

1 Police Department in December of 2011 she's actually pregnant,
2 so she clearly has had sex at that point; right? She's
3 pregnant. What about --

4 MS. LUZAICH: Objection.

5 MS. ALLEN: What? You brought that up.

6 MS. LUZAICH: Can we approach?

7 THE COURT: Sure.

8 (Bench conference)

9 MS. LUZAICH: I actually did not bring that up, and
10 it was the 2012 statement that she was pregnant, not 2011.

11 MS. ALLEN: Okay. I'll correct it. That's fine.

12 THE COURT: Okay.

13 MS. ALLEN: That's fine.

14 THE COURT: Thank you.

15 (End of bench conference)

16 MS. LUZAICH: So objection. That misstates the
17 evidence.

18 THE COURT: Sustained. And Ms. Allen indicated that
19 she was going to correct it.

20 MS. ALLEN: Sorry, Your Honor.

21 THE COURT: It's okay.

22 MS. ALLEN: Okay. So she's -- well, I apologize.
23 She's pregnant in the 2012 interview with Metro. So she's
24 clearly had sex at that point. But let's just say for
25 argument's sake that none of them knew what sex was

1 personally; right? They personally had no knowledge of it.
2 How hard is it to get that on TV? How hard is it to get that
3 on the Internet? How hard is it to get that in videos, like
4 MTV videos? We had a whole long discussion in voir dire about
5 that. Sex is pretty accessible. And even as accessible as it
6 is the descriptions are still, he stuck it in me. That's the
7 best -- really, that's the best you get. That is the best
8 description that you get, he stuck it in me.

9 The State mentioned the Counts 30 and 32, which talk
10 about anal sex. And you remember with Victoria. And if you
11 remember, she didn't testify to that on direct. I brought
12 that out on cross. And the reason I brought that out on cross
13 is very simple. If you are sodomized against your will, I
14 suspect that's something you would remember. I suspect that
15 if you -- that happened to you on two occasions -- even on one
16 occasion, you would be forthcoming if you were in court and
17 discussing dildos, two-sided dildos and vibrators and all of
18 the other things that go along with it. I suspect that's
19 something that would be forthcoming to you, that you wouldn't
20 have any problem talking about. She didn't remember that.
21 She didn't remember that detail. It's very difficult to --
22 when you do make something up and you make it -- you make it
23 elaborate -- when you make up an elaborate story it's very
24 hard to remember all the details of your elaborate story. If
25 you just said, the light was green and the car went through

1 it, it's not hard to remember those facts. Those are simple
2 facts. But if you make up that the light was green and the
3 car went through it and there was a bird sitting over here in
4 the tree and it was green and it was 5:00 o'clock and you give
5 all these details, months later it's going to be pretty hard
6 to recall those details. Years later it's going to be hard to
7 recall those details. The fact that she couldn't recall that
8 she'd been sodomized, that's a detail I suspect she would have
9 remembered. That's a detail I suspect she would have
10 testified to had it actually happened.

11 Detective Aguiar tells you he didn't have probable
12 cause to arrest Fred. He doesn't do anything with the case.
13 And not because he's incompetent. He tells Detective Madsen,
14 there's a consent issue here, I have -- essentially there's
15 two people saying there was consent and one saying there
16 wasn't, I can't really do anything about that. So it's not
17 until Taharah enters the picture that anything happens; right?
18 It's not until Taharah says something that anything happens.
19 And then, you know, Metro responds, we see Dr. Mehta, Sholeh
20 Nourbakhsh shows up. I mean there's just this massive
21 response. And I'd like to go through some of the things that
22 are of significance with regard to some of those witnesses.

23 Dr. Mehta told you that probable abuse -- I hope I'm
24 saying this right -- probable abuse with Taharah was
25 essentially because Taharah was able to vocalize it, okay. So

1 I asked her questions like, so if a person you're examining
2 can't vocalize or they can't articulate, can't speak, is it
3 still probable abuse; well, it depends, you know, on the
4 circumstance, like if there's a video then obviously that's
5 different, but, no, if they can't articulate then, no, I don't
6 check that. The difference in Dr. Mehta's report between no
7 abuse and probable or possible abuse is essentially just
8 someone saying it happened. She said that to you. So all you
9 have to do is say it happened and now it becomes there's
10 abuse. That's essentially what she said.

11 Detective Madsen pretty much told you the same
12 thing, didn't he? He said, I did my own investigation and
13 interviewed people, right, I interviewed the Dukes and I got
14 Detective Aguiar's recordings and his transcriptions and I
15 read those and I didn't even have Dr. Mehta's final report and
16 I arrested Fred. That's what he told you. The statement of
17 Victoria and the statement of Taharah and that was enough. He
18 said they didn't have time to canvass the people in the house,
19 talk to Sha'karia, Marcus. They didn't have time to go to the
20 school even though he told you that disclosure tends to happen
21 at a school because school counselors and teachers are really
22 the closest with the children. If you think about it, kids
23 spend the majority of their time at school. That age, they
24 spend more time with counselors and teachers than they do with
25 their own parents. And he said that's a great -- that's a

1 treasure trove of -- just going to use that word, but it's a
2 treasure trove of disclosure, because they feel close to those
3 people. He didn't talk to any of those people. And in fact
4 when the girls testified that they did tell House and Bywaters
5 and Cooper, no one ever talked to them, no one ever spoke to
6 them. Cooper told you when he talked to Miss Rose that that
7 was the first time he'd ever spoken to her. They didn't -- no
8 one talked to them.

9 John testified -- my client's brother testified that
10 he picked the kids up and that he had tried to sort of work
11 with Victoria a little bit. Remember he said, I brought her
12 over. And he's got some -- first to admit he's got some
13 memory issues. He's got some -- he had a very bad accident, I
14 think you heard. Overall seemed sincere that he brought
15 Victoria over, he was trying to help her. He was trying to
16 help all the kids. He would give them money for As, \$7, I
17 think for As. Taquanda got the most, she worked the hardest.
18 And come to find out that Victoria's stealing from him. She's
19 taking his kids' school supplies, his money from his drawer
20 and then whining about it. And when he confronts her she
21 cries. But remember what he said. The crying wasn't real,
22 like it was crying with no emotion.

23 Do you remember when she broke down on the witness
24 stand on the State's question about the relationship she had
25 with her mother, she couldn't bear to touch her anymore?

1 Remember those questions that were asked? And she broke down.
2 You remember the next day, the day after that I was very
3 careful to ask Taharah and Taquanda when they left if she
4 hugged her mom. Do you remember that? She walked out the
5 doors and she gave her mom a big hug. Her little sisters
6 talked about that.

7 Then we had the investigator Harrison Mayo get on
8 the stand, and he talked about interviewing Dr. Gondy. So Dr.
9 Gondy sat up here and said, oh, I put possible sexual abuse --
10 I think it had something to do with the HPV -- and talked
11 about some guy being there. And then all of a sudden says
12 something about having braids in his hair. I asked her two or
13 three times, are you sure that's what you said. So you
14 remember what Mr. Mayo said? No, she didn't describe that,
15 she described a really dark-skinned guy, short hair, immature,
16 wore glasses the whole time. She also said that she couldn't
17 remember why she put possible sexual abuse. And she seemed
18 confused. Her notes weren't good, she didn't remember. So
19 how much -- I mean, how much credence do you give Dr. Gondy in
20 that case? I mean, she comes to court, she says one thing.
21 She clearly said something else out of court. This is a woman
22 who couldn't remember why she put possible sexual abuse on her
23 own medical forms. She was dealing with a kid. And I know
24 that, you know, the State said they took her to an OB-GYN.
25 Why would kids ever subject themselves to, you know, that kind

1 of intimate exams, why did you ever submit yourself to that
2 when you're a kid, why did you ever say someone touched you
3 and then you had to go through all this? I don't Taharah,
4 Taquanda, I don't think any of these kids realized any of this
5 would happen. I don't think they thought, oh, I'm going to
6 have to go in and have an exam like a big girl. And I don't
7 think that was ever part of the planning. You don't think
8 about the consequences sometimes when you're a kid. Remember,
9 you all agreed with that concept when we talked in jury
10 selection.

11 So what is -- well, so you have the daunting task of
12 deciding whether or not the Dukes were credible. And that is
13 pretty much the crux of the case; right? You either believe
14 them or you don't, period. It's all or nothing; right? You
15 either believe that all of these things happened or they just
16 didn't happen, they did not happen the way -- they didn't
17 happen at all. And that's pretty much where you are.

18 You have reasonable doubt. This is why you have
19 reasonable doubt. You have Victoria, who gets on the stand
20 and tells you about these daily beatings and the horrible
21 physical abuse everybody is going through; right? Horrible.
22 No one agrees with her. You have her letter. You guys get
23 the letter, it'll go back with you. And she says that, he
24 forced me to write the letter, he actually -- like I was --
25 you know, I think maybe even she conceded he may have beat her

1 to write it. I can't remember that. But, you know, she talks
2 about letting Miss Ann and Fred and -- forced me to write
3 that. And I asked her if he forced her to make the heart with
4 the little things coming out of it. There's some detail in
5 this letter. Do you force someone to do that, or is that
6 something someone does? And it kind of goes along with what
7 John said about Victoria said this was the best she'd ever had
8 it. When you think about what she was living in Louisiana I'd
9 submit to you that it was the best she'd ever had. She
10 finally a decent roof over her head, consistent meals, I'm
11 sure, school. She actually had friends.

12 So she talks about the beatings daily, she talks
13 about telling her teachers, which we know is not true.
14 There's no way she told those teachers. They came in here and
15 told you that. They have no motivation to lie, they have no
16 dog in this fight.

17 You have Tina, who made Voluntary Statement Number 1
18 and Voluntary Statement Number 2. Number 1 is Henderson,
19 Number 2 is Metro. What changed between those two statements?
20 Fred. She knew Fred was done with her at that point, they
21 were done, he was not coming back, he was not dealing with
22 Victoria ever again.

23 You have the common-sense, real life experience of
24 knowing that the description that Taharah gave of sex in this
25 case is just not accurate. Understand how hard it is for me

1 to stand up here and say that. But just putting it in does
2 not make sense. It just doesn't. That's not real life.
3 That's a movie. That's a video. That's her sister telling
4 her. That's not real life. And not knowing what Fred's
5 body's doing because it's dark? No. That's not realistic at
6 all.

7 This isn't a case of -- well, let me start off with
8 this. There's a lot of counts in this case, and I know there
9 were gasps and horrified looks when all the charges were read
10 initially. There's a lot of them. And to say it's all or
11 nothing, that's a lot. But there's a standard here, and the
12 standard is the State having to prove to you beyond a
13 reasonable doubt that Fred did this. It's not, well, I kinda
14 felt like it might have happened or, you know, because there's
15 so many charges we feel like something must have happened.
16 That's not -- that's not a standard. That's not where we are.
17 That's not what you can -- you cannot do that. Your standard
18 is reasonable doubt, do you have a reasonable doubt that these
19 events took place, do you have a reasonable doubt as to the
20 credibility of the witnesses the State sent you.

21 Look at the exhibits. I ask you to look at the
22 exhibits, the letters, pictures of the laundry room. You
23 couldn't really see them when they were up on the thing.
24 You'll get a chance to look at all these pictures. The school
25 records. These are all defense exhibits. We went out and got

1 these. Mr. Mayo took the pictures, he did the diagram,
2 subpoenaed school records, got the letters. These are all
3 defense exhibits; right? We wanted you guys to see this. We
4 wanted you to see Cooper, we wanted you to see Bywaters, we
5 wanted you to see House. Because in the end is it reasonable
6 that all of those people are lying, Cooper, Bywaters, House,
7 or is it reasonable that the Dukes were lying?

8 At the end of the day it's all or nothing. At the
9 end of the day credibility is an issue. And you're going to
10 go back to credibility. That jury instruction, you're going
11 to be sick of it, I expect, by the end of all of the
12 deliberations. That is the instruction that you're going to
13 go back to, is there any credibility of any of those
14 witnesses. I submit to you there's not. Mr. Harris is not
15 guilty, and I ask you to go back there and find him not
16 guilty.

17 THE COURT: Thank you very much.

18 The State may begin their rebuttal.

19 STATE'S REBUTTAL

20 MS. LUZAICH: Victims are victims for a reason. And
21 having met the Duke family, it is very easy to tell why each
22 and every one of those Duke family members are victims here
23 today and in 2012 and in 2011 and in 2010 and in 2009 and in
24 2008 and in 2007 and in 2005. Ms. Allen just talked to you a
25 lot about credibility and the fact that why would the teachers

1 and whatnot make it up versus why would the Dukes make it up.
2 I will tell you exactly why the teachers might come in here
3 and say, no, I never heard that. Because the Dukes fell
4 through the cracks. Look at those grades for those kids. Ms.
5 Bywaters, Coach Cooper, they talked to you about how they were
6 special education teachers. And it's their job to get these
7 kids who have special needs ready for the world and to make
8 sure their academic needs are met. And what happened? They
9 all failed. All -- well, Victoria and Shabazz and Mahlica
10 failed all their classes, yet were permitted to graduate. So
11 clearly the Clark County School District has failed those kids
12 in that regard. But remember what Ms. House said today; if I
13 knew about it and I didn't report it I could lose my license,
14 I could get prosecuted. Coach Coop, as well, and Ms.
15 Bywaters, as well. If they knew about it and didn't do
16 anything about it, they could lose their license and get
17 prosecuted. So the fact that they didn't come in here and
18 say, oh, yeah, these kids told me that, doesn't mean they
19 didn't actually tell them that.

20 But also think about the kids and the academic
21 acuity, the lack of cognition, whatever you want to call it.
22 And when they say, I told so-and-so what happened, what did
23 they actually tell them? Did they give them detail, or did
24 they say something fairly general that they thought was clear
25 but the teacher did not? But, either way, victims are victims

1 for a reason, and it's very easy to see how that man could
2 have taken advantage of all of them and in fact did.

3 Ms. Allen tells you that it's all or nothing. That
4 is absolutely untrue, as the jury instructions specifically
5 tell you. You must look at each and every count separately,
6 and you must look at each and every victim separately. You
7 can find guilty of one count and not guilty of forty-five, you
8 can find guilty of twenty-two and not guilty of twenty-three.
9 You can find anything. It is absolutely, positively not all
10 or nothing.

11 First let me point out to you, very important,
12 Instruction Number 35. I told you at the very beginning of
13 this case that you were going to hate Tina Duke. I expect
14 that you do. But Instruction Number 35 tells you that you are
15 here to determine only whether or not the State of Nevada has
16 met the burden of proof regarding that man, the defendant.
17 You are not called upon to return a verdict as to any other
18 person, the instruction tells you. So if the evidence in this
19 case convinces you that the defendant did what he's charged
20 with, you should find him guilty even if you believe somebody
21 else is also guilty. Hate Tina, if you want. But today is
22 not your day to decide whether or not Tina is guilty of
23 anything.

24 Ms. Allen talked to you about the fact that Dr.
25 Gondy said, possible sexual abuse, but doesn't know why.

1 Think back a little more to when she was on the stand and she
2 actually told you that it was possible sexual abuse one month
3 before, she told you that the guardian who had brought Taharah
4 in told her that. And why is that important? Because on June
5 27th of 2012, when Miss Ann took Taharah to Dr. Gondy, it was
6 a month after Taharah and Taquanda told her that Fred was
7 molesting Taharah. At the end of May, remember, Taquanda told
8 you that's when we told Miss Ann, and it was one month later.
9 So in the reports it specifically said, possible sexual abuse
10 suspected one month prior. That's why she said it, because
11 the guardian told her that. And why would she also suspect
12 sexual abuse? Well, because she was positive -- a 12-year-old
13 girl is positive for HPV. How do you get HPV? You get it by
14 having sex. That's the only way to get it. Dr. Mehta told
15 you that.

16 Now, the defense says, well, you didn't hear
17 anything about Tina or Victoria or Lealer having HPV. Well,
18 there's no evidence whatsoever that they were ever tested for
19 it specifically. Remember, Dr. Mehta also told you the only
20 way that you can find out if somebody has HPV is to do that
21 specific vaginal pap smear kind of test. There's no evidence
22 that Tina or Victoria or Lealer had that test. That's why you
23 didn't hear whether or not they have HPV. Do they? Who
24 knows?

25 The defense would also have you believe that the

1 girls want to go back to Mom and that's why all of this came
2 about, Taharah and Taquanda, that they want to go back to Mom
3 and that's why all of this came about. Well, don't you
4 remember it was Ms. Allen who asked Bobbie Tibbs way back
5 when, didn't the girls tell you that they don't want to go
6 back to Mom, they love Mom but they don't want to live with
7 her. So their -- the defense theory out the door.

8 Ms. Allen told you that the only indicia that the
9 sexual abuse that Victoria told you about from 2005 was
10 related in 2005 came from Tina. That is absolutely untrue.
11 The indicia that it occurred in 2005 was related to you by
12 first Victoria -- well, first Tina, because she testified
13 first. So it was related to you by Tina. It was also related
14 to you by Victoria. But it was also related to you by
15 Mahlica, because Mahlica told you that Victoria told her back
16 in 2005 before they went to Utah that Fred had touched her.
17 Mahlica also told the detectives in Henderson in December of
18 2011 when they interviewed her. Mahlica told the detectives
19 in December 2011 that Vicky told her before they went to Utah
20 that Fred had been touching her.

21 But you also heard it in Fred's statement. The
22 defendant himself told you in his statement to the detectives
23 that in 2005 Victoria accused him of touching her. So there
24 is an abundant amount of other indicia that that information
25 was related in 2005.

1 Now, why do you think Ann and the defendant didn't
2 want Victoria to live in the house when they came back in
3 2007? Because she had accused him of touching her in 2005.
4 That's why Victoria was sent away from the Blankenship house
5 at first. And she was alienated. She wasn't alienated
6 completely, but she was not allowed to live with her siblings.
7 Now, did her siblings go visit her? Eventually. Because,
8 remember, none of them remembered that first they lived at --
9 sorry. None of the siblings who lived at Blankenship in 2007
10 remembered that Mom and Vicky had lived at Ms. Dorothy's first
11 and then at an efficiency. They all remembered going to see
12 them at Walnut. But, remember, they came back in early August
13 of 2007, first they go to Miss Dorothy's for about a month,
14 they go to the efficiency for about a month. It's not until
15 October of 2007 that they go to the Walnut apartment. So when
16 the kids come back it's two months before they see Mom or
17 Victoria again. So Victoria is alienated for those two
18 months, during which time Fred takes her up to the mountain
19 and has sex with her while Mom is there.

20 And, you know, the defense say, oh, you know, that
21 never happened, you can't believe anything, you can't believe
22 Tina. I don't disagree with that. Should you believe
23 everything Tina says? Absolutely not. What you should
24 believe is things that are corroborated by other sources that
25 Tina says. But what person comes in here and tells you that

1 they engaged in sex acts with their biological child who is at
2 the time 15 years old unless it's true? Now, is Tina lying
3 about some stuff? Possibly, probably, whatever. But you
4 don't lie about that. You only tell 14, 13 strangers that you
5 have engaged in sex acts with your 15-year-old biological
6 child if that's true. That's how we know that that occurred.

7 You know, if anything, Victoria should be happy when
8 Mom is with Fred, because then Victoria gets to be with her
9 siblings and take care of her siblings, Mom is with Fred, and
10 nobody's being beaten. So if the defense theory makes any
11 sense, Victoria's not going to try and get him in trouble.
12 Victoria's going to keep her mouth shut and let Mom be with
13 him. So the defense's theory just makes no sense whatsoever.

14 You know, Ms. Allen also said that after the
15 Henderson interviews in December of 2011 Tina realizes that
16 she's done with Fred, she never is going to see him again.
17 Well, that's not true. We heard from everybody that after
18 December of 2011, while the rest of the family is living in
19 the Henderson apartments, both Fred and Ann bring the kids to
20 see Tina and the family in Henderson. So we never heard that,
21 oh, my God, six months went by and we didn't see the whole
22 family. They saw them regularly still. So Tina wasn't done
23 with Fred, Fred wasn't done with Tina; they continued to see
24 each other for the next six months up until the time that
25 these crimes got reported in September of 2012.

1 When Ms. Allen was talking about Detective Madsen
2 [inaudible] -- when she was talking to Detective Madsen and
3 asked him, so are you saying that Fred gave Taharah HPV, he
4 said, no, I'm not saying that. Think about it. He's a
5 detective, he's not a doctor. He's not going to jump out on a
6 limb and say Fred gave Taharah HPV. Was he thinking it? Of
7 course he was. Just like all of you are. But he's not going
8 to go out on a limb and say it, because he's not a doctor.
9 That's why he said, no, that's not what I'm saying.

10 And then when she talked about Bobbie Tibbs and the
11 investigation in December 2011, January of 2012, when the kids
12 asked Bobbie why is -- or when is Fred coming back, okay, now
13 there are two definitely different ways that you can look at
14 that. Because think about it. In December of 2011 the kids
15 make no disclosure to the detectives, they're woken up at 3:00
16 o'clock in the morning, they -- they're tired, they're talking
17 to male detectives, especially for Taharah. But think about
18 it. Fred's right outside the room, right outside the room.
19 And these kids don't know is Fred going to remain, are we
20 going to have to live with him, and, oh, my God, he's beat us
21 before, if we tell what he's been doing, Taharah specifically,
22 is he going to beat me again, is he going to have sex with me
23 again. They don't know if police could possibly take them out
24 of the home. They probably think that, well, they're going to
25 go to sleep and wake up and Fred's still going to be there.

1 But when Bobbie comes to the house and talks to them a few
2 days later, Bobbie interviews them again, they don't disclose
3 anything to Bobbie. Where's Fred? Right outside the room.
4 He's still right there. Then in January the defendant's moved
5 out of the house, and they ask the question, when is Fred
6 coming back. Now, Ms. Allen would have you think that they
7 asked the question with excitement, when is Fred coming back,
8 we can't wait to see him. That's not what the testimony was.
9 The testimony was just that the kids asked, when is Fred
10 coming back.

11 MS. ALLEN: Judge, objection. That misstates
12 testimony. I specifically asked Ms. Tibbs if the girls wanted
13 Fred to come home, and she indicated yes.

14 THE COURT: Okay. And again it would be the jury
15 that determines the ultimate facts.

16 MS. LUZAICH: And, you know, unless they -- there
17 was no testimony that they said, I can't wait for Fred to come
18 home. It was, when is Fred coming home. Are they trying to
19 prepare themselves for the beatings to come back? Because
20 while he's out of the house they're not seeing him, there's no
21 beatings, there's no sex acts. Are they trying to prepare
22 themselves for that to occur again?

23 What you have to do is look at this from the eyes of
24 the people who described things to you. Today, this week,
25 last week when Taharah was here she was 14. Clearly she's

1 cognitively delayed, she is not quite as up to speed as other
2 14-year-olds. But think about way back when this was
3 happening when she was 12. She was 12. She was in sixth
4 grade when these things are happening. So the fact that she
5 says, he stuck it in me, does that mean it didn't happen
6 because she give more description when she was 12 or when she
7 was here talking to you? Remember how we talked about in jury
8 selection how embarrassing is it for anyone to have to come in
9 here to a roomful of strangers and talk about intimate sexual
10 details. Very embarrassing, okay. I've been doing this
11 forever. I can get these words out like there's no tomorrow.
12 But for a 14-year-old to walk into this courtroom and have to
13 sit here and explain to you -- and remember, with him sitting
14 right there -- explain these things to you it's embarrassing.
15 So the fact that all she really said was, he stuck it in me,
16 or whatever, it doesn't mean it didn't occur. It meant she
17 was embarrassed. She is, as we said, slow or cognitively
18 delayed. You have to look at everything from the eyes of the
19 person telling you. And when she was talking to the
20 detectives in December of 2011 she had barely turned 12.
21 Barely.

22 Sha'karia. Let's talk about Sha'karia just a
23 second. What was the first thing Sha'karia said? That's my
24 pops, that's my pops. I expect everybody noticed that when
25 Sha'karia spoke to Ms. Allen she was all happy and perky and

1 very helpful with her information, just like she was when the
2 investigator Mr. Mayo went to the house. She was very
3 helpful. And then I asked her questions. I suggest to you I
4 was not nasty to her, I did not get in her face in any way,
5 shape, or form, but you all saw how she responded to me. And
6 when you think about it, the evidence that you heard, the bad
7 things that you heard about Victoria and Taquanda, you heard
8 them from Sha'karia. Sha'karia's the one who told either the
9 defendant or her mom that Victoria took the juice from the
10 refrigerator, and Victoria got whupped because she took the
11 juice from the refrigerator. Did Sha'karia take the juice and
12 say that Victoria did it? Did nobody take the juice and did
13 Sha'karia make it up? When Ms. Allen asked Sha'karia, so did
14 Taquanda do something that she got in trouble for; yes, she
15 stole my pink vibrator. She was pretty excited to tell you
16 that. But think about it. She said that she thought that
17 Taquanda had taken the vibrator and she sent the girls up to
18 the candy lady so she could search through Taquanda's drawer
19 and she found the pink vibrator in Taquanda's drawer. Did
20 Sha'karia put the pink vibrator in Taquanda's drawer to get
21 her in trouble? What was the first thing she said to you
22 about the Duke family; I was jealous of all them because I
23 thought my mom was paying them more attention than she was me.
24 And when I asked her about that on cross-examination she
25 refused to admit that she was jealous. So who is the one

1 who's stirring the pot here? Sha'karia clearly doesn't want
2 her pops to get in trouble. Sha'karia clearly does want the
3 Duke kids to get in trouble. Look at everything you've heard
4 from the eyes of the person telling you.

5 And the defendant's statement. You heard from his
6 own mouth what kind of person he is. He told you through his
7 interview with Detective Aguiar that he is the kind of person
8 that will take sex any way he can, and he does. Remember,
9 during the very, very beginning of the interview he talks
10 about -- the detective, one of the very first questions, "Have
11 you ever had sex with Victoria?" "No." The next thing he
12 talks about is, "Well, five or six years ago when I first met
13 them she made an allegation that something happened." When I
14 first met them. So that would be January of 2005, just like
15 Victoria said.

16 Detective Aguiar asks him again, "Did you ever have
17 sex with Victoria when you were there two weeks ago?" This
18 was in December of 2011. And he says, "No." But he says, "I
19 have sex with her mother like every time I go there." So for
20 the third time he denies. Detective Aguiar says, "But it was
21 the mom you had sex with, not Victoria?" "No." So three
22 denials of sex with Victoria. He also talks about the kids,
23 the defendant. And he says, "If you see the kids, then you
24 know they're not really like 100 percent." Victims are
25 victims for a reason. And he talks about himself and Tina and

1 Lealer, and he talks about, "The three of us, lovers at one
2 time. We all three lived together here, me the mom, and her."
3 "what's her name?" "Her name is Lealer."

4 He talks in his interview about the three-warning
5 system. "I tell them three times, and the third time I make
6 the decision if it's warranted to spank your butt. But it's
7 got to be serious," he says. Well, Victoria got whapped for
8 drinking juice.

9 Detective Aguiar asks about -- while he's talking
10 about the discipline Aguiar asks about Mahlica. And he says,
11 "Mahlica. Did you ever hold her up by her neck against a
12 wall?" So clearly Mahlica had told Detective Aguiar that the
13 defendant had held her up against the wall by her neck just
14 like she told you and just like Taquanda told you.

15 He does corroborate a lot of the things that the
16 kids said, that he tells the detective his brother just
17 happened to be passing through Louisiana, he swooped in there
18 and picked up the kids, you know, because big, beneficial
19 defendant, he's going to help the family. But then he says,
20 "And I put her and her kids in an apartment for six months."
21 Well, that's not true. Everyone said that they lived on Trish
22 Lane. Even Sha'karia said that they lived on Trish Lane.

23 He talks about -- Detective Aguiar talks to the
24 defendant about that time in 2005, asking him, "Did you ever
25 watch the kids?" At first he says, "No, no." He goes, "Well,

1 I mean, it would --" the detective says, "I mean, would it
2 ever be just you and kids while she, Tina, was out looking for
3 work or something?" And then the defendant says, "Oh, wait.
4 I think I had to watch them one Saturday when she first got a
5 job." So he admits that he had the kids in his apartment
6 alone one Saturday while Tina was out. But he tells him, "I
7 was a bachelor, I wasn't going to let no woman just come in
8 and change my routine with no five kids. So I was just
9 helping her out, just getting a piece of ass on the side."

10 And Detective Aguiar asked him, "And when you
11 watched them when Victoria was 11 years old did anything
12 happen then?" He says, "No. That's the time I was telling
13 you she tried to accuse me of something back when she was 11."
14 So we know there really was an accusation back then that
15 Victoria got yelled at, she got spoken to, she got treated
16 differently. And this is what the kids see. Taharah,
17 Taquanda, Mahlica, they see that when Victoria told that she
18 had been touched this is what happened to Victoria, she wasn't
19 believed, she was treated badly, and she was alienated. So
20 why on earth would Taharah tell anyone that she was being
21 touched?

22 He describes about how meeting Tina -- that he met
23 her in Louisiana. "I say, you want to come out here and --"
24 oh, sorry, Utah, when they go up to Utah, "You want to come
25 out here and hang out for the weekend so you can come, just

1 hang out for the weekend. So that's what she did. She jumped
2 on the bus." But then the defendant tells the detective that
3 she was in Utah for three or four years. So clearly he's
4 trying to get a story straight and just not quite getting
5 there. But he does corroborate the fact -- he says, "The kids
6 are asleep when I get there, so we get started picking them up
7 one by one and putting them in the van." So when you heard
8 from the kids that he kind of snuck up there in the middle of
9 night and snuck us into the car and took us away, you kind of
10 wondered about that, didn't you, at first. Well, even the
11 defendant admits that that's how it happened.

12 Remember when Tina told you about how while she was
13 at Bally's he had beaten her and while she was at Bally's the
14 supervisor said something, encouraged her to call the police?
15 Well, we heard from Officer Loving about that. And, you know,
16 Officer Loving corroborated most of what Tina said. The
17 defense would have you believe that, oh, it couldn't possibly
18 have happened because Officer Loving didn't see any marks or
19 bruises on her. But, remember, October 24th was when it was
20 reported and Officer Loving went to Bally's, but in the report
21 itself it said that the battery had occurred on the 20th,
22 three and a half days earlier. Well, of course you're not
23 going to expect to see any red marks or anything like that
24 three days later. And Officer Loving said that, what we told
25 her and we tell many domestic violence victims is if you have

1 to go back to the house go around the corner and call us so
2 that we can be there when you get home. Which is exactly what
3 Tina said happened. And in the defendant's statement when
4 he's talking about that he says, "Instead of just calling us
5 and saying she wants her stuff, she brought the police here."
6 So the defendant is even corroborating some of what Tina is
7 saying.

8 He talks about how Taharah and Taquanda stayed at
9 the house when Mahlica and Shabazz and Victoria and Tina moved
10 out, talked about the fact that they stayed, that Lealer has
11 guardianship, not the defendant. Lealer has guardianship.
12 And one more time the detective asked, "When you had sex with
13 Tina a couple weeks ago was Victoria in the room?" For the
14 sixth time the defendant lied and said, "No." He asked, "Did
15 Victoria ever walk in on you and her mom doing anything with
16 you, her mom giving oral sex to you or anything like that?"
17 He says, "No." Now, clearly when Tina is talking about the
18 things that occurred between herself and Victoria and the
19 defendant is she minimizing? Absolutely. Absolutely. But
20 the fact that she was talking about it demonstrates that it
21 did occur. And yet one more time the detective says to the
22 defendant, "If you've ever had consensual sex with Victoria, I
23 don't care about that." The defendant says, "No, no, no."
24 "Have you guys ever had consensual sex?" "No. The worst
25 thing we ever did was hug and kiss each other. That's it. On

1 the cheek." Seven denials to the detective. And then he went
2 on to say further, "Me and her, Tina, go off to ourselves, we
3 lock the door, we make sure no one else is bothering us."

4 And then you remember hearing about the detective
5 talking about DNA. He was like, oh, you know, towel, all the
6 time gives me this dirty red towel until the detective starts
7 talking about, no, we're going to look for DNA in Victoria's
8 vagina. Ding, ding, ding, ding, ding, the light goes off in
9 the defendant's head and he realizes, wow, now I'm busted, now
10 I have to come clean. And what did you hear him say? "Let's
11 do this, then," he says. "I'll tell you the truth, because
12 there's no sense of me lying about what happened between me,
13 her mom, and her. So, yeah, we all had consensual sex. We
14 had consensual sex a week ago, Mom, Vicky, and we all set in
15 the room and got high, smoked a joint, we took our clothes
16 off, we all had sex. That's the last time I was over there.
17 It had to be at least six, seven days ago or -- well, ain't it
18 been longer than two weeks that I came over."

19 So now that he knows that he can't lie anymore, now
20 that there's potentially high physical evidence, now he's got
21 to admit. Well, Ms. Allen makes a big deal, well, you saw no
22 DNA report, something about a towel, the towel was collected.
23 Well, who cares? I mean, who cares what's on the towel? He
24 had sex with Tina all the time. We expect his DNA to be on
25 the towel. That would have nothing to do with him having sex

1 with Victoria. But when he is confronted with there being
2 potentially actual proof of him having sex with Victoria,
3 that's when he admits it, although, oh, wait, only when she
4 was of age, I would never do it when she was young. So the
5 detective asks, "Did you have sex with Vicky that night?" "We
6 had sex. All three of us had sex." "How many other times
7 have you guys had sex," he says, the detective. "That's the
8 second time." "Well, what's the first time?" So seven times
9 he says, no sex whatsoever. Then there's one sex. "Oh, wait.
10 No, there's a second time. The first time we have sex is when
11 they first moved into that place in Henderson." "And you had
12 sex with Vicky then, too," the detective asks. "Oral." "They
13 both gave you oral sex?" "Yes. Oral sex together." And what
14 does he say, "I'm getting two for the price of one."

15 You know, interestingly, the defendant says to the
16 detective something along the lines of, well, I would never go
17 there unless it was just Vicky and mom together, you know, I
18 could never go see Vicky by herself because somebody would
19 know, there's always somebody there. Well, what did Mahlica
20 tell you? Mahlica told you that while they were at the St.
21 Andrews apartments there were times that the defendant would
22 come and go see Vicky by herself. And Mahlica told you that
23 there were times at the Center Street, the Henderson
24 apartments that the defendant would go and see Victoria by
25 herself. He said -- Mahlica said there were times that the

1 defendant would come to see Vicky and Mom in St. Andrews and
2 there were times the defendant would come and see Vicky and
3 Mom at Center Street. But he said, oh, I could never, because
4 somebody would have seen. Well, somebody did see. She
5 described it for you.

6 The detective asks the defendant, "How do you think
7 that makes you look going over to sleep with the mom and the
8 daughter?" And what does the defendant say? He says, "Well,
9 shit. It makes me look like I got both of them where they'll
10 do whatever I want." That sums the defendant up entirely. I
11 got them where they'll do whatever I want. He knows that
12 because that's what he had had since he brought them back in
13 August of 2007. They did whatever he wanted, because that was
14 their way of life. They didn't know anything different.
15 Victoria didn't want to, she just didn't know anything
16 different. Now, Tina may have wanted to many times, half the
17 time, most of the time. We heard about one time that she
18 didn't want to. But he had them where they would both do it
19 whenever he wanted. He also corroborates the story -- he
20 talks about the two-headed dildo.

21 And then, interestingly, at the very end of the
22 interview he's talking about, oh, I can't understand why she
23 would hate me, or something like that. The detective asks
24 about Victoria. "If she hates you so much, why is she having
25 sex with you?" And he doesn't answer. He doesn't answer

1 because he can't. Because she's having sex with him because
2 she has no choice.

3 You heard from all of the Dukes. Do you really
4 think that they could have concocted all of this, those people
5 that you heard on the stand? There is no way. Ladies and
6 gentlemen, the State of Nevada cannot hold the defendant
7 accountable for his actions. Even the Court cannot hold the
8 defendant accountable for his actions. Only you can. The
9 evidence shows that the defendant is guilty of these charges,
10 so please find him guilty. Thank you.

11 THE COURT: Thank you very much.

12 At this time the clerk will now swear the officers
13 of the court who will take charge of the jury panel.

14 THE CLERK: Yes, Your Honor.

15 (Officers sworn)

16 THE COURT: Okay. At this time, ladies and
17 gentlemen --

18 Mr. Powell, you have been selected to be our
19 alternate juror, so I'm not going to require you to stay at
20 the courthouse. I'm going to ask you to see the clerk before
21 you leave, provide her with all of your things, your badge,
22 your notebook and all your notes and your phone number. And
23 I'm also going to ask that you don't leave the jurisdiction
24 until we give you notice that we've reached a verdict or that
25 we need you back. Do you understand that?

1 JUROR NUMBER 14: I understand.

2 THE COURT: Okay. And you understand you're still
3 under the same obligation not to discuss the case with anyone?

4 JUROR NUMBER 14: I understand.

5 THE COURT: Okay. Thank you very much.

6 And you are excused to deliberate upon your verdict.
7 And you can take everything with you now.

8 (Jury retired to deliberate at 3:49 p.m.)

9 THE COURT: And, Mr. Powell, if I do not see you
10 again, thank you very much for your service.

11 JUROR NUMBER 14: My pleasure. Thank you.

12 THE COURT: Thank you.

13 MS. LUZAICH: So are you going to give them the
14 option at 5:00 o'clock on whether they want to stay or go home
15 or --

16 (Court recessed at 3:51 p.m., until the following
17 Monday, April 14, 2014, when jury returned to deliberate)

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INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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DEFENDANT'S WITNESSES

Kenyon House	20	24		
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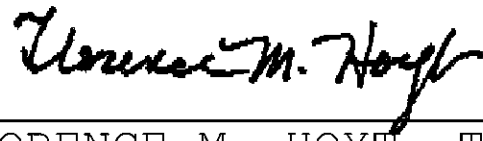
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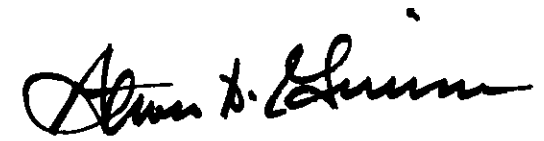
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DATE



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 12

FRIDAY, APRIL 11, 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, FRIDAY, APRIL 11, 2014, 9:52 A.M.

2 (Court was called to order)

3 (Jury is not present)

4 MS. ALLEN: Your Honor, my client is ready. I am
5 still -- unfortunately, Ms. House is not here. So let me call
6 my investigator.

7 THE COURT: That's okay.

8 MS. LUZAICH: We need to instructions and --

9 THE COURT: Yeah, we need to do -- I was going to
10 canvass him first, then go back and get the instructions and
11 do the instructions.

12 MS. ALLEN: Oh. Okay. All right.

13 THE COURT: Yeah. So don't worry about it.

14 THE MARSHAL: -- books in here; right?

15 MS. ALLEN: Yeah, they need to come in for
16 instructions, please.

17 THE COURT: But they haven't been numbered or
18 anything yet, because I don't know. So as soon as --

19 And, Ms. Luzaich, that instruction was in.

20 MS. LUZAICH: Right. It was just when Kristina
21 scanned them -- Pam said that the scanner doesn't work really
22 well -- it wasn't in the packet that she scanned. So as long
23 as it's in there.

24 THE COURT: See, remembered it specifically because
25 I'd made changes to it. Not substantive, but just --

1 Okay. The record will reflect this hearing is
2 taking place outside the presence of the jury panel. All four
3 lawyers are present. Mr. Harris is present.

4 And, Mr. Harris, you know why we're here this
5 morning; right?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You've had a chance to speak to Mr.
8 MacArthur?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Have you had an adequate opportunity to
11 discuss the issues with your attorney?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And you're ready to proceed?

14 THE COURT: Yes, ma'am.

15 THE COURT: Okay. And you understand under the
16 Constitution of the United States and the Constitution of the
17 State of Nevada that you not -- you cannot be compelled to
18 testify in this case? Do you understand that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: You may at your own request give up this
21 right and take the witness stand and testify. If you do,
22 you'll be subject to cross-examination by the Deputy District
23 Attorney, and anything that you may say, be it on direct or
24 cross-examination, will be the subject of fair comment when
25 the Deputy District Attorney speaks to the jury in her final

1 argument. Do you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. If you choose not to testify, the
4 Court will not permit the Deputy District Attorney to make any
5 comments to the jury because you have not testified. Do you
6 stated that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: If you elect not to testify, the Court
9 will instruct the jury, but only if your attorney specifically
10 requests, as follows. The law does not compel a defendant in
11 a criminal case to take the stand and testify and no
12 presumption may be raised and no inference of any kind may be
13 drawn from the failure of a defendant to testify. Do you
14 understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you have any questions about these
17 rights?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: You're further advised that if you have
20 a felony conviction and more than 10 years has not elapsed
21 from the date that you've been convicted or discharged from
22 prison, parole, or probation, whichever is later, and the
23 defense has not sought to preclude that from coming before the
24 jury and you elect to take the stand and testify, the Deputy
25 District Attorney in the presence of the jury will be

1 permitted to ask you the following. Have you been convicted
2 of a felony, what was it, when did it happen. However, no
3 details may be gone into. Do you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And you understand that whatever --
6 regardless of whatever your attorney has told you, that it is
7 your right and your right alone --

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: -- and it's your decision and your
10 decision alone?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: So it's up to you whether you want to
13 testify or not. Do you understand that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you have any questions of the Court?

16 THE DEFENDANT: No.

17 THE COURT: Have you had an opportunity to discuss
18 with your lawyer and make a decision whether you want to
19 testify or not?

20 THE DEFENDANT: Yes, I have.

21 THE COURT: Okay. What is your decision?

22 THE DEFENDANT: Not to testify.

23 THE COURT: Okay. And do you want the Carter
24 instruction?

25 MS. ALLEN: Please.

1 THE COURT: Okay. All right. I'll go back and
2 number them, and then we can settle instructions.

3 MS. ALLEN: Thank you, Your Honor. And I'm -- oh.
4 Argue instructions, right. Okay.

5 (Court recessed at 9:55 a.m., until 10:12 a.m.)

6 (Jury is not present)

7 THE COURT: Okay. Everyone has their copies?

8 MS. LUZAICH: Yes, Your Honor.

9 THE COURT: Okay. The record will reflect this
10 hearing is taking place outside the presence of the jury
11 panel.

12 Is the State familiar with Court's Proposed 1
13 through 42?

14 MS. LUZAICH: Yes.

15 THE COURT: Do you have any additional instructions
16 that you would like to propose at this time?

17 MS. LUZAICH: No. I don't have any -- I guess I can
18 just make my record. I don't have any additional
19 instructions, and I don't necessarily object to any of the
20 instructions. My only point would be Instruction Number 5,
21 the child abuse charge -- this is just for the record.

22 THE COURT: Okay.

23 MS. LUZAICH: When the Supreme Court decided Clay
24 they had indicated that the State had not defined enough
25 things from the statute. So when we did jury instructions

1 yesterday I offered a child abuse instruction that defines
2 everything in the statute. When the defense asked that things
3 be taken out I did not object to that. So this is -- the
4 Instruction Number 5 is the instruction the way the defense
5 wanted it, not the way the State offered it, just for the
6 record.

7 THE COURT: And, Ms. Allen, you agree?

8 MS. ALLEN: I would agree, Your Honor. Just to make
9 sure the record's clear, the reason being is that there are --
10 obviously there's corresponding sexual assault under 14 and 16
11 charges, and there's child abuse charges. The child abuse
12 charges are not charged in conjunction with the sexual
13 assault. All of them are charged in conjunction with
14 specifically basically hitting the children with a belt. And
15 so what I didn't want was the jury to see all of this sexual
16 abuse language and equate it to the child abuse when that's
17 not how it's charged. So, yes, I requested it be taken out;
18 she had no objection to it.

19 THE COURT: Okay. Does the State have any further
20 objections?

21 MS. LUZAICH: No.

22 THE COURT: Okay. Is the defense familiar with
23 Court's Proposed 1 through 42?

24 MS. ALLEN: Yes, Your Honor.

25 THE COURT: Any objections?

1 MS. ALLEN: No. Your Honor, and we had submitted
2 ours to the Court. I did voluntarily withdraw some of mine.
3 I would only ask that my full set be made a Court's exhibit.
4 I don't know if your secretary still has it. If not, it's
5 fine, I can re-send a copy. It's not a big deal.

6 THE COURT: Okay. Because some of them we gave.

7 MS. ALLEN: Correct. We did. Oh, no, no, no. I
8 understand that.

9 THE COURT: So I think we need to make a full record
10 of that. So --

11 MS. ALLEN: Are there ones that you did give? Okay.
12 That's fine.

13 THE COURT: I think you need to make a full record,
14 so let me go grab -- hopefully I still have it.

15 (Pause in the proceedings)

16 THE COURT: Okay. I found it. So what -- Defense
17 Proposed Jury Instructions will be marked as Court's Exhibit
18 next in line. So it'll be Exhibit 12.

19 Page 2 of the instructions, Ms. Allen, we modified
20 this instruction and we gave it.

21 MS. ALLEN: Correct.

22 THE COURT: You agree?

23 MS. ALLEN: Yes, I do.

24 THE COURT: And then page 3 you -- I just have a
25 line crossed through it, so I can't remember if you withdrew

1 it or I declined to give it.

2 MS. ALLEN: Which one was that, Your Honor?

3 THE COURT: "If you find the State has failed to
4 prove beyond a reasonable doubt that every person wilfully and
5 without authority of law...."

6 MS. ALLEN: Oh, yeah. I withdrew it, I think,
7 because there is a Mendoza instruction. And so I was okay
8 with theirs.

9 THE COURT: All right. Then page 4 was another --

10 MS. LUZAICH: Wait. No, no. I'm sorry. Can you go
11 back to page 3. It's a second degree --

12 MS. ALLEN: Oh. I apologize.

13 MS. LUZAICH: And can we go back to the State's for
14 just one second, I apologize, because it'll lead into this.

15 THE COURT: That's fine.

16 MS. LUZAICH: Also regarding the coercion, which is
17 Instruction Number 21, when I proposed the coercion
18 instruction there was a paragraph that said, "If threats are
19 used, coercion is a felony. If no --" actually, "If force or
20 violence is used, it's a felony. If no force or violence,
21 it's a misdemeanor." The defense specifically indicated that
22 they did not want any lesser instructions, so that part of it
23 was taken out. So the coercion is either going to be a guilty
24 or a not guilty.

25 Which brings me to page 3 from their instructions.

1 She withdrew -- or she had indicated that she withdrew that
2 because it's a second degree instruction and she didn't want
3 the lesser second degree kidnapping.

4 MS. ALLEN: And that's correct, Your Honor.

5 THE COURT: All right. And my recollection is that
6 you said you were not going to ask for any lesser, and you did
7 not.

8 MS. ALLEN: No. Pursuant to discussions with our
9 client, and he's indicating yes.

10 MS. LUZAICH: And I'd ask the Court to canvass him
11 on that.

12 THE COURT: Okay.

13 MS. ALLEN: Your Honor, I do, too, Your Honor.

14 THE COURT: All right. So, Mr. Harris, you
15 understand what your attorney requested?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Okay. You understand that the State
18 proposed some lesser included offenses --

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: -- including misdemeanors?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And that those instructions were
23 withdrawn and taken off of the verdict form because your
24 attorneys indicated to the Court that you did not want that.

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Is that correct?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And you had an opportunity to adequately
4 discuss that with your lawyer?

5 THE DEFENDANT: Yes, I did.

6 THE COURT: And that's part of your trial strategy?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And you understand you can't raise this
9 on appeal, that your attorneys were inadequate and they should
10 have done this, because you specifically asked them not to do?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: And you were adequately advised;
15 correct?

16 THE DEFENDANT: Yes, I was.

17 THE COURT: And you're doing this all freely and
18 voluntarily?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you have any questions about that?

21 THE DEFENDANT: None whatsoever.

22 THE COURT: Okay. Thank you.

23 Does the State have anything further before I go
24 back to Ms. Allen?

25 MS. LUZAICH: I don't think so.

1 MS. ALLEN: I do have one thing further, Your Honor.
2 With regard to your canvass I just want to make it very clear
3 that my intent initially was to propose two additional
4 misdemeanors. One was a misdemeanor battery, and the other
5 one was a gross misdemeanor, unlawful contact with a minor,
6 which is a non-sexual gross misdemeanor. And Mr. Harris also
7 indicated he didn't want those. So I just want the record to
8 be clear it wasn't just coercion, I had two other -- one
9 misdemeanor and one gross misdemeanor that I had intended at
10 least to propose, and in our discussions he indicated he
11 didn't want those, either. So I just want to be clear about
12 that.

13 THE COURT: Okay. Mr. Harris, that's correct?

14 THE DEFENDANT: That's correct.

15 THE COURT: Correct?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you have anything you want to add?

18 THE DEFENDANT: No.

19 THE COURT: Okay. Thank you.

20 MS. ALLEN: Thank you, Your Honor.

21 THE COURT: Okay. So we're back to Defense Proposed
22 Instructions page 2. That instruction was modified and given.

23 MS. ALLEN: Thank you, Your Honor.

24 THE COURT: Correct?

25 MS. ALLEN: Yes, Your Honor.

1 THE COURT: And then page 3 was withdrawn because of
2 second degree kidnapping.

3 MS. ALLEN: Correct.

4 THE COURT: Page 4 was modified and given.

5 MS. ALLEN: Correct.

6 THE COURT: Okay. Page 5 was modified, and it was
7 given.

8 MS. ALLEN: Okay. I would agree.

9 THE COURT: Page 6. I know that you proposed this,
10 and the Court indicated I was not going to give it. So I'll
11 let you make your record right now.

12 MS. ALLEN: Your Honor, it's been made a Court
13 exhibit. I submit that with I think every packet, and so the
14 Court you indicated you don't give that. Which is fine. It's
15 made a part of the record. That's why I asked for my -- that
16 to be filed so it's made part of the record.

17 THE COURT: Okay. Does the State wish to add
18 anything?

19 MS. LUZAICH: No.

20 THE COURT: Okay. I think there's a couple more
21 pages. Page 7. Again, this was one that you proposed and I
22 indicated I was not going to give. Is there anything you want
23 to add?

24 MS. ALLEN: No, Your Honor.

25 THE COURT: Okay. And page 8 was withdrawn?

1 MS. ALLEN: Correct.

2 THE COURT: And page 9 was withdrawn.

3 MS. ALLEN: Yes, Your Honor.

4 THE COURT: Okay. And so they're all marked as
5 Court's Exhibit Number 12.

6 (Pause in the proceedings)

7 THE COURT: We found -- if you can believe it, we
8 found typos on the verdict form, so I'm going to -- "assault."
9 So she's fixed it, and so I'm going to go get it and have you
10 all look at it and approve the verdict form.

11 MS. ALLEN: Thank you.

12 (Court recessed at 10:24 a.m., until 10:31 a.m.)

13 (Jury is not present)

14 THE COURT: Do you want to approach and look at the
15 verdict form now, and then both sides can okay it, and then we
16 can bring the jury panel in.

17 It was the word "assault."

18 MS. ALLEN: Huh?

19 THE COURT: It was the word "assault." It was
20 apparently misspelled numerous times. We should have caught
21 it.

22 (Pause in the proceedings)

23 THE COURT: Okay. So is the State satisfied with
24 the verdict form?

25 MS. LUZAICH: Yes, Your Honor.

1 THE COURT: The defense is satisfied with the
2 verdict form?

3 MS. ALLEN: Yes, Your Honor.

4 THE COURT: Okay. It'll be lodged with the Clerk of
5 the Court.

6 And can we bring the jury panel in.

7 MS. LUZAICH: Now, what are you going to do as far
8 as scheduling? I mean, the witness will be relatively quick.

9 MS. ALLEN: Yes. She's here.

10 MS. LUZAICH: The instructions are going to take a
11 long time to read.

12 THE COURT: I read fast, though.

13 MS. LUZAICH: No, I know. But there's still 52
14 pages -- or 52 instructions, and the information instruction
15 is 16 pages.

16 MS. ALLEN: The State should cut down on their --

17 MS. LUZAICH: Are you going to break for lunch at
18 some point?

19 THE COURT: Well, of course.

20 MS. LUZAICH: Yes. That's what we were asking. At
21 what point are you going to break for lunch?

22 MS. ALLEN: I figured -- well, we were -- I was
23 thinking after instructions and State's first close that might
24 be a good -- because you figure that's going to put us till
25 probably 1:00 o'clock.

1 THE COURT: Really?

2 MS. ALLEN: I think so with witness, instructions,
3 State's close. I think it may put us close to 1:00.

4 THE COURT: I try not to interrupt your close.

5 MS. ALLEN: I would love that.

6 MS. LUZAICH: Ms. Rhoades is closing. I'm doing
7 rebuttal. So she's guessing 45 minutes --

8 MS. RHOADES: Hopefully.

9 MS. LUZAICH: -- maybe more. Who -- there's a lot
10 of counts.

11 THE COURT: Okay. So we'll probably break after
12 that.

13 MS. ALLEN: And then the other question we had was
14 -- and I think the staff kind of answered that, but how late
15 -- how late would you keep the jury? I mean, is it -- I'm
16 just wondering. And my kids are -- my kids are okay. I just
17 wonder for the purposes of where we're going after this.

18 THE COURT: I'm going to tell you I'm hopeful for a
19 verdict today --

20 MS. ALLEN: Okay.

21 THE COURT: -- because of my other obligations.

22 MS. ALLEN: Right.

23 THE COURT: Okay? But --

24 MS. LUZAICH: I guess at 5:00 o'clock if they're --

25 THE COURT: We're on the record, so there's --

1 MS. LUZAICH: No. If they're not close at 5:00
2 o'clock, are you going to give them the option to stay or to
3 come back, or are you going to make the decision?

4 THE COURT: I'll give them the option to stay.

5 MS. ALLEN: Okay.

6 THE COURT: Sometimes they'll say, we don't want to
7 go. If they say, we don't want to go, then to me that means
8 we're close, you know, let them stay. We can stay another
9 hour or so and --

10 MS. ALLEN: Okay.

11 THE COURT: But if they say, you know, we need more
12 time, then I give them more time.

13 MS. ALLEN: It's just a question on my part. So
14 okay.

15 THE COURT: It's not going to be a --

16 MS. ALLEN: All-nighter.

17 THE COURT: There you go. You said it.

18 MS. ALLEN: I said it. Betsy said it. She said it.
19 Ms. Allen said it. Put it out there.

20 THE COURT: I'm getting too old for those.

21 (Court recessed at 10:35 a.m., until 10:38 a.m.)

22 (Jury reconvened at 10:38 a.m.)

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

25 MS. ALLEN: Yes, Your Honor.

1 MS. LUZAICH: Yes, Your Honor.

2 THE COURT: Does the State stipulate?

3 (Pause in the proceedings)

4 THE COURT: You can ask me. You guys can approach
5 if you want to ask me something.

6 (Bench conference)

7 THE COURT: It's okay.

8 MS. LUZAICH: Yesterday she had asked if I cared if
9 Sha'karia stayed in the courtroom after she testified. I
10 said, I don't care. After she testified I said, no freakin'
11 way. So she didn't stay yesterday, and then she walked in
12 today. So I told her she needs to get out.

13 THE COURT: Yeah. And I told her it was okay to
14 come back today.

15 MS. LUZAICH: Well, she can watch closing, because
16 that's --

17 MR. MacARTHUR: Why can't she -- she's already
18 testified. Why --

19 THE COURT: Well, because the State has the right to
20 call, you know, rebuttal witnesses.

21 MR. MacARTHUR: Oh. Are you calling any?

22 MS. LUZAICH: No. But just if --

23 MR. MacARTHUR: If you're not calling her, then what
24 difference does it make?

25 MS. LUZAICH: Because she was such a bitch. I'm

1 honest. That's why.

2 MR. MacARTHUR: I do appreciate the honesty.

3 MS. LUZAICH: Sorry. Sorry.

4 MS. RHOADES: That was on the record, Lisa.

5 MS. ALLEN: I would ask she be allowed to stay. I

6 did tell her --

7 MR. MacARTHUR: That was Kristina Rhoades.

8 THE COURT: You don't plan on calling anybody in

9 rebuttal?

10 MS. LUZAICH: No, Your Honor.

11 THE COURT: Okay.

12 MS. ALLEN: I would just ask -- and the only reason

13 I say that is [unintelligible] I said, yeah, it's fine for you

14 to come back tomorrow. I knew she had said that.

15 THE COURT: Is she going to behave?

16 MS. ALLEN: Yes, she'll behave. In her house

17 slippers she will behave.

18 THE COURT: She has her house slippers on today? As

19 long as they're not foot flops.

20 MS. LUZAICH: Can I read the record of --

21 MS. ALLEN: No. I just --

22 THE COURT: All right. Thank you.

23 (End of bench conference)

24 THE COURT: Okay. At this time the defense can call

25 their next witness.

1 MS. ALLEN: Thank you, Your Honor. Ms. Kenyoni
2 House.

3 KENYONI HOUSE, DEFENDANT'S WITNESS, SWORN

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

7 THE WITNESS: Kenyoni, K-E-N-Y-O-N-I, House,
8 H-O-U-S-E.

9 THE CLERK: Thank you. You may proceed.

10 DIRECT EXAMINATION

11 BY MS. ALLEN:

12 Q Good morning, Ms. House. How are you?

13 A Good morning. Well --

14 Q I appreciate you coming here today. I apologize for
15 the inconvenience.

16 Where are you currently employed?

17 A H.P. Fitzgerald Elementary School.

18 Q Are you sick?

19 A No. I have a chronic illness which affects my
20 voice.

21 Q Oh. I'm so sorry. There's water up there if it
22 that helps at all.

23 How long have you been --

24 THE COURT: Do you need water?

25 THE WITNESS: No. I'm good.

1 THE COURT: Okay.

2 BY MS. ALLEN:

3 Q How long have you been at H.P. Fitzgerald?

4 A Eight years.

5 Q Okay. And what do you do there?

6 A School counselor.

7 Q Have you been in that capacity the entire time?

8 A Yes.

9 Q All right. Do you know -- well, let me ask you

10 this. Do you know what a mandatory reporter is?

11 A Yes.

12 Q Okay. And can you explain to the jury what that is.

13 A Any person in the capacity of school counselor,

14 teacher, anyone who works with children has to report any

15 abuse or neglect if brought to them or if they suspect it.

16 Q Okay. And there's consequences if you fail to

17 report; is that correct?

18 A Yes.

19 Q Okay. Do you know what those consequences are?

20 A You can lose your license.

21 Q And your education -- could you just briefly state

22 what your educational background is.

23 A I have a Bachelors degree in social work. I am a

24 licensed social worker. I have a license, a professional

25 license with the State Board of Education to be a school

1 counselor, and I just also submitted for a license for
2 marriage and family therapist.

3 Q Okay. Are you -- are you aware of two individuals
4 by the name of Taharah and Taquanda Duke?

5 A Yes, I am.

6 Q Okay. And how do you know them?

7 A They were students at my school two or three years
8 ago. One -- I can't remember -- I get them mixed up. But one
9 was older. I think that was Taharah, and then the other one
10 was younger, which I think was Taquanda.

11 Q Okay. You didn't actually teach them, did you?

12 A No.

13 Q Okay. You just -- you were their counselor?

14 A I'm just -- yes.

15 Q Okay. And so would they come to you with questions
16 about school?

17 A They would come to me, because I'm in that capacity.
18 I don't really remember them coming to me about questions of
19 that.

20 Q Okay. Do you remember them coming to you about
21 really anything?

22 A Yes. One occasion there was another parent of a
23 student who said that both girls were following --

24 MS. LUZAICH: Objection. Hearsay.

25 THE COURT: Sustained.

1 BY MS. ALLEN:

2 Q Without telling me what they said, they came to you
3 about something that was going on in school; is that correct?

4 A When they -- no, it really -- well, it involved
5 another student, so yes.

6 Q It involved another student.

7 A Yes.

8 Q Okay. Did they ever come to you -- or specifically
9 did Taquanda ever come to you with anything really into her
10 home life?

11 A No.

12 Q Okay. Did she ever say anything to you about
13 anybody holding a knife to her neck at home?

14 A No.

15 Q Okay. Did she ever come to you and talk about
16 instances of abuse either with her or her siblings at home?

17 A No.

18 Q Okay. What would you have done if Taquanda had come
19 to you with that kind of information?

20 A I would have immediately investigated. I would have
21 held her and called CPS at that moment and gotten
22 instructions. If she would have said a knife or any type of
23 abuse, I would have immediately called CPS and informed my
24 administrators of doing so.

25 Q Okay. Part of it is -- part of your reporting is if

1 a student comes to you and says, yes, I'm being abused you
2 have to report.

3 A Yes.

4 Q Okay. The other part of it is if you suspect it; is
5 that correct?

6 A Yes.

7 Q Did you ever suspect abuse with either girl?

8 A No.

9 Q Okay. So if you'd seen bruises on their face or
10 anything like that, that would have led you to make those
11 calls?

12 A Yes.

13 MS. ALLEN: Okay. Court's indulgence.

14 (Pause in the proceedings)

15 MS. ALLEN: Thank you, Your Honor. I'd pass the
16 witness.

17 THE COURT: Cross-examination?

18 MS. LUZAICH: Thank you.

19 CROSS-EXAMINATION

20 BY MS. LUZAICH:

21 Q Ms. House, as the school counselor are you the
22 counselor for the entire school, or for a particular grade?
23 How does it work?

24 A For the entire school.

25 Q You're the only counselor?

1 A Yes.

2 Q How many students do you counsel at a given time?

3 A We have a student population -- it varies through
4 each school year, but between 420 and 500 students. It's not
5 like a caseload. I do monthly school guidance lessons, and I
6 have several programs like small group counseling, and I refer
7 to, you know, any type of medical services or 504s, IEPs, that
8 sort of thing.

9 Q Did you deal with Taharah in an IEP?

10 A No.

11 Q Do kids have to seek you out if they have a problem,
12 issue, or do you wander the school and say, hey, do you have a
13 problem, do you have a problem, do you have a problem?

14 A Sometimes it's teacher referral. Sometimes students
15 come up to me.

16 Q But they come to you, you don't go to them
17 necessarily?

18 A No.

19 Q And if you did know something and didn't report it
20 you mentioned you could lose your license. That would be a
21 terrible thing for you, would it not?

22 A Absolutely.

23 Q You could also be prosecuted because it's a crime to
24 not report if a mandatory reporter?

25 A Absolutely.

1 MS. LUZAICH: Thank you. I have nothing further.
2 THE COURT: Any redirect?
3 MS. ALLEN: No, Your Honor. Thank you.
4 THE COURT: Thank you very much for your testimony
5 here today. Oh. It looks like we have one question. If
6 you'll just -- if you don't mind waiting around till I can get
7 that question from the juror.
8 This will be marked as 13, Court's Exhibit 13.
9 Will you just state your first name.
10 THE WITNESS: Yes. Kenyoni, K-E-N-Y-O-N-I.
11 THE COURT: Thank you.
12 And if the attorneys can meet me in the hallway.
13 (Hallway bench conference)
14 THE COURT: Do I have a stipulation to the presence
15 of the jury panel?
16 MS. LUZAICH: Yes, Your Honor.
17 MS. ALLEN: Yes.
18 THE COURT: Okay. Ma'am, I just have one question
19 for you. What is the protocol at H.P. Fitzgerald when a
20 teacher believes they observed any type of abuse?
21 THE WITNESS: They are to report it themselves to
22 CPS, call CPS.
23 THE COURT: Okay. Any followup by Ms. Allen?
24 MS. ALLEN: No. I would just -- I don't know if the
25 jury heard it, so I would just ask you to repeat it to the

1 jury, that's all.

2 THE WITNESS: Oh. They are to report it, call CPS.

3 THE COURT: Any followup by the State?

4 MS. LUZAICH: No.

5 THE COURT: Okay. Thank you very much for your
6 testimony here today. You may step down. You are excused.

7 Does the defense have any further witnesses they
8 intend to call?

9 MS. ALLEN: No, Your Honor. Defense rests.

10 THE COURT: Okay. Does the State have any rebuttal?

11 MS. LUZAICH: The State does not.

12 THE COURT: Okay. At this time we're going to hand
13 out the jury instructions. It's now my duty as the judge to
14 instruct you on the law that applies to this case. Each of
15 you will be given a copy of the jury instructions. They're
16 quite lengthy. I am required by law to read them to you. You
17 will be able to take these instructions with you when you go
18 back to deliver upon your verdict, so don't be concerned if
19 you don't catch every word that I say, because you'll have an
20 opportunity to review them collectively, individually as many
21 times you want to.

22 (Jury instructions read - not transcribed)

23 THE COURT: The State of Nevada may open and close
24 the arguments.

25 MS. RHOADES: Thank you, Your Honor.

1 STATE'S CLOSING ARGUMENT

2 MS. RHOADES: And thank you, all of you, for your
3 time and for your attention in this very long, three-week,
4 what was going to be a very long two-week trial. We know that
5 this is not easy stuff to sit through every day, day in and
6 day out, for three weeks, and we know that you sacrifice a lot
7 of your daily lives to come here. And I just want to thank
8 you for that.

9 Also I have to apologize. My allergies are getting
10 the best of me, so I'm a little stuffed up.

11 During Mr. MacArthur's opening he told you that
12 Victoria is mad at her mother and that Victoria is mad at the
13 defendant, Fred Harris, Victoria's mad at them -- Victoria's
14 mad at the defendant for breaking up her family, for turning
15 Tina, her mom, against her. The defense will have you believe
16 that Victoria Duke concocted this very lengthy scheme and she
17 enlisted her mother, she enlisted her siblings, mainly Taharah
18 and Taquanda Duke, in making up stories and allegations
19 against this defendant because the defendant broke up her
20 family. And it has all come to this perfect fruition where
21 they all get to come here and be subject to hours of
22 examination in front of a courtroom full of people.

23 You observed Victoria on the stand. You observed
24 her demeanor. You observed how she was. You heard the facts
25 that she testified to. Does Victoria seem like the mastermind

1 behind a seven-year scheme to get back at the defendant for
2 breaking up her family? I will leave that question to you.

3 Moreover, this was not some happy family that the
4 defendant came in and broke up. Victoria had a rough
5 childhood. All of them had a rough childhood growing up.
6 This isn't some happy home and the defendant came in and broke
7 it all up. The defendant took advantage of the situation, he
8 took advantage of this family, he took advantage of Tina Duke,
9 he took advantage of all five of her children.

10 In every criminal case the State of Nevada, the
11 state everywhere, must prove two things, first that crimes
12 were committed and, second, that it was the defendant that
13 committed those crimes. Here you heard testimony. Everybody
14 that -- pretty much everyone that got up on that witness stand
15 pointed to this defendant. This defendant is the one that did
16 these things to them. Identity is not an issue. This is not
17 a case of whodunit. This is a case about the crimes, what
18 crimes were committed, when were they committed.

19 I first want to outline kind of the life that the
20 Dukes led here in Las Vegas. This timeline will help with the
21 counts. Each of your counts lists basically a time frame.
22 And if you find that the crime was committed within that time
23 frame, the timeline will help, because you can go back and see
24 where were they living, where were the crimes committed, did
25 it happen within that particular time frame.

1 So we start off December of 2004. Tina Duke and her
2 kids are living in Louisiana. Tina meets the defendant. Tina
3 comes to Las Vegas to visit the defendant in December 2004.
4 The defendant's brother goes to Louisiana, picks up the kids,
5 and takes them to Las Vegas, and they're all living together
6 at Trish Lane. Trish Lane is Miss Ann's house. The defendant
7 is living in a separate apartment on Nellis. He is not living
8 there at that time. They stay at this Trish Lane address from
9 December 2004 to May of 2005.

10 January 2005, that's Victoria's first disclosure,
11 when she's 12 years old. And we'll talk about that more in a
12 little bit.

13 May of 2005 to August 2007 they go to Utah. And
14 this is not to scale. I couldn't fit it all to scale. They
15 go to Utah. Tina is still coming out to Las Vegas and
16 visiting the defendant while she's in Utah.

17 August 2007 is when, after CPS took the kids away
18 from Tina and Tina worked the case plan to get the kids back,
19 August 2007 she had them back for some time. She and the
20 defendant basically put all five of the kids in the
21 defendant's car in the middle of the night and drive them to
22 Las Vegas. When they drive them to Las Vegas some of the kids
23 go -- well, four of the kids, except for Victoria, go to the
24 Blankenship house. Mom and Victoria go to Miss Dorothy's
25 house. Taharah, Taquanda, Shabazz, and Mahlica are all in the

1 Blankenship house at this time. They're separated. The kids
2 are surprised that they're separated.

3 August 24th, 2007, that's the incident that Victoria
4 described to you in the car on top of the mountain where she
5 could see all of Las Vegas, the lights of Las Vegas. That
6 happened while Victoria was living at Miss Dorothy's with her
7 mom.

8 September 2007 to October 2007 they go from --
9 Victoria and mom go from Miss Dorothy's house to an
10 efficiency, budget-type Siegel Suites motel, if you will. All
11 the kids, they're still at Blankenship, except for Victoria.

12 Then from October 2007 to July 2008 Victoria and mom
13 move into the Walnut, the two-bedroom Walnut apartment, where
14 Victoria and mom each have their own room.

15 Then from July 2008 to August 2010 everybody's in
16 Blankenship. Victoria and mom move into Blankenship. They're
17 there with the four other kids and the defendant and Miss Ann.

18 From August 2010 to August 2011 the older kids go
19 with mom to the apartment on St. Andrews. Tina moves out.
20 She takes with her Victoria, Mahlica, and Shabazz, leaving
21 Taharah and Taquanda in the Blankenship house with the
22 defendant and Miss Ann.

23 October 9th, 2010, right after mom and the older
24 kids move out, Taharah turns 11. She's living in the
25 Blankenship house when she turns 11.

1 From August 2011 to now they are living in the
2 Henderson apartments. August 2011 to September 2012 mom's
3 living there with the older kids, Victoria, Shabazz, and
4 Mahlica. Taharah and Taquanda just recently moved back with
5 her last year, October 2013. That's not even on the time
6 frame, so that has nothing to do with any of the charges in
7 your amended information.

8 December 2011 we have Victoria's second disclosure,
9 when she's 19 years old. This disclosure happens at the
10 behest of Miss Rose after Victoria tells Miss Rose promise --
11 makes her promise not to tell anybody.

12 Taharah's first disclosure, May 2012. This is the
13 incident in the laundry room that Taquanda saw that Taquanda
14 went to Miss Ann about, and then Miss Ann asked Taharah about
15 it, and Taharah disclosed to her. That happened in May of
16 2012 while Taharah and Taquanda were living at the Blankenship
17 house.

18 June 27th, 2012, Miss Ann takes Taharah to the
19 doctor, Dr. Gondy. Dr. Gondy tells her she has a sexually
20 transmitted disease, high risk HPV.

21 After that, September 26th, 2012, is Taharah's
22 interview with Michelle Fisher when she discloses to CPS and
23 to Metro the things that the defendant did to her.

24 So kind of using this as a background we're going to
25 go through the crimes that the defendant is charged with. And

1 there are a lot of them, there 45. There are five counts of
2 sexual assault, there are eleven counts of sexual assault with
3 a minor under 14, eight counts of sexual assault with a minor
4 under 16, five counts of lewdness with a child under 14, four
5 counts of first degree kidnapping, one count of battery with
6 intent to commit sexual assault, two counts of administration
7 of a drug to aid in the commission of a crime, one count of
8 sexually motivated coercion, there are five counts of child
9 abuse, neglect or endangerment, one for each of the Duke
10 children. There's one count battery by strangulation, one
11 count of pandering, and one count of living from the earnings
12 of a prostitute.

13 Now, I'm not going to go in the order which the
14 crimes are listed on your amended information. I'm going to
15 start with Victoria first, and we're going to start with the
16 crime of sexual assault. You are instructed -- okay. Sexual
17 assault is when a person subjects someone else to sexual
18 penetration against the victim's will or under conditions in
19 which the perpetrator knows or should know that the victim is
20 mentally or physically incapable of resisting or understanding
21 the nature of his or her conduct. Okay. So it's penetration,
22 it's without consent, and at times the age of the victim will
23 be considered. So this is sexual assault. You also have an
24 instruction that tells you specifically when a person subjects
25 a minor under 14 years to sexual penetration they're guilty of

1 an under 14 crime, and then when a person subjects a minor
2 under 16 years to sexual penetration they're guilty of the
3 under 16 crime of sex assault.

4 What is without consent? You are instructed that
5 submission is not consent. Just because someone gives in does
6 not mean that that is consent. The person is not required to
7 do more than her age, her strength, the surrounding facts and
8 circumstances of that case reasonably allows. And the
9 circumstances surrounding this relationship, the surrounding
10 facts, you look at the relationship between the parties, the
11 position in the home. You're also told that physical force is
12 not necessary. You don't need to force -- physically force
13 someone to have sex for there to be no consent.

14 There's no consent where a person is induced to
15 submit to the sexual act through fear of death or serious
16 bodily injury. So when someone threatens you and tells you
17 that they're going to beat you, that they're going to beat
18 your sibling, that they're going to beat your mom, that
19 they're going to put you in Child Haven, that they're going to
20 injure you in any way, that is not -- that is not consent if
21 someone gives that person what they want.

22 You're also specifically instructed on penetration.
23 Sexual penetration is fellatio or any intrusion, however
24 slight, of any part of a person's body or any object
25 manipulated or inserted by a person into the genital or anal

1 openings of the body of another. Digital penetration is
2 placing one or more fingers of the perpetrator into the
3 genital or anal opening of another person. Fellatio is
4 touching of the penis by the mouth or tongue of another
5 person. So while it's not -- doesn't always have to be
6 necessarily inserting anything, it's [inaudible] penetration.
7 You're told up here that sexual penetration is fellatio. Also
8 what's important is, however slight -- sexual penetration is
9 the intrusion however slight of the penis into the genital
10 opening of another person.

11 So I'm going to start with Counts 21 and 22, sexual
12 assault with a minor under 14. We're talking about Victoria
13 at this time. So what are your elements? Minor under 14,
14 penetration without consent. The time frame with which these
15 are charged is December 2004 through May of 2005. Victoria
16 testified that her date of birth, July 31st, 1992. This is
17 for the crimes that occurred at the defendant's apartment on
18 Nellis when he was living separately from Miss Ann while Miss
19 Ann was living at Trish Lane with the Duke kids. So this is
20 what we're talking about right here.

21 Victoria's 12 years old at this time. Victoria and
22 the -- and her sisters and her brother were at the Trish Lane
23 house. Her mom -- defendant picked them up, he took Tina to
24 work, he took the kids to his house, to his apartment, rather.
25 So mom's gone the five kids are in the defendant's house. All

1 the kids are sick. Victoria told you that. All the kids were
2 sick this day. They were all sleeping in the defendant's
3 room. I believe she testified most of them were on the bed.
4 They had taken some cold medicine. Victoria wakes up alone in
5 the defendant's bed. She wakes up alone in the defendant's
6 bed and asks where her sisters and her brother are, and
7 they're at the park. Defendant tells her that they all went
8 to the park. So they're all out of the house. Defendant has
9 Victoria in his room alone. He grabs her hands -- and
10 Victoria told you all this on the stand. Defendant grabbed
11 her hand and forced it to touch his penis. The defendant then
12 proceeded to pull her pants down and put his finger in her
13 vagina. She told you that. She told you that it hurt.

14 The defendant also tried to force his penis in her
15 vagina. And she did tell you that the penis passed through
16 the lips of her vagina. He was forcing this, and then he
17 eventually stopped. There's evidence of penetration, there's
18 no doubt about that. Is there consent? There's evidence of
19 digital penetration and sexual penetration. So was there
20 consent? Did 12-year-old Victoria consent to this? No.
21 Defendant told her that if she told anyone he would beat her.
22 She told you that it felt terrible. She told you that she did
23 not want this to happen.

24 So what are the circumstances surrounding, you know,
25 what happened in the defendant's bedroom in January 2005?

1 Well, this is mom's boyfriend that she knows. It's an
2 authority figure in the house. Her siblings are living with,
3 you know, his other girlfriend, essentially, in the Trish Lane
4 house. He has a position of authority over Victoria. He told
5 her that he would beat her, and he did this to her in his
6 bedroom.

7 What else happened? What other crimes happened in
8 that bedroom in January 2005? We have lewdness with a child
9 under 14. So there's essentially three elements to lewdness
10 with a child under 14. Any person who wilfully commits any
11 lewd or lascivious act upon or with any part of the body of a
12 child under the age of 14 with the intent of arousing,
13 appealing to the passions of sexual desires of either the
14 person or the child is guilty of lewdness with a minor.

15 You also have other instructions on this crime that
16 tell you the law does not require that the lust, sexual
17 passions be aroused. And you also have instructions that the
18 touching may be through clothing. So Count 20, lewdness with
19 a child under 14. Still talking about Victoria, still talking
20 about January 2005. She's 12 years old. The defendant
21 grabbed Victoria's hand and forced it to touch his penis. She
22 told you that. His penis was out of his pants. It was bare
23 skin. Her hand was touching his penis. The defendant caused
24 her hand to move up down on his penis. This was immediately
25 before the defendant tried to force his penis inside her

1 12-year-old vagina. So from that circumstance you can -- you
2 can kind of gather his intent. We can't get into his head.
3 He didn't write down, my intent today when I was forcing
4 Victoria to do this is. We know by the circumstances what his
5 intent was. This is a lewd act upon Victoria's hand, a minor,
6 with the intent to arouse the defendant. Defendant is guilty
7 of Count 20, lewdness with a child under 14.

8 The next crime that happened in that bedroom,
9 coercion sexually motivated. Coercion is when a person, with
10 the intent to compel another from doing something or
11 abstaining from doing something uses violence or inflicts
12 injury or attempts to intimidate the person by threats or
13 force. So they stop them or they make them do something.
14 That's the intent, they want to make them or stop them from
15 doing something. And they can either use violence or inflict
16 injury, or they can attempt to intimidate that person by
17 threat or force.

18 Count 23, coercion sexually motivated. Again this
19 is in the room, January 2005. The defendant grabbed and
20 bruised Victoria's arm. The defendant told her that he would
21 beat her if she told anyone. So he's trying to make her not
22 do something, he's trying to make her abstain from doing
23 something. He did use violence. He grabbed and bruised her
24 arm. And he also threatened that he would beat her if she
25 told anybody. So he used violence, and he attempted to

1 intimidate by threats or force. His intent again, don't tell
2 anybody, don't tell anybody what happens. And he's guilty of
3 Count 23.

4 The next thing that happened in that bedroom, the
5 next crime, first degree kidnapping. You have two very long
6 instructions on first degree kidnapping. "Every person who
7 wilfully seizes, confines, inveigles, entices, decoys,
8 abducts, conceals, kidnaps or carry away any person by any
9 means whatsoever with the intent to hold or detain for the
10 purpose of committing sexual assault is guilty of first degree
11 kidnapping."

12 Another way to get to first degree kidnapping is
13 when a person leaves or takes away or detains any minor with
14 the intent to hold the minor for unlawful acts, to commit
15 unlawful acts. That's also guilty of first degree kidnapping.
16 So it can be either one of those two things, and you don't
17 have to agree as a whole how you get to first degree
18 kidnapping, whether you think it was for the purpose of
19 committing sexual assault or you think it was the minor -- he
20 was holding the minor for unlawful acts.

21 The second really long instruction about first
22 degree kidnapping tells you that to find the defendant guilty
23 of both first degree kidnapping and a sexual assault for the
24 same kind of event you have to find that it was either one of
25 these five things: that it was not incidental to the sexual

1 assault, the movement of the victim was not incidental to the
2 sexual assault; if it was incidental movement, that movement
3 substantially increased the risk of harm to the victim; third,
4 if it was incidental movement, the movement substantially
5 exceeded that required to complete the sexual assault; fourth,
6 that the victim was physically restrained; or, fifth, that the
7 movement had some kind of independent significance or purpose.
8 You don't have to find all five. You just need one. The
9 "or," you see that "or" behind each of the end of the
10 sentence. And also you don't have to agree on which theory
11 you think he was holding her for -- or which theory you think
12 that it was not incidental.

13 Count 19 is first degree kidnapping for what
14 happened in that bedroom. The defendant seized and confined
15 12-year-old Victoria in his bedroom. She is a minor. He
16 would not let her leave. She tried to leave. She told you
17 that. She wanted to leave, she tried to leave, he was
18 grabbing her arm, and he would not let her leave.

19 Well, how do we know that his purpose -- how do we
20 know his purpose? He committed the sexual assault on
21 Victoria. He stuck his finger in her vagina. He tried to
22 stick his penis in her vagina, and he didn't get all the way
23 through. But he got through. He passed through the lips. We
24 talked about that was a sexual assault. We know that his
25 purpose was to commit sexual assault when he was holding her

1 in that room.

2 Also you have she's a minor, he held her in that
3 room with the intent to perpetrate upon her unlawful acts. He
4 did other things in that room. He committed coercion sexually
5 motivated, he committed lewdness with a child under 14. He
6 did other unlawful acts on her in that room. He wouldn't let
7 her leave.

8 Her siblings were out of the house, and the
9 defendant had her alone in his room. Everybody else was gone.
10 There was nobody else. He wouldn't let her out of that room.
11 That is increased likelihood of harm to Victoria. And he's
12 guilty of Count 19, first degree kidnapping.

13 There are some instructions about credibility that I
14 want you to pay attention to when you are assessing Victoria's
15 credibility on the stand and really everybody's credibility on
16 the stand. The credibility or believability should be
17 determined by the manner upon the stand, the relationship to
18 the parties, fears, motives, interests, or feelings, and also
19 the strengths or weaknesses of their recollections.

20 Another important instruction is that there is
21 absolutely no requirement that the testimony of the victim of
22 sexual assault be corroborated, and her testimony standing
23 alone, if believed by you, is enough to find him guilty of
24 sexual assault.

25 Victoria has been consistent throughout. She's been

1 consistent in her statements. She discloses first -- well,
2 this is what we're talking about now, the first disclosure of
3 January 2005. But on the stand she's been consistent.
4 Detective Aguiar and Detective Madsen told you that in both of
5 her statements she was consistent, that she testified to very
6 vivid facts, she vividly described a lot of the incidents on
7 the stand, remembering specific details.

8 Another thing that Mr. MacArthur told you in opening
9 was that all these disclosures have been when the family's
10 separated, when the defendant takes Tina away from the kids or
11 the defendant takes Victoria away from her brothers and
12 sisters. Well, this January 2005, this first disclosure that
13 Victoria made, that happened when the whole family was living
14 together at Trish Lane. Nobody was living at the defendant's
15 apartment, there wasn't some kids living the Blankenship and
16 some not. The whole family was living together at Trish Lane.

17 The testimony of Victoria was also corroborated
18 through other evidence. The defendant's apartment on Nellis.
19 Tina testified that he lived at this apartment on Nellis, all
20 the kids testified that. The defendant did not live with Miss
21 Ann during this time frame when they were in Las Vegas that
22 first time.

23 The defendant himself, he told you in his interview
24 with Detective Aguiar that he was alone with the kids in his
25 apartment when he was a bachelor. He was a bachelor here, he

1 was not living with Miss Ann, he was alone with those kids in
2 his house. The kids also testified that they would go to the
3 defendant's apartment. They remembered going here when they
4 were here when they were younger.

5 Before Utah, after the January 2005, incident
6 Victoria did tell Mahlica. Mahlica told you that, and
7 Victoria told you that. Victoria also disclosed to Miss Ann
8 before Utah. Defendant's interview with Detective Aguiar he
9 confirmed that 2005 disclosure. He knew that this happened.
10 He knew about these allegations. What was the result of
11 Victoria's disclosure to Miss Ann when she was looking for
12 help? Well, she told Miss Ann, Miss Ann told the defendant's
13 mom, Miss Dorothy, they get Tina involved, and they all kind
14 of get Victoria in a room and basically tell her that they
15 don't believe her, that they don't think it happened. Oh.
16 They also talked to the defendant about it, and he says it
17 didn't happen, so they go ahead and believe the defendant and
18 completely disregard anything that Victoria tells them.

19 CPS is not called, the police are not called,
20 nothing is investigated. They call -- all of the adults call
21 Victoria a liar. They tell her that she's crazy and that she
22 shouldn't be around her family. That was the result of her
23 disclosure when she sought help in January 2005.

24 Moving on to Count 26, sexual assault with a minor
25 under 16 -- and all that credibility stuff needs to be taken

1 into account when you consider her testimony for all of the
2 counts that I'm going to talk about with her.

3 Minor under 16. These are your elements. Sexual
4 penetration without consent. The time frame for Count 26 is
5 August 1st, 2007, through August 31st, 2007. So August 2007.
6 This is for the incident on the top of the mountain where
7 Victoria could see all the lights of Las Vegas in the backseat
8 of that car. Again, penetration without consent and age. So
9 this is going to be while Mom and Victoria are living at Miss
10 Dorothy's and the rest of the kids are living at Blankenship.

11 Victoria told you the exact date that this happened.
12 She knew the exact date that this happened because the
13 defendant told her that he was going to take her virginity and
14 that she needed to pick a day that it was going to happen. He
15 told her that she [sic] was going to take her virginity in
16 that conversation that she had. Her mom was right there. He
17 told her that if, you know, he couldn't have her there was
18 going to be problems, he was going to beat her, he was going
19 to beat her siblings.

20 The car was vividly described by Victoria. It was a
21 dark car, it was a small car. It was the same car that
22 defendant picked them up in when he picked them up from Utah
23 and drove them back to Las Vegas. Defendant is driving, Mom
24 is in the passenger seat, and Victoria's in the backseat.
25 They're driving around for quite some time. Defendant stops

1 at the liquor store to get liquor. They're drinking, they go
2 to a park, and they end up on this mountain that overlooks all
3 of Las Vegas. Victoria can see the lights. She remembers the
4 shards of glass on the ground, she remembers the cars around
5 her that are rocking.

6 What does the defendant do while on top of this
7 mountain? He climbs in the backseat of the car and hovers
8 over her. She testified that she was drinking a lot. She's
9 15 at this time, so she's drinking a lot, trying to hurt
10 herself, basically, so that she won't have to be there and
11 subject herself to what's going on. She recalls the defendant
12 hovering over her. She remembers that he pulls her pants
13 down, the defendant pulls her underwear down. She testified
14 that she felt pressure on her vagina. The next morning her
15 vagina was sore, it was bleeding. This is evidence of
16 penetration.

17 What other evidence of penetration do we have, what
18 happened that in that car? The defendant told her that they
19 had sex and that it was going to happen again and that it was
20 going to happen a lot. Tina tells you -- because, remember,
21 Tina's in the front passenger seat while this happens and does
22 absolutely nothing to stop it. Tina tells you the details of
23 what happened in this car. Tina tells you the defendant put
24 his penis in Victoria's vagina. Victoria did not want this to
25 happen. She -- the position that she's in in that car, I --

1 her mom's right there, the person that she should be able to
2 go to help. She doesn't do anything about it. Her disclosure
3 in 2005, nobody did anything about it. She is basically
4 helpless at this point. She told you that she didn't want it
5 to happen, as well. She's 15 years old at this time, and the
6 defendant is still in this fatherly position of authority
7 because he's Mom's boyfriend. He's guilty of Count 26, sexual
8 assault with a minor under 16.

9 How else do we know that there was no consent?
10 Threats. He induced her to submit to these actions through
11 fear of serious bodily injury. He told her that he was going
12 to beat her if she didn't have sex with him in that
13 conversation in the car previously.

14 What else? What other crimes happened August 24th,
15 2007, in that car, Count 25, first degree kidnapping. You
16 were instructed on that. Carried away and confined her to a
17 remote location, okay. On top of a mountain in the middle of
18 Las Vegas where you could see all the lights. What was his
19 purpose? Well, he got in the backseat of the car and forced
20 his penis inside her, so his purpose, I think you can infer
21 from his actions, was to commit sexual assault. And keep in
22 mind you still have that other option. She is still a minor.
23 So you can find that first degree kidnapping, too. She's a
24 minor with intent to perpetrate any unlawful act on her.

25 The defendant took 15-year-old Victoria to the top

1 of a mountain in the middle of Las Vegas where other cars were
2 around, and they were clearly -- it appeared that the other
3 cars, people were in there having sex. There was broken
4 glass. He drove her around for quite some time. It was far
5 away from where she was living at the time at Miss Dorothy's.
6 I'm going to say that that's an increased likelihood of harm.
7 That movement from Miss Dorothy's to that top of the mountain,
8 that's an increased likelihood of harm to Victoria. And he's
9 guilty of Count 25, first degree kidnapping.

10 Administration of a drug to aid in the commission of
11 a felony. That's another crime that occurred in that car on
12 that day. And you're instruction tells you that any person
13 who administers to anyone else any intoxicating agent with the
14 intent to enable or assist himself in the commission of a
15 felony is guilty of administration of a drug to aid in the
16 commission of a felony. Count 24. The defendant drove to the
17 store, purchased alcohol, he purchased a lot of alcohol. He
18 gave it to Mom, he gave it to Victoria. She's 15 years old at
19 the time. This is an intoxicating agent. Victoria drank it.
20 She drank a lot because she wanted to forget what was
21 happening. And what did he do thereafter? Well, he committed
22 a felony. He committed sexual assault on a minor under the
23 age of 16. So he's guilty of Count 24.

24 Moving on to Counts 29 through 35, sexual assault
25 with a minor under 16. The time frame is September 1st, 2007,

1 to July 30th, 2008. Victoria's 15 years old during this whole
2 time. This is for -- these charges are for what happened at
3 the efficiency Siegel Suites and for what happened at the
4 Walnut apartment.

5 Going back to our elements, penetration without
6 consent and age. We have her age. She's under the age of 16,
7 so that element is met. So this is going to be happening in
8 the Siegel Suites or the Walnut apartment before Tina and
9 Victoria move into Blankenship.

10 So Counts 29 through 35. Counts 29 and 31, sexual
11 intercourse, penis in vagina. Counts 30 and 32, anal
12 intercourse. Count 33, dildo or a vibrator that the defendant
13 inserted into Victoria's genital opening. And Counts 34 and
14 35 are for the defendant causing Tina to place a dildo inside
15 of Victoria's genital opening.

16 So what do we know happened at Siegel Suites? They
17 were living there from September 27th to October -- I'm sorry,
18 September 2007 to October 2007. The defendant would come over
19 a lot. Victoria told you that. Also, Tina told you that
20 defendant would come over a lot at this time. Victoria told
21 you that when the defendant would come over these things would
22 happen very often, basically every time he came over this kind
23 of stuff would happen. He would put his penis in her vagina,
24 he would put his finger in her vagina, he would touch her
25 breasts and her vagina with her hands. She said this happened

1 multiple times while at the Siegel Suites. The defendant
2 would bring a purple vibrator with a black top over to the
3 Siegel Suites. She described that in detail. He would also
4 bring a double-sided blackish-brown dildo. She described that
5 in detail. Defendant would bring that to the Siegel Suites
6 apartment, I guess you could call it, although it was a one-
7 bedroom apartment, just one room basically, a bathroom and a
8 kitchen that's all connected.

9 The first time that the defendant force Victoria to
10 have sex with her mom was in the Siegel Suites apartment.
11 Victoria told you that. The defendant demanded that Tina use
12 the vibrator on Victoria's clitoris. Victoria told you that.
13 Defendant demanded that Tina stick the vibrator in Victoria's
14 vagina. Tina testified to these facts, as well. Then the
15 defendant tells them to use the dildo together. This happens
16 at the Siegel Suites. Victoria also told you that when the
17 defendant would bring these toys he would often use them alone
18 with her, that he would insert the dildo in her genital
19 opening, that he would insert the vibrator in her genital
20 opening, that he would use the vibrator on her clitoris. So
21 it wasn't just Mom and Victoria that were using the toys
22 together; the defendant would use those toys on her, as well.

23 They're living at the apartment on Walnut from
24 October 2007 to September 2008. Defendant came over a lot
25 again at this apartment, at least three times a week.

1 Victoria told you that. He left these toys at Walnut. He
2 would bring the toys over to Walnut, and he left them there.
3 Victoria told you that the defendant would put his penis in
4 her vagina often. This would occur in her room. The Walnut
5 apartment is a two-bedroom apartment, not just a one-bedroom,
6 so it would occur in her room, it would occur in Mom's room,
7 it would occur in the living room. And she further told you
8 that the defendant would shove the dildo in and out of her
9 vagina.

10 Anal intercourse. She testified -- Victoria
11 testified on cross-examination that the anal intercourse did
12 occur once at the apartment on Walnut, that the defendant put
13 his penis in the anal opening of her. She previously stated
14 -- which she was confronted with this on cross-examination.
15 She previously stated that this had happened more than one
16 time. Now, you have an instruction that tells you that a
17 prior inconsistent statement can be considered by you as
18 substantive evidence in the case. So you can consider it.
19 There are two counts of anal intercourse in this section that
20 we were talking about before. While those might not be the
21 strongest counts compared to the others, that is not to have
22 any bearing on the evidence in your consideration of the other
23 cases -- of the other counts, the sexual intercourse, the
24 penis in the vagina, the dildo, the vibrator, all of that.
25 But there is evidence that the anal intercourse happened more

1 than one time at the apartment on Walnut.

2 Victoria told you that she did not want any of this
3 to happen. She's 15 years old at this time. Again, remember,
4 submission is not consent. He has been doing this to her
5 since January 2005, the first time that she came to Vegas, the
6 first time that she spent any amount of time with him he has
7 been doing this to her. He is still Mom's boyfriend. Mom's
8 participating in this with the defendant. Victoria has
9 nowhere to turn. Again, Tina corroborates what Victoria told
10 you.

11 Oh. You also heard about the two-sided dildo from
12 the defendant himself. He told you that Tina has a two-sided
13 dildo at her house. He told you that in his interview with
14 Detective Aguiar. So all of those counts at -- all of those
15 counts of sexual assault on Victoria that occurred at the
16 Siegel Suites and the apartment on Walnut, he's guilty of
17 every single one of those counts by far.

18 Count 28, first degree kidnapping. Again this is
19 for the room at Walnut. Defendant confined Victoria to a room
20 with her mom when he forced them to have sex with each other.
21 His purpose was to commit sexual assault, because, you know,
22 that's what he did. And Victoria told you that she did not
23 want to be there.

24 He would bring alcohol. She told you that she would
25 drink so much that she wanted to die, she was trying to get

1 away from there. He's guilty of Count 28, first degree
2 kidnapping.

3 Count 27, administration of a drug. Again, Victoria
4 told you that the defendant would often bring alcohol to both
5 the Siegel Suites and the Walnut apartment. She would drink
6 it, she would drink it to make herself sick, she would drink
7 it because he brought it over there for her to drink. She
8 attempting to hurt herself. And thereafter the defendant
9 committed crimes of sexual assault, the crimes we just talked
10 about before. He's guilty of Count 27, administration of a
11 drug.

12 Count 36, sexual assault. There's no age here. So
13 we have penetration without consent. May 2009, Victoria's 16
14 years old at this time. This occurred at the Blankenship
15 house, 966 Blankenship. Victoria and Mom lived there with
16 their -- with Victoria's other siblings July 2008 through
17 August 2010. No one else was home. Victoria told you about
18 this incident when no one else was home and the defendant
19 called her from the garage into the defendant's room. She
20 thought that she was in trouble by the way defendant called
21 her into the room. Once Victoria got into the room he grabbed
22 her, there was a struggle, she tried to leave, and the
23 defendant pulled her to the bed. Once the defendant pulled
24 her to the bed he pulled her pants down, he forced his penis
25 in her vagina, and his penis moved back and forth. Victoria

1 testified to that. This happened in May 2009 in the
2 Blankenship house. And he's guilty of Count 36.

3 In Counts 37 through 40, these are for the crimes
4 that occurred while they were living at the St. Andrews
5 apartment. So Mom and Tina -- I'm sorry, Mom and Victoria and
6 Shabazz and Mahlica all moved out of the Blankenship house,
7 and they're living at the St. Andrews apartment. Your time
8 period here, August 2010 to October 2011. Victoria's 18 years
9 old. She told you that there are less visits than before.
10 Remember, keep in mind August 2010, and then Taharah turns 11
11 in October of 2010. So he's coming over to the St. Andrews
12 apartment less. She testified that the defendant put his
13 penis in her vagina at the St. Andrews apartment. She
14 testified that she did not want this to happen. She testified
15 that it happened multiple times. He is guilty of Counts 39
16 through 40, sexual assault. The penetration and without
17 consent, they have both been established.

18 And what else happened at the St. Andrews apartment?
19 Count 37, first degree kidnapping. There's not a
20 corresponding sexual assault charge for this first degree
21 kidnapping, so that incidental instruction, you don't have to
22 use that with this count, with Count 37. This is the Welfare
23 office appointment story that Victoria so detail-orientedly
24 described for us on the stand. She was at the apartment at
25 St. Andrews, Mom was there, the defendant came over there, he

1 was going to take her to an appointment that she had at the
2 Welfare office. He wasn't taking her and he was late, so she
3 knocked on Mom's door, to find Mom giving oral sex to the
4 defendant. When she knocked on the door defendant opened the
5 door, he grabbed her, he seized her, he held and detained her.
6 This was in Mom's room at the St. Andrews apartment. He said
7 to her, you're mine, you can go when I say you can go. She
8 struggled with him, and she was eventually able to get away.

9 The defendant was demanding oral sex from Victoria.
10 He told her, you need to do what your mom is doing. The
11 purpose for detaining her in the mom's room was to commit
12 sexual assault. It doesn't matter that the sexual assault
13 didn't occur. He was demanding oral sex from Victoria.

14 Count 38, battery with intent to commit sex assault.
15 You have the instruction on this, on this PowerPoint, anyway.
16 Any person who commits a battery upon another with the
17 specific intent to commit a sexual assault is guilty of the
18 offense battery with intent to commit sexual assault. Battery
19 is the wilful and unlawful use of force or violence upon the
20 person of another.

21 So in this struggle the defendant grabbed Victoria's
22 wrists and would not let her go. This is a wilful and
23 unlawful use of force. So how do we know again that his
24 intent was to commit sexual assault? Mom was giving oral sex
25 to the defendant when Victoria walked in. The defendant told

1 her -- Victoria testified to this. The defendant told her to
2 get down on her knees with her mom and put her mouth on his
3 penis. There's your intent. He's guilty of Count 38, battery
4 with intent to commit sex assault.

5 Count 41, sexual assault, penetration without
6 consent. There's no age here. August 2011 to December 2011.
7 Victoria's 19 years old at this time. This is for the
8 Henderson apartment at Center Street that they moved to. The
9 defendant came over even less often. It was farther away than
10 the St. Andrews apartment. She testified that the last time
11 she had sex with the defendant was at this -- at the Henderson
12 Center Street apartment. She told you that she didn't want
13 any of this to happen. Defendant is guilty of Count 41,
14 sexual assault.

15 Moving on, we're going to move on to when Taharah
16 turns 11, October 2010 to September 2012. We're moving on to
17 Taharah. We've established all the counts against Victoria.
18 So with Taharah we have Counts 2 through 14, sexual assault
19 and lewdness with a minor under 14. The time period is the
20 same for all those counts, October 1st, 2010, to September
21 26th, 2012. August 2010, again remember that's when everybody
22 moves out of the Blankenship house except for Taharah and
23 Taquanda. Taharah told you that the first time that anything
24 happened with the defendant was after everyone moved out,
25 after Mom and her older siblings moved out. She turns 11

1 October 9th, 2010, and then she turns 12 years old September
2 26th, 2012, when she's taken out of the home. So the entire
3 time period the age has been established. She's 12 years old,
4 she's under 14.

5 Counts 2, 6, 10, and 13 are sexual assault of a
6 minor under 14. This is for digital penetration. Again,
7 penetration without consent, age, the age has been
8 established. Taharah told you about the incident in the
9 laundry room where the defendant put two fingers in her
10 private. She told you that it hurt, and she further told you
11 that the defendant said, shh, don't tell. So the age, 12
12 years old, the defendant is a father figure to Taharah. He is
13 -- you know, it's him and Miss Ann and Taharah and Taquanda
14 for the most part living in the Blankenship house for the
15 majority of the time that Taharah and Taquanda are there.

16 What other surrounding facts do we have? Well, we
17 know that Taharah was aware that Victoria disclosed back in
18 2005 and nobody did anything about it. So she's got that
19 going in her mind, she's got it in the back of her mind when
20 this consent issue is going through her head. She's 12 years
21 old -- 11 years old. She told you that this digital
22 penetration happened multiple times. There's evidence of
23 penetration. There was no consent. And he's guilty of 2, 6,
24 10, and 13. That's the digital penetration involving Taharah.

25 Moving on to Counts 3, 8, 11, and 14, this is the

1 sexual assault under -- victim under 14, sexual penetration
2 for Taharah. Taharah told you that the defendant put his
3 private part in her private part. He put his penis in her
4 vagina. Those are my words. Those weren't Taharah's words.
5 This happened in Fred's bathroom. She told where it happened
6 in the house at Blankenship. It happened in Fred's bathroom
7 more than one time. It happened in the old bedroom that she
8 used to sleep in more than one time. She was standing up one
9 time when it happened and he came behind her and put his penis
10 in her vagina. In the garage. She told that it happened more
11 than one time in the garage. She told you one time she was
12 bent over the pool table in the garage.

13 Count's 3, 8, 11, and 14 have been established. The
14 penetration without consent. If you will tell -- if you tell,
15 I will get in a lot of trouble. So he puts this guilt on 11-,
16 12-year-old Taharah that she can't tell because he's going to
17 get in trouble. There's no consent, and he's guilty of all of
18 those counts.

19 Counts 9, sexual assault with a minor under 14.
20 This is for fellatio. And fellatio, again, is sexual
21 penetration, is the touching of the penis by the mouth or
22 tongue of another. Taharah told you that the defendant forced
23 his private part in her mouth. She told you that this
24 happened more than one time. She said that it happened in the
25 garage and it happened in her old room. She described how it

1 would happen. He forced her on her knees. Taharah told you
2 she did not want any of this to happen. There's penetration,
3 it was without consent, and he's guilty of
4 Count 9.

5 Counts 4, 5, 7, and 12, lewdness with a child under
6 the age of 14. Going back to the lewdness instruction that we
7 had with Victoria, you need a lewd or lascivious act upon or
8 with any part of a child's body with the intent to arouse. So
9 you need those three elements. Here Taharah told you that the
10 defendant's hands rubbed her breasts, there was skin-on-skin
11 contact. This would happen, she said, immediately before he
12 penetrated her, and it happened immediately before fellatio.
13 That's Counts 4 and 7, his hands rubbing on her breasts, that
14 lewd act upon the body of Taharah with the intent to arouse.
15 How do we know the intent was to arouse? Well, he did it
16 immediately before he penetrated her, whether it was putting
17 his penis in her vagina, his finger in his vagina, or his
18 penis in her mouth. Taharah also told you that the defendant
19 forced and caused her hand to be placed on his private part
20 and he forced it to rub up and down. Again, she said this
21 would occur before penetration. So we have the lewd act, lewd
22 or lascivious act upon Taharah's body with the intent to
23 arouse, because he did it right before he sexually assaulted
24 her. And he's guilty of Counts 5 and 12.

25 Let's talk about Taharah's credibility. Remember

1 you have the instruction there is no corroboration necessary.
2 If you believe the victim's testimony, that is enough to find
3 the defendant guilty of sexual assault charges. Also we need
4 to look at her manner on the stand, how she testified to, her
5 demeanor. She knew facts. She couldn't remember specific
6 dates, but she gave you what happened inside that Blankenship
7 house, she described what rooms it happened in, she described
8 how it happened.

9 So we have two interviews with Taharah, we have the
10 December 2011 Henderson interview and the September 2012 CPS
11 medical interview. When you're evaluating these interviews I
12 want you to take into consideration where these interviews
13 happened, who did the interviews. The December 2011 interview
14 was done by three male Henderson police detectives in the
15 Blankenship home in the middle of the night, at 3:00 a.m.,
16 when the defendant was in the very next room while Taharah was
17 talking to Detective Melchert. Her interview in September --
18 and remember, September 2012 isn't the first time that Taharah
19 disclosed. Taharah discloses in May of 2012 to Ann after
20 Taquanda confronts about what happened, after Taquanda tells
21 Ann about what happened. Nonetheless, the September 2012
22 interview, it's Taharah alone in a room with Michelle Fisher,
23 that forensic interviewer. Detective Madsen testified that
24 these rooms are set up for kids. This was in a completely
25 separate building then. The defendant was nowhere near her.

1 She disclosed more in September 2012 because of all this. She
2 felt more comfortable with what was going on. I mean, if you
3 can just picture how the different interviews were occurring
4 in your heads, I think you can imagine why Taharah didn't tell
5 the Henderson Police detective anything in December of 2011.

6 Also take into account that Taharah knew what
7 happened to Victoria. She knew that Victoria was essentially
8 shunned by all the adults. They called her a liar, they
9 wouldn't let her live in the Blankenship home, and she knew
10 that Victoria had disclosed in 2005.

11 There was a lot of talk about how Detective Aguiar
12 told Taharah that they were there to make her feel safe. In
13 Utah CPS removed the kids from the home, but that's only
14 because Tina was nowhere to be found. She was in Nevada. She
15 wasn't in Utah. She wasn't in the same state. So CPS had no
16 choice but to remove them from the home. Taharah doesn't know
17 what's going to happen if she discloses anything in that
18 December 2011 interview. She doesn't know what's going to
19 happen, if they're going to remove her from the home or what.
20 And she's also got what happened with Victoria a few years
21 back in the back of her mind.

22 Taquanda's credibility. Taquanda's manner on the
23 stand. She was different than Taharah. Taquanda was more
24 matter of fact about things. She had more confidence. The
25 detectives that interviewed her also told you that she just

1 exuded more confidence than Taharah. Taquanda, remember, in
2 her December 2011 interview she does tell Detective Aguiar
3 about physical abuse. What else does she tell Detective
4 Aguiar that he testified to? I'm afraid if Fred finds out I
5 told. I'm afraid because Fred is outside. She said these
6 things to the detective. Taquanda told the detective about
7 the physical abuse with Shabazz and the physical abuse with
8 Taharah. Detective Aguiar told you that she was basically
9 sobbing when she was talking about how afraid she was.

10 While we don't need any corroboration and while
11 Taharah's testimony is enough, we do have corroboration. May
12 2012 Taquanda sees it happening. She walks by the laundry
13 room, she sees through that mirror that she was looking at in
14 her bedroom that the defendant came and got Taharah. She
15 followed them. She saw the hands in the laundry room. She
16 described to you where the hands were. She said that the
17 defendant's hand was over Taharah's hand.

18 Taharah doesn't tell Miss Ann. Taharah has been
19 told over and over again by this defendant that if she tells
20 he's going to get in trouble, if she tells he's going to beat
21 her, if she tells he's going to beat her family. Taquanda
22 tells Miss Ann. Taquanda actually sees it happening, and
23 Taquanda is the one that goes to Miss Ann. And then Miss Ann
24 confronts Taharah about it. When Miss Ann confronts Taharah
25 about it, Taharah tells Miss Ann what's going on. So Miss Ann

1 takes these 12- and 11-year-old girls to an OB-GYN. The
2 examination is conducted. This happens in June 2012. Dr.
3 Gondy testified June 27, 2012. And Taharah has high-risk HPV,
4 a sexually transmitted disease. Twelve-year-old Taharah has
5 high-risk HPV. That is also corroboration. Dr. Gondy told
6 you that Miss Ann told her that Taharah was sexually abused.
7 Miss Ann knew about this. Miss Ann told Detective Madsen
8 exactly what the girls told you, that they went to Miss Ann in
9 May, that they told her what happened, that Miss Ann said she
10 was going to do something about it, she said she was going to
11 move them out of the apartment, out and away from the
12 defendant. And it never happened. Ultimately she never did
13 anything. So you've got that corroboration there, as well.

14 After the visit to Ms. Gondy is when the girls visit
15 Mom and their siblings in the Henderson apartment. It wasn't
16 before. It wasn't before Taharah tested positive for HPV, it
17 was after. Again, when they come back, they come back from
18 being with their mom in the summer, they come back hoping to
19 start the school year, hoping that Miss Ann is going to keep
20 up on her promise that she's going to move the girls away from
21 the defendant into an apartment. September 26th, 2012 --
22 school starts in August of 2012, so Taquanda waits for
23 something to happen, and finally she realizes that nothing is
24 going to happen. And that's when she calls CPS and reports.
25 These -- all of these things I want you to take into account

1 when you're assessing Taharah and Taquanda's credibility.

2 Child abuse, neglect, or endangerment. There's five
3 counts of that, one for each of the Duke kids. You're
4 instructed that a person who wilfully, unlawfully, feloniously
5 causes a child under 18 to suffer unjustifiable physical pain
6 as a result of abuse or neglect or to be placed in a situation
7 where the child may suffer physical pain is guilty of child
8 abuse. Abuse or neglect means physical or mental injury of a
9 non-accidental nature. Physical injury means permanent or
10 temporary disfigurement, impairment of any bodily function or
11 organ of the body, any bodily function whatsoever. Counts 1
12 and 15 through 18 are your child abuse counts. They are for
13 the most part all August 27 through September 26th, 2012,
14 except for Victoria's. Victoria's starts January 2005 to
15 September 26, 2012. All the other kids have the first time
16 frame.

17 This is all for when the kids were living at
18 Blankenship. They're all under 18 while they're living at
19 Blankenship. Beatings with a belt. Every single one of the
20 Duke kids that testified on the stand said that the defendant
21 beat them with the belt. Taquanda told you that it would
22 leave welts. So, you know, sometimes they would get in
23 trouble and that's why he beat them with a belt. What did
24 they get in trouble for? So they got in trouble for not doing
25 the pushups right, and that warranted a beating with the belt.

1 They got in trouble from drinking juice from the fridge, and
2 that warranted beating them with a belt. He would beat them
3 for no reason at all. All the kids testified to that.

4 Physical injuries of a non-accidental nature. They
5 have physical injuries. Taharah is Count 1. She testified to
6 a time that she could remember when she was on the bed with
7 Mahlica and he was just basically hitting both of them with a
8 belt while the two girls were on the bed. Taquanda said that
9 she saw Taharah hit with a belt, as well.

10 Taquanda is Count 15. Again, she told you that it
11 caused welts. She said that it happened multiple times, that
12 the defendant would beat her with a belt.

13 Shabazz is Count 16. Shabazz was punching or
14 beating with a belt. We know that Shabazz was beat with a
15 belt. He testified to that. All the Duke kids besides
16 Shabazz testified that they saw the defendant beat Shabazz
17 with a belt. We also have this incident in the garage when
18 the defendant essentially beat Shabazz up and gave him a
19 broken blood vessel in his eye. Taquanda described that for
20 you. Shabazz described that for you.

21 Mahlica is Count 17 for beating her repeatedly with
22 a belt and choking her. Mahlica testified that she was beaten
23 with a belt. Mahlica testified that the defendant choked her.
24 Taquanda testified that he saw the defendant -- that she saw
25 the defendant choking Mahlica.

1 And Victoria's Count 18. Victoria told you that the
2 defendant would beat her with a belt. The defendant's
3 admissions during his interview with Detective Aguiar
4 regarding 2005, that's why Victoria's starts in 2005. The
5 defendant told her -- told Detective Aguiar that Victoria made
6 all this stuff up because he held her down and whupped on her
7 butt. He's guilty of all the child abuse counts for what he
8 did to those kids in the Blankenship home.

9 Moving on to the counts with Tina, Count 42,
10 pandering. Pandering is when someone uses physical force or
11 the immediately threat of physical force to induce an adult to
12 unlawfully become a prostitute. Your time frame, August 2007
13 through December 17th, 2011. Tina told you that the defendant
14 put her in the streets while she was living at Siegel Suites.
15 The defendant told her how to prostitute, what to do, where to
16 go, how to look, look like you're getting a drink, just sit
17 there, make eye contact. She described for you what the
18 defendant told her to do. He would also take her to different
19 places for her to prostitute. Tina told you that the
20 defendant would threaten her, he would threaten her family
21 with beatings. Her kids were living with him at the
22 Blankenship house. He used immediate threats of physical
23 force or physical force, and he's guilty of Count 42.

24 Count 43 is a sexual assault count for Tina, August
25 2007 through August 2008. This occurred at the Walnut

1 apartment. She didn't have enough money from her night of
2 prostituting, so the defendant got really angry at her, yelled
3 at her, beat her, and sodomized her. She told you, he fucked
4 me in the ass. She told you that while defendant was doing
5 this he called her a stupid bitch. She did not want this to
6 happen. While Tina did have consensual sex with defendant on
7 other occasions, that has no bearing to her consent with this
8 occasion, and she did not provide consent and there was
9 penetration, and he's guilty of Count 43.

10 Contact 44, living from the earnings of a prostitute
11 is when someone knowingly accepts, receives, or appropriates
12 any money from the earnings of a prostitute. Your time frame
13 August 2007, December 17th, 2011, same as the pandering
14 charge. The defendant knew she was prostituting because he
15 put her on the streets himself and he got the money from her.
16 So it was knowingly. He was knowingly accepting money from a
17 prostitute. Tina told you that she would give the money over
18 to the defendant and when she didn't have enough he would beat
19 her. He's guilty of Count 44.

20 Count 45, battery by strangulation. You're already
21 instructed on battery. It's the wilful and unlawful use of
22 force or violence. Strangulation is intentionally impeding
23 the normal breathing or circulation of the blood by applying
24 pressure on the throat or neck. Your time frame, she was
25 living at the Blankenship house. This is the incident that

1 she described to you when they were at the Blankenship house
2 and the defendant was sick and defendant's in the room with
3 Miss Ann. Tina goes and get him some medicine, brings it to
4 him, gives him a kiss, and defendant flips out on her. He
5 starts beating her, he gets really angry, why did she kiss him
6 in front of Miss Ann. He grabs a thick extension cord and he
7 wraps it around her neck, and she told you that he was choking
8 her. This is evidence. Count 45, battery by strangulation.

9 Let's talk about Tina's credibility. You don't have
10 to like her. You don't have to like her to believe her. More
11 importantly, a lot of the things that Tina testified to is --
12 they were corroborated by other witnesses' transmit. So we
13 have Victoria. Victoria was living with Mom separately than
14 her other brothers and sisters. They -- Victoria told you
15 that Mom was never at home at night. She wasn't home. She
16 was working at Bally's and she was working somewhere else.
17 Where else was she working? Where else was she working at all
18 hours of the night when she was never home? Taquanda told you
19 that she heard -- overheard the defendant and her mom argue
20 about money.

21 And just remember these counts with Tina, it does
22 not affect your evaluation, your determination of any of the
23 other counts in this case whatsoever. And when you go back
24 into the jury room and when you evaluate the other counts in
25 this case and you make your determination taking into

1 consideration everything that was testified to on that stand,
2 there's no choice but to find the defendant guilty of every
3 single one of the counts with which he is charged. Thank you.

4 THE COURT: Thank you.

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

14 And we'll start again at 2:00 o'clock. Thank you.

15 (Jury recessed at 12:41 p.m.)

16 THE COURT: I just have one little thing outside the
17 presence. Okay. Let the record reflect that this hearing is
18 taking place outside the presence of the jury panel.

19 While I was reading I noticed a couple of errors on
20 the jury instructions. Count 35 -- although I read what I
21 knew it was supposed to say, Count 35 stops with "of resisting
22 or understanding," and it should say, "nature of the
23 defendant's conduct." I've already had Pam fix that.

24 And then also Instruction Number 10 on line 4 should
25 say, "know [sic] or should have known."

1 MS. ALLEN: I apologize, Your Honor. Where was it?
2 THE COURT: Instruction Number 10, line 4. It
3 should say, "the perpetrator knew or should have known."
4 MS. ALLEN: Okay.
5 THE COURT: So she's already fixed them. And what
6 I'm going to have her do is just take apart the instructions
7 and insert the new ones. And she'll give you new copies of
8 the instructions, as well.
9 MS. LUZAICH: Thank you, Your Honor.
10 THE COURT: Did you notice anything else? Usually I
11 notice them because I read them.
12 MS. LUZAICH: I hate to say I wasn't reading them.
13 THE COURT: So I read it because I knew what it was
14 supposed to say, but it wasn't there. So Pam's already fixed
15 them, and during the break she'll change them.
16 MS. ALLEN: What time are we coming back?
17 MS. LUZAICH: 2:00 o'clock.
18 MS. ALLEN: 2:00 o'clock. Okay.
19 THE COURT: 2:00 o'clock.
20 MS. ALLEN: Thank you.
21 THE COURT: Thank you.
22 (Court recessed at 12:44 p.m., until 2:10 p.m.)
23 (Jury is present)
24 THE COURT: Do the parties stipulate to the presence
25 of the jury panel?

1 MS. ALLEN: Yes.

2 MS. RHOADES: Yes, Your Honor.

3 THE COURT: Defense may begin their closing
4 argument.

5 MS. ALLEN: Thank you, Your Honor.

6 DEFENDANT'S CLOSING ARGUMENT

7 MS. ALLEN: Good afternoon, everyone. Thank you
8 again for your patience. I know Ms. Rhoades thanked you, but
9 honestly I think on behalf of both sides we have to thank you
10 for your patience. We understand how long this has gone.

11 So at the beginning of this case Ms. Luzaich in her
12 opening argument quoted Mark Twain in that truth is stranger
13 than fiction. I'm willing to bet that Mark Twain never met
14 the Duke family. I'm willing to bet he never met anybody even
15 close to the Duke family. And why the State used this quote
16 from Mark Twain, it makes sense. Of course, when you have
17 this many counts and you have this many people and you have
18 this great of a story, I mean, who could make this up? Well,
19 I'm here to argue to you or tell you that Victoria could.
20 Victoria could make this up. And in fact I would submit after
21 all of this that you could see that she did.

22 I'm going to refer as I go through my closing to two
23 separate -- not events, but two separate interviews. One is
24 Henderson, one is Metro. I think all of you realize that
25 there were two separate interviews done in this case. One was

1 in 2011, one was in 2012. So when I say Henderson
2 investigation I'm talking about that. When I say the Metro's
3 investigation I'm talking about that. I just want to be clear
4 as I go into this, because sometimes I forget to go back and
5 explain myself.

6 But essentially this case starts with Victoria Duke,
7 and it ends with her; right? Everything starts with Victoria,
8 everything ends with her. When you go back to Louisiana and
9 you hear about their life in Louisiana it's probably less than
10 ideal, probably less than ideal for pretty much everybody
11 that's even been into this room aside from the Dukes; right?
12 They live probably in some poverty. There's very little that
13 they have. And what they do have is Victoria, because Mom
14 appears to be nonexistent; right? At one point she ups and
15 leaves Louisiana for Fred, to come see Fred, sometime in
16 December of 2004. But I'm willing to submit to you that she
17 probably has done similar things before.

18 MS. LUZAICH: Objection.

19 THE COURT: Sustained.

20 MS. ALLEN: She leaves Louisiana, she leaves her
21 kids, and, while CPS does not get them, they're hot on their
22 tracks. You recall there were some questions about Tina,
23 about whether or not CPS was involved with them here in 2005.
24 She admits that they were, that someone had made some
25 allegations back in Louisiana. They did get out of Louisiana

1 before -- they did get out of Louisiana before CPS got them.
2 But, nonetheless, there were clearly indications there were
3 problems with this family.

4 So everybody's testimony is pretty much the same
5 when they talk about coming out here. Mom's gone for weeks,
6 Victoria's in charge. She tells you she's sort of the one
7 who's in charge of feeding them, clothing, making sure if
8 they're going to school they're getting to school. I think
9 she may have mentioned something about lunches at school. And
10 suddenly some guy shows up and takes them to Las Vegas.
11 That's my client's brother. And you heard in his statement he
12 said, this lady shows up out of nowhere, I met her once in
13 Louisiana, she comes to Las Vegas after we talked on the phone
14 a couple of times, and I knew she had kids, and I'm like,
15 lady, where are your kids; I left them back there. So he's
16 like, you really shouldn't have done that, let's bring them
17 out here, my brother can get them.

18 So he arranges for John to bring the kids, you know,
19 to Las Vegas. And I think most of the Dukes acknowledge that
20 it was sometime late December. They may have arrived before
21 the first of the year, it may have been right after the first
22 of the year. And this is when Victoria steps in.

23 Now, do you remember Detective Madsen saying, this
24 kind of stuff is the kind of stuff that happens behind closed
25 doors; right? You don't generally have disclosures -- or

1 sometimes we don't have disclosures because it happens behind
2 closed doors or it's secret, they're told to be quiet about
3 it. But what Victoria said was, I show up and within a couple
4 of weeks Fred's doing this to me, like there's no like
5 gratuitous groping beforehand, there's nothing, he just takes
6 her into a room, scoots everybody else, and tries to have sex
7 with her. Okay. And the State says it's credible because she
8 provides details, my brothers and sister were out on the
9 playground, Mahlica was sick, we didn't generally go over to
10 Fred's house.

11 When did Victoria first relay the story? And the
12 State wants you to think it was back in 2005; right? The only
13 indicia that this story was relayed back in 2005 was in fact
14 to -- or was in fact -- it came from Tina. Tina said, yeah,
15 Victoria said something. And this was her testimony when she
16 sat up here in front of you. Victoria said something about
17 Fred touching her, but she was also angry with him about
18 getting on her about something. She added that. That wasn't
19 a question that we asked, that was an additional that Tina
20 thought was important to tell you.

21 So Victoria comes out, this immediately happens to
22 her; right? It happens immediately. Remember the beatings
23 happen immediately. Tina says the prostitution happens
24 immediately, all of this stuff happens within a few -- within
25 a few weeks, according to their testimony. So they've come

1 out to Vegas, the man was nice enough to bring them out, and
2 all of a sudden he's turning Tina out, he's raping Victoria,
3 he's beating everybody. I mean, within a matter of weeks.

4 And they're lucky enough to get away; right?
5 They're lucky enough to go to Utah, they're lucky enough to
6 get some money, get to Utah, get a place. And what is the
7 next thing that happens? Tina comes right back. She gets on
8 a bus or however she -- and she comes right back. The man
9 who's beating her kids, sexually molesting her kid, oh, and
10 turning her out as a prostitute. She comes right back. Less
11 than six months later she comes right back. What does that
12 tell you? Does it tell you that maybe the story is just --
13 it's full of it. How can you possibly think -- now, granted,
14 Tina's not the smartest person in the world. I'm not giving
15 her credit for being Einstein. But, really, do you think
16 she's smart enough to go to Utah and stay there? Not only is
17 she not smart enough apparently to stay away, but then she
18 loses her children. Like she actually loses her children.
19 And this will become important in a few minutes.

20 So Victoria makes up this story about Fred molesting
21 her, and she says no one believes her and she's treated as an
22 outcast, and they eventually end up leaving, okay. Mind you,
23 the story's never relayed in any sort of detail until 2011.
24 2011 is the first time you have any detail on this. So 2005,
25 2006, 2007, 2008, 2009, 2010, 2011. Seven years. Seven

1 years. Do you think seven years is enough time to maybe put a
2 couple of details together for something like that? I'm
3 thinking -- I would submit to you it is. Seven years. So the
4 fact that she's able to recall details of a story -- and, mind
5 you, her recall of details is not that great. But the fact
6 that she's able to recall certainties of a story nearly seven
7 years later, I mean, really? None of those details came out
8 in 2005, so what do you have to compare it to? What exactly
9 do you as a jury have to compare 2005 to? Anything? You have
10 nothing. You have nothing to compare it to. And the State
11 will say, well, if you believe her testimony beyond a
12 reasonable doubt, there's no corroboration necessary, there's
13 nothing needed beyond that. Well, that's a jury instruction,
14 and it certainly is an important one. But I would submit to
15 you that she can't even believe what she said to you about
16 that, that her statement of what happened in 2005 is not
17 believable beyond a reasonable doubt.

18 We then move to 2007. And I apologize. Court's
19 indulgence. We then move to 2007, and Tina has lost her
20 children in Utah and eventually gotten them back, and she
21 apparently contacts Fred at some point and says, come get me,
22 I hate it here. So Fred drives down -- or drives up, I should
23 say, to Utah, grabs -- you know, he tries to get what he can
24 of the kids. I think all of the kids told you that only Mom's
25 stuff was packed; right? She only got her stuff. Generally I

1 think you can see throughout the course of this case that Mom
2 doesn't really about much of anything but herself. Like her
3 interests and needs are put first, and everybody else kind of
4 comes second. So she packs up, she doesn't tell any of the
5 kids, and they move back to Las Vegas.

6 And what is one of the first things that happens per
7 all their testimony? He gets her a job at Bally's. Remember,
8 he get her a job at Bally's. And she's not making \$30 an
9 hour, she's not an executive, but she's making I think
10 starting at \$13 an hour. And she said she's extra board, I
11 think is what she used, which is almost full time. She was
12 almost getting 40 hours a week. And when Mr. MacArthur asked
13 her, so you're making -- at some point during all this you're
14 making about \$30,000 a year. \$30,000 a year. She's making
15 almost \$30,000 a year. What's interesting is that do you
16 remember Tina remember every single penny she ever made at
17 Bally's? She remembered that. She remembered every raise,
18 she remembered it went 2 cents a month the longer you were
19 there. She remembered the money she made. But she couldn't
20 remember what she had said the police in 2011. So she
21 remembers the kind of money she made at Bally's but she has no
22 recollection of when she talked to the police in 2011.

23 So he gets her a job and she starts working. And
24 because something -- there was some indication that Victoria
25 was unhappy with him in 2005, he doesn't want Victoria in the

1 house. So he says, you know what, you need to stay somewhere
2 else, you need to stay somewhere else. And at the beginning
3 of all of this the State said you're going to see there's -- I
4 don't think this is the word they used, but alienation, like
5 every time the kids would visit Mom Fred and Ann would stay,
6 they would never leave them alone. Throughout this entire
7 case Mr. MacArthur and I were careful to ask every witness,
8 every time you went to your Mom's house did you go for
9 weekends; yes. Did Fred and Ann leave you there; yes.
10 There's no alienation here. These kids are back and forth
11 between Mom's house. Sha'karia said that, I think Fred said
12 in his statement to the police. Even Victoria admitted that.
13 All these kids, you know, they're back and forth with Mom.
14 They're certainly not being supervised every moment that
15 they're there.

16 Nonetheless, Victoria and Mom move into the
17 efficiency. They move into the efficiency apartment, and
18 she's got to get the money together to get into Walnut. So
19 she gets apartment on Walnut eventually, and Victoria ends up
20 in school. Grades are going to be important. Look at their
21 grades. Every kid admitted that while they were with Fred
22 their grades with the best that they'd ever been, they had
23 never had better grades in school. All of them. I would
24 submit to you if you're attempting to secret away people, if
25 you're attempting to continue to abuse them, if you're going

1 to make them into, you know, for lack of a better word, you
2 know, kind of like a slave to you, if you want to keep them in
3 that position, do you educate them? Do you send them to
4 school? Do you insist that they go every single day? Do you
5 then insist that they get good grades? Every kid said an
6 education was exceptionally important to Fred, he insisted
7 they go to school, he wanted them to get good grades. So do
8 you do that to someone that you're looking to abuse for years
9 on end? I mean, is that what you do? And then you look at
10 the grades when they end up back at their mom's house, because
11 they just literally went to straight Fs. And you heard the
12 girls -- the two young girls say that when they went back to
13 their mom's house 30 absences within -- from November to
14 present. So 30 absences already.

15 So he gets all the kids in school, and they're doing
16 well. The kids are doing reasonably well. Shabazz is in
17 ROTC, the kids are getting decent grades, they're getting in
18 trouble at school, and Fred's exercising a policy that I
19 believe most parents exercise, if you get in trouble the home
20 -- or at school, you get in trouble at home. So the State --
21 Ms. Rhoades said, okay, well, he's beating her because -- he's
22 beating them because -- and I wrote this down, apologize --
23 oh, because they're taking juice from the fridge or doing
24 pushups wrong. Like that's why he's beating them. And, mind
25 you, "beating" is a word they came up with. It's not the word

1 -- it's disciplining them.

2 How about beating up a disabled kid at school for
3 taking your juice? How about stealing a diabetic girl's
4 bracelet? How about getting RPC-ed and constantly getting in
5 trouble at school? How about constantly lying? How about all
6 those things? Is that enough to be disciplined? If you beat
7 up a kid in the bathroom for stealing your juice, a disabled
8 kid, do you think that's enough to be punished at home? I
9 would submit to you that it is. It's not stealing juice from
10 the fridge.

11 When you talk about child abuse the jury instruction
12 is pretty clear. It talks about permanent or temporary
13 disfigurement, impairment of any bodily function or organ. We
14 know that there's no permanent disfigurement; right? Did
15 anybody come in unable to walk anymore? Did anybody come in
16 here unable to see or hear or use their hands? No. There's
17 no impairment of any bodily function or organ. There's no
18 testimony to that. So what you have to look at was it
19 temporary disfigurement. So I was careful to ask -- and this
20 was save and except for Victoria. I was careful to ask each
21 one of them, and so was Mr. MacArthur, could you sit
22 afterwards, could you walk out, did you have any problems
23 later, did you -- you know, were you like bruised the next
24 day. Most of them said, no, I don't remember anything like
25 that. In fact, I think universally they said, we had welts.

1 So then you look at the idea that it left a welt. So if you
2 use your hand and you smack your child's bottom and it leaves
3 a welt, is that any different than a belt?

4 I want you for one moment to think of this from a
5 child's perspective. Think of it from the Dukes' perspective.
6 Up until the time they moved in with Fred they had never
7 experienced discipline. In fact, they really didn't
8 experience having a mother. What they had was Victoria.
9 Victoria raised these kids. Does it strike you as odd that
10 Victoria was not disciplining these children? They move into
11 this home with Fred, and Fred is very strict. He expects a
12 certain thing. He and Ann expect that the little girls aren't
13 going to act like they're older, he expects that they're not
14 going to -- they're not going to lie, he expects they're going
15 to go to school, and he expects they're going to get good
16 grades. When they don't do those things, save and except for
17 Victoria, universally what happened? They got something taken
18 away, then it went to pushups, and if things got bad, then
19 they got what they called a whuppin.

20 Victoria said, oh, no, no, he was beating everybody
21 all the time, 24 hours a day, seven days a week, it was going
22 on like crazy, the only thing that stopped it was if I gave
23 myself to him. It's like a Lifetime movie; right? I mean,
24 that's the only thing that stopped Fred. What they don't
25 account for, what Victoria didn't realize, what Taquanda

1 clearly didn't realize is that they have something called
2 mandatory reporters; right? That's another thing that Ms.
3 Rhoades didn't want to talk about. She didn't want to talk
4 about Coach Cooper, she didn't want to talk about Ms.
5 Bywaters, she didn't want to talk about Ms. House, she didn't
6 want to talk about the psychiatrist that Victoria saw.
7 Remember, Victoria said she disclosed -- she disclosed some of
8 this to the psychiatrist. I mean, it's admitted. You can
9 look at it. She saw a psychiatrist. She says she told the
10 psychiatrist all of these things. She says she told everybody
11 in Utah all this stuff, she says she made a few phone calls to
12 CPS. I mean, if in fact you were to believe Victoria's
13 account of events, you would also have to believe that the
14 system failed every single time, I mean, in a multitude of
15 ways. You have to believe that three separate teachers just
16 ignored them, you have to believe that a psychiatrist ignored
17 them, you have to believe that Gondy ignored them. And in
18 fact -- I'll get to that in a minute. But you have to believe
19 everybody along the way, all the people in Utah ignored them.
20 I mean, how many people do we have to go through? How many
21 people have to come in and say, yeah, they never told me
22 anything? And it's not even that they didn't tell them
23 anything; I never even saw anything on her; right? No
24 bruises, I never saw marks, I never -- Shabazz says, oh, Coach
25 Cooper asked me about it. Coach Cooper came in, what, 10

1 minutes after that and said, I never saw anything like that.
2 These are people -- Coach Cooper particularly, this is a guy
3 that takes care of people when the law doesn't even require
4 him to do it; right? He takes care of the pregnant teens, he
5 takes care of the people at his school that don't have enough,
6 he gives them diapers, he gives them food and formula. So
7 he's not even required by law to do that and he does it. Do
8 you really think he dropped the ball on this one? Do you
9 really think he didn't notice if these three kids were coming
10 to school with all these horrible marks all over them? It
11 defies logic. It defies rational thought process.

12 If you think of this from a child's point of view,
13 you realize that if you've never had discipline, discipline in
14 the way that Fred did it is going to seem like a beating. But
15 if you think of it from Shrday's perspective or you think of
16 it from Sha'karia's perspective, they said, we got in trouble,
17 this is what happened when we got in trouble, it started off
18 as X and it eventually moved to that if I didn't -- if I
19 couldn't figure it out. And Sha'karia even said, it happened
20 to me once, because I was smart enough to figure out not to do
21 it again.

22 I would submit to you that the child abuse counts,
23 1, 15, 16, and 17 -- I'll get to Victoria in a minute -- but
24 they defy the testimony. Truth is stranger than fiction. I
25 can't imagine a greater fiction. There is no substantiation

1 to this at all. None. There's no pictures of bruising,
2 there's no teachers that can come in and -- there's nothing.
3 There is nothing. And even the State's allegation of
4 corroboration is -- think about it. Taquanda's like, oh, I
5 see, you know, Taharah choked out. Taharah says, I'm home by
6 myself. They can't even get that part of their story
7 straight.

8 I would submit the child abuse counts with regard to
9 Taharah, Taquanda, Shabazz, and Mahlica are in effect not --
10 those are -- you must find Fred not guilty. There's no
11 evidence that Fred inflicted any sort of temporary -- because
12 that's all that's left is temporary disfigurement. He
13 inflicted no temporary disfigurement on any of those children.
14 What he did was he disciplined them.

15 Now I want to talk about Tina a little bit. And so
16 at the start of the case Ms. Luzaich said that Tina was going
17 to make your skin crawl. I think she said it a couple of
18 times. She said, this is a mother who's going to make your
19 skin crawl. I'd like to remind that's their witness, and I'd
20 like to remind you that they want you to use her to
21 corroborate Victoria. So they want you to use their witness,
22 who Ms. Luzaich referred to as someone who'd make your skin
23 crawl, and they want you to corroborate what Victoria said
24 about the car or about what happened at the efficiency or what
25 happened at Walnut. And I would submit to you that that just

1 isn't possible. This woman left her kids on at least two
2 occasions; right? She left in Louisiana and then she left
3 once again in -- when she came here from Utah. She's -- I
4 said this before. She says that he put her in the streets in
5 2005, but she really just couldn't wait to get back to him.
6 She had every opportunity in the world to stay in Utah, but
7 she just didn't want to do it. It doesn't really sound like
8 that kind of an abusive situation that she described when all
9 she wants to do is come back. The only thing she can think to
10 do is come back. She's making this money at Bally's. But
11 then she tells you, I'm working 24 hours a day. Remember
12 that? She says, I'm working 24 hours a day, I work at Bally's
13 and then he makes me go out and prostitute myself and I'm
14 working 24 hours a day. Does that really make any sense to
15 anybody here? I guess if she is putting cocaine up her nose
16 every night -- and she said she was using cocaine. I guess if
17 she's putting cocaine up her nose every single night it might
18 make sense for two or three days. But eventually everybody
19 has to stop. According to her, it never stopped. It stopped
20 finally when she got arrested.

21 Now, this is a woman who has experience with CPS;
22 right? When she comes back and she's arrested by Metro her
23 children have already been taken away from her one time;
24 right? They've already been put in foster care. She already
25 knows the power of the State, doesn't she? It took her months

1 to get her children back. So when she's picked up by Metro
2 she says, I'm afraid to tell them because Fred has the kids.
3 Does that make any sense? No. She understands that telling
4 Metro at that point in time, that's going to get her kids out.
5 She knows. She left them in the care of a neighbor, and the
6 State stepped in. But suddenly if she tells them that Fred's
7 raping her daughter and beating the kids and beating her and
8 forcing her to be a prostitute, they're going to ignore her at
9 that point. So she already knows the power of the State and
10 so, according to her, she doesn't say anything because Fred
11 has her kids. Remember, go back to the idea of what the State
12 said. They only dropped them off and they supervised them.
13 That's not true. Those kids were in and out of their house.
14 Those kids were in and out of Tina's house. And if you
15 remember, Sha'karia said when the two little girls would go
16 over there for a weekend they would come became and what'd
17 they have, bad attitudes. They came back wearing makeup, they
18 came back acting like they needed to be older than they were.

19 You remember her Henderson interview? She said
20 nothing happened, nothing is wrong, Ann's a good person, she
21 helps me out, Fred's a good person, never seen him touch the
22 kids in a way that's wrong. Taken by surprise, it seems like.
23 I mean, they have to hunt her down, and then when they
24 eventually find her nothing's going on, she's never -- she
25 never indicates anything is wrong. She talks about a

1 situation where the last time she was with Fred Victoria
2 pushed her way in and sort of insisted on having sex but
3 that's really about it; right? And Henderson picks up on
4 this, and I'll get to that in a few minutes.

5 But realize that once Fred's interviewed by
6 Detective Aguiar he's now on notice that Victoria's -- she's
7 crazy; right? According to her mom, she looks -- Fred looks
8 uncomfortable when Victoria pushes her way in; right? And it
9 doesn't make sense for him to be uncomfortable at this point,
10 does it? Because, according to Victoria, they've been having
11 sex for years and they've been having sex with Mom for years.
12 So why would Fred get uncomfortable with the situation? But
13 Tina says he looked -- you know, he looked uncomfortable, I
14 left the room and I was angry and that was sort of the end of
15 it.

16 This is the last time Fred sees Tina; right? He
17 doesn't go back. He's done. Like the whole family's crazy
18 and he's done with it. And he says so in his interview. At
19 what point do you think Tina realized Fred was done with her?
20 At what point do you think Tina thought, oh, he's not coming
21 back, he doesn't love me and, wow, he actually did pick Ann
22 over me? At what point do you think that sort of hit her?
23 And do you think maybe it coincided with the girls being home
24 for the summer? So what you have is Tina realizing Fred's
25 done. And there's a saying that I'm sure you've all heard.

1 Hell hath no fury like a woman scorned. And essentially
2 that's what you have here with Tina. She's angry, Fred is
3 done with her, he doesn't want anything else to do with her.

4 But in essence you have all of these interviews that
5 happened in December of 2011. The only person who's saying
6 anything that happened that was untoward is Victoria. You
7 have Taharah calling Fred a good man and saying that she's not
8 scared to live there. Maybe it was in relation to the dogs,
9 but she's the one who volunteered the information. You have
10 Taquanda talking to Detective Aguiar, and the State said,
11 well, they weren't really that comfortable because Fred's
12 there and they didn't feel good about it. Okay. Well,
13 dismiss Detective Aguiar's interview. Go ahead, throw it out
14 the window. I don't care.

15 Because then I would ask you, and this is other
16 thing that she didn't talk about, about what about Bobbie
17 Tibbs. Anybody remember Bobbie Tibbs? Not my witness. That
18 was the State's witness. She's from CPS. What did Bobbie
19 Tibbs say? She said the girls reiterated exactly what they
20 said to Detective Aguiar, that they felt totally safe in the
21 house. What two things did she add to this? One, neither one
22 of them believed Victoria. So they thought Victoria was
23 lying; right? And, number two, when is Fred coming back. So
24 even if, even if for just a second you believe that Taquanda
25 was scared somehow when she was talking to Detective Aguiar,

1 why did she say that to Bobbie Tibbs? Why did she ask Bobbie
2 Tibbs, when is Fred -- the girls. It was the girls said, when
3 is Fred coming back. They wanted Fred back in the house.

4 So if you want to throw out Detective Aguiar's
5 interview because it's early in the morning or because maybe
6 he's not a good interviewer, maybe he really just sucks at
7 interviewing kids; right? So if you want to throw that out,
8 what are you left with? You're left with Bobbie Tibbs,
9 someone totally separate, someone who is really truly trained
10 to talk to children and seemed very sincere on the stand.

11 I'd like to talk now about the counts that relate to
12 Taharah, okay. Her first -- her first interview with
13 Henderson is in 2011, and she's actually just turned 12;
14 right? She just turned 12, because she turned 11 in October
15 of 2010. So she's already 12 when the Henderson interview
16 takes place, and she says nothing's happened; right? She's
17 very clear that nothing happened, never has been touched
18 inappropriately, nothing is -- you know, has ever happened.
19 Bobbie comes along and interviews her again. No disclosure.
20 According to -- according to the State's theory, she goes and
21 she tells Miss Ann -- and that information comes from two
22 sources; right? Essentially it comes from Taquanda, and it
23 comes from Taharah, who say, oh, yeah, I told the other one, I
24 told this one, and then we went and told Miss Ann. I think
25 you heard -- I believe you heard testimony that Miss Ann just

1 didn't believe them. And there's some history here that
2 there's lying involved; right? The kids lie, the kids have
3 lied in the past, they've gotten trouble for it, they've
4 gotten in trouble at school for it, lying and stealing. And
5 so Miss Ann doesn't believe them. When they're taken for an
6 exam in Dr. Gondy's office apparently Taharah has HPV,
7 sexually transmitted disease. And while the State hasn't come
8 out and said it, their theory is that my client gave it to
9 them. What other theory could you have; right? Who else
10 would have given it to her? She's being raped, being raped by
11 my client. How else would she have gotten HPV; right? I
12 asked Detective Madsen if that was his theory, and he -- it
13 was more defensive than I expected. He said, that is not my
14 theory. Okay. Sorry.

15 MS. LUZAICH: Well, no. Objection. That's not
16 what he said. He said, that's not what I'm saying.

17 MS. ALLEN: No. He said, that's not my theory.

18 THE COURT: And the jury will determine what the
19 facts were.

20 MS. ALLEN: So did any of you wonder if Victoria had
21 HPV, all the years of sex?

22 MS. LUZAICH: Objection.

23 THE COURT: Sustained.

24 MS. ALLEN: Well, it's a -- Your Honor, it's a --
25 that's a reasonable doubt. That's something the State did not

1 address in their case.

2 MS. LUZAICH: I didn't speculate.

3 THE COURT: And that's back to my point exactly.
4 It's not in evidence.

5 MS. ALLEN: Well -- can we approach?

6 THE COURT: Sure.

7 (Bench conference)

8 MS. ALLEN: It's a permissible inference. Supposing
9 my client's sleeping with Lealer, Victoria, and Tina, no
10 evidence of any of them having HPV submitted by the State.

11 MS. LUZAICH: Because nobody was tested for it. You
12 have to be specifically tested for it. But you can't ask them
13 to speculate. Because that's exactly what you're doing.

14 THE COURT: You're asking them to speculate --

15 MS. ALLEN: I'm not asking them to speculate.

16 THE COURT: -- on something that there's no evidence
17 on.

18 MS. ALLEN: No, I'm not asking them to speculate.
19 It's a permissible inference. If my client was having sex
20 with Taharah and gave her an STD, there's a permissible
21 inference that he gave it to other people, the other people he
22 was having sex with.

23 THE COURT: You said, haven't you guys wondered if
24 the other ones have HPV. You did ask them to wonder.

25 MS. ALLEN: Okay. Well, then I'll ask -- I'll say

1 differently, then.

2 MS. LUZAICH: I don't think that that's a --

3 THE COURT: The objection is sustained. There was
4 no evidence of it. You can move on.

5 MS. ALLEN: Well, wait. Hold on, Your Honor, for
6 one -- so I'm not even allowed to say, did you -- there's been
7 no evidence presented that Lealer Cooks, Tina Duke, or
8 Victoria Duke had HPV, the State hasn't presented any evidence
9 about it.

10 MR. MacARTHUR: That's [inaudible].

11 THE COURT: I think that would be permissible.

12 MS. ALLEN: Okay.

13 (End of bench conference)

14 MS. ALLEN: I don't think -- well, let me start off
15 with it's pretty clear there was no evidence presented, right,
16 that Tina or Victoria or Lealer had HPV. So apparently
17 Taharah was the most unlucky one of the four, because she's
18 the only one who got it. I would submit that the fact that
19 three of them didn't come in here and testify to that is --
20 that in itself is reasonable doubt.

21 MS. LUZAICH: Well, objection. That is not
22 appropriate.

23 THE COURT: Sustained.

24 MS. LUZAICH: Move to strike.

25 THE COURT: Granted.

1 MS. ALLEN: Now, Taharah is slow. That's what
2 everybody came in here and testified to. She's slow. But she
3 was able to talk about some of the things, you know, living in
4 Blankenship, going to school. She was able to articulate at
5 least basic events in her life. And if you recall and
6 skipping to Sholeh and Bobbie Tibbs and Detective Madsen and
7 even Dr. Mehta I asked very specific questions about forensic
8 interviews. Do you recall those questions about leading
9 versus open-ended questions and why you didn't want to suggest
10 the answer to a child because, you know, if you suggest an
11 answer, children tend to want to please, and so they're going
12 to sort of repeat back what you just said.

13 Okay. So recall when Taharah was being questioned
14 by the State. It required leading. It required leading
15 questions. And recall I objected to those questions. It
16 required suggestions about what happened. This is the hard
17 part; right? This is the really hard part for me, standing up
18 here and saying, remember what she said about sex. Do you
19 remember what Taharah said? She said, I went into -- you
20 know, I got drug into the bathroom, I got drug into a bedroom,
21 I got -- wherever it was and he stuck his private in me. He
22 stuck his private in me; right? So asking you to call upon
23 common sense and experience, does this sound like a
24 description of sex? When I asked her about talking to CPS and
25 they asked -- they asked her, what was Fred's body doing at

1 the time, do you remember her response? It was dark. So
2 we're to believe that Taharah, slow as she is, can't describe
3 what someone's doing to her, having sex, in the dark. It
4 really defies logic. He stuck it in me. That's all she said.
5 That's it. No other descriptions. I hate to be so stark
6 about it, but really that's just the way it was. That's the
7 way she said it when she talked to CPS, that's the way she
8 said it when she testified at the prelim, that's the way she
9 said it here, and each and every -- well, take that back -- at
10 least here in front of you led into the answers, because she
11 couldn't articulate it on her own. Could be in part, too,
12 being nervous. She kept smiling. A lot of her answers were,
13 I guess. But really this is a defining moment in her life,
14 presumably. She uses the words "raped" with CPS. She says to
15 CPS -- and this is, by the way, in 2012, and I asked her about
16 it. When they asked her what was going on, she goes, well, we
17 get in trouble for the littlest things and, like, I'm not
18 happy, oh, and, yeah, there's the rape thing. That's what
19 she says. It's an afterthought, oh, the rape thing.

20 Now Victoria. And I talked a little bit about
21 Victoria earlier, in 2005. Her rendition of 2005 doesn't come
22 until 2011, okay. So let's talk about all the other things
23 that she talked about. Her description of the beatings are
24 not founded in reality at all. There's no reality in anything
25 she described with the beatings. They don't even comport with

1 the other four kids that are there. Like they don't comport
2 with anything. It literally is like right out of a movie, he
3 was just beating us all day every day and it only stopped when
4 I gave him what he wanted, which was me.

5 She talks about losing her virginity to Fred. And
6 this is eerily similar, right, to the first time that all this
7 happened with him. They're not even in town for a month;
8 right? She testifies, her mom testifies, everybody says, we
9 come back like August of 2007. She says the date's August
10 24th of 2007. So they're not even back a month, probably not
11 even three weeks, and Fred's supposedly telling her, you know,
12 it's time, time, we're going to do this, pick a date. I mean,
13 wouldn't -- why not just send a certified letter at that
14 point; right? This is -- hey, this is what's going to happen.
15 It doesn't make any sense. First of all, she's been gone for
16 two years, so whatever happened two years ago, even if you
17 believe that, suddenly you're just going to come back and do
18 this. It doesn't make any sense. It doesn't make any sense
19 to have Mom involved, it doesn't make any sense that you're on
20 some mountain with rocking back and forth. All of the details
21 in this are sort of hastily put together, if you think about
22 it. So the cars are rocking back and forth. She says they
23 want to a park and she was allowed to walk around. So if you
24 are in the process of beginning to -- you know, you're going
25 to start the process of raping someone, do you generally take

1 them somewhere where they can run away? I mean, if you're
2 going to put someone -- you're going to hold someone hostage,
3 right, you should probably hold them hostage. You probably
4 shouldn't give them an opportunity to get away. But he takes
5 her to a park and lets her walk around. And then he takes her
6 to an area where there's tons of other people. That makes
7 perfect sense. When you're going to rape a kid take 'em
8 somewhere where everybody else in the world's going to see it
9 and make sure Mom's there so she can tell you about it later.
10 None of it makes any sense. And, once again, how long did it
11 take her to recount the details? Years; right? No one knows
12 the story. No one knows the story from 2007. Tina denies it.
13 I mean, she -- at least to Henderson she denies it. She has
14 marginal memory when it comes to talking about it on the stand
15 in front of you. But Victoria for the first time recounts
16 this in 2011.

17 Remember Detective Aguiar -- Detective Madsen said
18 the two of them wrote out statements, they wrote out dates and
19 events and -- I don't know if you recall that, but he did. He
20 said, and Tina brought them in; right? Tina brought in her
21 handwritten statement about what had been going on, and
22 Victoria's had been with dates and times and all these things.
23 You wonder why maybe you didn't see those? Well --

24 MS. LUZAICH: Objection.

25 MS. ALLEN: They testified to it, Your Honor.

1 Detective Madsen testified to it.

2 THE COURT: Go ahead.

3 MS. LUZAICH: Well, can we approach?

4 THE COURT: Sure.

5 (Bench conference)

6 MS. LUZAICH: She can talk about it all she wants,
7 but you can't say, wonder why she didn't -- you didn't see
8 them.

9 THE COURT: Yeah.

10 MS. LUZAICH: That's hearsay.

11 MS. ALLEN: No. You could have brought it in
12 through the witnesses, through Victoria and then Tina.

13 MS. LUZAICH: They're hearsay. You would have
14 objected. That's why they didn't come in.

15 MR. MacARTHUR: [Inaudible]. It's only hearsay
16 because it's somebody else's statement. But they didn't come
17 into evidence, and the fact that you didn't bring them or even
18 ask --

19 MS. ALLEN: You didn't even ask about them.

20 MR. MacARTHUR: -- about it is something that she
21 can comment on.

22 MS. LUZAICH: No. They're hearsay. They're not
23 admissible. They're statements.

24 THE COURT: No. That statements to the police are
25 hearsay.

1 MS. ALLEN: No. These were handwritten --

2 MS. LUZAICH: It's the same thing, which is why.

3 MS. ALLEN: Which is fine. But they're never -- do
4 you ever wonder why -- okay. Hear about them. That's what
5 I'll say, hear about them.

6 THE COURT: Okay.

7 MS. LUZAICH: That's fine. Okay.

8 THE COURT: Thank you.

9 (End of bench conference)

10 MS. ALLEN: So do you ever wonder why you didn't
11 hear about these statements, why Victoria didn't testify about
12 them, why Tina didn't testify about them? Remember Detective
13 Aguiar talking about it's important to separate people when
14 you're having a discussion because you don't want one to bleed
15 into the other and you don't want the bleeding back and forth,
16 okay. Victoria and Tina -- Tina brings it in for her. So do
17 you think they say down and maybe wrote them out together? I
18 mean, really that's sort of the inference here. Tina brings
19 them in for both of them. You can't rely on what they wrote
20 out in a statement. That's why you didn't hear about them,
21 because there's not even an indicia of reliability at that
22 point. Who knows what condition the two of them like sat and
23 wrote those out? So Detective Madsen refers to the
24 handwritten statements. And you wonder if the details there,
25 it's like a diary or whatever it is, I think Taquanda even

1 talked about it, you have to wonder why you haven't heard
2 about those things.

3 By the time 2011 rolls around Victoria has probably
4 realized that her mother is not going to leave Fred; right?
5 Fred talks about Tina in his statement in such a way that's
6 probably offensive to some of you. He -- and I'm not
7 belittling that by any stretch of the imagination. What he
8 says could be taken as offensive. He talks about her ability
9 to perform oral sex, he makes it pretty clear that she's kind
10 of a side thing, Lealer's his main focus in life, Tina's just
11 a side thing, he goes over there essentially just for sex,
12 none of which is illegal. It calls maybe into question his
13 thought as a rational man having two women around that
14 essentially, you know, could do this. But, I mean,
15 essentially it's not illegal; right? He can go over to Tina
16 and he can do -- he can do that. And as long as she's
17 consenting, which by all accounts she was in 2011, it's really
18 not that big of a deal.

19 So Victoria realizes that there's no end in sight,
20 Fred's not going anywhere, and no one has paid attention to
21 her; right? She tried to get Taharah back in 2007 to make
22 something up, if you recall the testimony of Sha'karia, she
23 heard Victoria telling -- she heard Victoria telling Taharah,
24 hey, go say, you know, Fred touched you. It was kind of
25 another attempt of hers to get out of the house and get away

1 -- or get her mom away from Fred. And it just wasn't working.
2 Remember -- remember Victoria's statements about her mom.
3 It's kind of sad; right? She can't change her mom. She said
4 that. It's my mom, I can't change her, I can't get rid of
5 her, I can't make her realize bad decisions, I can't --
6 there's nothing I can do about my mom, I can't do anything
7 about her; right? That's her mom. So what is the option? If
8 you want to get rid of the one factor in your life that's
9 causing you grief -- well, there's two. There's her mom and
10 Fred. But if you can't get rid of one them, what do you do?
11 You get rid of Fred. So she has -- as Fred said in his
12 statement, she has this habit of going and standing next to
13 the door and listening or, you know, peeking in or getting
14 involved when he's with Tina. And according to him in his
15 statement, and Tina, both in her statement in 2011 and here
16 when she testified, that was one thing she was consistent
17 about. She said, yeah, Victoria busted in and just started
18 having sex. And do you remember what she said about Fred? He
19 was uncomfortable, this was uncomfortable for him. Which
20 doesn't really make any sense if you believe Victoria; right?
21 Because this has been going on for years. There's no reason
22 to be uncomfortable at this point.

23 So remember what she does when she goes and tells
24 the Henderson Police? Do you remember what she does when she
25 brings them back to the apartment? There's one thing that you

1 haven't had in this whole case; right? There's one thing you
2 haven't seen, and that was like a DNA report or a DNA expert;
3 right? DNA didn't come and tell you, we found DNA on X. So I
4 think Aguiar testified he collected the blanket or the towel
5 or whatever it was and nothing was ever really done with it.
6 So Victoria has -- she finally gets something that she thinks
7 may incriminate him and goes nowhere. It really goes nowhere.
8 So she does what she did before, and she tries to get Taharah.
9 And remember these girls want to go back to their mom; right?
10 Mom doesn't make them go to school, Mom lets them wear makeup,
11 Mom lets them do their hair the way they want, Mom lets them
12 act how they want. Don't want to go to school, don't want to
13 learn anything, don't want to get an education, don't want to
14 be disciplined, we want to go back to Mom.

15 The girls spend the summer with their Mom and
16 Victoria, and Taquanda tells you that the plan -- she starts
17 off and she says, the plan didn't work, and she then quickly
18 says, to move out; right? The plan didn't work. I would
19 submit to you the plan was not to move out, the plan was to
20 get rid of Fred. They'd tried before, nothing came of it, and
21 so all they were left with was Taharah. I know this is hard
22 to believe. How could a kid come in here and make this up?
23 Do you remember when we talked to you in voir dire about that?
24 Access to sex. Remember that? What access do kids have to
25 sex? Well, when Victoria makes her statement to Henderson

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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

Electronically Filed
Jun 17 2016 09:00 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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 XX  
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IN THE SUPREME COURT OF NEVADA

FREDERICK HARRIS,

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OPENING BRIEF APPENDIX

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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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