

# **APPENDIX A**

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS

DEC 24 2019

FOR THE NINTH CIRCUIT

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

JUAN ORELLANA,

Petitioner-Appellant,

v.

RAYMOND MADDEN, Warden,

Respondent-Appellee.

No. 17-56717

D.C. No.

2:16-cv-02316-FMO-FFM

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Fernando M. Olguin, District Judge, Presiding

Submitted December 12, 2019\*\*  
Pasadena, California

Before: BOGGS,\*\*\* WARDLAW, and BEA, Circuit Judges.

Juan Orellana is a prisoner in the California penal system serving a term of 15 years to life for convictions of oral copulation with a child and committing a

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

lewd act on a child. He appeals the district court's denial of his petition for a writ of habeas corpus made under 28 U.S.C. § 2254. The sole question we must decide is whether it was "contrary to, or involved an unreasonable application of, clearly established" United States Supreme Court caselaw for the California Court of Appeal to conclude that Orellana did not invoke unambiguously his right to have an attorney present during police interrogation. *See* 28 U.S.C. § 2254(d)(1). We hold that the California Court of Appeal did not violate this standard and affirm the district court in denying Orellana's habeas petition.

At the outset of the interrogation, Detective Hernandez read Orellana his *Miranda* rights. After she read each right to him, Detective Hernandez asked Orellana if he understood the right; each time Orellana responded, "Yes." After Detective Hernandez read Orellana his rights, and after he responded that he understood his rights, the detective asked Orellana why he had skipped his appointment with the detective for a voluntary interview. Orellana responded: "Yes, and then I talked to the attorney 'cause I had already paid her, and she told me, 'You can't go because first—' she said . . . ." Detective Hernandez then interrupted Orellana to tell him "it's not the attorney's decision," and if Orellana wanted to talk about the case, Detective Hernandez could discuss it with him. Orellana continued to talk with Detective Hernandez voluntarily and never asked to speak to his attorney.

Orellana’s “reference to an attorney . . . [was] ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that [he] *might* be invoking the right to counsel,” not that he necessarily did invoke his right. *Davis v. United States*, 512 U.S. 452, 459 (1994). Orellana’s answer referencing an attorney was given in response to a question regarding why Orellana had skipped the scheduled voluntary interview. The statement was clear on two facts: (1) Orellana had retained counsel, and (2) Orellana’s counsel told him not to attend the voluntary interview. No other information was clearly conveyed in the statement, and the words used did not express an unambiguous request for the presence of an attorney. Detective Hernandez was not required to stop the interrogation just because Orellana referenced his attorney; the burden was on Orellana to “unambiguously request counsel.” *Id.*

The California Court of Appeal’s decision that Orellana’s Fifth Amendment rights were not violated when questioning continued because he “had not unambiguously demanded counsel,” *People v. Orellana*, No. B255892, 2015 WL 1954474, at \*7 (Cal. Ct. App. Apr. 30, 2015), applied the correct legal standard and was not an unreasonable application of clearly established federal law. *See* 28 U.S.C. § 2254(d)(1). The district court was correct to deny Orellana’s habeas petition.

**AFFIRMED.**



**United States Court of Appeals for the Ninth Circuit**

**Office of the Clerk**  
95 Seventh Street  
San Francisco, CA 94103

**Information Regarding Judgment and Post-Judgment Proceedings****Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

**Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)**

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

**Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)****Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)****(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

**B. Purpose (Rehearing En Banc)**

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-7806.

### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov)

### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 10. Bill of Costs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

**9th Cir. Case Number(s)**

**Case Name**

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

**Signature**

**Date**

(use "s/[typed name]" to sign electronically-filed documents)

COST TAXABLE	REQUESTED (each column must be completed)			
	No. of Copies	Pages per Copy	Cost per Page	TOTAL COST
Excerpts of Record*	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Principal Brief(s) ( <i>Opening Brief; Answering Brief; 1st, 2nd, and/or 3rd Brief on Cross-Appeal; Intervenor Brief</i> )	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Reply Brief / Cross-Appeal Reply Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Supplemental Brief(s)	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee				\$ <input type="text"/>
<b>TOTAL:</b>				\$ <input type="text"/>

**\*Example:** Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:

No. of Copies: 4; Pages per Copy: 500; Cost per Page: \$.10 (or actual cost IF less than \$.10);

TOTAL: 4 x 500 x \$.10 = \$200.

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# **APPENDIX B**

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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 JUAN ORELLANA, ) No. CV 16-2316 FMO (FFM)  
12 Petitioner, )  
13 v. ) JUDGMENT  
14 RAYMOND MADDEN, Warden, )  
15 Respondent. )  
16 \_\_\_\_\_ )

17 Pursuant to the Order Accepting Findings, Conclusions and Recommendations of  
18 United States Magistrate Judge,

19 IT IS ADJUDGED that the Petition is dismissed with prejudice.  
20

21 DATED: February 15, 2017  
22

23 \_\_\_\_\_ /s/  
24 FERNANDO M. OLGUIN  
25 United States District Judge  
26  
27  
28

# **APPENDIX C**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JUAN ORELLANA,	)	CASE NO. CV 16-2316 FMO (FFM)
Petitioner,	)	ORDER GRANTING CERTIFICATE OF
v.	)	APPEALABILITY
RAYMOND MADDEN, Warden,	)	
Respondent.	)	

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Rule 11(a) of the Rules Governing § 2254 Actions provides:

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

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1 Under 28 U.S.C. § 2253(c)(2), a Certificate of Appeal may issue “only if the  
 2 applicant has made a substantial showing of the denial of a constitutional right.” The  
 3 Supreme Court has held that, to obtain a COA under § 2253(c), a habeas prisoner must  
 4 show that “reasonable jurists could debate whether (or, for that matter, agree that) the  
 5 petition should have been resolved in a different manner or that the issues presented  
 6 were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 429  
 7 U.S. 473, 483-84, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (internal quotation marks  
 8 omitted); *see also Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S. Ct. 1029, 154 L. Ed.  
 9 2d 931 (2003).

10 Here Petitioner has raised a claim that the trial court violated Petitioner’s Fifth  
 11 Amendment rights by allowing the prosecution to admit into evidence Petitioner’s pre-  
 12 trial statements to police that were obtained during interrogation of Petitioner after  
 13 Petitioner requested to have counsel present. The Court finds that this issue is adequate  
 14 to deserve encouragement to proceed further. In particular, in accordance with 28  
 15 U.S.C. § 2253(c)(3), the Court finds that petitioner has made the requisite showing with  
 16 respect to the following issue: Whether the California Court of Appeal unreasonably  
 17 applied clearly established Supreme Court law in determining that Petitioner’s  
 18 statements regarding an attorney could not reasonably be construed as an expression of a  
 19 desire for the assistance of an attorney.

20 THEREFORE, pursuant to 28 U.S.C. § 2253, a COA is GRANTED with respect  
 21 to the foregoing issue.

22  
 23 Dated: February 15, 2017

24 /s/  
 25 FERNANDO M. OLGUIN  
 26 United States District Judge

26 Presented by:

27 /S/ FREDERICK F. MUMM  
 28 FREDERICK F. MUMM  
 United States Magistrate Judge

# **APPENDIX D**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JUAN ORELLANA,	)	Case No. CV 16-2316 FMO (FFM)
Petitioner,	)	
v.	)	ORDER ACCEPTING FINDINGS,
	)	CONCLUSIONS AND
RAYMOND MADDEN, Warden,	)	RECOMMENDATIONS OF
Respondent.	)	UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the entire record in this action, the attached Report and Recommendation of United States Magistrate Judge (“Report”), and the objections to the Report. Good cause appearing, the Court concurs with and accepts the findings of fact, conclusions of law, and recommendations contained in the Report after having made a de novo determination of the portions to which objections were directed.

IT IS ORDERED that judgment be entered dismissing the Petition with prejudice.

DATED: February 15, 2017

/s/  
FERNANDO M. OLGUIN  
United States District Judge

# **APPENDIX E**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JUAN ORELLANA,	)	No. CV 16-2316-FMO (FFM)
	)	
Petitioner,	)	REPORT AND RECOMMENDATION OF
	)	UNITED STATES MAGISTRATE
v.	)	JUDGE
	)	
RAYMOND MADDEN,	)	
	)	
Respondent.	)	

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This Report and Recommendation is submitted to the Honorable Fernando M. Olguin, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California. For the reasons discussed below, it is recommended that the Petition be denied and the action be dismissed with prejudice.

**I. PROCEEDINGS**

Petitioner, Juan Orellana, a state prisoner in the custody of the California Department of Corrections, filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 on March 31, 2016. On May 26, 2016, Respondent filed an answer to the Petition. On June 17, 2016, Petitioner filed a traverse. The matter, thus, stands submitted and ready for decision.

## II. PROCEDURAL HISTORY

A Los Angeles County Superior Court jury found Petitioner guilty of oral copulation of a child under ten and lewd acts on a child (Cal. Penal Code §§ 288.7, 288). (Clerk's Transcript ["CT"] 332-33.) He was sentenced to fifteen years to life in prison. (*Id.* at 362-64.)

Petitioner then appealed his conviction. On April 30, 2015, the California Court of Appeal filed an unpublished opinion in which it affirmed the judgment. Petitioner did not file a petition for review. On June 4, 2015, however, he initiated a series of unsuccessful collateral attacks to his conviction, the last of which was denied on February 3, 2016.

Petitioner then initiated this action.

## III. FACTUAL BACKGROUND

The following facts were taken verbatim from the California Court of Appeal's opinion affirming Petitioner's conviction:

### 1. *Vanessas's Allegations*

Vanessa M. was born in June 2007. [Petitioner] was a good friend of Vanessa's father, Pedro, who was deported in about 2011. [Petitioner] and his girlfriend Blanca Ardon acted as godparents to Vanessa. They took Vanessa places on weekends -- to the park, out to eat, and to their apartment.

[Petitioner's] teenage daughter Monica usually went along. Vanessa called [Petitioner] her "padrino."

On September 16, 2012, a Sunday, [Petitioner], Ardon, Monica, and Vanessa went to The Grove shopping center and to a store across the street. They took Monica home and then went to their apartment, taking Vanessa with them. Ardon left the apartment to walk a short distance to get some telephone cards. [Petitioner] stayed home alone with Vanessa. It was the first time [Petitioner] had ever been home alone with Vanessa. Vanessa was five years old at the time.

1 Around 4:00 that afternoon, Ardon called Vanessa's mother, Claudia Calderon.  
2 Ardon told Calderon that Vanessa was crying and that they were going to bring  
3 her home. [Petitioner] and Ardon brought Vanessa back to Calderon's apartment  
4 around 6:00 p.m. According to Calderon, Vanessa seemed nervous. She got into  
5 bed right away. As soon as [Petitioner] and Ardon left, Vanessa asked her mother  
6 to come into the bathroom. Vanessa was crying and told Calderon that  
7 [Petitioner] had touched her private parts. Vanessa pointed to her crotch.  
8 Vanessa said [Petitioner] had pulled her underwear down and bitten her or tried to  
9 bite her "in her privates." Vanessa said [Petitioner] had opened her legs and had  
10 her sit on top of him. She told Calderon that [Petitioner's] zipper had hurt her  
11 leg. According to Calderon, Vanessa was "screaming for [her] to never let her go  
12 with her godparents again."

13 Calderon called [Petitioner] and Ardon. She asked Ardon how she could  
14 allow her boyfriend to do this. Ardon said she did not know what Calderon was  
15 talking about. Ardon gave the phone to [Petitioner]. Calderon told [Petitioner]  
16 she "couldn't believe that he did that to [her] daughter." She cursed at him.  
17 [Petitioner] said he had not done anything. He offered to take Vanessa to the  
18 doctor.

19 Calderon took Vanessa to Children's Hospital that night. Medical  
20 personnel examined Vanessa. Police and a social worker arrived. Calderon told  
21 the police officer what had happened. The officer took Calderon and Vanessa to  
22 County/USC Hospital. Around 2:15 a.m., a forensic nurse-practitioner, Shana  
23 Cripe, interviewed Vanessa, examined her, and took swabs. Cripe asked  
24 Vanessa's mother to wait outside. Cripe usually asks the child "Why are you  
25 here?" and "What happened?"

26 Vanessa told Cripe that her padrino had "pull[ed] his zipper down and it  
27 scared [her]," that he had "hit [her] with the zipper on [her] private part," and that  
28 he had "pulled at [her] underwear under [her] dress." Vanessa said that her

1 padrino had put his fingers and “his private part on [her] private part,” that his  
2 “private part looked like a snake,” and that “stuff came out of his private part on  
3 the bed.” Vanessa pointed to her vaginal area when she used the term “private  
4 part.” Vanessa told Cripe that her padrino had bitten her “on the private part with  
5 his teeth” and she told him it hurt. Vanessa said, “He showed me pictures of  
6 naked grownups with Hello Kitty because it was my birthday.”<sup>1</sup>

7  
8 FN.1 Vanessa's birthday is June 29, not  
9 September 16.

10 Cripe was unable to understand about a quarter of what Vanessa said: some  
11 of what she told Cripe just did not make sense. Cripe said this was fairly normal  
12 for a five-year-old patient.

13 Cripe then interviewed Calderon outside Vanessa's presence. Calderon  
14 told Cripe that Vanessa had urinated and wiped herself with toilet paper since  
15 [Petitioner] and Ardon brought her home but had not defecated or taken a bath.  
16 After interviewing Vanessa and her mother, Cripe had Vanessa take her clothes  
17 off. She examined her for injuries and used a Woods Lamp to look for proteins or  
18 secretions. Saliva usually would not light up under the Woods Lamp but semen  
19 would. No proteins or secretions appeared on Vanessa's body, nor did she have  
20 any cuts, scratches, marks, or other injuries. Cripe did not see any redness in  
21 Vanessa's vaginal area but noted that it had been more than eight hours since  
22 Vanessa had been returned to her mother. Cripe's examination of Vanessa's  
23 genital and anal areas revealed nothing out of the ordinary. Cripe concluded that  
24 she could not either “confirm or negate sexual abuse[,] because the exam was  
25 normal.”

26 Los Angeles Police Department Detective Theresa Hernandez also  
27 interviewed Vanessa and her mother on September 24, 2012, at Rampart station.  
28 Vanessa's interview was videotaped.



1       2.       *The Detective Interviews [Petitioner]*

2               Detective Hernandez called [Petitioner] and asked him to come in for an  
3 interview. Hernandez and [Petitioner] arranged a time to meet but [Petitioner] did  
4 not appear for the meeting. Hernandez called [Petitioner] and left him a couple of  
5 messages. [Petitioner] did not respond and Hernandez had officers arrest him on  
6 September 26, 2012. The arresting officers brought [Petitioner] to Rampart  
7 station around 8:00 p.m. and Hernandez interviewed him. Hernandez left the  
8 door of the interview room open. She sat across the table from [Petitioner].  
9 [Petitioner] was not handcuffed during the interview. Hernandez was dressed in  
10 “business casual” attire, a t-shirt and slacks. Hernandez -- a certified Spanish  
11 speaker -- interviewed [Petitioner] in Spanish. The interview was videotaped.

12               Hernandez first asked [Petitioner] a number of preliminary questions about  
13 his age, address, occupation, and the like. Hernandez then said, “I’ll talk to you  
14 about the case I have, okay?” Hernandez went on, “But in order to do that I need  
15 to read your, -- to read you your rights. Okay?” Hernandez told [Petitioner] he  
16 had the right to remain silent, that anything he said could be used against him in a  
17 court of law, that he had the right to the presence of an attorney before and during  
18 any interrogation, and that if he did not “have the money to pay an attorney, one  
19 will be appointed to you at no cost before you’re being [ ] interrogated.” After  
20 each statement, Hernandez asked [Petitioner], “Do you understand?” Each time  
21 Hernandez answered, “Yes.”

22               Hernandez then asked [Petitioner], “Didn’t I call you yesterday for [ ] an  
23 appointment?” and “[D]id I say that you had no problems?” Hernandez answered,  
24 “Yes, and then I talked to the attorney ‘cause I had already paid her, and she told  
25 me, ‘You can’t go because first,’ she said. . . .” Hernandez interrupted: “But it’s  
26 not, . . . it’s not the attorney’s decision. Like I just told you, those are your rights.  
27 If you want to talk to me about the case, I can discuss it with you.” Hernandez  
28 said, “Well, yeah. That’s what I wanted to talk about, but. . . .” Hernandez

1 interrupted again: “Well, yeah?” Is that the answer? ‘Well, yeah.’ Okay, I just  
2 need your signature here please.” Hernandez had [Petitioner] sign a *Miranda*  
3 waiver form.<sup>2</sup>

4  
5 FN.2 *Miranda v. Arizona* (1966) 384 U.S.  
6 436.

7 Hernandez told [Petitioner], “[I]n a moment I’m gonna ask you everything I  
8 have to ask you. . . . Now, . . . people always think the worst about the cases,  
9 okay?” Hernandez said she worked for the sexual assault unit but that she already  
10 knew [Petitioner] had not raped anyone. [Petitioner] expressed relief. Hernandez  
11 told [Petitioner] that he had “touched someone” but not raped her. Hernandez  
12 said touching someone was “not a big deal” to her but if [Petitioner] lied to her,  
13 that would make it a big deal. Hernandez noted that [Petitioner’s] record  
14 consisted of only a domestic violence arrest and a misdemeanor case of some sort,  
15 and that she knew he was not “a bad person.”

16 Hernandez told [Petitioner] she wanted to understand “why did this happen  
17 with the girl . . . what happened that day?” [Petitioner] responded, “[I]t’s not  
18 gonna happen again because I’m not gonna be with the girl anymore.”  
19 [Petitioner] said he had offered to take Vanessa to the doctor “because I hadn’t  
20 done anything to the girl.” Hernandez said, “You did touch her. You did give her  
21 oral sex, okay?” [Petitioner] said, “No. No.” Hernandez then told [Petitioner]  
22 that his saliva had been found in a DNA test. Hernandez later said this falsehood  
23 was a commonly-used interrogation technique.

24 Hernandez told [Petitioner], “[Y]ou moved her underwear to the side and  
25 then you put your finger [sic] and then she pushed you and then you went and  
26 gave her oral sex with your tongue.” Hernandez said, “A girl that age doesn’t  
27 lie.” She asked [Petitioner], “Did you force yourself over on her [sic]?”  
28 [Petitioner] answered, “No.” Hernandez noted [Petitioner] had not done anything

1 like that when Vanessa had been with him before. [Petitioner] mentioned that  
2 they were always with his daughter Monica. Hernandez asked if it was different  
3 that day because Monica was not there. [Petitioner] said his wife (referring to  
4 Ardon) had been there but had gone out to buy some cards. [Petitioner]  
5 eventually said that he had put Vanessa on his lap but had not touched her. He  
6 again denied any oral copulation.

7 Hernandez then told [Petitioner] she knew he was not a liar but if he  
8 “turn[ed] into a liar” she would “talk to the D.A.” and “raise the charge.”  
9 Hernandez repeated that a DNA test showed Vanessa had [Petitioner’s] saliva  
10 “down there.” Hernandez said, “You wanna lie to me here? That’s fine. I close  
11 the book but we’re going to arrest you, okay? Don’t lie to me. Be honest with  
12 me.” Hernandez told [Petitioner], “You did it, and the question I’m asking you  
13 [is] why?” [Petitioner] said, “But I wasn’t gonna hurt her.” Hernandez again  
14 accused [Petitioner] of putting his finger in Vanessa’s vagina and “oral sex.”  
15 [Petitioner] said, “Not internal. None of that. . . . It wasn’t internal.”

16 Hernandez told [Petitioner], “We have to put this behind you.” She said  
17 Vanessa was not hurt, that [Petitioner] did not “force” her, but that he did “grobe  
18 [ ]” her. [Petitioner] said, “No. No.” Hernandez told [Petitioner] Vanessa had  
19 said, when [Petitioner] “gave her oral sex,” she pushed him and he moved back  
20 and then left her alone. [Petitioner] said, “Yes.” Then Hernandez asked, “Did  
21 you make a mistake? Did you do something stupid?” [Petitioner] answered,  
22 “Yes, I made a mistake.” He said he was not going to do it again, “God willing.”

23 Hernandez told [Petitioner], “if what you need is therapy, we can get you  
24 that, . . . and depending on what the D.A. says, if this is not very serious,  
25 probation or something.” Hernandez talked about Vanessa being a child. Then  
26 she said, “She attracted [sic] you sexually, but what happened that different day  
27 [sic] that you have never done it before?” [Petitioner] answered, “It was a, like  
28 just an impulse.” There was some discussion of Vanessa’s dress being up.

1 Hernandez asked if [Petitioner] felt “[s]omething erotic” when he saw Vanessa  
2 with her “dress up high like that.” [Petitioner] said, “I mean, I just saw her like a  
3 girl . . . but . . . I had never done it before nor am I gonna do it [sic]. Just like an  
4 impulse.” When Hernandez asked what he felt, [Petitioner] said, “I mean, in my  
5 mind, you know. I mean, what an adult person would imagine.”

6 Eventually [Petitioner] seemed to admit having touched Vanessa’s crotch  
7 outside her underwear with his tongue. He also seemed to admit having had an  
8 erection but repeated that he could not harm Vanessa because she is a girl. He  
9 said he “hugged her and that’s all.” Hernandez told [Petitioner] she had to send  
10 the case to the district attorney but she would note that [Petitioner] cooperated.  
11 [Petitioner] repeated, “[I]t won’t happen again.”

12 3. *The Charges, the Hearing, and the Trial*

13 The People charged [Petitioner] with oral copulation of a child under ten in  
14 violation of Penal Code section 288.7 subdivision (b) and with having committed  
15 a lewd act on a child in violation of Penal Code section 288(a). The case went to  
16 trial in January 2014. [Petitioner’s] attorney moved to exclude [Petitioner’s]  
17 statements to Detective Hernandez in the interview on the ground that “there was  
18 no knowing, intelligent, voluntary waiver of his *Miranda* rights.” The court  
19 conducted a hearing outside the jury’s presence. Detective Hernandez testified.  
20 The defense called [Petitioner]. The court read the transcript of the interview and  
21 watched at least part of the videotape.

22 Hernandez testified that she read [Petitioner] each of his *Miranda* rights in  
23 Spanish and that he said “yes” when asked if he understood each. Hernandez  
24 testified [Petitioner] said he “wasn’t sure” if he wanted to talk to her, and he  
25 mentioned having spoken with an attorney. Hernandez told [Petitioner] it was his  
26 decision, his right, and he could talk to her if he wanted to. [Petitioner] then said  
27 “well, yeah -- [t]hat he would talk to [Hernandez].” Hernandez testified that  
28 [Petitioner] never said that he did not want to talk to her, never asked to stop the

1 interview, and never asked for an attorney. Hernandez said she never threatened  
2 [Petitioner] during the interview.

3 On cross-examination, Hernandez admitted that -- before [Petitioner] was  
4 arrested and brought in for the interview -- she had "received a message from a  
5 law firm that they wanted to speak to [her]" about [Petitioner]. Hernandez  
6 testified that, when she reminded [Petitioner] at the beginning of the interview  
7 that she had told him on the phone he had no problems, she was "trying to make  
8 him feel comfortable."

9 [Petitioner] also testified at the hearing. [Petitioner] said he was from  
10 Honduras and had attended school for only two years. [Petitioner] claimed he  
11 told Hernandez he wanted to have a lawyer present during the interview, that he  
12 tried to tell her that two or three times but she interrupted. [Petitioner] had paid  
13 and spoken with an attorney; the attorney had told him to call if and when he was  
14 interviewed. [Petitioner] said he had signed the *Miranda* form but could not read  
15 it. He testified Hernandez "didn't explain" the form.

16 [Petitioner] said he did not call the lawyer to represent him in the interview  
17 because the police had taken his wallet with the lawyer's business card in it when  
18 he was arrested. When defense counsel asked [Petitioner] if he had felt  
19 "intimidated" by the detective, he answered, "Yes, because I didn't have the  
20 attorney that I had looked for to represent me." [Petitioner] testified he continued  
21 to talk to Hernandez because he was "afraid [if he did not] she would have the  
22 D.A. punish me." He said he had initially denied the allegations but Hernandez  
23 got angry and said not to insult her, that she had been "doing this" for many  
24 years.

25 On cross-examination, [Petitioner] admitted he had answered "yes" to each  
26 of the *Miranda* questions. [Petitioner] said when he answered yes, that he  
27 understood he had the right to have an attorney present before and during any  
28 questioning, "at that moment I wanted to explain to her that I already had an

1 attorney.” [Petitioner] claimed he told Hernandez that he wanted his lawyer there  
2 “but she said that I didn’t need him there.” He said he felt “intimidated” “because  
3 I’m a shy person -- in the way I express myself.” Then he said, “If it’s a police  
4 officer, yes, I am afraid. I’m a shy person.” [Petitioner] claimed he did not  
5 understand all of Hernandez’s questions. When asked what he did when he did  
6 not understand a question, he answered, “I wanted to express myself, but she  
7 would interrupt.” [Petitioner] admitted that he never stopped answering the  
8 detective’s questions. He also admitted having denied some accusations that  
9 Hernandez made during the interview.

10 At the conclusion of testimony at the hearing, the prosecutor cited and  
11 discussed United States Supreme Court cases. He argued that, while Hernandez  
12 “could have perhaps been nicer with the defendant,” there was “nothing to  
13 indicate that he didn’t knowingly give up his rights.” The prosecutor said  
14 Hernandez did not threaten [Petitioner], initially sitting at a table making “small  
15 talk” with him, and “there [was] nothing during those *Miranda* questions that was  
16 intimidating or coercive.” The prosecutor argued that, after Hernandez read  
17 [Petitioner] his rights, “he could have invoked. He never did. And whether the  
18 court wants to believe that this detective cut him off, he still engages in  
19 conversation during the entire interview with her. He has the ability to say I don’t  
20 want to talk any more. I want to speak to my lawyer. And he didn’t.” The  
21 prosecutor said Hernandez encouraged [Petitioner] to tell the truth and said it  
22 would be better for him, but she did not make promises about what would happen  
23 if he admitted the crime. The prosecutor conceded that Hernandez was  
24 “aggressive” in the interview but argued that, under the totality of the  
25 circumstances, [Petitioner’s] will was not overborne.

26 Defense counsel stated “[t]he main issue . . . [was] whether or not  
27 [[Petitioner]] made a voluntary waiver of his right to counsel at this interview.”  
28 Counsel argued that [Petitioner] “had no opportunity to call the attorney that he

1 paid for.” Defense counsel said [Petitioner] “tried” and “intended” to tell  
2 Hernandez “that he wanted to have an attorney present,” but that she “cut [ ] him  
3 off three times.” Counsel argued that [Petitioner] continued to talk to Hernandez  
4 because she “threatened to raise the charges on him,” and that Hernandez had  
5 induced [Petitioner] to make incriminating admissions with promises of leniency  
6 as well as threats.

7 The court stated, “It seems to me that the two issues are whether the  
8 defendant was advised of his rights in an understandable way, and whether or not  
9 he voluntarily and intelligently waived those rights.” On the first issue, the court  
10 noted the video and audio-taped recording showed “that Mr. [Petitioner] was  
11 orally advised of his rights. He was asked after each right whether he understood,  
12 and he responded yes.” The court gave little weight to the form Hernandez had  
13 [Petitioner] sign, given [Petitioner’s] testimony that he could not read Spanish.  
14 The court concluded, “Nonetheless, it does appear that he was advised of each of  
15 his rights in a way that was understandable, and that he indicated he understood  
16 them.”

17 On the second issue, the court found “problematic” Hernandez’s  
18 interruption of [Petitioner] “on more than one occasion concerning his attorney  
19 and the fact that he had contacted an attorney.” However, the court noted, under  
20 governing law, a defendant’s invocation of his rights to remain silent and to have  
21 counsel present during questioning must be express. The court said, “I don’t  
22 think there was an express invocation here. I think there was some ambiguity in  
23 terms of what may have been said, at best. But I don’t think there was an express  
24 invocation of Mr. [Petitioner’s] desire to have his attorney present during  
25 questioning. As evidenced further by the fact that he kept talking.” As for  
26 [Petitioner’s] claim of “intimidation,” the court stated, “I don’t see that, in either  
27 the content of the transcript or the portion of the tape that I watched in terms of  
28 any body language or tone of voice.” The court therefore denied the defense



1 motion to exclude [Petitioner's] statements. But, the court said, defense counsel  
2 could argue to the jury that they should give little or no weight to the statements.

3 In closing argument, defense counsel argued that [Petitioner] repeatedly  
4 had denied Vanessa's allegations until Detective Hernandez threatened to "raise  
5 the charges" and "close the book," and had suggested he might get probation and  
6 therapy. Counsel asked the jurors to "[l]ook at the interview in its totality" and to  
7 consider [Petitioner's] "lack of education and how that may play a role in his  
8 ability to communicate." Counsel argued that Hernandez was telling [Petitioner]  
9 what she "want[ed] to hear" and that [Petitioner] "relent[ed]" because he was  
10 scared. Defense counsel told the jurors, "Ask yourself how voluntary was his  
11 confession in light of all the circumstances."

12 The jury convicted [Petitioner] on both counts. [Petitioner's] attorney  
13 moved for a new trial "on the ground that the court erred in admitting into  
14 evidence Defendant's involuntary admissions made in his interview with  
15 Detective Hernandez." The court denied the motion and sentenced [Petitioner] on  
16 the oral copulation count to life in prison with a minimum eligible parole date of  
17 15 years. On the lewd act on a child count, the court sentenced [Petitioner] to the  
18 midterm of six years concurrent with the life term.  
19 (Lodged Doc. 6 at 2-11.)

#### 20 21 **IV. PETITIONER'S CLAIMS**

- 22 1. The trial court violated Petitioner's Fifth Amendment  
23 rights by allowing the prosecution to admit into  
24 evidence Petitioner's pre-trial statements to police  
25 because that those statements were obtained through  
26 coercion.
- 27 2. The trial court violated Petitioner's Fifth Amendment  
28 right to counsel by admitting his pre-trial statements to



1 police because the investigating detective obtained  
2 those statements by ignoring petitioner's attempts to  
3 invoke his right to counsel.

- 4 3. Trial counsel deprived Petitioner of his Sixth  
5 Amendment right to effective assistance of counsel by  
6 failing to investigate potential witnesses, by failing to  
7 request a copy of a DNA report concerning the crimes  
8 of which petitioner was accused, and by failing to  
9 consult a DNA expert to challenge that report.
- 10 4. Appellate attorney deprived Petitioner of his due  
11 process right to effective assistance of counsel on  
12 appeal by failing to file a petition for review in the  
13 California Supreme Court on Petitioner's behalf.
- 14

## 15 **V. STANDARD OF REVIEW**

16 The standard of review applicable to Petitioner's claims herein is set forth  
17 in 28 U.S.C. § 2254(d), as amended by the Antiterrorism and Effective Death  
18 Penalty Act of 1996 ("AEDPA") (Pub. L. No. 104-132, 110 Stat. 1214 (1996)).  
19 *See* 28 U.S.C. § 2254(d); *see also Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct.  
20 2059, 138 L. Ed. 2d 481 (1997). Under AEDPA, a federal court may not grant  
21 habeas relief on a claim adjudicated on its merits in state court unless that  
22 adjudication "resulted in a decision that was contrary to, or involved an  
23 unreasonable application of, clearly established Federal law, as determined by the  
24 Supreme Court of the United States," or "resulted in a decision that was based on  
25 an unreasonable determination of the facts in light of the evidence presented in

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1 the State court proceeding.”<sup>1</sup> 28 U.S.C. § 2254(d); *see Williams v. Taylor*, 529  
2 U.S. 362, 402, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000).

3 The phrase “clearly established Federal law” means “the governing legal  
4 principle or principles set forth by the Supreme Court at the time the state court  
5 renders its decision.”<sup>2</sup> *Lockyer v. Andrade*, 538 U.S. 63, 71-72, 123 S. Ct. 1166,  
6 155 L. Ed. 2d 144 (2003). However, a state court need not cite the controlling  
7 Supreme Court cases in its own decision, “so long as neither the reasoning nor the  
8 result of the state-court decision contradicts” relevant Supreme Court precedent  
9 which may pertain to a particular claim for relief. *Early v. Packer*, 537 U.S. 3, 8,  
10 123 S. Ct. 362, 154 L. Ed. 2d 263 (2002) (*per curiam*).

11 A state court decision is “contrary to” clearly established federal law if the  
12 decision applies a rule that contradicts the governing Supreme Court law or  
13 reaches a result that differs from a result the Supreme Court reached on  
14 “materially indistinguishable” facts. *Williams*, 529 U.S. at 405-06. A decision  
15 involves an “unreasonable application” of federal law if “the state court identifies  
16 the correct governing legal principle from [Supreme Court] decisions but  
17 unreasonably applies that principle to the facts of the prisoner’s case.” *Id.* at 413.  
18 A federal habeas court may not overrule a state court decision based on the  
19 federal court’s independent determination that the state court’s application of

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21 <sup>1</sup> In addition, under 28 U.S.C. § 2254(e)(1), factual determinations by a state  
22 court “shall be presumed to be correct” unless the petitioner rebuts the  
presumption “by clear and convincing evidence.”

23 <sup>2</sup> Under AEDPA, the only definitive source of clearly established federal law is  
24 set forth in a holding (as opposed to dicta) of the Supreme Court. *See Williams*,  
25 529 U.S. at 412; *see also Yarborough v. Alvarado*, 541 U.S. 652, 660-61, 124 S.  
26 Ct. 2140, 158 L. Ed. 2d 938 (2004). Thus, while circuit law may be “persuasive  
27 authority” in analyzing whether a state court decision was an unreasonable  
28 application of Supreme Court law, “only the Supreme Court’s holdings are  
binding on the state courts and only those holdings need be reasonably applied.”  
*Clark v. Murphy*, 331 F.3d 1062, 1069 (9th Cir. 2003).

1 governing law was incorrect, erroneous, or even “clear error.” *Lockyer*, 538 U.S.  
2 at 75. Rather, a decision may be rejected only if the state court’s application of  
3 Supreme Court law was “objectively unreasonable.” *Id.*

4 The standard of unreasonableness that applies in determining the  
5 “unreasonable application” of federal law under Section 2254(d)(1) also applies  
6 in determining the “unreasonable determination of facts in light of the evidence”  
7 under Section 2254(d)(2). *Taylor v. Maddox*, 366 F.3d 992, 999 (9th Cir. 2004).  
8 Accordingly, “a federal court may not second-guess a state court’s fact-finding  
9 process unless, after review of the state-court record, it determines that the state  
10 court was not merely wrong, but actually unreasonable.” *Id.*

11 Where more than one state court has adjudicated the petitioner’s claims, the  
12 federal habeas court analyzes the last reasoned decision. *Barker v. Fleming*, 423  
13 F.3d 1085, 1091 (9th Cir. 2005) (citing *Ylst v. Nunnemaker*, 501 U.S. 797, 803,  
14 111 S. Ct. 2590, 115 L. Ed. 2d 706 (1991) for presumption that later unexplained  
15 orders, upholding judgment or rejecting same claim, rest upon same ground as the  
16 prior order). Thus, a federal habeas court looks through ambiguous or  
17 unexplained state court decisions to the last reasoned decision in order to  
18 determine whether that decision was contrary to or an unreasonable application of  
19 clearly established federal law. *Bailey v. Rae*, 339 F.3d 1107, 1112-13 (9th Cir.  
20 2003).<sup>3</sup>

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22 <sup>3</sup> Respondent argues that each of Petitioner’s four grounds for relief is  
23 procedurally barred because the California Supreme Court rejected those claims  
24 pursuant to an independent and adequate state law. There is, however, no need to  
25 address Respondent’s procedural bar argument as to Petitioner’s first two grounds  
26 for relief because, as explained herein, the California Court of Appeal rejected  
27 both of those grounds in a reasoned decision, and the court of appeal’s rejection of  
28 those grounds was reasonable. There is, likewise, no need to reach Respondent’s  
procedural bar argument as to Grounds Three and Four because, even under *de*  
*novo* review, those grounds fail on their respective merits. *See Lambrix v.*

(continued...)

## VI. DISCUSSION

### A. Petitioner's Pre-trial Statements

Petitioner asserts two different challenges to the trial court's decision to allow the prosecutor to introduce into evidence statements that Petitioner made during a custodial interrogation. First, he maintains that the trial court should have excluded those statements because they were obtained through coercion. In particular, Petitioner complains that the detective intentionally misled Petitioner by asserting that the police had obtained DNA evidence from the victim showing that Petitioner had sexually molested her, when, in fact, no such evidence existed. Additionally, Petitioner asserts that the investigating detective threatened him with arrest and with "rais[ing] the charges" against him if he lied.<sup>4</sup> Petitioner maintains that he was uniquely susceptible to those purportedly coercive tactics because he has only a second-grade level of education, does not speak English, and is easily intimidated by figures of authority. Although Petitioner acknowledges that he has had prior experience as a criminal suspect and that he suffered a prior misdemeanor conviction, he nevertheless suggests that his prior

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(...continued)

*Singletary*, 520 U.S. 518, 524-25, 117 S. Ct. 1517, 137 L. Ed. 2d 771 (1997) (holding that, in interests of judicial economy, federal courts may address merits of allegedly defaulted habeas claim if issue on claim's merits is clear but the procedural default issues are not). Accordingly, this Court reviews the California Court of Appeal's opinion rejecting Petitioner's first and second grounds for relief under AEDPA's deferential standard, and the Court reviews Petitioner's third and fourth ground for relief *de novo*. See *Ylst*, 501 U.S. at 803; *Pirtle v. Morgan*, 313 F.3d 1160, 1167 (9th Cir. 2002) (holding that *de novo* review is appropriate only "when it is clear that a state court has not reached the merits of a properly raised issue").

<sup>4</sup> The relevant facts as to both of Petitioner's challenges to his pre-trial statements is set forth above in the Factual Background section. (*See supra* § III.)

1 experience is inconsequential because he “lack[s] knowledge of the legal system  
2 from A to Z.” (Traverse at 6.)

3 Second, Petitioner contends that the trial court violated his Fifth  
4 Amendment right to counsel by admitting his pre-trial statements to police  
5 because investigating detectives obtained those statements by ignoring  
6 Petitioner’s attempts to invoke his right to counsel. Specifically, Petitioner  
7 alleges that, in response to being read his *Miranda*<sup>5</sup> rights, he repeatedly  
8 attempted to invoke his right to counsel. But, according to Petitioner, the  
9 investigating detective thwarted these attempts by interrupting him and  
10 intimidating him into signing a *Miranda* waiver that he did not even understand  
11 in the first place. In support of this allegation, Petitioner cites the fact that he  
12 explicitly told the detective that he had retained an attorney and that the attorney  
13 had advised him not to speak with police. Petitioner maintains that the detective  
14 ignored these statements and, instead, convinced Petitioner to waive his right to  
15 counsel by aggressively stating that it was Petitioner’s decision, not the attorney’s  
16 decision. Thereafter, according to Petitioner, the detective again interrupted  
17 Petitioner when the latter acknowledged the detective’s statement and pressured  
18 Petitioner to sign the *Miranda* waiver form. Citing the foregoing facts, Petitioner  
19 maintains that the detective effectively refused to allow Petitioner to invoke his  
20 right to counsel.

21 **1. The California Court of Appeal’s Opinion**

22 The California Court of Appeal rejected both of Petitioner’s challenges to  
23 the admission of his pre-trial statements on their respective merits. First, the  
24 court of appeal addressed Petitioner’s coercion claim. In rejecting that claim, the  
25 court of appeal noted that the interrogation was short and took place at a  
26 reasonable hour, thus foreclosing any argument that Petitioner was sleep-

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27  
28 <sup>5</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

1 deprived. The court of appeal, moreover, noted that Petitioner, a forty-six-year-  
2 old adult, had prior experience with the criminal justice system and that the  
3 interrogation was conducted by a certified Spanish speaker. Further, according to  
4 the court of appeal, nothing about the setting or the style of the interrogation --  
5 aside from the fact that it occurred in a police station -- gave rise to a coercive  
6 atmosphere. Although the court of appeal noted that the detective deceived  
7 Petitioner about the existence of DNA evidence, the court of appeal explained  
8 that such deception is permissible. And, in any event, Petitioner did not admit to  
9 any skin-to-skin contact with the victim.

10 The court of appeal found the detective's statements about "rais[ing] the  
11 charges" against Petitioner troubling. Notwithstanding that fact, the court of  
12 appeal noted that Petitioner had already made an incriminating statement before  
13 the detective threatened to raise the charges against him. Specifically, Petitioner  
14 had already stated that "it's not gonna happen again" because he was "not gonna  
15 be with that girl anymore." The court of appeal also explained that the detective's  
16 threat was not sufficient to overbear Petitioner's will because it was "coupled  
17 with an exhortation to tell the truth." (Lodged Doc. No. 6 at 17.) Further  
18 undercutting Petitioner's coercion argument, according to the court of appeal, was  
19 the fact that the detective sought to reassure Petitioner that Petitioner was not a  
20 rapist, that his conduct may have frightened the victim (who was Petitioner's  
21 goddaughter), and that the charging and plea bargaining decisions would be made  
22 by the district attorney. Having considered the totality of the foregoing  
23 circumstances, the court of appeal concluded that Petitioner's will had not been  
24 overborne and, thus, held that his custodial statements were voluntary.

25 Second, the court of appeal held that Petitioner did not unambiguously  
26 invoke his right to counsel. In support of this holding, the court of appeal noted  
27 that Petitioner "never asked for a lawyer or stated that he wanted the lawyer he  
28 said he had hired to be present before any questioning proceeded." (*Id.* at 13.)

1 Additionally, the court of appeal observed that, during the ensuing questioning,  
2 Petitioner sat calmly and answered the detective's questions.

## 3 **2. Federal Legal Standard and Analysis**

4 In rejecting Petitioner's challenges to the admission of his pre-trial  
5 statements, the California Court of Appeal set forth and applied the proper federal  
6 legal standard governing such challenges. (*See id.* at 13-15.) Accordingly, the  
7 court of appeal's resolution of Petitioner's claims was not contrary to clearly  
8 established Supreme Court precedent. As such, the only avenue through which  
9 Petitioner can obtain habeas relief on his challenges to the admission of his pre-  
10 trial statements is by showing that the court of appeal's resolution of his claims  
11 constituted an "unreasonable application of" the Supreme Court's clearly  
12 established precedent -- that is, he must show that the court of appeal  
13 unreasonably applied the governing legal standard to the facts of his case. *See*  
14 *Penry v. Johnson*, 532 U.S. 782, 792, 121 S. Ct. 1910, 150 L. Ed. 2d 9 (2001).  
15 As explained below, Petitioner cannot make that showing.

### 16 **a. Coercion**

17 Under the Fourteenth Amendment, a confession is involuntary only if the  
18 police use coercive means to undermine the suspect's ability to exercise his free  
19 will. *See Colorado v. Connelly*, 479 U.S. 157, 167, 107 S. Ct. 515, 93 L. Ed. 2d  
20 473 (1986). The police, however, can interrogate a suspect if he or she  
21 voluntarily, knowingly, and intelligently waives his or her constitutional rights.  
22 *Patterson v. Illinois*, 487 U.S. 285, 292, 108 S. Ct. 2389, 101 L. Ed. 2d 261  
23 (1988); *Moran v. Burbine*, 475 U.S. 412, 421, 106 S. Ct. 1135, 89 L. Ed. 2d 410  
24 (1986). A waiver is valid if the suspect intentionally relinquished his or her  
25 rights with full awareness of the nature of the rights and the consequences of the  
26 decision. *Patterson*, 487 U.S. at 292; *Moran*, 475 U.S. at 421.

27 The test for determining whether a confession is involuntary is whether,  
28 considering the totality of the circumstances, the confession was obtained by



1 means of physical or psychological coercion or improper inducement such that  
2 the suspect's will was overborne. *Moran*, 475 U.S. at 421; *Miller v. Fenton*, 474  
3 U.S. 104, 112, 106 S. Ct. 445, 88 L. Ed. 2d 405 (1985) (stating that voluntariness  
4 of confession is legal issue requiring independent determination on federal  
5 habeas corpus proceeding); *Culombe v. Connecticut*, 367 U.S. 568, 602, 81 S. Ct.  
6 1860, 6 L. Ed. 2d 1037 (1961) (holding that test for voluntariness is whether  
7 confession was product of essentially free and unconstrained choice by its  
8 maker).

9 Although several factors are considered in determining whether a  
10 confession is involuntary, "coercive police activity is a necessary predicate to [a]  
11 finding that a confession is '[in]voluntary' within the meaning of the Due Process  
12 Clause." *Connelly*, 479 U.S. at 167; *Withrow v. Williams*, 507 U.S. 680, 693, 113  
13 S. Ct. 1745, 1754, 123 L. Ed. 2d 407 (1993) (describing police coercion as  
14 "crucial element" to determination that confession was involuntary). In addition  
15 to the level of police coercion, other relevant factors include the length of the  
16 interrogation, its continuity, and the defendant's maturity, education, physical  
17 condition, and mental health. *Id.* at 693-94. "It is not sufficient for a court to  
18 consider the circumstances in isolation. Instead, 'all the circumstances attendant  
19 upon the confession must be taken into account.'" *Doody v. Schriro*, 649 F.3d  
20 986, 1008 (9th Cir. 2011) (quoting *Reck v. Pate*, 367 U.S. 433, 440, 81 S. Ct.  
21 1541, 6 L. Ed. 2d 948 (1961)).

22 Here, having considered the totality of the circumstances, the court of  
23 appeal reasonably could have concluded that Petitioner's pre-trial statements  
24 were not the product of police coercion. First, the interrogating detective  
25 committed no misconduct in misleading Petitioner about the evidence against  
26 him. Police deception alone will not render a confession involuntary. *See United*  
27 *States v. Crawford*, 372 F.3d 1048, 1060-61 (9th Cir. 2004) ("Trickery, deceit,  
28 even impersonation do not render a confession inadmissible, certainly in



1 noncustodial situations and usually in custodial ones as well, unless government  
2 agents make threats or promises”). Thus, police generally can lie to a suspect  
3 about, for example, the extent of the evidence against the suspect or feign  
4 friendship with the suspect without fear of rendering the resulting confession  
5 involuntary. *See, e.g., Frazier v. Cupp*, 394 U.S. 731, 737-39, 89 S. Ct. 1420, 22  
6 L. Ed. 2d 684 (1969) (confession voluntary even though officer falsely told  
7 suspect that suspect’s co-conspirator had confessed). Here, the detective, at most,  
8 lied to Petitioner about the existence of DNA evidence linking Petitioner to the  
9 victim. But, as the foregoing precedent makes clear, employing such lies to  
10 extract incriminating statements from a criminal suspect is a permissible  
11 interrogation tactic.

12 Second, the detective’s threats to have Petitioner arrested and to “raise the  
13 charges” against him, though troubling, were insufficient to overbear Petitioner’s  
14 will. To be sure, a confession that is obtained by a credible threat is involuntary  
15 and inadmissible, provided that the totality of the circumstances show that the  
16 threat overbore the defendant’s will. *See Payne v. Arkansas*, 356 U.S. 560,  
17 564-65, 78 S. Ct. 844, 2 L. Ed. 2d 975 (1958) (confession was coerced where  
18 interrogating police officer promised protection from “angry mob” if suspect  
19 confessed). Here, the detective’s threats went beyond merely accurately  
20 informing Petitioner of the predicament in which he found himself. *Compare to*  
21 *United States v. Hufstetler*, 782 F.3d 19, 24-25 (1st Cir. 2015) (rejecting claim of  
22 coercion based on threat to arrest defendant’s girlfriend and stating “an officer’s  
23 truthful description of the family member’s predicament is permissible since it  
24 merely constitutes an attempt to both accurately depict the situation to the suspect  
25 and to elicit more information about the family member’s culpability”). Instead,  
26 the detective flatly told Petitioner that he would be arrested and that he would  
27 face more serious charges if he lied to the detective.

28 ///

1 The Court, however, cannot simply consider those threats in isolation but  
2 must, instead, take into account “all the circumstances attendant upon the  
3 confession” to determine whether Petitioner was coerced into implicating himself.  
4 *See Doody*, 649 F.3d at 1008 (*supra*). Having considered the totality of the  
5 circumstances, the court of appeal reasonably could have concluded that  
6 Petitioner’s statements were not coerced. As the court of appeal observed, the  
7 videotape of the interrogation showed that the detective and Petitioner “spoke in a  
8 conversational tone.” (Lodged Doc. No. 6 at 16.) The videotape, likewise,  
9 contains no indication that the detective yelled at Petitioner or even raised her  
10 voice. And, Petitioner “did not appear frightened or distraught in the video.”  
11 (*Id.*) The court of appeal’s observations echoed those of the trial court, which,  
12 having viewed the video, likewise, found no indication in the video that Petitioner  
13 was intimidated by the detective’s statements. (*Id.* at 10 (“I don’t see [evidence  
14 of intimidation], in either the content of the transcript or the portion of the tape  
15 that I watched in terms of any body language or tone of voice.”).) That  
16 observation is entitled to deference on habeas review because, as the Supreme  
17 Court has repeatedly recognized, “determinations of credibility and demeanor lie  
18 ‘peculiarly within a trial judge’s province’ and are entitled to deference in the  
19 absence of exceptional circumstances.” *Snyder v. Louisiana*, 552 U.S. 472, 477,  
20 128 S. Ct. 1203, 170 L. Ed. 2d 175 (2008) (quoting *Hernandez v. New York*, 500  
21 U.S. 352, 369, 111 S. Ct. 1859, 114 L. Ed. 2d 395 (1991)). Thus, as the court of  
22 appeal concluded, nothing -- other than the detective’s challenged statements --  
23 that occurred during the short time during which Petitioner was interrogated  
24 supports Petitioner’s argument that his will was overborne by the detective’s  
25 statements.

26 Moreover, none of the relevant factors that guide the Court’s analysis  
27 suggest that Petitioner’s statements to the detective were the product of coercion.  
28 The interrogation did not take place over an exceedingly prolonged period. On

1 the contrary, it lasted less than one hour. This short period of time does not  
2 suggest that the resulting statements were involuntary. *See Clark v. Murphy*, 331  
3 F.3d 1062, 1069 (9th Cir. 2003) (eight-hour length of interrogation did not  
4 suggest defendant's statements were involuntary), *overruled in part on other*  
5 *grounds by Lockyer v. Andrade*, 538 U.S. 63, 123 S. Ct. 1166, 1172, 155 L. Ed.  
6 2d 144 (2003); *Cunningham v. Perez*, 345 F.3d 802, 810-11 (9th Cir. 2003)  
7 (officer did not undermine defendant's free will where interrogation lasted for  
8 eight hours and officer did not refuse to give break for food and water); *Jenner v.*  
9 *Smith*, 982 F.2d 329, 334 (8th Cir. 1993) (six or seven hour questioning not  
10 coercive); *United States v. Lehman*, 468 F.2d 93, 101 (7th Cir. 1972) ("vigorous"  
11 eight hour questioning with few breaks did not render confession involuntary);  
12 *compare Ashcraft v. Tennessee*, 322 U.S. 143, 149-54, 64 S. Ct. 921, 88 L. Ed.  
13 1192 (1944) (invalidating confession because police questioned suspect for  
14 thirty-six hours straight); *Doody*, 649 F.3d at 1009 (confession involuntary where  
15 police questioned suspect for thirteen hours).

16 Further, the timing of the interrogation -- from 8:00 p.m. until sometime  
17 before 9:00 p.m. -- is unlike cases where the timing of the interrogation renders a  
18 relatively short duration of questioning coercive. *See Berghuis v. Thompson*, 560  
19 U.S. 370, 386-87, 130 S. Ct. 2250, 176 L. Ed. 2d 1098 (2010) (timing of  
20 interrogation did not suggest coercion where interrogation occurred over three  
21 hours in the middle of the day); *compare with Haley v. Ohio*, 332 U.S. 596,  
22 599-600, 68 S. Ct. 302, 92 L. Ed. 224 (1948) (finding confession of  
23 fifteen-year-old boy involuntary where suspect confessed after being questioned  
24 from midnight until 5:00 a.m.). Although the questioning took place in an  
25 interrogation room at the police station, the door to the room was open, and  
26 Petitioner was not handcuffed.

27 Moreover, nothing about Petitioner's maturity, physical condition, or  
28 mental health suggests that his statements were involuntary. When the

1 interrogation occurred, Petitioner was not a juvenile, but a forty-five year-old man  
2 with prior experience in the criminal justice system. *Compare Doody*, 649 F.3d at  
3 1009 (holding that seventeen-year-old's confession was involuntary, in part,  
4 because seventeen-year-old had no prior experience with criminal justice system).  
5 Petitioner was not suffering from any kind of physical impairment or mental  
6 condition that would have impacted his ability to voluntarily respond to the  
7 detective's questions. Nor was he deprived of sleep or forced to endure physical  
8 stress during the interrogation. *Compare id.* (confession involuntary where  
9 defendant's sleep deprivation over thirteen-hour interrogation made him  
10 unresponsive and where, during interrogation, defendant was forced to sit in  
11 straight back chair with nothing on which to lean); *Leyra v. Denno*, 347 U.S. 556,  
12 561, 74 S. Ct. 716, 719 98 L. Ed. 948 (1954) (confession involuntary where  
13 defendant, after days of intermittent, intensive interrogation, was "physically and  
14 emotionally exhausted" and defendant's "ability to resist interrogation was  
15 broken to almost trance-like submission").

16 Finally, neither Petitioner's inability to speak English nor his limited  
17 education suggests that his statements were involuntary. On the contrary, the  
18 detective was a certified Spanish speaker, and she conducted the interrogation in  
19 Spanish. When advised of his *Miranda* rights, Petitioner acknowledged that he  
20 understood each of those rights. Moreover, he appears to have understood the  
21 detective's questions and answered those questions without expressing any  
22 confusion. More importantly, Petitioner's limited education level must be  
23 considered against the fact that he had experience in the criminal justice system,  
24 having been arrested in connection with a domestic violence allegation and  
25 having been convicted of a misdemeanor in the past. Given these circumstances,  
26 the court of appeal reasonably could have concluded that, despite the detective's  
27 challenged statements, Petitioner's will was not overborne and that his statements  
28 were voluntary.

1           Regardless, even if Petitioner could show that his pre-trial statements were  
2 coerced, he cannot demonstrate that the admission of his purportedly coerced  
3 statements had a substantial and injurious impact on the jury's verdict. *See*  
4 *Brecht v. Abrahamson*, 507 U.S. 619, 637-39, 113 S. Ct. 1710, 123 L. Ed. 2d 353  
5 (1993); *see also Parle v. Runnels*, 387 F.3d 1030, 1044 (9th Cir. 2004)  
6 (explaining that trial error is harmless unless the reviewing court has "is left with  
7 'grave doubt' about whether [the] constitutional error substantially influenced the  
8 verdict") (citing *O'Neal v. McAninch*, 513 U.S. 432, 438, 115 S. Ct. 992, 130 L.  
9 Ed. 2d 947 (1995)). As the Supreme Court has explained, "[a] confession is like  
10 no other evidence. Indeed, 'the defendant's own confession is probably the most  
11 probative and damaging evidence that can be admitted against him.'" *Arizona v.*  
12 *Fulminante*, 499 U.S. 279, 296, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991). The  
13 impact of a confession can be so "profound" that a reviewing court may  
14 "'justifiably doubt [a jury's] ability to put [a confession] out of mind even if told  
15 to do so.'" *Id.* Consequently, courts must exercise "'extreme caution'" before  
16 "'determining that the admission of [a] confession at trial was harmless.'" *Jones*  
17 *v. Harrington*, \_\_\_ F.3d \_\_\_, 2016 WL 3947820, \*10 (9th Cir. July 22, 2016)  
18 (quoting *Arizona v. Fulminante*, 499 U.S. 279, 296, 111 S. Ct. 1246, 113 L. Ed.  
19 2d 302 (1991)).

20           Here, however, the Court has little doubt -- let alone "grave doubt" -- that  
21 the jury would have reached the same verdict even if it had not been exposed to  
22 Petitioner's purportedly coerced pre-trial statements. As an initial matter, the  
23 victim provided powerful, consistent, and detailed accounts of Petitioner's  
24 actions. *Compare with Jones*, 2016 WL 3947820 at \*10 (admission of  
25 petitioner's confession obtained in violation of his right to remain silent was not  
26 harmless where petitioner's statements formed "backbone" of prosecution's case  
27 and where no witnesses tied petitioner to crime). More importantly, the victim  
28 reported Petitioner's misconduct to her mother on the very day on which the

1 misconduct occurred and, thereafter, consistently described that misconduct to  
2 several different people. Testimony further established that the victim was crying  
3 when she reported Petitioner's misconduct and that she was "screaming for [her  
4 mother] to never let her go with her godparents again." (Lodged Doc. No. 6 at 3.)  
5 Further, the victim's account of the incident underlying Petitioner's conviction  
6 included details that would not be known to a five-year-old girl. For example,  
7 she told the nurse-practitioner who examined her that Petitioner's "private part  
8 looked like a snake," and that "stuff came out of his private part on the bed." (*Id.*  
9 at 3.)

10 There was, moreover, no evidence suggesting that the victim -- a five-year-  
11 old girl -- had any motive to falsely accuse Petitioner. On the contrary, up until  
12 the day on which Petitioner molested her, the five-year-old victim had referred to  
13 Petitioner as her "padrino." The victim's past interactions with Petitioner,  
14 likewise, provided no plausible reason why she would falsely accuse Petitioner of  
15 sexually molesting her. Rather, those interactions included Petitioner and his  
16 wife taking the victim to parks and meals on the weekends.

17 If the only evidence against Petitioner had consisted solely of the victim's  
18 account and Petitioner's purportedly coerced statements, the Court might have  
19 reached a different conclusion regarding the impact of Petitioner's statements.  
20 After all, the prosecutor cited several of Petitioner's purportedly coerced  
21 statements in arguing to the jury that Petitioner was guilty. (*See* RT 2164-69).  
22 As the Ninth Circuit has recognized, the admission of the erroneously admitted  
23 evidence is likely to be found prejudicial when the prosecutor emphasizes the  
24 importance of that evidence during closing arguments. *See Garcia v. Long*, 808  
25 F.3d 771, 782-84 (9th Cir. 2015) (admission of audiotape of petitioner's three and  
26 half hour interrogation and letter written during interrogation was not harmless  
27 despite other evidence implicating him in charged crime, in part, because the  
28 petitioner's statements "were the focal point of the prosecution's closing

1 argument”); *Jones*, 2016 WL 39447820 at \*10 (admission of petitioner’s  
2 confession obtained in violation of his right to remain silent was not harmless, in  
3 part, because prosecutor, in closing arguments, repeatedly referred to petitioner’s  
4 statements and told jury that it “could convict beyond a reasonable doubt based  
5 only on [petitioner’s] own statements”); *Maxwell v. Roe*, 628 F.3d 486, 508 (9th  
6 Cir. 2010) (significance of perjured testimony of jailhouse informant “was  
7 underscored by the prosecution in its closing argument” when it emphasized  
8 informant’s testimony).

9 The Court, however, is not faced with such a circumstance. Indeed, before  
10 the detective made any purportedly coercive threats against Petitioner, Petitioner  
11 had already effectively conceded that he had sexually molested the victim.  
12 Specifically, when asked about the victim’s allegations that he had touched her in  
13 a sexual manner, Petitioner responded, “[I]t’s not gonna happen *again* because  
14 I’m not gonna be with the girl anymore.” (Lodged Doc. No. 6 at 5 (*emphasis*  
15 *added*).) This statement alone constituted powerful evidence against Petitioner  
16 because it left no question that Petitioner had, as the victim reported, sexually  
17 molested the victim on the day in question. Indeed, that fact was established by  
18 Petitioner’s use of the word “again.” By effectively stating that the alleged sexual  
19 misconduct would not happen “again,” Petitioner admitted that it had happened in  
20 the past.

21 To be sure, the Ninth Circuit, mindful of the uniquely prejudicial effect of a  
22 confession, has found the admission of an illegally obtained confession to be  
23 prejudicial even where the petitioner makes other properly admitted statements  
24 suggesting his guilt. *See, e.g., Jones*, 2016 WL 3947820 at \*10 (admission of  
25 petitioner’s confession obtained in violation of his right to remain silent was not  
26 harmless even though, before violation occurred, petitioner made some  
27 “confusing comments about his whereabouts” during crime because those

28 ///



1 comments were “weak tea” compared to his admissions obtained in violation of  
2 right to silence); *Garcia v. Long*, 808 F.3d 771, 782-84 (9th Cir. 2015).

3 The Ninth Circuit’s opinion in *Garcia* is instructive in determining whether  
4 a confession is sufficiently prejudicial to warrant habeas relief. There, a sixteen-  
5 year-old girl reported to her family that the petitioner, Garcia, had been molesting  
6 her “for years.” *Garcia*, 808 F.3d at 773. Police then arrested Garcia and sought  
7 to question him about the victim’s allegations. *Id.* at 773-74. Having been read  
8 his *Miranda* rights, Garcia invoked his right to silence, but the investigating  
9 detective continued to question him. *Id.* at 774. Initially, Garcia denied any  
10 wrongdoing, but eventually he admitted to committing three acts of sexual  
11 misconduct with the victim, each of which, according to Garcia, was initiated by  
12 the victim. *Id.* at 774. At the detective’s urging, Garcia also wrote a letter of  
13 apology to the victim absolving her of any blame for his actions. *Id.* Although he  
14 ultimately was charged with committing numerous acts of molestation against a  
15 child under fourteen-years-old, the only specific acts of misconduct to which  
16 Garcia actually confessed were those that occurred after the victim had already  
17 reached fifteen years of age. *Id.*

18 A recording of the interrogation, which lasted over three and half hours,  
19 was played for the jury, and the letter that Garcia wrote was read to the jury. *Id.*  
20 Aside from Garcia’s confession and the victim’s testimony, the only other  
21 evidence implicating Garcia was the testimony of his former wife, who testified  
22 that Garcia had responded that he was sorry and had said, “God . . . forgives,”  
23 when asked why he had hurt the victim. *Id.* at 775.

24 During his closing arguments, the prosecutor heavily relied on Garcia’s  
25 pre-trial statements to persuade the jury that Garcia was guilty of the charged acts  
26 of committing sexual misconduct against a child under fourteen-years-old. *See*  
27 *id.* In particular, the prosecutor told the jury that the tape “lets us know what kind  
28 of man [Garcia] is” and cited Garcia’s inconsistencies to show that, despite



1 admitting some misconduct, he had lied in denying the charged acts of  
2 misconduct. *Id.* The prosecutor then contrasted Garcia's inconsistent statements  
3 and half-truths with the account of the victim, who, according to the prosecutor,  
4 had "always told the same truth." *Id.*

5 Under these facts, the Ninth Circuit held that the admission of Garcia's pre-  
6 trial statements that were obtained in violation of his right to remain silent were  
7 prejudicial. *Id.* at 782-84. Although the Ninth Circuit acknowledged that Garcia  
8 never confessed to the charged acts of misconduct, the Ninth Circuit nevertheless  
9 found significant that "the prosecutor relied heavily on Garcia's admissions to  
10 argue that the jury should believe [the victim's] testimony" and disbelieve  
11 Garcia's shifting accounts of what he did and did not do. *Id.* at 782. Citing  
12 numerous excerpts from the prosecutor's closing argument, the Ninth Circuit  
13 concluded that "Garcia's interrogation statements were the focal point of the  
14 prosecution's closing argument." *Id.* Although recognizing that Garcia's pre-  
15 trial statement to his wife was "harmful" to his case, the Ninth Circuit reasoned  
16 that Garcia's concession that he "hurt" the victim "in unspecified ways was not  
17 nearly as compelling as [his] taped admission that he had engaged in multiple  
18 specific sexual acts with [the victim]." *Id.* at 783. Furthermore, the Ninth Circuit  
19 noted that the admission of Garcia's illegally obtained custodial statements forced  
20 his trial counsel to concede that, in fact, Garcia had molested the victim, though  
21 counsel argued that Garcia did not commit the specific acts of which he was  
22 accused or use force or fear to accomplish those acts. *Id.* at 784. Thus, having  
23 considered the totality of these facts, the Ninth Circuit concluded that the  
24 admission of Garcia's pre-trial statements had a substantial and injurious impact  
25 on the jury's verdict. *Id.*

26 Petitioner's case, however, is distinguishable from the foregoing cases.  
27 Unlike the petitioner's properly admitted "confusing comments" in *Jones*  
28 regarding his whereabouts when the crime occurred, Petitioner's statement that

1 “[I]t’s not gonna happen *again* because I’m not gonna be with the girl anymore”  
2 was a clear admission of guilt. Petitioner’s properly admitted statement is,  
3 likewise, distinguishable from the petitioner’s properly admitted statement to his  
4 ex-wife in *Garcia*. Indeed, in *Garcia*, the petitioner’s incriminating statement  
5 was ambiguous in that he merely stated, “God . . . forgives” when confronted by  
6 the his ex-wife about how he could have “hurt” the victim in “unspecified ways.”  
7 By contrast, Petitioner was confronted with an interrogating detective’s question  
8 about whether Petitioner had sexually molested the five-year old victim. In  
9 response, Petitioner did not vaguely refer to God’s forgiveness, but rather  
10 admitted that he had sexually molested the victim by assuring the interrogating  
11 detective that “it’s not gonna happen *again*.” (Lodged Doc. No. 6 at 5 (*emphasis*  
12 *added*).) That clear concession of wrongdoing, in and of itself, would have been  
13 more than enough for the jury to conclude that the victim’s multiple and  
14 consistent accounts of Petitioner’s misconduct were accurate. That conclusion is  
15 all the more likely considering that the victim, a five-year-old girl, had no reason  
16 to fabricate her account of Petitioner’s misconduct in the first place and that she  
17 reported Petitioner’s misconduct on the same day on which it occurred. *Compare*  
18 *Garcia*, 808 F.3d at 773-74 (sixteen-year-old victim reported that her step-father  
19 had been molesting her “for years,” but waited “several months” thereafter to  
20 report molestation to authorities).

21 The impact of Petitioner’s purportedly coerced pre-trial statements is also  
22 distinguishable in three other key respects. First, unlike the molestation that  
23 occurred in *Garcia*, which transpired over a period of years, the molestation here  
24 occurred only once. Whereas the properly admitted evidence in *Garcia* included  
25 only *Garcia*’s vague statement about harming the victim in “unspecified ways,”  
26 Petitioner’s properly admitted statement about not molesting the victim “again”  
27 necessarily constituted an admission of the specific incident underlying the  
28 charges against him. In fact, Petitioner made that incriminating statement when

1 asked about his conduct on “that day.” Because of this fact, Petitioner’s  
2 concession that “it’s not gonna happen again” effectively established that  
3 Petitioner molested the victim on the day in question. Indeed, the victim reported  
4 only one incident during which Petitioner molested her.

5 Second, Petitioner’s purportedly coerced statements did not force trial  
6 counsel to concede any misconduct on Petitioner’s part. On the contrary, trial  
7 counsel steadfastly denied that Petitioner committed any wrongdoing. By  
8 contrast, in *Garcia*, trial counsel had no choice but to admit some wrongdoing on  
9 Garcia’s part because Garcia admitted to three specific acts of sexual misconduct  
10 and he was not even arguably coerced to do so. Trial counsel in Petitioner’s case  
11 addressed Petitioner’s purportedly coerced statements. But in doing so, he argued  
12 that Petitioner made those statements only because he was intimidated by the  
13 supposedly coercive tactics of the interrogating detective.<sup>6</sup> (*See* RT 2183-87.) In  
14 other words, he presented a plausible reason why Petitioner’s custodial statements  
15 were not reliable.

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17  
18 <sup>6</sup> Counsel’s chosen strategy to confront Petitioner’s pre-trial statements -- that is,  
19 relying on the interrogation transcript to argue that they were coerced -- further  
20 undercuts the prejudicial impact of those statements. *See Williams v. Woodford*,  
21 384 F.3d 567, 596 (9th Cir. 2002) (finding no evidence that petitioner’s right to  
22 fair trial was violated where witness who was beaten at city jail was available for  
23 cross-examination about coercion, thus allowing petitioner “to test the  
24 voluntariness and veracity” of witness’s testimony at trial); *United States v.*  
25 *Mattison*, 437 F.2d 84, 85 (9th Cir. 1970) (holding no violation of due process  
26 where witness who was subjected to allegedly coercive interrogation testified at  
27 trial and was subjected to cross-examination at trial through which jury could  
28 assess how any purported coercion impacted witness’s credibility). Although,  
here, Petitioner did not testify, the jury was exposed to the interrogation transcript,  
including the threats that the detective made. That evidence, coupled with  
counsel’s argument, was enough for the jury to conclude that Petitioner falsely  
implicated himself, if, in fact, the jury was inclined to believe so.

1 Third, unlike *Garcia*, Petitioner's purportedly coerced statements were by  
2 no means the focal point of the prosecutor's closing arguments. Rather, the  
3 prosecutor primarily relied on the victim's accounts of Petitioner's misconduct.  
4 To that end, the prosecutor argued that the victim's statements alone were enough  
5 to convict Petitioner of the charged crimes. Although the prosecutor  
6 subsequently recounted some of Petitioner's purportedly coerced pre-trial  
7 statements, the prosecutor never argued, as did the prosecutor in *Garcia*, that the  
8 jury could convict Petitioner based on those statements alone. Indeed, in his  
9 rebuttal argument, the prosecutor never even mentioned Petitioner's pre-trial  
10 statements -- even though Petitioner's trial counsel argued in his closing  
11 argument that those statements had been coerced. Instead, the prosecutor urged  
12 the jury to "consider all the evidence" and to "review those statements by [the  
13 victim] close in time [and] you will find that [the] evidence of what [the victim]  
14 said is sufficient for your verdict, and that you're going to convict" Petitioner of  
15 the charged crimes. (RT 2193.) As the foregoing makes clear, the focal point of  
16 the prosecutor's closing arguments was not Petitioner's pre-trial statements, but  
17 rather the victim's pre-trial accounts of Petitioner's actions.

18 There is, of course, no doubt that the admission of Petitioner's purportedly  
19 coerced statements aided the prosecutor in proving Petitioner's guilt. And,  
20 indeed, like the prosecutors *Garcia* and *Jones*, the prosecutor, here, relied on  
21 Petitioner's purportedly coerced pre-trial statements to persuade the jury of  
22 Petitioner's guilt, albeit to a lesser degree than did the prosecutors in *Garcia* and  
23 *Jones*. But the fact remains that the jury in all likelihood would have reached the  
24 same verdict even if those statements had been excluded. The victim's credibility  
25 was virtually unassailable, and her accounts of the incident underlying the  
26 charges against Petitioner were detailed and consistent. Petitioner, moreover,  
27 bolstered the victim's credibility by clearly acknowledging that he had committed  
28 sexual misconduct against the victim -- an acknowledgment that necessarily

1 pertained to the incident underlying the victim's allegation. Having considered  
2 those facts and having given due consideration to the unique role a confession  
3 plays in a criminal trial, the Court cannot conclude that Petitioner's purportedly  
4 coerced statements had a substantial and injurious impact on the jury's verdict.

5 For the foregoing reasons, the court of appeal's rejection of Petitioner's  
6 claim that his pre-trial statements were the product of coercion was neither an  
7 unreasonable application of, nor contrary to, clearly established federal law as  
8 determined by the Supreme Court.

9 **b. Right to Counsel**

10 A suspect who is subject to custodial interrogation has the right to remain  
11 silent and the right to speak with an attorney. *Miranda*, 384 U.S. at 444, 479; *see*  
12 *also Dickerson v. United States*, 530 U.S. 428, 442, 120 S. Ct. 2326, 147 L. Ed.  
13 2d 405 (2000). Consequently, once a suspect requests counsel, questioning must  
14 stop until an attorney is present. *See Davis v. United States*, 512 U.S. 452, 458,  
15 114 S. Ct. 2350, 2356, 129 L. Ed. 2d 362 (1994). Questioning need not cease,  
16 however, where the suspect's request for counsel is ambiguous. *Id.* at 459.

17 Courts engage in an "objective inquiry" to determine whether the suspect  
18 has made "some statement that can reasonably be construed to be an expression  
19 of a desire for the assistance of an attorney." *Id.* "Although a suspect need not  
20 speak with the discrimination of an Oxford don, he must articulate his desire to  
21 have counsel present sufficiently clearly that a reasonable police officer in the  
22 circumstances would understand the statement to be a request for an attorney."  
23 *Garcia v. Long*, 808 F.3d 771, 777 (9th Cir. 2015 (quoting *Davis*, 512 U.S. at  
24 459).

25 The Supreme Court's opinion in *Davis* illustrates how this objective  
26 inquiry works in practice. In *Davis*, the suspect, after being advised of his  
27 *Miranda* rights, agreed to submit to police questioning. 512 U.S. at 2351. After  
28 about an hour and a half of questioning, however, the suspect stated, "Maybe I

1 should talk to a lawyer.” *Id.* Rather than cease questioning, the officers asked the  
2 suspect if he was requesting a lawyer, and the suspect replied that he was not.  
3 Questioning then resumed and the suspect made several incriminating statements,  
4 which he later sought to have excluded from trial because they came after he  
5 requested, but was not provided, counsel. *Id.* Under these facts, the Supreme  
6 Court held that the suspect’s statement was, at best, an ambiguous request for  
7 counsel. *Id.* at 462. Consequently, it was insufficient to require the officers to  
8 cease questioning, and, moreover, it provided no grounds to suppress the  
9 suspect’s subsequent statements. *Id.*; *see also Clark v. Murphy*, 331 F.3d 1062,  
10 1069 (9th Cir. 2003) (holding that petitioner’s statement that “I think I would like  
11 to talk to a lawyer” was not unequivocal request for counsel and, therefore, did  
12 not require police questioning to cease), *overruled in part on other grounds by*  
13 *Lockyer v. Andrade*, 538 U.S. 63, 123 S. Ct. 1166, 155 L. Ed. 2d 144 (2003).

14 By contrast, a criminal defendant unambiguously and unequivocally  
15 invokes his right to counsel where his request leaves no question that he wants  
16 legal representation, even if, in requesting counsel, he shows deference to the  
17 interrogating detective. *See, e.g., Mays v. Clark*, 807 F.3d 968, 978-79 (9th Cir.  
18 2015) (finding no ambiguity or equivocation regarding petitioner’s invocation of  
19 right to counsel where petitioner asked police if he could call his father “and have  
20 my lawyer come down here”); *Sessoms v. Grounds*, 776 F.3d 615, 618 n.3 (9th  
21 Cir. 2015) (*en banc*) (finding that petitioner unequivocally invoked right to  
22 counsel by stating “There wouldn’t be any possible way that I could have a -- a  
23 lawyer present while we do this?” and stating “Yeah, that’s what my dad asked  
24 me to ask you guys . . . uh, give me a lawyer.”).

25 Here, Petitioner did not make an unambiguous request for counsel. At best,  
26 he alluded to the fact that he had retained counsel and that counsel had advised  
27 him not to speak to police without counsel present. That statement is far from an  
28 unequivocal request to speak with counsel. *Compare Jones*, 2016 WL 3947820

1 at \*5 (holding that petitioner, who had initially agreed to answer detective's  
2 questions, unequivocally invoked right to silence by stating, "I don't want to talk  
3 no more").<sup>7</sup> Indeed, at no point did Petitioner state that he, himself, would not  
4 speak to police without an attorney or that he, himself, even believed that it was a  
5 good idea to have counsel present. Instead, he merely indicated that his counsel  
6 had urged him not to speak with police.

7 In other words, Petitioner did little more than attempt to relay what counsel  
8 thought was wise. Petitioner's statement, therefore, is closer to the defendant's  
9 equivocal statement in *Davis* that he should "maybe . . . talk to a lawyer," than it is  
10 to the petitioner's unequivocal, yet deferential, question in *Mays* about whether  
11 he could call his father and "have my lawyer come down here." (*See supra.*)  
12 Petitioner's reference to his counsel's advice is also distinguishable from the  
13 suspect's unequivocal request for counsel in *Sessoms*. There, the suspect not only  
14 stated that his father had advised him to request an attorney, he also coupled that  
15 statement with a clear indication that he wanted to an attorney – stating, "Yeah,  
16 that's what my dad asked me to ask you guys . . . uh, *give me a lawyer.*" *Sessoms*,  
17 776 F.3d at 618 n.3 (*emphasis added*). Here, by contrast, Petitioner only  
18 mentioned what his attorney had suggested and nothing more. Because  
19 Petitioner's statement was equivocal, the detective was free to remind Petitioner  
20 that the decision to waive his right to counsel and remain silent was Petitioner's  
21 alone and to inquire as to whether he wanted to speak to the detective without an  
22 attorney. *Compare with Mays*, 807 F.3d at 978-79 (explaining that, where  
23 defendant unequivocally invokes right to counsel, neither police nor reviewing  
24 courts can rely on defendant's "post-request statements to cast doubt on the  
25 clarity of [his] request for a lawyer").

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26  
27 <sup>7</sup> In *Thompkins*, the Supreme Court explained that "there is no principled reason  
28 to adopt different standards for determining when an accused has invoked the  
*Miranda* right to remain silent and the *Miranda* right to counsel." 560 U.S. at 381.



1           Although it is troubling that the detective interrupted Petitioner as  
2   Petitioner was explaining what his counsel had told him, that fact is insufficient  
3   to transform Petitioner's equivocal reference to his counsel's opinion into an  
4   unequivocal invocation of Petitioner's right to counsel. Perhaps if he had not  
5   been interrupted, Petitioner would have, like the suspect in *Sessoms*, stated that  
6   he wanted to heed his attorney's advice and requested his attorney. But based on  
7   this record, there is no way to determine what would have happened if the  
8   detective had not interrupted Petitioner, and any attempt to do so would be pure  
9   speculation. One, nevertheless, could argue that, under such circumstances, the  
10   Court should presume that Petitioner, left uninterrupted, would have invoked his  
11   right to counsel. But the Court is aware of no Supreme Court case supporting  
12   such a presumption. On the contrary, the Supreme Court has excluded custodial  
13   statements where there was a technical compliance with *Miranda* only where  
14   there is evidence that the police deliberately engaged in some type of misconduct.  
15   *See Missouri v. Seibert*, 542 U.S. 600, 604, 124 S. Ct. 2601, 159 L. Ed. 2d 643  
16   (2004) (suppressing confession obtained after defendant was appraised of his  
17   *Miranda* rights because confession followed earlier interrogation where police,  
18   pursuant to policy, deliberately withheld *Miranda* warning and elicited full  
19   confession from defendant). Here, by contrast, there is no evidence of deliberate  
20   misconduct -- or, indeed, of any misconduct -- on the detective's part. True, the  
21   detective may have been eager to obtain a *Miranda* waiver from Petitioner;  
22   however, the same likely can be said of any law enforcement official who  
23   interrogates a criminal suspect. And, nothing about the detective's eagerness  
24   prevented Petitioner from asserting his right to counsel. On the contrary, the trial  
25   court, which viewed the relevant portions of the interrogation videotape,  
26   concluded that there was no evidence of intimidation. (*See* Lodged Doc. No. 6 at  
27   10.)

28   ///



1 In short, the court of appeal reasonably concluded that Petitioner did not  
2 unequivocally invoke his right to counsel. Consequently, the court of appeal's  
3 rejection of Petitioner's challenges to his pre-trial statement was neither an  
4 unreasonable application of, nor contrary to, clearly established federal law as  
5 determined by the Supreme Court.

6 **B. Trial Counsel's Performance**

7 In his next claim for relief, Petitioner contends that his trial counsel  
8 deprived Petitioner of his Sixth Amendment right to effective assistance of  
9 counsel by committing two errors. First, Petitioner faults counsel for failing to  
10 investigate several potential witnesses who could have testified on Petitioner's  
11 behalf. In particular, Petitioner identifies "two very important witnesses" who  
12 counsel failed to investigate: Jose Abel Mendoza and Mariana Lopez. (Pet.,  
13 App'x to Ground Three.) Petitioner further asserts that there were "also more  
14 witnesses" who wanted to testify on his behalf. (*Id.*) The only such witnesses  
15 whom he identifies, however, are Monica Orellana and Blanca Ardon, both of  
16 whom did, in fact, testify at trial. Second, Petitioner maintains that counsel erred  
17 in failing to request a copy of the DNA report to which the investigating detective  
18 alluded while interrogating Petitioner. Petitioner also contends that counsel  
19 compounded that error by failing to consult a DNA expert to challenge the report.  
20 As explained below, neither of Petitioner's allegations of attorney error warrants  
21 relief.

22 Both of Petitioner's allegations of attorney error are governed by the two-  
23 prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct.  
24 2052, 80 L. Ed. 2d 674 (1984). Under the first prong of that test, the petitioner  
25 must prove that his attorney's representation fell below an objective standard of  
26 reasonableness. *Strickland*, 466 U.S. at 687-88, 690. To establish deficient  
27 performance, the petitioner must show his counsel "made errors so serious that  
28 counsel was not functioning as the 'counsel' guaranteed the defendant by the

1 Sixth Amendment.” *Id.* at 687; *Williams*, 529 U.S. 362, 391, 120 S. Ct. 1495, 146  
2 L. Ed. 2d 389 (2000). In reviewing trial counsel’s performance, however, courts  
3 “strongly presume[] [that counsel] rendered adequate assistance and made all  
4 significant decisions in the exercise of reasonable professional judgment.”  
5 *Strickland*, 466 U.S. at 690; *Yarborough v. Gentry*, 540 U.S. 1, 8, 124 S. Ct. 1,  
6 157 L. Ed. 2d 1 (2003). Only if counsel’s acts and omissions, examined within  
7 the context of all the surrounding circumstances, were outside the “wide range”  
8 of professionally competent assistance, will petitioner meet this initial burden.  
9 *Kimmelman v. Morrison*, 477 U.S. 365, 386, 106 S. Ct. 2574, 91 L. Ed. 2d 305  
10 (1986); *Strickland*, 466 U.S. at 690.

11 Under the second part of *Strickland*’s two-prong test, the petitioner must  
12 show that he was prejudiced by demonstrating a reasonable probability that, but  
13 for his counsel’s errors, the result would have been different. *Strickland*, 466  
14 U.S. at 694. The errors must not merely undermine confidence in the outcome of  
15 the trial, but must result in a proceeding that was fundamentally unfair. *Williams*,  
16 529 U.S. at 393 n.17; *Lockhart*, 506 U.S. at 369. The petitioner must prove both  
17 deficient performance and prejudice. A court need not, however, determine  
18 whether counsel’s performance was deficient before determining whether the  
19 petitioner suffered prejudice as the result of the alleged deficiencies. *Strickland*,  
20 466 U.S. at 697.

21 Here, neither of Petitioner’s allegations of attorney error warrants habeas  
22 relief. First, Petitioner’s claim that counsel erred in failing to investigate  
23 potential witnesses who would have helped Petitioner’s defense fails for lack of  
24 evidence. Although Petitioner identifies two witnesses -- namely, Jose Abel  
25 Mendoza and Mariana Lopez -- who purportedly would have testified on  
26 Petitioner’s behalf, Petitioner has failed to provide a declaration or affidavit from  
27 either witness stating that he or she was willing to testify, or setting forth the facts  
28 to which he or she would have testified. *See Dows v. Wood*, 211 F.3d 480, 486

1 (9th Cir. 2000) (rejecting ineffective assistance of counsel claim based on failure  
2 to call witnesses where petitioner presented no affidavit from witness showing  
3 that witness was willing to provide helpful testimony to petitioner). The same is  
4 true as to the other unidentified witnesses who supposedly wanted to testify on  
5 Petitioner's behalf. Petitioner's allegations as to those unidentified witnesses also  
6 fail because they are conclusory in that Petitioner does not even identify the  
7 witnesses counsel purportedly failed to investigate or the facts about which they  
8 allegedly would have testified. Such conclusory allegations cannot justify habeas  
9 relief. *See James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994) ("Conclusory  
10 allegations which are not supported by a statement of specific facts do not  
11 warrant habeas relief."); *Jones v. Gomez*, 66 F.3d 199, 205 (9th Cir. 1995)  
12 (habeas relief not warranted where claims for relief are unsupported by facts).  
13 Although Petitioner identifies Monica Orellana and Blanca Ardon as witnesses  
14 who wanted to testify on Petitioner's behalf, both of those witnesses testified at  
15 trial.

16 Second, Petitioner's claim that counsel erred in failing to obtain or  
17 challenge the prosecution's DNA evidence is meritless. The prosecutor presented  
18 no DNA evidence to prove Petitioner's guilt. As such, counsel had no reason to  
19 consult a DNA expert. To be sure, the investigating detective, in interrogating  
20 Petitioner, alluded to DNA evidence showing Petitioner's guilt. But that allusion  
21 to DNA evidence was merely a permissible ruse designed to get Petitioner to  
22 admit his guilt. (*See supra.*) And, in any event, trial counsel noted in his closing  
23 argument that there was no medical or forensic evidence implicating Petitioner in  
24 the charged crimes.

25 Accordingly, Petitioner is not entitled to habeas relief with respect to his  
26 challenges to his trial counsel's performance.

27 ///

28 ///

1           **C.     Appellate Counsel’s Performance**

2           In his final claim for relief, Petitioner maintains that his appellate counsel  
3 provided ineffective assistance of counsel by failing to file a petition for review in  
4 the California Supreme Court on Petitioner’s behalf. According to Petitioner,  
5 counsel’s failure to file a petition for review potentially resulted in the default of  
6 each of the foregoing claims for relief. Indeed, Petitioner notes that Respondent  
7 has argued in this action that each of the foregoing claims for relief are  
8 procedurally barred precisely because the state court rejected those claims based  
9 on petitioner’s failure to assert them in a petition for review. As explained below,  
10 this claim is meritless.

11           A criminal defendant cannot be deprived of the effective assistance of  
12 counsel where no constitutional right to counsel exists. *Evitts v. Lucey*, 469 U.S.  
13 387, 396 n.7, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985). The Supreme Court,  
14 moreover, has held that there is no constitutional right to counsel for a criminal  
15 defendant to pursue discretionary state court appeals. *Wainwright v. Torna*, 455  
16 U.S. 586, 587-88, 102 S. Ct. 1300, 71 L. Ed. 2d 475 (1982) (*per curiam*);  
17 *Pennsylvania v. Finley*, 481 U.S. 551, 555, 107 S. Ct. 1990, 95 L. Ed. 2d 539  
18 (1987) (“Our cases establish that the right to appointed counsel extends to the  
19 first appeal of right, and no further. Thus, we have rejected suggestions that we  
20 establish a right to counsel on discretionary appeals.”); *Ross v. Moffitt*, 417 U.S.  
21 600, 610-11, 94 S. Ct. 2437, 41 L. Ed. 2d 341 (1974) (explaining that there is no  
22 constitutional right to counsel for discretionary appeals on direct review). Here,  
23 Petitioner had no right to effective assistance of counsel in connection with his  
24 petition for review because, in California, petitions for review are discretionary  
25 appeals. Indeed, California’s Rules of Court make clear that the California  
26 Supreme Court is not obliged to entertain a petition for review. *See* CAL. RULE  
27 OF COURT 8.500.(b) (stating that, under certain conditions, “[t]he Supreme Court  
28 *may order review* of a Court of Appeal decision”) (*emphasis added*).

1 Accordingly, Petitioner's claim lacks merit.<sup>8</sup>

2  
3 **VII. RECOMMENDATION**

4 The Magistrate Judge therefore recommends that the Court issue an order:  
5 (1) approving and adopting this Report and Recommendation; and (2) directing  
6 that judgment be entered denying the Petition on the merits with prejudice.  
7

8 DATED: October 6, 2016

9 /S/ FREDERICK F. MUMM  
10 FREDERICK F. MUMM  
11 United States Magistrate Judge  
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25 <sup>8</sup> The Court also notes that it did not find that Petitioner's claims were  
26 procedurally barred, but, instead, opted to reject them on their respective merits.  
27 Accordingly, even if Petitioner had a constitutional right to counsel with respect to  
28 his petition for review, he suffered no prejudice from counsel's failure to file a  
petition for review.

# **APPENDIX F**

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(a). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115(a).

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN ANTONIO ORELLANA,

Defendant and Appellant.

B255892

(Los Angeles County  
Super. Ct. No. BA403082)

COURT OF APPEAL - SECOND DIST.

**FILED**

APR 30 2015

JOSEPH A. LANE

Clerk

Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Lisa B. Lench, Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and  
J. Michael Lehman, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Juan Orellana of oral copulation of a child under ten and lewd acts on a child. On appeal, Orellana contends the trial court violated his Fifth and Sixth Amendment rights by permitting the People to introduce damaging admissions Orellana made when a detective interrogated him. Orellana argues he had retained an attorney and he tried to tell the detective that he wanted his lawyer to be there but the detective interrupted him. Orellana also contends the detective threatened him, promised him leniency, and lied about nonexistent scientific evidence, rendering his incriminating admissions involuntary. We find no error, and therefore affirm the judgment.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

#### ***1. Vanessa's Allegations***

Vanessa M. was born in June 2007. Orellana was a good friend of Vanessa's father, Pedro, who was deported in about 2011. Orellana and his girlfriend Blanca Ardon acted as godparents to Vanessa. They took Vanessa places on weekends -- to the park, out to eat, and to their apartment. Orellana's teenage daughter Monica usually went along. Vanessa called Orellana her "padrino."

On September 16, 2012, a Sunday, Orellana, Ardon, Monica, and Vanessa went to The Grove shopping center and to a store across the street. They took Monica home and then went to their apartment, taking Vanessa with them. Ardon left the apartment to walk a short distance to get some telephone cards. Orellana stayed home alone with Vanessa. It was the first time Orellana had ever been home alone with Vanessa. Vanessa was five years old at the time.

Around 4:00 that afternoon, Ardon called Vanessa's mother, Claudia Calderon. Ardon told Calderon that Vanessa was crying and that they were going to bring her home. Orellana and Ardon brought Vanessa back to Calderon's apartment around 6:00 p.m. According to Calderon, Vanessa seemed nervous. She got into bed right away. As soon as Orellana and Ardon left, Vanessa asked her mother to come into the bathroom. Vanessa was crying and told Calderon that Orellana had touched her private parts. Vanessa pointed to her crotch. Vanessa said Orellana had pulled her underwear



down and bitten her or tried to bite her “in her privates.” Vanessa said Orellana had opened her legs and had her sit on top of him. She told Calderon that Orellana’s zipper had hurt her leg. According to Calderon, Vanessa was “screaming for [her] to never let her go with her godparents again.”

Calderon called Orellana and Ardon. She asked Ardon how she could allow her boyfriend to do this. Ardon said she did not know what Calderon was talking about. Ardon gave the phone to Orellana. Calderon told Orellana she “couldn’t believe that he did that to [her] daughter.” She cursed at him. Orellana said he had not done anything. He offered to take Vanessa to the doctor.

Calderon took Vanessa to Children’s Hospital that night. Medical personnel examined Vanessa. Police and a social worker arrived. Calderon told the police officer what had happened. The officer took Calderon and Vanessa to County/USC Hospital. Around 2:15 a.m., a forensic nurse-practitioner, Shana Cripe, interviewed Vanessa, examined her, and took swabs. Cripe asked Vanessa’s mother to wait outside. Cripe usually asks the child “Why are you here?” and “What happened?”

Vanessa told Cripe that her padrino had “pull[ed] his zipper down and it scared [her],” that he had “hit [her] with the zipper on [her] private part,” and that he had “pulled at [her] underwear under [her] dress.” Vanessa said that her padrino had put his fingers and “his private part on [her] private part,” that his “private part looked like a snake,” and that “stuff came out of his private part on the bed.” Vanessa pointed to her vaginal area when she used the term “private part.” Vanessa told Cripe that her padrino had bitten her “on the private part with his teeth” and she told him it hurt. Vanessa said, “He showed me pictures of naked grownups with Hello Kitty because it was my birthday.”<sup>1</sup> Cripe was unable to understand about a quarter of what Vanessa said: some of what she told Cripe just did not make sense. Cripe said this was fairly normal for a five-year-old patient.

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<sup>1</sup> Vanessa’s birthday is June 29, not September 16.

Cripe then interviewed Calderon outside Vanessa's presence. Calderon told Cripe that Vanessa had urinated and wiped herself with toilet paper since Orellana and Ardon brought her home but had not defecated or taken a bath.

After interviewing Vanessa and her mother, Cripe had Vanessa take her clothes off. She examined her for injuries and used a Woods Lamp to look for proteins or secretions. Saliva usually would not light up under the Woods Lamp but semen would. No proteins or secretions appeared on Vanessa's body, nor did she have any cuts, scratches, marks, or other injuries. Cripe did not see any redness in Vanessa's vaginal area but noted that it had been more than eight hours since Vanessa had been returned to her mother. Cripe's examination of Vanessa's genital and anal areas revealed nothing out of the ordinary. Cripe concluded that she could not either "confirm or negate sexual abuse[,] because the exam was normal."

Los Angeles Police Department Detective Theresa Hernandez also interviewed Vanessa and her mother on September 24, 2012, at Rampart station. Vanessa's interview was videotaped.

## *2. The Detective Interviews Orellana*

Detective Hernandez called Orellana and asked him to come in for an interview. Hernandez and Orellana arranged a time to meet but Orellana did not appear for the meeting. Hernandez called Orellana and left him a couple of messages. Orellana did not respond and Hernandez had officers arrest him on September 26, 2012. The arresting officers brought Orellana to Rampart station around 8:00 p.m. and Hernandez interviewed him. Hernandez left the door of the interview room open. She sat across the table from Orellana. Orellana was not handcuffed during the interview. Hernandez was dressed in "business casual" attire, a t-shirt and slacks. Hernandez -- a certified Spanish speaker -- interviewed Orellana in Spanish. The interview was videotaped.

Hernandez first asked Orellana a number of preliminary questions about his age, address, occupation, and the like. Hernandez then said, "I'll talk to you about the case I have, okay?" Hernandez went on, "But in order to do that I need to read your, -- to read you your rights. Okay?" Hernandez told Orellana he had the right to remain silent,

that anything he said could be used against him in a court of law, that he had the right to the presence of an attorney before and during any interrogation, and that if he did not “have the money to pay an attorney, one will be appointed to you at no cost before you’re being [] interrogated.” After each statement, Hernandez asked Orellana, “Do you understand?” Each time Hernandez answered, “Yes.”

Hernandez then asked Orellana, “Didn’t I call you yesterday for [] an appointment?” and “[D]id I say that you had no problems?” Hernandez answered, “Yes, and then I talked to the attorney ‘cause I had already paid her, and she told me, ‘You can’t go because first,’ she said . . . .” Hernandez interrupted: “But it’s not, . . . it’s not the attorney’s decision. Like I just told you, those are your rights. If you want to talk to me about the case, I can discuss it with you.” Hernandez said, “Well, yeah. That’s what I wanted to talk about, but . . . .” Hernandez interrupted again: “ ‘Well, yeah?’ Is that the answer? ‘Well, yeah.’ Okay, I just need your signature here please.” Hernandez had Orellana sign a *Miranda* waiver form.<sup>2</sup>

Hernandez told Orellana, “[I]n a moment I’m gonna ask you everything I have to ask you. . . . Now, . . . people always think the worst about the cases, okay?” Hernandez said she worked for the sexual assault unit but that she already knew Orellana had not raped anyone. Orellana expressed relief. Hernandez told Orellana that he had “touched someone” but not raped her. Hernandez said touching someone was “not a big deal” to her but if Orellana lied to her, that would make it a big deal. Hernandez noted that Orellana’s record consisted of only a domestic violence arrest and a misdemeanor case of some sort, and that she knew he was not “a bad person.”

Hernandez told Orellana she wanted to understand “why did this happen with the girl . . . what happened that day?” Orellana responded, “[I]t’s not gonna happen again because I’m not gonna be with the girl anymore.” Orellana said he had offered to take Vanessa to the doctor “because I hadn’t done anything to the girl.” Hernandez said, “You did touch her. You did give her oral sex, okay?” Orellana said, “No. No.”

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<sup>2</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

Hernandez then told Orellana that his saliva had been found in a DNA test. Hernandez later said this falsehood was a commonly-used interrogation technique.

Hernandez told Orellana, “[Y]ou moved her underwear to the side and then you put your finger [sic] and then she pushed you and then you went and gave her oral sex with your tongue.” Hernandez said, “A girl that age doesn’t lie.” She asked Orellana, “Did you force yourself over on her [sic]?” Orellana answered, “No.” Hernandez noted Orellana had not done anything like that when Vanessa had been with him before. Orellana mentioned that they were always with his daughter Monica. Hernandez asked if it was different that day because Monica was not there. Orellana said his wife (referring to Ardon) had been there but had gone out to buy some cards. Orellana eventually said that he had put Vanessa on his lap but had not touched her. He again denied any oral copulation.

Hernandez then told Orellana she knew he was not a liar but if he “turn[ed] into a liar” she would “talk to the D.A.” and “raise the charge.” Hernandez repeated that a DNA test showed Vanessa had Orellana’s saliva “down there.” Hernandez said, “You wanna lie to me here? That’s fine. I close the book but we’re going to arrest you, okay? Don’t lie to me. Be honest with me.” Hernandez told Orellana, “You did it, and the question I’m asking you [is] why?” Orellana said, “But I wasn’t gonna hurt her.” Hernandez again accused Orellana of putting his finger in Vanessa’s vagina and “oral sex.” Orellana said, “Not internal. None of that. . . . It wasn’t internal.”

Hernandez told Orellana, “We have to put this behind you.” She said Vanessa was not hurt, that Orellana did not “force” her, but that he did “grope[]” her. Orellana said, “No. No.” Hernandez told Orellana Vanessa had said, when Orellana “gave her oral sex,” she pushed him and he moved back and then left her alone. Orellana said, “Yes.” Then Hernandez asked, “Did you make a mistake? Did you do something stupid?” Orellana answered, “Yes, I made a mistake.” He said he was not going to do it again, “God willing.”

Hernandez told Orellana, “if what you need is therapy, we can get you that, . . . and depending on what the D.A. says, if this is not very serious, probation or



something.” Hernandez talked about Vanessa being a child. Then she said, “She attracted [sic] you sexually, but what happened that different day [sic] that you have never done it before?” Orellana answered, “It was a, like just an impulse.” There was some discussion of Vanessa’s dress being up. Hernandez asked if Orellana felt “[s]omething erotic” when he saw Vanessa with her “dress up high like that.” Orellana said, “I mean, I just saw her like a girl . . . but . . . I had never done it before nor am I gonna do it [sic]. Just like an impulse.” When Hernandez asked what he felt, Orellana said, “I mean, in my mind, you know. I mean, what an adult person would imagine.”

Eventually Orellana seemed to admit having touched Vanessa’s crotch outside her underwear with his tongue. He also seemed to admit having had an erection but repeated that he could not harm Vanessa because she is a girl. He said he “hugged her and that’s all.” Hernandez told Orellana she had to send the case to the district attorney but she would note that Orellana cooperated. Orellana repeated, “[I]t won’t happen again.”

### 3. *The Charges, the Hearing, and the Trial*

The People charged Orellana with oral copulation of a child under ten in violation of Penal Code section 288.7 subdivision (b) and with having committed a lewd act on a child in violation of Penal Code section 288(a). The case went to trial in January 2014. Orellana’s attorney moved to exclude Orellana’s statements to Detective Hernandez in the interview on the ground that “there was no knowing, intelligent, voluntary waiver of his *Miranda* rights.” The court conducted a hearing outside the jury’s presence. Detective Hernandez testified. The defense called Orellana. The court read the transcript of the interview and watched at least part of the videotape.

Hernandez testified that she read Orellana each of his *Miranda* rights in Spanish and that he said “yes” when asked if he understood each. Hernandez testified Orellana said he “wasn’t sure” if he wanted to talk to her, and he mentioned having spoken with an attorney. Hernandez told Orellana it was his decision, his right, and he could talk to her if he wanted to. Orellana then said “well, yeah -- [t]hat he would talk to

[Hernandez].” Hernandez testified that Orellana never said that he did not want to talk to her, never asked to stop the interview, and never asked for an attorney. Hernandez said she never threatened Orellana during the interview.

On cross-examination, Hernandez admitted that -- before Orellana was arrested and brought in for the interview -- she had “received a message from a law firm that they wanted to speak to [her]” about Orellana. Hernandez testified that, when she reminded Orellana at the beginning of the interview that she had told him on the phone he had no problems, she was “trying to make him feel comfortable.”

Orellana also testified at the hearing. Orellana said he was from Honduras and had attended school for only two years. Orellana claimed he told Hernandez he wanted to have a lawyer present during the interview, that he tried to tell her that two or three times but she interrupted. Orellana had paid and spoken with an attorney; the attorney had told him to call if and when he was interviewed. Orellana said he had signed the *Miranda* form but could not read it. He testified Hernandez “didn’t explain” the form.

Orellana said he did not call the lawyer to represent him in the interview because the police had taken his wallet with the lawyer’s business card in it when he was arrested. When defense counsel asked Orellana if he had felt “intimidated” by the detective, he answered, “Yes, because I didn’t have the attorney that I had looked for to represent me.” Orellana testified he continued to talk to Hernandez because he was “afraid [if he did not] she would have the D.A. punish me.” He said he had initially denied the allegations but Hernandez got angry and said not to insult her, that she had been “doing this” for many years.

On cross-examination, Orellana admitted he had answered “yes” to each of the *Miranda* questions. Orellana said when he answered yes, that he understood he had the right to have an attorney present before and during any questioning, “at that moment I wanted to explain to her that I already had an attorney.” Orellana claimed he told Hernandez that he wanted his lawyer there “but she said that I didn’t need him there.” He said he felt “intimidated” “because I’m a shy person -- in the way I express myself.” Then he said, “If it’s a police officer, yes, I am afraid. I’m a shy person.” Orellana

claimed he did not understand all of Hernandez's questions. When asked what he did when he did not understand a question, he answered, "I wanted to express myself, but she would interrupt." Orellana admitted that he never stopped answering the detective's questions. He also admitted having denied some accusations that Hernandez made during the interview.

At the conclusion of testimony at the hearing, the prosecutor cited and discussed United States Supreme Court cases. He argued that, while Hernandez "could have perhaps been nicer with the defendant," there was "nothing to indicate that he didn't knowingly give up his rights." The prosecutor said Hernandez did not threaten Orellana, initially sitting at a table making "small talk" with him, and "there [was] nothing during those *Miranda* questions that was intimidating or coercive." The prosecutor argued that, after Hernandez read Orellana his rights, "he could have invoked. He never did. And whether the court wants to believe that this detective cut him off, he still engages in conversation during the entire interview with her. He has the ability to say I don't want to talk any more. I want to speak to my lawyer. And he didn't." The prosecutor said Hernandez encouraged Orellana to tell the truth and said it would be better for him, but she did not make promises about what would happen if he admitted the crime. The prosecutor conceded that Hernandez was "aggressive" in the interview but argued that, under the totality of the circumstances, Orellana's will was not overborne.

Defense counsel stated "[t]he main issue . . . [was] whether or not [Orellana] made a voluntary waiver of his right to counsel at this interview." Counsel argued that Orellana "had no opportunity to call the attorney that he paid for." Defense counsel said Orellana "tried" and "intended" to tell Hernandez "that he wanted to have an attorney present," but that she "cut [] him off three times." Counsel argued that Orellana continued to talk to Hernandez because she "threatened to raise the charges on him," and that Hernandez had induced Orellana to make incriminating admissions with promises of leniency as well as threats.

The court stated, "It seems to me that the two issues are whether the defendant was advised of his rights in an understandable way, and whether or not he voluntarily and intelligently waived those rights." On the first issue, the court noted the video- and audio-taped recording showed "that Mr. Orellana was orally advised of his rights. He was asked after each right whether he understood, and he responded yes." The court gave little weight to the form Hernandez had Orellana sign, given Orellana's testimony that he could not read Spanish. The court concluded, "Nonetheless, it does appear that he was advised of each of his rights in a way that was understandable, and that he indicated he understood them."

On the second issue, the court found "problematic" Hernandez's interruption of Orellana "on more than one occasion concerning his attorney and the fact that he had contacted an attorney." However, the court noted, under governing law, a defendant's invocation of his rights to remain silent and to have counsel present during questioning must be express. The court said, "I don't think there was an express invocation here. I think there was some ambiguity in terms of what may have been said, at best. But I don't think there was an express invocation of Mr. Orellana's desire to have his attorney present during questioning. As evidenced further by the fact that he kept talking." As for Orellana's claim of "intimidation," the court stated, "I don't see that, in either the content of the transcript or the portion of the tape that I watched in terms of any body language or tone of voice." The court therefore denied the defense motion to exclude Orellana's statements. But, the court said, defense counsel could argue to the jury that they should give little or no weight to the statements.

In closing argument, defense counsel argued that Orellana repeatedly had denied Vanessa's allegations until Detective Hernández threatened to "raise the charges" and "close the book," and had suggested he might get probation and therapy. Counsel asked the jurors to "[l]ook at the interview in its totality" and to consider Orellana's "lack of education and how that may play a role in his ability to communicate." Counsel argued that Hernandez was telling Orellana what she "want[ed] to hear" and that Orellana



“relent[ed]” because he was scared. Defense counsel told the jurors, “Ask yourself how voluntary was his confession in light of all the circumstances.”

The jury convicted Orellana on both counts. Orellana’s attorney moved for a new trial “on the ground that the court erred in admitting into evidence Defendant’s involuntary admissions made in his interview with Detective Hernandez.” The court denied the motion and sentenced Orellana on the oral copulation count to life in prison with a minimum eligible parole date of 15 years. On the lewd act on a child count, the court sentenced Orellana to the midterm of six years concurrent with the life term.

### ***APPELLANT’S CONTENTIONS***

Orellana contends his interrogation by Detective Hernandez without his attorney present violated his Fifth and Sixth Amendment rights to counsel. Orellana also argues that his incriminating admissions were the result of police coercion -- including promises of leniency, threats of retaliation, and “use of fabricated scientific evidence” -- and were therefore involuntary.

### ***DISCUSSION***

As with appellate review of *Miranda* issues (see *People v. Hensley* (2014) 59 Cal.4th 788, 809), the trial court’s legal conclusion as to the voluntariness of a confession is subject to independent review on appeal. The trial court’s resolution of disputed facts and inferences, its evaluation of credibility, and its findings as to the circumstances surrounding the confession are upheld if supported by substantial evidence. (*People v. Dykes* (2009) 46 Cal.4th 731, 752-753 (*Dykes*); *People v. Williams* (2010) 49 Cal.4th 405, 436 (*Williams*).)

1. *Detective Hernandez Did Not Violate Orellana’s Right to Counsel under the Fifth and Sixth Amendments*

Orellana contends his “confession was the product of a violation of his right to counsel.” It is unclear whether Orellana is arguing (1) that he had hired an attorney and could not be questioned without that lawyer present (a Sixth Amendment right), or (2) when he told Hernandez he had hired and spoken with a lawyer, that statement

amounted to an invocation of his right under *Miranda* not to be questioned without an attorney present (a Fifth Amendment right). In either event, Orellana's argument fails.

a. *Sixth Amendment Analysis*

When a person has been formally charged with a crime and is represented by counsel, police must give defense counsel the opportunity to speak with the defendant and be present during questioning. If they do not do so -- absent a waiver -- any statements obtained must be suppressed. (*Minnick v. Mississippi* (1990) 498 U.S. 146.) This Sixth Amendment right to counsel attaches "after the first formal charging proceeding." (*Moran v. Burbine* (1986) 475 U.S. 412, 428 (*Moran*).) In California, a prosecutor's filing of a complaint triggers the Sixth Amendment right to counsel. (*People v. Viray* (2005) 134 Cal.App.4th 1186, 1205.) A defendant's consent to police-initiated interrogation after the Sixth Amendment right has attached is not presumed involuntary or coerced simply because counsel has been previously appointed for the defendant. (*Montejo v. Louisiana* (2009) 556 U.S. 778, 794.)

Here, Orellana had been arrested but not charged. He told Hernandez he had hired a lawyer and spoken with that person. He seemed to say the lawyer had told him he did not have to go to the interview. The lawyer or someone on his or her behalf had called and left a message for Hernandez. On these facts, Hernandez did not violate Orellana's Sixth Amendment right to counsel. His Sixth Amendment rights had not attached. The United States Supreme Court has held that, before the initiation of adversarial judicial proceedings, the Sixth Amendment does not preclude the interrogation of a defendant who has validly waived his Fifth Amendment rights even when he is represented by counsel. (*Moran, supra*, 475 U.S. 412; see also *People v. Mattson* (1990) 50 Cal.3d 826, 867 (*Matson*).)<sup>3</sup> Detective Hernandez read each of

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<sup>3</sup> The California Supreme Court held in *People v. Houston* (1986) 42 Cal.3d 595 (*Houston*) that a defendant's right to counsel under article I, section 15 of the California Constitution was violated when interrogating officers did not tell the defendant that counsel who had been retained to represent him was at the police station, asking to see him immediately and demanding that any questioning cease. The underlying events in *Houston* took place six years before *Moran* was decided. The *Houston* court discussed

Orellana's *Miranda* rights to him in Spanish and asked him if he understood each. He said "yes" each time. Orellana then went on to answer Hernandez's questions. Accordingly, he validly waived his Fifth Amendment rights.

b. *Fifth Amendment Analysis*

Orellana also seems to contend that his statements to Hernandez about having hired an attorney constituted an invocation of his right not to proceed with questioning without his attorney present. However, the United States Supreme Court has held that a suspect must unambiguously request counsel. (*Davis v. United States* (1994) 512 U.S. 452, 459.) The *Davis* court rejected the proposition that police must stop questioning when the suspect *might* want a lawyer. (*Id.* at p. 459.) "[T]he interrogation must cease until an attorney is present *only* [i]f the individual states that he wants an attorney." ' ' (*Ibid.*, quoting *Moran, supra*, 475 U.S. at p. 433, fn. 4.) "Unless the suspect actually requests an attorney, questioning may continue." (*Davis, supra*, 512 U.S. at p. 462.) Where -- as here -- a defendant refers to an attorney, trial and reviewing courts "must ask whether, in light of the circumstances, a reasonable officer would have understood a defendant's reference to an attorney to be an unequivocal and unambiguous request for counsel, without regard to the defendant's subjective ability or capacity to articulate his or her desire for counsel, and with no further requirement imposed upon the officers to ask clarifying questions of the defendant." (*People v. Gonzalez* (2005) 34 Cal.4th 1111, 1125 (*Gonzalez*).)

Orellana argues that he tried to tell Hernandez he wanted a lawyer but she interrupted him. But Orellana never asked for a lawyer or stated he wanted the lawyer he said he had hired to be present before any questioning proceeded. Orellana sat

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*Moran* -- decided less than seven months earlier -- but based its decision on the California rather than the U.S. Constitution. Chief Justice Lucas dissented, writing that the United States Supreme Court's decision in *Moran* was "clear" and "directly on point." (*Houston*, 42 Cal.3d at p. 617.) In any event, here, no attorney came to the station or otherwise took "diligent steps to come to [Orellana's] aid." (*Id.* at p. 610.) (See also *Mattson, supra*, 50 Cal.3d at p. 868 ("[t]he *Houston* rule was quite narrow . . . and was limited to the facts of that case").)]

calmly and proceeded to answer Hernandez's questions. He made some admissions, but repeatedly denied any oral copulation of Vanessa. On these facts, the trial court properly concluded that Orellana had not unambiguously demanded counsel. (See, e.g., *People v. Bacon* (2010) 50 Cal.4th 1082, 1104 [defendant's statement " 'I think it'd probably be a good idea for me to get an attorney' " was ambiguous or equivocal reference to attorney]; *People v. Roquemoire* (2005) 131 Cal.App.4th 11, 19, 23-25 [defendant's remark on being advised of *Miranda* rights that he was confused and his question, "Can I call a lawyer or my mom to talk to you?" (*Id.* at p. 19) did not constitute unequivocal request for counsel to be present; subsequent statements were admissible]; *People v. Gonzalez, supra*, 34 Cal.4th at p. 1119 [defendant's statement to detectives "if . . . you guys are going to charge me I want to talk to a public defender" was conditional, ambiguous, and equivocal]; *People v. Sapp* (2003) 31 Cal.4th 240, 268 [defendant's equivocal effort to invoke right to counsel was inadequate to require that questioning cease].)

2. *Orellana's Admissions in his Interview with Hernandez Were Voluntary*

The federal and state Constitutions bar the use of involuntary confessions against a criminal defendant. (*Jackson v. Denno* (1964) 378 U.S. 368, 385-386; *People v. Benson* (1990) 52 Cal.3d 754, 778 (*Benson*).) A confession is involuntary if it is obtained by force, fear, or a promise of immunity or reward. (*People v. Esqueda* (1993) 17 Cal.App.4th 1450, 1483.) "The test for determining whether a confession is voluntary is whether the questioned suspect's 'will was overborne at the time he confessed.' " (*People v. Cruz* (2008) 44 Cal.4th 636, 669.)

Coercive police activity is a necessary predicate to a finding that a confession is involuntary. (*Colorado v. Connelly* (1986) 479 U.S. 157.) A statement is involuntary when -- among other circumstances -- it was extracted by threats or obtained by a direct or implied promise. (*Dykes, supra*, 46 Cal.4th at p. 752.) "A confession is 'obtained' by a promise within the proscription of both the federal and state due process guarant[ees] if and only if inducement and statement are linked, as it were, by 'proximate' causation." (*People v. Benson, supra*, 52 Cal.3d at p. 778.) In considering



whether something an officer says is a threat or a promise, courts “do not consider the words spoken in a vacuum but in the context of the conversation.” (*People v. Ramos* (2004) 121 Cal.App.4th 1194, 1203 (*Ramos*).) “In assessing allegedly coercive police tactics, “[t]he courts have prohibited only those psychological ploys which, under all the circumstances, are so coercive that they tend to produce a statement that is both involuntary and unreliable.” (*People v. Smith* (2007) 40 Cal.4th 483, 501 (*Smith*) [quoting *People v. Ray* (1996) 13 Cal.4th 313, 340].) “The business of police detectives is investigation, and they may elicit incriminating information from a suspect by any legal means.” (*People v. Jones* (1998) 17 Cal.4th 279, 297.)

In determining whether a defendant’s will was overborne, courts apply a “ “totality of the circumstances” ” test and examine the nature of the interrogation and the circumstances relating to the particular defendant. (*People v. Thomas* (2012) 211 Cal.App.4th 987, 1008.) Among the factors to be considered are “ “ “the crucial element of police coercion,” ” ” whether *Miranda* warnings had been given, the length of the interrogation, its location, and the defendant’s maturity, education, physical condition, and mental health. (*Dykes, supra*, 46 Cal.4th at p. 752.) “[N]o single factor is dispositive.” (*Williams, supra*, 49 Cal.4th at p. 436.)

The state bears the burden of proving the voluntariness of a confession by a preponderance of the evidence. (*Dykes, supra*, 46 Cal.4th at pp. 752-753; *Benson, supra*, 52 Cal.3d at p. 779.)

Here, Detective Hernandez’s interview of Orellana lasted less than an hour. It began around 8:00 p.m.; it was not the middle of the night or very early in the morning, nor was there any evidence that Orellana was sleep-deprived. Orellana was 46 years old and had been arrested before. Hernandez, a certified Spanish speaker, spoke with Orellana in Spanish. Before she asked him any questions, she advised him in Spanish of his *Miranda* rights. He said he understood each of those rights.

While the interview took place in an interrogation room at the police station, Hernandez remained seated across the table from Orellana and she left the door open. Orellana was not handcuffed. Although Hernandez apparently had a gun in a shoulder

holster, she was not wearing a uniform, and there is no evidence that she ever took the gun out of the holster. The videotape of the interview shows that Hernandez and Orellana spoke in a conversational tone. While Hernandez spoke directly -- even forcefully -- to Orellana at times, she never yelled at him or even raised her voice. Orellana does not appear frightened or distraught in the video. He is not trembling, crying, or breathing heavily.

The record does not support Orellana's contention that Hernandez promised him leniency if he confessed. Hernandez did tell Orellana in her initial telephone call that he "had no problems" and in the interview that it was "not a big deal" to have touched someone. But she never assured him -- in the telephone call or in the interview -- that he would not be arrested or charged. Moreover, Orellana already had made a number of incriminating admissions before Hernandez ever mentioned a possible conversation with the district attorney about "therapy" or "probation." Accordingly, the required proximate causation between inducement and statement is missing.

As for Hernandez's use of deception, she did falsely tell Orellana that DNA tests had shown his saliva on Vanessa's genitals. However, "[d]eception does not necessarily invalidate an incriminating statement." (*People v. Maury* (2003) 30 Cal.4th 342, 411.) "The use of a subterfuge by police officers is not necessarily impermissible because subterfuge per se is not the same as coercive conduct." (*People v. Parrison* (1982) 137 Cal.App.3d 529, 537 [police took hand swab, then falsely told defendant swab showed he had handled a gun].) (See also *Smith, supra*, 40 Cal.4th at pp. 505-506 [police told defendant results of sham test for gunshot residue were positive]; *People v. Dominick* (1986) 182 Cal.App.3d 1174, 1192 [detective falsely told defendant that victim had identified his photograph as the perpetrator].) In any event, Orellana continued throughout the interrogation to deny any skin-to-skin contact with Vanessa's genitals. Accordingly, any police lies about DNA results did not produce a confession to oral copulation.

Hernandez's statement to Orellana that if he lied to her she would talk to the D.A. about "rais[ing] the charge" presents a closer question. However, Orellana already

had made an incriminating statement -- that it was “not gonna happen again” because he was “not gonna be with the girl anymore” -- before Hernandez ever mentioned “raising” any charges. Moreover, Hernandez’s statement was coupled with an exhortation to tell the truth. Encouraging a suspect to tell the truth is not coercion. (*Amaya-Ruiz v. Stewart* (9th Cir. 1997) 121 F.3d 486, 494, overruled on other grounds.) Hernandez’s statement must be read in the context of the entire interview, including all of her questions and comments, among them an assurance that she knew Orellana had not raped anyone, a reference to how his conduct could have frightened his goddaughter, and an implication that charging and plea bargaining decisions would be made by the district attorney. Viewed in the totality of the circumstances, Hernandez’s statement about increasing the charges did not rise to the level of a constitutionally impermissible threat. (Cf. *Williams, supra*, 49 Cal.4th at pp. 435-445 [detectives told defendant “ ‘you’re going to . . . fry in the gas chamber’ ” and “the only thing that’s going to help you, ok is to tell the truth”]; officers’ vigorous interrogation and display of confidence in defendant’s guilt did not render his statements involuntary, as defendant’s will was not overborne]; *People v. Belmontes* (1988) 45 Cal.3d 744, 770-774 [officer said to defendant “Thanks for lying to me” and mentioned case might involve the death penalty, then told defendant “ ‘you want to clear it up so that it’s not all [lying] on you’ ”]; *In re Joe. R.* (1980) 27 Cal.3d 496, 513 [after receiving *Miranda* warnings, minor denied guilt for about 40 minutes; police then loudly, emphatically, and profanely (“bullshit”) accused minor of lying and presented him with incriminating evidence; confession was admissible].)

In sum this sort of questioning by a detective may not be admirable. But the issue is whether, under the totality of the circumstances here, Orellana’s will was overborne. These facts -- even taken in combination, as is required -- do not amount to an involuntary confession under governing law. (See *People v. Thomas, supra*, 211 Cal.App.4th at pp. 1007-1013 [four-hour interview at 4:24 a.m. of 17-year-old by two detectives did not produce involuntary statement even though detectives falsely told defendant that camera on highway had recorded events; two-hour interview of

15-year-old with IQ of 50 to 70 did not render defendant's statement involuntary even though detectives presented incriminating evidence after defendant had said, " 'I ain't talking no more and we can leave it at that' "; *People v. Quiroz* (2013)

215 Cal.App.4th 65, 78-79 [witness's statement to police not involuntary even though police told him he faced 50 years in prison for murder but could give them accurate information the district attorney might view favorably; law enforcement "may confront a witness with what they know" and "discuss any advantages that 'naturally accrue' from making a truthful statement"]; *Ramos, supra*, 121 Cal.App.4th at pp. 1200-1204

[defendant's incriminating statement not involuntary even though detective told him his cooperation would benefit him in judicial process and that detective would present the facts to the district attorney on defendant's behalf]; *People v. Holloway* (2004)

33 Cal.4th 96, 112-117 [admissions not involuntary even though detective told defendant " '[w]e're talking about a death penalty case here,' " " '[t]he truth cannot hurt you,' " and " '[t]he longer you sit there and not say anything and you just ride with it, and you're just, you're gone' "; detective's suggestions that killings might have been accidental or done in fit of rage and those circumstances could " 'make[] a lot of difference' " fell "far short of being promises of lenient treatment in exchange for cooperation"]; *People v. Farnam* (2002) 28 Cal.4th 107, 181-183 [18-year-old defendant's confession not involuntary even though he was crying and police falsely told him his fingerprints had been found on victim's wallet].)



***DISPOSITION***

The judgment is affirmed.

***NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS***

EGERTON, J.\*

WE CONCUR:

EDMON, P. J.

KITCHING, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

# **APPENDIX G**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COURT OF APPEAL - SECOND DIST.

FILED

JUL 1 2015

JOSEPH A. LANE Clerk

Deputy Clerk

In re

JUAN ORELLANA

on

Habeas Corpus.

B264504

(Super. Ct. No. BA403082)

ORDER

BY THE COURT:\*

The petition for writ of habeas corpus, filed June 4, 2015, has been read and considered with the opinion filed on appeal (*People v. Orellana* (Apr. 30, 2013, B255892) [nonpub. opn.]) Review of the petition and the exhibits provided in support of the petition indicate petitioner's claims should have been raised on appeal. Habeas corpus cannot serve as a substitute for an appeal and, in the absence of special circumstances not present here, the writ will not lie where the claimed errors could have been, but were not, raised in petitioner's timely appeal from his judgment of conviction. (See *In re Reno* (2012) 55 Cal.4th 428, 490-493; *In re Dixon* (1953) 41 Cal.2d 756, 759; *In re Walker* (1974) 10 Cal.3d 764, 773.) Accordingly, the petition is denied.

\*KITCHING, Acting P. J.

ALDRICH, J.

JONES, J.\*\*

\*\*Judge of the Superior Court of Los Angeles County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

# **APPENDIX H**

Appellate Courts Case Information

CALIFORNIA COURTS  
THE JUDICIAL BRANCH OF CALIFORNIA

Supreme Court

Change court

Court data last updated: 04/15/2016 03:43 PM

Docket (Register of Actions)

ORELLANA (JUAN) ON H.C.

Case Number S226907

Date	Description	Notes
06/04/2015	Petition for writ of habeas corpus filed	Petitioner: Juan Orellana Pro Per Exhibits attached with petition
09/09/2015	Petition for writ of habeas corpus denied	Werdegär, J., was absent and did not participate.

[Click here](#) to request automatic e-mail notifications about this case.

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# **APPENDIX I**

## Appellate Courts Case Information

CALIFORNIA COURTS  
THE JUDICIAL BRANCH OF CALIFORNIA

Supreme Court

Change court

Court data last updated: 04/15/2016 03:43 PM

Docket (Register of Actions)

**ORELLANA (JUAN) ON H.C.**  
**Case Number S230078**

Date	Description	Notes
10/20/2015	Petition for writ of habeas corpus filed	Petitioner: Juan Orellana Pro Per Exhibits A - B attached with petition
02/03/2016	Petition for writ of habeas corpus denied	The petition for writ of habeas corpus is denied. (See <i>In re Clark</i> (1993) 5 Cal.4th 750, 767-769.)

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# **APPENDIX J**



B255892

FILED  
JOSEPH A. LAME, Clerk  
R. Hernandez, Deputy Clerk

Jun. 6, 2014

**ORIGINAL C-2 R-5 & PR**

**COURT OF APPEAL  
SECOND APPELLATE DISTRICT  
STATE OF CALIFORNIA**

PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff and **RESPONDENT**

No. BA403082-01

**Vs**

**JUAN ANTONIO ORELLANA-01,**

Volume 1 of 2 Volumes  
Notice of appeal filing date: 04/28/14

Defendant(s) and **APPELLANT**

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**CLERK'S TRANSCRIPT**  
Page 1 to 173

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**Appearances:**

**Appeal from the Superior Court,  
County of Los Angeles**

Counsel for Plaintiff:

**Honorable LISA B. LENCH, Judge**

**THE ATTORNEY GENERAL**

Counsel for Defendant:

Date Mailed to:  
Defendant (in pro per)  
Defendant's Trial Attorney  
Defendant's Appellate Attorney  
District Attorney  
Attorney General

JUN 06 2014

MAY 05 2014

000083

**PEOPLE v. JUAN JUAN ORELLANA**

**Case No. BA403082**

Transcription/Translation  
[INTERVIEW OF JUAN ORELLANA]

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

**FOR IDENTIFICATION ONLY**

DATE 1/23/14 DNA ☐

TYPE OF HEARING JIT

CASE NO. BA403082

Court EXH. NO. 2B

CRIM 128 06-05  
(replaces CR 10A)

Prepared by Alejandro Alcántara (State of California Court Certified Interpreter,  
United States District Court Certified Interpreter, Approved Spanish Translator for the  
Superior Court of Los Angeles) for and under the supervision of Victoria Mizrahi

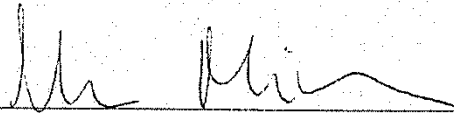
*Court 2B*

### DECLARATION OF INTERPRETER/TRANSLATOR

I, Victoria Mizrahi, am an official interpreter and translator for the Superior Court in and for the County of Los Angeles, State of California; I am familiar with the English and Spanish languages. I have supervised and reviewed the 77-page transcription/translation of the attached audio file in the case of the **PEOPLE v. JUAN JUAN ORELLANA**, Case No. **BA403082**, and the foregoing is a true and correct transcription/translation of said audio file.

I certify under penalty of perjury that I personally reviewed said transcription/translation and that it is accurate and complete.

Executed on: 9/25/13 at Los Angeles, California.



Victoria Mizrahi  
California Court Certified Interpreter 300612

000085

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

TRANSCRIPTION/TRANSLATION OF RECORDED INTERVIEW OF JUAN ORELLANA

PEOPLE v. JUAN ORELLANA — CASE NO. BA403082

Transcribed and Translated by Court Certified Interpreter Alejandro Alcántara, SCCI 300456

NOMENCLATURE

VOICES:

MV1	_____	MALE VOICE 1 (Juan Antonio Orellana)
MV2	_____	MALE VOICE 2 (unidentified, off camera)
FV1	_____	FEMALE VOICE 1 (Detective Hernandez)
FV2	_____	FEMALE VOICE 2 (unidentified, off camera)
FV3	_____	FEMALE VOICE 3 (unidentified, heard on the phone's speaker)

LEGENDS:

[OV]	_____	OVERLAPPING VOICES
[UI]	_____	UNINTELLIGIBLE
[INT]	_____	INTERRUPTING
[UR]	_____	UNKNOWN REFERENT
[SL]	_____	SOUNDS LIKE...
[IM] [IF]	_____	INDICATING FEMALE/INDICATING MALE
[IS] [IP]	_____	INDICATING SINGULAR/INDICATING PLURAL
[TN:]	_____	TRANSLATOR'S NOTE
...	_____	LINKING ELEMENT/PAUSE
-	_____	INCOMPLETE WORD
—	_____	DISCONTINUED PHRASE (ENGLISH)
...	_____	SAME AS ABOVE (SPANISH)
*	_____	DEFECT IN THE SOURCE LANGUAGE
[sic]	_____	LITERAL QUOTE
SMALL CAPS	_____	ORIGINALLY IN ENGLISH (ALSO IN ITALICS ON THE LEFT COLUMN)
[UPPERCASE]	_____	TRANSCRIBER/TRANSLATOR'S REMARKS
[lowercase]	_____	TRANSLATOR'S ADD-ONS

(Refer to last page for a detailed explanation of these legends)

DISCLAIMER

The transcription and translation of the contents of this audio-tape-recorded material are based upon the recording as heard on the particular electronic equipment used (Sony VAI0 Laptop computer; Bosse Digital Earphones; Start Stop Universal Transcription System) the quality of the recording provided, the clarity of the voices and the content of the conversation as understood by the translator.

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

TRANSCRIPTION/TRANSLATION OF RECORDED INTERVIEW OF JUAN ORELLANA  
PEOPLE v. JUAN ORELLANA — CASE NO. BA403082

TRANSCRIPTION

TRANSLATION

1 FV1: Voy a darte mi tarjeta, ¿okey?

FV1: I'm gonna give you my card, okay?

2

3 MVI: Bueno.

MVI: All right.

4

5 [NO VERBAL ACTIVITY]

[NO VERBAL ACTIVITY]

6

7 FV1: [UI] el número de detective, ¿okey?

FV1: [UI] the detective's number, okay?

8

9 [NO VERBAL ACTIVITY]

[NO VERBAL ACTIVITY]

10

11 FV1: Aquí tienes. ¿Okey?

FV1: Here you go. Okay?

12

13 MVI: Yeah.

MVI: YEAH.

14

15 FV1: ¿Te llamas Sergio?

FV1: Your name is Sergio?

16

17 MVI: No, ...

MVI: No, ...

18

19 FV1: ¿Orellana?

FV1: Orellana?

20

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: ... mi nombre es Juan Orellana.	MV1: ... my name is Juan Orellana.
2		
3	FV1: ¿Juan Antonio Orellana?	FV1: Juan Antonio Orellana?
4		
5	MV1: Sí.	MV1: Yes.
6		
7	FV1: ¿Estamos a 26?	FV1: Today's the 26 <sup>th</sup> ?
8		
9	MV1: Veintiséis.	MV1: 26 <sup>th</sup> .
10		
11	FV1: Y son las ocho. <i>Eight nineteen</i> (8:19).	FV1: And it's eight o'clock. <b>EIGHT NINETEEN</b>
12		(8:19).
13		
14	MV1: Sí.	MV1: Yes.
15		
16	FV1: ¿Tu domicilio?	FV1: Your address?
17		
18	MV1: 1703 Sur Bonnie Brea [sic], Apartamento	MV1: 1703 South Bonnie Brae, Apartment letter
19	letra C [SL].	C [SL].
20		
21	FV1: ¿Tienes mucho tiempo viviendo ahí?	FV1: Have you been living there for a long
22		time?
23		
24	MV1: Ah... ocho años. [UI].	MV1: Uh, eight years. [UI].
25		
26	FV1: ¡Oh! Okey. Bastante. ¿El área postal?	FV1: Oh! Okay. Quite some time. The ZIP
27		area [sic]?
28		

000088

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: 90006.	MV1: 90006.
2		
3	FV1: Okey. ¿Y tu teléfono?	FV1: Okay. Your phone number?
4		
5	MV1: 2-13 ...	MV1: 2-13 ...
6		
7	FV1: Um-hum.	FV1: Um-hum.
8		
9	MV1: ... 8-80 ...	MV1: ... 8-80 ...
10		
11	FV1: Um-hum.	FV1: Um-hum.
12		
13	MV1: ... 37-91.	MV1: ... 37-91.
14		
15	FV1: Okey. ¿Trabajas?	FV1: Okay. Do you work?
16		
17	MV1: Sí, en construcción.	MV1: Yes, in construction.
18		
19	FV1: [OV] ¿Dónde trabajas?	FV1: [OV] Where do you work?
20		
21	MV1: Construcción.	MV1: Construction.
22		
23	FV1: ¿Dónde trabajas?	FV1: Where do you work?
24		
25	MV1: Oh, en mi trabajo es en... en todas partes.	MV1: Oh, in my job is in— everywhere. I mean,
26	O sea, una compañía de construcción. O	a construction company. So—
27	sea...	
28		

000089

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	FV1: [INT] ¿Cuál es el nombre de la	FV1: [INT] What's the name of the company?
2	compañía?	
3		
4	MV1: Paulo Develobo [SL].	MV1: Paulo Develobo [SL].
5		
6	FV1: ¿Cómo?	FV1: What?
7		
8	MV1: Paulo Develobo [SL].	MV1: Paulo Develobo [SL].
9		
10	FV1: ¿Pablo?	FV1: Pablo?
11		
12	MV1: Develobo [SL].	MV1: Develobo [SL].
13		
14	FV1: ¿Pablo?	FV1: Pablo?
15		
16	MV1: Paulo. Develo--	MV1: Paulo. Develo--
17		
18	FV1: [INT] ¿O Pab-- Pablo?	FV1: [INT] O Pab-- Pablo?
19		
20	MV1: Paulo.	MV1: Paulo.
21		
22	FV1: Sí. Deletréalo.	FV1: Yes. Spell it.
23		
24	MV1: Pa-U-L.	MV1: Pa-U-L.
25		
26	FV1: Tú escribe aq-- tú escribe aquí.	FV1: Write it down he-- you write it down here.
27		
28	MV1: Tenía una tarjeta en la cartera allí. Pus no	MV1: I had a card in my wallet. I couldn't tell



INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	le podría decir. Ahí anda la tarjeta de	you. The credit card is there too.
2	crédito también.	
3		
4	FV1: ¿Pa-?	FV1: Pa-?
5		
6	MV1: Paulo. U-	MV1: Paulo. U-
7		
8	FV1: ¡Oh! ¿Paul?	FV1: Oh! Paul?
9		
10	MV1: Paul, ajá. Paul...	MV1: Paul, uh-huh. Paul...
11		
12	FV1: ¿Paul?	FV1: Paul?
13		
14	MV1: Develobo [SL]. De-be-leo.	MV1: Develobo [SL]. De-be-leo [SL].
15		
16	FV1: D...	FV1: D...
17		
18	MV1: Ajá.	MV1: Uh-huh.
19		
20	FV1: ¿Qué más?	FV1: What else?
21		
22	MV1: Vel... velebo [SL]. Paulo [UI].	MV1: Vel- velebo [SL]. Paulo [UI].
23		
24	FV1: [OV] Okey. ¿Construction?	FV1: [OV] Okay. CONSTRUCTION?
25		
26	MV1: Ajá, Construction. Yeah. Ahí anda en la	MV1: Uh-huh. CONSTRUCTION. YEAH. It's
27	cartera.	right there in the wallet.
28		

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	FV1: ¿En qué ciudad?	FV1: In what city?
2		
3	MV1: Ahí en la Be— en Brentwood.	MV1: Down in Be— in Brentwood.
4		
5	FV1: ¿En dónde?	FV1: Where?
6		
7	MV1: Brentwood.	MV1: Brentwood.
8		
9	FV1: ¿Qué haces?	FV1: What do you do?
10		
11	MV1: Yo pinto. eh... Mas que me contrataron de	MV1: I paint. uh— Even though they hired me
12	pintor . . .	as a painter . . .
13		
14	FV1: [OV] ¡Oh!	FV1: [OV] Oh!
15		
16	MV1: . . . pero ando de todo trabajo haciendo.	MV1: . . . but I'm doing all kinds of jobs.
17		
18	FV1: Okey.	FV1: Okay.
19		
20	MV1: Yeah.	MV1: YEAH.
21		
22	[NO VERBAL ACTIVITY]	[NO VERBAL ACTIVITY]
23		
24	FV1: ¿Cuánto mides de estaturas [sic]?	FV1: What are your heights [sic]?
25		
26	MV1: No sé. Como... por...	MV1: I don't know. About— like—
27		
28	FV1: ¿Cinco pies?	FV1: Five feet?

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: No.	MV1: No.
2		
3	FV1: ¿Cuánto pesas?	FV1: How much do you weight?
4		
5	MV1: Ciento ochenta.	MV1: One hundred and eighty (180).
6		
7	FV1: ¿Y tu fecha de nacimiento?	FV1: And your date of birth?
8		
9	MV1: Mes 6. 12 del '66.	MV1: Month 6, 12, '66.
10		
11	FV1: ¿Cuántos años tienes?	FV1: How old are you?
12		
13	MV1: Cuarenta y seis.	MV1: Forty-six (46).
14		
15	FV1: Okey. [UI] hablo contigo sobre el caso	FV1: Okay. [UI] I'll talk to you about the case
16	que tengo, ¿okey?	I have, okay?
17		
18	MV1: Sí.	MV1: Yes.
19		
20	FV1: Pero para hacer eso necesito leer tu...	FV1: But in order to do that I need to read
21	leerte sus derechos. ¿Okey? Y como te	your— to read you your rights. Okay?
22	dije, no tienes antece- ance- ades- a-	And like I said, you have no rec- ren-
23	antecedentes más que eso. [UI] tu [UI].	rest- re- record other than that. [UI] your
24		[UI].
25		
26	MV1: Mi historial, sí.	MV1: My record, yes.
27		
28	FV1: Yeah. *Usted tien- ¿Y eso fue en... es-	FV1: YEAH. You hav- And that was in... s-

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	2001, verdad?	2001, right?
2		
3	MV1: Como el 2001, sí.	MV1: Around 2001, yes.
4		
5	FV1: Ya hace mucho.	FV1: A long time ago.
6		
7	MV1: 2002. Sí.	MV1: 2002. Yes.
8		
9	FV1: *Usted tiene el derecho de permanecer	FV1: You have the right to remain silent. Do
10	callado. ¿Entiende?	you understand?
11		
12	MV1: Sí.	MV1: Yes.
13		
14	FV1: Sí. Cualquier cosa que *usted diga podrá	FV1: Yes. Anything you say may be used
15	usarse en su contra en una corte de	against you in a court of law. Do you
16	justicia. ¿Entiendes?	understand?
17		
18	MV1: Sí.	MV1: Yes.
19		
20	FV1: Okey. *Usted tiene el derecho de la	FV1: Okay. You have the right to the presence
21	presencia de un abogado antes y durante	of an attorney before and during any
22	cualquier interrogatorio. ¿Entiendes?	interrogation. Do you understand?
23		
24	MV1: Sí.	MV1: Yes.
25		
26	FV1: *Usted tie- no tiene el dinero, puede	FV1: You ha- don't have the money, you can
27	pagar... Si usted no tiene dinero para pagar	pay— If you don't have the money to pay
28	un abogado, se le nombrará uno a usted	an attorney, one will be appointed to you

000094

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	sin costo antes de intrucarl--interrogársele	at no cost before you're being intrucarl--
2	a usted. ¿Entiendes?	interrogated. Do you understand?
3		
4	MV1: Sí.	MV1: Yes.
5		
6	FV1: Okey. ¿No te hablé ayer para... para una	FV1: Okay. Didn't I call you yesterday for... for
7	cita?	an appointment?
8		
9	MV1: Sí, p-- Sí, tiene...	MV1: Yes, p-- Yes, it has—
10		
11	FV1: [INT] ¿Y te dije que no tenías	FV1: [INT] And did I say that you had no
12	problemas?	problems?
13		
14	MV1: Sí, y ya hablé yo con la abogada porque ya	MV1: Yes, and then I talked to the attorney
15	le había pagado y me dijo, "No puedes ir	'cause I had already paid her, and she told
16	porque primero..." me dice...	me, "You can't go because first—" she
17		said...
18		
19	FV1: [INT] Pero no... no es la decisión del	FV1: [INT] But it's not... it's not the attorney's
20	abogado. Como te acabo de decir, esos	decision. Like I just told you, those are
21	son tus derechos. Si quie-- quieres hablar	your rights. If you w--want to talk to me
22	connmigo sobre el caso, lo puedo discutir	about the case, I can discuss it with you.
23	contigo.	
24		
25	MV1: Pues sí. Eso era lo que yo quería hablar,	MV1: Well, yeah. That's what I wanted to talk
26	pero...	about, but—
27		
28	FV1: Yeah. Ant-- Okey. ¿"Pues sí"? ¿Esa es	FV1: YEAH. Bef-- Okay. "Well, yeah"? Is that

000095

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 respuesta? . . . "Pues sí". Okey. Nomás  
2 necesito tu firma aquí por favor. Y 'orita  
3 te pregunto todo lo que tengo que  
4 preguntarte . . . Gracias . . . 'Ora, entiende  
5 eso, ¿okey? La gente siempre... la gente  
6 siempre piensa lo peor de los casos,  
7 ¿okey?

the answer? . . . "Well, yeah." Okay. I  
just need your signature here please. And  
in a moment I'm gonna ask you everything  
I have to ask you . . . Thank you . . . Now,  
understand that, okay? People always—  
people always think the worst about the  
cases, okay?

9 MV1: Sí, se anticipa.

MV1: Yes, they get ahead of themselves.

11 FV1: *Yeah*. Y te voy a decir, yo... yo trabajo en  
12 la unidad de a— de a— de yo t— de la... de  
13 la... de asaltos sexuales, ¿okey? No  
14 \*violastes a nadie. Yo ya sé eso, ¿okey?

FV1: **YEAH**. And I'm gonna tell you, I... I work  
in the unit for a— the a— for, I t— for the—  
the... the sexual assault unit, okay? You  
didn't rape anyone. I already know that,  
okay?

17 MV1: [LAUGHTER] . . . ¡Qué bueno! ¡Qué  
18 alivio!

MV1: [LAUGHTER] . . . I'm glad! What a  
relief!

20 FV1: [LAUGHTER]

FV1: [LAUGHTER]

22 MV1: ¡Qué alivio! Sí, yo sé.

MV1: What a relief! Yes, I know.

24 FV1: ¿Okey? De que \*tocastes a alguien, sí  
25 \*tocastes, pero no la \*violastes. ¿Okey?  
26 Mucha gente... Nosotros lo vemos de una  
27 manera diferente que ustedes. Nosotros  
28 ve— vemos los niveles, ¿okey? Violar, te

FV1: Okay? Now, that you touched someone,  
you did, but you didn't rape her. Okay?  
A lot of people— We look at it in a  
different way than you guys. We s—see the  
levels, okay? To rape, I'm gonna tell you



000096

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 voy a decir lo... lo... sinceramente es lo  
2 peor. ¿Okey? Para mí, cuando yo veo  
3 que tocan a uno —¿okey?— yo veo cosas  
4 peores. Para mí no es una gran cosa,  
5 ¿okey? Pero sí lo hace una gran cosa si  
6 me... si me mientes. Como ya te dije, yo  
7 ya sé que no eres una persona mala.

the... the— quite frankly, is the worst.  
Okay? To me, when I see that they touch  
someone—okay?—I see worse things. To  
me, it's not a big deal, okay? But what  
makes it a big deal is if you... if you lie to  
me. Like I said, I already know you're not  
a bad person.

8  
9 MV1: No.

MV1: No.

10  
11 FV1: Que \*tuvistes una violencia doméstica, sí  
12 la \*tuvistes, pero fue en el dos mil once...  
13 uno, así que no tienes nada antes de eso y  
14 no has tenido nada después, así que eso  
15 me dice que no eres una persona que no  
16 respeta la ley; no... no... no... no... no nos  
17 está ignorando. Te \*dijieron, "Ya no  
18 puede hacer eso", y no lo has hecho hace  
19 tiempo... vuelto a hacer.

FV1: There's no doubt you had a domestic  
violence [case], but it was in two thousand  
and eleven... one, so you don't have  
anything before that and you haven't had  
anything after, so that tells me that you're  
not someone who doesn't respect the law;  
you're not... not... not... not... you're not  
ignoring us. You were told, "You can no  
longer do that," and you haven't done it  
for a long time—done it again.

20  
21  
22 MV1: Sí.

MV1: Yes.

23  
24 FV1: Igual... ah... a veces cuando los  
25 matrimonios se pelean y, y va a pasar algo  
26 y v—y pasa, ¿okey? También entendemos  
27 esto. ¿okey? Lo que yo lo q—yo quiero  
28 entender, ¿por qué pasó esto con la niña?

FV1: Same thing, uh, sometimes when married  
couples fight and, and something's gonna  
happen and v— and it happens, okay? We  
also understand this, okay? What I w—  
what I want to understand [is], why did

INTERVIEW OF JUAN ORELLANA

000097  
[Transcription/Translation]

1	Tú conoces a Vanessa; es tu...	this happen with the girl? You know
2		Vanessa; she's your—
3		
4	MV1: Es mi ahijada ella.	MV1: She's my goddaughter.
5		
6	FV1: Es tu ahijada. Y nunca había pasado.	FV1: She's your goddaughter. And it had never
7		happened.
8		
9	MV1: No.	MV1: No.
10		
11	FV1: Nomás esa una vez primero. Así que yo	FV1: Only that one time first [sic]. So I know
12	sé que no eres una persona mala. Lo que	you're not a bad person. What I want to
13	yo quiero entender, ¿qué pasó ese día?	understand, what happened that day?
14	¿Qué fue que...? ¿Qué... qué pasó	What was is that—? What... what
15	diferente ese día...? Porque eso es de lo	happened differently that day...? Because
16	que queremos hacer dos veces, ¿okey?	that's what we want to do twice, okay? I
17	Yo quiero... yo quiero acesiorarme [sic]	want to—I want to make assure [sic] that
18	que eso no va a pasar otra vez, ¿okey?	this is not gonna happen again, okay?
19	Y...	And—
20		
21	MV1: No, no va... no va a pasar porque ya no	MV1: No, it's not gonna—it's not gonna happen
22	voy a estar con la niña.	again because I'm not gonna be with the
23		girl anymore.
24		
25	FV1: No. Entonces eso está bien. Si tú piensas	FV1: No. So that's good. If you think you have
26	que tienes una debilidad cuando estás	a weakness when you're around the girl—
27	alrededor de la niña... Y no creo, porque	And I don't think so because you've never
28	nunca lo has hecho antes.	done it before.



000098

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 MV1: No.

MV1: No.

2  
3 FV1: Porque... porque me dijo la mamá que la  
4 has paseado antes y, y la han llevado y se  
5 han divertido, y la niña nunc-- La niña es  
6 muy lista, ¿eh? La niña nu-- Si algo pasa,  
7 ella va a decir. La niña nunca ha de-- \*he  
8 dicho nada malo de ti. Fue nomás ese día  
9 que fue a tu casa. ¿Okey? Así que no te  
10 pongas todo nervioso, que no te voy a...  
11 no te voy a hundir, ¿okey?

FV1: Because... because her mom told me that  
you have taken her out in the past and, and  
they have brought her and they have had a  
good time, and the girl nev-- The girl's  
really sharp, huh? The girl nev-- If  
something happens, she's gonna say it.  
The girl has never sai-- has said anything  
bad about you. It was only that day when  
she came to your house. Okay? So don't  
get all nervous 'cause I'm not gonna--  
I'm not gonna sink you, okay?

12  
13  
14  
15 MV1: Yeah, yo sé.

MV1: YEAH, I know.

16  
17 FV1: Y es más, deja traer tus papeles de... de...  
18 para enseñarte que nomás tienes ese \*una  
19 [UI], ¿okey? 'Pérame.

FV1: In fact, let me bring your papers from,  
from-- so I can show you that you only  
have that one one [sic] [UI], okay? Hold  
on.

20  
21  
22 [THE FOLLOWING EXCHANGE TAKES  
23 PLACE OFF CAMERA; VOICES YELLING IN  
24 THE BACKGROUND]

[THE FOLLOWING EXCHANGE TAKES  
PLACE OFF CAMERA; VOICES YELLING IN  
THE BACKGROUND]

25  
26 FV1: Hey, Blair!

FV1: HEY, BLAIR!

27  
28 FV2: Yes.

FV2: YES.

000099

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	FV1: <i>Can you do me a favor?</i>	FV1: CAN YOU DO ME A FAVOR?
2		
3	FV2: <i>Yeah.</i>	FV2: YEAH.
4		
5	FV1: <i>Can you give me that report and his rap</i>	FV1: CAN YOU GIVE ME THAT REPORT AND HIS
6	<i>sheet real quick?</i>	RAP SHEET REAL QUICK?
7		
8	FV2: <i>Yeah.</i>	FV2: YEAH.
9		
10	FV1: <i>Thanks!</i>	FV1: THANKS!
11		
12	[NO VERBAL ACTIVITY]	[NO VERBAL ACTIVITY]
13		
14	FV2: <i>Rap sheet and report?</i>	FV2: RAP SHEET AND REPORT?
15		
16	FV1: <i>Yeah.</i>	FV1: YEAH.
17		
18	FV2: <i>All right. [UI].</i>	FV2: ALL RIGHT. [UI].
19		
20	[BACK ON CAMERA]	[BACK ON CAMERA]
21		
22	FV1: <i>Mira. Eso es lo que yo veo, ¿okey? Yo</i>	FV1: Look. This is what I see, okay? I run off
23	<i>corro tu nombre. Aquí estás. ¿Okey?</i>	[sic] your name. You're here. Okay? Uh,
24	<i>Ah... eso me dice cuántas felonías; tres</i>	this tells me how many felonies; three
25	<i>arrestos, pero no tienes ni una convicción.</i>	arrests, but you don't have a single
26	<i>Eso es lo que cuenta, este lado.</i>	[moral] conviction <sup>1</sup> . This is what matters.
27	<i>convictions. ¿Okey? Te pueden arrestar</i>	this side, CONVICTIONS. Okay? You can
28	<i>muchas veces, ¿okey? Buena gente...</i>	be arrested many times, okay? Good

000100

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1       buc-- buena... buena... E-- a-- eso no quiere  
2       decir que y si eres culpable, no los que  
3       eres culpable [sic]. Quiere decir que en el  
4       momento que te arrestaron, que pensaron  
5       que tenían suficiente, ¿verdad?

people... g--good... good-- E-- a-- that  
doesn't mean that you are guilty, not that  
the you are guilty [sic]. It means that at  
the moment they arrested you, they  
thought they had enough, right?

1. TN: although the Spanish word *convicciones* does exist, it refers only to a conviction in the sense of strong belief and not (not ever) to conviction in the sense of judgement.

10      MV1: Um-hum.

MV1: Um-hum.

12      FV1: Y ya cuando va a corte, no hay suficiente  
13       para tener \*cargo y te los quitan, o no  
14       llega a corte. ¿Okey? Y estoy viendo que  
15       hay unos casos que ni siquiera fueron a  
16       corte, así que... Menorías tampoco tienes  
17       ninguna. Namás tienes una; es y se... es la  
18       violencia doméstica. No... Siempre que te  
19       arrestan por violencia doméstica, como es  
20       violencia doméstica es una mayoría, es  
21       una felonía, ¿okey? Pero cuando nosotros  
22       agarramos el deporte, si vemos que no es  
23       una cosa muy seria... Por ley lo tenemos  
24       que hacer felonía cuando te arrestamos,  
25       pero cuando no es r-- serio, entonces, ah,  
26       lo bajan a menoría. Y es lo que... es lo  
27       que pasó contigo. ¿okey? Para que no te  
28       asustes. ¿eh?

FV1: And then when it goes to court there's not  
enough to have charge[s] and they remove  
them, or it doesn't get to go to court.  
Okay? And I'm seeing that there are some  
cases that didn't even go to court, so--  
You don't have any minories [sic] either.  
You only have one; it's and it-- it's the  
domestic violence. Not-- Everytime they  
arrest you for domestic violence, since it's  
domestic violence it's a majory [sic], it's  
a felony, okay? But when we grab the  
report, if we see that it's not something  
really serious-- By law we have to make  
it a felony when we arrest you, but when  
it's not r-- serious, then, uh, they lower it  
to minory [sic]. And that's what... that's  
what happened with you, okay? Just so

000101

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 that you don't get scared, huh?

2

3 MV1: No. MV1: No.

4

5 FV1: Nunca has usado otros nombres y no eres FV1: You've never used other names and you're

6 mentiroso. Eso es lo que yo veo. not a liar. That's what I see.

7

8 MV1: [OV] Pos no. No [UI]. MV1: [OV] Well, no. I'm not [UI].

9

10 FV1: Parece que... Aquí está. En dos mil... FV1: It seems like— Here it is. In two

11 Diciembre, ¿verdad? thousand... December, right?

12

13 MV1: Um-hum. MV1: Um-hum.

14

15 FV1: Cerca de... Namás en la sección de Central FV1: Near— Just in the Central section, right?

16 —¿verdad?— por... por eso. *Convicted*. For... for that. **CONVICTED**. You just got

17 Nomás te dieron probación por treinta y probation for 36 months, right?

18 seis meses. ¿verdad?

19

20 MV1: Sí, tres años. MV1: Yes, three years.

21

22 FV1: [OV] Y sesenta días de *County Jail*. Y FV1: [OV] And 60 days **COUNTY JAIL**. And

23 nunca \*violastes la probación, así que you never violated probation so you're

24 estás bien, así que no eres una persona fine; so you're not someone, like I said,

25 como te dije, que nos veas... o sea, es lo who sees us as— I mean, that's what you

26 que nos dices. "¡Váyanse a la fregada!" tell us. "Go to hell!" Okay? I mean,

27 ¿Okey? O sea, n- n- no nos faltas al y-y-you don't disrespect us. It seems like

28 respeto. Parece que te arrestaron para... you were arrested to— you threatened



000102

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1       amenazaste a alguien y nunca llegó a  
2       nada. así que eso quiere decir que nunca  
3       llegó... no... no hubo... Alguien puede  
4       decir que los \*amenazastes y no quiere  
5       deci-- no quiere decir que es cierto, ¿okey?

someone and it never got anywhere, so  
that means that it never got to--- there...  
there was no--- Someone can say that you  
threatened them and that doesn't m--  
doesn't mean that it's true, okay?

6  
7       MV1: Sí, no fue cierto eso. Porque me pusieron  
8       el... fue u--

MV1: Yes, that wasn't true. Because they gave  
me the--- it was a--

9  
10      FV1: [INT] Es lo que dice. L-- lo mandaron así  
11       y luego después no pasó nada. Y esto es  
12       lo mismo otra vez, igual. Eres un pintor.  
13       Painter?

FV1: [INT] That's what it says. Th--they send  
it/you [UR] like this and then nothing  
happened. And this is the same again, just  
the same. You're a painter. PAINTER?

14  
15      MV1: Sí.

MV1: Yes.

16  
17      FV1: Y... um, *disturbing*--- Fue *dismissed*; eso  
18       fue otro... de los t-- Así que... así que eso  
19       me dice a mí que no eres un mentiroso y  
20       no eres una persona crime-- criminal  
21       habitual. ¿Okey? Éste es el reporte  
22       nomás que tenemos. Yo ya lo veí [sic]...  
23       ya lo leí. No la\*violastes, ¿okey?

FV1: And, um, **DISTURBING**--- It was  
**DISMISSED**; that was another--- from the  
t-- So... so that tells me that you're not a  
liar and you're not a crimen-- a habitual  
criminal person. Okay? This is the report  
only that we have [sic]. I already saw-ed  
[sic] it... I already read it. You didn't rape  
her, okay?

24  
25  
26      MV1: No, no, yo no.

MV1: No, no, I didn't.

27  
28      FV1: ¡Gracias a Dios! *All righty?*

FV1: Thank God! **ALL RIGHTY?**

000103

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: Sí, no. Yo que no...	MV1: Yes, no. I didn't—
2		
3	FV1: [INT] ¿La niña tiene cuántos años?	FV1: [INT] Is the girl four years old?
4		
5	MV1: Cinco, creo.	MV1: Five, I think.
6		
7	FV1: Tiene cinco años, ¿verdad?	FV1: She's five, right?
8		
9	MV1: Sí.	MV1: Yes.
10		
11	FV1: Okey. ¿Es tu ahijada?	FV1: Okay. She's your goddaughter?
12		
13	MV1: Es mi ahijada, sí.	MV1: She's my goddaughter, yes.
14		
15	FV1: Ándale pues. Parece que el día... ¿el día	FV1: All right. It seems like on the... on the
16	dieci- dieciséis fue?	sixt-sixteenth, wasn't it?
17		
18	MV1: Sí, el domingo.	MV1: Yes, on Sunday.
19		
20	FV1: Fue el domingo.	FV1: It was on Sunday.
21		
22	MV1: Yo me ofrecí decirle la señora que la [UI]	MV1: I offered to tell the lady to [UI] her [UI]
23	el doctor porque yo no le había hecho	the doctor because I hadn't done anything
24	nada a la niña. Me ofrecí y luego ella di-	to the girl. I offered to do it and then she
25	No, dijo que no, que no quería hablar	s- No, she said no: she said she didn't
26	conmigo.	want to talk to me.
27		
28	FV1: Pero la m- pero la mamá se asusta,	FV1: But the m- but her mom's scared, okay?

000104

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1           ¿okey?

2

3   MV1: Yo sé. Como porque... tal ve-

4

MV1: I know. 'Cause like... mayb-

5   FV1: [OV] Cuando la... cuando la niña...

6

FV1: [OV] When the... when the girl... when

7

cuando la niña di- cuando una niña dice

the girl s- when a girl says that you

8

que la \*tocastes, ell- la mamá no sabe al...

touched her, sh- the mom doesn't know

9

al... al... al principio. Una mamá se

at. at. at first. A mother gets scared. . . .

10

asusta. . . .

11

MV1: Es cierto.

MV1: That's true.

12

13   FV1: . . . la lleva al hospital y, y la [sic] hacen

FV1: . . . takes her to the hospital and, and they

14

examen y no fue... no fue v- violada de

gave her a test and she wasn't... she wasn't

15

esa manera. ¿Okey?

r-raped that way. Okay?

16

17   MV1: Yeah, pero...

MV1: Yeah, but—

18

19   FV1: [INT] Sí la \*tocastes. Sí le \*hicistes sexo

FV1: [INT] You did touch her. You did give

20

e- oral, ¿okey?

her e-oral sex, okay?

21

22   MV1: No, no.

MV1: No, no.

23

24   FV1: Sí. ¿Okey? Porque hay saliva. Aunque la

FV1: Yes. Okay? Because there's saliva. Even

25

bañaron y la lavaron la ropa, hay saliva.

though they bathed her and washed her

26

Eso es \*la... la DNA. Así que eso sí hay.

clothes, there's saliva. That's the... the

27

¿okey?

DNA. So that thing is there, okay?

28

000105

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 MV1: [OV] Sí. [UI].

MV1: [OV] Yes, [UI].

2  
3 FV1: Pero no la \*lastimastes. Porque cuando  
4 estás viendo un reporte, nos enseñan todo  
5 esto. Es el reporte del hospital. Y  
6 siempre ve unas fotos y enseñan si hubo  
7 alguna herida, así que yo sé que no la  
8 \*heristes, ¿okey? Lo que yo quiero saber  
9 es, ella ha ido a tu casa varias veces,  
10 ¿verdad?

FV1: But you didn't hurt her. Because when  
you're looking at a report, they show us all  
this. This is the report from the hospital.  
And you always see some photos and they  
show if there was an injury, so I know you  
didn't injure her, okay? What I want to  
know is, she has come to your house  
several time, right?

11  
12 MV1: Se ha quedado allí.

MV1: She has stayed there.

13  
14 FV1: Sí. ¿Qué pasó esa vez que \*hicistes eso?  
15 Porque la niña dice que primero... ¿Cómo  
16 estuvo? Le mo-- le movis-- Estaba sentada  
17 en un sofá. Tú estabas sentado aquí, le  
18 \*movistes el calzoncillo a un lado y luego  
19 le \*pusistes el dedo y después ella te  
20 empujó y después tú \*fuistes y le \*hicistes  
21 sexo oral con la lengua. Después ella te  
22 empujó y cuando ella te empujó no  
23 \*insististes. La \*dejastes. Así que yo sé  
24 que no la for-- no --¿cómo su e--?-- no  
25 \*forcejastes con ella porque no tuvo... no  
26 tenía marcas y ella nos dijo, Una niña no  
27 miente. Una niña de esa edad no miente.  
28 Ahora que si fuera más \*mayores, quién

FV1: Yes. What happened this time that you  
did that? Because the girl says that first--  
How was it? You m-- you moved her--  
She was sitting on a sofa. You were  
sitting here, you moved her underwear to  
the side and then you put your finger and  
then she pushed you and then you went  
and gave her oral sex with your tongue.  
Then she pushed you and when she  
pushed you, you didn't insist. You left her  
alone. So I know that you didn't for-- you  
didn't-- How do y--? You didn't struggle  
with her because she didn't have-- she  
had no marks and she told us. A girl  
doesn't lie. A girl that age doesn't lie.



000106

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 sabe. ¿Verdad? Es muy sincera. Así que,  
2 ¿hi- \*hicistes una estupidez? Sí. ¿Lo...  
3 lo...? ¿Te \*forzastes sobre de ella? No.  
4 ¿Okey? Porque ella misma...

Now, if she was older [sic], who knows.  
Right? She's very honest. So, d--did you  
do something stupid? Yes. Did... did--?  
Did you force yourself over on her [sic]?  
No. Okay? Because she...

7 MV1: [OV] No.

MV1: [OV] No.

9 FV1: ... me dijo que las dos veces ella te  
10 empujó y te \*hicistes at-- te \*hicistes para  
11 atrás. ¿verdad? Y luego después la  
12 \*sentastes encima de ti. te \*cerrastes el  
13 sipe [sic]... el zipper, te lo \*desquitastes  
14 y la... y la \*jalastes así y te la \*tallastes  
15 aquí, ¿okey? Lo único... lo único que dice  
16 que ella sintió que el zipper --¿ya ves que  
17 el zipper está...?-- como que la raspó un  
18 poquito. Eso no es nada. ¿Okey? Eso  
19 nomás es --¿cómo se dice?-- *touching*?  
20 ¿Tocando? De... de...

FV1: ... told me herself that the two times she  
pushed you and you moved b--you moved  
back, right? And later afterwards [sic]  
you sat her on top of you, you closed your  
sipe [sic]... your zipper, you untook [sic] it  
off and then... then you pulled her like this  
and rubbed her against you here, okay?  
All... all she says she felt was the  
zipper--you know how the zipper is  
like...?--it kind of scratched her a little  
bit. That's nothing. Okay? That's  
just--what do you call it?--TOUCHING?  
Touching? From, from...

23 MV1: [OV] Um-hum.

MV1: [OV] Um-hum.

25 FV1: ... de... de... de piel a piel. Es lo que  
26 nosotros le llamamos. ¿okey? Ora, la  
27 pregunta, ¿qué fue... qué pasó de re- ese  
28 día que te la \*llevastes, que sucedió eso?

FV1: ... from, from... skin to skin. That's what  
we call it, okay? Now, the question [is],  
what was-- what happened as re-- that day  
that you took her with you, that this

000107

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1       Porque las otras veces no lo\*hicistes.  
2       ¿Qué pasó ese día? ¿Qué estabas  
3       pensando?

happened? Because the other times you  
didn't do it. What happened that day?  
What were you thinking?

5       MV1: No, es que andaba con mi hija. Hemos  
6       andado siempre con mi niña.

MV1: No, 'cause I was with my daughter.  
We've always been with my girl.

8       FV1: Pero... pero... Yo sé. ¿Pero ese día qué  
9       fue? ¿Porque no estaba tu hija?

FV1: But... but—I know. But what was it that  
day? [Was it] because your daughter  
wasn't there?

12       MV1: No mi esposa estaba, que salió a comprar  
13       unas tarjet—

MV1: My wife was there not [sic] 'cause she  
went out to buy some cards—

15       FV1: [INT] E— eso fue cuando salió tu esposa,  
16       pero por eso digo, ¿qué...? Yo quiero  
17       cerciorarme que... que... Ya me \*dijistes  
18       que ya no vas a s— juntarte con la niña.  
19       ¿okey?

FV1: [INT] Th—that's when your wife went out,  
but that's why I'm saying, what...? I want  
to make sure that... that— You already  
told me that you're not longer gonna s—  
get together with the girl, okay?

21       MV1: No, no.

MV1: No, no.

23       FV1: Pero hay muchas niñas allá. ¿Qué fue lo  
24       que te \*atrayero esa niña de...? ¿Te dijo  
25       algo la niña? Porque la niña s— se me hizo  
26       media seria, la... seria, así que no sé... yo  
27       sé que la niña no es —¿cómo se dice?—  
28       ¿un poquito suelta? Así que, ¿qué fue

FV1: But there's a lot of girls there. What  
attracted [sic] you from that girl from—?  
Did the girl say something to you?  
Because the girl s—seemed kind of serious  
to me, the— serious, so I don't know—I  
know the girl is not—what do you call

000108

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 diferente que pasó esa vez, que... que se te  
2 hiz-- que te a-- que te \*atrayó sexualmente  
3 la niña? Yo quiero saber porque pa'  
4 decirle a la mamá, "Okey, no la vistas de  
5 esa manera. Esto dijo la niña". Porque la  
6 niña va a estar alrededor de otros hombres  
7 y yo quiero saber que... que no fue algo  
8 que ella hizo o dijo, que a-- . . .

it?—a little loose? So, what was different  
that happened that time [sic], that... that  
made y-- that got y-- that the girl attrucked  
[sic] you sexually? I want to know  
because then, to tell her mom, "Okay,  
don't dress her that way. This is what the  
girl said." Because the girl is going to be  
around other men and I want to know  
that... that it wasn't something she did or  
said, that a-- . . .

12 MV1: [OV] No, no.

MV1: [OV] No, no.

14 FV1: . . . que te \*atrayó tex- sex- sex-  
15 sexualmente.

FV1: . . . that attrucked [sic] you tex-  
sex-sex-sexually.

17 MV1: No, yo traía la niña. Eso no e-- yo no le  
18 puedo hacer ningún daño a ella, que yo le  
19 quiera hacer eso.

MV1: No, I had the girl with me. That, I didn't  
d-- I can't do any harm to her, like me  
trying to hurt her.

21 FV1: Pero la \*tocas. ¿Okey? De que la  
22 tocaste, \*lo \*tocas. Tú sabes muy bien.

FV1: But you touched her. Okay? There's no  
doubt that you touched her. You know it  
very well.

25 MV1: Sí la... la [UI] como le digo. Yo la puse  
26 en mis piernas, pero no es que la haya  
27 tocado.

MV1: Yes, I-- I [UI] like I said. I put her on my  
lap, but it's not like I touched her.

000109

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 FV1: [OV] Okey. Y la... y... y le di- y le 2 *hicistes. ah... s- ah... ¿cómo se dice <i>oral</i> 3 <i>sex</i> ? Le *hicistes... 4 5 MV1: No, eso no. 6 7 FV1: Sí cierto. ¿Y la saliva? Ya te dije que no 8 eres un mentiroso. ¿okey? 9 10 11 MV1: Sí. 12 13 FV1: Pero si te haces un mentiroso, yo voy a 14 subir el cargo. *orita no lo pu- n- n- 15 *orita si sigues tu... tu historia de lo que... 16 de que no repites y no eres de mentiroso 17 —¿okey?— podemos trabajar con eso, 18 pero si me empiezas a mentir, yo voy a 19 hablar con el fiscal. ¿okey? Porque el 20 fiscal ya tiene... l- le... hicimos *el prueba 21 de DNA. No sé si entiendes si cua- si 22 cuando bañas una persona no se quita 23 totalmente. ¿okey? Saliva tuya ahí abajo 24 sí tenía. De... 25 26 MV1: [INT] ¿En su parte íntima? 27 28 FV1: Sí. Eso n- eso ni qué, ¿okey?	FV1: [OV] Okay. And you— and, and you did... and you gave her, uh— s- uh... how do you say ORAL SEX? You gave her—  MV1: No. That, I didn't.  FV1: It is true. And what about the saliva? I already told you that you're not a liar, okay?  MV1: Yes.  FV1: But if you turn into a liar I'm gonna raise the charge. Right now you don't p- n- n- Right now, if you stick to... to your story about the— that you don't repeat it and you're not a liar—okay?—we can work with that, but if you start lying I'm gonna talk to the D.A. Okay? Because the D.A. already has— w-we— we did a DNA test on her. I don't know if you understand if whe- if when [sic] you bathe someone, it doesn't come off completely, okay? She did have your saliva down there. From—  MV1: [INT] In her private part?  FV1: Yes. That's un-unquestionable, okay?
---	---



000110

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: Mmm.	MV1: Mmm.
2		
3	FV1: Así que par— ¿Me quieres mentir aquí?	FV1: So to— You wanna lie to me here? That's
4	Está bien. Yo cierro el libro pero te	fine. I close the book but we're going to
5	vamos a arrestar, ¿okey? No me mientas.	arrest you, okay? Don't lie to me. Be
6	Sé sincero conmigo. Yo ya sé... según	honest with me. I already know—
7	esto eres una persona sincera. No dejes	according to this you're an honest person.
8	que... no dejes que el miedo te...	Don't let— don't let the fear to—
9		
10	MV1: Yo so— yo soy una persona sincera y no...	MV1: I'm... I'm an honest person and I can't...
11	no... no puedo mentirle que yo ...	can't... I can't lie to you and say that I...
12		
13	FV1: [OV] Ebert...	FV1: [OV] Ebert...
14		
15	MV1: ... le haya bajado sus <i>panties</i> .	MV1: ... pulled down her PANTIES.
16		
17	FV1: [OV] Okey, pero deja decirte. Los	FV1: [OV] Okay, but let me tell you. The
18	oficiales vinieron, que te estaban tocando	officers came, they were knocking at your
19	el cuart— Tú *vistes oficiales que hay en tu	room— You saw there are officers at your
20	casa y no te *salistes del carro. ¿okey?	house and you didn't get out of the car,
21		okay?
22		
23	MV1: Estoy en mi carro porque había...	MV1: I'm in my car because I had— I was
24	Tomando mi coca ahí, que fui al	drinking my coke there, 'cause I went to
25	McDonald's.	McDonald's.
26		
27	FV1: Pero voy a dejar pasar eso. ¿Okey?	FV1: But I'm gonna let that one go. Okay?
28		

000111

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: Okey.	MV1: Okay.
2		
3	FV1: Quiero saber qué fue diferente de esa... de	FV1: I want to know what about that... this time
4	esta vez que te hizo tocar esa niña que no	was different which made you touch that
5	*sucedió otras veces. Mi trabajo	girl and didn't happen other times. My
6	—¿okey?— es corregir esto. Mi para	job—okay?—is to correct that. My for
7	trabajo también es, no quiero que algo así	job [sic] is also, I don't want something
8	vuelva a suceder, ¿okey? No solamente	like this to happen again, okay? Not only
9	contigo, pero yo quiero saber qué pasó	with you, but I want to know what
10	para que no vuelva a pasar con otra niña o	happened so that it doesn't happen again
11	otro señor. Yo quiero saber qué es lo que	with another girl or another man. I want
12	causa esto. ¿Okey? Porque si yo te viera	to know what causes this. Okay? Because
13	como una persona que lo hace a cada ra-	if I saw you as someone who does it all
14	eres un estúpido. ¿okey?	the ti—you're stupid, okay?
15		
16	MV1: Sí, tiene...	MV1: Yes, you have to—
17		
18	FV1: [INT] Pero no eres.	FV1: [INT] But you're not.
19		
20	MV1: No.	MV1: No.
21		
22	FV1: Por eso es que s- me, me asombra. Por	FV1: That's why I'm s- I'm, I'm astonished.
23	eso te dije ayer, le digo, "Ven a hablar,	That's why I told you yesterday, I said,
24	platicar conmigo", le dije, "Y te puedes	"Come talk to me, chat with me", I said,
25	ir", te dije.	"And then you can go", I told you.
26		
27	MV1: Sí, di- me dijo. Pero como me dice	MV1: Yeah, you t- you told me. But like you're
28	ahorí-	saying right now—

000112

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 FV1: [INT] Pero... pe- pero luego \*dijistes... y  
2 luego... y l- y luego no... no... no ibas a  
3 venir, ¿verdad? Así que 'ora estamos  
4 hablando de... hablando... Es lo único que  
5 quiero saber. Yo sé que pa'- yo sé que  
6 pasó esto. ¿okey? Así que n- no me  
7 empieces a negar, por favor. Porque de  
8 que... ¿Cómo te dije? No estamos aquí a  
9 preguntarte, "¿\*hicistes o no \*hicistes?"  
10 Sí lo \*hicistes, y la pregunta que yo te  
11 estoy haciendo, ¿por qué? ¿Por qué? ¿La  
12 esposa no te daba ya?

13  
14 MV1: No, sí, me iba a ella.

15  
16 FV1: Pero no es igual que la niña.

17  
18 MV1: Pero no iba yo a hacerle daño yo.

19  
20 FV1: Pero no le \*hicistes daño. No la lasti- Es  
21 lo que te digo, . . .

22  
23 MV1: [OV] Sí.

24  
25 FV1: . . . no la \*lastimastes físicamente. Y de  
26 eso... y de eso es lo que te \*salvastes,  
27 ¿okey? No le \*pusistes el pene adentro de  
28 ella. . . .

FV1: [INT] But... b-but then you said— and  
then— and th— and then you were not, not,  
not gonna come, right? So now we're  
talking about—talking— That's all I want  
to know. I already know that it hap- I  
know that this happened, okay? So  
d-don't start denying it, please. Because  
the fact that— What did I tell you? We're  
not here to ask you, "Did you or didn't  
do?" [sic] You did it, and the question  
I'm asking you [is], why? Why? Was the  
wife no longer giving you?

MV1: No, yeah, I would go to her.

FV1: But she not the same as the girl.

MV1: But I wasn't gonna hurt her.

FV1: But you did hurt her. You didn't hur-  
That's what I'm saying, . . .

MV1: [OV] Yes.

FV1: . . . you didn't hurt her physically. And  
that... that's what saved you, okay? You  
didn't put your penis inside her, . . .



000113

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: ¡No! ¿Cómo voy a creer?!	MV1: No! Come on!
2		
3	FV1: ... así que de eso te *salvastes. ¿Okay?	FV1: ... so you escaped that. Okay? But you
4	Pero sí la *tocastes con el dedo en la	did touch her with your finger in her
5	vagina y sí le di- le dis- *hicistes. ah.	vagina, and you did g- you gav- you gave
6	sexo oral. ¿okay? Eso sí pasó. Yo puedo	her, uh, oral sex, okay? That really
7	trabajar con eso. Porque no la	happened. I can work with that. Because
8	*lastimastes físicamente. ¿Okay? Si la	you didn't hurt her physically. Okay? If
9	hubieras... si la... si la... si... si la hubieras	you had— if you... if you... if, if you had
10	[UI]...	[UI] her—
11		
12	MV1: [INT] Físico ni interno no, ¿verdad?	MV1: [INT] Neither physical nor internal, no.
13		Right?
14		
15	FV1: ¿Cómo?	FV1: What?
16		
17	MV1: Ni interno. Nada de eso.	MV1: Nor internal. None of that.
18		
19	FV1: No. No.	FV1: No. No.
20		
21	MV1: No, yo no...	MV1: No, I didn't—
22		
23	FV1: [OV] No fue interno.	FV1: [OV] It wasn't internal.
24		
25	MV1: No...	MV1: Not...
26		
27	FV1: Le hic- le hicieron todas las pruebas. No	FV1: They d- they gave her all the tests. It
28	fue interno pero si había saliva tuya.	wasn't internal but there was some of your

000114

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	¿Okey? Así que yo sé qué *hicistes. Y la	saliva there. Okay? So I know that you
2	niña me dijo y la c-- y los niños... em... Tú	did it. And the girl told me and the c-- and
3	conoces a la niña.	the children. um— You know the girl.
4		
5	MV1: Yo la conozco desde que nació. Yo la	MV1: I've known her since she was born. I
6	he...	have—
7		
8	FV1: [INT] Y... y... Okey, entonces, ¿cómo es	FV1: [INT] And, and— Oka, then how can you
9	posible que me... que me digas que tú la	possibly tell m— tell me that you love her.
10	quieres, es una niña buena...	that she's a good girl—
11		
12	MV1: [OV] Igual que mi... mi hija. yo igual.	MV1: [OV] Just like my... my daughter, the
13		same.
14		
15	FV1: Cómo es posible que... que mi... No voy a	FV1: How is it possible to, to—I'm not going
16	permitir que tú me digas que esa niña es	to allow you to tell me that this girl is a
17	una mentirosa porque no es. No se lo	liar because she's not. The girl doesn't
18	merece esa niña, ¿okey? ¿Se asustó?	deserve it, okay? Did she get scared? Of
19	Claro que se asustó. Está asustada.	course she did. She's scared. Okay?
20	¿Okey? Eso se le va a quitar, pero qué	That's gonna go away, but what a big...
21	gran... qué gran favor le puedes hacer a	what a big favor you can do to that girl
22	esa niña que... Más en el futuro, porque un	who— More so in the future, because one
23	día se van a ver otra vez, ¿okey? Que ella	day you guys are gonna meet again, okay?
24	sepa que, "Me equivoqué". Un día le	She has to know that, "I made a mistake."
25	escribes una carta, "I am so sorry, ..."	One day you write a letter to her, "I AM
26		SO SORRY. ..."
27		
28	MV1: Sí.	MV1: Yes.

000115

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 FV1: ... No lo volveré a hacer", le... le... le... y 2 le... y no se lo merecía. Gracias a Dios 3 que no está más grande para que quede 4 traumada emocionalmente. ¿Te imaginas 5 que le pasara eso a alguien más? No se lo 6 merece la niña. 7 8 MV1: Yo sé que no. 9 10 FV1: Lo que sí se merece esa niña, que seas 11 sincero. ¿Okey? Porque en el momento 12 que tú puedas reconocer lo que *hicistes, 13 d-- yo te apuesto que se te va a quitar un 14 peso de encima. Igualmente cuando te 15 *distes cuenta de esto. Esto ya no... Ya 16 esto está detrás de tí. Ya no te tienes que 17 preocupar por eso, ¿verdad? 18 19 MV1: Sí. 20 21 FV1: Hay que poner esto detrás de tí. Ya te dije 22 que yo ya sé. No te estamos acusando de, 23 de asalto sexual, o sea que... que... que 24 el... adentro de la vagina; eso no pasó. Ya 25 la revisamos. No pas-- No está lastimada. 26 ¿okey? No la *manoseastes, no la 27 *forzastes, ¿okey? 28	FV1: ... I'm not gonna do it again," she, she, she... and she... and she didn't deserve it. Thank God she's not older to be traumatized emotionally. Can you imagine if this happened to someone else? The girl doesn't deserve it.  MV1: I know she doesn't.  FV1: What the girl deserves, for you to be honest. Okay? Because the moment you can acknowledge what you did, d-- I bet you you're gonna get a weigh off your back. The same when you realized this. This is no longer— This is now behind you. You don't have to be worried for that, right?  MV1: Yes.  FV1: We have to put this behind you. I already told you, I already know. We're not accusing you of, of sexual assault, so to, to, to... inside her vagina; that didn't happen. We already checked her. It didn't hap-- She's not hurt, okay? You groped her; you didn't force her, okay?
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000116

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 MV1: [OV] No, no.

MV1: [OV] No, no.

2  
3 FV1: Ella sí nos dijo que cuando... que cuando  
4 la \*tocabas. ella te empujó y sí te  
5 \*hicistes para atrás. ¿okay? Y sí me dijo  
6 que cuando tú le \*hicistes sexo oral ella te  
7 empujó— eh, te empujó y te \*hicistes pa-  
8 atrás y luego ya la \*dejastes. Que... Así  
9 que yo te puedo respetar por eso. ¿okay?

FV1: She told us that when... that when you  
touched her, she pushed you and you  
actually moved back, okay? And she did  
tell me that when you gave her oral sex,  
she push— uh, she pushed you and you  
moved back and then you left her alone.  
That— So I can respect you for that,  
okay?

10  
11  
12 MV1: Sí.

MV1: Yes.

13  
14 FV1: ¿Te \*equivocastes. \*hicistes una stupid—  
15 una estupidez? Quiz— quizás.

FV1: Did you make a mistake? Did you do  
something st— something stupid?  
Ma—maybe.

16  
17  
18 MV1: Sí, me equivoqué.

MV1: Yes, I made a mistake.

19  
20 FV1: Pero no creo que lo vayas a hacer otra vez.

FV1: But I don't think you're gonna do it again.

21  
22 MV1: No, no.

MV1: No, no.

23  
24 FV1: ¿Okay?

FV1: Okay?

25  
26 MV1: Dios mediante, no, yo siempre no voy a...

MV1: God willing, no, I'm always going to—

27  
28 FV1: [OV] Yo quiero saber... pero yo quiero

FV1: [OV] I want to know— but I want to

000117

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 saber qué fue lo que causó eso, qué  
2 \*sentistes. Porque quizás el problema que  
3 hay aquí, si lo que necesitas es terapia te  
4 podemos conseguir eso. Te, te p-- te  
5 podemos conseguir, y según lo que diga el  
6 fiscal, si no es algo muy serio, probación  
7 o algo, pero yo creo que terapia. Yo  
8 puedo exigir, po-- porque no eres una  
9 persona habitual, como así se dice.

know what caused that, what did you feel.  
Because maybe the problem we have here,  
if what you need is therapy, we can get  
you that. We, we c-- we can get it for you,  
and depending on what the D.A. says, if  
this is not very serious, probation or  
something; but therapy, I think. I can  
demand, be--because you're not a habitual  
person, as we call it.

11 MV1: Sí.

MV1: Yes.

12  
13 FV1: Así es que si... si... si hay algo que tú  
14 sientes cuando ves a las niñas así de  
15 chiquitas, yo necesito saber qué es lo que  
16 sientes porque se puede... ¿Cómo dices  
17 que se puede curar? No... no es que se  
18 pueda curar pero lo pueden... te pueden  
19 hacer... pueden... hablan contigo, hacen  
20 terapia y, y algo pasó en tu vida que hizo  
21 que tú pensaras desde [UI] esa manera, y  
22 tratan de quitar eso. ¿Me entiendes?

FV1: So if... if... if there's something you feel  
when you see girls this young, I need to  
know what you feel because it can-- How  
do you say that it can be cured? It's not...  
it's not that it can be cured but they can--  
they can give you-- they can-- they talk  
to you, they do therapy and, and  
something happened in your life that made  
you think that way since [UI], and they try  
to get rid of that. Do you understand?

24 MV1: Sí.

MV1: Yes.

25  
26 FV1: Yo no quiero verte aquí otra vez jamás  
27 aquí. ¿Okey?

FV1: I don't wanna see you here another time  
ever again here [sic]. Okay?

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 MV1: [OV] No, no.

MV1: [OV] No, no.

2  
3 FV1: Yo quiero saber namás ac- Pero tampoco  
4 quiero saber que lo vuelvas a hacer en otro  
5 lugar, ¿okey?

FV1: I just wanna know c- But I don't wanna  
know either that you do it again  
somewhere else, okay?

6  
7 MV1: No, en ningún lugar. Por eso.

MV1: No, nowhere. That's what I mean.

8  
9 FV1: Y yo quiero darle a esta niña que sienta  
10 que... El trabajo de un niño es, cuando si  
11 alguien los lastima o les hace algo, que se  
12 tiene que c- sentir, am, seguros de que si  
13 le dicen a su mamá o su papá, que les van  
14 a ayudar, ¿okey? Y esa niña, yo lo estoy  
15 trabajando el caso.

FV1: And I want to give this girl to make her  
feel that— A child's job is, when if [sic]  
someone hurts them or does something to  
them, that they have to c- feel, um,  
confident that if they tell their mom or  
their dad, that they're gonna help them,  
okay? And that girl, I'm working the case.

16  
17 MV1: 'Ta bien.

MV1: All right.

18  
19 FV1: Y tú eres su padrino y como te dije, está  
20 asustada. Y er- ella no entiende por qué  
21 lo \*hicistes. Es una niña chiquita; tiene  
22 cinco años y está confusa, así que yo  
23 tengo que ex- yo... yo tengo que explicar  
24 a la mamá también qué fue lo que pasó,  
25 qué fue lo que te hizo hacer eso, qué fue  
26 lo que \*sentistes. Te \*atraxó sexualmente,  
27 pero, ¿qué fue que pasó ese día diferente  
28 que nunca lo has hecho antes? Eso es lo

FV1: And you're her godfather and like I said,  
she's scared. And shr- she doesn't  
understand why you did it. She's a little  
girl; she's about five years old and she's  
confusing [sic], so I have to exp- I, I also  
have to explain to her mom what  
happened, what made you do that, what  
did you feel. She attruckted [sic] you  
sexually, but what happened that different  
day that you have never done it before?



000119

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	que yo quiero saber.	That's what I want to know.
2		
3	MV1: Fue un... un impulso así nomás.	MV1: It was a— like just like an impulse [sic].
4		
5	FV1: ¿Un impulso?	FV1: An impulse?
6		
7	MV1: Sí, pero no...	MV1: Yes, but not—
8		
9	FV1: ¿Es... es de la manera que se estaba	FV1: Is... is it the way she was sitting? Was her
10	sentando ella? ¿Tenía el vestido...? Ella	dress—? She told me that when she sat
11	sí me dijo que cuando se sentó tenía su	down, her dress was up. Because I asked
12	vestido subido. Porque le pregunté, le dije	her, I told her if— . . .
13	que s— . . .	
14		
15	MV1: [OV] Sí, tenía su vestido.	MV1: [OV] Yeah, she had her dress.
16		
17	FV1: . . . le dije que si tenía pantalones o	FV1: . . . I asked her if she was wearing pants or
18	vestido y me dijo que vestido y que lo	dress and she told me that a dress, and that
19	tenía subido. ¿Se te hizo eso eróticamente	it was up. Did that seem like something
20	algo?	erotically to you? [sic]
21		
22	MV1: Erótico a lo mejor sí, pero en... en eso...	MV1: Yeah, maybe erotic, but at... at that
23		point—
24		
25	FV1: [INT] Porque si le digo... Le voy a decir	FV1: [INT] 'Cause if I tell her—I'm gonna tell
26	a la mamá para que le ponga pantalones	the mother so that she always makes her
27	siempre . . . [LAUGHTER] . . . ¿Verdad?	wear pants . . . [LAUGHTER] . . . Right?
28		



000120

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: Sí, [UI], sí.	MV1: Yes, [UI], yes.
2		
3	FV1: Cuando la viste con el vestido así alto,	FV1: When you saw her with the dress up high
4	¿cómo *sentistes? ¿Algo erótico?	like that, what did you feel? Something
5		erotic?
6		
7	MV1: Como una... O sea, lo único que la vi	MV1: Like a— I mean, I just saw her like a girl.
8	nomás como una niña, pues, pero nunca...	you know, but I never— I had never done
9	nunca lo había hecho ni lo haré. Nomás	it before nor am I gonna do it. Just like an
10	como un impulso.	impulse.
11		
12	FV1: En ese... pero en ese momento no la	FV1: At that— but at that very moment you
13	*viste como una niña.	didn't see her as a girl.
14		
15	MV1: Un impulso. Así.	MV1: An impulse. Like that.
16		
17	FV1: ¿Qué... qué fue lo que *sentistes?	FV1: What... what did you feel?
18		
19	MV1: O sea, en mi mente, pues. O sea, lo que	MV1: I mean, in my mind, you know. I mean,
20	haya imaginado una persona adulta.	what an adult person would imagine.
21		
22	FV1: Okey. ¿Y fue algo que ella dijo o nomás	FV1: Okay. And was it something she said or
23	las piernas como las tenía o cómo?	just the legs, the way she had them, or
24		how?
25		
26	MV1: No, nomás eso pasó, <i>pants</i> . O sea, su	MV1: No, that's all that happened, PANTS. I
27	calzón. Nomás eso.	mean, her panties. That's all.
28		

000121

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	FV1: Okey, y cuando la *tocastes, ¿eso qué te	FV1: Okay, and when you touched her, what
2	hizo sentir?	[sic] did that make you feel?
3		
4	MV1: Pues que era una niña y ya no la... insistí.	MV1: Well, that she was a girl so then I didn't...
5		insist.
6		
7	FV1: Porque eso fue lo primero que *hicistes...	FV1: Because that's the first thing you did...
8		
9	MV1: [INT] Es una niña.	MV1: [INT] She's a girl.
10		
11	FV1: La segunda parte que *hicistes fue que le,	FV1: The second part you did was that you, you
12	le *distes o— sexo oral. ¿Fue curiosidad?	gave her s— oral sex. Was it curiosity?
13	¿Querías sentir cómo sabía o qué?	Did you want to feel what she tasted like
14		or what?
15		
16	MV1: De niño, así nomás así y ya.	MV1: As a child [ALSO: as a boy], just that, and
17		that's it.
18		
19	FV1: No, de niño no. Ni me digas eso porque	FV1: No, not as a boy. Don't even say that to
20	eso es sin permiso.	me because that's without permission.
21		
22	MV1: No, de niña ella, de niña. como niña, pero	MV1: No, as a girl that she is, as a girl, as a girl,
23	no más, que yo iba a hacerle daño. No.	but nothing else, that I was gonna hurt her.
24		No.
25		
26	FV1: Okey, entonces cuan— cuando le *hicistes	FV1: Okay, so whe—when you gave her oral sex
27	sexo oral n— nomás fue sexo oral. No...	i—it was just oral sex. You didn't— you
28	no le *hicistes con el pene.	didn't do it to her with your penis.

000122

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: No, ni... ni la lengua ni nada. . . .	MV1: No, or... or with the tongue or anything.
2		...
3		
4	FV1: [OV] ¿Qué fue...?	FV1: [OV] What was it—?
5		
6	MV1: ... Sólo eso nomás y ya.	MV1: ... Only that and nothing else.
7		
8	FV1: Beso allá abajo. ¿Por eso piensa...t—tiene	FV1: A kiss down there. Is that why you
9	su saliva en su... en su vagina?	think— sh—she has your saliva in her... in
10		her vagina?
11		
12	MV1: O entonces... pero no adentro de su... su...	MV1: Or then— but not inside her... her... her
13	su parte, la niña.	part, the girl.
14		
15	FV1: [OV] ¿Con la lengua?	FV1: [OV] With your tongue?
16		
17	MV1: El pantalón nomás. Encima del calz—de...	MV1: Only her pants. Over her panti— her...
18		
19	FV1: [INT] No fue... no fue encima del calzón.	FV1: [INT] It wasn't... it wasn't over her
20	¡Señor...! No fue encima del calzón. Si tú	panties. Sir...! It wasn't over her panties.
21	esa es la primera vez que tú haces esto...	If you, this is the first time you do that—
22	Okey, yo tengo cincuenta años. Tengo	Okay, I'm 50 years old. I've been doing
23	veinticuatro años haciendo esto. No me	this for 24 years. Don't insult me. Have
24	insultes. ¿Te he tratado respetuosamente?	I treated you with respect?
25		
26	MV1: [OV] Perdón. Perdón.	MV1: [OV] I'm sorry. I'm sorry.
27		
28	FV1: ¿Te he acusado de ser un monstruo?	FV1: Have I accused you of being a monster?

000123

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 MV1: No.

MV1: No.

2  
3 FV1: Yo soy bien sincera, o bien honesta. Te  
4 dije que... que yo veo al— Si esa es la  
5 primera vez que lo haces, es horrible, está  
6 bien. A mí no se me hace porque esto no  
7 es lo peor que he visto. Yo cuando agarro  
8 un caso de esos que vi que n— que no...  
9 que n— que no la violaron sexualmente  
10 con el pene, o que la lastimaron o la  
11 golpearon, para mí se me hace algo... eso  
12 no es serio. ¿Okey? Pero por favor no me  
13 insultes [UI].

FV1: I'm very sincere, or very honest. I told  
you that... that I see th— If that's the first  
time you do it, it's horrible, that's fine. I  
don't think so because this is not the worst  
I've seen. When I grab one of those cases  
where I saw that n— that she wasn't... that  
sh— that she wasn't raped sexually with  
the penis, or that she was hurt or beaten, to  
me it seems to me [sic] something— that's  
not serious. Okay? But please don't  
insult me [UI].

14  
15 MV1: [OV] Sí, tiene razón. \*Usté me dijo que  
16 no es nada serio y yo sé que...

MV1: [OV] Yes, you're right. You told me that  
it's nothing serious and I know—

17  
18 FV1: [INT] No. Y... y no te estoy mintiendo.  
19 No tienes antecedentes.

FV1: [INT] No. And... and I'm not lying to  
you. You don't have a record.

20  
21 MV1: [OV] Sí.

MV1: [OV] Yes.

22  
23 FV1: Nomás se tien—tienes ese y tiene... y está  
24 muy viejo, como de once años. E— el  
25 fiscal ve todo esto. Pero también el fiscal  
26 ve si me vas a mentir o no. Porque no hay  
27 duda de que \*hicistes esto. ¿Okey? De  
28 eso no hay duda. Eso pasó el día 16,

FV1: You only ha—have that one, and it's  
been—and it's very old, like 11 years old.  
Th—the D.A. looks at all this. But the  
D.A. also looks at the fact of whether  
you're gonna lie to me or not. Because  
there's no doubt that you did this. Okay?

000124

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1           ¿okey? ¿Sabes por qué hasta ahorita te  
2           agarramos? ...

There's no doubt about that. That  
happened on the 16<sup>th</sup>, okay? Do you know  
why we didn't catch you until now? ...

3  
4  
5   MV1: [OV] Si.

MV1: [OV] Yes.

6  
7   FV1: ... Porque apenas ayer me llegó la... los  
8           resultados de la DNA. Eso dura... dura  
9           tiempo; no dura... Cuando sa-- cuando son  
10          huellas me pueden dar los resultados al  
11          siguiente día. Cuando es DNA no se  
12          puede porque se tiene que ir al labo-- l--  
13          laboratorio y todo. no sé qué, pero sí salió  
14          tu saliva. ¿Okey? Y la raz-- y la razón  
15          que supimos... Si nunca te habían  
16          arrestado antes no hubiéramos sabido de  
17          quién era; hubiera \*decido, "Es de un  
18          hombre pero no sabemos..." Pero como tú  
19          has sido arrestado antes, la computadora  
20          ve luego, luego tu nombre. Si supimos  
21          que eras tú. ¿Okey? No porque somos  
22          mentos y flojos... mentos o flojos y, y no  
23          le pongo atención. Tenía que esperar eso.  
24          Y tú sabes que la mamá ya la... la... le... la  
25          llevó al hospital inmediatamente. Ella se  
26          fue [UI].

FV1: ... Because I just received the, the DNA  
results. That takes... takes time; it doesn't  
take— When s-- when they're fingerprints  
they can give me the results the next day.  
When it's DNA it's not possible because  
it has to go to the lab--l--laboratory and all  
that, I don't know what else, but your  
saliva did show. Okay? And the reas--  
and the reason we knew— If you had  
never been arrested before, we wouldn't  
have known whose it was; I would have  
said [sic], "It's a man's but we don't  
know..." But since you have been arrested  
before, the computer sees your name right  
away. We knew it was you. Okay? Not  
because we're stupid and lazy... stupid and  
lazy and, and I don't pay attention. I had  
to wait for that. And you know that her  
mom already... she... she... she... she took  
her to the hospital immediately. She went  
[UI].

000125

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>MV1: [OV] Sí. Pus yo me ofrecí llevarla pero me dijeron [UI].</p> <p>FV1: [OV] Y si hubiera esperado una semana no hubiéramos sido tan afortunados. Y muchos niños no dicen luego, luego. Ella fue muy lista y dijo luego... inmediatamente. Así que en vez de culparla de lo que sea, ella hizo lo correcto. Tú sabes. En tu corazón sabes que ella hizo lo... lo correcto.</p> <p>MV1: Sí, yo... yo tengo la razón como papá.</p> <p>FV1: [OV] Y si t- y si tú tuvieras una niña, como papá tú quisieras lo mismo, ¿verdad?</p> <p>MV1: Yo le dije al compadre, hablado con él, el papá de la niña, [UI] ahora, hablé con él y me dice... le digo, "Compadre, si yo tengo una niña de quince años y... y yo jamás permitiría que me le hicieran eso. Yo vo'a..."</p> <p>FV1: [INT] ¿Le *pedistes perdón por esto?</p>	<p>MV1: [OV] Yes. Well, I offered to take her but they told me [UI].</p> <p>FV1: [OV] And if she had waited one week we wouldn't have been so fortunate. And many children don't tell right away. She was very clever and told right away immediately. So instead of blaming her for whatever, she did the right thing. You know. In your heart you know that she did the... the right thing.</p> <p>MV1: Yes, I... I have the reason as a father that I am.</p> <p>FV1: [OV] And if y--and if you had a girl, as a father you would want the same, right?</p> <p>MV1: I told my <i>compadre</i>, speaking to him, the father of the girl, [UI] now, I spoke to him and he says... I said, "Compadre, I have a 15-year old girl and, and I would never allow anyone to do that to her. I'm gonna..."</p> <p>FV1: [INT] Did you apologize for that?</p>
---	--	--

000126

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 MV1: Si, le d- "Disculpe. Perdóname. MV1: Yes, I t- "I'm sorry. Forgive me.  
2 compadre". compadre."  
3  
4 FV1: ¿Te perdonó? Y está enojado, ¿no? FV1: Did he forgive you? And he's mad, isn't  
5 he?  
6  
7 MV1: No. Hablamos. Me dice. "Yo sé —me MV1: No. We spoke. He says, "I know—he  
8 dice— compadre, que yo la dejaba says—*compadre*, that I used to leave her  
9 encargada a usted —me dice— que ... in your care—he said—and ...  
10  
11 FV1: Um-hum. FV1: Um-hum.  
12  
13 MV1: ... que cualquier cosa que pase —me MV1: ... and if anything happens—he says—the  
14 dice—, la niña se quede con usted por lo girls should stay with you because of  
15 que ha pasado". Porque lo deportaron... what happened." 'Cause he was  
16 deported—  
17  
18 FV1: [INT] ¿Está... está decepcionado por lo FV1: [INT] Is he... is he disappointed because  
19 que pasó? of what happened?  
20  
21 MV1: Me dice que sí, por la situación, yo... MV1: He says he is, 'cause of the situation, I—  
22  
23 FV1: [OV] Tiene que estar. *Yeah!* FV1: [OV] He's gotta be. **YEAH!**  
24  
25 MV1: Yo como compadre, como le dije, yo MV1: I as a father, like I told him, I understand  
26 entiendo de co— th—  
27  
28 FV1: [INT] Uno... Cuando un nombre [sic] a, a FV1: [INT] One— When one to makes [sic]



000127

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	una persona como compadre, es porque te	someone else a <i>compadre</i> , it's because
2	estiman tanto, tanto, que quieren...	they appreciate you so, so much that they
3		want to make you—
4		
5	MV1: [INT] Sí, la confianza. Hay confianza...	MV1: [INT] Yes, the trust. There's trust—
6		
7	FV1: [INT] Y la *rompistes.	FV1: [INT] And you broke it.
8		
9	MV1: Y le dije yo, "Discúlpeme, compadre, por	MV1: And I told him, "I'm sorry, <i>compadre</i> , for
10	este invidente de que ha pasado, ...	this incident that has happened. ...
11		
12	FV1: Um-hum.	FV1: Um-hum.
13		
14	MV1: ... pero yo l—le... ya no voy a poder estar	MV1: ... but I... I'll—I'm not gonna be able to
15	cerca de la niña".	be near the girl anymore".
16		
17	FV1: Yeah.	FV1: YEAH.
18		
19	MV1: "Y, y me va a disculpar".	MV1: "And, and you're gonna have to forgive
20		me."
21		
22	FV1: Y... y sí... y si es una... y si eso es una	FV1: And, and it's... and it's a—and if that's a
23	decisión buena, yo voy a poner en el	good decision, I'm gonna put in the report
24	reporte que sí *dijistes eso, que tú	that you said that, that you acknowledged
25	*reconocistes que no puedes estar	that you can't be around the girl and
26	alrededor de la niña y que vas a retirar	you're gonna stay far [UI]—
27	[UI]...	
28		

000128

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	[OVERLAPPING NOISE RENDERS THE END	[OVERLAPPING NOISE RENDERS THE END
2	OF THE PHRASE UNINTELLIGIBLE]	OF THE PHRASE UNINTELLIGIBLE]
3		
4	MV1: Sí, no me puedo hacer cargo. Aún que	MV1: Yeah, I can't be in charge of that.
5	la... el caso que ella... ellos tenía-	Although the— her case... they had... they
6	tuvieron.	had. [sic]
7		
8	FV1: No. ¿Y tú crees que *histes... e- que	FV1: No. And do you think you did— e- you
9	*hicistes *ese decisión porque tienes	did [sic] that decision because you're
10	miedo que vuelva a pasar eso?	afraid this may happen again?
11		
12	MV1: Sí, s-	MV1: Yes, s-
13		
14	FV1: ¿Y por eso te quieres retirar?	FV1: And that's why you want to stay away?
15		
16	MV1: Sí, en eva- Para no tener ningún más	MV1: Yes, in ev- So I don't have any more any
17	problemas.	[sic] problems.
18		
19	FV1: ¿Quieres...? ¿Tú crees que te beneficies	FV1: Do you want—? Do you think you would
20	con terapia?	benefit from therapy?
21		
22	MV1: Claro que sí, me be- beneficiaría mucho	MV1: Yes, of course, I would be- benefit a lot
23	y... y l- lo que yo no quisiera, este récord,	and... and wh-what I wouldn't like, this
24	porque yo trabajo en construcción y hay	record, because I work in construction and
25	áreas donde trabajamos en la' escuelas, y	there's areas where we work in schools,
26	si me pasa esto de que me ponen...	and if this happens to me, that they make
27		me...
28		

000129

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	FV1: [OV] Yeah.	FV1: [OV] YEAH.
2		
3	MV1: . . . como un... que el policía me esté	MV1: . . . like— you know, that the police
4	checando dónde estoy, y es lo peor . . .	officer is checking where I am, and that's
5		the worst . . .
6		
7	FV1: [OV] Uh-huh.	FV1: [OV] Uh-huh.
8		
9	MV1: . . . que yo no quisiera pasar por esta	MV1: . . . thing that I wouldn't go through this
10	situación penosa.	embarrassing situation.
11		
12	FV1: Claro.	FV1: Of course.
13		
14	MV1: Y, ah, y— yo... yo s—	MV1: And, uh, I... I... I kn—
15		
16	FV1: [INT] N— n— n—no le vamos a hablar a tu	FV1: [INT] W—w—w—we're not gonna call your
17	empleado. Eso nomás es entre... Lo que	employee [sic]. This is just between—
18	tú le quieras decir a tu empleado, allá...	Whatever you want to tell your employee
19	allá tú. E— es tu... es tu decisión. Pero	is... is up to you. I—it's your... it's your
20	mientras no estés curado de esto, trata de	decision. But meantime, as long as you're
21	no estar alrededor de niños, ¿okay? O si	not cured of this, try not to be around
22	estás alrededor de niños, que esté	children, okay? Or if you're around
23	alguien... un compañero contigo para que	children, have someone... a coworker with
24	no *haiga duda de que no *hicistes nada.	you so that there's not doubt that you
25	¿Okay?	didn't do anything. Okay?
26		
27	MV1: Sí, y yo... yo en... en el edificio nunca he	MV1: Yes, and I... I haven't... I haven't had any
28	tenido problemas. Nadie... O sea, yo que	problems in the building. Nobody— I

000130

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	ande en apartamentos, sólo ha sido único	mean, me being in apartments, it's only
2	que [UI].	been when [UI].
3		
4	FV1: [OV] No. Yo ya fui a preguntar, ¿okey?	FV1: [OV] No. I already went to ask, okay?
5	Y. y. y no hay ningún problema.	And. and, and there's no problem.
6		
7	MV1: Okey, en-	MV1: Okay, th-
8		
9	FV1: [INT] Y te voy a ser sincero [sic]. Hasta	FV1: [INT] And I'm gonna be honest [IM] with
10	le pregunté a tu hija. ¿Okey?	you. I even asked your daughter. Okay?
11		
12	MV1: Qué bueno. S- y en- sí, y mi hija no sale	MV1: I'm glad. Ye- so- yes, and right now my
13	'orita conmigo porque el miedo es que me	daughter is not going out with me for fear
14	fuera a arrestar. Su mamá no le permite	of me getting arrested. Her mom doesn't
15	eso.	allow her to do that.
16		
17	FV1: Okey.	FV1: Okay.
18		
19	MV1: Y me duele porque . . .	MV1: And it hurts me because . . .
20		
21	FV1: [OV] Hi- hi- hicimos...	FV1: [OV] W-w-we did-
22		
23	MV1: . . . es mi única hija.	MV1: . . . she's my only daughter.
24		
25	FV1: Sí. Hicimos toda la inve- Antes de traerte	FV1: Yes. We did the invest- Before bringing
26	yo aquí, yo hago mi investigación.	you here I do my investigation.
27		
28	MV1: [OV] Sí.	MV1: [OV] Yes.

INTERVIEW OF JUAN ORELLANA

000131

[Transcription/Translation]

1	FV1: No te traigo aq- aq- a ti aquí sin yo saber	FV1: I don't bring you he- he- you here without
2	lo que está pasando.	me knowing what's going on.
3		
4	MV1: Gracias por investigar. . . .	MV1: Thank you for investigating. . . .
5		
6	FV1: ¿Okey?	FV1: Okay?
7		
8	MV1: . . . Yo le agradezco.	MV1: . . . I thank you for it.
9		
10	FV1: Y... y... y yo no sé qué pasó, como te dije,	FV1: And, and, and I don't know what
11	No... Algo está *rompido. Algo pasó	happened, like I told you. It's not—
12	que... Como te dije, es la primera vez.	Something is brokened [sic]. Something
13		happened that— Like I said, this is the
14		first time.
15		
16	MV1: Sí.	MV1: Yes.
17		
18	FV1: ¿Okey? ¿Quién fue la... q- eh, de quién	FV1: Okay? Who was the— wh- uh, whose
19	fue la idea que fu- fuera la señora a la	idea was it to have the lady g-go to the
20	tienda? ¿Tú la *mandastes a la tienda?	store? Did you send her to the store?
21		
22	MV1: No, ella salió. Me... Que quería hablar	MV1: No, she went out. I— She said she
23	para la familia ahí en... en El Salvador.	wanted to call the family in... in El
24	Fue a [UI]...	Salvador. She went to [UI] —
25		
26	FV1: [INT] ¿Fue a comprar tarjetas para llamar	FV1: [INT] She went to buy phone cards?
27	por teléfono?	
28		

000132

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: Sí.	MV1: Yes.
2		
3	FV1: Hasta la niña sabía eso.	FV1: Even the girl knew that.
4		
5	MV1: Oh, sí, ella... e- Como le dije...	MV1: Oh, yeah, she— e- Like I said—
6		
7	FV1: [INT] ¡Esa niña es muy viva! Ella oye...	FV1: [INT] That girl is very sharp! She
8	[LAUGHTER]	hears— [LAUGHTER]
9		
10	MV1: Sí. Otras veces se va con ella y ahí le	MV1: Yeah. Some other times she goes with her
11	compra ella cositas porque ella q-	and she buys her little things because she
12		w-
13		
14	FV1: Uh-huh.	FV1: Uh-huh.
15		
16	MV1: Sus pinturas y d- Yo también la... y le he	MV1: Like little paints [ALSO: little makeup]
17	dado a ella pa' que compre sus cositas.	and d- And I als— I've also given her
18	Pero en esta vez no sé, como le digo, qué	some money to buy little stuff. But this
19	pasó que ahora no fue con... con ella.	time—like I said—I don't know what
20		happened that she didn't go with... with
21		her this time.
22		
23	FV1: ¿Cómo...? O- okay, y mi otra pregunta	FV1: How—? O-okay, and my other question
24	es: okay, la *tocastes con el dedo en la	is: okay, you touched her with your finger
25	vagina; le movis- le movistes el	in her vagina; you mo-moved her panties,
26	calzoncillo, ¿okay? Ella te empujó. Y tú	okay? She pushed you. And you said that
27	*dijistes que era cosa del momento,	it was just some thing of the moment,
28	¿okay? ¿Qué fue el impulso que te hizo...	okay? What was the impulse that made

000133

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 "Bueno, deja ver... deja hacer o- sexo  
2 oral"? ¿Qué fue lo que pasó en esos  
3 segundos que... que dijo. "Quieres hacer  
4 eso". ¿Era porque, "De una vez. Ya le  
5 hice eso. Deja hacerlo", o por qué? ¿O  
6 fue algo que la niña otra vez hizo, o se... o  
7 se levantó el vestido o qué fue lo que  
8 pasó?

you... "Well, let's see... let's do s- oral  
sex"? What happened during those  
seconds that... that you said, "You wanna  
do that." Was it because, "Let's do it  
already. I already did that thing to her.  
Let me do it," or what? Or was it  
something that the girl did again, or did  
she— or did she lift her dress or what  
happened?

11 MV1: No, ella se levantó el vestido pero jugando  
12 en la cama, ella así nomás, sí. . . .

MV1: No, she lifted her dress but she was  
playing on the bed. Just like, you know.  
Yeah. . . .

15 FV1: [OV] ¿Sola?

FV1: [OV] By herself?

17 MV1: . . . Pero no, yo... yo impulsivamente. En  
18 mi mente digo yo, "Es mi s- mi ahijada y  
19 no puedo hacer estas cosas", sí.

MV1: . . . But no, I... I [did it] impulsively. In  
my mind I say, "She's my s- my  
goddaughter and I can't do these things."  
yeah.

22 FV1: Pero... pero... pero t- pero te hizo sentir  
23 sexualmente, ¿verdad? ¿Te excitó  
24 sexualmente? ¿Sabes por qué sé? Porque  
25 la niña me dijo que cuando la \*sentastes  
26 aquí y la \*tallastes, ella sintió tu pene  
27 duro. No le entró pero sí lo sintió duro,  
28 así que eso quiere decir que lo... porque l-

FV1: But, but, but d- but she made you feel  
sexually, right? Did she arouse you  
sexually? You know why I know?  
Because the girl told me that when you sat  
her here and rubbed her, she felt that your  
penis was hard. It didn't penetrate her but  
she felt that it was hard, so that means that



000134

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	lo... lo tenías... ¿erecto? ¿Así se dice en	the— because i-i—it was... erect? Is that
2	español?	how you say it in Spanish?
3		
4	MV1: Sí. [UI].	MV1: Yes. [UI].
5		
6	FV1: [OV] Lo tenías erecto. Y, y, y cuando	FV1: [OV] You had it erect. And, and, and
7	una persona se... se ca- ¡Una persona! Un	when a person gets... get's ho- A person!
8	hombre se le... se... se pone el pene erecto	A man gets... gets. get's his penis erect,
9	quiere decir que se sintió sexualmente	that means that he felt sexually attracted.
10	atraído.	
11		
12	MV1: Sí, pero en la mente uno sabe que es una	MV1: Yeah, but in one's mind, one knows that
13	niña y no puede hacer n-- un daño. Y yo...	she's a girl and one can't do n-- some
14		harm. And I—
15		
16	FV1: Okey.	FV1: Okay.
17		
18	MV1: No.	MV1: No.
19		
20	FV1: No sabes lo afutado [sic] que eres que no	FV1: You don't know how futunate [sic] you
21	se te ocurrió meter el pene erecto adentro	are that it didn't occur to you to put your
22	de ella.	erect penis inside her.
23		
24	MV1: No ... [GIGGLING] ... Yo sé que es una	MV1: No ... [GIGGLING] ... I know she's a
25	niña [UI] no puede...	girl [UI] can't—
26		
27	FV1: Okey.	FV1: Okay.
28		

000135

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 <b>MV1:</b> O sea, pasaron la razón cuan—porque esto. 2 3 4 <b>FV1:</b> Y luego cuando la sentaste aquí y la 5        *abrazastes, te la *tallastes, lo único que 6        se lastimó —y no fue gran cosa—, te... 7        Cuando te *deshicites el cierre para 8        sacarte el pene, el cierre la... le... le raspó 9        un poquito. Pero eso no es... esa parte 10       no... no fue intencional. Eso nomás fue tu 11       excitación que la agarrastes y la *pusistes 12       [UI]. 13 14 15 <b>MV1:</b> [OV] Sí, la abracé y eso es lo único. No, 16        pero no, yo n— 17 18 <b>FV1:</b> [OV] Okey. 19 20 <b>MV1:</b> [UI]. 21 22 <b>FV1:</b> [OV] ¿Lo vas a volver a hacer? 23 24 <b>MV1:</b> No ... [GIGGLE] ... No. Yo sé que 25        cuántos riesgos de lo que pueda eso 26        pasarme a mí, las consecuencias, y no... 27        jamás ya, eh... 'Toy una persona de 28        cuarenta y seis años. Yo reconozco de	1 <b>MV1:</b> I mean, they, the reason, came through 2        when— because of this. 3 4 <b>FV1:</b> And then when you sat her here and 5        hugged her, you rubbed her against you, 6        the only thing that hurt her—and it wasn't 7        much—you... When you unmade [sic] 8        your zipper to take out your penis, the, the, 9        the zipper scratched her just a little bit. 10       But that's not— that part wasn't... wasn't 11       intentional. That was just because of your 12       excitement [ALSO: arousal], that you 13       grabbed her and put her [UI]. 14 15 <b>MV1:</b> [OV] Yes. I hugged her and that's all. 16        No, but no, I d— 17 18 <b>FV1:</b> [OV] Okay. 19 20 <b>MV1:</b> [UI]. 21 22 <b>FV1:</b> [OV] Are you gonna do it again? 23 24 <b>MV1:</b> No ... [GIGGLE] ... No. I know how 25        many risks there are of what can happen to 26        me for that [sic], the consequences, and I 27        don't—I'll never more, uh—I'm 46 years 28        old. I recognize that I sh— I shouldn't do
---	---

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 que n--no debo de hacer eso. Y tengo una  
2 niña; tengo que darle un ejemplo.

that. And I have a girl [of my own]; I  
have to set an example for her.

3  
4 FV1: ¿Qué tal que tú tienes una nieta --tú ya  
5 tiene una niña-- y alguien le hiciera eso  
6 a ella?

FV1: What if you had a granddaughter--you  
already have a daughter--and someone  
did this to her?

7  
8 MV1: No ... [GIGGLE] ... Yo sé que, como le  
9 dije, "Compadre..." La reacción es de una  
10 persona proteger a los niño, a sus propios  
11 hijos, sí.

MV1: No ... [GIGGLE] ... I know that, like I  
told him, "Compadre..." A person's  
reaction is to protect the children, their  
own children, yeah.

12  
13 FV1: [OV] Okey. Y... y... y de curiosidad,  
14 ¿okey? Tú sabes lo que pasó. ¿okey?  
15 Cuando la mamá te habló, yo sé que  
16 estaba enojadísima y te acusó. ¿Para qué  
17 te \*negastes con ella?

FV1: [OV] Okay. And, and, and out of  
curiosity, okay? You know what  
happened, okay? When her mom spoke to  
you, I know she was really, really angry  
and she accused you. Why did you refuse  
to [sic] with her?

18  
19  
20 MV1: ¿Con la comadre?

MV1: With her mother?

21  
22 FV1: Sí.

FV1: Yes.

23  
24 MV1: Nomás le dije que yo me ofrecía a llevarla  
25 a donde el doctor para demostrarle que yo  
26 no le había hecho daño. Eso es lo único  
27 que yo le dije.

MV1: I only told her that I was offering to take  
her to the doctor so that I could prove to  
her that I hadn't harmed her. That's all I  
told her.

000137

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	FV1: Okey, ¿tú pensaste que ella te estaba	FV1: Okay, did you think she was accusing you
2	acusando de, de poner el pene dentro de la	of, of putting your penis in her vagina?
3	vagina?	
4		
5	MV1: Eso fue lo que yo m-me...	MV1: That's what I m-L...
6		
7	FV1: [INT] Ella dijo que... que te dijo que te	FV1: [INT] She said that... that she told you
8	dijo que... que la habías tocado. La	that she told you [sic] that... that you had
9	tocaste —¿okey?— ahí donde no debes de	touched her. You touched—okay?—in
10	tocarla.	that place where you shouldn't touch her.
11		
12	MV1: Lo único que me dijo, “*usté la violó,	MV1: All she said to me was, “You raped her.
13	compadre. ¿Le hizo algo o no?”	compadre. Did you do anything to her or
14		not?”
15		
16	FV1: ¡Oh! Okey, [UI].	FV1: Oh! Okay, [UI].
17		
18	MV1: Eso... eso fue lo que a mí me...	MV1: That's... that's what she told m-
19		
20	FV1: [INT] ¿Y no s-y no el *aclarastes?	FV1: [INT] And you didn't s- you didn't
21		clarify for her?
22		
23	MV1: No le aclaré. Mi esposa...	MV1: I didn't clarify. My wife—
24		
25	FV1: [INT] De todos modos se hubiera	FV1: [INT] She would have been mad anyway,
26	enojado, ¿okey?	okay?
27		
28	MV1: Mi esposa cayó en ch-en... en un estado	MV1: My wife fell into ch- into... into a state of.

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 de... de... de los nervios, que la tuve que of— from her nerves, so I had to take her  
2 llevar a la... acá a la clínica porque ... to... over to the clinic because ...  
3  
4 FV1: [OV] Y... y sé sincero. ¿Le \*dijistes ... FV1: [OV] And, and be honest. Did you tell  
5 her ...  
6  
7 MV1: ... somos compadres. MV1: ... we're *compadres*.  
8  
9 FV1: ... le, le dijiste a tus... tus... a tu esposa la FV1: ... did, did you tell them, your... your...  
10 verdad? did you tell your wife the truth?  
11  
12 MV1: Sí, yo le dije que no la había tocado así MV1: Yes, I told her that I hadn't touched her  
13 como ella dice que la violé. No. the way she says that I raped her. No.  
14  
15 [NO VERBAL ACTIVITY] [NO VERBAL ACTIVITY]  
16  
17 FV1: [UI] a tu esposa. Luego [UI]. Am... okey. FV1: [UI] your wife. Then [UI]. Um, okay, but  
18 ¿pero le dijiste a tu esposa que no fue de did you tell your wife that it wasn't  
19 violar? Porque no fue. raping? Because it wasn't.  
20  
21 MV1: No. Yo le dije a mi esposa que no. MV1: No. I told my wife no.  
22  
23 FV1: Okey. Y n— y no fue de violar. ¿Pero sí le FV1: Okay. And it w— and it wasn't raping.  
24 \*dijistes que la \*tocastes? ¿Para aclara— But you told her that you touched her? To  
25 cla— aclararle a ella? clarif— cla—clarify it for her?  
26  
27 MV1: Que tocarla, yo no le dije. Sí la tuve MV1: About touching her, I didn't tell her. I did  
28 chifnada pero no le dije que yo la... have her *chinada* but I didn't tell her that

000139

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1		I had—
2		
3	FV1: [INT] ¿Qué es chifnada?	FV1: [INT] What does <i>chifnada</i> mean?
4		
5	MV1: Como agarrar un bebé y lo pone en las	MV1: Like when you take a baby and put him on
6	piernas.	your lap.
7		
8	FV1: No, no la *tuvías chineada. Tenías más	FV1: No, you didn't have her <i>chineada</i> . You
9	que chineada ... [LAUGHTER]	had her more than <i>chineada</i> ...
10		[LAUGHTER]
11		
12	MV1: Eso es lo único que le dije, pero yo le	MV1: That's all I told her, but I can talk to her
13	puedo hablar a ella con *todo sinceridad	with full honesty becaus—
14	porq—	
15		
16	FV1: [INT] Si ustedes quieren sobrevivir esto	FV1: [INT] If you guys want to survive this
17	y, y van a seguir como pareja le tienes que	and, and you're gonna continue as a
18	ser sincero a tu esposa. Porque...	couple, you have to be honest with your
19		wife. Because—
20		
21	MV1: Claro.	MV1: Of course.
22		
23	FV1: Porque ella te va... te va... Es— de eso,	FV1: Because she's gonna... she's gonna— Sh—
24	todos modos lo tengo que mandar al fiscal	regarding this, I have to send it to the
25	pero... Sí... sí... y no... y soy honesta; voy	D.A. anyways but— Yeah— yeah— and
26	a poner que si *cooperastes porque no te	don't—and I'll be honest; I'm gonna put
27	*portastes mal, y yo le tengo que mandar	here that you cooperated because you
28	al fiscal el... esto y él va a ver que... Eso...	didn't behave badly, and I have to send the

000140

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 eso es lo que nos... nos enseña que no eres  
2 mentiroso, cuando empiezan a usar  
3 nombres diferentes.

D.A. the— this, and he's gonna see that—  
That's... that's what... what shows us that  
you're not a liar, when they start using  
different names.

6 MV1: Pus sí...

MV1: Yeah...

8 FV1: [INT] Todo es— todo está bien. No  
9 tienes... nomás tienes una... Esa es las  
10 convicciones y se... se escribe casi igual,  
11 ¿okey? Arrestos tienes tres, de felonías.  
12 ¿okey? Pero convicciones, donde  
13 \*dijieron que si eres culpable, no tienes  
14 ninguna felonía. Nomás tienes el  
15 *misdemeanor*. Así que no tienes. No  
16 tienes nada aquí de juveniles. Nunca te  
17 han arrestado juveniles; no [UI]. No  
18 tienes ningún ticket. Dice 00.

FV1: [INT] It's all f— it's all fine. You don't  
have— you only have one— That one is  
for the [moral] convictions and it... it's  
spelled almost the same, okay? Arrests,  
you have three. For felonies, okay? But  
[moral] convictions, where they said that  
you're actually guilty, you don't have any  
felony. You only have the MISDEMEANOR.  
So you don't have any. You don't have  
anything here under juveniles. You were  
never arrested juveniles [sic]; no [UI].  
You don't have any TICKET. It says 00.

21 MV1: Sí, no, no tengo ticket.

MV1: Yes, no, I don't have no TICKET.

23 FV1: ¿Okey? Uh... uh... *Expired*. No tiene— no  
24 estás en probación. Tienes una probación  
25 que está expirada. ¿Okey? Así que  
26 sabemos que... Yo veo eso antes de hablar  
27 contigo. Si fue— si fueras un... otra clase  
28 de persona yo no estuviera hablando

FV1: Okay? UH... UH... EXPIRED. You have  
no— you're not on probation. You have  
one probation that's been expired. Okay?  
So we know— I look at this before talking  
to you. If you w— if you were a... another  
kind of person, I wouldn't be talking to y—



000141

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 cont-tigo de esta manera.

to you this way.

2  
3 MV1: Que bueno, le agradezco, ¿verdad? Que  
4 lo que me está diciendo pues es algo muy  
5 ...

MV1: I'm glad. I really wanna thank you, you  
know. 'Cause what you're telling me is  
something very ...

6  
7 FV1: [OV] Um-hum.

FV1: [OV] Um-hum.

8  
9 MV1: ... muy bien, pues sí, porque una persona  
10 que... trabajado derechamente, como dice,  
11 tantos años ...

MV1: ... very good, yeah, because a person  
who—working honestly, like you said, for  
so many years ...

12  
13 FV1: Um-hum.

FV1: Um-hum.

14  
15 MV1: ... y para mí es un respeto, porque una  
16 persona que investiga y... ese es su  
17 trabajo, yo entiendo.

MV1: ... and to me, that deserves respect  
because someone who investigates and...  
that's your job, I understand.

18  
19 FV1: Eh, nunca vas a escalar eso. Nunca vas a  
20 violar a una niña. ¿Verdad que [UI]?  
21

FV1: Uh, you're never gonna climb<sup>2</sup> that up.  
You're never going to rape a girl. An I  
right to say that [UI]?  
22

23 2. TN: The speaker is inaccurately translating the  
24 expression "to escalate" using the Spanish word *escalar*,  
25 a false cognate (a word which is spelled similarly or with  
26 like sound to that of the source language but has a  
different and distinct meaning in the target language)

27 MV1: [OV] No. No ... [GIGGLE]  
28

MV1: [OV] No. No ... [GIGGLE]

000142

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	FV1: Okey.	FV1: Okay.
2		
3	MV1: No.	MV1: No.
4		
5	FV1: ¿No vas a volver a tocar a una niña con tu	FV1: You're not gonna touch a girl again with
6	dedo en la vagina otra vez?	your finger in her vagina?
7		
8	MV1: Yo sé que no.	MV1: I know I won't.
9		
10	FV1: ¿No lo vas a hacer otra vez?	FV1: You're not gonna do it again?
11		
12	MV1: No. Nunca.	MV1: No. Never.
13		
14	FV1: [OV] Okey. ¿No vas a hacer una niña	FV1: [OV] Okay. You're not gonna give oral
15	sexo oral otra vez?	sex to a girl again?
16		
17	MV1: Nunca.	MV1: Never.
18		
19	FV1: Nunca. ¿No lo vas a...?	FV1: Never. Are you gonna—?
20		
21	MV1: [OV] No.	MV1: [OV] No.
22		
23	FV1: ¿No lo vas a hacer otra vez?	FV1: You're not gonna do it again?
24		
25	MV1: No. Yo sé... a mi edad yo no puedo...	MV1: No. I know— at my age I can't...
26		
27	FV1: [INT] Esa fue la última vez. No hay	FV1: [INT] That was the last time. There's no
28	otras, ¿verdad?	others, right?

000143

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: No, no se *repitirá.	MV1: No, it won't happen again.
2		
3	FV1: No voy a... n-- n-- n-- no me va a ll-- llegar	FV1: I'm not going to— I, I, I, I'm not gonna
4	un reporte en dos semanas de otra niña	g--get a report in two weeks about another
5	que aparece. Esa es la única... la única	girl that appears [sic]. That's the only...
6	vez que haz... que es... Porque voy a	the only time you have— that— Because
7	manda— eh, l--lo voy a cerrar de esta	I'm gonna send— uh, I'm gonna close it
8	manera. Esa es la única vez que le has	this way. That's the only time you've
9	hecho a-- s-- s-- sexo oral a una niña. Es	done t-- o--o--oral sex on a girl. That's all.
10	todo.	
11		
12	MV1: Okey. Y no hay segunda... segunda vez.	MV1: Okay. And there's no second... second
13		time.
14	.	
15	FV1: [OV] No hay ninguna.	FV1: [OV] There's none.
16		
17	MV1: Ninguna más. No.	MV1: No other. No.
18		
19	FV1: Okey. Nomás esta.	FV1: Okay. Only this one.
20		
21	MV1: Sí, es lo único que ha pasado.	MV1: Yes, that's the only thing that has
22		happened.
23		
24	FV1: Ándale pues. Okey. Te agradeso [sic]	FV1: All right then. Okay. I wanna thank you
25	que seas sincero conmigo. Am... y esto es	for being honest with me. Um, and this is
26	lo que va a pasar: cuan-- ah... sí te van a	what's gonna happen: when... uh, they're
27	ques-- eh, sí... sí vas a ir a la cárcel ahora	gonna q-- uh, you... you are going to go to
28	porque tengo que pres-- tengo que	jail now because I have to pres-- I have to

000144

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	presentar el caso con el fiscal. ¿okey? Si	present the case to the D.A. Okay? If you
2	quieres. cuando llegues a la casa llámale a	want, when you arrive to the house [sic]
3	tu esposa. o si quieres yo le puedo llamar	call your wife. or if you want me to, I can
4	y yo [UI]. ¿Quieres que le diga? ¿N- o le	call myself [UI]. Do you want me to tell
5	quieres decir tú?	her? N- or do you want to tell her
6		yourself?
7		
8	MV1: Se... se... se va a poner en shock ella.	MV1: She... she... she's gonna be in shock. She
9	Trabaja encerrada; no esta en la casa y...	works locked up in a place; she's not at
10	y...	home and... and...
11		
12	FV1: [INT] ¿Entons cómo se va a dar cuenta?	FV1: [INT] Then how is she gonna know?
13		
14	MV1: Eso es lo que yo no quisiera, que...	MV1: That's what I wouldn't want, to—
15		
16	FV1: [INT] ¿Cómo le hablas tú, normalmente?	FV1: [INT] How do you call her, normally?
17		
18	MV1: Normalmente ella me llama a las nueve de	MV1: Normally, she calls me at 9:00 PM; we
19	la noche; hablamos. Porque ella trabaja	talk. 'Cause she works locked up in a
20	encerrada y...	place and—
21		
22	FV1: ¿Y no te ha hablado? ¿Quieres que yo le	FV1: And she hasn't called you? Do you want
23	hable?	me to call her?
24		
25	MV1: ¿*Usté le... le puede entender? ¿O le	MV1: Can you... can you understand her/it
26	hablo yo nomás, sólo pa' decirle que estoy	[UR]? Or shall I just call her, just to tell
27	detenido y que voy a salir mañana?	her that I've been detained and I'm gonna
28		get out in the morning?

000145

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	FV1: Yeah.	FV1: YEAH.
2		
3	MV1: Para que no se...	MV1: Just so that she won't—
4		
5	FV1: [INT] No vas a salir mañana antes que	FV1: [INT] You're not gonna get out
6	vayas con el fiscal. No vas a llegar al	tomorrow, before you go with the D.A.
7	fiscal... Ahor— ¿Mañana es jueves?	You're not gonna make it to the D.A—
8		Toda— Is tomorrow Thursday?
9		
10	MV1: Sí.	MV1: Yes.
11		
12	FV1: Viernes.	FV1: Friday.
13		
14	MV1: Oh, el viernes.	MV1: Oh, on Friday.
15		
16	FV1: El po— el viernes te vas a presentar en la	FV1: On p— You're gonna go to court on Friday.
17	corte. Deja... 'Pérame. Y te voy a poner	Let— Hold on. I'm gonna put you on
18	en speaker —¿okay?— para... ¿Cuál es el	speaker —okay?—to... What's the
19	número? ¡Oh! No va a conocer el	number? Oh! She's not gonna know the
20	número. ¿Tú crees que lo... que lo	number. Do you think she... she's gonna
21	levante?	lift it <sup>3</sup> ?
22		
23		3. TN: the speaker renders a literal translation of the
24		expression "to pick up the phone" which in Spanish
25		conveys only the image of lifting, as oppose to
26	MV1: No sé si el teléfono de la... del celular mío	MV1: I don't know if the phone of the— if my
27	lo... ¿lo tiene acá? No.	cell phone is— do you have it here? No.
28		

000146

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	FV1: De--deja ver si lo contesta de esta manera.	FV1: L--let me see if she answers it this way. I
2	Ojalá. A ver si quic-- ¿Cuál es el teléfono	hope so. Let's see if she wants-- What's
3	de ella?	her phone number?
4		
5	MV1: 3-23... No, no recuerdo su... 8 s--	MV1: 3-2-3... No, I don't remember her-- 8 s--
6		
7	FV1: 3-23.	FV1: 3-2-3.
8		
9	MV1: 8-96...	MV1: 8-9-6...
10		
11	[BEEPS]	[BEEPS]
12		
13	MV1: Y hasta se me ha olvidado [UI].	MV1: I've even forgotten [UI].
14		
15	FV1: Has de cuenta que lo estás marcando.	FV1: Pretend you're dialing it yourself right
16	ahorita porque, ¿si lo marcas tú sí puedes?	now because, if you dial it are you able to?
17		
18	MV1: No, no. Que lo trajeran el teléfono para	MV1: No, no. If they brought the phone here to
19	verlo, porque ya se me ha olvidado de	look at it, because I have forgotten from
20	memoria.	memory.
21		
22	FV1: Okey.	FV1: Okay.
23		
24	MV1: Hasta con eso, con la agenda uno lo pone.	MV1: Even there, one dials it from the
25		phonebook.
26		
27	FV1: ¡Ah, qué! Okey, un momento. Me caes	FV1: Come on! Okay, just a moment. I kind of
28	bien un poquito, ¿eh?	like you a little bit, huh?

000147

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: Gracias.	MV1: Thank you.
2		
3	[FV1 OFF CAMERA]	[FV1 OFF CAMERA]
4		
5	FV1: <i>Hey, can I have his cell [UI] phone,</i>	FV1: HEY, CAN I HAVE HIS CELL [UI] PHONE,
6	<i>please?</i>	PLEASE?
7		
8	FV2: <i>Yeah.</i>	FV2: YEAH.
9		
10	MV2: [OV] <i>Yeah, okay.</i>	MV2: [OV] YEAH, OKAY.
11		
12	FV1: <i>Thank you! ... [LAUGHTER]</i>	FV1: THANK YOU! ... [LAUGHTER]
13		
14	[NO VERBAL ACTIVITY]	[NO VERBAL ACTIVITY]
15		
16	[DISTANT VOICES IN THE BACKGROUND:	[DISTANT VOICES IN THE BACKGROUND:
17	UNINTELLIGIBLE]	UNINTELLIGIBLE]
18		
19	[FV1 BACK ON CAMERA]	[FV1 BACK ON CAMERA]
20		
21	FV1: Sé sincero conmigo. Eso es parte de la	FV1: Be honest with me. That's part of the
22	terapia —¿sabes?— cuando vayas. De...	therapy, you know, whenever you go.
23	de que... que admitas tu culpa y... y de a-	To... to... to admit your fault and, and
24	de ahora en adelante vas a hacer eso. Y lo	from n- from now on you're gonna do
25	*hicistes obviamente con la... con la otra.	that. And you obviously did it with the...
26	Dile... dile pacíficamente. ¿Quieres que	with the other one. Tell her... tell her
27	yo le explique?	peacefully. Do you want me to explain it
28		to her?



000148

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: A ver si contesta ahorita.	MV1: Let's see if she answers now.
2		
3	FV1: Yo sé cómo explicarle.	FV1: I know how to explain it to her.
4		
5	MV1: Trabaja hasta las ocho de la noche.	MV1: She works until about 8:00 PM.
6		
7	FV1: Oh.	FV1: Oh.
8		
9	MV1: Aló, mi amor. ¿Cómo está?	MV1: Hello, my love. How are you?
10		
11	FV1: Di- dile que voy a hablar contigo. Yo le	FV1: Te-tell her that I'm gonna talk to you. I'll
12	explico a ella, y... y tú me vas a oír.	explain to her, and... and you're gonna be
13		listening.
14		
15	MV1: Sí . . . Sí, esto- estoy acá en la... No se	MV1: Yes . . . Yes, I'm... I'm here at the—
16	vaya a asustar, mi amor. Este...	Don't be scared, my love. Uh...
17		
18	FV3: [FAINT VOICE COMING FROM THE	FV3: [FAINT VOICE COMING FROM THE
19	PHONE] . . . ¡Ay, Juan!	PHONE] . . . Oh, Juan!
20		
21	FV1: ¡Oy, no, no, yo le digo! . . . ¿Señora? . . .	FV1: Oy! No, no, I'll tell her! . . . Ma'am? . . .
22	¿Señora? No, no se preocupe. Está bien.	Ma'am? No, don't worry. He's okay.
23	Soy... soy el detective Hernández del	I'm... I'm detective Hernandez from the
24	Departamento de Policía de Los Angeles,	Los Angeles Police Department, Rampart
25	de la Sección de Rampart . . . Ah, estoy...	Section . . . Uh, I'm— we're talking to
26	estamos hablando con su esposo. Aquí	your husband. He's here at the station.
27	está en la estación. Am... ¿*Usted sabe por	Um, do you know why we were looking
28	qué lo andábamos buscando? . . . ¿Le...	for him? . . . Did... did... did he comment

000149

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 le... le hizo un comentario? ¿Le \*hicistes  
2 comentario?

anything to you? Did you comment  
anything to her?

4 MV1: Sí. Ella ya sabe.

MV1: Yes. She knows.

6 FV1: Okey. E-el comentario fue de que él  
7 había tocado a... a su... ¿cómo se dice?

FV1: Okay. Th-the comment was that he was  
touching his... his— what is it called?

9 MV1: Ahijada.

MV1: Goddaughter.

11 FV1: A su ahijada. ¿Okey? No la violó  
12 sexualmente, pero lo que sí hizo es que sí  
13 le tocó \*quen el... con el dedo en la vagina  
14 y sí... y sí le hizo sexo oral a la niña.  
15 ¿Okey? Pero gracias... Dejes— pero  
16 gracias a Dios que no la lastimó  
17 físicamente. ¿okey? Eh. lo que le estoy  
18 explicando a su esposo, que si fue a v— si  
19 fuera sido una violación donde le pone el  
20 pene adentro de la vagina, esa sería una  
21 cosa extremera— extremadamente seria.  
22 Él la tocó, le hizo sexo oral; no lastimó a  
23 la niña físicamente, ¿okey? Sí va a ir a la  
24 cárcel ahora. El caso se va a presentar con  
25 el fiscal el viernes pero le quiero decir que  
26 su esposo fue muy sincero, no tiene  
27 antecede— anteedentes; es... lo único que  
28 él tiene... ¿Ella sabe de la de eso?

FV1: His goddaughter. Okay? He didn't rape  
her sexually but what he did was to touch  
her wi— with his finger on her vagina and  
he did... he did give oral sex to the girl.  
Okay? But thank— Let— but thank God  
he didn't hurt her physically, okay? Uh,  
what I'm explaining to your husband, that  
if it was r— if it had been a rape where he  
puts his penis in her vagina, that would  
have been an extremery [sic]... an  
extremely serious thing. He touched her,  
he gave her oral sex; he didn't hurt the girl  
physically, okay? He will go to jail now.  
The case is going to be presented with the  
D.A. on Friday but I want to tell you that  
your husband was very sincere, he doesn't  
have a rec— a record; he's— all he has is—  
Does she know about that thing?

000150

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 MV1: Sí, sabe todo ella.

MV1: Yeah, she knows about everything.

2  
3 FV1: El único que tiene es un arresto e- en  
4 2001 de una violencia doméstica, pero lo  
5 bajaron de felonía a menoría [sic], así que  
6 es lo único que tiene tu esposo. ¿okey?  
7 . . . Porque lo hizo . . . Y, y, e- él— . . .  
8 Fue un momento de —ya hablamos de  
9 eso— estupidez o lo que sea, pero nunca  
10 lo ha hecho antes, que yo sepa, y dice que  
11 no lo va a hacer otra vez. ¿okey? Por  
12 favor no se... no se ponga... ai- d- Se lo  
13 voy a pasar para que él le diga. U- usted  
14 [UI] que ser honesto con ella y decirle que  
15 sí.

FV1: The only one he has is an arrest i—in 2001  
for a domestic violence, but they lowered  
it from felony to minory [sic], so that's all  
your husband has, okay . . . Because he  
did it . . . And, and, h-he— . . . It was a  
moment of—we already talked about  
that—of stupidity or whatever, but he has  
never done it before, as far as I know, and  
he says that he's not gonna do it again,  
okay? Please don't... don't get— a- d-  
I'm gonna let you talk to him so he can  
tell you. Y-you [UI] to be honest with her  
and tell her yes [, you did it].

16  
17 MV1: Sí . . . Mi amor, no se... no... no se ponga  
18 mal...

MV1: Yes . . . My love, don't... don't... don't get  
in bad shape—

19  
20 [NO VERBAL ACTIVITY]

[NO VERBAL ACTIVITY]

21  
22 FV1: A ver.

FV1: Let me see.

23  
24 MV1: Mi amor...

MV1: My love...

25  
26 FV1: ¿Le puedes poner el speaker?

FV1: Can you put it on speaker?

27  
28 MV1: \*Ta llorando.

MV1: She's crying.

000151

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	FV1: Si...	FV1: If—
2		
3	MV1: 'Ta llorando.	MV1: She's crying.
4		
5	FV1: Dile, "Mira...", dile... Ella necesita saber	FV1: Tell her, "Look...", tell her— She needs to
6	que... que... que tú va a ser fuerte— Dile que	know that, that, that you're going to be
7	si lo *hicistes.	strong— Tell her that you did it.
8		
9	MV1: M'hija, no, no se ponga mal. Este, yo voy	MV1: No, honey, don't get like that. Uh, I'm
10	a salir. No... no se ponga triste. Yo sé	gonna get out. Don't... don't get sad. I
11	que la voy a traer todas las veces, todos	know I'm gonna be picking you up from
12	los viernes al trabajo igual que mi...	work every time, every Friday, from work
13		just like my—
14		
15	FV1: [INT] Que este viernes no.	FV1: [INT] Not this Friday, tell her.
16		
17	MV1: Y este viernes no voy a poder ir a traerla	MV1: And this Friday I'm not gonna be able to
18	... ¡Ay, no! Llo— no llore...	go get you ... Oh, no! Cr— don't cry...
19		
20	FV1: [INT] ¿Alguien la puede recoger?	FV1: [INT] Can someone pick her up?
21		
22	MV1: No llore, m'hija ... No llore, m'hija ...	MV1: Don't cry, honey ... Don't cry, honey ...
23	Yo la quiero mucho y yo sé, pero e— esto	I love you so much and I know, but th—this
24	se va a solucionar. Ah...	is gonna get solved. Uh—
25		
26	FV1: Sé honesto con ella y dile lo que *hicistes.	FV1: Be honest with her and tell her that you
27	Que la vas a dejar en duda y es *pior que	did it. 'Cause you're gonna leave her
28	le dejes en duda.	wondering and it's worse to leave her with

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 the doubt.  
2  
3 FV3: [THROUGH THE PHONE'S SPEAKER] FV3: [THROUGH THE PHONE'S SPEAKER]  
4 ... [UI]. ... [UI].  
5  
6 MV1: No, el abogado no he hecho nada. O sea, MV1: No, the attorney. I haven't done anything.  
7 no vino a hablar con ella y, y ella tenía I mean, she didn't come to talk to her and,  
8 que hablar conmigo personal, la detective. and she needed to talk to me personal  
9 Yeah. [sic], the detective. YEAH.  
10  
11 FV3: [THROUGH THE PHONE'S SPEAKER] FV3: [THROUGH THE PHONE'S SPEAKER]  
12 ... [UI]. ... [UI].  
13  
14 FV1: Tienes que ser sincero con ella. Dile lo FV1: You have to be honest with her. Tell her  
15 que \*hicistes. what you did.  
16  
17 MV1: [OV] Sí, fui y pagué, pero no... no nada MV1: [OV] Yes, I went and paid, but not—  
18 de esto. nothing about that.  
19  
20 FV1: Tengo que cortar la llamada [UI]. FV1: I have to cut the call [UI].  
21  
22 MV1: El viernes. Okey. Se va a cortar la MV1: On Friday. Okay. The call is gonna get  
23 llamada. Ya. cut off. All right.  
24  
25 FV1: [OV] Eh, porque... el po— el po— el FV1: [OV] Uh, because— the pu— the pu— the  
26 propósito de esto fue de que... que fueras purpose of this was for you to... to go do  
27 a hacer [UI]. [UI].  
28

000153

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: [OV] Para avisarle... para avisarle de que	MV1: [OV] To let you know— to tell you not
2	no... no tenga otro pena. Estoy... estoy	to... not to worry no more. I'm... I'm fine
3	bien acá.	here.
4		
5	FV1: Dile lo que *hicistes.	FV1: Tell her what you did.
6		
7	MV1: Sí.	MV1: Yes.
8		
9	FV3: [THROUGH THE PHONE'S SPEAKER]	FV3: [THROUGH THE PHONE'S SPEAKER]
10	... ¡¿Y a dónde va a estar?!	... And where are you gonna be?!
11		
12	MV1: Es donde voy a estar, aquí en la estación	MV1: This is where I'm gonna be, right here at
13	de policia.	the police station.
14		
15	FV1: Dile digo... dile lo que *hicistes. Sé	FV1: Tell her I say— tell her what you did. Be
16	sincero.	honest.
17		
18	MV1: [OV] Hasta el viernes.	MV1: [OV] Not until Friday.
19		
20	FV3: [THROUGH THE PHONE'S SPEAKER]	FV3: [THROUGH THE PHONE'S SPEAKER]
21	... [UI].	... [UI].
22		
23	MV1: Hasta el sábado. No sé. Viernes, creo que	MV1: Until Saturday. I don't know. I think
24	voy a ir... estar en corte.	Friday is when I'm gonna go... gonna be in
25		court.
26		
27	FV1: Al fiscal, ajá.	FV1: To the D.A., uh-huh.
28		

000154

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 <b>MV1:</b> Al fiscal . . . <i>Yeah</i> . . . Bueno . . . Ahí la 2                    veo. No... no se vaya a poner grave, 3                    m'hija, porque mire, usted trabajando ahí 4                    con los patrones, ellos no saben qué está 5                    pasando. Voy a tener que colgar y ahí 6                    disculpe, mi amor . . . <i>Bye</i> , pues. 7 8 <b>FV1:</b> ¿Por qué no le quieres decir? 9 10 <b>MV1:</b> 'Ta te—'ta llorando ahí. 11 12 <b>FV1:</b> Pos sí, pero está llorando porque piensa 13                    que ella que es una injusticia. Dile la 14                    verdad. Para que [UI]. 15 16 <b>MV1:</b> [OV] Sí, mi amor. Vaya, pues. Entonces 17                    hablamos así, y no se preocupe: 'toy bien. 18                    Bueno. 19 20 <b>FV1:</b> Lo *dejastes peor. ¿Por qué... por qué lo 21                    *dejastes peor? 22 23 <b>MV1:</b> No, ella me dice, "¿Pues qué puedo hacer? 24                    Me voy a resignar entonces. Y aquí—me 25                    dice—no puedo resistir esto". 26 27 <b>FV1:</b> ¿Ella piensa que lo *hicistes? 28	1 <b>MV1:</b> To the D.A. . . . <b>YEAH</b> . . . All right . . . I'll 2                    see you there. Don't... don't you get sick, 3                    honey, because look, with you working 4                    there with the bosses, they don't know 5                    what's going on. I'm gonna have to hang 6                    up. And I'm sorry, my love . . . <b>BYE</b> then. 7 8 <b>FV1:</b> Why don't you want to tell her? 9 10 <b>MV1:</b> She's t—she's crying there. 11 12 <b>FV1:</b> Yeah, but she's crying because she thinks 13                    this is an injustice. Tell her the truth. So 14                    that [UI]. 15 16 <b>MV1:</b> [OV] Yes, my love. All right then. So 17                    we'll talk later, and don't worry: I'm fine. 18                    All right. 19 20 <b>FV1:</b> You left it in worse shape. Why... why 21                    did you leave in worse shape? 22 23 <b>MV1:</b> No, she's telling me, "Well, what can I 24                    do? I'm gonna resign to it then. And 25                    here—she says—I can't resist this." 26 27 <b>FV1:</b> Does she think you did it?
---	--



000155

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: No, ella me dice. "Si... si pasaron las	MV1: No, she says, "If... if things actually
2	cosas. la investigación..." Le digo yo,	happened. the investigation..." I told her,
3	"...orita estoy acá con la detective y..."	"I'm here with the detective right now
4		and..."
5		
6	FV1: [INT] ¿Y por qué no le... y por qué no	FV1: [INT] And why didn't you— and why
7	*fuistes sincero con ella? Apágalo.	weren't you honest with her? Turn it off.
8		
9	[CHIME]	[CHIME]
10		
11	FV1: Bueno. Okey, entonces...	FV1: All right. Okay, so—
12		
13	MV1: ¿Y a mi hija no le puedo avisar?	MV1: And I can't tell my daughter?
14		
15	FV1: Yo le puedo hablar.	FV1: I can call her.
16		
17	MV1: Okey.	MV1: Okay.
18		
19	FV1: Yo... yo tengo su teléfono de la mamá.	FV1: I, I have the mom's phone number. Um,
20	Am... ¿ella tiene su propio celular?	does she have her own cell phone?
21		
22	MV1: ¡Oh! ¿Y el... y el carro es así, como le	MV1: Oh! And the... and the car is like, they're
23	vana dar <i>ticket</i> mañana ahí. ¿No le puede	gonna give it a <b>TICKET</b> tomorrow there.
24	s—?	Can you s—?
25		
26	FV1: [INT] ¿Ella sabe moverlos?	FV1: [INT] Does she know how to move them?
27		
28	MV1: No, no hay nadie. Si es que mi esposa no	MV1: No, there's no one. 'Cause the thing is,

000156

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	está en la casa. Ella está trabajando	my wife is not home. She's working
2	encerrada. Ella trabaja encerrada.	locked up in a place. She works behind
3		close doors.
4		
5	FV1: ¿Y las llaves dónde están?	FV1: And where are the keys?
6		
7	MV1: No sé si las dejaron ahí en el carro o las	MV1: I don't know whether they left them in the
8	traen acá. Mañana pasa la barredora.	car or they have them here. The street
9		sweeper drives by tomorrow.
10		
11	FV1: [OV] Okey, si... si la- si las traen ellos,	FV1: [OV] Okay, if, if th- if they have them,
12	am, van a tener... tú vas a tener que dar un	um, you're gonna have to— you're gonna
13	permiso ...	have to give a permission ...
14		
15	MV1: Um-hum.	MV1: Um-hum.
16		
17	FV1: ... y eso lo puedes pedir en la... en la	FV1: ... and you can ask for that at the... at the
18	cárcel donde estés, que le den las llaves...	jail where you're gonna be. Ask them to
19	Allí no- nombras una persona; ellos me	give you your keys— There, just n-name
20	van a llamar a mí y yo les bie-	a person; they're gonna call me here and
21		then I'll b-
22		
23	MV1: [INT] Ahí está el número, que yo al	MV1: [INT] The number is in there, 'cause I
24	vecino le dije que... Bueno, es que...	told my neighbor to— Well, 'cause—
25		
26	FV1: [INT] Eso lo ha- eso lo haces tú allá y, y,	FV1: [INT] That, you can d- you can do over
27	y le das permiso a alguien que le de las	there and, and, and give permission to
28	llaves del carro en la... y to- todo te	someone so they can give him the car keys

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 arreglas eso mañana en la cárcel, y ellos  
2 me mandan aviso y me... me dicen, "Est—"  
3 que... que estás pidiendo soltar las llaves  
4 a alguien, y ¡— la única persona que puede  
5 dar ese permiso soy yo porque yo soy la  
6 investigadora del caso, así que nomás  
7 necesito que... que firmes eso allá, ¿okey?  
8 Ándale pues.

in the— and y— you arrange all that  
tomorrow in jail, and they'll send me  
notice and, and they'll tell me, "It's—"  
that... that you're asking to let go [sic] of  
the keys to someone, and th—the only  
person who can give that permission is me  
because I'm the investigator in the case, so  
I just need you to... to sign that there,  
okay? All right then.

11 **MV1:** Sí.

**MV1:** Yes.

13 **FV1:** ¿Te sientes mejor?

**FV1:** Do you feel better?

15 **MV1:** Sí, sí, yo me siento bien. Yo ya... yo sí he  
16 hablado con \*usté, caso...

**MV1:** Yes, yes, I feel better. I already— I have  
talked to you, case—

18 **FV1:** ¿Pero te sientes mejor que lo que hitistes  
19 [sic]? ¿No... no te sientes como que te  
20 quitó un peso de enci—?

**FV1:** But do you feel better than [sic] what you  
did? Don't... don't you feel like someone  
lifted a weight off of y—?

22 **MV1:** [OV] Sí, no, no, no, yo sé, y...

**MV1:** [OV] Yeah, no, no, no, I know, and—

24 **FV1:** Yo sé que vas a tener que... que ira corte,  
25 todo eso, y tú sabes por lo que \*pasastes  
26 con eso —¿okey?— con el... con el... la  
27 violencia doméstica, pero para mí es  
28 preferible que... admities lo que \*hicistes.

**FV1:** I know you're gonna have to... to go to  
court, all that, and you know what you  
went through with that thing—okay?—  
with the... with the... the domestic  
violence, but to me it's preferable to... that

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	No eres una persona que lo hace cada rato,	you admit what you did. You're not
2	y si es una vez fue una estupidez. Atenta	someone who does it often, and if it was
3	[sic] lo que va a pasar y ponlo detrás de ti.	one time, it was stupid. Attempt [sic]
4	Es lo más fácil. Es lo más pronto.	what's gonna happen and place it behind
5		you [sic]. That's the easiest thing. That's
6		the sooner [sic].
7		
8	MV1: Sí, tiene razón.	MV1: Yeah, you're right.
9		
10	FV1: [OV] ¿Okey?	FV1: [OV] Okay?
11		
12	MV1: Yo... yo sé que ya no lo voy a... o sea...	MV1: I, I know I'm no longer gonna—I mean—
13		
14	FV1: [INT] Ándale pues, ¿eh? Te tengo que	FV1: [INT] All right, huh? I have to put the
15	poner las esposas otra vez. <i>I'm sorry</i> ...	handcuffs on you again. <b>I'M SORRY</b> ...
16	[LAUGHTER]... A ver. Párate por	[LAUGHTER]... Let's see. Please stand
17	favor. ¿Tienes alguna pregunta de mí?	up. Do you have any question for me?
18		
19	MV1: No, nomás.	MV1: No, that's all.
20		
21	FV1: Okey.	FV1: Okay.
22		
23	MV1: Eso es todo.	MV1: That's all.
24		
25	FV1: A ver. Te pusieron dos porque no t—no...	FV1: Let's see. They put you two because you
26	no... no alcanzas, ¿verdad?	don't r— don't l... don't— you can't reach,
27		right?
28		

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1	MV1: Sí.	MV1: Yes.
2		
3	FV1: ¿Tienes malos los hombros o...?	FV1: Do you have bad shoulders or...?
4		
5	MV1: Sí, *apadezco de la espalda y...	MV1: Yeah, I suffer from my back and—
6		
7	FV1: De tanto pintar, ¿verdad?	FV1: From all this painting, right?
8		
9	MV1: No, me cai una vez en la escalera ahí y cai	MV1: No, one time I fell from a ladder/the stairs
10	de espalda al suelo.	[UR] there and I fell to the ground on my
11		back.
12		
13	FV1: ¿Y no tenían aseguranza?	FV1: And they/you [UR] didn't have insurance?
14		
15	MV1: Entonces yo trabajaba en las esquinas. No	MV1: So I was working off of the corners. I had
16	tenía aseguranza.	no insurance.
17		
18	FV1: Oh. Ándele. Végase para acá, pues.	FV1: Oh. All right. Come with me now.
19		
20	[OFF CAMERA]	[OFF CAMERA]
21		
22	FV1: Tienes permiso para trabajar, ¿verdad?	FV1: You have a work permit, right?
23		
24	MV1: Sí, por eso el miedo a preguntar, ¿verdad?	MV1: Yeah, and that's why the fear to ask, you
25	Este, con esto...	know. Uh, with this...
26		
27	FV1: <i>He's all yours!</i>	FV1: <b>HE'S ALL YOURS!</b>
28		

000160

INTERVIEW OF JUAN ORELLANA

[Transcription/Translation]

1 [VOICES FADE OUT]

[VOICES FADE OUT]

2 [MULTIPLE VOICES IN THE BACKGROUND;

[MULTIPLE VOICES IN THE BACKGROUND;

3 UNINTELLIGIBLE]

UNINTELLIGIBLE]

4

5

6

7

[END OF AUDIO FILE]

[END OF AUDIO FILE]

8

9

10

11

12

13

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000161

## EXPLANATION OF LEGENDS

[OV]	OVERLAPPING VOICES. Two or more people speaking at the same time, thus making the sequence rather difficult to follow, many times affecting the clarity of sound.
[UI]	UNINTELLIGIBLE. An extreme case in which the sound of the voice (or voices) can be heard, but the meaning cannot be understood.
[INT]	INTERRUPTING. A person interrupts the previous speaker without any overlapping voices.
[UR]	UNKNOWN REFERENT. The speaker has omitted certain word (in some cases after being interrupted) and the phrase in the source language is missing a crucial element, necessary to render a complete and accurate translation.
[SL]	SOUNDS LIKE. (Used extremely sparingly) Unlike cases where the transcriber has decided to indicate that the message is unintelligible [UI], this code denotes that the words used may very well be those heard from the source language. The transcriber has allowed a more lenient interpretation, but there is not an absolute certainty. Used mostly for proper nouns and numbers.
[IS] [IP] [IM] [IF]	INDICATING SINGULAR; INDICATING PLURAL; INDICATING MALE; INDICATING FEMALE. In Spanish, the form of the noun carries both gender and number. In English that is not always the case, so these indicators are used to add such specificity.
[TN:]	TRANSLATOR'S NOTE. When required, the translator will offer a note of clarification to explain his choice of words in a particular case, or to provide any alternative translation.
...	LINKING ELEMENT/PAUSE. This graphic element denotes either a pause or an interruption in the text. When found at the end of a paragraph, this suspension points indicate that such voice was interrupted and may continue its phrasing further ahead. If used preceding any text, this ellipse links such paragraph with the previous participation by the same speaker.
-	INCOMPLETE WORD. The hyphen is attached to the end of any incomplete word.
--	DISCONTINUED PHRASE. The long dash is attached to the end of any incomplete phrase. It can be found multiple times in the middle of any paragraph and shows that the thought was interrupted by the speaker, who jumped to another phrase without finishing the first.
...	DISCONTINUED PHRASE. Same as above, but used only in the Spanish language notation.
*	DEFECT. An asterisk preceding a word in the left column indicates a defect in the source language. It may pinpoint a defectively pronounced word or an unconventional linguistic structure that, notwithstanding its flawed nature, is capable of rendering the message. Depending on the particular structure, the same degree of imperfection may or may not be conveyed in the translation.
[sic]	LITERAL QUOTE. This element marks a defective or unconventional phrase structure, spelling, or word form, which has been copied verbatim.
SMALL CAPS	TEXT ORIGINALLY IN ENGLISH. Capital letters (not in brackets) indicate that the speaker used English as the source language, thus making the translation of such word or phrase unnecessary.
[UPPERCASE]	TRANSCRIBER/TRANSLATOR'S REMARKS. All comments in upper case and between brackets—all the above legends included—have been added by the transcriber/translator to aid the reader in his/her understanding of the final written work.
[lowercase]	TRANSLATOR'S ADD-ONS. Sometimes, when the technical restraints make it impossible to render an accurate translation, the translator may add one or two words (always between brackets) to a phrase. Keep in mind that any such text—shown in lower case, between brackets—has been added by the translator solely for the purpose of attaining clarity in the target language.



# **APPENDIX K**

Tape No.		STATEMENT FORM				Page ____ of ____													
Witness No.						DR No. 12-0218106													
Name	ORELLANA, JUAN ANTONIO		Date/Time of Interview	9/26/12 2000		Location of Interview RAMP DETS #203													
Residence Address	1703 S. BONNIE BLVD #C		City	LOS ANGELES	ZIP Code	90006 (213) 880-3798													
Business Address	PAUL D CONSTRUCTION BRENTWOOD		City	BRENTWOOD	ZIP Code														
Sex	M	Descent	HISP BUC BRO	Hair	BRO	Eyes	S'OO	Height	180	Weight	6/12/66	DOB	46	Age		Driver Lic. No./Other ID		State	CA
Interviewing Officer(s) DET. T. HERNANDEZ														Serial No.(s) 24182		Division RAMP.			
MIRANDA ADMONITION												Officer Completing DET. HERNANDEZ				Serial No. 24182			
<p>1. Usted tiene el derecho de permanecer callado. Entiende? SI</p> <p>2. Cualquier cosa que Usted diga podrá usarse en su contra en una corte de justicia. Entiende? SI</p> <p>3. Usted tiene el derecho de la presencia de un abogado antes y durante cualquier interrogatorio. Entiende? SI</p> <p>4. Si Usted no tiene dinero para pagar un abogado, se le nombrará uno a Usted, sin costo, antes de interrogársele a Usted. Entiende? SI</p> <p>PUES SI X Juan C. Steffen</p>																			
<p>Statements: Use third person. Include who, what, where, when, why and how.</p> <p>ESCRIBA EN TERCERA PERSONA. INCLUYA: QUIEN, QUE, DONDE, CUANDO, PORQUE Y COMO.</p>																			

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

**FOR IDENTIFICATION ONLY**

DATE 1/23/14 DNA ☐

TYPE OF HEARING J/T

CASE NO. BA 403082

Court EXH. NO. 1

CRIM 128 06-06  
(replaces CR 10A)

# **APPENDIX L**

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF-RESPONDENT, ) SUPERIOR  
 ) COURT  
 VS. ) NO.  
 ) BA403082-01  
 01) JUAN ORELLANA, )  
 )  
 DEFENDANT-APPELLANT. )

JUN 03 2014

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY  
HONORABLE LISA B. LENCH, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

JANUARY 23 AND 24, 2014

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS  
STATE ATTORNEY GENERAL  
SUITE 1701  
300 SOUTH SPRING STREET  
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

B255892

Jun. 6, 2014

C-2 R-5 & PR

COURT OF APPEAL - SECOND DISTRICT

**FILED**

JOSEPH A. LANE, Clerk

R. Hernandez, Deputy Clerk

ORIGINAL

VOLUME 2 OF 5  
PAGES 1 THROUGH 87/300  
PAGES 301 THROUGH 390/600

RONALD G. DAHL, CSR #4213  
OFFICIAL REPORTER

1 THEM.

2 SECOND, YOU DO NOT HAVE TO GO BACK TO THE  
3 11TH FLOOR. DID YOU COME FROM ELEVEN? OKAY. YOU  
4 DON'T HAVE TO GO BACK TO THE 11TH FLOOR UNTIL YOU'RE  
5 EXCUSED. SO FROM NOW UNTIL THE TIME THAT YOU ARE  
6 EXCUSED, YOU DON'T HAVE TO GO BACK TO THE 11TH FLOOR.

7 SO I'M GOING TO LET YOU GO FOR THE  
8 EVENING. I'M GOING TO ASK YOU TO PLEASE NOT DISCUSS  
9 THIS MATTER AMONG YOURSELVES OR WITH ANYONE ELSE OR  
10 FORM OR EXPRESS ANY OPINION ON IT. I KNOW YOU DON'T  
11 KNOW ANYTHING UPON WHICH YOU COULD FORM AN OPINION,  
12 BUT STILL DON'T. AND TO REFRAIN FROM ENGAGING IN ANY  
13 KIND OF INTERNET ACTIVITY RESPECT TO ANYTHING  
14 CONNECTED WITH THIS CASE OR YOUR JURY SERVICE.

15 PLEASE COME BACK TOMORROW AT 1:30 AND WE  
16 WILL CONTINUE WITH THE JURY SELECTION PROCESS. AND  
17 FINALLY, PLEASE HAVE A NICE EVENING. WE'LL SEE YOU  
18 ALL TOMORROW AT 1:30.

19  
20 (THE FOLLOWING PROCEEDINGS WERE HELD  
21 IN OPEN COURT, OUT OF THE PRESENCE  
22 AND HEARING OF THE JURY:)

23  
24 THE COURT: ALL RIGHT. BACK ON THE RECORD IN  
25 THE MATTER OF PEOPLE VERSUS JUAN ORELLANA. THE RECORD  
26 WILL REFLECT THAT MR. ORELLANA IS PRESENT, BOTH  
27 COUNSEL ARE PRESENT.

28 WITH RESPECT TO THE 402 HEARING ON THE

1 ISSUE OF THE ADMISSIBILITY OF MR. ORELLANA'S STATEMENT  
2 TO THE POLICE, MR. SANTISO, YOU HAVE A WITNESS THAT  
3 YOU WOULD LIKE TO CALL?

4 MR. SANTISO: YES, YOUR HONOR. YOUR HONOR,  
5 PEOPLE CALL DETECTIVE TERRY HERNANDEZ.

6  
7 TERESA HERNANDEZ,  
8 CALLED AS A WITNESS BY THE PEOPLE, WAS SWORN AND  
9 TESTIFIED AS FOLLOWS:

10  
11 THE CLERK: YOU DO SOLEMNLY STATE THAT THE  
12 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE  
13 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND  
14 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

15 THE WITNESS: YES.

16 THE CLERK: THANK YOU. PLEASE TAKE THE WITNESS  
17 STAND.

18 PLEASE STATE YOUR FIRST AND LAST NAME AND  
19 SPELL THEM FOR THE RECORD.

20 THE WITNESS: THERESA HERNANDEZ. T-E-R-E-S-A  
21 H-E-R-N-A-N-D-E-Z.

22

23 DIRECT EXAMINATION

24

25 BY MR. SANTISO:

26 Q GOOD AFTERNOON, DETECTIVE.

27 A GOOD AFTERNOON.

28 Q DO YOU WORK FOR THE LOS ANGELES POLICE



1 DEPARTMENT?

2 A I DO.

3 Q ARE YOU A DETECTIVE?

4 A YES.

5 Q HOW LONG HAVE YOU BEEN A DETECTIVE FOR?

6 A A DETECTIVE? OR WITH THE POLICE

7 DEPARTMENT?

8 Q A DETECTIVE.

9 A ROUGHLY, AS A DETECTIVE, ROUGHLY FIVE  
10 YEARS. BUT I'VE WORKED IN INVESTIGATIONS LONGER THAN  
11 THAT, AS A POLICE OFFICER.

12 Q HOW LONG HAVE YOU BEEN A POLICE OFFICER?

13 A FOR TWENTY-FIVE AND A HALF YEARS.

14 Q I WANT TO DRAW YOUR ATTENTION, DO YOU  
15 WORKING A PERSON NAMED JUAN ORELLANA?

16 A YES.

17 Q DO YOU SEE HIM IN COURT TODAY?

18 A YES.

19 Q COULD YOU PLEASE IDENTIFY HIM.

20 A HE'S SITTING TO MY LEFT IN THE RED AND  
21 BLUE CHECKERED SHIRT. JEANS. HEADPHONES ON.

22 MR. SANTISO: FOR THE RECORD, THAT'S THE  
23 DEFENDANT, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 BY MR. SANTISO:

26 Q AS -- LET ME ASK THIS FIRST. ARE YOU THE  
27 INVESTIGATING OFFICER RELATING TO AN INCIDENT  
28 INVOLVING THE DEFENDANT AND A GIRL NAMED VANESSA?

1 A YES.

2 Q AS PART OF THAT INVESTIGATION, DID YOU  
3 INTERVIEW THE DEFENDANT?

4 A I DID.

5 Q WAS THAT CONDUCTED ON SEPTEMBER 26, 2012?

6 A YES.

7 Q LET'S BRIEFLY DISCUSS THE CIRCUMSTANCES  
8 RELATED TO THAT INTERVIEW. BEFORE THAT INTERVIEW, HAD  
9 YOU IDENTIFIED THE DEFENDANT AS A SUSPECT?

10 A YES.

11 Q AND WAS HE ARRESTED BEFORE YOU INTERVIEWED  
12 HIM?

13 A YES.

14 Q WHO WAS HE ARRESTED BY? I DON'T WANT A  
15 SPECIFIC NAME, BUT WHO ARRESTED HIM?

16 A A UNIT CALLED CCU.

17 Q WHAT DOES THAT STAND FOR?

18 A CAREER CRIMINAL UNIT.

19 Q ONCE THE CAREER CRIMINAL UNIT ARRESTED THE  
20 DEFENDANT, DID THEY BRING THEM TO YOU?

21 A YES.

22 Q WHERE WAS THAT?

23 A RAMPART DETECTIVE DIVISION.

24 Q ONCE HE WAS BROUGHT TO YOU, DID YOU TALK  
25 TO HIM?

26 A YES.

27 Q WHERE DID YOU TALK TO HIM AT?

28 A AT RAMPART DETECTIVE DIVISION, IN ONE OF

1 THE INTERVIEW ROOMS.

2 Q DID YOU PUT HIM INSIDE OF AN INTERVIEW  
3 ROOM?

4 A YES.

5 Q WAS ANYBODY OTHER THAN YOURSELF AND THE  
6 DEFENDANT IN THE INTERVIEW ROOM WHEN YOU STARTED  
7 TALKING TO HIM?

8 A NO.

9 Q DID YOU INTERVIEW HIM?

10 A I DID.

11 Q DURING THE INTERVIEW OF THE DEFENDANT, WAS  
12 ANYBODY ELSE PRESENT OTHER THAN WHO YOU TALKED ABOUT?

13 A NO.

14 Q WHEN YOU FIRST STARTED TALKING TO THE  
15 DEFENDANT, WHAT DID YOU SPEAK ABOUT?

16 A WE WERE TALKING ABOUT HIS NAME, WHERE HE  
17 LIVED, HIS EMPLOYMENT.

18 Q AFTER YOU ESTABLISHED THAT INFORMATION  
19 WITH THE DEFENDANT, DID YOU READ HIM WHAT'S KNOWN AS  
20 THE MIRANDA RIGHTS?

21 A I DID.

22 Q WHY DID YOU DO THAT?

23 A BECAUSE I WAS GOING TO INTERVIEW HIM ON  
24 THE CASE THAT HE WAS A NAMED SUSPECT ON.

25 MR. SANTISO: YOUR HONOR, I'M HOLDING IN MY HAND  
26 -- IT'S ACTUALLY DOUBLE-SIDED. I THINK WHAT I'LL DO  
27 IS JUST MARK THIS COPY RIGHT NOW, AND MAYBE I'LL  
28 INTERCHANGE IT LATER? BECAUSE IT'S A DOUBLE-SIDED

1 COPY.

2 THE COURT: OF WHAT?

3 MR. SANTISO: I'M SORRY. ON ONE SIDE IT APPEARS  
4 TO BE A REPORT. BUT THE OTHER SIDE HAS A STATEMENT  
5 FORM WHICH I'LL BE ASKING THE DETECTIVE ABOUT.

6 THE COURT: ALL RIGHT. YOU CAN PRELIMINARILY  
7 MARK IT AS COURT'S EXHIBIT 1. AND YOU CAN PROVIDE A  
8 SUBSTITUTE OF ONE SIDE OF IT AT A LATER DATE.

9  
10 (EXHIBIT COURT'S 1 = FOR I.D.)  
11

12 MR. SANTISO: ALL RIGHT. COURT NUMBER 1 ON THE  
13 BOTTOM RIGHTHAND CORNER. MAY I APPROACH?

14 THE COURT: YES.

15 BY MR. SANTISO:

16 Q SHOWING YOU COURT'S EXHIBIT NUMBER 1, TELL  
17 ME WHAT THAT IS.

18 A A STATEMENT FORM.

19 Q TELL ME MORE ABOUT THAT STATEMENT FORM.

20 A THIS IS A STATEMENT FORM THAT I USE WHEN I  
21 INTERVIEW SOMEONE. ON THERE ARE THE MIRANDA RIGHTS.  
22 I HAVE THEM IN ENGLISH AND IN SPANISH. MR. ORELLANA  
23 IS A SPANISH SPEAKER. AND I READ THEM VERBATIM. READ  
24 THEM OFF OF HERE, JUST TO MAKE SURE THERE'S NO ERROR.  
25 TO BE CONSISTENT.

26 AFTER EACH QUESTION, I WRITE HIS ANSWER.  
27 THIS IS WHAT HE SAID. I WRITE IT IN SPANISH. I FILL  
28 OUT HIS INFORMATION. AND THEN I HAVE HIM SIGN IT.

1 Q YOU INDICATED THAT YOU SPOKE TO THE  
2 DEFENDANT IN SPANISH. ARE YOU CERTIFIED BY THE  
3 DEPARTMENT AS A SPANISH SPEAKER?

4 A I AM.

5 Q DID YOU CONDUCT THIS INTERVIEW WITH THE  
6 DEFENDANT IN SPANISH?

7 A I DID.

8 Q THE ENTIRETY, INCLUDING THE MIRANDA  
9 WAIVER?

10 A YES.

11 Q NOW, YOU INDICATED THAT YOU READ HIM?  
12 QUESTIONS RELATED TO MIRANDA?

13 A YES.

14 Q COULD YOU TAKE US THROUGH THAT PROCESS.  
15 IF YOU ASKED HIM A QUESTION, WHAT QUESTION WAS THAT.  
16 AND WHETHER HE RESPONDED, AND IN WHAT MANNER HE  
17 RESPONDED.

18 THE COURT: BUT IF YOU'RE GOING TO SAY THE  
19 QUESTION, SAY IT IN ENGLISH. NOT IN SPANISH, PLEASE.

20 THE WITNESS: OKAY. I DO -- BECAUSE I READ  
21 THEM. I HAVE IT WRITTEN IN SPANISH AND ENGLISH.

22 THE COURT: I CAN'T DO A TRANSCRIPT OF SPANISH.  
23 IF YOU WILL STIPULATE THAT WHAT SHE'S GOING TO SAY IN  
24 ENGLISH IS WHAT'S ON THE FORM IN SPANISH?

25 MR. LE: YES, YOUR HONOR. THAT'S FINE.

26 THE WITNESS: I CAN TRANSLATE IT.

27 THE COURT: IF SHE READS IT IN SPANISH, I CAN'T  
28 GET A RECORD OF IT, BECAUSE THE COURT REPORTER CAN'T

1 TAKE DOWN SPANISH.

2 THE DEFENDANT: DO YOU WANT ME TO READ IT IN  
3 SPANISH AND THEN TRANSLATE IMMEDIATELY?

4 THE COURT: I THINK THE WAY IT WOULD WORK IS I  
5 WOULD HAVE AN INTERPRETER DOING THAT IF YOU READ IT IN  
6 SPANISH, SO THE ENGLISH WOULD BE WHAT'S IN THE RECORD.  
7 I DON'T HAVE AN INTERPRETER AVAILABLE TO DO THAT. SO  
8 IF YOU WANT TO JUST SAY WHAT IT IS IN ENGLISH.  
9 BECAUSE SPANISH IS OF NO VALUE TO ME AT THE MOMENT.

10 THE WITNESS: YES, MA'AM. NUMBER ONE. YOU HAVE  
11 THE RIGHT TO REMAIN SILENT. DO YOU UNDERSTAND? HE  
12 RESPONDED YES.

13 ANYTHING YOU SAY CAN BE USED AGAINST YOU  
14 IN A COURT OF LAW. DO YOU UNDERSTAND? HE SAID YES.

15 YOU HAVE THE RIGHT TO THE PRESENCE OF AN  
16 ATTORNEY BEFORE AND DURING ANY INTERROGATION. ANY  
17 QUESTIONING. DO YOU UNDERSTAND? HE SAID YES.

18 IF YOU DO NOT HAVE MONEY TO PAY FOR AN  
19 ATTORNEY, ONE WILL BE ASSIGNED TO YOU WITH NO COST  
20 BEFORE ANY INTERVIEW. DO YOU UNDERSTAND? AND HE SAID  
21 YES.

22 BY MR. SANTISO:

23 Q AND AS FAR AS THE MIRANDA RIGHTS, DID YOU  
24 READ HIM ANY OTHER RIGHTS AFTER THAT, OR ASK HIM ANY  
25 OTHER QUESTIONS AFTER THAT? ACTUALLY, LET ME REPHRASE  
26 THAT. THAT'S A POOR QUESTION.

27 AFTER YOU READ HIM THAT FOURTH QUESTION,  
28 WHAT HAPPENED?

1           A       HE SAID HE WASN'T SURE. HE STARTED  
2 TELLING ME -- COULD YOU MIND IF I GO TO THE  
3 TRANSLATION?

4           Q       WOULD THAT REFRESH YOUR MEMORY AS TO WHAT  
5 HAPPENED?

6           A       YES, IT WOULD.

7                   HE WASN'T LIKE -- HE WAS NOT SURE, AND HE  
8 WAS TELLING ME, WELL, I SPOKE WITH AN ATTORNEY,  
9 BECAUSE I PAID HIM. AND HE SAID YOU CAN'T GO OR  
10 SOMETHING LIKE THAT.

11                   SO HE KIND OF WASN'T SURE. SO I TOLD HIM  
12 IT'S YOUR DECISION. IT'S YOUR RIGHT. YOU CAN TALK TO  
13 ME IF YOU WAN TO. IT WAS HIS DECISION.

14           Q       WHEN YOU GAVE HIM THAT INFORMATION, DID HE  
15 RESPOND?

16           A       YES.

17           Q       AND WHEN HE RESPONDED, WHAT DID HE SAY?

18           A       WELL, SI. WHICH IS WELL, YEAH. THAT HE  
19 WOULD TALK TO ME.

20           Q       AT THAT POINT IN TIME DID YOU ASK HIM  
21 QUESTIONS RELATED TO VANESSA?

22           A       I DID.

23           Q       AND YOUR INVESTIGATION?

24           A       YES, I DID.

25           Q       DID HE ANSWER THOSE QUESTIONS?

26           A       HE DID.

27           Q       DURING THAT QUESTIONING PROCESS, DID HE  
28 EVER ASK TO STOP THE INTERVIEW?



1 A NO.

2 Q DID HE EVER ASK FOR AN ATTORNEY?

3 A NO.

4 Q NOW, THIS INTERVIEW ROOM, DESCRIBE THE  
5 LAYOUT, JUST BRIEFLY.

6 A THE INTERVIEW ROOM?

7 Q YES.

8 A IT'S A SMALL ROOM. FOUR WALLS. THERE'S A  
9 DOOR. AND WHEN YOU VIEW THE VIDEO, BECAUSE IT WAS  
10 ONLY HIM AND I, JUST FOR SECURITY REASONS, I LEFT THE  
11 DOOR OPEN IN CASE SOMETHING GOES WRONG AND I CAN ASK  
12 FOR ASSISTANCE OR SOMETHING. BUT IT'S A SMALL ROOM.

13 THERE'S A TABLE. HE'S SITTING IN FRONT OF  
14 ME, AND I'M SITTING ACROSS FROM HIM. AND IS THAT'S  
15 IT.

16 Q DURING THIS INTERVIEW, DID YOU EVER DRAW  
17 YOUR WEAPON?

18 A NO. AS A MATTER OF FACT, WHEN I TOOK HIM  
19 IN, JUST TO PUT HIM AT EASE, I TOOK THE HANDCUFFS OFF.  
20 SO HE WOULD FEEL MORE COMFORTABLE.

21 Q DURING THE INTERVIEW HE HAD NO HANDCUFFS  
22 ON?

23 A YES.

24 Q DO YOU EVER THREATEN HIM AT ALL DURING THE  
25 INTERVIEW?

26 A NO.

27 Q I'M SAYING THE WHOLE PROCESS, WHEN YOU  
28 FIRST PUT HIM IN THE ROOM TO WHEN YOU LEFT THE ROOM.

1 A THE ONLY TIME I PUT THE HANDCUFFS BACK ON  
2 HIM IS WHEN I WAS DONE WITH THE INTERVIEW.

3 Q YOU TRAILED OUT AT THE LAST. WHAT'S THE  
4 LAST THING YOU SAID?

5 A THE ONLY TIME I PUT THE HANDCUFFS BACK ON  
6 HIM IS AFTER WE WERE DONE WITH THE INTERVIEW.

7 Q WAS THE INTERVIEW RECORDED?

8 A YES.

9 Q VIDEO AND AUDIO?

10 A VIDEO AND AUDIO, YES.

11 Q ONE THING I WANT TO CLARIFY. YOU SAID  
12 THAT WHEN YOU WERE DISCUSSING THIS MIRANDA WAIVER WITH  
13 HIM, HE SAID SOMETHING ABOUT TALKING TO A LAWYER?

14 A HE SAID I SPOKE WITH AN ATTORNEY. I PAID  
15 HIM. AND THEN I SAID SOMETHING -- BECAUSE HE WAS KIND  
16 OF MUMBLING. NOT MAKING SENSE. HE WAS UNSURE.

17 MR. LE: YOUR HONOR, I'LL OBJECT AS  
18 CHARACTERIZING MY CLIENT AS BEING UNSURE. THAT CALLS  
19 FOR SPECULATION.

20 THE COURT: OBJECTION IS SUSTAINED.

21 MR. LE: MOTION TO STRIKE THAT PORTION.

22 THE COURT: THE "HE WAS UNSURE" IS STRICKEN.  
23 BY MR. SANTISO:

24 Q OKAY. WELL, DID YOU GET THE IMPRESSION  
25 THAT HE WAS UNSURE?

26 A I GOT THE IMPRESSION HE WAS UNSURE.

27 Q WHAT WAS THAT BASED ON?

28 A HE DIDN'T TELL ME I DON'T WANT TO TALK TO

1 YOU. HE DIDN'T TELL ME I WANT TO SPEAK TO MY  
2 ATTORNEY, NOTHING LIKE THAT. HE DIDN'T INVOKE HIS  
3 RIGHTS.

4 WHICH IS WHY I TOLD HIM, IT'S YOUR  
5 DECISION TO INVOKE YOUR RIGHTS. IF YOU WANT TO TALK  
6 TO ME, YOU CAN.

7 Q HAD YOU CONTACTED HIM OR ATTEMPTED TO  
8 CONTACT HIM PRIOR TO MAKING CONTACT IN THE INTERVIEW  
9 ROOM?

10 A YES.

11 Q TELL ME ABOUT THAT.

12 A I HAD CALLED AND MADE AN APPOINTMENT. HE  
13 WAS SUPPOSED TO COME IN. AND HE DIDN'T SHOW UP. HE  
14 DIDN'T CANCEL OR ANYTHING.

15 Q WHAT WAS THE INTERVIEW FOR?

16 A THE INTERVIEW TO ASK HIM ABOUT THIS CASE.

17 Q AND WHEN WAS THAT INTERVIEW GOING TO BE?

18 A IT WAS GOING TO BE PRIOR TO THIS ARREST.

19 Q DO YOU KNOW HOW MANY DAYS IT WAS BEFORE?  
20 COUPLE DAYS? IF YOU REMEMBER.

21 A I DON'T REMEMBER. I'M GOING TO ESTIMATE A  
22 FEW DAYS.

23 Q WHEN YOU CALLED HIM AND TOLD HIM ABOUT THE  
24 INTERVIEW, DID YOU TELL HIM WHAT THE INTERVIEW WAS  
25 FOR?

26 A NO.

27 Q NOW, DO YOU HAVE A COMPUTER IN FRONT OF  
28 YOU?

1 A YES.

2 Q DOES WHAT'S ON THE SCREEN APPEAR TO DEPICT  
3 THE VIDEO FROM THE INTERVIEW THAT WE'VE BEEN  
4 DISCUSSING?

5 A YES.

6 MR. SANTISO: YOUR HONOR, THE CD BELONGS TO MR.  
7 LE. IN LIGHT OF THE TECHNOLOGICAL ISSUES WE'RE  
8 HAVING, IF I MAY TEMPORARILY MARK THAT AS COURT'S  
9 EXHIBIT NUMBER 2. I'LL LATER USE MY COPY FOR THE  
10 PURPOSES OF THE COURT. MAKE THAT PEOPLE'S NUMBER 2.  
11 AND ALLOW US TO WATCH IT NOW?

12 THE COURT: MR. LE, DO YOU HAVE ANY OBJECTION TO  
13 HIM SUBSTITUTING YOURS AT A LATER TIME FOR HIS?

14 MR. LE: NO.

15 MR. SANTISO: YOUR HONOR, I ALSO HAVE A  
16 TRANSCRIPT OF WHAT I BELIEVE WE'RE ABOUT TO WATCH.  
17 AND I THINK IT'S BETTER IF WE ACTUALLY USE THE ONE MR.  
18 LE HAS PROVIDED. IF I MAY MARK THAT. I THINK THE  
19 COURT HAS A COPY ALREADY.

20 THE COURT: I DO. I'LL MAKE THAT COURT'S  
21 EXHIBIT -- I'LL MAKE THE CD 2A AND THE TRANSCRIPT 2B.  
22 WITH THE UNDERSTANDING THAT THE CD MAY BE SUBSTITUTED  
23 AT A LATER TIME.

24  
25 (EXHIBIT COURT'S 2A = FOR I.D.)

26 (EXHIBIT COURT'S 2B = FOR I.D.)

27

28 MR. SANTISO: FOR THE RECORD, THE TRANSCRIPT,

1 THE TITLE PAGE SAYS PEOPLE VERSUS JUAN ORELLANA. CASE  
2 NUMBER 403802. TRANSCRIPTION SLASH TRANSLATION.  
3 INTERVIEW OF JUAN ORELLANA.

4 AND IT'S A TOTAL OF 77 PAGES. SO THAT  
5 WOULD BE COLLECTIVELY PEOPLE'S 2B.

6 THE COURT: ALL RIGHT.

7 MR. SANTISO: MAY I APPROACH?

8 THE COURT: LET ME JUST MAKE CLEAR. THE BOUND  
9 COPY I HAVE IS 77 PAGES. THE LAST PAGE IS AN  
10 EXPLANATION OF LEGEND THAT IS NOT FILLED IN. JUST SO  
11 IT'S CLEAR, THE ACTUAL TRANSCRIPT IS 76 PAGES. BUT  
12 THE BOUND VOLUME GOES THROUGH PAGE 77. BUT THAT'S  
13 FINE.

14 MR. SANTISO: ALSO, ACTUALLY, I'M NOTICING THAT  
15 AS PART OF THIS EXHIBIT, THE FIRST PAGE IS THE TITLE  
16 PAGE, BUT IT'S NOT NUMBERED. THE SECOND PAGE IS A  
17 DECLARATION OF INTERPRETER SLASH TRANSLATOR, BUT IT  
18 DOES NOT HAVE A PAGE NUMBER.

19 THE FIRST PAGE NUMBER ON THE BOTTOM  
20 RIGHTHAND CORNER IS PAGE 1, AND IT BEGINS OR SEEMS TO  
21 BE THE NOMENCLATURE PAGE.

22 THE COURT: RIGHT.

23 MR. SANTISO: PAGE 1 IDENTIFIED THROUGH PAGE 76,  
24 AS THE COURT INDICATED, APPEARS TO BE THE TRANSCRIPT.

25 THE COURT: OKAY.

26 MR. SANTISO: THANK YOU. MAY I APPROACH?

27 THE COURT: YES.

28 MR. SANTISO: THANK YOU.

1 THE COURT: MR. LE, IF YOU WANT TO COME UP.

2 MR. LE: YES.

3 MR. SANTISO: WHAT I'M GOING TO DO IS THE CD --

4 THE COURT: AND THE RECORD WILL REFLECT THE  
5 COURT REPORTER IS NOT REQUIRED TO REPORT THE AUDIO  
6 PORTION OF THE CD THAT'S BEING PLAYED.

7

8 (A RECORDING WAS PLAYED  
9 IN OPEN COURT.)

10

11 MR. SANTISO: RIGHT NOW I HAVE THE CD ON PAUSE.  
12 AND IT'S AT TWO SECONDS.

13 BY MR. SANTISO:

14 Q DO YOU SEE THAT, DETECTIVE?

15 A YES.

16 Q TELL US WHAT WE SEE AT THIS POINT IN TIME.

17 A I'M IN THE PROCESS OF TAKING MR.

18 ORELLANA'S HANDCUFFS OFF.

19 Q I'M GOING TO PLAY A PORTION AND THEN I'LL  
20 STOP AND ASK A FEW MORE QUESTIONS.

21 A OKAY.

22

23 (A RECORDING WAS PLAYED  
24 IN OPEN COURT.)

25

26 MR. SANTISO: I BELIEVE THAT IS IT, UNLESS MR.  
27 LE WANTS MORE OF IT.

28 MR. LE: NO, THAT'S THE CRUX OF IT, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. SANTISO: AND FOR THE RECORD, I STOPPED IT  
3 AT FIVE MINUTES AND 29 SECONDS.

4 THE COURT: ALL RIGHT. WHICH IS APPROXIMATELY  
5 PAGE 11 OF THE TRANSCRIPT.

6 BY MR. SANTISO:

7 Q DETECTIVE, WHAT DID YOU JUST VIEW?

8 A IT WAS MY INITIAL INTERVIEW WITH ORELLANA.  
9 AND THE LAST PART WAS THE ADMONISHMENT.

10 Q THAT YOU'VE TESTIFIED TO?

11 A YES.

12 Q ONE THING I DIDN'T ASK YOU BEFORE IS I  
13 NOTE THAT IT WAS THE -- THERE WAS LIKE AN ARREST TEAM  
14 THAT WENT OUT AND ARRESTED HIM; RIGHT?

15 A RIGHT.

16 Q WHAT DAY WAS THAT? WHAT DAY WAS IT THAT  
17 HE WAS ARRESTED?

18 A IT WAS IN SEPTEMBER. SEPTEMBER THE 26TH.

19 Q WAS IT THE SAME DAY THAT YOU INTERVIEWED  
20 HIM?

21 A YES.

22 Q DO YOU KNOW HOW LONG BEFORE YOU  
23 INTERVIEWED HIM HE WAS ARRESTED?

24 A ALMOST IMMEDIATELY WHEN THEY BROUGHT HIM  
25 TO THE STATION. THEY ARRESTED HIM, I GOT THE PHONE  
26 CALL THAT THEY WERE COMING IN WITH HIM. I WAITED,  
27 BECAUSE IT WAS LATE AT NIGHT. THE END OF WATCH.

28 THEY BROUGHT HIM TO THE STATION. THEY



1 WALKED HIM TO THE UPSTAIRS TO THE SECOND FLOOR, AND I  
2 TOOK HIM FROM THEM AND I WALKED HIM TO THIS ROOM.

3 Q THAT'S WHEN YOU DID YOUR INTERVIEW?

4 A YES.

5 Q WAS THE INTERVIEW AT APPROXIMATELY EIGHT  
6 P.M.?

7 A YES.

8 Q YOU WHEN YOU SAY IT WAS END OF WATCH, DOES  
9 THAT MEAN THE END OF YOUR SHIFT?

10 A THE END OF MY SHIFT. BUT I WAITED,  
11 BECAUSE I GOT A PHONE CALL THAT HE WAS IN CUSTODY.

12 Q YOU ASKED HIM THE QUESTION AFTER -- WHEN  
13 YOU WERE READING HIM HIS MIRANDA RIGHTS, YOU ASKED HIM  
14 IF HE WANTED TO TALK ABOUT THE CASE, HE COULD DISCUSS  
15 IT WITH YOU?

16 A YES.

17 Q AND WHEN YOU SAID THAT, HE RESPONDED,  
18 WELL, YEAH?

19 A YES.

20 MR. LE: YOUR HONOR, I'M GOING TO OBJECT. THAT  
21 MISSTATES THE --

22 THE COURT: WELL, THAT'S PART OF THE RESPONSE.

23 MR. LE: THAT'S PART OF THE RESPONSE. NOT THE  
24 FULL RESPONSE. THE COURT HAS THE TRANSCRIPT.

25 THE COURT: I DO.

26 BY MR. SANTISO:

27 Q APPROXIMATELY HOW LONG WAS THE INTERVIEW?

28 A I'M GOING TO GUESS --

1 Q I DON'T WANT YOU TO GUESS.

2 A ABOUT AN HOUR. OKAY.

3 MR. SANTISO: I HAVE NOTHING FURTHER, YOUR  
4 HONOR.

5 THE COURT: CROSS-EXAMINATION, MR. LE.

6 MR. LE: YES. THANK YOU.

7

8 CROSS-EXAMINATION

9

10 BY MR. LE:

11 Q DETECTIVE, BEFORE YOU INTERVIEWED MR.  
12 ORELLANA, DID YOU ASK MR. ORELLANA WHAT LEVEL OF  
13 EDUCATION HE RECEIVED?

14 A NO.

15 Q NOW, DID HE TELL YOU WHETHER OR NOT HE  
16 COULD SPEAK ANY ENGLISH?

17 A WHEN HE WAS COMING IN, PRIOR TO THIS, I  
18 ALWAYS ASK THEM -- BEFORE MY INTERVIEWS, OBVIOUSLY I'M  
19 NOT -- IF I TALK TO THEM IN SPANISH, I'LL ASK THEM  
20 ENGLISH OR SPANISH. IN THIS CASE, HE WOULD HAVE SAID  
21 SPANISH, WHICH IS WHY I DID THE INTERVIEW IN SPANISH.

22 Q DID YOU INQUIRE ABOUT HIS LEVEL OF  
23 EDUCATION AT ALL?

24 A NO.

25 Q DID YOU ASK HIM WHETHER OR NOT HE COULD  
26 READ OR WRITE?

27 A NO.

28 Q NOW, AT -- ONE OF THE LAST QUESTIONS OR

1 THE MIRANDA ADVISEMENT THAT YOU GAVE HIM WAS THAT IF  
2 HE COULD NOT PAY FOR AN ATTORNEY, ONE WOULD BE  
3 APPOINTED FOR HIM FREE OF COST AT THE INTERROGATION;  
4 IS THAT CORRECT?

5 A CORRECT.

6 Q NOW, AFTER YOU READ HIM THE RIGHTS, YOU  
7 THEN MENTIONED SOMETHING ABOUT A PHONE CALL THAT YOU  
8 HAD MADE TO MR. ORELLANA THE DAY BEFORE.

9 A CORRECT.

10 Q RIGHT? NOW, IN THAT PHONE CALL, DID YOU  
11 PERSONALLY TALK TO MR. ORELLANA OR DID YOU READ MR.  
12 ORELLANA A MESSAGE?

13 A THERE WERE TWO PHONE CALLS. I KNOW I  
14 TALKED TO HIM ONE TIME. ANOTHER TIME I LEFT HIM A  
15 MESSAGE.

16 Q NOW, MR. ORELLANA RESPONDED TO THE PHONE  
17 MESSAGE THAT YOU LEFT HIM THE DAY BEFORE REGARDING  
18 INTERVIEWING HIM; IS THAT CORRECT?

19 A HE JUST DIDN'T SHOW UP FOR THE INTERVIEW.

20 Q EXCUSE ME?

21 A HE MADE AN APPOINTMENT TO COME SEE ME AND  
22 HE JUST DID NOT SHOW UP FOR THE INTERVIEW OR CANCEL.

23 Q BUT HE CALLED YOU BACK IN RESPONSE TO A  
24 MESSAGE THAT YOU LEFT HIM REGARDING AN INTERVIEW; IS  
25 THAT CORRECT?

26 A CORRECT.

27 Q NOW, WHEN YOU CALLED HIM AND LEFT HIM A  
28 MESSAGE REGARDING AN INTERVIEW, DID YOU INDICATE TO

1 HIM WHAT IT IS THAT YOU WANTED TO TALK TO HIM ABOUT  
2 IT?

3 A NO.

4 Q WHAT DID YOU TELL HIM? THAT YOU JUST  
5 WANTED TO HIM TO COME IN AND BE INTERVIEWED?

6 A THAT I HAVE A CASE I MENTIONED TO HIM THAT  
7 I NEEDED TO TALK TO HIM ABOUT. I DON'T TELL THEM THE  
8 ALLEGATIONS OVER THE PHONE.

9 Q NOW, WHEN HE CALLED YOU BACK IN RESPONSE  
10 TO YOUR MESSAGE, DID YOU INDICATE TO HIM WHAT IT WAS  
11 THAT YOU WANTED TO TALK TO HIM ABOUT?

12 A NO. AGAIN, I DON'T GIVE THEM THE  
13 ALLEGATIONS OVER THE PHONE.

14 Q NOW, AT SOME POINT -- WELL, AT ANY POINT  
15 PRIOR TO THE DATE OF THE INTERVIEW THAT YOU HAD WITH  
16 HIM THAT WAS RECORDED, DID YOU RECEIVE ANY MESSAGES  
17 FROM A LAW FIRM WHO INDICATED TO YOU THAT THEY  
18 REPRESENT JUAN ORELLANA?

19 A ANY TELEPHONIC MESSAGES THAT I RECEIVE,  
20 UNLESS THEY ARE VERIFIABLE, I DON'T TAKE INTO ACCOUNT.

21 Q THAT'S NOT MY QUESTION, DETECTIVE. I'M  
22 ASKING A VERY SIMPLE QUESTION. OKAY? PRIOR TO THE  
23 INTERVIEW THAT YOU HAD WITH MR. ORELLANA AT RAMPART  
24 STATION THAT WAS RECORDED -- CORRECT?

25 A CORRECT.

26 Q DID YOU RECEIVE A MESSAGE FROM A LAW FIRM  
27 THAT INDICATED THAT THEY REPRESENT MR. ORELLANA?

28 A I RECEIVED A MESSAGE FROM A LAW FIRM THAT

1 THEY WANTED TO SPEAK TO ME.

2 Q REGARDING MR. JUAN ORELLANA?

3 A CORRECT.

4 Q DID THEY SPECIFICALLY TELL YOU THAT THEY  
5 DID NOT WANT YOU TO INTERVIEW HIM WITHOUT THEIR BEING  
6 PRESENT?

7 A NO. THEY WANTED ME TO CALL THEM BACK.

8 Q REGARDING JUAN ORELLANA; RIGHT?

9 A CORRECT.

10 Q AND DID THEY ALSO TELL YOU THAT THEY  
11 WANTED YOU TO CALL THEM BACK REGARDING YOUR REQUEST TO  
12 INTERVIEW HIM?

13 A THEY JUST TOLD ME THAT THEY WANTED -- I  
14 DON'T KNOW IF IT WAS YOU -- YOU WOULD REMEMBER MORE OF  
15 THIS CALL IF YOU CALLED ME. IT WAS THAT YOU WERE  
16 CALLING REGARDING MR. ORELLANA AND YOU WANTED ME TO  
17 CALL YOU BACK AND YOU LEFT A PHONE NUMBER.

18 Q IT WASN'T ME. AND THAT WASN'T MY  
19 QUESTION, IF I WAS THE ONE THAT CALLED.

20 A CORRECT.

21 Q BUT YOU DID -- YOU DO REMEMBER ACTUALLY  
22 GETTING A CALL FROM SOMEBODY WHO REPRESENTED TO YOU IN  
23 THE MESSAGE THAT THEY REPRESENT A JUAN ORELLANA, AND  
24 THEY WANTED TO TALK TO YOU ABOUT YOU WANTING TO  
25 INTERVIEW HIM; IS THAT CORRECT?

26 A THAT'S INCORRECT. THE MESSAGE THAT I GOT  
27 ALLEGEDLY FROM AN ATTORNEY'S OFFICE, THAT THEY WANTED  
28 TO TALK TO ME REGARDING MR. ORELLANA, TO CALL THEM

1 BACK AND THEY LEFT A PHONE NUMBER.

2 Q OKAY. THAT'S YOUR RECOLLECTION; RIGHT?

3 A CORRECT.

4 Q NOW, AFTER YOU READ MR. ORELLANA THE  
5 MIRANDA, YOU MENTIONED THIS PHONE CALL THAT YOU MADE  
6 TO MR. ORELLANA; RIGHT?

7 A CORRECT.

8 Q AND THEN YOU ALSO PROCEEDED TO TELL HIM  
9 THAT, DIDN'T I TELL YOU IN THAT CONVERSATION THAT YOU  
10 HAD NO PROBLEMS? RIGHT?

11 A CORRECT.

12 Q SO WHEN YOU TOLD HIM THAT, THAT IN THAT  
13 PHONE CONVERSATION THAT HE HAD NO PROBLEMS, WERE YOU  
14 TRYING TO MAKE HIM FEEL COMFORTABLE SO THAT HE WOULD  
15 TALK TO YOU ABOUT THE ALLEGATIONS VANESSA WAS MAKING?

16 A I WAS TRYING TO MAKE HIM FEEL COMFORTABLE,  
17 YES.

18 Q THE QUESTION WAS WERE YOU TRYING TO MAKE  
19 MR. ORELLANA FEEL COMFORTABLE BY TELLING HIM THAT?

20 A I WAS.

21 Q AND NOW, AS SOON AS YOU SAY THAT TO HIM,  
22 HE ANSWERS YOU YES, AND THEN I TALKED TO AN ATTORNEY,  
23 BECAUSE I HAD ALREADY PAID HER. AND SHE TOLD ME, YOU  
24 CAN'T GO BECAUSE FIRST -- AND THEN YOU PROCEEDED TO  
25 CUT HIM OFF BEFORE HE'S ABLE TO ANSWER FULLY; RIGHT?

26 A THAT'S INCORRECT, SIR. THE TRANSLATION IS  
27 I TALKED TO AN ATTORNEY. I PAID HIM. HE SAID I  
28 DIDN'T HAVE TO GO. HE DIDN'T SAY DO NOT TALK TO HIM.

1 IF YOU PLAY THAT BACK, THAT'S THE CORRECT TRANSLATION.

2 Q LET ME ASK YOU THIS. WHEN MR. ORELLANA  
3 WAS TALKING TO YOU ABOUT HIM PAYING AN ATTORNEY --  
4 RIGHT? HE TALKED TO AN ATTORNEY, AND THAT HE HAD PAID  
5 FOR AN ATTORNEY. DID YOU CUT HIM OFF DURING HIS  
6 STATEMENT AT ALL?

7 A NO. HE STILL SPOKE MORE AFTER THAT.

8 Q OKAY.

9 A THE CORRECT TRANSLATION -- WE CAN PLAY  
10 THIS BACK FOR YOU -- IS I TALKED TO AN ATTORNEY, I  
11 PAID HIM, HE SAID I DIDN'T HAVE TO GO TALK TO YOU.

12 Q LET'S TALK ABOUT THE CORRECT TRANSLATION.  
13 LET ME ASK YOU THIS. YOU'RE CERTIFIED BY YOUR  
14 DEPARTMENT TO SPEAK THE SPANISH LANGUAGE.

15 A I SPEAK, READ AND WRITE IT, YES.  
16 FLUENTLY.

17 Q MY QUESTION IS YOU'RE CERTIFIED BY YOUR  
18 DEPARTMENT; CORRECT?

19 A RIGHT.

20 Q WHAT IS REQUIRED BY YOUR DEPARTMENT TO BE  
21 CERTIFIED AS A SPANISH SPEAKER?

22 A WE TAKE A VERBAL TEST. THEY TALK TO US  
23 AND WE TALK BACK TO THEM IN SPANISH. AND THEY WANT TO  
24 MAKE SURE THAT WE'RE ANSWERING CORRECTLY IN SPANISH.

25 Q OKAY. NOW, ARE YOU CERTIFIED BY THE L.A.  
26 SUPERIOR COURT TO BE AN INTERPRETER?

27 A NOT BY THE L.A. SUPERIOR COURT.

28 Q NOW, AFTER MR. ORELLANA TELLS YOU THAT HE



1 HAD SPOKEN TO AN ATTORNEY AND THAT HE HAD PAID THAT  
2 ATTORNEY, AND THAT ATTORNEY PROCEEDED TO TELL HIM WHAT  
3 HE SHOULD DO, YOU THEN TELL HIM IT'S NOT THE  
4 ATTORNEY'S DECISION, IT'S MR. ORELLANA'S RIGHTS AND  
5 IT'S HIS DECISION WHETHER OR NOT HE WANTS TO TALK TO  
6 YOU; IS THAT CORRECT?

7 A I TOLD HIM IT'S HIS RIGHT TO DECIDE  
8 WHETHER HE WANTS TO TALK TO ME OR NOT.

9 Q AND THEN MR. ORELLANA PROCEEDS TO ANSWER,  
10 WELL, YEAH, THAT'S WHAT I WANTED TO TALK TO YOU ABOUT.  
11 BUT -- AND THEN YOU CUT HIM OFF PRIOR TO HIM BEING  
12 ABLE TO FINISH; IS THAT CORRECT?

13 A THAT'S NOT WHAT I HEARD, NO.

14 Q SO DURING YOUR ADVISEMENTS TO MR. ORELLANA  
15 -- EXCUSE ME. DURING MR. ORELLANA'S RESPONSE TO YOUR  
16 ADVISEMENT, DID YOU CUT HIM OFF DURING ANY PORTION OF  
17 THAT? YOUR INDEPENDENT RECOLLECTION, DETECTIVE.

18 MR. SANTISO: I'M GOING TO OBJECT. VAGUE AS TO  
19 TIME.

20 THE COURT: YES. IT'S A LITTLE BIT DIFFICULT,  
21 MR. LE. THE OBJECTION IS SUSTAINED.

22 MR. LE: LET ME BE A LITTLE MORE CLEAR. IT IS  
23 UNCLEAR.

24 BY MR. LE:

25 Q AT ONE POINT DO YOU REMEMBER ASKING MR.  
26 ORELLANA, AND DID I SAY THAT YOU HAD NO PROBLEMS? DO  
27 YOU REMEMBER THAT?

28 A YES.

1 Q AND YOU RESPONDED TO THAT PARTICULAR  
2 QUESTION YOU HAD; RIGHT?

3 A RIGHT.

4 Q WHEN HE RESPONDED TO THAT PARTICULAR  
5 QUESTION, DID I SAY THAT YOU HAD NO PROBLEMS, DID YOU  
6 CUT HIM OFF IN HIS RESPONSE TO THAT QUESTION?

7 A NO. IT'S ACTUALLY THE OTHER WAY AROUND.  
8 I WAS TELLING HIM AND HE STARTED SPEAKING AND I WASN'T  
9 FINISHED WITH MY PHRASE. HE STARTED SPEAKING MIDWAY  
10 THROUGH MY PHRASE.

11 Q OKAY. NOW, AFTER YOU TELL HIM, BUT IT'S  
12 NOT THE ATTORNEY'S DECISION, LIKE I JUST TOLD YOU,  
13 THOSE ARE YOUR RIGHTS, IF YOU WANT TO TALK TO ME ABOUT  
14 THE CASE, I CAN DISCUSS IT WITH YOU, HE RESPONDS TO  
15 THAT QUESTION; RIGHT?

16 A YES. THAT'S WHAT I WANT TO DO.

17 Q HE RESPONDS; RIGHT?

18 A YES.

19 Q DURING THAT RESPONSE TO YOUR QUESTION  
20 ABOUT IT'S NOT THE ATTORNEY'S DECISION, IT'S YOUR  
21 DECISION, IF YOU WANT TO TALK TO ME ABOUT THE CASE I  
22 CAN DISCUSS IT WITH YOU --

23 A CORRECT.

24 Q -- DID YOU CUT HIM OFF IN HIS RESPONSE?

25 A I WAS TALKING AT THE TIME. AND THAT'S  
26 WHEN I SAID YOU CAN TALK TO ME IF YOU WANT TO ABOUT  
27 THIS CASE. SO NORMALLY THE ONLY ONE I WOULD BE  
28 CUTTING OFF IS ME.

1 AND THEN HE RESPONDED, WELL, SI. WELL,  
2 YES, I DO WANT TO TALK ABOUT THIS.

3 Q DID HE IN FACT SAY, WELL, YES, I WANT TO  
4 TALK ABOUT THIS? DID HE SAY THAT VERBATIM?

5 A WELL, YES. SI. SPANISH. WE CAN RETURN  
6 IT BACK TO THAT.

7 Q MY QUESTION IS YOUR INDEPENDENT  
8 RECOLLECTION. DID HE TELL YOU THOSE SPECIFIC WORDS,  
9 WELL, YES, I WANT TO TALK ABOUT THIS?

10 A NO. HE TOLD ME IN SPANISH.

11 Q WELL, IN THE SPANISH LANGUAGE. DID HE SAY  
12 THAT TO YOU IN THE SPANISH LANGUAGE? WELL, YES, I  
13 WANT TO TALK ABOUT THIS?

14 A I DID WANT TO TALK ABOUT THIS.

15 Q DID HE SAY THAT IN THE SPANISH LANGUAGE TO  
16 YOU?

17 A YES.

18 Q NOW, WHEN -- AND THEN AFTER HE SAYS THAT  
19 TO YOU -- RIGHT? YOU THEN SHOW HIM, I BELIEVE IT'S  
20 COURT EXHIBIT NUMBER 1, THE STATEMENT FORM; IS THAT  
21 CORRECT?

22 A THE STATEMENT FORM WAS FILLED OUT PRIOR TO  
23 THE ADMONISHMENT. THE TOP PORTION.

24 MR. LE: I'M GOING TO OBJECT AS BEING  
25 NONRESPONSIVE, YOUR HONOR.

26 THE COURT: HE'S ASKING YOU DID YOU SHOW HIM  
27 THAT FORM.

28 THE WITNESS: AT ONE POINT AFTER I FINISHED

1 ADMONISHING HIM AND I WROTE HIS ANSWERS, I HAD HIM  
2 SIGN IT. IS THAT WHAT YOU'RE ASKING?

3 BY MR. LE:

4 Q OKAY. NO, I'M SAYING AFTER HE ANSWERS  
5 YOU, WELL, YEAH, THAT'S WHAT I WANTED TO TALK ABOUT.  
6 THEN DID YOU SHOW HIM A STATEMENT FORM AND TELL HIM TO  
7 SIGN IT?

8 A YES. HIS ANSWER WAS YES.

9 Q NO. MY QUESTION WAS --

10 THE COURT: SHE SAID YES.

11 BY MR. LE:

12 Q YOU SHOWED HIM A STATEMENT FORM AND YOU  
13 ASKED HIM TO SIGN IT; IS THAT CORRECT?

14 A YES.

15 Q NOW, DID YOU ASK WHETHER OR NOT HE KNEW  
16 WHAT THAT CONTENT -- WHAT THE CONTENT OF THAT  
17 STATEMENT FORM WAS?

18 A I HAVE TO LOOK AT IT AGAIN. I MIGHT HAVE  
19 TOLD HIM THE ANSWER. I HAVE TO LOOK AT IT AGAIN.

20 Q DO YOU HAVE AN INDEPENDENT RECOLLECTION OF  
21 WHETHER OR NOT YOU ASKED HIM WHETHER HE KNEW WHAT HE  
22 WAS SIGNING?

23 A NOT WITHOUT LOOKING AT THE VIDEO. IT'S  
24 BEEN A YEAR AND A HALF.

25 MR. LE: YOUR HONOR, CAN SHE REVIEW IT?

26 THE COURT: SURE.

27 THE WITNESS: I TOLD HIM HERE IS YOUR STATEMENT.

28 I GAVE HIM THE INFORMATION. I GO, THIS IS WHAT I

1 ASKED YOU.

2 BY MR. LE:

3 Q YOU CAN STOP IT. THANK YOU. YOUR HONOR,  
4 I'M ALMOST DONE WITH MY QUESTIONING OF THE DETECTIVE.

5 THE COURT: ALL RIGHT.

6 BY MR. LE:

7 Q SO WHEN YOU SHOWED MR. ORELLANA THE  
8 STATEMENT FORM, COURT EXHIBIT NUMBER 1, YOU TOLD HIM  
9 THIS IS WHAT I DISCUSSED WITH YOU.

10 A THESE ARE THE QUESTIONS THAT I ASKED YOU.

11 Q SO THESE ARE THE QUESTIONS THAT I ASKED OF  
12 YOU. AND SIGN HERE. IS THAT WHAT YOU SAID?

13 A I TOLD HIM SIGN HERE. TURNED IT AROUND.  
14 I GO, THESE ARE THE QUESTIONS THAT I ASKED YOU. IN  
15 THAT ORDER.

16 MR. LE: I HAVE NO FURTHER QUESTIONS OF THIS  
17 WITNESS AT THIS MOMENT, YOUR HONOR.

18 THE COURT: ALL RIGHT. ANY OTHER REDIRECT, MR.  
19 SANTISO?

20 MR. SANTISO: I DON'T, YOUR HONOR.

21 THE COURT: ALL RIGHT. THANK YOU.

22 ALL RIGHT. MR. SANTISO, WERE YOU GOING TO  
23 CALL ANY OTHER WITNESSES?

24 MR. SANTISO: NO, YOUR HONOR.

25 THE COURT: MR. LE.

26 MR. LE: YES, YOUR HONOR. I WOULD LIKE TO CALL  
27 JUAN ORELLANA.

28 THE COURT: ALL RIGHT.

1 JUAN ORELLANA,  
2 THE DEFENDANT HEREIN, CALLED AS A WITNESS IN HIS OWN  
3 BEHALF, ASSISTED BY SPANISH INTERPRETER JENNY FAURE,  
4 WAS SWORN AND TESTIFIED AS FOLLOWS:  
5

6 THE COURT: YOU DO SOLEMNLY STATE THAT THE  
7 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE  
8 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND  
9 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

10 THE WITNESS: YES.

11 THE COURT: PLEASE HAVE A SEAT.

12 PLEASE STATE AND SPELL -- AND HAVE THE  
13 INTERPRETER SPELL YOUR FIRST AND LAST NAME.

14 THE WITNESS: JUAN ORELLANA.

15 THE INTERPRETER: INTERPRETER SPELLING, J-U-A-N  
16 O-R-E-L-L-A-N-A.

17  
18 DIRECT EXAMINATION

19  
20 BY MR. LE:

21 Q GOOD AFTERNOON, JUAN.

22 A GOOD AFTERNOON.

23 Q MR. ORELLANA, WHAT IS YOUR COUNTRY OF  
24 ORIGIN?

25 A I'M FROM HONDURAS.

26 Q WHAT LEVEL OF EDUCATION DID YOU RECEIVE IN  
27 HONDURAS?

28 A JUST TWO YEARS OF SCHOOL.

1 Q NOW, DO YOU REMEMBER BEING INTERVIEWED BY  
2 DETECTIVE HERNANDEZ?

3 A YES.

4 Q DO YOU REMEMBER WHEN SHE ADVISED YOU THAT  
5 YOU HAD A RIGHT TO AN ATTORNEY PRESENT DURING THE  
6 INTERVIEW?

7 A YES.

8 Q NOW, DURING THE INTERVIEW THAT YOU HAD  
9 WITH THE DETECTIVE, DETECTIVE HERNANDEZ, DID YOU AT  
10 ANY POINT TRY TO TELL HER THAT YOU WANTED TO HAVE AN  
11 ATTORNEY PRESENT DURING THAT INTERVIEW?

12 A YES. I TOLD HER.

13 Q PRIOR TO YOU BEING INTERVIEWED BY  
14 DETECTIVE HERNANDEZ, DID YOU GO AND TALK TO AN  
15 ATTORNEY?

16 A YES.

17 Q AND WHAT WAS YOUR PURPOSE IN GOING TO TALK  
18 TO THE ATTORNEY? PRIOR TO YOUR INTERVIEW WITH  
19 DETECTIVE HERNANDEZ.

20 A THE PURPOSE WAS SO THAT THEY COULD TELL ME  
21 HOW BIG THIS PROBLEM WAS.

22 Q NOW, DID THE ATTORNEY THAT YOU TALKED TO  
23 TELL YOU THAT THEY WANTED YOU TO CONTACT THEM IF AND  
24 WHEN YOU WERE BEING INTERVIEWED?

25 A YES.

26 Q DID YOU DISCUSS WITH THE ATTORNEY THAT YOU  
27 SPOKE TO THAT A DETECTIVE HAD CONTACTED YOU REGARDING  
28 AN INTERVIEW THAT THE DETECTIVE WANTED TO HAVE WITH



1 YOU?

2 A YES.

3 Q NOW, DID YOU PAY THAT ATTORNEY TO ASSIST  
4 YOU DURING THIS INTERVIEW?

5 A YES.

6 Q NOW, DID YOU ATTEMPT -- HOW MANY TIMES DO  
7 YOU RECALL TRYING TO TELL THE DETECTIVE THAT YOU  
8 WANTED TO HAVE AN ATTORNEY PRESENT?

9 A THREE TIMES.

10 Q NOW, DID YOU WANT TO HAVE AN ATTORNEY  
11 PRESENT THERE?

12 A YES.

13 Q SHOWING YOU WHAT HAS BEEN PREVIOUSLY  
14 MARKED AS COURT EXHIBIT NUMBER 1 FOR IDENTIFICATION,  
15 DO YOU RECOGNIZE THIS FORM?

16 A YES.

17 Q DID YOU KNOW -- DID YOU SIGN THIS FORM?

18 A I SIGNED IT. BUT I COULDN'T READ IT. I  
19 JUST KNOW HOW TO WRITE MY NAME.

20 Q NOW, WHEN YOU SIGNED THAT FORM, DID THE  
21 DETECTIVE TELL YOU SPECIFICALLY WHAT IT WAS THAT YOU  
22 WERE SIGNING?

23 A NO, SHE DIDN'T EXPLAIN IT.

24 Q NOW, WHEN YOU WERE INTERVIEWED BY THE  
25 DETECTIVE, DID YOU FEEL INTIMIDATED BY THE DETECTIVE?

26 A YES, BECAUSE I DIDN'T HAVE THE ATTORNEY  
27 THAT I HAD LOOKED FOR TO REPRESENT ME.

28 Q NOW, WHY DID YOU NOT CALL THE ATTORNEY

1 THAT YOU PAID TO REPRESENT YOU DURING THAT INTERVIEW?

2 A I HAD THE CARD IN MY WALLET, BUT THE  
3 POLICE OFFICERS TOOK EVERYTHING AWAY FROM ME, AND THEY  
4 HAD IT ALL IN THE OFFICE.

5 MR. LE: I HAVE NO FURTHER QUESTIONS, YOUR  
6 HONOR.

7 THE COURT: ALL RIGHT. MR. SANTISO.

8 MR. SANTISO: YES. THANK YOU.

9

10 CROSS-EXAMINATION

11

12 BY MR. SANTISO:

13 Q GOOD MORNING, SIR.

14 A GOOD AFTERNOON.

15 Q WHEN THE DETECTIVE ASKED YOU YOU HAVE THE  
16 RIGHT TO REMAIN SILENT, DO YOU UNDERSTAND, YOU  
17 RESPONDED YES. CORRECT?

18 A YES.

19 Q WHEN SHE ASKED YOU ANYTHING YOU SAY MAY BE  
20 USED AGAINST YOU IN A COURT OF LAW, DO YOU UNDERSTAND,  
21 YOU RESPONDED YES. CORRECT?

22 A YES.

23 Q WHEN SHE ASKED YOU, YOU HAVE THE RIGHT TO  
24 THE PRESENCE OF AN ATTORNEY BEFORE AND DURING ANY  
25 INTERROGATION, DO YOU UNDERSTAND, YOU RESPONDED YES.  
26 CORRECT?

27 A I SAID YES, BUT AT THAT MOMENT I WANTED TO  
28 EXPLAIN TO HER THAT I ALREADY HAD AN ATTORNEY.

1 Q YOU SAID YES; CORRECT?

2 A YES.

3 Q AND YOU TALKED TO THIS DETECTIVE FOR AT  
4 LEAST 30 MINUTES AFTER SHE ASKED YOU THESE QUESTIONS;  
5 CORRECT?

6 A YES.

7 Q THIS INTERVIEW WAS INSIDE OF A ROOM;  
8 CORRECT?

9 A YES.

10 Q YOU AND THE DETECTIVE.

11 A YES.

12 Q NO ONE ELSE.

13 A NO, NO ONE ELSE.

14 Q NO HANDCUFFS ON YOU; CORRECT?

15 A NO.

16 Q NEVER DID SHE THREATEN YOU DURING THIS  
17 INTERVIEW WITH HARM TO YOU; CORRECT?

18 A TO HARM ME? IN WHAT WAY? I DON'T  
19 UNDERSTAND.

20 Q DURING THIS INTERVIEW, DID SHE EVER TRY TO  
21 HURT YOU?

22 A NO. TO HURT ME, NO.

23 Q TO HURT ONE YOUR FAMILY MEMBERS?

24 A NO.

25 Q AND SHE WAS ASKING YOU QUESTIONS DURING  
26 THIS INTERVIEW AND YOU WERE GIVING RESPONSES TO HER;  
27 CORRECT?

28 A YES.

1 Q YOU NEVER SAID DURING THIS INTERVIEW THAT  
2 YOU WANTED YOUR LAWYER; CORRECT?

3 A I TOLD HER, BUT SHE DIDN'T LET ME EXPLAIN  
4 TO HER THAT I WANTED HIM AT THAT MOMENT.

5 Q DID YOU SAY I WANT MY LAWYER?

6 A YES, I TOLD HER, BUT SHE SAID THAT I  
7 DIDN'T NEED HIM THERE. THAT I NEEDED HIM HERE.

8 MR. SANTISO: WHAT I WOULD LIKE TO DO, YOUR  
9 HONOR, IS I WOULD LIKE THE COURT TO REVIEW THE  
10 ENTIRETY OF THE VIDEO AT SOME POINT IN TIME. NOT  
11 RIGHT NOW. I'M ALMOST DONE WITH MY QUESTIONING. TO  
12 SEE WHETHER THERE IS ANY POINT IN TIME WHERE HE ASKED  
13 FOR A LAWYER.

14 I THINK IT'S RELEVANT TO SEE IF HE EVER  
15 DID, AND WHETHER THE QUESTIONING SHOULD CEASE AT ANY  
16 POINT. BUT I WILL MAKE THAT REQUEST OF THE COURT TO  
17 REVIEW THE VIDEO.

18 THE COURT: WELL, I DON'T KNOW, GIVEN THE FACT  
19 THAT THE VIDEO IS IN SPANISH, THAT I'M GOING TO BE  
20 AIDED BY THE VIDEO, OTHER THAN READING THE TRANSCRIPT.

21 MR. SANTISO: I THINK THAT'S BETTER. IF THE  
22 COURT LOOKS AT THE TRANSCRIPT.

23 THE COURT: I WILL HAPPILY READ THE TRANSCRIPT.  
24 I'M NOT SURE THAT WATCHING THE VIDEO IS GOING TO BE OF  
25 MUCH ASSISTANCE TO ME BECAUSE IT'S IN SPANISH.

26 MR. SANTISO: YOU'RE ABSOLUTELY RIGHT, YOUR  
27 HONOR. I THINK THE TRANSCRIPT IS FINE.

28 THE COURT: OKAY.

1 BY MR. SANTISO:

2 Q MR. ORELLANA, IS IT YOUR TESTIMONY, SIR,  
3 THAT YOU ASKED FOR A LAWYER AT SOME POINT IN TIME WHEN  
4 YOU WERE SPEAKING TO THE DETECTIVE?

5 A HOW IS THAT?

6 Q IS IT -- ARE YOU TELLING US THAT WHEN YOU  
7 SPOKE TO THE DETECTIVE, YOU TOLD HER I WANT A LAWYER?

8 A YES, I TOLD HER.

9 Q WHEN YOU SPOKE WITH THE DETECTIVE, YOU  
10 WEREN'T ON DRUGS, WERE YOU?

11 A NO.

12 Q YOU WEREN'T DRINKING ALCOHOL, WERE YOU?

13 A I DON'T DRINK.

14 Q YOU WEREN'T ON ANY SORT OF PRESCRIPTION  
15 MEDICATION?

16 A NO.

17 Q SHE DIDN'T TELL YOU THAT YOU HAVE TO TALK  
18 TO HER; CORRECT?

19 A THAT I HAD TO TALK TO HER?

20 Q RIGHT. DID SHE EVER SAY YOU HAVE TO TALK  
21 TO ME?

22 A YOU'RE GOING TO TALK TO ME HERE. THAT'S  
23 WHY I CALLED YOU. BECAUSE I WANTED TO INTERVIEW YOU.

24 Q BUT DID SHE TELL YOU THAT YOU HAD TO  
25 ANSWER HER QUESTIONS?

26 A YOU ARE GOING TO ANSWER THE QUESTIONS I  
27 ASK YOU.

28 Q WELL, DIDN'T SHE ACTUALLY SAY IT WOULD BE

1 BETTER FOR YOU IF YOU WERE JUST HONEST WITH HER AND  
2 ANSWER HER QUESTIONS?

3 A YES, THAT'S WHAT SHE SAID.

4 Q SHE DIDN'T FORCE YOU TO ANSWER THE  
5 QUESTIONS, THOUGH.

6 A WHEN I WAS TRYING TO EXPLAIN IT TO HER,  
7 SHE WAS TELLING ME TO BE SINCERE. AND IF I DIDN'T  
8 TELL HER THE TRUTH, I'M JUST GOING TO CLOSE THE BOOK  
9 HERE AND I'M GOING TO TELL THE DISTRICT ATTORNEY TO  
10 PUNISH YOU.

11 Q WHEN YOU WENT TO TALK TO HER, YOU KNEW  
12 ABOUT THE ALLEGATIONS VANESSA MADE; RIGHT?

13 A YES.

14 Q AND YOU KNEW ABOUT THE ALLEGATIONS BECAUSE  
15 OF A CONVERSATION YOU HAD WITH CLAUDIA; CORRECT?

16 A YES. I TALKED TO HER THE DAY THE INCIDENT  
17 OCCURRED. I TOLD HER THAT I COULD TAKE THE GIRL TO  
18 THE DOCTOR WITH HER. I OFFERED.

19 Q I UNDERSTAND. I DON'T WANT TO GET INTO  
20 WHAT HAPPENED. AFTER YOU SPOKE WITH CLAUDIA ABOUT  
21 WHAT VANESSA TOLD HER, AFTER THAT YOU WERE CONTACTED  
22 BY DETECTIVE HERNANDEZ AND YOU SPOKE TO HER ON THE  
23 PHONE; CORRECT?

24 A WITH THE DETECTIVE, YES. ABOUT EIGHT DAYS  
25 LATER.

26 Q ON THE PHONE.

27 A OVER THE PHONE.

28 Q WHEN YOU SPOKE TO HER OVER THE PHONE, YOU

1 KNEW THAT YOU WERE BEING CONTACTED ABOUT WHAT VANESSA  
2 HAD SAID; CORRECT?

3 A YES. SHE JUST SAID THAT SHE WANTED TO  
4 HAVE AN INTERVIEW.

5 Q THAT'S NOT MY QUESTION, THOUGH. WHEN YOU  
6 SPOKE TO THE DETECTIVE YOU KNEW SHE WANTED TO TALK TO  
7 YOU ABOUT WHAT VANESSA HAD SAID TO HER MOM.

8 A NO, SHE DIDN'T SAY THAT THAT'S WHAT IT WAS  
9 ABOUT. SHE JUST SAID AN INTERVIEW.

10 Q NOT MY QUESTION. MY QUESTION IS WHEN THE  
11 DETECTIVE CONTACTED YOU, YOU KNEW SHE WAS GOING TO  
12 TALK TO YOU ABOUT VANESSA; CORRECT?

13 MR. LE: YOUR HONOR, CALLS FOR SPECULATION.

14 MR. SANTISO: IT GOES TO HIS STATE OF MIND.

15 THE COURT: OBJECTION IS OVERRULED. ACTUALLY,  
16 THE OBJECTION IS SUSTAINED. THE USE OF THE WORD KNEW.  
17 BY MR. SANTISO:

18 Q LET ME ASK IT LIKE THIS.

19 THE COURT: AND THAT'S GOING TO BE YOUR LAST  
20 QUESTION.

21 MR. SANTISO: I JUST HAVE LIKE THREE MORE.

22 I'LL LEAVE IT AT THAT.

23 THE COURT: ALL RIGHT. I'M GOING TO BREAK. WE  
24 ARE NOT FINISHED, I KNOW. I'M NOT SUGGESTING THAT  
25 ANYBODY IS PRECLUDED FROM ANSWERING ANY MORE  
26 QUESTIONS. I'M JUST GOING TO STOP.

27 MR. ORELLANA, YOU'RE ORDERED BACK TO THIS  
28 COURT TOMORROW AT 1:30. IS HE ON BOND?



COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF-RESPONDENT, ) SUPERIOR  
 ) COURT  
 VS. ) NO.  
 ) BA403082-01  
 01) JUAN ORELLANA, )  
 )  
 DEFENDANT-APPELLANT. )  
 ) JUN 03 2014

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE LISA B. LENCH, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

JANUARY 27 AND 28, 2014

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS  
STATE ATTORNEY GENERAL  
SUITE 1701  
300 SOUTH SPRING STREET  
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

B255892

Jun 6, 2014

C-2 R-5 & PR

COURT OF APPEAL - SECOND DISTRICT

FILED

JOSEPH A. LAME, Clerk

R. Hernandez, Deputy Clerk

ORIGINAL

VOLUME 3 OF 5  
PAGES 601 THROUGH 736/900  
PAGES 901 THROUGH 1007/1200

RONALD G. DAHL, CSR #4213  
OFFICIAL REPORTER

1 CASE NUMBER: BA403082-01  
2 CASE NAME: PEOPLE V. JUAN ORELLANA  
3 LOS ANGELES, CALIFORNIA TUESDAY, JANUARY 28, 2014  
4 DEPARTMENT 132 HON. LISA B. LENCH, JUDGE  
5 TIME: A.M. SESSION

6 APPEARANCES:

7 THE DEFENDANT PRESENT WITH HIS COUNSEL,  
8 CHRISTIAN LE, DEPUTY PUBLIC DEFENDER  
9 OF LOS ANGELES COUNTY; GUILLERMO R.  
10 SANTISO, DEPUTY DISTRICT ATTORNEY  
11 OF LOS ANGELES COUNTY, REPRESENTING  
12 THE PEOPLE OF THE STATE OF CALIFORNIA.

13 (RONALD G. DAHL, OFFICIAL REPORTER.)  
14 (JENNY FAURE AND CARMEN REYES,  
15 CERTIFIED SPANISH INTERPRETERS,  
16 ASSISTING THE DEFENDANT.)

17  
18 (THE FOLLOWING PROCEEDINGS WERE HELD  
19 IN OPEN COURT, OUT OF THE PRESENCE  
20 AND HEARING OF THE JURY:)

21  
22 THE COURT: ALL RIGHT. IN THE MATTER OF PEOPLE  
23 VERSUS JUAN ORELLANA, BA403082, THE RECORD WILL  
24 REFLECT THAT MR. ORELLANA IS PRESENT, BEING ASSISTED  
25 BY THE SPANISH LANGUAGE INTERPRETER. BOTH COUNSEL ARE  
26 PRESENT. THE JURORS ARE NOT PRESENT.

27 WE ARE CONTINUING THE 402 HEARING ON THE  
28 ADMISSIBILITY OF THE DEFENDANT'S STATEMENT TO

1 DETECTIVE HERNANDEZ.

2

3

4 JUAN ORELLANA,  
5 RECALLED AS A WITNESS FOR THE 402 HEARING, HAVING BEEN  
6 PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

7

8 THE COURT: WHEN WE LEFT OFF, MR. SANTISO, YOU  
9 WERE CROSS-EXAMINING MR. ORELLANA. AND YOU MAY  
10 CONTINUE AT THIS TIME.

11 MR. SANTISO: THANK YOU.

12

13 CROSS-EXAMINATION (RESUMED)

14

15 BY MR. SANTISO:

16 Q GOOD MORNING, SIR. I JUST HAVE A FEW MORE  
17 QUESTIONS FOR YOU.

18 YOU INDICATED LAST WEEK THAT YOU FELT  
19 INTIMIDATED DURING THE INTERVIEW; IS THAT CORRECT?

20 A YES.

21 Q ARE YOU INTIMIDATED BY WOMEN?

22 MR. LE: OBJECTION. IRRELEVANT.

23 THE COURT: OBJECTION SUSTAINED.

24 MR. SANTISO: I BELIEVE I SHOULD BE ABLE TO  
25 EXPLORE WHAT IT IS THAT MADE IT INTIMIDATING FOR HIM.  
26 AND THAT'S ONE OF THE QUESTIONS.

27 THE COURT: WELL, THAT QUESTION, I DON'T THINK  
28 IS APPROPRIATE. THERE ARE OTHER THINGS YOU CAN  
EXPLORE ABOUT INTIMIDATION. I DON'T THINK THAT

1 QUESTION IS APPROPRIATE.

2 BY MR. SANTISO:

3 Q WHAT WAS IT ABOUT THIS INTERVIEW THAT  
4 INTIMIDATED YOU?

5 A BECAUSE I'M A SHY PERSON. IN THE WAY I  
6 EXPRESS MYSELF.

7 Q BUT THERE IS NOTHING THAT THE DETECTIVE  
8 DID THAT MADE YOU INTIMIDATED; RIGHT?

9 A NO.

10 Q YOU DON'T HAVE A PROBLEM EXPRESSING  
11 YOURSELF TO WOMEN, DO YOU?

12 A IF IT'S A POLICE OFFICER, YES, I AM  
13 AFRAID. I AM A SHY PERSON.

14 Q DETECTIVE HERNANDEZ REMAINED ON HER SIDE  
15 OF THE TABLE DURING THE ENTIRE INTERVIEW; CORRECT?

16 A YES.

17 Q THE INTERVIEW DOOR WAS OPEN THE ENTIRE  
18 TIME; CORRECT?

19 A YES.

20 Q WHEN DETECTIVE HERNANDEZ WAS QUESTIONING  
21 YOU, YOU UNDERSTOOD ALL HER QUESTIONS; CORRECT?

22 A NO, I DIDN'T UNDERSTAND ALL OF THEM.

23 Q SO WHEN YOU DIDN'T UNDERSTAND A QUESTION,  
24 WHAT DO YOU?

25 A I WANTED TO EXPRESS MYSELF, BUT SHE WOULD  
26 INTERRUPT.

27 Q BUT SHE WOULD STOP TALKING AT SOME POINT;  
28 RIGHT?

1 A YES.

2 Q SO WOULD YOU SAY SOMETHING AT THAT POINT?

3 A I WANTED TO EXPLAIN, BUT SHE -- SHE  
4 INTERRUPTED.

5 Q NOW, YOU SAID EARLIER THAT YOU HAD HIRED A  
6 LAWYER BEFORE YOU MET WITH DETECTIVE HERNANDEZ; RIGHT?

7 A CORRECT. YES.

8 Q WHEN YOU WERE MEETING WITH DETECTIVE  
9 HERNANDEZ, WERE YOU AWARE THAT SHE WAS GOING TO ASK  
10 YOU QUESTIONS ABOUT VANESSA?

11 A YES.

12 Q AND THAT'S WHY YOU GOT THE LAWYER; RIGHT?

13 A YES.

14 Q AT NO POINT IN TIME DURING THE INTERVIEW  
15 DID YOU JUST STOP TALKING, DID YOU?

16 A I DON'T UNDERSTAND.

17 Q LET ME ASK IT LIKE THIS. AT SOME POINT  
18 THE INTERVIEW CAME TO AN END; RIGHT?

19 A YES.

20 Q FROM THE BEGINNING ALL THE WAY TO THE END,  
21 DID YOU EVER STOP ANSWERING DETECTIVE HERNANDEZ'S  
22 QUESTIONS?

23 A NO.

24 Q ONE LAST QUESTION. AT THE BEGINNING OF  
25 THE INTERVIEW, WHEN -- LET ME ASK IT LIKE THIS.

26 THE COURT: ARE YOU GOING TO REFERENCE A  
27 TRANSCRIPT?

28 MR. SANTISO: I'M GOING TO ASK HIM ONE QUESTION.

1 THE COURT: CAN YOU HOLD THAT THOUGHT FOR A  
2 SECOND. OKAY. SORRY. THANK YOU.

3 BY MR. SANTISO:

4 Q I WILL BE ASKING HIM A QUESTION FROM PAGE  
5 9, LINE 26.

6 LAST WEEK I ASKED YOU WHETHER YOU ANSWERED  
7 YES TO THE QUESTION OF YOU HAVE THE RIGHT TO REMAIN  
8 SILENT; RIGHT?

9 A YES.

10 Q AFTER THAT THE DETECTIVE ASKED YOU A FEW  
11 MORE QUESTIONS; RIGHT? ABOUT YOUR RIGHTS?

12 A YES.

13 Q AND EVERY TIME SHE ASKED YOU A QUESTION,  
14 SHE ALWAYS ASKED YOU DO YOU UNDERSTAND; CORRECT?

15 A YES.

16 Q AND WHAT WAS YOUR ANSWER?

17 A I SAID YES, BUT SINCE I DON'T KNOW HOW TO  
18 READ, I MEAN I DON'T UNDERSTAND THAT.

19 Q BUT SHE WAS SAYING THESE WITH WORDS, THESE  
20 QUESTIONS, WASN'T SHE?

21 A YES, SHE WAS USING HER WORDS.

22 Q SO WHAT ARE YOU TALKING ABOUT WHEN YOU SAY  
23 THAT YOU DON'T UNDERSTAND READING?

24 A BECAUSE OF MY EDUCATION. I HAVEN'T GONE  
25 TO SCHOOL. I'M IGNORANT.

26 Q IF YOU DIDN'T UNDERSTAND HER QUESTIONS AND  
27 SHE ASKED YOU DO YOU UNDERSTAND, WHY DIDN'T YOU SAY  
28 NO?

1 A BECAUSE LIKE I SAID, I'M A SHY PERSON.  
2 THAT'S WHAT I'M TRYING TO EXPLAIN TO YOU.

3 Q BUT THERE WERE TIMES DURING THIS INTERVIEW  
4 THAT YOU DENIED THINGS THAT SHE SAID; RIGHT?

5 A WELL, YES, OF COURSE.

6 MR. SANTISO: NOTHING FURTHER.

7 THE COURT: MR. LE?

8 MR. LE: YES.

9

10 REDIRECT EXAMINATION

11

12 BY MR. LE:

13 Q MR. ORELLANA, WHEN YOU WERE INTERVIEWED BY  
14 DETECTIVE HERNANDEZ, DID YOU SEE HER WITH A GUN ON HER  
15 PERSON?

16 A YES.

17 Q WHERE DID YOU SEE HER --

18 THE COURT: NOT YET.

19 BY MR. LE:

20 Q WHERE DID YOU SEE THE GUN ON HER PERSON?

21 A UNDER HER ARM.

22 Q WAS IT A BIG GUN?

23 A YES.

24 MR. LE: NOW, YOUR HONOR, I'M GOING TO ASK

25 PERMISSION TO PLAY A CERTAIN PORTION OF THE VIDEO.

26 AND IT'S GOING TO START, FROM THE TRANSCRIPT -- JUST A

27 SMALL PORTION. IT'S GOING TO START WITH THE BOTTOM OF

28 PAGE 9.



1 THE COURT: OKAY. THIS IS -- WE DID MARK THIS;  
2 RIGHT?

3 MR. LE: I THINK WE DID. THE TRANSCRIPT, I  
4 BELIEVE, IS COURT'S EXHIBIT 2B.

5 THE COURT: RIGHT. AND THE CD WAS COURT'S  
6 EXHIBIT 2A; CORRECT?

7 MR. LE: THAT'S CORRECT, YOUR HONOR.

8 THE COURT: THANK YOU.

9 BY MR. LE:

10 Q MR. ORELLANA, I WANT TO PLAY YOU A SMALL  
11 PORTION. IT'S AT FOUR MINUTES AND THIRTEEN OF COURT'S  
12 EXHIBIT 2A.

13  
14 (A RECORDING WAS PLAYED  
15 IN OPEN COURT.)

16  
17 BY MR. LE:

18 Q OKAY. AND I STOPPED IT AT 4-50, FOR THE  
19 RECORD.

20 NOW, MR. ORELLANA, DO YOU REMEMBER  
21 DETECTIVE HERNANDEZ TALKING TO YOU ABOUT YOUR RIGHT TO  
22 HAVE AN ATTORNEY PRESENT DURING THIS INTERVIEW?

23 A YES.

24 Q WHEN DETECTIVE HERNANDEZ WAS TALKING TO  
25 YOU ABOUT YOUR RIGHT TO HAVE AN ATTORNEY PRESENT  
26 DURING THIS INTERVIEW, DID YOU TRY TO TELL HER THAT  
27 YOU WANTED TO HAVE AN ATTORNEY PRESENT DURING THIS  
28 INTERVIEW?

1           A       YES, I TRIED TWO OR THREE TIMES. AND SHE  
2 INTERRUPTED.

3           Q       DO YOU RECALL -- I'M GOING TO REFER THE  
4 COURT AS WELL AS COUNSEL TO PAGE 10 OF THE TRANSCRIPT,  
5 YOUR HONOR, LINE 6 THROUGH 9.

6                   THERE WAS A PORTION OF YOUR INTERVIEW WITH  
7 DETECTIVE HERNANDEZ IN WHICH SHE ASKED YOU, OKAY,  
8 DIDN'T I TELL YOU YESTERDAY -- DIDN'T I CALL YOU  
9 YESTERDAY FOR AN APPOINTMENT? DO YOU REMEMBER HER  
10 ASKING YOU THAT QUESTION?

11          A       YES.

12          Q       AND THEN YOU INDICATED YES, YES, IT HAS --  
13 AND THEN SHE APPEARED TO CUT YOU OFF. DO YOU RECALL  
14 THAT?

15          A       YES.

16          Q       AND THAT'S A PORTION OF THE INTERVIEW THAT  
17 I JUST PLAYED FOR YOU. DO YOU RECALL THAT STATEMENT?  
18 BEFORE YOU WERE CUT OFF?

19          A       YES.

20          Q       HAD YOU NOT BEEN CUT OFF BY DETECTIVE  
21 HERNANDEZ, WHAT WOULD YOU HAVE TOLD HER?

22          A       THAT I WANTED MY ATTORNEY TO BE PRESENT.

23          Q       AND THE ATTORNEY THAT YOU WANTED TO HAVE  
24 PRESENT, WAS IT AN ATTORNEY FROM THE LAW OFFICE THAT  
25 YOU SPOKE TO THE DAY BEFORE?

26          A       YES. CORRECT.

27          Q       AND DID YOU PAY THIS LAW OFFICE THE DAY  
28 BEFORE THIS INTERVIEW?

1 MR. SANTISO: I'LL OBJECT. I THINK WHETHER HE'S  
2 ACTUALLY RETAINED COUNSEL, PAID FOR COUNSEL, IS  
3 IRRELEVANT TO THE --

4 THE COURT: OBJECTION IS SUSTAINED.  
5 BY MR. LE:

6 Q OKAY. NOW, THERE WAS ALSO A PORTION I  
7 PLAYED FOR YOU, THE DETECTIVE ASKED YOU AND DID I SAY  
8 THAT YOU HAD NO PROBLEMS? AND THEN YOU RESPONDED YES.

9 AND YOUR HONOR, I'M REFERRING THE COURT  
10 AND COUNSEL TO LINES 11 THROUGH 17 OF PAGE 10.

11 DO YOU REMEMBER THE DETECTIVE ASKING YOU,  
12 AND DID I SAY THAT YOU HAVE NO PROBLEMS, AND YOU  
13 RESPONDED YES, AND THEN I TALKED TO THE ATTORNEY  
14 BECAUSE I HAD ALREADY PAID HER, AND SHE TOLD ME YOU  
15 CAN'T GO BECAUSE FIRST SHE SAID --

16 AND THEN THE DETECTIVE CUT YOU OFF. DO  
17 YOU REMEMBER THAT?

18 A YES.

19 Q NOW, HAD THE DETECTIVE NOT CUT YOU OFF  
20 DURING THAT PORTION, WHAT DID YOU WANT TO TELL THE  
21 DETECTIVE?

22 A AGAIN, THAT I WANTED MY ATTORNEY PRESENT.

23 Q AND THEN WHEN SHE CUT YOU OFF, THE  
24 DETECTIVE TELLS YOU -- AND I'M REFERRING TO LINES 19  
25 TO 22, BUT IT'S NOT -- IT'S NOT THE ATTORNEY'S  
26 DECISION. LIKE I JUST TOLD YOU, THOSE ARE YOUR  
27 RIGHTS. IF YOU WANT TO TALK TO ME ABOUT THE CASE, I  
28 CAN DISCUSS IT WITH YOU.

1                   AND THEN YOUR RESPONSE WAS, WELL, YEAH.  
2           THAT'S WHAT I WANTED TO TALK ABOUT. BUT -- AND THEN  
3           SHE APPEARS TO CUT YOU OFF AGAIN.

4                   DO YOU REMEMBER THAT?

5           A        YES.

6           Q        IF SHE HAD NOT CUT YOU OFF, WHAT DID YOU  
7           WANT TO TELL HER AT THAT MOMENT?

8           A        THAT I WANTED MY ATTORNEY.

9           Q        NOW, WHEN YOU SAID, WELL, YEAH, DID YOU  
10          TELL HER THAT I WANT TO TALK TO YOU ABOUT WHAT  
11          HAPPENED WITH VANESSA OR DID YOU TELL HER, WELL, YEAH,  
12          I WANTED TO TALK TO YOU ABOUT WANTING AN ATTORNEY  
13          PRESENT?

14          A        YES, BUT I WANT AN ATTORNEY PRESENT.

15          Q        OKAY. NOW, SIR, DURING A PORTION OF THE  
16          -- AT THE BEGINNING OF YOUR INTERVIEW, DETECTIVE  
17          HERNANDEZ ASKED YOU WHO YOUR EMPLOYER WAS; RIGHT?

18          A        YES.

19          Q        AND YOU TRIED TO SPELL THE NAME OF YOUR  
20          EMPLOYER TO HER; RIGHT?

21          A        YES.

22          Q        AND WHEN YOU -- YOU COULDN'T SPELL THE  
23          NAME OF YOUR EMPLOYER TO HER, TO DETECTIVE HERNANDEZ.  
24          SHE ASKED IF YOU COULD WRITE YOUR EMPLOYER'S NAME ON A  
25          PIECE OF PAPER THAT SHE HAD IN FRONT OF HER; IS THAT  
26          CORRECT?

27          A        CORRECT.

28          Q        AND DID YOU TELL HER THAT YOU CAN'T -- BUT

1 THE CARD, THE CARD -- THE BUSINESS CARD IS IN YOUR  
2 WALLET?

3 A YES.

4 Q OKAY. NOW, MR. ORELLANA, DURING THIS  
5 INTERVIEW WITH DETECTIVE HERNANDEZ, AT ANY POINT DID  
6 SHE EVER THREATEN TO TALK TO THE D.A. AND RAISE THE  
7 THE CHARGES ON YOU?

8 A YES. SHE MENTIONED IT.

9 Q NOW, YOU CONTINUED TO TALK TO THE  
10 DETECTIVE -- YOU CONTINUED TO TALK TO THE DETECTIVE  
11 EVEN THOUGH YOU WANTED TO HAVE AN ATTORNEY PRESENT.  
12 WHY DID YOU CONTINUE TO TALK TO THE DETECTIVE EVEN  
13 THOUGH YOU DIDN'T HAVE AN ATTORNEY PRESENT WITH YOU?

14 A I WAS AFRAID THAT SHE WOULD HAVE THE D.A.  
15 PUNISH ME.

16 Q DID YOU WANT -- WHY DID YOU NOT CONTINUE  
17 TO ASK FOR AN ATTORNEY TO BE PRESENT DURING THAT  
18 INTERVIEW?

19 A BECAUSE SHE DIDN'T GIVE ME THE OPPORTUNITY  
20 TO ASK FOR MY ATTORNEY TO BE PRESENT.

21 MR. LE: I HAVE NO FURTHER QUESTIONS, YOUR  
22 HONOR.

23 THE COURT: MR. SANTISO, ANYTHING ELSE?

24 MR. SANTISO: YES.  
25  
26  
27  
28

1 RECROSS-EXAMINATION

2  
3 BY MR. SANTISO:

4 Q SHE DIDN'T BRING UP THIS WHOLE SITUATION  
5 ABOUT THE PROSECUTOR UNTIL FIFTEEN MINUTES INTO YOUR  
6 INTERVIEW; RIGHT?

7 A YES. AROUND THE MIDDLE OF THE INTERVIEW.

8 MR. SANTISO: THANK YOU. NOTHING FURTHER, YOUR  
9 HONOR.

10 THE COURT: MR. LE?

11  
12 FURTHER REDIRECT EXAMINATION

13  
14 BY MR. LE:

15 Q THIS INTERVIEW WAS ABOUT AN HOUR LONG; IS  
16 THAT RIGHT?

17 A CORRECT. YES.

18 Q WHEN YOU TALKED TO THE DETECTIVE ABOUT  
19 WHAT HAPPENED WITH VANESSA, EVEN THOUGH YOU WANTED AN  
20 ATTORNEY PRESENT, YOU INITIALLY DENIED THAT YOU DID  
21 ANYTHING WRONG; RIGHT?

22 MR. SANTISO: I'LL OBJECT. THAT GOES BEYOND THE  
23 SCOPE OF THE HEARING, YOUR HONOR.

24 THE COURT: WELL, IS YOUR OFFER OF PROOF THAT  
25 THAT CHANGED AFTER THE STATEMENT WAS MADE ABOUT THE  
26 PROSECUTOR?

27 MR. LE: YES, YOUR HONOR. COUNSEL INDICATED --  
28 YES. HE SAID WHY DID YOU CONTINUE TO TALK.

1 THE COURT: OKAY. THE OBJECTION IS OVERRULED.  
2 BY MR. LE:

3 Q NOW, WHEN YOU FIRST TALKED TO THE  
4 DETECTIVE ABOUT THE ALLEGATIONS VANESSA WAS MAKING  
5 AGAINST YOU, DID YOU INITIALLY DENY THAT YOU DID  
6 ANYTHING INAPPROPRIATE WITH VANESSA?

7 A YES.

8 Q AND THEN DID THE DETECTIVE APPEAR TO GET  
9 UPSET AT YOU WHEN YOU DENIED THAT ANYTHING  
10 INAPPROPRIATE HAPPENED BETWEEN YOU AND VANESSA?

11 A YES. SHE WAS ANGRY.

12 Q DID SHE TELL YOU THAT YOU'RE LYING TO HER,  
13 AND THAT SHE'S BEEN DOING THIS FOR TWENTY SOMETHING  
14 YEARS? AND THAT IF YOU LIE, IT'S GOING TO BE WORSE  
15 FOR YOU?

16 DO YOU REMEMBER HER TELLING YOU THAT?

17 A YES. SHE SAID SHE HAD BEEN DOING THIS FOR  
18 ABOUT 25 YEARS.

19 Q AND DID THAT -- HER TELLING YOU THAT,  
20 GETTING UPSET AT YOU, DID THAT INTIMIDATE YOU?

21 A YES. WHEN SHE SAID DON'T INSULT ME.

22 Q AND YOU REMEMBER HER SAYING THAT; RIGHT?

23 A YES.

24 Q DON'T INSULT ME, I'VE BEEN DOING THIS FOR  
25 TWENTY SOMETHING YEARS, DON'T LIE TO ME; RIGHT?

26 A YES.

27 Q AND SHE SAID THAT IN RESPONSE TO YOUR  
28 DENIALS OF ANY WRONGDOING; IS THAT CORRECT?



1 A YES.

2 THE COURT: AGAIN, THE TRANSCRIPT SPEAKS FOR  
3 ITSELF AS TO WHEN HE SAID WHAT HE SAID. I LET YOU  
4 HAVE A LITTLE LEEWAY ON IT BECAUSE I THOUGHT IT WAS  
5 GOING TO BE GOING TO HIS MENTAL STATE. NOT WHAT HE  
6 SAID, AND -- NOT WHAT HE SAID.

7 MR. LE: NO FURTHER QUESTIONS, YOUR HONOR.

8 THE COURT: MR. SANTISO?

9 MR. SANTISO: NOTHING.

10 THE COURT: THANK YOU, MR. ORELLANA. YOU CAN  
11 STEP DOWN.

12 MR. LE.

13 MR. LE: YES, YOUR HONOR. THANK YOU.

14 THE COURT: ANY OTHER WITNESSES OR EVIDENCE?

15 MR. LE: NO. I REST.

16 THE COURT: MR. SANTISO?

17 MR. SANTISO: AS FAR AS WITNESSES?

18 THE COURT: ANY OTHER WITNESSES OR EVIDENCE?

19 MR. SANTISO: NO.

20 THE COURT: OKAY. MR. SANTISO, IT'S YOUR  
21 BURDEN.

22 MR. SANTISO: YES. YOUR HONOR, IT'S  
23 INTERESTING, BECAUSE IN PREPARATION FOR THIS HEARING,  
24 IT LOOKS LIKE THE MIRANDA RULE IS, I GUESS, FOR LACK  
25 OF A BETTER PHRASE, STRICTER THAN IT WAS BEFORE. IN  
26 THE SENSE THAT I PROVIDED THE COURT AND COUNSEL WITH  
27 TWO SUPREME COURT CASES THAT ARE RELATIVELY RECENT.  
28 ONE IS THE THOMPSON CASE. T-H-O-M-P-K-I-N-S.

1 CITATION, 560 U.S. 370. AND ALSO THE MONTEJO CASE.

2 M-O-N-T-E-J-O. CITATION, 556 U.S. 778.

3 AND I PROVIDED THOSE TO THE COURT BECAUSE  
4 I THINK IT'S INSTRUMENTAL IN THE COURT'S ANALYSIS AS  
5 TO WHETHER THIS MIRANDA WAIVER WAS FIRST OF ALL  
6 KNOWING AND VOLUNTARILY AND INTELLIGENT, AND SECONDLY,  
7 WHETHER THE DEFENDANT INVOKED AT ANY POINT IN TIME.

8 AND IF THE COURT READS THOSE CASES, IT'S  
9 CLEAR, FIRST OF ALL, THE FIRST STEP IS WAS IT A  
10 KNOWING, VOLUNTARILY AND INTELLIGENT WAIVER. THERE IS  
11 NOTHING TO INDICATE THAT THE DEFENDANT WAS BEING  
12 FORCED OR COERCED INTO WAIVING HIS RIGHTS.

13 THE DETECTIVE, I GUESS WE CAN ALL SAY,  
14 COULD HAVE PERHAPS BEEN NICER WITH THE DEFENDANT. BUT  
15 THAT'S REALLY NOT WHAT THE LAW IS. THERE IS NOTHING  
16 TO INDICATE THAT HE DIDN'T KNOWINGLY GIVE UP HIS  
17 RIGHTS.

18 NOW, SECONDLY, THIS IS AN INTERVIEW THAT  
19 LASTED OVER 40 TO 45 MINUTES. THE LAW, AND  
20 SPECIFICALLY THE TOMKINS CASE, SAYS, LOOK, IF YOU WANT  
21 TO INVOKE YOUR MIRANDA RIGHTS YOU BETTER BE CLEAR  
22 ABOUT IT. BECAUSE IF IT'S EQUIVOCAL OR AMBIGUOUS,  
23 THAT IS NOT A MIRANDA WAIVER.

24 THE DEFENDANT HAD TO HAVE SAID I WANT TO  
25 REMAIN SILENT, OR SOMETHING EQUIVALENT, OR HAD TO HAVE  
26 SAID THAT HE WANTS HIS LAWYER. AND AT NO POINT IN  
27 TIME DURING THAT INTERVIEW DID HE EVER SAY THAT. AND  
28 HE TRIED TO SAY, WELL, THE DETECTIVE KEPT ON CUTTING

1 ME OFF, BUT DURING THE INTERVIEW HE ANSWERS NUMEROUS  
2 QUESTIONS AND HE'S TALKING WITH HER.

3 AND HE COULD HAVE SAID I DON'T WANT TO  
4 TALK ANY MORE, OR I WANT MY LAWYER, BUT HE DID NOT DO  
5 THAT. AND THEREFORE, THERE'S NO MIRANDA VIOLATION  
6 HERE.

7 NOW, THE ISSUE WHETHER HE RETAINED COUNSEL  
8 OR NOT IS IRRELEVANT. BECAUSE EVEN IF HE HAD A  
9 LAWYER, HE CAN STILL WAIVE HIS MIRANDA RIGHTS. AND  
10 THAT'S THE MONTEJO CASE. ACTUALLY, THAT TALKS ABOUT  
11 THAT PARTICULAR CONCEPT.

12 NOW, THE ISSUE OF WHETHER HE CAN READ,  
13 THAT'S IRRELEVANT. BECAUSE HIS SIGNATURE ON THE  
14 MIRANDA FORM DOESN'T REALLY MATTER. SHE DIDN'T EVEN  
15 HAVE TO HAVE HIM SIGN THAT FORM, BECAUSE SHE READ HIM  
16 THE RIGHTS ORALLY. SO THAT'S SUFFICIENT FOR THE  
17 MIRANDA WAIVER.

18 AND THE LAST THING I'LL SAY, AND I BELIEVE  
19 THE COURT IS ALREADY AWARE OF THE ISSUE BECAUSE THE  
20 COURT SUSTAINED AN OBJECTION, OR RATHER ITS OWN  
21 OBJECTION, IN REGARDS TO WHETHER HE WAS INTIMIDATED  
22 INTO PERHAPS SUBSEQUENTLY ADMITTING SOME CONDUCT THAT  
23 HE WAS IN -- THAT HE DIDN'T DO. I DON'T BELIEVE THAT  
24 GOES INTO WHETHER THE WAIVER WAS A PROPER WAIVER.

25 IT'S JUST RATHER AN ISSUE THAT CAN BE  
26 SUBSEQUENTLY ARGUED TO THE JURY BY THE DEFENSE. I  
27 DON'T BELIEVE THAT ANALYSIS AFFECTS THE MIRANDA WAIVER  
28 AT ALL. AND I'LL SUBMIT.

1 THE COURT: MR. LE.

2 MR. LE: YES. THANK YOU, YOUR HONOR. YOUR  
3 HONOR, THE LAW IS STILL THAT A DEFENDANT HAS TO MAKE A  
4 KNOWING, INTELLIGENT AND VOLUNTARY WAIVER OF HIS  
5 MIRANDA RIGHTS. THE MAIN ISSUE, YOUR HONOR, IS  
6 WHETHER OR NOT HE MADE A VOLUNTARY WAIVER OF HIS RIGHT  
7 TO COUNSEL AT THIS INTERVIEW.

8 NOW, I WOULD ASK THE COURT TAKE IN THE  
9 TOTALITY OF THE CIRCUMSTANCES, BECAUSE THAT'S WHAT THE  
10 COURT HAS TO DO UNDER CASE LAW.

11 NOW, WHAT DO YOU DO WE KNOW OF THE  
12 TOTALITY OF THE CIRCUMSTANCES? WE KNOW THAT IT'S  
13 UNDISPUTED THAT DETECTIVE HERNANDEZ KNEW AT THE VERY  
14 LEAST THAT SOMEBODY CONTACTED HER AND LEFT HER A FEW  
15 MESSAGES INDICATING THEY WERE FROM A LAW OFFICE.

16 THE COURT: ONE. NOT A FEW.

17 MR. LE: ONE. I REMEMBERED A FEW. EXCUSE ME.  
18 AT LEAST ONE MESSAGE. THAT -- FROM A LAW OFFICE THAT  
19 SAID THEY REPRESENTED JUAN ORELLANA AND TO HAVE HER  
20 CALL THEM.

21 OKAY. WE KNOW THAT. WE KNOW THAT WHEN  
22 SHE WAS -- WHEN SHE INTERVIEWED HIM, HE HAD JUST  
23 GOTTEN ARRESTED AND WAS TAKEN DIRECTLY TO THE RAMPART  
24 STATION, TURNED OVER TO HER CUSTODY, TAKEN TO THE  
25 INTERVIEW ROOM. HE HAD NO OPPORTUNITY TO CALL THE  
26 ATTORNEY THAT HE PAID FOR.

27 WE ALSO KNOW -- AND YOU HAVE THE  
28 TRANSCRIPT, YOUR HONOR -- THAT THE DETECTIVE, WHEN SHE

1 STARTS TALKING TO HIM ABOUT HIS RIGHT TO AN ATTORNEY,  
2 CUTS HIM OFF THREE TIMES. SHE DENIES THAT SHE CUTS  
3 HIM OFF, BUT THE TRANSCRIPT IS THE EVIDENCE, AND IT  
4 SPEAKS FOR ITSELF. IT'S -- SHE DENIES THAT SHE CUT  
5 HIM OFF, BUT WHO FINISHES A SENTENCE WITH "BECAUSE"?

6 I MEAN IT'S CLEAR THAT WHAT HE TRIED TO  
7 TELL HER AND WHAT HE INTENDED TO TELL HER WAS THAT HE  
8 WANTED TO HAVE AN ATTORNEY PRESENT. AND THEN HIS LAST  
9 EFFORT, HIS LAST EFFORT IN TRYING TO TELL THE  
10 DETECTIVE THAT HE WANTED AN ATTORNEY PRESENT, HE  
11 INDICATES, WELL, YEAH, THAT'S WHAT I WANTED TO TALK TO  
12 YOU ABOUT, BUT -- SHE CUTS HIM OFF AGAIN AND SAYS,  
13 WELL, YEAH. WELL, YEAH.

14 AND THEN SHE TESTIFIES WHAT HE ANSWERED  
15 WAS, WELL, YEAH, I WANT TO TALK ABOUT THIS. THAT'S  
16 NOT WHAT THE TRANSCRIPT SAYS, YOUR HONOR.

17 OKAY. AND THEN SHE ASKED HIM TO SIGN THIS  
18 STATEMENT FORM. YOU SEE IT ON THE VIDEO. BUT HE HAS  
19 A SECOND GRADE EDUCATION. HE DOESN'T KNOW WHAT HE'S  
20 SIGNING. HE DOESN'T KNOW HE'S SIGNING THE FACT THAT  
21 HE DOES NOT WANT TO HAVE AN ATTORNEY PRESENT.

22 HE TRIED TO TELL HER THREE TIMES. AND  
23 THEN COUNSEL ASKED, WHY DID HE CONTINUE TO TALK  
24 THROUGHOUT THE DURATION OF HIS INTERVIEW. AND THE  
25 REASON WHY -- I INQUIRED ABOUT IT -- HE FELT  
26 INTIMIDATED, THEY THREATENED TO RAISE THE CHARGES ON  
27 HIM AND HE CONTINUED TO DENY, WAS TO TRY TO GET COURT  
28 TO UNDERSTAND HIS STATE OF MIND FOR WHY HE CONTINUED.

1 BECAUSE HIS CONCERN WAS -- SHE MADE IT  
2 CLEAR TO HIM DURING THE INTERVIEW, LOOK, IF YOU DENY  
3 THAT YOU DID ANYTHING WRONG, IF YOU DENY THAT, I'M  
4 GOING TO TALK TO THE D.A. BECAUSE RIGHT NOW, ALL YOU  
5 ARE CHARGED WITH IS JUST TOUCHING HER, MAYBE ORAL SEX.  
6 IT'S NOT LIKE YOU RAPED HER OR ANYTHING LIKE THAT.  
7 YOU COULD GET PROBATION.

8 AND LATER ON, THAT'S WHY HE CONTINUES TO  
9 TALK TO HER. THAT GOES TO HIS STATE OF MIND, WHICH IS  
10 CLEARLY RELEVANT TO THE COURT'S ANALYSIS OF WHY HE  
11 WOULD CONTINUE TO TALK.

12 NOW, WHY DIDN'T HE ASK FOR AN ATTORNEY TO  
13 BE PRESENT? HE WAS INTIMIDATED, YOUR HONOR. HE TRIED  
14 THREE TIMES. WAS CUT OFF THREE TIMES. THEN SHE NEVER  
15 MENTIONS ANYTHING ABOUT HIS ATTORNEY ANY MORE, OR HIS  
16 RIGHT TO HAVE AN ATTORNEY PRESENT, AFTER SHE HAS HIM  
17 SIGN THIS FORM. THIS FORM BEING COURT'S EXHIBIT  
18 NUMBER 1 FOR IDENTIFICATION.

19 AND THE TOTALITY OF THE CIRCUMSTANCES,  
20 YOUR HONOR, IS THAT HE DID NOT MAKE A VOLUNTARY WAIVER  
21 OF HIS MIRANDA RIGHTS. AND I WOULD RESPECTFULLY ASK  
22 THAT THE COURT THROW THIS CONFESSION OR ALLEGED  
23 CONFESSION OUT IN VIOLATION OF MY CLIENT'S MIRANDA  
24 RIGHTS.

25 AND I'LL SUBMIT ON THAT, YOUR HONOR.

26 THE COURT: MR. SANTISO.

27 MR. SANTISO: THE WAIVER OF THE MIRANDA RIGHTS,  
28 WHICH IS ON PAGE 9 OF THE TRANSCRIPT THAT WE'VE BEEN

1 TALKING ABOUT, AT LINE 9, THROUGH PAGE 10 AT LINE 4, I  
2 DON'T SEE HOW IT COULD BE ANY CLEARER THAN THAT.

3 AND YOU KNOW, MY POSITION, OR -- YES, MY  
4 POSITION IS THAT WE CAN -- THE DEFENDANT CAN SAY THAT  
5 HE WAS CONFUSED OR INTIMIDATED, BUT THERE IS NOTHING  
6 DURING THOSE MIRANDA QUESTIONS THAT WAS INTIMIDATING  
7 OR COERCIVE. SHE'S JUST SITTING THERE AT A TABLE  
8 TALKING WITH HIM. THEY BASICALLY ENGAGED IN SMALL  
9 TALK BEFORE THIS.

10 SHE DIDN'T MAKE ANY THREATS TO HIM, DIDN'T  
11 SAY ANYTHING ABOUT IF YOU DON'T TALK TO ME I'M GOING  
12 TO CONTACT THE D.A.

13 AND THEN SHE GETS INTO THE MIRANDA RIGHTS.  
14 SO THE MIRANDA RIGHTS WAIVER IS CLEAR. WHAT HAPPENED  
15 AFTERWARDS HAS NO RELEVANCY TO HIS KNOWING AND  
16 INTELLIGENT WAIVER OF HIS MIRANDA RIGHTS.

17 AND SUBSEQUENT TO THAT IS HE COULD HAVE  
18 INVOKED. HE NEVER DID. AND WHETHER THE COURT WANTS  
19 TO BELIEVE THAT THIS DETECTIVE CUT HIM OFF, HE STILL  
20 ENGAGES IN CONVERSATION DURING THE ENTIRE INTERVIEW  
21 WITH HER. HE HAS THE ABILITY TO SAY I DON'T WANT TO  
22 TALK ANY MORE. I WANT TO SPEAK TO MY LAWYER. AND HE  
23 DIDN'T.

24 AND I'LL SUBMIT.

25 MR. LE: YOUR HONOR, IF I COULD JUST ADD ONE  
26 OTHER THING THAT THE COURT COULD TAKE INTO  
27 CONSIDERATION IN THE COURT'S ANALYSIS.

28 THE COURT: YES.



1 MR. LE: NOW, YOU HAVE TO ALSO TAKE INTO  
2 CONSIDERATION THE MINDSET OF THIS DETECTIVE. SHE  
3 KNOWS THAT PRIOR TO THIS INTERVIEW, MR. ORELLANA AT  
4 THE VERY LEAST HAD TALKED TO A LAW OFFICE. AND I  
5 DON'T THINK IT'S COINCIDENTAL THAT WHEN SHE ADVISES  
6 HIM OF HIS RIGHT TO COUNSEL BEING PRESENT, AND HE  
7 RESPONDS DURING THAT ADVISEMENT, SHE CUTS HIM OFF  
8 THREE TIMES.

9 AND I WOULD SUBMIT TO THE COURT THAT THE  
10 REASON WHY SHE'S CUTTING HIM OFF ON THREE SEPARATE  
11 OCCASIONS IS BECAUSE SHE KNOWS BASED ON THE KNOWLEDGE  
12 THAT SHE -- HE SPOKE TO A LAW OFFICE, THAT HE WAS  
13 GOING TO INVOKE FOR HIS RIGHT TO HAVE COUNSEL PRESENT.

14 THE COURT: MR. LE, I'M NOT GOING TO GET INTO  
15 SPECULATION AS TO WHY, IF SHE CUT HIM OFF, SHE CUT HIM  
16 OFF, AND WHETHER SHE KNEW WHAT HE WAS GOING TO SAY. I  
17 THINK THAT'S PRETTY FAR AFIELD OF WHAT I'M PERMITTED  
18 TO DRAW IN TERMS OF INFERENCE.

19 I'M NOT SAYING THAT YOU DON'T HAVE SOME  
20 GOOD POINTS, BUT I'M NOT GOING TO GET INTO WHAT WAS IN  
21 HER MIND ABOUT WHY SHE MIGHT HAVE INTERRUPTED HIM  
22 BECAUSE SHE KNEW HE WAS GOING TO ASK FOR A LAWYER.

23 I THINK THAT'S AN INFERENCE THAT IS NOT  
24 JUSTIFIED BY THE EVIDENCE OR ONE THAT I'M ALLOWED TO  
25 MAKE. AGAIN, YOU HAVE GOOD POINTS TO MAKE. THAT  
26 DOESN'T HAPPEN TO BE ONE OF THE ONES THAT I THINK IS  
27 AN INFERENCE THAT I CAN DRAW.

28 IF YOU HAVE MORE TO SAY, PLEASE.

1 MR. LE: NO, THAT'S AN INFERENCE THAT I'M ASKING  
2 THE COURT TO DRAW. BUT OF COURSE YOUR HONOR IS --  
3 IT'S YOUR HONOR'S DECISION. I ASK THAT YOU TAKE THAT  
4 INTO CONSIDERATION.

5 THE COURT: ALL RIGHT. ANYTHING ELSE FROM  
6 EITHER OF YOU, MR. LE, MR. SANTISO?

7 MR. LE: NO. SUBMITTED.

8 MR. SANTISO: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT. IT SEEMS TO ME THAT THE  
10 TWO ISSUES ARE WHETHER THE DEFENDANT WAS ADVISED OF  
11 HIS RIGHTS IN AN UNDERSTANDABLE WAY, AND WHETHER OR  
12 NOT HE VOLUNTARILY AND INTELLIGENTLY WAIVED THOSE  
13 RIGHTS.

14 ON THE FIRST ISSUE, IT SEEMS CLEAR FROM  
15 THE RECORDING THAT MR. ORELLANA WAS ORALLY ADVISED OF  
16 HIS RIGHTS. HE WAS ASKED AFTER EACH RIGHT WHETHER HE  
17 UNDERSTOOD, AND HE RESPONDED YES.

18 THE SUBSEQUENT HANDING OF THE FORM TO MR.  
19 ORELLANA FOR HIS SIGNATURE, I AM NOT SURE THE PEOPLE  
20 HAVE MET THEIR BURDEN THAT MR. ORELLANA UNDERSTOOD  
21 WHAT HE WAS SIGNING, GIVEN THE FACT THAT THERE'S NO  
22 REFUTATION OF HIS STATEMENT THAT HE DOESN'T READ  
23 SPANISH. THAT HIS LEVEL OF EDUCATION IS INSUFFICIENT  
24 TO -- IS NOT SUFFICIENT TO ALLOW HIM TO BE ABLE TO  
25 READ SPANISH.

26 EVEN ASSUMING THAT THAT'S TRUE, THERE IS  
27 STILL THE ISSUE OF THE ORAL STATEMENTS, SO I'M NOT  
28 GIVING MUCH CREDENCE TO THE SIGNATURE ON THE FORM.

1 BASED UPON HIS TESTIMONY. ALTHOUGH THE OFFICER DID  
2 SAY, AS NOT REFLECTED IN THE TRANSCRIPT, THIS IS WHAT  
3 I SAID. THAT'S NOT IN THE TRANSCRIPT. SHE TESTIFIED  
4 TO THAT ON THURSDAY. AND THAT SHE SAID THAT TO HIM  
5 BEFORE SHE ASKED HIM FOR HIS SIGNATURE. IT SEEMS BY  
6 WAY OF EXPLANATION AS TO WHAT IT WAS HE WAS SIGNING.

7 NONETHELESS, IT DOES APPEAR THAT HE WAS  
8 ADVISED OF EACH OF HIS RIGHTS IN A WAY THAT WAS  
9 UNDERSTANDABLE, AND THAT HE INDICATED HE UNDERSTOOD  
10 THEM.

11 WITH RESPECT TO WHETHER OR NOT HE  
12 KNOWINGLY AND INTELLIGENTLY WAIVED THOSE RIGHTS, IT IS  
13 PROBLEMATIC TO ME THAT SHE WOULD INTERRUPT HIM ON MORE  
14 THAN ONE OCCASION CONCERNING HIS ATTORNEY AND THE FACT  
15 THAT HE HAD CONTACTED AN ATTORNEY.

16 I DON'T AGREE WITH YOU, MR. LE, THAT SHE  
17 HAD AN OBLIGATION, IF YOU ARE SUGGESTING IT, TO CALL  
18 THE ATTORNEY. I DON'T THINK SHE DOES. BUT SHE DID  
19 ACKNOWLEDGE THAT SHE HAD RECEIVED A CALL FROM SOMEONE.  
20 IT IS TRUE, NONETHELESS, THAT IT IS THE DEFENDANT'S  
21 RIGHT, NOT THE ATTORNEY'S RIGHT, TO INVOKE THE RIGHT  
22 TO HAVE AN ATTORNEY PRESENT DURING QUESTIONING.

23 MR. ORELLANA'S TESTIMONY IS THAT HE WAS  
24 TRYING TO DO THAT. THE DETECTIVE'S TESTIMONY WAS THAT  
25 SHE DID NOT BELIEVE THAT HE WAS INDICATING THAT.

26 THE BOTTOM LINE IS THAT THE CASES,  
27 PARTICULARLY THE SUPREME COURT CASE CITED BY THE  
28 PEOPLE -- I DON'T KNOW HOW TO PRONOUNCE THE FIRST

1 NAME. B-E-R-G-H-U-I-S V. TOMKINS MAKES IT CLEAR THAT  
2 A WAIVER -- AN INVOCATION DOES NEED TO BE EXPRESSED.  
3 THEY DON'T WANT LAW ENFORCEMENT OFFICERS SPECULATING  
4 ABOUT AN AMBIGUOUS STATEMENT BY A DEFENDANT. AND THEY  
5 HAVE LAID DOWN, TO SEEMS TO ME, A FAIRLY BRIGHT LINE  
6 RULE THAT AN INVOCATION NEEDS TO BE EXPRESSED.

7 I DON'T THINK THERE WAS AN EXPRESS  
8 INVOCATION HERE. I THINK THERE WAS SOME AMBIGUITY IN  
9 TERMS OF WHAT MAY HAVE BEEN SAID, AT BEST. BUT I  
10 DON'T THINK THERE WAS AN EXPRESS INVOCATION OF MR.  
11 ORELLANA'S DESIRE TO HAVE HIS ATTORNEY PRESENT DURING  
12 QUESTIONING. AS EVIDENCED FURTHER BY THE FACT THAT HE  
13 KEPT TALKING.

14 AND I UNDERSTAND HIS TESTIMONY THAT HE WAS  
15 INTIMIDATED, BUT I DON'T SEE THAT, IN EITHER THE  
16 CONTENT OF THE TRANSCRIPT OR THE PORTION OF THE TAPE  
17 THAT I WATCHED IN TERMS OF ANY BODY LANGUAGE OR TONE  
18 OF VOICE.

19 SO I AM OVERRULING THE DEFENDANT'S  
20 OBJECTION TO THE INTRODUCTION OF THIS STATEMENT ON  
21 MIRANDA GROUNDS. THE PEOPLE HAVE SATISFIED THEIR  
22 BURDEN OF ESTABLISHING THAT HE WAS ADVISED OF THOSE  
23 RIGHTS AND THAT HE WAIVED THOSE RIGHTS PRIOR TO  
24 ENGAGING IN A DISCUSSION WITH THE DETECTIVE.

25 WHETHER OR NOT, MR. LE, YOU HAVE ARGUMENTS  
26 TO SUGGEST THAT THE STATEMENTS THAT HE MADE WERE NOT  
27 VOLUNTARY, THAT'S SOMETHING THAT YOU'RE CLEARLY  
28 ALLOWED TO RAISE IN FRONT OF THE JURY.

1 I'M NOT MAKING A FINDING AT THIS TIME THAT  
2 THEY WERE INVOLUNTARY, BUT IT'S A FACTOR THAT THE JURY  
3 CAN CONSIDER WHEN THEY ARE CONSIDERING ANY WEIGHT OR  
4 EFFECT THEY WANT TO GIVE TO ANY STATEMENTS THAT HE'S  
5 MAKING.

6 WITH RESPECT -- WE'VE GOT A COUPLE MORE  
7 MINUTES THAT I WOULD LIKE TO GET SOME OF THE 402'S  
8 RESOLVED. THE ONLY ONE REMAINING, AS I RECALL, IS,  
9 MR. LE, YOUR ASSERTION THAT YOU WANTED A COMPETENCE  
10 HEARING BEFORE VANESSA TESTIFIES.

11 I'VE REVIEWED THE CASES AND THE LAW, AND  
12 IT SEEMS TO ME THAT'S NOT SOMETHING TO WHICH YOU ARE  
13 ENTITLED. THAT IT'S MORE APPROPRIATE THAT I ALLOW THE  
14 DISTRICT ATTORNEY -- AND IF YOU OBJECT YOURSELF -- NOT  
15 YOU OBJECT YOURSELF, BUT IF YOU WANT TO QUESTION HER  
16 YOURSELF, YOU MAY, IN TERMS OF WHETHER OR NOT SHE  
17 UNDERSTANDS HER OBLIGATION TO TELL THE TRUTH.

18 TELL ME IF YOU ARE STILL ASSERTING YOUR  
19 RIGHT TO HAVE A PRETRIAL COMPETENCE HEARING.

20 MR. LE: WELL, I READ THE CASE THAT COUNSEL  
21 CITED, KNOX, AND I THINK IT'S CLEAR THAT WE CAN VOIR  
22 DIRE THE WITNESS WITH RESPECT TO HER COMPETENCY. SO I  
23 INTEND TO DO THAT WHEN SHE TESTIFIES.

24 THE COURT: OKAY.

25 MR. LE: ANOTHER THING THAT I WANTED TO DISCUSS  
26 WITH THE COURT AND DISCUSS WITH MR. SANTISO WAS THAT I  
27 DO WANT THE VIDEOTAPED, RECORDED INTERVIEW OF VANESSA  
28 M. TO BE PLAYED DURING THIS TRIAL.

# **APPENDIX M**

Jun. 6, 2014

C-2 R-5 & PR

R. Hernandez, Deputy Clerk

COURT OF APPEAL OF T.

SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF-RESPONDENT, ) SUPERIOR  
 ) COURT  
 VS. ) NO.  
 ) BA403082-01  
 01) JUAN ANTONIO ORELLANA, )  
 )  
 DEFENDANT-APPELLANT. )

JUN 03 2014

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE LISA B. LENCH, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

JANUARY 31, 2014  
FEBRUARY 3, 4, 2014  
MARCH 21, 2014  
APRIL 23 AND 28, 2014

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS  
STATE ATTORNEY GENERAL  
SUITE 1701  
300 SOUTH SPRING STREET  
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

ORIGINAL

VOLUME 5 OF 5  
PAGES 1801 THROUGH 1909/2100  
PAGES 2101 THROUGH 2206/2400  
PAGES 2401 THROUGH 2409/2700  
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PAGES 3001 THROUGH 3002/3300  
PAGES 3301 THROUGH 3307/3600

RONALD G. DAHL, CSR #4213  
OFFICIAL REPORTER



1 MR. LE: NO.

2 THE COURT: MR. SANTISO?

3 MR. SANTISO: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

5 MR. LE.

6 MR. LE: YES, YOUR HONOR. THE DEFENSE CALLS MR.  
7 JUAN ORELLANA TO THE WITNESS STAND.

8  
9 JUAN ORELLANA,  
10 THE DEFENDANT HEREIN, CALLED AS A WITNESS IN HIS OWN  
11 DEFENSE, WAS SWORN AND TESTIFIED AS FOLLOWS:

12  
13 THE CLERK: YOU DO SOLEMNLY STATE THAT THE  
14 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE  
15 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND  
16 NOTHING BUT THE TRUTH, SO HELP YOU GOD.

17 THE WITNESS: YES.

18 THE CLERK: PLEASE TAKE THE WITNESS STAND.

19 SIR, PLEASE STATE YOUR NAME FOR THE  
20 RECORD.

21 THE WITNESS: JUAN ORELLANA.

22 THE INTERPRETER: INTERPRETER SPELLING, YOUR  
23 HONOR?

24 THE COURT: THANK YOU.

25 THE INTERPRETER: J-U-A-N O-R-E-L-L-A-N-A.

26 THE CLERK: THANK YOU.

27 THE COURT: MR. LE.

28

DIRECT EXAMINATION

BY MR. LE:

Q GOOD MORNING, SIR.

A GOOD MORNING.

Q WHAT IS YOUR COUNTRY OF ORIGIN, SIR?

A I WAS BORN IN HONDURAS.

Q AND WHAT LEVEL OF EDUCATION DID YOU  
RECEIVE IN HONDURAS?

A I ONLY WENT TO SCHOOL FOR TWO YEARS.

Q CAN YOU WRITE WELL?

A NO, I CAN'T WRITE WELL.

Q CAN YOU READ WELL?

A A LITTLE.

Q NOW, DO YOU KNOW A PERSON BY THE NAME OF  
VANESSA M.?

A YES.

Q AND SHOWING YOU PEOPLE'S 1, IS THIS  
VANESSA M.?

A YES.

Q WHO IS SHE TO YOU?

A I'M HER PADRINO. GODFATHER.

Q HOW DID YOU BECOME HER PADRINO?

A BECAUSE I'VE KNOWN HER SINCE SHE WAS BORN.

Q DID SOMEBODY ASK YOU TO BECOME HER  
PADRINO?

A YES. HER PARENTS.

Q AND WHO ARE HER PARENTS?

1 A PEDRO AND CLAUDIA.

2 Q NOW, PEDRO, HOW DO YOU KNOW PEDRO?

3 A OH, BECAUSE WE ARE FROM THE SAME PLACE.

4 Q WHEN YOU SAY SAME PLACE, ARE YOU REFERRING  
5 TO THE SAME PLACE IN HONDURAS?

6 A YES. FROM THAT SAME PLACE.

7 Q DID YOU GROW UP TOGETHER WITH PEDRO?

8 A YES.

9 Q DID HE LIKE A BROTHER TO YOU?

10 A YES.

11 Q DID PEDRO ASK YOU TO BECOME THE GODFATHER  
12 OF VANESSA?

13 A YES.

14 Q DID PEDRO ASK YOU -- WELL, YOU ARE AWARE  
15 THAT PEDRO WAS DEPORTED; RIGHT?

16 A YES.

17 Q NOW, WHEN PEDRO WAS DEPORTED, DID HE --  
18 BEFORE HE WAS DEPORTED, DID HE ASK YOU OR -- DID HE  
19 ASK YOU TO PROMISE HIM THAT YOU WOULD TAKE CARE OF AND  
20 LOOK AFTER VANESSA?

21 A YES, WHEN WE BECAME COMPADRES.

22 Q AND DID YOU TRY TO DO THAT TO THE BEST OF  
23 YOUR ABILITY?

24 A YEAH, ONCE HE WAS DEPORTED, YES.

25 Q NOW, HOW -- WHAT WOULD YOU DO TO TRY TO BE  
26 A GOOD GODFATHER TO VANESSA?

27 A WELL, TAKE HER TO THE PARK OR TAKE HER  
28 SHOPPING.

1 Q AND YOU WOULD TRY TO SPEND TIME WITH HER;  
2 IS THAT RIGHT?

3 A YES.

4 Q OTHER THAN TAKE HER TO THE PARK, TAKE HER  
5 SHOPPING --

6 A MCDONALD'S.

7 Q OKAY. HOW OFTEN WOULD YOU SEE VANESSA  
8 SINCE HER FATHER GOT DEPORTED?

9 A NOT ALWAYS ON SUNDAYS. SOMETIMES SATURDAY  
10 OR SUNDAY. BUT ALWAYS WITH MY DAUGHTER.

11 Q YOUR DAUGHTER.

12 THE INTERPRETER: YOUR HONOR, COULD THE COURT  
13 INSTRUCT THE WITNESS TO WAIT UNTIL COUNSEL HAS  
14 FINISHED THE QUESTION?

15 THE COURT: SIR, YOU NEED TO WAIT UNTIL MR. LE  
16 IS FINISHED WITH HIS QUESTION BEFORE YOU START  
17 ANSWERING.

18 THE WITNESS: I'M SORRY.  
19 BY MR. LE:

20 Q YOUR DAUGHTER, WAS THAT THE YOUNG LADY WHO  
21 JUST TESTIFIED BEFORE YOU?

22 A YES.

23 Q NOW, HOW LONG HAVE YOU BEEN SEPARATED FROM  
24 YOUR DAUGHTER'S MOTHER?

25 A OH, SINCE MY DAUGHTER WAS LITTLE.

26 Q OKAY. WHEN YOUR DAUGHTER WAS A YOUNG  
27 GIRL; IS THAT CORRECT?

28 A YES.

1 Q NOW, SINCE YOU WERE SEPARATED FROM  
2 MONICA'S MOM, WERE YOU GIVEN VISITATION?

3 A YES.

4 Q DID YOU HAVE TO GO TO COURT TO ASK FOR  
5 VISITATION?

6 A YES. BECAUSE AT FIRST SHE LET ME SEE HER,  
7 AND THEN SHE TOLD ME THAT I WASN'T GOING TO BE ALLOWED  
8 TO SEE HER AGAIN. SHE FILED FOR CHILD SUPPORT. AND  
9 SO I HAD TO.

10 Q SO SINCE MONICA WAS YOUNG, HAVE YOU SEEN  
11 HER ON A REGULAR BASIS?

12 A YES.

13 Q AND DID YOU TRY TO BE A GOOD FATHER TO  
14 MONICA AS WELL?

15 A YES.

16 Q DO YOU CONSIDER VANESSA LIKE YOUR OWN  
17 DAUGHTER?

18 A OH, YES.

19 Q NOW, HAVE YOU EVER DONE ANYTHING SEXUALLY  
20 INAPPROPRIATE WITH MONICA?

21 A NO.

22 Q HAVE YOU EVER DONE ANYTHING SEXUALLY  
23 INAPPROPRIATE WITH VANESSA?

24 A NO.

25 Q NOW, WHEN WAS THE LAST TIME THAT YOU SPENT  
26 -- WAS THE LAST TIME THAT YOU SPENT TIME WITH VANESSA,  
27 WAS IT THE DAY THAT SHE MADE THESE ACCUSATIONS AGAINST  
28 YOU?

1 A YES.

2 Q THAT DAY, THAT DAY THAT VANESSA HAD MADE  
3 THESE ACCUSATIONS AGAINST YOU, DID YOU DO ANYTHING  
4 SEXUALLY INAPPROPRIATE WITH HER THAT DAY?

5 A NO.

6 Q THE PERIOD OF TIME THAT YOUR WIFE, BLANCA,  
7 WENT TO THE CAR TO GET THE PHONE CARDS, WAS THAT THE  
8 ONLY PERIOD OF TIME ON THE DAY THAT VANESSA MADE THESE  
9 ACCUSATIONS AGAINST YOU THAT YOU WERE ALONE WITH  
10 VANESSA?

11 A YES.

12 Q IS THERE LIKE A -- THE AREA, THE STORE --  
13 THERE'S A 99-CENT STORE OR A DOLLAR STORE NEAR WHERE  
14 YOU LIVE; RIGHT?

15 A YES.

16 Q AND HOW FAR IS THAT DOLLAR STORE FROM  
17 WHERE YOU LIVE?

18 A IT'S SHORT. ABOUT A BLOCK AWAY, ON THE  
19 CORNER.

20 THE COURT: MR. LE, IS NOW A GOOD TIME FOR US TO  
21 BREAK?

22 MR. LE: YES. THAT WOULD BE PERFECT.

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,  
24 WE'RE GOING TO TAKE OUR NOON RECESS AT THIS TIME.

25 AGAIN, PLEASE REMEMBER THE ADMONITION NOT  
26 TO DISCUSS THIS MATTER AMONGST YOURSELVES OR ANYONE  
27 ELSE, OR FORM OR EXPRESS ANY OPINION ON IT UNTIL THE  
28 CASE IS SUBMITTED TO YOU.

1 SEE YOU BACK HERE AT 1:30. AND HAVE A  
2 NICE LUNCH.

3  
4 (THE FOLLOWING PROCEEDINGS WERE HELD  
5 IN OPEN COURT, OUT OF THE PRESENCE  
6 AND HEARING OF THE JURY:)

7  
8 MR. SANTISO: THERE'S BEEN A FAIR AMOUNT OF  
9 EVIDENCE RELATED TO WHAT I WOULD PERCEIVE TO BE GOOD  
10 CHARACTER ON THE PART OF THE DEFENDANT. ALL ELICITED  
11 BY MR. LE. THERE IS A FEW INCIDENTS INVOLVING  
12 DOMESTIC VIOLENCE FROM THE EARLY TWO THOUSANDS.

13 AND I'M REQUESTING THAT I BE ALLOWED TO  
14 INQUIRE OF THE DEFENDANT OF THOSE ACTS. I'M MAKING  
15 THIS REQUEST NOW SO I KNOW HOW TO PREPARE OVER THE  
16 LUNCH HOUR. AND I WOULD BE OFFERING THAT UNDER  
17 SECTION 1102 OF THE EVIDENCE CODE.

18 THE COURT: MR. LE?

19 MR. LE: I WOULD LIKE TO RESPOND AT 1:30, IF I  
20 MAY.

21 THE COURT: NO. YOU CAN RESPOND NOW.

22 MR. LE: WELL, IF THE COURT FINDS THAT IT'S  
23 1102, THEN I WOULD ASK THAT THE COURT EXCLUDE IT UNDER  
24 352.

25 ALSO, IF THE -- I DON'T KNOW WHAT THE  
26 MANNER IS ON WHICH COUNSEL WOULD ATTEMPT TO ELICIT  
27 THAT FROM MY CLIENT. HE SUSTAINED ONE MISDEMEANOR  
28 CONVICTION BACK, I THINK, IN 2001.



1 THE COURT: I DON'T REMEMBER THERE BEING A  
2 MOTION WITH RESPECT TO ANY IMPEACHMENT OF THE CLIENT  
3 BASED UPON PRIOR CRIMINAL CONDUCT AND ITS EXCLUSION.  
4 I'M GATHERING THAT'S BECAUSE ABSENT THIS CHARACTER  
5 EVIDENCE, THE PEOPLE WEREN'T ATTEMPTING TO INTRODUCE  
6 IT AS IMPEACHMENT.

7 IS THAT CORRECT, MR. SANTISO?

8 MR. SANTISO: CORRECT.

9 MR. LE: AND I WOULD SAY -- THE TESTIMONY I'M  
10 ELICITING FROM MONICA WASN'T GOING TO HIS GOOD  
11 CHARACTER. IT'S JUST ABOUT HOW HE WAS AS A FATHER.  
12 OR HOW HE IS AS A FATHER.

13 THE COURT: HOW IS THAT RELEVANT IF IT'S NOT  
14 CHARACTER? WHAT'S ITS RELEVANCE IF IT'S NOT  
15 CHARACTER? I'LL LET YOU THINK ABOUT THE RELEVANCE TO  
16 THAT OVER THE LUNCH HOUR.

17  
18 (AT 12:00 NOON, A RECESS WAS TAKEN UNTIL  
19 1:30 P.M. OF THE SAME DAY.)  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 CASE NUMBER: BA403082-01  
2 CASE NAME: PEOPLE V. JUAN ORELLANA  
3 LOS ANGELES, CALIFORNIA FRIDAY, JANUARY 31, 2014  
4 DEPARTMENT 132 HON. LISA B. LENCH, JUDGE  
5 TIME: P.M. SESSION

6 APPEARANCES:

7 THE DEFENDANT PRESENT WITH HIS COUNSEL,  
8 CHRISTIAN LE, DEPUTY PUBLIC DEFENDER  
9 OF LOS ANGELES COUNTY; GUILLERMO R.  
10 SANTISO, DEPUTY DISTRICT ATTORNEY  
11 OF LOS ANGELES COUNTY, REPRESENTING  
12 THE PEOPLE OF THE STATE OF CALIFORNIA.

13 (RONALD G. DAHL, OFFICIAL REPORTER.)  
14 (JENNY FAURE AND VICTORIA MIZRAHI,  
15 CERTIFIED SPANISH INTERPRETERS,  
16 ASSISTING THE DEFENDANT.)

17  
18 (THE FOLLOWING PROCEEDINGS WERE HELD  
19 IN OPEN COURT, OUT OF THE PRESENCE  
20 AND HEARING OF THE JURY:)

21  
22 THE COURT: ALL RIGHT. BACK ON THE RECORD IN  
23 THE MATTER OF PEOPLE VERSUS JUAN ORELLANA. THE RECORD  
24 WILL REFLECT IS MR. ORELLANA IS PRESENT WITH THE  
25 INTERPRETER.

26 MR. LE, DID YOU FIGURE OUT THE ANSWER TO  
27 MY QUESTION?

28 MR. LE: YES. I INTRODUCED THROUGH ORELLANA,

1 MONICA, THAT MR. ORELLANA WAS ALWAYS APPROPRIATE WITH  
2 HER. AND COUNSEL IS TRYING TO ELICIT OR INTRODUCE BAD  
3 CHARACTER EVIDENCE. BUT JUST BECAUSE I INTRODUCED  
4 GOOD CHARACTER REGARDING HOW HE IS AS A FATHER DOES  
5 NOT OPEN THE DOOR FOR COUNSEL INTRODUCING ANY BAD  
6 CHARACTER.

7 HE'S TRYING TO INTRODUCE EVIDENCE OF A, I  
8 BELIEVE, A 2001 CONVICTION FOR A DOMESTIC VIOLENCE  
9 ACT. SO IF HE -- WHICH IS IRRELEVANT TO MY  
10 INTRODUCTION OF GOOD CHARACTER REGARDING HIM BEING A  
11 GOOD FATHER.

12 NOW, IF HE HAS EVIDENCE THAT MY CLIENT WAS  
13 A BAD FATHER OR WAS BAD TO KIDS AND THAT SORT OF  
14 THING, I WOULD CONCEDE THAT HE WOULD BE ABLE TO  
15 INTRODUCE THAT. HOWEVER, I DON'T THINK ME INTRODUCING  
16 EVIDENCE THAT HE WAS A GOOD FATHER OPENS THE DOOR TO  
17 THEM TO THEM INTRODUCING ACTS OF DOMESTIC VIOLENCE,  
18 WHICH IS CLEARLY TO THE GOOD CHARACTER THAT I  
19 INTRODUCED.

20 THE COURT: MR. SANTISO?

21 MR. SANTISO: MR. LE HAS PORTRAYED HIS CLIENT IN  
22 A CERTAIN WAY AS FAR AS BEING A GOOD FATHER. HE'S  
23 GOING TO PORTRAY HIM AS SOMEBODY WHO WAS VERY MEEK AND  
24 BASICALLY WAS -- I DON'T WANT TO SAY AMBUSHED, BUT  
25 THAT HE WAS -- WORDS WERE PUT INTO HIS MOUTH WHILE HE  
26 WAS BEING INTERVIEWED BY THE DEFENDANT.

27 AND I THINK I SHOULD BE ABLE TO COUNT ARE  
28 THAT. AND SPECIFICALLY THE FACT ABOUT HIM BEING A

1 GOOD FATHER. THERE ACTUALLY IS AN INCIDENT WHERE HE  
2 BECOMES INVOLVED IN A DOMESTIC DISPUTE WITH HIS  
3 GIRLFRIEND, THE MOTHER OF MONICA, AND HE BATTERS  
4 MONICA'S MOTHER DURING THAT INCIDENT.

5 SO AS TO WHETHER HE'S A GOOD FATHER, IT'S  
6 ARGUABLE, AT LEAST ON THAT PARTICULAR INCIDENT. IT  
7 DATES BACK TO 2001. I UNDERSTAND IT'S BEEN A WHILE.  
8 BUT THE JURY -- I WANT THEM TO SEE BOTH SIDES OF HIM.  
9 AS OPPOSED TO HIMSELF, HIS WIFE AND HIS DAUGHTER  
10 SAYING THESE GREAT THINGS ABOUT HIM WHERE THERE'S  
11 OTHER INFORMATION OUT THERE THAT THE JURY COULD USE TO  
12 EVALUATE HIS CREDIBILITY. AND I'LL SUBMIT, YOUR  
13 HONOR.

14 THE COURT: MR. LE?

15 MR. LE: YOUR HONOR, I HAVE THE POLICE REPORT  
16 FOR THE INCIDENT WHICH COUNSEL IS REFERRING TO WITH  
17 RESPECT TO MONICA ORELLANA AND HER MOTHER, DINORA  
18 ARGUETA.

19 IN THAT INCIDENT, THERE WERE NO CHARGES  
20 FILED. THAT CASE, IT WAS AN ARREST AND THERE WERE NO  
21 CHARGES FILED. AND ALSO HE HAS INJURIES. HE, BEING  
22 MY CLIENT, HAS VISIBLE INJURIES. HE HAS A TORN SHIRT.

23 SO UNDER -- IF THE COURT FEELS THAT THAT  
24 INCIDENT IS -- SINCE IT INVOLVED MONICA BEING PRESENT,  
25 IT SHOULD BE EXCLUDED UNDER 352.

26 THE COURT: SHE WAS PRESENT?

27 MR. LE: HER NAME WAS THERE. HOWEVER --

28 MR. SANTISO: SHE WAS THERE.

1 MR. LE: SHE'S LISTED AS A WITNESS. BUT AGAIN,  
2 THIS IS INVOLVING AN INCIDENT INVOLVING HIM, MY CLIENT  
3 AND HER MOM. AND THERE WERE NO FILINGS ON HIM. HE  
4 HAS INJURIES. AND --

5 THE COURT: MR. LE, I'M GOING TO INTERRUPT YOU,  
6 BECAUSE I THINK YOU'RE REPEATING YOURSELF. AND I  
7 CAN'T -- I FIND IT PROBLEMATIC TO ASSERT THAT AN ACT  
8 OF DOMESTIC VIOLENCE THAT OCCURS IN FRONT OF A CHILD  
9 IS NOT INDICATIVE OF ONE'S PARENTING TRAITS. IN TERMS  
10 OF BEING A GOOD, LOVING PARENTS.

11 SO I AM GOING TO ALLOW THE PROSECUTION TO  
12 INTRODUCE IT. IT DOES NOT REQUIRE A CRIMINAL  
13 CONVICTION. IT'S THAN WHAT THIS IS ABOUT. IT  
14 REQUIRES SPECIFIC INSTANCES OF CONDUCT. AND WHETHER  
15 OR NOT IT'S USED TO DISPROVE A CHARACTER TRAIT THAT  
16 THE DEFENSE HAS PUT INTO EVIDENCE.

17 AND SO I'M GOING TO ALLOW THE PEOPLE TO  
18 INTRODUCE THAT EVIDENCE. THE DOOR HAVING BEEN OPENED  
19 REPEATEDLY BY THE DEFENSE.

20 MR. LE: YOUR HONOR, MY CLIENT IS GOING TO DENY  
21 THAT HE DID ANY WRONGDOING. THE POLICE REPORT  
22 REFLECTS THAT HE DENIED ANY WRONGDOING.

23 THE COURT: MR. LE, YOUR CLIENT CAN DENY  
24 WHATEVER HE WANTS TO DENY. HE'S TESTIFYING. WHATEVER  
25 HIS TESTIMONY IS, IT IS. THAT DOESN'T MEAN MR.  
26 SANTISO CANNOT ASK ABOUT IT.

27 MR. LE: IF I COULD JUST HAVE A MOMENT TO REVIEW  
28 THIS POLICE REPORT. BECAUSE I'M NOT EVEN SURE IF THE

1 POLICE REPORT REFLECTS THAT MONICA ORELLANA WAS EVEN  
2 THERE DURING THE INCIDENT.

3 THE COURT: HOW LONG HAVE YOU HAD THAT POLICE  
4 REPORT?

5 MR. LE: SOME TIME. SOMETIME THIS WEEK. I DID  
6 NOT THINK THAT COUNSEL WAS GOING TO TRY TO INTRODUCE  
7 IT UNTIL TODAY.

8 THE COURT: DID THE JURY BUZZ?

9 THE BAILIFF: YES.

10 THE COURT: NO. ANYTHING ELSE BEFORE WE BRING  
11 THE JURORS IN, MR. LE?

12 MR. LE: NO.

13 THE COURT: MR. SANTISO?

14 MR. SANTISO: NO, YOUR HONOR.

15 THE COURT: ALL RIGHT.

16  
17 (THE FOLLOWING PROCEEDINGS WERE HELD  
18 IN OPEN COURT IN THE PRESENCE AND  
19 HEARING OF THE JURY:)

20  
21 THE COURT: ALL RIGHT. THE RECORD WILL REFLECT  
22 THE JURORS AND ALTERNATE JURORS ARE PRESENT.

23 MR. ORELLANA, DO YOU WANT TO PLEASE  
24 RESUME THE WITNESS STAND.

25

26

27

28

1                   JAUN ORELLANA,  
2     THE WITNESS ON THE STAND AT THE TIME OF THE NOON  
3     RECESS, RETOOK THE STAND AND TESTIFIED AS FOLLOWS:  
4

5           THE COURT: SIR, YOU ARE REMINDED THAT YOU'RE  
6     STILL UNDER OATH.

7           MR. LE, IF YOU WOULD LIKE TO CONTINUE WITH  
8     YOUR DIRECT EXAMINATION.

9           MR. LE: YES.

10  
11           DIRECT EXAMINATION (RESUMED)

12  
13     BY MR. LE:

14           Q     GOOD AFTERNOON, EVERYONE. GOOD AFTERNOON,  
15     MR. ORELLANA.

16           A     GOOD AFTERNOON.

17           Q     NOW, WHEN WE LEFT OFF, YOU INDICATED THAT  
18     THE DISTANCE BETWEEN THIS 99-CENT STORE -- THIS  
19     99-CENT STORE AND YOUR APARTMENT WAS A FAIRLY SHORT  
20     DISTANCE. RIGHT?

21           A     YES.

22           Q     NOW, DURING THE TIME THAT BLANCA WENT TO  
23     GO GET THE PHONE CARDS, DID YOU REMAIN INSIDE YOUR  
24     APARTMENT WITH VANESSA?

25           A     YES.

26           Q     WHILE YOU AND VANESSA WERE INSIDE THAT  
27     APARTMENT, DID YOU DO ANYTHING INAPPROPRIATELY WITH  
28     VANESSA?



1 A NO.

2 Q DID YOU DO ANYTHING OF A SEXUAL NATURE  
3 WITH VANESSA WHEN YOU AND VANESSA WERE INSIDE YOUR  
4 APARTMENT BY YOURSELF?

5 A NO.

6 Q NOW, DID MS. ARDON, BLANCA ARDON, RETURN  
7 WITH THE PHONE CARDS?

8 A YES.

9 Q AND THE TIME THAT SHE WAS GONE, THE TIME  
10 THAT SHE WAS GONE TO GET THE PHONE CARDS, UNTIL THE  
11 TIME THAT SHE WAS BACK, DO YOU REMEMBER APPROXIMATELY  
12 HOW LONG SHE WAS GONE?

13 A ABOUT FIVE MINUTES.

14 Q DURING THE TIME THAT VANESSA WAS AT YOUR  
15 APARTMENT, DID -- WAS SHE CRYING HYSTERICALLY?

16 A NO.

17 Q DID SHE APPEAR TO YOU TO BE IN FEAR?

18 A NO.

19 Q DID YOU THEN, AFTER YOUR WIFE CAME BACK  
20 FROM GETTING THE PHONE CARDS, AT SOME POINT YOU  
21 RETURNED VANESSA BACK TO HER MOTHER, CLAUDIA; IS THAT  
22 RIGHT?

23 A AFTER SHE SPOKE TO THE FAMILY IN EL  
24 SALVADOR, YES.

25 Q THEN YOU RETURNED VANESSA BACK TO HER  
26 MOTHER, CLAUDIA; IS THAT RIGHT?

27 A YES.

28 Q AND YOU RETURNED HER BACK TO THE ADDRESS

1 YOU LIVED ON FLOWER STREET; IS THAT CORRECT?

2 A YES.

3 Q NOW, WHEN YOU RETURNED VANESSA BACK TO HER  
4 MOTHER, CLAUDIA, DID YOU IMMEDIATELY LEAVE OR DID YOU  
5 SPEND SOME TIME AT CLAUDIA'S SINGLE?

6 A NO, WE STAYED THERE FOR ABOUT A HALF AN  
7 HOUR.

8 Q NOW, WHEN YOU -- AND THEN AFTER YOU LEFT  
9 -- WELL, I'LL STOP YOU THERE. WHEN YOU WERE AT  
10 CLAUDIA'S APARTMENT, DID VANESSA ACT AS IF SHE WAS  
11 SCARED OF YOU?

12 A NO.

13 Q WHEN YOU CAME BACK, WHEN YOU LEFT  
14 CLAUDIA'S APARTMENT, WHERE DID YOU GO?

15 A HOME.

16 Q WHEN YOU GOT HOME, DID YOUR WIFE RECEIVE A  
17 PHONE CALL FROM CLAUDIA?

18 A YES.

19 Q AND WHEN YOUR WIFE RECEIVED THE PHONE CALL  
20 FROM CLAUDIA, DID YOUR WIFE THEN TURN OVER THAT PHONE  
21 CALL TO YOU?

22 A YES. SHE GAVE ME THE PHONE.

23 Q AND WHEN SHE GAVE YOU THE PHONE, WHAT  
24 HAPPENED?

25 A OH, SHE WAS CRYING AND SHE SAID THAT I HAD  
26 TOUCHED HER DAUGHTER AND THAT I HAD SEXUALLY TOUCHED  
27 HER.

28 Q WHEN MS. CALDERON TOLD YOU THAT OVER THE

1 PHONE, WHAT DID YOU DO?

2 A I TOLD HER I DIDN'T DO THAT. AND I  
3 OFFERED TO TAKE HER TO THE DOCTOR WITH HER.

4 Q AND WHY DID YOU DO THAT? WHY DID YOU SAY  
5 THAT? WHY DID YOU OFFER TO TAKE CLAUDIA TO THE DOCTOR  
6 WITH VANESSA?

7 A TO PROVE TO HER THAT I HADN'T DONE  
8 ANYTHING TO THE CHILD.

9 Q AND DID YOU TELL HER THAT YOU WERE WILLING  
10 TO TAKE HER RIGHT THEN AND THERE?

11 A YES.

12 Q DID YOU HAVE A CAR?

13 A YES.

14 Q AND DID SHE ACCEPT YOUR OFFER?

15 A NO.

16 Q NOW, DID SHE ALSO -- WHEN SHE -- OKAY.  
17 NOW I'M GOING TO TALK TO YOU ABOUT -- DO YOU REMEMBER  
18 RECEIVING A PHONE CALL FROM DETECTIVE HERNANDEZ?

19 A YES.

20 Q AND WHEN YOU RECEIVED THIS CALL FROM FROM  
21 DETECTIVE HERNANDEZ, DID YOU KNOW WHAT SHE WAS  
22 CONTACTING YOU ABOUT?

23 A NO, I DIDN'T KNOW.

24 Q OKAY. DID YOU HAVE ANY IDEA WHAT  
25 DETECTIVE HERNANDEZ WAS CONTACTING YOU ABOUT?

26 A YES. AFTERWARDS, I THOUGHT THAT IT WAS  
27 BECAUSE OF THE CALL I GOT FROM THE COMADRE.

28 Q AND WHAT DID YOU DO? DID YOU TRY TO SEEK

1 LEGAL COUNSEL IN TERMS OF WHAT TO DO AFTER RECEIVING  
2 THAT PHONE CALL? FROM DETECTIVE HERNANDEZ?

3 A YES. I LOOKED FOR AN ATTORNEY.

4 Q NOW, DID YOU ACTUALLY GO TALK TO A LAW  
5 OFFICE REGARDING THE PHONE CALL THAT YOU RECEIVED FROM  
6 DETECTIVE HERNANDEZ?

7 A YES.

8 Q AND DID YOU TELL THEM THAT YOU RECEIVED A  
9 PHONE CALL FROM A DETECTIVE --

10 MR. SANTISO: I'LL OBJECT TO THIS LINE OF  
11 QUESTIONING AS LEADING, YOUR HONOR.

12 THE COURT: OBJECTION SUSTAINED.

13 BY MR. LE:

14 Q DID YOU GO AND SPEAK TO A LAW OFFICE  
15 REGARDING THE PHONE CALL THAT YOU RECEIVED FROM  
16 DETECTIVE HERNANDEZ?

17 A YES.

18 Q DID THEY GIVE YOU SOME ADVICE IN TERMS OF  
19 WHAT YOU SHOULD DO?

20 MR. SANTISO: I'LL OBJECT AGAIN AS LEADING.

21 THE COURT: OBJECTION IS OVERRULED. BUT THAT'S  
22 A YES-OR-NO QUESTION.

23 THE WITNESS: YES.

24 BY MR. LE:

25 Q DID YOU ACT UPON THEIR ADVICE?

26 A YES.

27 Q NOW, AT SOME POINT -- YOU WERE ARRESTED;  
28 RIGHT? YOU WERE ARRESTED ON THIS CASE; RIGHT?

1 A YES.

2 Q IN RELATION TO THE PHONE CALL THAT YOU  
3 RECEIVED FROM DETECTIVE HERNANDEZ, HOW MANY DAYS  
4 PASSED WHEN YOU WERE ARRESTED?

5 A ONE MORE DAY.

6 Q SO THE NEXT DAY WAS WHEN YOU WERE  
7 ARRESTED; RIGHT?

8 A SHE CALLED ME ON THE 24TH TO HAVE AN  
9 APPOINTMENT WITH HER ON THE 25TH.

10 Q OKAY.

11 A BUT THEN SHE CALLED ME AND SAID THAT  
12 ANOTHER APPOINTMENT THAT WAS MORE IMPORTANT CAME UP  
13 AND THAT SHE WAS PUTTING OURS OVER FOR ANOTHER DAY.

14 Q NOW, WHEN YOU WERE ARRESTED FOR THIS CASE,  
15 WHERE WERE YOU WHEN YOU WERE ARRESTED?

16 A I WAS IN THE PARKING LOT AT MCDONALD'S. I  
17 WENT TO BUY SOME COFFEE. I WAS IN THE CAR.

18 Q NOW, THIS MCDONALD'S THAT YOU WENT TO,  
19 WHERE IS THAT LOCATED?

20 A AT THE CORNER OF HOOVER AND WASHINGTON.

21 Q HOOVER AND WASHINGTON. HOW FAR IS THAT  
22 AWAY FROM WHERE YOU LIVE?

23 A ABOUT TWO BLOCKS AWAY.

24 Q NOW, AFTER YOU WERE ARRESTED, WHAT  
25 HAPPENED? WERE YOU TAKEN SOMEPLACE?

26 A YES. THEY TOOK ME TO RAMPART STATION.

27 Q AND RAMPART WAS WHERE -- DID YOU MEET A  
28 DETECTIVE THERE BY THE THE NAME OF DETECTIVE HERNANDEZ

1 AT THE RAMPART STATION?

2 A YES.

3 Q NOW, WHEN YOU WERE ARRESTED, HOW WERE YOU  
4 FEELING?

5 A WELL, I FELT SCARED.

6 Q WHEN YOU WERE TAKEN TO RAMPART STATION,  
7 HOW WERE YOU FEELING?

8 A WELL, I WAS AFRAID, AND SCARED.

9 Q WHEN YOU WERE ARRESTED, WHAT DID YOU  
10 BELIEVE THAT YOU WERE BEING ARRESTED FOR?

11 MR. SANTISO: I'LL OBJECT AS TO RELEVANCE.

12 THE COURT: OBJECTION IS OVERRULED.

13 THE WITNESS: CAN I ANSWER?

14 THE COURT: YES.

15 THE WITNESS: I FELT THAT THEY WERE ARRESTING ME  
16 BECAUSE OF WHAT I HAD TALKED ABOUT WITH MY COMADRE.

17 BY MR. LE:

18 Q WHEN YOU SAY COMADRE, ARE YOU REFERRING TO  
19 CLAUDIA CALDERON?

20 A YES.

21 Q AND THE ACCUSATIONS THAT SHE MADE TO YOU  
22 OVER THE PHONE; IS THAT CORRECT?

23 A YES.

24 Q NOW, WHEN YOU -- AT SOME POINT YOU TALKED  
25 TO DETECTIVE HERNANDEZ; RIGHT?

26 MR. SANTISO: OBJECTION. VAGUE AS TO TIME, YOUR  
27 HONOR.

28 THE COURT: OBJECTION SUSTAINED.

1 BY MR. LE:

2 Q SOON AFTER YOU WERE ARRESTED YOU WERE  
3 TAKEN TO RAMPART STATION; RIGHT?

4 A YES.

5 Q AFTER WERE YOU TAKEN TO RAMPART STATION,  
6 WERE YOU INTERVIEWED BY A DETECTIVE HERNANDEZ?

7 A YES.

8 Q AND THAT WAS THE FEMALE DETECTIVE THAT  
9 TESTIFIED YESTERDAY; IS THAT CORRECT?

10 A YES.

11 Q NOW, WHEN YOU WERE TAKEN INTO THAT -- YOU  
12 WERE TAKEN INTO AN INTERVIEW ROOM; RIGHT?

13 A YES.

14 Q NOW, WHEN YOU WENT INTO THAT INTERVIEW  
15 ROOM, HOW WERE YOU FEELING?

16 A WELL, SCARED.

17 Q AND WHY WERE YOU FEELING SCARED?

18 A BECAUSE I HAD NEVER BEEN IN FRONT OF A  
19 POLICE OFFICER BEING INTERVIEWED.

20 Q NOW, WHEN YOU WENT INTO THAT INTERVIEW  
21 ROOM, WHAT DID YOU THINK THAT YOU WERE BEING CHARGED  
22 WITH?

23 A THAT THEY WERE ACCUSING ME OF HAVING  
24 TOUCHED THE CHILD.

25 Q NOW, YOU TALKED TO DETECTIVE HERNANDEZ;  
26 RIGHT? ABOUT WHAT HAPPENED? ABOUT THE ACCUSATIONS;  
27 RIGHT?

28 A YES.



1 Q DID YOU TELL HER THAT -- DID SHE TELL YOU  
2 WHAT VANESSA WAS ACCUSING YOU OF DOING?

3 A YES. SHE ASKED ME ABOUT THAT.

4 Q AND DO YOU REMEMBER WHAT YOU HAD TOLD HER  
5 INITIALLY?

6 A YES.

7 Q DID YOU TELL HER THAT YOU DID SOMETHING  
8 INAPPROPRIATE OR DID YOU DENY THAT YOU DID ANYTHING  
9 WRONG WITH VANESSA WHEN SHE FIRST INTERVIEWED YOU?

10 MR. SANTISO: I'M GOING TO OBJECT TO LEADING  
11 AGAIN, YOUR HONOR.

12 THE COURT: OBJECTION SUSTAINED.

13 BY MR. LE:

14 Q NOW, MR. ORELLANA, WHEN YOU WERE FIRST  
15 INTERVIEWED BY DETECTIVE HERNANDEZ, DETECTIVE  
16 HERNANDEZ ASKED YOU, ACCUSED YOU OF DOING  
17 INAPPROPRIATE THINGS TO VANESSA. DO YOU REMEMBER  
18 THAT?

19 A YES.

20 Q AND WHAT DID YOU TELL HER WHEN SHE MADE  
21 THOSE ACCUSATIONS AGAINST YOU?

22 A AT FIRST I TOLD HER NO.

23 Q AND WHY DID YOU TELL HER NO AT FIRST?

24 A BECAUSE IT'S NOT TRUE. I DIDN'T TOUCH THE  
25 CHILD.

26 Q NOW, AT SOME POINT DURING THE INTERVIEW  
27 WITH -- DURING THE THE INTERVIEW THAT YOU HAD WITH  
28 DETECTIVE HERNANDEZ, DID YOU FEEL THREATENED?

1 MR. SANTISO: I'M GOING TO OBJECT TO LEADING  
2 AGAIN.

3 THE COURT: OBJECTION SUSTAINED.  
4 BY MR. LE:

5 Q AT ANY POINT DURING THE INTERVIEW WITH  
6 DETECTIVE HERNANDEZ DID YOU SAY THAT YOU DID SOME  
7 STUFF THAT WAS INAPPROPRIATE WITH VANESSA?

8 A I DID TELL HER.

9 Q NOW, WHEN YOU TOLD DETECTIVE HERNANDEZ --  
10 OR WHEN YOU TOLD DETECTIVE HERNANDEZ THAT YOU DID DO  
11 SOME STUFF WITH VANESSA THAT WAS INAPPROPRIATE  
12 SEXUALLY, WAS THAT BECAUSE YOU IN FACT DID SOME THINGS  
13 THAT WERE INAPPROPRIATE WITH VANESSA?

14 MR. SANTISO: I'LL OBJECT. COMPOUND. AND IT'S  
15 LEADING.

16 THE COURT: OBJECTION SUSTAINED.  
17 BY MR. LE:

18 Q WHEN YOU TOLD DETECTIVE -- WHY DID YOU  
19 TELL DETECTIVE HERNANDEZ -- OR WHY DID YOU ADMIT TO  
20 DOING SOME INAPPROPRIATE THINGS WITH VANESSA?

21 A BECAUSE SHE PROMISED ME SOMETHING. THAT  
22 SHE WOULD BE ABLE TO HELP ME.

23 Q WERE THERE ANY OTHER REASONS WHY YOU  
24 ADMITTED TO DOING SOME INAPPROPRIATE THINGS WITH  
25 VANESSA?

26 A NO.

27 Q WHAT MADE YOU THINK THAT SHE WAS GOING TO  
28 HELP YOU OUT?

1 MR. SANTISO: I'LL OBJECT. THAT MISSTATES THE  
2 TESTIMONY, YOUR HONOR.

3 THE COURT: OBJECTION IS OVERRULED.

4 THE WITNESS: WHAT WAS THAT? I DIDN'T  
5 UNDERSTAND.

6 BY MR. LE:

7 Q WHAT MADE YOU THINK THAT DETECTIVE  
8 HERNANDEZ WAS GOING TO HELP YOU OUT?

9 A SHE TOLD ME THAT IF I WOULD TALK TO HER,  
10 THAT SHE WAS GOING TO HELP ME WITH A PSYCHOLOGIST.

11 Q AND DID -- DID SHE TELL YOU WHAT WOULD  
12 HAPPEN IF YOU DIDN'T ADMIT TO ANY WRONGDOING WITH  
13 VANESSA?

14 A YES. SHE SAID THAT IF I DIDN'T COOPERATE,  
15 THAT SHE WAS GOING TO TELL THE D.A. TO PUNISH ME.

16 Q AND WHEN SHE TOLD YOU THAT, WHAT DID THAT  
17 MAKE YOU FEEL? WHEN SHE TOLD YOU THAT.

18 A WELL, LIKE THAT SHE WAS GOING TO PUT ME IN  
19 JAIL.

20 Q DID YOU -- HOW WERE YOU FEELING WHEN SHE  
21 TOLD YOU THAT?

22 A AFRAID.

23 Q DID YOU TELL HER, OR DID YOU ADMIT TO  
24 WRONGDOING WITH VANESSA BECAUSE IT WAS TRUE?

25 A YES. SHE TOLD ME TO TELL HER.

26 Q NOW, WAS THE REASON WHY YOU ADMITTED TO  
27 WRONGDOING WAS BECAUSE YOU BELIEVED THAT THAT'S WHAT  
28 SHE WANTED YOU TO TELL HER?

1 MR. SANTISO: OBJECTION. THAT'S LEADING.

2 THE COURT: OBJECTION SUSTAINED.

3 BY MR. LE:

4 Q NOW, WHEN SHE FIRST INTERVIEWED YOU, BE  
5 WHEN DETECTIVE HERNANDEZ FIRST STARTED INTERVIEWING  
6 YOU, DID YOU DENY THAT ANYTHING INAPPROPRIATE HAPPENED  
7 WITH VANESSA?

8 A YES.

9 Q NOW, DURING THE INTERVIEW THAT DETECTIVE  
10 HERNANDEZ HAD WITH YOU, DID SHE CUT YOU OFF WHEN YOU  
11 TRIED TO ANSWER SOME OF HER QUESTIONS?

12 A YES.

13 Q AND WHEN SHE DID THAT, WAS SHE CUTTING YOU  
14 OFF WHEN YOU TRIED TO ANSWER HER QUESTIONS -- HOW DID  
15 THAT MAKE YOU FEEL?

16 A WELL, THAT I WASN'T ABLE TO EXPRESS MYSELF  
17 AND TO ANSWER THE -- THE ANSWER THAT I HAD.

18 Q MR. ORELLANA, DID YOU DO ANYTHING SEXUALLY  
19 INAPPROPRIATE WITH VANESSA THE DATE THAT YOU LAST  
20 SPENT TIME WITH VANESSA?

21 A NO.

22 Q DID YOU BITE HER IN HER VAGINAL AREA?

23 A NO.

24 Q DID YOU DO ANYTHING INAPPROPRIATE TO  
25 VANESSA IN HER VAGINAL AREA?

26 A NO.

27 Q WHAT DID YOU THINK THAT DETECTIVE  
28 HERNANDEZ WOULD HAVE DONE HAD YOU NOT ADMITTED TO ANY

1 WRONGDOING WITH VANESSA?

2 MR. SANTISO: I'LL OBJECT AS SPECULATION, YOUR  
3 HONOR.

4 THE COURT: OBJECTION IS OVERRULED.

5 THE INTERPRETER: I'M SORRY, YOUR HONOR?

6 THE COURT: SORRY. OVERRULED.

7 THE INTERPRETER: THE INTERPRETER NEEDS A  
8 REPETITION.

9 BY MR. LE:

10 Q YES. WHAT DID YOU THINK DETECTIVE  
11 HERNANDEZ WOULD HAVE DONE HAD YOU CONTINUED TO DENY  
12 ANY WRONGDOING WITH VANESSA?

13 A LIKE SHE SAID, JUST CLOSE THE BOOK AND  
14 THROW ME IN JAIL.

15 Q AND WHAT DID THAT MEAN TO YOU? WHAT DID  
16 THAT MEAN TO YOU WHEN SHE TOLD YOU THAT SHE WAS GOING  
17 TO CLOSE THE BOOK AND PUT YOU IN JAIL? WHAT DID THAT  
18 MEAN TO YOU?

19 A I UNDERSTOOD IT TO MEAN THAT I WAS NOT  
20 GOING TO BE GETTING OUT OF JAIL.

21 Q HOW DID THAT MAKE YOU FEEL WHEN SHE TOLD  
22 YOU THAT?

23 A SCARED. BECAUSE I KNEW I WAS INNOCENT  
24 ABOUT WHAT SHE WAS SAYING I HAD -- WHAT I HAD DONE.

25 MR. LE: I HAVE NO FURTHER QUESTIONS.

26 THE COURT: CROSS-EXAMINATION, MR. SANTISO?

27 MR. SANTISO: THANK YOU.  
28

CROSS-EXAMINATION

BY MR. SANTISO:

Q GOOD AFTERNOON, SIR.

A GOOD AFTERNOON.

MR. SANTISO: I NEED CLARIFICATION ON THE  
COURT'S RULING, YOUR HONOR, BASED ON TESTIMONY.

THE COURT: OKAY.

MR. SANTISO: IF WE CAN --

THE COURT: I DON'T KNOW WHAT ORDER YOU WANT TO  
DO THINGS IN. IF YOU WANT IT NOW, YOU CAN HAVE IT  
NOW.

MR. SANTISO: IF WE MAY DO SO NOW.

THE COURT: ALL RIGHT.

(THE FOLLOWING PROCEEDINGS WERE HELD  
AT THE BENCH:)

MR. SANTISO: I'M ASKING TO APPROACH BECAUSE I  
WAS ONLY GOING TO POSSIBLY GET INTO ONE INCIDENT WHERE  
THE DEFENDANT WAS ARRESTED, BUT NOW I THINK THE DOOR  
HAS ONCE AGAIN BEEN OPENED BASED ON SOMETHING THAT MR.  
LE ASKED AND THE DEFENDANT SAID WHEN HE STATED THAT HE  
HAS NEVER BEEN IN FRONT OF A POLICE OFFICER BEFORE.  
SO I'M ASKING TO GO INTO THAT INCIDENT.

THE COURT: WHICH INCIDENT?

MR. SANTISO: BOTH.

THE COURT: DO YOU KNOW THAT -- HE SAID HE HAD

1 NEVER BEEN INTERVIEWED IN THAT WAY BEFORE. SO -- I  
2 DON'T KNOW IF YOU HAD INFORMATION THAT HE HAD BEEN  
3 INTERVIEWED IN THAT WAY BEFORE.

4 IT'S QUITE A VAGUE STATEMENT, SO I DON'T  
5 KNOW WHAT YOU'RE SEEKING TO ASK HIM ABOUT.

6 MR. SANTISO: I THOUGHT HE JUST SAID HE'S NEVER  
7 BEEN IN FRONT OF A POLICE BEING INTERVIEWED. THAT'S  
8 WHAT MY NOTES INDICATE.

9 THE COURT: RIGHT.

10 MR. SANTISO: SO I KNOW FOR SURE THAT IN THE  
11 INCIDENT THAT WE WERE JUST DISCUSSING BEFORE WE  
12 RESUMED, HE WAS INTERVIEWED BY AN OFFICER OR A  
13 DETECTIVE. HE WAS INTERVIEWED BY AN OFFICER AT THE  
14 TIME OF THE INCIDENT, AND SUBSEQUENT TO THAT THERE WAS  
15 ANOTHER INTERVIEW BY ANOTHER OFFICER OR DETECTIVE.

16 THE OTHER INCIDENT, WHICH IS THE INCIDENT  
17 THAT LED TO HIS MISDEMEANOR CONVICTION, I'M SURE HE AT  
18 LEAST SPOKE TO AN OFFICER. I'LL ABSOLUTELY DOUBLE  
19 CHECK BEFORE I INQUIRE, BUT I'M PRETTY SURE IN THAT  
20 SECOND INCIDENT HE ALSO SPOKE TO AN OFFICER.

21 MR. LE: IT'S VAGUE. HIS ANSWERS ARE VAGUE.  
22 HE'S NOT AN EDUCATED GUY. MY READING OF HIS ANSWERS  
23 IN TERMS OF HIM NEVER BEEN INTERVIEWED BEFORE IS THAT  
24 HE HAD NEVER BEEN INTERVIEWED IN THAT MANNER BEFORE.

25 THE COURT: MR. LE, I THINK HE SAID SOMETHING  
26 THAT OPENED THE DOOR QUITE WIDE. YOU MAY NOT HAVE  
27 INTENDED FOR HIM TO SAY THAT, BUT I DO BELIEVE HE  
28 OPENED THE DOOR QUITE WIDE.



1 I UNDERSTAND HE'S NOT EDUCATED. I  
2 UNDERSTAND THAT IT'S NOT HOW YOU WOULD HAVE PREFERRED  
3 HIM TO ANSWER THE QUESTION. IT NONETHELESS IS THE WAY  
4 HE ANSWERED THE QUESTION.

5 MR. LE: I JUST WANTED CLARIFICATION IN TERMS OF  
6 WHAT IT IS THAT MR. SANTISO CAN ASK. HOW MANY  
7 INCIDENTS CAN MR. SANTISO ASK? BECAUSE I HAVE TWO  
8 POLICE REPORTS IN FRONT OF ME. ONE THAT WAS PROVIDED  
9 TODAY.

10 SO I DIDN'T EVEN HAVE AN OPPORTUNITY TO  
11 DISCUSS THE FACTS OF THAT INTERVIEW OR THAT ARREST OR  
12 THAT CONTACT WITH MR. ORELLANA UNTIL -- WELL, I'VE  
13 NEVER HAD A CHANCE TO DO THAT.

14 THE COURT: WELL, MR. LE, QUITE FRANKLY, THAT'S  
15 NOT SOMETHING THAT HE HAS AN OBLIGATION TO GIVE YOU IN  
16 ORDER TO GIVE YOU THE OPPORTUNITY TO DISCUSS IT WITH  
17 YOUR CLIENT. YOUR CLIENT KNOWS WHAT'S HAPPENED IN HIS  
18 LIFE.

19 AND IT'S NOT THE PROSECUTOR'S OBLIGATION  
20 TO GIVE YOU A POLICE REPORT THAT MAY OR MAY NOT BE  
21 USED FOR SOMETHING OTHER THAN THE NORMAL,  
22 RUN-OF-THE-MILL THINGS THAT POLICE REPORTS ARE USED  
23 FOR.

24 IN THIS INSTANCE, IT'S SOMETHING THAT YOUR  
25 CLIENT OPENED THE DOOR TO. AND MY UNDERSTANDING IS  
26 THAT ALL HE'S GOING TO BE ASKING IS WHETHER OR NOT HE,  
27 IN PRIOR INCIDENTS, SPECIFICALLY TWO, HAS BEEN  
28 INTERVIEWED BY THE POLICE. BECAUSE -- I MEAN THAT'S

1 MY UNDERSTANDING OF THAT YOU'RE ASKING.

2 MR. SANTISO: THAT'S FINE. I'LL KEEP IT LIKE  
3 THAT.

4 THE COURT: SO THAT'S NOT SOMETHING --

5 MR. LE: I WOULD ASK THAT THAT LINE OF  
6 QUESTIONING BE EXCLUDED UNDER 352.

7 THE COURT: OKAY. THAT MOTION IS DENIED.

8  
9 (THE FOLLOWING PROCEEDINGS WERE HELD  
10 IN OPEN COURT IN THE PRESENCE AND  
11 HEARING OF THE JURY:)

12  
13 BY MR. SANTISO:

14 Q SIR, YOU INDICATED THAT DURING THE  
15 INTERVIEW, YOU FELT SCARED BECAUSE YOU HAD NEVER BEEN  
16 IN FRONT OF A POLICE OFFICER BEFORE.

17 MR. LE: OBJECTION. THAT MISSTATES THE  
18 WITNESS'S TESTIMONY.

19 MR. SANTISO: I WASN'T DONE WITH MY QUESTION.

20 THE COURT: I DON'T THINK IT WAS FINISHED. ASK  
21 YOUR WHOLE QUESTION. AND THEN IF YOU HAVE AN  
22 OBJECTION, MR. LE, YOU MAY MAKE AN OBJECTION ONCE THE  
23 QUESTION IS COMPLETED.

24 BY MR. SANTISO:

25 Q YOU JUST STATED THAT YOU WERE SCARED  
26 BECAUSE YOU HAD NEVER BEEN IN FRONT OF A POLICE  
27 OFFICER BEFORE AND WERE ON -- WHILE BEING INTERVIEWED  
28 BY THAT POLICE OFFICER.

1 MR. LE: OBJECTION. THAT'S AMBIGUOUS.

2 THE COURT: OBJECTION IS OVERRULED.

3 THE WITNESS: YES. IN AN INTERROGATION ROOM  
4 LIKE THAT DAY.

5 BY MR. SANTISO:

6 Q BUT YOU'VE BEEN QUESTIONED BY A POLICE  
7 OFFICER BEFORE, HAVEN'T YOU?

8 A WHEN I'VE BEEN STOPPED BY A POLICE  
9 OFFICER, YES. IN TRAFFIC.

10 Q HOW ABOUT IN 2001?

11 A NO. IT WAS ON THE STREET, WHEN I WAS  
12 STOPPED.

13 Q YOU WERE ARRESTED IN 2001, WEREN'T YOU?

14 A YES. I CALLED.

15 Q FOR ONE OF THOSE ARRESTS; CORRECT?

16 A YES.

17 Q AND THEN THERE WAS ANOTHER SITUATION IN  
18 2001 WHERE YOU WERE ALSO ARRESTED; RIGHT?

19 A YES.

20 Q SO THERE ACTUALLY IS TIMES IN THE PAST  
21 WHERE YOU HAVE BEEN INTERVIEWED BY POLICE OFFICERS;  
22 CORRECT?

23 A YES.

24 Q AND THOSE DIDN'T INVOLVE A VEHICLE, DID  
25 IT?

26 A NO.

27 Q NOW, SIR, THE TIME WHERE YOU CALLED THE  
28 POLICE BACK IN 2001, THAT INVOLVED A SITUATION BETWEEN

1 YOU AND MONICA'S MOM; CORRECT?

2 A YES.

3 Q AND THE SITUATION BETWEEN YOU AND MONICA'S  
4 MOM HAPPENED IN FRONT OF MONICA; RIGHT?

5 A YES.

6 Q AND YOU WERE ARRESTED THAT DAY; CORRECT?

7 A YES.

8 Q AND SO WAS MONICA'S MOM; RIGHT?

9 A YES.

10 Q AND THE BOTH OF YOU WERE ARRESTED BECAUSE  
11 YOU BEAT EACH OTHER UP; RIGHT?

12 A YES.

13 Q EVERYTHING ON THE DAY THAT WE'VE BEEN  
14 TALKING ABOUT WAS FINE WITH VANESSA; RIGHT?

15 A YES.

16 Q VANESSA LOOKED HAPPY.

17 A YES.

18 Q WHEN YOU DROPPED HER OFF AT CLAUDIA'S  
19 HOUSE, EVERYTHING WAS FINE WITH VANESSA; RIGHT?

20 A YES.

21 Q AND BY THE TIME THAT YOU HAD DROPPED HER  
22 OFF AND YOU GOT BACK HOME, CLAUDIA CALLED YOUR WIFE;  
23 RIGHT?

24 A MY WIFE'S PHONE.

25 Q SO CLAUDIA CALLED YOUR WIFE; RIGHT?

26 A YES.

27 Q AND YOU DON'T LIVE, OR AT LEAST AT THAT  
28 TIME YOU DIDN'T LIVE VERY FAR FROM MS. CALDERON;

1 CORRECT?

2 A NO.

3 Q SO IT WAS ONLY A SHORT PERIOD OF TIME FROM  
4 WHEN YOU HAD LEFT VANESSA'S HOME TO WHEN YOUR WIFE GOT  
5 THIS CALL; RIGHT?

6 A YES.

7 Q AND WHEN MS. CALDERON CALLED YOUR WIFE,  
8 DID YOU HEAR HOW FRANTIC MS. CALDERON SOUNDED WHEN SHE  
9 WAS SPEAKING TO YOUR WIFE?

10 A YES. SHE WAS TELLING HER ABOUT THE CASE  
11 WITH THE GIRL.

12 Q BUT BEFORE YOU EVEN GOT ON THE PHONE,  
13 COULD YOU TELL HOW FRANTIC MS. CALDERON SOUNDED?

14 A NO.

15 Q HOW ABOUT WHEN YOU GOT ON THE PHONE WITH  
16 MS. CALDERON?

17 A THEN I DID. I COULD HEAR. WHILE SHE WAS  
18 EXPLAINING TO ME WHAT SHE THOUGHT I HAD DONE TO THE  
19 GIRL. THAT I HAD RAPED HER.

20 Q DID SHE SOUND EMOTIONAL?

21 A WELL, SHE WAS SCREAMING AT ME AND  
22 INSULTING ME.

23 Q BUT JUST A FEW MINUTES BEFORE WHEN YOU  
24 LEFT THAT HOUSE, EVERYTHING WAS FINE, WASN'T IT? BY  
25 THAT HOUSE, I MEAN VANESSA'S HOUSE.

26 A YES.

27 Q DID YOU HEAR BLANCA'S TESTIMONY EARLIER --  
28 I THINK IT WAS TODAY. MAYBE IT WAS YESTERDAY. WHERE

1 SHE SAID THAT SHE WAS ONLY GONE FOR FIVE MINUTES?

2 A I DON'T KNOW IF IT WAS TODAY OR YESTERDAY,  
3 BUT YES, I DID HEAR THAT.

4 Q AND YOUR TESTIMONY TODAY IS THAT SHE WAS  
5 GONE FOR FIVE MINUTES; RIGHT?

6 A YES.

7 Q DID YOU HEAR BLANCA'S TESTIMONY YESTERDAY  
8 THAT YOU WERE ONLY AT VANESSA'S HOME FOR HALF AN HOUR?

9 A NO, I DIDN'T HEAR THAT.

10 Q BUT IT'S YOUR TESTIMONY TODAY THAT YOU  
11 WERE THERE FOR HALF AN HOUR; RIGHT?

12 A AT CLAUDIA'S HOUSE?

13 Q THAT'S CORRECT.

14 A YES.

15 Q YOU SAID THAT YOU GOT A CALL AT SOME POINT  
16 IN TIME FROM DETECTIVE HERNANDEZ, AND SHE CANCELLED  
17 YOUR APPOINTMENT; RIGHT?

18 A YES.

19 Q WHEN DID YOU GET THAT CALL?

20 A THE 24TH. IN THE AFTERNOON. AT FOUR.  
21 THE APPOINTMENT WAS FOR FIVE.

22 Q HAD YOU ALREADY SPOKEN TO A LAWYER -- LET  
23 ME ASK IT LIKE THIS.

24 WHAT DAY DID YOU SPEAK TO A LAWYER?

25 A THE 25TH.

26 Q WHAT TIME?

27 A MIDDAY. AROUND TEN.

28 Q YOU DIDN'T GO TO THE INTERVIEW; RIGHT?

1 A THE INTERVIEW WAS ON THE 26TH. AT FIVE.

2 Q WHAT DAY WERE YOU ARRESTED?

3 A THE 26TH, AROUND 7:30 OR 8:00.

4 Q YOU TESTIFIED THAT AT SOME POINT IN TIME  
5 THE DETECTIVE TOLD YOU THAT THE DISTRICT ATTORNEY WAS  
6 GOING TO PUNISH YOU WHEN SHE WAS INTERVIEWING YOU. DO  
7 YOU REMEMBER THAT TESTIMONY?

8 A YES.

9 Q SO YOU'RE SAYING THAT DETECTIVE HERNANDEZ  
10 SAID THAT TO YOU?

11 A YES.

12 Q OKAY. WHAT I'M GOING TO DO -- AND YOUR  
13 HONOR, WHAT I WOULD LIKE TO DO IS I'M GOING TO SHOW  
14 THE DEFENDANT SOME PORTIONS OF THE VIDEO. BUT I WOULD  
15 LIKE THE JURY TO FOLLOW ALONG WITH THE TRANSCRIPT, IF  
16 THAT'S OKAY.

17 THE COURT: THAT'S FINE. ARE YOU GOING TO BE  
18 ABLE TO DESIGNATE THE PAGE AND LINE?

19 MR. SANTISO: THAT'S ALL SET.

20 THE COURT: OKAY. YOU MAY PASS THE TRANSCRIPTS  
21 OUT. IS THIS ONE IN THE EXHIBIT ENVELOPE?

22 MR. SANTISO: YES. THERE SHOULD BE, YOUR HONOR.  
23 MAY I APPROACH?

24 THE COURT: YES.

25 BY MR. SANTISO:

26 Q ALL RIGHT. SIR, I'M GOING TO GO THROUGH  
27 SOME CLIPS WITH YOU IN JUST A MOMENT.

28 WHEN YOU WERE WITH VANESSA AT YOUR HOUSE,



1 THERE WAS A POINT IN TIME THAT YOU WERE COMPLETELY  
2 ALONE WITH HER; RIGHT?

3 A AT MY HOUSE? WHEN WE WERE AT MY  
4 APARTMENT?

5 Q THAT'S CORRECT, SIR.

6 A YES.

7 Q FIRST TIME YOU'D BEEN ALONE WITH HER,  
8 ISN'T IT?

9 A YES.

10 Q PRIOR -- I'M GOING TO ASK YOU A SERIES OF  
11 QUESTIONS ABOUT ONLY ONE DAY. AND THE DAY I WILL BE  
12 REFERRING TO IS THE DAY WHERE YOU WERE ALONE WITH  
13 VANESSA IN YOUR APARTMENT. OKAY?

14 A YES.

15 Q PRIOR TO THIS DATE, DID YOU FIND ANYTHING  
16 EROTIC ABOUT VANESSA?

17 A NO.

18 Q BUT ON THIS DAY YOU DID; RIGHT?

19 A YES.

20 Q WHAT DID YOU FIND EROTIC ABOUT HER?

21 A I DON'T KNOW. EROTIC? NOTHING.

22 Q MAYBE YOU MISUNDERSTOOD MY QUESTION. ON  
23 THIS DAY WHEN YOU WERE ALONE WITH VANESSA, DID YOU  
24 FIND HER EROTIC?

25 A NO.

26 Q WERE YOU SEXUALLY AROUSED BY HER?

27 A NO.

28 Q WAS THE WAY HER DRESS WAS UP ON HER LEGS

1       EROTIC TO YOU?

2           A       NO.

3           Q       DID THAT SEXUALLY AROUSE YOU?

4           A       NO.   SHE'S A GIRL.

5           MR. SANTISO:   FOR THE RECORD, IF I MAY HAVE  
6       EVERYBODY TURN TO PAGE 35.   AND I WILL BEGIN AT LINE  
7       15.   AND I'LL START PLAYING THE CD AT 17 MINUTES AND  
8       23 SECONDS.

9                       SIR, WHAT I'M GOING TO DO IS I'M GOING TO  
10       PLAY A CLIP FOR YOU, AND I WANT YOU TO LISTEN TO IT  
11       AND WATCH IT, PLEASE.   AND I'LL ASK YOU A QUESTION.

12                      I'M ACTUALLY GOING TO START PLAYING IT AT  
13       17-16, BUT THE RELEVANT PORTION WILL BEGIN ON PAGE 35,  
14       LINE 15.   ACTUALLY, I'LL START COMPLAINING IT AT  
15       17-16.

16  
17                      (A RECORDING WAS PLAYED  
18                      IN OPEN COURT.)

19  
20           MR. SANTISO:   FOR THE RECORD, I'VE STOPPED IT AT  
21       17-45.

22       BY MR. SANTISO:

23           Q       DID YOU HAVE A CHANCE TO LISTEN TO THAT?

24           A       YES.

25           Q       YOU ARE TELLING THE DETECTIVE THAT YOU  
26       FOUND VANESSA EROTIC, AREN'T YOU?

27           A       YES, BUT I FELT INTIMIDATED BY WHAT SHE  
28       HAD ASKED ME EARLIER.

1 Q YOU ACTUALLY, YOURSELF, SAID THE WORD  
2 EROTIC. RIGHT?

3 A YES, I SAID IT, YES.

4 Q YOU DIDN'T JUST SHAKE YOUR HEAD YES;  
5 RIGHT?

6 A WITH MY HEAD?

7 Q YOU GAVE A VERBAL RESPONSE. A VERBAL  
8 RESPONSE TO HER QUESTION; CORRECT?

9 A YES.

10 Q WHAT ABOUT THIS PORTION OF THE INTERVIEW  
11 DID YOU FIND INTIMIDATING BY THE DETECTIVE?

12 A WHEN SHE SAID THAT SHE WAS GOING TO CLOSE  
13 THE BOOK AND THE CASE -- WELL, THAT I'M GOING TO  
14 ARREST YOU.

15 Q SHE WAS GOING TO ARREST YOU ANYWAY, SO WHY  
16 WOULD YOU KEEP ON TALKING?

17 MR. LE: OBJECTION. THAT'S ARGUMENTATIVE.

18 THE COURT: THE OBJECTION IS SUSTAINED. ON  
19 OTHER GROUNDS.

20 BY MR. SANTISO:

21 Q YOU KEPT ON TALKING TO HER IN THIS  
22 INTERVIEW WITH THE DETECTIVE; RIGHT?

23 A YES.

24 Q WHEN YOU WERE ALONE WITH VANESSA, YOU  
25 COULDN'T CONTROL YOURSELF; RIGHT?

26 A IT'S JUST THAT I DIDN'T TOUCH THE GIRL.

27 Q DID YOU ACT ON IMPULSE?

28 A NO.

1 Q THAT'S WHAT YOU TOLD THE DETECTIVE, ISN'T  
2 IT?

3 A YES. I TOLD HER THAT. BUT SHE TOLD ME  
4 THAT SHE WAS GOING TO HELP ME IF I COOPERATED BY  
5 SENDING ME TO A PSYCHOLOGIST. THAT'S WHY I TOLD HER.

6 MR. SANTISO: I'LL REFER EVERYBODY TO PAGE 34,  
7 LINE 26. FOR THE RECORD, I WILL START PLAYING THE CD  
8 AT 17-07.

9 BY MR. SANTISO:

10 Q SIR, I'M GOING TO ASK YOU TO WATCH THIS  
11 VIDEO AND ASK YOU A FEW QUESTIONS AFTERWARDS.

12  
13 (A RECORDING WAS PLAYED  
14 IN OPEN COURT.)

15  
16 MR. SANTISO: FOR THE RECORD, I STOPPED IT AT  
17 17-25.

18 BY MR. SANTISO:

19 Q THOSE ARE YOUR WORDS; RIGHT? WHEN YOU SAY  
20 IT WAS AN IMPULSE?

21 A YES.

22 Q AND YOU ACTUALLY SAID THAT YOU ACTED ON  
23 IMPULSE ON -- DURING MORE THAN ONE TIME DURING THIS  
24 INTERVIEW, DIDN'T YOU?

25 A YES, BECAUSE THAT'S WHAT THE DETECTIVE  
26 WANTED TO HEAR.

27 Q ARE YOU SAYING THAT YOU JUST SAID  
28 EVERYTHING BECAUSE THAT'S WHAT THE DETECTIVE WANTED TO

1 HEAR?

2 A YES.

3 Q THEN WHY DIDN'T YOU ADMIT TO HAVING ORAL  
4 SEX WITH VANESSA?

5 A BECAUSE I HADN'T DONE THAT.

6 Q BUT YOU'RE SAYING THAT YOU ADMITTED TO  
7 THINGS IN THAT INTERVIEW BECAUSE YOU -- BECAUSE OF THE  
8 DETECTIVE WANTED YOU TO; RIGHT?

9 A YES, SHE TOLD ME THAT SHE WANTED TO  
10 PRESENT HER REPORT.

11 Q BUT YOU DENIED ORAL SEX; RIGHT?

12 A YES.

13 Q SO SHE DIDN'T GET YOU TO ADMIT TO  
14 EVERYTHING THAT SHE WANTED YOU TO, THEN; RIGHT?

15 A YES.

16 Q WHEN YOU WERE FIRST CONFRONTED BY THE  
17 DETECTIVE ABOUT INAPPROPRIATELY SEXUALLY TOUCHING  
18 VANESSA, DID YOU DENY IT?

19 A YES.

20 MR. SANTISO: I'LL REFER EVERYBODY TO PAGE 11,  
21 LINE 11.

22 ALL RIGHT, SIR. I'M GOING TO PLAY YOU  
23 SOMETHING. IF YOU COULD PLEASE WATCH IT AND LISTEN TO  
24 IT AND I'LL ASK YOU SOME QUESTIONS.

25 FOR THE RECORD, I'M GOING TO START PLAYING  
26 IT AT 5 MINUTES AND 17 SECONDS.

27

28

1 (A RECORDING WAS PLAYED  
2 IN OPEN COURT.)  
3

4 MR. SANTISO: FOR THE RECORD, THE CD ACTUALLY  
5 STARTED AT 5 MINUTES AND 15 SECONDS, AND I STOPPED IT  
6 AT 5 MINUTES AND 43 SECONDS.

7 BY MR. SANTISO:

8 Q DID YOU HAVE A CHANCE TO LISTEN TO THAT,  
9 SIR?

10 A YES.

11 Q THIS IS THE FIRST PORTION OF THE INTERVIEW  
12 WHERE THE DETECTIVE STARTS TELLING YOU ABOUT THE  
13 SEXUAL ABUSE; RIGHT?

14 A YES.

15 Q YOU DIDN'T DENY ANYTHING, DID YOU?

16 A NO.

17 Q YOU DIDN'T SHAKE YOUR HEAD?

18 A NO.

19 Q YOU DIDN'T ACT SURPRISED?

20 A NO.

21 Q DIDN'T ASK THE DETECTIVE WHAT SHE WAS  
22 TALKING ABOUT?

23 A NO.

24 Q AND AT THIS PORTION OF THE INTERVIEW, THIS  
25 IS BEFORE THE DETECTIVE BROUGHT ANYTHING UP ABOUT A  
26 PSYCHOLOGIST; RIGHT?

27 A YES.

28 Q OR THE D.A.?

1 A YES. BEFORE.

2 Q OR CLOSING THE BOOK?

3 A YES.

4 Q OR ARRESTING YOU.

5 A YES.

6 MR. SANTISO: REFERRING EVERYBODY TO PAGE 21,  
7 LINE 12.

8 ALL RIGHT, SIR. I'M GOING TO PLAY  
9 SOMETHING FOR YOU. IF YOU COULD PLEASE LISTEN TO IT.  
10 FOR THE RECORD, I'M STARTING IT AT EIGHT MINUTES AND  
11 14 SECONDS.

12  
13 (A RECORDING WAS PLAYED  
14 IN OPEN COURT.)  
15

16 MR. SANTISO: FOR THE RECORD, IT ACTUALLY  
17 STARTED AT EIGHT MINUTES AND 12 SECONDS. AND I  
18 STOPPED IT AT NINE MINUTES AND 46 SECONDS.  
19 BY MR. SANTISO:

20 Q SIR, DID YOU HAVE A CHANCE TO LISTEN TO  
21 THAT?

22 A YES.

23 Q YOU'RE NOT DENYING ANYTHING SHE'S SAYING,  
24 ARE YOU?

25 A NO.

26 Q AT ONE POINT IN TIME SHE SAYS THAT YOU  
27 DIDN'T USE FORCE; RIGHT?

28 A I DIDN'T USE FORCE.



1 Q LET ME RE-ASK THE QUESTION. WHEN SHE IS  
2 TELLING YOU WHAT VANESSA SAID THAT YOU DID TO HER, SHE  
3 BRINGS UP THAT YOU DIDN'T USE FORCE; RIGHT?

4 A YES. THAT'S RIGHT.

5 Q AND AT THAT PORTION, YOU AGREED TO THAT BY  
6 SAYING NO; RIGHT?

7 A YES.

8 Q BUT NOTHING ELSE THAT SHE SAID DID YOU  
9 DENY.

10 MR. LE: OBJECTION. THAT'S VAGUE.

11 THE COURT: OBJECTION IS OVERRULED.

12 THE WITNESS: YES.

13 MR. SANTISO: THAT MAY HAVE BEEN A POOR  
14 QUESTION.

15 BY MR. SANTISO:

16 Q YOU DIDN'T DENY ANYTHING SHE SAID; RIGHT?  
17 DURING THIS PORTION?

18 A NO.

19 Q AND AT THE END OF THAT PORTION THAT I JUST  
20 SHOWED YOU, THE DETECTIVE ASKS YOU WHAT YOU WERE  
21 THINKING; RIGHT?

22 A YES.

23 Q AND YOU DIDN'T EVEN ANSWER THAT QUESTION;  
24 RIGHT?

25 A NO.

26 Q YOU JUST STARTED TALKING ABOUT YOUR  
27 DAUGHTER; CORRECT?

28 A YES.

1 Q AND YOU TALKED ABOUT HOW YOUR DAUGHTER WAS  
2 WITH YOU THE ENTIRE TIME; RIGHT?

3 A YES.

4 Q BUT THAT WASN'T THE TRUTH, WAS IT?

5 A AT THE TIME THAT THE GIRL WAS THERE, MY  
6 DAUGHTER WASN'T.

7 Q THAT ISN'T MY QUESTION. MY QUESTION IS,  
8 YOU TOLD THE DETECTIVE YOUR DAUGHTER WAS WITH YOU THE  
9 ENTIRE TIME; RIGHT?

10 A YES.

11 Q BUT THAT WASN'T THE TRUTH.

12 A WHEN -- WHEN THE GIRL WAS THERE WITH ME,  
13 MY DAUGHTER WAS NOT THERE.

14 Q I KNOW. MY QUESTION IS, WHEN YOU TOLD  
15 THAT TO THE DETECTIVE -- NOT WHAT WE KNOW TODAY, BUT  
16 AT THE TIME WHEN YOU'RE TALKING TO THE DETECTIVE, YOU  
17 TOLD HER YOUR DAUGHTER WAS WITH YOU THE ENTIRE TIME.  
18 BUT THAT WAS NOT THE TRUTH; CORRECT?

19 MR. LE: OBJECTION. IT'S ARGUMENTATIVE. ASKED  
20 AND ANSWERED.

21 THE COURT: THE OBJECTION IS SUSTAINED. AS TO  
22 THE FORM -- AS TO THE WORDS USED.  
23 BY MR. SANTISO:

24 Q WHEN YOU TOLD THE DETECTIVE THAT YOUR  
25 DAUGHTER WAS WITH YOU THE ENTIRE TIME, THAT WAS NOT  
26 THE TRUTH; CORRECT?

27 A CORRECT.

28 Q AND WE KNOW THAT WAS NOT THE TRUTH BECAUSE

1 YOU HAD ALREADY TAKEN HER HOME WHEN YOU WERE ALONE  
2 WITH VANESSA; RIGHT?

3 A YES.

4 Q WHEN BLANCA LEFT TO GET THE CARDS, DID YOU  
5 PUT VANESSA ON YOUR LAP?

6 A NO.

7 MR. SANTISO: I REFER EVERYBODY TO PAGE 24, LINE  
8 21.

9 JUROR NUMBER ONE: CAN HE TELL US WHAT -- LET US  
10 KNOW WHAT LINES YOU'RE GOING THROUGH?

11 THE COURT: SOMETIMES PART OF THE PROBLEM IS,  
12 MR. SANTISO, YOU REFER THEM TO A LINE, BUT THEN YOU  
13 START EARLIER, SO IT'S A LITTLE CONFUSING. AND I  
14 DON'T KNOW IF -- SO IT'S A LITTLE CONFUSING.

15 IF YOU COULD JUST TELL US IF YOU KNOW WHAT  
16 LINE YOU'RE STARTING AT AND WHAT LINE YOU'RE ENDING  
17 AT. WHEN YOU END, YOU END. BUT MAINLY WHAT LINE  
18 YOU'RE STARTING AT.

19 BECAUSE IT'S A LITTLE CONFUSING WHEN YOU  
20 DIRECT PEOPLE TO A LINE AND THEN YOU START EARLIER.

21 MR. SANTISO: IT'S JUST THAT THE CD JUMPS. BUT  
22 FOR PURPOSES OF THIS QUESTION, I WILL BE USING PAGE  
23 24, LINE 21 THROUGH LINE 28.

24 THE COURT: SO THE RECORDING MAY NOT BE THOSE  
25 EXACT LINES, BUT THAT'S WHAT YOU'RE GOING TO BE ASKING  
26 HIM ABOUT.

27 MR. SANTISO: RIGHT. MAY I?

28 THE COURT: YES.

1 MR. SANTISO: I'M GOING TO PLAY THIS CLIP. SIR,  
2 JUST LISTEN TO IT AND THEN I'LL ASK YOU SOME  
3 QUESTIONS. IT'S GOING TO START A LITTLE BIT EARLIER.  
4 IT'S GOING TO START AT 10-41, FOR THE RECORD.

5  
6 (A RECORDING WAS PLAYED  
7 IN OPEN COURT.)  
8

9 BY MR. SANTISO:

10 Q ALL RIGHT. IT JUMPED BACK WHEN I FIRST  
11 STARTED PLAYING IT. SO I APOLOGIZE. IT ACTUALLY  
12 STARTED AT 10 MINUTES AND 37 SECONDS AND I STOPPED IT  
13 AT 10 MINUTES AND 51 SECONDS.

14 DID YOU LISTEN TO THAT?

15 A YES. I HEARD THAT SHE ASKED ME ABOUT THAT  
16 THERE.

17 Q OKAY. YOU DID ACTUALLY PUT HER ON YOUR  
18 LAP; RIGHT?

19 A YES.

20 Q WHY WOULD YOU PUT HER ON YOUR LAP WHEN  
21 YOU'RE ALL ALONE WITH HER?

22 A BECAUSE SHE SAYS TICKLE ME, PADRINO.

23 Q AND THEN WHY DIDN'T YOU ADMIT TO PUTTING  
24 HER ON YOUR LAP WHEN I JUST ASKED YOU THAT QUESTION?

25 A BECAUSE I DIDN'T REMEMBER THAT SHE HAD  
26 ASKED ME ABOUT IT AT THE TIME.

27 Q BUT SIR, I DIDN'T ASK YOU IF YOU  
28 REMEMBERED BEING ASKED THAT QUESTION BY DETECTIVE

1 HERNANDEZ. WHAT I ASKED YOU WAS DID YOU PUT VANESSA  
2 ON YOUR LAP WHEN BLANCA WASN'T THERE. RIGHT?

3 A YES.

4 MR. SANTISO: I'LL NOW REFER EVERYBODY TO PAGE  
5 32, LINE THREE. AND WE'RE GOING TO GO THROUGH LINE  
6 24. PAGE 32, LINE 3, THROUGH LINE 24. STARTING AT 15  
7 MINUTES AND 12 SECONDS.

8  
9 (A RECORDING WAS PLAYED  
10 IN OPEN COURT.)  
11

12 MR. SANTISO: FOR THE RECORD, I STOPPED IT AT 15  
13 MINUTES AND 43 SECONDS.

14 BY MR. SANTISO:

15 Q DID YOU HAVE A CHANCE TO LISTEN TO THAT,  
16 SIR?

17 A YES.

18 Q DID YOU TOUCH VANESSA IN HER VAGINA?

19 A NO.

20 Q DID YOU PUT YOUR FACE IN HER VAGINA?

21 A NO.

22 Q DID YOU RUB YOUR PENIS ON HER VAGINA?

23 A NO.

24 Q WHY DIDN'T YOU TELL THAT TO THE DETECTIVE  
25 WHEN SHE'S SAYING THESE THINGS TO YOU?

26 A BECAUSE I FELT AFRAID.

27 Q WHY DID YOU TELL HER YOU MADE A MISTAKE?

28 A SHE ASKED ME IF I HAD MADE A MISTAKE.

1 Q WHY DID YOU TELL HER YOU WEREN'T GOING TO  
2 DO IT AGAIN?

3 A BECAUSE IF THIS IS WHAT THE GIRL MADE UP  
4 AT SUCH A YOUNG AGE, WHAT MIGHT SHE MAKE UP WHEN SHE  
5 GETS OLDER?

6 Q MY QUESTION ACTUALLY WAS WHY DID YOU TELL  
7 HER YOU WEREN'T GOING TO DO IT AGAIN?

8 A BECAUSE I'M NOT GOING TO BE CLOSE TO THE  
9 GIRL ANY MORE.

10 Q DID YOU KISS VANESSA ON THE OUTSIDE OF HER  
11 UNDERWEAR?

12 A NO.

13 Q WHEN DETECTIVE HERNANDEZ WAS CONFRONTING  
14 YOU ABOUT HAVING ORAL SEX WITH VANESSA, DIDN'T YOU  
15 ACTUALLY CLARIFY FOR HER WHAT YOU HAD DONE?

16 A NO, NO, I DIDN'T CLARIFY.

17 Q DIDN'T YOU TELL HER THAT YOU HAD DONE IT  
18 OVER THE UNDERWEAR?

19 A NO.

20 MR. SANTISO: I'LL REFER EVERYBODY TO PAGE 38,  
21 LINE 8. THROUGH LINE 17. PAGE 38, LINE 8 THROUGH  
22 LINE 17.

23 SIR -- FOR THE RECORD, IT'S GOING TO START  
24 A LITTLE BIT EARLIER, BUT THOSE ARE THE RELEVANT  
25 PORTIONS. SIR, LISTEN TO THIS, PLEASE, AND I'LL ASK  
26 YOU A FEW QUESTIONS.

27

28

1 (A RECORDING WAS PLAYED  
2 IN OPEN COURT.)  
3

4 MR. SANTISO: I MAY HAVE FORGOTTEN TO INDICATE  
5 FOR THE RECORD WHERE I STARTED IT, BUT THAT CLIP WENT  
6 FROM 18 MINUTES AND 44 SECONDS TO 19 MINUTES AND 8  
7 SECONDS.

8 BY MR. SANTISO:

9 Q DID YOU HAVE A CHANCE TO LISTEN TO THAT,  
10 SIR?

11 A YES.

12 Q YOU CLARIFIED FOR DETECTIVE HERNANDEZ THE  
13 ORAL SEX PART, DIDN'T YOU?

14 A WHEN SHE ASKED ME IF THERE WAS SALIVA  
15 INSIDE OF THE VAGINA, I TOLD HER NO, NOT INSIDE THE  
16 VAGINA.

17 Q BUT THEN YOU SAID SOMETHING ABOUT HER  
18 UNDERWEAR, DIDN'T YOU?

19 A YES.

20 Q AND THAT'S BECAUSE THAT'S WHERE YOU PUT  
21 YOUR FACE, ISN'T IT?

22 A BUT IT'S NOT TRUE.

23 Q WHY DID YOU CLARIFY THAT FOR DETECTIVE  
24 HERNANDEZ?

25 A BECAUSE THAT'S WHAT SHE WANTED ME TO TELL  
26 HER.

27 Q THAT'S NOT TRUE. SHE WANTED YOU TO ADMIT  
28 ORAL SEX; RIGHT?



1 MR. LE: OBJECTION. ARGUMENTATIVE.

2 THE COURT: OBJECTION SUSTAINED.

3 BY MR. SANTISO:

4 Q SHE WANTED YOU TO ADMIT ORAL SEX. THAT IS  
5 YOUR TESTIMONY; RIGHT?

6 A CORRECT.

7 Q AND WHEN SHE'S TRYING TO GET YOU TO ADMIT  
8 ORAL SEX, YOU CLARIFIED FOR HER IT WAS OVER THE  
9 UNDERWEAR; ISN'T THAT TRUE?

10 A YES.

11 Q SHE DIDN'T PUT THOSE WORDS IN YOUR MOUTH,  
12 DID SHE?

13 A BUT SHE WAS ASKING ME ABOUT ORAL SEX THAT  
14 I HAD DONE.

15 Q SHE DID NOT PUT THOSE WORDS IN YOUR MOUTH,  
16 THOUGH; CORRECT?

17 A CORRECT.

18 THE COURT: I DON'T KNOW WHERE YOU ARE.

19 MR. SANTISO: REALLY, I'M JUST ABOUT DONE,  
20 ACTUALLY. MAYBE FIVE MORE MINUTES?

21 THE COURT: ALL RIGHT.

22 BY MR. SANTISO:

23 Q YOU ASKED YOUR COMPADRE PEDRO FOR  
24 FORGIVENESS; RIGHT?

25 A YES, I TALKED TO HIM.

26 Q AND YOU HAD A CONVERSATION WITH THE  
27 DETECTIVE ABOUT ASKING PEDRO FOR YOUR FORGIVENESS;  
28 RIGHT?

1           A       YES.  BECAUSE SHE ASKED ME IF I HAD  
2  ALREADY TALKED TO HIM.

3           Q       MY QUESTION IS YOU ASKED PEDRO FOR  
4  FORGIVENESS, THOUGH; RIGHT?

5           A       YES.

6           Q       BUT IT'S YOUR TESTIMONY, SIR, THAT YOU  
7  DIDN'T DO ANYTHING TO VANESSA?

8           A       YES.

9           Q       SIR, WHY, IF YOU DIDN'T DO ANYTHING TO  
10  VANESSA WHEN SHE WAS ALONE WITH YOU, WHY WOULD SHE  
11  ACCUSE YOU OF DOING THE THINGS THAT SHE SAYS YOU DID?

12          MR. LE:  OBJECTION.  CALLS FOR SPECULATION, YOUR  
13  HONOR.

14          THE COURT:  OBJECTION IS SUSTAINED.  
15  BY MR. SANTISO:

16          Q       VANESSA DOESN'T LIKE YOU ANY MORE; RIGHT?  
17  AT LEAST FROM WHAT YOU HEARD?

18          MR. LE:  OBJECTION.  CALLS FOR SPECULATION.

19          THE COURT:  OBJECTION IS SUSTAINED.

20          MR. SANTISO:  I HAVE NOTHING FURTHER.

21          THE COURT:  ALL RIGHT.  LADIES AND GENTLEMEN,  
22  WE'RE GOING TO TAKE OUR AFTERNOON RECESS AT THIS TIME.

23                 PLEASE REMEMBER THE ADMONITION TO NOT  
24  DISCUSS THIS MATTER AMONG YOURSELVES OR WITH ANYONE  
25  ELSE OR FORM OR EXPRESS AN OPINION ON IT.  TAKE A  
26  FIFTEEN-MINUTE RECESS, PLEASE.

27  
28                 (RECESS.)

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(THE FOLLOWING PROCEEDINGS WERE HELD  
IN OPEN COURT, OUT OF THE PRESENCE  
AND HEARING OF THE JURY:)

THE COURT: ANYTHING BEFORE WE BRING THE JURORS  
BACK IN?

MR. LE: NO.

THE COURT: MR. SANTISO?

MR. SANTISO: NO, YOUR HONOR.

THE COURT: ALL RIGHT.

(THE FOLLOWING PROCEEDINGS WERE HELD  
IN OPEN COURT IN THE PRESENCE AND  
HEARING OF THE JURY:)

THE COURT: ALL RIGHT. THE RECORD WILL REFLECT  
THE JURORS AND ALTERNATE JURORS ARE PRESENT. MR.  
ORELLANA IS ON THE WITNESS STAND.

YOU WERE FINISHED; CORRECT, MR. SANTISO?

MR. SANTISO: YES. THANK YOU.

THE COURT: REDIRECT, MR. LE?

MR. LE: YES.

1 REDIRECT EXAMINATION

2  
3 BY MR. LE:

4 Q MR. ORELLANA, AFTER YOU RETURNED, YOU AND  
5 BLANCA RETURNED FROM DROPPING OFF VANESSA, YOU THEN  
6 RECEIVED A PHONE CALL FROM CLAUDIA CALDERON; RIGHT?

7 A YES.

8 Q AND CLAUDIA, SHE WAS UPSET DURING THIS  
9 CONVERSATION; RIGHT?

10 A YES.

11 Q DID SHE USE -- DID SHE MAKE A SPECIFIC  
12 ACCUSATION TO YOU REGARDING WHAT YOU DID TO VANESSA?

13 A YES.

14 Q AND WHAT DID SHE SPECIFICALLY ACCUSE YOU  
15 OF DOING TO VANESSA?

16 MR. SANTISO: I'LL OBJECT, YOUR HONOR. IT'S  
17 BEEN ASKED AND ANSWERED ON DIRECT.

18 THE COURT: I'M GUESSING WHAT MR. LE IS GETTING  
19 AT. THE OBJECTION IS OVERRULED.

20 THE WITNESS: THAT I HAD RAPED THE CHILD.

21 BY MR. LE:

22 Q AND WHEN THE DETECTIVE -- WHEN THE  
23 DETECTIVE FIRST STARTED INTERVIEWING YOU, SHE HAD  
24 INFORMED YOU; RIGHT? SHE INFORMED YOU THAT YOU WERE  
25 NOT BEING ARRESTED FOR RAPE; RIGHT?

26 A YES.

27 Q AND WHEN SHE TOLD YOU THAT, HOW DID YOU  
28 FEEL? WHEN SHE TOLD YOU THAT YOU WERE NOT BEING

1 ARRESTED FOR RAPE, HOW DID YOU FEEL?

2 A WELL, I FELT THAT IT WASN'T AS SEVERE AS  
3 -- SERIOUS AS SHE TOLD ME IT WAS.

4 Q NOW, BACK IN 2001, WHEN YOU WERE ARRESTED  
5 FOR AN INCIDENT WITH MONICA'S MOTHER, WERE YOU THE ONE  
6 THAT CALLED THE POLICE?

7 A YES.

8 Q AND BOTH YOU AND MS. ARGUETA WERE ARRESTED  
9 ON THAT INCIDENT; RIGHT?

10 A YES.

11 Q NOW, THE OTHER INCIDENT IN 2001 IN WHICH  
12 YOU WERE ARRESTED, DID THAT INCIDENT INVOLVE YOU DOING  
13 SEXUALLY INAPPROPRIATE THINGS TO A CHILD?

14 A NO.

15 Q THAT SECOND INCIDENT FOR WHICH YOU WERE  
16 ARRESTED IN 2001, WHO DID THAT INVOLVE?

17 A WITH MARIA MENDOZA.

18 Q AND MARIA MENDOZA, WAS SHE AN ADULT AT THE  
19 TIME?

20 A YES.

21 Q IS SHE RELATED TO PEDRO MENDOZA?

22 A THE SISTER.

23 Q NOW, THE INCIDENT IN WHICH YOU WERE  
24 ARRESTED WITH MARIA MENDOZA, DID IT INVOLVE ANY SEXUAL  
25 ABUSE OR ALLEGATION?

26 MR. SANTISO: I'LL OBJECT. ASKED AND ANSWERED.

27 THE COURT: OBJECTION IS OVERRULED.

28 THE WITNESS: NO.

1900

1 BY MR. LE:

2 Q NOW, DURING THE PART OF THE INTERVIEW  
3 TOWARDS THE END, I BELIEVE, WITH DETECTIVE HERNANDEZ,  
4 YOU HAD MENTIONED A PHONE CALL THAT YOU HAD -- A  
5 CONVERSATION THAT YOU HAD HAD WITH YOUR COMPADRE,  
6 PEDRO. DO YOU REMEMBER THAT?

7 A YES.

8 Q AND HAD YOU INDICATED TO DETECTIVE  
9 HERNANDEZ THAT YOU HAD ASKED PEDRO FOR FORGIVENESS.  
10 DO YOU REMEMBER SAYING SOMETHING TO THAT EFFECT, MR.  
11 ORELLANA?

12 A YES.

13 Q NOW, WHY DID YOU ASK PEDRO FOR FORGIVENESS  
14 WHEN YOU SPOKE TO HIM?

15 A HE ASKED ME IF IT WAS TRUE, AND I SAID NO.  
16 IT WAS AN INCIDENT THAT SHE WAS ACCUSING ME OF.

17 Q WELL, WHY DID YOU ASK PEDRO FOR  
18 FORGIVENESS? IF YOU HADN'T DONE ANYTHING WRONG TO  
19 VANESSA, WHY DID YOU ASK PEDRO FOR FORGIVENESS?

20 A BECAUSE SOMETHING, YOU KNOW, JUST ONE OF  
21 THOSE THINGS THAT HAPPENED, BUT IT WAS NOTHING  
22 SERIOUS.

23 Q DID YOU TELL HIM THAT YOU WERE NOT GOING  
24 TO BE ABLE TO SEE VANESSA ANY MORE?

25 MR. SANTISO: I'LL OBJECT AS LEADING, YOUR  
26 HONOR.

27 THE COURT: OBJECTION SUSTAINED.

28 BY MR. LE:

1 Q DID YOU ASK PEDRO FOR FORGIVENESS BECAUSE  
2 YOU HAD DONE SOMETHING INAPPROPRIATE WITH VANESSA?

3 A NO. NOT WHAT ANYTHING -- NOTHING THAT I  
4 HAD DONE. JUST BECAUSE OF THE SPECULATION THAT I WAS  
5 BEING ACCUSED OF HAVING DONE SOMETHING WITH THE CHILD.

6 MR. LE: I'M GOING TO PLAY YOU A PORTION OF THE  
7 INTERVIEW THAT YOU HAD WITH DETECTIVE HERNANDEZ.

8 I'M GOING TO REFER THE COURT AND COUNSEL  
9 AND THE LADIES AND GENTLEMEN OF THE JURY TO THE BOTTOM  
10 PORTION OF 24. I BELIEVE IT'S GOING TO START AT LINE  
11 25. AND THEN I'M GOING TO ASK THAT IT BE STOPPED AT  
12 PAGE 26, AFTER LINE 15.

13 NOW I'M GOING TO PLAY YOU A CERTAIN  
14 PORTION OF THIS INTERVIEW WITH DETECTIVE HERNANDEZ,  
15 OKAY?

16  
17 (A RECORDING WAS PLAYED  
18 IN OPEN COURT.)  
19

20 BY MR. LE:

21 Q NOW --

22 MR. SANTISO: COULD THE RECORD REFLECT WHAT  
23 PORTION WAS PLAYED, YOUR HONOR?

24 MR. LE: IT STARTED AT 10 MINUTES AND 47  
25 SECONDS. AND I ENDED AT 12.

26 THE COURT: THANK YOU.

27 BY MR. LE:

28 Q NOW, MR. ORELLANA, WHEN YOU STARTED TO



1 ADMIT THAT THERE WAS SOME WRONGDOING ON YOUR PART WITH  
2 VANESSA, WAS IT BEFORE OR AFTER THIS PORTION OF THE  
3 INTERVIEW THAT I JUST PLAYED FOR YOU?

4 A IT WAS AFTER THAT THAT I SAID THAT.  
5 BECAUSE THAT'S WHAT SHE WANTED ME TO TELL HER.

6 Q NOW, PRIOR TO THIS, BEFORE THIS PORTION,  
7 BEFORE THIS PORTION THAT I JUST PLAYED FOR YOU, DID  
8 DETECTIVE HERNANDEZ MAKE SPECIFIC -- OR TELL YOU ABOUT  
9 SPECIFIC ALLEGATIONS THAT VANESSA HAD MADE TO YOU?

10 A YES.

11 Q AND BEFORE SHE TOLD YOU ABOUT -- BEFORE  
12 DETECTIVE HERNANDEZ HAD MENTIONED TO YOU ABOUT RAISING  
13 THE CHARGE AND ALSO CLOSING THE BOOK ON YOU, HAD YOU  
14 DENIED THAT YOU HAD DONE ANYTHING INAPPROPRIATE WITH  
15 VANESSA?

16 A YES.

17 Q NOW, BEFORE PEDRO WAS DEPORTED, DID YOU  
18 MAKE A PROMISE TO PEDRO ABOUT VANESSA?

19 MR. SANTISO: OBJECTION. THIS HAS BEEN ASKED  
20 AND ANSWERED, YOUR HONOR.

21 THE COURT: OBJECTION IS SUSTAINED.

22 BY MR. LE:

23 Q NOW, MR. ORELLANA, I'M GOING TO ASK YOU  
24 THIS LAST QUESTION. HAVE YOU EVER DONE -- WELL, YOU  
25 KNOW WHAT? YOU KNOW WHAT? HAD YOU EVER DONE ANYTHING  
26 INAPPROPRIATE WITH VANESSA BEFORE?

27 MR. SANTISO: I'LL OBJECT. THAT'S BEEN ASKED  
28 AND ANSWERED, YOUR HONOR.

1 THE COURT: OBJECTION SUSTAINED.

2 BY MR. LE:

3 Q HAVE YOU EVER TAKEN VANESSA ON YOUR LAP  
4 BEFORE?

5 A NO.

6 Q THAT WAS THE FIRST DAY THAT YOU EVER PUT  
7 HER ON YOUR LAP?

8 A YES.

9 Q DID YOU EVER PLAY AROUND WITH VANESSA AND  
10 TICKLE HER?

11 A YES. BEFORE, I MEAN SHE LIKED THAT.

12 Q DID YOU EVER ALSO PUT HER ON YOUR LAP AND  
13 TICKLE HER PRIOR?

14 MR. SANTISO: I'LL OBJECT. VAGUE AS TO TIME,  
15 YOUR HONOR.

16 THE COURT: OBJECTION IS SUSTAINED.

17 MR. LE: I HAVE NO FURTHER QUESTIONS.

18 THE COURT: MR. SANTISO?

19 MR. SANTISO: NO, THANK YOU.

20 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY  
21 STEP DOWN.

22 MR. LE?

23 MR. LE: YES. MAY WE APPROACH, YOUR HONOR?

24 THE COURT: SURE.

25

26 (THE FOLLOWING PROCEEDINGS WERE HELD

27 AT THE BENCH:)

28

# **APPENDIX N**

Jun. 6, 2014

C-2 R-5 & PR

R. Hernandez, Deputy Clerk

COURT OF APPEAL OF T.

SECOND APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
 )  
 PLAINTIFF-RESPONDENT, ) SUPERIOR  
 ) COURT  
 VS. ) NO.  
 ) BA403082-01  
 01) JUAN ANTONIO ORELLANA, )  
 )  
 DEFENDANT-APPELLANT. )

JUN 03 2014

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HONORABLE LISA B. LENCH, JUDGE PRESIDING

REPORTER'S TRANSCRIPT ON APPEAL

JANUARY 31, 2014  
FEBRUARY 3, 4, 2014  
MARCH 21, 2014  
APRIL 23 AND 28, 2014

APPEARANCES:

FOR PLAINTIFF-RESPONDENT: KAMALA HARRIS  
STATE ATTORNEY GENERAL  
SUITE 1701  
300 SOUTH SPRING STREET  
LOS ANGELES, CA 90013

FOR DEFENDANT-APPELLANT: IN PROPRIA PERSONA

ORIGINAL

VOLUME 5 OF 5  
PAGES 1801 THROUGH 1909/2100  
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PAGES 3301 THROUGH 3307/3600

RONALD G. DAHL, CSR #4213  
OFFICIAL REPORTER

1 WITH LEWD ACT UPON A CHILD.

2 "THE PEOPLE HAVE PRESENTED EVIDENCE OF  
3 MORE THAN ONE ACT TO PROVE THE DEFENDANT COMMITTED  
4 THIS OFFENSE. YOU MUST NOT FIND THE DEFENDANT GUILTY  
5 UNLESS YOU ALL AGREE THAT THE PEOPLE HAVE PROVED  
6 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED  
7 AT LEAST ONE OF THESE ACTS AND YOU ALL AGREE ON WHICH  
8 ACT HE COMMITTED."

9  
10 I'M GOING TO STOP THERE, LADIES AND  
11 GENTLEMEN. AND IF THE PEOPLE WISH TO MAKE THEIR  
12 OPENING STATEMENT, YOU MAY DO SEE.

13 MR. SANTISO: THANK YOU. GOOD AFTERNOON.

14 SO LET'S TALK ABOUT WHY YOU'RE HERE.  
15 VANESSA. SHE WAS BORN ON JANUARY 27, 2007. SHE WAS A  
16 LITTLE OVER FIVE YEARS OLD AT THE TIME OF THE  
17 INCIDENT.

18 WHEN SHE TESTIFIED AT THE PRELIMINARY  
19 HEARING, WHICH YOU HEARD ABOUT JUST A LITTLE BIT AGO,  
20 IN FEBRUARY OF 2013, SHE WAS A LITTLE OVER FIVE AND A  
21 HALF YEARS OLD. WHEN SHE JOINED US FOR THIS TRIAL,  
22 SHE WAS ABOUT SIX AND A HALF YEARS OLD.

23 YOUR JOB AS A JURY IS TO EVALUATE HER  
24 CREDIBILITY. IS VANESSA TELLING THE TRUTH OR IS SHE  
25 THE FALSE ACCUSER THAT THE DEFENSE SAID SHE WAS IN  
26 THEIR OPENING? I IMPORE YOU, I URGE YOU TO KEEP IN  
27 MIND VANESSA'S AGE WHEN YOU ARE TALKING ABOUT HER.  
28 WHEN YOU'RE DISCUSSING HER STATEMENTS.

1           AND WHEN I SAY HER STATEMENTS, I MEAN  
2   EVERYTHING YOU'VE HEARD HER SAY. HERE IN COURT. WHAT  
3   SHE SAID AT PRELIMINARY HEARING, WHAT SHE SAID TO HER  
4   MOM, TO THE DETECTIVE, TO THE NURSE. BECAUSE THOSE  
5   STATEMENTS THAT SHE MADE BEFORE, YOU CAN CONSIDER  
6   THOSE STATEMENTS FOR THEIR TRUTH. AND USE THOSE FOR  
7   THE BASIS OF YOUR CONVICTION.

8           HER AGE IS IMPORTANT BECAUSE OFTENTIMES  
9   WHEN A CHILD COMES INTO COURT AND THEY GIVE TESTIMONY  
10  IN THIS TYPE OF ENVIRONMENT THAT WE'RE IN, WHICH  
11  TYPICALLY IS ONLY FOR ADULTS, THEY ARE HELD TO AN  
12  UNREASONABLE STANDARD. SIMPLY PUT, JURORS FORGET THAT  
13  THEY ARE KIDS. EVEN THE LAWYERS SOMETIMES FORGET THEY  
14  ARE KIDS. THEY TALK LIKE KIDS, THEY THINK LIKE KIDS,  
15  EXPRESS THEMSELVES LIKE KIDS.

16           VANESSA IS A CHILD WHO DOESN'T HAVE --  
17  EXCUSE ME. VANESSA IS A CHILD THAT HAS THE SAME LIFE  
18  EXPERIENCE AND SEXUAL EXPERIENCE, WHICH WE'LL TALK  
19  ABOUT, JUST LIKE ANY OTHER CHILD HER SAME AGE. YOU  
20  NEED TO JUDGE HER AND YOU NEED TO EVALUATE HER LIKE  
21  THESE OTHER CHILDREN WHO ARE EXACTLY IN THE SAME  
22  POSITION THAT SHE IS.

23           YOU CAN'T EXPECT HER TO HAVE THE SAME  
24  MEMORY OR ABILITY TO EXPLAIN HERSELF AS ANY CHILD  
25  OLDER THAN WHAT SHE IS. DON'T PUNISH HER FOR BEING A  
26  DIFFERENT AGE OR FOR NOT BEING AN ADULT.

27           AND I DISCUSSED THIS POINT WITH YOU  
28  BECAUSE WHEN YOU FOCUS AND YOU APPRECIATE HOW OLD

1 VANESSA IS, YOU UNDERSTAND THAT EVERYTHING THAT YOU'VE  
2 HEARD FROM HER, BACK WHEN SHE WAS FIVE AND A HALF  
3 YEARS OLD, WHEN SHE FIRST TOLD HER MOM ABOUT THIS, TO  
4 THE POINT IN TIME WHERE SHE TESTIFIED AT THE  
5 PRELIMINARY HEARING, AND THEN JOINED US FOR THE TRIAL  
6 HERE, WHAT YOU HEARD AND WHAT YOU SAW IS EXACTLY WHAT  
7 YOU SHOULD EXPECT FROM A CHILD HER AGE.

8 AND THAT'S WHY WHAT VANESSA SAID TO HER  
9 MOM, TO THE NURSE, ON THAT VIDEOTAPE THAT YOU SAW,  
10 THAT'S WHAT YOU NEED TO USE WHEN YOU'RE EVALUATING HER  
11 CREDIBILITY. WHEN EVERYTHING WAS FRESH IN HER MIND.  
12 WHEN SHE HAD JUST RECENTLY BEEN EXPOSED TO THE SEXUAL  
13 ABUSE.

14 I'M PRETTY SURE THE DEFENSE IS GOING TO  
15 GET UP HERE AND ARGUE ABOUT INCONSISTENT STATEMENTS  
16 THAT THIS SIX-YEAR-OLD MADE. THAT BECAUSE SHE SAID  
17 ONE THING A YEAR AND A HALF AGO AND SHE SAID SOMETHING  
18 ELSE NOW, WELL, SHE'S A LIAR OR SHE'S A FABRICATOR.  
19 THAT SHE'S SEXUALLY SOPHISTICATED ENOUGH TO MAKE ALL  
20 THIS STUFF UP.

21 BUT THE PROBLEM WITH THAT, AND I GO BACK  
22 TO MY INITIAL POINT, IS THAT THIS IGNORES HER AGE.  
23 THAT SHE IS SIX YEARS OLD. AND IT IGNORES THE MORE  
24 LOGICAL EXPLANATION THAT OVER TIME HER MEMORY HAS JUST  
25 FADED. JUST LIKE ANY OTHER CHILD HER AGE.

26 AND ACTUALLY, IF YOU THINK ABOUT IT, IT'S  
27 A GOOD THING THAT HER MEMORY HAS FADED. BECAUSE SHE  
28 STILL DOESN'T APPRECIATE JUST HOW SERIOUS THIS STUFF



1 IS. AND IF YOU WANT TO PUT IT IN TERMS OF A  
2 PERCENTAGE, BASICALLY TWENTY PERCENT OF THIS GIRL'S  
3 LIFE HAS GONE BY FROM THE INCIDENT TO WHEN SHE CAME IN  
4 TO TESTIFY. AND I THINK IF YOU THINK ABOUT IT IN  
5 TERMS OF A PERCENTAGE, YOU CAN KIND OF RELATE TO IT IN  
6 TERMS OF YOUR OWN AGE.

7 OFTENTIMES IN TRIALS THE VICTIM HAS SOME  
8 SORT OF BIAS AGAINST THE DEFENDANT, SOME SORT OF  
9 MOTIVE TO LIE, SOME SORT OF INTEREST IN THE OUTCOME OF  
10 THE CASE THAT NEGATIVELY AFFECTS HER CREDIBILITY.  
11 OBVIOUSLY THIS DOESN'T EXIST HERE.

12 SHE HAS NO MOTIVE TO LIE. SHE HAS NO BIAS  
13 AGAINST HIM. WHICH WE'LL TALK ABOUT IN A LITTLE BIT.  
14 YOUR VERDICT CAN BE BASED SOLELY ON HER TESTIMONY.  
15 YOU CAN CONVICT BASED ON THE STATEMENTS OF VANESSA  
16 ALONE. THAT'S A CONCEPT THAT WE TALKED ABOUT IN JURY  
17 SELECTION. THE LAW SAYS YOU CAN CONVICT BASED ON WHAT  
18 VANESSA TOLD YOU. AND THE JUDGE READ THE INSTRUCTION  
19 TO YOU.

20 I'LL DISCUSS IT AGAIN. THESE ARE WHAT I  
21 CALL THE SINGLE WITNESS TESTIMONY INSTRUCTIONS. YOU  
22 GOT TWO OF THEM. THE FIRST ONE SAYS TESTIMONY ONE  
23 WITNESS CAN PROVE ANY FACT. AS LONG AS YOU CAREFULLY  
24 REVIEW ALL OF THE OTHER EVIDENCE THAT YOU HEARD,  
25 NOTHING PREVENTS YOU FROM CONVICTING BASED ON WHAT  
26 VANESSA SAID. YOU CAN ABSOLUTELY -- AND I'M GOING TO  
27 URGE YOU TO DISREGARD EVERYTHING ELSE YOU HEARD,  
28 UNRELATED TO VANESSA.

1 BECAUSE YOU CAN USE HER STATEMENTS, THE  
2 EVIDENCE THAT WE OBTAINED THROUGH WHAT SHE SAID, FOR  
3 THE BASIS OF YOUR CONVICTION. AND THERE IS ACTUALLY  
4 THE SECOND ONE OF THE SINGLE WITNESS TESTIMONY  
5 INSTRUCTIONS. THIS ONE IS -- IF YOU THINK ABOUT IT,  
6 MOST SEXUAL ASSAULTS DON'T HAPPEN IN A ROOM WITH A LOT  
7 OF OTHER PEOPLE. OKAY. THEY ARE OFTEN IN PRIVATE,  
8 WHEN SOMEBODY IS ALONE WITH THE VICTIM.

9 AND THIS INSTRUCTION SAYS THAT CONVICTION  
10 OF A SEXUAL ASSAULT CRIME MAY BE BASED ON THE  
11 TESTIMONY OF A COMPLAINING WITNESS ALONE. YOU NEED TO  
12 KEEP THESE INSTRUCTIONS IN MIND WHEN YOU'RE TALKING  
13 ABOUT THE EVIDENCE IN THIS CASE. AND IT'S IMPORTANT  
14 ALSO TO KEEP THIS IN MIND, BECAUSE THE DEFENSE WILL  
15 SAY, WELL, THERE'S NOTHING ELSE TO SUPPORT WHAT  
16 VANESSA SAID. BUT THAT'S NOT THE LAW. THE LAW  
17 DOESN'T REQUIRE THAT.

18 LET'S TALK ABOUT A COUPLE DIFFERENT  
19 ASPECTS OF WHAT WE'VE LEARNED ABOUT VANESSA AND HER  
20 REACTIONS. WHAT DO WE KNOW? A COMPLETE CHANGE IN  
21 FEELINGS. WHAT DO I MEAN BY THIS? THERE'S NO DISPUTE  
22 THAT UP UNTIL THIS DAY, THE DEFENDANT, HIS WIFE, MS.  
23 ARDON, AND EVEN HIS DAUGHTER MONICA, THEY CONSIDERED  
24 VANESSA A DAUGHTER. MONICA CONSIDERS HER A SISTER.  
25 THEY WERE VERY GOOD TO HER.

26 UP UNTIL THIS DAY, VANESSA HAD NEVER SAID  
27 ANYTHING BAD ABOUT THE DEFENDANT. VANESSA'S MOM NEVER  
28 HAD ANY SORT OF CONCERN ABOUT THE DEFENDANT. AND THE

1 FACT THAT EVERYTHING WAS PERFECT BEFORE THIS DAY, AND  
2 THEN SUDDENLY, JUST LIKE THAT, VANESSA COMPLETELY  
3 CHANGES THE WAY SHE FEELS ABOUT THE DEFENDANT,  
4 SUPPORTS WHAT SHE SAID.

5 HER GODFATHER DID SOMETHING TO HER THAT  
6 WAS SO OUT OF CHARACTER, SO DIFFERENT, SO  
7 UNCOMFORTABLE, SO ICKY, SO BEYOND THE NORM OF WHAT HE  
8 HAS EVER DONE TO HER, THAT IN A MATTER OF JUST A FEW  
9 HOURS, SHE DOES A COMPLETE TURNAROUND ON THE WAY SHE  
10 FEELS ABOUT HIM. SHE CAN'T EVEN KISS HIM GOODBYE OR  
11 HUG HIM GOODBYE THE LAST TIME SHE SAW HIM.

12 WHAT DO YOU THINK? BECAUSE OF WHAT HE  
13 JUST HAD DONE TO HER. THE MANNER OF VANESSA'S  
14 DISCLOSURE SUPPORTS WHAT SHE SAYS.

15 IT FURTHER DEMONSTRATES THAT SHE'S TELLING  
16 THE TRUTH. IMMEDIATELY WHEN VANESSA FELT SAFE, SHE  
17 DISCLOSED TO HER MOM THE ABUSE. RIGHT? THE DEFENDANT  
18 AND HIS WIFE, THEY LEAVE IN A HURRY. AND THEN AS SOON  
19 AS THEY LEFT, VANESSA CALLS HER MOM INTO THAT BATHROOM  
20 AND IN CONFIDENCE, AWAY FROM THE BABYSITTER, AS SHE'S  
21 CRYING, SHE TELLS HER MOTHER WHAT HAPPENED.

22 BECAUSE SHE FEELS SAFE. SHE'S WITH THE  
23 PERSON THAT SHE TRUSTS. AND THAT IS THE FIRST  
24 OPPORTUNITY THAT SHE GETS TO DISCLOSE THIS. THE  
25 MANNER OF DISCLOSURE BY VANESSA SUPPORTS WHAT SHE SAID  
26 THE DEFENDANT DID TO HER.

27 LET'S TALK ABOUT THE CONSISTENCY OF HER  
28 STATEMENTS. WITHIN ABOUT A WEEK, VANESSA TELLS THREE

1 PEOPLE WHAT THE DEFENDANT HAD DONE TO HER. HER MOM,  
2 NURSE CRIPE, AND DETECTIVE HERNANDEZ.

3 AND SHE ALWAYS WAS CONSISTENT ON THREE  
4 ASPECTS. THAT THE TOUCHED DEFENDANT TOUCHED HER  
5 PRIVATE PART. HE BIT HER IN THE PRIVATE PART. AND  
6 THAT HIS ZIPPER HURT HER IN HER PRIVATE AREA. SHE IS  
7 WERE ALWAYS CONSISTENT, AND SHE ALWAYS REFERENCED  
8 THESE ANY TIME SHE WAS INTERVIEWED CLOSE IN TIME TO  
9 WHEN THE INCIDENT WAS FRESH IN HER MIND.

10 I'M PRETTY SURE THE DEFENSE IS GOING TO  
11 BRING UP THE FACT THAT WHEN SHE MET WITH THE NURSE,  
12 VANESSA TALKED ABOUT HOW SHE SAW THE DEFENDANT'S  
13 PENIS, PRIVATE PARTS. AND WE'RE GOING TO DISCUSS THAT  
14 IN THE CONTEXT OF THIS NEXT PORTION, WHICH I CALL  
15 WORDS OF A CHILD.

16 WE, AS ADULTS, WE CAN EXPLAIN THINGS.  
17 MAYBE SOMETIMES I CAN'T EXPLAIN IT AS GOOD AS I WISH I  
18 COULD, BUT WE HAVE WORDS, WE KNOW HOW TO COMMUNICATE.  
19 AND WE AS ADULTS CAN SAY, WELL, YOU KNOW SOMEBODY PUT  
20 THEIR FACE ON OUR VAGINA, AND WHEN HE DID THAT, HE DID  
21 THIS WITH HIS LIPS OR HE DID THAT WITH HIS TONGUE. WE  
22 CAN'T GET THAT FROM VANESSA BECAUSE SHE'S SO YOUNG.

23 AND WHEN SHE DESCRIBES HIS CONDUCT AND SHE  
24 DESCRIBES WHAT SHE SAW, SHE EXPLAINS IT JUST AS YOU  
25 WOULD EXPECT A FIVE-YEAR-OLD TO DO. SHE USED VERY  
26 BASIC EXPLANATIONS; RIGHT? THAT HE TOUCHED HER ON THE  
27 VAGINA. THAT SHE SAW THE DEFENDANT'S PENIS AND IT  
28 LOOKED LIKE A SNAKE. THAT SHE SAW WHITE STUFF COME

1 OUT OF THE DEFENDANT'S PENIS.

2 AND YOU SAW HOW SHE USED THOSE DOLLS TO  
3 SIMULATE ORAL SEX. AND YOU SAW THE STRADDLING THAT  
4 SHE USED WITH THOSE DOLLS. WHAT YOU MUST CONSIDER IS  
5 THAT WHAT VANESSA SAID IS THE TYPE OF THING THAT A  
6 FIVE-YEAR-OLD WOULD NOT KNOW BUT FOR THE FACT THAT SHE  
7 HAD BEEN EXPOSED TO IT.

8 SHE USED THE TERM HE BIT ME. THAT'S HER  
9 DESCRIPTION OF THE SENSATION THAT SHE FELT IN HER  
10 VAGINAL AREA. AND WE KNOW THAT, BASED ON WHAT THE  
11 NURSE SAID, THAT THE VAGINAL AREA IS VERY SENSITIVE.  
12 THAT'S HER ABILITY TO COMMUNICATE WHAT SHE FELT THERE.  
13 AND BASED ON WHAT YOU HEARD THE NURSE SAY, CHANCES ARE  
14 IT IT WASN'T A BITE. OKAY. I'M NOT GOING TO SAY IT  
15 WAS.

16 BUT THEN -- AND I KEEP ON HITTING THIS  
17 POINT BECAUSE I WANT TO MAKE SURE WE ALL UNDERSTAND  
18 IT. YOU GOT TO GO BACK TO HOW OLD SHE IS. SHE CAN'T  
19 TALK TO US LIKE SOMEONE WHO IS MORE SEXUALLY  
20 SOPHISTICATED. TO HER, THE FEELING THAT SHE FELT, THE  
21 SENSATION, IS A BITE. AND WHAT'S MORE IMPORTANT IS  
22 THAT DON'T LOOK AT THE WORDS THAT SHE USES TO DESCRIBE  
23 THAT PARTICULAR -- THAT PARTICULAR PORTION OF THE  
24 ABUSE. WHAT YOU'VE GOT TO LOOK AT IS WHAT SHE'S  
25 DESCRIBING. THE CONDUCT.

26 IS THAT CONSISTENT WITH THE DEFENDANT  
27 PUTTING HIS MOUTH ON HER VAGINA? WHICH IT IS. AND I  
28 GO BACK TO THIS PORTION ABOUT VANESSA SAYING TO THE

1 S.A.R.T. NURSE -- EXCUSE ME. TO THE FORENSIC NURSE,  
2 ABOUT SEEING A SNAKE AND WHITE STUFF COMING OUT OF THE  
3 SNAKE. OR OUT OF DEFENDANT'S PRIVATE PARTS. BUT FOR  
4 HER SEEING THAT, SHE WOULDN'T HAVE DISCLOSED IT.

5 AND YOU HEARD HOW THE NURSE TALKED ABOUT  
6 HOW IT'S A VERY OPEN-ENDED INTERVIEW WITH HER. SHE  
7 DOESN'T WANT TO LEAD OR SUGGEST. SHE JUST WANTS TO  
8 GET VANESSA TO TALK AND HAVE VANESSA TELL HER WHAT  
9 HAPPENED.

10 YOU'RE GOING TO HAVE THE VIDEO BACK THERE.  
11 THERE IS A VERY IMPORTANT PART FOR YOU TO LOOK AT.  
12 PERHAPS THIS IS GOING TO BE SUFFICIENT FOR YOUR  
13 PURPOSES, BUT LET'S LOOK AT THE VIDEO -- NOT THE WHOLE  
14 THING. JUST CERTAIN PORTIONS THAT I HAVE FOR YOU TO  
15 REVIEW.

16  
17 (A RECORDING WAS PLAYED  
18 IN OPEN COURT.)  
19

20 MR. SANTISO: WHAT DO YOU NOTICE THERE? NOTICE  
21 HOW HER VOICE CHANGES? SHE GETS EMBARRASSED. SHE  
22 TALKS LOWER THAN WHEN SHE WAS JUST SPEAKING TO THE  
23 DETECTIVE. HE TOUCHED ME HERE. SHE POINTS TO HER  
24 VAGINAL AREA.

25  
26  
27  
28



1 (A RECORDING WAS PLAYED  
2 IN OPEN COURT.)  
3

4 MR. SANTISO: SO THAT'S FURTHER DESCRIBING WHAT  
5 HAPPENED IN HER WORDS. AS A FIVE-YEAR-OLD.  
6

7 (A RECORDING WAS PLAYED  
8 IN OPEN COURT.)  
9

10 MR. SANTISO: AND WHAT'S INTERESTING, AND I  
11 FORGOT TO MENTION IN THE PRIOR CLIP, SHE KNOWS WHAT'S  
12 GOING ON. SHE'S TALKING ABOUT HOW THE GODMOTHER WENT  
13 TO GET CARDS. SHE'S USING THE WORD BROUGHTING. IT  
14 DOESN'T REALLY MATTER WHAT WORDS SHE USED, BUT SHE'S  
15 SHE'S AWARE OF THE CONVERSATION THAT OCCURRED THERE.  
16 SO SHE'S A BRIGHT GIRL.  
17

18 (A RECORDING WAS PLAYED  
19 IN OPEN COURT.)  
20

21 MR. SANTISO: HERE IS ANOTHER PORTION.  
22

23 (A RECORDING WAS PLAYED  
24 IN OPEN COURT.)  
25

26 MR. SANTISO: THIS PORTION ABOUT PUTTING HIS  
27 ZIPPER DOWN IS ACTUALLY -- IF YOU THINK ABOUT IT, IT'S  
28 CONSISTENT WITH WHAT SHE TOLD THE NURSE. LOOK, DO YOU



1 THINK HE WAS PUTTING HIS ZIPPER DOWN FOR ANY OTHER  
2 REASON THAN TO EXPOSE HIS PENIS? THINK ABOUT IT. SO  
3 THIS PORTION ACTUALLY IS CONSISTENT WITH WHAT SHE TOLD  
4 THE NURSE.

5  
6 (A RECORDING WAS PLAYED  
7 IN OPEN COURT.)  
8

9 MR. SANTISO: SHE KNOWS THAT EVERYTHING IS COOL  
10 WHEN HER MADRINA GETS BACK. FIVE MINUTES IS A LONG  
11 TIME. BECAUSE I KNOW THE DEFENDANT'S GOING TO BE  
12 LIKE, WELL, SHE WAS ONLY GONE FOR FIVE MINUTES. OKAY.  
13 THIS STUFF TAKES LIKES THIRTY SECONDS. SO TIME IS NOT  
14 A FACTOR HERE. OPPORTUNITY IS NOT A FACTOR.

15  
16 (A RECORDING WAS PLAYED  
17 IN OPEN COURT.)  
18

19 MR. SANTISO: SO THAT'S THE CONDUCT. YOU NEED  
20 TO RELY ON WHAT WAS GOING ON AS FAR AS THE STATEMENT  
21 VANESSA MADE AT THIS TIME. NOT WHAT SHE SAID HERE.  
22 THE LAW SAYS YOU CAN CONSIDER THAT AS EVIDENCE. THE  
23 MOM -- WHAT SHE SAID TO THE MOM, TO THE NURSE, AND TO  
24 THE DETECTIVE. THIS IS WHAT YOU HAVE TO BASE YOUR  
25 VERDICT ON.

26 SO WHAT IS THE LAW? THERE'S TWO DIFFERENT  
27 CHARGES THAT WE'RE DEALING WITH LETTER. THE FIRST ONE  
28 IS ORAL COPULATION OF A CHILD UNDER TEN YEARS OLD, AND

1 THE SECOND ONE IS LEWD ACT ON A CHILD.

2 AS FAR AS ORAL COPULATION WITH A CHILD TEN  
3 OR YOUNGER, VERY SIMPLE. MUST BE PROVEN THAT THERE  
4 WAS ORAL COPULATION. WE USE THIS TERM ORAL COPULATION  
5 WITH VANESSA. BUT LEGALLY, WE MAY HAVE DIFFERENT --  
6 WE MAY HAVE OUR DIFFERENT OPINIONS AS TO WHAT IT IS.  
7 BUT LEGALLY, THAT'S WHAT YOU HAVE TO BASE YOUR VERDICT  
8 ON, WHAT THE LAW SAYS.

9 WHAT IS ORAL COPULATION? AND IT'S  
10 ACTUALLY REALLY INTERESTING WHAT THE LAW SAYS.  
11 BECAUSE IT'S ANY CONTACT. ANY CONTACT, NO MATTER HOW  
12 SLIGHT, BETWEEN THE DEFENDANT'S MOUTH AND VANESSA'S  
13 VAGINA. IT COULD HAVE JUST BEEN A LITTLE BIT BETWEEN  
14 ANY PART OF HIS MOUTH AND HER VAGINA. BUT THAT'S  
15 ENOUGH. AND JUST IN CASE, PENETRATION IS NOT  
16 REQUIRED. OKAY. SO WE KNOW WHAT ORAL COPULATION IS.  
17 WE HEARD VANESSA TALK ABOUT HOW HE MOVED HER UNDERWEAR  
18 TO THE SIDE.

19 SECOND. VANESSA WAS TEN OR UNDER. NO  
20 ISSUE WITH THAT. THIRD ELEMENT. THE DEFENDANT WAS AT  
21 LEAST EIGHTEEN YEARS OLD. HE WAS BORN IN 1966. THIS  
22 IS OBVIOUSLY NOT AN ISSUE.

23 I WANT TO TALK ABOUT INTENT, JUST A  
24 MOMENT. YOU'RE GOING TO NOTICE THAT THIS DOESN'T  
25 REQUIRE ANY SORT OF WRONGFUL INTENT IN HIS MIND WHEN  
26 HE'S DOING IT. WHICH I BELIEVE IT WILL MAKE SENSE IN  
27 JUST A MOMENT.

28 THE NEXT CHARGE, COUNT TWO, IS LEWD ACT ON

1 A CHILD. WHAT IS A LEWD ACT ON A CHILD? IT MUST BE  
2 PROVEN THAT THE DEFENDANT TOUCHED A CHILD OVER OR  
3 UNDER THE CLOTHING. OKAY. YOU AS THE JURY, IF YOU  
4 THINK THERE WAS AN ISSUE AS TO OVER OR UNDER, THAT'S  
5 WITHIN YOUR PROVINCE. BUT FOR PURPOSES OF A 288, IT  
6 DOESN'T MATTER.

7 IT HAS TO BE DONE WITH SOME SORT OF  
8 WRONGFUL PORPOSE. BASICALLY, IN A VERY SIMPLIFIED  
9 MANNER, THIS JUST MEANS WITH A SEXUAL DESIRE, FOR  
10 PURPOSE OF AROUSAL. HE'S NOT THERE DOING THAT STUFF  
11 FOR ANY OTHER OTHER REASON THAN TO BE AROUSED BY IT.

12 I DON'T BELIEVE INTENT IS GOING TO BE AN  
13 ISSUE. BUT IF THE DEFENSE MAKES AN ISSUE ABOUT THAT,  
14 I WILL TALK TO YOU ABOUT IT WHEN I HAVE A CHANCE TO  
15 ADDRESS YOU A SECOND TIME.

16 AND LAST ELEMENT, VANESSA WAS UNDER  
17 FOURTEEN. THAT'S NOT AN ISSUE.

18 NOW, I TOLD YOU ABOUT HOW ON THE ORAL  
19 COPULATION, YOU DON'T NEED INTENT. YOU DON'T NEED TO  
20 DO THE ACT OF ORAL COPULATION ON A CHILD UNDER TEN FOR  
21 A WRONG REASON. FOR A SEXUAL REASON. FOR ANY REASON,  
22 REALLY. THE ACT ITSELF IS WHAT SATISFIES THE CHARGE.

23 BUT OPPOSED TO A 288, WITH LEWD ACT ON A  
24 CHILD, YOU NEED THAT WRONGFUL MINDSET IN A PERSON'S  
25 MIND DOING IT. BUT LIKE I SAID, I DON'T THINK INTENT  
26 IS GOING TO BE ARGUED BY THE DEFENSE. IF THEY DO,  
27 I'LL COME BACK. I JUST DON'T WANT TO WASTE A LOT OF  
28 TIME ON IT. YOU DECIDE. YOU AS A JURY DECIDE THE

1 CONDUCT WHICH YOU WILL BASE YOUR CONVICTION ON.

2 SO WHAT DO I MEAN BY THAT? YOU HAVE COUNT  
3 ONE, WHICH IS ORAL COPULATION. COUNT TWO, WHICH DEALS  
4 WITH LEWD ACT. WE HEARD ABOUT SEVERAL LEWD ACTS,  
5 RIGHT? WE HEARD ABOUT HIM RUBBING HIS PENIS ON HER,  
6 WE HEARD ABOUT HIM TOUCHING HER VAGINA. AND WHAT THE  
7 LAW SAYS IS THIS.

8 LET'S SAY YOU'RE BACK THERE IN THAT JURY  
9 ROOM. AND YOU DELIBERATE AND YOU START LIKE THIS.  
10 ALL RIGHT, EVERYBODY, LET'S JUST FOCUS ON WHAT SHE  
11 FIRST SAID. THE PORTION ABOUT HOW HE TOUCHED HER.  
12 LET'S TALK ABOUT IT. YOU GUYS CONVERSE AMONG  
13 YOURSELVES, EVERYBODY IS IN AGREEMENT. IT HAPPENED.  
14 YOU BELIEVE VANESSA. AND THEY SAY WHO THINKS THAT  
15 HE'S GUILTY OF IT? ALL RAISE YOUR HAND. BOOM.  
16 YOU'RE DONE.

17 ALL TWELVE OF YOU HAVE AGREED THAT THAT  
18 PARTICULAR ACT WAS COMMITTED, THAT'S AN ENOUGH FOR A  
19 CONVICTION OF A LEWD ACT.

20 LET'S SAY YOU START SOMEONE SOMEWHERE ELSE  
21 FIRST. THE PORTION ABOUT RUBBING HIS PENIS ON HER.  
22 YOU WANT TO START THERE. YOU TALK ABOUT IT,  
23 DELIBERATE, YOU TAKE A VOTE, WHO THINKS HE'S GUILTY OF  
24 RUBBING HIS PENIS ON HER, AND ALL TWELVE OF YOU RAISE  
25 YOUR HAND. YOU'RE DONE. THAT'S A CONVICTION FOR A  
26 LEWD ACT.

27 SO EVEN THOUGH YOU HAVE SEVERAL LEWD ACTS,  
28 YOU JUST ALL HAVE TO AGREE WHICH ONE. MY POSITION,

1 BASED ON THE EVIDENCE, IS THAT YOU WILL ALL AGREE THAT  
2 THERE WAS MORE THAN ONE; RIGHT? BUT ULTIMATELY THAT'S  
3 FOR YOU TO DECIDE. I CAN JUST GUIDE YOU THROUGH, BUT  
4 YOU HAVE TO MAKE THAT DECISION. SO THAT TALKS ABOUT  
5 UNANIMITY. YOU ALL HAVE TO AGREE ON THE SAME ACT WHEN  
6 YOU HAVE MORE THAN ONE.

7 I WANT TO TOUCH ON SOMETHING THAT THE  
8 JUDGE WAS TALKING ABOUT. IN THIS CASE, WE HAVE WHAT'S  
9 KNOWN AS LESSER-INCLUDED OFFENSES. AND REALLY, FOR  
10 YOUR PURPOSE, THOSE DON'T REALLY APPLY HERE. BECAUSE  
11 THE POSITION OF THE DEFENSE, AT LEAST AS I FORESEE IT,  
12 IS THAT THIS DIDN'T EVEN HAPPEN IN THE FIRST PLACE.  
13 ALL RIGHT?

14 AND I ALSO BRING UP THIS POINT BECAUSE I  
15 DON'T WANT YOU TO JUST COMPROMISE BACK THERE. I WANT  
16 YOU TO HOLD HIM ACCOUNTABLE FOR EVERYTHING HE DID TO  
17 VANESSA AND MAKE SURE HE'S FOUND RESPONSIBLE FOR WHAT  
18 HE DID. NOT SOMETHING LESSER.

19 MR. LE: OBJECTION. IMPROPER ARGUMENT.

20 THE COURT: OBJECTION IS OVERRULED.

21 MR. SANTISO: YOU HOLD HIM RESPONSIBLE FOR HIS  
22 CONDUCT.

23 LET ME TALK ABOUT THE ORAL COPULATION FOR  
24 A MOMENT. LET'S SAY YOU ARE DELIBERATING ON THE ORAL  
25 COPULATION AND YOU ALL AGREE THAT IT'S BEEN FOUND  
26 BEYOND A REASONABLE DOUBT. OKAY. THAT HE'S GUILTY OF  
27 IT.

28 WHEN YOU DELIBERATE ON THE LEWD ACTS, DO

1 NOT CONSIDER THE ORAL COPULATION AS PART OF THE --  
2 EXCUSE ME. AS THE BASIS OF YOUR VERDICT ON COUNT TWO.  
3 I HOPE THAT MAKES SENSE. BECAUSE THE REASON WHY I SAY  
4 THAT IS THIS. LET'S SAY YOU BELIEVE THAT, OKAY, WELL,  
5 YOU HAVE A COUPLE HOLDOUTS BACK THERE WHO SAY I DON'T  
6 THINK THERE'S BEEN ORAL COPULATION THERE. AND YOU  
7 DECIDE TO ACQUIT ON THE FIRST COUNT. THEN ON THE  
8 SECOND COUNT, I WANT YOU TO USE THAT CONDUCT AS A  
9 POTENTIAL BASIS FOR YOUR CONVICTION. SO THAT ADDS  
10 ANOTHER ACT THAT YOU CAN USE TO CONVICT HIM ON THE  
11 LEWD ACT.

12 I SUBMIT TO YOU THE EVIDENCE IS SUFFICIENT  
13 FOR THE FIRST COUNT, BASED ON WHAT VANESSA SAID IN  
14 THAT VIDEOTAPED INTERVIEW AND HOW SHE MOVED THE  
15 UNDERWEAR TO THE SIDE.

16 ONE THING I FORGOT TO MENTION BEFORE IS  
17 VANESSA CORRECTED THE DETECTIVE SEVERAL TIMES IN THE  
18 INTERVIEW AS TO CERTAIN THINGS THAT HAPPENED. BECAUSE  
19 THE DETECTIVE WAS, WELL, WAS IT LIKE THIS, AND SHE WAS  
20 LIKE NO, IT WAS LIKE THIS. OKAY. SHE GUIDED THAT  
21 INTERVIEW.

22 LET'S TALK ABOUT THE DEFENSE. THE ONLY  
23 THING I WANT TO MENTION IS MS. ARDON. AND WHEN MS.  
24 ARDON, WE LEARNED TODAY, WHEN MS. ARDON SPOKE TO THE  
25 DEFENSE INVESTIGATOR BACK ON JULY, 2013, SHE  
26 ABSOLUTELY MISREPRESENTED WHO WAS AT THAT HOUSE. SHE  
27 TOLD THAT INVESTIGATOR THAT MONICA WAS STILL THERE.

28 WELL, WE KNOW SHE WASN'T. BECAUSE THERE



1 WAS NO OTHER EVIDENCE SUPPORTING THAT. I MEAN SHE  
2 COMES IN AND SHE SAYS THAT NOBODY WAS THERE. I MEAN  
3 SHE'S GOT TO BE CONSISTENT WITH MONICA, AND EVERY  
4 OTHER PIECE OF EVIDENCE WE HAVE RELATED TO WHO WAS AT  
5 THE HOUSE.

6 AND I DON'T THINK AS A WIFE, AS SOMEONE  
7 WHO CLEARLY LOVES HER HUSBAND, YOU SHOULD HOLD IT  
8 AGAINST HER BECAUSE SHE'S TRYING TO PROTECT HIM, BUT  
9 YOU DON'T HAVE TO ACCEPT HER TESTIMONY.

10 LET'S TALK ABOUT THE DEFENDANT. BEFORE WE  
11 TALK ABOUT SPECIFIC PORTIONS OF HIS TESTIMONY, I WANT  
12 TO MENTION ONE THING. YOU HEARD ME ASK HIM SOME  
13 QUESTIONS ABOUT SOME THINGS THAT HAPPENED INVOLVING  
14 THE POLICE BACK IN 2001.

15 I WASN'T SEEKING TO USE THAT EVIDENCE TO  
16 SHOW THAT, OKAY, WELL, HE HAD SOME POLICE CONTACTS  
17 SOMETIME AGO SO SOMEHOW HE'S GUILTY OF WHAT HE DID  
18 HERE. ABSOLUTELY NOT. THAT WOULD BE A LUDICROUS  
19 ARGUMENT.

20 BUT WHAT I REALLY CARE ABOUT, WHAT YOU SAW  
21 IN THAT EXCHANGE WITH THE PRIOR POLICE CONTACTS, IS  
22 WHEN HE WAS ON DIRECT EXAMINATION, HE TRIED TO PORTRAY  
23 HIMSELF TO BE ONE TYPE OF PERSON. BECAUSE HE TOLD  
24 YOU, WELL, THIS IS MY FIRST INTERVIEW WITH A POLICE  
25 OFFICER, I WAS SCARED. AND THEN HE ALSO TRIED TO  
26 STATE THAT THE ONLY OTHER TIME HE HAD BEEN EXPOSED TO  
27 THE POLICE WAS DURING A TRAFFIC STOP. OKAY. THAT  
28 WASN'T THE TRUTH.



1           AND WE ONLY KNOW ABOUT THE POLICE CONTACT  
2 BEFORE BECAUSE I HAD TO ASK HIM ABOUT IT. I MEAN I  
3 THINK I WAS EXPECTING HIM TO BE HONEST ABOUT IT, BUT  
4 IT CAME OUT OF HIS MOUTH. BECAUSE HE WAS TRYING TO  
5 PASS HIMSELF OFF AS BEING A CERTAIN TYPE OF PERSON.  
6 THOSE CONTACTS ARE NOT WHAT MAKES HIM LESS CREDIBLE.  
7 WHAT MAKES HIM LESS CREDIBLE IS HIS INABILITY TO TELL  
8 YOU ABOUT IT. I MEAN THAT'S SUCH A TRIVIAL THING.  
9 2001.

10           BUT HE'S TRYING TO MAKE HIMSELF SEEM LIKE  
11 A DIFFERENT PERSON OR TRYING -- OR JUST BASICALLY  
12 LYING ABOUT SOMETHING SO DUMB. WHAT MAKES YOU THINK  
13 HE'S NOT GOING TO MISREPRESENT THE REST OF HIS  
14 TESTIMONY?

15           SO WHAT DO WE KNOW ABOUT THE DEFENDANT?  
16 WE KNOW THAT HE FELT EROTIC TOWARDS VANESSA ON THE DAY  
17 OF THE INCIDENT. WHEN WE TALKED ABOUT THIS, I WENT  
18 THROUGH IT WITH HIM. GAVE HIM AN OPPORTUNITY TO  
19 EXPLAIN HIMSELF. OKAY. THESE ARE THE PORTIONS, AS  
20 FAR AS WHEN HE SAID THAT HE FOUND HER EROTIC. THE  
21 PORTION OF THE VIDEO.

22           WHAT DID HE SAY? I HOPE YOU CAN SEE THAT.  
23 THE DETECTIVE IS ASKING HER HOW SHE WAS DRESSED, WAS  
24 SHE WEARING PANTS.

25           THE DEFENDANT: YEAH, SHE HAD A DRESS.

26           HERNANDEZ: I ASKED HER IF SHE WAS WEARING  
27 PANTS OR A DRESS AND SHE TOLD ME THAT A DRESS, AND  
28 THAT IT WAS UP. DOES THAT SEEM LIKE SOMETHING

1       EROTICALLY TO YOU?

2               "THE DEFENDANT:   YEAH, MAYBE EROTIC.

3               BUT AT THAT POINT -- SO HE FOUND HIMSELF  
4       TO BE EROTIC BECAUSE OF HER.

5               WHAT ELSE DO WE KNOW?   THAT HE ACTED ON  
6       IMPULSE.   I ASKED HIM ABOUT IT.   HERE THIS IS THE  
7       PORTION OF THE TRANSCRIPT THAT HE TALKS ABOUT IT.   AS  
8       WELL AS THE VIDEO.   AND HE SAYS -- THE DETECTIVE IS  
9       QUESTIONING.

10              SHE ATTRACTED YOU SEXUALLY.   BUT WHAT  
11      HAPPENED DIFFERENT THAT DAY THAT YOU HAVE NEVER DONE  
12      IT BEFORE?   THAT'S WHAT I WANT TO KNOW.

13              DEFENDANT:   IT WAS A -- LIKE JUST AN  
14      IMPULSE.

15              HERNANDEZ:   AN IMPULSE?

16              DEFENDANT:   YES.   BUT NOT --

17              SO THESE ARE HIS WORDS.   WE KNOW WHEN HE  
18      BRINGS UP IMPULSE THE SECOND TIME.   THIS IS A PORTION  
19      OF THE TRANSCRIPT THAT I ASKED HIM ABOUT.   IN THE  
20      VIDEO.

21              HERNANDEZ:   WHEN YOU SAW HER WITH HER  
22      DRESS UP HIGH LIKE THAT, WHAT DID YOU FEEL?   SOMETHING  
23      EROTIC?

24              DEFENDANT:   LIKE A --

25              THE COURT:   SLOW DOWN.

26              MR. SANTISO:   I'M SORRY.

27              LIKE A -- I MEAN I JUST SAW HER LIKE A  
28      GIRL, YOU KNOW.   BUT I NEVER -- I HAD NEVER DONE IT

1 BEFORE NOR AM I GOING TO DO IT. JUST LIKE AN IMPULSE.

2 HERNANDEZ SAYS AT THAT -- BUT AT THAT VERY  
3 MOMENT YOU DIDN'T SEE HER AS A GIRL.

4 DEFENDANT: AN IMPULSE. LIKE THAT.

5 ALL RIGHT. SO HE TELLS THAT TO THE  
6 DETECTIVE. YOU CAN CONSIDER THOSE PORTIONS OF HIS  
7 INTERVIEW WHEN YOU'RE EVALUATING HIS CREDIBILITY.

8 NOW, THERE WAS TWO VERY CONCERNING THINGS  
9 THAT HE TESTIFIED TO IN HIS TESTIMONY.

10 SIR, DID YOU HAVE VANESSA ON YOUR LAP AT  
11 ANY POINT IN TIME WHEN BLANCA WASN'T THERE?

12 NO.

13 OKAY. WELL, HOW ABOUT WHAT DID HE SAY  
14 DURING THE INTERVIEW? YES. I -- LIKE I SAID, I PUT  
15 HER ON MY LAP. BUT IT'S NOT LIKE I TOUCHED HER.

16 THIS STATEMENT IS HUGE. YOU KNOW WHAT?  
17 BECAUSE THEN I ASKED HIM, WELL, YOU TOLD THAT TO THE  
18 DETECTIVE. HOW COME NOW YOU'RE SAYING YOU DIDN'T?  
19 AND THAT'S WHEN HE SAID, OH, WELL, I WAS JUST TICKLING  
20 HER.

21 WELL, THEN COME HOW COME HE HAD STATED  
22 THAT BEFORE WHEN I ASKED HIM? WHY COULDN'T HE JUST BE  
23 HONEST BEFORE? WELL, HE COULDN'T, BECAUSE HE WAS  
24 TRYING TO BE DISHONEST, UNTIL HE WAS CONFRONTED WITH  
25 THAT STATEMENT. DISHONEST ABOUT A CRUCIAL ISSUE.

26 WE'RE GOING TO TIE THAT PARTICULAR PART  
27 ABOUT HIS DISHONESTY WITH ANOTHER JURY INSTRUCTION IN  
28 JUST A MOMENT. AND THIS TICKLING THING ACTUALLY

1 BRINGS UP A SEPARATE POINT. HE TALKED ABOUT HOW THERE  
2 HAD BEEN OTHER TIMES. I THINK IT WAS HIM OR MS. ARDON  
3 TALKED ABOUT OTHER TIMES HE HAD TICKLED HER AND THERE  
4 WAS NEVER A PROBLEM WITH IT.

5 SO I DON'T GET -- IT JUST SHOWS YOU HE'S  
6 BEING DISINGENUOUS WITH YOU WHEN HE DENIED HAVING HER  
7 ON HIS LAP. IF YOU WANT, THOSE ARE THE PORTIONS OF  
8 THE TRANSCRIPT IN THE VIDEO AS TO WHERE HE MAKES THAT  
9 STATEMENT.

10 HOW ABOUT A KISS ON VANESSA'S UNDERWEAR?  
11 OKAY. HE GOT CAUGHT UP HERE. HE CLARIFIED THIS  
12 PORTION FOR THE DETECTIVE. I ASKED HIM, SIR, DID YOU  
13 KISS VANESSA ON THE OUTSIDE OF THE UNDERWEAR? AND  
14 WITH WHAT WAS HIS RESPONSE? NO.

15 BUT WE KNOW THIS WASN'T TRUE. BECAUSE  
16 WHY? BECAUSE IN THE INTERVIEW, HERNANDEZ SAYS A KISS  
17 DOWN THERE. IS THAT WHY YOU THINK -- SHE HAS YOUR  
18 SALIVA IN HER VAGINA?

19 DEFENDANT: OR THEN -- BUT NOT INSIDE HER.  
20 HER -- HER -- HER PART. THE GIRL.

21 HERNANDEZ: WITH THE TONGUE?

22 DEFENDANT: ONLY HER PANTS. OVER HER  
23 PANTY -- HER --

24 THIS IS HIM CLARIFYING FOR THE DETECTIVE  
25 WHAT HE HAD DONE. ONCE AGAIN, DISHONEST ABOUT A  
26 CRUCIAL ISSUE. IF YOU LIKE, THOSE ARE THE PORTIONS OF  
27 THE TRANSCRIPT AND THE VIDEO. DELIBERATE LIE. THERE  
28 IS A PORTION IN THE INSTRUCTION. IT WAS TOWARDS THE

1 BEGINNING OF WHAT WAS THE JUDGE WAS TELLING YOU ABOUT,  
2 THAT DISCUSSES ABOUT IF YOU FIND THAT A WITNESS  
3 DELIBERATELY LIED ABOUT SOMETHING, AND IF YOU FIND  
4 THAT THE DEFENDANT DELIBERATELY LIED ABOUT SOMETHING  
5 SIGNIFICANT -- WHICH WHAT WE JUST WENT THROUGH  
6 SUPPORTS THIS. SOMETHING SIGNIFICANT. SOMETHING  
7 CRUCIAL. SOMETHING IMPORTANT; RIGHT? THEN YOU SHOULD  
8 CONSIDER NOT BELIEVING ANYTHING THAT THAT PERSON SAYS.

9 THIS IS WHAT THE LAW SAYS. YOU THINK HE  
10 LIED ABOUT SOMETHING SIGNIFICANT? THAT DESTROYS HIS  
11 BELIEVABILITY ABOUT ANYTHING ELSE HE SAID.

12 SO I HAVE ONE MORE SLIDE. BEFORE I  
13 DISCUSS THAT SLIDE I WANT TO MENTION SOMETHING. IF  
14 YOU BELIEVE VANESSA, YOU'RE DONE. YOU CAN CONVICT.  
15 BUT IF FOR SOME REASON YOU WANT MORE, THEN YOU NEED TO  
16 WATCH THE DEFENDANT'S INTERVIEW. ALL RIGHT? AND  
17 YOU'RE GOING TO SEE IN THAT INTERVIEW HOW WHEN HE WAS  
18 INITIALLY CONFRONTED WITH THESE ALLEGATIONS, HE DIDN'T  
19 DENY IT.

20 AND YOU JUST HEARD THE JUDGE READ A VERY  
21 IMPORTANT INSTRUCTION ABOUT THAT. BECAUSE THINK ABOUT  
22 IT. MOST REASONABLE PEOPLE, WHEN THEY HEAR THAT THEY  
23 TOUCHED A LITTLE GIRL'S VAGINA OR RUBBED THEIR PENIS  
24 ON HER VAGINA, OR PUT THEIR MOUTH ON HER VAGINA, ARE  
25 GOING TO BE SO SHOCKED BY WHAT THEY HEAR THAT YOU  
26 WOULD EXPECT SOME REACTION TO IT. SOME FACIAL  
27 GESTURE, SOME VERBAL DENIAL.

28 BUT THERE WASN'T, HERE. AND THERE IS A

1 SPECIFIC INSTRUCTION THAT YOU CAN USE RELATED TO THAT.  
2 IN HIM NOT DENYING THAT. AND THAT'S AT THE VERY  
3 BEGINNING OF THE INTERVIEW. OKAY? BECAUSE I KNOW THE  
4 DEFENSE IS GOING TO SPEND THEIR ARGUMENT ON DETECTIVE  
5 HERNANDEZ. BUT THIS IS THE BEGINNING OF THE  
6 INTERVIEW, AS SOON AS SHE'S DONE READING THE MIRANDA  
7 RIGHTS.

8 ALSO, IN THE INTERVIEW, YOU GOT TO  
9 CONSIDER HOW HE FOUND VANESSA EROTIC, HOW HE ACTED ON  
10 AN IMPULSE, HE KISSED HER IN THE UNDERWEAR. ALL THIS  
11 INFORMATION SUPPORTS WHAT VANESSA SAID THE DEFENDANT  
12 DID TO HER.

13 IN ADDITION TO WHAT'S IN THAT VIDEO, YOU  
14 WILL WANT TO CONSIDER, IF YOU WANT TO CONSIDER MORE,  
15 THEN DISCUSS WHAT HE SAID TO YOU IN COURT. HOW HE  
16 ATTEMPTED TO MISREPRESENT HIMSELF. HOW HE DENIED  
17 HAVING VANESSA ON HIS LAP, AND ONLY ADMITTED TO IT  
18 AFTER HE WAS CONFRONTED WITH THE INTERVIEW. AND THEN  
19 HE TRIED TO DOWNPLAY IT BY SAYING, WELL, I WAS JUST  
20 TICKLING HER.

21 ALSO CONSIDER HOW HE DENIED KISSING HER  
22 OVER THE UNDERWEAR, ONLY -- YES, HE DENIED KISSING HER  
23 ON HER UNDERWEAR, WHICH IS HIS STATEMENT AS FAR AS  
24 WHAT HE TOLD THE DETECTIVE. WHAT HE SAYS IN HIS  
25 TESTIMONY FURTHER SUPPORTS WHAT VANESSA SAID HE DID.  
26 IT CAN ALSO FORM THE BASIS OF YOUR CONVICTION.

27 SOMETIMES YOU GOT TO READ BETWEEN THE  
28 LINES; RIGHT? AND THAT'S WHY I TALK ABOUT FORGIVENESS



1 VERSUS APOLOGY. HE TOLD US THAT HE CALLED HIS  
2 COMPADRE PEDRO, VANESSA'S FATHER, RIGHT? TO ASK FOR  
3 FORGIVENESS.

4 AND WHEN MR. LE ASKED THE DEFENDANT WHY HE  
5 CALLED TO ASK FOR FORGIVENESS, THE DEFENDANT'S  
6 RESPONSE WAS BECAUSE OF THE SPECULATION SURROUNDING  
7 THE ABUSE. BUT WHAT DOESN'T MAKE SENSE ABOUT WHAT THE  
8 DEFENDANT SAID IS THAT YOU DON'T ASK FOR FORGIVENESS  
9 UNLESS YOU'VE DONE SOMETHING WRONG. YOU APOLOGIZE,  
10 YOU SAY SORRY TO SOMEONE WHO MAY BE GOING THROUGH  
11 SOMETHING OR FOR WHAT SOMEONE MAY BE DEALING WITH AS A  
12 RESULT OF SPECULATION.

13 YOU ONLY ASK FOR FORGIVENESS FROM YOUR  
14 FRIEND, TO THE MAN THAT HAS TRUSTED YOU WITH HIS  
15 DAUGHTER, BECAUSE YOU HAVE DONE SOMETHING SO SERIOUS,  
16 SO SIGNIFICANT THAT YOU VIOLATED THAT TRUST.

17 MR. LE, I'M ASSUMING, IS GOING TO MAKE A  
18 CLOSING ARGUMENT. I'LL HAVE A CHANCE TO ADDRESS YOU  
19 ONCE HE'S DONE. I WILL BE BRIEF IN MY SECOND  
20 ARGUMENT. JUST TO PERHAPS TALK ABOUT SOME THINGS THAT  
21 MR. LE BRINGS UP IN HIS CLOSING STATEMENT.

22 BUT I'M CONFIDENT THAT ONCE YOU CONSIDER  
23 ALL THE EVIDENCE AND YOU DISCUSS IT WITH THE JURORS,  
24 YOU'RE GOING TO FIND HIM GUILTY OF WHAT HE DID TO  
25 VANESSA. THANK YOU.

26 THE COURT: THANK YOU, MR. SANTISO.

27 LADIES AND GENTLEMEN, WE'RE GOING TO TAKE  
28 OUR AFTERNOON RECESS AT THIS TIME. PLEASE REMEMBER



1 THE ADMONITION NOT TO DISCUSS THIS MATTER AMONG  
2 YOURSELVES OR WITH ANYONE ELSE OR FORM OR EXPRESS AN  
3 OPINION ON IT UNTIL THE CASE IS SUBMITTED TO YOU.

4 TAKE A FIFTEEN-MINUTE RECESS. AND BUZZ US  
5 WHEN YOU'RE BACK THERE IN THE JURY ROOM.

6  
7 (THE FOLLOWING PROCEEDINGS WERE HELD  
8 AT THE BENCH:)

9  
10 MR. LE: YOUR HONOR, AT SOME POINT ARE YOU GOING  
11 TO TALK TO PROSPECTIVE JUROR NUMBER 1?

12 THE COURT: I WAS GOING TO DO IT BEFORE THE  
13 INSTRUCTIONS, AND I DIDN'T. AND THEN ONCE I STARTED  
14 THE INSTRUCTIONS, I WAS GOING TO ASK YOU BEFORE HIS  
15 OPENING, AND THEN I WAS GOING TO LET YOU GUYS DO YOUR  
16 ARGUMENTS. BUT I WAS GOING TO ASK YOU IF YOU WANT ME  
17 TO.

18 I HAD TOLD YOU ON FRIDAY THAT I WOULD  
19 FIRST SEEK YOUR INPUT AS TO WHETHER IT'S SOMETHING YOU  
20 STILL WANT ME TO DO. SO I TOLD YOU YOU COULD THINK  
21 ABOUT IT OVER THE WEEKEND. IF YOU WANT TO CONTINUE TO  
22 THINK ABOUT IT, YOU CAN CONTINUE TO THINK ABOUT IT.  
23 BUT AT SOME POINT YOU NEED TO LET ME KNOW.

24 MR. LE: I'LL CONTINUE TO THINK ABOUT IT OVER  
25 THE BREAK. THANK YOU.

26  
27 (RECESS.)  
28

1 (THE FOLLOWING PROCEEDINGS WERE HELD  
2 IN OPEN COURT IN THE PRESENCE AND  
3 HEARING OF THE JURY:)

4  
5 THE COURT: THE RECORD WILL REFLECT THE JURORS  
6 AND ALTERNATE JURORS ARE PRESENT. MR. LE, AT THIS  
7 TIME IF YOU WOULD LIKE TO MAKE CLOSING ARGUMENT.

8 MR. LE: YES, YOUR HONOR. THANK YOU.

9 YOUR HONOR, COUNSEL, LADIES AND GENTLEMEN  
10 OF THE JURY, THIS IS THE LAST TIME THAT I'M GOING TO  
11 GET AN OPPORTUNITY TO TALK TO ALL OF YOU ABOUT THIS  
12 CASE. OKAY.

13 WHAT ARE YOU ALL HERE TO DECIDE? SIMPLE  
14 QUESTION. OKAY. YOU ARE HERE TO DECIDE WHETHER OR  
15 NOT THE DISTRICT ATTORNEY'S OFFICE HAS PROVEN THEIR  
16 CASE BEYOND A REASONABLE DOUBT. THAT IS WHAT YOU ARE  
17 HERE TO DECIDE.

18 WHAT ARE YOU NOT HERE TO DECIDE? YOU'RE  
19 NOT HERE TO DECIDE WHETHER OR NOT YOU LIKE VANESSA.  
20 YOU'RE NOT HERE TO DECIDE WHETHER OR NOT YOU THINK  
21 VANESSA IS CUTE, WHETHER OR NOT YOU BELIEVE SHE'S AN  
22 ADORABLE LITTLE GIRL.

23 PEOPLE'S EXHIBIT NUMBER 1, THE PICTURE OF  
24 VANESSA, DOESN'T REFLECT HOW ADORABLE SHE IS. SHE'S  
25 MUCH MORE ADORABLE IN PERSON. OKAY. YOU ARE NOT HERE  
26 ALSO TO DECIDE WHETHER OR NOT YOU LIKE CHILDREN OR  
27 WHETHER OR NOT YOU WANT TO PUNISH PEOPLE WHO ABUSE  
28 CHILDREN. YOU ARE HERE TO DECIDE WHETHER OR NOT YOU

1 BELIEVE MR. SANTISO HAS PROVEN THE DISTRICT ATTORNEY'S  
2 CASE BEYOND A REASONABLE DOUBT.

3 NOW, WHEN YOU GO BACK INTO THAT JURY  
4 DELIBERATION ROOM, THE FIRST THING THAT I ASK YOU TO  
5 DO IS APPLY THE PRESUMPTION OF INNOCENCE. AND THE  
6 PRESUMPTION OF INNOCENCE, WHAT DOES THAT MEAN IN THIS  
7 CASE? THAT MEANS THAT WHEN YOU WALK BACK INTO THAT  
8 JURY DELIBERATION, YOU ARE TO SAY TO YOURSELF THAT MR.  
9 ORELLANA DID NOT DO WHAT HE IS ACCUSED OF DOING BY  
10 VANESSA. AND THEN YOU ASK YOURSELF HAS THE  
11 PROSECUTION PROVEN THEIR CASE BEYOND A REASONABLE  
12 DOUBT? HAVE THEY PROVED THE FACTS OF THE CASE WITH  
13 SUCH STRONG, COMPELLING, RELIABLE, CONSISTENT EVIDENCE  
14 THAT IT LEAVES YOU WITH AN ABIDING CONVICTION OF THE  
15 CHARGES AGAINST MR. ORELLANA.

16 OKAY. NOW, THAT'S THE DEFINITION OF  
17 BEYOND A REASONABLE DOUBT. HER HONOR HAD INDICATED TO  
18 YOU THAT AN ABIDING CONVICTION IS SOMETHING THAT THE  
19 THAT IS A LASTING CERTAINTY. SOMETHING IS MORE THAN  
20 JUST THEORY.

21 WHEN YOU LOOK BACK AND YOU REFLECT BACK ON  
22 THE EVIDENCE THAT WAS PRESENTED IN THIS CASE, WOULD  
23 YOU BE CONFIDENT IN YOUR DECISION OR WILL YOU HAVE  
24 SOME DOUBT AS TO YOUR DECISION? THAT IS WHAT AN  
25 ABIDING CONVICTION MEANS.

26 SO LET'S LOOK AT THE EVIDENCE. LET'S TALK  
27 ABOUT THE TESTIMONY OF VANESSA. NOW, VANESSA WAS FIVE  
28 YEARS OLD AT THE TIME THAT THESE ACCUSATIONS WERE

1 MADE. NOW, CAN A FIVE-YEAR-OLD TELL THE TRUTH?  
2 ABSOLUTELY. I WOULD INSULT YOUR INTELLIGENCE IF I  
3 TOLD YOU NO.

4 BUT CAN A FIVE-YEAR-OLD ALSO MAKE UP  
5 THINGS AND FANTASIZE? ABSOLUTELY. DON'T TAKE MY WORD  
6 FOR IT. REMEMBER WHAT HAPPENED ON THIS WITNESS STAND.  
7 VANESSA, SHE TOLD YOU, SHE TOLD THE TRUTH WHEN SHE  
8 TOLD YOU THE DAY THAT SHE TESTIFIED. WHAT DAY WAS IT?  
9 JANUARY 28. THAT WAS THE TRUTH THAT SHE TOLD YOU.

10 BUT DID SHE ALSO FANTASIZE? ABSOLUTELY.  
11 WHAT DID SHE FANTASIZE ABOUT? SHE ALSO TOLD YOU THAT  
12 ON JANUARY 17TH, SHE HUNG OUT AND SAW MONICA. NOT  
13 ONLY DID SHE HANG OUT WITH MONICA, MONICA BOUGHT HER  
14 CANDY. AND MONICA DIDN'T BUY HER ANYTHING ELSE  
15 BECAUSE SHE HAD NO MORE MONEY.

16 WE KNOW THAT THAT'S THE PRODUCT OF HER  
17 IMAGINATION AND HER FANTASY. I DIDN'T TELL HER THOSE  
18 SPECIFIC THINGS. I DIDN'T LEAD HER TO SAY THOSE  
19 THINGS. SHE VOLUNTEERED THOSE THINGS HERSELF.

20 BECAUSE THAT'S WHAT CHILDREN ARE CAPABLE  
21 OF DOING. NOT ONLY ARE THEY CAPABLE OF TELLING THE  
22 TRUTH, BUT THEY ARE ALSO CAPABLE OF FANTASY AND MAKING  
23 UP THINGS AS WELL. AND THAT'S WHAT VANESSA DID IN  
24 THIS CASE.

25 NOW, MR. SANTISO IS RIGHT, YOU CAN'T --  
26 YOU CAN HAVE A FACT PROVEN BY ONE WITNESS. BUT THERE  
27 IS ALSO AN END PART OF THAT INSTRUCTION THAT HER HONOR  
28 GAVE YOU. BEFORE YOU CAN RELY ON THE TESTIMONY OF ONE

1 WITNESS TO PROVE A FACT, YOU MUST CAREFULLY CONSIDER  
2 THE REST OF THE EVIDENCE. CAREFULLY CONSIDER THE REST  
3 OF THE EVIDENCE.

4 THIS IS AN IMPORTANT, IMPORTANT CASE.  
5 THESE ARE SOME SERIOUS CHARGES. THERE IS A LOT ON THE  
6 LINE. MR. ORELLANA IS FACED WITH A POSSIBILITY OF  
7 BEING LABELED A PEDOPHILE, A CHILD MOLESTER FOR THE  
8 REST OF HIS LIFE. THIS IS A VERY IMPORTANT ROLE THAT  
9 YOU ALL PLAY.

10 EVALUATE THE EVIDENCE CAREFULLY. THAT IS  
11 WHAT YOU NEED TO DO, BECAUSE THAT'S WHAT THE LAW  
12 REQUIRES YOU TO DO WHEN YOU'RE RELYING ON ONE WITNESS  
13 TO PROVE A FACT.

14 NOW, VANESSA HAS MADE A NUMBER OF  
15 STATEMENTS TO A NUMBER OF PEOPLE. AND WHEN YOU ARE  
16 THAT YOUNG, IT'S VERY DANGEROUS IN HOW IT IS THAT YOU  
17 TALK TO THEM, BECAUSE YOU KNOW, GENERALLY KIDS WILL  
18 SAY WHAT IT IS THAT YOU WANT THEM TO SAY.

19 YOU HAVE THE BENEFIT OF VIEWING THE VIDEO  
20 RECORDED INTERVIEW OF VANESSA WHEN SHE FIRST TALKS TO  
21 DETECTIVE HERNANDEZ. REMEMBER, I WANT TO POINT  
22 SOMETHING OUT TO YOU THAT WHEN DETECTIVE HERNANDEZ  
23 ASKED VANESSA, WHAT IS THIS? AND SHE POINTS TO HER  
24 BUTT. AND THEN SHE POINTS TO ANOTHER PART OF HER  
25 BODY. AND THEN SHE POINTS TO HER CROTCH AREA.  
26 REMEMBER?

27 VANESSA DOESN'T TELL DETECTIVE HERNANDEZ  
28 WHAT HER MIDDLE AREA IS. WHAT HER CROTCH AREA IS.

1 AND THEN YOU HAVE DETECTIVE HERNANDEZ SUGGEST THAT  
2 WHAT DO YOU CALL YOUR PEE-PEE? THEN WHAT HAPPENS  
3 AFTER DETECTIVE HERNANDEZ USES THE WORD WORD PEE-PEE  
4 AND POINTS TO THE CROTCH AREA? THEN VANESSA SAYS THE  
5 WORD PEE-PEE. THAT'S WHY PEOPLE ARE TRAINED TO  
6 INTERVIEW CHILD WITNESSES. BECAUSE IT'S SO EASY TO  
7 GET THEM TO SAY WHAT IT IS THAT YOU WANT THEM TO SAY.

8 THERE IS A BIG DANGER IN THAT. YOU'VE  
9 HEARD FROM MORE THAN ONE WITNESS WHO SAID THAT. AND  
10 THAT'S COMMON SENSE. NOW, YOU'RE GOING TO HAVE  
11 DEFENSE EXHIBIT I FOR IDENTIFICATION, THESE ARE SOME  
12 RELEVANT PORTIONS OF VANESSA'S TESTIMONY AT THE  
13 PRELIMINARY HEARING. SHE WAS ALSO UNDER OATH. I  
14 WASN'T THE DEFENSE ATTORNEY ON THE CASE. BUT MR.  
15 SANTISO WAS THE D.A. ON THE CASE.

16 WHEN VANESSA FIRST TALKS ABOUT SOMETHING  
17 THAT HER GODFATHER, MR. ORELLANA, DID THAT WAS MEAN.  
18 OKAY. SHE WAS ASKED, I'M GOING TO ASK YOU ABOUT THAT.  
19 WHERE WERE YOU WHEN HE DID MEAN STUFF TO YOU?

20 I WAS ON THE SOFA. AND HE WAS ON THE SOFA  
21 TOO.

22 SO YOU WERE ON THE SOFA AND SO WAS YOUR  
23 PADRINO.

24 YES.

25 YOU SAID THAT YOU WERE ON THE SOFA WITH  
26 YOUR PADRINO. WHAT ELSE HAPPENED WHEN YOU WERE ON THE  
27 SOFA WITH HIM?

28 HE GOT ME.



1                   WHEN YOU SAY HE GOT YOU, WHAT DOES THAT  
2 MEAN?

3                   THAT HE WAS GOING TO TOUCH ME.

4                   THERE IS -- SHE DOESN'T TESTIFY TO  
5 ANYTHING ABOUT BEING BITTEN. SHE WAS ASKED IF, YOU  
6 KNOW, WHERE MR. ORELLANA ALLEGEDLY TOUCHES HER. AND  
7 THEN SHE POINTS TO HER VAGINAL AREA. SHE WAS ASKED  
8 SPECIFICALLY, WHAT HAPPENED AFTER? WELL -- AND THEN  
9 YOU'RE GOING TO GET THIS. I ASK YOU, I REALLY DO, TO  
10 REVIEW THIS TRANSCRIPT. TAKE INTO CONSIDERATION ALL  
11 OF HER STATEMENTS.

12                  SHE THEN SAYS, YOU KNOW WHAT, MR. ORELLANA  
13 THEN ATE AND HE WASHED HIS HANDS. AND THEN I SLEPT.  
14 I WENT TO SLEEP. AND THEN I AWAKENED AND THEN I WENT  
15 BACK TO SLEEP. AND THEN AFTER HE ATE, HE FED ME.

16                  THAT IS COMPLETELY INCONSISTENT WITH A  
17 YOUNG GIRL WHO IS TRAUMATIZED BY BEING ABUSED BY  
18 SOMEBODY.

19                  SHE ALSO GAVE YOU HINTS OF WHAT COULD HAVE  
20 HAPPENED THAT DAY. THAT'S COMPLETELY LEGITIMATE. DO  
21 YOU REMEMBER, AS YOU RECALL, I THINK HE WAS TICKLING  
22 ME BUT NOW I THINK THAT HE DID SOMETHING. HE TOUCHED  
23 ME. BUT HE WAS TRYING TO TICKLE ME.

24                  SHE WAS THE ONE THAT MENTIONED TICKLING.  
25 BECAUSE IT'S NOT UNUSUAL FOR SOMEBODY TO PUT A  
26 FIVE-YEAR-OLD ON THEIR LAP AND TICKLE THEM. THAT'S AN  
27 INNOCENT EXPRESSION OF LOVING A CHILD. SHE IS THE ONE  
28 THAT SAID I THOUGHT HE WAS TICKLING ME, BUT THEN HE



1 DID SOMETHING AND -- HOW DID THAT MAKE YOU FEEL? OH,  
2 IT WAS NASTY. IT WAS SO NASTY.

3 KEEP IN MIND, SHE NEVER USED THAT WORD,  
4 THAT ADJECTIVE BEFORE. NASTY. WHERE DO YOU THINK  
5 SHE'S GETTING THIS FROM? AGAIN, IT'S THE REAL DANGER  
6 IN SUGGESTIBILITY WHEN YOU'RE TALKING TO A CHILD. SHE  
7 NEVER MENTIONS TO THE NURSE THE WORD WHITE STUFF. DID  
8 YOU HEAR THE NURSE TELL US THAT WHITE -- THAT SHE SAID  
9 WHITE STUFF CAME OUT OF MR. ORELLANA'S SNAKE? SHE  
10 NEVER SAID WHITE STUFF. WHAT SHE SAYS IS STUFF CAME  
11 OUT OF HIS PRIVATE PART ON THE BED.

12 BUT SHE ALSO SAYS TO THE NURSE, HE SHOWED  
13 ME PICTURES OF NAKED GROWNUPS WITH HELLO KITTY,  
14 BECAUSE IT WAS MY BIRTHDAY. SO THAT MAKES ANY --  
15 THAT, AGAIN, I WOULD SUBMIT TO ALL OF YOU IS A PRODUCT  
16 OF VANESSA'S IMAGINATION. WE KNOW THAT ON THE DATE  
17 THAT THESE ALLEGATIONS WERE MADE, IT WAS NOT HER  
18 BIRTHDAY. BUT SHE TELLS THE NURSE THAT IT WAS HER  
19 BIRTHDAY.

20 TAKE INTO CONSIDERATION ALL OF VANESSA'S  
21 STATEMENTS, VARIOUS STATEMENTS. LOOK AT THE VIDEO.  
22 SHE'S A SWEET GIRL, BUT SHE'S A TYPICAL FIVE-YEAR-OLD.  
23 THEY HAVE A HARD TIME EXPRESSING THEMSELF. BECAUSE  
24 SHE HAD A HARD TIME EXPRESSING HERSELF, WHAT IS SHE  
25 GETTING? TWO DOLLS? WHAT DO KIDS DO WITH DOLLS?  
26 WHAT DO KIDS DO WITH TOYS? THEY FANTASIZE. THEY  
27 IMAGINE THINGS.

28 WE ALL HAD TOYS GROWING UP. SOME MORE

1 THAN OTHERS. BUT WE HAD THINGS TO PLAY WITH. THAT'S  
2 WHAT THEY DO. THEY PLAY WITH TOYS. REVIEW THAT VIDEO  
3 CAREFULLY. THAT -- TAKE ALL HER STATEMENTS. REVIEW  
4 THEM. IT'S IMPORTANT. IT'S IMPORTANT BECAUSE THAT'S  
5 THE ONE WITNESS THAT SAYS THAT HE DID -- MR. ORELLANA  
6 DID INAPPROPRIATE THINGS. OKAY.

7 NOW, YOU NOTICE MR. SANTISO DIDN'T MENTION  
8 ANYTHING ABOUT MEDICAL EVIDENCE. OR DNA EVIDENCE.  
9 AND I'M PRETTY SURE HE'S GOING TO SAY SOMETHING IN HIS  
10 LAST ARGUMENT, BECAUSE IT'S HIS BURDEN OF PROOF. HE  
11 GETS TO ARGUE ONCE MORE. HE'S GOING TO TRY TO  
12 MINIMIZE THE ABSENCE OF MEDICAL EVIDENCE AS WELL AS  
13 DNA EVIDENCE.

14 BUT EVEN THE BIASED WORK OF DETECTIVE  
15 HERNANDEZ, EVEN SHE ACKNOWLEDGES THAT IT'S IMPORTANT.  
16 BECAUSE WHEN YOU'RE MAKING THESE ALLEGATIONS ABOUT  
17 HAVING ANY -- YOUR MOUTH IN CERTAIN AREAS, THAT'S WHY  
18 YOU TAKE SWABS. THAT'S WHY YOU TAKE SWABS.

19 THIS IS AGAIN WHERE YOU USE YOUR COMMON  
20 SENSE, LADIES AND GENTLEMEN. WHEN SOMEBODY SAYS THEY  
21 ARE BITTEN. AND SHE SAID THAT A NUMBER OF TIMES.  
22 THAT'S ONE THING SHE'S CONSISTENT ABOUT. YOU EXPRESS  
23 SOMETHING -- IF NOT A BITE MARK, SOME SORT OF MARK.  
24 OF A ZIPPER HAVING CONTACT WITH THAT AREA. MAYBE IT  
25 MAY NOT CUT YOU WHERE YOU'RE GOING TO BLEED, BUT IT  
26 SHOULD LEAVE SOME SORT OF SCRATCH, SOMETHING, SOME  
27 REDNESS, SOMETHING.

28 OKAY. NOW, THE NURSE, SHE -- WHAT DID SHE

1 SAY? NO FINDINGS? WHAT DOES THAT MEAN? ONE OF THE  
2 INTERPRETATIONS FOR NO FINDINGS MEANS NOTHING  
3 HAPPENED. THERE IS NO DNA ON THE UNDERWEAR OF  
4 VANESSA, AND SHE WAS WEARING THE SAME UNDERWEAR WHEN  
5 SHE CAME HOME AS TO WHEN SHE GOT TO THE HOSPITAL. AND  
6 HER MOM TESTIFIED THAT SHE TOOK HER TO THE HOSPITAL  
7 IMMEDIATELY.

8 YOU GOT -- THERE WAS A STIPULATION SAYING  
9 THAT SHE ARRIVED AT CHILDREN'S HOSPITAL AT 10:01 P.M.

10 MR. SANTISO: I'LL OBJECT. THAT MISSTATES IT  
11 THE TESTIMONY.

12 MR. LE: SHE WAS ADMITTED. EXCUSE ME. SHE WAS  
13 ADMITTED INTO THE HOSPITAL AT 10:01. I WOULD SUBMIT  
14 TO YOU THAT WHEN SOMEBODY COMES INTO THE HOSPITAL AND  
15 SAYS THAT THEY'VE BEEN SEXUALLY ABUSED, THAT'S AN  
16 EMERGENCY SITUATION AND THEY ARE MOST LIKELY ADMITTED  
17 VERY QUICKLY AFTER THEY ARRIVED.

18 NOW, NO MEDICAL EVIDENCE TO SUPPORT THESE  
19 ALLEGATIONS. NO DNA ON THE DRESS THAT WAS RECOVERED,  
20 ON THE UNDERWEAR THAT WAS RECOVERED, ON HER BODY AREA  
21 WHERE MR. ORELLANA ALLEGEDLY DID INAPPROPRIATE THINGS  
22 TO HER. THAT IS COMPELLING, STRONG EVIDENCE  
23 SUPPORTING HE'S INNOCENT, EVEN THOUGH WE DO NOT HAVE  
24 TO ESTABLISH ANYTHING. WE DO NOT HAVE TO PRESENT ANY  
25 EVIDENCE. THAT IS COMPELLING EVIDENCE OF HIS  
26 INNOCENCE.

27 OKAY. AND THEN, YOU KNOW, DETECTIVE  
28 HERNANDEZ AND CLAUDIA CALDERON'S TESTIMONY, I'M NOT

1 EVEN GOING TO INSULT YOUR INTELLIGENCE BY GOING INTO  
2 TOO MUCH DETAIL ABOUT THEIR TESTIMONY UNDER OATH.  
3 THEY -- WHEN YOU TALK ABOUT MATERIAL LIES, IT DOESN'T  
4 GET ANY MORE MATERIAL THAN THE LIES THAT THEY  
5 TESTIFIED TO, UNDER OATH.

6 SO YOU SHOULD, AT THE VERY LEAST, AT THE  
7 VERY LEAST, BE HESITANT IN ACCEPTING ANYTHING THAT  
8 CLAUDIA AND DETECTIVE HERNANDEZ SAID, BASED ON THOSE  
9 LIES THAT THEY TOLD YOU TO YOUR FACE.

10 NOW, MR. SANTISO INDICATED THAT MR.  
11 ORELLANA IS DISINGENUOUS. WITH ALL DUE RESPECT TO MR.  
12 ORELLANA, THERE IS NOTHING THAT IS DISINGENUOUS ABOUT  
13 HIM. HE IS A HARD WORKER. BUT HE IS NOT A GENIUS.  
14 HE HAS A GRADE -- HE HAS BEEN EDUCATED IN HONDURAS,  
15 WITH A GRADE LEVEL OF THE SECOND GRADE.

16 WHY IS THAT A FACTOR THAT YOU SHOULD  
17 CONSIDER? BECAUSE BASED ON THE FACT THAT HE ONLY HAS  
18 A SECOND GRADE EDUCATION, HE MAY NOT BE ABLE TO  
19 ARTICULATE HIMSELF AS WELL AS SOMEBODY WHO MAY HAVE  
20 BEEN EDUCATED IN THE UNITED STATES. HAVE YOU EVER  
21 GONE TO A UC, CAL STATE, UCLA, USC? TAKE THAT INTO  
22 CONSIDERATION.

23 THE ONE BEAUTIFUL THING ABOUT OUR CRIMINAL  
24 JUSTICE SYSTEM IS WHAT I SEE BEFORE ME RIGHT NOW.  
25 THIS IS PROBABLY THE MOST DIVERSE JURY THAT I HAVE  
26 EVER HAD IN A CASE. YOU HAVE PEOPLE FROM AN ARRAY OF  
27 DIFFERENT ELEMENTS OF LIFE WITH DIFFERENT EXPERIENCES.

28 USE YOUR LIFE EXPERIENCES AND APPLY IT TO

1 THIS CASE, BECAUSE YOUR LIFE EXPERIENCES AND YOUR  
2 DIFFERENT LIFE EXPERIENCES GIVE YOU YOUR COMMON SENSE.  
3 HIS LACK OF EDUCATION FACTORS INTO HOW HE RESPONDS.  
4 HOW HE RESPONDS TO QUESTIONS. NOW, HE KNEW WHEN HE  
5 WAS ARRESTED WHAT HE WAS BEING ARRESTED FOR. HOW DOES  
6 HE KNOW THIS? HOW DOES HE KNOW? BECAUSE CLAUDIA  
7 CALLS HIM AND SAYS YOU RAPED MY DAUGHTER.

8 WHAT DOES HE DO? WHAT DOES AN INNOCENT  
9 PERSON DO WHEN THEY ARE ACCUSED OF SOMETHING SO  
10 SERIOUS LIKE THAT? NO, I DIDN'T DO THAT. I WILL  
11 PERSONALLY TAKE YOU TO THE HOSPITAL IMMEDIATELY WITH  
12 VANESSA. WHAT MORE CAN DO YOU THAN SAY THAT TO HER.  
13 SO HE KNOWS THAT THESE ARE SOME SERIOUS ALLEGATIONS  
14 THAT ARE BEING MADE AGAINST HIM. BUT DOES HE FLEE?  
15 DOES HE FLEE?

16 IF YOU THINK THAT YOU DID SOMETHING WRONG  
17 AGAINST THESE SERIOUS, SERIOUS CHARGES, YOU HAVE THESE  
18 CHARGES PENDING AGAINST YOU, DID HE LEAVE? NO. HOW  
19 DO WE KNOW THIS? HE GOT ARRESTED IN A MCDONALD'S  
20 THAT'S LIKE TWO BLOCKS FROM WHERE HE LIVES. OKAY?

21 AND THEN WHEN HE GETS A PHONE CALL FROM  
22 THE DETECTIVE, WHAT DOES HE DO? HE GOES AND CONSULTS  
23 A LAW OFFICE. THAT'S A RATIONAL THING TO DO. BECAUSE  
24 HE'S SCARED. SOMEBODY IS MAKING SOME REALLY SERIOUS  
25 ALLEGATIONS. AND BECAUSE HE ACTS ON THE ADVICE OF  
26 COUNSEL WHEN HE GOES TO CONSULT WITH THEM, WHICH IS  
27 WHAT THEY ARE SUPPOSED TO DO, GIVE HIM COUNSEL, THE  
28 DETECTIVE WANTS YOU TO HOLD THAT AGAINST HIM.

1           AND IN FACT MR. ORELLANA TELLS THAT YOU  
2 SHE CALLED BACK AND CANCELLED. HE ANSWERED EVERY  
3 SINGLE QUESTION THAT MR. SANTISO ASKED ABOUT THE  
4 TIMEFRAME.

5           NOW, WHEN HE GETS ARRESTED AND GETS  
6 INTERVIEWED BY DETECTIVE HERNANDEZ AT RAMPART STATION,  
7 IMAGINE THE FEAR THAT HE FEELS. HE'S UNDER ARREST FOR  
8 SOMETHING HE KNOWS IS VERY SERIOUS. HE GOES IN THERE.  
9 AND WHY DO YOU THINK THE DETECTIVE TELLS HIM, OH,  
10 YOU'RE NOT BEING ARRESTED FOR RAPE. BECAUSE SHE KNOWS  
11 THAT THAT'S WHAT THE MOM HAD ACCUSED HIM OF AND NOW  
12 SHE WANTS TO PUT HIM AT EASE, TO TRY TO MAKE HIM FEEL  
13 THAT IT'S NOT A BIG DEAL ABOUT WHAT SHE'S ABOUT TO  
14 TALK TO HIM ABOUT.

15           I'M NOT GOING TO INSULT YOUR INTELLIGENCE.  
16 YOU'RE GOING TO HAVE THE FULL TRANSCRIPT -- WELL,  
17 YOU'RE GOING TO HAVE ABOUT ALMOST 70 PAGES OF  
18 TRANSCRIPTS, AND YOU'RE GOING TO HAVE THE VIDEO TOO.  
19 THE FIRST 33 PAGES, ALMOST HALF OF THE TRANSCRIPT, HE  
20 DENIES THAT HE DID ANYTHING WRONG.

21           IT WASN'T UNTIL DETECTIVE HERNANDEZ SAYS I  
22 WILL RAISE THE CHARGES ON YOU, I WILL CLOSE THE BOOK  
23 ON YOU, PLACE YOU UNDER ARREST, AND THEN ALSO TELL HIM  
24 I CAN TALK TO THE D.A., THIS IS NOT A BIG DEAL, YOU  
25 CAN HAVE PROBATION, YOU CAN GET THERAPY. HE DENIES  
26 FOR THE FIRST 33 PAGES OR SO. MULTIPLE TIMES. COUNT  
27 HOW MANY TIMES HE DENIES ANY WRONGDOING.

28           AND THEN IT WASN'T UNTIL SHE THREATENS TO



1 CLOSE THE BOOK ON HIM AND TALK TO THE D.A. ABOUT  
2 POSSIBLY GIVING HIM PROBATION, GIVING HIM THERAPY, IS  
3 THEN HE STARTS TO RELENT.

4 EVEN THE DETECTIVE, AS BIASED AS SHE IS,  
5 CONCEDED THE FACT THAT, YOU KNOW, THERE ARE DANGERS IN  
6 -- YOU'VE NEVER BEEN TAUGHT TO MAKE THREATS TO  
7 SOMEBODY YOU INTERVIEW, YOU'VE NEVER BEEN TAUGHT TO  
8 MAKE PROMISES TO A PERSON YOU INTERVIEW, BECAUSE THERE  
9 IS DANGERS OF FALSE CONFESSIONS WHEN YOU DO THIS.

10 SHE MADE IT SEEM AS THOUGH THIS IS NOT A  
11 BIG DEAL, BUT IF YOU LIE TO ME AND YOU KEEP ON  
12 DENYING, THOSE ARE BIG DEALS. NEVER MIND THE FACT  
13 THAT HE COULD BE TELLING YOU THE TRUTH, THAT HE DIDN'T  
14 DO ANYTHING.

15 SHE MAKES IT SEEM THAT IF HE ADMITS TO  
16 THIS, IT'S NOT A BIG DEAL, THAT HE'S GOING TO BE  
17 RELEASED. YOU'VE GOT THE TRANSCRIPT. REVIEW IT. USE  
18 YOUR COMMON SENSE AND YOUR LIFE EXPERIENCES.

19 NOW, MR. SANTISO REALLY DID A NUMBER ON  
20 MR. ORELLANA. YOU KNOW BY TAKING CERTAIN STATEMENTS,  
21 TAKING CERTAIN STATEMENTS OUT OF 70 PAGES OF  
22 TRANSCRIPT, TAKING CERTAIN STATEMENTS HERE AND THEN  
23 CONFRONTING HIM WITH THOSE STATEMENTS.

24 YOU KNOW, WHEN MR. SANTISO WAS DOING THAT,  
25 I WAS THINKING TO MYSELF. THEY CALL THIS SOMETHING.  
26 IN THE NEWS THEY CALL THIS SOMETHING. YOU KNOW WHAT  
27 THEY CALL THIS, LADIES AND GENTLEMEN? THEY CALL IT  
28 TAKING A STATEMENT OUT OF CONTEXT. WHAT THAT MEANS IS



1 THAT WHEN YOU -- OF COURSE, ON A 70-PAGE TRANSCRIPTS.  
2 YOU CAN TAKE ONE OR TWO, THREE, FOUR LINES, AND MAKE  
3 ARGUMENTS BASED ON THOSE SENTENCES THAT YOU PICK OUT.  
4 BUT IF YOU DON'T LOOK AT THE FULL PICTURE, YOU WILL BE  
5 TAKING THOSE STATEMENTS OUT OF CONTEXT BECAUSE IT DOES  
6 NOT FULLY AND ACCURATELY EXPLAIN THE CONTEXT IN WHICH  
7 THOSE STATEMENTS WERE MADE.

8 THAT'S WHY PEOPLE WHO ARE INTERVIEWED IN  
9 THE NEWS, WHETHER IT BE POLITICIANS OR ACTORS AND  
10 ACTRESSES, GET UPSET WHEN THEY ARE QUOTED AND THEIR  
11 STATEMENTS ARE TAKEN OUT OF CONTEXT. IT'S UNFAIR TO  
12 DO THAT. IT'S UNFAIR TO DO THAT.

13 LOOK AT THE INTERVIEW IN ITS TOTALITY.  
14 NOW, I WANT TO GIVE YOU AN EXAMPLE OF MR. ORELLANA'S  
15 LACK OF EDUCATION AND HOW THAT MAY PLAY A ROLE IN HIS  
16 ABILITY TO COMMUNICATE. TAKE INTO CONSIDERATION THAT  
17 HE IS THE GODFATHER, HE WAS THE GODFATHER OF VANESSA.  
18 HE WAS ASKED TO BE THE GODFATHER OF VANESSA BY PEDRO.  
19 SOMEBODY WHO IS LIKE A BROTHER TO HIM. SOMEBODY HE  
20 GREW UP WITHIN HONDURAS.

21 THEY GREW UP IN THE SAME VILLAGE TOGETHER.  
22 WHY DO YOU ASK SOMEBODY TO BE YOUR -- THE GODFATHER OF  
23 YOUR CHILD? JUST IN CASE SOMETHING HAPPENS TO YOU,  
24 THEY CAN CARE FOR THAT CHILD WHILE YOU ARE NO LONGER  
25 ABLE TO. PEDRO HAS BEEN DEPORTED. MR. ORELLANA TOOK  
26 THE RESPONSIBILITY BE TO BE VANESSA'S GODFATHER. HE  
27 KNOWS THAT BECAUSE OF THESE ALLEGATIONS THAT ARE BEING  
28 MADE AGAINST HIM BY VANESSA, HE WILL NEVER BE ABLE TO

1 SEE VANESSA AGAIN.

2 THAT'S WHY HE ASKED HIM FOR FORGIVENESS.  
3 YOU CAN INFER THAT THAT'S WHAT HE'S TRYING TO DO IN  
4 THE INTERVIEW. BECAUSE OF THIS SITUATION, I BEGGED  
5 HIM FOR FORGIVENESS. BECAUSE OF THE SITUATION.  
6 BECAUSE HE'S NEVER GOING TO BE ABLE TO SEE HER AGAIN.  
7 NOT BECAUSE HE DID ANYTHING SEXUALLY INAPPROPRIATE  
8 WITH VANESSA.

9 I MEAN WHEN YOU AGREE TO BECOME THE  
10 GODFATHER OF ONE OF YOUR BROTHER'S CHILD, OR A FRIEND  
11 THAT YOU CONSIDER AS A BROTHER, THAT IS A BIG  
12 RESPONSIBILITY. HE NEVER ASKED FOR FORGIVENESS  
13 BECAUSE OF -- HE DID ANYTHING SEXUALLY INAPPROPRIATE.  
14 AGAIN, LISTEN TO THE VIDEO, REVIEW THE TRANSCRIPT.

15 NOW, MR. SANTISO SAYS -- ANOTHER THING I  
16 JUST WANT TO GIVE YOU AN EXAMPLE OF. MR. ORELLANA  
17 RELENTING TO THE DETECTIVES. QUESTIONING, MR. SANTISO  
18 SAYS, WHERE IS HE GETTING -- HE USES THE WORD ALL  
19 RIGHT. BUT NEVER MIND WHO USED THAT WORD RIGHT BEFORE  
20 HE ANSWERS THAT.

21 DETECTIVE HERNANDEZ. SHE IS TELLING HIM  
22 WHAT SHE WANTS TO HEAR. AND HE RELENTS. BECAUSE HE'S  
23 SCARED. HE THINKS HE'S GOING TO DO LIFE. SHE'S GOING  
24 TO CLOSE THE BOOK ON HIM.

25 MR. SANTISO: I'LL OBJECT TO THAT LAST  
26 STATEMENT, YOUR HONOR. THAT MISSTATES THE TESTIMONY.  
27 I'D ASK THE JURY TO BE ADMONISHED AS WELL.

28 THE COURT: WITH RESPECT TO WHAT IS IN HIS MIND

1 ABOUT WHAT'S GOING TO HAPPEN, THE OBJECTION IS  
2 SUSTAINED. WITH RESPECT TO HIS EMOTION, THE OBJECTION  
3 IS OVERRULED.

4 MR. LE: THAT'S WHAT HE TESTIFIED TO. HE'S  
5 SCARED WHEN SHE SAYS THAT. HE'S RELENTING. HE'S  
6 RELENTING. SHE HAS MADE IT CLEAR TO HIM ON A NUMBER  
7 OF OCCASIONS THAT SHE WANTED HIM TO ADMIT ORAL SEX AS  
8 WELL. HE COULD NOT GET HIMSELF TO ADMIT THAT HE HAD  
9 ORAL SEX WITH WITH VANESSA.

10 SO WHAT DOES HE TRY TO DO? THAT'S WHY HE  
11 SAYS THE THINGS ABOUT HER PANTIES. BUT WHEN ASKED  
12 HERE, HE SAYS I DIDN'T DO ANYTHING. I ONLY SAID THAT.  
13 I ONLY SAID THAT BECAUSE I WAS SCARED. DO YOU THINK  
14 HE'S EVER BEEN INTERVIEWED LIKE THAT BEFORE? DO YOU  
15 THINK HE'S EVER BEEN INTERVIEWED BY RAMPART  
16 DETECTIVES? WITH SOMEONE WIELDING A BIG GUN RIGHT  
17 THERE? KNOWING YOU'RE CHARGED WITH THESE SERIOUS  
18 CHARGES AND THEY GO LIKE THIS TO YOU, SAYING SENIOR,  
19 SENIOR, CUTTING YOU OFF.

20 CHECK OUT HOW MANY TIMES SHE CUTS HIM OFF  
21 WHEN HE TRIES TO. THAT'S PART OF THE INTIMIDATION.  
22 SHE TELLS YOU THAT. DETECTIVE HERNANDEZ DOES. IT  
23 WORKED. IT WORKED. ASK YOURSELF HOW VOLUNTARY WAS  
24 HIS CONFESSION IN LIGHT OF ALL THE CIRCUMSTANCES.

25 NOW, I HAD ASKED YOU TO CONSIDER MONICA'S  
26 TESTIMONY AS WELL AS BLANCA. THE DISTRICT ATTORNEY  
27 JUST WANTS YOU TO JUST THROW OUT THEIR TESTIMONY  
28 BECAUSE THEY HAVE A PERSONAL RELATIONSHIP WITH MR.

1 ORELLANA. MONICA IS HIS DAUGHTER. BLANCA IS HIS  
2 WIFE. THEY LOVE HIM. OF COURSE THEY LOVE HIM.

3 BUT YOU KNOW WHO ELSE THEY LOVE? THEY  
4 ALSO LOVE VANESSA. THEY ALSO LOVE VANESSA. MONICA  
5 AND BLANCA. BLANCA TESTIFIED THAT SHE WAS ONLY GONE  
6 FOR THAT SMALL PERIOD OF TIME. AND YOU'RE GOING TO  
7 HAVE PICTURES WHERE YOU'RE GOING TO SEE HOW FAR THIS  
8 DISTANCE IS. YOU'RE TALKING ABOUT A BLOCK. TO WALK A  
9 BLOCK AND COME BACK.

10 AND HE, MR. ORELLANA, SUPPOSEDLY HAS ORAL  
11 SEX. MAYBE DOES STUFF WITH HIS FINGER. POSSIBLY  
12 EJACULATES. PUTS HER ON HIS LAP AND LIKE DOES STUFF  
13 WITH HIS ZIPPER. HE DOES ALL OF THESE THINGS WITHIN A  
14 FIVE-MINUTE WINDOW?

15 IF YOU ARE GOING -- IS THAT IMPOSSIBLE?  
16 MAYBE NOT. I DON'T KNOW. BUT HOW LIKELY IS THAT?  
17 TAKE THAT INTO CONSIDERATION. AND IF YOU ARE GOING TO  
18 BE SUCH A PEDOPHILE THAT YOU'RE GOING TO DO ALL OF  
19 THOSE THINGS WHILE YOUR WIFE IS JUST GOING TO THE CAR  
20 AND COMING BACK, WOULDN'T YOU THINK THAT THERE WOULD  
21 BE OTHER PEOPLE COMING CAN OUT OF WOODWORK SAYING HE  
22 DID IT TO ME?

23 MR. SANTISO: I'LL OBJECT TO THAT LAST  
24 STATEMENT, YOUR HONOR. IT'S IMPROPER ARGUMENT.

25 THE COURT: OBJECTION IS SUSTAINED.

26 MR. LE: HIS DAUGHTER, SIXTEEN YEARS OLD NOW,  
27 HAS HAD MULTIPLE CONTACTS WITH HIM. OR AS MUCH AS  
28 POSSIBLY -- AS POSSIBLE UNDER THE SITUATION. HE'S

1 SEPARATED FROM HER MOM. HAS A COURT ORDER ALLOWING  
2 HIM VISITATION. SHE'S TESTIFIED HE'S NEVER DONE  
3 ANYTHING INAPPROPRIATE TO ME. HE'S NEVER DONE  
4 ANYTHING. HE'S TRIED TO BE A GOOD FATHER TO ME.  
5 NEVER DONE ANYTHING INAPPROPRIATE.

6 THAT IS SOMETHING THAT YOU CAN CONSIDER.  
7 WHETHER OR NOT THE PROSECUTION HAS PROVED ITS CASE  
8 BEYOND A REASONABLE DOUBT.

9 NOW, THIS IS A VERY TOUGH JOB THAT YOU  
10 HAVE. IT'S ONE OF THE TOUGHEST CASES FOR ME -- THESE  
11 TYPE OF CASES AND CHARGES. IT'S TOUGH FOR EVERYBODY.  
12 IT'S TOUGH FOR THE JUDGE, IT'S TOUGH FOR DEFENSE  
13 ATTORNEY. IT'S TOUGH PROBABLY FOR THE PROSECUTION.

14 AND I KNOW THAT IT'S TOUGH FOR ALL OF YOU.  
15 BUT THE REASON WHY WE WENT THROUGH THE VOIR DIRE  
16 PROCESS IS BECAUSE YOU ALL PROMISED THAT YOU YOU WOULD  
17 NOT ACT ON YOUR EMOTIONS, YOU WOULD BE IMPARTIAL  
18 JUDGES OF THE FACTS AND APPLY THE EVIDENCE, AND FOLLOW  
19 HER HONOR'S INSTRUCTIONS ON THE LAW AND DETERMINE  
20 WHETHER OR NOT YOU BELIEVE THE PROSECUTION HAS PROVEN  
21 THEIR CASE BEYOND A REASONABLE DOUBT.

22 KEEP IN MIND WHY YOU WERE SUMMONED TO BE  
23 JURORS ON THIS CASE. BE COGNIZANT OF WHERE YOU ARE.  
24 BE COGNIZANT OF WHY YOU ARE HERE. SEPARATE YOUR  
25 EMOTIONS IN THIS CASE. AND WHEN YOU DO THAT, AND YOU  
26 APPLY THE EVIDENCE OBJECTIVELY TO THE LAW AS HER HONOR  
27 INSTRUCTS YOU ON IT, YOU HAVE TO COME TO THE  
28 CONCLUSION, LADIES AND GENTLEMEN, THAT THIS IS NOT

1 PROOF BEYOND A REASONABLE DOUBT.

2 IT'S THE HIGHEST BURDEN OF PROOF IN ANY  
3 COURT IN THE UNITED STATES OF AMERICA. FOR OBVIOUS  
4 REASONS. RETURN A VERDICT OF NOT GUILTY OF THESE  
5 CHARGES. BECAUSE THE PROOF -- MR. SANTISO -- I LIKE  
6 HIM. LIKE I SAID, ON A PERSONAL LEVEL I DO LIKE HIM.  
7 HE JUST SIMPLY HAS NOT PROVEN THIS CASE BEYOND A  
8 REASONABLE DOUBT. AND THAT'S WHAT YOUR NOT-GUILTY  
9 VERDICT WOULD MEAN.

10 I THANK YOU ALL FOR YOUR TIME.

11 THE COURT: THANK YOU, MR. LE.

12 MR. SANTISO.

13 MR. SANTISO: THANK YOU.

14 GOOD AFTERNOON AGAIN. IT'S MY OPPORTUNITY  
15 TO RESPOND TO A FEW THINGS THAT MR. LE SAID. AND I  
16 STAND CORRECTED. IT'S ABSOLUTELY CORRECT WHAT MR. LE  
17 SAID ABOUT THE WHITE PORTION OF VANESSA'S STATEMENT.  
18 I APOLOGIZE. SHE DID JUST SAY STUFF CAME OUT OF HIS  
19 PENIS. YOU HEARD WHAT THE NURSE SAID. IF WHAT YOU  
20 HEARD IS NOT WHAT I SAID, GO WITH YOUR MEMORY. BUT  
21 MR. LE WAS CORRECT IN THAT REGARD.

22 OBVIOUSLY I DISAGREE WITH THE REST OF HIS  
23 ARGUMENT, AS YOU SHOULD AS WELL. I'LL JUST FOCUS ON A  
24 FEW PORTIONS. IT'S INTERESTING THAT HE TALKED ABOUT  
25 VANESSA FANTASIZING. WHAT SHE TALKED ABOUT WITH  
26 MONICA AND THE CANDY, THAT'S SOMETHING THAT COULD  
27 ACTUALLY HAPPEN TO A GIRL THAT'S FIVE YEARS OLD.  
28 GOING TO GET CANDY WITH MONICA NOT HAVING MONEY.



1 PERHAPS SHE REMEMBERED IT.

2 BUT GOING BACK TO WHAT I SAID EARLIER IS  
3 SHE'S TALKING ABOUT THINGS THAT WERE DONE TO HER, THAT  
4 A FIVE-YEAR-OLD SHOULDN'T KNOW. WHAT SHE, QUOTE,  
5 UNQUOTE, FANTASIZED ABOUT COULD ACTUALLY HAPPEN TO  
6 HER. TO ANY FIVE-YEAR-OLD.

7 BUT NOT WHAT SHE SAID THE DEFENDANT DID TO  
8 HER. THAT'S ONE OF THE BIG PROBLEMS WITH THAT WHOLE  
9 FANTASY ARGUMENT. MR. LE TALKED ABOUT HOW THE  
10 DETECTIVE SUGGESTED PEE-PEE TO HER. ACTUALLY, I  
11 IMPLORE YOU TO REVIEW THE TRANSCRIPT. SHE SAID THE  
12 WORD PEE-PEE HERSELF ONCE. AND THEN THE REST OF THE  
13 INTERVIEW SHE IS JUST MOTIONING OR REFERRING TO HER  
14 PARTS OF HER BODY.

15 IF SHE IS SO SUBJECT TO SUGGESTIVENESS,  
16 THEN HOW COME SHE DIDN'T CONTINUE USING THAT WORD  
17 THROUGHOUT THE REST OF THE INTERVIEW. YOU GOT TO  
18 THINK ABOUT THAT TOO. HE SAID SOMETHING ABOUT HER  
19 BEING TRAUMATIZED. I DON'T KNOW WHERE THAT CAME FROM.  
20 I GUESS, LIKE I SAID, UNFORTUNATELY, I DON'T THINK SHE  
21 KNOWS HOW SERIOUS IT IS YET.

22 MR. LE TALKED ABOUT THE DOLLS. THAT WHOLE  
23 DOLL ARGUMENT, ABOUT IT BEING SUGGESTIVE OR HER  
24 FANTASIZING WITH THE TOYS WOULD WOULD ACTUALLY HAVE  
25 SOME RELEVANCE AND WOULD BE STRONGER IF THE DOLLS WERE  
26 GIVEN TO HER WAY AT THE BEGINNING BEFORE THE  
27 DISCLOSURES WERE MADE. OR AS SOON AS THE DISCLOSURES  
28 WERE MADE TO HER MOM.



1 DON'T FORGET THAT WHAT SHE IS SHOWING WITH  
2 THE DOLLS IS CONSISTENT WITH SHE WHAT SHE DISCLOSED TO  
3 HER MOM AND ALSO TO THE NURSE. SO SAYING THAT THE  
4 DOLLS ALLOWED HER TO FANTASIZE AND PERHAPS WERE  
5 SUGGESTIVE DOESN'T APPLY IN THIS CASE. SHE ALREADY  
6 SAID WHAT HAPPENED BEFORE THE DOLLS HAD BEEN GIVEN TO  
7 HER.

8 AND MR. LE TALKS ABOUT MEDICAL EVIDENCE.  
9 THERE IS NO MEDICAL EVIDENCE. OKAY. I'VE NEVER SAID  
10 ANYTHING ABOUT THAT. WE TALKED ABOUT THAT DURING JURY  
11 SELECTION. AND IF YOU THIS THINK ABOUT IT, WHAT  
12 VANESSA DESCRIBED ACTUALLY IS CONSISTENT WITH WHAT WAS  
13 IN THE MEDICAL EVIDENCE. SHE NEVER SAID THAT ANYTHING  
14 CAME OUT OF THE DEFENDANT'S PENIS AND WENT ON HER.  
15 RIGHT?

16 AND WE ALSO KNOW THAT THERE COULD BE  
17 FACTORS THAT AFFECT THE ABILITY TO GET ANY SORT OF  
18 FORENSICS. WIPING. WE KNOW SHE SAID SHE URINATED  
19 WITH HER MOM. SO THE LACK OF FORENSICS REALLY DOESN'T  
20 ADD ANYTHING AS FAR AS THE DEFENSE'S CASE AND WHAT  
21 THEY ARE TRYING TO SAY TO YOU.

22 MR. LE CALLED MS. CALDERON A LIAR. OKAY.  
23 BUT HE DIDN'T SAY ANYTHING ABOUT IT. I GUESS HE JUST  
24 SAID IT JUST TO SAY IT. I, FOR INSTANCE, SAID YOU  
25 SHOULDN'T BELIEVE MS. ARDON BECAUSE SHE SAID SOMETHING  
26 IN THE PAST THAT WAS COMPLETELY UNCONSISTENT WITH THE  
27 EVIDENCE. I GAVE YOU A BASIS FOR WHY YOU SHOULDN'T  
28 BELIEVE MS. ARDON.

1 HE'S NOT GIVEN YOU A BASIS TO NOT BELIEVE  
2 MS. CALDERON. ALL RIGHT. THERE'S NOTHING TO INDICATE  
3 THAT SHE HAS LIED. SO I'M NOT SURE WHERE THAT CAME  
4 FROM. I -- I'M SURE, APART FROM THE TIME WHERE HE  
5 GETS IN AN ALTERCATION WITH HIS WIFE IN FRONT OF  
6 MONICA WHEN SHE WAS A CHILD, BUT I'M SURE HE'S BEEN A  
7 GOOD FATHER. YOU'RE NOT HERE TO DECIDE IF HE'S A GOOD  
8 DAD OR BAD DAD. RIGHT?

9 WE'RE ONLY HERE TO DECIDE ONE THING.  
10 THAT'S WHAT HAPPENED ON THIS CRUCIAL DAY WHEN THE  
11 DEFENDANT WAS LEFT ALONE FOR THE FIRST TIME WITH  
12 VANESSA FOR FIVE MEANS MINUTES AND VANESSA, AFTER  
13 THAT, HAD SUCH A CHANGE IN HER BEHAVIOR TOWARDS THE  
14 DEFENDANT.

15 SO YOU GOT TO PUT THAT ASIDE. BECAUSE  
16 THAT DOESN'T SHOW ONE WAY OR ANOTHER WHETHER HE DID OR  
17 HE DIDN'T DO IT. I'M CONFIDENT, ONCE AGAIN, AS I SAID  
18 EARLIER, THAT ONCE YOU CONSIDER ALL THE EVIDENCE AND  
19 YOU REVIEW THOSE STATEMENTS BY VANESSA THAT SHE SAID  
20 CLOSE IN TIME, YOU WILL FIND THAT THAT EVIDENCE OF  
21 WHAT VANESSA SAID IS SUFFICIENT FOR YOUR VERDICT, AND  
22 THAT YOU'RE GOING TO CONVICT HIM OF ORALLY COPULATING,  
23 YES, PUTTING HIS MOUTH ON HER VAGINA. AND ALSO OF  
24 COMMITTING AT LEAST ONE ACT OF LEWD CONDUCT ON  
25 VANESSA. AND I APPRECIATE YOUR TIME.

26 THANK YOU, YOUR HONOR.

27 THE COURT: THANK YOU, MR. SANTISO.  
28