

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK H. HARRIS, JR.,	)	Electronically Filed
# 1149356,	)	Oct 29 2020 11:33 a.m.
	)	Elizabeth A. Brown
Appellant,	)	CASE NO.: 81257-01255 of Supreme Court
	)	E-FILE
	)	D.C. Case No.: A-18-784704-W
vs.	)	C-13-291374-1
	)	Dept.: XII
STATE OF NEVADA,	)	
	)	
Respondent.	)	
	)	

APPELLANT'S APPENDIX VOLUME IV

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

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MASTER INDEX

Case No's.: 81255, 81257

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

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

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

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

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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 Q Okay. So with regard to that statement do you
2 recall whether or not you told Henderson Police Department
3 that Fred started pimping you out in 2007 after you came back
4 from Utah?

5 MS. LUZAICH: Well, objection. Which statement?

6 MR. MacARTHUR: This is going to be -- well, I just
7 identified it by date. We're talking about the voluntary
8 statement September 2012.

9 MS. LUZAICH: You said the voluntary statement to
10 Henderson in -- September of 2012.

11 MR. MacARTHUR: And I apologize again, because I
12 thought both were Henderson. But perhaps this is Metro. So
13 I'll re-ask it.

14 BY MR. MacARTHUR:

15 Q Are you aware of whether or not you told Las Vegas
16 Metro Police Department detectives that Fred started pimping
17 you out in 2007 when you came here from Utah?

18 A No. I don't remember telling the officer that in --
19 the Henderson Police Department that.

20 Q Ms. Duke, I'll come back to that.

21 Is it correct that you did not believe in physically
22 disciplining children, you weren't a spanker?

23 A No. I don't spank my children. I don't hit my
24 children, I don't beat my children.

25 Q Understood. However, Fred does believe in corporal

1 punishment; is that correct?

2 A Yes.

3 Q Okay. And you are aware of instances in which he
4 disciplined your children for various things that he thought
5 were outside the rules; is that correct?

6 A Correct.

7 (Pause in the proceedings)

8 MR. MacARTHUR: All right. State, I'm going to
9 approach with voluntary statement, page 10.

10 Permission to approach, Your Honor?

11 THE COURT: You may. What are you approaching --

12 MR. MacARTHUR: Would you like -- can I approach
13 throughout the examination --

14 THE COURT: Sure.

15 MR. MacARTHUR: -- or would you like me to ask you.

16 THE COURT: Sure. Just tell me what you're
17 approaching with.

18 MR. MacARTHUR: I'm approaching with page 10 of the
19 voluntary statement --

20 THE COURT: Okay.

21 MR. MacARTHUR: -- given from September of 2012.

22 THE COURT: Thank you.

23 BY MR. MacARTHUR:

24 Q If you would, Ms. Duke, please reference that page.
25 I've highlighted the areas that I'm going to question you

1 about. Just let me know when you're ready.

2 A Okay.

3 Q Does that refresh your recollection as to what you
4 said to the Metropolitan Police detectives in September 2012?

5 A Yes.

6 Q Okay. And didn't you in fact tell them that he
7 began forcing you to prostitute in 2007 when you came back
8 from Utah?

9 A Yes.

10 Q Now, this is the interview where you told Ms.
11 Luzaich that you were being more honest; is that correct?

12 A Yes.

13 Q Now, thinking back to 2007 when you were in Utah, I
14 believe your testimony yesterday was that one of the reasons
15 that you returned to Las Vegas was that you believed you could
16 make twice as much money being a housekeeper here as you could
17 make in Utah. Is that -- is that fair?

18 A Yes.

19 Q Okay. Now, given your testimony yesterday that Fred
20 had forced you to work as a prostitute and that he had beaten
21 you, why would you want to return to Las Vegas and be back in
22 his orbit in 2007? Does that make sense? Was that question
23 confusing?

24 A No, it's not.

25 Q Why did you want to come back to Las Vegas in 2007

1 and be back in proximity to Fred if he was forcing you to work
2 as a prostitute and if he had beat you?

3 A He said I could make more money than, you know, what
4 I was making in Utah. And when I came -- when I first
5 started, when that first happened -- I don't know how to say
6 this, but when I came back to Las Vegas in 2007 then he
7 started just being -- I don't know how to put it -- just being
8 mean, just being hateful, just mean, hateful. Just being -- I
9 don't know how to say it.

10 Q I think I understand what you're saying. However,
11 when you came to Las Vegas you said that your four youngest
12 children lived with he and Lealer at Blankenship; is that
13 correct?

14 A Yes, correct.

15 Q And you let your four children live with him despite
16 the fact that you thought he was mean?

17 A When we first arrived he said, you know, I can help
18 you get a job, you know, I can help you with you and your
19 family, I have Ann to help you in the house, I have a house.
20 So I'm thinking everything's going to be better, everything's
21 going to be all right. But no.

22 Q Okay. Whose idea was it for your four youngest
23 children to live at Blankenship?

24 A It was Fred's idea. And Ann.

25 Q So Fred wanted your children to live with him and

1 Ann at Blankenship is your recollection?

2 A Yes.

3 Q Do you recall -- Court's indulgence. Make sure I
4 get the agency right.

5 Do you recall telling Detective Madsen of the
6 Henderson Police Department --

7 MS. LUZAICH: Objection. Detective Madsen doesn't
8 work for Henderson Police Department.

9 MR. MacARTHUR: I can only read off of what's on the
10 paper. Whether he does or not --

11 MS. LUZAICH: I understand. But --

12 MR. MacARTHUR: You gave me this document, so 0

13 MS. LUZAICH: He doesn't work for the Henderson
14 Police Department.

15 MR. MacARTHUR: Okay. I'll rephrase the question,
16 then.

17 THE COURT: Thank you.

18 BY MR. MacARTHUR:

19 Q Do you recall telling Detective Madsen, without
20 regard to what agency he may or may not work for, in 2011,
21 this is December 2011, do you remember telling him that it was
22 your idea that your children should live with Fred and Lealer
23 at Blankenship?

24 A When I agreed with them I said it was like his --
25 his first idea, the main person idea, it was Fred and Ann.

1 And I agreed. So I guess it was my idea. It was --
2 originally it was Fred and Ann's idea. Then I agreed, put it
3 like that. That's the best way I could answer that question.

4 Q Do you recall telling the detective that you were
5 upset that he didn't want your kids to live there and you
6 wondered why, I mean, if he's got this house y'all don't have
7 room for us? Does that ring a bell?

8 A Yes.

9 Q Do you remember if you said that to the detective?

10 A Yes, I remember, I think.

11 Q Do you also remember telling him that it would be
12 easier for you and Victoria to get an efficiency apartment if
13 you didn't have all five children?

14 A Yeah. I recall that. But mainly basically they
15 wanted Taharah and Taquanda to go to Fitzgerald Elementary
16 School. That was right by 966 Blankenship, in walking
17 distance.

18 Q Okay.

19 A And for I think Mahlica and Shabazz to go to West.

20 Q I understand. But specifically my question to you
21 is didn't you in fact want your four youngest children to live
22 with Lealer and Fred because it would be easier for you to get
23 an efficiency apartment if you didn't have all five children?

24 A Not so much that. Not so much that. It was
25 basically mainly the schooling, because you cannot be in a

1 hotel and go to school. They state in all the schools.
2 Q I understand. I'm going to approach --
3 MS. LUZAICH: Which statement?
4 MR. MacARTHUR: This is the one with Madsen.
5 MS. LUZAICH: You haven't gotten it right yet.
6 (Pause in the proceedings)
7 MR. MacARTHUR: Understood.
8 BY MR. MacARTHUR:
9 Q Ms. Duke --
10 A Yes.
11 Q -- if you would -- if you would review that page.
12 I've highlighted the areas that I'm going to question you
13 about. Just let me know when you've had an opportunity to
14 read them.
15 A Here you go.
16 Q Okay. Did that refresh your recollection as to your
17 statement to the police at that time?
18 A Yeah. Yes.
19 Q All right. And isn't it in fact true that you -- at
20 that time you thought it would be hard or harder to get an
21 efficiency apartment with five children?
22 A Yeah. In general. In general it is hard to get any
23 kind of hotel with five children.
24 Q Understood.
25 A And I really didn't want them to be in a hotel.

1 Q I understand.

2 A You know -- you know. Yeah.

3 Q That makes perfect sense. But when you gave this
4 answer to the police it was in response to a question of how
5 come you decided kinda split everybody up, how come you guys
6 didn't have any other kids live with you. That was the
7 question he asked you; right?

8 A Because everyone was trying to help us and --

9 Q I don't mean to -- I'm not trying to be rude, I'm
10 just -- my question specifically is that's the question the
11 detective asked you, right --

12 A Yes.

13 Q -- on this page?

14 A Yes.

15 Q Okay. And then you gave him the answer about the
16 efficiency.

17 A Okay.

18 MS. LUZAICH: Well, objection. That was only part
19 of the answer.

20 MR. MacARTHUR: Okay. And --

21 THE COURT: Did you fully answer the question? Is
22 there anything you wanted to add?

23 THE WITNESS: I wanted to add that, you know,
24 basically about the hotel thing, the efficiency thing, it is
25 -- on a general it's hard to get a hotel with a whole bunch of

1 people in a room anyway, you know, because it gets expensive.
2 That's what I meant.

3 MR. MacARTHUR: I understand.

4 THE COURT: Okay.

5 MR. MacARTHUR: In light of the State's objection
6 that it was not --

7 THE COURT: Are you okay?

8 THE WITNESS: I'm okay. I'm okay.

9 THE COURT: Well, you keep rubbing your chest. Are
10 you okay?

11 THE WITNESS: It just hurts a little, that's all.

12 THE COURT: Are you having chest pains?

13 THE WITNESS: Yes. But I'm okay. I can get -- I
14 can do this. I can just get through this. Just -- just get
15 me through this.

16 THE COURT: At this time, ladies and gentlemen,
17 we're going to take a recess. During this recess you're
18 admonished not to talk or converse amongst yourselves or with
19 anyone else on any subject connected with this trial, or read,
20 watch, or listen to any report of or commentary on the trial
21 or any person connected with this trial by any medium of
22 information, including, without limitation, newspapers,
23 television, the Internet, or radio, or form or express any
24 opinion on any subject connected with this trial until the
25 case is finally submitted to you.

1 We'll be in recess until the court marshal tells you
2 otherwise.
3 (Court recessed at 11:17 a.m., until 1:21 p.m.)
4 (Jury is present)
5 THE COURT: Do I have a stipulation from the State
6 to the presence of the jury panel?
7 MS. LUZAICH: Yes, Your Honor.
8 THE COURT: The defense?
9 MS. ALLEN: Yes, Judge.
10 THE COURT: Thank you.
11 Can we have our witness brought back in.
12 MS. LUZAICH: Sorry?
13 THE COURT: Can you bring the witness back in.
14 Thank you.
15 Okay, ma'am. Are you feeling okay?
16 THE WITNESS: Yes, I'm feeling a little better.
17 Trying not to stress.
18 THE COURT: Okay. And you're ready to proceed?
19 THE WITNESS: Yes, ma'am.
20 THE COURT: Okay. And you'll let me know if you
21 need a break or anything like that; right?
22 THE WITNESS: Yes, ma'am.
23 THE COURT: Okay. You can have a seat. And Mr.
24 MacArthur's going to continue with his questioning. Thank
25 you.

1 MR. MacARTHUR: Thank you, Your Honor.

2 BY MR. MacARTHUR:

3 Q All right. Right before we took the break I believe
4 we'd been talking about the efficiency apartment on Walnut and
5 it being easier to move in if you didn't have all five
6 children. Do you remember that?

7 A Yes.

8 Q Okay. Isn't it in fact true that Fred was strict on
9 both discipline and education? Do you think that's a fair
10 statement?

11 A Yes.

12 Q Okay. No disagreement with that?

13 A No, I don't disagree.

14 Q Would you agree that the children while they were
15 living at Blankenship were doing the best they had done in
16 their entire lives?

17 MS. LUZAICH: Well, objection. Vague.

18 THE COURT: Are you talking about the children as a
19 whole, or each individual child?

20 MR. MacARTHUR: Good question, Judge. Let me
21 rephrase.

22 THE COURT: Okay.

23 BY MR. MacARTHUR:

24 Q Tina, do you ever remember having made that
25 statement to the police, that while the children were living

1 on Blankenship they were doing the best they had ever done in
2 their entire life?

3 A To a certain extent, yes, as far as education. As
4 far as education. They really were doing good at Fitzgerald
5 and West.

6 Q Okay. And you in fact had said that under oath at
7 the preliminary hearing last year; is that correct?

8 A Correct.

9 Q Okay. Isn't it also true that you never saw Fred
10 abusing the children?

11 A That's not true.

12 Q Okay. Do you recall telling that to the police, and
13 I believe that's going to be Las Vegas Metropolitan Police
14 Department, in either December of 2011 or January of 2012?

15 A Yes. Meaning I didn't see him because I was at work
16 or in the streets. And, yes, I did see him abuse them when I
17 was at 966 Blankenship.

18 Q Okay. But you told the police that you had never
19 seen Fred abusing the children; is that correct?

20 A Because I was never -- I was never hardly home.

21 Q I understand that part. I think you just explained
22 that. However, either you did see Fred abusing your children
23 or you did not. And I believe your testimony yesterday was
24 that you had seen him abusing your children. Is that correct?

25 A Yes.

1 THE COURT: Not yesterday.
2 MR. MacARTHUR: Sorry.
3 MS. ALLEN: Monday.
4 THE COURT: That's okay.
5 MR. MacARTHUR: Trial days run together.
6 THE COURT: I know. I know.
7 BY MR. MacARTHUR:
8 Q Okay. And I apologize. I don't mean to confuse
9 you. But you did testify to that on Friday, that you had seen
10 him abuse your children before; is that correct?
11 A Yes.
12 Q Okay. And is that still your testimony today?
13 A Yes, it is.
14 Q Okay. Then my question is didn't you in fact tell
15 the police that you had never seen Fred abusing your children.
16 Do you remember saying that to them?
17 A I remember saying that, that -- I remember -- I
18 recall something like that.
19 Q Do you think it would refresh your recollection if
20 you were to be able to see your own statement?
21 A That's fine.
22 Q Well, I --
23 THE COURT: Is that a yes?
24 THE WITNESS: Yes.
25 MR. MacARTHUR: State, voluntary statement from

1 December '11, January '12, page 19.

2 BY MR. MacARTHUR:

3 Q Same approach as usual. I've highlighted the areas
4 I'm going to question you about. Please review those and let
5 me know when you're ready.

6 A Okay.

7 Q Okay. Having reviewed that, do you recognize it?

8 A Yes, I do.

9 Q Okay. And does it refresh your recollection as to
10 how that conversation with the police went?

11 A Yes.

12 Q Okay. And would it be correct to say that the
13 police are asking you about corporal punishment and whether he
14 spansks and things like that? Is that correct?

15 A Yes.

16 Q Okay. And didn't you in fact tell them that you had
17 never seen Fred -- I don't want to --

18 A Maybe I should have been more pacific with him,
19 okay, because I seen it, and then sometimes I didn't see it
20 because I was gone.

21 Q Okay. But you did tell the police officer, "I've
22 never seen Fred touch the children in a wrong way"; is that
23 correct? That's what you told him?

24 A Yes.

25 Q Okay. And you said that if you'd done it over again

1 you would have been more precise or you would have been more
2 specific?

3 A I should have -- yeah. If he would have pressed me
4 -- meaning I should have been more pacific back then when I
5 was talking to them.

6 Q Okay. Tina, before we went on a break for lunch I
7 believe we had -- I'm going to go back for a moment. We were
8 talking about the efficiency apartment; right? And the State
9 had made an objection about your statement and that I did not
10 include all of it. Do you remember that?

11 A Yes. Before we went on break.

12 Q Okay. So I'm going to re-approach with that same
13 statement.

14 MR. MacARTHUR: Page 15, State.

15 BY MR. MacARTHUR:

16 Q And if I could, Tina, would you agree with me that
17 there are question and answer paragraphs? Is that correct?

18 A Yes, a question and answer paragraph.

19 Q And the detective asked you -- and what I want you
20 to do is read along with me, and if I say anything different
21 or if I don't do it right, please let me know.

22 The detective asks, "Okay. Did you -- how come you
23 decided to kind of split everybody up? How come you guys
24 didn't have any other kids live with you?" Is that correct so
25 far?

1 A Yes.

2 Q Okay. And your answer was, "It would be hard,
3 harder to get an efficiency with five children. They said for
4 some reason -- I forgot what reason, but they -- it would be
5 best for them to go -- like they wanted to go to Fitzgerald
6 and another school they looked at was -- what was it,
7 Fitzgerald and West Prep. When they went to West Prep then
8 they first got here, and then they wind up -- the teenagers
9 wind up going to Canyon Springs"; is that correct?

10 A Correct.

11 Q Okay. Now, with regard to times in which Fred
12 physically chastised the children -- and let me not put it
13 that way. Were there times in which your children got
14 whuppins?

15 A Yes.

16 Q Okay. And when I say a whuppin' are we talking
17 about being hit with a belt on the backside?

18 A I seen several different things.

19 Q Okay. Including that?

20 A Yes.

21 Q Okay. And there were more than one instance; is
22 that correct?

23 A Yes.

24 Q Okay. As far as you can recall were there instances
25 in which Shabazz was in trouble in school for stealing?

1 A My recollection about that incident, I remember it
2 was -- I was coming home from Bally's from work, and it was
3 Shabazz's birthday.

4 Q Okay.

5 A His soldier, his commander called me, Jarvis, and
6 said, well, we understand -- we love Shabazz, he's a good
7 student, ROTC, and so what we're going to do is get him a
8 gift. And so I said, okay, that's fine, thank you. And so
9 the soldiers, you know, they got together and got him a gift.

10 Q And when you say soldiers, is this ROTC --

11 A Yes.

12 Q -- at Canyon Springs?

13 A Yes.

14 Q And approximately how old is Shabazz at this time?

15 A He's about 14, I think.

16 Q Okay. Please proceed.

17 A And so I guess they give it to him at school. I'm
18 at work. I guess they give it to him at school, he brings it
19 home, and Mahlica -- we were in the garage and they were
20 sitting around playing, and Shabazz brought a -- not computer,
21 but a game, what is it --

22 Q Would it have been a Nintendo 64?

23 A Yeah.

24 Q Okay.

25 A Yeah. He brought it home. He said -- he was happy

1 about it, they said. They told me when I got home and said
2 that Fred started getting onto him about -- talking about he
3 stole it. And so they -- his reaction was like I guess he
4 whupped him or what have you. And Mahlica and Taharah and
5 Taquanda, they was all sitting in the garage and they watched
6 him, and he just took that like a child, they said, Fred took
7 the Nintendo thing and just broke it. Because when I was
8 walking in I almost stepped on one of the pieces because it
9 was shattered. He took the thing, he dropped it -- they said
10 that he dropped it -- I was told he dropped it, stomped on it.
11 And I couldn't understand that, because Shabazz said he didn't
12 steal it, it was given to him because it was the month of his
13 birthday. I just --

14 Q Do you -- I'm sorry.

15 A -- didn't understand it.

16 Q Do you recall whether or not the school contacted
17 you or Fred about the Nintendo having been taken from another
18 child at school?

19 A No.

20 MS. LUZAICH: Well, objection. Hearsay.

21 THE COURT: Sustained.

22 MR. MacARTHUR: Withdrawn, Judge.

23 BY MR. MacARTHUR:

24 Q Ms. Duke, where does Shabazz live now?

25 A 'Bazz lives in Henderson.

1 Q Okay. And have you seen him at the courthouse?
2 MS. LUZAICH: objection. Relevance.
3 THE COURT: Sustained, unless --
4 MR. MacARTHUR: Judge, I'll withdraw it.
5 BY MR. MacARTHUR:
6 Q Ms. Duke, let's talk briefly about Taquanda. Did
7 she also receive whuppins from Fred?
8 A Yes.
9 Q Okay. Do you remember an incident at all involving
10 a stolen cell phone? Do you know what I'm talking about?
11 MS. LUZAICH: Well, objection. Assumes facts not in
12 evidence.
13 THE COURT: I think you need to back up and lay some
14 foundation.
15 MR. MacARTHUR: Understood, Your Honor.
16 BY MR. MacARTHUR:
17 Q Ms. Duke, did you ever have, as the mother of
18 Taquanda, some issues with her stealing things?
19 A No.
20 Q Do you remember if you told the police that she had
21 stole things?
22 A No, I don't remember that.
23 Q Do you think it would refresh your recollection to
24 be able to see your statement to the police?
25 A Yes.

1 MR. MacARTHUR: Okay. And, State, I'm going to be
2 December '11, January '12, and it's going to be page 19.

3 BY MR. MacARTHUR:

4 Q Okay. Does that refresh your recollection as to
5 what it is I'm talking about?

6 A Yes.

7 Q Okay. Do you recall telling the police at the time
8 that Taquanda had had some problems taking stuff and that in
9 particular there was an incident where she was given a
10 whuppin?

11 A She thought that she had stole a cell phone, and the
12 little girl wanted -- she left it at the house.

13 Q So it would be your testimony today that it was a
14 misunderstanding and that the cell phone had not actually been
15 stolen, it had accidentally been left at the house?

16 A I believe that.

17 Q Okay. But at the time in which you spoke with the
18 police you referred to it as Taquanda -- actually, withdrawn.

19 Tina, going back to approximately August of 2007,
20 you've moved back to Las Vegas from Utah?

21 A Yes.

22 Q Were you and Victoria welcome at the Blankenship
23 house?

24 A No.

25 Q Okay. And given that you said no, what's your

1 recollection as to why you or your oldest daughter weren't
2 welcome at the Blankenship house?

3 A Because Ann was mad at me for giving up my baby for
4 adoption.

5 Q You're referring to Joseph?

6 A Yes. And she was mad at Vicky -- Fred said that she
7 was mad at Vicky because she always starts stuff. Ann was
8 saying Vicky always starts stuff. They always kept bumping
9 heads, her and Victoria.

10 Q Okay. Now, thinking about that time, would you
11 characterize Victoria's demeanor or her behavior back then as
12 disrespectful and defiant?

13 A At times. You know, teenagers. I've met a ton of
14 teenagers that was defiant, you know, disrespectful.

15 Q Okay. So you thought that she could be defiant and
16 disrespectful, but no more or less than you might expect from
17 some other teenage girl?

18 A Yeah.

19 Q Okay. Do you remember whether or not Victoria
20 bumped heads with Fred because she was disrespectful, not
21 going to school, and abusive of you?

22 A Yes.

23 Q And, you know, it's my problem for having asked a
24 compound question, so let me break that down in smaller --

25 Victoria did have -- or did bump heads with Fred

1 because she was disrespectful?

2 A Because she was angry, because she was -- I guess
3 that part -- stage in her life that she just wanted to do her
4 own thing.

5 Q Okay. She also had problems going to school at the
6 time? She wasn't going to school or she was ditching school?
7 Is that correct?

8 A She -- I found out -- I found out when I was off the
9 streets and not working that she had ditched a couple of -- a
10 couple of -- she had ditched school.

11 Q Okay. And that was another one of the reasons that
12 she had run-ins with Fred?

13 A Yes.

14 Q Okay. And lastly, did she also have run-ins with
15 Fred because she was physically abusive of you?

16 A We would argue sometimes.

17 Q Okay. And I understand that arguments occur. But
18 my question specifically is whether at that time, this is in
19 late 2007, after you'd come to Las Vegas from Utah, was she
20 physically abusive of you.

21 A No. No. She had shoved me one time, but she -- she
22 wasn't abusive. I mean, well --

23 Q Let me ask you then, Tina, do you recall an instance
24 in which you came home from work and you found Victoria at the
25 apartment in the company of a 25-year-old boy or man?

1 A No. I didn't come home and see anything, but it was
2 -- well, she told me that it was someone that she had met. I
3 didn't catch them. I didn't see him in the house when I got
4 back home. And she said she was seeing someone.

5 Q How old was Victoria at the time?

6 A She was about 16.

7 Q Okay. And without regard to whether you actually
8 saw them doing something or not --

9 A It was hearsay, yeah.

10 Q -- my question to you now is when you confronted her
11 about it did Victoria beat you up, or do you recall that she
12 beat you up?

13 A I don't recall her -- we got into a conversation.
14 We got into a conversation, and I said, well, he's too old,
15 he's too old for you, you know. I don't want that going on.

16 Q But it would be your testimony today that she did
17 not beat you up following that confrontation?

18 A No, she didn't beat me up.

19 Q Okay.

20 A I don't remember that.

21 MR. MacARTHUR: Okay. Court's indulgence.

22 (Pause in the proceedings)

23 BY MR. MacARTHUR:

24 Q Do you remember the police asking you these same
25 questions or questions along these lines back in December of

1 2011 or January 2012?

2 A Similar.

3 Q Okay. Do you remember whether or not you told the
4 police that Fred intervened and told Victoria to stop fighting
5 her mother? Does that ring a bell?

6 A Yes.

7 Q Okay. Does that refresh your recollection as to
8 whether or not you'd had a physical confrontation with
9 Victoria?

10 A I think at one time I did.

11 Q Is it fair to say that you may have had a physical
12 confrontation with her but you're not sure if it's this
13 specific time?

14 A I'm not quite sure.

15 Q Okay.

16 A Teenagers is teenagers. Some of them act out. It's
17 what they do.

18 Q We're still in late 2007, Ms. Duke. Do you recall
19 that sometimes Fred and Victoria got along and other times
20 they didn't?

21 A True. Sometimes they got along, sometimes they
22 didn't. I remember they had one incident where we were at
23 Miss Dorothy's house and we were at the time staying --
24 somehow we left Trish Lane for a minute, and then we were at
25 the Shade Tree. Miss Ann put us out. And then I think in May

1 or April she accepted us back in. Okay. But at one time --
2 at that particular time, that was in '04 when that happened.
3 This particular incident happened we were supposed -- she was
4 supposed to meet --

5 Q When you say she who are you referring to?

6 A Victoria was supposed to meet -- Miss Dorothy was
7 picking us up. We were supposed to do something. And
8 Victoria wasn't -- when I got home from work Victoria wasn't
9 at a particular place and time, at a particular place where
10 she was supposed to be picked up. And so they went to -- they
11 picked her up, questioned her, you know, where was she, how
12 come she wasn't at the pacific spot. She's --

13 MS. LUZAICH: Well, objection.

14 THE WITNESS: And then they started fighting --

15 MS. LUZAICH: This is a narrative.

16 THE WITNESS: -- physically fighting, but --

17 MR. MacARTHUR: Hold on a minute.

18 THE COURT: Just a minute. When there's an
19 objection --

20 MS. LUZAICH: Objection. It's a narrative. It's
21 really not in response to a question, and it's hearsay.

22 THE COURT: Just ask the question again.

23 MR. MacARTHUR: Understood.

24 THE COURT: So the answer's stricken, and he's just
25 going to ask the question again.

1 BY MR. MacARTHUR:

2 Q There were times in which Fred and Victoria got
3 along, and other times they didn't?

4 A Yes.

5 Q Okay. That's a correct statement?

6 A Uh-huh.

7 Q Okay. I'm going to ask you to look at that document
8 and let me know whether you recognize it. Don't explain what
9 it is yet, but let me know whether you recognize it.

10 MR. MacARTHUR: And for the Court's record, the
11 document she's reviewing is Defense Exhibit B.

12 I thought it was C.

13 MS. ALLEN: It might be C.

14 MR. MacARTHUR: It's Defense Proposed C.

15 (Pause in the proceedings)

16 BY MR. MacARTHUR:

17 Q Okay. My first question is do you recognize the
18 handwriting on the document.

19 MS. LUZAICH: Can I see it?

20 MR. MacARTHUR: Oh. Sure. Sorry.

21 MS. ALLEN: For the record, Your Honor, I did
22 provide all this to the State beforehand.

23 MS. LUZAICH: She did. I just didn't know which one
24 it was.

25 THE COURT: And it's Exhibit C; correct?

1 MR. MacARTHUR: Yes, Your Honor. Proposed.
2 BY MR. MacARTHUR:
3 Q Ms. Duke, do you recognize the handwriting on --
4 A Yes, I do.
5 Q Okay. And is that your handwriting?
6 A No, it's not.
7 Q It's not?
8 A No, it's not.
9 Q So looking at this document you don't recognize it
10 as something that you'd written?
11 A I didn't write that. That's not my handwriting.
12 Q Understood. Do you recognize the form at all? Have
13 you ever seen it before?
14 A Yes, I recognize the form.
15 Q Okay. And, if you know, what is the form from?
16 A That is from a Social Security office.
17 Q So you've seen a form like this before?
18 A Uh-huh.
19 Q Okay. Let me ask you this. Do you recognize
20 the handwriting? Even though you're stating that it's not
21 yours --
22 A No, it's not.
23 Q -- do you know whose handwriting this is?
24 A That's Miss Dorothy's handwriting.
25 Q Okay. And that would be the defendant's mother?

1 A Yes.

2 Q Having read its contents, did you have Miss Dorothy
3 write this for you?

4 A She had written that for me. Yes, she did. She'd
5 written that for me. I -- we were filling out an application.

6 Q Okay.

7 A Yeah. And I guess I was having some -- and
8 everybody thought whatever they thought about me, and I said,
9 okay, fine, because I was like I guess would submit, whatever,
10 to -- I was still in the streets and on drugs and stuff, and
11 so when they said -- Fred and his mom said that, well, maybe
12 you need some help, you need some help --

13 Q I understand. But let me slow you down. I don't
14 want you to testify to what other people said to you. That'll
15 cause a hearsay objection, so --

16 A Okay.

17 Q But suffice it to say that someone felt as though
18 you needed help.

19 A Yeah.

20 Q Okay. And is -- did you -- whoever wrote this, did
21 you dictate what to say to them?

22 A Some of it. And some of it they assumed that, oh,
23 yes, this is how we feel about you and we think that you need
24 some help, yeah.

25 Q Okay. And so, to be clear, of the information in

1 this document some of it is your statement, and other parts
2 you believe are --

3 A Their assumption of me --

4 Q -- their characterization.

5 A -- of my character, uh-huh.

6 Q Okay.

7 A Yeah.

8 Q Okay. Let me ask you this. Would you agree with me
9 that there appear to be two different handwriting styles, that
10 up top we have cursive, and down at the bottom we have print?

11 A Print. This is still not my writing.

12 Q Okay. I was just going to ask you are either of
13 those yours.

14 A No. I don't write like that.

15 Q Okay. All right. Tina, I know that you testified
16 yesterday on direct examination. I'd like to revisit one of
17 those topics, namely, when it was that Victoria first said to
18 you that she was being sexually abused by Fred. When was the
19 first time that Victoria divulged or you learned that she was
20 being sexually abused by Fred?

21 A It was 2005.

22 Q Okay.

23 A March, I think. Somewhere around there.

24 Q March 2005. So at this point in the timeline you've
25 come to Las Vegas from Louisiana, Fred's brother has brought

1 your children out, it's January of 2005, and then sometime
2 around March or the spring of 2005 is when you believe that
3 Victoria first made these revelations?

4 A Correct.

5 Q Okay. Do you remember telling the police that she
6 first divulged these things in 2007? Do you know if you said
7 that?

8 A I believe it was -- I believe she told the police of
9 Utah I believe it was 2006 -- wait a minute. 2005, December.

10 Q I'm not quite following you. What happened in 2005,
11 December?

12 A In 2005, December, she just thought I guess she
13 just had to say something. She told the police about -- Utah
14 police or Utah CPS, the people who came to my address in
15 Utah --

16 Q Okay. Let me back up a step. We've got a lot of
17 information here.

18 Yesterday -- I'm sorry. Friday you testified that
19 Victoria first said that she was being sexually abused by Fred
20 in spring of 2005; right?

21 A Yes.

22 Q Okay.

23 A But she had told that --

24 Q Hold on. I don't mean to cut you off. I just -- I
25 want to make sure that we're talking about the same thing. I

1 promise I'll give you an opportunity to respond.

2 And then just now, a couple minutes ago, you told
3 the jury that your recollection is still the Victoria made
4 these allegations for the first time in the spring of 2005;
5 right?

6 A Yeah, 2005, when she -- not the police, but to me
7 and Ann -- well, Ann told me, and I believe she told Miss
8 Dorothy, and they were all in the bedroom, we're all in the
9 bedroom talking.

10 Q So we'll come back to that detail.

11 A Okay.

12 Q Hold on. We're still on the timeline, and then
13 we'll get to the details, I promise.

14 And so what did you say is happening is in Utah in
15 December of 2005? You said something about CPS and Victoria
16 there.

17 A That was 2006.

18 Q 2006.

19 A Yeah.

20 Q And what was --

21 A The end of -- yeah, about -- okay.

22 THE COURT: Well, 2005, or 2006?

23 THE WITNESS: It was December 2005.

24 BY MR. MacARTHUR:

25 Q Okay. And you're stating that in December of 2005

1 that Victoria had brought these allegations to the attention
2 of CPS in Utah? Is that what you're saying?

3 A Yeah. It had to be around that time, end of 2005.
4 Because 2007 we had moved back here to Las Vegas.

5 Q Uh-huh. Do you remember telling the police in
6 December 2011 or January 2012 -- when I say the police I'm
7 talking about the Las Vegas Metropolitan Police Department.
8 Do you remember telling them that she first said that she was
9 being abused in a sexual manner by Fred in 2007 when you guys
10 came back from Utah? Does that ring a bell?

11 A Yes.

12 Q Okay. And so that having rung a bell, is what you
13 told the police back in 2011 correct, or is what you're saying
14 in court today correct?

15 A Well, I'm remembering the date here, correct, today.
16 And in 2007 -- I mean, excuse me, not 2007, but --

17 Q 2005.

18 A In 2011, 2012 in January when they came to the
19 house.

20 Q Okay.

21 A Well, we were talking in his car.

22 Q All right. So as you sit there now you feel as
23 though your testimony in front of the jury is the most
24 correct, that it was 2005, not 2007?

25 A About what?

1 Q When Victoria first divulged that she was being
2 sexually abused.

3 A It was in 2005 when she told me and Ann and Miss
4 Dorothy.

5 Q Okay. And so when you told the police that that was
6 in 2007 when you came back from Utah, this was mistaken; is
7 that correct?

8 A When I came back in 2007, because here to Las Vegas,
9 Nevada, what are you asking me?

10 Q Well, let me show you a statement.

11 A I just want to make sure.

12 Q Just the highlighted portion.

13 A Okay.

14 Q Okay. Having read that, does that refresh your
15 recollection of what the police were asking you and what you
16 told them?

17 A Yes.

18 Q Okay. And in fact the officer asked you, "Okay.
19 And when Victoria I guess originally, um, around when you
20 first moved here, did, uh, Victoria ever say anything about
21 Fred, you know, touching her in a sexual manner or
22 inappropriate or somewhere that she felt uncomfortable or
23 inappropriate?" That's the detective's question; correct?

24 A Correct.

25 Q Okay. And your answer is, "When we came back here

1 from Utah in '07 I believe she did. I believe she did. It
2 was like hearsay and hearsay because I wasn't there. I'm
3 always running, I'm always working, so I'm not in the -- um, I
4 wasn't in the presence of anything happening." That was your
5 answer?

6 A Yeah.

7 Q Okay. Now, I promised I'd let you get back to those
8 details. I'm going to do that now.

9 When I was asking you about the timeline between
10 2005 and 2007 you had said that Victoria, when she was
11 revealing this information, who did she tell?

12 A When I went in December of 2005 to see Fred --

13 Q Uh-huh.

14 A -- I paid a babysitter over \$200. We were friends.
15 We talked about this Friday.

16 Q And just so we're clear, I'm asking when Victoria
17 first divulged that she was being sexually abused by Fred
18 where was she when she first made that statement.

19 MS. LUZAICH: Well, objection. Vague. When she
20 first divulged to who?

21 MR. MacARTHUR: To anyone.

22 THE COURT: So --

23 MS. LUZAICH: Well, unless she was there, the
24 objection's foundation and --

25 THE COURT: So the objection to foundation is

1 granted, and you can restate the question.

2 BY MR. MacARTHUR:

3 Q All right. The first time that Victoria said she
4 was being sexually abused, as far as you're aware, who did she
5 tell that to?

6 A She told that to Miss Ann and Miss Dorothy. And
7 then when I came home from work she told me. And -- well,
8 Miss Ann told me about it. And so we all gathered in her room
9 on Trish Lane.

10 Q Okay. Let me back up a second. Did you learn about
11 it from Victoria, or did you learn about it from Miss Ann?

12 A I learned about that from Miss Ann. I remember Miss
13 Ann, because we all had to go in her room.

14 Q Okay. Now, Miss Ann never lived in Utah; is that
15 correct?

16 A No.

17 Q Okay. And so the first time that Victoria told
18 somebody that something sexual was happening to her Victoria
19 wasn't in Utah; right?

20 A The first time she told someone of authority.

21 Q Okay. And let me not confuse the issue. I'm not
22 necessarily asking you the first time she told someone in
23 authority. Doesn't have to be a police officer or counselor
24 or anything like that. First time she told anybody, that
25 you're aware of, that was in 2005, and she told Miss Ann?

1 A I remember 2005 that she had mentioned to Ann and
2 Ann told me about any kind of making passes, advance or what
3 have you. I believe -- I truly believe it was 2005.

4 Q Okay.

5 A And on Trish Lane. And Mom's coming home from
6 Jason's Deli. I was pregnant. And they said, come in the
7 room, we need to talk with you.

8 Q Okay. And that's fine.

9 A That's the first -- very first first time of any
10 kind of thing.

11 Q Understood.

12 A Okay.

13 Q However, you testified under oath today that
14 Victoria told Miss Ann and that Victoria -- I mean, sorry, not
15 Victoria, Miss Ann told Miss Dorothy and told you; right?

16 A Yeah. And then I think -- I guess Miss Dorothy was
17 already there, you know, at the house, you know, on Trish
18 Lane, because everybody needed to talk.

19 Q And you can see these events in your mind; is that
20 correct? I mean, you can -- you can recall them?

21 A Yes.

22 Q Okay. In other words, you're testifying from your
23 actual memory, right, not from something you've read or
24 something else? Is that fair?

25 A Yeah, from my memory, what I remember.

1 Q Okay. Do you recall telling the police that
2 Victoria came to you specifically and said that she was being
3 molested by Fred? Do you know if you did that?

4 Did you understand the question?

5 A Yes.

6 Q I'm not trying to hurry you. I just -- are you
7 still thinking?

8 A The first time I remember was at -- first time I
9 remember was in 2005 at Miss Ann's house.

10 Q Well, I know that you remember the when. But the
11 question is do you remember telling the police that Victoria
12 came up to you specifically, not Ann, and explained to you
13 that she was being sexually abused.

14 A Was that another question?

15 Q I'll ask it again. Do you remember telling the
16 police that Victoria specifically came to you, came into the
17 room you were in and told you she was being sexually abused at
18 the hands of Fred? Remember telling the police that?

19 A I don't quite remember.

20 Q Okay. Would it refresh your recollection to be able
21 to see the statement that you made to the police?

22 A Yes.

23 Q Okay. Did that refresh your recollection of the
24 conversation you'd had with the police detective?

25 A Yes. This is the statement that in 2005 -- I

1 remember saying this. And this is --

2 Q I don't want you to explain it yet. I'm going to
3 ask you --

4 A Yes, I remember --

5 Q Okay.

6 A -- saying this.

7 Q Now, you've already testified that Victoria divulged
8 her sexual abuse to Miss Ann, and you said that Miss Ann
9 contacted you and Miss Dorothy; right?

10 A Right.

11 Q Okay. You also stated that it was some hearsay and
12 that you hadn't seen it personally; right?

~~13~~ A I haven't seen it personally.

14 Q Okay. And so the detective asks you, "Okay. And
15 what did she tell you in April of '05?" Is that correct?
16 That's what he says?

17 A What does it say in April '05?

18 Q That's what the detective says?

19 A Yes.

20 Q Okay. And your answer is, "She said that Mom -- she
21 told -- she came in the room and told me and Ann -- okay, wait
22 a minute. I was -- I came from work. I'm exhausted,
23 pregnant, exhausted. Came from work and she says that, come
24 in the room -- because she used to live on Trish Lane. She
25 said, come in the room. This is how all this begins. So, um,

1 come in the room, I got something to -- I said, what, you
2 know, and she says that, uh, Victoria said that, uh, Fred had
3 molested her, had touched her, you know. And I didn't know
4 what to think about that, really. Yeah, I was -- and, um, so
5 when that --"; is that correct?

6 A Correct.

7 Q Okay. And so Lealer was not in the habit of calling
8 you Mom; is that correct?

9 A No.

10 Q Okay. And so when the person's saying Mom, you're
11 referring to Victoria; is that right?

12 A Yes.

13 Q Okay.

14 A Because Lealer never called me Mom.

15 Q Understood.

16 A When she told us, when she -- when she was telling
17 me she had come into the room and she was telling everyone.
18 Victoria came into Ann's room, bedroom, and she was telling
19 Miss Ann, me, Miss Dorothy --

20 Q Well, hold on. I understand that you've just said
21 that Victoria came in and was telling everybody, you, Dorothy,
22 and Miss Ann. But five minutes ago you said that she had told
23 Miss Ann and that Miss Ann told you and Dorothy; right?

24 MS. LUZAICH: Well, objection. That's what the
25 statement says. But Ann is telling her what Victoria said.

1 It's improper impeachment.

2 MR. MacARTHUR: Your Honor, certainly this is
3 material she could get back to on redirect if she doesn't
4 think I'm doing it well.

5 MS. LUZAICH: Well, he's misstating the -- or --

6 THE COURT: What I don't like is for you to
7 paraphrase what the witness testified to. So if you have a
8 question, ask a question.

9 MR. MacARTHUR: Okay.

10 THE COURT: Thank you.

11 MR. MacARTHUR: I apologize, Your Honor.

12 BY MR. MacARTHUR:

13 Q Do you remember telling the police that the
14 complaint Victoria made was that Fred was making passes at
15 her?

16 Actually, let me ask that a different way. Is it
17 your recollection that Victoria told you that she was being
18 sexually abused by Fred, or did she tell you or Leann [sic]
19 that Fred was making passes at her?

20 MS. LUZAICH: Objection to the form of the question.

21 THE COURT: Maybe just phrase it what did she say to
22 her, to this witness.

23 BY MR. MacARTHUR:

24 Q Did Victoria tell you she was being sexually abused,
25 or did she tell you that Fred was making passes at her?

1 A She said that -- she said that Fred was making
2 passes at -- made a pass at her. She was telling everyone at
3 the same -- in the same room.

4 THE COURT: Okay. We're just asking you.

5 THE WITNESS: Oh. Yes.

6 BY MR. MacARTHUR:

7 Q Okay. So Victoria said that Fred making passes at
8 her?

9 A Passes and -- and she said that Fred had -- had
10 fondled her.

11 Q Okay. So it's your testimony today that she said
12 both, that he was making passes at her and that he had fondled
13 her?

14 A Yes.

15 Q Okay.

16 A As I could remember.

17 Q Understood. Isn't it in fact true that when you
18 talked to the police in December of 2011 or January of 2012
19 that you told -- you only told them about Fred was allegedly
20 making passes at her? Does that make sense?

21 A Yes.

22 Q Okay. And so you didn't tell them that she said
23 that Fred was fondling her, did you?

24 A I told -- I told them that Fred had made a pass at
25 her.

1 Q Uh-huh. But you didn't tell them that she'd said
2 that Fred was fondling her, did you?

3 A Maybe I did.

4 Q Do you think you did? Do you think you told the
5 police that Fred had fondled her in December 2011?

6 A He had made some passes at her.

7 Q Okay. And we've already had that testimony, said
8 that Fred was making passes at her. My question specifically
9 is do you think that you told the police that he was fondling
10 her in December 2011.

11 A I may have.

12 Q If I told you you didn't, would you disagree?

13 A I remember stating something like that.

14 Q Remember stating something like he was fondling her?
15 Yes?

16 A That he had made some sexual passes at her.

17 MR. MacARTHUR: Okay. Court's indulgence.

18 (Pause in the proceedings)

19 BY MR. MacARTHUR:

20 Q Do you think it would refresh your recollection to
21 be able to review the statement that you made to the police in
22 December of 2011?

23 A Yes.

24 MR. MacARTHUR: All right. State, I'm going to
25 refer to pages 10 and pages 20.

1 MS. LUZAICH: And 20? What about 11?

2 THE COURT: You asked her about her entire
3 statement. Are you asking her to review her entire statement,
4 or just certain pages?

5 MR. MacARTHUR: For the sake of time, Your Honor, I
6 was not going to have her review the entire statement. I
7 think it's fair, because if there is somewhere in there, I
8 think the State can be trusted to show that to the jury.

9 THE COURT: Okay. So you're going to ask her to
10 just look at a few pages?

11 MR. MacARTHUR: You know, Judge, I'll --

12 THE COURT: It's up to you. I just want to know.

13 MR. MacARTHUR: I will withdraw that question.

14 BY MR. MacARTHUR:

15 Q Ms. Duke, if you believe that you told the police
16 that Fred was fondling Victoria, please share with the State
17 where that can be found.

18 I'll move to the next question.

19 MS. LUZAICH: Well, objection.

20 THE COURT: Sustained. If you want her to review
21 the entire statement, that's fine. We'll just probably do it
22 not on court time.

23 MR. MacARTHUR: Understood, Your Honor. It's a
24 32-page statement. I'll withdraw that question.

25 THE COURT: All right. Okay.

1 BY MR. MacARTHUR:

2 Q Tina, isn't in fact true that Victoria never told
3 you that Fred was forcing her to have sex with him before
4 December 2011? Isn't that in fact the first time Victoria
5 ever made an allegation that Fred was forcing her to have sex
6 with him?

7 A You mean 2005?

8 Q No. I'm talking about 2011, December.

9 A 2011?

10 Q Uh-huh. Isn't that in fact the first time that
11 Victoria ever made the allegation that Fred was forcing her to
12 have sex with him?

13 MS. LUZAICH: Well, objection. Foundation. She
14 can't testify to anything Victoria's ever said to anyone.

15 THE COURT: Right. Sustained. You just need to
16 rephrase it.

17 MR. MacARTHUR: Understood, Judge.

18 THE COURT: I think I know what you're getting at.

19 BY MR. MacARTHUR:

20 Q At the beginning of this cross-examination I went
21 through some of the statements that you gave; right?

22 A Yes.

23 Q Being here in trial, having appeared previously at
24 preliminary hearing; right?

25 A Yes.

1 Q Okay. And in fact you testified on two different
2 days at preliminary hearing. Do you remember that?

3 A Yes.

4 Q Okay. We had to interrupt and then come back and
5 resume on a different day; is that fair?

6 A Yes.

7 Q Do you remember testifying under oath that Victoria
8 didn't to you that Fred was forcing her to have sex with him
9 anytime before December 2011?

10 A Before 2011? I don't remember that, because --
11 reason is because -- I understand that question is because in
12 2007, yes, he had forced -- he had forced Victoria and
13 threatened me and Victoria and my family. So what are you
14 getting at? I don't understand the question.

15 Q Do you think it would refresh your recollection as
16 to what you testified to last year if I were to show you the
17 transcript from the preliminary hearing?

18 THE COURT: Yes or no?

19 THE WITNESS: Okay. Yes. If you show me the --

20 THE COURT: Okay. What date?

21 MR. MacARTHUR: Court's indulgence.

22 THE WITNESS: It's confusing, that's all.

23 THE COURT: Are you okay?

24 THE WITNESS: I'm okay. It's just confusing, and
25 it's just stressing me out. I'm just -- you know.

1 THE COURT: Do you need a break?

2 THE WITNESS: No, ma'am, thank you. I'm -- just do
3 this, you know. Because why would he ask that question and
4 I've stated that he had forced --

5 THE COURT: Okay. I can't answer any questions.
6 But if you need a break, I'll be happy to give you a break.

7 THE WITNESS: I'm okay right now.

8 THE COURT: Okay. Thank you.

9 What date and page?

10 MR. MacARTHUR: I'm sorry. Forgot you asked me
11 that, Judge. I'm going to June 20th, 2030 [sic] -- I'm sorry,
12 2013. And I'll be referring to page 8.

13 BY MR. MacARTHUR:

14 Q There's four pages on here. I'm just referring to
15 this one.

16 Have you had an opportunity to review it?

17 A Yes.

18 Q Okay. Does that refresh your recollection as to the
19 conversation that was being had in preliminary hearing?

20 A Yes.

21 Q Okay. And you were being cross-examined by Ms.
22 Allen, is that correct, the attorney sitting over there at
23 that table?

24 A Right.

25 Q Okay. And she asked you, "When he asked you that

1 question you had -- according to your testimony, you had
2 already seen Fred force Victoria to have sex with him; isn't
3 that right?" That's what it says; right?

4 And you reply, "Yes."

5 A My answer was yes.

6 Q Okay. And then she asks, "Okay. But you didn't
7 volunteer that information to him; isn't that correct?" And
8 you say, "No, I didn't say that"; is that correct?

9 A Correct.

10 Q And then lastly she says, "Did Victoria tell you
11 before this date in 2011, December 2011, had she come to you
12 and said Fred was forcing her to have sex?"

13 And your reply was, "I don't remember her coming to
14 me telling me anything"; is that correct?

15 A Correct.

16 Q Yesterday I believe you testified that at some point
17 there was a conversation --

18 THE COURT: You mean Friday?

19 MR. MacARTHUR: I'm sorry?

20 THE COURT: Friday. I just want --

21 MS. ALLEN: Thursday. Actually Thursday. Thursday,
22 Your Honor.

23 MR. MacARTHUR: Thursday.

24 THE COURT: Thursday.

25 MS. ALLEN: Sorry.

1 THE COURT: Okay. I just want the record to be
2 clear, so --

3 MR. MacARTHUR: And I apologize.

4 BY MR. MacARTHUR:

5 Q Okay. Going back to Thursday of last week --

6 THE COURT: Sorry, Mr. MacArthur.

7 MR. MacARTHUR: No, it's okay, Judge. I think I'm
8 messing up more than anybody else.

9 BY MR. MacARTHUR:

10 Q -- you testified that there was at some point an
11 occasion where you, Fred. and Victoria had a very serious
12 conversation in a car. Remember that?

13 A Yes.

14 Q Okay. And in that conversation -- well, rather than
15 paraphrasing what you said, why was that conversation
16 important? What happened in the car where there was a
17 conversation between you and Fred and Victoria?

18 MS. LUZAICH: Objection. Assumes facts not in
19 evidence. A conversation between her and Victoria and Fred?

20 MR. MacARTHUR: I thought that's what she had
21 testified to.

22 BY MR. MacARTHUR:

23 Q If you know. If you don't understand the question,
24 I can rephrase.

25 THE COURT: Do you understand the question?

1 THE WITNESS: Yes.

2 Well, it was mentioned in the car -- it was
3 discussed in the car between me, Victoria, and Fred that he --
4 his fantasy, he wanted to have sex with Victoria.

5 BY MR. MacARTHUR:

6 Q Uh-huh.

7 A And he had -- he had threatened me and my family, me
8 and Victoria, and he said that he would kill her and kill me,
9 and he said that, I have your children, I have your family,
10 you know, and -- and then we went from there.

11 Q Okay. Was there also some sort of discussion about
12 Victoria's body belonging to Fred or something along those
13 lines? Do you know what I'm talking about?

14 A Perhaps. I can't remember word from word --

15 Q Okay.

16 A -- but perhaps maybe so.

17 Q Okay. Well, I'm not asking you to remember
18 something that you don't. Suffice it to say that you're not
19 allowed to be in the courtroom when Victoria testifies; right?

20 A Right. Yes.

21 Q And she's not allowed to be in the courtroom while
22 you're testifying; right?

23 A Right.

24 Q Okay.

25 THE COURT: Well, not necessarily.

1 MR. MacARTHUR: Well, I suppose in certain
2 circumstances.

3 BY MR. MacARTHUR:

4 Q As far as you know, Victoria's never been present
5 when you testified; right?

6 A She has not been present.

7 Q Okay. And you've never been present while she was
8 testifying on the stand?

9 A Right.

10 Q Okay. So I'll move on to the next question.

11 Do you remember telling the police that there was
12 never a conversation in front of Miss Dorothy's in the car
13 regarding Victoria's body belonging to Fred?

14 A What did you just say?

15 Q Let me back up.

16 A With Miss Dorothy in the car? What?

17 Q I'll ask it a different way. I know that's
18 complicated.

19 The police made contact with you while they were
20 investigating these charges; right?

21 A Yes.

22 Q Okay. And they would ask you questions about what
23 had happened. Is that also correct?

24 A Yes.

25 Q Okay. And did they sometimes ask you questions that

1 were comparing something Victoria said to what you said?
2 MS. LUZAICH: Well, objection. Assumes --
3 foundation. She doesn't know what they were comparing.
4 MR. MacARTHUR: If she knows.
5 THE WITNESS: I don't know.
6 THE COURT: Well, yeah. I mean, they would have to
7 tell her.
8 MR. MacARTHUR: I'll rephrase, Judge.
9 THE COURT: Okay.
10 BY MR. MacARTHUR:
11 Q Were there times in which the police told you that
12 Victoria told us that this happened, is that true?
13 A Yes.
14 Q Okay. And so with regard to this conversation in
15 front of Miss Dorothy's house involving you and Fred and
16 Victoria --
17 MS. LUZAICH: Objection. Assumes facts not in
18 evidence.
19 MR. MacARTHUR: The question hasn't been asked yet.
20 MS. LUZAICH: Well, the --
21 THE COURT: Don't answer the question. Let me just
22 hear the full question.
23 MS. LUZAICH: But the question is that a
24 conversation occurred in front of Miss Dorothy's house.
25 That's not what the testimony was.

1 MR. MacARTHUR: It's a premature objection, Judge.
2 The question is going to be did the police -- with regard to
3 this conversation in a car involving you, Miss Dorothy, and
4 the defendant did the police ever ask you whether that
5 happened.
6 THE COURT: Okay. So is the question did the police
7 ever ask you if a conversation happened in a car between you,
8 Miss Dorothy, and Fred?
9 MR. MacARTHUR: Yes.
10 THE COURT: Okay. Go ahead.
11 MR. MacARTHUR: Thank you.
12 MS. LUZAICH: Miss Dorothy?
13 MR. MacARTHUR: Miss Dorothy.
14 THE COURT: I wrote it down. Miss Dorothy.
15 MS. ALLEN: No. In front of Miss Dorothy's house.
16 MR. MacARTHUR: Oh. In front of Miss Dorothy's
17 house. Sorry. I --
18 THE COURT: Okay. All right. So --
19 MR. MacARTHUR: I may have accidentally put her in
20 the car.
21 THE COURT: -- can you say -- ask the question
22 again.
23 MR. MacARTHUR: Yes, ma'am.
24 THE COURT: And don't answer it until I hear the
25 full question.

1 BY MR. MacARTHUR:

2 Q Did the police ask you questions regarding a
3 conversation that had happened in a car in front of Miss
4 Dorothy's house where you, Victoria, and Fred were present?
5 Do you know if they asked you that, or do you remember if they
6 asked you that?

7 THE COURT: Oh. I'm -- you're waiting for me.

8 THE WITNESS: I'm waiting for --

9 THE COURT: Okay. I apologize. Yes. You can
10 answer. I'm sorry.

11 THE WITNESS: Okay.

12 THE COURT: Do you recall that?

13 THE WITNESS: Yes. I recall talking in a car in
14 front of Miss Dorothy's house.

15 THE COURT: Well, I think the question was do you
16 recall the police asking you about that.

17 Is that correct, Mr. MacArthur?

18 MR. MacARTHUR: That's correct.

19 THE WITNESS: Okay. Yes.

20 BY MR. MacARTHUR:

21 Q Okay. And do you recall telling them that, no, that
22 conversation never happened? Do you remember if you said that
23 or not?

24 A I don't even remember saying that, because --

25 Q Understood. Would it refresh your recollection if

1 you're able to see the transcript of your statement to the
2 police at that time?

3 A At that time. Okay.

4 MR. MacARTHUR: All right. State, I'll be referring
5 to the very bottom of page 17, and then the top paragraph of
6 18.

7 BY MR. MacARTHUR:

8 Q Just the last sentence here I'll be asking you
9 about, and then the first five sentences there.

10 Would you like more time, Ms. Duke?

11 A Yes. I remember this conversation. He had asked.
12 I said, no, because, no, that's not how that conversation went
13 in the car.

14 Q Okay. Well --

15 A That's why I said no.

16 Q Let me take you one step at a time. Let's go
17 through what the transcript says, and then I promise I'll give
18 you an opportunity to tell me anything that's been left out,
19 okay.

20 The detective says, "Back to what I was kinda
21 talking to you about, did you, um, you Victoria, Dor -- or
22 you, Victoria, Fred ever have a conversation in a car out in
23 front of Miss Dorothy's house about how that Victoria's body
24 was going to be Fred's and that she would have to sleep with
25 him if she wanted to see his kid or her brothers and sisters?"

1 Is that what he asked you?

2 A Yes, he did ask me that.

3 Q Hold on. I know. And I promise I'll give you
4 another opportunity to explain.

5 And your answer was no; is that correct?

6 A Correct.

7 Q Okay.

8 A Meaning no because that wasn't exactly the sentence,
9 the conversation we had then the car. I mean, we had a
10 conversation, but that's not the exact words as I remember.

11 Q Okay. And I understand that. You didn't want to
12 agree to something that he wasn't stating and wasn't correct;
13 right?

14 A Right.

15 Q Okay. But did you then explain why he wasn't
16 correct? Did you provide more information as to what actually
17 was said inside of this car?

18 A No. I failed to do so --

19 Q Okay.

20 A -- to correct him or ask him --

21 Q Okay. I understand.

22 But he actually asked you more than once; right?
23 Didn't he ask you that question again, do you recall? It's
24 okay if you don't remember. Do you remember if he asked you
25 that question again? Same page.

1 A Yes.

2 Q Okay. And so, since you had an opportunity to
3 review it -- okay, do you recall that he gets a telephone call
4 from someone, that he interrupts asking you questions because
5 he's apparently talking to somebody else on the phone?

6 A The officer in the car?

7 Q Yeah.

8 A Yeah. I think his phone rang.

9 Q Okay. And so he says, "Okay. Since I'm doing an
10 interview, so let me just turn this off, I think. Okay. I'm
11 sorry." He says, "So you said --" and you said, "Since we're
12 talking, I'm going to turn it off." Question, "You never saw
13 -- you never heard that conversation happen? You never saw
14 that happen?" And your answer was, "No." Do you recall that
15 being correct, as what you said?

16 A Yes. I said no because that wasn't the words that
17 was said in the car.

18 Q And I understand your testimony. However, this is
19 the second time he's asked you; right?

20 A Right.

21 Q Okay. In fact do you remember saying that you don't
22 know why Victoria would say that?

23 A Yes, I do remember.

24 Q So when the detective asked you, "Do you know why
25 Victoria's telling me that's happened," you remember telling

1 him, no, I don't know why -- or, no, I don't?

2 A Yes.

3 Q Okay. Tina -- and I know these questions are
4 personal, but did Victoria ever tell you that she lost her
5 virginity in Louisiana?

6 MS. LUZAICH: Objection. Rape shield.

7 THE COURT: Sustained.

8 MR. MacARTHUR: Your Honor, I should be able to
9 respond. Can we approach?

10 THE COURT: Yeah. The objection's been sustained.
11 (Bench conference)

12 MS. LUZAICH: We had a conversation about this.

13 MR. MacARTHUR: I'm not talking about that -- I'm
14 not --

15 THE COURT: [Inaudible] for those who are present at
16 the bench.

17 MR. MacARTHUR: This is Tina's -- she's testified
18 first. We expect that another witness is going to say that
19 Victoria told her that she lost her virginity in Louisiana.

20 MS. LUZAICH: Objection. Rape shield. She's not
21 going to ever say that.

22 MR. MacARTHUR: Well, that would be a prior
23 inconsistent statement. Now, I was merely trying to avoid
24 bringing this witness back.

25 MS. LUZAICH: Your Honor, can we do this outside the

1 presence of the jury?

2 THE COURT: Yeah, we could.

3 (End of bench conference)

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

14 We are in recess until the court marshal tells you
15 otherwise. Thank you very much.

16 (Jury recessed at 2:41 p.m.)

17 THE COURT: And, ma'am, you can step down, but we're
18 not done yet. Just stay close by.

19 (Witness exited courtroom)

20 THE COURT: The record will reflect that this
21 hearing is taking place outside the presence of the jury
22 panel, as well as the witness.

23 The last question was something about Victoria
24 losing her virginity in --

25 MR. MacARTHUR: Louisiana.

1 THE COURT: -- Louisiana. There was an objection to
2 rape shield. So I'll hear from the State.

3 MS. LUZAICH: Mr. MacArthur and Ms. Allen and I had
4 a conversation about this -- well, the topic in general before
5 we came in from the lunch break, as well.

6 And I'll go back for one second. During opening
7 statement Mr. MacArthur made comments about Victoria having
8 been pregnant and had a miscarriage. I didn't object at the
9 time because I didn't want to call attention to it. And I
10 said to them, if you're going to go into any other sex acts
11 other than Fred, the defendant, and at the time Victoria did
12 the interview with the detective in September she was pregnant
13 and has had a baby. Anything other than that, that is rape
14 shield. And they absolutely can't go into any other sex acts.

15 So anything about losing virginity in Louisiana when
16 she was like 11, there is absolutely no legitimate purpose for
17 bringing that in above and beyond the she was pregnant and had
18 a miscarriage during the time frame that the defendant was
19 sexually abusing her. All of that is rape shield and
20 absolutely inadmissible.

21 MR. MacARTHUR: Thank you, Your Honor. There are
22 some exceptions to rape shield, first, such as in instances of
23 prostitution where consent becomes the issue, rape shield can
24 be sidestepped.

25 THE COURT: Tell me an exception that's applicable

1 here.

2 MR. MacARTHUR: And it's also under prior
3 inconsistent statement.

4 Now, I agree that the statement described by Miss
5 Luzaich definitely occurred. There was no misunderstanding as
6 to what it pertained to. However, this witness has testified
7 that the defendant took Victoria's virginity. We expect
8 Victoria's also going to say that the defendant took her
9 virginity. However, we have another witness who is going to
10 testify that Victoria told her that she had lost her virginity
11 in Louisiana. I'm asking this witness if she had been told
12 that, as well. And the exception is prior inconsistent
13 statement, which is not covered by rape shield.

14 THE COURT: Anything else?

15 Anything else by the State?

16 MS. LUZAICH: No.

17 THE COURT: Okay. The objection is sustained. And
18 we'll take a 15-minute recess, so 3:00 o'clock we'll start
19 again.

20 MS. LUZAICH: Thank you.

21 MR. MacARTHUR: All right.

22 THE COURT: So that -- did she -- she didn't answer,
23 did she?

24 MS. ALLEN: No.

25 MR. MacARTHUR: She did not.

1 THE COURT: Okay. I just wanted to make sure.
2 MS. LUZAICH: No? I didn't hear.
3 MR. MacARTHUR: She didn't.
4 THE COURT: Okay. Thank you.
5 (Court recessed at 2:45 p.m., until 3:03 p.m.)
6 (Jury is present)
7 THE COURT: Do the parties stipulate to the presence
8 of the jury panel?
9 MS. LUZAICH: Yes, ma'am.
10 MR. MacARTHUR: We do, Your Honor.
11 THE COURT: Okay. You may bring your witness back
12 in.
13 Okay. You may continue.
14 MR. MacARTHUR: Thank you, Your Honor.
15 BY MR. MacARTHUR:
16 Q All right, Ms. Duke. We've already had you refresh
17 your recollection more than once on the police report that you
18 gave -- or should I say the voluntary statement that you gave
19 in December 2011 or January 2012; right?
20 A Right.
21 Q Okay. I found the page I was missing earlier.
22 MS. LUZAICH: Objection. What are we --
23 MR. MacARTHUR: Oh. I'm sorry. Page 19 and page
24 20, bottom of 19.
25 THE COURT: Okay. But we kind of just started with

1 you showing her that document. So is there a question
2 pending?

3 MR. MacARTHUR: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. MacARTHUR: I had asked a series of questions
6 about whether or not Victoria had said that Fred was forcing
7 her to have sex with her.

8 THE COURT: Okay.

9 MR. MacARTHUR: And I couldn't find a particular
10 page, and we had refreshed with an alternate page. But I
11 found what it was I was looking for. And so, having
12 established that she did not recall having said that and
13 having established that it did refresh her recollection, the
14 nature of that conversation, I'm resuming at the proper point
15 in the conversation.

16 THE COURT: Okay. Go ahead.

17 MR. MacARTHUR: All right. And I apologize if that
18 wasn't clear.

19 BY MR. MacARTHUR:

20 Q The last sentence -- or the last paragraph on 19 and
21 the top paragraph on 20.

22 Are you finished, Ms. Duke?

23 A Yes.

24 Q Okay. Does that refresh your recollection as to the
25 conversation you were having with the Metropolitan Police

1 detective?

2 A Yes, kind of.

3 Q Okay.

4 MS. LUZAICH: Maybe the Henderson detective?

5 THE COURT: With the police.

6 MR. MacARTHUR: Sorry. With the police, Judge. I

7 blame Ms. Allen.

8 BY MR. MacARTHUR:

9 Q Okay. Do you agree that at the bottom of page 19

10 you say, "About tardy or not going and somebody got in trouble

11 about that and, um, or -- and, um -- but I never seen Fred

12 touch the children in a wrong way"? Am I right so far?

13 A Yes.

14 Q Okay. And then he says, "Okay."

15 A And that's the statement.

16 Q I understand.

17 A He says, "Okay."

18 Q And then you say, "I've never seen that happen";

19 right?

20 A Right.

21 Q And then he says, "Okay. And you said that Victoria

22 had said that Fred was making -- making passes at her. Did

23 she ever say that he was forcing her to have sex with him?"

24 And your answer, "No, she didn't tell me that. I don't

25 remember her saying anything like that because, um, I mean,

1 they were -- they would, um, bump heads. You know, they
2 would get in an argument, in a fight because either he didn't
3 like the way he was she was disrespecting me or she didn't go
4 to school, find out -- find out she didn't go to school, you
5 know." Is that correct?

6 A Yes, that's on the statement.

7 Q Okay. All right. Thank you for your patience, Ms.
8 Duke. My next question is pertaining to your testimony last
9 Thursday. You had said that the defendant put you out on the
10 streets to make money and support your children in spring of
11 2005. Do you remember saying that?

12 A Yes.

13 Q Okay. And I asked you today whether it was 2005 and
14 2007. You remember me asking you that series of questions?

15 A Yes, I do.

16 Q Okay. And you had told the police that it was in
17 2007; right?

18 A Yes. In 2007.

19 Q So --

20 A But actually it was -- it started actually in 2005
21 and -- yeah, beginning of 2005.

22 Q Okay. As long as we're talking about the same
23 thing.

24 Now, you came back from Utah in August of 2007;
25 correct?

1 A Yes.

2 Q Okay. And pretty quickly you got a job at Bally's

3 doing housekeeping; is that correct?

4 A Yes.

5 Q Isn't it in fact correct that you were employed with

6 Bally's from September 17th, 2007, until April 2011?

7 A Yes.

8 Q Okay. And if you recall, what was the wage, what

9 did they hire you at when you started a month after you came

10 back to Las Vegas?

11 A 13.75 or 13.13, 13.75. And then it jumped up to

12 15.15 an hour.

13 Q 15.15?

14 A Yes.

15 Q How quickly do you remember getting that raise? Do

16 you know when that came?

17 A Due to performance and -- I think within about -- it

18 gradually jumped. They put 50 cents, 50 cents every six

19 months, so it's --

20 Q Okay.

21 A -- about a few years --

22 Q Okay.

23 A -- to 15.15.

24 Q That's fine.

25 A Until January -- until April 2011.

1 Q Okay. So would it be fair to say that when you were
2 first hired you were making about \$27,000 a year, and by the
3 end of it you were making over \$31,000 a year?

4 A Yes.

5 Q Okay. Now, you've also testified that Fred was
6 making you prostitute in order to make money to support your
7 children; is that correct?

8 A Yes, that's correct.

9 Q Okay. And so the position at Bally's, was that full
10 time?

11 A It was -- it was steady -- they call it steady
12 extra, but I was working almost like a full time. So it's
13 here and there.

14 Q So you were getting hours comparable to full time
15 even if you weren't classified as a full-time employee?

16 A Yeah.

17 Q Okay.

18 A Yeah.

19 Q And so I presume that when you were having to act as
20 a prostitute that this was either before or after working at
21 Bally's.

22 A Oh. Oh. Yeah, it was. It was sometimes -- one
23 time would be -- well, a few times -- not a few times, but
24 most of the time I would be out in the streets until like when
25 I come home -- if you want to call it home, but hell hole.

1 When I came from Bally's I would -- he said, well, you have to
2 go tonight, you know, you have to, you know. So I'll be like
3 from 9:00 p.m. all the way sometimes to -- until about 7:00
4 o'clock in the morning, and then I have to, you know, start my
5 work at Bally's. And you know, call Candy, say, Candy, you
6 need me to come in; yeah, Tina come in, it's, you know, full.
7 So yeah. Many times it was like that. And then sometimes I
8 would be out there from -- going to the casinos or walking the
9 Strip or on Boulder Highway from 9:00 a.m., till I guess 3:00
10 o'clock in the morning, yeah. And then from 3:00 o'clock in
11 the morning, you know, I was so pissed off, I was so mad many
12 times that I would just -- from there I would just keep my
13 clothes on. Because I would get dressed at my job. Just keep
14 my clothes on, just walk away, just walk -- go in the house
15 and just turn around and walk out because I didn't even want
16 to see him, you know. Oh, yeah, slip the money under the
17 door; yeah, uh-huh, yeah, I gotta get ready for work, you
18 know, I gotta go to work, to Bally's, yeah. And I would go
19 and work like I guess 24 hours a day most of the time. That
20 just really took a lot of me, and it's just so fucked up,
21 uh-huh.

22 Q I understand.

23 A And he would beat me, too, if I didn't have enough,
24 or he would just -- it was just horrible.

25 Q Understood. I believe you testified on Thursday

1 that you were fired from Bally's.

2 A Yes.

3 Q Okay. And would you share with us why that would be

4 you were fired?

5 A Why? Because when you're out there in the streets,

6 you know, and you are trying to work a 9:00 to 5:00, too, or

7 8:00 to 4:00 it's just going to drain you. And I just

8 couldn't keep up with my rooms. Lot of weight on my feet, a

9 lot of hurt on my body. I was doing from a few cars when I

10 was out there prostituting. But what did he care, you know?

11 Sometimes it was just --

12 MS. LUZAICH: Objection. No question pending.

13 THE COURT: Sustained.

14 MR. MacARTHUR: Court's indulgence.

15 BY MR. MacARTHUR:

16 Q Ms. Duke, weren't you in fact terminated for theft?

17 A Terminated for theft?

18 Q Yes.

19 A I didn't steal anything.

20 Q I'm not asking you whether you did steal anything.

21 I'm asking you isn't it in fact true that Bally's separated

22 you from your employment as a result of an allegation of

23 theft.

24 A No. Not at Bally's.

25 Q Do you -- do you remember Ms. Allen asking you

1 questions about your termination back at preliminary hearing?

2 A Vaguely. I remember some of it.

3 Q Do you remember telling her that you resigned?

4 A Yes. They put it down as resigned. I had a meeting
5 with the union, and so they put it down as resigned. It was
6 -- it was fired, and then another word for being fired. And
7 then when I had the meeting with the union they said, we're
8 going to put it down as resigned.

9 Q Okay. Fred Harris in fact helped you get the job at
10 Bally's, didn't he?

11 A Yeah.

12 Q And because you started working at Bally's in
13 September of 2007, he helped you get that job pretty fast,
14 didn't he, from when you came back from Utah?

15 A I suppose yes, he did.

16 Q Okay. Now, Tina, you had testified on Thursday that
17 he was taking your money; is that correct?

18 A Yes.

19 Q And you said that he was taking all of it.

20 A Yes.

21 Q How did you pay your rent?

22 A At Bally's? I mean, when I was working at --

23 Q At Walnut or at St. Andrews, yeah, the apartments
24 that you lived in with Victoria. How did you pay your rent?

25 A From my job where I was working.

1 Q Okay. But you --

2 A At St. Andrews. And then when I was in the streets
3 at Walnut he would come and take my money and then leave just
4 enough. At one time I had to go and ask one of the help
5 centers for -- to pay the rest of my rent because he said, I
6 want your money, I know I need your money. So okay. So I
7 gave it to him.

8 Q Let me ask you this. You've testified here in trial
9 that the defendant took the money that you earned working in
10 prostitute and that he also took the money that you earned
11 from Bally's.

12 A Yes. And left me just enough to pay the rent or I
13 guess whatever I needed to do.

14 Q But do you remember saying just a couple minutes ago
15 that he -- you said that he was taking all of it.

16 A Yeah. All of it with just -- and then just enough
17 to survive, what money I had to remain.

18 Q Okay. So receipts, for example, from your apartment
19 complex would still have your signature on them? You were
20 still paying that yourself?

21 A Yes. I would pay my rent.

22 Q All right. Now, at the time you were living on
23 Walnut do you remember what the rent was monthly? Matter of
24 fact, let me tighten that up for you. Do you remember if the
25 rent was \$590 a month?

1 A No. It was 710 or 725. If you're a few days late.
2 That was Ms. Lewis at the Walnut Road apartments. She -- it
3 was 715 to 725 a month.

4 Q Okay. And you were able to pay that with the money
5 that you were making at Bally's, yeah?

6 A Yeah.

7 Q Ms. Duke, you had testified previously in this trial
8 that you had had an intimate relationship with Fred, right, at
9 various times in the past?

10 A Yes.

11 Q When did that relationship dissolve? Do you
12 remember when it was that the two of you ceased to be an item?

13 A That -- that resolved -- that pretty much ended when
14 I moved in Henderson.

15 Q And when -- as best you're able, what year --

16 A Part of St. Andrews in Las Vegas here, but ended in
17 -- pretty much ended in Henderson.

18 Q Do you know what years those might be?

19 A 2013 -- 2012.

20 Q 2012.

21 A 2012. Between the end of 2011, 2012.

22 Q Didn't you move to St. Andrews in North Las Vegas in
23 August of 2010?

24 A Yes.

25 Q Okay. And your relationship with Fred had already

1 petered out by the time you moved into St. Andrews, hadn't it?

2 A Pretty much. Pretty much. We hardly seen each
3 other.

4 Q I understand. But previously you had said that you
5 thought it petered out in 2012. And so now, remembering that
6 you moved to St. Andrews in August of 2010 --

7 A Yeah.

8 Q -- and the relationship had petered out before that;
9 right?

10 A Just about.

11 Q Okay. Do you remember testifying in court back at
12 the preliminary hearing that your relationship with Fred was
13 falling starting in 2007, that you could tell it was falling
14 apart?

15 A Yeah. I can tell -- he -- I thought it would be,
16 you know, stronger since I came back --

17 Q Uh-huh.

18 A -- but other things took place. And, yeah, it was
19 just weakening out, weakening out, getting worse, bad, worse,
20 horrible.

21 Q Understood. What I want to make sure that I
22 understand is that the end of this relationship started in
23 2010 -- I mean 2007 and was already done by 2010; right?

24 A Pretty much just dying out, just fading. Slowly
25 fading.

1 Q And do you remember why it was that you thought it
2 was dying out in 2007?
3 A Because the way he was treating me.
4 Q Okay. Now, with regard to the way he was treating
5 you --
6 A Different things that had happened.
7 Q -- isn't it in fact true that at this time he
8 decided that he was going to be with Ann or Lealer?
9 A They were already friends.
10 Q Yes, I understand that. But was there a point at
11 which he decided that he was going to make -- I don't know how
12 to put this delicate -- he was going to make Lealer his number
13 one girl, she was going to be the it girl?
14 A Oh. Yes. I thought I was for a moment.
15 Q And again --
16 A But --
17 Q Sorry.
18 A -- no. I guess he chose Ann. Which that's cool.
19 She can have him.
20 Q Okay. And again, that's in 2007; right?
21 A Uh-huh.
22 Q Okay. And at that point --
23 THE COURT: Was that a yes?
24 THE WITNESS: Yes.
25 THE COURT: Thank you.

1 BY MR. MacARTHUR:

2 Q And at that point you started seeing someone else;
3 is that correct?

4 A Yes.

5 Q Okay. Now, I'm not going to get into details of
6 your relationship with this gentleman, but was this gentleman
7 approximately 25 years old? Am I thinking of the right
8 person?

9 MS. LUZAICH: Objection. Relevance.

10 THE COURT: Sustained.

11 MR. MacARTHUR: I'll move on, Judge.

12 BY MR. MacARTHUR:

13 Q Do you recall whether or not there was some conflict
14 as a result of you being in front of the Blankenship house in
15 the company of this gentleman, some conflict between you and
16 Fred?

17 A Between me and who? What gentleman?

18 Q Do you recall there being some conflict between you
19 and Fred because you were in front of the Blankenship house in
20 this other gentleman's company?

21 A As I recall, it wasn't -- he didn't get out of the
22 car --

23 Q Right.

24 A -- this person I was seeing.

25 Q Uh-huh.

1 A Fred must have been looking out the door or
2 something, I don't know. But they didn't fight or have a
3 conflict or conversation together or anything like that.

4 Q I understand. And I'm not asking if Fred was in a
5 fight with the man. I'm just saying you remember the incident
6 and you remember there being interaction between you and Fred
7 over that topic.

8 A Yes.

9 Q Okay. Now, you had testified last week that at
10 times you've battled a substance abuse addiction; is that
11 correct?

12 A Yes.

13 Q Okay. And I believe you characterized that as use
14 of cocaine, downers, and sleeping pills?

15 A Yes. Cocaine, sleeping pills, [unintelligible]
16 pills, drinking. Because I didn't like what I was doing, so
17 had to do something.

18 Q Ms. Duke, isn't it in fact true that this other
19 gentleman from in front of the house was a source for some of
20 these substances?

21 A No.

22 Q No?

23 A No.

24 Q Okay. And you didn't bring these substances into
25 the Blankenship house, did you?

1 A No. I didn't bring no drugs or anything in their
2 house. I did -- I did have liquor. He would take pictures of
3 it and port wine, which they helped themselves to it, him and
4 his cronies and homies, whatever.

5 Q Okay. But that was alcohol; right?

6 A That was alcohol.

7 Q Okay. Last week you testified to a domestic battery
8 where you said that Fred had -- I'm referring to the incident
9 where you said that he threw his dirty brown workboot at you.
10 Do you know what I'm talking about?

11 A Yeah. Uh-huh.

12 Q Okay. And you'd said that he had hit you or had
13 struck you and he threw something at you and that you were
14 pretty severely injured; is that correct?

15 A That's correct. We were arguing. We had -- was
16 talking about some paper from Social Security and that he --
17 he asked me about it, and I walked away. I said, I don't have
18 to be bothered with this, I don't want to be bothered with it.
19 So I walked away. He chased me out down the hall, grabbed my
20 arm, shoved me. He said, bitch, where the fuck you going.
21 And so I said, let me go, I'm just walking away. And so he
22 pulled me back in the room and asked me another question. He
23 sat down, then he started getting upset, throwing boots at me
24 and like -- just horrible. You know, then he, you know, just,
25 you know, pushed me down on the bed and started hitting me.

1 Q I understand, Ms. Duke. If you would -- well,
2 before I get to that question, you went to work the following
3 morning, and you said that it was difficult to work because
4 you'd had these injuries; right?

5 A Yes.

6 Q Okay. And your supervisor had on your behalf called
7 the police?

8 A Yes. They called security and then police.

9 Q Okay. And was there an understanding that you would
10 go back home and before you got there you would call the
11 police so that they could arrive with you?

12 A Yes.

13 Q Okay. And at that point -- did you follow their
14 instructions?

15 A Yes.

16 Q Okay. And at that point the police made contact
17 with Fred; is that correct?

18 A Correct.

19 Q Okay. If you would for the jury, please tell them
20 what injuries you sustained as a result of Fred having done
21 these things the day previous.

22 A My leg, my right leg was severely bruised, swollen,
23 and I couldn't perform my duty at my job. And my rib cage was
24 hurt. And I was just, you know, shaken up, you know. And --

25 Q Now, you had said that the shoe that he threw at you

1 hit you in the head; is that correct?

2 A Yes. Hit me in the face.

3 Q Okay. And so you were also injured as a result of

4 the shoe having hit you in the head or in the face; correct?

5 A Yes. I guess you can hardly see the bruise or -- it

6 was just like kind of reddish in my face, whatever you want to

7 call it.

8 Q Okay. You'd also said that he hit you or slapped

9 you in the face on -- like more than once in that event?

10 A In that same --

11 Q Same -- in the same incident where the boot was

12 thrown at you you said you were also slapped in the face more

13 than once?

14 A Yes.

15 Q Yes?

16 A Yes.

17 Q Okay. And did you show, as best you were able, your

18 injuries to the police, or did they ask to see them?

19 A Yes.

20 Q Okay. And I kind of messed that question up,

21 because I asked two questions instead of one.

22 So, first, did you show your injuries to the police?

23 A Yes, I did.

24 Q Okay. And did they -- did they -- when you showed

25 them to them did they look at them?

1 A Yes, they did. The thing they seen was on my leg.
2 It was all purple. Horrible.

3 Q Okay. And, lastly, was Fred arrested after their --
4 his contact with the police?

5 A No.

6 Q I believe you testified last week that at a certain
7 point you were then arrested for prostitution on October 24th,
8 2009; is that correct?

9 A It was September the 23rd.

10 Q September 23rd?

11 A 2009.

12 Q Okay. When you had contact with the police did you
13 tell them that Fred was forcing you to working as a
14 prostitute?

15 A No, I didn't tell them that. I didn't tell on him.
16 Because he had my family.

17 Q Okay. Understood. Did you tell them that you were
18 being manipulated because he was controlling your family?

19 A No, I don't think I said anything -- I don't think I
20 said anything like that, because that would imply him, and
21 then he's got my family and then I didn't know what was going
22 to happen. So yeah.

23 Q I understand. However, in October of 2012, when you
24 spoke with the police then, you did tell them all these
25 things; right?

1 A I don't remember.

2 Q All right. Do you recall if you moved out of the
3 Blankenship house soon after the incident where you had called
4 the police from Bally's?

5 A I left for a few days.

6 Q Uh-huh.

7 A I had to come back, because didn't have no money and
8 I couldn't make it. I didn't have any money, no money hidden
9 or finagled at that time.

10 Q Understood. Isn't it in fact also true that when
11 you left your children did not want to leave with you?

12 A The younger ones. Yeah. Mahlica stayed.

13 Q And I think that's there. Are we talking about
14 Taharah and Taquanda?

15 A Yes. Taharah, Taquanda, Mahlica stayed, I think.
16 Shabazz left, went back home, yeah.

17 Q If you could, just so that I'm oriented as to the
18 time, the report that you made to the police initiated at
19 Bally's, that domestic violence incident, is that about August
20 of 2009?

21 A Yeah. I think it was on that time, I think.

22 Q Okay. So as of August of 2009, soon after that
23 Taharah and Taquanda and maybe Mahlica or Shabazz, but
24 specifically Taharah and Taquanda don't want to leave the
25 Blankenship house. That's correct, right?

1 A Correct.

2 Q Okay. Do you remember what their reasons were for
3 not wanting to leave?

4 MS. LUZAICH: Well, objection. Hearsay.
5 Foundation.

6 THE COURT: Sustained.

7 MR. MacARTHUR: Withdrawn.

8 BY MR. MacARTHUR:

9 Q Let's move forward about one year. So instead of
10 August 2009, we're going to be talking about August of 2010.

11 Did there come a time in which you gave Miss Ann
12 guardianship of Taharah and Taquanda?

13 A Yes.

14 Q Okay. And was this temporary guardianship, or
15 permanent guardianship?

16 A Temporary.

17 Q And were they in school at the time?

18 A Yes.

19 Q And do you know what school they were going to?

20 A Fitzgerald.

21 Q And they wanted to be at the Blankenship house?

22 A Yes.

23 Q Okay. And were they getting good grades?

24 A Yes, they were getting great grades, good grades.

25 Q Okay. Now, when Fred and Lealer, Miss Ann, had

1 temporary guardianship of your two youngest where were you
2 living at that time?

3 A I was at the Blankenship address.

4 Q Okay. So initially you were --

5 A I moved to St. Andrews.

6 Q Okay. So initially you were living in the
7 Blankenship address, and they had temporary guardianship of
8 your two youngest, and those things were happening at the same
9 time; right?

10 A Right.

11 Q Okay. And then you relocated. And did you go to --
12 I mean, are you saying that you went to -- you didn't go to
13 Blankenship, right, you went to St. Andrews?

14 A St. Andrews.

15 Q Okay. St. Andrews. And that would have been about
16 August of 2010; correct?

17 A Correct.

18 Q Okay. Moving forward another year to December of
19 2011, this is when you have contact with the Henderson Police
20 Department and you gave that voluntary statement we've been
21 referring to this morning -- or at least the first one. You
22 with me?

23 A Yeah.

24 Q Okay. Isn't it in fact the case that by this time
25 you're financially struggling?

1 A Pretty much. I wasn't making as much as I used to
2 make.

3 Q Okay. But in fact you're still trying to give what
4 little money you can to Lealer; is that correct?

5 A Right. Because it was dwindling down. Just as much
6 as I could give her.

7 Q Okay.

8 A But during tax time when I got my taxes I had given
9 Miss Lealer 400 for the children, and then I brought another
10 400, you know, 'cause it was tax time.

11 Q I understand. Now, you had already been terminated
12 from the Bally's; is that correct?

13 A Yes.

14 Q Now, why were you giving say the money to Lealer
15 instead of Fred?

16 A Okay. He would have her pick it up.

17 Q Okay. So is it fair to say you're thinking of them
18 as essentially the same entity, they're the same person?

19 A Yes.

20 Q Okay.

21 A Yes.

22 Q Okay. Now, when you spoke with the -- I feel like
23 I'm going to be wrong no matter which one I say -- Henderson
24 detectives in December of 2011 do you remember telling them
25 that Fred had never taken money against your will from you?

1 A I don't remember that.

2 Q Okay. Would it refresh your relocation to be able
3 to see your statement?

4 A Yes.

5 MR. MacARTHUR: Okay. State, I'm going to bring
6 that voluntary statement, page 34.

7 BY MR. MacARTHUR:

8 Q Just the highlighted areas on the top.

9 A Yes.

10 Q All right. And does that refresh your recollection
11 as to the conversation you were having with the detectives at
12 the time?

13 A Yes.

14 Q Okay. And do you remember telling them that he'd
15 never come and taken money against your will and you didn't
16 steal food or food stamps or anything like that?

17 A Yes. That's what's in the statement.

18 Q Okay.

19 A But at that particular time sometimes he wouldn't,
20 sometimes he would at that particular time, date in that year.

21 Q Okay. But you clearly told the police that, no, he
22 didn't do that?

23 A Correct.

24 Q Okay. In fact --

25 A Maybe I should have been more pacific.

1 Q Okay. In fact, four lines later you said that, "He
2 didn't, you know, force me to do anything"; is that correct?

3 A Stating to what -- that was on the top, the top
4 sentence.

5 Q I understand. But you said, "He didn't, you know,
6 force me to do anything"; right?

7 A Okay. Maybe I should have been more pacific with
8 that.

9 Q I understand. Now, given that we're talking about
10 the events involving St. Andrews, which begins around August
11 of 2010, and your contact with the Henderson Police Department
12 in December 2011, that's the time frame I'm asking about,
13 okay.

14 A Okay.

15 Q At that point did you begin taking Victoria to psych
16 therapy?

17 A She went a few times, 2010. She went a few times,
18 but she stopped going.

19 Q Okay. Do you know if she received any prescriptions
20 for medications as a result of that?

21 A I believe she did.

22 Q And at this time Taharah and Taquanda are still at
23 Blankenship with Lealer; is that correct? And Fred.

24 A Correct.

25 Q Okay. Was -- in your opinion was Lealer a good

1 provider for your two youngest children?

2 A Yes.

3 Q Okay. And at the time on the Blankenship address
4 there was Fred, Lealer, Taharah, and Taquanda; is that
5 correct?

6 A Correct.

7 Q Didn't you in fact tell the police in Henderson in
8 December of 2011 that Ann couldn't be a better mama?

9 A True.

10 Q And that you wished you were more like her?

11 A Yes.

12 Q Now, in that same time period do you remember an
13 incident in which Victoria was very angry because she had a
14 dog and when she came home the dog was missing or the dog
15 wasn't there?

16 A Yes.

17 Q Okay. And wasn't she in fact angry at Fred because
18 she thought he had something to do with her dog being missing?

19 A Yes. She was angry.

20 Q Isn't it in fact true that the dog escaped while the
21 water utility people were visiting the apartment to either
22 turn something on or turn something off?

23 A Yes.

24 MS. LUZAICH: Objection. Foundation. Unless she
25 was there she can't testify.

1 THE COURT: Sustained.

2 BY MR. MacARTHUR:

3 Q Okay. Were you there?

4 A I was there, and I went -- Fred was I guess playing
5 with the dog or something. I went and talked to the landlord
6 people about the water.

7 Q Okay.

8 A So and I wasn't paying any attention, so, if the dog
9 was gone or not, because Vicky had put the dog in her bedroom.

10 Q Okay.

11 A She said she put the dog -- I said, okay, Vicky, you
12 know, keep the dog in your bedroom and take him out and come
13 back.

14 Q Okay. Well, let me ask you this. When you told the
15 police that the dog had escaped when the utility people came
16 in to turn something on or off were you saying that because
17 you'd seen it, or was that just the conclusion you'd drawn?

18 A I -- that's when I came to a conclusion thinking
19 maybe he escaped then.

20 Q Okay. Now, you'd testified on Thursday that there
21 came a point in which you'd had sexual contact with your
22 daughter; right?

23 A Yes.

24 Q Okay. During that same portion of the testimony you
25 had testified that you were also sexually active with Fred; is

1 that correct?

2 A Correct.

3 Q Ms. Duke, were there -- was there ever a time or
4 multiple times where Victoria would force her way in or press
5 her way into your room while you were having sex with Fred?

6 A No. Not exactly. One of the incidents happened in
7 Henderson where he had come over and he had -- he was -- he
8 wanted to be with me, he wanted to be with Victoria. I said,
9 I'm not feeling this. I walked out. And that's -- I think I
10 had to go to work that day, that --

11 Q Let me back you up a step, because you said
12 something about Fred wanting to be with you or with Victoria.
13 My question was isn't it in fact true that on two occasions
14 that Victoria entered your room without permission while you
15 were having sex with Fred?

16 A I don't quite remember that.

17 Q Okay. Would it refresh your recollection to be able
18 to read your statement that you gave to the police in December
19 2011?

20 A Okay.

21 Q Is that a yes?

22 A Yes.

23 MR. MacARTHUR: State, page 26. And, while we're at
24 it, 27.

25 //

1 BY MR. MacARTHUR:

2 Q Ms. Duke, I'm going to hand you two pages, pages 25
3 and 26. There's one highlighted area on the first page, and
4 two highlighted areas on the second.

5 A Okay.

6 Q All right. Having read that, did it refresh your
7 recollection of the conversation you had with the detective?

8 A Yes.

9 Q Okay. And isn't it in fact true that on two
10 different occasions Victoria had tried to push her way into
11 your room while you were having sex with Fred?

12 A Well, it says that --

13 Q Is that a yes or a no?

14 A It's on the statement.

15 Q Are you saying that that's not true?

16 A I really just don't remember that.

17 Q Okay. You in fact told the police that when she did
18 that that you were stunned; is that correct?

19 A Yes.

20 Q Okay. Now, earlier in your testimony in response to
21 a question from the State you said that you'd given multiple
22 statements and that your second statement to the police in
23 September 2012 may have been a bit more honest. You remember
24 saying that?

25 A Yes.

1 Q Okay. Now, you would agree with me that by the time
2 you came to court and you were placed under oath in
3 preliminary hearing, that's after this point; right?

4 A Yes.

5 Q Okay. Do you remember being questioned by Ms. Allen
6 as to whether this incident involving Victoria pushing herself
7 into your room while you were having sex with Fred, Betsy
8 Allen asked you, did that actually happen? Do you remember
9 her asking you that?

10 A Yes.

11 Q Do you remember telling her under oath that, yes,
12 that actually happened?

13 A Yes.

14 Q Okay.

15 A Okay.

16 Q Isn't it in fact also true that when this happened
17 that it made you upset, that you were not happy with Victoria
18 for having done that?

19 A Yes.

20 Q Okay. In fact, it caused you to stop talking to
21 Victoria from the time that it happened all the way until you
22 spoke with the police in December 2011, didn't it?

23 A Yes.

24 Q Isn't it in fact also true that when Victoria pushed
25 her way into the room these two different times that it made

1 Fred very uncomfortable?

2 A Yes.

3 MR. MacARTHUR: Court's indulgence.

4 (Pause in the proceedings)

5 BY MR. MacARTHUR:

6 Q Isn't it in fact true that Victoria has told you
7 that she really dislikes Fred or that she hates Fred?

8 A Yes.

9 Q Isn't it in fact also true that she has told you
10 that she intends to get Fred?

11 A Yes.

12 Q Okay. Now, at the time of the December 2011
13 interview with the Henderson Police -- and, again, I don't
14 mean to pry, but isn't it in fact true that you had just
15 broken up with your boyfriend at the time in which you gave
16 that statement?

17 A Yes.

18 Q Okay. And this was somebody that you cared about or
19 that you were close to?

20 A Yes.

21 Q Okay. And this person was not Fred?

22 A No.

23 Q Okay. So with regard to the statement that you gave
24 in December of 2011 you were -- had just been in a
25 relationship with a different person that was not Fred; right?

1 A Yeah. Correct.

2 Q Moving forward to February of 2012, this is a month
3 or two after your first contact with Henderson Police
4 Department with the recorded statement. You with me?

5 A Yes.

6 Q Okay. Didn't you in fact tell the police that a
7 long time ago Fred and you had been lovers?

8 A Yes.

9 MS. LUZAICH: Well, objection. Vague as to time.

10 THE COURT: Can you just -- I mean, she has
11 testified to that. Can you just clarify the time frame.

12 MR. MacARTHUR: Absolutely.

13 BY MR. MacARTHUR:

14 Q And when you told the police that a long time ago
15 you had been lovers with Fred Harris what did you mean by
16 that?

17 A I meant, well, we had sex, we would hang out, have
18 sex, do things together.

19 Q Oh. And -- okay. I understand, you know, what
20 lovers do. What I mean is when you said "a long time ago" --

21 A Oh. A long time ago.

22 Q Right.

23 A What -- how long -- what date, time are you talking
24 about?

25 THE COURT: That's the question.

1 BY MR. MacARTHUR:

2 Q That's the question.

3 A Okay.

4 Q I'll put it a different way. When you were speaking
5 with the detectives and you told them a long time ago you had
6 been lovers were Fred, how long back did you mean? When did
7 you stop being lovers with Fred?

8 MS. LUZAICH: Well, objection. Vague as to time.
9 What interview are we talking about?

10 MR. MacARTHUR: We're talking about the December
11 2011 or January 2012 interview with the Henderson Police
12 Department.

13 MS. LUZAICH: Thank you.

14 MR. MacARTHUR: Voluntary Statement Number 1.

15 THE WITNESS: Okay. Well, this started in -- I met
16 him in Louisiana 2004.

17 BY MR. MacARTHUR:

18 Q And I don't want to make you recount everything
19 that's happened from 2004. What I really want to know is when
20 is it that you and Fred stopped being lovers. And you said
21 things were falling apart in 2007, you said they were done by
22 2010. So based on your recollection when was it that you and
23 Fred ceased to be lovers?

24 A Basically was 2010 it start subsiding, just going
25 away. I've seen him a few times, once or twice. I live far

1 away in Henderson, he lived way over there in Blankenship. It
2 was about twice I seen him after 2010.

3 Q Okay. Is it fair to say that --

4 A 2011 -- you know, we seen each other off and on, but
5 it was just dying out. It was just -- I guess he was just
6 trying to rekindle the flame or something. I don't know. I
7 don't.

8 Q Okay. I understand. Would it be fair to say that
9 the relationship may have been over in 2010, but you might
10 have got hooked up with each other a couple of times after
11 that?

12 A Okay. Yes.

13 Q Okay. Is that fair? Okay.

14 MR. MacARTHUR: Court's indulgence.

15 (Pause in the proceedings)

16 MS. ALLEN: Actually, you know what, let's approach.

17 MR. MacARTHUR: Permission to approach, Your Honor.

18 (Bench conference)

19 MR. MacARTHUR: What was the year? We're in 2012.
20 We're looking at 2012.

21 MS. LUZAICH: [Inaudible].

22 MR. MacARTHUR: No. Victoria gets pregnant in
23 February of 2012 and she miscarries after. We expect the rape
24 shield objection. That's why we're trying to get -- and the
25 mom doesn't find out about the pregnancy or the miscarriage

1 until [inaudible]. She finds out when the miscarriage occurs.

2 MS. ALLEN: I think that in bringing this area out,
3 I to apologize, I'm going to have to hand you my phone,
4 because I don't have any other want to hand [inaudible]. In
5 fact Mom testified that the conversation was that my client
6 was going to take her virginity essentially I think it was --

7 THE COURT: That what?

8 MS. ALLEN: That my client was taking her virginity.

9 THE COURT: Okay.

10 MS. ALLEN: Do you recall that?

11 THE COURT: Yeah, yeah, yeah.

12 MS. ALLEN: Okay. And there's Johnson v. State that
13 talks about rape shield and [inaudible], right.

14 THE COURT: Oh, geez. Thank you.

15 MS. ALLEN: You're welcome.

16 MS. LUZAICH: Let me see.

17 MS. ALLEN: Okay. So the argument we made
18 previously, we had previously asked a question of Victoria and
19 she said she lost her virginity in Louisiana. The Court
20 denied us getting into that. And I think that this case
21 allows us to. I'm not sure that it necessarily applies to the
22 pregnancy. I want to argue that it does, that there's
23 specific testimony she had [inaudible] -- and it's -- he
24 argued prior against this to the State, and it's not. It's
25 more impeachment. We're talking about these people testifying

1 that my client took this girl's virginity, and if in fact
2 that's the case, it's pretty directly on point that if --

3 THE COURT: It says, "Once [inaudible] testified
4 that she never had sexual intercourse prior to the night of
5 the alleged rape defense had a right to attempt to discredit
6 testimony by showing --" but there's no evidence of that yet.
7 Well, I know they tried to get into it.

8 MS. ALLEN: Right. Well, the mom testified that
9 that was the conversation, that he was taking her virginity.

10 MS. LUZAICH: Well, but the conversation is that the
11 defendant said he was taking her virginity, not that Victoria
12 said it. Therefore, rape shield still applies.

13 THE COURT: I think, though, it's different. I
14 think that it's different if the victim says --

15 MS. LUZAICH: Okay. So she --

16 THE COURT: -- [inaudible] I mean, unless --

17 MS. ALLEN: Yeah, she has testified it is her
18 virginity. So then I guess we would be able to get into it
19 with the [inaudible].

20 THE COURT: Okay. And it's Johnson v. State --

21 MS. ALLEN: Oh. I apologize. Here.

22 THE COURT: I just want to forward it to --

23 MS. ALLEN: Yeah. I'm sure she has it.

24 THE COURT: Okay. Thank you.

25 (End of bench conference)

1 THE COURT: Okay. You may continue.

2 MR. MacARTHUR: Thank you, Your Honor. Court's
3 indulgence.

4 BY MR. MacARTHUR:

5 Q Last week during your direct testimony we also heard
6 about sexual contact between you and your daughter involving a
7 two-sided brown dildo. You remember that?

8 A Yes.

9 Q Okay. Isn't it in fact true that this device was
10 kept in a bag in your room?

11 A True.

12 Q Okay. And how long did you have it, if you know?

13 A Couple of years, I think.

14 Q Okay. Now, you said that this kind of contact had
15 happened twice?

16 A That's right.

17 Q Okay. I believe you also testified that while you
18 and your daughter were directly involved that the defendant
19 was able to see you and that he was masturbating.

20 A Correct.

21 Q Okay. And you've testified about that incident in a
22 previous court, right, at preliminary hearing?

23 A Correct.

24 Q Do you recall stating that during the first of those
25 two interactions that the apparatus was inserted Victoria

1 first?

2 A Correct.

3 Q Okay. And, conversely, you second?

4 A Correct.

5 Q Have you ever discussed your testimony on that point

6 with Victoria before coming into court?

7 A No.

8 Q Okay. In 2007, when Vic -- I'm sorry, not Vic --

9 Fred chose to pursue a relationship with Lealer instead of you

10 did that make you angry?

11 A No, it didn't make me angry. It just made me sad,

12 because I thought that he loved me.

13 Q Okay. Isn't it in fact true that when this happened

14 it made Victoria very angry?

15 MS. LUZAICH: Well, objection. Foundation.

16 Speculation.

17 MR. MacARTHUR: I'll ask another way, Judge.

18 THE COURT: Go ahead.

19 BY MR. MacARTHUR:

20 Q When Fred decided to pursue a relationship with

21 Lealer instead of you, is this something that was known to

22 people in the two families? Did the kids know about it, did

23 Lealer and Fred know about it, did you know about it?

24 A Yes.

25 Q Okay. And based on that shared knowledge of the

1 event isn't it in fact true that it made Victoria very angry?

2 MS. LUZAICH: Well, my objection to foundation is to
3 how it made Victoria feel. Victoria can testify how she felt.
4 This witness cannot.

5 MR. MacARTHUR: I'll rephrase, Judge.

6 THE COURT: Thank you.

7 BY MR. MacARTHUR:

8 Q Did Victoria ever express herself in front of you in
9 such a way that made you think it made her very angry?

10 A Yes.

11 Q Okay. Lastly, thinking back on your testimony from
12 last week, you remember the incident where you said that Fred
13 was forcing you to work as a prostitute and that if you did
14 not have the amount of money he expected that he would beat
15 you?

16 A Correct.

17 Q Okay. And I believe you said that on one particular
18 instance that he beat you, he called you names, he was
19 belittling, and that he sodomized you.

20 A Yes.

21 Q Okay. And the State asked a followup question of,
22 and by sodomize, what do you mean by that. You remember that
23 question?

24 A Yes.

25 Q And I'm not asking you to explain it further. I'm

1 just asking if you're following.

2 A Yes.

3 Q Okay. And do you remember that your testimony was,
4 he fucked me in my ass?

5 A Yes.

6 Q Okay. Now, during this cross-examination you've
7 acknowledged that you've given multiple statements before or
8 you've testified in court before; correct?

9 A Correct.

10 Q Okay. And afterward, during that same line of
11 testimony, you had said that the following day after you'd
12 been beat up that you had to go to work, which was difficult
13 because you had to be bright-eyed and bushy-tailed.

14 A Correct.

15 Q And say hi to all the other co-workers like nothing
16 had happened. Remember testifying to that?

17 A Correct.

18 Q Ms. Duke, are you aware that you testified to those
19 exact same statements verbatim back at the preliminary hearing
20 last year?

21 A Yes.

22 Q Okay. And so you had already been questioned before
23 by the State a year ago about and what do you mean by
24 sodomized; right?

25 A Right.

1 Q And you made the exact same statement last year,
2 that, he fucked me in my ass; right?

3 A Right.

4 Q And you also made the same statement of you had to
5 wake up and go to work and be bright-eyed and bushy-tailed.

6 A Correct.

7 Q Okay. Ms. Duke, do you know if you said the same
8 thing verbatim in your voluntary statement in October of 2012?
9 Do you know if that happened?

10 A Maybe I -- I can't quite remember, but maybe I did.
11 You mean that Henderson interview?

12 Q Yes, ma'am. Well, perhaps. The interview that you
13 gave in October of 2012 to the police, whichever agency that
14 might have been. Do you remember whether you told him that
15 after he'd sodomized you that it was difficult because the
16 next day you had to get up and be bright-eyed and bushy-tailed
17 and say hello to your co-workers and act like nothing had
18 happened?

19 A Yes.

20 Q You do remember saying it exactly that way?

21 A I believe so. I think.

22 Q Okay. Fair enough. Ms. Duke, were you ever
23 arrested in this case related to these types of charges?

24 A Was I ever arrested --

25 Q In relation to the facts of this case?

1 A You mean prostitution?

2 Q No. I realize those are -- that's one of the facts.
3 Let me be a bit more specific. Were you ever charged with
4 sexual assault of a minor?

5 A No.

6 Q Okay. Were you ever charged with incest?

7 A No.

8 Q Okay. Were you ever charged with kidnapping?

9 A No.

10 Q Or use of alcohol with the intent to commit a crime?

11 A No.

12 Q Do you know, and only if you know, why you weren't
13 charged with those things but Fred was?

14 MS. LUZAICH: Objection. That she absolutely can't.

15 THE COURT: Sustained.

16 MR. MacARTHUR: Okay.

17 THE COURT: Sustained.

18 BY MR. MacARTHUR:

19 Q Have you been told by the District Attorney that you
20 would not be criminally charged in this case?

21 A What are you -- what are you saying? I don't
22 understand the question.

23 Q Well, you've had occasions to have direct contact
24 with the prosecutor in this case; right? You've spoken with
25 her in pretrial conferences before you come to court and

1 testify; right?

2 A Correct.

3 Q Has she ever told you that she would not charge you
4 with any crimes?

5 A I think -- I believe that she was telling me we'll
6 see what happens in court.

7 Q See what happens in court.

8 A As I remember, as I recall.

9 MR. MacARTHUR: Okay. Court's indulgence.

10 (Pause in the proceedings)

11 BY MR. MacARTHUR:

12 Q One thing further, Ms. Duke. Do you write?

13 A Yes, I do write.

14 Q Okay. And when I say write I mean like books or
15 novels.

16 A Yes. I've written my first book completed, finished
17 it, and my publicist -- my publisher has it, my producer has
18 it.

19 Q Okay. And have you written and submitted just one
20 book, or more than one book?

21 A One so far. I'm working on my second one.

22 Q Okay. And these books that you write, are they
23 fiction, or nonfiction?

24 A It's based on a true story with a twist.

25 Q Okay. So it's based true, but there may be some

1 fiction included?

2 A Yes, at the end of the book.

3 Q Okay. In either of these two books is Fred Harris a
4 character?

5 A No. Well, the second one, I'm not done with it, but
6 -- I just started my second book. But my first book he's not
7 in the book.

8 Q He's not featured in that one at all?

9 A No.

10 Q Okay. And the second book you're not finished with,
11 based on what you've written so far is Fred Harris an existing
12 character in that?

13 MS. LUZAICH: Objection. Can we approach?

14 THE COURT: You may.

15 (Bench conference)

16 THE COURT: All four lawyers are present.

17 I thought we dealt with this.

18 MS. LUZAICH: Yeah. This is the first time I ever
19 heard of a second book.

20 THE COURT: And you're objecting to the second --

21 MR. MacARTHUR: She told us about it.

22 THE COURT: Okay. And we're talking about the
23 second book that she's not done with?

24 MR. MacARTHUR: Right.

25 THE COURT: She's working on?

1 MS. LUZAICH: So it's not a book.

2 MR. MacARTHUR: Well, she told us it was
3 autobiographical and that -- well, she didn't say he was a
4 character. He said he was a character. I just asked her if
5 she --

6 THE COURT: Who said he's a character?

7 MR. MacARTHUR: The defendant said he was a
8 character in the second book. She --

9 THE COURT: How does he know?

10 MR. MacARTHUR: I don't know how he knows, but --

11 THE COURT: Okay.

12 MR. MacARTHUR: I'm just giving you all the
13 information I have.

14 THE COURT: Okay.

15 MR. MacARTHUR: She says that she's writing her
16 second book. She told that to us. And she didn't tell us
17 that Fred was in it. We asked Fred if he knew how -- he said,
18 yes, he is in it. And so part of my questions are to find out
19 whether that's true. Based on her -- I'm almost done. Based
20 on her most recent answer it sounds like he's going to be a
21 character but he may not be yet. If he's not a character yet,
22 I don't think I can really ask any questions. If he is a
23 character, I think I can. But --

24 MS. LUZAICH: There's no relevance whatsoever to the
25 second book.

1 THE COURT: I'm just wondering what --
2 MS. ALLEN: Goes to her truthfulness.
3 THE COURT: I'm sorry. What?
4 MS. ALLEN: I would say it goes to her truthfulness.
5 MS. LUZAICH: Why are you asking -- what they wanted
6 from the first book was the title, and she was just very clear
7 he's not in the first book.
8 MR. MacARTHUR: The second book that's the title.
9 MS. LUZAICH: No. It's the first.
10 MR. MacARTHUR: Oh. I thought the second book was
11 "Secret Revenge."
12 THE COURT: Oh. Was "Secret Revenge."
13 MR. MacARTHUR: Right.
14 THE COURT: Right. Something like that. Okay.
15 MR. MacARTHUR: Okay. Then I won't be asking the
16 first book.
17 THE COURT: Okay. What is it you want to get into
18 about the second book?
19 MR. MacARTHUR: If he's a character, I'd like to
20 know if it's autobiographical or if it's fictional.
21 MS. LUZAICH: What's the relevance? What's the
22 relevance.
23 MR. MacARTHUR: Well, because to sell books you've
24 got to -- have to have a good plot line. Salaciousness
25 [inaudible].

1 THE COURT: And so what helps?
2 MR. MacARTHUR: Salaciousness.
3 THE COURT: And so are you trying to get to if this
4 trial goes -- I don't know.
5 MR. MacARTHUR: Remember that our theory is that
6 this accusation by Victoria is brought on by a revenge motive
7 and that she's incorporated her mother. So, you know, in a
8 perfect world I would love for her to tell me that, yes, I'm
9 writing a second book, and, you know, Fred's in it and that
10 somehow what's going on here is going to help me get that book
11 published. That's what I'm hoping she'll say. I doubt she's
12 going to say that, and I'm not going to push it.
13 THE COURT: Okay. What I'll allow you to ask her is
14 -- and [inaudible] if it's a memoir or truth --
15 MR. MacARTHUR: Right.
16 THE COURT: And then the first book she's already
17 said is fiction.
18 MR. MacARTHUR: Well, she said it was based on fact
19 and it has sexual --
20 THE COURT: A twist at the end to me means fiction.
21 MR. MacARTHUR: Right. And I took it that way.
22 THE COURT: Okay. So you can ask her if it has
23 anything to do with this trial.
24 MR. MacARTHUR: Okay. I'll do that.
25 THE COURT: Okay. And then if she says yes, then

1 you have to approach the bench again.

2 MR. MacARTHUR: Okay.

3 (End of bench conference)

4 BY MR. MacARTHUR:

5 Q Okay. Ms. Duke, you were talking about the second
6 book. And first let me ask you is Fred Harris a character in
7 that book?

8 A Not yet.

9 Q Okay.

10 A Not yet. I just started my second book.

11 Q Okay. And will the -- will facts from this trial be
12 included as part of the plot line in the book?

13 A No.

14 Q Okay. After the charges brought against Fred Harris
15 isn't it in fact true that CPS placed Taharah and Taquanda
16 into foster care?

17 A Correct.

18 Q Okay. And have they been returned to your custody?

19 A Yes.

20 Q Okay. And when were they returned to your custody?

21 A October the 26th.

22 Q Of last year?

23 A 2013.

24 Q And, Ms. Duke, is your participation in this trial
25 as a witness part of the requirements of completing the CPS?

1 A Can you repeat that?

2 Q You had to accomplish certain things in order to be
3 reunited with your children; is that correct?

4 A Yes. Correct.

5 Q Okay. Was cooperation in this case one of the
6 things that you had to do in order to be reunited with your
7 children?

8 A I don't understand the -- meaning -- you are stating
9 to me meaning that did I have to participate in this court --
10 this criminal court in order to get my children back?

11 Q Yes, ma'am.

12 A No. It's Family Court is different. It's different
13 from criminal court.

14 Q I understand that they're different.

15 A In order to get my kids back? No, I don't think so.
16 Not necessarily. It's classes, I had to go to classes, I
17 believe I had to go to Safe Nest parenting class therapy.

18 THE COURT: I think you've answered his question.

19 THE WITNESS: Yeah.

20 MR. MacARTHUR: All right, Your Honor.

21 BY MR. MacARTHUR:

22 Q And lastly, Ms. Duke, have you used any prescription
23 medications in the past 24 hours?

24 A No, I haven't.

25 Q Okay. And have you used any controlled substances

1 that are not prescription in the past 24 hours?

2 A No, I haven't.

3 MR. MacARTHUR: Thank you for your patience, Ms.
4 Duke. I no longer have any questions for you.

5 THE COURT: Okay. Thank you.

6 State may begin their redirect.

7 MS. LUZAICH: Thank you.

8 REDIRECT EXAMINATION

9 BY MS. LUZAICH:

10 Q Tina, at the time of the preliminary hearing in this
11 case way back in like June 2013 you were appointed an attorney
12 to represent you and your interests before you testified;
13 correct?

14 A Correct.

15 Q And I never told you that I was not -- that you were
16 not going to be --

17 MR. MacARTHUR: Objection, Your Honor. Leading.

18 THE COURT: I'm going to allow her to answer.

19 Go ahead.

20 BY MS. LUZAICH:

21 Q I never told you that you were not going to be
22 prosecuted; correct?

23 A Correct.

24 Q You were never offered immunity, anything of that
25 nature; correct?

1 A Correct.

2 Q And you talked -- you testified after consulting
3 with your attorney completely independent of me and the State
4 of Nevada; correct?

5 A Yes, ma'am. Correct.

6 Q And what you and Mr. MacArthur were just talking
7 about regarding Family Court and CPS, that is also completely
8 independent of criminal court and me; correct?

9 A Yes.

10 Q You said you got your children back in October of
11 2013 --

12 A Yes, ma'am.

13 Q -- so that's months ago --

14 A Yes.

15 Q -- correct?

16 A Correct.

17 Q And you're still here.

18 A Yes.

19 Q Now, when Mr. MacArthur was just asking you about
20 how you testified at the preliminary hearing and did you
21 describe in the same way being sodomized as you did here, was
22 that an event that you remember fairly -- fairly clearly in
23 your mind?

24 A Yes. Because that's a painful event. That's
25 horrible.

1 Q And is that why you testified and described it the
2 same here as you did there?

3 A Yes.

4 Q And then having to deal the next day with going to
5 work in that condition, is that also something that you
6 remember very clearly?

7 A Yes. Because it was painful and hurtful.

8 THE COURT: If you have an objection, you can make
9 it.

10 MR. MacARTHUR: I'll reiterate the objection, Judge.
11 I believe this line of questioning has been leading.

12 THE COURT: Sustained.

13 BY MS. LUZAICH:

14 Q Okay. Tell me why have you described it the same
15 today as you did at the preliminary hearing?

16 A Because it's very painful, very hurt physically and
17 mentally hurt.

18 Q Mr. MacArthur asked you about when you discovered
19 that the defendant was involved in a relationship or chose, I
20 guess, Ms. Cooks over you how you felt. You said that you
21 felt sad.

22 A Yes. I felt hurt, sad.

23 Q You said because you thought he loved you?

24 A I thought he really loved me.

25 Q What made you think that?

1 A I thought because he -- you know, he brought me down
2 here, he said, well, I love you, I need you to come down here,
3 you can make more -- twice as much as you -- that you're
4 making up in Utah and I need you, I miss you, I love you. And
5 I thought [unintelligible] had changed, things is changed and
6 -- yeah.

7 Q You believed him when he told you that?

8 A Yes, I believed him. And found out different.

9 Q You'd mentioned that when you had met him back in
10 2004 that was when you and he had began a sexual relationship.
11 When is the last time that you remember engaging in sexual
12 activity with him?

13 A The very, very, very last time?

14 Q Best you can remember.

15 A It was 2012 -- wait a minute. 2012, mid -- mid
16 2012.

17 Q Where? Where were you living at the time? Which
18 location were you living in?

19 A I was at the Henderson, the Lakewood Cove.

20 Q Okay. And do you recall the last time that you
21 engaged in any kind of sexual activity with the defendant?
22 Was it before you had talked with the Henderson Police
23 Department, or after you talked to the Henderson Police
24 Department?

25 A It was I think -- let me think. It's been so long

1 ago. It was -- I think -- I think it was before I talked to
2 the -- I think it was before I talked to the Henderson Police
3 Department.

4 Q Okay. And after you talked to the Henderson Police
5 Department did Victoria live somewhere else?

6 A Yes. Yes. She was living somewhere else.

7 Q Where was she living?

8 A She was staying with Miss Rose, someone -- I didn't
9 know exactly where she was at, but she --

10 Q But with Miss Rose?

11 A Miss Rose.

12 Q Okay. And that was the lady that took Victoria to
13 the police so that she could tell what happened.

14 A Yes.

15 Q You said that Victoria had told you that she
16 disliked Fred. When did she tell you that she disliked Fred?

17 A She just said it a few times. She said it multiple
18 times.

19 Q Okay. Was it after he started having sex with her?

20 A It was before, after. Both times.

21 Q Okay. Was it after he made her have sex with you
22 and a dildo?

23 MR. MacARTHUR: Objection. Leading.

24 THE COURT: Sustained.

25 //

1 BY MS. LUZAICH:
2 Q Okay. Mr. MacArthur asked you about that -- the
3 two-sided dildo. Where did it come from?
4 A Fred got that from some adult shop.
5 Q Okay. Describe it for me.
6 A It's a two-headed penis.
7 Q And what color is it?
8 A Brown.
9 Q And how big is it?
10 A I guess about this big, I think.
11 Q Okay. You have your two hands out. More than a
12 foot long? Would you agree that your two hands are more than
13 a foot away from each other?
14 A About a foot long, I think. I --
15 Q Okay. And how many times did you use it with
16 Victoria?
17 A I used it a few times. We -- Fred used it a few
18 times.
19 Q Whose idea was it for you to use it with Victoria?
20 A Fred.
21 Q You said that Victoria pushed her way into your room
22 while you were having sex. When was that?
23 A That was I think late 2011, I think.
24 Q Where?
25 A Henderson. At Lakewood Cove.

1 Q And then what happened?
2 A Then I just -- just got up and walked away.
3 Q And then what?
4 A Then I -- I just started my day, started whatever I
5 needed to do on that particular day.
6 Q Well, did you go to work?
7 A I believe I had to get ready to go to work, because
8 I worked --
9 Q Work where?
10 A -- I worked swing at Monte Carlo, Sbarro's Pizza.
11 Q When you were talking about Victoria's dog, where
12 was that?
13 A That was at the St. Andrews -- St. Andrews
14 apartment.
15 Q Okay. And the day that the dog got out weren't you
16 having sex with Fred that day while the dog got out?
17 MR. MacARTHUR: Objection, Your Honor. Leading.
18 THE COURT: Sustained.
19 BY MS. LUZAICH:
20 Q Did you have sex with Fred that day?
21 MR. MacARTHUR: Objection, Your Honor. Leading.
22 THE COURT: Sustained.
23 BY MS. LUZAICH:
24 Q Did you do anything that day with Fred?
25 MR. MacARTHUR: Objection, Your Honor. Leading.

1 THE COURT: That's not leading. You can answer that
2 question.

3 THE WITNESS: I think so. Maybe. I think so.

4 BY MS. LUZAICH:

5 Q Did you tell the police that you did?

6 A Maybe. Yeah.

7 Q You said earlier that when you gave your statement
8 to the Henderson Police Department -- I think your words were
9 that to your -- to the best of your ability you told them the
10 truth.

11 A Yes, ma'am.

12 Q You didn't -- did you tell the Henderson Police
13 Department that you had sex with Victoria and a two-sided
14 dildo?

15 A I don't remember telling the Henderson Police that.

16 Q Yeah. But you told Metro that; right?

17 A I believe so.

18 Q Did you tell the Henderson Police Department that
19 you had oral sex with Victoria?

20 A I don't remember saying that.

21 Q But you told the -- did you tell Metro that?

22 A Metro. I believe it was Metro.

23 Q Did you tell the Henderson Police Department that --
24 well, that Fred masturbated -- well, that Fred wanted you to
25 have sex with Victoria?

1 A Metro or --

2 Q No. Did you tell the Henderson Police Department

3 that Fred wanted you to have sex with Victoria?

4 A I don't remember if I told him he wanted me to have

5 sex with her.

6 Q Did you tell the Henderson Police Department Fred

7 wanted you to have sex with Victoria?

8 A I don't know if he asked me that or if told him

9 that, the Henderson Police Department.

10 Q Did you watch Victoria have sex with Fred?

11 A Yes, I did.

12 Q On more than one occasion?

13 A I believe it was more than one occasion.

14 Q You believe? Was it a lot of occasions?

15 A It was a few occasions, I remember.

16 Q Mr. MacArthur asked you questions about a

17 conversation in a car with Fred, you, and Victoria. Where

18 were you living at the time that that conversation took place?

19 A We were at Miss Dorothy's house.

20 Q Okay. So you were living at Miss Dorothy's house at

21 the time?

22 A Yes.

23 Q Where were you and Fred and Victoria in the car when

24 that conversation took place?

25 MR. MacARTHUR: Objection, Your Honor. Refers to

1 facts not in evidence. Her previous testimony was that that
2 conversation never happened.

3 MS. LUZAICH: No, it wasn't.

4 THE COURT: Overruled. You may proceed.

5 BY MS. LUZAICH:

6 Q I'm not trying to confuse you. You and Victoria
7 were in the car --

8 A Yes.

9 Q -- in his car. Where were you and Fred and Victoria
10 in the car? Where was the car located when you had that
11 conversation?

12 A I believe it was in front of her apartment, side of
13 her apartment. It's like the apartment where she was living
14 at, it had like a sidewalk, then you have to park kind of
15 front side like. So it was in front of her apartment.

16 Q And earlier you said that when you were talking to
17 the Henderson Police Department about that conversation you
18 didn't agree with it because what you explained Mr. MacArthur
19 was it wasn't the exact words that were used.

20 A Exactly.

21 Q What words do you remember were used?

22 A As I remember, it was, it's my fantasy, I want to
23 have sex with Victoria. And he was demanding it. He said
24 that, you know, he would hurt me, he would hurt my family,
25 kill me and Victoria, just a lot of horrible things.

1 Q And when the Henderson detective asked you about
2 that he didn't use all of those words that you just described
3 for us?

4 A Right. He didn't use all of the words.

5 Q Correct. And you know that because you were just
6 given the opportunity by Mr. MacArthur to review the
7 transcript --

8 A Correct.

9 Q -- and none of those words were in it; correct?

10 A Correct.

11 Q Mr. MacArthur also asked you about a conversation in
12 2005 where Victoria and Miss Ann and Miss Dorothy and you,
13 potentially, were involved in a conversation about Victoria
14 talking about Fred; correct?

15 A Correct.

16 Q I mean, just so that we're on the same page.

17 A Yes.

18 Q And Mr. MacArthur showed you a transcript where you
19 said something to the Henderson Police Department about Fred
20 making a pass at Victoria, that Victoria had said that. Do
21 you remember that?

22 A Yes.

23 Q And you said that you also told the Henderson Police
24 Department that Victoria told you that he had fondled her;
25 correct?

1 A Correct.

2 MS. LUZAICH: I'm sorry. Just a second.

3 (Pause in the proceedings)

4 MS. LUZAICH: Page 21 of the Henderson --

5 May I approach?

6 THE COURT: You may.

7 MS. LUZAICH: Thank you.

8 BY MS. LUZAICH:

9 Q I'm showing you page 21 of the Henderson Police

10 Department interview. Can you look at the top of the page and

11 tell me did you tell the Henderson detective that -- or

12 actually why don't you just read it for us.

13 A Which one?

14 Q And the answer.

15 A Okay. The answer is, "But when I went to court in

16 Utah -- because I know you guys have this on computer or

17 record, when I went to court in Utah and the children were

18 taken from me she had mentioned -- she was making an

19 allegation about her and Fred had -- Fred had fondled her and,

20 you know." And then there's a question --

21 Q Okay. So --

22 A -- and it goes on.

23 Q -- back in that Henderson Police Department

24 interview you did tell the Henderson detective that Victoria

25 told you that Fred had fondled her; correct?

1 A Correct.

2 Q When you came back from Utah whose idea was it for
3 you and Victoria to live somewhere other than Blankenship?

4 A It was Fred, Fred's idea and Ann's idea.

5 Q Where did you -- when you came back from Utah where
6 did you think you were going to live?

7 A I thought I was going to live with Fred.

8 Q You had said that there were occasions that you and
9 Fred and Miss Ann had sex together. Where was that?

10 A That was on Trish Lane.

11 Q So that was before you went to Utah; correct?

12 A Correct.

13 Q Did that happen again when you came back from Utah?

14 A No.

15 Q When you talked to the Henderson Police Department
16 about Miss Ann Mr. MacArthur said that you described her as a
17 good provider or somebody who took good care of your kids,
18 would you agree?

19 A Yes.

20 Q Did you tell that to Metro, as well?

21 A Yes.

22 Q Do you still believe that?

23 A I believe that. I kind of -- after all what has
24 happened and all I believe the part of it -- part of it --
25 just partly. Part of it is the one where she would, you know,

1 help them with homework, make sure they get off to school,
2 they make good grades. She would cook for them, you know.

3 Q All right. So she did. She cooked for them, she
4 took care of them, she helped them.

5 A Uh-huh.

6 Q Was she there when Fred was having sex with you at
7 the apartment?

8 MR. MacARTHUR: Objection.

9 THE COURT: Overruled. You can answer.

10 THE WITNESS: Was Ann --

11 MR. MacARTHUR: Your Honor, the basis of the
12 objection, just for the Court's record, was foundation.

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

14 BY MS. LUZAICH:

15 Q So I'll be more specific. Was Miss Ann there at the
16 St. Andrews apartment when Fred had sex with you?

17 A No.

18 Q Was Miss Ann there at the St. Andrews apartment when
19 Fred had sex with Victoria?

20 A No.

21 Q Was Miss Ann there at the Walnut Street apartment
22 when Fred had sex with you and Victoria?

23 A No.

24 Q Was Miss Ann there at the efficiency when Fred had
25 sex with you and Victoria?

1 A No.

2 THE COURT: Okay. I think at this -- is this a good
3 time to conclude, or --

4 MS. LUZAICH: You know, I was just going to ask like
5 one more question and then be done.

6 THE COURT: Go ahead. Go ahead. Go ahead.

7 BY MS. LUZAICH:

8 Q All of these occasions that you and Victoria and the
9 defendant had sex at whatever the locations, would Fred stay
10 over, or would he then go home?

11 A He would go home.

12 Q And at St. Andrews in Henderson after he had sex
13 with you would he stay there, or would he go back to
14 Blankenship?

15 A He would go back to Blankenship.

16 MS. LUZAICH: Thank you.

17 I'd pass the witness.

18 THE COURT: Mr. MacArthur, how much time do you
19 think you need?

20 MR. MacARTHUR: I think that we can finish this
21 witness today before 5:00 o'clock, Judge.

22 THE COURT: Okay. Go ahead.

23 RE CROSS-EXAMINATION

24 BY MR. MacARTHUR:

25 Q Just with regard to the testimony you just gave, Ms.

1 Duke, when the State asked you just now when was the last time
2 you had sex with Fred you said that that was mid 2012; is that
3 correct?

4 A I'm thinking perhaps mid 2012 or the beginning of
5 2012.

6 Q Okay.

7 A I can't quite remember.

8 Q I understand. Would you agree with me that Victoria
9 made her allegation to the Henderson Police Department that
10 Fred had raped her in December of 2012 -- I mean, sorry, 2011?

11 A Henderson Police made me aware of that when -- I was
12 coming home from work and they made me aware of that.

13 Q Okay. But you remember that being December of 2011;
14 is that correct?

15 A I think so.

16 Q Okay.

17 A Yes. I think so.

18 Q And yet you still having -- you still recall having
19 a one-off sexual relationship with Fred in the middle of 2012;
20 correct?

21 A I believe so.

22 Q Okay.

23 A It was either -- it was either -- I just can't
24 remember the exact date.

25 Q I understand.

1 A That time is -- I've been through much.

2 Q Okay. And lastly, with regard to the State's

3 question on Victoria having pushed her way into your room, you

4 remember that line of conversation?

5 A Yes.

6 Q Okay. Isn't it in fact true that you did not want

7 Victoria to come into the room?

8 A [Inaudible].

9 Q I'm just going to need you to speak up.

10 A True.

11 Q Okay. And isn't it in fact true that Fred did not

12 want her to come in the room, he was visibly uncomfortable?

13 A True.

14 Q Okay. And so with regard to Victoria coming into

15 the room and wanting to get involved, you didn't want that to

16 happen; is that fair?

17 A Yes.

18 Q Okay. And so with regard to the two instances in

19 which Victoria pushed her way into the room, that was what

20 Victoria wanted to do; right?

21 A I believe so.

22 MR. MacARTHUR: I have no further questions. Thank

23 you, ma'am.

24 Oh. Court's indulgence. I may have one.

25 (Pause in the proceedings)

1 BY MR. MacARTHUR:

2 Q There is one last thing, Ms. Duke. I think during
3 almost the entire cross-examination I've been referring to
4 this voluntary statement that you either made in December of
5 2011 or January 2012. Remember that? That's how I've been
6 describing it?

7 A Yes.

8 Q Okay. Isn't it in fact true that this statement was
9 actually made on December 22nd, 2011? Does that appear to be
10 correct?

11 A Oh. When I was in the car with the attorney?

12 Q I'm not sure where you were.

13 A He's talking.

14 Q I can't see that. But when you gave the -- when you
15 were inside the car giving your recorded statement, probably
16 to a Henderson police officer, it was December 22nd, 2011; is
17 that correct?

18 A Pretty much, yes.

19 Q Okay. I understand that you said pretty much, and
20 I'm not trying to nit-pick, but this is the only statement you
21 made on that day; right?

22 A Yes.

23 MR. MacARTHUR: Okay. No further questions, Your
24 Honor.

25 THE COURT: Okay. Thank you very much. Thank you

1 very much for your testimony here today. You may step down.
2 MS. ALLEN: Your Honor, can we approach just
3 briefly? I apologize.
4 THE COURT: I'm sorry. Do I have any questions from
5 the jury panel? Okay.
6 JUROR NUMBER 7: In regards to the case, or just in
7 general?
8 THE COURT: No. For this witness. I thought the
9 clerk told me that maybe there is a question.
10 Okay. So thank you very much for your testimony
11 here today. You may step down. You are excused from your
12 subpoena. Thank you for the testimony that you provided to
13 this jury panel.
14 (Bench conference)
15 MS. ALLEN: We may have to recall her, and so I -- I
16 listed her on my witness list. We did try to talk to her.
17 She [inaudible] phone. I would just ask for the State's
18 cooperation. I don't mind sending a cab to get her and paying
19 for that, because I know her investigator's had some problems.
20 THE COURT: Okay. So the State would cooperate
21 with --
22 MS. ALLEN: Yeah. I just may need to recall Tina.
23 MS. LUZAICH: [Inaudible] best --
24 THE COURT: She --
25 MS. ALLEN: And obviously I'll make arrangements, if

1 you want me to. But I just -- that's what I wanted to say.

2 THE COURT: Okay. 10:30 good for everybody
3 tomorrow?

4 MS. ALLEN: 10:30. Yeah.

5 THE COURT: Okay.

6 (End of bench conference)

7 THE COURT: At this time, ladies and gentlemen, we
8 are going to conclude for the evening. We're going to start
9 tomorrow morning at 10:30. During this recess you're
10 admonished not to talk or converse amongst yourselves or with
11 anyone else on any subject connected with this trial, or read,
12 watch, or listen to any report of or commentary on the trial
13 or any person connected with this trial by any medium of
14 information, including, without limitation, newspapers,
15 television, the Internet, or radio, or form or express any
16 opinion on any subject connected with this trial until the
17 case is finally submitted to you.

18 Thank you very much, and we'll see you tomorrow
19 morning. 10:30. You can come right up to the fourteenth
20 floor. Thank you and you're excused.

21 (Court recessed at 4:56 p.m., until the following day,
22 Tuesday, April 1, 2014, at 10:30 a.m.)

23 * * * * *

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INDEX

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

Tina Rene Duke	--	2	126	140
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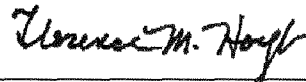
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DATE



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA

Plaintiff

vs.

FREDERICK HARRIS, JR.

Defendant

CASE NO. C-291374

DEPT. NO. XII

Transcript of
Proceedings

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

TUESDAY, APRIL 1, 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.

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1 LAS VEGAS, NEVADA, TUESDAY, APRIL 1, 2014, 10:41 A.M.

2 (Court was called to order)

3 (Jury is present)

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

6 MS. LUZAICH: Yes.

7 MS. ALLEN: Yes, Your Honor.

8 THE COURT: Okay, you can call your next witness.

9 MS. LUZAICH: The State calls Neha Mehta.

10 NEHA MEHTA, STATE'S WITNESS, SWORN

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

14 THE WITNESS: Dr. Neha, N-E-H-A Mehta, M-E-H-T-A.

15 THE CLERK: Thank you.

16 THE COURT: You may proceed.

17 MS. LUZAICH: Thank you.

18 DIRECT EXAMINATION

19 BY MS. LUZAICH:

20 Q Good morning, ma'am. Can you describe for the jury
21 what you do for a living?

22 A Yes. I am a pediatric medical doctor. I serve as
23 the medical director of a child abuse evaluation program in
24 New Orleans, Louisiana at this time.

25 Q How long have you been serving as the director in

1 New Orleans?

2 A About a year and a half now.

3 Q As the director of that program in New Orleans, what
4 do you do on a daily basis?

5 A I provide teaching and training to other doctors
6 about evaluation of children with concerns of child physical
7 or sexual abuse. I evaluate children where there are concerns
8 of child physical or sexual abuse. I serve as an administrator
9 to the program, helping solve problems, clinic issues, things
10 of that nature. I provide -- on a day-to-day basis work
11 collaboratively with a team of professionals to help provide
12 the appropriate treatments and therapies for children who are
13 victims of child physical or sexual abuse.

14 Q Prior to becoming the director of that program, what
15 did you do?

16 A I was here in Las Vegas. I was the medical director
17 of the child abuse program at Sunrise Children's Hospital, as
18 well as the medical evaluation portion of the Southern Nevada
19 Children's Assessment Center.

20 Q For how long a period of time did you do that?

21 A Nine and a half years.

22 Q Can you describe for the jury what training and
23 education you have that qualifies you to do all of the things
24 that you've just described for us?

25 A Yes. I am a medical doctor. I finished medical

1 school at the Medical College of Georgia in Augusta, Georgia.
2 Then I completed three years of training specific to children
3 in Pediatrics at the University of Kentucky in Lexington,
4 Kentucky. I stayed on for an additional year as the chief
5 resident in Pediatrics in Lexington, Kentucky. I then went
6 to Cincinnati Children's Hospital. I completed a one year
7 child abuse fellowship where I was formally trained by other
8 professionals in this field to evaluate children for concerns
9 of physical abuse, sexual abuse or neglect. I stayed on for
10 two years as a faculty member in that program. I then was
11 recruited to come to Las Vegas and help set up the program at
12 Sunrise Children's Hospital.

13 I am board certified. The American Board of
14 Pediatrics creates certifications for physicians in this
15 country to show that they meet standards required to practice
16 in this profession. I am board certified in both general
17 pediatrics and in child abuse pediatrics.

18 Q When you came to Las Vegas and you were working with
19 Sunrise Hospital, can you describe for us what you did on a
20 daily basis at Sunrise Hospital?

21 A I evaluated children, both in the emergency
22 department setting, as well as in the hospital setting if
23 there was any concern about possible child abuse. So that
24 could be a parent bringing their child into the emergency
25 department, that could be law enforcement bringing a child in,

1 that could be a child who initially looked like maybe they had
2 an accidental injury and then as they discovered more and more
3 injuries there became concerns about possible abuse, and then
4 I would be asked to evaluate those children as well.

5 Q When you talk about child abuse, is that only
6 physical abuse or does it entail more than that?

7 A It includes physical abuse, sexual abuse, neglect
8 and other more minor or rarer forms of abuse.

9 Q Does the training that you've described for us
10 include not only training regarding the physical abuse of
11 children, but regarding the sexual abuse of children?

12 A Yes, it does.

13 Q And in evaluating sexual abuse of a child, is that
14 different than evaluating sexual abuse of an adult?

15 A Yes, it's very different.

16 Q Why would that be?

17 A There's a number of reasons that we have differences
18 between child sexual abuse cases and adult sexual assault
19 cases. For one thing, with children there's often a greater
20 degree of compliance. They're more likely to go along with
21 what's happening because they don't necessarily have as deep
22 an understanding of what this means or what's going on, as
23 opposed to adults who are more likely to recognize that this
24 is a violation of some type and to try to fight back in some
25 way. Adults are much more likely to make a report in a timely

1 way because they understand the nature of this might be a
2 crime that's being committed against them, whereas children
3 are more likely to accept that this is something else that
4 goes on in their lives that is just another thing that happens
5 to them, such as maybe being physically disciplined or a form
6 of punishment or things like that. They are just more willing
7 to accept that this might be how things are.

8 Most of the time when somebody sexually abuses a
9 child, they have formed a relationship with the child and
10 they are in a position of power or trust or authority of that
11 child, and so again, it's harder for children to come forward
12 and make reports about abuse. They're more likely -- people
13 who molest children are more likely to sort of slowly develop
14 and increasingly do more and more with the child, ultimately
15 with the goal of raping the child, having sexual relations
16 with the child, but may start off with touching, fingering,
17 licking, behaviors that the child is confused about and then
18 progressively increase, whereas with adults, sexual assault
19 is more likely to be a one time event where somebody uses
20 force against the adult.

21 Q And, Dr. Mehta, you also talked about your work not
22 only at Sunrise Children's Hospital, but the Southern Nevada
23 Children's Assessment Center. Can you describe for us first,
24 what is the Southern Nevada Children's Assessment Center?

25 A So in evaluating children with concerns of abuse,

1 there is a model that's accepted nationally. The idea is that
2 it is not of benefit to children to have to kind of tell what
3 happened to them over and over again. It's traumatizing to
4 them and it's sort of re-victimizing them. So the goal is to
5 try to create a one stop location for the child so that they
6 don't first go to a police department and tell everything to
7 a police officer and then have to tell everything to the
8 police officer's supervisor, and then go to child protection
9 and have to tell everything to a worker and then that worker's
10 supervisor, and then have to go see a doctor and tell
11 everything to that doctor and then have to kind of tell
12 what's happened to them over and over again to mental health,
13 multiple professionals. If all of the professionals are
14 gathered in one location, the child can be interviewed by a
15 trained interviewer who knows about children, who knows how
16 to ask questions in a way that doesn't suggest answers to
17 them to be sure they get as accurate information as possible,
18 and that interview can be watched by the people who are
19 involved.

20 So at the Southern Nevada Children's Assessment
21 Center, children where there are concerns of abuse, who may
22 or may not be abused, come in and they're able to tell in
23 their own words what their experience was and then that can
24 be listened to by law enforcement and child protection to
25 reach conclusions about what they need to do to protect or

1 investigate that situation.

2 The area that I serve in is the medical component,
3 and so when children are alleged to be victims of physical or
4 sexual abuse they also need medical treatment and evaluation.
5 We need to assess them for injuries, diseases, mental health
6 issues and overall safety of the child, psychological safety
7 for the child. And so the area that I work in is performing
8 the medical evaluation of those children after they've had
9 that forensic interview.

10 Q And when you were working at the Southern Nevada
11 Children's Assessment Center, how did that fit in with your
12 duties at Sunrise Children's Hospital?

13 A So for two days a week I was dedicated to the
14 Southern Nevada Children's Assessment Center and I would see
15 scheduled children there at particular times, like a clinic,
16 like going to a doctor's office. I had nurses there. We
17 would -- it was very much for children a -- we tried to make
18 it as positive an experience as possible. We didn't want it
19 to have that same emotionally-charged effect you have in an
20 emergency department where people are rushing around and you
21 don't understand what's going on and you're scared. We really
22 wanted this experience to be as non-traumatic for children as
23 possible.

24 So it's very much like going to the doctor for a
25 check-up. Height, weight, eye chart, talking to the child

1 about their health history. I speak privately with the child
2 to make sure that I have all of the pieces I need for my
3 medical diagnosis and treatment. And then performing a
4 physical examination of the child as gently and as humanely as
5 possible, with nurses there who assist the child, prepare the
6 child for the examination. And so I served in that capacity
7 two days a week at the Southern Nevada Children's Assessment
8 Center.

9 Q And for how long did you do that?

10 A I did that for about four years.

11 Q Can you even guesstimate how many children you have
12 examined in your career relating to -- well, children in
13 general for anything whatsoever?

14 A Thousands of children.

15 Q Can you guesstimate how many children you would have
16 examined for purposes of abuse investigation?

17 A Oh, my goodness, well over three thousand children.

18 Q And what would be the difference between a child
19 being seen at Sunrise Children's Hospital in the emergency
20 room and the Southern Nevada Children's Assessment Center?

21 A If there is concern that there could potentially be
22 some type of evidence on the child's body, that there could
23 be someone's saliva or body fluid on the child, we would want
24 to try to collect that evidence. And that's something that
25 happens fairly routinely in adult sexual assault cases. So

1 adult men and women who are sexually assaulted are much more
2 likely to report within a couple of days of being assaulted
3 and there's the opportunity to try to collect that evidence.
4 We generally hold as a rule about 72 hours, about three days
5 is a time period where if somebody has assaulted you, within
6 the next three days there's a reasonable chance of trying to
7 find some type of evidence on your body, some type of hair,
8 saliva, some type of DNA evidence that would support that
9 allegation.

10 After about 72 hours, through the process of going
11 to the bathroom, wiping, brushing teeth, eating, all of these
12 things make evidence fall off the body quickly. Taking baths,
13 changing clothes; the chances of finding evidence becomes less
14 and less and less. So we generally do not think that you can
15 reasonably find evidence on someone's body except in very rare
16 cases after 72 hours. And so for that reason if there's
17 concern that something has happened within that time period,
18 children are often seen in the emergency department for the
19 purposes of trying to collect that evidence. Since the vast
20 majority of child cases don't meet that criteria, many of
21 those children are then seen in the type of setting I see them
22 in, in a calmer, more structured clinic setting.

23 Q And have you testified as an expert in the area of
24 both child physical and sexual abuse here in Clark County?

25 A Yes, I have.

1 Q Have you in other jurisdictions as well?

2 A I've testified in Ohio, Indiana, Kentucky and now
3 Louisiana.

4 Q And do you just testify on behalf of the State, or
5 do you testify on behalf of other parties as well?

6 A I testify for anybody who requests me to come and
7 evaluate a case.

8 Q So are you asked on a fairly regular basis to
9 independently evaluate a case, even if you have not personally
10 seen a child?

11 A I wouldn't say on a regular basis, but I have been
12 asked to review cases for the defense before and to offer my
13 opinion.

14 Q Have you also been asked to review cases for the
15 State, even if you haven't seen the child?

16 A Yes, I have.

17 Q Okay. So I'm going to ask you specifically, when
18 you examine a grown-up woman for alleged sexual abuse, is it
19 the same examination as if you are examining a child for
20 alleged sexual abuse?

21 A For an adult female the focus is on trying to find
22 that forensic evidence because the issue at hand is going to
23 be -- you know, if there was contact there's still going to be
24 a question that other people sort out that I as a doctor don't
25 sort out, which is was there consent or not. Was this a

1 consensual activity or was it non-consensual? With children,
2 because they don't have the mental capabilities to provide
3 consent, there are various state laws that indicate that even
4 if they're sort of willingly going along with what happens,
5 they don't have the capacity to provide --

6 MS. ALLEN: Judge, I'm going to object. She's
7 testifying as to legal issues.

8 THE COURT: Sustained.

9 MS. LUZAICH: Let me rephrase my question.

10 BY MS. LUZAICH:

11 Q Physically when you are examining or when an adult
12 woman is examined for sexual assault, is the exam the same as
13 for a child?

14 A No.

15 Q Why not?

16 A For adult females the focus of the examination is
17 largely at the inside of the vagina, and so internal
18 examination and internal specimens are the focus for adult
19 females. For children we focus a lot on the outside of the
20 genital areas, examining the hymenal tissues at the opening to
21 the vagina. The ability of the child to understand what we're
22 doing, there's a lot of preparation for the child for the
23 examination process and a lot of differences in the types of
24 meaning that we attribute to different infections.

25 Q Okay. When you see -- this is just kind of general

1 -- when you see a child at the Sunrise Emergency Room for
2 purposes of sexual assault evaluation and see a child at the
3 Southern Nevada Children's Assessment Center for that same
4 purpose, is the exam the same or similar?

5 A The examination is similar, however the evidence kit
6 is not collected. And so in the emergency department there is
7 a box that contains various cotton swabs and it is collected
8 by the medical provider to look for saliva, semen, things like
9 that that we do and put in that box and then maintain a chain
10 and pass that on to law enforcement. In the clinic setting we
11 do not do that type of collection. Our focus is on sexually
12 transmitted diseases, pregnancy testing, things of that
13 nature, but they are very similar.

14 Q Okay. So I'm going to direct your attention to
15 September 27th of 2012. Were you working as a physician at
16 the Southern Nevada Children's Assessment Center on that date?

17 A Yes, I was.

18 Q Were you asked to examine two young girls known to
19 you as Taharah Duke and Taquanda Duke?

20 A Yes, I was.

21 Q At whose request did you examine those children?

22 A I do not specifically know.

23 Q I mean, would it have been a law enforcement type
24 request?

25 A It would have been from either law enforcement or

1 Child Protective Services, and I believe based on our
2 notations it was more likely Child Protective Services that
3 requested us to evaluate those children.

4 Q So the kids that are seen at the -- and you call it
5 the CAC, is that correct?

6 A That is correct.

7 Q Kids that are seen at the CAC are seen for that
8 specific purpose; a parent doesn't just call and make an
9 appointment and come see you there?

10 A That is correct. In order to have a medical
11 examination at the CAC, the request has to come from one of
12 our partner agencies, so child protection or law enforcement
13 are the main referral sources for children that we evaluate
14 there.

15 Q And now you mentioned that at the CAC it's kind of
16 a one stop shopping there, so a child can be interviewed and
17 seen by law enforcement and child protection type individuals,
18 as well as medical, correct?

19 A Correct.

20 Q And was it your understanding that both Taharah Duke
21 and Taquanda Duke were interviewed on that same day?

22 A Yes, that was my understanding.

23 Q Do they generally get -- do kids generally get
24 interviewed before they see you, after, or does it just kind
25 of depend?

1 A It sort of depends. Often they've been interviewed
2 before they see me, but it can be that I see them before
3 they've been interviewed.

4 Q Okay. Let's talk about Taharah Duke first. Did you
5 see Taharah Duke on September 27th of 2012?

6 A Yes, I did.

7 Q And for what purpose?

8 A For the purpose of medical diagnosis and treatment.

9 Q Was it your understanding that she had made
10 allegations that she had been sexually abused?

11 A It was my understanding that she had disclosed
12 during her forensic interview that she had been raped.

13 Q Do you have some contact with the interviewers
14 before you see the kids?

15 A I either speak to the interviewer or to the person
16 who observed the interview.

17 Q To hear a general description of what was disclosed?

18 A That is correct.

19 Q So, Taharah comes to you on September 27th, 2012.
20 What do you then do?

21 A I -- She initially comes in. She is met by our
22 nursing staff, who obtained her height, her weight, her blood
23 pressure, obtained her basic health history. I review that
24 basic health history, allergies, immunizations, surgeries,
25 things of that nature. And then I sit and speak with her

1 privately for a few minutes because I need to make sure for
2 my purposes that I have the data that I need without trying
3 to make her re-tell what she's just spoken about.

4 Q Okay. You said that they get height and weight
5 and things of that nature first. What was her height and
6 weight?

7 A Her height -- Can I refer to my notes just to be
8 sure I get it accurate?

9 Q At the time or at or near the time you perform all
10 of your evaluations, do you actually fill out a report that
11 is used for purposes of law enforcement later?

12 A As part of the medical record as well, yes.

13 Q Would it refresh your recollection to review that
14 report?

15 A Yes, it would.

16 Q Go right ahead.

17 MS. ALLEN: And, Your Honor, if we could just see
18 what she's referring to?

19 THE COURT: Sure, you can approach. Is this your
20 witness?

21 MS. ALLEN: Pardon?

22 THE COURT: Is this your witness? Are you going to
23 be crossing this witness?

24 MS. ALLEN: I am going to be crossing. Yes.

25 THE COURT: Okay. Sure, you can approach and look.

1 MS. ALLEN: This is the second one?

2 THE WITNESS: That's correct.

3 MS. ALLEN: Okay. So these are two separate ones?

4 THE WITNESS: Yes.

5 MS. ALLEN: And what are these?

6 THE WITNESS: This -- they're prior medical records
7 that I did not have at the time I did this evaluation.

8 MS. ALLEN: Okay. So you didn't have --

9 I apologize, Your Honor. May I ask her -- may I
10 briefly ask her a question about this? She has other records
11 up here that don't -- that aren't her medical notes.

12 THE COURT: Do you want to take her on voir dire?

13 MS. ALLEN: I would appreciate that. We may want
14 to do it outside the presence.

15 THE COURT: Okay. All right. At this time, ladies
16 and gentlemen, we're going to take a short recess. During
17 this recess you are admonished not to talk or converse among
18 yourselves or with anyone else on any subject connected with
19 this trial, or read, watch or listen to any report of or
20 commentary on the trial or any person connected with this
21 trial by any medium of information, including without
22 limitation newspapers, television, Internet and radio, or
23 form or express any opinion on any subject connected with
24 this trial until the case is finally submitted to you.

25 We're in recess until further notice. Thank you.

1 (Jury is not present)

2 THE COURT: Okay, the record will reflect this
3 hearing is taking place outside the presence of the jury
4 panel.

5 MS. ALLEN: Your Honor, I just -- in looking through
6 some of the records she has here, there are lab reports that
7 were not provided to the defense regarding Taquanda Duke. I do
8 have the reports that she's referencing in her testimony, the
9 ones that she wanted to refer to. I do have those. However,
10 I don't have the lab reports that are here. I've never seen
11 these.

12 THE COURT: Do you want me to copy them for you
13 right now?

14 MS. ALLEN: Well, yeah.

15 MS. LUZAICH: For the record, I don't know -- she
16 came and looked at my file a month ago.

17 MS. ALLEN: These weren't part -- this wasn't there,
18 the lab reports.

19 MS. LUZAICH: It's in --

20 MS. ALLEN: And then there are medical documents up
21 there from --

22 THE COURT: Just a minute. I don't have a secretary
23 back there, so it's going to be me doing this. So I just want
24 to make sure, do you want a copy of this entire packet?

25 MS. LUZAICH: I'll give her mine.

1 MS. ALLEN: No. I just need the one that I marked
2 off for you. I don't have the lab report.

3 THE COURT: This?

4 MS. ALLEN: Correct, Your Honor. I don't have a
5 copy of that.

6 THE COURT: Okay, I'll go make a copy. Is there
7 anything else?

8 MS. ALLEN: No, Your Honor. I just need to address
9 this.

10 THE COURT: Okay.

11 (Pause in the proceedings)

12 THE COURT: Ms. Allen.

13 MS. ALLEN: Yes.

14 THE COURT: And then, Doctor, I think that's yours.
15 Do I need that?

16 MS. ALLEN: Oh, no. I'm sorry, Judge. It was all
17 of those papers that were behind there. I'll go back. Do you
18 want me to go back and copy them?

19 THE COURT: No, that's okay. I thought I had asked
20 that and I thought --

21 MS. ALLEN: I said it was everything past that point
22 that I had --

23 THE COURT: Okay.

24 MS. ALLEN: Thank you.

25 THE COURT: I'll just make a copy of everything.

1 (Pause in the proceedings)
2 THE COURT: Okay, here's everything.
3 MS. ALLEN: Okay.
4 THE COURT: And, Doctor, that is yours back.
5 Okay, go ahead.
6 MS. ALLEN: Okay, thank you.
7 VOIR DIRE EXAMINATION
8 BY MS. ALLEN:
9 Q You have some other records up there, is that
10 correct?
11 A Correct.
12 Q Okay. And who are they from?
13 A They were sent to me by the D.A.'s Office to prepare
14 for this case.
15 Q Okay. And when were you given those records?
16 THE COURT: Just so we're clear, what records are
17 we talking about?
18 MS. ALLEN: I apologize, Your Honor.
19 BY MS. ALLEN:
20 Q Could you please refer to what the records are?
21 A There are medical records here from my visit on
22 9/27/2012.
23 Q I apologize. Since the jury is not here, we can just
24 skip forward. The records that the D.A. sent you, not yours
25 that you did, there's records up there that you didn't do?

1 A They sent me everything because I don't have access
2 to my records anymore, so the only way I have information is
3 because they had to send it to me.

4 Q Okay. How about -- what is up there that is not
5 yours, that you did not do?

6 A The thing that is --

7 THE COURT: That you did not prepare. Right?

8 MS. ALLEN: Yes.

9 THE WITNESS: The thing that is up here that is not
10 prepared by me are records from an OB/GYN center.

11 BY MS. ALLEN:

12 Q Okay. And the doctor's name?

13 A Dr. Anita Gondy.

14 Q Okay. And those are obviously not prepared by you,
15 is that correct?

16 A That is correct.

17 Q Okay. And when is the first time that you saw those
18 records?

19 A Within the last month.

20 Q Okay. So you did not have those records at the time
21 that you examined Taharah or Taquanda?

22 A That is correct.

23 Q Okay. And have you talked to Dr. Gondy?

24 A No.

25 Q Okay. So all you did was review those records?

1 A That is correct.

2 Q Okay. And you anticipate that the D.A. is going to
3 ask you questions about those records today?

4 A I anticipate that. I mean, I was provided them.
5 I don't know.

6 Q Okay. And those records had no bearing on your
7 examination of the two girls, is that correct?

8 A I didn't have them at the time that I examined the
9 two girls.

10 Q And so my question was that those reports had no
11 bearing on your examination of those two girls, is that
12 correct?

13 A I'm not sure I understand your question.

14 Q Okay. That report from Dr. Gondy or those reports
15 from Dr. Gondy you didn't have at the time you examined
16 Taharah and Taquanda, is that right?

17 A That's correct.

18 Q Okay. So any information contained in those reports
19 would not have any bearing on the reports that you prepared
20 when you examined Taharah and Taquanda, is that correct?

21 A There is no information regarding this in these
22 reports except for one of the children making reference to
23 it.

24 Q Okay, correct. So one of the children said
25 something to you about seeing this doctor, is that correct?

1 You have to answer out loud.

2 THE COURT: Is that a yes?

3 THE WITNESS: Yes.

4 BY MS. ALLEN:

5 Q Okay. But you didn't have anything from Dr. Gondy
6 at the time that you saw them or at the time that those
7 reports were prepared?

8 A That is correct.

9 MS. ALLEN: Okay. I'm not sure that she is qualified
10 to testify about the reports from the other physician. She
11 didn't have them at the time that she examined Taharah and
12 Taquanda. There's no bearing on what Dr. Gondy said to what
13 she did, and for her to testify on behalf of another expert,
14 when these reports weren't even made available until the last
15 month, I believe would be patently inappropriate. And so I
16 would move the Court to preclude her from testifying about
17 Dr. Gondy's reports.

18 MS. LUZAICH: Can I ask some questions before I
19 argue?

20 THE COURT: Sure.

21 VOIR DIRE EXAMINATION

22 BY MS. LUZAICH:

23 Q Dr. Mehta, isn't it true that I actually sent you
24 those reports last week?

25 A I knew it was sometime recently. I didn't know the

1 exact date.

2 Q Did you leave for Huntsville, Alabama a week --
3 well, when did you leave for Huntsville?

4 A The conference in Huntsville, Alabama was last week
5 and I was there for the full week.

6 Q And did I send them to you right before you left?

7 A Yes.

8 Q Did you have the opportunity to look at them before
9 or did you look at them when you got back from Huntsville?

10 A I looked at them briefly but I didn't read through
11 everything until I came back from Huntsville.

12 Q Okay. And in your examination of Taharah Duke, did
13 she -- and I'm only leading to do this fast, Judge. Did she
14 tell you that she had been diagnosed -- my word, not hers --
15 with HPV, which is similar to genital warts?

16 A Yes.

17 Q Did she tell you that she had seen another doctor
18 a couple of months prior to her seeing you --

19 A She did.

20 Q -- where she learned that?

21 A Yes.

22 Q And did she tell you that she had told that doctor
23 that she had been sexually abused?

24 A She did not tell me that.

25 Q Did she tell you that she had told her guardian that

1 she had been sexually abused?

2 A Yes.

3 Q And did you review the records from Dr. Gondy?

4 A Yes.

5 Q And did Dr. Gondy see Taharah Duke September -- or
6 June 27th of 2012?

7 A Yes.

8 Q Which is two -- three months prior to you seeing
9 her?

10 A Yes.

11 Q Did Dr. Gondy in her reports do an ultrasound and
12 diagnose Taharah Duke with HPV?

13 A She didn't make the diagnosis by the ultrasound,
14 but yes, she did both of those things.

15 Q Okay, that was a bad question. What did she make
16 the diagnosis via?

17 A Pap smear.

18 Q Okay. And is that something that you were able to
19 confirm in the reports?

20 A Yes. There's a testing result in the report.

21 Q And do the reports also indicate that Dr. Gondy was
22 told of possible sexual abuse --

23 A Yes.

24 Q -- by the guardian who brought Taharah there?

25 A Yes.

1 Q And is all that consistent with what Taharah told
2 you?

3 A Yes.

4 Q Does any of that information have anything to do
5 with your opinion regarding Taharah Duke?

6 A Yes.

7 MS. LUZAICH: And therefore, Judge, it is relevant
8 and appropriate for Dr. Mehta to discuss at least her review
9 of the records by Dr. Gondy.

10 MS. ALLEN: May I be briefly heard, Your Honor?

11 THE COURT: Sure.

12 MS. ALLEN: What we have now is hearsay on hearsay.
13 We have Taharah possibly telling -- Frankly, I've interviewed
14 Dr. Gondy, so this is not correct, but I've actually
15 interviewed Dr. Gondy. And now we have Taharah telling Dr.
16 Gondy and a possible guardian telling Dr. Gondy about possible
17 sexual abuse. These are impressions that Dr. Gondy had in
18 her reports. They're not -- it doesn't say disclosed by,
19 you know, guardian. It doesn't say disclosed by anybody.

20 And frankly, for her to have an opinion today about
21 what happened back in September of 2012, those reports have
22 nothing to do with that. Her opinion is from September of
23 2012. These are the reports that she did. She was not privy
24 to Dr. Gondy's reports when she made her opinion. So for
25 her to come in here and say well these just bolster what I'm

1 saying, now we're admitting double hearsay, we're admitting
2 records -- testimony about records with no foundation
3 whatsoever, and it's patently inappropriate. She has the
4 right to testify about her examinations, what she did on
5 9/27 of 2012. I will still object, but I would even submit
6 that what Taharah tells her would probably come in because
7 it's based on a medical diagnosis, but how is it that she's
8 able to testify about double hearsay that happened months
9 before, and she didn't even receive the report until the
10 last week?

11 THE COURT: Okay. I think the objection was you
12 want to completely prevent her from testifying about any
13 medical records that she has been provided by Dr. Gondy.
14 That objection is going to be overruled, and you can make any
15 further objection that you think is appropriate. The State
16 is not moving to admit those records at this time.

17 MS. ALLEN: I know they're not moving to admit them,
18 but what I'm saying is it's inappropriate for her to testify
19 about them. Right, her opinion is not based upon -- from 2012
20 her opinion wouldn't have been based upon what Dr. Gondy did
21 because she didn't even have those records at the time. And
22 the impressions that Dr. Gondy made in her reports, how is it
23 that Dr. Mehta can testify about impressions from another
24 physician that she hasn't even talked to?

25 THE COURT: Well, I don't even know what the State

1 is going to even ask her yet. Basically you've asked me to
2 exclude the records altogether and prevent her from relying
3 upon them, and quite frankly an expert can rely upon things
4 made known to them at the time of trial.

5 MS. ALLEN: Can we --

6 THE COURT: Facts or data made known to them at the
7 time of trial.

8 MS. ALLEN: Can I have a proffer from the State,
9 then, what she intends to ask her about those records?

10 THE COURT: Sure.

11 MS. LUZAICH: Well, pretty much what I just asked
12 right now, except not quite as leading.

13 MS. ALLEN: Except what?

14 MS. LUZAICH: Not quite as leading. I was asking
15 questions in a way to move it faster.

16 MS. ALLEN: Okay. So then the State is going to be
17 allowed to elicit information from this physician that someone
18 told a doctor that's not testifying that there was sexual
19 abuse? I just want to be clear that we're allowing that
20 double hearsay in, that someone told this doctor --

21 THE COURT: I'm not going to allow double hearsay.
22 I mean, are you going to ask her to look at Dr. Gony's
23 records and say did somebody tell somebody else?

24 MS. LUZAICH: Well, somebody told Dr. Gony possible
25 sexual abuse a month earlier.

1 THE COURT: Okay. Well, Dr. Gondy can testify about
2 that.

3 MS. ALLEN: That's my concern. I don't think it's
4 appropriate for Dr. Mehta to testify to double hearsay.

5 THE COURT: And I'm assuming Dr. Gondy is going to
6 testify. She can testify about that.

7 MS. LUZAICH: Okay.

8 THE COURT: Okay, other than that, any concerns?

9 MS. ALLEN: So the questions that we're going to --
10 I just want to be clear. So then the questions we're asking
11 Dr. Mehta is that you were provided a copy of I guess medical
12 records from Dr. Gondy and that Dr. Gondy diagnosed Taharah
13 with HPV via a Pap smear. She did an ultrasound and a Pap
14 smear and there was a diagnosis of HPV. Is that the limit to
15 the testimony we're eliciting? I'm just asking.

16 MS. LUZAICH: Well, right now it is.

17 MS. ALLEN: Okay.

18 THE COURT: Okay.

19 MS. ALLEN: Thank you.

20 THE COURT: We can bring the jury back in.

21 (Jury is present)

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

24 MS. LUZAICH: Yes.

25 MS. ALLEN: Yes, Your Honor.

1 THE COURT: The State may continue with their direct
2 examination.

3 MS. LUZAICH: Thank you.

4 DIRECT EXAMINATION (Continued)

5 BY MS. LUZAICH:

6 Q So, Doctor, I had asked you about Taharah Duke,
7 her height and weight. You were reviewing your records to
8 determine what her height and weight were.

9 A Her height was -- I want to make sure I got it
10 right. Five feet, five and a half inches, and her weight was
11 131 pounds.

12 Q At the time, how old was she?

13 A Twelve years old.

14 Q Would you consider that, based on your experience,
15 normal for a 12-year-old?

16 A I thought she was large for her age, and that's how
17 I documented it.

18 Q Large as in tall, not --

19 A Correct.

20 Q Sorry, I don't mean to be rude, fat?

21 A She -- those proportions could also be that of an
22 adult, so there are some petite adults who would be five feet
23 five and a half, 131 pounds. So for a 12-year-old she had the
24 size dimensions of a smallish adult.

25 Q Okay. You said that -- well, was she otherwise an

1 average-looking, normal, no problems with her head-to-toe type
2 appearance 12-year-old?

3 A She had no deformities or any issues like that that
4 were noted by me.

5 Q Okay. So you indicated that you spoke with her
6 privately. Why do you do that specifically?

7 A So that children have an opportunity if there's some
8 concern that they have about their health or their well-being,
9 that we have an opportunity to discuss that and that they
10 don't worry about another person overhearing that. I feel
11 that it provides them an opportunity to tell something to a
12 physician that they may not have been comfortable speaking
13 about before or express a concern that they have about their
14 body, and it gives me an opportunity to make sure that issues
15 that I need to have addressed that I have that information.

16 Q Did you actually speak privately with Taharah?

17 A Yes, I did.

18 Q What would you have asked her or said to her?

19 A So, I start off and I asked her about school and
20 what grade she's in in school and how she's doing in school,
21 and she indicated to me that she was in the 7th grade and she
22 had special education classes for reading and for English.
23 I asked her about friendships to see if she's socially
24 connected. She indicated that she didn't have a best friend.
25 I asked her about career plans to see if she's, you know,

1 thought about those types of issues. She didn't have a career
2 plan. I'm also assessing her for her intellectual ability
3 and her cognitive development as we're talking about things,
4 trying to look to see if she's mature, if she understands
5 the questions that I'm asking, if she gives me appropriate
6 answers. So while I'm making her comfortable talking to me,
7 I'm also doing these types of assessments.

8 Q What, if anything, did you notice?

9 A She did seem cognitively delayed to me, as I was
10 talking to her.

11 Q For somebody who is not in the sciences, what does
12 that mean?

13 A I think a lay person might say that she seems slow.

14 Q Okay. And what else did you talk to her about?

15 A I asked her about her household and who lives in
16 that household together, so that if she were to say a name
17 I'd know who that person was. I asked her about her body and
18 what words she uses for the place on her body where she gets
19 her periods, and she calls it her vagina. I asked her about
20 any symptoms, pains or problems she's having from that part of
21 her body. I asked her if she's ever been pregnant. She told
22 me she didn't know. I asked her if she's ever had a sexually-
23 transmitted infection. She indicates that she went to an
24 OB/GYN center. She was told that she had an HPV virus and she
25 told me that that was like warts, and that she had been taken

1 there by her guardian, Ms. Ann.

2 Q And I'm sorry, I'm going to step back for one
3 second. When you said that you had asked her who did she live
4 with, did she tell you that she lived with Ms. Ann?

5 A Yes. She told me that she had a guardian that she
6 wasn't related to named Ms. Ann and that in that household was
7 Ms. Ann, Taharah, the patient, her sister Taquanda, who was
8 11 at the time, and there was another girl there named I think
9 Sha'karia, who was Ms. Ann's daughter, and then Ms. Ann's
10 boyfriend, Fred.

11 Q Okay. You said that you talked to her about body
12 parts and whether she was having problems with her period.
13 Why do you ask her about her period?

14 A I'm understanding her understanding of her body,
15 what words she uses for that part of her body; if she's having
16 her periods. For example, if she said I haven't had my period
17 in four months, then I would be highly concerned that, for
18 example, she could be pregnant. So I'm asking her about her
19 understanding of her body, if she's having any symptoms, is
20 she having a discharge. That might be an indication of a
21 sexually-transmitted disease. If she's noticed bumps or sores
22 or things like that. So I'm giving her an opportunity to
23 describe to me any concerns that she has about the private
24 areas of her body that she may not have thought to talk to a
25 detective or someone else about.

1 Q Did she indicate that she was already menstruating,
2 she was having menstrual cycles?

3 A She had been having her periods for three years now.
4 She had started when she was nine years old.

5 Q Is that unusual?

6 A That's a little bit on the younger side for a girl
7 to have started her menstrual cycles, and it means that her
8 body has now had three years of female hormones, causing her
9 increased development, meaning that there are other 12-year-
10 olds who haven't had their periods yet whose private areas are
11 not very physically mature because they haven't been getting
12 a lot of female hormone estrogen. In her case she's had three
13 years of that hormone circulating, so her private area I'm
14 going to anticipate would be very developed, and in fact on
15 physical examination it was.

16 Q Was she physically developed in more than just her
17 genital area?

18 A Correct. She also had breast development.

19 Q So you're asking her all these questions. She had
20 indicated to you that she had been to an OB/GYN center and
21 been told that she had HPV, which was like genital warts.
22 Is it unusual for somebody who's 12 or younger to go to
23 someplace like an OB/GYN center?

24 MS. ALLEN: Judge, objection, foundation.
25 Speculation.

1 MS. LUZAICH: Based on her training and experience.

2 THE COURT: Overruled. You can answer.

3 THE WITNESS: It's very unusual. It's --

4 BY MS. LUZAICH:

5 Q Why? Oh, sorry.

6 A It's uncommon for children who are about 12 years
7 old to be seen at an adult facility for GYN issues or
8 complaints.

9 Q In your experience do gynecologists who specifically
10 see adults, are they not trained to -- generally to examine
11 children?

12 A OB/GYN training does not include a lot of detailed
13 information about examining the front outside areas of the
14 genitals. It's very much focused on adult medicine, which is
15 examining internally and looking for adult types of diseases
16 like cancers, things like that.

17 Q So to do an adult-type examination on a child, is
18 that something that you don't generally want to do?

19 A It's generally not recommended, except under unusual
20 situations or circumstances.

21 Q Why is that?

22 A Again, for children this is often going to be the
23 first time somebody has inserted medical instrumentation into
24 the body. You want to make sure that the child understands
25 what's going on. That the person who is evaluating the child

1 knows about issues of reporting if there's concerns of abuse,
2 things like that that might not necessarily be part of adult
3 medicine training, whereas people trained in adolescence and
4 pediatrics are going to know about that they're required to
5 make reports if there's concerns of abuse.

6 Q So there's actually different training when you are
7 examining children as opposed to adults?

8 A That is correct.

9 Q So tell me about this. She said that she had HPV.
10 What is that?

11 A HPV is a virus, and if a person has the high risk
12 type of HPV there are two things that can happen that we worry
13 about medically for that person. One is they can develop
14 genital warts. So that virus can produce warts, which would
15 be kind of large, lumpy bumps that can be internal to the body
16 and in some cases external to the body. The other thing and
17 the reason that it's screened for in adults is because it can
18 become cervical cancer. And so it is a virus that has the
19 potential to become warts and/or cervical cancer. And that
20 is -- it's something that is generally tested and looked at
21 in adult women and not as commonly looked at in teenagers.

22 Q Is HPV or genital warts something that you can
23 always visually see?

24 A So, the actual virus in and of itself you can't see
25 by looking, and so it is possible for somebody to have an HPV

1 infection and for the person who is looking externally and
2 internally at their body to not see anything. You can have
3 that virus and carry that virus and transmit it to someone
4 else through sexual contact without yourself having to have
5 any visible signs of having that virus.

6 Q Are there many different kinds of HPV?

7 A There are at least 100 sub-types of HPV and there's
8 a group that are considered the high risk sub-types that are
9 screened for in adults to look for that risk of cervical
10 cancer.

11 Q What about in kids?

12 A In children we no longer routinely screen for that
13 because the time it takes to develop into cancer can be a
14 period of years, and so instead of routinely screening young
15 teens the recommendation has now been to wait until they are
16 18 or older, in some cases 21, before routinely doing Pap
17 smears and tests to look for that disease because it's felt
18 that the trauma associated with doing those evaluations and
19 aggressively trying to treat this virus is more harmful than
20 beneficial and we generally now wait until they're adults to
21 actually routinely screen and test for HPV. So if somebody is
22 positive, they will have additional testing to see what their
23 risk for cancer is and there may be some procedures that are
24 done to burn, freeze or cut out areas that look like they're
25 infected.

1 Q But you said that you don't necessarily have to have
2 infected areas to have the virus?

3 A That is correct.

4 Q How does one transmit the virus from one to another?

5 A It is transmitted via sexual contact.

6 Q Is that the only way to transfer it from one to
7 another?

8 A It could be transferred from a mother to an infant
9 during the birth process. So if the adult female has warts in
10 the vaginal canal and a baby comes through that vaginal canal,
11 that baby could get infected. Often that is warts in the
12 baby's airway and we usually detect that during the first
13 couple of years of life. If they have breathing problems they
14 may get scoped and someone may detect those warts. But it is
15 possible also to transmit to the child's genital area that
16 way.

17 Q And I'm sorry, did you say the only way to detect
18 whether or not a girl has HPV is by Pap smear?

19 A There is no other accepted testing, aside from if
20 you saw a wart and you said, okay, I can see that they have
21 this wart. But there is no blood test. The only way to do it
22 is to go physically inside the body and manually scrape the
23 cervix.

24 Q Okay. What about a man? How could you detect
25 whether a man has HPV?

1 A If he actually has the virus there is no
2 commercially available standard test to test men for HPV aside
3 from if some men might have visible warts on their genitalia,
4 but many men wouldn't and so there wouldn't really be a way to
5 test a male to see if he has HPV.

6 Q Okay. So you can have it and transmit it without
7 seeing it, whether a man or a woman?

8 A Correct.

9 Q Were you later provided by the State with records of
10 Taharah actually seeing an OB/GYN on June 27th of 2012, three
11 months prior to your visit with her, where you were able to
12 confirm this?

13 A Yes. There's an actual test result showing that she
14 was positive for that high risk HPV type virus based on a Pap
15 smear.

16 Q A Pap smear. And how is a Pap smear, just for those
17 who don't have that body part, how is a Pap smear actually
18 conducted?

19 A So, for a female in order to examine inside the body
20 -- so if somebody wanted to examine the back of a person's
21 throat, they could say open your mouth manually. You could
22 open your mouth and they could look to the back of the throat
23 and swab the back of the throat. The vagina is sort of
24 collapsed so that you can't manually open it, but for an
25 examiner to look inside the vagina you can take a device

1 that's called a speculum.

2 Q Would it help if you had one to show the jury?

3 A Yes.

4 MS. LUZAICH: May I approach for purposes of
5 demonstrative only?

6 THE COURT: You may.

7 BY MS. LUZAICH:

8 Q And just for the record, did you ask me to bring
9 that so that you could use that?

10 A Yes, because I also did this type of examination in
11 her subsequent to when they would have done this Pap smear.

12 Q All right.

13 A So, the vagina is sort of folded and collapsed and
14 it's like a sock where it's got like a closed end. So if you
15 imagine kind of going into the sock and then where the toes
16 are, the seam, so it's like a blind pouch. And in order to
17 examine inside you can't visualize it by looking because it's
18 kind of folded down. This is the device that we use to look
19 at the inside of a girl who's menstruating, inside of her
20 vagina. This portion stays outside of the body and this is
21 the part that's going to go inside of the body. We generally
22 put some type of lubrication on this. The vagina is closed.
23 We're able then to insert this into the body and then from
24 here on the outside I'm now able to crank this open and to
25 look inside. There's a light that we can plug in here at the

1 bottom so that the inside is illuminated. And then we can
2 take cotton swabs with long sticks and swab the back wall,
3 which is what I do for STD testing, but here they would have
4 used a special type of brush to scrape the cervix, put it in
5 a special medium and send it to a laboratory to look for that
6 HPV virus. And so this is the examination technique that
7 would be used in an adolescent female.

8 Q And so you indicated that she had had a Pap smear,
9 which was something inserted in her vagina like that and
10 scraped to get the result. Was there another test done as
11 well?

12 A They also did an ultrasound externally of her pelvic
13 area to look at her uterus where a baby sac would -- where a
14 baby would grow if she had had a baby.

15 Q How does one treat HPV?

16 A There isn't a great full-proof treatment. It's one
17 of the reasons that there's so much emphasis on vaccinating.
18 So there's been a vaccine that's been developed. There's a
19 lot of focus on preventative medicine of vaccinating young
20 girls to prevent it. There are, depending on what is seen,
21 sometimes there are repeat tests done to see if it's
22 progressing, if it's getting worse. The cervix can be painted
23 with a special dye to try to see if they can see microscopic
24 changes. Ultimately what may happen is a specialist in that
25 area would go in and laser out a portion of the cervix to try

1 to prevent the patient from developing cervical cancer. In
2 some cases if there is -- if it looks like it's advanced or
3 there's evidence of cancer, they may have to remove some of
4 the female organs in order to prevent the spread of cancer.

5 Q Did it indicate whether Taharah was treated?

6 A I did not see any data regarding her being treated
7 or not.

8 Q Okay. So, fast-forward to September 27th, 2012.
9 She's told you that she had been seen at this OB/GYN center
10 and told that she had HPV. What else did you talk to Taharah
11 about?

12 A I indicated that I knew she had spoken to someone
13 earlier in the day about someone doing something to her and
14 I wanted to clarify if any of the contact involved her back
15 side, her anal area. Sometimes children don't provide that
16 information easily. She indicated that there had been -- she
17 did not tell me about any anal contact. I also asked her if
18 someone besides Fred had done anything to her because -- you
19 know, if she had been molested when she was younger, anything
20 of that nature, if there was somebody else to worry about or
21 some other concern with her. She indicated no one else had
22 molested her. And I asked her if she knew if any other
23 children had been molested by this same person, and she
24 indicated that her older sister Victoria had been.

25 And then I just wanted to kind of clarify and I

1 asked her some more questions about that OB/GYN center visit.
2 She had told me that she had gone with Ms. Ann and I wanted to
3 kind of understand, you know, what she had said about that.
4 She indicated she had told Ms. Ann --

5 MS. ALLEN: Judge, if we're encroaching on the
6 subject of our outside the presence conversation, I would like
7 to advise the witness to -- I would object at this point.

8 THE COURT: Is the objection hearsay?

9 MS. ALLEN: Yes.

10 THE COURT: Sustained.

11 MS. LUZAICH: Well, this is what she had told Ms.
12 Ann, not the doctor.

13 MS. ALLEN: And I would object to it, Your Honor,
14 because it's not in the course of medical diagnosis.

15 THE COURT: I don't understand the difference
16 between Ms. Ann. It's still hearsay.

17 MS. LUZAICH: Okay.

18 BY MS. LUZAICH:

19 Q You talked to her about -- without telling us what
20 she said, you talked to her about things that she had told
21 Ms. Ann?

22 A Yes.

23 Q And what else did you talk to her about?

24 A That was --

25 Q It at that point?

1 A That was it at that point, to the best of my
2 recollection.

3 Q Okay. So were you relying on information you had
4 gotten from the interview that Taharah did regarding what to
5 do for your examination or what Taharah told you for what to
6 look for your examination?

7 A Both.

8 Q And what specifically had Taharah told you about the
9 abuse that she was there for?

10 A Can I look at my notes to refresh my recollection,
11 to understand your question better?

12 Q Yeah.

13 THE COURT: You may.

14 THE WITNESS: She made indication to me that Fred
15 had raped her.

16 BY MS. LUZAICH:

17 Q Okay. When she used -- that was her word, not
18 yours, correct?

19 A Correct.

20 Q Do you follow up with her and ask her what does
21 that mean to you, or was that where you were relying on the
22 interview?

23 A That is where I relied on the interview.

24 Q And is that because you don't want to re-interview?

25 A That is correct.

1 Q Okay. So after you had spoken to her privately,
2 what did you then do?

3 A I then performed her physical examination.

4 Q And would that be a head-to-toe exam?

5 A That is correct.

6 Q And tell us what did you observe?

7 A So, in addition to just her regular vital signs,
8 in performing her examination we prepare the child for the
9 examination. She is on an exam table. Her feet are in
10 stirrups and I inspect the outside of her genital area and
11 I rate the development of her genitals on a scale. And so
12 that scale goes from one to five. So a newborn baby, small
13 little girls would have a one scoring, which is no pubertal
14 development, no genital hair, completely prepubertal. Girls
15 with a two and a three rating are now about to get their
16 periods or starting their periods. They have some genital
17 hairs. They have some estrogen, some female hormone
18 development that is making the tissue at the opening of the
19 vagina -- at the very bottom of the vagina there is some
20 tissue called a hymen and it's a tissue that starts to develop
21 some stretchiness to it as there's more female hormone in
22 place. And so girls with a two or three rating will have some
23 of that stretchiness.

24 In Taharah's case I rated her genital development as
25 a four, and then a full adult female would be a five. And so

1 I noted that I was able to examine her hymenal tissue. I was
2 able to take a Q-tip and touch the tissue. She doesn't have
3 tenderness to that skin anymore because it's gotten thicker
4 and stretchier. And then I was able to, in addition to
5 inspecting the outside of her genital area, I was able to do
6 the type of examination I talked about where I inserted this
7 into her body. I did see a little bit of white discharge,
8 which can be a symptom of infection, so I tested it to make
9 sure that it wasn't a sexually-transmitted disease. But it
10 can also be some normal fluid that her body makes in response
11 to, you know, hygiene issues or just hormonal reasons. And so
12 I just for precautionary reasons did that type of testing in
13 her as well.

14 Q What was the result of your test?

15 A Negative. She did not have the two infections that
16 I test for, which are gonorrhea and chlamydia. She did not
17 have either of those infections.

18 Q And the fact that you were able to, you described,
19 insert the speculum, what is the significance of that without
20 tenderness or anything?

21 A It again supports that her body is now at the
22 point where it is possible for me, as well as three months
23 previously for the other examiner, to be able to insert an
24 object into her body without causing tearing, bleeding, pain,
25 bruising, those kinds of things; that she's physically capable

1 of accommodating insertion of an object into her body without
2 causing external signs that someone could see.

3 Q Did you observe anything unusual or not quite right
4 within her genital area?

5 A Aside from that non-specific discharge, no.

6 Q The fact -- and what was it your understanding from
7 the course of the interview that she had alleged the abuse to
8 be?

9 A I understood it to be penile-vaginal penetration.
10 And in examining inside of her body, I did not see any
11 physical warts or objects or things like that that would have
12 been related to her concern about the HPV virus.

13 Q The fact that you didn't see any genital warts or
14 anything of that nature, that doesn't have any bearing on
15 whether or not she tested positive for it three months
16 earlier, correct?

17 A That is correct. Again, you can have that wart
18 virus and we worry about what its potential in the future is.
19 It can develop into warts and it can develop into cancer. She
20 just tested positive for microscopically being able to see the
21 DNA of those -- of that wart virus.

22 Q The fact that you were not able to see any evidence
23 of anything -- well, let me rephrase that. You said that
24 she had alleged penile-vaginal sexual abuse. Based on what
25 you saw, is that consistent, inconsistent or what, in your

1 opinion?

2 A It is possible for there to be penile-vaginal
3 intercourse without leaving physical signs or symptoms. This
4 has been studied and published in our child abuse literature.
5 There was a child abuse physician in Texas who studied 36
6 young, pregnant teens and because they were pregnant we knew
7 that there had been sexual intercourse, so we were --

8 MS. ALLEN: Judge, at this point I'm going to pose
9 an objection. If we could have some foundation --

10 THE COURT: Sustained.

11 MS. ALLEN: --as to who this -- and what articles
12 and time frames?

13 THE COURT: The objection is sustained.

14 MS. ALLEN: Thank you.

15 BY MS. LUZAICH:

16 Q Okay. Are you referring to one specific article or
17 procedure of testing?

18 A Yes. I'm referring to an article published by Dr.
19 Nancy Kellogg. The title of the article is "Normal doesn't
20 mean nothing happened."

21 Q And you've reviewed that article as part of your
22 experience over the course of being a child abuse expert in
23 your career?

24 A Yes. We have a variety of articles that we rely on
25 that are researched articles, including an article by Joyce

1 Adams, "It's Normal to be Normal." Abbey Berenson, who
2 compares children who were abused versus children who were not
3 abused. John McCann, who looks at injury healing. There's
4 a body of literature that is part of my fellowship training,
5 as well as my on-going review of the literature. And so those
6 are the scientific studies that we have to help us understand
7 what goes on with these children, both medically and
8 psychologically.

9 Q So specifically regarding Nancy Kellogg's literature
10 and testing, can you describe what you read?

11 A Yes. What she did was she enrolled 36 pregnant
12 teenagers into her study. Because they were pregnant it was
13 known that they'd had penile-vaginal intercourse and there
14 wasn't confusion about whether there had been penetration or
15 not. In examining those 36 females, only two of them had
16 findings that suggested penetration. The other 34 did not
17 have any findings that suggested penetration, meaning aside
18 from the fact that they were pregnant, it was not possible to
19 tell just looking at their bodies that they had had sexual
20 relations. And that type of data has been persistent in our
21 field and it's been replicated since then.

22 Q So when you looked at Taharah's vaginal area,
23 although you couldn't see anything, that is not inconsistent
24 with her description of what had occurred?

25 A That is correct.

1 Q Did you recommend anything for Taharah?

2 A I recommended that she have an IEP, which is an
3 individualized educational plan, because of my concerns of
4 her cognitive delay, and I also recommended psychological
5 treatment and therapy for her and her sister.

6 Q When you say her sister, are you talking about
7 Taquanda?

8 A Yes, I am.

9 Q Did you also examine Taquanda?

10 A I did.

11 Q Now, is it your understanding that Taquanda did
12 not make any allegations that she herself had been sexually
13 abused?

14 A That was my understanding, yes.

15 Q Why would Taquanda also have been examined?

16 A We often do a precautionary examination in siblings
17 of children who have alleged sexual abuse. In some cases as
18 children become more comfortable or as time goes on they end
19 up making a disclosure that something had happened to them.
20 And so as a precaution we evaluate siblings, just recognizing
21 that there can be -- when one sibling is abused, it can be
22 more than one sibling in a household that's been abused.

23 Q And just so we're clear, Taquanda never made any
24 allegation to you either of sexual abuse by the same person,
25 correct?

1 A She did not make any allegations of sexual abuse.

2 Q So on September 27th, 2012 when you examined
3 Taquanda, what did you observe when you examined Taquanda,
4 generally first?

5 A Generally she was 11 years old and she had a better
6 ability to explain and describe things than her sister. She
7 did not seem to have cognitive delay. And I spoke with her
8 just to verify, you know, how she was doing, if she was doing
9 okay. Specifically based on some of the comments she made to
10 me, I asked her some screening questions regarding depression
11 as well because she made some indication of depression to me.

12 Q Okay. Would you have asked her pretty much the same
13 questions that you asked Taharah as well?

14 A Given that they'd had a forensic interview earlier
15 that day, it was slightly different the way I approached my
16 questions with her. Very similar.

17 Q And did you then do a head-to-toe examination of
18 Taquanda?

19 A Yes, I did.

20 Q And what did you observe?

21 A She had a normal physical examination. Her genital
22 development was also advanced for age. And I was able to take
23 a Q-tip and touch the outside of her genital areas without
24 causing her any tenderness or pain. Because she had not made
25 an allegation of sexual abuse, I did not -- and she was only

1 11 years old, I did not do an internal examination. She was
2 currently on her menstrual cycle at the time of my
3 examination.

4 Q Did you also do STD testing on Taquanda?

5 A Yes, I did.

6 Q Why would you do that?

7 A Again, because many children do not make an initial
8 disclosure of sexual abuse, but over time they may through the
9 process of therapy or feeling safe make some disclosure of
10 abuse, so for her overall health and wellness.

11 Q Okay. And did she also come back negative?

12 A That is correct.

13 Q Did you form an opinion regarding the abuse of
14 Taharah based on your training, education, experience and
15 what you observed from Taharah?

16 A Yes.

17 Q And what was that opinion?

18 A I diagnosed her as child sexual abuse.

19 MS. LUZAICH: Thank you. I'd pass the witness.

20 THE COURT: Cross?

21 MS. ALLEN: Your Honor, how late are we going today?
22 It's almost 12:00. I would prefer not to stop --

23 THE COURT: Okay.

24 MS. ALLEN: -- if that's okay.

25 THE COURT: Okay.

1 MS. ALLEN: Thank you.

2 THE COURT: All right, we'll recess for lunch.

3 During this recess you are admonished not to talk or converse

4 among yourselves or with anyone else on any subject connected

5 with this trial, or read, watch or listen to any report of

6 or commentary on the trial or any person connected with this

7 trial by any medium of information, including without

8 limitation newspapers, television, Internet and radio, or

9 form or express any opinion on any subject connected with

10 this trial until the case is finally submitted to you.

11 We'll be in recess until 1:30. Thank you.

12 MS. ALLEN: Thank you, Your Honor, I appreciate

13 that.

14 (Court recessed at 11:56 a.m. until 1:34 p.m.)

15 (Jury is present)

16 THE COURT: Do the parties stipulate to the presence

17 of the jury panel?

18 MS. LUZAICH: Yes, Judge.

19 MS. ALLEN: Yes, Your Honor.

20 THE COURT: Okay, you may continue.

21 MS. ALLEN: I believe --

22 THE COURT: You may begin your cross.

23 MS. ALLEN: Okay, thank you. I was going to say --

24 THE COURT: I forgot you didn't start.

25 MS. ALLEN: -- I think Ms. Luzaich was done.

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CROSS-EXAMINATION

BY MS. ALLEN:

Q Good afternoon, Dr. Mehta. How are you?

A Good, thank you.

Q My name is Betsy Allen and I'm going to ask you some questions regarding your testimony and your reports, okay?

A Yes, ma'am.

Q Just going back briefly to your experience, you said that you were employed some time at Cincinnati Children's Hospital, is that correct?

A That is correct.

Q How long were you at Cincinnati Children's Hospital?

A I was there for one year of my fellowship and then I stayed on for two more years as faculty, so just about three years.

Q Okay, three years?

A Uh-huh.

Q Okay. Can everybody hear her? She seems to be talking very softly.

A I'll try and lean forward. Thank you.

Q Thank you. I'm sorry, maybe it's me.

A No, no, I appreciate that.

Q Okay. Are you acquainted with someone by the name of Dr. Robert Shapiro?

A I am.

1 Q Okay. And he -- did he teach at the Children's
2 Hospital Medical Center or was he associated with this in
3 Cincinnati?
4 A Yes. He was the fellowship director of the program
5 I was in.
6 Q Did you know him?
7 A Yes.
8 Q Personally?
9 A Yes.
10 Q Okay. So you actually worked under him, is that
11 correct?
12 A That is correct.
13 Q Okay. Are you aware of his publications?
14 A Some of them.
15 Q Okay. So you are -- I guess basically you started
16 off as a pediatric medical doctor, is that right?
17 A That is correct.
18 Q And at some point you opted to specialize in child
19 abuse?
20 A That is correct.
21 Q Okay. At what point in your career did you decide
22 that you were going to specialize in child abuse?
23 A Immediately after my chief residency year. So I
24 completed --
25 Q Here in Vegas?

1 A No.

2 Q Okay.

3 A So I did an undergraduate college degree, then four
4 years of medical school, three years of pediatrics, one year
5 of chief resident, and then directly into fellowship.

6 Q Okay. And what was the catalyst that pushed you
7 into child abuse?

8 A I was planning to academic medicine. I was going to
9 work in a university setting. And I kept getting those cases
10 when I was in general practice in my training and recognized
11 that I wanted to have some advanced training in that area.
12 So my initial plan was to teach pediatrics and child abuse
13 pediatrics in the university setting, and then once I entered
14 into the field I realized that there was -- it was very hard
15 to find good part-time practice in the area. There was such
16 a need that there was a lot of full time requests.

17 Q And you were in Las Vegas I think you said for nine
18 years, is that right?

19 A That is correct.

20 Q Okay. And you helped establish the CAC, is that
21 correct?

22 A I was -- the CAC existed.

23 Q Okay.

24 A I helped establish the medical clinic at the CAC.

25 Q Okay. So prior to your coming on, they didn't have

1 like a full time physician or a physician to do the actual
2 physical examinations of the children?

3 A They had a history of having had some nurses who
4 had been doing exams and the County had let go of that
5 program, so there was a period of, I don't know, months where
6 they were looking and trying to create a program.

7 Q Okay. And you mentioned nurses. Prior to you
8 coming on at the CAC, were there women or men there referred
9 to as SANE nurses?

10 A No. They had two nurse practitioners in the program
11 and they were not SANE nurses.

12 Q They weren't SANE nurses?

13 A No.

14 Q Okay. Just to be clear, what is a SANE nurse, so
15 we're not confusing the jury?

16 A Sure. A SANE nurse is a term that's generally used
17 to describe somebody who is a registered nurse, somebody with
18 a two or four year degree in nursing, and they usually perform
19 adult sexual assault exams. They can do some adolescent
20 sexual assault exams as well. And they focus on those acute
21 exams where the contact has been within those last few days
22 in order to collect evidence.

23 Q Okay. So prior to your coming on there were nurses
24 there. There wasn't a physician that was really sort of full
25 time there, is that right?

1 A There wasn't. There were two nurse practitioners
2 with a physician director.

3 Q Okay. So you came in and for a period of time acted
4 as the director of the CAC, is that correct?

5 A No. The director of the medical clinic.

6 Q The medical clinic. Okay. And you said very
7 specifically that you worked with CPS and Metro, is that
8 correct?

9 A We have to work collaboratively. Yes.

10 Q Okay. Those are the three main components of the
11 CAC, isn't that correct? It's the Las Vegas Metropolitan
12 Police Department, Child Protective Services, and then the
13 follow-up physical examination part that you -- the medical
14 part of it that you fulfill, is that correct?

15 A Those are three of the main components. There's
16 also a community collaboration component with like people from
17 the community who participate in like fundraising, things like
18 that. There is a mental health component where resources are
19 provided to non-offending parents and therapies for children,
20 so there's referrals for that. So there are a couple of other
21 pieces to the CAC as well.

22 Q Okay. And you worked very closely then -- while you
23 were here you worked very closely with the District Attorney's
24 Office, isn't that correct?

25 A I would come when they subpoenaed me, yes.

1 Q Okay. How many times were you subpoenaed to testify
2 by the Clark County District Attorney's Office?

3 A I don't have an exact number. I'm going to say over
4 thirty.

5 Q Okay. How many times would it be specifically with
6 Ms. Luzaich?

7 A I don't have an exact number. I'm going to say --
8 I'm really guesstimating five.

9 Q Okay. So you've testified for her before?

10 A I have.

11 Q Okay. On all five occasions? On all five occasions
12 that you were subpoenaed by Ms. Luzaich, did you testify for
13 her? Did you actually provide testimony?

14 A Yes.

15 Q Okay. All right.

16 A There probably are other times she subpoenaed me
17 that I didn't testify. I should be clear on that.

18 Q And that's what I was asking you about testifying.

19 A No, I apologize. She's probably subpoenaed me many
20 more times than that.

21 Q Okay.

22 A I've probably testified five of those times.

23 Q And so you have or you had at least at one point a
24 pretty -- you had a working relationship with her, is that
25 correct?

1 A Okay. Yes.

2 Q Is that correct?

3 A I mean, I didn't work with her per se. That's why
4 I'm not understanding your question exactly.

5 Q You collaborated on cases coming into court to
6 testify, is that correct?

7 A I would have pretrial conferences with her to
8 discuss my case, yes.

9 Q Okay. And they were all sexual abuse cases, is that
10 correct?

11 A I want to say I've testified in a physical abuse
12 case where she subpoenaed me as well.

13 Q Okay. Were most of them sexual abuse cases?

14 A Yes, I believe so.

15 Q Okay. How many times have you testified for a
16 defense -- a defendant or the defense in all the years that
17 you've sort of specialized in this?

18 A Once.

19 Q Okay. And how many times would you estimate you
20 testified for the prosecution, not just in Las Vegas but
21 anywhere that you've been?

22 A Probably around fifty.

23 Q Okay. So one time for the defense and about fifty
24 times for the prosecution, is that correct?

25 A That's correct.

1 Q Okay. Is it a safe assumption to say that you work
2 more with the prosecution than you work with the defense?

3 A More commonly, yes.

4 Q Okay. You said that the HPV virus is a common STD,
5 is that correct?

6 A Could you rephrase your question? I don't think I
7 said that exact phrase, that's why I'm hesitating.

8 Q My recollection is that you testified HPV was a
9 common STD.

10 A I would say that the HPV virus is sexually
11 transmitted, and so it's a little bit different than an STD
12 where people think about, oh, you can take an antibiotic and
13 treat it. Does that make sense?

14 Q I mean, it makes sense, but it's still a sexually
15 transmitted disease, is that right? It's still classified
16 as an STD, HPV is?

17 A Not all HPV. High risk HPV of the cervix, such as
18 this patient had.

19 Q Okay. And so it's classified as an STD, is that
20 correct?

21 A Not all HPV.

22 Q I said this one in particular that you're talking
23 about, you said it's a high risk HPV in this particular person
24 we're talking about, Taharah, is that right?

25 A So in Taharah's case I would say that having a high

1 risk HPV infection is supportive of her indicating that there
2 had been sexual contact.

3 Q That's not the question I asked you, Dr. Mehta.
4 What I asked you was is HPV an STD? And your response when I
5 asked you that question, I believe, was not all forms.

6 A Not all forms of HPV are an STD, correct.

7 Q Right. But then you said the form that this
8 particular patient had would be classified as an STD, is that
9 correct?

10 A They didn't give an exact sub-type. They said she
11 had high risk HPV, and that is associated with sexual contact.

12 Q Okay. So you didn't actually test her for HPV, is
13 that correct?

14 A That is correct.

15 Q So you're relying on reports from someone else, is
16 that right?

17 A That is correct.

18 Q And so you personally have no knowledge about the
19 form or strain of HPV that this girl has, is that correct?

20 A I only have the test result.

21 Q Okay. Again, you have no personal knowledge about
22 what kind of HPV she has, is that correct?

23 A The test result does not indicate that.

24 Q The question I asked you is you have no personal
25 knowledge. Do you --

1 MS. LUZAICH: Objection, asked and answered.

2 THE COURT: Sustained.

3 BY MS. ALLEN:

4 Q You also testified that she would have received it
5 through sexual contact, is that right?

6 A Most likely, yes.

7 Q Most likely, but there are other ways to receive
8 that, is that correct?

9 A Yes.

10 Q And you said childbirth?

11 A That would be another way.

12 Q Okay. So the individual who purportedly had given
13 her this STD, would it also be easily transmitted to other
14 partners?

15 A It could be, yes.

16 Q Okay. You're a doctor, this is your specialty.
17 What is the risk of transmission of this form of HPV?

18 A It's unknown.

19 Q Unknown. Okay. So as you sit here you can't answer
20 that question --

21 A That's correct.

22 Q -- how easily it's transmitted, is that correct?

23 A That's correct.

24 Q Okay. Were you ever given any medical records to
25 review from the defense as far as Frederick Harris?

1 A No, ma'am.

2 Q Okay. So as you sit here today, you have no idea
3 if he has HPV, is that correct?

4 A That is correct.

5 Q Okay. Did you ask Taharah if she was treated for
6 this high risk HPV?

7 A I did not.

8 Q Wouldn't that be a concern of yours that she was
9 treated for something that potentially could cause cancer?

10 A Because it doesn't develop into cancer in that time
11 frame, it's something that would need to be followed up by her
12 regular physician on subsequent Pap smears.

13 Q Okay. So you weren't concerned about her getting
14 cancer at that point in time?

15 A At that point in time, no.

16 Q Okay. You described -- I apologize, you described
17 Taharah as a smallish adult. Do you recall that?

18 A That was me speculate-- sorry, wrong word -- me
19 trying to say if somebody is five feet, five and a half inches
20 tall and 131 pounds, giving a quantification as to the size of
21 that person.

22 Q So she was like a smallish adult, is that correct?

23 A Yes.

24 Q Even though she was 12 years old?

25 A Correct.

1 Q Okay. You said you would be concerned if -- you
2 asked her about her period, is that right?

3 A Yes.

4 Q She had regular periods, is that correct?

5 A I'd have to look at my notes to refresh my memory,
6 but I understood her to have regular periods.

7 Q Was that -- Is that a standard question you ask,
8 do you have a regular period?

9 A Yes, I do ask that question.

10 Q Okay. And you said if she didn't have a period for
11 four months I'd be concerned that she was pregnant?

12 A That would be an example of a reason I would ask
13 that question.

14 Q There are certainly other reasons why someone could
15 not have a period for four months, is that correct?

16 A Yes.

17 Q Okay. Is it unusual for a girl at 12 years old to
18 have irregular periods?

19 A No.

20 Q Okay. You talked about the Tanner stages one to
21 five, is that correct?

22 A That's correct.

23 Q And you said they -- you said both girls were at
24 Tanner stage four, is that right?

25 A That's correct.

1 Q But specifically with Taharah, she's Tanner stage
2 four and there's only one stage after that, is that right?

3 A Stage five. Correct.

4 Q Okay. What is the difference between four and five?

5 A The pubic hair on the female then instead of just
6 covering the labia majora also spreads onto the thighs and up
7 the belly some, and there is increased estrogenization of the
8 hymen.

9 Q Okay. So it's basically pubic hair and estrogenized
10 hymen, is that correct?

11 A The stretchiness of the hymen, yes.

12 Q Okay. And you characterized Taharah in your report
13 as having an estrogenized hymen?

14 A Yes.

15 Q Okay. Did that indicate to you -- or the fact that
16 you used that terminology, had her hymen reached Tanner stage
17 five but she didn't have the pubic hair? Was she halfway
18 there? Do you understand what I'm saying?

19 A No, ma'am.

20 Q Okay. Was her hymen fully estrogenized, fully
21 developed?

22 A Her hymen demonstrated the capacity for stretch and
23 was supportive of her being a Tanner stage four female.

24 Q Okay. And what happens as women go into I guess
25 stages four and five as far as the vagina? Can you explain

1 what happens, what changes happen with the vagina in that area
2 aside from the pubic hair?

3 A It would not -- it's not a concrete definition. It
4 would just be continued estrogenization.

5 Q Does the vagina sort of open up a little bit? Does
6 it widen?

7 A Not specifically, no.

8 Q Not specifically. So you have incurred instances
9 where it's opened up and instances where it's not?

10 A I don't understand your question.

11 Q You've seen women or you've examined Tanner stage
12 four individuals --

13 A Yes.

14 Q -- who have -- their vaginal area has opened up and
15 there's ones that have not, is that correct?

16 A I don't understand your question.

17 Q Well, you said it was non-specific. Explain why
18 it's non-specific.

19 A I don't understand the opened up part. I think
20 that's where I'm confused on your question.

21 Q Okay. Well, let's go back.

22 MS. ALLEN: I apologize, Your Honor, if I could just
23 have a moment.

24 BY MS. ALLEN:

25 Q You indicated you were aware of Dr. Shapiro and some

1 of the things that he had written, is that correct?

2 A Yes.

3 Q Okay. You actually worked under him?

4 A Yes.

5 Q Is this a correct statement? During puberty the

6 hymenal tissue becomes thicker and redundant. The opening

7 into the vagina becomes larger.

8 A Larger than pre-puberty.

9 Q Okay. So is someone at stage four pre-puberty or

10 post-puberty?

11 A Post-puberty.

12 Q Okay. Someone who's actually had a menstrual cycle?

13 A Generally speaking, yes.

14 Q Okay. So then post-puberty, so someone who is stage

15 four then, the opening to the vagina becomes larger, is that

16 correct?

17 A Than somebody who is pre-pubertal. So if you're

18 comparing somebody who has not gone through puberty, like an

19 8-year-old, the size of the opening is going to appear larger

20 between an 8-year-old and somebody who is now later going

21 through puberty.

22 Q Okay. So -- and when we're talking about children

23 because you refer to children a lot, we're talking about

24 anything from infants all the way up to 18, is that right?

25 A The field of pediatrics is defined as below the age

1 of 18, yes.

2 Q Okay. But when you talk about children, it could be
3 someone who is like 17, is that correct?

4 A That is possible, yes.

5 Q Okay. Did you ever examine Victoria Duke in the
6 process of this?

7 A No, ma'am.

8 Q The only two that you examined were Taharah and
9 Taquanda Duke, is that right?

10 A That's correct.

11 Q Okay. You said that she had had her period for
12 approximately three years?

13 A By her history.

14 Q Taharah. I apologize; Taharah.

15 A By her history, yes.

16 Q Okay. So she had been subjected to three plus years
17 of female hormones, I think is what you said?

18 A So, she had been already in puberty for three years,
19 meaning she's got significant estrogen effect to her hymen.

20 Q Okay. And what does that mean? I mean, what is the
21 difference between significant estrogen effect versus non-
22 significance estrogen effect?

23 A So if somebody is nine and they just started having
24 their period for the first time, they would likely experience
25 pain with trying to insert a tampon into their body because

1 that hymenal tissue is not very thickened or stretchy yet.

2 After a period of years of that hormone circulating and those
3 tissues becoming thicker and stretchier, it would be possible
4 for them to insert a tampon into their body without causing
5 pain or discomfort.

6 Q So as you are exposed to estrogen, the hymen becomes
7 more tolerant of -- I don't want to say trauma, but of things
8 touching it, I guess?

9 A It becomes more tolerant of things touching it and
10 of being penetrated.

11 Q Okay. Is it more likely pre-puberty to have the
12 hymen bleed if there's trauma to it?

13 A It is more likely, yes.

14 Q Okay. So after puberty there's a less of a
15 likelihood for blood, let's say upon sexual contact, whether
16 it's you classify it sexual assault or consensual, but just
17 sexual contact, period, if someone is having penile to vaginal
18 penetration there's less of a likelihood of bleeding, is that
19 correct?

20 A Yes.

21 Q Okay. The exam that Taharah and Taquanda went
22 through, is that sort of a standard female exam for people as
23 they -- women as they get older? Is it an exam that everybody
24 -- every woman should go through once a year?

25 A No. I generally -- if you have somebody who has not

1 been sexually -- with concerns of sexual abuse, most people
2 would not do a speculum examination in somebody who is of that
3 age.

4 Q Yeah. The question I'm asking you is the exam that
5 they went through, is that something that women who are, let's
6 say sexually active, that they would go through once a year?
7 It's a standard exam, it's not a special exam simply because
8 she's a child, is that correct?

9 A Well, we use colposcopy to do the examination, so
10 we use a special piece of equipment with a magnifying lens
11 and photographic capability to document her exam, and the
12 examination of the external portions of their genitalia is not
13 something that would routinely be done at a doctor's visit.

14 Q Let me clarify. The speculum, is that something
15 that's used on an annual Pap smear with women?

16 A Yes.

17 Q Okay. So it's nothing unusual for a woman, a
18 sexually active woman to go through a Pap smear, is that
19 correct?

20 A That's correct.

21 Q Or at least they should once a year, right?

22 A Sometimes the guidelines stretch it out longer than
23 that, but yes.

24 Q Okay. You indicated -- and I'm talking about
25 Taharah now, I'll get to Taquanda in a minute. The questions

1 I'm asking you, if I'm not specific they are related to
2 Taharah. You said that Taharah verbalized to you things that
3 had happened to her, is that right? She verbalized to you,
4 she actually spoke to you and said that certain things had
5 happened to her, is that correct?

6 A Yes.

7 Q And you hadn't sat through her forensic interview,
8 is that right?

9 A That is correct.

10 Q You said you may have talked to someone who
11 interviewed her, is that right?

12 A I would have been provided information regarding
13 what she said in the forensic interview.

14 Q Okay. And I believe that you testified that you
15 specifically asked her a question, you know, can you tell me
16 what Fred did to you. Do you recall testifying to that?

17 A I did not ask her can you tell me what Fred did to
18 you.

19 Q Okay. Do you remember what you asked her?

20 A No.

21 Q You don't have any specific recollection about what
22 you asked Taharah Duke, is that correct?

23 A I can tell you what I believe I asked her and then
24 verify it by looking at my notes.

25 Q Well, let me ask you this. There's no tape recording

1 of the interview, is that right?

2 A That's correct.

3 Q Okay. And your questions aren't meant to necessarily
4 be a forensic interview, is that correct?

5 A That's correct.

6 Q So you -- did you give her an open-ended question
7 like, can you tell me what happened to you?

8 A No.

9 Q Okay. You gave her what I guess we would term a
10 leading question, you suggested the answer to her and let her
11 repeat whatever she was going to repeat to you, is that
12 correct?

13 A No.

14 Q Okay. So you did not lead her and ask her, you
15 know, tell me something someone has done to you? You didn't
16 ask her anything like that?

17 A I indicated to her that I knew she had spoken to
18 someone earlier in the day about something that had happened
19 to her.

20 Q Okay. And you followed up with what?

21 A I asked her who that was in regard to.

22 Q Okay. And she verbalized to you that it was Fred?

23 A Correct.

24 Q Okay. And you said you remembered her to be slow;
25 for lack of a better term, she was slow?

1 A Yes.

2 Q Okay. You used another word, but easiest -- for the
3 purposes of the jury it's slow, right?

4 A Cognitively delayed. Correct.

5 Q Okay. You indicated that she told you she had been
6 raped and that was her word, is that correct?

7 A She used the word raped in explaining something to
8 me about what had happened to her.

9 Q Okay. Did she specifically say I was raped?

10 A She told me that she told someone else that she was
11 raped.

12 Q Okay. So she didn't specifically say to you I was
13 raped, she said I told someone else that, is that correct?

14 A Correct.

15 Q Okay. And then you said the interview that you do
16 you do it alone, is that right?

17 A That's correct.

18 Q And you did this interview alone?

19 A Yes.

20 Q Do you recall if her 11-year-old sister was present
21 during the interview?

22 A The 11-year-old sister was not present.

23 Q Do you recall in your report saying, "Aside from
24 the patient's 11-year-old sister, there are no family members
25 present?"

1 A That's during the medical examination portion. So
2 when I examined her, the body examination, her sister was
3 there in the room for the medical examination.

4 Q Okay. So you allowed her sister to come in, is that
5 correct?

6 A Correct. I do not have them see each other's exams,
7 but they can be present for emotional support if they wish to
8 be.

9 Q Okay. She indicated to you she had problems with
10 her period or that her stomach hurt during her period, is that
11 correct?

12 A That's correct.

13 Q Did she indicate she had abnormal heavy periods?

14 A I didn't specifically ask her about that.

15 Q Okay. You indicated there was a white discharge,
16 is that right?

17 A Correct.

18 Q And that can be due to hygiene issues, bathing, the
19 type of panties she wears, is that correct?

20 A That's a possibility, yes.

21 Q All of those things, is that correct?

22 A That's correct.

23 Q It's not specific or indicative of sexual abuse?

24 A That's correct.

25 Q And you indicated it was a totally normal exam?

1 A That's correct.

2 Q You also said that her -- or I actually don't think
3 that you said this in direct, but that her hymen I believe was
4 intact from three to nine o'clock, is that right?

5 A I would describe it as normal.

6 Q Your report says, "The tissue was present from three
7 to nine o'clock," is that correct?

8 A That's correct.

9 Q Okay. That's -- I can approach, but that's your
10 writing, is that right?

11 A Correct.

12 Q Okay. So she had -- if you're looking at a clock,
13 the hymen tissue was present from three to nine, is that
14 right?

15 A That's correct.

16 Q And when you say that, do you mean it was present --
17 was it above the three to nine o'clock or is it present below
18 the three to nine o'clock? If that makes sense.

19 A It doesn't make sense.

20 Q Okay. So what I'm going to do then, if I could,
21 is --

22 A If you want to show me the drawing, I'll explain it
23 to you on the drawing.

24 Q Actually, I was going to actually have you --

25 MS. ALLEN: Your Honor, if I can approach?

1 THE COURT: You may.

2 MS. ALLEN: Thank you.

3 BY MS. ALLEN:

4 Q Could you draw just a clock, three to nine o'clock
5 and where the hymen tissue was.

6 A If you give me the drawing it would be a lot easier
7 because I'm not a good artist. It's hard for me to draw it.

8 Q It's okay, we don't need anything perfect, I
9 promise. I would like it outside of the drawing. I'd like
10 your rendition of it. You don't have to draw the vagina and
11 the lips.

12 A Yeah, I'm trying to figure out -- there isn't really
13 a way to draw it without drawing the whole thing. That's why
14 I'm puzzling over how to draw it for you.

15 Q Okay. Well, then go ahead and do your best. I'm
16 not expecting Picasso, I promise.

17 A Okay.

18 Q Can you -- where's the hymen? Could you put an
19 arrow and indicate where the hymen is on that?

20 A I'm going to color it in.

21 MS. ALLEN: And do you want to come up here?

22 MS. LUZAICH: I have an objection. I'm just trying
23 to figure out what the objection is.

24 BY MS. ALLEN:

25 Q And is this the top of the -- this is the twelve

1 o'clock position?

2 A Yes.

3 Q Okay. And this would be the six o'clock position,
4 is that correct?

5 A Yes.

6 Q Okay. Three and nine?

7 A Yes.

8 Q Okay. So this would be where her stomach is, is
9 that right?

10 A This is the hole that she would pee out of.

11 Q The what?

12 A Where she would pee from.

13 Q Okay.

14 A Here's her anus.

15 Q Okay.

16 A This would be twelve, this would be three, this
17 would be six and this would be nine.

18 Q Okay. All right. And so this was your recollection
19 of the tissue that was present in Taharah, is that right?

20 A No. That's my drawing at your request of how I
21 would draw it.

22 Q Okay. Then can you draw a picture of what you
23 recall Taharah -- Taharah's to be?

24 A I don't have an independent recollection of her
25 examination. I only have my description of her examination.

1 Q Okay. So as you sit here today then, you have no
2 independent recollection of the three to nine o'clock that was
3 present on Taharah Duke, is that right?

4 A That is correct.

5 Q Okay. So your picture showed a very small sliver
6 of tissue, is that right, the picture you drew?

7 A It's me trying to draw what you asked me to draw.

8 Q I understand.

9 A So I'd be -- if we have the images, I'm happy to
10 look at the patient's images with you.

11 Q Images? The pictures?

12 A From the actual examination.

13 Q You took pictures during the examination?

14 A Correct.

15 Q And you're absolutely positive you took pictures
16 of those?

17 A Yes.

18 MS. ALLEN: Can we approach?

19 THE COURT: You may.

20 (Bench Conference)

21 MS. ALLEN: I don't have those.

22 MS. LUZAICH: I know. We never provide the pictures
23 unless they're specifically asked for and an order is entered
24 because it's child pornography. I wasn't asked for them. I
25 don't have them either.

1 THE COURT: There is a procedure in order to handle
2 those types of pictures.

3 MS. ALLEN: I've never encountered that issue.
4 They've always been ordered turned over, and so --(inaudible).

5 THE COURT: There's a case right on point --

6 MS. ALLEN: Okay.

7 THE COURT: -- that talks about the procedure.

8 MS. ALLEN: Is it yours?

9 MR. MACARTHUR: My case? I don't think so.

10 MS. LUZAICH: Epperson.

11 THE COURT: I don't think it's -- no. But there's
12 a procedure in place. Well, there's case law.

13 MS. LUZAICH: Epperson.

14 THE COURT: What's the case?

15 MS. LUZAICH: Epperson.

16 THE COURT: Epperson. Yeah. You don't just --
17 unfortunately, we just don't automatically get them.

18 MS. LUZAICH: You don't just get child pornography.

19 MS. ALLEN: Well, it's not child pornography, it's
20 medical pictures, but. I mean, there's a difference, but --

21 THE COURT: They're of a child's vagina.

22 MS. ALLEN: No, I understand, Your Honor. Okay.
23 Well, I didn't get them, and so --

24 THE COURT: I'm not saying you cannot --

25 MS. ALLEN: Yeah. Right.

1 THE COURT: -- get them. Are you making a request
2 for them?

3 MS. ALLEN: Yeah, at this point I'd have to make a
4 request to get them.

5 THE COURT: Okay.

6 MS. ALLEN: And resume my cross with her once I get
7 them because I need her to -- show her them.

8 MS. LUZAICH: Okay. I can't do it that fast and she
9 flies out at seven o'clock tonight. I mean, I can see what I
10 can do. I just --

11 THE COURT: Do you have them?

12 MS. LUZAICH: No.

13 THE COURT: Oh, okay.

14 MS. LUZAICH: They're at the CAC.

15 THE COURT: You didn't even request them?

16 MS. LUZAICH: No, I never do. It's a normal exam.
17 It's a normal exam. If there were findings, then we ask for
18 them. But in a normal exam, I mean, it's normal --

19 MS. ALLEN: I understand, but I'm asking her to --
20 I need an indication of how much tissue was present. That's
21 what I'm asking her and she has no independent recollection.

22 THE COURT: And you think the pictures, I mean --

23 MS. ALLEN: She said she (unintelligible) having the
24 pictures to see to be able to tell me about that.

25 THE COURT: Okay. I mean, I know she's told me

1 she has to leave. Do you know when she's going to be back?
2 Because I guess she's going to have to be recalled.

3 MS. LUZAICH: When she'll be back? In a couple
4 months. She was in New Orleans. I can make a phone call to
5 see how long it would take to get --

6 THE COURT: Okay. So she's leaving to go back to
7 New Orleans because that's where she lives?

8 MS. LUZAICH: Because that's where she lives.

9 THE COURT: Can she stay overnight?

10 MS. LUZAICH: You can ask her.

11 MS. ALLEN: I mean, I can keep crossing her and then
12 you can see if you can get the pictures. I'll keep crossing
13 her so we can move things along.

14 MR. MACARTHUR: Would she be able to work off her
15 notes and do it artistically? She said she has --

16 MS. LUZAICH: Ask her.

17 MR. MACARTHUR: -- no independent recollection, but
18 what if she has her notes?

19 MS. LUZAICH: Ask her.

20 MR. MACARTHUR: Could she do it --

21 MS. ALLEN: She has her notes. They're up there.
22 (Inaudible) three to nine o'clock.

23 THE COURT: Okay.

24 (End of Bench Conference)

25 THE COURT: Go ahead.

1 BY MS. ALLEN:

2 Q Okay. I apologize, Dr. Mehta. So I don't have
3 those pictures and you have no independent recollection, is
4 that correct?

5 A Of her exact examination from two years ago? No,
6 ma'am.

7 Q Okay. And the picture you drew then is just three
8 and nine o'clock, is that right?

9 A I just indicate that her hymen appears normal to me,
10 that it's a normal examination.

11 Q Normal examination. Okay. Moving on just quickly,
12 I apologize, you had checked on your report non-specific
13 findings, is that correct?

14 A That was because of the whitish discharge, yes.

15 Q Okay. And then you also checked the box probable
16 abuse, is that right?

17 A That is correct.

18 Q Okay. And you have essentially the patient reported
19 disclosure to CAC but also to you, is that correct?

20 A Essentially to the CAC, but made indication to me
21 as well.

22 Q Okay. And that was the cause for probable abuse?

23 A In addition to what else is marked there.

24 Q Okay. And in spite of the completely normal exam,
25 is that correct?

1 A Yes.

2 Q Okay. Let's talk about Taquanda's exam. Taquanda's
3 exam took place the same day, is that right?

4 A Yes.

5 Q You actually indicated that she was on her period,
6 during her menstrual cycle, is that right, when you examined
7 her?

8 A That is correct.

9 Q Do you recall the report actually stated that she
10 hadn't even started having her menstrual cycle?

11 A When she was asked the question she did not indicate
12 she had started her period. I do not know if she did or did
13 not understand the question.

14 Q Okay. So the information in your report that says
15 the patient hasn't started having her menstrual period, then
16 that was her answer to the question?

17 A So if you look on the handwritten forms in the
18 report, the nurse asks her when she comes in --

19 Q No, I'm just asking --

20 A -- if she has her period, and I'm indicating I
21 reviewed that and per the patient's own information she didn't
22 indicate she had started.

23 Q Okay. But she actually was on her period when she
24 came in?

25 A That's correct.

1 Q Okay. So is there a possibility she didn't know
2 that she was on her period?

3 A She may not have understood the question as to if
4 somebody says have you started having your periods yet. She
5 may have a different word for it than that.

6 Q Okay. There was a question about current genital
7 discharge and you have "sometimes whitish."

8 A That is what the patient told the nurse.

9 Q Okay. So she says -- indicates that she has a
10 whitish discharge, is that correct?

11 A Correct.

12 Q And that's the same as Taharah, is that right, she
13 had a whitish discharge?

14 A Correct.

15 Q Okay. Which you -- on Taharah's you indicated that
16 it was non-specific, is that right?

17 A Correct.

18 Q Okay. On Taquanda's, however, you indicated, I
19 think, that it was a normal exam, is that right?

20 A I did not visualize the discharge when I examined
21 her.

22 Q Okay. So you have to visualize it in order to get
23 non-specific findings?

24 A Non-specific is the same as normal. It means it
25 doesn't tell us anything forensically.

1 Q But there's two different boxes.

2 A So, for example, historically people would sometimes
3 think a discharge or redness meant something, and there is a
4 category of findings that don't really point one way or
5 another towards abuse or non-abuse. We call those non-specific
6 findings. They are things that you see like redness or
7 discharge that do not answer or tell you one way or another.

8 Q Okay. But then it's non-specific, it's not normal,
9 is that right? There's a reason there's two boxes, isn't
10 there?

11 A Yes.

12 Q Okay. And you specifically -- normal exam on
13 Taquanda and on Taharah's it was non-specific, is that right?

14 A Yes.

15 Q Do you recall what your assessment -- well, let me
16 ask you this. Was Taquanda also a Tanner four estrogenized
17 redundant hymen?

18 A I know she was a Tanner four. I'd have to read the
19 rest for the rest of the descriptors.

20 Q Go ahead.

21 A Yes.

22 Q Okay. So she was essentially in the same sort of
23 puberty-type area that her sister was in, is that correct?

24 A Yes.

25 Q Okay. Do you recall -- well, you indicate in the

1 report or someone indicated that she hadn't actually started
2 her menstrual cycle, so you don't know how long she had been
3 on it, is that correct?

4 A That's correct.

5 Q So there's no history as to how long she had been
6 on it?

7 A That's correct.

8 Q Your recollection of her hymen, was it the same --
9 essentially the same as her sister's, that same stretchy --
10 the same stretchy type of skin that you described for her
11 sister?

12 A I don't independently recall the appearance of her
13 hymen. I know that I was able to take swabs and touch her
14 hymen and it didn't cause her any tenderness or discomfort
15 for me to do that.

16 Q Okay. And did you perform like a Pap smear on her
17 as well?

18 A I did not perform a Pap smear on either girl, but
19 I did use this on a -- I did this type of examination of the
20 older sister.

21 Q Okay. So you didn't use a speculum on Taquanda,
22 is that right?

23 A Correct.

24 Q Okay. You didn't take any swabs, then, of her
25 cervix?

1 A I did not do any swabs of her cervix.

2 Q Okay. Did you do any testing for STDs or anything

3 such as that?

4 A I did.

5 Q Okay. Did those results come back right away?

6 A No.

7 Q When did they come back?

8 A They generally take a week to come back.

9 Q Okay. Did you have any independent recollection of

10 the results of those tests before coming in here today and

11 reviewing those lab reports?

12 A No.

13 Q Okay. Both girls came back with no -- of all the

14 tests you run, no STDs, is that correct?

15 A That's correct.

16 Q Okay. And on Taquanda's you marked possible abuse,

17 is that right?

18 A That's correct.

19 Q And that's for two reasons, in that she disclosed

20 potential physical abuse, is that right?

21 A No.

22 Q She didn't disclose physical abuse?

23 A She did disclose physical abuse, but that's not

24 the reason I marked that. I'm just also notating there.

25 Q I said one of the reasons. Was that one of the

1 reasons?

2 A Uh-huh.

3 Q Okay. So then the possible abuse would have been
4 the contact with the sister's guardian's adult boyfriend?

5 A Correct.

6 Q Okay. So the reason why you checked possible abuse
7 in this case is simply because she had contact with the person
8 who allegedly assaulted Taharah?

9 A Correct.

10 Q For no other reason?

11 A Correct.

12 Q What indications would cause you to check no medical
13 indications of abuse?

14 A If there is a finding on an examination that has a
15 medical explanation. If --

16 Q Can you explain what that is?

17 A So, for example, let's say a child has bruising to
18 their genital area but they fell and have a straddle injury
19 and somebody is concerned because there's bleeding coming from
20 their genital area, but the history that they provide matches
21 the type of injury that they have. Sometimes a parent comes
22 in and they're concerned because their child has a behavior,
23 like maybe their child is touching their privates a lot, and
24 we recognize that that might be a normal behavior based on
25 the age or stage of that child.

1 So if we don't have any indication of -- no one is
2 making an allegation about a specific person, if there's no
3 risk of contact with somebody who is alleged or known to have
4 molested another child, if the statement of a child is
5 initially concerning and then upon further clarification it
6 becomes clear they're describing something else. So, for
7 example, a child might say Uncle Bobby hurt my pee pee, and
8 people may be concerned about the possibility of abuse, but
9 then in the course of talking to the child they come to
10 understand that Uncle Bobby elbowed them in the groin when
11 they were wrestling, then we realize that that's not a concern
12 for abuse, that that's a genital complaint that's not related
13 to abuse. Those would be some examples.

14 Q Okay. So it sounds like verbalization is a very
15 important component of finding abuse, is that correct?

16 A That is correct.

17 Q Okay. So in instances where you have a non-verbal
18 child and let's say there's redness, just redness in the
19 genital area, a female child who's non-verbal, would you
20 generally check no abuse or would you check probable abuse?

21 A It would really depend on the rest of the context
22 of the concern.

23 Q Okay. It would come down to someone else maybe
24 reporting that they thought the child had been sexually
25 abused?

1 A Or if there was a witnessed event --
2 Q Witness to an event?
3 A -- or the child had tried to say something to
4 someone else, things like that.
5 Q Okay. So verbalization can mean the difference
6 between no abuse and probable abuse, is that correct?
7 A To the extent of my ability to evaluate, yes.
8 Q Because certainly in this case both girls had
9 totally normal exams, is that right?
10 A That's correct.
11 Q Okay. And so if they had totally normal exams and
12 they didn't verbalize, they said there was no abuse, would it
13 have been no abuse?
14 A I might not even have seen them in that situation,
15 but if I did see them and they indicated that there was no
16 history of abuse, again, without any other information. I
17 mean, are there cases where there's other reasons? Yes,
18 there are cases where there might be videotaped evidence or
19 photographic evidence, things of that nature, but essentially
20 yes.
21 Q Well, you weren't given photograph evidence in this
22 case, were you?
23 A No, ma'am.
24 Q Were you given videos?
25 A No, ma'am.

1 Q Okay. You weren't given anything other really than
2 what they were interviewed, their interview, and you didn't
3 sit in on their interview, is that correct?

4 A That's correct.

5 Q So you heard what they said second-hand from either
6 someone who interviewed them or someone sitting there, is that
7 correct?

8 A Correct.

9 Q And then whatever they may have told you during the
10 exam?

11 A Correct.

12 Q Okay. And so if those components of non-disclosure
13 had not been there in this particular case, then it would have
14 been no finding of abuse, is that right?

15 A Correct.

16 Q On Taharah, do you recall if there were -- the hymen
17 -- I can't say the word -- the edge of the hymen, do you
18 recall if it was smooth?

19 A When the hymen is estrogenized we often don't use
20 that terminology anymore because it's now kind of folding and
21 moving, and so I just take the Q-tip and make sure that it's
22 all present.

23 Q Okay. You didn't find any trauma or --

24 A No, ma'am.

25 Q -- old injuries, I guess? Is that --

1 A That is correct.

2 Q Would that be correct terminology? You didn't find
3 any old injuries?

4 A That is correct.

5 Q Any type of indications that she had healed from
6 some kind of trauma?

7 A I didn't see any type of scars or anything like
8 that.

9 Q Anything like that. Okay.

10 MS. ALLEN: Court's indulgence. May I have a
11 moment, Your Honor?

12 THE COURT: Uh-huh.

13 MS. ALLEN: Thank you. Your Honor, aside from the
14 conversation we had at the bench, I believe my cross-
15 examination is concluded at this point.

16 THE COURT: Any redirect?

17 MS. LUZAICH: Yes. Thank you.

18 REDIRECT EXAMINATION

19 BY MS. LUZAICH:

20 Q Okay. There was a lot of talk about the hymen and
21 whether it's estrogenized or what about it. You know, people
22 talk on a lay person basis about popping the cherry or, you
23 know, the hymen being torn or whatever. Is that an accurate
24 description of what occurs in a body?

25 A No.

1 Q Why?

2 A A lot of what I do day-to-day is explain this to
3 families in a clinical setting because their expectation is
4 is that there's going to be some type of evidence that a
5 doctor can look at and tell that there's been some kind of
6 puncture wound or some type of visual sign that something has
7 gone into that opening.

8 A way that I explain that to families is, you know,
9 if you're talking about an opening that's capable of stretch,
10 similar if you think about like the opening to your nose and
11 that you would look at the size of the opening and you would
12 think, well, you know, two fingers probably shouldn't fit in
13 there but it can be done, you can stretch the opening, and
14 then you can't look at somebody's nose opening and know if two
15 fingers have ever been in there or not. In cases I have where
16 there's been anal contact there will be a concern about, you
17 know, won't you be able to tell by looking at the child's
18 anus, but that muscle opens up to let things in or out and
19 then goes right back down, so a little kid can have a really
20 big poop, a really big bowel movement, and that anal muscle
21 goes back down.

22 Because there's already an opening into the vagina,
23 all girls have an opening and later on that's where the blood
24 is going to come out when they get their period and that's
25 how they're going to put a tampon in if they choose to use

1 a tampon, there's already an opening there. And so the
2 appearance of that opening can change some with time, but
3 it's always there. There's an opening and it has some
4 capacity for stretch, even in little girls who are only a
5 Tanner stage one. By the time you go through the stage of
6 puberty, that capacity for stretch is pretty significant
7 and the hymen generally doesn't show any signs or symptoms
8 related to penetration into the vagina. It just stretches
9 and allows for that to occur.

10 Q You just mentioned, you know, putting a finger or
11 two up your nose. Is there another part of your body that
12 you might liken the vagina to?

13 A The actual tissue of the vagina is very similar to
14 the inside of the mouth or the cheek, so it's very similar
15 kinds of skin. So if you think about -- so it's kind of that
16 wet, pink, smooth skin. If you think about any time you've
17 bit or burned inside of your mouth, it smooths right over
18 and heals. It's very hard for there to be any long-lasting
19 trauma. Those skin cells turn over very quickly. So if you
20 look on the inside of people's mouths, again, you don't know
21 how many times they've been burned or bitten themselves or
22 injured themselves because that skin smooths over and heals
23 really well very quickly.

24 Q So when you do an examination, an evaluation for
25 sexual abuse, do you take every child in every situation and

1 start just with a clean slate and independent, like you're not
2 comparing one child to another?

3 A Correct.

4 Q So you just -- you look at a child and you see what
5 you see or don't see and you hear what you hear or don't hear
6 and it doesn't matter what happened with another child, you
7 make your independent decision based on that child alone,
8 is that correct?

9 A That is correct.

10 Q And the fact that Taharah had three years of
11 menstruation before you saw her, during which time abuse
12 would have occurred, what did that do to her vagina tissues?

13 A So, three years of puberty allows her body to have
14 stretch and capacity for penetration, that sometimes you
15 might think, oh, if somebody is only 12, would their body,
16 you know, you would be able to tell. But she's been having
17 her period for three years. She's got a lot of that female
18 hormone, her tissues are thicker and stretchier than you
19 might otherwise realize a 12-year-old would have that
20 capacity for.

21 Q And when you were asked questions about the hymenal
22 tissue between three and nine o'clock and you talked about it
23 being present, Ms. Allen was trying to ask you, you know, how
24 much was present, you know, this much or this much, are all
25 -- well, are all women, children, whatever, different?

1 A So, the amount of tissue present there varies
2 enormously person to person, and without having seen someone
3 before it's not possible to look at someone and see if
4 there's more tissue or less tissue than there used to be.
5 So some children can have a very -- just on their own, non-
6 abused children can have a very narrow, small margin of
7 hymenal tissue and that's just what their body is. There
8 isn't a forensic significance to whether there is a lot of
9 hymenal tissue versus a thinner margin. It is possible to
10 penetrate through the opening whether there's a thicker
11 margin or a thinner margin. It doesn't weigh into deciding
12 whether or not somebody has been abused.

13 Q So you can't say because she's 12 there should be,
14 you know, two millimeters and since there aren't two
15 millimeters there's a problem?

16 A Correct.

17 Q You just can't say anything like that?

18 A Everybody has a different natural amount. And I'm
19 only looking to see if there's any evidence of injury.
20 Injury -- the ability to see injury on a child's exam occurs
21 in less than five percent of cases.

22 Q What is the significance of between three o'clock
23 and nine o'clock? Why is that in your report to begin with?

24 A It's in there because if you are looking at -- so
25 if I'm directly visualizing somebody's body it's the lower

1 part, the part closer to their buttocks that I'm looking at,
2 and that's the area where we're more typically going to see
3 injury if there is going to be injury. It's where in the
4 rare cases that we have like an exam where something just
5 happened to someone and they come in right away, that's the
6 area where I'm going to see injury if I see injury. And then
7 later when I follow that child up it's usually healed. But
8 in the rare cases that I get to see them right after an abuse
9 occurred, that's a focal point that I want to look at because
10 that's where injuries tend to be present if they're going to
11 be present.

12 Q And I'm sorry, I might not have heard Ms. Allen
13 correctly when she asked you about the exams that you did for
14 Taharah and Taquanda. You described when you did Taharah's
15 exam you used that speculum that you showed us. When you did
16 Taquanda's exam, did you use a speculum?

17 A I did not.

18 Q Why not?

19 A For a couple of reasons. One, I did not -- I
20 discovered she was on her menstrual cycle at the time of her
21 examination and her staging. I was under the impression from
22 just her history she might not even have started her periods
23 yet. In addition, she had not made a disclosure of abuse.
24 So in order to test her I just took Q-tip swabs and blindly,
25 without being able to visualize the cervix, just stuck the

1 swabs inside and swabbed inside of her body for the testing.

2 MS. LUZAICH: Thank you, Doctor, I don't have any
3 other questions.

4 THE COURT: Any recross?

5 RECROSS EXAMINATION

6 BY MS. ALLEN:

7 Q You stated that -- you indicated -- Ms. Luzaich
8 followed up with the idea that these exams, whether or normal
9 or not, I guess, aren't necessarily indicative of sexual
10 abuse, is that correct?

11 A I'm sorry?

12 Q The exam itself is not indicative of sexual abuse,
13 right, of Taharah and Taquanda. Just the exams is not
14 indicative of sexual abuse, is that correct?

15 A Correct.

16 Q Okay. What puts it into the -- or I should say
17 Taharah specifically, what puts it into the probable abuse
18 category is her verbalization, is that correct?

19 A That is correct.

20 Q Okay. You said you don't compare children. You
21 don't look at Taharah and Taquanda and compare them and then
22 you don't go on to the next kid and compare that to Taharah
23 and Taquanda, you take each child as they come in. Is that
24 right?

25 A Another way of saying that, and I'm not sure if I'm

1 understanding your question, would be I don't have in my mind
2 a standardized this is the way a particular child is going to
3 look. Each child can have different size vaginal opening,
4 different amount of hymenal tissue. There isn't some kind of
5 family tendency or something that I'd gauge one child by
6 another with.

7 Q Okay. You notated Taharah's as having the three
8 to nine o'clock tissue, is that correct?

9 A Yes.

10 Q Okay. Did you note anything with regard to
11 Taquanda's?

12 A I did not physically write it down.

13 Q Okay. And so as you sit here, do you recall what
14 the findings were with regards to the tissue of her hymen?

15 A I diagnosed her as having a normal genital
16 examination.

17 Q But you also diagnosed Taharah as having a normal
18 genital examination, is that correct?

19 A Correct.

20 Q Okay. So as you sit here today, what is your
21 recollection of Taquanda's hymen and the stage -- or what was
22 left of it or what -- was it three to nine o'clock, was it --
23 what was it?

24 A I don't independently recall. I felt that her
25 examination was normal.

1 Q Okay. Taquanda didn't disclose sexual abuse, is
2 that correct?

3 A That is correct.

4 Q Okay. So it wasn't as important to note the tissue
5 in her hymen?

6 A No. I indicate that she has an estrogenized
7 redundant hymen.

8 Q Correct.

9 A That I was able to swab it, and that I mark on the
10 following page that her examination is normal. And I have --
11 I obtained images during the examination just to show what it
12 looked like at that time.

13 Q Okay. And you said you took pictures of both
14 girls, is that right?

15 A That's correct.

16 Q Okay. You said something about that essentially
17 you wouldn't be here, I guess, if there was no allegation of
18 abuse, is that correct? Do you recall saying something,
19 testifying to something like that during redirect? I
20 apologize, you don't recall that?

21 A No.

22 Q Okay. Well, your entire job when you were here in
23 Las Vegas and likely down in New Orleans, I'm assuming, is
24 that you -- the examination of children who are alleged to be
25 abused, is that correct?

1 A Yes.

2 Q Okay. You don't see children who come in just for
3 an exam?

4 A I do end up seeing -- well, it depends on what your
5 question is. Can you clarify?

6 Q Well, I mean, a child, the parent -- I mean, my kid
7 needs a 12-month check up and they bring their child in to
8 see you?

9 A No, I do not do well child care.

10 Q Okay. All right. So generally your practice deals
11 with abused children, is that right?

12 A Or concerns of abuse. Yes.

13 Q Concerns of abuse or abused children. Is it mostly
14 sexual abuse?

15 A I see more sexual abuse than physical abuse, yes.

16 Q Okay. With regard to the children that you see,
17 you fill out these forms about probable and possible abuse
18 or no findings, is that correct?

19 A Correct.

20 Q Do you follow up with these children and what
21 happens later after they leave your clinic?

22 A Generally, no.

23 Q Okay. So you're not aware -- of the ones that you
24 find probable abuse, you're not aware of later on them saying
25 it didn't happen or recanting, is that correct?

1 A I've had some cases where that has occurred.

2 Q I'm saying do you follow up with that on the cases?

3 A Do I see the child again, is that your question?

4 Q On the cases that you check the box probable abuse

5 or possible abuse, do you follow up with those children to

6 find out what happened later?

7 A Not in all cases, no.

8 Q Okay. And so you don't know if later on they say,

9 oh, it didn't really happen?

10 A I would not necessarily know that. That's correct.

11 Q Okay. You wouldn't have any of that information?

12 A No.

13 Q Would you agree then -- I believe you stated that

14 the hymen doesn't necessarily weigh into your opinion about

15 whether a child was abused or not, is that right?

16 A No, that's not what I said.

17 Q Okay. Can you explain that then?

18 A Can you ask your question again so I understand it?

19 Q Well, does the hymen weigh into your opinion about

20 whether a child was abused?

21 A It can.

22 Q Okay. And when can it weigh into that?

23 A So, for example, I've had cases where a 2-year-old

24 has an injured hymen, cannot tell us what happened and I

25 still conclude that the child was abused because of the

1 injury.

2 Q Okay. So a 2-year-old child who is unable to
3 verbalize, correct?

4 A Correct.

5 Q And there's an injury to the hymen?

6 A Correct.

7 Q So at that point in time you would check possible
8 abuse?

9 A Correct.

10 Q Okay. And those would be the factors that would
11 weigh into your decision to check possible abuse?

12 A If there appeared to be a penetrating injury to the
13 hymen with no provided history of trauma to match it, then
14 yes.

15 MS. ALLEN: Thank you.

16 THE COURT: Before I excuse this witness, can I
17 have the parties approach?

18 (Bench Conference)

19 THE COURT: Have you been able to find the photos?
20 Okay. Then I guess I should ask her (unintelligible) if they
21 still have the photos.

22 MS. ALLEN: Please.

23 THE COURT: Okay.

24 (End of Bench Conference)

25 THE COURT: All right. At this time we're going to

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

10 We'll be in recess until the court marshal lets you
11 know. Thank you, you're excused.

12 (Jury is not present)

13 THE COURT: Let the record reflect that this
14 hearing is taking place outside the presence of the jury
15 panel.

16 Doctor, you indicated during -- you indicated
17 during your testimony that you did take photos of this
18 examination, is that correct?

19 THE WITNESS: That is correct.

20 THE COURT: Where are those photos right now?

21 THE WITNESS: Those photos would be in the
22 possession of the CAC.

23 THE COURT: The CAC?

24 THE WITNESS: They're not my personal photos. They
25 are owned by the -- they're managed by the CAC.

1 THE COURT: Okay. So you could not request them?
2 THE WITNESS: No.
3 THE COURT: All right. You have nothing to do with
4 them?
5 THE WITNESS: That's correct.
6 THE COURT: The CAC does?
7 THE WITNESS: That's correct.
8 THE COURT: Okay.
9 THE WITNESS: Well, I obtained the photos and when
10 I was here employed I had access to a system so I could
11 review them, but I didn't have any type of rights to copy or
12 print them or do anything like that.
13 THE COURT: Do you still have those rights?
14 THE WITNESS: To be able to view them?
15 THE COURT: Uh-huh.
16 THE WITNESS: I don't think so, no.
17 THE COURT: Okay. But you couldn't get them for us?
18 THE WITNESS: Uh-uh.
19 THE COURT: No possible way?
20 THE WITNESS: No, not that I could do.
21 THE COURT: Okay. With that, can I excuse this
22 witness?
23 MS. ALLEN: Yes.
24 THE COURT: Okay, you are excused from your
25 subpoena. Thank you very much for being here and the

1 testimony you provided, and I hope you make your plane.

2 THE WITNESS: Thank you.

3 THE COURT: Okay. With that, now what is your --

4 MS. ALLEN: Well, Your Honor --

5 THE COURT: -- 'cause she can't get them.

6 MS. ALLEN: I understand she can't get them. Again,
7 I think it was more of a question of them being provided from
8 the State, but it is what is. I mean, I can't -- obviously I
9 can't question her about it without having the pictures and we
10 don't have the pictures, and I have no idea how long it would
11 take to get them. My concern is that there was no testimony
12 -- I wanted a specific -- I guess a specific testimony from
13 her with regard to what she saw with regard to Taharah's --
14 the hymen, you know, the tissue in the hymen with regard to
15 her.

16 THE COURT: Okay. So is there a request pending
17 for the State to try to get them?

18 MS. ALLEN: I would request that they do, yes.

19 THE COURT: Okay. Ms. Luzaich, do you have that
20 power?

21 MS. LUZAICH: Well --

22 THE COURT: I mean, I don't know.

23 MS. LUZAICH: The Court needs to issue an order with
24 all of those findings under Epperson. I actually, as soon as
25 I sat down while she was cross-examining, I sent an email to

1 the actual coordinator of the CAC and the person at the front
2 desk who does the busy work to do that asking for it, but I
3 mean, they haven't responded. I sent my investigator an email.
4 He was out in the field. He's back at the office now. He
5 said -- I just got an email back, let me call the CAC. So
6 that's what I'm trying to do. But there needs to be -- they
7 won't release it without a written court order.

8 THE COURT: Okay. All right. Will you prepare the
9 court order or do you want my office to start preparing the
10 court order?

11 MS. LUZAICH: No, no, no, I'll have my secretary
12 do it.

13 THE COURT: Okay. We'll be in recess for about
14 ten more minutes.

15 MS. ALLEN: Thank you.

16 MS. LUZAICH: Wait, can we -- I'm sorry, one second.

17 THE COURT: You know, I also want to tell you --

18 MS. LUZAICH: Now, whose photos? Just Taharah's?

19 MS. ALLEN: Yeah, just Taharah.

20 MS. LUZAICH: Oh, okay. Thank you.

21 THE COURT: And I also want to tell you that we need
22 to stop at four o'clock today. Okay?

23 MS. LUZAICH: Can we talk about what time we're
24 going to start tomorrow? I'm sorry, Judge.

25 THE COURT: Uh-huh.

1 MS. LUZAICH: Just I figured while the jury is out.
2 I know Ms. Allen has an issue in the morning.
3 MS. ALLEN: I have one thing at 9:30 in lower level.
4 THE COURT: 10:30?
5 MS. ALLEN: Sure.
6 THE COURT: Okay.
7 MS. LUZAICH: Oh, okay.
8 THE COURT: Does that work for everybody?
9 MS. LUZAICH: Sure.
10 MS. ALLEN: I would normally pass it off to someone,
11 but my client spent like eight months in Lakes Crossing --
12 THE COURT: Oh, okay.
13 MS. ALLEN: -- so I need to make sure it goes well.
14 THE COURT: Okay.
15 MS. LUZAICH: Thank you.
16 (Court recessed at 2:36 p.m. until 2:46 p.m.)
17 (Jury is not present)
18 THE MARSHAL: So is that guy a witness or he's not
19 a witness?
20 MR. MACARTHUR: He is a witness.
21 MS. ALLEN: Oh, John?
22 THE COURT: No one invoked the exclusionary rule.
23 MR. MACARTHUR: Well, hold on, hold on.
24 THE COURT: Neither side.
25 MS. LUZAICH: Oh, we would be invoking. I thought

1 it was at the beginning.

2 THE COURT: Okay. I don't think that either side
3 has invoked the exclusionary rule, and the clerk --

4 MS. LUZAICH: Oh, we would be invoking the
5 exclusionary rule.

6 THE COURT: Okay. The exclusionary rule has now
7 been invoked, so no witnesses in the courtroom.

8 MS. ALLEN: Right. No, we told -- yeah.

9 THE COURT: I think everyone always assumes it has
10 been.

11 MS. LUZAICH: Yes, that's true.

12 MS. ALLEN: Yeah, I never -- I am always really
13 careful about that.

14 THE COURT: I guess I should ask before we start.

15 (Pause in the proceedings)

16 (Jury is present)

17 THE COURT: Do I have a stipulation from the State
18 of Nevada to the presence of the jury panel?

19 MS. LUZAICH: Yes, Judge.

20 THE COURT: Ms. Allen?

21 MS. ALLEN: Yes, Your Honor.

22 THE COURT: Okay. The State can call their next
23 witness.

24 MS. RHOADES: Yes, Your Honor. The State calls
25 Victoria Duke.

1 VICTORIA DUKE, STATE'S WITNESS, SWORN

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

5 THE WITNESS: Victoria Angelique Duke. Victoria,
6 V-I-C-T-O-R-I-A Duke, D-U-K-E.

7 THE CLERK: Thank you.

8 THE COURT: Okay, thank you, Ms. Duke.

9 There's just one thing I want to tell the ladies
10 and gentlemen of the jury before you get started. I know
11 there have been some questions about how you ask witnesses
12 questions. You're only permitted to ask witnesses questions
13 and if you look in your notebook the procedure for asking a
14 witness a question is in there. If after reading that
15 procedure any of you have any further questions, before the
16 end of the day if you'll just raise your hand and I will try
17 to answer the question. But the exact same thing that I read
18 to you at the start of the case is in your jury book. Is
19 everybody okay? Can we proceed?

20 Okay, everyone is shaking their head yes, so you can
21 proceed with this witness.

22 MS. RHOADES: Thank you, Your Honor. May I approach
23 the witness briefly just to put something underneath the
24 microphone?

25 THE COURT: Of course.

1 MS. RHOADES: Okay.

2 DIRECT EXAMINATION

3 BY MS. RHOADES:

4 Q Victoria, how are you doing today?

5 A I'm okay.

6 Q How old are you?

7 A Twenty-one.

8 Q And when is your birthday?

9 A July 31st, 1992.

10 Q What's your mom's name?

11 A Tina Duke.

12 Q Do you have brothers and sisters?

13 A Yes.

14 Q Can you tell me their names and how old they are

15 right now?

16 A I have a sister named Mahlica, she's 20. I have a

17 sister named Taharah, she's 14, and I have a sister named

18 Taquanda and she's 13. I have a brother named Shabazz and

19 he's 19.

20 Q What state do you live in right now?

21 A California.

22 Q When did you move to California?

23 A In August of 2012 -- or 2013.

24 Q And did you move from Las Vegas to California in

25 August 2013?

1 A Yes.

2 Q When was the last time that you saw your siblings?

3 A In May of 2013.

4 Q What are you doing out in California, Victoria?

5 A I am living with my god-mom and I'm going to school
6 for MCAA.

7 Q Can you tell us what that is?

8 A It's Medical Clinical Admissions Assistant.

9 Q And what kind of things are you going to do with
10 that degree?

11 A I can start -- I can go -- I can have a career at
12 a clinic, a hospital or any type of medical facility.

13 Q And you just started that, is that right?

14 A Yes.

15 Q Did you graduate high school?

16 A Yes.

17 Q What high school did you graduate from?

18 A Canyon Springs.

19 Q And that's here in Las Vegas?

20 A Yes.

21 Q Were you born in Las Vegas or were you born
22 somewhere else?

23 A I was born somewhere else.

24 Q Where were you born?

25 A Columbus, Ohio.

1 THE COURT: You know what, Ms. Duke, that might get
2 a little uncomfortable if you keep having to bend down.

3 THE WITNESS: Okay.

4 THE COURT: I think if you just get close enough
5 everyone will be able to hear you, and the jury will let me
6 know if they can't hear you. I just don't want you to have
7 to keep going like that, okay?

8 THE WITNESS: Okay.

9 THE COURT: All right.

10 BY MS. RHOADES:

11 Q Okay, Victoria, I'm going to take you back to early
12 2004. Where were you living at that time?

13 A In Louisiana.

14 Q And who were you living with in Louisiana?

15 A My mom and my siblings.

16 Q All four of your siblings?

17 A Yes.

18 Q So you're the oldest of everyone, right?

19 A Yes.

20 Q Is there a time when you were living in Louisiana
21 that you came to Las Vegas?

22 A Yes.

23 Q How did that come about?

24 A My mom went to Las Vegas and Fred's brother took us
25 -- came from Las Vegas to pick us up from Louisiana.

1 Q Do you recognize Fred in the courtroom today?
2 A Yes.
3 Q Can you point to him and identify something that
4 he's wearing?
5 A A white shirt, black tie, tan pants and black shoes.
6 Q Can you point him out?
7 A On the right side of the court over there.
8 MS. RHOADES: Your Honor, may the record reflect
9 identification of the defendant?
10 THE COURT: So reflected.
11 MS. RHOADES: Thank you.
12 BY MS. RHOADES:
13 Q Fred's brother came and picked you and your siblings
14 up from Louisiana?
15 A Yes.
16 Q Was your mom there at that time?
17 A No.
18 Q Had you ever met Fred's brother before this time?
19 A No.
20 Q Had you ever met Fred before this time?
21 A He came to the house, but I didn't go see him; my
22 other siblings did.
23 Q And when you say came to the house, you mean in
24 Louisiana?
25 A Yes.

1 Q So you and your siblings get in Fred's brother's
2 car --
3 A Yes.
4 Q -- and drive to Las Vegas, is that right?
5 A Yes.
6 Q What happens when you arrive in Las Vegas?
7 A We moved directly into Ms. Ann's house on Trish
8 Lane.
9 Q And who is Ms. Ann?
10 A Ms. Ann is Fred's girlfriend.
11 Q Were you aware of a relationship between your mother
12 and Fred as well?
13 A Yes.
14 Q What was the nature of that relationship?
15 A I'm not sure.
16 Q When did you meet Fred?
17 A At Trish Lane.
18 Q After you got here from Louisiana?
19 A Yes.
20 Q How old were you when you came to Vegas from
21 Louisiana?
22 A About 12 or 11.
23 Q Do you remember what month you came to Las Vegas?
24 A December.
25 Q Would that be in 2004?

1 A Yes.

2 Q Who lived at the Trish Lane house besides Ms. Ann?

3 A Her mother and her daughter.

4 Q Do you know Ms. Ann's daughter's name?

5 A Sha'karia.

6 Q Did Fred live at the house on Trish Lane?

7 A No.

8 Q Did you and your family, your brothers and your

9 sisters and your mom all stay at Trish Lane?

10 A Yes.

11 Q How long did you live there for?

12 A I lived there from 2014 -- from December 2014 to

13 May 2005.

14 Q Could it be December 2004, not December 2014?

15 A Oh, 2004. From 2004 to May 2005.

16 Q And did your siblings and you and your mom all live

17 at the Trish Lane for that entire period of time?

18 A Uh, no.

19 Q Is there somewhere else that you lived?

20 A We were shortly put out into the Shade Tree and then

21 we moved back into Trish Lane.

22 Q And when you were put out into Shade Tree, you guys

23 were all together, you and your siblings and your mom, is that

24 right?

25 A Yes.

1 Q And then you moved back in all together?
2 A Yes.
3 Q Do you remember ever going to where the defendant
4 lived?
5 A Uh, one day we went to the defendant's house and he
6 took my mom to work and he left us there and then came back.
7 Q Do you remember where Fred's house was?
8 A No.
9 Q Was it a house or was it an apartment?
10 A An apartment.
11 Q Did he live there alone or with somebody else?
12 A Uh, I can't remember.
13 Q Describe the time that you remember going over to
14 Fred's apartment.
15 A In the daytime, in the morning.
16 Q Did you go with all of your siblings and your mom?
17 A Yes, and then he dropped -- they dropped us off at
18 the house and he took my mom to work.
19 Q Where were you coming from?
20 A We was coming from Ms. Ann's house on Trish Lane.
21 Q So Fred picked you and your siblings and your mom
22 up at Trish Lane and took you and your siblings back to his
23 apartment?
24 A Yes.
25 Q Where did he take your mom, if you know?

1 A To work.

2 Q Did Fred come back to the apartment after he took
3 your mom to work?

4 A Yes.

5 Q What happened at Fred's apartment?

6 A We was all asleep looking at -- we was all asleep
7 and we was all sick, and when I woke up my siblings was gone.
8 And I asked where my siblings were and he said at the park.

9 Q Do you remember what month and what year this was
10 in?

11 A It was in 2005 and it was in January.

12 Q And when you said you were all sick, you mean you
13 and your brothers and your sisters were all sick?

14 A Yes.

15 Q Did you have a cold or something like that?

16 A I'm not sure what it was, but we all had fevers and
17 it was like a cold-flu symptoms, severe.

18 Q So you were all sleeping in Fred's apartment, is
19 that right?

20 A Yes.

21 Q Where at in Fred's apartment were you sleeping?

22 A In his room.

23 Q On his bed?

24 A Yes.

25 Q Were all five of you on the bed?

1 A Yes.

2 Q And you woke up from being asleep and you saw that

3 your brother and your sisters were gone?

4 A Yes.

5 Q Was the defendant in the room?

6 A Yes.

7 Q In his bedroom?

8 A He had just walked in by the time I woke up.

9 Q Did you ask him where your siblings went?

10 A Yes.

11 Q And what did Fred tell you?

12 A He said that they were at the park.

13 Q Could you hear any noise in the house?

14 A No.

15 Q Do you remember about how big the house was?

16 A No.

17 Q What happened when you were in Fred's room alone

18 with him?

19 A He -- I asked him where my siblings were and he said

20 at the park. And then he walked towards the bed and he picked

21 up my hand and he tried to get me to touch his penis.

22 Q Did he -- Fred, did Fred have clothes on?

23 A His penis was out of his pants.

24 Q But he had pants on. Did he have a shirt on?

25 A Yes.