remember him being in a wheelchair?

7 A. No, he was never in a wheelchair.

8 Q. Were you and Mr. Maki good friends?

9 A. I'd say good acquaintances. Like I say, I trusted
10 him. I had no reason to think anything would happen.

11 Q. You stated a number-- I want to make sure I heard
12 you correctly. Did you say that Mr. Maki's niece came to
13 visit him?

14 A. Yes. His sister would come over, and at the time
15 she had--I think a three-year-old girl. And so the niece
16 and her mother would be there with him.

17 Q. Was the niece ever there with Mr. Maki without the
18 mother?

19 A. Not to my knowledge, no.

20 Q. How often do you recall Mr. Maki babysitting?

21 A. Three, maybe four times.

22 Q. Was that concentrated within a particular period of
23 time, or was that throughout the entire time that you knew
24 Mr. Maki?

1 A. From maybe November through December.

2 Q. So it was a period of about a month where he
3 babysat three or four times?

4 A. Month or two months, yeah.

5 MS. SCHMUCK: No further questions, your Honor.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. GRECO:

9 Q. Mr. Menees, at any time since January 19th have
10 either of your daughters made any statements to you saying
11 that anyone else other than the defendant has ever
12 improperly touched them in a sexual way?

13 A. No.

14 MR. GRECO: That's all I have, your Honor.

15 THE COURT: Any recross?

16 MS. SCHMUCK: Nothing further, your Honor.

17 THE COURT: Thank you, Mr. Menees. You can step
18 down and be excused.

19 (Witness excused.)

20 MR. GRECO: Your Honor, can we approach the bench
21 for a second?

22 (Discussion at the bench.)

23 THE COURT: Ladies and gentlemen of the jury, let's
24 take a short break. Remember the admonition.

(Recess.)

THE COURT: Okay. The jury is present. Mr. Maki is present with counsel. Mr. Greco is present.

We can proceed.

MR. GRECO: Your Honor, the State calls Cathy Peele.

CATHLEEN MARIE PEELE,
called as a witness on behalf of the State,
first having been duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GRECO:

Q. Would you please state your name and spell your last name.

A. Cathleen Marie Peele, P-double e-l-e.

Q. And would you please describe for the jury your general educational background.

A. I am a registered nurse. Graduated from St. Joseph's School of Nursing in 1983 from San Francisco. And I attended the University of California, Davis Nurse Practitioner Program in Pediatrics.

Q. And would you summarize your employment history since 1986. First please just focus on your employment at the SAINTS Clinic and at UNR during that period.

1 A. Okay. I am a--I started out in 1986 as a clinical
2 instructor for the University of Nevada School of Medicine,
3 Department of Pediatrics, in which I was a nurse
4 practitioner and clinic administrator for a specialty
5 clinic.

6 And I'm also the Director of the Washoe County
7 Children's Sexual Abuse Investigation Team. And since have
8 been promoted to a clinical assistant professor with the
9 Department of Pediatrics.

10 Q. And when did you receive that promotion at UNR?

11 A. Four years ago.

12 Q. What is your specific position at Washoe County
13 SAINTS Program?

14 A. I'm the director and a nurse practitioner.

15 Q. What does SAINTS stand for?

16 A. SAINTS stands for Sexual Abuse Investigation Team,
17 Washoe County children.

18 Q. And what do your duties at the UNR Medical School
19 include? I know you said you're an instructor. But
20 specifically what do you instruct students in?

21 A. I instruct students in their first through fourth
22 year in how to properly examine children, do pediatric
23 assessment. Also to include assessments of alleged sexual
24 abuse victims.

1 Q. And in terms of your duties at SAINTS Clinic, what
2 do you do there?

3 A. My duties at the SAINTS Clinic are probably
4 fourfold.

5 First I am a nurse practitioner, so I examine the
6 children.

7 Secondly, I'm the director, and I'm in charge of
8 the development of the program.

9 And I'm in charge of the financial and the fiscal,
10 and I write the grants.

11 I'm also a consultant in the medical area for
12 sexual abuse.

13 Q. Can you give us a rough estimate of how many
14 children you have examined who were suspected of being
15 sexually abused over the years?

16 A. I've examined over 3,000 children who have been
17 allegedly sexually abused.

18 Q. Are you currently an instructor at any other
19 institutions other than UNR School of Medicine?

20 A. Yes, I am.

21 Q. Where?

22 A. I am a faculty member at the National Judicial
23 College and at the National Juvenile and Family Court
24 Judges.

1 Q. And at those two institutions what type of topics
2 do you lecture on?

3 A. We lecture on the dynamics of sexual abuse, the
4 medical aspect, collecting of forensic evidence, and medical
5 aspect and psychological aspects of sexual abuse.

6 Q. And are you affiliated with any organizations or
7 entities that deal primarily with sexual abuse or child
8 sexual abuse?

9 A. Yes, I am.

10 Q. Would you just outline two or three of what you
11 think are your most important affiliations in that regard.

12 A. I'm a member of the American Professionals Abuse of
13 Child Professionals--or Abuse on Children.

14 I am--I belong to the Forensic Nurses Association.

15 And I'm a member of the National Pediatric Nurse
16 Practitioners Association and Foundation.

17 Q. Have you had any articles dealing specifically with
18 child sexual abuse accepted for publication by any
19 periodicals or magazines?

20 A. Yes, I have. I have a publication that will be
21 coming out in "Clinical and Forensic Medicine" on stress of
22 child abuse examinations.

23 Q. Is that the Journal of Clinical Forensic Medicine?

24 A. Yes, it is.

1 Q. And over the years have you received a number of
2 honors in conjunction with your professional duties?

3 A. Yes.

4 Q. Why don't you highlight, give us two or three
5 examples of what you think are the most important honors.

6 A. I received the Nurse of the Year Award in 1991 for
7 innovations in nursing.

8 I've received a five-year service from the National
9 Judicial College for my service in education to the judicial
10 system.

11 Q. And, finally, have you been awarded any grants,
12 either individually or in your professional capacity, in
13 your connection with those entities you described earlier
14 over the years?

15 A. Yes, I have.

16 Q. And again would you please just click off a few of
17 what you think are the most important grants that you think
18 you have received?

19 A. Well, I've written and received over 20 grants, and
20 they are from state, federal and local.

21 Q. What is the--roughly what is the aggregate amount
22 of all those 20 grants?

23 A. I've never really counted them up. I'm sure over
24 two or 300,000.

1 Q. Now, on January 24th of this year did you examine
2 two children by the name of Desiree Rohrback Menees and
3 Summer Rohrback Menees?

4 A. Yes, I did.

5 Q. And where did that examination occur?

6 A. It occurred at Washoe Medical Center, the SAINTS
7 Clinic.

8 Q. And do you have any type of room set up there
9 specifically for examining children?

10 A. Yes, we do.

11 Q. Describe that room.

12 A. Well, it's in the old part of Washoe Med, and it's
13 very much like a physician's room where you take your
14 children or kids to be examined in that it has the scale for
15 height and weight, and it has the blood pressure cuffs and
16 examining table. We have all sorts of posters for the
17 children for the various ages.

18 Q. And when you examined Desiree and Summer on that
19 day, what was the purpose of your examination?

20 A. The purpose of my examination was to provide a
21 complete pediatric assessment, head-to-toe evaluation for
22 alleged sexual abuse.

23 Q. Now, in each case where you examine a child for
24 alleged sexual abuse, I take it you start with the visual

1 exam.

2 A. Yes, I do.

3 Q. Do you supplement that visual exam with an
4 examination by some type of equipment?

5 A. Yes, I do.

6 Q. What equipment do you utilize?

7 A. We have a video colposcope, which is the-- The
8 videoscope is used primarily with women who have OB-GYN
9 problems where they need lasering of their cervix, but it's
10 now known to be used in most sexual abuse clinics in that it
11 is a very bright light. It's fiber-optic and provides
12 high-powered magnification. It helps us look at the
13 vascularity. Ours is a video so that it helps us-- I can
14 print out pictures and actually videotape the segments of
15 their genital and anal exam that I need to.

16 Q. Do you also take a patient history in each case
17 where you examine a child for possible sexual abuse?

18 A. Yes.

19 Q. Do you use that to assist in your diagnosis as
20 well?

21 A. Yes, I do.

22 Q. Now, moving to Summer first, the younger of the two
23 children, how would you describe her general overall
24 health?

1 A. It was fine. She was cooperative. And there were
2 really no major problems. She had--she did have some fluid
3 in one of her ears. And she needed some dental work. But
4 basically her overall condition was good.

5 Q. Did you perform a vaginal exam on Summer?

6 A. Yes. Genital exam. I didn't do an internal
7 inspection of her vaginal area.

8 Q. And when you examined that area--well, let's
9 specifically move to the hymen first. Did you notice
10 anything unusual as you examined Summer's hymen?

11 A. Yes, I did.

12 Q. What was that?

13 A. Well, the hymenal tissue-- I don't know. It's hard
14 to explain without giving you a diagram. But the hymenal
15 tissue sits behind--let me just give you a quick--urethra,
16 which is where they pee from. Then you have your labia,
17 outer labia and smaller labia, the inner labia. Then the
18 hymenal tissue sits back in there, which is the opening to
19 the vagina.

20 Her hymenal tissue was rolled and thick, and the
21 edges were not smooth. They were rolled and thickened.

22 Q. And was that immediately apparent on your visual
23 examination?

24 A. Yes, it was.

1 Q. Did you use the equipment you described earlier to
2 check the child's vascularity?

3 A. Yes, I did.

4 Q. Did you notice anything unusual about-- Well,
5 strike that.

6 Would you define for the jury what you mean by
7 "vascularity." What does that mean?

8 A. When we talk about vascularity, we are talking
9 about blood vessels and what the pattern looks like when we
10 look down there.

11 Q. Does vascularity also include the idea of the
12 amount of blood flow into the area?

13 A. Right.

14 Q. Did you notice anything unusual about Summer's
15 vascularity?

16 A. She had an increase. It was more red in a
17 particular area than you'd like to see. She had an increase
18 of redness in vascularity.

19 Q. Would I be accurate in saying there was more blood
20 flow in that particular area than you would expect to see in
21 a child of that age?

22 A. Well, there were more changes in the vascular
23 pattern.

24 Q. And did you examine Summer's vaginal vault opening

1 as well?

2 A. Well, I didn't go into the vaginal vault. The
3 vaginal vault is inside. So with the use of the colposcope,
4 though, I was able to see both the anterior and the
5 posterior vaginal wall.

6 Q. And that was through the opening?

7 A. That was through the opening. So there was not a
8 lot of hymenal tissue. Even though it was rolled and
9 thickened, there wasn't a lot of it.

10 Q. And a normally healthy child with a normal hymen,
11 would you be able to see both those walls so easily like you
12 did in this exam?

13 A. You may be able to see one or the other, but not
14 usually both together at the same time.

15 Q. Now, when you perform that video-- Again, I keep
16 mispronouncing it. Would you say the name?

17 A. Video colposcope.

18 Q. Colposcope. When you perform that exam, does that
19 result in a videotape being produced?

20 A. Yes.

21 Q. Describe how that equipment works. How is it that
22 from the colposcope you perform a videotape ultimately is
23 rendered?

24 A. Well, we follow a procedure. When children are

1 admitted into the clinic, they get a little green card. And
2 so I videotape with the camera their name. And then it's
3 like a TV with a remote control. And I just punch a button
4 to start it, and take pictures when I feel like I need to.
5 And the whole time it's videotaping, unless I need to pause
6 it. And that's how it's done.

7 Q. Do you have the capability of using that videotape
8 to produce still photographs from the videotape?

9 A. Yes, I do.

10 Q. How does that work?

11 A. We print them out. There's a printer. So they're
12 printed either at the time or after. And those go and
13 become part of the record.

14 THE CLERK: State's Exhibit 4 marked for
15 identification.

16 (State's Exhibit 4 was marked
17 for identification.)

18 BY MR. GRECO:

19 Q. Showing you what has been marked as State's Exhibit
20 4 for identification, do you recognize that photograph and
21 the items depicted in it?

22 A. Yes, I do.

23 MS. SCHMUCK: Your Honor, may I voir dire the
24 witness?

1 THE COURT: Yes.

2 VOIR DIRE EXAMINATION

3 BY MS. SCHMUCK:

4 Q. Ms. Peele, what you're looking at--don't show it to
5 the jury obviously--how can you identify that as something
6 that is connected to either of these two children that are
7 involved in this case?

8 A. Well, because every child that comes in, when I
9 told you that I videotaped their little green card when they
10 are admitted. I also give them a SAINTS Clinic number, and
11 that number becomes imprinted on this particular picture, so
12 that we maintain a chain of evidence.

13 Q. How is that number imprinted on that particular
14 picture?

15 A. Before each child I go in and change the numbers
16 with the remote control. And then it's imprinted on the
17 pictures.

18 Q. So do you actually--is it something you do manually
19 when you change the number?

20 A. Yes.

21 Q. Okay. So that's how you are distinguishing the
22 pictures, is through the number that is imprinted on there?

23 A. That would be one way. The other way is I also
24 draw on my medical report form in the pictures that are

1 provided, I also draw a picture in case one is destroyed or
2 there's a problem with--and it's also on videotape, with the
3 correct SAINTS Clinic number identified on the tape.

4 Q. The diagram, that's on a videotape?

5 A. The diagram is on my chart, my medical report
6 form.

7 Q. So you are-- Make sure I understand what you're
8 saying. You change the numbers manually yourself for each
9 child that comes in to be examined?

10 A. That's correct.

11 Q. You have the capability with the colposcope to take
12 a video of the exam; am I correct?

13 A. Of the genital and anal area.

14 Q. All right. Now, that in turn is then turned into a
15 still picture; is that correct?

16 A. That's correct.

17 Q. Okay. Do you do all the development of the film?

18 A. It's printed right then and there off the video.

19 Q. Don't show that to the--

20 A. Oh. It's printed right off the video. I usually
21 print them out. As I'm seeing the children, I print out the
22 pictures. I print them out usually at that time that I'm
23 seeing each child.

24 Q. All right. So right as you're doing the exam you

1 can have the capability to video and then turn it into a
2 still picture?

3 A. Correct.

4 Q. Can you look at those two--pick that picture you
5 have there, and what identifies that as being Summer's
6 picture for you? Is there anything else other than the
7 number on there?

8 A. Well, other than-- No. The number would be it,
9 other than I draw what I see also, and by what I describe
10 tells me what I'm looking at. I mean, if the description
11 were not to fit what I said, I would know also.

12 MS. SCHMUCK: Thank you, your Honor.

13 CONTINUED DIRECT EXAMINATION

14 BY MR. GRECO:

15 Q. Let's cover those numbers for just a second now.
16 Without referring to the specific numbers on the photograph
17 in front of you, since it hasn't been introduced yet, how is
18 it that you record those numbers? What tracking system do
19 you use to track one little girl from the next little girl
20 or boy?

21 A. Well, besides all these we have a book. And each
22 child that comes in I have mark their name. I say who
23 they're referred by. I also write down the SAINTS number.
24 And the SAINTS number is the month, the year, and the number

1 child that I've seen for that month.

2 Q. So you have a number for the month, the year, but
3 not for the date in the month, correct? Just the--

4 A. That's the number child that I've seen for that
5 day.

6 Q. So if you were to perform three exams on January 1,
7 in addition to the month being zero one and the year,
8 assuming it's this year, being '94, that child's photograph
9 would be marked as zero three, right?

10 A. Correct.

11 Q. Even though it occurred on the 1st?

12 A. Right.

13 Q. Prior to coming into court today to testify did you
14 examine the examination numbers for Summer and Desiree?

15 A. Yes, I did.

16 Q. Does the number on that photograph in front of you
17 match the number of the exam for Summer?

18 A. Yes, it does.

19 Q. And does the month and year match the month and the
20 year that you performed this examination?

21 A. Yes, it does.

22 Q. Does that photograph truly and accurately depict
23 the hymen as you described it earlier of Summer?

24 A. Yes, it does.

1 MR. GRECO: Your Honor, at this point I would ask
2 that that photograph be admitted into evidence.

3 THE COURT: Okay.

4 MS. SCHMUCK: Your Honor, I would continue my
5 objection to the photograph being entered.

6 THE COURT: Okay. The objection is overruled.
7 I'll go ahead and admit number 4.

8 (State's Exhibit 4 was
9 admitted into evidence.)

10 BY MR. GRECO:

11 Q. Are there four quadrants on that photograph?

12 A. Yes, there are.

13 Q. In which quadrant is the fact that the hymen is
14 thickened and rolled over on itself? In which quadrant is
15 that depicted?

16 A. It's best depicted probably in quadrant three, but
17 it's depicted in three quadrants.

18 Q. Now, Miss Peele, when you conduct each SAINTS exam,
19 do you also take a patient history?

20 A. Yes, I do.

21 Q. Did Summer tell you anything that you felt was
22 important for purposes of your medical diagnoses?

23 A. Yes, I do.

24 Q. What did she tell you that you thought was

1 important?

2 A. Well, she gave me a history that Uncle Chuck, who
3 is really not their uncle, but lives next door--

4 MS. SCHMUCK: Your Honor, I think the record should
5 reflect Miss Peele is obviously referring to something I
6 can't see.

7 THE WITNESS: Oh. My notes.

8 MS. SCHMUCK: Okay. May we see the notes?

9 THE COURT: What are they being used for?

10 MR. GRECO: Your Honor, I am simply going to ask
11 her--

12 BY MR. GRECO:

13 Q. If you need to refer to something, can you let me
14 know as we go along?

15 A. Sure.

16 Q. Let's start over.

17 THE COURT: I'm not keeping secrets from you, Miss
18 Schmuck, in response to that. But you can, of course, refer
19 to the notes to refresh your memory.

20 MS. SCHMUCK: Your Honor, I just noticed she
21 referred to something, and I just wished to know what it
22 was.

23 BY MR. GRECO:

24 Q. I simply ask that if you do need to refer to your

1 notes, just let me know what you're referring to. I will
2 ask you some appropriate questions.

3 Did Summer make any statements regarding some
4 things that had happened to her?

5 A. Yes, she did.

6 Q. And can you recall right now sitting there exactly
7 what those statements were?

8 A. She said that her Uncle Chuck, who was really not
9 her uncle, but lived next door, put his private in her front
10 part.

11 Q. Did she say anything else about her Uncle Chuck
12 that you can recall right now?

13 A. Not that I can recall.

14 Q. Now, based upon your examination, both your
15 colposcopic exam and your visual exam, and the patient
16 history described to you by Summer, did you formulate any
17 opinion or conclusion regarding Summer? And specifically
18 whether she had been subjected to sexual abuse.

19 A. Yes, I did.

20 Q. What opinion did you formulate?

21 A. That something has happened to her. That she's
22 been sexually abused.

23 Q. Thank you. Now, did you perform an examination of
24 Summer's sister, Desiree?

1 A. Yes, I did.

2 Q. Was that on the same date as you examined Summer?

3 A. Yes, it was.

4 Q. Now, when you examined Desiree, did you notice
5 anything abnormal during the gynecological exam?

6 A. No. Hers was normal.

7 THE COURT: Excuse me. Let's take a couple
8 minutes.

9 A JUROR: I can't hear. Sorry.

10 THE COURT: Juror number one--I don't blame
11 her--raised her hand and said, "I can't hear," because the
12 garbage is being dumped right below us.

13 They are moving. Want to repeat your last--

14 MR. GRECO: Yes, your Honor. I will.

15 THE COURT: Hang on a second.

16 Should have been here a couple weeks ago when they
17 were working on the street. But I'm not grumpy when I say
18 that.

19 Let's go ahead, Mr. Greco.

20 BY MR. GRECO:

21 Q. Was Desiree's gynecological exam normal?

22 A. Yes, it was.

23 Q. Did you take a patient history of Desiree as well
24 to help you in terms of making medical diagnoses?

1 A. Yes, I did.

2 Q. Did Desiree make any statements to you regarding
3 any type of sexual abuse happening?

4 A. She said that she was touched, but she had been
5 interviewed prior to that by forensic interview, so I didn't
6 go any further with her. I just left it at that.

7 Q. Now, when you say her gynecological exam was
8 normal, using Summer as a guidepost or as a standard, what
9 was more normal about Desiree's exam?

10 A. Well, Desiree's exam, her hymenal tissue looked
11 completely different than Summer's in that it was--the shape
12 was normal, the edges were normal, the size opening was
13 normal, the vascularity was normal. All the kinds of things
14 that we look at to--that we use as criteria were normal.

15 Q. Did you assign Desiree a particular examination
16 number?

17 A. Yes, I did.

18 Q. What number was that?

19 A. I'd have to-- May I refer to my notes?

20 Q. Would that refresh your recollection on the
21 matter?

22 A. Yes, it would.

23 Q. Go ahead.

24 THE CLERK: State's Exhibit 5.

(State's Exhibit 5 was marked
for identification.)

THE WITNESS: Hers was 01 94 14.

BY MR. GRECO:

Q. Showing you what has been marked as State's Exhibit
Number 5 for identification, do you recognize the code
imprinted on the lower-left corner of that photograph?

A. Yes, I do.

Q. Do the numbers there match the numbers for
Desiree's exam?

A. Yes, they do.

Q. Do you recognize the items depicted therein?

A. Yes, I do.

Q. Are these true and accurate reproductions of
Desiree's vagina and hymen?

A. Yes, they are.

MR. GRECO: Your Honor, at this point I'd move for
admission of State's Exhibit 5.

MS. SCHMUCK: Your Honor, my objection continues.

THE COURT: Okay. Thank you.

The objection is overruled. Number 5 will be
admitted.

(State's Exhibit 5 was
admitted into evidence.)

1 BY MR. GRECO:

2 Q. Miss Peele, do you feel that Desiree's photograph
3 is valuable for comparison purposes with Summer's
4 photograph?

5 A. Yes, I do.

6 Q. Why do you feel that way? What do you note that is
7 of comparative value between the two photographs?

8 A. Well, that Desiree is older than Summer, and
9 Summer's actually looks like an older child as compared to
10 Desiree's. And I think that it's real clear the difference
11 of the rolling and the thickening, versus a real sharp edge
12 and not the kind of rolling and thickening that I see on
13 Desiree's.

14 Q. Now, do different girls in different families
15 typically have different sizes and shapes of their hymen and
16 vaginas?

17 A. Yes.

18 Q. Is it important to you that these two are sisters?

19 A. Yes.

20 Q. When you make that comparison?

21 A. Yes.

22 Q. Now, referring you first to State's Exhibit 4,
23 would you please take this pen, and with an arrow point to
24 the rolled and thickened hymen of Summer that you described

1 earlier, just have an arrow pointing right to it.

2 Referring your attention to State's Exhibit 5, in
3 the photograph in the lower-right quadrant of Desiree's
4 hymen, would you with an arrow point to Desiree's hymen.

5 In terms of comparison, in terms of the size of the
6 opening that shows into the vaginal vault, is there anything
7 important that you think should be noted looking at those
8 two photographs?

9 A. Well, that Summer's--in Summer's there is less
10 tissue and--

11 Q. Less hymenal tissue?

12 A. Less hymenal tissue. And you can see both the
13 posterior wall and the anterior, the bottom and the top
14 wall, versus in Summer's she has more-- I mean, Desiree's.
15 I'm sorry. In Desiree, she has more hymenal tissue, and you
16 can really only see the anterior or the top portion of the
17 hymenal wall.

18 Q. Is that unusual?

19 A. Well, like I said, you can see maybe one, but
20 usually not both.

21 Q. Would you typically expect to see more of the
22 vaginal vault, i.e., the larger opening in an older girl
23 than a younger girl?

24 A. Yes, you would. Yes.

1 Q. And would you typically expect to see a thinner,
2 healthier hymen in a younger child versus an older child?

3 A. Yes, except for the babies. That, you know,
4 hymenal tissue changes as they grow older, so as--infants up
5 till about three or four, the hymen can look very much like
6 an adolescent's in that it becomes more thickened and more
7 estrogenized under the effect of the hormones. So that's
8 true, except for that.

9 MR. GRECO: Your Honor, at this time I would ask
10 that the photographs be published. And since they're rather
11 small, I'd like to hand them to the jurors.

12 THE COURT: Do you have any objection?

13 MS. SCHMUCK: Just subject to my continuing
14 objection. No, your Honor, I don't.

15 THE COURT: Go ahead and pass them around.

16 Ladies and gentlemen, this is an appropriate time
17 to tell you that you can and you will take in all of the
18 evidence that has been admitted. You can certainly just
19 pass these around because they are small. But the timing of
20 it is appropriate. So feel free to take a look at those
21 photos, but remember that you will also see them again.

22 MR. GRECO: Your Honor, that is all the questions I
23 have.

24 THE COURT: Okay. Thank you.

1 Miss Schmuck.

2 MS. SCHMUCK: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MS. SCHMUCK:

5 Q. Ms. Peele, beginning with your examination of
6 Summer, how was the child referred to you? How did you come
7 about examining the child?

8 A. These children were referred by the Reno Police
9 Department. All of our children that come to our clinic are
10 referred either by a law enforcement agency and/or a child
11 protective service agency.

12 Q. Isn't it true that you are basically gathering
13 evidence then for the Reno Police Department or the child
14 protective agency, or whoever was referring them to you?

15 A. Well, we are part of an investigative aspect;
16 however, we're there to provide a complete medical
17 evaluation of these children.

18 Q. But they come to you in a particular circumstance
19 because the--the law enforcement agency is referring them?

20 A. Correct. There is a concern, yes.

21 Q. In the particular case of Summer, you stated that
22 you did a history.

23 A. Yes.

24 Q. A patient history. What exactly do you mean by

1 doing a patient history? What does that involve?

2 A. Well, when I obtain a history from children,
3 it's--we get a complete background. We have a form that
4 parents fill out, complete background, which has to do with
5 their social history, the children's past medical history,
6 their birth history.

7 Also part of my examination includes a physical
8 examination, just like any of you who would go to a doctor
9 with a specific complaint. What is the problem there
10 today? And also a review of systems. Are there any
11 complaints at that moment of time of any of the body
12 systems. And then a complete head-to-toe evaluation.

13 Q. And in this particular instance with Summer, who
14 gave you that information?

15 A. Well, the child and the mother.

16 Q. The mother gave you the information?

17 A. Correct.

18 Q. Do you know--do you recall what the mother's name
19 was?

20 A. I'd have to refresh my memory on that.

21 Q. Why don't you go ahead.

22 A. Well, I was wrong. The father and the friend,
23 Adrian. That's right. She was in the room at the time.

24 Q. So when the child was referred to you and they come

1 in, is there a separate room that they're interviewed in, as
2 opposed to the examining room?

3 A. Depends on what interview you're talking about. If
4 you're talking about the medical history that I obtained,
5 they're in the exam room with me. When they are having
6 forensic interview by law enforcement and/or Social
7 Services, they're either in the agencies where they
8 interview children and adolescents, or in our forensic
9 interview room.

10 Q. There's a separate forensic interview room in which
11 they may be interviewed about circumstances surrounding why
12 they're there?

13 A. Correct.

14 Q. But in your interview room particularly you're
15 doing history, physical history, family history, that kind
16 of thing?

17 A. That's right.

18 Q. Is that separated from your examination room?

19 A. No, it's not.

20 Q. It's all together?

21 A. Uh-huh.

22 Q. Do you recall when you spoke with Summer and took
23 the history who was present besides the child?

24 A. The friend, Adrian, was in the room. Is that what

1 you mean? In the exam room?

2 Q. Yes.

3 A. The friend, Adrian, was in the exam room.

4 Q. Do you remember if it was--who gave you the
5 particular history of the incident that brought the child to
6 you?

7 A. Well, I got the history. The history that I
8 already said was stated came from the child. And then any
9 history after that is either obtained after the exam, or
10 also on our behavioral questionnaires that we obtain on our
11 children.

12 Q. So there was a--there was a questionnaire that was
13 filled out by someone?

14 A. Yes.

15 Q. Okay. The behavioral questionnaire, exactly what
16 are you looking for there?

17 A. Well, one is more specific general kinds of
18 behaviors that we look for children that helps us pick up
19 children who may be ADHD, or the hyperactivity syndromes.
20 We're looking for other kinds of hyperactivity. We're
21 looking for other kinds of problems of developmental
22 problems or psychological problems that you encounter in any
23 pediatric population.

24 Q. So why are you specifically looking for those types

1 of problems?

2 A. Because a lot of the children come in with a lot of
3 behavior problems, a lot of behaviors that concern us, and
4 so we need to, you know, find out what is really going on
5 with them.

6 Q. Do you recall if there were any specific behavioral
7 problems with Summer?

8 A. Yes, I do.

9 Q. Can you recall that without referring to your
10 notes?

11 A. As I recall, she had some behavioral kinds of
12 problems, nightmares. There was sadness or some
13 depression. I believe some eating changes, changes in
14 eating habits.

15 Q. And those particular behavioral problems, were you
16 able to trace those directly to this incident that you were
17 told about with Uncle Chuck?

18 A. I think that these incidences, you know, these are
19 questions that we ask all children, and I think that they
20 don't tell us--they don't tell me that she necessarily--it's
21 because she has been sexually abused. It tells me this
22 child is stressed and something has gone on to create these
23 kinds of problems.

24 Q. So did you--were you able to trace those particular

1 behavioral problems to this incident that caused her to be
2 referred to you, is my question?

3 A. Well, she came to me with these kinds of problems,
4 and with the history that she gave me of being-- Children
5 have nightmares, but, you know, obviously something has
6 happened in this child's life that has concerned us.

7 Q. Were you able to determine how long the behavior
8 symptoms had been going on?

9 A. No, I haven't.

10 Q. So you didn't know if these were recent vintage or
11 older?

12 A. No. I didn't ask exactly when they started.

13 Q. Wouldn't that be important to know when they
14 started?

15 A. It is important to know, yes.

16 Q. Did you-- I apologize if you covered this on
17 direct. But did you examine Summer in only one position, or
18 did you examine her in two positions?

19 A. I examined her in two positions.

20 Q. What two positions did you examine her?

21 A. The supine position, which is when they're laying
22 on their back and like a little frog. Second, and probably
23 most important position, the knee-chest position, which is
24 the position when they're on their knees, kind of like what

1 we call a stink bug position. Their bottoms are up in the
2 air. That's an extremely important position because gravity
3 helps pull down the bladder and uterus and hymenal tissue.
4 If it may look abnormal in one position, then you need to
5 know it looks abnormal in the second position. And
6 sometimes it may look abnormal, and we turn them over, and
7 the tissue falls down and looks normal. In Summer's case it
8 remained rolled and thickened.

9 Q. You're looking for consistency in the appearance in
10 both positions?

11 A. Correct.

12 Q. What exactly--or can you describe for us what you
13 would expect the hymen--normal hymen of a seven-year-old or
14 seven-and-a-half-year-old child to look like.

15 A. Well, again, there's many different kinds of
16 hymens. So the shapes can be all the different kinds of
17 shapes that are described. But you would expect it would at
18 the most be maybe seven or eight millimeters as far as the
19 opening is concerned. You would expect it to be either
20 round or angular shape or crescentic shaped, or an opening
21 there with a smooth tissue border, with a normal vascular
22 pattern.

23 Q. Isn't it true that there's maybe five or six
24 different shapes of hymens that are considered to be

1 normal?

2 A. I just stated those, yes.

3 Q. Was there a particular shape that you find more
4 often than any other in a normal hymen?

5 A. You know, I haven't really done a study on it, but
6 I guess round or crescentic or angular would be the most
7 popular ones that I see.

8 Q. Are shapes of hymens--again I'm talking about
9 normal hymens--is it something that is a genetic
10 determination in the sense that do you see--I think the D.A.
11 asked you this--do you see similarities between children
12 from the same family, or even in the same--within the same
13 ethnic group?

14 A. Well, yes, I have. There isn't a lot of literature
15 written on that. That would be my own observation in
16 looking at a lot of children and siblings, and maybe a
17 specific ethnic group, or whatever. But, yes, that is--

18 Q. So that's based on your own observances?

19 A. That's based on my own observation. There is not
20 any recent literature out on that. At this time a study has
21 not been done.

22 Q. What in that sense then, when you examine a child
23 or, I guess, even before you examine a child, you interview
24 a child, do you make some sort of notation insofar as what

1 ethnic group they belong to?

2 A. Yes, I do.

3 Q. How do you determine that?

4 A. Well-- What ethnic group they're from?

5 Q. Yes.

6 A. On our report they're either white, black, Native
7 American or African-American or other.

8 Q. And how do you determine that?

9 A. Well, I either look at the children--it's either by
10 observation or by asking questions. We have a high
11 population of Indians, Native Americans, that we examine.

12 Q. Are there other reasons that a hymen of a
13 seven-year-old or seven-and-a-half-year-old would have a
14 thickened, rolled area, besides a sexual assault?

15 A. I really can't think of any. The only time that
16 I've seen thickened and rolled hymens is when you get up
17 into the little bit older age range where the children are
18 starting to develop a little bit, and their tissue is
19 starting to estrogenize or become under the effects of
20 hormones. There you may see some changes taking place. But
21 other than something going inside a child to--on a chronic
22 basis to give it this thickening and rolling, I can't think
23 of anything else.

24 Q. What do you mean by "On a chronic basis"?

1 A. Well, more than one time.

2 Q. Okay. When you look at and you examine a child,
3 and--let's--when you examined Summer, did you make some sort
4 of determination as to how chronic this sexual assault was?

5 A. No, I didn't, because even if I had asked her, you
6 know-- I can't determine--I can't determine that. I can
7 only say that it looks like, because of the way the hymen
8 is, that it looks more like something that's gone on more
9 than one time, as opposed to a one-time incident, that may
10 or may not leave anything at all.

11 Q. Now, with respect to Desiree, you did a history
12 with this child as well?

13 A. Yes, I did.

14 Q. Was that done in a similar manner to the way that
15 you did it with Summer?

16 A. Yes. It was brief.

17 Q. Do you remember which child you saw first?

18 A. I saw Summer first.

19 Q. Did you do her history with her father and friend
20 the way that you described with Summer?

21 A. I believe that Adrian was in the room for both
22 girls.

23 Q. Were you able to derive more information from
24 Desiree than from Summer in terms of the circumstances that

1 brought her there?

2 A. I believe that I obtained more information from
3 Summer than I did from Desiree.

4 Q. Were you surprised at that?

5 A. Not really. I mean, I--you know--

6 Q. I guess I'm referring to particularly the
7 difference in ages, if that was something that you were--

8 A. Not really, because a 10-year-old is--starting to
9 get up to the seven-, eight-, nine- and 10-year-olds, I
10 think Summer is not quite at the age where Desiree is that
11 she's well aware of consequences. Not that Summer isn't,
12 but probably more embarrassed. And being 10, it's
13 embarrassing and not a real comfortable thing.

14 Q. Do you recall whether or not in the case of Desiree
15 there were any particular behavioral symptoms that were
16 given as far as her history was concerned?

17 A. I'd have to refresh--look at my notes. But I
18 believe she also had some behavioral kinds of symptoms,
19 eating, sleeping problems, some depression, increase in
20 fears, those kinds of things.

21 Q. Okay. Could you refer to your notes, please, and
22 refresh your memory as far as that's concerned.

23 A. Eating disorders and depression, sadness, and
24 typical behavior has changed.

1 Q. And that's something, when you say typical behavior
2 is changed, you would receive that information from the
3 father or the friend?

4 A. Correct.

5 Q. I take it then from your testimony, your previous
6 testimony, that Desiree's hymen was normal.

7 A. That's correct.

8 Q. So was there some conclusion that you reached from
9 that?

10 A. Well, I think that based on what Desiree said, that
11 she said that something happened to her. Again, I--that was
12 only a brief statement that she made. She had been
13 interviewed, so I did not feel like I needed to go in and
14 ask her all the questions that she probably previously had
15 been asked already.

16 Q. Okay. Did you reach any sort of conclusion then
17 from your exam?

18 A. Well, my conclusion would be that she gives history
19 of being sexually abused. Her exam is normal. So that does
20 not mean that it did or didn't happen.

21 Q. So I guess in reference then you're basically
22 saying that you've concluded that Summer was sexually
23 assaulted, and Desiree was not. Or--

24 A. No. I'm saying that both of them give history that

1 the exam could be consistent on--both exams could be
2 consistent with what they're saying.

3 Q. You could have a normal exam, and it could
4 sill--you could still say it indicated sexual assault.

5 A. Yes. Sexual abuse.

6 Q. Sexual abuse. I guess I am baffled then about--

7 A. --how that could happen?

8 Q. Yes.

9 A. Well, you have to remember that the hymenal tissue
10 is very much like a rubber band. And it's very fluid
11 mucosal membrane, very much like inside your mouth. It can
12 be traumatized and be repaired back to normal.

13 And the reason I can say that is I've had kids who
14 have been severely traumatized down there, whether it's been
15 digitally or penile, we've brought them back in five or
16 eight days, and there is little to no evidence that anything
17 has even happened to them. Given the fact that the nature
18 of sexual abuse, because of things that are said to kids, or
19 for whatever reasons that children don't tell us, you're
20 more likely not to get a response or a disclosure
21 immediately, and, therefore, not have physical findings.

22 In Desiree's case, you know, I don't know
23 specifically what she said other than she was touched. Now,
24 she could have been touched on the top or the outer part.

1 She could have even been digitally penetrated. But you have
2 to remember that there is not a lot of tissue at the
3 anterior portion, and it's possible for something to go
4 inside and not cause a lot of trauma or any trauma that we
5 would be able to say for sure is a result of sexual abuse.

6 Q. When you say it's possible for something to go
7 inside without any resulting trauma, would you say that a
8 normal adult male penis could do that, go inside without
9 causing any trauma?

10 A. Yes, I am.

11 Q. Do you see that happening often?

12 A. I have seen it happen. I have documentation of
13 confessions from alleged perpetrators where that has
14 happened, and we have a pretty normal exam.

15 Q. So is there anything else that you look for then in
16 terms of--besides the hymenal tissue, do you look for any
17 sort of scarring?

18 A. Definitely. When we do an exam, we look for
19 scarring; we look for tears; we look for transections; we
20 look for changes in the vascular pattern; we look for
21 adhesions or lesions; we look for any bleeding, discharge,
22 odor; all the kinds of things that you would look for, you
23 know, to--we rule out any kind of dermatological kinds of
24 problems, infectious kinds of problems. Injury, accidental

1 injury kinds of problems. All the--

2 Q. How are you able to rule out accidental injury?

3 A. Well, accidental injuries usually are on one side.
4 They're usually unilateral, which means that there's a
5 problem or some sort of trauma on one side. Most children
6 come into the emergency room right away for the most part
7 because there's either a witness to something that someone
8 has fallen, or to that, or has been hit down there.

9 And also it's very rare to have a penetrating
10 injury without some other type of trauma in any other part
11 of the body, especially down around this area. This is so
12 localized, this is right there, that you would expect in a
13 penetrating accidental injury to have trauma somewhere else
14 around that area. She had none.

15 Q. Desiree?

16 A. Desiree.

17 Q. Had none.

18 MS. SCHMUCK: I have no further questions, your
19 Honor.

20 MR. GRECO: I'll be brief, your Honor.

21 REDIRECT EXAMINATION

22 BY MR. GRECO:

23 Q. Miss Peele, when you testified a few minutes ago
24 that it's possible for something to go inside without

1 resulting in trauma, does the likelihood or chance of that
2 happening increase if the something being a penis that goes
3 inside only goes in no more than one inch?

4 A. Sure. Yes.

5 Q. Would it be fair for me to say that the lesser
6 amount of, say, a penis that would penetrate a child goes
7 into the vagina, the less likely you would see resulting
8 trauma as a general statement?

9 A. There's other factors that are involved, but, yes,
10 as a general statement, that probably is true. We look at
11 the size of the object, the resistance of the child, if any
12 lubrication was used, and positioning, those kinds of
13 things.

14 Q. And is it possible for a child of Desiree's age to
15 have a normal hymenal exam a month after alleged sexual
16 abuse occurred where that abuse consisted of one inch of a
17 penis entered her vagina?

18 A. That's possible. Studies have shown children's
19 hymens, if they were traumatized, actually in some instances
20 the size actually goes back within a year or two, goes back
21 to a smaller size, or the same size as before.

22 Q. All right. Let me ask it this way: If a penis
23 enters a vagina one inch and no more, is it possible that
24 when that happens that absolutely no damage to the hymen

1 would occur? Is that possible?

2 A. It's possible.

3 Q. And did you discuss the dates that these children
4 were allegedly sexually abused with them?

5 A. What do you mean, "the dates"?

6 Q. Were you aware they had been assaulted a month
7 before, as opposed to a day or two before?

8 A. Correct, yes.

9 Q. Now, Miss Schmuck asked you about adhesions. Do
10 adhesions in the vagina typically heal up in a period of
11 time?

12 A. Well, the adhesions that I see are not in the
13 vagina. They are in the fossa navicular layers or on the
14 outer portion of the hymen or at the posterior fourchette
15 where the labia come together. And, yes, adhesions do heal
16 up. There's different kinds of adhesions.

17 Q. All right. But by "adhesions," you mean slight
18 tears, correct?

19 A. When I say "adhesion," I mean, yeah, there is a
20 slight tear that heals. Again, there are different types of
21 adhesions, yes.

22 Q. But adhesions are not chronic, right? Adhesions
23 heal over time?

24 A. Adhesions can be chronic will also. But they can

1 heal.

2 Q. And, well, I'll just ask one more question on that
3 line. What type of adhesions can heal?

4 A. The labial adhesions heal. Labial adhesions.

5 Q. And are labial adhesions the most frequent type of
6 adhesions you see in children?

7 A. Yes.

8 Q. And then, finally, Miss Schmuck asked you some
9 questions about who the children were referred to?

10 A. Referred by.

11 Q. Referred by. I'm sorry. They were obviously
12 referred to you. I'm sorry. You occasionally have children
13 who are referred by persons or entities other than police
14 organizations, don't you?

15 A. Like I said, they're referred by law enforcement
16 agencies and/or Social Services. All of that includes
17 Bureau of Indian Affairs, the FBI and Nevada Division of
18 Child and Family Services.

19 Q. And does the fact that a particular child is
20 referred by a police entity in any way sway your examination
21 and diagnoses in any case?

22 A. It's just part of the process.

23 Q. Does it make any difference to you at all that the
24 child was examined by a police entity, as opposed to some

1 other entity?

2 A. Not at all.

3 MR. GRECO: That's all I have, your Honor.

4 THE COURT: Miss Schmuck, anything? Any recross?

5 RECROSS-EXAMINATION

6 BY MS. SCHMUCK:

7 Q. Miss Peele, does the hymen heal up if it-- Is that
8 what you were talking about? I'm trying to follow your
9 answers to Mr. Greco in terms of, if there was some kind of
10 breakage there, does it heal up?

11 A. Yes. It can heal by leaving a scar. Or it can
12 heal by leaving less tissue. It can heal by leaving changes
13 in the vascular pattern.

14 Q. Okay. So was it your opinion that, for Summer
15 particularly, would you say that her hymen had healed, but
16 that there was a thickening of the edges?

17 A. Correct. Yes. Thickening and rolling.

18 Q. Well, then, as far as Desiree is concerned, are you
19 saying that you think her hymen had healed?

20 A. I didn't see any evidence that there had been any
21 healing going on, but, again, it was normal, so I didn't see
22 any evidence at the time that I examined her of any
23 healing.

24 Q. Of any healing.

1 A. But, again, my experience has been, even in cases
2 where there's been traumatic, and, you know, trauma to that
3 area, they do heal rapidly and may not leave any evidence.
4 And it's well known nationally leave very little evidence,
5 if any at all.

6 MS. SCHMUCK: Thank you, your Honor. No further
7 questions.

8 MR. GRECO: Nothing further, your Honor.

9 THE COURT: Thank you. Thank you, Miss Peele. You
10 can step down and be excused. No, we're not going to excuse
11 you. Or can she be?

12 MR. GRECO: From my perspective she may be
13 excused.

14 MS. SCHMUCK: Yes, she can be excused.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: Ladies and gentlemen, let's take the
18 evening recess.

19 I want to give you a couple of comments.

20 No juror may declare to his fellow jurors any fact
21 relating to the case as of his or her own knowledge. If any
22 juror discovers during the trial or after the trial has
23 retired that he or any other juror has personal knowledge of
24 any fact in controversy in the case, it shall be your duty

1 as an individual juror to disclose such situation to the
2 judge out of the presence of the other jurors.

3 That's basically what we are saying. Don't make
4 any investigation yourself, by yourself, that type of
5 thing. Okay.

6 Then remember not to discuss this case amongst
7 yourselves or with anybody else. Please don't form any
8 conclusions on this case until the case is submitted to
9 you. Please do not read, look at or listen to any news
10 media accounts of this case should there be any.

11 We will be in recess until approximately 10:00 a.m.
12 We have about seven matters tomorrow morning. And believe
13 it or not, I'm not like a banker. I do start earlier than
14 10:00 a.m. Okay. But we have other things going on. We
15 might spill over. I'm not sure. We usually don't. But I
16 just want to warn you.

17 I'll have you report to the jury room, please, at
18 10:00 a.m. I'll get you--we'll get the trial started as
19 close to 10:00 a.m. as we can.

20 Everybody have a pleasant evening. I will see you
21 tomorrow morning.

22 (Recess.)
23
24

1 RENO, NEVADA, TUESDAY, APRIL 12, 1994, 10:10 A.M.

2 THE COURT: Good morning to you all.

3 Okay. Let the record show that the jury is
4 present. Counsel-- Excuse me. Mr. Maki is present with
5 counsel. The State is present.

6 We're ready to proceed.

7 Good morning.

8 MR. GRECO: Good morning, your Honor.

9 The State would call Jim Stegmaier next.

10 JAMES J. STEGMAIER,
11 called as a witness on behalf of the State,
12 first having been duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. GRECO:

16 Q. Would you please state your name and spell your
17 last name for the record.

18 A. Yes. James J. Stegmaier, spelled
19 S-t-e-g-m-a-i-e-r.

20 Q. And who are you employed by?

21 A. I'm employed with the City of Reno as a police
22 officer and detective assigned to the services section.

23 Q. Do part of your duties include the investigation of
24 sex crimes?

1 A. Yes. It's a sex crimes, child abuse unit.

2 Q. How long have you been employed by the Reno Police
3 Department?

4 A. Six years.

5 Q. Have you received any specialized training in
6 interviewing child sex victims?

7 A. Yes.

8 Q. Would you describe that training for the jury.

9 A. I am currently POST certified from three different
10 academies, two in northern California, one in northern
11 Nevada. Those are 40--excuse me--40 week courses that
12 specify training in both sexual assault of juveniles,
13 females, some cases which require delicate questioning, such
14 as children-type cases.

15 I've also attended most recently in December a
16 one-week course in San Jose at the San Jose State University
17 in reference to sexual assault investigation in children
18 questioning so that the children aren't led in the way they
19 can question them.

20 Since that time also I attended an eight-hour
21 course from the SAINTS, local SAINTS program, which is the
22 Sexual Assault Investigative Team for Washoe County. And in
23 that eight-hour course it dealt specifically with
24 interviewing children and how to ask questions in a

1 non-leading manner.

2 Q. Are you the primary detective assigned to the case
3 of the State of Nevada versus Charles Joseph Maki?

4 A. Yes.

5 Q. When were you first assigned that case?

6 A. I was assigned the case on January 19th, 1994.

7 Q. Referring your attention to January 19--well, to
8 that morning, did you have some contact with the victims in
9 the case?

10 A. Yes, I did.

11 Q. What were their names?

12 A. The young ladies' names were Summer and Desiree
13 Rohrback. And their father's name was Gary Menees.

14 Q. And did you interview the two girls?

15 A. Yes, I did.

16 Q. Which one did you interview first?

17 A. The first child to be interviewed was Desiree, who
18 was a 10-year-old female.

19 Q. Then you interviewed Summer?

20 A. Yes.

21 Q. Was your interview of Summer immediately after
22 Desiree's interview?

23 A. Yes, it was.

24 Q. And did you speak with Summer at all about the

1 facts of the case prior to beginning your formal interview?

2 A. Not at all.

3 Q. Was that interview videotaped?

4 A. Yes, it was.

5 MR. GRECO: Your Honor, pursuant to your pre-trial
6 ruling, I would move that the videotaped interview of Summer
7 Menees be deemed admitted for trial purposes and played for
8 the jury at this time.

9 THE COURT: Any comments?

10 MS. SCHMUCK: Your Honor, subject to my continuing
11 objection from the pre-trial motions.

12 THE COURT: Okay. The objection is overruled.

13 We'll go ahead and play the tape of Summer.

14 (Defendant's Exhibit 2 was
15 admitted into evidence.)

16 (Whereupon the videotape was
17 played.)

18 BY MR. GRECO:

19 Q. Now, Detective Stegmaier, following your interviews
20 with the girls, had you developed a last name for the
21 suspect known as Chuck?

22 A. Yes, I had.

23 Q. What last name had you developed?

24 A. Mr. Maki, Charles Maki.

1 Q. And did you go somewhere to attempt to make contact
2 with Charles Maki?

3 A. Yes, I did.

4 Q. Where did you go?

5 A. At the conclusion of the interview with the girls,
6 I had determined from information from the girls' father
7 that Mr. Maki lived in the same complex at 1015 Nevada
8 Street in Reno, Washoe County.

9 Q. Is that where you went?

10 A. Yes, I did.

11 Q. When you arrived there, did you have to go inside
12 some apartment?

13 A. No. Upon arrival there we checked the perimeter
14 first to make sure that Mr. Maki himself wasn't outside the
15 premises. As we walked around the back of the complex, we
16 located him working on a vehicle. Actually there was two
17 men. And I inquired as to if either one of them was Mr.
18 Charles Maki, and Mr. Maki stated that he was.

19 Q. And can you recall at approximately what time you
20 made contact with Mr. Maki?

21 A. I would say that it was approximately 12:30, 20
22 till 1:00.

23 Q. Do you see the man who identified himself as Mr.
24 Maki who you saw with your own eyes that day in the

1 courtroom here?

2 A. Yes, I do.

3 Q. Would you point him out for the jury.

4 A. Mr. Maki is seated at the defense table wearing the
5 turquoise-colored, long-sleeved shirt.

6 Q. What did you say to Mr. Maki?

7 A. Once Mr. Maki identified himself, I identified
8 myself as Detective Stegmaier with the Reno Police
9 Department. I showed him my badge. He was with another
10 gentleman. At that particular time I asked him if he would
11 like to step away from the other guy to avoid any
12 embarrassment. He was very cooperative. He walked with me
13 approximately 20 feet away from the car, where Detective
14 John Bohach was with me. And I began talking to him about
15 why I was there.

16 Q. Did you tell him that you wanted to interview him?

17 A. Yes, I did.

18 Q. Did you tell him that he had to go with you and had
19 to answer any questions?

20 A. Just the opposite. I told Mr. Maki that I had--I
21 was investigating a case in which his name had came up as a
22 possible suspect. Told him it was a one-sided report at
23 this point. In other words, I only had the victims' side of
24 the story. I didn't have any of the information from his

1 side. And that I was there for one particular purpose, and
2 that was to ask him if he wanted to come down to the station
3 to give me his side of the story.

4 Told him he was not under arrest. And that if he
5 didn't want to go, that I would submit that one-sided report
6 to the District Attorney's Office and let them make any
7 decisions from there.

8 Q. And did he agree to go down to the police station
9 and talk to you?

10 A. Yes, he did.

11 Q. And when you arrived at the police station, what
12 room did you take him to for the interview?

13 A. We took him to a room that's in the detective
14 section called--it's the fraud-burglary section, just a--
15 roughly an eight-by--eight-foot-wide-by-six-foot-long room,
16 with a single table and three chairs.

17 Q. Is that room equipped with a videotape camera?

18 A. Yes, it is. Both audio and visual.

19 Q. Now, is the videotape camera easily visible to
20 persons who enter that room?

21 A. Not at all.

22 Q. Where is it located physically within the room?

23 A. In that particular room the--in that particular
24 room there's two of them. The reason I hesitate, that one

1 there is hidden behind a speaker, looks like a little stereo
2 speaker between two books. They're up in the corner above
3 one of the tables. Actually it's a hidden camera that
4 goes--shoots through this stereo speaker.

5 Q. Did you tell the defendant that he was being
6 videotaped?

7 A. No, sir.

8 Q. Why did you do that?

9 A. It's been my experience that-- My interviews are
10 very laidback and just very casual. It's been my experience
11 that, because I'm a casual interviewer, that if I also tell
12 them it's being videotaped and audiotaped, oftentimes even
13 people who are just witnesses who don't want to be
14 videotaped and audiotaped, they tend not to be as truthful
15 and as candid with you.

16 Q. Do you do that with most of the suspects you
17 interview?

18 A. There's nobody I actually tell them they are being
19 interviewed. If they ask, then, of course, I always tell
20 them, "Yes, as a matter of fact, you are." But it wasn't
21 asked.

22 Q. And you do that with all of your suspects for the
23 same reasons you stated a few minutes ago?

24 A. Yes. Even the children, too.

1 Q. Can you recall at what time the actual interview of
2 Charles Maki commenced?

3 A. Yes.

4 Q. What time was that?

5 A. He was seated at approximately five minutes after
6 1:00 on the 19th of January. Interview started about seven
7 minutes after 1:00, two minutes after he was seated.

8 MR. GRECO: Your Honor, pursuant to your pre-trial
9 ruling, I would ask that State's Exhibit 3, the videotape of
10 Charles Maki, be admitted for trial purposes and played for
11 the jury.

12 MS. SCHMUCK: Again, your Honor, I do have my
13 continuing objection.

14 THE COURT: Okay. The objection is overruled. It
15 will be admitted.

16 (State's Exhibit 3 was
17 admitted into evidence.)
18 (Whereupon the videotape
19 was played.)

20 MR. GRECO: Your Honor, I neglected to mention
21 earlier that the videotape of Summer that we played was
22 Exhibit 2. I don't think I told you at that time you
23 admitted that was the exhibit. I wanted to put that on the
24 record.

1 THE COURT: What is this one?

2 MR. GRECO: This one was 3. I believe I did say
3 that.

4 THE COURT: Okay. Thank you.

5 BY MR. GRECO:

6 Q. Detective Stegmaier, in regards to the middle of
7 that videotape where you saw the defendant alone, you could
8 only see him on the videotape. Was there, in fact, anyone
9 else in that room?

10 A. No. Mr. Maki was by himself at that point.

11 Q. Who was that--the other detective in the room with
12 you?

13 A. That was Detective John Bohach, who was also
14 assigned to the sex crimes unit.

15 Q. Was that Detective Bohach as well at the end of the
16 tape where he's asking him some questions?

17 A. Yes.

18 Q. What was Detective Bohach doing there? Why was he
19 asking about his Social Security number and place of
20 residence?

21 A. There's a booking form that the police department
22 uses when they place someone under arrest. Whether that be
23 a simple shoplifting up to murder. It has a series of
24 questions necessary for the booking people of Washoe County

1 Jail to have in order to allow a new person into the jail.

2 Q. Is that done in each and every case where a suspect
3 is arrested and is going to be taken to the jail?

4 A. Yes.

5 Q. And what charges did you place the defendant under
6 arrest for?

7 A. I placed him under arrest for sexual assault, which
8 is NRS 200.366, and I placed him under arrest for lewdness
9 with a minor under 201.230 of the NRS.

10 Q. How many counts of each?

11 A. Five counts of sexual assault, five counts of
12 lewdness with a minor under 14.

13 MR. GRECO: That's all I have, your Honor.

14 THE COURT: Thank you.

15 Miss Schmuck.

16 MS. SCHMUCK: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MS. SCHMUCK:

19 Q. Good morning, Detective.

20 A. Good morning, ma'am.

21 Q. Detective Bohach, how long was the interval between
22 your interviews of Summer and Desiree before the interview
23 with Mr. Maki?

24 A. I'm sorry, ma'am. Did you call-- Is it Detective

1 Bohach you're referring to or-- My name is Detective
2 Stegmaier.

3 Q. I'm sorry. How long was the interview that you
4 conducted with Summer and Desiree? There were two
5 interviews?

6 A. Yes, ma'am.

7 Q. How long was the interval between those two
8 interviews and the interview with Mr. Maki?

9 A. The girls' interview ended at approximately 12:30.
10 And I went directly from there. 12:30, 20 to 1:00, I left
11 directly from there to Mr. Maki's house, which is about a
12 five-minute drive.

13 Q. When you got to Mr. Maki's house, you indicated you
14 found him behind the house; is that correct?

15 A. Yes, ma'am.

16 Q. As you approached him, did you know the person that
17 you were looking for? Did you have a physical description
18 of him?

19 A. Yes, ma'am.

20 Q. Did you see him and recognize him right away?

21 A. No. I had two gentlemen there who were both white
22 males, and Mr. Maki obviously looked more of the person I
23 was looking for than the other one due to he was muscularly
24 built. Mr. Maki has some nice arms on him. He was wearing

1 a cutoff at that particular time that showed his physique.
2 Besides the obvious characteristics of the hair and the size
3 and the weight, I had a feeling Mr. Maki was the gentleman I
4 was looking for.

5 Q. So you had some physical description of him before
6 you went over there?

7 A. Yes, ma'am.

8 Q. Where did you get that physical description from?

9 A. The physical description was given to me initially
10 by the reporting officer, Officer Ballew, on his report that
11 was taken on the night before, January 18th, when the
12 allegations first surfaced with Mr. Menees, when the girls
13 approached their dad. However, when I talked to Mr. Menees
14 on the phone and in person at the police department when he
15 brought the girls down, he gave me a more candid description
16 of Mr. Maki himself.

17 Q. Okay. Were you in uniform that day?

18 A. This is my uniform. I just have a suit.

19 Q. You're a detective?

20 A. Yes, ma'am.

21 Q. So you don't usually wear a uniform?

22 A. No. Just a sport coat and slacks.

23 Q. When you first spoke with Mr. Maki, did you
24 immediately identify yourself as a Reno police officer?

1 A. Yes, I did.

2 Q. Did you tell him that you were investigating a
3 particular allegation of crime?

4 A. Not the particular allegation. I told him I was
5 investigating a crime in which his name had surfaced.

6 Q. But you didn't identify the particular crime that
7 you were investigating?

8 A. No, ma'am.

9 Q. How long were you there talking to him before you
10 went to the police station?

11 A. Five minutes.

12 Q. At that time did you observe Mr. Maki in terms of
13 did he look like he was tired?

14 A. He didn't appear to be tired to me.

15 Q. Did he look like he was-- Or did you smell alcohol
16 on him?

17 A. No, ma'am.

18 Q. Did you notice that his eyes were red?

19 A. I don't recall if his eyes were red at that
20 particular day.

21 Q. Did you observe him walking around?

22 A. Yes, ma'am.

23 Q. Did you notice anything peculiar about the way he
24 walked?

1 A. No. I spoke with him for approximately five
2 minutes. And I've been trained in the DUI-type things for
3 people under the influence of narcotics or alcohol. I even
4 offered to let him drive his own car, which although I
5 wasn't concentrating to see if he was--you know, with any
6 actual test to see if he's under the influence of anything,
7 I definitely wouldn't have allowed him to drive his own
8 vehicle if I had thought he was under the influence of
9 something, whether that be narcotic or alcohol.

10 Q. Did you particularly ask him if he was under the
11 influence of alcohol--

12 A. No, ma'am.

13 Q. --or narcotics?

14 A. Not at all.

15 Q. When you got to the police station, was Mr. Maki
16 taken into the interview room, or was he allowed to just
17 walk in there on his own?

18 A. Well, obviously he had never been there before with
19 my knowledge, so I led him to an interview room. But, I
20 mean, as far as my hands on to the interview room or
21 handcuffed or anything, not at all. But obviously I showed
22 him the way there.

23 Q. How big is the interview room?

24 A. I would say it's eight feet long approximately,

1 maybe ten at the most, and about six feet wide. It's a
2 small cubicle-type room size of a normal residence restroom,
3 something like that.

4 Q. A restroom, is that what you said?

5 A. Yes, ma'am. It's a small room.

6 Q. Do you as a habit or in your normal course of
7 interviewing people, do you also have an audio recorder
8 going at the same time that you would be doing your video
9 recording?

10 A. That's an option. Personally I flip-flop back and
11 forth. Usually when I take in an audio recorder, it's not
12 actually to turn on, as funny as that sounds. What I'll do
13 is I'll put the audio recorder on this little table that's
14 between him and I. And without fail the suspect always is
15 eyeing it to see if it's on. What I do is I don't turn it
16 on, so he figures: Oh, right now we're just talking. And
17 obviously it's being recorded both visually--

18 Q. In this particular instance with the interview of
19 Mr. Maki did you come in with an audio recorder?

20 A. No, ma'am.

21 Q. There was no audio recorder in the room?

22 A. No, ma'am.

23 Q. Isn't it true, Officer, that when you took Mr. Maki
24 down to the police station, that you had sufficient evidence

1 to arrest him right at that point?

2 A. I would say that's kind of a tricky question. And
3 the reason is, is specifically when I do my investigations,
4 it's very important to me to give the person who is being
5 accused of it the opportunity to tell me what is happening.
6 So based upon the girls' allegations, yeah, you could put
7 somebody in jail. But I don't do that. You know, I always,
8 again, give that person a chance to refute what occurred.
9 And that happens quite often. Quite often I'm able to,
10 after talking to the suspect, realize that there is no basis
11 for those allegations whatsoever.

12 Q. I guess that kind of leads me to my next question
13 then. If in this particular instance you, after speaking
14 with Summer and Desiree, you had gone out to see Mr. Maki,
15 you asked him to come to the police station?

16 A. Yes, ma'am.

17 Q. You stated on direct that he voluntarily--he was
18 voluntarily cooperating with you?

19 A. Yes, ma'am.

20 Q. If he had refused to come with you to the police
21 station, what would you have done?

22 MR. GRECO: I'd object on this basis on relevancy
23 grounds. It's not what happened. Doesn't have anything to
24 do with the elements of the--

1 THE COURT: I'm going to sustain it.

2 THE WITNESS: To be honest with you, I even told
3 him that. What I would do--

4 MR. GRECO: Detective Stegmaier--

5 THE COURT: The objection is sustained.

6 THE WITNESS: I'm sorry, sir. My apologies.

7 THE COURT: It's all right.

8 BY MS. SCHMUCK:

9 Q. In the course of your interview with Mr. Maki, do
10 you remember if he was having any problems hearing you?

11 A. I believe he mentioned that he had a hearing
12 problem and that he would like for me to speak up. I speak
13 pretty loud in interviews. And so it never came up again.

14 Q. Was that prior to going down to the police station,
15 or in the actual interview itself?

16 A. Prior.

17 Q. In the actual interview itself did you notice any
18 indication from him that he was having problems hearing
19 you?

20 A. One incident comes to mind, and I don't know if it
21 was where he actually had a problem hearing me or if he
22 just--because I slur my words sometimes. And it was where I
23 told him, "You realize you're not under arrest, and you're
24 free to go." And he says, "I am under arrest?" And I said,

1 "No, you're not." He goes, "Oh, no. Yeah, I understand
2 that." And so he heard the words, but--but in what context
3 was the problem. So I don't know. That was the only
4 indication I had during the interview.

5 Q. Do you recall, Detective, whether or not he was
6 wearing a hearing aid that day?

7 A. I don't recall offhand, ma'am.

8 Q. With reference to the interviews of the two young
9 girls, the interview of Desiree, she was the first girl that
10 you interviewed; is that correct?

11 A. Yes, ma'am. That's correct.

12 Q. You were talking earlier about formulating
13 questions and not--trying not to formulate leading questions
14 when you were interviewing children. Prior to speaking with
15 her, did you have any information at all with which to
16 formulate questions? Not leading questions, but just
17 questions in general.

18 A. Yes, ma'am.

19 Q. Had you spoken to anyone else about any of these
20 allegations in order to get that information?

21 A. The only information I had was the officer's
22 initial report, which contained a one-paragraph synopsis of
23 Desiree's revelations to him about the next-door neighbor
24 named Mr. Maki. I had that limited information.

1 And then I also had spoken to the father, Mr.
2 Menees, who prior to interviewing the girls I kind of gave
3 him an idea of what I was going to do. When a parent brings
4 a kid down, they're afraid we are going to traumatize them
5 like they see on TV of these hard interviews. And I
6 explained to him exactly how it was going to go and what
7 my--basically what my game plan was for interviewing his
8 girls. And then where we would go from that point.

9 And Mr. Menees at that point again reiterated what
10 was in that one paragraph. He hadn't interviewed the girls
11 any further once they had made an initial allegation that
12 they had been touched. He called the police and didn't
13 question them any further.

14 Q. So as far as you know, you were the second person
15 who had spoken with them about this?

16 A. As far as I know.

17 Q. With respect to your interview of Summer, you asked
18 her a question about tatoos. Why did you ask her that
19 question?

20 A. The reason I asked that particular question is
21 recently I had a case where one of the key pieces of
22 evidence was a large mole that the suspect had in his pubic
23 area by his penis. And although that's unusual, I can think
24 of a couple more cases where that has been a key piece of

1 evidence. And I don't want to miss something that may be as
2 obvious by that, so I always ask all my victims if there's
3 anything unusual they happened to notice.

4 Q. So that is something that you would be particularly
5 looking for, is a distinguishing characteristic, a mole?

6 A. One of many scars, tatoos, odd shape.

7 Q. I believe that you particularly asked Summer if Mr.
8 Maki had any tatoos around his private area.

9 A. Yes, ma'am.

10 Q. And she indicated that he did not.

11 A. Well, actually I believe that she indicated that he
12 had many tatoos front and back. And then I believe I said
13 "Anything in that particular area?" And I believe she said
14 "No." Of course--

15 Q. Thank you, Detective.

16 A. Okay.

17 Q. Did you, Detective, do any kind of investigation as
18 far as speaking with the children's teacher?

19 A. No, ma'am.

20 Q. Did you do any investigation as far as speaking to
21 a school counselor?

22 A. No, ma'am.

23 Q. Did you speak to the children's physician?

24 A. No, ma'am. I didn't know they had one.

1 Q. Do you recall if you asked Desiree about any
2 distinguishing marks on Mr. Maki?

3 A. I don't believe I did.

4 MS. SCHMUCK: I have no further questions, your
5 Honor.

6 THE COURT: Thank you.

7 Redirect.

8 MR. GRECO: Yes, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. GRECO:

11 Q. When you asked Summer about her tatoos, she
12 responded he had many on his front and back, correct?

13 A. Correct.

14 Q. You had been talking about his genitals and penis a
15 short time before?

16 A. Correct.

17 Q. After she said "Many on his front and back," you
18 said, "Did you notice any down in that area," correct?

19 A. Correct.

20 Q. She said "No"?

21 A. Exactly. I was specifically referring to the penis
22 and pubic area.

23 Q. That's what you had just been talking about a
24 moment before that time, correct?

1 A. Correct.

2 Q. Did you notice any signs of intoxication at all on
3 the defendant on the day you interviewed him?

4 A. No.

5 Q. At any time did he tell you that he had been
6 drinking that day?

7 A. Yes.

8 Q. All right. And did you ask him about a time frame
9 of when he had been drinking?

10 A. I asked him if he had been drinking, and he--

11 Oh, I'm sorry. On the day of the occurrence, or
12 the day of the interview?

13 Q. The day of the interview.

14 A. No. I'm sorry. On the day of the interview there
15 was no mention of his alcohol usage that day at all. And I
16 didn't detect any.

17 Q. In your initial contact with him at the apartment
18 building and in your drive over he never made mention of
19 having been drinking anything that day?

20 A. No, sir. I wouldn't have offered to let him drive
21 if I thought he had been slightly drinking.

22 Q. Other than the one point in the interview Miss
23 Schmuck talked about, that being where you said, "You're not
24 under arrest," and he said, "I am?" other than either

1 mishearing or misunderstanding that one word "Not," at any
2 time in the interview did you notice the defendant seeming
3 to have trouble hearing you?

4 A. No, sir.

5 Q. At all the other points in the interview other than
6 that one point were his answers responsive to the questions
7 you asked?

8 A. Yes. The interview lasted about half an hour, and
9 that was the only initial question he had in reference to
10 what I asked. And never again did I have to repeat
11 something for him.

12 MR. GRECO: That's all I have, your Honor.

13 THE COURT: Recross.

14 MS. SCHMUCK: I have no recross, your Honor.

15 THE COURT: Thank you, Detective Stegmaier. You
16 can step down.

17 THE WITNESS: Thank you, your Honor.

18 (Witness excused.)

19 THE COURT: Will counsel approach, please?

20 (Discussion at the bench.)

21 MR. GRECO: Your Honor, the State of Nevada rests.

22 THE COURT: Ladies and gentlemen, before we
23 continue on, I think it's an appropriate time to take
24 lunch. We could probably take 10, 15 minutes, then come

1 back for 10 or 15. Let's take our lunch break. Remember
2 the admonition.

3 And let's resume at 1:30. Everybody have a
4 pleasant lunch.

5 (Recess.)
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1 RENO, NEVADA, TUESDAY, APRIL 12, 1994, 1:30 P.M.

2 THE COURT: Good afternoon to everybody.

3 Okay. The jury is present. Mr. Maki is present
4 with counsel. The State is present. We can proceed.

5 Now, the State rested, so, Miss Schmuck.

6 MS. SCHMUCK: Thank you, your Honor.

7 The defense calls as its first witness Michael
8 Brian, your Honor.

9 MICHAEL W. O'BRIEN,

10 called as a witness on behalf of the defendant,

11 first having been duly sworn,

12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. SCHMUCK:

15 Q. Mr. O'Brien, would you please state your name for
16 the record and spell your last name for the court reporter.

17 A. Michael W. O'Brien, O apostrophe capital
18 B-r-i-e-n.

19 Q. Could you please tell us your occupation or
20 profession.

21 A. I'm an investigator for the Public Defender's
22 Office.

23 Q. Were you so employed as an investigator for the
24 Public Defender's Office on February 7th, 1994?

1 A. I was.

2 Q. At my request did you go to the Washoe County Jail
3 and take some pictures of Mr. Maki?

4 A. Yes, I did.

5 Q. Is this the man that you took pictures of? Is this
6 Mr. Maki, the man you took pictures of?

7 A. It is.

8 MS. SCHMUCK: May I approach the witness, your
9 Honor?

10 BY MS. SCHMUCK:

11 Q. Mr. O'Brien, I'm going to show you what had been
12 designated Defense Exhibits A through F. Have you had a
13 chance to look at those?

14 A. I have.

15 Q. With respect to Exhibit A, Defense Exhibit A, do
16 you recognize what is depicted in that photograph?

17 A. Yes. Numerous tatoos on Mr. Maki's anatomy.

18 Q. Thank you. Does Exhibit A fairly and accurately
19 depict the state of Mr. Maki's tatoos and body on that
20 particular day on February 7th?

21 A. It does on the face side--the face portion of the
22 body.

23 Q. Turning your attention then to defense Exhibit B,
24 do you recognize what is depicted in that picture?

1 A. These are close-ups of the same body tatoos.

2 Q. Does that fairly and accurately represent Mr.
3 Maki's body on that particular day on February 7th?

4 A. Yes. In the partially clothed condition it does.

5 Q. Thank you. I'll turn you attention then to Defense
6 Exhibit C. Do you recognize what is depicted in that
7 photograph?

8 A. Yes. This is a further close-up of the lower
9 portion of Mr. Maki's torso, showing the tatoos on that
10 portion of his body.

11 Q. Okay. Does that fairly and accurately represent
12 his body and the tatoos on his body in that particular
13 section on that particular day?

14 A. It does.

15 Q. Turning your attention then to Exhibit D, do you
16 recognize what is depicted in that photograph?

17 A. Yes. It's again--

18 Q. Would you describe that.

19 A. --tatoos on the lower portion and the pelvic,
20 primarily the pelvic area of Mr. Maki's anatomy.

21 Q. Does that fairly and accurately represent the
22 particular tattoo that you saw on Mr. Maki's body?

23 A. It does.

24 Q. Turning your attention to Exhibit E, do you

1 recognize what is depicted in that picture?

2 A. Yes. This is a full length of a partially clad Mr.
3 Maki with the--his pants pulled down to approximately the
4 area of the knees.

5 Q. Does that fairly and accurately represent the state
6 of his body or the way he appeared on that particular day?

7 A. It does.

8 Q. And, finally, as to Defense Exhibit F, do you
9 recognize what is depicted in that picture?

10 A. Yes. It is a closer-up of the same pose with Mr.
11 Maki's pants down partially forward towards his knees, the
12 rest of his body unclothed, indicating the tatoos that are
13 on this portion of his anatomy, primarily around the lower
14 abdomen and pelvic regions.

15 Q. Does that picture fairly and accurately represent
16 the tatoos as they were on that particular day?

17 A. They do.

18 Q. Thank you.

19 MS. SCHMUCK: Your Honor, at this time I would move
20 that Defense Exhibits A through F be admitted into
21 evidence.

22 MR. GRECO: I have no objection, your Honor.

23 THE COURT: May I see them, please?

24 A through F will be admitted.

(Defendant's Exhibits A
through F were admitted into
evidence.)

MS. SCHMUCK: Thank you, your Honor. May I publish
the pictures to the jury?

THE COURT: Go ahead.

We can go on while they're looking.

MS. SCHMUCK: Your Honor, I have no further
questions of this witness.

THE COURT: Oh. Okay.

Any questions, Mr. Greco?

MR. GRECO: No questions, your Honor.

THE COURT: Okay. Thank you, Mr. O'Brien. You can
step down.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

MS. SCHMUCK: Your Honor, the defense would call
Danielle Johnson.

THE COURT: Go ahead, face the clerk, please.

1 DANIELLE JOHNSON,

2 called as a witness on behalf of the defendant,

3 first having been duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SCHMUCK.

7 Q. Miss Johnson, would you please state your name for
8 the record and spell your last name for the court reporter.

9 A. My name is Danielle Johnson. It's J-o-h-n-s-o-n.

10 Q. Ms. Johnson, what is your occupation or
11 profession?

12 A. I work at Mariposa County Head Start in the
13 office.

14 Q. Where do you live?

15 A. Mariposa, California.

16 Q. Okay. Do you know Charles Joseph Maki?

17 A. Yes, I do.

18 Q. Is he in the courtroom today?

19 A. Yes.

20 Q. Could you point him out for the jury?

21 A. Right there.

22 Q. What is he wearing?

23 A. The teal-colored shirt.

24 Q. How is it that you know Mr. Maki?

1 A. He was a roommate of mine at one time.

2 Q. Exactly when was that?

3 A. I believe that was 1989, for about nine months.

4 Q. Were you living in Reno at the time?

5 A. Yes. On Ralston.

6 Q. How long were you roommates?

7 A. About nine months.

8 Q. And you said that was in 1989?

9 A. Yes.

10 Q. During that period of time did you form any opinion
11 as to Mr. Maki's work habits?

12 A. Yes.

13 Q. What is that opinion?

14 A. He's a very hard worker. He was always up early to
15 go to work and never missed a day. And he even built a
16 fence for me at our home after he got off his regular job.

17 Q. Do you recall what Mr. Maki was doing as work at
18 that time?

19 A. Roofing and tar.

20 Q. Also during that period of time did you have
21 occasion to see Mr. Maki with small children?

22 A. Yes. I watched two children quite frequently at
23 that time.

24 Q. Did you form an opinion as to Mr. Maki's conduct

1 with children?

2 A. Yes.

3 Q. And what was that opinion?

4 A. He was very gentle around them. And he played with
5 them all the time. He helped me to bathe this one little
6 girl and that--those kind of things. He was just--he was
7 real gentle with them and real good with them. He played
8 with them a lot.

9 MS. SCHMUCK: Thank you. No further questions,
10 your Honor.

11 THE COURT: Any questions, Mr. Greco?

12 MR. GRECO: Yes, your Honor.

13 CROSS-EXAMINATION

14 BY MR. GRECO:

15 Q. Did you live together as boyfriend and girlfriend?

16 A. No, we did not.

17 Q. What was your relationship then?

18 A. He was just a friend of mine.

19 Q. What was your living arrangement, though? How is
20 it that he was able to come into contact with these girls
21 you watched?

22 A. How is it that he came into contact? It was my
23 home first, and he moved in.

24 Q. All right. So he did move in?

1 A. Yes, as a roommate. Yes.

2 Q. And so the total time that the two of you lived
3 together at that residence was nine months?

4 A. About.

5 Q. That was back in '89?

6 A. I believe it's '89, yes.

7 Q. Have you lived with him at any time since 1989?

8 A. No, I have not.

9 Q. Have you seen him in the presence of any small
10 girls since 1989?

11 A. No, I have not.

12 MR. GRECO: That's all I have, your Honor.

13 THE COURT: Any redirect?

14 MS. SCHMUCK: Nothing further, your Honor.

15 THE COURT: Thank you, Miss Johnson. You can step
16 down. You can be excused.

17 (Witness excused.)

18 MS. SCHMUCK: Your Honor, with that, the defense
19 will rest its case.

20 THE COURT: Okay.

21 MR. GRECO: Your Honor, I have some short rebuttal
22 witnesses.

23 THE COURT: All right. Let's go.

24 MR. GRECO: Summer Menees would be first.

1 THE COURT: Summer, you don't have to be resworn.
2 Okay. You took an oath yesterday. You remember that oath?

3 THE WITNESS: Yeah.

4 THE COURT: We don't have to reswear.

5 Any objections?

6 MS. SCHMUCK: No objection.

7 MR. GRECO: No, your Honor.

8 SUMMER MENEES,
9 called as a witness on behalf of the State,
10 previously having been duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GRECO:

14 Q. Hi, Summer.

15 A. Hi.

16 Q. How are you doing today?

17 A. Fine.

18 Q. Summer, can you remember way back to January when
19 you were interviewed on TV by Detective Stegmaier?

20 A. Yes.

21 Q. Do you remember telling Detective Stegmaier that
22 Chuck had tatoos all over, front and back?

23 A. Yes.

24 Q. Now, yesterday nobody really asked you about those,

1 and I wanted to ask you a little bit about those. Is that
2 okay?

3 A. Yes.

4 Q. When you say he had tatoos all over, front and
5 back, where can you remember him having tatoos?

6 A. On his stomach and his back and his arms.

7 Q. On his arms? Okay. Can you remember--can you
8 remember what any of the tatoos looked like?

9 A. Half of a naked lady.

10 Q. Half of a what?

11 A. A naked lady.

12 Q. Where was that?

13 A. By--on his stomach.

14 Q. On his stomach. Can you remember what any of the
15 other ones looked like?

16 A. There was a skull.

17 Q. Okay. Where was that at?

18 A. Up above the naked lady.

19 Q. Was that on his stomach, too?

20 A. Yes.

21 Q. Can you remember anything else about the skull?

22 A. I think his tongue was sticking out.

23 Q. Summer, have I shown you any photographs in this
24 case of Chuck's tatoos?

1 A. No.

2 Q. Has anybody ever shown you any photographs of
3 Chuck's tatoos?

4 A. No.

5 MR. GRECO: May I have those, please.

6 BY MR. GRECO:

7 Q. Summer, I just want to show you one of these
8 photographs, because I don't want you looking at the other
9 ones. I am going to show you what has been marked as
10 Defendant's Exhibit B. Do you recognize the tatoos in that
11 picture? Why don't you take it, just take a look at it for
12 a second.

13 A. Yeah.

14 Q. Okay. Now, I know you can't see the face on that
15 picture, but who is in that picture?

16 A. Chuck.

17 Q. Is that because you recognize those tatoos?

18 A. Yes.

19 Q. When you said it was a skull with the tongue
20 hanging out, is that the top tatoo there on his stomach?

21 A. Yes.

22 Q. I know you can't see all that lady there, and I
23 don't really want you to look at the other photographs, but
24 does that appear to be the top of the naked lady that you

1 were talking about?

2 A. Yes.

3 MR. GRECO: That's all I have, your Honor.

4 THE COURT: Okay. Miss Schmuck.

5 MS. SCHMUCK: No further questions, your Honor.

6 THE COURT: Thank you, Summer. You can step down,
7 sweetie, and you can be excused.

8 (Witness excused.)

9 MR. GRECO: Your Honor, the State calls Desiree
10 Menees.

11 THE COURT: Desiree, you don't have to be sworn, so
12 go ahead, take a seat, make yourself comfortable.

13 DESIREE ROHRBACK MENEES,
14 called as a witness on behalf of the State,
15 previously having been duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GRECO:

19 Q. How are you doing, Desiree?

20 A. Fine.

21 Q. Desiree, yesterday we forgot to ask you a couple of
22 important questions, and I'd like to ask you those now.
23 Okay?

24 Desiree, did you ever see any tatoos on Chuck when

1 he had his clothes off?

2 A. Yes.

3 Q. Where were the tatoos on his body that you can
4 remember today?

5 A. There were some on his arms. I only saw one on his
6 stomach, and half of one on his back.

7 Q. Okay. And can you remember what the one on his
8 stomach looked like?

9 A. An eyeball with a tongue sticking out.

10 Q. Kind of funny looking?

11 A. Yes.

12 Q. Desiree, showing you what has been marked-- Well,
13 let me ask you this. Desiree, before now has anybody shown
14 you any photographs of Chuck's tatoos?

15 A. No.

16 Q. Showing you what has been admitted as State's--
17 Defendant's Exhibit B--I'm sorry--would you take a look at
18 that for a second. Go ahead and hold it. Do you recognize
19 something in that photo?

20 A. The tatoo.

21 Q. And which tatoo?

22 A. The eyeball.

23 Q. With the tongue?

24 A. Yes.

1 Q. And I know you can't see the top of that photo, but
2 do you know whose face is up there?

3 A. Chuck.

4 Q. Is that because you recognize that tatoo?

5 A. Yes.

6 MR. GRECO: That's all I have, your Honor.

7 THE COURT: Questions, Miss Schmuck?

8 MS. SCHMUCK: No further questions, your Honor.

9 THE COURT: Thank you, Desiree. You can step down,
10 sweetie. You can be excused.

11 (Witness excused.)

12 MR. GRECO: Can we approach the bench your Honor?

13 (Discussion at the bench.)

14 THE COURT: We have a legal matter to take up,
15 ladies and gentlemen. I'm going to go ahead and excuse
16 you. Why don't you go ahead and retire to the jury room.
17 We'll call you when we're done. Thank you. Remember the
18 admonition.

19 (The following proceedings
20 were had without the presence
21 of the jury:)

22 MR. GRECO: Your Honor, by way of offer of proof,
23 Gary Menees is here. And on the night of the defendant's
24 arrest, approximately an hour before the defendant called,

1 at roughly 4:00 o'clock in the afternoon, the defendant's
2 sister, Jackie Maki, called, and she told--

3 THE COURT: Called who?

4 MR. GRECO: Called Gary Menees. She told Gary
5 Menees that her brother had been arrested. She wasn't
6 surprised at all because when she was younger, she had been
7 raped by her brother.

8 As soon as I found out this morning that Miss
9 Schmuck was putting on character evidence, we made a search
10 for her, but we've been unable to locate her. She's in
11 Stead, and just not at her residence.

12 So the evidence I would like to offer is the
13 hearsay evidence from the brother--I mean-- I'm sorry.
14 Through Mr. Menees.

15 THE COURT: Okay. Miss Schmuck.

16 MS. SCHMUCK: Well, your Honor, this is obviously
17 hearsay evidence, and it's--as Mr. Greco has offered no
18 exception to the hearsay rule in terms of bringing this
19 evidence in.

20 THE COURT: What would it be?

21 MR. GRECO: Well, your Honor, I have to tell you I
22 have a hard time contesting what Miss Schmuck says. I
23 don't--it is hearsay, your Honor. And I can't--to be
24 honest, can't think of any applicable exceptions if she's

1 objecting to it, your Honor. Your Honor, I'm going to
2 withdraw that application.

3 THE COURT: Okay.

4 MR. GRECO: Well, do you want me to end my rebuttal
5 case in front of the jury? That will be the end.

6 THE COURT: Are you through with rebuttal?

7 MR. GRECO: I am.

8 THE COURT: Then we'll call them back.

9 Why don't counsel approach for a second.

10 (Discussion at the bench.)

11 (The following proceedings
12 were had in the presence of
13 the jury:)

14 THE COURT: Welcome, everybody. Go ahead and be
15 seated. Thank you.

16 Okay. Anything else, Mr. Greco?

17 MR. GRECO: Your Honor, that concludes the State's
18 rebuttal case.

19 THE COURT: Okay. Defense has rested?

20 MS. SCHMUCK: That's correct, your Honor.

21 THE COURT: All right. Ladies and gentlemen of the
22 jury, let me tell you what we're going to do now. We're
23 going to retire to my office, the two attorneys and I.
24 We're going to go over jury instructions. I don't think it

1 will take too long as far as settling the instructions.

2 And for your information, these don't come off the
3 top of the judge's head or look at a book, he or she look at
4 a book. They are offered by the attorneys. And we go
5 through--this is a process where, based on what I perceive
6 the evidence to be, based on the evidence, the district
7 attorney will offer this instruction, defense will offer
8 this instruction, and I choose between the instructions, and
9 then we settle them. I will then read you the
10 instructions. You then have closing arguments. And the
11 case will be submitted to you.

12 So what I'm going to do, I'm going to send you back
13 to the jury room until we have settled instructions. And as
14 I say, you might as well as go ahead and take a break. But
15 I will have you assembled in the jury room awaiting our
16 settlement instructions.

17 Okay. Remember the admonition. You can be
18 excused.

19 (Recess.)

20 (The following proceedings
21 were had in chambers:)

22 THE COURT: We are on the record in State versus
23 Maki.

24 Miss Schmuck is present. Mr. Greco is present.

1 We've settled on instructions numbers 1 through
2 33. It's my understanding there's no objections or no other
3 comments.

4 MR. GRECO: State has no objection to the offered
5 instructions.

6 MS. SCHMUCK: Defense has no objections to the
7 offered instructions.

8 THE COURT: Okay. Let's do it.

9 (The following proceedings
10 were had in open court:)

11 THE COURT: Okay. The jury is present. Mr. Maki
12 is present with counsel, Miss Schmuck. And Mr. Greco is
13 present for the State.

14 Okay. Ladies and gentlemen, I'm going to instruct
15 you on the law. I've got 33 instructions that we have
16 agreed to give. And as I said to you earlier, these don't
17 come off the top of my head. They're law. I will read them
18 to you. There is no need to take notes because you can take
19 the instructions with you. As a matter of fact, if you take
20 notes, you could misinterpret them. But you will take these
21 with you in the jury room.

22 After that counsel will give their arguments, and
23 then you will have the case this afternoon.

24 (The Court read the instructions.)

1 THE COURT: Okay. Now we'll start closing
2 arguments. Because the prosecution has the burden of proof,
3 they will start first. Then Miss Schmuck will give her
4 closing argument, and then Mr. Greco on behalf of the State
5 will be the last person to talk. The reason that the
6 prosecution has two shots in the closing arguments is
7 because they have the burden of proof.

8 Go ahead, Mr. Greco.

9 MR. GRECO: Thank you, your Honor.

10 Ladies and gentlemen, I wanted to start by thanking
11 you one more time. I know that the testimony in this case,
12 it wasn't always the most pleasant testimony. But, again,
13 we appreciate your attendance, and I thank you sincerely.

14 I wanted to touch on the law just a little bit
15 before launching into the facts on the case. The most
16 important instructions that the judge read to you, I think,
17 are instructions 19, 20 through about 24. I'm going to
18 touch on a couple of those because those are the element
19 instructions, the elements of the crimes that you have to
20 look at here.

21 In terms of the sexual assault, the key in that
22 element instruction is that the defendant has to subject the
23 person to sexual penetration either against the victim's
24 will or under conditions in which the defendant knew or

1 should have known the victim was mentally or physically
2 incapable of resisting or understanding the nature of the
3 defendant's conduct.

4 So against one's will is one way. But if the
5 victim simply doesn't understand what's going on, that's the
6 second prong. That applies particularly to young children.
7 I'll address that in a few minutes.

8 Of course, instruction number 20 tells you that the
9 State absolutely does not have to prove force. So we often
10 think of forcible rape, somebody being grabbed in an
11 alleyway, thrown down and beaten. That's not the law in
12 this state, and you should--you don't need to find that
13 here, and we haven't alleged that.

14 The second important thing on instruction number 19
15 is what a sexual penetration means. Cunnilingus and
16 fellatio aren't applicable here. But what is applicable is
17 the third prong: Or any intrusion, however slight, of any
18 part of a person's body, or other object, manipulated by a
19 person inserted into the genital or anal opening of a body
20 of another, including sexual intercourse in its ordinary
21 meaning.

22 Any intrusion. One inch, one-sixteenth of an inch,
23 anything is enough. Again, when I discuss the facts in a
24 few minutes, I'm going to get into that.

1 And then finally the lewdness instruction I don't
2 need to read now. It's very simple. The judge just read it
3 to you. You can read it again when you go back into the
4 jury room.

5 The instruction following the lewdness instruction
6 is very important, and that's the one that told you for a
7 lewdness you don't have to have touching of the actual
8 skin. The law is simply so long as those elements are
9 satisfied in the lewdness instruction, if there's touching,
10 even if it's over clothing, that's sufficient.

11 Now, the Information alleges 10 total counts. And
12 as you saw during the trial, the Information does not allege
13 the counts chronologically. That is because the Information
14 simply groups the counts by the type of charge and the
15 victim. So you have the first four counts of sexual assault
16 involving the first victim, Desiree, and then the one count
17 involving Summer. Then you have the lewdness counts
18 involving Desiree and the lewdness counts involving Summer.
19 So that's simply the election of the D.A. at the time of
20 charging. It's not meant to be chronological.

21 In any event, as to Counts I through III, the
22 sexual assaults involving Desiree and penile penetration,
23 the evidence is crystal clear. Both in the first two times
24 when he penetrated her in his apartment, and in the third

1 time when she was over to her apartment, you heard her say
2 in each case he put it inside of her.

3 Now, she told you it was about an inch. But
4 remember that instruction. Any penetration, any intrusion,
5 no matter how slight, is enough. One inch is more than
6 enough. And what's important is that she told you she felt
7 it inside of her. In fact, she said, I believe, on all two
8 or even three of the events that it hurt her. But the key
9 is she felt it inside. She had no doubt in her mind that it
10 was inside of her. She did not waiver at all on
11 cross-examination.

12 Now, Count IV is the finger penetration. Remember,
13 that one occurred after the third penile penetration when
14 she was back at her apartment, her bedroom, when she had
15 tried to get away from him. After she--he sexually
16 assaulted her the third time with his penis, he then
17 finished by inserting his finger up into her. He moved that
18 in and out just like he moved his penis in and out of her.
19 She felt it inside of her, and that hurt as well.

20 Count V is the sexual assault involving Summer.
21 Specifically that he inserted his penis into her vagina.
22 Again remember she told you on the stand that was the last
23 of the three things that happened to her. I'll get to the
24 other two in a moment.

1 She told you she felt it inside. She told you it
2 hurt. She told you a number of other things. She used the
3 word "Hump." But when we pinned her-- I asked her about
4 that, "What do you mean by that word?" You heard me say
5 "That's kind of a funny word." And she told us where she
6 had heard that word. But she told us that "hump" meant
7 moving it in and out. She felt it inside of her. He moved
8 it in and out, and it hurt.

9 Remember both on the stand and on the video when
10 she is asked, she said, "Oh, about that much." But, again,
11 any penetration is sufficient.

12 Ladies and gentlemen, I would submit to you that
13 when this individual was penetrating these small girls, very
14 small girls, he was thinking about what type of medical
15 evidence or damage he could do if he inserted his penis
16 fully.

17 In any event, Count VI begins the lewdness counts.
18 Count VI is that Desiree, the defendant kissed or sucked the
19 victim's breast. Now, she told you that on the stand. She
20 pointed out her right breast. And it happened during one of
21 the first two sexual assaults at the defendant's apartment.
22 But again she was clear on that. It didn't happen for a
23 particularly long period of time, but she did not waiver on
24 cross-examination.

1 Count VII is that the defendant touched or rubbed
2 the exterior of Desiree's vagina. Remember during the very
3 first sexual assault in his apartment, she told you that
4 while he was doing that--I'm sorry--right before he did
5 that, he fondled her over her underwear. So remember he was
6 rubbing her vagina over her underwear, and then when he sent
7 Summer out the first time to get the milk, as soon as Summer
8 leaves, he gets on top of her. But he was rubbing the
9 exterior of her vagina prior to that first sexual assault.
10 Again there was no wavering on cross-examination. So that's
11 the basis of Count VII.

12 Count VIII charges that the defendant caused the
13 victim to touch or fondle his penis and/or testicles. You
14 may recall that happened during the second sexual assault at
15 his apartment. She told you that while he was doing that he
16 made her touch or rub his penis. She remembered he made her
17 grab and hold on to his penis, and she had to rub it a
18 little bit while he was doing that to her.

19 Count IX of the Information charges that the
20 defendant touched or rubbed the exterior of Desiree's--I'm
21 sorry--of Summer's vagina. Remember, in terms of Summer--in
22 terms of either of them, they are not chronological, but he
23 touched or rubbed her vagina the first thing he did to her.
24 Remember she said he began rubbing his finger, I think she

1 said pointy finger, around the exterior of her vagina.

2 And then Count X was the second thing he did to
3 her. After he had done that, he then took his penis and he
4 began rubbing it around the exterior of her vagina.

5 Of course, the third thing he did to her was Count
6 V, which I have already talked about. After he did those
7 two things, he inserted his penis in her vagina a short
8 distance.

9 Now, you may have noticed on the videotape Summer
10 was a little less clear in terms of order. You see
11 Stegmaier has her jump back and forth between the touching
12 with the finger and then the penile penetration, and also
13 the rubbing of the penis outside the vagina.

14 Of course, that's because Stegmaier is hearing all
15 this for the first time. You heard him tell you that he did
16 not talk to that little girl at all before that interview
17 was commenced. So he's hearing all this for the very first
18 time after reading a very brief report written by a patrol
19 officer the night before and talking briefly with the
20 father. He's finding out the details for the very first
21 time. That's why they jumped back and forth. But any doubt
22 about the order was cleared up on the stand. And, again,
23 she did not waiver on cross-examination.

24 Now, of course, you have a lot of other information

1 besides just what the two little girls told you to show the
2 defendant's guilt. Most importantly, of course, you have
3 his admissions.

4 During the interview, after he started telling the
5 truth, after the initial denials, you heard him make a
6 number of admissions, the most important of which were that
7 he admitted that he rubbed his penis on Desiree's vagina.
8 Then he also--the other important one is he admitted to
9 Stegmaier that he was guilty. That was his exact words.
10 "I'm guilty."

11 When Stegmaier asked him, "Well, what do you mean?
12 What did you do?" he said, quote, "Probably whatever Desiree
13 told you." He was basically conceding the fact that these
14 little girls were telling the truth. He's basically with
15 that statement, "Probably whatever Desiree told you," and,
16 "I'm guilty," he's basically conceding all the counts as to
17 Desiree.

18 And, of course, he also admitted in the interview
19 by Stegmaier that he let Summer wash him in the shower, and
20 she might have touched his testicles, although you'll recall
21 those weren't his exact words.

22 Those are the key admissions made to Stegmaier, but
23 they are not the end of the admissions. You saw him sitting
24 in that room alone. Remember I told you in opening

1 statement that you'd see him make certain facial or body
2 language gestures. He did that. You saw him looking
3 skyward. You saw him putting his head down in his hands.
4 Those are clear gestures of guilt. He was feeling guilty
5 because he was thinking about what he had done to those
6 little girls. That's why he was moving that way. But, of
7 course, he said some things as well.

8 You heard him say, "Why? Why? The stupidest
9 thing. Why? Why? I don't believe I did this." He was
10 talking about he didn't believe that he sexually assaulted a
11 seven- and nine-year-old girl.

12 And then finally he made some more spontaneous
13 admissions when Bohach was asking him those booking
14 questions. Again, Bohach is just simply asking him his
15 name, his date of birth, and all those things. He starts
16 looking skyward and says, "I had to get this off my chest.
17 I did something wrong." And probably most importantly, or
18 at least probably the best indicator of his personality,
19 "There goes my million-dollar lawsuit with SIIS." He was
20 deeply concerned that he might lose his workmen's
21 compensation money he had coming from SIIS.

22 Of course, you have some admissions to Gary Menees
23 as well on two different nights. He tells Menees on the
24 night of his arrest over the telephone, he tells him, "It

1 just happened." He couldn't explain it, but it just
2 happened. He tells Menees he's sorry for what he did to the
3 girls. And he apologizes in several other manners as well.
4 It's clear what he's talking about. He was feeling guilty.

5 Now, you heard him change his tune a little bit
6 three or four nights later. He calls Gary again, says,
7 "Well, I don't really remember much now. I had been
8 drinking. The only thing I remember is the event in the
9 shower with Summer." Has is already stepping back. He's
10 already trying to cover his tracks. He is lying once again,
11 just like he lied at the beginning of the interview to
12 Stegmaier. Most importantly, of course, it all led up to,
13 "Will you please drop the charges?"

14 I told you in my opening statement Gary Menees is a
15 trusting individual. And you saw that. He's not a real
16 strong individual. You got a sense of that on the stand.
17 He trusted this individual, and this individual took
18 advantage of his daughters. And he was playing on that
19 trust with these phone calls when he was trying to convince
20 him to drop the charges. He was hoping he could use his
21 prior friendship one more time to get this very polite, very
22 nice man to help him out.

23 But you heard what Menees finally said. "My girls
24 aren't liars. I'm not going to drop the charges." And Gary

1 stood by his daughters.

2 Finally, ladies and gentlemen, we had some medical
3 evidence as well. You all saw the photos of Summer's
4 hymen. It was very thick. It was rolled over on itself.
5 You heard Cathy Peele's conclusion that it was her opinion
6 that that was due to sexual abuse. And that is a very--you
7 heard her say that's a very unusual hymen for a child of
8 that age.

9 Desiree, of course, had a healthy hymen. But
10 remember Desiree told you each time he only went in one
11 inch. Remember he had fondled her as well before he did
12 that. But, of course, you saw the two of them. Desiree
13 is--although she is only two years older, she is much larger
14 than the other girl.

15 Cathy Peele told you from the stand it's possible,
16 even with more penetration, not to show damage a month or so
17 later, or sometime later. That's the key, of course. The
18 little girls didn't come forward to their father, so we
19 don't have a SAINTS exam the day after it happened or the
20 day it happened. We have it a month after. She told you
21 about the healing process.

22 There might be some question there if it was just
23 Desiree's word against this man. It's not. It's Desiree's
24 and Summer's word against him. It's Gary Menees' word

1 against him. Most importantly, it's his own word. Remember
2 he said "I'm guilty regarding Desiree, and whatever she told
3 you is what I mean by when I say 'I'm guilty.'" .

4 In any event, ladies and gentlemen, I'll get one
5 more opportunity to address you. And that is because, as
6 the judge has already stated, I have the burden of proof, so
7 I get to go last. But at this time I'd defer to Miss
8 Schmuck.

9 THE COURT: Thank you, Mr. Greco.

10 Miss Schmuck.

11 MS. SCHMUCK: Thank you, your Honor.

12 If it please the Court, counsel, Mr. Maki. Ladies
13 and gentlemen of the jury, this will be my last opportunity
14 to speak with you. And I want to say, first of all, on
15 behalf of myself and Mr. Maki, how much we appreciate your
16 time and your attention here at this trial. I know that
17 jury duty can create sacrifices and problems for everyone.
18 And we do appreciate any sacrifices you have had to make.
19 Most of all, we appreciate your attention and your time
20 here.

21 Ladies and gentlemen, this is a very difficult
22 case.

23 On one side you have two very attractive young
24 girls who say that Mr. Maki, my client, did some things to

1 him--them. That he committed sexual assaults. That he
2 committed acts of lewdness.

3 And on the other side you have Mr. Maki. You have
4 Mr. Maki telling the police that he did certain things to
5 these girls. However, he did not say to the police that he
6 did all the things that the two young girls are telling
7 you.

8 Now, the defense would ask you to, or submit to
9 you, as lawyers say, that in order to bring these extremes
10 together or to reconcile them, that you have to really look
11 at the evidence that's missing in this case.

12 First you've got Cathy Peele, who is the head of
13 the SAINTS program. Miss Peele testified that Desiree's
14 hymen was normal. She testified that the exam was normal.
15 There was no evidence of scarring and there was no evidence
16 of trauma. And yet Desiree testified that Mr. Maki sexually
17 penetrated her vagina with his penis on three separate times
18 and once with his finger. She said it hurt. And she said
19 that later that day she couldn't remember it that much, but
20 she still said that it hurt.

21 You also have the information about Summer as far
22 as her SAINTS exam. And I believe that Miss Peele testified
23 there that the exam showed a certain thickening, a folding,
24 of the hymenal tissue. And Miss Peele stated that she

1 thought in her opinion that that thickening or folding of
2 the hymenal tissue could be the product of chronic sexual
3 abuse.

4 She also stated that Summer's hymen looked older in
5 comparison to her sister's, that it looked like that of an
6 older child. And yet you have Summer telling you that she's
7 alleging Mr. Maki penetrated her with his penis on one
8 occasion. Yet Ms. Peele is reporting trauma, and she
9 suspects that there's chronic abuse.

10 I have to ask you to look at this very carefully,
11 because that just simply does not add up in terms of what
12 Miss Peele is telling you about the possible sexual abuse or
13 sexual assault of these two little girls.

14 Second, there's the tatoo. Now, you heard me on
15 cross-examination with both these children asking them what
16 Mr. Maki looked like. I asked specifically what his penis
17 looked like. They said it was hairy. One of the girls, I
18 think Desiree, said that it was peach colored. I believe
19 Summer said, "Well, it was the same color as the rest of his
20 body."

21 Neither of those girls on cross-examination
22 mentioned the tatoo. Now, I'm sorry if we've offended
23 anyone's sensibilities here with the pictures of the
24 tatoos. But that is a very distinctive tatoo, particularly

1 the one down around Mr. Maki's pubic area. It's not
2 something that you would forget, and it's not something that
3 you would miss seeing.

4 The third and the final missing piece here, ladies
5 and gentlemen, that I would submit to you, is this: Mr.
6 Maki, you've seen him on tape at the police station. And he
7 told the police about two instances with these two young
8 women. Maybe that's an alleged confession. But that's all
9 he confessed to. He was sorry. He was obviously very
10 sorry. He was very upset at what was going on. But he did
11 not confess to committing any of the other acts that these
12 two girls are telling you about. And I suggest to you the
13 reason why he didn't confess to the rest of those acts is
14 because they did not happen.

15 The judge has just instructed you, ladies and
16 gentlemen, on the law that will be applied in this case.
17 And I think the particular instruction that I'm going to
18 direct your attention to is something that I'm going to tell
19 you again because I think it's the most important
20 instruction. And it's the one that our entire system is
21 based on here. And that instruction is: "A reasonable
22 doubt is one based on reason. It is not mere possible
23 doubt, but is such doubt as would govern or control a person
24 in the more weighty affairs of life. If the minds of the

1 jurors, after the entire comparison and consideration of all
2 the evidence, are in such condition that they can say they
3 feel an abiding conviction of the truth of the charge, there
4 is not a reasonable doubt. Doubt, to be reasonable, must be
5 actual, not mere possibility or speculation."

6 Ladies and gentlemen, the State has failed to
7 sustain its burden in this case. Reasonable doubt exists
8 here. And we would ask you to find Mr. Maki not guilty.

9 Thank you.

10 THE COURT: Thank you, Miss Schmuck.

11 Mr. Greco.

12 MR. GRECO: At the beginning of he argument counsel
13 said, "He didn't do all the things the two girls are telling
14 you," and then at the end of her argument she said, "He
15 didn't admit to all the things that are charged in the
16 Information." Well, of course, that assumes the opposite,
17 that he did do some of the things and he did admit to some
18 of the things alleged in the Information. Of course, he
19 admitted some of the things alleged in the Information. But
20 he did all the things, all the things the two young girls
21 say he did.

22 Defense counsel tells you Desiree's hymen was
23 normal. And that's true. But, again, Cathy Peele told you
24 that hymens can heal, and also penetration can occur,

1 significant penetration can occur and cause no hymenal
2 damage at all. Again, we don't have an exam here the day
3 after.

4 Now, Miss Schmuck talked about these tatoos as
5 well. And she says that yesterday the girls didn't even
6 talk about these tatoos, even though as the photos showed
7 they're pretty visible. Of course, they didn't talk about
8 them yesterday. Because they weren't asked about them
9 yesterday. When Miss Schmuck brought it up in her defense
10 case, the two girls were brought back to court, and they
11 told you what had happened. And, remember, they had never
12 seen those photos before. The only photo they saw was the
13 one I showed them today. That's the first time I showed
14 them a photo. Didn't want to show them the other photos
15 because he was naked in them. But you heard them describe
16 what they saw.

17 They said--one girl said a skull with a tongue, and
18 then the naked lady. The other girl said the skull with the
19 tongue. Now, you look at those photos. I still can't tell
20 what it is. Is it a skull? Is it an eyeball? Is it
21 supposed to be both?

22 The point is this traumatic event is happening to
23 them in relatively quick time. Remember Summer kept
24 interrupting the defendant's vaginal sexual assaults of

1 Desiree, and so he was only on top of her each time for 20
2 or so seconds. She's got this horrible thing happening to
3 her. She's not examining him from head to toe for the
4 purposes of determining exactly where his tatoos are.

5 The key is they knew there was a skull there with
6 the tongue. One, I think it was Summer, saw the naked lady
7 as well. Of course, they were both right when they said he
8 had tatoos on his arms. You saw those in the photos. You
9 can also see it when he stood up on the video.

10 But probably most importantly, remember what
11 happened back in January when Summer was interviewed.
12 Stegmaier asked her about the tatoos. And she said he
13 asked--he asked her, "Did you have any tatoos--did he have
14 any tatoos on his body?" She said, "Yeah. He had them all
15 over, in front and back." Now, he did go on to say, "Did he
16 have any down there?" Of course, he had just been talking
17 about the defendant's penis a few seconds before. She said
18 "No." What she, of course, meant is she didn't see
19 anything on his penis. That was the main subject of the
20 interview, unfortunately. But she knew they were all over
21 his front and back.

22 Stegmaier didn't ask her to describe them, so she
23 didn't say it on the videotape. Didn't give you more detail
24 on that yesterday because they weren't asked. And they told

1 you today. That's the purpose of rebuttal case.

2 Ladies and gentlemen, if you believe these two
3 little girls in this case, he is guilty of each and every
4 count. When you determine their credibility--and that's
5 your role as a jury--think about a number of things. Think
6 about a motive to lie. What possible motive to lie do these
7 little girls have in this case? Absolutely none. Zero.

8 In fact, up until this happened, they told you they
9 were friendly. That's why Gary Menees trusted this man with
10 his children. He didn't--he hadn't seen any indication of
11 this, although as you heard that testimony about the
12 defendant having them over to pet his dog, play with his
13 dog, to have popsicles, ice cream or candy, you can begin to
14 see what was probably going through his mind in terms of
15 motive.

16 But in any event, these little girls have no motive
17 to lie. When you think about whether they're telling the
18 truth, think about how these revelations came out in the
19 first place. Remember what happened. It's about a month
20 later Desiree and her dad are talking, and she simply breaks
21 down crying. Because she had been--she had been holding
22 this terrible secret in her mind for a month. She breaks
23 down crying. In fact, as Gary recalled it on the stand, you
24 could see tears came to his eyes. You could see he was

1 reliving that experience.

2 The police didn't go out to these girls and find
3 them. They weren't looking for Mr. Maki. They--these
4 people came to the police because Desiree broke down and
5 started crying. And then Gary went to Summer immediately,
6 and Summer told him what had happened. And you can
7 understand why little girls like this might wait a while to
8 tell their father. This is embarrassing. It's shameful.
9 It's humiliating. Especially for a 10-year-old.

10 You probably noticed on the stand there Desiree was
11 more uncomfortable than Summer, even though she's older and
12 more articulate. In fact, you heard in response to Miss
13 Schmuck's question Cathy Peele talked about the fact of how
14 it is more difficult for adolescents once they reach the age
15 of 10 or 11 to discuss things like this. Excuse me. Once
16 they get into the age range of 10 or 11, it becomes more
17 difficult because, of course, they're proceeding through
18 adolescence.

19 Summer is so young, she is so innocent, she still
20 does not appreciate just exactly what had happened to her.

21 Remember I read you that sexual assault
22 instruction. Other than against the victim's will, the
23 other way that someone can sexually assault a young child is
24 simply by that child not understanding the nature or

1 consequences of his action. That's exactly why that second
2 prong is there. It's talking about young children.

3 When you determine whether or not those little
4 girls are telling the truth, whether they're credible, think
5 about their demeanor on the stand. When both sides asked
6 them questions, think about how quickly they responded. Did
7 they have to take long, long times to think? They were
8 obviously thinking of answers. But they didn't have to
9 really think for very long. Their memory of the event was
10 good.

11 Think about Desiree's demeanor particularly. When
12 we got to the hard parts, you saw what happened to her. She
13 started crying. And she started crying because she was
14 remembering these very real, very terrible things that have
15 happened to her.

16 If these little children had just sat up there like
17 robots and spit out answer after answer after answer, you
18 might begin to wonder about whether or not they were telling
19 the truth. But they didn't do that.

20 You heard, of course, with the defense questions,
21 of course, there's a lot of surprises there. You saw how
22 well they reacted to surprises. They did not waiver on
23 cross-examination. They were not impeached on
24 cross-examination. And I would submit to you that their

1 testimony was extraordinarily credible given how young they
2 are and how difficult the subject matter was that they had
3 to talk about.

4 Now, the defendant did talk to you on the
5 videotape. And when you think about the defendant and his
6 credibility in terms of his statements on the videotape,
7 think about the order of that interview.

8 Remember what happened in the first five minutes of
9 the interview. Stegmaier told him why he was there, and he
10 goes "What," like this. He's totally shocked by the
11 allegations. For the first five minutes of that interview
12 he adamantly denied everything that happened.

13 Then he starts to equivocate. He starts making
14 those statements about, "I don't really know what happened,"
15 or "I was buzzed, and I don't remember what happened." Now
16 he has gone from absolute denial to equivocation. And then,
17 of course, he finally just comes right out with it and makes
18 the admissions that I talked about earlier. So obviously
19 during the first two times his memory didn't change
20 dramatically in the first 15 minutes of that interview.

21 When he says he didn't do anything in the first
22 five minutes, he adamantly denied everything, he was lying.
23 When he said he didn't remember what had happened, he didn't
24 know what had happened in the middle of the interview, he

1 was lying. He started to tell the truth, although not the
2 full truth, he told the truth when he started making
3 admissions.

4 Now, I talked about the girls' motive to lie. What
5 about his motive to lie at the beginning of that videotape?
6 It's obvious. He was simply attempting to save his skin.

7 The bottom line in items of credibility,
8 believability, weigh what you saw up there from those two
9 little girls with what you saw from that man on that
10 videotape, and just ask yourself: Are those girls telling
11 the truth? They certainly are.

12 You saw the defendant do some crying during Miss
13 Schmuck's statements. That was very touching. You also
14 heard him call Gary Menees the night he was arrested, and he
15 told Gary, "I love those little girls." What he did to
16 those little girls in December was not love. He treated
17 those girls as nothing more than tools. They were simply
18 sexual aids to him.

19 And, ladies and gentlemen, by returning verdicts of
20 guilty on every count alleged in the Information, you can
21 let Mr. Charles Maki know that those two little girls are
22 not tools. You can let him know that those two little girls
23 mean something. And you can let him know that you as the
24 members of this community are not going to put up with the

1 sexual abuse of innocent little children.

2 Thank you.

3 THE COURT: Thank you, Mr. Greco.

4 I want to personally thank both counsel for an
5 orderly presentation and professional presentation.

6 I want to thank you all, ladies and gentlemen, for
7 your time and patience in this case.

8 Now it's your turn. What we're going to do, we're
9 going to swear you in. We're going to have--excuse me--
10 we're going to swear in the bailiff, Miss Dause, to take
11 charge of the jury.

12 I'm going to go ahead and, with counsel's
13 permission, go ahead and dismiss--excuse Mrs. Fritz. Is
14 that okay?

15 MR. GRECO: No objection, your Honor.

16 MS. SCHMUCK: No objection, your Honor.

17 THE COURT: Mrs. Fritz, why don't you leave a phone
18 number with Bailiff Dause, your phone number, in case
19 somebody becomes ill or something like that. We'll go ahead
20 and excuse you. And thank you very much for your
21 attention.

22 We'll go ahead and swear in the bailiff to take
23 charge of the jury.

24 (Bailiff sworn.)

1 THE COURT: Now, remember, ladies and gentlemen of
2 the jury, you'll be able to take in all of the evidence, all
3 of the instructions. And if you need any assistance in
4 anything, make sure that you just contact Miss Dause.

5 We will now be in recess, and we will await your
6 verdict.

7 (Recess.)

1 STATE OF NEVADA)

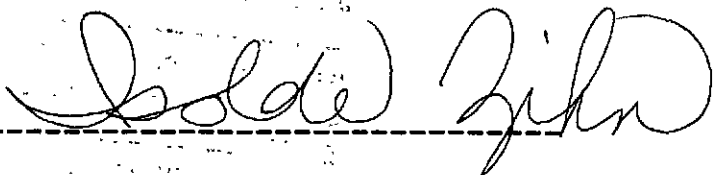
2 COUNTY OF WASHOE)

3
4 I, ISOLDE ZIHN, a Certified Shorthand Reporter of
5 the Second Judicial District Court of the State of Nevada,
6 in and for the County of Washoe, do hereby certify:

7 That I was present in Department 8 of the
8 above-entitled court on April 11 & 12, 1994, at the hour of
9 10:00 a.m. of said days, and took verbatim stenotype notes
10 of the proceedings had upon the matter of THE STATE OF
11 NEVADA, Plaintiff, versus CHARLES MAKI, Defendant, Case No.
12 CR94-0345, and thereafter reduced to writing by means of
13 computer-assisted transcription as herein appears;

14 That the foregoing transcript, consisting of pages,
15 1 through 222, all inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 Dated at Reno, Nevada this 30th day of August, 1994.

21
22 
23

24 Isolde Zihn, CCR #87

CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
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3980
JWC

ROBIN WRIGHT
Attorney at Law
226 Hill Street, Reno, Nevada 89501
Telephone (702) 324-4418 Facsimile (702) 324-4362

CR94-0345
Dept. No. 8

FILED

'94 NOV -7 P2:15

By *[Signature]*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,
vs.
CHARLES JOSEPH MAKI,
Defendant.

STIPULATION AND ORDER TO
RELEASE EXHIBITS TO COUNSEL

The parties, through their undersigned counsel, hereby stipulate that all Exhibits offered and/or admitted at the Trial of this matter shall be released by the Court Clerk to GARY HATLESTAD, Deputy District Attorney, in order to permit the viewing of said exhibits by himself and by ROBIN WRIGHT, counsel for Defendant, on the premises of the Washoe County District Attorney's Office.

DATED this 7th day of November, 1994.

JACK ALIAN GROUP
by ROBIN WRIGHT
Nevada State Bar #1372
226 Hill Street
Reno, Nevada 89501

DOROTHY NASH HOLMES
Washoe County District Attorney
P.O. Box 11130
Reno, Nevada 89520
by GARY HATLESTAD

Robin Wright
Attorneys for Defendant

Gary Hatlestad
Attorneys for Plaintiff

IT IS SO ORDERED this 7 day of November, 1994.

[Signature]
DISTRICT JUDGE

No. CR94-0345
 Dept. No. 8

FILED
 94 NOV 7
 JUD. BAILEY, Clerk
 By *[Signature]*
 Deputy Clerk

In the Second Judicial District Court
 Of the State of Nevada, in and for the County of Washoe

THE STATE OF NEVADA,

Plaintiff,

vs.

CHARLES JOSEPH MAKI,

Defendant.

RECEIPT

RECEIVED FROM THE CLERK OF THE COURT, THE FOLLOWING:

ALL EXHIBITS INCLUDING PLTF'S #1 thur #5 AND DEFT'S A thru F...

EXHIBITS TEMP. RELEASED FOR VIEWING...TO BE RETURNED WHEN COMPLETED.

ABOVE RELEASED PER STIP. AND COURT ORDER...

AFFIDAVIT

STATE OF NEVADA }
 COUNTY OF WASHOE } ss.

GARY HATLESTAD D/A

, first being duly sworn, deposes and says that:

I am lawfully entitled to possession of the above listed exhibit(s) and do hereby acknowledge receipt of the same.

Subscribed and sworn to before me this

7 day of Nov. 19 94

JUDI BAILEY
 CLERK OF THE COURT

By *[Signature]*
 Deputy Clerk

[Signature: Gary Hatlestad]

FILED

'94 DEC -7 AM 51

JUDI BAILEY, CLERK

DEPUTY

In the Second Judicial District Court

Of the State of Nevada, in and for the County of Washoe

THE STATE OF NEVADA,

Plaintiff,

vs.

CHARLES JOSEPH MAKI,

Defendant.

RECEIPT

GARY HATLESTAD,
RECEIVED FROM ~~THE CLERK OF THE COURT~~ THE FOLLOWING:

ALL EXHIBITS WHICH WERE TEMP. RELEASED ON NOV. 7, 1994...

AFFIDAVIT

STATE OF NEVADA }
COUNTY OF WASHOE } ss.R. DUER - DIST. COURT EVIDENCE.

, first being duly sworn, deposes and says that:

I am lawfully entitled to possession of the above listed exhibit(s) and do hereby acknowledge receipt of the same.

Subscribed and sworn to before me this

7 day of Dec. 19 94JUDI BAILEY
CLERK OF THE COURT

By

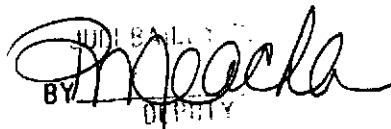
Deputy Clerk

FILED

'95 SEP 13 A10:52

No. CR94-0345

Dept. No. 9


 BY Richard A. Gammick
 DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
 IN AND FOR THE COUNTY OF WASHOE.

* * *

IN THE MATTER OF THE APPLICATION

FOR A SEIZURE ORDER.

SEIZURE ORDER


THE STATE OF NEVADA, TO ANY PEACE OFFICER OF THE STATE
 OF NEVADA:

The State of Nevada, by Richard A. Gammick, Washoe
 County District Attorney, having applied pursuant to NRS 176.111
 for a seizure order for blood and saliva samples from persons
 convicted of the enumerated sex offenses set forth in the
 statute, and the State being lawfully entitled to obtain blood
 samples and saliva tests to determine the genetic markers and
 secretor status of these convicted persons,

The court finds that the following persons are convicted
 persons subject to the provisions of NRS 176.111 and this order:

<u>Name</u>	<u>Case Number</u>	<u>Offense</u>
ALLMAN, GUY	C79-1308	Sexual Assault
NICHOLS, GARY	C83-1030	Sexual Assault
WINFREE, LARRY	C83-1735	Sexual Assault
MIZE, DONALD R.	C84-217	Lewdness With a Minor
FRYE, GARY W.	C87-795	Lewdness With a Minor

1	HOLM, FREDRICK	CR89-1052	Sexual Assault
	CANTARELLA, DAVID W.	CR90-284	Sexual Assault
2	GELHAR, EARL F.	CR90-585	Lewdness With a Minor
	COLEMAN, ARTHUR E.	CR90-326	Sexual Assault
3	PEREYRA, JHUNE M.	CR90-327	Statutory Sexual Seduction
	WINTERS, RICKY F.	CR90-1700	Sexual Assault
4	OAKES, RODNEY R.	CR90-2347	Sexual Assault
	GUZMAN, PEDRO	CR91-977	Sexual Assault
5	MALDONADO-ROBLES, JUAN	CR91-1373	Sexual Assault
	MERCURI, ALBERT T.	CR91-587	Sexual Assault
6	EDWARDS, DUWAYNE	CR91-1656	Sexual Assault
	OVERTON, DAVID D.	CR91-2442	Sexual Assault
7	DURAKOWSKI, JOHN S.	CR92-0568	Attempted Sexual Assault
	GRAY, TIMMY D.	CR92-0290	Sexual Assault
8	HALEY, JACK	CR92-1293	Sexual Assault
	THOMAS, WILLIE J.	CR92-0640	Sexual Assault
9	COBLE, CHESTER W.	CR92-2280	Sexual Assault
	ROBINSON, TERMAINE	CR92-0388	Sexual Assault
10	WARNER, LESLIE J.	CR92-1532	Sexual Assault (under 14)
	MERLOS, DAVID	CR92-2090	Lewdness With a Minor
11	DRIVER, WILLIAM H.	CR93-0417	Sexual Assault (under 14)
	TALKINGTON, TIMOTHY T.	CR93-0466	Sexual Assault
12	PHILLIPS, PATRICK L.	CR92-2368	Lewdness With a Minor
	SPANGLER, ROBERT P.	CR93-0671	Lewdness With a Minor
13	OLSON, ROBERT L.	CR93-0501	Lewdness With a Minor
	SHUTE, HERBERT M.	CR93-1261	Lewdness With a Minor
14	SILVANI, JOEY L.	CR93-0480	Sexual Assault
	VALENTINE, DONALD	CR93-1515	Sexual Assault
15	RATLIFF, MICHAEL C.	CR93-2079	Lewdness With a Minor
	REED, GARY W.	CR93-2025	Lewdness With a Minor
16	TRUJILLO, JAMES L.	CR94-0752	Sexual Assault
	SEARS, TYRONE W.	CR94-0288	Sexual Assault
17	McCLUNG, JAMES B.	CR94-0538	Lewdness With a Minor
	YOUNG, BRIAN D.	CR92-2391	Sexual Assault
18	GRACE, STEPHEN E.	CR94-0645	Sexual Assault
	SMITH, BRUCE S.	CR94-0856	Lewdness With a Minor
19	HERRERA, LUIS A.	CR94-1395	Lewdness With a Minor
	RUTHERFORD, JOHN M.	CR94-0638	Lewdness With a Minor
20	BUTLER, RICHARD L.	CR94-0925	Sexual Assault
	EASTER, WILLIAM J.	CR94-1328	Sexual Assault
21	KEENE, WILLIAM	CR93-1137	Statutory Sexual Seduction
	SMITH, JOHN F.	CR94-2151	Sexual Assault
22	COTTON, PATRICK	CR93-2398	Sexual Assault
	LATHAM, RALPH E.	CR94-2452	Lewdness With a Minor
23	McGEE, MICHAEL W.	CR94-2154	Statutory Sexual Seduction
	ROGERS, ERIC D.	CR94-1169	Statutory Sexual Seduction
24	WOOLLEY, THOMAS H.	CR94-1608	Attempted Sexual Assault
	PEREZ, EUGENE A.	CR94-2707	Sexual Assault (under 14)
25	McINTOSH, TIMOTHY D.	CR95-0416	Lewdness With a Minor
	DAKE, JOHN P.	CR94-2897	Attempted Sexual Assault
26	BACON, DOUGLAS B.	CR95-0369	Sexual Assault (under 14)

1	LOMBOY, CHARLES P.	CR95-0055	Statutory Sexual Seduction
	AVALOS, FRANK	CR94-0995	Lewdness With a Minor
2	LAIR, GREGORY C.	CR94-2192	Lewdness With a Minor
	CIESYNSKI, RICHARD A.	CR95-0139	Att. Lewdness With a Minor
3	VASQUEZ, MARIANO C.	CR95-0453	Lewdness With a Minor
	MANCINI, DANIEL T.	CR90-1373	Sexual Assault
4	ALLGOOD, ROBERT	CR90-1603	Sexual Assault
	TYNER, GARY W.	CR90-1160	Sexual Assault
5	STOLTZ, DARRYL	CR93-0843	Sexual Assault
	BAJONE, STEVEN S.	CR94-0189	Lewdness With a Minor
6	GRALLA, MICHAEL E.	CR93-1489	Lewdness With a Minor
	FAUSTINO, MARIA	CR93-1386	Lewdness With a Minor
7	SPARKMAN, ALFONZO	CR89-721	Lewdness With a Minor
	KELLY, WILLIAM E.	C81-395	Sexual Assault
8	MURDAUGH, STANLEY	C86-1527	Sexual Assault
	TEMPLIN, DONALD M.	CR89-1227	Sexual Assault
9	LUYET, MICHAEL E.	CR90-1933	Lewdness With a Minor
	BOEMLER, CHARLES R.	CR86-2005	Sexual Assault
10	SALINAS, REUBEN	CR90-2677	Sexual Assault
	HAWK, WALTER R.	CR90-325	Lewdness With a Minor
11	FABINY, JAMES	CR91-1787	Lewdness With a Minor
	GONZALES, ALCIDEZ	CR92-0203	Sexual Assault
12	VELTRE, THOMAS M.	CR91-2325	Statutory Sexual Seduction
	MAYES, EARL C.	CR92-1230	Att. Sex. Ass. (under age)
13	COLE, EDWARD B.	CR92-1268	Sexual Assault
	COULTER, TRAVIS D.	CR92-1112	Statutory Sexual Seduction
14	LINARES, ARAMIS	CR92-1429	Lewdness With a Minor
	REYMAN, CHARLES D.	CR93-0421	Lewdness With a Minor
15	LEPORE, VAN R.	CR93-1334	Sexual Assault
	POOL, LONNIE D.	CR93-1443	Sexual Assault
16	DRAKE, DONALD	CR94-0700	Sexual Assault
	GARLAND, JAMES C.	CR94-0793	Lewdness With a Minor
17	GRAHAM, ELLIE J.	CR94-2453	Sexual Assault (under 14)
	DASTOLFO, ANTHONY M.	CR94-0024	Sexual Assault (under 14)
18	TYREE, CLEVE W.	CR94-2121	Sexual Assault
	DYKMAN, JOHN H.	CR94-1505	Lewdness With a Minor
19	EVERETT, WILLIAM D.	CR95-0406	Lewdness With a Minor
	GLOVER, AARON M.	CR95-0586	Sexual Assault (under 14)
20	SMITH, JOHN D.	CR94-2100	Lewdness With a Minor
	SIERRA, ANDREW R.	C83-303	Sexual Assault
21	TOLBERT, WILLIAM L.	C84-1512	Sexual Assault
	STEVENS, COUNTRY JOE	C86-1427	Sexual Assault
22	KALIS, FRANCIS D.	CR93-1307	Lewdness With a Minor
	TAYLOR, WILLIAM A.	CR93-2110	Sexual Assault
23	SALINAS, JESSEE P.	CR95-0582	Statutory Sexual Seduction
	SURRATT, WILLIAM D.	CR92-0545	Lewdness With a Minor
24	DUNHAM, RICHARD	CR92-1876	Sexual Assault
	BARTLEY, TIMOTHY W.	CR93-0524	Sexual Assault
25	DALLO, DAVE	CR94-0452	Lewdness With a Minor
	SNIDER, NEVADA V.	CR94-0494	Sexual Assault
26	FLETCHER, PAUL	C86-1047	Sexual Assault

1	MURRY, THOMAS D.	CR89-1024	Sexual Assault
	ELLISON, CHRIS A.	CR89-2483	Sexual Assault
2	BLAIR, BRUCE	CR90-712	Sexual Assault
	COLLINS, JEWEL H.	CR92-0506	Sexual Assault
3	SKINNER, PAUL A.	CR92-2105	Sexual Assault
	PEPPER, DAVID J.	CR93-0419	Sexual Assault
4	TYLER, FREDERICK J.	CR93-0806	Lewdness With a Minor
	KAMINSKI, CARL	CR93-1339	Sexual Assault
5	KEMP, CHARLES E.	CR93-0495	Sexual Assault (under 14)
	MAKI, CHARLES	CR94-0345	Sexual Assault (under 14)
6	EDSTROM, THOMAS A.	CR94-0468	Sexual Assault (under 14)
	PRICE, JAMES E.	CR94-0373	Sexual Assault (under 14)
7	THOMPSON, MARCEL D.	CR93-2135	Sexual Assault
	COFFIELD, BEN	CR94-0563	Lewdness With a Minor
8	TEUTSCHER, JAMES L.	CR94-2310	Sexual Assault
	ZAMUDRO, RIGOBEO S.	CR94-2009	Sexual Assault
9	AMIEVA, JESUS	CR94-1787	Sexual Assault
	VALDEZ-FLORES, PASCUAL	CR94-2565	Sexual Assault
10	EVANS, TIMOTHY	CR94-2378	Sexual Assault

11 IT IS HEREBY ORDERED, and you are therefore directed, to
 12 detain, seize and transport, at any time, day or night, the
 13 convicted persons identified in this order from their present
 14 locations to a facility at which duly qualified medical personnel
 15 shall obtain blood samples and saliva tests, and if there is any
 16 resistance, you are directed to use reasonable force to effect
 17 this Order, and thereafter submit the blood samples, saliva
 18 tests, and results to the central repository established by NRS
 19 176.111.

20 Dated this 13th day of Sept, 1995.

21
 22 
 23 DISTRICT JUDGE
 24
 25
 26

091200A2

IN THE SUPREME COURT OF THE STATE OF NEVADA

REMITTITUR

DATE: October 24, 1995
 TO: Honorable Judi Bailey, Clerk
 RE: CHARLES JOSEPH MAKI vs. THE STATE OF NEVADA

NO. 26049 DIST. CT. NO. CR940345

Pursuant to NRAP Rule 41, enclosed is (are) the following:

- ☒ Certified copy of Judgment and copy of Order.
- ☐ Certified copy of Judgment and copy of Opinion.
- ☐ Certified copy of Judgment and Opinion.
- ☒ Receipt for Remittitur. (County Clerk please sign below and return. Retain the attached copy for your records.)
- ☒ Record on Appeal. Volumes 1 through 3.
- ☒ Exhibits State's 1, 2 and 3 (videotapes).
- ☐ Deposition(s) of
- ☐ Memorandum of Costs and Disbursements.
- ☐ Other

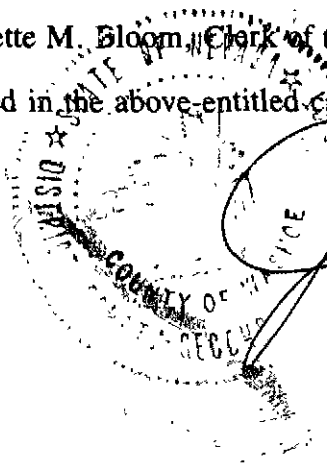
cc: Hon. Steven R. Kosach, District Judge
 Jack A. Alian Group and Robin Wright
 Hon. Frankie Sue Del Papa, Attorney General
 Hon. Richard A. Gammick, District Attorney

Issued by: J. Richardson
 Chief Deputy Supreme Court Clerk

sp

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the
 REMITTITUR issued in the above-entitled cause, on (date) Oct 27, 1995



County Clerk

CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
NVC

V4-674

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLERK'S CERTIFICATE

15 09 27 AM '95
[Signature]

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of said State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in the matter of CHARLES JOSEPH MAKI vs. THE STATE OF NEVADA, Case No. 26049.

JUDGMENT

The Court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, to the effect: "ORDER this appeal dismissed."

Judgment, as quoted above, entered this 4th day of October, 19 95.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Supreme Court, at my office in Carson City, Nevada, this 24th day of October, 19 95.

JANETTE M. BLOOM
Clerk of Supreme Court of the State of Nevada

sp

By *[Signature]*
Chief Deputy Clerk

CR94-0345 DC-9900039406-106
STATE VS CHARLES JOSEPH MAKI 2 Pages
District Court 10/27/1995 09 32 AM
Washoe County 2855
Dnc .1106-

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

'95 OCT 27 19 32

No. 26049

FILED

OCT 04 1995

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of three counts of sexual assault on a child under the age of fourteen years and five counts of lewdness with a child under the age of fourteen years.

Charles Joseph Maki ("Maki") was charged with five counts of sexual assault on a child under the age of fourteen years and five counts of lewdness on a child under the age of fourteen years. Maki was found guilty of all but two counts of sexual assault. Maki appeals, arguing that (1) his confessions were obtained in violation of his constitutional rights; and (2) the district court erred by allowing evidence of uncharged prior bad acts to be admitted during the sentencing hearing.

We conclude that Maki's arguments are without merit. First, he was not "in custody" before he was read his Miranda warnings. See Oregon v. Mathiason, 429 U.S. 492 (1977). Accordingly, any incriminating statements he made during this time were admissible.

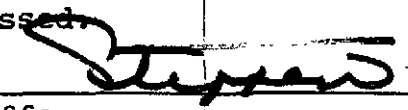
Second, after Maki was "in custody," read his Miranda warnings, and invoked his right to remain silent, the police did not "scrupulously honor" his right to remain silent. See Michigan v. Mosley, 423 U.S. 96, 104 (1975). However, because the parties stipulated to exclude portions of the police interview, there was only one incriminating statement admitted at trial that was obtained in violation of Maki's Fifth Amendment right. We conclude that the admission of this

statement resulted in harmless error. See *Weathers v. State*, 105 Nev. 199, 202, 772 P.2d 1294, 1297 (1989).

Finally, the district court did not err by allowing evidence of uncharged prior bad acts to be admitted during the sentencing hearing because the uncharged bad acts were supported by evidence, Maki's half-sister personally testified, and the district court did not necessarily have to rely upon these acts to sentence Maki as it did. Compare *Goodson v. State*, 98 Nev. 493, 495-96, 654 P.2d 1006, 1007 (1982).

In view of the foregoing, we conclude that Maki's appeal lacks merit. Accordingly, we

ORDER this appeal dismissed.


Steffen

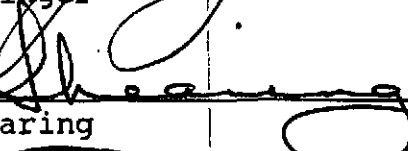
, C.J.


Young

, J.


Springer

, J.


Shearing

, J.


Rose

, J.

cc: Hon. Steven R. Kosach, Judge
Hon. Frankie Sue Del Papa, Attorney General
Hon. Richard A. Gammick, District Attorney
Jack A. Alian Group
Judi Bailey, Clerk

CR94-0345
STATE VS CHARLES JOSEPH MAKI 2 Pages
District Court 04/10/1996 02:39 PM
Washoe County
JDC

1 CHARLES MAKI
2 NDOP No. 42820
3 P.O. Box 1989-ESP
4 Ely, Nevada 89301

5 DEFENDANT PRO PER

FILED

'96 APR 10 / P2:39

JUDICIAL CLERK

BY [Signature]
DEPUTY

6 DISTRICT COURT

7 WASHOE COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR94-0345

Dept. No. VIII

12 CHARLES MAKI,

13 Defendant.

15 MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD

16 COMES NOW the defendant, CHARLES MAKI, in pro per, and moves
17 this Honorable Court for an Order withdrawing ROBIN WRIGHT, ESQ.,
18 as the attorney of record in the above-captioned matter.

19 In most situations it is obviously not necessary to notify
20 the parties when the attorney withdraws from a case, but when the
21 client wishes to remove his attorney and represent himself in
22 person, it is required by the Nevada Revised Statutes that the
23 client request the court of action to issue a certificate releas-
24 ing the attorney of record. Under such statute it is only
25 necessary for the party to present his request for the change in
26 order to justify the court in making an order withdrawing the
27 attorney of record.

28 . . .

1 Therefore, be this Court so notified that this is the desire
2 of the defendant herein that the afore-mentioned attorney of
3 record be withdrawn and the same shall be for any other attorney(s)
4 which could possibly be subscribed and documented as attorney(s)
5 of record in this case, so that further actions in the above-
6 entitled cause can be conducted by the defendant in proper person.

7 Further, it is requested of the Court that it issues an order
8 directing the named attorney of record that she turn over to the
9 defendant the entire case file, without costs, including, but not
10 limited to, the trial transcript or guilty plea transcript, all
11 briefs on appeal, and all other papers and police reports relating
12 to this matter, so that defendant may file a petition for post-
13 conviction relief with a minimum amount of delay.

14 Respectfully submitted this 8th day of April, 1996.

15
16 Charles F. Mink
Defendant Pro Per

17
18 CERTIFICATE OF SERVICE

19 I hereby certify that a true and correct copy of the
20 foregoing were mailed to the following interested parties at the
following addresses, on the 8th day of April, 1996.

21 DOROTHY NASH HOLMES
22 District Attorney
23 195 So. Sierra
Reno, Nevada 89520

24 ROBIN WRIGHT
25 226 Hill Street
Reno, Nevada 89520-

26 Charles F. Mink
27 Defendant Pro Per
28

PERSONAL
COPY

CR94-0345
DC-990039406-108
STATE VS. CHARLES JOSEPH MAKI 1 Page
District Court 04/10/1996 02:39 PM
Washoe County 2610
DOC

FILED

'96 APR 10 P2:39

JUD. BAILEY, CLERK

BY [Signature]
DEPUTY

1 CHARLES MAKI
2 NDOP No. 42820
3 P.O. Box 1989-ESP
4 Ely, Nevada 89301

5 DEFENDANT PRO PER

6 DISTRICT COURT

7 WASHOE COUNTY, NEVADA

8
9 THE STATE OF NEVADA

10 Plaintiff,

11 vs.

Case No. CR94-0345
Dept. No. VIII

12 CHARLES MAKI,

13 Defendant.
1415 NOTICE OF MOTION16 TO: THE STATE OF NEVADA, Plaintiff, DOROTHY NASH HOLMES,
17 Washoe County District Attorney; and ROBIN WRIGHT, ESQ.

18 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on the
19 ____ day of _____, 1996, at the hour of ____ o'clock
20 ____ .. or as soon thereafter as the parties may be heard, the
21 undersigned will bring on for hearing the attached MOTION FOR
22 WITHDRAWAL OF ATTORNEY OF RECORD, before the above-entitled Court,
23 at the Washoe County Courthouse, Reno, Nevada, in Department No.
24 VIII thereof.

25 DATED this ____ day of April, 1996.

26
27 [Signature]
28 Defendant Pro Per

FILED

Case No. CR94-03452

'96 APR 18 P12:33

Dept. No. 8

JUD. BAILEY CLERK
BY K. Dun Cas
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

* * * * *

THE STATE OF NEVADA,

Plaintiff,

WITHDRAWAL OF ATTORNEY

vs.

CHARLES MAKI,

Defendant.

The undersigned, being attorney of record for Defendant,
CHARLES MAKI, in the above-entitled action, and pursuant to Rule 46
of the Supreme Court of the State of Nevada, hereby withdraws as
attorney of record effective this date.

DATED THIS 15th day of April, 1996.

226 Hill Street
Reno, Nevada 89501
(702) 324-4418

Robin Wright
Robin Wright
Nevada State Bar #1372
Attorney for Charles Maki

ROBIN WRIGHT

Attorney at Law

226 Hill Street, Reno, Nevada 89501
Telephone (702) 324-4418 Facsimile (702) 324-4362

CR94-0345 DC-9900039406-109
STATE VS CHARLES JOSEPH MAKI 2 Pages
District Court 04/18/1996 12:33 PM
Washoe County 4300
JWC

CERTIFICATE OF MAILING

I, Lisa L. Waugh, hereby certify that I am an employee of Robin Wright, and that on this date I deposited for mailing, U.S. postage prepaid, the foregoing document, addressed to the following:

Richard A. Gammick
Washoe County District Attorney
ATTN: Gary H. Hatlestad, Deputy District Attorney
P.O. Box 11130
Reno, Nevada 89520

and

Charles Joseph Maki
Ely State Prison
P.O. Box 1989
Ely, Nevada 89601

DATED this 18th day of April, 1996.


Lisa L. Waugh

ROBIN WRIGHT

Attorney at Law

226 Hill Street, Reno, Nevada 89501

Telephone (702) 324-4418 Facsimile (702) 324-4362

Case No. CR94P0345

CHARLES J. MAKI -VS- E.K. MCDANIEL

DATE, JUDGE
OFFICERS OFCOURT PRESENTAPPEARANCES - HEARINGCONT'D TO

7/11/97

HONORABLE

STEVEN R.

KOSACH

DEPT. NO. 8

L. Romero

(Clerk)

D. Phipps

(Reporter)

POST CONVICTION HEARING

Deputy District Attorney Terry McCarthy was present for the State. Defendant was present with counsel, Joe Plater.

Counsel Plater addressed the Court as to the matter of the continuance previously granted by the Court. Counsel Plater further asked leave of the Court to have the defendant housed at the Washoe County Jail until Friday, July 18. Response by the State.

COURT ORDERED: Matter to be heard on July 18, 1997. Defendant to be housed at the Washoe County Jail. Defendant was remanded to the custody of the sheriff.

CR94-0345 DC-9900039406-055
STATE VS CHARLES JOSEPH MAKI 1 Page
District Court 07/11/1997 02:12 PM
Washoe County
MTN

CASE NO. CR94P0345

CHARLES J. MAKI -VS- E.K. MCDANIEL

**DATE, JUDGE
OFFICERS OF****COURT PRESENT**

7/18/97

HONORABLE
STEVEN R.

KOSACH

DEPT. NO. 8

L. Romero
(Clerk)S. Koetting
(Reporter)**APPEARANCES-HEARING****POST CONVICTION HEARING**

Petitioner, Charles J. Maki, was present with counsel, Joe Plater. Respondent, E.K. McDaniel, Warden of a Nevada State Prison, was not present being represented by counsel, Deputy District Attorney, Terry McCarthy.

Counsel Plater moved for the rule of exclusion; SO ORDERED.

Charles J. Maki was called by counsel Plater; sworn and testified; cross examined; redirect examined; recross examined.

State's A, B.1 and B.2 were marked for identification; exhibits B.1 & B.2 were offered into evidence; no objections; ordered admitted and so marked.

At 11:15 a.m. Court ordered recess.

At 11:30 a.m. Court reconvened with all parties present.

Michael Ray Freed was called by counsel Plater; sworn and testified; cross examined.

Janet Cobb Schmuck was called by counsel Plater; sworn and testified.

At 12:00 Court ordered recess.

At 2:00 p.m. Court reconvened with all parties present.

Janet Cobb Schmuck, previously sworn, resumed the stand. Counsel Plater continued with direct examination; cross examination; redirect examination..

State's exhibit A, previously marked for identification, was offered into evidence; ordered admitted and so marked.

At 3:10 p.m. Court ordered recess.

At 3:25 p.m. Court reconvened with all parties present.

Counsel McCarthy placed two stipulations on the record.

Exhibits 1-4 were marked for identification; stipulated into evidence.

Closing arguments presented by respective counsel.

COURT ORDERED: Petition for post conviction relief denied.

DC-9900039406-054
CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court
Washoe County
07/18/1997 02:11 PM
1 Page
MIN
JVS

DC-9900048467-018
CR94-0345
STATE VS CHARLES JOSEPH MAKI
District Court 08/02/2013 11:49 AM
Washoe County 2515
COURT

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

AUG - 2 2013

JOEY HASTINGS, CLERK
By: [Signature]
DEPUTY CLERKCHARLES JOSEPH MAKI
PETITIONER

V.

CASE NO: CR94-0345

STEVEN KOSACH, HON. JUDGE ETC.

DEPT. #8

2ND JUDICIAL DIST. COURT DEPT. 8

IN AND FOR THE COURT OF WASHOE
RESPONDENTNOTICE OF APPEAL

NOTICE TO APPEAL CASE NO: CR94-0345, ON
WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS TO THE NEVADA SUPREME
COURT, IS HEARD BY GIVEN THAT PETITIONER CHARLES JOSEPH MAKI
IS APPEALING THIS ENTIRE CASE- CR94-0345 PURSUANT TO AND BY
WAY OF WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS, N.R.S. 34.160,
N.R.S. 34.170, N.R.S. 34.190 TO THE NEVADA SUPREME COURT FOR
REVIEW AND ISSUE ORDER'D ALLOWING PETITIONER TO PROVE "HIS
ACTUAL INNOCENCE", PURSUANT TO STATE VS. MITCHELL, 122 NV. 1269,
149 p.3d 33 (2006), IN THIS HONORABLE COURT ON OR ABOUT
THE 12TH DAY OF APRIL 1994.

DATED THIS DAY 01 OF AUG 2003

RECEIVED

AUG 09 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERKCharles J. Maki

CHARLES J. MAKI

V4. 684

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

AUG - 2 2013

JOEY HASTINGS, CLERK
BY:  DEPUTY CLERKCHARLES JOSEPH MAKI
PETITIONER

V.

CASE # CR94-0345

STEVEN KOSACH, HONORABLE JUDGE ETC.

DEPT. #8

2ND JUDICIAL DIST. COURT DEPT. 8IN AND FOR THE COUNTY OF WASHOE
RESPONDED

DESIGNATION OF RECORD ON

APPEAL

COMES NOW, CHARLES J. MAKI, PETITIONER IN
 PROPER PERSONA, AND HERIN DESIGNATES THE FOLLOWING, COMPLETE
 CASE FILE FROM CASE # CR94-0345, 1994 TO AND INCLUDING THE
 PRESENT DATE, FOR RECORD ON APPEAL TO BE CERTIFIED BY THE CLERK
 OF THIS COURT AND TRANSCRIBED ALL COURT PROCEEDINGS IN CASE
 NO: CR94-0345 TO THE CLERK OF THE COURT FOR NEVADA SUPREME CT,
 WRIT OF PROHIBITION/WRIT OF MANDAMUS WITH ATTACHED EXHIBITS,
 MOTION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT TO SUPPORT OF THE
 MOTION FOR APPOINTMENT OF COUNSEL TO REPRESENT PETITIONER ON
 APPEAL TO THE NEVADA SUPREME COURT PURSUANT TO N.R.S. 34.160,

N.R.S. 34.170, N.R.S. 34.190, N.R.S. 34.750, NEV. RULES OF CIVIL PROCEDURE.

PETITIONER RESPECTFULLY SUBMITS PURSUANT TO THE ABOVE NAME LEGAL AUTHORITY SUPRA, TO HAVE THIS HONORABLE COURT APPOINT LEGAL COUNSEL TO REPRESENT PETITIONER ON HIS WRIT OF PROHIBITION / WRIT OF MANDAMUS THAT IS BEING FORWARDED AS PART OF THE DESIGNATION RECORD ON APPEAL CASE# CR94-0345 BY THE CLERK OF THE COURT FOR THE 2ND JUDICIAL DISTRICT COURT OF NEV. IN AND FOR THE COUNTY OF WASHOE; TO THE CLERK OF THE COURT OF NEVADA SUPREME COURT.

DATED THIS 01 DAY OF AUG 20013

Charles J. Maki

CHARLES J. MAKI

DC-9900048457-020
CR94-0345
STATE VS CHARLES JOSEPH MAKI 6 Pages
District Court 08/02/2013 11:50 AM
1215
Washoe County
nar

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNT OF WASHOE

FILED

AUG -2 2013

JOEY HASTINGS, CLERK
By: [Signature]
DEPUTY CLERKCHARLES JOSEPH MAKI
PETITIONER

VS.

CASE NO: CR94-0345

STEVEN KOSACH, HONORABLE JUDGE

DEPT. NO: 8

IN FOR 2ND JUDICIAL DIST. CT. OF

WASHOE COUNTY

RESPONDENT.

MOTION FOR APPOINTMENT OF COUNSEL

COMES NOW, CHARLES J. MAKI, PETITIONER, IN PROPER PERSON AND WITH THE ASSISTANCE OF INMATE LIVING IN THE SAME UNIT AS THE PETITIONER AND ~~AS~~ HAS LITTLE KNOWLEDGE IN PREPARING THESE PROCEEDINGS FOR THIS HONORABLE COURT IN THE NEVADA SUPREME COURT.

PETITIONER NOT ONLY SUBMITTIS TO THIS HONORABLE COURT AND THE NEVADA SUPREME COURT; THAT PETITIONER HAS COMPLETELY NO KNOWLEDGE OR UNDERSTANDING OF HOW TO WRITE OR PREPARE ANY OF THESE PROCEEDINGS AND PLEADINGS THAT HE IS NOW SUBMITTING BEFORE THIS HONORABLE NEVADA SUPREME COURT PURSUANT TO N.R.S. 34.160; N.R.S. 34.170; N.R.S. 34.190; N.R.S. 34.750; RULES OF CIVIL PROCEEDURE OF THE STATE OF NEVADA, NEV. SUPREME COURT; NEVADA CONSTITUTION, ARTICLES #6, § SIX (6). FOR REVIEW AND TO ISSUE ORDERING THE 2ND JUDICIAL DISTRICT COURT TO HOLD A COMPLETE INVESTIGATION AND HEARINGS TO DETERMIN WITH EVIDENCE

TESTIMONY, D.N.A. TESTING AND TO DETERMIN HOW
 IN EFFECTIVE ALL ATTORNEYS WERE REPRESENTING PETITIONER
 IN CASE # CR94-0345 TO FIND OUT IF IN FACT THERE HAS BEEN
 OVER THE PAST 18 YEARS A FUNDAMENTAL MISARRIAGE OF
 JUSTICE BY NOT ALLOWING PETITIONER WITH COMPETENT
 ATTORNEYS TO PROVE "ACTUAL-INNOCENCE" OF THE CRIME OF
 SEXUAL ASSAULT/LEWDNESS THAT HE WAS CHARGED AND CONVICTED
 OF.

THIS motion FOR APPOINTMENT OF COUNSEL IS BASED UPON
 THE FOLLOWING FACTS WITH POINTS AND AUTHORITIES,

PETITIONER RESPECTFULLY SUBMITS THAT UPON REVIEW
 OF THIS ENTIRE CASE # CR94-0345 THIS HONORABLE NEVADA
 SUPREME COURT CAN SEE THE MANY PROBLEMS IN THIS CASE
 SUPRA, IS LEGAL, AT THIS PARTICULAR JUNCTURE IS SO OF
 CONVOLUTED BY ALL THE LITIGATION, AS IT IS INTERESTING TO NOTE
 THAT THE ATTACHED PETITIONER'S EXHIBITS, EXHIBIT-ONE, EXHIBIT-TWO,
 EXHIBIT-THREE, AND EXHIBIT-FOUR; PETITIONER'S TRIAL, DIRECT APPEAL,
DOCKET #26049 (ORDER DISMISSING DIRECT APPEAL, OCT-04-1995),
 AND HIS INITIAL POST-CONVICTION PLEADINGS AND APPEAL DOCKET #
30904 WHICH EXHIBIT #2 SUPRA, AT PAGE #6 FIRST PARAGRAPH
 WITH FOOT NOTE #5-6 STATING THAT IT IS PETITIONER'S SOLE
 RESPONSIBILITY TO ENSURE THAT THE ^{ENTIRE} ~~CASE~~ COURT RECORDS FROM
 HIS POST-CONVICTION PROCEEDINGS OF MAY 09 1996 ARE PROPERLY
 BEFORE THE NEVADA SUPREME COURT FOR REVIEWING AND RULING.
 HOWEVER PETITIONER HAD COUNSEL REPRESENTING HIM ON HIS
 POST-CONVICTION PROCEEDINGS AND AS THIS HONORABLE NEVADA
 SUPREME COURT IN EVERETTENTLY PUTS THE BURDEN OF PAGE #6
 OF EXHIBIT #2 SUPRA CLEARLY ON THE SHOULDERS OF THE PETITIONER

WHEN IN FACT IT IS HIS LEGAL COUNSEL EVEN BEING SO INEFFECTIVE DELIBERATELY, INTENTIONALLY FAILED TO NOT ONLY PREPARE PROPER APPEAL FROM PETITIONERS POST-CONVICTION HEARING BUT ALSO FAILED TO HAVE THE 2ND JUDICIAL DISTRICT COURT TO PROPERLY PREPARE AND PROVIDE THIS HONORABLE COURT THE MATERIALS WITH ALL EVIDENCE, TESTIMONY AND ANY OTHER MATERIAL ^{NECESSARY} ~~NECESSARY~~ FOR THIS HONORABLE COURT AND AS WELL RELEVANT AUTHORITY COGENT ARGUMENT; TO PROVE PETITIONER'S "ACTUAL INNOCENCE" OF THIS CRIME OF SEXUAL ASSAULT/LEWDNESS SHOWING A VERY SERIOUS FUNDAMENTAL MISCHANCE OF JUSTICE OVER THESE PAST 18 YEARS.

PETITIONER THEN PROCEEDED ON HIS OWN WITHOUT ANY TYPE OF LEGAL ASSISTANCE PREPARED TO THE BEST OF HIS KNOWLEDGE PRESENT THE UNITED STATES DISTRICT COURT - FOR THE DISTRICT OF NEVADA A28 U.S.C. § 2254 OF THE ISSUES THAT WERE DENIED IN THIS HONORABLE COURT BY EXHIBIT #2 SUPRA INTO EXHIBIT #4 WITH ATTACHED EXHIBIT #1 AND EXHIBIT #3; HOWEVER IN EXHIBIT #4 PAGE #5 THAT THE COURT RULED THAT PETITIONER HAD SUA SPONTE MIXED EXHAUSTION AND UNEXHAUSTION OF ISSUES THEREFORE EXHIBIT #2 WAS DISMISSED WITHOUT PREJUDICE TO GO BACK TO THE 2ND JUDICIAL DISTRICT COURT AND TO ~~EXHAUST~~ EXHAUST ALL ISSUES BEFORE COMING BACK INTO THE FEDERAL COURT.

PETITIONER FURTHER SUBMITS TO THIS HONORABLE COURT THAT IF HE WERE TO GO BACK TO 2ND JUDICIAL DISTRICT COURT TO TRY AND RAISE THESE ISSUES THE COURT WOULD DENY PETITIONER'S 2ND POST CONVICTION PROCEEDINGS AS BEING PROCEDURALLY BARRED AND TIME BARRED FOR RAISING THESE ISSUES AFTER 18 YEARS OF PETITIONER HAS AND PRESENTLY MAINTAINED "ACTUAL-INNOCECE" OF THE CRIME SEXUAL ASSAULT/LEWDNESS FOR THE PAST 18 YEARS...

WHEREFORE, AT THIS TIME PETITIONER IS PRESENTING THIS CASE AND PLEADINGS OF "WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS" IN THE NEVADA SUPREME COURT AND FURTHER, SUBMITS HE HAS NO OTHER PLAIN OR SPEEDY REMEDIES OTHER THAN TO BRING THIS "WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS" INTO THE NEVADA SUPREME COURT PURSUANT TO N.R.S. 34.160; N.R.S. 34.170; N.R.S. 34.190; N.R.S. 34.750 TO PRESENT THE ISSUES OF ACTUAL INNOCENCE, AS THERE IS A CONSTITUTIONAL VIOLATION HAS AND WILL CONTINUE TO RESULT IN PETITIONER'S NOT BEING ABLE TO SHOW OR PRESENT EVIDENCE, TESTIMONY, WITNESSES, D.N.A. TESTING, RAPE KITS TO SHOW THAT PETITIONER IS ACTUALLY INNOCENT OF THE CRIME SHOWING THAT PETITIONER NEVER COMMITTED THIS CRIME OVER 19 YEARS AGO. SEE I.E., STATE V. MITCHELL, 122 NV. 1269, 149 P. 3RD 33 (2006)

PETITIONER FURTHER, SUBMITS TO THIS HONORABLE NEVADA SUPREME COURT THAT THE INFORMATION IN THIS "MOTION FOR APPOINTMENT OF COUNSEL AND AFFIDAVIT IN SUPPORT OF THIS MOTION AND IS WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS" WARRANTS THE APPOINTMENT OF COUNSEL NOT ONLY TO ASSIST PETITIONER, BUT TO ALSO ASSIST THIS HONORABLE NEVADA SUPREME COURT IN BETTERING UNDERSTANDING OF THIS CONVOLUTED, COMPLEX, COMPLICATED PURSUANT TO N.R.S. 34.750 (A)(B)(C); SEE, C-F, MONTGOMERY V. PINCHAK, 249 F.3d 472, AT 499 (3RD CIR, 2002); FARMER V. HAAS, 990 F.2d 319, AT 322 (7TH CIR. 1993); BARNES V. EIGHTH JUDICIAL DIST. CT. OF STATE OF NEVADA, IN AND FORE CLARK COUNTY, 103 NV. 679, 748 P.2d 483 (1987); HAINES V. KERNER, 404 U.S. 519, AT 520-21, 92 SUPREME COURT 594 (1972);

AS PETITIONER IS HELD TO A MUCH LOWER STRINGENT STANDARD THEN A QUALIFIED EXPERIENCED ATTORNEY OF THE ND. BARR, AND FURTHER, THIS MOTION FOR APPOINTMENT OF COUNSEL WITH AFFIDAVIT AND WRIT OF PROHIBITION/WRIT OF MANDAMUS BY THE PETITIONER MUST BE REVIEWED AND IF POSSIBLE RULED IN PETITIONERS FAVOR AS BEING TRUE AND CORRECT.

THEREFORE MORE THAN AFTER 18 YRS. OF LITAGATING WITH AND THRU INEFFECTIVE ASSISTANCE OF ATTORNEYS AT TRIAL, ON DIRECT APPEAL, AND POST-CONVICTION PROCEEDINGS WITHOUT ANY TYPE OF PHYSICAL SPECIFIC FACTUAL EVIDENCE NO-RAPE KIT OR D.N.A. TESTING OR WITNESSES TESTIFYING ON BEHALF OF PETITIONER TO PROVE HIS "ACTUAL-INNOCENCE OF SEXUAL ASSAULT/LEWDNESS IS A GRAVE FUNDAMENTAL MISCARRIAGE OF JUSTICE WHICH OVER THE PAST 18 YRS NOT ALLOWING PETITIONER TO PROPERLY PRESENT THIS PROCEEDING PROPERLY IN THE 2ND JUDICIAL DISTRICT, WITHOUT HAVING TO CONTINUALLY ARGUEING PROCEDURAL BARR AND UN-TIMELY SUCCESSIVE PETITIONS BY PETITIONER AND ALL OF HIS IN-EFFECTIVE ASSISTANCE OF COUNSEL. SEE I.E., EXHIBIT #1 SUPRA.

PETITIONER SUBMITS THAT WITH THIS MOTION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT IN SUPPORT OF THIS MOTION AND THE WRIT OF PROHIBITION/WRIT OF MANDAMUS SHOW'S MORE THAN SUFFICIENT ENUFF FACTUAL EVIDENCE PURSUANT TO STATE V. MITCHELL, SUPRA, SHOWING HIS ACTUAL INNOCENCE THAT HE WAS NEVER INVOLVED WITH THE CRIME SEXUAL ASSAULT/LEWDNESS, TO BE REVERSED AND RE-MANDED BACK TO 2ND JUDICIAL DISTRICT COURT FOR FURTHER PROCEEDINGS...

PETITIONER RE-ALLEGED AND INCORPORATES AFFIDAVIT IN SUPPORT
OF HIS MOTION OF APPOINTMENT OF COUNSEL SHOWING ALL SUCH
EVIDENCE, TESTIMONY, RAPE KIT, D.N.A. TESTING WHICH WAS NEVER
PRESENTED IN THE LAST 18 YRS. OF CASE # CR94-0345 SHOWING PETITIONERS
ACTUAL INNOCENCE, ALSO ATTACHED TO THESE PROCEEDINGS NOW BEFORE
THE N.U.S. CT. EXHIBITS # 1-4 SUPRA.

DATED THIS 01 DAY OF AUG, 2003

RESPECTFULLY SUBMITTED

CHARLES

~~CHARLES~~ J. MAKI

~~CHARLES~~ J. MAKI