

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK H. HARRIS, JR.,	)		Electronically Filed
# 1149356,	)	CASE NO.: 81257, 81255	Oct 29 2020 12:02 p.m.
Appellant,	)	E-FILE	Elizabeth A. Brown
	)	D.C. Case No.: A-18-784704-W	Clerk of Supreme Court
vs.	)		C-13-291374-1
	)	Dept.: XII	
STATE OF NEVADA,	)		
	)		
Respondent.	)		
	)		

APPELLANT'S APPENDIX VOLUME IX

Appeal from a Denial of Post Conviction Relief
Eighth Judicial District Court, Clark County, Nevada

TERRENCE M. JACKSON, ESQ.
Nevada Bar No. 000854
Law Office of Terrence M. Jackson
624 South 9th Street
Las Vegas, Nevada 89101
(702) 386-0001
terry.jackson.esq@gmail.com

STEVEN B. WOLFSON
Nevada Bar No. 001565
Clark County District Attorney
200 E. Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2750
steven.wolfson@clarkcountynyda.com

AARON D. FORD
Nevada Bar No. 007704
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

...

Counsel for Appellant

Counsel for Respondent

MASTER INDEX

Case No's.: 81255, 81257

Document (<u>file stamp date in parenthesis</u>)	Volume	Page No.
Amended Judgment of Conviction-Jury Trial (11-14-2016)	X	2474 - 2479
Clerk's Certificate of Judgment (11-28-2017)	X	2485 - 2486
Defendant's Reply to State's Response to Motion for New Trial (07-09-2014)	I	0102 - 0116
Defendant's Motion for New Trial (04-28-2014)	I	0081 - 0087
Findings of Fact and Conclusions of Law & Order [heard 4/23/2020] (05-21-2020)	XI	2567 - 2598
Information: Case No. C-13-291374-1 (07-23-2013)	I	0001 - 0015
Instructions to the Jury (04-11-2014)	I	0016 - 0069
Judgement of Conviction, Jury Trial (11-02-2015)	I	0119 - 0124
Motion to Consolidate Supreme Court Case 81255 with Case 81257 (07-13-2020, 1:25 p.m.)	XI	2602 - 2604
Motion to Consolidate Supreme Court Case 81257 with Case 81255 (07-13-2020, 1:27 p.m.)	XI	2605 - 2606
Notice of Appeal to Supreme Court of Nevada (10-27-2015) ..	I	0117 - 0118

Notice of Appeal to Supreme Court of Nevada (05-27-2020) ..	XI	2599 - 2600
Notice of Entry of Findings of Fact, Conclusions of Law and		
Order (05-28-2020)	XI	2601
Order of Affirmance [NSC 69093](05-24-2017)	X	2480 - 2484
Order Consolidating Appeals (07-28-2020).....	XI	<u>2618</u>
Petition for Writ of Habeas Corpus [PC] (11-16-2018)	X	2490 - 2497
Remittitur: NSC 69093 (12-07-2017)	X	2487 - 2489
Reply to State’s Response to Supplemental Post Conviction Petition		
for WHC [heard 4/23/2020] (04-10-2020)	XI	2561 - 2566
Supplemental Points & Authorities in support of Writ of Habeas		
Corpus for Post Conviction Relief (11-01-2019)	X	2498 - 2500
Supplemental Points & Authorities in support of Writ of Habeas		
Corpus for Post Conviction Relief (11-01-2019)	XI	2501 - 2528
State’s Opposition to Defendant’s Motion for New Trial with		
Exhibits [heard 6/19/2014] (06-13-2014)	I	0088 - 0101
State’s Response to Petitioner’s Supplemental Post Conviction		
Petition for WHC [heard 4/23/2020] (04-06-2020)	XI	2529 - 2560
Transcript: Evidentiary Hearing re: Defendant’s Motion for New		
Trial [heard 11/24/2014] (12-30-2015)	X	2381 - 2440

Transcript: Evidentiary Hearing re: Defendant's Motion for New		
Trial [heard 6/30/2015] (12-30-2015)	X	2441 - 2461
Transcript: Hearing re: Post Conviction Petition for Writ of		
Habeas Corpus [heard 4/23/2020] (07-15-2020)	XI	2607 - 2614
Transcript: Hearing re: Confirmation of Counsel and Petition		
for WHC [heard 6/20/2019] (07-15-2020)	XI	2615 - 2617
Transcript: Sentencing [heard 10/27/2015] (12-30-2015)	X	2462 - 2473
Transcript, Jury Trial - Day 1[heard 3/25/2014](12-30-2015) .	I	0125 - 0249
Transcript, Jury Trial - Day 1[heard 3/25/2014](12-30-2015) .	II	0250 - 0309
Transcript, Jury Trial - Day 2[heard 3/26/2014](12-30-2015) .	III	0310 - 0500
Transcript, Jury Trial - Day 2[heard 3/26/2014](12-30-2015) .	III	0501- 0557
Transcript, Jury Trial - Day 3[heard 3/27/2014] (12-30-2015) .	III	0558 - 0733
Transcript, Jury Trial - Day 4[heard 3/31/2014] (12-30-2015) .	III	0734 - 0749
Transcript, Jury Trial - Day 4[heard 3/31/2014] (12-30-2015) .	IV	0750 - 0880
Transcript, Jury Trial - Day 5[heard 4/1/2014] (12-30-2015).	IV	0881 - 1000
Transcript, Jury Trial - Day 5[heard 4/1/2014] (12-30-2015).	V	1001 - 1048
Transcript, Jury Trial - Day 6[heard 4/2/2014] (12-30-2015).	V	1049 - 1250
Transcript, Jury Trial - Day 7 [heard 4/3/2014] (12-30-2015).	VI	1251 - 1433

...

Transcript, Jury Trial - Day 8 [heard 4/4/2014] (12-30-2015).	VI	1434 - 1501
Transcript, Jury Trial - Day 8 [heard 4/4/2014] (12-30-2015).	VII	1502 - 1687
Transcript, Jury Trial - Day 9 [heard 4/7/2014] (12-30-2015).	VII	1688 - 1750
Transcript, Jury Trial - Day 9 [heard 4/7/2014] (12-30-2015).	VIII	1751 - 1878
Transcript, Jury Trial -Day 10 [heard 4/9/2014] (12-30-2015).	VIII	1879 - 1998
Transcript, Jury Trial -Day 10 [heard 4/9/2014] (12-30-2015).	IX	1999 - 2055
Transcript, Jury Trial -Day 11 [heard 4/10/2014] (12-30-2015).	IX	2056 - 2235
Transcript, Jury Trial -Day 12 [heard 4/11/2014] (12-30-2015).	IX	2236 - 2250
Transcript, Jury Trial -Day 12 [heard 4/11/2014] (12-30-2015).	X	2251 - 2367
Transcript, Jury Trial -Day 14 [heard 4/15/2014] (12-30-2015).	X	2368 - 2380
Verdict (04-15-2014)	I	0070 - 0080

...

...

...

...

...

...

CERTIFICATE OF SERVICE

I hereby certify that I am an assistant to Terrence M. Jackson, Esquire, am a person competent to serve papers and not a party to the above-entitled action and on the 29th day of October, 2020, I served copy of the foregoing: Appellant, Frederick H. Harris', Opening Brief as well as Volumes I through XI of the Appendix, as follows:

[X] Via Electronic Service to the Nevada Supreme Court, to the Eighth Judicial District Court, and to the Nevada Attorney General by U.S. mail with first class postage affixed to the Petitioner/Appellant as follows:

STEVEN B. WOLFSON
Clark County District Attorney
Steven.Wolfson@clarkcountyda.com

AARON D. FORD
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701

JAMES R. SWEETIN
Chief Deputy D. A. - Criminal
james.sweetin@clarkcountyda.com

FREDERICK H. HARRIS, JR.
ID # 1149356
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

By: /s/ Ila C. Wills
Assistant to Terrence M. Jackson, Esq.

1 DIRECT EXAMINATION

2 BY MS. LUZAICH:

3 Q Good afternoon, sir.

4 A Hello.

5 Q How are you employed?

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

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

10 A I was hired June 25, 2001.

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

12 A Almost 13 years, yes.

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

14 A I've been a detective since 2006.

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

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

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

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

22 Q And then what?

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

25 Q What is the sexual abuse juvenile detail?

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

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

11 A Yes.

12 Q How does that come about?

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

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

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

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

4 Q Okay. And --

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

7 Q Do most of your investigations also involve CPS?

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

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

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

23 Q Why is that?

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

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

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

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

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

1 for example, robberies or property crimes?

2 A I would say so.

3 Q And especially because children are involved.

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

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

11 A I was.

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

15 A I did.

16 Q How did you become involved?

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

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

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

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

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

11 THE COURT: Sustained.

12 BY MS. LUZAICH:

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

15 A Yes.

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

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

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

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

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

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

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

6 MS. ALLEN: Judge, objection. Hearsay.

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

9 MS. LUZAICH: He wasn't.

10 THE WITNESS: Yeah, I --

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

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

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

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

17 THE COURT: Okay. As long --

18 MS. LUZAICH: I'll ask --

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

20 MS. LUZAICH: -- the next question.

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

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

24 THE COURT: Okay.

25 ///

1 BY MS. LUZAICH:

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

5 A It did.

6 Q Did you access the notes?

7 A I did.

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

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

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

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

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

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

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

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

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

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

19 A Correct.

20 Q So they're objective interviewers?

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

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

1 A Michele Fisher.

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

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

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

15 A Sholeh was with me.

16 Q And just you and Sholeh?

17 A Yes.

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

20 A Correct.

21 Q Or guardians or anything of that nature?

22 A Correct.

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

24 A Law enforcement or CPS.

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

1 interview room?

2 A Taharah and Michele Fisher.

3 Q Okay. So nobody else?

4 A No.

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

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

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

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

19 Q The older one.

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

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

24 A Yes.

25 Q Did she talk to Michele and give information?

1 A She did.

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

4 A I did.

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

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

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

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

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

20 MS. ALLEN: Judge, objection. Hearsay.

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

22 THE COURT: You can answer yes or no.

23 THE WITNESS: Yes, she was.

24 BY MS. LUZAICH:

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

1 Taquanda?

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

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

6 A Yeah, it was Lealer Ann Cooks.

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

9 A She did.

10 Q Were you there when Sholeh called her?

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

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

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

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

17 A She was.

18 Q Did you participate in that interview?

19 A I did.

20 Q Did Ms. Nourbakhsh participate in that interview?

21 A She did not.

22 Q Was she sick?

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

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

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

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

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

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

12 A No. That's correct.

13 Q Why is that?

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

18 Q Kid friendly?

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

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

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

3 A Not right away, but eventually we did.

4 Q Okay. How did you start your interview?

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

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

10 A She claimed to not know at first.

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

12 THE COURT: Overruled.

13 BY MS. LUZAICH:

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

15 A Little by little I did.

16 Q What do you mean little by little?

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

19 MS. ALLEN: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MS. LUZAICH:

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

23 A Okay.

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

1 happening?

2 A Yes.

3 Q And did she at first deny knowing anything?

4 A Yes.

5 Q Did that change?

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

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

13 A Yes.

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

16 MS. ALLEN: Judge, objection. Hearsay.

17 THE COURT: Overruled. You can answer.

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

21 BY MS. LUZAICH:

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

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

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

1 doctor?

2 A Yes.

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

5 A Yes.

6 Q Did she tell you what the disease was?

7 A She said to her recollection it was HPV.

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

10 A Yes.

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

13 A Yes.

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

16 A She claims she had tried.

17 Q But she didn't ultimately do anything?

18 A Correct.

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

22 THE COURT: You may.

23 BY MS. LUZAICH:

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

1 A It is.

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

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

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

9 A Tina Duke.

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

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

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

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

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

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

25 Q Did you make an effort to contact them?

1 A I did.

2 Q At what point did you do that?

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

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

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

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

12 A I did.

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

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

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

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

23 Q And did you get anything from him?

24 A I did.

25 Q What did you get from him?

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

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

9 A I did.

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

12 A Yes.

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

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

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

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

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

7 Q Awhile, not immediate?

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

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

15 A Several days later we did.

16 Q Was that after a hearing in family court?

17 A Yes.

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

20 A I did.

21 Q That's Tina Duke; correct?

22 A Correct.

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

24 A Sholeh and I did it together.

25 Q Where did you conduct that interview?

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

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

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

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

11 A She did.

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

14 A Yes.

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

17 A I did.

18 Q What did you ask her to do?

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

1 myself and Sholeh.

2 Q And did she ultimately do that?

3 A She did.

4 Q All right. How did she do it?

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

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

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

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

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

1 family court hearing.

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

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

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

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

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

12 A She did.

13 Q Who did she bring with her?

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

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

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

19 Q Okay. And what about Mahlica?

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

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

25 A I watched parts of that interview.

1 Q And did you notice anything about Shabazz?

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

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

6 A She did.

7 Q Did he take them off?

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

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

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

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

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

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

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

24 Q Sorry.

25 A -- she was --

1 Q Child is the wrong word.

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

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

4 A Yes.

5 Q And who was that?

6 A Victoria Duke.

7 Q Did you interview Victoria?

8 A I did not.

9 Q Did -- who did?

10 A Michele Fisher interviewed Victoria, as well.

11 Q Did you watch that interview?

12 A I watched most of that interview.

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

14 interview that you watched, did Victoria give great detail

15 about things that had occurred?

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

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

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

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

20 details she provided.

21 Q After Victoria was interviewed, what happened?

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

23 was interviewed.

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

25 involved in the case?

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

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

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

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

7 A Correct.

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

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

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

18 A It did.

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

21 A I did.

22 Q And who did you arrest?

23 A I arrested Frederick Harris.

24 Q Do you see him here in court today?

25 A I do.

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

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

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

6 THE COURT: So reflected.

7 BY MS. LUZAICH:

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

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

13 Q 966 Blankenship?

14 A Yes.

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

17 A Yes, ma'am.

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

19 A No, Lealer was home.

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

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

1 down.

2 Q Okay. So he was calm?

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

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

5 Q Well, that's okay.

6 A Yeah.

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

8 MS. LUZAICH: That was nonresponsive.

9 THE COURT: Right. And --

10 MS. ALLEN: Okay.

11 THE COURT: Go ahead.

12 BY MS. LUZAICH:

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

14 Cooks?

15 A I did.

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

17 THE COURT: Cross.

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

19 moment.

20 THE COURT: Of course.

21 (Bench conference)

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

23 go to the bathroom.

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

25 [inaudible].

1 (End of bench conference)

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

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

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

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

14 (Jury is not present)

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

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

18 THE COURT: Okay.

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

22 THE COURT: Yeah. 5:00.

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

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

1 MS. ALLEN: Yeah.

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

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

5 MS. LUZAICH: Yeah.

6 MS. RHOADES: Yeah.

7 THE COURT: Right on.

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

10 (Pause in the proceedings)

11 (Jury is present)

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

14 MS. LUZAICH: Yes.

15 MS. ALLEN: Yes, Your Honor.

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

17 MS. ALLEN: Thank you.

18 CROSS-EXAMINATION

19 BY MS. ALLEN:

20 Q Good afternoon, Detective Madsen.

21 A Hello.

22 Q How are you?

23 A Good. How are you?

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

1 A Okay.

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

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

5 Q Okay. And you started off on patrol?

6 A Right.

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

9 A Correct.

10 Q And you're a detective now?

11 A I am.

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

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

15 Q Okay.

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

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

19 A Yes.

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

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

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

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

3 Q Okay. Burn out?

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

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

7 A Very much.

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

10 A Yes.

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

13 A Correct.

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

16 A More children.

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

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

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

24 A Yes.

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

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

2 A Correct.

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

4 A Correct.

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

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

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

15 A Correct.

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

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

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

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

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

10 A Or even in the same room.

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

13 A Correct.

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

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

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

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

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

25 A Not by me.

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

2 A I did not.

3 Q And when I say submit documents to the DA's office,
4 what -- what -- what is that when you --

5 A Sometimes rather --

6 Q -- submit a paper --

7 A -- than making an arrest we'll submit for an arrest
8 warrant just so there's another -- another level of eyes
9 looking at it to see if it really is a legitimate case, if
10 there really is probable cause to issue a warrant for an
11 arrest.

12 Q Okay. And that was never done in this case with
13 regard to Tina; is that correct?

14 A Correct.

15 Q Okay. It was done with Lealer, is that -- is that
16 right, though?

17 A Correct.

18 Q Okay. Did you actually arrest Lealer?

19 A I did not. I -- well, actually, I don't remember.
20 I believe I submitted for a warrant on Lealer.

21 Q Okay. All right. So you can't remember as you sit
22 here whether or not you were the one who actually went out and
23 arrested her?

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

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

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

3 A The Henderson --

4 Q Yes.

5 A -- statements?

6 Q Yes.

7 A Yes.

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

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

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

15 A Okay.

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

18 A He was. Yes.

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

21 A Correct.

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

24 A Okay.

25 Q Would that --

1 A That's correct.

2 Q -- be fair?

3 A Yes.

4 Q Okay. So back in December of 2011 all of the same
5 people were interviewed; is that -- is that correct? Is that
6 a fair statement?

7 A I believe so. I'm not completely sure if Henderson
8 interviewed all the same people we did or if they interviewed
9 someone we didn't or if we interviewed someone they didn't at
10 some point, but, in fact, I know that they interviewed at
11 least one person that was not interviewed in our case.

12 Q They did?

13 A Yes.

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

15 A The name was Rose Smith.

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

17 A No.

18 Q Okay. So you -- but you did part of your
19 investigation, I don't mean you personally, I just mean
20 generally your team because you were the case detective on
21 this particular report; is that right?

22 A Correct.

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

24 A Yes.

25 Q Mahlica?

1 A Yes.

2 Q Tina?

3 A Yes.

4 Q Taquanda?

5 A Yes.

6 Q Taharah?

7 A Yes.

8 Q And Victoria?

9 A Yes.

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

13 A I believe so, yes.

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

18 A I know they were different.

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

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

24 Q Yes.

25 A Yes.

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

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

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

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

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

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

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

19 A Yes.

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

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

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

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

5 A Yes.

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

8 A Correct.

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

11 A Correct.

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

15 A I did not.

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

19 A I did not.

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

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

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

1 A No.

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

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

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

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

10 Q Marcus, someone by the name of Marcus?

11 A I don't remember hearing that name.

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

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

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

18 A Not necessarily.

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

22 A Not necessarily.

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

25 A That's not correct.

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

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

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

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

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

13 A Uh-huh.

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

16 A Yeah.

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

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

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

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

25 MS. ALLEN: Have him come back tomorrow?

1 THE COURT: Right.

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

3 BY MS. ALLEN:

4 Q Okay. So as a homework assignment, would you please
5 review -- I would ask you to review Tina's statements to both
6 agencies.

7 A Okay.

8 Q I would ask you also to review Taharah's statements
9 to both agencies. Yeah, and Mahlica's statements to both
10 agencies.

11 A Okay.

12 Q Okay. Is that fair?

13 A Absolutely.

14 MS. LUZAICH: Although, can we approach?

15 THE COURT: Sure.

16 (Bench conference)

17 THE COURT: Tina, Taharah, and Mahlica?

18 MS. ALLEN: Mahlica.

19 THE COURT: Okay.

20 MS. LUZAICH: He's not going to be able to testify
21 about the differences because that would be hearsay.

22 MS. ALLEN: I'm not asking him to testify to what
23 the differences are.

24 MS. LUZAICH: Okay.

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

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

3 MS. LUZAICH: Okay.

4 THE COURT: Okay.

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

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

9 MS. ALLEN: That's fine.

10 THE COURT: Okay.

11 MS. ALLEN: Thank you.

12 (End of bench conference)

13 BY MS. ALLEN:

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

16 A I did.

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

20 A Yes.

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

23 A Yes.

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

1 A Correct.

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

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

12 Q Okay.

13 A But, yes, it was Taquanda initially.

14 Q It was Taquanda.

15 A Yes.

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

18 MS. LUZAICH: Well --

19 THE WITNESS: I'm sorry.

20 MS. LUZAICH: -- objection.

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

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

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

25 (Bench conference)

1 MS. LUZAICH: Did Taharah ever tell you anything
2 herself? Yes.
3 MS. ALLEN: I'm on [inaudible].
4 MS. LUZAICH: I know, but did Taharah ever tell you
5 herself? Yes. What did she tell you? She said that he raped
6 her.
7 MS. ALLEN: Oh. Okay. Well, that's -- this is in
8 her other statement where it says I asked --
9 MS. LUZAICH: Right. But that was my point is that
10 that was early on later when she started admitting things.
11 MS. ALLEN: Okay.
12 MS. LUZAICH: So --
13 MS. ALLEN: All right. That's fine.
14 MS. LUZAICH: -- I would just ask you to withdraw
15 the question.
16 MS. ALLEN: All right. That's fine.
17 (End of bench conference)
18 THE COURT: Thank you.
19 BY MS. ALLEN:
20 Q During your interview Ms. Cooks told you that she
21 didn't believe the girls; isn't that correct?
22 A Initially, yes.
23 Q Okay. And then she also gave instances of why she
24 didn't believe them; is that correct?
25 A Yes.

1 Q Okay. Did you -- did you ever -- a question about
2 HPV came up and -- and Taharah having HPV; is that correct?
3 A Correct.
4 Q Was there ever any -- did you ever take it upon
5 yourself to get any medical records for anybody else involved
6 in the case with regard to HPV?
7 A No.
8 Q Okay. So nothing on Lealer Ann Cooks?
9 A No.
10 Q Okay. Victoria?
11 A No.
12 Q Okay. It's your contention that Mr. Harris gave
13 Taharah HPV: is that correct?
14 A That's not my contention, no.
15 Q It's not?
16 A No.
17 Q Oh. Okay. You said Tina initially came in, or when
18 you talked to Tina she seemed confused; is that right?
19 A Correct.
20 Q Okay. And you asked her to write something out?
21 A I did.
22 Q Okay. She came back with one page, like one sheet
23 of paper?
24 A Correct.
25 Q Did you keep that sheet of paper?

1 A I did.

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

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

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

8 A Correct.

9 Q Do you remember how many pages it was?

10 A I don't.

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

13 A Yeah, somewhere around there.

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

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

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

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

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

24 A Not physically from Victoria, no.

25 Q Tina brought it in with hers?

1 A Correct.

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

5 A No.

6 Q They were done at home?

7 A Correct.

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

10 A Possibly, yes.

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

13 A I don't remember.

14 Q Okay.

15 MS. ALLEN: Court's indulgence.

16 BY MS. ALLEN:

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

19 A Right.

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

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

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

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

3 A Correct.

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

6 A Correct.

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

9 A Right. There was a lot of it.

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

12 A No.

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

15 A Correct.

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

18 A Correct.

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

20 A Yes.

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

23 A That about sums it up.

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

1 of 2012 that led to submitting for an arrest?

2 A Yes.

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

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

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

9 A Not necessarily.

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

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

13 Q Well --

14 MS. ALLEN: Do you have an objection?

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

16 BY MS. ALLEN:

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

20 A No.

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

23 A No.

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

1 A No.

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

4 A Nope.

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

7 A No.

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

10 A Correct.

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

14 A Correct.

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

17 A Correct.

18 Q What was it that he --

19 MS. LUZAICH: Objection. Hearsay.

20 MS. ALLEN: Your Honor --

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

22 MS. ALLEN: Okay.

23 THE COURT: -- being offered by you.

24 BY MS. ALLEN:

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

1 You said he was calm; right?

2 A He was very cooperative.

3 Q Was he angry?

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

6 Q Okay. Lealer was?

7 A Yes.

8 Q Okay.

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

12 THE COURT: Okay.

13 Do you have those statements?

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

15 THE COURT: Okay. Thanks.

16 Any redirect?

17 MS. LUZAICH: Now?

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

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

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

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

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

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

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

9 * * * * *

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------	---------------	--------------	-----------------	----------------

STATE'S WITNESSES

Christopher Delacanal	10	26		
Christopher Aguiar	35	77	108	
Nicholas Madsen	121	151		

* * *

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
---------------------	-----------------

STATE'S EXHIBIT NO.

3	55
---	----

* * *

CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

12/28/15

DATE



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA

Plaintiff

vs.

FREDERICK HARRIS, JR.

Defendant
.....

CASE NO. C-291374

DEPT. NO. XII

**Transcript of
Proceedings**

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

JURY TRIAL - DAY 11

THURSDAY, APRIL 10, 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, THURSDAY, APRIL 10, 2014, 10:46 A.M.
2 (Court was called to order)
3 (Jury is present)
4 THE COURT: Do the parties stipulate to the presence
5 of the jury panel?
6 MS. LUZAICH: Yes.
7 MS. ALLEN: Yes, Your Honor.
8 THE COURT: Okay. We can call the detective back to
9 the stand. And just to bring you back up to speed, remember
10 the detective was going to review those statements, and now
11 I'm going to allow Ms. Allen to continue with cross-
12 examination.
13 NICHOLAS MADSEN, STATE'S WITNESS, SWORN
14 THE CLERK: Thank you. Please be seated. Would you
15 please state your full name, spelling your first and last name
16 for the record.
17 THE WITNESS: Nicholas Madsen, N-I-C-H-O-L-A-S
18 M-A-D-S-E-N.
19 CROSS-EXAMINATION (Continued)
20 BY MS. ALLEN:
21 Q Good morning, Detective. How are you?
22 A Good morning. Good, thanks. How are you?
23 Q As I asked you outside, have you done your homework?
24 A I have.
25 Q Okay. I had asked you to review a couple of

1 different reports. I know that that was somewhat lengthy, but
2 did you have an opportunity to do that?

3 A I did.

4 Q And I believe it was Tina and Taharah and --

5 A Mahlica.

6 Q -- Mahlica. Okay. Thank you. All right. So you
7 reviewed all -- for those particular people the ones that were
8 done both in December 2011 and then again in like September-
9 October of 2012?

10 A Correct.

11 Q Okay. The questions I'd asked you -- and I'm going
12 to start with Tina --

13 A Okay.

14 Q -- did you find that there were significant
15 differences between the two statements?

16 A Yes.

17 Q Okay. What about with regard to Taharah? Did you
18 find that there were significant differences between the two
19 statements?

20 A Yes.

21 Q Okay. And what about Mahlica? Did you find that
22 there were not significant but there were some differences
23 between the two statements?

24 A Yes, that's exactly how I would term that.

25 Q Okay. Wow. There's an agreement. Wonderful.

1 Okay.

2 Two last questions. One was -- remember yesterday I
3 asked you about Dr. Mehta and her report on the two girls?

4 A Correct.

5 Q And you didn't recall if you had that report prior
6 to submitting for the arrest warrant or submitting for charges
7 on this case; is that correct?

8 A That's right.

9 Q And I think I had later asked you if it actually
10 mattered whether or not you had that report at the time you
11 submitted, and you indicated it really didn't matter; is that
12 right?

13 A Correct.

14 Q Okay. In your arrest report do you recall actually
15 referring to that report from Dr. Mehta?

16 A I remember referring to the fact that exams were
17 done. I don't remember if I referred exactly to the fact that
18 a final report was done.

19 Q Okay.

20 A There will be a preliminary report, but then for
21 actual final blood tests, lab results, things like that, those
22 come sometimes weeks, sometimes months later. So I might have
23 referred to the preliminary report, but I would not have
24 referred to the final report.

25 Q Okay. Ultimately, though, it didn't really have a

1 sway either way with regard to your submission of charges?

2 A Correct.

3 Q Okay. And finally, you talked to Detective Aguiar

4 about this case; is that correct?

5 A That's correct.

6 Q Because you had to get all of those records from

7 him?

8 A Right.

9 Q There'd been a significant amount of investigation

10 done almost a year prior, and that was pertinent to what you

11 were doing; is that correct?

12 A Yes.

13 Q When you spoke to Aguiar did he indicate that the

14 case never really closed because of the issue of consent of

15 Victoria?

16 A He indicated that that was --

17 MS. LUZAICH: Well, objection. Hearsay.

18 MS. ALLEN: It's a prior inconsistent statement,

19 Your Honor. Aguiar testified that he didn't -- he didn't

20 close it or he didn't do anything with it because of probable

21 cause. So there were two different answers given. One was

22 given to --

23 THE COURT: Okay. But you said prior consistent.

24 MS. ALLEN: I said inconsistent, Your Honor.

25 THE COURT: Oh. I'm sorry.

1 MS. ALLEN: That's okay.

2 THE COURT: I'm sorry. I thought you said
3 consistent.

4 MS. ALLEN: I said inconsistent statement.

5 THE COURT: Okay. All right. Overruled. You can
6 proceed.

7 MS. ALLEN: Thank you.

8 BY MS. ALLEN:

9 Q When you spoke with Detective Aguiar did he actually
10 indicate to you that he never I guess really closed it -- and
11 I don't mean to do the air quotes, but he never really closed
12 it because of the issue of consent of Victoria?

13 A That that was one factor in it never being really
14 closed, yes.

15 Q Okay. In your report do you recall putting that --
16 that was the only thing that you put in your report?

17 A I don't recall what I wrote in the report
18 specifically with regards to Detective Aguiar's case.

19 Q Would it refresh your recollection to look at your
20 report?

21 A Yes. Absolutely.

22 Q Page 18. I apologize. Right there. This is this
23 paragraph. If you could read that to yourself.

24 A Uh-huh.

25 Q Does that refresh your recollection?

1 A It does.

2 Q Okay. And that's the only thing you actually put in
3 there; is that correct?

4 A Correct.

5 Q Okay. There could have been further discussions,
6 but that was what you put in the report?

7 A Correct.

8 MS. ALLEN: Okay. Your Honor, thank you. I believe
9 at this time I pass the witness.

10 THE COURT: Redirect?

11 MS. LUZAICH: Thank you.

12 REDIRECT EXAMINATION

13 BY MS. LUZAICH:

14 Q Ms. Allen keeps saying the Henderson investigation
15 was almost a year prior. It was actually nine months prior;
16 correct?

17 A Correct.

18 Q When you were asked earlier -- Ms. Allen asked you
19 about whether or not Tina was charged or whether charges were
20 submitted. And you said not by you. Why did you not submit
21 charges on Tina?

22 MS. ALLEN: Judge, objection. Relevance. And it
23 may call for a legal conclusion.

24 THE COURT: Overruled. You can answer.

25 MS. LUZAICH: My question was why did he not submit

1 that, not why was she not charged ultimately.

2 THE COURT: Right. He can answer.

3 THE WITNESS: I did not submit charges against Tina
4 because, based on my investigation as a whole and specifically
5 my interactions with her, she struck me as being genuinely
6 fearful. It appeared that she felt -- in my opinion it
7 appeared that she felt that she was in a position where she
8 had to do certain things out of fear for her safety and the
9 safety of her children.

10 BY MS. LUZAICH:

11 Q And in the big scheme of things, unless you, the
12 collective you, the police agency, submits charges to the DA's
13 office charges don't get filed?

14 A That's correct.

15 Q Ms. Allen also asked you questions about did you
16 pull school records. Do you generally pull school records for
17 kids?

18 A Me personally, only if the school is somehow
19 involved in the investigation, if the initial report came
20 because of something that a teacher or counselor was told,
21 observed, concerns they had because of the child's behavior.
22 But it's -- I simply wouldn't have the time in every case to
23 pull school records and counselors' records for every kid on
24 every case. Only if someone is said to have some relevant
25 information will I do that.

1 Q Okay. In your experience teachers, counselors,
2 people that work at school, they're mandated reporters; right?

3 A They are.

4 Q And do -- are there often times that you get cases
5 because a teacher, counselor, or somebody at school has
6 reported?

7 A Yes. Our caseload increases during the school year
8 because counselors and teachers generally are -- well, not
9 generally, but a lot of times they're who a child will go to
10 first about something like this.

11 Q And in those situations you indicated that you would
12 have pulled records?

13 A Yes.

14 Q In any of the investigation or interviews that were
15 conducted as far as you know in this case were you, the
16 police, told that one of the kids had reported to a counselor
17 or a teacher?

18 A Not to my recollection, no.

19 Q Ms. Allen also asked you about did you interview
20 everybody that was ever living in that home. And you said
21 it's not necessarily something that you need to do. Why is
22 that?

23 A With what we deal with specifically these tend to be
24 allegations of things that occur behind closed doors with no
25 witnesses that people generally don't talk to other people

1 about. Again, it's just like with the school. I'll only talk
2 to people who are alleged to have relevant information.

3 Q Okay. And she also kind of asked you did you ever
4 talk to -- did you try to talk to anyone who ever lived in the
5 home. I mean, isn't that kind of broad?

6 A Yes. And, unfortunately, our caseload just won't
7 allow that.

8 Q She was asking you about Taharah, Tina, and
9 Mahlica's statements being different. Now, when you spoke to
10 Tina was it kind of difficult getting information from her?

11 A It was.

12 MS. ALLEN: I would object as to leading.

13 THE COURT: Overruled. You can proceed. I'd just
14 caution the State not to lead.

15 MS. LUZAICH: Thank you.

16 BY MS. LUZAICH:

17 Q What was difficult about it?

18 A She was not -- it's difficult to explain. She was
19 not especially forthcoming with the information. And, like I
20 said earlier, there was the matter that we seemed to be
21 confusing each other.

22 Q Okay. And you said you reviewed the statements to
23 Henderson. Did she tell you a lot more than she told
24 Henderson?

25 A She told us a lot more.

1 Q Taharah. Taharah was how old when she was
2 interviewed by Ms. Fischer?

3 A I wouldn't know that off the top of my head. I want
4 to say she was 12 at the time.

5 Q Okay. And in your years with the Sexual Abuse
6 Juvenile Division at Metro approximately how many kids under
7 -- well, 12 or under have you investigated or participated in
8 an investigation regarding?

9 A I wouldn't even be able to come up with that number.
10 It would be several hundred. But we average between 200 and
11 250 cases a year per detective, and any number of those would
12 be kids under 12. So several hundred at least.

13 Q Okay. And those are yours. Do you also get to work
14 on cases with your other detectives, like somebody else's
15 case? Do you participate in their investigations sometimes?

16 A Yes.

17 Q And in your experience do kids always report right
18 away when somebody hurts them?

19 MS. ALLEN: Judge, objection. Leading.

20 THE COURT: You are leading. Sustained.

21 BY MS. LUZAICH:

22 Q Well, how often do kids report right away when
23 somebody hurts them?

24 A There's no way to tell. We are generally -- a lot
25 of this training we get suggests that the reason we need to

1 approach these investigations differently, I guess, is because
2 we're asking kids to talk about things that are maybe shameful
3 or embarrassing and that they had been told repeatedly by
4 someone with authority over them we don't talk about. So we
5 know -- we know going in that not every child is going to talk
6 to us about what's happening.

7 Q Okay. And in your personal experience have there
8 been other situations where that has happened, where a child
9 didn't say something and then later did?

10 A Yes. It's a common practice for us that even if a
11 child does not disclose we refer the family to victim
12 counseling through our victim advocates at the Center, because
13 it tends to be the case in some cases that a child will later
14 disclose through counseling, and then we can take another look
15 at the case later on.

16 Q In your experience are there other factors that also
17 enter into what might make a child more comfortable before
18 they're ready to disclose?

19 A Yes. There are a number of different things that
20 can enter into it.

21 Q Just for example?

22 A There's fear, there's shame, there's embarrassment,
23 there's family pressures. A lot of -- a common one we get is
24 a child will be keenly aware that if they say something about
25 the provider in the home their family will lose their home,

1 they'll lose their ability to have food on the table, they
2 might get taken away and placed into Child Haven. There's
3 hundreds of different considerations unique to each child.

4 Q Do sometimes kids just not want to talk about it?

5 A Yes.

6 Q Has it been your experience sometimes that it also
7 depends on who's asking the questions?

8 A Yes, it can.

9 Q Have you been in the situation where sometimes kids
10 are more comfortable with one particular person and less
11 comfortable with -- and I mean police-type person.

12 A Yes. And it becomes an issue especially -- I hate
13 to generalize, but when kids hit their teen years or just
14 before their teen years a lot of times girls won't be as
15 comfortable speaking with me, but they will be much more
16 comfortable speaking with Michelle or Sholeh or another female
17 investigator.

18 Q Ms. Allen also asked you was your investigation
19 somewhat unusual. And you said, well, what do you mean by
20 that; and she started asking, well, did you do this or not do
21 that, did you do this or not do that. So your investigation
22 itself, who you interviewed, in your opinion was a fairly
23 typical investigation?

24 A I was. I hesitate to use the words "typical" or
25 "unusual" with these cases, because it's -- it's commonly

1 accepted that all of our cases are going to be really
2 complicated. There tend to be a lot of different
3 relationships involved, a lot of different people involved.
4 So there's no such thing as a typical or usual or unusual case
5 when it comes to juvenile sex abuse.

6 Q Okay. Was there something that was very unusual
7 about this case?

8 A I'm not sure I understand that question.

9 Q I'll withdraw the question.
10 When you -- I'm sorry, my nose is stuffy.
11 Did you actually speak with Detective Aguiar? Did
12 you email with him?

13 A I know I spoke with him on the telephone at least
14 once. I do know we corresponded over email, as well, but I
15 wouldn't remember how many times we spoke on the phone versus
16 how many times we emailed.

17 Q Okay. And when you were putting in your report the
18 information from him as to why, I mean, was it a brief
19 synopsis, as opposed to every single thing that you and he
20 talked about?

21 A Yes.

22 MS. LUZAICH: Thank you.

23 I'd pass the witness.

24 MS. ALLEN: Your Honor, no further questions at this
25 time.

1 THE COURT: Okay. Thank you very much for your
2 testimony here today. You may step down. You are excused
3 from your subpoena. Thank you for coming back today.

4 THE WITNESS: Thank you.

5 THE COURT: Does the State have any further
6 witnesses?

7 MS. LUZAICH: I'm not sure. Could we take a brief
8 recess?

9 THE COURT: Oh, absolutely.

10 We're going to take a short recess. During this
11 recess you're admonished not to talk or converse amongst
12 yourselves or with anyone else on any subject connected with
13 this trial, or read, watch, or listen to any report of or
14 commentary on the trial or any person connected with this
15 trial by any medium of information, including, without
16 limitation, newspapers, television, the Internet, or radio, or
17 form or express any opinion on any subject connected with this
18 trial until the case is finally submitted to you.

19 If you'll stay close by, the marshal will let you
20 know when we're going to resume. It should be a short recess.

21 (Court recessed at 11:02 a.m., until 11:15 a.m.)

22 (Jury is not present)

23 THE COURT: So it's my understanding you have your
24 -- is this your witness?

25 MS. LUZAICH: I do. Yes, it is.

1 THE COURT: Okay. Are you Shabazz?
2 Okay. We can bring the jury panel in.
3 Do you want to have Shabazz take the stand.
4 MS. LUZAICH: Sure.
5 THE COURT: Yeah. You can just come up and take the
6 stand. You can take your hat with you, if you want. Okay.
7 And I just want to ask you a question before the jury --
8 you're going to come right up there and just sit in that seat.
9 Is it possible for you to take those sunglasses off?
10 MR. DUKE: My eyes is light sensitive.
11 THE COURT: Your eyes are light sensitive? Okay.
12 Can you just maybe try to take them off and see if your eyes
13 can take it. Just try for me.
14 MS. LUZAICH: Just for a little while, Shabazz.
15 THE COURT: Pardon?
16 MS. LUZAICH: Just for a little while.
17 THE COURT: If you can't take it, then I'll let you
18 put them back on. I just want you to test it to see, because
19 the lights really aren't that bright in here. I don't like
20 bright lights.
21 Okay. How do you feel?
22 MR. DUKE: Bad.
23 THE COURT: Do you think you could testify without
24 those glasses on?
25 MR. DUKE: Huh?

1 THE COURT: Do you think you could testify without
2 those glasses on? Yeah? You'll do that for me? Yes?
3 MR. DUKE: (No audible response)
4 MS. LUZAICH: You need to answer out loud, Shabazz,
5 anytime somebody asks you questions.
6 THE COURT: And that's just what I wanted to remind
7 -- Kris, in front of us, she's taking down everything that's
8 being said, and so we'll give you the microphone, but you're
9 going to have to put it up to your mouth. And when the jury
10 comes in there'll be a bunch of people in that box over there.
11 You have to speak loud enough so they can hear you, as well as
12 all of us. Can you do that for me, as well?
13 MR. DUKE: Uh-huh.
14 THE COURT: Okay. And if anytime you feel
15 uncomfortable because of your eyes, just let me know. Is it
16 so far so good?
17 MR. DUKE: Yes, so far.
18 THE COURT: You're good? Okay. All right. Are you
19 ready?
20 MR. DUKE: Yeah.
21 THE COURT: Okay. We can bring the jury in.
22 (Jury reconvened at 11:19 a.m.)
23 THE COURT: Okay. Do the parties stipulate to the
24 presence of the jury panel?
25 MS. LUZAICH: Yes.

1 MS. ALLEN: Yes, Your Honor.

2 THE COURT: And, the State, will you just state for
3 the record who your next witness is.

4 MS. LUZAICH: The State calls Shabazz Duke.

5 THE COURT: Okay. Mr. Duke, will you please raise
6 your right hand so you can be sworn in by -- your other right
7 hand. There you go.

8 SHABAZZ QASIM DUKE, STATE'S WITNESS, SWORN

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

12 THE WITNESS: Shabazz Qasim Duke.

13 THE COURT: Okay. I'm just going to ask can you
14 scoot up as close as you can to that microphone. Okay. Thank
15 you.

16 DIRECT EXAMINATION

17 BY MS. LUZAICH:

18 Q Shabazz, can you spell your name.

19 MS. LUZAICH: Oh. Sorry, Judge.

20 THE COURT: That's okay.

21 Will you spell your name, Shabazz.

22 THE WITNESS: S-H-A-B-A-Z-Z.

23 BY MS. LUZAICH:

24 Q And your middle name?

25 A Q-A-S-I-M.

1 Q And your last name.
2 A D-U-K-E.
3 Q Thank you. Shabazz, how old are you?
4 A Nineteen.
5 Q What's your birthday?
6 A January 21st, 1995.
7 Q Okay. Do you live here in Clark County?
8 A No.
9 Q Where do you live?
10 A Henderson, Nevada.
11 Q Oh. Okay. Do you have sisters?
12 A Yes.
13 Q How many sisters do you have?
14 A Four.
15 Q Can you tell me their names and, if you know, how
16 old they are.
17 A Taharah, Taquanda, Mahlica, and Vicky.
18 Q Do you know how old Mahlica is?
19 A She's 19.
20 Q Do you know how old Vicky is?
21 A She's -- no, I don't.
22 Q Okay. Do you know how old Taharah is?
23 A No.
24 Q Do you know how old Taquanda is?
25 A No.

1 Q Let me ask it this way. Are any of your sisters
2 older than you?

3 A Yes.

4 Q Which sisters are older than you?

5 A Vicky and Mahlica.

6 Q And do you have any sisters that are younger than
7 you?

8 A Yes.

9 Q Which sisters are younger than you?

10 A Taharah and Taquanda.

11 Q Okay. Do you -- and what's your mom's name?

12 A Tina.

13 Q What's your dad's name?

14 A Marvin.

15 Q Do you see your dad?

16 A I haven't seen him in a while.

17 Q What's a while?

18 A It's like a decade.

19 Q Okay. How old were you the last time you remember
20 seeing him?

21 A I was either four or five years old.

22 Q Okay. When is the last time you saw your mom?

23 A It's been a while.

24 Q Okay. Do you live with your mom?

25 A No.

1 Q Do you live with any of your sisters?
2 A No.
3 Q Do you live -- who do you live with?
4 A My friend.
5 Q Okay. And when you say it's been a while since
6 you've seen your mom, is a while like days or weeks or months?
7 A Couple months.
8 Q What about your sisters? Have you seen Taharah or
9 Taquanda?
10 A Yeah, I seen them both recently.
11 Q And what's recently? Days or weeks?
12 A Couple -- like a week ago.
13 Q Okay. Where'd you see Taharah and Taquanda?
14 A They was walking to the 7-Eleven.
15 Q Okay. So you didn't like go to the house to visit
16 them?
17 A No way. I just ran into them.
18 Q Okay. What about Mahlica? When's the last time you
19 saw Mahlica?
20 A I haven't seen her like in a week.
21 Q In a week?
22 A Yeah.
23 Q A week being seven days, or a week being just --
24 A Just seven days.
25 Q Okay. And where'd you see Mahlica?

1 A She was working to the 7-Eleven, too, I guess.
2 Q Oh. With Taharah and Taquanda?
3 A Yeah.
4 Q I should have asked you that. And before that when
5 was the last time you saw Mahlica, Taharah, and Taquanda?
6 A I haven't seen them in a month.
7 Q Okay. It's been a long time?
8 A Yeah.
9 Q Okay. What about Vicky? When's the last time you
10 saw Vicky?
11 A I haven't seen her forever.
12 Q Okay. Now, forever means months or so to you?
13 A Maybe like a couple years. Maybe.
14 Q Oh. Okay. Had you met me before today?
15 A Yes.
16 Q Did you meet me here in this building?
17 A Yes.
18 Q Okay. So we've talked before; right?
19 A Uh-huh.
20 Q Now, here -- would you agree we're in court today?
21 A Yes.
22 Q And there's a judge sitting there?
23 A Yes.
24 Q The last time you and I met you did not go to court,
25 though; is that right? You did not talk to a judge?

1 A No.

2 Q Okay. Was there a time that you actually did live
3 with your mom and your sisters?

4 A Yes, there was a time.

5 Q When were you the last time that you lived with your
6 mom and any of your sisters?

7 A I was at school, when I was going to school.

8 Q Okay. Where were you guys living? That's a better
9 question.

10 A A better question. In Henderson.

11 Q Okay. Was it a house, or an apartment?

12 A It was an apartment.

13 Q And do you know what street it was on?

14 A It was on Center Street --

15 Q Okay.

16 A -- and Warm Springs.

17 Q And when you lived at Center Street and Warm Springs
18 in that apartment who lived there with you?

19 A My mom and my sisters.

20 Q Which sister?

21 A Taharah and Taquanda, Mahlica and Vicky.

22 Q Taharah and Taquanda lived with you?

23 A Yeah. And Mahlica and Vicky, all of them.

24 Q Okay. And do you know when that was?

25 A I think that was in October.

1 Q October, as in -- what month is this? April. Like
2 five or six months ago?

3 A It was like a year ago.

4 Q Okay. Were Taharah and Taquanda living in foster
5 care for a while?

6 A I think so, yeah.

7 Q Okay. Did you live with them after they came back
8 from foster care?

9 A No.

10 Q Did you live with them before they went to foster
11 care?

12 A Yeah. Yeah.

13 Q Okay. Did you live with them on Blankenship?

14 A Blankenship?

15 Q You're looking at me funny. Did you live in a house
16 on Blankenship?

17 A Yeah. Yeah. For a while, yeah.

18 Q And what's a while to you?

19 A Probably like a couple years before I moved to North
20 Town or whatever.

21 Q Okay. You went from Blankenship to North Town?

22 A Yeah.

23 Q Was there an apartment that you lived in in North
24 Town?

25 A Yeah. It was called St. Andrews.

1 Q Okay. Did you live there with Mom and Mahlica and
2 Vicky?
3 A Yeah.
4 Q Okay. And when you lived at Blankenship who lived
5 there?
6 A Fred and just me and Taharah and Taquanda and Vicky.
7 And I think that's it.
8 Q Maybe Mahlica, too?
9 A Yeah, maybe Mahlica.
10 Q Okay. When you say Fred, do you see Fred here in
11 court today?
12 A Yes.
13 Q Can you describe something that he's wearing for me.
14 A Blue shirt, dreadlocks.
15 Q Can you just point in his direction.
16 MS. LUZAICH: Record reflect identification of the
17 defendant?
18 THE COURT: So reflected.
19 MS. LUZAICH: Thank you.
20 BY MS. LUZAICH:
21 Q Before you lived at Blankenship where did you live?
22 A I lived in Utah.
23 Q Yeah? What was it like living in Utah?
24 A It was amazing. But that's like where my other
25 brother got adopted, though, and stuff.

1 Q Okay. What was amazing about Utah?

2 A It had nice trees, I went to school, everything was

3 going okay.

4 Q Yeah? Did --

5 A Life was good.

6 Q Did you see some doctors or therapists in Utah?

7 A Maybe when I was sick, yeah. But that was pretty

8 much it.

9 Q Okay. Did you go to special classes when you were

10 in Utah?

11 A Yeah. Whatever. [Unintelligible].

12 THE COURT: I'm sorry. Was your answer, yeah,

13 whatever?

14 THE WITNESS: Yeah, that was my answer.

15 THE COURT: Okay.

16 BY MS. LUZAICH:

17 Q Yeah, that was what? I can't understand you. I'm

18 sorry.

19 THE COURT: Right. He said, yeah, whatever.

20 Okay. So Shabazz, if you could just answer yes or

21 no and leave the whatevers out unless they're appropriate.

22 Can you do that for me?

23 THE WITNESS: Yeah.

24 THE COURT: Okay. Do you remember the question?

25 THE WITNESS: Yes.

1 THE COURT: Okay. Can you answer it?
2 THE WITNESS: Yes.
3 THE COURT: Okay. Is your answer yes?
4 THE WITNESS: Yes.
5 THE COURT: Okay.
6 BY MS. LUZAICH:
7 Q When you came back from Utah and you were at
8 Blankenship did you go to school there, too?
9 A Yeah, I went to school there, too.
10 Q What school did you go to?
11 A I went to Sedway first, I mean, the middle school,
12 eight grade, seventh.
13 Q Did you go to any special classes while you were
14 there?
15 A Yeah, I went to some, yeah.
16 Q What kind of special classes? Do you remember?
17 A It was math and reading and English.
18 Q Okay. And did you go to a different school after
19 Sedway while you were living at Blankenship?
20 A Yeah. After that it was Canyon --
21 Q Canyon is --
22 A -- Canyon Springs.
23 Q Is that a high school?
24 A Yeah, high school.
25 Q Were you still at special classes there?

1 A Yeah. But, I mean, it got lower and lower as I
2 began, you know, processing.

3 Q Okay. Do you continue to go to school when you
4 moved out of the house on Blankenship?

5 A Yes.

6 Q When you lived at St. Andrews did you go to school?

7 A Yeah, I was going to school.

8 Q And then when you moved to Henderson did you go to
9 school?

10 A Yeah, I was still going to school.

11 Q Okay. Now, did you graduate?

12 A Did I graduate? Yes.

13 Q You graduated high school?

14 A Yes.

15 Q When did you graduate?

16 A It was -- it was like in 2014, yeah, 'cause -- no.
17 It was like 2013, okay, graduated high school.

18 Q What have you been doing since you graduated high
19 school?

20 A I's been going to the gym, working out, focused on
21 my reading, my music, my training, and my acknowledgements.

22 Q What kind of training do you do?

23 A Kind of like a martial art, Chinese physical
24 fitness, whatever, isometric thing.

25 Q Okay. What kind of music?

1 A All kinds.

2 Q And did you say acknowledgements?

3 A Yeah.

4 Q What acknowledgements?

5 A Statements I read. That's what -- that's what I

6 call them.

7 Q I'm sorry?

8 A Statements -- acknowledgements, statements I read.

9 That's what I call them.

10 Q Okay. What kind of statements?

11 A Well, just anything that is on my mind I write down

12 and I say it to the people, and I get a hand clapping. It has

13 something worth meaning.

14 Q Okay. Let me talk for a minute about when you lived

15 at Blankenship. You said that Fred and your sisters lived

16 there. And Ann; right?

17 A Yes.

18 Q When Fred was at -- or when you were living at

19 Blankenship with Fred did Fred ever hurt you?

20 A He did.

21 Q How did he hurt you?

22 A I mean, sometimes physical, sometimes mental.

23 Q What kind of physical hurt?

24 A Hits to the chest, death-defying moments.

25 Q When you say hits to the chest what do you mean by

1 that?

2 A Well, you know, [unintelligible] hits to the chest
3 and all that.

4 Q Did he hit your chest?

5 A Oh, yeah. Mine, yes.

6 Q What did he hit your chest with?

7 A Fists.

8 Q And is that something that happened one time, more
9 than one time?

10 A Sometimes a lot, and then maybe one time or another.

11 Q Why would that happen?

12 A I don't know. You get blamed for -- get blamed for
13 stuff you don't do and if you don't do what he says.

14 Q When you say don't do it, did he tell you to do
15 something and you didn't do it?

16 A Well, I tried my best to do what I could.

17 Q Okay.

18 A But sometimes I forgot or it slipped my mind.

19 Q Okay. And then you said you also got blamed for
20 stuff you didn't do. Did Fred accuse you of doing things that
21 you felt you didn't do?

22 MS. ALLEN: Objection. Leading.

23 THE COURT: Overruled.

24 BY MS. LUZAICH:

25 Q That means you can answer. Did Fred accuse you of

1 doing things you felt that you didn't do?

2 A Yes.

3 Q For example? Can you tell me something?

4 A Stealing.

5 Q Okay. And when he accused you of something you felt

6 you didn't do how did he hurt you?

7 A I mean, 'cause -- I mean, now -- I mean, I know, I

8 mean, if I didn't do something I didn't do it, you know. And

9 freakin' -- I always got to think [unintelligible] this or

10 that, you know. Crazy.

11 Q Was there a time that he did something and left some

12 kind of mark on you that you could see?

13 MS. ALLEN: And I would object to leading, Your

14 Honor.

15 THE COURT: I'm going to give the District Attorney

16 some leeway.

17 Go ahead. You can answer.

18 BY MS. LUZAICH:

19 Q Do you understand my question, or do you need me to

20 repeat it?

21 A Repeat it.

22 Q Sure. Was there a time that Fred did something to

23 hurt you and it left some kind of mark somewhere on your body

24 that somebody else could see?

25 A Yeah.

1 Q Tell me about that.

2 A Well, I was going to Canyon Springs I guess there
3 was a time where I got in trouble and I got sent to the room
4 and wound up being choked out by the belt and coming to school
5 with one eye good and one eye red. Coach Coop asked me, what
6 about your eye and stuff, and I was -- almost told him.
7 Freakin' it was bad.

8 Q When you said one eye was good and one eye was red
9 what do you mean?

10 A Like this part of my eye right was red, and this
11 part of my eye right here was good.

12 Q Okay. You're talking about your eyeball, as opposed
13 to the skin around your eye?

14 A (No audible response)

15 Q You're nodding your head up and down. Does that
16 mean yes?

17 A Yes.

18 Q Okay. And you said Coach Coop asked you about it.
19 You said, I almost told him. Does that mean you did not did
20 not tell him how it happened?

21 A No.

22 Q Why did you not tell Coach Coop how it happened?

23 A 'Cause I was scared.

24 Q What were you scared of?

25 A I was scared of losing my family.

1 Q Were there any other -- you said he choked you out
2 with a belt. How did he do that?

3 A He told me to put my like head in the belt. When I
4 didn't do it Fred -- 'cause I already knew what was going to
5 happen. But I wound up doing it anyway, you know, I mean,
6 choked out. But I was holding -- I was holding that -- he was
7 -- trying to break out.

8 Q You had said that he hit you in the chest. Did he
9 ever hit you with a fist anywhere else?

10 A My face, yeah, and maybe my head.

11 Q Now, did this stuff only happen at Blankenship, or
12 did it happen anywhere else?

13 A Just Blankenship.

14 Q Did you ever see any of your sisters physically
15 hurt, any of your sisters?

16 A I mean -- I mean, I heard, you know, when she was
17 getting in trouble. I think it was Taharah.

18 Q How would you hear?

19 A Because -- well, shoot, it's like sometimes not even
20 that. I mean, everything -- but anyways, she was getting in
21 trouble, and I heard like something hit the wall. So then I
22 was like, what the heck's going on, man?

23 Q So did you see her afterwards?

24 A Yeah. She was all in tears and she could barely
25 talk. And I was like, you know, what happened to you, when I

1 looked at her, you know.

2 Q What did she say?

3 MS. ALLEN: Objection, Your Honor.

4 THE WITNESS: She didn't say anything.

5 MS. ALLEN: Your Honor, objection. Hearsay.

6 THE COURT: Sustained.

7 MS. LUZAICH: It would have been an excited

8 utterance. But he said she didn't say anything.

9 THE COURT: I'm sorry?

10 MS. LUZAICH: I would have offered it as an excited

11 utterance. He said she was in tears.

12 THE COURT: Okay. If you want to try to lay the

13 foundation for that.

14 MS. LUZAICH: That's okay.

15 THE COURT: Okay.

16 MS. LUZAICH: Thank you very much, Shabazz.

17 I would pass the witness.

18 THE COURT: Cross.

19 CROSS-EXAMINATION

20 BY MS. ALLEN:

21 Q Good morning, Shabazz. How are you?

22 A Swell.

23 Q Swell?

24 A Uh-huh.

25 Q Okay. You said you've been in this building before;

1 is that right?

2 A Been in the building before?

3 Q This building.

4 A Yeah. Sure. That is right.

5 Q Like last year?

6 A Yeah, last year.

7 Q But you didn't testify like you're doing today; is

8 that right?

9 A Yeah, that's right.

10 Q Okay. You were just sent home?

11 A I was just sent home.

12 Q Okay. But you met Lisa before; is that right?

13 A Yes.

14 Q Okay. And before today. You met her -- had you met

15 her before today?

16 A Yeah, before.

17 Q Okay. How many times did you meet her before today?

18 A I mean, I would have met her last year, and then I

19 met her today in court.

20 Q Okay. So two times?

21 A Two times.

22 Q Okay. Are you hard to get a hold of?

23 A Yeah.

24 Q Okay. You didn't really want to be bothered with

25 coming down here, did you?

1 A Well, I mean, I knew that, I mean, if I didn't come
2 down here maybe somebody would try to come for me or
3 something. I wanted to come down here to do it. I know it
4 was right.

5 Q Okay. But you said you were afraid someone was
6 going to come and try to find you, or were you told that
7 someone could come pick you up or something?

8 A I got knowledge. What can I say.

9 Q All right. Do you go by another name besides
10 Shabazz?

11 A Yeah. Sure I do.

12 Q What is that?

13 A DM.

14 Q DM? What does that stand for?

15 A It's short for my name maybe, you know.

16 Q What name is that?

17 A D Meister.

18 Q D Meister. Got it. And is that your like music
19 name?

20 A Yeah. Music, yeah.

21 Q All right. What kind of music do you make?

22 A You know, rap, hip hop, R&B, and all that stuff.
23 And then, you know, soul and flare [phonetic], and a whole
24 bunch more.

25 Q Okay. All right. So you remember living with Fred

1 and Ann; is that right?

2 A Yes.

3 Q Okay. And this is --

4 MS. ALLEN: Your Honor, I believe that this is

5 agreed upon.

6 Is that correct?

7 MS. LUZAICH: Yes.

8 MS. ALLEN: It would be Defense Admitted W.

9 THE COURT: It's admitted?

10 MS. ALLEN: Yes.

11 THE COURT: Okay.

12 MS. ALLEN: The State has stipulated to its

13 determination, Your Honor.

14 MS. LUZAICH: That's correct.

15 THE COURT: Okay. So W will be admitted.

16 (Defendant's Exhibit W admitted)

17 BY MS. ALLEN:

18 Q You remember going to Canyon Springs High School; is

19 that right?

20 A Sure, that's right.

21 Q You remember Coach Coop, don't you?

22 A Yes.

23 Q Did you see him sitting outside?

24 A Yeah. He was sitting outside. I was like, what you

25 guys doing here, you know.

1 Q Did you talk to him?
2 A I just -- I said hi a little, yeah.
3 Q And you like Coach Coop?
4 A Well, I kind of did, but he's kind of like a brush
5 off my shoulders. But, you know, time heals all wounds.
6 Q So there's a reason you don't like Coach Coop?
7 A No. Me and him is okay now, but --
8 Q There was a time you didn't like him?
9 A Yeah. There was a time when I didn't like him,
10 yeah.
11 Q Was he -- was he on you about school?
12 A No.
13 Q Okay. Did you get in trouble by him at school?
14 A No.
15 Q Okay. You saw Coach Coop nearly every day, didn't
16 you?
17 A Sometimes. I mean, I wanted to join the football
18 team, but he -- I mean, I'm in [unintelligible].
19 Q Is that why you were upset with him, because he
20 wouldn't let you join the football team?
21 A No.
22 Q Okay.
23 A That ain't the reason why.
24 Q All right. And you remember telling -- or you
25 remember Coach Coop saying something to you about your black

1 eye or the eyeball?

2 A Yeah, my eye.

3 Q Okay. And you said it was red on the inside?

4 A No. Like on my eyeball. One eyeball is like

5 normal, one eyeball is red, like I done bust a blood cell or

6 something.

7 Q Busted blood cell. Got it. And when you received

8 -- like when someone hit you in the eye did it cause the like

9 swelling around the eye itself?

10 A I think so, yeah.

11 Q When it had turned it black? Like you get a black

12 eye from someone punching you in the eye, don't you?

13 A Yeah. But it was kind of healing up.

14 Q Oh. Okay. But that had happened the night before?

15 A Yeah, the night before, yeah.

16 Q Okay. So it was a pretty fresh bruise, wasn't it?

17 A Yep.

18 Q Okay. Anybody else ask you about it at school?

19 A Maybe the guys at ROTC.

20 Q You were involved with ROTC; isn't that right?

21 A Yes.

22 Q So you were involved in Canyon Springs; isn't that

23 right?

24 A Yes.

25 Q And when you transferred to Basic you were in ROTC

1 for one semester. Do you remember that?

2 A Yeah, I was.

3 Q Okay. When you were at Canyon Springs in grade 9
4 and grade 10 do you remember getting pretty good grades?

5 A Yeah. Sure. I got the best grades ever, man. I
6 was the best freshman ever, yeah.

7 Q Yeah. You did really well, didn't you?

8 A Yeah, I did.

9 Q A-s and Bs almost all the way down. Just a couple
10 of Cs. You remember that?

11 A Yep.

12 Q When you went to Basic you were still involved in
13 ROTC; right?

14 A Oh, yeah. It was kinda --

15 Q And that would have been grade 8?

16 A Huh?

17 Q I'm sorry. That would have been eleventh grade.

18 A Yeah, I'd have been in eleventh grade.

19 Q Okay. And you remember -- you still were doing
20 okay, but you had a couple Fs. Do you remember that?

21 A Yeah.

22 Q Okay. Do you remember the remainder of high school
23 that you got mostly Fs?

24 A Yeah. I do. I do.

25 Q You remember that?

1 A Tough times.

2 Q Yeah. But you were --

3 A I mean, you want to talk about school spirit --

4 Q Yeah? But you were doing pretty good at Canyon

5 Springs, weren't you?

6 A Yeah, I was.

7 Q Fred wanted you to get good grades, didn't he?

8 A He did.

9 Q Yeah? He kind of expected you to get good grades,

10 didn't he?

11 A Yeah.

12 Q Did you and Fred have some disagreements when you

13 were living there?

14 A Yes.

15 Q Do you remember a time when you got in trouble at

16 school for -- and you got RPC-ed?

17 A Yeah, I got RPC-ed one time.

18 Q Do you remember that you beat up some kid in the

19 bathroom?

20 A Yeah. I did.

21 Q Do you remember it being a disabled kid?

22 A Yeah.

23 Q Do you remember if you -- you had just attacked the

24 kid in the bathroom, didn't you?

25 A Yeah. Because he stole something of mine. That was

1 way back, okay.

2 Q You were in karate; isn't that right?

3 A Yes.

4 Q Okay. So you were pretty good with your hands and

5 punching and blocking and all that good stuff?

6 A Yes.

7 Q How long were you in karate?

8 A I was in karate for three years.

9 Q When were you in karate?

10 A I went in karate when I went to Doolittle, like last

11 -- like the summer year that I was still in Blankenship.

12 Q Okay. Fred paid for that, didn't he?

13 A Yeah.

14 Q Is he the one who actually put you in karate?

15 A Yeah.

16 Q And he used to take you there and pick you up?

17 A No. I used to walk there by myself --

18 Q You used to walk?

19 A -- every Tuesday and Thursday.

20 Q Okay. All right. He never took you there?

21 A No.

22 Q All right. Do you remember getting in trouble at

23 home for beating up one of your sisters?

24 A Huh?

25 Q Do you remember getting in trouble at home for

1 beating up one of your sisters?

2 A I don't remember that.

3 Q Do you remember living with Victoria?

4 A Yes. Yeah.

5 Q You do? Yeah?

6 A Yeah.

7 Q Do you remember Victoria being kind of bossy?

8 A Yeah, she was bossy. Yeah.

9 Q Did she try to boss you around?

10 A Yeah, bossed me around, yeah.

11 Q What'd you do when she tried to boss you around?

12 A I just tried to work with her.

13 Q Did you ignore her?

14 A No.

15 Q Was Victoria not to be ignored?

16 A Yeah. She was not to be ignored. She --

17 Q Okay. Do you recall getting in trouble for stealing

18 something?

19 A What?

20 Q When you lived at Blankenship with Fred and Ann.

21 A Blankenship? Yeah, sort of. I was in trouble for

22 stealing something. I probably didn't do it.

23 Q But you probably didn't do it. Do you remember

24 getting in trouble for stealing like a Nintendo?

25 A Oh. No. I could explain all of that.

1 Q I'm just asking if you remember. Do you remember
2 that?

3 A Yeah, sure.

4 Q Okay.

5 A That's part of something else, too.

6 Q Okay. All right. Well, where did you get the
7 Nintendo, Shabazz?

8 A Like was in -- this is when I was in Sedway Middle
9 School doing history things. But, anyways, my friend -- I
10 mean, I talked to his -- I mean, Savala, right. And it became
11 part of my life, like my friends. And one day I told like I
12 guess Isaiah Savala that, you know, I had a Nintendo 64
13 [unintelligible] or whatever, you know, in Utah. And, well,
14 he talked to his brother, and I guess the day when, I mean, I
15 got it his, I mean, big brother, Isaac Savala, wanted to be my
16 representative, too. But anyways, he gave it to me and stuff.
17 So I took it home on the bus and I covered it up in my jacket
18 and took it out, you know, of the box and put it in my
19 backpack and wound up showing him. But I guess he disagreed,
20 and I guess after that -- I mean, I didn't steal it. I
21 already told you it was given to me by my friends, so, I mean,
22 it was that night that I told him about it, and, you know, he
23 wound up saying, is he going to be wanting this back; and I
24 was like, no. And he wound up breaking it and just freakin'
25 destroying it and like breaking everything. I mean, my mom

1 wound up being there. And freakin' I just watched the whole
2 thing fall in a shambles.

3 Q Okay. Do you remember -- did you tell your mom that
4 you got it as a ROTC gift for your birthday?

5 A No.

6 Q Did you tell anybody that?

7 A Like I said I got it from my friends.

8 Q Okay. So you didn't it for ROTC, right, for your
9 birthday?

10 A No, I didn't.

11 Q Okay. Did you get in trouble at school a lot,
12 Shabazz?

13 A Get in trouble at school for what?

14 Q I'm just asking if you got in trouble at school a
15 lot.

16 A No.

17 Q Did they call your mom a lot?

18 A No.

19 Q They never called your mom?

20 A No.

21 Q What about Fred? Did they have to call Fred a
22 couple of times?

23 A No.

24 Q What about the RPC?

25 A The RPC, yeah. That was like one time.

1 Q That was --

2 A After that I didn't get RPC-ed anymore.

3 Q Okay.

4 A But I ain't done telling you about the 64 thing,
5 'cause there's more to that.

6 Q Just a minute, Shabazz.

7 THE COURT: That's okay, Shabazz.

8 BY MS. ALLEN:

9 Q Shabazz, do you remember -- you said your friend
10 Isaac had given it to you; is that right?

11 A Yeah. Isaac Savalas.

12 Q Savalas. Do you remember Isaac's parents coming to
13 the school and threatening to press charges?

14 A No, I didn't -- I mean, I didn't think they did and
15 stuff like that. Didn't even happen.

16 MS. ALLEN: Okay. Court's indulgence for just a
17 moment.

18 (Pause in the proceedings)

19 MS. ALLEN: Your Honor, I pass the witness.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MS. LUZAICH:

23 Q Did you say, Shabazz, when Ms. Allen was just asking
24 you about the kid in the bathroom that you beat him up because
25 the kid stole something?

1 A Yes, sir.

2 Q What did he steal?

3 A It was a juice.

4 Q From you, or from somebody else?

5 A It was from me.

6 Q You said you had met me once before, right --

7 A Yes.

8 Q -- in this building. Have you spoken to Craig, my

9 investigator, on the phone?

10 A Yes.

11 Q A few times on the phone?

12 A Just like twice.

13 Q Okay. Has he called you a bunch of time and not

14 been able to get a hold of you?

15 A I don't know when he called me. He just called -- I

16 mean, my phone was dead when I went to California.

17 MS. LUZAICH: Okay. Thank you.

18 Nothing further.

19 MS. ALLEN: Hold on, Your Honor, just a moment.

20 (Pause in the proceedings)

21 MS. ALLEN: Your Honor -- that's fine, Your Honor.

22 I apologize. We had passed the witness.

23 THE COURT: It's okay.

24 Thank you very much for your testimony here today,

25 and make sure you take your hat and your glasses with you,

1 okay. You can step down. Thank you very much for being here,
2 and thank you for the testimony you gave this jury panel.

3 THE WITNESS: It was my pleasure.

4 THE COURT: Okay. Thank you.

5 Does the State have any further witnesses that they
6 intend to call?

7 MS. LUZAICH: The State does not have any further
8 witnesses. The State rests its case in chief.

9 THE COURT: Okay. You can step down, Shabazz.

10 Okay. So, ladies and gentlemen, the State of Nevada
11 has rested their case. So it's now the defense's opportunity
12 to begin calling their witnesses.

13 MS. ALLEN: Yes, Your Honor. Coach -- I just have
14 two I think quick ones before lunch, if we could.

15 THE COURT: Go ahead.

16 MS. ALLEN: The first one is Coach Hernandez Cooper.

17 THE COURT: Coach Cooper.

18 MS. ALLEN: Hernandez Cooper, Coach Coop. It's
19 easier.

20 HERNANDEZ JAMES COOPER, DEFENDANT'S WITNESS, SWORN

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

24 THE WITNESS: Hernandez James Cooper,
25 H-E-R-N-A-N-D-E-Z C-O-O-P-E-R.

1 THE CLERK: Thank you.

2 MS. ALLEN: May I approach proceed?

3 THE COURT: Absolutely.

4 MS. ALLEN: Thank you.

5 DIRECT EXAMINATION

6 BY MS. ALLEN:

7 Q Can I call you Coach Coop?

8 A Yes. Absolutely.

9 Q Okay. Is that what everybody calls you?

10 A Yes.

11 Q All right. Coach Coop, I'm going to ask you what
12 you currently do for a living.

13 A Currently I'm a head football coach at Canyon
14 Springs High School, and I'm a psych coordinator for Community
15 Schools of Southern Nevada, which is a reach out program --
16 outreach program to help tie community resources to inner-city
17 kids that have lack of funding.

18 Q Okay. And what is your educational background?

19 A I graduated from Westwood High School in 1987 in
20 East Texas. I have an Associates degree in education from
21 Navarro College in Texas, and a degree in criminal justice
22 from the University of Nevada Las Vegas in 1994.

23 Q Okay. And you're currently at Canyon Springs; is
24 that correct?

25 A Yes, ma'am.

1 Q How long have you been there?

2 A I've been there now almost nine years.

3 Q All right. And if I use -- were you ever a SPED

4 teacher?

5 A Yes, ma'am. I have a certification in Special Ed I

6 was over discipline in house and also I taught biology there.

7 Q Okay. And what does SPED stand for?

8 A Special Ed.

9 Q Okay. Do you recall a student -- well, let me ask

10 you this. Do you recall Shabazz Duke?

11 A Yes, ma'am.

12 Q Okay. So you saw someone walk out that you recall

13 being someone you had dealt with before?

14 A Yes, ma'am.

15 Q Okay. And how do you recall Shabazz Duke? What was

16 your interaction with him?

17 A Well, I've known -- well, Shabazz, I met his family.

18 His sister Victoria was on my caseload, but Shabazz was always

19 in ROTC, which is a room close to mine. And after school --

20 as a football coach we stay after school a lot, and I would

21 see Shabazz with the ROTC program a lot.

22 Q Okay. Did you talk to him?

23 A No, ma'am.

24 Q Not today. I just mean ever.

25 A Yes. Yes. On campus, yes, ma'am.

1 Q All right. So when he was at Canyon Springs with
2 you you would talk to him, not maybe daily, but just --

3 A Yes, ma'am. I would interact with Shabazz and see
4 him around campus, yes, ma'am.

5 Q Okay.

6 MS. LUZAICH: Could he maybe talk a little slower?

7 MS. ALLEN: Me?

8 MS. LUZAICH: No. The witness. I can't understand
9 a word he's saying.

10 MS. ALLEN: Sorry.

11 THE COURT: Maybe if you just -- I get told that all
12 the time, so --

13 MS. ALLEN: So do I. I apologize.

14 BY MS. ALLEN:

15 Q Have you ever testified before?

16 A Yes, I have.

17 Q Okay. All right. So you should be used to this.

18 All right. So when you would interact with Shabazz
19 what -- when were the interactions? Can you describe some of
20 the times that you would see him.

21 A Just coming and going, during lunch periods, after
22 school when he was with ROTC and I'd be with the football, see
23 him on his. Because ROTC practice not too far from where
24 football practice was. But I would see him on campus and be
25 cordial.

1 Q Okay. Was he one of your students?

2 A No, ma'am.

3 Q All right. Do you ever recall having any sort of

4 conversation with him regarding any sort of injuries to his

5 face or his body?

6 A No, ma'am.

7 Q Okay. Do you recall ever seeing him with any sort

8 of injuries to his face or his body?

9 A Not really. Shabazz -- when it was at lunch or

10 after school most of the time he would have shades on anyway.

11 You know, I'd see him with shades on, and, you know, just say,

12 what's up, cool dude. But never recall seeing any injuries.

13 Q Okay. You also know his sister; is that right?

14 A Yes, ma'am.

15 Q Actually which -- which sisters do you know?

16 A I know Victoria, and I've seen his other sister at

17 school, Mahlia [sic] or -- I can't recall her name.

18 Q Mahlica? Does that sound right?

19 A Yes.

20 Q Okay. Was either one of those girls your student?

21 A Victoria was on my caseload. As a teacher

22 coordinator in Special Education you're assigned a certain

23 amount of kids to do their educational IEP, which is

24 Individual Educational Plan, to help them -- to help them

25 succeed academically and socially. So I evaluated her, tested

1 her, and my interactions with Victoria were more than with
2 anybody else in the family.

3 Q Okay. Do you remember someone by the name of
4 Bywaters?

5 A Yes. Kamilah Bywaters.

6 Q Okay. How do you remember Kamilah Bywaters?

7 A She also worked as a Special Ed teacher coordinator
8 and taught in Special Education Department at Canyon Springs.

9 Q Okay. Do you know -- and this is only if you know,
10 but would Ms. Bywaters have been involved with Victoria?

11 A I think after my first couple years with Victoria
12 being on my caseload she was moved to Ms. Bywaters's caseload.

13 Q Okay. All right. Even after Victoria moved did you
14 still have interaction with her?

15 A Yes. I would see her on campus and, you know, and
16 ask her how things were going and see how she was doing, yes.

17 Q All right. Aside from your role as the football
18 coach and Special Ed teacher coordinator what else sort of do
19 you do on campus that maybe it's not part of the curriculum?

20 A I'm pretty much the go-to guy around the campus,
21 kind of a mentor to so many inner-city kids, men, young men,
22 young women, former graduates, graduates, kids that don't have
23 the resources, and we try to get them motivated to use
24 whatever they have as motivation to succeed. Even the
25 principals. And I see kids daily. I'm in the cafeteria, I

1 get called to classrooms with kids, kids that don't have
2 eyeglasses, kids that don't have dental health or vision, just
3 there's a lot of hats that I wear around there that I've done
4 for so many years that I really enjoy doing.

5 Q Is Canyon Springs an at-risk school?

6 A It is. It's a Title 1 school and an at-risk school,
7 yes, ma'am.

8 Q All right. I've met with you before; is that right?

9 A Yes, ma'am.

10 Q And I came to your office?

11 A Yeah.

12 Q What's unusual about your office, as opposed to some
13 of the other teachers' offices on campus?

14 A Well, I'm the only one there that has a food bank,
15 I'm the only one there that has Pampers and diapers and
16 resources to get kids eyeglasses. I'm the only one that has
17 meals that they can prepare and cook while they're there then.
18 I have things that -- I have school supplies. It's like a
19 resource room that I can provide for people that need
20 something right now.

21 Q All right. So a lot of your students, then, don't
22 have food daily; is that correct?

23 A Yes.

24 Q All right. And you said you have Pampers?

25 A I have Pampers.

1 Q So do you provide those to the students, or
2 teachers?

3 A No, to students that are parents.

4 Q Okay. And does your school have a higher rate of
5 teenage pregnancy?

6 A Absolutely.

7 Q All right. You said you remembered Victoria
8 specifically because she was on your caseload; is that
9 correct?

10 A Yes, ma'am.

11 Q Do you remember the specific years?

12 A It was my early years. I want to say maybe between
13 2008 and 2010.

14 Q All right. Do you remember how she was doing while
15 she was in school with you?

16 A Well, just in my evaluation of Victoria she was -- I
17 felt that academically and for her age that she was off task,
18 she was behind. So in my IEPs after testing her with the
19 standardized tests that we use I tried to put the
20 modifications and accommodations that she would need to help
21 her. She got it, but it took her different ways and a little
22 longer to get it. So those are the things that I would do.

23 Q Okay. So she was sort of behind academically; is
24 that correct?

25 A Yes, ma'am, based on my exam.

1 Q Would you say really far behind?

2 A Yes, ma'am.

3 Q All right. Did you -- you tried working with her to
4 get her up to task?

5 A Yes, ma'am.

6 Q Okay. Do you feel like you ever did get her up to
7 task?

8 A No, ma'am. I think that -- I think there was a gap
9 in her starting school and the things that people of her age
10 that should already know that she was just starting to catch
11 up. Her rate of progress was better, but she was behind, and
12 I didn't think that I could help her catch up.

13 Q Okay. Did you ever meet or have occasion to meet
14 her mother?

15 A I did, if you're referring to Tina Duke.

16 Q Okay. And how many times do you think you met Tina?

17 A Annually, probably two years. Because of the IEP a
18 parent had to be present at the IEP. And I do remember Ms.
19 Duke having transportation issues, but getting her there. And
20 the second IEP meeting I think it was another lady that was
21 there.

22 Q You don't remember who, though; is that right?

23 A I want to say just Dorothy, a first name. I don't
24 know her last name.

25 Q Dorothy; is that correct?

1 A Yes, I think that was her name.

2 Q Okay. And Dorothy's not Tina, obviously.

3 A No, ma'am.

4 Q Okay. But there were conversations between you and
5 Dorothy with regard to Victoria's progress and how to get her
6 on track?

7 A Yes, ma'am. She's a part of that IEP meeting, yes.

8 Q All right. Did Victoria ever come to you and tell
9 you anything that concerned you with regard to her home life?

10 A No. She just said that her mother had tough times,
11 you know, because sometimes her attendance would not be -- and
12 I would ask her where was she at. And she didn't have a ride
13 to school or, you know, tough to get to school. She rode the
14 bus. But just, you know, evaluating your students you can
15 kind of tell where they are with my experience, you know, what
16 kind of home life they have.

17 Q Okay. What is a mandatory reporter?

18 A A mandated reporter Clark County School District in
19 my understanding is if a kid, a student, anybody on campus
20 reports that they feel like they want to cause hurt, harm to
21 themselves or anybody else or something's going on that is
22 causing harm to them, then we go to the counselors or we call
23 Child Protective Services to get it investigated and make a
24 note of it.

25 Q Okay. Have you previously reported what you

1 perceived to be either abuse or harm to a student or the
2 student harming themselves or something to that -- have you
3 done this? Have you reported someone?

4 A Yes, ma'am, I have a couple of times at Canyon.
5 Yes, ma'am.

6 Q Okay. And when would be the last time you did
7 something like that?

8 A Last time was this past -- beginning of this year.
9 I had a kid that felt like he wanted to cause harm to himself
10 and said he couldn't take it anymore and that he felt like he
11 was going to cause harm to himself. So I immediately
12 contacted Child Protective Services. Never got through, so I
13 did an online report and also went to the school counselors
14 and the Special Ed Department and notified them. We did what
15 we call a protocol.

16 Q Okay. Had Victoria or any of your students come to
17 you and said, I'm being sexually abused at home, what would
18 you have done?

19 A Immediately -- I mean, that's not something I would
20 play with. I have two females that I work with. I would have
21 first of all notified them and went directly and filed that
22 report.

23 Q Okay. And are you -- you're particularly sensitive
24 to that kind of issue; is that correct?

25 A Any harm, hurt to kids. You know, I have daughters.

1 You know, I've had a situation before that kind of involved
2 me. And, yes, I would. That's not something I'd take
3 lightly.

4 Q Okay. You said you had a situation involving you
5 before?

6 A Yes.

7 Q Okay. And what had happened with that?

8 A Well --

9 MS. LUZAICH: Objection. Relevance.

10 THE COURT: Sustained.

11 BY MS. ALLEN:

12 Q Okay. Had Victoria or any student come to you and
13 said, I am being like beaten at home, I'm being physically
14 abused at home, what would you have done with that
15 information?

16 A I would have immediately contacted the Dean's Office
17 and notify the counselors.

18 Q Okay. So it's the same protocol for sexual abuse,
19 physical abuse?

20 A Any abuse.

21 Q Okay. Do you ever recall seeing Victoria with any
22 sort of marks, bruising or anything to her face or body?

23 A No, ma'am.

24 Q Okay. What about Mahlica? Do you ever recall
25 seeing any marks on Mahlica?

1 A No, ma'am.

2 Q Now, if you had seen Shabazz, Mahlica, Victoria, or
3 any student with any marks on their body, would that be
4 something that you would -- would cause you to follow this
5 mandatory reporting protocol?

6 A Yes, if I felt something -- you know, if they wasn't
7 in a sport that would dictate such an injury --

8 Q Okay.

9 A -- then that's something that I would, yes, look
10 into further.

11 Q Okay. So maybe in wrestling you could end up with
12 some bruising?

13 A Wrestling, in football, in basketball. Any physical
14 activity that would be consistent with that would cause some
15 kind of injury I would -- you know, other than that, I would
16 try to look into it or have the teachers or somebody else look
17 into it.

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

19 (Pause in the proceedings)

20 BY MS. ALLEN:

21 Q One last question, actually. Knowing all three
22 kids, correct, at least these three, Shabazz, Mahlica, and
23 Victoria, correct, who would you describe as the most stable?

24 A In my years of seeing the kids I would have to say
25 it would be Mahlica.

1 Q Mahlica?
2 A Yes.
3 MS. ALLEN: Okay. Thank you.
4 I'd pass the witness.
5 THE COURT: Cross?
6 MS. LUZAICH: Yes, Your Honor.
7 CROSS-EXAMINATION
8 BY MS. LUZAICH:
9 Q Good morning.
10 A Good morning. How are you?
11 Q Good. How are you?
12 A Wonderful, thank you.
13 Q I've never met you before today; is that right?
14 A No, ma'am, you have not.
15 Q And you said that you have testified before. When
16 did you testify previously?
17 MS. ALLEN: Objection, Your Honor. Relevance.
18 THE COURT: Sustained.
19 BY MS. LUZAICH:
20 Q Have you come to this court building and testified?
21 MS. ALLEN: Objection, Your Honor. Relevance.
22 THE COURT: Sustained.
23 BY MS. LUZAICH:
24 Q You said that you saw Shabazz around campus at
25 Canyon Springs; right?

1 A Correct.

2 Q Did you know him to be in any Special Education
3 classes?

4 A Yes, ma'am.

5 Q But you didn't supervise him in any of those
6 classes?

7 A Not on my caseload.

8 Q Did you report seeing a mark on Shabazz in 2008?

9 A No, ma'am. Not that I recall.

10 Q So if someone reported that, that wouldn't be you?

11 A Not that I recall. I can't speak for anybody else.

12 Q As a mandatory reporter are you aware that you can
13 be prosecuted for a crime if you do not report physical abuse?

14 A Oh, absolutely.

15 Q And as a mandatory reporter are you aware that you
16 can be prosecuted for a crime if you don't report sexual
17 abuse?

18 A Yes, ma'am.

19 MS. LUZAICH: Nothing further, Your Honor.

20 THE COURT: Redirect?

21 MS. ALLEN: No, Your Honor. I don't believe so.
22 Thank you.

23 THE COURT: Sir, thank you very much for being here.
24 You may step down, and you are excused from your subpoena.

25 Your next witness?

1 MS. ALLEN: Is Officer Loving.
2 MICHAEL LOVING, DEFENDANT'S WITNESS, SWORN
3 THE CLERK: Thank you. Please be seated. Would you
4 please state your full name, spelling your first and last name
5 for the record.
6 THE WITNESS: Michael L-O-V-I-N-G, Loving.
7 THE CLERK: Thank you.
8 DIRECT EXAMINATION
9 BY MR. MacARTHUR:
10 Q Good morning, Officer.
11 A How are you?
12 Q Just fine, thanks. My name's Jonathan MacArthur.
13 I'm counsel for the defense. We've never met; is that
14 correct?
15 A Correct.
16 Q Okay. Did you receive a subpoena to come in and
17 testify today?
18 A I did.
19 Q Okay. And were you given some documents to review
20 with regard to your testimony?
21 A I was.
22 Q Okay. Have you ever testified in court before?
23 A Yes.
24 Q Okay. Are you usually subpoenaed by the State's
25 side?

1 A I am.

2 Q Okay. Were you surprised to find out you were
3 subpoenaed by the defense?

4 A I was.

5 Q Okay. Do you recall having responded to a call for
6 service involving a battery constituting domestic violence
7 involving one Tina Duke?

8 A Vaguely.

9 Q Okay.

10 A It's been a while.

11 Q And did you have an opportunity to review any
12 documents that were made in response to your having responded
13 to that call?

14 A I did.

15 Q Okay. And do you recall the date of the incident?

16 A Not off the top of my head.

17 Q Okay. Does -- at any time, Officer, if I ask you a
18 question and you're not familiar with it, I have the documents
19 here, please feel free to review them again if necessary.

20 A I would love to see them.

21 Q Okay. Do you recall if the date was October 24th,
22 2009?

23 A It could have been, yes. If you don't mind.

24 THE COURT: You can approach and show him the
25 document.

1 MR. MacARTHUR: Thank you, Your Honor.

2 THE WITNESS: Okay. Yes, it was.

3 BY MR. MacARTHUR:

4 Q All right. Now, this call for service was
5 initiated, am I correct, from Bally's Hotel & Casino?

6 A That is where we -- according to the report, that is
7 where we responded to, yes.

8 Q Okay. And do you know about what time you
9 responded?

10 A Looks like might have been around 11:36 in the
11 morning. If I -- let me just read the narrative real quick,
12 if I could, please.

13 Q Absolutely.

14 A I stand corrected. 10:43 in the morning.

15 Q 10:41 a.m.?

16 A 10:43 a.m.

17 Q 10:43 a.m.

18 A Uh-huh.

19 Q All right. And I realize that you were probably
20 sent there by Dispatch.

21 A Correct.

22 Q Okay. Do you know who had initiated the call for
23 service?

24 A Not according to this. No, I don't. For sure I do
25 not know who made the phone call.

1 Q Okay. When you responded to Bally's who did you
2 make contact with?

3 A I believe we -- according to the report, we made
4 contact with a female who identified herself as Rene Duke, who
5 we further found out was a Tina Rene Duke.

6 Q All right. And what would be standard protocol for
7 an officer responding to a call for service related to
8 domestic violence?

9 A First we would -- we would want to establish contact
10 with the victim, the alleged victim. If it was somebody that
11 was claiming any kind of battery, we would offer her some sort
12 of medical response. At that time we would also kind of being
13 looking and evaluating, see if we see any bumps, bruises,
14 scratches, or anything like that.

15 Q All right. Do you also interview witnesses to the
16 event?

17 A If they're readily available, yes.

18 Q Okay. Are you equipped with a camera to take
19 pictures of any injuries if those are available?

20 A At that time we ourselves, myself and my partner
21 that responded that day, we're enduro officers, which means we
22 rode small off-road bikes. That was our mode of
23 transportation on that day. So we wouldn't have had a camera
24 on us ourselves. We could have called for one if one was
25 necessary.

1 Q Understood. Okay. And do you recall whether you or
2 your partner made contact with Ms. Duke?

3 A Yes, we did.

4 Q Okay. It was both of you?

5 A Yes, sir.

6 Q Okay. And during the course of your interaction
7 with Ms. Duke did she describe the details of battery she said
8 she'd suffered at the hands of Frederick Harris?

9 A According to the report, she did make note of the
10 incident.

11 Q Okay. Did she indicate that she'd been slapped
12 repeatedly in the face?

13 A According to this report, yes, it was.

14 Q Okay. Did she indicate that a boot had been thrown
15 at her and had hit her in the head?

16 A According to the report, that is the statement that
17 Ms. Duke made.

18 Q Okay. She also -- well, let me approach, hand you a
19 sheet.

20 Okay. Did she indicate any other injuries she
21 believed she sustained from her battery?

22 A Other than in the report it says that she was pushed
23 hard and fell back on a table.

24 Q Okay. Did she say that she suffered an injury from
25 that or had sort of soreness, bruising, et cetera? And I'm

1 asking if she told you that, as opposed to whether you noted
2 it.

3 A It's been a while, but I don't see anything on here
4 where it says she was in any -- she wasn't reporting any pain
5 at that time, no.

6 Q Okay. And so as far as you can recall she didn't
7 relate to you that this fall onto the coffee table had injured
8 her back or given her severe bruising to her legs?

9 A I just -- I want to make clear and I think I need to
10 be clear on something. Myself and Officer Fraley [phonetic]
11 responded to this report. I had a chance to it at it on
12 OnBase, a data system where we scan old documents, and it's
13 there for review. And I don't have those documents with me.
14 However, both of us responded to this. There's two sections
15 to this report. There's a front page with everybody's
16 information, the descriptors, name, date of birth for both
17 parties. There's a second page, which is a narrative, which
18 is the story that's told here.

19 On this particular incident I reviewed this, and
20 Officer Fraley did the narrative portion of this.

21 Q Okay.

22 A At that time I was doing the front page, the
23 documentation of who and what was involved and their
24 descriptors --

25 Q Excellent.

1 A -- in addition to preparing to fill out another
2 document, which was a threat assessment which we filled out
3 for this report. So I'm not completely -- I can't completely
4 marry myself to this narrative, because it wasn't written by
5 me. I didn't author this.

6 Q Okay. This is your -- this is your partner's
7 report?

8 A Correct.

9 Q Okay. But you recognize his name there?

10 A Yes. Absolutely.

11 Q Okay. And you remember having been in his presence
12 at --

13 A I do.

14 Q -- the time that you responded?

15 A I do.

16 Q Okay. Now, you had testified just a few minutes ago
17 that it would be standard procedure that after interviewing
18 any potential witnesses, including the victim, that you would
19 offer them medical assistance; is that correct?

20 A Yes. Yes.

21 Q And did you do that here?

22 A It says that we did and it was refused by her.

23 Q All right. Now, Officer, when -- let me ask you
24 this first. How many domestic violence calls for services do
25 you think you've responded to in your time with Metro?

1 A In 19 years? Dozens and dozens.

2 Q Okay. And have you responded to calls for service
3 where you've seen injuries before?

4 A Absolutely.

5 Q Okay. And do you contrast what is told to you by
6 the victims or the independent witnesses with the physical
7 evidence on the scene?

8 A Can you kind of --

9 Q Do you do anything to try to determine whether or
10 not what's being told to you appears to be the truth?

11 A Yes.

12 Q Okay. Is it usual where if something's happened at
13 a house they might point fingers at each other?

14 A Oh, yes.

15 Q Okay. In fact, if you find probable cause that a
16 domestic battery has occurred, it's not unusual to make an
17 arrest; is that correct?

18 A It would be procedure, yes.

19 Q Okay. And so might you look for injuries consistent
20 with what the victim told you happened?

21 A Absolutely.

22 Q Might you also look for statements by the alleged
23 perpetrator that corroborate something the victim says?

24 A Yes, sir.

25 Q Okay. And that's not unusual at all, is it?

1 A No.

2 Q Okay. Officer, looking at the report there, do you
3 recall whether you made a visual inspection of Ms. Duke's face
4 or her head?

5 A My partner noted that there were no bumps or bruises
6 on the top of her -- on the top of her head or forearm.

7 There was also a second note by Officer Fraley. It
8 says, "There was no redness or bumps nor bruises on either
9 side of her face."

10 MR. MacARTHUR: All right. Court's indulgence.

11 (Pause in the proceedings)

12 BY MR. MacARTHUR:

13 Q And just one more housekeeping matter, Officer, and
14 I'm done with you.

15 I realize that your partner's not here to testify.
16 Do you have any reason not to trust or rely on the
17 representations that he made in that report?

18 A No, I don't.

19 MR. MacARTHUR: Okay. Court's indulgence, Your
20 Honor.

21 (Pause in the proceedings)

22 BY MR. MacARTHUR:

23 Q One more thing. There's always one more thing,
24 Officer. And I apologize.

25 In making first contact with Tina Duke did she

1 indicate to you what the fight was about?

2 A It states here in the report that apparently she
3 hadn't filled out some paperwork to the satisfaction of her
4 boyfriend, Mr. Harris, and that he had gotten physical with
5 her as a result of that.

6 Q Okay. And had consequently battered her because of
7 his dismay?

8 A That was her claim, yes, sir.

9 MR. MacARTHUR: Thank you, Officer. I appreciate
10 it. I have no further questions.

11 THE COURT: Cross-examination?

12 MS. LUZAICH: Thank you.

13 CROSS-EXAMINATION

14 BY MS. LUZAICH:

15 Q Officer Loving, it indicates that you responded to
16 Bally's on October 24 of 2009, somewhere around 10:00 in the
17 morning; right?

18 A Yes, ma'am.

19 Q Does it also indicate in your report that the
20 battery occurred on October 20th, four days earlier, at 17:00,
21 which in people time is what, 5:00 p.m.?

22 A I couldn't be absolutely certain on the date without
23 looking at it, but, yeah, I --

24 MS. LUZAICH: May I approach?

25 THE WITNESS: I do remember there was -- there was a

1 separation of time, yes.

2 BY MS. LUZAICH:

3 Q Would it refresh your recollection to refer to the
4 report?

5 A Yes, ma'am. Please.

6 Yes, ma'am, that would be correct.

7 Q That the battery occurred on what date?

8 A That it occurred on the 20th of October and that she
9 had reported the incident and made contact with us on the 24th
10 of October.

11 Q So three and a half days later, because it was 5:00
12 at night and now it's 10:00 in the morning; right?

13 A Yes, ma'am.

14 Q And do you -- now, do you recall saying that she had
15 told you that when she was at work that day her supervisor
16 encouraged her to report?

17 A I seem to recall that, yes.

18 Q You mentioned that she was given a blue card.
19 What's a blue card?

20 A What we refer to a blue card is it has not only the
21 event number so a victim could refer to the courts for a
22 protection order. It does give a good number of domestic
23 services, including the contact numbers for the courts to get
24 that restraining order.

25 Q And that's given all domestic violence situations?

1 A Yes, ma'am.

2 Q You mentioned something about a threat assessment.
3 What's a threat assessment?

4 A Threat assessment was a page that was developed for
5 the Department. There are factors that are involved that
6 shows whether you're really at risk of further violence and
7 even more serious violence. There's questions that are asked
8 on, have you been beaten before, does your -- does the
9 significant other have a gun, are there guns in the home,
10 those kind of questions that would lead somebody to determine
11 you're really at risk here, maybe you shouldn't be staying in
12 the home, that kind of thing.

13 Q And did you tell her that she shouldn't stay in the
14 home?

15 A Yes.

16 Q Did she indicate to you that she was going to go
17 home, she had stuff there?

18 A She had indicated that she did have things there,
19 and I believe her children were there, that she had children
20 there. We would have told her that if she had felt the need
21 to go ahead and go back that she should go to a location
22 somewhere near the home, call for a police officer to respond
23 with her. She didn't know whether or not Mr. Harris would
24 have been home, so she would have been told, call from an area
25 near the home, wait for a police officer to respond to go back

1 to that home if you want to collect belongings.

2 Q Is that something that you do often in domestic
3 violence situations?

4 A Absolutely.

5 Q Now, battery constituting domestic violence, is that
6 a misdemeanor?

7 A It is in this state.

8 Q Is that something that you can only arrest if it
9 occurs in your presence?

10 A That is not true. Battery domestic violence --

11 Q What are the situations?

12 A Yeah. Battery domestic is one of those things where
13 if we can substantiate that a battery did occur, it need not
14 have taken place in our presence.

15 Q Okay. Now, since the battery had occurred three and
16 a half days earlier, would it surprise you not to see red
17 marks or things of that nature?

18 A No, it wouldn't surprise me at all.

19 Q And did she also indicate that she fell -- sorry,
20 it's getting harder to read as I get older -- that she fell on
21 her back, landing on a small table, injuring her tailbone?

22 A She did make that claim, yes.

23 Q And did she also indicate that her daughter may or
24 may not have seen the incident because her daughter was in the
25 home?

1 A She did.

2 Q Thank you. I have nothing further -- oh. I'm
3 sorry. I have one more question.

4 Does the report indicate that it was actually
5 assigned to a Domestic Violence detective?

6 A According to the page, yes, it was.

7 Q Is there a unit in the Detective Bureau at Metro
8 that does handle specifically domestic violence offenses, they
9 do followup after patrol takes an original report?

10 A That is correct.

11 MS. LUZAICH: Thank you.

12 THE COURT: Any redirect?

13 MR. MacARTHUR: Court's indulgence.

14 (Pause in the proceedings)

15 REDIRECT EXAMINATION

16 BY MR. MacARTHUR:

17 Q Just in followup, Officer, is it your recollection
18 that when she was detailing what had happened to you she was
19 specific in saying that the battery had happened three days
20 beforehand? Is that correct?

21 A That's what's indicated in the report, yes.

22 Q Okay. And when people give you that kind of
23 information you do your best to detail it in your report;
24 right?

25 A I believe it is noted in the narrative of that

1 report.

2 MR. MacARTHUR: Excellent. Thank you, Officer.

3 THE COURT: Any recross?

4 MS. LUZAICH: No.

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

7 MS. ALLEN: I have more, but it's -- I didn't know
8 if you wanted to break for lunch. It's 12:20.

9 MR. MacARTHUR: Let's keep going.

10 THE COURT: How long are they?

11 MS. ALLEN: I don't know. I mean --

12 THE COURT: Okay.

13 MS. LUZAICH: Can we break?

14 THE COURT: We can break for lunch.

15 During this recess you're admonished not to talk or
16 converse amongst yourselves or with anyone else on any subject
17 connected with this trial, or read, watch, or listen to any
18 report of or commentary on the trial or any person connected
19 with this trial by any medium of information, including,
20 without limitation, newspapers, television, the Internet, or
21 radio, or form or express any opinion on any subject connected
22 with this trial until the case is finally submitted to you.

23 We'll be in recess till 2:00 o'clock.

24 (Jury recessed at 12:24 p.m.)

25 THE COURT: Okay. The jury has left the courtroom.

1 Can you just remind me who's going to testify this
2 afternoon.

3 MS. ALLEN: Yes. We have Shawn Robinson --

4 THE COURT: Okay.

5 MR. MacARTHUR: Harrison Mayo.

6 MS. ALLEN: Thank you.

7 THE COURT: Harrison?

8 MS. ALLEN: Harrison Mayo, and Sha'karia Bailey.

9 Oh. And we have one more, but she's tomorrow.

10 THE COURT: Right. I know that there's that one
11 witness that can only testify tomorrow. But this sounds like
12 the rest of the afternoon.

13 MS. ALLEN: Oh, I don't know. I think if we resume
14 at 2:00, pending some random stuff, I think we'll be done at
15 3:00, 3:30.

16 THE COURT: Okay. So we can still do jury
17 instructions.

18 MS. ALLEN: Yeah. Oh, yeah.

19 THE COURT: Okay. Perfect. Perfect. But don't --
20 if you're not done, don't panic, because we can always do jury
21 instructions in the morning.

22 MS. ALLEN: Right.

23 THE COURT: What time does that witness have to
24 testify?

25 MS. ALLEN: No, no, no. There's no time. Tomorrow.

1 THE COURT: Okay.

2 MS. ALLEN: She had a funeral today at 11:00.

3 THE COURT: Oh. That's right, she had a funeral.

4 MS. ALLEN: And so she just was unavailable today.

5 So tomorrow it's anytime, so we could bring her in whenever

6 you want. As long as I know the time by the time we leave

7 today, my investigator can call her.

8 THE COURT: Okay. Well, hopefully we can get them

9 done today. I'd like to get them done today.

10 (Court recessed at 12:27 p.m., until 2:23 p.m.)

11 (Jury is present)

12 THE COURT: Do I have a stipulation to the presence

13 of the jury panel?

14 MS. LUZAICH: Yes.

15 MS. ALLEN: Yes, Your Honor.

16 THE COURT: Okay. You can call your next witness.

17 MS. ALLEN: Thank you, Your Honor. Sha'karia

18 Bailey.

19 SHA'KARIA BAILEY, DEFENDANT'S WITNESS, SWORN

20 THE CLERK: Thank you. Please be seated. Could you

21 please state your full name, spelling your first and last name

22 for the record.

23 THE WITNESS: Sha'karia Bailey, S-H-A-'-K-A-R-I-A,

24 last name Bailey, B-A-I-L-E-Y.

25 //

DIRECT EXAMINATION

BY MS. ALLEN:

Q Good afternoon, Sha'karia. How are you?

A I'm fine.

Q How old are you?

A Twenty-one.

Q All right. And I'm going to ask you who your mom is. Can you give me your mom's name.

A Lealer Ann Cooks.

Q Okay. And is she your biological mother, or is she like an adoptive mother.

A She's like an adoptive mother.

Q Okay. How long has she been your mother? How long have you known her as your mother?

A Twenty-one years.

Q Okay. So all your life?

A Yes, ma'am.

Q Okay. You now know who your real mom; is that right?

A Yes, ma'am.

Q But when I say "mom" who would you be thinking of in your mind?

A Lealer.

Q Okay. Do you call her -- or do other people call her by a different name?

1 A Ann.

2 Q Okay. Are you employed?

3 A Yes, ma'am.

4 Q Okay. And what kind of work do you do?

5 A I'm a personal care attendant.

6 Q Can you just tell me what that means.

7 A I take care of the elderly and the needy who can't

8 take for themselves.

9 Q Okay. Do you recall a time in your life where you

10 lived on a street by the name of Trish Lane?

11 A Yes, ma'am.

12 Q Okay. Do you remember approximately how old you

13 were when you lived on Trish Lane?

14 A I want to say around the age of maybe eight, nine,

15 maybe even ten.

16 Q Okay. And when you initially moved into that house

17 who lived there with you?

18 A Me, Lealer, Claudia Littles, which is my

19 grandmother, and my brother Marcus.

20 Q Okay. Claudia would be Lealer's mother?

21 A Yes, ma'am.

22 Q All right. The four of you lived in that home; is

23 that correct?

24 A Yes, ma'am.

25 Q At that point in time in your life did you know Fred

1 Harris?

2 A Yes, ma'am.

3 Q Okay. How long -- when you lived on Trish Lane or
4 when you moved into Trish Lane how long had Fred been involved
5 in your life?

6 A I want to say for maybe two years.

7 Q Okay. And did you know Fred -- what Fred's
8 relationship was with your mom, with Ann?

9 A Yes, ma'am.

10 Q And what was that?

11 A He was my mother's boyfriend.

12 Q Okay. So you've known Fred for a long time; is that
13 correct?

14 A Yes, ma'am.

15 Q All right. And is it that gentleman sitting at that
16 table over there?

17 A That's my pops.

18 Q Okay. When you say pops, is that what you call him?

19 A Yes, ma'am.

20 Q All right. Do you consider him to have raised you,
21 as well?

22 A Yes, ma'am.

23 Q All right. Did there come a point in time just on
24 the house on Trish Lane where other people moved in?

25 A Yes, ma'am.

1 Q And who were those people that moved in?
2 A The Duke family.
3 Q All right. Can you tell me their names.
4 A Shabazz Duke, Taharah Duke, Taquanda Duke, Victoria
5 Duke, and Mahlica Duke and Tina Duke.
6 Q Okay. Who was the mother?
7 A Tina.
8 Q All right. Approximately how long did they live at
9 the house on Trish Lane?
10 A I want to give it -- it was there for a few year I
11 wouldn't say years, because it wasn't years. I want to say
12 maybe, if I'm not mistaken, eight or nine months, maybe more.
13 Q Okay. So they didn't live there a year; is that
14 right?
15 A Correct.
16 Q Okay. And do you know where they went from Trish
17 Lane?
18 A No.
19 Q All right. They just left at some point?
20 A Yes, ma'am.
21 Q All right. How is that you remember the Dukes
22 moving into the home on Trish Lane?
23 A I was the only child before they came along, and I
24 was jealous, and it felt like my mother and them was giving
25 them more attention than what she was giving me.

1 Q Okay. So you weren't happy about having them there?
2 A No.
3 Q All right. Who are you closest in age to?
4 A Victoria Duke, which is the oldest sister.
5 Q All right. Do you know how far apart you are in
6 age?
7 A Two and a half months, I believe.
8 Q Two and a half months.
9 A Yes.
10 Q Okay. So you're really close in age; is that
11 correct?
12 A Yes.
13 Q Okay. Were you close to Victoria?
14 A No, ma'am.
15 Q All right. Who were you close to out of all those
16 kids?
17 A I was closer to Mahlica Duke.
18 Q Okay. And was that -- was that just on Trish Lane,
19 or was that also later, when you lived with them at
20 Blankenship?
21 A Also later when I lived with them at Blankenship.
22 Q Okay. So the children -- or the Dukes -- and when I
23 say the Dukes I mean Tina and all the children. The Dukes did
24 leave the Trish Lane home at some point; is that correct?
25 A Yes, ma'am.

1 Q Did they ever come back at some point later?
2 A Yes, ma'am.
3 Q All right. And where were you living at the time
4 that they came back?
5 A 966 Blankenship Avenue.
6 Q Okay. And do you happen to recall the year that
7 they came back?
8 A Honestly, ma'am, I can't.
9 Q All right. No problem. You just remember that they
10 all came back; is that right?
11 A Yes, ma'am.
12 Q When you -- when you remember them coming back, who
13 was living in the house on Blankenship?
14 A It was me, which is Sha'karia, it was Taharah and
15 Taquanda when we first started out originally.
16 Q Okay. At some point in time were all of them living
17 there?
18 A Yes, ma'am.
19 Q All right. And then some of them moved out?
20 A Yes, ma'am.
21 Q Okay. The whole time that you were there were
22 Taharah and Taquanda -- they were the constant, they were
23 always there?
24 A Yes, ma'am.
25 Q Okay. When you lived on Trish Lane do you recall

1 instances of Victoria getting in trouble?

2 A Yes, ma'am.

3 Q All right. Do you recall the things that she got in
4 trouble for?

5 A Yes, ma'am.

6 Q And what kinds of things did Victoria get in trouble
7 for?

8 MS. LUZAICH: Objection.

9 THE WITNESS: Lying --

10 MS. LUZAICH: Objection. Relevance.

11 MS. ALLEN: Well, it goes back to -- it goes back to
12 the bias, motive to lie. She -- well, do you want to do this
13 at the bench?

14 THE COURT: Probably.

15 (Bench conference)

16 THE COURT: Okay. All four lawyers are present.

17 MS. LUZAICH: You can't talk of bad act evidence
18 against victims.

19 MS. ALLEN: Well, it's not necessarily bad act
20 evidence against victims. But Victoria testified that my
21 client was making things up in order to get her in trouble to
22 beat her.

23 THE COURT: Well, and Shabazz kind of --

24 MS. LUZAICH: Not at Trish Lane.

25 MS. ALLEN: Yeah, she did.

1 MR. MacARTHUR: Shabazz says --

2 MS. ALLEN: Oh, no. Victoria said -- Victoria

3 specifically said he used to take things out of the

4 refrigerator to blame me so he could beat me. She said that.

5 Because I asked her about it, and the jury laughed.

6 THE COURT: Okay. Anything else from the State?

7 MS. LUZAICH: Well, I mean, I think they can ask

8 about those things. But I don't think they can say, tell me

9 everything she did to get in trouble for.

10 MR. MacARTHUR: Because we --

11 MS. LUZAICH: That's exactly what the question was,

12 tell me --

13 MR. MacARTHUR: Because we pretrialed her we know

14 that she's talking about those things.

15 THE COURT: I wrote down Victoria getting in

16 trouble, you know --

17 MS. ALLEN: Do you recall instances where Victoria

18 got in trouble --

19 MS. LUZAICH: You said, tell me about the things she

20 got in trouble for.

21 MR. MacARTHUR: She's going to talk about things you

22 already know about. She's not bringing anything new in.

23 THE COURT: Are you going to -- you're not going to

24 go into every single instance.

25 MS. ALLEN: No, no.

1 THE COURT: Because we'd be here till the cows came
2 home.

3 MS. ALLEN: Her answer was [inaudible].

4 MS. LUZAICH: But her answer was, "A lot."

5 MS. ALLEN: Well, we'll keep it -- here's the
6 problem. Do you want me to direct her, or do you want me to
7 lead her? I mean, so I can do --

8 THE COURT: You know what, probably during this part
9 you should lead her --

10 MS. ALLEN: Okay.

11 THE COURT: -- so that she doesn't go into a
12 complete narrative of --

13 MS. ALLEN: Okay.

14 THE COURT: -- a billion things.

15 MS. ALLEN: Okay.

16 THE COURT: I mean, because you have very specific
17 instances you want to talk to her about.

18 MS. ALLEN: Yep. Yeah.

19 THE COURT: Okay.

20 MS. LUZAICH: What specific instances? They've got
21 to be what Victoria talked about.

22 MS. ALLEN: Well, yeah. She talked about -- she
23 talked about Fred stealing something out of the refrigerator
24 and blaming her. I specifically asked Victoria if she would
25 steal things from the refrigerator and blame her sisters. She

1 denied it. So I can go into all that. She said she was
2 getting in trouble for stealing things and lying. I mean,
3 Victoria articulated all of those things on Trish Lane,
4 including the one I'm talking about.

5 THE COURT: Okay. So you're going to into the
6 instances of conduct that Victoria testified to. Okay.

7 (End of bench conference)

8 MS. LUZAICH: I withdrew the objection.

9 MS. ALLEN: She's withdrawing the objection, Your
10 Honor, so I'm going to direct her, as opposed to lead. I'm
11 just going to ask open-ended questions. The State withdrew
12 the objection.

13 THE COURT: Okay. Go ahead.

14 BY MS. ALLEN:

15 Q All right. Do you -- I think that the question I
16 asked you was do you recall specific instances in which
17 Victoria got in trouble.

18 A Yes.

19 Q Okay. And can you recall as you sit here some of
20 those instances?

21 A Yes.

22 Q Okay. Can you give me an example of something that
23 she got in trouble for at Trish Lane?

24 A Yes. For example, Victoria had got caught stealing
25 juice out of the kitchen where we stayed at, and she blamed it

1 on Taharah and Taquanda.

2 Q Okay. And who confronted her? Do you remember?

3 A My mom.

4 Q Okay. So your mom confronted her. And did she deny

5 it, did she agree that she did it, what happened?

6 A She denied it.

7 Q Okay. Was there some reason why you knew she was

8 lying?

9 A Because I watched her.

10 Q Okay. You'd actually watched her do that?

11 A Yes, ma'am.

12 Q Okay. Were there other instances that she got in

13 trouble while you were living on Trish Lane?

14 A I can't recall any.

15 Q Specifically?

16 A Pacifically.

17 Q Okay. All right. Do you recall -- do you recall

18 having problems with Victoria, as well, while you were living

19 on Trish Lane?

20 A Can you please rephrase that?

21 Q Yeah. No problem. Do you recall personally did you

22 have problems with Victoria while you were living on Trish

23 Lane?

24 A No, ma'am.

25 Q Okay. So I'm going to fast forward, then, to

1 Blankenship. You were -- at some point you moved to this
2 house on Blankenship; is that correct?

3 A Yes, ma'am.

4 Q Okay. And I don't remember if I asked you this or
5 not. But who lived at Blankenship before the Dukes moved in?

6 A Before the Dukes moved in? Like any of the Dukes
7 are you referring to?

8 Q Any of the Dukes. Before they moved in who lived on
9 Blankenship?

10 A Me, my mom, Fred, my grandmother, and my brother.

11 Q Okay. So your mother was still alive when you moved
12 into Blankenship?

13 A Yes, ma'am.

14 Q At some point did your mother -- or did your
15 grandmother pass away?

16 A Yes, ma'am.

17 Q Okay. And that's Claudia?

18 A Yes.

19 Q Okay. Were there specific instances -- do you
20 recall specific instances on Blankenship where -- well, let me
21 ask you this.

22 You were all kids growing up together, teenagers and
23 younger children; is that correct?

24 A Yes, ma'am.

25 Q Did all of you get in trouble?

1 A Yes, ma'am.

2 Q Okay. Had you personally been in trouble with
3 either or mom or Fred?

4 A Yes, ma'am.

5 Q Okay. And do you recall an instance where you got
6 in trouble by Fred?

7 A Yes. For talking back.

8 Q All right. Had Fred -- what was Fred's punishment
9 for you?

10 A I got a whuppin.

11 Q Okay. And how many times did that happen?

12 A It only happened once. That's all I needed was one
13 time.

14 Q Okay. So you learned the first time?

15 A Yes.

16 Q Okay. Do you recall if this whuppin -- well, let me
17 ask you this. When -- after this whuppin did you have any
18 problems in the area where it happened?

19 A No.

20 Q And what area was that?

21 A My booty.

22 Q Okay. All right. Your bottom?

23 A Yes.

24 Q Okay. And was there blood, bruising, anything?

25 A No.

1 Q All right. Had you seen Fred discipline any of the
2 Duke children like that?

3 A What do you mean like that?

4 Q Well, let me ask you this. Were there other things
5 Fred to discipline you?

6 A Yes.

7 Q What were those things?

8 A Push-ups, or he'd take the game system away.

9 Q Okay. So he would -- was it a progressive
10 punishment? He would start with one and then move on to the
11 next and then on to the next?

12 A Depends on what you did.

13 Q Okay. If it was really, really bad what would he
14 generally do?

15 A Take the game away, 'cause he know kids are attached
16 to games.

17 Q Okay.

18 A So that's normally what he would do.

19 Q Okay. And then push-ups. You had to do push-ups?

20 A Yes. I tried.

21 Q Okay. All right. Did you see him have any of the
22 Duke kids do those type of things?

23 A Yes.

24 Q Okay.

25 A He made them do push-ups, also.

1 Q Okay. Do you remember an instance -- you recall an
2 instance in which Shabazz got in trouble; is that correct?

3 A Yes.

4 Q Do you recall why he got in trouble?

5 A He had got in trouble for stealing -- a little boy
6 stole his juice at school, and he beat the boy up.

7 Q Okay. And what did Fred do?

8 A He gave him a whuppin and made him do push-ups, and
9 he had to do chores.

10 Q Okay. When you say whuppin what do you mean?

11 A Just with the belt whuppin.

12 Q Okay. When it happened to you was it painful?

13 A What whuppin feels good?

14 Q It feels good?

15 A No. I said what whuppin do feel good? None. So
16 yes.

17 Q Pardon?

18 THE COURT: I misunderstood what she said, too.

19 MS. ALLEN: Me, too, Your Honor. I thought oh.

20 BY MS. ALLEN:

21 Q Okay. So was it -- did you end up going to the
22 hospital after you got yours?

23 A No.

24 Q All right. You were able to walk out?

25 A Yes.

1 Q Okay. Did you see him -- did you see him actually
2 whup Shabazz?

3 A Yes.

4 Q Okay. Was it any different than yours?

5 A No.

6 Q All right. Did Shabazz seem normal after that?

7 A Yes.

8 MS. ALLEN: Court's indulgence.

9 (Pause in the proceedings)

10 BY MS. ALLEN:

11 Q Do you recall an instance at any time of Fred coming
12 home and just randomly beating people?

13 A No.

14 Q All right.

15 A Never.

16 Q What would it require for a punishment in your house
17 with Fred?

18 A Bad grades, talking back, or we didn't do chores.

19 Q All right. Or beating a kid up at school?

20 A Or -- yes, ma'am.

21 Q Okay. Something like that. What about stealing
22 things?

23 A Yes. He didn't like a stealer.

24 Q He didn't like it. Okay. Was there -- do you
25 recall an instance in which Taquanda was accused of stealing

1 something?

2 A Yes.

3 Q Okay. And what was that, do you remember?

4 A She stole my pink vibrator.

5 Q Okay. And how did you end up finding that this

6 happened?

7 A I sent Taharah and Taquanda to the candy lady down

8 the street so that I have time to search their rooms. So

9 during the process of them being gone I searched the room and

10 I found my vibrator in her drawer. And then --

11 Q Did you confront her?

12 A Yes. Once they got home I had confronted her. And

13 Taquanda, she has a habit of pulling on her clothes and making

14 a little sound that she makes when she's lying. And --

15 Q Okay. So when Taquanda's not telling the truth you

16 said she pulls on her clothes?

17 A Yes. Like she fidgets a lot.

18 Q She fidgets?

19 A Yes, ma'am.

20 Q And you said she makes a sound?

21 A Yeah. She (clicking tongue).

22 Q All right. And is that your -- when she starts

23 doing that in your mind that's when you know she's lying?

24 A Yes, ma'am.

25 Q All right. What did Taquanda do? Did she deny it?

1 What happened?

2 A She denied it. She basically pointed the finger to
3 Taharah.

4 Q Okay. And did you confront Taharah?

5 A I confronted Taharah, but Taharah told me she didn't
6 do it. And I believed Taharah for the fact is Taharah never
7 was in my room the way Taquanda was in my room.

8 Q All right. Okay. Do you remember when Taharah and
9 Taquanda were living there that they would occasionally visit
10 at their mom's house?

11 A Yes, ma'am.

12 Q All right. Do you remember approximately how often
13 they would go to their mom's house?

14 A Sometimes Mom would let them go over for the
15 weekend. But then when the summer vacation came she let them
16 go for the summer vacation.

17 Q Okay. So they spent considerable amounts of time
18 with their mom?

19 A Yes, ma'am.

20 Q Okay. Did you notice a difference in those girls
21 when they came back from their mom's house?

22 A Yes, ma'am.

23 Q Okay. And what kind of things did you notice that
24 were different about them?

25 A They had a smacky little attitude, and they tried to

1 be grown with wearing makeup.

2 Q Okay. And were they -- would you've considered --
3 they were younger than you; is that right?

4 A They was the age around eight or nine.

5 Q Okay. And you said they were trying to be grown up,
6 wearing makeup. What was their appearance when they came back
7 from Mom's?

8 A Having on I guess eye -- no, the mascara and the
9 eyeliner.

10 Q Okay. All right. They were wearing makeup.

11 A Yes, ma'am.

12 Q Were they normally allowed to wear makeup at your
13 house?

14 A No, ma'am.

15 Q Okay. And you said they came back with attitudes?

16 A Yes.

17 Q When you say an attitude what do you mean?

18 A Talking back.

19 Q All right. And was that to everybody?

20 A To everybody.

21 MS. ALLEN: Okay. Sorry. I apologize, Your Honor.

22 THE COURT: No problem.

23 BY MS. ALLEN:

24 Q Okay. Was there -- was there an instance in which
25 you and Victoria would babysit the younger children?

1 A Yes, ma'am.

2 Q All right. When would that come up?

3 A That would only come up on special occasions, such
4 as Valentine's day, Mom's or Pop's birthday.

5 Q All right. And where would your parents -- Mom and
6 Fred be? Where would they be?

7 A They'd either go out to Red Lobster or to I think
8 that the club was called Seven Seas.

9 Q Okay. So they went out.

10 A Yes.

11 Q Okay. And you guys would care for the younger
12 children?

13 A Yes.

14 Q All right. Was there -- did something happen in
15 one of the times that you were caring for the kids that caused
16 you some concern?

17 A Yes, ma'am.

18 Q Okay. Can you explain what happened.

19 A The time was we were all playing hide-and-go-seek in
20 the house, and I had overheard Victoria tell Taharah to come
21 and tell me that Fred had touched her.

22 Q Okay.

23 A So I took it upon myself to go and ask Taharah, and
24 Taharah said, what, what are you talking about, no that never
25 happened.

1 Q Okay. Did she eventually come clean and tell you
2 that Victoria had done this?

3 A Yes.

4 MS. LUZAICH: Objection. Leading.

5 THE COURT: Sustained.

6 BY MS. ALLEN:

7 Q Upon further questioning what did they say?

8 A Taharah eventually came forward to me the next day
9 and told me that Victoria had told her to come and tell me.

10 Q Okay. Do you remember approximately when that was?

11 A I want to say she probably -- Taharah -- if I'm not
12 mistaken, Taharah's the oldest out of Taharah and Taquanda.
13 So I want to say probably around the age of nine, ten.

14 Q Okay.

15 A Because she's older.

16 Q Okay. You mean she's older than Taquanda?

17 A Yes.

18 Q Okay. All right. All right. You have a brother by
19 the name of Marcus?

20 A Yes.

21 Q Okay. Can you describe Marcus.

22 A He stands about six one, six two, dark skin, low-cut
23 [unintelligible], he has big lips.

24 Q Okay. All right. Is he older or younger than you?

25 A He's older than me.

1 Q Okay. And that's Lealer's son, as well; is that
2 correct? Ann's son.

3 A Yes.

4 Q Okay. Do you recall -- do you recall a time when
5 your mom took -- well, let me ask you this. Does Marcus have
6 guardianship of someone?

7 A Yes. My niece, Marquia [phonetic].

8 Q Marquia. Okay. And is Marquia disabled?

9 A Yes. She has cerebral palsy.

10 Q Do you recall a time in which your mom took Marquia
11 to a doctor?

12 A Yes, ma'am.

13 Q Okay. What kind of doctor was it?

14 A OB-GYN.

15 Q Did anybody else go with her?

16 A Yes, ma'am. Taharah Duke and Taquanda Duke.

17 Q Okay. So it was Marquia and Taharah and Taquanda.
18 Who else?

19 A And my mom and Marcus.

20 Q Okay. Marcus accompanied your mom on that visit; is
21 that correct?

22 A Yes. Because he's the guardian of Marquia.

23 Q Okay. And does she refer to him as her son?

24 A Yes.

25 Q Okay. Okay. Did Victoria ever -- well, so you were

1 never that close to Victoria; is that correct?

2 A Correct.

3 Q Do you recall if Victoria ever made any statements
4 about Fred?

5 A Yes.

6 Q Okay. Can you tell me what those were.

7 MS. LUZAICH: Objection. Foundation.

8 THE COURT: Sustained.

9 BY MS. ALLEN:

10 Q Okay. Do you recall when she made this particular
11 statement to you?

12 A I don't recall. I know we were both staying at 966
13 Blankenship. This is when they came back. And --

14 Q So they'd just come back -- or they had -- they'd
15 come back from wherever, you're not sure where they were?

16 A I don't know where they went.

17 Q Okay. Do you recall where you were when she said it
18 to you? Well, let me ask you this. This particular statement
19 I'm asking you about, has she said it to you more than once?

20 A Yes.

21 Q Okay. Do you know how many times she said it to
22 you?

23 A I want to take a estimate of maybe three or maybe
24 more.

25 Q Okay. So it's not just one day, it's --

1 A It's constantly.

2 Q Okay. She was saying -- she said this to you a
3 number of times?

4 A Yes.

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

6 (Pause in the proceedings)

7 BY MS. ALLEN:

8 Q How does Victoria feel about Fred?

9 MS. LUZAICH: Objection.

10 THE COURT: Sustained. Speculation.

11 BY MS. ALLEN;

12 Q Has Victoria told you how she feels about Fred?

13 A Yes.

14 Q Okay. And what we're talking about she said a
15 number of times?

16 A Yes.

17 Q Okay. Can you tell me what it is that she said.

18 MS. LUZAICH: Objection. Hearsay.

19 MS. ALLEN: It's a prior inconsistent statement. I
20 asked Victoria about this on cross-examination.

21 THE COURT: Okay. I'll allow it.

22 BY MS. ALLEN:

23 Q Go ahead.

24 A Victoria -- basically the way she said it is that
25 she has hatred her heart toward Fred Harris --

1 Q Okay.

2 A -- and that he was going to pay.

3 Q All right. And did she explain to you why?

4 A She basically said that the reason why was because

5 her mom kept leaving them just to come and see Fred.

6 Q Okay. So she blamed Fred for that?

7 A Yes.

8 Q Okay. And she said this to you on more than one

9 occasion; is that correct?

10 A Yes, ma'am.

11 MS. ALLEN: Okay. Thank you.

12 Judge, may I approach?

13 THE COURT: Of course.

14 MS. ALLEN: Thank you.

15 BY MS. ALLEN:

16 Q Defense Exhibits J and D. And you lived at the

17 house on Blankenship; is that correct?

18 A Yes, ma'am.

19 Q If I showed you two pictures, would you be able to

20 identify those pictures for me?

21 A Yes.

22 Q And if you can't --

23 A Yes.

24 Q Do you recognize those pictures?

25 A Yes.

1 Q Okay. What are those pictures of?
2 A Our laundry room.
3 Q At Blankenship?
4 A Yes, 966 Blankenship.
5 Q Okay. In addition to a washer and dryer in that
6 room were there other things in that room?
7 A It was a ironing board behind the door, a trash can
8 that set right by the door.
9 Q Okay. How big was the room?
10 A Small.
11 Q Okay. Do you -- in your mind can you picture the
12 size and height of Taquanda?
13 A Yes, I can.
14 Q Okay. Could five people who are like her size and
15 height fit in that laundry room with the washer and dryer?
16 A No.
17 MS. ALLEN: Okay. Your Honor, I -- oh. Court's
18 indulgence. Sorry.
19 (Pause in the proceedings)
20 BY MS. ALLEN:
21 Q In your interactions with Victoria -- you previously
22 testified that when -- you knew Taquanda was lying because she
23 would pull on something and --
24 A She fidgets.
25 Q She fidgets. Okay. Had you had experience with

1 Victoria in the same vein? Had you had experience with
2 Victoria lying to you?

3 A Yes.

4 Q Okay. What is it Victoria did in your -- when you
5 -- in your experience what is it she did when she was lying?

6 A She looks away.

7 Q She looks away. Okay. You -- how would you have --
8 if you were to describe Mahlica today, how would you describe
9 her?

10 A Very quiet. An observer.

11 Q Okay. But you were closer -- I'm sorry. What?

12 A A very observer. She's an observer.

13 Q She's an observer. Okay. And you were close with
14 her; is that correct?

15 A Yes.

16 Q You really liked Mahlica?

17 A Yes.

18 Q How would you describe Victoria?

19 A Compulsive liar.

20 MS. LUZAICH: Objection. Move to strike. That is
21 completely inappropriate.

22 THE COURT: Sustained. The motion to strike is
23 granted. The jury is instructed to disregard the answer just
24 given by the witness.

25 MS. ALLEN: Well, let me -- I apologize, Your Honor.

1 THE COURT: That's okay.
2 (Pause in the proceedings)
3 MS. ALLEN: Your Honor, I'd pass the witness.
4 THE COURT: Cross-examination.
5 MS. LUZAICH: Thank you.
6 CROSS-EXAMINATION
7 BY MS. LUZAICH:
8 Q Are we boring you, Sha'karia?
9 A No. I'm just tired.
10 Q Okay. You don't like Victoria at all, do you?
11 A No.
12 Q Well, let me ask you this. If a man put his penis
13 in your 12-year-old vagina, would you have hatred in your
14 heart for him?
15 MS. ALLEN: Judge, objection.
16 THE COURT: Sustained.
17 MS. LUZAICH: On what grounds? Objection on what
18 grounds?
19 MS. ALLEN: How is that relevant, Your Honor?
20 THE COURT: I don't believe it's relevant.
21 BY MS. LUZAICH:
22 Q Okay. You're jealous of Victoria; correct?
23 A No.
24 Q No?
25 A No.

1 Q So when you told Ms. --
2 A You said am I jealous of her? Excuse me?
3 Q So when you told Ms. Allen on direct examination
4 that you were jealous of those kids you were lying?
5 A No, I wasn't lying.
6 Q So you are jealous of Victoria?
7 A When you define jealousy in my eyes I was jealous
8 that they were in my home.
9 Q Okay. Your home. Did you live in the Trish Lane
10 home the whole time that your mom lived there?
11 A Yes, ma'am.
12 Q Did you live in the Blankenship home the whole time
13 that your mom lived there?
14 A No, ma'am.
15 Q How often -- or how long did you live in the
16 Blankenship home?
17 A I lived in the Blankenship home from the year 2007
18 when my grandmother passed away to the year of 2010. Then I
19 moved out. I went and graduated high school, and I came back
20 in April of 2012.
21 Q Okay. So you came and left?
22 A Yes, ma'am.
23 Q So there were long periods of time that they lived
24 there and you did not?
25 A Yes, ma'am.

1 Q When did you move into the Trish Lane home?
2 A When you ask when are you expecting a year?
3 Because --
4 THE COURT: She's expecting a date.
5 THE WITNESS: A date?
6 THE COURT: Uh-huh. The best you can.
7 THE WITNESS: I can't recall the date that I moved
8 in.
9 BY MS. LUZAICH:
10 Q Okay. What year did you move into the Trish Lane
11 home?
12 A I want to say year 2004 or '05.
13 Q How old were you when you moved into the Trish Lane
14 home?
15 A Like maybe around eight or nine.
16 Q What grade were you going into when you moved into
17 the Trish Lane home?
18 A Probably around third or fourth. I don't recall.
19 Q Okay. When did you move into the Blankenship home?
20 A When I was at the age of 14.
21 Q What year was that?
22 A I don't recall the year.
23 Q What's your date of birth?
24 A 9/5/92. September 5th.
25 Q So what grade did you start when you were living in

1 the Blankenship home?

2 A When I lived on Blankenship I started out in the
3 seventh -- no, the sixth.

4 Q Okay. So you don't really remember much of
5 anything, do you?

6 A I don't remember my years of school.

7 Q Okay. Now, you said that Victoria got in trouble
8 for stealing juice from the refrigerator. Did she take juice
9 and drink it?

10 A Yes, she took the juice and dranked it, but it was
11 past our bedtime.

12 Q Okay. So because it was past her bedtime you call
13 that stealing it?

14 A In the house that's what mom called it, yes.

15 Q Okay. Drinking juice is stealing it. Okay. And
16 I'm sorry. Your grandmother passed away. When was that?

17 A In the year 2007.

18 Q Do you know when in 2007?

19 A February 5th.

20 Q At the time that you lost your grandmother were the
21 Duke family not living here?

22 A They wasn't staying the home with us, no.

23 Q Okay. Now, the time that Fred or Pops beat you with
24 the belt -- or, sorry, you called it gave you a whuppin, did
25 it leave marks on your behind?

1 A No, ma'am.

2 Q What school did you go to for middle school?

3 A Michael Callihan and West Prep.

4 Q And was that the difference between living at Trish

5 Lane and Blankenship?

6 A Yes, ma'am.

7 Q Where'd you go to high school?

8 A Canyon Springs High School. Also Del Sol High

9 School is where I graduated.

10 Q Okay. So you went to school essentially with

11 Mahlica and Victoria.

12 A Yes, ma'am.

13 Q You were not in Special Ed classes like they were;

14 correct?

15 A No, ma'am.

16 Q You talked about you called Taquanda having stolen

17 your pink vibrator. Did you see her take it?

18 A I didn't see her take it, but it was found in

19 Taquanda's drawer.

20 Q Yeah, I heard that. You don't know how it got in

21 Taquanda's drawer, though, do you?

22 A No, ma'am.

23 Q You didn't see her put it in the drawer; correct?

24 A No, ma'am.

25 Q And it's just your personal opinion that fidgeting

1 and making a sound means she's lying. Is it possible that she
2 fidgets when she's not lying?

3 A I don't believe so.

4 Q Why?

5 A I never seen Taquanda do that when she wasn't lying.
6 Taquanda tells the truth, and when she tells the truth she
7 looks you in your eye.

8 Q Okay. So that's your personal opinion.

9 A Yes, ma'am.

10 Q And you said Vicky looks away when she lies. Have
11 you ever seen Vicky look away for any other reason?

12 A No. Not when you're speaking with her.

13 Q Well, how often did you speak with her?

14 A We stayed in the same house. I had to talk to her
15 on a daily basis.

16 Q Well, you don't have to.

17 A Well, that's -- in our household it wouldn't be
18 right. That's just like you staying in a house with somebody
19 you walk past them on a daily basis and don't speak.

20 Q Is there a reason that you have an attitude with me?

21 A I'm not -- that's my attitude.

22 Q Oh. Okay. Are you -- are you angry that your
23 mother was arrested as a result of the Duke kids?

24 A No.

25 Q Not at all?

1 A (No audible response)

2 Q You need to answer out loud for the court recorder.

3 A No.

4 Q Are you angry that your mother was prosecuted as a
5 result --

6 MS. ALLEN: Your Honor, objection. Can we approach?

7 THE COURT: Are you okay?

8 THE WITNESS: I just had to clear my throat.

9 THE COURT: All right. Do you want some water?

10 THE WITNESS: Yeah.

11 THE COURT: Okay. We'll get you some water.

12 (Bench conference)

13 THE COURT: I didn't hear it, because she did that.

14 MS. ALLEN: I know. She's asking about Lealer being
15 prosecuted by the DA's Office.

16 MR. MacARTHUR: Right.

17 MS. LUZAICH: I wasn't going to ask [inaudible] --

18 MS. ALLEN: That's getting very close. I mean,
19 she's trying to bait her into doing that, and I'm concerned.

20 MS. LUZAICH: It's bias.

21 MS. ALLEN: Like I told her under no -- certain
22 circumstances to bring up Lealer's conviction.

23 MS. LUZAICH: And I'm not going to do that.

24 THE COURT: Okay. And I heard Ms. Luzaich say, I
25 don't know, a couple of days ago she wasn't going to bring in

1 the jail [inaudible].

2 MS. ALLEN: I understand that. Well, I'm concerned

3 she's going to get [unintelligible] to try and get her to say

4 that.

5 MS. LUZAICH: No.

6 THE COURT: Okay.

7 MS. LUZAICH: Just my last question is, and aren't

8 you angry that your mother was prosecuted for -- as a result

9 of the Duke kids.

10 MS. ALLEN: Okay. All right.

11 THE COURT: Right. Because I think it goes to bias.

12 MS. ALLEN: Okay.

13 THE COURT: You can ask it.

14 (End of bench conference)

15 THE COURT: Okay. The State --

16 Are you okay?

17 THE WITNESS: Uh-huh.

18 THE COURT: All right.

19 BY MS. LUZAICH:

20 Q So are you saying that you're not angry that your

21 mother was prosecuted as a result of the Duke kids?

22 A No, ma'am.

23 MS. LUZAICH: Okay. I have nothing further.

24 THE COURT: Redirect?

25 MS. ALLEN: Yes. Just a moment.

REDIRECT EXAMINATION

BY MS. ALLEN:

Q You went to Canyon Springs High School; is that correct?

A Yes, ma'am.

Q Did you know Coach Cooper?

A Yes.

Q Okay. Was he -- he wasn't your teacher; is that right?

A No.

Q All right. Did you know him to be Victoria's teacher?

A Yes.

Q All right. Okay. I asked you a question about Taquanda stealing things, and you mentioned the vibrator; right?

A Yes.

Q Is there another instance that you knew about?

A Yes. She stole my -- she also stole a little girls diabetic wristband at school.

MS. LUZAICH: Objection. Foundation.

THE COURT: Sustained. Just lay the foundation.

BY MS. ALLEN:

Q Okay. Do you recall approximately when this was?

A When Taquanda was in I want to say the third grade.

1 Q Okay.

2 A And going to Fitzgerald High -- no Elementary.

3 Q Fitzgerald Elementary. Okay. So tell what

4 happened? She came home with it?

5 A She came home with --

6 MS. LUZAICH: Well, again, objection. Foundation.

7 Unless she saw her take it, she can't testify that she did.

8 THE COURT: Right. You may want to lay some

9 foundation --

10 MS. ALLEN: All right.

11 THE COURT: -- as to how she has this knowledge.

12 BY MS. ALLEN:

13 Q All right. How did you come to find out that she

14 had taken it?

15 A My mom asked her where she got the bracelet from.

16 Q Okay. And what kind of bracelet was it?

17 A A diabetic bracelet.

18 Q Okay. Was it eventually returned to the girl?

19 A Yes, ma'am.

20 Q All right. You interacted with -- well, when you

21 went to Canyon Springs did you interact with Victoria,

22 Mahlica, and Shabazz on a daily basis?

23 A No.

24 MS. LUZAICH: Well, objection. Beyond the scope.

25 MS. ALLEN: She asked her about Canyon Springs and

1 Victoria.

2 THE COURT: Overruled. I'm going to allow it.

3 BY MS. ALLEN:

4 Q When you went to Canyon Springs did you interact
5 with Victoria and Shabazz and Mahlica on a daily basis?

6 A No.

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

8 (Pause in the proceedings)

9 MS. ALLEN: Can we approach for a second?

10 THE COURT: Sure.

11 (Bench conference)

12 MS. LUZAICH: I'd like to object to her staying.

13 THE COURT: All four lawyers are present.

14 MS. ALLEN: So I do have a question that's outside
15 the scope of direct, and so if the State objects, that's fine.
16 I'll just --

17 THE COURT: Well, I mean, that's the whole problem.
18 Then you'll ask to reopen direct.

19 MS. ALLEN: Right. I'd ask to reopen. I do have a
20 question [inaudible].

21 THE COURT: You're asking to reopen direct? Okay.

22 MS. ALLEN: Taharah -- I asked Taharah specifically
23 had she taken inappropriate pictures of herself on cell phone,
24 and this witness knows about that. I forgot to ask her --

25 MS. LUZAICH: Well, I mean, did she see the -- I

1 mean, what's the relevance?

2 THE COURT: Now, remember -- now, remember what
3 Taharah said. She did not deny taking the pictures.

4 MR. MacARTHUR: She did -- she said she --

5 MS. LUZAICH: She said they were

6 MR. MacARTHUR: -- took them, but that they weren't
7 inappropriate.

8 THE COURT: She said she didn't think were
9 inappropriate. You used the term "inappropriate." She said
10 she didn't think they were inappropriate, but there was really
11 no description of it. I think you asked her something to the
12 effect of did you have on less clothes than you have on today.

13 MS. LUZAICH: Right.

14 THE COURT: And --

15 MS. ALLEN: She said no. I think she said no or --

16 MS. LUZAICH: No. She said, I was wearing clothes.

17 MS. ALLEN: Well, she said --

18 MS. LUZAICH: Well, she said --

19 MR. MacARTHUR: You're both right. She said no, and
20 she said, I'm wearing --

21 MS. LUZAICH: What were the pictures?

22 MR. MacARTHUR: -- what I -- the same amount of
23 clothes.

24 MS. ALLEN: She took pictures of herself, like her
25 butt, like her pants down and her shirt up and stuff.

1 THE COURT: Like naked?
2 MS. LUZAICH: Showing her boobs?
3 MS. ALLEN: No. Right here. Right up to here and
4 like her pants down. You could see her panties.
5 MS. LUZAICH: Well, in her mind that's not
6 inappropriate. I mean, if she was showing boobs, that's --
7 THE COURT: But she said she had clothes on.
8 MR. MacARTHUR: She said she had the same amount of
9 clothes that she --
10 MS. LUZAICH: She did. They were just --
11 MS. ALLEN: Hold on. The Judge wants to talk.
12 THE COURT: Let me just ask this. Was any skin
13 showing --
14 MS. ALLEN: Yeah.
15 THE COURT: -- any boobs?
16 MS. ALLEN: Shirt was pulled up, pants were down, so
17 her panties exposed and her panties.
18 MS. LUZAICH: But her panties were on.
19 THE COURT: Her panties, so her butt wasn't exposed?
20 MS. LUZAICH: So she was wearing --
21 MS. ALLEN: Her butt was exposed and her panties
22 were on.
23 MS. LUZAICH: Her panties were on. She was wearing
24 the same thing or more -- she was wearing a bathing suit.
25 THE COURT: Okay. A bare butt? It was her bare

1 butt?

2 MS. ALLEN: I don't know. I don't think so.

3 THE COURT: Okay. And the other one, what, was her
4 shirt?

5 MS. ALLEN: Her shirt was -- she was pulling her
6 shirt up.

7 MS. LUZAICH: But her boobs were not exposed.

8 THE COURT: I understand that. But she -- I mean --

9 MS. LUZAICH: I mean, in your mind and my mind it's
10 suggestive. But in a 12 -- and she was less than 12, because
11 now she's 12.

12 THE COURT: Right. Now, we probably all think
13 that's inappropriate because of the age she was at the time.
14 But you asked were the -- she admitted that there were
15 pictures, she admitted that the mom took them away, but --

16 MS. LUZAICH: But she still had clothes on. Because
17 she did.

18 THE COURT: Yeah.

19 MR. MacARTHUR: She made it sound like she didn't
20 raise her shirt and lower her pants.

21 MS. LUZAICH: She wasn't asked the question.

22 MR. MacARTHUR: She was asked, were you wearing
23 fewer clothes than you are now. And she said no.

24 MS. LUZAICH: And she's not. They were just
25 rearranged.

1 MR. MacARTHUR: That seems a little
2 [unintelligible].

3 THE COURT: That's correct. All right. But, in all
4 fairness, we're talking about Taharah.

5 MS. ALLEN: Well, I mean --

6 MS. LUZAICH: But if you had asked, were your shirt
7 pulled up and she denied it, then I agree. Was your pants
8 pulled down.

9 THE COURT: Was your shirt pulled up with your pants
10 pulled down [inaudible] ask it.

11 MS. ALLEN: That's fine.

12 THE COURT: Okay. Do you want to still reopen
13 direct?

14 MS. ALLEN: Not if you're not going to let me ask
15 those questions.

16 THE COURT: Okay. Anything else?

17 MS. LUZAICH: I just have one question.

18 THE COURT: Okay.

19 (End of bench conference)

20 THE COURT: All right. And so, Ms. Allen, you're
21 going to pass the witness?

22 MS. ALLEN: Yes, Your Honor.

23 THE COURT: Okay.

24 //

25 //

1 THE COURT: Okay.

2 MS. ALLEN: Court's indulgence.

3 THE COURT: Sure.

4 (Pause in the proceedings)

5 MS. ALLEN: John Robinson, Your Honor.

6 THE COURT: John Robinson?

7 MS. ALLEN: Yes.

8 THE CLERK: Raise your right hand.

9 JOHN ROBINSON, DEFENDANT'S WITNESS, SWORN

10 THE CLERK: Thank you. Please be seated. Could you

11 please state your full name, spelling your first and last name

12 for the record?

13 THE WITNESS: John Robinson, R-O-B-I-N-S-O-N.

14 MS. ALLEN: Good afternoon, John. Oh. I apologize.

15 May I proceed?

16 THE COURT: Absolutely.

17 MS. ALLEN: Thank you.

18 DIRECT EXAMINATION

19 BY MS. ALLEN:

20 Q Good afternoon, John. How are you?

21 A Good. How are you doing?

22 Q I'm good. Thank you.

23 Do you know Frederick Harris?

24 A Yes, I do.

25 Q How do you know him?

1 A That is my oldest brother.

2 Q All right. And he's here today. Is that right?

3 A Yes, he is.

4 Q And he's sitting over here?

5 A Yes, he is.

6 Q All right. You've known him your whole life then;

7 is that correct?

8 A Correct.

9 Q Okay. I'm going to jump right into this, and at

10 some point, you brought -- well, let me ask you this. Do you

11 know the Dukes?

12 A Yes.

13 Q Okay. Do you know -- you know all the children and

14 the mother?

15 A Yes, I do.

16 Q At some point were you the person who brought them

17 from Louisiana to Las Vegas?

18 A Yes. I did.

19 Q Okay. How did you do that? Did you pick them up in

20 a car and drive them?

21 A Yes, I did. It was a difficult matter, but it

22 happened.

23 Q Okay. I'm going to skip right to your brother

24 living in 966 Blankenship. Do you recall him living in that

25 house?

1 A Yes, I do.

2 Q Okay. Did you at some point live around the corner
3 or in the same neighborhood as Fred?

4 A Yes. I stayed actually maybe three to five minutes
5 walking distance.

6 Q Okay. What was the name of the street you lived on?

7 A Yankee Avenue.

8 Q Okay. And do you remember approximately the years
9 that you lived there?

10 A Sometime late of 2006 to 2010.

11 Q Okay. So approximately '06 to 2010.

12 A Yes.

13 Q Okay. And those are just estimates; is that right?

14 A Yes, just estimates.

15 Q All right. How often would you go to your brother's
16 house?

17 A It's my brother. Maybe five days a week.

18 Q Okay. What do you do for a living?

19 A Move furniture, drive trucks.

20 Q Okay. All right. Is that locally or is that
21 elsewhere, what is -- how's --

22 A Well, for pretty much for the last 20 years locally.

23 Q Okay.

24 A And occasionally going out of town.

25 Q Okay. Was there a reason you had to go to your

1 brother's house that much or where you just there to visit.
2 What was the circumstances?

3 A It's my older brother. I get a lot of advice from
4 him. He had tools. I didn't have the proper tools to do my
5 job.

6 Q Okay.

7 A And using his tools would kind of put -- set me
8 aside from the other workers. So if I showed up and I had
9 tools then I got chosen.

10 Q Okay. So you'd borrow his stuff?

11 A Yes.

12 Q All right. In the times that you were over at his
13 house did you interact with the Dukes?

14 A Yes. Yes. Yes.

15 Q What kinds of things did you guys do as a family,
16 let's say?

17 A I mean, birthday parties. Any kind of events.
18 Anything that was going on in Vegas when it's so so hot, water
19 balloon fights or just the normal family activities.

20 Q Okay. What about things with like -- what about
21 religious-type things. Did you have anything like that?

22 A Yes. We would, I mean, church every Sunday.

23 Q Okay.

24 A And just any activity to just kind of make ourselves
25 better.

1 Q Okay. Were the Dukes involved in these activities?
2 A Yes.
3 Q Okay.
4 A Yes.
5 Q Did you personally do anything to try to help the
6 Dukes?
7 A Yes. All the time.
8 Q All right. What kinds of things did you do?
9 A Any given chance that I will see them in a need, you
10 know, I was -- I'm the baby so I kind of understood and wanted
11 -- wouldn't mind having smaller siblings, and I looked at them
12 and I seen the need and I would step in. And plus give them
13 incentives as, you know, if they done some good or if they was
14 going to -- or they wanted to go somewhere with the other
15 kids, they wasn't too comfortable with their dress code, I
16 will see to it that they would be in a comfortable state.
17 Q Okay. So you wanted to make sure that they felt
18 comfortable with the other kids?
19 A Well, just being comfortable.
20 Q Okay. Did you also do something as far as grades?
21 A Yes. Yes. I used to get -- as an incentive for
22 myself, if I done something I would get some kind of reward
23 for it. And I knew that they were in a big need and I know
24 that they want it. So my proposal to them, if they ever
25 brought anything good, done anything weren't racist or in

1 school, brought home A's, I would give them \$7 bucks and A.
2 Q Okay. All right. Do you remember who got the most
3 money?
4 A The baby.
5 Q Okay. Taquanda.
6 A Taquanda, yes.
7 Q She did well.
8 A All the time. She would try to at least.
9 Q Okay.
10 A She would try to.
11 Q All right. So you remember giving her money for
12 A's?
13 A Yes. Yes. Yes.
14 Q Okay. At some point in time did you become closer
15 with Victoria?
16 A Yes.
17 Q Okay. And of the children where did she fall in
18 that -- was she oldest, youngest, middle?
19 A She was the oldest of the group.
20 Q Okay. Did you start having her over to the house or
21 did you start doing things with her?
22 A Yes. I saw in her that she was pretty much, I mean,
23 I guess from day one she was challenged, you know, and I
24 pretty much wanted to whatever I could have her in a
25 comfortable setting, mentally and everything. And she always

1 placed herself as, I don't know and you know, just kind of,
2 you know, you know, with her it was pretty much left or right,
3 and you know, you got what you got when you got it, and I
4 mean, with her, I mean, at the --

5 Q Let me start -- let me ask you some questions real
6 quick as a foundation.

7 A Okay.

8 Q Do you -- are you married now?

9 A Yes, I am married.

10 Q Okay. Back when you were interacting with Victoria,
11 were you married?

12 A No.

13 Q Okay. Is it the same woman?

14 A Same woman.

15 Q All right. Do you have any children?

16 A Yes.

17 Q All right. How many children?

18 A Three.

19 Q And did you have these children when Victoria was
20 coming to your house?

21 A Yes.

22 Q All right. So your children are a little older now?

23 A Yes.

24 Q All right. Did you have Victoria do anything at
25 your house?

1 A Yeah. It got to a point to where Victoria was not
2 comfortable, you know, just -- and she just wanted more and
3 more and more. I see her at church and she would have this,
4 you know, like, you know, I wish I can go with you or
5 something like that. And, okay, come on, you know, and I
6 would have her ride with me and we all be going back home or
7 going out to eat or going somewhere, you know. And she came
8 to the house, and I think after she -- something happened to
9 where she got in trouble or what ever and went off. I'm like,
10 you know, you can come in kind of stay with me, you know.

11 Q Okay. So she got in trouble, let's say with someone
12 else, like Fred or Ann or someone else, or her mom; is that
13 right?

14 A Well, just being mischievous and trying to -- and
15 it's just with the crowd.

16 MS. LUZAICH: Well, objection.

17 MS. ALLEN: I'm not trying to elicit that
18 information. So hold on.

19 BY MS. ALLEN:

20 Q But she got in trouble for something and you don't
21 know what that is; is that right?

22 A Yes.

23 Q Okay. And you decided you were going to try to take
24 her under you wing; is that right?

25 A Yeah. I'm pretty much like the uncle.

1 Q Okay. All right. Did you have, at any point, did
2 you start having problems with Victoria in your home?
3 A Yes.
4 Q Okay. What kinds of problems did you --
5 MS. LUZAICH: Objection. Relevance.
6 MS. ALLEN: Well, they --
7 MS. LUZAICH: Can we approach?
8 MS. ALLEN: Sure.
9 THE COURT: Yes. Yes.
10 (Bench Conference)
11 MS. ALLEN: I asked Victoria if she ever babysat for
12 John, and she said no. I asked Victoria if she ever stole
13 anything from his house, and she said no. I asked Victoria if
14 she had ever told John that living in Vegas at Fred and Ann's
15 house was the best she'd ever had it in her whole life, and
16 she said no. Those are all the things I'm eliciting.
17 MS. LUZAICH: That's not what that sounds like.
18 MS. ALLEN: Yeah.
19 THE COURT: Okay. But that's where you're going?
20 MS. ALLEN: Yeah.
21 THE COURT: Okay.
22 MS. ALLEN: Oh, yeah, I'm not trying to get into it.
23 There's nothing else. That's why I --
24 MS. LUZAICH: Yeah, but he's rambling on.
25 MS. ALLEN: He's got -- I told you he's got --

1 MR. MacARTHUR: He's got brain damage.
2 MS. LUZAICH: I know. I understand.
3 MS. ALLEN: He has a traumatic brain injury.
4 THE COURT: Okay.
5 MS. ALLEN: So I'm trying to be very careful. So I
6 can lead a little more, if you'd like me to.
7 MS. LUZAICH: But the problem with traumatic brain
8 injury is we don't know how accurate his perception --
9 MS. ALLEN: That's [inaudible] perception.
10 MS. LUZAICH: But we don't know how accurate his
11 perceptions are.
12 MS. ALLEN: Well --
13 MR. MacARTHUR: That all comes out in cross; right?
14 MS. LUZAICH: Because all of the --
15 THE COURT: Well, I guess that can come out on
16 cross.
17 MS. LUZAICH: Well, but now I have to ask about it.
18 THE COURT: Yeah.
19 MS. ALLEN: Okay. Well, if that's what you -- I
20 mean, if that's what you want to do, that's fine.
21 MS. LUZAICH: Well, because all of the things that
22 you're going to talk about happened after his injury.
23 MR. MacARTHUR: Right.
24 MS. LUZAICH: So we don't know if they really
25 happened or if he inaccurately perceived things.

1 MR. MacARTHUR: Okay.

2 MS. ALLEN: Okay.

3 MS. LUZAICH: So --

4 MR. MacARTHUR: It's appropriate for cross.

5 THE COURT: So the objection's overruled.

6 (End of bench conference)

7 THE COURT: You may proceed.

8 MS. ALLEN: Thank you.

9 BY MS. ALLEN:

10 Q Do you need some water?

11 A No, I've got some. Thanks.

12 Q Okay. I think I asked you if you started having

13 problems with Victoria in the home, and you said yes; is that

14 correct?

15 A Yes.

16 Q Okay. And briefly, I don't need you to go through a

17 whole litany of them, but just can you tell me a couple of the

18 problems that you had with her?

19 A Well, things was coming up missing and misplaced and

20 there would be one found within her possession. Another thing

21 was, you know, the inappropriateness of -- we had two

22 bathrooms and one time she would, you know, I caught her

23 coming out the bathroom and she didn't have to. She just had

24 a towel over her front part, and you know, and I just frowned

25 up. You know, my wife was -- you know, my girl at the time

1 wasn't at home and by me coming home from work, you know, I
2 kind of like, you know, looked at her like, you know.

3 Q Okay. So you weren't happy with that?

4 A No. No, I wasn't happy.

5 Q When you confronted her with things coming up
6 missing, specifically what were the two things that you
7 mentioned coming -- that you remember coming up missing?

8 A Just school supplies and money.

9 Q Okay. When you say school supplies, whose school
10 supplies were they?

11 A My kids.

12 Q All right. And you said you would find them in her
13 things; is that right?

14 A Yes.

15 Q Okay. Did you ever confront Victoria about that?

16 A Yes, I did.

17 Q And what was her reaction?

18 A Just like always, just boo hoo, just you know, cry,
19 cry, cry, you know, just --

20 Q Okay. When you're doing this you mean cry?

21 A And -- but cry with no tears. And I'm like no, you
22 know. It's just some unbelievable thing, you know.

23 Q Okay. Was your experience with Victoria -- what was
24 -- strike that. When you -- in the times that you interacted
25 with Victoria what would she do if she was confronted with

1 something that she did?

2 A Well, she would, you know, she would deny, you know,
3 and then cry.

4 Q Okay.

5 A Well, pretty much, I don't know what to call it, but
6 my definition of crying is, you know, you cry.

7 Q Okay.

8 A Your tears. You know your emotions hit.

9 Q Okay.

10 A But what she was doing is just maybe to my
11 understanding just making attention go to something else.

12 Q Okay. By the way, well, a couple more questions.
13 But during the time that you were interacting with Victoria,
14 you said you were sort of trying to help her; is that right?

15 A Yes, ma'am.

16 Q Okay. Do you recall her ever making any sort of
17 statements about living -- sort of living with Fred and Ann or
18 her time in Las Vegas. Do you recall that?

19 A Yes. She spoke highly about being around
20 Blankenship.

21 Q Okay.

22 A She spoke that she did not like being too much
23 around at my mom's.

24 Q Okay.

25 A Due to her being strict, you know.

1 Q Okay.

2 A But she always highly recommended like, I'm glad.

3 I'm so happy about you guys coming and accepting us into your

4 life, and that was the most of it.

5 Q That was her talking that --

6 A Yes.

7 Q -- she was happy to be here?

8 A Yes. Always had, and I mean, with the glow. She

9 had a glow about it.

10 Q All right. At least in that respect, she seemed

11 sincere?

12 A Yes.

13 Q Okay.

14 A Yes.

15 Q I'm going to ask you just a real quick question with

16 regard to -- you had an accident; is that correct?

17 A I did, yes.

18 Q Okay. And this was approximately in 2005; is that

19 right?

20 A Yes, at the end of 2004, yes.

21 Q Okay. Was it a very serious accident?

22 A Yes, it was. I lost a good friend of mine that was

23 -- we was pretty much at that point in time planning on

24 getting married, and she was my fiance and an 18-wheeler came

25 over and -- well, just came out of his lane and ran us off the

1 road.

2 Q Okay. And so you lost your finance in the accident;
3 is that correct?

4 A Yes, ma'am, I did.

5 Q And did it -- you spent a while in the hospital; is
6 that correct?

7 A Yes. I pretty much, you know, was in the hospital
8 and just out of commission to do anything.

9 Q Okay. And you suffered some very serious injuries;
10 is that correct?

11 A Yes.

12 Q Okay.

13 A Severed liver and just -- I still have marks on me
14 from it.

15 Q Okay. You indicated to your face.

16 A Yes. My face and chest and stomach area.

17 Q Okay.

18 A Legs.

19 Q All right. Okay. Did you -- well, you suffered
20 sort of an injury to your head; is that correct?

21 A Yes.

22 Q Okay. Do you recall the accident at all?

23 A Yes.

24 Q You recall some of it?

25 A Some of it.

1 Q It took you a long time to recuperate; is that
2 correct?

3 A Yes, it did.

4 Q Okay.

5 MS. ALLEN: Your Honor, I pass the witness.

6 THE COURT: Cross.

7 MS. LUZAICH: Thank you.

8 CROSS-EXAMINATION

9 BY MS. LUZAICH:

10 Q Good afternoon, Mr. Robinson. And I apologize, I
11 just want to ask you one little question about that accident.

12 When you had the head injury was there some brain
13 injury, as well?

14 A To my fiance, yes.

15 Q Your fiance was deceased; correct?

16 A Yes.

17 Q To yourself was there some brain injury from the
18 accident?

19 A No brain injury to me, just as upper lip or just
20 real -- just cuts.

21 Q Okay. When you just said that Victoria spoke about
22 her time at Blankenship very highly, but that she didn't like
23 being with her mom. Do you remember saying that?

24 A She didn't like being with her mom?

25 Q Yes.

1 MS. ALLEN: No. That misstates his testimony. His
2 mom, Dorothy. He said Dorothy.

3 BY MS. LUZAICH:

4 Q Oh, your mom?

5 A Yes. She didn't --

6 Q Oh, I'm sorry. I thought you said her mom. Okay.
7 Did you -- well -- how often would Victoria come to your
8 house?

9 MS. ALLEN: Could we just have a, if you can, set a
10 time frame.

11 BY MS. LUZAICH:

12 Q When you lived in the house at Yankee.

13 A Well, she actually stayed with me at Yankee for a
14 month and a half.

15 Q And when was that?

16 A A month and a half of the time that I was there? I
17 really can't point out, you know --

18 Q Okay.

19 A -- the frame. But it had to be -- I mean, I would
20 be kind of guessing.

21 Q Okay. When did you leave Yankee?

22 A '09. '09.

23 Q '09 not --

24 A 2009.

25 Q Not 2010?

1 A well --

2 Q I mean a minute ago you said 2010. Was that a
3 mistake?

4 A Not a mistake. Actually when you, I mean, I'm a
5 truck driver. You know, if you majority -- even when you pay
6 your taxes you have to -- if you was there, then you was
7 there. And let's say majority of '09 I was there.

8 Q Okay. Did you not live at Yankee in 2010 at all?

9 A I can't recall to say that I did, I may have been
10 there for a month or two.

11 Q Okay.

12 A I should have been there for a month or two, because
13 -- and actually, I should -- yeah, I think I can see '10 I
14 been in there. Yes. Yes.

15 Q Okay. So you think you were there for a while in
16 '10.

17 A I know I was there, let's say before the moving
18 season started, and that would have been April to May.

19 Q Okay. So when Victoria stayed with you for the
20 month and a half was that closer to the end of the time that
21 you lived at Yankee, was it in the beginning of the time you
22 lived Yankee, when?

23 A In between. You know, it was in between. So she
24 was -- I mean, we was basically settled and we wasn't planning
25 on moving at the time when she was there, you know, actually

1 staying there, and pretty much trying progress with her. You
2 know, actually, the two younger siblings went to the school
3 that's right behind my house off of Yankee. I can't think of
4 the school name, but it's basically walking distance.

5 Q Okay. Your three children, how close in age are
6 they to Taharah and Taquanda, the youngest two Duke kids?

7 A My kids are 11, 20, and 9, now.

8 Q So they're barely younger than Taharah and Taquanda.

9 A I really can't recall what age they are now. But at
10 the time they were about just thicker kids, healthy, maybe
11 more bigger. My kids was kind of small. My wife is 110
12 pounds, and my kids are, I mean my girl is 60 some pounds, and
13 my two boys are like 45 pounds. My 11 year old is the
14 smallest.

15 Q Okay. But are they close in age, not height or
16 weight, close in age to Taharah and Taquanda?

17 A I really can't say the age, but the mentality same,
18 somewhat.

19 Q Despite the fact that they're younger, they're on
20 the same level kind of?

21 A I can't call that one, you know, I mean, kids are
22 kids. They playing and, you know, it's they all want to go to
23 Chuck E. Cheese and --

24 Q Would you say that Victoria was on the same age
25 level as your kids?

1 A Well --

2 Q Mentality, I meant.

3 A No. She's -- no. Because I wouldn't let her

4 babysit my kids if I kind of thought she would be more harm

5 harm, you know. But that's a tough one there. I can't really

6 call, because I really can't -- you know, I'm not that

7 educated to say what level, you know, Victoria's on.

8 MS. LUZAICH: Okay. Thank you, Mr. Robinson.

9 I have no more questions.

10 MS. ALLEN: No, Your Honor. Nothing.

11 THE COURT: Thank you very much for your testimony

12 here today. You may step down. And you are excused from your

13 subpoena.

14 THE WITNESS: Awesome. Awesome.

15 THE COURT: Thank you.

16 MR. MacARTHUR: We have another witness ready,

17 Judge.

18 THE COURT: Sure.

19 MR. MacARTHUR: Should we bathroom break, or would

20 you like to do it next?

21 MS. LUZAICH: It's Harrison Mayo; right?

22 MR. MacARTHUR: Yeah.

23 MS. LUZAICH: He's going to be quick.

24 MS. ALLEN: Should be.

25 MR. MacARTHUR: He is.

1 THE COURT: Is everyone okay to keep going? Okay.
2 You can call your next witness.

3 MR. MacARTHUR: Defense will call Harrison Mayo,
4 Your Honor.

5 THE CLERK: Please raise your right hand.

6 HARRISON MAYO, DEFENDANT'S WITNESS, SWORN

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

10 THE WITNESS: My first name is Harrison,
11 H-A-R-R-I-S-O-N, my last name is Mayo, M-A-Y-O.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MR. MACARTHUR:

15 Q Good afternoon, Mr. Mayo.

16 A Good afternoon.

17 Q How are you employed?

18 A I am employed with the Nevada Investigative Group,
19 it's a PI firm.

20 Q Okay. And how long have you been employed in that
21 capacity?

22 A A little over three years.

23 Q A little over three years. And how old are you now?

24 A Sixty.

25 Q Sixty. Did you have a career before you worked for

1 Nevada Investigative Group?

2 A Yes, I did.

3 Q Okay. And what did you do?

4 A I was a detective with the Las Vegas Metropolitan
5 Police Department.

6 Q And how many years did you do that?

7 A Twenty-five.

8 Q Okay. And when you -- I'm sorry. Did you retire
9 from Metro?

10 A Yes, I did.

11 Q Okay. And when you retired what was your rank
12 there?

13 A I was a Senior Detective in the robbery homicide
14 bureau.

15 Q Did you ever think the first time that I examined
16 you you'd be being called as a defense witness?

17 MS. LUZAICH: Objection.

18 THE COURT: Sustained.

19 MR. MacARTHUR: Withdrawn, Judge.

20 BY MR. MacARTHUR:

21 Q Mr. Mayo, how did you come to be affiliated with
22 this case?

23 A I was assigned to this case to assist Attorney Allen
24 with the investigation.

25 Q Okay. Is that Betsy Allen?

1 A Yes.

2 Q Okay. And are you being paid for the work that you
3 do?

4 A Yes, I am.

5 Q Okay. And how do you get paid for that?

6 A I get paid by Clark County through the Office of
7 Appointed Counsel.

8 MS. LUZAICH: Well, objection.

9 THE COURT: Sustained.

10 BY MR. MacARTHUR:

11 Q Okay. And who is your -- do you have a boss or
12 supervisor?

13 A Yes.

14 Q Okay. And who is that?

15 A Craig Retke.

16 Q Okay. And is Mr. Retke the owner of Nevada
17 Investigative Group?

18 A Yes, he is.

19 Q Okay. Did you know him before you worked for the
20 firm?

21 A Yes, I did.

22 Q Okay. In what capacity?

23 A He was a Intel detective for Metro.

24 Q Okay. Also here in Las Vegas, Nevada?

25 A Yes.

1 Q Okay. Now, in your time as a detective did you ever
2 have occasion to testify in court?

3 A Yes, I have.

4 Q How many times?

5 A God. Over a twenty-five year career, multiple
6 times.

7 Q Okay. Is it fair to say that you typically
8 testified as a prosecution witness?

9 A Yes, I have.

10 Q Do you have any experience working with Lisa Luzaich
11 from the D.A.'s office?

12 A Yes, I have.

13 Q All right. When was that?

14 A Pardon me.

15 MS. LUZAICH: Objection. Relevance.

16 THE COURT: What's the relevance to that?

17 MR. MacARTHUR: Just establishes -- I'll withdraw
18 the question.

19 THE COURT: Thank you.

20 BY MR. MacARTHUR:

21 Q Was all of your case work exclusively in robbery?

22 A No.

23 Q What other areas?

24 A I started out in patrol, selective enforcement,
25 street level narcotics, the gang unit, administrative detail,

1 auto theft, general assignment, internal affairs, and back to
2 robbery.

3 Q Okay. Did you ever do any work with homicide?

4 A I had -- I've worked a couple homicide cases, yes.

5 Q All right. Now, when you were appointed to work in
6 this case were you provided with certain documentary
7 information?

8 A Yes, I was.

9 Q Okay. And do we commonly refer to that as
10 discovery?

11 A Yes.

12 Q Okay. And in that discovery did you see voluntary
13 statements?

14 A Yes, I did.

15 Q Medical records?

16 A Yes, sir.

17 Q Photos, et cetera?

18 A Yes.

19 Q Okay. Did you educate yourself as to the
20 information contained in those documents?

21 A Yes, I did.

22 Q All right. Now, based on -- well, first let me back
23 up. Did you perform certain investigation on behalf of the
24 defense?

25 A Yes, I did.

1 Q Okay. And did those investigations take you to any
2 particular geographic locations?

3 A Yes, they did.

4 Q Okay. And was one of those locations an address at
5 966 Blankenship?

6 A Yes, it was.

7 Q Okay. If you would, I keep wanting to call you
8 Detective Mayo. Mr. Mayo, when did you go to 966 Blankenship?

9 A I don't recall.

10 Q Okay. Was it this year or last year?

11 A I want to say it was last year.

12 Q Okay.

13 A It's April. Yeah. I want to say it was last year.

14 Q Okay. And what did you do while you were there?

15 A I after going inside the residence I spoke with the
16 young lady that was living there and explained why I was
17 there.

18 Q Do you remember who the young lady might have been?

19 A Sharika [sic] Bailey.

20 Q Would that have been Sha'karia Bailey?

21 A Yes.

22 Q Okay. And what else did you do while you were
23 there?

24 A Like I say, I explained to her why I was there and
25 asked her if I could look around the house.

1 Q Did she permit you to do that?
2 A Yes, she did.
3 Q Okay. And what areas of the house in particular did
4 you focus on?
5 A I went through the whole house, but I was primarily
6 concerned with the laundry room.
7 Q And why was that?
8 A Because after reading the discovery I -- this is
9 where this incident was allegedly to have taken place.
10 Q Okay. One incident in particular?
11 A Yes.
12 Q Okay. Did you take any photos while you were at the
13 house?
14 A Yes, I did.
15 Q Okay. I'm going to approach with two photos that
16 have been admitted into evidence, Defense's Exhibits J and D.
17 Do you recognize these photos, Mr. Mayo?
18 A Yes, I do.
19 Q Okay. And do you recognize those as photos that you
20 took?
21 A Yes, sir.
22 Q Okay. And do they fairly and accurately depict what
23 it is you saw there in the laundry room?
24 A Yes.
25 Q Okay.

1 MR. MacARTHUR: Permission to publish, Your Honor.

2 THE COURT: You may.

3 BY MR. MacARTHUR:

4 Q And between D and J, which do you think is the
5 better descriptor for --

6 A Which is a better descriptor?

7 Q Well, actually I'll -- let me put them up first.
8 Tell me if you need me to switch out.

9 Okay. And this is Defense D. All right. Mr. Mayo.
10 if you would, please tell us what we're -- what we're looking
11 at in Defense D.

12 A You're looking at a dryer that's in the laundry
13 room.

14 Q Okay. Anything else?

15 A The washer's next to it with a bunch of stuff around
16 it.

17 Q Okay. And why did you take this picture in
18 particular?

19 A Because this is where I was told this incident took
20 place.

21 Q Okay. And I don't see any point of reference. Were
22 you able to form an opinion or make an estimate as to the size
23 or the dimensions of this room?

24 A Yes. The room is really small. The washer and
25 dryer barely fit in there. They were like wall-to-wall.

1 Q Okay.

2 A But there was a couple of feet in front of it.

3 Q A couple of feet?

4 A Yeah. In front of the machines.

5 Q Okay. I don't see a door there. Is there a door to
6 that room?

7 A Yes, it is.

8 Q Is there anything significant about that door given
9 the size of this room?

10 A Open all the way toward the right.

11 Q Okay. Now, having been inside of that room, how
12 much space is there in front of that washer and dryer before
13 you either hit the door or you hit a wall?

14 A About two feet. Like I says, it's a very small
15 room, two, 2-1/2 feet. Just enough room for the door to open
16 and close.

17 Q Just enough room for the door to open and close. Is
18 there enough room for a couple of people to also stand in the
19 room and then freely open or close the door?

20 MS. LUZAICH: Objection. Speculation.

21 BY MR. MacARTHUR:

22 Q If you know. I mean, you were there, I haven't --
23 I'm not?

24 THE COURT: Do you know?

25 THE WITNESS: Yes.

1 THE COURT: Okay. You can answer.

2 THE WITNESS: You'd have to -- you'd have to go
3 inside of it and move over to the left in order to close the
4 door.

5 BY MR. MacARTHUR:

6 Q Okay. And so you could conceivably get the door
7 closed?

8 A Yes.

9 Q Okay. How many people -- well, actually, let's not
10 start with how many people. You've been in the room. When
11 you were standing in it how many people of your size do you
12 think could stand in that room with you?

13 MS. LUZAICH: Well, objection. Unless he stood in
14 there with more than one person his size, he can't say.

15 THE COURT: I agree.

16 MR. MacARTHUR: That question was asked by the State
17 to Taquanda, who I would estimate has less ability to do that,
18 and Taquanda's testimony is that five other people her size.

19 MS. LUZAICH: I most certainly did not ask that
20 question.

21 MR. MacARTHUR: Sorry, Judge. I just got burned. I
22 think that was we who asked that question.

23 THE COURT: That's okay.

24 MR. MacARTHUR: There having been no objection to it
25 by the State, I would ask if I can --

1 THE COURT: The objection's sustained.

2 MR. MacARTHUR: Yes, ma'am.

3 BY MR. MacARTHUR:

4 Q And, if you would, Mr. Mayo, regarding Defense J, is
5 this the same room?

6 A Yes, it is.

7 Q Okay. And why did you take the photo from this
8 perspective?

9 A I was trying to show the distance between the front
10 of the dryer, up until the door facing.

11 Q Okay. And your testimony was that that was a couple
12 of feet.

13 A A few feet, yeah.

14 Q While you were at the Blankenship address did you
15 have occasion to take note of its layout?

16 A Yes, I did.

17 Q Okay. And when you took note of its layout did you
18 record that at all or did you document it at all?

19 A Yes, I did.

20 Q Okay. And what did you do or what did you cause to
21 be created?

22 A This schematic.

23 Q You realize I can see it, but what we're going to do
24 is lay some foundation for it.

25 A Okay.

1 Q And so what is it you attempted to document?
2 A The entire layout of the house.
3 Q Like a blueprint?
4 A Yes.
5 Q Okay. Did you do that?
6 A Yes, I did.
7 Q Okay. And is it to scale, does it have
8 measurements?
9 A No.
10 Q Okay. Just a layout in general?
11 A Yes.
12 Q Okay. And is this your handwriting?
13 A Yes, it is.
14 Q All right. And does it fairly and accurately depict
15 the layout of the house that you visited and took photographs
16 in?
17 A Yes, it is.
18 Q Okay.
19 MR. MacARTHUR: This time, Your Honor, we would move
20 for the admission of Defense Proposed Exhibit R.
21 MS. LUZAICH: No objection.
22 THE COURT: It's admitted.
23 (Defense Exhibit R admitted)
24 MR. MacARTHUR: Permission to publish?
25 THE COURT: You may.

1 BY MR. MacARTHUR:

2 Q All right. Mr. Mayo, if you would, please take us
3 on a tour of the 966 Blankenship house?

4 A Okay.

5 Q And just for your convenience, on the monitor you
6 can touch it, if you like, and it will leave marks behind, or
7 at least maybe you can. I don't appear to have that ability.

8 A The house itself faces south. This is the front
9 door.

10 Q Okay.

11 A All right. And it goes right into the living room
12 area, which is right here.

13 Q Okay.

14 A The kitchen is over here, and the dining room is
15 right next to it. From there you go down the hallway going
16 east through the house, which leads to the back bedroom area.

17 Q Okay. And is that a hallway we see there?

18 A Yes. Right, right here.

19 Q Okay.

20 A Which leads to another hallway that you turn right
21 going south, which is right -- oops -- here.

22 Q Okay. How -- sorry. How many bedrooms were there
23 total?

24 A Three. Wait. Four.

25 Q Okay. Is that including a master bedroom?

1 A Yes.

2 Q Okay. Did you collect any information as to what
3 bedrooms belonged to what occupants back when the Duke family
4 lived in the Blankenship address?

5 A Yes, I did.

6 Q Okay. If you could, would you please show the jury
7 which bedroom would have belonged to Taquanda and Taharah
8 Duke, the two youngest Duke children?

9 A Okay. What I was told was --

10 MS. LUZAICH: Objection. Foundation. There was
11 testimony that they changed rooms all the time.

12 THE COURT: That they changed. There was testimony
13 that --

14 MR. MacARTHUR: Yes.

15 THE COURT: -- the rooms changed. So --

16 MR. MacARTHUR: Actually, I believe you're correct,
17 Your Honor.

18 BY MR. MacARTHUR:

19 Q All right. You had already testified that you were
20 familiar with an allegation that had been made against Fred
21 Harris. Specifically involving a laundry room that you've
22 already testified about and a Taharah Duke; is that correct?

23 A Yes.

24 Q Okay. And you were aware of that allegation before
25 you went to the Blankenship house?

1 A Yes.

2 Q Okay. And did that allegation come from the fall or
3 late summer of 2012?

4 A Yes.

5 Q Okay. And so for the purposes of your testimony, do
6 you know what -- which bedroom belonged to Taquanda and
7 Taharah in the summer of 2012?

8 A It's this bedroom right here, right across from the
9 laundry room.

10 Q Okay. And if you would, please tell the jury where
11 the laundry room is?

12 A Laundry room is right there.

13 Q Okay. And so we appear to have two rooms that are
14 opposite each other in the same hallway; is that correct?

15 A Yes.

16 Q Are the doors directly in front of each other?

17 A No. They're offset a little.

18 Q They're offset. Okay. From your position in the
19 laundry room or the bedroom, were you able to see from one
20 room into the other?

21 A Only if you stood in front of the door you would see
22 where the dryer is.

23 Q Okay.

24 A Like if you came out this bedroom right here --

25 Q Yes.

1 A -- you could only see across -- anyway -- from the
2 door to the laundry room door.

3 Q Right. Did you note whether or not there were any
4 mirrors in the laundry room or the bedroom that would have
5 allotted you to have a better view from one from to the other?

6 A I never saw any mirrors in that bedroom.

7 Q You didn't see any mirrors in the bedroom?

8 A No. I don't recall seeing any mirrors in the
9 bedroom.

10 Q Okay. Was that significant to you when you made
11 that discovery?

12 A Yes.

13 Q Why was that significant?

14 A Because doing my investigation I was told that
15 Taquanda was able to look in the mirror and see what was going
16 on in the laundry room.

17 Q Okay. And based on your investigation did you find
18 that to be a correct state of affairs?

19 A No.

20 Q Okay. At the bottom of your blueprint of the house,
21 I see that you've got something in parenthetical. Could you
22 tell us what that is?

23 MS. ALLEN: Jonathan, move it over. It's on a --

24 MR. MacARTHUR: Oh. Because it's on the purple.

25 //

1 BY MR. MacARTHUR:

2 Q You have something in your own handwriting in
3 parenthesis at the bottom.

4 A That the washer and dryer were -- in the laundry
5 room it was a tight space.

6 Q A tight space.

7 A Yeah.

8 Q Okay. And why did you note that it was a tight
9 space? Why was that significant to you?

10 A Because I was told that this is where --

11 MS. LUZAICH: Objection. Hearsay.

12 THE COURT: Sustained.

13 BY MR. MacARTHUR:

14 Q Let me provide proper foundation. You had access to
15 voluntary statements; is that correct?

16 A Yes.

17 Q Okay. And so when you say you were told, is
18 somebody tell you or is this information that was available in
19 discovery?

20 A It was available in discovery. That was my mistake,
21 but --

22 Q And so apparently Taquanda is telling someone.

23 MS. LUZAICH: Well, objection. It's still hearsay.

24 THE COURT: Sustained.

25 MS. LUZAICH: And it's double hearsay.

1 MR. MacARTHUR: All right. Withdrawn, Judge.
2 BY MR. MacARTHUR:
3 Q Mr. Mayo, in continuing your investigation did you
4 have occasion to visit another site?
5 A Another site? I went to several places during this
6 investigation.
7 Q Okay. Well, I'll be more specific, then. Did you
8 have occasion to go to the medical office of a Dr. Gondy?
9 A Yes, I did.
10 Q Okay. And if you would, why did you want to make
11 contact with Dr. Gondy?
12 A I'd been to Dr. Gondy's office on at least three
13 occasions trying to obtain a medical report on Taharah Duke.
14 Q Okay. Then let me refer to the first visit. Was
15 there something about your understanding of the case that led
16 you to want to speak to Dr. Gondy?
17 A Yes.
18 Q Okay. And what was that?
19 A After I obtained a copy of the medical report, she
20 listed something in the medical report that wasn't documented.
21 Q Okay. And what was -- what was that that she had
22 listed that you didn't find additional documentation for?
23 MS. LUZAICH: Objection. Hearsay.
24 THE COURT: Sustained.
25 MR. MacARTHUR: I didn't ask about the substance of

1 it, Your Honor. And it's furthermore part of the testimony
2 brought by the State when they questioned Dr. Gondy.

3 THE COURT: It's still going to call for hearsay.

4 MR. MacARTHUR: All right. Court's indulgence.

5 BY MR. MacARTHUR:

6 Q Detective, were you aware of a medical report in
7 which Dr. Gondy had drawn a conclusion of possible sexual
8 abuse?

9 A Yes, sir.

10 Q And is that regarding Taharah Duke?

11 A Yes, sir.

12 Q Okay. Did you find any additional supporting
13 documents for that conclusion when you were going through the
14 discovery?

15 A No, sir.

16 Q Okay. And so did you make contact with Dr. Gondy?

17 A Yes, I did.

18 Q All right. And did you have an opportunity to
19 discuss with her this document and/or its support?

20 A Yes, sir.

21 Q Okay. And in speaking with Dr. Gondy did she
22 articulate why she had indicated possible sexual abuse?

23 MS. LUZAICH: Well, other than yes or no, objection.
24 Hearsay.

25 MR. MacARTHUR: Right.

1 THE COURT: You can answer yes or no.

2 MR. MacARTHUR: If I might, Your Honor. She could
3 not recall.

4 THE COURT: He can answer yes or no at this point.

5 MS. ALLEN: Well, can we approach?

6 (Bench Conference)

7 THE COURT: All four lawyers are present.

8 MR. MacARTHUR: Okay. It's our position that it's a
9 prior inconsistent statement.

10 MS. LUZAICH: But what are you trying to elicit?

11 THE COURT: Tell me what you want to ask him and
12 what you're trying to elicit.

13 MR. MacARTHUR: Okay. I'm going to ask him, did she
14 provide you with a basis for why she indicated possible sexual
15 abuse. Now, when she came into court she said that it was the
16 HPV that made her indicate possible sexual abuse, but when he
17 contacted her she couldn't remember why she'd indicated it,
18 because she didn't make any supporting notes.

19 MS. LUZAICH: She told the Court that the guardian
20 told her that.

21 MS. ALLEN: She put -- when we interviewed her,
22 because I was there, why did you put possible sexual abuse in
23 here? She's like, you know, I really don't know.

24 MR. MacARTHUR: Furthermore, she, I mean, she --

25 THE COURT: You know what, can I just ask a

1 question. Why in the world was this investigator allowed to
2 talk to Dr. Gondy? I mean, is that --

3 MR. MacARTHUR: Why did he talk to her?

4 THE COURT: Because that's --

5 MS. LUZAICH: I agree. Shame on Dr. Gondy.

6 THE COURT: -- called -- Dr. Gondy. Unless there
7 was a HIPAA authorization.

8 MS. ALLEN: We did have a court order, Your Honor.

9 THE COURT: Okay.

10 MS. ALLEN: You gave it to us.

11 THE COURT: All right. I just wanted to make sure.

12 MS. ALLEN: I was with him.

13 THE COURT: Okay. That's all I wanted to know.

14 MS. ALLEN: Yeah. We had one.

15 THE COURT: I was thinking, I sure hope I did sign
16 something.

17 MS. ALLEN: You did. That State agreed to it.

18 THE COURT: Okay.

19 MR. MacARTHUR: So, in short, her -- she didn't have
20 a very good recollection as to why she had made the note she
21 did. We were somewhat surprised when she came in and
22 testified that it was the HPV that led her to indicate
23 possible sexual abuse. And additionally she described
24 essentially the defendant as having been present during the
25 exam.

1 MS. LUZAICH: But that's fine. I agree that her
2 description of the person with her is a prior inconsistent
3 statement when you asked about that. But as far as the
4 support for the possible sexual abuse I disagree. She said
5 that the guardian -- she testified that the guardian told her
6 that.

7 MR. MacARTHUR: But that -- she said that for the
8 first time in trial.

9 MS. ALLEN: Wait a second. Which is fine, except
10 when we asked her about it, we said, why is this possible --
11 why did you put possible sexual abuse in here. Her response
12 to us was, I don't know. She's like, I can't figure it out.

13 MS. LUZAICH: Maybe she just didn't want to talk to
14 you.

15 MS. ALLEN: Okay. She had a court order and she
16 was --

17 MS. LUZAICH: But that doesn't mean she has to talk
18 to you.

19 MS. ALLEN: She was very open about everything else.
20 It's still a prior inconsistent statement. It doesn't matter
21 if she didn't want to talk to us or not. It's still a prior
22 inconsistent statement.

23 THE COURT: Okay. So your representation is you
24 asked her why she put it there.

25 MR. MacARTHUR: Yes.

1 THE COURT: She said, I don't know.

2 MR. MacARTHUR: After checking to see if she can

3 find support documents, which she couldn't locate.

4 MS. ALLEN: She couldn't find.

5 MR. MacARTHUR: She said she couldn't remember.

6 MS. ALLEN: She's like, I don't know.

7 MR. MacARTHUR: I don't know why I put that there.

8 MS. ALLEN: Yeah.

9 THE COURT: Okay. The objection's overruled. They

10 can ask it.

11 (End of bench conference)

12 THE COURT: The objection's overruled. You can ask

13 the question.

14 MR. MacARTHUR: Thank you, Your Honor.

15 BY MR. MacARTHUR:

16 Q All right. Mr. Mayo, did you have an opportunity to

17 talk to Dr. Gondy about that conclusion she had drawn and her

18 possible support for that conclusion?

19 A Yes, but --

20 Q Okay.

21 A -- I wasn't the only one there when I spoke with her

22 about this.

23 Q Okay. So let me be clear. Who was -- who else was

24 present when you were speaking with Dr. Gondy?

25 A Attorney Allen.

1 Q Betsy Allen?

2 A Yes.

3 Q Okay. And so did you -- well, I guess I asked that

4 already. Did Dr. Gondy provide -- what did Dr. Gondy tell you

5 was her reason for having concluded possible sexual abuse for

6 Taharah?

7 A Well, after she -- we provided her the copy of the

8 medical record that we had.

9 Q Yes, sir.

10 A She said she didn't know why she put that in there.

11 Q Okay. Did she give any specifics as to why she

12 couldn't figure out why she put that there?

13 A No.

14 Q Did she make any attempts to locate supporting

15 documents?

16 A No, she didn't.

17 Q Did she appear to have a good recollection of the

18 exam itself, or the patient?

19 MS. LUZAICH: Well --

20 THE WITNESS: Yes, she did.

21 MS. LUZAICH: Withdrawn.

22 THE WITNESS: Yes, she did.

23 BY MR. MacARTHUR:

24 Q Okay. And since she appeared to have a decent

25 recollection was she able to recount for you who had been

1 present during the exam of Taharah or Taquanda?

2 A Yes, she did. She accounted for what she described
3 as a grandmother bringing the kids in with the father.

4 Q Okay. And were you able to determine who the
5 grandmother was?

6 A It really wasn't the grandmother. It was -- it
7 turned out to be during my investigation, it turned out to be
8 her guardian.

9 Q Who was?

10 A Lealer Cook.

11 Q Okay. And who was the son that was being referred
12 to?

13 A It was her son Marcus.

14 MS. LUZAICH: Well, objection. Speculation. I
15 mean --

16 THE COURT: Sustained. Unless you can lay some
17 foundation.

18 BY MR. MacARTHUR:

19 Q All right. During your investigation did you have
20 occasion to speak with more than one individual?

21 A Oh, yes.

22 Q Okay. And without going into any details as to what
23 these people told you, were you able to satisfy yourself that
24 you knew who Lealer Cooks was?

25 A Yes.

1 Q Okay. Did you know who Marcus, I don't know if his
2 last name is Cooks, but were you able to satisfy yourself that
3 you knew who he was?

4 A Yes.

5 Q Okay. Did you know who all the individual Duke
6 children were?

7 A Yes.

8 MR. MacARTHUR: Court's indulgence. No further
9 questions for Mr. Mayo, Your Honor.

10 THE COURT: Any cross?

11 MS. LUZAICH: Just briefly.

12 CROSS-EXAMINATION

13 BY MS. LUZAICH:

14 Q Good afternoon, Mr. Mayo. You do know me; right?

15 A Yes, I do.

16 Q There are a lots of retired police officers that
17 become private investigators; correct?

18 A That's true.

19 Q And with yourself and Mr. Retke there are others, as
20 well, aren't there?

21 A Yes, there is.

22 Q When you went to 966 Blankenship you said you met
23 with Sha'karia.

24 A Yes, I did.

25 Q That would be Lealer Cook's daughter?

1 A Yes.

2 Q So kind of Fred Harris's girlfriend's daughter.

3 A Yes.

4 Q She was quite helpful with you, was she not?

5 A Yes.

6 Q When you went into the -- now, that diagram that's

7 not to scale; correct?

8 A No, it was not to scale.

9 Q And you're not a crime scene analyst. You did a

10 good job, but you weren't taking measurements for the entire

11 house; correct?

12 A Right. No, I wasn't.

13 Q When you went and you took photographs, you took a

14 photograph of the laundry room -- or two photographs of the

15 laundry room from outside; right?

16 A Yes.

17 Q You did not go inside the laundry room and take a

18 photograph from that perspective?

19 A No.

20 Q And two people could have fit in the laundry room

21 with the door closed or at least cracked or whatever; correct?

22 A Yes.

23 Q The two bedrooms, and I'm going to refer you to your

24 diagram, which for the record is without my glasses, I believe

25 Defense Exhibit R.

1 Sorry about that. I should have told you I was
2 going to use it.

3 There are two bedrooms on the east side of the --
4 here. Okay. On the east side of the house; correct?

5 A Yes.

6 Q Next to each other. You said you didn't see mirrors
7 in this one that's closest to the garage. Did you see mirrors
8 in the other one?

9 A No.

10 Q Now, when you -- you know that the testimony or the
11 statements or whatever were that that incident occurred in May
12 of 2012; right? You would agree with me?

13 A Yes.

14 Q You did not go to the house in May of 2012; correct?

15 A No.

16 Q You did not go to the house in June of 2012?

17 A No.

18 Q In fact you did not go to the house during any time
19 that Taharah and Taquanda Duke lived in the house; correct?

20 A No, I didn't.

21 Q And you don't really know what, if any, changes were
22 made to the house after they moved out in September of 2012;
23 do you?

24 A No, I don't.

25 Q And from September of 2012, until the time that you

1 went was a year, maybe?

2 A It's quite a while.

3 Q Maybe even more than a year?

4 A I'm not sure, but it was a while.

5 Q A long time.

6 A Uh-huh.

7 Q Okay. Now, when you went to Dr. Gondy's office, you

8 said you had medical records with her -- with you, I'm sorry.

9 The ones that she had given you and you were talking to her

10 about them, you and Ms. Allen?

11 A Yes. We had obtained a copy of Taharah Duke's

12 medical record.

13 Q Okay. And you said that when you asked her about

14 why she wrote possible sexual abuse, she told you she didn't

15 know?

16 A She didn't know.

17 Q She didn't tell you, like she testified here, that

18 the guardian told her that or the woman with the child told

19 her that?

20 A She, if I recall, she told us that she thought the

21 kid was sexually active with some boy.

22 Q Okay. Well, I move to strike.

23 MS. ALLEN: Your Honor, she asked the question.

24 MS. LUZAICH: Nonresponsive.

25 MR. MacARTHUR: The State asked the question.

1 MS. LUZAICH: No. I asked a yes or no question.

2 THE COURT: The motion is granted.

3 BY MS. LUZAICH:

4 Q Did you go through papers with her and point to
5 anything while you were talking to her? You know, like what
6 about this, what about this, what about this.

7 A No. Attorney Allen did most of the conversation
8 with her.

9 Q Oh. So you were just standing there listening. You
10 weren't interacting with her as much.

11 A I questioned -- I had a few questions I asked, but
12 yeah.

13 Q Okay. And is it possible that maybe she just didn't
14 want to tell you, the defense investigator?

15 A I don't know.

16 Q Is it possible? Have you ever encountered that
17 before that somebody didn't want to talk to a defense
18 investigator?

19 A I -- yes. As a police officer there were people
20 that they didn't want to talk to me.

21 Q I bet a lot of people didn't want to talk to you as
22 a police officer; correct?

23 A That's true.

24 Q Did you tell Dr. Gondy that you were an investigator
25 for the defendant?

1 A I didn't lay it out like that.

2 Q How'd you phrase it?

3 A I -- like I said, I'd been to Dr. Gondy's office at
4 least three times before that visit. I gave them my card and
5 Attorney Allen's card. So they knew who we were.

6 Q Does Attorney Allen's card say, attorney for
7 defendant Fred Harris?

8 A No. It's not spelled out like that.

9 Q Does your card say defense investigator?

10 A No, it doesn't.

11 Q So you never told her that you were the defense
12 investigator?

13 A I never told her that, no.

14 Q Did you tell her office, though?

15 A I told them who I was and why I was there.

16 Q Okay. Thank you.

17 MS. LUZAICH: I don't have anymore questions.

18 THE COURT: Any redirect?

19 REDIRECT EXAMINATION

20 BY MR. MacARTHUR:

21 Q Mr. Mayo, the State's questions were, did you say
22 this or --

23 MR. MacARTHUR: I apologize, Your Honor.

24 THE COURT: That's okay.

25 //

1 BY MR. MacARTHUR:

2 Q The State just asked you some questions about did
3 you tell Dr. Gondy this or that. Do you remember that?

4 A Yes.

5 Q Okay. Were you there -- were you the only person
6 there talking to Dr. Gondy?

7 A No.

8 Q Okay. I believe you testified earlier that Betsy
9 Allen was there.

10 A Yes, she was.

11 Q Did she explain to Dr. Gondy who the two of you were
12 and why you were there?

13 A Yes, she did.

14 Q Okay. Did Dr. Gondy appear to have any problem with
15 that?

16 A No, she didn't.

17 Q And was she otherwise cooperative when you asked her
18 questions?

19 A Yes, she was.

20 Q All right. Lastly, Mr. Mayo, you had testified
21 about the condition of the room as you saw it in 2013; is that
22 correct?

23 A Yes.

24 Q And you testified that there's no way for you to
25 know whether or not there were mirrors or something had

1 changed in the room. Do you remember that testimony?

2 A Yes.

3 Q Okay. Do you recall whether or not the room had
4 closet doors?

5 A You know, no I don't. Like I said, I just peeked in
6 the room.

7 Q Okay. Do you think you would have noticed if the
8 closet had had large sliding mirrored doors?

9 A Yes.

10 Q Okay. You don't remember having seen anything like
11 that do you?

12 A Like I said, I just peeked in the room. I focused
13 on the laundry room.

14 MR. MacARTHUR: Understood. Thank you, Mr. Mayo.

15 THE COURT: Any other questions?

16 MS. LUZAICH: No, thank you.

17 THE COURT: Okay. It looks like -- if you can just
18 hold on a minute. It looks like we have a question from one
19 of the jurors.

20 All right. Can the attorneys meet me in the
21 hallway.

22 (Hallway bench conference)

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

25 MR. MacARTHUR: We do, Your Honor.

1 MS. LUZAICH: Yes.

2 THE COURT: Okay. At this time I'm going to ask you
3 a question. Did Dr. Gondy's admission of not knowing why she
4 put that in there in reference to putting sexual assault in
5 her report come prior to or after the defense questioned Dr.
6 Gondy on Thursday, April 3rd, 2014?

7 THE WITNESS: It was -- you mean the report was
8 done? Is that what you're asking me?

9 THE COURT: I can ask the question again. Did Dr.
10 Gondy's admission of not knowing why she put that in there in
11 reference to putting sexual assault in her report come prior
12 to or after the defense questioned Dr. Gondy on Thursday,
13 April 3rd, 2014?

14 THE WITNESS: Prior to.

15 THE COURT: Okay. Does the State have any follow
16 up?

17 MS. LUZAICH: I have one question based on that.

18 RECROSS-EXAMINATION

19 BY MS. LUZAICH:

20 Q And Dr. Gondy's notes said possible sexual abuse;
21 correct? Not sexual assault.

22 A Right. Yes. Possible sexual abuse.

23 MS. LUZAICH: Thank you.

24 THE COURT: Anything from the Defense?

25 MR. MacARTHUR: No, Your Honor.

1 THE COURT: Okay. Thank you very much for your
2 testimony here today. You may step down and you are excused.
3 THE WITNESS: Thank you, Your Honor.
4 THE COURT: Thank you for being here.
5 Okay. So we're going to conclude for the day;
6 correct?
7 MS. ALLEN: Oh. I apologize, Your Honor.
8 THE COURT: I just want to make sure we're
9 concluding for the day.
10 MS. ALLEN: We are. Yes, Your Honor, we're
11 concluding for the day.
12 THE COURT: Okay. All right. We're going to
13 conclude for the day. I'm just going to tell you what's going
14 to happen next. From what I understand there's going to be
15 one more witness that will testify tomorrow. After that
16 witness testifies you'll be instructed on the law, both sides
17 will have an opportunity to speak to you in their closing
18 argument, and then you will be excused to deliberate upon your
19 verdict. So based upon that I believe that we will be done
20 tomorrow.
21 We're going to start tomorrow morning at 10:00
22 o'clock.
23 During this recess you're admonished not to talk or
24 converse amongst yourselves or with anyone else on any subject
25 connected with this trial, or read, watch, or listen to any

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

6 Thank you very much. And we'll see you tomorrow
7 morning at 10:00 a.m.

8 (Jury not present)

9 THE COURT: Okay. I have Pam working on some
10 corrections, so we'll go back in chambers as soon as she's
11 done. And we'll work off of my set, so I hope that's not too
12 confusing. I like to just work off of one set. So she'll --
13 or the set you gave to me with just changes.

14 MS. LUZAICH: Okay. Yeah. You know, we have -- I
15 mean, I've provided them with a hard copy, as well, so we'd at
16 least each have one in our hands.

17 THE COURT: Okay.

18 (Court recessed at 4:08 p.m., until the following day,
19 Friday, April 11, 2014, at 10:00 a.m.)

20 * * * * *

21

22

23

24

25

INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
-------------	---------------	--------------	-----------------	----------------

STATE'S WITNESSES

Nicholas Madsen		2	7	
Shabazz Qasim Duke	18	34	46	

* * *

DEFENDANT'S WITNESSES

Hernandez James Cooper	49	61		
Michael Loving	63	72	76	
Sha'karia Bailey	80	107	115	122
John Robinson	123	138		
Harrison Mayo	143	168	173	176

* * *

EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
--------------------	-----------------

DEFENDANT'S EXHIBIT NO.

R	154
W	37

* * *

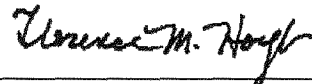
CERTIFICATION

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

AFFIRMATION

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

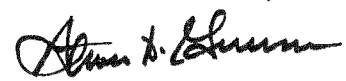
FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

12/28/15

DATE



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA

Plaintiff

vs.

FREDERICK HARRIS, JR.

Defendant

.....

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.