IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK H. HARRIS, JR., # 1149356, Appellant, vs. STATE OF NEVADA, Respondent.	)	CASE NO.: **81257, 81255** **E-FILE** D.C. Case No.: **A-18-784704-W** **C-13-291374-1** Dept.: **XII**

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APPELLANT'S APPENDIX VOLUME IX

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

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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:

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DIRECT EXAMINATION

BY MS. LUZAICH:

Q Good afternoon, sir.

A Hello.

Q How are you employed?

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

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

A I was hired June 25, 2001.

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

A Almost 13 years, yes.

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

A I've been a detective since 2006.

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

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

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

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

Q And then what?

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

Q What is the sexual abuse juvenile detail?

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

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

A Yes.

Q How does that come about?

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

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

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

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

Q Okay. And --

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

Q Do most of your investigations also involve CPS?

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

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

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

Q Why is that?

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

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

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

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

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

for example, robberies or property crimes?

A I would say so.

Q And especially because children are involved.

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

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

A I was.

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

A I did.

Q How did you become involved?

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

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

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

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

MS. ALLEN: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

BY MS. LUZAICH:

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

A Yes.

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

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

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

A I believe it was the younger one that called.

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

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

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

MS. ALLEN: Judge, objection. Hearsay.

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

MS. LUZAICH: He wasn't.

THE WITNESS: Yeah, I --

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

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

THE COURT: Which he's referring to hearsay.

MS. LUZAICH: He didn't say --

THE COURT: Okay. As long --

MS. LUZAICH: I'll ask --

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

MS. LUZAICH: -- the next question.

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

MS. LUZAICH: He wasn't going to.

THE COURT: Okay.

///

BY MS. LUZAICH:

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

A It did.

Q Did you access the notes?

A I did.

Q And what is the reason for accessing the notes?

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

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

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

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

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

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

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

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

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

A Correct.

Q So they're objective interviewers?

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

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

A Michele Fisher.

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

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

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

A Sholeh was with me.

Q And just you and Sholeh?

A Yes.

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

A Correct.

Q Or guardians or anything of that nature?

A Correct.

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

A Law enforcement or CPS.

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

interview room?

A Taharah and Michele Fisher.

Q Okay. So nobody else?

A No.

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

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

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

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

Q The older one.

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

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

A Yes.

Q Did she talk to Michele and give information?

A She did.

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

A I did.

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

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

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

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

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

MS. ALLEN: Judge, objection. Hearsay.

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

THE COURT: You can answer yes or no.

THE WITNESS: Yes, she was.

BY MS. LUZAICH:

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

Taquanda?

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

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

A Yeah, it was Lealer Ann Cooks.

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

A She did.

Q Were you there when Sholeh called her?

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

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

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

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

A She was.

Q Did you participate in that interview?

A I did.

Q Did Ms. Nourbakhsh participate in that interview?

A She did not.

Q Was she sick?

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

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

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

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

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

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

A No. That's correct.

Q Why is that?

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

Q Kid friendly?

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

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

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

A Not right away, but eventually we did.

Q Okay. How did you start your interview?

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

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

A She claimed to not know at first.

MS. ALLEN: Objection, Your Honor. Hearsay.

THE COURT: Overruled.

BY MS. LUZAICH:

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

A Little by little I did.

Q What do you mean little by little?

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

MS. ALLEN: Objection, Your Honor.

THE COURT: Sustained.

BY MS. LUZAICH:

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

A Okay.

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

happening?

A Yes.

Q And did she at first deny knowing anything?

A Yes.

Q Did that change?

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

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

A Yes.

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

MS. ALLEN: Judge, objection. Hearsay.

THE COURT: Overruled. You can answer.

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

BY MS. LUZAICH:

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

A At first she said she did not believe them.

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

doctor?

A Yes.

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

A Yes.

Q Did she tell you what the disease was?

A She said to her recollection it was HPV.

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

A Yes.

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

A Yes.

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

A She claims she had tried.

Q But she didn't ultimately do anything?

A Correct.

Q Once you finished your interview with Ms. Cooks --

MS. LUZAICH: And, actually, may I approach the witness?

THE COURT: You may.

BY MS. LUZAICH:

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

A It is.

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

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

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

A Tina Duke.

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

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

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

A At that time it would have been, yes.

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

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

Q Did you make an effort to contact them?

A I did.

Q At what point did you do that?

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

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

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

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

A I did.

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

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

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

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

Q And did you get anything from him?

A I did.

Q What did you get from him?

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

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

A I did.

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

A Yes.

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

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

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

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

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

Q Awhile, not immediate?

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

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

A Several days later we did.

Q Was that after a hearing in family court?

A Yes.

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

A I did.

Q That's Tina Duke; correct?

A Correct.

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

A Sholeh and I did it together.

Q Where did you conduct that interview?

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

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

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

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

A She did.

Q Did she have some difficulty in relaying some things?

A Yes.

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

A I did.

Q What did you ask her to do?

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

myself and Sholeh.

Q And did she ultimately do that?

A She did.

Q All right. How did she do it?

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

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

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

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

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

family court hearing.

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

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

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

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

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

A She did.

Q Who did she bring with her?

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

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

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

Q Okay. And what about Mahlica?

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

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

A I watched parts of that interview.

Q And did you notice anything about Shabazz?

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

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

A She did.

Q Did he take them off?

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

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

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

Q And then did you observe the interview with Mahlica?

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

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

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

Q Sorry.

A -- she was --

Q Child is the wrong word.
A -- she was an adult by this point.
Q Okay. Another of Tina's children. How's that?
A Yes.
Q And who was that?
A Victoria Duke.
Q Did you interview Victoria?
A I did not.
Q Did -- who did?
A Michele Fisher interviewed Victoria, as well.
Q Did you watch that interview?
A I watched most of that interview.
Q And when you watched, or at least the part of the interview that you watched, did Victoria give great detail about things that had occurred?
A Victoria did. There's no real standard, but most of our interviews of alleged victims tend to run out after about an hour, hour and 15 or 20 minutes. Victoria seemed to speak a lot longer than that and she was extremely vivid in the details she provided.
Q After Victoria was interviewed, what happened?
A I don't remember the -- the next step after Victoria was interviewed.
Q Do you remember what day it was that you got involved in the case?

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

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

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

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

A Correct.

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

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

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

A It did.

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

A I did.

Q And who did you arrest?

A I arrested Frederick Harris.

Q Do you see him here in court today?

A I do.

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

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

MS. LUZAICH: Record reflect identification of the defendant.

THE COURT: So reflected.

BY MS. LUZAICH:

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

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

Q 966 Blankenship?

A Yes.

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

A Yes, ma'am.

Q Was he alone or was there anybody else there?

A No, Lealer was home.

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

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

down.

Q Okay. So he was calm?

A Frederick was very calm. He was very cooperative. He did also voice that he felt that this was --

Q Well, that's okay.

A Yeah.

MS. ALLEN: Your Honor, I would object.

MS. LUZAICH: That was nonresponsive.

THE COURT: Right. And --

MS. ALLEN: Okay.

THE COURT: Go ahead.

BY MS. LUZAICH:

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

A I did.

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

THE COURT: Cross.

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

THE COURT: Of course.

(Bench conference)

MS. ALLEN: I hate to do this, but I really have to go to the bathroom.

THE COURT: You know, I have to, too, so [inaudible].

(End of bench conference)

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

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

We'll be in recess for about ten minutes.

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

(Jury is not present)

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

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

THE COURT: Okay.

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

THE COURT: Yeah. 5:00.

MS. ALLEN: 5:00. Got it.

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

MS. ALLEN: Yeah.

MS. LUZAICH: -- to offer the JOC.

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

MS. LUZAICH: Yeah.

MS. RHOADES: Yeah.

THE COURT: Right on.

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

(Pause in the proceedings)

(Jury is present)

THE COURT: Do the parties stipulate to the presence?

MS. LUZAICH: Yes.

MS. ALLEN: Yes, Your Honor.

THE COURT: Okay. You may begin your cross.

MS. ALLEN: Thank you.

CROSS-EXAMINATION

BY MS. ALLEN:

Q Good afternoon, Detective Madsen.

A Hello.

Q How are you?

A Good. How are you?

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

A Okay.

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

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

Q Okay. And you started off on patrol?

A Right.

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

A Correct.

Q And you're a detective now?

A I am.

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

A I'm actually on the sexual abuse detail.

Q Okay.

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

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

A Yes.

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

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

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

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

Q Okay. Burn out?

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

Q Okay. But you obviously like where you are?

A Very much.

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

A Yes.

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

A Correct.

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

A More children.

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

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

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

A Yes.

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

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

A Correct.

Q You don't want to suggest an answer?

A Correct.

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

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

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

A Correct.

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

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

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

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

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

A Or even in the same room.

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

A Correct.

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

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

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

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

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

A Not by me.

Q Okay. You didn't arrest her at any point in time?
A I did not.
Q And when I say submit documents to the DA's office, what -- what -- what is that when you --
A Sometimes rather --
Q -- submit a paper --
A -- than making an arrest we'll submit for an arrest warrant just so there's another -- another level of eyes looking at it to see if it really is a legitimate case, if there really is probable cause to issue a warrant for an arrest.
Q Okay. And that was never done in this case with regard to Tina; is that correct?
A Correct.
Q Okay. It was done with Lealer, is that -- is that right, though?
A Correct.
Q Okay. Did you actually arrest Lealer?
A I did not. I -- well, actually, I don't remember. I believe I submitted for a warrant on Lealer.
Q Okay. All right. So you can't remember as you sit here whether or not you were the one who actually went out and arrested her?
A I can't remember. I don't believe I was.
Q Okay. Part of your investigation was pulling all of

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

A The Henderson --

Q Yes.

A -- statements?

Q Yes.

A Yes.

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

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

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

A Okay.

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

A He was. Yes.

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

A Correct.

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

A Okay.

Q Would that --

A That's correct.
Q -- be fair?
A Yes.
Q Okay. So back in December of 2011 all of the same people were interviewed; is that -- is that correct? Is that a fair statement?
A I believe so. I'm not completely sure if Henderson interviewed all the same people we did or if they interviewed someone we didn't or if we interviewed someone they didn't at some point, but, in fact, I know that they interviewed at least one person that was not interviewed in our case.
Q They did?
A Yes.
Q Okay. And do you know who that was?
A The name was Rose Smith.
Q Okay. You didn't interview Rose Smith?
A No.
Q Okay. So you -- but you did part of your investigation, I don't mean you personally, I just mean generally your team because you were the case detective on this particular report; is that right?
A Correct.
Q Okay. So there was an interview with Shabazz?
A Yes.
Q Mahlica?

A Yes.
Q Tina?
A Yes.
Q Taquanda?
A Yes.
Q Taharah?
A Yes.
Q And Victoria?
A Yes.
Q Okay. And there was -- there were corresponding interviews with Detective Aguiar on all of those people, as well; is that right?
A I believe so, yes.
Q Okay. With regard to Taharah's interview with Detective Aguiar and regard to the interview that Metro had with her, they were very different interviews; isn't that correct?
A I know they were different.
Q Okay. Different -- well, would you agree in one there was -- in one there was very incriminating information she gave, and in one there was not incriminating information?
A Incriminating as far as making allegations against someone else?
Q Yes.
A Yes.

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

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

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

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

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

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

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

A Yes.

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

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

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

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

A Yes.

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

A Correct.

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

A Correct.

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

A I did not.

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

A I did not.

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

A Not past the people we've already named.

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

A No.

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

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

Q Okay. Does the name Anya Thomas sound familiar?

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

Q Marcus, someone by the name of Marcus?

A I don't remember hearing that name.

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

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

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

A Not necessarily.

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

A Not necessarily.

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

A That's not correct.

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

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

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

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

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

A Uh-huh.

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

A Yeah.

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

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

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

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

MS. ALLEN: Have him come back tomorrow?

THE COURT: Right.

MS. ALLEN: Sure. That would be fine.

BY MS. ALLEN:

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

A Okay.

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

A Okay.

Q Okay. Is that fair?

A Absolutely.

MS. LUZAICH: Although, can we approach?

THE COURT: Sure.

(Bench conference)

THE COURT: Tina, Taharah, and Mahlica?

MS. ALLEN: Mahlica.

THE COURT: Okay.

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

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

MS. LUZAICH: Okay.

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

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

MS. LUZAICH: Okay.

THE COURT: Okay.

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

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

MS. ALLEN: That's fine.

THE COURT: Okay.

MS. ALLEN: Thank you.

(End of bench conference)

BY MS. ALLEN:

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

A I did.

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

A Yes.

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

A Yes.

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

A Correct.

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

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

Q Okay.

A But, yes, it was Taquanda initially.

Q It was Taquanda.

A Yes.

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

MS. LUZAICH: Well --

THE WITNESS: I'm sorry.

MS. LUZAICH: -- objection.

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

THE WITNESS: I'm sorry. Who --

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

(Bench conference)

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

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

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

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

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

MS. ALLEN: Okay.

MS. LUZAICH: So --

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

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

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

(End of bench conference)

THE COURT: Thank you.

BY MS. ALLEN:

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

A Initially, yes.

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

A Yes.

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

A Correct.

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

A No.

Q Okay. So nothing on Lealer Ann Cooks?

A No.

Q Okay. Victoria?

A No.

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

A That's not my contention, no.

Q It's not?

A No.

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

A Correct.

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

A I did.

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

A Correct.

Q Did you keep that sheet of paper?

A I did.

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

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

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

A Correct.

Q Do you remember how many pages it was?

A I don't.

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

A Yeah, somewhere around there.

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

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

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

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

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

A Not physically from Victoria, no.

Q Tina brought it in with hers?

A Correct.

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

A No.

Q They were done at home?

A Correct.

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

A Possibly, yes.

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

A I don't remember.

Q Okay.

MS. ALLEN: Court's indulgence.

BY MS. ALLEN:

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

A Right.

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

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

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

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

A Correct.

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

A Correct.

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

A Right. There was a lot of it.

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

A No.

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

A Correct.

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

A Correct.

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

A Yes.

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

A That about sums it up.

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

of 2012 that led to submitting for an arrest?

A Yes.

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

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

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

A Not necessarily.

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

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

Q Well --

MS. ALLEN: Do you have an objection?

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

BY MS. ALLEN:

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

A No.

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

A No.

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

A No.

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

A Nope.

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

A No.

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

A Correct.

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

A Correct.

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

A Correct.

Q What was it that he --

MS. LUZAICH: Objection. Hearsay.

MS. ALLEN: Your Honor --

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

MS. ALLEN: Okay.

THE COURT: -- being offered by you.

BY MS. ALLEN:

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

You said he was calm; right?

A He was very cooperative.

Q Was he angry?

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

Q Okay. Lealer was?

A Yes.

Q Okay.

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

THE COURT: Okay.

Do you have those statements?

THE WITNESS: I have access to them, yes.

THE COURT: Okay. Thanks.

Any redirect?

MS. LUZAICH: Now?

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

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

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

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

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

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

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

* * * * *

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EXHIBITS

DESCRIPTION:	ADMITTED
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.

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Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

12/28/15

DATE

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12/30/2015 08:41:36 AM

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:	TRANSCRIPTION BY:
KRISTINE CORNELIUS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

LAS VEGAS, NEVADA, THURSDAY, APRIL 10, 2014, 10:46 A.M.

(Court was called to order)

(Jury is present)

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

MS. LUZAICH: Yes.

MS. ALLEN: Yes, Your Honor.

THE COURT: Okay. We can call the detective back to the stand. And just to bring you back up to speed, remember the detective was going to review those statements, and now I'm going to allow Ms. Allen to continue with cross-examination.

NICHOLAS MADSEN, STATE'S WITNESS, SWORN

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

THE WITNESS: Nicholas Madsen, N-I-C-H-O-L-A-S M-A-D-S-E-N.

CROSS-EXAMINATION (Continued)

BY MS. ALLEN:

Q Good morning, Detective. How are you?

A Good morning. Good, thanks. How are you?

Q As I asked you outside, have you done your homework?

A I have.

Q Okay. I had asked you to review a couple of

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

A I did.

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

A Mahlica.

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

A Correct.

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

A Okay.

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

A Yes.

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

A Yes.

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

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

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

Okay.

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

A Correct.

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

A That's right.

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

A Correct.

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

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

Q Okay.

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

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

sway either way with regard to your submission of charges?

A Correct.

Q Okay. And finally, you talked to Detective Aguiar about this case; is that correct?

A That's correct.

Q Because you had to get all of those records from him?

A Right.

Q There'd been a significant amount of investigation done almost a year prior, and that was pertinent to what you were doing; is that correct?

A Yes.

Q When you spoke to Aguiar did he indicate that the case never really closed because of the issue of consent of Victoria?

A He indicated that that was --

MS. LUZAICH: Well, objection. Hearsay.

MS. ALLEN: It's a prior inconsistent statement, Your Honor. Aguiar testified that he didn't -- he didn't close it or he didn't do anything with it because of probable cause. So there were two different answers given. One was given to --

THE COURT: Okay. But you said prior consistent.

MS. ALLEN: I said inconsistent, Your Honor.

THE COURT: Oh. I'm sorry.

MS. ALLEN: That's okay.

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

MS. ALLEN: I said inconsistent statement.

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

MS. ALLEN: Thank you.

BY MS. ALLEN:

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

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

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

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

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

A Yes. Absolutely.

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

A Uh-huh.

Q Does that refresh your recollection?

A It does.

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

A Correct.

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

A Correct.

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

THE COURT: Redirect?

MS. LUZAICH: Thank you.

REDIRECT EXAMINATION

BY MS. LUZAICH:

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

A Correct.

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

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

THE COURT: Overruled. You can answer.

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

that, not why was she not charged ultimately.

THE COURT: Right. He can answer.

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

BY MS. LUZAICH:

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

A That's correct.

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

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

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

A They are.

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

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

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

A Yes.

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

A Not to my recollection, no.

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

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

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

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

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

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

A It was.

MS. ALLEN: I would object as to leading.

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

MS. LUZAICH: Thank you.

BY MS. LUZAICH:

Q What was difficult about it?

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

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

A She told us a lot more.

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

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

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

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

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

A Yes.

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

MS. ALLEN: Judge, objection. Leading.

THE COURT: You are leading. Sustained.

BY MS. LUZAICH:

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

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

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

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

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

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

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

Q Just for example?

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

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

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

A Yes.

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

A Yes, it can.

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

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

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

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

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

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

A I'm not sure I understand that question.

Q I'll withdraw the question.

When you -- I'm sorry, my nose is stuffy.

Did you actually speak with Detective Aguiar? Did you email with him?

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

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

A Yes.

MS. LUZAICH: Thank you.

I'd pass the witness.

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

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

THE WITNESS: Thank you.

THE COURT: Does the State have any further witnesses?

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

THE COURT: Oh, absolutely.

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

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

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

(Jury is not present)

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

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

THE COURT: Okay. Are you Shabazz?

Okay. We can bring the jury panel in.

Do you want to have Shabazz take the stand.

MS. LUZAICH: Sure.

THE COURT: Yeah. You can just come up and take the stand. You can take your hat with you, if you want. Okay. And I just want to ask you a question before the jury -- you're going to come right up there and just sit in that seat. Is it possible for you to take those sunglasses off?

MR. DUKE: My eyes is light sensitive.

THE COURT: Your eyes are light sensitive? Okay. Can you just maybe try to take them off and see if your eyes can take it. Just try for me.

MS. LUZAICH: Just for a little while, Shabazz.

THE COURT: Pardon?

MS. LUZAICH: Just for a little while.

THE COURT: If you can't take it, then I'll let you put them back on. I just want you to test it to see, because the lights really aren't that bright in here. I don't like bright lights.

Okay. How do you feel?

MR. DUKE: Bad.

THE COURT: Do you think you could testify without those glasses on?

MR. DUKE: Huh?

THE COURT: Do you think you could testify without those glasses on? Yeah? You'll do that for me? Yes?

MR. DUKE: (No audible response)

MS. LUZAICH: You need to answer out loud, Shabazz, anytime somebody asks you questions.

THE COURT: And that's just what I wanted to remind -- Kris, in front of us, she's taking down everything that's being said, and so we'll give you the microphone, but you're going to have to put it up to your mouth. And when the jury comes in there'll be a bunch of people in that box over there. You have to speak loud enough so they can hear you, as well as all of us. Can you do that for me, as well?

MR. DUKE: Uh-huh.

THE COURT: Okay. And if anytime you feel uncomfortable because of your eyes, just let me know. Is it so far so good?

MR. DUKE: Yes, so far.

THE COURT: You're good? Okay. All right. Are you ready?

MR. DUKE: Yeah.

THE COURT: Okay. We can bring the jury in.

(Jury reconvened at 11:19 a.m.)

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

MS. LUZAICH: Yes.

MS. ALLEN: Yes, Your Honor.

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

MS. LUZAICH: The State calls Shabazz Duke.

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

SHABAZZ QASIM DUKE, STATE'S WITNESS, SWORN

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

THE WITNESS: Shabazz Qasim Duke.

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

DIRECT EXAMINATION

BY MS. LUZAICH:

Q Shabazz, can you spell your name.

MS. LUZAICH: Oh. Sorry, Judge.

THE COURT: That's okay.

Will you spell your name, Shabazz.

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

BY MS. LUZAICH:

Q And your middle name?

A Q-A-S-I-M.

Q And your last name.
A D-U-K-E.
Q Thank you. Shabazz, how old are you?
A Nineteen.
Q What's your birthday?
A January 21st, 1995.
Q Okay. Do you live here in Clark County?
A No.
Q Where do you live?
A Henderson, Nevada.
Q Oh. Okay. Do you have sisters?
A Yes.
Q How many sisters do you have?
A Four.
Q Can you tell me their names and, if you know, how old they are.
A Taharah, Taquanda, Mahlica, and Vicky.
Q Do you know how old Mahlica is?
A She's 19.
Q Do you know how old Vicky is?
A She's -- no, I don't.
Q Okay. Do you know how old Taharah is?
A No.
Q Do you know how old Taquanda is?
A No.

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

A Yes.

Q Which sisters are older than you?

A Vicky and Mahlica.

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

A Yes.

Q Which sisters are younger than you?

A Taharah and Taquanda.

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

A Tina.

Q What's your dad's name?

A Marvin.

Q Do you see your dad?

A I haven't seen him in a while.

Q What's a while?

A It's like a decade.

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

A I was either four or five years old.

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

A It's been a while.

Q Okay. Do you live with your mom?

A No.

Q Do you live with any of your sisters?
A No.
Q Do you live -- who do you live with?
A My friend.
Q Okay. And when you say it's been a while since you've seen your mom, is a while like days or weeks or months?
A Couple months.
Q What about your sisters? Have you seen Taharah or Taquanda?
A Yeah, I seen them both recently.
Q And what's recently? Days or weeks?
A Couple -- like a week ago.
Q Okay. Where'd you see Taharah and Taquanda?
A They was walking to the 7-Eleven.
Q Okay. So you didn't like go to the house to visit them?
A No way. I just ran into them.
Q Okay. What about Mahlica? When's the last time you saw Mahlica?
A I haven't seen her like in a week.
Q In a week?
A Yeah.
Q A week being seven days, or a week being just --
A Just seven days.
Q Okay. And where'd you see Mahlica?

A She was working to the 7-Eleven, too, I guess.
Q Oh. With Taharah and Taquanda?
A Yeah.
Q I should have asked you that. And before that when was the last time you saw Mahlica, Taharah, and Taquanda?
A I haven't seen them in a month.
Q Okay. It's been a long time?
A Yeah.
Q Okay. What about Vicky? When's the last time you saw Vicky?
A I haven't seen her forever.
Q Okay. Now, forever means months or so to you?
A Maybe like a couple years. Maybe.
Q Oh. Okay. Had you met me before today?
A Yes.
Q Did you meet me here in this building?
A Yes.
Q Okay. So we've talked before; right?
A Uh-huh.
Q Now, here -- would you agree we're in court today?
A Yes.
Q And there's a judge sitting there?
A Yes.
Q The last time you and I met you did not go to court, though; is that right? You did not talk to a judge?

A No.

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

A Yes, there was a time.

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

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

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

A A better question. In Henderson.

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

A It was an apartment.

Q And do you know what street it was on?

A It was on Center Street --

Q Okay.

A -- and Warm Springs.

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

A My mom and my sisters.

Q Which sister?

A Taharah and Taquanda, Mahlica and Vicky.

Q Taharah and Taquanda lived with you?

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

Q Okay. And do you know when that was?

A I think that was in October.

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

A It was like a year ago.

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

A I think so, yeah.

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

A No.

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

A Yeah. Yeah.

Q Okay. Did you live with them on Blankenship?

A Blankenship?

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

A Yeah. Yeah. For a while, yeah.

Q And what's a while to you?

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

Q Okay. You went from Blankenship to North Town?

A Yeah.

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

A Yeah. It was called St. Andrews.

Q Okay. Did you live there with Mom and Mahlica and Vicky?

A Yeah.

Q Okay. And when you lived at Blankenship who lived there?

A Fred and just me and Taharah and Taquanda and Vicky. And I think that's it.

Q Maybe Mahlica, too?

A Yeah, maybe Mahlica.

Q Okay. When you say Fred, do you see Fred here in court today?

A Yes.

Q Can you describe something that he's wearing for me.

A Blue shirt, dreadlocks.

Q Can you just point in his direction.

MS. LUZAICH: Record reflect identification of the defendant?

THE COURT: So reflected.

MS. LUZAICH: Thank you.

BY MS. LUZAICH:

Q Before you lived at Blankenship where did you live?

A I lived in Utah.

Q Yeah? What was it like living in Utah?

A It was amazing. But that's like where my other brother got adopted, though, and stuff.

Q Okay. What was amazing about Utah?

A It had nice trees, I went to school, everything was going okay.

Q Yeah? Did --

A Life was good.

Q Did you see some doctors or therapists in Utah?

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

Q Okay. Did you go to special classes when you were in Utah?

A Yeah. Whatever. [Unintelligible].

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

THE WITNESS: Yeah, that was my answer.

THE COURT: Okay.

BY MS. LUZAICH:

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

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

Okay. So Shabazz, if you could just answer yes or no and leave the whatevers out unless they're appropriate. Can you do that for me?

THE WITNESS: Yeah.

THE COURT: Okay. Do you remember the question?

THE WITNESS: Yes.

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THE COURT: Okay. Can you answer it?

THE WITNESS: Yes.

THE COURT: Okay. Is your answer yes?

THE WITNESS: Yes.

THE COURT: Okay.

BY MS. LUZAICH:

Q When you came back from Utah and you were at Blankenship did you go to school there, too?

A Yeah, I went to school there, too.

Q What school did you go to?

A I went to Sedway first, I mean, the middle school, eight grade, seventh.

Q Did you go to any special classes while you were there?

A Yeah, I went to some, yeah.

Q What kind of special classes? Do you remember?

A It was math and reading and English.

Q Okay. And did you go to a different school after Sedway while you were living at Blankenship?

A Yeah. After that it was Canyon --

Q Canyon is --

A -- Canyon Springs.

Q Is that a high school?

A Yeah, high school.

Q Were you still at special classes there?

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

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

A Yes.

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

A Yeah, I was going to school.

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

A Yeah, I was still going to school.

Q Okay. Now, did you graduate?

A Did I graduate? Yes.

Q You graduated high school?

A Yes.

Q When did you graduate?

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

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

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

Q What kind of training do you do?

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

Q Okay. What kind of music?

A All kinds.

Q And did you say acknowledgements?

A Yeah.

Q What acknowledgements?

A Statements I read. That's what -- that's what I call them.

Q I'm sorry?

A Statements -- acknowledgements, statements I read. That's what I call them.

Q Okay. What kind of statements?

A Well, just anything that is on my mind I write down and I say it to the people, and I get a hand clapping. It has something worth meaning.

Q Okay. Let me talk for a minute about when you lived at Blankenship. You said that Fred and your sisters lived there. And Ann; right?

A Yes.

Q When Fred was at -- or when you were living at Blankenship with Fred did Fred ever hurt you?

A He did.

Q How did he hurt you?

A I mean, sometimes physical, sometimes mental.

Q What kind of physical hurt?

A Hits to the chest, death-defying moments.

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

that?

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

Q Did he hit your chest?

A Oh, yeah. Mine, yes.

Q What did he hit your chest with?

A Fists.

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

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

Q Why would that happen?

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

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

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

Q Okay.

A But sometimes I forgot or it slipped my mind.

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

MS. ALLEN: Objection. Leading.

THE COURT: Overruled.

BY MS. LUZAICH:

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

doing things you felt that you didn't do?

A Yes.

Q For example? Can you tell me something?

A Stealing.

Q Okay. And when he accused you of something you felt you didn't do how did he hurt you?

A I mean, 'cause -- I mean, now -- I mean, I know, I mean, if I didn't do something I didn't do it, you know. And freakin' -- I always got to think [unintelligible] this or that, you know. Crazy.

Q Was there a time that he did something and left some kind of mark on you that you could see?

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

THE COURT: I'm going to give the District Attorney some leeway.

Go ahead. You can answer.

BY MS. LUZAICH:

Q Do you understand my question, or do you need me to repeat it?

A Repeat it.

Q Sure. Was there a time that Fred did something to hurt you and it left some kind of mark somewhere on your body that somebody else could see?

A Yeah.

Q Tell me about that.

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

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

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

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

A (No audible response)

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

A Yes.

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

A No.

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

A 'Cause I was scared.

Q What were you scared of?

A I was scared of losing my family.

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

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

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

A My face, yeah, and maybe my head.

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

A Just Blankenship.

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

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

Q How would you hear?

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

Q So did you see her afterwards?

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

looked at her, you know.

Q What did she say?

MS. ALLEN: Objection, Your Honor.

THE WITNESS: She didn't say anything.

MS. ALLEN: Your Honor, objection. Hearsay.

THE COURT: Sustained.

MS. LUZAICH: It would have been an excited utterance. But he said she didn't say anything.

THE COURT: I'm sorry?

MS. LUZAICH: I would have offered it as an excited utterance. He said she was in tears.

THE COURT: Okay. If you want to try to lay the foundation for that.

MS. LUZAICH: That's okay.

THE COURT: Okay.

MS. LUZAICH: Thank you very much, Shabazz.

I would pass the witness.

THE COURT: Cross.

CROSS-EXAMINATION

BY MS. ALLEN:

Q Good morning, Shabazz. How are you?

A Swell.

Q Swell?

A Uh-huh.

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

is that right?

A Been in the building before?

Q This building.

A Yeah. Sure. That is right.

Q Like last year?

A Yeah, last year.

Q But you didn't testify like you're doing today; is that right?

A Yeah, that's right.

Q Okay. You were just sent home?

A I was just sent home.

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

A Yes.

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

A Yeah, before.

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

A I mean, I would have met her last year, and then I met her today in court.

Q Okay. So two times?

A Two times.

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

A Yeah.

Q Okay. You didn't really want to be bothered with coming down here, did you?

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

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

A I got knowledge. What can I say.

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

A Yeah. Sure I do.

Q What is that?

A DM.

Q DM? What does that stand for?

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

Q What name is that?

A D Meister.

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

A Yeah. Music, yeah.

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

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

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

and Ann; is that right?

A Yes.

Q Okay. And this is --

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

Is that correct?

MS. LUZAICH: Yes.

MS. ALLEN: It would be Defense Admitted W.

THE COURT: It's admitted?

MS. ALLEN: Yes.

THE COURT: Okay.

MS. ALLEN: The State has stipulated to its determination, Your Honor.

MS. LUZAICH: That's correct.

THE COURT: Okay. So W will be admitted.

(Defendant's Exhibit W admitted)

BY MS. ALLEN:

Q You remember going to Canyon Springs High School; is that right?

A Sure, that's right.

Q You remember Coach Coop, don't you?

A Yes.

Q Did you see him sitting outside?

A Yeah. He was sitting outside. I was like, what you guys doing here, you know.

Q Did you talk to him?

A I just -- I said hi a little, yeah.

Q And you like Coach Coop?

A Well, I kind of did, but he's kind of like a brush off my shoulders. But, you know, time heals all wounds.

Q So there's a reason you don't like Coach Coop?

A No. Me and him is okay now, but --

Q There was a time you didn't like him?

A Yeah. There was a time when I didn't like him, yeah.

Q Was he -- was he on you about school?

A No.

Q Okay. Did you get in trouble by him at school?

A No.

Q Okay. You saw Coach Coop nearly every day, didn't you?

A Sometimes. I mean, I wanted to join the football team, but he -- I mean, I'm in [unintelligible].

Q Is that why you were upset with him, because he wouldn't let you join the football team?

A No.

Q Okay.

A That ain't the reason why.

Q All right. And you remember telling -- or you remember Coach Coop saying something to you about your black

eye or the eyeball?

A Yeah, my eye.

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

A No. Like on my eyeball. One eyeball is like normal, one eyeball is red, like I done bust a blood cell or something.

Q Busted blood cell. Got it. And when you received -- like when someone hit you in the eye did it cause the like swelling around the eye itself?

A I think so, yeah.

Q When it had turned it black? Like you get a black eye from someone punching you in the eye, don't you?

A Yeah. But it was kind of healing up.

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

A Yeah, the night before, yeah.

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

A Yep.

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

A Maybe the guys at ROTC.

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

A Yes.

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

A Yes.

Q And when you transferred to Basic you were in ROTC

for one semester. Do you remember that?

A Yeah, I was.

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

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

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

A Yeah, I did.

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

A Yep.

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

A Oh, yeah. It was kinda --

Q And that would have been grade 8?

A Huh?

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

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

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

A Yeah.

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

A Yeah. I do. I do.

Q You remember that?

A Tough times.

Q Yeah. But you were --

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

Q Yeah? But you were doing pretty good at Canyon Springs, weren't you?

A Yeah, I was.

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

A He did.

Q Yeah? He kind of expected you to get good grades, didn't he?

A Yeah.

Q Did you and Fred have some disagreements when you were living there?

A Yes.

Q Do you remember a time when you got in trouble at school for -- and you got RPC-ed?

A Yeah, I got RPC-ed one time.

Q Do you remember that you beat up some kid in the bathroom?

A Yeah. I did.

Q Do you remember it being a disabled kid?

A Yeah.

Q Do you remember if you -- you had just attacked the kid in the bathroom, didn't you?

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

way back, okay.

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

A Yes.

Q Okay. So you were pretty good with your hands and punching and blocking and all that good stuff?

A Yes.

Q How long were you in karate?

A I was in karate for three years.

Q When were you in karate?

A I went in karate when I went to Doolittle, like last -- like the summer year that I was still in Blankenship.

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

A Yeah.

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

A Yeah.

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

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

Q You used to walk?

A -- every Tuesday and Thursday.

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

A No.

Q All right. Do you remember getting in trouble at home for beating up one of your sisters?

A Huh?

Q Do you remember getting in trouble at home for

beating up one of your sisters?

A I don't remember that.

Q Do you remember living with Victoria?

A Yes. Yeah.

Q You do? Yeah?

A Yeah.

Q Do you remember Victoria being kind of bossy?

A Yeah, she was bossy. Yeah.

Q Did she try to boss you around?

A Yeah, bossed me around, yeah.

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

A I just tried to work with her.

Q Did you ignore her?

A No.

Q Was Victoria not to be ignored?

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

Q Okay. Do you recall getting in trouble for stealing something?

A What?

Q When you lived at Blankenship with Fred and Ann.

A Blankenship? Yeah, sort of. I was in trouble for stealing something. I probably didn't do it.

Q But you probably didn't do it. Do you remember getting in trouble for stealing like a Nintendo?

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

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

A Yeah, sure.

Q Okay.

A That's part of something else, too.

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

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

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

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

A No.

Q Did you tell anybody that?

A Like I said I got it from my friends.

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

A No, I didn't.

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

A Get in trouble at school for what?

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

A No.

Q Did they call your mom a lot?

A No.

Q They never called your mom?

A No.

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

A No.

Q What about the RPC?

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

Q That was --

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

Q Okay.

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

Q Just a minute, Shabazz.

THE COURT: That's okay, Shabazz.

BY MS. ALLEN:

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

A Yeah. Isaac Savalas.

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

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

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

(Pause in the proceedings)

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

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. LUZAICH:

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

A Yes, sir.
Q What did he steal?
A It was a juice.
Q From you, or from somebody else?
A It was from me.
Q You said you had met me once before, right --
A Yes.
Q -- in this building. Have you spoken to Craig, my investigator, on the phone?
A Yes.
Q A few times on the phone?
A Just like twice.
Q Okay. Has he called you a bunch of time and not been able to get a hold of you?
A I don't know when he called me. He just called -- I mean, my phone was dead when I went to California.
MS. LUZAICH: Okay. Thank you.
Nothing further.
MS. ALLEN: Hold on, Your Honor, just a moment.
(Pause in the proceedings)
MS. ALLEN: Your Honor -- that's fine, Your Honor. I apologize. We had passed the witness.
THE COURT: It's okay.
Thank you very much for your testimony here today, and make sure you take your hat and your glasses with you,

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

THE WITNESS: It was my pleasure.

THE COURT: Okay. Thank you.

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

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

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

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

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

THE COURT: Go ahead.

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

THE COURT: Coach Cooper.

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

HERNANDEZ JAMES COOPER, DEFENDANT'S WITNESS, SWORN

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

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

THE CLERK: Thank you.

MS. ALLEN: May I approach proceed?

THE COURT: Absolutely.

MS. ALLEN: Thank you.

DIRECT EXAMINATION

BY MS. ALLEN:

Q Can I call you Coach Coop?

A Yes. Absolutely.

Q Okay. Is that what everybody calls you?

A Yes.

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

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

Q Okay. And what is your educational background?

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

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

A Yes, ma'am.

Q How long have you been there?
A I've been there now almost nine years.
Q All right. And if I use -- were you ever a SPED teacher?
A Yes, ma'am. I have a certification in Special Ed I was over discipline in house and also I taught biology there.
Q Okay. And what does SPED stand for?
A Special Ed.
Q Okay. Do you recall a student -- well, let me ask you this. Do you recall Shabazz Duke?
A Yes, ma'am.
Q Okay. So you saw someone walk out that you recall being someone you had dealt with before?
A Yes, ma'am.
Q Okay. And how do you recall Shabazz Duke? What was your interaction with him?
A Well, I've known -- well, Shabazz, I met his family. His sister Victoria was on my caseload, but Shabazz was always in ROTC, which is a room close to mine. And after school -- as a football coach we stay after school a lot, and I would see Shabazz with the ROTC program a lot.
Q Okay. Did you talk to him?
A No, ma'am.
Q Not today. I just mean ever.
A Yes. Yes. On campus, yes, ma'am.

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

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

Q Okay.

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

MS. ALLEN: Me?

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

MS. ALLEN: Sorry.

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

MS. ALLEN: So do I. I apologize.

BY MS. ALLEN:

Q Have you ever testified before?

A Yes, I have.

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

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

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

Q Okay. Was he one of your students?

A No, ma'am.

Q All right. Do you ever recall having any sort of conversation with him regarding any sort of injuries to his face or his body?

A No, ma'am.

Q Okay. Do you recall ever seeing him with any sort of injuries to his face or his body?

A Not really. Shabazz -- when it was at lunch or after school most of the time he would have shades on anyway. You know, I'd see him with shades on, and, you know, just say, what's up, cool dude. But never recall seeing any injuries.

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

A Yes, ma'am.

Q Actually which -- which sisters do you know?

A I know Victoria, and I've seen his other sister at school, Mahlia [sic] or -- I can't recall her name.

Q Mahlica? Does that sound right?

A Yes.

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

A Victoria was on my caseload. As a teacher coordinator in Special Education you're assigned a certain amount of kids to do their educational IEP, which is Individual Educational Plan, to help them -- to help them succeed academically and socially. So I evaluated her, tested

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

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

A Yes. Kamilah Bywaters.

Q Okay. How do you remember Kamilah Bywaters?

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

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

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

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

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

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

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

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

Q Is Canyon Springs an at-risk school?

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

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

A Yes, ma'am.

Q And I came to your office?

A Yeah.

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

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

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

A Yes.

Q All right. And you said you have Pampers?

A I have Pampers.

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

A No, to students that are parents.

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

A Absolutely.

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

A Yes, ma'am.

Q Do you remember the specific years?

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

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

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

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

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

Q Would you say really far behind?

A Yes, ma'am.

Q All right. Did you -- you tried working with her to get her up to task?

A Yes, ma'am.

Q Okay. Do you feel like you ever did get her up to task?

A No, ma'am. I think that -- I think there was a gap in her starting school and the things that people of her age that should already know that she was just starting to catch up. Her rate of progress was better, but she was behind, and I didn't think that I could help her catch up.

Q Okay. Did you ever meet or have occasion to meet her mother?

A I did, if you're referring to Tina Duke.

Q Okay. And how many times do you think you met Tina?

A Annually, probably two years. Because of the IEP a parent had to be present at the IEP. And I do remember Ms. Duke having transportation issues, but getting her there. And the second IEP meeting I think it was another lady that was there.

Q You don't remember who, though; is that right?

A I want to say just Dorothy, a first name. I don't know her last name.

Q Dorothy; is that correct?

A Yes, I think that was her name.

Q Okay. And Dorothy's not Tina, obviously.

A No, ma'am.

Q Okay. But there were conversations between you and Dorothy with regard to Victoria's progress and how to get her on track?

A Yes, ma'am. She's a part of that IEP meeting, yes.

Q All right. Did Victoria ever come to you and tell you anything that concerned you with regard to her home life?

A No. She just said that her mother had tough times, you know, because sometimes her attendance would not be -- and I would ask her where was she at. And she didn't have a ride to school or, you know, tough to get to school. She rode the bus. But just, you know, evaluating your students you can kind of tell where they are with my experience, you know, what kind of home life they have.

Q Okay. What is a mandatory reporter?

A A mandated reporter Clark County School District in my understanding is if a kid, a student, anybody on campus reports that they feel like they want to cause hurt, harm to themselves or anybody else or something's going on that is causing harm to them, then we go to the counselors or we call Child Protective Services to get it investigated and make a note of it.

Q Okay. Have you previously reported what you

perceived to be either abuse or harm to a student or the student harming themselves or something to that -- have you done this? Have you reported someone?

A Yes, ma'am, I have a couple of times at Canyon. Yes, ma'am.

Q Okay. And when would be the last time you did something like that?

A Last time was this past -- beginning of this year. I had a kid that felt like he wanted to cause harm to himself and said he couldn't take it anymore and that he felt like he was going to cause harm to himself. So I immediately contacted Child Protective Services. Never got through, so I did an online report and also went to the school counselors and the Special Ed Department and notified them. We did what we call a protocol.

Q Okay. Had Victoria or any of your students come to you and said, I'm being sexually abused at home, what would you have done?

A Immediately -- I mean, that's not something I would play with. I have two females that I work with. I would have first of all notified them and went directly and filed that report.

Q Okay. And are you -- you're particularly sensitive to that kind of issue; is that correct?

A Any harm, hurt to kids. You know, I have daughters.

You know, I've had a situation before that kind of involved me. And, yes, I would. That's not something I'd take lightly.

Q Okay. You said you had a situation involving you before?

A Yes.

Q Okay. And what had happened with that?

A Well --

MS. LUZAICH: Objection. Relevance.

THE COURT: Sustained.

BY MS. ALLEN:

Q Okay. Had Victoria or any student come to you and said, I am being like beaten at home, I'm being physically abused at home, what would you have done with that information?

A I would have immediately contacted the Dean's Office and notify the counselors.

Q Okay. So it's the same protocol for sexual abuse, physical abuse?

A Any abuse.

Q Okay. Do you ever recall seeing Victoria with any sort of marks, bruising or anything to her face or body?

A No, ma'am.

Q Okay. What about Mahlica? Do you ever recall seeing any marks on Mahlica?

A No, ma'am.

Q Now, if you had seen Shabazz, Mahlica, Victoria, or any student with any marks on their body, would that be something that you would -- would cause you to follow this mandatory reporting protocol?

A Yes, if I felt something -- you know, if they wasn't in a sport that would dictate such an injury --

Q Okay.

A -- then that's something that I would, yes, look into further.

Q Okay. So maybe in wrestling you could end up with some bruising?

A Wrestling, in football, in basketball. Any physical activity that would be consistent with that would cause some kind of injury I would -- you know, other than that, I would try to look into it or have the teachers or somebody else look into it.

MS. ALLEN: Okay. Court's indulgence.

(Pause in the proceedings)

BY MS. ALLEN:

Q One last question, actually. Knowing all three kids, correct, at least these three, Shabazz, Mahlica, and Victoria, correct, who would you describe as the most stable?

A In my years of seeing the kids I would have to say it would be Mahlica.

Q Mahlica?

A Yes.

MS. ALLEN: Okay. Thank you.

I'd pass the witness.

THE COURT: Cross?

MS. LUZAICH: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. LUZAICH:

Q Good morning.

A Good morning. How are you?

Q Good. How are you?

A Wonderful, thank you.

Q I've never met you before today; is that right?

A No, ma'am, you have not.

Q And you said that you have testified before. When did you testify previously?

MS. ALLEN: Objection, Your Honor. Relevance.

THE COURT: Sustained.

BY MS. LUZAICH:

Q Have you come to this court building and testified?

MS. ALLEN: Objection, Your Honor. Relevance.

THE COURT: Sustained.

BY MS. LUZAICH:

Q You said that you saw Shabazz around campus at Canyon Springs; right?

A Correct.

Q Did you know him to be in any Special Education classes?

A Yes, ma'am.

Q But you didn't supervise him in any of those classes?

A Not on my caseload.

Q Did you report seeing a mark on Shabazz in 2008?

A No, ma'am. Not that I recall.

Q So if someone reported that, that wouldn't be you?

A Not that I recall. I can't speak for anybody else.

Q As a mandatory reporter are you aware that you can be prosecuted for a crime if you do not report physical abuse?

A Oh, absolutely.

Q And as a mandatory reporter are you aware that you can be prosecuted for a crime if you don't report sexual abuse?

A Yes, ma'am.

MS. LUZAICH: Nothing further, Your Honor.

THE COURT: Redirect?

MS. ALLEN: No, Your Honor. I don't believe so. Thank you.

THE COURT: Sir, thank you very much for being here. You may step down, and you are excused from your subpoena.

Your next witness?

MS. ALLEN: Is Officer Loving.

MICHAEL LOVING, DEFENDANT'S WITNESS, SWORN

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

THE WITNESS: Michael L-O-V-I-N-G, Loving.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. MacARTHUR:

Q Good morning, Officer.

A How are you?

Q Just fine, thanks. My name's Jonathan MacArthur. I'm counsel for the defense. We've never met; is that correct?

A Correct.

Q Okay. Did you receive a subpoena to come in and testify today?

A I did.

Q Okay. And were you given some documents to review with regard to your testimony?

A I was.

Q Okay. Have you ever testified in court before?

A Yes.

Q Okay. Are you usually subpoenaed by the State's side?

A I am.

Q Okay. Were you surprised to find out you were subpoenaed by the defense?

A I was.

Q Okay. Do you recall having responded to a call for service involving a battery constituting domestic violence involving one Tina Duke?

A Vaguely.

Q Okay.

A It's been a while.

Q And did you have an opportunity to review any documents that were made in response to your having responded to that call?

A I did.

Q Okay. And do you recall the date of the incident?

A Not off the top of my head.

Q Okay. Does -- at any time, Officer, if I ask you a question and you're not familiar with it, I have the documents here, please feel free to review them again if necessary.

A I would love to see them.

Q Okay. Do you recall if the date was October 24th, 2009?

A It could have been, yes. If you don't mind.

THE COURT: You can approach and show him the document.

MR. MacARTHUR: Thank you, Your Honor.

THE WITNESS: Okay. Yes, it was.

BY MR. MacARTHUR:

Q All right. Now, this call for service was initiated, am I correct, from Bally's Hotel & Casino?

A That is where we -- according to the report, that is where we responded to, yes.

Q Okay. And do you know about what time you responded?

A Looks like might have been around 11:36 in the morning. If I -- let me just read the narrative real quick, if I could, please.

Q Absolutely.

A I stand corrected. 10:43 in the morning.

Q 10:41 a.m.?

A 10:43 a.m.

Q 10:43 a.m.

A Uh-huh.

Q All right. And I realize that you were probably sent there by Dispatch.

A Correct.

Q Okay. Do you know who had initiated the call for service?

A Not according to this. No, I don't. For sure I do not know who made the phone call.

Q Okay. When you responded to Bally's who did you make contact with?

A I believe we -- according to the report, we made contact with a female who identified herself as Rene Duke, who we further found out was a Tina Rene Duke.

Q All right. And what would be standard protocol for an officer responding to a call for service related to domestic violence?

A First we would -- we would want to establish contact with the victim, the alleged victim. If it was somebody that was claiming any kind of battery, we would offer her some sort of medical response. At that time we would also kind of being looking and evaluating, see if we see any bumps, bruises, scratches, or anything like that.

Q All right. Do you also interview witnesses to the event?

A If they're readily available, yes.

Q Okay. Are you equipped with a camera to take pictures of any injuries if those are available?

A At that time we ourselves, myself and my partner that responded that day, we're enduro officers, which means we rode small off-road bikes. That was our mode of transportation on that day. So we wouldn't have had a camera on us ourselves. We could have called for one if one was necessary.

Q Understood. Okay. And do you recall whether you or your partner made contact with Ms. Duke?

A Yes, we did.

Q Okay. It was both of you?

A Yes, sir.

Q Okay. And during the course of your interaction with Ms. Duke did she describe the details of battery she said she'd suffered at the hands of Frederick Harris?

A According to the report, she did make note of the incident.

Q Okay. Did she indicate that she'd been slapped repeatedly in the face?

A According to this report, yes, it was.

Q Okay. Did she indicate that a boot had been thrown at her and had hit her in the head?

A According to the report, that is the statement that Ms. Duke made.

Q Okay. She also -- well, let me approach, hand you a sheet.

Okay. Did she indicate any other injuries she believed she sustained from her battery?

A Other than in the report it says that she was pushed hard and fell back on a table.

Q Okay. Did she say that she suffered an injury from that or had sort of soreness, bruising, et cetera? And I'm

asking if she told you that, as opposed to whether you noted it.

A It's been a while, but I don't see anything on here where it says she was in any -- she wasn't reporting any pain at that time, no.

Q Okay. And so as far as you can recall she didn't relate to you that this fall onto the coffee table had injured her back or given her severe bruising to her legs?

A I just -- I want to make clear and I think I need to be clear on something. Myself and Officer Fraley [phonetic] responded to this report. I had a chance to it at it on OnBase, a data system where we scan old documents, and it's there for review. And I don't have those documents with me. However, both of us responded to this. There's two sections to this report. There's a front page with everybody's information, the descriptors, name, date of birth for both parties. There's a second page, which is a narrative, which is the story that's told here.

On this particular incident I reviewed this, and Officer Fraley did the narrative portion of this.

Q Okay.

A At that time I was doing the front page, the documentation of who and what was involved and their descriptors --

Q Excellent.

A -- in addition to preparing to fill out another document, which was a threat assessment which we filled out for this report. So I'm not completely -- I can't completely marry myself to this narrative, because it wasn't written by me. I didn't author this.

Q Okay. This is your -- this is your partner's report?

A Correct.

Q Okay. But you recognize his name there?

A Yes. Absolutely.

Q Okay. And you remember having been in his presence at --

A I do.

Q -- the time that you responded?

A I do.

Q Okay. Now, you had testified just a few minutes ago that it would be standard procedure that after interviewing any potential witnesses, including the victim, that you would offer them medical assistance; is that correct?

A Yes. Yes.

Q And did you do that here?

A It says that we did and it was refused by her.

Q All right. Now, Officer, when -- let me ask you this first. How many domestic violence calls for services do you think you've responded to in your time with Metro?

A In 19 years? Dozens and dozens.

Q Okay. And have you responded to calls for service where you've seen injuries before?

A Absolutely.

Q Okay. And do you contrast what is told to you by the victims or the independent witnesses with the physical evidence on the scene?

A Can you kind of --

Q Do you do anything to try to determine whether or not what's being told to you appears to be the truth?

A Yes.

Q Okay. Is it usual where if something's happened at a house they might point fingers at each other?

A Oh, yes.

Q Okay. In fact, if you find probable cause that a domestic battery has occurred, it's not unusual to make an arrest; is that correct?

A It would be procedure, yes.

Q Okay. And so might you look for injuries consistent with what the victim told you happened?

A Absolutely.

Q Might you also look for statements by the alleged perpetrator that corroborate something the victim says?

A Yes, sir.

Q Okay. And that's not unusual at all, is it?

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A No.

Q Okay. Officer, looking at the report there, do you recall whether you made a visual inspection of Ms. Duke's face or her head?

A My partner noted that there were no bumps or bruises on the top of her -- on the top of her head or forearm.

There was also a second note by Officer Fraley. It says, "There was no redness or bumps nor bruises on either side of her face."

MR. MacARTHUR: All right. Court's indulgence.

(Pause in the proceedings)

BY MR. MacARTHUR:

Q And just one more housekeeping matter, Officer, and I'm done with you.

I realize that your partner's not here to testify. Do you have any reason not to trust or rely on the representations that he made in that report?

A No, I don't.

MR. MacARTHUR: Okay. Court's indulgence, Your Honor.

(Pause in the proceedings)

BY MR. MacARTHUR:

Q One more thing. There's always one more thing, Officer. And I apologize.

In making first contact with Tina Duke did she

indicate to you what the fight was about?

A It states here in the report that apparently she hadn't filled out some paperwork to the satisfaction of her boyfriend, Mr. Harris, and that he had gotten physical with her as a result of that.

Q Okay. And had consequently battered her because of his dismay?

A That was her claim, yes, sir.

MR. MacARTHUR: Thank you, Officer. I appreciate it. I have no further questions.

THE COURT: Cross-examination?

MS. LUZAICH: Thank you.

CROSS-EXAMINATION

BY MS. LUZAICH:

Q Officer Loving, it indicates that you responded to Bally's on October 24 of 2009, somewhere around 10:00 in the morning; right?

A Yes, ma'am.

Q Does it also indicate in your report that the battery occurred on October 20th, four days earlier, at 17:00, which in people time is what, 5:00 p.m.?

A I couldn't be absolutely certain on the date without looking at it, but, yeah, I --

MS. LUZAICH: May I approach?

THE WITNESS: I do remember there was -- there was a

separation of time, yes.

BY MS. LUZAICH:

Q Would it refresh your recollection to refer to the report?

A Yes, ma'am. Please.

Yes, ma'am, that would be correct.

Q That the battery occurred on what date?

A That it occurred on the 20th of October and that she had reported the incident and made contact with us on the 24th of October.

Q So three and a half days later, because it was 5:00 at night and now it's 10:00 in the morning; right?

A Yes, ma'am.

Q And do you -- now, do you recall saying that she had told you that when she was at work that day her supervisor encouraged her to report?

A I seem to recall that, yes.

Q You mentioned that she was given a blue card. What's a blue card?

A What we refer to a blue card is it has not only the event number so a victim could refer to the courts for a protection order. It does give a good number of domestic services, including the contact numbers for the courts to get that restraining order.

Q And that's given all domestic violence situations?

A Yes, ma'am.

Q You mentioned something about a threat assessment. What's a threat assessment?

A Threat assessment was a page that was developed for the Department. There are factors that are involved that shows whether you're really at risk of further violence and even more serious violence. There's questions that are asked on, have you been beaten before, does your -- does the significant other have a gun, are there guns in the home, those kind of questions that would lead somebody to determine you're really at risk here, maybe you shouldn't be staying in the home, that kind of thing.

Q And did you tell her that she shouldn't stay in the home?

A Yes.

Q Did she indicate to you that she was going to go home, she had stuff there?

A She had indicated that she did have things there, and I believe her children were there, that she had children there. We would have told her that if she had felt the need to go ahead and go back that she should go to a location somewhere near the home, call for a police officer to respond with her. She didn't know whether or not Mr. Harris would have been home, so she would have been told, call from an area near the home, wait for a police officer to respond to go back

to that home if you want to collect belongings.

Q Is that something that you do often in domestic violence situations?

A Absolutely.

Q Now, battery constituting domestic violence, is that a misdemeanor?

A It is in this state.

Q Is that something that you can only arrest if it occurs in your presence?

A That is not true. Battery domestic violence --

Q What are the situations?

A Yeah. Battery domestic is one of those things where if we can substantiate that a battery did occur, it need not have taken place in our presence.

Q Okay. Now, since the battery had occurred three and a half days earlier, would it surprise you not to see red marks or things of that nature?

A No, it wouldn't surprise me at all.

Q And did she also indicate that she fell -- sorry, it's getting harder to read as I get older -- that she fell on her back, landing on a small table, injuring her tailbone?

A She did make that claim, yes.

Q And did she also indicate that her daughter may or may not have seen the incident because her daughter was in the home?

A She did.

Q Thank you. I have nothing further -- oh. I'm sorry. I have one more question.

Does the report indicate that it was actually assigned to a Domestic Violence detective?

A According to the page, yes, it was.

Q Is there a unit in the Detective Bureau at Metro that does handle specifically domestic violence offenses, they do followup after patrol takes an original report?

A That is correct.

MS. LUZAICH: Thank you.

THE COURT: Any redirect?

MR. MacARTHUR: Court's indulgence.

(Pause in the proceedings)

REDIRECT EXAMINATION

BY MR. MacARTHUR:

Q Just in followup, Officer, is it your recollection that when she was detailing what had happened to you she was specific in saying that the battery had happened three days beforehand? Is that correct?

A That's what's indicated in the report, yes.

Q Okay. And when people give you that kind of information you do your best to detail it in your report; right?

A I believe it is noted in the narrative of that

report.

MR. MacARTHUR: Excellent. Thank you, Officer.

THE COURT: Any recross?

MS. LUZAICH: No.

THE COURT: Thank you very much for your testimony here today. You may step down, and you are excused.

MS. ALLEN: I have more, but it's -- I didn't know if you wanted to break for lunch. It's 12:20.

MR. MacARTHUR: Let's keep going.

THE COURT: How long are they?

MS. ALLEN: I don't know. I mean --

THE COURT: Okay.

MS. LUZAICH: Can we break?

THE COURT: We can break for lunch.

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

We'll be in recess till 2:00 o'clock.

(Jury recessed at 12:24 p.m.)

THE COURT: Okay. The jury has left the courtroom.

Can you just remind me who's going to testify this afternoon.

MS. ALLEN: Yes. We have Shawn Robinson --

THE COURT: Okay.

MR. MacARTHUR: Harrison Mayo.

MS. ALLEN: Thank you.

THE COURT: Harrison?

MS. ALLEN: Harrison Mayo, and Sha'karia Bailey. Oh. And we have one more, but she's tomorrow.

THE COURT: Right. I know that there's that one witness that can only testify tomorrow. But this sounds like the rest of the afternoon.

MS. ALLEN: Oh, I don't know. I think if we resume at 2:00, pending some random stuff, I think we'll be done at 3:00, 3:30.

THE COURT: Okay. So we can still do jury instructions.

MS. ALLEN: Yeah. Oh, yeah.

THE COURT: Okay. Perfect. Perfect. But don't -- if you're not done, don't panic, because we can always do jury instructions in the morning.

MS. ALLEN: Right.

THE COURT: What time does that witness have to testify?

MS. ALLEN: No, no, no. There's no time. Tomorrow.

THE COURT: Okay.

MS. ALLEN: She had a funeral today at 11:00.

THE COURT: Oh. That's right, she had a funeral.

MS. ALLEN: And so she just was unavailable today. So tomorrow it's anytime, so we could bring her in whenever you want. As long as I know the time by the time we leave today, my investigator can call her.

THE COURT: Okay. Well, hopefully we can get them done today. I'd like to get them done today.

(Court recessed at 12:27 p.m., until 2:23 p.m.)

(Jury is present)

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

MS. LUZAICH: Yes.

MS. ALLEN: Yes, Your Honor.

THE COURT: Okay. You can call your next witness.

MS. ALLEN: Thank you, Your Honor. Sha'karia Bailey.

SHA'KARIA BAILEY, DEFENDANT'S WITNESS, SWORN

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

THE WITNESS: Sha'karia Bailey, S-H-A-'-K-A-R-I-A, last name Bailey, B-A-I-L-E-Y.

//

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?

A Ann.
Q Okay. Are you employed?
A Yes, ma'am.
Q Okay. And what kind of work do you do?
A I'm a personal care attendant.
Q Can you just tell me what that means.
A I take care of the elderly and the needy who can't take for theirselves.
Q Okay. Do you recall a time in your life where you lived on a street by the name of Trish Lane?
A Yes, ma'am.
Q Okay. Do you remember approximately how old you were when you lived on Trish Lane?
A I want to say around the age of maybe eight, nine, maybe even ten.
Q Okay. And when you initially moved into that house who lived there with you?
A Me, Lealer, Claudia Littles, which is my grandmother, and my brother Marcus.
Q Okay. Claudia would be Lealer's mother?
A Yes, ma'am.
Q All right. The four of you lived in that home; is that correct?
A Yes, ma'am.
Q At that point in time in your life did you know Fred

Harris?

A Yes, ma'am.

Q Okay. How long -- when you lived on Trish Lane or when you moved into Trish Lane how long had Fred been involved in your life?

A I want to say for maybe two years.

Q Okay. And did you know Fred -- what Fred's relationship was with your mom, with Ann?

A Yes, ma'am.

Q And what was that?

A He was my mother's boyfriend.

Q Okay. So you've known Fred for a long time; is that correct?

A Yes, ma'am.

Q All right. And is it that gentleman sitting at that table over there?

A That's my pops.

Q Okay. When you say pops, is that what you call him?

A Yes, ma'am.

Q All right. Do you consider him to have raised you, as well?

A Yes, ma'am.

Q All right. Did there come a point in time just on the house on Trish Lane where other people moved in?

A Yes, ma'am.

Q And who were those people that moved in?
A The Duke family.
Q All right. Can you tell me their names.
A Shabazz Duke, Taharah Duke, Taquanda Duke, Victoria Duke, and Mahlica Duke and Tina Duke.
Q Okay. Who was the mother?
A Tina.
Q All right. Approximately how long did they live at the house on Trish Lane?
A I want to give it -- it was there for a few year I wouldn't say years, because it wasn't years. I want to say maybe, if I'm not mistaken, eight or nine months, maybe more.
Q Okay. So they didn't live there a year; is that right?
A Correct.
Q Okay. And do you know where they went from Trish Lane?
A No.
Q All right. They just left at some point?
A Yes, ma'am.
Q All right. How is that you remember the Dukes moving into the home on Trish Lane?
A I was the only child before they came along, and I was jealous, and it felt like my mother and them was giving them more attention than what she was giving me.

Q Okay. So you weren't happy about having them there?
A No.
Q All right. Who are you closest in age to?
A Victoria Duke, which is the oldest sister.
Q All right. Do you know how far apart you are in age?
A Two and a half months, I believe.
Q Two and a half months.
A Yes.
Q Okay. So you're really close in age; is that correct?
A Yes.
Q Okay. Were you close to Victoria?
A No, ma'am.
Q All right. Who were you close to out of all those kids?
A I was closer to Mahlica Duke.
Q Okay. And was that -- was that just on Trish Lane, or was that also later, when you lived with them at Blankenship?
A Also later when I lived with them at Blankenship.
Q Okay. So the children -- or the Dukes -- and when I say the Dukes I mean Tina and all the children. The Dukes did leave the Trish Lane home at some point; is that correct?
A Yes, ma'am.

Q Did they ever come back at some point later?
A Yes, ma'am.
Q All right. And where were you living at the time that they came back?
A 966 Blankenship Avenue.
Q Okay. And do you happen to recall the year that they came back?
A Honestly, ma'am, I can't.
Q All right. No problem. You just remember that they all came back; is that right?
A Yes, ma'am.
Q When you -- when you remember them coming back, who was living in the house on Blankenship?
A It was me, which is Sha'karia, it was Taharah and Taquanda when we first started out originally.
Q Okay. At some point in time were all of them living there?
A Yes, ma'am.
Q All right. And then some of them moved out?
A Yes, ma'am.
Q Okay. The whole time that you were there were Taharah and Taquanda -- they were the constant, they were always there?
A Yes, ma'am.
Q Okay. When you lived on Trish Lane do you recall

instances of Victoria getting in trouble?

A Yes, ma'am.

Q All right. Do you recall the things that she got in trouble for?

A Yes, ma'am.

Q And what kinds of things did Victoria get in trouble for?

MS. LUZAICH: Objection.

THE WITNESS: Lying --

MS. LUZAICH: Objection. Relevance.

MS. ALLEN: Well, it goes back to -- it goes back to the bias, motive to lie. She -- well, do you want to do this at the bench?

THE COURT: Probably.

(Bench conference)

THE COURT: Okay. All four lawyers are present.

MS. LUZAICH: You can't talk of bad act evidence against victims.

MS. ALLEN: Well, it's not necessarily bad act evidence against victims. But Victoria testified that my client was making things up in order to get her in trouble to beat her.

THE COURT: Well, and Shabazz kind of --

MS. LUZAICH: Not at Trish Lane.

MS. ALLEN: Yeah, she did.

MR. MacARTHUR: Shabazz says --

MS. ALLEN: Oh, no. Victoria said -- Victoria specifically said he used to take things out of the refrigerator to blame me so he could beat me. She said that. Because I asked her about it, and the jury laughed.

THE COURT: Okay. Anything else from the State?

MS. LUZAICH: Well, I mean, I think they can ask about those things. But I don't think they can say, tell me everything she did to get in trouble for.

MR. MacARTHUR: Because we --

MS. LUZAICH: That's exactly what the question was, tell me --

MR. MacARTHUR: Because we pretrialed her we know that she's talking about those things.

THE COURT: I wrote down Victoria getting in trouble, you know --

MS. ALLEN: Do you recall instances where Victoria got in trouble --

MS. LUZAICH: You said, tell me about the things she got in trouble for.

MR. MacARTHUR: She's going to talk about things you already know about. She's not bringing anything new in.

THE COURT: Are you going to -- you're not going to go into every single instance.

MS. ALLEN: No, no.

THE COURT: Because we'd be here till the cows came home.

MS. ALLEN: Her answer was [inaudible].

MS. LUZAICH: But her answer was, "A lot."

MS. ALLEN: Well, we'll keep it -- here's the problem. Do you want me to direct her, or do you want me to lead her? I mean, so I can do --

THE COURT: You know what, probably during this part you should lead her --

MS. ALLEN: Okay.

THE COURT: -- so that she doesn't go into a complete narrative of --

MS. ALLEN: Okay.

THE COURT: -- a billion things.

MS. ALLEN: Okay.

THE COURT: I mean, because you have very specific instances you want to talk to her about.

MS. ALLEN: Yep. Yeah.

THE COURT: Okay.

MS. LUZAICH: What specific instances? They've got to be what Victoria talked about.

MS. ALLEN: Well, yeah. She talked about -- she talked about Fred stealing something out of the refrigerator and blaming her. I specifically asked Victoria if she would steal things from the refrigerator and blame her sisters. She

denied it. So I can go into all that. She said she was getting in trouble for stealing things and lying. I mean, Victoria articulated all of those things on Trish Lane, including the one I'm talking about.

THE COURT: Okay. So you're going to into the instances of conduct that Victoria testified to. Okay.

(End of bench conference)

MS. LUZAICH: I withdrew the objection.

MS. ALLEN: She's withdrawing the objection, Your Honor, so I'm going to direct her, as opposed to lead. I'm just going to ask open-ended questions. The State withdrew the objection.

THE COURT: Okay. Go ahead.

BY MS. ALLEN:

Q All right. Do you -- I think that the question I asked you was do you recall specific instances in which Victoria got in trouble.

A Yes.

Q Okay. And can you recall as you sit here some of those instances?

A Yes.

Q Okay. Can you give me an example of something that she got in trouble for at Trish Lane?

A Yes. For example, Victoria had got caught stealing juice out of the kitchen where we stayed at, and she blamed it

on Taharah and Taquanda.

Q Okay. And who confronted her? Do you remember?

A My mom.

Q Okay. So your mom confronted her. And did she deny it, did she agree that she did it, what happened?

A She denied it.

Q Okay. Was there some reason why you knew she was lying?

A Because I watched her.

Q Okay. You'd actually watched her do that?

A Yes, ma'am.

Q Okay. Were there other instances that she got in trouble while you were living on Trish Lane?

A I can't recall any.

Q Specifically?

A Pacifically.

Q Okay. All right. Do you recall -- do you recall having problems with Victoria, as well, while you were living on Trish Lane?

A Can you please rephrase that?

Q Yeah. No problem. Do you recall personally did you have problems with Victoria while you were living on Trish Lane?

A No, ma'am.

Q Okay. So I'm going to fast forward, then, to

Blankenship. You were -- at some point you moved to this house on Blankenship; is that correct?

A Yes, ma'am.

Q Okay. And I don't remember if I asked you this or not. But who lived at Blankenship before the Dukes moved in?

A Before the Dukes moved in? Like any of the Dukes are you referring to?

Q Any of the Dukes. Before they moved in who lived on Blankenship?

A Me, my mom, Fred, my grandmother, and my brother.

Q Okay. So your mother was still alive when you moved into Blankenship?

A Yes, ma'am.

Q At some point did your mother -- or did your grandmother pass away?

A Yes, ma'am.

Q Okay. And that's Claudia?

A Yes.

Q Okay. Were there specific instances -- do you recall specific instances on Blankenship where -- well, let me ask you this.

You were all kids growing up together, teenagers and younger children; is that correct?

A Yes, ma'am.

Q Did all of you get in trouble?

A Yes, ma'am.

Q Okay. Had you personally been in trouble with either or mom or Fred?

A Yes, ma'am.

Q Okay. And do you recall an instance where you got in trouble by Fred?

A Yes. For talking back.

Q All right. Had Fred -- what was Fred's punishment for you?

A I got a whuppin.

Q Okay. And how many times did that happen?

A It only happened once. That's all I needed was one time.

Q Okay. So you learned the first time?

A Yes.

Q Okay. Do you recall if this whuppin -- well, let me ask you this. When -- after this whuppin did you have any problems in the area where it happened?

A No.

Q And what area was that?

A My booty.

Q Okay. All right. Your bottom?

A Yes.

Q Okay. And was there blood, bruising, anything?

A No.

Q All right. Had you seen Fred discipline any of the Duke children like that?

A What do you mean like that?

Q Well, let me ask you this. Were there other things Fred to discipline you?

A Yes.

Q What were those things?

A Push-ups, or he'd take the game system away.

Q Okay. So he would -- was it a progressive punishment? He would start with one and then move on to the next and then on to the next?

A Depends on what you did.

Q Okay. If it was really, really bad what would he generally do?

A Take the game away, 'cause he know kids are attached to games.

Q Okay.

A So that's normally what he would do.

Q Okay. And then push-ups. You had to do push-ups?

A Yes. I tried.

Q Okay. All right. Did you see him have any of the Duke kids do those type of things?

A Yes.

Q Okay.

A He made them do push-ups, also.

Q Okay. Do you remember an instance -- you recall an instance in which Shabazz got in trouble; is that correct?

A Yes.

Q Do you recall why he got in trouble?

A He had got in trouble for stealing -- a little boy stole his juice at school, and he beat the boy up.

Q Okay. And what did Fred do?

A He gave him a whuppin and made him do push-ups, and he had to do chores.

Q Okay. When you say whuppin what do you mean?

A Just with the belt whuppin.

Q Okay. When it happened to you was it painful?

A What whuppin feels good?

Q It feels good?

A No. I said what whuppin do feel good? None. So yes.

Q Pardon?

THE COURT: I misunderstood what she said, too.

MS. ALLEN: Me, too, Your Honor. I thought oh.

BY MS. ALLEN:

Q Okay. So was it -- did you end up going to the hospital after you got yours?

A No.

Q All right. You were able to walk out?

A Yes.

Q Okay. Did you see him -- did you see him actually whup Shabazz?

A Yes.

Q Okay. Was it any different than yours?

A No.

Q All right. Did Shabazz seem normal after that?

A Yes.

MS. ALLEN: Court's indulgence.

(Pause in the proceedings)

BY MS. ALLEN:

Q Do you recall an instance at any time of Fred coming home and just randomly beating people?

A No.

Q All right.

A Never.

Q What would it require for a punishment in your house with Fred?

A Bad grades, talking back, or we didn't do chores.

Q All right. Or beating a kid up at school?

A Or -- yes, ma'am.

Q Okay. Something like that. What about stealing things?

A Yes. He didn't like a stealer.

Q He didn't like it. Okay. Was there -- do you recall an instance in which Taquanda was accused of stealing

something?

A Yes.

Q Okay. And what was that, do you remember?

A She stole my pink vibrator.

Q Okay. And how did you end up finding that this happened?

A I sent Taharah and Taquanda to the candy lady down the street so that I have time to search their rooms. So during the process of them being gone I searched the room and I found my vibrator in her drawer. And then --

Q Did you confront her?

A Yes. Once they got home I had confronted her. And Taquanda, she has a habit of pulling on her clothes and making a little sound that she makes when she's lying. And --

Q Okay. So when Taquanda's not telling the truth you said she pulls on her clothes?

A Yes. Like she fidgets a lot.

Q She fidgets?

A Yes, ma'am.

Q And you said she makes a sound?

A Yeah. She (clicking tongue).

Q All right. And is that your -- when she starts doing that in your mind that's when you know she's lying?

A Yes, ma'am.

Q All right. What did Taquanda do? Did she deny it?

What happened?

A She denied it. She basically pointed the finger to Taharah.

Q Okay. And did you confront Taharah?

A I confronted Taharah, but Taharah told me she didn't do it. And I believed Taharah for the fact is Taharah never was in my room the way Taquanda was in my room.

Q All right. Okay. Do you remember when Taharah and Taquanda were living there that they would occasionally visit at their mom's house?

A Yes, ma'am.

Q All right. Do you remember approximately how often they would go to their mom's house?

A Sometimes Mom would let them go over for the weekend. But then when the summer vacation came she let them go for the summer vacation.

Q Okay. So they spent considerable amounts of time with their mom?

A Yes, ma'am.

Q Okay. Did you notice a difference in those girls when they came back from their mom's house?

A Yes, ma'am.

Q Okay. And what kind of things did you notice that were different about them?

A They had a smacky little attitude, and they tried to

be grown with wearing makeup.

Q Okay. And were they -- would you've considered -- they were younger than you; is that right?

A They was the age around eight or nine.

Q Okay. And you said they were trying to be grown up, wearing makeup. What was their appearance when they came back from Mom's?

A Having on I guess eye -- no, the mascara and the eyeliner.

Q Okay. All right. They were wearing makeup.

A Yes, ma'am.

Q Were they normally allowed to wear makeup at your house?

A No, ma'am.

Q Okay. And you said they came back with attitudes?

A Yes.

Q When you say an attitude what do you mean?

A Talking back.

Q All right. And was that to everybody?

A To everybody.

MS. ALLEN: Okay. Sorry. I apologize, Your Honor.

THE COURT: No problem.

BY MS. ALLEN:

Q Okay. Was there -- was there an instance in which you and Victoria would babysit the younger children?

A Yes, ma'am.

Q All right. When would that come up?

A That would only come up on special occasions, such as Valentine's day, Mom's or Pop's birthday.

Q All right. And where would your parents -- Mom and Fred be? Where would they be?

A They'd either go out to Red Lobster or to I think that the club was called Seven Seas.

Q Okay. So they went out.

A Yes.

Q Okay. And you guys would care for the younger children?

A Yes.

Q All right. Was there -- did something happen in one of the times that you were caring for the kids that caused you some concern?

A Yes, ma'am.

Q Okay. Can you explain what happened.

A The time was we were all playing hide-and-go-seek in the house, and I had overheard Victoria tell Taharah to come and tell me that Fred had touched her.

Q Okay.

A So I took it upon myself to go and ask Taharah, and Taharah said, what, what are you talking about, no that never happened.

Q Okay. Did she eventually come clean and tell you that Victoria had done this?

A Yes.

MS. LUZAICH: Objection. Leading.

THE COURT: Sustained.

BY MS. ALLEN:

Q Upon further questioning what did they say?

A Taharah eventually came forward to me the next day and told me that Victoria had told her to come and tell me.

Q Okay. Do you remember approximately when that was?

A I want to say she probably -- Taharah -- if I'm not mistaken, Taharah's the oldest out of Taharah and Taquanda. So I want to say probably around the age of nine, ten.

Q Okay.

A Because she's older.

Q Okay. You mean she's older than Taquanda?

A Yes.

Q Okay. All right. All right. You have a brother by the name of Marcus?

A Yes.

Q Okay. Can you describe Marcus.

A He stands about six one, six two, dark skin, low-cut [unintelligible], he has big lips.

Q Okay. All right. Is he older or younger than you?

A He's older than me.

Q Okay. And that's Lealer's son, as well; is that correct? Ann's son.

A Yes.

Q Okay. Do you recall -- do you recall a time when your mom took -- well, let me ask you this. Does Marcus have guardianship of someone?

A Yes. My niece, Marquia [phonetic].

Q Marquia. Okay. And is Marquia disabled?

A Yes. She has cerebral palsy.

Q Do you recall a time in which your mom took Marquia to a doctor?

A Yes, ma'am.

Q Okay. What kind of doctor was it?

A OB-GYN.

Q Did anybody else go with her?

A Yes, ma'am. Taharah Duke and Taquanda Duke.

Q Okay. So it was Marquia and Taharah and Taquanda. Who else?

A And my mom and Marcus.

Q Okay. Marcus accompanied your mom on that visit; is that correct?

A Yes. Because he's the guardian of Marquia.

Q Okay. And does she refer to him as her son?

A Yes.

Q Okay. Okay. Did Victoria ever -- well, so you were

never that close to Victoria; is that correct?

A Correct.

Q Do you recall if Victoria ever made any statements about Fred?

A Yes.

Q Okay. Can you tell me what those were.

MS. LUZAICH: Objection. Foundation.

THE COURT: Sustained.

BY MS. ALLEN:

Q Okay. Do you recall when she made this particular statement to you?

A I don't recall. I know we were both staying at 966 Blankenship. This is when they came back. And --

Q So they'd just come back -- or they had -- they'd come back from wherever, you're not sure where they were?

A I don't know where they went.

Q Okay. Do you recall where you were when she said it to you? Well, let me ask you this. This particular statement I'm asking you about, has she said it to you more than once?

A Yes.

Q Okay. Do you know how many times she said it to you?

A I want to take a estimate of maybe three or maybe more.

Q Okay. So it's not just one day, it's --

A It's constantly.

Q Okay. She was saying -- she said this to you a number of times?

A Yes.

MS. ALLEN: Okay. Court's indulgence.

(Pause in the proceedings)

BY MS. ALLEN:

Q How does Victoria feel about Fred?

MS. LUZAICH: Objection.

THE COURT: Sustained. Speculation.

BY MS. ALLEN;

Q Has Victoria told you how she feels about Fred?

A Yes.

Q Okay. And what we're talking about she said a number of times?

A Yes.

Q Okay. Can you tell me what it is that she said.

MS. LUZAICH: Objection. Hearsay.

MS. ALLEN: It's a prior inconsistent statement. I asked Victoria about this on cross-examination.

THE COURT: Okay. I'll allow it.

BY MS. ALLEN:

Q Go ahead.

A Victoria -- basically the way she said it is that she has hatred her heart toward Fred Harris --

Q Okay.

A -- and that he was going to pay.

Q All right. And did she explain to you why?

A She basically said that the reason why was because her mom kept leaving them just to come and see Fred.

Q Okay. So she blamed Fred for that?

A Yes.

Q Okay. And she said this to you on more than one occasion; is that correct?

A Yes, ma'am.

MS. ALLEN: Okay. Thank you.

Judge, may I approach?

THE COURT: Of course.

MS. ALLEN: Thank you.

BY MS. ALLEN:

Q Defense Exhibits J and D. And you lived at the house on Blankenship; is that correct?

A Yes, ma'am.

Q If I showed you two pictures, would you be able to identify those pictures for me?

A Yes.

Q And if you can't --

A Yes.

Q Do you recognize those pictures?

A Yes.

Q Okay. What are those pictures of?
A Our laundry room.
Q At Blankenship?
A Yes, 966 Blankenship.
Q Okay. In addition to a washer and dryer in that room were there other things in that room?
A It was a ironing board behind the door, a trash can that set right by the door.
Q Okay. How big was the room?
A Small.
Q Okay. Do you -- in your mind can you picture the size and height of Taquanda?
A Yes, I can.
Q Okay. Could five people who are like her size and height fit in that laundry room with the washer and dryer?
A No.
MS. ALLEN: Okay. Your Honor, I -- oh. Court's indulgence. Sorry.
(Pause in the proceedings)
BY MS. ALLEN:
Q In your interactions with Victoria -- you previously testified that when -- you knew Taquanda was lying because she would pull on something and --
A She fidgets.
Q She fidgets. Okay. Had you had experience with

Victoria in the same vein? Had you had experience with Victoria lying to you?

A Yes.

Q Okay. What is it Victoria did in your -- when you -- in your experience what is it she did when she was lying?

A She looks away.

Q She looks away. Okay. You -- how would you have -- if you were to describe Mahlica today, how would you describe her?

A Very quiet. An observer.

Q Okay. But you were closer -- I'm sorry. What?

A A very observer. She's an observer.

Q She's an observer. Okay. And you were close with her; is that correct?

A Yes.

Q You really liked Mahlica?

A Yes.

Q How would you describe Victoria?

A Compulsive liar.

MS. LUZAICH: Objection. Move to strike. That is completely inappropriate.

THE COURT: Sustained. The motion to strike is granted. The jury is instructed to disregard the answer just given by the witness.

MS. ALLEN: Well, let me -- I apologize, Your Honor.

THE COURT: That's okay.

(Pause in the proceedings)

MS. ALLEN: Your Honor, I'd pass the witness.

THE COURT: Cross-examination.

MS. LUZAICH: Thank you.

CROSS-EXAMINATION

BY MS. LUZAICH:

Q Are we boring you, Sha'karia?

A No. I'm just tired.

Q Okay. You don't like Victoria at all, do you?

A No.

Q Well, let me ask you this. If a man put his penis in your 12-year-old vagina, would you have hatred in your heart for him?

MS. ALLEN: Judge, objection.

THE COURT: Sustained.

MS. LUZAICH: On what grounds? Objection on what grounds?

MS. ALLEN: How is that relevant, Your Honor?

THE COURT: I don't believe it's relevant.

BY MS. LUZAICH:

Q Okay. You're jealous of Victoria; correct?

A No.

Q No?

A No.

Q So when you told Ms. --

A You said am I jealous of her? Excuse me?

Q So when you told Ms. Allen on direct examination that you were jealous of those kids you were lying?

A No, I wasn't lying.

Q So you are jealous of Victoria?

A When you define jealousy in my eyes I was jealous that they were in my home.

Q Okay. Your home. Did you live in the Trish Lane home the whole time that your mom lived there?

A Yes, ma'am.

Q Did you live in the Blankenship home the whole time that your mom lived there?

A No, ma'am.

Q How often -- or how long did you live in the Blankenship home?

A I lived in the Blankenship home from the year 2007 when my grandmother passed away to the year of 2010. Then I moved out. I went and graduated high school, and I came back in April of 2012.

Q Okay. So you came and left?

A Yes, ma'am.

Q So there were long periods of time that they lived there and you did not?

A Yes, ma'am.

Q When did you move into the Trish Lane home?
A When you ask when are you expecting a year? Because --
THE COURT: She's expecting a date.
THE WITNESS: A date?
THE COURT: Uh-huh. The best you can.
THE WITNESS: I can't recall the date that I moved in.
BY MS. LUZAICH:
Q Okay. What year did you move into the Trish Lane home?
A I want to say year 2004 or '05.
Q How old were you when you moved into the Trish Lane home?
A Like maybe around eight or nine.
Q What grade were you going into when you moved into the Trish Lane home?
A Probably around third or fourth. I don't recall.
Q Okay. When did you move into the Blankenship home?
A When I was at the age of 14.
Q What year was that?
A I don't recall the year.
Q What's your date of birth?
A 9/5/92. September 5th.
Q So what grade did you start when you were living in

the Blankenship home?

A When I lived on Blankenship I started out in the seventh -- no, the sixth.

Q Okay. So you don't really remember much of anything, do you?

A I don't remember my years of school.

Q Okay. Now, you said that Victoria got in trouble for stealing juice from the refrigerator. Did she take juice and drink it?

A Yes, she took the juice and drinked it, but it was past our bedtime.

Q Okay. So because it was past her bedtime you call that stealing it?

A In the house that's what mom called it, yes.

Q Okay. Drinking juice is stealing it. Okay. And I'm sorry. Your grandmother passed away. When was that?

A In the year 2007.

Q Do you know when in 2007?

A February 5th.

Q At the time that you lost your grandmother were the Duke family not living here?

A They wasn't staying the home with us, no.

Q Okay. Now, the time that Fred or Pops beat you with the belt -- or, sorry, you called it gave you a whuppin, did it leave marks on your behind?

A No, ma'am.
Q What school did you go to for middle school?
A Michael Callihan and West Prep.
Q And was that the difference between living at Trish Lane and Blankenship?
A Yes, ma'am.
Q Where'd you go to high school?
A Canyon Springs High School. Also Del Sol High School is where I graduated.
Q Okay. So you went to school essentially with Mahlica and Victoria.
A Yes, ma'am.
Q You were not in Special Ed classes like they were; correct?
A No, ma'am.
Q You talked about you called Taquanda having stolen your pink vibrator. Did you see her take it?
A I didn't see her take it, but it was found in Taquanda's drawer.
Q Yeah, I heard that. You don't know how it got in Taquanda's drawer, though, do you?
A No, ma'am.
Q You didn't see her put it in the drawer; correct?
A No, ma'am.
Q And it's just your personal opinion that fidgeting

and making a sound means she's lying. Is it possible that she fidgets when she's not lying?

A I don't believe so.

Q Why?

A I never seen Taquanda do that when she wasn't lying. Taquanda tells the truth, and when she tells the truth she looks you in your eye.

Q Okay. So that's your personal opinion.

A Yes, ma'am.

Q And you said Vicky looks away when she lies. Have you ever seen Vicky look away for any other reason?

A No. Not when you're speaking with her.

Q Well, how often did you speak with her?

A We stayed in the same house. I had to talk to her on a daily basis.

Q Well, you don't have to.

A Well, that's -- in our household it wouldn't be right. That's just like you staying in a house with somebody you walk past them on a daily basis and don't speak.

Q Is there a reason that you have an attitude with me?

A I'm not -- that's my attitude.

Q Oh. Okay. Are you -- are you angry that your mother was arrested as a result of the Duke kids?

A No.

Q Not at all?

A (No audible response)

Q You need to answer out loud for the court recorder.

A No.

Q Are you angry that your mother was prosecuted as a result --

MS. ALLEN: Your Honor, objection. Can we approach?

THE COURT: Are you okay?

THE WITNESS: I just had to clear my throat.

THE COURT: All right. Do you want some water?

THE WITNESS: Yeah.

THE COURT: Okay. We'll get you some water.

(Bench conference)

THE COURT: I didn't hear it, because she did that.

MS. ALLEN: I know. She's asking about Lealer being prosecuted by the DA's Office.

MR. MacARTHUR: Right.

MS. LUZAICH: I wasn't going to ask [inaudible] --

MS. ALLEN: That's getting very close. I mean, she's trying to bait her into doing that, and I'm concerned.

MS. LUZAICH: It's bias.

MS. ALLEN: Like I told her under no -- certain circumstances to bring up Lealer's conviction.

MS. LUZAICH: And I'm not going to do that.

THE COURT: Okay. And I heard Ms. Luzaich say, I don't know, a couple of days ago she wasn't going to bring in

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the jail [inaudible].

MS. ALLEN: I understand that. Well, I'm concerned she's going to get [unintelligible] to try and get her to say that.

MS. LUZAICH: No.

THE COURT: Okay.

MS. LUZAICH: Just my last question is, and aren't you angry that your mother was prosecuted for -- as a result of the Duke kids.

MS. ALLEN: Okay. All right.

THE COURT: Right. Because I think it goes to bias.

MS. ALLEN: Okay.

THE COURT: You can ask it.

(End of bench conference)

THE COURT: Okay. The State --

Are you okay?

THE WITNESS: Uh-huh.

THE COURT: All right.

BY MS. LUZAICH:

Q So are you saying that you're not angry that your mother was prosecuted as a result of the Duke kids?

A No, ma'am.

MS. LUZAICH: Okay. I have nothing further.

THE COURT: Redirect?

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.

Q Okay.

A And going to Fitzgerald High -- no Elementary.

Q Fitzgerald Elementary. Okay. So tell what happened? She came home with it?

A She came home with --

MS. LUZAICH: Well, again, objection. Foundation. Unless she saw her take it, she can't testify that she did.

THE COURT: Right. You may want to lay some foundation --

MS. ALLEN: All right.

THE COURT: -- as to how she has this knowledge.

BY MS. ALLEN:

Q All right. How did you come to find out that she had taken it?

A My mom asked her where she got the bracelet from.

Q Okay. And what kind of bracelet was it?

A A diabetic bracelet.

Q Okay. Was it eventually returned to the girl?

A Yes, ma'am.

Q All right. You interacted with -- well, when you went to Canyon Springs did you interact with Victoria, Mahlica, and Shabazz on a daily basis?

A No.

MS. LUZAICH: Well, objection. Beyond the scope.

MS. ALLEN: She asked her about Canyon Springs and

Victoria.

THE COURT: Overruled. I'm going to allow it.

BY MS. ALLEN:

Q When you went to Canyon Springs did you interact with Victoria and Shabazz and Mahlica on a daily basis?

A No.

MS. ALLEN: Okay. Court's indulgence.

(Pause in the proceedings)

MS. ALLEN: Can we approach for a second?

THE COURT: Sure.

(Bench conference)

MS. LUZAICH: I'd like to object to her staying.

THE COURT: All four lawyers are present.

MS. ALLEN: So I do have a question that's outside the scope of direct, and so if the State objects, that's fine. I'll just --

THE COURT: Well, I mean, that's the whole problem. Then you'll ask to reopen direct.

MS. ALLEN: Right. I'd ask to reopen. I do have a question [inaudible].

THE COURT: You're asking to reopen direct? Okay.

MS. ALLEN: Taharah -- I asked Taharah specifically had she taken inappropriate pictures of herself on cell phone, and this witness knows about that. I forgot to ask her --

MS. LUZAICH: Well, I mean, did she see the -- I

mean, what's the relevance?

THE COURT: Now, remember -- now, remember what Taharah said. She did not deny taking the pictures.

MR. MacARTHUR: She did -- she said she --

MS. LUZAICH: She said they were

MR. MacARTHUR: -- took them, but that they weren't inappropriate.

THE COURT: She said she didn't think were inappropriate. You used the term "inappropriate." She said she didn't think they were inappropriate, but there was really no description of it. I think you asked her something to the effect of did you have on less clothes than you have on today.

MS. LUZAICH: Right.

THE COURT: And --

MS. ALLEN: She said no. I think she said no or --

MS. LUZAICH: No. She said, I was wearing clothes.

MS. ALLEN: Well, she said --

MS. LUZAICH: Well, she said --

MR. MacARTHUR: You're both right. She said no, and she said, I'm wearing --

MS. LUZAICH: What were the pictures?

MR. MacARTHUR: -- what I -- the same amount of clothes.

MS. ALLEN: She took pictures of herself, like her butt, like her pants down and her shirt up and stuff.

THE COURT: Like naked?

MS. LUZAICH: Showing her boobs?

MS. ALLEN: No. Right here. Right up to here and like her pants down. You could see her panties.

MS. LUZAICH: Well, in her mind that's not inappropriate. I mean, if she was showing boobs, that's --

THE COURT: But she said she had clothes on.

MR. MacARTHUR: She said she had the same amount of clothes that she --

MS. LUZAICH: She did. They were just --

MS. ALLEN: Hold on. The Judge wants to talk.

THE COURT: Let me just ask this. Was any skin showing --

MS. ALLEN: Yeah.

THE COURT: -- any boobs?

MS. ALLEN: Shirt was pulled up, pants were down, so her panties exposed and her panties.

MS. LUZAICH: But her panties were on.

THE COURT: Her panties, so her butt wasn't exposed?

MS. LUZAICH: So she was wearing --

MS. ALLEN: Her butt was exposed and her panties were on.

MS. LUZAICH: Her panties were on. She was wearing the same thing or more -- she was wearing a bathing suit.

THE COURT: Okay. A bare butt? It was her bare

butt?

MS. ALLEN: I don't know. I don't think so.

THE COURT: Okay. And the other one, what, was her shirt?

MS. ALLEN: Her shirt was -- she was pulling her shirt up.

MS. LUZAICH: But her boobs were not exposed.

THE COURT: I understand that. But she -- I mean --

MS. LUZAICH: I mean, in your mind and my mind it's suggestive. But in a 12 -- and she was less than 12, because now she's 12.

THE COURT: Right. Now, we probably all think that's inappropriate because of the age she was at the time. But you asked were the -- she admitted that there were pictures, she admitted that the mom took them away, but --

MS. LUZAICH: But she still had clothes on. Because she did.

THE COURT: Yeah.

MR. MacARTHUR: She made it sound like she didn't raise her shirt and lower her pants.

MS. LUZAICH: She wasn't asked the question.

MR. MacARTHUR: She was asked, were you wearing fewer clothes than you are now. And she said no.

MS. LUZAICH: And she's not. They were just rearranged.

MR. MacARTHUR: That seems a little [unintelligible].

THE COURT: That's correct. All right. But, in all fairness, we're talking about Taharah.

MS. ALLEN: Well, I mean --

MS. LUZAICH: But if you had asked, were your shirt pulled up and she denied it, then I agree. Was your pants pulled down.

THE COURT: Was your shirt pulled up with your pants pulled down [inaudible] ask it.

MS. ALLEN: That's fine.

THE COURT: Okay. Do you want to still reopen direct?

MS. ALLEN: Not if you're not going to let me ask those questions.

THE COURT: Okay. Anything else?

MS. LUZAICH: I just have one question.

THE COURT: Okay.

(End of bench conference)

THE COURT: All right. And so, Ms. Allen, you're going to pass the witness?

MS. ALLEN: Yes, Your Honor.

THE COURT: Okay.

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RECROSS-EXAMINATION

BY MS. LUZAICH:

Q Sha'karia, how many years older than Taquanda are you?

A Today? I don't know her age. I want to say probably 10.

Q You're 10 years older than here?

A Probably so. Maybe more.

Q And you haven't lived with them -- well, the time that you were talking about with the bracelet, how long ago was that?

A About three years ago.

Q Maybe more?

A Maybe more.

MS. LUZAICH: Thanks.

Oh. I have nothing further.

THE COURT: Oh. You're done?

MS. LUZAICH: Yeah. Yes. Thank you. Sorry.

THE COURT: Okay. Thank you very much for your testimony here today. You may step down, and you are excused from your subpoena. Thank you again for being here.

THE WITNESS: Can I take my water?

THE COURT: Of course you can. Of course.

Ms. Allen, do you have the next --

MS. ALLEN: Yes, Your Honor.

THE COURT: Okay.

MS. ALLEN: Court's indulgence.

THE COURT: Sure.

(Pause in the proceedings)

MS. ALLEN: John Robinson, Your Honor.

THE COURT: John Robinson?

MS. ALLEN: Yes.

THE CLERK: Raise your right hand.

JOHN ROBINSON, DEFENDANT'S WITNESS, SWORN

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

THE WITNESS: John Robinson, R-O-B-I-N-S-O-N.

MS. ALLEN: Good afternoon, John. Oh. I apologize. May I proceed?

THE COURT: Absolutely.

MS. ALLEN: Thank you.

DIRECT EXAMINATION

BY MS. ALLEN:

Q Good afternoon, John. How are you?

A Good. How are you doing?

Q I'm good. Thank you.

Do you know Frederick Harris?

A Yes, I do.

Q How do you know him?

A That is my oldest brother.

Q All right. And he's here today. Is that right?

A Yes, he is.

Q And he's sitting over here?

A Yes, he is.

Q All right. You've known him your whole life then; is that correct?

A Correct.

Q Okay. I'm going to jump right into this, and at some point, you brought -- well, let me ask you this. Do you know the Dukes?

A Yes.

Q Okay. Do you know -- you know all the children and the mother?

A Yes, I do.

Q At some point were you the person who brought them from Louisiana to Las Vegas?

A Yes. I did.

Q Okay. How did you do that? Did you pick them up in a car and drive them?

A Yes, I did. It was a difficult matter, but it happened.

Q Okay. I'm going to skip right to your brother living in 966 Blankenship. Do you recall him living in that house?

A Yes, I do.

Q Okay. Did you at some point live around the corner or in the same neighborhood as Fred?

A Yes. I stayed actually maybe three to five minutes walking distance.

Q Okay. What was the name of the street you lived on?

A Yankee Avenue.

Q Okay. And do you remember approximately the years that you lived there?

A Sometime late of 2006 to 2010.

Q Okay. So approximately '06 to 2010.

A Yes.

Q Okay. And those are just estimates; is that right?

A Yes, just estimates.

Q All right. How often would you go to your brother's house?

A It's my brother. Maybe five days a week.

Q Okay. What do you do for a living?

A Move furniture, drive trucks.

Q Okay. All right. Is that locally or is that elsewhere, what is -- how's --

A Well, for pretty much for the last 20 years locally.

Q Okay.

A And occasionally going out of town.

Q Okay. Was there a reason you had to go to your

brother's house that much or where you just there to visit. What was the circumstances?

A It's my older brother. I get a lot of advice from him. He had tools. I didn't have the proper tools to do my job.

Q Okay.

A And using his tools would kind of put -- set me aside from the other workers. So if I showed up and I had tools then I got chosen.

Q Okay. So you'd borrow his stuff?

A Yes.

Q All right. In the times that you were over at his house did you interact with the Dukes?

A Yes. Yes. Yes.

Q What kinds of things did you guys do as a family, let's say?

A I mean, birthday parties. Any kind of events. Anything that was going on in Vegas when it's so so hot, water balloon fights or just the normal family activities.

Q Okay. What about things with like -- what about religious-type things. Did you have anything like that?

A Yes. We would, I mean, church every Sunday.

Q Okay.

A And just any activity to just kind of make ourselves better.

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Q Okay. Were the Dukes involved in these activities?
A Yes.
Q Okay.
A Yes.
Q Did you personally do anything to try to help the Dukes?
A Yes. All the time.
Q All right. What kinds of things did you do?
A Any given chance that I will see them in a need, you know, I was -- I'm the baby so I kind of understood and wanted -- wouldn't mind having smaller siblings, and I looked at them and I seen the need and I would step in. And plus give them incentives as, you know, if they done some good or if they was going to -- or they wanted to go somewhere with the other kids, they wasn't too comfortable with their dress code, I will see to it that they would be in a comfortable state.
Q Okay. So you wanted to make sure that they felt comfortable with the other kids?
A Well, just being comfortable.
Q Okay. Did you also do something as far as grades?
A Yes. Yes. I used to get -- as an incentive for myself, if I done something I would get some kind of reward for it. And I knew that they were in a big need and I know that they want it. So my proposal to them, if they ever brought anything good, done anything weren't racist or in

school, brought home A's, I would give them $7 bucks and A.

Q Okay. All right. Do you remember who got the most money?

A The baby.

Q Okay. Taquanda.

A Taquanda, yes.

Q She did well.

A All the time. She would try to at least.

Q Okay.

A She would try to.

Q All right. So you remember giving her money for A's?

A Yes. Yes. Yes.

Q Okay. At some point in time did you become closer with Victoria?

A Yes.

Q Okay. And of the children where did she fall in that -- was she oldest, youngest, middle?

A She was the oldest of the group.

Q Okay. Did you start having her over to the house or did you start doing things with her?

A Yes. I saw in her that she was pretty much, I mean, I guess from day one she was challenged, you know, and I pretty much wanted to whatever I could have her in a comfortable setting, mentally and everything. And she always

placed herself as, I don't know and you know, just kind of, you know, you know, with her it was pretty much left or right, and you know, you got what you got when you got it, and I mean, with her, I mean, at the --

Q Let me start -- let me ask you some questions real quick as a foundation.

A Okay.

Q Do you -- are you married now?

A Yes, I am married.

Q Okay. Back when you were interacting with Victoria, were you married?

A No.

Q Okay. Is it the same woman?

A Same woman.

Q All right. Do you have any children?

A Yes.

Q All right. How many children?

A Three.

Q And did you have these children when Victoria was coming to your house?

A Yes.

Q All right. So your children are a little older now?

A Yes.

Q All right. Did you have Victoria do anything at your house?

A Yeah. It got to a point to where Victoria was not comfortable, you know, just -- and she just wanted more and more and more. I see her at church and she would have this, you know, like, you know, I wish I can go with you or something like that. And, okay, come on, you know, and I would have her ride with me and we all be going back home or going out to eat or going somewhere, you know. And she came to the house, and I think after she -- something happened to where she got in trouble or what ever and went off. I'm like, you know, you can come in kind of stay with me, you know.

Q Okay. So she got in trouble, let's say with someone else, like Fred or Ann or someone else, or her mom; is that right?

A Well, just being mischievous and trying to -- and it's just with the crowd.

MS. LUZAICH: Well, objection.

MS. ALLEN: I'm not trying to elicit that information. So hold on.

BY MS. ALLEN:

Q But she got in trouble for something and you don't know what that is; is that right?

A Yes.

Q Okay. And you decided you were going to try to take her under you wing; is that right?

A Yeah. I'm pretty much like the uncle.

Q Okay. All right. Did you have, at any point, did you start having problems with Victoria in your home?

A Yes.

Q Okay. What kinds of problems did you --

MS. LUZAICH: Objection. Relevance.

MS. ALLEN: Well, they --

MS. LUZAICH: Can we approach?

MS. ALLEN: Sure.

THE COURT: Yes. Yes.

(Bench Conference)

MS. ALLEN: I asked Victoria if she ever babysat for John, and she said no. I asked Victoria if she ever stole anything from his house, and she said no. I asked Victoria if she had ever told John that living in Vegas at Fred and Ann's house was the best she'd ever had it in her whole life, and she said no. Those are all the things I'm eliciting.

MS. LUZAICH: That's not what that sounds like.

MS. ALLEN: Yeah.

THE COURT: Okay. But that's where you're going?

MS. ALLEN: Yeah.

THE COURT: Okay.

MS. ALLEN: Oh, yeah, I'm not trying to get into it. There's nothing else. That's why I --

MS. LUZAICH: Yeah, but he's rambling on.

MS. ALLEN: He's got -- I told you he's got --

MR. MacARTHUR: He's got brain damage.

MS. LUZAICH: I know. I understand.

MS. ALLEN: He has a traumatic brain injury.

THE COURT: Okay.

MS. ALLEN: So I'm trying to be very careful. So I can lead a little more, if you'd like me to.

MS. LUZAICH: But the problem with traumatic brain injury is we don't know how accurate his perception --

MS. ALLEN: That's [inaudible] perception.

MS. LUZAICH: But we don't know how accurate his perceptions are.

MS. ALLEN: Well --

MR. MacARTHUR: That all comes out in cross; right?

MS. LUZAICH: Because all of the --

THE COURT: Well, I guess that can come out on cross.

MS. LUZAICH: Well, but now I have to ask about it.

THE COURT: Yeah.

MS. ALLEN: Okay. Well, if that's what you -- I mean, if that's what you want to do, that's fine.

MS. LUZAICH: Well, because all of the things that you're going to talk about happened after his injury.

MR. MacARTHUR: Right.

MS. LUZAICH: So we don't know if they really happened or if he inaccurately perceived things.

MR. MacARTHUR: Okay.

MS. ALLEN: Okay.

MS. LUZAICH: So --

MR. MacARTHUR: It's appropriate for cross.

THE COURT: So the objection's overruled.

(End of bench conference)

THE COURT: You may proceed.

MS. ALLEN: Thank you.

BY MS. ALLEN:

Q Do you need some water?

A No, I've got some. Thanks.

Q Okay. I think I asked you if you started having problems with Victoria in the home, and you said yes; is that correct?

A Yes.

Q Okay. And briefly, I don't need you to go through a whole litany of them, but just can you tell me a couple of the problems that you had with her?

A Well, things was coming up missing and misplaced and there would be one found within her possession. Another thing was, you know, the inappropriateness of -- we had two bathrooms and one time she would, you know, I caught her coming out the bathroom and she didn't have to. She just had a towel over her front part, and you know, and I just frowned up. You know, my wife was -- you know, my girl at the time

wasn't at home and by me coming home from work, you know, I kind of like, you know, looked at her like, you know.

Q Okay. So you weren't happy with that?

A No. No, I wasn't happy.

Q When you confronted her with things coming up missing, specifically what were the two things that you mentioned coming -- that you remember coming up missing?

A Just school supplies and money.

Q Okay. When you say school supplies, whose school supplies were they?

A My kids.

Q All right. And you said you would find them in her things; is that right?

A Yes.

Q Okay. Did you ever confront Victoria about that?

A Yes, I did.

Q And what was her reaction?

A Just like always, just boo hoo, just you know, cry, cry, cry, you know, just --

Q Okay. When you're doing this you mean cry?

A And -- but cry with no tears. And I'm like no, you know. It's just some unbelievable thing, you know.

Q Okay. Was your experience with Victoria -- what was -- strike that. When you -- in the times that you interacted with Victoria what would she do if she was confronted with

something that she did?

A Well, she would, you know, she would deny, you know, and then cry.

Q Okay.

A Well, pretty much, I don't know what to call it, but my definition of crying is, you know, you cry.

Q Okay.

A Your tears. You know your emotions hit.

Q Okay.

A But what she was doing is just maybe to my understanding just making attention go to something else.

Q Okay. By the way, well, a couple more questions. But during the time that you were interacting with Victoria, you said you were sort of trying to help her; is that right?

A Yes, ma'am.

Q Okay. Do you recall her ever making any sort of statements about living -- sort of living with Fred and Ann or her time in Las Vegas. Do you recall that?

A Yes. She spoke highly about being around Blankenship.

Q Okay.

A She spoke that she did not like being too much around at my mom's.

Q Okay.

A Due to her being strict, you know.

Q Okay.

A But she always highly recommended like, I'm glad. I'm so happy about you guys coming and accepting us into your life, and that was the most of it.

Q That was her talking that --

A Yes.

Q -- she was happy to be here?

A Yes. Always had, and I mean, with the glow. She had a glow about it.

Q All right. At least in that respect, she seemed sincere?

A Yes.

Q Okay.

A Yes.

Q I'm going to ask you just a real quick question with regard to -- you had an accident; is that correct?

A I did, yes.

Q Okay. And this was approximately in 2005; is that right?

A Yes, at the end of 2004, yes.

Q Okay. Was it a very serious accident?

A Yes, it was. I lost a good friend of mine that was -- we was pretty much at that point in time planning on getting married, and she was my fiance and an 18-wheeler came over and -- well, just came out of his lane and ran us off the

road.

Q Okay. And so you lost your finance in the accident; is that correct?

A Yes, ma'am, I did.

Q And did it -- you spent a while in the hospital; is that correct?

A Yes. I pretty much, you know, was in the hospital and just out of commission to do anything.

Q Okay. And you suffered some very serious injuries; is that correct?

A Yes.

Q Okay.

A Severed liver and just -- I still have marks on me from it.

Q Okay. You indicated to your face.

A Yes. My face and chest and stomach area.

Q Okay.

A Legs.

Q All right. Okay. Did you -- well, you suffered sort of an injury to your head; is that correct?

A Yes.

Q Okay. Do you recall the accident at all?

A Yes.

Q You recall some of it?

A Some of it.

Q It took you a long time to recuperate; is that correct?

A Yes, it did.

Q Okay.

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

THE COURT: Cross.

MS. LUZAICH: Thank you.

CROSS-EXAMINATION

BY MS. LUZAICH:

Q Good afternoon, Mr. Robinson. And I apologize, I just want to ask you one little question about that accident.

When you had the head injury was there some brain injury, as well?

A To my fiance, yes.

Q Your fiance was deceased; correct?

A Yes.

Q To yourself was there some brain injury from the accident?

A No brain injury to me, just as upper lip or just real -- just cuts.

Q Okay. When you just said that Victoria spoke about her time at Blankenship very highly, but that she didn't like being with her mom. Do you remember saying that?

A She didn't like being with her mom?

Q Yes.

MS. ALLEN: No. That misstates his testimony. His mom, Dorothy. He said Dorothy.

BY MS. LUZAICH:

Q Oh, your mom?

A Yes. She didn't --

Q Oh, I'm sorry. I thought you said her mom. Okay. Did you -- well -- how often would Victoria come to your house?

MS. ALLEN: Could we just have a, if you can, set a time frame.

BY MS. LUZAICH:

Q When you lived in the house at Yankee.

A Well, she actually stayed with me at Yankee for a month and a half.

Q And when was that?

A A month and a half of the time that I was there? I really can't point out, you know --

Q Okay.

A -- the frame. But it had to be -- I mean, I would be kind of guessing.

Q Okay. When did you leave Yankee?

A '09. '09.

Q '09 not --

A 2009.

Q Not 2010?

A well --

Q I mean a minute ago you said 2010. Was that a mistake?

A Not a mistake. Actually when you, I mean, I'm a truck driver. You know, if you majority -- even when you pay your taxes you have to -- if you was there, then you was there. And let's say majority of '09 I was there.

Q Okay. Did you not live at Yankee in 2010 at all?

A I can't recall to say that I did, I may have been there for a month or two.

Q Okay.

A I should have been there for a month or two, because -- and actually, I should -- yeah, I think I can see '10 I been in there. Yes. Yes.

Q Okay. So you think you were there for a while in '10.

A I know I was there, let's say before the moving season started, and that would have been April to May.

Q Okay. So when Victoria stayed with you for the month and a half was that closer to the end of the time that you lived at Yankee, was it in the beginning of the time you lived Yankee, when?

A In between. You know, it was in between. So she was -- I mean, we was basically settled and we wasn't planning on moving at the time when she was there, you know, actually

staying there, and pretty much trying progress with her. You know, actually, the two younger siblings went to the school that's right behind my house off of Yankee. I can't think of the school name, but it's basically walking distance.

Q Okay. Your three children, how close in age are they to Taharah and Taquanda, the youngest two Duke kids?

A My kids are 11, 20, and 9, now.

Q So they're barely younger than Taharah and Taquanda.

A I really can't recall what age they are now. But at the time they were about just thicker kids, healthy, maybe more bigger. My kids was kind of small. My wife is 110 pounds, and my kids are, I mean my girl is 60 some pounds, and my two boys are like 45 pounds. My 11 year old is the smallest.

Q Okay. But are they close in age, not height or weight, close in age to Taharah and Taquanda?

A I really can't say the age, but the mentality same, somewhat.

Q Despite the fact that they're younger, they're on the same level kind of?

A I can't call that one, you know, I mean, kids are kids. They playing and, you know, it's they all want to go to Chuck E. Cheese and --

Q Would you say that Victoria was on the same age level as your kids?

A Well --

Q Mentality, I meant.

A No. She's -- no. Because I wouldn't let her babysit my kids if I kind of thought she would be more harm harm, you know. But that's a tough one there. I can't really call, because I really can't -- you know, I'm not that educated to say what level, you know, Victoria's on.

MS. LUZAICH: Okay. Thank you, Mr. Robinson.

I have no more questions.

MS. ALLEN: No, Your Honor. Nothing.

THE COURT: Thank you very much for your testimony here today. You may step down. And you are excused from your subpoena.

THE WITNESS: Awesome. Awesome.

THE COURT: Thank you.

MR. MacARTHUR: We have another witness ready, Judge.

THE COURT: Sure.

MR. MacARTHUR: Should we bathroom break, or would you like to do it next?

MS. LUZAICH: It's Harrison Mayo; right?

MR. MacARTHUR: Yeah.

MS. LUZAICH: He's going to be quick.

MS. ALLEN: Should be.

MR. MacARTHUR: He is.

THE COURT: Is everyone okay to keep going? Okay. You can call your next witness.

MR. MacARTHUR: Defense will call Harrison Mayo, Your Honor.

THE CLERK: Please raise your right hand.

HARRISON MAYO, DEFENDANT'S WITNESS, SWORN

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

THE WITNESS: My first name is Harrison, H-A-R-R-I-S-O-N, my last name is Mayo, M-A-Y-O.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. MACARTHUR:

Q Good afternoon, Mr. Mayo.

A Good afternoon.

Q How are you employed?

A I am employed with the Nevada Investigative Group, it's a PI firm.

Q Okay. And how long have you been employed in that capacity?

A A little over three years.

Q A little over three years. And how old are you now?

A Sixty.

Q Sixty. Did you have a career before you worked for

Nevada Investigative Group?

A Yes, I did.

Q Okay. And what did you do?

A I was a detective with the Las Vegas Metropolitan Police Department.

Q And how many years did you do that?

A Twenty-five.

Q Okay. And when you -- I'm sorry. Did you retire from Metro?

A Yes, I did.

Q Okay. And when you retired what was your rank there?

A I was a Senior Detective in the robbery homicide bureau.

Q Did you ever think the first time that I examined you you'd be being called as a defense witness?

MS. LUZAICH: Objection.

THE COURT: Sustained.

MR. MacARTHUR: Withdrawn, Judge.

BY MR. MacARTHUR:

Q Mr. Mayo, how did you come to be affiliated with this case?

A I was assigned to this case to assist Attorney Allen with the investigation.

Q Okay. Is that Betsy Allen?

A Yes.

Q Okay. And are you being paid for the work that you do?

A Yes, I am.

Q Okay. And how do you get paid for that?

A I get paid by Clark County through the Office of Appointed Counsel.

MS. LUZAICH: Well, objection.

THE COURT: Sustained.

BY MR. MacARTHUR:

Q Okay. And who is your -- do you have a boss or supervisor?

A Yes.

Q Okay. And who is that?

A Craig Retke.

Q Okay. And is Mr. Retke the owner of Nevada Investigative Group?

A Yes, he is.

Q Okay. Did you know him before you worked for the firm?

A Yes, I did.

Q Okay. In what capacity?

A He was a Intel detective for Metro.

Q Okay. Also here in Las Vegas, Nevada?

A Yes.

Q Okay. Now, in your time as a detective did you ever have occasion to testify in court?

A Yes, I have.

Q How many times?

A God. Over a twenty-five year career, multiple times.

Q Okay. Is it fair to say that you typically testified as a prosecution witness?

A Yes, I have.

Q Do you have any experience working with Lisa Luzaich from the D.A.'s office?

A Yes, I have.

Q All right. When was that?

A Pardon me.

MS. LUZAICH: Objection. Relevance.

THE COURT: What's the relevance to that?

MR. MacARTHUR: Just establishes -- I'll withdraw the question.

THE COURT: Thank you.

BY MR. MacARTHUR:

Q Was all of your case work exclusively in robbery?

A No.

Q What other areas?

A I started out in patrol, selective enforcement, street level narcotics, the gang unit, administrative detail,

auto theft, general assignment, internal affairs, and back to robbery.

Q Okay. Did you ever do any work with homicide?

A I had -- I've worked a couple homicide cases, yes.

Q All right. Now, when you were appointed to work in this case were you provided with certain documentary information?

A Yes, I was.

Q Okay. And do we commonly refer to that as discovery?

A Yes.

Q Okay. And in that discovery did you see voluntary statements?

A Yes, I did.

Q Medical records?

A Yes, sir.

Q Photos, et cetera?

A Yes.

Q Okay. Did you educate yourself as to the information contained in those documents?

A Yes, I did.

Q All right. Now, based on -- well, first let me back up. Did you perform certain investigation on behalf of the defense?

A Yes, I did.

Q Okay. And did those investigations take you to any particular geographic locations?

A Yes, they did.

Q Okay. And was one of those locations an address at 966 Blankenship?

A Yes, it was.

Q Okay. If you would, I keep wanting to call you Detective Mayo. Mr. Mayo, when did you go to 966 Blankenship?

A I don't recall.

Q Okay. Was it this year or last year?

A I want to say it was last year.

Q Okay.

A It's April. Yeah. I want to say it was last year.

Q Okay. And what did you do while you were there?

A I after going inside the residence I spoke with the young lady that was living there and explained why I was there.

Q Do you remember who the young lady might have been?

A Sharika [sic] Bailey.

Q Would that have been Sha'karia Bailey?

A Yes.

Q Okay. And what else did you do while you were there?

A Like I say, I explained to her why I was there and asked her if I could look around the house.

Q Did she permit you to do that?
A Yes, she did.
Q Okay. And what areas of the house in particular did you focus on?
A I went through the whole house, but I was primarily concerned with the laundry room.
Q And why was that?
A Because after reading the discovery I -- this is where this incident was allegedly to have taken place.
Q Okay. One incident in particular?
A Yes.
Q Okay. Did you take any photos while you were at the house?
A Yes, I did.
Q Okay. I'm going to approach with two photos that have been admitted into evidence, Defense's Exhibits J and D. Do you recognize these photos, Mr. Mayo?
A Yes, I do.
Q Okay. And do you recognize those as photos that you took?
A Yes, sir.
Q Okay. And do they fairly and accurately depict what it is you saw there in the laundry room?
A Yes.
Q Okay.

MR. MacARTHUR: Permission to publish, Your Honor.

THE COURT: You may.

BY MR. MacARTHUR:

Q And between D and J, which do you think is the better descriptor for --

A Which is a better descriptor?

Q Well, actually I'll -- let me put them up first. Tell me if you need me to switch out.

Okay. And this is Defense D. All right. Mr. Mayo. if you would, please tell us what we're -- what we're looking at in Defense D.

A You're looking at a dryer that's in the laundry room.

Q Okay. Anything else?

A The washer's next to it with a bunch of stuff around it.

Q Okay. And why did you take this picture in particular?

A Because this is where I was told this incident took place.

Q Okay. And I don't see any point of reference. Were you able to form an opinion or make an estimate as to the size or the dimensions of this room?

A Yes. The room is really small. The washer and dryer barely fit in there. They were like wall-to-wall.

Q Okay.
A But there was a couple of feet in front of it.
Q A couple of feet?
A Yeah. In front of the machines.
Q Okay. I don't see a door there. Is there a door to that room?
A Yes, it is.
Q Is there anything significant about that door given the size of this room?
A Open all the way toward the right.
Q Okay. Now, having been inside of that room, how much space is there in front of that washer and dryer before you either hit the door or you hit a wall?
A About two feet. Like I says, it's a very small room, two, 2-1/2 feet. Just enough room for the door to open and close.
Q Just enough room for the door to open and close. Is there enough room for a couple of people to also stand in the room and then freely open or close the door?
MS. LUZAICH: Objection. Speculation.
BY MR. MacARTHUR:
Q If you know. I mean, you were there, I haven't -- I'm not?
THE COURT: Do you know?
THE WITNESS: Yes.

THE COURT: Okay. You can answer.

THE WITNESS: You'd have to -- you'd have to go inside of it and move over to the left in order to close the door.

BY MR. MacARTHUR:

Q Okay. And so you could conceivably get the door closed?

A Yes.

Q Okay. How many people -- well, actually, let's not start with how many people. You've been in the room. When you were standing in it how many people of your size do you think could stand in that room with you?

MS. LUZAICH: Well, objection. Unless he stood in there with more than one person his size, he can't say.

THE COURT: I agree.

MR. MacARTHUR: That question was asked by the State to Taquanda, who I would estimate has less ability to do that, and Taquanda's testimony is that five other people her size.

MS. LUZAICH: I most certainly did not ask that question.

MR. MacARTHUR: Sorry, Judge. I just got burned. I think that was we who asked that question.

THE COURT: That's okay.

MR. MacARTHUR: There having been no objection to it by the State, I would ask if I can --

THE COURT: The objection's sustained.

MR. MacARTHUR: Yes, ma'am.

BY MR. MacARTHUR:

Q And, if you would, Mr. Mayo, regarding Defense J, is this the same room?

A Yes, it is.

Q Okay. And why did you take the photo from this perspective?

A I was trying to show the distance between the front of the dryer, up until the door facing.

Q Okay. And your testimony was that that was a couple of feet.

A A few feet, yeah.

Q While you were at the Blankenship address did you have occasion to take note of its layout?

A Yes, I did.

Q Okay. And when you took note of its layout did you record that at all or did you document it at all?

A Yes, I did.

Q Okay. And what did you do or what did you cause to be created?

A This schematic.

Q You realize I can see it, but what we're going to do is lay some foundation for it.

A Okay.

Q And so what is it you attempted to document?
A The entire layout of the house.
Q Like a blueprint?
A Yes.
Q Okay. Did you do that?
A Yes, I did.
Q Okay. And is it to scale, does it have measurements?
A No.
Q Okay. Just a layout in general?
A Yes.
Q Okay. And is this your handwriting?
A Yes, it is.
Q All right. And does it fairly and accurately depict the layout of the house that you visited and took photographs in?
A Yes, it is.
Q Okay.
MR. MacARTHUR: This time, Your Honor, we would move for the admission of Defense Proposed Exhibit R.
MS. LUZAICH: No objection.
THE COURT: It's admitted.
(Defense Exhibit R admitted)
MR. MacARTHUR: Permission to publish?
THE COURT: You may.

BY MR. MacARTHUR:

Q All right. Mr. Mayo, if you would, please take us on a tour of the 966 Blankenship house?

A Okay.

Q And just for your convenience, on the monitor you can touch it, if you like, and it will leave marks behind, or at least maybe you can. I don't appear to have that ability.

A The house itself faces south. This is the front door.

Q Okay.

A All right. And it goes right into the living room area, which is right here.

Q Okay.

A The kitchen is over here, and the dining room is right next to it. From there you go down the hallway going east through the house, which leads to the back bedroom area.

Q Okay. And is that a hallway we see there?

A Yes. Right, right here.

Q Okay.

A Which leads to another hallway that you turn right going south, which is right -- oops -- here.

Q Okay. How -- sorry. How many bedrooms were there total?

A Three. Wait. Four.

Q Okay. Is that including a master bedroom?

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A Yes.

Q Okay. Did you collect any information as to what bedrooms belonged to what occupants back when the Duke family lived in the Blankenship address?

A Yes, I did.

Q Okay. If you could, would you please show the jury which bedroom would have belonged to Taquanda and Taharah Duke, the two youngest Duke children?

A Okay. What I was told was --

MS. LUZAICH: Objection. Foundation. There was testimony that they changed rooms all the time.

THE COURT: That they changed. There was testimony that --

MR. MacARTHUR: Yes.

THE COURT: -- the rooms changed. So --

MR. MacARTHUR: Actually, I believe you're correct, Your Honor.

BY MR. MacARTHUR:

Q All right. You had already testified that you were familiar with an allegation that had been made against Fred Harris. Specifically involving a laundry room that you've already testified about and a Taharah Duke; is that correct?

A Yes.

Q Okay. And you were aware of that allegation before you went to the Blankenship house?

A Yes.

Q Okay. And did that allegation come from the fall or late summer of 2012?

A Yes.

Q Okay. And so for the purposes of your testimony, do you know what -- which bedroom belonged to Taquanda and Taharah in the summer of 2012?

A It's this bedroom right here, right across from the laundry room.

Q Okay. And if you would, please tell the jury where the laundry room is?

A Laundry room is right there.

Q Okay. And so we appear to have two rooms that are opposite each other in the same hallway; is that correct?

A Yes.

Q Are the doors directly in front of each other?

A No. They're offset a little.

Q They're offset. Okay. From your position in the laundry room or the bedroom, were you able to see from one room into the other?

A Only if you stood in front of the door you would see where the dryer is.

Q Okay.

A Like if you came out this bedroom right here --

Q Yes.

A -- you could only see across -- anyway -- from the door to the laundry room door.

Q Right. Did you note whether or not there were any mirrors in the laundry room or the bedroom that would have allotted you to have a better view from one from to the other?

A I never saw any mirrors in that bedroom.

Q You didn't see any mirrors in the bedroom?

A No. I don't recall seeing any mirrors in the bedroom.

Q Okay. Was that significant to you when you made that discovery?

A Yes.

Q Why was that significant?

A Because doing my investigation I was told that Taquanda was able to look in the mirror and see what was going on in the laundry room.

Q Okay. And based on your investigation did you find that to be a correct state of affairs?

A No.

Q Okay. At the bottom of your blueprint of the house, I see that you've got something in parenthetical. Could you tell us what that is?

MS. ALLEN: Jonathan, move it over. It's on a --

MR. MacARTHUR: Oh. Because it's on the purple.

//

BY MR. MacARTHUR:

Q You have something in your own handwriting in parenthesis at the bottom.

A That the washer and dryer were -- in the laundry room it was a tight space.

Q A tight space.

A Yeah.

Q Okay. And why did you note that it was a tight space? Why was that significant to you?

A Because I was told that this is where --

MS. LUZAICH: Objection. Hearsay.

THE COURT: Sustained.

BY MR. MacARTHUR:

Q Let me provide proper foundation. You had access to voluntary statements; is that correct?

A Yes.

Q Okay. And so when you say you were told, is somebody tell you or is this information that was available in discovery?

A It was available in discovery. That was my mistake, but --

Q And so apparently Taquanda is telling someone.

MS. LUZAICH: Well, objection. It's still hearsay.

THE COURT: Sustained.

MS. LUZAICH: And it's double hearsay.

MR. MacARTHUR: All right. Withdrawn, Judge.

BY MR. MacARTHUR:

Q Mr. Mayo, in continuing your investigation did you have occasion to visit another site?

A Another site? I went to several places during this investigation.

Q Okay. Well, I'll be more specific, then. Did you have occasion to go to the medical office of a Dr. Gondy?

A Yes, I did.

Q Okay. And if you would, why did you want to make contact with Dr. Gondy?

A I'd been to Dr. Gondy's office on at least three occasions trying to obtain a medical report on Taharah Duke.

Q Okay. Then let me refer to the first visit. Was there something about your understanding of the case that led you to want to speak to Dr. Gondy?

A Yes.

Q Okay. And what was that?

A After I obtained a copy of the medical report, she listed something in the medical report that wasn't documented.

Q Okay. And what was -- what was that that she had listed that you didn't find additional documentation for?

MS. LUZAICH: Objection. Hearsay.

THE COURT: Sustained.

MR. MacARTHUR: I didn't ask about the substance of

it, Your Honor. And it's furthermore part of the testimony brought by the State when they questioned Dr. Gondy.

THE COURT: It's still going to call for hearsay.

MR. MacARTHUR: All right. Court's indulgence.

BY MR. MacARTHUR:

Q Detective, were you aware of a medical report in which Dr. Gondy had drawn a conclusion of possible sexual abuse?

A Yes, sir.

Q And is that regarding Taharah Duke?

A Yes, sir.

Q Okay. Did you find any additional supporting documents for that conclusion when you were going through the discovery?

A No, sir.

Q Okay. And so did you make contact with Dr. Gondy?

A Yes, I did.

Q All right. And did you have an opportunity to discuss with her this document and/or its support?

A Yes, sir.

Q Okay. And in speaking with Dr. Gondy did she articulate why she had indicated possible sexual abuse?

MS. LUZAICH: Well, other than yes or no, objection. Hearsay.

MR. MacARTHUR: Right.

THE COURT: You can answer yes or no.

MR. MacARTHUR: If I might, Your Honor. She could not recall.

THE COURT: He can answer yes or no at this point.

MS. ALLEN: Well, can we approach?

(Bench Conference)

THE COURT: All four lawyers are present.

MR. MacARTHUR: Okay. It's our position that it's a prior inconsistent statement.

MS. LUZAICH: But what are you trying to elicit?

THE COURT: Tell me what you want to ask him and what you're trying to elicit.

MR. MacARTHUR: Okay. I'm going to ask him, did she provide you with a basis for why she indicated possible sexual abuse. Now, when she came into court she said that it was the HPV that made her indicate possible sexual abuse, but when he contacted her she couldn't remember why she'd indicated it, because she didn't make any supporting notes.

MS. LUZAICH: She told the Court that the guardian told her that.

MS. ALLEN: She put -- when we interviewed her, because I was there, why did you put possible sexual abuse in here? She's like, you know, I really don't know.

MR. MacARTHUR: Furthermore, she, I mean, she --

THE COURT: You know what, can I just ask a

question. Why in the world was this investigator allowed to talk to Dr. Gondy? I mean, is that --

MR. MacARTHUR: Why did he talk to her?

THE COURT: Because that's --

MS. LUZAICH: I agree. Shame on Dr. Gondy.

THE COURT: -- called -- Dr. Gondy. Unless there was a HIPAA authorization.

MS. ALLEN: We did have a court order, Your Honor.

THE COURT: Okay.

MS. ALLEN: You gave it to us.

THE COURT: All right. I just wanted to make sure.

MS. ALLEN: I was with him.

THE COURT: Okay. That's all I wanted to know.

MS. ALLEN: Yeah. We had one.

THE COURT: I was thinking, I sure hope I did sign something.

MS. ALLEN: You did. That State agreed to it.

THE COURT: Okay.

MR. MacARTHUR: So, in short, her -- she didn't have a very good recollection as to why she had made the note she did. We were somewhat surprised when she came in and testified that it was the HPV that led her to indicate possible sexual abuse. And additionally she described essentially the defendant as having been present during the exam.

MS. LUZAICH: But that's fine. I agree that her description of the person with her is a prior inconsistent statement when you asked about that. But as far as the support for the possible sexual abuse I disagree. She said that the guardian -- she testified that the guardian told her that.

MR. MacARTHUR: But that -- she said that for the first time in trial.

MS. ALLEN: Wait a second. Which is fine, except when we asked her about it, we said, why is this possible -- why did you put possible sexual abuse in here. Her response to us was, I don't know. She's like, I can't figure it out.

MS. LUZAICH: Maybe she just didn't want to talk to you.

MS. ALLEN: Okay. She had a court order and she was --

MS. LUZAICH: But that doesn't mean she has to talk to you.

MS. ALLEN: She was very open about everything else. It's still a prior inconsistent statement. It doesn't matter if she didn't want to talk to us or not. It's still a prior inconsistent statement.

THE COURT: Okay. So your representation is you asked her why she put it there.

MR. MacARTHUR: Yes.

THE COURT: She said, I don't know.

MR. MacARTHUR: After checking to see if she can find support documents, which she couldn't locate.

MS. ALLEN: She couldn't find.

MR. MacARTHUR: She said she couldn't remember.

MS. ALLEN: She's like, I don't know.

MR. MacARTHUR: I don't know why I put that there.

MS. ALLEN: Yeah.

THE COURT: Okay. The objection's overruled. They can ask it.

(End of bench conference)

THE COURT: The objection's overruled. You can ask the question.

MR. MacARTHUR: Thank you, Your Honor.

BY MR. MacARTHUR:

Q All right. Mr. Mayo, did you have an opportunity to talk to Dr. Gondy about that conclusion she had drawn and her possible support for that conclusion?

A Yes, but --

Q Okay.

A -- I wasn't the only one there when I spoke with her about this.

Q Okay. So let me be clear. Who was -- who else was present when you were speaking with Dr. Gondy?

A Attorney Allen.

Q Betsy Allen?

A Yes.

Q Okay. And so did you -- well, I guess I asked that already. Did Dr. Gondy provide -- what did Dr. Gondy tell you was her reason for having concluded possible sexual abuse for Taharah?

A Well, after she -- we provided her the copy of the medical record that we had.

Q Yes, sir.

A She said she didn't know why she put that in there.

Q Okay. Did she give any specifics as to why she couldn't figure out why she put that there?

A No.

Q Did she make any attempts to locate supporting documents?

A No, she didn't.

Q Did she appear to have a good recollection of the exam itself, or the patient?

MS. LUZAICH: Well --

THE WITNESS: Yes, she did.

MS. LUZAICH: Withdrawn.

THE WITNESS: Yes, she did.

BY MR. MacARTHUR:

Q Okay. And since she appeared to have a decent recollection was she able to recount for you who had been

present during the exam of Taharah or Taquanda?

A Yes, she did. She accounted for what she described as a grandmother bringing the kids in with the father.

Q Okay. And were you able to determine who the grandmother was?

A It really wasn't the grandmother. It was -- it turned out to be during my investigation, it turned out to be her guardian.

Q Who was?

A Lealer Cook.

Q Okay. And who was the son that was being referred to?

A It was her son Marcus.

MS. LUZAICH: Well, objection. Speculation. I mean --

THE COURT: Sustained. Unless you can lay some foundation.

BY MR. MacARTHUR:

Q All right. During your investigation did you have occasion to speak with more than one individual?

A Oh, yes.

Q Okay. And without going into any details as to what these people told you, were you able to satisfy yourself that you knew who Lealer Cooks was?

A Yes.

Q Okay. Did you know who Marcus, I don't know if his last name is Cooks, but were you able to satisfy yourself that you knew who he was?

A Yes.

Q Okay. Did you know who all the individual Duke children were?

A Yes.

MR. MacARTHUR: Court's indulgence. No further questions for Mr. Mayo, Your Honor.

THE COURT: Any cross?

MS. LUZAICH: Just briefly.

CROSS-EXAMINATION

BY MS. LUZAICH:

Q Good afternoon, Mr. Mayo. You do know me; right?

A Yes, I do.

Q There are a lots of retired police officers that become private investigators; correct?

A That's true.

Q And with yourself and Mr. Retke there are others, as well, aren't there?

A Yes, there is.

Q When you went to 966 Blankenship you said you met with Sha'karia.

A Yes, I did.

Q That would be Lealer Cook's daughter?

A Yes.

Q So kind of Fred Harris's girlfriend's daughter.

A Yes.

Q She was quite helpful with you, was she not?

A Yes.

Q When you went into the -- now, that diagram that's not to scale; correct?

A No, it was not to scale.

Q And you're not a crime scene analyst. You did a good job, but you weren't taking measurements for the entire house; correct?

A Right. No, I wasn't.

Q When you went and you took photographs, you took a photograph of the laundry room -- or two photographs of the laundry room from outside; right?

A Yes.

Q You did not go inside the laundry room and take a photograph from that perspective?

A No.

Q And two people could have fit in the laundry room with the door closed or at least cracked or whatever; correct?

A Yes.

Q The two bedrooms, and I'm going to refer you to your diagram, which for the record is without my glasses, I believe Defense Exhibit R.

Sorry about that. I should have told you I was going to use it.

There are two bedrooms on the east side of the -- here. Okay. On the east side of the house; correct?

A Yes.

Q Next to each other. You said you didn't see mirrors in this one that's closest to the garage. Did you see mirrors in the other one?

A No.

Q Now, when you -- you know that the testimony or the statements or whatever were that that incident occurred in May of 2012; right? You would agree with me?

A Yes.

Q You did not go to the house in May of 2012; correct?

A No.

Q You did not go to the house in June of 2012?

A No.

Q In fact you did not go to the house during any time that Taharah and Taquanda Duke lived in the house; correct?

A No, I didn't.

Q And you don't really know what, if any, changes were made to the house after they moved out in September of 2012; do you?

A No, I don't.

Q And from September of 2012, until the time that you

went was a year, maybe?

A It's quite a while.

Q Maybe even more than a year?

A I'm not sure, but it was a while.

Q A long time.

A Uh-huh.

Q Okay. Now, when you went to Dr. Gondy's office, you said you had medical records with her -- with you, I'm sorry. The ones that she had given you and you were talking to her about them, you and Ms. Allen?

A Yes. We had obtained a copy of Taharah Duke's medical record.

Q Okay. And you said that when you asked her about why she wrote possible sexual abuse, she told you she didn't know?

A She didn't know.

Q She didn't tell you, like she testified here, that the guardian told her that or the woman with the child told her that?

A She, if I recall, she told us that she thought the kid was sexually active with some boy.

Q Okay. Well, I move to strike.

MS. ALLEN: Your Honor, she asked the question.

MS. LUZAICH: Nonresponsive.

MR. MacARTHUR: The State asked the question.

MS. LUZAICH: No. I asked a yes or no question.

THE COURT: The motion is granted.

BY MS. LUZAICH:

Q Did you go through papers with her and point to anything while you were talking to her? You know, like what about this, what about this, what about this.

A No. Attorney Allen did most of the conversation with her.

Q Oh. So you were just standing there listening. You weren't interacting with her as much.

A I questioned -- I had a few questions I asked, but yeah.

Q Okay. And is it possible that maybe she just didn't want to tell you, the defense investigator?

A I don't know.

Q Is it possible? Have you ever encountered that before that somebody didn't want to talk to a defense investigator?

A I -- yes. As a police officer there were people that they didn't want to talk to me.

Q I bet a lot of people didn't want to talk to you as a police officer; correct?

A That's true.

Q Did you tell Dr. Gondy that you were an investigator for the defendant?

A I didn't lay it out like that.

Q How'd you phrase it?

A I -- like I said, I'd been to Dr. Gondy's office at least three times before that visit. I gave them my card and Attorney Allen's card. So they knew who we were.

Q Does Attorney Allen's card say, attorney for defendant Fred Harris?

A No. It's not spelled out like that.

Q Does your card say defense investigator?

A No, it doesn't.

Q So you never told her that you were the defense investigator?

A I never told her that, no.

Q Did you tell her office, though?

A I told them who I was and why I was there.

Q Okay. Thank you.

MS. LUZAICH: I don't have anymore questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. MacARTHUR:

Q Mr. Mayo, the State's questions were, did you say this or --

MR. MacARTHUR: I apologize, Your Honor.

THE COURT: That's okay.

//

BY MR. MacARTHUR:

Q The State just asked you some questions about did you tell Dr. Gondy this or that. Do you remember that?

A Yes.

Q Okay. Were you there -- were you the only person there talking to Dr. Gondy?

A No.

Q Okay. I believe you testified earlier that Betsy Allen was there.

A Yes, she was.

Q Did she explain to Dr. Gondy who the two of you were and why you were there?

A Yes, she did.

Q Okay. Did Dr. Gondy appear to have any problem with that?

A No, she didn't.

Q And was she otherwise cooperative when you asked her questions?

A Yes, she was.

Q All right. Lastly, Mr. Mayo, you had testified about the condition of the room as you saw it in 2013; is that correct?

A Yes.

Q And you testified that there's no way for you to know whether or not there were mirrors or something had

changed in the room. Do you remember that testimony?

A Yes.

Q Okay. Do you recall whether or not the room had closet doors?

A You know, no I don't. Like I said, I just peeked in the room.

Q Okay. Do you think you would have noticed if the closet had had large sliding mirrored doors?

A Yes.

Q Okay. You don't remember having seen anything like that do you?

A Like I said, I just peeked in the room. I focused on the laundry room.

MR. MacARTHUR: Understood. Thank you, Mr. Mayo.

THE COURT: Any other questions?

MS. LUZAICH: No, thank you.

THE COURT: Okay. It looks like -- if you can just hold on a minute. It looks like we have a question from one of the jurors.

All right. Can the attorneys meet me in the hallway.

(Hallway bench conference)

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

MR. MacARTHUR: We do, Your Honor.

MS. LUZAICH: Yes.

THE COURT: Okay. At this time I'm going to ask you a question. Did Dr. Gondy's admission of not knowing why she put that in there in reference to putting sexual assault in her report come prior to or after the defense questioned Dr. Gondy on Thursday, April 3rd, 2014?

THE WITNESS: It was -- you mean the report was done? Is that what you're asking me?

THE COURT: I can ask the question again. Did Dr. Gondy's admission of not knowing why she put that in there in reference to putting sexual assault in her report come prior to or after the defense questioned Dr. Gondy on Thursday, April 3rd, 2014?

THE WITNESS: Prior to.

THE COURT: Okay. Does the State have any follow up?

MS. LUZAICH: I have one question based on that.

RECROSS-EXAMINATION

BY MS. LUZAICH:

Q And Dr. Gondy's notes said possible sexual abuse; correct? Not sexual assault.

A Right. Yes. Possible sexual abuse.

MS. LUZAICH: Thank you.

THE COURT: Anything from the Defense?

MR. MacARTHUR: No, Your Honor.

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

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you for being here.

Okay. So we're going to conclude for the day; correct?

MS. ALLEN: Oh. I apologize, Your Honor.

THE COURT: I just want to make sure we're concluding for the day.

MS. ALLEN: We are. Yes, Your Honor, we're concluding for the day.

THE COURT: Okay. All right. We're going to conclude for the day. I'm just going to tell you what's going to happen next. From what I understand there's going to be one more witness that will testify tomorrow. After that witness testifies you'll be instructed on the law, both sides will have an opportunity to speak to you in their closing argument, and then you will be excused to deliberate upon your verdict. So based upon that I believe that we will be done tomorrow.

We're going to start tomorrow morning at 10:00 o'clock.

During this recess you're admonished not to talk or converse amongst yourselves or with anyone else on any subject connected with this trial, or read, watch, or listen to any

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

Thank you very much. And we'll see you tomorrow morning at 10:00 a.m.

(Jury not present)

THE COURT: Okay. I have Pam working on some corrections, so we'll go back in chambers as soon as she's done. And we'll work off of my set, so I hope that's not too confusing. I like to just work off of one set. So she'll -- or the set you gave to me with just changes.

MS. LUZAICH: Okay. Yeah. You know, we have -- I mean, I've provided them with a hard copy, as well, so we'd at least each have one in our hands.

THE COURT: Okay.

(Court recessed at 4:08 p.m., until the following day, Friday, April 11, 2014, at 10:00 a.m.)

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EXHIBITS

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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

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CLARK COUNTY, NEVADA
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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:	TRANSCRIPTION BY:
KRISTINE CORNELIUS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

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

LAS VEGAS, NEVADA, FRIDAY, APRIL 11, 2014, 9:52 A.M.

(Court was called to order)

(Jury is not present)

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

THE COURT: That's okay.

MS. LUZAICH: We need to instructions and --

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

MS. ALLEN: Oh. Okay. All right.

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

THE MARSHAL: -- books in here; right?

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

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

And, Ms. Luzaich, that instruction was in.

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

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

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

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

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: Yes, ma'am.

THE COURT: And you're ready to proceed?

THE COURT: Yes, ma'am.

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

THE DEFENDANT: Yes, ma'am.

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

argument. Do you understand that?

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: No, ma'am.

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

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

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: No.

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

THE DEFENDANT: Yes, I have.

THE COURT: Okay. What is your decision?

THE DEFENDANT: Not to testify.

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

MS. ALLEN: Please.

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

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

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

(Jury is not present)

THE COURT: Okay. Everyone has their copies?

MS. LUZAICH: Yes, Your Honor.

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

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

MS. LUZAICH: Yes.

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

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

THE COURT: Okay.

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

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

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

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

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

MS. LUZAICH: No.

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

MS. ALLEN: Yes, Your Honor.

THE COURT: Any objections?

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

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

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

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

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

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

(Pause in the proceedings)

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

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

MS. ALLEN: Correct.

THE COURT: You agree?

MS. ALLEN: Yes, I do.

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

it or I declined to give it.

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

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

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

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

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

MS. ALLEN: Oh. I apologize.

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

THE COURT: That's fine.

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

Which brings me to page 3 from their instructions.

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

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

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

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

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

THE COURT: Okay.

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

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

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: Yes, ma'am.

THE COURT: -- including misdemeanors?

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: No, ma'am.

THE COURT: Is that correct?

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: Yes, I did.

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

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: And you were adequately advised; correct?

THE DEFENDANT: Yes, I was.

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

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you have any questions about that?

THE DEFENDANT: None whatsoever.

THE COURT: Okay. Thank you.

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

MS. LUZAICH: I don't think so.

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

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

THE DEFENDANT: That's correct.

THE COURT: Correct?

THE DEFENDANT: Yes, ma'am.

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

THE DEFENDANT: No.

THE COURT: Okay. Thank you.

MS. ALLEN: Thank you, Your Honor.

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

MS. ALLEN: Thank you, Your Honor.

THE COURT: Correct?

MS. ALLEN: Yes, Your Honor.

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

MS. ALLEN: Correct.

THE COURT: Page 4 was modified and given.

MS. ALLEN: Correct.

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

MS. ALLEN: Okay. I would agree.

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

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

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

MS. LUZAICH: No.

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

MS. ALLEN: No, Your Honor.

THE COURT: Okay. And page 8 was withdrawn?

MS. ALLEN: Correct.

THE COURT: And page 9 was withdrawn.

MS. ALLEN: Yes, Your Honor.

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

(Pause in the proceedings)

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

MS. ALLEN: Thank you.

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

(Jury is not present)

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

It was the word "assault."

MS. ALLEN: Huh?

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

(Pause in the proceedings)

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

MS. LUZAICH: Yes, Your Honor.

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

MS. ALLEN: Yes, Your Honor.

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

And can we bring the jury panel in.

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

MS. ALLEN: Yes. She's here.

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

THE COURT: I read fast, though.

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

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

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

THE COURT: Well, of course.

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

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