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APP. 001

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SEP 27 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DEVELL MOORE,

Petitioner-Appellant,

v.

ATTORNEY GENERAL FOR THE STATE
OF NEVADA; ROBERT LeGRAND,
Warden,

Respondents-Appellees.

No. 19-15861

D.C. No. 3:13-cv-00390-LRH-WGC
District of Nevada,
Reno

ORDER

Before: LEAVY and W. FLETCHER, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

APP. 002

No. 19-15861

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEVELL MOORE,)	
)	
Petitioner-Applicant,)	
)	D.C. No. 3:13-cv-00390-LRH-WGC
vs.)	
)	District of Nevada (Reno)
ROBERT LEGRAND, et al.,)	
)	
Respondents - Appellees.)	
)	

**OPPOSITION TO APPLICATION FOR CERTIFICATE OF
APPEALABILITY**

Respondents, by and through counsel, AARON D. FORD, Attorney General of the State of Nevada, and MICHAEL J. BONGARD, Senior Deputy Attorney General, oppose the application of Petitioner-Applicant for a certificate of appealability. Respondents base their opposition on the attached points and authorities as well as all other pleadings, documents and exhibits on file in the above-entitled matter.

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APP. 003

I. HISTORY OF THE CASE

A. Trial and Direct Appeal Proceedings¹

A Clark County jury found Moore guilty of three counts of sexual assault of a minor under the age of 14 and one count of lewdness with a child under the age of 14. (ECF No. 21-3). The trial court imposed consecutive sentences for the sexual assault charges and a concurrent sentence for the lewdness charge. (ECF No. 21-5).

The Nevada Supreme Court affirmed Moore's convictions. (ECF No. ECF No. 21-11).

B. State and Federal Habeas Proceedings

On March 7, 2012, Moore filed his state habeas corpus petition. (ECF No. 21-13). The state district court denied the petition and the Nevada Supreme Court affirmed the denial of the petition on May 14, 2013. (ECF Nos. 21-14 and 21-17).

Moore initiated federal habeas proceedings in July 19, 2013. (ECF No. 7). Moore ultimately filed a counseled-third amended petition, raising three claims. (ECF No. 32). Respondents submitted an answer to the petition, and Moore filed a reply. (ECF No. 40).

On March 28, 2019, the federal district court denied Moore's petition and denied a certificate of appealability. (ECF No. 48).

¹ Items in the United States District Court's docket are referenced by their place and page number assigned by the ECF system. Items in this Court's docket are referenced by the document number and page number assigned by the docket.

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On May 29, 2019, Moore filed an application for certificate of appealability. (Dkt. 2).

Respondents now file their opposition.

II. ISSUANCE OF COA AND STANDARD OF REVIEW

In order to obtain a certificate of appealability, the petitioner bears the burden of making a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

Where the federal district court has rejected a constitutional claim on the merits, the Supreme Court held:

“Where the district court has rejected the constitutional claim on the merits, the showing required to satisfy §2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”

Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Addressing dismissals based on procedural grounds, the Supreme Court held:

“When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.”

Slack, 529 U.S. at 484.

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Contrary to Moore's assertion on page 8 of the application, the granting of a certificate of appealability is neither automatic, nor preferred in most cases. In *Miller-El*, the Court reinforced its prior holding that issuance of a certificate of appealability is not automatic. The Court in *Miller-El* stated:

Our holding should not be misconstrued as directing that a COA always must issue. Statutes such as AEDPA have placed more, rather than fewer, restrictions on the power of federal courts to grant writs of habeas corpus to state prisoners. *Duncan v. Walker*, 533 U.S. 167, 178, 150 L.Ed.2d 251, 121 S. Ct. 2120 (2001) ("AEDPA's purpose [is] to further the principles of comity, finality, and federalism") (quoting *Williams v. Taylor*, 529 U.S. 420, 436, 146 L.Ed.2d 435, 120 S. Ct. 1479 (2000)); *Williams v. Taylor*, 529 U.S. 362, 399, 146 L.Ed.2d 389, 120 S. Ct. 1495 (2000) (opinion of O'CONNOR, J.). The concept of a threshold, or gateway, test was not the innovation of AEDPA. Congress established a threshold prerequisite to appealability in 1908, in large part because it was "concerned with the increasing number of frivolous habeas corpus petitions challenging capital sentences which delay execution pending completion of the appellate process...." *Barefoot, supra*, at 892, n. 3. By enacting AEDPA, using the specific standards the Court had elaborated earlier for the threshold test, Congress confirmed the necessity and the requirement of differential treatment for those appeals deserving of attention from those that plainly do not. It follows that issuance of a COA must not be *pro forma* or a matter of course.

Miller-El v. Cockrell, 537 U.S. 332, 337 (2003).

This case is one of those instances where issuance of a certificate of appealability should not issue.

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APP. 006

III. MOORE IS NOT ENTITLED TO A CERTIFICATE OF APPEALABILITY

A. Moore's Question

Moore asks this Court to review the district court's decision finding Ground 2 meritless. (Dkt. 2). The claim alleged a constitutional violation because the prosecution used peremptory challenges to excuse two minorities from the jury panel. *Id.* at 9.

B. The Nevada Supreme Court Rejected the Claim

The Nevada Supreme Court rejected Moore's *Batson* claim, finding:

Moore claims that the district court erred in denying his motion for a mistrial pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986). In his motion, Moore alleged that the State used two of its four peremptory challenges in a discriminatory manner. The State offered the following explanations for striking the two minority panel members: (1) juror Barber because her brother was tried for pandering and drug trafficking and she believed he was treated unfairly by police and (2) juror Enriquez because she appeared gullible and easily persuaded by the defense's theory of the case. The district court ruled that these rationales were not pretextual, and we also conclude that, because "discriminatory intent is not inherent in the State's explanation[s]," and those explanations are not "implausible or fantastic," the district court did not clearly err in rejecting Moore's *Batson* challenge. *Ford v. State*, 122 Nev. 398, 403, 404, 132 P.3d 574, 578 (2006).

(ECF No. 21-11 at 2-3).

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The rejection of Moore's claim was not debatable among jurists of reason.

The state court record supports the Nevada Supreme Court's factual findings. 28 U.S.C.

C. The State Court Record

The state court record supports the Nevada Supreme Court's factual findings. 28 U.S.C. §2254(e).

The record reflects that the State challenged two jurors, minority jurors (one African-American and one Hispanic), two Caucasian jurors and waived two peremptory challenges. (ECF No. 20-3 at 3-4).

The prosecution stated they exercised a peremptory challenge against the African-American woman because of her young age, the fact that she had final exams, and a brother charged with drug and sex offenses where the proposed juror thought a witness lied. (ECF No. 20-3 at 3).

The state-court record supports the State's expressed reasons for exercising the peremptory challenge. Juror 166 stated she had finals at school. (ECF No. 20 at 37). The juror also discussed the fact her brother faced charges for crimes involving drugs, and prostitution or pandering. *Id.* at 58 and 63-64. The juror expressed her opinion that law enforcement treated the brother unfairly. *Id.* at 60.

The record reflects the prosecutor expressed an opinion that the second juror (Enriquez) may be gullible and that she might be subject to falling for an incredible

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argument. (ECF No. 20-3 at 3-4). During *voir dire*, the record reflects that the juror stated she was separated, and did not know her husband's employment. (ECF No. 20 at 29). She also stated that she previously served on a jury (three years prior) and did not remember whether the jury reached a verdict. *Id.* at 30.

The State noted that there were two African-American females on the jury. (ECF No. 20-3 at 3-4).

The defense noted during a break in *voir dire*, that "in the box" were "five African-Americans, 11 of some sort of Hispanic and three of Asian descent" and that represented the community. (ECF No 20-1 at 44).

The state trial court rejected the *Batson* challenge, finding the State sufficiently articulated race neutral reasons for the exercise of their peremptory challenges. (ECF No. 20-3 at 4).

D. The District Court's Rejection of Ground 2 is not Debatable or Wrong Among Jurists of Reason

The district court found the Nevada Supreme Court's rejection of Ground 2 was not an objectively unreasonable application of United States Supreme Court decisions. (ECF No. 48).

In the third amended petition Moore alleged, "The trial court's inquiry essentially ended at the second step of the *Batson* analysis with the court stating that the State articulated adequate bases for their peremptory challenges." (ECF No. 32 at 16).

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In the order denying the petition, the district court rejected Moore's claim, finding, "There is no support for Moore's claim that the trial court failed to engage in an analysis of the validity of the prosecutor's explanations." (ECF No. 48 at 8).

The Nevada Supreme Court noted that the trial court found the State's rationales were not pretextual. (ECF No. 21-11 at 3). Reviewing the trial record, the Nevada Supreme Court also found that the State's explanations were not "implausible or fantastic." *Id.*

When rejecting Moore's *Batson* claim, the Nevada Supreme Court cited *Ford v. State*, 132 P.3d 574, 578 (Nev. 2006). In *Ford*, the Nevada Supreme Court cited *Purkett v. Elem*, 514 U.S. 765 (1995), a case cited by both Moore and the federal district court when denying Ground 2 in Moore's petition.

In *Elem* (a non-AEDPA decision), the Court reversed a grant of habeas relief based upon a *Batson* challenge. In *Elem*, the Court clarified that the second step of *Batson* "does not demand an explanation that is persuasive, or even plausible." *Id.* at 768. "Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." *Id.*, citing *Hernandez v. New York*, 500 U.S. 352, 360 (1991) (plurality opinion). The Court in *Elem* warned against conflating "reasonableness" of the basis for the strike with "genuineness of the motive." 514 U.S. at 769.

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The third step then requires the state court to view the facts and determine whether a discriminatory intent motivated the prosecutor's peremptory strike. *Id.* at 769.

In Moore's case, the prosecutor's proffered explanation in both cases was non-discriminatory. Additionally, the record reflects that the trial court weighed that reason against the record. The State's peremptory strikes included one African-American, one Hispanic-American, two presumably Caucasian jurors, since Moore did not include them in the *Batson* challenge. The State also waived two challenges.

Given the record from trial, the Nevada Supreme Court's review and application of *Batson* was not objectively unreasonable. The federal district court's rejection of Ground 2 is not debatable among jurists of reason. Moore's application for certificate of appealability fails to satisfy the *Miller-El* standard.

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IV. CONCLUSION

The Supreme Court stated that a certificate of appealability will not always issue. *Miller-El*, 537 U.S. at 337.

Jurists of reason would not find the district court's rejection of the claims in Moore's federal petition debatable or wrong. Respondents request the Court deny the request for COA.

RESPECTFULLY SUBMITTED this 1st day of July 2019.

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CERTIFICATE OF SERVICE
When All Case Participants are Registered for the
Appellate CM/ECF System

U.S. Court of Appeal Docket Number: 19-15861

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 1, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system to the following:

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No. 19-15861

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Devell Moore,

Petitioner-Appellant,

v.

Robert LeGrand, et al.

Respondents-Appellees.

On Appeal from the United States District Court
for the District of Nevada (Reno)
District Court Case No. 3:13-cv-00390-LRH-WGC
Honorable Larry R. Hicks, United States District Judge

Petitioner-Appellant's Application for Certificate of Appealability

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Certification: This Application is timely filed. *See* Circuit Rule 22-1(d).

Petitioner, Devell Moore, by and through his attorney, C.B. Kirschner, Assistant Federal Public Defender, and pursuant to 28 U.S.C. § 2253(c)(2) and Circuit Rule 22-1(d), hereby seeks an order from this Court granting a Certificate of Appealability from the district court's order denying Moore's 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus on the merits, which was entered on March 28, 2019. *See* Electronic Case File ("ECF") Nos. 48 & 49. The district court denied Moore a Certificate of Appealability. *See* ECF No. 48 at 13.

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POINTS AND AUTHORITIES

I. Statement of the Case

On October 17, 2008, Devell Moore, Petitioner, was charged with multiple counts of sexually assaulting a minor and related offenses.¹ He was convicted following a jury trial of three counts of sexual assault with a minor and one count of lewdness.² The trial court sentenced Moore to three, consecutive terms of imprisonment of thirty-five (35) years to life.³ Moore is therefore serving an effective life sentence, as he will not be eligible for parole until completing 105 years in prison. Moore remains incarcerated at Lovelock Correctional Center in Lovelock, Nevada.

Moore appealed his conviction, raising several claims of error including that the trial court erroneously allowed the prosecution to strike two minority individuals from the jury pool in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). The Nevada Supreme Court affirmed his conviction. Following an unsuccessful post-conviction petition in

¹ ECF No. 19-4 (criminal complaint).

² ECF No. 21-3 (verdict).

³ ECF No. 21-5 (judgment of conviction).

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state court, Moore sought federal habeas relief.

Moore mailed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on July 19, 2013.⁴ The district court appointed the Federal Public Defender as counsel for Mr. Moore. Counsel filed a Third Amended Petition on March 11, 2016 and raised the following claims for relief:⁵

- 1) Moore's continued confinement is in violation of the Fifth and Fourteenth Amendments to the Untied States Constitution as the trial court failed to grant Moore's request to exclude Moore's taped confessional statement where Moore failed to explicitly waive his *Miranda* rights and where the circumstances of the in-custody interview rendered Moore's statement involuntary.
- 2) The trial court denied Moore equal protection of the law and a fair trial when the prosecution used its peremptory challenges to exclude two members of a protected minority class from serving on Moore's jury.
- 3) Moore's trial counsel provided ineffective assistance of counsel prior to and during trial in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

On March 28, 2019, the district court denied all of Moore's claims

⁴ ECF No. 7.

⁵ ECF No. 32. Moore filed a pro se First Amended Petition on June 3, 2014 (ECF No. 9) and counsel filed a Second Amended Petition April 30, 2015 (ECF No. 18).

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on their merits and declined to issue a Certificate of Appealability (“COA”).⁶ Moore filed a timely Notice of Appeal.⁷ This Application for a Certificate of Appealability follows.

Moore respectfully requests this Court issue a COA on the following issue: Whether the trial court denied Moore equal protection of the law and a fair trial when the prosecution used its peremptory challenges to exclude two members of a protected minority class from serving on Moore’s jury, in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986).

II. Applicable Legal Standards

Habeas petitioners must seek a COA before appealing an adverse judgment. 28 U.S.C. § 2253(c). Section 2253(c)(2) further provides that a COA may issue “if the applicant has made a substantial showing of the denial of the constitutional right.” This Court has interpreted this statute as requiring a petitioner to first make application to the district court. Ninth Circuit Rule 22-1(a) provides, in part, “A certificate of

⁶ ECF No. 48.

⁷ ECF No. 50.

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appealability must first be considered by the district court.”⁸

When seeking a COA on a substantive ruling, “a habeas petitioner must make a substantial showing of the denial of a constitutional right, a demonstration that...includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel* 529 U.S. 473, 483-84 (2000) (quoting *Barefoot v. Estelle*, 463

⁸ Also pertinent to the inquiry is Federal Rule of Appellate Procedure 22(b)(1), which provides:

(b) Certificate of Appealability.

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court...the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue.... If the district judge has denied the certificate, the applicant may request the circuit judge to issue the certificate.

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U.S. 880, 893 and n.4 (1983)).

The United States Supreme Court has expressed a preference for ensuring that a prisoner's case is reviewed by an appellate court even if the merits of his claim are weak. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003) ("Accordingly, a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief"). *See also Wilson v. Belleque*, 554 F.3d 816, 826 (9th Cir. 2009).

A COA should issue when there is a demonstration of good faith and a claim is not frivolous. *See Miller-El*, 537 U.S. at 337-38; cf. *Slack*, 529 U.S. at 484 ("a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right"). The United States Supreme Court recently affirmed this standard, holding:

The COA inquiry, we have emphasized, is not coextensive with a merits analysis. At the COA stage, the only question is whether the applicant has shown that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." This threshold question should be decided without

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“full consideration of the factual or legal bases adduced in support of the claims.”

Buck v. Davis, 137 S.Ct. 759, 773 (2017) (quoting *Miller-El*, 537 U.S. at 327, 336).

Moore’s issue for review meets the low standard for granting a COA. Jurists of reason could debate the district court’s decision on the merits of his constitutional claim.

III. Argument

A. The trial court denied Moore equal protection of the law and a fair trial when the prosecution used its peremptory challenges to exclude two members of a protected minority class from serving on Moore’s jury, in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986).

The Equal Protection Clause, as articulated in *Batson v. Kentucky*, 476 U.S. 79 (1986), guarantees defendants that prosecuting authorities will not exclude members of a protected minority class from the jury venire pool on account of race.

Before the start of Moore’s trial, defense counsel made a timely objection during voir dire to the prosecutor’s striking of two minority jurors. Defense counsel made the following record:⁹

⁹ ECF No. 20-3 at 3.

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If I may address the *Batson* issues from yesterday.

At the time that the jurors – the State excused Juror Number 161 with the last name of Enriques I approached the bench, and for the purposes of preserving the timing of the objection, informed the Court I would be making a *Batson* challenge.

They at the time were striking a Hispanic juror.

The State then excused Juror 166, who was an African American juror, and at that point they had developed a pattern determining discrimination against minority jurors.

Se we are making a challenge under *Batson* and moving for a mistrial on that basis.

In *Purkett v. Elem*, the United States Supreme Court pronounced a three-part test for determining whether a prospective juror has been impermissibly excluded under the principles enunciated in *Batson v. Kentucky*:

Under our *Batson* jurisprudence, once the opponent of a peremptory strike has made out a prima facie case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful discrimination.

Purkett, 514 U.S. 765, 767 (1995); *see also Doyle v. State*, 921 P.2d

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901, 907-08 (Nev. 1996) (adopting the three-part *Purkett* test).

The third step of the analysis, determining whether the State has engaged in purposeful discrimination, “lies at the heart of *Batson*.” *See Lewis v. Lewis*, 321 F.3d 824, 834 (9th Cir. 2003). *Batson*’s third step places an affirmative duty on the trial court judge to determine whether the defendant has shown purposeful discrimination. *See Batson*, 476 U.S. at 97-98; *accord Lewis*, 321 F.3d at 832 (“During *Batson*’s third step, the court has an affirmative duty to determine if purposeful discrimination occurred.”); *cf. McClain v. Prunty*, 217 F.3d 1209, 1220 (9th Cir. 2000) (“The trial court has a duty to determine the credibility of the prosecutor’s proffered statements.”). The “critical question in determining whether a prisoner has proved purposeful discrimination at step three is the persuasiveness of the prosecutor’s justification for his peremptory strike.” *Miller-El v. Cockrell*, 537 U.S. 322, 338-39 (2003); *accord McClain*, 217 F.3d at 1221 (“the persuasiveness of the prosecutor’s justifications for exercising peremptory challenges is relevant”) (citing *Purkett v. Elem*, 514 U.S. 765, 768 (1995)). “Implausible or fantastic justification may (and probably will) be found to be pretexts for purposeful discrimination.” *McClain*, 217 F.3d at 1220

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(quoting *Elem*, 514 U.S. at 768).

Here, the prosecutor explained that Juror Barber (African American) was excused because her brother had been in trouble with the law and she believed he had been wrongfully imprisoned.¹⁰ The prosecutor claimed Juror Enriquez (Hispanic) was excused because she was “lead-around-able, gullible, might fall for” the defense’s arguments.¹¹ Notably, Enriquez had testified she was employed by Flamingo Hilton for 20 years before retiring, had three grown children, had previously served on a criminal jury, and stated she would not have a problem being fair and impartial.¹² After hearing from the respective parties, the court found, “I think the State sufficiently articulated the reasons for their challenges under *Batson*.¹³ “I think we got a good jury that looks [to] me like certainly they have the ability to be fair and impartial.”¹⁴ The defense’s motion was denied.

¹⁰ ECF No. 20-3 at 3.

¹¹ *Id.* at 4.

¹² ECF No. 20 at 28-32.

¹³ ECF No. 20-3 at 4.

¹⁴ *Id.*

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The trial court's inquiry essentially ended at the second step of the *Batson* analysis with the court stating that the prosecution articulated adequate bases for their peremptory challenges. In *Batson*'s second step, the prosecutor must offer a race-neutral explanation for the peremptory challenge, and the judge must determine at that point whether the proffered reason is race neutral. *Batson*, 476 U.S. at 97-98. The trial court's duty under *Batson*, however, does not end here. The court is then required to proceed to step three where the court must undertake a searching inquiry to determine whether the proffered reasons are pretexts for racial discrimination. *Id.* at 98.

In the current case, the State offered facially race-neutral reasons for its challenges. The trial judge found the purported reasons to be race neutral and ended its inquiry there. The trial court failed to engage in its affirmative duty to conduct a meaningful third step analysis, an analysis of the validity of the prosecutor's rationale. This final step is mandated by *Batson* and its progeny. Indeed, the State's claim that Ms. Enriquez was excused for being "gullible" and easily misled reeks of racial bias, as similar arguments were historically used to justify preventing minorities from voting. The trial court, however, merely

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concluded the prosecution articulated neutral reasons and stated the jury looked good, without conducting any analysis into whether the proffered reasons were mere pretexts.

The Nevada Supreme Court denied this claim on direct appeal, holding:¹⁵

In his motion, Moore alleged that the State used two of its four peremptory challenges in a discriminatory manner. The State offered the following explanations for striking the two minority panel members: (1) juror Barber because her brother was tried for pandering and drug trafficking and she believed he was treated unfairly by police and (2) juror Enriquez because she appeared gullible and easily persuaded by the defense's theory of the case. The district court ruled that these rationales were not pretextual, and we also conclude that, because "discriminatory intent is not inherent in the State's explanation[s]," and those explanations are not "implausible or fantastic," the district court did not clearly err in rejecting Moore's *Batson* challenge. *Ford v. State*, 122 Nev. 398, 403, 132 P.32d 574, 578 (2006).

The Nevada Supreme Court's failure to examine the record regarding voir dire with a more critical eye likely lead to its failure to correct this violation of Moore's right to equal protection under the law.

¹⁵ ECF No. 21-11 at 2-3.

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The analysis and decision constitutes an unreasonable application of federal constitutional law as articulated by the United States Supreme Court. Indeed, the trial court did not rule that the State's reasons "were not pretextual" since the trial court neglected to perform *Batson*'s third step analysis at all. Moreover, the Nevada Supreme Court also failed to engage in a purposeful analysis of *Batson*'s third step. Under this step, it is not sufficient that the state court considered the government's race-neutral explanations "plausible;" rather the court must "make a deliberate decision whether purposeful discrimination occurred." *United States v. Alanis*, 335 F.3d 965, 969 (9th Cir. 2003). This requires the court to "conduct a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Id.* at 969 n.3. No such inquiry was conducted by the trial court, or the Nevada Supreme Court, in this case.

Had the Nevada Supreme Court correctly applied the law pursuant to *Batson*, it would have come to a different conclusion regarding the use of peremptory challenges against Ms. Barber and Ms. Enriquez. Particularly with regards to Juror Enriquez, the prosecution argued that this minority woman appeared to be "gullible" and easily

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misled, based solely on her “body language,” without pointing to any of her specific answers during voir dire.¹⁶ This rationale is strongly indicative of a discriminatory intent. Allegations that minorities were gullible and easily influenced were historically used to deny them voting rights. Such allegations ring hollow in this case as Ms. Enriquez had been gainfully employed at the same business for 20 years before retiring and had previously served on a criminal jury. Notably, Respondents’ Answer to this claim made a strong defense of Juror Barber being excused, but tread noticeably lighter with regards to offering any defense for the excusal of Juror Enriquez.¹⁷

However, there was evidence of discriminatory intent regarding Ms. Barber as well. The defense pointed out that there were other jurors who had family members in prison who were not excused from the jury, to which the prosecutor replied, “I don’t know there are any jurors left on the stand with anybody that is in prison. My belief is they

¹⁶ Instead the prosecution generally referred to “some of her answers” without identifying any of them. ECF No. 20-3 at 4.

¹⁷ See ECF No. 40 at 6-8.

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are all gone.”¹⁸ Systematically excluding people from juries because they have a relative in prison is inherently discriminatory. African Americans are incarcerated at nearly five times the rate of white Americans.¹⁹ Excluding veniremen based on their having relatives in prison will always result in a jury that is disproportionately white. Moreover, Ms. Barber clearly stated she bore no ill-will towards the State and could be fair and impartial.²⁰

Moore is entitled to relief because the Nevada Supreme Court failed to correctly apply *Batson*’s three-step test. Because it is too late to order Jurors Barber or Enriquez seated on the jury, the appropriate remedy is for Moore to be granted a new trial. *See Riley v. Taylor*, 277 F.3d 261, 294 (3rd Cir. 2001); *United States v. Alcantar*, 897 F.2d 436, 440 (9th Cir. 1990).

¹⁸ ECF No. 20-3 at 4.

¹⁹ See <https://www.prisonpolicy.org/reports/rates.html> (Based on the 2010 census, Whites were incarcerated at a rate of 450 per 100,000 while Blacks were incarcerated at a rate of 2,306 per 100,000). *See also* <https://www.naacp.org/criminal-justice-fact-sheet/> (“African Americans are incarcerated at more than 5 times the rate of whites.”).

²⁰ ECF No. 20 at 59-61.

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As to this claim for relief, the district court held:²¹

There is no support for Moore's claim that the trial court failed to engage in an analysis of the validity of the prosecutor's explanations. The Nevada Supreme Court's adjudication of this claim did not result in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; nor was its decision based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Jurists of reason could disagree with the district court's ruling on this constitutional claim. There is support for "Moore's claim that the trial court failed to engage in an analysis of the validity of the prosecutor's explanations." One only need look to the record.

The Nevada Supreme Court erroneously concluded the trial court "ruled that these rationales [offered by the prosecutor] were not pretextual."²² This is clearly belied by the record as the trial court made no such finding. Rather, the trial court merely stated, "I think the State

²¹ ECF No. 48 at 8.

²² ECF No. 21-11 at 3.

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sufficiently articulated the reasons for their challenges per *Batson*.²³ This satisfied the second prong of *Purkett*. However, the court conducted no analysis, and made no ruling, as to whether the reasons were pretextual, as required by the third prong of *Purkett*. Notably, this last prong is the most critical question and “lies at the heart of *Batson*.” *Lewis*, 321 F.3d at 834. The trial court, and the Nevada Supreme Court, were required to consider whether Juror Enriquez being excused because her body language suggested she was “gullible” and Juror Barber being excused because she had a relative in prison, were pretexts for racial discrimination.

Moore was denied equal protection and a fair trial because the trial court failed to apply all three prongs of *Purkett*, and because there was evidence that the peremptory challenges were used in a racially discriminatory manner. This claim is not frivolous and a Certificate of Appealability is warranted.

²³ ECF No. 20-3 at 4.

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IV. Conclusion

Reasonable jurists could debate whether the district court erred in denying Moore's Third Amended Petition for Writ of Habeas Corpus because the prosecution's use of peremptory challenges violated *Batson*. Therefore, Devell Moore respectfully requests this Court issue a Certificate of Appealability.

Dated May 29, 2019.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ CB Kirschner
C.B. Kirschner
Assistant Federal Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following non-CM/ECF participants:

Devell Moore
1046850
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

/s/ Adam Dunn

An Employee of the
Federal Public Defender

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEVELL MOORE,

JUDGMENT IN A CIVIL CASE

Petitioner,

v.

Case Number: 3:13-cv-00390-LRH-WGC

LEGRAND, et al.,

Respondents.

— **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

— **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

✗ Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the third-amended petition (ECF No. 32) is DENIED in its entirety

IT IS FURTHER ORDERED AND ADJUDGED that a certificate of appealability is DENIED.

IT IS FURTHER ORDERED AND ADJUDGED that judgment is hereby entered and this case is closed.

March 28, 2019

Date

DEBRA K. KEMPI

Clerk



/s/ L. Haywood

Deputy Clerk

APP. 035

1
2
3
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5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 DEVELL MOORE,

9 Petitioner,

10 v.

11 LEGRAND, *et al.*,

12 Respondents.

Case No.: 3:13-cv-00390-LRH-WGC

13
14 **ORDER**

15 This habeas petition is before the court for a decision on the merits (ECF No. 32).

16 Respondents filed an answer (ECF No. 40), and petitioner Devell Moore filed a reply
(ECF No. 45).

17 **I. Procedural History and Background**

18 In 2009, a jury found Moore guilty of 3 counts of sexual assault of a minor under
19 age 14 and 1 count of lewdness with a child under age 14 (exhibit 13).¹ The state
20 district court sentenced him to 3 consecutive terms of life with the possibility of parole
21 after 35 years with a concurrent term of life with the possibility of parole after 10 years.

22 Exh. 14. Judgment of conviction was entered on February 3, 2010. Exh. 15.

23
1 Exhibits referenced in this order are found at ECF Nos. 19-21, 36.

APP. 036

1 The Nevada Supreme Court affirmed Moore's convictions, affirmed the denial of
2 Moore's state postconviction petition, and denied a motion for rehearing of the petition.
3 Exhs. 21, 27, 29.

4 On July 19, 2013, Moore dispatched his federal habeas petition for filing (ECF
5 No. 6). Ultimately, this court appointed the Federal Public Defender as counsel for
6 Moore. Respondents have now answered the petition (ECF No. 40).

7 II. **LEGAL STANDARD -Antiterrorism and Effective Death Penalty Act (AEDPA)**

9 28 U.S.C. § 2254(d), a provision of the Antiterrorism and Effective Death Penalty
10 Act (AEDPA), provides the legal standards for this court's consideration of the petition in
11 this case:

12 An application for a writ of habeas corpus on behalf of a person in
13 custody pursuant to the judgment of a State court shall not be granted with
14 respect to any claim that was adjudicated on the merits in State court
proceedings unless the adjudication of the claim —

15 (1) resulted in a decision that was contrary to, or involved an
16 unreasonable application of, clearly established Federal law, as
determined by the Supreme Court of the United States; or

17 (2) resulted in a decision that was based on an unreasonable
18 determination of the facts in light of the evidence presented in the State
court proceeding.

19 The AEDPA "modified a federal habeas court's role in reviewing state prisoner
20 applications in order to prevent federal habeas 'retrials' and to ensure that state-court
21 convictions are given effect to the extent possible under law." *Bell v. Cone*, 535 U.S.
22 685, 693-694 (2002). This Court's ability to grant a writ is limited to cases where "there
23 is no possibility fair-minded jurists could disagree that the state court's decision conflicts

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1 with [Supreme Court] precedents.” *Harrington v. Richter*, 562 U.S. 86, 102 (2011). The
2 Supreme Court has emphasized “that even a strong case for relief does not mean the
3 state court’s contrary conclusion was unreasonable.” *Id.* (citing *Lockyer v. Andrade*, 538
4 U.S. 63, 75 (2003)); *see also Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (describing
5 the AEDPA standard as “a difficult to meet and highly deferential standard for evaluating
6 state-court rulings, which demands that state-court decisions be given the benefit of the
7 doubt”) (internal quotation marks and citations omitted).

8 A state court decision is contrary to clearly established Supreme Court
9 precedent, within the meaning of 28 U.S.C. § 2254, “if the state court applies a rule that
10 contradicts the governing law set forth in [the Supreme Court’s] cases” or “if the state
11 court confronts a set of facts that are materially indistinguishable from a decision of [the
12 Supreme Court] and nevertheless arrives at a result different from [the Supreme
13 Court’s] precedent.” *Lockyer*, 538 U.S. at 73 (quoting *Williams v. Taylor*, 529 U.S. 362,
14 405-06 (2000), and citing *Bell*, 535 U.S. at 694.

15 A state court decision is an unreasonable application of clearly established
16 Supreme Court precedent, within the meaning of 28 U.S.C. § 2254(d), “if the state court
17 identifies the correct governing legal principle from [the Supreme Court’s] decisions but
18 unreasonably applies that principle to the facts of the prisoner’s case.” *Lockyer*, 538
19 U.S. at 74 (quoting *Williams*, 529 U.S. at 413). The “unreasonable application” clause
20 requires the state court decision to be more than incorrect or erroneous; the state
21 court’s application of clearly established law must be objectively unreasonable. *Id.*
22 (quoting *Williams*, 529 U.S. at 409).

23 ///

APP. 038

1 To the extent that the state court's factual findings are challenged, the
2 "unreasonable determination of fact" clause of § 2254(d)(2) controls on federal habeas
3 review. *E.g., Lambert v. Blodgett*, 393 F.3d 943, 972 (9th Cir.2004). This clause
4 requires that the federal courts "must be particularly deferential" to state court factual
5 determinations. *Id.* The governing standard is not satisfied by a showing merely that the
6 state court finding was "clearly erroneous." 393 F.3d at 973. Rather, AEDPA requires
7 substantially more deference:

8 [I]n concluding that a state-court finding is unsupported by
9 substantial evidence in the state-court record, it is not enough that we
10 would reverse in similar circumstances if this were an appeal from a
district court decision. Rather, we must be convinced that an appellate
panel, applying the normal standards of appellate review, could not
reasonably conclude that the finding is supported by the record.

12 *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir.2004); see also *Lambert*, 393
13 F.3d at 972.

14 Under 28 U.S.C. § 2254(e)(1), state court factual findings are presumed to be
15 correct unless rebutted by clear and convincing evidence. The petitioner bears the
16 burden of proving by a preponderance of the evidence that he is entitled to habeas
17 relief. *Cullen*, 563 U.S. at 181.

18 III. Instant Petition

19 Ground 1

20 Moore asserts that his Fifth and Fourteenth Amendment rights were violated by
21 the trial court's failure to grant his request to exclude his taped confessional statement
22 where he failed to explicitly waive his Miranda rights and where the circumstances of
23 the in-custody interview rendered his statement involuntary (ECF No. 32, pp. 12-14).

APP. 039

1 The Fifth Amendment to the United States Constitution guarantees the privilege
2 against self-incrimination. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme
3 Court established procedural safeguards to protect the exercise of the privilege against
4 self-incrimination. Prior to questioning, law enforcement must inform the suspect of his
5 or her right to remain silent and the right to have counsel present during interrogation.
6 A suspect has the right to cut off questioning at any time. *Id.*

7 After Moore was arrested, he was taken to an interview room at the police
8 station. The detective who questioned Moore first read Moore his Miranda rights, and
9 Moore stated that he understood his rights. Exh. 3. Moore then confessed to the
10 crimes charged. The transcript reflects that Moore answered the detective's questions
11 and never invoked his right to remain silent or to have counsel present. Moore did
12 indicate that he needs "mental help" because he makes bad judgments, but his
13 statements are coherent, often detailed, and responsive to the questions. The detective
14 relayed the accusations and Moore responded: "I foolishly have made the wrong
15 judgment and do the wrong thing, and I really just—I've, I've even told uh, my fiancé
16 that I need mental help on a lot of situations because I get very hostile . . . um, just bad
17 judgment . . . my mental is truly off." Moore also responded to questions with specifics
18 about the types of abuse, and where and when the abuse took place. *Id.* At trial, the
19 State played the tape of Moore's statement to police. Exh. 10, p. 31.

20 Affirming the convictions, the Nevada Supreme Court denied the claim:

21 Moore contends that the district court erred by denying his motion to
22 suppress his confession because it was involuntary and obtained in
23 violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). We disagree. After
the interviewing detective recited Moore's Miranda rights, Moore stated
that he understood them and never unambiguously invoked his right to
remain silent. See *Berghuis v. Thompkins*, 560 U.S. __, __, 130 S. Ct.

APP. 040

2250, 2259-60 (2010). Further, a review of the factors he cites in support of his brief argument that his confession was involuntary do not lead us to conclude that substantial evidence does not support the district court's conclusion. See *Rosky v. State*, 111 P.3d 690, 694 (2005).

3 Exh. 21 at 1.

4 Moore has not demonstrated that the in-custody interview violated his Miranda
5 rights. The Nevada Supreme Court's adjudication of this claim did not result in a
6 decision that was contrary to, or involved an unreasonable application of, clearly
7 established federal law, as determined by the Supreme Court of the United States; nor
8 was its decision based on an unreasonable determination of the facts in light of the
9 evidence presented in the State court proceeding. See 28 U.S.C. § 2254(d). Federal
10 habeas relief is denied as to ground 1.

11 **Ground 2**

12 Moore argues that the trial court violated his Fourteenth Amendment equal
13 protection and fair trial rights when it allowed the prosecution to use its peremptory
14 challenges to exclude 2 prospective jurors (ECF No. 32, pp. 14-17).

15 In *Batson v. Kentucky*, 476 U.S. 79 (1986), the United States Supreme Court
16 held that the Equal Protection Clause guarantees defendants that prosecuting
17 authorities will not exclude members of a protected minority class from the jury venire
18 pool solely based on race. The Court subsequently pronounced a three-part test for
19 determining whether a prospective juror has been impermissibly excluded:

20 Under our *Batson* jurisprudence, once the opponent of a peremptory
21 challenge has made out a prima facie case of racial discrimination (step
22 1), the burden of production shifts to the proponent of the strike to come
23 forward with a race-neutral explanation (step 2). If a race-neutral
explanation is tendered, the trial court must then decide (step 3) whether
the opponent of the strike has proved purposeful discrimination.

Purkett v. Elem, 514 U.S. 765, 767 (1995).

APP. 041

1 The state-court record reflects that during jury selection defense counsel moved
2 for a mistrial, arguing that the State had violated *Batson*. Counsel argued that the fact
3 that the State excused a Hispanic juror and an African-American juror showed a pattern
4 of discrimination against minority prospective jurors. Exh. 9, pt. 1, pp. 3-8. The State
5 first argued that striking two jurors is hardly a pattern. They further responded that they
6 used a peremptory strike against the African-American woman in question because she
7 stated that she had a brother in prison related to drug, prostitution, and trafficking
8 convictions. She had also said that her brother was wrongfully imprisoned due to a girl
9 lying about her age to police. The district attorney noted “she couldn’t be more right to
10 put off my jury, whatever color her skin was.” *Id.* at 4.

11 With respect to the Hispanic prospective juror, the State said they primarily
12 wanted to use the strike in order to “get to the pool” because there were a couple of
13 upcoming prospective jurors that they viewed as favorable. The prosecutor also noted
14 that the prospective juror seemed particularly gullible. The prosecutor observed that the
15 State had only exercised 4 peremptory strikes and also that the defense had used
16 peremptory strikes against 3 Hispanics and an African American woman.

17 The state district court denied the motion for mistrial, concluding that the State
18 “sufficiently articulated the reasons for their challenges per *Batson*.” The court also
19 observed that in its view the jury pool and the jury as selected were sufficiently diverse.
20 *Id.* at 6.

21 The Nevada Supreme Court denied the claim on direct appeal, stating:

22 Moore claims that the district court erred in denying his motion for a
23 mistrial pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986). In his motion,
Moore alleged that the State used two of its four peremptory challenges in
a discriminatory manner. The State offered the following explanations for

APP. 042

1 striking the two minority panel members: (1) juror Barber because her
2 brother was tried for pandering and drug trafficking and she believed he
3 was treated unfairly by police and (2) juror Enriquez because she
4 appeared gullible and easily persuaded by the defense's theory of the
5 case. The district court ruled that these rationales were not pretextual, and
6 we also conclude that, because "discriminatory intent is not inherent in the
7 State's explanation[s]," and those explanations are not "implausible or
8 fantastic," the district court did not clearly err in rejecting Moore's *Batson*
9 challenge. *Ford v. State*, 122 Nev. 398, 403, 404, 132 P.3d 574, 578
10 (2006).

11 Exh. 21 at 1-2.

12 There is no support for Moore's claim that the trial court failed to engage in an
13 analysis of the validity of the prosecutor's explanations. The Nevada Supreme Court's
14 adjudication of this claim did not result in a decision that was contrary to, or involved an
15 unreasonable application of, clearly established federal law, as determined by the
16 Supreme Court of the United States; nor was its decision based on an unreasonable
17 determination of the facts in light of the evidence presented in the State court
18 proceeding. See 28 U.S.C. § 2254(d). Accordingly, Moore is not entitled to federal
19 habeas relief on ground 2.

15 **Ground 3**

16 Ground 3 alleges ineffective assistance of defense counsel in violation of
17 Moore's Sixth and Fourteenth Amendment rights (ECF No. 32, pp. 17-19). Ineffective
18 assistance of counsel (IAC) claims are governed by the two-part test announced in
19 *Strickland v. Washington*, 466 U.S. 668 (1984). In *Strickland*, the Supreme Court held
20 that a petitioner claiming ineffective assistance of counsel has the burden of
21 demonstrating that (1) the attorney made errors so serious that he or she was not
22 functioning as the "counsel" guaranteed by the Sixth Amendment, and (2) that the
23 deficient performance prejudiced the defense. *Williams*, 529 U.S. at 390-91 (citing

APP. 043

1 *Strickland*, 466 U.S. at 687). To establish ineffectiveness, the defendant must show that
2 counsel's representation fell below an objective standard of reasonableness. *Id.* To
3 establish prejudice, the defendant must show that there is a reasonable probability that,
4 but for counsel's unprofessional errors, the result of the proceeding would have been
5 different. *Id.* A reasonable probability is "probability sufficient to undermine confidence in
6 the outcome." *Id.* Additionally, any review of the attorney's performance must be "highly
7 deferential" and must adopt counsel's perspective at the time of the challenged conduct,
8 in order to avoid the distorting effects of hindsight. *Strickland*, 466 U.S. at 689. It is the
9 petitioner's burden to overcome the presumption that counsel's actions might be
10 considered sound trial strategy. *Id.*

11 Ineffective assistance of counsel under *Strickland* requires a showing of deficient
12 performance of counsel resulting in prejudice, "with performance being measured
13 against an objective standard of reasonableness, . . . under prevailing professional
14 norms." *Rompilla v. Beard*, 545 U.S. 374, 380 (2005) (internal quotations and citations
15 omitted). When the ineffective assistance of counsel claim is based on a challenge to a
16 guilty plea, the *Strickland* prejudice prong requires a petitioner to demonstrate "that
17 there is a reasonable probability that, but for counsel's errors, he would not have
18 pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52,
19 59 (1985).

20 If the state court has already rejected an ineffective assistance claim, a federal
21 habeas court may only grant relief if that decision was contrary to, or an unreasonable
22 application of, the *Strickland* standard. See *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003).
23 There is a strong presumption that counsel's conduct falls within the wide range of

APP. 044

1 reasonable professional assistance. *Id.*

2 The United States Supreme Court has described federal review of a state
3 supreme court's decision on a claim of ineffective assistance of counsel as "doubly
4 deferential." *Cullen*, 563 U.S. at 190 (quoting *Knowles v. Mirzayance*, 129 S.Ct. 1411,
5 1413 (2009)). The Supreme Court emphasized that: "We take a 'highly deferential' look
6 at counsel's performance . . . through the 'deferential lens of § 2254(d).'" *Id.* at 1403
7 (internal citations omitted). Moreover, federal habeas review of an ineffective assistance
8 of counsel claim is limited to the record before the state court that adjudicated the claim
9 on the merits. *Cullen*, 563 U.S. at 181-84. The United States Supreme Court has
10 specifically reaffirmed the extensive deference owed to a state court's decision
11 regarding claims of ineffective assistance of counsel:

12 Establishing that a state court's application of *Strickland* was
13 unreasonable under § 2254(d) is all the more difficult. The standards
14 created by *Strickland* and § 2254(d) are both "highly deferential," *id.* at
15 689, 104 S.Ct. 2052; *Lindh v. Murphy*, 521 U.S. 320, 333, n.7, 117 S.Ct.
16 2059, 138 L.Ed.2d 481 (1997), and when the two apply in tandem, review
17 is "doubly" so, *Knowles*, 556 U.S. at ——, 129 S.Ct. at 1420. The
18 *Strickland* standard is a general one, so the range of reasonable
19 applications is substantial. 556 U.S. at ——, 129 S.Ct. at 1420. Federal
20 habeas courts must guard against the danger of equating
21 unreasonableness under *Strickland* with unreasonableness under §
22 2254(d). When § 2254(d) applies, the question is whether there is any
23 reasonable argument that counsel satisfied *Strickland*'s deferential
standard.

24 *Harrington*, 562 U.S. at 105. "A court considering a claim of ineffective assistance
25 of counsel must apply a 'strong presumption' that counsel's representation was within
26 the 'wide range' of reasonable professional assistance." *Id.* at 104 (quoting *Strickland*,
27 466 U.S. at 689). "The question is whether an attorney's representation amounted to

APP. 045

1 incompetence under prevailing professional norms, not whether it deviated from best
2 practices or most common custom." *Id.* (internal quotations and citations omitted).

3 Here, Moore asserts that his counsel was ineffective for failing to investigate
4 Moore's competency in light of Moore's irrational rejection of a guilty plea deal (ECF No.
5 32, pp. 17-19). Moore notes that medical staff at Clark County Detention Center
6 prescribed him 2 antidepressants. Defense counsel did not have Moore's competency
7 evaluated. Moore contends that after the victim failed to appear in justice court the
8 State offered a plea agreement whereby Moore would be eligible for release in 8 years.
9 Moore rejected the offer and proceeded to trial. *Id.* Moore includes a 2013 letter from
10 defense counsel that states that, according to her notes in the file, the State offered 8-
11 to-life on the day that the preliminary hearing was scheduled but the victim was not
12 present, which Moore rejected.

13 The state district court dismissed the claim because it was alleged in such a
14 cursory and unspecific manner as to be insufficiently pleaded. Exh. 24 at 4. Moore
15 appealed, and the Nevada Supreme Court affirmed the denial of Moore's petition,
16 stating:

17 [A]ppellant claimed that counsel failed to seek a pretrial competency
18 evaluation as appellant asserted he used antipsychotic medication during
19 trial. Appellant failed to demonstrate that counsel's performance was
20 deficient or that he was prejudiced. That appellant used medication during
21 trial was insufficient to demonstrate that he did not have the ability to
22 consult with his attorney with a reasonable degree of rational
23 understanding and that he did not have a factual understanding of the
proceedings against him. See *Melchior-Gloria v. State*, 99 Nev. 174, 179-
80, 660 P.2d 109, 113 (1983) (citing *Dusky v. United States*, 362 U.S.
402, 402 (1960)). Appellant failed to demonstrate a reasonable probability
of a different outcome had counsel sought a pretrial competency
evaluation. Therefore, the district court did not err in denying this claim.
Exh. 27 at 3.

APP. 046

1 In his federal petition, Moore mischaracterizes the references he made to his
2 mental health in his voluntary statement to the detective. As noted above in the
3 discussion of ground 1, Moore *did* state that he needed mental health assistance. But
4 any fair reading of his statements reveal that he was focused on having exercised bad
5 judgment: "I made the wrong the judgment instead of being like a father figure and
6 saying—no . . . I'm sayin', would make the wrong mental judgment." "But I know I
7 have this feeling towards, you know, the way I look at little girls, and I know it ain't right
8 so, you know, mentally it's wrong." Exh. 3. Moore has not shown that a competency
9 evaluation had a reasonable probability of changing the result of the trial. Further, the
10 2013 letter from the public defender—referencing her 2008 notes—is the sum total of
11 information or evidence about the plea deal. Moore has failed to demonstrate that the
12 Nevada Supreme Court's decision was contrary to or involved an unreasonable
13 application of *Strickland* or was based on an unreasonable determination of the facts in
14 light of the evidence presented in the state court proceeding. 28 U.S.C. § 2254(d).
15 Federal habeas relief is denied as ground 3.

16 Accordingly, the petition is denied in its entirety.

17 IV. **Certificate of Appealability**

18 This is a final order adverse to the petitioner. As such, Rule 11 of the Rules
19 Governing Section 2254 Cases requires this court to issue or deny a certificate of
20 appealability (COA). Accordingly, the court has sua sponte evaluated the claims within
21 the petition for suitability for the issuance of a COA. See 28 U.S.C. § 2253(c); Turner v.
22 Calderon, 281 F.3d 851, 864-65 (9th Cir. 2002).

23 ///

APP. 047

1 Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner
2 "has made a substantial showing of the denial of a constitutional right." With respect to
3 claims rejected on the merits, a petitioner "must demonstrate that reasonable jurists
4 would find the district court's assessment of the constitutional claims debatable or
5 wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463
6 U.S. 880, 893 & n.4 (1983)). For procedural rulings, a COA will issue only if reasonable
7 jurists could debate (1) whether the petition states a valid claim of the denial of a
8 constitutional right and (2) whether the court's procedural ruling was correct. *Id.*

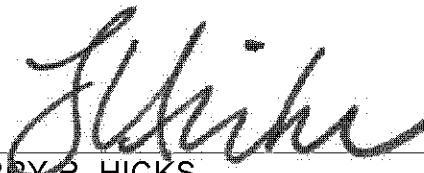
9 Having reviewed its determinations and rulings in adjudicating Moore's petition,
10 the court finds that none of those rulings meets the *Slack* standard. The court therefore
11 declines to issue a certificate of appealability for its resolution of any of Moore's claims.

12 **IT IS THEREFORE ORDERED** that the third-amended petition (ECF No. 32) is
13 **DENIED** in its entirety.

14 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

15 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly and
16 close this case.

17 Dated: March 28, 2019.



18
19 LARRY R. HICKS
20
21 UNITED STATES DISTRICT JUDGE
22
23

APP. 048

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVELL MOORE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55527

FILED

JUN 08 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingersoll
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of sexual assault of a minor under 14 years of age and one count of lewdness with a minor under 14 years of age. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. Appellant Devell Moore raises four issues.

First, Moore contends that the district court erred by denying his motion to suppress his confession because it was involuntary and obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1966). We disagree. After the interviewing detective recited Moore's Miranda rights, Moore stated that he understood them and never unambiguously invoked his right to remain silent. See Berghuis v. Thompkins, 560 U.S. ___, ___, 130 S. Ct. 2250, 2259-60 (2010). Further, a review of the factors he cites in support of his brief argument that his confession was involuntary do not lead us to conclude that substantial evidence does not support the district court's conclusion. See Rosky v. State, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005).

Second, Moore claims that the district court erred in denying his motion for a mistrial pursuant to Batson v. Kentucky, 476 U.S. 79 (1986). In his motion, Moore alleged that the State used two of its four

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peremptory challenges in a discriminatory manner. The State offered the following explanations for striking the two minority panel members: (1) juror Barber because her brother was tried for pandering and drug trafficking and she believed he was treated unfairly by police and (2) juror Enriquez because she appeared gullible and easily persuaded by the defense's theory of the case. The district court ruled that these rationales were not pretextual, and we also conclude that, because "discriminatory intent is not inherent in the State's explanation[s]," and those explanations are not "implausible or fantastic," the district court did not clearly err in rejecting Moore's Batson challenge. Ford v. State, 122 Nev. 398, 403, 404, 132 P.3d 574, 578 (2006).

Third, Moore argues that the district court erred in allowing the State to present evidence of a prior bad act—a fight between Moore and the victim's mother that occurred in 2003. The district court held a pretrial hearing pursuant to Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985). At the hearing, the State argued that evidence of domestic violence was relevant to show motive and opportunity, as creating a family environment of violence and intimidation was essential to controlling a child for molestation purposes and dissuading her from speaking about the continuing abuse. Under those circumstances, we cannot conclude that the district court manifestly erred in admitting this evidence. See Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006).

Fourth, Moore claims that the district court erred in denying his motion for mistrial based upon "irrelevant vouching." Upon redirect examination of the interviewing detective, the prosecutor asked if the detective had encountered other suspects who initially denied accusations of sexual abuse. The record supports the State's argument that this was

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rehabilitation—not vouching—in response to Moore's attempts on cross-examination to discredit the detective's leading interview techniques. Therefore, the district court did not clearly abuse its discretion in denying Moore's motion for mistrial. See Abram v. State, 95 Nev. 352, 355, 594 P.2d 1143, 1144 (1979). Moreover, even if this were clear error, it would be harmless given the overwhelming evidence of Moore's guilt, including his confession where he admitted to "too many" instances of sexually abusing the victim and the victim's detailed trial testimony about the abuse.

Having considered Moore's claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

The image shows three handwritten signatures of judges. The first signature, 'Gibbons', is on the left, followed by a horizontal line and the name 'Cherry' above a signature that appears to be 'Cherry', with 'J.' at the end. The third signature, 'Pickering', is on the right, with 'J.' at the end. Below each signature is the name of the judge: 'Gibbons', 'Cherry', and 'Pickering' respectively.

cc: Hon. James M. Bixler, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

APP. 051

1 JOC

2 **FILED**

3 FEB 03 2010

4 *John T. Schimme*
5 CLERK OF COURT

6 **ORIGINAL**

7
8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -VS-

13 CASE NO. C250540

14 DEVELL MOORE
15 #2685596

16 Defendant.

17

18 JUDGMENT OF CONVICTION

19 (JURY TRIAL)

20 The Defendant previously entered a plea of not guilty to the crimes of COUNT 1
21 SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14 (Category A Felony), in
22 violation of NRS 200.364, 200.366, COUNT 2 – SEXUAL ASSAULT WITH A MINOR
23 UNDER THE AGE OF 14 (Category A Felony), in violation of NRS 200.364, 200.366,
24 COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14
25 (Category A Felony), in violation of NRS 200.364, 200.366, COUNT 4 – LEWDNESS
26 WITH A CHILD UNDER THE AGE OF 14 (Category A Felony), in violation of NRS
27 201.230, and COUNT 5 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14
28 (Category A Felony), in violation of NRS 201.230; and the matter having been tried

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1 before a jury and the Defendant having been found guilty of the crimes of COUNT 1 -
2 SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14 (Category A Felony), in
3 violation of NRS 200.364, 200.366, COUNT 2 - SEXUAL ASSAULT WITH A MINOR
4 UNDER THE AGE OF 14 (Category A Felony), in violation of NRS 200.364, 200.366,
5 COUNT 3 - SEXUAL ASSAULT WITH A MINOR UNDER THE AGE OF 14
6 (Category A Felony), in violation of NRS 200.364, 200.366, COUNT 5 - LEWDNESS
7 WITH A CHILD UNDER THE AGE OF 14 (Category A Felony), in violation of NRS
8 201.230, and found NOT GUILTY of the crime of COUNT 4; thereafter, on the 14th day
9 of January, 2010, the Defendant was present in court for sentencing with his counsel,
10 KATHLEEN HAMERS, Deputy Public Defender, and good cause appearing,

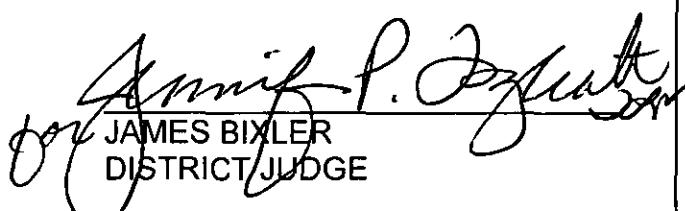
11 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
12 addition to the \$25.00 Administrative Assessment Fee, and \$150.00 DNA Analysis Fee
13 including testing to determine genetic markers, the Defendant is SENTENCED to the
14 Nevada Department of Corrections (NDC) as follows: AS TO COUNT 1 - to LIFE with
15 the possibility of Parole after THIRTY - FIVE (35) YEARS; AS TO COUNT 2 - to LIFE
16 with the possibility of Parole after THIRTY - FIVE (35) YEARS; AS TO COUNT 3 - to
17 LIFE with the possibility of Parole after THIRTY - FIVE (35) YEARS; AS TO COUNT 5 -
18 to LIFE with the possibility of Parole after TEN (10) YEARS. COUNTS 1, 2, and 3 are
19 to run CONSECUTIVE and COUNT 5 to run CONCURRENT with Counts 1 through 3;
20 with FOUR HUNDRED SIXTY - ONE (461) DAYS Credit for Time Served. IF the Fee
21 and Genetic Testing has previously been imposed, it shall be waived in this case.

22 FURTHER ORDERED, a SPECIAL SENTENCE OF LIFETIME SUPERVISION is
23 imposed to commence upon release from any term of imprisonment, probation or
24 parole.

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1 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in
2 accordance with NRS 179D.460 within FORTY – EIGHT (48) HOURS after any release
3 from custody.

4 DATED this 3rd day of February, 2010

5 
6 JAMES BIXLER
7 DISTRICT JUDGE
8

25

1 TRAN

FILED

2

ORIGINAL APR 27 12 45 PM '10

3

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

4

5

STATE OF NEVADA,)
)
 Plaintiff,) No. 55527
) Case No. C250540
 vs.) Dept. No. 24
)
 DEVELL MOORE,)
)
 Defendant.)

11

12

JURY TRIAL

13

Before the Honorable James M. Bixler
Wednesday, November 4, 2009, 11:00 a.m.

14

15

Reporter's Transcript of Proceedings

16

17

APPEARANCES:

18

For the State: Mary Kay Holthus, Esq.
 William Merback, Esq.
 Deputies District Attorney
 Las Vegas, Nevada

19

20

For the Defendant: Kathleen Hamers, Esq.
 Michael Feliciano, Esq.
 Deputies Public Defender
 Las Vegas, Nevada

21

22

23

24

25

REPORTED BY: BILL NELSON, RMR, CCR No. 191

CLERK OF THE COURT

RECEIVED
APR 27 2010

1 TRAN

2
3
4 IN THE EIGHTH JUDICIAL DISTRICT COURT
5 CLARK COUNTY, NEVADA6 STATE OF NEVADA,)
7 Plaintiff,) NO. 55521
8 vs.) CASE NO. C280849
9 DEVELL MOORE,) DBRS. NO. 34
10 Defendant)11 JURY TRIAL12 Before the Honorable James H. Bickler
13 Wednesday, November 4, 2009, 11:00 a.m.14 Reporter's Transcript of Proceedings15 APPEARANCES:16 For the State: Nancy Ray Holthus, Esq.
17 William Harback, Esq.
18 Deputy District Attorney
19 Las Vegas, Nevada20 For the Defendant: Kathleen Camara, Esq.
21 Michael Palicano, Esq.
22 Deputy Public Defender
23 Las Vegas, Nevada24 REPORTED BY: BILL NELSON, BMR, ECR No. 191
25BILL NELSON & ASSOCIATES
Certified Court Reporters702.360.4677
Fax 360.28443
1 Las Vegas, Nevada, Wednesday, November 4, 20092
3 * * * * *4
5 (Thereupon, the following proceedings were had out of
6 the presence of the jury.)7 THE COURT: You want to put some matters on the
8 record?

9 Yes.

10 MS. HAMERS: Yes, please.

11 THE COURT: We're on the record in the State of
12 Nevada versus Devell Moore.13 MS. HAMERS: The first thing I want to do is, if
14 I may address the Batson issues from yesterday.15 At the time that the jurors -- the State excused
16 Juror Number 161 with the last name Enrigues I
17 approached the bench, and for the purposes of preserving
18 the timing of the objection, informed the Court I would
19 be making a Batson challenge.

20 They at that time were striking a Hispanic juror.

21 The the State then excused Juror 166, who was an
22 African American juror, and at that point they had
23 developed a pattern determining discrimination against
24 minority jurors.25 So we are making a challenge under Batson and
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4 WITNESS DR CR RDR RCR
5 Shavonne Stewart-Sanders 14 53 71
6 N [REDACTED] Stewart-Sanders 75 111 117
7 Karen Davis 119 136 142 144

1 moving for a mistrial on that basis.

2 THE COURT: State.

3 MS. HOLTHUS: First of all, our first kick was
4 Kim Barber, the African American gal.5 So I'll give you, although reasonable, I don't
6 think it's required, because I don't believe it's close
7 to a pattern, and quite frankly if there is any
8 discrimination, it seems to be on the other side where
9 there was three Hispanics, a Filipino, Hawaiian, all for
10 lack of a better term, non-White primarily, kicked off
11 there.12 But in any event as to Kim Barber, she was a
13 young -- has finals, and most importantly has a brother
14 in prison for -- White it started with some little drug
15 dabbling, nothing to do with sex, to prostitution, to
16 drug trafficking, involving trafficking prostitution,
17 but wasn't guilty, the girl lied to the police and said
18 she was 17 to him, and then she was really 15, and so he
19 was wrongfully imprisoned.20 So I mean, she couldn't be more right to put off
21 my jury, whatever color her skin was.

22 We only exercised four preempts.

23 We had one African American.

24 Our last one was Hispanic. We were kicking her
25 partially to get to the pool. We liked a couple jurors

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1 upcoming, and also felt she was potentially based on
 2 body language, and some of her answers,
 3 lead-around-able, gullible, might fall for what we
 4 believe to be incredible words of argument in terms of
 5 the Defense to motivate somebody to say they molested a
 6 child when they didn't.

7 And then we also had Hillary Reynolds and Dillon
 8 Hinton were the only other ones we exercised.

9 I would also say, in addition to my Batson
 10 challenge at the bench with respect to the Defense notes
 11 that even before we began exercising preempts they
 12 challenged Angel Johnson based upon really nothing, and
 13 the Court excused, over the State's objection, a black
 14 young female juror that had really no basis to be
 15 kicked, other than she had some subpoena for this
 16 morning that arguably might have conflicted, except we
 17 all knew we were starting at 1:00.

18 We objected to her dismissal, but upon request of
 19 the Defense the Court did dismiss that African American
 20 woman.

21 MS. HAMERS: Just a couple things in response.

22 The State's alleged a race neutral reason for
 23 excusing Miss Barbara I think is a pretext here because
 24 there were other jurors who had family members in prison
 25 who were not excused from the jury.

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1 What else?

2 MS. HAMERS: Moving on, if I may, a couple other
 3 things I wanted to make a record of.

4 THE COURT: Yes.

5 MS. HAMERS: We appeared beginning back in April
 6 this year on this case.

7 MS. HOLTHUS: I'm sorry.

8 Before we leave that, Judge, if I could just make
 9 a record.

10 They are doing all these additions.

11 There are still two African American females on
 12 the jury.

13 THE COURT: Okay.

14 MS. HOLTHUS: Thank you.

15 THE COURT: You know, the jury commissioners
 16 office -- Only when these folks get up here in the
 17 courtroom does the issue of race ever even come up.

18 They don't keep track of race through the jury
 19 commissioners offices, petit jurors, grand juries, that
 20 information is simply not tracked.

21 Until we see these folks up here as we start a
 22 trial with the jury pool, we have no idea who it is that
 23 is in this pool, or how they were selected, the fashion
 24 or manner they were.

25 If there is something wrong with the manner in
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8

1 The only other thing I want to respond to, which
 2 I guess is a separate issue is, the juror that was
 3 excused because she had a subpoena this morning.

4 The concern I raised with the Court was the
 5 prejudice to my client if I would be in another
 6 courtroom with that woman as a witness this morning on
 7 another sex offense, because I think that starts making
 8 things look very bad for my client, particularly if
 9 there are other people who appear to be guilty of sex
 10 crimes, and I didn't want there to be an association
 11 between those two.

12 MS. HOLTHUS: Peremptorily kicking people because
 13 of what they might, or potentially might, see in the
 14 hallway is absolutely inappropriate.

15 Beyond that, I don't know there are any jurors
 16 left on the stand with anybody that is in prison.

17 My belief is they are all gone.

18 THE COURT: The motion to declare a mistrial is
 19 denied.

20 I think the State sufficiently articulated the
 21 reasons for their challenges per Batson.

22 I think we got a good jury.

23 I think we got a good jury that looks at me like
 24 certainly they have the ability to be fair and
 25 impartial.

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1 which our jury commissioners office acclimates our jury
 2 pool, then that is something that is going to have to be
 3 addressed by the Supreme Court I would presume.

4 But in any event, it appears that our jury pool
 5 has -- or has a sufficient diversity.

6 It appears to the Court this particular jury that
 7 is set has a sufficient diversity.

8 And as I said earlier, it appears any challenges
 9 that were issued or made by the State have been
 10 adequately addressed in terms of a Batson and has been
 11 articulated.

12 The record's been made.

13 Next.

14 MS. HAMERS: Thank you, Judge.

15 We appeared on April 28th, 2009 in this Court
 16 with a discovery motion.

17 At that time a number of things were ordered by
 18 the Court.

19 One was that NCIC -- or the information contained
 20 of State's witnesses be provided to the Court.

21 Since that time we've received no information
 22 about criminal record.

23 However, through our own investigation, because
 24 we can locally -- if we found some information on
 25 Shavonne Stewart's case, briefly the State of Colorado

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1 also verified she has three to four cases in Colorado
 2 that we do not have access to. This is information
 3 supposed to be provided to the Court for the Court to
 4 review and provided to us if necessary.

5 It appears that that doesn't -- or hasn't
 6 happened, despite the fact she had criminal records out
 7 there that would be in NCIC I imagine.

8 THE COURT: Okay.

9 MS. HAMERS: So we're asking for a mistrial based
 10 on that discovery violation.

11 THE COURT: Does the State have any NCIC records?

12 MS. HOLTHUS: I did no NCIC.

13 I have the Defendant's NCIC.

14 I did not NCIC Shavonne.

15 THE COURT: You ave no information in terms,
 16 other than a local -- Do you run a scope on the
 17 witnesses?

18 MS. HOLTHUS: I don't believe I ran anything on
 19 this one.

20 They provided me --

21 THE COURT: The information you got through the
 22 Defense?

23 MS. HOLTHUS: Correct, was really not an issue.

24 Mom never been an integral part of my case
 25 because quite frankly I never knew whether she was on my

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1 side or his side.

2 MS. HAMERS: The Order from this Court was, she
 3 provided the NCIC information to this Court.

4 MS. HOLTHUS: That's what I'm looking for.

5 MS. HAMERS: Want the minutes?

6 MS. HOLTHUS: Yes.

7 What date is it?

8 THE COURT: The April 28th hearing.

9 It seems to me we were discussing the issue of
 10 the voluntariness of the statement by the Defendant on a
 11 hearing with the Detective, which I believe we ordered
 12 and had.

13 I don't see anything in that minutes of that
 14 hearing.

15 MS. HAMERS: Towards to bottom of the minutes
 16 there.

17 THE COURT: The criminal history is CPS reports,
 18 any child counseling records, anything permitted by the
 19 statute.

20 The State can look into the criminal history of
 21 the witnesses.

22 The Court can review it in-camera and determine
 23 if anything is exculpatory.

24 Well, the State didn't, and the Court hasn't,
 25 with the exception of what you found where -- You have

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1 more information than anybody else does.

2 MS. HAMERS: At that time the Court ordered the
 3 information be provided to the Court, so that we can
 4 find out what it is.

5 Right now Colorado will only tell me there are
 6 cases. I don't know what they are.

7 That was the idea of them going to the Court, so
 8 you can look at what they are and see if they were
 9 things should be provided to me.

10 THE COURT: The minutes don't reflect I ordered
 11 them to do that.

12 I just said, It's kind of funky you what it says
 13 here.

14 MS. HAMERS: That you ordered --

15 THE COURT: They can look it up and give it to
 16 me, and I will review it.

17 MS. HAMERS: Was the Court's Order -- That's the
 18 Court's Order provided in my notes, that is what was
 19 ordered that day.

20 We can get a transcript if that's what we need to
 21 do.

22 THE COURT: Does your client want a mistrial and
 23 set this over for a few weeks?

24 MS. HAMERS: Yes.

25 THE COURT: Really.

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1 MS. HAMERS: I don't know what those are, Judge.
 2 For all I know, it could be perjury offenses for
 3 pretending other people sexually abused their children.

4 MS. HOLTHUS: I can be ordered to run NCIC.
 5 I do not have NCIC ability. I can't get there.
 6 I have no more control over Colorado than she
 7 does.

8 This is absolutely -- I don't know.

9 THE COURT: Here's what we'll do:

10 The trouble is, you want them to give you NCIC
 11 information when they obviously we have gone through
 12 this a jillion times.

13 They are under contract, can't do that. They are
 14 prohibited from, blah, blah, blah.

15 MS. HAMERS: That's why we litigated this in
 16 April, and they were ordered to give it to you.

17 MS. HOLTHUS: I can't give it to you, Judge.
 18 I can't run it.

19 They can go through the FBI.

20 They can go through the Court.

21 They can do their own thing.

22 THE COURT: They can't do it.

23 So it can't be done.

24 Let's move that on.

25 You can use that as an appellate issue.

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1 They can or they can't -- They are licensed by I
 2 presume it's the FBI who runs the national criminal --
 3 or crime --

4 MS. HAMERS: So as of now, we -- no information
 5 exists, we know we don't have access, and the Court
 6 previously ordered the State to provide that to the
 7 Court.

8 THE COURT: I didn't order them.

9 I said, you can do it, and I will review it.

10 And they didn't do it.

11 Nobody brought it up before this very second that
 12 it hasn't been done.

13 MS. HOLTHUS: Then I would point out that it's
 14 now November, we're in the middle of trial, and at no
 15 time after April when she apparently got this
 16 information, the stuff in Colorado, did she come back
 17 for a clarification, or say, I didn't do something I was
 18 supposed to do.

19 There has been nothing until now the jury has
 20 been sworn.

21 THE COURT: The State's position is, you are
 22 under a contract, under an obligation, not to do exactly
 23 what they are suggesting?

24 MS. HOLTHUS: Correct.

25 And I do not believe I was ordered to do it.

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14
 1 What I'm saying is, if I had been ordered to do
 2 it and had not done it, then my files do not reflect
 3 that, I don't have it in my notes.

4 I would have actually taken that to my higher-ups
 5 if I was aware of that and figured out what to do with
 6 it.

7 She never brought it back to my attention there
 8 is stuff out there.

9 She knows now, she would have known, NCIC had
 10 been run if there was stuff in Colorado.

11 Quite honestly, it doesn't give them anything.

12 MS. HAMERS: For the record, this is not the
 13 first time this was brought up.

14 That's why a discovery motion was filed in April.

15 The information I received from Colorado came to
 16 me via memo, to me November 3rd that states she has
 17 active cases there, but they will not give us the
 18 information because we are not law enforcement.

19 So that is why I'm in the position I'm in now.

20 When I put a motion on to the Court, and the
 21 Court orders something be done by the State, it is not
 22 my responsibility to make sure they do it, see if they
 23 do it, see if there is anything out there, and that's
 24 why they didn't do it.

25 So as far as we are concerned, we requested this
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1 Information, it was ordered to be provided to the Court.

2 Now, there is records out there we don't have
 3 access to, and we're being forced to go to trial without
 4 those.

5 THE COURT: I'm not declaring a mistrial because
 6 the information hasn't been produced.

7 Again, I'm not positive. I think the State may
 8 be able to voluntarily produce it.

9 I don't know they are subject to being ordered to
 10 do something which they are contractually obliged not to
 11 do.

12 It's a very sticky issue.

13 But in any event, you made your record.

14 I'm denying the motion for mistrial based on the
 15 absence of a criminal -- absence of the criminal history
 16 of the State's witness, adult witness.

17 We're only dealing with one, the mom, right?

18 MS. HAMERS: As far as we know.

19 The others are children, so I imagine that's the
 20 case.

21 Moving on --

22 THE COURT: Yes.

23 MS. HAMERS: -- today the State opened an
 24 envelope of evidence that was provided by a Detective
 25 Lafreniere, if I'm saying his name right.

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15
 1 The same thing occurred here, and the same motion
 2 where we asked for discovery back in April of 2009 we
 3 asked for any videos, tangible evidence would be
 4 admitted at trial.

5 Apparently there are two videos in that envelope
 6 of evidence or disks, I don't know, audio or video. We
 7 never seen them before.

8 We move for a mistrial on that basis as a
 9 discovery violation, or in the alternative they
 10 absolutely be excluded in this trial, as we've had no
 11 opportunity to see them.

12 Also, in that envelope contains detectives'
 13 handwritten notes that were specifically asked for in
 14 our discovery motion back in April of this year, and we
 15 have not had an opportunity to see up until today.

16 THE COURT: In regards to the CDs or DVDs, I
 17 don't think the State ever got to see them.

18 Did you ever see them?

19 MS. HOLTHUS: Two things.

20 No, I didn't.

21 No, they weren't out there.

22 THE COURT: Where did they come from?

23 MS. HOLTHUS: I'm not even sure.

24 The first I knew about that was when we opened it
 25 up saw them.

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23

1 any wrongdoing on behalf of the Defendant.

2 The whole reason we are here is to see if the
3 State can prove the allegations contained in the
4 Information beyond a reasonable doubt.

5 The Defendant has plead not guilty to this
6 charges.

7 But the first thing we do is, Teri's going to
8 read to you into the record the actual charges that the
9 State has brought against the Defendant.

10 Listen carefully.

11 When you retire to consider your verdict, you
12 will get a copy of this, so don't feel like you have to
13 memorize it.

14 We only go through it once.

15 Go ahead.

16 (Criminal Information now read to the jury by the
17 clerk.)

18 THE CLERK: To which the Defendant entered pleas
19 of not guilty.

20 THE COURT: Once again, the Defendant's plead not
21 guilty to those charges.

22 The whole purpose of this trial is to see if the
23 State can prove those charges beyond a reasonable doubt.

24 Conduct as a juror during the next course of the
25 trial, those are my next few comments in that respect.

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1 Through the course of the trial there might be
2 objections by the attorneys.

3 If I sustain the objection, and strike whatever
4 evidence, you are not to consider it.

5 Along those lines, you are not to consider
6 anything as evidence from a source outside this
7 courtroom.

8 So if by some chance you hear somebody say
9 something, or read something, see something you are not
10 supposed to anyway, or if it's something in your
11 background, you need to make sure that none of that is
12 considered by you in terms of evidence.

13 The evidence that you are to consider is strictly
14 and completely contained within this courtroom during
15 the course of this trial.

16 The testimony and exhibits that are admitted into
17 evidence is the only thing you can consider when you go
18 to render your verdicts.

19 During the course of the trial, you are not to be
20 influenced to any degree by any mention of prejudice or
21 sympathy by or against the State or Defendant.

22 In considering the weight and value of the
23 testimony of the witnesses, you may take into
24 consideration the appearance, attitude, behavior of the
25 witnesses, the interest of the witness in the outcome of

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1 the case, if there is any interest, the relationship
2 between the witness and the Defendant or the State, the
3 inclination of the witness to speak truthfully or not,
4 the probability or improbability of the witness'
5 statements, and all of the facts and circumstances in
6 this case.

7 Thus, you may give the testimony, and you should
8 give the testimony of any witness, exactly the weight
9 that you the jury determine should be given.

10 There is two kinds of evidence in cases.
11 There is direct evidence and circumstantial
12 evidence.

13 Direct evidence is the testimony of an eyewitness
14 of somebody who claims to have witnessed an account or
15 the facts they are testifying to.

16 Circumstantial evidence is evidence of the
17 existence of a fact which will lead you to conclude
18 another fact existed.

19 The classic example of direct evidence and
20 circumstantial evidence would be, if you walk out of
21 your house in the morning, you look at the street, it's
22 full of water, you look at the sidewalk, full of water,
23 the gutter's got water running down it, you would
24 conclude that the existence of those facts you have
25 observed would indicate that it has rained.

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1 That's called circumstantial evidence that it
2 rained.

3 If you walk out and see it raining, that is
4 direct evidence.

5 Direct evidence and circumstantial evidence is
6 both evidence and can be given whatever weight you the
7 jury decide it's to be given, whether it's direct
8 evidence or circumstantial evidence.

9 You are the sole judges of the credibility of the
10 evidence in this case.

11 You all have been given some note pads. You are
12 encouraged to make notes. It's not going to be a long
13 trial, so you probably won't need too terribly many
14 notes to know what happened, but you are still
15 encouraged to make notes.

16 Don't make notes to the exclusion you are paying
17 attention to a witness on the witness stand.

18 There will be plenty of breaks, plenty of lulls
19 when you can write down something, but don't be writing
20 down notes so much as you miss watching and listening to
21 a witness on the stand.

22 You only get one shot at getting this right. So
23 pay close attention when somebody is testifying.

24 The second thing, questions.

25 As I very first explained to you, everybody here

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APP. 061

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1 in the courtroom has a function.

2 Bill, the Court Reporter, he's got a job.

3 I've got a job.

4 Teri's got a job.

5 Joe's got a job.

6 The counsel are responsible for their case. They
7 put on their witnesses, cross-examine the other
8 witnesses.

9 Your job as the jury, I've said probably a
10 thousand times, your job is to listen to the evidence,
11 listen to the instructions on the law that I give you,
12 and go back render a verdict based upon consulting with
13 each other whether or not you believe the State's proven
14 the Defendant guilty beyond a reasonable doubt or not.
15 That's your job.

16 Your job is really not to ask questions, but the
17 law provides an opportunity for you to ask questions if
18 you feel that it is absolutely necessary.

19 If you feel that it is absolutely necessary, this
20 is how you go about doing it:

21 Take a clean sheet of paper on your note pad,
22 write down the question.

23 Put your Juror Number on it.

24 Raise your hand, get Joe's attention.

25 Joe's going to come get the question from you,

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1 bring it up here to me.

2 I'm going to have counsel come up to the bench.

3 We're all going to look at it, and I will listen
4 to the comments or objections they that have, and I'll
5 make a ruling if it's a question I can ask.

6 If it is a question I can ask, I'll ask the
7 question.

8 If not, we'll mark the question.

9 After the trial is over, I'll explain to you why
10 it wasn't -- I couldn't ask that question.

11 Questions by the jury, keep in mind they are only
12 questions for the witness.

13 You can't ask me a question, can't ask counsel a
14 question, the Defendant, any of the staff, strictly
15 questions for the witness.

16 You have to ask it before the witness leaves the
17 witness stand.

18 Once the witness leaves, they are gone, we're not
19 going to recall them, so you guys can ask some
20 questions.

21 I will try to look and make sure that there is
22 not anybody with their hand up before the witness leaves
23 the stand.

24 Joe will be checking also.

25 Now, that having been said, I already basically

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1 explained to you the order that everything will proceed
2 in.

3 The State makes their opening statements first,
4 which is basically a road map of what they expect this
5 trial to be, and what the evidence will consist of.

6 The Defense gets to do exactly the same thing
7 following the State's opening statement.

8 They go right into the evidence.

9 After that, the State's evidence, their
10 witnesses, will be cross-examined by the Defense, and
11 whatever the Defense decides they want the put on, if
12 anything, they put that evidence on, the State
13 cross-examines those witnesses.

14 There will be an opportunity for the rebuttal, or
15 surrebuttal, if it's necessary.

16 I will then give you the instructions on the law
17 as it applies to this case.

18 The State will then make their closing argument,
19 followed by Defense's closing argument.

20 Since the State has the burden of proof in this
21 case, they get to make a reply closing argument
22 following the Defense.

23 As soon as that happens, you guys are going to
24 get a set of instructions, get all the exhibits admitted
25 into evidence, along with the information that was just
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1 read to you, go to the jury deliberation room, and start
2 your deliberations.

3 So that's what to expect.

4 Okay. You guys ready?

5 MR. MERBACK: Yes, sir.

6 THE COURT: The State's up.

7 Let's go.

8 (Opening statements of counsel as follows.):

9 MR. MERBACK: Thank you, Judge.

10 In October 2008 Shavonne Stewart found a
11 handwritten note in her purse that read:

12 Dear mom, I didn't know how to tell you this, but
13 Dee has been cheating on you for the past two years he's
14 been with you, and every time you leave he has sex with
15 me, and he tortures my brothers so he can have sex with
16 me.

17 If you don't believe me, I will tell you how.

18 Please leave him.

19 The evidence in this case will show that this
20 note was written by then ten year old N [REDACTED].

21 N [REDACTED] is Shavon Stewart's daughter.

22 The Defendant is Devell Moore, and he was
23 Shavonne's boyfriend for about a seven-year period.

24 Shavonne, the Defendant, N [REDACTED], and N [REDACTED]'s
25 three younger brothers all lived together in Colorado.

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1 They lived there on and off again until about August
 2 2008 when they moved to Las Vegas.

3 The evidence in this case will show that when
 4 N [REDACTED] was about eight years old, when the family was
 5 still living in Colorado, the Defendant began sexually
 6 abusing her.

7 The Defendant eventually left Colorado, and he
 8 went to live in California.

9 Shavonne and N [REDACTED] and the three brothers all
 10 remained in Colorado for a while, and then in August
 11 2008 the family, Shavonne, N [REDACTED] and the brothers all
 12 came out the Las Vegas, and they moved into the
 13 Defendants mother's house, which was at [REDACTED]
 14 here in Las Vegas, and soon after that the Defendant
 15 came back from California and joined them at his
 16 mother's house here in Las Vegas.

17 Once the Defendant was back in the same house
 18 with N [REDACTED] here in Las Vegas, he began sexually
 19 abusing her again.

20 You heard testimony that the Defendant where
 21 among other things removed N [REDACTED]'s pants and tried to
 22 put his penis into her vagine.

23 You will hear his penis would penetrate between
 24 the lips of her vagina, but it would not go all the way
 25 in.

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1 And you will hear that one of the times at least
 2 when this happened the Defendant told N [REDACTED] that her
 3 hole was not opening.

4 Then in October 2008 N [REDACTED] disclosed to her
 5 mother the sexual abuse she had been enduring at the
 6 hands of the Defendant by writing that note.

7 She wrote the note, and she put it in her
 8 mother's purse.

9 And when her mother found the note in her purse,
 10 she quickly got herself and her kids out of the house,
 11 and she called the police.

12 The evidence will show the police then arrived,
 13 specifically Detective Lafreniere, arrived and
 14 interviewed N [REDACTED] and interviewed Shavonne.

15 The evidence will also show he interviewed the
 16 Defendant, and in the Defendant's interview he
 17 acknowledged he had been sexually abusing N [REDACTED].

18 He specifically indicated, among other things, he
 19 had performed oral sex on her, and he had tried to put
 20 his penis in her vagina.

21 Ladies and gentlemen, based upon that evidence,
 22 the evidence that will be presented to you in this
 23 trial, we will ask that you find the Defendant guilty of
 24 sexual assault with a minor under the age of 14, and
 25 lewdness with a child under the age of 14.

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1 Thank you.

2 THE COURT: Thank you, counsel.

3 MR. FELICIANO: Thank you, Your Honor.

4 Devell Moore is not a child molester.

5 He has done some bad things that you are going to
 6 hear about, but those bad things don't make him a child
 7 molester.

8 This case is about a family that is tired. They
 9 are tired and scared.

10 They are tired of the beatings that Mr. Moore
 11 gives them, and they are scared of him.

12 These allegations are simply a way to get rid of
 13 him.

14 What you are going to hear in this case is that
 15 he's charged with sexually abusing N [REDACTED] Stewart.

16 You are going to see that that didn't happen.

17 And what you are not going to see in this case is
 18 any physical evidence of any abuse, and you are not
 19 going to see any other type of injuries or anything like
 20 that that would suggest physical sexual abuse.

21 In this case what you are going to hear is that
 22 Mr. Moore is a bad father and a bad boyfriend.

23 He beats his girlfriend, and he beats his kids.

24 When the kids in this home are disciplined, they
 25 are disciplined harshly.

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1 They are often disciplined when they don't even
 2 deserve it.

3 Mr. Moore beats them.

4 He hits them with a belt.

5 He leaves marks on them.

6 And not only that, the abuse doesn't stop with
 7 the children. He also hits his girlfriend Shavonne,
 8 which you are going to hear from.

9 In fact, you are even going to hear he was
 10 charged with beating her, was arrested and eventually
 11 convicted of it.

12 Basically, this family is tired of the beatings.

13 They want Mr. Moore out of their life. And this
 14 is the way to do it.

15 Now, you are going to hear a lot a bad things
 16 about Mr. Moore.

17 Like I said, you are going to hear he beats his
 18 kids.

19 He beats his girlfriend.

20 You are not going to like it, and of course you
 21 are going to disagree with what you hear about Mr.
 22 Moore's conduct.

23 You are not going to agree with what he does.

24 It might upset you.

25 At the end of this trial you might not even like
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1 Mr. Moore, but from listening to the abuse he inflicts
 2 on his family -- but those things do not make him a
 3 child molester.

4 What you are here for today and throughout this
 5 trial is to determine if he sexually abused N [REDACTED]
 6 S [REDACTED], and the answer to that question is, no.

7 You are going to see it's not supported by the
 8 physical evidence.

9 There is no injuries.

10 It simply didn't happen.

11 For those reasons, we're going to ask you to find
 12 him not guilty.

13 THE COURT: Thank you, counsel.

14 State, ready to call your first witness?

15 MR. MERBACK: Yes, Judge.

16 THE COURT: All right.

17 MR. MERBACK: The State calls Shavonne Stewart.

18 THE CLERK: Come forward, please, ma'am.

19 Take the witness stand.

20 Remain standing, and raise your right hand.

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1 A. Yes.

2 Q. How old is D [REDACTED]?

3 A. He's six.

4 Q. And D [REDACTED]?

5 A. He's four.

6 Q. And where do you currently live?

7 A. I reside in Colorado.

8 Q. Do all four of your children live there with you
 9 in Colorado?

10 A. Yes, sir.

11 Q. Who is Devell Moore?

12 A. That is my two youngest's father.

13 Q. Do you see him here in the courtroom today?

14 A. Yes.

15 Q. Could you point to him and describe something
 16 he's wearing?

17 A. He's wearing black.

18 MR. MERBACK: Judge, can the record reflect the
 19 identification of the defendant?

20 THE COURT: Yes, the record will so show.

21 BY MR. MERBACK:

22 Q. What was your relationship with Mr. Moore?

23 A. I was his girlfriend, fiancee at one time.

24 Q. How long were you together with him?

25 A. About seven years.

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34 1 Q. You indicated that Mr. Moore is D [REDACTED] and
 2 D [REDACTED] father, is that correct?

3 A. That's correct.

4 Q. So he's not N [REDACTED] or K [REDACTED]'s father?

5 A. No, sir.

6 Q. When did you first meet Mr. Moore?

7 A. May of 2001.

8 Q. And was that here in Las Vegas, or also in
 9 Colorado?

10 A. It was in Colorado.

11 Q. Did there come a point in time after you met him
 12 that you guys moved in together?

13 A. Yes, it was in 2002.

14 Q. So about a year or so after you met him, is that
 15 right?

16 A. Roughly, yes.

17 Q. And then when was it that D [REDACTED] was born,
 18 how long after that?

19 A. About two years later.

20 He was born [REDACTED].

21 Q. How about D [REDACTED]?

22 A. [REDACTED] of [REDACTED].

23 Q. I want to just briefly talk with you about an
 24 incident that occurred in Colorado.

25 I'm going to draw your attention to September

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1 24th of 2003.

2 That would have been shortly after D [REDACTED], Jr.
3 was born, is that correct?

4 A. That's correct.

5 Q. Did something occur?

6 MS. HOLTHUS: Can we approach?

7 I'm sorry to interrupt you.

8 THE COURT: Sure.

9 (Thereupon, a discussion was had between Court and
10 Counsel at sidebar.)11 THE COURT: Ladies and gentlemen of the Jury,
12 there is an instruction you are going to have in your
13 instruction packet, and I'm going to read it to you
14 right now because it's appropriate to be reminded right
15 now at this early point regarding some of the testimony
16 you are about to hear from the witness.17 So this may sound a little disjointed, but it
18 touches upon the subject matter of what the witness is
19 about to talk about, which are some conduct of the
20 Defendant that happened in Colorado that is not directly
21 connected to this trial, which he's not on trial for
22 having done.23 So evidence which tends to show the Defendant
24 committed offenses other than that which -- for which
25 he's on trial if believed is not being received and mayBILL NELSON & ASSOCIATES 702.360.4677
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1 not be considered by you to prove he's a person of bad
2 character, or to prove he has a disposition to commit
3 crimes.4 Such evidence is received and may be considered
5 by you only for the limited purpose of proving the
6 Defendant's intent, motive, opportunity, or the absence
7 of mistake or accident.8 You must weigh this evidence in the same manner
9 as you do all other evidence in this case.

10 Go ahead.

11 MR. MERBACK: Thank you, Judge.

12 BY MR. MERBACK:

13 Q. Mr. -- We were talking about an incident that
14 occurred briefly after D [REDACTED], Jr. was born.

15 Could you tell us what that incident was?

16 A. I --

17 Q. Was it involving yourself and Mr. Moore?

18 A. Yes.

19 Q. Okay. What happened?

20 A. We had got into an argument.

21 He was gone at the time.

22 We got into an argument, and he came back, and at
23 that time he said, D [REDACTED] D [REDACTED], Jr., I tried to stop him
24 from taking him --

25 Q. You tried to stop him from taking him?

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1 A. Uh-huh.

2 Q. What happened?

3 A. Well, I was hitting him, trying to get the baby
4 away from him, and I don't know, I fell, I don't know
5 what happened, but I was on the ground, and he was
6 choking me.

7 Q. How old was D [REDACTED] at the time?

8 A. He was about three weeks.

9 Q. What happened after the Defendant choked you?

10 A. We ran.

11 I told him to get in the car, and I'm still
12 fighting him, trying to get D [REDACTED] out of the car.

13 Q. By D [REDACTED], you are talking about D [REDACTED]

14 A. Yes, D [REDACTED] out of the car.

15 At that time I went to his side of the window to
16 -- because he was driving, and I continued to hit him,
17 and I slipped off the car, and the car drove off and
18 rolled over me, over my legs.19 Q. And you indicated that the Defendant was driving
20 the car, is that right?

21 A. That's correct.

22 Q. Did you suffer any any visible injuries as a
23 result of that?

24 A. No.

25 Q. Did you sufficient any injuries as a result?

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1 A. No.

2 Q. Did you have a discussion with N [REDACTED] in regards
3 to that incident when it occurred?

4 A. I don't remember if I had.

5 Q. You don't remember talking to N [REDACTED] about it?

6 A. No.

7 Q. Do you know whether or not N [REDACTED] was aware of
8 the incident?

9 A. She was aware of it.

10 Q. How old was she at the time?

11 A. She was six.

12 Q. What -- Did N [REDACTED] do anything, or how did she
13 react to that incident?

14 A. She just wanted the baby to come home.

15 Q. Was she concerned about that?

16 A. Yes.

17 Q. Was she concerned about you as well?

18 A. Not that I remember.

19 Q. Mostly about the baby?

20 A. Uh-huh.

21 Q. Did there come a point in time when the Defendant
22 left Colorado, and you stayed there?

23 A. Yes.

24 Q. Do you recall when that was?

25 A. It was I believe January of 2007.

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APP. 065

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1 Q. Do you know where he went?
 2 A. To California.
 3 Q. And you remained in Colorado?
 4 A. That's correct.
 5 Q. And how about N [REDACTED] and K [REDACTED] and C [REDACTED]?
 6 A. The kids stayed with me.
 7 Q. They all stayed with you?
 8 A. Uh-huh.
 9 Q. Prior to the Defendant leaving in early 2007,
 10 actually when he left in early 2007, were you working at
 11 the time?
 12 A. Yes.
 13 Q. And where were you working at?
 14 A. I was working at Sprint Nextel.
 15 Q. How long had you been working there?
 16 A. Probably about maybe six months at that time.
 17 Q. Six months in 2007?
 18 A. No, between 2006 and 2007.
 19 Q. So you worked there from 2006 to 2007?
 20 A. Yes.
 21 Q. Did you work a specific shift when you were at
 22 Sprint?
 23 A. The 2:00 p.m. to 11:00 shift.
 24 Q. 2:00 p.m. to 11:00 at night?
 25 A. Uh-huh.

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1 Q. When you were working that shift, from 2 in the
 2 afternoon until 11 at night, who would watch the kids?
 3 A. Devell Moore -- I mean, Sr.
 4 Q. The Defendant?
 5 A. Yes.
 6 Q. Did there come a point in time after the
 7 Defendant had gone to California when you left Colorado
 8 and came to Las Vegas?
 9 A. Yes, I left in I believe it was July of 2007.
 10 Q. And you moved to Las Vegas?
 11 A. That's correct.
 12 Q. Where did you live when you moved to Las Vegas in
 13 July of 2007?
 14 A. I stayed with the Defendant's uncle.
 15 Q. What was his name?
 16 A. Bobby.
 17 Q. And do you recall where generally in Las Vegas
 18 that house would have been?
 19 A. I don't remember.
 20 Q. Okay. So you and the kids lived with Bobby when
 21 you moved to Las Vegas?
 22 A. That's correct.
 23 Q. How long were you here in Las Vegas on that
 24 occasion?
 25 A. For about a month-and-a-half.

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1 Q. And then where did you go after that
 2 month-and-a-half?
 3 A. I went back to Colorado.
 4 Q. During that month-and-a-half point in time that
 5 you were living in Las Vegas, did the Defendant come and
 6 live with you in Las Vegas as well?
 7 A. No.
 8 Q. Did you see him at all during that point in time?
 9 A. Yes.
 10 Q. When was that?
 11 A. It was a weekend I believe in August, August and
 12 September.
 13 Q. So just a couple of weekends?
 14 A. Uh-huh.
 15 Q. But he remained in California while you were
 16 living in Las Vegas?
 17 A. Yes.
 18 Q. So after that month-and-a-half, you moved back to
 19 Colorado?
 20 A. Yes.
 21 Q. Where did you live in Colorado when you moved
 22 back there?
 23 A. I lived in Arapaho, Colorado with my mother.
 24 Q. Did there come another point in time when you
 25 left Colorado and came back to Las Vegas?
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1 A. August 2008.
 2 Q. Okay.
 3 A. August 24th, 2008.
 4 Q. And when you came back to Las Vegas August 24th,
 5 2008, where did you live in Las Vegas?
 6 A. I stayed with Devell's mother.
 7 Q. What is her name?
 8 A. Andrea.
 9 Q. And do you recall the address where that was?
 10 A. It was on [REDACTED].
 11 Q. [REDACTED]?
 12 A. Uh-huh.
 13 Q. If I said [REDACTED], would that sound
 familiar, sound correct?
 14 A. Yes.
 15 Q. That's here in Las Vegas, Clark County, correct?
 16 A. Yes.
 17 Q. Now, you indicated the Defendant was still living
 18 in California?
 19 A. Yes.
 20 Q. Did there come a point in time when he joined you
 21 and your kids at his mother's house here in Las Vegas?
 22 A. Yes.
 23 Q. About how long was it after you came here?
 24 A. Probably about two weeks, two to three weeks.
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APP. 066

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1 Q. So a couple weeks into September basically then?
 2 A. Yes.
 3 Q. And at that point yourself and all four kids and
 4 the Defendant were all living with the Defendant's
 5 mother?
 6 A. That's correct.
 7 Q. Now, did there come a point where the entire
 8 family left that house on [REDACTED] and moved to
 9 another location in Las Vegas?
 10 A. Yes, it was the end of September.
 11 Q. Do you recall where you moved to?
 12 A. I know the cross streets, it was Grand Teton and
 13 Grand Canyon, up north.
 14 Q. Now, I'm going to call your attention to October
 15 10th, 2008.
 16 Do you recall that date?
 17 A. Yes.
 18 Q. Did there come a point in time on that date when
 19 you discovered something that caused you alarm?
 20 A. Yes.
 21 Q. What happened?
 22 A. I was cleaning out my purse, and I found a note
 23 from my daughter stating that --
 24 Q. Let me stop you right there.
 25 When you saw the note, did you recognize the
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1 handwriting in the note?
 2 A. Yes.
 3 Q. As whose handwriting?
 4 A. As N [REDACTED]'s, my daughter.
 5 MR. MERBACK: May I approach, Judge?
 6 THE COURT: Yes.
 7 BY MR. MERBACK:
 8 Q. Showing you what has been marked as State's
 9 Proposed Exhibit Number 1, do you recognize State's
 10 Proposed Exhibit Number 1?
 11 A. Yes.
 12 Q. What is that?
 13 A. It's a letter from my daughter.
 14 Q. Is that the same letter that you found in your
 15 purse on October 10th, 2008?
 16 A. Yes.
 17 MR. MERBACK: Judge, move to admit State's
 18 Proposed Exhibit Number 1.
 19 MS. HAMERS: No objection.
 20 THE COURT: 1 is admitted.
 21 MR. MERBACK: Court's indulgence.
 22 BY MR. MERBACK:
 23 Q. Shavonne, can you read for us State's Exhibit
 24 Number 1, the note written by your daughter?
 25 A. Dear mom, I don't know how to tell you this, but
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1 Dee has been cheating on you for the past two years.
 2 He's been with you, and every time you leave he
 3 has sex with me, and he tortures my brothers so he can
 4 have sex with me.
 5 If you don't believe me, I'll tell you how.
 6 Please leave him.
 7 Q. Shavonne, when you found that note, did you show
 8 it to N [REDACTED]?
 9 A. Yes.
 10 Q. Did you speak with her about it?
 11 A. Yes.
 12 Q. How old was N [REDACTED] at the time on October 10th,
 13 2008 when you found that note?
 14 A. She was 10.
 15 Q. After speaking to N [REDACTED] about the note, what
 16 did you do?
 17 A. I told her to go upstairs, take a shower, tell
 18 her brothers to take a shower, and so we can go for a
 19 picnic.
 20 Q. And why did you tell her you were going to go for
 21 a picnic?
 22 A. Well, she knew what I was doing, but I wanted her
 23 to tell her brothers that we were going on a picnic.
 24 So --
 25 Q. What was the reason at that point for saying you
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APP. 067

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1 Q. Where did you go?
 2 A. To an apartment complex down the street.
 3 Q. And what did you do when you got there?
 4 A. I called the police.
 5 Q. Did the police eventually come to that apartment
 6 complex?
 7 A. Yes, it was the fire department first.
 8 Q. And did the police arrive after them?
 9 A. Yes.
 10 Q. Where exactly was it in the apartment complex
 11 that you met up with the police, do you recall?
 12 A. The leasing office.
 13 Q. So kind of a main area of the apartment complex?
 14 A. Yes.
 15 Q. The note, State's Exhibit Number 1, did you take
 16 that with you when you left the house?
 17 A. Yes, I did.
 18 Q. What did you do with it?
 19 A. I showed it to the police when they came.
 20 Q. Did you keep it, or did you give it to the police
 21 officer?
 22 A. No, I -- Well, I took it with me, and when they
 23 came to the apartment complex, I gave it to them.
 24 Q. To the police?
 25 A. Yes.

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1 Q. Did you recall if you specifically came in
 2 contact with a detective named Jason Lafreniere?
 3 A. Yes.
 4 Q. Do you recall whether he conducted any
 5 interviews?
 6 A. Yes, he interviewed my daughter first and then
 7 me.
 8 Q. At some point in time did you have a discussion
 9 with Detective Lafreniere about where the Defendant
 10 currently was?
 11 A. Yes.
 12 Q. And where was he at that point in time?
 13 A. He was at the house.
 14 Q. Did you express any concerns about the police
 15 going over to the house to contact him?
 16 A. No.
 17 Q. Did the police indicate to you they were going to
 18 go over there?
 19 A. Not until after N [REDACTED] was interviewed by CPS.
 20 Q. So after N [REDACTED] and yourself are interviewed,
 21 did the police indicate to you they were going to go
 22 over to the house?
 23 A. No, I actually told them if they weren't going to
 24 take them, then I wasn't going back to the house, and
 25 that's when they said they were going to go pick him up.

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1 Q. They said there were going to go to the house?
 2 A. Yes.
 3 Q. Did you have concerns about them going to the
 4 house to contact the Defendant?
 5 A. Just the concern he might not open the door.
 6 Q. Any other concerns at all about what might
 7 happen?
 8 A. No.
 9 Q. Did you agree to do anything, or help the police
 10 in some way to make contact with the Defendant at a
 11 different location?
 12 A. Yes.
 13 Q. What did you do?
 14 A. I contacted the Defendant and told him that we
 15 needed to be picked up from the park.
 16 Q. Had you reached an agreement with the police you
 17 were going to do that?
 18 A. Yes.
 19 Q. And what did the Defendant say when you called
 20 him?
 21 A. I called him.
 22 He fused a little bit and came.
 23 Q. He agreed to come pick you up?
 24 A. Yes.
 25 Q. He didn't actually pick you up though, is that
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1 correct?
 2 A. No.
 3 MR. MERBACK: Court's indulgence.
 4 THE COURT: Certainly.
 5 BY MR. MERBACK:
 6 Q. Over the course of your seven year relationship
 7 with the Defendant, was N [REDACTED] aware of any physical
 8 violence or altercations that were occurring in the home
 9 between yourself and the Defendant, or your other
 10 children and the Defendant?
 11 A. Yes.
 12 Q. Is that something that would occur often,
 13 consistently?
 14 How would you describe those kinds of
 15 occurrences?
 16 A. Often.
 17 Q. And would those occurrences involve actual
 18 physical violence?
 19 A. There with were a few physical altercations, most
 20 of them were verbal.
 21 Q. What is that?
 22 A. Most of them were verbal.
 23 Q. Have you had any contact with the Defendant since
 24 that October 10th, 2006 date?
 25 A. Yes.

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APP. 068

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1 Q. Have you actually spoken to him on the phone?
 2 A. Yes.
 3 Q. Has he ever said anything to you about what
 4 happened between him and N_____?
 5 A. Just apologized.

6 BY MR. HERBACK: No further questions, Judge.
 7 THE COURT: Cross.
 8 MR. FELICIANO: Thank you, Your Honor.

CROSS-EXAMINATION OF SHAVONNE STEWART-SANDERS

11 BY MR. FELICIANO:

12 Q. Good afternoon, ma'am.

13 A. Hi.

14 Q. You have been with Mr. Moore for about seven
 15 years, right?

16 A. Yes.

17 Q. And that has been on and off?

18 A. More so towards the end, yes.

19 Q. But you had time to where you were together, and
 20 times you weren't together, correct?

21 A. Yes.

22 Q. And during all the time that you were with him,
 23 he was around N_____?

24 A. Yes.

25 Q. When he was staying in the house, he was around

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1 her all the time?

2 A. Yes.

3 Q. And you never suspected any type of sexual abuse?

4 A. No.

5 Q. So the whole time you were together you never
 6 suspected anything?

7 A. No.

8 Q. Now, the night before that you say you found that
 9 note you were arguing with Mr. Moore?

10 A. Yes.

11 Q. You two were mad at each other, right?

12 A. Yes.

13 Q. And that is the night right before that you went
 14 to the police?

15 A. That's correct.

16 Q. Now, when you first found that note, you said you
 17 didn't confront Mr. Moore about it, right?

18 A. That's correct.

19 Q. And that's because of his temper?

20 A. Yes.

21 Q. So he has a really bad temper?

22 A. Yes.

23 Q. And I mean, would you say confronting him would
 24 be the last thing you would want to do, that's what you
 25 told the police, right?

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1 A. Yes.

2 Q. And that is obviously because you are scared of
 3 him?4 A. Not necessarily scared of him, but his actions of
 5 what he might do.6 Q. Well, I mean, you were so scared on the day that
 7 you called the police you said you wouldn't go back
 8 unless he was gone?

9 A. Yes.

10 Q. All right. So obviously if you are not going to
 11 go back, you are scared, is that fair to say?

12 A. Yes, uh-huh.

13 Q. Now, you talked about a time where you had an
 14 issue in Colorado incident with Mr. Moore, right?

15 A. Yes.

16 Q. That sounds like you got ran over?

17 A. Yes.

18 Q. He ran you over?

19 A. I slipped under the truck, and he took off and
 20 rolled over my legs.

21 Q. Well, I mean, it was his fault?

22 A. Yes.

23 Q. Right?

24 A. Yes.

25 Q. You didn't -- That is not something you did on
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1 your own?

2 A. Right.

3 Q. And he was charged with some pretty serious stuff
 4 for that, right?

5 A. I don't know what the charges were.

6 Q. Kidnapping, does that sound familiar?

7 A. I don't know what the charges were.

8 I didn't go to the Court.

9 Q. Okay.

10 MR. FELICIANO: Court's indulgence.

11 THE COURT: Sure.

12 BY MR. FELICIANO:

13 Q. You remember giving a statement to the police on
 14 October 10th, 2008?

15 A. That's correct.

16 Q. Right?

17 A. Yes.

18 MR. FELICIANO: May I approach?

19 THE COURT: Yes.

20 BY MR. FELICIANO:

21 Q. And you talked to them about that incident in
 22 Colorado, right?

23 A. Yes, I did.

24 Q. And does that look familiar?

25 A. Are you talking about that --

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APP. 069

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1 Q. When you talked to Detective LaFreniere?
 2 A. Yes.
 3 Q. I'm going to refer you to page 16, and they are
 4 asking you about the charges, and if you could, just
 5 read that to yourself right there.
 6 A. Uh-huh.
 7 Q. So you remember telling them that he was charged
 8 with kidnapping and domestic violence, right?
 9 A. I remember telling them that I believed it was
 10 kidnapping and domestic violence, but I wasn't sure.
 11 Q. But eventually he was convicted of domestic
 12 violence, or some crime?
 13 A. All I know is, he was on probation.
 14 I don't know what the charges were.
 15 Q. But that was for that incident?
 16 A. Yes, that's correct.
 17 Q. Now, Mr. Moore is fairly strict with the
 18 children, right?
 19 A. Yes.
 20 Q. Would you say he's harsh?
 21 A. Yes.
 22 Q. He hits them?
 23 A. Yes.
 24 Q. I mean, with a belt?
 25 A. Yes.

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1 Q. In fact, he has a little red bat that he was
 2 using just for that purpose?
 3 A. Yes.
 4 Q. That was different than your method of
 5 disciplining the kids?
 6 A. Yes.
 7 Q. You didn't have any physical contact with them
 8 when you disciplined them?
 9 A. Yes, I did.
 10 Q. You did?
 11 A. Uh-huh.
 12 Q. But you would do spankings and things like that?
 13 A. That's correct.
 14 Q. You would never do the belt, or a bat, or
 15 anything?
 16 A. I do a belt.
 17 Q. The belt too?
 18 A. Yes.
 19 Q. But not the bat?
 20 A. Not the bat.
 21 Q. Now, do you remember an incident involving a
 22 check in your home that was supposed to be put up by one
 23 of your children, and they had got written on with
 24 crayon?
 25 A. Oh, yes, I remember that.

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1 Q. And that was an incident where N [REDACTED] was
 2 supposed to put up a check?
 3 A. Uh-huh.
 4 Q. And that didn't happen, right?
 5 A. No.
 6 Q. In fact, one of the other kids ended up writing
 7 with crayon on the check?
 8 A. Yes.
 9 Q. And the kids were punished for that, right?
 10 A. Yes.
 11 Q. Punished harshly?
 12 A. I don't remember the punishment, but yes.
 13 Q. Now, I want to talk to you about some movies that
 14 were in your home.
 15 There were some pornographic movies in your home,
 16 right?
 17 A. Yes.
 18 Q. And you were aware of those?
 19 A. Yes.
 20 Q. In fact, you actually kept them, and you stored
 21 them in a certain place?
 22 A. That's correct.
 23 Q. Now, after you called the police, eventually you
 24 were subpoenaed to come to court, right?
 25 A. That's right.

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APP. 070

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1 A. She was in Colorado?
 2 Q. She was in Colorado.
 3 A. She was with my mother.
 4 MR. FELICIANO: Court's indulgence.
 5 THE COURT: Sure.
 6 BY MR. FELICIANO:
 7 Q. So you are saying at the first preliminary
 8 hearing setting that she was in Colorado, and that was
 9 true?
 10 A. That's correct.
 11 Q. Okay. And you also talked to the Court that day,
 12 right?
 13 A. Yes.
 14 Q. And you told the Court that she was in Colorado?
 15 A. Yes.
 16 Q. And today that is -- you're saying that is where
 17 she was?
 18 A. Yes.
 19 Q. We'll come back to that in a little bit.
 20 Now, on the second date -- or they told you you
 21 needed to bring her to Court, right?
 22 A. Yes.
 23 Q. And they told you they would put you in jail if
 24 you didn't bring her to court next time?
 25 A. Uh-huh.

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1 Q. Now, the second hearing, December 15th, 2008,
 2 about a month later you then bring N [REDACTED] to court?
 3 A. Yes.
 4 Q. Now, once this case started, you were instructed
 5 to get N [REDACTED] counseling, right?
 6 A. That's correct.
 7 Q. And you actually met with Karen Davis?
 8 A. Yes.
 9 Q. From child protective services?
 10 A. Yes.
 11 Q. And that was the same day that you called the
 12 police?
 13 A. Yes.
 14 Q. And they said, get her into counseling as soon as
 15 possible?
 16 A. That's correct.
 17 Q. And she was never taken to counseling?
 18 A. She was going through counseling through her
 19 school.
 20 Q. We're talking about this incident.
 21 They referred you to counseling after you called
 22 the police?
 23 A. Right.
 24 Q. And they said to get her into counseling?
 25 A. Right.

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1 Q. She was not taken to counseling?
 2 A. No, because she went to Colorado.
 3 Q. She didn't get counseling there either?
 4 A. She got it at school.
 5 Q. I'm sorry?
 6 A. She received counseling at school.
 7 Q. And did you provide any records of her counseling
 8 to the District Attorneys office?
 9 A. No.
 10 Q. And how long has -- or how long has she been in
 11 counseling?
 12 A. She's no longer in counseling.
 13 Q. When did she start?
 14 A. When she went to fifth grade back when she went
 15 to Colorado.
 16 Q. Okay. From October 10th of '08 how soon after
 17 that did she start counseling?
 18 A. She started school maybe that following week when
 19 she went back, so in November, late November.
 20 Q. How long was she in counseling?
 21 A. Until June of 2009.
 22 Q. And you are saying that was just through school?
 23 A. Yes.
 24 MR. FELICIANO: Court's indulgence.
 25 THE COURT: Yes.

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APP. 071

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1 A. Yes.
 2 Q. And that's felony embezzlement?
 3 A. Yes.
 4 Q. And it's punishable up to five years in prison?
 5 A. Yes.
 6 Q. And the currently there is a warrant for your
 7 arrest, right?
 8 A. I don't know.
 9 Q. Well, you live -- You are not aware if there was
 10 a warrant which issued for your arrest on February 10th
 11 of this year?
 12 A. No, sir.
 13 My lawyer didn't tell me that.
 14 Q. I'm sorry?
 15 A. My lawyer did not tell me that.
 16 Q. So you live obviously in Colorado?
 17 A. That's correct.
 18 Q. And you have been traveling between here and
 19 Colorado.
 20 And you haven't been arrested, right?
 21 A. That's correct.
 22 Q. You haven't been arrested in Colorado for this?
 23 A. That's correct.
 24 MR. MERBACK: Judge, I object.
 25 Beyond the scope.

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1 protective services.
 2 You never seen this. This is a summary of what
 3 happened in the case and what you were supposed to do on
 4 the first preliminary hearing date when you were
 5 supposed to bring your daughter to court.
 6 If you could just read this, read that paragraph
 7 right there to yourself.
 8 Done?
 9 A. Uh-huh.
 10 Q. Okay. So N [REDACTED] was actually in Las Vegas?
 11 A. No, she wasn't.
 12 I can give you -- If you need me to provide
 13 ticket information, I can do that.
 14 N [REDACTED] was in Colorado.
 15 Q. So when you told that to CPS, you were lying to
 16 them?
 17 MR. MERBACK: Objection.
 18 There has been no evidence she told that to CPS.
 19 THE COURT: I mean, you just showed her a
 20 document, but unless it's admitted into evidence, you
 21 really can't use it.
 22 BY MR. FELICIANO:
 23 Q. Did you tell CPS she was in Colorado?
 24 A. Yes, I did.
 25 Q. So you never told them that she was -- You told

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1 THE COURT: Go ahead.
 2 Just stay focused here.
 3 BY MR. FELICIANO:
 4 Q. You haven't since you have been in Nevada been
 5 arrested?
 6 A. Correct.
 7 Q. And you are going back to Colorado tomorrow?
 8 A. I don't know.
 9 Q. Within the next few days?
 10 A. Yes.
 11 Q. And you don't expect to be arrested on your way
 12 back to Colorado, do you?
 13 A. No.
 14 MR. FELICIANO: Court's indulgence.
 15 BY MR. FELICIANO:
 16 Q. Okay. We're just going to backtrack on one
 17 subject.
 18 We talked about the first preliminary hearing
 19 setting?
 20 A. Uh-huh.
 21 Q. Where you said that you didn't bring your
 22 daughter to court.
 23 And you said she was in Colorado?
 24 A. Yes, that's correct.
 25 Q. I'm going to approach with a summary from child

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1 CPS she was in Colorado?
 2 MR. MERBACK: Objection.
 3 Asked and answered.
 4 MR. FELICIANO: I'm trying to clarify.
 5 THE COURT: Go ahead and ask.
 6 You told them at the time of the preliminary
 7 hearing, you also told that to CPS.
 8 THE WITNESS: That's correct.
 9 BY MR. FELICIANO:
 10 Q. And you never told anybody that N [REDACTED] was still
 11 here?
 12 A. No.
 13 MR. FELICIANO: Court's indulgence.
 14 THE COURT: Sure.
 15 MR. HAMERS: Pass the witness.
 16 THE COURT: Redirect?
 17
 18 **REDIRECT EXAMINATION OF SHAVONNE STEWART-SANDERS**
 19 BY MR. MERBACK:
 20 Q. You indicated that you didn't come to court when
 21 you initially were subpoenaed in November, is that
 22 correct?
 23 A. I came to court.
 24 I just didn't bring N [REDACTED].
 25 Q. You didn't bring N [REDACTED] to court?

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APP. 072

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1 A. No.
 2 Q. Why didn't you bring N [REDACTED] to court?
 3 A. I didn't want her to have to get on the stand.
 4 Q. Had you talked to the Defendant about whether or
 5 not you were going to bring N [REDACTED] to court?
 6 A. Yes.
 7 Q. Did he say anything to you specifically about
 8 that?
 9 A. Yes.
 10 Q. What did he say?
 11 A. Basically, if I didn't show up, there was nothing
 12 that they could do.
 13 Q. You indicated that you told the Court, and you
 14 told CPS, that N [REDACTED] was in Colorado at that point, is
 15 that correct?
 16 A. Yes.
 17 Q. You received your subpoena for the case prior to
 18 actually coming to court, is that right?
 19 A. Yes.
 20 Q. When you originally received a subpoena, was
 21 N [REDACTED] in Las Vegas at that time, or was she in
 22 Colorado at the time?
 23 A. She was later in Las Vegas.
 24 Q. So at some point in time you sent her to
 25 Colorado, is that right?
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1 to your testimony in this case?
 2 A. No.
 3 MR. MERBACK: No further questions, Judge.
 4 THE COURT: Any recross?
 5 MR. FELICIANO: Just briefly.
 6

7 **RECROSS-EXAMINATION OF SHAVONNE STEWART-SANDERS**
 8 BY MR. FELICIANO:
 9 Q. When you received the subpoena the first time for
 10 the first preliminary hearing, you said N [REDACTED] was
 11 still here, right?
 12 A. Yes.
 13 Q. So you knew she needed to appear in court, right?
 14 A. Yes.
 15 Q. And you still sent her to Colorado?
 16 A. That's correct.
 17 Q. And that was in violation of the order to bring
 18 her here?
 19 A. That's correct.
 20 MR. FELICIANO: Pass.
 21 THE COURT: Anything else?
 22 MR. MERBACK: No, Judge.
 23 THE COURT: Thank you very very much for your
 24 testimony.
 25 You will be excused.
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1 A. Yes.
 2 Q. Do you recall however in advance of that November
 3 court date it was that you sent her to Colorado?
 4 A. I believe it was at the end of October.
 5 Q. Maybe at least a few weeks before the court date?
 6 A. Yes.
 7 Q. So it was after you received a subpoena to bring
 8 her to court, but before you actually came to court?
 9 A. That's correct.
 10 Q. There was some discussion of some movies in your
 11 home, some pornographic movies in your home, with
 12 Defense counsel, is that right?
 13 A. Yes.
 14 Q. Did you ever show any of those movies to N [REDACTED]?
 15 A. No.
 16 Q. There was also some discussion about a pending
 17 case that you have here in Las Vegas, do you recall
 18 that?
 19 A. Yes.
 20 Q. Were you promised anything by the State in
 21 regards to that case as to what might happen to that
 22 case, or any help you might get with that case?
 23 A. No.
 24 Q. Have you been promised any type of leniency or
 25 anything from us in regards to that case and in regards
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1 You can go ahead and step down.
 2 Thanks.
 3 THE COURT: If you need a break, want a bathroom
 4 break, it's now 20 till 3.
 5 Do you guys want to take five minutes or not, or
 6 keep going?
 7 You want to take a short little restroom break?
 8 All right. We're going to take ten minutes.
 9 You guys relax, go to the restroom.
 10 (Jury admonished by the Court.)
 11 THE COURT: Ten minutes.
 12 (Jury excused from the courtroom.)
 13 (Thereupon, the following proceedings were had out of
 14 the presence of the jury.):
 15 THE COURT: Make sure the door's closed.
 16 We're in recess.
 17 (Thereupon, a recess was had.)
 18
 19
 20
 21
 22
 23
 24
 25

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APP. 073

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1 (Thereupon, the following proceedings were had out of
 2 the presence of the jury.):
 3 THE COURT: We ready to bring the jury in?
 4 MS. HAMERS: I need to make a record on the bad
 5 act instruction.
 6 THE COURT: Let's wait until we get rid of them.
 7 Bring them in.
 8 (Thereupon, the following proceedings were had in open
 9 court and in the presence of the jury.):
 10 THE COURT: Do the parties stipulate to the
 11 presence of the jury?
 12 MS. HOLTHUS: Yes, Your Honor.
 13 MR. FELICIANO: Yes, Your Honor.
 14 THE COURT: Okay. State's next witness.
 15 MS. HOLTHUS: N. [REDACTED]
 16 THE CLERK: Come forward, N. [REDACTED]
 17 Take the witness stand, and raise your right
 18 hand.
 19 MS. HAMERS: Can we approach while she's walking
 20 up there?
 21 THE COURT: Sure.

22 (Thereupon, a discussion was had between Court and
 23 Counsel at sidebar.)
 24 THE COURT: Shavonne, come come on up.
 25 You can sit right here beside N. [REDACTED]

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1 Swear in N. [REDACTED].
 2 THE CLERK: Raise your right hand.
 3
 4 N. [REDACTED] S. [REDACTED] T-S. [REDACTED]
 5
 6 who, being first duly sworn to tell the truth, the whole
 7 truth, and nothing but the truth, was examined and
 8 testified as follows:

9 THE CLERK: Please be seated.
 10 Please state your full name, spelling both your
 11 first and last name for the record.
 12 THE WITNESS: My name is N. [REDACTED], spelled
 13 N. [REDACTED] S. [REDACTED] T-S. [REDACTED].
 14 THE COURT: Thank you.
 15 N. [REDACTED], kind of slide right up there close to
 16 that microphone.
 17 Okay. And kind of look right at that microphone
 18 and speak right there.
 19 That way everybody can hear you.
 20 All right. Go ahead.

21 - - - - -
 22
 23
 24
 25

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1 **DIRECT EXAMINATION OF N. [REDACTED] S. [REDACTED] T-S. [REDACTED]**

2 BY MS. HOLTHUS:
 3 Q. N. [REDACTED], how old are you?
 4 A. 12.
 5 Q. What is your birthday?
 6 A. [REDACTED].
 7 Q. What year were you born?
 8 A. [REDACTED].
 9 Q. What grade are you in?
 10 A. Sixth.
 11 Q. Where do you go to school?
 12 A. Lotus.
 13 Q. What is Lotus?
 14 A. I don't know -- It's in Colorado.
 15 Q. Okay. So you are living in Colorado, just came
 16 in here to testify for this trial?
 17 A. Yes.
 18 Q. How long have you been in Colorado?
 19 A. 12 years.
 20 Q. Off and on since you were born?
 21 A. On and off.
 22 Q. What is the first -- Let me take that back.
 23 Tell me about your family.
 24 A. I have three brothers.
 25 I live with my mom and my new stepdad.

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1 Q. Your mom is sitting behind you now?
 2 A. Yes.
 3 Q. And your brothers, what are their names and ages?
 4 A. K. [REDACTED] is 10.
 5 D. [REDACTED] is 6.
 6 And D. [REDACTED] is 4.
 7 Q. They all live with you since they were born off
 8 and on in Colorado?
 9 A. Yes.
 10 Q. Where else besides Colorado did you live?
 11 A. Las Vegas.
 12 Q. Do you know Devell Moore?
 13 A. Yes.
 14 Q. How do you know him?
 15 A. I know him because my mom met him.
 16 Q. How old were you when your mom met him?
 17 A. I don't know.
 18 Q. Do you see him here in court?
 19 A. Yes.
 20 Q. Do can you point to him, and tell me where he's
 21 seated and what he's wearing?
 22 A. He's wearing black.
 23 MS. HOLTHUS: May the record reflect the
 24 Identification of the Defendant?
 25 THE COURT: Yes, the record will so show.

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APP. 074

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1 BY MS. HOLTHUS:

2 Q. Was there a time that the Defendant actually
3 moved in with you, was living with you?

4 A. Yes.

5 Q. Where were you living when you first remember him
6 moving in with you?

7 A. In Colorado.

8 Q. What is the first memory you have -- or how old
9 were you when you first remember him living with you?

10 A. I don't know.

11 Q. Let me ask you this:

12 Is he the daddy to any of your brothers?

13 A. Yes.

14 Q. Which one?

15 A. D [REDACTED] and D [REDACTED]

16 Q. And D [REDACTED] is older?

17 A. Yes.

18 Q. He's you said 5 or 6?

19 A. 6.

20 Q. For at least six years mom and the Defendant
21 lived together?

22 A. Yes.

23 Q. Were they living together when D [REDACTED] was born?

24 A. Yes.

25 Q. D [REDACTED], J [REDACTED] was born?

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1 Q. When did you start calling him dad?

2 A. I don't remember.

3 Q. Were you little?

4 A. No.

5 Q. That question needs no answer, so I don't know
6 what little or big is.

7 You are 12 now.

8 Your brother is 6.

9 So at least by the time you were 6 years old Dee
10 was in your home, is that right?

11 A. I don't know.

12 Q. You said you were all living together when

13 D [REDACTED] J [REDACTED] was born?

14 A. Yes.

15 Q. And he's six years younger than you are?

16 A. Yes.

17 Q. So if you do the math, then you would have been
18 at least 6, right, maybe younger?

19 A. Yes.

20 Q. Back when you were 6, were you calling the
21 Defendant dad?

22 A. No.

23 Q. Why did you start calling him dad?

24 A. Because he told me I should start calling him
dad.

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78 1 A. Yes.

2 Q. That was all in Colorado?

3 A. Yes.

4 Q. Was it just you your brothers, mom and the
5 Defendant living together?

6 A. Yes.

7 Q. Over the course of those years was there ever any
8 have kinds of violence in the home?

9 A. Sometimes.

10 Q. Was would it be directed sometimes to you?

11 A. No.

12 Q. Who would it be directed towards?

13 A. Mom and stepdad.

14 Q. Between them you mean?

15 A. Yes.

16 Q. And when you talk about stepdad, who are you
17 talking about?

18 A. Devell.

19 Q. Do you call him something else?

20 A. Dad.

21 Q. Is there something else that you called him as
22 well?

23 A. Dee.

24 Q. Dee, like D-e-e?

25 A. Yes.

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1 Q. Do you remember what grade you were in?

2 A. No.

3 Q. Do you still call him dad?

4 A. No.

5 Q. What do you want to refer to him as now?

6 A. Dee.

7 Q. When did you go from dad to Dee?

8 A. Just now.

9 Q. You said that you would see there would be
10 violence in the home between Dee and your mom?

11 A. Yes.

12 Q. Did you ever see Dee hit your brothers?

13 A. Only when they got in trouble.

14 Q. And when they got in trouble, how would he hit
15 them?

16 A. With a belt.

17 Q. Did it leave marks?

18 A. No.

19 Q. What about you, did he ever hit you with a belt?

20 A. Yes.

21 Q. Did it ever leave marks?

22 A. Yes.

23 Q. Were you afraid of his temper?

24 A. Yes.

25 Q. And this was being physically violent on

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APP. 075

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1 occasion, would he also be verbally loud?
 2 A. Yes.
 3 Q. Scary in the house?
 4 A. Yes.
 5 Q. Was there something else he was doing in the
 6 house that made you uncomfortable?
 7 A. Yes.
 8 Q. When did that start?
 9 A. It --
 10 Q. Let me show you what has been marked as State's
 11 Proposed Exhibit Number 2.
 12 Would you take a look at that?
 13 A. Yes.
 14 Q. Is that your date of birth at the top,
 15 [REDACTED]?
 16 A. Yes.
 17 Q. That is kind of a chart you and I have made
 18 together a couple of times showing you how old you were
 19 and what grade you were during what years?
 20 A. Yes.
 21 Q. Would that help you kind of figure out what was
 22 going on if you use that?
 23 A. Yes.
 24 MS. HOLTHUS: Move to admit State's Proposed
 25 Exhibit Number 2.
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1 MS. HAMERS: No objection.
 2 THE COURT: 2 is admitted.
 3 MS. HOLTHUS: Thank you.
 4 BY MS. HOLTHUS:
 5 Q. So your belief is you first met the Defendant
 6 when -- Well let's take it back.
 7 We know C [REDACTED] was born in what year, or do we
 8 know?
 9 A. I -- 2003.
 10 Q. Okay. So these other things that started
 11 happening to you, how old were you then?
 12 A. 9.
 13 Q. 9.
 14 So about in third grade?
 15 A. Yes.
 16 Q. So that would have been about 2006 or 2007?
 17 A. Yes.
 18 Q. Where were you living at the time when it first
 19 began?
 20 A. In Colorado.
 21 Q. Tell me the first thing you remember about
 22 something happening to you.
 23 A. I remember my cousins and uncles moving out.
 24 Q. Who were your cousins and uncles?
 25 A. My Auntie Tasha and my Uncle Herschel and my
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1 three cousins, Mia, Tashandra and Demetrious.
 2 Q. And they had been living with you and Dee and
 3 your brothers?
 4 A. Yes.
 5 Q. At some point they moved out.
 6 Were they leaving the state or getting their own
 7 place?
 8 A. Leaving the state.
 9 Q. You say, when they were moving out, was it
 10 actually the day they were moving out?
 11 A. The day they were moving out.
 12 Q. What is about that that you remember so well?
 13 Was it while they were leaving, after they left?
 14 A. After they left.
 15 Q. Where was your mom?
 16 A. Work.
 17 Q. Where did mom work?
 18 A. I don't remember.
 19 Q. Okay. Do you remember what shift mom was
 20 working?
 21 A. No.
 22 Q. Days or nights?
 23 A. It was on and off.
 24 Q. The time we're talking about now after your
 25 cousins and uncle left, was that day or night?
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1 A. Night.
 2 Q. Where were your brothers?
 3 A. I don't know.
 4 Q. Tell me what happened.
 5 A. I remember my cousins leaving, and he said that
 6 he wanted to try something.
 7 Q. He --
 8 A. Devell, Dee, wanted to try something.
 9 And --
 10 Q. And what happened -- Where were you when he said
 11 he wanted to try something?
 12 A. I was sitting on the couch.
 13 Q. Would that be in a living room?
 14 A. Yes.
 15 Q. The place that you were living, was that a house
 16 or an apartment?
 17 A. A house.
 18 Q. How many bedrooms?
 19 A. Three.
 20 Q. One-storey, two-storey?
 21 A. Two -- three.
 22 Q. Three-storey?
 23 A. Yes.
 24 Q. The living room being on which floor?
 25 A. The middle floor.
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APP. 076

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87

1 Q. And then he said he wanted to what, try
 2 something?
 3 A. Yes.
 4 Q. What did you say?
 5 A. No.
 6 Q. What happened then?
 7 A. He said --
 8 Q. What did he say?
 9 A. He said, let's go upstairs, and then he took me
 10 upstairs, and we watched this movie.
 11 Q. So when he said, let's go upstairs, did you go
 12 with him?
 13 A. Yes.
 14 Q. Did you have any idea what was going to happen up
 15 there?
 16 A. No.
 17 Q. When you went upstairs, what happened, where did
 18 you go, what room?
 19 A. Mom's room.
 20 Q. Was that also his room?
 21 A. Yes.
 22 Q. How many beds were in the room?
 23 A. One.
 24 Q. Was the TV in there?
 25 A. Yes.

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88

1 Q. Was it dark or light inside the room?
 2 A. Light.
 3 Q. What was light in the room, was it daylight,
 4 or --
 5 A. Night.
 6 Q. It was nighttime?
 7 A. Yes.
 8 Q. So what was making the room light?
 9 A. The lights.
 10 Q. The lights were on?
 11 A. Yes.
 12 Q. Was the door closed, if you remember?
 13 A. I don't remember.
 14 Q. Okay. What do you remember, where did you go
 15 once you got up to the room?
 16 A. On the bed.
 17 Q. How were you positioned on the bed?
 18 A. I was sitting down.
 19 Q. Which part of the bed?
 20 What size bed is it, or was it?
 21 A. I --
 22 Q. A big bed, or little bed?
 23 A. A big bed.
 24 Q. Do you know how a bed is longer on the sides and
 25 shorter on the sides, were you sitting on the long side

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1 or the short side?
 2 A. I don't remember.
 3 Q. Were you at the foot of the bed?
 4 A. Yes.
 5 Q. What happened then?
 6 A. He put in this movie.
 7 Q. What movie was it?
 8 A. A grown-up movie.
 9 Q. Do you know the name of it?
 10 A. Liquid City.
 11 Q. When you say, a grown-up movie, what do you mean
 12 by that?
 13 A. Where they would do grown-up things.
 14 Q. What kind of grown-up things?
 15 A. Have sex.
 16 Q. Did he say anything about putting on the movie?
 17 A. No.
 18 Q. Did you say anything?
 19 A. No.
 20 Q. If you are sitting on the bed, where was he?
 21 A. I don't remember.
 22 Q. What happened then?
 23 A. We just watched the movie.
 24 Q. And then what?
 25 A. Nothing else happened.

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1 Q. And how did you end up leaving the room?
 2 A. I don't remember.
 3 Q. Did he say anything to you about the movie?
 4 A. No.
 5 Q. Did you say anything to him?
 6 A. No.
 7 Q. What were you thinking?
 8 A. I don't remember what I was thinking.
 9 Q. Did you say anything to your mom right after
 10 that?
 11 A. No.
 12 Q. Why not?
 13 A. I don't know.
 14 Q. Did there come a time after that that something
 15 else happened to you that made you uncomfortable?
 16 A. Yes.
 17 Q. How long after you watched Liquid City was it?
 18 A. I don't know.
 19 Q. Was it days, weeks, months, do you have an idea?
 20 A. No.
 21 Q. Were you still 9ish?
 22 A. I don't remember.
 23 Q. What happened after that, what was the next thing
 24 you remember after watching that movie?
 25 Did he ever show you the movie again?

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APP. 077

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1 A. No.
 2 Q. Did he ever take you to the room again?
 3 A. Yes.
 4 Q. Did he take you to the room more than one time?
 5 A. Yes, two times.
 6 Q. Okay. What happened the two times he took you to
 7 the room?
 8 We're talking about in Colorado, right?
 9 A. Yes.
 10 Q. What happened those times?
 11 A. The first time we watched the movie, and the
 12 second time he tried to stick it in me.
 13 Q. Tried to stick what in you?
 14 A. His dick.
 15 Q. And what part of you did he try to stick his dick
 16 in?
 17 A. What?
 18 Q. In what part of you did he try to stick his dick?
 19 A. My vagina.
 20 Q. I'm sorry?
 21 A. My vagina.
 22 Q. Now, we're talking about his dick and your
 23 vagina.
 24 We are talking about the place where the pee
 25 comes out on each of you?

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1 A. Yes.
 2 Q. What -- Were you dressed or undressed when he
 3 tried to stick it in?
 4 A. I don't remember.
 5 Q. Do you remember what you were wearing?
 6 A. No.
 7 Q. Do you remember how far in it went?
 8 A. It didn't go in.
 9 Q. Where did it go?
 10 A. Just the lips.
 11 Q. Did it go in between the lips?
 12 A. No.
 13 Q. What did it feel like?
 14 A. It didn't feel like anything.
 15 Q. Did he say anything?
 16 A. No.
 17 Q. What did you say?
 18 A. Nothing.
 19 Q. What made him stop?
 20 A. I don't know.
 21 Q. How did it end?
 22 A. I don't remember.
 23 Q. Did he say anything to you?
 24 A. No.
 25 Q. Did you say anything to him?

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1 A. No.
 2 Q. Did anything come out of his dick?
 3 A. No.
 4 Q. Did you tell your mom?
 5 A. No.
 6 Q. Why not?
 7 A. I don't know.
 8 Q. Did Dee ever tell you it was okay to tell your
 9 mom?
 10 A. No.
 11 Q. Did he tell you what might happen if you told?
 12 A. He said he would get in trouble, and he didn't
 13 know if I would.
 14 Q. He didn't know if you would get in trouble, but
 15 he knew he would?
 16 A. Yes.
 17 Q. Did you want him to try to stick his dick in you?
 18 A. No.
 19 Q. Were there any other times he tried to do that to
 20 you in Colorado?
 21 A. I --
 22 Q. Or do anything to you that made you feel
 23 uncomfortable?
 24 A. I don't remember.
 25 Q. Did you get along with Dee okay?
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1 A. Just a little.
 2 Q. Did there come a time that you left Colorado?
 3 A. Yes.
 4 Q. When was that?
 5 A. When I was in fourth grade. We left and went to
 6 Las Vegas.
 7 Q. In fourth grade.
 8 You turned 10 at the beginning of fourth grade,
 9 right?
 10 A. Yes.
 11 Q. That would have been according to the little
 12 chart the school year of 2007 to 2008?
 13 A. Yes.
 14 Q. When you moved here in -- was it the beginning of
 15 fourth grade did you say?
 16 A. Yes.
 17 Q. How long did you stay here that time?
 18 A. I don't know.
 19 Q. Did you go all the way through fourth grade here
 20 in Vegas?
 21 A. No.
 22 Q. Did you go back to Colorado for fourth grade?
 23 A. Yes.
 24 Q. While you were living here in Vegas, were you
 25 living with Dee?
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APP. 078

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1 A. Yes.
 2 Q. Where were you living then?
 3 A. We stayed in a hotel.
 4 Q. All of you together?
 5 A. Yes.
 6 Q. When you went back to Colorado, did the Defendant
 7 go with you?
 8 A. No.
 9 Q. Just you and your mom and brothers?
 10 A. Yes.
 11 Q. How long did you stay in Colorado that time -- Or
 12 asking you a different way, did you leave Colorado then
 13 again?
 14 A. Yes.
 15 Q. And where did you go?
 16 A. Back to Las Vegas.
 17 Q. When was that, what grade were you in then?
 18 A. Fifth.
 19 Q. Is that the beginning of fifth?
 20 A. Yes.
 21 Q. And is that the point you were 10 when you first
 22 got here I guess and then turned 11 in October of fifth
 23 grade?
 24 A. Yes.
 25 Q. 2008, 2009 school year?

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1 A. Yes.
 2 Q. Do you remember exactly when you got here?
 3 Did you start fifth grade here?
 4 A. No, I started fifth grade in Colorado.
 5 Q. Does Colorado start in August or September, or do
 6 you know?
 7 A. August.
 8 Q. And how much of fifth grade did you do in
 9 Colorado?
 10 A. Just a week.
 11 Q. And you came directly to Vegas?
 12 A. Yes.
 13 Q. And went right to fifth grade?
 14 A. Yes.
 15 Q. When you came back to Vegas, where were you
 16 living?
 17 A. Who were you living with.
 18 A. Dee's mom.
 19 Q. What's her name?
 20 A. Gloria.
 21 Q. Gloria what?
 22 A. Scott.
 23 Q. Anybody else?
 24 A. And Uncle Bobby.
 25 Q. Okay. Anybody else?

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1 A. Mom and three brothers and Dee.
 2 Q. What address was that place?
 3 A. I don't remember.
 4 Q. Does [REDACTED] sound familiar, or no?
 5 A. No.
 6 Q. It was in Las Vegas though?
 7 A. Yes.
 8 Q. Did you live in more than one place with Dee when
 9 you were in Vegas at that time?
 10 A. Yes.
 11 Q. How many places?
 12 A. Two.
 13 Q. Did they both belong -- Who owned them both, one
 14 was Dee's mom?
 15 A. Two.
 16 Q. Both were Dee's mom?
 17 A. Both of the places belonged to Dee's mom.
 18 Q. When you got to Vegas, did he do things to you
 19 here that made you uncomfortable?
 20 A. Yes.
 21 Q. Did it happen more than one time in Vegas now?
 22 A. Two times.
 23 Q. Where did those two times happen?
 24 A. In the first house.
 25 Q. That was a house?

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1 A. Yes.
 2 Q. How many bedrooms?
 3 A. Three.
 4 Q. How was it divvied up, who slept where?
 5 A. Gloria slept in her room.
 6 Uncle Bobby slept in his room.
 7 Then the rest, we either had the room -- or the
 8 front room, the bedroom, or the front room.
 9 Q. Okay. Tell me about the first time it happened
 10 to you at the old place.
 11 Daytime or nighttime?
 12 A. I don't remember.
 13 Q. Where were you?
 14 You already said you were at the old house,
 15 Gloria's house, the first house.
 16 What room were you in when Dee first approached
 17 you?
 18 A. Gloria's room.
 19 Q. Where was Gloria?
 20 A. Out shopping with my mom.
 21 Q. And your brothers?
 22 A. Outside playing.
 23 Q. How do you know that?
 24 A. Actually, they were with my mom.
 25 Q. What happened, how did you get into Gloria's

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APP. 079

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1 room?
 2 A. He took me there.
 3 Q. What did he say?
 4 A. He didn't say anything.
 5 Q. Did you want to go?
 6 A. No.
 7 Q. Why did you go?
 8 A. I don't know.
 9 Q. What happened when you got in there?
 10 A. I sat on the bed, and --
 11 Q. How did you sit on the bed, what part?
 12 A. Back a little bit.
 13 I was on the edge.
 14 Q. Your back was on the bed.
 15 So you were laying on the bed?
 16 A. Yes.
 17 Q. And your -- I'm sorry.
 18 What was on the edge?
 19 A. I was on the edge of the bed.
 20 Q. See that tissue box you got there in front of
 21 you?
 22 A. Yes.
 23 Q. Pretend that is the bed, and show me about where
 24 on the bed you would have been sitting or laying.
 25 A. The bed was facing this way, and I was right

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1 here.
 2 Q. Where would be the head of the bed?
 3 A. Here.
 4 MS. HOLTHUS: For the record, if you are standing
 5 at the end facing the bed, she would have been sitting
 6 on the right side of the bed in about the middle.
 7 THE COURT: That's correct.
 8 BY MS. HOLTHUS:
 9 Q. So then you laid down there?
 10 A. Yes.
 11 Q. Did your butt stay at the edge of the bed?
 12 A. Yes.
 13 Q. Where were your legs?
 14 A. Laying over the bed.
 15 Q. And where was the Defendant?
 16 A. In between my legs.
 17 Q. What was he wearing?
 18 A. I don't remember.
 19 Q. What were you wearing?
 20 A. I don't remember.
 21 Q. Were your clothes on, or off, or down?
 22 A. Down.
 23 Q. How did they get down?
 24 A. I don't remember.
 25 Q. Was the room light?

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1 A. Yes.
 2 Q. Was it natural light, or overhead light, you
 3 know, sunlight or --
 4 A. Sunlight
 5 Q. Was there a TV on?
 6 A. No.
 7 Q. What happened then?
 8 A. He tried to stick it in me.
 9 Q. How did he try?
 10 A. I don't remember.
 11 Q. Was he standing still?
 12 A. Yes.
 13 Q. Where were his hands?
 14 A. One was on the bed, and the other was on his
 15 dick.
 16 Q. You said, he tried.
 17 What stopped him?
 18 A. Mom and Gloria walked in and went into the
 19 kitchen.
 20 Q. How far did it get?
 21 A. It didn't go in at all.
 22 Q. Where did it go?
 23 A. Just to the lips.
 24 Q. Did it push at all?
 25 A. Just a little.

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1 Q. Did it hurt?
 2 A. A little.
 3 Q. Did you say anything?
 4 A. No.
 5 Q. You said your legs were hanging over.
 6 Can you show me with like with your fingers how
 7 were they, were they together, were they apart?
 8 A. They were apart.
 9 Q. Spread?
 10 A. Yes.
 11 Q. What was spreading them?
 12 Were you spreading them on your own, or was
 13 something physically spreading them, or --
 14 A. I don't remember.
 15 Q. You said he was standing between your legs?
 16 A. Yes.
 17 Q. And that your legs were spread, and then he was
 18 pushing it.
 19 When you are talking about, it, what are you
 20 talking about?
 21 A. His dick.
 22 Q. Into where?
 23 A. My vagina.
 24 Q. And you said -- Did he touch you anywhere else on
 25 your body that day?

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APP. 080

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1 A. No.
 2 Q. Did he have you touch him anywhere else on his
 3 body?
 4 A. No.
 5 Q. And then you said somebody came home?
 6 A. Yes.
 7 Q. How do you know?
 8 A. Because I heard the garage door open.
 9 Q. And what happened when you heard the garage door
 10 open?
 11 A. He put his clothes back on, and I put whatever I
 12 had on back on.
 13 Q. And what did you do?
 14 A. He walked out, and I walked out.
 15 Q. And did you say anything to anybody?
 16 A. No.
 17 Q. Why not?
 18 A. I don't know.
 19 Q. You said it happened two times at the old place
 20 in Vegas.
 21 Tell me about the other time.
 22 A. I was asleep on the floor, and he was on the
 23 futon, woke me up, got on the floor with me, and tried
 24 to stick it in.
 25 Q. You were where?

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1 A. On the floor asleep.
 2 Q. But were you on something?
 3 A. Covers.
 4 Q. You said you made a bed.
 5 Who were you on the floor with, were you alone?
 6 A. I was on the floor with my brothers Keondre and
 7 DJ.
 8 Q. Where was the Defendant?
 9 A. On the futon.
 10 Q. On the futon.
 11 Where was the futon?
 12 A. Up against the wall in the living room.
 13 Q. You got off the futon and did what?
 14 A. And laid on the floor.
 15 Q. Was this nighttime?
 16 A. Yes.
 17 Q. Was there any lights on in the room?
 18 A. No.
 19 Q. Was there a TV on?
 20 A. No.
 21 Q. What happened then?
 22 A. He got undressed and tried to stick it in me.
 23 Q. How were you laying when he laid down with you?
 24 A. On my side.
 25 Q. Were you on the end of your brothers?

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1 A. I was in the middle.
 2 Q. And so where did he go?
 3 A. In between me and DJ.
 4 Q. So the Defendant got between you and DJ?
 5 A. Yes.
 6 Q. Was Keondre then on the other side of you?
 7 A. Yes.
 8 Q. Were you facing the Defendant or Keondre?
 9 A. Keondre.
 10 Q. Where was the Defendant facing?
 11 A. Back of me.
 12 Q. So you were spooned -- You were against Keondre,
 13 and then the Defendant was -- or had his tummy to your
 14 back?
 15 A. Yes.
 16 Q. And how did you try to stick it in you?
 17 A. By pushing.
 18 Q. By pushing what where?
 19 A. His dick in between my vagina.
 20 Q. Was that skin to skin?
 21 A. Yes.
 22 Q. How far did it go in?
 23 A. It didn't go in.
 24 Q. Where did it go?
 25 A. Just the lips.

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	105		107
1	A. In his hand.	1	A. When we moved to the new house, after we stayed
2	Q. Where was his dick when the sperm came out?	2	there for a month, I wrote it on a note to my mom.
3	A. In his hand.	3	Q. What made you decide to write the note?
4	Q. Was that before or after he tried to stick it in	4	A. I wanted him to stop.
5	you?	5	Q. Why didn't you tell your mom?
6	A. After.	6	A. I don't know.
7	Q. Now, where were the other times?	7	Q. Just easier to write it in a note?
8	Did the sperm ever get on you?	8	A. Yes.
9	A. No.	9	Q. And what did you do with the note?
10	Q. Where would it go?	10	A. I put it in her purse.
11	A. In his hand.	11	Q. Why in her purse?
12	Q. The other times, were those in Las Vegas or	12	A. Because she goes in her purse a lot.
13	Colorado?	13	Q. Do you remember where in her purse you put it?
14	A. I don't remember.	14	A. No, I just threw it in there.
15	Q. When you were on the floor, did he touch you	15	Q. And at sometime after she found it, right?
16	anywhere else on your body?	16	A. Yes.
17	A. No.	17	Q. Do you know how long after you wrote it, it was?
18	Q. Did he have you touch him anywhere else on his	18	A. Just a day.
19	body?	19	Q. Was it the same day that you wrote it?
20	A. No.	20	A. No, it was the day after.
21	Q. Did you ever touch your chest, your breasts,	21	Q. And what happened?
22	either here or in Colorado?	22	When did you realize mom found the note?
23	A. No.	23	A. When the people came to fix something in the
24	Q. What about his mouth?	24	house, I woke up, and my mom told me to come here, and
25	A. Yes.	25	took me outside in the garage and talked to me.
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	106		108
1	Q. What did he do with his mouth?	1	Q. And what happened then?
2	A. He kissed me.	2	How was mom?
3	Q. Where were you when that happened?	3	Was mom upset?
4	A. In Gloria's room.	4	A. Yeah, she was crying.
5	Q. Here in Las Vegas?	5	Q. How about you, were you upset?
6	A. Yes.	6	A. Yes.
7	Q. Did he lick your vagina after he tried to stick	7	Q. Did she ask you about the note?
8	his dick in you?	8	A. Yes.
9	A. No.	9	Q. What did you tell her?
10	Q. Did he say anything?	10	A. I told her that --
11	A. No.	11	Q. I'm sorry?
12	Q. Were there any other times that something	12	A. I told her that I wrote it.
13	happened to you with him like that here in Las Vegas	13	Q. You wrote it.
14	that you remember?	14	Okay. And then what happened?
15	A. No.	15	A. Then she told all of us to get dressed, and we
16	Q. In fairness, have you been trying to forget a lot	16	walked over to these apartments, and she called the
17	of this?	17	police.
18	A. Yes.	18	Q. What happened then?
19	Q. Did you tell your mom after -- Was Gloria's room	19	A. Then these detectives talked to me and my mom,
20	first, or the living room first?	20	and I told them what happened.
21	A. Gloria's room.	21	Q. Did you try to tell them as much as you could?
22	Q. You didn't tell after Gloria's room you said.	22	A. Yes.
23	What about the living room, did you tell?	23	Q. Did you try to tell them everything you could
24	A. Yes.	24	remember?
25	Q. How did you tell?	25	A. Yes.
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1 Q. Did you try to tell them the truth?
 2 A. Yes.
 3 Q. Yes?
 4 A. Yes.
 5 Q. And then what happened?
 6 A. And then --
 7 Q. Did they eventually take him away?
 8 A. Yes.
 9 Q. ~~M~~, I'm showing you State's Exhibit 1.
 10 Do you recognize that?
 11 A. Yes.
 12 Q. Is that the note you wrote?
 13 A. Yes.
 14 Q. And you said you didn't know how to tell mom
 15 this, but Dee was cheating on her for the past two
 16 years, you wrote that note when you were 10?
 17 A. 11.
 18 Q. Okay. You said he had been having sex with you
 19 every time she would leave, is that what you wrote?
 20 A. Yes.
 21 Q. So was that actually happening more than the
 22 couple times you talked about, or --
 23 A. Yes, but I don't remember the other times.
 24 Q. Okay. So it was happening more often, but you
 25 don't specifically recall the other times than what you

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1 A. Yes.
 2 Q. Did you ever actually have to give mom all the
 3 details of how?
 4 A. No.
 5 MS. HOLTHUS: I'll pass the witness.
 6 THE COURT: Cross.

8 ~~CROSS-EXAMINATION OF ~~N~~ ST -S~~

9 BY MS. HAMERS:

10 Q. ~~N~~, I'm going to ask you some questions.
 11 Are you okay to keep going?
 12 I know you have been up there a long time.
 13 A. I'm okay.
 14 Q. If you are not okay, or you need a break or
 15 anything, just tell me.
 16 All right?
 17 A. Yes.
 18 Q. Your stepdad lived with you could we say a lot of
 19 years, is that fair?
 20 A. Yes.
 21 Q. Is life at home better when your stepfather is
 22 there, or when he's not there?
 23 A. When he's not there.
 24 Q. You and your three brothers, you are the oldest,
 25 right?
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1 talked about?
 2 A. Yes.
 3 Q. And then you said that he has sex with you.
 4 What did you mean by, having sex with you?
 5 A. Just trying to stick it in me.
 6 Q. You said he was torturing your brothers?
 7 A. Yes.
 8 Q. What did you mean by that, what was he doing?
 9 A. Telling them to go outside, so he could try to
 10 stick it in me, and watch the movies with me.
 11 Q. Did he watch the movies with you more than one
 12 time?
 13 A. Maybe about five times.
 14 Q. And were there times when your brothers tried to
 15 come in while you were in the bedroom with Dee?
 16 A. Yes.
 17 Q. And what would he do to them?
 18 A. Yell at them and tell them to get out, or --
 19 Q. Is that what you meant by torturing your
 20 brothers?
 21 A. Yes.
 22 Q. He would do that, so he could have sex with you?
 23 A. And watch the movies.
 24 Q. And he said, if you don't believe me, would you
 25 tell your mom how, but mom believed you, didn't she?
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1 A. Yes.
 2 Q. You help take care of them?
 3 A. Yes.
 4 Q. Some of them since they were little, bitty
 5 babies?
 6 A. Yes.
 7 Q. Do you feel protective of them?
 8 A. Yes.
 9 Q. Does it bother you when someone does something to
 10 hurt them?
 11 A. Yes.
 12 Q. How does that make you feel?
 13 A. Bad.
 14 Q. Make you mad?
 15 A. Yes.
 16 Q. The Prosecutor asked you some questions, and you
 17 used the word violent a lot.
 18 I want to ask you a little bit about what that
 19 means.
 20 Okay?
 21 A. Yes.
 22 Q. What does that word mean to you, what is violent?
 23 A. Fighting.
 24 Q. Okay. What kind of fighting?
 25 A. Like arguing.
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1 Q. Can you speak up just a little bit?
 2 I missed what you said.
 3 A. Fist fighting and arguing.
 4 Q. Fist fighting and arguing?
 5 A. Yes.
 6 Q. Okay. The violence in your house, did it include
 7 a lot of yelling when your stepdad was around?
 8 A. Yes.
 9 Q. Did it include getting hit with a belt?
 10 A. Yes.
 11 Q. Until there were marks?
 12 A. Yes.
 13 Q. Did it include getting hit with a big plastic
 14 spoon?
 15 A. No.
 16 Q. Did you get hit with a bat?
 17 A. No.
 18 Q. Did you see your brothers get hit with a bat?
 19 A. No.
 20 Q. When your stepdad would hit you, what would he
 21 hit you with?
 22 A. A belt.
 23 Q. Was it ever with his hands or always a belt?
 24 A. Always a belt.
 25 Q. How often did that happen?

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1 A. Not often.
 2 Q. Not often?
 3 A. No.
 4 Q. When you were in Colorado, did some people who
 5 were there to protect kids people come talk to you at
 6 the school about your dad hitting you with the belt?
 7 A. Yes.
 8 Q. After that happened, did you still get hit with
 9 the belt?
 10 A. No.
 11 Q. You never got hit with a belt after that?
 12 A. No.
 13 Q. What about in Las Vegas, did you ever get hit
 14 with a belt in Las Vegas?
 15 A. No.
 16 Q. Did your brothers get hit with a belt in Las
 17 Vegas?
 18 A. Yes.
 19 Q. After those people talked to you and your
 20 brothers in Colorado, did your stepdad still live with
 21 you after that?
 22 A. Yes.
 23 Q. I'm going to ask you a little bit about your mom.
 24 Okay?
 25 A. Okay.

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1 Q. When you say that there was violence between your
 2 stepdad and your mom, what does that mean, what would
 3 happen between them?
 4 A. They would argue and fight.
 5 Q. They would argue with words?
 6 A. Yes.
 7 Q. And they would fight with what?
 8 A. Hands.
 9 Q. Was it your mom hitting him, or him hitting your
 10 mom?
 11 A. I don't really know.
 12 Q. Did you ever see your stepdad hit your mom?
 13 A. No.
 14 Q. Did you ever see him hurt your mom?
 15 A. Yes.
 16 Q. What did you see?
 17 A. I've seen him choke her, run over her with the
 18 car.
 19 Q. Did you see anything else?
 20 A. No.
 21 Q. How did you feel when you saw your stepdad
 22 choke your mom?
 23 A. Sad, scared.
 24 Q. Were you scared for your mom?
 25 A. Yes.

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1 A. Not often.
 2 Q. Not often?
 3 A. No.
 4 Q. When you saw him choke her, were you scared what
 5 she might do?
 6 A. Yes.
 7 Q. Were you scared for yourself too?
 8 A. Yes.
 9 Q. Did you think he might do that to you or your
 10 brothers?
 11 A. Yes.
 12 Q. Did the police come when that happened?
 13 A. Yes, they came after it happened.
 14 Q. Let me ask you to stop one second and say that a
 15 little bit louder.
 16 But if you need to take a couple seconds first,
 17 you can.
 18 A. They came after it happened.
 19 Q. They came after it happened.
 20 Was it the same day?
 21 A. Yes.
 22 Q. And after your stepdad ran over your mom with the
 23 car, did he still live with you?
 24 A. Yes.
 25 Q. When you wrote your mom this note, you said that
 26 your stepdad was cheating on her, right?
 27 A. Yes.
 28 Q. You said he tortured your brothers?

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1 A. Yes.
 2 Q. You told her to leave him?
 3 A. Yes.
 4 Q. Did you hope that she would?
 5 A. Yes.
 6 Q. You didn't want him living in your house anymore,
 7 did you?
 8 A. No.
 9 Q. Since you wrote that note, has he been living at
 10 your house again?
 11 A. No.
 12 MS. HAMERS: Thanks, N. [REDACTED].

13 I don't have any other questions for you.

14 THE COURT: Any redirect?

15 -----

16 **DIRECT EXAMINATION OF N. [REDACTED] S. [REDACTED]**

17 BY MS. HOLTHUS:
 18 Q. N. [REDACTED], why didn't you want him living in the
 19 house anymore?
 20 A. Because I didn't want him to hurt my mom anymore.
 21 Q. Did you ever tell anybody at school he was
 22 hurting you guys at home, or your mom?
 23 A. No.
 24 Q. Did you tell your mom the truth about what he was
 25 doing to you?

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1 MS. HOLTHUS: We just have one more witness for
 2 today.
 3 I don't think it will be very long.
 4 Karen Davis.
 5 THE CLERK: Come forward, please, ma'am.
 6 Take the witness stand.
 7 Remain standing, and raise your right hand.

8 -----
 9 KAREN DAVIS,

10 11 who, being first duly sworn to tell the truth, the whole
 12 truth, and nothing but the truth, was examined and
 13 testified as follows:

14 THE CLERK: Please be seated.
 15 Please state your full name, and spell both your
 16 first and last name for the record.

17 THE WITNESS: Karen Davis, K-a-r-e-n D-a-v-i-s.
 18 THE CLERK: Thank you.

19 -----
 20 **DIRECT EXAMINATION OF KAREN DAVIS**

21 BY MS. HOLTHUS:

22 Q. Miss Davis, what do you do?
 23 A. I am in the department of family services and
 24 work as an investigator in the sex abuse unit.
 25 Q. How long have you been with CPS?

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118 120
 1 A. Yes.
 2 Q. You said you are protective of your brothers.
 3 Do you also feel bad about your brothers losing
 4 their dad?
 5 A. Yes.

6 Q. You haven't seen the Defendant since you wrote
 7 the note, right, you said you had no contact with him,
 8 he hasn't lived with you since then?
 9 A. No.
 10 Q. And neither have your brothers seen their dad, is
 11 that right?
 12 A. Yes.

13 Q. How does that make you feel?
 14 A. Sad that it happened.
 15 MS. HOLTHUS: Thank you.
 16 No more questions.

17 THE COURT: Anything else?
 18 MS. HAMERS: No more questions, Judge.
 19 Thank you.

20 THE COURT: Thank you very much for your
 21 testimony.
 22 You can go ahead and step down.

23 You will be excused.
 24 Anybody need a break?
 25 Everybody okay?

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1 non-emergency, or how many hours you got to respond?
 2 A. The hotline actually has a criteria they utilize
 3 to determine what should be the appropriate response
 4 time for each of the reports.

5 Q. What kind of considerations are there for that?
 6 A. One of the considerations would be if the child
 7 -- if the alleged perpetrator has direct access to the
 8 child, if the child is in the home with the alleged
 9 perpetrator.

10 Q. Would that be a pretty big one?

11 A. Yes.

12 Q. Okay. And anything else?

13 A. Other ones would be that, if there was physical
 14 abuse that was say the child was at the hospital, and
 15 there was physical findings that supported the
 16 allegations, that would be one that would be considered
 17 a same day, an emergency.

18 Q. So would it be safe to say, depending on how long
 19 ago the abuse was, if the abuse was called in and say
 20 this person just abused this child an hour ago, then it
 21 might be a 24-hour response versus two weeks ago this
 22 child was abused?

23 A. Yes.

24 Q. Those kinds of things?

25 A. Yes.

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1 Q. Directing your attention to October 10th, 2008,
 2 were you working?

3 A. Yes.

4 Q. On duty then?

5 A. Yes, I was the duty person.

6 Q. So emergency calls would come to you?

7 A. Yes.

8 Q. And did there come a time when you got a call?

9 A. Yes.

10 Q. It didn't actually come through the hotline, is
 11 that right?

12 A. No, that's correct.

13 Q. How did you get the call?

14 A. The call was actually -- I was actually contacted
 15 by the duty worker through our law enforcement partners
 16 that advised me that they had received a report that
 17 involved a subject minor that would require the
 18 assistance of child protective services.

19 Q. When you talked about your law enforcement
 20 partner, what did you mean by that?

21 A. We work hand in hand with law enforcement, being
 22 whether it Metro, Henderson, or North Las Vegas, on all
 23 reports that are the nature of like sex abuse or abuse
 24 and neglect, period.

25 Q. With respect to children?

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1 A. Yes.
 2 Q. And what is the reason for the partnership?
 3 A. The reason for the partnership is, if in the
 4 event abuse or neglect is proved, if there is criminal
 5 charges found, the law enforcement would handle the
 6 criminal part, while CPS actually handles the civil
 7 part.

8 Q. So custody and the welfare of the child you would
 9 be in charge of, Metro being in charge of the actual
 10 prosecution of the case?

11 A. That's correct.

12 Q. And this is kind of the streamline investigation,
 13 so you don't do double work basically?

14 A. Yes.

15 Q. You limit interviews of the children and
 16 witnesses?

17 A. Exactly.

18 Q. So who called you on that day?

19 A. I received a call from Detective LaFreniere.

20 Q. He was your partner that day?

21 A. Yes, he was the duty worker for Metro that day.

22 Q. And you were the duty worker for CPS, so the two
 23 of you met?

24 A. Yes.

25 He was already there at the scene, along with

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1 patrol.

2 That patrol actually responded to the call first.

3 Q. Where was it you responded to?

4 A. I don't have the actual physical address.

5 Q. Do you recall the family you responded to?

6 A. Yes, I do.

7 Q. Who was that?

8 A. The natural mother was Shavonne Stewart-Sanders
 9 is the name of the mom.

10 Q. Was that [REDACTED], does that sound
 11 familiar?

12 A. Yes.

13 I know it was an apartment complex or a
 14 condominium complex that we actually met the family at.

15 Q. Which is actually not where the family lived?

16 A. No, it was not.

17 Q. Did you find out why they were at the complex?

18 A. Yes.

19 Q. What was going on?

20 A. The natural mother and the children had actually
 21 left their physical residence and walked down to the
 22 apartment complex after the natural mother had learned
 23 from her daughter that she was being abused by the
 24 natural mother's live-in boyfriend at the time.

25 Q. So when you got there, you said Detective

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1 LaFreniere was already there.
 2 What did you do?
 3 A. Actually, we kind of worked together.
 4 Like I said, Detective LaFreniere conducted what
 5 we call a forensic interview.
 6 Q. Which is?
 7 A. Where there is a lot of questions asked, but the
 8 questions are not -- The questions are asked in a form
 9 where they are not leading.
 10 So he actually conducted a forensic interview
 11 with the alleged victim.
 12 Q. Was that tape recorded?
 13 A. Yes, I believe he did record it.
 14 Q. And that was done in your presence?
 15 A. Sort of, yeah.
 16 I was there and not there.
 17 I was there, but I was often getting up to check
 18 on the other siblings that were also present.
 19 Q. Then at this point you still have no formal
 20 report into CPS, into your -- You are just there with
 21 Detective LaFreniere?
 22 A. That's correct.
 23 Q. Were you -- Or did you hear the nature of the
 24 allegations made by the child?
 25 A. Yes, I did.

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1 Q. What was your understanding, what was going on?
 2 A. She was being sexual abused by the natural
 3 mother's live-in boyfriend.
 4 Q. What happened then --
 5 A. I --
 6 Q. -- after the forensic interview with the child?
 7 A. After the forensic interview with the child was
 8 done, we also forensically interviewed two of the three
 9 siblings, because one of them was not that verbal, and
 10 there was also an interview conducted on the natural
 11 mother at that time.
 12 Q. Were you present for that?
 13 A. Yes, I was.
 14 Q. Prior to that -- At some point did Detective
 15 LaFreniere inform Shavonne, the mother, about the child,
 16 N [REDACTED] ?
 17 A. Yes.
 18 Q. What N [REDACTED] had said?
 19 A. Yes, he did.
 20 Q. What was mom's reaction?
 21 A. Mom's reaction was, she became very emotional.
 22 Her demeanor was appropriate for what Detective
 23 LaFreniere had described to her.
 24 Q. When you say, described it, he was describing the
 25 actual details of the sexual abuse?

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1 A. Yes, he provided her with details as to how it
 2 was described or disclosed by N [REDACTED].
 3 Q. And when you described mom's reaction as
 4 appropriate, that is one of the things you look for?
 5 A. Yes, were trained to observe.
 6 MS. HAMERS: Objection.
 7 This isn't an expert witness.
 8 We're not going to talk about demeanor.
 9 THE COURT: I agree.
 10 Go ahead.
 11 MS. HOLTHUS: We can certainly talk about
 12 demeanor and why she used the term, appropriate.
 13 MS. HAMERS: She just said she was trained to
 14 look for it.
 15 She's not an expert witness.
 16 THE COURT: Just ask her another question.
 17 BY MS. HOLTHUS:
 18 Q. What did you do then?
 19 A. After Detective LaFreniere advised the natural
 20 mother of what was disclosed, we worked on a plan to try
 21 to make our business to have Detective LaFreniere make
 22 contact with the alleged perpetrator.
 23 Q. Why did you need a plan?
 24 A. Because at that time the children's physical
 25 residence was in the home with the perpetrator, and so
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1 it was either to have the mom and the children removed
 2 from the home, or to have the alleged perpetrator
 3 removed from the home, so that the children can remain
 4 in that placement.
 5 Q. Who picked who leaves, who decided that?
 6 A. It's up to the natural -- Well, we as a
 7 department inform the parents, if there is not a plan,
 8 the children have to come into protective custody, and
 9 so it's kind of I guess you would say it's up to the
 10 parent at that time to decide if she's -- or they are
 11 going to leave or stay.
 12 Q. And she decided --
 13 A. She already told us her plan was to leave the
 14 residence.
 15 Q. Did she leave then?
 16 A. After the plan was worked out to have Mr. Moore
 17 leave from the residence, and he was arrested, the mom
 18 did return to the home with myself, along with the other
 19 two officers, to obtain both her belongings and some of
 20 the children's belongings, as much as she could take
 21 with her.
 22 Q. Were you present when he was actually taken into
 23 custody that day?
 24 A. I was from a distance.
 25 I could see him being pulled over by patrol.
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1 Q. Do you know him enough to know him if you saw
 2 him?

3 A. I seen him once, because we actually had to
 4 transport him to our family courts before.

5 Q. Okay. Do you see him here in court?

6 A. Yes.

7 Q. Point to him, and tell us what he's wearing?

8 A. Right here at the table.

9 Q. Three people at the table.

10 A. Which one.

11 A. I'm sorry.

12 The gentleman in the black shirt.

13 I'm sorry.

14 MS. HOLTHUS: May the record reflect the
 15 identification of the Defendant?

16 THE COURT: The record will so show.

17 MS. HOLTHUS: Thank you.

18 BY MS. HOLTHUS:

19 Q. So now does a report actually come in?

20 A. Yes, a report is generated.

21 Q. And that is generated by Metro?

22 A. Yeah, in this case this report would have been
 23 generated by Metro because the initial call regarding
 24 the abuse came from Metro.

25 Q. So on October 10th after the Defendant is

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1 then did you take any further action on behalf of CPS?

2 A. On behalf of CPS, I contacted our CPS in Aurora
 3 County, Colorado, and the reason I did that was because
 4 that's the address the mom provided to me of where her
 5 and the children would be residing at that time when
 6 they left Las Vegas.

7 Q. And as a CPS worker, was it your job to determine
 8 before you left her and the children that night?

9 A. My job was to determine whether or not the mom
 10 was appropriate in assuring these children would be
 11 safe.

12 Q. And did you have any concerns in that regard at
 13 that point?

14 A. At the time I didn't have any concerns due to the
 15 mother's actions with removing herself and the children
 16 from the home and providing me with information
 17 regarding her actually leaving town with the children.

18 Q. Did she indicate when she would be leaving town?

19 A. The plan was for her and the children to leave
 20 that next day.

21 Q. As far as you knew, they did?

22 A. As far as I knew, they were to be on a plane that
 23 next morning.

24 Q. And that's why you contacted Arapaho, Colorado,
 25 to tell them they are coming?

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132

1 arrested do you stay with Shavonne and the kids?

2 A. Yes, I did.

3 Q. And what did you do?

4 A. I actually helped to transport Shavonne, along
 5 with some of her belongings, to one of her friend's home
 6 that evening.

7 Q. So she actually didn't even stay -- Was it a
 8 house?

9 A. It was a house.

10 Q. She didn't stay in the house that night?

11 A. Not to my knowledge.

12 I actually drove her and the kids to a different
 13 residence.

14 Q. When was the next time you saw her?

15 A. The next time I saw Shavonne was at a pretrial
 16 hearing I think it was, and if I could just look through
 17 my notes, I think it was like --

18 Q. Would that refresh your recollection to look?

19 A. Yes, yes.

20 Q. Go ahead.

21 A. It --

22 Q. Now -- I'll let you look at those.

23 A. It was in November 2008.

24 Q. Okay. Now, this was October 10th of '08.

25 You took her and her kids, the girlfriend, and

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1 A. Yes, I contacted them that evening.

2 Q. And you said I think sometime after that in
 3 November of '08 you had further contact with Shavonne?

4 A. Yes, I did.

5 Q. That was where?

6 A. Here at Justice Court.

7 Q. Was that at the first setting of the preliminary
 8 hearing?

9 A. Yes, I believe.

10 Q. Was N [REDACTED] here?

11 A. No, I don't -- No, I didn't see her here.

12 Q. Did that become a concern of yours?

13 A. Yes, it did.

14 Q. When?

15 A. It became a concern after I learned that the
 16 natural mother had never left Las Vegas, and that
 17 N [REDACTED] had not shown up as ordered to appear in court,
 18 in criminal court.

19 Q. For the preliminary hearing?

20 A. Yes.

21 Q. And what did you do as a result of that
 22 information?

23 A. I contacted the Clark County School District to
 24 find out if and when the child had been withdrawn from
 25 school, and I also made contact with the maternal

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1 grandmother in Colorado to talk with her regarding the
2 subject minor's whereabouts.

3 Q. What did you find out?

4 A. I found out that N [REDACTED] had been in Colorado
5 with the maternal grandmother and had not actually been
6 here in Las Vegas, but the mom was still here in Las
7 Vegas.

8 Q. Did you find out when N [REDACTED] had been sent to
9 Colorado?

10 A. If I can look at my notes.

11 Q. Would that refresh your recollection?

12 A. Yes.

13 I actually talked to a worker at the Arapaho
14 County Department of Human Services on November 18th to
15 have her to assist me in verifying if in fact N [REDACTED]
16 was physically in Colorado.

17 Q. When was the preliminary hearing set for?

18 A. I believe it was in November as well.

19 Q. All right. Do you have it documented, the dates?

20 A. I have it documented, the date that -- Yeah,
21 November 17th is the date I was subpoenaed to appear
22 here.

23 Q. And thereafter you talked to Arapaho trying to
24 determine where N [REDACTED] was?

25 A. Yes.

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1 Q. Did you determine where she was?

2 A. Yes, I determined she was there in Colorado.

3 Q. Did you find out when she got there?

4 A. Well, based on the conversation I had with the
5 maternal grandmother, she said the child had been there
6 since the -- like the end of October, didn't give me a
7 specific date.

8 Q. What did you do as a result of that?

9 A. As a result of that, I maintained contact with
10 the assigned worker in Arapaho County to insure that
11 this child's mental health needs were being met.

12 When I say that, I mean that she was actually
13 placed in counseling, and she was being allowed the
14 opportunity to see a therapist or counselor, whichever
15 was appropriate, so that her mental health needs were
16 being addressed.

17 Q. And was that as far as you knew being done?

18 A. Yes, as far as I know it was being done.

19 Q. What about with respect to mom not bringing the
20 child to court, did you do anything with respect to
21 that, or was that a concern?

22 A. Yeah, it was a concern, so what we actually did
23 was reopened our case on the civil side.

24 Q. What caused that?

25 A. Because the mom was here, and we wanted to make

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1 sure the three children left with her was being
2 protected, as even though they weren't direct victims,
3 we still had to be sure they were kept safe as well.

4 Q. So at that point during the preliminary hearing
5 mom and the three boys were here, but she only sent
6 N [REDACTED] to Colorado, is that right?

7 A. To my knowledge, yes.

8 Q. And didn't bring her to court?

9 A. Yes, to my knowledge.

10 Q. And is that a concern as a CPS investigator?

11 A. It's a concern again because the siblings were
12 still here in Las Vegas, and two of those children are
13 actually children of the alleged perpetrator, so yes,
14 that is a concern.

15 Q. Did you have after that, after involvement, did
16 she eventually bring N [REDACTED] to court?

17 A. I was never back in civil Court or in criminal
18 court to actually physically know if in fact she brought
19 her, but the plan was for her to bring her back to court
20 as scheduled.

21 Q. And would you have expected to have heard if she
22 hadn't?

23 A. I'm sorry?

24 Q. Would you have expected to have heard if she had
25 not brought her to court?

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1 A. Yes.

2 Q. And in fact, the last time she wasn't brought to
3 court it was called in on the hotline?

4 A. Yes, it was.

5 Q. And that would be a concern about the mother not
6 following up on prosecution of her child's perpetrator?

7 A. Yes.

8 MS. HOLTHUS: Thank you, Miss Davis.

9 THE COURT: Cross.

10 MS. HAMERS: Thank you.

11

12 **CROSS-EXAMINATION OF KAREN DAVIS**

13 BY MS. HAMERS:

14 Q. Miss Davis, was there ever any physical abuse, I
15 guess sexual could be included in that, but physical
16 non-sexual abuse recorded in this case?

17 A. In this specific case, no.

18 Q. And if I'm understanding your testimony right
19 today, and you might have to look at your notes again as
20 far as dates, when there was a hearing set for November
21 16th, you recall that, and you recall Shavonne appearing
22 in court without N [REDACTED], is that correct?

23 A. Yes.

24 Q. Well, I was also subpoenaed to be here in court.

25 Q. So you were present as well?

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1 A. Yes.
 2 Q. And you recall Shavonne showing up?
 3 A. Yes, she was here.
 4 Q. And N [REDACTED] not showing up?
 5 A. Yes.
 6 Q. Were you present in court when the case was
 7 actually called?
 8 A. Yes, I think I was still in the back of the
 9 courtroom.
 10 Q. Do you recall Shavonne saying to the Judge and to
 11 the Court that N [REDACTED] was in Colorado?
 12 A. Yes.
 13 Q. If you recall.
 14 A. Yeah, I do believe I recall.
 15 Q. I'm going to approach with a CPS summary report.
 16 You might be more familiar with these than I am
 17 because they can be a little difficult to figure out.
 18 To me it looks like kind of a summary of the
 19 whole case.
 20 I'm going to ask you to review this section right
 21 here.
 22 Just read that to yourself.
 23 A. Okay.
 24 MS. HOLTHUS: What page is counsel referring to?
 25 MS. HAMERS: It says 5 of 7 on the bottom.
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1 MS. HOLTHUS: Thank you.
 2 THE WITNESS: Okay.
 3 Yes.
 4 BY MS. HAMERS:
 5 Q. Are you finished with it?
 6 A. Yes.
 7 Q. According to that investigation by CPS, was it
 8 discovered that N [REDACTED] actually was in Las Vegas and in
 9 school that day?
 10 A. No, she was not.
 11 Q. Is that an error?
 12 A. Yes -- Well, the report was taken by the hotline
 13 worker, by a confidential source of course, and -- but
 14 when we actually went out to see if the child was in
 15 school that day, she was not in school that day.
 16 Q. Who authors these reports?
 17 A. The workers from the hotline.
 18 Q. So the worker from the hotline does the report
 19 summary on the whole case?
 20 A. Yes, on any reports that come in through the
 21 hotline the workers are the ones that actually write
 22 them up.
 23 Q. Okay. And when -- So tell me how that works.
 24 When does this summary report become generated?
 25 A. Once a call is called into the hotline, the
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1 reports are usually generated while they are actually
 2 getting the information from the caller.
 3 Q. Okay.
 4 A. And then they are printed out and distributed to
 5 the investigators.
 6 Q. And then if there is some sort of change, or
 7 follow-up, or like you said an error, she actually
 8 wasn't in school that day, that was an error?
 9 A. Yeah, if there is an error, the reports aren't
 10 reflected to generate that.
 11 Q. So if there is an error, they don't go back and
 12 fix it?
 13 A. No.
 14 Q. They just leave it reporting the wrong
 15 information?
 16 A. And that's only because they are not the
 17 investigators, they are just the call takers.
 18 Q. What about the investigators, do they update
 19 that?
 20 A. Yes, the unity system is updated.
 21 Q. Who was the investigator on that case?
 22 A. It was myself.
 23 Q. Did you go back and update that information?
 24 A. Not on that actual report.
 25 We don't have access to the actual report, but
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APP 000
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Stewart CLERK
COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

HON. JAMES M. BIXLER, DISTRICT COURT JUDGE, PRESIDING

10 THE STATE OF NEVADA,
11 Plaintiff,

12 v.
13 DEVELL MOORE,
14 Defendant.

Case No. C-250540
Sup. Ct. No. 55527
Dept. 24

15 TRANSCRIPT OF PROCEEDINGS

16 Jury Trial (Day One)

17 COURTHOUSE

18 November 3, 2009

19 Las Vegas, Nevada

20

21

22

23

Reported by:

Lee M. Bahr, CP, CCR 173

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CLERK OF THE COURT

APP. 091

1 APPEARANCES:

2

3 For the State:

4

5

6

7

MARY KAY HOLTHUS, ESQ.
Deputy D. A.
200 Lewis Ave.
Las Vegas, NV. 89155
and
JOHN MERBACK, ESQ.
Deputy D. A.
200 Lewis Ave.
Las Vegas, NV. 89155

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Defendant present in court in custody.

10

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For the Defendant:

KATHLEEN HAMERS, ESQ.
Deputy Public Defender
300 South Third Street
Suite 226
Las Vegas, NV. 89101
and
MIKE FELICIANO, ESQ.
Deputy Public Defender.
300 South Third Street
Suite 226
Las Vegas, NV. 89101

No other appearances.

APP. 092

1 TRANSCRIPT OF PROCEEDINGS

2 .

3 THE COURT: They are pretty much in order.

4 First 14 in the box, Joe, okay?

5 MARSHAL DOWNING: Okay.

6 THE CLERK: And for the record, 223 did not
7 show up, on your sheet, if you want to mark off 223 didn't
8 show up, William Worthy.9 THE COURT: Once we have got our 14 in the
10 box, and once we start questioning them, when you
11 start doing the challenges, I guess, it doesn't really
12 matter.13 If you use the number that they are sitting
14 over there rather than their badge number.15 I kind of lose track, but it's real easy to
16 look over there and see if it's juror 10, or eight, or
17 whichever one we are talking about, okay?18 And if you guys want, once we get -- once we
19 get our our 14, I will work off one of these, put their
20 names in the box and the number. I will just make both
21 of you a copy of it if you want.

22 MS. HOLTHUS: Sure, great.

23 MR. MERBACK: Great.

24 THE COURT: Okay. Off the record.

25 MS. HOLTHUS: These are our jury instructions.

APP. 093

1 THE COURT: All right, thank you.

2 (Discussion of the record.)

3 *****.

4 (Whereupon, the following proceedings were had
5 in the presence of the jury panel:)

6 *****

7 THE COURT: All right. Bring them in.

8 MARSHAL DOWNING: All rise.

9 THE COURT: Go to the back row, and then to
10 the end. Go up to the back row.

11 There you go.

12 Then go all the way to the end, the first five,
13 and then go in and do the same thing with the middle row,
14 and then the way to this end.

15 There you go.

16 MARSHALL DOWNING: Please be seated.

17 THE COURT: All right. Good afternoon, ladies
18 and gentlemen.

19 You are in the Eighth Judicial District Court,
20 State of Nevada in Clark County, Department Number 24.

21 My name is James Bixler. I am the presiding
22 Judge in this Department.

23 This is the case of the State of Nevada v.
24 Devell Moore, Case Number C-250540.

25 The first thing that is going to happen real

APP. 094

1 quickly is I am going to give you a little explanation
2 of what you should expect, and what's coming up.

3 The first thing I am going to do is introduce
4 the court staff, and kind of give you a quick overview
5 of what everybody does, and then I am going to have
6 counsel both for the State and the Defense introduce
7 themselves, give you a brief statement of their case,
8 and identify the witnesses they anticipate will be
9 called in this matter.

10 You need to pay particular attention to
11 counsel and their witnesses because it's important to
12 note if you know any of these folks, we need to know
13 about it, okay?

14 First thing real quickly, who we all are
15 here.

16 On this side, the court staff, and what we
17 do.

18 This is Lee, Lee Bahr, and his partner, Bill
19 Nelson, who will be here tomorrow.

20 They -- he is a court reporter, the official
21 court reporter, and his function is to make a record
22 of everything that is said here in court during these
23 court proceedings.

24 He makes what is referred to as a verbatim
25 record meanings that he takes down every single word that

APP. 095

1 is said.

2 He doesn't guess and say, well, they said
3 something like this, blah, blah, blah. He takes every
4 word down, and if he can't hear every word, he can't make
5 a record.

6 So it's entirely possible that at some point
7 during these proceedings, you might see Lee, or his
8 partner, Bill, stop, yelling sometimes at the parties,
9 the participants, the witnesses, telling them that they
10 can't hear them, that they are mumbling, that they are
11 talking over each other, for whatever reason that the
12 many court reporter can't make a complete, 100 percent
13 record, he will stop the proceedings, okay?

14 So, if that hams, don't think he is being rude,
15 or obnoxious, or pushy, he is only doing the job that he
16 is supposed to be doing. I try to help them out, but
17 they are real good at doing it themselves.

18 So, when I am going through the questioning
19 here in a few minutes, when we start with all the voir
20 dire, or the questioning of the jury pool to see if you
21 qualify to be a juror on a case like this, I will ask
22 a lot of questions.

23 Some of the questions I am answering myself
24 because nobody will respond, and I'm not going to get
25 positive, affirmative answer, so I'll answer because

APP. 096

1 it's imperative that we have a complete record, so
2 if there is a question, there is an answer.

3 Teri Lee is right here. She is the Clerk,
4 excuse me.

5 Her function is to take the exhibits, all
6 the evidence that's marked. She will keep track of it.
7 She will mark it. She will swear in the witnesses, and
8 she is also the person who keeps the official minutes
9 of what went on here during our court proceeding.

10 Joe Downing, right over here, is our marshal,
11 some say bailiff, but they are now referred to as marshals.
12 His primary function is the security of the courtroom.
13 He will also go out and get the witnesses, bring them
14 into court.

15 He will also be the only point of contact for
16 the jury in terms of information exchanged between the
17 jurors, and the Court, or the attorneys.

18 The jury is not allowed to converse with any
19 of us. Hi, that's it, I mean, good morning, jury. You
20 can't talk about anything with the Court staff, or the
21 attorneys, or any of the witnesses. You just can't
22 do it, okay?

23 Any information that you have to give to the
24 Court, or the attorneys, or anybody else having to do
25 with this case has to go through Joe. He is the only

APP. 097

1 one that is allowed to converse with you, okay?

2 All right. Now, that having been said, I
3 am going auto have the State introduce themselves, and
4 make a brief statement of their case and identify the
5 witnesses they anticipate being called.

6 Then the same thing for the Defense, and
7 then we will start with the questioning of the jury
8 pool, okay?

9 MR. MERBACK: Yes.

10 Ladies and gentlemen, my name is Jake Merback.

11 This is Mary Kay Holthus. We are from the
12 District Attorney's office.

13 We represent the State of Nevada in the case
14 against the Defendant, Devell Moore.

15 In this case, the State of Nevada alleges
16 that between August, of 2008, and October, of 2008, the
17 Defendant committed the crimes of sexual assault with a
18 minor under the age of 14, and lewdness with a child
19 under the age of 14, and he committed these crimes at
20 various times when he sexually abused then 10 year old
21 Na [REDACTED] S [REDACTED], at a home where they were living at
22 [REDACTED], here in Las Vegas, Nevada.

23 In its case in chief, the State will be
24 calling the following witnesses:

25 Na [REDACTED] S [REDACTED], Shevonn Stewart Stewart,

APP. 098

1 Sean Gregg Ely, E. J. Moore, Darius Moore, Gloria Scott,
2 Karen Davis, Officer Shaun Ditmar, Officer Shane Koboskim,
3 and Detective Jason LaFreniere.

4 Thank you.

5 THE COURT: Thank you, Mr. Merback.

6 Ms. Hamers?

7 MS. HAMERS: Thank you, Judge.

8 And good afternoon.

9 My name is Kathleen Hamers, and this is my
10 co-counsel, Mike Feliciano.

11 Together, we represent Mr. Devell Moore, and
12 we are in our case will be using many of the same
13 witnesses, Na [REDACTED] S [REDACTED], Shevonne Stewart, and
14 Detective Jason LaPreniere, and Mr. Moore is not guilty
15 of these charges.

16 THE COURT: Thank you very much.

17 All right. Now, the very first thing we
18 need to do before we start is have a roll call to make
19 sure that we are looking at the right jury pool.

20 So Teri is going to read the jury pool that
21 was supposed to be sent up here, answer present, or
22 here, whatever you prefer. You don't need to stand
23 up.

24 Just let us know that you are present, and
25 then we will check to see if there is anybody extra.

APP. 099

1 THE CLERK: Leonor Enriquez.
2 JUROR ENRIQUEZ: Present.
3 THE CLERK: Barbara Cuomo.
4 JUROR CUOMO: Present.
5 THE CLERK: Corazon Parina.
6 JUROR PARINA: Present.
7 THE CLERK: Kimberly Barber.
8 JUROR BARBER: Present.
9 THE CLERK: Angel Johnson.
10 JUROR JOHNSON: Present.
11 THE CLERK: Marcia Hofmann.
12 JUROR HOFMANN: Present.
13 THE CLERK: Leopoldo A. Adaoag.
14 JUROR ADAOAG: Adaoag.
15 THE CLERK: Adaoag, thank you.
16 JUROR ADAOAG: Here.
17 THE CLERK: Lori Jones.
18 JUROR JONES: Present.
19 THE CLERK: Katelyn Boshart.
20 JUROR BOSHART: Present.
21 THE CLERK: Hilary Reynolds.
22 JUROR REYNOLDS: Present.
23 THE CLERK: Roger Hearne.
24 JUROR HEARNE: Present.
25 THE CLERK: Deja Handy.

APP. 100

1 JUROR HANDY: Present.

2 THE CLERK: Jacob Gumas.

3 JUROR GUMAS: Present.

4 THE CLERK: Laurie A. Mathews.

5 JUROR MATHEWS: Present.

6 THE CLERK: Richard Brandon.

7 JUROR BRANDON: Present.

8 THE CLERK: Denise E. Critcher.

9 JUROR CRITCHER: Present.

10 THE CLERK: Tiffany Wang.

11 JUROR WANG: Here.

12 THE CLERK: Lumnije Binaku.

13 JUROR BINAKU: Present.

14 THE CLERK: Thank you. Karen Clemence.

15 JUROR CLEMENCE: Present.

16 THE CLERK: Gary Huey.

17 JUROR HUEY: Present.

18 THE CLERK: Jose Vivas.

19 JUROR VIVAS: Present.

20 THE CLERK: Andrew Merkes.

21 JUROR MERKES: Present.

22 THE CLERK: Sean Keefer.

23 JUROR KEEFER: Present.

24 THE CLERK: Svetlana Huggins.

25 JUROR HUGGINS: Present.

APP. 101

1 THE CLERK: Dylan Hinton.

2 JUROR HINTON: Present.

3 THE CLERK: Sonja Spears.

4 JUROR SPEARS: Present.

5 THE CLERK: Christon Padia.

6 JUROR PADIA: Padia.

7 THE CLERK: Padia, thank you.

8 JUROR PADIA: Here.

9 THE CLERK: Felipe Garay.

10 JUROR GARAY: Present.

11 THE CLERK: Tyler Yim.

12 JUROR YIM: Present.

13 THE CLERK: Sandra Walton.

14 JUROR WALTON: Here.

15 THE CLERK: Marlo Villasenor.

16 JUROR VILLASENOR: Present.

17 THE CLERK: Thomas Price.

18 JUROR PRICE: Present.

19 THE CLERK: Peter Zak.

20 JUROR ZAK: Present.

21 THE CLERK: Marlys Smith.

22 JUROR SMITH: Present.

23 THE CLERK: Michael Boyles.

24 JUROR BOYLES: Present.

25 THE CLERK: Gregory Hendrick.

APP. 102

1 JUROR HENDRICK: Present.

2 THE CLERK: Nicole Pucci-Johnson.

3 JUROR PUCCI-JOHNSON: Present.

4 THE CLERK: Linda Hansen.

5 JUROR HANSEN: Present.

6 THE CLERK: Terri Vigna.

7 JUROR VIGNA: Here.

8 THE CLERK: Robert Zicarelli.

9 JUROR ZICARELLI: Here..

10 THE CLERK: Albert Perez.

11 JUROR PEREZ: Here.

12 THE CLERK: Jennifer Hamilton.

13 JUROR HAMILTON: Here.

14 THE CLERK: Willie Worthy, not present. That's
15 the one I didn't call, okay.

16 Beth Sylvester.

17 JUROR SYLVESTER: Present.

18 THE CLERK: William Freshour.

19 JUROR FRESHOUR: Freshour, present.

20 THE CLERK: Freshour, thank you. Jennifer
21 Gualazzi.

22 JUROR GUALAZZI: Here.

23 THE CLERK: Thomas Thomsen.

24 JUROR THOMSEN: Here.

25 THE CLERK: Jeannette Aguiniga.

APP. 103

1 JUROR AGUINIGA: Present.

2 THE CLERK: John Walker.

3 JUROR WALKER: Here.

4 THE CLERK: Alice Jenkot.

5 JUROR JENKOT: Here.

6 THE CLERK: Christopher Hamm.

7 JUROR HAMM: Here.

8 THE CLERK: Alexandra Olaru.

9 JUROR OLARU: Present.

10 THE CLERK: Joseph Esdtrada.

11 JUROR ESTRADA: Here.

12 THE CLERK: Jeanamarie Puga.

13 JUROR PUGA: Present.

14 THE CLERK: Timothy J. Conyngham.

15 JUROR CONYUNGHAM: Here.

16 THE CLERK: Conyungham, thank you. Christine
17 Payne.

18 JUROR PAYNE: Here.

19 THE CLERK: Dewey Belvin.

20 JUROR BELVIN: Present.

21 THE CLERK: Andrew Bennett.

22 JUROR BENNETT: Here.

23 THE CLERK: Or Bennett, excuse me.

24 JUROR BENNETT: Here.

25 THE CLERK: Maria Paula Gonzalez.

APP. 104

1 JUROR GONZALEZ: Present.

2 THE CLERK: Nikea Hill.

3 JUROR HILL: Present.

4 THE CLERK: Thank you.

5 THE COURT: Anyone here whose name was not
6 called?

7 No. No answer.

8 All right, good. We have got the right group.

9 What we are going to do at this point is
10 start the questioning called voir dire, testing the
11 jury panel for their qualifications to be on a jury
12 such as this.

13 It's imperative that you understand the
14 necessity of giving full, complete and honest answers
15 to the questions I'm about to ask you, and in order
16 to facilitate that whole process, we are going to
17 swear you in.

18 So the next thing that is going to happen
19 is everybody stand up, raise your right hand, and
20 Teri is going to swear everybody in now at once.

21 *****

22 (Whereupon, the panel was duly sworn at
23 this time.)

24 *****

25 THE CLERK: Thank you, you may be seated.

APP. 105

1 THE COURT: Okay.

2 I'm going to start this off with a quick
3 explanation.

4 As you can clearly see, this is a criminal
5 trial.

6 A criminal trial, here is how this works, and
7 this is going to be a question in just a second as soon
8 as I give you a little explanation first.

9 American jurisprudence, criminal law in the
10 United States, this is how it works. You have probably
11 heard it, but I am going to explain it to you for real.

12 A Defendant in a criminal case is presumed
13 innocent.

14 As the Defendant sits here, he is innocent
15 until the State can prove, if they can prove that he
16 is guilty beyond a reasonable doubt of the charges that
17 he is charged with, okay?

18 The whole purpose of this trial is to see if
19 the State can prove the Defendant guilty beyond a
20 reasonable doubt.

21 If we were to retire right now, just because
22 the Defendant has been charged with something means
23 absolutely nothing.

24 If the jury retires right now and was asked
25 to find if the Defendant is guilty or not guilty, they

APP. 106

1 would find the Defendant not guilty because not one
2 iota of proof has been presented, and that's the way
3 the process works.

4 Is there anyone that has a problem with that
5 concept of jurisprudence?

6 There is no answer so the answer is no.

7 Those are rights guaranteed by the U. S.,
8 as well as the Nevada Constitution.

9 I am going to ask some general qualifying
10 questions first, okay?

11 So this is going to -- when I ask these questions,
12 I am going to pan the room from my right, your left all
13 the way around.

14 If you have an affirmative answer, you need
15 to hold your hand up and wait till I get to you, and
16 you will need to stand up, and give me your last name
17 and the three last numbers of your jury badge as you
18 answer a question, okay?

19 Is there anybody in this jury pool who is
20 not a citizen of the United States?

21 No response. The answer is no.

22 Is there anyone in this jury pool who has
23 been convicted of a felony offense and has not had
24 their civil rights restored?

25 Again, no.

APP. 107

1 Is there anyone in this jury pool who has such
2 a sympathy, prejudice, or bias related to age, religion,
3 race, sexual preference, gender, national origin, that
4 they feel they would be unable to be open-minded, fair
5 and impartial as jurors in this case?

6 Yes, sir. Stand up, last name, three last
7 numbers of your juror badge.

8 JUROR HUEY: 186.

9 THE COURT: Okay. What's the problem?

10 JUROR HUEY: Can I approach the bench?

11 THE COURT: Unfortunately, these all have to
12 be --

13 JUROR HUEY: I was assaulted when I was in
14 junior high school, sexually.

15 THE COURT: We are going to get to --

16 JUROR HUEY: I don't feel that I could deal
17 with THIS.

18 THE COURT: We are going to get to some
19 specific questions like that, and let me say this
20 first, and then we will address what you are discussing,
21 okay?

22 Generally, let me say, first of all, we are
23 not trying to pry into your lives. We are not trying
24 to unduly get into your privacy but we need to know
25 if there are things about your background that are

APP. 108

1 going to cause you difficulty on a case like this.

2 Everyone of you, me, everybody here, has a
3 certain amount of life experiences. We all come from
4 a different educational background, work experience
5 background, life experience background, and that's
6 certainly to be understood and embraced. That's what
7 makes each one of us unique and who we are.

8 We understand that, and we embrace that, and
9 we totally accept that.

10 Here is what -- here is where it becomes a
11 problem. You come to serve on a jury. We need people
12 who can be fair, and impartial, and have a neutral mind
13 set.

14 We want to be able to leave those things that
15 have happened to you in the back -- in your background.

16 Anything that might affect your ability to sit
17 as a juror, focus on the evidence, and be fair and impartial
18 to both the Defendant and the State.

19 If you have things in your life that have so
20 affected your ability to be fair and impartial in this
21 kind of a setting, we need to know about it.

22 We want you to be able to leave those things
23 out in the hallway, not let them interfere when you go
24 into that jury deliberation room to assess the evidence
25 that you have heard, and consult with the other jurors

APP. 109

1 and decide whether or not you believe this Defendant is
2 guilty.

3 If you are in that kind of a spot, if you
4 have something in your background that you think is
5 going to so permeate your thought process, we are going
6 to get to it, and that's what we are trying to decide.

7 If you can tell me that you can leave that
8 information, and those experiences out in the hallway,
9 and sit as a juror, and be fair and impartial, and be
10 neutral minded to both sides, that's what we want.

11 It's very simple, okay?

12 Now, what's your name again?

13 JUROR HUEY: Huey, Gary Huey.

14 THE COURT: I am just going to ask you one,
15 and nobody can answer these questions except you.

16 Do you think that what happened to you back --
17 how old were you?

18 JUROR HUEY: 12 years old.

19 THE COURT: That's a good while ago, and I
20 know that those kind of things are extremely traumatic,
21 very difficult, and they stay with you.

22 All I'm asking you:

23 Is that something that would prevent you from
24 being able to sit on this jury and be fair and impartial?

25 JUROR HUEY: Absolutely.

APP. 110

1 THE COURT: Go on down to the third floor.

2 They are going to rotate you back into another jury.

3 There is lots of litigation in this building.

4 When you get excused out, you don't get excused
5 from jury duty, you just get excused down to the third
6 floor, okay? And then they rotate you back into another
7 jury pool, all right?

8 (Juror Huey excused at this time.)

9 THE COURT: All right. Now, where was I?

10 That was the -- everybody else has agreed that
11 they are open-minded and don't have any prejudices or
12 biases, and that you can sit and be fair and impartial.

13 Now, in a trial like this, there is two judges.
14 I am the judge of the law, and I answer questions about
15 objections, and other things, and the jury is, collectively,
16 the judge of the facts.

17 The jury decides what the facts of this case
18 are, and the way the trial goes, there is opening arguments,
19 the State puts on their case, the Defense puts on its case
20 if they want to, they don't have to, if they feel like
21 there is any reason, yes or no.

22 There is closing arguments, and here is the most
23 important part that I am telling you. There is instructions
24 on the law. I am going to tell you what the law is as it
25 applies to this case.

APP. 111

1 If you can't follow the instructions on the law
2 that I give you, I need to know this.

3 If you disagree with what I tell you the law
4 is, and you cannot follow the instructions, I need to
5 know that.

6 You have to follow the instructions even if you
7 disagree with them, and you don't think that's what the
8 law is, or you think that the law should be something
9 else. You still have to set those thoughts aside, and you
10 have to follow the instructions on the law that I'm giving
11 you, okay?

12 Is there anyone here in this group that can't
13 do that?

14 The answer is no.

15 All right. Does anybody here know any of the
16 attorneys?

17 The answer is no.

18 Did anybody here recognize any of the witness's
19 names that were mentioned?

20 Anybody here know the Defendant?

21 The answer to all of those questions was no.

22 Is there one?

23 Yes?

24 JUROR JOHNSON: Your Honor, I know one of the
25 lawyers.

APP. 112

1 THE COURT: Stand up and identify yourself with
2 your last three numbers.

3 JUROR JOHNSON: Angel Johnson, 167.

4 THE COURT: You have to speak up a little bit.

5 JUROR JOHNSON: 167.

6 THE COURT: Okay. Who do you know?

7 JUROR JOHNSON: The Deputy D. A.

8 THE CLERK: I'm sorry.

9 THE COURT: She knows Ms. Holthus. How do you
10 know her?

11 JUROR JOHNSON: I'm her bartender.

12 THE COURT: Well, just let me ask you.

13 She is one of the attorneys for the State in
14 this case, and the attorneys don't -- they don't give
15 any evidence. All they do is ask questions.

16 Is there any reason that because you know her
17 from a social atmosphere, or social contact, that you
18 would treat her witnesses differently than any other
19 witnesses?

20 JUROR JOHNSON: No.

21 THE COURT: The fact that you have social
22 contact with her wouldn't affect your ability to be
23 fair and impartial to both the Defense and the State
24 in this case?

25 JUROR JOHNSON: No.

APP. 113

1 THE COURT: All right.

2 Anybody else? That's the first time I have
3 ever had that.

4 All right. As I said earlier, there is more
5 to the Defendant's rights in these cases than just a
6 presumption of innocence.

7 As I said, it's the State's obligation to
8 prove the Defendant guilty beyond a reasonable doubt.

9 The Defendant doesn't have to prove anything.
10 He doesn't have to saying anything. He doesn't have
11 to testify. He doesn't have to put on evidence, and
12 he doesn't have to do a thing. He just has to sit
13 there and see if the State can prove their case.

14 Is there anybody that has a problem with
15 that?

16 No.

17 All right. These are the kind of qualifying
18 questions that I am going to ask all of you, and we
19 are going to start up here with these folks in the
20 jury box..

21 The questions are basically going to be
22 exactly the same, so everybody can kind of be aware of
23 them, okay?

24 I am going to ask you to tell me how long
25 you have lived in Las Vegas.

APP. 114

1 What you do for a living.

2 If you are married, what your spouse does for
3 a living.

4 I am going to ask you if you have grown children
5 and what they do for a living.

6 I am going to ask you if you have had anything
7 in your background that would cause you to treat the
8 testimony of a police officer differently than any other
9 person.

10 A police officer is just like everybody else.
11 They can be right. They can be wrong.

12 But sometimes you may have had an experience
13 in your life that you give some kind of extra credibility
14 to a person because he is a policemen, or, on the other
15 hand, you may have had a bad relationship, circumstance
16 with a police officer, you got a ticket that you didn't
17 think he was telling the truth about, and you may have
18 developed an adversity towards the police, and you may
19 have something against them, and you might think they
20 are not deserving of the same credibility as another
21 witness in the same situation, I need to know that.

22 I am going to ask you if you or anybody close
23 to you has ever been the victim of or accused of a crime,
24 and, in particular, if you or anybody that has been close
25 to you has ever been accused of or the victim of a sexually

APP. 115

1 related crime, okay?

2 It's important that we know if you have something
3 in your background along those lines.

4 I need to know if you have any kind of a
5 preconceived concept or notion about how these criminal
6 trials are supposed to go.

7 Do you come, in other words, do you come to sit
8 on this jury with a fair, and impartial, and a neutral
9 mind set, okay?.

10 It's imperative that you be able to be fair,
11 and impartial, and neutral as a juror. That's the whole
12 point of asking you these kinds of questions.

13 I am going to have to ask you if you understand
14 the nature of jury service, meaning that you are going to
15 focus and pay attention to the evidence in this case, you
16 are going to listen to the instructions on the law that
17 I give you, and then you are going to retire with the
18 other members of the jury, and you are going to consider
19 and reach a verdict, meaning you are going to have to
20 decide whether or not you think the State has proven
21 their case beyond a reasonable doubt.

22 You have to be able to make that kind of a
23 decision, yes or no. I do believe it or I don't believe
24 it.

25 If you believe that they have, you have to

APP. 116

1 be willing to come back and say, we find the Defendant
2 guilty.

3 If you think the State has failed to prove
4 beyond a reasonable doubt the Defendant is guilty then
5 you have to be able to come back and say, not guilty,
6 okay?

7 That is the ultimate question that the jury
8 has to answer, and you have to accept and be willing
9 to provide that function, okay?

10 Up here, we are going to start in the back
11 row, and what's your name?

12 JUROR ENRIQUEZ: Leonor Enriquez.

13 THE COURT: Okay, I've got it.

14 VOIR DIRE EXAMINATION OF JUROR LEONOR ENRIQUEZ
15 BY THE COURT:

16 Q. Ms. Enriquez, how long have you been here
17 in Las Vegas?

18 A. 35 years.

19 Q. You can sit down. You don't have to stand
20 up. All right, 35 years?

21 A. Yes.

22 Q. What do you do for a living?

23 A. I work for the Flamingo Hilton for 20 years.
24 I am retired.

25 Q. Very good, very good. Are you married?

APP. 117

1 A. I am separated.

2 Q. What does your husband, your ex to be husband,
3 what does he do?

4 A. I don't know, Your Honor.

5 Q. You don't know?

6 A. I don't really know.

7 Q. Do you have grown children?

8 A. I have three grown children. One is a
9 carpeting journeyman. I have one, a daughter, who is a
10 nurse assistant, and I have a special son.

11 Q. Okay.

12 Have you or anybody close to you ever had
13 any formalized training, or work experience in law
14 enforcement?

15 A. No.

16 Q. Okay.

17 Have you, or anyone close to you, ever been on
18 jury duty before?

19 A. I have been in one before.

20 Q. You have been on a jury before.

21 Were you actually on the jury or were you in
22 the jury pool?

23 A. I was on the jury.

24 Q. On the jury?

25 A. Yes.

APP. 118

1 Q. How long ago was that?

2 A. I think that was like three years ago.

3 I'm not sure anymore.

4 Q. So it was here in Clark County?

5 A. Yes.

6 Q. Was it a criminal trial or a civil trial?

7 A. Criminal.

8 Q. Did the jury retire and render a verdict?

9 A. I don't remember.

10 Q. Okay. You don't remember if you reached
11 a verdict or not?

12 A. I don't remember if we did.

13 Q. Okay?

14 A. I think we did.

15 Q. Okay. It's important that whatever kind
16 of a case that was, whatever you can recall about that
17 experience, don't bring it to court. You have got to
18 leave it outside in the hallway because you need to
19 focus on the evidence in this case and pay attention
20 to the instructions that I give you on this case, and
21 don't let that --

22 A. (Interposing) I don't, I have never
23 talked about it with anyone.

24 Q. Well, after the case is over you can talk
25 about it, but you don't talk about it to anybody, including

APP. 119

1 the other members of the jury while this trial is going
2 on?

3 A. Okay.

4 Q. Can you do that?

5 A. Yes.

6 Q. And don't let that other trial that you
7 were here on interfere with the being a juror on this
8 jury in this case.

9 Q. Can you do that?

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. Yes.

13 Q. Okay.

14 Q. Have you, or anyone close to you, ever been
15 the victim of or accused of any crime?

16 A. No.

17 Q. And in particular, when I say that, I'm
18 focusing in on any sexual related crime.

19 Q. Anything along those lines?

20 A. No.

21 Q. Okay.

22 Q. Do you think that you come to serve on this
23 jury having a fair and impartial mind set?

24 A. I don't understand the question.

25 Q. Well, do you think that you're fair and

APP. 120

1 impartial?

2 As you sit there as a prospective juror, do
3 you have any preconceived notions that would affect
4 your ability to be fair and impartial to both the State
5 and the Defendant?

6 A. No, it wouldn't affect me.

7 Q. Okay.

8 I guess the ultimate question is -- well, let
9 me back up.

10 Do you have anything in your background that
11 would cause you to treat the testimony of a police officer
12 differently than anybody else?

13 A. No.

14 Q. Okay.

15 If you were sitting over here, as either the
16 Defendant or the prosecution, on either side, would you
17 be comfortable with a juror being on the jury that has
18 the frame of mind that you have right now?

19 A. I would be comfortable.

20 Q. You would be comfortable on either side?

21 A. On either side.

22 THE COURT: That's what we want.

23 CKAY. The State, do you have any questions?

24 MS. HOLTHUS: Pass for cause, Judge.

25 THE COURT: Defense?

APP. 121

1 MS. HAMERS: We will pass for cause, Judge.

2 THE COURT: Okay.

3 Barbara -- you know what.

4 I need to -- there is one small thing that I
5 have overlooked. I need to give some of these folks to
6 bail out if they can't be here for a couple of days.

7 We are estimating that this trial is going to
8 be a couple days long, right, three days, four?

9 MS. HOLTHUS: Correct.

10 THE COURT: For sure before Friday is the
11 estimate.

12 Is that what everybody is estimating?

13 MS. HOLTHUS: Yes, Your Honor.

14 THE COURT: There is one thing that I overlooked.
15 I have overlooked it, and I am going to give you guys,
16 and I am going to caution you before I give you a chance
17 to bail out here, if you have got something going on in
18 your life that is going to keep you from sitting here
19 as a juror for the next couple of days, I need to know
20 about it.

21 If you have got something going on in your life,
22 and it has to be something of an emergency kind of nature,
23 that is totally consuming your mind set such that it would
24 be virtually impossible for you to sit there as a juror,
25 and to focus and pay attention on the evidence in this

APP. 122

1 case, I need to know if there is something like that going
2 on in your life.

3 Again, this is going to be a real short trial.
4 You don't get -- if you have got something going on in
5 your life right this instant that is going to prevent you
6 from being here for a few days, and hearing this trial,
7 I need to know about it, and you need to understand that
8 you don't get off jury duty. Again, you only go down to
9 the third floor, and you will get recycled into another
10 jury pool.

11 This trial is so short.

12 If you have got something like that, I'll let
13 you go, but you are going to get relocated back into
14 another jury pool, and I can tell you you might find a
15 trial that won't be any longer than this, but you will
16 never find a trial that is going to be much shorter than
17 this, and the juror will be rotated back into the jury
18 pool, and be looking at a week or two long jury trial.

19 So before you jump to bail out, keep that in
20 mind.

21 Is there anybody over here that's in that kind
22 of a situation?

23 Yes, in the back.

24 Now, let me just also caution you.

25 Economic hardship is not an excuse to get out

APP. 123

1 of jury duty.

2 Child care issues are a different story.

3 You might get off this jury pool, but you will
4 need to make some arrangements for the next jury pool
5 so that you can get somebody else to take care or pick
6 up your kids, or something, but I have got two of you
7 back in the back row.

8 What, stand up, and your name, and the last
9 three numbers, if you haven't forgotten.

10 JUROR JOHNSON: 167, Angel Johnson.

11 I got a subpoena for tomorrow morning for a
12 criminal trial.

13 THE COURT: Here in this Courthouse?

14 JUROR JOHNSON: Yeah. So I don't know if
15 that is going to affect me.

16 THE COURT: Is it in Justice Court?

17 JUROR JOHNSON: I believe so. I would have
18 to look at the subpoena.

19 THE COURT: That probably would interfere with
20 sitting on this.

21 Actually, let me explain to you that this trial,
22 everybody has got some obligations in the morning, we are
23 not going to determine what time we are going to start
24 tomorrow until later on today.

25 There is a very good chance that we might not

APP. 124

1 even be starting until one o'clock tomorrow, we will
2 probably -- I mean, the earliest we probably wouldn't
3 be starting before 11, and more than likely, we won't
4 start until one o'clock in the afternoon.

5 If you had a subpoena in the morning, could
6 you go check in, and in all probability, you could have
7 it handled way before.

8 MS. HAMERS: Judge, can we approach?

9 THE COURT: Sure.

10 *****

11 (Whereupon, a brief, informal discussion was
12 had at the bench between the Court and counsel.)

13 *****

14 THE COURT: All right. Here is what we are
15 going to do.

16 I am going to go ahead and excuse you, and
17 there is a couple of reasons.

18 These guys all have court in the morning.

19 It's entirely possible you may be involved
20 in one of those cases that they have in another
21 Department than this one so even though we might not
22 be starting this trial until later, you may have some
23 other problems with these people being on another case
24 you have.

25 So go ahead, and go on down to the third

APP. 125

1 floor, and we will excuse you off this panel, and they
2 will rotate you back into a different panel later on,
3 okay?

4 JUROR JOHNSON: Thank you.

5 (Juror Angel Johnson excused at this time.)

6 THE COURT: And we will replace her with?

7 THE CLERK: Richard Brandon, badge 179.

8 THE COURT: Richard, take that last chair right
9 there. I would appreciate it. No, the first chair up
10 there.

11 Stand up and identify yourself and also your
12 last three digits.

13 JUROR KIMBERLY: 166, I have finals at school.

14 THE COURT: You have finals, and then where
15 do you go to school?

16 JUROR KIMBERLY: Cordon Bleu.

17 THE COURT: I'm sorry.

18 JUROR KIMBERLY: Cordon Bleu.

19 THE COURT: Oh, okay.

20 Well, you can't arrange to have them made
21 up?

22 If this trial goes -- it will be in the afternoon.
23 It probably won't be in the morning. It will probably be
24 in the afternoons, like this afternoon, tomorrow afternoon,
25 maybe Thursday afternoon.

APP. 126

1 JUROR KIMBERLY: I get out of school at one.

2 THE COURT: I'm sorry.

3 JUROR KIMBERLY: I get out of school one o'clock.

4 THE COURT: Well, you probably need to be here
5 by one o'clock.

6 Is that going to be all right?

7 JUROR KIMBERLY: I can try, yes, I can.

8 THE COURT: Okay, all right. Anybody else over
9 here? That was the only problems we've got?

10 Well, that's good.

11 VOIR DIRE EXAMINATION OF JUROR BARBARA CUOMO

12 BY THE COURT:

13 Q. All right. So we are back to Barbara
14 Cuomo?

15 A. Yes.

16 Q. Barbara, how long have you been in town?

17 A. Probably about -- I lived here in the
18 early '70's, I went to Southern California in the late
19 '70's, and then I came back here probably about 16
20 years ago.

21 Q. Okay. What do you do for a living?

22 A. I am a certified medical assistant at
23 Nevada Cancer Institute.

24 Q. Okay. How long have you done that?

25 A. Almost five years.

APP. 127

1 Q. Are you married?

2 A. No.

3 Q. Grown children?

4 A. Yes.

5 Q. What do they do?

6 A. My son just got out of prison in
7 California. He is in a program like a transitional
8 program for five months.

9 Q. Okay. I don't mean to pry. What kind
10 of an offense was he in prison on?

11 A. It was drugs and alcohol.

12 Q. Okay.

13 And he is in some kind of a program that
14 transitions back in, and they have drug rehab, and
15 all that kind of stuff?

16 A. Yes.

17 Q. Okay, good. That's the only adult child?

18 A. Yes.

19 Q. Okay.

20 Have you ever had any training or employment
21 in law enforcement?

22 A. No.

23 Q. Anybody close to you?

24 A. My cousin works for the City, in law
25 enforcement.

APP. 128

1 Q. The city, here in Las Vegas?

2 A. Yes.

3 Q. As a what, a marshal, or something?

4 A. She's an administrative assistant to some
5 of the marshals.

6 Q. Okay.

7 Is she actually -- I don't know what the term
8 is, a badge carrying --

9 A. No.

10 Q. She is a civilian employee?

11 A. Yes.

12 Q. Okay.

13 Anything about that that would cause you problems
14 being on a jury like this?

15 A. No, I don't think so.

16 Q. Okay.

17 Have you, or anyone close to you, ever been
18 accused of or the victim of a crime?

19 A. Just my son.

20 Q. Besides your son?

21 A. No.

22 Q. Okay. And in particular, in sexually
23 related crimes?

24 A. No.

25 Q. Anything along those lines?

APP. 129

1 A. No.

2 Q. Anything in your background that would
3 cause you difficulty listening to the testimony of a
4 police officer and treating it any different than any
5 other witness?

6 A. Well, I have been through a lot with my
7 son, but, you know, the judicial system. Some parts I
8 wasn't happy about.

9 Q. Okay. That was in California?

10 A. Yes.

11 Q. Or we are way better over here.

12 You wouldn't hold any of that against either
13 the State, or the Defense, or the Court in regards to
14 being a juror on this kind of a trial here at this
15 time?

16 A. I don't think so.

17 Q. Okay.

18 It's real important whenever you're -- again,
19 whatever kind of an experience you have had like that,
20 which sometimes can be very frustrating, or trying, and
21 can certainly begin to color your perspective of how
22 things would work, the fact is here you need to leave
23 whatever you experienced out in the hallway and
24 concentrate strictly and solely on listening to the
25 evidence in this case, listening to the instructions,

APP. 130

1 and following the instructions on the law, and then
2 consulting with the other jurors in rendering a verdict
3 to be completely and totally fair and impartial to both
4 the Defense and to the State of Nevada.

5 Can you do that?

6 A. Probably not.

7 Q. Why not?

8 A. I don't know. I just don't think I
9 could.

10 Q. Well, you have got to give me a reason.
11 Is it because you don't want to, or you just don't
12 think -- what is there about this process that you
13 think that you can't be fair and impartial about?

14 A. Like I said, just some of the things
15 that I have been through with the judicial system.

16 Q. You have got to be more specific.

17 If you are telling me that you can't be on
18 this jury, you are going to have to give me a real
19 good reason why.

20 A. I don't know. I just don't think I
21 could be partial.

22 Q. Well, you can't be fair?

23 A. No.

24 Q. And who would you not be fair towards,
25 the State or the Defense?

APP. 131

1 A. Probably the Defendant.

2 Q. And what is it about that that is causing
3 you problems?

4 A. Just because I have been through so much
5 stuff with my son and --

6 Q. Did he have a trial?

7 A. Well, yeah, when he was younger.

8 Q. But what he went to prison for, did he
9 have a trial on that?

10 A. Yes, but I wasn't there.

11 Q. Well, I am having difficulty understanding
12 why, if you weren't there for whatever trial he had,
13 why the judicial system would be giving you heartburn?

14 A. Well, you know, he was let out of jail.
15 He was let go, and the parole officer never returned
16 calls to myself and to my dad, and we were trying to
17 get him help for his health problems, and we are just
18 getting the run-around.

19 Q. Well, that sounds like something you
20 might be more willing to hold that against the State
21 than the Defendant, I mean, why would that kind of an
22 experience cause you to harbor animosity towards the
23 Defendant?

24 Your son was the Defendant, and that case
25 certainly didn't have anything to do with the problems

APP. 132

1 you are describing?

2 A. Well, I know, but I just, you know, I've
3 been around too much of that kind of stuff, the way it
4 was handled and --

5 Q. Well, you know, nobody that's here really
6 wants to be here, I mean, we are not fooling ourselves.
7 Everybody that is going to end up on this jury is going
8 to acquiesce into doing a civic duty.

9 A. Yes.

10 Q. Nobody is going to be thrilled about this,
11 and nobody is going to be volunteering and and begging
12 to do it. But the excuses that you are giving me, to
13 be perfectly honest with you, don't seem to hold much
14 water as to why you say you can't be fair and impartial.

15 Being fair and impartial is not that difficult
16 unless you have a real reason not to be, and there is
17 nothing that you have described to me that as far as
18 I'm concerned to do me, makes you unable to be fair and
19 impartial unless you absolutely are bent to get off this
20 jury.

21 You are going to get rotated back into probably
22 a civil jury trial that is going to go considerably longer
23 than this thing is going to go.

24 That's probably not what your concern is, but
25 if you are just bound and determined to tell me that under

APP. 133

1 no circumstances can you sit there and be fair and impartial,
2 I mean, I have got no choice but to let you go. But I don't
3 like it.

4 It sticks to my craw because I think you are not
5 being very forthright with us, to be perfectly honest with
6 you.

7 I think that you are just using that as an
8 excuse so that you can get off of here.

9 Do you want me to excuse you and go down and
10 get on another jury panel?

11 A. No.

12 THE COURT: Well, I don't know. What do you
13 guys think?

14 Did I browbeat her bad enough now?

15 Should I excuse her or not?

16 Do you guys want her off, let her off. If you
17 think that she with what she professes, if you think she
18 can be fair and impartial, I will leave her on.

19 MS. HOLTHUS: I will submit, Judge.

20 MS. HAMERS: We are not challenging for cause.

21 THE COURT: Then she is going to stay.

22 All right. She is passed for cause.

23 VOIR DIRE EXAMINATION OF JUROR CORAZON PARINA
24 BY THE COURT:

25 Q. Corazon Parina, is that the way you say

APP. 134

1 that?

2 A. Yes.

3 Q. All right. How long have you been in
4 Las Vegas?

5 A. More than a year. More than two years.

6 Q. Good. Where are you from?

7 A. San Diego, California.

8 Q. Okay. And what do you do for a living?

9 A. I am licensed medical technologist.

10 Q. Okay.

11 A. Right in the laboratory department.

12 Q. Okay. Are you married?

13 A. Yes.

14 Q. What does your husband do?

15 A. He just retired, 62 years old.

16 Q. Good. What did he do before he retired?

17 A. Stay home.

18 Q. I mean before. Now, you've got to see
19 him everyday?

20 A. Okay. He was working at U. S. Airways
21 here in McCarran, and then he laid off, okay. He was
22 one of them they laid off, and then he decided to retire
23 already at 62 years old.

24 Q. Good, good for him. Do you guys have
25 grown children?

APP. 135

1 A. I have only one son, only child. He is
2 living in San Diego.

3 Q. And what does he do?

4 A. Right now he is unemployed. He finish
5 three year course of high speed multimedia.

6 Q. Okay, very good.

7 Have you or anyone close to you ever had any
8 training, or education, or employment in law enforcement?

9 A. No.

10 Q. Okay.

11 Have you or anybody close to you ever been the
12 victim of or accused of a crime?

13 A. No.

14 Q. And, in particular, a sexual related crime,
15 anything like that?

16 A. No.

17 Q. Okay.

18 Anything in your background that would cause
19 you difficulty in listening to the testimony of a police
20 officer and treating it any differently than anybody
21 else?

22 A. No.

23 Q. Okay.

24 Do you understand the nature of jury service,
25 what we are going to ask you to do? You are going to

APP. 136

1 have to like make a decision. You have to listen to
2 the evidence and to the instructions under the law,
3 consult with your other jurors, and then decide whether
4 or not you think the State has proven their case beyond
5 a reasonable doubt, do you understand that?

6 A. I understand that.

7 Q. Can you make that kind of a decision?

8 A. Yes.

9 Q. If you think the State has proved their
10 case beyond a reasonable doubt, can you come back to
11 court and say guilty?

12 A. Yes.

13 Q. Okay.

14 If you think the State failed to prove their
15 case beyond a reasonable doubt, can you come back to
16 the court and say not guilty?

17 A. Yes.

18 Q. Good.

19 I am also going to instruct you that you can't
20 discuss this case, you can't form an opinion about
21 anything connected with this case, nor can you discuss
22 this case with anybody, and in particular, other members
23 of the jury until you have retired to consider your
24 verdict.

25 Can you do that?

APP. 137

1 A. Yes.

2 Q. Good.

3 Do you think that you come to this jury --
4 have you ever been on a jury before?

5 A. In San Diego, I was asked to report, but
6 I wasn't chosen as a juror.

7 Q. You were kind of in the jury pool but
8 you didn't really --

9 A. Yes.

10 Q. -- end up on the jury?

11 A. Yes.

12 Q. Okay.

13 Do you think that you come to serve on this
14 jury with a fire, and impartial, and a neutral kind of
15 a mind set?

16 A. Yes.

17 Q. And here is the real test of that.

18 If you were in this case, if you were prosecuting,
19 or if you were the Defendant in this case, would you be
20 comfortable with a juror on the jury with the frame of
21 mind that you have?

22 A. I don't know.

23 Maybe this is really a big experience for me
24 to want to be one of the jurors at this time. I don't
25 have any experience at all at this time.

APP. 138

1 Q. Well, what I mean is do you think it
2 these folks over here should be nervous because if you
3 were on the jury that has the frame of mind that you
4 have or should they be comfortable that they have got
5 somebody on this jury that is fair and impartial?

6 What do you think?

7 Did that that make any sense?

8 Do you think that you have a fair and impartial
9 mind?

10 A. Yes.

11 Q. Okay, that's all these people want.

12 Everybody wants the people on the jury to just
13 treat both sides the same, the same fair and impartial
14 treatment that the other side gets.

15 Can you do that?

16 A. Yes.

17 THE COURT: Perfect, perfect.

18 Questions?

19 MS. HOLTHUS: Can we approach?

20 THE COURT: Sure.

21 *****

22 (Whereupon, a brief, informal discussion was
23 had off the record at the bench between the Court and
24 counsel.)

25 *****

APP. 139

1 THE COURT: Yeah, what Joe was just telling
2 you guys, anybody who needs to go to the bathroom, just
3 check in with Joe so he knows thta you are going out.
4 Go ahead and go to the bathroom. You don't need to sit
5 here, I mean, don't wait out in the hallway. If you
6 have got to go to the bathroom, you go to the bathroom
7 and come back. But check in with Joe, but you don't
8 need to wait for a break, okay?

9 All right. Ms. Parina, are you comfortable
10 with your English?

11 A. Yes.

12 Q. Okay.

13 I mean, you have understood everything that
14 we have said here, haven't you?

15 A. Maybe not everything, but but I understand
16 Your Honor.

17 Q. Okay.

18 All right. I mean, what was your native language?
19 You said you were from, originally from where?

20 A. I am from the Philippines.

21 Q. From the Philippines?

22 A. Yes.

23 Q. Anybody, you or anybody, if you didn't
24 feel comfortable, you sound like you are pretty comfortable,
25 I certainly don't notice any problems, but if you felt

APP. 140

1 like you wanted to have an interpreter help you interpret
2 English from Philippines to English, we would be happy
3 to provide you with one, just to let you know that if you
4 thought it was necessary. It doesn't seem like to me but
5 that's up to you, okay?

6 A. Yes.

7 THE COURT: All right.

8 VOIR DIRE EXAMINATION OF JUROR KIMBERLY BARBER
9 BY THE COURT:

10 Q. Kimberly Barber.

11 A. Yes.

12 Q. Kimberly?

13 MS. HAMERS: Judge, can we approach?

14 THE COURT: Sure. Did I miss something?

15 MS. HAMERS: We didn't pass for cause.

16 THE COURT: Oh, okay, yeah, yeah, yeah,
17 you're right, you're right.

18 Did you guys pass for cause?

19 MS. HOLTHUS: Yes, we did, Your Honor.

20 THE COURT: Okay. Does the Defense pass for
21 cause?

22 MS. HAMERS: Thank you, Judge, just a couple
23 of questions.

24 VOIR DIRE EXAMINATION OF JUROR CORAZON PARINA
25 BY MS. HAMERS:

APP. 141

1 Q. Ma'am, how old did you say your son
2 is?

3 A. How old is my son?

4 Q. Yeah.

5 A. He is 23 years old this month.

6 Q. 23 years old. How old was he when he
7 left the house?

8 A. When he -- he left more one or two years
9 ago because I decided to retire here in Las Vegas, in
10 Nevada, and he doesn't want to come with me. He wants
11 to stay in with family.

12 Q. So you were with him in San Diego until
13 about three years ago?

14 A. Yes.

15 Q. And you came up here, and he stayed in
16 San Diego?

17 A. Yes, he has stayed in San Diego.

18 Q. Okay. So he lived with you until he
19 was 20?

20 A. Yes.

21 Q. Okay.

22 When your son was little, did he always tell
23 the truth?

24 A. I think so, yeah.

25 Q. Yeah?

APP. 142

1 Did he ever tell you something that wasn't
2 true, maybe to get out of trouble?

3 A. Well, he started in a Catholic school all
4 through up through high school, and I know he didn't like
5 it, and we had communication, family communication so I
6 understand that he didn't become a bad boy.

7 Q. So he didn't get in trouble?

8 A. No.

9 Q. And so he never had to lie to get out of
10 trouble?

11 A. No.

12 Q. What about little white lies, nothing?

13 A. Well, maybe white lies, but I didn't mind
14 that, it was to better himself, and for a good reason,
15 and so I believe him.

16 Q. So if he had a good reason for doing it,
17 it was okay?

18 A. Yes.

19 Q. But it still happened?

20 A. Yes.

21 Q. Okay. Do you want to be on the jury?

22 A. Do I have the right to choose if I don't
23 want to?

24 Q. Unfortunately, no, but I still would like
25 to know whether or not you would want to serve?

APP. 143

1 A. Of course, I am not comfortable to become
2 a juror, and I don't know, maybe I don't want to listen
3 to what's going on in this world. It's crazy. So I
4 don't want to be a part of that.

5 Q. When you spoke earlier, you talked about,
6 you know, this is a big deal, and you don't have a lot
7 of experience as a juror, do you remember that?

8 A. Yeah, yes.

9 Q. You know, the idea of having a jury, the
10 reason you are all sitting there, and that we are not
11 is because that's exactly who should be on a jury?

12 A. Yeah.

13 Q. Do you understand that?

14 A. Uh-huh.

15 Q. Because people who have lives, and
16 have nothing to do with this other stuff going on,
17 nothing to do with the court system, and all you needed
18 to do is to look at what's going on and decide whether
19 or not something has been proved to you.

20 Does that change anything or do you still
21 kind of feel that you don't really want to do it?

22 A. I don't want to do it.

23 MS. HAMERS: Okay, that's fair. Thank you.

24 THE COURT: Pass for cause?

25 MS. HAMERS: Yes.

APP. 144

1 THE COURT: There is a quote by, I'm pretty
2 sure it was Benjamin Franklin, that commented upon our
3 jury system.

4 He said the only problem with it is you end
5 up with 12 people who couldn't figure out how to get
6 off jury duty.

7 We don't subscribe to that theory at all.

8 We totally understand and appreciate the
9 imposition that we place on people's lives when we
10 ask you to come down here and sit as a juror, and
11 we realize that nobody really wants to do this, and
12 this is just one of the civic duties that our system
13 kind of heaps on you, but we appreciate everybody who
14 is here, I can promise you that.

15 VOIR DIRE EXAMINATION OF JUROR KIMBERLY BARBER
16 BY THE COURT:

17 Q. Is it Kimberly Barber?

18 A. Yes.

19 Q. Kimberly, I know that you are going to
20 school, right?

21 A. Yes.

22 Q. Are yo working?

23 A. No.

24 Q. And how long have you lived here in Las
25 Vegas?

APP. 145

1 A. Nine years.

2 Q. Are you married?

3 A. No.

4 Q. No children?

5 A. No.

6 Q. And you are going to be a chef?

7 A. If I graduate.

8 Q. Good. Have you ever been employed or
9 trained in any kind of law enforcement activity?

10 A. No.

11 Q. Okay.

12 Have you had any kind of experience that
13 might color or affect your being able to listen to
14 the testimony of a police officer and treating it
15 like anybody that is not a police officer?

16 A. No.

17 Q. Okay. No problems like that?

18 A. No.

19 Q. Okay. Have you ever been on a jury
20 before?

21 A. No.

22 Q. Okay.

23 Have you, or anybody close to you, ever been
24 the victim of, or accused of a crime?

25 A. Yes.

APP. 146

1 Q. Okay.

2 Now, is it a crime, or is it because I have
3 asked this question also, a sexual related crime?

4 A. No, sir.

5 Q. Okay.

6 What kind of a crime was it?

7 First of all, was it a victim of, or accused
8 of?

9 A. Pardon?

10 Q. I mean, was somebody close to you the
11 victim of a crime, or was somebody close to you accused
12 of a crime? What was it?

13 A. Accused of.

14 Q. And what was it?

15 A. I believe I want to say drug related.

16 Q. Who are we talking about?

17 A. My brother.

18 Q. Your brother?

19 A. Yes.

20 Q. Okay. He was charged with a drug related
21 crime?

22 A. Drug related, and prostitution, and I
23 don't know how it was actually --

24 Q. Okay.

25 All right. Was he in Las Vegas when this all

APP. 147

1 happened?

2 A. Yes.

3 Q. How long ago was this?

4 A. This was about two years ago, I would
5 say.

6 Q. Okay. Was he charged?

7 A. Yes.

8 Q. And he was prosecuted?

9 A. Yes.

10 Q. Okay.

11 And did you -- were you pretty close to him
12 and followed along with what happened to him when they
13 prosecuted him?

14 A. Probably, yeah.

15 Q. Do you know who prosecuted him?

16 Was it one of the City Attorney's offices,
17 or was it the District Attorney, or do you know?

18 A. I don't know.

19 Q. Was there anything about being involved
20 with your brother in that kind of an experience that
21 is going to cause you to hold that against either
22 the District Attorney's office or the Police Department
23 in this case?

24 A. No.

25 Q. Can you take that kind of an experience

APP. 148

1 of having observed and seen your brother be prosecuted
2 for something, can you leave that out in the hallway,
3 and not let it interfere or affect your ability to be
4 fair and impartial to both sides in this case?

5 A. Yes.

6 Q. Okay.

7 Do you think that he was treated fairly in
8 that case?

9 A. No.

10 Q. Do you think that he was treated unfairly
11 by the Police Department?

12 A. Yes.

13 Q. Do you think that he was treated unfairly
14 by the prosecutors, or do you know?

15 A. Well, it was -- yes.

16 Q. The people, like the District Attorney,
17 who prosecuted him for the crime, do you think that those
18 were the people that were responsible for not treating
19 him fairly, or do you think it was just the Police
20 Department?

21 A. The Police Department.

22 Q. Okay.

23 . Okay. You sound like you have got a
24 little question mark.

25 Did you -- were you pretty involved in that

APP. 149

1 whole process of what was going on with him?

2 A. No, I wasn't.

3 Q. Okay.

4 And, again, this is really the most important
5 part. Are you going to let anything about that experience
6 of what happened to your brother interfere with your
7 ability to sit as a juror in this kind of a case and
8 be fair and impartial to both the Defendant and to the
9 State?

10 A. No.

11 Q. Okay. You can leave that out in the
12 hallway?

13 A. Yes.

14 Q. Okay.

15 Do you think that you come to serve on this
16 jury with a fair, impartial, and a neutral kind of a
17 mind see?

18 A. Yes.

19 Q. You understand the nature of jury
20 service. You understand what we are going to ask
21 you to do?

22 A. Yes.

23 Q. You are going to listen to the evidence,
24 listen to the instructions on the law, retire and consult
25 with the rest of the jurors, and then make a decision.

APP. 150

1 You are going to decide whether you think the
2 State proved their case beyond a reasonable doubt or
3 not.

4 Do you understand that?

5 A. Yes.

6 Q. Can you come back and say guilty if you
7 think the State has proved their case beyond a reasonable
8 doubt?

9 A. Yes.

10 Q. Can you come back and say not guilty if
11 you think they failed to do that?

12 A. Yes.

13 Q. Okay.

14 If you were one of the parties over here,
15 either the Defendant or the prosecution. Would you
16 be comfortable with a juror with your frame of mind?

17 A. Yes.

18 THE COURT: Good. The State?

19 VOIR DIRE EXAMINATIOIN OF JUROR KIMBERLY BARBER
20 BY MS. HOLTHUS:

21 Q. Your finals, are those things that you
22 can reschedule?

23 A. Two of them I can, but I'm not sure
24 about the other.

25 Q. I'm sorry.

APP. 151

1 A. I'm not sure about the other.

2 Q. How big a hassle would it be?

3 A. Big.

4 Q. Do you have to study for them, or anything,
5 or is it more practical?

6 A. I had to study for them.

7 Q. And that wouldn't be a distraction for
8 you to be taking -- coming and listening to evidence
9 and working as a juror in the afternoons, and then
10 doing your finals in the morning?

11 A. No.

12 Q. With respect to your brother, was it
13 misdemeanors or felonies?

14 A. I think they were misdemeanors. I don't
15 know.

16 Q. Okay. And you said it was for prostitution?

17 A. And like trafficking drugs.

18 Q. Do you know if he was -- you say he was
19 trafficking in drugs?

20 A. He was trafficking in drugs..

21 Q. Was he also trafficking in prostitution
22 or was it he was directly involved in prostitution?

23 A. Directly involved in prostitution. I don't
24 know -- it was one of those.

25 Q. So, did he have prostitutes working for

APP. 152

1 him or was he himself prostituting himself?

2 A. He had prostitutes.

3 Q. So he was charged more as a panderer?

4 A. Yes.

5 Q. And in what way do you think he was treated
6 unfairly?

7 A. Well, I don't know if he was lied about
8 by someone in the court.

9 Q. And how do you know that he got lied about
10 in court?

11 A. Because they had to let him go, and there
12 was a lot of lying, and they said that he was, he was
13 arrested on Sunday, but it wasn't him. Like she was
14 saying that it was him, and she lied about her age, and
15 my brother said it was like what it was.

16 Q. And do you know, did he go to prison?

17 Was that a plea?

18 Did he negotiate the case, or did he actually
19 go to trial?

20 A. I don't know. There was a trial.

21 Q. Was there a whole trial?

22 A. I think he pled.

23 Q. He didn't go to trial, or you weren't
24 involved in it at all?

25 A. No.

APP. 153

1 Q. And so -- but you don't have any hard
2 feelings towards Metro, or the police, or whoever
3 prosecuted?

4 A. Well, yeah, I mean, it was a basic, you
5 know, that idea, and he was the one that had to deal
6 with the police, and that.

7 Q. I understand. But the question is
8 though:

9 Because of what you experienced with your
10 brother, do you think that you can be fair to police
11 officers who come in here and testify?

12 A. Yes, I can.

13 Q. And what about the State, who prosecuted
14 him? Was he treated fairly by them?

15 A. No.

16 Q. But you don't feel that you would hold
17 that against anyone?

18 A. No, it was what they found and probably
19 go ahead with the evidence.

20 MS. HOLTHUS: Okay, thanks. I will pass for
21 cause..

22 VOIR DIRE EXAMINATION OF JUROR KIMBERLY BARBER
23 BY MS. HAMERS:

24 Q. I need to clarify more than I don't want
25 to beat a dead horse over there, but you are telling us

APP. 154

1 a girl lied about your brother, made accusations, and
2 as a result of that, he was prosecuted, and then the
3 District Attorney, or whoever picked it up, prosecuted
4 it, and he went to prison?

5 A. Yes.

6 Q. Okay. And you said that she lied about
7 him?

8 A. Yes.

9 Q. The girl, you said she lied about her
10 age, so how old was she in reality?

11 A. I think she was 17.

12 Q. 17?

13 A. Under 18.

14 Q. Under 18. That was the issue whether
15 she was under 18?

16 A. Yes.

17 Q. And when this young girl went to the
18 police, I imagine, that's when these accusations were
19 made?

20 A. No, it was came to the house, and there
21 was some prostitution going on, and she said that my
22 brother was involved with it.

23 Q. So there was a whole big scene going
24 on. She was talking to whatever law enforcement agency
25 it is, and she says, that guy, right, talking about

APP. 155

1 your brother, right?

2 A. Yes.

3 Q. Now, when the police, when she told the
4 police that, do you think it's wrong for the police to
5 go ahead, and make their reports, do their jobs, and
6 then the District Attorney's office?

7 A. No.

8 Q. And when when the District Attorney goes
9 ahead and prosecutes, you know, tries to send your
10 brother to prison for whatever reason, is it really
11 their fault that this is happening?

12 A. They probably did because the girl lied
13 and said so and so did it.

14 Q. Okay. And so they have -- I'm trying
15 to find out kind of at what point that becomes a
16 problem?

17 Do you know what I'm saying because the girl
18 said, something happened, and, obviously, they can't
19 just ignore that, right?

20 A. Yes.

21 Q. Do you agree?

22 A. Yes.

23 Q. Okay.

24 But you are saying something should happen,
25 it should be more than just that girl's word?

APP. 156

1 A. Yes.

2 Q. They should do some investigation beyond?

3 A. Yes.

4 Q. Okay.

5 Was there something particular in that case
6 that they could have done that you know of?

7 A. No.

8 Q. Do you think it's a difficult call to
9 make when all you are talking about is the words of
10 people?

11 A. It was that, and also, I guess with the
12 attitude, the statement that he was making to the police,
13 well, it was read and didn't describe, you know, exactly
14 what kind of person that was going on with the situation,
15 so it was stuff that she actually wanted to say about
16 it.

17 Q. Trying to make your brother look worse?

18 A. Yeah.

19 Q. Okay.

20 When you think about a case, maybe not that case,
21 just any case at all, how do you think police, prosecutors,
22 and ultimately, juries can make a determination just on
23 someone's word?

24 Are there things they can do?

25 A. They ought to do something.

APP. 157

1 Q. Is there anything that you can think of
2 that you can find by saying someone accused you of
3 something, let's say. Let's say I just said, you know,
4 hey, I had a run-in to the Courthouse today. You came
5 up and smacked me.

6 A. Yeah.

7 Q. Are there things that you feel as part
8 of an investigation should be done to check that out?

9 A. Yeah, there is a lie detector test.

10 Q. A lie detector test. What else could be
11 done?

12 A. Maybe some sort of examination.

13 Q. Maybe some sort of physical examination?

14 A. Yes.

15 Q. We are in a Courthouse, maybe there are
16 cameras, right?

17 A. Yes.

18 Q. It's hard to determine it right on your
19 word at all?

20 A. Yeah, with everybody.

21 MS. HAMERS: All right, thank you. Pass for
22 cause.

23 VOIR DIRE EXAMINATION OF JUROR RICHARD BRANDON
24 BY THE COURT:

25 Q. It's Richard Brandon, is that right?

APP. 158

1 A. Yes.

2 Q. Richard, how long have you been in town?

3 A. About six years.

4 Q. Okay. Where did you come from?

5 A. L. A.

6 Q. Okay.

7 A. Greater Hollywood.

8 Q. And what do you do for a living?

9 A. I'm retired.

10 Q. What did you do before you retired?

11 A. I was a store manager.

12 Q. From Hollywood?

13 A. Yeah.

14 Q. Are you married?

15 A. No.

16 Q. Grown children?

17 A. One.

18 Q. What does he do?

19 A. Well, he basically, well, he's a bit
20 of a writer, he's a salesman, and he is waiting for
21 disability, which I think he is beginning to begin next
22 month.

23 Q. Okay.

24 Have you ever been trained or employed in
25 law enforcement of any sort?

APP. 159

1 A. No.

2 Q. Okay. Anybody close to you?

3 A. No.

4 Q. Okay. Have you ever been on jury duty?

5 A. Yes.

6 Q. How long ago?

7 A. It seems like yesterday, but they say
8 you are only called every 18 months, but I was called
9 again.

10 Q. Okay. But it was here in Las Vegas?

11 A. It was here in Las Vegas.

12 Q. Okay. Were you actually on the jury?

13 A. Yes.

14 Q. Or were you in the jury pool?

15 A. No, I was on the jury.

16 Q. Was it a criminal or a civil trial?

17 A. Criminal.

18 Q. Criminal. Were you the foreperson of
19 that jury?

20 A. No.

21 Q. Did that jury deliberate?

22 A. Yes.

23 Q. Did that jury return a verdict?

24 A. Absolutely.

25 Q. Okay, that's as far as we need to go.

APP. 160

1 Now, you have to understand. Whatever you
2 recall from that jury service, you need to forget it.
3 Just forget it because I'm quite sure it was a different
4 situation, a different kind of trial, a different
5 situation than this.

6 So whatever you remember about that trial,
7 don't bring it into the courtroom, don't bring it into
8 the deliberation room of this case.

9 You are going to get everything you need in
10 terms of all the evidence that is going to be presented
11 in this case, all the law that I am going to instruct
12 you on that pertains to this case, and that's what you
13 need to concentrate on and follow.

14 Can you do that?

15 A. Yes.

16 Q. And not let anything that you remember
17 about that other trial interfere?

18 A. No.

19 Q. Okay.

20 Have you or anybody close to you ever been
21 the victim of or accused of a crime?

22 A. My son.

23 Q. How long ago, and what kind of crime?

24 A. I believe it was fighting.

25 Q. Was he accused or was he a victim?

APP. 161

1 A. I believe it was fighting..

2 Q. Fighting?

3 A. Yes.

4 Q. So he accused of a crime, or was he the
5 victim?

6 A. No, he did 28 days.

7 Q. Okay.

8 A. Right up here somewhere.

9 Q. In a jail cell?

10 A. Oh, yeah, but not the penitentiary.

11 Q. Right right. And so, now, is there
12 anything -- did he get prosecuted?

13 A. Yes, yes, he was prosecuted.

14 Q. Do you think he was treated fairly in
15 that process?

16 A. Pardon me?

17 Q. Do you think he got treated fairly
18 in that process?

19 A. More than likely.

20 Q. Okay. Did you follow the whole thing
21 real closely?

22 A. Pardon me?

23 Q. Did you follow it, the whole thing, real
24 closely?

25 A. No, no, I didn't.

APP. 162

1 Q. Did he call you for bail?

2 A. Oh yes, yes, he called me for bail.

3 Yeah, he called me from jail. He called me for bail.

4 Q. Okay.

5 Was there anything about that experience
6 that would interfere with your ability to be on this
7 jury and be fair and impartial to both sides in this
8 case?

9 A. No, no.

10 Q. Okay.

11 Anything in your background that would cause
12 you to treat the testimony of a police officer differently
13 than any other witness?

14 A. No.

15 Q. Okay.

16 Do you understand the nature of jury service?

17 You have already been on one jury, and you have heard
18 me explain this a couple of times.

19 Is there anything about what is going to happen
20 to you as a juror in a case like this that is going to
21 cause you any kind of problem?

22 A. No, no. Well, I would rather do a traffic
23 ticket.

24 Q. Right, right.

25 A. But but this is a heavy responsibility.

APP. 163

1 Q. Totally understandable, but the bottom
2 line is, do you understand what we are going to ask you
3 to do? Focus in, and pay attention, listen carefully
4 to the evidence in this case, follow the instructions
5 on the law that I give you, and then you will retire,
6 and consult with the rest of the jurors and reach your
7 verdict, and either decide the State proved their case
8 beyond a reasonable doubt or they didn't.

9 Can you make that kind of a decision?

10 A. Yes.

11 Q. Okay.

12 Do you think you come to serve on this jury
13 with a fair, impartial, and a neutral mind set?

14 A. Yes.

15 Q. Such that if you were on either side
16 of the tables over here, the Defendant, or the prosecution,
17 that you would be okay with a juror with your frame of
18 mind being on the jury?

19 A. Yes, absolutely.

20 THE COURT: All right, good enough.

21 The State?

22 VOIR DIRE EXAMINATION OF JUROR RICHARD BRANDON
23 BY MS. HOLTHUS:

24 Q. You said that you would rather be on a
25 traffic ticket, and this is a heavy burden?

APP. 164

1 A. Yes.

2 Q. You understand that whatever the crime
3 is, whatever the accusation is, the burden is actually
4 the same, whether it's a traffic ticket, or it's a
5 drug charge, or a sexual assault with a child charge,
6 the standards is the same. It's proof beyond a reasonable
7 doubt?

8 A. Oh, absolutely.

9 Q. So is there anything about that that
10 causes you concern, or anything else that you feel that
11 would --

12 A. (Interposing) That causes me concern?
13 No, no, not that causes me concern.

14 Q. That's a really stupid question because
15 it doesn't really mean much. I am concerned about what
16 I -- primarily, what I am concerned about is your ability
17 of being fair?

18 A. Yeah, that I can do. I can be fair.

19 Q. And there is nothing else in your background
20 that would cause you to be unfair either to the Defense
21 or to the State?

22 A. No, it's just that as you have to really
23 pay a lot of attention, and it's something that really
24 affects somebody's life, or lots of people's lives.
25 You can't be nonchalant about it anyway.

APP. 165

1 Q. Same burden, but certainly it seems more
2 important?

3 A. Yes.

4 MS. HOLTHUS: Okay, thanks. I'll pass for
5 cause.

6 THE COURT: Defense?

7 MR. FELICIANO: Yes. Thank you, Your Honor

8 VOIR DIRE EXAMINATION OF JUROR RICHARD BRANDON
9 BY MR. FELICIANO:

10 Q. You just talked about the burden of proof
11 in this traffic ticket versus what we are here for today,
12 right?

13 A. Yes.

14 Q. You would agree with me, this is a little
15 more serious, right?

16 A. Absolutely.

17 Q. Okay. And you heard the nature of the
18 allegations?

19 A. I did.

20 Q. Does that cause you any concern, I mean,
21 listening to that type of testimony?

22 A. No, it doesn't cause me any concern
23 listening to that type of testimony.

24 It's just, like I said, it's just something that
25 you can't be nonchalant about it. It is a -- you have

APP. 166

1 to really pay a lot of attention, I mean, and then decide
2 right or wrong.

3 Q. So, basically, look at both sides?

4 A. So, basically, look at both sides, yes.

5 Q. When your son had his little issue, how
6 long ago was this? I'm sorry.

7 A. Oh, about a year and a half ago.

8 Q. Okay. And did he talk to you about this
9 whole incident?

10 A. Not particularly.

11 Q. But he just did a little bit of time in
12 jail, and he was done with it?

13 A. Right. He is bipolar. He also has smarts,
14 and so he has had skirmishes, but that was the only time
15 he was in a fight. But he pretty much handles his own
16 business.

17 Q. And he still lives here in town, I take
18 it?

19 A. Oh, yes, he lives here.

20 Q. When he was a child did he ever lie to
21 you?

22 A. Probably.

23 Q. Okay. Did you ever catch him in a lie?

24 A. Did I ever catch him in a lie? I was --
25 I mean I --

APP. 167

1 Q. I mean, just like --

2 A. I don't -- like I can't come up with a
3 specific, but I'm sure he lied to me as a child, and I
4 probably caught him in a lie as a child, yes.

5 Q. Just like every other parent?

6 A. Just like every other parent, yes.

7 MR. FELICIANO: Thank you, Judge. Pass for
8 cause.

9 THE COURT: Very good.

10 VOIR DIRE EXAMINATION OF JUROR MARCIA HOFMANN

11 BY THE COURT:

12 Q. Is it Marcia Hofmann?

13 A. Marcia.

14 Q. Marcia Hoffman, sorry.

15 Marcia, how long have you been in town?

16 A. A total of nine years, but three and a
17 half in Arizona. My husband is in the military.

18 Q. Okay. Is he out of the military now?

19 A. He retired this year.

20 Q. Okay. Do you work?

21 A. No, I work at home.

22 Q. Right.

23 A. I have a different place to do it.

24 Q. OKAY. And he just retired from the Air
25 Force?

APP. 168

1 A. Yes, he did.

2 Q. He wasn't in the military police, or
3 anything like that?

4 A. No, sir, he was a civil engineer.

5 Q. Okay.

6 Have you or anybody close to you ever had
7 any background training in law enforcement at all?

8 A. No.

9 Q. Anything in your background that would
10 affect your ability to listen to the testimony of a
11 police officer and treat it differently than anybody
12 else?

13 A. No.

14 Q. Okay. Have you ever been on a jury
15 before?

16 A. Yes.

17 Q. How long ago?

18 A. I think it was like it was just last
19 week but I believe it was two years ago. I thought
20 it was last year.

21 Q. But it was here in Clark County?

22 A. It was here, yes.

23 Q. Okay. Was it a criminal trial or a
24 civil trial?

25 A. It was a criminal.

APP. 169

1 Q. A criminal trial. And you were on the
2 jury, not the jury pool?

3 A. Yes.

4 Q. Did that jury retire and deliberate?

5 A. We didn't retire because he decided
6 to plead guilty.

7 Q. So somebody pled guilty before you ever
8 had a chance to?

9 A. Right.

10 Q. Okay.

11 Now, it's real important to understand that
12 whatever went on during the course of that trial, was
13 then, and has nothing to do with what's going on here.

14 You won't let anything of that experience
15 of being on that jury affect your being on this jury?

16 A. No, I won't.

17 Q. Okay.

18 Once again, the only thing we are going to
19 ask you to do is forget whatever you remember about
20 that experience, sit here as a juror and focus on the
21 evidence that is admitted, listen to the instructions
22 on the law that I give you, go and retire with the
23 other jurors, consult with the other jurors, be fair
24 and impartial, and answer that all important question:

25 Did the State prove the charges beyond a

APP. 170

1 reasonable doubt?

2 Do you understand that?

3 A. Yes, I do.

4 Q. Do you think that you are up to that?

5 A. I can to that.

6 Q. Can you handle that kind of a question?

7 A. Yes.

8 Q. Have you or anybody close to you ever
9 been the victim of, or accused of a crime?

10 A. No.

11 Q. And, specifically, focusing in on sexual
12 related crime. Nothing there?

13 A. No, not close to me.

14 Q. Okay.

15 Do you think that -- is there anything that
16 you can think of in your background that might affect
17 your ability to be fair and impartial as a juror in a
18 case like this to both sides?

19 Anything at all that you can think of?

20 A. No.

21 Q. That I have not specifically asked you
22 about?

23 A. No.

24 Q. Okay.

25 Do you think you come to serve on this jury

APP. 171

1 with a fire, impartial, and a neutral kind of a mind
2 set?

3 A. Yes.

4 Q. Would you be comfortable if you were either
5 the prosecution or the Defense with somebody on the jury
6 that has your frame of mind?

7 A. Yes.

8 THE COURT: Okay, you're up.

9 VOIR DIRE EXAMINATION OF JUROR MARCIA HOFMANN

10 BY MS. HOLTHUS:

11 Q. And I apologize if I missed this. Do you
12 have kids?

13 A. Yes, two.

14 THE COURT: I didn't ask. I skipped one.

15 BY MS. HOLTHUS:

16 Q. How many?

17 A. Two. They are not grown. They are 13 and
18 17.

19 Q. Okay. Boys or girls?

20 A. Boys.

21 Q. They still live with you?

22 A. Yes.

23 Q. Okay.

24 And you said something when Judge asked you if
25 you or anyone close to you ever been accused of a sex

APP. 172

1 related crime, or a victim of a sex related crime, and
2 you said not close to you.

3 Does that mean that --

4 A. (Interposing) People at church. There
5 was an incident that happened at church that I'm aware
6 of, but they weren't people that I was intimately involved
7 with, that I had a formal relationship with, but mostly
8 conjecture in the people so not anything that would affect
9 me.

10 Q. Okay. Were you close enough to the
11 situation to know whether he said or whether she was --
12 who right or what were the circumstances?

13 A. I was close enough to make my own decisions,
14 based on what I knew of the people involved, but not for
15 it to have any bearing, or for it to really matter, you
16 know, it was just something that it didn't involve me
17 at all.

18 Q. Well, did it stay within the church, or
19 do you know if it came to the authorities?

20 A. It went to the -- yeah, it went to the
21 authorities.

22 Q. And do you know if it was prosecuted?

23 A. I don't believe so. I don't believe it
24 went -- there was interviews, and police involvement,
25 and lawyers, but I don't believe that it actually got

APP. 173

1 to this point.

2 Q. Were these adults?

3 A. No.

4 Q. Were they adults and children or --

5 A. It was a child volunteer being accused
6 with a small child.

7 Q. Okay.

8 And no feeling about who was treated fairly
9 or not fairly?

10 A. When it went to the court, the feelings
11 that I have are involving those people, and how the
12 church handled it, but it had nothing to do with me
13 individually..

14 MS. HOLTHUS: Okay, super. Thanks. I will
15 pass for cause.

16 THE COURT: All right.

17 MS. HAMERS: Thank you, Judge.

18 VOIR DIRE EXAMINATION OF JUROR MARCIA HOFMANN
19 BY MS. HAMERS:

20 Q. Ms. Hofmann, I want to ask you something
21 about this.

22 You said that you have an opinion about what
23 happened based on other things you knew about those
24 people involved, is that right?

25 A. Yes.

APP. 174

1 Q. And, I mean, kind of what we are talking
2 about is credibility?

3 A. Absolutely.

4 Q. Right. When someone tells you something,
5 if that was happening in isolation, and you knew nothing
6 else, it would be hard to tell, right?

7 A. Absolutely.

8 Q. When you know about other things going
9 on, whether they be other accusations, other things that
10 happen with other people, other things going on in the
11 home, it is kind of something you consider?

12 A. Yes, they are all factors.

13 Q. All factors. What if you are dealing
14 with a child who I imagine, you know, you have never
15 met, who will come in and testify here.

16 How is it that you are able to judge credibility
17 in that circumstance?

18 A. Body language will tell you a lot, watching
19 the child, just their demeanor, but ultimately, whether
20 they keep their story straight or not, you know, it's
21 perception on how the child is speaking, and my knowledge
22 of child development, and I don't have any extensive
23 knowledge of abuse sexually, just with the basic child
24 development, how they think, when they are sat into a
25 corner, and if their life is normally out, just listening

APP. 175

1 to the testimony, actually listening, not hearing what
2 they are saying, not just listening to that and based
3 on that.

4 Q. And you said 13 and 17, right? That's a
5 lot of experience with kids.

6 A. Yeah, and I taught school for seven years,
7 so, yes, I have.

8 Q. So do you think that kids have a lot of
9 different motivations for saying things?

10 A. Absolutely.

11 Q. Even -- even young kids?

12 A. Yeah, absolutely, not knowing what is in
13 their mind, you know, watching a child give testimony,
14 I have no idea what they have gone through. I can only
15 go by what they are saying so i can't judge if I don't
16 listen.

17 Q. How do you feel about being on a jury?

18 A. You know, I didn't think, I knew I had
19 the duty, but it is your duty is where I am called to
20 be right now.

21 MS. HAMERS: Okay, thank you. Pass for cause,
22 Your Honor.

23 THE COURT: All right.

24 MS. HOLTHUS: Judge, could we just approach
25 briefly?

APP. 176

1 THE COURT: Sure.

2 *****

3 (Whereupon, a brief, informal discussion was had
4 at the bench between the Court and counsel.)

5 *****

6 VOIR DIRE EXAMINATION OF JUROR LEOPOLDO A. ADAOAG, JR.

7 BY THE COURT:

8 Q. Leopoldo?

9 A. Yes.

10 Q. How do you say your last name?

11 A. Adaoag.

12 Q. Adaoag?

13 A. Yes, sir.

14 Q. Adaoag?

15 A. Yes, sir.

16 Q. All right, I am going to have trouble
17 with that one. Okay. How long have you been here
18 in town?

19 A. 13 years, Your Honor.

20 Q. 13 years?

21 A. Yes, sir.

22 Q. What do you do for a living?

23 A. I work for a painter in the valley, I
24 was the superintendent, and now I took over the Department
25 of Wildlife in the whole valley.

APP. 177

1 Q. Really?

2 A. Yes, sir.

3 Q. Are you married?

4 A. Yes, sir.

5 Q. And does your wife work outside the home?

6 A. No, she had open heart surgery.

7 Q. She had some medical issues?

8 A. Yes, Your Honor, and she had a heart
9 attack four months ago.

10 Q. She had a heart attack four months ago?

11 A. Yes.

12 Q. Okay.

13 Is that -- is that something that is going
14 to concern you?

15 Do you help her with her medical treatment
16 and care?

17 A. Yes, Your Honor.

18 Q. Do you do that on a daily basis?

19 A. Only in a particular lab break or lab
20 technician.

21 Q. Is there anything about her medical
22 situation that would prevent you from being on a jury
23 like this?

24 A. No.

25 Q. Okay.

APP. 178

1 I mean, because that's something that could
2 definitely interfere with your ability to focus and
3 concentrate on evidence in a case.

4 Are you okay?

5 A. Yes, Your Honor.

6 Q. Because we will be out of here by five
7 o'clock roughly. We won't keep you late so if you are
8 used to going home about that time, you will still get
9 home about that time, is that okay?

10 A. Yes, sir.

11 Q. Okay. Do you have kids?

12 A. I have four kids, Your Honor, grown.

13 Q. Are they all grown up?

14 A. Yes, Your Honor.

15 Q. Start with the oldest and go down real
16 quickly.

17 A. 38, 33, 23 and 20.

18 Q. Okay. You spread them out there a
19 little bit there.

20 Q. 38, what do they do for a living, what does
21 he do?

22 Q. Is it a girl or a boy?

23 A. A girl. She's an architect in Summerlin.

24 Q. Okay. And then you're down to 36?

25 A. 36 is supervisor in one of the pen companies

APP. 179

1 here.

2 Q. Okay. And then you go down to 23?

3 A. Third one works for laboratory tech.

4 Q. Okay. And then the 20 year old?

5 A. The 20 year old, he is going to school and
6 work.

7 Q. Okay, very good.

8 Have you or anybody close to you ever been
9 trained or employed in law enforcement?

10 A. My brothers.

11 Q. I'm sorry.

12 A. My brothers.

13 Q. Your brothers?

14 A. Yes.

15 Q. Where do they live? Is it just one brother
16 or more than one brother?

17 A. I have six brothers.

18 Q. How many of them are in law enforcement?

19 A. I have one brother, but he retired.

20 Technically, he is retired.

21 Q. Is he back in the Philippines?

22 A. Yes, Your Honor.

23 Q. Anything about the fact that you have
24 a couple of brothers that are in law enforcement that
25 would cause you difficulty in being a juror and listening

APP. 180

1 to the testimony of a police officer?

2 A. No, Your Honor.

3 Q. Can you treat that testimony of a police
4 officer just the same as any other non police officer
5 witness?

6 A. Yes, Your Honor.

7 Q. I mean, you won't give them any extra
8 credibility just because they are a police officer, is
9 that right? Is that "yes"?

10 A. Yes.

11 Q. Okay, all right. Because it's important
12 that you treat every witness exactly the same.

13 You and the other jurors get to judge how much
14 credibility every single witness receives. That's what
15 your job is.

16 But you've got to start off the same, in other
17 words, you can't give somebody an advantage just because
18 they are a police officer in terms of their credibility
19 so you wouldn't do that, would you?

20 A. No.

21 Q. Okay, all right.

22 Have you or anyone close to you ever been the
23 victim or accused of a crime?

24 A. No, Your Honor.

25 Q. And, in particular, that would include then

APP. 181

1 no sexual related crimes, is that right?

2 A. Right.

3 Q. Okay..

4 Can you think of anything that I haven't specifically
5 asked you that might bear upon your ability to be a juror
6 in a case like this?

7 A. No, Your Honor.

8 Q. Okay.

9 Do you think you come to this jury duty with a
10 fair, impartial, and a neutral mind frame?

11 A. Yes, Your Honor.

12 Q. Okay. Do you understand the nature of
13 jury service?

14 A. Yes, sir.

15 Q. Do you understand what we are going to ask
16 the members of this jury to do at the conclusion of the
17 evidence in this case?

18 A. Yes, sir.

19 Q. You are going to listen to the evidence,
20 follow the instructions on the law, and retire and
21 consider your verdict, and decide if you believe that
22 the State proved beyond a reasonable doubt that the
23 Defendant committed the crime he is charged with?

24 A. Yes, Your Honor.

25 A. Do you understand that?

APP. 182

1 A. Yes, sir.

2 Q. If you think that the State proved that,
3 can you come back and say guilty?

4 A. Yes, sir.

5 Q. If you think the State failed it to prove
6 the Defendant guilty beyond a reasonable doubt, can you
7 come back to court and say not guilty?

8 A. Yes also.

9 Q. If you were either the prosecution or
10 the Defense in this case, would you be comfortable with
11 somebody on the jury that has the frame of mind that you
12 have?

13 A. Yes, sir.

14 THE COURT: Good enough. The State?

15 MS. HOLTHUS: We will pass for cause, Judge.

16 THE COURT: Defense? Pass for cause?

17 MS. HAMERS: We will, Judge. Thank you.

18 THE COURT: Very good.

19 VOIR DIRE EXAMINATION OF JUROR LORI JONES

20 BY THE COURT:

21 Q. And Lori Jones?

22 A. Yes.

23 Q. And, Lori, how long have you been here
24 in town?

25 A. I was born and raised in Henderson,

APP. 183

1 and after I was married, I lived in California for
2 quite a while, and then I moved back here about 12
3 years ago.

4 Q. Okay. You went to basic.

5 A. My family has always been here. What's
6 that?

7 Q. You went to Basic?

8 A. Yes. I'm proud of it.

9 Q. Absolutely.

10 And so your husband -- well, first of all,
11 what do you do?

12 A. What do I do? I work in the tax preparation
13 business.

14 Q. Okay.

15 A. For a tax attorney.

16 Q. Okay. And you are married?

17 A. I'm married.

18 Q. And your husband does --

19 A. My husband is unemployed currently.

20 Q. Okay.

21 A. Looking for a job.

22 Q. And what was he doing before he became
23 unemployed?

24 A. He has been unemployed on and off for
25 the last two two years. He was an executive with a

APP. 184

1 savings and loan before.

2 Q. Rough business these days.

3 A. Yeah, yeah.

4 Q. What about children, grown children?

5 A. I have four grown children.

6 Q. What do they do?

7 A. 34 to 25, pardon me?

8 Q. As you go through them, could you tell
9 me quickly what they do?

10 A. 34 year old daughter, she's a stay-at-home
11 mom. She has three children.

12 Q. Okay.

13 A. Her husband is trying to find a job
14 right now, and the second one is 32. That makes me
15 think, she's 32, at home, a stay-at-home mom with three
16 children.

17 Q. Everybody should have to do this once in
18 a while just to keep track.

19 A. Number three is 29. She just recently
20 married, and her husband, they are can both looking for
21 jobs, and the youngest is 25, and she is a stay-at-home
22 mom with one child.

23 Q. Good.

24 Anybody, you or anyone close to you ever been
25 employed in law enforcement?

APP. 185

1 A. I have a nephew that is a police officer.

2 Q. Is that going to bother you that --

3 A. It surprised me a little bit that he could
4 be a police officer, but I am proud of him.

5 Q. You wouldn't let that be a problem?

6 A. No.

7 Q. Anything in your background that would
8 cause you difficulty as a juror listening to a police
9 officer, the testimony of a police officer?

10 A. No.

11 Q. You are not going to give them any additional
12 credibility or detract any from their credibility just
13 because they are police officers?

14 A. I don't think so.

15 Q. Okay.

16 They are just like anybody else. They can be
17 right; they can be wrong, the same as with everyone.

18 Is that fair?

19 A. Yes.

20 Q. Okay.

21 Have you or anybody close to you ever been the
22 victim of or accused of a crime?

23 A. Not really.

24 Q. Pointedly, a sexual related crime?

25 A. No.

APP. 186

1 Q. All right. But you hesitated about not
2 really when I --

3 A. (Interposing) No, I mean, my parents were
4 burglarized, and things like that.

5 Q. Okay.

6 Anything like that that would cause you difficulty
7 in being on a jury in a case like this?

8 A. No.

9 Q. In other words, it doesn't sound like anybody
10 ever got caught?

11 A. No.

12 Q. Nobody got arrested?

13 A. No.

14 Q. And you are not going to hold that against
15 the police or the District Attorney's office because
16 nobody got caught and prosecuted, are you?

17 A. No.

18 Q. Anything else that you can think of that
19 might touch upon or bear upon your ability to be a juror
20 in a case like this?

21 A. Well, my only concern is if I am not
22 working I am not being paid, and my husband is unemployed,
23 so -- but I know a lot of people are in the same boat.

24 Q. And, you know, and don't think for a
25 second that that doesn't enter into our minds, and it

APP. 187

1 does.

2 Unfortunately, it is just not a legal excuse
3 for experiencing a economic hardship because to be
4 perfectly honest with you, almost everybody in some
5 form or fashion experiences some kind of hardship.
6 That's why we try to do this whole process as efficiently
7 as possible to lessen whatever hardship you are going
8 to incur.

9 Are you going to be all right? Can you handle
10 it?

11 A. Hopefully, it won't hurt.

12 Q. It will be -- and it will be, as I said,
13 this whole trial won't take very long. It doesn't mean
14 that it's not important. It doesn't mean that you don't
15 have to focus, and pay attention, and stay right on top
16 of what's going on in here.

17 It won't last long, but we are going to demand
18 your full attention. Can you do that?

19 A. I would feel that it's my responsibility
20 if I'm on the jury.

21 Q. And we appreciate that.

22 A. I have been on a jury before, if you were
23 going to ask me this.

24 Q. I was going to ask you.

25 A. Okay. It was about 15 years ago. It was

APP. 188

1 only supposed to last two or three days, and it lasted
2 10 days.

3 Q. That won't happen here.

4 A. Okay.

5 Q. I'll shoot myself.

6 All right. So you have been on a jury. It
7 was a 15 years ago. Was it a criminal or a civil trial?

8 A. Criminal.

9 Q. Criminal.

10 Were you -- did the jury reach a verdict, did
11 they retire?

12 A. Yes.

13 Q. And did they reach a verdict?

14 A. Yes.

15 Q. Were you the foreperson, by any chance?

16 A. No.

17 Q. Okay.

18 Do you understand that whatever you do remember,
19 I know it was some time ago, but whatever you do remember
20 about that experience, don't let it interfere with this
21 part of it. You need to leave that out in the hall, and
22 pay attention to just the evidence in this case and really
23 pay attention to the instructions on the law that I give
24 you as it applies in this case.

25 Can you to that?

APP. 189

1 A. Yes.

2 Q. If you think that the State proved their
3 case beyond a reasonable doubt, can you come back and say
4 guilty?

5 A. Yes.

6 Q. If you think the State failed to prove their
7 case beyond a reasonable doubt, would you have any problem
8 coming back and saying not guilty?

9 A. No.

10 Q. Okay.

11 Do you think that you have a pretty fair, impartial,
12 and a neutral frame of mind as you come to serve on this
13 jury?

14 A. I guess so.

15 Q. You can't think of any reason why you are
16 not, why you wouldn't be fair and impartial?

17 A. No.

18 Q. It's real important that you give both
19 the State and the Defense the same fair and impartial
20 consideration.

21 Can you do that?

22 A. Yes.

23 Q. Okay.

24 If you were sitting over here at the Defense
25 table or the prosecution's table, would you be comfortable

APP. 190

1 with a juror being on the jury that has your frame of
2 mind?

3 A. Yes.

4 THE COURT: Good enough. The State?

5 MS. HOLTHUS: No questions. We will pass for
6 cause.

7 THE COURT: The Defense?

8 MR. FELICIANO: Thank you, Your Honor.

9 VOIR DIRE EXAMINATION OF JUROR LORI JONES
10 BY MR. FELICIANO:

11 Q. Ms. Jones, you said you had a nephew that
12 is a police officer?

13 A. Yes.

14 Q. Are you close with this nephew?

15 A. Fairly.

16 Q. You were asked if you would give weight
17 to a police officer's testimony versus someone else,
18 and you said, no, you didn't think it would affect
19 you.

20 Is that the case, and are you not sure if
21 you can actually separate that or --

22 A. No, I have known a lot of police officers
23 in my lifetime, people that I liked and didn't like that
24 were police officers.

25 Q. Okay. So that's not going to affect you

APP. 191

1 at all here, right?

2 A. Right.

3 Q. And you also have four children?

4 A. Yes.

5 Q. And they have children?

6 A. Yes.

7 Q. It seems like you have a lot of experience
8 dealing with kids?

9 A. Yes.

10 Q. Will the nature of the charges here affect
11 you at all?

12 A. Well, obviously, I'm a mother. I have spent
13 a lifetime protecting my daughters so --

14 Q. Okay.

15 Is that something that you would be so sensitive
16 to that you don't think that you could possibly be fair?

17 A. No, I think that I could be fair.

18 Q. Well, with someone with your mind set,
19 and if they were sitting there, if you were sitting
20 there, how would you feel?

21 Do you think that person would be fair?

22 A. Well, I'm sorry, I'm misundersanding.

23 Q. It was a bad question.

24 A. If I was sitting there, did I think I
25 would be fair?

APP. 192

1 Q. Well, I'm sorry, that's a bad question,
2 I mean, with somebody with your mind set, the way you
3 feel about the charges, and all that, someone with that
4 mind set sitting in judgment of you, how would you feel
5 about that?

6 A. I, I don't know. That's a hypothetical
7 question, but I think that I can be fair.

8 I have known situations where people were accused,
9 and found guilty and later found out they weren't, and
10 people who you know were not found guilty and later found
11 out that they were, and I think that you do the best you
12 can, and it's not infallible. So I feel a responsibility
13 to be fair but I'm human, so --

14 Q. Okay.

15 Now, I heard you say that you think you could
16 be fair.

17 A. Yes.

18 Q. It didn't seem like you were sure that you
19 can actually give Mr. Moore a fair shake in this trial,
20 is that fair to say?

21 A. I can say that I am sure that I would do
22 my best to be as fair and impartial as I could be.

23 Q. Okay.

24 But you can't tell us, I mean, it's difficult
25 to say, I mean, but you can't tell us if you actually

APP. 193

1 can be fair.

2 Is that fair to say?

3 A. No, I can be fair.

4 Q. You can?

5 A. I just feel it's a big responsibility. I
6 feel like I have the ability to be fair.

7 Q. Okay. Do you have the ability to be fair
8 in this case?

9 A. I think so.

10 Q. Okay. Can you tell us --- but you can't
11 say for sure that you could?

12 A. I definitely can say yes, I think so.

13 Q. Is that a yes?

14 A. Affirmative.

15 Q. I mean, You know this is really technical.
16 You know this is, earlier you said it is really important,
17 right, I mean?

18 A. I understand.

19 Q. The charges are serious.

20 A. Yes.

21 Q. Mr. Moore is on trial for some serious
22 accusations?

23 A. Yes.

24 Q. You can be fair?

25 A. I can be fair.

APP. 194

1 MR. FELICIANO: Okay, thank you. Pass for
2 cause.

3 VOIR DIRE EXAMINATION OF JUROR KATELYN BOSHART
4 BY THE COURT:

5 Q. Is it -- how do you say it, Katelyn?

6 A. Katelyn Boshart.

7 Q. Katelyn Boshart.

8 A. Boshart.

9 Q. Boshart. Katelyn, how long have you been
10 in Las Vegas?

11 A. 14 years.

12 Q. What do you do for a living?

13 A. I am currently unemployed.

14 Q. What were you doing?

15 A. I worked at a daycare for a year and a
16 half.

17 Q. Okay. Are you married?

18 A. No.

19 Q. No children?

20 A. No.

21 Q. Okay.

22 Ever been trained or employed in law enforcement
23 of any sort?

24 A. No.

25 Q. Anybody close to you?

APP. 195

1 A. No.

2 Q. Anything in your background that you can
3 think of that would cause you to treat the testimony of
4 a police officer differently than any other kind of a
5 witness?

6 A. No.

7 Q. Okay.

8 Have you or anybody close to you ever been
9 accused of, or the victim of any kind of a crime?

10 A. No.

11 Q. And, in particular, a sexually -- a sexual
12 related crime?

13 A. No.

14 Q. Okay. Have you ever been on jury duty
15 before?

16 A. No.

17 Q. You said you have been in town 14 years?

18 A. Yes.

19 Q. Where did you go to school?

20 A. I went to Green Valley High School.

21 Q. Okay.

22 Anything in your background that I haven't
23 asked you specifically about that you think might touch
24 upon or bear upon your ability to be a juror in a case
25 like this?

APP. 196

1 A. No, sir.

2 Q. Do you think that you have a fair and
3 impartial mind set as you come to serve on this jury?

4 A. Yes.

5 Q. Do you understand the difficult nature
6 of the service we are going to ask of the jury in this
7 case?

8 A. Yes.

9 Q. We are going to ask you, even though it's
10 going to be a short trial, again, as I have said, we
11 are going to ask you to pay real close attention to
12 the evidence in this case. Pay attention to the
13 instructions on the law and go to consider a verdict with
14 the rest of your jurors, and then come back to court and
15 answer the question:

16 Did the State prove the case beyond a reasonable
17 doubt that the Defendant is guilty?

18 Do you understand that?

19 A. Yes.

20 Q. If you think the State did prove beyond a
21 reasonable doubt that the Defendant was guilty, can you
22 come back to court and say guilty?

23 A. Yes.

24 Q. And can you also come back and say not
25 guilty if you feel that the State failed to prove the

APP. 197

1 Defendant guilty?

2 A. Yes.

3 Q. Okay.

4 Would you be comfortable with somebody being
5 on the jury, if you were either in the Defendant's chair,
6 or the prosecution's chair, would you be comfortable, no
7 matter what side you were on, if you knew that there was
8 a juror on the jury that possesses the frame of mind that
9 you have?

10 A. Yes.

11 Q. Would you be comfortable with that?

12 A. Yes.

13 THE COURT: Okay. Does the State have any
14 questions?

15 MS. HOLTHUS: A few.

16 VOIR DIRE EXAMINATIONI OF JUROR KATELYN BOSHART
17 BY MS. HOLTHUS:

18 Q. How far did you go in school?

19 A. I got my GED, and I am going to attend
20 KSI next semester.

21 Q. What you going back to study?

22 A. Undecided.

23 Q. Just going to school?

24 A. Yes.

25 Q. How did you like the daycare business?

APP. 198

1 A. I enjoyed it. Unfortunately, I was laid
2 off, and there is probably not as many jobs as in health
3 care.

4 Q. And so daycare, would you be with little
5 kids?

6 A. Yeah, I was with three year olds.

7 Q. Okay. Probably, little girls. Do you have
8 any experience with older kids?

9 A. No.

10 Q. Do you have any brothers or sisters?

11 A. I have a little stepbrother.

12 Q. Do you live with him?

13 A. No, he lives with his mom during the week.
14 I see him on weekends.

15 Q. How do you think a victim or how do you
16 expect a teenage girl to talk about sexual abuse here?

17 What do you expect from her demeanor?

18 What do you expect her to be like?

19 A. I couldn't say. I don't have any expectations
20 with that.

21 Q. You don't have any expectations?

22 A. No, not with this with the mind set. I'm
23 not sure.

24 Q. Do you think that it would be difficult?

25 A. Yes.

APP. 199

1 Q. For you to sit in front of all of these
2 jurors and talk about your sex life or lack of, would
3 that be difficult to do?

4 A. Yes, that would be difficult.

5 Q. Do you think people lie for a reason?

6 A. Yeah, sometimes.

7 Q. For what kind of reasons?

8 A. Probably to get out of trouble.

9 Q. To get out of trouble?

10 A. Yes.

11 MS. HOLTHUS: Thanks a lot. Pass for cause.

12 THE COURT: Defense, any questions?

13 MS. HAMERS: No, we will pass for cause.

14 Thanks..

15 THE COURT: All right.

16 VOIR DIRE EXAMINATION OF JUROR HILARY REYNOLDS

17 BY THE COURT:

18 Q. Hilary Reynolds?

19 A. Yes.

20 Q. Hilary, tell us a little bit about yourself.

21 There is going to be no surprises here so you can just go
22 ahead and start telling us --

23 A. Okay.

24 I have been in retail. I have been here for
25 nine years.

APP. 200

1 Q. Okay.

2 A. I'm married, and we are from New Jersey.

3 I have been in retail. I am a sales person, sales manager,
4 throughout different companies for about 20 years.

5 Q. Okay. What does your husband do?

6 A. My husband? Right now, he is a conductor
7 for for the Union Pacific Railroad..

8 Q. Okay.

9 A. He gets up in the middle of the night.

10 We have three children. My six year old son just
11 got diagnosed with juvenile diabetes, type one so that is
12 a concern for me.

13 My five year old just turned five on Halloween.
14 He is not able, and my eight month old is already crawling
15 upstairs. So I have lots of experiences with children.

16 I have a younger brother who went through law
17 enforcement and decided against it.

18 I know three cops, one of whom is my best friend
19 from New Jersey. Two cops in town here.

20 I can't think of any other questions.

21 Q. Well, let's back up just a second.

22 That's good, that was good though. You have
23 been paying attention.

24 Here, back to your kids.

25 A. Yes.

APP. 201

1 Q. You have got a toddler that is eight months
2 old?

3 A. Yes, I do.

4 Q. And then you have got a five year old that
5 has type one diabetes?

6 A. The six year old does.

7 Q. The six year old?

8 A. Yes.

9 Q. And then a five year old?

10 A. A five year old son.

11 Q. Okay. Who is taking care of these kids?

12 A. My husband right now.

13 Q. Okay.

14 Is this issue of child care for the next couple
15 of days going to be a problem for you?

16 A. Not unless it goes to Sunday night.

17 Q. No, no, no.

18 A. Sunday and Monday I need to be home.

19 Q. No, no, nothing like that.

20 A. No, seriously, my husband will be home
21 until Sunday and Monday.

22 Q. Okay. This will be long, long over by
23 then.

24 A. Yes, so it shouldn't be a problem.

25 Q. Okay, all right. That's very important.

APP. 202

1 That is something if it's not an unresolved issue that
2 really could affect your ability as to what is going
3 on here?

4 A. Yes.

5 Q. All right. Anybody close to you ever
6 been the victim of or accused of a crime?

7 A. My mother was, had a felony charge
8 against her, and she paid a fine. She sold cigarettes
9 to a minor.

10 Q. That's it?

11 A. That's it.

12 Q. Okay, and anything else that I have not
13 having specifically touched upon or asked you about
14 that might be important?

15 A. When I was 16, this was in 1992, I was
16 hit by a car, and I was just going through chemotherapy,
17 so I had short, short hair, I looked like a little boy,
18 and the cop paid no attention to me as I was sitting
19 in the middle of the road, and he was talking to the
20 woman who hit me, and he was not very nice to me, and
21 the police report says that being the hit vehicle, which
22 I always thought in my mind, sarcastically, like I'm
23 really?

24 Like because I wasn't the blonde that was
25 crying, I was the little kid on the street, I kind of

APP. 203

1 had a prejudice against that, but like I said, I know --
2 I know all my friends that are cops, and I -- I don't
3 give them either way.

4 Q. And that's important, I mean, because you
5 have got some friends, you have had some experience?

6 A. Yeah, so --

7 Q. Not so pleasant an experience?

8 A. I know it as a woman so --

9 Q. The main -- I guess the main thing thing
10 is:

11 Can you sit on this jury, listen to the
12 testimony of a police officer, and, you know, weigh the
13 police officer's testimony the way you see it and not
14 because that the witness is a police officer?

15 A. Yes.

16 Q. A police officer can be right, he can be
17 wrong, but they are human just like anybody else.

18 And you won't detract from that witness's testimony
19 because he is a police officer?

20 A. No.

21 Q. Or on the other side, you won't give him
22 any extra credibility just because he is a police officer?

23 A. No.

24 Q. Okay, that's all we can ask.

25 Do you think that you come to serve -- first of

APP. 204

1 all, do you understand the nature of jury service and what
2 we are going to ask this jury to do?

3 A. Yes.

4 Q. It's going to be a difficult case?

5 A. Yes.

6 Q. And what we are going to ask you to do is
7 to make a difficult decision.

8 A. Uh-huh.

9 Q. You are going to have to pay attention,
10 pay close attention to the evidence in the case, listen
11 to my instructions, and then make that decision if you
12 believe the State proved their case beyond a reasonable
13 doubt.

14 Do you understand that?

15 A. I do.

16 Q. Do you have any difficulty in answering
17 that kind of a question?

18 A. I don't.

19 Q. Okay.

20 Do you believe that if you think that the
21 State has failed to prove the Defendant guilty beyond a
22 reasonable doubt you will have any problems coming back
23 into this courtroom and saying not guilty?

24 A. No.

25 Q. And that just the opposite?

APP. 205

1 A. Yes.

2 Q. If you think they did prove the case
3 beyond a reasonable doubt, can you come back and say
4 guilty?

5 A. I will.

6 Q. Do you think that you have a fair,
7 impartial, and a neutral frame of mind as you come to
8 serve on this jury such that if you were one of either
9 of the two sides of this case, you would be comfortable
10 with somebody being on the jury that has your frame of
11 mind?

12 A. Yes.

13 THE COURT: Sounds good to me. Does the State
14 have any questions?

15 MS. HOLTHUS: No, Judge, we will pass for cause.
16 Thank you.

17 THE COURT: All right.

18 MS. HAMERS: We will pass for cause, thank you.
19 Can we approach the bench, please?

20 THE COURT: Sure.

21 *****

22 (Whereupon, a brief, informal discussion was had
23 at the bench between the Court and counsel.)

24 *****

25 THE COURT: You guys get to walk in and out

APP. 206

1 when you need to go to the bathroom, but I think everybody
2 else needs a little break.

3 So we are going to take a five minute recess.

4 Now, before we go, don't everybody jump up and
5 run out, okay?

6 Let me explain a couple of things to you.

7 First of all, you are all sitting in a particular
8 spot because of the number that you were given by the Jury
9 Commissioner.

10 It's important that you maintain your position
11 because in just a few minutes you are going to see why we
12 will be going into the second phase of picking a jury, and
13 it's real important that you be right where you are supposed
14 to be, okay?

15 So pay close attention to where you are, and
16 that's where you need to be.

17 We are going to take a five minute, five minute
18 recess, all right?

19 Now, I have got to say this every time we take a
20 break.

21 You can't discuss this trial.

22 You can't discuss anything that has to do with
23 this trial.

24 You can't discuss any person that has to do with
25 this trial. Anything connected with this trial cannot be

APP. 207

1 discussed by anybody in this jury pool, period, not with
2 anybody else, and not amongst yourselves, all right?

3 Now, I have to go on and say this.

4 You can't watch, read, or listen to any reports
5 through any medium of information, which includes radio,
6 television, newspapers, internet.

7 You are not to form or express any opinion about
8 any subject connected with this trial or any person connected
9 with this trial until such time as this case has been finally
10 submitted to the jury, which we are a good ways from there
11 now, okay?

12 Take five minutes. Go out that door, come back
13 in this door.

14 Don't stay in the courtroom because we will have a
15 few things to discuss.

16 Go outside, and then Joe will come out to get
17 you.

18 Lee, we are on recess. Go take a break.

19 Let's come back in just a few minutes and then
20 we will make a record. We are in recess.

21 MS. HOLTHUS: Okay. What do you want to make a
22 record on?

23 THE COURT: I don't know, just in case.

24 *****

25 (Whereupon, after recess, the following proceedings

APP. 208

1 were had outside the presence of the jury panel:)

2 *****

3 THE COURT: All right. We are going to go back
4 on the record.

5 MS. HAMERS: Judge, before we bring them in again,
6 on the record, can I, on the record, just make a record
7 of our -- of the appearance, as to the makeup of our jury
8 panel?

9 THE COURT: Yes, absolutely, and we will go on
10 the record.

11 Actually, I'm a little bit impressed actually
12 with the jury pool in this situation.

13 MR. FELICIANO: Well, in the box, it looks pretty
14 good but --

15 THE COURT: Out there it doesn't.

16 MR. FELICIANO: No.

17 THE COURT: This is the first time I have ever
18 seen as many ethnic people on -- in the box. I don't
19 know -- I haven't paid too much attention in that area.

20 MS. HAMERS: And to the extent that I can, and
21 I can make a record of it because jury service doesn't
22 provide us with the information as to the jurors, because
23 one or the other, on appeal there is never a record of
24 it.

25 We did our best to judge by appearance because

APP. 209

1 that's all we have to go by, and what we have come up with
2 is it appears that we have five African Americans, 11
3 of some sort of Hispanic and three of Asian descent.

4 That the -- you know, that that would serve
5 to comply with what is the percentage of the population,
6 the general population is nine to 10 percent black, 10,
7 11 percent Hispanic, and four to eight percent Asian,
8 and the remainder is white, and I just wanted to make a
9 record of what we have right now.

10 THE COURT: Okay.

11 MS. HOLTHUS: And I would just conversely
12 make a record that we have an inordinate representation
13 in the actual box itself, and we have a grossly unbalanced
14 jury as to men.

15 We have like three guys and the rest are women,
16 if I am counting correctly, and I am not sure what
17 constitutes white, but it certainly is not the majority
18 of the panel at this point.

19 I am counting, initially we had one, two, three,
20 at least four of the 15 were African American, maybe five,
21 that are already in the box, at least two Filipino, and
22 to the point that English, I mean, it's not just looking
23 at it, it's English, clearly English barriers, and what
24 not, and so I am just throwing that out there.

25 The only other thing, I don't mean to be petty,

APP. 210

1 Judge, but --

2 THE COURT: What?

3 MS. HOLTHUS: I don't want to be petty.

4 THE COURT: Then don't. What?

5 MS. HOLTHUS: Could we just approach the bench?

6 THE COURT: Sure.

7 *****

8 (Whereupon, a brief, informal discussion was had
9 at the bench between the Court and counsel.)

10 *****

11 THE COURT: Where did we end anyway? We just
12 finished number 10.

13 Bring them in.

14 *****

15 (Whereupon, the following proceedings were had
16 in the presence of the jury panel:)

17 *****

18 MARSHAL DOWNING: The jury panel is entering.

19 Please be seated.

20 THE COURT: Okay.

21 Does anybody see an empty seat that wasn't there
22 before we took a break? Filled one right there.

23 Any other empty seats?

24 Would the parties stipulate to the presence of
25 the jury pool?

APP. 211

1 MR. FELICIANO: Yes, Your Honor.

2 MS. HAMERS: Yes, Your Honor.

3 MS. HOLTHUS: Yes, Your Honor.

4 THE COURT: All right, very good.

5 Okay, let's just pick up from where we left off,
6 and I believe we left off with you, Roger.

7 VOIR DIRE EXAMINATION OF JUROR ROGER HEARNE

8 BY THE COURT:

9 Q. Is it Roger Hearne?

10 A. Yes.

11 Q. Roger, how long have you been in Las Vegas?

12 A. Oh, nine plus years.

13 Q. Okay. What do you do for a living?

14 A. I'm employed in real estate.

15 Q. Okay. Things are getting better though?

16 A. Yeah.

17 Q. They are, and they will get better, too.

18 Are you married?

19 A. Yes.

20 Q. Does your wife work?

21 A. No, wife is retired, and, excuse me, I
22 have three children.

23 Q. What is she retired from before we go
24 past that?

25 A. She was in sales.

APP. 212

1 Q. Okay. Three children, grown?

2 A. Yes. My son is a fireman and paramedic
3 for the City of Houston, Texas.

4 My daughter and her family are in Dallas is
5 where we moved from, and then a daughter in California,
6 who is a human resource vice president, and they all
7 have children.

8 Q. Good, all right.

9 Have you or anybody close to you ever been
10 trained or employed in law enforcement?

11 A. No.

12 Q. Have you or anybody close to you ever
13 been the victim of or accused of a crime?

14 A. No.

15 Q. Anything in your background that would
16 cause you to treat the testimony of a police officer
17 differently than any non police officer witness?

18 A. No.

19 Q. Okay.

20 Do you understand -- have you ever been on
21 a jury before?

22 A. In Dallas County, Texas.

23 Q. Okay. How long ago was that?

24 A. 20 years, maybe.

25 Q. I went to school at Baylor.

APP. 213

1 A. Yeah? Baylor.

2 Q. So Dallas, Texas. What kind of a trial?

3 What kind of a jury were you on?

4 A. It was a civil trial. It had to do with
5 a building violation of a poor couple.

6 Q. And you were actually on the jury, not
7 on the jury pool?

8 A. Oh, yes.

9 Q. Okay. Did -- was that --- were you the
10 foreperson of that jury?

11 A. No.

12 Q. Did that jury render a verdict?

13 A. Yes.

14 Q. Okay.

15 And you do understand the nature that criminal
16 trials and civil trials are completely different?

17 A. Yes.

18 Q. Okay.

19 So, and compared to 20 years ago, it probably
20 won't be too difficult to put that experience out of
21 your mind. There is nothing about that experience of
22 being on a civil jury that will affect you being on a
23 criminal jury like this?

24 A. Absolutely, no.

25 Q. Do you think that you have a pretty fair,

APP. 214

1 and impartial, and a neutral mind frame here as you come
2 to serve on this jury?

3 A. I have had a lot of chance to think about
4 it as we were going around here certainly, yes.

5 Q. All right. And you understand the nature
6 of jury service in this kind of a criminal case?

7 A. Yes.

8 Q. You understand, as I have said umpteen
9 times, the jury's function is to concentrate, and focus,
10 and listen to the evidence that's presented during the
11 course of this trial, listen to the instructions on the
12 law that I give you, and go back and render, decide
13 amongst the jurors, it has to be a collective and a
14 unanimous decision as to whether or not you, collectively,
15 as the jury believes the State has proven that the
16 Defendant committed the crimes that he is charged with
17 beyond a reasonable doubt.

18 Do you understand that?

19 A. Very clearly.

20 Q. Do you think that you can answer that
21 kind of a question?

22 A. Yes.

23 Q. If you think that they have proved it,
24 can you come back and say guilty?

25 A. Yes.

APP. 215

1 you do?

2 A. I do, yeah.

3 Q. Okay.

4 And I guess there is a couple of easy answers,
5 right? If the State proves beyond a reasonable doubt,
6 then it's guilty, right?

7 A. Right.

8 Q. If you listen to the evidence, and you
9 don't think a crime was committed, it is not guilty,
10 right?

11 A. Yes.

12 Q. If you listen to the evidence, and you
13 don't really know what went on one way or another,
14 what's your verdict then?

15 A. Well, that's not beyond a reasonable doubt,
16 if there is a question.

17 Q. And so then the verdict for you would
18 be?

19 A. Not guilty.

20 Q. Not guilty?

21 A. Yes.

22 Q. Are you comfortable with that when you
23 are dealing with a child, and even if it has to be proven
24 beyond a reasonable doubt, you don't know for sure whether
25 or not Mr. Moore is innocent?

APP. 216

1 A. No, I'm comfortable with listening to
2 the evidence and having it proven beyond a reasonable
3 doubt.

4 Q. And if you did have some inkling as to,
5 I don't know, maybe something could have happened, are
6 you comfortable with a not guilty verdict?

7 A. Yes, I am comfortable.

8 Q. Okay. Do you want to be on this jury?

9 A. Yeah.

10 MS. HAMERS: Thank you.

11 Pass for cause, Judge.

12 THE COURT: All right.

13 VOIR DIRE EXAMINATION OF JUROR DEJA HANDY

14 BY THE COURT:

15 Q. We have Deja?

16 A. Deja.

17 Q. Deja Handy, right?

18 A. Yes.

19 Q. Deja, how long have you been in Las Vegas?

20 A. Five years.

21 Q. Where did you come from?

22 A. California.

23 Q. As if there is someplace different. So
24 what do you do for a living?

25 A. I'm a court runner.

APP. 217

1 Q. Who do you work for?

2 A. Prince Legal.

3 Q. Okay. How long have you done that?

4 A. About eight, nine months.

5 Q. Okay. Are you married?

6 A. No.

7 Q. No children?

8 A. Divorced.

9 Q. You are divorced, really?

10 A. Yes.

11 Q. No children?

12 A. No.

13 Q. Okay. Any training or background in
14 law enforce?

15 A. No.

16 Q. Anybody close to you?

17 A. No.

18 Q. Have you ever been on a jury before?

19 A. No.

20 Q. Anything in your background that might
21 touch upon or affect your ability to be a juror and
22 listen to the testimony of a police officer, and treat
23 it any differently than any other witness?

24 A. I guess not, no.

25 Q. Have you had some experiences with some

APP. 218

1 sort of police?

2 A. Yeah, but that's not going to affect what
3 I think.

4 Q. Okay.

5 You are going to get asked this anyway, you
6 might as well tell me.

7 A. Sure.

8 Q. What kind of a experience you had.

9 A. Well, domestic violence.

10 Q. You were the victim of or accused of a
11 domestic violence?

12 A. I was accused.

13 Q. Okay. Were you prosecuted? Did you get
14 arrested?

15 A. We both did.

16 Q. Okay. That's not unusual for that to occur.

17 Police are called on a domestic call, and they
18 can't ascertain if one person or the other person was the
19 primary aggressor, then in all probability they will arrest
20 both of the parties. That's not an unusual occurrence.

21 Do you think that that was unfair of the police
22 to do that?

23 A. No, but he was lying.

24 Q. So, my question is:

25 Did you end up getting prosecuted?

APP. 219

1 Q. If you think they have failed to prove
2 it, do you have any problem with coming back and saying
3 not guilty?

4 A. No.

5 Q. Okay.

6 Do you think that you have the kind of a
7 frame of mind that either side here, the prosecution
8 or the Defense, either one, would be comfortable with
9 somebody on the jury that has the frame of mind that
10 you possess?

11 A. It should be, yeah.

12 Q. Okay. Good enough for me. Any questions
13 I missed?

14 MS. HOLTHUS: No.

15 THE COURT: Anything you want to ask?

16 Pass for cause?

17 MS. HOLTHUS: We pass for cause, Judge.

18 Thank you.

19 THE COURT: Defense?

20 MS. HAMERS: I have a couple of questions.

21 Thank you, Judge

22 VOIR DIRE EXMAIONATION OF JUROR ROGER HEARNE

23 BY MS. HAMERS:

24 Q. You have a pretty good handle on what
25 goes on in a trial it sounds like, or you feel like

APP. 220

1 A. No.

2 Q. And neither did he?

3 A. No.

4 Q. Okay.

5 Anything about that experience that is going
6 to cause you difficulty, sitting on a jury and on a
7 jury at all?

8 A. No.

9 Q. And particularly, where there is going
10 to be a police officer witness.

11 Do you have any trouble listening to the testimony
12 of a police officer witness?

13 A. No.

14 Q. And not holding what happened to you
15 against that police officer that is going to get on the
16 stand here?

17 A. No.

18 Q. Okay.

19 Anything else specifically that I haven't touched
20 upon that you think could or might bear upon your ability
21 to be a juror in a case like this?

22 A. No.

23 Q. Okay.

24 Do you understand the serious nature of the
25 jury service that we are asking you folks to do?

APP. 221

1 A. Yes.

2 Q. Okay.

3 And you understand that you are going to have
4 to go back and consider what the rest of the jurors in
5 this case, after you have heard all the evidence, whether
6 or not you feel that the State proved beyond a reasonable
7 doubt the Defendant was guilty.

8 Do you understand that that is the ultimate
9 question that the jury has to answer.

10 Do you understand that?

11 A. Yes.

12 Q. Answering that question, is that going to
13 cause or pose any difficulties for you?

14 A. No.

15 Q. If you think the State proved the case
16 beyond a reasonable doubt, can you say guilty?

17 A. Yes.

18 Q. If you think the State failed to do that,
19 can you say not guilty?

20 A. Yes.

21 Q. Okay.

22 Do you think that you are fair and impartial,
23 and that you have a neutral frame of mind as you come
24 to serve on this jury?

25 A. Yes.

APP. 222

1 Q. If you were the Defendant or the prosecutor
2 in this case, would you be comfortable on either side of
3 the over here with somebody on the jury that has your
4 frame of mind?

5 A. Yes.

6 THE COURT: The State?

7 MR. MERBACK: Nothing, thank you. Pass for cause,
8 Judge.

9 THE COURT: Defense?

10 MS. HAMERS: Yes, please.

11 VOIR DIRE EXAMINATION OF JUROR DEJA HANDY
12 BY MS. HAMERS:

13 Q. You said he was lying, and I imagine this
14 is husband, boyfriend, some domestic violence?

15 A. Yeah, it was my husband.

16 Q. It was your husband. They arrested both
17 of you, and you said neither of you were ever charged?

18 A. No.

19 Q. Do you know how they found out he was
20 lying?

21 A. Well, I know he was lying. I don't know
22 if they found out.

23 Q. Okay.

24 A. So --

25 Q. But he never came clean or ever admitted

APP. 223

1 that?

2 A. Right, he never -- I don't know. I never
3 spoke to him after that so --

4 Q. He wouldn't probably do it then.

5 A. Right.

6 Q. All right. Did you ever find out why no
7 one was charged or why nothing else happened?

8 A. No.

9 Q. Okay.

10 Was it scary to have someone accuse you of
11 something that you didn't do?

12 A. Yes.

13 Q. And when you said you were arrested, you
14 were actually booked into the jail?

15 A. Uh-huh.

16 Q. For how long?

17 A. Like a weekend.

18 Q. It was about --

19 A. A really long time.

20 Q. A real long weekend, right?

21 A. Yes.

22 Q. And I don't mean to make light of that,
23 but the whole time you are in there, you don't really
24 know what's going to happen, right?

25 A. Right.

APP. 224

1 Q. Were you ever interrogated by the police?

2 A. No.

3 Q. Can you imagine, if you were interrogated
4 by the police, if you were in that situation, what that
5 would feel like?

6 A. Yes.

7 Q. Would you be scared?

8 A. Yes.

9 Q. If someone told you that saying a particular
10 thing, or doing a particular thing could get you out of
11 trouble, could get you out of jail, might you go along
12 with that?

13 A. I guess.

14 Q. Or with you, whatever you were talking
15 about?

16 A. You mean -- you mean by the police?

17 Q. Yeah. Let's say it was the police.

18 Let's say you are there, and your husband says
19 that, you know, whatever he said, you were violent with
20 him, you hit him, attacked him, or something like that,
21 and the police said to you, you are not getting anywhere
22 sitting here in jail saying you didn't do anything, and
23 if you just say you did it, then this will be easier for
24 you, and we can get you out of jail, and you can move on
25 with your life.

APP. 225

1 MS. HOLTHUS: I am going to object, Your
2 Honor, to the line of questioning as being an attempt
3 to affect the status quo.

4 THE COURT: Yeah, I think -- I don't think
5 that's a proper voir dire question.

6 MS. HAMERS: Well, let me rephrase and see if
7 that's more appropriate.

8 Q. Do you think that it's possible to say
9 that you did something you didn't do?

10 A. No.

11 MS. HAMERS: Under no circumstances? All right,
12 thanks.

13 We will pass for cause, Judge.

14 THE COURT: Okay.

15 VOIR DIRE EXAMINATION OF JUROR JACOB GUMAS
16 BY THE COURT:

17 Q. Okay. Jacob Gumas?

18 A. Gumas.

19 Q. Did you say Gumas?

20 A. Gumas.

21 Q. Okay, gumas. And it's Jacob?

22 A. Yes.

23 Q. Okay. So, Mr. Gumas, what do you do for
24 a living?

25 A. I'm the store manager for Long's Home

APP. 226

1 Improvement.

2 Q. Where?

3 A. The one on Eastern and Russell.

4 Q. Very good. How long have you been here?

5 A. I have been in Vegas for 15 years.

6 Q. Okay. Are you married?

7 A. Yes.

8 Q. Does your wife work?

9 A. Raising the two kids.

10 Q. Perfect. She is working harder than
11 all of us?

12 A. She is working harder than I ever did.

13 Q. Now, and have you ever been trained, or
14 anybody close to you ever been trained or employed in
15 law enforcement?

16 A. No.

17 Q. I didn't ask you, your kids are how old?

18 A. No, they are young, four and one.

19 Q. Anybody close to you with the police?

20 A. No.

21 Q. Okay. Anything in your background that
22 might color or --

23 A. No.

24 Q. Or prevent you from being able to listen
25 to the testimony of a police officer and treating it just

APP. 227

1 like anybody else?

2 A. No.

3 Q. You are not going to give them any more
4 or any less credibility than anybody else?

5 A. No.

6 Q. Okay, all right, fair enough.

7 Have you, or anybody close to you, been the
8 victim of, or accused of a crime?

9 A. No.

10 Q. Particularly focused on sexually related
11 crimes?

12 A. No.

13 Q. Okay. Have you ever been on a jury
14 before?

15 A. No.

16 Q. Do you understand the nature of the jury
17 service we are going to be asking the jurors in this
18 case to perform?

19 A. Yes.

20 Q. Is there anything about that causes you
21 any difficulty?

22 A. No.

23 Q. Do you think that you are up to the task
24 of examining and paying attention to the evidence, examining
25 the evidence, and discussing all of this with your fellow

APP. 228

1 jurors, and then answering the question whether or not
2 you feel as though the State proved their case beyond a
3 reasonable doubt?

4 A. I can do it.

5 Q. If you think the State did, can you come
6 back and say guilty?

7 A. Yes.

8 Q. If you think the State failed to do that,
9 can you come back and say not guilty?

10 A. I could.

11 Q. Okay.

12 Anything else I haven't touched upon specifically
13 that might bear on your ability to be fair and impartial
14 juror in a case like this?

15 A. No.

16 Q. Okay.

17 And do you think that you have a fair, impartial
18 and a neutral mind set such that if you were either the
19 prosecutor or the Defense in this case, you would be
20 comfortable with somebody on the jury with your frame of
21 mind?

22 A. I would.

23 THE COURT: Sounds good enough for me. Did I
24 miss something anywhere?

25 MS. HOLTHUS: No, we are good.

APP. 229

1 MR. FELICIANO: Pass for cause?

2 MS. HOLTHUS: Pass for cause, Judge. Thank
3 you.

4 MS. HAMERS: We will pass for cause, Judge.

5 VOIR DIRE EXAMINATION OF JUROR LAURIE MATTHEWS
6 BY THE COURT:

7 Q. Laurie Matthews, is that right?

8 A. Yes.

9 Q. Laurie, no surprises. How long have you
10 been in town?

11 A. 17 years.

12 Q. What do you do for a living?

13 A. I am a supporter in the emergency room in
14 St. Rose Hospital in Henderson.

15 Q. How long have you worked out there?

16 A. Nine years.

17 Q. Married?

18 A. Divorced.

19 Q. Grown kids?

20 A. Yes, my son is 29. He is security at
21 the Bellagio, and my daughter is 27. She is at the
22 Collins Ranch as a professional called assistant, and
23 she is the security manager for the Wal-Mart also.

24 Q. Okay. Those are both security type
25 jobs?

APP. 230

1 A. Yes.

2 Q. Anything about that that would affect
3 your perspective or ability to be a juror in a case
4 like this?

5 A. No.

6 Q. It wouldn't cause you to have any bias,
7 or prejudice in regards to listening to the testimony
8 of a police officer?

9 A. No.

10 Q. You can treat them just like anybody else?

11 A. Yes.

12 Q. Okay.

13 Have you or anybody close to you ever been accused
14 of or the victim of a crime?

15 A. No.

16 Q. Particularly, a sexually related type of a
17 crime?

18 A. Nothing.

19 Q. Anything that you can think of at all that
20 I haven't touched upon specifically that might touch upon
21 or bear upon your ability to be a juror and to be fair
22 and impartial to both sides in a case like this?

23 A. No problem.

24 Q. Do you understand the nature of jury
25 service, and what we are going to ask the members of this

APP. 231

1 jury in this case to do?

2 A. Yes.

3 Q. When the case is over with?

4 A. Yes.

5 Q. Anything about that at all that would
6 cause you any problem?

7 A. No.

8 Q. Do you think you are up to that task?

9 A. Yes.

10 Q. Once again, this is one of those group
11 deals. The jury has to render a unanimous verdict
12 after consulting with each other, you have to consider
13 the evidence, listen to the instructions on the law,
14 and then make the ultimate decision if you think the
15 State proved the case beyond a reasonable doubt.

16 Could you say guilty if you believe the
17 State did that?

18 A. Yes.

19 Q. Would you also be able to come back
20 and say, not guilty, if you think the State failed
21 to prove the Defendant guilty beyond a reasonable
22 doubt?

23 A. Yes.

24 THE COURT: Okay. Any questions?

25 MS. HOLTHUS: No thanks, Judge. We will

APP. 232

1 pass for cause.

2 MS. HAMERS: Pass for cause.

3 THE COURT: All right.

4 VOIR DIRE EXAMINATION OF JUROR BARBARA CUOMO

5 BY THE COURT: (Continuing).

6 Q. All right. Barbara Cuomo, i've got
7 you back. We didn't really finish with you, and I
8 need to ask you some more questions because we just
9 kind of cut it short, but now that you have heard
10 all of these other questions, let me come back and
11 kind of start again.

12 I know, Barbara, that you had some problems,
13 some issues with your son, and what happened to him
14 over in prison.

15 Are you going to be able to not let that
16 interfere with your ability to sit as a juror in a
17 case like this and, once again, if you think that
18 the answer is yes, then say so. Don't let me badger
19 you into saying no.

20 If you honestly and truly feel as though,
21 that the experience that you have gone through with
22 your son is going to affect your ability to be fair
23 and impartial to both sides of this case, then say
24 so.

25 If you think you can do it and be fair

APP. 233

1 and impartial to both the Defense and the State.
2 or not?

3 A. I don't think so, Your Honor.

4 THE COURT: Well, you know what? I'm not
5 even going to argue with you.

6 I am going to go ahead and excuse you
7 because nobody can answer those questions except
8 you, and if that's the way you feel, that's the way
9 you feel.

10 Go ahead and go on down to the third floor
11 Jury Commissioner's office. They will relocate you,
12 and there's a lot of litigation in this building that
13 doesn't have anything to do with criminal law, trust
14 me, okay?

15 (Juror Barbara Cuomo excused at this time.)

16 THE COURT: We will go ahead and excuse
17 Barbara and replace her with?

18 THE CLERK: Denise Critcher, badge 180.

19 VOIR DIRE EXAMINATION OF JUROR DENISE E. CRITCHER
20 BY THE COURT:

21 Q. Denise, if you will, take that second
22 chair there on the top row.

23 A. Certainly.

24 THE COURT: What is her number?

25 THE CLERK: 180.

APP. 234

1 BY THE COURT:

2 Q. So Denise, how long have you been here
3 in Las Vegas?

4 A. 47 years.

5 Q. What do you do for a living?

6 A. I am currently on line for an interior
7 design course.

8 Q. Really, good for you. So this is a
9 new endeavor?

10 A. Yes, it is.

11 Q. What did you do before?

12 A. I was in a race and sports book for
13 19 years.

14 Q. Okay. Do you know all about that
15 stuff?

16 A. Oh, yeah.

17 Q. Where did you work?

18 A. Pardon me?

19 Q. Did you work at various hotels?

20 A. Yes, various hotels.

21 Q. Okay. Are you married?

22 A. Yes.

23 Q. What does your husband do?

24 A. He has two businesses. He has an escrow
25 business here in Las Vegas, and a high performance

APP. 235

1 business in Huntington Beach, California.

2 Q. What about children. Have you got grown
3 children?

4 A. I have two. He has four.

5 Q. Starting with the oldest, and it doesn't
6 make any difference whether they are one of yours or
7 one of his, just start from the oldest and work down,
8 and tell me basically what they do?

9 A. Okay. My oldest son is 31. He works
10 in sales.

11 His oldest daughter is 24. She's an RN.

12 My son is 22, and works at an exotic pet
13 store.

14 His son, 19, is a freshman in college, and
15 two 18 year old twins, they are seniors in high school.

16 Q. How many of them live at home?

17 A. One.

18 Q. So you could have a house full?

19 A. Yes, we have.

20 Q. So, have you, or anybody close to you,
21 ever been trained or employed in law enforcement?

22 A. No.

23 Q. Have you, or anybody close to you,
24 ever been the victim of, or accused of a crime?

25 A. Yes.

APP. 236

1 Q. You better explain.

2 A. My brother was accused of attempted
3 murder on me.

4 Q. Really?

5 A. Yes.

6 Q. How long ago was this?

7 A. 1975. It was New Year's Eve.

8 Q. Where were you?

9 A. I was at home.

10 Q. I mean, were you in Las Vegas?

11 A. No, I was in California at the time.

12 Q. Okay.

13 Was he ever prosecuted for that? You were
14 the victim, and he was the defendant?

15 A. Yes.

16 Q. Okay.

17 A. He was pleaded out to battery and sent
18 to a State mental institution for four years.

19 Q. Okay.

20 So, because of that incident, you had some
21 involvement with the police?

22 A. Very small.

23 Q. And you also had some involvement with
24 some prosecutors?

25 A. Yes, sir..

APP. 237

1 Q. And do you have any -- because of
2 that experience, has that left you with any kind of
3 feelings of animosity towards the prosecution or the
4 police?

5 A. No.

6 Q. On the other hand, has that caused you
7 to have any kind of feelings of bias in favor of the
8 police, or the prosecution?

9 A. No, they are people.

10 Q. Just the same.

11 Nothing about that experience would affect
12 your ability to be on the jury?

13 A. No.

14 Q. In a case like this. You can be fair
15 and impartial to both sides side of this case?

16 A. Yes.

17 Q. Okay. Anything else besides that incident
18 in your background?

19 A. No.

20 Q. Nothing that -- nobody accused or charged
21 with, or the victim of any kind of sexual related type
22 of criminal offense?

23 A. No.

24 Q. Okay. And have you ever been on a jury
25 before?

APP. 238

1 A. I was on the Federal grand jury for two
2 years.

3 Q. Completely different animal.

4 A. Yes.

5 Q. Was it two or three years?

6 A. Two.

7 Q. Two, okay. Yeah, grand juries and petit
8 juries are --

9 A. Yeah.

10 Q. -- totally different?

11 A. Yes.

12 Q. Right. And, but nonetheless, you did
13 get some instructions?

14 A. Yes.

15 Q. By the prosecutor's office about what
16 your function and duty was as a grand juror in that
17 situation?

18 A. Yes.

19 Q. You do understand that whatever you
20 were instructed and told has absolutely no applicability
21 to what we are doing here?

22 A. Absolutely.

23 Q. Okay.

24 Leave all that stuff behind you and just listen
25 to the instructions on the law that I give you as it

APP. 239

1 applies to this case.

2 Can you do that?

3 A. Yes.

4 Q. Anything that you can think of in your
5 background that would cause you to treat the testimony
6 of a police officer any differently than a non police
7 officer witness?

8 A. No.

9 Q. Okay.

10 Anything that I haven't specifically touched
11 upon that might bear upon your ability to sit as a
12 juror in a case like this and be fair and impartial
13 to both sides?

14 A. No.

15 Q. No problem?

16 A. No.

17 Q. Do you understand the nature of the
18 jury service that we are going to ask the jury to do
19 in this case?

20 A. Yes.

21 Q. Anything about what's going to go on
22 here that is going to cause you difficulty?

23 A. No.

24 Q. Do you think you are up to the task?

25 A. Yes.

APP. 240

1 Q. If you think the State has proven the
2 case beyond a reasonable doubt, are you going -- can
3 you come back into court and say, guilty?

4 A. I could, absolutely.

5 Q. Just the opposite.

6 If you believe that the State failed to
7 do that, can you come back into court and say, not
8 guilty?

9 A. Absolutely.

10 Q. Do you think that you have a fair,
11 impartial, and a neutral frame of mind as you come to
12 serve on this jury?

13 A. Yes, I do.

14 Q. Would you be comfortable on either side
15 of the aisle here with somebody on the jury that has
16 your frame of mind? No problem?

17 A. No problem.

18 THE COURT: The State?

19 MS. HOLTHUS: Pass for cause, Judge.

20 THE COURT: Defense?

21 MR. FELICIANO: Yes, Judge, thank you.

22 VOIR DIRE EXAMINATION OF JUROR DENISE E. CRITCHER
23 BY MR. FELICIANO:

24 Q. I have a few questions about your service
25 on the grand jury. That was here, right?

APP. 241

1 A. Yes.

2 Q. All right. And you did that for two
3 years?

4 A. Yes.

5 Q. And about how many cases do you think you
6 heard?

7 A. Oh, God, I don't know -- ballpark?

8 Q. Yeah, roughly.

9 A. 75.

10 Q. And these are all kinds of different
11 offenses?

12 A. Yes.

13 Q. So it was all kinds of different types
14 of offenses, right?

15 A. Yes.

16 Q. Now, when you were serving on the grand
17 jury, your function was to see if there was enough
18 information to return an indictment, is that --

19 A. Yes.

20 Q. Okay.

21 And in doing that function, do you remember
22 the standard that they instructed you on?

23 A. That you don't talk about it until
24 everything is combined, and then you talk as a
25 group.

APP. 242

1 Q. And when you talked in the group, the
2 standards you would apply wasn't beyond a reasonable
3 doubt, right?

4 A. Yes.

5 Q. It was a very low standard that you would
6 apply?

7 A. It was to determine whether or not it
8 would go to trial or not.

9 Q. Okay.

10 So it was to determine if there was even enough
11 evidence?

12 A. Absolutely.

13 Q. To charge somebody?

14 A. Right.

15 Q. Okay.

16 So, you are going to be instructed on the law
17 in this case at the conclusion, and you are going to
18 have a different standard?

19 A. Right, it's beyond a reasonable doubt.

20 Q. Okay. And you know that standard is
21 going to be --

22 A. Right.

23 Q. -- beyond a reasonable doubt?

24 A. Right.

25 Q. Much higher, the highest standard that

APP. 243

1 we have?

2 A. Right.

3 Q. Is there any issues as far as separating
4 your service of the grand jury and what you are doing
5 here today?

6 A. Oh no.

7 MR. FELICIANO: All right, thank you, ma'am.

8 Pass for cause.

9 THE COURT: All right, very good.

10 All right. Just for informational purposes
11 for the jury pool, we are now going to transition into
12 the second phase of selecting this jury, and you will
13 see in about two seconds why we need so many people,
14 okay?

15 Approach the bench, and I will explain this
16 to you a little better, all right?

17 Both sides in these criminal cases are
18 allowed to assert what is referred to as a challenge
19 for no reason, no cause. They can ask a particular
20 juror to step down, and if you are asked to step down,
21 you are going to go back down to the third floor Jury
22 Commissioner's office, and this is just part of the
23 process.

24 It doesn't mean that you have done anything
25 wrong, right, or anything else, it just means that this

APP. 244

1 is part of the process, and both sides get to exercise
2 the challenges, and when the smoke all clears at the
3 end of the day, these folks need to be completely and
4 totally comfortable with the folks that are sitting over
5 here in this jury box, okay?

6 So that having been said, I don't want anybody
7 to harbor any hard feelings or animosity if you are asked
8 to report down to the third floor Jury Commissioner's
9 office, and we appreciate everybody's participation,
10 okay? And I say that to you in advance.

11 All right, sorry, approach.

12 *****

13 (Whereupon, a brief, informal discussion was
14 had at the bench between the Court and counsel.)

15 *****

16 THE COURT: All right. We are going to ask
17 Kimberly Barber to go ahead, and step down, and report
18 to the Jury Commissioner's office on the third floor.

19 Kimberly is going to be replaced by Tiffany
20 Wang.

21 Kimberly, thank you very much.

22 (Juror Kimberly Barber excused at this time.)

23 THE COURT: And we are going to ask Richard
24 Branson to go ahead and step down and report to the
25 third floor, Jury Commissioner's office.

APP. 245

1 Richard, thank you very much for participating.

2 (Juror Richard Branson excused at this time.)

3 THE COURT: Richard is going to be replaced
4 by Lumnije Binaku, and Tiffany, you are in the second
5 chair there, yeah, and is it Lumnije, is that how you
6 say that?

7 JUROR BINAKU: Lumnije.

8 THE COURT: Lumnije Binaku?

9 JUROR BINAKU: Yes.

10 THE COURT: Okay. You are in the right chair.

11 VOIR DIRE EXAMINATION OF JUROR TIFFANY WANG
12 BY THE COURT:

13 Q. Okay. Tiffany.

14 A. Yes.

15 Q. We will start with you.

16 A. I'm sorry.

17 Q. You may sit, you may sit. Have you
18 been paying attention?

19 A. Yeah, I don't speak very good English.

20 I try, Your Honor. I try to answer all the questions.

21 Q. What is your native language?

22 A. Chinese, Mandarin.

23 Q. Mandarin Chinese?

24 A. Yeah.

25 Q. All right. Now, here is how this works,

APP. 246

1 if you can understand.

2 You are entitled to serve on a jury if you
3 choose to. If you want to serve on this jury, and
4 you think that you have a language barrier problem,
5 we will arrange for an interpreter to be right here
6 beside you an interpreter for you.

7 Did you understand that?

8 A. I can have an interpreter.

9 Q. We can have an interpreter come and sit
10 with you so that you can be on this jury if you want to.
11 If you don't want to do that, I will excuse you, and
12 let you go down to the third floor back to the Jury
13 Commissioner's office. It's up to you.

14 Do you understand?

15 A. I can't understand. I really can't
16 understand all things. I would want to be excused.

17 MS. HAMERS: I don't think she understands
18 the option.

19 THE COURT: Well, do you want me to get an
20 interpreter to explain it or do you want me to just
21 go ahead and excuse her?

22 MS. HAMERS: Well, I mean, I agree that it
23 should be up to her. I just think it sounds like she
24 didn't understand the options.

25 THE COURT: This is up to you. It's your

APP. 247

1 choice. If you want to leave the jury, you don't have
2 to serve. If you want to be on the jury, we can get
3 you an interpreter.

4 A. I think no.

5 Q. You think no?

6 A. Yeah.

7 THE COURT: Okay. Then we will excuse you.
8 Go on down to the third floor, okay?

9 JUROR WANG: Thank you.

10 (Juror Tifany Wang excused at this time.)

11 THE CLERK: Next one is Karen Clemence, Badge
12 184.

13 VOIR DIRE EXAMINATION OF JUROR KAREN CLEMENCE
14 BY THE COURT:

15 Q. Karen, is it Clemence?

16 A. Yes.

17 Q. Karen that second chair there. So,
18 Karen, have you been paying attention?

19 A. Yes.

20 Q. Do you understand how this works?

21 A. Got it.

22 Q. Okay. How long have you been in Las
23 Vegas?

24 A. 19 years.

25 Q. What do you do for a living?

APP. 248

1 A. I am a manager at Citibank, with the
2 Credit Card Division.

3 Q. Okay. Married?

4 A. Yes.

5 Q. What does your husband do?

6 A. He is a home builder.

7 Q. Okay. Grown children?

8 A. Two.

9 Q. What do they do?

10 A. Boys, they are both unemployed.

11 Q. Okay.

12 A. Or laid off, whatever words you want
13 to use.

14 Q. Do they live at home?

15 A. Yes, unfortunately.

16 Q. Have you, or anybody close to you,
17 ever been employed, or have a background in law
18 enforcement?

19 A. No.

20 Q. Okay. Have you ever been on jury duty
21 before?

22 A. No.

23 Q. Okay.

24 Have you, or anybody close to you, ever been
25 the victim of, or accused of a crime?

APP. 249

1 A. No.

2 Q. Okay.

3 Anything in your background that you can think
4 of that would cause you difficultuy being a juror, and
5 listening to the testimony of a police officer, and
6 treating that testimony differently than you would treat
7 any non police officer witness?

8 A. No.

9 Q. Okay.

10 Anything that you can think of specifically
11 that I haven't touched on directly that might affect
12 your ability to be on a jury like this?

13 A. Just recently, my niece's husband was
14 accused of molesting both of their children.

15 Q. Where do they live?

16 A. In Washington, D. C.

17 Q. How long ago has this been that this
18 came to light?

19 A. This was just found out about six weeks
20 ago.

21 Q. Okay. And, now, who is this again?

22 A. It's my niece, her husband. They have
23 got two small children.

24 Q. Your niece, and her husband, and their
25 two small children?

APP. 250

1 A. Yes.

2 Q. Have you discussed this with her?

3 A. Yes, it's my God daughters so we have
4 had conversations.

5 Q. Okay.

6 So you are pretty familiar with what her
7 husband has been accused of?

8 A. Correct.

9 Q. To your knowledge, is there a prosecution
10 proceeding?

11 A. She is starting, they both hired lawyers.
12 They are going to -- she had to get written statements
13 from neighbors and people that had seen the kids,
14 and watched the kids, and she is going through that
15 proceeding, it just started. I am not really familiar
16 with all that kind of stuff, but that's kind of where
17 they are at.

18 Q. This isn't strictly a criminal prosecution
19 proceeding? There is not something else going on, too,
20 is there?

21 A. As far as I know, no.

22 Q. I mean, I'm talking about like a domestic
23 divorce action, or something like that?

24 A. No.

25 Q. Okay. And does the fact that you have

APP. 251

1 a family member who is in a situation like this,
2 something having to do with this topic, is that going
3 to cause you difficulty being on a jury like this?

4 A. I don't know. It's a little rough. I
5 don't want it to cause anything, but I don't know. I
6 just wanted to tell you that I don't know. She has
7 told me a lot of details so it's tough.

8 Q. Nobody can answer the questions that
9 we are asking you, and I'm sorry that I have to ask
10 you those kind of questions, but, obviously, it's very
11 important to everybody here.

12 If you think that this is -- that the subject
13 matter of this trial would be too close, and too
14 emotionally charged with your situation, then you
15 just tell me.

16 If you think that it's past the point of
17 you being comfortable and able to leave that other
18 what's going on with your niece out in the hallway,
19 and not let it enter in, if you can't sit -- if
20 you don't feel comfortable and feel like you can
21 do that, then you should probably let us know that
22 right now.

23 And I -- and I know that you would like
24 to be able to think and to try doing your duty and
25 your needing to be here, and be fair and impartial

APP. 252

1 to both sides.

2 The reason we are asking you these questions
3 is because sometimes it's just not possible. Sometimes
4 there is something that's so close to what is going
5 on in here to enter into your life that it just is
6 not even reasonable and humanly possible to think
7 that you are able to not let it interfere.

8 A. I just think it's so fresh that all of
9 this came up like six weeks ago. There was pictures
10 found, and I don't -- I honestly don't know if I can
11 do it.

12 Q. That's all right. Don't even worry about
13 it.

14 A. I don't think it's fair, you know, to
15 the Defendant or the State, or whatever you guys want
16 to call yourselves, you know, I don't know if I could,
17 you know, I don't know, it's just so fresh in my mind.

18 Q. Listen, I am going to go ahead and
19 excuse you.

20 Go down to the third floor.

21 A. I'm sorry.

22 THE COURT: They are going to put you -- and
23 you don't have to apologize.

24 You go down to the third floor, and they will
25 rotate you back into something else, and trust me, there

APP. 253

1 are lots of other cases in this building that don't have
2 anything to do with this, okay?

3 Thank you very much. I appreciate you being
4 here, and participating with us.

5 JUROR CLEMENCE: Thank you.

6 (Juror Clemence excused at this time.)

7 THE COURT: And we will replace Karen with?

8 THE CLERK: Jose Vivas, badge 189.

9 THE COURT: Jose vivas.

10 VOIR DIRE EXAMINATION OF JUROR JOSE VIVAS

11 BY THE COURT:

12 Q. Jose?

13 A. Yes, sir.

14 Q. Go ahead and sit at that top second
15 seat in there. Jose, how long have you been here in
16 town?

17 A. 12 years.

18 Q. Okay. What do you do for a living?

19 A. I'm a bartender.

20 Q. Where do you work?

21 A. El Camelot.

22 Q. Oh, okay. Are you married?

23 A. Yeah.

24 Q. Does your wife work?

25 A. Yeah.

APP. 254

1 Q. What does she do?

2 A. She works for a large revenue company,

3 La Palm.

4 Q. All right. Children, do you have any
5 grown children.

6 A. No, not yet.

7 Q. Okay.

8 Have you, or anybody close to you ever been
9 trained or employed in law enforcement?

10 A. No.

11 Q. Ever been on a jury?

12 A. No.

13 Q. Anything in your background that would
14 affect your perspective or ability to be a juror in a
15 case like this and listen to the testimony of a police
16 officer?

17 A. No.

18 Q. Okay. Have you or anybody close to
19 you ever been the victim of or accused of a crime?

20 A. No.

21 Q. And that particularly is focusing in
22 on sexually related crimes.

23 A. No.

24 Q. Nothing there?

25 A. No.

APP. 255

1 Q. Okay. Anything that you can think of
2 in your background that could affect or touch upon your
3 ability to be a juror in a case like this and be fair
4 and impartial to both sides?

5 A. No.

6 Q. Okay.

7 Do you understand -- you said you have never
8 been on a jury, right?

9 A. Yes.

10 Q. But you do understand what we are going
11 to ask this jury to do when the evidence is all over
12 with?

13 A. Yes.

14 Q. Anything about what we are going to
15 ask this jury to do that is going to cause you
16 difficulty?

17 A. No.

18 Q. Can you do it?

19 A. Yes.

20 Q. It's important that every juror pay
21 real close attention to the evidence that's admitted
22 during the course of this trial, listen to the
23 instructions of law, retire to consider your verdict,
24 consult with everybody else on the jury, and then,
25 ultimately, the jury unanimously reaches a verdict.

APP. 256

1 Anything about that whole process that is
2 going to cause you a problem?

3 A. No.

4 Q. Do you think that if the State proved
5 their case beyond a reasonable doubt, can you come back
6 to court and say guilty?

7 A. Yes.

8 Q. If you think the State failed to prove
9 the case beyond a reasonable doubt, would it cause you
10 a problem to come back and say, not guilty?

11 A. No.

12 Q. You could do that?

13 A. Yes, sir.

14 Q. Okay.

15 Do you think that you have a fair, and
16 impartial, and a neutral frame of mind as you come to
17 serve on this jury?

18 A. Yes, sir.

19 Q. If you were the Defendant, or the prosecutor
20 in this case, either side, would you be comfortable with
21 somebody on the jury that possesses the frame of mind that
22 you have?

23 A. Yes.

24 THE COURT: The State?

25 MS. HOLTHUS: Nothing, we would pass for cause,

APP. 257

1 Judge.

2 Well, wait, can I change my mind?

3 THE COURT: Sure.

4 VOIR DIRE EXAMINATION OF JUROR JOSE VIVAS

5 BY MS. HOLTHUS:

6 Q. How old are your kids?

7 A. Three and two.

8 Q. Boys or girls?

9 A. Two boys.

10 MS. HOLTHUS: Thank you. That's all, thank
11 you.

12 THE COURT: Okay. Defense?

13 MS. HAMERS: We will pass for cause, Judge.

14 THE COURT: All right.

15 VOIR DIRE EXAMINATION OF JUROR LUMNIJE BINAKU

16 BY THE COURT:

17 Q. And we have, is it -- it's Binaku?

18 A. Binaku, yes.

19 Q. And you say your first name again is?

20 A. Lumniye.

21 Q. Boy, I'm going to have real trouble
22 with that. I will just call you Miss Binaku, how's
23 that?

24 A. Okay.

25 Q. How long have you been in Las Vegas?

APP. 258

1 A. Nine years.

2 Q. Okay. And where did you come from when
3 you came to Las Vegas.

4 A. I came from Buffalo, New York.

5 Q. Buffalo?

6 A. Yes.

7 Q. All right. What do you do for a living?

8 A. I work for a laundry.

9 Q. Okay. Are you married?

10 A. Yes.

11 Q. What does your husband?

12 A. He works with the meals specialty.

13 Q. You guys have children?

14 A. Not yet.

15 Q. Okay.

16 And have you or anybody close to you ever
17 been engaged, employed, or trained in law enforcement?

18 A. No.

19 Q. No?

20 A. No.

21 Q. Have you ever been on a jury before?

22 A. No.

23 Q. Okay.

24 Have you or anyone close to you ever been
25 accused of, or the victim of a crime?

APP. 259

1 A. No.

2 Q. And, in particular, a sexual related
3 crime?

4 A. No.

5 Q. Nothing?

6 A. No.

7 Q. Okay.

8 Can you think of anything in your background
9 that would cause you difficulty being a juror in a
10 case like this, and listening to the testimony of a
11 police officer?

12 Would that cause you any problem?

13 A. Well, my English, I don't really understand
14 every word that you are saying, my English is not good
15 enough I don't think, and I can't understand everything.

16 Q. Well, I have to tell you that your English
17 sounds pretty good to me.

18 A. I understood some but not all.

19 Q. Not every single thing?

20 A. No.

21 Q. Well, again, your native language is?

22 A. Albanian.

23 Q. Albanian.

24 Well, again, this is kind of the question for
25 you. If you want to be on this jury, we would provide

APP. 260

1 you with an interpreter to assist you in anything that
2 you didn't understand, okay?

3 If you -- if you don't feel comfortable with
4 your language skills, I'll excuse you, and I will let
5 you go down, and maybe they can rotate you into a
6 different jury pool.

7 You are going to have this same problem with
8 any jury pool because if you have a language problem,
9 you are probably going to have to tell the Jury
10 Commissioner's office that you just don't have good
11 enough English skills to sit on the jury. But it's
12 your choice.

13 If you feel uncomfortable trying to understand
14 everything that's going on, and if you don't feel like
15 you are getting it all?

16 A. Yes.

17 Q. You don't feel?

18 A. I don't feel comfortable.

19 Q. All right. No problem, we will excuse you.
20 You need to explain to them at the Jury Commissioner's
21 office that for at least the period of time until you
22 feel more comfortable with your English skills, it won't
23 do you any good to be subpoenaed back here, okay?

24 A. Okay.

25 THE COURT: Go ahead and go right on down to

APP. 261

1 the third floor, all right?

2 JUROR BINAKU: Yes. Thank you.

3 (Juror Lumnije Binaku excused at this time.)

4 THE CLERK: Andrew Merkes, badge 190.

5 VOIR DIRE EXAMINATION OF JUROR ANDREW MERKES

6 BY THE COURT:

7 Q. Andrew Merkes, is it Merkes, is that the
8 way you say it?

9 A. Yes.

10 Q. Andrew, how long have you been in Las
11 Vegas?

12 A. Three years now.

13 Q. What do you do for a living?

14 A. I work at Smith's Food and Drugs.

15 Q. Which store do you work at?

16 A. Caliente and Pecos.

17 Q. Are you married?

18 A. Engaged.

19 Q. Engaged. What does your fiance do?

20 A. She works in the Air Force.

21 Q. She is in the Air Force?

22 A. Yes.

23 Q. And so you have no children.

24 A. No.

25 Q. Okay.

APP. 262

1 Have you, or anybody close to you, ever been
2 trained or employed in law enforcement?

3 A. No.

4 Q. And have you, or anyone close to you,
5 ever been the victim of, or accused of a crime?

6 A. No, sir.

7 Q. Nothing sexual related, no sexual related
8 type crimes?

9 A. No.

10 Q. Okay. And have you ever been on a jury
11 before?

12 A. No.

13 Q. Do you understand the nature of this jury
14 service?

15 A. Yes.

16 Q. Do you understand what we are going to
17 ask the jury to do?

18 A. Yes.

19 Q. Do you think that you can do that?

20 A. I believe I can.

21 Q. Is there anything in your background that
22 would cause you to treat the testimony of a police officer
23 differently than any other witness?

24 A. No.

25 Q. You wouldn't give them any greater or

APP. 263

1 lesser credibility than anybody else?

2 A. No.

3 Q. Okay.

4 Anything that I haven't touched on specifically
5 that you think might bear upon your ability to sit as a
6 juror in a case like this?

7 A. No, sir, not that I can think of.

8 Q. Do you think that you have a fair, and
9 an impartial, and a neutral mind set as you come to
10 serve on this jury/?

11 A. Yes.

12 Q. If you believe after consulting with
13 the rest of the members of the jury, if you believe
14 that the State of Nevada proved the Defendant guilty
15 beyond a reasonable doubt, could you come back to court
16 and say, guilty?

17 A. Yes, I can.

18 Q. If you think that the State of Nevada
19 failed to prove the Defendant guilty beyond a reasonable
20 doubt, can you come back to court and say, not guilty?

21 A. Yes, sir.

22 Q. Not to throw in a trick question, but if
23 the jury retired right now to consider the verdict in
24 this case, what would your verdict be?

25 A. Not guilty.

APP. 264

1 Q. Why?

2 A. Because the State hasn't put on any
3 evidence yet.

4 Q. The State hasn't put on any evidence,
5 right?

6 A. Right.

7 Q. The State hasn't proven anything.

8 Can the Defendant sit there and not say a
9 word during the course of this trial?

10 A. Yes, he can.

11 Q. And do you understand that you can't
12 hold it against him that he may choose not to say
13 anything, or put on any evidence.

14 Do you understand that?

15 A. Yes.

16 Q. That's something you can't even consider
17 when you deliberate?

18 A. Yes.

19 Q. Do you understand that?

20 A. Yes.

21 Q. Can you do that?

22 A. Yes.

23 Q. When I tell you that you can't talk or
24 discuss anything about this case during the course of
25 the trial.

APP. 265

1 Can you do that?

2 A. Yes, sir.

3 Q. No talking, especially to the other
4 jurors, right?

5 A. Yes.

6 Q. You can't form an opinion about anything
7 having to do with this trial until the case is all over
8 with, do you understand that?

9 A. Yes.

10 Q. Can you do that?

11 A. Yes.

12 Q. If you were the Defendant or the prosecutor
13 in this case, would you be comfortable with somebody on
14 the jury that has your frame of mind?

15 A. Yes, sir.

16 THE COURT: Sounds good to me. The State?

17 MS. HOLTHUS: Nothing, thanks. Pass for cause,
18 Judge.

19 THE COURT: Defense?

20 MS. HAMERS: Yes, Judge, thank you.

21 VOIR DIRE EXAMINATION OF JUROR ANDREW MERKES
22 BY MS. HAMERS:

23 Q. The same question.

24 Even if you didn't ever say he did something
25 to do with you, and you thought it would get you out

APP. 266

1 of trouble?

2 A. Depends on the circumstances.

3 Q. It's possible?

4 A. It is possible.

5 MS. HAMERS: Thank you. We will pass for
6 cause.

7 THE COURT: Okay. Let's see here. Approach
8 the bench.

9 *****

10 (Whereupon, a brief, informal discussion was
11 had off the record at the bench between the Court and
12 counsel.)

13 *****

14 THE COURT: Okay.

15 All right. We are going to ask Jose Vivas
16 to go ahead and step down, and go to the third floor
17 to the Jury Commissioner's office.

18 We are going to replace Jose with Sean Keefer.

19 Jose, thank you very much for participating in
20 these proceedings.

21 JUROR VIVAS: Thank you.

22 (Juror Jose Vivas excused at this time.)

23 VOIR DIRE EXAMINATION OF JUROR SEAN KEEFER

24 BY THE COURT:

25 Q. So, Sean, you haven't been sleeping over

APP. 267

1 there, have you?

2 A. No, sir.

3 Q. All right. How long have you been in
4 town?

5 A. Three years.

6 Q. What do you do for a living?

7 A. I am a chef at the MGM, and I work
8 graveyard.

9 Q. Where did you come from when you moved
10 here?

11 A. From Denver.

12 Q. Okay. Are you married?

13 A. Yes.

14 Q. What does your wife do?

15 A. Food server at the MGM.

16 Q. Oh, any kids, grown kids?

17 A. Young kids, three.

18 Q. Okay. How old are they?

19 A. My son is 12, and two daughters nine
20 and 10.

21 Q. Okay.

22 Have you, or anybody close to you, ever
23 been trained or employed in law enforcement?

24 A. No.

25 Q. Have you, or anybody close to you,

APP. 268

1 ever been the victim of, or accused of any crime?

2 A. Yes.

3 Q. Okay. Go ahead and explain?

4 A. My children's mother, who is not
5 currently my wife, she was molested sexually by her
6 grandfather.

7 Q. How long ago was that?

8 A. When she was 10.

9 Q. So that is what, about 20 years ago?

10 A. Yes.

11 Q. Did you even know her then?

12 A. No, I didn't.

13 Q. Okay.

14 A. It was when she was a child.

15 Q. Okay. And it was the grandfather, is
16 that who it was?

17 A. Yes, sir.

18 Q. So, was the grandfather prosecuted that
19 you know of?

20 A. I believe it was a plea bargain.

21 Q. Okay.

22 Do you -- you don't have any any firsthand
23 information about it?

24 A. No.

25 Q. You -- everything that you are aware of

APP. 269

1 was told to you by your ex-wife, is that right?

2 A. And family, yes.

3 Q. Okay.

4 Is there anything about that knowledge of
5 that incident back 20 years ago that would affect your
6 ability to sit on a jury in a case like this and be
7 fair and impartial to both sides?

8 A. No.

9 Q. That's something that is just -- it's
10 one of those little bricks or blocks of experience that
11 you've heard, and you've had, and it is not going to
12 affect your ability to be fair and impartial here?

13 A. No, sir.

14 Q. You can leave all of that out in the
15 hallway?

16 A. Yes.

17 Q. Is that fair?

18 A. Yes, sir.

19 Q. All right. Is that the only thing that
20 you can think of in your background as to you, or anybody
21 close to you have experienced?

22 A. Yes, sir.

23 Q. Okay. Have you ever been on a jury
24 before?

25 A. No.

APP. 270

1 Q. Okay.

2 Do you understand the nature of the jury
3 service that we are going to ask the jury in this case
4 to perform?

5 A. Yes.

6 Q. Is there anything at all about what we
7 are going to ask this jury to do that you think is going
8 to cause you problems?

9 A. No.

10 Q. Anything in your background that is
11 going to cause you to treat the testimony of a police
12 officer differently than any other non police officer
13 witness?

14 A. No.

15 Q. And do you understand what you are going
16 to be charged to do?

17 If you think the State in collaboration with
18 the rest of the jurors, if you believe that the State
19 has proven their case beyond a reasonable doubt that
20 the Defendant committed the crimes he is charged with,
21 would you have any problems coming back into court and
22 saying he is guilty?

23 A. No.

24 Q. If you think that the State failed to
25 prove beyond a reasonable doubt that the Defendant

APP. 271

1 committed those crimes, can you come back to court and
2 say, not guilty?

3 A. Yes, sir.

4 Q. Do you think you possess a fair, and
5 impartial, and a neutral mind set as you come here to
6 jury service?

7 A. I do.

8 Q. If you were the Defendant or the prosecution,
9 would you be comfortable with somebody on the jury with
10 your frame of mind?

11 A. Yes.

12 THE COURT: Good enough for me. The State?
13 Pass for cause?

14 MS. HOLTHUS: Pass for cause, thank you.

15 MR. FELICIANO: Pass for cause, Your Honor.

16 THE COURT: All right. Approach the bench.

17 *****

18 (Whereupon, a brief, informal discussion was
19 had off the record at the bench between the Court and
20 counsel.)

21 *****

22 THE COURT: All right. Have a seat.

23 All right. Sean Keefer, we are going to ask
24 you to step down and report to the third floor Jury
25 Commissioner's office.

APP. 272

1 Thank you for being here and participating,
2 Sean.

3 JUFOR KEEFER: Okay.

4 (Juror Sean Keefer excused at this time.)

5 THE COURT: We are going to replace Sean with
6 Svetlana Huggins?

7 JUROR HUGGINS: Correct.

8 THE COURT: Is that the way you say that?

9 JUROR HUGGINS: Yes, it is, Judge.

10 THE COURT: Okay. Ms. Huggins, if you will
11 take that second seat in there. There is always one
12 seat that has a problem.

13 VOIR DIRE EXAMINATION OF JUROR SVETLANA HUGGINS
14 BY THE COURT:

15 Q. Svetlana, how long have you been here
16 in town?

17 A. Eight years.

18 Q. What do you do for a living?

19 A. I work in a dental office.

20 Q. I'm sorry, you work where?

21 A. A dental office.

22 Q. Oh, what do you do?

23 A. I'm a dentist.

24 Q. Oh, all right. As a matter of fact,
25 I just got an appointment.

APP. 273

1 Are you married?

2 A. Yes.

3 Q. What does your husband do?

4 A. He is an engineer, and he works for the
5 City of Las Vegas.

6 Q. Okay. Do you guys have grown children?

7 A. No.

8 Q. Have you, or anybody close to you,
9 ever been trained or employed in law enforcement at
10 all?

11 A. My friend's husband is a police officer.

12 Q. Here in Las Vegas?

13 A. Yes.

14 Q. Is he a Metro officer?

15 A. Yes, he is.

16 Q. And do you know him pretty well?

17 A. Yeah, well enough. We socialize with
18 him.

19 Q. Do you ever talk with him about work?

20 A. No.

21 Q. Okay.

22 Anything about the fact that you have a
23 friend, actually of your husband has a good friend and
24 an acquaintance I'd guess you would call him, right?

25 A. Yes.

APP. 274

1 Q. That's a police officer.

2 Is there anything about that relationship that
3 would cause you difficulty being on the jury and listening
4 to the testimony of a police officer?

5 A. No.

6 Q. Have you, or anybody close to you, ever
7 been accused of, or the victim of, pointedly, a sexually
8 related crime?

9 A. Yes, my best friend was sexually assaulted.

10 Q. Your best girlfriend --

11 A. Yes, my best friend.

12 Q. -- was sexually assaulted. How long ago?

13 A. 15 years ago.

14 Q. Did you know her then?

15 A. Yes.

16 Q. Okay.

17 Did this happen here in Las Vegas or someplace
18 else?

19 A. No, it happened when i was in Europe.

20 Q. When you were in Europe?

21 A. Yes.

22 Q. Okay.

23 And I really don't know how they do things
24 over there, but was someone caught and prosecuted for
25 that?

APP. 275

1 A. No.

2 Q. No one was ever caught at all?

3 A. It wasn't even -- the case wasn't even
4 presented. You know, the system was corrupted, and he
5 was never prosecuted.

6 Q. To your knowledge, you said it was never
7 even turned over to be prosecuted?

8 A. No.

9 Q. Is that going to cause you any kind of
10 a problem in this situation, being a juror on a case
11 like this?

12 A. It might be difficult.

13 Q. It's important -- what happened to your
14 friend, and the circumstances, and the situation that
15 existed, and where were you guys? What country were
16 you in?

17 A. At that time I lived in central Europe,
18 Roman country.

19 Q. Okay.

20 Did that have something to do with why --

21 A. Yes.

22 Q. -- nobody was going to get prosecuted?

23 A. Yeah.

24 Q. Well, do you understand that that
25 situation here is completely different, I mean, what

APP. 276

1 that -- what your girlfriend and you had experienced
2 in that environment, and in that culture, and in that
3 place was completely and totally different than what
4 goes on in here.

5 A. Okay.

6 Q. Can you take that kind of an experience,
7 a horrible experience for your girlfriend, and for you,
8 can you leave it outside and not let it interfere with
9 your ability to be fair and impartial to both sides in
10 this case?

11 A. Yes.

12 Q. Okay..

13 That's all that -- we know that everybody can
14 have some pretty traumatic incidents in their background,
15 but all we want you to do is to sit and listen to the
16 evidence in this case, pay close attention, follow the
17 instructions on the law that I give you, and then go and
18 consult with the rest of the jurors and reach a verdict,
19 and be fair and impartial to both the State and to the
20 Defense as you do that.

21 Can you to that?

22 A. Oh, yes, I can.

23 Q. Okay.

24 Other than that experience, have you had anything
25 else in your background that could possibly bear upon your

APP. 277

1 ability to be a juror in a case like this?

2 A. No.

3 Q. That is the only thing that you can think
4 of?

5 A. Yes.

6 Q. Do you understand what we are going to ask
7 this jury to do?

8 A. Yes.

9 Q. After you have heard the evidence and the
10 instructions on the law, do you understand what we are
11 going to ask the jury to do?

12 Can you do that? Can you go back and render,
13 can you consult with the rest of the jurors and render
14 a verdict, and answer the question whether or not you
15 think the State proved its case beyond a reasonable
16 doubt?

17 Can you answer that kind of a question?

18 A. Yes.

19 Q. If you think the State proved its case
20 beyond a reasonable doubt, can you come back and say,
21 guilty?

22 A. Yes.

23 Q. If you think that the State failed to
24 prove the Defendant's guilt beyond a reasonable doubt,
25 can you come back to court and say, not guilty?

APP. 278

1 A. Yes.

2 Q. Do you think that you have a neutral
3 and an impartial, and a fair frame of mind when you
4 come to serve on this jury?

5 A. Yes.

6 Q. If you were the Defendant or the
7 prosecutor on either side, and you knew that there was
8 a juror that has the frame of mind that you have, would
9 you be comfortable with that?

10 A. I would.

11 Q. You would?

12 A. I would.

13 Q. You would? Okay, good.

14 MS. HOLTHUS: I will pass for cause.

15 VOIR DIRE EXAMINATION OF JUROR SVETLANA HUGGINS
16 BY MR. FELICIANO:

17 Q. Ms. Huggins?

18 A. Yes.

19 Q. You talked about the experience that
20 you had in Europe, and it seemed like that was pretty
21 difficult for you, wasn't it?

22 A. It was at the time.

23 Q. I mean, were the police called, or, I
24 mean, how did that happen?

25 A. Yes, the police were called and there

APP. 279

1 was no response.

2 Q. So they didn't even respond to the crime
3 being committed?

4 A. No.

5 Q. And that must have been a really difficult
6 experience for you, you and your friend?

7 A. Yes.

8 Q. Okay.

9 Is there anything about that that makes it
10 difficult for you to sit here and listen to this trial?

11 A. No.

12 MR. FELICIANO: Thank you. Pass for cause.

13 THE COURT: All right. Approach the bench.

14 *****

15 (Whereupon, a brief, informal discussion was
16 had off the record at the bench between the Court and
17 counsel.)

18 *****

19 THE COURT: Okay. We are going to ask Katelyn
20 Boshart to go ahead and step down, and report to the
21 third floor Jury Commissioner's office.

22 And, Katelyn, thank you very much for your
23 participation in this case.

24 JUROR BOSHART: Thank you.

25 (Juror Katelyn Boshart excused at this time.)

APP. 280

1 THE COURT: We are going to replace Katelyn
2 with Dylan Hinton, that second chair right there,
3 Dylan.

4 JUROR HINTON: All right.

5 VOIR DIRE EXAMINATION OF JUROR DYLAN HINTON
6 BY THE COURT:

7 Q. So, Dylan, how long have you been in
8 Las Vegas?

9 A. 24 years.

10 Q. Where did you go to school?

11 A. Red Rock.

12 Q. What do you do?

13 A. I deliver pharmaceuticals.

14 Q. Okay.

15 We get a lot of people through the court system
16 who deliver pharmaceuticals. But that's not your line
17 of employment?

18 A. Legally, it is.

19 Q. Are you married?

20 A. Yeah.

21 Q. What does your wife do?

22 A. Same thing.

23 Q. Okay. You guys have kids?

24 A. No.

25 Q. Have you ever been trained or employed

APP. 281

1 in any kind of law enforcement?

2 A. No.

3 Q. Or anybody close to you?

4 A. No.

5 Q. Okay.

6 Have you, or anybody close to you, ever been
7 the victim of, or accused of a crime?

8 A. Yes, I went to school in California for
9 four months, and I was accused, or I was arrested for
10 a felony, and it was -- after time served, it was reduced
11 to a misdemeanor.

12 Q. Okay.

13 A. Yeah.

14 Q. What was the type of crime that you are
15 talking about?

16 A. Of stealing car radios.

17 Q. Car radios, okay. It was like an auto
18 burglary kind of charge?

19 A. Yeah. I wasn't really sure what the
20 initial charge was, but I just knew it was reduced
21 down, and I left California and never went back there.

22 Q. Okay. And how long ago was that?

23 A. I was 18.

24 Q. Okay.

25 Other than that incident, anything else, and

APP. 282

1 more specifically, anything related to sexual related
2 crimes?

3 A. No.

4 Q. Okay.

5 And so, considering what happened to you
6 over there you -- well, you dealt both with some police,
7 and you dealt with some prosecutors, too, right?

8 A. Yes, but I just pled no contest so there
9 was no --

10 Q. So there was no trial, or anything?

11 A. No.

12 Q. Did you have -- did you have an attorney
13 working for you on the case?

14 A. Yes.

15 Q. And did your attorney work out some kind
16 of a deal with the prosecution?

17 A. Yes.

18 Q. Okay.

19 And that's -- and then the basic deal was,
20 you did some requirements, and then your case got
21 reduced, and you stayed out of trouble, and that was
22 the end of it?

23 A. Right.

24 Q. Okay.

25 Anything about that experience that would

APP. 283

1 cause you to harbor any animosity towards the police
2 in this case?

3 A. No, sir.

4 Q. Or any animosity towards the prosecution
5 in this case?

6 A. No.

7 Q. Would that case have any effect on
8 your ability to sit as a juror in a case like this at
9 all?

10 A. I don't know.

11 Q. You don't think it would or --

12 A. I deserved it, you know?

13 Q. Okay.

14 All right. Do you think that you can leave
15 all that whole history, that scenario, and incident,
16 out in the hallway and not let it affect your ability
17 to be fair and impartial in this kind of a case?

18 A. Yes.

19 Q. Okay. Have you ever been on a jury?

20 A. No.

21 Q. Okay.

22 Anything else that I haven't touched upon
23 specifically that might bear upon your ability to serve
24 as a juror in a case like this?

25 A. No.

APP. 284

1 Q. You wouldn't have any difficulty listening
2 to the testimony of a police officer and not treating it
3 differently than anybody else?

4 A. No.

5 Q. Okay.

6 Do you understand what it is that we ask a
7 jury to do in these kind of cases?

8 A. Yes.

9 Q. Okay. Basically, in every kind of a case,
10 do you understand what the jury has to do?

11 A. Yeah.

12 Q. Anything about what we are going to ask
13 the jury to do cause you any problems?

14 A. No, sir.

15 Q. Okay.

16 Do you think that you have a fair, and an
17 impartial, and a neutral kind of a mind set as you
18 come to serve on this jury?

19 A. Yes.

20 Q. Would you be comfortable being the
21 Defendant or the prosecution in this case with somebody
22 on the jury that has your frame of mind?

23 A. Yeah, maybe not my background, but my
24 frame of mind, yes.

25 THE COURT: All right, all right, that's

APP. 285

1 fine.

2 All right. Does the State have any other
3 questions?

4 MS. HOLTHUS: No thanks. Pass for cause.

5 THE COURT: Defense?

6 MS. HAMERS: We will pass for cause, Your
7 Honor.

8 THE COURT: Okay. Approach the bench.

9 *****

10 (Whereupon, a brief, informal discussion was
11 had off the record at the bench between the Court and
12 counsel.)

13 *****

14 THE COURT: All right. We are going to ask
15 Hilary Reynolds to go ahead and step down, and report
16 to the third floor Jury Commissioner's office.

17 Also, Leopoldo Adaoag, and I wrote it down
18 here, Adaoag.

19 Go ahead and go down to the third floor Jury
20 Commissioner's office, and report back in, tell them
21 what's going on, and I appreciate your participation.

22 Thank you very much for being here and
23 participating.

24 JUROR ADAOAG: Thank you, Your Honor.

25 JUROR REYNOLDS: Thank you.

APP. 286

1 (Jurors Leopoldo Adaoag and Hilary Reynolds
2 were excused at this time.)

3 THE COURT: And we will replace hilary with
4 Sonja Spears, and Mr. Adaoag will be replaced by Christon
5 Padia, and Christon, that second chair in the middle
6 row. Am I saying that right, Padia?

7 JUROR PADIA: Yes.

8 THE COURT: Okay.

9 VOIR DIRE EXAMINATION BY JUROR SONJA SPEARS
10 BY THE COURT:

11 Q. Okay. Sonja?

12 A. I have lived in North Las Vegas for nine
13 and a half years.

14 I am originally from California.

15 I worked for National Security Technologies,
16 which is a prime contractor for the United States
17 Department of Energy.

18 I have two grown children, 23 year old daughter,
19 she works in retail, a 20 year old son, who is at home
20 in retail, my 20 year old son, who is at home.

21 My stepfather is a retired police officer
22 from California. He has been retired for probably 25
23 years. No --

24 Q. Husband?

25 A. Oh, divorced.

APP. 287

1 Q. Okay.

2 A. Yeah, he is in California.

3 Q. Okay.

4 A. No felonies, no crimes, no sexually related
5 charges.

6 Q. No sexually related charges?

7 A. No.

8 Q. Other than your stepfather, which you
9 obviously were very close to, but he retired 22 years
10 ago as a police officer, anything else about your
11 background that may bear upon your ability to be fair
12 and impartial as a juror when you are listening to the
13 testimony of a police officer?

14 A. Absolutely not.

15 Q. Okay. You could treat him just like any
16 other witness?

17 A. Yes, I can.

18 Q. Okay. Have you ever been on a jury
19 before?

20 A. No.

21 Q. Anything else that you can think of that
22 might cause you difficulty sitting on a jury on a case
23 like this?

24 A. No.

25 Q. Okay.

APP. 288

1 Do you think you have a fair, impartial,
2 and a neutral frame of mind as you come to this jury
3 service?

4 A. Yes, sir.

5 Q. Do you understand what we are going to
6 ask this jury to do?

7 A. Yes, sir.

8 Q. Is that going to cause you any kind of
9 problem/?

10 A. No. Of course not..

11 Q. Okay.

12 If you think the State proved the case
13 beyond a reasonable doubt, you can come back and say,
14 guilty?

15 A. Absolutely.

16 Q. And can you also do just the opposite?

17 A. Not guilty if they do not.

18 Q. If you think the State failed to prove
19 beyond a reasonable doubt the Defendant is guilty,
20 could you come back to court and say, not guilty?

21 A. Yes, I can.

22 Q. Okay.

23 Are you comfortable on either side of the
24 aisle here with somebody on the jury that has the frame
25 of mind that you have?

APP. 289

1 A. Yes, sir..

2 THE COURT: The State?

3 MS. HOLTHUS: Nothing for the State. We pass
4 for cause.

5 THE COURT: Defense?

6 MR. FELICIANO: Just briefly, thank you.

7 VOIR DIRE EXAMINATION OF JUROR SONJA SPEARS

8 BY MR. FELICIANO:

9 Q. Your stepfather is a retired police officer,
10 correct?

11 A. Yes.

12 Q. Do you still talk to him a lot?

13 A. We are not as close as we used to be.

14 We had a little falling out but, I mean, he lives here
15 in Vegas so --

16 Q. When you did, when you were close, did
17 you talk about his work a lot, or anything like that?

18 A. No, not really, I mean, you know, it
19 was not like me and him talking about it, no.

20 Q. Like did he tell you about specific
21 cases?

22 A. Oh no.

23 Q. Or anything that he was working on?

24 A. No, he was on the SWAT team. He was
25 on the high level, but he wouldn't talk about it.

APP. 290

1 Q. So he actually couldn't talk to you
2 about stuff?

3 A. Well, I don't know if he couldn't or
4 he didn't, or whatever, yeah.

5 Q. Okay.

6 A. Yeah, it just didn't really come up.

7 MR. FELICIANO: Okay. All right, thank you.

8 We will pass for cause.

9 THE COURT: Okay, all right.

10 VOIR DIRE EXAMINATION OF JUROR CHRISTON PADIA
11 BY THE COURT:

12 Q. Christon, how long have you lived here
13 in Las Vegas?

14 A. I have been here a little over four
15 years. I came from Arizona.

16 Q. Arizona? First one from Arizona. What
17 do you do for a living?

18 A. I am a beverage manager at the Bellagio.

19 Q. Okay. Are you married?

20 A. I am divorced.

21 Q. Children?

22 A. One, and he is eight.

23 Q. Okay.

24 Have you, or anybody close to you, ever been
25 trained or employed in law enforcement?

APP. 291

1 A. My uncle is in the Mesa Police Department.

2 Q. Mesa Arizona Police Department?

3 A. Yes.

4 Q. Anything about that relationship, having
5 an uncle that's a police officer that would cause you
6 difficulty being on a jury like that?

7 A. No, it wouldn't.

8 Q. Anything else that you can think of that
9 might cause you difficulty in being a juror and listening
10 to the testimony of a police officer?

11 A. No.

12 Q. You would treat it just like any other
13 witness?

14 A. Yes.

15 Q. Okay. And have you ever been on a jury
16 before?

17 A. Never.

18 Q. Have you or anybody close to you ever
19 been the victim of or accused a crime -- well, first,
20 more pointedly, a sexually related crime?

21 A. No.

22 Q. What about any kind of a crime?

23 A. My little sister was involved with drugs,
24 she was arrested for possession.

25 Q. Possession of drugs?

APP. 292

1 A. Yes.

2 Q. Okay. Was she prosecuted?

3 A. I think she just had to -- she got arrested
4 for it. She was under age.

5 Q. Anything about that experience of having
6 a sister that had gotten in trouble that would cause you
7 to harbor any animosity towards the Police Department,
8 or the prosecutor in this case?

9 A. Absolutely not, she was wrong in what she
10 did.

11 Q. Okay.

12 Anything at all about that incident that would
13 cause you to be anything but fair and impartial?

14 A. No.

15 Q. Okay. You can set that all aside?

16 A. I'm sorry?

17 Q. You can set that all aside?

18 A. Yes.

19 Q. Okay.

20 And, once again, do you understand the nature
21 of jury service?

22 A. Yes.

23 Q. Do you understand that the kind of a
24 question that the jury in this case is going to have
25 to answer at the end of this case. Is that going to

APP. 293

1 cause you any kind of difficulty?

2 A. No.

3 Q. Okay.

4 If you think the State has proven this Defendant
5 guilty beyond a reasonable doubt, can you come to court,
6 and say, guilty?

7 A. Yes.

8 Q. Can you also at the same time if you feel
9 that the State failed to prove the Defendant guilty beyond
10 a reasonable doubt, can you come back to court and say,
11 not guilty?

12 A. Yes.

13 Q. Okay.

14 Do you think that you have a fair, impartial,
15 and a neutral frame of mind as you come to serve on this
16 jury?

17 A. Yes.

18 Q. Would you be comfortable with you on the
19 jury if you were sitting over here on either side of
20 the aisle over here as the Defendant or the prosecutor?

21 A. Pardon me?

22 Q. Would you be comfortable if you were
23 over here as either the Defendant or the prosecutor
24 with somebody on the jury that has your frame of
25 mind?

APP. 294

1 A. Yes.

2 THE COURT: Okay. The State?

3 MS. HOLTHUS: Nothing. Thank you. Pass for
4 cause.

5 THE COURT: The Defense?

6 MR. FELICIANO: Briefly.

7 VOIR DIRE EXAMINATION OF JUROOR CHRISTON PADIA
8 BY MR. FELICIANO:

9 Q. Ms. Padia, you talked about your sister
10 having legal problems in the past.

11 Were you -- did you talk to her about that?

12 Were you involved in that?

13 A. I was, yes.

14 Q. Do you think she was treated fairly?

15 A. Considering that she was under age, and
16 that, and it was pretty much all taken care of, it was
17 her who got it involved, they were to her as to anybody
18 else.

19 Q. So as far as the way the police handled
20 it, you thought they were fair to her?

21 A. Yeah.

22 MR. FELICIANO: Thank you. Pass for cause,
23 Your Honor.

24 THE COURT: All right. Approach the bench.

25 *****

APP. 295

1 (Whereupon, a brief, informal discussion was
2 had off the record at the bench between the Court and
3 counsel.)

4 *****

5 THE COURT: Okay.

6 We are going to ask Leonor Enriques to go
7 ahead and step down, and report to the third floor Jury
8 Commissioner's office.

9 Ms. Enriques, we appreciate your participation,
10 and we thank you very much for being here. You go on
11 down to the third floor.

12 (Juror Leonor Enriques was excused at this
13 time.)

14 THE COURT: We are going to replace Leonor
15 with Felipe Garay.

16 And then we are going to ask that Christon
17 Padia go ahead and step down.

18 We will replace Christon with Tyler Yim.

19 (Juror Christon Padia excused at this time.)

20 VOIR DIRE EXAMINATION OF JUROR FELIPE GARAY
21 BY THE COURT:

22 Q. Okay. Mr. Garay, is that correct?

23 A. Yes.

24 Q. Is it Felipe?

25 A. Felipe Garay.

APP. 296

1 Q. Felipe Garay. How long have you been
2 here in Las Vegas?

3 A. 19 years.

4 Q. What do you do for a living?

5 A. I am a laborer for union.

6 Q. You are a laborer for who?

7 A. Laborer for union.

8 Q. Oh, okay. What union is that, what do
9 you do?

10 A. It's construction.

11 Q. Construction. Regular construction labor
12 union?

13 A. Yes.

14 Q. Okay. Are you married?

15 A. No, I am divorced.

16 Q. Okay. Do you have grown children?

17 A. Yeah, I got one daughter. She is 22,
18 she is at UNLV, and the other one is in Atlanta,
19 Georgia, a nurse.

20 Q. Okay. The one that lives in Georgia does
21 what?

22 A. She is at the university.

23 Q. Okay. She is in school also?

24 A. Yes.

25 Q. Okay, all right.

APP. 297

1 Have -- first of all, have you ever been on
2 a jury before?

3 A. No, the first time.

4 Q. Okay.

5 Have you ever been employed, or trained, or
6 anybody close to you anybody close to you been trained
7 or employed in law enforcement?

8 A. Not here. I was in Mexico.

9 Q. Okay. How long ago was that?

10 A. I worked for four years in that place
11 but because of my daughters that were in that place,
12 moved to here.

13 Q. Okay.

14 A. But that was about 22 years.

15 Q. That was about 22 years ago?

16 A. Yes.

17 Q. Was that a municipal Police Department
18 or was it some kind of a State or a Federal?

19 A. No, no, it was just in the city.

20 Q. It was the city police. Did you have
21 special training for that?

22 A. No, it was different rules in Mexico.

23 Q. I know.

24 Okay. So you didn't really have any special
25 training to do what you were doing?

APP. 298

1 A. No.

2 Q. Is there anything about the fact that
3 you were on a Police Department some 20 years ago that
4 would cause you difficulty being a juror in a case like
5 this?

6 A. No, I don't think so.

7 Q. Okay.

8 The fact that you were a police officer,
9 would that cause you to treat the testimony of a police
10 officer on the witness stand differently than any other
11 witness?

12 A. No, I wouldn't let it.

13 Q. Okay.

14 Would that -- have you, or anyone close to
15 you, ever been the victim of a crime?

16 A. No, sir.

17 Q. Have you, or anybody close to you ever
18 been accused of a crime?

19 A. No.

20 Q. And, in particular, any kind of a sexual
21 related type crime?

22 A. No, nothing at all..

23 Q. Can you think of anything that I haven't
24 specifically touched upon?

25 You have heard all these questions that we

APP. 299

1 have asked. Is there anything that I have asked anybody
2 that has caused to think of something that you might think
3 we would be interested in knowing about?

4 A. No.

5 Q. Okay. Nothing in your background?

6 A. No, you know, well, those cases like one,
7 that lady, there wasn't too much left, of a minor age,
8 or stuff like that.

9 Q. Okay, all right.

10 Do you understand what it is that a jury does
11 in cases like this?

12 Do you understand the function that the jury
13 performs in cases like this?

14 A. Yes.

15 Q. The jury has to listen to the evidence,
16 pay attention and follow the instructions of the law,
17 and then they have to consult with each other, and they
18 have to render a verdict and decide whether or not the
19 State proved the Defendant guilty beyond a reasonable
20 doubt?

21 A. I understand.

22 Q. Do you understand that?

23 A. Yes, sir.

24 Q. Can you perform that function?

25 A. Yeah, I can do that.

APP. 300

1 Q. If you think the State did prove the
2 Defendant guilty beyond a reasonable doubt, can you
3 come back to court and say, guilty?

4 A. Yes.

5 Q. If you think the State failed to prove
6 the Defendant guilty beyond a reasonable doubt?

7 A. Yes.

8 Q. Can you come back to court and say not
9 guilty?

10 A. Yes, sir.

11 Q. Do you think that you have a fair, and
12 impartial, and a neutral frame of mind?

13 A. Yes, I do.

14 Q. Do you think so?

15 A. Yes, I do.

16 Q. Would you be comfortable if you were
17 the Defendant or the prosecutor with somebody on the
18 jury that has your frame of mind?

19 A. Yes.

20 Q. Okay.

21 A. No problem.

22 THE COURT: The State?

23 MS. HOLTHUS: Nothing. Pass for cause, thank
24 you.

25 MR. FELICIANO: Pass for cause.

APP. 301

1 THE COURT: All right.

2 VOIR DIRE EXAMINATION OF JUROR TYLER YIM

3 BY THE COURT:

4 Q. Then I have Tyler -- is it Yim?

5 A. Yes, sir.

6 Q. Yim. How long have you been in Las
7 Vegas?

8 A. Five or six years, originally from Hawaii.
9 No grown-up children. I have a small child, no wife.
10 Live with my girlfriend.

11 I work for a private -- a nation-wide
12 private security firm. I'm a supervisor.

13 Q. Okay.

14 In what -- in what capacity?

15 As a supervisor, what kind of security work
16 does your firm do?

17 A. My company normally focuses in retail
18 as far as the malls. We have --

19 Q. Theft related security?

20 A. Yes, and also hotel security.

21 Q. Okay. In that capacity, let me ask
22 you:

23 Do you have a lot of interaction with the
24 Police Department?

25 A. Yes, a lot. I work with police officers

APP. 302

1 daily.

2 Q. Is that going to cause you difficulty
3 in being a juror in a case like this?

4 A. No.

5 Q. Where there is going to be a police
6 officer office?

7 A. No, it shouldn't.

8 I have been trained to be people minded from
9 all incidents. I have had thousands of hours of
10 training with the Police Department and cadets as
11 well.

12 Q. Okay.

13 A. I wouldn't have any problem with that,
14 Your Honor.

15 Q. Do you think that that would, in any
16 manner affect your ability to be fair and impartial
17 to both the Defendant and to the State?

18 A. No, not at all.

19 Q. Can you leave all of that background
20 aside and be a juror and pay attention just to the
21 evidence that you hear in this case?

22 A. Yes.

23 Q. And pay attention to the law that I
24 instruct you on, and render a verdict, being fair
25 and impartial to both the Defendant and to the State?

APP. 303

1 A. Yes.

2 Q. Okay.

3 Have you, or anybody close to you ever been
4 the victim of a sexual related crime?

5 A. No, sir.

6 Q. How about any other kind of crime?

7 A. No crimes.

8 Q. Okay.

9 Anything else you can think of that might
10 bear upon your ability to be a juror on this case?

11 A. No, sir.

12 THE COURT: The State?

13 MS. HOLTHUS: Nothing. Thank you. The State
14 will pass for cause.

15 MR. FELICIANO: Pass for cause.

16 THE COURT: Okay. Approach the bench.

17 *****.

18 (Whereupon, a brief, informal discussion was
19 had off the record at the bench between the Court and
20 counsel.)

21 *****

22 THE COURT: All right. We are going to ask
23 Tyler Yim to go ahead and step down and report to the
24 third floor Jury Commissioner's office.

25 I appreciate your participation and being here,

APP. 304

1 Mr. Yim..

2 JUROR YIM: Thank you.

3 (Juror tyler Yim excused at this time.)

4 THE COURT: We are going to replace Tyler with
5 Sandra Walton.

6 VOIR DIRE EXAMINATION OF JUROR SANDRA WALTON

7 BY THE COURT:

8 Q. Sandra, if you would take that second chair
9 on that middle row.

10 A. Okay.

11 Q. You know what I am going to ask you, don't
12 you?

13 A. Yes.

14 Q. Okay. And how long have you been in Las
15 Vegas?

16 A. 13 years.

17 Q. What do you do for a living?

18 A. I work for United Airlines here at McCarran
19 Airport.

20 Q. Okay. How long have you worked for United?

21 A. 18 years in June.

22 Q. Okay. Are you married?

23 A. Yes.

24 Q. What does your husband do?

25 A. He is a dispatcher also for United Airlines.

APP. 305

1 Q. Okay. They are all independent, aren't
2 they?

3 A. Yes, independent.

4 Q. Okay. Grown children?

5 A. I have four grown children, and two grown
6 stepchildren.

7 My oldest is 31, and he is currently being
8 considered for disability. He is bipolar, and my second
9 son is 29, and he has got a little girl, and he is a
10 collector.

11 Q. Works in collections?

12 A. Right.

13 Q. Okay.

14 A. My daughter, she's 27. She has a three
15 year old child. She is married, currently in Utah, and
16 she is a CPA, an accountant, graduated from BYU with a
17 master's degree.

18 Q. Okay.

19 A. And then my daughter is 26. She has a
20 little boy six months old. She is a supervisor for
21 Metro Fire Department Bureau.

22 Q. Okay. Is there anybody close to you in
23 law enforcement?

24 A. No, Your Honor.

25 Q. Anybody, you, or anybody, ever been

APP. 306

1 trained in law enforcement?

2 A. No, sir.

3 Q. I notice you had difficulty --

4 A. I have club CP.

5 Q. Okay.

6 A. And it's -- when I'm really tired I take
7 off for a couple of days. I was, and I had damage,
8 and it caused nerve damage to coordinate the left
9 leg.

10 Q. Okay. Well, are you able to sit?

11 A. Yeah.

12 Q. I mean, can you sit --

13 A. Yeah.

14 Q. You don't have any difficulty?

15 A. Oh yes.

16 Q. There is nothing about -- I know you say
17 CP, you meant cerebral palsy?

18 A. Right.

19 Q. Anything about that that is going to cause
20 you difficulty being able to --

21 A. Just the parking.

22 Q. Yeah, I can understand that. Joe, there
23 is a special place for her to park, right?

24 MARSHAL DOWNING: She can park right on the
25 first floor.

APP. 307

1 BY THE COURT:

2 Q. You do, when you are on a jury, you do
3 actually have a place to park.

4 A. Okay.

5 Q. And it's just across the street.

6 Q. Okay.

7 And do you have any other difficulties as far
8 as getting in or out, we can always make arrangements
9 for you to get a wheelchair for you.

10 A. No, I'm fine.

11 Q. Okay.

12 But as far as sitting down for periods of
13 time, you are not going to -- this doesn't cause you
14 any problem?

15 A. No problem.

16 Q. -- like that?

17 A. No.

18 Q. Okay, good.

19 All right. Now, have you ever been on a jury
20 before?

21 A. Never.

22 Q. Anything in your background that might
23 affect your ability to be a juror and sit and listen to
24 the testimony of a police officer?

25 A. No.

APP. 308

1 Q. Okay. You would treat them just like
2 any another witness?

3 A. Yes. . .

4 Q. That was a yes, right?

5 A. Yes.

6 Q. All right. Anything that you can think of
7 with all of these questions that I have been asking you
8 that you can --

9 A. (Interposing) The only thing that I am
10 concerned with is my son is 31, and I found out the
11 therapy that he is going through right now, he has got
12 severe depression, bipolar, and some other things that
13 he was raped twice by another male, and he turned gay --
14 well, when he was 16 years old, he told me he was gay,
15 and I didn't know.

16 I knew something happened, but he never
17 told me what, and this has all come out last week.

18 Q. So you are saying that the incident that
19 you are saying where he was sexually assaulted, he was
20 16 when it happened?

21 A. Yes.

22 Q. And he is now 31?

23 A. 31, and he hasn't been able to hold a
24 job, and we think that he is dysfunctional. I have
25 been supporting him until about a year ago when he

APP. 309

1 tried committing suicide four times, and then the State
2 decided he needed to be in a group facility, and he is
3 being considered for disability.

4 Q. So is he in a group facility right
5 now?

6 A. Yes, he is.

7 Q. And so you don't have to go and take
8 care of him?

9 A. No.

10 Q. All right. Let me get down to the
11 heart of this.

12 Is there anything about that? This is a
13 son that you have that is 31, who has been diagnosed
14 bipolar, and he had some problems, and you recently
15 had a revelation that he had some experience of the
16 nature that you just described?

17 A. Right.

18 Q. All right.

19 Pretty unusual, fairly traumatic. It is
20 certainly an experience that nobody would relish.

21 So, are you going to be able to keep that --
22 keep all of that scenario away from your function and
23 duty as a juror in this case?

24 A. Yes.

25 Q. Can you leave that whole thing that

APP. 310

1 you just described to us, as bad as it sounds, can you
2 leave that out in the hallway and not let that interfere
3 with your ability to be a juror and be fair and impartial
4 in this case?

5 A. My only thing is that there is cause and
6 effect for everything that happens, and not knowing all
7 the details what caused my son to basically not be able
8 to function, or graduate high school, or hold a job
9 properly, I feel now that this has come out that it has
10 all been because of the crime that happened that never
11 got taken care of, he never got caught.

12 Q. And it never got brought to the attention
13 of anybody?

14 A. Right, and going through this with my son
15 for years, and it's just at a point where they told me I
16 wouldn't have to take care of him anymore, and that the
17 State will so that's all still in the process, and I'm
18 just everyday, I never know if he is going to commit
19 suicide. He goes into a shell. It's just a lot of
20 stuff that happened.

21 Q. Well, you know, nobody can answer the
22 questions that I am asking you.

23 Is that going to interfere with your ability
24 to focus and concentrate on the evidence that's going
25 to be admitted in this case or not?

APP. 311

1 A. I have to say that in a sexual abuse
2 case that I don't think I can be fair to the Defendant
3 at this time.

4 Q. You don't think that you could be fair to
5 the State?

6 A. To any party because I am so upset with
7 what happened that caused all the problems.

8 THE COURT: Well, I'm going to let her go.

9 I am going to go ahead and excuse you, okay?
10 you can go ahead down to the third floor Jury
11 commissioner's office, and they will recycle you into
12 some other kind of a trial. They have got a lot of
13 things, a lot of litigation in the building that has
14 nothing to do with what's going on here, okay?

15 JUROR WALTON: Okay.

16 THE COURT: Go ahead, and go on down to the
17 third floor, Sandra. We will replace you with --

18 MS. HAMERS: Before you do, can we approach?

19 THE COURT: Sure.

20 *****

21 (Whereupon, a brief, informal discussion was
22 had off the record at the bench between the Court and
23 counsel.)

24 *****

25 THE COURT: Sandra, you can go ahead and go

APP. 312

1 down, that's all right, I'm sorry.. That had nothing
2 to do with you. We are going to replace Sandra with --

3 THE CLERK: With Marlo Villasenor, badge 205.

4 VOIR DIRE EXAMINATION OF JUROR MARLO VILLASENOR
5 BY THE COURT:

6 Q. How do you pronounce that, is that Marlo
7 Villasenor?

8 A. Villasenor.

9 Q. Villasenor?

10 A. Yes, correct.

11 Q. Okay. Marlo, how long have you been here
12 in Las Vegas?

13 A. Almost 12 years.

14 I am married. My husband works for Paris in
15 room service.

16 I am a Clark County School District employee.
17 I teach physical education to primary students, primary
18 grade level. We have two boys, one primary and one
19 secondary.

20 Q. Good. Anybody close to you that is in law
21 enforcement at all?

22 A. No.

23 Q. Anything that you can think of in your
24 past or background that would affect your ability to
25 listen a police officer's testimony and treat him

APP. 313

1 differently?

2 A. No.

3 Q. Okay. And have you ever been on jury
4 duty before?

5 A. No.

6 Q. Okay.

7 Do you understand the nature of -- well,
8 crimes.

9 Have you, or anybody close to you, ever been
10 accused of, or the victim of any kind of a sexual
11 related crime?

12 A. No.

13 Q. How about any other kind of crime?

14 A. No.

15 Q. Okay.

16 Do you understand the nature of the jury
17 service that we are about to ask this jury to engage
18 in?

19 A. Absolutely.

20 Q. Any problems?

21 A. None.

22 Q. Can you handle it?

23 A. Yes, sir.

24 Q. Okay.

25 This is a very serious case. It's going to

APP. 314

1 be -- it is going to require your full attention. You
2 have got to be fair and impartial from the very beginning
3 to the very end.

4 Do you think that you can do that?

5 A. Yes.

6 Q. If you think that the State has proven
7 their case beyond a reasonable doubt that you can come
8 back and say, guilty?

9 A. Yes.

10 Q. Can you come back and say not guilty if
11 you feel just the opposite, if they did not --

12 A. Yes.

13 Q. -- prove their case beyond a reasonable
14 doubt to you?

15 A. Yes.

16 Q. Anything else that I haven't touched
17 on directly with you that you think might bear on your
18 ability to be fair and impartial here?

19 A. I'm good.

20 Q. Okay.

21 Would you be comfortable if you were the
22 Defendant or the prosecution with somebody on the jury
23 with your frame of mind?

24 A. Absolutely.

25 THE COURT: Sounds good to me. Okay, the State?

APP. 315

1 MS. HOLTHUS: Okay. Pass for cause.

2 THE COURT: Defense?

3 MR. FELICIANO: Pass for cause.

4 THE COURT: Approach the bench.

5 *****

6 (Whereupon, a brief, informal discussion was
7 had off the record at the bench between the Court and
8 counsel.)

9 *****

10 THE COURT: Okay.

11 We are going to ask Dylan Hinton to go ahead
12 and step down, report to the third floor Jury Commissioner's
13 office, and also Marlo Villasenor to go ahead and report --
14 step down and report to the third floor Jury Commissioner's
15 office.

16 (Jurors Dylan Hinton and Marlo Villasenor were
17 excused at this time.)

18 THE COURT: And Dylan Hinton is going to be
19 replaced by Thomas Price, and Marlo Villarsenor will be
20 replaced by Peter Zak.

21 Thomas Price in that second seat, and Peter
22 Zak in that other second seat.

23 VOIR DIRE EXAMINATION OF JUROR THOMAS PRICE
24 BY THE COURT:

25 Q. Mr. Price?

APP. 316

1 A. Yes.

2 Q. How long have you been in Las Vegas?

3 A. 30 years.

4 Q. What do you do for a living?

5 A. I'm the sales manager for a liquor
6 distributorship.

7 Q. Which one?

8 A. Coors.

9 Q. All right. Do you know Bruce, and all
10 those guys?

11 A. Oh, yeah.

12 Q. Are you married?

13 A. Yes, sir.

14 Q. What does your wife do?

15 A. She works for Home Health Care.

16 Q. Okay. Grown children?

17 A. She has three, I have two.

18 Q. Quickly, what do they do?

19 A. 34, 32 boys.

20 Q. What do they do for a living?

21 A. One is -- the 34 year old works for a
22 security systems company.

23 Q. Okay.

24 A. The 32 year old boy is in the service.

25 Q. Okay.

APP. 317

1 A. And the 30 year old daughter is a
2 stay-at-home mother.

3 My daughter is 23, and she lives in California
4 trying to be a movie star.

5 Q. How is that working out?

6 A. You will see her on American Idol in
7 January.

8 Q. Oh, all right.

9 A. And my son, 19, he lives with his mother.

10 Q. Anybody in law enforcement, anybody
11 trained or employed in law enforcement?

12 A. No, sir.

13 Q. Okay. Have you ever been on jury service
14 before?

15 A. No, sir.

16 Q. Have you, or anybody close to you, ever
17 been the victim or accused of a sexually related crime?

18 A. No, sir.

19 Q. How about any other kind of crime?

20 A. Only a friend of mine was murdered.

21 Q. I'm sorry?

22 A. A friend of mine was murdered.

23 Q. How long ago was that?

24 A. About three months?

25 Q. About three months ago?

APP. 318

1 A. Yes.

2 Q. Anybody been caught and prosecuted yet?

3 A. Not prosecuted yet.

4 Q. But somebody has been apprehended for
5 it?

6 A. Yes, it was over a robbery.

7 Q. It was a robbery in a store?

8 A. Yes.

9 Q. Anything about that that's going to
10 cause you difficulty being on a jury in a case like
11 this?

12 A. No.

13 Q. Okay. Can you leave that all out in
14 the hallway?

15 A. Yes.

16 Q. Okay. It has nothing to do with this?

17 A. Nothing to do with this.

18 Q. Okay.

19 Anything else that you can think of in your
20 background that would cause you to treat the testimony
21 of a police officer differently than any other witness?

22 A. No, not at all.

23 Q. Anything that we've touched upon, or that
24 I have asked anybody whether you, or anybody else, has
25 raised some question in your mind about anything that

APP. 319

1 you think that we should be aware of?

2 A. No.

3 Q. Okay.

4 Do you think that you come to serve on this
5 jury with a fair, and an impartial, and a neutral mind
6 set?

7 A. Yes.

8 Q. Okay. Do you understand what we are
9 going to ask the jury to do?

10 A. I do, yes.

11 Q. Okay.

12 This is going to be a serious case that is
13 going to require your attention.

14 You have got to follow the instructions and
15 render -- consult with the other members of the jury and
16 then render a verdict?

17 A. Yes.

18 Q. Anything about that that causes you any
19 difficulty?

20 A. No.

21 Q. Can you do it?

22 A. Yes.

23 Q. If the State doesn't prove the Defendant
24 guilty, can you say, not guilty?

25 A. Yes, I can.

APP. 320

1 Q. If the State proves the Defendant guilty
2 beyond a reasonable doubt, can you come back and say,
3 guilty?

4 A. Yes.

5 Q. Anything else that I need to ask you that
6 you think would bear on your ability or your ability to
7 sit as a juror?

8 A. No.

9 Q. Do you think that you have a fair and
10 impartial mind set such that you would be comfortable
11 being both -- either the Defendant or the prosecution
12 and somebody on the jury that has your frame of mind?

13 A. I do.

14 THE COURT: Okay. Does the State have any
15 questions?

16 MS. HOLTHUS: No thanks, Judge.

17 THE COURT: Defense?

18 MS. HOLTHUS: Pass for cause.

19 THE COURT: Defense?

20 MR. FELICIANO: Pass for cause.

21 THE COURT: Okay.

22 VOIR DIRE EXAMINATION OF JUROR PETER ZAK
23 BY THE COURT:

24 Q. Mr. Peter Zak, how long have you been
25 in town here?

APP. 321

1 A. Almost five years.

2 Q. And where are you from?

3 A. I'm from Wisconsin.

4 Q. Okay. What do you do for a living?

5 A. I am retired. I was a carpenter, and
6 my wife is retired, and she was an office worker.

7 Q. And she was what?

8 A. An office worker.

9 Q. Okay. Grown children?

10 A. I have a son that's 30 and a daughter
11 that's 25.

12 Q. So what do they do for a living?

13 A. My son is works in electrical work, and
14 my daughter is a dental assistant.

15 Q. Okay.

16 Anybody close to you ever been trained or
17 employed in law enforcement?

18 A. No.

19 Q. Anything in your background that would
20 cause you difficulty listening to the testimony of a
21 police officer?

22 A. No, sir.

23 Q. Can you treat it just like any other
24 witness?

25 A. Yes.

APP. 322

1 Q. Okay. Have you ever been on a jury?

2 A. No.

3 Q. Anything about your background that
4 you can think of that would cause you difficulty being
5 a juror in a case like this?

6 A. Not that I can think of..

7 Q. Okay.

8 Do you think that if you, and the rest of
9 the jury, conclude that the State has proven their case
10 beyond a reasonable doubt, can you come back and say,
11 guilty?

12 A. I can.

13 Q. If you think that the State failed to
14 prove that the Defendant was guilty beyond a reasonable
15 doubt, could you come back and say, not guilty?

16 A. Yes, I can.

17 Q. Okay.

18 Do you think that you are fair and impartial
19 to the point that if you were one of the litigants in
20 this case you would be comfortable with a juror on the
21 jury that has your frame of mind?

22 A. Yeah.

23 THE COURT: Sounds pretty good to me.

24 The State?

25 MS. HOLTHUS: Pass for cause, thank you.

APP. 323

1 MS. HAMERS: We will pass for cause.

2 THE COURT: All right. Approach the bench.

3 *****

4 (Whereupon, a brief, informal discussion was
5 had off the record at the bench between the Court and
6 counsel.)

7 *****

8 THE COURT: Okay. You are the jury.

9 We are going to let you guys go.

10 Thank you very much for being here, and I
11 hope you can see how many people we have gone through.

12 If you guys weren't here, we couldn't have
13 done this, and we needed you to be here.

14 I want to thank you very, very much for
15 being here because it doesn't work if you were not
16 here.

17 So, thank you, and go ahead and report down
18 to the third floor, the Jury Commissioner's office,
19 and I think they are still waiting for you, and they
20 will tell you to go home.

21 *****

22 (Whereupon, the jury panel not impaneled were
23 excused at this time.).

24 *****

25 THE COURT: All right. Real quickly, we are

APP. 324

1 going to be done. We are not going to do anything else
2 tonight.

3 I am going to give you some fast instructions.

4 MS. HOLTHUS: Thank you, Your Honor.

5 THE CLERK: Swear the jury in?

6 THE COURT: Yeah, yeah, the first thing you need
7 to do is stand up, raise your right hand, and you are going
8 to take a different oath.

9 Now, you are the real deal.

10 *****

11 (Whereupon, the jury, and alternates, were duly
12 sworn at this time.)

13 *****

14 THE CLERK: Thank you. You may be seated.

15 THE COURT: Okay, a couple of things real quick.

16 From now on, you are going to wear the blue juror
17 badges, not those white badges that you got from the Jury
18 Commissioner's office.

19 The difference is the blue badges tell everybody
20 that you guys are jurors. You are not in a jury pool.

21 You are a juror on a case, and you have got that
22 on any time you are around because it's supposed to
23 insulate you from being chatted up by any anybody.

24 You can talk to anybody except the people who
25 are in this room, or the witnesses in this case, and you

APP. 325

1 can't talk to anybody about this case, especially each
2 other, okay?

3 From now on, you don't come in and out the
4 front door. From now on you go with Joe out the back
5 door.

6 We have a jury room right back here where you
7 can put your things.

8 You will meet Joe at the double doors over here
9 at the side in the morning when you come in, and when you
10 take all of your breaks.

11 You go in and out over here.

12 We try to do this so you won't be out here and
13 having a possibility of running into some of the witnesses
14 in the case, okay?

15 I am going to go through this real slow with
16 you before we take this overnight break.

17 Do not discuss this case with anybody,
18 especially each other.

19 Don't watch, listen or read any reports or
20 commentaries through any medium of information, which
21 includes radio, television, newspapers, internet.

22 For heaven's sake, don't go get on the
23 internet. Don't try to look something up about this
24 case.

25 Everything that you need to have to deliberate,

APP. 326

1 to reach a verdict, is going to be presented to you right
2 here during the course of this trial.

3 You cannot consider anything else.

4 The part about not discussing this case with
5 anybody, it's possibly one of the biggest reasons of jury
6 misconduct that cases need to get retried.

7 As inconvenient as it is for us to impose on
8 your life, think about how hard it would be to do this
9 to somebody else because this case had to be retried
10 because you folks didn't pay attention to the instructions,
11 and this case had to be tried.

12 That seems pretty horrible.

13 So just pay attention. Don't discuss this case,
14 period, okay?

15 Go home, tell your wife, your husband, your
16 girlfriend or your boyfriend, I am on the jury in a
17 criminal case, and the Judge asked me not to discuss
18 anything else until the trial is over, okay?

19 Tomorrow, one.

20 I think the person -- the student who had the
21 one o'clock, she's gone, we won't have anything to
22 interfere with us, right?

23 MS. HOLTHUS: Right.

24 THE COURT: All right. So at one o'clock,
25 we won't have anything to interfere with it.

APP. 327

1 The first thing you are going to do is we
2 are going to have the opening statements by the State
3 and the Defense, and we are going to go right into the
4 evidence, and, like I said, it may be short, but it's
5 going to require your full attention, okay?

6 You guys have a good night. I will see you
7 tomorrow morning, meet Joe out there about 10 minutes
8 to one.

9 Off the record.

10 (Discussion off the record.)

11 THE COURT: Ask Joe. I am not even familiar
12 if there is one, but if there is, that's the man to ask
13 right there, okay?

14 A JUROR: Okay.

15 THE COURT: All right. Have a good night.

16 See you tomorrow about 10 till one.

17 MS. HOLTHUS: Thank you, Judge.

18 MS. HAMERS: Okay.

19 THE COURT: Let's be here about 12:30, and we
20 are in recess.

21 *****

22 (End of proceedings on November 3, 2009.)

23 *****

24

25

APP. 328

1 CERTIFICATE
2
3
45 STATE OF NEVADA)
6) ss.
7 CLARK COUNTY)
8
910 I, LEE M. BAHR, CP, CCR 173, do hereby certify
11 that I reported the foregoing proceedings; that the same
12 is true and correct as reflected by my original machine
13 shorthand notes taken at said time and place before
14 the Hon. James M. Bixler, District Court Judge, presiding.
1516 Dated at Las Vegas, Nevada, this
17 28th of March, 2010.18
19
20
21

2223 LEE M. BAHR, CP, CCR 173
24
25