PROSPECTIVE JUROR NUMBER 015: Mm.

MR. BECKER: Now, when you're asked to render a verdict, the verdicts are guilty or not guilty. All right. The not guilty verdict, it doesn't say guilty or innocent. It says guilty or not guilty. You understand that?

PROSPECTIVE JUROR NUMBER 015: Right,

MR. BECKER: And you would have trouble -- any difficulty whatsoever, rendering a not guilty verdict if you thought maybe Defendant, Mr. Barral was guilty?

MS. FLECK: Judge, I'm -- again, I'm going to -- I think that he's starting to get into reasonable doubt and sort of --

THE COURT: Right. I'll sustain the objection.

MR. BECKER: I would profer -- I think it's reasonable to ask so to make sure that jurors are willing to follow the law.

THE COURT: But you can't get into reasonable doubt and quantify it.

MR. BECKER: All right.

Do you come into this trial feeling any kind of leaning towards one side or the other?

PROSPECTIVE JUROR NUMBER 015: No. I'm open to all the evidence. I'm coming in here with an open eye.

MR. BECKER: Okay. Thank you. Pass for cause, Your Honor.

THE COURT: Pass the mic over. Tell me your name.

PROSPECTIVE JUROR NUMBER 025: Jordan Knighton.

THE COURT: Do you work?

PROSPECTIVE JUROR NUMBER 025: Badge number 025.

THE COURT: You work?

PROSPECTIVE JUROR NUMBER 025: No.

THE COURT: Have you worked?

PROSPECTIVE JUROR NUMBER 025: Yeah. I used to work at a farm and I did coaching for youth football three years in high school.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 025: No.

THE COURT: Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 025: No.

THE COURT: Can you think of any reason you wouldn't be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 025: Not that I can think of.

THE COURT: You'll listen to all the evidence before you make your decision.

PROSPECTIVE JUROR NUMBER 025: I mean, there's some, you know, some leaning towards listening to a child over an adult but, yeah -- I mean, I'm open to it. I mean, I don't know exactly.

THE COURT: All right.

State.

MS. FLECK: Thank you.

Mr. Knighton, did you say you worked on a farm.

PROSPECTIVE JUROR NUMBER 025: Yes. I used to.

MS. FLECK: And where was that?

PROSPECTIVE JUROR NUMBER 025: That was up in Oregon before I moved down here.

MS. FLECK: And how long have you lived here?

PROSPECTIVE JUROR NUMBER 025: About three years, roughly.

MS. FLECK: Okay. And then -- the youth football that you've been involved

in is that here?

PROSPECTIVE JUROR NUMBER 025: That was up in Oregon as well.

MS. FLECK: When you say that there's some concern that you have about a child versus an adult, what do you mean by that?

PROSPECTIVE JUROR NUMBER 025: I mean -- I mean, I have younger siblings and then you know when they get freaked out or when something bad happens to them, they seem to tell the truth more and like, they won't lie about something that severe.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 025: I feel that, you know, if they have a reasonable cause to say that then there's no doubt in my mind that something had happened.

MS. FLECK: So you would actually, I mean, that's not really a concern, that's exactly what you're supposed to do is kind of weigh --

PROSPECTIVE JUROR NUMBER 025: Mm-hmm.

MS. FLECK: -- the -- use your common sense and to judge credibility --

PROSPECTIVE JUROR NUMBER 025: Yeah.

MS. FLECK: -- of people, you know, and what would make -- what would maybe motivate someone to say something or not say something.

PROSPECTIVE JUROR NUMBER 025: Yes.

MS. FLECK: So it sounds like you're perfectly comfortable doing that job.

PROSPECTIVE JUROR NUMBER 025: Yes.

MS. FLECK: Okay. Any experience with law enforcement from being a victim of a crime or someone close to you being a victim of a crime?

PROSPECTIVE JUROR NUMBER 025: About eight years ago, our house

got robbed and they -- we knew exactly who did but they didn't really listen to us so nothing really happened. I think my mom got like a couple hundred dollars back with the stolen stuff but that's about it.

MS. FLECK: And that was back in Oregon.

PROSPECTIVE JUROR NUMBER 025: Yes.

MS. FLECK: Clearly different state.

PROSPECTIVE JUROR NUMBER 025: Different state, yeah.

MS. FLECK: I don't imagine that it would play any role in this --

PROSPECTIVE JUROR NUMBER 025: No.

MS. FLECK: -- particular courtroom, would it?

PROSPECTIVE JUROR NUMBER 025: No.

MS. FLECK: So would you agree that just because one cop doesn't do their job, it certainly doesn't mean that --

PROSPECTIVE JUROR NUMBER 025: No.

MS. FLECK: -- all of them don't, right?

PROSPECTIVE JUROR NUMBER 025: Yeah.

MS. FLECK: Okay. And then how about accused of a crime? Have you or anyone close to you been accused or convicted of a crime?

PROSPECTIVE JUROR NUMBER 025: My brother was accused of stealing an iPad but it wasn't him, I know that for sure.

MS. FLECK: How old was he?

PROSPECTIVE JUROR NUMBER 025: Sixteen, Seventeen.

MS. FLECK: Was he accused by another kid? Or by --

PROSPECTIVE JUROR NUMBER 025: Yeah. He was accused by kids and his parents.

MS. FLECK: Again, isolated situation sounds like.

PROSPECTIVE JUROR NUMBER 025: Yeah.

MS. FLECK: Is that right?

PROSPECTIVE JUROR NUMBER 025: Mm-hmm.

MS. FLECK: Okay. All right. So then any other issues that you kind of thought about as you sit here?

PROSPECTIVE JUROR NUMBER 025: No, not really.

MS. FLECK: Like a couple of the -- last two jurors --

PROSPECTIVE JUROR NUMBER 025: Mm-hmm.

MS. FLECK: -- the same sort of questions regarding age. Being maybe one of the jurors, if you're chosen, do you have any feelings that, you know, I don't know if I would comfortable going back and exchanging ideas with people that may have more life experience?

PROSPECTIVE JUROR NUMBER 025: I mean, if they have more experience then they're going to know more than me, I wouldn't feel as comfortable as if I was doing it with somebody -- people my own age.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 025: If somebody has more experience than me, I'm going to lean towards their, you know, opinions more than my own.

MS. FLECK: Okay. So, would you though allow -- I mean, it sounds like, you know, when you talk about the things that your siblings --

PROSPECTIVE JUROR NUMBER 025: Mm-hmm.

MS. FLECK: -- have done or how you judge their credibility, would you -- you would allow for their opinion but not certainly say well, just because you're older or you have more life experience, you're right and I'm wrong?

PROSPECTIVE JUROR NUMBER 025: Yeah.

MS. FLECK: Okay. So you would still feel comfortable discussing it and sharing your own opinion but --

PROSPECTIVE JUROR NUMBER 025: Yeah.

MS. FLECK: -- listening to what they'd said also.

PROSPECTIVE JUROR NUMBER 025: Yes.

MS. FLECK: And that's exactly what you're supposed to do as a juror. So, sounds like we'll pass for cause. Thank you.

THE COURT: Thank you.

MS. FLECK: Thank you very much.

MR. BECKER: Good afternoon, Mr. Knighton.

Could you accept that there are circumstances where children make false allegations of sexual abuse?

PROSPECTIVE JUROR NUMBER 025: Yeah. That -- I mean, they can. But, I mean, I've had -- well, I guess there's kind of a similar situation with my cousin like back when I was little with my Grandpa and stuff. But, that was never really proven but he was -- he is not allowed to see her anymore because of it. And I truly think that that was a lie but I mean, I can't really tell because I was like only five when this happened. So.

MR. BECKER: Okay. So you in your own personal family experience are close to a situation where you feel like someone as a child made a false allegation against another family member?

PROSPECTIVE JUROR NUMBER 025: To some extent, yes.

MR. BECKER: All right. And you talked about the fact that you have sisters and you've felt that if it was something serious that they wouldn't lie about it.

Correct?

PROSPECTIVE JUROR NUMBER 025: If something that serious happened to them then I don't believe that they would lie about something that serious. I mean, if it's something, you know, minor, yeah, they're going to lie about it. But, if something serious happens, I don't feel that there's a reason to lie about it.

MR. BECKER: Can you accept that your family, your nuclear family dynamic is unique to you and that in other family dynamics that maybe things are not always the same?

PROSPECTIVE JUROR NUMBER 025: I don't really -- undecided on that one. I don't really have a definite answer.

MR. BECKER: I mean, my concern is that if you've already formed the opinion --

PROSPECTIVE JUROR NUMBER 025: Mm-hmm.

MR. BECKER: -- that something happened. I'm asking myself, you know, can I trust this kind of to be fair to Mr. Barral. And I guess I'll ask you, I mean, can you be fair to Mr. Barral, with this belief that if the witness gets up there and says something happened then something must have happened.

PROSPECTIVE JUROR NUMBER 025: I would lean towards the child's.

MR. BECKER: Would you lean to the child so much so that you would say that it would accurate that you could not be a fair juror in this?

PROSPECTIVE JUROR NUMBER 025: Yeah. I -- it probably wouldn't unfair -- it would probably be unfair of me to sit here and, you know, just be towards more the -- I just, I don't really know how to answer. But, I would be unfair.

MR. BECKER: Thank you.

THE COURT: So, have you got in your mind that just because he's charged,

he's guilty.

PROSPECTIVE JUROR NUMBER 025: I mean, I haven't heard what the kid has to say or anything else like that but --

THE COURT: You haven't heard anything.

PROSPECTIVE JUROR NUMBER 025: No, I haven't. But it's just my mindset, if something -- you know, why would the child lie.

THE COURT: Your mindset is you're guilty until proven innocent.

PROSPECTIVE JUROR NUMBER 025: Why would the child lie about something that serious?

THE COURT: Thank you.

Do you have any questions?

MS. FLECK: Well, yeah --

THE COURT: Do you want to try and rehabilitate.

MS. FLECK: I -- is it -- I mean, we've gone through this with other people but are -- is it -- I mean, do you agree then, your opinion is is that you would want to give the child the benefit of the doubt but certainly if, you know, Ms. Edwards and I brought in a witness and you didn't believe anything that was said and there was holes in her story all over the place and she wasn't able -- never able to like, maintain the same story, I mean, you wouldn't convict somebody based upon the fact just that she's a child. Would you?

PROSPECTIVE JUROR NUMBER 025: I mean, no. I mean, not if their story was inconsistent. It would have to be more, you know --

MS. FLECK: Right.

PROSPECTIVE JUROR NUMBER 025: I'm just not sure, honestly.

MS. FLECK: Okay. And I don't -- you know, I think that -- from what I've

heard you say is you can be fair. That you like children, obviously, that you respect children, you respect their opinions but that you can listen to the evidence and wait regarding guilt until you've all of the evidence.

Because the thing isn't really you lean one way or the other in terms of, you know, liking law enforcement or not liking law enforcement; liking children or not liking children. It's will you wait regarding guilt until we've presented the case? And only if we prove the case beyond a reasonable doubt, then vote guilty.

PROSPECTIVE JUROR NUMBER 025: I honestly don't think I could.

MS. FLECK: Okay. All right. Thank you. Thanks for your honesty.

Submit.

THE COURT: Okay. I'm going to deny for cause. Thanks. Just go ahead and sit.

Okay. Tell me, do you work?

PROSPECTIVE JUROR NUMBER 017: Yes, I do.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 017: I work as a recreational assistant for the City of Henderson.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 017: No.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 017: No.

THE COURT: Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 017: No.

THE COURT: Can you think of any reason you wouldn't be fair and impartial to both parties?

PROSPECTIVE JUROR NUMBER 017: Yes.

THE COURT: What's that?

PROSPECTIVE JUROR NUMBER 017: My mother and my three aunts were molested when they were younger.

THE COURT: And so you would hold that against this defendant.

PROSPECTIVE JUROR NUMBER 017: No, I wouldn't. But if I -- when I see that little girl up there it's just going to bring memories what my mother and aunts told me. I would see my mother on that stand as a little girl.

THE COURT: State.

MS. FLECK: Well, Mr. Lopez do you feel then -- is it more that you feel like it would traumatize you to sit here or is it that you feel -- because I don't -- I certainly don't want to put somebody who's had such a close experience with some sort of sexual assault through something traumatic.

So, is that you feel that it will traumatize you to listen to it or do you feel that you will find the Defendant is guilty before we've really put on the evidence?

PROSPECTIVE JUROR NUMBER 017: It would just bring whatever my mother's told me back to life.

MS. FLECK: All right. Thank you. Thank you for your honesty.

We'll submit it, Your Honor.

MR. BECKER: I'll stip to excuse.

THE COURT: You're free to go. Thank you. Go check with the jury commissioner.

Fill that spot, please.

THE CLERK: Badge Number 037, Roberta Barnes.

THE COURT: All right. Tell me Ms. Barnes, do you work?

PROSPECTIVE JUROR NUMBER 037: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 037: Union Carpenter.

THE COURT: You ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 037: No.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 037: On paper.

THE COURT: Oh, man.

PROSPECTIVE JUROR NUMBER 037: I'm still married but we split up years ago.

THE COURT: I have so many questions I need to ask.

Did your husband work?

PROSPECTIVE JUROR NUMBER 037: No.

THE COURT: Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 037: No.

THE COURT: Can you be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 037: I don't think I could.

THE COURT: Why?

PROSPECTIVE JUROR NUMBER 037: Years ago, I walked in on a sexual assault on my 70-year old mother, in the progress.

THE COURT: I'm going to let the State ask you some questions.

MS. FLECK: Okay. Well, Ms. Barnes, I guess similar kinds of questions. Sounds like it would -- not only could you probably not be fair but that it would put you personally through a lot of trauma to listen to it. Is that fair?

PROSPECTIVE JUROR NUMBER 037: Yes.

MS. FLECK: All right. Thank you.

We'll submit.

MR. BECKER: I'll join, Your Honor, on stipulating to excuse.

THE COURT: All right. You're excused. Go check with the jury commissioner.

THE CLERK: Badge Number 041, Joe Barraza.

THE COURT: All right. Mr. Barraza, do you work?

PROSPECTIVE JUROR NUMBER 041: No.

THE COURT: Have you worked?

PROSPECTIVE JUROR NUMBER 041: Yes. I'm temporarily unemployed.

THE COURT: What were you doing?

PROSPECTIVE JUROR NUMBER 041: Excuse me?

THE COURT: What were you doing before you became temporarily unemployed?

PROSPECTIVE JUROR NUMBER 041: Cell towers.

THE COURT: Pardon?

PROSPECTIVE JUROR NUMBER 041: Cell towers.

THE COURT: Building them? Climbing them?

PROSPECTIVE JUROR NUMBER 041: You name it.

THE COURT: All right. Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 041: No, sir.

THE COURT: Do you have a background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 041: No, sir.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 041: No, sir.

THE COURT: Can you be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 041: I think I could.

THE COURT: I'll let the State ask you some questions.

MS. FLECK: Thank you.

Mr. Barraza, when you pause a little bit after the Judge asked can you be fair and impartial, is it -- is there something that's on your mind that makes you think you would have to overcome that? Is there anything?

PROSPECTIVE JUROR NUMBER 041: I just have a hard time accepting things like that. It's kind of -- it just doesn't seem real to me, you know.

MS. FLECK: Okay. Child molestation?

PROSPECTIVE JUROR NUMBER 041: Yeah.

MS. FLECK: When you say it doesn't seem real or you have a hard accepting it, is it that you can't believe that people do this? Or is that you can't believe people do it meaning it doesn't really happen?

PROSPECTIVE JUROR NUMBER 041: I just have a hard time believing it, you know.

THE COURT: Get that mic closer to your mouth, please.

MS. FLECK: Okay. So -- and again -- sorry -- just -- just because that cuts both ways. It can -- does it mean you have a hard time believing it? Like if a child says they were sexually abused or if somebody says they were sexually molested, you have a hard time believing it because this just doesn't happen? Or is it that you're -- are you saying like I just can't believe this stuff happens? It's so horrible, I can't believe it happens?

PROSPECTIVE JUROR NUMBER 041: Yeah, it's horrible. I can't believe it happened.

MS. FLECK: Okay. So, is it -- I mean, you believe it -- you know it happens, in your heart, right? Yes?

PROSPECTIVE JUROR NUMBER 041: Yes.

MS. FLECK: It's just that it's so bad that you don't understand how someone can do it?

PROSPECTIVE JUROR NUMBER 041: Correct.

MS. FLECK: Okay. Is -- and I don't mean to mince words but is it -- is my burden higher with you? Do I have to prove something more than beyond a reasonable doubt with you because of the nature of the crime?

PROSPECTIVE JUROR NUMBER 041: Yes.

MS. FLECK: Okay. And why is that?

PROSPECTIVE JUROR NUMBER 041: Again, it's just hard for me to accept that it -- you know, something like that happens.

MS. FLECK: Okay so you kind of just want to say, I would just prefer to believe that people don't molest children.

PROSPECTIVE JUROR NUMBER 041: Yes.

MS. FLECK: All right. Well, I'm going to make a challenge for cause.

THE COURT: Before I rule on that, do you have any questions, Mr. Becker.

MR. BECKER: Briefly.

This type of case is uncomfortable for everybody, okay. And all -- it's okay if it's uncomfortable for you. I guess the issue is, can you listen to the evidence and then follow the instructions of law and can you be fair to both sides?

And so, if the prosecutor puts her case on and puts the witnesses up and the State proves their case beyond a reasonable doubt and you follow the instructions and it dictates that you should find defendant guilty; that's your job.

By the same token, if the instruct -- if you follow the instructions and you find through your deliberations that the State didn't prove their case then you'd follow the instructions and find the -- Mr. Barral not guilty.

I mean, it's no more complicated than that. Do you think you could put aside these feelings that you have and be fair to both sides?

PROSPECTIVE JUROR NUMBER 041: Yes.

MR. BECKER: Okay. Because frankly, you know, we want people that will be fair to both sides. It's not fair to the State if you're automatically going to reject their case because you don't want to believe these things happen.

And then, it's not fair to us if you're just going to automatically rubber stamp whatever the State puts before you and not subject to a high standard of evaluation. But you really sincerely think you can do that and be fair to each side.

PROSPECTIVE JUROR NUMBER 041: Yes, I could.

MR. BECKER: Okay.

THE COURT: Pass for cause.

MS. FLECK: Judge, I'm going to renew my objection based on the fact that Mr. Barraza was of the opinion that the State would have to prove more than their burden of beyond a reasonable doubt in order to prove the case to him. And therefore, he -- really -- even if he tried to be fair, he would be expecting than our burden requires.

THE COURT: Thank you. I think he rehabilitated and he'll listen to the evidence.

Thank you. Pass that mic

MS. FLECK: Thank you.

THE COURT: -- over to --

PROSPECTIVE JUROR NUMBER 018: It's dead.

THE COURT: It's dead?

All right. Speak out. Tell me your name.

PROSPECTIVE JUROR NUMBER 018: Casey Neil, 018.

THE COURT: Do you work?

PROSPECTIVE JUROR NUMBER 018: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 018: Insurance adjustor.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 018: No.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 018: Separated.

THE COURT: Did your wife work?

PROSPECTIVE JUROR NUMBER 018: Once upon a time.

THE COURT: What did she do?

PROSPECTIVE JUROR NUMBER 018: Just clerical.

THE COURT: Have you ever sa -- did I ask you if you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 018: Never been called for jury duty.

THE COURT: Have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 018: Military. But that's it.

THE COURT: Military police?

PROSPECTIVE JUROR NUMBER 018: No. No.

THE COURT: Can you be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 018: Yes.

THE COURT: State.

MS. FLECK: Thank you, Your Honor.

Mr. Neil, do you and your wife have children?

PROSPECTIVE JUROR NUMBER 018: We have children but not with each other.

MS. FLECK: Okay. But, kids that live in your house and maybe share [indiscernible]

PROSPECTIVE JUROR NUMBER 018: My boy lives with his mom in Utah and her boy lives with her.

MS. FLECK: Any problems with the fact that there -- you're going to have a child testifying in the case.

PROSPECTIVE JUROR NUMBER 018: No.

MS. FLECK: Any experiences with law enforcement as the victim of a crime? You or anyone close to you?

PROSPECTIVE JUROR NUMBER 018: I had someone steal some stuff from my house but it doesn't make me look at the Henderson police any different.

MS. FLECK: How about accused of crime? You or anyone --

PROSPECTIVE JUROR NUMBER 018: No.

MS. FLECK: -- close to you been accused of a crime?

PROSPECTIVE JUROR NUMBER 018: No. All right.

How about some of the questions that we talked about earlier regarding evidence and forensic evidence? Are you a person who would require based on maybe TV show or movies, somebody that requires something like DNA or photographs or something like that in order to convict someone of a crime?

PROSPECTIVE JUROR NUMBER 018: I don't watch those shows. I would

just listen to whatever the evidence is and make my decision based on that.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 018: Whether it's DNA, whether it's just testimony, whether it's whatever is presented.

MS. FLECK: Okay. So whether it's just testimony --

PROSPECTIVE JUROR NUMBER 018: As a whole.

MS. FLECK: You can account for the fact that there are some cases then where testimony would be logically, in using your common sense, would be the only kind of evidence that would maybe come forward.

PROSPECTIVE JUROR NUMBER 018: Sometimes it's -- that's the way.

MS. FLECK: Okay. All right. Anything else then that -- well, I guess you're military. What is it then that you did within the military?

PROSPECTIVE JUROR NUMBER 018: I was an air traffic controller.

MS. FLECK: Okay. What branch?

PROSPECTIVE JUROR NUMBER 018: Air Force.

MS. FLECK: Okay. Anything else then that --?

PROSPECTIVE JUROR NUMBER 018: Nope.

MS. FLECK: No. All right. If you're chose promise to do the very best job you can possibly do.

PROSPECTIVE JUROR NUMBER 018: Sure will.

MS. FLECK: All right. Thank you so much.

PROSPECTIVE JUROR NUMBER 018: Okay.

MS. FLECK: And we'll pass for cause.

THE COURT: Go ahead.

MR. BECKER: As you look over here now, when you look at Mr. Barral can

you look at him just you would -- like you would look at anybody else you pass in the hall.

PROSPECTIVE JUROR NUMBER 018: I thought he was an attorney when I walked in.

MR. BECKER: So you at this moment not leaning towards either side?

PROSPECTIVE JUROR NUMBER 018: No.

MR. BECKER: And we -- I asked a previous juror about a lot of the highly publicized criminal trials that go on, here in Las Vegas, California, really throughout the country, okay. Are you somebody -- and I'm not talking about one case in particular, that if you heard that someone was acquitted in a notorious trial is that -- you know, are you the type of person that would be like, another one got away.

PROSPECTIVE JUROR NUMBER 018: No. There's nothing that I think about with regards to any specific case like that where I've had those thought.

MR. BECKER: So you're not predisposed to believing that if a jury acquits a defendant that they didn't see the evidence clearly?

PROSPECTIVE JUROR NUMBER 018: No. Yeah. I'm not in the courtroom when it happens. I don't know what they discuss. They make their decision based on what they hear and see.

MR. BECKER: Okay. So you don't bring any predisposition in to lean one way or the other.

PROSPECTIVE JUROR NUMBER 018: I'm completely open,

MR. BECKER: Thank you. Pass for cause.

THE COURT: Thanks.

All right. Doctor tell me -- you're a Chiropractor?

PROSPECTIVE JUROR NUMBER 020: Correct.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 020: Yes.

THE COURT: Does your spouse work?

PROSPECTIVE JUROR NUMBER 020: No.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 020: No.

THE COURT: Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 020: No, sir.

THE COURT: Can you be fair to both parties in this case?

PROSPECTIVE JUROR NUMBER 020: I believe I can.

THE COURT: All right.

State.

MS. FLECK: Thank you.

Sir, has your wife ever worked?

PROSPECTIVE JUROR NUMBER 020: Yes, she has.

MS. FLECK: Outside of the home?

PROSPECTIVE JUROR NUMBER 020: Yes, she has.

MS. FLECK: In what kind of work was she in?

PROSPECTIVE JUROR NUMBER 020: She was a nurse for years and she is also a chiropractic physician.

MS. FLECK: Okay. Do you know if she ever, during her time as a nurse, did any sexual assault examinations? Did she ever work in that field?

PROSPECTIVE JUROR NUMBER 020: No.

MS. FLECK: Outside of chiropracting, have you done anything else in the medical field?

PROSPECTIVE JUROR NUMBER 020: I was in public health for a short time before chiropractic sch -- college.

MS. FLECK: Was that as an administrator or in your occupation.

PROSPECTIVE JUROR NUMBER 020: In administration; health education.

MS. FLECK: Okay. Did you -- I didn't hear if the Judge asked, did -- do you have children?

PROSPECTIVE JUROR NUMBER 020: Yes, we do.

MS. FLECK: And how old are they?

PROSPECTIVE JUROR NUMBER 020: 28, 26, and 21.

MS. FLECK: How about gran -- Any grandkids yet?

PROSPECTIVE JUROR NUMBER 020: Not yet.

MS. FLECK: Okay. Anything about the nature of the case other than the obvious that makes you think you wouldn't be a good juror for this case?

PROSPECTIVE JUROR NUMBER 020: Well, I've been around kids my whole life. So.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 020: I've seen -- I've seen and heard a lot. I treat patients from child protective services.

MS. FLECK: Oh. Okay.

PROSPECTIVE JUROR NUMBER 020: I've heard a lot of stories. I treat policeman in my practice. I've been there almost 30 years.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 020: So I've heard and seen quite a bit about this subject over the years.

MS. FLECK: How might that affect you if you think it would in terms of

listening to the testimony and kind of judging the credibility of witnesses?

PROSPECTIVE JUROR NUMBER 020: You know, I can't believe the scope of this problem is my first thought. My second thought, I've supervised kids in Pop Warner football, Nevada Youth football, Central Little League for years. And I know kids have a lot of things to say, some of it's not always true.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 020: So, I'm always cautious with everything I hear and yet I know that it's a problem. I had a staff member many years ago who was accused of child molestation.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 020: And it was quite a process for this young lady and she was found innocent but it was basically on hearsay that the entire case developed.

MS. FLECK: Did she actually go to trial?

PROSPECTIVE JUROR NUMBER 020: I don't know. I don't believe so.

MS. FLECK: Okay. So basically it wasn't necessarily that she was found guilty or not guilty. It's that there maybe wasn't enough evidence or something to take it through the process?

PROSPECTIVE JUROR NUMBER 020: I believe as I recall, the story was changed on the part of the accuser.

MS. FLECK: Okay. So the victim maybe recanted at some point, went back on her story, changed detail, something like that.

PROSPECTIVE JUROR NUMBER 020: That's correct.

MS. FLECK: Okay. So you don't -- it's to your recollection though that she didn't actually go through a court process, a trial.

PROSPECTIVE JUROR NUMBER 020: I can't be sure but I don't believe that she did.

MS. FLECK: So, it sounds though that based upon -- I mean, you seem to have kind of a mixed opinion in terms of so -- like some of the other jurors certainly not thinking this never happens with th -- I mean, quite the opposite, you're shocked at how often it does happen.

PROSPECTIVE JUROR NUMBER 020: That's correct.

MS. FLECK: And -- but you're willing to weigh testimony and to use common sense to judge credibility.

PROSPECTIVE JUROR NUMBER 020: I would have to see the evidence clearly in my mind because I've seen both sides.

MS. FLECK: Right. Well let's talk about what evidence necessarily would mean to you. Given your medical background, what might you require for evidence? Is testimony enough for you?

PROSPECTIVE JUROR NUMBER 020: If it was just testimony in and of itself, I'd have to listen to it but being around as many kids as I've been around over the years, I know that sometimes that's always correct.

MS. FLECK: Okay. Well -- so --I mean, do you think at the end of the day you might say well, you know, gosh I believed her but I just would want something more -- you know, I just wish that there was something more.

PROSPECTIVE JUROR NUMBER 020: I would be inclined to think that.

MS. FLECK: Okay. So, then you would require something more than a victim's testimony standing alone.

PROSPECTIVE JUROR NUMBER 020: For me, I would say yes to that.

MS. FLECK: So, you know, I guess if -- well, let's see, you've said through

the Judge that you would be willing to follow the law. Is that right?

PROSPECTIVE JUROR NUMBER 020: Correct.

MS. FLECK: If you were given an instruction and the law said to you that if you believe a victim's testimony, beyond a reasonable doubt, that standing alone is enough to convict.

MR. BECKER: I'm going to object, Your Honor, based on Rule 7.70 subsection b.

MS. FLECK: Well Judge, then I'm going to have to pass for cause. I'm trying to -- I mean, I'm going to have to ask for an excusal for cause because he's requiring more than the law requires and that's why I was referring --

MR. BECKER: And I'll object to that statement as not accurate.

MS. FLECK: Well, no --

THE COURT: Hang on.

Do you have -- I don't --

MR. BECKER: I could approach with a copy of it.

THE COURT: Bring the copy to me, my law clerk's not here. Bring it up here to me.

MR. BECKER: 7.70 (b).

MS. FLECK: Can we approach?

THE COURT: Yeah.

[Bench Conference Begins]

MS. FLECK: The problem is is that he has to be excused for cause because now he has said that he's requiring something more than the law's going to require. The law specifically says that if you believe the victim beyond a reasonable doubt, that's enough to sustain a conviction of guilty. Now he has said he's going to

require than testimony. So, unless I -- we --

THE COURT: Do we rehabilitate him?

MR. BECKER: Well, I would say that that's not a complete version of the instruction. It says if you otherwise believe that the State has proven their case beyond a reasonable doubt --

MS. FLECK: No it doesn't. It says --

MR. BECKER: -- so it doesn't --

MS. FLECK: No. It specifically says if you believe the victim beyond a reasonable doubt, their testimony standing alone is enough to convict.

THE COURT: If believed --

MR. BECKER: And I would --

MS. FLECK: If believed beyond a reasonable doubt.

THE COURT: All right.

MR. BECKER: If believed. But it also -- okay, the jury instructions also say that no instruction is to be read alone.

THE COURT: No. I understand.

MR. BECKER: And there's also the reasonable doubt instruction. I don't think it's true that a juror can't require more or they should be told that they can't require more.

MS. FLECK: But that is the law.

THE COURT: But that's the law.

MS. FLECK: So --

THE COURT: All right.

MS. FLECK: -- then I make a challenge --

THE COURT: Thanks.

MS. FLECK: -- for cause.

THE COURT: Thanks.

MR. BECKER: I'll submit for --

THE COURT: All right.

[Bench Conference Concludes]

THE COURT: Doctor, we're going to excuse you now. Thank you. You're free to go down to talk to the jury commissioner.

Fill that spot please.

THE CLERK: Badge Number 043, Larry Karp.

THE COURT: Karp, do you work?

PROSPECTIVE JUROR NUMBER 043: Yes, I do.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 043: Security officer for a casino.

THE COURT: Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 043: Other than that, no.

THE COURT: How long have you been a security guard?

PROSPECTIVE JUROR NUMBER 043: 21 years.

THE COURT: Have you -- are you married?

PROSPECTIVE JUROR NUMBER 043: Yes.

THE COURT: Spouse work?

PROSPECTIVE JUROR NUMBER 043: Yes.

THE COURT: What does your spouse do?

PROSPECTIVE JUROR NUMBER 043: She's a recruiter for Farmer's Insurance.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 043: No.

THE COURT: Can you think of any reason you wouldn't be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 043: No.

THE COURT: You'll listen to the testimony and look at the exhibits and make a decision from what you see here in court.

PROSPECTIVE JUROR NUMBER 043: Yes.

THE COURT: You don't have any preconceived ideas; guilt or innocence of the Defendant?

PROSPECTIVE JUROR NUMBER 043: No.

THE COURT: State.

MS. FLECK: Briefly. Thank you, Your Honor.

Mr. Karp, where are you a security officer?

PROSPECTIVE JUROR NUMBER 043: Silverton Casino.

MS. FLECK: All right. Do you and your wife have kids?

PROSPECTIVE JUROR NUMBER 043: I have one by this present wife and three by a past wife.

MS. FLECK: How about any grandkids?

PROSPECTIVE JUROR NUMBER 043: No, not yet.

MS. FLECK: How do you feel about the things that we've been talking regarding credibility of children and having kid -- a kid that's going to testify before you?

PROSPECTIVE JUROR NUMBER 043: I don't know if I really understand the question.

MS. FLECK: Well, will you be able to listen to that testimony with an open

mind. I mean, do you have any thoughts about the fact that -- you know, we've heard both spectrums. Some people say, kids, you know, they don't feel comfortable doing it because they'll feel more that kids aren't telling the truth. And then there's other people that have testified to say, anything that kids say, almost, you know, they should be believed. Do you fall somewhere along that spectrum?

PROSPECTIVE JUROR NUMBER 043: Having children of my own, I know sometimes they tell lies to get out of trouble.

MS. FLECK: So in your experience there's a reason usually -- there's a motivation behind telling something that is then turned out to be a lie.

PROSPECTIVE JUROR NUMBER 043: Right.

MS. FLECK: So it sounds like then that you'll use your common sense to evaluate the credibility of witnesses.

PROSPECTIVE JUROR NUMBER 043: Yes.

MS. FLECK: Ever been the victim of a crime?

PROSPECTIVE JUROR NUMBER 043: No.

MS. FLECK: Anyone close to you?

PROSPECTIVE JUROR NUMBER 043: No.

MS. FLECK: How about accused?

PROSPECTIVE JUROR NUMBER 043: No.

MS. FLECK: Okay. All right. Then after listening to all of the other legal concepts and issues that people have had maybe sitting on this jury, any reason to think you wouldn't be good for both the State and the Defense?

PROSPECTIVE JUROR NUMBER 043: Yes.

MS. FLECK: If we prove our case beyond a reasonable doubt, do you have any problem finding the Defendant guilty in this case?

PROSPECTIVE JUROR NUMBER 043: No.

MS. FLECK: All right. Thank you very much. We'll pass for cause.

THE COURT: And if they don't prove their case beyond a reasonable doubt, could you find him not guilty? If the State does not prove their case beyond a reasonable doubt, can you find him not guilty?

PROSPECTIVE JUROR NUMBER 043: Yes.

THE COURT: Okay. Defense.

MR. BECKER: And are going to make us call Mr. Barral to the witness stand in order to find Mr. Barral not guilty if the State has otherwise not proven the case beyond a reasonable doubt.

PROSPECTIVE JUROR NUMBER 043: You talking about his 5th Amendment.

MR. BECKER: Yes.

PROSPECTIVE JUROR NUMBER 043: No.

MR. BECKER: When you look over there at Mr. Barral, can you see him just as you would see anybody else in this courtroom, at this point?

PROSPECTIVE JUROR NUMBER 043: Yes.

MR. BECKER: Okay.

And you have no leanings towards one side or the other at this point in time?

PROSPECTIVE JUROR NUMBER 043: No, I don't.

MR. BECKER: Thank you. Pass for cause.

THE COURT: Thanks.

Tell me your name.

PROSPECTIVE JUROR NUMBER 023: Rebekah Zeppernick.

THE COURT: Do you work?

PROSPECTIVE JUROR NUMBER 023: 023.

THE COURT: You work?

PROSPECTIVE JUROR NUMBER 023: No.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 023: Yes.

THE COURT: Spouse work?

PROSPECTIVE JUROR NUMBER 023: Yes.

THE COURT: What does your spouse do?

PROSPECTIVE JUROR NUMBER 023: He's a server at Wynn Las Vegas.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 023: No.

THE COURT: Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 023: No.

THE COURT: Can you think of any reason you wouldn't be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 023: No.

THE COURT: And you've heard all of the questions I asked to people before you; is there anything that comes to mind that -- boy, I better let the Court be aware of this?

PROSPECTIVE JUROR NUMBER 023: No.

THE COURT: State.

MS. FLECK: Thank you, Your Honor.

Ma'am was there a time -- I know right now you're not working, was there a time that you were employed?

PROSPECTIVE JUROR NUMBER 023: Yes.

MS. FLECK: And in what kind of work?

PROSPECTIVE JUROR NUMBER 023: At Wynn, I was a server.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 023: I just quit to stay home.

MS. FLECK: All right. Do you and your husband have kids?

PROSPECTIVE JUROR NUMBER 023: Yes.

MS. FLECK: Did you just have one recently?

PROSPECTIVE JUROR NUMBER 023: No. I have a 13 year old, an 18 month old son, and I'm pregnant with another one.

MS. FLECK: Good. Okay. Well, 18 months is pretty --

PROSPECTIVE JUROR NUMBER 023: Yeah.

MS. FLECK: I'd say that's --

PROSPECTIVE JUROR NUMBER 023: Yeah.

MS. FLECK: -- pretty much just. Okay.

Where -- what restaurant?

PROSPECTIVE JUROR NUMBER 023: The Country Club Steakhouse.

MS. FLECK: Then, anything -- I mean, regarding your pregnancy, any problems coming in here, or sitting, or anything like that? Is there any --

PROSPECTIVE JUROR NUMBER 023: Other --

MS. FLECK: -- health issues that you're concerned with?

PROSPECTIVE JUROR NUMBER 023: No health issues other than just typical morning sickness, a little bit, and need to use the restroom once in awhile.

MS. FLECK: All right. So any problem then just raise your hand and say, hey --

PROSPECTIVE JUROR NUMBER 023: Okay.

MS. FLECK: - we need a -- I need a break.

PROSPECTIVE JUROR NUMBER 023: Okay.

MS. FLECK: Okay.

All right then, ever been the victim of a crime? Anyone close to you victim of a crime?

PROSPECTIVE JUROR NUMBER 023: No.

MS. FLECK: How about accused?

PROSPECTIVE JUROR NUMBER 023: Yes.

MS. FLECK: And what was that?

PROSPECTIVE JUROR NUMBER 023: I was married to someone who was arrested for felony drug charges.

MS. FLECK: Okay. Was that here in Las Vegas?

PROSPECTIVE JUROR NUMBER 023: Yes.

MS. FLECK: How long ago?

PROSPECTIVE JUROR NUMBER 023: About five years.

MS. FLECK: Was he ultimately convicted of something or --?

PROSPECTIVE JUROR NUMBER 023: Yes.

MS. FLECK: Was that through a trial process or did he take a plea negotiation?

PROSPECTIVE JUROR NUMBER 023: I don't know. I had my marriage annulled and walked away from it. So I have no idea.

MS. FLECK: Okay. But he ultimately got a felony for that charge?

PROSPECTIVE JUROR NUMBER 023: Yes.

MS. FLECK: I imagine that since you sort of decided not only you wanted to

leave the marriage, without even sort of acknowledging the marriage that you don't have any previous feelings or preconceived ideas about law enforcement based upon that?

PROSPECTIVE JUROR NUMBER 023: No.

MS. FLECK: Did you feel that he was treated the way that he should have been or got the charges brought that he should have based upon what he has done?

PROSPECTIVE JUROR NUMBER 023: Yes.

MS. FLECK: Okay. All right. Then anything else that is of concern to you. I mean, I know you've got children, are you able though to fairly judge their credibility and listen to their testimony --

PROSPECTIVE JUROR NUMBER 023: Yes.

MS. FLECK: -- and not come to a decision until we've presented the entire case?

PROSPECTIVE JUROR NUMBER 023: Yes.

MS. FLECK: All right. Thank you very much. I'll pass for cause.

THE COURT: Thank you.

MR. BECKER: I'll pass questions and for cause, Your Honor.

THE COURT: Okay.

We'll start the peremptory challenges now.

Adrian, you've got that ready?

I'll instruct you on the law, orally, now. Later, I will give you written instructions that you'll be able to take back to the jury room with you.

If any juror discovers during the trial or after the jury has retired to deliberate that they have personal knowledge of any fact in controversy in this case,

you shall disclose that situation to myself in the absence of the other jurors. This means that if you learn during the course of this trial that you were acquainted with the facts of this case or witnesses and you have not previously told me of this relationship, you must declare that to me. And you always communicate through the marshal.

Additionally, if that situation arise you're -- you are admonished that you may not to relate to fellow jurors any of the facts relating to this case that are within your own knowledge. If you discover that any other juror has personal knowledge of any fact in controversy, you'll disclose that situation to myself in the absence of the other jurors. Once again, you communicate through the marshal.

You will also recall that during the course of the trial the attorneys on both sides, the parties, the witnesses, and court personnel other than the marshal are not permitted to converse with the members of the jury. As I previously stated, these individuals are not anti-social, rather they are bound by ethics and the law not to talk to you to do so might contaminate your verdict. Moreover you are admonished that you are not to visit the scene of any of the acts or occurrences made mention of during the trial unless specifically directed to do so by the Court. Please don't investigate this case or anyone who has anything to do with this case on your own. Do not undertake any legal or factual research on your own; especially don't *Google* anything or *Ask Jeeves* or any of that stuff.

Finally, you must not be influenced in any degree by any personal feeling of sympathy for or prejudice against the State or the Defendant. Both sides are entitled to the same fair and impartial consideration.

We -- what I have now to say is a general introduction to the trial. This is a criminal case commenced by the State of Nevada, which I again refer to

sometimes as the State against Dustin Barral. Case is based on an information that will be read to you in a short period of time. You must distinctly understand that the information is simply a charge and that it is not in any sense, evidence of the allegations it contains. The Defendant has pled not guilty to the information. The State therefore has the burden of proving each of the essential elements of the charges beyond a reasonable doubt. As the Defendant sits here now, he is not guilty.

The purpose of this trial is to determine whether the State will meet the burden. Juror res -- primary responsibility as jurors is to find and determine the facts. Under our system of criminal procedure, you are the sole judge of the facts. You are to determine the facts from the testimony you hear and other evidence, including exhibits introduced in court. It's up to you to determine the inferences you might feel properly drawn from the evidence.

Trial begins with opening statements. The District Attorney's will make an opening statement if they so desire which is an outline to help you understand what the State expect to prove. Next, the Defendant's attorneys may if they so desire, make an opening statement, but they don't have to do so. Opening statements serve as an introduction to the evidence which the party making the statement intends to prove but they are not evidence.

Next, the State will commence with its case in chief. This is the State's opportunity to present its evidence. This consists of calling witnesses and the production of physical items of evidence such as documents and/or photographs into light. Counsel for the defense may cross-exam the State's witnesses. Following the State's case in chief, the Defendant may present evidence and the District Attorney's may cross-exam the Defense witnesses; however, as I have said,

the Defendant's not obligated to present any evidence.

Approaching takes time from the Jury but do it. This may be the last time.

MS. FLECK: Okay.

THE COURT: Come on.

[Bench Conference Begins]

MS. FLECK: We can't go back and forth like this. There aren't enough people sat for cause.

THE COURT: What?

MS. FLECK: It's only supposed to be one at a time.

THE COURT: You're only doing one at a time.

MS. FLECK: Well that's what I just said over there and then they said no they gave it back me.

THE COURT: No. One at a time.

MS. FLECK: That's what --

THE CLERK: I say we take it back to you and show you who [indiscernible]

MS. FLECK: Okay.

THE COURT: Actually, the marshal should stand there with you.

MS. FLECK: Okay.

THE COURT: And he presents it to you and he presents it to you. And he shows you what they did.

MS. FLECK: Thank you.

THE COURT: And then --

MS. FLECK: Thank you.

THE COURT: -- you come up --

MS. FLECK: That's why I was -- that's why I was --

THE COURT: -- and we do it. And then if we run out of people, we'll get more.

MR. BECKER: Okay. So we're each doing one or passing and then bringing it to you, right?

THE COURT: Right.

MR. BECKER: Fair enough.

MS. FLECK: I thought you wanted to go back and forth.

THE COURT: And if you waive that doesn't mean you have to waive the next one.

MR. BECKER: Okay.

THE COURT: All right.

[Bench Conference Concludes]

THE COURT: We would thank and excuse Juror Number 13, Alexandra Kruse. Alexandra Kruse, that's you?

PROSPECTIVE JUROR NUMBER 013: Yeah.

THE COURT: Okay, you're excused. Thank you. And Number 7, Mr. Abbott.

THE CLERK: Badge Number 044, Isaiah Pickney.

Badge Number 045, Melanie Aslinger.

THE COURT: All right. Tell me your name.

PROSPECTIVE JUROR NUMBER 044: Yeah. My name's Isaiah.

THE COURT: Do you work?

PROSPECTIVE JUROR NUMBER 044: Yeah. I'm a concessions worker at the movie theater at Sam's Town, Century 18.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 044: No.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 044: No. Very serious relationship though.

THE COURT: Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 044: No. I mean, I just this past college semester, I just started minoring in criminal justice.

THE COURT: Okay. Can you think of any reason you would be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 044: Actually, yeah. There are two -- about two things.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 044: Starting with the first one, they are two very important people to me. My girlfriend, of course, she's -- her and her adopted mother. She was actually -- before she was adopted, and she was about three years old when she is, but in her two years before, it's believed that in her records that she was abused and neglected by her birth father. With her adopted mother, she indeed was actually sexually raped by her father.

I will say yes, this -- that doesn't connect with this guy, it's a different thing. But I will -- with my second, I won't be honest with the child protesting -- witnessing that kind of complicates things for me. I do see as a -- I mean, I don't want to seem like an amateur detective kind of thing but for me that's a very serious accusation for a child to say, this so and so did this. I mean, there's a certain level where like, okay, maybe she could say this guy hit me or she yelled at me. And a child can maybe lie or something and I can see that side.

I'm going to be honest, I'm not going to, you know -- when the guy -- this guy's going to come in here and sit in -- I'm not going to lie and say that I'm not going to see him as a he didn't do something. I mean -- I don't know. I'm a little bit --

THE COURT: You think because he -- well we all know that we didn't go out today as people are crossing the streets and saying all right, you're going to go to trial in Department 1, you're going to trial in Department 2, oh by the way you're going to go to trial in Department 8.

We know he was arrested but he's innocent. You have heard no evidence. If we were to stop this trial right now, send you back in to deliberate, you would have to find him not guilty because you haven't heard any evidence. You've heard talk, we've had examination, but you haven't even heard the information read to you, which is not evidence.

PROSPECTIVE JUROR NUMBER 044: Okay. But for me -- so -- but there is a child protesting or -- child has accused that this guy did this or did this.

THE COURT: So that would --

PROSPECTIVE JUROR NUMBER 044: Correct?

THE COURT: -- tough for you not -- you wouldn't hold the Defendant guilty just because the child said it or innocent just because the child said it?

It's difficult for you personally, is what you're saying?

PROSPECTIVE JUROR NUMBER 044: Yes.

THE COURT: All right. Let me have the attorneys talk to you if they would like to ask some questions.

MS. FLECK: Very briefly. If we didn't -- if the child that testified got on the stand and you did not believe her; there was something that she said or her

demeanor, there were things that made you think she wasn't telling the truth, you certainly would not find the Defendant guilty just because she's a child?

PROSPECTIVE JUROR NUMBER 044: That's hard. I -- it's --I guess -- I mean, I guess can see both sides where I can see a kid lying or something under pressures and not -- I don't know. Honestly, just for me -- I mean, if a kid says someone hurt them or touched them in that way, for me it's hard to just say, oh maybe she's lying or why would she say that?

MS. FLECK: Okay. Well, could you at least keep an open mind to the possibility that, you know, that, I guess, could be the case until you judge her credibility? Can you wait until you see her, until you're able to judge her credibility, until you're able to hear what she has to say on the witness stand and then make the determination of if you find the Defendant guilty or not guilty?

I mean, you know, it's -- in this particular kind of a case it's difficult because of the things we've talked about. It's such an emotionally-charged topic. And so anybody says child molesting is horrible; someone who touches a child is horrible. Can you wait, though, to say that this particular person did that in fact until we've proven our case beyond a reasonable doubt? Like, what I'm saying is can you separate the charge and the idea of sexual molestation from this particular defendant?

PROSPECTIVE JUROR NUMBER 044: I think it's just honestly for me -- I don't know. It's just the kid for me. Like, yeah.

MS. FLECK: Okay. I trust that he can -- I'll wait. I'll let the Defense do what they --

THE COURT: Okay.

MS. FLECK: Question, if they'd like to.

MR. BECKER: Well, I've asked this of others. If you're looking over now and looking at Mr. Barral and going, yuck, you know, then I don't think you can be fair to him. I mean, is that what you feel when you look over at Mr. Barral, right now?

PROSPECTIVE JUROR NUMBER 044: It's like honestly -- I'm going to be honest, I'm not going to say that -- if I'm going to walk in here and completely just think oh he's completely innocent -- I don't know.

MR. BECKER: So, in other words, what you're saying -- and we've asked you to be honest is ultimately what you're saying is no matter how much we try to get you to say you could be fair that you really just don't think you can be fair to Mr. Barral based on, in part, on the experiences you described, relating to your girlfriend and so forth.

PROSPECTIVE JUROR NUMBER 044: To a lesser extent, I guess I could say yes. Basically, I'm more on the edge of being on the State's side.

MR. BECKER: So going into this thing -- if you're a juror going into it, we're really at a disadvantage?

PROSPECTIVE JUROR NUMBER 044: I don't want it to be that way but for this kind of case, yeah.

MR. BECKER: And I would make motion to excuse for cause, Your Honor.

THE COURT: Call down. Put him on a civil trial.

All right. You're excused. Challenge for cause is granted.

THE CLERK: Badge Number 047, Ban Thai.

THE COURT: All right. Mr. Thai, do you work?

PROSPECTIVE JUROR NUMBER 047: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 047: I do nail.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 047: Yes.

THE COURT: Where?

PROSPECTIVE JUROR NUMBER 047: I citizen -- you know, English, I know little bit. I don't know English a lot, a little bit. You know, before I became a citizen in 2006, I had [indiscernible] help me.

THE COURT: You get instructions on how to do your nails?

PROSPECTIVE JUROR NUMBER 047: Yeah. I do nail, every you -- if you get them to talk, nail I know.

THE COURT: In English they talk and you understand?

PROSPECTIVE JUROR NUMBER 047: What? I don't know what you say?

THE COURT: Call down put him on a civil trial. I'm going to excuse him. If you're trying to get off, I'll tell you what, you could be put on a six-month trial. Go down and talk to the jury commissioner. Civil trials are a lot worse than criminal trials.

THE CLERK: Badge Number 048, Mariah Murphy.

THE COURT: Tell me do you work?

PROSPECTIVE JUROR NUMBER 048: No.

THE COURT: Have you worked in the past?

PROSPECTIVE JUROR NUMBER 048: Yes. I worked in 2011 but I have been out of the country for the last 9 months and just moved back to the States two weeks ago so I haven't been able to work for awhile.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 048: No.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 048: No.

THE COURT: Any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 048: No.

THE COURT: Where'd you go for the last 9 months?

PROSPECTIVE JUROR NUMBER 048: Costa Rica, Nicaragua, and Panamá.

THE COURT: To do?

PROSPECTIVE JUROR NUMBER 048: I go to a traveling school.

THE COURT: Can you -- you've heard the evidence, can you be fair and impartial in this case?

PROSPECTIVE JUROR NUMBER 048: Yes.

THE COURT: State.

MS. FLECK: Thank you.

Ms. Murphy, what's the focus of the schooling?

PROSPECTIVE JUROR NUMBER 048: My degree is in global studies.

MS. FLECK: So, now will you be on summer break?

PROSPECTIVE JUROR NUMBER 048: Yes, ma'am.

MS. FLECK: What would you like to do with your degree once you graduate?

PROSPECTIVE JUROR NUMBER 048: I'm considering human rights or maybe going into embassy work or something in international relations but considering a focus on human rights is kind of huge topic but it's just my first year of college. So.

MS. FLECK: Okay. Any thoughts that you've had -- I mean, I guess, you're probably learning maybe not the exact same kinds of concepts that we're talking about here. But if you're thinking about things like -- your mind is kind of spurred by things, human rights or human right violations in other countries. Do you have any

strong opinion about our criminal justice system?

PROSPECTIVE JUROR NUMBER 048: Yes.

MS. FLECK: Can you share them with me?

PROSPECTIVE JUROR NUMBER 048: It's entirely flawed.

MS. FLECK: Okay. In what way are you thinking that?

PROSPECTIVE JUROR NUMBER 048: Where do I start?

MS. FLECK: Well, let me ask you this? Is there something that has given you this basis of knowledge or this, I guess, opinion.

PROSPECTIVE JUROR NUMBER 048: It's never personally affected me. I've met people -- I've seen -- I've been to other countries where I see how their systems work and I guess it's just the perspective that this skewed for me.

MS. FLECK: So you think that some places do it better than we do it?

PROSPECTIVE JUROR NUMBER 048: I wouldn't hazard to say that but I would say it's obvious that there could be improvements, not saying that I could make them, but -- I guess in regards to this question like, simply pleading the 5th; I can't say that I agree with that. Like, if this -- I mean, I guess what I'm saying is I don't -- maybe I can't judge this fairly because of my feelings towards government and towards the criminal justice system. And if the Defendant were to just simply plead the 5th and not testify at all, that would make me want to strongly consider what the child has to say more than him because if he's not even willing to say anything, it's just -- it just doesn't make sense to me.

MS. FLECK: Okay. Well, and understanding -- I mean, that's his right. And that's the way, you know, that's the way, in our government and under --

PROSPECTIVE JUROR NUMBER 048: That's just how it works.

MS. FLECK: -- our Constitution, that's absolutely 100 percent his right. So --

PROSPECTIVE JUROR NUMBER 048: Mm-hmm.

MS. FLECK: -- if that's something that you would require, it sounds like you could be a fair juror.

PROSPECTIVE JUROR NUMBER 048: No. I don't think I could be a fair juror.

MS. FLECK: And I'm -- I have no idea if he's going to testify or not but --

PROSPECTIVE JUROR NUMBER 048: Mm-hmm.

MS. FLECK: -- it makes no difference if he does or not. It's that -- you basically think that the Constitution should be different than it is. So I'm going to make a challenge for cause based, I would imagine, on both parties.

MR. BECKER: I'd like a chance, Your Honor.

THE COURT: Sure.

MR. BECKER: Well, to be clear, the trial hasn't started.

PROSPECTIVE JUROR NUMBER 048: Yes.

MR. BECKER: And we haven't made a decision until the State rests their case about whether Mr. Barral's going to take the witness stand, okay. But it is a barometer of whether or not you could follow the instructions because the Fifth Amendment area is one area where people are more likely to have a problems. Right?

PROSPECTIVE JUROR NUMBER 048: Mm-hmm.

MR. BECKER: But you just came from Nicaragua, amongst other places, right?

PROSPECTIVE JUROR NUMBER 048: Yes.

MR. BECKER: Did you ever go to a courthouse in Nicaragua?

PROSPECTIVE JUROR NUMBER 048: I was outside of a courthouse. I did

not enter it. I spoke -- my main purpose of being there was studying Sandinista Revolution and everything that came with that and studying how people in power and how governments work and how -- it's just all encompassing, which brings me back to -- in some ways is related to the criminal justice system.

MR. BECKER: Right. And you learned about power corrupting people, right?

PROSPECTIVE JUROR NUMBER 048: Yes.

MR. BECKER: And we have this wonderful thing here in the United States called the right to a jury trial, right?

PROSPECTIVE JUROR NUMBER 048: Yes, sir.

MR. BECKER: So that the government can't put Mr. Barral away without the people's consent, right?

PROSPECTIVE JUROR NUMBER 048: Mm-hmm.

MR. BECKER: I mean, look, there are competing interests at stake. I know you say you're concerned about human rights, right?

PROSPECTIVE JUROR NUMBER 048: Yes.

MR. BECKER: That would include the right of a child, for example, to be free from sexual exploitation, right?

PROSPECTIVE JUROR NUMBER 048: Yes.

MR. BECKER: And also the right of a defendant to have a fair trial? Can you accept that in this country we do our best by having jurors like you serve on a jury in the hope that we reach a fair result?

PROSPECTIVE JUROR NUMBER 048: I don't necessarily -- I did not know much about the jury process coming into this and this is just a very strange thing and I don't understand how there -- how this can be objective or how you can just have a group of people knowing so little and deciding a fate for people. Or deciding

whether this man or this woman is or is not guilty.

MR. BECKER: So -- and that's fair to question the system. I guess in terms of testing whether you could be a fair juror, I mean, does that mean that you're going to feel less likely to convict someone because you don't feel it's your right to do so? I mean, does that you're going to be biased against the prosecution in this case?

PROSPECTIVE JUROR NUMBER 048: I don't think that it will make me -- I mean, at this point, it's making me think I cannot be biased but it also makes me believe that at the end of this, regardless of what I hear and what I see, I do not feel that I am qualified to make a decision.

MR. BECKER: Okay. Your Honor, I will -- I'll submit to the Court's discretion.

THE COURT: All right. Thank you, ma'am. I appreciate your comments, you're free to go.

THE CLERK: Badge Number 049, Caitlin Watts.

THE COURT: Do you work, Ms. Watts?

PROSPECTIVE JUROR NUMBER 049: No, I do not.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 049: No, I'm not.

THE COURT: Are you going to school?

PROSPECTIVE JUROR NUMBER 049: Yes.

THE COURT: Where at?

PROSPECTIVE JUROR NUMBER 049: University of Nevada Reno; in Reno. UNR

THE COURT: Are you out of school right now?

PROSPECTIVE JUROR NUMBER 049: Yes. For summer break.

THE COURT: Or are you commuting?

PROSPECTIVE JUROR NUMBER 049: I'm here for summer break.

THE COURT: Oh.

PROSPECTIVE JUROR NUMBER 049: I had to reschedule.

THE COURT: Okay. Have you sat as a juror before?

PROSPECTIVE JUROR NUMBER 049: No, sir.

THE COURT: Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 049: No.

THE COURT: Could you be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 049: Yes.

THE COURT: State.

MS. FLECK: Thank you.

I guess maybe it's that it's summer break and so all of the students are finally getting their opportunity to serve as jurors. What are you studying up at UNR?

PROSPECTIVE JUROR NUMBER 049: I am studying Elementary and Special Education.

MS. FLECK: Have you started any of your practical classes?

PROSPECTIVE JUROR NUMBER 049: Yes.

MS. FLECK: Yes. So you've been able to get into the classroom with kids and stuff?

PROSPECTIVE JUROR NUMBER 049: Yes; both inside and outside the classroom.

MS. FLECK: And what would you hope to do once you graduate?

PROSPECTIVE JUROR NUMBER 049: Oh, it changes every year. Changes with the kids who I work with. So --

MS. FLECK: Kind of --

PROSPECTIVE JUROR NUMBER 049: Right. As of now, I would like to do middle school English.

MS. FLECK: Okay. How do you feel about the things that you've heard regarding listening to kids testify, having a child as the victim in this case.

PROSPECTIVE JUROR NUMBER 049: Honestly, the only experience that I've had in regards to that was when I walked into this room. Otherwise, it's not a topic of conversation in my classroom except maybe in my law classroom, for educational law like two years ago.

MS. FLECK: How do you feel about judging the credibility of a child?

PROSPECTIVE JUROR NUMBER 049: I'm okay with it. I mean, she's a human too.

MS. FLECK: Okay. So the views -- you would use the same kind of things that you would use to judge anyone's credibility?

PROSPECTIVE JUROR NUMBER 049: Yes.

MS. FLECK: You wouldn't believe say an adult necessarily over a kid just because it's an adult.

PROSPECTIVE JUROR NUMBER 049: Right.

MS. FLECK: All right. Any issues or I should say issues or any experience with law enforcement as the victim of a crime or accused of the crime?

PROSPECTIVE JUROR NUMBER 049: My dad was convicted of a DUI, but I wasn't involved with that.

MS. FLECK: Where was that?

PROSPECTIVE JUROR NUMBER 049: Here. But it happened when I was -- during school and my parents didn't tell me. So.

MS. FLECK: Okay. And a DUI is sometimes different because --

PROSPECTIVE JUROR NUMBER 049: Yeah.

MS. FLECK: -- a DUI's sort of crime that's like all right well we drank too much, we drove, and there you have it. It's not -- it's a little bit more black and white. So anything in your family that --

PROSPECTIVE JUROR NUMBER 049: No.

MS. FLECK: -- from that, regarding law enforcement? No. Okay. How about accused? Anyone that you're close to?

PROSPECTIVE JUROR NUMBER 049: No.

MS. FLECK: No. All right. Anything that makes you think you wouldn't be a good juror for this case?

PROSPECTIVE JUROR NUMBER 049: No.

MS. FLECK: No. Okay. All right. Thank you so much. We'll pass Ms. Watts for cause.

MR. BECKER: Your Honor, I'll pass for questions and for cause.

THE COURT: Thank you.

Tell me your name.

PROSPECTIVE JUROR NUMBER 045: Melanie Aslinger, 045.

THE COURT: You work?

PROSPECTIVE JUROR NUMBER 045: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 045: I'm an Elementary Special Education teacher.

THE COURT: Where do you teach?

PROSPECTIVE JUROR NUMBER 045: Iverson Elementary on Hollywood

PROSPECTIVE JUROR NUMBER 005: Perfect.

THE COURT: And she'll give you a card. If you'll check in with the jury commissioner, I appreciate it.

PROSPECTIVE JUROR NUMBER 005: Okay.

THE CLERK: You ready?

THE COURT: Yes.

THE CLERK: Badge Number 030, Ladonna Gentz.

THE COURT: Ms. Gentz, do you work?

PROSPECTIVE JUROR NUMBER 030: No, I don't.

THE COURT: Have you worked in the past?

PROSPECTIVE JUROR NUMBER 030: Yes.

THE COURT: What have you done?

PROSPECTIVE JUROR NUMBER 030: I was a vice president for a logistical company.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 030: Yes.

THE COURT: Spouse work?

PROSPECTIVE JUROR NUMBER 030: No.

THE COURT: You ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 030: Yes, I have.

THE COURT: Where?

PROSPECTIVE JUROR NUMBER 030: Here.

THE COURT: When?

PROSPECTIVE JUROR NUMBER 030: Eight or nine years ago.

THE COURT: Civil or criminal?

PROSPECTIVE JUROR NUMBER 030: Criminal.

THE COURT: Without telling us the verdict, were you able to reach a verdict?

PROSPECTIVE JUROR NUMBER 030: Yes, sir.

THE COURT: Were you the jury foreperson?

PROSPECTIVE JUROR NUMBER 030: Yes, I was.

THE COURT: Can you -- I guess I should ask what type of case it was?

PROSPECTIVE JUROR NUMBER 030: Drug possession and sale.

THE COURT: Drug case?

PROSPECTIVE JUROR NUMBER 030: Mm-hmm.

THE COURT: You can set that, what you did there, apart from this case and listen to the evidence -- the testimony and look at the evidence here to make a decision?

PROSPECTIVE JUROR NUMBER 030: Yes.

THE COURT: You'll be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 030: Absolutely.

THE COURT: State.

MS. FLECK: Thank you, Your Honor.

Ms. --

PROSPECTIVE JUROR NUMBER 030: Gentz.

MS. FLECK: Genz?

PROSPECTIVE JUROR NUMBER 030: Gentz.

MS. FLECK: Gentz. Okay.

PROSPECTIVE JUROR NUMBER 030: Mm-hmm.

MS. FLECK: Do you and your husband have children?

PROSPECTIVE JUROR NUMBER 030: Yes.

MS. FLECK: How many?

PROSPECTIVE JUROR NUMBER 030: I have two stepchildren; sons. And I have two sons.

MS. FLECK: And how old are all your kids?

PROSPECTIVE JUROR NUMBER 030: 30, 20 -- Oh, wait. 32, 30, 23, and 22.

MS. FLECK: Any grandkids yet?

PROSPECTIVE JUROR NUMBER 030: No. Thank God. No. Sorry.

MS. FLECK: Okay. So comfortable then with children --

PROSPECTIVE JUROR NUMBER 030: Yes.

MS. FLECK: -- being a part of the case?

How about the charges themselves? Besides the things that we've already heard and everyone sort of agreeing that at the end of the day the charges themselves once proven, can be worthy of judgment. Any issues listening to testimony that could be graphic, from a child about sexual experiences that, you know, someone at 4 years old experienced?

PROSPECTIVE JUROR NUMBER 030: No.

MS. FLECK: Can you do that with a fair and open mind?

PROSPECTIVE JUROR NUMBER 030: Oh, yes. Yes.

MS. FLECK: Any experience with law enforcement?

PROSPECTIVE JUROR NUMBER 030: No.

MS. FLECK: In either yourself or your family?

PROSPECTIVE JUROR NUMBER 030: No, ma'am.

MS. FLECK: How about accused of a crime? Have you or anyone close to you ever been accused of a crime?

PROSPECTIVE JUROR NUMBER 030: No, ma'am.

MS. FLECK: How about the victim of a crime?

PROSPECTIVE JUROR NUMBER 030: No, ma'am.

MS. FLECK: No?

PROSPECTIVE JUROR NUMBER 030: No.

MS. FLECK: No -- so no experiences with law enforcement?

PROSPECTIVE JUROR NUMBER 030: Well, I'm sorry. Ten years ago we were burglarized; our house. But --

MS. FLECK: Okay. Did you report that to the police?

PROSPECTIVE JUROR NUMBER 030: Yes, ma'am.

MS. FLECK: And were you satisfied with the result, one way or the other?

PROSPECTIVE JUROR NUMBER 030: Yes, ma'am.

MS. FLECK: You were satisfied with their endeavors to try to get someone or getting someone and prosecuting?

PROSPECTIVE JUROR NUMBER 030: Yes, ma'am.

MS. FLECK: Okay. Then anything else that you've thought of as you've listened to the charges that make you think, you know, I don't think I would be a very good juror for this particular case?

PROSPECTIVE JUROR NUMBER 030: No, ma'am.

MS. FLECK: Able to leave your -- you know -- any biases, or prejudice, or sympathies that you have at the door; listen to just the evidence and make a decision based just on that?

PROSPECTIVE JUROR NUMBER 030: Yes.

MS. FLECK: All right. Thank you. We'll pass for cause.

THE COURT: Thank you.

Becker.

MR. BECKER: Good morning, Ms. Gentz.

Would you automatically believe the testimony of a child just because she comes in here and makes an allegation?

PROSPECTIVE JUROR NUMBER 030: No. I would hope -- no,

MR. BECKER: So you wouldn't have any problem scrutinizing the testimony of a child?

PROSPECTIVE JUROR NUMBER 030: I would have to.

MR. BECKER: Do you feel, at this time, a predisposition towards, you know, one side or the other? I know you haven't heard any evidence but do you find yourself already at this point kind of being on one side?

PROSPECTIVE JUROR NUMBER 030: No, sir.

MR. BECKER: The juror that was there before you had a -- travel plans on Friday morning and of course, we hope to get this case to the jury in a reasonably efficient manner; whether that's on Wednesday afternoon or Thursday. Or however long it takes to get all of the relevant testimony before we take you to the jury room.

But then we also expect that the jury is going to go back in the jury room and be committed to rendering a fair and proper verdict without time constraints. And -- is there anything that -- in other words -- of course we're hoping we can get this done efficiently. But of greater concern from my perspective, is that it be fair. Is there any time constraint that you have that would impede upon your ability not just to hear all the testimony but to deliberate fairly; without any kind of time pressure?

PROSPECTIVE JUROR NUMBER 030: I don't have any commitments. No.

MR. BECKER: I had discussed with previous panel members the Fifth

Amendment issue. And a lot of people have a problem with it, frankly. Are you one of those people?

PROSPECTIVE JUROR NUMBER 030: No.

MR. BECKER: So it wouldn't present a problem for you at all to understand the Fifth Amendment and not draw any inferences whatsoever from the fact that Mr. Barral either testify -- or I'm sorry, does not testify?

PROSPECTIVE JUROR NUMBER 030: No, sir.

MR. BECKER: And given everything you've heard so far, is there any reason that you think you could not be fair to both sides?

PROSPECTIVE JUROR NUMBER 030: No, sir.

MR. BECKER: Thank you. Nothing further, Your Honor.

THE COURT: Pass for cause?

MR. BECKER: Pass.

THE COURT: If you'll hand that mic down to --

All right. Tell me your name again.

PROSPECTIVE JUROR NUMBER 009: Cesar Canonigo, Juror Number 009.

THE COURT: Do you work?

PROSPECTIVE JUROR NUMBER 009: I own a business and I -- I stated before.

THE COURT: In Illinois. A bowling --

PROSPECTIVE JUROR NUMBER 009: Yes. Illinois Bowling Center. In April --

THE COURT: Okay. You don't work here in Las Vegas?

PROSPECTIVE JUROR NUMBER 009: I'm retired. I am pretty much retired.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 009: I have a home here as well. And my plans were to retire here until -- we were going to sell the business and retire here and we had a home here for a long time and this thing happened.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 009: And I cannot focus my mind because -- is disaster.

THE COURT: I didn't -- I didn't ask.

PROSPECTIVE JUROR NUMBER 009: Yes.

THE COURT: Okay. I want to know if you're married?

PROSPECTIVE JUROR NUMBER 009: Yes, I am.

THE COURT: And does your spouse work?

PROSPECTIVE JUROR NUMBER 009: She's retired as well.

THE COURT: What did she retire from?

PROSPECTIVE JUROR NUMBER 009: She was a medical technologist in the hospital; a lab -- laboratory.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 009: No, I have not.

THE COURT: Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 009: No.

THE COURT: Now you tell me you're going to have a hard time listening. I'm going to let you ask -- answer some of the questions that these attorneys have.

PROSPECTIVE JUROR NUMBER 009: Okay.

THE COURT: Go ahead.

MS. FLECK: Thank you.

Sir, when did this happen to your business in Illinois? How long ago?

PROSPECTIVE JUROR NUMBER 009: The disaster?

MS. FLECK: Yes.

PROSPECTIVE JUROR NUMBER 009: April 18th.

MS. FLECK: So, April 18th?

PROSPECTIVE JUROR NUMBER 009: Yes. This last month. Yes.

MS. FLECK: Have you been able to be out there since -- from April 18th until now.

PROSPECTIVE JUROR NUMBER 009: Yes. I have been out there and I just came back for this particular reason. I've been out there to take care of the business.

MS. FLECK: I see. So -- but for you getting subpoenaed -- or called for your juror -- jury duty, you would have stayed there.

PROSPECTIVE JUROR NUMBER 009: Yes. I would have to until I clear up the mess that we have down there.

MS. FLECK: Are there other people that are there that can take care of your interests while you're here?

PROSPECTIVE JUROR NUMBER 009: No. The primary person that's responsible there is myself and with the help of my wife but I'm the primary the person that runs the business. And without me there it really -- the -- I'm it.

MS. FLECK: Okay. You know, it's so difficult for the Court be in this kind of situation because we want to sensitive to other people's schedules and anything that's going on in their lives. That being said, even if it's just -- through Friday, would that be too much of a burden for you to sit in this case?

PROSPECTIVE JUROR NUMBER 009: Yes. Be -- it's not -- because my mind is not -- it's not there. I could be listening but my mind is not there. And it's

really -- it's very difficult to judge something when your mind and heart is not there.

MS. FLECK: Right.

PROSPECTIVE JUROR NUMBER 009: And because you're removed from it. I could be listening to you but my mind is not with you; my heart is not with you.

MS. FLECK: Okay. Judge, I'm going to make a motion if the Defense wants to stipulate that it just -- it's too important of a case, I think, that --

MR. BECKER: I'll join, Your Honor, if the --

THE COURT: All right.

MR. BECKER: -- Court will accept the stipulation.

THE COURT: You go down and talk to jury commissioner; tell her I said to put you on a civil trial.

Fill it.

THE CLERK: Badge Number 032, Jared Joerger.

PROSPECTIVE JUROR NUMBER 032: Joerger.

THE COURT: Tell me your name.

PROSPECTIVE JUROR NUMBER 032: Jared Joerger, 032.

THE COURT: Do you work?

PROSPECTIVE JUROR NUMBER 032: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 032: I do maintenance on the -- on the Strip.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 032: No.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 032: No, sir.

THE COURT: Do you have a background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 032: Yes. Both my parents work for Metro and I have a cousin who was the Sherriff of Elko County.

THE COURT: You may know that your Dad is an expert is a certain area that you hear today. You can't call him and say, Dad this is what happened in court and I didn't fully understand; can you tell me what's going on? You can't do that. Do you understand?

PROSPECTIVE JUROR NUMBER 032: Yes, sir.

THE COURT: Or your Mom.

PROSPECTIVE JUROR NUMBER 032: Yes, sir.

THE COURT: Or your uncle.

PROSPECTIVE JUROR NUMBER 032: Yes, sir.

THE COURT: All right. Because we want you to make a decision from what you see and experience in these four walls. Do you understand that?

PROSPECTIVE JUROR NUMBER 032: Yes, sir.

THE COURT: And you'll do that?

PROSPECTIVE JUROR NUMBER 032: Yes.

THE COURT: You'll be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 032: I'll do my best.

THE COURT: Have you eve -- okay. You're in -- you haven't gotten any evidence and you haven't heard anything. You'll listen to the evidence, yes?

PROSPECTIVE JUROR NUMBER 032: I'll listen.

THE COURT: In -- have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 032: No.

THE COURT: State.

MS. FLECK: Thank you.

Mr. Joerger, you say both your parents are employed by Metro?

PROSPECTIVE JUROR NUMBER 032: They're retired but they were.

MS. FLECK: Okay. How about your father? What area of Metro was he in?

PROSPECTIVE JUROR NUMBER 032: He was a -- was a normal police officer.

MS. FLECK: Patrol officer?

PROSPECTIVE JUROR NUMBER 032: Yes.

MS. FLECK: And then how about your mom?

PROSPECTIVE JUROR NUMBER 032: Dispatching.

MS. FLECK: Would your dad often talk to you about cases that he had?

PROSPECTIVE JUROR NUMBER 032: They would both talk to me about situations and cases they have come across through their careers.

MS. FLECK: Okay. Do you get along with your parents?

PROSPECTIVE JUROR NUMBER 032: Very well.

MS. FLECK: Do you like them?

Then I imagine if you were ever the victim of a crime that that would have been taken care of speedily for you; is that right?

PROSPECTIVE JUROR NUMBER 032: Well no it's -- not necessarily if I did it, then they would say I needed to serve my time if I did it.

MS. FLECK: Well, not accused but a victim. Were you ever the victim of a crime?

PROSPECTIVE JUROR NUMBER 032: Uh, no.

MS. FLECK: Okay. And then you weren't accused of a crime?

PROSPECTIVE JUROR NUMBER 032: No.

MS. FLECK: You said something interesting that they would've said that you know, you need to do your time. So, then would you be of the opinion that, you know, people need to take personal responsibility, or should be accountable I should say, for things that they do?

PROSPECTIVE JUROR NUMBER 032: Yes.

MS. FLECK: That if someone does a crime, as you say, they -- you do the time?

PROSPECTIVE JUROR NUMBER 032: Yes.

MS. FLECK: Anything else then that we've talked about that makes you think, I'm not sure if I'd be a good juror for this case.

PROSPECTIVE JUROR NUMBER 032: I worked with kids for about four years, coaching.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 032: And so I've had these relationships with children and their families from -- aging from years 3 to 17.

MS. FLECK: Okay. So you would feel comfortable with a child witness in this case?

PROSPECTIVE JUROR NUMBER 032: Yes.

MS. FLECK: Wouldn't judge the Defendant unfairly based upon the fact that you obviously like kids; that you've devoted a lot of your time to mentoring kids or helping them.

PROSPECTIVE JUROR NUMBER 032: Complet -- 100 percent honesty, it would be hard to do that, as much as I would want to -- predisposition between how I was raised and my work with the kids; it'd be hard to do that.

MS. FLECK: Okay. So, you know, I guess the -- you've heard some of the

kind of counter-arguments to those kinds of feelings. Can you -- being hard, you know -- it's -- this is a hard case. I mean, that's just the way that it is, you know. Sex assault cases on kids; I don't know that it gets a whole lot harder as a juror then to sit on a sexual assault case of a minor.

Unlike a murder, there won't be graphit -- graphic pictures and things like that but there's no question that it evokes things in people that other crimes in people that other crimes don't necessarily evoke. So, being hard not really the standard. You need to be able to listen to the evidence and not until the evidence is presented to you, evaluate the case and determine guilt? Would you be able to do that?

PROSPECTIVE JUROR NUMBER 032: Yes.

MS. FLECK: And -- some of the same things that we've talked about with the other jurors that once and if a verdict is rendered of guilt then it would be appropriate to judge the crime itself but can you wait until that happens; if that happens?

PROSPECTIVE JUROR NUMBER 032: I can do my best. I'll try.

MS. FLECK: And certainly if we didn't present any evidence to you and Ms. Edwards and I just, you know, didn't put forth a case that rose to the standard of beyond reasonable doubt, you certainly wouldn't convict somebody just based on your history; your family working for Metro.

PROSPECTIVE JUROR NUMBER 032: That's correct.

MS. FLECK: Okay. My only concern I guess is -- and you seem, you know, very articulate, you'll probably be if you're chosen, maybe one of the younger jurors on the case. Do you feel comfortable exchanging ideas with people that, you know, are older than you, have more life experience, you know, may be attorneys? And holding your own saying you know, this is how I evaluated the case, this is how I

evaluated the evidence?

PROSPECTIVE JUROR NUMBER 032: Yes.

MS. FLECK: Okay. All right. Thank you very much. We'll pass for cause.

THE COURT: Thank you.

MR. BECKER: Good morning. Is it pronounced Joerger?

PROSPECTIVE JUROR NUMBER 032: Joerger.

MR. BECKER: Joerger. Okay.

Mr. Joerger, your -- you grew up in this town and your whole life your parents were working for Metro; is that correct?

PROSPECTIVE JUROR NUMBER 032: That is correct.

MR. BECKER: When you grew up, I presume your family was friends with other law enforcement families.

PROSPECTIVE JUROR NUMBER 032: Yes.

MR. BECKER: Did that include families of District Attorneys or Deputy District Attorneys?

PROSPECTIVE JUROR NUMBER 032: Uh, no.

MR. BECKER: There's a lot of news about crime, you know. Every day you could read about it or hear about it on the news. I imagine when you sat at the table with your family, you know, growing up was talk of the -- of crime in the news a subject that would be talked about at the dinner table? For example --

PROSPECTIVE JUROR NUMBER 032: Yes.

MR. BECKER: Do you think that played a significant role in shaping your view of the community and law enforcements role in the community?

PROSPECTIVE JUROR NUMBER 032: Yes it did.

MR. BECKER: My concern is that -- I mean -- how could the son of two Metro

police officers come to court, for example, and listen to the testimony and then say the State, the District Attorney's office hasn't met their burden? How could you go home and tell your parents that you acquitted Mr. Barral? I mean, do you think you could that?

PROSPECTIVE JUROR NUMBER 032: I could try. I could do my best but I, like you said, I was raised somewhat partial to the more -- to the District Attorney's side of I guess what the case would be.

MR. BECKER: So you would agree then that -- and you used the word predisposition, but that your predisposition coming in is to favor -- I mean, I'm not taking it personally but to favor this side, this table over here?

PROSPECTIVE JUROR NUMBER 032: To lean that way a little more, yes.

MR. BECKER: Okay. Now the Judge will tell you, you know, that's he's going to instruct you as to the law and order you to follow the law. And he'll ask if you think you could follow those instructions but, from my perspective, you know, all of the instructions are read somewhat in line with your own -- the perspective that you bring into it to begin with. Because if want to see things a certain way you're going to interpret the words and the instructions one way and if you want to see it another, you might interpret the words differently. I mean, I'll just ask you point-blank, recognizing this family allegiance that you have, do you think you can overcome it and be fair to Mr. Barral when you deliberate on this case?

PROSPECTIVE JUROR NUMBER 032: To be fair to the Defendant, no.

MR. BECKER: Okay. Thank you.

THE COURT: So are you saying that if the State could not meet their burden, you would find him guilty anyway.

PROSPECTIVE JUROR NUMBER 032: I'm not saying that. I'm just saying

I -- I lean more towards the State's side just with my upbringing. I just -- to be completely fair to the Defendant, I'm not 100 percent in the middle of -- I could listen to everything impartially.

THE COURT: So he starts out guilty in your mind.

PROSPECTIVE JUROR NUMBER 032: If you're going to put it that way, to a certain extent, I have to say yes.

THE COURT: All right. You're excused. Thanks.

THE CLERK: Badge Number 034, Sandra Espinosa.

THE COURT: All right. Tell me, do you work?

PROSPECTIVE JUROR NUMBER 034: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 034: I work for Southwest Airlines.

THE COURT: Could you help? Oh she's already gone.

PROSPECTIVE JUROR NUMBER 034: She left already.

THE COURT: She's already gone.

What do you do at Southwest?

PROSPECTIVE JUROR NUMBER 034: I load the aircraft out on the ramp.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 034: No.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 034: No.

THE COURT: And you've heard us ask questions, lots of questions, some are probing; is there anything that came to mind that you said, I better bring this up to the Judge.

PROSPECTIVE JUROR NUMBER 034: There's just a couple things: I do

work at the airline and I'm a full-time student as well. I take care of my kids; single mom. And it's just -- it would be really difficult trying to --

THE COURT: How old are your kids?

PROSPECTIVE JUROR NUMBER 034: I have a 17 year old and a 16 month old. Yeah, I don't know. I'm starting over again.

THE COURT: It's going to be hard -- it's difficult for all of us.

PROSPECTIVE JUROR NUMBER 034: Yes.

THE COURT: But we need -- we need good citizens to sit as jurors. I'll let them ask some questions in a second. Again -- have I asked you -- did you sit as -- have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 034: No. I haven't.

THE COURT: Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 034: Just have a cousin that is in the FBI out here.

THE COURT: He may be the expert in an area that you hear in court and you can't call that -- call him and say you're the expert in the world for this, can you tell me what's going on? Because that would -- that -- it wouldn't be fair to the Defendant or to the State actually.

PROSPECTIVE JUROR NUMBER 034: Right.

THE COURT: You'll be -- you'll listen if you're chosen as a juror and make a fair decision? That's all we're asking.

PROSPECTIVE JUROR NUMBER 034: Yeah. I will tell you about nine years ago my son did go through something similar with his father's -- some -- a member of his father's family and that does make it a little difficult.

THE COURT: It makes it difficult but --

PROSPECTIVE JUROR NUMBER 034: Yes.

THE COURT: -- we're asking you to set that aside; don't convict an individual because of what happened previously in your life. Just listen to the evidence --

PROSPECTIVE JUROR NUMBER 034: Right.

THE COURT: -- and be fair. That's all we're asking.

PROSPECTIVE JUROR NUMBER 034: Right.

THE COURT: All right.

State.

MS. FLECK: Thank you.

Ma'am, what are your hours at the airport?

PROSPECTIVE JUROR NUMBER 034: Usually I'm at work -- I would try and break up my shifts and I work like 6 to 11 at night because I do my clinical observation hours at the hospital during the day.

MS. FLECK: You in nursing?

PROSPECTIVE JUROR NUMBER 034: No. I'm for ultrasound.

MS. FLECK: Ultrasound tech. Okay.

PROSPECTIVE JUROR NUMBER 034: Mm-hmm.

MS. FLECK: With regard to your school schedule -- I mean, like everyone has said, we hope to get this case to you and then into your deliberations really by Friday. We keep saying --

PROSPECTIVE JUROR NUMBER 034: Mm-hmm.

MS. FLECK: -- maybe tomor -- Wednesday but I think everyone keeps forgetting that today's actually Tuesday.

PROSPECTIVE JUROR NUMBER 034: Tuesday.

MS. FLECK: So, realistically, it will -- it will take this week, probably; by the

time we get the jury and then start to present evidence.

PROSPECTIVE JUROR NUMBER 034: Right.

MS. FLECK: Is it something that you can make up, maybe on the weekend? Are those schedules at school things that you will have some flexibility with?

PROSPECTIVE JUROR NUMBER 034: Unfortunately with the school, they don't. I did bring a letter from the director because they only take ten students a year and I'm in my -- I just am finishing my first year.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 034: And I had to make up hours during this short break that we have because my daughter was very ill and I missed some time. So she's allowing me to make some time up at the hospital during this week before --

MS. FLECK: So, you're already behind.

PROSPECTIVE JUROR NUMBER 034: -- before school starts again.

MS. FLECK: So -- I mean, it sounds like then it's a program that you had to work to get into, you were specially chosen --

PROSPECTIVE JUROR NUMBER 034: Very, very hard.

MS. FLECK: -- and then we would really be jeopardizing that if you had to sit with us.

PROSPECTIVE JUROR NUMBER 034: Yes.

MS. FLECK: The State will submit it to the Court's decision regarding for cause, Your Honor.

MR. BECKER: I'd stip, Your Honor.

THE COURT: All right. You're free to go.

PROSPECTIVE JUROR NUMBER 034: Okay.

THE COURT: Check in at the jury commissioner. She may have a one day trial.

PROSPECTIVE JUROR NUMBER 034: Okay.

THE CLERK: Badge Number 035, Daniel Welzbacher.

THE COURT: And you can find my last bag that was mis -- never mind.

Do you work, Mr. Welzbacher?

PROSPECTIVE JUROR NUMBER 035: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 035: A cab driver.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 035: No.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 035: Yes.

THE COURT: Where?

PROSPECTIVE JUROR NUMBER 035: 2009, here.

THE COURT: Civil or criminal?

PROSPECTIVE JUROR NUMBER 035: Criminal.

THE COURT: Without telling us a verdict, were you able to reach a verdict?

PROSPECTIVE JUROR NUMBER 035: Well, I didn't go --

THE COURT: Oh. You didn't make it.

PROSPECTIVE JUROR NUMBER 035: -- all the way. Yeah.

THE COURT: Okay. Could you be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 035: I would rather have a civil one -- I had a case like --

THE COURT: Well everybody would rather have civil.

PROSPECTIVE JUROR NUMBER 035: I mean, I had a case like this before.

THE COURT: Okay. I'll let the attorney's ask you some questions.

MS. FLECK: Thank you, Your Honor.

When you say that you've had a case like this before, in what regard?

PROSPECTIVE JUROR NUMBER 035: It was pimping of a 15 year old girl.

MS. FLECK: Who was?

PROSPECTIVE JUROR NUMBER 035: It was pimping a 15 year old girl.

MS. FLECK: Okay. So, was that the previous jury that you sat on?

PROSPECTIVE JUROR NUMBER 035: Yeah. And I told them the truth. I couldn't do it.

MS. FLECK: So, were you actually asked to sit as a juror; to go back and deliberate or did you just kind of go through this questioning process?

PROSPECTIVE JUROR NUMBER 035: This questioning process.

MS. FLECK: And you told them that you couldn't do it because you couldn't be fair to --

PROSPECTIVE JUROR NUMBER 035: Yeah. I wouldn't be fair.

MS. FLECK: You couldn't be fair because of the charges?

PROSPECTIVE JUROR NUMBER 035: Yeah.

MS. FLECK: You couldn't be fair to the --

PROSPECTIVE JUROR NUMBER 035: Yes

MS. FLECK: -- Defendants?

PROSPECTIVE JUROR NUMBER 035: I don't know.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 035: I'm just telling you the truth.

MS. FLECK: No. No problem. And I appreciate that. So, how about for this particular case; do you think that -- I mean, it sounds like you don't think you could be fair for this case either? Is that right?

PROSPECTIVE JUROR NUMBER 035: Yes.

MS. FLECK: And what is it about this case that makes you think maybe you couldn't be fair?

PROSPECTIVE JUROR NUMBER 035: This is what a 4 year old. Or a 7 year old.

MS. FLECK: Court's indulgence.

Parties both stipulate, Your Honor.

MR. BECKER: I'll join, Your Honor.

THE COURT: All right. You got to check with jury commissioner. Get Susanne to have him put on a civil trial. He doesn't want to be on a criminal trial.

THE CLERK: Badge Number 036, Jazmin Arteaga-Ibanez.

THE COURT: You work?

PROSPECTIVE JUROR NUMBER 036: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 036: I'm a CNA and a hostess.

THE COURT: What's a CNA?

PROSPECTIVE JUROR NUMBER 036: Certified Nursing Assistant.

THE COURT: Okay. Are you married?

PROSPECTIVE JUROR NUMBER 036: No.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 036: No.

THE COURT: You have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 036: Back in March, I got my car broken into.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 036: My laptop stolen, my wallet stolen, and I had credit card charges. But that's about it.

THE COURT: You're not going to hold that against the Defendant?

PROSPECTIVE JUROR NUMBER 036: No.

THE COURT: You'll be fair and impartial and listen to the evidence that is presented here to make a decision?

PROSPECTIVE JUROR NUMBER 036: Yes.

THE COURT: State.

MS. FLECK: Thank you.

Okay. Did you -- did the Judge ask if you've been a juror before?

PROSPECTIVE JUROR NUMBER 036: Yes.

MS. FLECK: And have you?

PROSPECTIVE JUROR NUMBER 036: No.

MS. FLECK: Okay. So you were the victim then of car burglary back in March or --

PROSPECTIVE JUROR NUMBER 036: Yes. March.

MS. FLECK: And did you file a report on that?

PROSPECTIVE JUROR NUMBER 036: Yes. I filed a police report.

MS. FLECK: Was anyone every caught?

PROSPECTIVE JUROR NUMBER 036: No.

MS. FLECK: Did you hold -- was it Metro? Was it through Metro?

PROSPECTIVE JUROR NUMBER 036: Yes. It was through Metro.

MS. FLECK: Did you hold them responsible in any way for not finding somebody?

PROSPECTIVE JUROR NUMBER 036: No.

MS. FLECK: Was it just kind of the circumstances of the case?

PROSPECTIVE JUROR NUMBER 036: Yes.

MS. FLECK: The circumstances of what happened?

PROSPECTIVE JUROR NUMBER 036: Yes.

MS. FLECK: Yes. Okay. You said that you're a Certified Nursing Assistant?

PROSPECTIVE JUROR NUMBER 036: Yes.

MS. FLECK: And where is that?

PROSPECTIVE JUROR NUMBER 036: Infinity Hospice. I do at-home care so I drive around all the city.

MS. FLECK: Have you worked at all in a hospital here in Las Vegas or anywhere?

PROSPECTIVE JUROR NUMBER 036: No.

MS. FLECK: Any experience doing sexual assault examinations?

PROSPECTIVE JUROR NUMBER 036: No.

MS. FLECK: You'll be hearing from a doctor in this case who does perform sexual assault examinations. Anything then based upon your training and experience that you think might lend -- that you would have knowledge the areas that she's going into.

PROSPECTIVE JUROR NUMBER 036: I don't think so. No.

MS. FLECK: Accused of crime or anyone close to you accused of a crime?

PROSPECTIVE JUROR NUMBER 036: No.

MS. FLECK: You also said that you're a hostess?

PROSPECTIVE JUROR NUMBER 036: Yes.

MS. FLECK: And where is that?

PROSPECTIVE JUROR NUMBER 036: Stack Restaurant at the Mirage.

MS. FLECK: Okay. You don't have children, is that right?

PROSPECTIVE JUROR NUMBER 036: No.

MS. FLECK: Do you have any experience with kids?

PROSPECTIVE JUROR NUMBER 036: I have a little sister.

MS. FLECK: Oh good. How old is she?

PROSPECTIVE JUROR NUMBER 036: She's nine.

MS. FLECK: So again, you'll be hearing from a -- the victim in this case is now 7. Do you think that you'll be able to fairly judge her for her experiences and not kind of compare her to your sister?

PROSPECTIVE JUROR NUMBER 036: I think so.

MS. FLECK: Okay. Anything that we've talked that makes you think you wouldn't be a good juror for this particular case?

PROSPECTIVE JUROR NUMBER 036: I don't think so.

MS. FLECK: Okay. Understand all the concepts of listening to the evidence and putting that together with the law and only then rendering a verdict?

PROSPECTIVE JUROR NUMBER 036: Yes.

MS. FLECK: Okay. All right. If you're chosen, promise to do the very best job you can possibly do.

PROSPECTIVE JUROR NUMBER 036: Yes.

MS. FLECK: All right. Thank you. We'll pass for cause.

MR. BECKER: Thank you.

Good morning. Do you come in to this trial with any agenda one way or

the other?

PROSPECTIVE JUROR NUMBER 036: No.

MR. BECKER: In other words, an agenda such as I'm going to be -- I'm going to -- I want to -- I want to help set a Defendant free; something like that?

PROSPECTIVE JUROR NUMBER 036: No.

MR. BECKER: Or I want to get justice for a little girl; something like that?

PROSPECTIVE JUROR NUMBER 036: No.

MR. BECKER: Okay. So you come into this truly neutral?

PROSPECTIVE JUROR NUMBER 036: I believe so.

MR. BECKER: With no -- no leaning towards one side or the other?

PROSPECTIVE JUROR NUMBER 036: No.

MR. BECKER: I -- I talk -- I -- yeah, I talked with other juror's about this Fifth Amendment issue. And we have the choice; whether Mr. Barral will testify or not testify but we don't make that choice until the State's case is over. And -- do you have a problem with the Fifth Amendment? If a Defendant elects not to testify for example?

PROSPECTIVE JUROR NUMBER 036: No.

MR. BECKER: I'll pass for cause. Thank you.

THE COURT: Thanks. Next lady.

Tell me your name.

PROSPECTIVE JUROR NUMBER 011: Nicole Virga, 011.

THE COURT: Do you work?

PROSPECTIVE JUROR NUMBER 011: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 011: I'm a golf caddy, on golf courses.

THE COURT: Where?

PROSPECTIVE JUROR NUMBER 011: The Walters courses; so Bali Hai, Royal Links, Desert Pines.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 011: No.

THE COURT: You ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 011: No.

THE COURT: A background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 011: My boyfriend is a police officer for Metro.

THE COURT: What's his name?

PROSPECTIVE JUROR NUMBER 011: Cory Church.

THE COURT: Is he a patrol officer?

PROSPECTIVE JUROR NUMBER 011: Now he is. Yes. He was in PSU.

THE COURT: He may be an expert. You can't ask him anything about the case. You understand?

PROSPECTIVE JUROR NUMBER 011: Yes, sir.

THE COURT: You can tell him you were picked for a jury -- criminal jury and that's all you can tell him. You understand that?

PROSPECTIVE JUROR NUMBER 011: Yes, sir.

THE COURT: You can do that?

PROSPECTIVE JUROR NUMBER 011: Yes.

THE COURT: Okay. You'll be fair to both parties?

PROSPECTIVE JUROR NUMBER 011: Yes.

THE COURT: State.

MS. FLECK: Thank you.

Okay. Since [indiscernible] your Officer Church, is that correct?

PROSPECTIVE JUROR NUMBER 011: Yes

MS. FLECK: You say now he's back on patrol?

PROSPECTIVE JUROR NUMBER 011: Yes.

MS. FLECK: You know, obviously the Defense will have, you know, the same kinds of questions. And their concern will be: Is there any way that you can possibly sit as a juror on this case and then go home to your boyfriend and say, you know, we found him not guilty?

PROSPECTIVE JUROR NUMBER 011: We don't live together.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 011: And so I probably won't even see him until next week.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 011: Sunday.

MS. FLECK: But would you feel comfortable with that? I mean --

PROSPECTIVE JUROR NUMBER 011: Oh yeah. Yeah.

MS. FLECK: Does he talk to you about his cases?

PROSPECTIVE JUROR NUMBER 011: Not in detail. I don't like him too and he doesn't like to bring work home, usually.

MS. FLECK: I imagine that he -- I mean, he's a clearly *Law & Order* kind of guy right?

PROSPECTIVE JUROR NUMBER 011: Yeah.

MS. FLECK: Given that that's his job, would you agree that the system wouldn't work if we didn't have the kind of jury system that we have holding us

responsible to our burden of beyond a reasonable doubt; that then the whole system kind of falls apart?

PROSPECTIVE JUROR NUMBER 011: Absolutely.

MS. FLECK: Would you agree with that?

PROSPECTIVE JUROR NUMBER 011: Yes.

MS. FLECK: So certainly, even though your boyfriend works for law enforcement, the whole system is done if you just come in and say, yeah he's guilty because my boyfriend's in Metro?

PROSPECTIVE JUROR NUMBER 011: Right.

MS. FLECK: So you wouldn't do that?

PROSPECTIVE JUROR NUMBER 011: No.

MS. FLECK: You would hold us to our burden and ensure that we proved our case to the burden of beyond a reasonable doubt?

PROSPECTIVE JUROR NUMBER 011: Yes.

MS. FLECK: Understanding also that that's not beyond any doubt?

PROSPECTIVE JUROR NUMBER 011: Yes, ma'am.

MS. FLECK: Right? That there's -- it's called a reasonable doubt because that's -- there is room for some doubt; it's just got to be reasonable.

PROSPECTIVE JUROR NUMBER 011: Right.

MS. FLECK: Okay?

PROSPECTIVE JUROR NUMBER 011: Yes.

MS. FLECK: Comfortable with all that?

PROSPECTIVE JUROR NUMBER 011: Yeah.

MS. FLECK: All right. Everyone in here probably envies your job.

PROSPECTIVE JUROR NUMBER 011: Yeah. It's a fun job.

MS. FLECK: So, any issues then with work or anything through this week?

PROSPECTIVE JUROR NUMBER 011: Nope. I'm on call so, I'm good.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 011: Yeah.

MS. FLECK: All right. If you're chosen, promise to do the very best job you can possibly do?

PROSPECTIVE JUROR NUMBER 011: Yes.

MS. FLECK: Thank you very much. We'll pass for cause.

THE COURT: Go ahead.

MR. BECKER: There was a previous juror who had grown up in a family of police officers so I'll ask you how long have you been in a relationship with a police officer?

PROSPECTIVE JUROR NUMBER 011: Almost two years.

MR. BECKER: All right. And -- I know you work as a golf caddy.

PROSPECTIVE JUROR NUMBER 011: Yes.

MR. BECKER: And as a single person, I mean, you could meet people in so many different ways. Was it just -- kind of random that you ended up dating someone who was in law enforcement?

PROSPECTIVE JUROR NUMBER 011: I actually met him while I was bartending at a bar. He was eating with his family.

MR. BECKER: All right. So it's not a situation -- it was a random occurrence that you happened to meet him?

PROSPECTIVE JUROR NUMBER 011: I did not know he was a police officer until about two weeks after we started hanging out.

MR. BECKER: And when you found out he was a police officer, what was

your reaction?

PROSPECTIVE JUROR NUMBER 011: Indifferent.

MR. BECKER: Okay. So you weren't, you know, particularly, necessarily looking to date someone --

PROSPECTIVE JUROR NUMBER 011: No.

MR. BECKER: -- in law enforcement?

PROSPECTIVE JUROR NUMBER 011: No.

MR. BECKER: And in terms of having, what you might call a law enforcement mentality, prior to dating a police officer did you have strong views about crime in the community?

PROSPECTIVE JUROR NUMBER 011: No, sir.

MR. BECKER: How about -- there are lots of high-profile cases were, you know -- that are covered in the media, I'm not talking about one in particular. But in general, when there's a high-profile case, would you in general, be rooting for the prosecution or the Defense; if you could say?

PROSPECTIVE JUROR NUMBER 011: Neither one. I'm not biased if that's what you're asking.

MR. BECKER: All right. And so you don't have any predisposition going in to this matter where you want to see, you know -- you want to see the prosecution win; or the defense win?

PROSPECTIVE JUROR NUMBER 011: No.

MR. BECKER: All right. This Fifth Amendment issue, I don't want to, you know, beat it to death here but I got to ask everyone about it.

PROSPECTIVE JUROR NUMBER 011: Right.

MR. BECKER: Is that a problem for you?

PROSPECTIVE JUROR NUMBER 011: No.

MR. BECKER: All right. And you think if you were on a jury and let's say before you met up with your boyfriend this Sunday you told him you were on a jury in Las Vegas at the Regional Justice Center that resulted in an acquittal, I mean, do you think -- it's a two-year relationship, do you think that would cause a flag for you?

PROSPECTIVE JUROR NUMBER 011: No. I'm sure he understands the -- the rules.

MR. BECKER: Okay. Thank you. Pass for cause.

THE COURT: We're going to take our afternoon recess. My staff's been doing this since about six o'clock this morning. So go to lunch, come back. You all sit -- remember where you're sitting and sit back there. It doesn't matter where you sit; we have your numbers up here. We'll call you. Come back about 1:15.

MARSHAL: Rise for the jury.

[Outside the presence of the prospective jury]

THE COURT: All right. Jury's left? Everybody out?

All right. See you guys at 1:15.

MS. FLECK: So --

MR. BECKER: Thank you.

MS. FLECK: Just quickly. We passed 32 then for cause, is that how that -- this is going to work?

THE CLERK: No. Just who's in the box.

THE COURT: No. Just what's in the box.

THE CLERK: One by one.

THE COURT: And then once they're all passed for cause, then you'll start your preemps. And then you can question them for cause as well; the new ones.

MS. FLECK: Okay so then once the 12 -- the 14 gets passed for cause, then we start our preemps, and then we put a new person in?

THE COURT: Yes.

THE CLERK: Right.

MS. FLECK: Got it. Okay. Thank you.

[Recess taken at 11:58 a.m.]

[Trial resumed at 1:18 p.m.]

[Outside the presence of the prospective jury]

THE COURT: Are you guys ready? Everybody ready?

MS. FLECK: Yes, Your Honor.

MR. BECKER: Yes, Your Honor.

MR. CASTILLO: Yes, Your Honor.

THE COURT: All right. Bring them in.

THE MARSHAL: Rise for the jury.

[In the presence of the prospective jury]

THE COURT: All right. We're back. Thank you for coming back and being prompt. Generally, I am not. I've got lots of matters that I have to take care so if I am late, I apologize. It's not the attorney's fault or the defendant's. It's generally mine.

We are at --

THE CLERK: Number 7.

THE COURT: Number 7. Name? On this side.

THE MARSHAL: Oh. Sorry

THE COURT: You're okay.

All right. We have the information that -- you're Eric Abbott, correct?

PROSPECTIVE JUROR NUMBER 012: Yes, Your Honor.

THE COURT: And you are a lawyer and you're in-house at one of the hotels, somewhere?

PROSPECTIVE JUROR NUMBER 012: No, Your Honor. Gaming Manufacturer.

THE COURT: Oh. Gaming Manufacturer. I apologize. And again, have you sat as a juror before?

PROSPECTIVE JUROR NUMBER 012: About 20 years ago in New York State. I don't know --

THE COURT: Oh yeah. And you don't --

PROSPECTIVE JUROR NUMBER 012: -- if I was actually -- huh?

THE COURT: You don't remember anything about it.

PROSPECTIVE JUROR NUMBER 012: I was being asked questions and -- there's no judge there in voir dire in New York. And all of the sudden we were all kicked out. I mean, you know what I mean. So.

THE COURT: Yeah. Can you think of any reason you would not be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 012: No.

THE COURT: State.

MS. FLECK: Thank you.

Good afternoon now, Mr. Abbott. Have you ever practiced criminal law?

PROSPECTIVE JUROR NUMBER 012: Very little bit.

MS. FLECK: What -- one which side?

PROSPECTIVE JUROR NUMBER 012: Both sides.

MS. FLECK: You've worked for the state at some point? Or for the government at some point?

PROSPECTIVE JUROR NUMBER 012: In law school, I was an intern at a city prosecutor's office in Ohio.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 012: I don't remember the name of the city. I'm sorry.

MS. FLECK: It's okay.

PROSPECTIVE JUROR NUMBER 012: It was a small town. So, technically I was practicing, you know, pursuant to law student rules.

MS. FLECK: Rules. Okay.

PROSPECTIVE JUROR NUMBER 012: And then, I've dealt with, you know, a few traffic tickets and a domestic violence issue for a neighbor a long time ago. And we've had -- have had issues -- had one issue come with an employee.

MS. FLECK: Okay. So similar then in terms of just never --

PROSPECTIVE JUROR NUMBER 012: And there's a case now I'm dealing with too. Not as counsel of record but -- and not as the Defendant either. So.

MS. FLECK: Okay. So you're advising, maybe. You're --

PROSPECTIVE JUROR NUMBER 012: Yes.

MS. FLECK: Is it -- the case that you're involved in now, is somebody being prosecuted by our office?

PROSPECTIVE JUROR NUMBER 012: It's -- no. Absolutely not. It's outside the United States.

MS. FLECK: It's -- Oh. Okay. All right. Good.

So, I guess then with having done some criminal work on both sides,

you know, I -- obviously I know you know the law and that you will understand taking an oath, and understand the application of the evidence to the law and all of that.

Is -- does your heart fall in one side or the other in terms of criminal law? You know -- there's some criminal defense attorneys that it doesn't matter if they have a video tape. You know, in their mind the person is not guilty. There is something that has been contrived.

So do you fall one way or the other sort of in the criminal justice system thinking -- just experiences that you've had or cases that you've seen or maybe experiences that your friends who are attorneys have had that makes you feel one or the other?

PROSPECTIVE JUROR NUMBER 012: No.

MS. FLECK: Okay. Ever been the victim of a crime?

PROSPECTIVE JUROR NUMBER 012: Yes.

MS. FLECK: What?

PROSPECTIVE JUROR NUMBER 012: Let's see, I was mugged as a child and we had a burglary in my house a few years ago. I had my shed broken into and I had, just over the weekend, my credit card number stolen.

MS. FLECK: Uggh. Identify theft, huh?

Was -- did you find that out through calling your credit card company or did they call as a fraud warning or anything like that?

PROSPECTIVE JUROR NUMBER 012: They called as a fraud warning, yesterday.

MS. FLECK: Okay. So, obviously they probably haven't even found the person who has it yet. Have they?

PROSPECTIVE JUROR NUMBER 012: Not to my knowledge. I have no

idea.

MS. FLECK: Anything about -- I imagine that when you were mugged as a child, that was in New York.

PROSPECTIVE JUROR NUMBER 012: Correct.

MS. FLECK: Was somebody ever prosecuted for that?

PROSPECTIVE JUROR NUMBER 012: No.

MS. FLECK: Anything about those experiences, having law enforcement involved or not involved, sometimes people feel that -- that something should've been done with their case. Somebody should have been apprehended and that law enforcement fell short on their job on that. Do you have any feelings like that based upon the cases that you've been a victim in?

PROSPECTIVE JUROR NUMBER 012: Yes.

MS. FLECK: Okay. What are your thoughts?

PROSPECTIVE JUROR NUMBER 012: In regards to the burglary, I mean, my wife walk -- my wife and my older son walked in on it. I mean, the guy ran out of the house. I mean, the police came quickly -- thank God for that -- that was good. But -- I mean they didn't take any fingerprints or do anything.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 012: I mean, in that regards.

MS. FLECK: And that was here?

PROSPECTIVE JUROR NUMBER 012: Yes.

MS. FLECK: How long ago did you say that was?

PROSPECTIVE JUROR NUMBER 012: Approximately the last three or four years; three or four years ago.

MS. FLECK: Would you be able to fairly listen to an officer, in this case a

detective, who testified for Metro and not sort of have any preconceived notions or ideas about what he may not have done pursuant to his job based upon what happened to you?

PROSPECTIVE JUROR NUMBER 012: Yes.

MS. FLECK: Yes, you would.

PROSPECTIVE JUROR NUMBER 012: Yes.

MS. FLECK: Based upon that, could you be fair then to the State? I mean, it sounds like some of the experiences that you have maybe don't give you an overall negative feeling about law enforcement. But maybe even in th -- just in this jurisdiction; that will presenting the evidence, will you be able to listen to that evidence and be fair and impartial?

PROSPECTIVE JUROR NUMBER 012: By law enforcement, do you mean the -- I mean, I can be fair and impartial. But do you mean like the street police, like a patrol officer? I -- Or --

MS. FLECK: No.

PROSPECTIVE JUROR NUMBER 012: -- man -- it's -- I think it's more of a managerial issue; at least in my case. It -- they just didn't have the time to do it.

MS. FLECK: Okay. Well, you'll be listening to evidence from the detective. I mean, he'll be the person who did the entire investigation in the case. So, will you be able to fairly listen to his testimony with an open mind? Or based upon what happened in your burglary case or other feelings you have about law enforcement, will that impede your ability to listen fairly?

PROSPECTIVE JUROR NUMBER 012: No. It will not.

MS. FLECK: Okay. Okay, so do you want to clarify for me at all or -- I guess -- because I thought you said yes, that you thought that it would.

PROSPECTIVE JUROR NUMBER 012: You asked a different question. I'm sorry. I would be able to listen to the officer fair and impartially, yes.

MS. FLECK: Okay. Do you have any concerns at sitting -- do you have any concerns regarding sitting as a juror on this case based upon the things that have happened in those cases?

PROSPECTIVE JUROR NUMBER 012: In those cases, no.

MS. FLECK: Is there something else that makes you think you might not be the best juror for this case?

PROSPECTIVE JUROR NUMBER 012: Well, I'm a parent.

MS. FLECK: Okay. So, is it the feeling that we heard early form Ms. Hughes, kind of just straightaway the charges themselves that make you think you wouldn't be fair?

PROSPECTIVE JUROR NUMBER 012: No.

MS. FLECK: Well, I'm not going to put words in your mouth. So, just tell me what it is then that makes you think might not be fair.

PROSPECTIVE JUROR NUMBER 012: I didn't say I wouldn't be fair. I'm sorry. What are --

MS. FLECK: I said, is there anything else that makes you feel that you might not be the -- you know, best juror? Or fair and impartial juror for this case? And you said, well I have kids.

PROSPECTIVE JUROR NUMBER 012: Yeah. I think -- look, all I can speak to is my own experience with my own two children and -- putting a seven year old on the stand, I -- I don't know. That's just -- seems hard to be able to understand -- not understand but sort of evaluate their credibility. I -- you understand what I mean? I --

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 012: It's just hard with my own children. I mean, I know with my own children, you know, they sometimes don't, you know, say the truth and things. I mean --

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 012: I don't know. I just -- I've never been put in that experience. So.

MS. FLECK: Okay. Fair enough. Well, you know, unfortunately we don't puck our victims so, you know, if a seven year old is a -- is the victim, that's the person, sadly, that has to testify. So, that's the case that we have and that's the evidence that you'll hear.

So, when you say things -- when you say like, you know, kids lie. Like when you say kids lie, what are the s -- what have -- what are some of your opinions with why kids will lie?

PROSPECTIVE JUROR NUMBER 012: Well, I have one child with Asperger's so that's -- or that's a form of Autism so in his case, you know, he can't maybe help it sometimes. You understand what I mean?

MS. FLECK: Right.

PROSPECTIVE JUROR NUMBER 012: And then, you know, my other child -- and it's usually on minor things, you know. Like, do I have a test tomorrow? And those kind of things. I mean it's not habitual.

MS. FLECK: Motivations -- I mean, do you find that when your children lie to you, that there's usually motivations behind why they would lie?

PROSPECTIVE JUROR NUMBER 012: Yes.

MS. FLECK: What would some of those be?

PROSPECTIVE JUROR NUMBER 012: To get out of doing stuff for my younger son.

MS. FLECK: So maybe to get out doing something or to get out of trouble?

PROSPECTIVE JUROR NUMBER 012: Yes.

MS. FLECK: Okay. And maybe to get something that they want? Or be able to do something that they want to do?

PROSPECTIVE JUROR NUMBER 012: With my older son, it's really hard. I -- look, I'm not a psychiatrist, so I --

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 012: You understand?

MS. FLECK: I do.

PROSPECTIVE JUROR NUMBER 012: It's just -- it's hard for me to understand. I still don't.

MS. FLECK: Okay. Well, then let's just kind of I guess break it down to the bare minimum. Do you -- it sounds like, you know, to me that you're not necessarily comfortable with the charges in the case and the fact that we do have a child witness.

PROSPECTIVE JUROR NUMBER 012: I don't think any parent would be, no. I'm not comfortable with it. Can I be fair? Yes.

MS. FLECK: Okay. So you think that you can listen to that testimony and -- my concern, I guess, is when you say something like, you know, kids lie. Is that the first feeling that you're going to have when we put Jocelyn on the stand? Are you -- from the beginning of her speaking, will you be listening to her with the mindset that she is lying?

PROSPECTIVE JUROR NUMBER 012: No.

MS. FLECK: Okay. All right. All right. Thank you.

We'll pass for cause.

THE COURT: Thank you.

MR. BECKER: Thank you.

I want to talk about this burglary of your home and you had indicated that when your wife and one of your children came home, the burglar was actually in the house?

PROSPECTIVE JUROR NUMBER 012: Correct.

MR. BECKER: And they ran from the house. Metro was called, came to the scene.

PROSPECTIVE JUROR NUMBER 012: That's what I was told yeah. I wasn't there. So.

MR. BECKER: And you made the statement that the police didn't do anything.

PROSPECTIVE JUROR NUMBER 012: They didn't take fingerprints.

MR. BECKER: Right.

Would it be fair to say that your expectation of law enforcement would be that they would utilize whatever tools they have to assist them in investigating in a crime, to give them the best shot of solving the crime? Is that a fair statement?

PROSPECTIVE JUROR NUMBER 012: If they have the resources to do it.

MR. BECKER: Well, let's talk -- let's talk about resources. I mean, fingerprinting -- I mean, are we questioning whether or not a I -- this law enforcement agency has the resources to take fingerprints after a residential burglary?

PROSPECTIVE JUROR NUMBER 012: I personally don't know one way or

another. I just know they didn't do it and I thought it was pretty serious. And --

MR. BECKER: All right. I suppose my question is this: I mean, in holding the State to its burden, would you expect that when prosecuting an individual for serious charges like these or any charges, that it would be fair to expect the State to use its law enforcement resources to investigate the case and present it as thoroughly as possible? Is that a fair expectation?

PROSPECTIVE JUROR NUMBER 012: If you're asking for my lay opinion, yes. I --

MR. BECKER: All right. Well, ultimately jurors make decisions about how the law is -- plays out in the criminal justice system right?

PROSPECTIVE JUROR NUMBER 012: They decide the facts. I didn't understand the question, I'm sorry.

MR. BECKER: All right. Well, the jurors are charged with a burden of deciding whether the State proves its case beyond a reasonable doubt, correct?

PROSPECTIVE JUROR NUMBER 012: At the end of the trial, yes. If there's -- if it goes to the jury, yes.

MR. BECKER: Right. So that if there were some people that were spotted a distance from your house and you were -- your wife and child said, well it kind of looks like them but the police didn't bother taking fingerprints. It might be something that a jury would reasonably go back to the jury and say like, hey we're uncomfortable; the State didn't do their job here. Is that fair to say, that if the State doesn't properly investigate a case, that that's a relevant consideration to take back into a jury room?

PROSPECTIVE JUROR NUMBER 012: That may depend on other facts, I mean, you gave me a hypothetical. So, I mean, if those were all -- if that was the

entire scope of the evidence then, yes.

MR. BECKER: You have two children; you said a son and a daughter.

PROSPECTIVE JUROR NUMBER 012: I didn't say their sex.

MR. BECKER: Oh. I'm sorry.

PROSPECTIVE JUROR NUMBER 012: I have two sons.

MR. BECKER: Oh. Two sons, okay. And how old are they?

PROSPECTIVE JUROR NUMBER 012: One's 10, one's 9.

MR. BECKER: All right. Now, obviously as a parent, you're going to have compassion for children as probably everyone does. But, to the extent that you have children that are of a young age, do you think it's going to skew your ability to be fair in analyzing the allegations in this case?

PROSPECTIVE JUROR NUMBER 012: No.

MR. BECKER: Okay. And you can put aside your affinity for -- your affinity and your protectiveness of -- over your own children in evaluating how to analyze the facts and evidence presented in this case?

PROSPECTIVE JUROR NUMBER 012: Yes.

MR. BECKER: Pass for cause. Thank you.

THE COURT: Can you pick that up and bring it down?

Tell me your name.

PROSPECTIVE JUROR NUMBER 013: Alexandra Kruse. My juror number is 013.

THE COURT: You work?

PROSPECTIVE JUROR NUMBER 013: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 013: I'm a receptionist for a financial

advisor?

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 013: No.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 013: No.

THE COURT: Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 013: No.

THE COURT: From the questions we asked this morning, did anything come to mind that you thought, oh you know, I better tell the Judge?

PROSPECTIVE JUROR NUMBER 013: No.

THE COURT: State.

MS. FLECK: Thank you.

Ms. Kruse, do you have any kids?

PROSPECTIVE JUROR NUMBER 013: No.

MS. FLECK: You said that you're a receptionist for financial advisor. Have you had any schooling? Like after high school?

PROSPECTIVE JUROR NUMBER 013: For financial advising?

MS. FLECK: For anything.

PROSPECTIVE JUROR NUMBER 013: Yeah. I'm in school now.

MS. FLECK: You're in school now. For what?

PROSPECTIVE JUROR NUMBER 013: Elementary Education.

MS. FLECK: Okay. So you want to go on to be a teacher?

PROSPECTIVE JUROR NUMBER 013: Mmm-hmm.

MS. FLECK: Have you started any of your practical classes yet? That you're in the classroom and spending time with kids or are you still kind of doing the book

work?

PROSPECTIVE JUROR NUMBER 013: Well, this past semester I had four observations to do at a elementary school.

MS. FLECK: All right. How do you feel about the subject matter in this case and the fact that there will be a seven year old testifying; and that that will be the kind of bulk of the witness testimony and the evidence?

PROSPECTIVE JUROR NUMBER 013: Well, I think for everyone here it's going to be hard but I don't have any bias towards anything or opinions yet.

MS. FLECK: Okay. So you can listen to all the evidence --

PROSPECTIVE JUROR NUMBER 013: Yeah.

MS. FLECK: -- and wait. All right. Again, I think that we went through this question earlier with the young man that was excused. If you're chosen, you might be one of the younger jurors that's sitting. Do you have any feelings about having to go to back to deliberate with people who maybe have had more life experiences then you, kind of holding your opinion and feeling strong in your own opinion?

PROSPECTIVE JUROR NUMBER 013: No. I am not worried about that.

MS. FLECK: Okay. You feel like you can have an open dialogue with people?

PROSPECTIVE JUROR NUMBER 013: Yeah.

MS. FLECK: Ever been the victim of a crime or anyone close to you?

PROSPECTIVE JUROR NUMBER 013: No.

MS. FLECK: How about accused of a crime?

PROSPECTIVE JUROR NUMBER 013: No.

MS. FLECK: You or anyone close to you?

PROSPECTIVE JUROR NUMBER 013: No.

MS. FLECK: Okay. All right. Any thoughts then? And final thoughts about being a juror?

PROSPECTIVE JUROR NUMBER 013: No, that's it.

MS. FLECK: No. All right. Thank you.

We'll pass Ms. Kruse for cause.

MR. BECKER: Your Honor, I'll pass for cause with no additional questions.

THE COURT: Thank you. If you'll pass that over.

Tell me your name.

PROSPECTIVE JUROR NUMBER 015: Ria Loveranes. My badge number is 015.

THE COURT: Do you work?

PROSPECTIVE JUROR NUMBER 015: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 015: I am a cashier at Tommy Hilfiger.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 015: No.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 015: No.

THE COURT: Any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 015: No.

THE COURT: Any answers to any of the questions that have been asked previous jurors that you thought you better bring it the Court's attention?

PROSPECTIVE JUROR NUMBER 015: No.

THE COURT: State.

MS. FLECK: Thank you.

Almost exact same questions then that -- for Ms. Kruse. Do you have children?

PROSPECTIVE JUROR NUMBER 015: No.

MS. FLECK: Any experience with kids that makes you think that you would be uncomfortable or on the opposite end is there anything that makes you feel uncomfortable about the charges other than -- I shouldn't, I guess, the charges; uncomfortable about the witnesses and the children involved in the case?

PROSPECTIVE JUROR NUMBER 015: No.

MS. FLECK: Okay. Have you ever been the victim of a crime or anyone close to you?

PROSPECTIVE JUROR NUMBER 015: No.

MS. FLECK: How about accused?

PROSPECTIVE JUROR NUMBER 015: No.

MS. FLECK: Any experience at all then with law enforcement that gives you a lasting impression one way or the other?

PROSPECTIVE JUROR NUMBER 015: No.

MS. FLECK: You've heard some of the questions that I've talked with earl -- other jurors earlier about the shows like *Crime Scene* or -- *CSI* or *Law & Order.*

PROSPECTIVE JUROR NUMBER 015: Mm-hmm.

MS. FLECK: Have you seen those?

PROSPECTIVE JUROR NUMBER 015: Yes.

MS. FLECK: Any problems with a case like this, a sex case; you know where someone's been accused of sexual acts? Any problem with just having testimony in that case? Having it be one child's experience as opposed to having fingerprints or DNA evidence? Can you decide a case like this based upon just witness testimony?

PROSPECTIVE JUROR NUMBER 015: Yes.

MS. FLECK: You wouldn't require more?

PROSPECTIVE JUROR NUMBER 015: No.

MS. FLECK: Any thoughts, then that you have from all the other questions that have been asked regarding sitting as a juror on this case?

PROSPECTIVE JUROR NUMBER 015: No.

MS. FLECK: All right. Thank you so much. Pass for cause.

MR. BECKER: Good afternoon.

PROSPECTIVE JUROR NUMBER 015: Afternoon.

MR. BECKER: Okay. I had asked a previous juror about this issue about what type of investigating techniques you would expect law enforcement to utilize.

PROSPECTIVE JUROR NUMBER 015: Mm-hmm.

MR. BECKER: Because you're saying you wouldn't expect more than just testimony but my question for you is if there was other investigation that could've been done for example to corroborate or exclude the allegations, would you have the expectation that law enforcement would avail itself to whatever resources and tools they had available?

PROSPECTIVE JUROR NUMBER 015: Right. Whatever -- dealing with the trial itself, I'm open to all the evidence.

MR. BECKER: In other words, I don't -- I don't want you to come in with some kind of agreement that we're going to lower the level of expectations because this isn't a CI -- *CSI* show. I mean, does that mean that we should not expect our law enforcement agencies to utilize a reasonable -- resources to conduct a thorough investigation?

PROSPECTIVE JUROR NUMBER 015: Mm-hmm.

MR. BECKER: Do you expect that of your local law enforcement agency?

PROSPECTIVE JUROR NUMBER 015: No.

MR. BECKER: No?

PROSPECTIVE JUROR NUMBER 015: Mm-mm.

MR. BECKER: I'm not trying to put on the spot or make you feel uncomfortable.

PROSPECTIVE JUROR NUMBER 015: [indiscernible]

MR. BECKER: I'm just trying to make sure that you're a juror that we'd feel comfortable with trying the case. In other words, Ms. Fleck asked you if you would feel comfortable deciding this case just on testimony alone, right?

PROSPECTIVE JUROR NUMBER 015: Mm-hmm.

MR. BECKER: And you said you would. And my question is, if there was reasonable investigation that could've been done, that could've helped corroborate or exclude these charges, would you expect Metro to do that?

PROSPECTIVE JUROR NUMBER 015: Yes.

MS. FLECK: Judge, I'm just going to object as -- in to form of the question. I think we are getting --

THE COURT: I'll sustain the objection.

MR. BECKER: All right. This burden is called proof beyond a reasonable doubt and at the end of the day when you render a verdict, you go back to the jury room and there are only two verdicts that a jury can render. One is guilty; and the other is not guilty. Some jurors might kind it -- find it confusing on some level because they might have what they might describe as a feeling that perhaps it was likely that the Defendant was guilty but that the charges hadn't been proven beyond a reasonable doubt, okay?

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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. DUSTIN JAMES BARRAL, Defendant.	CASE NO. C269095 DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

TUESDAY, MAY 28, 2013

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

DAY 1 - VOLUME I

For the State: MICHELLE FLECK, ESQ.
Chief Deputy District Attorney

MICHELLE Y. EDWARDS, ESQ.
Deputy District Attorney

For the Defendant: MICHAEL L. BECKER, ESQ.
MICHAEL V. CASTILLO, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

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TUESDAY, MAY 28, 2013 AT 9:35 A.M.

[Outside the presence of the prospective jury]

THE COURT: I have to ask the question: Have there been discussions of negotiations? Because the Supreme Court -- I don't care what they are; I don't participate in them.

MS. FLECK: There was a -- let me tell you what it was. I know that there have been talks and negotiation throughout the course of the case. And it looks as though back in the end of March after the last setting, Ms. Luzaich made an offer of pleading guilty to an attempt essay and a child abuse and neglect stipulating to a fixed 5 years probation, upon successful completion the case would be dismissed. I'm sorry, upon successful we would dismiss the attempt essay and the child abuse and neglect would stand. That was rejected and it was then revoked.

THE COURT: All right. So you guys have talked about and could not resolve this.

MR. BECKER: It -- that is correct, Your Honor. I will say that I believe there was a record previously made pursuant to *Missouri v Frye* with regard to the offer and denial of that --

THE COURT: Okay.

MR. BECKER: -- rejection of that offer and there have been no discussions since then as I believe that Mr. Barral has made clear that he wishes to have a trial.

THE COURT: All right.

MR. BECKER: Is that correct, Mr. Barral?

THE DEFENDANT: That is correct.

THE COURT: All right. You can come up here and sit by your attorneys.

MS. FLECK: And then the only other thing -- I'm not sure if the defense has anything else add record. I just think we need to figure out when we're going to do those brief 51.385 hearings. Because -- for the witnesses there's 51.385 evidence. It would be for Nicole, the mom, for the grandma, Joanna, for the detective, pretty much all of them.

THE COURT: When are you ready to do those?

MS. FLECK: I'm not sure if you want to do them after jury selection. We could --

THE COURT: Yes. We can do that. We're going to -- it -- were -- it'll take all day to get the jury.

MS. FLECK: So, tomorrow morning then, before we would do openings, we would do those hearings?

THE COURT: Yes.

MS. FLECK: Okay.

MR. CASTILLO: And there's one further issue, Your Honor. Based upon the new discovery which defense counsel received on Friday, there are some issues pursuant to Miller that the defense would like to raise outside the presence.

I am serving my colleague from State and if I can approach?

THE COURT: Okay.

MS. FLECK: What was the new evidence?

MR. CASTILLO: Based upon the notes from the therapist, Betsy Morgan.

MR. BECKER: And I suppose we could address that after lunch to give the State some time to digest it. I don't think anything relating to this will come up during voir dire. And we certainly won't mention anything that's subject to that prior to the Court considering it.

THE COURT: Okay. Let's put this on for morning -- you can argue it in the morning.

MR. BECKER: That's fine.

THE COURT: All right.

MR. BECKER: Thank you, Your Honor.

THE COURT: And so you guys are ready for the jury to be brought up?

MS. FLECK: Yes.

THE COURT: And there's nine and nine.

MS. FLECK: Nine and nine. If we could just go through --

THE COURT: You might as well go get the jury.

MS. FLECK: You -- in here we -- we question them individually? Correct?

THE COURT: Yes.

MS. FLECK: Can we then go -- can we just go through your list of questions that you ask the panel and maybe incorporate a couple that we would -- either side would want the entire panel asked?

THE COURT: I don't ask the entire panel.

MS. FLECK: Don't -- so -- you go through each person and ask them? Then can we just incorporate on that list? For instance, I know that you always ask: Is there anyone that is friends or family with anyone in the District Attorney's office? And just so that I don't have to ask everybody, then can we broaden it to say, on the opposite side, is there anyone that is friends or family members -- close personal friends or family members with anyone that's practicing criminal law in the jurisdiction?

THE COURT: Okay.

MS. FLECK: And then -- And I don't know if we want -- sometimes since it's a

sex case, sometimes the question of have you or anyone close to you been accused of a crime -- sometimes I like to follow it up with a second one: Have you or anyone close to you --

THE COURT: I don't ask that. I'll let you ask it.

Here's what I do: I ask them their name, where they work, have they any background in law enforcement, have they ever sat as a juror before, can they be fair and impartial to both parties in this case understanding this is a child sexual assault case?

MS. FLECK: Those are the only ones you ask?

THE COURT: And then I say, State. And then I say, Defense.

You have to pass for cause and then defense gets it. And they get to ask questions.

MS. FLECK: For the whole panel or for each --

THE COURT: Each individual.

MS. FLECK: So then I -- you want me to then ask each individual: Have you been accused of a crime?

THE COURT: Whatever you want to ask them.

MS. FLECK: Okay.

THE COURT: If you want to ask them as a group, you can ask them as a group. I don't care.

MR. BECKER: In other words, you hand the panel over to us?

THE COURT: Yes.

MR. BECKER: We can address them as we choose?

THE COURT: Yes.

MR. BECKER: We can ask questions as a group? We can go individually,

subject to our discretion?

THE COURT: Uh-huh.

MR. BECKER: Fair enough.

MS. FLECK: Okay. There might be a lot of repetition for me but -- just because I -- I'll definitely want to know if they've -- the people that have been accused of a crime, or convicted of a crime, or someone close to them, or victims.

THE COURT: Whatever you want to ask.

MS. FLECK: Okay.

THE COURT: I don't limin -- limit the attorneys.

MR. BECKER: Wait, you --

THE COURT: From either side.

MR. BECKER: You can ask those questions to the group as a whole and then go individual, if that's what you choose, you know. I mean, that's your choice.

MS. FLECK: Well -- but, the problem is is that we go one for one to pass for cause. Right?

THE COURT: Yes.

MS. FLECK: Okay. All right. Well, we'll figure it out.

MR. BECKER: And one last question, Your Honor, in terms of how the Court picks the alternate jurors.

THE COURT: I have a very scientific method. I have 1 through 14 on these superballs. At the end you get to pick them. In fact, what you're going to do is pick them first so you'll know which ones are the alternates.

So, you'll come up and pick one and you'll pick one; those are your two alternates. It may be 1 and 14; it may be 2 and 3; whatever it is. You'll know -- I -- the jury won't know. They're not going to be told they're alternates until the very

end.

MR. CASTILLO: Okay. Understood.

THE COURT: But you'll know at the very beginning.

[Pause in proceedings]

THE COURT: So you'll be ready in the morning at 9:30 for your hearings?

MS. FLECK: Hopefully. What -- lunchtime today, I'm going to go and call everybody --

THE COURT: Okay.

MS. FLECK: And see if they can all come down. And then we'll be -- we'll know by the time we release the jury tonight if that can happen. Otherwise -- yeah, I imagine that's how we'll do it.

[Colloquy between the Court and the Law Clerk]

THE COURT: You can come up.

MR. CASTILLO: Thank you.

MS. FLECK: Thank you.

THE COURT: Uh-huh.

You need to give her your cell number because I tried to call you and it and I ended up calling Luzaich.

MS. FLECK: Oh shoot. Did I give you guys the wrong number?

THE COURT: All right. You got 1 --

MR. CASTILLO: 11, Your Honor.

MS. FLECK: And 13.

THE COURT: Oh. Okay. So 11 and 13 are the alternates.

And you understand you have 9 challenges, peremptory challenges. They have 9 peremptory challenges.

MS. FLECK: Okay. Thank you, Your Honor.

[Pause in proceedings]

MS. FLECK: Just to clarify.

THE COURT: Yes.

MS. FLECK: When you say you don't ask them anything; you ask them the basic ones?

THE COURT: Yes. Just basic questions.

MS. FLECK: But -- like, can they follow the law? All those preliminary ones?

THE COURT: You ask whatever you want to ask; that I don't ask.

MS. FLECK: Okay.

[Pause in proceedings]

[In the presence of the prospective jury]

THE MARSHAL: Rise for the jury, please.

THE COURT: Good morning, ladies and gentlemen. You can be seated. My name is Doug Smith. I am the District Court Judge that is assigned to Department Eight. We're on record C269095, *State of Nevada versus Dustin Barral.* Sometimes, I'll refer to it as *State versus Barral.*

The record will reflect the presence of the attorneys for the State and the attorneys for Mr. Barral. I'll have them introduce themselves in just a minute.

This is Brandon Stewart; he is an intern for me. This is Kathy Streuber, she's the clerk. Jill Jacoby, who is the court recorder. And Adrian Contreras, helping me out. Tom Lemke will be here, he is my marshal. My -- judicial assistant you'll see later is Susanne Anderson.

Does anybody know any of the names that I just mentioned? Myself or any of my staff? All right.

THE CLERK: Judge.

THE COURT: Yes. Adrian will bring you a microphone. Tell me your name and the last three numbers of your badge.

PROSPECTIVE JUROR NUMBER 012: Yes, Your Honor. Eric Abbott, 012. I'm an attorney here in town and I appeared before you when you were in Justice Court. So, I recognize you.

THE COURT: Okay. What kind of law do you practice?

PROSPECTIVE JUROR NUMBER 012: Right now I work in house for a gaming company, handling litigation management and intellectual property issues; primarily patent law.

THE COURT: Okay. Just because you've appeared in front of me, does that give you any biases for or against the State or Mr. Barral?

PROSPECTIVE JUROR NUMBER 012: No, Your Honor.

THE COURT: All right. We'll have some questions for -- Thank you, I appreciate that.

They tell me this case will last probably three days, maybe three and a half days and we'll have the State introduce the case in just a minute. Just as you're speaking, if you'll speak up and speak right into the microphone when you are talking; we're taking everything down that everyone says. Please don't use uh-huh's and uh-uh's. Yes or no, please. The -- because it's too hard to transcribe that information.

Again, introduce yourself by your badge -- the last three numbers in your badge and your name. Ms. Streuber will keep track of everything that's going on in court; including being responsible for swearing in witnesses, marking exhibits, keeping track of the evidence.

The marshals, along with other members of the marshal's department, you'll see them come in and out periodically. They're responsible for safety in the courtroom and taking care of all of -- of you as jurors.

You'll come to learn most of the Court personnel and the attorneys. They're prohibited by law and ethical obligations from having any contact with jurors other than here in court. Once you become a juror, you'll be given a blue badge. Only talk to those people that have blue badges on. Then you know that they won't be a witness or anything in another department. And you won't be tainting any -- the case that you're sitting on.

I realize that there are things that may come up that you want to bring to my attention; just raise your hand. You always communicate through the Marshal. Don't talk to anybody about this case or anything that has anything to do with the case but you can bring up any questions to me. Write it down. The Marshal will give you a pad of paper if you need. And then we can talk about your questions.

I'm going to ask now -- understand this is a case involving two counts of sexual assault on a minor. You're going to hear more about that in just a minute. The reason I introduce that now is for you to get your thought processes together in answering questions. There are no right or wrong answers to my questions; or the State's questions; or Defense attorneys.

Let me just say this: As he sits before you today, Mr. Barral is innocent because nothing has been presented to the jury. And under our system of government, we do not require a defendant to prove anything, to show anything, to do anything. He and his attorneys could sit there and read magazines; wouldn't have to answer a question, ask a question; do anything. You are to presume him

innocent. The state is required, under our system of government, to prove beyond a reasonable doubt, every material element in the information that will be read to you at a late time.

Ms. Fleck, introduce you -- your co-counsel, list of witnesses, and give them a brief description of the case.

MS. FLECK: Thank you, Your Honor. Good morning, ladies and gentlemen. My name is Michelle Fleck. This is Michelle Edwards. We are the Deputy District Attorneys assigned to handle the case of *State of Nevada versus Dustin Barral.*

The Defendant in this case, as the Judge said, has been charged with two criminal counts. They're both sexual assault on a minor, under the age of 14, for digital penetration; that's inserting his finger into the genital opening and the anal opening of Jocelyn Coleman, the victim.

Jocelyn Coleman will testify before you in this case at 7 years old. She was 4 years old when these allegations occurred. They occurred on or between July 10th of 2010 and July 12th of 2010 here in Las Vegas, Nevada.

I'm going to read you a list of possible witnesses. If you know someone on the list or the name sounds familiar, you'll have an opportunity to tell the Judge how you know them and how it would affect your ability to sit as a juror.

The victim in this case is Jocelyn Coleman, her sister Katelyn Coleman, her mother Nicole Hammonds, her father Frederick Coleman, her grandmother Joanna Coleman; there's a Betsy Morgan, Dr. Sandra Stel. From the Las Vegas Metropolitan Police Department, Detective Timothy Hatchett. You may also be hearing from her -- from Jocelyn's aunt, which is Kathy Denny, from her grandfather, which is David Hammonds, and possibly from her uncle Michael Hammonds. Additionally from Sunrise Hospital, you may be hearing from a Doctor O'Connor and

a Nurse that works there named Lori Cohen.

And Ms. Edwards and I, on behalf of the State of Nevada, thank you in advance for your time and for your attention in this case. Thank you.

THE COURT: Does anybody have any friends or family that are members of the District Attorney's office, Prosecutor's office?

I'm seeing no hands.

Do you recognize -- anyone recognize any of the names that were mentioned by the State?

Again, seeing no hands.

Here's what we're trying to do. We need 14 jurors; 2 are alternates. But we need people on the jury that will keep an open mind, will not make up their mind beforehand, will listen to the evidence, and make a decision on what they hear and see in this -- in these four walls. We just want somebody that's fair both to the State of Nevada and to the Defendant, Mr. Barral. That's what we're looking for.

Counsel, if you'll introduce yourself and --

MR. BECKER: Good morning, ladies and gentlemen. I am attorney, Michael Becker, who along with my colleague and co-counsel, Michael Castillo, will be defend -- will be representing Defendant, Dustin Barral, who is now standing. And who has entered a plea of not guilty to the charges. Thank you.

THE COURT: Do you have any potential witnesses that you wanted to --

MR. BECKER: No additional witnesses other than have already been read.

THE COURT: All right. Thank you.

Does anyone in here recognize the names that Mr. Becker mentioned?

Do you have any --

THE CLERK: Judge.

THE COURT: Where?

THE CLERK: On the other side over there.

THE COURT: Okay.

If you'll stand. Give her the mic.

PROSPECTIVE JUROR NUMBER 103: Tracy Henson, 103. Mr. Becker actually defended my daughter's sexual assault and I don't think I'd be good for this. The --

THE COURT: Does any -- either party have any problem with me releasing --

PROSPECTIVE JUROR NUMBER 103: My daughter was the victim.

THE COURT: Why don't you go ahead and go back down to the jury room. Thank you. We'll excuse you. Thank you for your openness.

All right. Why don't we take -- oh.

Adrian if you'll bring the mic up to the first juror.

[Colloquy between the Court and the Law Clerk]

THE COURT: Before you -- you can have a seat for just a second. There are two things I -- I've -- I sometimes forget to ask. I have to ask these questions. We're not trying to be probing into your lives or ask inappropriate questions though. There are certain things we have to have. First of all, if you're not a citizen of the United States, I have to know because you cannot sit as a juror if you're a citizen of the United States. Does anybody fit that category? Seeing no hands.

Also, if you're a convicted felon who have not had their civil rights restored to them, I need to know; you cannot sit as a juror. Okay. Thank you.

All right. In the back then tell me your name.

PROSPECTIVE JUROR NUMBER 002: Josselyn Aguilar

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 002: No.

THE COURT: Have -- You can sit. You don't have to -- we're pretty informal of that regard.

Do you work?

PROSPECTIVE JUROR NUMBER 002: No.

THE COURT: Have you worked?

PROSPECTIVE JUROR NUMBER 002: I'm sorry. I do work.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 002: I'm a cashier at a restaurant.

THE COURT: What restaurant?

PROSPECTIVE JUROR NUMBER 002: Graziano's Pizza.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 002: Yes.

THE COURT: Where?

PROSPECTIVE JUROR NUMBER 002: In Las Vegas.

THE COURT: When?

PROSPECTIVE JUROR NUMBER 002: Two years ago.

THE COURT: Civil or criminal?

PROSPECTIVE JUROR NUMBER 002: I believe civil.

THE COURT: Without telling us a verdict, were you able to reach a verdict?

PROSPECTIVE JUROR NUMBER 002: I was an alternate.

THE COURT: Okay. And you never had to go back in the jury room then? And --

PROSPECTIVE JUROR NUMBER 002: No.

THE COURT: You understand there's a difference between civil and criminal.

This is a criminal case.

PROSPECTIVE JUROR NUMBER 002: Mm-hmm.

THE COURT: There's 12 that will meet in the jury room and their decision has to be unanimous.

In a civil case, all you got to have is -- you know 51 percent make the decision in a civil case. Do you understand that?

PROSPECTIVE JUROR NUMBER 002: Mm-hmm.

THE COURT: So there is a difference.

PROSPECTIVE JUROR NUMBER 002: Okay.

THE COURT: All right. Do you have any background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 002: Besides working at a law firm, no.

THE COURT: Where did you work?

PROSPECTIVE JUROR NUMBER 002: Haines and Krieger.

THE COURT: And what did you do there?

PROSPECTIVE JUROR NUMBER 002: I was a receptionist.

THE COURT: So you never argued in a courtroom or --

PROSPECTIVE JUROR NUMBER 002: No.

THE COURT: Okay.

Can you be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 002: Yes.

THE COURT: State.

MS. FLECK: Judge, can we approach?

THE COURT: Yes.

[Bench Conference Begins]

MS. FLECK: Do you want them to at least ask the preliminary questions for the 14.

THE COURT: I don't ask a lot of questions. I told you at the end of the --

MS. FLECK: I know. But then I'm going to have to --

THE COURT: Tell me what you want.

MR. BECKER: I think what she wants is for you to do the preliminary of the whole group and then --

MS. FLECK: Just ask the first 14.

MR. BECKER: -- turn it over to Counsel.

MS. FLECK: Because then I can ask the first 14 the general questions so we're not asking each of them. Just ask the first 14 those questions that you have and then we'll start with going one, one, one, one.

THE COURT: What questions that I have?

MS. FLECK: The ones you just asked her.

THE COURT: All right.

MS. FLECK: Because, otherwise --

THE COURT: All right.

MS. FLECK: Otherwise, I ask people that haven't been asked those questions yet.

THE COURT: All right. All right.

MS. FLECK: And then also, are we going to ask for cause questions or no?

THE COURT: Those are for cause -- I turn it over to you.

MS. FLECK: So the ones -- what about if people have trips, if they have --

THE COURT: No. I don't ask those. If they can bring -- if they bring it up, they do.

MR. BECKER: Those are hardship, yeah.

MS. FLECK: Okay.

MR. BECKER: Hardships, you know.

THE COURT: I don't bring up financial problems; otherwise, everybody --

MS. FLECK: I --

MR. BECKER: [indiscernible]

THE COURT: -- agrees to it.

[Bench Conference Concludes]

THE COURT: All right. We're going to try to do this differently.

Is any of the 14 in the jury box, have they ever -- have you ever sat as a juror before? If you have, raise your hand.

Okay. So, she's answered the question.

Again, tell me your name again. I'm sorry. And --

PROSPECTIVE JUROR NUMBER 012: Eric Abbott, 012.

THE COURT: Did you sit it here in Las Vegas?

PROSPECTIVE JUROR NUMBER 012: No, Your Honor. It was in New York State and it was over 20 years ago. I don't know if I was actually seated or not. It was a long time ago.

THE COURT: You don't remember going back, deliberating in a jury room?

PROSPECTIVE JUROR NUMBER 012: No. I know no witnesses were called. I was in a big room and --

THE COURT: Was it civil or criminal?

PROSPECTIVE JUROR NUMBER 012: It was a civil case, Your Honor.

THE COURT: All right. Thank you.

All right. Anybody have any -- yes.

PROSPECTIVE JUROR NUMBER 007: I was called for an outside -- Ashley Hughes.

THE COURT: Okay. Your name -- I need your name.

PROSPECTIVE JUROR NUMBER 007: Ashley Hughes, 007. I was called for proceedings three years ago but I too had a son that was molested so I would not be partial. I would -- I'm a -- not be impartial. So I made it this far.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 007: And it was the same --

THE COURT: I'll let them ask some questions about that.

PROSPECTIVE JUROR NUMBER 007: Okay. It was the same kind of case but I could -- would not like to be here --

THE COURT: All right.

PROSPECTIVE JUROR NUMBER 007: -- for such thing.

THE COURT: It's not convenient for anyone to be here. Just, if you think it's relevant, bring it up. I appreciate it.

PROSPECTIVE JUROR NUMBER 017: Tristan Lopez, 017. I feel also that I wouldn't be partial in this.

THE COURT: Why?

PROSPECTIVE JUROR NUMBER 017: My own mother was molested when she was younger.

THE COURT: All right. I'll let them ask some questions about that. Thank you.

Is there anybody in these 14 that have any training in law or law enforcement?

Okay. You do as well? Okay. First of all, let me go to this gentleman here.

PROSPECTIVE JUROR NUMBER 003: Gregory Buhyoff, Jury Number 003.

I'm a practicing attorney here in town.

THE COURT: What kind of law do you practice?

PROSPECTIVE JUROR NUMBER 003: My practice focuses on trademarks, copyrights, trade secrets, intellectual property.

THE COURT: With your law background, can you fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 003: I believe I can.

THE COURT: I'll let them ask some questions about that.

Okay, who else? Did somebody else have a -- okay. Yes?

PROSPECTIVE JUROR NUMBER 009: Your Honor, Cesar Canonigo, 009. I believe I cannot serve properly here. I just suffered a major disaster. I own a business in Illinois and it was flooded. And my mind is not right right now in terms of trying to be focused on other matters other than my business -- my total business is lost right now. And I have documentation to prove that it's disaster in Illinois. April 18th was the -- we have a big flood in Illinois.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 009: And my business was flooded and it was shut-down.

THE COURT: What kind of business?

PROSPECTIVE JUROR NUMBER 009: It's a bowling center. I meant to sell that and things happened. So, really my mind is not set properly here to be -- to be in this situation.

THE COURT: Well, I appreciate that and I'll let the attorneys ask you some questions. Thank you.

Is there anything else that anybody wanted to bring up? Yes?

PROSPECTIVE JUROR NUMBER 012: Your Honor, yes. I used to practice in this court -- in this courthouse as a Primary Civil Litigator.

THE COURT: Okay.

PROSPECTIVE JUROR NUMBER 012: Years ago. Now I'm in house so it's been years since I've been down here. Every once in awhile I am attorney of record of few minor matters but --

THE COURT: All right. They -- and they -- they're understand that. They can ask you some questions. Thank you.

Okay. Tell me what.

PROSPECTIVE JUROR NUMBER 002: I just thought maybe you need to know I -- I'm a dental hygiene student. I'm going to UC -- well, L.A. to take my dental boards on Thursday. So -- just so that wouldn't interfere with --

THE COURT: How you getting there? You better -- you got to get me some paperwork to that.

PROSPECTIVE JUROR NUMBER 002: Okay. I have the hotel information, the rep exam information.

THE COURT: You have that with you?

PROSPECTIVE JUROR NUMBER 002: I have it on my phone.

THE COURT: All right. We'll look at that at the break.

PROSPECTIVE JUROR NUMBER 002: Okay.

THE COURT: Okay.

Anything else anybody thinks is important that you could -- should bring up to the Court?

PROSPECTIVE JUROR NUMBER 016: My name is Gloria Martin, Juror 0 -- Oh, I can't see. 016. I'm an OB/GYN in town; solo practice. I actually have surgery

scheduled tomorrow for a patient that I can't reschedule because it's been rescheduled before. And I have a patient in active labor right now that another doctor is watching for me.

THE COURT: Patient in active labor will have to wait but the fact that you have surgery set for tomorrow; I'll excuse you now. But you have to go down the jury commission and talk to them. They may put you in a one-day trial.

PROSPECTIVE JUROR NUMBER 016: Okay. Thank you.

PROSPECTIVE JUROR NUMBER 020: Your Honor, Doug Manfra, Badge Number 020. I'm a Chiropractor Physician. I was not able to affect vacation or leap over the holiday and I have a number of -- a fair number of patients in various stages of care.

THE COURT: All right. Thank you. I'm going to have to ask you to sit. It's inconvenient for all of us to sit.

Understand that at the conclusion of the trial, you as a jury will be the Trier of facts. I'm the Trier of the law. I'll tell you what the law is and you must follow that. Does anybody have any problem with that?

No matter what you think the law ought to be, this is not CSI. This is real life stuff. Television, you know, can be solved their problems in 20 minutes; solve crimes in 20 minutes. And that doesn't happen in real life. So --

Under our system of criminal procedures certain principles of law apply in every criminal trial. They are: A: That a -- that an information which will be read to you in a little bit, filed in this case is merely an accusation. It is not evidence of guilt; no matter what it says. B: That the Defendant is presumed innocent, as I told you before. And C: That the Defendant is guilty beyond a reasonable doubt. Everybody understand that. Anybody that doesn't understand that, please raise

your hand. All right. Seeing no hands.

Is there anybody in this group of 14 that knows the other people in there? You know the attorney.

PROSPECTIVE JUROR NUMBER 012: I think I recognize the name.

THE COURT: All right. That's all right.

Anything you've seen or heard -- if this has been in the media, I don't know that it has, must be disregarded by the jury.

Fill that spot, please.

THE CLERK: Badge Number 025, Jordan Knighton.

THE COURT: Mr. Knighton, you've heard all the questions that the Court's asked. Did anything come into mind that you thought should be brought up to the Court?

PROSPECTIVE JUROR NUMBER 025: No, Your Honor.

THE COURT: Now let's go back to this -- the first young lady.

The State have any questions of the first young lady?

MS. FLECK: Yes. Thank you, Your Honor.

I'm going to ask just a few general questions for the 14. Kind of the purpose of voir dire, what we're going through now, is for both the State and the Defense to seat a jury that's fair, impart -- and impartial to both sides. That can listen to the oath that's given to you, that can listen to the evidence, and then at the end of the trial, can render a verdict based upon that evidence and that evidence alone. Not based on bias, not based on prejudice, not based on your prior experiences. We'll obviously ask you to bring your common sense into the courtroom with you. But to leave those other things that you may have in your mind or in your heart at the door in this case.

There are some questions that we may ask that will be somewhat personal. You've heard the charges; it's a very serious case for both the State and the Defense. So, nothing's meant to embarrass you or to reveal something about yourself that, you know, you wouldn't really necessarily feel comfortable saying in a room full of strangers or maybe even to your own friends. But, it's the time to kind of look within and say would I really be a good juror for this particular case. Can I come into the courtroom as a blank slate in terms of this evidence? And just listen solely to the evidence; not speculate, not guess at the end of the trial. But use the evidence and the law that the Judge will read to you, and based upon those two things alone, render a verdict.

So, as I'm asking questions kind of think about those things. There's no wrong answers but just if we could ask everyone to really tell the truth and to use this time to think, would this be -- would I be a good fit for this?

Some of the other general ideas to think about is that you will be hearing testimony from children in this case or at least one child. She is 7 years old and she'll testify before you. She was 4 years old when the initial disclosures took place. Think about if you think that you would be able to judge the credibility of a child. I'll ask you what your experiences with children, if you have children. But that will be the main witness in the case; the victim of the case. So think about that as well.

Okay. So, Ms. Aguilar you're -- you said that you're single. Is that right?

PROSPECTIVE JUROR NUMBER 002: Correct.

MS. FLECK: Do you have children of your own?

PROSPECTIVE JUROR NUMBER 002: No.

MS. FLECK: Do you have experience with children?

PROSPECTIVE JUROR NUMBER 002: Yes.

MS. FLECK: What kind of experience?

PROSPECTIVE JUROR NUMBER 002: I have baby-sat; I have volunteered with children as a dental hygiene student. We go out and volunteer in elementary schools and educate them on --

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 002: Yeah.

MS. FLECK: Regarding this dental exam that you have, is that something that can be changed?

PROSPECTIVE JUROR NUMBER 002: No. It's been set for awhile and I've already made all the payments. And if I was to not be there then I wouldn't get that money back.

MS. FLECK: Okay. And would -- you wouldn't then be able to go on to take the exam?

PROSPECTIVE JUROR NUMBER 002: Mm-hmm.

MS. FLECK: You said it's on Thursday?

PROSPECTIVE JUROR NUMBER 002: It's -- I leave Thursday at noon. My first exam is Monday morning and the second one is on Saturday.

MS. FLECK: Okay. All right, Judge, based upon that I'm going to make a motion for cause. I don't think that we'll -- I know we won't be done.

MR. BECKER: I would stipulate if the Court would entertain a stipulation.

THE COURT: All right. I'll release you. Why don't you go down and talk to jury commission where she can put you on a two-day trial.

Fill that spot.

THE CLERK: Badge Number 026, Howard Robbins.

THE COURT: You can have a seat Mr. Robbins. Tell me -- you heard the questions that the Court asked, does anything come to mind that you thought you should bring to the attention of the Court.

PROSPECTIVE JUROR NUMBER 026: Nothing that comes to mind.

THE COURT: Do you work?

PROSPECTIVE JUROR NUMBER 026: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 026: I'm a financial advisor.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 026: Yes.

THE COURT: Spouse, work?

PROSPECTIVE JUROR NUMBER 026: Yes.

THE COURT: What does your spouse do?

PROSPECTIVE JUROR NUMBER 026: She works for a contractor's licensing school.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 026: No.

THE COURT: Background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 026: No.

THE COURT: Can you be fair and impartial both to the Defendant and to the State of Nevada?

PROSPECTIVE JUROR NUMBER 026: I believe so.

THE COURT: State.

Make sure you talk more into the mic.

PROSPECTIVE JUROR NUMBER 026: Sure.

THE COURT: Because they're recording it.

MS. FLECK: Okay. Good morning, Mr. Robbins

PROSPECTIVE JUROR NUMBER 026: Good morning.

MS. FLECK: There's another question -- couple of questions that I will be asking each of you individually and then we'll get to some of the concerns that have already been brought up. But one is: Have you or anyone close to you been accused of a crime? That would be accused and or convicted. Not just, you know, if something went on for an ultimate conviction but also if somebody was accused by law enforcement or by someone; friends or family. And then, you know, an allegation was made and there was some sort of an investigation.

The other question is: If you or someone close to you have been the victim of a crime? Do either of those questions reveal any answers for you, Mr. Robbins?

PROSPECTIVE JUROR NUMBER 026: No, they don't.

MS. FLECK: No one accused or a victim.

PROSPECTIVE JUROR NUMBER 026: No.

MS. FLECK: Any experience with law enforcement that has sort of given you an opinion going forward of the criminal justice system?

PROSPECTIVE JUROR NUMBER 026: No.

MS. FLECK: The question is asked often if you know anyone within the District Attorney's office and I'll ask for the group: Do you know -- are you familiar with anyone within the District Attorney's office?

PROSPECTIVE JUROR NUMBER 026: No, I'm not.

MS. FLECK: How about practicing criminal defense attorneys in town?

PROSPECTIVE JUROR NUMBER 026: No.

MS. FLECK: Did you -- Do you have children?

PROSPECTIVE JUROR NUMBER 026: Yes.

MS. FLECK: How many?

PROSPECTIVE JUROR NUMBER 026: Three.

MS. FLECK: How -- what are their ages?

PROSPECTIVE JUROR NUMBER 026: Ten, Seven, and Five.

MS. FLECK: You'll be hearing, obviously, from a victim in this case that's seven. Is your seven-year old a girl or a boy?

PROSPECTIVE JUROR NUMBER 026: A boy.

MS. FLECK: How do you feel about the prospect of listening to testimony from a child, given that you have kids the same age?

PROSPECTIVE JUROR NUMBER 026: I feel fine about that.

MS. FLECK: If you're chosen to be a juror, will you be able to give Jocelyn the kind of respect to have gone through what she went through in her own way and not compare it to one of your kids and maybe say, my child would never have done that; or my child would have do this? Can you give her the ability to kind of have -- process things the way she processed them?

PROSPECTIVE JUROR NUMBER 026: I believe so.

MS. FLECK: Anything then that makes you think that for this particular case, you would not be a fair and impartial juror to both the State and the Defense.

PROSPECTIVE JUROR NUMBER 026: None that I can think of.

MS. FLECK: Okay. Thank you very much. I'll pass for cause.

THE COURT: Becker.

MR. BECKER: Thank you.

I'll do a lead-in to the group as well and then I will get to you, Mr. Robbins. But, basically we have a very brief window of opportunity to try and interact with you to determine whether or not we think you could be fair and impartial in this type of case. So it's really important that we use this time productively

There's a lot of pressure because when you're asked a question, for the most part people know what the appropriate answer is; what you're supposed to say. And there's a lot of pressure to say, really, what we want to hear. But, there are certain things, you know -- what we need to know is not necessarily what you think is appropriate but what are your real feelings.

And I'll give you an example: Judge Smith told everybody that the Defendant is entitled to the presumption of innocence. And that the Defense doesn't need to do anything. And that -- in fact, it's the State that has the burden of proving their case beyond a reasonable doubt.

And my question is, to the group, is there anybody that disagrees with that burden? Is there anybody on the panel that thinks that that's too heavy a burden placed on the State? That the Defendant should in fact, have some kind of burden placed on him to prove himself innocent? Anybody? Show of hands. I'm not seeing anybody; any hands.

But, when you walk into the courtroom and you look around and, you know, you start to surmise what's going on. You see the table that says Defendant, and you look over and of course, two of the people at the table are wearing jackets; Mr. Barral isn't. But you look at him and it's natural, immediately, to start forming an opinion. You start to think about, you know, well first, who's the Defendant? What are the charges? Then you hear the charges and there's a tendency to kind of look at him a different way, just based on the charges.

Is there anybody in this panel that just feels, already, that they've looked over towards, you know, that side of the room and sized Mr. Barral up and has started to form some kind of opinion about his guilt or innocence, just based upon either the way he looks or what's been said so far here today?

And that -- Ms. Hughes.

PROSPECTIVE JUROR NUMBER 007: Yes.

MR. BECKER: Okay.

PROSPECTIVE JUROR NUMBER 007: 007. Having gone through this situation I -- it -- I am just impartial. I mean, you do look over there and it makes you go through it all over again. So, it's not fun.

MR. BECKER: So, you have -- you had indicated previously that -- I think you said that you -- that your son was a victim.

PROSPECTIVE JUROR NUMBER 007: Yes.

MR. BECKER: And because of that, when you look over at Mr. Barral you just feel like you can't look at him with a clean slate. You --

PROSPECTIVE JUROR NUMBER 007: You just can't look at any of that situation with a clean slate. It's -- you have to put it behind you for your everyday living but when you get faced with it right now, it is not good.

MR. BECKER: All right.

PROSPECTIVE JUROR NUMBER 007: Yeah.

MR. BECKER: Well, I understand that that's an emotional experience; having gone through it with your son. And of course, as a mother you're going to be very protective and that's natural.

Is there -- I mean, the Court -- after all the testimony comes forward in this case, the Court is going to read instructions to the jurors. And the jurors are

going to be instructed not to let sympathy or bias play a role. And you're going to be instructed as to exactly what the law is.

My question for you is: Knowing that you're predisposed to this bias, is there any possibility that you could acknowledge it and curb it and follow the instructions that the Judge would give you about how to apply the law?

PROSPECTIVE JUROR NUMBER 007: I don't think I can be impartial. And I don't feel that I should have to be impartial?

MR. BECKER: Okay.

PROSPECTIVE JUROR NUMBER 007: If that makes sense.

MR. BECKER: I don't know if the Court would entertain -- I'd offer a stipulation, if the State wants us to, regarding this witness.

MS. FLECK: Just -- if I could just ask a couple follow-up questions.

MR. BECKER: That's fine.

MS. FLECK: Ma'am. Understanding -- in your particular case, was the person who violated your son -- perpetrated on your son, was he convicted?

PROSPECTIVE JUROR NUMBER 007: I'm not sure if he was convicted of that time, but he had had three other prior things. And I did hear that later on he was, but my son was so upset he did not want to go to trial with it.

MS. FLECK: Did he disclose to somebody?

PROSPECTIVE JUROR NUMBER 007: Did who?

MS. FLECK: Well, ultimately I guess he disclosed.

PROSPECTIVE JUROR NUMBER 007: My son disclosed to somebody?

MS. FLECK: Did he ultimately then come to you and tell you -- disclosed to you what had happened?

PROSPECTIVE JUROR NUMBER 007: He has -- God, I feel like I'm on trial.

I am very confused why I can't get a pass from a trial like this; why I feel like I'm on trial right.

MS. FLECK: And I don't want to make feel at all like you're on trial but the -- I guess that the questioning is is, you know, is this something that you can separate to say, this isn't the person that actually, you know, did these things to your son? Like -- I -- I'm -- I guess I'm trying to find out, was the person who did this to your son, ultimately convicted? Was there a jury trial, where he was found guilty beyond a reasonable doubt?

PROSPECTIVE JUROR NUMBER 007: I do not know that information. It wasn't something I wanted to keep in touch with him on, after the fact.

MS. FLECK: Thank you, Your Honor. I'll submit it to your discretion.

THE COURT: You know, we're not trying to put anybody on trial in the jury box. We're trying to find people that are fair and impartial and hopefully that you wouldn't hold what somebody else did against this defendant. But it doesn't sound to me that you'll be fair, so you can leave. You go down to the jury -- in fact, we'll make sure that you're on a civil jury -- it may be a six-month civil jury, but you're going to go on a civil jury.

Call Susan. Have her put on a civil jury.

MR. BECKER: Your Honor, could we approach?

THE COURT: Sure.

[Bench Conference Begins]

MR. BECKER: My recollection may not be correct, but I think it's possible that the panel was not sworn in.

THE COURT: They aren't.

MR. BECKER: Okay.

THE COURT: I don't swear them in until the end.

MR. BECKER: Okay. In other words, admonish that they are to give truthful answers to all the questions --

MS. FLECK: Yeah

MR. CASTILLO: That's fine.

MS. FLECK: Because I think she was lying

THE COURT: Hmm?

MS. FLECK: I think she was lying.

MR. BECKER: It --

THE COURT: Well, sure.

MS. FLECK: I don't care. I wanted her out anyway

MR. BECKER: For what it's worth, I just wanted to bring --

THE COURT: Well, I do too. I do too. But, you know what we're not going to prosecute --

MR. BECKER: Okay.

THE COURT: For perjury.

MS. FLECK: Yeah.

THE COURT: We're just going to -- I don't swear my jury in until they come back from lunch. If -- even if we break like tonight --

MR. BECKER: Okay.

THE COURT: -- I won't swear them in.

MR. BECKER: Okay.

THE COURT: Because the ones who are sworn in; that's the panel.

MR. BECKER: Right.

THE COURT: And if somebody doesn't show up then we're stuck.

MS. FLECK: But do we have to give them the oath that they have to tell the truth.

THE COURT: No.

MS. FLECK: Or no?

THE COURT: No.

MS. FLECK: Okay.

THE COURT: No.

MS. FLECK: Okay.

[Bench Conference Concludes]

THE COURT: All right. Fill that spot, please.

THE CLERK: Badge Number 027, Linda Coreschi.

THE COURT: Ms. Coreschi, do you work?

PROSPECTIVE JUROR NUMBER 027: No.

THE COURT: Have you worked in the past?

PROSPECTIVE JUROR NUMBER 027: Oh yes.

THE COURT: What have you done?

PROSPECTIVE JUROR NUMBER 027: I was a budget analyst for the State of California.

THE COURT: Have you ever sat a juror before?

PROSPECTIVE JUROR NUMBER 027: Yes.

THE COURT: Where?

PROSPECTIVE JUROR NUMBER 027: California. Many years ago.

THE COURT: Civil or criminal?

PROSPECTIVE JUROR NUMBER 027: One civil. One criminal.

THE COURT: All right. Without telling us the verdict in the civil case, were

you able to reach a verdict?

PROSPECTIVE JUROR NUMBER 027: Yes.

THE COURT: Were you the jury foreperson?

PROSPECTIVE JUROR NUMBER 027: No.

THE COURT: In the criminal case, were you able to reach a verdict?

PROSPECTIVE JUROR NUMBER 027: No.

THE COURT: Were you the jury foreperson?

PROSPECTIVE JUROR NUMBER 027: No.

THE COURT: You heard all the questions that I asked. Was there anything that came to mind you thought should be brought before the Court?

PROSPECTIVE JUROR NUMBER 027: Well, the only thing that I would like to say is that I have a -- I get very nervous about sexual abuse of children. I can't even stand to watch it, I can't stand to hear about it; it just makes me ill that people could do this to children.

THE COURT: Right. Well, that's why we're in trial. You'll follow the -- you'll follow the law that I instruct you on, the law. Yes?

PROSPECTIVE JUROR NUMBER 027: Yes.

THE COURT: And you wouldn't place a burden on the Defendant for what's happened to other children. We know it's happened to other children but it's -- it's not -- certainly not the Defendant.

PROSPECTIVE JUROR NUMBER 027: Yes.

THE COURT: We just want you to be fair and impartial to listen to the testimony that's given here, look at the evidence, and you'll have it to go back in the jury room, and then come to a conclusion at that point. That's what we want you to do. Keep everything within the walls of this court.

PROSPECTIVE JUROR NUMBER 027: Okay.

THE COURT: Can you do that?

PROSPECTIVE JUROR NUMBER 027: Yes.

THE COURT: Okay. State.

MS. FLECK: Thank you. Are we going to -- to Mr. --

THE COURT: No. You're going right there.

MS. FLECK: Okay. Thank you.

Good morning, ma'am. You said that -- I heard that -- did -- or did the Judge ask if you were married?

PROSPECTIVE JUROR NUMBER 027: No.

MS. FLECK: Okay. He didn't ask or you're not?

PROSPECTIVE JUROR NUMBER 027: He didn't ask.

MS. FLECK: Are you married?

PROSPECTIVE JUROR NUMBER 027: Yes.

MS. FLECK: And does your husband work?

PROSPECTIVE JUROR NUMBER 027: He's retired also.

MS. FLECK: What was he retired from?

PROSPECTIVE JUROR NUMBER 027: He was a vice president of a bank.

MS. FLECK: How about children and or grandchildren?

PROSPECTIVE JUROR NUMBER 027: I have a stepdaughter but they live -- she and her daughter live in England.

MS. FLECK: Oh, okay. Did you have opportunity to -- did the two of you grow up together? Did you kind --

PROSPECTIVE JUROR NUMBER 027: No.

MS. FLECK: -- of raise her. No.

PROSPECTIVE JUROR NUMBER 027: No.

MS. FLECK: Okay. How about the questions about listening to children testify in this case or children witnesses? How do you feel about judging credibility of a child?

PROSPECTIVE JUROR NUMBER 027: I'm fine with judging the credibility of a child.

MS. FLECK: When you say that cases like this make you extremely nervous, like Ms. Hughes before, I think that the idea that I was trying to get across is can you wait to make your judgments, wait to make any opinions that you have about the nature of the case in this courtroom until you hear the evidence?

PROSPECTIVE JUROR NUMBER 027: Yes.

MS. FLECK: Okay. I mean, I'm pretty sure anyone can agree sexual abuse of a child is, at the end of the day, a morally reprehensible crime; that it is repulsive to people, those kinds of things. But can you wait to determine the actual of guilt of this particular defendant, whether or not he's actually guilty of committing the crime, until the evidence is presented to you?

PROSPECTIVE JUROR NUMBER 027: Yes.

MS. FLECK: So -- so anything else then about the nature of these charges that gives you concern about sitting on this case?

PROSPECTIVE JUROR NUMBER 027: No.

MS. FLECK: The Judge kind of mentioned some things about shows like CSI; have you ever seen shows like that?

PROSPECTIVE JUROR NUMBER 027: Yes.

MS. FLECK: Would you agree that those shows are based in Hollywood? That this is an actual courtroom? That many of the concepts that you'll see on

shows like that don't actually exist in the real word?

PROSPECTIVE JUROR NUMBER 027: Of course.

MS. FLECK: Okay. So, would you be comfortable with judging a case that didn't have any physical evidence?

PROSPECTIVE JUROR NUMBER 027: Yes.

MS. FLECK: And just had evidence in the form of testimony from witnesses?

PROSPECTIVE JUROR NUMBER 027: Yes.

MS. FLECK: That would be enough to you?

PROSPECTIVE JUROR NUMBER 027: Yes.

MS. FLECK: All right, ma'am. Anything else then that makes you think that this may not be the best case for you to sit on?

PROSPECTIVE JUROR NUMBER 027: No.

MS. FLECK: All right. If you're chosen, promise to do the very best job you can possibly do?

PROSPECTIVE JUROR NUMBER 027: Yes.

MS. FLECK: All right. Thank you. Pass for cause.

THE COURT: Would examine her for cause? And then we'll go back.

MR. BECKER: Thank you.

My -- my concern -- I -- you say that you're very nervous, these types of charges are uncomfortable again and that's natural. My concern as counsel for Mr. Barral is that it will taint the way you look at him and that you will come into this trial predisposed to make a fighting against him. You understand that concern?

PROSPECTIVE JUROR NUMBER 027: Yes.

MR. BECKER: And my question for you is, I know you've felt that it was appropriate, and it is, to bring to our attention this feeling that you have. But

because of this feeling do you -- is your feeling so strong that you feel that you couldn't be a fair juror when it comes to deciding the guilt or innocence of Mr. Barral?

PROSPECTIVE JUROR NUMBER 027: My feeling is very strong and I hope I could be fair.

MR. BECKER: All right. You know these are very serious allegations?

PROSPECTIVE JUROR NUMBER 027: Yes.

MR. BECKER: And the accuser is a child.

PROSPECTIVE JUROR NUMBER 027: Yes.

MR. BECKER: And there's a tendency to feel sympathy, compassion, and understanding for children, right?

PROSPECTIVE JUROR NUMBER 027: Yes.

MR. BECKER: But the instructions tell you, you shouldn't let sympathy dictate how you -- how you approach your task here. In other words, if it comes down to choosing a child or an adult, most of the time people are going to be more sympathetic to children, right?

PROSPECTIVE JUROR NUMBER 027: I don't know.

MR. BECKER: All right. Would you be?

PROSPECTIVE JUROR NUMBER 027: I don't know.

MR. BECKER: You said that you hope you could be sympa -- that you hope that you could be fair to Mr. Barral. I mean, to what degree of certainty do you think you could accomplish that objective?

PROSPECTIVE JUROR NUMBER 027: I don't know.

MR. BECKER: I'm going to -- I -- talk about another subject, which may tie into this ability. And this is really the only time we're going to talk about this issue

would be during the jury selection process. And that is, the Fifth Amendment, which entitles a defendant to remain silent and not testify. Okay?

PROSPECTIVE JUROR NUMBER 027: Yes.

MR. BECKER: So you may, may, have a situation where there is a child accuser; the State maintains burden of proving their case beyond a reasonable doubt. And the defense -- the Defendant, Mr. Barral does not testify. And that would be pursuant to the Fifth Amendment. It's something that would never be talked about outside of voir dire. In fact, there's, you know -- you would be instructed that you couldn't talk about that back in the jury room.

PROSPECTIVE JUROR NUMBER 027: Yes.

MR. BECKER: All right. But, how do you feel about this Fifth Amendment protection. I mean, do you think that if somebody exercised their Fifth Amendment right no to testify, that you would automatically assume that they must have done something wrong?

PROSPECTIVE JUROR NUMBER 027: I would hope that I wouldn't think that.

MR. BECKER: So you think you could overcome that issue; the Fifth Amendment issue?

PROSPECTIVE JUROR NUMBER 027: I think so.

MR. BECKER: But you're not sure you could overcome your predispose -- predisposition toward -- of bias towards people that would be accused of a sexual assault on a child?

PROSPECTIVE JUROR NUMBER 027: That's true.

MR. BECKER: Thank you.

THE COURT: Pass for cause?

MR. BECKER: I'd approach. I'd ask to approach.

THE COURT: Okay. We approach a lot. We take -- we im -- we impede on the jury's time, but go ahead. Let's try and cut this down.

[Bench Conference Begins]

MR. BECKER: Well, I don't like to make cause challenges in front of the jurors because it -- I risk, you know -- if I lose it, I alienate the juror. But in any case, I don't think she's -- you know -- she's teetering on the edge. But, I think she's on the wrong side of it in terms of being able to state unequivocally an ability to be fair. And I'd ask to excuse her for a cause based on that.

THE COURT: I'll talk to her. Let me talk to her.

MS. FLECK: And just for our side -- I mean, I think that she said that at the end of the day she thinks that --

THE COURT: You know --

MS. FLECK: -- sex offense is horrible but -- that she'll only listen to the evidence.

THE COURT: The problem is we ask them: Can you do this? And they haven't heard anything and so that's very troublesome to people; when you say can you be -- well I don't know? I haven't heard anything. And you know that's -- we ask them to make commitment and haven't heard a thing. And so that's kind of troublesome. You know?

MS. FLECK: Commitment just to listen to the evidence

THE COURT: Yeah.

MS. FLECK: -- and wait until --

THE COURT: I'll -- let me talk to her.

[Bench Conference Concludes]

THE COURT: All right. One of the problems that I see when we talk to jurors, very often is, we're asking you to come to a conclusion; will you be fair and impartial. And that is something you have to be. There has to be unequivocal, I'll be fair and impartial. That doesn't mean you're going to be automatic one way or the other. And we're asking you to come to some conclusions and you haven't heard a thing, we haven't presented a thing to you; except for asking a bunch of questions.

So the question I have for you, ma'am is will you listen to the evidence both from the State -- well what -- from what you hear up here and from what you've heard from the Judge, and be fair and impartial to Mr. Barral and to the State of Nevada? That's all; you'll listen to the evidence.

PROSPECTIVE JUROR NUMBER 027: I will listen to the evidence.

THE COURT: Okay. And you'll make a decision from what you see and hear in this courtroom.

PROSPECTIVE JUROR NUMBER 027: Yes.

THE COURT: Okay. I think that's fair. Pass that mic down two, please.

All right. I think we're -- you know what, I let the attorneys take this over and I shouldn't have because now I'm -- I'm a little bit lost on where we are. But, I think we are to you. You're an attorney here in town?

PROSPECTIVE JUROR NUMBER 003: Yes, Your Honor.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 003: Yes.

THE COURT: Does your spouse work?

PROSPECTIVE JUROR NUMBER 003: Yes.

THE COURT: What does your spouse do?

PROSPECTIVE JUROR NUMBER 003: She's a nurse; registered nurse.

THE COURT: Where at?

PROSPECTIVE JUROR NUMBER 003: Summerlin Hospital.

THE COURT: What does she do there?

PROSPECTIVE JUROR NUMBER 003: She's in human infection control now. She used to do bedside nursing but now she's infection control.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 003: No.

THE COURT: Can you listen to the evidence and look at the Exhibits and make a decision fair both to the Defendant and to the State of Nevada?

PROSPECTIVE JUROR NUMBER 003: Yes.

THE COURT: State.

MS. FLECK: Sir, is it Buhyoff?

PROSPECTIVE JUROR NUMBER 003: Buhyoff. Yes.

MS. FLECK: Buhyoff. Any experience in criminal law?

PROSPECTIVE JUROR NUMBER 003: One case that was pled out; a misdemeanor case.

MS. FLECK: And was that here in Nevada.

PROSPECTIVE JUROR NUMBER 003: That was Henderson City; the City of Henderson.

MS. FLECK: Were you -- you were retained to -- by maybe a friend or something like that.

PROSPECTIVE JUROR NUMBER 003: Yes. And it was plead out. Yeah.

MS. FLECK: And did you hate every second of it?

PROSPECTIVE JUROR NUMBER 003: No. It was actually quite interesting because I hadn't done something like that before and so.

MS. FLECK: Okay. Is -- were you asked -- I mean -- and again, I don't want to get into something about the case but were you asked as a friend or somebody close to you to just take -- can you handle this? Or is criminal law something that you've had an interest in practicing -- like did you want to be in criminal defense or is that something that you'd like to do?

PROSPECTIVE JUROR NUMBER 003: I was handling another matter for the client and she asked me to handle this as well. And it was easy enough to do. And I actually consulted a criminal defense attorney on the matter as well; someone I know in town.

MS. FLECK: Okay. So except for that, no experience practicing criminal law?

PROSPECTIVE JUROR NUMBER 003: No.

MS. FLECK: Obviously, you're versed, very well versed in all of the, you know, legal concepts and all of those things. You know, one thing will be physical evidence or I should forensic evidence. Even though the law is that testimony is the same as say, physical evidence; that it's, you know -- the weight that you'll give something, that that's testimony from a witness being the same kind of evidence as -- or carrying the same weight I guess as something like DNA; something like fingerprints.

Is that something that, you know -- even though you'll follow the law, even though that's the way that you would be charged, that you would think to yourself in certain cases I would just require something like physical evidence?

PROSPECTIVE JUROR NUMBER 003: No. I would follow the law.

MS. FLECK: Okay. And being able to understand something -- some cases may not lend themselves to different kinds of evidence?

PROSPECTIVE JUROR NUMBER 003: Yes.

MS. FLECK: Maybe fingerprints, DNA, things like that? Yes?

PROSPECTIVE JUROR NUMBER 003: Yes. Yes.

MS. FLECK: Okay. Then anything else -- do you have kids?

PROSPECTIVE JUROR NUMBER 003: One.

MS. FLECK: And how old?

PROSPECTIVE JUROR NUMBER 003: 17 year old daughter.

MS. FLECK: Okay. All right. Anything else then that you've thought about that makes you think, not a great case for you to sit on?

PROSPECTIVE JUROR NUMBER 003: Well, I believe you mentioned whether or not any family members have been charged with a crime.

MS. FLECK: Oh.

PROSPECTIVE JUROR NUMBER 003: [indiscernible]

MS. FLECK: [indiscernible] Yes.

PROSPECTIVE JUROR NUMBER 003: Yes. I had a brother who was charged with a -- essentially domestic violence matter that was pled out. So in the interest in full disclosure, I'll just give you that information.

MS. FLECK: All right. Thank you. I forgot about that one.

Where was that?

PROSPECTIVE JUROR NUMBER 003: In Florida.

MS. FLECK: How about the other one then the victim of a crime? Have you or anyone close to you been the victim of a crime?

PROSPECTIVE JUROR NUMBER 003: Well, yes. I've had a bicycle stolen.

MS. FLECK: Okay.

PROSPECTIVE JUROR NUMBER 003: Which I didn't really even report because it was -- wasn't worth really my time to do so. But, I've had things stolen;

I've had friends whose houses have been broken into, et cetera. Oh yeah.

MS. FLECK: Okay. And you know, just in -- then again for everyone, the idea of those questions is did it give you any -- did it leave you with any lasting impressions of law enforcement? Sounds like in your -- one way or the other -- and it sounds like in case you didn't report and so you wouldn't have any sort of --

PROSPECTIVE JUROR NUMBER 003: No. No.

MS. FLECK: -- lasting feelings based upon those cases?

PROSPECTIVE JUROR NUMBER 003: No. Nothing that would affect my ability to be impartial on a case like this. No.

MS. FLECK: Okay. All right. Thank you very much, sir. We'll pass for cause.

THE COURT: Mr. Becker.

MR. BECKER: Good morning, Mr. Buhyoff.

PROSPECTIVE JUROR NUMBER 003: Good morning.

MR. BECKER: So you understand the burden of proof, obviously, from both practice and from law school? Correct?

PROSPECTIVE JUROR NUMBER 003: Yes.

MR. BECKER: Would it be fair to say that the burden of proof is the same in a case where there are allegations let's say, sexual assault from a child, as it would be for example, in a DUI case?

PROSPECTIVE JUROR NUMBER 003: Yes.

MR. BECKER: And as a lawyer, you're trained to look at the facts objectively? Correct?

PROSPECTIVE JUROR NUMBER 003: Correct.

MR. BECKER: And not to give in let's say to the temptation to say, well the

accuser here is a child. I think that we should interpret the burden a little differently in this type of case because it's better to error on the side of caution. Is that something that your training has instructed you on how to handle?

PROSPECTIVE JUROR NUMBER 003: Yes. I believe. Yeah. Yes.

MR. BECKER: That you would apply the same burden of proof in this case?

PROSPECTIVE JUROR NUMBER 003: Yes.

MR. BECKER: All right. And you've also been trained to understand the implications of the Fifth Amendment and would not hold it against Mr. Barral for example, if he chose not to testify in this case?

PROSPECTIVE JUROR NUMBER 003: Yes.

MR. BECKER: All right. Thank you. I have no further questions.

THE COURT: Pass for cause?

MR. BECKER: Pass for cause.

THE COURT: Thank you.

Tell me your name.

PROSPECTIVE JUROR NUMBER 005: Excuse me. Name is Val Hart, 005.

THE COURT: Do you work?

PROSPECTIVE JUROR NUMBER 005: Yes.

THE COURT: What do you do?

PROSPECTIVE JUROR NUMBER 005: I'm a western region manager for Dan's Prize, a wholly-owned subsidiary of Hormel Foods. I oversee 13 states; 85 percent of my job is travel. And I have pre-booked airfare as I sit here.

THE COURT: When is your pre-booked airfare?

PROSPECTIVE JUROR NUMBER 005: My first trip is Friday; I go to Salt Lake.

THE COURT: I'm pretty sure we're going to be done by Friday.

PROSPECTIVE JUROR NUMBER 005: And if we're not?

THE COURT: Then we'll deal with that bridge when we get to it. I won't make you miss the flight.

PROSPECTIVE JUROR NUMBER 005: Okay.

THE COURT: Are you married?

PROSPECTIVE JUROR NUMBER 005: Yes.

THE COURT: Your spouse work?

PROSPECTIVE JUROR NUMBER 005: He's self-employed so I guess that would be yes.

THE COURT: What does he do?

PROSPECTIVE JUROR NUMBER 005: He's in motorsports.

THE COURT: Have you ever sat as a juror before?

PROSPECTIVE JUROR NUMBER 005: No.

THE COURT: Background in law or law enforcement?

PROSPECTIVE JUROR NUMBER 005: Dated a lawyer for three years before my husband.

THE COURT: There are a whole bunch of questions I could ask, but I won't.

PROSPECTIVE JUROR NUMBER 005: That's why I didn't marry him.

THE COURT: The question I have is: Can you be fair and impartial to both parties in this case?

PROSPECTIVE JUROR NUMBER 005: Yes.

THE COURT: State.

MS. FLECK: Thank you.

Okay. Mrs. Hart, I'll ask a couple of the ones the Judge may have

wanted to. And I don't want to pry too much but, is he in criminal law in any way? Do you know what kind of law he practiced?

PROSPECTIVE JUROR NUMBER 005: Who?

MS. FLECK: Your ex-boyfriend.

PROSPECTIVE JUROR NUMBER 005: Oh yes. He was a personal injury attorney so he was an ambulance chaser.

MS. FLECK: Okay. Compliments keep coming about him.

Okay. Now, this book -- this trip that you have booked for Friday, what time are you supposed to leave on Friday?

PROSPECTIVE JUROR NUMBER 005: My flight leaves at 6 a.m., Southwest Airlines.

MS. FLECK: Is there any chance of rescheduling that particular trip?

PROSPECTIVE JUROR NUMBER 005: No. I've rescheduled it twice already. And next week I have two days in Phoenix, which is Tuesday, Wednesday. And I have two days in Northern California, which is Thursday, Friday. Those are already booked.

THE COURT: Okay. You're going to have -- I'm going to have to release you. Do you have any problem with me releasing her?

MR. BECKER: No, Your Honor.

THE COURT: Okay. Now you have to send me a copy of your itinerary and your ticket, to my office. I know you wouldn't do it but I've had people say that in the past and can't come up with it. And we've had some serious problems.

PROSPECTIVE JUROR NUMBER 005: Okay. Do you just need Friday or do you need next week as well.

THE COURT: Just Friday.

NRS 200.364 defining sexual penetration states:

> "Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a **person into the genital or anal openings of the body of another**, including sexual intercourse in its ordinary meaning.

In the present case, a rational trial of fact could not have found the Appellant guilty of these charges based upon the testimony of the witnesses presented at trial. It was made clear to *the jury from the beginning that there were no physical findings substantiating digital or anal* penetration to the named victim through injury or the Defendant's DNA. Dr. Sandra Cetl confirmed the same as a State's witness through direct and cross examination. Accordingly, the State's entire case hinged on the statements of the named victim Jocelyn Coleman.

Nicole Hammands, Jocelyn's mother, was the first to take the stand. She testified only that Jocelyn told her: "When I went to sleep, Dustin came in the room, sat on the futon, looked at my privates and dug into them."[1] Nicole asked no follow up questions and nowhere in her testimony was it established that Jocelyn told Nicole that actual penetration of the genital openings occurred.

Jocelyn then took the stand. On direct, Jocelyn testified that "he digged in my privates." She testified that he put his finger inside but did not know where the privates were. When asked whether the touching was over or under the clothes, Jocelyn replied "I don't' know." On cross examination, Jocelyn did not provide further clarification other than to say "dug in privates" and that her mother helped her practice.

Jocelyn's grandmother, Joanna Hammond, took the stand and testified that Jocelyn told her: "Dustin touched her and dug up in her." Like Nicole, Joanna did not ask any follow up questions of Jocelyn as to whether or not any penetration occurred.

Megan Barral was then called to the stand. She testified that Jocelyn stated: "Uncle Dustin touched me and he hurt me." Jocelyn did not provide clarification and Megan was denied the opportunity to conduct follow up questioning.

The final witness called to testify as to what Jocelyn stated was former detective Timothy Hatchett (hereinafter "Hatchett"). During the direct examination the majority of Jocelyn's voluntary statement was played for the jury. Jocelyn initially stated she did not know why her privates were hurting and that no one had touched her privates. It is only after Hatchett elicits testimony through the use of leading questions and the "dig" prompt that Jocelyn finally states: "Levi's daddy dug in my privates." Upon questioning Jocelyn did state that it was "under my pants and my panties" and inside. However, Hatchett failed to definitively clarify through precise questions what inside may have meant and whether or not digital penetration of Jocelyn's vagina actually occurred.

Likewise, Jocelyn's testimony in spcaking to Hatchett also failed to substantiate that anal penetration occurred. Jocelyn initially stated that the Defendant was "trying to dig in my butt." After Hatchett once again provides leading questions, Jocelyn states that he goes to her bottom and it "goes inside." Again there were no follow up questions from Hatchett to definitively clarify whether or not penetration of Jocelyn's anal cavity actually occurred.[2]

Taken as a whole, Jocelyn's testimony on the stand, video voluntary statement and her NRS 51.385 hearsay exceptions conveyed by other witnesses failed to establish beyond a reasonable doubt that the digital sexual penetration alleged in counts 1 and 2 actually occurred.

Presumably the State will counter that when considering the sufficiency of the evidence in sexual assault cases, "the victim's testimony alone is sufficient to uphold a conviction." Rose, 123 Nev. at 203, 163 P.3d at 414. However, the Nevada Supreme Court has also held that "[a]lthough the victim's testimony need not be corroborated...'the victim must testify with *some* particularity regarding the incident in order to uphold the charge." LaPierre v. State, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992).

Given that Jocelyn testified only that the Defendant "digged in my privates," did not know whether the touching was over or under the clothes, initially denied in her voluntary

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[1] All testimony is accurate to the best of counsel's recollections and notes taken during the course of the trial proceedings. Counsel has also requested the video of the trial and respectfully requests to be allowed to supplement this motion once it is available as necessary.

statement that any touching occurred, and that Hatchett elicited testimony from her through the use of leading questions, it can hardly be said that Jocelyn testified with enough particularity to uphold the charges. Most importantly, Jocelyn does not definitively state for the record that penetration, however slight, actually occurred as required by NRS 200.364. Accordingly, has State failed to produce the minimum threshold of evidence upon which a conviction for sexual assault may be based and an acquittal should be granted by this Court.

II. CONFLICTING EVIDENCE WAS PRESENTED AND THIS COURT SHOULD GRANT A NEW TRIAL BECAUSE THE TOTALITY OF THE EVIDENCE FAILS TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

Alternatively, the Defendant respectfully requests a new trial based on the conflicting testimony of the named victim and Megan Barral during the course of the trial.

A. Applicable Law

Motions for a new trial in criminal cases are governed by NRS 176.515 which states in pertinent part:

> 1. The court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.
> ....
> 4. A motion for a new trial based on any other grounds must be made within 7 days after verdict or finding of guilt or within such further time as the court may fix during the 7-day period.

The Nevada Supreme Court has consistently held that pursuant to the provision regarding "other grounds," the district court may grant a motion for a new trial based on an independent evaluation of the evidence. State v. Purcell, 110 Nev. at 1393; 887 P.2d at 278. Historically, Nevada has empowered the trial court in a criminal case where the evidence of guilt is conflicting, to independently evaluate the evidence and order another trial if it does not agree with the jury's conclusion that the defendant has been proven guilty beyond a reasonable doubt." Washington v. State, 98 Nev. 601, 604; 655 P.2d 531, 532 (1982) (quoting State v. Busscher, 81 Nev. 587, 589; 407 P.2d 715, 716 (1965)). [A] conflict of evidence occurs where there is

[2] It should be noted that Jocelyn does not describe any touching of her bottom during her direct testimony or on cross examination.

sufficient evidence presented at trial which, if believed, would sustain a conviction, but this evidence is contested and the district judge, in resolving the conflicting evidence differently from the jury, believes the totality of evidence fails to prove the defendant guilty beyond a reasonable doubt. State v. Walker, 109 Nev. 683, 685-86, 857 P.2d 1, 2 (1993).

Accordingly, the "totality of the evidence" evaluation is the standard for the district court to use in deciding whether to grant a new trial based on an independent evaluation of conflicting evidence. Purcell 110 Nev. at 1394; 887 P.2d at 278-279 (1994).

B. Standard of Review

The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court and will not be disturbed on appeal absent palpable abuse. Dominques v. State, 112 Nev. 683, 695; 917 P. 3d 1364, 1373 (1996), *quoting* Pappas v. State, Dept' Transp., 104 Nev. 572, 574, 763 P. 2d 348, 349 (1988).

C. Discussion

In the present case, there was conflicting evidence presented between Jocelyn and Megan Barral. *In contrast to Jocelyn's digging story, Megan testified that Dustin told her that* when he was asked to check on their son Joshua he accidentally sat on Jocelyn while she was sleeping on the futon. This was also conveyed to Joanna Hammonds.

Further, the baby monitor in Joshua's room became a focal point of discussion during Megan's testimony and during closing arguments. Megan testified that Dustin went into the room to check on Joshua after she heard Joshua fussing on the monitor and that it was "his turn." She stated on cross that he came right back to the room. After being shown the photograph of the baby monitor admitted as Defense Exhibit "A," Megan stated the volume switch was on the master unit in her bedroom and that if the unit in Joshua's room was unplugged it would emit a *high pitched sound. Megan also stated that she was attuned to the sound of her child's crying* and that she did not hear anything strange or unusual while Dustin was in the room with Joshua and Jocelyn. Upon inquiry, Megan stated that at no time did she hear Dustin over the monitor or any cries for help from Jocelyn.

In contrast, Jocelyn states in her interview with Hatchett that Dustin was quite vocal while he was in the room with her stating in part that she told him to "stop, but he didn't stop." Jocelyn also relayed in the interview that Dustin purportedly stated to her "I want to do it again and again."

The Defense respectfully submits that the evidence of guilt is conflicting because the jury in finding the Defendant guilty of both sexual assault charges arguable resolved the conflicting evidence by relying on Jocelyn's rendition of events to Hatchett and disregarding or ignoring not only Dustin's rendition of events that he accidentally sat on Jocelyn, but also Megan's testimony as to how long Dustin was out of the room, and that she did not hear anything on a very sensitive baby monitor,

Given Jocelyn's lack of credibility including but not limited to her memory issues and inconsistent testimony as to what took place, it is submitted that the totality of the evidence fails to prove the Defendant guilty beyond a reasonable doubt because believing that these events actually occurred necessarily hinges on believing Jocelyn's testimony. In accordance with State v. Walker, the evidence is clearly contested between Jocelyn's and Megan's version of events, and this Court in resolving the conflicting evidence differently from the jury should find that the totality of the evidence fails to prove the defendant guilty beyond a reasonable doubt. In contrast to the State's anticipated argument, the Defense is not asking the Court to find that Megan's testimony was absolutely credible. Instead, the Defense is asking this Court to find that the State failed to prove the Defendant guilty beyond a reasonable doubt due to the inherent unreliability of Jocelyn's overall testimony which the State relied on throughout the case.

Accordingly, the Defendant submits that based on the conflicting evidence presented, this Court should order another trial based on an independent evaluation of conflicting evidence.

III. A NEW TRIAL IS REQUIRED BECAUSE THE COURT COMMITTED A FUNDAMENTAL ERROR BY NOT SWEARING IN THE JURY VENIRE

A new trial is required because the Defendant suffered a structural error during jury selection affecting his fundamental rights as the jury venire was never sworn in by the Court prior to voir dire.

A. Applicable Law

There are two classes of constitutional errors, "trial error" and "structural defects." Arizona v. Fulminante, 499 U.S. 279, 307–08, 309–10, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991). Trial errors are subject to harmless-error review because these errors "may ... be quantitatively assessed in the context of other evidence presented in order to determine whether [they were] harmless beyond a reasonable doubt." Fulminante, 499 U.S. at 307–08, 111 S.Ct. 1246. Conversely, "structural defects" "affect the framework within which the trial proceeds, rather than simply an error in the trial process itself." Id. at 309–10, 111 S.Ct. 1246. Such errors are grounds for reversal because they "defy analysis by 'harmless-error' standards." Id. at 309, 111 S.Ct.1246.

NRS 16.030(5) regarding the drawing an examination of jurors and the oath or affirmation that must be conveyed says in relevant part:

> Before persons whose names have been drawn are examined as to their qualifications to serve as jurors, the judge or the judge's clerk **shall administer an oath** or affirmation to them in substantially the following form (emphasis added):
> *Do you, and each of you, (solemnly swear, or affirm under the pains and penalties of* perjury) that you will well and truly answer all questions put to you touching upon your qualifications to serve as jurors in the case now pending before this court (so help you God)?

B. Discussion

After voir dire began, Lead Counsel Michael Becker noticed that the swearing in had not occurred and asked to approach the bench to inform the Court of the same. Counsel respectfully noted that the jurors were not sworn to tell the truth. The Court noted that it was not necessary as he only did the swearing in once a jury was chosen and all challenges had been exercised.

The Defense submits that the Court's failure to swear in the jury venire in contradiction of statute constitutes a structural defect as it affected the very framework of the trial itself, namely the necessity of conveying to the juror's the solemn necessity of telling the truth during voir dire.

Although the Nevada Supreme Court has not specifically ruled that errors in jury selection with regard to swearing in a jury are structural in nature, the Court has held in the

context of Batson challenges that jury selection issues are structural in nature. *See* Diomampo v. State, 124 Nev. 414, 422-23, 185 P. 3d 1031 (2008) ("Discriminatory jury selection in violation of Batson constitutes structural error, or error that affects the framework of a trial).

In the present case, by not swearing in the jury venire, the Defendant was deprived of the opportunity to adequately elicit sworn responses. By not properly admonishing the jury venire that they had a solemn duty to tell the truth at all stages of the proceedings, there is no structural guarantee that the potential jurors felt obliged to give thorough and accurate responses. Given that jury selection is a fundamental part of the trial process, it can hardly be argued that this error was not structural in nature. Accordingly, a new trial is required and this Court should order the same.

CONCLUSION

An acquittal should be granted by this Court because a rational trier of fact could not have found that the Defendant was guilty of the two counts of sexual assault based upon the testimony of witnesses presented at trial. Alternatively, a new trial is warranted based on the conflicting testimony of Megan Barral and the named victim Jocelyn Coleman. Finally, a new trial should be granted by this Court due to the structural error of not swearing in the jury venire prior to voir dire.

WHEREFORE, the Defendant DUSTIN BARRAL respectfully requests that this Honorable Court grant his motion for an acquittal or alternatively for a new trial.

Dated this 24 day of June, 2013.

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531
Attorneys for Defendant DUSTIN BARRAL

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 11th day of June, 2013

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531

CERTIFICATE OF FILING

I, Jennifer Alva, an employee of Las Vegas Defense Group, hereby certify that service of the above and foregoing MOTION FOR ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL, was made this 7th day of June, 2013, by Electronic Filing and/or Facsimile Transmission to:

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DUSTIN JAMES BARRAL,
#2755494

Defendant.

Case No: C269095

Dept No: VIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL

DATE OF HEARING: July 8, 2013
TIME OF HEARING: 8:00 a.m.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney, through MICHELLE N. FLECK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in State's Opposition to Defendant Motion for Acquittal or in the Alternative a New Trial.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

BACKGROUND FACTS

On July 10, 2010, four year old Jocelyn Coleman stayed the night at her Aunt Megan and Uncle Dustin Barral's house because her mother Nicole Hammands had been admitted to the hospital. That night, Jocelyn went to bed on a futon in the same bedroom as her six-month old cousin, Joshua Barral, who slept in the crib next to the futon. During the night, Jocelyn was trying to sleep but couldn't because the Defendant came into the room, sat next to her on the futon, and, as Jocelyn says, "dug in her privates" and in her butt. After Defendant dug in her privates and butt, Jocelyn saw him go into the bathroom across the hallway and wash his hands. Defendant then returned to the bedroom he shared with his wife Megan Barral and woke her up to tell her he had "accidentally sat" on Jocelyn because he "forgot she was there." Notably, Levi Barral and Jocelyn's younger sister were sleeping on the floor in Dustin and Megan's room.

On Sunday morning, Megan and Dustin were in their room with Jocelyn when Megan relayed Dustin's story to Jocelyn, "Isn't it funny how Uncle Dustin sat on you last night?" Megan described Jocelyn's reaction as confused or as though she brushed it off like she didn't remember. The story of Uncle Dustin accidentally sitting on Jocelyn was repeated, yet again, at church that Sunday in front of Joanna Hammands. Again, Jocelyn's reaction, as described by the Defendant to Megan, was confusion, like she didn't know what had happened. On Sunday afternoon great aunt Kathy Denny took Jocelyn and her sister to visit Nicole at the hospital, where they visited in the hallway. Jocelyn stayed the night again at Dustin and Megan's house on Sunday; though on Sunday night she slept in the same room with her cousin Levi and her sister.

As per the usual routine, Jocelyn went with her sister to their father's house on Monday, where they stayed overnight. Jocelyn finally returned home to her mother late Tuesday afternoon or early evening. Upon arriving home, there was a family dinner with Megan, her two children, Nicole and her two daughters and the maternal grandparents. After dinner, Megan left with her two boys and Nicole took her two daughters upstairs for a bath.

When Nicole got upstairs Jocelyn told Nicole she needed to talk to her, then made Nicole go into her room and sit down on her bed before Jocelyn told Nicole that Uncle Dustin looked at, touched and dug in her privates. Nicole immediately knew this horrific act had to be reported so she asked Jocelyn one simple follow up question, "Are you telling the truth?" Jocelyn answered in the affirmative.

Shocked by what Jocelyn had just said, Nicole went downstairs to her parents leaving Jocelyn and her sister upstairs. Nicole's mother, Joanna Hammonds, went upstairs to take care of the girls while Nicole tried to collect herself emotionally downstairs. Jocelyn then told Joanna that Uncle Dustin had dug in her privates. Joanna did not ask any follow up questions. Megan returned to the house with the boys and her parents told her what the Defendant had done to Jocelyn.

Later that evening Jocelyn came downstairs, sat on Megan's lap and, in the presence of at least Nicole and Joanna, told Megan Uncle Dustin touched her and hurt her. Nicole called 3-1-1 Tuesday night at which time she was provided contact information to follow up with a detective the next day. On Wednesday, approximately four days after the event, Nicole spoke with then-detective Timothy Hatchett who told her to take Jocelyn to Sunrise Pediatric hospital for a SCAN exam and Nicole complied. The SCAN exam yielded one non-specific finding, Jocelyn had vaginitis. The following day, Nicole took Jocelyn to the Southern Nevada Children's Assessment Center where Detective Hatchett forensically interviewed Jocelyn Coleman, which was video-recorded.

Jocelyn Coleman gave Detective Hatchett an extremely detailed, descriptive disclosure that "Uncle Dustin" or "Levi's daddy" dug in her privates and butt with his fingers. Jocelyn described when it happened, including that she was sleeping in the room with Josh while Levi and her sister slept in Aunt Megan and Uncle Dustin's room. Jocelyn also reported her mom was at the hospital when it happened. Jocelyn used descriptive, age-appropriate language to describe how the Defendant reached under her pajamas and panties, and described his fingers turning into her privates. Jocelyn used the words dug or digged repeatedly throughout the interview to describe what the Defendant did to her with his

fingers in her privates and butt. She complained the digging hurt bad and caused pain that lasted for awhile. Jocelyn reported she could see Uncle Dustin in the room and reported he wore shorts that night. Jocelyn recalled that after Uncle Dustin dug in her privates and butt he went and washed his hands in the bathroom before he went back to his room.

Detective Hatchett conducted a thorough investigation of the events, interviewing Nicole, Megan, other relatives, the father of the victim. Ultimately, Detective Hatchett made a probable cause arrest of the Defendant at his place of work.

PROCEDURAL FACTS

On November 29, 2010, the Defendant was charged by way of a Criminal Information with two counts of Sexual Assault with a Minor Under Fourteen Years of Age (Category A felony, NRS 200.364, 200.366) for digitally penetrating Jocelyn Coleman's genital and anal openings on or about July 10, 2010. The matter was set for trial and continued at least five (5) times with negotiations ongoing. The matter finally proceeded to Jury Trial on May 28, 2013, at 9:00 a.m.

The Jury Trial lasted approximately four (4) days during which the State called seven (7) witnesses to testify, including the victim Jocelyn Coleman who was seven (7) years old at the time of Jury Trial. Nearly three years after the initial disclosure, Jocelyn came into court on May 29, 2013, and testified in front of the jury and the court that Dustin dug in her privates. Jocelyn testified with some particularity as to where she was when Dustin dug in her privates, who was in the room and who she told about the events. In accordance with Nevada Revised Statute ("NRS") 51.385, which provides for the admission of the statements of a victim of sexual assault who is under ten years of age describing sexual abuse, Jocelyn's multiple, consistent disclosures were admitted as testimonial evidence through State witnesses Nicole Hammonds, Joanna Hammonds, Megan Hammonds, and now-Sergeant Timothy Hatchett. Additionally, the forensic interview of then four-year-old Jocelyn Coleman was admitted into evidence through Sergeant Hatchett.

On Friday, May 31, 2013, the jury returned a verdict of guilty on both counts of Sexual Assault With a Minor Under Fourteen Years of Age against Defendant, who was then

remanded into custody and sentencing is scheduled for August 8, 2013. Defendant filed the instant motion June 7, 2013, wherein he seeks to have the jury verdict overturned as a matter of law based on three arguments: 1. sufficiency of the evidence, 2. conflicting facts; 3. failure to give the jury panel the oath in advance of jury selection. The State contends Defendant's arguments fail as a matter of law and the jury verdict should stand.

APPLICABLE LAW

Pursuant to NRS 176.515:

> 1. The court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.
> 2. If trial was by the court without a jury the court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.
> 3. Except as otherwise provided in NRS 176.0918, a motion for a new trial based on the ground of newly discovered evidence may be made only within 2 years after the verdict or finding of guilt.
> 4. A motion for a new trial based on any other grounds must be made within 7 days after the verdict or finding of guilt or within such further time as the court may fix during the 7-day period.

A defendant may seek a new trial as a matter of law by challenging the sufficiency of the evidence presented in support of the jury verdict. The standard of review for sufficiency of the evidence leading to conviction is whether the trier of fact, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt. Edwards v. State, 90 Nev. 255, 258-259, (1974). In reviewing a claim focused on sufficiency of the evidence, the relevant inquiry is "whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984); (citing Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979)) (emphasis in original). Where there is substantial evidence to support a jury verdict, it should not be disturbed. Bolden v. State, 97 Nev. 71, 73, (1981).

Furthermore, "it is the [fact finder]'s function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses." Origel-Candido v.

State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998), (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); see also Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979) (Court held it is the function of the jury to weigh the credibility of the identifying witnesses); Azbill v. State, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972) (In all criminal proceedings, the weight and sufficiency of the evidence are questions for the trier of fact; its verdict will not be disturbed if there is evidence to support it), cert. denied, 429 U.S. 895, 97 S.Ct. 257 (1976).

This standard does not require this Court to decide whether "it believes that the evidence at the trial established guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. at 319-20, 99 S.Ct. at 2789 (quoting Woodby v. INS, 385 U.S. 276, 282, 87 S.Ct. 483, 486 (1966)). This standard thus preserves the fact finder's role and responsibility "[to fairly] *resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences* from basic facts to ultimate facts." Id. at 319, 99 S.Ct. at 2789.

I. THE STATE PROVED BEYOND A REASONABLE DOUBT THAT DEFENDANT USED HIS FINGER(S) TO PENETRATE JOCELYN COLEMAN'S VAGINA AND ANUS AND AS SUCH A NEW TRIAL IS NOT WARRANTED

Defendant argues in the instant motion that he should be acquitted or granted a new trial because the State did not present sufficient evidence Defendant actually penetrated the victim's vagina and anus with his fingers. Defendant's argument suggests that in order to establish penetration the victim must use specific words or phrases at trial. This argument merely rehashes the weight of the evidence presented at trial rather than raise an issue of law, such as insufficient evidence, or new evidence.

NRS 176.515(1) provides the exclusive grounds upon which a court may grant a new trial. *See* State v. Harvey, 62 Nev. 287, (1944). Those grounds include: (1) if a new trial is required as a matter of law or (2) newly discovered evidence. Here, there is no allegation by the Defendant that there is any newly discovered evidence. As such, the only situation in which the Defendant would be entitled to the remedy he requests, namely a new trial, is

where it would be required as a matter of law.

A criminal Defendant is not entitled to new Trial simply because he or she does not agree with the verdict returned by the jury. In the instant case, the State can find no other basis for the Defendant's request *other* than that he is not satisfied with the jury's determination. The fact finder is charged with resolving any conflict of evidence and assessing the weight of the evidence and to determine the credibility of the witnesses. Origel-Candido v. State, *supra*; Azbill v. State, *supra*.

Even in cases where a Defendant moves for a new Trial based on something that can be substantiated other than just a general dislike of the result, such as where there is newly discovered evidence, the Nevada Supreme Court has held that a new trial is not allowable unless there is a reasonable probability that the a new trial would have led to a different result. Walker v. State, 113 Nev. 853, 1997, rehearing denied, certiorari denied 119 S.Ct. 377, 525 U.S. 950, 142 L.Ed.2d 311, State v. Crockett, 84 Nev. 516, (1968)., Pacheco v. State, 81 Nev. 639, (1965).

Here, the State presented evidence at Trial from which a reasonable trier of fact could find the Defendant guilty of two counts of Sexual Assault With a Minor Under the Age of 14. The facts produced at Trial indicated that on or about July 10, 2010, Defendant Dustin Barral, used his finger(s) to penetrate his 4 (four) year old niece's vagina and anus. Jocelyn testified that the Defendant "dug" in her privates when she was staying the night at her Aunt Megan and Dustin's house. She was sleeping in the room with Levi's younger brother when Dustin came into the room and placed his hands under her clothes and proceeded to dig in her privates.

Additionally, pursuant to NRS 51.385, Jocelyn's prior recorded statement to the detective – given within days of the incident – was played for the jury. Throughout the recorded interview, Jocelyn repeatedly describes Uncle Dustin or "Levi's Daddy" as digging in her privates and butt with his fingers. She repeatedly uses the words dig, dug or digging to describe what Defendant did. She also describes Defendant's fingers going under her clothes and turning right to her privates. In the interview, Jocelyn uses the word "sinking in"

to describe what happened to the Defendant's fingers while he was digging in her privates. Jocelyn accurately reports where she slept on the night in question, where her two cousins Levi and Josh were sleeping, as well as her sister and Uncle Dustin and Aunt Megan. Jocelyn also describes how she saw Uncle Dustin when he was in the room with her and how she watched him go to the bathroom and was his hands right after he dug in her privates and butt. Pursuant to NRS 51.385, the State also elicited Jocelyn's statements of how Uncle Dustin had dug in her privates or touched her and hurt her from Nicole Hammonds, Joanna Hammonds and Megan Barral.

Contrary to Defendant's claim, there is no absence of evidence the Defendant digitally penetrated the child victim's vagina and anus, such that acquittal or a new trial is required as a matter of law. Clearly, the jury found the language used by Jocelyn of dug, dig, digged in her privates and butt, and that his fingers were sinking into her privates described how the Defendant digitally penetrated her vagina and anus. That the victim used age-appropriate language raised a question for the jury to determine if the testimony constituted penetration. Clearly, the verdict of guilty on both counts of Sexual Assault With a Minor under 14 demonstrates the jury reached a conclusion any reasonable trier of fact would in light of the testimony at Trial.

II. THERE WAS NO CONFLICT OF EVIDENCE AND, EVEN SO, ANY CONFLICT OF EVIDENCE WAS RESOLVED BY THE FACT FINDER

Defendant claims there was conflicting evidence presented at trial regarding the operation of a baby monitor in the room in which Jocelyn was staying the night the Defendant sexually assaulted her. This argument is merely a rehash of Defendant's closing arguments perpetuated in the instant motion, which conveniently disregards the complete testimony of Megan Barral elicited at trial. As such, it does not present an issue of law or new evidence to support a request for a new trial or an acquittal. As discussed above, conflicting evidence is to be resolved by the trier of fact and is not a basis for granting a new trial. Origel-Candido v. State, *supra*; Azbill v. State, *supra*.

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Here, Megan Barral testified, in part, that if the baby monitor had been turned off it would have resulted in a beeping noise in the monitor in her room alerting her that the device had been unplugged. Megan also testified the volume of the monitor in Josh's room could be turned down, such that she wouldn't be able to hear any noise in Josh's room in the monitor. In closing arguments, the defense argued this issue at length and the State addressed the misguided argument in rebuttal.

The evidence is clear that a reasonable trier of fact could have been convinced of the defendant's guilt of Sexual Assault With a Minor Under the Age of 14 beyond a reasonable doubt. Edwards, *supra*. In fact, that is precisely what occurred during this Trial. The jury assessed the weight of the evidence and determined the credibility of all of the witnesses. Origel-Candido, McNair v. State, Culverson, Azbill, *supra*. The jury returned a verdict in line with the evidence presented. Therefore, because there was substantial evidence to support the jury verdict, it must not be disturbed. Bolden v. State, *supra*.

III. THE COURT DID NOT COMMIT A FUNDAMENTAL ERROR DURING VOIR DIRE AND A NEW TRIAL IS NOT WARRANTED

NRS 16.030(5)

> 5. Before persons whose names have been drawn are examined as to their qualifications to serve as jurors, the judge or the judge's clerk shall administer an oath or affirmation to them in substantially the following form:
> Do you, and each of you, (solemnly swear, or affirm under the pains and penalties of perjury) that you will well and truly answer all questions put to you touching upon your qualifications to serve as jurors in the case now pending before this court (so help you God)?

In this case, after voir dire had begun, parties noticed that the swearing in of the prospective jury panel had not occurred. Parties approached the bench and informed the Court of the same. The Court indicated that he would swear in the jury once all members were selected and all challenges had been exhausted. Voir dire continued without objection from either the defense or the State.

///

Defendant now contends the Court committed a structural error during voir dire by waiting until the jury was chosen to administer the oath. There has been no showing or even suggestion of any impropriety or injustice occurring in the instant case with regards to the chosen jurors. Both the State and the defense were afforded ample opportunity to examine each juror. At no point did the defense object to the process or the panel or any of the empaneled jurors. It isn't until the instant motion, after the jury rendered a verdict disfavorable to the defense, that an actual objection is lodged.

In Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003), the Nevada Supreme Court addressed the failure of defense counsel to object to jury instructions which he alleged were erroneous on appeal. The Court stated:

> Generally, the failure to clearly object on the record to a jury instruction precludes appellate review. Walker v. State, 116 Nev. 670, 673, 6 P.3d 477, 479 (2000). However, "this court has the discretion to address an error if it was plain and affected the defendant's substantial rights." Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001); *see also* NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."). In conducting plain error review, we must examine whether there was "error," whether the error was "plain" or clear, and whether the error affected the defendant's substantial rights. *See* United States v. Olano, 507 U.S. 725, 732–35, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993) (discussing appellate court's role in applying Fed.R.Crim.P. 52(b), which is identical to NRS 178.602, in deciding whether to overturn a judgment below). Additionally, the burden is on the defendant to show actual prejudice or a miscarriage of justice. Phenix v. State, 114 Nev. 116, 119, 954 P.2d 739, 740 (1998).

More recently, in Perez v. State, 2012 WL 1448289 (Nev), an unpublished opinion cited here by the State as informative and not as legal precedent, the Court was assigned to address the issue of whether or not the district court violated NRS 16.030(4) by failing to empanel jurors in the order in which their names were drawn. The Court determined that because Perez had failed to object at the time of trial, it would review the matter for plain

error, citing Green v. State, *supra*. The Court concluded that "[b]ecause Perez had not demonstrated that any violation of the jury selection statute resulted in actual prejudice affecting his substantial rights, no plain error existed." *See*, id. Here, Defendant has failed to show any actual prejudice affecting his substantial rights, in which case there can be no showing of plain error and certainly no showing that a new trial is warranted.

While Nevada has not addressed this specific issue, other jurisdictions have held that a trial court's failure to administer an oath of truthfulness to all prospective jurors at commencement of jury selection did not require reversal. In People v. Carter, 117 P.3d 476, 36 Cal.4th 1114 (2005), *cert denied*, 126 S.Ct. 1881 (2006), the defendant contended the trial court erred at the commencement of the voir dire process in failing to administer the oath of truthfulness to the prospective jurors who comprised the second and third panels, and the error was a "structural defect" and therefore the entire matter was reversible per se, *citing* Arizona v. Fulminante (1991) 499 U.S. 279, 307–309, 111 S.Ct. 1246, 113 L.Ed.2d 302, and People v. Cahill (1993) 5 Cal.4th 478, 502, 20 Cal.Rptr.2d 582, 853 P.2d 1037; (*see also* People v. Pelton (1931) 116 Cal.App.Supp. 789, 791, 7 P.2d 205 [holding that a conviction by an unsworn jury renders the verdict "a nullity justifying a reversal"].) Id., 117 P.3d at 517, 36 Cal.4th at 1175.

In disagreeing with the defendant's position the California Supreme Court reasoned as follows:

> ...First, neither Arizona v. Fulminante, *supra*, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 518 (holding that the harmless-error rule applies to erroneously admitted coerced confessions), nor People v. Cahill, *supra*, 5 Cal.4th 478, 20 Cal.Rptr.2d 582, 853 P.2d 1037 (holding that the erroneous admission of a coerced confession does not require automatic reversal under California law), addressed the juror-oath question presented here and therefore are unhelpful to defendant's case. The fundamental or "structural" defects discussed in those decisions consisted of significant irregularities, unlike the present situation, where the trial court partially but not fully complied with the oath-giving provisions set forth in Code of Civil Procedure section 232. (See Arizona v. Fulminante, *supra*, 499 U.S. at pp. 309–310, 111 S.Ct. 1246; People v. Cahill, supra, 5 Cal.4th at 501–502, 20

> Cal.Rptr.2d 582, 853 P.2d 1037.) Similarly, the decision in People v. Pelton, supra, 7 P.2d 205, 116 Cal.App.Supp. 789, unlike the present case, involved the trial court's failure to administer the oath to jurors mandated by Code of Civil Procedure section 232, subdivision (b). These decisions do not support defendant's assertion that the trial court's failure to administer the oath of truthfulness to prospective jurors, as provided in Code of Civil Procedure section 232, subdivision (a), constitutes a structural defect. Indeed, although empanelling one or more jurors who are actually biased against the defense would constitute structural error (In re Carpenter (1995) 9 Cal.4th 634, 654, 38 Cal.Rptr.2d 665, 889 P.2d 985, *citing* Arizona v. Fulminante (1991) 499 U.S. 279, 309, 111 S.Ct. 1246, 113 L.Ed.2d 302), here the trial court's error in failing to swear some of the prospective jurors has not been shown to have resulted in the inclusion of any biased jurors on the panel, and defendant's claim of structural error fails for that reason.

Id., 117 P.3d at 518, 36 Cal.4th at 1176.

The Court further opined:

> Second, although there is a dearth of California case law examining the factual situation presented here, our decision in an analogous case, People v. Lewis (2001) 25 Cal.4th 610, 629–631, 106 Cal.Rptr.2d 629, 22 P.3d 392, is instructive. In Lewis, we addressed the question whether the trial court erred in failing to administer the oath to prospective jurors prior to their answering written questionnaires regarding their views on the death penalty and other matters. (Id., at p. 629, 106 Cal.Rptr.2d 629, 22 P.3d 392.) Observing that the prospective jurors had signed their questionnaires under penalty of perjury and were sworn under Code of Civil Procedure section 232, subdivision (a), prior to being personally questioned in open court, we held that although the defendant was "correct that prospective jurors should have been sworn under Code of Civil Procedure section 232[, subdivision (a),] before filling out the questionnaires, he fails to establish that he was prejudiced by the trial court's failure to administer the oath at that juncture. [Citations.]" (Id., at pp. 630–631, 106 Cal.Rptr.2d 629, 22 P.3d 392; *see also* People v. Cruz (2001) 93 Cal.App.4th 69, 72–74, 113 Cal.Rptr.2d 86 [no prejudicial error where the oath taken pursuant to Code of Civil Procedure section 232, subdivision (b), did not ask the jurors to agree to follow the instructions of the court].)

> For similar reasons as those found in Lewis, we reject defendant's assertion of prejudicial error here. Although the trial court omitted giving the first oath, the jury ultimately was instructed as to its duty to follow the trial court's instructions and was presumed to have performed its official duty, and defendant has failed to establish that he was prejudiced by the trial court's failure to administer the required oath at the outset of questioning some of the prospective jurors. We further observe that, as in People v. Lewis, *supra*, 25 Cal.4th 610, 629–631, 106 Cal.Rptr.2d 629, 22 P.3d 392, the prospective jurors each filled out a juror questionnaire that was signed under penalty of perjury, a circumstance that undoubtedly impressed upon the prospective jurors the gravity of the matter before them and the importance of being truthful and thereby ameliorated at least in part the trial court's failure to timely administer the oath set forth in Code of Civil Procedure section 232, subdivision (a). In view of the virtual certainty that these prospective jurors understood that they were required to answer truthfully the questionnaires, we reasonably may infer that the same prospective jurors similarly understood that they were required to respond truthfully to the questions posed during the voir dire examination—much of which was essentially a follow up to the prospective jurors' answers given in response to the questions set forth in the questionnaires.
>
> Accordingly, on these facts we believe the jury understood that it was required to answer truthfully the questions posed during the voir dire examination. We therefore conclude the court's error in not administering the oath to some of the prospective jurors was not prejudicial to defendant

Id., 117 P.3d 476 at 518-519, 36 Cal.4th 1114 at 1176-1177.

In his motion, Defendant argues that by not administering the oath to the jury venire, he was deprived of the opportunity to adequately elicit sworn responses and further claims there is no structural guarantee that the potential jurors felt obliged to give thorough and accurate responses. (Defendant's Motion, p. 11.) In support of his assertion, Defendant cites to Diomampo v. State, 124 Nev. 414, 422-23, 185 P.3d 1031 (2008) ("Discriminatory jury selection in violation of Batson constitutes structural error, or error that affects the

framework of a trial."). Id., p. 11. Diomampo is distinguishable to the facts in this case in that a Batson violation which infringes on a Defendant's constitutional right to Due Process.

The United States Supreme Court has held the racially discriminatory use of peremptory challenges is unconstitutional under the Equal Protection clause. Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986). The Supreme Court subsequently extended Batson to hold that its prohibition also applies to discrimination based on gender (J.E.B. v. Alabama, 511 U.S. 127, 114 S.Ct. 1419 (1994)) and ethnic origin (Hernandez v. New York, 500 U.S. 352, 111 S.Ct. 1859 (1991)). Furthermore, there is no requirement that the defendant and the excluded juror be of the same race. Powers v. Ohio, 499 U.S. 400, 111 S.Ct. 1364 (1991); Holland v. Illinois, 493 U.S. 474, 110 S.Ct. 803 (1990).

In this case, just because the issue raised by Defendant occurred during jury selection, it certainly does not make it analogous to a Batson violation. Furthermore, the importance of telling the truth was emphasized by both the State and the defense during the entire voir dire process. The State stressed the seriousness of the case for both parties, the importance that we empanel jurors that can be fair to both the State AND the defense and the importance to tell the truth in all answers. Additionally, the defense expressed the importance of telling the truth when he told the jury they needed to express their real feelings as opposed to what they thought the Court or parties wanted to hear.

Throughout the entire voir dire process the panel was told numerous times by the State, the defense and the Judge about the importance of telling the truth. Additionally there was no objection to the process, the panel, or to any of the chosen jurors. Those jurors were sworn in and by all accounts performed their duty as empanelled jurors. There was no indication at any point that any of the chosen jurors did not tell the truth or failed to perform their duty under the law. There has been zero showing of any prejudice to the defense in this case. The empanelled jury was never objected to by the defense; as such, the motion for new trial should be denied and the conviction should stand.

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CONCLUSION

Based on the foregoing, the State respectfully requests that this Court deny DEFENDANT DUSTIN BARRAL'S MOTION FOR ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL.

DATED this 20th day of June, 2013.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ MICHELLE N. FLECK
MICHELLE N. FLECK
Chief Deputy District Attorney
Nevada Bar #010040

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Opposition to Defendant Motion for Acquittal or in the Alternative a New Trial, was made this 20th day of June, 2013, by facsimile transmission to:

MICHAEL L. BECKER, ESQ.
FAX #974-0524

/s/ J. MOTL
Secretary for the District Attorney's Office

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Fax (702) 974-0524
Attorneys for Defendant DUSTIN BARRAL

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, -vs- DUSTIN BARRAL, #2755494 Defendant.	)	CASE NO.: **C269095** DEPT NO: **VIII**

REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL

COMES NOW, the Defendant, DUSTIN BARRAL, by and through his attorneys of record, MICHAEL L. BECKER, ESQ. and MICHAEL V. CASTILLO, ESQ., and hereby replies to the State's Opposition to the Defendant's Motion for Acquittal or in the Alternative a New Trial.

This Reply is made based upon all the papers and pleadings on file herein, the Points and Authorities which follow and any arguments of counsel entertained by the Court at the hearing of said Motion.

DATED this 28th day of June, 2013.

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531
Attorneys for Defendant DUSTIN BARRAL

ARGUMENT

I. THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT *THE DEFENDANT USED HIS FINGERS TO PENETRATE THE NAMED* VICTIM'S VAGINAL AND ANAL CAVITIES

In its reply the State asserts that Defendant should not be granted *a new trial* stating in part that the Defense has not presented grounds pursuant to NRS 176.515(1). (*See* State's Reply at p. 5). It should be noted that the State fails to point out that NRS 176.515 (4) states in relevant part that a Court may also grant a new trial on other grounds. Further, the Defendant is not asking this Court for a new trial based on the sufficiency of the evidence. Rather, the Defendant is asking the Court to grant him *an acquittal* pursuant to NRS 175.381(2) based on the fact that the State failed to establish that the Defendant subjected the named victim to sexual penetration. The State readily concedes in its reply that the testimony of the named victim was the primary evidence used to obtain the convictions with the words (dug, dig, digged and sink) to describe the purported penetration. (*See* State's Reply at p. 8).

As initially set forth in the Defendant's motion for acquittal, Jocelyn does not definitively state for the record that penetration, however slight, actually occurred as required by NRS 200.364. Accordingly, has State failed to produce the minimum threshold of evidence upon which a conviction for sexual assault may be based and an acquittal should be granted by this Court.

II. A NEW TRIAL SHOULD BE GRANTED BY THIS COURT DUE TO THE CONFLICTING EVIDENCE THAT WAS PRESENTED.

The State asserts in its reply that conflicting evidence was not presented as it was "merely a rehash of Defendant's closing arguments..." The State cites to Azbill v. State, 88 Nev. 240, 252, 495 P. 2d 1064 (1972) for the proposition that the weight and sufficiency of the evidence "are questions for the trier of fact." The State fails to point out that this Court may grant a motion for a new trial based on an independent evaluation of the evidence where the evidence of guilt is conflicting. State v. Purcell, 110 Nev. 1389, 1394-95; 887 P. 2d 276, 279 (1994).

As stated in the Defendant's motion, conflicting evidence was presented in the present case based on the difference between Jocelyn's recitation of events and Dustin's (as conveyed

through the testimony of Megan Barral and Joanna Hammonds). Further, the evidence was also conflicting as to whether or not Jocelyn or Dustin said anything in the bedroom that may have been picked up by the baby monitor in the room where Jocelyn was sleeping that would have been overheard by Megan Barral.

In its reply, the State chooses to ignore the conflicting evidence as to Jocelyn and Dustin's stories and focuses entirely on the questions of fact involving the baby monitor. The State asserts that the evidence is not conflicting as to Jocelyn's credibility and whether or not she said "stop," or whether or not Dustin stated "I want to do it again and again," because Megan purportedly testified that the volume of the monitor in Joshua's room could be turned down. (*See* State's Reply at p. 9). The State fails to point out that on re-cross the Defense was able to establish that there was not a volume button on the monitor located in the bedroom, that the baby monitor never emitted a beeping sound and that Megan was sensitive to any noises coming from the baby monitor and heard nothing while Dustin was out of the room.

In sum, this Court should grant a new trial based on the conflicting evidence presented, including whether or not anything was said by Jocelyn or Dustin in Jocelyn's version of events that would have been picked up by the baby monitor and heard by Megan had the events in question actually occurred.

III. A NEW TRIAL IS REQUIRED BECAUSE THE COURT COMMITTED A FUNDAMENTAL ERROR BY NOT SWEARING IN THE JURY VENIRE

The Court committed a structural error during voir dire by never swearing in the jury venire. The State asserts in its reply that "at no point did the defense object to the process or the panel or any of the empaneled jurors." (*See* State's Reply at p. 10). The State's contention is belied by the record. Independent of whether the State "noticed that the swearing in of the prospective jury panel had not occurred", it was the Defense that rose and asked to approach the bench to make a record of said failure. The reason why the Defense asked to approach was to avoid calling the Court's error to the attention of the entire jury panel. At the bench, Defense Counsel formally protested that the jury panel had not been sworn in. The Court summarily replied that it was not necessary to swear in the jury panel until the conclusion of the voir dire.

The actions of Defense Counsel were the legal equivalent of an objection. At that point, any further protest would have been futile, as the Court had previously expressed frustration with attorneys asking to approach the bench, and expressed negative body language when Counsel approached on this issue.

As previously stated in the Defendant's Motion, the Defendant concedes that there is not any Nevada law directly on point regarding the failure to swear in a jury panel. However, the Defendant objects to the citing of an unpublished opinion, Perez v. State, 2012 WL 144829 (Nev) for any purpose. *See* SCR 123 (providing that "[a]n unpublished opinion or order of [the Nevada Supreme Court] shall not be regarded as precedent and shall not be cited as legal authority"). Notwithstanding, Perez is readily distinguishable. First, the defense did object herein, so plain error analysis does not apply. And second, it cannot reasonably be argued that the order of name selection is on even close to equal footing as the failure to admonish jurors that they must be truthful in responding to questions during jury selection.

The State's reliance on the California case, People v. Carter, 117 P.3d 476, 36 Cal.4th 1114 (2005) is similarly misplaced. In that case, the Court relied on the fact that prior to the beginning of in court voir dire, jurors had been provided with a questionnaire that admonished them as to "the gravity of the matter before them and the importance of being truthful and thereby ameliorated at least in part the trial court's failure to timely administer the oath..." thereby concluding "we believe the jury understood that it was required to answer truthfully the questions posed during the voir dire examination." No such admonishment was ever given here prior to the swearing in of the panel.

Although not a neighboring jurisdiction, the Alabama courts have divided juror oath problems into two categories: "defective oath situations" and "no-oath situations". Treating a situation where the jury venire was administered an oath before voir dire but the petit jury was not administered an additional oath after it was empaneled as a "defective-oath situation", the Court still acknowledged reversibility if "some objection was taken...during the progress of the trial, based on that [defect]." Ex parte Deramus, 721 So.2d 242 (Ala.1998). Additionally, in Fortner v. State of Alabama, 825 So.2d 876 (Ala.2001), the Alabama Supreme Court makes clear

that the same analysis would apply in a scenario where the petit jury was administered the oath but the jury venire was not. (*See* also Brooks v. State, 845 So.2d 849 (Ala.Crim.App.2002).

Finally, the Michigan Supreme Court in remanding a defendant for a new trial has recently held that the failure to swear in a jury panel is structural in nature because "the absence of a sworn jury renders the defendant's trial fundamentally unfair and is an unreliable vehicle for determining guilt or innocence...[and] seriously affects the fairness, integrity or public reputation of the judicial proceedings..." *See* People v. Allen, 299 Mich App 205, 829 NW 2d 319 (2013). While Allen dealt with the swearing in of the jury panel as opposed to the jury venire in the case at bar, the same principal applies, namely that "the required oath is not a mere formality which is required only by tradition. It represents a solemn promise on the part of each juror to do his duty according to the dictates of the law to see that justice is done." *Id.* The Defendant submits any juror, whether prospective or empanelled, has the same solemn responsibility to tell the truth which is ensured by the oath that is required by Nevada statute. By failing to ensure that this was done, the Court committed a structural error by failing to protect the Defendant's fundamental right to trial by an impartial juror because there was no guarantee that potential jurors felt obligated to give accurate and truthful responses. Accordingly, a new trial is required and this Court should order the same.

CONCLUSION

For all the reasons set forth in this Reply and the Defendant's motion, the Defendant DUSTIN BARRAL respectfully requests that this Honorable Court grant his motion for an acquittal or alternatively for a new trial.

Dated this 28th day of June, 2013.

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531
Attorneys for Defendant DUSTIN BARRAL

CERTIFICATE OF FILING

I, Jennifer Aleman, an employee of Las Vegas Defense Group, hereby certify that service of the above and foregoing REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL, was made this 28th day of June, 2013, by Electronic Filing and/or Facsimile Transmission to:

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An employee of the Las Vegas Defense Group

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ORDR

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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DUSTIN JAMES BARRAL,
#2755494

Defendant.

CASE NO: C269095

DEPT NO: VIII

ORDER DENYING DEFENDANT'S REQUEST FOR ADMISSIBILITY OF PRIOR SEXUAL CONDUCT PURSUANT TO NRS 48.069

DATE OF HEARING: May 28, 2013
TIME OF HEARING: 9:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 28th day of May, 2013, the Defendant being present, represented by MICHAEL L. BECKER, ESQ. and MICHAEL V. CASTILLO, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MICHELLE FLECK, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Request for Admissibility of Prior Sexual Conduct Pursuant to NRS 48.069, shall be, and it is DENIED as no racial basis was found.

DATED this 24 day of June, 2013.

DISTRICT JUDGE cp

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY Michelle Fleck
MICHELLE FLECK
Chief Deputy District Attorney
Nevada Bar #10040

jm / SVU

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CLERK OF THE COURT

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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DUSTIN JAMES BARRAL,
#2755494

Defendant.

CASE NO: C269095

DEPT NO: VIII

ORDER DENYING DEFENDANT'S MOTION FOR ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL

DATE OF HEARING: July 8, 2013
TIME OF HEARING: 8:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 8th day of July, 2013, the Defendant being present, represented by MICHAEL L. BECKER ESQ. and MICHAEL V. CASTILLO, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MICHELLE EDWARDS, Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Motion for Acquittal or in the Alternative a New Trial, shall be, and it is DENIED.

DATED this 12th day of July, 2013.

DISTRICT JUDGE TG

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY Michelle Fleck EOR
MICHELLE EDWARDS
Deputy District Attorney
Nevada Bar #10575

jm / SVU

Electronically Filed
09/23/2013 11:26:29 AM

JOC

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DUSTIN JAMES BARRAL
#2755494

Defendant.

CASE NO. C269095-1

DEPT. NO. VIII

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1 & 2 – SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony) in violation of NRS 200.364, 200.366; and the matter having been tried before a jury and the Defendant having been found guilty of said crimes; thereafter, on the 18th day of September, 2013, the Defendant was present in court for sentencing with his counsels MICHAEL BECKER and MICHAEL CASTILLO, ESQ. S and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee, $1,890.00 Restitution and $150.00 DNA Analysis Fee including testing to determine genetic markers, the

Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 - LIFE with a MINIMUM parole eligibility of FOUR HUNDRED TWENTY (420) MONTHS; AS TO COUNT 2 - LIFE with a MINIMUM parole eligibility of FOUR HUNDRED TWENTY (420) MONTHS, Count 2 to run CONCURRENT with Count 1 with ONE HUNDRED ELEVEN (111) DAYS credit for time served.

FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is imposed to commence upon release from any term of imprisonment, probation or parole. In addition, before the Defendant is eligible for parole, a panel consisting of the Administrator of the Mental Health and Development Services of the Department of Human Resources or his designee; the Director of the Department of Corrections or his designee; and a psychologist licensed to practice in this state; or a psychiatrist licensed to practice medicine in Nevada must certify that the Defendant does not represent a high risk to re-offend based on current accepted standards of assessment.

ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release from custody.

DATED this 23RD day of September, 2013.

DOUG SMITH
DISTRICT JUDGE

Electronically Filed
09/27/2013 04:31:07 PM

CLERK OF THE COURT

Electronically Filed
Oct 03 2013 11:04 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

NOA
MICHAEL L. BECKER, ESQ.
Nevada Bar No. 8765
MICHAEL V. CASTILLO, ESQ.
Nevada Bar No 11531
LAS VEGAS DEFENSE GROUP, LLC
2300 W. Sahara Ave., Suite 450
Las Vegas, NV 89102
Office (702) 331-2725
Fax (702) 974-0524
Attorneys for Defendant DUSTIN BARRAL

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. DUSTIN BARRAL, Defendant.	CASE NO.: C269095 DEPT. NO.: VIII

NOTICE OF APPEAL

TO: THE STATE OF NEVADA

TO: STEVEN WOLFSON, MICHELLE FLECK, ESQ. AND MICHELLE EDWARDS, ESQ., CLARK COUNTY, NEVADA and THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA DEPARTMENT 8 (VIII), IN AND FOR THE COUNTY OF CLARK.

NOTICE is hereby given that the Appellant, DUSTIN BARRAL, pursuant to NRAP 4 and NRS 177.015 (3), hereby appeals to the Supreme Court of the State of Nevada from the Judgment of Conviction entered against said Appellant on the 23rd day of September, 2013 and attached hereto to Exhibit "A".

Dated this 27th day of September, 2013.

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531

Docket 64135 Document 2013-29489

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 27th day of September, 2013.

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Las Vegas Defense Group, LLC and that this 27th day of September, 2013, I served the foregoing Notice of Appeal upon the appropriate parties hereto by electronic filing and/or facsimile transmission to:

MICHELLE FLECK, ESQ.
Chief Deputy District Attorney
Nevada Bar No. 6639
200 S. Third Street
Las Vegas, NV 89101
MICHELLE.FLECK@clarkcountyda.com

MICHELLE EDWARDS, ESQ.
Deputy District Attorney
Michelle.Edwards@clarkcountyda.com

PDMOTIONS@CCDANV.COM

Jennifer Aleman, Paralegal

DECLARATION OF MAILING

Jennifer Aleman, an employee with the Las Vegas Defense Group, LLC hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that on the 27th day of September, 2013, I mailed a copy of the Notice of Appeal in Case No. C269095 to Appellant, DUSTIN BARRAL, via United States Postal Mail to High Desert State Prison, ID No.1108615, P.O. Box 650, Indian Springs, Nevada 89070-0650

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 27th day of September, 2013.

Jennifer Aleman, Paralegal

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUSTIN JAMES BARRAL, Appellant, THE STATE OF NEVADA, Respondent.	CASE NUMBER: 64135 (District Court Case No. C269095)

Electronically Filed
Jan 28 2014 03:15 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

MOTION FOR EXTENSION OF TIME

COMES NOW the Appellant, DUSTIN BARRAL, by and through his attorneys, MICHAEL L. BECKER, ESQ. and MICHAEL V. CASTILLO, ESQ., to respectfully request that this Honorable Court enter an Order extending for thirty (30) days the time in which the Defense may file its Opening Brief and Appendix in the above-entitled matter. Appellant moves this Honorable Court for a 30 day extension. This request is predicated on NRAP 31(b)(3)(A) and the attached Affidavit of Counsel.

DATED this 28th day of January, 2014.

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531
Attorneys for Appellant DUSTIN BARRAL

Docket 64135 Document 2014-02959

AFFIDAVIT

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

MICHAEL V. CASTILLO, ESQ., having been first duly sworn, and upon information and belief, deposes and says:

1. That I am an attorney duly licensed to practice law in the State of Nevada and the co-counsel of record for Appellant DUSTIN BARRAL along with MICHAEL L. BECKER, ESQ. on his appeal currently pending before this Honorable Court;

2. That Appellant's Opening Brief is due on January 31, 2014;

3. That Counsel is requesting an extension of time from January 31, 2014 to Monday, March 3, 2014;

4. That Counsel requests this extension of time for the following reasons:

   a. The complexity of the issues raised in the Appellant's docketing statement, many of which require further research, including but not limited to persuasive authority;

   b. The scope of the transcripts of the record below which were not posted until December 16, 2013;

5. That Counsel has not been granted previous extensions in this case;

6. That this request for an extension of time is made in good faith and not for purposes of delay.

MICHAEL V. CASTILLO, ESQ.

SUBSCRIBED AND SWORN to before me this 28th day of January, 2014.

NOTARY PUBLIC in and for said County and State

NOTARY PUBLIC STATE OF NEVADA County of Clark JENNIFER ALDRICH Appt. No. 10-2110-1 My Appt. Expires April 8, 2014

CERTIFICATE OF SERVICE BY E-FILING

I, Jennifer Alonzo hereby certify that I am an employee of Las Vegas Defense Group, and that this 28th day of January, 2014, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

STEVEN S. OWENS, ESQ.
Nevada Bar No. 4352
Chief Deputy District Attorney

CATHERINE CORTEZ MASTO
Nevada Bar No. 003986
Nevada Attorney General

By _____
An Employee of Las Vegas Defense Group

DECLARATION OF MAILING

Jennifer Aleman, an employee with the Las Vegas Defense Group, hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that on the 28th day of June, 2013, declarant deposited in the United States mail, a copy of the Appellant's Appendix in the case of State of Nevada vs. Dustin Barral, Case No. 64135, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to DUSTIN BARRAL, #11008615, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070, that there is a regular communication by mail between the place of mailing and the place so addressed.

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 28th day of January, 2014.

An employee of Las Vegas Defense Group

IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

DUSTIN JAMES BARRAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 64135
District Court Case No. C269095

NOTICE MOTION/STIPULATION APPROVED

TO: Las Vegas Defense Group, LLC \ Michael L. Becker

The motion/stipulation filed this day is approved. Opening Brief due: March 3, 2014.

DATE: January 28, 2014

Tracie Lindeman, Clerk of Court

By: Niki Wilcox
Deputy Clerk

Notification List
Electronic
Las Vegas Defense Group, LLC \ Michael L. Becker
Clark County District Attorney \ Steven S. Owens, Chief Deputy District Attorney
Attorney General/Carson City \ Catherine Cortez Masto, Attorney General

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUSTIN JAMES BARRAL, Appellant, THE STATE OF NEVADA, Respondent.	CASE NUMBER: 64135 (District Court Case No. C269095)

Electronically Filed
Feb 25 2014 01:00 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

MOTION FOR EXTENSION OF TIME (2ND REQUEST)

COMES NOW the Appellant, DUSTIN BARRAL, by and through his attorneys, MICHAEL L. BECKER, ESQ. and MICHAEL V. CASTILLO, ESQ., to respectfully request that this Honorable Court enter an Order extending for fifteen (15) days the time in which the Appellant may file its Opening Brief and Appendix in the above-entitled matter. This request is predicated on NRAP 31(b)(3)(A) and the attached Affidavit of Counsel.

DATED this 25th day of February, 2014.

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531
Attorneys for Appellant DUSTIN BARRAL

Docket 64135 Document 2014-06150

AFFIDAVIT

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

MICHAEL V. CASTILLO, ESQ., having been first duly sworn, and upon information and belief, deposes and says:

1. That I am an attorney duly licensed to practice law in the State of Nevada and the co-counsel of record for Appellant DUSTIN BARRAL along with MICHAEL L. BECKER, ESQ. on his appeal currently pending before this Honorable Court;

2. That Appellant's Opening Brief is due on March 3, 2014;

3. That Counsel is requesting an extension of time from March 3, 2014 to March 17, 2014;

4. That your affiant has been granted one thirty-day extension in this case.

5. When the deadline was last extended I intended to be able to complete the opening brief within the allotted time. Several factors combined to prevent me from doing so including the resignation of an associate attorney at Counsel's firm. I fully expect to be able to complete the opening brief within the requested time frame.

6. That this second request for an extension of time is made in good faith and not for purposes of delay.

MICHAEL V. CASTILLO, ESQ.

SUBSCRIBED AND SWORN to before me this 25th day of February, 2014.

NOTARY PUBLIC in and for said County and State

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
JENNIFER ALEMAN
Appt. No. 10-2116-1
My Appt. Expires April 8, 2014

CERTIFICATE OF SERVICE BY E-FILING

I, Jennifer Alemán hereby certify that I am an employee of Las Vegas Defense Group, and that this 25th day of February, 2014, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

STEVEN S. OWENS, ESQ.
Nevada Bar No. 4352
Chief Deputy District Attorney

CATHERINE CORTEZ MASTO
Nevada Bar No. 003986
Nevada Attorney General

By _____
An Employee of Las Vegas Defense Group

DECLARATION OF MAILING

Jennifer Aleman, an employee with the Las Vegas Defense Group, hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that on the 25th day of February, 2014, declarant deposited in the United States mail, a copy of the Appellant's Motion for Extension of Time (2nd Request) in the case of State of Nevada vs. Dustin Barral, Case No. 64135, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to DUSTIN BARRAL, #11008615, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070, that there is a regular communication by mail between the place of mailing and the place so addressed.

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 25th day of February, 2014.

An employee of Las Vegas Defense Group

An unpublished order shall not be regarded as precedent and shall not be cited as legal authority. SCR 123.

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUSTIN JAMES BARRAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64135

FILED

MAR 06 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER GRANTING MOTION

Cause appearing, appellant's motion requesting a second extension of time to file the opening brief is granted. NRAP 31(b)(3)(B). Appellant shall have until March 17, 2014, to file and serve the opening brief and appendix. No further extensions of time shall be permitted absent demonstration of extraordinary circumstances and extreme need. *Id.* Counsel's caseload normally will not be deemed such a circumstance. *Cf. Varnum v. Grady*, 90 Nev. 374, 528 P.2d 1027 (1974). Failure to timely file the opening brief and appendix may result in the imposition of sanctions.

It is so ORDERED.

_____, C.J.

cc: Las Vegas Defense Group, LLC
Attorney General/Carson City
Clark County District Attorney

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUSTIN BARRAL

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NUMBER: 64135
(District Court Case No. C269095)

Electronically Filed
Mar 18 2014 09:24 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX

(VOLUME I)

MICHAEL L. BECKER, ESQ.
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MICHAEL V. CASTILLO, ESQ.
Nevada Bar#11531
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Attorneys for Appellant

STEVE WOLFSON, ESQ.
CLARK COUNTY, NEVADA
Nevada Bar #1565
STEVEN S. OWENS, ESQ.
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Chief Deputy District Attorney
200 South Third Street
Las Vegas, Nevada 89155
(702) 671-2500

CATHERINE CORTEZ-MASTO, ESQ.
NEVADA ATTORNEY GENERAL
Nevada Bar #3926
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 486-3420

Counsel for Respondent

PAGES 5-13 STRICKEN PER ORDER FILED 5/08/14.

Docket 64135 Document 2014-08645

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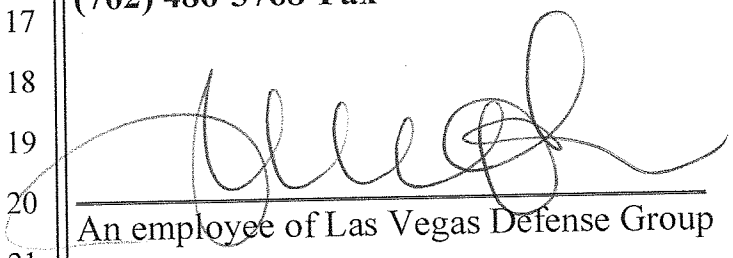
Voluntary State of J.C. 5-13

CERTIFICATE OF SERVICE BY E-FILING

I hereby certify that I am an employee of Las Vegas Defense Group, and that this 17th day of March, 2014, I electronically filed the foregoing Appellant's Appendix with the Clerk of the Court by using the ECF system which will send a notice of electronic filing and/or by facsimile transmission to:

STEVEN S. OWENS, ESQ.
Chief Deputy District Attorney
Nevada Bar#4352
200 S. Third Street
P.O. Box. 552212
Las Vegas, NV 89155
(702) 382-5815-Fax
Counsel for the Respondent

CATHERINE CORTEZ-MASTO, ESQ.
NEVADA ATTORNEY GENERAL
Nevada Bar #3926
100 North Carson Street
Carson City, Nevada 89701
(702) 486-3768-Fax



An employee of Las Vegas Defense Group

DECLARATION OF MAILING

Jennifer Aleman, an employee with the Las Vegas Defense Group, hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that on the 17th day of March, 2014, declarant deposited in the United States mail, a copy of the Appellant's Appendix in the case of State of Nevada vs. Dustin Barral, Case No. 64135, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to DUSTIN BARRAL, #11008615, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070, that there is a regular communication by mail between the place of mailing and the place so addressed.

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 17th day of March, 2014.

An employee of Las Vegas Defense Group

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

ARREST REPORT

☐ City ☒ County ☒ Adult ☐ Juvenile Sector/Beat _____

ID/EVENT#	ARRESTEE'S NAME (Last, First, Middle)	S.S.#
100714-2664	BARREL DUSTIN JAMES	530-30-3282
ARRESTEE'S ADDRESS	(Number, Street, City, State, Zip Code) 6336 MALINO ST. LAS VEGAS, NV. 89129	
CHARGES:	2 COUNTS SEXUAL ASSAULT UNDER 14	

OCCURRED: DATE	DAY OF WEEK	TIME	LOCATION OF ARREST (Number, Street, City, State, Zip Code)
07/10-07/10			2575 N. DECATUR LVN 89107

RACE	SEX	D.O.B.	HT	WT	HAIR	EYES	PLACE OF BIRTH
W	M	09/09/84	5' 9"	200	BRO	BRO	LAS VEGAS NV.

CIRCUMSTANCES OF ARREST

That I learned the following facts and circumstances which lead me to believe that DUSTIN BARRAL committed (or was committing) the offense of 2 Counts Sexual Assault under 14 at the location of 6336 Molino St. Las Vegas NV. 89108.

That the offense occurred on approximately 07/10 to 07/12 of 2010.

I Detective T. Hatchett P#8260 am currently assigned to the Juvenile Sexual Assault Section. On 7/14/10, I received a report in regards to possible juvenile sexual abuse. Nicole Hammonds reported that her daughter, Jocelyn Coleman, disclosed that her uncle had looked at, touched, and "dug" into her vaginal area. The alleged victim was born on 11/13/05 and is currently 4 years of age. The perpetrator known as the uncle, was reported to be Dustin Barral DOB:09/09/84. The mother advised that the victim had spent the night over at the uncles house. The sleep over occurred over the past weekend and that the time period was between 07/10 and 07/12. Due to the allegations being possibly within a 72 hours period, I advised Nicole to take her daughter to Sunrise Podiatrics for a medical examination.

I 07/15/10, I conducted an audio and video recorded forensic interview with Jocelyn Hammonds DOB: 11/13/05, while at the Children's Advocacy Center. During the beginning of the interview, I attempted to build rapport with the child and gain an understanding of her cognitive abilities. During this time we went over the difference between the truth and a lie and she was able to demonstrate that she understood the difference. Jocelyn at this time, agreed to only speak with me about the truth during the interview. I also had the child demonstrated her ability to count, identify colors, and the understanding of words associated with object placement. From my experience and training of interviewing prior juveniles, the victim appeared to be exceptionally articulate. During the interview I also purposely made a mistake with the victim's age and she quickly corrected me. I explained to her that I wanted her to correct me anytime I made mistakes and that I didn't want her to guess about any of the things that we were talking about. After establishing the ground rules of the interview, I attempted to gain a general understanding of her current living arrangements and family dynamics.

After speaking with the child and building rapport, I provided the victim with anatomically correct picture of a female toddler. She described the different areas of the body and identified the vaginal area as "private" and the buttocks as "bottom". I asked her during the interview if there were any areas that she would consider private and that no one should touch. She then identified these areas by placing a red x on the vaginal and buttocks area. I asked her if she had told someone that someone had "dug" in her private area. She stated that Levi's "daddy" had "digged" in her privates. I had previously learned during the interview that the alleged suspect has two children and that one of them is named Levi. She later in the interview, identifies the

ARRESTING OFFICER(S)	P#	APPROVED BY	CONNECTING RPTS. (Type or Event Number)
T. HATCHETT	8260	LT. LES LANE	

LVMPD 82 (REV. 6-10) (EDWP)

perpetrator as uncle Dustin. I asked her what digging in her private means. She states that "it hurts" and brought to view that she awoke to the suspect "digging" on her private. She advised that he was "digging" with his hands and further illustrated with her two fingers, that he was using his fingers. At one point Jocelyn appeared to be say that the alleged suspect was "sinking" inside of her privates. She further disclose that the suspect went under her pants and her panties. She stated, "he went all the way under to my privates." I asked her to explain how it felt when he was doing this and she stated, "it was hurting bad". I asked her to show me on the picture where her uncle was touching her. She responded by opening her legs and pointing to her vaginal area. While pointing to the vaginal area she stated that, "inside here". ***(Sexual Assault Under 14)*** I had her clarify and she again affirmed that it was inside of her skin. She again uttered that when it was night time, "he sink into my private." She advised that she was at her cousins house and that she was spending the night. She advised that she was sleeping in the room where Joshua was sleeping and that he was sleeping in the crib. She indicated that she was trying to sleep on the futon, but that she could not sleep because, "he was hurting me". She further illustrated that she told the suspect to "stop" but he kept "digging." She also explained that Dustin did not respond to her when she told him to stop. She also described that it was night time at the time of the alleged sexual abuse. She explained that the suspect had his shorts on during this time but did not have a shirt on. She stated that she was wearing pants, panties, and a shirt. I asked her how his hand went under her pants and she explained, "his fingers went under and turned toward my privates." She advised that she observed Dustin in the room and that he stated, "I want to do it again and again." I asked her why she thought he had done this to her. She replied, " ...I didn't want him to do that." She also brought to view that this occurred a couple of days prior to the interview and that her mother was in the hospital at the time. I asked her if there had been anybody else that had ever done something like this to her. She then advised that uncle Dustin was "digging" in her buttocks. She stated, "he was digging in my private...and moved to my bottom." She also disclosed that it was "hurting really bad" and that he used his fingers and that they were "inside" of her buttocks. ***(Sexual Assault Under 14)*** She advised that this occurred on the same day that he was "digging" on her vaginal area. She also stated that she observed the suspect washing his hands after the incident. She again described that it "hurt" when he was "digging" in her buttocks. I asked her if there was anyone else that had done anything like that to her and she advised, "no". She further indicated that this was the only time that the alleged sexual abuse occurred. She also denied ever having to look at or touch anyone's private area. She indicated that she had told her mom and family about the incident, but she didn't want her cousins to find out.

On 07/15/10, I conducted a audio recorded interview with the victim's mother, Nicole Hammands, while located at the Children's Advocacy Center. She advised that her daughter disclosed to her that her Uncle Dustin had touched her. She explained that this disclosure occurred on the Tuesday prior to the interview. She indicated that her daughter had spent the night over the previous weekend and that the suspect's house is located at 6336 Molino St. Las Vegas, NV. She stated that her sister Megan, Dustin, and their two boys, reside at the address. She brought to view that her daughter arrived at the residence on Saturday during the evening. She advised me that she was in the hospital at the time and that her mother, Joanna Hammands, had transported the children to Dustin's residence. She explained that Dustin is currently married to her biological sister. Therefore, making him the uncle to her children. She stated that both Jocelyn and Katelyn were spending the night at the residence on the night of the alleged abuse. Nicole stated that her daughter disclosed, that uncle Dustin came into the room to check on Joshua and that he sat next to her on the futon. It was at this time that Dustin looked, touched, and "dug" into her "privates". Nicole was under the belief that her daughter was trying to explain that the suspect "fingered" Jocelyn. She was not aware of any other allegations of sexual abuse against Dustin. She explained that the family was not keen of the suspect, because he had eloped with her sister without the families approval. Furthermore, the family later found out that he had been lying to her sister, Megan, about where money was going in regards to payday loans. According to Nicole, Jocelyn has never previously alleged, that anyone has ever perpetrated sexual abuse against her.

On 07/21/10, I conducted a telephonic interview with Joanna Hammands. She agreed to conduct and audio recorded interview in reference to the investigation. She indicated that she was aware of why she was speaking with me and that it was in reference to her granddaughter, Jocelyn, being sexually molested. She brought to

view that on the Tuesday, Nichol approached her and advised that she needed to speak with Jocelyn. Nicole illustrated that Jocelyn had disclosed that her Uncle Dustin had touched her. Joanna then spoke with Jocelyn and asked her about what she had disclosed to her mom (Nicole). Jocelyn disclosed that when she was at her Aunt Megan's, Uncle Dustin come into the room and "dug" into her privates and "dug up in her." She indicated that it was night time at the time of the alleged abuse. The grandmother explained that she did not go any further with the questioning, other than asking if she was ok. She brought to view that Jocelyn had spent the night over at the uncle's house on the previous Saturday and Sunday. She explained that she believed, that the abuse occurred on the Saturday that Jocelyn had spent the night. She recalled that she had met with her daughter Megan, at church on that Sunday. She remembered Dustin arriving at the church and a conversation ensued about Dustin being in Jocelyn's room over the course of the night. Megan and Dustin were talking about how funny it was, that he forgot that Jocelyn was in the room that night. The conversation brought forth how Dustin was in the room that night and that he had allegedly sat on Jocelyn, while she was sleeping on the futon. Joanne stated that this statement was made prior to the juvenile disclosing sexual abuse from the uncle. Therefore, she concluded that the abuse may have occurred on the past Saturday, because Dustin admitted that he was indeed in the room on that evening. She could not recall who initially started the conversation in reference to the event. However, Megan told her that Dustin advised her, that he had gone into the room to check on Joshua and that he forgotten that Jocelyn was in the room. During this time he allegedly sat on Jocelyn while she was laying on the futon.

Joanna also brought to view that Nicole had been in the hospital and that Jocelyn was with them on the Friday prior to her spending the night.. She indicated that Megan agreed to have the children spend the night with her at her residence. She advised that both Jocelyn and Katelyn spent the night with Megan and that she dropped them off on Saturday. They agreed upon this because Joanna and her husband are pastures and they usually have extremely early Sunday mornings at the residence. She stated that the children were dropped off at the suspect's residence at approximately 1730 hours on Saturday. She also stated that her son Matthew picked up the children on Monday and took the children to their father's house. It was learning during the investigation that the actual date for that Saturday was July 10th, 2010.

Joanna provided me with an overview of their relationship with Dustin. She advised that Megan and Dustin have had financial problems and that they asked her for financial support. She indicated that it was decided that giving them money would not be best resolution for their financial problems. She also indicated that Dustin has made very little effort to be personable with the family. It was of her opinion that at times, Dustin would attempt to isolate Megan from the family. She stated that she believes Jocelyn "100%" and has no doubt in what Jocelyn has disclosed.

On 02/22/10, I conducted an audio recorded interview with Megan Barral. We were located at the Children's Advocacy Center and CPS Kim Artist was also present during the interview. She advised that Jocelyn and Katelyn had both spent the night at her house, due to her sister being in the hospital. She advised that she received a call from her parents after the victim had spent the night. They informed her that Jocelyn had disclosed that Dustin had inappropriately touched her. She stated that she spoke with the victim and "...she basically just had told me the same thing that they had told me." She confronted Dustin and he advised her that he had already explained what had occurred. Megan admitted that she had overheard Dustin go into the room in which Jocelyn was sleeping. She advised that he had gone into the room to check on Joshua. She indicated that Dustin had woken her up after returning to their room that night. She admitted that they have had financial issues throughout the marriage and that he had taken out payday loans. She advised that she was unaware that he had taken these loans out and that they were trying to address the issues with the loans. We spoke about there sexual activity and she brought to view that they did participate with in sexual activity with their friends. She also advised that they did possess sexual toys and that one of these items was a vibrator and/or a strap on. Strap on, is a commonly used term to identify a prosthetic penis, which can be fastened around an individuals body and held in place.

On 07/27/10, I conducted an audio recorded interview with the victim's father, Frederick Coleman. He advised that Nicole was in the hospital and that he was unable to get the girls. He advised that Michael brought the children on the Tuesday, following the weekend and that the children had spent the night at there uncle's house. Frederick advised that the children had arrived at his residence early in the day and that they had an event filled day. He brought to view that there activities consisted of going to a water park, watching movies, buying sandals, and that he also prepared meals for the children. During this time, he doesn't recall observing any behavior in the children that would create concern for him. He advised that his roommate Anthony Mays, was present at the apartment at the time the children were there. Frederick indicated that the children were at his house until approximately 7 or 8 that same day. I asked him during the interview to describe Dustin and his experiences with him. He indicated that he never liked him. He was of the opinion that Dustin was "sneaky" and he felt that his wife Megan, didn't have a "clue." Frederick brought to view that he was upset that his daughter didn't disclose the abuse to him, on the day that she was at his household. He indicated that she finally disclosed to him after first telling her mother. Jocelyn disclosed that her Uncle Dustin place his finger inside of her while she was trying to sleep. Jocelyn explained that she was sorry that she hadn't told her father, but she didn't want him to go to jail. Frederick explained at the beginning of the interview, that his daughter was extremely smart. Therefore, she new that her father would be extremely upset about the disclosure.

During the initial stages of the investigation I had made contact with the suspect and he agreed to meet with me to discuss the allegation on July 30th, 2010. I received a call from him that day and he advised that he was attempting to contact his attorney before speaking with me. I provided him with my desk phone number and advised him to please contact me with his attorney's information. I explained that he could leave a message and that I would contact the attorney directly. I however, never received a phone call in the following days in regards to his attorneys information.

It was learned during the interview that the suspect was employed with the United States Postal Office. I made contact with Special Agent James Gursky P#482 of the Office of Inspector General. He was able to confirm that the suspect was employed at the Post Office located on 2675 N. Decatur LVN. He agreed to meet with me on 08/04/10 and provide me access to the suspect. On 08/04/10, I and Det. Tamino P# 8278, met with Agent Gursky at the described location. Agent Gursky made contact with management and they were able to directly lead us to Dustin Barrel. I made contact with Dustin while sorting mail and identified myself as a detectives with Metro. At this time I placed him under arrest for two counts of Sexual Assault under 14. He was transported to CCDC without incident, where he was booked on listed charges.

It should be noted that the suspect was identified both visually and with NV driver's license after being transported to CCDC. CPS Kim Artist also conducted an Interview with his oldest child Levi Barral. She indicated that there was no disclosure of sexual abuse. I also conducted a forensic interview with Katelyn Coleman and she did not disclose sexual abuse. However, I observed an immediate change in her body language, after presenting her with an anatomically correct picture of a young female. I determined that it was in the best interest for the child to also under go a medical examination. Following the exam, I received a call from the mother. Nicole advised me on 07/27/10, that Katelyn indicated that Snoopy was sad and that Dustin had touched her privates. She also mentioned something in relation to Knots Berry Farm. Nicole indicated that it was confusing and that she wasn't sure if Katelyn had overheard Jocelyn talking or if she was talking about some other incident. I determined that after being questioned by the doctor and myself, it wasn't in the child best interest for a 3rd interview to be conducted. A medical Examination was also completed on Jocelyn and they identified that she may have vaginitis and that it could have possibly been fostered from medication she had been taking.

Electronically Filed
11/29/2010 03:16:48 PM

CLERK OF THE COURT

INFO
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 12/01/10
10:30 A.M.
LANGFORD

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DUSTIN JAMES BARRAL,
#2755494

Defendant.

Case No: C269095
Dept No: VIII

INFORMATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That DUSTIN JAMES BARRAL, the Defendant(s) above named, having committed the crime of **SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Felony - NRS 200.364, 200.366)**, on or between the 10th day of July, 2010, and the 12th day of July, 2010, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

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//

//

COUNT 1

did then and there wilfully, unlawfully, and feloniously sexually assault and subject JOCELYN HAMMANDS, a female child under fourteen years of age, to sexual penetration, to-wit: digital penetration, by inserting his finger(s) into the genital opening of the said JOCELYN HAMMANDS, against her will, or under conditions in which Defendant knew, or should have known, that the said JOCELYN HAMMANDS was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 2

did then and there wilfully, unlawfully, and feloniously sexually assault and subject JOCELYN HAMMANDS, a female child under fourteen years of age, to sexual penetration, to-wit: digital penetration, by inserting his finger(s) into the anal opening of the said JOCELYN HAMMANDS, against her will, or under conditions in which Defendant knew, or should have known, that the said JOCELYN HAMMANDS was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY /s//LISA LUZAICH
LISA LUZAICH
Chief Deputy District Attorney
Nevada Bar #005056

Names of witnesses known to the District Attorney's Office at the time of filing this Information are as follows:

NAME	ADDRESS
BARRAL, MEGAN	6336 MOLINO ST., LVN 89108
COLEMAN, JOCELYN	5114 SPRING BLOSSOM CT., LVN 89118
COLEMAN, FREDERICK	ADDRESS UNKNOWN
COLEMAN, KATELYN	5114 SPRING BLOSSOM CT., LVN 89118
HAMMANDS, NICOLE	5114 SPRING BLOSSOM CT., LVN 89118
HAMMANDS, JOANNA	5114 SPRING BLOSSOM CT., LVN 89118
HAMMANDS, MICHAEL	4406 FLOWERDATE CT., LVN 89104
HATCHETT, TIMOTHY	LVMPD P#8250

DA#10F14936X/mmw/SVU
LVMPD EV#1007142664
(TK3)

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAY 2 0 2013

BY: KATHERINE STREUBER, DEPUTY

MOT
MICHAEL L. BECKER, ESQ.
Nevada Bar No. 8765
MICHAEL V. CASTILLO, ESQ.
Nevada Bar No 11531
2300 W Sahara Avenue, Suite 450
Las Vegas, NV 89102
Office (702) 331-2725
Fax (702) 974-0524
Attorneys for Defendant DUSTIN BARRAL

ORIGINAL

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- DUSTIN BARRAL, #2755494 Defendant.	CASE NO: **C269095** DEPT NO: **VIII**

REQUEST FOR ADMISSIBILITY OF PRIOR SEXUAL CONDUCT PURSUANT TO NRS 48.069

COMES NOW the Defendant, DUSTIN BARRAL, by and through his attorneys, MICHAEL L. BECKER, ESQ. and MICHAEL V. CASTILLO, ESQ. and hereby provides the State of Nevada and MICHELLE FLECK, ESQ. and MICHELLE EDWARDS, ESQ., counsel for the State, notice pursuant to NRS 48.069 that the Defense intends to seek admission of sattements made by the named victim claiming others touched her privates for the limited purpose of determining witness credibility as set forth in the written offer of proof below during trial commencing May 28, 2013.

Dated this 20th day of May, 2013

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531
Attorneys for Defendant DUSTIN BARRAL

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff;

MICHELLE FLECK, ESQ., Deputy District Attorney;

MICHELLE EDWARDS, ESQ., Deputy District Attorney

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the above and foregoing REQUEST FOR ADMISSIBILITY OF PRIOR SEXUAL CONDUCT will be heard before the above entitled Court on the ____day of _____, 2013, at _____ a.m., or as soon thereafter as counsel may be heard.

DATED this 20th day of May, 2013

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531
Attorneys for Defendant DUSTIN BARRAL

APPLICABLE LAW AND DISCUSSION

Nevada law permits the admission of "[e]vidence of the character or a trait of character of the victim of the crime offered by an accused." NRS 48.045(l)(b). However, such evidence may be subject to Nevada's rape shield statute, NRS 50.090, which provides in part that, in "any prosecution for sexual assault or statutory sexual seduction or for attempt to commit or conspiracy to commit either crime, the victim's previous sexual conduct is not admissible to challenge the victim's credibility or to prove consent to the sexual encounter." However, there are two exceptions. First, a child-victim's prior sexual experiences may be admissible to counteract the jury's perception that a young child would not have the knowledge or experience necessary to describe a sexual assault unless it had actually happened. *See* Summitt v. State, 101 Nev. 159, 163-64, 697 P.2d 1374, 1377 (1985).

The Nevada Supreme Court has held that a defendant in a prosecution in which the rape shield is applicable "must, upon motion, be given an opportunity to demonstrate that due process requires the admission of such evidence because the probative value in the context of that particular case outweighs its prejudicial effect on the prosecutrix. Chapman v. State 117 Nev. 1, 5, 16 P.3d 432, 434 - 435 (2001). If, after balancing the probative value of such evidence against its prejudicial effect, the trial court determines that the evidence should be admitted, the opportunity to be afforded the defendant is simply "the opportunity to show, by specific incidents of sexual conduct, that the prosecutrix has the experience and ability to contrive" a charge against him. Summit, 101 Nev. at 159, 697 P.2d at 1377.

Second, a victim's prior false allegations of sexual abuse or sexual assault are admissible to impeach the victim's trial testimony. *See Abbott v. State,* 122 Nev. 715, 732–33, 138 P.3d 462, 473–74 (2006). Before admitting such evidence, however, defense counsel must prove by a preponderance of the evidence that (1) the accusations were made; (2) the accusations were false; and (3) the extrinsic evidence is more probative than prejudicial. Efrain M., a Minor v. State, 107 Nev. 947, 950, 823 P.2d 264, 265 (1991)). Moreover, "[t]he trial court has sound discretion to admit or exclude" such evidence. Id.

The Nevada Supreme Court reviews a district court's decision to admit or exclude evidence for an abuse of discretion. Ramet v. State, 125 Nev. 195, 198, 209 P.3d 268, 269 (2009) (citing Thomas v. State, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006)). If there is an abuse of discretion, harmless error review applies. Knipes v. State, 124 Nev. 927, 933–34, 192 P.3d 1178, 1182–83 (2008). For nonconstitutional errors, evidentiary or otherwise, an error is harmless unless there was a "'substantial and injurious effect or influence in determining the jury's verdict.' " Tavares v. State, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001) (quoting Kotteakos v. United States, 328 U.S. 750, 776, 66 S.Ct. 1239, 90 L.Ed. 1557 (1946). However, if there is no objection to the admission or exclusion of evidence, appellate review is precluded unless the district court committed plain error. Mclellan v. State, 124 Nev. 263, 269, 182 P.3d 106, 110 (2008).

On Friday, May 24, 2013, a mere three days prior to trial, the Defense was provided with nine pages of notes from Betsy Morgan, a therapist at the Compass Counseling Center containing her notes from sessions conducted with the named victim Joselyn Coleman from July 26, 2010 to the present (*See* attached Exhibit "A"). In the notes, the named victim references sexual contact involving her privates in interactions other than with the defendant as demonstrated by the following exchanges:

a. Doesn't always feel safe re: her privates at her natural father's house. Natural father's roommate says words that hurt her privates. (9/29/2010 session)
b. Last period at school, told teacher girl patted her privates (9/16/2010)
c. Thinks about scary monsters when her privates hurt (10/20/2010 session)
d. Girlfriend put her hands around her neck and choked. Privates hurt a lot from nightmares (2/24/2011 session)
e. Issues with boy in school. Kicked her in her privates, licked her face and tried to kiss her (11/3/2011 session)

Further, the named victim also references a prior touching incident with her friend Neco during a voluntary interview with Detective Hatchett on July 15, 2010 (*See* attached Exhibit "B").

Collectively, the above examples demonstrate that the named victim's prior allegations regarding her privates is relevant in order to establish that she has the prerequisite knowledge and experience necessary to describe a sexual assault. Given that these are not isolated incidents and that the prior incident with Neco is supplemented by additional acts of sexual touching, the Defense submits that it should be permitted to ask a limited series of questions regarding the prior incidents to counteract any perception that the named victim would not have the knowledge or experience necessary to describe the current charges unless it actually took place.

Further, in accordance with Summitt, the probative value outweighs any potential prejudice due to the right of the Defendant to demonstrate to the jury that the named victim has the experience and ability to contrive a charge against him.

Alternatively, the Defense submits that a Miller hearing is warranted in order to establish that the named victim has a history of making allegations of touching by others and that said allegations are false.

CONCLUSION

Based on the foregoing, the Defendant DUSTIN BARRAL respectfully requests that this Honorable Court grant an order:

1. Permitting the Introduction of the prior allegations of sexual conduct of the named victim for the limited purpose of evaluating witness credibility.
2. For such further relief as this Court deems proper.

Dated this 24th day of May, 2013

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531
Attorneys for Defendant DUSTIN BARRAL

DECLARATION OF MICHAEL V. CASTILLO, ESQ. PURSUANT TO NRS 53.045

MICHAEL V. CASTILLO, ESQ. deposes and states as follows:

1. I am an attorney licensed to practice law in the State of Nevada and retained co-counsel for DUSTIN BARRAL along with MICHAEL L. BECKER, ESQ. I make this declaration based upon my own personal knowledge except to those matters stated upon information and belief, and as to those matters I believe them to be true;
2. That I received additional discovery from Betsy Morgan of the Compass Counseling Center on May 24, 2013, a mere three days prior the scheduled trial in this matter;
3. That said discovery contains numerous references to sexual conduct involving her privates as demonstrated by the following exchanges:
   a. Doesn't always feel safe re: her privates at her natural father's house. Natural father's roommate says words that hurt her privates. (9/29/2010 session);
   b. Last period at school, told teacher girl patted her privates (9/16/2010);
   c. Thinks about scary monsters when her privates hurt (10/20/2010 session);
   d. Girlfriend put her hands around her neck and choked. Privates hurt a lot from nightmares (2/24/2011 session);
   e. Issues with boy in school. Kicked her in her privates, licked her face and tried to kiss her (11/3/2011 session);
4. That the named victim also references prior sexual conduct with a boy named Neco in her July 15, 2010 interview with Detective Hatchett;
5. That this information is relevant for a jury's consideration in that the Defense is entitled to demonstrate before a jury that the named victim had the preexisting knowledge and experience to describe a sexual assault and has a history of making allegations of touching;
6. That this motion was not brought previously before this court due to the time frame in which the therapist notes were received;
7. That Counsel was not previously aware of the additional information contained within the notes of Betsy Morgan regarding the named victim.

Pursuant to NRS 53.045, I MICHAEL V. CASTILLO, ESQ., declare under perjury that the foregoing is true and correct.

Executed this 24th day of May, 2013.

MICHAEL V. CASTILLO, ESQ.
Nevada Bar Number: 11531

EXHIBIT "A"

3425 Cliff Shadows Pkwy
Suite 150
Las Vegas, NV 89129
Phone: (702) 368-4585
Fax: (702) 228-5155

Compass Counseling Center

Confidential Fax

The information contained in this fax is intended only for the personal and confidential use of the recipients named below. If you have received this fax in error, please notify us immediately by phone. Thank You

To: Craig Fabert Office of the District Atty. From: Betsy Morgan

Fax: (702) 384-0146 Pages: Cover + 7

Phone: (702) 671-2803 Date: 5/20/2013

Re: Barral CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

◆ **Comments:**

Coleman, Jocelyn
Monday, July 26, 2010
3:08 PM

Compass Counseling Center
Therapist: Betsy Morgan

Coleman, Jocelyn

Diagnosis: 309.28 **Spouse:** **Children/Siblings:**

Medication: NM

7/26/2010, 3:09 PM — Uncle dis NM's bro molested & was arr. NM in hosp. Pers dec picked up by MT. Getting ready for bath - told NM needs to take bath privately (sleeping or eating). Uncle came up, looked at privates, touched them, dug in them. Dis trying to hang DF. Pics of bed supportive of st. Interviewed by Lpts. of DF to be interviewed tomorrow to rule him out. 2 yr old said bad something happened to her. Happened at Strawberry. MTs tried to contact dad, still in process. Both had prep exams & interviews. Missing CF who died last Aug. Fam. normal. Has sex in public & up sing hair. Sx: nightmares, allergies, urinate around, upset at day, sing, dance, comfy. NF dis not tragic. Co-D. Loves kids, ate, sleeps, pace bed there. No structure. Re-created on pics NM. PT. PT My body is private public.

8/3/2010, 9:05 AM — NM – Aunt CPS contact & fam. - on perp's side. Diff sleeping. Bad dreams.

PT. Feelings Dance (Match) Sad re: Dustin Touching Pers. Sad re: CPS death.

8/17/2010, 10:08 AM — NM Dustin arrested then out on bail. Then Coleridge. NM complained. Withdrew stories, but still on rec. Has stopped st. Mixed feelings re: disp. Does not talk to her. Diff able to see colleges. Goes out of state for vacation. 2 counts sexual assault. Court - rpt. D - he did 5 yr. to try to activate DA's office. Sx still frequency date rights of him (Facebook). Still sx pain, clearance already DX. Sea. See again sx pain every day. NM feels miserable, feeling down, sad, crying. Dis court class. Did not know why she had to go to court.

Pt. – P.T. See pics & notes dated this date in file.

9/1/2010, 2:08 PM — Camping last wk. Woke up one night last wk freaking out that her privates hurt. Rec'd appt tomorrow. Still pain in privates. Asks NM to look & make sure everything is OK. Keeping in bed. Pt. to contact Dr. DA's office back to pre-K 9/2/10. PT. Happy to rpt. camping trip.

9/16/2010, 3:10 PM New school dr. Still c/o vaginal pain. Dr did culture - no organism cause found. Will monitor. Last visit no time a NF to new dr. Last visit at school - told teacher girl's dad hurt her privates. Teacher said well monitored. Court in 1 month. May have to testify. Will see NF soon.
PT. Mad because private hurt morning, night & when goes to bed. Hurts like getting a big shot. Stays constipated.

NM
9/21/2010, 3:07 PM Lio is currently stating something happened to her.. Saying some things are "Ouch" school nurse not scheduling her home & like cough. Does take allergy meds. Not mean DX a NF.

9/29/2010, 2:11 PM NM PT feels improved. Sig. less "bits." Still pain in vagina every day. Told NM doesn't want Dustin to be here upset any more. Because he dug in her privates. Has been taking to NF - NF wish I could tell her about what. Mean it always. Last date he hurt privates at her NF's house. ~~NF~~ Mom made sure "bad words" that make her privates. Denies touching but NF or room mate. NF left to store left them alone a few minutes. Room mate she is a little rough. Hurts her privates too when NF says bad words.

NM
10/12/2010, 3:14 PM Court Lio tomorrow. PT still had to talk to prosecutors. Pain in privates daily. PT NF - no answer. "1" on Children's Mood Scale. Pts. sadness is re: privates.

NM PT
10/20/2010, 2:59 PM Court reached. 11/15 told GM felt like she was dying. Other than that happy times are returning. Few crying c NM last visit. c/o privates pain every day. Felt like wanted to die. Private hurt. Things about scary monster where her privates hurt. Stated all she has in her head is Uncle Dustin at that point & she can't get him out. Suggested sing a song/use happy thots.

10/27/2010, 3:05 PM PT says she don't feel good all over. Leaving crying. Lio slight to mod privates hurting. No more death talk. NF moved again. Saw kids over weekend. Hrs out. NM's hrs out.

NM
11/11/2010, 11:09 AM Said privates don't hurt anymore. Broke down when found out has to testify. Unsafe case (sex) will do that/left Mom NM crying. Fear of Dustin at church.

PT+NM.

11/24/2010, 3:16 PM NM Has been c/o feeling like getting shots in privates again. NF declining to spend much time a them. PT asleep.

12/16/2010, 2:12 PM Pers dead not guilty-trial in May. Mostly at night c/o feeling like being spit privates. Better more comfort F NF. Plea deal may be offered after first of yr. NF moved again. All sleep to get a fair settlement told NM she really needs to talk to Mr Estey. Can't see cousins for Christmas. NF - privates hurting reason wanted to talk to me.

1/6/2011, 2:07 PM Subpoenaed for Jan 31st at 1st upset-in days of trial. Cry at last minutes of re: cousins being taken away Jr. quinceañera. Pers trying to work a deal. PT lost it. Nightmares last night, woke 3X last night to pray for her. NF told of pers also coming to her house. Not allowed. Upset not able to see (older cousin) asked why can't see him at Christmas. Scooter. Dressed Michael Jackson turned into a werewolf in her pm (Marie Her & got threw him out) Dreamed talking NM told her & pers 7 other dreams. NF wanted to see pts - NM said no. Sad. Upset crying Upset crying-sad re: going to court.

1/20/2011, 2:11 PM on pt. Not complaining as much re: pain in privates. Talking at school → NM talked to pts → not to soon. Dep about it. Picks angry face pt. feeling faces every day. Cries self to sleep.

2/10/2011, 2:06 PM NM - New job. Fam. moving. Met dr asp re: not being able to see cousin. Worried re: life plan. Moving away Jr GrM. Anx. what she will do when grown. married. Upset NM NF - no more cancer. Ocean talk PM to marry someone like Dwayne Feels dumb. Since accident NF doing well. Six / ob privates hurt. Feels like getting really crazy =CF.

2/24/2011, 3:03 PM GrM Told NM+GrM NF's CF put her hands around pts neck + choked. Privates hurt a lot pt. nightmares. Upset can't see cousins because pt. has bad dreams. Monsters eat her. Spiders Hurt. Scared. Playing. CF comes on her on bed + chases her. Demonstrated to prosecutor - CF on top of her told her could kill her + brother. Sorry". Choked her while on top of her. Mult x.

3/10/2011, 2:15 PM GrM CPS states unable to do anything. Investigated Due to custody orders. NM smiled [illegible]

light marks on their house to gang ones. Had
it. Officers were. NF came to safety because a
monster tried to kill her. NF got away.
Turned back into NF. Doesn't want to go
house. Doesn't want Casey to be around other.

GrM NF's GF preg. Jamaat Wed. Girls drop.
3/24/2011, 2:07 PM NF afraid Casey will abuse her again. Married
to NF. Will have another brother. Feels good
about that. Told Dr M Dr stops hurt. Has been
thinking about Court & Uncle Dustin. Reviewed coast
coping techs.

4/7/2011, 2:09 PM A.M. A doing well. NF's GF had miscarriage.
No complaints re: parents until on way here. Court off
last week. Part of ass't D.A. → did well.
NF. Casey is being nice.

5/5/2011, 2:02 PM Hit by bird at school. Doesn't know how to
respond. NF's GF miscarried. Dad fired. Moved again.
Talking re: moving out of town. NF told girls bus - go
out side of NF's friend's. Deep breath. Deep breath every day.
Doesn't seem NF for a while. Casey is being
nice to her.

5/19/2011, 2:07 PM. Last 2 wks cries all the time. Shut
down. Focus & pay in class. Talion. Hit her in
room. Leans dog. From court subpoena. June
Dr Nick last 2 wks. NF moved again. Told both
girls to lump Julian at school. Cried see to keep
last 2 secret. On steroids for allergic reaction.
Julian back to friend. Misses Lexi & stuffed animal
cat.
Doesn't want to see Uncle Dustin.
Misses Lexi.
NM doesn't see or talk to aunt Mei-Mei
anymore.
Dad can't do things w Dr M.

6/2/2011, 2:15 PM GrM Last X went to NF's Casey there. At last
NF arrested - didn't come to her pa. grad. Assault &
battery, free. Arrests. NF drinks. From court past wk.
NF chased someone w machete. Pt Dad calls a
bad day. NF didn't come. Promised. Didn't spend
night at his house - Casey there. Things NF didn't
have a car to get there.
Dr M called DSS again re: grandma at Dustin's house.

6/13/2011, 3:03 PM From court. At last mtg. Pt has
been on emotional roller coaster since then. Meltdowns.
Pt. Not very good with court being off. Mad states
can't see NF due to Casey. (Hand affect).

7/14/2011, 5:09 PM Contacted DCFS re: pt. bleeding 2 wks ago. Easily mad / frustrated. NF trying to be centered 1-4 yrs. Past - used to spank. Pastor lied to NF. Pt. escaped church to what happened to her. Dep went there. No longer going to church there. Court set up. Further incidents of DCFS harm. NF gave her cell phone. Not turned on. Pt. does go grp sess. Said she did when I went. CM told her to tell devil to shut up - working.

7/26/2011, 4:01 PM Pt. home in Jan court. Couldn't ID perp. Said couldn't threaten if anyone touched her. Protective order stands. DFS remains involved to protect children. Went to NF's - CF called DCFS very upset. Pt. called NM to pick her up at NF's - CF there. Didn't report. DFS now the heavier hand. Left CF in tears. Anyone had to be lying. NM - Pt. crumpled in court. Teased when NM told her he might be in the pod. "Curled up" later. NM & NF told her she shouldn't have called NM.

8/17/2011, 2:27 PM Dreamed re: Casey last night. At NF's house. Casey choked her. Woke up real early & couldn't get back to sleep. Concocting camping trip.

NM

8/30/2011, 3:10 PM Cheating out jail in AK. Pt. looks like has a "wedgie" all the time. Pulls at underwear. Aunt (perp's wife) contacted Dr. M. Pt. c/o fatigue. Quiet in class. Upset. NF got girl (DFT can't see) kinda tells private's don't want her underwear to touch them because of what Dustin did.

9/29/2011, 4:07 PM Court in 2 wks. Doing very well in school. Speech goes. D/C spending night at NF. Wedgies all the X (to entering grm.) Pt. waited re: g/pass to AK. Wedgies.

Dr M

10/24/2011, 5:02 PM 2 wks for court date. No more wedgies. NF calls down & follow thru. Don't go over there. To be sentenced 11/17. Doing well in school. Pt. sad. (Crying). Doesn't want to go to court again.

Dr F

11/3/2011, 5:08 PM Pt. passes 1 day @ school. Kicked out in her privates, licked her face & tried to kiss her. Suspended. Court postponed. NM disclosed DF touching. New dresser. DF. Happy court postponed. No More Hurt Wkbk. Pt. will stop / relapse / think.

1/23/2012, 3:07 PM Dr M - Uncle lost to home each wkd. Doesn't wd. Low → in trouble @ court. D/C not for

this with no possession warrant will be issued.

3/13/2012, 3:04 PM Dr M Trial in Oct.
Pt. Missed cousin. STD.

4/12/2012, 3:08 PM Dr M. No movement on legal.

5/10/2012, 3:08 PM Doing well.

6/14/2012, 3:09 PM Dr M Doing well. NF going to prison long term.

6/18/2012, 6:08 PM On a date. Saw guy last Thurs for a call. Knifed (rape). Pt wants to date him F/U. Questions about NM getting married. Upset re: declining NF. Pt divorced NF in 2011. Why is she there so long time. NF told NM NF talked to them in detail re: last incident. Pt said re: NM raping NF's Day. Sad. Also mad he made bad choices.

9/10/2012, 3:04 PM Excited re: new school. Home. Likes NM & BF "cool" but "still sad." NF doesn't contact her. NM doesn't like "Safe Bet" program. Trial in Oct. Almost had a stroke @ DMV last month. Trying to contact BA re: restraining order. Moving. NF back in jail. Saw NF last month. Case there. Lost custody of 2 kids.

9/24/2012, 3:12 PM Dr M Court - Oct 15 - Jury select. 17 & 18 - trial. Won't open up to NM. Upset re: Safe Bet Org. Pt Dad @ Safe Bet. Sad NM & BF to jail. NM & BF moved it. Upset about. Sad Cupid will get in trouble if tells NM things. Is second chance. Trip off to Vegas. Upset about what happened - what those did. - happier that way.

10/1/2012, 3:08 PM Dr M Trial still set for 17, 18, 19.
Pt. PT

3/5/2013, 6:07 PM NM. Pt recently felt "bubbles in her privates". Stated started when she was molested. NF in jail on surgery charges. Trial - March 18. Pt Cousin is coach. 5th B. NF in jail - sad - missed Christmas, B-day, "honor roll". Sad re: NM & BF breaking up.

3/26/2013, 5:19 PM NM - court w/o 4/8.
Pt - Honor roll 4 qtr. of the month. Sad NF still in jail.

4/2/2013, 6:35 PM Dr M - NM told last night going to court. Stomach ache, tired. Sad, nervousness. Told NM;

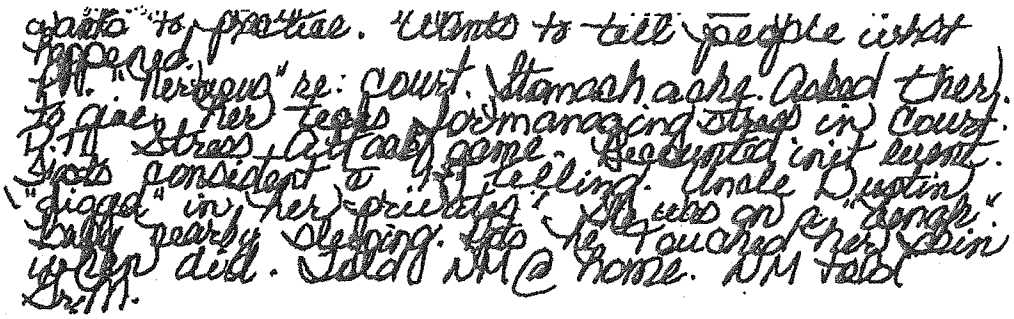


EXHIBIT "B"

A: Um, the privates.

Q: Okay. And--

A: I do it?

Q: Just put a little mark there. There you go, that's perfect. Okay, is that the only place or is there anywhere else that you consider private that nobody's supposed to ever touch?

A: Here.

Q: Okay. Go ahead and mark that, and what's -- and what area's that?

A: Um, bottom.

Q: The bottom? Okay. So we have the -- the private and the bottom. Is there anywhere else or is that all of 'em?

A: Um--

Q: Is there anywhere else that you consider private that nobody should ever touch?

A: That's it.

Q: That's it? Okay. Has there ever been a time that anybody has ever touched you in those areas?

A: Um, yeah.

Q: Tell me about that.

A: One of the time is -- one time one of my friend's touched me.

Q: Okay.

A: But we were um, but we were friends.

Q: Oh okay.

A: And--

Q: And how old is your friend?

A: How -- he was 4.

Q: Oh okay.

A: Four-months-old and--

Q: Was there anybody else other than your 4-year-old friend who's ever touched you in those areas?

A: Um, he touched me -- he touched me on my um, privates and--

Q: Who did?

A: --he um, Neco.

Q: Neco?

A: My friend.

Q: And who -- and is Neco the 4-year-old you're talkin' about?

A: Mm-hm.

Q: Oh okay, so Neco your friend.

A: And he kissed me. Sometimes he kiss me on my shoulders--

Q: Oh on your shoulders?

A: --and he -- but my teachers don't let him do that.

Q: Oh okay. Has there been anybody else who's ever touched you in any of those private areas?

CERTIFICATE OF FILING

I, M. Castillo, an employee of Las Vegas Defense Group, hereby certify that service of the above and foregoing REQUEST FOR ADMISSIBIILITY OF PRIOR SEXUAL CONDUCT, was made this 24th day of May, 2013, by Electronic Filing and/or Facsimile Transmission to:

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An employee of the Las Vegas Defense Group

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAY 29 2013

BY KATHERINE STREUBER, DEPUTY

OPPS
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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DUSTIN JAMAL BARRAL,
#2755494

Defendant.

CASE NO: C269095

DEPT NO: VIII

STATE'S OPPOSITION TO DEFENDANT'S REQUEST FOR ADMISSIBILITY OF PRIOR SEXUAL CONDUCT PURSUANT TO NRS 48.069

DATE OF HEARING: 05-29-13
TIME OF HEARING: 8:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney, through MICHELLE FLECK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for Admissibility of Prior Sexual Conduct Pursuant to NRS 48.069.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF FACTS PERTINENT TO THIS OPPOSITION

Defendant, DUSTIN BARRAL, is charged by way of Information with the crimes of Sexual Assault With a Minor Under the Age of 14 (Felony – NRS 200.364, 200.366), Attempt Sexual Assault With a Minor Under the Age of 14 (Category A Felony – NRS 193.330, 200.364, 200.366). the victim in this case is Jocelyn Hammands (DOB: 11-13-05). Defendant is Jocelyn's uncle. Jocelyn was 4 years of age at the time crimes occurred and is currently 7 years of age.

Defendant is accused of sexually assaulting the victim, then age 4, as she slept on a Futon while spending the night at his residence. Specifically, the victim has given statements that the Defendant came into the room where she was asleep with her cousin and "dug" his fingers into her vagina and anal opening which hurt her.

Trial of this matter has commenced and a jury is currently being selected for this matter. On May 28, 2013, Defendant filed the instant motion. The State's Opposition follows.

LEGAL ARGUMENT

Defendant's instant motion moves for admission of the following statements made to a counselor by the victim, who was four years of age at the time, occurring ***after*** the Defendant sexually assaulted this victim:

1. On September 29, 2010 the Counselor's case notes indicate: Jocelyn does not always feel safe regarding her privates at her natural father's house. Jocelyn's father's roommate says things that hurt her privates.

A reading of the entire case note of the counselor indicates that Jocelyn's dad's roommate told her she was "a little stupid" which made her privates hurt. Jocelyn denied any touching by her nature father or his roommate.

2. On September 16, 2010, the counselor's case notes indicated Jocelyn told her teacher that a girl patted her privates. The teacher informed the counselor that the classroom is well monitored.

3. On October 20, 2010, the counselor's case notes indicated that Jocelyn thinks about scary monsters when her private hurts. Defense counsel fails to point out that the four year old child also thinks about "Uncle Dustin" (when her private hurts) and cannot get him out of her head.

4. On February 24, 2011, the counselor's case note indicates that Jocelyn told her mother and grandmother that her father's girlfriend put her fingers around her neck and choked.

5. On November 3, 2011, the counselor's case note indicates that there was an issue with a boy at school who kicked Jocelyn's privates, tried to lick her face and attempted to kiss her.

In addition to the aforementioned statements which were made by Jocelyn's Grandmother and Mother in speaking to the counselor regarding Jocelyn's progress; Jocelyn also gave a statement to Detective Hatchett on July 15, 2010, wherein she indicated that her four year old friend Nico had touched her privates and kissed her on her shoulder but the teacher would not let him do that. The victim's statement regarding the incident at school with Nico occurred ***prior*** to Defendant inserting his fingers into the four year old victim's anus and vaginal opening.

See Defendant's Motion p. 4; Exhibit's A-B.

I. THE PROFFERED STATEMENTS ARE NOT INCIDENTS OF PRIOR SEXUAL CONDUCT OF THE VICTIM ADMISSIBLE TO PROVE CONSENT PURSUANT TO NRS 48.069

NRS 48.069 states:

> In any prosecution for sexual assault or for attempt to commit or conspiracy to commit a sexual assault, if the accused desires to present evidence of any previous sexual conduct of the victim of the crime to prove the victim's consent:
> 1. The accused must first submit to the court a written offer of proof, accompanied by a sworn statement of the specific facts that the accused expects to prove and pointing out the relevance of the facts to the issue of the victim's consent.
> 2. If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the victim regarding the

offer of proof.
3. At the conclusion of the hearing, if the court determines that the offered evidence:
(a) Is relevant to the issue of consent; and
(b) Is not required to be excluded under NRS 48.035,
the court shall make an order stating what evidence may be introduced by the accused and the nature of the questions which the accused is permitted to ask. The accused may then present evidence or question the victim pursuant to the order.

In this case it is absolutely undisputable that a four-year-old is not capable of "consenting" to an adult male, then 25 years of age, inserting his fingers into her vaginal opening and anal opening. Furthermore, the Defendant has absolutely failed to submit a sworn statement of any facts that that are relevant to the issue of consent in this matter.

II. THE ADMISSION OF THE PROFFERED STATEMENTS ARE BARRED BY NRS 50.090

NRS 50.090 states the following:

> In any prosecution for sexual assault or statutory sexual seduction or for attempt to commit or conspiracy to commit either crime, the accused may not present evidence of any previous sexual conduct of the victim of the crime to challenge the victim's credibility as a witness unless the prosecutor has presented evidence or the victim has testified concerning such conduct, or the absence of such conduct, in which case the scope of the accused's cross-examination of the victim or rebuttal must be limited to the evidence presented by the prosecution or victim.

In Summit v. State, 101 Nev. 159, 697 P. 2d 1374 (1985), the Nevada Supreme Court explained the rationale for the rape-shield law codified in NRS 50.090. The Court explained that general use of a female's reputation for morality and chastity would be inadmissible to infer consent or to attack credibility. The Court also explained that the law is designed to protect rape victims from degrading and embarrassing disclosure of intimate details of their private lives and to encourage rape victims to disclose crimes, while being free from unnecessary indignities and needless probing into their sexual histories. Specifically, the Court stated:

In 1977 Nevada joined forty-five states and the federal government in passing a "rape

shield" statute, limiting inquiry into the sexual history of a complaining witness in a rape or sexual assault case. *See* J.A. Tanford and A.J. Bocchino, Rape Victim Shield Laws and the Sixth Amendment, 128 U.Pa.L.Rev. 544, 544 (1980). Such laws have generally been designed to reverse the common law rule applicable in rape cases, that use of evidence of a female complainant's general reputation for morality and chastity was admissible to infer consent and also to attack credibility generally. Thus, for example, it had been held: "It is a matter of common knowledge that the bad character of a man for chastity does not even in the remotest degree affect his character for truth, when based upon that alone, while it does that of a woman." State v. Sibley, 131 Mo. 519, 132 Mo. 102, 33 S.W. 167, 171 (1895), quoted in State v. Brown, 636 S.W.2d 929, 933 n. 3 (Mo.1982), *cert. denied sub nom.*, Brown v. Missouri, 459 U.S. 1212, 103 S.Ct. 1207, 75 L.Ed.2d 448 (1983). Such statutes as Nevada's have been described as "directed at the misuse of prior sexual conduct evidence based on this antiquated and obviously illogical premise." State v. Hudlow, 99 Wash.2d 1, 659 P.2d 514, 519 (1983). See also People v. McKenna, 196 Colo. 367, 585 P.2d 275, 278 (1978). An additional purpose of such statutes is " 'to protect rape victims from degrading and embarrassing disclosure of intimate details about their private lives.' " 124 Cong.Rec. at H 11945 (1978), quoted in Doe v. United States, 666 F.2d 43, 45 (4th Cir.1981). Finally, "[t]he restrictions placed on the admissibility of certain evidence by the rape-shield laws will, it was hoped, encourage rape victims to come forward and report the crimes and testify in court protected from unnecessary indignities and needless probing into their respective sexual histories." State v. Lemon, 456 A.2d 261, 264 (R.I.1983). Id.

The statements made to the counselor and/or Detective Hatchett do not reference any specific sexual allegations. Furthermore, the statements to the counselor were made after Defendant had already sexually assaulted the victim in this case; while the statement made to Detective Hatchett references a four-year-old little boy named Nico kissing the victim's shoulder at school in front of the teacher. As such, Defendant simply cannot demonstrate to this Court that this type of behavior is evidence of "knowledge" or "motive to fabricate" about the instant allegations of sexual abuse in this case.

III. THE ADMISSION OF THE PROFFERED STATEMENTS ARE NOT FALSE ALLEGATION AND ARE THEREFORE INADMISSIBLE

The State would further point out that there are very limited exceptions to the rape-shield law. One of those would be if the defense was alleging that there was a prior false allegation.

In Miller v. State, 105 Nev. 497, 779 P.2d 87, (1989), the Supreme Court of Nevada ruled that the district court had properly excluded evidence the defense attempted to elicit regarding prior sexual abuse allegations made by the complaining witness. The court held that Defendant must prove, by a preponderance of the evidence, the following three elements:

(1) the accusation or accusations were in fact made;
(2) that the accusation or accusations were in fact false;
(3) that the evidence is more probative than prejudicial.

Id at Nev. 502, P.2d 90 (emphasis supplied); State v. Brown, 107 Nev. 164, 165, 807 P.2d 1379, 1380 (1991).

Upon such a showing, the trial court is to permit cross examination of the victim and upon denial or failure of memory, can permit extrinsic evidence. Miller, at 502. The Nevada Supreme Court discussed a defendant's burden in Brown, *supra*. Proof of falsity must be something more than a bare unsupported opinion that the complaining witness is lying. Brown, at 166. Before a sexual assault defendant can commence cross-examination of a victim as to prior complaints of sexual misconduct, he must provide some independent basis that the accusations are false. Id. Moreover, without a showing that the prior complaints are false, they become irrelevant. Brown at 168-169. As an aside, there is no violation of a sexual assault defendant's Sixth Amendment Right to Confrontation by refusing to permit cross examination regarding prior complaints when a defendant has not met the Miller burden at a hearing. Id.

The reasoning for this law is sound. Even to suggest to a jury that a victim has made prior false or unsubstantiated sexual abuse allegations can be extremely detrimental to the State's case. Simply asking the question would be enough to unfairly taint the credibility of a victim. Because of this, the law places a high burden on the defense to back up any claims

of prior false allegations before the questions can even be asked. If the cannot show that the prior allegations are false, the questions should be precluded.

Turning to the instant case, there is no evidence to suggest that the victim has made any false allegations of sexual abuse. Thus Miller is clearly inapplicable and the rape- shield law applies.

CONCLUSION

Based upon the above and foregoing Points and Authorities, the State respectfully requests Defendant's Request for Admissibility of Prior Sexual Conduct Pursuant to NRS 48.069 must be DENIED.

DATED this _____ day of May, 2013.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY M. Fleck
MICHELLE FLECK
Chief Deputy District Attorney
Nevada Bar #10040

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State's Opposition was made this ____ day of May, 2013, by facsimile transmission to:

MICHAEL BECKER, ESQ.
FAX# 974-0524

BY _____
Employee of the District Attorney's Office

/SVU

VER

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
MAY 31 2013 3:00P
BY Billie Jo Craig
BILLIE JO CRAIG DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DUSTIN BARRAL,

Defendant.

CASE NO: C-10-269095-1

DEPT NO: VIII

VERDICT

We, the jury in the above entitled case, find the Defendant DUSTIN BARRAL, as follows:

COUNT 1 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

☒ Guilty of **SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE**

☐ Not Guilty

We, the jury in the above entitled case, find the Defendant DUSTIN BARRAL, as follows:

COUNT 2 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE

(please check the appropriate box, select only one)

☒ Guilty of **SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE**

☐ Not Guilty

DATED this 31 day of May, 2013

FOREPERSON

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06/07/2013 02:42:31 PM

CLERK OF THE COURT

MOT
MICHAEL L. BECKER, ESQ.
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Attorneys for Defendant DUSTIN BARRAL

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- DUSTIN BARRAL, #2755494 Defendant.	CASE NO: DEPT NO:	**C269095** **VIII**

MOTION FOR ACQUITTAL OR
IN THE ALTERNATIVE A NEW TRIAL

COMES NOW, the Defendant, DUSTIN BARRAL, by and through his attorneys of record, MICHAEL L. BECKER, ESQ. and MICHAEL V. CASTILLO, ESQ., and pursuant to NRS 175.381 and 176.515 moves this Honorable Court to set aside the verdict and enter a judgment of acquittal based on the insufficiency of the evidence or alternatively, to grant a new trial.

This Motion is made based upon all the papers and pleadings on file herein, the Points and Authorities which follow and any arguments of counsel entertained by the Court at the hearing of said Motion.

DATED this 7th day of June, 2013.

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531
Attorneys for Defendant DUSTIN BARRAL

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff;

MICHELLE FLECK, ESQ., Deputy District Attorney;

MICHELLE EDWARDS, ESQ., Deputy District Attorney

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the above and foregoing MOTION FOR ACQUITTAL OR IN THE ALTERNATIVE A NEW TRIAL will be heard before the above entitled Court on the 17 day of June, 2013, at 8:00AM a.m., or as soon thereafter as counsel may be heard.

DATED this 7th day of June, 2013

MICHAEL V. CASTILLO, ESQ.
Nevada Bar No. 11531
Attorneys for Defendant DUSTIN BARRAL

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On or about November 29, 2010, the Defendant DUSTIN BARRAL (hereinafter "Dustin" or "Defendant") was charged by way of information with two counts of SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14 (Category A Felony –NRS 200.364, 200.366).

The State alleges that the Defendant sexually assaulted his then four (4) year old niece Jocelyn Coleman as she slept on a futon while spending the night at his residence by going into a bedroom where she was trying to sleep and digging into her vaginal and anal openings with his fingers.

Jury trial commenced on May 28, 2013. Following a three day trial, the jury found the Defendant guilty of both counts. Sentencing is set for August 12, 2013 at 8:00 a.m.

The focal points of this motion are (1) that insufficient evidence was presented at trial to sustain a conviction; (2) alternatively, that conflicting evidence was presented meriting a retrial and (3) a new trial is warranted because the Defendant suffered a structural error during jury selection affecting his fundamental rights.

ARGUMENT

I. THE STATE FAILED TO PRESENT SUFFICENT LEGAL EVIDENCE AT TRIAL TO SUPPORT THE DEFENDANT'S CONVICTIONS

The Defendant respectfully submits that the State failed to submit legally sufficient evidence to sustain the jury's convictions for both counts of sexual assault.

A. Applicable Law

The Due Process Clause of the United States Constitution requires that an accused may not be convicted unless each fact necessary to constitute the crime with which he is charged has been proven beyond a reasonable doubt. Fiore v. White, 531 U.S. 225, 228-29, 121 S. Ct. 712, 148 L. Ed. 2d 629 (2001); Rose v. State, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007). Further, an acquittal must be granted by a district court when there is insufficient evidence to support a conviction.

NRS 175.381(2) provides that the trial court may set aside a verdict and enter a judgment of acquittal "if the evidence is insufficient to sustain a conviction." *See also* Evans v. State, 112 Nev. 1172, 1193; 926 P.2d 265, 279 (1996) (the district court may set aside a jury verdict of guilty and enter a judgment of acquittal only when there is insufficient evidence to support a conviction). Insufficiency of the evidence occurs where the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, *even if such evidence were believed by the jury."* Evans, 112 Nev. at 1193; 926 P. 3d at 279. **When there is truly insufficient evidence, a defendant must be acquitted.** State v. Purcell, 110 Nev. 1389, 1394-95; 887 P. 2d 276, 279 (1994).

B. Standard of Review

The exercise by the trial court of the right to grant a new trial or acquittal will be presumed correct and proper by the appellate court until the contrary is shown by the appellant. State v. Crockett, 84 Nev. 516, 518; 444 P. 2d 896, 898 (1968). Additionally, the Nevada Supreme Court has stated that in determining the sufficiency of the evidence on appeal, "the critical question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Mejia v. State, 122 Nev. 487, 492; 124 P. 2d 722, 725 (2006), *quoting* State v. Walker, 109 Nev. 683, 685; 857 P. 2d 1, 2 (1993). However, "mere suspicion or speculation cannot be the basis for a jury's conclusion that an essential element has been satisfied." United States v. Free, 841 F. 2d 321, 325 (9th Cir. 1988).

C. Discussion

In the present case, the evidence presented by the State was insufficient as a matter of law and the convictions should be set aside because the State failed to establish that the Defendant *subjected the named victim to sexual penetration.*

NRS 200.366 states in relevant part:

> A person who subjects another person to sexual penetration against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct is guilty of sexual assault.