

IN THE SUPREME COURT OF THE STATE OF NEVADA

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| FREDERICK H. HARRIS, JR., |) | | Electronically Filed |
| # 1149356, |) | CASE NO.: 81257, 81239 | Oct 29 2020 11:57 a.m. |
| Appellant, |) | E-FILE | Elizabeth A. Brown |
| |) | D.C. Case No.: A-18-784704-W | Clerk of Supreme Court |
| vs. |) | | |
| |) | C-13-291374-1 | |
| |) | Dept.: XII | |
| STATE OF NEVADA, |) | | |
| |) | | |
| Respondent. |) | | |
| |) | | |

APPELLANT'S APPENDIX VOLUME VIII

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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1 MS. ALLEN: Your Honor, can the record reflect she's
2 shaking her head?

3 THE COURT: Right. You need to -- you need to
4 respond verbally so that the record reflects. Was that a no?

5 THE WITNESS: Yes.

6 THE COURT: Okay.

7 BY MS. LUZAICH:

8 Q What -- what kind of touch was it? What did his
9 hand do on your private part?

10 A It was like a rub.

11 Q Okay. You said he was taking your clothes off. Did
12 his hands touch any other part of your body at that point?

13 A On my chest, too.

14 Q What did his hand do to your chest?

15 A Like just rubbed.

16 Q Did the skin of his hand touch the skin of your
17 chest?

18 A Yes.

19 Q Was he saying anything while this was happening?

20 A No.

21 Q Then what did he do?

22 A And then after that -- oh, and the lights went out.
23 Like he turned the lights off. And then that's when he had --
24 that's when he had raped me in the bathroom, in his bathroom.

25 Q When you say he took your clothes off, did he take

1 all of your clothes off?

2 A Yes.

3 Q What about his clothes?

4 A He just pulled down his pants.

5 Q And then what did he do specifically, honey? What

6 -- what part of his body did he use?

7 A His private part.

8 Q What did he do with it?

9 A He had put it in me.

10 Q When you say his private part, is there a word for a

11 man or boy's private part?

12 A Yes.

13 Q Can you tell me what the word is? If you were

14 talking to your friends, what word would you use to describe

15 it? Actually, that's bad.

16 A I don't really be talking to my friends all like --

17 Q Okay. I'm sorry.

18 A I don't --

19 Q That was a really --

20 A -- know.

21 Q -- bad question. A man's private part, where on his

22 body is it, front or back?

23 A It's front.

24 Q And does a man use that part of his body every day?

25 A Yes.

1 Q What does he use it for?
2 A To go to the bathroom.
3 Q Okay. And you said he put it in you. Where did he
4 put it?
5 A In my private part.
6 Q How did it feel when he did that?
7 A It hurt.
8 Q Was that the first time he ever did that?
9 A No.
10 Q I'm going to come back to that. Where in the
11 bathroom were you when he did that?
12 A I was standing right by the shower bent over. And
13 like there was this rod or whatever where you like hang your
14 towels and I was touching that.
15 Q Okay. And when you were bent over, where was he in
16 relation to you?
17 A I don't understand that question.
18 Q I'm sorry. I'll ask it better. When you were bent
19 over, what part of his body -- well, was he in front of you or
20 behind you or next to you?
21 A Behind me.
22 Q Okay. Was he saying anything when that happened?
23 A Yes. He just said don't tell nobody.
24 Q You said that's not the first time that he put his
25 private in your private. Tell me about the first time that

1 you can remember that he put his private in your private.

2 Where were you, then?

3 A Well, that was the first time I can remember, but it
4 happened multiple times.

5 Q Okay. It happened before that and you just can't
6 remember the details?

7 A No.

8 Q Do you know where it was?

9 A It was like sometimes in my old rooms or like in the
10 garage when nobody was there.

11 Q Okay. I'm going to go back one second to the time
12 in the bathroom. Do you know was anybody else in the house?

13 A I think my sister, Taquanda, I think she was asleep.

14 Q Do you know where Ms. Ann was?

15 A I think Ms. Ann, she was at work.

16 Q Okay. Was there another occasion that it happened
17 in his bathroom?

18 A Yes.

19 Q The other occasion that it happened in his bathroom,
20 where in the bathroom were you?

21 A Right by his shower.

22 Q And were you in the same position or different
23 position?

24 A Same.

25 Q And what did he do?

1 A The same thing I just told you.

2 Q I know, Taharah. I need you to tell me

3 specifically. I'm sorry.

4 A First he brought me to his bathroom, and then he

5 started touching me with his hands. And then he fondled my

6 breasts, and then he had put his private part in me.

7 Q When he would do this, would Ms. Ann always be out

8 of the house?

9 MS. ALLEN: Objection.

10 THE WITNESS: Yes.

11 MS. ALLEN: Leading, Your Honor.

12 THE COURT: Overruled. You can answer. The

13 question was was Ann always out of the house?

14 BY MS. LUZAICH:

15 Q The Judge said you can answer.

16 THE WITNESS: I can answer?

17 THE COURT: Uh-huh. You can.

18 THE WITNESS: Okay. Sometimes she would be asleep

19 or like he would do it when like there's hardly nobody in the

20 house or everybody is asleep.

21 BY MS. LUZAICH:

22 Q Okay.

23 A Or like there's no one really there like to watch

24 him or like to see what's going on in the house.

25 Q Okay. You had said that he also did it in your old

1 room. When you say your old room, which is that?

2 A I had the front room, the one with the window, and
3 then it was the one that we last stayed in.

4 Q So when you say he did it in your old room, is that
5 the one with the window or the one you last stayed in?

6 A He did it both times in both of those.

7 Q Okay. Tell me --

8 A It was like -- it was like multiple times.

9 Q Okay.

10 A But --

11 Q Tell me about the time that he did it in the room
12 with the window. Where in that room did it happen? In the
13 room with the window were you sitting, standing, laying down?

14 A I was standing.

15 Q Okay. Where in the room were you standing?

16 A Right by my bed.

17 Q Okay. In that room, the room with the window, how
18 many beds were in that room at the time?

19 A There was two beds. There was my sister's,
20 Taquanda's, and mine.

21 Q Okay. Was there other furniture in the room, also?

22 A There was like a studying table and then there was
23 our dresser, our dressers, and then there was like a lamp on
24 top of the dresser. And then there was this big thing where
25 like a TV went inside, but you had to open it. It was like

1 where you put a TV.

2 Q Okay. You said you were standing by your bed?

3 A Yes.

4 Q So then what happened? Where was he?

5 A Well, he was in the room.

6 Q Where in the room was he?

7 A He was standing right by me.

8 Q Was he in front of you, behind you, next to you?

9 A Behind me.

10 Q What did he do?

11 A First he started touching me with his hands, and

12 then he started touching on my breasts. And then he had put

13 his private part in me.

14 Q When he put his private part in you, where did he

15 put it?

16 A The one where I use the bathroom out of it every

17 day.

18 Q Okay. In your room did he cause you to do anything

19 else or did he cause anything else to happen?

20 A He had -- he had made me touch his private part.

21 Q How did he make you touch his private part?

22 A He took my hand and he put it on his private part.

23 Q When he put your hand on his private part, did he

24 cause your hand to do anything?

25 A Yes.

1 Q What did he cause your hand to do?
2 A He caused my hand like to start rubbing like up and
3 down.
4 Q When you did that, did anything happen?
5 A Yes.
6 Q What happened?
7 A It kind of got harder a little bit.
8 Q When he had you rub it up and down, was that also a
9 time that he put it inside you?
10 MS. ALLEN: Objection, Your Honor. Leading.
11 THE COURT: Overruled. I'll let you answer.
12 THE WITNESS: Okay. Yes.
13 BY MS. LUZAICH:
14 Q Did he have you rub it before, after, or something
15 else that he put it inside you?
16 A Ask that question again. I couldn't really hear
17 you.
18 Q Never mind. I'm sorry. I'll withdraw that. Is
19 that the only place that he had -- is that the only room in
20 the house that he had you do that?
21 A No, it was like in like different type of rooms,
22 like my old room and stuff. Like it happened multiple times,
23 but I can only remember like a couple, only like sometimes.
24 Q Okay. So we just talked about the room with the
25 window; right?

1 A Yes.

2 Q So the last room that you stayed in before you moved
3 out of the house, did it happen in that room, too?

4 A Yes.

5 Q Tell me everything that he did in that room. Where
6 were you in that room?

7 A I -- I just told you that was the one where -- it
8 was the laundry room one where he woke me up out my sleep and
9 then took me to the laundry room. And then he had took my
10 clothes off and then I guess he had put his two fingers up me
11 and then I guess that's when my sister had woke up and then
12 she had walked down the hallway so he stopped. And then --

13 Q Did he ever actually do it while you were in your
14 room that you were living in before you moved out, or did he
15 only take you out of that room and do it in the laundry room?

16 A He only took me out of that room.

17 Q Okay. I'm sorry. I asked a question bad. You said
18 that he did it in the garage?

19 A Yes.

20 Q Did he do it in the garage one time or more than one
21 time?

22 A More than one time.

23 Q And in the garage, where were you in the garage when
24 it happened?

25 A It was a pool table, and I guess I was bent over and

1 my hands was touching the pool table. And I guess -- and he
2 had put his private part in me.

3 Q Did he touch you anywhere else in the garage --

4 A On my --

5 Q -- another part of your body?

6 A On my chest.

7 Q Okay. What did he touch your chest with in the
8 garage?

9 A His hand.

10 Q And did he put his private part anywhere else in the
11 garage?

12 A That's all.

13 Q Did he ever try to put it in your mouth?

14 A Yes.

15 Q Where was that?

16 MS. ALLEN: Objection, Your Honor. Leading.

17 THE COURT: I'm sorry. I didn't -- I just heard
18 objection.

19 MS. ALLEN: Objection. Leading.

20 THE COURT: Sustained.

21 BY MS. LUZAICH:

22 Q Did he put it anywhere else? You're nodding your
23 head, Taharah.

24 A Yes.

25 Q Where? Where else did he put it?

1 A He put it in my mouth, too.

2 Q Did he do that one time or more than one time?

3 A More than one time.

4 Q Where in the house were you when he did that?

5 A It was -- it happened sometimes in the garage, and

6 then sometimes in my old rooms.

7 Q Okay. And how would he do that? What position

8 would you be in?

9 A I would just be on my knees, and then he would just

10 do that.

11 Q When you were on your knees, where were your

12 clothes?

13 A They were on.

14 Q Okay. What about his?

15 A His pants was just pulled down.

16 Q How would his pants get pulled down?

17 A He would pull them down.

18 Q And then what would he do?

19 A Then he would put his private part in my mouth.

20 Q When he would do that, where would his hands be?

21 A His hands would be on his private part.

22 Q And did he do anything while his private part was in

23 your mouth?

24 A Sometimes he would like just touch my breasts or

25 whatever.

1 Q Did you want him to do any of those things?
2 A No.
3 Q All right. You said earlier that he would tell you
4 not to tell. Is that the only thing that he would talk to you
5 about? Would he ever say anything about what he was doing?
6 Do you understand the question?
7 A No.
8 Q Okay. I'll ask it better. Would he ever say
9 anything to you about --
10 A Oh.
11 Q Do you understand?
12 A Uh-huh. He would say like if I told he would get
13 into a lot of trouble so don't tell nobody, like if you tell
14 somebody this would happen.
15 Q What? Did he say what would happen if you told
16 somebody?
17 A Like he would get in -- like he would get into like
18 a lot of trouble.
19 Q Okay. You said that you told Taharah -- or, sorry,
20 Taquanda after the laundry room. After you told Taquanda, do
21 you know what Taquanda did?
22 A She -- she went to Ms. Ann, then she told Ms. Ann.
23 Q And after she told Ms. Ann, did Ms. Ann talk to you,
24 as well?
25 A Yes.

1 Q Do you know when, around when that was?
2 A It was when we was still -- it was when me and my
3 sister was still going to Hyde Park.
4 Q Okay. So what grade might that have been?
5 A In seventh grade.
6 Q Okay. And was that before the summer?
7 A Yes.
8 Q After you and Taquanda talked to Ms. Ann, did Ms.
9 Ann take you somewhere? You're nodding your head again.
10 A Oh. Yes.
11 Q Where did she take you?
12 A She had took me to the doctor.
13 Q What kind of doctor did she take you to, do you
14 know?
15 A I don't know the name of it. It's like to get a
16 checkup.
17 Q A specific kind of checkup? You're nodding your
18 head again.
19 A Yes.
20 Q What kind of checkup?
21 A I don't really know how to say it. Like I don't
22 know what it means.
23 Q Is it a girl doctor? I mean --
24 A Yes.
25 Q -- a doctor that girls see and boys don't?

1 A Yes.

2 Q Okay. And was it a -- was the doctor a man or a
3 woman?

4 A It was a woman.

5 Q And had you ever seen her before?

6 A No.

7 Q Did she do a specific kind of examination?

8 A Yes.

9 Q What kind of examination?

10 A Isn't it called like a Pap smear or something like
11 that?

12 Q Okay.

13 A Something.

14 Q She did a Pap smear. Did she also do an examination
15 of your body part?

16 A Yes.

17 Q Which part of your body did she actually examine?

18 A My private part.

19 Q Is that the first time you ever had that kind of
20 examination?

21 A Yes.

22 Q When she did that examination, did you learn that
23 there was a test result?

24 A Yes.

25 Q What did you learn that the result was?

1 MS. ALLEN: Judge, objection. Foundation and
2 hearsay.

3 THE COURT: You know what, I apologize. I didn't
4 even hear the question. Will you repeat the question?

5 MS. LUZAICH: Whether after she had the test she
6 learned of a test result. Yes. What was the result?

7 THE COURT: Okay. Overruled. You can answer.

8 THE WITNESS: Oh. They was talking something about
9 like HPV.

10 BY MS. LUZAICH:

11 Q Okay. Now, did you go back to that doctor's office
12 a couple of times?

13 A No.

14 Q Well, you saw the doctor and she examined you;
15 right?

16 A Uh-huh.

17 Q Did you -- is that a yes?

18 A Yes.

19 Q Did you also have a test called an ultrasound?

20 A Yes.

21 Q Was that another day?

22 A Yes.

23 Q Okay. And did you go back again after that and talk
24 to another doctor in that office and get shots for school?

25 A Oh. That was like a different doctor's office.

1 Q Oh. Okay. I'm sorry. That was my
2 misunderstanding. I apologize. After the doctor told you --
3 well, when the doctor told you that you had HPV, was Ms. Ann
4 with you?

5 A Yes.

6 Q So Ms. Ann knew? Well --

7 A Yes.

8 Q -- Ms. Ann heard it when you heard it, at least?

9 A Yes.

10 Q Was Ms. Ann going to do something after that?

11 MS. ALLEN: Judge, objection. Calls for hearsay.

12 THE COURT: Sustained.

13 BY MS. LUZAICH:

14 Q Did you and Ms. Ann and Taquanda, without telling me
15 what, talk about doing something after that?

16 A Yes.

17 Q And did it involve going somewhere?

18 A Yes.

19 Q Did that ever happen?

20 A Well, here's what happened. So we were, me, Ms.
21 Ann, and Taquanda, I guess after that, after she heard what
22 happened --

23 MS. ALLEN: Judge, and I'm going to --

24 THE WITNESS: -- and stuff --

25 MS. ALLEN: -- object to this as nonresponsive, and

1 also I think it calls for hearsay.

2 THE COURT: It -- it's -- she's going into a
3 narrative.

4 THE WITNESS: I'm trying to tell --

5 THE COURT: So if you could just listen to the
6 question and try to answer the question, okay. Is that okay?

7 THE WITNESS: But I have to tell what happened
8 because I just can't like talk. I have to like go tell you
9 like the whole story.

10 THE COURT: Well, do your best to just answer the
11 questions, okay?

12 THE WITNESS: Okay.

13 BY MS. LUZAICH:

14 Q Did Ms. Ann ever take you out of the house?

15 MS. ALLEN: Objection. Leading.

16 THE COURT: Overruled. I'm going to allow her to
17 answer.

18 THE WITNESS: Can you ask that question again? I
19 just kind of --

20 BY MS. LUZAICH:

21 Q Did Ms. Ann ever move you out of the house?

22 A No, but we was planning on moving. But somehow she
23 lost the apartment and it never did happen, so we had to move
24 all the stuff that was in our apartment back into the house
25 that we was staying at.

1 Q The Blankenship house?
2 A Yes.
3 Q After Taharah -- or Taquanda and you talked to Ms.
4 Ann, did Fred touch you again?
5 A I'm trying to remember.
6 Q I'm sorry?
7 A I'm trying to remember if that happened again after
8 that. No.
9 Q Do you remember testifying at another hearing that
10 it did happen again after you and Taquanda told Ms. Ann?
11 A Yes. Okay. Now I remember. Now I remember.
12 Q Did it happen again after you talked to Ms. Ann?
13 A Yes.
14 Q Did you -- well, did you guys go visit your mom,
15 Vicky, Mahlica, and Shabazz in the Henderson apartment that
16 summer?
17 A Yes. We had hung out there like for a week, a
18 couple of weeks.
19 Q You stayed with them for a few weeks?
20 A Yes, like some weeks.
21 Q Did you tell Vicky what Fred had been doing?
22 A No.
23 Q After you guys stayed at the Henderson apartment for
24 a few weeks in the summer, did you go back to the house at
25 Blankenship?

1 A Yes.

2 Q And then did you start school again?

3 A Yes.

4 Q Now, I'm going to take you back a little bit. Do
5 you remember in December of 2011 the Henderson Police coming
6 to the Blankenship house late, like in the middle of the
7 night?

8 A Yes.

9 Q Tell me about what you remember about that.

10 A I just remember somebody knocking on the door and
11 then us getting up. And then we was being questioned, and
12 then after the questions they had left.

13 Q Okay. Do you remember it being like in the middle
14 of the night?

15 A Yes.

16 Q Were there a couple of detectives there?

17 A Yes.

18 Q And were you and Taquanda and Ms. Ann and Fred
19 there?

20 A Yes.

21 Q Was that all, just you, Taquanda, Ms. Ann, and Fred
22 were there at the time?

23 A Yes.

24 Q Did the detectives talk to you and Taquanda
25 separately?

1 A Yes.

2 Q Like not together; right?

3 A Uh-huh.

4 Q Yes?

5 A Yes.

6 Q When the detective asked you questions, did you know
7 that he had a tape recorder going?

8 A Yes.

9 Q He told you; right?

10 A Uh-huh.

11 Q Is that a yes?

12 A Yes.

13 Q Now, when you talked to the detective, did you tell
14 him that Fred had been hurting you?

15 A No.

16 Q Did you tell him that Fred had been hurting your
17 brother or sisters?

18 A No.

19 Q Why did you not tell him that?

20 A Because I didn't really think that they was going to
21 believe me and I was scared.

22 Q What were you scared --

23 A And --

24 Q -- about? Oh. Sorry.

25 A -- I was tired and I just wanted them to get up out

1 my face.

2 Q Do you know what time it was that they talked to
3 you?

4 A I really don't know. I know the next morning I had
5 to go to school and it was probably 1:00 in the morning or
6 something.

7 Q Could it have been almost 4:00 in the morning?

8 A Maybe. I don't really know.

9 Q When you said you were scared, what were you scared
10 of?

11 A That like if I told them that like they wouldn't
12 believe me, and then after they left I would have probably got
13 in trouble.

14 Q When the detective talked to you, where were you and
15 he?

16 A I was -- I was in my room with the window.

17 Q Okay. And do you know where Fred was while you were
18 talking to the detective?

19 A No, but he wasn't in the room. He was outside the
20 room.

21 Q Right. He was not in the room. Was he still in the
22 house?

23 A Yes.

24 Q Okay. Was Ms. Ann also in the house?

25 A Yes.

1 Q When you talked to the detective in December of
2 2011, did you tell him that Fred had been touching you?

3 A What was that date?

4 Q Did he tell you -- did he tell -- did you -- oh.
5 When the Henderson Police came to your house.

6 A Oh. That time.

7 Q Did you tell that detective that Fred had been
8 touching you?

9 A No.

10 Q Had he been touching you yet?

11 A What was the date, 2009?

12 Q December of 2011.

13 A '11. No.

14 Q Did you tell the -- well, after you guys talked to
15 the detectives that night, do you remember a lady from Child
16 Protective Services come into the house?

17 A Yes.

18 Q Do you remember what her name was?

19 A Her name was Ms. Bobbi.

20 Q Okay. Did you like Ms. Bobbi?

21 A She was nice.

22 Q Did you tell Ms. Bobbi that Fred was hurting you
23 guys?

24 A No.

25 Q Did you tell Ms. Bobbi that you liked living with

1 Fred and Ann? You're nodding your head, Taharah.
2 A Yes.
3 Q Why did you tell her that?
4 A I just told them that so there like wouldn't be like
5 really no problems in the house when they left.
6 Q When you talked to Ms. Bobbi, where were you?
7 A I was in my -- my room with the window.
8 Q Okay. So you were in your house at Blankenship?
9 A Yes.
10 Q And where was Fred, was he also in the house?
11 A Yes.
12 Q Was Ann also in the house?
13 A Yes.
14 Q But they were not in the room; right? While you --
15 A Right.
16 Q -- were talking to Ms. Bobbi, they were not in the
17 same room with you; correct? Is that right?
18 A Correct.
19 Q After -- now I'm going to fast-forward again. After
20 you guys went to Henderson in the summer and visited with mom,
21 Vicky, Shabazz, and Mahlica, you said you went back to school,
22 correct, living at the Blankenship house?
23 A Yes.
24 Q What school did you go to?
25 A Hyde Park.

1 Q Okay. What grade did you start?

2 A Seventh grade.

3 Q And is that Hyde Park that you went to because Anya
4 was going there?

5 A Yes.

6 Q Do you know when school starts, what month school
7 starts in?

8 A August.

9 Q Okay. So did you start school that August?

10 A Yes.

11 Q Did there come a time that Taquanda wanted to call
12 somebody?

13 A Yes.

14 Q Did she talk to you about calling somebody? Okay.
15 Let me -- let me ask it a different way. Who did she want to
16 call?

17 A She just wanted to call somebody that could like
18 help us.

19 Q Did she talk to you about it?

20 A Yes. She was just like --

21 MS. ALLEN: Your Honor, I'm going to object at this
22 point. It sounds like she's getting into hearsay.

23 THE COURT: As long as she's -- she can't testify to
24 anything that Taquanda said.

25 MS. LUZAICH: It's offered for Taharah's state of

1 mind.

2 THE COURT: The hearsay objection is sustained.

3 BY MS. LUZAICH:

4 Q Did you tell Taquanda that -- well, what did you
5 tell Taquanda? Do you remember? I mean, did you tell her
6 anything?

7 A I can't remember what she --

8 Q Microphone, honey.

9 A Oh. I just remember what she told me. She just
10 said --

11 MS. ALLEN: Your Honor --

12 BY MS. LUZAICH:

13 Q Okay. You can't -- you're not allowed to say that
14 right now. The -- did you and Taquanda actually have a
15 conversation about it? Without telling me what was said, did
16 you have a conversation, did you talk about it?

17 A Yes.

18 Q What did you tell her, if anything?

19 A It was just basically her talking about how she
20 wanted to call somebody.

21 MS. ALLEN: Judge --

22 THE COURT: Sustained.

23 MS. ALLEN: -- objection. Thank you.

24 THE WITNESS: And --

25 ///

1 BY MS. LUZAICH:

2 Q Did you want her to call somebody? Did you not want
3 her to call somebody? Did you have an opinion one way or
4 another?

5 A Well, I knew we should have called somebody, like I
6 wanted her to call somebody, but I was scared because I didn't
7 know what was going to happen. And like last time when we was
8 in Utah we had got taken into foster care. And, yeah, I was
9 just kind of scared and nervous, but then again I wanted her
10 to call somebody.

11 Q Why did you want her to call somebody?

12 A So -- I don't know, so bad stuff wouldn't happen no
13 more.

14 Q Did she ultimately make a call?

15 A Yes.

16 Q Were you there when she did?

17 A Yes.

18 Q Where were you guys when she made the call?

19 A We was at Anya's house.

20 Q Did -- I mean, were you there so that you could hear
21 what she was saying? Without telling me what she said, were
22 you actually there so that you could hear it?

23 A Yes.

24 Q And whatever it was that she was saying, did you
25 agree with it?

1 A Yes.

2 Q Did somebody come and see you after she called?

3 A Yes.

4 Q Where did somebody come to see you?

5 A At first they came to our school, then had took us
6 to -- I think they took us back -- they took us to Child
7 Haven. And then it was just questioning us.

8 Q Did you have an interview with a lady that asked you
9 a whole lot of questions?

10 A Yes.

11 Q Were there things that she -- well, after you talked
12 to the lady who asked you a whole lot of questions, then what?

13 A Then I guess we had -- I guess we had got taken to
14 another like location in Child Haven, like a room where they
15 like put all the kids.

16 Q Okay. So you didn't go back to Blankenship?

17 A No.

18 Q Did you go to mom?

19 A No.

20 Q After you went to Child Haven, where did you go?

21 A After Child Haven, I guess Ms. Johnson. That's when
22 we like first met her.

23 Q Is that your foster mom?

24 A Yes. So she picked us up and she had just took us
25 to her house. And she was like this is where you all would be

1 like living.

2 Q Okay. And you said you thought you lived with her
3 for about a year?

4 A Uh-huh.

5 Q Is that a yes?

6 A Yes, like a year.

7 Q Okay. And did you come to court and testify in this
8 building at another hearing --

9 A Yes.

10 Q -- over the summer? Okay. Are you okay, Taharah?

11 A Uh-huh.

12 Q Is that a yes?

13 A Yes.

14 Q Okay. Thank you.

15 MS. LUZAICH: I would pass the witness.

16 THE COURT: Okay. I'm getting that signal that we
17 need a break, so I appreciate that. We're going to take a
18 lunch recess.

19 During this recess you're admonished not to talk or
20 converse amongst yourselves or with anyone else on any subject
21 connected with this trial, or read, watch, or listen to any
22 report of or commentary on the trial or any person connected
23 with this trial by any medium of information, including
24 without limitation, newspapers, television, the Internet, or
25 radio, or form or express any opinion on any subject connected

1 with this trial until the case is finally submitted to you.
2 We'll start again at 2:00. Thank you.
3 (Jury recessed at 12:21 p.m.)
4 MS. LUZAICH: Judge, can we real quick --
5 THE COURT: Sure.
6 MS. LUZAICH: -- after they -- you know, can we
7 approach?
8 THE COURT: Yes.
9 (Bench conference)
10 MS. ALLEN: Oh, not tomorrow. Wednesday.
11 MS. LUZAICH: Yeah.
12 MS. ALLEN: Oh, my God.
13 MS. LUZAICH: I have a witness that has a plane
14 tonight, so --
15 THE COURT: Okay.
16 MS. LUZAICH: -- I asked them if it's okay with the
17 Court, it's CPS, it's the investigator, if I could just call
18 her when we come back. She'll be quick, and then --
19 THE COURT: That's fine.
20 MS. LUZAICH: -- finish Taharah.
21 THE COURT: I don't care.
22 MS. ALLEN: I don't care.
23 THE COURT: Because I think Taharah --
24 MS. ALLEN: It's going to be some time, yeah.
25 THE COURT: I mean, it's going to be --

1 MS. ALLEN: And if she can't read still, I don't
2 know if she's gotten better.

3 MS. LUZAICH: She can read a little. I asked her
4 this morning just because I didn't want to embarrass her.

5 THE COURT: Okay. Because what are we going to do
6 about that? I know you guys brought that to my attention.

7 MR. MacARTHUR: It would be easier to take the clerk
8 into the hallway with you rather than have the jury dismissed.
9 We were just thinking about ways to make it faster.

10 MS. ALLEN: We'll help to read her -- or someone
11 will have to read her her -- the -- if it's impeachment.

12 THE COURT: Yeah, but it --

13 MS. LUZAICH: Are you going to -- what are you going
14 to use to impeach her? Are you going to use all three
15 statements? I mean --

16 MS. ALLEN: Well, prelim, probably --

17 MS. LUZAICH: That's what I mean, two statements and
18 prelim?

19 (End of bench conference)

20 MS. ALLEN: Two prelims.

21 THE COURT: But in all --

22 MS. ALLEN: There's like two questions from --

23 MS. LUZAICH: Okay

24 THE COURT: In all fairness, I go out there and read
25 it to her? I'm not sure she'd be able to remember what I read

1 to her.

2 MS. RHOADES: She may not. She may not.

3 MS. ALLEN: I mean --

4 THE COURT: I mean, she's in middle school and she
5 cannot read at all?

6 MS. ALLEN: She's --

7 MS. LUZAICH: A little. She can --

8 MS. ALLEN: -- learning disabled.

9 MS. LUZAICH: Yeah, she is learning disabled, but
10 she can read a little.

11 MS. ALLEN: So we'll see how it goes. I mean, she
12 -- the last time I crossed her she was just -- she wouldn't
13 read anything. So she just agreed to anything. I have no
14 idea.

15 MS. LUZAICH: And that's possible.

16 MS. ALLEN: Maybe do you remember testifying to "x"?
17 Uh-huh. Like she may not. I don't know. That's how she was
18 last time. If you put some candy up there we might --

19 MS. LUZAICH: Not funny.

20 MR. MacARTHUR: That was funny.

21 MS. ALLEN: She had a Rollo at prelim and she was
22 just like this.

23 MS. LUZAICH: I know. I know. And playing with it.

24 MS. ALLEN: And I stop --

25 THE COURT: Poor thing.

1 MS. ALLEN: -- in the middle of my prelim and I was
2 like do you want to finish your candy? Oh, yeah. And she
3 just kept playing with it.
4 MS. LUZAICH: She was.
5 MS. ALLEN: And I was like, do you need a tissue?
6 No.
7 MR. MacARTHUR: Do you want to eat it?
8 MS. ALLEN: I was like just stop playing with the
9 damn candy.
10 THE COURT: Sometimes I think we expect kids to act
11 more grownup. They act like kids.
12 MR. MacARTHUR: Uh-huh.
13 MS. ALLEN: So anyways. So we'll see.
14 THE COURT: Okay.
15 (Court recessed at 12:24 p.m., until 2:13 p.m.)
16 (Jury is present)
17 THE COURT: Do the parties stipulate to the presence
18 of the jury panel?
19 MS. ALLEN: Yes.
20 MS. LUZAICH: Yes, Your Honor.
21 THE COURT: Okay. You can recall your witness.
22 MS. RHOADES: Your Honor --
23 THE COURT: I'm sorry. I forgot. At this time,
24 ladies and gentlemen, the State is going to call a witness out
25 of order, so the last witness we're going to stop with, we

1 stopped with direct examination, and the State is going to
2 call a witness out of order just because of scheduling
3 reasons.

4 MS. RHOADES: Thank you, Your Honor. Sholeh
5 Nourbakhsh is the State's next witness.

6 SHOLEH NOURBAKHSH, STATE'S WITNESS, SWORN

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

10 THE WITNESS: Yes. Sholeh Nourbakhsh. My first
11 name is S-H-O-L-E-H. My last name is N-O-U-R-B-A-K-H-S-H.

12 THE CLERK: Thank you.

13 THE COURT: You can proceed.

14 MS. RHOADES: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. RHOADES:

17 Q How are you currently employed?

18 A I work for Child Protective Services in the state of
19 Texas.

20 Q And how long have you worked there for?

21 A Approximately three and a half months.

22 Q When did you move to Texas?

23 A December 16th of 2013.

24 Q Prior to working at the CPS in Texas, did you work
25 in Clark County?

1 A Yes.

2 Q What did you do in Clark County?

3 A I was a Senior Child Protective Services
4 Investigator.

5 Q And is that with Department of Family Services?

6 A Correct.

7 Q How long did you work there as an investigator?

8 A Approximately nine and a half years.

9 Q And what unit did you work in?

10 A I worked in the North B unit, and then I moved to
11 the sexual abuse unit.

12 Q Besides an investigator, have you done other things
13 at CPS?

14 A Yes.

15 Q What have you done?

16 A I was a permanency worker for approximately a year
17 and three months.

18 Q And then you were an investigator after you were a
19 permanency worker?

20 A Correct.

21 Q What kind of training and education have you had to
22 do those jobs at CPS and Clark County?

23 A Initially you apply to have a Bachelor's degree,
24 which is what I have. And then we went through our new
25 employee training through Clark County. And they taught us

1 various trainings of the process of investigations,
2 reunifications, reunification with family members, the Unity
3 system of where we do our documentation, diverse training,
4 hostile family members or people in the community for, you
5 know, training purposes and how to deal with accordingly.
6 Throughout the years we did what's called a Clint Holder
7 training that taught us how to conduct child and family team
8 meetings where we come together for the family's sake for
9 possible reunification and for placement purposes. Then I
10 went through when I entered into sex abuse, I went through
11 forensic training in 2009 with -- it was with Metro Police
12 Department and North Las Vegas Police Department and Child
13 Protective Services. There was me and another investigator
14 and we completed the first witness forensic training for
15 children. Then in 2011 we went through additional forensic
16 training.

17 Q As an investigator in the sex abuse unit, what are
18 your -- what were your job duties?

19 A To investigate cases that dealt with sexual abuse.
20 And at times you would have additional allegations that were
21 in addition to the sexual abuse. Sometimes you had drug
22 abuse, sometimes you had physical abuse, sometimes you had
23 emotional abuse.

24 Q I'm going to direct your attention to
25 September/October of 2012. Were you working at CPS in Clark

1 County at that time?

2 A Yes.

3 Q Back then did you become involved in an
4 investigation involving two girls named Taharah and Taquanda?

5 A Yes.

6 Q Is this Taharah and Taquanda Duke?

7 A Yes.

8 Q How old was Taharah Duke when you became involved in
9 the investigation?

10 A I believe 12 years old.

11 Q And how old was Taquanda when you became involved in
12 the investigation?

13 A I believe she was 11.

14 Q How is it that you became involved in the
15 investigation with those two girls?

16 A In September of -- I believe it was September 26th I
17 received a report regarding sexual abuse allegations that were
18 against Frederick Harris and Lealer Cook. She also went by
19 the name of Ann.

20 Q How did you receive this report?

21 A Well, typically what happens is that Child
22 Protective Services will receive a phone call through our
23 hotline service, and then through our hotline service it gets
24 directed out to the associated unit, which in this particular
25 case was our sexual abuse unit. Our supervisor of the unit

1 will review the cases that come in, and then they get
2 distributed to the investigators at work.

3 Q And did your supervisor review this case and then
4 assign it to you?

5 A Correct.

6 Q What did you do after you were assigned this case?

7 A Once me and my supervisor had staffed the case, a
8 copy of the report gets sent to the corresponding law
9 enforcement agency. In this particular case it was assigned
10 to Metro. And then once that got assigned the office that we
11 particularly work in is called the CAC or Children's
12 Assessment Center of Southern Nevada. And we are housed with
13 law enforcement, CPS, and medical doctors who perform the SCAN
14 exams for our cases. So at that point the case was assigned
15 to Detective Nick Madsen, and him and I, we staffed the case
16 together.

17 Q And Detective Nick Madsen works for Metro; is that
18 right?

19 A Yes.

20 Q After you staffed the case with Detective Madsen,
21 what -- what did you do?

22 A Well, him and I, we discussed the next steps as to
23 what to take. And we have a joint investigation. Law
24 enforcement usually takes the lead, and in this particular
25 case for law enforcement they would do what's called a same

1 day. So they would have to make contact with the family the
2 same day the case came in to the office. So once that was
3 determined, we -- he scheduled and set up appointments to do
4 what's called a forensic interview for the children, and I
5 physically left the building and went to the school where the
6 children were attending school.

7 Q Were you aware if the girls had other siblings?

8 A Not at that particular time.

9 Q What is a forensic interview?

10 A A forensic interview is an interview where a child
11 will go through -- it's a very child friendly interview and
12 it's where you have -- the forensic interview asks very
13 non-leading open-ended questions for a child to, you know,
14 talk about an incident or incidents that they have gone
15 through that has been traumatic for them, such as, you know,
16 sexual abuse or even, in some cases, physical abuse.

17 Q After those forensic interviews were set up, did you
18 go to the girls' school?

19 A Yes. Nick set those up. I had already left.

20 Q Okay. What day did you go to the girls' school?

21 A The 27th.

22 Q Was this the day after the call came into the
23 hotline?

24 A Yes.

25 Q What did you do when you got to their school?

1 A I went to the school and talked to the school staff
2 to find out if any of the children had any IEPs, individual
3 education plans, find out if they have any type of learning
4 disabilities that we need to be made aware of prior to them
5 being interviewed. And then after I collected the information
6 they went and got the kids from their classrooms and I
7 transported them back to the CAC.

8 Q And when you transported them back, what happened
9 when you got back?

10 A Oh. They -- well, they went through what's called a
11 forensic interview and it's done one on one and it's also
12 recorded.

13 Q Who interviewed Taharah?

14 A Michele Fisher was the forensic interviewer.

15 Q Did Michele Fisher also interview Taquanda?

16 A Correct.

17 Q Were you in the room while the girls were being
18 interviewed?

19 A I was in a separate room while they were being
20 interviewed so I could view it on a monitor.

21 Q Were you doing that with someone else?

22 A Yeah, Nick, because, you know, we work jointly.
23 Yes, he was there, too.

24 Q So you and Detective Madsen were viewing the
25 forensic interview in an observation room; is that right?

1 A Yes.

2 Q Did Taharah and Taquanda get interviewed separately
3 by Michele Fisher?

4 A Correct.

5 Q What did you notice about Taharah during Taharah's
6 interview?

7 A Taharah, she -- it took her a long time to answer
8 questions that were being asked of her, and she would give one
9 word answers. And she was very slow and had difficulty
10 understanding some of the questions that were being asked of
11 her, so Ms. Fisher had to become more direct as the interview
12 progressed for her ability to, you know, understand better
13 during the time that she had the forensic interview.

14 Q What, if anything, did you notice about Taquanda
15 during her interview?

16 A She was age appropriate. She was a pretty typical
17 child. She did not struggle as much as her sister during her
18 forensic interview.

19 Q After the forensic interviews, what happened next?

20 A Contact was made with their guardian, Ms. Cook, and
21 she was requested to come down to the CAC to be interviewed.
22 And in the process the SCAN exams, the medical exam for the
23 kids, were also being conducted prior to them being walked
24 back to Child Haven, you know, where they get checked in for a
25 24-hour period.

1 Q What is a SCAN exam?

2 A It's a medical exam for children that either have
3 been victimized of sexual abuse.

4 Q Does SCAN stand for something?

5 A It does. It is -- I don't know.

6 Q Were -- were both girls sent to have a SCAN exam?

7 A Yes.

8 Q Why was a SCAN exam set up for both of the girls?

9 A Part of the -- part of the process for this case,
10 there was a lot of information that was shared. And the
11 concern was is that Taquanda herself did not make a
12 representation that she was sexually abused. However, the
13 Child Protective Services, you know, was going -- set up
14 therapy services for the children, and it's something that's
15 done routinely for them to get help for what they've, you
16 know, endured and what they've been through. And so if, in
17 fact, she was not ready at the time the forensic interview
18 happened and she discloses that something did happen to her,
19 then, you know, we have an opportunity, back then, to see if
20 there is any medical evidence that could have been obtained
21 from the SCAN exam.

22 Q Did Ms. Cooks come down to the CAC and interview?

23 A Yes.

24 Q What was the next step in your investigation?

25 A I had taken the children to the back, which is a

1 housing facility for the kids. Once they get taken into
2 protective custody we bring them back to a place called Child
3 Haven. Once they go through that check-in process, then I
4 went through the process of trying to locate possible family
5 members that would be a placement option for the children.

6 Q At that time when the girls were placed in Child
7 Haven, were they removed from Ms. Cooks' home?

8 A Yes.

9 Q And why were they removed from the home at that
10 time?

11 A Because there was a disclosure made of sexual abuse.

12 Q What did you do after that?

13 A So once we -- during the forensic interviews that we
14 had, we also discovered that there was other siblings in the
15 family and that we had Shabazz that was 17 and a half, and
16 then you had the two adult siblings, Victoria and I believe
17 you pronounce her name Makayla [sic]. And in the process of
18 us trying to find them and talk to them we went to what's
19 called a protective custody hearing. I believe that was on
20 the October 2nd.

21 Q Did you try to contact the girls' biological mother?

22 A At the time that the forensic interviews happened
23 and they were brought into protective custody, we didn't know
24 her whereabouts.

25 Q Did you take steps to try to find her?

1 A Yeah. Well, what happens is with the information
2 that we have, the police department have their own avenues
3 that they can check as far as where she might be located, and
4 Child Protective Services has to go through their avenues.
5 And ours is a lot slower, and so we have to do what's called a
6 diligent search. And we put a request in, you know, with
7 their last known address, name, date of birth, social, and
8 even, you know, going through the history of the case, you
9 know, to try and find information.

10 Q When -- well, were you finally able to make contact
11 with the mother?

12 A Yes, she had showed up at the protective custody
13 hearing.

14 Q And what date was that on?

15 A I believe it was October 2nd.

16 Q When children are taken out of the home, are they
17 required to go to family court and do something about it?

18 A I'm sorry. Say that again?

19 Q When children are taken out of the home, are the
20 guardian or the parents required to go to court about when
21 they're taken out of the home?

22 A Yes.

23 Q Is that what the protective custody hearing is?

24 A Oh. Yes.

25 Q And did you make contact with Tina at the hearing?

1 A Correct. At the protective custody hearing Child
2 Protective Services is obligated to explain to the judge or
3 the hearing master, whoever we're in front of, as to why the
4 children were removed from the care, you know, from the care
5 -- from the home that they were staying in. And at that time,
6 that's when Tina had showed up to court. And after the
7 protective custody hearing took place, we actually had went
8 back to the Children's Advocacy Center to talk to her.

9 Q Did you talk to the three other children, as well?

10 A Yes.

11 Q Who interviewed Tina?

12 A It was myself and Nick Madsen.

13 Q What did you notice about Tina when you were
14 interviewing her?

15 A She was very traumatized. She had cried throughout
16 the interview. She would at times, you know, whisper during
17 the interview because of her fear towards Mr. Harris. And
18 she, you know, appeared like she was reliving, you know, what
19 she went through with her children. She gave a lot of
20 scenarios and details as to what happened during the time that
21 she was involved with Mr. Harris, and she even went home and
22 wrote down other incidents that occurred between herself and
23 Mr. Harris after she left the interview. It was just -- it
24 was a lot for her --

25 Q Okay.

1 A -- during the interview.

2 Q During the interview did Tina appear to understand
3 the severity of what was going on?

4 A Not initially. She had a hard time, you know,
5 grasping that her children were brought into protective
6 custody. She was very angry and upset that she had found out
7 that --

8 MS. ALLEN: Judge, and this point I would just
9 object if we're getting into hearsay with regard to Tina.

10 THE COURT: Okay. I don't think she's -- just don't
11 tell us anything Tina said.

12 THE WITNESS: Okay.

13 BY MS. RHOADES:

14 Q I think you said she was upset.

15 A Right. She was upset. She -- when she found out
16 about the information in regards to the sexual abuse she
17 became angry. She cursed. She wanted to protect her
18 children, but she was fearful of Mr. Harris because of the
19 physical nature --

20 MS. ALLEN: Judge, and objection. I believe this is
21 -- this is hearsay. She's just characterizing it.

22 THE COURT: She's just characterizing it different.
23 The objection is sustained.

24 MS. RHOADES: Yes, Your Honor.

25 ///

1 BY MS. RHOADES:

2 Q You said you interviewed Shabazz, as well; is that
3 right?

4 A Yes.

5 Q When did you interview Shabazz?

6 A Well, there was two separate interviews with
7 Shabazz. There was one that was done by Michele Fisher, and
8 then there was one that was done by myself.

9 Q Why was Shabazz interviewed two times?

10 A The initial interview that Michele had done was to
11 determine if he was a victim, and so a forensic interview was
12 done at that time. And I believe it was on the 3rd of October
13 -- or, I'm sorry, the 2nd of October, and then the additional
14 interview that I did was on the 3rd. It was not a forensic
15 interview. It was an interview to talk about Shabazz's
16 safety.

17 Q And why did you do a second interview with -- with
18 Shabazz?

19 A Well, during the first interview Shabazz had talked
20 about, you know --

21 Q I'll stop you there. Without telling me what
22 Shabazz said --

23 A Okay. Okay. The second interview happened because
24 I was instructed by my supervisor's supervisor to conduct
25 another interview to determine if Shabazz -- Shabazz had the

1 ability to protect himself.

2 Q How old was Shabazz at this time?

3 A 17 and a half.

4 Q Was Shabazz living with his mom, Tina?

5 A Yes.

6 Q When Michele Fisher interviewed Shabazz the first
7 time, did you observe the interview?

8 A Yes.

9 Q Over the course of those two interviews with
10 Shabazz, how would you describe him?

11 A He was a very passionate kid. He had a difficult
12 time, as well, processing information. He -- a lot of the
13 questions that were asked of him had to be broken down little
14 by little. He -- he definitely took his time during the
15 interview.

16 Q Did you also contact and speak with Victoria?

17 A I did not directly contact her, but there was an
18 interview done.

19 Q Were you present for that interview?

20 A Correct.

21 Q Were you observing it or were you actually in the
22 interview room?

23 A No, I was observing it.

24 Q How would you describe Victoria?

25 A She was very age appropriate, answered her

1 questions, you know, clearly, was very detailed during her
2 forensic interview.

3 Q I believe you said Makayla, but would Mahlica sound
4 accurate?

5 A Yes.

6 Q Did you set up and talk to Mahlica?

7 A Yes.

8 Q And when did this happen?

9 A I believe it was on the 2nd.

10 Q Did you interview Mahlica, or were you observing the
11 interview?

12 A Just observing.

13 Q What were your impressions of Mahlica?

14 A I would say it was the same, just age appropriate.

15 Q The girls, what was going on with Taharah and
16 Taquanda at this time, where were they?

17 A Oh. They were placed in foster care.

18 Q When were they placed in foster care?

19 A I believe on the 1st of October.

20 Q Were they together in one home in foster care?

21 A Yeah. Yes.

22 Q Was giving the girls to Tina at this point an
23 option?

24 A In October?

25 Q Yes.

1 A No.

2 Q Why not?

3 A Well, given the disclosure that was made and mom --
4 the mother not having enough protective capacity at that time,
5 it was not a safe option for the children.

6 Q What happened after you spoke with everyone in the
7 case?

8 A What happened after that?

9 Q What did you do? What was your part of the
10 investigation after that?

11 A Well, once everyone was spoken to, then the case
12 gets transferred to an ongoing worker or a permanency worker.
13 And two things kind of generate at that time, it's an
14 introduction to an ongoing worker at that point, and it's also
15 -- usually around the first time where the family member or
16 members will hear about a case plan that they will have to
17 complete in order for them to be reunified with their
18 children.

19 Q Now, what happened with the guardianship that Ms.
20 Cooks had?

21 A Oh. That was dissolved, I believe, at the plea
22 hearing that happened.

23 Q And do you know what date that was on?

24 A I believe it was the 15th.

25 Q And the girls were not allowed to go back to Ms.

1 Cooks' home after that; is that right?

2 A Correct.

3 Q Do you know if the mother got the girls back
4 eventually?

5 A I believe she was reunified with her children on --
6 she was, I just don't remember what date.

7 Q Do you remember what year?

8 A I want to say 2013, and I think it was October 24th.

9 Q Did -- did Tina have to work a case plan to get the
10 girls back?

11 A Correct. And --

12 Q Can you describe what a case plan is?

13 A Sure. A case plan is where it's a collaboration
14 with the department and the family member that it's for where
15 they will have requirements that they need to complete in
16 order for them to have their children placed back with them.

17 MS. RHOADES: Court's indulgence. State would pass
18 the witness.

19 THE COURT: Cross-examination.

20 MS. ALLEN: Thank you.

21 CROSS-EXAMINATION

22 BY MS. ALLEN:

23 Q Good afternoon, Sholeh.

24 A Hi.

25 Q Hi. My name is Betsy Allen. I'm just going to ask

1 you a couple follow up questions, okay.

2 A Sure.

3 Q I think you said you'd been with CPS here for nine
4 years; is that right?

5 A Correct.

6 Q Okay. And how long have you been in the sexual
7 abuse unit?

8 A Since 2009.

9 Q Okay. And when did you leave Las Vegas?

10 A 2013.

11 Q Okay. So you were there approximately four years?

12 A Right.

13 Q Okay. And you're doing the same type of work in
14 Houston?

15 A Austin.

16 Q Austin. You're doing the same type of work there;
17 is that right?

18 A Correct.

19 Q Okay. Are you still doing the sexual abuse
20 allegations?

21 A Yeah, they're -- in Texas they're all put together.

22 Q Okay. So there's no separate unit?

23 A Correct.

24 Q Okay. So you do everything, physical abuse,
25 neglect, sexual abuse, all of it?

1 A Correct.

2 Q Okay. Prior to coming to testify, did you have like
3 a specific recollection of this case?

4 A Yes.

5 Q Okay. You remembered all the facts that you
6 testified to today? Did you remember those or did you have to
7 review the notes that you had made in Unity in order to -- to
8 be accurate?

9 A Right. I reviewed the notes in order for me to be
10 more accurate.

11 Q Okay. You didn't have specific dates, is that
12 correct, in mind? Like when you say I interviewed so and so
13 on "x" date, you didn't remember that as -- I mean, this was a
14 few years ago; is that correct?

15 A Correct.

16 Q Okay. So you needed some refreshment with regard to
17 some of the facts of the case; is that right?

18 A Correct.

19 Q Okay. When you first received this case, you -- did
20 you do some research about the Duke family in the system? Did
21 you look through any of the previous contacts they'd had with
22 Child Protective Services?

23 A Yes.

24 Q Okay. And their contact had gone back to
25 approximately 2005; is that right?

1 A Correct.

2 Q Okay. And you realized at some point that everybody
3 had been interviewed in December of 2011? Do you recall in
4 your -- the Unity or in the CPS notes that all of these people
5 had been interviewed in December of 2011?

6 A Yes.

7 Q Okay. They had been interviewed both by CPS through
8 someone by the name of Bobbi Tibbs?

9 A Correct.

10 Q And they had also been interviewed by someone from
11 Henderson Police Department; is that right?

12 A That I'm not sure.

13 Q Okay. Do you recall any notes that gave you an
14 indication that Henderson Police Department was involved in --
15 in some investigation in December of 2011?

16 A Correct.

17 Q Okay. So -- so you do remember that they were at
18 least involved somewhere?

19 A Right.

20 Q Okay. Were you ever able to obtain copies of the
21 interviews that Henderson Police Department did with Taharah,
22 Taquanda, Tina, Mahlica? Do you remember if you ever say
23 those interviews that Henderson did in December of 2011?

24 A I never saw those.

25 Q You never saw those. Okay. Certainly you read the

1 notes that Bobbi Tibbs put in there with regard to her
2 interviews; is that correct?

3 A No, actually, me and Ms. Tibbs actually had a
4 conversation about her investigation.

5 Q Okay. So you didn't read any of her notes?

6 A I skimmed over what we call our NIA and our closing
7 summary, but I didn't go back and read each single one, no.

8 Q Okay. As you sit here today, have you read any of
9 those, the summaries for any of the interviews with Taharah,
10 Taquanda, Mahlica, Tina?

11 A No.

12 Q Back from December of 2011. I apologize.

13 A No.

14 Q Okay. So as you sit here today, you haven't read
15 any of those?

16 A Correct.

17 Q Okay. And you haven't read any of the interviews
18 from Henderson; is that right?

19 A Correct.

20 Q Okay. You talked about having a forensic interview
21 and the difference between a leading question versus a
22 non-leading question.

23 A Uh-huh.

24 Q You have to say yes.

25 A Oh. Yes. Sorry.

1 Q That's okay. Can you sort of explain the
2 difference? I'm not sure that you did. Can you explain the
3 difference between a leading question versus a non-leading
4 question?

5 A A non-leading question is what I said earlier was an
6 open-end question. So you would ask a question that does not
7 give a child an option to say yes or no, and give them an
8 opportunity to explain more.

9 Q Okay. It doesn't suggest an answer; is that
10 correct?

11 A Correct.

12 Q Okay. So a non-leading question would, you know,
13 what did you do Friday night; right? Because then I'm giving
14 you the option to tell me all of the things that you did on
15 Friday night; is that -- is that right?

16 A Uh-huh.

17 Q Yes?

18 A Yes. Sorry.

19 Q That's okay. I do that, too. Whereas a leading
20 question would be, you know, you went to the Golden Nugget,
21 had dinner, and went out dancing on Friday night; isn't that
22 correct?

23 A Correct.

24 Q That would be a leading question. I'm suggesting to
25 you what you did; is that right?

1 A Yes.

2 Q Okay. And it's really important when you interview
3 children or question children in any capacity to not lead
4 them; isn't that right?

5 A Correct.

6 Q Because it's very easy -- let me -- let me back up.
7 Children's personalities are such that they want to please,
8 isn't that right?

9 A Some, yes.

10 Q Okay. They -- they tend to want to generally please
11 an adult, you know, like giving the right answer or doing the
12 dishes or whatever it is, children generally tend to want to
13 please an adult, isn't that right?

14 A Yes.

15 Q And so you have to be very careful when you question
16 them not to suggest these answers because there is -- there is
17 a high probability that a child could answer yes or say yes
18 just to please the adult; is that correct?

19 A Correct.

20 Q Okay. Especially when you're asking about cases of
21 sexual abuse, you don't want to do those types of things
22 because -- because of like this exact reason. You don't want
23 the child to answer yes in order to somehow think that they're
24 pleasing you; is that right?

25 A Correct.

1 Q Okay. You, I think, said you pulled up their school
2 records; is that right?

3 A No.

4 Q Okay. You didn't pull up any of their school
5 records at all?

6 A No.

7 Q Okay. Is that something that you generally would do
8 in your investigation?

9 A Their school records, no.

10 Q Okay. Are -- are children who attend -- or sudden
11 changes in a child's grades, would that be -- that could be
12 indicative of some kind of abuse or something going on at
13 home; is that correct?

14 A Yes.

15 Q So if a child suddenly went from getting As and Bs
16 to Ds and Fs, that could be -- for you that could be
17 indicative of something going on at home?

18 A Yes.

19 Q Okay. And as you sit here today, you don't recall
20 looking at any of the grades of any of the Duke children; is
21 that right?

22 A Correct.

23 Q You were aware that at least Taharah needed an IEP;
24 is that right?

25 A Later on, yes. When I started in the investigation,

1 that's what I had asked for --

2 Q Okay.

3 A -- if they did.

4 Q Okay. And you found out Taharah did?

5 A No. They -- neither one of them did.

6 Q Neither one of Taharah or Taquanda had an IEP?

7 A Correct.

8 Q Okay. Are you aware if Shabazz had one?

9 A No.

10 Q What about Victoria?

11 A No.

12 Q Okay. So as you sit here, you -- you weren't aware

13 of any of the children having IEPs?

14 A Correct.

15 Q Okay.

16 A Well -- sorry.

17 Q That's okay. You're aware that there was -- Tina

18 had had previous involvement with CPS; is that right? Not

19 just in Nevada, but in Utah.

20 A Yes.

21 Q All right. And you were aware the children were

22 taken away from her in Utah?

23 A Correct.

24 Q Okay. And that she had to do a case plan in Utah?

25 If you know.

1 A Yeah, I don't remember.

2 Q Okay. But you were aware the children were taken
3 out of the home in Utah?

4 A Correct.

5 Q Okay. And when you sat through this interview with
6 her in, I think you said it was September or early October of
7 2012, she had been made aware that the children were being
8 taken out of the home; isn't that correct?

9 A Yes.

10 Q When you interviewed Shabazz, he wouldn't take his
11 sunglasses off; is that right?

12 A That is correct.

13 Q And was that your interview or Michele Fisher's
14 interview? Or the first interview or the second one, I should
15 say.

16 A That was Michele's interview.

17 Q Okay. He refused to take his sunglasses off?

18 A Correct.

19 Q Okay. He was -- I think you described him as
20 passionate; is that right?

21 A Correct.

22 Q Was he also a little flippant in his answers?

23 A A little what?

24 Q Flippant, sort of nonchalant.

25 A Yeah.

1 Q Do you remember him wanting to be called like D
2 Meister?

3 A Yes.

4 Q Okay. That's how he wanted the worker to refer to
5 him, as D Meister; is that right?

6 A Yes.

7 Q Okay. Did you think Taharah -- you said she was
8 slow to give answers. Do you remember that?

9 A Yes.

10 Q Okay. Did you -- did you find her to be cognitively
11 delayed in any way?

12 A Oh. Yes.

13 Q Okay. So like when I -- slow, I mean slow
14 cognitively delayed. Is that how you would describe her?

15 A Yes.

16 Q Okay. She was 12 years old when you interviewed
17 her; is that right?

18 A Taharah?

19 Q Correct. When Michele Fisher interviewed her but
20 you watched, she was 12; is that right?

21 A I believe so.

22 Q Do you remember her telling Ms. Fisher that she was
23 11 when the abuse first started with Fred?

24 A Yes, vaguely.

25 Q Would it refresh your recollection to look at the

1 CPS records?

2 A Oh. Sure. Yes.

3 Q Okay. If I can just have a moment until they find
4 the paperwork.

5 A Sure.

6 MS. ALLEN: I'll ask her that question while you
7 guys are looking.

8 BY MS. ALLEN:

9 Q Just -- I'm going to allow them a moment to find
10 that paperwork. Do you recall Taharah drawing a picture
11 during the first interview?

12 A Yes.

13 Q Okay. Someone asked her to draw a picture of, I
14 guess, a penis; is that correct?

15 A Yes.

16 Q Do you recall her using words like vagina?

17 THE COURT: Okay. Just -- just a minute. There
18 seems to be some communication with one of the jurors.

19 THE MARSHAL: He was going to ask to use the
20 restroom, but now he says --

21 JUROR NO. 13: I was going to ask to use the
22 restroom while they were taking a few minutes to take a look.

23 THE COURT: No, if you need a restroom break, no
24 problem. I will always take a break.

25 JUROR No. 13: Okay.

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

10 We'll be in recess until 3:15. Thank you.

11 (Court recessed at 2:59 p.m., until 3:15 p.m.)

12 (Jury is present)

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

15 MS. ALLEN: Yes, Your Honor.

16 THE COURT: Okay. You can -- we can call the
17 witness back to the stand, and Ms. Allen may continue with her
18 cross-examination.

19 You can have a seat. No, I'm sorry.

20 MS. ALLEN: May I proceed?

21 THE COURT: Yes.

22 MS. ALLEN: Thank you.

23 THE COURT: Sorry.

24 BY MS. ALLEN:

25 Q Okay. I'm just briefly going to go back to the

1 question I was asking you about Taharah reporting that she
2 remembers that it started, I think the first time was when she
3 was 11. And I asked if you would be assisted by reviewing the
4 records. Would that refresh your recollection?

5 A Yes.

6 Q Okay.

7 MS. ALLEN: And if I can approach.

8 THE COURT: Sure.

9 MS. ALLEN: I gave the State the page.

10 BY MS. ALLEN:

11 Q Does that refresh your recollection?

12 A Yeah.

13 Q Okay. So she did -- she did say that she was 11
14 when it started; is that correct?

15 A Yes.

16 Q Okay. And when you interviewed her, how old did you
17 say she was?

18 A I didn't interview her.

19 Q Oh. I apologize. When you sat in on the interview
20 or observed it you said she was 12; is that correct?

21 A I believe so, yes.

22 Q Okay. And do you remember when her birthday was by
23 any chance? I know. That's okay.

24 A This is a long time ago.

25 Q I know. I understand. During that interview with

1 Ms. Fisher she did draw a picture; is that correct?
2 A Yes.
3 Q Okay. Do you recall -- if I showed you a copy of
4 that picture, do you think you'd remember it?
5 A Yes.
6 Q Okay. This is State's Exhibit 2.
7 MS. ALLEN: May I approach?
8 THE COURT: Absolutely.
9 BY MS. ALLEN:
10 Q Does that look familiar?
11 A Yes.
12 Q Okay. And is that -- is that what you remember
13 Taharah drawing during that interview?
14 A Correct.
15 Q Okay. Do you recall how she came about drawing that
16 picture? Do you remember if Ms. Fisher asked her to draw it?
17 A I don't remember.
18 Q Okay. You don't remember at all?
19 A I really don't.
20 Q Okay. All right. During that interview, Taharah --
21 do you remember Taharah using words like vagina?
22 A No.
23 Q Okay. Do you remember her using specifically the
24 word rape?
25 A Yes.

1 Q She used rape a lot, actually, during that
2 interview; isn't that correct?

3 A Yes.

4 Q Okay.

5 MS. ALLEN: Court's indulgence. Your Honor, I think
6 at this time I pass the witness.

7 THE COURT: Okay. Any --

8 MS. ALLEN: Thank you. I would say your last name,
9 but I'd butcher. So, Sholeh, thank you.

10 THE WITNESS: No problem.

11 THE COURT: Thank you. Any redirect?

12 MS. RHOADES: Yes, Your Honor, just briefly.

13 REDIRECT EXAMINATION

14 BY MS. RHOADES:

15 Q Regarding sudden changes in grades in children, is
16 that always an indication that there's abuse going on at home?

17 A No.

18 Q Are there other indications to show that abuse is
19 going on at home besides grades?

20 A Oh. Yes.

21 Q In your experience, is someone that's getting bad
22 grades, is that more of an indication that they're being
23 abused in any way?

24 A In some cases, yeah. Yes.

25 Q And how about in some cases are kids that are

1 getting abused getting good grades?

2 A Yes.

3 Q With regard to the interview that Taharah did with
4 Michele Fisher, was it just Taharah and Michele Fisher in the
5 interview room?

6 A Yes.

7 Q There weren't 14 other people watching her, you
8 know, at the interview -- in the interview room --

9 A No.

10 Q -- is that right?

11 A Correct.

12 Q And the defendant wasn't there in that interview
13 room with Taharah and Michele Fisher; is that right?

14 A Correct.

15 MS. RHOADES: Nothing else.

16 THE COURT: Any recross?

17 MS. ALLEN: No, Your Honor. Thank you.

18 THE COURT: Thank you very much for your testimony.
19 You may step down. You are excused from your subpoena. Thank
20 you for being here.

21 THE WITNESS: Thank you.

22 THE COURT: We can call Taharah back to the stand.
23 And the State was concluded with your direct; correct?

24 MS. LUZAICH: That is correct.

25 THE COURT: Okay.

1 Okay. Taharah, thank you very much for coming back.
2 Taharah, you do understand that you are still under oath;
3 correct?

4 THE WITNESS: Uh-huh.

5 THE COURT: Okay. And you can use the microphone.
6 And now Ms. Allen is going to ask you some questions, okay.

7 CROSS-EXAMINATION

8 BY MS. ALLEN:

9 Q Good afternoon, Taharah.

10 A Hi.

11 Q How are you?

12 A Okay.

13 Q Okay. If you need a break, just let us know, okay?

14 A Okay.

15 Q All right. Do you remember I questioned you, I
16 talked to you before about last year?

17 A Yes.

18 Q Okay. And it was downstairs. Do you remember that?

19 A Yes.

20 Q You still have to answer out loud, okay?

21 A Okay.

22 Q All right. All right. You were born in October, is
23 that right, of 1999?

24 A Yes.

25 Q Okay. October 9th; is that right?

1 A Yes.
2 Q Okay. And you're 14 now?
3 A Yes.
4 Q So you'll be 15 this year; is that right?
5 A Yes.
6 Q Okay. And you're in the eighth grade; is that
7 right?
8 A Yes.
9 Q You remember living in Louisiana; is that correct?
10 A Yes.
11 Q And do you remember who you lived there with?
12 A My mom and my sisters and my brother.
13 Q And your brother. Okay. Yes. Do you remember your
14 dad at all?
15 A No.
16 Q Do you remember -- what's your first memory of
17 living in Louisiana? Do you remember how old you were?
18 A I was about -- I was about five.
19 Q Five years old?
20 A Uh-huh.
21 Q Yes?
22 A Yes.
23 Q Okay. So that would have been like in 2004; is that
24 right?
25 A Yes.

1 Q Sometime in 2004, maybe about then? Okay. Did you
2 go to school in Louisiana, do you remember?

3 A No.

4 MS. ALLEN: Sorry. I move. I apologize.

5 BY MS. ALLEN:

6 Q You don't remember going to school in Louisiana; is
7 that correct?

8 A Right.

9 Q Okay. Where did you live in Louisiana? Do you
10 remember the name of the town?

11 A West Monroe.

12 Q West Monroe. Okay. Do you remember where -- or do
13 you know in relation to the state of Louisiana where West
14 Monroe is? Is it in the north part of the state, the southern
15 part of the state, do you know?

16 A Are you asking me like what side is it on?

17 Q Geography. Do you know where West Monroe is? Do
18 you know if it's in the north part of the state?

19 A No --

20 Q You don't know?

21 A -- it's not.

22 Q It's not?

23 A It's not.

24 Q Where is West Monroe, do you know?

25 A It's in the south.

1 Q It's in the south? Okay. Is it near New Orleans?
2 A I don't really know like --
3 Q You don't know. Have you ever been to New Orleans?
4 A No.
5 Q No. Okay.
6 A But I want to go there.
7 Q Do you remember Hurricane Katrina? Do you remember
8 Hurricane Katrina?
9 A I remember hearing about it.
10 Q Okay. Do you remember if you were in Louisiana when
11 that happened?
12 A No.
13 Q You don't remember or you don't know?
14 A I don't know.
15 Q You don't know. Okay. Fair enough. Now, you moved
16 out to Las Vegas with your mom and your siblings; is that
17 right?
18 A Yes.
19 Q All the people we've talked about before, Vicky,
20 Shabazz, Taquanda, and Mahlica. You guys all move out to Las
21 Vegas; is that right?
22 A Yes.
23 Q And you -- do you remember who brought you out here?
24 A Yes.
25 Q Who was it?

1 A It was Fred's brother, John.

2 Q Fred's brother, John. Okay. Do you remember the
3 car that he brought you out in at all? Do you have any memory
4 of what the car was like?

5 A No.

6 Q And your mom wasn't here when he brought you out;
7 right? His mom -- your mom wasn't in Louisiana when he --
8 when he picked you up and brought you out here; is that right?

9 A Right.

10 Q Your mom was already here in Vegas?

11 A Right.

12 Q Okay. And you went immediately to the Trish Lane
13 house?

14 A Yes.

15 Q Okay. And did you stay in that house from January
16 -- December/January to May until you moved to Utah?

17 A I don't really know the dates, but I know I went to
18 Utah.

19 Q Okay. Do you remember -- right after you came to
20 Las Vegas, do you remember living anywhere else besides the
21 Trish Lane house before you went to Utah?

22 A No.

23 Q Okay. So it was always the Trish Lane house?

24 A Yes.

25 Q Okay. Do you remember Sha'karia living in the Trish

1 Lane house?

2 A Yes.

3 Q Okay. And then it was Ms. Ann; is that right?

4 A Yes.

5 Q And Ms. Ann's mother?

6 A Yes.

7 Q Do you remember Ms. Ann's mother? Do you remember

8 her name?

9 A Claudia.

10 Q Claudia. Okay. Was she sick? Was she sick at the

11 time? Do you remember?

12 A I don't remember.

13 Q Okay. Do you know if she eventually -- she

14 eventually passed away, did you know that?

15 A Yes.

16 Q Okay. Do you remember when she passed away?

17 A No.

18 Q All right. Do you remember if you were here in

19 Vegas when that happened, or were you in Utah?

20 A I was in Utah.

21 Q You were in Utah when that happened?

22 A Yes.

23 Q Okay. So you're living here in Las Vegas and you

24 remember your mom working; is that right?

25 A Yes.

1 Q And are you in school at that time? Before you go
2 to Utah, are you in school in Las Vegas?

3 A Yes.

4 Q Okay. Do you remember the school that you went to?

5 A No, but I remember it started with an "M".

6 Q It started with an "M". Okay. And then sometime --
7 do you remember finishing the school year here, or do you
8 remember just leaving for Utah one night?

9 A Just leaving for Utah.

10 Q Okay. Had anybody told you that you were moving to
11 Utah?

12 A No.

13 Q All right.

14 A It was kind of like a surprise.

15 Q It was a huge surprise?

16 A Like it was when we came back to Vegas from Utah.

17 Q Okay. So much the same way you were sort of
18 shocked, you were surprised about moving; is that -- is that
19 right?

20 A Yes.

21 Q Okay. Did someone just pick you up from school that
22 day and you guys just left for Utah?

23 A I don't remember how it happened, but I know we just
24 left with no warning.

25 Q Okay. Do you remember if you took any of your

1 things with you?

2 A I didn't take nothing with me.

3 Q So when you went to Utah, you didn't take anything

4 with you?

5 A No.

6 Q Just the clothes that you had on?

7 A Yes.

8 Q Okay. And you were in Utah for at least a year; is

9 that right?

10 A I don't really know how long I was in Utah.

11 Q Okay. Well, you -- at some point your mom left; is

12 that right?

13 A Yes.

14 Q And she came back to Las Vegas?

15 A Yes.

16 Q And she came back to see Fred; is that right?

17 A Yes.

18 Q And -- and then CPS came in and took you guys out of

19 the home; is that right?

20 A Yes.

21 Q Okay. And how long were you out of the home?

22 A For a year, I think.

23 Q Okay. You were out for a year. You remember being

24 like in foster care with a foster family for a year?

25 A Yes.

1 Q Okay. And then eventually you were allowed to move
2 back in with your mom; right?

3 A Yes.

4 Q And then once you guys were allowed to move back in
5 with your mom, you came back to Vegas at some point; is that
6 correct?

7 A Yes.

8 Q Okay. Prior to moving to Utah, did you have any
9 problems with Fred?

10 A I don't understand that question. Can you ask that
11 in a different way?

12 Q Sure. Prior to moving to Utah, did you have any --
13 did you have any issues with Fred? Was he mean to you in that
14 time frame when you moved from Louisiana to here, but before
15 you left for Utah, so those few months you guys were here was
16 Fred mean to you?

17 A I still don't get it.

18 Q You still don't get it. Okay. You remember living
19 on Trish Lane; is that right?

20 A Yes.

21 Q Okay. And you remember living there with your
22 family; is that right?

23 A Yes.

24 Q And you remember living there with Ms. Ann and
25 Claudia?

1 A Yes.

2 Q Okay. So in that time period when you lived on
3 Trish Lane, do you remember Fred being mean to you?

4 A No, I don't really remember much back then.

5 Q Okay. Well, so you don't remember him being mean to
6 you?

7 A No.

8 Q Okay. When you came back from Utah you said living
9 at that house on Blankenship there were good days and bad
10 days; is that right?

11 A Yes.

12 Q And the good days would be going out to eat?

13 A Yes.

14 Q Going to Circus Circus? Is that one of the good
15 days?

16 A Yes.

17 Q All right. Going out -- just generally going out or
18 having a barbeque at the house with -- with family, do you
19 remember that?

20 A Yes.

21 Q Okay. And you said the bad days would be when you
22 got in trouble; is that right?

23 A Yes.

24 Q Okay. Do you remember -- you remember talking about
25 some of the things that you got in trouble for; is that right?

1 A Yes.

2 Q When you didn't do your chores?

3 A Yes.

4 Q Okay. How about when you didn't get good grades in
5 school, did you get in trouble for that?

6 A It was just like a talking to.

7 Q Okay. So when you came home with like an F, then
8 Fred or Ann would talk to you about that; is that right?

9 A Yes.

10 Q Was Fred the one who really wanted you guys to get
11 good grades?

12 A Yes.

13 Q Okay. And he really pushed you in school, didn't
14 he, to get better grades, didn't he?

15 A Yes.

16 Q Okay. And the times that you were living at
17 Blankenship, while you were living there did you have pretty
18 good grades?

19 A Yes.

20 Q Okay. Are your grades now the same as they were
21 then?

22 A It wasn't the same, but they still good.

23 Q Okay. So you don't have -- well, let me ask you
24 this. You weren't allowed to really skip school, were you,
25 when you lived at Fred's house?

1 A No.

2 Q And there were rules?

3 A Uh-huh.

4 Q Yes or no.

5 A Yes.

6 Q Okay. And you got in trouble when you broke rules;

7 isn't that right?

8 A Yes.

9 Q Okay. You didn't miss a lot of school when you

10 lived with Fred, did you?

11 A No.

12 Q Okay. Since you moved back with your mom, you've

13 missed a lot of school; isn't that right?

14 A Yes.

15 Q Okay. You have at least 14 absences since you moved

16 back in with your mom?

17 A Yes.

18 Q Okay. Do you have more now? Do you have more than

19 14 now?

20 A Not more than 14. It was just because of doctor's

21 appointments and stuff.

22 Q Okay.

23 A And now court, too.

24 Q Okay. And you -- but you moved back in with your

25 mom around November of 2013; isn't that right?

1 A Yes.

2 Q Okay. You said you got in trouble when you got
3 RPC-ed for school, do you remember that?

4 A Yes.

5 Q Okay. Why did you get RPC-ed?

6 A For fighting.

7 Q Okay. So was this at H. P. Fitzgerald?

8 A Yes.

9 Q Okay. And so you got into a fight with someone
10 else?

11 A Yes.

12 Q Do you remember why?

13 A No.

14 Q You don't remember why. Okay. And then you also
15 said you got in trouble when you got suspended from school; is
16 that right?

17 A Yes.

18 Q Why did you get suspended from school?

19 A It was for fighting.

20 Q Okay. So is it the same instance as the RPC, or is
21 this a different fight?

22 A This one was different, though.

23 Q Okay. So you were in at least two fights at school,
24 is that right, when you were at H.P. Fitzgerald?

25 A Yes.

1 Q Okay. And that would have been second through fifth
2 grade that you were at H. P. Fitzgerald; is that right?

3 A Yes.

4 Q Okay. You said that -- well, do you remember that
5 when you would get in trouble for things it would usually
6 start off with like a talking to or you'd get things taken
7 away from you like your CDs?

8 A Yes.

9 Q Okay. And then if you got in more trouble or you
10 didn't listen or fix the problem then you had to do pushups?
11 Do you remember that?

12 A Yes.

13 Q Okay. And then if that didn't work and you
14 continued to get in more trouble or you didn't fix the
15 problem, then you would get a whooping. Do you remember that?

16 A Yes.

17 Q Okay. The whoopings that you described were always
18 with your clothes on; isn't that right?

19 A Yes.

20 Q Okay. And they were always on your bottom?

21 A Yes.

22 Q Okay. And after the -- that you had this whooping,
23 did you -- were you able to walk out of the room?

24 A Yes.

25 Q Okay. You weren't unable to walk; is that right?

1 You were able to walk out and do all of the things that you
2 had done before?

3 A Yes.

4 Q Okay. Sha'karia lived with you on Trish Lane; is
5 that right?

6 A Yes.

7 Q And then she also lived with you guys on
8 Blankenship; is that correct?

9 A Yes.

10 Q But not all the time. She was in and out of the
11 house; right?

12 A Right.

13 Q Okay. When all of you lived there, you, your mom,
14 your brother, and your sisters lived there, she was there for
15 part of that time; isn't that right?

16 A Right.

17 Q Do you remember instances where Sha'karia and
18 Victoria would babysit you guys while Fred and Ann would go
19 out?

20 A Yes.

21 Q Okay. Did that happen very often?

22 A Sometimes.

23 Q Okay. Do you know Marcus?

24 A Yes.

25 Q Okay. Who is Marcus?

1 A Ms. Ann's son.
2 Q Okay. And would you describe him as being like
3 dark-skinned?
4 A Yes.
5 Q Did he have short hair?
6 A Yes.
7 Q Like a fade?
8 A Yes.
9 Q Okay. You -- you said -- you testified on direct
10 that the only time you remember Mahlica having -- having a
11 whooping was at the same time as you; is that right?
12 A Yes.
13 Q Okay. What did the two of you do in order to -- for
14 that to happen? Do you remember what had happened?
15 A No.
16 Q Okay. You just remember that the two of you got in
17 trouble; is that right?
18 A Yes.
19 Q Okay. You remember Shabazz being in trouble for
20 beating up a kid at school?
21 A Yes.
22 Q Okay. And he did it in the bathroom; is that right?
23 A Yes.
24 Q Do you remember the kid being described as being
25 disabled?

1 A Yes.

2 Q Okay. Did you -- you didn't go to the same school
3 as Shabazz, did you?

4 A No.

5 Q Okay. Did Shabazz get in a little bit of trouble at
6 school?

7 A Somewhat.

8 Q Okay. Shabazz had somewhat of a temper sometimes?

9 A Yes.

10 Q Yes. Okay. Thank you. After Shabazz got in
11 trouble for beating -- or beating up the kid in school, you
12 said you don't remember any marks on him; is that right?

13 A Right.

14 Q And with Mahlica, you didn't see anything on her; is
15 that right?

16 A Right.

17 Q But it was on her bottom; is that correct?

18 A Right.

19 Q Okay. Was Mahlica able to get up and walk out of
20 the bedroom after that happened?

21 A Yes.

22 Q Okay. All right. Do you remember Ms. Ann taking
23 you to see a girl doctor? Remember those questions that Ms.
24 Luzaich asked you about that?

25 A Yes.

1 Q Do you remember you the doctor you went to go see
2 was a woman?

3 A Yes.

4 Q Do you remember if she had a little bit of an
5 accent?

6 A It kind of sounded like she was from India or
7 something.

8 Q Okay. Perfect. Do you remember if she had a dot on
9 her forehead?

10 A Yes.

11 Q Okay. Did Marcus go with you to that appointment?

12 A No.

13 Q Marcus did not go with you to that appointment?

14 A No.

15 Q Okay. Now, when you saw Dr. Gondy, do you recall
16 telling -- do you recall telling someone who interviewed you
17 later that you told Dr. Gondy that you were raped? Do you
18 remember that?

19 A Yes.

20 Q Okay. Did you tell Dr. Gondy that you were raped?

21 A Yes.

22 Q Okay. And do you recall her response being that you
23 should get away from the guy?

24 A Yes.

25 Q Okay. And as you sit here today, is that your

1 recollection of events?

2 A Yes.

3 Q That you, in fact, informed Dr. Gondy that you were
4 being raped; is that right?

5 A Yes.

6 Q And she told you that you should move or get away
7 from him?

8 A Yes.

9 Q Okay. There was two statements that you gave to --
10 well, let me backtrack. You gave -- you were interviewed
11 twice; is that right?

12 A Yes.

13 Q You were interviewed once in December of 2011?

14 A I don't really remember the dates, but I know I was
15 interviewed.

16 Q Okay. Do you remember the time when a detective
17 showed up at the Blankenship address?

18 A Yes.

19 Q Okay. And it was -- you don't recall the date. If
20 I told you it was December 18th of 2011, would that sound
21 about right?

22 A I don't really know because I don't remember the
23 dates, but I know I was interviewed.

24 Q Okay. Do you remember how old you were?

25 A What was -- what was the year?

1 Q December of 2011. How old were you in December of
2 2011?

3 A 11.

4 Q Are you sure?

5 A Yes.

6 Q Would you be 12?

7 A I don't know. I might have been 12 and I might have
8 been 11.

9 Q Well, your birthday is in October; right? October
10 9th of '99?

11 A Yes.

12 Q Okay. So October 9th of '99, and if you
13 fast-forward to December of 2011, how old do you think you
14 were?

15 A 12.

16 Q Okay. So you were 12 years old when Detective -- do
17 you remember if it was Detective --

18 MS. ALLEN: Okay. I apologize, Your Honor. There
19 has been some confusion about the detectives.

20 BY MS. ALLEN:

21 Q Detective Melchert. Do you remember Detective
22 Melchert talking to you?

23 A I don't remember the name, but if I see that
24 person's face I'll remember the face.

25 Q Got it. Okay. Do you remember them telling you

1 they were from Henderson?

2 A Yes.

3 Q Okay. And do you remember they showed up kind of in
4 the middle of the night to talk to you? Do you remember that?

5 A Yes.

6 Q Okay. And do you remember them telling you that
7 they were with the police department? Do you remember that?

8 A Yes.

9 Q Okay. And do you remember did they assure you that
10 they were there to help you?

11 A Yes.

12 Q Okay. And they told you that they needed you to be
13 completely honest with them; is that right?

14 A Yes.

15 Q Okay. And -- and did you -- at the time that you
16 interviewed with them, did you have any reason to believe that
17 they weren't there to help you? Do you understand the
18 question?

19 A No.

20 Q Okay. When you were being interviewed by them, did
21 you -- did you have any feeling that they weren't there to
22 help you or did you feel like they were there to help you?

23 A I don't really know --

24 Q You don't really know, but they told you they were
25 there --

1 A -- if they was there to help me or not.

2 Q You don't know. But they did tell you they were
3 there to help you, didn't they? You have to answer --

4 A Yes.

5 Q Okay. And they asked you some questions about
6 school. Do you remember those?

7 A Yes.

8 Q Okay. And then they asked you how you felt about
9 living in the house. Do you remember that?

10 A Yes.

11 Q Okay. And do you recall what your answer was?

12 A Yes.

13 Q What was it?

14 A I don't recall it, but if you read it to me I'll
15 remember what I said.

16 Q Okay. Do you recall telling the detective that you
17 felt protected? Do you remember that?

18 A Yes.

19 Q Okay. And do you recall that wasn't hid word to
20 you. He said, you feel pretty good about living in the house?
21 And do you remember your response was I feel protected? Do
22 you remember that?

23 A Yes.

24 Q So he didn't use the word protected with you. That
25 was your word, isn't that right?

1 A Right.

2 Q And then you said -- he said, okay, yeah, okay. And
3 then you said, and I feel safe. Do you remember telling him
4 that?

5 A Yes.

6 Q Okay. And then he asked you if there are any times
7 in the house when you don't feel safe. Do you remember your
8 answer?

9 A No.

10 Q Do you remember saying, no, never? Do you remember
11 that?

12 A Somewhat.

13 Q Okay. Would it help if you could look at your
14 transcript?

15 A No.

16 Q Okay. Do you remember the detective asking you if
17 there had been any problems between you and anyone else in the
18 house, and do you remember your answer?

19 A Yes.

20 Q What was it?

21 A I don't really remember. Like can you read that to
22 me, like what I said, and then I'll remember?

23 Q Do you remember if your answer was no? Do you
24 remember that? Your answer -- do you remember if your answer
25 was no?

1 A Yes.

2 Q Okay. So when he asked you if there any problems
3 with you and anybody else in the house you said no; is that
4 right?

5 A Right.

6 Q And Fred was living there at the time; isn't that
7 correct?

8 A Right.

9 Q Okay. And then they asked you if there were any
10 times that you were uncomfortable being around Fred. Do you
11 remember him asking you that question?

12 A Right.

13 Q And do you remember your answer was no?

14 A Right.

15 Q Okay. Now, previously today you testified that the
16 first time that Fred was inappropriate with you and he touched
17 you in a way that made you uncomfortable, and I don't mean hit
18 you with a belt. I mean sexually. You understand the
19 difference; right?

20 A Yes.

21 Q Your testimony was that it happened when you were
22 11. Do you remember that?

23 A Yes.

24 Q In fact, you -- you told the CPS worker that you
25 were 11 when it started; is that right?

1 A Yes.

2 Q Okay. But when you talked to the detective in
3 December of 2011, you said -- they asked if there were any
4 times you were uncomfortable around Fred and you said no;
5 right?

6 A Right.

7 Q Do you remember them asking you how you felt staying
8 in the house with Fred?

9 A Yes.

10 Q You remember your answer?

11 A No.

12 Q Okay. Do you remember that -- and they didn't --
13 well, let me ask you, do you remember your answer being I felt
14 good and confident, positive. Do you remember that?

15 A Yes.

16 Q And then you said anything but negative.

17 A Yes.

18 Q Okay. And those weren't words that they told --
19 they told you to say, is it? Is it?

20 A No.

21 Q Those were your words; isn't that right?

22 A Yes.

23 Q Do you remember the detective asking you some
24 questions about Fred's relationship with your mom?

25 A Yes.

1 Q Okay. And you described it as a close relationship;
2 is that right?

3 A Yes.

4 Q Fred and your mom had a close relationship?

5 A Yes.

6 Q And a loving relationship?

7 A Yes, I remember I said that.

8 Q Okay. Do you remember telling the detective that
9 Fred still makes sure that Mahlica and Shabazz and your mom
10 and Victoria are taken care of even though they moved out of
11 the house?

12 A Yes.

13 Q Supporting them even though they didn't live there
14 anymore?

15 A Yes.

16 Q Okay. And then do you remember saying -- oh, and
17 make sure that everybody is doing well in school; right? You
18 remember telling the detective he made sure everybody was
19 doing well in school?

20 A Yes.

21 Q Because school was really important, wasn't it?

22 A Right.

23 Q Okay. And then you volunteered to the detective
24 that he was a good man. Do you remember saying that about
25 Fred?

1 A Yes.

2 Q Okay. He provides for you. Do you remember telling
3 the detective that?

4 A Yes.

5 Q Do you remember them asking you about being punished
6 in the house?

7 A Yes.

8 Q Okay. And previously today you testified that you
9 had been punished by like whoopings and stuff; is that right?

10 A Yes.

11 Q Okay. And that that had happened while Victoria and
12 mom and Shabazz lived in the house; is that correct?

13 A Correct.

14 Q Okay. And do you remember telling the detective
15 that the only time you ever got in trouble you had to do
16 pushups?

17 A Yes.

18 Q And you talked about getting grounded and your CDs
19 taken away. Do you remember telling him that?

20 A Yes.

21 Q Okay. The detective asked you questions about being
22 in school, misbehaving. Oh. He asked you what would have
23 happened for you to get your CDs taken away. Do you remember
24 a discussion with the detective about that?

25 A Yes.

1 Q Okay. And at no time did you indicate -- well, I
2 apologize. You did indicate that at one point you were
3 spanked on the buttocks, do you remember that, on the bottom?
4 A Yes.
5 Q Okay. And do you remember why you were spanked or
6 why you told the detective you were spanked?
7 A I don't remember.
8 Q Okay. Do you remember telling him that you had
9 stolen -- you had stolen something?
10 A Yes.
11 Q Okay. Is that why you were spanked, because you
12 stole something? You have to answer.
13 A Right.
14 Q Okay. Is that correct, you and Taquanda stole
15 something; isn't that right?
16 A That was right.
17 Q Pardon?
18 A That was right.
19 Q Do you remember what it is that you stole?
20 A No.
21 Q Okay. Was it from a store or was it from Sha'karia?
22 A I think it was from the store or something.
23 Q Okay. Do you remember you recall you said you got
24 in trouble twice for getting in fights at school; is that
25 right?

1 A Right.

2 Q Okay. Do you remember if there were more times that
3 you got in trouble for being in fights at school?

4 A No.

5 Q Okay. Do you remember fighting a lot when you were
6 in school?

7 A Yes.

8 Q Okay. So when you were at H. P. Fitzgerald, were
9 you in trouble a lot at school for getting into fights?

10 A Not a lot, but sometimes.

11 Q Okay. The item that you got in trouble for when you
12 were spanked, the one you described to the detective, you told
13 him you were spanked on the bottom once for stealing
14 something. Do you remember we were just talking about that?

15 A Yes.

16 Q Lealer made you take that back; right? Didn't she
17 make you go to the store and return it?

18 A Right.

19 Q Okay. But you don't remember what store it was; is
20 that right?

21 A No.

22 Q Okay. Okay. And then you were -- so this interview
23 happened December of 2011 with the Henderson Police. At some
24 point you were interviewed by them; is that right?

25 A Right.

1 Q And you remember it being early in the morning or
2 late at night; is that correct?
3 A Correct.
4 Q And you were interviewed by yourself; correct?
5 A Correct.
6 Q Okay. And then you remember a few days after that
7 someone by the name of Bobbi interviewed you?
8 A Yes.
9 Q You remember talking to Bobbi?
10 A Yes.
11 Q Do you remember telling Bobbi things like you didn't
12 believe your sister, Victoria, when she said she had been
13 raped?
14 A I don't know.
15 Q Okay. Do you remember telling Bobbi that you felt
16 safe in the house and you didn't want to leave?
17 A Yes.
18 Q Okay. And do you remember telling Bobbi that you
19 didn't want to go back and live with your mom, Tina? Do you
20 remember telling her that?
21 A I don't know.
22 Q Okay. Do you remember in January of 2012 Bobbi came
23 out and talked to you again? Do you remember that?
24 A Yes.
25 Q And do you remember asking her when Fred could move

1 back in?

2 A I don't know.

3 Q Okay. You don't remember saying that?

4 A No.

5 Q Okay. Fred had moved out for a little while, isn't

6 that right?

7 A I don't know.

8 Q You don't remember Fred moving out of the house?

9 A No.

10 Q Okay. Okay. So now I want to talk to you about the

11 -- your testimony with regard to what you said about Fred

12 touching you, okay?

13 A Okay.

14 Q I'm going to ask you some questions about that. Do

15 you remember when you gave your statement to CPS? And this

16 would have been -- this would have been in like September -- I

17 apologize, September 27, 2012. Do you remember being

18 interviewed by someone by the name of Ms. Fisher in September

19 of 2012?

20 A I don't remember her name, but I think if I saw her

21 I would remember her face.

22 Q Okay. Well, let's put this into context, then. So

23 you -- you finished out the school year. After the interview

24 with the Henderson detectives you finished out the school

25 year, is that right, at Fred and Ann's house? You finished

1 school that year and into the summer at Fred and Ann's house;
2 is that right?

3 A Which -- which time are you talking about?

4 Q You have to hold the microphone up.

5 A Which time are you talking about?

6 Q Remember being interviewed by the Henderson
7 detectives?

8 A Yes.

9 Q Okay. And after that interview you finished school
10 out; right? You went through June at school? Did you finish
11 school that year?

12 A I don't remember.

13 MS. LUZAICH: You know, I'm sorry. Objection.
14 Foundation. I don't understand the question. I don't know if
15 Taharah will.

16 THE COURT: Do you understand the question?

17 THE WITNESS: No.

18 THE COURT: Okay.

19 BY MS. ALLEN:

20 Q Well, did you -- were you in school in -- when you
21 were interviewed by the Henderson Police Department, the
22 Henderson detectives, were you in school?

23 A Yes.

24 Q Okay. And that was December of 2011; is that right?

25 A Right.

1 Q Or at least you believe it is. And were you in
2 school in January of 2012?
3 A Yes.
4 Q What about February? Were you in school in February
5 or 2012?
6 A Yes.
7 Q Okay. March and April and May of 2012 were you in
8 school?
9 A Yes.
10 Q Okay. And that whole time of 2012, from January to
11 May of 2012, you were living in Fred and Ann's house; is that
12 right?
13 A Right.
14 Q Okay. So June comes along and do you -- you
15 finished that school year and you're on summer break. Do you
16 -- do you remember that?
17 A Yes.
18 Q Okay. And that summer you spent a significant
19 amount of time at your mom's house; isn't that right?
20 A Right.
21 Q In fact, almost the entire summer with your mom and
22 Victoria; isn't that right?
23 A And Mahlica.
24 Q Okay. And Mahlica.
25 A And Shabazz was there.

1 Q And Taquanda.
2 A And Taquanda.
3 Q Okay. So you spent the entire -- almost the entire
4 summer with your family; is that correct?
5 A Almost.
6 Q All right. And then you came back to Fred and Ann's
7 house to start the -- the school year, the 2012 school year.
8 Do you remember that?
9 A Yes.
10 Q Okay. And then in September you were interviewed by
11 someone from CPS. Do you recall that?
12 A Yes.
13 Q Okay. And they were asking you questions about
14 living at Fred's house. Do you remember that?
15 A Yes.
16 Q All right. Do you remember Ms. Fisher asked you how
17 you felt about living with Ms. Ann. Do you remember that?
18 A Yes.
19 Q Okay. And you said I used to want to live there,
20 but now I don't. Do you remember that?
21 A Yes.
22 Q Okay. And then she asked you why.
23 A Yes.
24 Q And do you remember your response was because we get
25 in trouble for like the little things. Do you remember that?

1 A Yes.

2 Q Like usually we'd be getting in trouble for -- do

3 you -- do you remember that, and then talking about getting

4 yelled at?

5 A Yes.

6 Q And then you said and then plus what happened to the

7 rape. Do you remember that?

8 A Yes.

9 Q Okay. So when you answered her question when she

10 asked you why you didn't want to live there anymore, your very

11 first response was that you were getting in trouble. Do you

12 remember that?

13 A Yes.

14 Q Okay. You told Ms. Fisher from CPS that it happened

15 when you were 11 years old. Do you remember that?

16 A Yes.

17 Q Just like you said today, it happened to you when

18 you were 11 years old; is that right?

19 A Right.

20 Q But you agreed earlier you were 12 years old when

21 you interviewed with Henderson detectives; is that right?

22 A I don't really know how old I was. I said it was

23 between 11 and 12.

24 Q Okay. Well, your birthday is in October; is that

25 correct?

1 A Correct.

2 Q Okay. And the interview was in December of 2011; is
3 that correct?

4 A I don't really know the dates or times.

5 Q Okay. All right. Do you remember talking about the
6 first time it happened with the CPS worker?

7 A Yes.

8 Q Do you remember what you told them?

9 A No.

10 Q Okay. Today you testified that he drug you into the
11 bathroom. Do you remember that?

12 A Yes.

13 Q Okay. Do you remember telling a CPS worker that you
14 were taking a shower --

15 A Yes.

16 Q -- the first time it happened? Do you remember
17 that?

18 A Yes.

19 Q Okay. And that someone shut off the lights; is that
20 right?

21 A Right.

22 Q Okay. And then someone grabbed your wrist --

23 A Right.

24 Q -- and like raped me. Do you remember saying that?

25 A Right.

1 Q Okay. Do you remember being asked -- do you
2 remember being asked by Ms. Fisher what his body was doing
3 when this was -- when this was going on, this rape in the
4 shower? Do you remember that?

5 A Yes.

6 Q Do you remember if your response was it was dark?

7 A Yes.

8 Q Okay. Did Ms. Ann ever catch you taking
9 inappropriate pictures on a cell phone of yourself?

10 A I was taking pictures, but they wasn't
11 inappropriate.

12 Q How would you describe the pictures? They were
13 pictures of you; is that right?

14 A Yes.

15 Q Okay. And they were pictures of you with less
16 clothing on than you have now?

17 A No.

18 Q They were pictures of you fully clothed?

19 A It was just normal pictures.

20 Q She took the phone away from you, didn't she, as a
21 result of those pictures?

22 A Yeah.

23 Q She was angry about them?

24 A Yeah.

25 Q Were you sending them to someone?

1 A No.

2 Q Okay. Do you remember Taquanda being accused by

3 Sha'karia of stealing a vibrator or dildo?

4 A Yes, I remember.

5 Q Okay. Do you remember if Taquanda blamed you?

6 MS. LUZAICH: Objection. Hearsay.

7 THE COURT: Sustained.

8 BY MS. ALLEN:

9 Q Did you steal -- did you steal the dildo?

10 A No.

11 Q Okay. Do you know if your sister did?

12 A No.

13 MS. LUZAICH: Objection.

14 MS. ALLEN: I asked her if she knew.

15 THE COURT: Are you okay, Taharah?

16 THE WITNESS: Can I get a minute?

17 THE COURT: Yeah --

18 THE WITNESS: Can I --

19 THE COURT: -- you can.

20 THE WITNESS: -- get a minute?

21 THE COURT: Do you need a break?

22 THE WITNESS: Uh-huh.

23 MS. ALLEN: Sure.

24 THE COURT: Okay. All right. We're going to take a

25 recess.

1 During this recess you're admonished not to converse
2 amongst yourselves or with anyone else on any subject
3 connected with this trial or read, watch, or listen to any
4 report of or commentary on the trial or any person connected
5 with this trial by any medium of information, including,
6 without limitation, newspapers, television, the Internet, or
7 radio, or form or express any opinion on any subject connected
8 with this trial until the case is finally submitted to you.
9 And we'll be in recess for ten minutes.

10 (Court recessed at 4:01 p.m., until 4:13 p.m.)

11 (Jury is present)

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

14 MS. LUZAICH: Yes.

15 MS. ALLEN: Yes, Your Honor.

16 THE COURT: Okay. The witness can be brought back
17 in and you may continue with your cross.

18 MS. ALLEN: Thank you.

19 THE COURT: Okay. Are you ready, Taharah?

20 THE WITNESS: [Inaudible].

21 THE COURT: All right. Thank you for coming back.
22 Thank you.

23 THE WITNESS: Uh-huh.

24 MS. ALLEN: Thank you, Your Honor. May I proceed?

25 THE COURT: Uh-huh.

1 MS. ALLEN: Thank you.

2 BY MS. ALLEN:

3 Q All right. Taharah, I'm almost finished. I am
4 almost finished. Okay. You -- you mentioned your friend
5 Anya. Do you remember talking about Anya?

6 A Yes.

7 Q Did you have a nickname for her?

8 MS. LUZAICH: I'm sorry. I didn't hear that.

9 MS. ALLEN: Nickname did she have --

10 THE COURT: Anya.

11 MS. LUZAICH: oh.

12 BY MS. ALLEN:

13 Q Did you have a nickname for Anya? Did you call her
14 something other than Anya?

15 A We called her Nahna (phonetic).

16 Q Nahna. Okay. And that was -- you called her that,
17 and so did your sister Taquanda; is that right?

18 A Yes.

19 Q Okay. And you said her mom's name was Sandy or
20 Sandra?

21 A Sandra.

22 Q Okay. Do you remember telling -- this is in
23 September of 2012. Do you remember telling Ms. Fisher that
24 you told Auntie -- you called her Auntie Sandra about it? Do
25 you remember that?

1 A Yes.

2 Q Okay. And you told her who had raped you and all
3 the details; is that right?

4 A Yes.

5 Q And do you remember that she -- you told the CPS
6 worker that she told you to call the cops; is that right?

7 A Yes.

8 Q Okay. Okay. So I just want to talk a little bit
9 about the -- the laundry room that you were talking about
10 earlier, okay? Okay?

11 A Yes.

12 Q Okay. You said that you were asleep; is that right?

13 A Yes.

14 Q Do you remember the time of day it was?

15 A No.

16 Q Do you remember were you -- had you been in school
17 that day, was it a Saturday, do you remember what time of year
18 it was?

19 A I think I went to school that day and came home.

20 Q You think so. Okay. Do you remember what day it
21 was of the week?

22 A No.

23 Q Okay. And you said you were asleep. Do you
24 remember when you woke up what time it was?

25 A No.

1 Q Okay. And in your mind there was nobody else in the
2 house, is that right, except Taquanda?
3 A Yes.
4 Q So it was you and Taquanda and Fred and that was it;
5 is that right?
6 A Right.
7 Q Okay. And he woke you up; is that correct?
8 A Yes.
9 Q And he took you directly to the laundry room; is
10 that right?
11 A Right.
12 Q Okay. He didn't take you anywhere else?
13 A Right.
14 Q And was the door open?
15 A I don't remember.
16 Q The laundry room door, you don't remember if it was
17 open?
18 A No.
19 Q How big is the laundry room?
20 A It's like -- it's not that big. It's like a square.
21 It's like --
22 Q Okay. The washer and dryer are in there; is that
23 right?
24 A Yes.
25 Q Okay. And there's a door?

1 A Yes.

2 Q But you don't remember if the door was open or shut?

3 A Right.

4 Q Do you remember if the light was on?

5 A No, I -- the light wasn't on.

6 Q The light was off?

7 A Yes.

8 Q Okay. So after he led you out of your room or he

9 pulled you out -- did he pull you out of your room?

10 A Well, he like led me.

11 Q Okay. So tell me what happened next.

12 A And then after he led me I was with him.

13 Q Go ahead.

14 A He had put me in the laundry room.

15 Q Okay.

16 A And then after that he had took -- he had took my

17 clothes off and then he had took his fingers and then he put

18 them up my private part.

19 Q Okay. Do you remember using the word -- when you

20 were talking to CPS, do you remember using the word vagina?

21 A Yes.

22 Q Okay. Is that a word that you know for your private

23 part?

24 A Yes.

25 Q Okay. And that word -- when you were talking to CPS

1 that word wasn't suggested to you. That was the word that you
2 used; isn't that right?

3 A Yes.

4 Q Okay. When you say that -- so all of your clothes
5 came off; is that right?

6 A Yes.

7 Q And where did you get dressed again?

8 A Before I left.

9 Q So you got dressed in the laundry room?

10 A Uh-huh.

11 Q Yes?

12 A Yes.

13 Q And then you went right back to your bedroom; is
14 that right?

15 A Yes.

16 Q Okay. And you weren't upset at all, were you? You
17 were crying?

18 A No.

19 Q Okay. You weren't crying.

20 A I just walked back.

21 Q Okay. Do you remember -- do you remember testifying
22 that Taquanda had caught you and Fred in the laundry room?

23 A No, because she was walking -- she was walking down
24 the hall.

25 Q Okay. But do you remember testifying she caught him

1 in the act doing that to me? Do you recall that?
2 A Yes.
3 Q Pardon?
4 A Yes.
5 Q Okay. So did you see her walk by?
6 A Yes, because I seen her because she was down there
7 when I was in my room.
8 Q Okay. So was -- does that lead you to believe, or
9 do you think that maybe the door was open, then, since you saw
10 her?
11 A Yes.
12 Q Okay. You said Fred used to work at Embarq; is that
13 right?
14 A Huh?
15 Q You said Fred used to work at Embarq?
16 A Yes.
17 Q Do you remember him also working at Nellis Air Force
18 Base?
19 A Yes.
20 Q Okay. When he worked did he work a lot of hours?
21 A It was a good amount of hours that he worked.
22 Q You remember him being gone a lot; is that right?
23 A Yes.
24 Q Okay. I'm going to ask you -- well, let me ask you
25 this. You said that you didn't tell anybody when Henderson

1 came to interview you because you were afraid that no one
2 would believe you. Do you remember saying that?

3 A Yes.

4 Q Okay. You had previously been taken away from your
5 mother in Utah; is that right?

6 A Yes.

7 Q CPS had taken you away from your mom in Utah, do you
8 remember that?

9 A Yes.

10 Q Okay. And -- and you knew that those were police
11 officers that interviewed you; is that right?

12 A Yes.

13 Q Okay. And you previously testified here that you've
14 told a doctor; is that right?

15 A Yes.

16 Q Do you remember telling any school counselors about
17 it?

18 A No.

19 Q Okay. Had Victoria told you that no one believed
20 her? Is that why you were worried about it?

21 A Yes.

22 Q Okay. So in -- when you were interviewed by Bobbi
23 in January of 2012, you remember we talked about the second
24 time she came to talk to you?

25 A Yes.

1 Q Okay. You -- I think you said you don't remember
2 telling her that you didn't believe your sister. Do you
3 remember saying that a few minutes ago that you didn't
4 remember that?

5 A Yes.

6 Q Okay. As you sit here today do you recall a time
7 period where you didn't believe your sister?

8 A No.

9 Q Okay. But you were worried about people not
10 believing you because of the things your sister had told you?

11 A Yes.

12 Q Okay. Did your sister talk to you a lot about Fred?

13 A No.

14 Q She didn't talk to you a lot about Fred?

15 A No.

16 Q But she talked to you a lot about people not
17 believing her; isn't that right?

18 A Yes.

19 Q Okay. Do you remember a time when Sha'karia and
20 Victoria, I asked you if they -- they watched you in the past
21 and you said that they had. Do you remember that?

22 A Yes.

23 Q Do you remember a time when you told Sha'karia that
24 Fred had touched you? Do you remember that?

25 A No.

1 Q Do you recall Sha'karia asking you if Victoria had
2 put you up to it? Do you remember that?

3 A No.

4 Q And do you remember admitting to Sha'karia that
5 Victoria had told you to say that?

6 A No.

7 Q You don't remember any of those things?

8 A No.

9 Q Okay. That would have been close in time to maybe
10 when Claudia died or after -- right after Claudia died?

11 A Well, I was not even in Vegas.

12 Q It was after Claudia died, right when you came back
13 from Utah. Do you remember anything happening like that,
14 Victoria telling you to say Fred touched you?

15 A No.

16 MS. ALLEN: Court's indulgence. Your Honor, I think
17 at this time I pass the witness.

18 THE COURT: Thank you.

19 MS. ALLEN: Thank you.

20 THE COURT: Any redirect.

21 MS. LUZAICH: Just briefly.

22 REDIRECT EXAMINATION

23 BY MS. LUZAICH:

24 Q Hi, Taharah. Are you all right?

25 THE COURT: Are you okay, Taharah?

1 THE WITNESS: I'm okay.

2 THE COURT: You're okay? All right.

3 BY MS. LUZAICH:

4 Q Okay. Taharah, when you just talked to Ms. Allen
5 about the time in the laundry room when you said that Taquanda
6 was walking down the hall and caught Fred, Taquanda didn't
7 walk into the laundry room; right?

8 A No.

9 Q When you are -- well, how does it make you feel
10 sitting here talking in front of a room full of people?

11 MS. ALLEN: Judge, objection.

12 THE COURT: Overruled. She can answer.

13 THE WITNESS: I'm nervous. Like --

14 BY MS. LUZAICH:

15 Q Is it hard to --

16 A -- I don't know how nervous I am, but I'm nervous.
17 I'm shaking over here.

18 Q When you talked to Ms. Fisher the interviewer in
19 September of 2012, were you as nervous as you are today or did
20 you feel somewhat different?

21 A I was still nervous.

22 Q Did you feel different talking to her than talking
23 to a room full of people?

24 A Way different because it was just her.

25 Q Okay. When Ms. Allen asked you about Sandra

1 Thompson, that's Anya's mom; right?

2 A Thomas.

3 Q No, Thomas. I'm sorry. Did I get that wrong?

4 A You just got the last name wrong.

5 Q Okay. Correct me. Tell me -- tell me what it is.

6 A Thomas.

7 Q Sandra Thomas. Okay. When Ms. Allen asked you

8 about telling Sandra Thomas, when did you tell Sandra Thomas

9 what Fred was doing?

10 A I don't remember when I told her, but I know I told

11 her.

12 Q Did you tell her close in time to when Taquanda

13 called CPS?

14 A Yes.

15 Q How close in time did you tell her to when Taquanda

16 called CPS?

17 A It was like some days.

18 Q Where were you when Taquanda called CPS?

19 A I was standing right there when she had called them.

20 Q Okay. Let me ask it a better way. Where were you

21 and Taquanda when Taquanda called CPS?

22 A We was in Sandra's room.

23 Q At her house?

24 A Yeah, at her house.

25 Q Okay. And do you know where Taquanda got the phone

1 number to call?

2 A No.

3 Q Did somebody give it to her?

4 A Yes.

5 Q Who gave it to her?

6 A Sandra.

7 Q Okay. You had talked about the fact that it had
8 happened that Fred touched you a lot of times, is it hard for
9 you to distinguish them while you're talking about them,
10 different times?

11 A Yes.

12 Q When you -- I'm sorry. I can't read my handwriting.
13 When you were talking to the Henderson Police Department,
14 that's the people that came to the Blankenship house in the
15 middle of the night, Ms. Allen asked you some questions about
16 that you told the detective that you felt safe and protected
17 at the Blankenship house. Do you remember saying that?

18 A Yes.

19 Q And you remember saying that here today, too;
20 correct?

21 A Yes.

22 Q Did you say that you felt safe and protected because
23 you guys had dogs there?

24 MS. ALLEN: Your Honor, objection. Leading.

25 THE COURT: Sustained.

1 BY MS. LUZAICH:

2 Q Did you talk to -- well, did you talk to the
3 detective about the big dogs that are there at the Blankenship
4 house?

5 A Right.

6 Q Did you talk to them about having dogs on the
7 outside, dogs on the side, dogs in the house, that you feel
8 safe?

9 A Right.

10 Q Did those dogs make you feel safe in that house?

11 A Sometimes.

12 Q When you were talking to those detectives at the
13 house on Blankenship, you said you had been asleep; right?
14 They woke you up to talk to them?

15 A Oh. Yes.

16 Q And Fred was where?

17 A In the house.

18 Q When you talked to Child Protective Services in
19 Utah, was your mom there in the house or was she somewhere
20 else entirely?

21 A I don't know what you're trying to ask me.

22 Q Remember in Utah when Child Protective Services came
23 and talked to all you guys and then took you out of the house,
24 out of your mom's house in Utah?

25 A In Utah?

1 Q Yes.

2 A Yes.

3 Q Okay. So when you talked to Child Protective
4 Services when they took you out of mom's house, was your mom
5 in another state at the time?

6 A Yes.

7 Q Okay. So she wasn't nearby while you were talking
8 to Child Protective Services; right?

9 A No.

10 Q And then in September of 2012 when you talked to Ms.
11 Fisher in the room where you were recorded, remember that?

12 A Yes.

13 Q Was Fred right outside the door?

14 A I don't know where he was at, but I just know he was
15 in the house.

16 Q No, no, not in the house. When -- when you were
17 talking to Ms. Fisher at the children's place in September of
18 2012, do you remember that? When you talked to Ms. Fisher in
19 September of 2012 there was a room with just you and her you
20 told us.

21 A Yes.

22 Q Okay. So when you and Taquanda were brought to that
23 place, Fred was not at that place; is that right?

24 A Right.

25 Q Okay. And he wasn't anywhere near there --

1 A Right.

2 Q -- as far as you knew? When -- well, and I'm sorry,

3 when you were talking to Ms. Fisher in that room and that you

4 were interviewed, did she ask you to draw something? Or,

5 actually, did she ask you about something that you then drew?

6 A Yes.

7 MS. LUZAICH: May I approach?

8 THE COURT: You may.

9 BY MS. LUZAICH:

10 Q Showing you State's Proposed Exhibit 2. Do you

11 recognize that?

12 A Yes.

13 Q Did you draw that?

14 A Yes.

15 Q And did you draw that when you were talking to Ms.

16 Fisher?

17 A Yes.

18 Q What is that? Do you know what it is?

19 A Yes.

20 Q Can you tell me? Are you nervous?

21 A Yes.

22 Q Are you uncomfortable?

23 A Yes.

24 Q Can you tell me anyway?

25 A That's like a male's private part.

1 Q And when you were drawing that male's private part,
2 were you talking about any particular male's private part?

3 A Fred's.

4 MS. LUZAICH: Move it into evidence.

5 THE COURT: Any objection?

6 MS. ALLEN: No, Your Honor.

7 THE COURT: It's admitted.

8 (State's Exhibit 2 admitted)

9 MS. LUZAICH: Thank you. I don't have any more
10 questions.

11 Thank you, Taharah.

12 THE COURT: Any recross?

13 MS. ALLEN: Thank you.

14 THE COURT: You're almost done.

15 MS. ALLEN: Yeah, we're almost done.

16 THE COURT: Okay?

17 THE WITNESS: Okay.

18 RE CROSS-EXAMINATION

19 BY MS. ALLEN:

20 Q You -- you indicated to Ms. Luzaich from your
21 statement in the first one with Henderson police you indicated
22 you felt safe because the dogs were in the house; is that
23 right?

24 A Right.

25 Q Okay. And you -- you said a number of times that

1 you felt safe in the house; is that right?

2 A Right.

3 Q Okay. But when they ask you if you had ever been
4 uncomfortable being around Fred, that didn't have anything to
5 do with the dogs, did it?

6 A No.

7 Q Okay. And your answer was no; is that right?

8 A Right.

9 Q And they asked you about staying in the house with
10 Fred. And that didn't have anything to do with the dogs, did
11 it?

12 A No.

13 Q And your answers were good, confident, and positive,
14 anything but negative. Do you remember that?

15 A Right.

16 Q Fred was in the house, is that right, but you didn't
17 even know where he was in the house?

18 A Right.

19 Q Okay. And you -- you had been told that they were
20 there to help you; is that right?

21 A Right.

22 Q They didn't indicate that they weren't there to help
23 you or that they were just interviewing you for no reason, did
24 they?

25 A No.

1 Q Okay. Do you know why they initially came to the
2 house?
3 MS. LUZAICH: Objection. Beyond the scope.
4 THE COURT: Overruled. I'm going to allow her to
5 answer.
6 MS. ALLEN: Thank you.
7 BY MS. ALLEN:
8 Q Do you know why they initially came to the house?
9 A I don't know. It was something about what Vicky
10 told them.
11 Q Okay. So something about Vicky; is that right?
12 A Yep.
13 Q Okay. I apologize. One last question. You saw --
14 you saw Victoria when she was here last week? Did you see
15 Victoria?
16 A Uh-huh. Yes.
17 Q For a couple days; right?
18 A I didn't see her for a couple of days. I just seen
19 her at court.
20 Q Okay. But --
21 A That was the only day I seen her.
22 Q She was staying at the Golden Nugget and you saw
23 her; is that right?
24 A What are you trying to say?
25 Q Did you just see Victoria here at court?

1 A Yes.

2 Q Okay.

3 A Not just seen, but it was like some days ago before

4 this week.

5 Q It was last week; right?

6 A Right.

7 Q Do you remember it being last like Tuesday or

8 Wednesday you seen her?

9 A Yes.

10 Q Had that been the first time you'd seen her in a

11 long time?

12 A Yes.

13 Q You met her downstairs when she came out of here.

14 Do you remember that?

15 A Right.

16 Q She gave you a big hug?

17 A Right.

18 Q And she gave your mom a big hug?

19 A Right.

20 Q And some -- I think Mahlica was there, too, and

21 Taquanda; is that right?

22 A Right.

23 Q Thank you.

24 MS. ALLEN: That's it, Your Honor.

25 THE COURT: Okay. Anything else?

1 Okay. Thank you very much for your testimony.

2 Okay. It looks like we have a question from one of the
3 jurors, so if you can just stay here for just a moment.

4 Can I have the attorneys just meet me in the
5 hallway.

6 (Pause in the proceedings)

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

9 MS. LUZAICH: Yes.

10 MS. ALLEN: Yes, Your Honor.

11 THE COURT: Okay. At this time, ladies and
12 gentlemen, the Court has made a determination not to ask that
13 question. So is there anything else?

14 Okay. Taharah, thank you very much for being here.
15 You may step down. You can leave the microphone there. You
16 are excused from your subpoena. Thank you for the testimony
17 that you gave to this jury.

18 And now we're going to conclude for the evening. I
19 want to remind you that tomorrow you do not need to be here,
20 so you have a day off. I want to make sure -- you're probably
21 grateful for a day off. I just wanted to make sure 9:30 was
22 going to be okay for everybody.

23 MS. ALLEN: Yes, Your Honor.

24 THE COURT: Okay. So Wednesday we're going to start
25 at 9:30.

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

9 Thank you very much for your time and your courtesy.
10 You are excused and I'll see you Wednesday morning.

11 (Jury recessed at 4:41 p.m.)

12 THE COURT: Anything outside the presence?

13 MS. LUZAICH: No, Your Honor.

14 MS. ALLEN: No.

15 THE COURT: Okay. Thank you. See you on Wednesday.

16 MS. LUZAICH: Thank you.

17 (Court recessed at 4:43 p.m., until
18 Wednesday, April 9, 2014, at 9:53 a.m.)

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| <u>STATE'S WITNESSES</u> | | | | |
| Taharah Duke | 3 | 130 | 177 | 184 |
| Sholeh Nourbakhsh | 96 | 113 | 128 | |

* * *

EXHIBITS

| <u>DESCRIPTION:</u> | <u>ADMITTED</u> |
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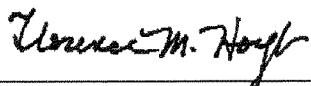
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Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

12/28/15

DATE



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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 10

WEDNESDAY, APRIL 9, 2014

APPEARANCES:

FOR THE STATE:

ELISSA LUZAICH
KRISTINA A. RHOADES
Deputy District Attorneys

FOR THE DEFENDANT:

BETSY ALLEN, ESQ.
JONATHAN MacARTHUR, ESQ.

COURT RECORDER:

KRISTINE CORNELIUS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

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

2 (Court was called to order)

3 (Jury is not present)

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

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

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

13 MS. ALLEN: Oh. No.

14 MS. LUZAICH: No.

15 THE COURT: Okay. Good.

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

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

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

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

24 MS. ALLEN: Oh. Gosh. Wow.

25 THE COURT: Right.

1 MS. ALLEN: Just not coming.

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

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

7 THE COURT: Well, I think --

8 MS. ALLEN: Do you know anything MS?

9 MS. LUZAICH: I was asking my dad.

10 MS. ALLEN: Your dad?

11 MS. LUZAICH: My dad is a doctor.

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

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

17 MS. LUZAICH: That's fine.

18 THE COURT: Okay.

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

20 THE COURT: What I usually do --

21 MS. ALLEN: Thank God we have two.

22 MS. LUZAICH: Yeah.

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

25 MS. ALLEN: Okay.

1 MR. MacARTHUR: Okay.

2 THE COURT: -- will now be a part of the jury. But
3 I don't move them all around.

4 MS. ALLEN: No.

5 THE COURT: And then so when they come in the first
6 thing I'll say, do the parties stipulate to the jury as now
7 empaneled. So no one has any objection to me excusing Ms.
8 Stephens; correct?

9 MS. LUZAICH: State does not.

10 MS. ALLEN: No, Your Honor.

11 THE COURT: Okay.

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

13 MS. LUZAICH: Sure. Can we do -- since you're on
14 the bench, can we do a couple --

15 THE COURT: Sure.

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

17 MS. ALLEN: Scheduling wise, we're crossing our
18 fingers and toes --

19 THE COURT: So am I.

20 MS. ALLEN: -- that the State is done today. We're
21 hopeful. Obviously, you know, when we've said, okay, we're
22 going to be done "x", it maybe hasn't worked out as well as we
23 thought. But they're cops now, so we're --

24 THE COURT: That's okay.

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

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

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

12 THE COURT: Okay.

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

15 THE COURT: That's fine.

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

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

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

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

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

4 THE COURT: Okay.

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

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

9 MS. LUZAICH: Right.

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

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

14 THE COURT: I just saw them.

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

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

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

3 MS. LUZAICH: Okay.

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

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

8 THE COURT: That's great.

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

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

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

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

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

18 MS. LUZAICH: Yes.

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

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

23 THE COURT: Okay.

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

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

4 THE COURT: Okay.

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

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

10 MS. LUZAICH: No, it is redacted.

11 THE COURT: It's reacted.

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

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

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

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

18 MS. ALLEN: Yes, Your Honor.

19 MS. LUZAICH: Yes.

20 THE COURT: Okay.

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

25 THE COURT: Okay.

1 MS. LUZAICH: -- just while they're listening to it,
2 but they won't have it back in the jury room.
3 THE COURT: Okay. So you're not going to hand them
4 out copies of it?
5 MS. LUZAICH: No, it'll be on --
6 THE COURT: You're just going --
7 MS. LUZAICH: -- the screen.
8 THE COURT: -- to put it on the screen.
9 MS. LUZAICH: Yeah.
10 THE COURT: Okay. And I heard it's an hour and a
11 half?
12 MS. LUZAICH: Yes.
13 THE COURT: Okay.
14 MS. LUZAICH: And that saves two trees doing it that
15 way rather than making --
16 THE COURT: Yes, you're right.
17 MS. LUZAICH: -- 15 copies.
18 THE COURT: I agree with that. That's -- that's a
19 good way. Okay. So who is up first for you this morning?
20 MS. LUZAICH: Sergeant Delacanal.
21 THE COURT: Okay. You want to bring him in?
22 We have everybody here now; right?
23 THE MARSHAL: Yes.
24 THE COURT: Okay.
25 (Jury is present)

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

3 MS. LUZAICH: Yes.

4 MS. ALLEN: Yes, Your Honor.

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

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

9 CHRISTOPHER DELACANAL, STATE'S WITNESS, SWORN

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

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

16 THE CLERK: Thank you.

17 MS. RHOADES: May I proceed?

18 THE COURT: You can proceed.

19 MS. RHOADES: Thank you.

20 DIRECT EXAMINATION

21 BY MS. RHOADES:

22 Q Sir, how are you employed?

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

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

1 Henderson Police?

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

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

5 A 19 years.

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

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

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

13 A Between 2003 and 2005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 A You mean outside the police department?

19 Q Yes.

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

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

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

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

14 A Yes.

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

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

20 Q Do you recall the date of that report?

21 A I believe it was December 10th.

22 Q How did you become involved in this investigation?

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

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

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

9 A It might.

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

11 A Yes.

12 Q Okay.

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

15 THE COURT: You may.

16 MS. RHOADES: Thank you.

17 BY MS. RHOADES:

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

22 A Yes.

23 Q And is your memory refreshed?

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

25 Q Were you on duty at this time?

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

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

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

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

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

1 them until the next day.

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

4 A Yes.

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

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

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

10 A I did.

11 Q When did you hear from him?

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

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

17 THE COURT: Sustained.

18 BY MS. RHOADES:

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

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

22 THE COURT: Sustained.

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

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

1 what you heard what did you do next.

2 BY MS. RHOADES:

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

5 A Yes.

6 Q What did you do?

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

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

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

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

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

20 Q And describe how you guys went there.

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

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

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

6 A Yes.

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

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

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

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

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

22 A No.

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

25 A Yes.

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

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

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

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

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

17 A We were in the garage.

18 Q Were these happening simultaneously?

19 A I believe so, yes.

20 Q Do you recognize Fred Harris in court today?

21 A Yes.

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

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

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

1 identification of the defendant?

2 THE COURT: So reflected.

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

4 THE COURT: You may.

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

7 THE COURT: You may.

8 MS. RHOADES: Thank you.

9 BY MS. RHOADES:

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

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

14 Q Do you recognize who that is?

15 A I believe that's Ms. Cooks.

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

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

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

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

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

12 Q After their interviews were done, what happened?

13 A Whose interviews?

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

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

18 Q Do you know which detective interviewed which girl?

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

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

24 A They were.

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

1 interviews did you hear something happen in the house?

2 A No.

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

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

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

11 A Yes.

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

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

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

18 THE COURT: Sustained.

19 BY MS. RHOADES:

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

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

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

3 A She became quite upset.

4 Q How did you know she was upset?

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

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

11 A Yes, they were.

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

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

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

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

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

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

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

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

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

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

24 A It was a number of months.

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

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

3 THE COURT: Cross.

4 MS. ALLEN: Thank you.

5 CROSS-EXAMINATION

6 BY MS. ALLEN:

7 Q Good morning, Sergeant.

8 A Good morning.

9 Q How are you?

10 A I am well. How are you?

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

14 A Okay.

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

17 A Yes.

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

19 A Yes.

20 Q 700s?

21 A 711.

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

25 A Yes.

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

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

4 Q Okay.

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

7 Q Okay. And before that was it patrol?

8 A It was property crimes.

9 Q Okay.

10 A And then before that it was patrol.

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

13 A Yes.

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

17 A Yes.

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

19 A Unfortunately, yes.

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

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

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

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

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

5 A As the date that it occurred.

6 Q Okay.

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

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

11 A Yes.

12 Q Okay. And Aguiar responded?

13 A Yes.

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

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

17 Q Okay.

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

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

22 A Yes.

23 Q -- if you know.

24 A Yes.

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

1 is that correct?

2 A Yes.

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

4 is that right?

5 A Yes.

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

7 time you showed up?

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

9 Q Okay.

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

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

12 asleep at that point; is that correct?

13 A Yes.

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

15 is that right?

16 A Yes.

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

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

19 them; is that correct?

20 A Yes.

21 Q And you tape recorded the statement; is that

22 correct?

23 A Yes.

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

25 recorded?

1 A As far as I know, yes.

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

5 A Yes.

6 Q Okay. And they were minors?

7 A Yes.

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

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

13 Q Okay.

14 A -- ability to understand, probably yes.

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

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

23 Q Okay.

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

1 up to the detective on how they feel.

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

4 A Exactly.

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

6 A Right.

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

9 A Yeah, depending on the age.

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

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

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

22 A Yes.

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

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

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

7 Q Okay.

8 A So --

9 Q Okay. But -- but you --

10 A But generally --

11 Q -- remember.

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

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

15 A Yes.

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

18 A Yes.

19 Q And that they're safe?

20 A Yes.

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

23 A Yes.

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

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

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

3 correct?

4 A Yes.

5 Q You have to say out loud.

6 A I'm sorry. Yes.

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

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

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

10 correct?

11 A Yes.

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

13 from -- did that come from Detective Aguiar?

14 A Yes.

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

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

17 that right?

18 A Yes.

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

20 and ended up in Metro's jurisdiction?

21 A I believe that was while the case was still open,

22 but Detective Aguiar was contacted by -- by a detective at

23 Metro.

24 Q Okay.

25 A And --

1 Q But it wasn't -- what I'm saying is like at some
2 point this case was essentially sent over. Everything you
3 had --
4 A Yes.
5 Q -- was sent over to Metro?
6 A Yes.
7 Q Okay. All right.
8 A As far as I know, yes.
9 MS. ALLEN: Court's indulgence for a moment. Thank
10 you, Your Honor.
11 THE COURT: Redirect.
12 MS. RHOADES: Nothing, Your Honor.
13 THE COURT: Sergeant, thank you very much for being
14 here. You are excused.
15 THE WITNESS: All right. Thank you.
16 THE COURT: You may call your next witness.
17 MS. LUZAICH: State calls Detective Aguiar.
18 CHRISTOPHER AGUIAR, STATE'S WITNESS, SWORN
19 THE CLERK: Thank you. Please be seated. Could you
20 please state your full name, spelling your first and last name
21 for the record.
22 THE WITNESS: Christopher Aguiar;
23 C-H-R-I-S-T-O-P-H-E-R, last name is Aguiar, A-G-U-I-A-R.
24 THE CLERK: Thank you.
25 THE COURT: You may proceed.

1 MS. LUZAICH: Thank you.

2 DIRECT EXAMINATION

3 BY MS. LUZAICH:

4 Q Good morning, sir. How are you employed?

5 A I'm a police officer with the City of Henderson.

6 Q How long have you been a police officer with the
7 City of Henderson?

8 A Approximately seven and a half years.

9 Q What is your current assignment at the City of
10 Henderson?

11 A I'm assigned to the investigations division and the
12 robbery unit.

13 Q How long have you been in the investigations
14 division as a whole?

15 A Since January of -- February of 2010.

16 Q When you went to the investigations division, where
17 did you start?

18 A In the special victims unit.

19 Q For how long were you with the special victims unit?

20 A I was there until approximately January of 2012.

21 Q So about two years?

22 A Almost two years, yeah.

23 Q And in January of 2012, is that when you went to the
24 robbery unit?

25 A I went first to the financial crimes unit and I was

1 there for about a year, and then I went to the robbery unit
2 after that.

3 Q Okay. And prior to going to the investigations
4 division, what did you do?

5 A I was a patrol officer assigned to -- first to the
6 east area command and then to the north area command.

7 Q So is the City of Henderson broken up into different
8 areas of command that the patrol officers respond to?

9 A Yes, there's three area commands, east, north, and
10 west.

11 Q And as a patrol officer, what were your duties?

12 A The first -- you basically are the first responder
13 to calls, that's the minor traffic accidents, conduct traffic
14 stops, response to homes for initial calls for service.

15 Q When you respond to calls for service as a patrol
16 officer, do you kind of begin an investigation and then
17 sometimes give it over to someone else?

18 A There are times that that happens, yes.

19 Q What might make you as a patrol officer give an
20 investigation over to someone else?

21 A If -- it depends on the complexity of the case. Any
22 potential people that need to be interviewed, sometimes our
23 patrol officers aren't qualified or don't have the amount of
24 time required to interview people, and sometimes those cases
25 are handed over, complex cases or specific cases will be

1 handed over to somebody else.

2 Q Are there certain kinds of crimes that are always
3 handed over?

4 A There's -- yes, certain levels of crimes will always
5 -- well, I would say 99.9 percent of the time would be handed
6 over.

7 Q For example?

8 A Homicides, officer involved shootings --

9 Q Sexual assaults?

10 A -- certain sexual assaults against children because
11 of the nature of the ages of the children and the
12 investigation needed.

13 Q Okay. I'm going to direct your attention
14 specifically to December 17, 2011. Were you working as a
15 detective with the special victims unit at that time?

16 A Yes, I was.

17 Q And who was your sergeant at that time?

18 A Sergeant Christopher Delacanal.

19 Q When you were working in December of 2011 for the
20 special victims unit, did you have a particular shift that you
21 worked?

22 A I normally worked Tuesday through Friday from 12:00
23 noon to 10:00 p.m.

24 Q And when the special unit -- sorry, special victims
25 unit detectives were not working, were there times that they

1 would also get called in?

2 A Yes.

3 Q How might that occur?

4 A Normally it would occur -- supervisors handle it
5 different ways, either a phone call or a text message from the
6 supervisor or the sergeant explaining that he needed somebody
7 to respond for a callout.

8 Q I'm sorry. I guess the better question would be
9 would that be if it was like after work hours or on a weekend
10 or something like that?

11 A Yeah, if it was -- if it was on a holiday or a
12 normal day off or a time period when we don't have people at
13 the station, say in the middle of the night.

14 Q Okay. And on December 17, 2011, were you called out
15 to respond to a call?

16 A Yes, I was.

17 Q Who was that call involving?

18 A Victoria Duke.

19 Q And where were you sent to to respond to that call?

20 A I was sent to the north station of the Henderson
21 Police Department.

22 Q Now, when you say the north station, how many
23 stations are there, or at least in 2011 how many were there?

24 A There were three station -- there are and were three
25 stations and each command works out of one of those stations.

1 Q The special victims unit detectives, where are they
2 housed?
3 A They're housed in our main station, which is the
4 same location that the east area command is housed for the
5 patrol division.
6 Q Where is that?
7 A On 223 Lead Street.
8 Q So when -- well, the individual, was that Victoria
9 Duke?
10 A Yes, it was.
11 Q When Victoria went to the north station, were you
12 sent there to talk to her?
13 A Yes, I was.
14 Q And when you went to the north station on December
15 17th of 2011, who was there?
16 A Our desk officer, Officer Viskieno (phonetic), Rose
17 Smith, and Victoria Duke.
18 Q What did you do when you got there?
19 A I got a couple initial details from Officer
20 Viskieno, and then I spoke to Rose.
21 Q Rose, is she somebody that was with Victoria?
22 A Yes, she was.
23 Q And is she an adult, so somebody that was older than
24 Victoria?
25 A Yes.

1 Q Where did you speak with Rose?

2 A I spoke with Rose -- there is -- in the north
3 station there's a couple of rooms that are designated as
4 interview rooms there at the station off in one of the
5 hallways and I spoke to her in that room.

6 Q When you spoke with Rose, was it just you and she,
7 or was anybody with you guys?

8 A Just us two.

9 Q And why do you do that?

10 A Normally you separate witnesses or anyone with
11 involved interest so that what people are saying aren't
12 influencing the things that the next persons are saying so
13 that you get an accurate depiction of -- a version of events
14 from one person only and it's not influencing anyone else
15 that's in the room and so other people don't know exactly what
16 they're saying.

17 Q Okay. And when you interviewed her, was your
18 interview tape recorded?

19 A Yes, it was.

20 Q What was the purpose behind interviewing Rose
21 specifically?

22 A I wanted to figure out first what -- why she came to
23 the station, what another individual, what Victoria had told
24 her, and get the basic information from her so that I knew
25 what we were there for.

1 Q Okay. And once you spoke to Rose, what did you do?

2 A After I spoke to Rose, then I spoke to Victoria
3 Duke.

4 Q Did you also speak with Victoria in one of those
5 interview rooms?

6 A Yes, I did.

7 Q Was it just you and Victoria?

8 A Yes, it was.

9 Q Would it be the normal course of things for it to be
10 just like one detective and a victim or a witness or whatever
11 as opposed to more than one detective or somebody else?

12 A Sometimes we will have two detectives during an
13 interview. Obviously in this case it was a Saturday evening.
14 I was the only one that got called in to investigate it and so
15 that's why I was the only one in that interview room.

16 Q Okay.

17 A It can go either way, though.

18 Q Had you felt that there was any problem or issue, I
19 mean, you have the ability at least to have somebody else come
20 in; correct?

21 A Yes.

22 Q When you talked to Victoria, was her interview also
23 recorded?

24 A Yes, it was.

25 Q Did she explain to you about a situation that

1 brought her there?

2 A Yes, she did.

3 Q And did she tell you who it was involving?

4 A Yes, she did.

5 Q Who was that?

6 A Fred Harris.

7 Q And did she also explain things that were concerning
8 her that didn't involve her?

9 A Yes, she did.

10 Q Did you give all of that information after you spoke
11 with Victoria to your sergeant?

12 A Yes, I did.

13 Q And is it the normal course of things for if you get
14 called out and he's not around for you at least to keep him
15 updated with what's going on?

16 A Yes, it is.

17 Q After you spoke with Victoria, what did you do?

18 A After I spoke to Victoria, I responded -- after
19 getting something to eat, I responded to 1100 Center Street.

20 Q Do you know what time it was that you went to the
21 north station?

22 A About 9:00 p.m.

23 Q And you went to Center Street. Did you go by
24 yourself, did you go with anybody?

25 A I had Officer Montano meet me there. He's a patrol

1 officer at the time, was assigned to the east area command.

2 Q Why did you do that?

3 A The nature of the neighborhood at 1100 Center
4 Street, it's not the safest part of Henderson to be. And when
5 I was in plain clothes, it's always safer to have a patrol
6 officer presence there with you so that there's no question
7 about who is there, who is trying to contact people, and it's
8 clear that you're a police officer because you have a uniform
9 office with you.

10 Q When you went there, what was it your intention to
11 do?

12 A It was -- my intention was to talk to any other
13 witnesses or family members that were at that apartment and
14 also to view the apartment.

15 Q Why did -- why were you going there to view the
16 apartment?

17 A To get a layout of the apartment and also I was told
18 that there was a piece of potential evidence that was in the
19 apartment.

20 Q Okay. Had you heard that that was where the last
21 incident or the incident that you're talking about occurred?

22 A Yes.

23 Q Okay. When you went there, who was there?

24 A It was Mahlica Duke and Shabazz Duke.

25 Q Did you speak with both Mahlica and Shabazz?

1 A Yes, I did.

2 Q Did you talk to them together, did you talk to them
3 separately, what did you do?

4 A Separately.

5 Q How did you go about doing that?

6 A I made contact with them and asked them separate,
7 one at a time, to come to my vehicle where I conducted an
8 interview with them.

9 Q Okay. So you talked to them outside of the
10 apartment?

11 A Yes, in my car that was parked in the parking lot.

12 Q And why did you do that?

13 A To have privacy during the interviews and it was the
14 safest place to do it and a place that I know is safe and
15 comfortable for me.

16 Q Okay. Did anybody else go to the Center Street
17 apartment, also?

18 A I think Rose had brought Victoria with her.

19 Q Okay. So by then there's Rose and Victoria, as well
20 as Shabazz and Mahlica at the apartment; correct?

21 A Yes.

22 Q What about the mom? Did you become aware of a
23 mother that was involved with the family?

24 A Yes, I was told the -- Victoria told me her mother
25 was Tina Duke.

1 Q Okay. Was Tina there?

2 A No, she was not.

3 Q Do you know where Tina was?

4 A I do not know where she was.

5 Q But she was not there?

6 A No, she was not.

7 Q By the time you got to the apartment, do you know

8 approximately what time it was?

9 A I believe it was probably around 10:00 at night.

10 Q Had it taken you awhile to talk to both Rose and

11 Victoria?

12 A I'd say yes to that.

13 Q When you got to the apartment do you know were

14 Shabazz and/or Mahlica awake, asleep, what?

15 A I don't recall if they were awake or sleeping.

16 Q But when you spoke to them both they were at least

17 able to communicate with you?

18 A They seemed fine, able to talk.

19 Q Do you remember who you talked to first?

20 A I don't recall in what order that I spoke to them.

21 Q Okay. Well, just Mahlica, for example. When you

22 talked to Mahlica, what were you -- what was your purpose of

23 talking to Mahlica?

24 A To see if Victoria had relayed any information to

25 her and if she had any information to share with me about any

1 knowledge of the events that Victoria had described.

2 Q Okay. And at this point were you pretty much just
3 concerned with anything that might have happened to Victoria
4 as opposed to anybody else?

5 A Yeah, or -- I mean, but, yes, in these type of
6 investigations, though, you always want to know if there is
7 anyone else, if something has happened to anyone else or if
8 they have knowledge about any of this.

9 Q Okay. So you're asking general questions, as well
10 as specific questions?

11 A Correct.

12 Q And did Mahlica talk to you?

13 A Yes, she did.

14 Q Did you notice anything about Mahlica as she was
15 talking to you?

16 A Not -- nothing specific that I recall.

17 Q Was it difficult or easy or what to get answers from
18 her?

19 A I don't think any --

20 Q I mean, she was able to communicate?

21 A She was, yes.

22 Q Okay. Now, when you talked to Shabazz, what did you
23 ask Shabazz about?

24 A Similar questions that I asked -- that I asked
25 Mahlica and Victoria about. He was a little more difficult to

1 communicate with.

2 Q That's where I was going. What was more difficult
3 about the communication between you and Shabazz?

4 A He just didn't appear to me to sometimes -- he
5 seemed to be a little slow in his answers and slow in
6 understanding what was happening.

7 Q Okay. Did -- after you spoke with them you said
8 that you had gone over there because there could have been
9 some kind of evidence. What kind of evidence might there have
10 been?

11 A I was looking for an item that was described to me
12 as an orange towel.

13 Q Described to you by whom?

14 A Victoria.

15 Q And did you find the towel?

16 A I found what I described as a pink blanket in an
17 upstairs bedroom.

18 Q Okay. And what did you do with it?

19 A I impounded it into evidence.

20 Q Why did you do that?

21 A There was a -- there was like a newspaper or an ad
22 that was stuck to it and it was described to me that it may
23 have had body fluids on it.

24 Q Okay. When you -- did you ultimately leave the
25 apartment?

1 A Yes, I did.

2 Q Did you leave any information with Mahlica and/or
3 Shabazz?

4 A I'm sure I left my business card. That's normal
5 practice. I don't have specific recollection of what I left
6 with them, but that's a normal thing after I talk to any
7 witnesses I will hand them a business card so that they can
8 contact me.

9 Q Did you indicate to them that you wanted to talk to
10 their mom?

11 A I'm sure I did.

12 Q Okay. Did you make an effort to contact Tina that
13 night?

14 A I believe I called her. I'm not -- I'm not sure
15 what time, but I would have tried to contact her.

16 Q And when you tried to contact her, were you able to
17 actually reach her?

18 A Not -- not that night. I didn't talk to her until
19 several days later.

20 Q Do you know if you left a message or --

21 A I don't remember.

22 Q Okay. Well, would you have left a message or --

23 A Yeah, if -- if I could have gotten voicemail, I
24 would leave a message for them to contact me.

25 Q Okay. So you would have left a name and number?

1 A Yes.

2 Q When you leave a message for an individual to
3 contact you in the course of your investigation, do you tell
4 them what specifically it's regarding? What kind of message
5 do you generally leave?

6 A Not -- not typically. It will normally be a general
7 message. You know, this is Chris Aguiar, this is Detective
8 Aguiar with Henderson Police, I need to contact -- I need to
9 talk to you, can you please call me back.

10 Q Is there a reason that you don't say why, like I
11 need to talk to you because of the sexual assault involving so
12 and so?

13 A Well, sometimes the reason for a general message is
14 if you get a voicemail that just says you've reached this
15 number, I'll leave a message. Well, you don't know
16 specifically if you have the right phone number, and also
17 things of this nature, it's just not -- not what I would leave
18 a message on a cell phone for.

19 Q Okay. When you left the apartment, were Shabazz and
20 Mahlica still there?

21 A Yes.

22 Q When you left were Victoria and Rose still there do
23 you know?

24 A I don't -- I think -- I don't know.

25 Q Okay. What did you do when you left that apartment?

1 A I responded to our station and where I met with --
2 where I later met with Sergeant Delacanal and Detective
3 Melchert.

4 Q Now, when you say you responded to our station,
5 that's not the north station, it's the one where your offices
6 are?

7 A Where our office is at, the Henderson main station
8 and 223 Lead Street.

9 Q Why did you meet up with Sergeant Delacanal and
10 Detective Melchert?

11 A To inform them what I've -- with the rest of the
12 information I received at Center Street. And it was then that
13 we decided that we needed to go to another address in Las
14 Vegas.

15 Q What address in Las Vegas were you going to?

16 A 966 Blankenship.

17 Q Why were you going there?

18 A Because there was concern expressed for the safety
19 of two children.

20 Q Did you have names of the children that there was
21 concern for?

22 A Taharah and Taquanda Duke.

23 Q Do you know what their relationship was, if any, to
24 the other individuals?

25 A They were the sisters of the other individuals who I

1 contacted.

2 Q And did you have information about who you would
3 have expected to be at the Blankenship residence?

4 A I expected Taharah, Taquanda, Lealer Ann Cooks, and
5 Fred Harris I expected to be there.

6 Q Okay. Now, the Center Street apartment that you had
7 just left, that's in Henderson, Clark County, Nevada?

8 A Yes, ma'am.

9 Q As a Henderson detective you have, I guess,
10 jurisdiction, you know, or whatever to -- or the ability to do
11 what you need to do in Henderson. Is it different when you go
12 out of Henderson?

13 A Well, yeah, I mean, we can respond to other areas.
14 We can make arrests. We typically won't handle calls for
15 service in any other area of town or area of the county.

16 Q And if you're going to another area of the county,
17 do you contact that police agency, I mean, kind of as a
18 courtesy, as well?

19 A Sometimes. Most -- I would say the majority of the
20 time we will.

21 Q When you went to 966 Blankenship, where was that
22 generally?

23 A It was in Las Vegas, Nevada. I think it's pretty
24 close to North Las Vegas or the North Las Vegas border, but
25 I'm not positive.

1 Q Okay. And when you went there, did you go with
2 anyone besides Detective Melchert and Sergeant Delacanal?

3 A We had two Las Vegas Metropolitan Police Department
4 police officers respond with us.

5 Q Around what time was it when you went to the
6 Blankenship address?

7 A It was approximately 1:00 a.m. on the 18th of
8 December 2011.

9 Q When you got there, who was it that would have, you
10 know, knocked on the door and communicated with whoever was
11 inside?

12 A I think I was probably side by side with one of the
13 Metro -- one of the Las Vegas Metropolitan Police Department
14 officers.

15 Q Okay. And did somebody answer the door when you
16 went there?

17 A Yes.

18 Q Who answered the door?

19 A I don't recall which adult it was, but it was either
20 Lealer or Fred.

21 Q Okay. Did -- were you allowed to come in?

22 A Yes, we were.

23 Q When you go to the door and somebody answers, did
24 you explain immediately the purpose that you were there?

25 A We would have explained probably not into great

1 specifics, but a general reason of why were there.

2 Q Okay. When you got inside, who was there initially?

3 A Lealer and Fred.

4 Q Okay. So just the adults?

5 A Yes.

6 Q Did you confirm with them that there were two
7 children there?

8 A Yes, we did.

9 Q And did it appear to you that the two adults, Lealer
10 and Fred, had been sleeping?

11 A Yes, it did.

12 Q And when you say Fred, do you see that person here
13 in court today?

14 A Yes, I do.

15 Q Can you describe where he's sitting and an article
16 of clothing that he's wearing?

17 A He's wearing a blue shirt with a tie and glasses.

18 MS. LUZAICH: Record reflect identification of the
19 defendant.

20 THE COURT: So reflected.

21 MS. LUZAICH: Thank you.

22 BY MS. LUZAICH:

23 Q Now, since it's your case or investigation at this
24 point, did you decide what would happen next when you got
25 inside the house?

1 A Yes, I did.

2 Q What was your decision?

3 A The decision was for me and Detective -- Detective
4 Melchert and I to interview Mr. Harris, and to have Sergeant
5 Delacanal would speak with Lealer.

6 Q And did you and Detective Melchert interview the
7 defendant?

8 A Yes, we did.

9 Q Was that interview tape recorded?

10 A Yes, it was.

11 Q Now, what might you have told him before the tape
12 recorder was turned on? Like from the time you walked in the
13 house, you didn't turn on the tape immediately; correct?

14 A That's correct. I didn't turn it on.

15 Q What would you have said before the tape recorder
16 was turned on?

17 A I would have told Mr. Harris that -- you know,
18 obviously introduce ourselves, explain the basic purpose of
19 why we were there, and that we would like to speak to him
20 about an investigation that we were conducting.

21 Q When you say explain the purpose for which we were
22 there, how do you -- how would you have phrased it?

23 A Just in general, I don't know the exact specifics on
24 this, what I would have done on this case, but I would be --
25 you know, we're investigating a sexual assault and we would

1 like to speak to you about that.

2 Q Okay. So you would have used the word sexual
3 assault as opposed to just general investigation?

4 A Yes.

5 Q And would you have told him who it was involving
6 before you turned the tape recorder on?

7 A I might not have. I probably would just have kept
8 it general at that point.

9 Q And then once you turned the tape on, was the entire
10 interview recorded?

11 A Yes, it was.

12 Q And then provided to the State for purposes of
13 court?

14 A Yes.

15 MS. LUZAICH: At this time I have State's Proposed
16 Exhibit --

17 May I approach? Sorry.

18 THE COURT: Of course.

19 MS. LUZAICH: -- 3, the interview. I would ask that
20 it be moved into evidence.

21 MR. MacARTHUR: No objection to the statement,
22 Judge.

23 MS. LUZAICH: And can I play it?

24 THE COURT: It's admitted and you may publish.

25 (State's Exhibit 3 admitted)

1 MS. LUZAICH: Thank you. For the record, it's going
2 to come up on the screen as transcript, and we will hear it
3 through the -- hopefully.

4 (State's Exhibit 3 played)

5 THE COURT: Okay. At this time we're going to
6 recess for lunch.

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

15 We'll start again at 2:00. Thank you very much.

16 (Court recessed at 12:21 p.m., until 2:04 p.m.)

17 (Jury is not present)

18 THE COURT: Do we have a panel?

19 THE MARSHAL: Yes. We're still missing --

20 THE COURT: Okay. Oh. Wait. That's right.

21 MS. ALLEN: We do have something outside the
22 presence.

23 THE COURT: Is he en route?

24 THE MARSHAL: I don't know.

25 THE COURT: Okay. I'm sure he'll be here any

1 minute.

2 Of course. Go ahead.

3 MS. ALLEN: Thank you.

4 Do you want to go first on the -- or do you want me

5 to?

6 MS. LUZAICH: Do we -- does he need to be here?

7 MS. ALLEN: Oh. Probably.

8 MR. MacARTHUR: Yeah, I was thinking that we should

9 probably have the defendant here.

10 THE COURT: Oh. Yeah. We can't --

11 MS. ALLEN: I guess we can't do anything.

12 (Pause in the proceedings)

13 THE COURT: Now we need to go back on the record.

14 MS. ALLEN: Oh. Yeah. That was off the --

15 MS. LUZAICH: You go first just because Aguiar is on

16 the stand.

17 MS. ALLEN: Yeah, that's fine.

18 THE COURT: Okay. We're on the record.

19 MS. ALLEN: Yes, Your Honor.

20 THE COURT: Defendant is present, all four attorneys

21 are here, and this is taking place outside the presence of the

22 jury panel.

23 MS. ALLEN: Yes, Your Honor. In my client's

24 statements to North Las Vegas, to Detective Aguiar, there was

25 a portion that was redacted that my client told the detective

1 that Victoria had said she had been having sex in Utah. And I
2 don't remember what page it's on. I apologize.

3 MR. MacARTHUR: 80, 90.

4 MS. LUZAICH: 90. Yeah.

5 MR. MacARTHUR: 80-something, 90.

6 MS. ALLEN: 90. Okay. Sorry. Page 90. Thank you.
7 I know she had had sex before because when she came in from
8 Utah she had been having sex, she admitted it. And so
9 normally I know that the -- this would be covered by rape
10 shield. I did provide the Court with a case, Johnson v.
11 State. And I apologize for it being on my phone. But Johnson
12 v. --

13 MS. LUZAICH: I actually have the case. Can I
14 approach and I'll hand it to you?

15 THE COURT: Sure.

16 MS. ALLEN: Johnson v. State, under rape shield,
17 once a victim testifies that she had never had sexual
18 intercourse prior to the night of alleged rape, defense had
19 right to attempt to discredit testimony by showing the victim
20 was not a virgin in prosecution for sexual assault, the
21 attempt sexual assault. And that's 942 P.2d 167, it's a 1997
22 case.

23 Victoria testified that she was a virgin up until
24 she came back from Utah, and the first time that she had ever
25 had sex was with my client on October -- no, August 24, 2007.

1 So that's what she said in her direct testimony and her
2 cross-examination, and that's what she maintained.

3 We are requesting that Mr. MacArthur be allowed to
4 question Detective Aguiar about just that particular -- you
5 know, that sentence in the statement. It was redacted. We're
6 not trying to look like the State hid anything from the jury
7 and we would never pose it in that manner, but he did tell
8 this to the detective. No, she -- you know, she told me she
9 had been having sex, you know, when she came back from Utah.

10 We believe that, obviously, rape shield doesn't
11 apply based upon Johnson v. State. She has a very specific
12 date in mind that her virginity was taken. She says it was
13 taken by Mr. Harris. This would indicate that she had prior
14 knowledge of sex, which is, I believe, admissible under rape
15 shield when the victim is or alleged victim is claiming they
16 are a virgin.

17 We would ask the Court to allow Mr. MacArthur to ask
18 a couple of limited questions about that. Again, not -- not
19 indicating the State is trying to hide anything and so it
20 wouldn't be posed that way. We also believe it sort of falls
21 under the rule of completeness with regard to his statement
22 and we request that -- that the Court make a ruling and allow
23 that those questions be asked.

24 (Pause in the proceedings)

25 THE COURT: Does the State want to address the

1 Court?

2 MS. LUZAICH: Oh. Of course. I was just waiting
3 for you to finish reading.

4 THE COURT: Thank you.

5 MS. LUZAICH: 50.090, commonly called the rape
6 shield statute, is the statute that says that a victim of
7 sexual assault other sexual activity is not admissible ever to
8 challenge their credibility. Clearly what the defense is
9 trying to do is challenge their credibility. I recognize that
10 there is some case law exception to the rape shield statutes,
11 and I do not think they apply here.

12 In that particular case, the victim, Nicole, had
13 been sexually assaulted by the defendant. She had been
14 molested by two other individuals, and that had been
15 inadmissible. And I'm not going to go through the whole the
16 defense didn't bring it up at trial --

17 THE COURT: Right. Right.

18 MS. LUZAICH: -- so that was the basis of that
19 court's ruling. But when they talked about the facts, in that
20 particular case they talk about Summit, basis of knowledge,
21 which Ms. Allen has raised, as well. But remember, when
22 Victoria talked about what happened in 2005, she said that the
23 defendant put his fingers in her vagina and put his penis in
24 her vagina a bit.

25 So while she talked about him actually taking her

1 virginity in 2007 in the car, she does talk about previously
2 he had put his penis in her vagina. So, I mean, she already
3 has a basis of knowledge. Whatever happened after 2005 in
4 Utah doesn't give her a basis of knowledge. Additionally,
5 when Victoria is describing this to the police, she has since
6 had a baby. I mean, clearly, basis of knowledge isn't an
7 issue. She's 19 when she's describing it to the police.

8 When the defendant tells the detective Victoria said
9 when she was in Utah she had sex, I mean, that is clearly a
10 self-serving statement by the defendant. It is not a, in any
11 way, shape, or form, otherwise reliable statement. If they
12 were trying to get in Victoria told Rose or Victoria told the
13 defendant's brother -- well, the defendant's brother I might
14 still have an issue, but somebody other than the defendant
15 himself that she had had sex before August 24th of 2007, then
16 I think they have an issue that it could pierce rape shield,
17 but not the defendant's statement. The defendant's statement
18 is self-serving.

19 Clearly, he admitted that he lied to the police,
20 period. So, you know, under the credibility instruction, you
21 know, everything he says is suspect anyway. So I don't think
22 that that statement to the police that Victoria told him, or
23 Victoria said -- I don't even know that she -- he said
24 Victoria told him, that Victoria said that she had had sex in
25 Utah is admissible to -- to pierce rape shield in this

1 particular situation under these facts.

2 THE COURT: Okay. And what year do they go to Utah?

3 MS. LUZAICH: 2005.

4 THE COURT: Okay.

5 MS. ALLEN: And may -- I just would like to briefly
6 be heard --

7 THE COURT: Okay.

8 MS. ALLEN: -- heard on rebuttal. I apologize.
9 Your Honor, first of all, she is very clear in her testimony
10 that she was a virgin until he took this in August of 2007.
11 She used those words. Those were the exact words that
12 Victoria used. We're not substituting our language for what
13 Victoria said. That's exactly what she said. So that -- that
14 would be the first issue that I have is that she used those
15 words. We did not. I did not make up the word virgin, nor
16 did Ms. Luzaich.

17 Second of all, with regard to Johnson, Johnson
18 doesn't differentiate between the defendant's statement and
19 anybody else's statement. It's just impeachment, period. It
20 doesn't matter who it comes from. I don't think Johnson
21 differentiates where the statement comes from. It just --
22 it's -- Johnson says, you know, if this victim is claiming
23 that they were a virgin prior to -- you know, prior to this
24 incident, which she is, then you're allowed to impeach with
25 evidence that she says that she wasn't. This is evidence that

1 she says that she wasn't. So that's the second.

2 The third part that -- issue that I take with Ms.
3 Luzaich is that she is saying, well, it's a self-serving
4 statement. Well, that's -- that's great except she wants --
5 she wants the jury to believe parts of it. She wants the jury
6 to believe the parts he talks about of this or the parts he
7 talks about with that. We've introduced the statement. We've
8 made it part of the record. We've allowed the jury to hear
9 it. This was redacted from it and it's relevant for the
10 purposes of showing that she had prior sexual knowledge.

11 This -- and when he's talking about all this, the
12 other part of it that really makes it not self-serving is that
13 when he's talking about all this, he's already admitting to
14 having sex with her. This isn't prior to that. This isn't
15 the part that she was talking about where he was denying it
16 and -- and, you know, lying to the police. This is way past
17 that point. He's already admitted in detail what happened
18 between he, Victoria, and the mother. So how in any way could
19 that be self-serving?

20 So you can't take pieces and say, well, part of it
21 is good, part of it is bad. That may be for them to argue to
22 the jury on closing, but I don't necessarily think --

23 She's having a hard time hearing.

24 MR. MacARTHUR: Sorry.

25 MS. ALLEN: I don't necessarily think that it's fair

1 to preclude bits and pieces of it just because the State says,
2 well, it's -- it's not reliable. That's unfair, that deprives
3 him of, you know, due process, and I believe partially the
4 confrontation clause. We're not asking that we get into this
5 girl's entire sexual history. He made the statement to the
6 detective when he was talking to him and he made it again
7 after all of these other things that he talked about came in.
8 You know, and obviously we're not looking for --

9 MS. LUZAICH: I just want the Court to read what he
10 said.

11 MS. ALLEN: Okay.

12 MS. LUZAICH: Because it's not -- I mean, it's not
13 that clear. And for the record, the unredacted transcript,
14 page 90. And although it's all pink, it's the blue in the
15 circle.

16 THE COURT: Okay.

17 MS. ALLEN: I'll let the Court read it.

18 (Pause in the proceedings)

19 THE COURT: So she admitted she had been having sex
20 with a girl and a friend?

21 MS. ALLEN: That's -- that's what he says. And
22 that's -- we're not looking to go into not in school, that she
23 was hanging with teenagers, that pregnant by some African
24 dude, none of those things. Simply a question to the
25 detective, you know, that when Fred was giving his statement

1 to you do you recall him saying that Vicky admitted to him
2 that she had had sex in Utah. That's it.

3 And I think it's -- you know, again, pursuant to
4 Johnson and pursuant -- you know, pursuant to the arguments I
5 set out, I believe that -- that it's appropriate in this -- in
6 this particular instance. Again, we're not looking to get
7 into all of these other things. It's really one simple
8 question to the detective.

9 MS. LUZAICH: But that is an amorphous kind of what
10 she said. It's -- it's very unclear what, if anything, she
11 actually said to him or that he had heard. At least in
12 Johnson, Nicole, the victim, had said Uncle Scott or whatever
13 his name is molested me and Uncle Jeff also molested me. So,
14 I mean, those were very clear, she said it, it happened, it
15 was investigated. That is just something that is so unclear
16 and ambiguous that --

17 MS. ALLEN: And -- and I --

18 MS. LUZAICH: I don't think that that is
19 impeachment.

20 THE COURT: Anything else?

21 MS. ALLEN: No, Your Honor.

22 THE COURT: Okay. The motion is denied.

23 MS. ALLEN: Okay.

24 THE COURT: Okay. You can bring them in. And you
25 can bring the detective back in, as well.

1 (Jury is present)

2 THE COURT: Do parties stipulate to the presence?

3 MS. LUZAICH: Yes.

4 MS. ALLEN: Yes, Your Honor.

5 THE COURT: Okay. You can recall the detective to

6 the stand.

7 Okay. You may proceed.

8 MS. LUZAICH: Thank you.

9 BY MS. LUZAICH:

10 Q Detective Aguiar, before we broke for lunch we

11 listened to an interview. Was that -- and you listened to it

12 with us; correct?

13 A Yes, I did.

14 Q Was that your voice that was conducting most of the

15 interview?

16 A Yes, it was.

17 Q We heard another voice that answered all the

18 questions. Was that the defendant?

19 A Yes, it was.

20 Q Then we heard a third voice that asked some

21 questions more towards the end. Who was that?

22 A Detective Jeffery Melchert.

23 Q Okay. So the two of you together were interviewing

24 the defendant?

25 A That's correct.

1 Q Where were you in the house while you conducted this
2 interview?

3 A It was connected to the -- the kitchen. There was a
4 small table just off the kitchen that we were sitting at.

5 Q Okay. Now, at the end of the interview you guys
6 talked about being hot. What was -- was there a problem?

7 A No, it was just -- I was dressed about like I was
8 today, except without the jacket. And I was sweating because
9 the oven had been -- the door had been opened to the oven and
10 Mr. Harris was using that to heat the house.

11 Q Oh.

12 A Or the area where we were at.

13 Q Oh. Okay. This was, what, December of -- December,
14 so it was cold, winter?

15 A Cold for here, yes.

16 Q Okay. Prior to your interviewing the defendant you
17 had spoken to Victoria; right?

18 A Correct.

19 Q And in your interview with the defendant you were
20 asking him questions about, well, why would Victoria say this,
21 that, or the other thing. And you had mentioned that
22 Victoria's description of events was very vivid, I think you
23 said.

24 A Yes.

25 Q There were a lot of things that she described,

1 incidents and stuff that she described for you?

2 A There were multiple incidents, yes.

3 Q And she was very descriptive in her -- or detailed
4 in her descriptions?

5 A Yes.

6 Q After you spoke with the defendant, and I'm sorry,
7 did you say that while you were talking to -- you and
8 Detective Melchert were talking to the defendant that
9 Detective or Sergeant Delacanal was speaking with Ms. Cooks?

10 A That's correct.

11 Q You also saw Ms. Cooks; is that correct?

12 A Yes, I did see her.

13 MS. LUZAICH: May I approach?

14 THE COURT: You may.

15 BY MS. LUZAICH:

16 Q Showing you what's been marked as -- or admitted as
17 State's Exhibit 1. Is that Ms. Cooks?

18 A Looks about like her to me.

19 Q Okay. She looked a little different in December
20 than --

21 A Yeah.

22 Q -- in this photo?

23 A Yes.

24 Q But it's the same person?

25 A Yes.

1 Q Thanks. So after you talked to the defendant, did
2 you interview one of the children?

3 A I interviewed Taquanda Duke.

4 Q And while you were interviewing Taquanda, did
5 Detective Melchert interview Taharah?

6 A Yes, he did.

7 Q Where did you conduct your interview with Taquanda?

8 A The same space where I had spoken to Mr. Harris.

9 Q Where did Detective Melchert conduct his interview
10 with Taharah?

11 A I believe it was in the -- there was kind of a hall
12 leading to the back bedrooms. I believe it was right off the
13 hall there's a bedroom to the right as you're walking back. I
14 think that's where he did it. But I wasn't in the room, so
15 I'm not --

16 Q Okay. Then my next question would be at the time
17 that you conducted your interview with Taquanda, was Detective
18 Melchert and Taharah at least in such a location that you
19 could not hear what -- what they were saying?

20 A Yes.

21 Q And, therefore, would you assume that they also
22 could not hear what you were saying?

23 A Yes, I would assume that.

24 Q And do you believe that the defendant and Ms. Cooks
25 were with Sergeant Delacanal in such a place that they also

1 couldn't hear what you and Taquanda were saying?

2 A I believe so.

3 Q And what Taharah and Detective Melchert were saying?

4 A Yes.

5 Q Okay. Now, when you interviewed Taquanda, was your

6 interview tape recorded?

7 A Yes, it was.

8 Q Was it also your understanding that when Detective

9 Melchert interviewed Taharah his interview was tape recorded?

10 A Yes.

11 Q And would he have later given you the recording of

12 that interview?

13 A Yes, he did.

14 Q Because you're the case detective; right?

15 A Yes.

16 Q Now, when you interviewed Taquanda, do you know what

17 time it was that you started that interview?

18 A It was about 3:00, 3:20 in the morning.

19 Q Okay. And had she been sleeping?

20 A Yes.

21 Q Could you tell that she had been sleeping?

22 A Yes.

23 Q Was she tired?

24 A She seemed a little bit tired when she started

25 talking to me, yeah.

1 Q Okay. During the course of your interview, how was
2 her demeanor?

3 A She was -- at the beginning of the interview she was
4 okay. I would say probably towards maybe almost to halfway
5 through she started crying during the interview when I was
6 asking questions.

7 Q What were you asking her about when she started
8 crying?

9 A If she had ever witnessed anyone being physically
10 abused.

11 Q By anyone in particular?

12 A By Mr. Harris.

13 Q Okay. And did she tell you that she had?

14 A Yes.

15 Q And was that when she was crying?

16 A Yes.

17 Q And would you say she was crying or was it even more
18 descriptive than that?

19 A It was -- it was loud. I mean, it was where you --
20 where at a certain point you almost couldn't make out some of
21 the words that she was saying. I'd have to lean in and ask
22 her can you repeat that, I can't hear you.

23 Q And when she was crying like that, what did she tell
24 you about witnessing abuse?

25 A She indicated that she had witnessed two of her

1 siblings be physically hit or struck.

2 Q Which siblings?

3 A Shabazz and Taharah.

4 Q Okay. Did you also ask her anything about whether
5 she was afraid?

6 A Yes. I'm not sure if I asked her specifically if
7 she was afraid, but I know that she responded that she was
8 afraid.

9 Q What was she afraid of?

10 A She indicated that she was afraid that if Mr. Harris
11 found out what she had told me.

12 Q After you had interviewed Taquanda and Detective
13 Melchert interviewed Taharah, and I'm sorry, I'm trying to be
14 very careful with their names, were you guys pretty much done
15 with what you were going to do at the house?

16 A Yes, we were.

17 Q Did you explain anything to the defendant or Ms.
18 Cooks before you left? You personally.

19 A I don't remember personally explaining anything to
20 either of them.

21 Q Okay. So Sergeant Delacanal talked about things
22 that he had said. Did you add anything to what he said?

23 A No, I don't recall adding anything to what he had
24 said.

25 Q Okay. By the time you left that house,

1 approximately what time was it?

2 A It would have been probably around 3:00, 3:45 in the
3 morning.

4 Q Okay. So --

5 A Give or take a few minutes.

6 Q -- sun not up yet?

7 A No.

8 Q Did you contact somebody after you finished -- not
9 necessarily immediately after, but after you finished what you
10 did in the house?

11 A I know at some point I called the -- made the report
12 to the CPS hotline that I was out there.

13 Q Why did you make a report to CPS hotline?

14 A Any time that we are dispatched or we go to a call
15 where CPS is not already on scene, we report to them what our
16 initial response was so that they're aware because sometimes
17 they'll run a parallel investigation.

18 Q Okay. Involving like a child and a caretaker kind
19 of situation?

20 A Correct.

21 Q And did you then at some point have contact with
22 somebody specifically from CPS regarding these incidents?

23 A Yes.

24 Q Who did you have contact with?

25 A A caseworker Bobbi Tibbs.

1 Q Okay. And did she try to get a hold of you in the
2 beginning and -- and was not able to because you had worked
3 all night and things of that nature?

4 A I don't recall specifically, but it's possible
5 because of the times.

6 Q Okay. Did it take awhile before you actually had
7 contact with her?

8 A I don't -- I don't remember the exact day that I
9 talked to her.

10 Q Okay. Did you -- did she ask you for your
11 interviews and such?

12 A Yes.

13 Q Okay. Now, she said she didn't get them. Did you
14 get -- did you get them transcribed?

15 A Yes, I did.

16 Q Are you sure?

17 A The interviews transcribed? Yes, they were
18 transcribed by the person who is on contract with the City of
19 Henderson.

20 Q Okay. Is it possible that somebody else got them
21 transcribed?

22 A I don't think so.

23 Q Okay. What did you tell her about what the kids had
24 or had not said, if you remember?

25 A I don't necessarily remember the specific

1 conversation that we had. Typically, though, I'll go over the
2 highlights and the main points of the interview with the
3 children, and I'll explain that to the CPS caseworker.

4 Q Okay. If Ms. Tibbs said that you had indicated that
5 the girls had not disclosed abuse, what would that mean?

6 A If that was -- I would have been referring to sexual
7 abuse because that was the main crux of why we were there at
8 the house was to investigate sexual abuse. But it was clear
9 that, you know, they -- that Taquanda had talked about
10 physical abuse, but did not disclose any knowledge or being a
11 victim of sexual abuse.

12 Q Okay. Was it your understanding that Taharah also
13 had not disclosed any sexual abuse?

14 A That was my understanding.

15 Q Did you try to contact the mother, Tina?

16 A Yes, I did.

17 Q How easy, difficult, or something else was it to
18 actually get in contact with her?

19 A She was not the easiest person to get a hold of.
20 And I think when I finally had spoken to her it was just me
21 showing up at her -- her apartment. I believe it was
22 unannounced. I don't remember every setting an appointment
23 with her.

24 Q Okay. So it was kind of hit or miss and you just
25 showed up?

1 A Yes.

2 Q When was it that you actually did speak with Tina

3 Duke?

4 A I believe it was December 22, 2011.

5 Q You said that you showed up at her house. Was

6 anybody else home when you went there? Do you remember?

7 A I don't remember if anybody else was there.

8 Q Okay. Did you talk to her?

9 A I talked to her in my car in the parking lot.

10 Q And would that interview also have been recorded?

11 A Yes, it was.

12 Q After you talked to Tina, did you do anything

13 further in the investigation?

14 A Not until a significant lapse in time.

15 Q Okay. Did you leave the special victims unit

16 shortly after that?

17 A Yes, I did.

18 Q When was that?

19 A Probably around, I think, January of 2012.

20 Q Were you contacted by Detective Madsen from the Las

21 Vegas Metropolitan Police Department sometimes in maybe

22 September/October of 2012?

23 A Yes, I was.

24 Q And did he ask you for all of your information and

25 things of that nature?

1 A Yes, he did.

2 Q Did you send him the recordings of your interviews?

3 A Yes, I did.

4 Q And is it possible that he had your interviews
5 transcribed?

6 A I don't -- I don't think so because from my
7 knowledge that the way the Las Vegas Metropolitan Police
8 Department works is that they have their own people who
9 transcribe the interviews. And I know -- they have employees
10 that transcribe interviews. And I know these interviews were
11 transcribed by the company that the City of Henderson
12 contracts, and I also know that these interviews are stored on
13 my computer in both -- both types, the original Word format
14 and the .pdf format. And I know that I've personally reviewed
15 these and I know the person that does the transcription.

16 Q Okay. All right. Thank you.

17 MS. LUZAICH: I pass the witness.

18 THE COURT: Cross.

19 CROSS-EXAMINATION

20 BY MR. MacARTHUR:

21 Q Good afternoon, Detective Aguiar. How are you?

22 A Good. How are you, sir?

23 Q I'm doing just fine. Thanks for asking. Okay.
24 Maybe I should start at the back and move backward in time.
25 You did not make an arrest of Fred Harris; is that correct?

1 A No, I did not.

2 Q Okay. If you would, please describe the -- what
3 conditions have to be met for an arrest to be made.

4 A Well, you have to have probable cause to make the
5 arrest.

6 Q Okay. And by probable cause, and I want you to
7 correct me if I'm wrong, is that essentially proof that a
8 crime may have been committed and proof that a certain suspect
9 is the person who committed it?

10 MS. LUZAICH: Objection. Legal conclusion.

11 THE COURT: Overruled. The officer can testify as
12 to what probable cause is.

13 THE WITNESS: In -- that's pretty -- I mean, there's
14 obviously different definitions floating around, but I think
15 that's pretty fair.

16 BY MR. MacARTHUR:

17 Q Okay. And I don't mean to ask you a question that
18 seems insulting at all. You've arrested people before?

19 A Yes, I have.

20 Q All right. Okay. You're not uncomfortable doing
21 that in any -- in any sense?

22 A No, I'm not.

23 Q Okay. And you've also conducted many voluntary
24 statement interviews?

25 A Yes, I have.

1 Q Okay. And you've also done interrogations of -- of
2 perpetrators that are considered suspects, not just witnesses?
3 A Yes.
4 Q Okay. And has it been the case that you've had
5 people make admissions to you before, confessed to having
6 committed crimes to you?
7 A That's correct. Yes.
8 Q Okay. And you've had times where people have denied
9 having done anything wrong.
10 A That's correct.
11 Q Is that fair?
12 A Yes, sir.
13 Q Okay. And then out of those people who deny doing
14 anything wrong, certainly you've had people who have denied it
15 and then you found out they were lying to you?
16 A That's correct.
17 Q Okay. And have you had people deny it and then you
18 found out that they were telling you the truth?
19 A Yes.
20 Q Okay. Is it fair to say that when you're talking
21 about pretty serious crimes, when a person didn't commit the
22 crime they tell you, no, I didn't commit it?
23 MS. LUZAICH: Well, objection.
24 THE COURT: What? Will you say the question again?
25 MR. MacARTHUR: Based on the detectives

1 experience --

2 THE COURT: Okay.

3 MR. MacARTHUR: -- in having conducted
4 interrogations, in serious crimes where a person has not
5 committed the crime, is it common for them to tell you I
6 didn't commit this crime?

7 MS. LUZAICH: Well, objection. Relevance.

8 THE COURT: Overruled. I'll allow you to answer it.

9 THE WITNESS: I'm sorry. I really don't understand.
10 Can you repeat it for me again, sir?

11 BY MR. MacARTHUR:

12 Q Maybe I'm making it overly complex. If somebody
13 didn't do it, they're going to tell you they didn't do it;
14 right?

15 MS. LUZAICH: Well, objection. He can't testify to
16 that.

17 THE COURT: Well, that -- that question the
18 objection is sustained.

19 MR. MacARTHUR: All right. Withdrawn.

20 BY MR. MacARTHUR:

21 Q Now, you began your investigation because you had
22 received a complaint from Victoria Duke; is that correct?

23 A She had responded to the north station and then I
24 was called into there. I hadn't received the initial one, but
25 I did go there and speak to her.

1 Q But it was a result of her having made contact with
2 law enforcement; correct?

3 A Yes.

4 Q And the information you were provided is that she
5 had been sexually assaulted by Fred Harris; is that correct?

6 A That is correct.

7 Q And, in fact, she described it as -- as -- as a
8 rape, a forcible rape; is that correct?

9 A Yes.

10 Q Okay. In fact, she had said that she had been
11 pushed down to the ground, do you remember that?

12 A Yes, sir.

13 Q Okay. She said that the --

14 MS. LUZAICH: Well, objection. Hearsay.

15 MR. MacARTHUR: Well, it's not for the truth of the
16 matter asserted, Judge. It shows what he does next.

17 THE COURT: Okay. Then say as a result of what she
18 said, what did you do next?

19 BY MR. MacARTHUR:

20 Q All right. So you received information either
21 directly or indirectly from Victoria that she had been
22 forcibly raped?

23 A That's correct.

24 Q And you were operating under the assumption that she
25 had been pushed, her mouth had been covered, and that she had

1 been restrained? Do you recall?

2 A I remember that she had been pushed, that -- she
3 said that there had been a hand put over her mouth.

4 MS. LUZAICH: Well, objection. Hearsay.

5 MR. MacARTHUR: And --

6 THE COURT: Sustained.

7 MR. MacARTHUR: And, Your Honor, we would argue that
8 this is a prior inconsistent statement. Victoria Duke has
9 already testified. And to the extent that she told this
10 detective anything different, it would come in as a prior
11 inconsistent statement as an exception to the hearsay rule.

12 THE COURT: Okay. So you're making an offer of
13 proof to the Court that she's been confronted with that
14 statement and now this one is going to be inconsistent?

15 MR. MacARTHUR: She was examined by the State and by
16 defense counsel and her account before this jury did not
17 include --

18 MS. LUZAICH: Well, can we approach?

19 THE COURT: Yeah, you can approach.

20 (Bench conference)

21 MS. LUZAICH: I'm sorry. I thought you don't like
22 speaking objections.

23 THE COURT: My only -- my only question was was she
24 confronted with this statement?

25 MS. LUZAICH: No.

1 MS. RHOADES: No.

2 MS. ALLEN: I asked her about the circumstances
3 surrounding it.

4 THE COURT: Because how can it be a prior
5 inconsistent statement if -- if he didn't ask her it?

6 MR. MacARTHUR: If -- if who didn't ask what to her?

7 THE COURT: If the detective didn't ask her. It
8 sounded like what you were telling me was that she wasn't
9 asked about this.

10 MR. MacARTHUR: Okay. I'm -- I don't want to get
11 lost in what the Court's asking me.

12 THE COURT: Okay.

13 MR. MacARTHUR: The way that I see it is that she
14 told the detective that she had been forcibly raped with
15 certain -- you know, pushed, mouth covered, and held down.

16 THE COURT: Okay.

17 MR. MacARTHUR: But her testimony in front of the
18 jury did not include that information. And so I'm contrasting
19 what she told him with what she told the jury as a prior
20 inconsistent statement.

21 MS. LUZAICH: But it's not inconsistent until the
22 defense says did you tell the detective that you were pushed,
23 your mouth was covered, and whatever --

24 THE COURT: See, that's my --

25 MS. LUZAICH: -- and she says no.

1 THE COURT: That's my opinion, that she has to be
2 confronted with it. And then she has to say --

3 MR. MacARTHUR: Victoria was your witness.

4 THE COURT: Then the witness can come in --

5 MS. ALLEN: I know she was and I'm trying to
6 remember.

7 THE COURT: Then the witness can come in --

8 MS. ALLEN: That was so long ago. I don't remember.
9 I asked her specific questions about it, about what happened,
10 but I can't remember. Honest to God I can't remember if I
11 asked her.

12 MS. LUZAICH: She wasn't asked the question did you
13 tell the detective that you were pushed and your mouth was
14 covered or whatever --

15 THE COURT: Right. And that's what has --

16 MS. LUZAICH: -- and then she said --

17 THE COURT: -- to happen --

18 MS. LUZAICH: -- no, that did not happen.

19 THE COURT: -- to lay the proper foundation to then
20 have it come in as a prior inconsistent. So, I mean, I can't
21 remember for sure.

22 MR. MacARTHUR: I don't remember her testifying
23 closely enough.

24 MS. ALLEN: I can't remember it either, honestly. I
25 can go through my notes and see.

1 MS. RHOADES: I remember. I mean, that was my
2 witness. She was never asked that. I never asked her about
3 that.

4 THE COURT: Okay. The objection is sustained.

5 (End of bench conference)

6 THE COURT: Okay. You may proceed.

7 BY MR. MacARTHUR:

8 Q You had also made contact with a witness or an
9 individual by the name of Rose Smith; is that correct?

10 A Yes, sir.

11 Q Did she also express some concerns to you as to what
12 she thought was happening between Victoria and Fred Harris?

13 A Yes.

14 Q Okay. And did she also express some concern that
15 something might have been happening at the Blankenship address
16 involving the younger siblings of Victoria and Fred Harris?

17 MS. LUZAICH: Objection. Hearsay.

18 THE COURT: You can answer yes or no.

19 THE WITNESS: Yes.

20 BY MR. MacARTHUR:

21 Q Okay. So operating off of this information, is that
22 what prompted you to do these interviews in the early morning
23 hours of December 17th?

24 A Yes.

25 Q Okay.

1 A It was December 18th.

2 Q December 18th. And, right, because it's after
3 midnight. I appreciate that. Okay. Can you tell the jury,
4 if you haven't testified to this already, why did you think it
5 was a good idea to do the interviews in the wee hours of the
6 morning?

7 A Well, anytime you're dealing with the serious nature
8 of the crimes that we were investigating, my first priority,
9 before anything else, is to make sure that we have children
10 that are safe and aren't in an environment where they're being
11 harmed. And that's -- if it has to be done in the middle of
12 the night, it has to be done in the middle of the night. It's
13 not my preference, but I felt out of an abundance of caution
14 that that's -- that's what needed to be done.

15 Q And so your first answer would be the sooner the
16 better; is that fair?

17 A Yes.

18 Q Okay. Is there -- is there any other reason?

19 A That was the only reason why I went over there.

20 Q Detective, is it an effective investigative
21 technique to contact people essentially without warning so
22 that they don't have a chance to prepare a story for you? Is
23 there any truth to that?

24 A Sometimes it can be possible.

25 Q Okay. Let me ask you this. Based on your training

1 and experience, if you were to call a suspect ahead and say,
2 hey, I'm going to want to talk to you tomorrow about a sexual
3 assault, that might give the individual a chance to talk to
4 everybody else in the house and -- and prepare. It's almost
5 like a united defense, wouldn't it, if you gave them that kind
6 of a warning?

7 A As -- as with any kind of case, yes.

8 Q Okay. And so that was not the circumstance here; is
9 that correct? I mean, as soon as you had enough information
10 to go and do a contact, you did that; right?

11 A Yes.

12 Q And you didn't give them any warning that you were
13 coming that would allow them to prepare some sort of story,
14 did you?

15 A The -- it wasn't to prevent a story being prepared.
16 The reason why I went there immediately was to talk to the
17 children and make sure they were safe.

18 Q I understand. And I don't mean to impute that to
19 your reasoning. I don't know if it was or not. You say it
20 wasn't and I accept that. I'm merely saying that is this one
21 of the advantages of having contacted them as soon as possible
22 without giving them notice that it would help minimize that
23 chance that they could concoct a store?

24 A Yes.

25 Q Okay. And before going over to the house you had

1 already talked to Victoria and Rose; is that correct?

2 A That's correct.

3 Q Did you also have occasion to speak with Mahlica and
4 Shabazz, the two younger siblings of Victoria?

5 A Yes, I did.

6 Q Okay. And when speaking to Victoria and Shabazz,
7 where were they located when you talked to them?

8 A Sorry. Can you repeat the question, sir?

9 Q Sure. Thinking of the two siblings, younger
10 siblings to Victoria, specifically Mahlica and Shabazz, where
11 did you conduct your -- your interview with them?

12 A It was in my vehicle in the parking lot of 1100
13 Center Street.

14 Q Okay. And 1100 Center Street was, in fact, Tina
15 Duke's address; is that correct?

16 A Yes, sir.

17 Q And Victoria also lived there?

18 A Yes.

19 Q And is it also true that Mahlica and Shabazz lived
20 there?

21 A Yes.

22 Q Okay. So you were clearly under the impression that
23 at this time they weren't living at the Blankenship address,
24 they were living with their -- their mother and their sister?

25 A Yes, that's my understanding.

1 Q Okay. And in speaking with Mahlica, you, in fact,
2 received information that she hadn't been subject to any sort
3 of sexual abuse and had no information about why you would
4 want to talk to her; is that correct?

5 A She did not disclose being the victim of any sexual
6 abuse.

7 Q Okay. And does that also hold true for Shabazz?
8 Shabazz didn't make any kind of disclosure like that to you,
9 did he?

10 A As far as sexual abuse, sir?

11 Q Right.

12 A No.

13 Q Okay. And so there were two siblings remaining that
14 you wanted to talk to at the Blankenship house, fair?

15 A Yes.

16 Q Okay. And those are Taquanda and Taharah?

17 A Yes.

18 Q I'm sorry. I probably should have done it the other
19 way around. Taharah is the older of the two?

20 A Yes.

21 Q Okay. Now, before we get into the interviews that
22 you had, do you receive training on how to perform questioning
23 or interrogation of potential suspects?

24 A I've been to a few different trainings.

25 Q Okay. And it's not just simply shooting questions

1 willy-nilly; right? I mean, there's a strategy to it, is that
2 fair?

3 A There can be strategies employed sometimes.
4 Sometimes you ask questions. It depends on how the interview
5 is going.

6 Q Okay. Detective, in your experience are you
7 familiar with a technique where you pretend to have more
8 information than you do in order to place a little bit of
9 pressure on the defendant and see if you can get him to make
10 an admission?

11 A Yes.

12 Q Okay. And sometimes that information might not even
13 be true, is that fair?

14 A That is fair. Yes, sir.

15 Q Okay. And would you agree that even though it's
16 lying, it's still an effective investigatory technique because
17 it may get you closer to the truth?

18 A Yes, it is an effective technique. I think it's one
19 that you don't want to use early in an interview. You know,
20 it's not the first resort, but it is.

21 Q Okay. Early on would it be fair to say that you try
22 to establish a rapport first, lines of communication?

23 A Yes.

24 Q Okay. You try to make a relaxed or at least --
25 well, maybe not relaxed. That might be strong. You try to

1 make sort of a baseline interaction so that you can judge if
2 their demeanor changes?

3 A I just -- my basic point at the beginning is usually
4 just to find out a little bit about the person.

5 Q Okay. And did you do that with the interview with
6 Mr. Harris?

7 A Yes.

8 Q Okay. Now, in fact, at one point in the interview,
9 do you remember having mentioned that Victoria had a diary?

10 A Yes, I do.

11 Q Okay. And is this one of the effective
12 investigatory techniques that I'm talking about?

13 A Yes.

14 Q Okay. And so you were actually not aware of
15 specific entries into a diary having to do with sex assault or
16 molestation, is that fair?

17 A I don't recall her actually telling me she had a
18 diary.

19 Q Okay. But you employed the diary in order to give
20 the defendant the impression that you had more information
21 than you did --

22 A That's --

23 Q -- is that fair?

24 A That's accurate, yes.

25 Q Okay. And if he had reason to think that there was

1 something maybe harmful in this diary, he might then try to
2 explain it or -- or minimize it, would that be fair? Or at
3 least potentially.

4 A It's possible.

5 Q Okay. Would you agree with me, Detective, that when
6 you questioned him about any prior sexual contact with
7 Victoria before she was an adult that he denied that
8 categorically?

9 A Yes.

10 Q Okay. And he denied that before the diary or after
11 the diary?

12 A That was denied the whole -- prior to being an
13 adult, that was denied the whole time.

14 Q Understood. It's also -- I mean, because he denied
15 it the whole time, it's also true, then, that he denied that
16 before the DNA, after the DNA question?

17 A As far as the minor, as a minor?

18 Q Yes. Having had sexual contact with Victoria any
19 time when she was not an adult.

20 A Yes.

21 Q Okay. Starting from the time in which you did the
22 interview with Fred Harris, do you know who was interviewed
23 next? Was he interviewed first, last?

24 A He and Lealer would have been interviewed
25 simultaneously.

1 Q Uh-huh.

2 A And then the two, Taharah and Taquanda would have
3 been interviewed at the same time.

4 Q Okay. And would that have been before or after the
5 defendant and Lealer Cooks?

6 A Mr. Harris and Ms. Cooks are interviewed first --

7 Q Uh-huh.

8 A -- and then next were the children.

9 Q Okay. And so was Lealer Cooks interviewed by
10 Defendant Melchert -- I'm sorry, Detective Melchert?

11 A No.

12 Q Who interviewed Lealer?

13 A Sergeant Delacanal.

14 Q Okay. Delacanal. And when those two adults were
15 done, then you went to Taharah and Taquanda --

16 A Yes.

17 Q -- right? And they were interviewed separately?

18 A Yes.

19 Q And you had already testified that they could not
20 hear each other?

21 A It's my belief that they could not hear each other.

22 Q Understood. Was there anybody else interviewed at
23 the Blankenship house that evening, or that morning?

24 A Just those four.

25 Q Okay. Now, with regard to Taquanda and Taharah, do

1 you recall them being approximately, I don't know, 12, 11 or
2 12 or 13 years old?

3 A I believe Taquanda was 11.

4 Q Okay.

5 A And I think Taharah was maybe a year older about.

6 Q A year older, so maybe 12?

7 A Probably.

8 Q Okay. Now, given the nature of your investigation,
9 was it important to you to make them feel comfortable and safe
10 before you starting asking them more pressing questions about
11 whether something had happened to them?

12 A Yes.

13 Q Okay. And how do you go about doing that? What --
14 what -- what's the approach? You receive any training?

15 A I've been to child interview training. These --
16 these children are kind of on the border of the techniques, so
17 not all of them were used. But normally you try to ask the
18 children some normal questions, you know, where they go to
19 school, how old they are, what they like to do when they're
20 not going to school, pets, friends, stuff like that. And also
21 you also want to establish that they know the difference
22 between a truth and a lie.

23 Q Okay. And did you do all those things for both
24 Taquanda and Taharah?

25 A I did it for Taquanda.

1 Q Okay. Because you had interviewed Taquanda, and
2 Taharah was interviewed by Delacanal?

3 A No.

4 Q Okay.

5 A He was interviewed by -- she was interviewed by
6 Detective Melchert.

7 Q Okay. Now, with regard to Taquanda, she said that
8 she had not been subject to any sort of sexual abuse; is that
9 correct?

10 A Yes, that is right.

11 Q Okay. But, however, you did say that she became
12 emotional when talking about her brother Shabazz; is that
13 correct?

14 A That's correct.

15 Q Okay. Didn't she, in fact, tell you -- as a matter
16 of fact, let me rephrase that. You had testified that she had
17 seen or -- or witnessed, either by seeing or hearing, Shabazz
18 being disciplined on more than one occasion; is that correct?

19 A She didn't use the word discipline.

20 Q I realize that's my word as opposed to hers.

21 A Okay. Well, I would say no for the discipline
22 question, then.

23 Q Okay. Well, she had -- she had recounted something
24 where he received a whooping. Would that be closer to the
25 word she used?

1 A I believe she said that she was hit with hands.

2 Q Okay. And, in fact, didn't she also give you some
3 details as to what those circumstances were. Do you recall
4 that?

5 A Yes.

6 Q Okay. And was one of those circumstances where
7 Shabazz has allegedly stolen a video game console?

8 A I believe that's pretty close. It was either a game
9 or a console.

10 Q Okay. And do you recall the other incident that she
11 recounted as being when he had allegedly beat up a disabled
12 child at school?

13 A Yes.

14 Q Okay. And based on your contact with Detective
15 Melchert, Taharah also made no revelations of having been
16 sexually abused; is that correct?

17 A That's correct.

18 Q Okay. Detective, if you would, please describe for
19 the jury why it was you didn't feel there was probable cause.

20 MS. LUZAICH: Objection. Calls for legal
21 conclusion.

22 THE COURT: Overruled. You can answer.

23 THE WITNESS: At the time, after responding to the
24 address, based on the statements that we received from
25 Victoria, Taharah, Taquanda, Mahlica, and Shabazz, I just --

1 there needed to be more follow up investigation done and I
2 just didn't -- at the time I didn't think there was enough
3 probable cause to make an arrest that night.

4 BY MR. MacARTHUR:

5 Q Understood. Now, this was not where the
6 investigation stopped; is that correct? I mean, you still had
7 a little bit more that you did afterward?

8 A There was -- there was more that needed to be done.

9 Q Okay. And at any point if you had received
10 additional information that you thought established probable
11 cause, you certainly would have acted on that; is that
12 correct?

13 A Yes.

14 Q Okay. Now, in conducting interviews, specifically
15 with Victoria's mother, Tina, and her other siblings, did you,
16 in fact, receive contradictory information that seemed to cut
17 against what Victoria was saying?

18 MS. LUZAICH: Well, objection, as far as it calls
19 for hearsay.

20 THE COURT: You can answer.

21 THE WITNESS: Can you repeat the question for me,
22 sir?

23 BY MR. MacARTHUR:

24 Q Sure. Did you, in fact, receive statements from
25 other witnesses that contradicted Victoria? If you recall it

1 that way. If you don't, certainly --

2 A There -- there were statements made by her mother
3 that said that she did not witness any sexual abuse against
4 her children.

5 Q Okay. And Victoria had also told you that her next
6 two youngest siblings, Mahlica and Shabazz, would be able to
7 attest to her sexual abuse, hadn't she?

8 MS. LUZAICH: Objection. Hearsay.

9 THE COURT: Sustained.

10 BY MR. MacARTHUR:

11 Q Okay. When speaking with Mahlica and Shabazz, they,
12 in fact, told you that they were not aware of any sexual
13 abuse.

14 MS. LUZAICH: Objection. Hearsay.

15 THE COURT: Sustained.

16 MR. MacARTHUR: Court's indulgence.

17 BY MR. MacARTHUR:

18 Q Detective, I want you to think back to when you
19 conducted your in-person interview with Victoria Duke. Do you
20 know what date that was?

21 A December 17th of 2011.

22 Q Okay. So the day before or the daytime before the
23 morning in which you contacted the Blankenship?

24 A The evening hours.

25 Q Okay. And when you had contact with Victoria, what

1 was her demeanor like?

2 A She was able to talk to me. At some point she was
3 crying.

4 Q Was she visibly upset?

5 A At certain points during the interview.

6 Q Okay. Was she visibly upset at the point in which
7 she was talking about the forcible rape she had been subjected
8 to?

9 A Which event are you describing? Because there was a
10 number of events that she described.

11 Q I understand. Specifically she said that --

12 MS. LUZAICH: Objection. Hearsay.

13 MR. MacARTHUR: Court's indulgence.

14 THE COURT: Thank you.

15 BY MR. MacARTHUR:

16 Q All right. Regarding the most recent incident that
17 caused her to make contact with law enforcement in Henderson,
18 you'll recall that when I started my question I talked about
19 you had been sort of called to action by an allegation of
20 forcible rape against Victoria; is that correct?

21 A Yes.

22 Q Okay. When she described -- withdrawn. Was she
23 visibly upset when she described that particular incident to
24 you?

25 A I don't -- I don't recall her being visibly upset.

1 Q You don't recall her being visibly upset?

2 A Not when she was describing the most recent event.

3 Q Okay. Detective, when interviewing Tina Duke, do
4 you recall her describing Victoria's sexual contact with the
5 defendant as consensual?

6 MS. LUZAICH: Objection. Hearsay.

7 MR. MacARTHUR: And this would be prior consistent
8 statement because this was asked to Tina Duke when she was on
9 the stand.

10 THE COURT: Well, you haven't -- you haven't laid
11 the proper foundation.

12 MR. MacARTHUR: Court's indulgence.

13 THE COURT: Because you said consistent; correct?

14 MR. MacARTHUR: Prior consistent statement, yes.

15 THE COURT: Okay. I don't believe you have laid the
16 proper foundation.

17 MR. MacARTHUR: All right, Your Honor.

18 BY MR. MacARTHUR:

19 Q Detective, Victoria -- I realize that I'm coming
20 back to a familiar question, but Victoria had made an
21 allegation of forcible rape at the hands of Fred Harris; is
22 that correct?

23 A Yes.

24 Q And this was part of -- this was the basis for your
25 investigation that led you to speak to Tina Duke; is that

1 correct?

2 A Yes.

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

6 MS. LUZAICH: Objection. Hearsay.

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

9 MS. LUZAICH: Can we approach?

10 THE COURT: Do you want to approach?

11 MR. MacARTHUR: Sure.

12 (Bench conference)

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

14 MR. MacARTHUR: Okay.

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

18 MS. LUZAICH: Tina.

19 MR. MacARTHUR: Yeah.

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

1 supposed motive to falsify arose.

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

5 THE COURT: There's more.

6 MR. MacARTHUR: Okay.

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

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

12 MR. MacARTHUR: So --

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

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

15 THE COURT: -- to fabricate.

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

18 MS. ALLEN: Yes.

19 THE COURT: Right.

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

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

23 THE COURT: Right. Exactly.

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

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

2 MR. MacARTHUR: I think --

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

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

10 THE COURT: Well, again --

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

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

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

16 THE COURT: Okay. Thank you.

17 (End of bench conference)

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

20 THE COURT: Thank you.

21 BY MR. MacARTHUR:

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

24 A Yes.

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

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

3 MS. LUZAICH: Objection. Hearsay. Foundation.

4 THE COURT: Sustained.

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

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

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

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

14 MR. MacARTHUR: Okay.

15 THE COURT: So the objection is sustained.

16 MR. MacARTHUR: Yes, ma'am.

17 BY MR. MacARTHUR:

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

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

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

25 A Yes.

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

3 A I do not know.

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

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

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

11 A Probably -- that would probably be accurate.

12 Q That sounds about right?

13 A Yes.

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

17 A I had not.

18 Q You had or had not?

19 A Had not.

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

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

1 THE COURT: Sure.

2 (Bench conference)

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

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

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

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

16 THE COURT: Right.

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

19 MR. MacARTHUR: Right.

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

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

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

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

1 MS. LUZAICH: Yeah.
2 THE COURT: Okay.
3 MS. LUZAICH: You know, just --
4 THE COURT: So I'll tell --
5 MS. LUZAICH: -- are we not worried --
6 THE COURT: -- the jury to --
7 MS. LUZAICH: -- about that?
8 THE COURT: -- disregard the question, and you can
9 just ask it a better way.
10 MR. MacARTHUR: Okay.
11 THE COURT: Did he answer?
12 MR. MacARTHUR: No.
13 THE COURT: Okay. All right. Thank you.
14 (End of bench conference)
15 THE COURT: I'm going to ask the jury to disregard
16 the question, and Mr. MacAurthur is going to ask a new
17 question.
18 BY MR. MacARTHUR:
19 Q Let me clean that up, Detective. When you went to
20 the Blankenship house, you were, in fact, investigation --
21 investigating allegations of both sexual and physical abuse;
22 is that correct? I mean, it could have been primarily sexual,
23 but it also included allegations of physical abuse?
24 A It was primary sexual, but, yeah, we also -- I mean,
25 anytime you're doing a sexual assault investigation, you ask

1 about other types of abuse, as well.

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

4 A Yes, at that time.

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

7 A No.

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

11 A Yes, that is fair.

12 Q All right.

13 MR. MacARTHUR: No further questions, Judge.

14 THE COURT: Thank you.

15 Redirect.

16 REDIRECT EXAMINATION

17 BY MS. LUZAICH:

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

21 A Yes, it is.

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

24 MR. MacARTHUR: Objection. Leading, Judge.

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

1 BY MS. LUZAICH:

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

5 MR. MacARTHUR: Objection. Leading.

6 THE COURT: You can answer.

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

9 BY MS. LUZAICH:

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

13 A Yes.

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

18 A That is correct.

19 MS. LUZAICH: May I approach?

20 THE COURT: You may.

21 BY MS. LUZAICH:

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

25 A Yes, that's correct.

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

1 she respond?

2 A Because I am afraid Fred is outside.

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

6 A That was our determination at the time.

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

10 A No, we did not.

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

12 THE COURT: Any recross?

13 MR. MacARTHUR: No, Your Honor.

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

16 THE WITNESS: Thank you, ma'am.

17 THE COURT: Thank you for being here.

18 You can call your next witness.

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

20 THE COURT: Sure. That's okay.

21 (Bench conference)

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

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

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

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

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

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

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

9 MS. LUZAICH: The rule of --

10 MS. ALLEN: -- regarding this statement.

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

12 MS. ALLEN: That's okay.

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

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

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

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

1 it a reliable statement.

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

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

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

10 What are you doing?

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

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

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

14 MS. ALLEN: Will you stop?

15 MR. MacARTHUR: Just make your record.

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

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

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

1 MS. ALLEN: And we don't want to go --

2 MS. LUZAICH: -- that she denied it first.

3 MS. ALLEN: We don't want the State -- and the whole
4 thing is, though, if we start doing that, then the State is
5 going to bring her JOC in and that's not -- I mean, if we --
6 I've been down this road before. If we bring in some other
7 part of her statement that denies culpability, they're going
8 to bring in --

9 MS. LUZAICH: No, I'll bring in that -- that she
10 denied --

11 MS. ALLEN: -- they're going to --

12 MS. LUZAICH: -- culpability at first.

13 MS. ALLEN: -- bring in the JOC. And I'm -- so now
14 like I'm literally caught between a rock and a hard place.

15 THE COURT: Are you going to bring in the JOC?

16 MS. ALLEN: See?

17 THE COURT: I guess I'm wondering how far this is
18 going to go.

19 MS. ALLEN: Right. And that -- so -- so now I'm
20 stuck. So I [unintelligible] from the State, it literally
21 becomes a one-sided affair. The State gets to bring what they
22 want out of the statement, but if I then cross-examine on the
23 main parts of the statement, they bring in her JOC to prove
24 she pled guilty to it. So, I mean, how is that effective for
25 me? How can I cross-examine effectively when I know they're

1 going to bring it in?

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

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

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

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

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

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

24 MS. LUZAICH: Uh-huh.

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

1 question, and then they're going to be able to --
2 MS. ALLEN: Well --
3 THE COURT: -- [inaudible].
4 MS. ALLEN: Well, can I have an offer about whether
5 or not they're bringing the JOC?
6 THE COURT: Well, I've asked that like three times
7 and I don't know, have you made a decision yet?
8 MS. LUZAICH: Well, it depends on how far they go on
9 the cross-examination. I mean, the fact that she --
10 MS. ALLEN: See?
11 MS. LUZAICH: -- denied it at first and then she
12 admitted it. I mean, and that she didn't believe the girls at
13 first and then they go to the doctor and there's HPV, and then
14 she admitted it. But I think that that's all what makes it
15 complete. I agree with that and that alone doesn't
16 necessarily allow me to bring in the JOC.
17 THE COURT: Well, this evidence has basically
18 already come in.
19 MS. ALLEN: Pardon?
20 THE COURT: This evidence has already basically come
21 in.
22 MS. ALLEN: What, about the HPV?
23 THE COURT: No, that --
24 MR. MacARTHUR: No, about them --
25 THE COURT: -- they told her --

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

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

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

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

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

18 THE COURT: I don't know.

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

21 THE COURT: I do.

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

1 they're allowed to bring in what they want, but I can't.
2 That's the point.

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

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

7 THE COURT: Right.

8 MS. LUZAICH: That is a hearsay exception.

9 THE COURT: Which is --

10 MS. ALLEN: I understand.

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

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

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

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

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

7 (End of bench conference)

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

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

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

13 MS. LUZAICH: The State calls Nick Madsen.

14 NICHOLAS MADSEN, STATE'S WITNESS, SWORN

15 THE CLERK: Thank you. Please be seated.

16 THE WITNESS: Thank you.

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

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

21 THE CLERK: Thank you.

22 THE COURT: Go ahead.

23 MS. LUZAICH: Thank you.

24 ///

25 ///