

1 correct?

2 A Yes.

3 Q Okay. And, in fact, when you spoke to Tina Duke did
4 she, by contrast, tell you that the sexual contact between
5 Victoria and Fred had been consensual?

6 MS. LUZAICH: Objection. Hearsay.

7 MR. MacARTHUR: And this is, again, prior consistent
8 statement.

9 MS. LUZAICH: Can we approach?

10 THE COURT: Do you want to approach?

11 MR. MacARTHUR: Sure.

12 (Bench conference)

13 THE COURT: I keep the foundation written down --

14 MR. MacARTHUR: Okay.

15 THE COURT: -- for prior consistent statement. The
16 statement is consistent with the witness's testimony in court,
17 so Tina.

18 MS. LUZAICH: Tina.

19 MR. MacARTHUR: Yeah.

20 THE COURT: The party offering the prior consistent,
21 is you, must establish that it's being offered to rebut an
22 express or implied charge against the witness of recent
23 fabrication or improper [unintelligible] motive. The
24 proponent, which is you, must demonstrate that the prior
25 consistent statement was made prior to the time that the

1 supposed motive to falsify arose.

2 MS. LUZAICH: Which is why we have not been able to
3 bring in all the people's statements because everybody already
4 had --

5 THE COURT: There's more.

6 MR. MacARTHUR: Okay.

7 MS. LUZAICH: -- a motive to fabricate.

8 THE COURT: Once a showing of fabrication is made,
9 State has a burden to show that the victim's prior consistent
10 statements occurred prior to the alleged fabrication. So the
11 statement must have been made when --

12 MR. MacARTHUR: So --

13 THE COURT: -- the person had no motive --

14 MR. MacARTHUR: So it has to be --

15 THE COURT: -- to fabricate.

16 MR. MacARTHUR: -- Tina who is alleged to be
17 fabricating.

18 MS. ALLEN: Yes.

19 THE COURT: Right.

20 MR. MacARTHUR: Right. It's not Victoria.

21 MS. LUZAICH: No, but it also -- it also has to be
22 made before a motive to fabricate arose.

23 THE COURT: Right. Exactly.

24 MS. LUZAICH: And Tina had a huge motive to
25 fabricate, just as much as Fred did.

1 MS. ALLEN: We're -- but she testified in court.

2 MR. MacARTHUR: I think --

3 MS. LUZAICH: But it doesn't matter.

4 MR. MacARTHUR: I think the more practical problem
5 here is that I'm trying to impeach Victoria, and I can't do
6 that with Tina's statement. Before we -- we don't have agree
7 on what you two disagree on. The point is that I'm asking to
8 impeach Victoria and it's Tina's statement, which I can't do.
9 I think that's what the Judge is --

10 THE COURT: Well, again --

11 MS. LUZAICH: Well, for all those reasons --

12 THE COURT: -- I don't -- I don't think the proper
13 foundation has been --

14 MR. MacARTHUR: And I agree, Judge. Now I know what
15 the foundation is, I agree. I'll withdraw that question.

16 THE COURT: Okay. Thank you.

17 (End of bench conference)

18 MR. MacARTHUR: Given the foundation issues, Your
19 Honor, I'll withdraw that question.

20 THE COURT: Thank you.

21 BY MR. MacARTHUR:

22 Q Detective, thinking about your interview with
23 Victoria's friend Rose Smith, yes?

24 A Yes.

25 Q Okay. Did you, in fact, receive a description of

1 some sort of allegation where Mahlica, the defendant, had
2 allegedly attempted to try to forcibly sexually assault her?

3 MS. LUZAICH: Objection. Hearsay. Foundation.

4 THE COURT: Sustained.

5 MR. MacARTHUR: And, Your Honor, accepting the
6 Court's ruling, it's not for the truth. It shows -- it's to
7 ask him if this was information he was operating on, not to
8 say that it was true or false.

9 THE COURT: Okay. Usually that means it's not
10 relevant if it's not offered for the truth.

11 MR. MacARTHUR: I think it's relevant in this
12 instance, Judge.

13 THE COURT: I -- I know you do.

14 MR. MacARTHUR: Okay.

15 THE COURT: So the objection is sustained.

16 MR. MacARTHUR: Yes, ma'am.

17 BY MR. MacARTHUR:

18 Q Suffice it to say, Detective, that Mahlica did not
19 account having been a victim of any sort of sexual molestation
20 or assault, is that fair?

21 A I've answered that several times that she did not
22 say that she was a victim of sexual assault.

23 Q Thank you. Detective, did you have contact with a
24 CPS worker by the name of Bobbi Tibbs?

25 A Yes.

1 Q Okay. Do you know when it was that she closed out
2 her investigation as unsubstantiated?

3 A I do not know.

4 Q Okay. Do you know when it was that you closed your
5 investigation?

6 A The investigation wasn't closed until some months
7 after I had spoken with Detective Madsen. It was an open
8 case.

9 Q Understood. Do you recall having -- having closed
10 it in the December of the following year, 2012?

11 A Probably -- that would probably be accurate.

12 Q That sounds about right?

13 A Yes.

14 Q In conducting your investigation, did you make any
15 inquiries as to whether any previous allegations had been made
16 of this nature?

17 A I had not.

18 Q You had or had not?

19 A Had not.

20 Q Had not. Okay. So I'm not asking about what you
21 know as you sit there now, but at the time in which you were
22 conducting your portion of the investigation you did not know
23 about prior CPS investigations and the same allegations?

24 MS. LUZAICH: Well, objection. I'm sorry, but can
25 we approach?

1 THE COURT: Sure.

2 (Bench conference)

3 THE COURT: What are you trying to get at?

4 MS. LUZAICH: You just asked him if he was aware of
5 prior CPS allegations, the same allegations, meaning that some
6 -- like somebody else previously alleged that he did this and
7 it was investigated.

8 MR. MacARTHUR: I'm talking about the two CPS
9 investigations that were initiated by Victoria, one with Bobbi
10 Tibbs and the other one from '08. In other words, I'm trying
11 to establish that his investigation was independent of theirs
12 and that they were not coordinated in such that when one said,
13 okay, I'm done, the other one automatically said I'm done.

14 MS. LUZAICH: But your -- your question was similar
15 allegations. There were never sexual allegations.

16 THE COURT: Right.

17 MS. ALLEN: I think he's referring to child abuse,
18 too.

19 MR. MacARTHUR: Right.

20 MS. LUZAICH: But you just made -- you just told the
21 jury that there were prior allegations --

22 MR. MacARTHUR: Then I'll withdraw --

23 MS. LUZAICH: -- of a sexual nature.

24 MR. MacARTHUR: -- the question and ask it a little
25 clearer.

1 MS. LUZAICH: Yeah.

2 THE COURT: Okay.

3 MS. LUZAICH: You know, just --

4 THE COURT: So I'll tell --

5 MS. LUZAICH: -- are we not worried --

6 THE COURT: -- the jury to --

7 MS. LUZAICH: -- about that?

8 THE COURT: -- disregard the question, and you can

9 just ask it a better way.

10 MR. MacARTHUR: Okay.

11 THE COURT: Did he answer?

12 MR. MacARTHUR: No.

13 THE COURT: Okay. All right. Thank you.

14 (End of bench conference)

15 THE COURT: I'm going to ask the jury to disregard

16 the question, and Mr. MacAurthur is going to ask a new

17 question.

18 BY MR. MacARTHUR:

19 Q Let me clean that up, Detective. When you went to

20 the Blankenship house, you were, in fact, investigation --

21 investigating allegations of both sexual and physical abuse;

22 is that correct? I mean, it could have been primarily sexual,

23 but it also included allegations of physical abuse?

24 A It was primary sexual, but, yeah, we also -- I mean,

25 anytime you're doing a sexual assault investigation, you ask

1 about other types of abuse, as well.

2 Q Okay. And your agency was doing this investigation
3 independently; is that correct?

4 A Yes, at that time.

5 Q Okay. Was it coordinated or dependent at all about
6 any findings CPS made in a different agency?

7 A No.

8 Q Okay. And so you made your decisions without regard
9 to what CPS did or didn't do in the past, is that -- is that
10 fair?

11 A Yes, that is fair.

12 Q All right.

13 MR. MacARTHUR: No further questions, Judge.

14 THE COURT: Thank you.

15 Redirect.

16 REDIRECT EXAMINATION

17 BY MS. LUZAICH:

18 Q And just to clear up, you were investigating sexual
19 abuse allegations against Fred Harris made by Victoria Duke;
20 is that correct?

21 A Yes, it is.

22 Q Okay. So when Mahlica told you about physical abuse
23 by the defendant years earlier, that was not --

24 MR. MacARTHUR: Objection. Leading, Judge.

25 THE COURT: You're -- you're leading. Sustained.

1 BY MS. LUZAICH:

2 Q Well, when Mahlica told you about sexual -- or
3 physical abuse allegations by the defendant earlier, you
4 weren't investigating that, were you?

5 MR. MacARTHUR: Objection. Leading.

6 THE COURT: You can answer.

7 THE WITNESS: That was not our primary
8 investigation.

9 BY MS. LUZAICH:

10 Q Okay. When you interviewed -- well, okay. So you
11 interviewed Taquanda while Detective Melchert interviewed
12 Taharah; correct?

13 A Yes.

14 Q And during the course of your interview with
15 Taquanda you said that she was crying really hard, really loud
16 when she was talking about the physical abuse by her -- the
17 defendant against her brother and her sister; correct?

18 A That is correct.

19 MS. LUZAICH: May I approach?

20 THE COURT: You may.

21 BY MS. LUZAICH:

22 Q Just showing you the transcript so that we get the
23 words correct. Did Taquanda tell you that Fred was beating
24 him, her brother, up, he would be so severe?

25 A Yes, that's correct.

1 Q It would be so severe and like he had bruises?
2 A Yes.
3 Q That he took him to the garage and when he came out
4 he had a bloodied eye?
5 A That's correct.
6 Q And he used his fists and he was threatening him?
7 A Yes.
8 Q Is that correct?
9 A Yes.
10 Q And she said nothing had happened to her, but that
11 it happened to her sister; correct?
12 A That's correct.
13 Q You asked her which sister. Which sister was it?
14 A She said Taharah.
15 Q And she said what did Fred do?
16 A Can you go back a page real quick?
17 Q Whoops. You said what happened to --
18 A Taharah.
19 Q -- Taharah; correct? And she said?
20 A He -- Fred, he was just beating her in the hallway.
21 Q And you had told her that you were -- that she was
22 not in trouble, right, and you were trying to convince her of
23 that?
24 A That's right.
25 Q And when you said you know that, right, and how did

1 she respond?

2 A Because I am afraid Fred is outside.

3 Q Now, when you finished interviewing Taharah and
4 Taquanda, did you determine that they were not currently being
5 harmed and were, therefore, at that point safe in the home?

6 A That was our determination at the time.

7 Q Okay. So that night nothing happened. You didn't
8 arrest anybody, you didn't take the kids out of the home;
9 correct?

10 A No, we did not.

11 MS. LUZAICH: Thank you. I have no more questions.

12 THE COURT: Any recross?

13 MR. MacARTHUR: No, Your Honor.

14 THE COURT: Thank you very much for your testimony.
15 You may step down. You are excused.

16 THE WITNESS: Thank you, ma'am.

17 THE COURT: Thank you for being here.

18 You can call your next witness.

19 MS. LUZAICH: I am so sorry. Can we approach?

20 THE COURT: Sure. That's okay.

21 (Bench conference)

22 MS. LUZAICH: We started to do this. There's an
23 issue with the detective that I want to raise before I ask him
24 about it. And we started to do it and then we got with the
25 rape shield and we stopped and brought the jury in. So

1 there's just one little quick thing that I wanted to raise
2 about Lealer's statement.

3 I want to ask him, the detective, that he -- and
4 this is in September of 2012, that he asked -- interviewed
5 Lealer and that -- Ms. Ann, whatever you want to call her,
6 that she admitted that the girls told her that -- the girls,
7 Taharah and Taquanda, told Lealer that Fred sexually assaulted
8 Taharah, that she knew it, she did nothing, and the girls,
9 therefore, remained in the home. I'm offering that statement
10 against penal interest.

11 And the truth is the fact she was charged with that
12 exactly, with knowing child abuse, knowing that it had
13 happened and left them in the home with the perpetrator. She
14 pled guilty. She's on probation. So, I mean, it really is a
15 statement against penal interest.

16 MS. ALLEN: And, Your Honor, obviously I can't
17 cross-examine the statement that she made because she wants to
18 bring in one small portion of it and there's like some 50-some
19 pages of it. And I can't cross-examine a statement. And she
20 -- there were other things that she said like I didn't believe
21 them. I mean, there's all of these things. And so it's
22 patently unfair to allow her to elicit one small statement
23 from this huge --

24 MS. LUZAICH: I won't object if they ask those
25 questions.

1 MS. ALLEN: Well, I -- I know you won't, but, I
2 mean, I can't cross-examine Lealer, can I? I mean, what
3 they're asking to bring in -- and there's a rule of
4 completeness in this and you can't bring an entire statement
5 of the co-defendant in without having her testify. So I
6 understand it's a statement against interest, but there's --
7 there is a rule of completeness to this that deprives my
8 client of his confrontation --

9 MS. LUZAICH: The rule of --

10 MS. ALLEN: -- regarding this statement.

11 MS. LUZAICH: Sorry. Didn't mean to interrupt.

12 MS. ALLEN: That's okay.

13 MS. LUZAICH: The rule of completeness only means
14 that the rest of what makes that statement in context, not the
15 whole statement, but that particular statement in context.
16 They can ask about it, and they can.

17 MS. ALLEN: Your Honor, again, this is, you know --

18 THE COURT: And, again, I mean, they're deprived of
19 cross-examining her.

20 MS. LUZAICH: They're not. They could call Lealer
21 Cooks. They're choosing not to. And if they can't call her,
22 she's unavailable, and that's why a statement against penal
23 interest is admissible and is not hearsay because she's
24 unavailable and she wouldn't make a statement like that unless
25 it was against repeated interest. That -- that's what makes

1 it a reliable statement.

2 MS. ALLEN: So we're going to get into her entire
3 statement being hearsay? I mean, that's essentially what the
4 State is saying. So we get into her entire statement being --
5 because it's hearsay.

6 THE COURT: Well, it sounds like they're not going
7 to object.

8 MS. ALLEN: Well, I appreciate that, but, I mean,
9 that's --

10 What are you doing?

11 THE COURT: He's fixing the frame. Thanks.

12 MR. MacARTHUR: Yes. Go ahead. Make your record.

13 THE COURT: That's okay. It's okay.

14 MS. ALLEN: Will you stop?

15 MR. MacARTHUR: Just make your record.

16 MS. ALLEN: Anyway, Your Honor, it's -- it's still a
17 hearsay statement. They're asking to bring in one portion of
18 it that is not -- it needs -- obviously it needs to be in
19 context. Now we're going to bring the whole statement in.
20 It's improper, but for purposes of --

21 THE COURT: Okay. So basically she was asked did
22 the girls tell you about this, she said, yes, they told me
23 about it, they admitted it to me, and I did nothing?

24 MS. LUZAICH: I would go into -- I would go into the
25 fact --

1 MS. ALLEN: And we don't want to go --
2 MS. LUZAICH: -- that she denied it first.
3 MS. ALLEN: We don't want the State -- and the whole
4 thing is, though, if we start doing that, then the State is
5 going to bring her JOC in and that's not -- I mean, if we --
6 I've been down this road before. If we bring in some other
7 part of her statement that denies culpability, they're going
8 to bring in --
9 MS. LUZAICH: No, I'll bring in that -- that she
10 denied --
11 MS. ALLEN: -- they're going to --
12 MS. LUZAICH: -- culpability at first.
13 MS. ALLEN: -- bring in the JOC. And I'm -- so now
14 like I'm literally caught between a rock and a hard place.
15 THE COURT: Are you going to bring in the JOC?
16 MS. ALLEN: See?
17 THE COURT: I guess I'm wondering how far this is
18 going to go.
19 MS. ALLEN: Right. And that -- so -- so now I'm
20 stuck. So I [unintelligible] from the State, it literally
21 becomes a one-sided affair. The State gets to bring what they
22 want out of the statement, but if I then cross-examine on the
23 main parts of the statement, they bring in her JOC to prove
24 she pled guilty to it. So, I mean, how is that effective for
25 me? How can I cross-examine effectively when I know they're

1 going to bring it in?

2 MS. LUZAICH: They can call Lealer Cooks. She has
3 pled guilty. She's on probation. She is not technically
4 unavailable. They're choosing not to call Lealer. But I -- I
5 will bring in that at first she denied it and then she
6 admitted it.

7 MS. ALLEN: But after they bring in the JOC.

8 THE COURT: Well, I know. I asked that and --

9 MS. LUZAICH: Well, if I offer that first she denied
10 it, then she admitted it.

11 MS. ALLEN: Well, I mean, so we're going to talk
12 about the whole -- I mean, so I can ask liberally about this
13 whole statement and that's fine and we're not bringing in the
14 JOC? Because if that's the case, all right. But if we're --
15 if that's the -- I mean, we can't parse it out. It's her
16 entire statement. She makes great -- she says great things
17 about -- for our case. Yeah, I'd love to bring her in, but,
18 unfortunately, she pled guilty. And I've been down this road
19 before. The minute I start talking about the good things she
20 says, JOC comes in to impeach her. There's case law on it. I
21 went through it with him.

22 THE COURT: Anything else? Okay. Is that the next
23 witness?

24 MS. LUZAICH: Uh-huh.

25 THE COURT: Okay. I will allow you to ask the

1 question, and then they're going to be able to --

2 MS. ALLEN: Well --

3 THE COURT: -- [inaudible].

4 MS. ALLEN: Well, can I have an offer about whether
5 or not they're bringing the JOC?

6 THE COURT: Well, I've asked that like three times
7 and I don't know, have you made a decision yet?

8 MS. LUZAICH: Well, it depends on how far they go on
9 the cross-examination. I mean, the fact that she --

10 MS. ALLEN: See?

11 MS. LUZAICH: -- denied it at first and then she
12 admitted it. I mean, and that she didn't believe the girls at
13 first and then they go to the doctor and there's HPV, and then
14 she admitted it. But I think that that's all what makes it
15 complete. I agree with that and that alone doesn't
16 necessarily allow me to bring in the JOC.

17 THE COURT: Well, this evidence has basically
18 already come in.

19 MS. ALLEN: Pardon?

20 THE COURT: This evidence has already basically come
21 in.

22 MS. ALLEN: What, about the HPV?

23 THE COURT: No, that --

24 MR. MacARTHUR: No, about them --

25 THE COURT: -- they told her --

1 MR. MacARTHUR: -- having told Lealer Cooks.

2 MS. LUZAICH: That she went to the doctor.

3 THE COURT: -- that she -- I mean, a clear inference
4 could be that she believed them. She took them to an OB/GYN
5 at a very young age and then she didn't do anything about it.
6 They were supposed to move into an apartment and they never
7 did.

8 MS. ALLEN: No, I understand. I understand that and
9 that's -- that -- I understand what the Court is saying. But
10 what my question, then, is, I mean, what -- I need to know at
11 what point the State is going to say, okay, they crossed the
12 line now we're bring the JOC. Because I have an entire
13 statement to contend with from Lealer Cooks, an entire
14 statement that parts of it are very good for me. So at what
15 point that I start bringing all the good parts in is the State
16 going to say, okay, now the JOC comes in?

17 MS. LUZAICH: Well, that depends on the good parts.

18 THE COURT: I don't know.

19 MS. ALLEN: This is my problem. Do you understand
20 my problem there?

21 THE COURT: I do.

22 MS. ALLEN: Yeah. And I think that sort of puts us
23 in a very patently unfair position. They're bringing in one
24 small portion that's very good for them, and then if I talk
25 about anything else, okay, now the JOC comes in. They're --

1 they're allowed to bring in what they want, but I can't.

2 That's the point.

3 THE COURT: Well, yeah, you can, you can bring them
4 in.

5 MS. LUZAICH: Well, but I bring it in as a statement
6 against penal interest.

7 THE COURT: Right.

8 MS. LUZAICH: That is a hearsay exception.

9 THE COURT: Which is --

10 MS. ALLEN: I understand.

11 MS. LUZAICH: Your stuff, the other stuff, isn't a
12 hearsay exception.

13 MS. ALLEN: I understand all that, but we're talking
14 about a statement of someone who is not going to testify, who
15 not just the State, but -- or defense, but the State is not
16 calling this witness. So, I mean, I understand all that. I
17 can't cross-examine her statement and I can't -- there's
18 nothing I can do about it.

19 So, you know, I'm left with the statement that she
20 did make and they're bringing in one small portion of it.
21 Yeah, they told me it happened. But there's other parts of it
22 again like I didn't believe them, like that they had been
23 lying, whatever it was that she said. And so I need to know
24 where the threshold is because what I don't want is to ask
25 questions about all the times that she said they were lying,

1 they lied all the time if they were in trouble, whatever it
2 is, and now all of the sudden it's like, well, now the JOC
3 comes in.

4 THE COURT: Well, I don't know what that line is. I
5 don't know what that line is, and I'm going to allow them to
6 ask that question. Okay.

7 (End of bench conference)

8 THE COURT: Thank you. You can call your next
9 witness.

10 MS. LUZAICH: Thank you. The State --

11 THE COURT: Is everyone okay to continue? Okay.
12 Everyone? Okay.

13 MS. LUZAICH: The State calls Nick Madsen.

14 NICHOLAS MADSEN, STATE'S WITNESS, SWORN

15 THE CLERK: Thank you. Please be seated.

16 THE WITNESS: Thank you.

17 THE CLERK: Could you please state your full name,
18 spelling your first and last name for the record.

19 THE WITNESS: It's Nicholas Madsen; N-I-C-H-O-L-A-S,
20 last name is M-A-D-S-E-N.

21 THE CLERK: Thank you.

22 THE COURT: Go ahead.

23 MS. LUZAICH: Thank you.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MS. LUZAICH:

3 Q Good afternoon, sir.

4 A Hello.

5 Q How are you employed?

6 A I'm a detective with Las Vegas Metropolitan Police
7 Department.

8 Q How long have you been with the Las Vegas
9 Metropolitan Police Department?

10 A I was hired June 25, 2001.

11 Q I can't add that fast. 13 years?

12 A Almost 13 years, yes.

13 Q Okay. And how long have you been a detective?

14 A I've been a detective since 2006.

15 Q Okay. Prior to being a detective, what did you do?

16 A There was the basic academy, field training, I was a
17 patrol officer at southeast area command for about five years.

18 Q And when you went to the detective bureau, where did
19 you go?

20 A I spent just shy of a year in property crimes,
21 burglaries.

22 Q And then what?

23 A In March of 2007 I transferred to the sexual abuse
24 juvenile detail.

25 Q What is the sexual abuse juvenile detail?

1 A It's a squad of seven to eight detectives on Metro
2 that handles any alleged sex crimes if a victim is under 18 if
3 the alleged perpetrator has some kind of position of authority
4 over them, lives in the same home, first degree family
5 relationship, or any victim who is under the age of -- alleged
6 victim under the age of 9 years regardless of the relationship
7 to the alleged offender.

8 Q Okay. Are there times that you do your
9 investigation alone and times that you kind of hook up with
10 another agency?

11 A Yes.

12 Q How does that come about?

13 A Our squad is actually housed with a team of Child
14 Protective Services sex abuse investigators at a place called
15 the Southern Nevada Children's Assessment Center. We're
16 housed in the same building with CPS, some mental health
17 professionals, some victim advocates who assist with
18 counseling. If a case comes in that requires both CPS and law
19 enforcement response, we try as much as possible to work a
20 joint investigation.

21 Q What would require CPS and Metro to work jointly as
22 opposed to where you would work alone?

23 A I'm not familiar with all of CPS's criteria for what
24 does and does not constitute a case for them, but in general
25 anytime a parent, guardian who is in the home or has some kind

1 of custody over the child is the alleged perpetrator, CPS will
2 get involved for the civil aspect of the case for guaranteeing
3 the safety of the child, the welfare of the child.

4 Q Okay. And --

5 A And to assist the non-offending parent with the
6 resources to -- to help them understand what's happening.

7 Q Do most of your investigations also involve CPS?

8 A It's difficult to say most because the nature of
9 what we deal with tends to -- a lot of our cases tend to come
10 up years after the fact, at which point there is no need for
11 CPS involvement, the child has either aged out of CPS's
12 jurisdiction, they're no longer in the same home, the offender
13 is no longer near them. But I would -- I would say maybe half
14 of our cases do involve CPS whether locally or from another
15 state, and most of our reports now come in through the CPS
16 hotline.

17 Q Okay. And the instances wherein you do work with
18 CPS, do you try to partner up with somebody from CPS very
19 early on in your investigation?

20 A Yes, that's the whole point. That's the best
21 practice is to have both parties to the investigation working
22 together as early as possible.

23 Q Why is that?

24 A There have been several trainings that we received
25 that show that a joint investigation tends to be better for

1 the welfare of the child, for the family, for everyone
2 involved, rather than having to have the child and witnesses
3 come in for repeated interviews, having to relive this over
4 and over again, especially for a young child who might be
5 traumatized. It tends to be more beneficial to them to only
6 have to tell their story once.

7 Q Okay. And can you describe for us what training and
8 education you have that helps you do this?

9 A Specifically for this job I've attended several
10 interview and interrogation schools, just general interview
11 and interrogation schools. I've attended several forensic
12 interview training, including a week-long course put on by
13 First Witness, another week-long course put on by personnel
14 from the Huntsville, Alabama, CAC. I have been -- I was lucky
15 enough to attend the Dallas Internet Crimes Against Children's
16 abuse -- child abuse conference in Dallas in 2009, I believe I
17 attended. Metro used to host something called the Western
18 States Sex Abuse investigator seminar every summer. I
19 attended, I think, four of those before the budget made it
20 impossible for that to continue. Several -- several classes
21 put on by the public agency training counsel specifically to
22 deal with sex crimes investigations, understanding sexual
23 offenders, several classes like that.

24 Q So would you agree that investigating crimes against
25 -- involving sex offenders is different than investigating,

1 for example, robberies or property crimes?

2 A I would say so.

3 Q And especially because children are involved.

4 A Yes. And the reason we have a squad dedicated to
5 our type of crimes is even amongst sex crimes investigators
6 there are a lot more unique considerations involved in an
7 interfamilial case than a stranger case.

8 Q Okay. I'm direct your attention back to September
9 of 2012. Were you working as a detective in the sexual abuse
10 detail at that time?

11 A I was.

12 Q Did you become involved with a case that -- sorry,
13 did you become involved in a case that involved Taharah and
14 Taquanda Duke?

15 A I did.

16 Q How did you become involved?

17 A It was assigned to me by my sergeant. The case came
18 in through the CPS hotline, and it was what we refer to as a
19 same day response, which means if a child is in potential
20 danger during our shift where if we don't go speak with them,
21 find out what's going on before our shift is over they might
22 have to return to a dangerous environment and someone may have
23 access to them that is an alleged offender. I was told by my
24 supervisor, Sergeant Schultz, that this case had come in. He
25 gave me the report. He told me that CPS specialist Sholeh

1 Nourbakhsh had been assigned and was already going to the
2 school to speak with the children, to get them to bring them
3 back for interviews.

4 Q You say he gave you a report. What information did
5 you have at the time?

6 A The information I had, I don't remember all of the
7 details, but it was a case that was called in by another
8 juvenile in the home saying she had concerns that her sister
9 was being --

10 MS. ALLEN: Objection, Your Honor. Hearsay.

11 THE COURT: Sustained.

12 BY MS. LUZAICH:

13 Q Okay. A juvenile called into the hotline and that's
14 how you got involved?

15 A Yes.

16 Q Did you learn the name of the juvenile that called
17 into the hotline?

18 A I learned the name, but I -- throughout this case I
19 get the names of the two siblings mixed up. It was --

20 Q Was it the older one or the younger one who called?

21 A I believe it was the younger one that called.

22 Q Okay. So once you got that report and you learned
23 that Ms. Nourbakhsh was involved from CPS's viewpoint, what
24 did you do?

25 A I spoke with Sholeh. She explained to me on the

1 phone what she was going to do, that she was heading to the
2 school already, that she didn't see a need for me to respond
3 to the school with her. So I started researching old reports
4 because the CPS report that I was given did indicate that
5 there was some prior history.

6 MS. ALLEN: Judge, objection. Hearsay.

7 THE COURT: Don't tell us anything someone else told
8 you, okay?

9 MS. LUZAICH: He wasn't.

10 THE WITNESS: Yeah, I --

11 MS. ALLEN: He was referring to a CPS report, Your
12 Honor.

13 MS. LUZAICH: He just said that there was prior
14 history.

15 THE COURT: Which he's referring to hearsay.

16 MS. LUZAICH: He didn't say --

17 THE COURT: Okay. As long --

18 MS. LUZAICH: I'll ask --

19 THE COURT: -- as he doesn't --

20 MS. LUZAICH: -- the next question.

21 THE COURT: As long as he doesn't testify about what
22 -- what it is --

23 MS. LUZAICH: He wasn't going to.

24 THE COURT: Okay.

25 ///

1 BY MS. LUZAICH:

2 Q So you said that -- that there was prior history.
3 Did the prior history have notes that you could at least
4 access?

5 A It did.

6 Q Did you access the notes?

7 A I did.

8 Q And what is the reason for accessing the notes?

9 A First and foremost to see if the matter that we are
10 currently investigating has already been investigated in the
11 past, if it's something that someone else has already dealt
12 with. We sometimes will get cases called in years later by a
13 therapist or a school counselor if a child talks to them about
14 the matter. And sometimes we will learn that this was already
15 dealt with two, three, four, five years ago and there's no
16 need to go through the whole thing again. And then besides
17 that it's just a general investigative step to find out who is
18 involved, what other allegations may have been made in the
19 past, if we have any reason to doubt the -- the validity of
20 what's being alleged now, if there's any red flags in what's
21 being alleged in the report.

22 Q Okay. So you looked and found prior stuff. Then
23 what did you do?

24 A I just researched records. I researched databases,
25 Metro databases for old reports for running people's

1 histories, and then I just waited for Sholeh to return with
2 the children so that we could observe one of the forensic
3 interviewers interview Taharah and Taquanda separately.

4 Q Did you cause there to be forensic interviews set
5 up?

6 A Sholeh and I did. I don't remember who exactly
7 scheduled the appointment.

8 Q And tell me, what is a forensic interviewer, first
9 of all?

10 A The CAC employs two full-time forensic interviewers.
11 They're not law enforcement. They're not CPS. Their job is
12 they interview children. They conduct what are called
13 forensic interviews by appointment at the center. And they do
14 it primarily on alleged sex abuse cases, but they will assist
15 if -- in any case where a child needs to be interviewed. They
16 will -- they will do those interviews as requested.

17 Q And you say that the forensic interviewers there are
18 not employed by either Metro or CPS; correct?

19 A Correct.

20 Q So they're objective interviewers?

21 A They are County employees, but I don't know exactly
22 who they are employed by. I know they're not considered CPS
23 or law enforcement.

24 Q Okay. And who was the individual that was going to
25 interview Taharah and Taquanda?

1 A Michele Fisher.

2 Q You said that you prepared to observe the
3 interviews. Why do you observe and not participate in the
4 interviews?

5 A It allows a measure of objectivity. Michele doesn't
6 have a stake in the investigation one way or the other for any
7 agency. I have also personally found that I am better able to
8 pay attention to what is said in an interview if I can watch
9 from -- we have a closed-circuit television in the observation
10 room. It's easier for me to watch and pay attention to what's
11 being said that way than if I'm actually in the interview and
12 I'm the one speaking with the child.

13 Q Okay. And when you watched the interviews, were you
14 alone or was anybody with you?

15 A Sholeh was with me.

16 Q And just you and Sholeh?

17 A Yes.

18 Q Parents are not allowed to watch the interviews; is
19 that correct?

20 A Correct.

21 Q Or guardians or anything of that nature?

22 A Correct.

23 Q It's just a law enforcement kind of tool?

24 A Law enforcement or CPS.

25 Q Okay. When Taharah was interviewed, who was in the

1 interview room?

2 A Taharah and Michele Fisher.

3 Q Okay. So nobody else?

4 A No.

5 Q And did you watch the whole interview from beginning
6 to end?

7 A I may have stepped out at different points to get a
8 pen to take notes or to talk to somebody about what was
9 happening with the case. When we get a same day that we're
10 not sure if we're going to need help with to respond out to
11 other locations, we'll routinely update our supervisor or
12 other members on my squad to let them know if I'm going to
13 need a hand or just to update my sergeant on the status of the
14 interviews.

15 Q Did you notice anything about Taharah as you watched
16 the interview and her abilities?

17 A I'm sorry. I need my memory refreshed. Is Taharah
18 the older sibling?

19 Q The older one.

20 A The older one. Taharah, to me, did not seem -- she
21 seemed slightly delayed to me.

22 Q Okay. Did -- did it appear she had a hard time kind
23 of understanding some of the questions?

24 A Yes.

25 Q Did she talk to Michele and give information?

1 A She did.

2 Q And did you also watch the interview that Michele
3 Fisher did with Taquanda?

4 A I did.

5 Q And did you notice anything about Taquanda's
6 interview?

7 A Taquanda struck me as being much more confident.
8 Taquanda seemed, for lack of a better way to put it, very
9 no-nonsense. She was there to tell something and that was
10 really what she did.

11 Q Okay. After the interviews with Taharah and
12 Taquanda, what did you do?

13 A Sometime during getting the kids there, the
14 interviews, in between interviews, I believe Sholeh called who
15 we were told was their legal guardian and called her and asked
16 her to respond to the center.

17 Q Okay. And, I'm sorry, just to go back for one
18 second to Taquanda's interview, was she able to give details
19 about a particular incident?

20 MS. ALLEN: Judge, objection. Hearsay.

21 MS. LUZAICH: I'm not asking for the details.

22 THE COURT: You can answer yes or no.

23 THE WITNESS: Yes, she was.

24 BY MS. LUZAICH:

25 Q Okay. Was Taharah not quite as good with details as

1 Taquanda?

2 A I would say that's fair. Overall Taquanda was a
3 more confident interview than Taharah was.

4 Q You said that Sholeh had called the guardian. Do
5 you remember the guardian's name?

6 A Yeah, it was Lealer Ann Cooks.

7 Q And she -- Ms. Cooks actually came to the CAC for an
8 interview?

9 A She did.

10 Q Were you there when Sholeh called her?

11 A I don't remember if I was or not.

12 Q Okay. So you don't know what would have been
13 explained to her on the phone?

14 A I don't know what was explained to her in
15 particular, no.

16 Q When Ms. Cooks came to the CAC, was she interviewed?

17 A She was.

18 Q Did you participate in that interview?

19 A I did.

20 Q Did Ms. Nourbakhsh participate in that interview?

21 A She did not.

22 Q Was she sick?

23 A She had a slight medical episode between the girls
24 being interviewed and Ms. Cooks being interviewed, and she
25 actually had to be treated by medical personnel.

1 Q And did somebody else participate in the interview
2 with you?

3 A Yes, one of her coworkers from CPS, Devon -- at the
4 time it was Devon Stokes. It's now Devon Butts.

5 Q So when Ms. Cooks came for the interview, where was
6 she interviewed?

7 A There are several conference rooms in the CAC, and
8 we interviewed her in one of the front conference rooms. I
9 guess it would be referred to as the east conference room.

10 Q So you would not interview her in the same place
11 that you would interview the kids; is that right?

12 A No. That's correct.

13 Q Why is that?

14 A Those -- those interview rooms are particularly
15 designed for the children. They have small tables, small
16 chairs, they're low to the floor, they have markers and
17 Play-Doh and easels to color on.

18 Q Kid friendly?

19 A Kid friendly. In general the only interview room
20 that is videotaped that's geared towards adult interviews is
21 where we interview alleged offenders, and I felt it would be
22 inappropriate to interview Lealer in that room because it's
23 got a handcuff bar. It's clearly for people who are accused
24 of crimes.

25 Q Okay. So you went to a conference room with her,

1 you and Ms. Butts or Ms. Stokes. Did you explain to her why
2 she was there?

3 A Not right away, but eventually we did.

4 Q Okay. How did you start your interview?

5 A I would have to refer to something to know exactly,
6 but in general I would have asked if she knew why I had -- why
7 we had asked her to come down.

8 Q Okay. And did she know or was she kind of in the
9 dark?

10 A She claimed to not know at first.

11 MS. ALLEN: Objection, Your Honor. Hearsay.

12 THE COURT: Overruled.

13 BY MS. LUZAICH:

14 Q Did you ultimately explain to her why she was there?

15 A Little by little I did.

16 Q What do you mean little by little?

17 A The girls had indicated in their forensic interviews
18 that Lealer --

19 MS. ALLEN: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MS. LUZAICH:

22 Q Remember you can't tell me what the girls said.

23 A Okay.

24 Q Were you trying to find out whether or not Ms. Cooks
25 knew anything about what the girls had told you had been

1 happening?

2 A Yes.

3 Q And did she at first deny knowing anything?

4 A Yes.

5 Q Did that change?

6 A That did. That's where I, little by little, would
7 tell her a little bit more about what I felt she knew. She
8 would give a little more. I would push her further about what
9 I thought she knew and she would give a little more. And it
10 went on like that for basically the entire interview.

11 Q Okay. So at the beginning she denied knowing
12 anything?

13 A Yes.

14 Q And ultimately what did she admit that she knew from
15 the girls?

16 MS. ALLEN: Judge, objection. Hearsay.

17 THE COURT: Overruled. You can answer.

18 THE WITNESS: She eventually admitted that the girls
19 had claimed that they -- that Taharah had been -- I believe
20 the word they used was molested by Fred Harris.

21 BY MS. LUZAICH:

22 Q Okay. And did she actually tell you that she did
23 not believe them at first?

24 A At first she said she did not believe them.

25 Q Did she tell you that she had taken Taharah to a

1 doctor?

2 A Yes.

3 Q And that the doctor told her that Taharah had a
4 disease?

5 A Yes.

6 Q Did she tell you what the disease was?

7 A She said to her recollection it was HPV.

8 Q Okay. And is it your understanding that that's a
9 disease that's transmitted by sexual contact?

10 A Yes.

11 Q And did she ultimately indicate that she was going
12 to do something about what they had told her?

13 A Yes.

14 Q And did she ever actually do anything about what
15 they had told her?

16 A She claims she had tried.

17 Q But she didn't ultimately do anything?

18 A Correct.

19 Q Once you finished your interview with Ms. Cooks --
20 MS. LUZAICH: And, actually, may I approach the
21 witness?

22 THE COURT: You may.

23 BY MS. LUZAICH:

24 Q Showing you State's Exhibit 1. Is that Lealer
25 Cooks?

1 A It is.

2 Q Once you finished your interview with Ms. Cooks,
3 what did you do?

4 A I don't remember the exact time frame after we
5 finished the interview with her. I don't remember if I tried
6 to reach the girls' mother that day or if I didn't try to
7 reach her until the next day.

8 Q Okay. And what was the girls' mother's name?

9 A Tina Duke.

10 Q Now, before I even get to Tina, did you arrange for
11 something else to happen with the girls that day?

12 A Again, I don't remember if it was myself or Sholeh
13 that did it. When we work a joint investigation it's just
14 kind of whoever picks up the slack first on certain aspects.
15 But we did arrange for the girls to have medical exams at the
16 CAC clinic.

17 Q Okay. And would that have been Dr. Mehta who did
18 the exams?

19 A At that time it would have been, yes.

20 Q Did you also in your investigation earlier learn
21 about some -- a Henderson Police Department investigation?

22 A Yes, when I was researching the initial records I
23 learned there had been a previous investigation by Henderson
24 Police.

25 Q Did you make an effort to contact them?

1 A I did.

2 Q At what point did you do that?

3 A I don't remember the exact timing of that. I now
4 sometime during the initial day of the investigation I left a
5 message for Detective Aguiar in Henderson.

6 Q I guess that would be my question. So it was that
7 same day that you contacted Detective Aguiar?

8 A I can't say for sure. I think it was. But it was
9 either that day or first thing the next shift that I worked.

10 Q You said you left a message for Detective Aguiar.
11 Did you ultimately get in communication with him?

12 A I did.

13 Q Do you know was it that day, the next day, a week, a
14 month?

15 A No, it was several days later that I was actually
16 able to speak with him.

17 Q And when you spoke with him, did you request
18 anything from him?

19 A Yes, we discussed his investigation involving some
20 of the same people. I asked if he could provide me with any
21 records, any reports, and any DVDs or CDs of taped interviews
22 he conducted regarding the same -- the same people, family.

23 Q And did you get anything from him?

24 A I did.

25 Q What did you get from him?

1 A He provided me with a Henderson Police Department
2 report. It included several case notes, and he also provided
3 several transcripts. I don't recall if he sent me CDs or
4 emailed me sound files, but I know I got something from him on
5 a disc. I think it was CDs of audio interviews.

6 Q Okay. And you said he provided you some
7 transcripts. Did you have to get some of the things that he
8 sent you transcribed?

9 A I did.

10 Q Now, when you guys do interviews, ultimately they're
11 on some sort of disc or something; correct?

12 A Yes.

13 Q How do you, the Las Vegas Metropolitan Police
14 Department, get your interviews transcribed?

15 A The process has actually changed a little bit over
16 the last year and a half or so, so I don't remember if this
17 case was done the old way or the new way. The old way was we
18 would simply burn our interviews onto a CD, we would provide
19 them to the clerical staff at our headquarters. Some of the
20 interviews would be done by the clerical staff there, it would
21 be transcribed. Some will get shipped out to a company called
22 Net Transcripts just depending on how backed up somebody is,
23 what the case load is like. At some point we've adjusted to
24 where we submit them electronically via email to our same
25 clerical staff and from there it goes the same way. Sometimes

1 they will do the transcriptions, a lot of the time it will get
2 sent out to Net Transcripts.

3 Q Okay. So how long did it take before you got the
4 items from the Henderson Police Department?

5 A I don't remember exactly. It was -- it was several
6 days, if not a few weeks.

7 Q Awhile, not immediate?

8 A Right. And Detective Aguiar did warn me it would
9 take awhile to compile everything because he had since left
10 and been assigned to a different unit.

11 Q Okay. So you got the girls examined, you spoke to
12 the Henderson Police Department. You said that you had tried
13 to contact the mother. Did you ultimately have contact with
14 the mother of the kids?

15 A Several days later we did.

16 Q Was that after a hearing in family court?

17 A Yes.

18 Q And who -- if -- well, did you interview the mother
19 of the kids?

20 A I did.

21 Q That's Tina Duke; correct?

22 A Correct.

23 Q Was it just you, or perhaps you and Sholeh?

24 A Sholeh and I did it together.

25 Q Where did you conduct that interview?

1 A In other conference room at the CAC. I believe this
2 one was in the north conference room.

3 Q And tell me, what was Tina Duke's demeanor like when
4 you spoke with her?

5 A Tina's interview, her demeanor throughout the
6 interview was -- I guess the best word for it would be a
7 little odd at first. She was upset throughout, but she did
8 seem to be confused at several points.

9 Q Did she describe a series of incidents, events,
10 however you want to phrase it, to you?

11 A She did.

12 Q Did she have some difficulty in relaying some
13 things?

14 A Yes.

15 Q At the conclusion of her interview, did you ask her
16 to do something?

17 A I did.

18 Q What did you ask her to do?

19 A Tina had provided a lot of information during her
20 interview and at different times she seemed to be confused and
21 at different times she was confusing me. I wasn't
22 understanding exactly what she was telling me as far as time
23 frames. I asked her if she would be able to put together some
24 sort of time frame, maybe even a timeline of events to
25 describe the incidents that she had -- she had alleged to

1 myself and Sholeh.

2 Q And did she ultimately do that?

3 A She did.

4 Q All right. How did she do it?

5 A Initially she just brought back a one-page sheet of
6 paper kind of summarizing everything she had said in the
7 interview in a very succinct manner. I explained to her that
8 wasn't really what I wanted. I wanted something a little more
9 detailed to really help me understand what she had told us.
10 So she brought back something else several days later that was
11 basically a written statement that she wrote down on her own
12 paper.

13 Q Okay. Not at your -- like not while you stood there
14 over her?

15 A No, no, no, no. She brought it back. The first one
16 she brought back a day or two later. The second one she
17 brought back two or three days after that.

18 Q Okay. Now, just to be clear, after you interviewed
19 the kids you said you tried to contact Tina. How easy,
20 difficult, or what was it to ultimately get in touch with her?

21 A Between myself and Sholeh, we made several phone
22 calls. I never went to her last address because we knew there
23 was a family court hearing coming up. If she wasn't at that
24 family court hearing, we would have immediately gone to her
25 last known address to speak with her then, but she was at the

1 family court hearing.

2 Q When you say that you and Sholeh both made phone
3 calls, did you leave messages, for example, hey, this is
4 Detective Madsen, please call me?

5 A Sholeh left messages. I don't recall if I did or
6 not.

7 Q Okay. But did she ever call either of you back?

8 A She didn't call me back. I don't know if she called
9 Sholeh back.

10 Q Okay. When she was at the family court hearing, did
11 she also bring kids with her for you guys to interview?

12 A She did.

13 Q Who did she bring with her?

14 A I'm not sure if I'll remember all the names. She
15 brought Shabazz, Mahlica, and I think that's it initially.

16 Q Okay. So did you and/or Sholeh interview Shabazz?

17 A I did not. I believe Sholeh -- or, no, I think
18 Michele interviewed Shabazz.

19 Q Okay. And what about Mahlica?

20 A I believe Sholeh interviewed Mahlica. I think
21 Sholeh interviewed one of the children, and I can't say for
22 sure if Sholeh or Michele interviewed Mahlica.

23 Q Okay. Now, Shabazz, you said you think Michele
24 interviewed Shabazz. Did you watch that interview?

25 A I watched parts of that interview.

1 Q And did you notice anything about Shabazz?

2 A The thing that jumped out and the reason I remember
3 that Michele did the interview is Shabazz wore prescription
4 sunglasses throughout his interview.

5 Q Okay. Did she want him to take them off?

6 A She did.

7 Q Did he take them off?

8 A He told her that they were prescription and I don't
9 remember if he did take them off or not. I think he offered
10 to anyway, but when she learned they were prescription she
11 said he didn't need to.

12 Q Okay. Did you notice anything about his abilities
13 during the course of what you watched of the interview?

14 A He seemed like he might have been a little delayed.
15 He was very relaxed, very calm. He -- he didn't seem to be
16 phased by anything that was going on at the time.

17 Q And then did you observe the interview with Mahlica?

18 A I only saw little brief moments of Mahlica's
19 interview.

20 Q Okay. You know that there was another child, as
21 well; correct?

22 A Correct. Well, I knew there was another person
23 involved. By this point --

24 Q Sorry.

25 A -- she was --

1 Q Child is the wrong word.

2 A -- she was an adult by this point.

3 Q Okay. Another of Tina's children. How's that?

4 A Yes.

5 Q And who was that?

6 A Victoria Duke.

7 Q Did you interview Victoria?

8 A I did not.

9 Q Did -- who did?

10 A Michele Fisher interviewed Victoria, as well.

11 Q Did you watch that interview?

12 A I watched most of that interview.

13 Q And when you watched, or at least the part of the

14 interview that you watched, did Victoria give great detail

15 about things that had occurred?

16 A Victoria did. There's no real standard, but most of

17 our interviews of alleged victims tend to run out after about

18 an hour, hour and 15 or 20 minutes. Victoria seemed to speak

19 a lot longer than that and she was extremely vivid in the

20 details she provided.

21 Q After Victoria was interviewed, what happened?

22 A I don't remember the -- the next step after Victoria

23 was interviewed.

24 Q Do you remember what day it was that you got

25 involved in the case?

1 A I want to say it was September 27, 2012.

2 Q And the family court hearing, do you remember when
3 that was?

4 A It was either October 2nd or 3rd, I believe.

5 Q Okay. So your investigation is going on for that
6 long.

7 A Correct.

8 Q Once Victoria and -- well, once all of the Duke
9 children and Tina and Lealer were interviewed, what else did
10 you have to do?

11 A Basically the only thing I had left to do was to
12 interview Fred if he was interested in being interviewed and
13 then to research all the old Henderson reports and try to kind
14 of make sense of everything I had learned in my investigation
15 with what had happened in the earlier investigation.

16 Q Okay. And did it take awhile for you to get the
17 Henderson stuff and then get it transcribed?

18 A It did.

19 Q So once you got everything put together, did there
20 come a time that you made an arrest in this case?

21 A I did.

22 Q And who did you arrest?

23 A I arrested Frederick Harris.

24 Q Do you see him here in court today?

25 A I do.

1 Q Can you describe an article of clothing that he's
2 wearing?

3 A He's wearing a blue button-up shirt.

4 MS. LUZAICH: Record reflect identification of the
5 defendant.

6 THE COURT: So reflected.

7 BY MS. LUZAICH:

8 Q Oh. I'm sorry. And do you remember where did you
9 go when you arrested him or where was he, where did you find
10 him?

11 A I found Frederick at his last listed address on
12 Blankenship.

13 Q 966 Blankenship?

14 A Yes.

15 Q And that would be here in Las Vegas, Clark County,
16 Nevada?

17 A Yes, ma'am.

18 Q Was he alone or was there anybody else there?

19 A No, Lealer was home.

20 Q And how -- what was Lealer's demeanor like when Fred
21 got arrested?

22 A Argumentative. She was -- at first she just kind of
23 used a little bit of profanity to say what she thought of the
24 situation. She did raise her voice a little bit at myself and
25 my partner. At one point Frederick actually asked her to calm

1 down.

2 Q Okay. So he was calm?

3 A Frederick was very calm. He was very cooperative.

4 He did also voice that he felt that this was --

5 Q Well, that's okay.

6 A Yeah.

7 MS. ALLEN: Your Honor, I would object.

8 MS. LUZAICH: That was nonresponsive.

9 THE COURT: Right. And --

10 MS. ALLEN: Okay.

11 THE COURT: Go ahead.

12 BY MS. LUZAICH:

13 Q Did there come a time that you also charged Ms.

14 Cooks?

15 A I did.

16 MS. LUZAICH: Thank you. I would pass the witness.

17 THE COURT: Cross.

18 MS. ALLEN: Your Honor, can we approach for a

19 moment.

20 THE COURT: Of course.

21 (Bench conference)

22 MS. ALLEN: I hate to do this, but I really have to

23 go to the bathroom.

24 THE COURT: You know, I have to, too, so

25 [inaudible].

1 (End of bench conference)

2 THE COURT: Okay. At this time we're going to take
3 a recess.

4 During this recess you're admonished not to talk or
5 converse amongst yourselves or with anyone else on any subject
6 connected with this trial, or read, watch, or listen to any
7 report of or commentary on the trial or any person connected
8 with this trial by any medium of information, including
9 without limitation, newspapers, television, the Internet, or
10 radio, or form or express any opinion on any subject connected
11 with this trial until the case is finally submitted to you.

12 We'll be in recess for about ten minutes.

13 (Court recessed at 4:21 p.m., until 4:28 p.m.)

14 (Jury is not present)

15 THE COURT: Well, I mean, how long is your cross?
16 Because I --

17 MS. ALLEN: I don't know. We may be done by 5:00.

18 THE COURT: Okay.

19 MS. ALLEN: I just wondered if we were stopping
20 right at 5:00 or if like we're -- I don't know. I'm just
21 gauging my life for tonight.

22 THE COURT: Yeah. 5:00.

23 MS. ALLEN: 5:00. Got it.

24 MS. LUZAICH: All right. If that's all you're going
25 to ask, in not going --

1 MS. ALLEN: Yeah.

2 MS. LUZAICH: -- to offer the JOC.

3 MS. ALLEN: I think -- this is your last witness,
4 isn't it?

5 MS. LUZAICH: Yeah.

6 MS. RHOADES: Yeah.

7 THE COURT: Right on.

8 MR. MacARTHUR: Let the record reflect the Judge
9 said right on.

10 (Pause in the proceedings)

11 (Jury is present)

12 THE COURT: Do the parties stipulate to the
13 presence?

14 MS. LUZAICH: Yes.

15 MS. ALLEN: Yes, Your Honor.

16 THE COURT: Okay. You may begin your cross.

17 MS. ALLEN: Thank you.

18 CROSS-EXAMINATION

19 BY MS. ALLEN:

20 Q Good afternoon, Detective Madsen.

21 A Hello.

22 Q How are you?

23 A Good. How are you?

24 Q Good. Thank you. My name is Betsy Allen. I'm just
25 going to ask you some follow up questions, okay?

1 A Okay.

2 Q How long have you been with -- how long have you
3 been with Metro?

4 A Almost 13 years. It'll be 13 in June.

5 Q Okay. And you started off on patrol?

6 A Right.

7 Q Okay. And then you moved your way up to detective;
8 is that correct?

9 A Correct.

10 Q And you're a detective now?

11 A I am.

12 Q Okay. At what point did you end up on the sexual
13 assault detail?

14 A I'm actually on the sexual abuse detail.

15 Q Okay.

16 A It's a separate entity. And I went there in March
17 of 2007.

18 Q Okay. And you've been there ever since?

19 A Yes.

20 Q Okay. So you've been there a long time; is that
21 correct?

22 A For what we do, yes, that's a long time.

23 Q Okay. Usually you'll spend a couple years in
24 robbery and then a couple years somewhere else. You've been
25 there seven years.

1 A Yeah, our unit in particular people tend to leave
2 after two or three years.

3 Q Okay. Burn out?

4 A That or just better opportunities, career
5 advancement, promotions, what have you.

6 Q Okay. But you obviously like where you are?

7 A Very much.

8 Q Okay. So that's probably part of the reason why you
9 stayed there?

10 A Yes.

11 Q Okay. And part of what you do or part of your
12 training is interviewing children; is that correct?

13 A Correct.

14 Q Do you deal with adult sexual assault or sexual --
15 abuse of adults so much or is it more children?

16 A More children.

17 Q Okay. And you take all kinds of classes in
18 interviewing in forensic interviews; is that correct?

19 A I don't take -- I've taken some forensic interviews.
20 I wouldn't say given how long I've been there that I've taken
21 a lot of forensic interviewing classes.

22 Q Okay. But you've probably don't a lot of forensic
23 interviews?

24 A Yes.

25 Q Okay. And the point of a forensic interview is so

1 that you're not leading a child; is that correct?

2 A Correct.

3 Q You don't want to suggest an answer?

4 A Correct.

5 Q Okay. And I've -- I think I've asked this question
6 a few times, but the reason why you don't want to suggest an
7 answer with a child is are they a little more susceptible to
8 agreeing to something that maybe didn't happen?

9 A Yes. The -- the training we get suggests that they
10 will be more likely to give the answer they think the
11 interviewer wants to hear if the interviewer seems to be
12 suggesting an answer.

13 Q Okay. So children tend to want to please an adult;
14 is that correct?

15 A Correct.

16 Q And maybe even more so if you're a police officer or
17 a teacher or something, someone they -- they see in a position
18 of power?

19 A I would say that's depending on the child. A lot of
20 the times we don't -- we don't introduce ourselves as police.
21 We don't display badges or guns at the center because we never
22 know what kids hate cops, are scared of cops, have been told
23 they'll be arrested. So it's hard to say how they feel about
24 police because we don't generally introduce ourselves that
25 way.

1 Q Okay. And in this particular case with regard to
2 the Dukes, what -- specifically who did you interview?

3 A The only people I actually interviewed myself were
4 Lealer Ann Cooks and Tina Duke. And when I say myself, Sholeh
5 Nourbakhsh was with me for one, and Devon Stokes for another.
6 But I was only present and actively involved in those two
7 interviews.

8 Q Okay. So you -- when you say active, you mean
9 asking questions?

10 A Or even in the same room.

11 Q Okay. And you said it was Lealer Cooks and then
12 Tina Duke?

13 A Correct.

14 Q Okay. And do you remember when you interviewed Tina
15 Duke?

16 A Tina I want to say was either October 2nd or 3rd. I
17 am not sure on the date. I know it was several days after the
18 initial report came in.

19 Q Okay. And approximately how long did that interview
20 last?

21 A I don't remember exactly. I know it was -- seemed
22 to be a longer interview. It was over an hour for sure.

23 Q Okay. And just to be clear, Tina Duke has never
24 been charged in this case; is that correct?

25 A Not by me.

1 Q Okay. You didn't arrest her at any point in time?

2 A I did not.

3 Q And when I say submit documents to the DA's office,

4 what -- what -- what is that when you --

5 A Sometimes rather --

6 Q -- submit a paper --

7 A -- than making an arrest we'll submit for an arrest

8 warrant just so there's another -- another level of eyes

9 looking at it to see if it really is a legitimate case, if

10 there really is probable cause to issue a warrant for an

11 arrest.

12 Q Okay. And that was never done in this case with

13 regard to Tina; is that correct?

14 A Correct.

15 Q Okay. It was done with Lealer, is that -- is that

16 right, though?

17 A Correct.

18 Q Okay. Did you actually arrest Lealer?

19 A I did not. I -- well, actually, I don't remember.

20 I believe I submitted for a warrant on Lealer.

21 Q Okay. All right. So you can't remember as you sit

22 here whether or not you were the one who actually went out and

23 arrested her?

24 A I can't remember. I don't believe I was.

25 Q Okay. Part of your investigation was pulling all of

1 the statements that were made back in like December of 2011;
2 is that right?

3 A The Henderson --

4 Q Yes.

5 A -- statements?

6 Q Yes.

7 A Yes.

8 Q Okay. And there were interviews done with pretty
9 much all of the same people by Detective Aguiar; is that
10 right?

11 A They -- there were interviews by all the same people
12 done by Detective Aguiar and the other detectives he worked
13 with at the time. He didn't do all of the interviews.

14 Q I -- that's not what I meant. I apologize.

15 A Okay.

16 Q But his -- he was the case detective; is that
17 correct?

18 A He was. Yes.

19 Q Okay. So he was sort of running that investigation;
20 is that right?

21 A Correct.

22 Q Okay. So when I said that I meant -- by Detective
23 Aguiar I meant by his team.

24 A Okay.

25 Q Would that --

1 A That's correct.

2 Q -- be fair?

3 A Yes.

4 Q Okay. So back in December of 2011 all of the same

5 people were interviewed; is that -- is that correct? Is that

6 a fair statement?

7 A I believe so. I'm not completely sure if Henderson

8 interviewed all the same people we did or if they interviewed

9 someone we didn't or if we interviewed someone they didn't at

10 some point, but, in fact, I know that they interviewed at

11 least one person that was not interviewed in our case.

12 Q They did?

13 A Yes.

14 Q Okay. And do you know who that was?

15 A The name was Rose Smith.

16 Q Okay. You didn't interview Rose Smith?

17 A No.

18 Q Okay. So you -- but you did part of your

19 investigation, I don't mean you personally, I just mean

20 generally your team because you were the case detective on

21 this particular report; is that right?

22 A Correct.

23 Q Okay. So there was an interview with Shabazz?

24 A Yes.

25 Q Mahlica?

1 A Yes.

2 Q Tina?

3 A Yes.

4 Q Taquanda?

5 A Yes.

6 Q Taharah?

7 A Yes.

8 Q And Victoria?

9 A Yes.

10 Q Okay. And there was -- there were corresponding
11 interviews with Detective Aguiar on all of those people, as
12 well; is that right?

13 A I believe so, yes.

14 Q Okay. With regard to Taharah's interview with
15 Detective Aguiar and regard to the interview that Metro had
16 with her, they were very different interviews; isn't that
17 correct?

18 A I know they were different.

19 Q Okay. Different -- well, would you agree in one
20 there was -- in one there was very incriminating information
21 she gave, and in one there was not incriminating information?

22 A Incriminating as far as making allegations against
23 someone else?

24 Q Yes.

25 A Yes.

1 Q Okay. And with regard to Mahlica, would you agree
2 they were differing, they were -- and when I say "they", I
3 mean Henderson and Metro's -- Metro's interviews. Comparing
4 those two interviews, they were different.

5 A I don't remember details of Mahlica's interview with
6 Henderson.

7 Q Okay. What about Tina's interview with Henderson?

8 A I don't remember -- I don't remember details of her
9 interview with Henderson. I don't know if she was even
10 interviewed by Henderson at that time.

11 Q Okay. A minute ago you -- you agreed with me that
12 she was interviewed by Henderson.

13 A I think she was. I don't remember any details from
14 any interview she did with Henderson.

15 Q Okay. As a -- as an officer, as a detective looking
16 at the full picture, it would be important to realize what
17 people had said sort of all along the way; is that -- is that
18 right?

19 A Yes.

20 Q Okay. And in this case would you agree that there
21 have been some -- the statements that had been given had been
22 opposite ends of the spectrum?

23 A I know some of them had been different between the
24 two investigations.

25 Q Okay. Well, one of them is saying -- and I'm not

1 referring to which one, but one of them is saying, yes, he
2 raped me, and another one saying, no, nothing like that has
3 happened, you would agree those are sort of on opposite ends
4 of the spectrum?

5 A Yes.

6 Q Okay. When you received this case it was
7 approximately September of 2012; is that correct?

8 A Correct.

9 Q Okay. And so this is not quite a year from
10 Henderson's investigation?

11 A Correct.

12 Q Okay. Did you, in the course of your investigation,
13 speak to any teachers that the kids may -- may have reported
14 this to?

15 A I did not.

16 Q Did you pull any school records with regard to any
17 of the children that had been in and out of Mr. Harris's
18 house?

19 A I did not.

20 Q Okay. Did you interview any of the other people
21 that lived in Mr. Harris's house during the time that the
22 Duke's were sort of in and out of that house?

23 A Not past the people we've already named.

24 Q Okay. So you wouldn't have, then, interviewed like
25 Sha'karia Bailey?

1 A No.

2 Q Okay. What about anybody -- well, there were other
3 people in the house, as well. Did you -- did you come to
4 learn of that?

5 A I can't remember if I was ever given specific names
6 about people that lived there otherwise or not.

7 Q Okay. Does the name Anya Thomas sound familiar?

8 A I remember hearing that name at some point. I can't
9 say what context.

10 Q Marcus, someone by the name of Marcus?

11 A I don't remember hearing that name.

12 Q Okay. And you don't remember the name Sha'karia; is
13 that right? Or you do?

14 A I can't say if I heard Sha'karia's name or not.

15 Q Okay. Certainly if there were other people in the
16 home at the same time that these alleged allegations were
17 going on, it might have been important to talk to them?

18 A Not necessarily.

19 Q Okay. You don't think that there could have been
20 any additional information that could have been given by any
21 of these people?

22 A Not necessarily.

23 Q Okay. Even though you had two very differing
24 investigations, Henderson and -- and Metro; is that correct?

25 A That's not correct.

1 Q Okay. When I say the investigation is different,
2 I'm talking about the statements that were given; is that
3 correct?

4 A We're talking about the statements of one person
5 being very different between the two investigations?

6 Q Well, there were a couple of statements that were
7 very different; isn't that correct?

8 A I can't say if I would say that there was more than
9 one that was very different between the two investigations
10 without looking at them or hearing them again.

11 Q Okay. If we -- if you were given time, then, to
12 review, let's say, Tina Duke's statement from Henderson --

13 A Uh-huh.

14 Q -- versus Tina Duke's statement to you, would that
15 help you refresh your recollection?

16 A Yeah.

17 MS. ALLEN: That may take some time, Your Honor.

18 THE COURT: You want to review both of them in their
19 entirety?

20 MS. ALLEN: Well, yeah. He doesn't recall Tina
21 Duke's statement and the difference between the Henderson and
22 the Metro investigation.

23 THE COURT: Okay. Could we have him do it like when
24 we're not in court and then we can bring him back?

25 MS. ALLEN: Have him come back tomorrow?

1 THE COURT: Right.

2 MS. ALLEN: Sure. That would be fine.

3 BY MS. ALLEN:

4 Q Okay. So as a homework assignment, would you please

5 review -- I would ask you to review Tina's statements to both

6 agencies.

7 A Okay.

8 Q I would ask you also to review Taharah's statements

9 to both agencies. Yeah, and Mahlica's statements to both

10 agencies.

11 A Okay.

12 Q Okay. Is that fair?

13 A Absolutely.

14 MS. LUZAICH: Although, can we approach?

15 THE COURT: Sure.

16 (Bench conference)

17 THE COURT: Tina, Taharah, and Mahlica?

18 MS. ALLEN: Mahlica.

19 THE COURT: Okay.

20 MS. LUZAICH: He's not going to be able to testify

21 about the differences because that would be hearsay.

22 MS. ALLEN: I'm not asking him to testify to what

23 the differences are.

24 MS. LUZAICH: Okay.

25 MS. ALLEN: I'm asking him to do -- you know, are

1 there significant differences in these statements and he's
2 like, well, I can't remember, so --

3 MS. LUZAICH: Okay.

4 THE COURT: Okay.

5 MS. ALLEN: And there's pretty significant
6 differences.

7 MS. LUZAICH: Well, just as long as we're clear that
8 he's not going to be able to testify about the differences.

9 MS. ALLEN: That's fine.

10 THE COURT: Okay.

11 MS. ALLEN: Thank you.

12 (End of bench conference)

13 BY MS. ALLEN:

14 Q All right. Now, when you -- you interviewed Lealer
15 Ann Cooks; is that c?

16 A I did.

17 Q And the State asked you if she had told -- she had
18 told you that the girls had -- had disclosed -- the girls had
19 disclosed something to her; is that right?

20 A Yes.

21 Q Okay. And your answer, I believe, was the girls
22 disclosed something to her; is that right?

23 A Yes.

24 Q Okay. And your answer, I believe, was the girls
25 disclosed something to her.

1 A Correct.

2 Q Okay. Wasn't it actually Taquanda who disclosed
3 something? It wasn't Taharah; is that correct?

4 A That -- there's a kind of a technical thing with the
5 way we use the word disclosed. Usually for us a disclosure
6 means that someone is claiming that it happened to them so
7 when we have another witness for us, for our unit, a
8 disclosure is someone saying this happened to me. So if
9 another party goes and says this happened to someone else, we
10 don't always call that a disclosure. We call that they made
11 an allegation about something happening to someone else.

12 Q Okay.

13 A But, yes, it was Taquanda initially.

14 Q It was Taquanda.

15 A Yes.

16 Q Okay. Because she was very sort of specific about
17 Taharah's answer; isn't that correct?

18 MS. LUZAICH: Well --

19 THE WITNESS: I'm sorry.

20 MS. LUZAICH: -- objection.

21 MS. ALLEN: I'm not going to ask him what it was.

22 THE WITNESS: I'm sorry. Who --

23 MS. LUZAICH: Well, can we approach again? I'm
24 sorry.

25 (Bench conference)

1 MS. LUZAICH: Did Taharah ever tell you anything
2 herself? Yes.

3 MS. ALLEN: I'm on [inaudible].

4 MS. LUZAICH: I know, but did Taharah ever tell you
5 herself? Yes. What did she tell you? She said that he raped
6 her.

7 MS. ALLEN: Oh. Okay. Well, that's -- this is in
8 her other statement where it says I asked --

9 MS. LUZAICH: Right. But that was my point is that
10 that was early on later when she started admitting things.

11 MS. ALLEN: Okay.

12 MS. LUZAICH: So --

13 MS. ALLEN: All right. That's fine.

14 MS. LUZAICH: -- I would just ask you to withdraw
15 the question.

16 MS. ALLEN: All right. That's fine.

17 (End of bench conference)

18 THE COURT: Thank you.

19 BY MS. ALLEN:

20 Q During your interview Ms. Cooks told you that she
21 didn't believe the girls; isn't that correct?

22 A Initially, yes.

23 Q Okay. And then she also gave instances of why she
24 didn't believe them; is that correct?

25 A Yes.

1 Q Okay. Did you -- did you ever -- a question about
2 HPV came up and -- and Taharah having HPV; is that correct?

3 A Correct.

4 Q Was there ever any -- did you ever take it upon
5 yourself to get any medical records for anybody else involved
6 in the case with regard to HPV?

7 A No.

8 Q Okay. So nothing on Lealer Ann Cooks?

9 A No.

10 Q Okay. Victoria?

11 A No.

12 Q Okay. It's your contention that Mr. Harris gave
13 Taharah HPV: is that correct?

14 A That's not my contention, no.

15 Q It's not?

16 A No.

17 Q Oh. Okay. You said Tina initially came in, or when
18 you talked to Tina she seemed confused; is that right?

19 A Correct.

20 Q Okay. And you asked her to write something out?

21 A I did.

22 Q Okay. She came back with one page, like one sheet
23 of paper?

24 A Correct.

25 Q Did you keep that sheet of paper?

1 A I did.

2 Q All right. And you said this isn't -- sort of like
3 this isn't good enough, I need you to go back and write more?

4 A It didn't help me understand what I was trying to
5 understand through asking her to do that.

6 Q Okay. So she then left and came back with, some
7 days later, with more paper; is that correct?

8 A Correct.

9 Q Do you remember how many pages it was?

10 A I don't.

11 Q You don't remember? Would six pages be
12 approximately correct?

13 A Yeah, somewhere around there.

14 Q Okay. Did -- do you remember if Victoria ever gave
15 you anything written?

16 A Yes, Victoria provided a written more of a timeline.

17 Q Okay. Do you remember when she gave that to you?

18 A Actually, I'm sorry. I misspoke. I think that
19 Victoria wrote something, or I was told Victoria wrote
20 something and Tina gave it to us with her written statement,
21 if I recall correctly.

22 Q Okay. So you don't even -- you don't actually
23 recall getting anything from -- actually from Victoria?

24 A Not physically from Victoria, no.

25 Q Tina brought it in with hers?

1 A Correct.

2 Q Okay. And these things that were written out were
3 not written out while they were sitting there talking to you;
4 is that correct?

5 A No.

6 Q They were done at home?

7 A Correct.

8 Q Okay. And the two of them could have been sitting
9 together at a table doing it; is that correct?

10 A Possibly, yes.

11 Q Okay. Were you ever -- did the name Dr. Kufuor ever
12 come up with you?

13 A I don't remember.

14 Q Okay.

15 MS. ALLEN: Court's indulgence.

16 BY MS. ALLEN:

17 Q You -- you -- obviously you've been doing this a
18 long time?

19 A Right.

20 Q Okay. And when this case was -- let me ask this.
21 When you submitted this case to the DA's office, had you
22 received the SCAN reports from Dr. Mehta?

23 A I don't remember if I had received them back yet or
24 not.

25 Q Okay. So there is, then, a possibility that prior

1 to submitting for an arrest in this case that you hadn't seen
2 the SCAN reports?

3 A Correct.

4 Q Okay. So at the point when you submitted for an
5 arrest, you had looked at all of the Henderson data?

6 A Correct.

7 Q Okay. As you sit here today you can't remember all
8 of it, but you had looked at it at some point?

9 A Right. There was a lot of it.

10 Q Okay. But you hadn't pulled any like school records
11 or talked to any school --

12 A No.

13 Q -- like counselors or anything or teachers; is that
14 correct?

15 A Correct.

16 Q Okay. You hadn't spoke to anybody else in the
17 house?

18 A Correct.

19 Q You had spoke to Ms. -- Ms. -- Ms. Cooks?

20 A Yes.

21 Q Okay. And outside of those things, what else was
22 part of your investigation?

23 A That about sums it up.

24 Q Okay. So then -- and it was -- so it was
25 essentially based on the interviews that you did in September

1 of 2012 that led to submitting for an arrest?

2 A Yes.

3 Q Okay. Because as you sit here today, you can't
4 remember if the SCAN reports came back?

5 A I don't remember if they were back by the time I
6 made the arrest or not, no.

7 Q Okay. As you sit here today looking back to that,
8 would the SCAN reports have made a difference either way?

9 A Not necessarily.

10 Q Okay. In your experience as a detective, is this
11 situation unusual?

12 A As far as what facet of it? I'm sorry.

13 Q Well --

14 MS. ALLEN: Do you have an objection?

15 MS. LUZAICH: I was going to, but he --

16 BY MS. ALLEN:

17 Q Is it unusual to receive -- okay. So let's start at
18 the beginning. Is it unusual to receive a report of some sort
19 of sexual abuse?

20 A No.

21 Q Okay. Is it unusual to go out and interview whoever
22 it was that claims there was sexual abuse?

23 A No.

24 Q Is it unusual to interview certain people
25 surrounding this allegation?

1 A No.

2 Q Okay. Is it unusual to sort of look into some of
3 the people that are involved in it?

4 A Nope.

5 Q Okay. Background check on the Henderson stuff
6 wouldn't have been unusual; is that correct?

7 A No.

8 Q It wouldn't have been unusual for you to look in the
9 CPS record; is that correct?

10 A Correct.

11 Q Okay. And then it's not unusual for you to make an
12 arrest based upon all of the -- all of the things that we
13 discussed here today; is that correct?

14 A Correct.

15 Q Okay. When Ms. Luzaich was asking you a question
16 about when you arrested Mr. Harris you said he said something?

17 A Correct.

18 Q What was it that he --

19 MS. LUZAICH: Objection. Hearsay.

20 MS. ALLEN: Your Honor --

21 THE COURT: It is hearsay because it's --

22 MS. ALLEN: Okay.

23 THE COURT: -- being offered by you.

24 BY MS. ALLEN:

25 Q Was he upset -- he wasn't upset when he said it.

1 You said he was calm; right?

2 A He was very cooperative.

3 Q Was he angry?

4 A Based on what he said he was angry, but his demeanor
5 was not angry, combative, uncooperative, nothing like that.

6 Q Okay. Lealer was?

7 A Yes.

8 Q Okay.

9 MS. ALLEN: Court's indulgence. Your Honor,
10 actually at this point in time I pass other than Detective
11 Madsen's homework assignment.

12 THE COURT: Okay.

13 Do you have those statements?

14 THE WITNESS: I have access to them, yes.

15 THE COURT: Okay. Thanks.

16 Any redirect?

17 MS. LUZAICH: Now?

18 THE COURT: I guess you could -- well --

19 MS. ALLEN: It's 4:53, Your Honor.

20 THE COURT: It is -- it's -- yeah, it's real close
21 so we'll just stop for the day.

22 During this recess you're admonished not to talk or
23 converse amongst yourselves or with anyone else on any subject
24 connected with this trial, or read, watch, or listen to any
25 report of or commentary on the trial or any person connected

1 with this trial by any medium of information, including
2 without limitation, newspapers, television, the Internet, or
3 radio, or form or express any opinion on any subject connected
4 with this trial until the case is finally submitted to you.

5 And we'll start tomorrow morning at 10:30. Thank
6 you.

7 (Court recessed at 4:54 p.m., until the following day,
8 Thursday, April 10, 2014, at 10:46 a.m.)

9 * * * * *

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* * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
<u>STATE'S EXHIBIT NO.</u>	
3	55

* * *

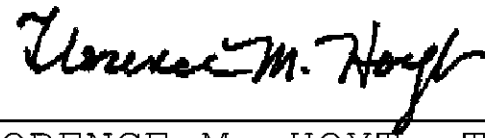
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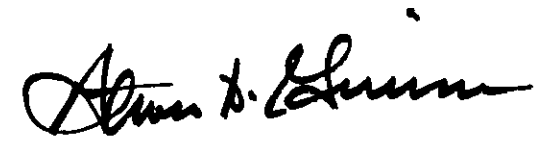
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DATE



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA

Plaintiff

vs.

FREDERICK HARRIS, JR.

Defendant

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CASE NO. C-291374

DEPT. NO. XII

**Transcript of
Proceedings**

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

JURY TRIAL - DAY 10

WEDNESDAY, APRIL 9, 2014

APPEARANCES:

FOR THE STATE:

ELISSA LUZAICH
KRISTINA A. RHOADES
Deputy District Attorneys

FOR THE DEFENDANT:

BETSY ALLEN, ESQ.
JONATHAN MacARTHUR, ESQ.

COURT RECORDER:

KRISTINE CORNELIUS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 9, 2014, 9:53 A.M.

2 (Court was called to order)

3 (Jury is not present)

4 THE COURT: The record will reflect that all parties
5 are present. I just have one thing to inform everyone about.
6 Apparently Juror No. 6, although I don't -- it's Helen
7 Stephens. I don't remember her conveying to any of us she had
8 any kind of health problems.

9 MS. ALLEN: She's the one with the cane, Your Honor,
10 that's sort of hunched over.

11 THE COURT: Okay. But did she -- does anyone recall
12 her telling us she had MS?

13 MS. ALLEN: Oh. No.

14 MS. LUZAICH: No.

15 THE COURT: Okay. Good.

16 MS. ALLEN: I wondered -- no, I wondered --

17 THE COURT: Because I'm thinking I'm losing my mind.

18 MS. ALLEN: When she said -- this sounds terrible,
19 but I remember when she said she had two children and I was
20 kind of like, wow. Because her health, to me, didn't seem
21 great.

22 THE COURT: Okay. Well, she called and she is done.
23 She has MS. She says she's not coming in.

24 MS. ALLEN: Oh. Gosh. Wow.

25 THE COURT: Right.

1 MS. ALLEN: Just not coming.

2 THE COURT: She's not coming. And I don't know if
3 you have episodes of MS. I don't know.

4 MS. ALLEN: I think it does go in -- I think it can,
5 like fibromyalgia or anything like nerve type thing, I think
6 it can go in bursts. I think.

7 THE COURT: Well, I think --

8 MS. ALLEN: Do you know anything MS?

9 MS. LUZAICH: I was asking my dad.

10 MS. ALLEN: Your dad?

11 MS. LUZAICH: My dad is a doctor.

12 THE COURT: I don't know that much about it and, you
13 know, I have to rely upon her. And I'm not going to tell
14 someone who says they're having MS to come in.

15 MS. ALLEN: I don't oppose putting in an alternate
16 at all.

17 MS. LUZAICH: That's fine.

18 THE COURT: Okay.

19 MS. LUZAICH: The State does not, either.

20 THE COURT: What I usually do --

21 MS. ALLEN: Thank God we have two.

22 MS. LUZAICH: Yeah.

23 THE COURT: -- is 6 will be excused. I just leave
24 that seat empty, but Robert Bell, Alternate No. 1 --

25 MS. ALLEN: Okay.

1 MR. MacARTHUR: Okay.

2 THE COURT: -- will now be a part of the jury. But

3 I don't move them all around.

4 MS. ALLEN: No.

5 THE COURT: And then so when they come in the first

6 thing I'll say, do the parties stipulate to the jury as now

7 empaneled. So no one has any objection to me excusing Ms.

8 Stephens; correct?

9 MS. LUZAICH: State does not.

10 MS. ALLEN: No, Your Honor.

11 THE COURT: Okay.

12 MS. ALLEN: And we -- do you want to do it now?

13 MS. LUZAICH: Sure. Can we do -- since you're on

14 the bench, can we do a couple --

15 THE COURT: Sure.

16 MS. LUZAICH: -- talk about a couple things?

17 MS. ALLEN: Scheduling wise, we're crossing our

18 fingers and toes --

19 THE COURT: So am I.

20 MS. ALLEN: -- that the State is done today. We're

21 hopeful. Obviously, you know, when we've said, okay, we're

22 going to be done "x", it maybe hasn't worked out as well as we

23 thought. But they're cops now, so we're --

24 THE COURT: That's okay.

25 MS. ALLEN: -- hoping they'll be done. I have, for

1 argument's sake, Judge, I want to say six witnesses I am
2 putting on. I could name them, but I am missing a sixth one
3 and I -- I'll remember that in a moment.

4 But nonetheless, there are two issues. One is that
5 one of my witnesses has a funeral to go to tomorrow at 11:00,
6 and so I don't think she'll be available tomorrow. Another
7 one is gone and leaving town Friday. So I think I can get
8 most of my witnesses on tomorrow, even with time to spare, but
9 I will have one last witness for Friday. Our suggestion and
10 our discussions was possibly that I do everything I can
11 tomorrow and then --

12 THE COURT: Okay.

13 MS. ALLEN: -- maybe release the jury early and
14 argue instructions.

15 THE COURT: That's fine.

16 MS. ALLEN: And then we can be prepared Friday to go
17 at -- well, hopefully maybe like 10:00. She has an
18 evidentiary hearing. Maybe at 10:00, and I can put my one --

19 THE COURT: You can't get out of an evidentiary
20 hearing when you're in the third week of a sex assault trial?

21 MS. LUZAICH: Oh. I have a -- I mean, I thought I
22 was going to be done so I haven't tried yet.

23 MS. ALLEN: We're all -- we just -- obviously, none
24 of us anticipated it would go this long, Your Honor. And so
25 we -- anyway, whatever time we start on Friday, and 10:00 is

1 fine with me because I just have the one witness. And,
2 honestly, my one witness will -- I maybe -- it would be as
3 fast as Bywaters, which was, what, like 10 minutes?

4 THE COURT: Okay.

5 MS. ALLEN: So that was our suggestion just based on
6 some of the scheduling if it's okay with the Court.

7 THE COURT: That's fine. Then we'd be reading
8 instructions and go right into closings?

9 MS. LUZAICH: Right.

10 MS. ALLEN: And they've provided their instructions
11 to me. I got them, I think, last night and today or
12 something.

13 MS. LUZAICH: I also sent them to your JEA.

14 THE COURT: I just saw them.

15 MS. ALLEN: I will work on those tonight so that I
16 will have, hopefully, if there's anything I need or any
17 specials I can get back to them either later tonight or
18 tomorrow and so we can be all prepared by -- by tomorrow
19 afternoon to argue those after my witnesses.

20 MS. LUZAICH: And my secretary, unfortunately, just
21 took off on my first day of trial and came back yesterday for
22 the first day, so the instructions, I'm going to need to tweak
23 them. I just -- I wanted the Court to at least have the
24 instructions. I have a couple to add and I have to fix like
25 grammar wise.

1 THE COURT: Okay. Pam goes through them pretty
2 good.

3 MS. LUZAICH: Okay.

4 THE COURT: So I have her go through them pretty
5 good before I give them.

6 MS. ALLEN: So as long as that's okay with the
7 Court, that was our suggestion based upon scheduling.

8 THE COURT: That's great.

9 MS. ALLEN: And then I have one that leaves on
10 Saturday, so that's the one that I was like, please, we have
11 to be finished. I know. Or we're going to be --

12 THE COURT: Well, when can that one testify?

13 MS. ALLEN: -- we're all going to be on Social
14 Security before the trial ends.

15 MS. LUZAICH: Tomorrow. That one is going to
16 testify tomorrow.

17 THE COURT: Okay. For sure that one is --

18 MS. LUZAICH: Yes.

19 THE COURT: -- going to testify tomorrow. Okay.

20 MS. LUZAICH: And then also for the record, with the
21 State's second witness this morning I'm going to be playing
22 the defendant's statement.

23 THE COURT: Okay.

24 MS. LUZAICH: It has been redacted. I have talked
25 to the defense at length about the redactions. What the Court

1 has in the Court's hands is a transcript of the redacted
2 version. I would ask that that be marked as a Court's
3 exhibit.

4 THE COURT: Okay.

5 MS. LUZAICH: I'm also going to, as soon as I can
6 print out a, you know, no notes on it copy of the defendant's
7 original statement without redactions, I'm going to ask that
8 that be filed as a Court's exhibit, as well.

9 THE COURT: Okay. The one I have is unredacted?

10 MS. LUZAICH: No, it is redacted.

11 THE COURT: It's reacted.

12 MS. LUZAICH: That's the redacted one.

13 THE COURT: Okay. So I don't --

14 MS. LUZAICH: I just need to print off the
15 unredacted one and I'll do that over the lunch hour.

16 THE COURT: Okay. Have both parties agreed to this
17 redacted statement?

18 MS. ALLEN: Yes, Your Honor.

19 MS. LUZAICH: Yes.

20 THE COURT: Okay.

21 MS. LUZAICH: And -- and -- and -- I lost my train
22 of thought. I apologize. The way I'm going to play the
23 statement is it's -- it's sanctioned, which means the jury
24 will hear it, they will see the redacted transcript --

25 THE COURT: Okay.

1 MS. LUZAICH: -- just while they're listening to it,
2 but they won't have it back in the jury room.

3 THE COURT: Okay. So you're not going to hand them
4 out copies of it?

5 MS. LUZAICH: No, it'll be on --

6 THE COURT: You're just going --

7 MS. LUZAICH: -- the screen.

8 THE COURT: -- to put it on the screen.

9 MS. LUZAICH: Yeah.

10 THE COURT: Okay. And I heard it's an hour and a
11 half?

12 MS. LUZAICH: Yes.

13 THE COURT: Okay.

14 MS. LUZAICH: And that saves two trees doing it that
15 way rather than making --

16 THE COURT: Yes, you're right.

17 MS. LUZAICH: -- 15 copies.

18 THE COURT: I agree with that. That's -- that's a
19 good way. Okay. So who is up first for you this morning?

20 MS. LUZAICH: Sergeant Delacanal.

21 THE COURT: Okay. You want to bring him in?

22 We have everybody here now; right?

23 THE MARSHAL: Yes.

24 THE COURT: Okay.

25 (Jury is present)

1 THE COURT: Do the parties stipulate to the jury
2 panel as now empaneled?

3 MS. LUZAICH: Yes.

4 MS. ALLEN: Yes, Your Honor.

5 THE COURT: Thank you. And the State can call their
6 next witness.

7 MS. RHOADES: Sergeant Delacanal is the State's next
8 witness.

9 CHRISTOPHER DELACANAL, STATE'S WITNESS, SWORN

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

13 THE WITNESS: My name is Christopher Delacanal;
14 spelled D-E-L-A-C-A-N-A-L. First name is
15 C-H-R-I-S-T-O-P-H-E-R.

16 THE CLERK: Thank you.

17 MS. RHOADES: May I proceed?

18 THE COURT: You can proceed.

19 MS. RHOADES: Thank you.

20 DIRECT EXAMINATION

21 BY MS. RHOADES:

22 Q Sir, how are you employed?

23 A I'm a police sergeant with the Henderson Police
24 Department.

25 Q How long have you been a police sergeant with the

1 Henderson Police?

2 A I was promoted to the rank of sergeant in 2005.

3 Q How long have you worked with the Henderson Police
4 Department?

5 A 19 years.

6 Q Before you became a sergeant, what did you do?

7 A I was a patrol officer, I believe, for the first six
8 years. I was then transferred to the detective bureau. I
9 spent about a year as a property crimes detective, and roughly
10 a year and a half as a special victims unit detective.

11 Q When were you working as a special victims
12 detective?

13 A Between 2003 and 2005.

14 Q And after you were a special victims detective you
15 became a sergeant?

16 A Yes, I was promoted a sergeant and moved back out to
17 patrol. In 2007 I took over the K-9 unit, so I was the
18 sergeant of the K-9 unit. In 2011 I came back to the
19 detective bureau as a supervisor over the special victims
20 unit.

21 Q What other detective bureaus are there at the
22 Henderson Police Department?

23 A Well, currently investigations is split into several
24 different sections. Property crimes is one of them, fraud,
25 special victims unit, and then CAPS, which are crimes against

1 persons, basically your robbery homicide type of a division,
2 and then on the other side of the house there's narcotics,
3 there's intel, and there's repeat offenders.

4 Q And in addition to the detective bureau there's also
5 a patrol -- patrol division; is that right?

6 A Yes, there's patrol division, there's traffic, there
7 are -- there's SWAT, K-9, there's all kinds of different
8 assignments within the police department.

9 Q When you were a detective in the special victims
10 unit, what did you do?

11 A Well, Henderson's special victims unit is
12 responsible for investigating any manner of sexual crimes,
13 adult sex crimes, child sex crimes, child abuse, elder abuse,
14 domestic violence. We also handle runaway juveniles, and I'm
15 responsible for the victim advocates that work for the police
16 department, that assist victims going through the court
17 process.

18 Q Is the entire special victims unit -- do you all
19 handle all of those cases, or is it broken down into separate
20 divisions?

21 A No, we handle all of those cases. Currently there
22 are seven detectives assigned to the special victims unit, and
23 each of them has the ability to investigate any of those --
24 any of those type of crimes.

25 Q As a sergeant with the special victims unit, what --

1 what kind of things do you do as a sergeant?

2 A Well, basically I'm responsible for case assignment,
3 so generally there are -- there are two ways that a detective
4 will get assigned a case. One of them would be that a patrol
5 officer either responds to a call, or a person comes into the
6 police station and reports a certain type of crime. Depending
7 on whether that -- when that crime occurred will decide
8 whether we respond immediately with a detective responding, or
9 if we just allow the patrolman to take a report and forward it
10 to our bureau. If it's something that occurs immediately or
11 has occurred within a certain amount of time, we'll send --
12 they'll call me and they'll say, hey, this is the case that we
13 have, this is the information we have right now, and I'll make
14 the decision whether or not we send a detective immediately or
15 have them route the case.

16 Q In the special victims unit is there another agency
17 that you often work closely with?

18 A You mean outside the police department?

19 Q Yes.

20 A Yeah. Well, we normally, if it's a -- if it's a
21 child crime we'll work with CPS. We normally have a CPS
22 investigator assigned to cases, so we work jointly with them
23 commonly on child crimes.

24 Q Is it any child or is it a specific age of the child
25 when CPS gets involved?

1 A No. Well, it -- the way CPS works is that they will
2 -- if they get a report of an alleged sexual abuse or child
3 abuse, they will take that report and they will send us what's
4 called a referral. So they will let us know that, hey, we got
5 this allegation involving this child, and that will get
6 assigned to a detective. And then the detective will
7 coordinate with the CPS case worker that way they're going
8 together to do interviews and things like that as long as they
9 can -- they can manage that. But they share information back
10 and forth so that everybody is on the same page.

11 Q I'm going to direct your attention to December of
12 2011. Were you working as a sergeant with the special victims
13 unit --

14 A Yes.

15 Q -- at that time? Did you become aware of a report
16 involving Victoria Duke?

17 A Yes, a patrol sergeant called me because I believe
18 they had gone into our north station and just gave them some
19 information about something that had occurred.

20 Q Do you recall the date of that report?

21 A I believe it was December 10th.

22 Q How did you become involved in this investigation?

23 A Well, because the -- the -- the protocol, the way
24 things work is that when they get these allegations or they
25 get a case that is beyond the ability of the patrolman to

1 investigate, they will call me and they'll give me kind of the
2 basics of what they're dealing with. And then I will notify
3 one of my detectives to go out and take over the case from the
4 patrolman.

5 Q With regard to the date that the report came in, you
6 said you kind of remember that it was December 10th. Would it
7 refresh your recollection as to the exact date if you looked
8 at your report?

9 A It might.

10 Q And I'm sorry, a report, a Henderson Police report.

11 A Yes.

12 Q Okay.

13 MS. RHOADES: Your Honor, may I approach the
14 witness?

15 THE COURT: You may.

16 MS. RHOADES: Thank you.

17 BY MS. RHOADES:

18 Q I'm showing you this Henderson Police Department
19 incident report. Could you just look through that first page
20 and see if that refreshes your recollection as to the exact
21 date that the report regarding Victoria came in.

22 A Yes.

23 Q And is your memory refreshed?

24 A Yes, it was actually the 17th. Sorry.

25 Q Were you on duty at this time?

1 A Well, as far as the special victims unit is
2 concerned I'm always on duty. They call me 24 hours a day, 7
3 days a week anytime something like that comes in. They'll
4 call me either for direction on how to proceed or because
5 they're calling me in order to get a detective to their scene.
6 So I guess I wasn't at work, but, yeah, that was my
7 responsibility was to answer the phone when they called.

8 Q And when they called, as the sergeant, what did you
9 do when you got this information?

10 A I called Detective Aguiar and I had him proceed to
11 the north station to contact the people that were there
12 reporting.

13 Q Were you in contact with Detective Aguiar when he
14 did this?

15 A No. Generally what'll happen is I will just -- I'll
16 call him up or I'll send him a text saying, hey, go -- go meet
17 with the victim. The detectives are -- the special victims
18 unit detectives in particular are pretty self-sufficient.
19 They're usually senior detectives and they're able to go and
20 kind of give a -- get a rundown of the case and kind of
21 proceed as they need to without having to tell me. They would
22 get back to me if something unusual were to occur or if they
23 needed additional assistance with what they were doing. But
24 it's not uncommon that I will send a detective to go handle a
25 case and then I won't hear back from them, I won't talk to

1 them until the next day.

2 Q Do you recall -- well, are there different stations
3 within the Henderson Police Department?

4 A Yes.

5 Q Do you recall what specific station you asked
6 Detective Aguiar to go out to?

7 A I believe that they had responded to the north
8 station, which is on Sunset Road.

9 Q Did you hear from Aguiar again on December 17th?

10 A I did.

11 Q When did you hear from him?

12 A He called me back later on that night and kind of
13 gave me a rundown of what he had in his case because one of
14 the things was that according to the story that he was given
15 there were two --

16 MS. ALLEN: Judge, and I would object as to hearsay.

17 THE COURT: Sustained.

18 BY MS. RHOADES:

19 Q Did you learn that there were two juveniles involved
20 in this family?

21 MS. ALLEN: Judge, and I would object as to hearsay.

22 THE COURT: Sustained.

23 MS. RHOADES: It's going to what he was doing next,
24 Your Honor.

25 THE COURT: Well, you can ask him as a result of

1 what you heard what did you do next.

2 BY MS. RHOADES:

3 Q As a result of your telephone call with Detective
4 Aguiar, did you do something?

5 A Yes.

6 Q What did you do?

7 A I called another detective, Detective Melchert, and
8 we all went over to an address on Blankenship so that
9 Detective Aguiar and Detective Melchert could interview two
10 juveniles that were living at that address.

11 Q Who did you know to live at this address?

12 A I didn't know names. I just knew that they were --
13 supposedly there was -- there was, I believe, an 11 year old
14 girl and a 12 year old girl who were sisters to the victim in
15 Detective Aguiar's case that were staying there with a woman
16 named Lealer Cooks and the alleged suspect, Fred Harris, I
17 believe.

18 Q What time did you go to the Blankenship house?

19 A It had to be close to 1:00 a.m.

20 Q And describe how you guys went there.

21 A Well, we contacted Las Vegas Metro initially because
22 we're in plain clothes and we're going to somewhere that's out
23 of our jurisdiction at 1:00 in the morning. So we had two
24 uniformed Las Vegas Metro officers come with us. We just
25 knocked on the door. I believe it was Ms. Cooks that answered

1 the door. We informed her that we were detectives and we were
2 following up on something. We asked if we could come in and
3 talk to them and she allowed us in.

4 Q And you and Detective Melchert and Detective Aguiar
5 were all in plain clothes; is that right?

6 A Yes.

7 Q Did the two uniformed officers stay with you guys
8 when you went into the house?

9 A No. Once we made contact with the folks that lived
10 there we -- we told them they could go.

11 Q And they just came with you because it was in Las
12 Vegas Metropolitan Police Department's jurisdiction?

13 A Yeah, it was their jurisdiction, it was kind of late
14 at night, and, you know, it kind of -- it helps a little bit,
15 especially when we wake folks up in the middle of the night,
16 to have a uniformed officer there. That way they're -- you
17 know, they understand that we're the police. We're not
18 somebody there that's, you know, impersonating or something
19 like that.

20 Q When you guys arrived, was there anyone else in the
21 house besides the four people that you mentioned previously?

22 A No.

23 Q When Ms. Cooks answered the door, did it appear that
24 she was sleeping?

25 A Yes.

1 Q What happened after you guys went into the house?

2 A Detective Aguiar and Detective Melchert, I believe
3 that this is the order of events, so I'm not 100 percent
4 certain, but I believe they began speaking with Mr. Harris. I
5 spoke with Ms. Cooks just to kind of give her an idea of why
6 we were there. It was 1:00 in the morning and, you know, she
7 has three detectives in her house. So I'm trying to give her
8 kind of an explanation about why we were there. So I did an
9 interview with her, and then I just stood by while the
10 detectives did their -- did their job.

11 Q Do you know where the interview with Mr. Harris took
12 place in the house?

13 A I believe they were at the -- like the kitchen
14 table, like the dining room kitchen. It was kind of an area
15 right off of the kitchen. It was a table right there.

16 Q Where did your interview with Ms. Cooks take place?

17 A We were in the garage.

18 Q Were these happening simultaneously?

19 A I believe so, yes.

20 Q Do you recognize Fred Harris in court today?

21 A Yes.

22 Q Can you please point to him and identify an article
23 of clothing that he's wearing?

24 A He's wearing a blue shirt and glasses.

25 MS. RHOADES: Your Honor, may the record reflect

1 identification of the defendant?

2 THE COURT: So reflected.

3 MS. RHOADES: Thank you. May I approach your clerk?

4 THE COURT: You may.

5 MS. RHOADES: Thank you. And may I approach the
6 witness?

7 THE COURT: You may.

8 MS. RHOADES: Thank you.

9 BY MS. RHOADES:

10 Q I'm showing you what's been admitted as State's
11 Exhibit 1. Do recognize the person in that photograph?

12 A She looked a little different when I talked to her,
13 but --

14 Q Do you recognize who that is?

15 A I believe that's Ms. Cooks.

16 Q Now, when you talked to Ms. Cooks that night, can
17 you describe her demeanor?

18 A Well, when we started our conversation she was --
19 she seemed a little bit excited, obviously, as anyone would
20 be. She had three detectives at her house early in the
21 morning. But as we began talking she was -- she calmed down
22 and I explained to her that we were there investigating an
23 alleged inappropriate relationship that occurred and I just
24 asked her for some background information having to do with
25 the girls and the living situation and things like that. By

1 the time we were done talking, she was fine.

2 Q Did you specifically tell her -- well, what did you
3 specifically tell her about the alleged inappropriate
4 relationship that had occurred?

5 A Well, I was -- I was -- specifically didn't tell her
6 the details of why we were there. I just told her that there
7 had been an allegation made and so we were here to make sure
8 that the girls were safe and that everybody was safe in the
9 home and -- but I did tell her that there was an allegation
10 that had to do with Fred, but I didn't tell her what it was or
11 who had made it or anything like that.

12 Q After their interviews were done, what happened?

13 A Whose interviews?

14 Q After Fred Harris's and Ms. Cooks' interviews were
15 done, what happened after that?

16 A The detectives then did interviews with the two
17 girls that were living in the house.

18 Q Do you know which detective interviewed which girl?

19 A I do not. I don't. I think they did them both at
20 the same time, so one had one girl, one had the other girl,
21 but I'm not -- I'm not certain who did which one.

22 Q Did you see if they were in separate rooms when
23 they --

24 A They were.

25 Q -- interviewed the girls? During one of the

1 interviews did you hear something happen in the house?

2 A No.

3 Q What -- after the interviews with -- while the girls
4 were being interviewed, did you see where the defendant and
5 Ms. Cooks were?

6 A Yes. While the girls were being interviewed, Ms.
7 Cooks and Mr. Harris were in the bedroom with me, so I stood
8 by with them while the detectives were talking to the girls.

9 Q So you allowed them to -- to be in the same room
10 after the interviews?

11 A Yes.

12 Q Did something happen in that room after the -- after
13 the interviews?

14 A Well, during that time Ms. Cooks was -- was speaking
15 with Mr. Harris wanting to know what the -- what was going on.

16 MS. ALLEN: Judge, I would object to anything Ms.
17 Cooks said as hearsay.

18 THE COURT: Sustained.

19 BY MS. RHOADES:

20 Q Without telling me what Ms. Cooks said, could you
21 hear what the defendant was saying?

22 A He was explaining to her what the nature of the
23 questions were that the detectives were asking. And somewhere
24 in the conversation he had admitted to her that he had gone to
25 Henderson to see the -- the victim's mother.

1 Q And after he told her that, what did Ms. Cooks do,
2 without telling me what she said.

3 A She became quite upset.

4 Q How did you know she was upset?

5 A She was -- she was yelling, she had jumped up off
6 the bed because they had been laying -- laying kind of side by
7 side in the bed. She jumped up off the bed. She was -- she
8 was yelling and not too pleased with the idea.

9 Q Were you aware if the interviews that were done in
10 the house that night were recorded?

11 A Yes, they were.

12 Q What did you do after -- after that happened between
13 the defendant and Ms. Cooks?

14 A Well, I worked to calm them down. I settled them
15 down and explained -- I explained to them the domestic
16 violence laws in -- in Las Vegas and in Clark County, how that
17 worked, and, you know, encouraged them to kind of settle down
18 and calm down for the night. And once that -- it got kind of
19 settled down, but shortly after that it was time -- we were
20 getting ready to go, and I don't know -- I don't remember
21 exactly what the arrangement was, but I got the impression
22 that he would not be staying there that night.

23 Q When you guys got ready to go, just tell me what you
24 guys did.

25 A Well, we just -- we spoke to everybody, we let them

1 know that there was -- that the investigation would be
2 continuing and we would get back to them if we needed any more
3 information and then we just -- we left for the night.

4 Q What was your role as the sergeant in the
5 investigation after that?

6 A I didn't have much role after that other than what
7 the detectives will do is they'll sometimes give me just
8 verbal updates on what they have going on or what's happening
9 with the case or so on and so forth, and then they will submit
10 it to me. We have a computerized system so they will submit
11 it to me for closure when they're -- when they're done with
12 the case or when they have something else that needs to
13 happen.

14 Q Was this case ever submitted to you for closure?

15 A It was eventually. It stayed open for quite some
16 time. And then Detective Aguiar advised me that a Las Vegas
17 Metro detective had asked for his case because he was doing an
18 additional case and so he had forwarded all of his information
19 over to him. And eventually he closed it. He was not able to
20 establish probable cause that the incident that we were
21 investigating had occurred.

22 Q When you say it stayed open for quite some time, do
23 you remember was it weeks or months?

24 A It was a number of months.

25 Q And you said that there wasn't probable cause to --

1 MS. RHOADES: Court's indulgence. The State passes
2 the witness, Your Honor.

3 THE COURT: Cross.

4 MS. ALLEN: Thank you.

5 CROSS-EXAMINATION

6 BY MS. ALLEN:

7 Q Good morning, Sergeant.

8 A Good morning.

9 Q How are you?

10 A I am well. How are you?

11 Q I am good. I am good. Thank you. My name is Betsy
12 Allen and I'm just going to ask you a couple follow up
13 questions, okay?

14 A Okay.

15 Q You've been a police officer for quite awhile; is
16 that correct?

17 A Yes.

18 Q And your P-number is pretty low, is it?

19 A Yes.

20 Q 700s?

21 A 711.

22 Q Okay. And so you've been around -- not to say that
23 you're old, but you've been around for awhile; is that
24 correct?

25 A Yes.

1 Q Okay. And you were on the special victims unit for
2 awhile. Are you still on it?

3 A Well, yes. I'm the sergeant over special victims --

4 Q Okay.

5 A -- unit now. I was a detective for roughly a year
6 and a half before getting promoted.

7 Q Okay. And before that was it patrol?

8 A It was property crimes.

9 Q Okay.

10 A And then before that it was patrol.

11 Q So you -- you were -- it's patrol and then detective
12 and then sergeant?

13 A Yes.

14 Q Okay. And so you've spent a number of years
15 interviewing victims and witnesses and things such as that
16 specific to sexual abuse crimes?

17 A Yes.

18 Q Okay. And do a lot of these involve children?

19 A Unfortunately, yes.

20 Q Okay. All right. And you -- you receive this
21 report on -- you -- I think you recall it was like the 17th of
22 December 2011; is that correct?

23 A That's what the report said, yes.

24 Q Okay. On the report it also has a date of 12/7/11.
25 Do you know why the 7th would be on there?

1 A I believe that that was the date of the alleged
2 incident between the victim and the suspect.

3 Q Okay. So it came into the system on -- or that's
4 the date that was given as the date that it happened?

5 A As the date that it occurred.

6 Q Okay.

7 A But it was reported 10 or 11 days later.

8 Q Okay. All right. So once you -- once you received
9 this I think you said you -- you maybe text or called Aguiar
10 and said, hey, you need to respond; is that right?

11 A Yes.

12 Q Okay. And Aguiar responded?

13 A Yes.

14 Q And you've worked with Aguiar for awhile?

15 A At that point, I took over the special victims unit
16 in April of 2011, so it had been since April.

17 Q Okay.

18 A He had been there before I got there as the
19 supervisor.

20 Q Okay. So he -- what I'm asking, then, is did Aguiar
21 have some experience --

22 A Yes.

23 Q -- if you know.

24 A Yes.

25 Q Okay. Again, interviewing and that type of thing;

1 is that correct?

2 A Yes.

3 Q Okay. You responded to this house on Blankenship;

4 is that right?

5 A Yes.

6 Q You eventually show up there. Do you remember what

7 time you showed up?

8 A It was -- it was early in the morning.

9 Q Okay.

10 A I'm thinking it's about 1:00.

11 Q Okay. And it appeared, at least, that everybody was

12 asleep at that point; is that correct?

13 A Yes.

14 Q All right. You separated Ms. Cooks and Mr. Harris;

15 is that right?

16 A Yes.

17 Q And that's important because you don't want them to

18 cross-reference things when you're discussing things with

19 them; is that correct?

20 A Yes.

21 Q And you tape recorded the statement; is that

22 correct?

23 A Yes.

24 Q And to your knowledge was Fred's statement tape

25 recorded?

1 A As far as I know, yes.

2 Q All right. And then there were two people,
3 additional people, interviewed as a result of this -- the
4 evening that you showed up; is that right?

5 A Yes.

6 Q Okay. And they were minors?

7 A Yes.

8 Q When you -- when you interview a minor, and would
9 you -- well, let me start with this. Would you say there's a
10 difference between someone who is like 17 versus someone who
11 is 11 when you're interviewing them?

12 A Yes, as far as maturity level and --

13 Q Okay.

14 A -- ability to understand, probably yes.

15 Q Okay. So you would agree, then, that when you
16 interview someone who is, let's say, 17 versus someone who is
17 10 or 11, you're going to use a little different method when
18 you interview them; is that correct?

19 A I don't know that you would use a different method,
20 but I think that if -- if you're talking to an extremely small
21 child, three or four years old, then you're going to use a
22 specific forensic interview technique.

23 Q Okay.

24 A As the children get older, 11 or 12, you don't
25 necessarily need to use that same technique. You may. It's

1 up to the detective on how they feel.

2 Q Okay. And when you say forensic interview, you're
3 saying that you don't want to lead them into anything.

4 A Exactly.

5 Q Okay. You don't want to suggest an answer?

6 A Right.

7 Q Okay. Because children are very susceptible to --
8 to agreeing with adults, is that correct?

9 A Yeah, depending on the age.

10 Q Okay. Would you agree that children, and I don't
11 necessarily mean 17 year olds, but maybe younger children tend
12 to want to please adults and that's the part of the -- the
13 forensic interview you have to be careful with; is that
14 correct?

15 A Yes, well, that would be mostly younger -- younger
16 kids.

17 Q Okay. When you -- when you interview a child or
18 when you interview -- and when we say child, we're obviously
19 talking anything up to 18, but when you interview a child, do
20 you want them to understand -- or do you try to make them
21 understand that you're there to help them?

22 A Yes.

23 Q Okay. How important is it that they understand
24 that?

25 A It's -- it's pretty important that they feel

1 comfortable and they understand that they're not in trouble.
2 And so usually detectives will go over that saying, hey,
3 you're not in any trouble here, you know, this is what -- we
4 just want to find out about the truth and they'll go through
5 all kinds of questions. I have not interviewed a child in
6 many years.

7 Q Okay.

8 A So --

9 Q Okay. But -- but you --

10 A But generally --

11 Q -- remember.

12 A -- that's the way it works, yeah.

13 Q Okay. You remember. You have experience in
14 interviewing children.

15 A Yes.

16 Q Okay. And you want to make them feel comfortable;
17 is that correct?

18 A Yes.

19 Q And that they're safe?

20 A Yes.

21 Q Because presumably in this line of work you're
22 discussing very sensitive topics; is that correct?

23 A Yes.

24 Q Okay. How long do you remember being at the
25 Blankenship address?

1 A I'm going to say approximately two hours.

2 Q Okay. And that was all the interviews; is that

3 correct?

4 A Yes.

5 Q You have to say out loud.

6 A I'm sorry. Yes.

7 Q That's okay. I know it's hard. I forget sometimes,

8 too. So a couple hours. That was all the interviews. And

9 then at some point those interviews are transcribed; is that

10 correct?

11 A Yes.

12 Q And when it was submitted for closure, that came

13 from -- did that come from Detective Aguiar?

14 A Yes.

15 Q Okay. And it was submitted, I think you said it was

16 submitted for closure because there was no probable cause; is

17 that right?

18 A Yes.

19 Q Okay. At some point all of this left your office

20 and ended up in Metro's jurisdiction?

21 A I believe that was while the case was still open,

22 but Detective Aguiar was contacted by -- by a detective at

23 Metro.

24 Q Okay.

25 A And --

1 Q But it wasn't -- what I'm saying is like at some
2 point this case was essentially sent over. Everything you
3 had --
4 A Yes.
5 Q -- was sent over to Metro?
6 A Yes.
7 Q Okay. All right.
8 A As far as I know, yes.
9 MS. ALLEN: Court's indulgence for a moment. Thank
10 you, Your Honor.
11 THE COURT: Redirect.
12 MS. RHOADES: Nothing, Your Honor.
13 THE COURT: Sergeant, thank you very much for being
14 here. You are excused.
15 THE WITNESS: All right. Thank you.
16 THE COURT: You may call your next witness.
17 MS. LUZAICH: State calls Detective Aguiar.
18 CHRISTOPHER AGUIAR, STATE'S WITNESS, SWORN
19 THE CLERK: Thank you. Please be seated. Could you
20 please state your full name, spelling your first and last name
21 for the record.
22 THE WITNESS: Christopher Aguiar;
23 C-H-R-I-S-T-O-P-H-E-R, last name is Aguiar, A-G-U-I-A-R.
24 THE CLERK: Thank you.
25 THE COURT: You may proceed.

1 MS. LUZAICH: Thank you.

2 DIRECT EXAMINATION

3 BY MS. LUZAICH:

4 Q Good morning, sir. How are you employed?

5 A I'm a police officer with the City of Henderson.

6 Q How long have you been a police officer with the
7 City of Henderson?

8 A Approximately seven and a half years.

9 Q What is your current assignment at the City of
10 Henderson?

11 A I'm assigned to the investigations division and the
12 robbery unit.

13 Q How long have you been in the investigations
14 division as a whole?

15 A Since January of -- February of 2010.

16 Q When you went to the investigations division, where
17 did you start?

18 A In the special victims unit.

19 Q For how long were you with the special victims unit?

20 A I was there until approximately January of 2012.

21 Q So about two years?

22 A Almost two years, yeah.

23 Q And in January of 2012, is that when you went to the
24 robbery unit?

25 A I went first to the financial crimes unit and I was

1 there for about a year, and then I went to the robbery unit
2 after that.

3 Q Okay. And prior to going to the investigations
4 division, what did you do?

5 A I was a patrol officer assigned to -- first to the
6 east area command and then to the north area command.

7 Q So is the City of Henderson broken up into different
8 areas of command that the patrol officers respond to?

9 A Yes, there's three area commands, east, north, and
10 west.

11 Q And as a patrol officer, what were your duties?

12 A The first -- you basically are the first responder
13 to calls, that's the minor traffic accidents, conduct traffic
14 stops, response to homes for initial calls for service.

15 Q When you respond to calls for service as a patrol
16 officer, do you kind of begin an investigation and then
17 sometimes give it over to someone else?

18 A There are times that that happens, yes.

19 Q What might make you as a patrol officer give an
20 investigation over to someone else?

21 A If -- it depends on the complexity of the case. Any
22 potential people that need to be interviewed, sometimes our
23 patrol officers aren't qualified or don't have the amount of
24 time required to interview people, and sometimes those cases
25 are handed over, complex cases or specific cases will be

1 handed over to somebody else.

2 Q Are there certain kinds of crimes that are always
3 handed over?

4 A There's -- yes, certain levels of crimes will always
5 -- well, I would say 99.9 percent of the time would be handed
6 over.

7 Q For example?

8 A Homicides, officer involved shootings --

9 Q Sexual assaults?

10 A -- certain sexual assaults against children because
11 of the nature of the ages of the children and the
12 investigation needed.

13 Q Okay. I'm going to direct your attention
14 specifically to December 17, 2011. Were you working as a
15 detective with the special victims unit at that time?

16 A Yes, I was.

17 Q And who was your sergeant at that time?

18 A Sergeant Christopher Delacanal.

19 Q When you were working in December of 2011 for the
20 special victims unit, did you have a particular shift that you
21 worked?

22 A I normally worked Tuesday through Friday from 12:00
23 noon to 10:00 p.m.

24 Q And when the special unit -- sorry, special victims
25 unit detectives were not working, were there times that they

1 would also get called in?

2 A Yes.

3 Q How might that occur?

4 A Normally it would occur -- supervisors handle it
5 different ways, either a phone call or a text message from the
6 supervisor or the sergeant explaining that he needed somebody
7 to respond for a callout.

8 Q I'm sorry. I guess the better question would be
9 would that be if it was like after work hours or on a weekend
10 or something like that?

11 A Yeah, if it was -- if it was on a holiday or a
12 normal day off or a time period when we don't have people at
13 the station, say in the middle of the night.

14 Q Okay. And on December 17, 2011, were you called out
15 to respond to a call?

16 A Yes, I was.

17 Q Who was that call involving?

18 A Victoria Duke.

19 Q And where were you sent to to respond to that call?

20 A I was sent to the north station of the Henderson
21 Police Department.

22 Q Now, when you say the north station, how many
23 stations are there, or at least in 2011 how many were there?

24 A There were three station -- there are and were three
25 stations and each command works out of one of those stations.

1 Q The special victims unit detectives, where are they
2 housed?

3 A They're housed in our main station, which is the
4 same location that the east area command is housed for the
5 patrol division.

6 Q Where is that?

7 A On 223 Lead Street.

8 Q So when -- well, the individual, was that Victoria
9 Duke?

10 A Yes, it was.

11 Q When Victoria went to the north station, were you
12 sent there to talk to her?

13 A Yes, I was.

14 Q And when you went to the north station on December
15 17th of 2011, who was there?

16 A Our desk officer, Officer Viskieno (phonetic), Rose
17 Smith, and Victoria Duke.

18 Q What did you do when you got there?

19 A I got a couple initial details from Officer
20 Viskieno, and then I spoke to Rose.

21 Q Rose, is she somebody that was with Victoria?

22 A Yes, she was.

23 Q And is she an adult, so somebody that was older than
24 Victoria?

25 A Yes.

1 Q Where did you speak with Rose?

2 A I spoke with Rose -- there is -- in the north
3 station there's a couple of rooms that are designated as
4 interview rooms there at the station off in one of the
5 hallways and I spoke to her in that room.

6 Q When you spoke with Rose, was it just you and she,
7 or was anybody with you guys?

8 A Just us two.

9 Q And why do you do that?

10 A Normally you separate witnesses or anyone with
11 involved interest so that what people are saying aren't
12 influencing the things that the next persons are saying so
13 that you get an accurate depiction of -- a version of events
14 from one person only and it's not influencing anyone else
15 that's in the room and so other people don't know exactly what
16 they're saying.

17 Q Okay. And when you interviewed her, was your
18 interview tape recorded?

19 A Yes, it was.

20 Q What was the purpose behind interviewing Rose
21 specifically?

22 A I wanted to figure out first what -- why she came to
23 the station, what another individual, what Victoria had told
24 her, and get the basic information from her so that I knew
25 what we were there for.

1 Q Okay. And once you spoke to Rose, what did you do?
2 A After I spoke to Rose, then I spoke to Victoria
3 Duke.
4 Q Did you also speak with Victoria in one of those
5 interview rooms?
6 A Yes, I did.
7 Q Was it just you and Victoria?
8 A Yes, it was.
9 Q Would it be the normal course of things for it to be
10 just like one detective and a victim or a witness or whatever
11 as opposed to more than one detective or somebody else?
12 A Sometimes we will have two detectives during an
13 interview. Obviously in this case it was a Saturday evening.
14 I was the only one that got called in to investigate it and so
15 that's why I was the only one in that interview room.
16 Q Okay.
17 A It can go either way, though.
18 Q Had you felt that there was any problem or issue, I
19 mean, you have the ability at least to have somebody else come
20 in; correct?
21 A Yes.
22 Q When you talked to Victoria, was her interview also
23 recorded?
24 A Yes, it was.
25 Q Did she explain to you about a situation that

1 brought her there?

2 A Yes, she did.

3 Q And did she tell you who it was involving?

4 A Yes, she did.

5 Q Who was that?

6 A Fred Harris.

7 Q And did she also explain things that were concerning
8 her that didn't involve her?

9 A Yes, she did.

10 Q Did you give all of that information after you spoke
11 with Victoria to your sergeant?

12 A Yes, I did.

13 Q And is it the normal course of things for if you get
14 called out and he's not around for you at least to keep him
15 updated with what's going on?

16 A Yes, it is.

17 Q After you spoke with Victoria, what did you do?

18 A After I spoke to Victoria, I responded -- after
19 getting something to eat, I responded to 1100 Center Street.

20 Q Do you know what time it was that you went to the
21 north station?

22 A About 9:00 p.m.

23 Q And you went to Center Street. Did you go by
24 yourself, did you go with anybody?

25 A I had Officer Montano meet me there. He's a patrol

1 officer at the time, was assigned to the east area command.

2 Q Why did you do that?

3 A The nature of the neighborhood at 1100 Center
4 Street, it's not the safest part of Henderson to be. And when
5 I was in plain clothes, it's always safer to have a patrol
6 officer presence there with you so that there's no question
7 about who is there, who is trying to contact people, and it's
8 clear that you're a police officer because you have a uniform
9 office with you.

10 Q When you went there, what was it your intention to
11 do?

12 A It was -- my intention was to talk to any other
13 witnesses or family members that were at that apartment and
14 also to view the apartment.

15 Q Why did -- why were you going there to view the
16 apartment?

17 A To get a layout of the apartment and also I was told
18 that there was a piece of potential evidence that was in the
19 apartment.

20 Q Okay. Had you heard that that was where the last
21 incident or the incident that you're talking about occurred?

22 A Yes.

23 Q Okay. When you went there, who was there?

24 A It was Mahlica Duke and Shabazz Duke.

25 Q Did you speak with both Mahlica and Shabazz?

1 A Yes, I did.

2 Q Did you talk to them together, did you talk to them
3 separately, what did you do?

4 A Separately.

5 Q How did you go about doing that?

6 A I made contact with them and asked them separate,
7 one at a time, to come to my vehicle where I conducted an
8 interview with them.

9 Q Okay. So you talked to them outside of the
10 apartment?

11 A Yes, in my car that was parked in the parking lot.

12 Q And why did you do that?

13 A To have privacy during the interviews and it was the
14 safest place to do it and a place that I know is safe and
15 comfortable for me.

16 Q Okay. Did anybody else go to the Center Street
17 apartment, also?

18 A I think Rose had brought Victoria with her.

19 Q Okay. So by then there's Rose and Victoria, as well
20 as Shabazz and Mahlica at the apartment; correct?

21 A Yes.

22 Q What about the mom? Did you become aware of a
23 mother that was involved with the family?

24 A Yes, I was told the -- Victoria told me her mother
25 was Tina Duke.

1 Q Okay. Was Tina there?

2 A No, she was not.

3 Q Do you know where Tina was?

4 A I do not know where she was.

5 Q But she was not there?

6 A No, she was not.

7 Q By the time you got to the apartment, do you know

8 approximately what time it was?

9 A I believe it was probably around 10:00 at night.

10 Q Had it taken you awhile to talk to both Rose and

11 Victoria?

12 A I'd say yes to that.

13 Q When you got to the apartment do you know were

14 Shabazz and/or Mahlica awake, asleep, what?

15 A I don't recall if they were awake or sleeping.

16 Q But when you spoke to them both they were at least

17 able to communicate with you?

18 A They seemed fine, able to talk.

19 Q Do you remember who you talked to first?

20 A I don't recall in what order that I spoke to them.

21 Q Okay. Well, just Mahlica, for example. When you

22 talked to Mahlica, what were you -- what was your purpose of

23 talking to Mahlica?

24 A To see if Victoria had relayed any information to

25 her and if she had any information to share with me about any

1 knowledge of the events that Victoria had described.

2 Q Okay. And at this point were you pretty much just
3 concerned with anything that might have happened to Victoria
4 as opposed to anybody else?

5 A Yeah, or -- I mean, but, yes, in these type of
6 investigations, though, you always want to know if there is
7 anyone else, if something has happened to anyone else or if
8 they have knowledge about any of this.

9 Q Okay. So you're asking general questions, as well
10 as specific questions?

11 A Correct.

12 Q And did Mahlica talk to you?

13 A Yes, she did.

14 Q Did you notice anything about Mahlica as she was
15 talking to you?

16 A Not -- nothing specific that I recall.

17 Q Was it difficult or easy or what to get answers from
18 her?

19 A I don't think any --

20 Q I mean, she was able to communicate?

21 A She was, yes.

22 Q Okay. Now, when you talked to Shabazz, what did you
23 ask Shabazz about?

24 A Similar questions that I asked -- that I asked
25 Mahlica and Victoria about. He was a little more difficult to

1 communicate with.

2 Q That's where I was going. What was more difficult
3 about the communication between you and Shabazz?

4 A He just didn't appear to me to sometimes -- he
5 seemed to be a little slow in his answers and slow in
6 understanding what was happening.

7 Q Okay. Did -- after you spoke with them you said
8 that you had gone over there because there could have been
9 some kind of evidence. What kind of evidence might there have
10 been?

11 A I was looking for an item that was described to me
12 as an orange towel.

13 Q Described to you by whom?

14 A Victoria.

15 Q And did you find the towel?

16 A I found what I described as a pink blanket in an
17 upstairs bedroom.

18 Q Okay. And what did you do with it?

19 A I impounded it into evidence.

20 Q Why did you do that?

21 A There was a -- there was like a newspaper or an ad
22 that was stuck to it and it was described to me that it may
23 have had body fluids on it.

24 Q Okay. When you -- did you ultimately leave the
25 apartment?

1 A Yes, I did.

2 Q Did you leave any information with Mahlica and/or
3 Shabazz?

4 A I'm sure I left my business card. That's normal
5 practice. I don't have specific recollection of what I left
6 with them, but that's a normal thing after I talk to any
7 witnesses I will hand them a business card so that they can
8 contact me.

9 Q Did you indicate to them that you wanted to talk to
10 their mom?

11 A I'm sure I did.

12 Q Okay. Did you make an effort to contact Tina that
13 night?

14 A I believe I called her. I'm not -- I'm not sure
15 what time, but I would have tried to contact her.

16 Q And when you tried to contact her, were you able to
17 actually reach her?

18 A Not -- not that night. I didn't talk to her until
19 several days later.

20 Q Do you know if you left a message or --

21 A I don't remember.

22 Q Okay. Well, would you have left a message or --

23 A Yeah, if -- if I could have gotten voicemail, I
24 would leave a message for them to contact me.

25 Q Okay. So you would have left a name and number?

1 A Yes.

2 Q When you leave a message for an individual to
3 contact you in the course of your investigation, do you tell
4 them what specifically it's regarding? What kind of message
5 do you generally leave?

6 A Not -- not typically. It will normally be a general
7 message. You know, this is Chris Aguiar, this is Detective
8 Aguiar with Henderson Police, I need to contact -- I need to
9 talk to you, can you please call me back.

10 Q Is there a reason that you don't say why, like I
11 need to talk to you because of the sexual assault involving so
12 and so?

13 A Well, sometimes the reason for a general message is
14 if you get a voicemail that just says you've reached this
15 number, I'll leave a message. Well, you don't know
16 specifically if you have the right phone number, and also
17 things of this nature, it's just not -- not what I would leave
18 a message on a cell phone for.

19 Q Okay. When you left the apartment, were Shabazz and
20 Mahlica still there?

21 A Yes.

22 Q When you left were Victoria and Rose still there do
23 you know?

24 A I don't -- I think -- I don't know.

25 Q Okay. What did you do when you left that apartment?

1 A I responded to our station and where I met with --
2 where I later met with Sergeant Delacanal and Detective
3 Melchert.

4 Q Now, when you say you responded to our station,
5 that's not the north station, it's the one where your offices
6 are?

7 A Where our office is at, the Henderson main station
8 and 223 Lead Street.

9 Q Why did you meet up with Sergeant Delacanal and
10 Detective Melchert?

11 A To inform them what I've -- with the rest of the
12 information I received at Center Street. And it was then that
13 we decided that we needed to go to another address in Las
14 Vegas.

15 Q What address in Las Vegas were you going to?

16 A 966 Blankenship.

17 Q Why were you going there?

18 A Because there was concern expressed for the safety
19 of two children.

20 Q Did you have names of the children that there was
21 concern for?

22 A Taharah and Taquanda Duke.

23 Q Do you know what their relationship was, if any, to
24 the other individuals?

25 A They were the sisters of the other individuals who I

1 contacted.

2 Q And did you have information about who you would
3 have expected to be at the Blankenship residence?

4 A I expected Taharah, Taquanda, Lealer Ann Cooks, and
5 Fred Harris I expected to be there.

6 Q Okay. Now, the Center Street apartment that you had
7 just left, that's in Henderson, Clark County, Nevada?

8 A Yes, ma'am.

9 Q As a Henderson detective you have, I guess,
10 jurisdiction, you know, or whatever to -- or the ability to do
11 what you need to do in Henderson. Is it different when you go
12 out of Henderson?

13 A Well, yeah, I mean, we can respond to other areas.
14 We can make arrests. We typically won't handle calls for
15 service in any other area of town or area of the county.

16 Q And if you're going to another area of the county,
17 do you contact that police agency, I mean, kind of as a
18 courtesy, as well?

19 A Sometimes. Most -- I would say the majority of the
20 time we will.

21 Q When you went to 966 Blankenship, where was that
22 generally?

23 A It was in Las Vegas, Nevada. I think it's pretty
24 close to North Las Vegas or the North Las Vegas border, but
25 I'm not positive.

1 Q Okay. And when you went there, did you go with
2 anyone besides Detective Melchert and Sergeant Delacanal?

3 A We had two Las Vegas Metropolitan Police Department
4 police officers respond with us.

5 Q Around what time was it when you went to the
6 Blankenship address?

7 A It was approximately 1:00 a.m. on the 18th of
8 December 2011.

9 Q When you got there, who was it that would have, you
10 know, knocked on the door and communicated with whoever was
11 inside?

12 A I think I was probably side by side with one of the
13 Metro -- one of the Las Vegas Metropolitan Police Department
14 officers.

15 Q Okay. And did somebody answer the door when you
16 went there?

17 A Yes.

18 Q Who answered the door?

19 A I don't recall which adult it was, but it was either
20 Lealer or Fred.

21 Q Okay. Did -- were you allowed to come in?

22 A Yes, we were.

23 Q When you go to the door and somebody answers, did
24 you explain immediately the purpose that you were there?

25 A We would have explained probably not into great

1 specifics, but a general reason of why were there.

2 Q Okay. When you got inside, who was there initially?

3 A Lealer and Fred.

4 Q Okay. So just the adults?

5 A Yes.

6 Q Did you confirm with them that there were two
7 children there?

8 A Yes, we did.

9 Q And did it appear to you that the two adults, Lealer
10 and Fred, had been sleeping?

11 A Yes, it did.

12 Q And when you say Fred, do you see that person here
13 in court today?

14 A Yes, I do.

15 Q Can you describe where he's sitting and an article
16 of clothing that he's wearing?

17 A He's wearing a blue shirt with a tie and glasses.

18 MS. LUZAICH: Record reflect identification of the
19 defendant.

20 THE COURT: So reflected.

21 MS. LUZAICH: Thank you.

22 BY MS. LUZAICH:

23 Q Now, since it's your case or investigation at this
24 point, did you decide what would happen next when you got
25 inside the house?

1 A Yes, I did.

2 Q What was your decision?

3 A The decision was for me and Detective -- Detective
4 Melchert and I to interview Mr. Harris, and to have Sergeant
5 Delacanal would speak with Lealer.

6 Q And did you and Detective Melchert interview the
7 defendant?

8 A Yes, we did.

9 Q Was that interview tape recorded?

10 A Yes, it was.

11 Q Now, what might you have told him before the tape
12 recorder was turned on? Like from the time you walked in the
13 house, you didn't turn on the tape immediately; correct?

14 A That's correct. I didn't turn it on.

15 Q What would you have said before the tape recorder
16 was turned on?

17 A I would have told Mr. Harris that -- you know,
18 obviously introduce ourselves, explain the basic purpose of
19 why we were there, and that we would like to speak to him
20 about an investigation that we were conducting.

21 Q When you say explain the purpose for which we were
22 there, how do you -- how would you have phrased it?

23 A Just in general, I don't know the exact specifics on
24 this, what I would have done on this case, but I would be --
25 you know, we're investigating a sexual assault and we would

1 like to speak to you about that.

2 Q Okay. So you would have used the word sexual
3 assault as opposed to just general investigation?

4 A Yes.

5 Q And would you have told him who it was involving
6 before you turned the tape recorder on?

7 A I might not have. I probably would just have kept
8 it general at that point.

9 Q And then once you turned the tape on, was the entire
10 interview recorded?

11 A Yes, it was.

12 Q And then provided to the State for purposes of
13 court?

14 A Yes.

15 MS. LUZAICH: At this time I have State's Proposed
16 Exhibit --

17 May I approach? Sorry.

18 THE COURT: Of course.

19 MS. LUZAICH: -- 3, the interview. I would ask that
20 it be moved into evidence.

21 MR. MacARTHUR: No objection to the statement,
22 Judge.

23 MS. LUZAICH: And can I play it?

24 THE COURT: It's admitted and you may publish.

25 (State's Exhibit 3 admitted)

1 MS. LUZAICH: Thank you. For the record, it's going
2 to come up on the screen as transcript, and we will hear it
3 through the -- hopefully.

4 (State's Exhibit 3 played)

5 THE COURT: Okay. At this time we're going to
6 recess for lunch.

7 During this recess you're admonished not to talk or
8 converse amongst yourselves or with anyone else on any subject
9 connected with this trial, or read, watch, or listen to any
10 report of or commentary on the trial or any person connected
11 with this trial by any medium of information, including
12 without limitation, newspapers, television, the Internet, or
13 radio, or form or express any opinion on any subject connected
14 with this trial until the case is finally submitted to you.

15 We'll start again at 2:00. Thank you very much.

16 (Court recessed at 12:21 p.m., until 2:04 p.m.)

17 (Jury is not present)

18 THE COURT: Do we have a panel?

19 THE MARSHAL: Yes. We're still missing --

20 THE COURT: Okay. Oh. Wait. That's right.

21 MS. ALLEN: We do have something outside the
22 presence.

23 THE COURT: Is he en route?

24 THE MARSHAL: I don't know.

25 THE COURT: Okay. I'm sure he'll be here any

1 minute.

2 Of course. Go ahead.

3 MS. ALLEN: Thank you.

4 Do you want to go first on the -- or do you want me

5 to?

6 MS. LUZAICH: Do we -- does he need to be here?

7 MS. ALLEN: Oh. Probably.

8 MR. MacARTHUR: Yeah, I was thinking that we should

9 probably have the defendant here.

10 THE COURT: Oh. Yeah. We can't --

11 MS. ALLEN: I guess we can't do anything.

12 (Pause in the proceedings)

13 THE COURT: Now we need to go back on the record.

14 MS. ALLEN: Oh. Yeah. That was off the --

15 MS. LUZAICH: You go first just because Aguiar is on

16 the stand.

17 MS. ALLEN: Yeah, that's fine.

18 THE COURT: Okay. We're on the record.

19 MS. ALLEN: Yes, Your Honor.

20 THE COURT: Defendant is present, all four attorneys

21 are here, and this is taking place outside the presence of the

22 jury panel.

23 MS. ALLEN: Yes, Your Honor. In my client's

24 statements to North Las Vegas, to Detective Aguiar, there was

25 a portion that was redacted that my client told the detective

1 that Victoria had said she had been having sex in Utah. And I
2 don't remember what page it's on. I apologize.

3 MR. MacARTHUR: 80, 90.

4 MS. LUZAICH: 90. Yeah.

5 MR. MacARTHUR: 80-something, 90.

6 MS. ALLEN: 90. Okay. Sorry. Page 90. Thank you.
7 I know she had had sex before because when she came in from
8 Utah she had been having sex, she admitted it. And so
9 normally I know that the -- this would be covered by rape
10 shield. I did provide the Court with a case, Johnson v.
11 State. And I apologize for it being on my phone. But Johnson
12 v. --

13 MS. LUZAICH: I actually have the case. Can I
14 approach and I'll hand it to you?

15 THE COURT: Sure.

16 MS. ALLEN: Johnson v. State, under rape shield,
17 once a victim testifies that she had never had sexual
18 intercourse prior to the night of alleged rape, defense had
19 right to attempt to discredit testimony by showing the victim
20 was not a virgin in prosecution for sexual assault, the
21 attempt sexual assault. And that's 942 P.2d 167, it's a 1997
22 case.

23 Victoria testified that she was a virgin up until
24 she came back from Utah, and the first time that she had ever
25 had sex was with my client on October -- no, August 24, 2007.

1 So that's what she said in her direct testimony and her
2 cross-examination, and that's what she maintained.

3 We are requesting that Mr. MacArthur be allowed to
4 question Detective Aguiar about just that particular -- you
5 know, that sentence in the statement. It was redacted. We're
6 not trying to look like the State hid anything from the jury
7 and we would never pose it in that manner, but he did tell
8 this to the detective. No, she -- you know, she told me she
9 had been having sex, you know, when she came back from Utah.

10 We believe that, obviously, rape shield doesn't
11 apply based upon Johnson v. State. She has a very specific
12 date in mind that her virginity was taken. She says it was
13 taken by Mr. Harris. This would indicate that she had prior
14 knowledge of sex, which is, I believe, admissible under rape
15 shield when the victim is or alleged victim is claiming they
16 are a virgin.

17 We would ask the Court to allow Mr. MacArthur to ask
18 a couple of limited questions about that. Again, not -- not
19 indicating the State is trying to hide anything and so it
20 wouldn't be posed that way. We also believe it sort of falls
21 under the rule of completeness with regard to his statement
22 and we request that -- that the Court make a ruling and allow
23 that those questions be asked.

24 (Pause in the proceedings)

25 THE COURT: Does the State want to address the

1 Court?

2 MS. LUZAICH: Oh. Of course. I was just waiting
3 for you to finish reading.

4 THE COURT: Thank you.

5 MS. LUZAICH: 50.090, commonly called the rape
6 shield statute, is the statute that says that a victim of
7 sexual assault other sexual activity is not admissible ever to
8 challenge their credibility. Clearly what the defense is
9 trying to do is challenge their credibility. I recognize that
10 there is some case law exception to the rape shield statutes,
11 and I do not think they apply here.

12 In that particular case, the victim, Nicole, had
13 been sexually assaulted by the defendant. She had been
14 molested by two other individuals, and that had been
15 inadmissible. And I'm not going to go through the whole the
16 defense didn't bring it up at trial --

17 THE COURT: Right. Right.

18 MS. LUZAICH: -- so that was the basis of that
19 court's ruling. But when they talked about the facts, in that
20 particular case they talk about Summit, basis of knowledge,
21 which Ms. Allen has raised, as well. But remember, when
22 Victoria talked about what happened in 2005, she said that the
23 defendant put his fingers in her vagina and put his penis in
24 her vagina a bit.

25 So while she talked about him actually taking her

1 virginity in 2007 in the car, she does talk about previously
2 he had put his penis in her vagina. So, I mean, she already
3 has a basis of knowledge. Whatever happened after 2005 in
4 Utah doesn't give her a basis of knowledge. Additionally,
5 when Victoria is describing this to the police, she has since
6 had a baby. I mean, clearly, basis of knowledge isn't an
7 issue. She's 19 when she's describing it to the police.

8 When the defendant tells the detective Victoria said
9 when she was in Utah she had sex, I mean, that is clearly a
10 self-serving statement by the defendant. It is not a, in any
11 way, shape, or form, otherwise reliable statement. If they
12 were trying to get in Victoria told Rose or Victoria told the
13 defendant's brother -- well, the defendant's brother I might
14 still have an issue, but somebody other than the defendant
15 himself that she had had sex before August 24th of 2007, then
16 I think they have an issue that it could pierce rape shield,
17 but not the defendant's statement. The defendant's statement
18 is self-serving.

19 Clearly, he admitted that he lied to the police,
20 period. So, you know, under the credibility instruction, you
21 know, everything he says is suspect anyway. So I don't think
22 that that statement to the police that Victoria told him, or
23 Victoria said -- I don't even know that she -- he said
24 Victoria told him, that Victoria said that she had had sex in
25 Utah is admissible to -- to pierce rape shield in this

1 particular situation under these facts.

2 THE COURT: Okay. And what year do they go to Utah?

3 MS. LUZAICH: 2005.

4 THE COURT: Okay.

5 MS. ALLEN: And may -- I just would like to briefly
6 be heard --

7 THE COURT: Okay.

8 MS. ALLEN: -- heard on rebuttal. I apologize.

9 Your Honor, first of all, she is very clear in her testimony
10 that she was a virgin until he took this in August of 2007.
11 She used those words. Those were the exact words that
12 Victoria used. We're not substituting our language for what
13 Victoria said. That's exactly what she said. So that -- that
14 would be the first issue that I have is that she used those
15 words. We did not. I did not make up the word virgin, nor
16 did Ms. Luzaich.

17 Second of all, with regard to Johnson, Johnson
18 doesn't differentiate between the defendant's statement and
19 anybody else's statement. It's just impeachment, period. It
20 doesn't matter who it comes from. I don't think Johnson
21 differentiates where the statement comes from. It just --
22 it's -- Johnson says, you know, if this victim is claiming
23 that they were a virgin prior to -- you know, prior to this
24 incident, which she is, then you're allowed to impeach with
25 evidence that she says that she wasn't. This is evidence that

1 she says that she wasn't. So that's the second.

2 The third part that -- issue that I take with Ms.
3 Luzaich is that she is saying, well, it's a self-serving
4 statement. Well, that's -- that's great except she wants --
5 she wants the jury to believe parts of it. She wants the jury
6 to believe the parts he talks about of this or the parts he
7 talks about with that. We've introduced the statement. We've
8 made it part of the record. We've allowed the jury to hear
9 it. This was redacted from it and it's relevant for the
10 purposes of showing that she had prior sexual knowledge.

11 This -- and when he's talking about all this, the
12 other part of it that really makes it not self-serving is that
13 when he's talking about all this, he's already admitting to
14 having sex with her. This isn't prior to that. This isn't
15 the part that she was talking about where he was denying it
16 and -- and, you know, lying to the police. This is way past
17 that point. He's already admitted in detail what happened
18 between he, Victoria, and the mother. So how in any way could
19 that be self-serving?

20 So you can't take pieces and say, well, part of it
21 is good, part of it is bad. That may be for them to argue to
22 the jury on closing, but I don't necessarily think --

23 She's having a hard time hearing.

24 MR. MacARTHUR: Sorry.

25 MS. ALLEN: I don't necessarily think that it's fair

1 to preclude bits and pieces of it just because the State says,
2 well, it's -- it's not reliable. That's unfair, that deprives
3 him of, you know, due process, and I believe partially the
4 confrontation clause. We're not asking that we get into this
5 girl's entire sexual history. He made the statement to the
6 detective when he was talking to him and he made it again
7 after all of these other things that he talked about came in.
8 You know, and obviously we're not looking for --

9 MS. LUZAICH: I just want the Court to read what he
10 said.

11 MS. ALLEN: Okay.

12 MS. LUZAICH: Because it's not -- I mean, it's not
13 that clear. And for the record, the unredacted transcript,
14 page 90. And although it's all pink, it's the blue in the
15 circle.

16 THE COURT: Okay.

17 MS. ALLEN: I'll let the Court read it.

18 (Pause in the proceedings)

19 THE COURT: So she admitted she had been having sex
20 with a girl and a friend?

21 MS. ALLEN: That's -- that's what he says. And
22 that's -- we're not looking to go into not in school, that she
23 was hanging with teenagers, that pregnant by some African
24 dude, none of those things. Simply a question to the
25 detective, you know, that when Fred was giving his statement

1 to you do you recall him saying that Vicky admitted to him
2 that she had had sex in Utah. That's it.

3 And I think it's -- you know, again, pursuant to
4 Johnson and pursuant -- you know, pursuant to the arguments I
5 set out, I believe that -- that it's appropriate in this -- in
6 this particular instance. Again, we're not looking to get
7 into all of these other things. It's really one simple
8 question to the detective.

9 MS. LUZAICH: But that is an amorphous kind of what
10 she said. It's -- it's very unclear what, if anything, she
11 actually said to him or that he had heard. At least in
12 Johnson, Nicole, the victim, had said Uncle Scott or whatever
13 his name is molested me and Uncle Jeff also molested me. So,
14 I mean, those were very clear, she said it, it happened, it
15 was investigated. That is just something that is so unclear
16 and ambiguous that --

17 MS. ALLEN: And -- and I --

18 MS. LUZAICH: I don't think that that is
19 impeachment.

20 THE COURT: Anything else?

21 MS. ALLEN: No, Your Honor.

22 THE COURT: Okay. The motion is denied.

23 MS. ALLEN: Okay.

24 THE COURT: Okay. You can bring them in. And you
25 can bring the detective back in, as well.

1 (Jury is present)

2 THE COURT: Do parties stipulate to the presence?

3 MS. LUZAICH: Yes.

4 MS. ALLEN: Yes, Your Honor.

5 THE COURT: Okay. You can recall the detective to

6 the stand.

7 Okay. You may proceed.

8 MS. LUZAICH: Thank you.

9 BY MS. LUZAICH:

10 Q Detective Aguiar, before we broke for lunch we

11 listened to an interview. Was that -- and you listened to it

12 with us; correct?

13 A Yes, I did.

14 Q Was that your voice that was conducting most of the

15 interview?

16 A Yes, it was.

17 Q We heard another voice that answered all the

18 questions. Was that the defendant?

19 A Yes, it was.

20 Q Then we heard a third voice that asked some

21 questions more towards the end. Who was that?

22 A Detective Jeffery Melchert.

23 Q Okay. So the two of you together were interviewing

24 the defendant?

25 A That's correct.

1 Q Where were you in the house while you conducted this
2 interview?

3 A It was connected to the -- the kitchen. There was a
4 small table just off the kitchen that we were sitting at.

5 Q Okay. Now, at the end of the interview you guys
6 talked about being hot. What was -- was there a problem?

7 A No, it was just -- I was dressed about like I was
8 today, except without the jacket. And I was sweating because
9 the oven had been -- the door had been opened to the oven and
10 Mr. Harris was using that to heat the house.

11 Q Oh.

12 A Or the area where we were at.

13 Q Oh. Okay. This was, what, December of -- December,
14 so it was cold, winter?

15 A Cold for here, yes.

16 Q Okay. Prior to your interviewing the defendant you
17 had spoken to Victoria; right?

18 A Correct.

19 Q And in your interview with the defendant you were
20 asking him questions about, well, why would Victoria say this,
21 that, or the other thing. And you had mentioned that
22 Victoria's description of events was very vivid, I think you
23 said.

24 A Yes.

25 Q There were a lot of things that she described,

1 incidents and stuff that she described for you?

2 A There were multiple incidents, yes.

3 Q And she was very descriptive in her -- or detailed
4 in her descriptions?

5 A Yes.

6 Q After you spoke with the defendant, and I'm sorry,
7 did you say that while you were talking to -- you and
8 Detective Melchert were talking to the defendant that
9 Detective or Sergeant Delacanal was speaking with Ms. Cooks?

10 A That's correct.

11 Q You also saw Ms. Cooks; is that correct?

12 A Yes, I did see her.

13 MS. LUZAICH: May I approach?

14 THE COURT: You may.

15 BY MS. LUZAICH:

16 Q Showing you what's been marked as -- or admitted as
17 State's Exhibit 1. Is that Ms. Cooks?

18 A Looks about like her to me.

19 Q Okay. She looked a little different in December
20 than --

21 A Yeah.

22 Q -- in this photo?

23 A Yes.

24 Q But it's the same person?

25 A Yes.

1 Q Thanks. So after you talked to the defendant, did
2 you interview one of the children?

3 A I interviewed Taquanda Duke.

4 Q And while you were interviewing Taquanda, did
5 Detective Melchert interview Taharah?

6 A Yes, he did.

7 Q Where did you conduct your interview with Taquanda?

8 A The same space where I had spoken to Mr. Harris.

9 Q Where did Detective Melchert conduct his interview
10 with Taharah?

11 A I believe it was in the -- there was kind of a hall
12 leading to the back bedrooms. I believe it was right off the
13 hall there's a bedroom to the right as you're walking back. I
14 think that's where he did it. But I wasn't in the room, so
15 I'm not --

16 Q Okay. Then my next question would be at the time
17 that you conducted your interview with Taquanda, was Detective
18 Melchert and Taharah at least in such a location that you
19 could not hear what -- what they were saying?

20 A Yes.

21 Q And, therefore, would you assume that they also
22 could not hear what you were saying?

23 A Yes, I would assume that.

24 Q And do you believe that the defendant and Ms. Cooks
25 were with Sergeant Delacanal in such a place that they also

1 couldn't hear what you and Taquanda were saying?

2 A I believe so.

3 Q And what Taharah and Detective Melchert were saying?

4 A Yes.

5 Q Okay. Now, when you interviewed Taquanda, was your

6 interview tape recorded?

7 A Yes, it was.

8 Q Was it also your understanding that when Detective

9 Melchert interviewed Taharah his interview was tape recorded?

10 A Yes.

11 Q And would he have later given you the recording of

12 that interview?

13 A Yes, he did.

14 Q Because you're the case detective; right?

15 A Yes.

16 Q Now, when you interviewed Taquanda, do you know what

17 time it was that you started that interview?

18 A It was about 3:00, 3:20 in the morning.

19 Q Okay. And had she been sleeping?

20 A Yes.

21 Q Could you tell that she had been sleeping?

22 A Yes.

23 Q Was she tired?

24 A She seemed a little bit tired when she started

25 talking to me, yeah.

1 Q Okay. During the course of your interview, how was
2 her demeanor?

3 A She was -- at the beginning of the interview she was
4 okay. I would say probably towards maybe almost to halfway
5 through she started crying during the interview when I was
6 asking questions.

7 Q What were you asking her about when she started
8 crying?

9 A If she had ever witnessed anyone being physically
10 abused.

11 Q By anyone in particular?

12 A By Mr. Harris.

13 Q Okay. And did she tell you that she had?

14 A Yes.

15 Q And was that when she was crying?

16 A Yes.

17 Q And would you say she was crying or was it even more
18 descriptive than that?

19 A It was -- it was loud. I mean, it was where you --
20 where at a certain point you almost couldn't make out some of
21 the words that she was saying. I'd have to lean in and ask
22 her can you repeat that, I can't hear you.

23 Q And when she was crying like that, what did she tell
24 you about witnessing abuse?

25 A She indicated that she had witnessed two of her

1 siblings be physically hit or struck.

2 Q Which siblings?

3 A Shabazz and Taharah.

4 Q Okay. Did you also ask her anything about whether
5 she was afraid?

6 A Yes. I'm not sure if I asked her specifically if
7 she was afraid, but I know that she responded that she was
8 afraid.

9 Q What was she afraid of?

10 A She indicated that she was afraid that if Mr. Harris
11 found out what she had told me.

12 Q After you had interviewed Taquanda and Detective
13 Melchert interviewed Taharah, and I'm sorry, I'm trying to be
14 very careful with their names, were you guys pretty much done
15 with what you were going to do at the house?

16 A Yes, we were.

17 Q Did you explain anything to the defendant or Ms.
18 Cooks before you left? You personally.

19 A I don't remember personally explaining anything to
20 either of them.

21 Q Okay. So Sergeant Delacanal talked about things
22 that he had said. Did you add anything to what he said?

23 A No, I don't recall adding anything to what he had
24 said.

25 Q Okay. By the time you left that house,

1 approximately what time was it?

2 A It would have been probably around 3:00, 3:45 in the
3 morning.

4 Q Okay. So --

5 A Give or take a few minutes.

6 Q -- sun not up yet?

7 A No.

8 Q Did you contact somebody after you finished -- not
9 necessarily immediately after, but after you finished what you
10 did in the house?

11 A I know at some point I called the -- made the report
12 to the CPS hotline that I was out there.

13 Q Why did you make a report to CPS hotline?

14 A Any time that we are dispatched or we go to a call
15 where CPS is not already on scene, we report to them what our
16 initial response was so that they're aware because sometimes
17 they'll run a parallel investigation.

18 Q Okay. Involving like a child and a caretaker kind
19 of situation?

20 A Correct.

21 Q And did you then at some point have contact with
22 somebody specifically from CPS regarding these incidents?

23 A Yes.

24 Q Who did you have contact with?

25 A A caseworker Bobbi Tibbs.

1 Q Okay. And did she try to get a hold of you in the
2 beginning and -- and was not able to because you had worked
3 all night and things of that nature?

4 A I don't recall specifically, but it's possible
5 because of the times.

6 Q Okay. Did it take awhile before you actually had
7 contact with her?

8 A I don't -- I don't remember the exact day that I
9 talked to her.

10 Q Okay. Did you -- did she ask you for your
11 interviews and such?

12 A Yes.

13 Q Okay. Now, she said she didn't get them. Did you
14 get -- did you get them transcribed?

15 A Yes, I did.

16 Q Are you sure?

17 A The interviews transcribed? Yes, they were
18 transcribed by the person who is on contract with the City of
19 Henderson.

20 Q Okay. Is it possible that somebody else got them
21 transcribed?

22 A I don't think so.

23 Q Okay. What did you tell her about what the kids had
24 or had not said, if you remember?

25 A I don't necessarily remember the specific

1 conversation that we had. Typically, though, I'll go over the
2 highlights and the main points of the interview with the
3 children, and I'll explain that to the CPS caseworker.

4 Q Okay. If Ms. Tibbs said that you had indicated that
5 the girls had not disclosed abuse, what would that mean?

6 A If that was -- I would have been referring to sexual
7 abuse because that was the main crux of why we were there at
8 the house was to investigate sexual abuse. But it was clear
9 that, you know, they -- that Taquanda had talked about
10 physical abuse, but did not disclose any knowledge or being a
11 victim of sexual abuse.

12 Q Okay. Was it your understanding that Taharah also
13 had not disclosed any sexual abuse?

14 A That was my understanding.

15 Q Did you try to contact the mother, Tina?

16 A Yes, I did.

17 Q How easy, difficult, or something else was it to
18 actually get in contact with her?

19 A She was not the easiest person to get a hold of.
20 And I think when I finally had spoken to her it was just me
21 showing up at her -- her apartment. I believe it was
22 unannounced. I don't remember every setting an appointment
23 with her.

24 Q Okay. So it was kind of hit or miss and you just
25 showed up?

1 A Yes.

2 Q When was it that you actually did speak with Tina
3 Duke?

4 A I believe it was December 22, 2011.

5 Q You said that you showed up at her house. Was
6 anybody else home when you went there? Do you remember?

7 A I don't remember if anybody else was there.

8 Q Okay. Did you talk to her?

9 A I talked to her in my car in the parking lot.

10 Q And would that interview also have been recorded?

11 A Yes, it was.

12 Q After you talked to Tina, did you do anything
13 further in the investigation?

14 A Not until a significant lapse in time.

15 Q Okay. Did you leave the special victims unit
16 shortly after that?

17 A Yes, I did.

18 Q When was that?

19 A Probably around, I think, January of 2012.

20 Q Were you contacted by Detective Madsen from the Las
21 Vegas Metropolitan Police Department sometimes in maybe
22 September/October of 2012?

23 A Yes, I was.

24 Q And did he ask you for all of your information and
25 things of that nature?

1 A Yes, he did.

2 Q Did you send him the recordings of your interviews?

3 A Yes, I did.

4 Q And is it possible that he had your interviews
5 transcribed?

6 A I don't -- I don't think so because from my
7 knowledge that the way the Las Vegas Metropolitan Police
8 Department works is that they have their own people who
9 transcribe the interviews. And I know -- they have employees
10 that transcribe interviews. And I know these interviews were
11 transcribed by the company that the City of Henderson
12 contracts, and I also know that these interviews are stored on
13 my computer in both -- both types, the original Word format
14 and the .pdf format. And I know that I've personally reviewed
15 these and I know the person that does the transcription.

16 Q Okay. All right. Thank you.

17 MS. LUZAICH: I pass the witness.

18 THE COURT: Cross.

19 CROSS-EXAMINATION

20 BY MR. MacARTHUR:

21 Q Good afternoon, Detective Aguiar. How are you?

22 A Good. How are you, sir?

23 Q I'm doing just fine. Thanks for asking. Okay.

24 Maybe I should start at the back and move backward in time.

25 You did not make an arrest of Fred Harris; is that correct?

1 A No, I did not.

2 Q Okay. If you would, please describe the -- what
3 conditions have to be met for an arrest to be made.

4 A Well, you have to have probable cause to make the
5 arrest.

6 Q Okay. And by probable cause, and I want you to
7 correct me if I'm wrong, is that essentially proof that a
8 crime may have been committed and proof that a certain suspect
9 is the person who committed it?

10 MS. LUZAICH: Objection. Legal conclusion.

11 THE COURT: Overruled. The officer can testify as
12 to what probable cause is.

13 THE WITNESS: In -- that's pretty -- I mean, there's
14 obviously different definitions floating around, but I think
15 that's pretty fair.

16 BY MR. MacARTHUR:

17 Q Okay. And I don't mean to ask you a question that
18 seems insulting at all. You've arrested people before?

19 A Yes, I have.

20 Q All right. Okay. You're not uncomfortable doing
21 that in any -- in any sense?

22 A No, I'm not.

23 Q Okay. And you've also conducted many voluntary
24 statement interviews?

25 A Yes, I have.

1 Q Okay. And you've also done interrogations of -- of
2 perpetrators that are considered suspects, not just witnesses?

3 A Yes.

4 Q Okay. And has it been the case that you've had
5 people make admissions to you before, confessed to having
6 committed crimes to you?

7 A That's correct. Yes.

8 Q Okay. And you've had times where people have denied
9 having done anything wrong.

10 A That's correct.

11 Q Is that fair?

12 A Yes, sir.

13 Q Okay. And then out of those people who deny doing
14 anything wrong, certainly you've had people who have denied it
15 and then you found out they were lying to you?

16 A That's correct.

17 Q Okay. And have you had people deny it and then you
18 found out that they were telling you the truth?

19 A Yes.

20 Q Okay. Is it fair to say that when you're talking
21 about pretty serious crimes, when a person didn't commit the
22 crime they tell you, no, I didn't commit it?

23 MS. LUZAICH: Well, objection.

24 THE COURT: What? Will you say the question again?

25 MR. MacARTHUR: Based on the detectives

1 experience --

2 THE COURT: Okay.

3 MR. MacARTHUR: -- in having conducted
4 interrogations, in serious crimes where a person has not
5 committed the crime, is it common for them to tell you I
6 didn't commit this crime?

7 MS. LUZAICH: Well, objection. Relevance.

8 THE COURT: Overruled. I'll allow you to answer it.

9 THE WITNESS: I'm sorry. I really don't understand.
10 Can you repeat it for me again, sir?

11 BY MR. MacARTHUR:

12 Q Maybe I'm making it overly complex. If somebody
13 didn't do it, they're going to tell you they didn't do it;
14 right?

15 MS. LUZAICH: Well, objection. He can't testify to
16 that.

17 THE COURT: Well, that -- that question the
18 objection is sustained.

19 MR. MacARTHUR: All right. Withdrawn.

20 BY MR. MacARTHUR:

21 Q Now, you began your investigation because you had
22 received a complaint from Victoria Duke; is that correct?

23 A She had responded to the north station and then I
24 was called into there. I hadn't received the initial one, but
25 I did go there and speak to her.

1 Q But it was a result of her having made contact with
2 law enforcement; correct?

3 A Yes.

4 Q And the information you were provided is that she
5 had been sexually assaulted by Fred Harris; is that correct?

6 A That is correct.

7 Q And, in fact, she described it as -- as -- as a
8 rape, a forcible rape; is that correct?

9 A Yes.

10 Q Okay. In fact, she had said that she had been
11 pushed down to the ground, do you remember that?

12 A Yes, sir.

13 Q Okay. She said that the --

14 MS. LUZAICH: Well, objection. Hearsay.

15 MR. MacARTHUR: Well, it's not for the truth of the
16 matter asserted, Judge. It shows what he does next.

17 THE COURT: Okay. Then say as a result of what she
18 said, what did you do next?

19 BY MR. MacARTHUR:

20 Q All right. So you received information either
21 directly or indirectly from Victoria that she had been
22 forcibly raped?

23 A That's correct.

24 Q And you were operating under the assumption that she
25 had been pushed, her mouth had been covered, and that she had

1 been restrained? Do you recall?

2 A I remember that she had been pushed, that -- she
3 said that there had been a hand put over her mouth.

4 MS. LUZAICH: Well, objection. Hearsay.

5 MR. MacARTHUR: And --

6 THE COURT: Sustained.

7 MR. MacARTHUR: And, Your Honor, we would argue that
8 this is a prior inconsistent statement. Victoria Duke has
9 already testified. And to the extent that she told this
10 detective anything different, it would come in as a prior
11 inconsistent statement as an exception to the hearsay rule.

12 THE COURT: Okay. So you're making an offer of
13 proof to the Court that she's been confronted with that
14 statement and now this one is going to be inconsistent?

15 MR. MacARTHUR: She was examined by the State and by
16 defense counsel and her account before this jury did not
17 include --

18 MS. LUZAICH: Well, can we approach?

19 THE COURT: Yeah, you can approach.

20 (Bench conference)

21 MS. LUZAICH: I'm sorry. I thought you don't like
22 speaking objections.

23 THE COURT: My only -- my only question was was she
24 confronted with this statement?

25 MS. LUZAICH: No.

1 MS. RHOADES: No.

2 MS. ALLEN: I asked her about the circumstances
3 surrounding it.

4 THE COURT: Because how can it be a prior
5 inconsistent statement if -- if he didn't ask her it?

6 MR. MacARTHUR: If -- if who didn't ask what to her?

7 THE COURT: If the detective didn't ask her. It
8 sounded like what you were telling me was that she wasn't
9 asked about this.

10 MR. MacARTHUR: Okay. I'm -- I don't want to get
11 lost in what the Court's asking me.

12 THE COURT: Okay.

13 MR. MacARTHUR: The way that I see it is that she
14 told the detective that she had been forcibly raped with
15 certain -- you know, pushed, mouth covered, and held down.

16 THE COURT: Okay.

17 MR. MacARTHUR: But her testimony in front of the
18 jury did not include that information. And so I'm contrasting
19 what she told him with what she told the jury as a prior
20 inconsistent statement.

21 MS. LUZAICH: But it's not inconsistent until the
22 defense says did you tell the detective that you were pushed,
23 your mouth was covered, and whatever --

24 THE COURT: See, that's my --

25 MS. LUZAICH: -- and she says no.

1 THE COURT: That's my opinion, that she has to be
2 confronted with it. And then she has to say --

3 MR. MacARTHUR: Victoria was your witness.

4 THE COURT: Then the witness can come in --

5 MS. ALLEN: I know she was and I'm trying to
6 remember.

7 THE COURT: Then the witness can come in --

8 MS. ALLEN: That was so long ago. I don't remember.
9 I asked her specific questions about it, about what happened,
10 but I can't remember. Honest to God I can't remember if I
11 asked her.

12 MS. LUZAICH: She wasn't asked the question did you
13 tell the detective that you were pushed and your mouth was
14 covered or whatever --

15 THE COURT: Right. And that's what has --

16 MS. LUZAICH: -- and then she said --

17 THE COURT: -- to happen --

18 MS. LUZAICH: -- no, that did not happen.

19 THE COURT: -- to lay the proper foundation to then
20 have it come in as a prior inconsistent. So, I mean, I can't
21 remember for sure.

22 MR. MacARTHUR: I don't remember her testifying
23 closely enough.

24 MS. ALLEN: I can't remember it either, honestly. I
25 can go through my notes and see.

1 MS. RHOADES: I remember. I mean, that was my
2 witness. She was never asked that. I never asked her about
3 that.

4 THE COURT: Okay. The objection is sustained.

5 (End of bench conference)

6 THE COURT: Okay. You may proceed.

7 BY MR. MacARTHUR:

8 Q You had also made contact with a witness or an
9 individual by the name of Rose Smith; is that correct?

10 A Yes, sir.

11 Q Did she also express some concerns to you as to what
12 she thought was happening between Victoria and Fred Harris?

13 A Yes.

14 Q Okay. And did she also express some concern that
15 something might have been happening at the Blankenship address
16 involving the younger siblings of Victoria and Fred Harris?

17 MS. LUZAICH: Objection. Hearsay.

18 THE COURT: You can answer yes or no.

19 THE WITNESS: Yes.

20 BY MR. MacARTHUR:

21 Q Okay. So operating off of this information, is that
22 what prompted you to do these interviews in the early morning
23 hours of December 17th?

24 A Yes.

25 Q Okay.

1 A It was December 18th.

2 Q December 18th. And, right, because it's after
3 midnight. I appreciate that. Okay. Can you tell the jury,
4 if you haven't testified to this already, why did you think it
5 was a good idea to do the interviews in the wee hours of the
6 morning?

7 A Well, anytime you're dealing with the serious nature
8 of the crimes that we were investigating, my first priority,
9 before anything else, is to make sure that we have children
10 that are safe and aren't in an environment where they're being
11 harmed. And that's -- if it has to be done in the middle of
12 the night, it has to be done in the middle of the night. It's
13 not my preference, but I felt out of an abundance of caution
14 that that's -- that's what needed to be done.

15 Q And so your first answer would be the sooner the
16 better; is that fair?

17 A Yes.

18 Q Okay. Is there -- is there any other reason?

19 A That was the only reason why I went over there.

20 Q Detective, is it an effective investigative
21 technique to contact people essentially without warning so
22 that they don't have a chance to prepare a story for you? Is
23 there any truth to that?

24 A Sometimes it can be possible.

25 Q Okay. Let me ask you this. Based on your training

1 and experience, if you were to call a suspect ahead and say,
2 hey, I'm going to want to talk to you tomorrow about a sexual
3 assault, that might give the individual a chance to talk to
4 everybody else in the house and -- and prepare. It's almost
5 like a united defense, wouldn't it, if you gave them that kind
6 of a warning?

7 A As -- as with any kind of case, yes.

8 Q Okay. And so that was not the circumstance here; is
9 that correct? I mean, as soon as you had enough information
10 to go and do a contact, you did that; right?

11 A Yes.

12 Q And you didn't give them any warning that you were
13 coming that would allow them to prepare some sort of story,
14 did you?

15 A The -- it wasn't to prevent a story being prepared.
16 The reason why I went there immediately was to talk to the
17 children and make sure they were safe.

18 Q I understand. And I don't mean to impute that to
19 your reasoning. I don't know if it was or not. You say it
20 wasn't and I accept that. I'm merely saying that is this one
21 of the advantages of having contacted them as soon as possible
22 without giving them notice that it would help minimize that
23 chance that they could concoct a store?

24 A Yes.

25 Q Okay. And before going over to the house you had

1 already talked to Victoria and Rose; is that correct?

2 A That's correct.

3 Q Did you also have occasion to speak with Mahlica and
4 Shabazz, the two younger siblings of Victoria?

5 A Yes, I did.

6 Q Okay. And when speaking to Victoria and Shabazz,
7 where were they located when you talked to them?

8 A Sorry. Can you repeat the question, sir?

9 Q Sure. Thinking of the two siblings, younger
10 siblings to Victoria, specifically Mahlica and Shabazz, where
11 did you conduct your -- your interview with them?

12 A It was in my vehicle in the parking lot of 1100
13 Center Street.

14 Q Okay. And 1100 Center Street was, in fact, Tina
15 Duke's address; is that correct?

16 A Yes, sir.

17 Q And Victoria also lived there?

18 A Yes.

19 Q And is it also true that Mahlica and Shabazz lived
20 there?

21 A Yes.

22 Q Okay. So you were clearly under the impression that
23 at this time they weren't living at the Blankenship address,
24 they were living with their -- their mother and their sister?

25 A Yes, that's my understanding.

1 Q Okay. And in speaking with Mahlica, you, in fact,
2 received information that she hadn't been subject to any sort
3 of sexual abuse and had no information about why you would
4 want to talk to her; is that correct?

5 A She did not disclose being the victim of any sexual
6 abuse.

7 Q Okay. And does that also hold true for Shabazz?
8 Shabazz didn't make any kind of disclosure like that to you,
9 did he?

10 A As far as sexual abuse, sir?

11 Q Right.

12 A No.

13 Q Okay. And so there were two siblings remaining that
14 you wanted to talk to at the Blankenship house, fair?

15 A Yes.

16 Q Okay. And those are Taquanda and Taharah?

17 A Yes.

18 Q I'm sorry. I probably should have done it the other
19 way around. Taharah is the older of the two?

20 A Yes.

21 Q Okay. Now, before we get into the interviews that
22 you had, do you receive training on how to perform questioning
23 or interrogation of potential suspects?

24 A I've been to a few different trainings.

25 Q Okay. And it's not just simply shooting questions

1 willy-nilly; right? I mean, there's a strategy to it, is that
2 fair?

3 A There can be strategies employed sometimes.
4 Sometimes you ask questions. It depends on how the interview
5 is going.

6 Q Okay. Detective, in your experience are you
7 familiar with a technique where you pretend to have more
8 information than you do in order to place a little bit of
9 pressure on the defendant and see if you can get him to make
10 an admission?

11 A Yes.

12 Q Okay. And sometimes that information might not even
13 be true, is that fair?

14 A That is fair. Yes, sir.

15 Q Okay. And would you agree that even though it's
16 lying, it's still an effective investigatory technique because
17 it may get you closer to the truth?

18 A Yes, it is an effective technique. I think it's one
19 that you don't want to use early in an interview. You know,
20 it's not the first resort, but it is.

21 Q Okay. Early on would it be fair to say that you try
22 to establish a rapport first, lines of communication?

23 A Yes.

24 Q Okay. You try to make a relaxed or at least --
25 well, maybe not relaxed. That might be strong. You try to

1 make sort of a baseline interaction so that you can judge if
2 their demeanor changes?

3 A I just -- my basic point at the beginning is usually
4 just to find out a little bit about the person.

5 Q Okay. And did you do that with the interview with
6 Mr. Harris?

7 A Yes.

8 Q Okay. Now, in fact, at one point in the interview,
9 do you remember having mentioned that Victoria had a diary?

10 A Yes, I do.

11 Q Okay. And is this one of the effective
12 investigatory techniques that I'm talking about?

13 A Yes.

14 Q Okay. And so you were actually not aware of
15 specific entries into a diary having to do with sex assault or
16 molestation, is that fair?

17 A I don't recall her actually telling me she had a
18 diary.

19 Q Okay. But you employed the diary in order to give
20 the defendant the impression that you had more information
21 than you did --

22 A That's --

23 Q -- is that fair?

24 A That's accurate, yes.

25 Q Okay. And if he had reason to think that there was

1 something maybe harmful in this diary, he might then try to
2 explain it or -- or minimize it, would that be fair? Or at
3 least potentially.

4 A It's possible.

5 Q Okay. Would you agree with me, Detective, that when
6 you questioned him about any prior sexual contact with
7 Victoria before she was an adult that he denied that
8 categorically?

9 A Yes.

10 Q Okay. And he denied that before the diary or after
11 the diary?

12 A That was denied the whole -- prior to being an
13 adult, that was denied the whole time.

14 Q Understood. It's also -- I mean, because he denied
15 it the whole time, it's also true, then, that he denied that
16 before the DNA, after the DNA question?

17 A As far as the minor, as a minor?

18 Q Yes. Having had sexual contact with Victoria any
19 time when she was not an adult.

20 A Yes.

21 Q Okay. Starting from the time in which you did the
22 interview with Fred Harris, do you know who was interviewed
23 next? Was he interviewed first, last?

24 A He and Lealer would have been interviewed
25 simultaneously.

1 Q Uh-huh.

2 A And then the two, Taharah and Taquanda would have
3 been interviewed at the same time.

4 Q Okay. And would that have been before or after the
5 defendant and Lealer Cooks?

6 A Mr. Harris and Ms. Cooks are interviewed first --

7 Q Uh-huh.

8 A -- and then next were the children.

9 Q Okay. And so was Lealer Cooks interviewed by
10 Defendant Melchert -- I'm sorry, Detective Melchert?

11 A No.

12 Q Who interviewed Lealer?

13 A Sergeant Delacanal.

14 Q Okay. Delacanal. And when those two adults were
15 done, then you went to Taharah and Taquanda --

16 A Yes.

17 Q -- right? And they were interviewed separately?

18 A Yes.

19 Q And you had already testified that they could not
20 hear each other?

21 A It's my belief that they could not hear each other.

22 Q Understood. Was there anybody else interviewed at
23 the Blankenship house that evening, or that morning?

24 A Just those four.

25 Q Okay. Now, with regard to Taquanda and Taharah, do

1 you recall them being approximately, I don't know, 12, 11 or
2 12 or 13 years old?

3 A I believe Taquanda was 11.

4 Q Okay.

5 A And I think Taharah was maybe a year older about.

6 Q A year older, so maybe 12?

7 A Probably.

8 Q Okay. Now, given the nature of your investigation,
9 was it important to you to make them feel comfortable and safe
10 before you starting asking them more pressing questions about
11 whether something had happened to them?

12 A Yes.

13 Q Okay. And how do you go about doing that? What --
14 what -- what's the approach? You receive any training?

15 A I've been to child interview training. These --
16 these children are kind of on the border of the techniques, so
17 not all of them were used. But normally you try to ask the
18 children some normal questions, you know, where they go to
19 school, how old they are, what they like to do when they're
20 not going to school, pets, friends, stuff like that. And also
21 you also want to establish that they know the difference
22 between a truth and a lie.

23 Q Okay. And did you do all those things for both
24 Taquanda and Taharah?

25 A I did it for Taquanda.

1 Q Okay. Because you had interviewed Taquanda, and
2 Taharah was interviewed by Delacanal?

3 A No.

4 Q Okay.

5 A He was interviewed by -- she was interviewed by
6 Detective Melchert.

7 Q Okay. Now, with regard to Taquanda, she said that
8 she had not been subject to any sort of sexual abuse; is that
9 correct?

10 A Yes, that is right.

11 Q Okay. But, however, you did say that she became
12 emotional when talking about her brother Shabazz; is that
13 correct?

14 A That's correct.

15 Q Okay. Didn't she, in fact, tell you -- as a matter
16 of fact, let me rephrase that. You had testified that she had
17 seen or -- or witnessed, either by seeing or hearing, Shabazz
18 being disciplined on more than one occasion; is that correct?

19 A She didn't use the word discipline.

20 Q I realize that's my word as opposed to hers.

21 A Okay. Well, I would say no for the discipline
22 question, then.

23 Q Okay. Well, she had -- she had recounted something
24 where he received a whooping. Would that be closer to the
25 word she used?

1 A I believe she said that she was hit with hands.

2 Q Okay. And, in fact, didn't she also give you some
3 details as to what those circumstances were. Do you recall
4 that?

5 A Yes.

6 Q Okay. And was one of those circumstances where
7 Shabazz has allegedly stolen a video game console?

8 A I believe that's pretty close. It was either a game
9 or a console.

10 Q Okay. And do you recall the other incident that she
11 recounted as being when he had allegedly beat up a disabled
12 child at school?

13 A Yes.

14 Q Okay. And based on your contact with Detective
15 Melchert, Taharah also made no revelations of having been
16 sexually abused; is that correct?

17 A That's correct.

18 Q Okay. Detective, if you would, please describe for
19 the jury why it was you didn't feel there was probable cause.

20 MS. LUZAICH: Objection. Calls for legal
21 conclusion.

22 THE COURT: Overruled. You can answer.

23 THE WITNESS: At the time, after responding to the
24 address, based on the statements that we received from
25 Victoria, Taharah, Taquanda, Mahlica, and Shabazz, I just --

1 there needed to be more follow up investigation done and I
2 just didn't -- at the time I didn't think there was enough
3 probable cause to make an arrest that night.

4 BY MR. MacARTHUR:

5 Q Understood. Now, this was not where the
6 investigation stopped; is that correct? I mean, you still had
7 a little bit more that you did afterward?

8 A There was -- there was more that needed to be done.

9 Q Okay. And at any point if you had received
10 additional information that you thought established probable
11 cause, you certainly would have acted on that; is that
12 correct?

13 A Yes.

14 Q Okay. Now, in conducting interviews, specifically
15 with Victoria's mother, Tina, and her other siblings, did you,
16 in fact, receive contradictory information that seemed to cut
17 against what Victoria was saying?

18 MS. LUZAICH: Well, objection, as far as it calls
19 for hearsay.

20 THE COURT: You can answer.

21 THE WITNESS: Can you repeat the question for me,
22 sir?

23 BY MR. MacARTHUR:

24 Q Sure. Did you, in fact, receive statements from
25 other witnesses that contradicted Victoria? If you recall it

1 that way. If you don't, certainly --

2 A There -- there were statements made by her mother
3 that said that she did not witness any sexual abuse against
4 her children.

5 Q Okay. And Victoria had also told you that her next
6 two youngest siblings, Mahlica and Shabazz, would be able to
7 attest to her sexual abuse, hadn't she?

8 MS. LUZAICH: Objection. Hearsay.

9 THE COURT: Sustained.

10 BY MR. MacARTHUR:

11 Q Okay. When speaking with Mahlica and Shabazz, they,
12 in fact, told you that they were not aware of any sexual
13 abuse.

14 MS. LUZAICH: Objection. Hearsay.

15 THE COURT: Sustained.

16 MR. MacARTHUR: Court's indulgence.

17 BY MR. MacARTHUR:

18 Q Detective, I want you to think back to when you
19 conducted your in-person interview with Victoria Duke. Do you
20 know what date that was?

21 A December 17th of 2011.

22 Q Okay. So the day before or the daytime before the
23 morning in which you contacted the Blankenship?

24 A The evening hours.

25 Q Okay. And when you had contact with Victoria, what

1 was her demeanor like?

2 A She was able to talk to me. At some point she was
3 crying.

4 Q Was she visibly upset?

5 A At certain points during the interview.

6 Q Okay. Was she visibly upset at the point in which
7 she was talking about the forcible rape she had been subjected
8 to?

9 A Which event are you describing? Because there was a
10 number of events that she described.

11 Q I understand. Specifically she said that --

12 MS. LUZAICH: Objection. Hearsay.

13 MR. MacARTHUR: Court's indulgence.

14 THE COURT: Thank you.

15 BY MR. MacARTHUR:

16 Q All right. Regarding the most recent incident that
17 caused her to make contact with law enforcement in Henderson,
18 you'll recall that when I started my question I talked about
19 you had been sort of called to action by an allegation of
20 forcible rape against Victoria; is that correct?

21 A Yes.

22 Q Okay. When she described -- withdrawn. Was she
23 visibly upset when she described that particular incident to
24 you?

25 A I don't -- I don't recall her being visibly upset.

1 Q You don't recall her being visibly upset?

2 A Not when she was describing the most recent event.

3 Q Okay. Detective, when interviewing Tina Duke, do
4 you recall her describing Victoria's sexual contact with the
5 defendant as consensual?

6 MS. LUZAICH: Objection. Hearsay.

7 MR. MacARTHUR: And this would be prior consistent
8 statement because this was asked to Tina Duke when she was on
9 the stand.

10 THE COURT: Well, you haven't -- you haven't laid
11 the proper foundation.

12 MR. MacARTHUR: Court's indulgence.

13 THE COURT: Because you said consistent; correct?

14 MR. MacARTHUR: Prior consistent statement, yes.

15 THE COURT: Okay. I don't believe you have laid the
16 proper foundation.

17 MR. MacARTHUR: All right, Your Honor.

18 BY MR. MacARTHUR:

19 Q Detective, Victoria -- I realize that I'm coming
20 back to a familiar question, but Victoria had made an
21 allegation of forcible rape at the hands of Fred Harris; is
22 that correct?

23 A Yes.

24 Q And this was part of -- this was the basis for your
25 investigation that led you to speak to Tina Duke; is that

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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

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME XVIII  
~~~~~

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IN THE SUPREME COURT OF NEVADA

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OPENING BRIEF APPENDIX

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26	19	RECORDER'S TRANSCRIPT OF PROCEEDINGS JURY TRIAL DAY 11 APRIL 10, 2014 (FILED 12/30/2015)	2944-3123
27			
28	20	RECORDER'S TRANSCRIPT OF PROCEEDINGS JURY TRIAL DAY 12 APRIL 11, 2014 (FILED 12/30/2015)	3124-3255

1	21	RECORDER'S TRANSCRIPT OF PROCEEDINGS JURY TRIAL DAY 12 APRIL 15, 2014 (FILED 12/30/2015)	3266-3268
2			
3	22	RECORDER'S TRANSCRIPT RE: EVIDENTIARY HEARING DEFENDANT'S MOTION FOR NEW TRIAL (12/30/2015)	3269-3289
4			
5	23	RECORDER'S TRANSCRIPT OF PROCEEDINGS RE: EVIDENTIARY HEARING DEFENDANT'S MOTION FOR NEW TRIAL (12/30/2015)	3290-3349
6			
7	7	REPORTER'S TRANSCRIPT OF BINDOVER (FILED 08/08/2013)	787-815
8			
9	1	REPORTER'S TRANSCRIPT OF EXCERPT OF PROCEEDINGS	22-31
10	1	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING	32-79
11	2	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING JUNE 20, 2013	80-93
12	3	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING APRIL 29, 2013	108-366
13			
14	4	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING MAY 7, 2013	367-542
15	5	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING JUNE 13, 2013 (FILED 07/31/2013)	543-653
16			
17	6	REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING JUNE 11, 2013 (FILED 07/31/2013)	654-786
18			
19	2	SECOND AMENDED CRIMINAL COMPLAINT (FILED 07/19/2013)	94-107
20			
21	8	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR A NEW TRIAL (FILED 06/13/2014)	954-967
22			
23	8	VERDICT (FILED 04/15/2014)	936-946
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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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