Q Okay. Taquanda didn't disclose sexual abuse, is that correct?

A That is correct.

Q Okay. So it wasn't as important to note the tissue in her hymen?

A No. I indicate that she has an estrogenized redundant hymen.

Q Correct.

A That I was able to swab it, and that I mark on the following page that her examination is normal. And I have -- I obtained images during the examination just to show what it looked like at that time.

Q Okay. And you said you took pictures of both girls, is that right?

A That's correct.

Q Okay. You said something about that essentially you wouldn't be here, I guess, if there was no allegation of abuse, is that correct? Do you recall saying something, testifying to something like that during redirect? I apologize, you don't recall that?

A No.

Q Okay. Well, your entire job when you were here in Las Vegas and likely down in New Orleans, I'm assuming, is that you -- the examination of children who are alleged to be abused, is that correct?

A Yes.
Q Okay. You don't see children who come in just for an exam?
A I do end up seeing -- well, it depends on what your question is. Can you clarify?
Q Well, I mean, a child, the parent -- I mean, my kid needs a 12-month check up and they bring their child in to see you?
A No, I do not do well child care.
Q Okay. All right. So generally your practice deals with abused children, is that right?
A Or concerns of abuse. Yes.
Q Concerns of abuse or abused children. Is it mostly sexual abuse?
A I see more sexual abuse than physical abuse, yes.
Q Okay. With regard to the children that you see, you fill out these forms about probable and possible abuse or no findings, is that correct?
A Correct.
Q Do you follow up with these children and what happens later after they leave your clinic?
A Generally, no.
Q Okay. So you're not aware -- of the ones that you find probable abuse, you're not aware of later on them saying it didn't happen or recanting, is that correct?

A I've had some cases where that has occurred.
Q I'm saying do you follow up with that on the cases?
A Do I see the child again, is that your question?
Q On the cases that you check the box probable abuse or possible abuse, do you follow up with those children to find out what happened later?
A Not in all cases, no.
Q Okay. And so you don't know if later on they say, oh, it didn't really happen?
A I would not necessarily know that. That's correct.
Q Okay. You wouldn't have any of that information?
A No.
Q Would you agree then -- I believe you stated that the hymen doesn't necessarily weigh into your opinion about whether a child was abused or not, is that right?
A No, that's not what I said.
Q Okay. Can you explain that then?
A Can you ask your question again so I understand it?
Q Well, does the hymen weigh into your opinion about whether a child was abused?
A It can.
Q Okay. And when can it weigh into that?
A So, for example, I've had cases where a 2-year-old has an injured hymen, cannot tell us what happened and I still conclude that the child was abused because of the

injury.

Q Okay. So a 2-year-old child who is unable to verbalize, correct?

A Correct.

Q And there's an injury to the hymen?

A Correct.

Q So at that point in time you would check possible abuse?

A Correct.

Q Okay. And those would be the factors that would weigh into your decision to check possible abuse?

A If there appeared to be a penetrating injury to the hymen with no provided history of trauma to match it, then yes.

MS. ALLEN: Thank you.

THE COURT: Before I excuse this witness, can I have the parties approach?

(Bench Conference)

THE COURT: Have you been able to find the photos? Okay. Then I guess I should ask her (unintelligible) if they still have the photos.

MS. ALLEN: Please.

THE COURT: Okay.

(End of Bench Conference)

THE COURT: All right. At this time we're going to

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take a recess. During this recess you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or read, watch or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including without limitation newspapers, television, Internet and radio, or form or express any opinion on any subject connected with this trial until the case is finally submitted to you.

We'll be in recess until the court marshal lets you know. Thank you, you're excused.

(Jury is not present)

THE COURT: Let the record reflect that this hearing is taking place outside the presence of the jury panel.

Doctor, you indicated during -- you indicated during your testimony that you did take photos of this examination, is that correct?

THE WITNESS: That is correct.

THE COURT: Where are those photos right now?

THE WITNESS: Those photos would be in the possession of the CAC.

THE COURT: The CAC?

THE WITNESS: They're not my personal photos. They are owned by the -- they're managed by the CAC.

THE COURT: Okay. So you could not request them?
THE WITNESS: No.
THE COURT: All right. You have nothing to do with them?
THE WITNESS: That's correct.
THE COURT: The CAC does?
THE WITNESS: That's correct.
THE COURT: Okay.
THE WITNESS: Well, I obtained the photos and when I was here employed I had access to a system so I could review them, but I didn't have any type of rights to copy or print them or do anything like that.
THE COURT: Do you still have those rights?
THE WITNESS: To be able to view them?
THE COURT: Uh-huh.
THE WITNESS: I don't think so, no.
THE COURT: Okay. But you couldn't get them for us?
THE WITNESS: Uh-uh.
THE COURT: No possible way?
THE WITNESS: No, not that I could do.
THE COURT: Okay. With that, can I excuse this witness?
MS. ALLEN: Yes.
THE COURT: Okay, you are excused from your subpoena. Thank you very much for being here and the

testimony you provided, and I hope you make your plane.

THE WITNESS: Thank you.

THE COURT: Okay. With that, now what is your --

MS. ALLEN: Well, Your Honor --

THE COURT: -- 'cause she can't get them.

MS. ALLEN: I understand she can't get them. Again, I think it was more of a question of them being provided from the State, but it is what is. I mean, I can't -- obviously I can't question her about it without having the pictures and we don't have the pictures, and I have no idea how long it would take to get them. My concern is that there was no testimony -- I wanted a specific -- I guess a specific testimony from her with regard to what she saw with regard to Taharah's -- the hymen, you know, the tissue in the hymen with regard to her.

THE COURT: Okay. So is there a request pending for the State to try to get them?

MS. ALLEN: I would request that they do, yes.

THE COURT: Okay. Ms. Luzaich, do you have that power?

MS. LUZAICH: Well --

THE COURT: I mean, I don't know.

MS. LUZAICH: The Court needs to issue an order with all of those findings under Epperson. I actually, as soon as I sat down while she was cross-examining, I sent an email to

the actual coordinator of the CAC and the person at the front desk who does the busy work to do that asking for it, but I mean, they haven't responded. I sent my investigator an email. He was out in the field. He's back at the office now. He said -- I just got an email back, let me call the CAC. So that's what I'm trying to do. But there needs to be -- they won't release it without a written court order.

THE COURT: Okay. All right. Will you prepare the court order or do you want my office to start preparing the court order?

MS. LUZAICH: No, no, no, I'll have my secretary do it.

THE COURT: Okay. We'll be in recess for about ten more minutes.

MS. ALLEN: Thank you.

MS. LUZAICH: Wait, can we -- I'm sorry, one second.

THE COURT: You know, I also want to tell you --

MS. LUZAICH: Now, whose photos? Just Taharah's?

MS. ALLEN: Yeah, just Taharah.

MS. LUZAICH: Oh, okay. Thank you.

THE COURT: And I also want to tell you that we need to stop at four o'clock today. Okay?

MS. LUZAICH: Can we talk about what time we're going to start tomorrow? I'm sorry, Judge.

THE COURT: Uh-huh.

MS. LUZAICH: Just I figured while the jury is out. I know Ms. Allen has an issue in the morning.

MS. ALLEN: I have one thing at 9:30 in lower level.

THE COURT: 10:30?

MS. ALLEN: Sure.

THE COURT: Okay.

MS. LUZAICH: Oh, okay.

THE COURT: Does that work for everybody?

MS. LUZAICH: Sure.

MS. ALLEN: I would normally pass it off to someone, but my client spent like eight months in Lakes Crossing --

THE COURT: Oh, okay.

MS. ALLEN: -- so I need to make sure it goes well.

THE COURT: Okay.

MS. LUZAICH: Thank you.

(Court recessed at 2:36 p.m. until 2:46 p.m.)

(Jury is not present)

THE MARSHAL: So is that guy a witness or he's not a witness?

MR. MACARTHUR: He is a witness.

MS. ALLEN: Oh, John?

THE COURT: No one invoked the exclusionary rule.

MR. MACARTHUR: Well, hold on, hold on.

THE COURT: Neither side.

MS. LUZAICH: Oh, we would be invoking. I thought

it was at the beginning.

THE COURT: Okay. I don't think that either side has invoked the exclusionary rule, and the clerk --

MS. LUZAICH: Oh, we would be invoking the exclusionary rule.

THE COURT: Okay. The exclusionary rule has now been invoked, so no witnesses in the courtroom.

MS. ALLEN: Right. No, we told -- yeah.

THE COURT: I think everyone always assumes it has been.

MS. LUZAICH: Yes, that's true.

MS. ALLEN: Yeah, I never -- I am always really careful about that.

THE COURT: I guess I should ask before we start.

(Pause in the proceedings)

(Jury is present)

THE COURT: Do I have a stipulation from the State of Nevada to the presence of the jury panel?

MS. LUZAICH: Yes, Judge.

THE COURT: Ms. Allen?

MS. ALLEN: Yes, Your Honor.

THE COURT: Okay. The State can call their next witness.

MS. RHOADES: Yes, Your Honor. The State calls Victoria Duke.

VICTORIA DUKE, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. Could you please state your full name, spelling your first and last name for the record.

THE WITNESS: Victoria Angelique Duke. Victoria, V-I-C-T-O-R-I-A Duke, D-U-K-E.

THE CLERK: Thank you.

THE COURT: Okay, thank you, Ms. Duke.

There's just one thing I want to tell the ladies and gentlemen of the jury before you get started. I know there have been some questions about how you ask witnesses questions. You're only permitted to ask witnesses questions and if you look in your notebook the procedure for asking a witness a question is in there. If after reading that procedure any of you have any further questions, before the end of the day if you'll just raise your hand and I will try to answer the question. But the exact same thing that I read to you at the start of the case is in your jury book. Is everybody okay? Can we proceed?

Okay, everyone is shaking their head yes, so you can proceed with this witness.

MS. RHOADES: Thank you, Your Honor. May I approach the witness briefly just to put something underneath the microphone?

THE COURT: Of course.

MS. RHOADES: Okay.

DIRECT EXAMINATION

BY MS. RHOADES:

Q Victoria, how are you doing today?

A I'm okay.

Q How old are you?

A Twenty-one.

Q And when is your birthday?

A July 31st, 1992.

Q What's your mom's name?

A Tina Duke.

Q Do you have brothers and sisters?

A Yes.

Q Can you tell me their names and how old they are right now?

A I have a sister named Mahlica, she's 20. I have a sister named Taharah, she's 14, and I have a sister named Taquanda and she's 13. I have a brother named Shabazz and he's 19.

Q What state do you live in right now?

A California.

Q When did you move to California?

A In August of 2012 -- or 2013.

Q And did you move from Las Vegas to California in August 2013?

A Yes.
Q When was the last time that you saw your siblings?
A In May of 2013.
Q What are you doing out in California, Victoria?
A I am living with my god-mom and I'm going to school for MCAA.
Q Can you tell us what that is?
A It's Medical Clinical Admissions Assistant.
Q And what kind of things are you going to do with that degree?
A I can start -- I can go -- I can have a career at a clinic, a hospital or any type of medical facility.
Q And you just started that, is that right?
A Yes.
Q Did you graduate high school?
A Yes.
Q What high school did you graduate from?
A Canyon Springs.
Q And that's here in Las Vegas?
A Yes.
Q Were you born in Las Vegas or were you born somewhere else?
A I was born somewhere else.
Q Where were you born?
A Columbus, Ohio.

THE COURT: You know what, Ms. Duke, that might get a little uncomfortable if you keep having to bend down.

THE WITNESS: Okay.

THE COURT: I think if you just get close enough everyone will be able to hear you, and the jury will let me know if they can't hear you. I just don't want you to have to keep going like that, okay?

THE WITNESS: Okay.

THE COURT: All right.

BY MS. RHOADES:

Q Okay, Victoria, I'm going to take you back to early 2004. Where were you living at that time?

A In Louisiana.

Q And who were you living with in Louisiana?

A My mom and my siblings.

Q All four of your siblings?

A Yes.

Q So you're the oldest of everyone, right?

A Yes.

Q Is there a time when you were living in Louisiana that you came to Las Vegas?

A Yes.

Q How did that come about?

A My mom went to Las Vegas and Fred's brother took us -- came from Las Vegas to pick us up from Louisiana.

Q Do you recognize Fred in the courtroom today?
A Yes.
Q Can you point to him and identify something that he's wearing?
A A white shirt, black tie, tan pants and black shoes.
Q Can you point him out?
A On the right side of the court over there.
MS. RHOADES: Your Honor, may the record reflect identification of the defendant?
THE COURT: So reflected.
MS. RHOADES: Thank you.
BY MS. RHOADES:
Q Fred's brother came and picked you and your siblings up from Louisiana?
A Yes.
Q Was your mom there at that time?
A No.
Q Had you ever met Fred's brother before this time?
A No.
Q Had you ever met Fred before this time?
A He came to the house, but I didn't go see him; my other siblings did.
Q And when you say came to the house, you mean in Louisiana?
A Yes.

Q So you and your siblings get in Fred's brother's car --

A Yes.

Q -- and drive to Las Vegas, is that right?

A Yes.

Q What happens when you arrive in Las Vegas?

A We moved directly into Ms. Ann's house on Trish Lane.

Q And who is Ms. Ann?

A Ms. Ann is Fred's girlfriend.

Q Were you aware of a relationship between your mother and Fred as well?

A Yes.

Q What was the nature of that relationship?

A I'm not sure.

Q When did you meet Fred?

A At Trish Lane.

Q After you got here from Louisiana?

A Yes.

Q How old were you when you came to Vegas from Louisiana?

A About 12 or 11.

Q Do you remember what month you came to Las Vegas?

A December.

Q Would that be in 2004?

A Yes.
Q Who lived at the Trish Lane house besides Ms. Ann?
A Her mother and her daughter.
Q Do you know Ms. Ann's daughter's name?
A Sha'karia.
Q Did Fred live at the house on Trish Lane?
A No.
Q Did you and your family, your brothers and your sisters and your mom all stay at Trish Lane?
A Yes.
Q How long did you live there for?
A I lived there from 2014 -- from December 2014 to May 2005.
Q Could it be December 2004, not December 2014?
A Oh, 2004. From 2004 to May 2005.
Q And did your siblings and you and your mom all live at the Trish Lane for that entire period of time?
A Uh, no.
Q Is there somewhere else that you lived?
A We were shortly put out into the Shade Tree and then we moved back into Trish Lane.
Q And when you were put out into Shade Tree, you guys were all together, you and your siblings and your mom, is that right?
A Yes.

Q And then you moved back in all together?
A Yes.
Q Do you remember ever going to where the defendant lived?
A Uh, one day we went to the defendant's house and he took my mom to work and he left us there and then came back.
Q Do you remember where Fred's house was?
A No.
Q Was it a house or was it an apartment?
A An apartment.
Q Did he live there alone or with somebody else?
A Uh, I can't remember.
Q Describe the time that you remember going over to Fred's apartment.
A In the daytime, in the morning.
Q Did you go with all of your siblings and your mom?
A Yes, and then he dropped -- they dropped us off at the house and he took my mom to work.
Q Where were you coming from?
A We was coming from Ms. Ann's house on Trish Lane.
Q So Fred picked you and your siblings and your mom up at Trish Lane and took you and your siblings back to his apartment?
A Yes.
Q Where did he take your mom, if you know?

A To work.

Q Did Fred come back to the apartment after he took your mom to work?

A Yes.

Q What happened at Fred's apartment?

A We was all asleep looking at -- we was all asleep and we was all sick, and when I woke up my siblings was gone. And I asked where my siblings were and he said at the park.

Q Do you remember what month and what year this was in?

A It was in 2005 and it was in January.

Q And when you said you were all sick, you mean you and your brothers and your sisters were all sick?

A Yes.

Q Did you have a cold or something like that?

A I'm not sure what it was, but we all had fevers and it was like a cold-flu symptoms, severe.

Q So you were all sleeping in Fred's apartment, is that right?

A Yes.

Q Where at in Fred's apartment were you sleeping?

A In his room.

Q On his bed?

A Yes.

Q Were all five of you on the bed?

A Yes.
Q And you woke up from being asleep and you saw that your brother and your sisters were gone?
A Yes.
Q Was the defendant in the room?
A Yes.
Q In his bedroom?
A He had just walked in by the time I woke up.
Q Did you ask him where your siblings went?
A Yes.
Q And what did Fred tell you?
A He said that they were at the park.
Q Could you hear any noise in the house?
A No.
Q Do you remember about how big the house was?
A No.
Q What happened when you were in Fred's room alone with him?
A He -- I asked him where my siblings were and he said at the park. And then he walked towards the bed and he picked up my hand and he tried to get me to touch his penis.
Q Did he -- Fred, did Fred have clothes on?
A His penis was out of his pants.
Q But he had pants on. Did he have a shirt on?
A Yes.

Q Where did the defendant grab you?
A He grabbed my hand and he -- he grabbed my hand and he forced my hand to touch his penis.
Q And did your hand touch his penis?
A (No audible response).
Q And just for the record, you're going to have to say yes or no, okay?
A Okay.
Q Did your hand touch his penis?
A Yes.
Q And it was his bare penis, is that right?
A Yes.
Q What happened after that?
A He was -- he told me he was going to beat me and not to tell nobody what had happened or what was going on.
Q Did you try to get away from the situation?
A Yes. I was trying to get away from him and he grabbed my legs and my hands and he told me he was going to beat me.
Q Were you on the bed when Fred grabbed your hand and put your hand on his penis?
A Yes.
Q Where was he at?
A Standing. He was standing. He was standing.
Q Were you able to get away from Fred?

A No.
Q What did he do next?
A He pulled my pants down. He pulled my pants down and then he told me I better not tell anybody about what happened or else he was going to beat me, and not to tell my mom, my sisters, anybody, Ms. Ann.
Q What happened after Fred took your pants off?
A He forced his finger into my vagina.
Q When Fred took your pants off, did you have underwear on?
A Yes.
Q Did Fred take those underwear off?
A Yes.
Q When he put his finger inside your vagina, how did that feel?
A Terrible.
Q What did Fred do next, if anything?
A He tried to force his penis into my vagina.
Q Did Fred have his pants off at this point or were his pants still on?
A His pants were sort of still on like halfway.
Q Were you still on the bed at this point?
A I was struggling but, yeah, he had me on the bed.
Q When you say he tried to force his penis in your vagina, did he penis pass through the lips of your vagina?

A Yes.
Q How did that feel?
A Terrible.
Q Was your whole body on the bed? Your legs and your arms were on the bed?
A Yes.
Q Did there come a time when he stopped doing that?
A Yes.
Q What did he do when he stopped?
A He pulled my pants back up and told me not to tell anybody, and he bruised my arm and told me not to tell nobody or else he was going to beat me.
Q Did he grab your arm while he was telling you not to tell anyone?
A Yes.
Q And is that where the bruise came from?
A Yes.
Q Had you ever seen Fred be physically abusive before?
A Yes.
Q Who did you see Fred physically abuse before?
A He physically abused me and my siblings.
Q What did he do to you?
A He would hit me and he -- we was at Ms. Dorothy's house and he held me by the neck and he was just -- he held me by the neck and pushed me and he would take the belt and hit

me with it and throw me across the room.

Q And when you say Ms. Dorothy, who is Ms. Dorothy?

A His mother.

Q Now, did this happen in 2004 or 2005 when you first came to Las Vegas?

A This -- yes.

Q So this all happened before this incident at Fred's apartment?

A Uh --

Q The physical abuse.

A The physical abuse, yes.

Q Did you previously see Fred physically abuse Mahlica before this incident at Fred's apartment?

A No.

Q How about Shabazz?

A Yes.

Q What did you see Fred do to Shabazz before this incident?

A He hit him.

Q How about Taharah?

A No.

Q How about Taquanda?

A No.

Q Okay. And we're just talking about the time period before the incident in the apartment, right?

A (No audible response).
Q Did you want any of that to happen, what happened in Fred's apartment?
A No.
Q Did your brother and sisters come back to the apartment?
A Yes.
Q About how long after Fred stopped did they come back, do you remember?
A Uh, right after.
Q Did you guys go back to the Trish Lane house?
A Yes.
Q And you guys all went back together?
A Yes.
Q Who took you over there?
A Fred.
Q Did you tell anyone what happened that day?
A Not that day 'cause I was too scared.
Q Did you eventually tell someone what happened?
A Yes.
Q Who did you tell?
A I told Ms. Ann.
Q About how long after it happened did you tell Ms. Ann?
A About a week.

Q What happened when you told Ms. Ann?
A She called his mom.
Q Is that Ms. Dorothy?
A Yes.
Q And what happened after that?
A And his mom came over and then he came over and then they was talking and he -- and Fred said that was a lie, that I was lying.
Q Did they talk to you, too?
A They said -- they was just asking me questions.
MS. ALLEN: Judge, objection as to "they" and objection as to hearsay.
THE COURT: Sustained.
BY MS. RHOADES:
Q Did you talk to Ann and Dorothy and Fred when they were talking about what happened?
A Yes.
Q Was anyone else there when they were discussing what happened?
A No.
Q Did you ever tell your mom what happened?
A Yes.
Q When did you tell your mom what happened?
A That same day that I told Ms. Ann and Ms. Dorothy.
Q Did they believe you?

A No.
Q What happened after that?
A After that they started treating me different, saying that I was a liar --and saying I couldn't be trusted.
MS. ALLEN: Objection as to --
THE WITNESS: -- and saying I couldn't be trusted.
MS. ALLEN: Your Honor --
MS. RHOADES: I can clarify.
MS. ALLEN: -- objection as to "they" and hearsay.
THE COURT: Sustained.
MS. ALLEN: Thank you.
BY MS. RHOADES:
Q Who treated you differently after that?
A Fred and my mom.
Q Fred and your mom?
A Yeah, and Ms. Dorothy.
Q What caused you to tell Ms. Ann about a week after this had happened?
A My mom didn't believe me and I felt bad and I just needed someone to talk to that could help the situation.
Q Did you tell your mom before you told Ms. Ann?
A No.
Q So you said that happened in January 2005. Did you eventually move to Utah from Las Vegas?
A Yes.

Q About how long after that incident did you move to Utah?
A We moved -- we moved in May of 2005.
Q Did anything else of a sexual nature happen with Fred between that incident to May 2005?
A No.
Q Do you know why you moved to Utah?
A Because my mom was tired of living in Vegas and she was about to have a baby, so she didn't want to be there because of the abuse and the drama.
Q Did you move with all four of your siblings and your mom?
A Yes.
Q How did you get to Utah from Las Vegas?
A This lady came in a minivan and picked us up with some of our things and we left.
Q About how long did you live in Utah?
A From 2005 to 2007.
Q You said your mom was pregnant. Did your mom do something with that baby?
A She gave him up for adoption.
Q Do you remember when that was?
A July 2005. July 19th.
Q Did you like living in Utah?
A Yes.

Q What did you like about it?

A It was peaceful. It was family oriented and we wasn't living in Vegas.

Q Were you aware whether or not your mom was still in contact with Fred?

A I was not aware.

Q Did there come a time when you and your brothers and sisters were removed from your mom's custody in Utah?

A Yes.

Q Did you go to a foster home?

A Yes, we did.

Q Did you guys all go to a foster home together or were you kind of separated?

A We was kind of separated.

Q How were you separated?

A We was -- they put Shabazz in his own separate home and they put Taquanda and Taharah in a home together and they put me and Mahlica in a home together.

Q Do you know why you were put in a foster home and taken from your mom's custody?

A Because my mom went to go visit Fred.

Q She came to visit Fred in Las Vegas?

A Uh-huh.

THE COURT: Is that a yes?

THE WITNESS: Yes.

BY MS. RHOADES:

Q About how long do you remember being in foster care for?

A From December of 2005 to June of 2006.

Q Did your mom eventually get you guys back?

A Yes.

Q And that was in June of 2006?

A Yes.

Q In August 2007, you moved back to Las Vegas, is that right?

A Yes.

Q How did that come about?

A My mom was telling us that we had to move.

MS. ALLEN: Objection, hearsay, Your Honor.

MS. RHOADES: It's not offered for the truth.

THE COURT: Sustained.

BY MS. RHOADES:

Q Are you doing okay?

A Yes.

Q So when you moved to Las Vegas from Utah in August 2007, how did you get from Utah to Las Vegas?

A Fred was parked outside and my mom woke all of us up and forced us into the car and closed the door and we started going to Vegas.

Q Were you and your brother and sisters all packed up

ready to move somewhere?

A We was packed up ready to move somewhere, but we didn't know necessarily where we were going. It was up in the air.

Q And when Fred was outside in his car and your mom woke you up, what time was that at?

A I'm not sure, but it had to be around probably two in the morning.

Q So it was dark out?

A Still dark, yeah.

Q So you and your siblings and your mom all pack your stuff in Fred's car and drive from Utah to Las Vegas?

A Yes.

Q Was anyone else in Fred's car other than Fred?

A No.

Q What kind of car is it?

A It was a black small car. I'm not sure what the model type was.

Q How old were you when you came back to Vegas?

A Fifteen.

Q And you just turned fifteen July 31st, 2007, right?

A Yes.

Q When you came to Las Vegas, where did you all first go?

A All of us first went to 966 Blankenship to drop off

my four siblings.

Q Who was living at 966 Blankenship?

A It was Sha'karia and Fred.

Q So instead of Fred's separate house, he was now living with Ann?

A Yeah.

Q And you said your four siblings went to that house. Which four? Well, all four of them, right?

A Yes.

Q And do you know why they went into that house and you guys -- you and your mom didn't?

A In the car on the way to Las Vegas they were having a conversation, saying that I wasn't trusted.

MS. ALLEN: Judge, objection, hearsay.

THE COURT: Sustained.

BY MS. RHOADES:

Q Did you hear Fred say anything while you guys were driving from Utah to Las Vegas about who was going to live where?

A Yes.

Q What did you hear Fred say?

A He said that Taharah and Taquanda and Shabazz and Mahlica was going to live at Ms. Ann's house and that I was going to -- and that I and my mom was going to live at Ms. Dorothy's house.

Q Do you know why?
A They told me --
MS. ALLEN: Judge, objection as to "they."
THE COURT: Sustained.
BY MS. RHOADES:
Q Did Fred tell you why?
A He said that I wasn't to be trusted. He said that I was crazy. And when you're in foster care you have to see therapists and stuff, they said you have to, and he said that they read -- they talked to the therapist and the therapist said I was crazy and that I couldn't be trusted and that I lie.
Q When you were living in Utah when you were in foster care, did you go to a therapist?
A Yes.
Q So your brother and sisters go to 966 Blankenship. Where do you and your mom go?
A We go to Ms. Dorothy's house.
Q Does Fred take you to Ms. Dorothy's house?
A Yes.
Q What happens when you get to Ms. Dorothy's house?
A We were sitting inside of the car.
Q Is this the same car that Fred picked you up in?
A Yes.
Q What happened when you got there?

A My mom and Fred was conversating (sic) to me about how --

MS. ALLEN: Judge, objection as to "they."

THE COURT: Sustained.

BY MS. RHOADES:

Q Were you in that car in front of Ms. Dorothy's house with your mom and Fred?

A Yes.

Q Did a conversation occur inside that car?

A Yes.

Q I'm going to ask you, what did Fred say to you only, not what your mom said, just what Fred said to you.

A He said that I was -- that he wasn't going to leave me alone and that he liked women, and that if I don't do what him and my mother say that I was going to wind up in a crazy home or in Child Haven and that I would never be able to see my siblings again because I can't be trusted and I wasn't listening to my mom when I was in Utah. And that he wasn't going to leave me alone, he wasn't going to let me do anything. He was going to bother me and bother me because he wanted to take my virginity.

Q After that conversation did you and your mom go into Ms. Dorothy's and unpack your things?

A Yes.

Q Did something happen on August 24th, 2007?

A August 24th is the day that me, my mom and Fred -- that me, my mom and Fred was in the car, the same car that we came from Utah in, on the hill facing all of Las Vegas.

Q And we'll take this very slowly. August 24th, you get in the same car that Fred picked you up in with Fred and your mom, is that right?

A Yes.

Q About what time did you get in the car with them?

A What time?

Q If you remember.

A It was in the daytime.

Q And it was just you three inside the car?

A Uh-huh.

Q Where did you go when you got inside the car?

A We went driving and we went to the park.

Q Did you go anywhere before you got to the park?

A We went to the store and he picked up alcohol.

Q When you say he picked up alcohol, do you mean Fred?

A Yes.

Q Did Fred go in the store and purchase alcohol?

A Yes.

Q And bring it back to the car?

A Yes.

Q With the alcohol, all three of you went to the park together?

A Yes.
Q When you got to the park, did you stay inside the car or did you get out and go in the park?
A We got out.
Q What did you do at the park?
A Just walked around.
Q Were you drinking while you were walking around?
A No.
Q And what happened after that?
A It was -- by the time we were done it was night time and we drove -- we got on the freeway and we drove to the place, and while we were going there we was drinking.
Q Who was driving?
A Fred.
Q And describe the place that you went to.
A It was high on top of a hill. You could see all of Las Vegas. And if you look out the window, you could see like a bunch of glass everywhere and different cars rocking back and forth. It's right by the mountains. Like, if you walk out like ten steps or so and you would be able to touch like a part of the bottom hill of the mountain.
Q What happened when you guys got to that location?
A We were drinking more drinks and we was -- then Fred got in the back of the car and we continued to drink.
Q Were you in the backseat of the car?

A Yes.
Q Was your mom in the front passenger seat?
A Yes.
Q Were you drinking a lot?
A Yeah.
Q Why were you drinking a lot?
A Because they said that --
Q And I'll stop you right there. I just want to know what Fred said, not what your mom said. What did Fred say while you guys were in the car?
A While we was in the car that moment -- in front of Ms. Dorothy's house or on the hill?
Q On the hill.
A They was just talking about -- they was talking between -- well, you know, they was talking between each other.
Q Fred and your mom were talking?
A Yeah.
Q What could you hear Fred saying?
A I can't remember what he was saying.
Q So Fred gets in the backseat with you, is that right?
A Yes.
Q What happens next?
A He pulls down my pants, and I just remember looking

at my mom, and I remember my pants being pulled down and my underwear and I remember pressure. I remember him hovering over me.

Q Where do you remember the pressure being on your body?

A In my vagina.

Q Did Fred take your shirt off or was your shirt still on?

A I can't remember.

Q What do you remember happening after that?

A I just remember my mom saying that it was cute, just being proud.

Q Did your mom do anything to stop this?

A No.

Q After this happened, after you remember him being on top of you hovering over you, what do you remember after that?

A After that I remember -- I don't remember anything else that night. I remember waking up at Ms. Dorothy's house.

Q Do you remember waking up at Ms. Dorothy's house the next morning?

A Yes.

Q How did your body feel when you woke up the next morning?

A I was sore and I wanted to go take a shower, and I was bleeding a little.

Q When you said you were sore, where were you sore?
A In my vagina.
Q Did Fred say anything to you after that incident about what happened in the car?
A He was just saying that it was going to happen more often.
Q Did you want anything like that to happen in the car?
A No.
Q How long did you stay at Ms. Dorothy's?
A We stayed at Ms. Dorothy's until August and we left in September.
Q Of 2007?
A Yes.
Q Did anything else of a sexual nature happen between the car incident and when you left Ms. Dorothy's?
A No.
Q And that's with Fred, is that right?
A (No audible response).
Q Where did you move to after Ms. Dorothy's?
A We moved into a motel and at the time it was called the Americana or the American Inn.
Q Is it called the Siegel Suites now?
A Yes.
Q And that was in September 2007, is that right?

A Yes.
Q How long -- for how long did you live in the Americana Inn?
A From September to mid-October.
Q Of 2007 as well?
A Yes.
Q Is this like an efficiency kind of room?
A Yes.
Q Who lived in that room?
A It was just me and my mother.
Q Can you describe what the room looked like?
A There was only one big bed, a dresser, a mirror. There was the kitchen. There was no doors. The only thing that had a door was the bathroom.
Q Was your mom working while you were living at the Americana?
A Yes.
Q Where was she working?
A At Bally's.
Q Would Fred come over to the room at the Americana?
A Yes.
Q How often would Fred come over?
A A lot.
Q When he came over, what would happen?
A We would drink and then he would want to have sex.

Q You said you would drink. Was the alcohol at your room or would Fred bring the alcohol?

A He would bring it.

Q Did you have sex with Fred at the Siegel Suites room?

MS. ALLEN: Judge, objection, leading.

THE COURT: Overruled. You can answer.

THE WITNESS: Yes.

BY MS. RHOADES:

Q Where did you have sex with Fred in that room?

A On the bed.

Q Can you describe how that happened?

A No.

Q You can't? Did he put a part of his body somewhere on --

MS. ALLEN: Judge, objection, leading.

THE COURT: Sustained.

BY MS. RHOADES:

Q Did Fred do anything -- did Fred touch your body while you were at the Siegel Suites?

A Yes.

Q Where did he touch you on your body?

A My breasts and my vagina.

Q With what part of his body did he touch your breasts?

A His hand.
Q With what part of his body did he touch your vagina?
A His hand.
Q Did he touch your vagina with any other part of his body at the Siegel Suites?
A His penis.
Q When you say his hand touched your vagina, where did it touch you on your vagina?
A Just -- I can't remember. I mean, I don't know that part of the body besides the inner -- like the inner vagina.
Q Did his finger go in your vagina?
A Yes.
Q Did his penis go in your vagina?
MS. ALLEN: Judge, objection, leading.
THE COURT: Overruled. You can answer.
BY MS. RHOADES:
Q Did his penis go in your vagina?
A Yes.
Q Besides alcohol, did Fred bring anything else over to the room at the Siegel Suites?
A Toys. He would bring toys.
Q What kind of toys would he bring?
A He brought a vibrator and a dildo.
Q Can you describe what the vibrator looked like?
A The vibrator was purple with a black top.

Q And can you describe what the dildo looked like?
A It was dark, blackish-brown, with two heads.
Q What happened with these toys?
A When my mom was at the house he would tell my mom to use the toys on me.
Q Would Fred come over and sometimes you were there alone?
A Yes.
Q And would Fred come over and sometimes you and your mom were there?
A Yes.
Q When you and your mom were there, what specifically did he tell you to do with those toys?
A He would tell my mom to use them on me.
Q Would your mom use the vibrator on you?
A Yes.
Q Was this in front of Fred?
A Yes.
Q What did she do with the vibrator?
A She would -- he would tell her to use it on my clitoris.
Q And would she do that?
A Yes.
Q Did she do anything else with the vibrator?
A She would -- she would -- he would tell her to stick

it in my vagina and she would.

Q Just take it slow. What did Fred tell you, if anything, to do with the dildo?

A He would say use it -- he would tell my mom to -- me and my mom to use it together.

Q Did you and your mom use it together? How did that occur?

A He told us to.

Q Did one side of the dildo go inside your mom's vagina?

MS. ALLEN: Judge, objection, leading.

THE COURT: Sustained.

BY MS. RHOADES:

Q Can you describe exactly what and where this dildo went?

A The dildo went from my mother's side to my side and --

Q When you say "my mother's side," what do you mean?

A Like from her vagina to mine.

Q So there were two sides to the dildo, right?

A Right.

Q Was one side of the dildo inside your mom's vagina?

MS. ALLEN: Judge, objection, leading.

THE COURT: I'm sorry?

MS. ALLEN: Leading.

THE COURT: You are leading.

MS. RHOADES: I'm just trying to clear it up.

THE COURT: I know.

BY MS. RHOADES:

Q The other side of the dildo that was not on your mom or near your mom, was that somewhere on your body?

A Yes.

Q Where on your body was it?

A In my vagina.

Q Was Fred watching you and your mom while you were doing this?

A Yes.

Q How many times did this happen at the Siegel Suites?

A Once.

Q How many times did what you described earlier with the vibrator happen at the Siegel Suites?

A Twice.

Q While you were at the Siegel Suites, did you see Fred do anything physically abusive towards your mom?

A No.

Q Where did you go after the Siegel Suites?

A We went to Walnut, to a place on Walnut.

Q Was that an apartment?

A Yes.

Q And Walnut Avenue is the street that it was on?

A Yes.
Q When did you move there?
A We moved there at the end of October.
Q Is that in 2007?
A Yes.
Q How long did you live at the apartment on Walnut?
A From 2007 to before the summer of 2008.
Q Were you going to school while you were living at Walnut?
A Yes.
Q At the Siegel Suites were you going to school?
A Uh, at the end of it. Like, we was living there and at the end of September I started school.
Q 2007?
A Yes.
Q Where were you going to school?
A At Mojave.
Q Way back when you were in Louisiana in 2004, were you going to school before that?
A Yes.
Q Did you go to school in Louisiana?
A Yes.
Q For how long?
A From -- I can't remember the starting date, but I know it was from like -- I can't remember the starting date,

but from that point to December and from December we went to Vegas.

Q December 2004?

A (No audible response).

Q Okay. While you were living at Walnut, did Fred come over to that apartment?

A Yes.

Q Who was living at that apartment?

A Just me and my mom.

Q Were your other siblings -- where were your other siblings living at?

A At the 966 Blankenship address.

Q How often would Fred come over to the Walnut apartment?

A A lot.

Q Can you give me a little bit more, maybe twice a week, three times a week, once a week?

A About three times a week.

Q What would happen when he came over?

A The same thing that happened at the Siegel Suites.

Q And we're going to talk about the things that happened, okay, at Walnut. Would the defendant bring anything over to the Walnut apartment?

A Alcohol. He would bring alcohol.

Q Did you drink the alcohol when he came over?

A Yes.
Q Would you drink a lot of alcohol?
A Yes.
Q Would he bring toys?
MS. ALLEN: Objection, Your Honor, leading.
THE COURT: You are leading.
BY MS. RHOADES:
Q Did he bring anything else besides alcohol?
A Yes.
Q What else did he bring?
A He would bring the toys.
Q When you say the toys, are those the same toys that you described earlier?
A Yes.
Q Did he leave these at the Walnut apartment?
A Yes.
Q How many bedrooms were in the Walnut apartment?
A Two.
Q Did you have a room and your mom had a room?
A Yes.
Q Tell me what happened of a sexual nature with Fred at the Walnut apartment.
A He would -- we would drink and then he would use the dildo or the vibrator.
Q When you say he would use the dildo or the vibrator,

describe how Fred used the vibrator.

A He would use the vibrator on my clitoris or he would use the dildo on the -- in or out of my vagina.

Q Was your mom there when this was happening?

A Sometimes she was there and sometimes she would be at work.

Q Were there times that Fred used the dildo on you when your mom was not there?

A Yes.

Q Were there times that Fred used the dildo on you when your mom was there?

A No.

Q How about the vibrator, was there times that Fred used the vibrator on you when your mom was not home?

A Yes.

Q Were there times that Fred used the vibrator on you when your mom was home?

A No.

Q Did other things of a sexual nature happen with Fred at the Walnut apartment? You have to speak up into the --

A It was multiple. It was multiple things, the same things that I've described earlier, and after that, no.

Q We're going to need to describe them again. While at the Walnut apartment, did a part of Fred's body touch a part of your body?

A Yes.
Q What part of Fred's body touched what part of your body?
A His penis touched my vagina.
Q Did he penis go inside your vagina?
A Yes.
Q How many times did this occur at the Walnut apartment?
A Often.
Q How often?
A Three times a week.
Q Did any other -- did he touch any other part of your body?
A Yes.
Q What other part of your body did he touch?
A He would touch my breasts.
Q What did he touch your breasts with?
A With his hand.
Q Did he touch any other part of your body?
A No.
Q Did anything happen with your mom and Fred and you of a sexual nature at the Walnut apartment?
A No.
Q When Fred put his penis in your vagina, did that happen in your room?

A Yes.

Q Did it happen in any other room at the Walnut apartment?

A Yes.

Q What other rooms?

A My mom's room, my room, and the living room.

Q So besides Fred putting his penis in your vagina and him touching your breasts, did anything else happen at the Walnut apartment with you and Fred?

A No.

Q Did you want any of these things to happen with Fred at the Walnut apartment?

A No.

Q Did you want him to put the vibrator on you?

A No.

Q Did you want him to put the dildo inside of you?

A No.

Q Did you go somewhere the summer of 2008?

A The summer of 2008 I was angry because I didn't want to do that stuff no more with Fred and my mom anymore and I was angry, and they said that I was acting out and they sent me over to his mom's house.

MS. ALLEN: Objection with regard to "they," Your Honor.

THE COURT: Sustained as to "they."

BY MS. RHOADES:

Q So you were angry in the summer of 2008. Did you go somewhere besides the Walnut apartment?

A Yes.

Q Where did you go?

A I went to his mother's house.

Q When you say "his," who do you mean?

A Fred's mother's house, Ms. Dorothy's house.

Q Did you go to Ms. Dorothy's house to live there?

A Off and on.

Q Do you remember what school year this was that you went to Ms. Dorothy's?

A It was the ending of my ninth grade year.

Q At some point did you move back or did you move into the Blankenship house?

A It was July 2008.

Q That you moved back into the Blankenship house?

A Yes.

Q And I shouldn't say back in because you never before -- you never previously lived at the Blankenship house, right?

A Right.

Q Who moved into that house?

A My mom and me.

Q And what month was this in?

A It was in July.

Q 2008?
A Yes.
Q When was your 16th birthday?
A July 31st, 2008.
Q How long did you live at Blankenship?
A From July 2008 to August 2010.
Q While you were living at the Blankenship, were your siblings still living there?
A Yes.
Q While at the Blankenship house did anything of a sexual nature happen with you and the defendant?
A During 2008 or --
Q During 2008 did anything of a sexual nature happen with you and the defendant?
A No.
Q How about during 2009?
A One time he touched my rear while I was washing dishes.
Q Did anything else happen?
A He just looked at me and went in his room afterward.
Q Did anything else happen between you and the defendant the entire time you were living at Blankenship?
A Yes.
Q What happened?
A He would call me in his room and tell me that he

missed me and say --

MS. ALLEN: Your Honor, I would object and I would just ask for some foundation as to when.

BY MS. RHOADES:

Q This incident you're about to describe when Fred called you into his room, do you remember what month this happened in?

A No.

Q Do you remember what year this happened in?

A 2009.

Q How many rooms were in the Blankenship house?

A Four.

Q Who -- do you remember at that time who lived in each of these rooms?

A Fred and Ann lived in the one, in the room on this side of the house. My sister and -- my sisters lived in this side. I think my brother lived on this side. And then someone else -- I think my mom lived on this side. My mom lived on this side.

Q Where were you at in the house when Fred called you in to his room during this incident that you're about to tell us about?

A I was in the garage.

Q Was anyone else home?

A No.

Q What did Fred say to you when he got you from the garage?
A He called my name as if I was in trouble.
Q What did he say to you after that?
A He called me in the room and told me to close the door.
Q Was this in his and Ann's room?
A Yes.
Q Did you do that?
A Yeah.
Q When you got into Fred's room and closed the door, what happened?
A He walked up to me and he was like -- he touched my arms and he was like, I've missed you and stuff, and he grabbed my hand and pulled me into the restroom of the room.
Q Is there a restroom connected to the bedroom?
A Yes. There's a restroom as soon as you walk in. Like, you walk in and the restroom is over there on the side.
Q Where -- he grabbed you on your hand, you said?
A Yes.
Q Did he pull you into the bathroom?
A Yes.
Q What happened when you got into the bathroom?
A I turned around to get ready to leave and he pulled my hand back in the bathroom, pulled me back into the

restroom.

Q What happened after that?

A He got something out of this drawer and he walked back to the bed and he pulled my hand to the bed.

Q So he pulled you from the bathroom over to the bed?

A Uh-huh.

THE COURT: Is that a yes?

THE WITNESS: Yes.

BY MS. RHOADES:

Q What happened after that?

A And then we had sex.

Q When you had sex, tell me what happened?

A He pulled my pants down, he pulled his pants down. He took his penis and he put it in my vagina and went back and forth.

Q Did this happen once or more than one time while you were living at Blankenship?

A It happened once.

Q Did you at some point move to an apartment, the St. Andrews apartments on Commerce and Craig?

A Yes.

Q When?

A In August of 2010.

Q Who moved to that apartment?

A Me, my sister Mahlica and Shabazz, my brother.

Q And where were Taharah and Taquanda staying?
A Taharah and Taquanda was staying with Fred and Ann.
Q Do you remember what school year you started when you moved into the St. Andrews apartment?
A It was my -- it was the beginning of my 12th grade year.
Q Do you remember talking to teachers at your high school?
A Yes.
Q And what high school was this again?
A Canyon Springs.
Q Did you tell anybody at Canyon Springs anything that was going on with Fred?
A I told two teachers.
Q The first teacher -- who was the first teacher?
A Coach Coop. And then I told Ms. Bywaters.
Q Did you tell Coach Coop that things of a sexual nature were happening with you and Fred?
A I can't remember.
Q How about -- well, who's the second teacher you said?
A Ms. Bywaters.
Q Did you tell Ms. Bywaters that things of a sexual nature were happening with you and Fred?
A I can't remember.

Q While at the St. Andrews apartment, would Fred come over to that apartment?

A Once in awhile. He didn't come over often because I would be with my friends; like, I stayed gone.

Q Did anything of a sexual nature happen between you and Fred at the St. Andrews apartment?

A It was just once.

Q Describe that for me. Are you doing okay, Victoria?

A I'm all right.

Q So, describe for me when something happened at the St. Andrews apartment.

A He would bring liquor, then we would have sex. He would put his penis in my vagina and then that would be all.

Q Did you want that to happen at the St. Andrews apartment?

A No.

Q The incident at Blankenship, did you want that to happen with Fred?

A No.

Q Did something else occur with Fred at the St. Andrews apartment?

A I was supposed to go to an appointment at the Welfare building and he was supposed to take me. And I knocked on my mother's door because I didn't want to be late and it was like thirty minutes or so before my appointment.

And I was knocking on my mom's -- I was knocking on my mom's door because him and my mom was in there, and I was supposed to go somewhere because he was supposed to take me. And he grabbed my wrist -- well, they opened the door and I'm like, we're supposed to -- are we still going? And he grabbed my wrist, and my mom was on the floor giving him oral, and he wouldn't let my wrist go and I had to pull away from him. I was telling him to let my wrist go. So I finally pulled away from him and I walked downstairs and I went around the corner.

Q Do you remember what month this happened in?

A No.

Q Was anyone else home at the apartment at this time?

A I had a dog, and it was just my mom, me, my dog and him. That was it.

Q Did you have a car at that time?

A No.

Q Did your mom have a car at that time?

A No.

Q Did Fred come over -- Why did Fred come over in the first place?

A He was supposed to take me to my appointment.

Q How many rooms were there in the St. Andrews apartment?

A Three.

Q Did your mom have a room?

A Yes.
Q Is that the room that your mom and Fred were in?
A Yes.
Q When you knocked on the door and opened the door to go in the room, was your mom dressed?
A She was naked.
Q Was Fred dressed?
A He was dressed but he had his penis out.
Q Can you say that again a little bit louder?
A He was dressed but he had his penis out.
Q And you said your mom was giving Fred oral sex, is that right?
A Yes.
Q How did you know that? Did you walk in and they were doing that?
A They opened the door because I was knocking on the door.
Q When Fred grabbed your wrist, what was he saying to you while he was doing this?
A He was like, you're mine and you can go when I say you can go.
Q Did he say anything else to you?
A No.
Q Why wouldn't -- why did he want you to stay?
A He wanted me to do what my mother was doing.

Q Were you able to get out of his grip?
A Yes. It was hard, but I did.
Q Did someone else take you to your appointment that you had to go to that day?
A Yes.
Q Your dog that was in the house, what kind of dog was that?
A It was -- I'm not sure the breed. It was a mixed dog. It looks like it was mixed with Shih Tzu and Poodle. And it was black. It was a short, black dog with curly hair.
Q It was your dog?
A Yes. I had received the dog for my birthday. The people -- the people seen me. We was walking, me and my friend was walking and they had given the dog to us. I was like, it's my birthday and they gave the dog to me because it was my birthday, and they said I could pay for the dog later.
Q That day, that day you had the appointment at the Welfare office, did you leave your dog locked in your room?
A Yes.
Q How long were you gone after you left to go to your appointment?
A I was gone for -- I was gone all the way into the night time because I didn't want to come back home. And so by the time I did come back home, 'cause my sister would help me take care of my dog, by the time I did come back home I

asked my sister what happened to my dog, and she said when she came back the dog was gone.

MS. ALLEN: Judge, objection as to hearsay.

THE COURT: Sustained.

BY MS. RHOADES:

Q When you came back to the St. Andrews apartment that day, was your dog there or was it gone?

A It was gone.

Q Did you ever see your dog again after that?

A No.

Q While you were living at St. Andrews, did you meet someone named Ms. Rose?

A Yes.

Q And did you meet her at -- when you were moving into another apartment?

A We met her as we was moving into the St. Andrews. She had given us furniture.

Q How did you meet her, just by the furniture?

A Through my mom.

Q Did you become close with Ms. Rose?

A Yes.

Q What kinds of things would you do with her?

A We -- she would take me to parties, take me over to her house. We would go shopping, or we would just chill at her house.

Q Did you at some point move to an apartment in Henderson?
A Yes.
Q Where is that located?
A 1100 Commerce. 1100 Commerce.
Q It's in Henderson, right?
A Yes.
Q When did you guys move to that apartment?
A October 2011. October 26, 2011.
Q While living at the Henderson apartment, did Fred come over?
A Yes.
Q How often would he come over?
A Once in awhile.
Q What would happen when he came over?
A He would walk around and talk to my mom and he and my mom would go upstairs. Then -- then -- sorry.
Q It's okay. Did anything of a sexual nature happen with you and the defendant at the Henderson apartment?
A Yes.
Q Tell me about that.
MS. ALLEN: Your Honor, objection. Can we have a foundation as to when?
BY MS. RHOADES:
Q How long did you live in --

THE COURT: Can you lay a foundation as to when?

MS. RHOADES: Yes. Yes, Your Honor.

BY MS. RHOADES:

Q How long did you live in the Henderson apartment?

A I lived in the Henderson apartment from October of 2006 to mid-November 2011.

Q When you say 2006, do you remember what year you moved into the Henderson apartment, Victoria?

A I remember moving in -- I don't mean -- I'm sorry, I don't mean 2006. Completely wrong. I'm just dazing out. We moved in there mid-October 2011 and I stayed there from mid-2011 to October -- to November, to mid-November.

Q 2011?

A Yes.

Q So you only stayed there for a short time period, about a month?

A Yes.

Q Where did you go in November of 2011?

A With Ms. Rose.

Q Did you move into Ms. Rose's house?

A Yes.

THE COURT: Okay, at this time we are going to conclude for the evening.

During this recess you are admonished not to talk or converse among yourselves or with anyone else on any subject

connected with this trial, or read, watch or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including without limitation newspapers, television, Internet and radio, or form or express any opinion on any subject connected with this trial until the case is finally submitted to you.

We'll start tomorrow morning at 10:30. Come up to the 14th floor. The court marshal will meet you and we'll start at 10:30. Thank you very much and we'll see you tomorrow morning.

(Jury recessed for the evening at 4:00 p.m.)

THE COURT: Anything outside the presence?

MR. MACARTHUR: We didn't hear the reply you gave to the last juror as to her concern about whether a witness would be called.

THE COURT: I told her the procedure for asking witness questions was in the notebook and then it's up to the parties as to what witnesses that they intend to call.

MR. MACARTHUR: Okay.

MS. ALLEN: Thank you.

THE COURT: Also, I think I should tell you the reason why I went over the procedure again is that one of the jurors -- you know, one of the jurors asked the court marshal, who obviously did not respond, wanted to ask your client a question.

MS. ALLEN: My client?

THE COURT: Yes.

MS. ALLEN: Oh, wow. That's new.

MS. LUZAICH: Yeah, that's a first for me.

THE COURT: So he obviously didn't respond. And the only thing I can say -- that's never happened before.

MS. ALLEN: Ever.

THE COURT: And the only thing I could say was that. That's why I said it when we proceeded again, the procedure for asking questions is in the notebook and the procedure clearly says you can ask a witness questions.

MS. ALLEN: I guess he presumes he's a witness.

THE COURT: So, but I just thought you should know that.

MS. ALLEN: Thank you. Appreciate it.

THE COURT: Uh-huh, you bet.

(Court recessed at 4:03 p.m. until the following day, Wednesday, April 2, 2015, at 10:30 a.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Liz Garcia

Liz Garcia, Transcriber

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12/30/2015 08:21:00 AM

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA	.	
	.	
Plaintiff	.	CASE NO. C-291374
	.	
vs.	.	
	.	DEPT. NO. XII
FREDERICK HARRIS, JR.	.	
	.	**Transcript of**
Defendant	.	**Proceedings**
. . . . .	.	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

TUESDAY, APRIL 1, 2014

APPEARANCES:

FOR THE STATE:	ELISSA LUZAICH KRISTINA A. RHOADES Deputy District Attorneys
FOR THE DEFENDANT:	BETSY ALLEN, ESQ. JONATHAN MacARTHUR, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
KRISTINE CORNELIUS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

LAS VEGAS, NEVADA, TUESDAY, APRIL 1, 2014, 10:41 A.M.

(Court was called to order)

(Jury is present)

THE COURT: Do the parties stipulate to the presence of the jury panel?

MS. LUZAICH: Yes.

MS. ALLEN: Yes, Your Honor.

THE COURT: Okay, you can call your next witness.

MS. LUZAICH: The State calls Neha Mehta.

NEHA MEHTA, STATE'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. Would you please state your full name, spelling your first and last name for the record.

THE WITNESS: Dr. Neha, N-E-H-A Mehta, M-E-H-T-A.

THE CLERK: Thank you.

THE COURT: You may proceed.

MS. LUZAICH: Thank you.

DIRECT EXAMINATION

BY MS. LUZAICH:

Q Good morning, ma'am. Can you describe for the jury what you do for a living?

A Yes. I am a pediatric medical doctor. I serve as the medical director of a child abuse evaluation program in New Orleans, Louisiana at this time.

Q How long have you been serving as the director in

New Orleans?

A About a year and a half now.

Q As the director of that program in New Orleans, what do you do on a daily basis?

A I provide teaching and training to other doctors about evaluation of children with concerns of child physical or sexual abuse. I evaluate children where there are concerns of child physical or sexual abuse. I serve as an administrator to the program, helping solve problems, clinic issues, things of that nature. I provide -- on a day-to-day basis work collaboratively with a team of professionals to help provide the appropriate treatments and therapies for children who are victims of child physical or sexual abuse.

Q Prior to becoming the director of that program, what did you do?

A I was here in Las Vegas. I was the medical director of the child abuse program at Sunrise Children's Hospital, as well as the medical evaluation portion of the Southern Nevada Children's Assessment Center.

Q For how long a period of time did you do that?

A Nine and a half years.

Q Can you describe for the jury what training and education you have that qualifies you to do all of the things that you've just described for us?

A Yes. I am a medical doctor. I finished medical

school at the Medical College of Georgia in Augusta, Georgia. Then I completed three years of training specific to children in Pediatrics at the University of Kentucky in Lexington, Kentucky. I stayed on for an additional year as the chief resident in Pediatrics in Lexington, Kentucky. I then went to Cincinnati Children's Hospital. I completed a one year child abuse fellowship where I was formally trained by other professionals in this field to evaluate children for concerns of physical abuse, sexual abuse or neglect. I stayed on for two years as a faculty member in that program. I then was recruited to come to Las Vegas and help set up the program at Sunrise Children's Hospital.

I am board certified. The American Board of Pediatrics creates certifications for physicians in this country to show that they meet standards required to practice in this profession. I am board certified in both general pediatrics and in child abuse pediatrics.

Q When you came to Las Vegas and you were working with Sunrise Hospital, can you describe for us what you did on a daily basis at Sunrise Hospital?

A I evaluated children, both in the emergency department setting, as well as in the hospital setting if there was any concern about possible child abuse. So that could be a parent bringing their child into the emergency department, that could be law enforcement bringing a child in,

that could be a child who initially looked like maybe they had an accidental injury and then as they discovered more and more injuries there became concerns about possible abuse, and then I would be asked to evaluate those children as well.

Q When you talk about child abuse, is that only physical abuse or does it entail more than that?

A It includes physical abuse, sexual abuse, neglect and other more minor or rarer forms of abuse.

Q Does the training that you've described for us include not only training regarding the physical abuse of children, but regarding the sexual abuse of children?

A Yes, it does.

Q And in evaluating sexual abuse of a child, is that different than evaluating sexual abuse of an adult?

A Yes, it's very different.

Q Why would that be?

A There's a number of reasons that we have differences between child sexual abuse cases and adult sexual assault cases. For one thing, with children there's often a greater degree of compliance. They're more likely to go along with what's happening because they don't necessarily have as deep an understanding of what this means or what's going on, as opposed to adults who are more likely to recognize that this is a violation of some type and to try to fight back in some way. Adults are much more likely to make a report in a timely

way because they understand the nature of this might be a crime that's being committed against them, whereas children are more likely to accept that this is something else that goes on in their lives that is just another thing that happens to them, such as maybe being physically disciplined or a form of punishment or things like that. They are just more willing to accept that this might be how things are.

Most of the time when somebody sexually abuses a child, they have formed a relationship with the child and they are in a position of power or trust or authority of that child, and so again, it's harder for children to come forward and make reports about abuse. They're more likely -- people who molest children are more likely to sort of slowly develop and increasingly do more and more with the child, ultimately with the goal of raping the child, having sexual relations with the child, but may start off with touching, fingering, licking, behaviors that the child is confused about and then progressively increase, whereas with adults, sexual assault is more likely to be a one time event where somebody uses force against the adult.

Q And, Dr. Mehta, you also talked about your work not only at Sunrise Children's Hospital, but the Southern Nevada Children's Assessment Center. Can you describe for us first, what is the Southern Nevada Children's Assessment Center?

A So in evaluating children with concerns of abuse,

there is a model that's accepted nationally. The idea is that it is not of benefit to children to have to kind of tell what happened to them over and over again. It's traumatizing to them and it's sort of re-victimizing them. So the goal is to try to create a one stop location for the child so that they don't first go to a police department and tell everything to a police officer and then have to tell everything to the police officer's supervisor, and then go to child protection and have to tell everything to a worker and then that worker's supervisor, and then have to go see a doctor and tell everything to that doctor and then have to kind of tell what's happened to them over and over again to mental health, multiple professionals. If all of the professionals are gathered in one location, the child can be interviewed by a trained interviewer who knows about children, who knows how to ask questions in a way that doesn't suggest answers to them to be sure they get as accurate information as possible, and that interview can be watched by the people who are involved.

So at the Southern Nevada Children's Assessment Center, children where there are concerns of abuse, who may or may not be abused, come in and they're able to tell in their own words what their experience was and then that can be listened to by law enforcement and child protection to reach conclusions about what they need to do to protect or

investigate that situation.

The area that I serve in is the medical component, and so when children are alleged to be victims of physical or sexual abuse they also need medical treatment and evaluation. We need to assess them for injuries, diseases, mental health issues and overall safety of the child, psychological safety for the child. And so the area that I work in is performing the medical evaluation of those children after they've had that forensic interview.

Q And when you were working at the Southern Nevada Children's Assessment Center, how did that fit in with your duties at Sunrise Children's Hospital?

A So for two days a week I was dedicated to the Southern Nevada Children's Assessment Center and I would see scheduled children there at particular times, like a clinic, like going to a doctor's office. I had nurses there. We would -- it was very much for children a -- we tried to make it as positive an experience as possible. We didn't want it to have that same emotionally-charged effect you have in an emergency department where people are rushing around and you don't understand what's going on and you're scared. We really wanted this experience to be as non-traumatic for children as possible.

So it's very much like going to the doctor for a check-up. Height, weight, eye chart, talking to the child

about their health history. I speak privately with the child to make sure that I have all of the pieces I need for my medical diagnosis and treatment. And then performing a physical examination of the child as gently and as humanely as possible, with nurses there who assist the child, prepare the child for the examination. And so I served in that capacity two days a week at the Southern Nevada Children's Assessment Center.

Q And for how long did you do that?

A I did that for about four years.

Q Can you even guesstimate how many children you have examined in your career relating to -- well, children in general for anything whatsoever?

A Thousands of children.

Q Can you guestimate how many children you would have examined for purposes of abuse investigation?

A Oh, my goodness, well over three thousand children.

Q And what would be the difference between a child being seen at Sunrise Children's Hospital in the emergency room and the Southern Nevada Children's Assessment Center?

A If there is concern that there could potentially be some type of evidence on the child's body, that there could be someone's saliva or body fluid on the child, we would want to try to collect that evidence. And that's something that happens fairly routinely in adult sexual assault cases. So

adult men and women who are sexually assaulted are much more likely to report within a couple of days of being assaulted and there's the opportunity to try to collect that evidence. We generally hold as a rule about 72 hours, about three days is a time period where if somebody has assaulted you, within the next three days there's a reasonable chance of trying to find some type of evidence on your body, some type of hair, saliva, some type of DNA evidence that would support that allegation.

After about 72 hours, through the process of going to the bathroom, wiping, brushing teeth, eating, all of these things make evidence fall off the body quickly. Taking baths, changing clothes; the chances of finding evidence becomes less and less and less. So we generally do not think that you can reasonably find evidence on someone's body except in very rare cases after 72 hours. And so for that reason if there's concern that something has happened within that time period, children are often seen in the emergency department for the purposes of trying to collect that evidence. Since the vast majority of child cases don't meet that criteria, many of those children are then seen in the type of setting I see them in, in a calmer, more structured clinic setting.

Q And have you testified as an expert in the area of both child physical and sexual abuse here in Clark County?

A Yes, I have.

Q Have you in other jurisdictions as well?

A I've testified in Ohio, Indiana, Kentucky and now Louisiana.

Q And do you just testify on behalf of the State, or do you testify on behalf of other parties as well?

A I testify for anybody who requests me to come and evaluate a case.

Q So are you asked on a fairly regular basis to independently evaluate a case, even if you have not personally seen a child?

A I wouldn't say on a regular basis, but I have been asked to review cases for the defense before and to offer my opinion.

Q Have you also been asked to review cases for the State, even if you haven't seen the child?

A Yes, I have.

Q Okay. So I'm going to ask you specifically, when you examine a grown-up woman for alleged sexual abuse, is it the same examination as if you are examining a child for alleged sexual abuse?

A For an adult female the focus is on trying to find that forensic evidence because the issue at hand is going to be -- you know, if there was contact there's still going to be a question that other people sort out that I as a doctor don't sort out, which is was there consent or not. Was this a

consensual activity or was it non-consensual? With children, because they don't have the mental capabilities to provide consent, there are various state laws that indicate that even if they're sort of willingly going along with what happens, they don't have the capacity to provide --

MS. ALLEN: Judge, I'm going to object. She's testifying as to legal issues.

THE COURT: Sustained.

MS. LUZAICH: Let me rephrase my question.

BY MS. LUZAICH:

Q Physically when you are examining or when an adult woman is examined for sexual assault, is the exam the same as for a child?

A No.

Q Why not?

A For adult females the focus of the examination is largely at the inside of the vagina, and so internal examination and internal specimens are the focus for adult females. For children we focus a lot on the outside of the genital areas, examining the hymenal tissues at the opening to the vagina. The ability of the child to understand what we're doing, there's a lot of preparation for the child for the examination process and a lot of differences in the types of meaning that we attribute to different infections.

Q Okay. When you see -- this is just kind of general

-- when you see a child at the Sunrise Emergency Room for purposes of sexual assault evaluation and see a child at the Southern Nevada Children's Assessment Center for that same purpose, is the exam the same or similar?

A The examination is similar, however the evidence kit is not collected. And so in the emergency department there is a box that contains various cotton swabs and it is collected by the medical provider to look for saliva, semen, things like that that we do and put in that box and then maintain a chain and pass that on to law enforcement. In the clinic setting we do not do that type of collection. Our focus is on sexually transmitted diseases, pregnancy testing, things of that nature, but they are very similar.

Q Okay. So I'm going to direct your attention to September 27th of 2012. Were you working as a physician at the Southern Nevada Children's Assessment Center on that date?

A Yes, I was.

Q Were you asked to examine two young girls known to you as Taharah Duke and Taquanda Duke?

A Yes, I was.

Q At whose request did you examine those children?

A I do not specifically know.

Q I mean, would it have been a law enforcement type request?

A It would have been from either law enforcement or

Child Protective Services, and I believe based on our notations it was more likely Child Protective Services that requested us to evaluate those children.

Q So the kids that are seen at the -- and you call it the CAC, is that correct?

A That is correct.

Q Kids that are seen at the CAC are seen for that specific purpose; a parent doesn't just call and make an appointment and come see you there?

A That is correct. In order to have a medical examination at the CAC, the request has to come from one of our partner agencies, so child protection or law enforcement are the main referral sources for children that we evaluate there.

Q And now you mentioned that at the CAC it's kind of a one stop shopping there, so a child can be interviewed and seen by law enforcement and child protection type individuals, as well as medical, correct?

A Correct.

Q And was it your understanding that both Taharah Duke and Taquanda Duke were interviewed on that same day?

A Yes, that was my understanding.

Q Do they generally get -- do kids generally get interviewed before they see you, after, or does it just kind of depend?

A It sort of depends. Often they've been interviewed before they see me, but it can be that I see them before they've been interviewed.

Q Okay. Let's talk about Taharah Duke first. Did you see Taharah Duke on September 27th of 2012?

A Yes, I did.

Q And for what purpose?

A For the purpose of medical diagnosis and treatment.

Q Was it your understanding that she had made allegations that she had been sexually abused?

A It was my understanding that she had disclosed during her forensic interview that she had been raped.

Q Do you have some contact with the interviewers before you see the kids?

A I either speak to the interviewer or to the person who observed the interview.

Q To hear a general description of what was disclosed?

A That is correct.

Q So, Taharah comes to you on September 27th, 2012. What do you then do?

A I -- She initially comes in. She is met by our nursing staff, who obtained her height, her weight, her blood pressure, obtained her basic health history. I review that basic health history, allergies, immunizations, surgeries, things of that nature. And then I sit and speak with her

privately for a few minutes because I need to make sure for my purposes that I have the data that I need without trying to make her re-tell what she's just spoken about.

Q Okay. You said that they get height and weight and things of that nature first. What was her height and weight?

A Her height -- Can I refer to my notes just to be sure I get it accurate?

Q At the time or at or near the time you perform all of your evaluations, do you actually fill out a report that is used for purposes of law enforcement later?

A As part of the medical record as well, yes.

Q Would it refresh your recollection to review that report?

A Yes, it would.

Q Go right ahead.

MS. ALLEN: And, Your Honor, if we could just see what she's referring to?

THE COURT: Sure, you can approach. Is this your witness?

MS. ALLEN: Pardon?

THE COURT: Is this your witness? Are you going to be crossing this witness?

MS. ALLEN: I am going to be crossing. Yes.

THE COURT: Okay. Sure, you can approach and look.

MS. ALLEN: This is the second one?

THE WITNESS: That's correct.

MS. ALLEN: Okay. So these are two separate ones?

THE WITNESS: Yes.

MS. ALLEN: And what are these?

THE WITNESS: This -- they're prior medical records that I did not have at the time I did this evaluation.

MS. ALLEN: Okay. So you didn't have --

I apologize, Your Honor. May I ask her -- may I briefly ask her a question about this? She has other records up here that don't -- that aren't her medical notes.

THE COURT: Do you want to take her on voir dire?

MS. ALLEN: I would appreciate that. We may want to do it outside the presence.

THE COURT: Okay. All right. At this time, ladies and gentlemen, we're going to take a short recess. During this recess you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or read, watch or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including without limitation newspapers, television, Internet and radio, or form or express any opinion on any subject connected with this trial until the case is finally submitted to you.

We're in recess until further notice. Thank you.

(Jury is not present)

THE COURT: Okay, the record will reflect this hearing is taking place outside the presence of the jury panel.

MS. ALLEN: Your Honor, I just -- in looking through some of the records she has here, there are lab reports that were not provided to the defense regarding Taquanda Duke. I do have the reports that she's referencing in her testimony, the ones that she wanted to refer to. I do have those. However, I don't have the lab reports that are here. I've never seen these.

THE COURT: Do you want me to copy them for you right now?

MS. ALLEN: Well, yeah.

MS. LUZAICH: For the record, I don't know -- she came and looked at my file a month ago.

MS. ALLEN: These weren't part -- this wasn't there, the lab reports.

MS. LUZAICH: It's in --

MS. ALLEN: And then there are medical documents up there from --

THE COURT: Just a minute. I don't have a secretary back there, so it's going to be me doing this. So I just want to make sure, do you want a copy of this entire packet?

MS. LUZAICH: I'll give her mine.

MS. ALLEN: No. I just need the one that I marked off for you. I don't have the lab report.

THE COURT: This?

MS. ALLEN: Correct, Your Honor. I don't have a copy of that.

THE COURT: Okay, I'll go make a copy. Is there anything else?

MS. ALLEN: No, Your Honor. I just need to address this.

THE COURT: Okay.

(Pause in the proceedings)

THE COURT: Ms. Allen.

MS. ALLEN: Yes.

THE COURT: And then, Doctor, I think that's yours. Do I need that?

MS. ALLEN: Oh, no. I'm sorry, Judge. It was all of those papers that were behind there. I'll go back. Do you want me to go back and copy them?

THE COURT: No, that's okay. I thought I had asked that and I thought --

MS. ALLEN: I said it was everything past that point that I had --

THE COURT: Okay.

MS. ALLEN: Thank you.

THE COURT: I'll just make a copy of everything.

(Pause in the proceedings)

THE COURT: Okay, here's everything.

MS. ALLEN: Okay.

THE COURT: And, Doctor, that is yours back.

Okay, go ahead.

MS. ALLEN: Okay, thank you.

VOIR DIRE EXAMINATION

BY MS. ALLEN:

Q You have some other records up there, is that correct?

A Correct.

Q Okay. And who are they from?

A They were sent to me by the D.A.'s Office to prepare for this case.

Q Okay. And when were you given those records?

THE COURT: Just so we're clear, what records are we talking about?

MS. ALLEN: I apologize, Your Honor.

BY MS. ALLEN:

BY MS. ALLEN:

Q Could you please refer to what the records are?

A There are medical records here from my visit on 9/27/2012.

Q I apologize. Since the jury is not here, we can just skip forward. The records that the D.A. sent you, not yours that you did, there's records up there that you didn't do?

A They sent me everything because I don't have access to my records anymore, so the only way I have information is because they had to send it to me.

Q Okay. How about -- what is up there that is not yours, that you did not do?

A The thing that is --

THE COURT: That you did not prepare. Right?

MS. ALLEN: Yes.

THE WITNESS: The thing that is up here that is not prepared by me are records from an OB/GYN center.

BY MS. ALLEN:

Q Okay. And the doctor's name?

A Dr. Anita Gondy.

Q Okay. And those are obviously not prepared by you, is that correct?

A That is correct.

Q Okay. And when is the first time that you saw those records?

A Within the last month.

Q Okay. So you did not have those records at the time that you examined Taharah or Taquanda?

A That is correct.

Q Okay. And have you talked to Dr. Gondy?

A No.

Q Okay. So all you did was review those records?

A That is correct.

Q Okay. And you anticipate that the D.A. is going to ask you questions about those records today?

A I anticipate that. I mean, I was provided them. I don't know.

Q Okay. And those records had no bearing on your examination of the two girls, is that correct?

A I didn't have them at the time that I examined the two girls.

Q And so my question was that those reports had no bearing on your examination of those two girls, is that correct?

A I'm not sure I understand your question.

Q Okay. That report from Dr. Gondy or those reports from Dr. Gondy you didn't have at the time you examined Taharah and Taquanda, is that right?

A That's correct.

Q Okay. So any information contained in those reports would not have any bearing on the reports that you prepared when you examined Taharah and Taquanda, is that correct?

A There is no information regarding this in these reports except for one of the children making reference to it.

Q Okay, correct. So one of the children said something to you about seeing this doctor, is that correct?

You have to answer out loud.

THE COURT: Is that a yes?

THE WITNESS: Yes.

BY MS. ALLEN:

Q Okay. But you didn't have anything from Dr. Gondy at the time that you saw them or at the time that those reports were prepared?

A That is correct.

MS. ALLEN: Okay. I'm not sure that she is qualified to testify about the reports from the other physician. She didn't have them at the time that she examined Taharah and Taquanda. There's no bearing on what Dr. Gondy said to what she did, and for her to testify on behalf of another expert, when these reports weren't even made available until the last month, I believe would be patently inappropriate. And so I would move the Court to preclude her from testifying about Dr. Gondy's reports.

MS. LUZAICH: Can I ask some questions before I argue?

THE COURT: Sure.

VOIR DIRE EXAMINATION

BY MS. LUZAICH:

Q Dr. Mehta, isn't it true that I actually sent you those reports last week?

A I knew it was sometime recently. I didn't know the

exact date.

Q Did you leave for Huntsville, Alabama a week -- well, when did you leave for Huntsville?

A The conference in Huntsville, Alabama was last week and I was there for the full week.

Q And did I send them to you right before you left?

A Yes.

Q Did you have the opportunity to look at them before or did you look at them when you got back from Huntsville?

A I looked at them briefly but I didn't read through everything until I came back from Huntsville.

Q Okay. And in your examination of Taharah Duke, did she -- and I'm only leading to do this fast, Judge. Did she tell you that she had been diagnosed -- my word, not hers -- with HPV, which is similar to genital warts?

A Yes.

Q Did she tell you that she had seen another doctor a couple of months prior to her seeing you --

A She did.

Q -- where she learned that?

A Yes.

Q And did she tell you that she had told that doctor that she had been sexually abused?

A She did not tell me that.

Q Did she tell you that she had told her guardian that

she had been sexually abused?

A Yes.

Q And did you review the records from Dr. Gondy?

A Yes.

Q And did Dr. Gondy see Taharah Duke September -- or June 27th of 2012?

A Yes.

Q Which is two -- three months prior to you seeing her?

A Yes.

Q Did Dr. Gondy in her reports do an ultrasound and diagnose Taharah Duke with HPV?

A She didn't make the diagnosis by the ultrasound, but yes, she did both of those things.

Q Okay, that was a bad question. What did she make the diagnosis via?

A Pap smear.

Q Okay. And is that something that you were able to confirm in the reports?

A Yes. There's a testing result in the report.

Q And do the reports also indicate that Dr. Gondy was told of possible sexual abuse --

A Yes.

Q -- by the guardian who brought Taharah there?

A Yes.

Q And is all that consistent with what Taharah told you?

A Yes.

Q Does any of that information have anything to do with your opinion regarding Taharah Duke?

A Yes.

MS. LUZAICH: And therefore, Judge, it is relevant and appropriate for Dr. Mehta to discuss at least her review of the records by Dr. Gondy.

MS. ALLEN: May I be briefly heard, Your Honor?

THE COURT: Sure.

MS. ALLEN: What we have now is hearsay on hearsay. We have Taharah possibly telling -- Frankly, I've interviewed Dr. Gondy, so this is not correct, but I've actually interviewed Dr. Gondy. And now we have Taharah telling Dr. Gondy and a possible guardian telling Dr. Gondy about possible sexual abuse. These are impressions that Dr. Gondy had in her reports. They're not -- it doesn't say disclosed by, you know, guardian. It doesn't say disclosed by anybody.

And frankly, for her to have an opinion today about what happened back in September of 2012, those reports have nothing to do with that. Her opinion is from September of 2012. These are the reports that she did. She was not privy to Dr. Gondy's reports when she made her opinion. So for her to come in here and say well these just bolster what I'm

saying, now we're admitting double hearsay, we're admitting records -- testimony about records with no foundation whatsoever, and it's patently inappropriate. She has the right to testify about her examinations, what she did on 9/27 of 2012. I will still object, but I would even submit that what Taharah tells her would probably come in because it's based on a medical diagnosis, but how is it that she's able to testify about double hearsay that happened months before, and she didn't even receive the report until the last week?

THE COURT: Okay. I think the objection was you want to completely prevent her from testifying about any medical records that she has been provided by Dr. Gondy. That objection is going to be overruled, and you can make any further objection that you think is appropriate. The State is not moving to admit those records at this time.

MS. ALLEN: I know they're not moving to admit them, but what I'm saying is it's inappropriate for her to testify about them. Right, her opinion is not based upon -- from 2012 her opinion wouldn't have been based upon what Dr. Gondy did because she didn't even have those records at the time. And the impressions that Dr. Gondy made in her reports, how is it that Dr. Mehta can testify about impressions from another physician that she hasn't even talked to?

THE COURT: Well, I don't even know what the State

is going to even ask her yet. Basically you've asked me to exclude the records altogether and prevent her from relying upon them, and quite frankly an expert can rely upon things made known to them at the time of trial.

MS. ALLEN: Can we --

THE COURT: Facts or data made known to them at the time of trial.

MS. ALLEN: Can I have a proffer from the State, then, what she intends to ask her about those records?

THE COURT: Sure.

MS. LUZAICH: Well, pretty much what I just asked right now, except not quite as leading.

MS. ALLEN: Except what?

MS. LUZAICH: Not quite as leading. I was asking questions in a way to move it faster.

MS. ALLEN: Okay. So then the State is going to be allowed to elicit information from this physician that someone told a doctor that's not testifying that there was sexual abuse? I just want to be clear that we're allowing that double hearsay in, that someone told this doctor --

THE COURT: I'm not going to allow double hearsay. I mean, are you going to ask her to look at Dr. Gondy's records and say did somebody tell somebody else?

MS. LUZAICH: Well, somebody told Dr. Gondy possible sexual abuse a month earlier.

THE COURT: Okay. Well, Dr. Gondy can testify about that.

MS. ALLEN: That's my concern. I don't think it's appropriate for Dr. Mehta to testify to double hearsay.

THE COURT: And I'm assuming Dr. Gondy is going to testify. She can testify about that.

MS. LUZAICH: Okay.

THE COURT: Okay, other than that, any concerns?

MS. ALLEN: So the questions that we're going to -- I just want to be clear. So then the questions we're asking Dr. Mehta is that you were provided a copy of I guess medical records from Dr. Gondy and that Dr. Gondy diagnosed Taharah with HPV via a Pap smear. She did an ultrasound and a Pap smear and there was a diagnosis of HPV. Is that the limit to the testimony we're eliciting? I'm just asking.

MS. LUZAICH: Well, right now it is.

MS. ALLEN: Okay.

THE COURT: Okay.

MS. ALLEN: Thank you.

THE COURT: We can bring the jury back in.

(Jury is present)

THE COURT: Do the parties stipulate to the presence of the jury panel?

MS. LUZAICH: Yes.

MS. ALLEN: Yes, Your Honor.

THE COURT: The State may continue with their direct examination.

MS. LUZAICH: Thank you.

DIRECT EXAMINATION (Continued)

BY MS. LUZAICH:

Q So, Doctor, I had asked you about Taharah Duke, her height and weight. You were reviewing your records to determine what her height and weight were.

A Her height was -- I want to make sure I got it right. Five feet, five and a half inches, and her weight was 131 pounds.

Q At the time, how old was she?

A Twelve years old.

Q Would you consider that, based on your experience, normal for a 12-year-old?

A I thought she was large for her age, and that's how I documented it.

Q Large as in tall, not --

A Correct.

Q Sorry, I don't mean to be rude, fat?

A She -- those proportions could also be that of an adult, so there are some petite adults who would be five feet five and a half, 131 pounds. So for a 12-year-old she had the size dimensions of a smallish adult.

Q Okay. You said that -- well, was she otherwise an

average-looking, normal, no problems with her head-to-toe type appearance 12-year-old?

A She had no deformities or any issues like that that were noted by me.

Q Okay. So you indicated that you spoke with her privately. Why do you do that specifically?

A So that children have an opportunity if there's some concern that they have about their health or their well-being, that we have an opportunity to discuss that and that they don't worry about another person overhearing that. I feel that it provides them an opportunity to tell something to a physician that they may not have been comfortable speaking about before or express a concern that they have about their body, and it gives me an opportunity to make sure that issues that I need to have addressed that I have that information.

Q Did you actually speak privately with Taharah?

A Yes, I did.

Q What would you have asked her or said to her?

A So, I start off and I asked her about school and what grade she's in in school and how she's doing in school, and she indicated to me that she was in the 7th grade and she had special education classes for reading and for English. I asked her about friendships to see if she's socially connected. She indicated that she didn't have a best friend. I asked her about career plans to see if she's, you know,

thought about those types of issues. She didn't have a career plan. I'm also assessing her for her intellectual ability and her cognitive development as we're talking about things, trying to look to see if she's mature, if she understands the questions that I'm asking, if she gives me appropriate answers. So while I'm making her comfortable talking to me, I'm also doing these types of assessments.

Q What, if anything, did you notice?

A She did seem cognitively delayed to me, as I was talking to her.

Q For somebody who is not in the sciences, what does that mean?

A I think a lay person might say that she seems slow.

Q Okay. And what else did you talk to her about?

A I asked her about her household and who lives in that household together, so that if she were to say a name I'd know who that person was. I asked her about her body and what words she uses for the place on her body where she gets her periods, and she calls it her vagina. I asked her about any symptoms, pains or problems she's having from that part of her body. I asked her if she's ever been pregnant. She told me she didn't know. I asked her if she's ever had a sexually-transmitted infection. She indicates that she went to an OB/GYN center. She was told that she had an HPV virus and she told me that that was like warts, and that she had been taken

there by her guardian, Ms. Ann.

Q And I'm sorry, I'm going to step back for one second. When you said that you had asked her who did she live with, did she tell you that she lived with Ms. Ann?

A Yes. She told me that she had a guardian that she wasn't related to named Ms. Ann and that in that household was Ms. Ann, Taharah, the patient, her sister Taquanda, who was 11 at the time, and there was another girl there named I think Sha'karia, who was Ms. Ann's daughter, and then Ms. Ann's boyfriend, Fred.

Q Okay. You said that you talked to her about body parts and whether she was having problems with her period. Why do you ask her about her period?

A I'm understanding her understanding of her body, what words she uses for that part of her body; if she's having her periods. For example, if she said I haven't had my period in four months, then I would be highly concerned that, for example, she could be pregnant. So I'm asking her about her understanding of her body, if she's having any symptoms, is she having a discharge. That might be an indication of a sexually-transmitted disease. If she's noticed bumps or sores or things like that. So I'm giving her an opportunity to describe to me any concerns that she has about the private areas of her body that she may not have thought to talk to a detective or someone else about.

Q Did she indicate that she was already menstruating, she was having menstrual cycles?

A She had been having her periods for three years now. She had started when she was nine years old.

Q Is that unusual?

A That's a little bit on the younger side for a girl to have started her menstrual cycles, and it means that her body has now had three years of female hormones, causing her increased development, meaning that there are other 12-year-olds who haven't had their periods yet whose private areas are not very physically mature because they haven't been getting a lot of female hormone estrogen. In her case she's had three years of that hormone circulating, so her private area I'm going to anticipate would be very developed, and in fact on physical examination it was.

Q Was she physically developed in more than just her genital area?

A Correct. She also had breast development.

Q So you're asking her all these questions. She had indicated to you that she had been to an OB/GYN center and been told that she had HPV, which was like genital warts. Is it unusual for somebody who's 12 or younger to go to someplace like an OB/GYN center?

MS. ALLEN: Judge, objection, foundation. Speculation.

MS. LUZAICH: Based on her training and experience.

THE COURT: Overruled. You can answer.

THE WITNESS: It's very unusual. It's --

BY MS. LUZAICH:

Q Why? Oh, sorry.

A It's uncommon for children who are about 12 years old to be seen at an adult facility for GYN issues or complaints.

Q In your experience do gynecologists who specifically see adults, are they not trained to -- generally to examine children?

A OB/GYN training does not include a lot of detailed information about examining the front outside areas of the genitals. It's very much focused on adult medicine, which is examining internally and looking for adult types of diseases like cancers, things like that.

Q So to do an adult-type examination on a child, is that something that you don't generally want to do?

A It's generally not recommended, except under unusual situations or circumstances.

Q Why is that?

A Again, for children this is often going to be the first time somebody has inserted medical instrumentation into the body. You want to make sure that the child understands what's going on. That the person who is evaluating the child

knows about issues of reporting if there's concerns of abuse, things like that that might not necessarily be part of adult medicine training, whereas people trained in adolescence and pediatrics are going to know about that they're required to make reports if there's concerns of abuse.

Q So there's actually different training when you are examining children as opposed to adults?

A That is correct.

Q So tell me about this. She said that she had HPV. What is that?

A HPV is a virus, and if a person has the high risk type of HPV there are two things that can happen that we worry about medically for that person. One is they can develop genital warts. So that virus can produce warts, which would be kind of large, lumpy bumps that can be internal to the body and in some cases external to the body. The other thing and the reason that it's screened for in adults is because it can become cervical cancer. And so it is a virus that has the potential to become warts and/or cervical cancer. And that is -- it's something that is generally tested and looked at in adult women and not as commonly looked at in teenagers.

Q Is HPV or genital warts something that you can always visually see?

A So, the actual virus in and of itself you can't see by looking, and so it is possible for somebody to have an HPV

infection and for the person who is looking externally and internally at their body to not see anything. You can have that virus and carry that virus and transmit it to someone else through sexual contact without yourself having to have any visible signs of having that virus.

Q Are there many different kinds of HPV?

A There are at least 100 sub-types of HPV and there's a group that are considered the high risk sub-types that are screened for in adults to look for that risk of cervical cancer.

Q What about in kids?

A In children we no longer routinely screen for that because the time it takes to develop into cancer can be a period of years, and so instead of routinely screening young teens the recommendation has now been to wait until they are 18 or older, in some cases 21, before routinely doing Pap smears and tests to look for that disease because it's felt that the trauma associated with doing those evaluations and aggressively trying to treat this virus is more harmful than beneficial and we generally now wait until they're adults to actually routinely screen and test for HPV. So if somebody is positive, they will have additional testing to see what their risk for cancer is and there may be some procedures that are done to burn, freeze or cut out areas that look like they're infected.

Q But you said that you don't necessarily have to have infected areas to have the virus?

A That is correct.

Q How does one transmit the virus from one to another?

A It is transmitted via sexual contact.

Q Is that the only way to transfer it from one to another?

A It could be transferred from a mother to an infant during the birth process. So if the adult female has warts in the vaginal canal and a baby comes through that vaginal canal, that baby could get infected. Often that is warts in the baby's airway and we usually detect that during the first couple of years of life. If they have breathing problems they may get scoped and someone may detect those warts. But it is possible also to transmit to the child's genital area that way.

Q And I'm sorry, did you say the only way to detect whether or not a girl has HPV is by Pap smear?

A There is no other accepted testing, aside from if you saw a wart and you said, okay, I can see that they have this wart. But there is no blood test. The only way to do it is to go physically inside the body and manually scrape the cervix.

Q Okay. What about a man? How could you detect whether a man has HPV?

A If he actually has the virus there is no commercially available standard test to test men for HPV aside from if some men might have visible warts on their genitalia, but many men wouldn't and so there wouldn't really be a way to test a male to see if he has HPV.

Q Okay. So you can have it and transmit it without seeing it, whether a man or a woman?

A Correct.

Q Were you later provided by the State with records of Taharah actually seeing an OB/GYN on June 27th of 2012, three months prior to your visit with her, where you were able to confirm this?

A Yes. There's an actual test result showing that she was positive for that high risk HPV type virus based on a Pap smear.

Q A Pap smear. And how is a Pap smear, just for those who don't have that body part, how is a Pap smear actually conducted?

A So, for a female in order to examine inside the body -- so if somebody wanted to examine the back of a person's throat, they could say open your mouth manually. You could open your mouth and they could look to the back of the throat and swab the back of the throat. The vagina is sort of collapsed so that you can't manually open it, but for an examiner to look inside the vagina you can take a device

that's called a speculum.

Q Would it help if you had one to show the jury?

A Yes.

MS. LUZAICH: May I approach for purposes of demonstrative only?

THE COURT: You may.

BY MS. LUZAICH:

Q And just for the record, did you ask me to bring that so that you could use that?

A Yes, because I also did this type of examination in her subsequent to when they would have done this Pap smear.

Q All right.

A So, the vagina is sort of folded and collapsed and it's like a sock where it's got like a closed end. So if you imagine kind of going into the sock and then where the toes are, the seam, so it's like a blind pouch. And in order to examine inside you can't visualize it by looking because it's kind of folded down. This is the device that we use to look at the inside of a girl who's menstruating, inside of her vagina. This portion stays outside of the body and this is the part that's going to go inside of the body. We generally put some type of lubrication on this. The vagina is closed. We're able then to insert this into the body and then from here on the outside I'm now able to crank this open and to look inside. There's a light that we can plug in here at the

bottom so that the inside is illuminated. And then we can take cotton swabs with long sticks and swab the back wall, which is what I do for STD testing, but here they would have used a special type of brush to scrape the cervix, put it in a special medium and send it to a laboratory to look for that HPV virus. And so this is the examination technique that would be used in an adolescent female.

Q And so you indicated that she had had a Pap smear, which was something inserted in her vagina like that and scraped to get the result. Was there another test done as well?

A They also did an ultrasound externally of her pelvic area to look at her uterus where a baby sac would -- where a baby would grow if she had had a baby.

Q How does one treat HPV?

A There isn't a great full-proof treatment. It's one of the reasons that there's so much emphasis on vaccinating. So there's been a vaccine that's been developed. There's a lot of focus on preventative medicine of vaccinating young girls to prevent it. There are, depending on what is seen, sometimes there are repeat tests done to see if it's progressing, if it's getting worse. The cervix can be painted with a special dye to try to see if they can see microscopic changes. Ultimately what may happen is a specialist in that area would go in and laser out a portion of the cervix to try

to prevent the patient from developing cervical cancer. In some cases if there is -- if it looks like it's advanced or there's evidence of cancer, they may have to remove some of the female organs in order to prevent the spread of cancer.

Q Did it indicate whether Taharah was treated?

A I did not see any data regarding her being treated or not.

Q Okay. So, fast-forward to September 27th, 2012. She's told you that she had been seen at this OB/GYN center and told that she had HPV. What else did you talk to Taharah about?

A I indicated that I knew she had spoken to someone earlier in the day about someone doing something to her and I wanted to clarify if any of the contact involved her back side, her anal area. Sometimes children don't provide that information easily. She indicated that there had been -- she did not tell me about any anal contact. I also asked her if someone besides Fred had done anything to her because -- you know, if she had been molested when she was younger, anything of that nature, if there was somebody else to worry about or some other concern with her. She indicated no one else had molested her. And I asked her if she knew if any other children had been molested by this same person, and she indicated that her older sister Victoria had been.

And then I just wanted to kind of clarify and I

asked her some more questions about that OB/GYN center visit. She had told me that she had gone with Ms. Ann and I wanted to kind of understand, you know, what she had said about that. She indicated she had told Ms. Ann --

MS. ALLEN: Judge, if we're encroaching on the subject of our outside the presence conversation, I would like to advise the witness to -- I would object at this point.

THE COURT: Is the objection hearsay?

MS. ALLEN: Yes.

THE COURT: Sustained.

MS. LUZAICH: Well, this is what she had told Ms. Ann, not the doctor.

MS. ALLEN: And I would object to it, Your Honor, because it's not in the course of medical diagnosis.

THE COURT: I don't understand the difference between Ms. Ann. It's still hearsay.

MS. LUZAICH: Okay.

BY MS. LUZAICH:

Q You talked to her about -- without telling us what she said, you talked to her about things that she had told Ms. Ann?

A Yes.

Q And what else did you talk to her about?

A That was --

Q It at that point?

A That was it at that point, to the best of my recollection.

Q Okay. So were you relying on information you had gotten from the interview that Taharah did regarding what to do for your examination or what Taharah told you for what to look for your examination?

A Both.

Q And what specifically had Taharah told you about the abuse that she was there for?

A Can I look at my notes to refresh my recollection, to understand your question better?

Q Yeah.

THE COURT: You may.

THE WITNESS: She made indication to me that Fred had raped her.

BY MS. LUZAICH:

Q Okay. When she used -- that was her word, not yours, correct?

A Correct.

Q Do you follow up with her and ask her what does that mean to you, or was that where you were relying on the interview?

A That is where I relied on the interview.

Q And is that because you don't want to re-interview?

A That is correct.

Q Okay. So after you had spoken to her privately, what did you then do?

A I then performed her physical examination.

Q And would that be a head-to-toe exam?

A That is correct.

Q And tell us what did you observe?

A So, in addition to just her regular vital signs, in performing her examination we prepare the child for the examination. She is on an exam table. Her feet are in stirrups and I inspect the outside of her genital area and I rate the development of her genitals on a scale. And so that scale goes from one to five. So a newborn baby, small little girls would have a one scoring, which is no pubertal development, no genital hair, completely prepubertal. Girls with a two and a three rating are now about to get their periods or starting their periods. They have some genital hairs. They have some estrogen, some female hormone development that is making the tissue at the opening of the vagina -- at the very bottom of the vagina there is some tissue called a hymen and it's a tissue that starts to develop some stretchiness to it as there's more female hormone in place. And so girls with a two or three rating will have some of that stretchiness.

In Taharah's case I rated her genital development as a four, and then a full adult female would be a five. And so

I noted that I was able to examine her hymenal tissue. I was able to take a Q-tip and touch the tissue. She doesn't have tenderness to that skin anymore because it's gotten thicker and stretchier. And then I was able to, in addition to inspecting the outside of her genital area, I was able to do the type of examination I talked about where I inserted this into her body. I did see a little bit of white discharge, which can be a symptom of infection, so I tested it to make sure that it wasn't a sexually-transmitted disease. But it can also be some normal fluid that her body makes in response to, you know, hygiene issues or just hormonal reasons. And so I just for precautionary reasons did that type of testing in her as well.

Q What was the result of your test?

A Negative. She did not have the two infections that I test for, which are gonorrhea and chlamydia. She did not have either of those infections.

Q And the fact that you were able to, you described, insert the speculum, what is the significance of that without tenderness or anything?

A It again supports that her body is now at the point where it is possible for me, as well as three months previously for the other examiner, to be able to insert an object into her body without causing tearing, bleeding, pain, bruising, those kinds of things; that she's physically capable

of accommodating insertion of an object into her body without causing external signs that someone could see.

Q Did you observe anything unusual or not quite right within her genital area?

A Aside from that non-specific discharge, no.

Q The fact -- and what was it your understanding from the course of the interview that she had alleged the abuse to be?

A I understood it to be penile-vaginal penetration. And in examining inside of her body, I did not see any physical warts or objects or things like that that would have been related to her concern about the HPV virus.

Q The fact that you didn't see any genital warts or anything of that nature, that doesn't have any bearing on whether or not she tested positive for it three months earlier, correct?

A That is correct. Again, you can have that wart virus and we worry about what its potential in the future is. It can develop into warts and it can develop into cancer. She just tested positive for microscopically being able to see the DNA of those -- of that wart virus.

Q The fact that you were not able to see any evidence of anything -- well, let me rephrase that. You said that she had alleged penile-vaginal sexual abuse. Based on what you saw, is that consistent, inconsistent or what, in your

opinion?

A It is possible for there to be penile-vaginal intercourse without leaving physical signs or symptoms. This has been studied and published in our child abuse literature. There was a child abuse physician in Texas who studied 36 young, pregnant teens and because they were pregnant we knew that there had been sexual intercourse, so we were --

MS. ALLEN: Judge, at this point I'm going to pose an objection. If we could have some foundation --

THE COURT: Sustained.

MS. ALLEN: --as to who this -- and what articles and time frames?

THE COURT: The objection is sustained.

MS. ALLEN: Thank you.

BY MS. LUZAICH:

Q Okay. Are you referring to one specific article or procedure of testing?

A Yes. I'm referring to an article published by Dr. Nancy Kellogg. The title of the article is "Normal doesn't mean nothing happened."

Q And you've reviewed that article as part of your experience over the course of being a child abuse expert in your career?

A Yes. We have a variety of articles that we rely on that are researched articles, including an article by Joyce

Adams, "It's Normal to be Normal." Abbey Berenson, who compares children who were abused versus children who were not abused. John McCann, who looks at injury healing. There's a body of literature that is part of my fellowship training, as well as my on-going review of the literature. And so those are the scientific studies that we have to help us understand what goes on with these children, both medically and psychologically.

Q So specifically regarding Nancy Kellogg's literature and testing, can you describe what you read?

A Yes. What she did was she enrolled 36 pregnant teenagers into her study. Because they were pregnant it was known that they'd had penile-vaginal intercourse and there wasn't confusion about whether there had been penetration or not. In examining those 36 females, only two of them had findings that suggested penetration. The other 34 did not have any findings that suggested penetration, meaning aside from the fact that they were pregnant, it was not possible to tell just looking at their bodies that they had had sexual relations. And that type of data has been persistent in our field and it's been replicated since then.

Q So when you looked at Taharah's vaginal area, although you couldn't see anything, that is not inconsistent with her description of what had occurred?

A That is correct.

Q Did you recommend anything for Taharah?

A I recommended that she have an IEP, which is an individualized educational plan, because of my concerns of her cognitive delay, and I also recommended psychological treatment and therapy for her and her sister.

Q When you say her sister, are you talking about Taquanda?

A Yes, I am.

Q Did you also examine Taquanda?

A I did.

Q Now, is it your understanding that Taquanda did not make any allegations that she herself had been sexually abused?

A That was my understanding, yes.

Q Why would Taquanda also have been examined?

A We often do a precautionary examination in siblings of children who have alleged sexual abuse. In some cases as children become more comfortable or as time goes on they end up making a disclosure that something had happened to them. And so as a precaution we evaluate siblings, just recognizing that there can be -- when one sibling is abused, it can be more than one sibling in a household that's been abused.

Q And just so we're clear, Taquanda never made any allegation to you either of sexual abuse by the same person, correct?

A She did not make any allegations of sexual abuse.

Q So on September 27th, 2012 when you examined Taquanda, what did you observe when you examined Taquanda, generally first?

A Generally she was 11 years old and she had a better ability to explain and describe things than her sister. She did not seem to have cognitive delay. And I spoke with her just to verify, you know, how she was doing, if she was doing okay. Specifically based on some of the comments she made to me, I asked her some screening questions regarding depression as well because she made some indication of depression to me.

Q Okay. Would you have asked her pretty much the same questions that you asked Taharah as well?

A Given that they'd had a forensic interview earlier that day, it was slightly different the way I approached my questions with her. Very similar.

Q And did you then do a head-to-toe examination of Taquanda?

A Yes, I did.

Q And what did you observe?

A She had a normal physical examination. Her genital development was also advanced for age. And I was able to take a Q-tip and touch the outside of her genital areas without causing her any tenderness or pain. Because she had not made an allegation of sexual abuse, I did not -- and she was only

11 years old, I did not do an internal examination. She was currently on her menstrual cycle at the time of my examination.

Q Did you also do STD testing on Taquanda?

A Yes, I did.

Q Why would you do that?

A Again, because many children do not make an initial disclosure of sexual abuse, but over time they may through the process of therapy or feeling safe make some disclosure of abuse, so for her overall health and wellness.

Q Okay. And did she also come back negative?

A That is correct.

Q Did you form an opinion regarding the abuse of Taharah based on your training, education, experience and what you observed from Taharah?

A Yes.

Q And what was that opinion?

A I diagnosed her as child sexual abuse.

MS. LUZAICH: Thank you. I'd pass the witness.

THE COURT: Cross?

MS. ALLEN: Your Honor, how late are we going today? It's almost 12:00. I would prefer not to stop --

THE COURT: Okay.

MS. ALLEN: -- if that's okay.

THE COURT: Okay.

MS. ALLEN: Thank you.

THE COURT: All right, we'll recess for lunch. During this recess you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or read, watch or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including without limitation newspapers, television, Internet and radio, or form or express any opinion on any subject connected with this trial until the case is finally submitted to you.

We'll be in recess until 1:30. Thank you.

MS. ALLEN: Thank you, Your Honor, I appreciate that.

(Court recessed at 11:56 a.m. until 1:34 p.m.)

(Jury is present)

THE COURT: Do the parties stipulate to the presence of the jury panel?

MS. LUZAICH: Yes, Judge.

MS. ALLEN: Yes, Your Honor.

THE COURT: Okay, you may continue.

MS. ALLEN: I believe --

THE COURT: You may begin your cross.

MS. ALLEN: Okay, thank you. I was going to say --

THE COURT: I forgot you didn't start.

MS. ALLEN: -- I think Ms. Luzaich was done.

CROSS-EXAMINATION

BY MS. ALLEN:

Q Good afternoon, Dr. Mehta. How are you?

A Good, thank you.

Q My name is Betsy Allen and I'm going to ask you some questions regarding your testimony and your reports, okay?

A Yes, ma'am.

Q Just going back briefly to your experience, you said that you were employed some time at Cincinnati Children's Hospital, is that correct?

A That is correct.

Q How long were you at Cincinnati Children's Hospital?

A I was there for one year of my fellowship and then I stayed on for two more years as faculty, so just about three years.

Q Okay, three years?

A Uh-huh.

Q Okay. Can everybody hear her? She seems to be talking very softly.

A I'll try and lean forward. Thank you.

Q Thank you. I'm sorry, maybe it's me.

A No, no, I appreciate that.

Q Okay. Are you acquainted with someone by the name of Dr. Robert Shapiro?

A I am.

Q Okay. And he -- did he teach at the Children's Hospital Medical Center or was he associated with this in Cincinnati?

A Yes. He was the fellowship director of the program I was in.

Q Did you know him?

A Yes.

Q Personally?

A Yes.

Q Okay. So you actually worked under him, is that correct?

A That is correct.

Q Okay. Are you aware of his publications?

A Some of them.

Q Okay. So you are -- I guess basically you started off as a pediatric medical doctor, is that right?

A That is correct.

Q And at some point you opted to specialize in child abuse?

A That is correct.

Q Okay. At what point in your career did you decide that you were going to specialize in child abuse?

A Immediately after my chief residency year. So I completed --

Q Here in Vegas?

A No.

Q Okay.

A So I did an undergraduate college degree, then four years of medical school, three years of pediatrics, one year of chief resident, and then directly into fellowship.

Q Okay. And what was the catalyst that pushed you into child abuse?

A I was planning to academic medicine. I was going to work in a university setting. And I kept getting those cases when I was in general practice in my training and recognized that I wanted to have some advanced training in that area. So my initial plan was to teach pediatrics and child abuse pediatrics in the university setting, and then once I entered into the field I realized that there was -- it was very hard to find good part-time practice in the area. There was such a need that there was a lot of full time requests.

Q And you were in Las Vegas I think you said for nine years, is that right?

A That is correct.

Q Okay. And you helped establish the CAC, is that correct?

A I was -- the CAC existed.

Q Okay.

A I helped establish the medical clinic at the CAC.

Q Okay. So prior to your coming on, they didn't have

like a full time physician or a physician to do the actual physical examinations of the children?

A They had a history of having had some nurses who had been doing exams and the County had let go of that program, so there was a period of, I don't know, months where they were looking and trying to create a program.

Q Okay. And you mentioned nurses. Prior to you coming on at the CAC, were there women or men there referred to as SANE nurses?

A No. They had two nurse practitioners in the program and they were not SANE nurses.

Q They weren't SANE nurses?

A No.

Q Okay. Just to be clear, what is a SANE nurse, so we're not confusing the jury?

A Sure. A SANE nurse is a term that's generally used to describe somebody who is a registered nurse, somebody with a two or four year degree in nursing, and they usually perform adult sexual assault exams. They can do some adolescent sexual assault exams as well. And they focus on those acute exams where the contact has been within those last few days in order to collect evidence.

Q Okay. So prior to your coming on there were nurses there. There wasn't a physician that was really sort of full time there, is that right?

A There wasn't. There were two nurse practitioners with a physician director.

Q Okay. So you came in and for a period of time acted as the director of the CAC, is that correct?

A No. The director of the medical clinic.

Q The medical clinic. Okay. And you said very specifically that you worked with CPS and Metro, is that correct?

A We have to work collaboratively. Yes.

Q Okay. Those are the three main components of the CAC, isn't that correct? It's the Las Vegas Metropolitan Police Department, Child Protective Services, and then the follow-up physical examination part that you -- the medical part of it that you fulfill, is that correct?

A Those are three of the main components. There's also a community collaboration component with like people from the community who participate in like fundraising, things like that. There is a mental health component where resources are provided to non-offending parents and therapies for children, so there's referrals for that. So there are a couple of other pieces to the CAC as well.

Q Okay. And you worked very closely then -- while you were here you worked very closely with the District Attorney's Office, isn't that correct?

A I would come when they subpoenaed me, yes.

Q Okay. How many times were you subpoenaed to testify by the Clark County District Attorney's Office?

A I don't have an exact number. I'm going to say over thirty.

Q Okay. How many times would it be specifically with Ms. Luzaich?

A I don't have an exact number. I'm going to say -- I'm really guesstimating five.

Q Okay. So you've testified for her before?

A I have.

Q Okay. On all five occasions? On all five occasions that you were subpoenaed by Ms. Luzaich, did you testify for her? Did you actually provide testimony?

A Yes.

Q Okay. All right.

A There probably are other times she subpoenaed me that I didn't testify. I should be clear on that.

Q And that's what I was asking you about testifying.

A No, I apologize. She's probably subpoenaed me many more times than that.

Q Okay.

A I've probably testified five of those times.

Q And so you have or you had at least at one point a pretty -- you had a working relationship with her, is that correct?

A Okay. Yes.

Q Is that correct?

A I mean, I didn't work with her per se. That's why I'm not understanding your question exactly.

Q You collaborated on cases coming into court to testify, is that correct?

A I would have pretrial conferences with her to discuss my case, yes.

Q Okay. And they were all sexual abuse cases, is that correct?

A I want to say I've testified in a physical abuse case where she subpoenaed me as well.

Q Okay. Were most of them sexual abuse cases?

A Yes, I believe so.

Q Okay. How many times have you testified for a defense -- a defendant or the defense in all the years that you've sort of specialized in this?

A Once.

Q Okay. And how many times would you estimate you testified for the prosecution, not just in Las Vegas but anywhere that you've been?

A Probably around fifty.

Q Okay. So one time for the defense and about fifty times for the prosecution, is that correct?

A That's correct.

Q Okay. Is it a safe assumption to say that you work more with the prosecution than you work with the defense?

A More commonly, yes.

Q Okay. You said that the HPV virus is a common STD, is that correct?

A Could you rephrase your question? I don't think I said that exact phrase, that's why I'm hesitating.

Q My recollection is that you testified HPV was a common STD.

A I would say that the HPV virus is sexually transmitted, and so it's a little bit different than an STD where people think about, oh, you can take an antibiotic and treat it. Does that make sense?

Q I mean, it makes sense, but it's still a sexually transmitted disease, is that right? It's still classified as an STD, HPV is?

A Not all HPV. High risk HPV of the cervix, such as this patient had.

Q Okay. And so it's classified as an STD, is that correct?

A Not all HPV.

Q I said this one in particular that you're talking about, you said it's a high risk HPV in this particular person we're talking about, Taharah, is that right?

A So in Taharah's case I would say that having a high

risk HPV infection is supportive of her indicating that there had been sexual contact.

Q That's not the question I asked you, Dr. Mehta. What I asked you was is HPV an STD? And your response when I asked you that question, I believe, was not all forms.

A Not all forms of HPV are an STD, correct.

Q Right. But then you said the form that this particular patient had would be classified as an STD, is that correct?

A They didn't give an exact sub-type. They said she had high risk HPV, and that is associated with sexual contact.

Q Okay. So you didn't actually test her for HPV, is that correct?

A That is correct.

Q So you're relying on reports from someone else, is that right?

A That is correct.

Q And so you personally have no knowledge about the form or strain of HPV that this girl has, is that correct?

A I only have the test result.

Q Okay. Again, you have no personal knowledge about what kind of HPV she has, is that correct?

A The test result does not indicate that.

Q The question I asked you is you have no personal knowledge. Do you --

MS. LUZAICH: Objection, asked and answered.

THE COURT: Sustained.

BY MS. ALLEN:

Q You also testified that she would have received it through sexual contact, is that right?

A Most likely, yes.

Q Most likely, but there are other ways to receive that, is that correct?

A Yes.

Q And you said childbirth?

A That would be another way.

Q Okay. So the individual who purportedly had given her this STD, would it also be easily transmitted to other partners?

A It could be, yes.

Q Okay. You're a doctor, this is your specialty. What is the risk of transmission of this form of HPV?

A It's unknown.

Q Unknown. Okay. So as you sit here you can't answer that question --

A That's correct.

Q -- how easily it's transmitted, is that correct?

A That's correct.

Q Okay. Were you ever given any medical records to review from the defense as far as Frederick Harris?

A No, ma'am.
Q Okay. So as you sit here today, you have no idea if he has HPV, is that correct?
A That is correct.
Q Okay. Did you ask Taharah if she was treated for this high risk HPV?
A I did not.
Q Wouldn't that be a concern of yours that she was treated for something that potentially could cause cancer?
A Because it doesn't develop into cancer in that time frame, it's something that would need to be followed up by her regular physician on subsequent Pap smears.
Q Okay. So you weren't concerned about her getting cancer at that point in time?
A At that point in time, no.
Q Okay. You described -- I apologize, you described Taharah as a smallish adult. Do you recall that?
A That was me speculate-- sorry, wrong word -- me trying to say if somebody is five feet, five and a half inches tall and 131 pounds, giving a quantification as to the size of that person.
Q So she was like a smallish adult, is that correct?
A Yes.
Q Even though she was 12 years old?
A Correct.

Q Okay. You said you would be concerned if -- you asked her about her period, is that right?

A Yes.

Q She had regular periods, is that correct?

A I'd have to look at my notes to refresh my memory, but I understood her to have regular periods.

Q Was that -- Is that a standard question you ask, do you have a regular period?

A Yes, I do ask that question.

Q Okay. And you said if she didn't have a period for four months I'd be concerned that she was pregnant?

A That would be an example of a reason I would ask that question.

Q There are certainly other reasons why someone could not have a period for four months, is that correct?

A Yes.

Q Okay. Is it unusual for a girl at 12 years old to have irregular periods?

A No.

Q Okay. You talked about the Tanner stages one to five, is that correct?

A That's correct.

Q And you said they -- you said both girls were at Tanner stage four, is that right?

A That's correct.

Q But specifically with Taharah, she's Tanner stage four and there's only one stage after that, is that right?

A Stage five. Correct.

Q Okay. What is the difference between four and five?

A The pubic hair on the female then instead of just covering the labia majora also spreads onto the thighs and up the belly some, and there is increased estrogenization of the hymen.

Q Okay. So it's basically pubic hair and estrogenized hymen, is that correct?

A The stretchiness of the hymen, yes.

Q Okay. And you characterized Taharah in your report as having an estrogenized hymen?

A Yes.

Q Okay. Did that indicate to you -- or the fact that you used that terminology, had her hymen reached Tanner stage five but she didn't have the pubic hair? Was she halfway there? Do you understand what I'm saying?

A No, ma'am.

Q Okay. Was her hymen fully estrogenized, fully developed?

A Her hymen demonstrated the capacity for stretch and was supportive of her being a Tanner stage four female.

Q Okay. And what happens as women go into I guess stages four and five as far as the vagina? Can you explain

what happens, what changes happen with the vagina in that area aside from the pubic hair?

A It would not -- it's not a concrete definition. It would just be continued estrogenization.

Q Does the vagina sort of open up a little bit? Does it widen?

A Not specifically, no.

Q Not specifically. So you have incurred instances where it's opened up and instances where it's not?

A I don't understand your question.

Q You've seen women or you've examined Tanner stage four individuals --

A Yes.

Q -- who have -- their vaginal area has opened up and there's ones that have not, is that correct?

A I don't understand your question.

Q Well, you said it was non-specific. Explain why it's non-specific.

A I don't understand the opened up part. I think that's where I'm confused on your question.

Q Okay. Well, let's go back.

MS. ALLEN: I apologize, Your Honor, if I could just have a moment.

BY MS. ALLEN:

Q You indicated you were aware of Dr. Shapiro and some

of the things that he had written, is that correct?

A Yes.

Q Okay. You actually worked under him?

A Yes.

Q Is this a correct statement? During puberty the hymenal tissue becomes thicker and redundant. The opening into the vagina becomes larger.

A Larger than pre-puberty.

Q Okay. So is someone at stage four pre-puberty or post-puberty?

A Post-puberty.

Q Okay. Someone who's actually had a menstrual cycle?

A Generally speaking, yes.

Q Okay. So then post-puberty, so someone who is stage four then, the opening to the vagina becomes larger, is that correct?

A Than somebody who is pre-pubertal. So if you're comparing somebody who has not gone through puberty, like an 8-year-old, the size of the opening is going to appear larger between an 8-year-old and somebody who is now later going through puberty.

Q Okay. So -- and when we're talking about children because you refer to children a lot, we're talking about anything from infants all the way up to 18, is that right?

A The field of pediatrics is defined as below the age

of 18, yes.

Q Okay. But when you talk about children, it could be someone who is like 17, is that correct?

A That is possible, yes.

Q Okay. Did you ever examine Victoria Duke in the process of this?

A No, ma'am.

Q The only two that you examined were Taharah and Taquanda Duke, is that right?

A That's correct.

Q Okay. You said that she had had her period for approximately three years?

A By her history.

Q Taharah. I apologize; Taharah.

A By her history, yes.

Q Okay. So she had been subjected to three plus years of female hormones, I think is what you said?

A So, she had been already in puberty for three years, meaning she's got significant estrogen effect to her hymen.

Q Okay. And what does that mean? I mean, what is the difference between significant estrogen effect versus non-significance estrogen effect?

A So if somebody is nine and they just started having their period for the first time, they would likely experience pain with trying to insert a tampon into their body because

that hymenal tissue is not very thickened or stretchy yet. After a period of years of that hormone circulating and those tissues becoming thicker and stretchier, it would be possible for them to insert a tampon into their body without causing pain or discomfort.

Q So as you are exposed to estrogen, the hymen becomes more tolerant of -- I don't want to say trauma, but of things touching it, I guess?

A It becomes more tolerant of things touching it and of being penetrated.

Q Okay. Is it more likely pre-puberty to have the hymen bleed if there's trauma to it?

A It is more likely, yes.

Q Okay. So after puberty there's a less of a likelihood for blood, let's say upon sexual contact, whether it's you classify it sexual assault or consensual, but just sexual contact, period, if someone is having penile to vaginal penetration there's less of a likelihood of bleeding, is that correct?

A Yes.

Q Okay. The exam that Taharah and Taquanda went through, is that sort of a standard female exam for people as they -- women as they get older? Is it an exam that everybody -- every woman should go through once a year?

A No. I generally -- if you have somebody who has not

been sexually -- with concerns of sexual abuse, most people would not do a speculum examination in somebody who is of that age.

Q Yeah. The question I'm asking you is the exam that they went through, is that something that women who are, let's say sexually active, that they would go through once a year? It's a standard exam, it's not a special exam simply because she's a child, is that correct?

A Well, we use colposcopy to do the examination, so we use a special piece of equipment with a magnifying lens and photographic capability to document her exam, and the examination of the external portions of their genitalia is not something that would routinely be done at a doctor's visit.

Q Let me clarify. The speculum, is that something that's used on an annual Pap smear with women?

A Yes.

Q Okay. So it's nothing unusual for a woman, a sexually active woman to go through a Pap smear, is that correct?

A That's correct.

Q Or at least they should once a year, right?

A Sometimes the guidelines stretch it out longer than that, but yes.

Q Okay. You indicated -- and I'm talking about Taharah now, I'll get to Taquanda in a minute. The questions

I'm asking you, if I'm not specific they are related to Taharah. You said that Taharah verbalized to you things that had happened to her, is that right? She verbalized to you, she actually spoke to you and said that certain things had happened to her, is that correct?

A Yes.

Q And you hadn't sat through her forensic interview, is that right?

A That is correct.

Q You said you may have talked to someone who interviewed her, is that right?

A I would have been provided information regarding what she said in the forensic interview.

Q Okay. And I believe that you testified that you specifically asked her a question, you know, can you tell me what Fred did to you. Do you recall testifying to that?

A I did not ask her can you tell me what Fred did to you.

Q Okay. Do you remember what you asked her?

A No.

Q You don't have any specific recollection about what you asked Taharah Duke, is that correct?

A I can tell you what I believe I asked her and then verify it by looking at my notes.

Q Well, let me ask you this. There's no tape recording

of the interview, is that right?

A That's correct.

Q Okay. And your questions aren't meant to necessarily be a forensic interview, is that correct?

A That's correct.

Q So you -- did you give her an open-ended question like, can you tell me what happened to you?

A No.

Q Okay. You gave her what I guess we would term a leading question, you suggested the answer to her and let her repeat whatever she was going to repeat to you, is that correct?

A No.

Q Okay. So you did not lead her and ask her, you know, tell me something someone has done to you? You didn't ask her anything like that?

A I indicated to her that I knew she had spoken to someone earlier in the day about something that had happened to her.

Q Okay. And you followed up with what?

A I asked her who that was in regard to.

Q Okay. And she verbalized to you that it was Fred?

A Correct.

Q Okay. And you said you remembered her to be slow; for lack of a better term, she was slow?

A Yes.
Q Okay. You used another word, but easiest -- for the purposes of the jury it's slow, right?
A Cognitively delayed. Correct.
Q Okay. You indicated that she told you she had been raped and that was her word, is that correct?
A She used the word raped in explaining something to me about what had happened to her.
Q Okay. Did she specifically say I was raped?
A She told me that she told someone else that she was raped.
Q Okay. So she didn't specifically say to you I was raped, she said I told someone else that, is that correct?
A Correct.
Q Okay. And then you said the interview that you do you do it alone, is that right?
A That's correct.
Q And you did this interview alone?
A Yes.
Q Do you recall if her 11-year-old sister was present during the interview?
A The 11-year-old sister was not present.
Q Do you recall in your report saying, "Aside from the patient's 11-year-old sister, there are no family members present?"

A That's during the medical examination portion. So when I examined her, the body examination, her sister was there in the room for the medical examination.

Q Okay. So you allowed her sister to come in, is that correct?

A Correct. I do not have them see each other's exams, but they can be present for emotional support if they wish to be.

Q Okay. She indicated to you she had problems with her period or that her stomach hurt during her period, is that correct?

A That's correct.

Q Did she indicate she had abnormal heavy periods?

A I didn't specifically ask her about that.

Q Okay. You indicated there was a white discharge, is that right?

A Correct.

Q And that can be due to hygiene issues, bathing, the type of panties she wears, is that correct?

A That's a possibility, yes.

Q All of those things, is that correct?

A That's correct.

Q It's not specific or indicative of sexual abuse?

A That's correct.

Q And you indicated it was a totally normal exam?

A That's correct.

Q You also said that her -- or I actually don't think that you said this in direct, but that her hymen I believe was intact from three to nine o'clock, is that right?

A I would describe it as normal.

Q Your report says, "The tissue was present from three to nine o'clock," is that correct?

A That's correct.

Q Okay. That's -- I can approach, but that's your writing, is that right?

A Correct.

Q Okay. So she had -- if you're looking at a clock, the hymen tissue was present from three to nine, is that right?

A That's correct.

Q And when you say that, do you mean it was present -- was it above the three to nine o'clock or is it present below the three to nine o'clock? If that makes sense.

A It doesn't make sense.

Q Okay. So what I'm going to do then, if I could, is --

A If you want to show me the drawing, I'll explain it to you on the drawing.

Q Actually, I was going to actually have you --

MS. ALLEN: Your Honor, if I can approach?

THE COURT: You may.

MS. ALLEN: Thank you.

BY MS. ALLEN:

Q Could you draw just a clock, three to nine o'clock and where the hymen tissue was.

A If you give me the drawing it would be a lot easier because I'm not a good artist. It's hard for me to draw it.

Q It's okay, we don't need anything perfect, I promise. I would like it outside of the drawing. I'd like your rendition of it. You don't have to draw the vagina and the lips.

A Yeah, I'm trying to figure out -- there isn't really a way to draw it without drawing the whole thing. That's why I'm puzzling over how to draw it for you.

Q Okay. Well, then go ahead and do your best. I'm not expecting Picasso, I promise.

A Okay.

Q Can you -- where's the hymen? Could you put an arrow and indicate where the hymen is on that?

A I'm going to color it in.

MS. ALLEN: And do you want to come up here?

MS. LUZAICH: I have an objection. I'm just trying to figure out what the objection is.

BY MS. ALLEN:

Q And is this the top of the -- this is the twelve

o'clock position?

A Yes.

Q Okay. And this would be the six o'clock position, is that correct?

A Yes.

Q Okay. Three and nine?

A Yes.

Q Okay. So this would be where her stomach is, is that right?

A This is the hole that she would pee out of.

Q The what?

A Where she would pee from.

Q Okay.

A Here's her anus.

Q Okay.

A This would be twelve, this would be three, this would be six and this would be nine.

Q Okay. All right. And so this was your recollection of the tissue that was present in Taharah, is that right?

A No. That's my drawing at your request of how I would draw it.

Q Okay. Then can you draw a picture of what you recall Taharah -- Taharah's to be?

A I don't have an independent recollection of her examination. I only have my description of her examination.

Q Okay. So as you sit here today then, you have no independent recollection of the three to nine o'clock that was present on Taharah Duke, is that right?

A That is correct.

Q Okay. So your picture showed a very small sliver of tissue, is that right, the picture you drew?

A It's me trying to draw what you asked me to draw.

Q I understand.

A So I'd be -- if we have the images, I'm happy to look at the patient's images with you.

Q Images? The pictures?

A From the actual examination.

Q You took pictures during the examination?

A Correct.

Q And you're absolutely positive you took pictures of those?

A Yes.

MS. ALLEN: Can we approach?

THE COURT: You may.

(Bench Conference)

MS. ALLEN: I don't have those.

MS. LUZAICH: I know. We never provide the pictures unless they're specifically asked for and an order is entered because it's child pornography. I wasn't asked for them. I don't have them either.

THE COURT: There is a procedure in order to handle those types of pictures.

MS. ALLEN: I've never encountered that issue. They've always been ordered turned over, and so --(inaudible).

THE COURT: There's a case right on point --

MS. ALLEN: Okay.

THE COURT: -- that talks about the procedure.

MS. ALLEN: Is it yours?

MR. MACARTHUR: My case? I don't think so.

MS. LUZAICH: Epperson.

THE COURT: I don't think it's -- no. But there's a procedure in place. Well, there's case law.

MS. LUZAICH: Epperson.

THE COURT: What's the case?

MS. LUZAICH: Epperson.

THE COURT: Epperson. Yeah. You don't just -- unfortunately, we just don't automatically get them.

MS. LUZAICH: You don't just get child pornography.

MS. ALLEN: Well, it's not child pornography, it's medical pictures, but. I mean, there's a difference, but --

THE COURT: They're of a child's vagina.

MS. ALLEN: No, I understand, Your Honor. Okay. Well, I didn't get them, and so --

THE COURT: I'm not saying you cannot --

MS. ALLEN: Yeah. Right.

THE COURT: -- get them. Are you making a request for them?

MS. ALLEN: Yeah, at this point I'd have to make a request to get them.

THE COURT: Okay.

MS. ALLEN: And resume my cross with her once I get them because I need her to -- show her them.

MS. LUZAICH: Okay. I can't do it that fast and she flies out at seven o'clock tonight. I mean, I can see what I can do. I just --

THE COURT: Do you have them?

MS. LUZAICH: No.

THE COURT: Oh, okay.

MS. LUZAICH: They're at the CAC.

THE COURT: You didn't even request them?

MS. LUZAICH: No, I never do. It's a normal exam. It's a normal exam. If there were findings, then we ask for them. But in a normal exam, I mean, it's normal --

MS. ALLEN: I understand, but I'm asking her to -- I need an indication of how much tissue was present. That's what I'm asking her and she has no independent recollection.

THE COURT: And you think the pictures, I mean --

MS. ALLEN: She said she (unintelligible) having the pictures to see to be able to tell me about that.

THE COURT: Okay. I mean, I know she's told me

she has to leave. Do you know when she's going to be back? Because I guess she's going to have to be recalled.

MS. LUZAICH: When she'll be back? In a couple months. She was in New Orleans. I can make a phone call to see how long it would take to get --

THE COURT: Okay. So she's leaving to go back to New Orleans because that's where she lives?

MS. LUZAICH: Because that's where she lives.

THE COURT: Can she stay overnight?

MS. LUZAICH: You can ask her.

MS. ALLEN: I mean, I can keep crossing her and then you can see if you can get the pictures. I'll keep crossing her so we can move things along.

MR. MACARTHUR: Would she be able to work off her notes and do it artistically? She said she has --

MS. LUZAICH: Ask her.

MR. MACARTHUR: -- no independent recollection, but what if she has her notes?

MS. LUZAICH: Ask her.

MR. MACARTHUR: Could she do it --

MS. ALLEN: She has her notes. They're up there. (Inaudible) three to nine o'clock.

THE COURT: Okay.

(End of Bench Conference)

THE COURT: Go ahead.

BY MS. ALLEN:

Q Okay. I apologize, Dr. Mehta. So I don't have those pictures and you have no independent recollection, is that correct?

A Of her exact examination from two years ago? No, ma'am.

Q Okay. And the picture you drew then is just three and nine o'clock, is that right?

A I just indicate that her hymen appears normal to me, that it's a normal examination.

Q Normal examination. Okay. Moving on just quickly, I apologize, you had checked on your report non-specific findings, is that correct?

A That was because of the whitish discharge, yes.

Q Okay. And then you also checked the box probable abuse, is that right?

A That is correct.

Q Okay. And you have essentially the patient reported disclosure to CAC but also to you, is that correct?

A Essentially to the CAC, but made indication to me as well.

Q Okay. And that was the cause for probable abuse?

A In addition to what else is marked there.

Q Okay. And in spite of the completely normal exam, is that correct?

A Yes.

Q Okay. Let's talk about Taquanda's exam. Taquanda's exam took place the same day, is that right?

A Yes.

Q You actually indicated that she was on her period, during her menstrual cycle, is that right, when you examined her?

A That is correct.

Q Do you recall the report actually stated that she hadn't even started having her menstrual cycle?

A When she was asked the question she did not indicate she had started her period. I do not know if she did or did not understand the question.

Q Okay. So the information in your report that says the patient hasn't started having her menstrual period, then that was her answer to the question?

A So if you look on the handwritten forms in the report, the nurse asks her when she comes in --

Q No, I'm just asking --

A -- if she has her period, and I'm indicating I reviewed that and per the patient's own information she didn't indicate she had started.

Q Okay. But she actually was on her period when she came in?

A That's correct.

Q Okay. So is there a possibility she didn't know that she was on her period?

A She may not have understood the question as to if somebody says have you started having your periods yet. She may have a different word for it than that.

Q Okay. There was a question about current genital discharge and you have "sometimes whitish."

A That is what the patient told the nurse.

Q Okay. So she says -- indicates that she has a whitish discharge, is that correct?

A Correct.

Q And that's the same as Taharah, is that right, she had a whitish discharge?

A Correct.

Q Okay. Which you -- on Taharah's you indicated that it was non-specific, is that right?

A Correct.

Q Okay. On Taquanda's, however, you indicated, I think, that it was a normal exam, is that right?

A I did not visualize the discharge when I examined her.

Q Okay. So you have to visualize it in order to get non-specific findings?

A Non-specific is the same as normal. It means it doesn't tell us anything forensically.

Q But there's two different boxes.

A So, for example, historically people would sometimes think a discharge or redness meant something, and there is a category of findings that don't really point one way or another towards abuse or non-abuse. We call those non-specific findings. They are things that you see like redness or discharge that do not answer or tell you one way or another.

Q Okay. But then it's non-specific, it's not normal, is that right? There's a reason there's two boxes, isn't there?

A Yes.

Q Okay. And you specifically -- normal exam on Taquanda and on Taharah's it was non-specific, is that right?

A Yes.

Q Do you recall what your assessment -- well, let me ask you this. Was Taquanda also a Tanner four estrogenized redundant hymen?

A I know she was a Tanner four. I'd have to read the rest for the rest of the descriptors.

Q Go ahead.

A Yes.

Q Okay. So she was essentially in the same sort of puberty-type area that her sister was in, is that correct?

A Yes.

Q Okay. Do you recall -- well, you indicate in the

report or someone indicated that she hadn't actually started her menstrual cycle, so you don't know how long she had been on it, is that correct?

A That's correct.

Q So there's no history as to how long she had been on it?

A That's correct.

Q Your recollection of her hymen, was it the same -- essentially the same as her sister's, that same stretchy -- the same stretchy type of skin that you described for her sister?

A I don't independently recall the appearance of her hymen. I know that I was able to take swabs and touch her hymen and it didn't cause her any tenderness or discomfort for me to do that.

Q Okay. And did you perform like a Pap smear on her as well?

A I did not perform a Pap smear on either girl, but I did use this on a -- I did this type of examination of the older sister.

Q Okay. So you didn't use a speculum on Taquanda, is that right?

A Correct.

Q Okay. You didn't take any swabs, then, of her cervix?

A I did not do any swabs of her cervix.

Q Okay. Did you do any testing for STDs or anything such as that?

A I did.

Q Okay. Did those results come back right away?

A No.

Q When did they come back?

A They generally take a week to come back.

Q Okay. Did you have any independent recollection of the results of those tests before coming in here today and reviewing those lab reports?

A No.

Q Okay. Both girls came back with no -- of all the tests you run, no STDs, is that correct?

A That's correct.

Q Okay. And on Taquanda's you marked possible abuse, is that right?

A That's correct.

Q And that's for two reasons, in that she disclosed potential physical abuse, is that right?

A No.

Q She didn't disclose physical abuse?

A She did disclose physical abuse, but that's not the reason I marked that. I'm just also notating there.

Q I said one of the reasons. Was that one of the

reasons?

A Uh-huh.

Q Okay. So then the possible abuse would have been the contact with the sister's guardian's adult boyfriend?

A Correct.

Q Okay. So the reason why you checked possible abuse in this case is simply because she had contact with the person who allegedly assaulted Taharah?

A Correct.

Q For no other reason?

A Correct.

Q What indications would cause you to check no medical indications of abuse?

A If there is a finding on an examination that has a medical explanation. If --

Q Can you explain what that is?

A So, for example, let's say a child has bruising to their genital area but they fell and have a straddle injury and somebody is concerned because there's bleeding coming from their genital area, but the history that they provide matches the type of injury that they have. Sometimes a parent comes in and they're concerned because their child has a behavior, like maybe their child is touching their privates a lot, and we recognize that that might be a normal behavior based on the age or stage of that child.

So if we don't have any indication of -- no one is making an allegation about a specific person, if there's no risk of contact with somebody who is alleged or known to have molested another child, if the statement of a child is initially concerning and then upon further clarification it becomes clear they're describing something else. So, for example, a child might say Uncle Bobby hurt my pee pee, and people may be concerned about the possibility of abuse, but then in the course of talking to the child they come to understand that Uncle Bobby elbowed them in the groin when they were wrestling, then we realize that that's not a concern for abuse, that that's a genital complaint that's not related to abuse. Those would be some examples.

Q Okay. So it sounds like verbalization is a very important component of finding abuse, is that correct?

A That is correct.

Q Okay. So in instances where you have a non-verbal child and let's say there's redness, just redness in the genital area, a female child who's non-verbal, would you generally check no abuse or would you check probable abuse?

A It would really depend on the rest of the context of the concern.

Q Okay. It would come down to someone else maybe reporting that they thought the child had been sexually abused?

A Or if there was a witnessed event --

Q Witness to an event?

A -- or the child had tried to say something to someone else, things like that.

Q Okay. So verbalization can mean the difference between no abuse and probable abuse, is that correct?

A To the extent of my ability to evaluate, yes.

Q Because certainly in this case both girls had totally normal exams, is that right?

A That's correct.

Q Okay. And so if they had totally normal exams and they didn't verbalize, they said there was no abuse, would it have been no abuse?

A I might not even have seen them in that situation, but if I did see them and they indicated that there was no history of abuse, again, without any other information. I mean, are there cases where there's other reasons? Yes, there are cases where there might be videotaped evidence or photographic evidence, things of that nature, but essentially yes.

Q Well, you weren't given photograph evidence in this case, were you?

A No, ma'am.

Q Were you given videos?

A No, ma'am.

Q Okay. You weren't given anything other really than what they were interviewed, their interview, and you didn't sit in on their interview, is that correct?

A That's correct.

Q So you heard what they said second-hand from either someone who interviewed them or someone sitting there, is that correct?

A Correct.

Q And then whatever they may have told you during the exam?

A Correct.

Q Okay. And so if those components of non-disclosure had not been there in this particular case, then it would have been no finding of abuse, is that right?

A Correct.

Q On Taharah, do you recall if there were -- the hymen -- I can't say the word -- the edge of the hymen, do you recall if it was smooth?

A When the hymen is estrogenized we often don't use that terminology anymore because it's now kind of folding and moving, and so I just take the Q-tip and make sure that it's all present.

Q Okay. You didn't find any trauma or --

A No, ma'am.

Q -- old injuries, I guess? Is that --

A That is correct.

Q Would that be correct terminology? You didn't find any old injuries?

A That is correct.

Q Any type of indications that she had healed from some kind of trauma?

A I didn't see any type of scars or anything like that.

Q Anything like that. Okay.

MS. ALLEN: Court's indulgence. May I have a moment, Your Honor?

THE COURT: Uh-huh.

MS. ALLEN: Thank you. Your Honor, aside from the conversation we had at the bench, I believe my cross-examination is concluded at this point.

THE COURT: Any redirect?

MS. LUZAICH: Yes. Thank you.

REDIRECT EXAMINATION

BY MS. LUZAICH:

Q Okay. There was a lot of talk about the hymen and whether it's estrogenized or what about it. You know, people talk on a lay person basis about popping the cherry or, you know, the hymen being torn or whatever. Is that an accurate description of what occurs in a body?

A No.

Q Why?

A A lot of what I do day-to-day is explain this to families in a clinical setting because their expectation is is that there's going to be some type of evidence that a doctor can look at and tell that there's been some kind of puncture wound or some type of visual sign that something has gone into that opening.

A way that I explain that to families is, you know, if you're talking about an opening that's capable of stretch, similar if you think about like the opening to your nose and that you would look at the size of the opening and you would think, well, you know, two fingers probably shouldn't fit in there but it can be done, you can stretch the opening, and then you can't look at somebody's nose opening and know if two fingers have ever been in there or not. In cases I have where there's been anal contact there will be a concern about, you know, won't you be able to tell by looking at the child's anus, but that muscle opens up to let things in or out and then goes right back down, so a little kid can have a really big poop, a really big bowel movement, and that anal muscle goes back down.

Because there's already an opening into the vagina, all girls have an opening and later on that's where the blood is going to come out when they get their period and that's how they're going to put a tampon in if they choose to use

a tampon, there's already an opening there. And so the appearance of that opening can change some with time, but it's always there. There's an opening and it has some capacity for stretch, even in little girls who are only a Tanner stage one. By the time you go through the stage of puberty, that capacity for stretch is pretty significant and the hymen generally doesn't show any signs or symptoms related to penetration into the vagina. It just stretches and allows for that to occur.

Q You just mentioned, you know, putting a finger or two up your nose. Is there another part of your body that you might liken the vagina to?

A The actual tissue of the vagina is very similar to the inside of the mouth or the cheek, so it's very similar kinds of skin. So if you think about -- so it's kind of that wet, pink, smooth skin. If you think about any time you've bit or burned inside of your mouth, it smooths right over and heals. It's very hard for there to be any long-lasting trauma. Those skin cells turn over very quickly. So if you look on the inside of people's mouths, again, you don't know how many times they've been burned or bitten themselves or injured themselves because that skin smooths over and heals really well very quickly.

Q So when you do an examination, an evaluation for sexual abuse, do you take every child in every situation and

start just with a clean slate and independent, like you're not comparing one child to another?

A Correct.

Q So you just -- you look at a child and you see what you see or don't see and you hear what you hear or don't hear and it doesn't matter what happened with another child, you make your independent decision based on that child alone, is that correct?

A That is correct.

Q And the fact that Taharah had three years of menstruation before you saw her, during which time abuse would have occurred, what did that do to her vagina tissues?

A So, three years of puberty allows her body to have stretch and capacity for penetration, that sometimes you might think, oh, if somebody is only 12, would their body, you know, you would be able to tell. But she's been having her period for three years. She's got a lot of that female hormone, her tissues are thicker and stretchier than you might otherwise realize a 12-year-old would have that capacity for.

Q And when you were asked questions about the hymenal tissue between three and nine o'clock and you talked about it being present, Ms. Allen was trying to ask you, you know, how much was present, you know, this much or this much, are all -- well, are all women, children, whatever, different?

A So, the amount of tissue present there varies enormously person to person, and without having seen someone before it's not possible to look at someone and see if there's more tissue or less tissue than there used to be. So some children can have a very -- just on their own, non-abused children can have a very narrow, small margin of hymenal tissue and that's just what their body is. There isn't a forensic significance to whether there is a lot of hymenal tissue verus a thinner margin. It is possible to penetrate through the opening whether there's a thicker margin or a thinner margin. It doesn't weigh into deciding whether or not somebody has been abused.

Q So you can't say because she's 12 there should be, you know, two millimeters and since there aren't two millimeters there's a problem?

A Correct.

Q You just can't say anything like that?

A Everybody has a different natural amount. And I'm only looking to see if there's any evidence of injury. Injury -- the ability to see injury on a child's exam occurs in less than five percent of cases.

Q What is the significance of between three o'clock and nine o'clock? Why is that in your report to begin with?

A It's in there because if you are looking at -- so if I'm directly visualizing somebody's body it's the lower

part, the part closer to their buttocks that I'm looking at, and that's the area where we're more typically going to see injury if there is going to be injury. It's where in the rare cases that we have like an exam where something just happened to someone and they come in right away, that's the area where I'm going to see injury if I see injury. And then later when I follow that child up it's usually healed. But in the rare cases that I get to see them right after an abuse occurred, that's a focal point that I want to look at because that's where injuries tend to be present if they're going to be present.

Q And I'm sorry, I might not have heard Ms. Allen correctly when she asked you about the exams that you did for Taharah and Taquanda. You described when you did Taharah's exam you used that speculum that you showed us. When you did Taquanda's exam, did you use a speculum?

A I did not.

Q Why not?

A For a couple of reasons. One, I did not -- I discovered she was on her menstrual cycle at the time of her examination and her staging. I was under the impression from just her history she might not even have started her periods yet. In addition, she had not made a disclosure of abuse. So in order to test her I just took Q-tip swabs and blindly, without being able to visualize the cervix, just stuck the

swabs inside and swabbed inside of her body for the testing.

MS. LUZAICH: Thank you, Doctor, I don't have any other questions.

THE COURT: Any recross?

RECROSS EXAMINATION

BY MS. ALLEN:

Q You stated that -- you indicated -- Ms. Luzaich followed up with the idea that these exams, whether or normal or not, I guess, aren't necessarily indicative of sexual abuse, is that correct?

A I'm sorry?

Q The exam itself is not indicative of sexual abuse, right, of Taharah and Taquanda. Just the exams is not indicative of sexual abuse, is that correct?

A Correct.

Q Okay. What puts it into the -- or I should say Taharah specifically, what puts it into the probable abuse category is her verbalization, is that correct?

A That is correct.

Q Okay. You said you don't compare children. You don't look at Taharah and Taquanda and compare them and then you don't go on to the next kid and compare that to Taharah and Taquanda, you take each child as they come in. Is that right?

A Another way of saying that, and I'm not sure if I'm

understanding your question, would be I don't have in my mind a standardized this is the way a particular child is going to look. Each child can have different size vaginal opening, different amount of hymenal tissue. There isn't some kind of family tendency or something that I'd gauge one child by another with.

Q Okay. You notated Taharah's as having the three to nine o'clock tissue, is that correct?

A Yes.

Q Okay. Did you note anything with regard to Taquanda's?

A I did not physically write it down.

Q Okay. And so as you sit here, do you recall what the findings were with regards to the tissue of her hymen?

A I diagnosed her as having a normal genital examination.

Q But you also diagnosed Taharah as having a normal genital examination, is that correct?

A Correct.

Q Okay. So as you sit here today, what is your recollection of Taquanda's hymen and the stage -- or what was left of it or what -- was it three to nine o'clock, was it -- what was it?

A I don't independently recall. I felt that her examination was normal.

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

FREDERICK HARRIS, Appellant, vs. THE STATE OF NEVADA, Respondent.	S.C. CASE NO. 69093

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APPEAL FROM JUDGMENT OF CONVICTION
(JURY TRIAL)
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE MICHELLE LEAVITT , PRESIDING

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APPELLANT'S APPENDIX TO THE OPENING BRIEF
VOLUME XIII

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court 17th day of June, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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