

2020 Ark. 148

Supreme Court of Arkansas.

Jose Rufino GARCIA-CHICOL, Appellant

v.

STATE of Arkansas, Appellant

No. CR-19-391

Opinion Delivered: April 16, 2020

Rehearing Denied May 28, 2020

Synopsis

Background: Defendant was convicted in the Circuit Court, Benton County, Brad Karren, J., of rape. Defendant appealed.

Holdings: The **Supreme Court**, Womack, J., held that:

- 1 bailiff's communication with jury about verdict forms in response to foreman's question did not prejudice defendant;
- 2 trial court's polling of jury did not violate rule governing inquiry into validity of jury's verdict;
- 3 requirement that State submit a motion to shorten the notice period for intent to use a translated letter was substantially met;
- 4 slight alteration in wording of attestation in translator's affidavit did not prejudice defendant; and
- 5 as a matter of first impression, translated statements were nontestimonial for confrontation clause purposes.





Affirmed.

Hart, J., filed a dissenting opinion.





Appellate Review
Sentencing or Penalty Phase Motion or Objection
Trial or Guilt Phase Motion or Objection
Pre-Trial Hearing Motion

West Headnotes (17)

Change View

- 1 **Criminal Law**  Fairness and justice in general
A mistrial is an extreme and drastic remedy to be resorted to only when there has been an error so prejudicial that justice cannot be served by continuing the trial.
- 2 **Criminal Law**  Discretion of court
The decision whether to grant or deny a motion for mistrial lies within the sound discretion of the trial court.
- 3 **Criminal Law**  Issues related to jury trial
A trial court's exercise of discretion in deciding whether to grant or deny a motion for mistrial should not be disturbed on appeal unless an abuse of discretion or manifest prejudice to the complaining party is shown.
- 4 **Criminal Law**  Authority or discretion of court
Provisions of statute setting forth procedure court must follow if disagreement among jurors arises after jury retires for deliberation or if jurors desire to be informed on a point of law are mandatory, in part, to ensure that jury is not misinformed regarding the law. Ark. Code Ann. § 16-89-125(e).

The requirement that State submit a motion to shorten the 45-day notice period for intent to use a translated letter was substantially met when trial court held a hearing on defendant's motion in limine and the State presented to the court its case for admitting the letter on short notice, due to fact that letter, written by defendant to wife in Spanish, was composed only one week earlier. **Ark. R. Evid. 1009.**

- 14 **Criminal Law**  Documentary and demonstrative evidence
Slight alteration in wording in State translator's affidavit, using word "true" instead of "fair" to attest to the accuracy and completeness of translation of letter that defendant sent in Spanish before trial, did not prejudice defendant and thus was not a basis to reverse rape conviction.
- 15 **Criminal Law**  Out-of-court statements and hearsay in general
Nontestimonial statements are not subject to the Sixth Amendment right of confrontation. U.S. Const. Amend. 6.
- 16 **Criminal Law**  Out-of-court statements and hearsay in general
In determining whether an interpreter is acting as a conduit with respect to a translation, making the translated statements nontestimonial for confrontation clause purposes, a court should consider all relevant factors, including which party supplied the interpreter, whether the interpreter had any motive to mislead or distort, the interpreter's qualifications and language skill, and whether actions taken subsequent to the conversation were consistent with statements as translated. U.S. Const. Amend. 6.
- 17 **Criminal Law**  Use of documentary evidence
Translated statements from letter that defendant sent in Spanish before trial were directly attributable to defendant and, therefore, nontestimonial for confrontation clause purposes; State's translator, who was highly qualified and who lacked any motive to mislead or distort contents of letter, was nothing more than a language conduit. U.S. Const. Amend. 6.

****633** APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. 04CR-17-2504],
HONORABLE BRAD KARREN, JUDGE

Attorneys and Law Firms

Hancock Law Firm, by: Sharon Kiel, Little Rock, for appellant.

Leslie Rutledge, Att'y Gen., by: Chris R. Warthen, Ass't Att'y Gen., for appellee.

Opinion

SHAWN A. WOMACK, Associate Justice

*1 Appellant **Jose** Rufino **Garcia-Chicol**, who was convicted of rape, appeals the circuit court's denial of his motion for mistrial. Additionally, he appeals the circuit court's decision to admit into evidence a translation of a letter he wrote in Spanish. He contends that this admission violated both **Arkansas** Rule of Evidence 1009 and his Sixth Amendment right to confrontation. We affirm.

I. Background

A jury convicted appellant of the rape of S.P., his stepdaughter, a minor who was less than fourteen years of age. Shortly before trial, while in the Benton County jail, appellant sent his wife a letter written in Spanish, which attempted to dissuade her from bringing his children to trial. Appellant's wife later turned the letter over to law enforcement. The letter, and a translation of the letter created by an **Arkansas** certified interpreter, were admitted into evidence at trial over appellant's objections.

During the penalty phase, instructions were given on the offense of rape and the lesser-included offense of attempted rape. The jury mistakenly signed both the rape and the attempted-rape verdict forms after the foreman asked the bailiff what to do with the

PROSECUTOR: Just what he told you?

BAILIFF: Yes, ma'am.

PROSECUTOR: So what did he tell you verbally when he told you about that other form?

BAILIFF: He said this one, you know, was attempted rape.

PROSECUTOR: Okay. When you told him to sign it, did you tell him to sign it "guilty" or "not guilty?"

BAILIFF: No. I think—no, I just said, "I guess sign it." Yeah, something—

PROSECUTOR: So you did not tell him which way—

BAILIFF: No.

***635** PROSECUTOR: —to sign it? And to your understanding, you did not—you did not even talk to him until after they formed the guilty verdict on the rape charge?

BAILIFF: Yes, ma'am.

PROSECUTOR: The greater offense?

BAILIFF: Correct.

4 **5** ***5** Appellant argues that by counseling the foreman to sign the additional verdict form, the bailiff inserted himself into the jury's deliberation and prevented the circuit court from addressing their confusion. The circuit court is required to call the jury into open court to answer any question it may have. **Ark.** Code Ann. § 16-89-125(e) (Repl. 2005). Section 16-89-125(e) provides:

After the jury retires for deliberation, if there is a disagreement between them as to any part of the evidence or if they desire to be informed on a point of law, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of or after notice to the counsel of the parties.

The provisions of subsection (e) are mandatory, in part, to ensure the jury is not misinformed regarding the law. *Sanders v. State*, 317 **Ark.** 328, 343, 878 S.W.2d 391, 400 (1994). Noncompliance with section 16-89-125(e) gives rise to a presumption of prejudice, and the State has the burden of overcoming that presumption. *Tarry v. State*, 289 **Ark.** 193, 197, 710 S.W.2d 202, 205 (1986). The State concedes that it had the burden of proving there was no prejudice.

We addressed bailiff misconduct under a set of similar facts in *Williams v. State*, 264 **Ark.** 77, 568 S.W.2d 30 (1978). In *Williams*, this court reversed the circuit court's order that denied the defendant's motion to set aside the verdict. The motion was based upon allegations that the bailiff had responded to the jury on a question of law. Specifically, one of the jurors came out and told the bailiff that they could not come to an agreement because one of the jurors was a friend of the key witness. When asked what could be done ***6** about it, the bailiff responded, "Well, it's too late to do anything about it now." After hearing testimony from the bailiff, the circuit court denied the motion to set aside.

6 In reversing the circuit court, this court relied on **Ark.** Stat. Ann. § 43-2139 (Repl. 1964), the former version of section 16-89-125(e). The *Williams* court held that the inquiry made by the foreman was a request for information on a point of law, and his failure to require the bailiff to conduct the jury into open court was contrary to the statute and constituted misconduct. 264 **Ark.** at 80, 568 S.W.2d at 31. The good intentions of the bailiff and the foreman were not enough to excuse noncompliance with the statute. *Id.* *Williams* is, however, distinguishable from the instant case. There, the foreman communicated with the bailiff while the jury was in the middle of deliberations, making it impossible for the circuit court to determine whether matters outside the record influenced the jury in reaching its verdict. In the case at bar, the bailiff testified that when he spoke with the foreman, the jury had already found appellant guilty of rape and had signed the rape verdict form. Therefore, the bailiff's instruction to the foreman to sign the additional form could not have infected the jury's deliberations.

language document, must be served upon all parties at least forty-five days before the date of trial. *Id.* Paragraph (b) of Rule 1009 requires a party to object to any translation by pointing out specific inaccuracies of the translation at least fifteen days prior to trial. Failure to object to the accuracy of a translation precludes a party from attacking or contradicting the translation. **Ark. R. Evid. 1009(c).**

While in jail, appellant wrote a letter to his wife, which was mailed out on September 5, 2018. In the letter, appellant asked his wife not to bring their daughters to court on September 26, the day of his jury trial. He also instructed her to stay away from her house and not answer the phone. On September 12, the State received the letter from law enforcement and made a request for the letter to be officially translated. An affidavit was executed by the State's translator on September 13, attesting that he was an **Arkansas** certified interpreter in the English and Spanish languages, and that the translated document he composed was a true, accurate, and complete translation of appellant's letter.

On September 19, appellant filed a motion in limine to exclude the letter based on undue prejudice. A hearing was held the following day on the motion in which the circuit ***10** court heard arguments from both parties. The court subsequently denied appellant's motion in limine, concluding it was admissible under Rule 404(b) of the **Arkansas** Rules of Evidence. At trial, appellant objected to the admissibility of the English translation on the grounds that the document violated his right to confrontation. This objection was overruled, and the translation of the letter was admitted into evidence.

Appellant now asserts that the State's notice of its intent to use the translated letter pursuant to Rule 1009 was defective because he was not given forty-five days' notice. Additionally, he argues the translator's affidavit did not comply with Rule 1009 because, instead of certifying that the translation was "fair, accurate, and complete," as paragraph (a) dictates, it certified the translation to be "*true*, accurate and complete." (Emphasis added.) The violation of paragraph (a) did not render the translation inadmissible, appellant contends, but instead meant that the translator himself was required to appear in court to testify.

13 14 At the pretrial hearing, appellant's counsel conceded that the State was not at fault regarding the timing of the disclosure of the letter because it had been composed the week prior, and the State needed to translate the letter. Paragraph (f) of Rule 1009 states that "[t]he court, upon motion of any party and for good cause shown, may enlarge or shorten the time limits set forth in this rule." **Ark. R. Evid. 1009(f).** The requirement that the State submit a motion to shorten the forty-five-day notice period was substantially ****638** met when the circuit court held a hearing on appellant's motion in limine and the State presented to the court its case for admitting the letter on short notice. Additionally, appellant's argument ***11** that the translator's affidavit is defective because it used the word "true" instead of "fair" is not a meritorious ground for reversal. Appellant suffered no prejudice from this slight alteration in wording.

15 Appellant also claims admission of the letter violated his Sixth Amendment right to confrontation. He argues he was caught by unfair surprise when he was unable to cross-examine the translator of his letter. The Sixth Amendment's Confrontation Clause provides: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." U.S. Const. amend. VI; *see also Vankirk v. State*, 2011 **Ark.** 428, at 3, 385 S.W.3d 144, 147 (noting that the Confrontation Clause is incorporated into the **Arkansas** Constitution via the Fourteenth Amendment). The **Supreme Court**, in *Crawford v. Washington*, held that the Confrontation Clause bars the admission of testimonial statements unless the witness is unavailable to testify, and the defendant has previously had the opportunity to cross-examine the declarant. 541 U.S. 36, 59, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). Nontestimonial statements are not subject to the Sixth Amendment. *Davis v. Washington*, 547 U.S. 813, 821, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006).

The **Supreme Court** further developed this "testimonial" standard outlined in *Crawford* in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009), and *Bullcoming v. New Mexico*, 564 U.S. 647, 131 S.Ct. 2705, 180 L.Ed.2d 610 (2011). In *Melendez-Diaz*, the Court held that a forensic-laboratory report ranks as testimonial for the purposes of the Confrontation Clause when the report had been created specifically to serve as evidence in a criminal proceeding. The prosecution may not introduce such a report without offering a live witness competent to testify to the ***12** veracity of the statements made in the report. *Id.* Likewise, in *Bullcoming*, the Court held the

*15 Allowing the translation document into evidence without having the translator there to testify was erroneous. Since the defendant received the maximum sentence, prejudice is demonstrated. See, e.g., *Kitchell v. State*, 2020 Ark. 102, 110, 594 S.W.3d 848 (citing **640 *Buckley v. State*, 341 Ark. 864, 20 S.W.3d 331 (2000)). In this case, the testimony against the defendant was inconsistent in key respects, and there was no DNA or other scientific evidence that would tend to confirm that a sex crime had occurred. The prosecution's burden of proof is guilt beyond any reasonable doubt. Perhaps allowing the defense to examine the translator would have been the difference in the outcome. Accordingly, we should reverse and remand for a new trial so that confidence may be afforded to the jury's verdict.

I dissent.

All Citations

2020 Ark. 148, 597 S.W.3d 631

End of
Document

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SENTENCING ORDER

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS,

19 West JUDICIAL DISTRICT 2 DIVISION

On September 28, 2018 the Defendant appeared before the Court, was advised of the nature of the charge(s), of Constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing.

ELECTRONICALLY FILED

Benton County Circuit Court
Brenda DeShields, Circuit Clerk

2018-Oct-04 09:10:21

04CR-17-2504

C19WD02 : 2 Pages

Offender	Defendant (Last, First, MI) Garcia-Chicol, Jose Rufino		DOB 08/11/1984	Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Total Number of Counts One
	SID # 4 1 2 6 1 0 5	Race & Ethnicity <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Unknown <input type="checkbox"/> Other <input checked="" type="checkbox"/> Hispanic			
Court Info	Supervision Status at Time of Offense				
	Judge Honorable Brad Karrein				File Stamp
	Prosecuting Attorney/Deputy Tyler Williams				
	Defendant's Attorney Lee Warden <input type="checkbox"/> Private <input checked="" type="checkbox"/> Public Defender <input type="checkbox"/> Pro Se <input type="checkbox"/> Appointed				
Legal Statement	Change of Venue <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, from:				
	<input type="checkbox"/> Pursuant to A.C.A. §§16-93-301 et seq., or <input type="checkbox"/> §§ this Court, without making a finding of guilt or entering a judgment of guilt and with the consent of the Defendant defers further proceedings and places the Defendant on probation. There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. Defendant was advised of the conditions of the sentence and/or placement on probation and understands the consequences of violating those conditions. The Court retains jurisdiction during the period of probation/suspension and may change or set aside the conditions of probation/suspension for violations or failure to satisfy Department of Community Correction (D.C.C.) rules and regulations.				
	<input checked="" type="checkbox"/> of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.C.) for the term specified on each offense shown below.				
	Defendant made a voluntary, knowing, and intelligent waiver of the right to counsel. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
	A.C.A. # of Offense/ Name of Offense+ 5-14-103 Rape		Case # 2017-2504-2		
	A.C.A. # of Original Charged Offense 5-14-103		ATN 006591563	Offense was <input type="checkbox"/> Nolle Prossed <input type="checkbox"/> Dismissed <input type="checkbox"/> Acquitted	
			Appeal from District Court <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Probation/SIS Revocation+ <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Offense Date Before December 16, 2017		Offense is <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misd. <input type="checkbox"/> Vio.	Offense Classification <input checked="" type="checkbox"/> Y <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> U	
	Number of Counts: One	Criminal History Score 0	Seriousness Level 9	Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to commit the offense	
	Presumptive Sentence <input checked="" type="checkbox"/> Prison Sentence of 180/300 months <input type="checkbox"/> Community Corrections Center <input type="checkbox"/> Alternative Sanction				
Defendant Sentence* (see Page 2) Imposed <input checked="" type="checkbox"/> ADC <input type="checkbox"/> Jud. Tran. <input type="checkbox"/> County Jail _____ months Probation _____ months SIS _____ months Other <input checked="" type="checkbox"/> Life <input type="checkbox"/> LWOP <input type="checkbox"/> Death If probation or SIS accompanied by period of confinement, state time: _____ days or _____ months. Sentence was enhanced _____ months, pursuant to A.C.A. §§ Enhancement(s) is to run: <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive. Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection <input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)					
Victim Info# (See page 2) <input type="checkbox"/> N/A (Multiple Victims <input type="checkbox"/> Yes <input type="checkbox"/> No)		Age 11	Sex <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	Race & Ethnicity <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input checked="" type="checkbox"/> Hispanic	
Defendant voluntarily, intelligently, and knowingly entered a <input type="checkbox"/> negotiated plea of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere. <input type="checkbox"/> plea directly to the court of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere.					
Defendant: <input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> §§16-93-301 et seq., or <input type="checkbox"/> other §§ <input type="checkbox"/> entered a plea and was sentenced by a jury. <input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input checked="" type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input checked="" type="checkbox"/> jury. <input type="checkbox"/> was found guilty of lesser included offense by <input type="checkbox"/> court <input type="checkbox"/> jury.					
Sentence is a Departure <input type="checkbox"/> Yes <input type="checkbox"/> No		Sentence Departure is <input type="checkbox"/> Durational or <input type="checkbox"/> Dispositional. If durational, state how many months above/below the presumptive sentence:			
Departure Reason (See page 2 for a list of reasons)					
Aggravating # _____ or Mitigating # _____ For Agg. #16 or Mit. #10, or if departing from guidelines, please explain: _____			Sentence will run: <input type="checkbox"/> Consecutive <input type="checkbox"/> Concurrent to Offense # _____ or Case # _____		

Offender

Court Info

Legal Statement

Offense #1

Defendant's Full Name: Garcia-Chicol, Jose Rufino

Special Conditions

Sex Offenses
Defendant has been adjudicated guilty of an offense requiring sex offender registration and must complete the Sex Offender Registration Form. ☒ Yes ☐ No

Defendant has committed an aggravated sex offense as defined in A.C.A. §12-12-903. ☐ Yes ☒ No

Defendant is alleged to be a sexually violent predator and is ordered to undergo an evaluation at a facility designated by A.D.C. pursuant to A.C.A. §12-12-918. ☐ Yes ☒ No

Defendant, who has been adjudicated guilty of an offense requiring registration, has been adjudicated guilty of a prior sex offense under a separate case number. ☐ Yes ☒ No
If yes, list prior case numbers:

Domestic Violence Offenses
Defendant has been adjudicated guilty of a domestic-violence related offense. ☐ Yes ☒ No

If no, was defendant originally charged with a domestic-violence related offense? ☐ Yes ☒ No
If yes, state the A.C.A. # of the offense:

If yes to either question, identify the relationship of the victim to the defendant.

DNA Sample/Qualifying Offense

Defendant has been adjudicated guilty of a qualifying offense or repeat offense (as defined in A.C.A. §12-12-1103). ☒ Yes ☐ No

Defendant is ordered to have a DNA sample drawn at ☐ a A.C.C. facility ☒ the A.D.C. or
☐ other _____

Drug Crime

Defendant has been convicted of a drug crime, as defined in §12-17-101. ☐ Yes ☒ No

Fines, Fees, Restitution

Court Costs	\$ 150
Fines	\$
Booking/Admin Fees (\$20)	\$ 20
Drug Crime Assessment Fee (\$125)	\$
DNA Sample Fee (\$250)	\$ 250
Mandatory Sex Offender Fee (\$250)	\$ 250
Public Defender User Fee	\$
Public Defender Attorney Fee	\$ 500
Other (explain)	\$
	25-CAC fund

Restitution \$ _____ Payable to [If multiple beneficiaries, give names and payment priority] _____

Terms

☐ Due Immediately☐ Installments of: _____☐ Payments must be made within _____ days of release from A.D.C.☐ Upon release from confinement, Defendant must return to court to establish payment of restitution☐ Restitution is joint and several with co-defendant(s) who was found guilty - List name(s) and case number(s) _____

Sentence Options

Defendant was convicted of a target offense(s) and is sentenced pursuant to provisions of the Community Punishment Act. ☐ Yes ☒ No

The Court hereby orders a judicial transfer to the Department of Community Correction. ☐ Yes ☒ No

Pursuant to the Community Punishment Act, the Defendant shall be eligible to have his/her records sealed. ☐ Yes ☒ No

Extended Juvenile Jurisdiction Applied
☐ Yes ☒ No

JAIL TIME CREDIT

TOTAL TIME TO BE SERVED FOR ALL OFFENSES
In months: _____ ☒ Life ☐ LWOP

Death Penalty
☐ Yes ☒ No

If Yes, State Execution Date: _____

DEFENDANT IS ASSIGNED TO: ☒ ADC ☐ CCC ☐ COUNTY JAIL ☐ PROBATION ☐ SIS ☐ SPECIAL CONDITIONS

Conditions of disposition or probation are attached. ☐ Yes ☒ No

A copy of the pre-sentence investigation on sentencing information is attached ☐ Yes ☒ No

A copy of the Prosecutor's Short Report is attached ☐ Yes ☒ No

☐ Defendant has previously failed a drug court program.

DEFENDANT WAS INFORMED OF APPELLATE RIGHTS ☒ Yes ☐ No Appeal Bond \$ _____

The County Sheriff is hereby ordered to: ☐ transport the defendant to county jail ☐ take custody for referral to CCC ☒ transport to ADC

Defendant shall report to ACC probation officer for report date to CCC ☐ Yes ☒ No

Signature

Prosecuting Attorney/Deputy (Print Name): Tyler Williams

Signature: Tyler WilliamsDate: 10-2-2018Circuit Judge (Print Name): Brad CamenSignature: Brad CamenDate: 10-4-18

Additional Info

Additional Info: Defendant shall register as a sex offender as required by law. The no contact order shall remain in effect.

No:

Before The
Supreme Court of The United States

Jose R. Garcia-Chicol

Petitioner

vs.

State of Arkansas

Respondent

ON Petition For a Writ of Certiorari to

Arkansas Supreme Court

Case No: CR-19-391

APPENDUM B
EXCERPT from
TRIAL TRANSCRIPT

Jose R. Garcia-Chicol, Pro Se
171396 P.O. Box 970
Mtn. ARNA, Arkansas
72360-0970

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1 not evidence. They are made only to help you in
2 understanding the evidence and applicable law;

3 Deliberations:. After I give you your final
4 instructions, you will then go to the jury room to
5 discuss the case and to decide the questions I will
6 put on your verdict form. These deliberations are
7 absolutely private and neither I nor anyone else will
8 be with you in the court -- the jury room. Your
9 decision is your verdict. Keep an open mind until
10 after you have gone to the jury room to decide the
11 case and you and your fellow jurors have discussed
12 the evidence.

13 That's an overview of what -- of what the whole
14 process will be from beginning to end.

15 [Now, as you can see we have interpreters here.]

16 [Let me read you an instruction about interpreters.]

17 [Some of you may be bilingual or more than bilingual,

18 so I want you to understand what the interpreters']

19 [process is.]

20 Languages other than English will be used during

21 this trial. The evidence you are to consider is only
22 that provided through the official court

23 interpreters. Although some of you may understand

24 the non-English language used, it is important for

25 all jurors to consider the same evidence. Therefore,

1 you waiting.

2 Do not make up your mind during the trial about
3 what the verdict should be. Evidence can be
4 presented only one piece at a time. Wait until you
5 have heard all the evidence and have discussed it
6 thoroughly with your fellow jurors at the end of the
7 trial during your deliberations before you decide the
8 case.

9 Recesses: We will periodically take breaks
10 during the trial. Your duties as a juror continue
11 during recesses. You must follow the rules even if
12 you are away from the courtroom, such as at lunch or
13 at home.

14 Instructions: It is my duty as judge to inform
15 you of the law applicable to this case through
16 instructions. It is your sworn duty as jurors to
17 accept and follow all of them. Do not single any one
18 instruction out to the exclusion of the others.
19 Follow them all as a whole. You are to consider the
20 law only as instructed by me. Do not consider any
21 other rule of law with which you may happen to be
22 familiar.

23 Closing Arguments: After the evidence, the
24 attorneys will have a chance to make their final
25 remarks to you. The attorneys' closing arguments are

1 you must base your decision on the evidence presented
2 in the English interpretation. You must not rely in
3 any way on your own interpretation of the witness'
4 words.)

5 And the last instruction I will read to you here
6 at this stage is AMI 2d 100-A -- commencement of
7 trial.

8 To ensure fairness, and the appearance of
9 fairness, you as jurors must obey the following
10 rules:

11 First, do not talk among yourselves about this
12 case, or about anyone involved with it, until the end
13 of the case when you go to the jury room to decide
14 your verdict..

15 Second, do not talk with anyone else about this
16 case or about anyone involved with it until the trial
17 is ended and you have been discharged as jurors.

18 I had one of the attorneys come up the other day
19 and say one of the jurors had walked by or something
20 and asked where the courtroom was, and he said he
21 couldn't talk to you. That's certainly because I'm
22 ordering them not to talk to you and I'm going to
23 order you not to talk to anyone else..

24 Third, when you are outside the courtroom, do
25 not let anyone tell you anything about the case or

1 about anyone involved with it. If someone should try
2 to talk to you about the case, please report it to
3 Mr. Monjure.

4 Fourth, during the trial you should not talk
5 with or speak to any of the parties, lawyers, or
6 witnesses involved in this case -- you should not
7 even pass the time of day with any of them. It is
8 important not only that you do justice in this case,
9 but that you also give the appearance of doing
10 justice. If a person from one side of the case sees
11 you talking to a person from the other side -- even
12 if it is simply to pass the time of day -- an
13 unwarranted and unnecessary suspicion about your
14 fairness might be aroused. When the lawyers, parties
15 or witnesses do not speak to you when they pass you
16 in the hall or meet you anywhere, remember it is
17 because they are not supposed to talk to you or visit
18 with you either.

19 Fifth, do not read any new stories or articles
20 about the case or about anyone involved with it or
21 listen to any radio or television reports about the
22 case or about anyone involved with it.

23 Six, do not do any research on the Internet or
24 otherwise or make any investigation about the case or
25 the parties on your own.

1 Seventh, do not make up your mind during the
2 trial about what the verdict should be. Keep an open
3 mind until after you have gone to the jury room to
4 decide the case and you and your fellow jurors have
5 discussed the evidence. And that's the rules you're
6 going to need to follow.

7 Madam clerk, would you please swear the jury in.

8 DEPUTY CLERK KATHY CARTWRIGHT: Would all
9 potential jurors please stand and raise your right
10 hand.

11 Do you solemnly swear or affirm to make true and
12 perfect answers to all questions asked by or under
13 the direction of this court concerning your
14 qualifications to serve as petit jurors in the case
15 of State of Arkansas versus Jose Rufino
16 Garcia-Chicol, so help you God?

17 (Prospective jurors responded, "I do.")

18 THE COURT: Thank you. You're invited to be
19 seated.

20 (Whereupon, voir dire examination was had by the
21 Court and counsel for the State and the Defense. The
22 following proceedings occurred after the jurors had
23 exited the courtroom at 12:58 p.m.)/

24 THE COURT: With that, we will be in recess
25 until two o'clock.

1 MS. FISHER: Your Honor, there is a motion that
2 we would like to make outside the presence of the
3 jury.

4 THE COURT: Just so you know, on the record we
5 didn't swear the jury, as you know. We didn't want
6 jeopardy to attach until after lunch. We'll get them
7 sworn in then.

8 You're invited to be seated. What is the
9 motion?

10 MS. FISHER: Your Honor, I'm calling it a
11 motion; but I'm very sure you're aware we had a
12 competency hearing last week and I'm just going to
13 ask that if they intend to challenge the competency
14 of Vanessa Garcia again that that be done outside the
15 presence of the jury.

16 THE COURT: It's pretty clear that the law
17 requires that.

18 MR. FAUGHT: Yes, Your Honor.

19 THE COURT: All right, any issues about that?

20 MR. FAUGHT: No, Your Honor.

21 THE COURT: All right. Then, while I've got the
22 jury gone, I just want to make sure that Mr. Garcia
23 knows --

24 Look, Mr. Garcia, I don't know your intentions
25 of testifying or not testifying, and I don't want to

1 Jose will tell you that in the time preceding
2 that that whenever Stephanie and Eric Junior were at
3 the house they would sequester themselves in a back
4 bedroom, that they would shut the door and lock it,
5 that they would hang out together away from everyone
6 else. Jose put a stop to that too. He said they
7 were allowed to do so, of course, but the door has
8 got to be open, it has got to be unlocked.

9 When Eric isn't around he refers to Stephanie as
10 an earthquake. She is all over the house playing
11 with her younger stepsiblings.

12 His relationship with Stephanie never recovers.
13 He will tell you that before these accusations
14 started the best that they got is he would hug her on
15 special occasions and that was it. Their
16 relationship never got better. And then the
17 accusations started, the accusations that come from
18 the mouth of someone whose mom and dad split in part
19 because of Jose. Accusations that come out of left
20 field. And Jose will tell you, "I don't know where
21 this is coming from." He didn't have the greatest
22 relationship with Stephanie, but this? He doesn't
23 understand it.

24 The alleged kiss that we anticipate Vanessa is
25 going to get up here and talk about, Vanessa being

1 his own biological child who is six years old at the
2 time that she witnessed it, witnessed it allegedly
3 after being told of other incidents by Stephanie.
4 That one -- he understands where the confusion comes
5 from. While the kiss didn't happen, he will tell
6 you, he will walk you through step-by-step what
7 happened and why Vanessa might have thought she saw
8 what she thought she saw.

9 Ladies and gentlemen, after you have waded
10 through the testimony, weighed the credibility of the
11 witnesses, found those specks of gold that we asked
12 you to find, those little nuggets of truth, Jose is
13 confident there will be reasonable doubt and that you
14 will return a verdict of not guilty. Thank you.

15 THE COURT: Thank you, Mr. Faught.

16 The State may call your first witness.

17 MS. FISHER: The State calls Vanessa Garcia.

18 THE COURT: Do you-all want to invoke the rule?

19 MR. WARDEN: Yes, Your Honor.

20 THE COURT: All right, the rule is invoked. If
21 you-all could look in the courtroom and see if
22 there's anyone here that needs to be removed.

23 Okay, the rule is invoked. Outside speakers are
24 off. Thank you.

25 All right, just while we're waiting for Vanessa

1 to get up here, we want -- I want to make sure, [REDACTED]

2 [REDACTED], how is the hearing apparatus? Good?

3 [REDACTED]: Yes.

4 THE COURT: Thank you.

5 BAILIFF MONJURE: There you go, up in here.

6 Let me swear you in. Raise your right hand. Do
7 you affirm the testimony you're about to give in this
8 case is the truth, the whole truth, and nothing but
9 the truth?

10 MS. GARCIA: Um-hmm. (Witness nodded head.)

11 BAILIFF MONJURE: Thank you. Get up in that
12 chair.

13 MS. FISHER: Your Honor, may I proceed?

14 THE COURT: You may. Thank you, Ms. Fisher.

15 VANESSA GARCIA, being called upon to testify on
16 behalf of the State, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. FISHER:

19 Q Would you give us your name?

20 A Vanessa.

21 Q Vanessa, what's your last name?

22 A Garcia.

23 Q Vanessa, how old are you?

24 A Seven.

25 Q And what grade are you in?

- 1 A First grade.
- 2 Q Okay. And do you go to school?
- 3 A Yes.
- 4 Q What's your favorite thing about school?
- 5 A (No response.)
- 6 Q Do you have recess?
- 7 A Yes.
- 8 Q Do you like recess?
- 9 A Yes.
- 10 Q Do you have a best friend at school?
- 11 A Yes.
- 12 Q What is her name?
- 13 A Melia.
- 14 Q Melia. Do you play with Melia at recess?
- 15 A Yes.
- 16 Q What do you-all like to play?
- 17 A Chase boys.
- 18 Q You like to chase boys?
- 19 A (No response.)
- 20 Q Well, Vanessa, who do you live with right now?
- 21 A Mom, my brother, and me.
- 22 Q Okay. What's your brother's name?
- 23 A Chino.
- 24 Q Is his name also Angel?
- 25 A Yes.

- 1 Q Okay. So he goes by both?
- 2 A Hmm. (Witness nodded head.)
- 3 Q And what is your dad's name?
- 4 A Jose.
- 5 Q Okay. What's his last name?
- 6 A Garcia.
- 7 Q Does your dad live with you anymore?
- 8 A No.
- 9 Q Okay. Why not?
- 10 A I don't remember.
- 11 Q You don't remember why he doesn't live with you anymore?
- 12 A (Witness shook head.)
- 13 Q Okay. Do you know why you're here today?
- 14 A No.
- 15 Q No. Okay. Do you know -- so do you remember -- let me
- 16 ask you, you said you don't remember why you're here today. Do
- 17 you remember telling your mom something important about your
- 18 dad and Stephanie?
- 19 A I think.
- 20 Q Okay. Can you tell me what that is?
- 21 A I don't remember.
- 22 Q You don't remember?
- 23 A (Witness shook head.)
- 24 Q Okay.
- 25 A Not really.

1 MS. FISHER: Your Honor, may I have one moment?

2 THE COURT: You may.

3 (Whereupon, there was an off-the-record
4 discussion between Ms. Fisher and Ms. Williams.)

5 BY MS. FISHER:

6 Q Okay. Do you know who Stephanie is?

7 A Yes. She's my sister.

8 Q Okay. Is she your younger sister or your big sister?

9 A My big sister.

10 Q Your big sister.. And does Stephanie live with you?

11 A No.

12 Q No. Did you ever see anything happen between Stephanie
13 and your dad?

14 A I think.

15 Q Did you tell your mom what you saw happen between
16 Stephanie and your dad?

17 A Yes, I think.

18 Q Okay. And what was that that you saw?

19 A I don't remember because I don't have a good memory.

20 Q Okay.

21 A Not really.

22 Q You don't remember?

23 A (Witness shook head.)

24 Q Do you remember -- you said you think you remember,
25 though, telling your mom about something you saw between

1 Stephanie and your dad?

2 A Yes.

3 Q Yeah. Do you remember was that -- do you remember if that
4 was an important thing for you to tell?

5 A I think.

6 Q Okay. Whenever that happened was your dad living with you
7 at that point in time?

8 A Yes.

9 Q Okay. And does he live with you anymore?

10 A No.

11 Q Okay. And do you remember why that is, why your dad
12 doesn't live with you anymore?

13 A (Witness shrugged:)

14 Q No.

15 A (Witness shook head.)

16 Q Okay..

17 MS. FISHER: Your Honor, can I have one moment?

18 THE COURT:. You may.

19 (Whereupon, there was an off-the-record
20 discussion between Ms. Fisher and Ms. Williams.

21 BY MS. FISHER:

22 Q So you said you remember telling -- you remember telling
23 your mom something that you saw happen between your dad and
24 Stephanie?

25 A (Witness nodded head.)

1 Q Do you remember whenever you saw what happened that you
2 told your mom about did you talk to your dad about that too?

3 A No.

4 Q Okay. Do you remember -- do you remember seeing anything
5 -- I'm sorry, let me -- let me think about this for a second.
6 I want to make sure I'm asking you the question right and I
7 want to make sure you understand me. Okay?

8 You said you saw something that you told your mom about.
9 What did you tell your mom about?

10 A I don't remember. I don't have a good memory.

11 Q Okay. Okay. Well, Vanessa --

12 (Whereupon, there was an off-the-record
13 discussion between Ms. Fisher and Ms. Williams.)

14 BY MS. FISHER:

15 Q Do you remember if -- you know you said you told your mom
16 something. Do you remember if your dad told you not to tell
17 your mom something?

18 A I think.

19 Q Okay. Do you remember what that was about? Do you
20 remember what your dad told you not to tell?

21 A (Witness shrugged.)

22 Q You don't remember that?

23 A (Witness shook head.)

24 Q Okay.

25 MS. FISHER: I'll pass the witness, Your Honor.

1 THE COURT: Vanessa Garcia, please.

2 BAILIFF MONJURE: Do you affirm the testimony
3 before this court is the truth, the whole truth, and
4 nothing but the truth?

5 MS. GARCIA: Um-hmm.

6 BAILIFF MONJURE: Thank you. Have a seat.

7 VANESSA GARCIA, being called upon to testify on
8 behalf of the State, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. FISHER:

11 Q Hi, Vanessa.

12 A Hi.

13 Q You were in this courtroom yesterday, weren't you?

14 A Yes.

15 Q Yeah. Do you remember when you were in this courtroom
16 yesterday I talked to you a little bit? Do you remember
17 talking to me?

18 A Yes.

19 Q How are you feeling about being in the courtroom here
20 today?

21 A Nervous.

22 Q Nervous. Yeah. That's understandable. I still get
23 nervous too.

24 So yesterday when you talked to us, do you remember
25 telling us that you didn't remember some things?

1 A (Witness nodded head.)

2 Q Was that because you didn't remember them or was it
3 because you were nervous?

4 A Nervous.

5 Q Nervous, yeah. So you know here in this courtroom you're
6 safe; right?

7 A (Witness nodded head.)

8 Q And you remember Mr. Danny's here? You remember Mr. Danny
9 is here; right?

10 A (Witness nodded head.)

11 Q And you remember how he had you raise your right hand?

12 A (Witness nodded head.)

13 Q And did you swear to tell the truth?

14 A Yes..

15 Q Okay. Are you ready to tell us the truth here today?

16 A Maybe.

17 Q Okay. Well, all I can do is ask you to tell the truth and
18 try your best. Okay?

19 So yesterday you told us that your mom -- that you told
20 your mom something. Do you remember that?

21 A Yes.

22 Q Can you tell us what you told your mom?

23 A I don't want to.

24 Q Okay.

25 A I'm nervous.

1 A I don't know.

2 Q Okay. Were you -- were you really close?

3 A (No response.)

4 Q Can you point to an object maybe in this room that's
5 probably about how far away you were?

6 A (Witness shrugged.)

7 Q Okay. That's fine. That's okay. That's okay.

8 And when you saw them kissing, what -- I guess, did you
9 have to turn and look because you said you were walking to your
10 room; right?

11 A (Witness nodded head.) Maybe. I think.

12 Q Okay.

13 A (Witness shrugged.)

14 Q Okay. Vanessa, as you previously said, do you remember
15 being in here yesterday?

16 A Yes.

17 Q Okay. And you remember being in here and answering a lot
18 of questions with you don't know? Do you remember that?

19 A Yes.

20 Q Okay. Between yesterday and today has anyone talked with
21 you about what you're supposed to say?

22 A I don't remember.

23 Q You don't remember?

24 A (Witness shook head.)

25 Q Okay. Has anyone talked with you about what you said

1 yesterday?

2 A No. I think -- (Witness shrugged.) I don't know.

3 Q Okay. So when you went home, you and your mom or anyone
4 else, you didn't discuss this with anybody?

5 A What do you mean?

6 Q Maybe?

7 A What do you mean?

8 Q Okay. So, Vanessa, let's go over it a little more. When
9 you went home last night, did you and your mom talk about your
10 testimony or what you were supposed to say?

11 A No.

12 Q Okay. Did you talk about it with anyone?

13 A No.

14 Q No. Okay. And you previously said that when you saw them
15 it made you feel bad or disgusting; is that right?

16 A Yes.

17 Q Who told you that that was bad?

18 A No one.

19 Q No one.

20 MR. FAUGHT: Your Honor, may I have a moment?

21 THE COURT: You may, sir.

22 MR. FAUGHT: Thank you.

23 (Whereupon, there was an off-the-record
24 discussion between Mr. Faught, Mr. Warden, and
25 Mr. Lammers.)

1 BY MR. FAUGHT:

2 Q All right, Vanessa, I've got a few more questions. Okay?

3 So, Vanessa, these people sitting to my right, what do you call
4 them? Is this Ms. Fisher and Ms. Williams?

5 A I don't know.

6 Q You don't know. Okay. Well, did you talk with them about
7 what you're supposed to say today?

8 A Yes.

9 Q Yes. Okay. Did they tell you what to say?

10 A Yes.

11 Q They did?

12 A (Witness nodded head.)

13 Q Okay. What did they tell you?

14 A (Witness shrugged.)

15 Q That's okay. It's okay. Vanessa, have you ever taken
16 something that you weren't supposed to?

17 A Hmm?

18 Q Have you ever taken something that you weren't supposed
19 to?

20 A I don't remember.

21 Q You don't remember?

22 A (Witness shook head.)

23 Q You don't remember if you've ever taken something from a
24 store that you didn't buy?

25 A I think.

- 1 Q You think?
- 2 A (Witness nodded head.)
- 3 Q Can you think of how many times you've done that?
- 4 A Just one.
- 5 Q Just one time?
- 6 A (Witness nodded head.)
- 7 Q And what happened after that?
- 8 A Mom got mad. It was a dream or something.
- 9 Q Or something. Okay. And after this happened -- you said
- 10 your mom got mad, right?
- 11 A (Witness nodded head.)
- 12 Q Did she ask you about what you took?
- 13 A Hmm?
- 14 Q So you said one time you took something from a store you
- 15 weren't supposed to. Is that right? Or am I getting that
- 16 wrong?
- 17 A I don't know.
- 18 Q You don't know?
- 19 A I took a little candy, and my mom got mad.
- 20 Q Okay. And when you got home did you tell your mom about
- 21 the candy or did she find it or something else?
- 22 A She knows already.
- 23 Q She knew?
- 24 A (Witness nodded head.)
- 25 Q Did she ask you about it?

1 client and that she was told by my client not to tell
2 Mom. As long as she stays within that particular
3 episode and doesn't talk about any other information.

4 --
5 MS. FISHER: I don't anticipate it will go any
6 further than that.

7 MR. WARDEN: That's fine.

8 THE COURT: Let me repeat what I understand you
9 are saying. Vanessa will say that she observed the
10 kiss between Stephanie and Mr. Garcia; right?

11 MR. WARDEN: Yes, Your Honor.

12 THE COURT: And then what else?

13 MR. WARDEN: And that my client told her not to
14 tell her mother I believe is the testimony. (I
15 believe that was what she said in the CAC interview.
16 If Ms. Kraner were to testify to that, I believe that
17 is admissible.)

18 THE COURT: (All right, and that's acceptable?
19 If Ms. Kraner says that, you're fine with that?)

20 MR. WARDEN: Yes, Your Honor.

21 THE COURT: And you're going to let Ms. Kraner
22 know --

23 MS. FISHER: Yes.

24 THE COURT: -- that's what she's going to be
25 able to say?

1 down.

2 MS. FISHER: Sorry.

3 THE COURT: All right, now, let's talk about
4 this then. So the kissing episode, look, at
5 21:40:703, Vanessa says, "Dad and sister kissed. I
6 tell mom. Mom says -- said not to tell dad because
7 dad would be angry." So is that the statement?

8 MS. FISHER: No. What I anticipate she will say
9 is just confirming that Vanessa told her that she saw
10 the defendant and Stephanie kissing and that the
11 defendant told her not to tell. I imagine it will be
12 pretty brief, Your Honor.

13 THE COURT: Okay. I guess maybe what I would
14 like to do is could I get the defense to stipulate as
15 to what it is that you're willing Ms. Kraner to
16 state? What I don't want to have happen is Ms.
17 Kraner state something and then have a mistrial or
18 have a door opened that then opens up something else.
19 So I would like to hear from the defense what it is
20 that you're stipulating to Ms. Kraner can say.

21 MR. WARDEN: Yes, Your Honor, I think under the
22 rules they have a right to let Ms. Kraner testify
23 about a prior consistent statement of Vanessa.
24 Vanessa testified just a few minutes ago that she
25 observed this kiss between the alleged victim and my

1 Q. Stephanie, you testified that Jose would put his penis
2 inside your vagina. Did that happen one time? More than one
3 time?

4 A. More than one time.

5 Q. Did it happen more than five times?

6 A. More than five times.

7 Q. Stephanie, did Jose ever touch your body in any other way?
8 Did he touch your body anywhere else other than the vagina?

9 A. The breasts and mouth.

10 Q. What did he do to your breasts?

11 A. He would use his hands.

12 Q. Did he use any other body part on your breasts?

13 A. No.

14 Q. You mentioned your mouth?

15 A. Um-hmm.

16 Q. What would Jose do to your mouth?

17 A. Kiss me.

18 Q. Stephanie, I want to talk to you about December of 2017.

19 Can you tell us a little bit about the day that your mom talked
20 to you at McDonald's?

21 A. Yes.. So she picked me up and she said, "I need to talk to
22 you." I got really scared. So we went to McDonald's. My
23 little brother and my sister went to the playground area. And,
24 then, she said that "Vanessa told me that she saw you and Jose
25 doing something in the bathroom." So we talked about it. And

1 I didn't tell her everything because I was just not breaking
2 until a certain point, then, I broke.

3 Q Were you surprised when your mom asked you?

4 A No. I mean, I knew one day they were going to know.

5 Q How did you know that they might know one day?

6 A Because I have a couple of times, like, told them that I
7 was going to tell them, but I didn't.

8 Q A couple of times when you wanted to tell them but you
9 didn't?

10 A (Witness nodded head.)

11 Q Why didn't you tell them?

12 A Because I was scared what Jose was going to do to my mom.

13 Q Were you worried about your mom finding out?

14 A (Witness nodded head.) Yes, because I thought she was
15 like my dad where my dad takes a lot of things seriously
16 because I thought she was the same way.

17 Q Do you remember talking to a police officer?

18 A Yes.

19 Q Did you tell the police officer that day everything?

20 A No.

21 Q Why not?

22 A Because I was still not very open to it.

23 Q When people started asking you questions about what had
24 taken place with Jose, were you ready to talk then?

25 A No.

1 rape shown the intent. Clearly, there was sufficient
2 evidence to show the intent to rape by the actions of
3 Stephanie Posada testifying, very similar actions
4 that shows -- clearly shows intent pursuant to
5 Arkansas case law. So your motion for a directed
6 verdict is denied.

7 All right, now, let's get to this question that
8 I've been asking you several times, Mr. García. Do
9 you understand you have an absolute constitutional
10 right not to testify pursuant to Arkansas jury
11 instruction AMCI 2d 111? I will give the instruction
12 that that cannot be considered evidence against you
13 if you decide not to testify.

14 What is your decision to do? Are you wanting to
15 testify or not testify?

16 MR. GARCIA-CHICOL THROUGH INTERPRETER YANCEY:
17 Could I have a moment to speak to my attorneys,
18 please?

19 THE COURT: You may. Yes. Please.

20 (Whereupon, there was an off-the-record
21 discussion between Mr. Garcia-Chicol through
22 Interpreter Fernández with Mr. Warden, Mr. Faught,
23 and Mr. Lammers.)

24 MR. LAMMERS: Judge, we -- we may need some more
25 time. Here's the problem: I think he's confused

1 between his right to an appeal and his right to
2 testify or not testify.

3 THE COURT: Well, there's no reason for an
4 appeal right now.

5 MR. LAMMERS: Right: Right. He thinks that
6 they're mutually exclusive.

7 MR. WARDEN: If he doesn't testify, then, he
8 doesn't have an appeal.

9 THE COURT: I've got a jury out there waiting.
10 If you-all want to decide this on the run, I guess
11 you can decide it on the run. I'm just wanting to
12 get an idea so that we know how many more witnesses
13 we're going to be calling.

14 MR. LAMMERS: Well, I think --

15 MR. WARDEN: He will be our next witness, Your
16 Honor.

17 THE COURT: I'll give you another couple of
18 minutes. Then, we're going to have to get going
19 back.

20 MS. WILLIAMS: Your Honor, would the Court allow
21 the State to take a restroom break?

22 THE COURT: Let's take a break for 10 minutes.
23 Thank you.

24 BAILIFF MONJURE: All rise.

25 (Whereupon, proceedings were recessed at 2:09

1 p.m. and resumed at 2:32 p.m., outside the presence
2 of the jurors.)

3 THE COURT: All right, Mr. Monjure, can you get
4 the jury.

5 MR. LAMMERS: Your Honor, can we do this before
6 the jury comes in about his -- whether or not he
7 wants --

8 THE COURT: Here's where we are, folks, I've got
9 a jury waiting. I have asked him at least three
10 times on the record, told him that he has a
11 constitutional right not to testify and I would read
12 the instruction to the jury, AMCI 2d 111, that if he
13 were not to testify that the jury is not to consider
14 that. He's acknowledged each and every time that he
15 understands that right, his failure to take the stand
16 is a waiver and understands that. He said he
17 understands it. If he doesn't take the stand, we're
18 moving forward.

19 Let's get the jury ready to go!

20 MS. FISHER: Your Honor, we have those
21 instructions you asked for --

22 THE COURT: Thank you.

23 MS. FISHER: -- with the lesser included.

24 THE COURT: Thank you. Let's get Mr. Monjure
25 and get the jury in here.

1 BAILIFF MONJURE: Are you ready to go?

2 THE COURT: Yes, sir.

3 (Whereupon, the jurors entered the courtroom at
4 2:33 p.m.)

5 THE COURT: Mr. Monjure, all jurors present and
6 accounted for?

7 BAILIFF MONJURE: Yes, sir.

8 THE COURT: Thank you. You're invited to be
9 seated, please.

10 Folks, were you able to follow this court's
11 instructions and not discuss the case among
12 yourselves or talk with any of the attorneys,
13 parties, or witnesses in the case, not to read or
14 watch any news stories or articles about the case or
15 discuss any such articles with anybody else?

16 (Some jurors nodded their head.)

17 THE COURT: All right, thank you.

18 All right, Mr. Warden, your case, sir.

19 (Whereupon, there was an off-the-record
20 discussion between Mr. Warden, Mr. Faught, and Mr.
21 Lammers.)

22 MR. WARDEN: Your Honor, we'd call -- we are
23 going to call Jose Garcia-Chicol.

24 THE COURT: Thank you.

25 BAILIFF MONJURE: Stand up for me. Raise your

1 Q Have you ever touched Stephanie Posada inappropriately?

2 A No.

3 Q Have you ever kissed her inappropriately?

4 A No.

5 Q Have you ever put her -- your hand on her vagina?

6 A No.

7 Q Have you ever intentionally touched her breasts?

8 A No.

9 Q Have you ever put your mouth on her vagina?

10 A No.

11 Q Have you ever used your penis in any way on her vagina?

12 A No.

13 Q At any point -- you've never done any of this stuff at any
14 point in time; correct?

15 A No.

16 Q Would you ever do something like that?

17 A No.

18 Q Jose, I want you to tell me about your family now. Your
19 wife, Sara, how did you two meet?

20 A It's a long story. I'm going to jump from one thing to
21 the other so that I don't make it that long.

22 Q And I will try to ask you questions in the middle. Okay?

23 A That's fine.

24 I met my wife, Sara, at a chicken plant. The name of it
25 is Simmons.. The second plant is in Siloam Springs.

1 Q When did you meet her?

2 A I met her approximately about seven -- seven and a half
3 years.

4 Q And tell me how you guys met,

5 A Well, I went on a Friday to apply for a job at the plant
6 around 8:00, 8:30 in the morning. In the afternoon, they
7 called me that I had an interview. They told me to come on
8 Monday. And, then, I went and I had the interview on Monday.
9 And, then, they said, "Are you ready?" I told them yes.

10 They took me inside the plant to show me all the places to
11 work. So they put me to work to see if I could do the work.
12 My first job at this plant was stacking boxes. I work on -- I
13 work on stacking boxes for about three months.

14 Then, they have places, paper, at the cafeteria saying
15 that they needed somebody for production, marination. This is
16 a job that requires you to work on marinating all the stuff for
17 Pizza Hut, for Kentucky --

18 THE COURT: Can counsel approach, please.

19 (Whereupon, the following proceedings occurred
20 at the bench.)

21 THE COURT: Look, I don't want his answer -- I

22 don't find his answer being responsive. I don't

23 really want to know about Simmons' policies and

24 Simmons' job. I want to get to the meat of this.

25 Look, if he's not going to answer the question --

1 MR. WARDEN: I will try to move him along, Your
2 Honor.

3 (Whereupon, proceedings at the bench were
4 concluded.)

5 BY MR. WARDEN:

6 Q Okay, Jose, I just want to try to move it along a little
7 faster.. Okay?

8 A That's fine..

9 Q Let's go right to the point where you met Sara.

10 A Okay. Fife. Okay.. The thing about it is, is I met my
11 wife -- she's the kind of person that -- what does -- well; she
12 checks on production.

13 Q Did you meet her at the chicken plant you-all were working
14 at?

15 A That's right.

16 Q And did you start dating her?

17 A Yes, because I invite her out and she said yes.

18 Q And did you eventually find out she was married?

19 A No..

20 Q You never found out she was married?

21 A No, because I asked her and she never told me she was.

22 Q Okay. I'm talking about during the entire course of your
23 dating, not at the beginning. Did you ever discover that she
24 was married?

25 A Yes.. There was a moment or a point that, I found out about

1 it. I found out about it because she said that there was a
2 possibility she was pregnant.

3 Q Okay. About how long was that after you guys started
4 dating?

5 A Six months.

6 Q And how did you find out? What did she tell you?

7 A She just said, "I think I'm pregnant."

8 Q Okay. But you said you found out that she was married at
9 that point. How did you find that out?

10 A No, at that time she said to me, "I think I'm pregnant."

11 Q Okay. And what happened next?

12 A Then I -- I said, "Well, tell me what to do. You tell me
13 what to do and I will take care of things. I will be
14 responsible for it."

15 Q Tell me about when you found out she was married.

16 A When she told me that she was married was at that same
17 instance when she told me that she thought she was pregnant.
18 And I said, "Well, I'll take care of it."

19 Q And at that time where were you living, Jose?

20 A I -- I lived in Springdale.

21 Q Was she -- was Sara living with you at that time?

22 A No. She showed up at three in the morning at the house.

23 Q Okay. Did she ever start living with you?

24 A No. No. We lived together right when my daughter -- she
25 was about eight -- she was around eight or seven months old.

1 Q Okay. That's when you started living together?

2 A No. I'm sorry, I'm sorry. Please give me a moment.

3 Okay. That's why I like to take the whole story. I don't
4 want to jump ahead of things.

5 Q We're just trying -- we're just trying to do it as
6 efficiently as we can. Okay?

7 A Okay. Okay, I started to live -- we started to live
8 together approximately when my daughter was about eight months
9 or seven months old. The reason about this was because her ex
10 came knocking on the door. And when I went to go check through
11 the little eyeglass for the door to see who was there, it was
12 him.

13 Q Okay.. And did he eventually find out about you and Sara?

14 A That's right.

15 Q And how did -- tell me about that.

16 A Well, that same day he called her -- she was right there
17 in the living room.

18 INTERPRETER FERNÁNDEZ: I'm sorry. Your Honor,
19 the interpreter needs a moment to clarify.

20 A That same day he said, "Come to the house, come get your
21 things and after that we will talk about this."

22 Q Well, Jose, you heard the testimony from your wife about
23 how you met; correct?

24 A Um-hmm.

25 Q And about how Eric find out -- found out about it?

1 A Um-hmm.

2 Q Do you remember that episode?

3 A Well, if I go from the story part-by-part-jumping, I might
4 be able to explain it right, but if I tell you the whole story,
5 I should be able to tell it better.

6 THE COURT: Counsel approach, please.

7 (Whereupon, the following proceedings occurred
8 at the bench.)

9 THE COURT: Does the State have any objection to
10 letting him lead this witness?

11 MS. WILLIAMS: For the limited purpose of
12 getting to the point of --

13 THE COURT: Thank you.

14 MS. WILLIAMS: Yes, that's fine with the State.

15 THE COURT: We're going to be here for days.

16 MS. WILLIAMS: Yes, Your Honor. I don't want to
17 lead him for the whole direct.

18 THE COURT: Please lead your witness.

19 MR. WARDEN: If you get to a point where you
20 want me to do any more, object and then I will know.

21 THE COURT: Okay.

22 (Whereupon, proceedings at the bench were
23 concluded.)

24 BY MR. WARDEN:

25 Q Okay, Jose, I'm going to ask you some questions and maybe

1 at the bench.)

2 MS. WILLIAMS: I'm going to suggest, Mr. Warden

3 --

4 THE COURT: Here is the thing, I understand your
5 client wants to do anything except talk about these
6 charges. I get that.

7 MR. WARDEN: I don't think you do because he
8 wants latitude here to explain the context of the
9 corroborating evidence.

10 THE COURT: Okay. I am going to order you to
11 ask him some leading questions.

12 MR. WARDEN: Yes, sir.

13 THE COURT: And if you can't do that, we're
14 going to take a break. And if you can't do that,
15 then, we're going to proffer his testimony.

16 MR. WARDEN: Okay.

17 THE COURT: Okay.

18 (Whereupon, proceedings at the bench were
19 concluded.)

20 (Whereupon, there was an off-the-record
21 discussion between Mr. Warden and Mr. Garcia-Chicol.)

22 BY MR. WARDEN:

23 Q Okay, Jose, I'm going to try to ask you some questions to
24 get through this. Okay?

25 A That's fine.

1 Q Can you draw a diagram of your home for the jury?

2 A That's right.

3 Q Would you please do that?

4 A I'm sorry. Please forgive me for trying to explain so
5 much. (Witness drawing.)

6 Q Okay. It don't have to be perfect.

7 A (Witness drawing.)

8 Q Okay. So we've got these areas?

9 A Yes.

10 Q This is supposed to be your home; correct?

11 A That's right.

12 Q Do you have an idea or do you think that you know when
13 Vanessa might have seen this incident that she thinks was a
14 kiss between you and Stephanie?

15 A That's right.

16 Q About when was that?

17 A This happened when I was just done placing the floor on my
18 kitchen.

19 Q Okay. Show me on this diagram where your kitchen is.

20 A This is the kitchen.

21 Q Is that where you were at?

22 A This is the garage. This little hall -- this little hall
23 is the bathroom. Yes. I didn't draw it very well. But this
24 little thing is the bathroom, the guest bathroom. This little
25 boxes that you see here, they are doors. All of these are

1 doors. I'm sorry. All of these little boxes are doors. This
2 is the hall here from the living room and this is the living
3 room. And this is the hall that will take you to where the
4 bedrooms are. This is the end over here. And there is another
5 door over here. And this is the closet. Yes. There you go.

6 Q Okay. Now, show me -- I want you to use the blue marker,
7 azul marker, and show me where you started out that day during
8 this incident.

9 A Well, around that time I was finishing placing the floor
10 on my kitchen. I finished the bigger area in the kitchen.
11 Finished up.

12 Over here you see the place to wash the dishes. You see
13 the stove here. You see here was the kitchen. So I finished
14 placing all the floor here. All that was left were the
15 details. The small pieces that you have to place, cut them
16 out, that's what was left.

17 So I took the stove out and the refrigerator out. When I
18 took those things out, I started measuring the pieces.

19 Q And you went outside to cut the pieces; right?

20 A Yes.

21 Q Show them how you did that.

22 A So when I measure all the pieces, I went out. Here's the
23 garage. I went through this door, the garage door, and then I
24 went this way.

25 From here up, this is the yard. And from this over is the

1 parking. Parking. Um-hmm. When I went out here I started
2 cutting the design.

3 So before I came out this door -- I have a big dog. When
4 he -- when he is hungry and he does not have food -- he has
5 this dish, his food dish, and he starts to grab the dish with
6 the mouth and lift it up. When I heard -- when I heard that
7 noise, I said, "The dog is hungry." But I said, "He has to
8 wait."

9 Q Well, tell me when you went to get the dog's food. Show
10 me -- show me that:

11 A Okay, that's fine. That's the problem here. -- You want me
12 to explain things well to you, I need to tell the story. I'm
13 going to go a little bit faster. I know you are losing
14 patience with me but --

15 So I came out here to cut the pieces. I said, "Let's let
16 the dog wait.. I'm going to go cut." And I had the glue and it
17 was drying out. I came out.. I went back inside. I placed the
18 pieces from the refrigerator area.

19 I came back out. And here is the back door, the garage
20 back door. I came out here. I grabbed the food stuff for the
21 dog. I grabbed it. I came back to the garage and here is
22 where I placed the dog food. I fill it up, and then I put it
23 back. I put it back there. Then I realized the dog didn't
24 have any water.. But the water dish for the dog, what we call
25 it, it's like a little bucket.. A paint bucket. It's five

1 gallons. That bucket, I cut it about -- a little more than
2 above half.

3 Q And did you go get the dog some water?

4 A Yes. Then I grabbed that bucket. I grab it from over
5 here. Here is the bedroom.

6 Q And where did you go fill it up?

7 A I grabbed the bucket here. Here. Here is the main
8 bedroom door. Back here is the porch. All this back here is
9 the porch. Then, I grabbed the bucket. I went inside the
10 bedroom but -- I'm sorry.

11 Q Did you take the bucket to the bedroom?

12 A Yes.

13 (Whereupon, there was an off-the-record
14 discussion between Mr. Warden and Mr. Lammers.)

15 BY MR. WARDEN:

16 Q Jose, I'm going to go ahead and lead you through this.

17 Okay? And if I say something wrong, you tell me. Okay?

18 A Okay. That's fine.

19 Q Did you take the bucket to the master bathroom to go fill
20 it up?

21 A Okay. Yes, I did take it.

22 Q Okay. And when you took it to the bathroom, you filled it
23 all the way up; correct?

24 A That's right.

25 Q And then you walked back out of the master bedroom

1. bathroom so that you could take it to where you usually put the
2. dog food; right?

3. A. Would you please let me explain this myself because I
4. think it would --

5. THE COURT: Mr. Garcia. Mr. Garcia, answer the
6. question that Mr. Warden is asking you, yes or no.

7. Mr. Warden, ask the question, sir.

8. BY MR. WARDEN:

9. Q When you filled the water bucket up, then you started to
10. leave the master bathroom; correct?

11. A Yes, I was coming out of the bathroom.

12. Q And as you were coming out of the bathroom, somebody
13. collided with you, didn't they?

14. A Yes. Yes, my -- my stepdaughter. My stepdaughter was
15. running through here and then Chino, my son, was running behind
16. her:

17. Q And you were already out of the bathroom when you collided
18. with somebody?

19. A I was coming out of the bathroom. My daughter was
20. running.

21. Q And the bucket doesn't have handles; right?

22. A And since the bucket didn't have a way for me to grab it,
23. yes, it didn't have these. I was grabbing them with the
24. fingers, like this, with my fingers like this.

25. Q Okay. Show me -- did you collide with Stephanie in the

1 you gave with Detective Coble.. Do you remember that testimony?

2 A You could see it on the video.

3 Q And so you remember -- you remember that? Can you tell
4 the jury why that happened?

5 A When the detective -- what is the name?

6 Q Coble..

7 A When the Detective Coble was asking me a question, it's
8 not that I laughed hahaha, or maybe he meant that I was like
9 haha.. I -- I -- I smile like -- it was like smile.

10 Q And why did that happen?

11 A Because he asked me, "Is it true that you had sex with
12 Stephanie?"

13 Q Okay.

14 A (At that same -- at that same time, at that same moment, at
15 that same time I don't know how he's taking it. It came to
16 mind about -- it came to mind about some things that my wife
17 was telling me or doing to me when we were together because
18 from the prior marriage twice -- twice she called the police on
19 me: once when she was pregnant with my son:

20 MS. WILLIAMS: Your Honor, I'm going to object
21 to relevance.

22 THE COURT: All right, hold on.. Relevance of
23 this testimony?

24 MR. WARDEN: Sure. I don't know what the
25 testimony is yet, but I think if he testifies as I

1 expect he is going to explain. I think the State has
2 put into issue what his reaction was, as we have had
3 testimony about. He's explaining what was going
4 through his mind when he made such a reaction.

5 THE COURT: All right, overruled. Go ahead.

6 BY MR. WARDEN:

7 Q Let me stop you. Let me stop you. You're saying that
8 your wife called the cops on you twice?

9 A Yes.

10 Q Were you ever arrested?

11 A The first time I was just handcuffed when I was in the
12 bedroom.. I was sitting in the bed -- on the bed..

13 Q Okay. And did you go to jail?

14 A No.

15 Q Okay. Why not?

16 A Because the -- my wife -- the agent asked her -- asked me
17 if -- "Did you hit her?" I told him no. And then, "Who kicked
18 the door?" "My wife did." And he's like, "How can your wife
19 kick the door down?" I said, "I don't know, but she did it."
20 And he's like, "Are you sure you didn't hit her?" "No." "She
21 had a black eye." I said, "No, no. Her eye becomes like that
22 when she gets really upset."

23 Q Okay. On either of those occasions did you get arrested,
24 Jose?

25 A No.. Arrested? Like taking me to jail? No..

1 cross-examination. I've asked you, I've asked the
2 defense to lead him, but he doesn't want to follow
3 the Court's orders.

4 MS. WILLIAMS: I'm trying not to elicit details.

5 THE COURT: He's not following. I don't think
6 -- do you want to take a moment to tell him not to
7 talk about that? You may do so.

8 MR. WARDEN: No, that's fine. Just keep going.
9 But I do want to put the State on notice that that
10 letter was sent on September 5th and today is
11 September 26. The authenticity of that letter is
12 suspect, and we haven't had sufficient time to look
13 into it. And we came here today knowing that letter
14 existed and now they're going to ask him about it and
15 that is fine. That's why I said short notice.

16 THE COURT: Thank you. So -- so not ask him
17 about the --

18 MS. WILLIAMS: No, Your Honor.

19 MR. WARDEN: I'll withdraw. May I have just a
20 moment?

21 THE COURT: Yes. Do you want a moment with Mr.
22 Garcia, Mr. Warden, Mr. Lammers, and Mr. Faught?

23 MR. WARDEN: Sure.

24 THE COURT: Mr. Garcia, if you will just walk
25 over there just a moment.

1 Just very brief; please. Very brief.

2 MR. WARDEN: Yes, Your Honor.

3 BAILIFF MONJURE: The jury can stay, boss?

4 THE COURT: The jury's going to stay. I just
5 want them to tell him one thing and then we're going
6 to get back on.

7 BAILIFF MONJURE: Okay.

8 (Whereupon, there was an off-the-record
9 discussion with Mr. Garcia-Chicoi through Interpreter
10 Yancey with Mr. Warden, Mr. Faught, and Mr. Lammers.)

11 MS. WILLIAMS: Your Honor, may I approach?

12 THE COURT: You may.

13 (Whereupon, the following proceedings occurred
14 at the bench.)

15 MS. WILLIAMS: I'm going to ask for a short
16 recess.

17 THE COURT: She wants a short recess. I don't
18 know why.

19 MS. WILLIAMS: I'm going to have -- we've got
20 the envelope.

21 THE COURT: Yes. All right, thank you,

22 (Whereupon, proceedings at the bench were
23 concluded.)

24 THE COURT: Mr. Monjure, we'll take about a
25 15-minute recess.

1 Q Your pod?

2 A Pod of what?

3 Q Echō, D, A, your pod.

4 A You're talking about my partners?

5 Q Yes.

6 A Yes. My jail partners?

7 Q Yes.

8 A Yes.

9 Q In your pod in the jail? Okay.

10 A Um-hmm.

11 Q Do you think it's possible that one of them wrote this

12 letter on your behalf?

13 A I don't know.

14 Q Would anybody know how to mimic your handwriting in that

15 jail?

16 A I don't know.

17 Q Okay. Have you shown a letter to anybody in that jail

18 that you've written?

19 A Oh, my goodness. Okay.

20 Q You don't have to tell me who. I want to know if

21 you've -- if anybody in that jail has seen a letter that you've

22 written?

23 A I sent a letter approximately in the month of April to a

24 guy that was supposedly going -- going to help me hire some

25 attorney.

1 Q Okay. You said you sent it. Did you send it in the mail?

2 MS. WILLIAMS: Your Honor, may we approach?

3 THE COURT: Yes.

4 (Whereupon, the following proceedings occurred
5 at the bench.)

6 MS. WILLIAMS: He's getting into very dangerous
7 ground.

8 THE COURT: I don't understand where this is
9 going.

10 MS. FISHER: I don't know. He's being
11 represented by the public defender's office.

12 MR. WARDEN: I'm not worried about this at this
13 point. This is about you-all having this letter and
14 him denying it and giving the opportunity to explain
15 how it could've come into existence.

16 MS. WILLIAMS: I think the State is entitled to
17 a fair trial and I think this potentially prejudices.
18 There's a reason why we try to -- we try to not
19 indicate his financial status, Your Honor. And so I
20 just feel like we are kind of going off.

21 THE COURT: Well, look, you have.

22 MS. FISHER: How is it relevant?

23 (THE COURT: This is taking longer than it should
24 take, but I'm trying to give you some leeway here.)

25 (MR. WARDEN: I will go as fast as I can.)

1 MS. WILLIAMS: I'm just trying -- it's tedious.
2 I think he can say and just don't lead into that.

3 MR. WARDEN: The explanation he gave the letter
4 to someone at the jail to take and it came back to
5 the jail four weeks ago and he's still in the jail
6 with the letter in their pocket.

7 MS. WILLIAMS: What pod?

8 MR. WARDEN: That's what I keep asking.

9 THE COURT: I'll let you go. Overruled.

10 (Whereupon, proceedings at the bench were
11 concluded.)

12 BY MR. WARDEN:

13 Q Okay, Jose, this letter from April, you gave it to a
14 person, correct, in the jail?

15 A That's right.

16 THE COURT: Mr. Warden, clarification. Is he
17 now saying he wrote this letter?

18 MR. WARDEN: No, he wrote -- I want to -- I
19 don't want to testify.

20 THE COURT: I know.

21 MR. WARDEN: This is a different letter, Your
22 Honor.

23 THE COURT: Okay. All right.

24 BY MR. WARDEN:

25 Q And this person -- this person takes this letter out of

1 the jail, that you know of?

2 A (No response.)

3 Q Let me ask you, did you ask him to take it out of the
4 jail?

5 A I brought him the letter and I put it in his hand.

6 Q Okay. And who was he supposed to take that letter to?

7 A To a friend of mine..

8 THE COURT: Mr. Warden, just -- I'm confused.
9 Is the letter Mr. Garcia is talking about, is that
10 the letter that is State's Exhibit 1?

11 MR. WARDEN: No, Your Honor. It's not in
12 evidence.. It's not a letter in evidence.

13 THE COURT: This is an entirely different letter
14 that we don't know anything about?

15 MR. WARDEN: Not yet.

16 THE COURT: All right. Thank you.

17 BY MR. WARDEN:

18 Q And did you ever hear from that -- that friend that you
19 asked him to take the letter to?

20 A Never.

21 Q Did you ever see that person that you gave the letter to?
22 Did you ever see him again after April?

23 A Months went by and the person ended up back in jail.

24 Q When did he come back in the jail?

25 A He came back between -- he came back three weeks -- he

1 for the jury.

2 (Whereupon, the jurors returned to the courtroom
3 at 11:18 a.m.)

4 THE COURT: Mr. Monjure, all jurors present and
5 accounted for?

6 Yes, sir.

7 THE COURT: Thank you. You're invited to be
8 seated, please.

9 Ladies and gentlemen, have you -- of the jury,
10 have you elected a foreperson?

11 (Jurors responded, "Yes.")

12 THE COURT: Who is that foreperson?

13 [REDACTED]: I am, Your Honor.

14 THE COURT: [REDACTED].

15 [REDACTED]: [REDACTED], yes, sir.

16 THE COURT: [REDACTED], would you please hand the
17 verdict to Mr. Monjure?

18 (Whereupon, Bailiff Monjure retrieved the
19 verdict forms and handed them to the Court.)

20 THE COURT: All right, Mr. Warden, would you
21 please have your client stand.

22 (Complied.)

23 THE COURT: All right, [REDACTED], I'm going to
24 go ahead and read the verdict form, and I'm going to
25 ask you if it represents the unanimous verdict of the

1 jury. Is that correct?

2 [REDACTED]: Yes, sir.

3 THE COURT: Thank you.

4 We, the jury, find beyond a reasonable doubt

5 Jose Garcia-Chicol guilty of rape. Signed

6 foreperson, [REDACTED]:

7 We, the jury, find beyond a reasonable doubt

8 Jose Garcia-Chicol guilty of attempted rape.

9 Is that the unanimous verdict of this jury?

10 Counsel approach, please.

11 (Whereupon, the following proceedings occurred
12 at the bench.)

13 THE COURT: The instruction on the transition.

14 MR. WARDEN: I don't know, Your Honor.

15 MS. FISHER: I assume we go ahead and reference
16 the lesser included.

17 THE COURT: I need to do some research. I'm
18 going to send them back for a little bit while I try
19 to figure this out.

20 MS. FISHER: We can try.

21 THE COURT: Or do we want to send them to lunch,
22 I guess is my point?

23 MS. FISHER: I think that would be fine, Your
24 Honor.

25 MR. WARDEN: Take a few minutes, I'd assume.

1 THE COURT: I would think so.

2 THE COURT: Mr. Monjure, come on around.

3 BAILIFF MONJURE: Okay.

4 (Whereupon, Bailiff Monjure joined proceedings
5 at the bench.)

6 THE COURT: I'm going to have to do some
7 research and figure out what we do on this situation.
8 They've found him guilty of both charges and one was
9 the lesser included.

10 When are their sandwiches coming?

11 BAILIFF MONJURE: Twenty minutes, half hour.

12 THE COURT: The jury is going to eat here?

13 BAILIFF MONJURE: Yes.

14 THE COURT: All right, we're going to take a
15 break for about 15, 20 minutes to see what we can do.

16 BAILIFF MONJURE: Okay.

17 THE COURT: Okay.

18 (Whereupon, proceedings at the bench were
19 concluded.)

20 THE COURT: I'm going to hand the verdict forms
21 to the court reporter for the record.

22 (Court's Exhibits 5, 6, and 7, verdict forms,
23 admitted into evidence and appearing at the end
24 hereof.)

25 THE COURT: All right, folks, we are going to

1 take a short break, 15, 20 minutes. Mr. Monjure?

2 BAILIFF MONJURE: Yes, sir.

3 THE COURT: I think their sandwiches are on the
4 way. Then, when the sandwiches get here, why don't
5 you let us know when they're here and we'll see how
6 we're going to proceed from there.

7 BAILIFF MONJURE: Okay, will do.

8 THE COURT: We will be in recess. Thank you.

9 BAILIFF MONJURE: That's it. All rise.

10 (Whereupon, proceedings were recessed at 11:22
11 a.m. and resumed, outside the presence of the
12 jurors.)

13 BAILIFF MONJURE: All rise.

14 THE COURT: All right, you're invited to be
15 seated, please.

16 All right, we are going to go back on the
17 record.

18 Mr. Monjure, I need to swear you in, sir.

19 BAILIFF MONJURE: Yes, sir.

20 THE COURT: Do you solemnly swear or affirm to
21 tell the truth, the whole truth, and nothing but the
22 truth?

23 BAILIFF MONJURE: Yes, sir.

24 THE COURT: All right, Ms. Williams, you want to
25 inquire?

1 MS. WILLIAMS: I think Ms. Fisher --

2 THE COURT: Oh, Ms. Fisher.

3 BAILIFF MONJURE: Do you want me to take the
4 stand?

5 THE COURT: Just stand.

6 MS. FISHER: Yes, Your Honor.

7 Mr. Monjure, while you were back with the jury
8 and they were making their deliberations, did someone
9 at some point come out to speak with you?

10 BAILIFF MONJURE: Actually, they knocked on my
11 door after, and said, "We got a verdict.."

12 MS. FISHER: Okay. Did they -- what else did
13 they say to you?

14 BAILIFF MONJURE: Just -- they were all talking
15 amongst themselves, and they asked about -- the
16 foreman [REDACTED] -- I don't know his last name -- said,
17 "What do we do -- what about this paper?" And he
18 kind of went -- he said, "I signed this one," and
19 that was the rape charge. Correct? I mean, it was
20 rape and attempted rape; correct?

21 MS. FISHER: Um-hmm.

22 BAILIFF MONJURE: That was the rape charge.
23 And, then, I don't know -- I just kind of hesitated
24 and just said, "Sign it."

25 MS. FISHER: Okay. So he -- he told you, "We

1 have a verdict"?

2 BAILIFF MONJURE: Yes.

3 MS. FISHER: You opened the door.

4 BAILIFF MONJURE: Yes.

5 MS. FISHER: And, then, you -- do you see a

6 paper signed at that point in time?

7 BAILIFF MONJURE: Yes?

8 MS. FISHER: What paper do you see signed at

9 that point in time?

10 BAILIFF MONJURE: Well, honestly, I couldn't

11 read it. But he said, you know, "We found him guilty

12 of rape. I don't know what to do with this or what

13 to do with the other form."

14 MS. FISHER: Did you see the other form he said,

15 "We don't know what to do with"?

16 BAILIFF MONJURE: Yes.

17 MS. FISHER: Okay. What was that form?

18 BAILIFF MONJURE: Well, I couldn't read it. I

19 just -- what he verbally said.

20 MS. FISHER: Just what he told you?

21 BAILIFF MONJURE: Yes, ma'am.

22 MS. FISHER: So what did he verbally tell you

23 about that other form?

24 BAILIFF MONJURE: He said this one, you know,

25 was attempted-rape.

1. MS. FISHER: Okay. When you told him to sign
2. it, did you tell him to sign it "guilty" or "not
3. guilty"?

4. BAILIFF MONJURE: No. I think -- no, I just
5. said, "I guess sign it." Yeah, something --

6. MS. FISHER: So you did not tell him which
7. way. --

8. BAILIFF MONJURE: No.

9. MS. FISHER: -- to sign it? And to your
10. understanding, you did not -- you did not even talk
11. to him until after they formed the guilty verdict on
12. the rape charge?

13. BAILIFF MONJURE: Yes, ma'am.

14. MS. FISHER: The greater offense?

15. BAILIFF MONJURE: Correct.

16. MS. FISHER: Okay. I'll pass the witness.

17. MR. WARDEN: So just clarifying, Danny --

18. BAILIFF MONJURE: Yeah.

19. MR. WARDEN: -- knocked on your door? You
20. opened it up?

21. BAILIFF MONJURE: Correct.

22. MR. WARDEN: This was [REDACTED] I believe is
23. the name of the foreman?

24. BAILIFF MONJURE: Yes, that's it. That's
25. correct.

1 MR. WARDEN: He was there in front of your door?

2 BAILIFF MONJURE: Well, he was still seated, you
3 know --

4 MR. WARDEN: Seated at the table.

5 BAILIFF MONJURE: -- at the table, a couple of
6 seats, yes.

7 MR. WARDEN: And did he -- what papers did you
8 observe? Did he have two pieces of paper?

9 BAILIFF MONJURE: Yes, the two verdict forms.

10 MR. WARDEN: Were you able to see clearly they
11 were verdict forms?

12 BAILIFF MONJURE: Yes. -- Yeah, I've seen them,
13 you know, a lot, handled them.

14 MR. WARDEN: You're familiar with the verdict?

15 BAILIFF MONJURE: Yes.

16 MR. WARDEN: And what did he say specifically
17 about guilt -- about having a guilty verdict on the
18 verdict form or not? Did he say we have a -- how did
19 he -- did he say, we have a verdict and it's rape and
20 it's guilty and then hold up one of the pieces of
21 paper?

22 BAILIFF MONJURE: Yeah. I mean, I don't want to
23 say specific, you know, but, yeah, that seems about
24 right.

25 MR. WARDEN: You're not able to observe exactly?

1 BAILIFF MONJURE: No, I couldn't see, you know,
2 (I wasn't close enough. I was at least this distance
3 (indicating)).

4 MR. WARDEN: And then he -- you -- I think you
5 said he said, "What do we do with this form?"

6 BAILIFF MONJURE: Right. And he did mention --

7 MR. WARDEN: The attempted rape?

8 BAILIFF MONJURE: Attempted rape.

9 MR. WARDEN: And you said, go ahead --

10 BAILIFF MONJURE: And sign it.

11 MR. WARDEN: -- and sign it?

12 BAILIFF MONJURE: Exactly. That's it.

13 MR. WARDEN: Was that the extent of the
14 conversation you had with him regarding these forms?

15 BAILIFF MONJURE: Yeah. Yeah. He asked me, "Do
16 I read them?" you know.

17 I said, "No, Judge will have you rise and then
18 you hand them to me and I hand them to the judge."

19 MR. WARDEN: Okay. Were you able to actually
20 see the location of the signature on any of the -- on
21 either form?

22 BAILIFF MONJURE: No. I didn't have my glasses,
23 plus, you know -- no.

24 MR. WARDEN: So before you weren't able to see
25 which form is which or whether there was a signature

1 or not a signature?

2 BAILIFF MONJURE: No, I could see a signature.

3 MR. WARDEN: Oh, you did see a signature?

4 BAILIFF MONJURE: Yeah, yeah, because, you know,
5 it's blue ink and all.

6 MR. WARDEN: Okay. Could you see whether it was
7 guilty or not guilty?

8 BAILIFF MONJURE: No.

9 MR. WARDEN: You couldn't see which particular
10 charge it was for?

11 BAILIFF MONJURE: Well, he said -- no, I
12 couldn't read it.

13 MR. WARDEN: You couldn't see it --

14 BAILIFF MONJURE: No.

15 MR. WARDEN: -- but he told this was rape?

16 BAILIFF MONJURE: Yes. Yes.

17 MR. WARDEN: Okay. Could you see on the other
18 form that it was no signed when he asked you that
19 question?

20 BAILIFF MONJURE: I could. It was blank.

21 MR. WARDEN: It was blank.

22 BAILIFF MONJURE: Um-hmm.

23 MR. WARDEN: You said go ahead and sign it?

24 BAILIFF MONJURE: Yes.

25 MR. WARDEN: Any other questions?

1 (Mr. Faught and Mr. Lammers shook their head.)

2 THE COURT: Anything further?

3 MS. FISHER: No, Your Honor.

4 THE COURT: Motions?

5 MR. WARDEN: Yes, Your Honor. At this point we

6 would like to move for a mistrial. I think Mr.

7 Lammers was going to talk on case law. I'll go ahead

8 and start on the case I was provided by the State.

9 It's Sanders v. State. I'll just go ahead and tell

10 you I think it is factually distinguishable from the

11 case at bar. In that particular case, it appears

12 that the jury returned to the courtroom with its

13 verdicts and they misunderstood the instruction on

14 completing the forms. Two of the forms had not been

15 filled out. And the trial court explained the

16 content of two of the forms to them. They then went

17 back to the jury room to continue deliberation and

18 the trial court offered the following summary for the

19 record. It is not extremely clear, Your Honor, but

20 this is what states:

21 The foreman just gave this back to me and asked

22 for an explanation. I just said, let me have both

23 forms and now way I'm going to talk to you two. And

24 that's t-w-o. I don't know who those two are. I can

25 see what his problem is. This form is misprinted.

1 This should be if you check A, B, and C, then,
2 sentence Raymond C. Sanders to death by lethal
3 injection. It says here life imprisonment without
4 parole. So we're going to correct those and give
5 them Form Three back.

6 So I think that the foreman came and the judge
7 corrected -- they had questions in the jury room.
8 The foreman came. The judge corrected it. They
9 brought it back.

10 After the amended form was delivered to the
11 jury, the attorney moved for a mistrial saying, we do
12 not -- Your Honor, at this time I'd like to move for
13 a mistrial.. It was explained the concerns of the
14 jury regarding these forms were not done on the
15 record. We don't know who has been discussing what
16 with the jury. We have all these concerns about what
17 is going on and I would like to move for a mistrial
18 at that time.

19 That's different from this. They asked for
20 clarification on the form.. They appear to have been
21 brought out to the judge to receive that
22 clarification and return the forms back to the jury.
23 And it also is not apparent anywhere in these facts
24 that he instructed them or, you know, ambiguously
25 said, I guess you should just sign the form. He

1 never instructed them to sign in a particular place.
2 And for that reason I think that case is factually
3 dissimilar to the case at bar.

4 THE COURT: Thank you, sir.

5 The state want to respond?

6 MS. FISHER: Yes.

7 THE COURT: Oh, Mr. Lammers, go ahead.

8 MR. LAMMERS: Your Honor, we're moving for a
9 mistrial for violation of Ark. Code Ann.
10 §16-89-125(e). That subsection states as follows, in
11 pertinent part: "After the jury retires for
12 deliberation, if there is a disagreement between them
13 as to any part of the evidence or if they desire to
14 be informed on a point of law, they must require the
15 officer to conduct them into court. Upon their being
16 brought into court, the information required must be
17 given in the presence of or after notice to the
18 counsel of the parties."

19 In this case, clearly, that statute was not
20 followed. There are several cases:

21 Tarry v. State, 289 Ark. 193. This statute is
22 mandatory and should be strictly followed.

23 Rhodes v. State, 290 Ark. 60. The provisions of
24 this section require the judge to call the jury into
25 open court to answer any questions the jury may have

1 are mandatory.

2 Your Honor, there's two cases, one decided --
3 both decided by the Arkansas Supreme Court where a
4 bailiff answered a jury or a juror's question or a
5 jury's question. Williams v. State, 264 Ark. 77, A
6 bailiff answered a juror's question, and the Supreme
7 Court said the obvious good intentions of the bailiff
8 and the foreman of the jury cannot excuse
9 noncompliance with the statute.

10 Here, I don't think we're arguing that -- this
11 was an innocent mistake; but the law is very clear
12 that any mistake under this section should result in
13 a mistrial.

14 State v. Short, 2009 Ark. 630, also contained a
15 similar fact pattern where a bailiff answered a
16 juror's question before a verdict was returned and a
17 mistrial was the proper remedy. The court in that
18 case said that Wilson v. State, 272 Ark. 361,
19 convinces us the law is settled on the impropriety of
20 a bailiff's responding to legal questions posed by a
21 jury.

22 Your Honor, I think it's clear that a verdict
23 had not been returned when this question was posed
24 and answered. The verdict is of no validity until
25 delivered by the jury in court. State v. Mills, 19

1 Ark. 476.

2 Here, we have a verdict that had not been
3 delivered. We have a jury that clearly was still
4 deliberating. Regardless of their testimony,
5 deliberations are ongoing until the verdict is -- is
6 returned.

7 There have certainly been cases in my career
8 where a jury filled out a form mistakenly. And so I
9 don't think any testimony as to a signature or where
10 a signature was can be considered by the Court to be
11 a verdict being returned or a conclusion of the
12 deliberations.

13 For those reasons, Your Honor, I feel like the
14 insertion of a court official into deliberations of
15 the jury is clear error. It doesn't matter whether
16 it's harmless, whether there is prejudice, that
17 section of the Arkansas Code is mandatory. And so
18 for those reasons, we move for a mistrial.

19 THE COURT: Response.

20 MS. FISHER: Your Honor, we agree with Mr.

21 Lammers that that statute is mandatory. However,
22 there is no automatic right to a mistrial because of
23 it. What the case law clearly states, and what Mr.
24 Lammers stopped after, is the statute is mandatory.
25 Noncompliance with the statute gives rise to a

1 presumption of prejudice, and the State has the
2 burden of overcoming that presumption.

3 The State is more than happy -- I know the Court
4 has kind of decided how they would like to proceed.
5 However, the State is more than happy to poll every
6 jury member individually to overcome that
7 presumption.

8 THE COURT: And on that Williams case, what is
9 it -- the mistrial threshold? Is it mistrial is an
10 extreme remedy unless it's -- what was the language
11 under that Williams case?

12 MS. FISHER: I don't -- that is their case law,
13 Your Honor. I don't have a copy of that.

14 THE COURT: The headnote talks about --

15 MR. LAMMERS: Your Honor, it says, in
16 considering the matter of prejudice, and I think --

17 THE COURT: No, I want to know about mistrial
18 threshold. Mistrial is extreme remedy and it says --

19 MS. FISHER: Your Honor, there are sample --
20 there are sample statements -- and I have them
21 somewhere in here -- that says mistrial -- the
22 general rule is that there must be some kind of
23 overruling necessity for a mistrial and there's
24 several prongs under which a mistrial will be
25 granted. However, there is no automatic right to a

1 mistrial. There is a presumption when something like
2 this happens of prejudice but the State has the
3 burden of overcoming that presumption. The State is
4 not scared of trying to overcome that presumption.

5 THE COURT: Right.

6 MS. FISHER: I don't think any prejudice was
7 done in this case as the jury -- it's clear from Mr.
8 Monjure's testimony -- and I think it would be clear
9 if we polled the jury that they had already come
10 to -- reached a decision on the rape charge. They
11 asked him -- he didn't tell them where to sign. He
12 never instructed them that. He just said, sign it.

13 THE COURT: What would be -- what would be the
14 State's questions to the jury to overcome the
15 presumption?

16 MS. FISHER: Your Honor, I think we could just
17 have them come out each individually and say, what
18 was your decision as to the verdict? Was that -- you
19 know, we could ask, was that decision made before or
20 after you made contact with Mr. Monjure as far as the
21 rape charge? And we could ask if his -- their
22 contact with him influenced them in any way on their
23 decision to make that? I mean, I think it's clear
24 the decision was made before they ever made contact
25 with Mr. Monjure. But, I mean, the State is happy to

1 go through and individually poll --

2 THE COURT: All right.

3 MS. FISHER: -- each juror to meet that.

4 THE COURT: Let me take a few minutes. I want
5 to take a few minutes. Be right back.

6 BAILIFF MONJURE: All rise.

7 (Whereupon, proceedings were recessed at 12:40
8 p.m., and resumed at 12:36 p.m., outside the presence
9 of the jurors.)

10 BAILIFF MONJURE: All rise.

11 THE COURT: Thank you. You're invited to be
12 seated, please.

13 All right, here's what -- I reviewed the case
14 law: I reviewed the statute. I reviewed the
15 arguments of counsel. And this is how I have decided
16 we're going to proceed. Okay.

17 Under S16-89-125(e), that creates a presumption
18 of prejudice. The State has the burden of overcoming
19 that presumption of prejudice. The threshold for
20 mistrial is a mistrial -- this is in *Halton v. State*,
21 2015 Ark. 345. A mistrial is an extreme and a
22 drastic remedy that will be resorted to only when
23 there has been an error so prejudicial that justice
24 cannot be served by continuing the trial or when the
25 fundamental fairness of a trial has been manifestly

1 effected.

2 What I want to do is have each juror come in
3 individually. I want both the State and the defense
4 to ask them their questions. After I hear their
5 answers, then, I will tell you what I'm going to do.

6 BAILIFF MONJURE: Do you want them in a certain
7 place? I know in order, but like when I bring.

8 THE COURT: It doesn't really matter. Let's
9 just seat them the closest to the door.

10 BAILIFF MONJURE: Okay.

11 (Whereupon, [REDACTED] entered the
12 courtroom.)

13 THE COURT: [REDACTED], if you'll go ahead and
14 sit down, sir. I'm going to have these attorneys ask
15 you some questions. Okay?

16 [REDACTED]: Sure.

17 MR. LAMMERS: Your Honor, may we approach?

18 THE COURT: You may.

19 (Whereupon, the following proceedings occurred
20 at the bench.)

21 MR. LAMMERS: Judge, I have got this Rule of
22 Evidence, Arkansas Rule of Evidence 606 that I think
23 arguably applies. And I have just now looked it up,
24 but it is competency of juror as a witness. And it
25 says, a member of the jury may not testify. Well,

1 that's --

2 MS. FISHER: That is testifying in the trial.

3 The trial is closed.

4 THE COURT: I guess I could just ask him, look,
5 what was your verdict? Poll jurors. I think this is
6 how we get to the truth of the matter.

7 Let me ask you this question. What I will do I
8 will just ask them, what was your verdict?

9 MS. FISHER: Yes. And you can even ask if Mr.
10 Mongure -- if that was influenced.

11 THE COURT: I'm going to say what was your
12 verdict? And was it unanimous?

13 MS. FISHER: And, Your Honor, I think you can
14 press further and ask was that -- was that influenced
15 by anyone outside of those 12 people.

16 THE COURT: Okay.

17 MS. FISHER: And that way they are clear they
18 came to that decision on their own all together.

19 THE COURT: All right, unanimous, influenced by
20 anybody else, and those are the three questions I
21 have.

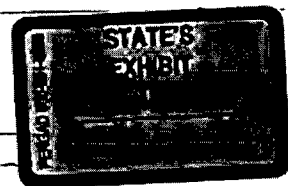
22 MS. FISHER: That's fine, Your Honor.

23 THE COURT: All right. Thanks.

24 (Whereupon, proceedings at the bench were
25 concluded.)

Hola

hola Como esta y Como estan nuestro hijos
 que Dios Te Bendiga y Espero que esten bien mi
 motivo de esta Carta es que te quiero pedir un gran
 favor y solo pido por el amor de Dios lo que quiero
 es que quiero Terminar esto diuna hrs por todo porque
 oy 4 de Septiembre esta ahora me enseñaron los
 videos de las niñas y todo esto me senti muy
 Triste Porque lo que esta diciendo la niña es muy
 Confuso Porque dice una cosa y dice pues dice otra
 Cosa seria como si me afasado nada y Cuando la
 Pasaron la segunda vez sabia Cuanta que alia Camar
 y escondia su rostro Para que no la vieran y
 llano queria hablar y decia que Yano queria hablar
 Porque Yano Sabia Cordava y luego Cambio Palabra
 y dijo otras cosas y Como ellos no encontraron
 nada de mi adane en ella y ninguna marca de
 violacion Como la niña Dice que Si la Forzaron
 Pero los resultados Salieron negativos Pero ellos
 no les importa eso lo que les importa a ellos
 es la Palabra de la niña



Porque Yo no quiero echarme la culpa de algo
 que no hice y que no echo Por eso quiero
 Y que esta ultima queda hacer el 26 de
 Septiembre al 30. am. y la Razon que

Te escribo esta carta asque lo Pido Contodo
mi Corazon que no se presenten ese dia
de la Corte Para Terminar Con esto diuabes
Con esto que existe nada Porfavor Solo
Pido Por el amor de Dios

nada mas Solo Pido Contodo mi Corazon y Solo
Suplica Porfavor Porque a la verdad es que nunca
elapido Sexo Penetracion Como la niña dice y
nunca la elocado solo digo Contodo mi Corazon
ese nunca apasado Porfavor Solo Pido Porque
no quiero Padecer una Condema Por algo que no cheche
Para nada y Solo lo Pido adios que esto Termine
ese dia Todo que no exista Porfavor Solo Pido
Cuando Haga el dia de la Corte agarra al
niñas y lláveselas al lugar don fueren
acoyar en Viciolatu Con los niños no se
quede en la Casa ese dia Para cuando la hotel
benir a Corte ese dia Por favor Solo Pido
quiero Terminar Con esto aadio mandame
una respuesta lo mas pronto posible sino ha
alavez para yo Prepararme Para mi abogado
mi su Sumera abenido Comigo Confio
en usted. Porfavor mandame la Carta Con el
nombre de mi abogado Para que me Yaga un
Por favor niña Te mando esta Carta Con
el nombre de mi Pa... Porque Siempre
idalianen mi Corazon y Cuando Termine
de la corte y... la Por favor oquardela
mas bien Porfavor y Que Dios la mande

Y ESPERO que no vaya a tomarlo

Con mal Pensamiento esta Carta

Porfavor Y Que Dios

La Bendiga mucho

Y Si es posible apaga su
Teléfono esa día Porque la
van a estar Harria y Harria

Porque ellos quieren que me sea culpable
Porque Quieren ganar Dinero Del
Gobierno Segun Por ganar un Caso
que no existe es Por eso que
Yo quiero llegar al final Para no
Darles gusto a ellos Por que
a ellos no les importa Si la
niña queda Trasmuda de lo que
ellos habian aprecioar y anti
te fandi me en la prición
Yes Pero que me escuche la ultima
vez De su Vida Ya anti queda
esto Problema Y ESPERO que
me escuche Por ultima vez.

por Pondama con una Corte con el nombre
 De mi amant y as Criba algo diferente
 Para que me C. Pechan X que me venga
 aqui Por favor Si o no

Y Salga Todo el dia fuera de la Casa
 esa dia Porque la Corte ha adurar 7.0.6 han
 maximo Por favor

Y Si ha avarar en lonces ay nos
 miramos ayi y gracias Por todo

los Quiere mucho y
 los CX Tvaro


Y aspero que Dios le aga entrar
 en razón

Y no quiero que sufran mas
 la niña en el Tribunal

Nicolás A. Durand
Arkansas Certified Court Interpreter
644 Dogwood Meadows Lane, Austin, AR 72007
nicolasadurand@hotmail.com
501.231.9415

AFFIDAVIT

I, Nicolás A. Durand, Arkansas Certified Interpreter in the English and Spanish languages, hereby certify that the preceding document is a true, accurate and complete translation of the attached Spanish letter titled: "HoLa"

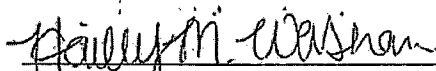
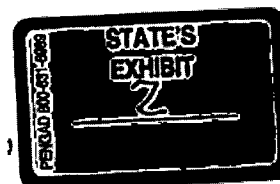
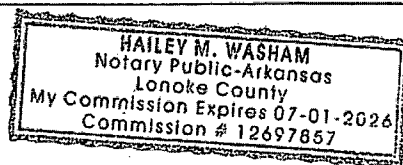
Date: 13 Sep 18

Nicolás A. Durand 644 Dogwood Meadows Lane, Austin, AR 72007

State of Arkansas

County of Lonoke

On this the 13 September 2018, before me, Nicolás A. Durand,
the undersigned notary, personally appeared Nicolás A. Durand known to me
(or satisfactorily proven) to be the person whose name is subscribed to the within
instrument and acknowledged that he executed the same for the purposes therein contained.
In witness whereof I hereunto set my hand and official seal.


Notary PublicMy Commission expires: ~~07-01-2021~~ 07-01-2026



SI-4

PROTOCOL AND KEY

PROTOCOL:

The transcript is done in accordance with the rules and guidelines of Transcription and Translation Protocol, observing the same strict standards of accuracy that govern the interpretation of oral testimony.

- The translation to English is done in accordance with the rules and guidelines of the American Translators Association and the National Center for State Courts Interpreter Consortium. The translation is performed by a team of certified interpreters. The translation is prepared with the same care and diligence as if the words were being interpreted live in open court; transferring every element of meaning from source language to target language without adding or omitting while maintaining the speaker's language level and style.
- All translation is maintained true to its original language level. Grammatical errors, awkward phrasing, and seemingly inaccurate wording in the translation reflect exactly what was spoken in the source language.

KEY:

[UI] Unintelligible

• *Italics* Spoken in Spanish

[] Transcription/Translation notes.

Hello

hello How are you and how are our kids doing

God bless you and I hope that you are all okay

the reason for this letter is to ask a big

favor from you and it is out of god's love that I ask this of you I want

is to finish this once and for all because

today September 4 till now they showed me

the videos of the girls and all that I felt very

sad because what she is saying is very

confusing because she says one thing and later she says another

thing it's like nothing happened and when she

went the second time she realized that there was a camera

she hid her face so that they didn't records her and

she didn't wants to talks anymore ad she was saying that she didn't want to talks

because she couldn't remember and later she changed her words

and said other things and since they didn't find

any of my dee n a on her or any mark of

rape she says that I penetrated her

but the results were negative but they

don't care about that what they care

about is her word

because I don't want to take the blame for something

that I didn't do and haven't done that's why I want to

go to trial on September 26 at [unintelligible] a.m. and the reason that

I write this letter is that I ask with all
 my heart is for you all not to go on that day
 to court to finish with this at once.
 with this that there is nothing there please I ask this of
 you for the love of God

I just ask you this from the bottom of my heart and I
 beg you please because the truth is that I have never
 had sex penetration like she says and
 I have never touched her I tell you from my heart
 that has never happened I ask you please because
 I don't want to serve a sentence for something that I have not done
 at all and I just ask god for this to be over with
 on that day that there is nothing there please I ask this of you
 when the court day is here get the
 girls and takes them to the place we went
 to ride bikes with the girls don't
 stay in the house that day so they don't make you

come to court on that day please I ask you
 because I want to be done with this on that day send me
 your response as soon as possible if you are not going
 to come so that I [unintelligible] because my attorney
 has not brought his shadow around here I trust

in you please send me the letter on

my brother's name so that I get it
 please sweetheart I send you this letter with
 [unintelligible] name because they always
 stop the letter and when you finish
 reading [unintelligible] please [unintelligible]

and I hope you don't take

this letter wrong

please and may God

bless you a lot

and if it is possible turn your
telephone off on that day because they
are going to be calling and calling you,

because they want me to plead guilty
because they want to get money from
the government supposedly for winning a case
where there is nothing there that is why.
I want to go to the end so they
don't have the satisfaction because

they don't care if she is traumatized from what
they are going to pressured her and
lock me up in prison
this is for you to listen to me the last
time in your life this

problem is on you and I hope that

you listen to me once and for all

[unintelligible] please and God bless you

write me back with a letter with my
brother's name and write something different
so they don't suspect and so that I get it
please yes or no

and stay away from the house all day
that day because the court is going to last 7 or 6 hours
max please

and if you are going to go then
we'll see each other then and thank you for everything

I love all of you a lot and
I miss all of you

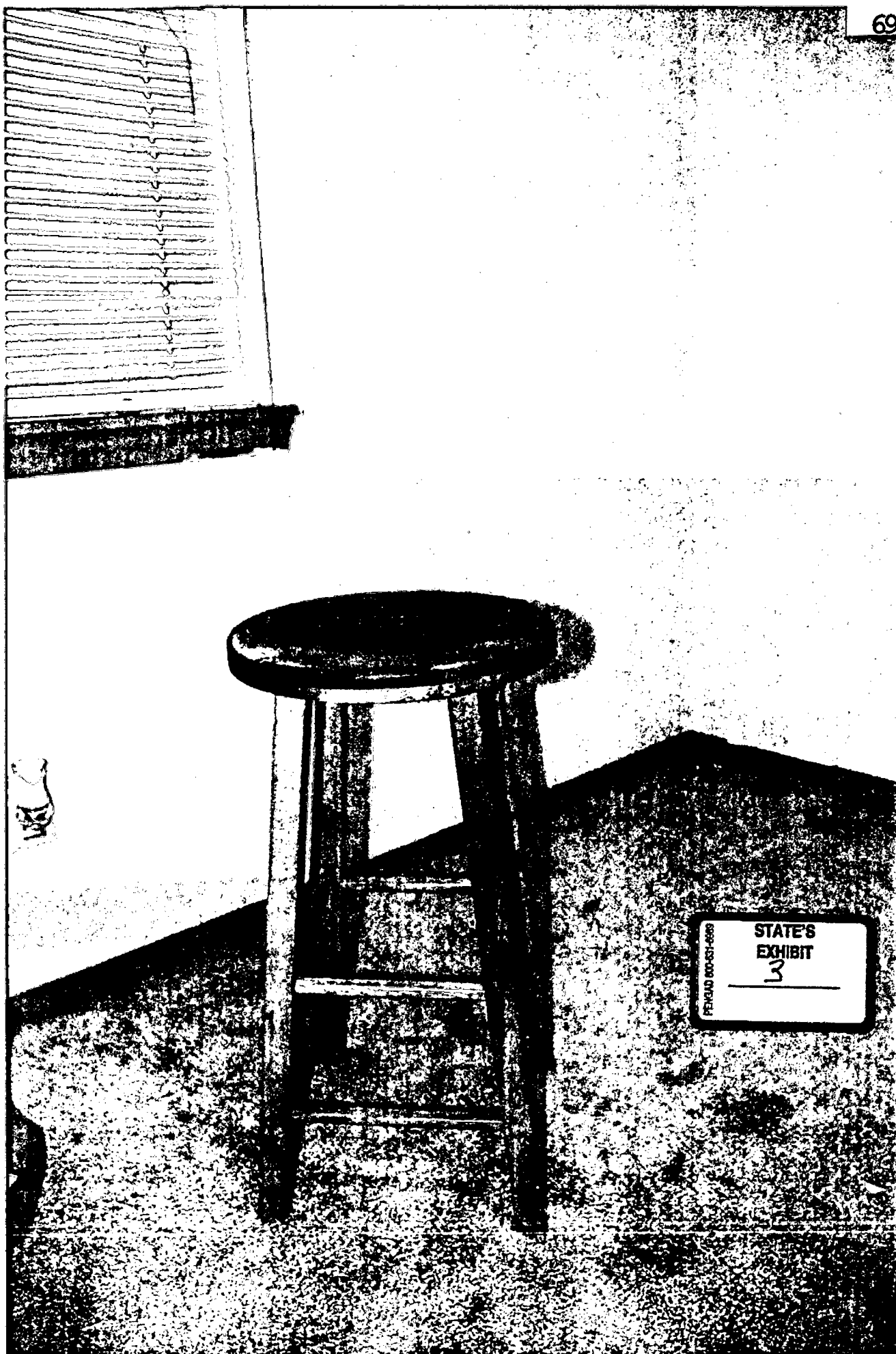
And I hope God helps you come
to your senses

and I don't want her to suffer more
in court

11



52-7



Jorge H. Hoyos-Lopez 8116328

Smart Communications - Barton County Jail
3524-3 North Shuloh Drive # 243
Fayetteville, AR 72703

NEW ARKANSAS AR 727

92-2-1003

15 SEP 2018 PM 2 1 FOREVER
USA

Barn Swallow

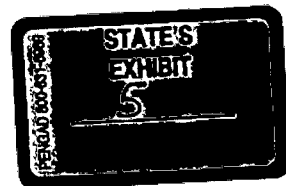
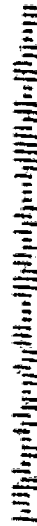
PROCESSED

SEP 04 2018

Outgoing inmate mail

Sara Jeanette
1003 Jo Lynn St.
Silas Springs, AR 72761

72761-458803

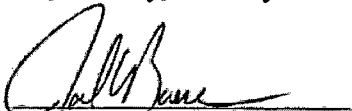




AMCI 2d 8301-VF
RAPE

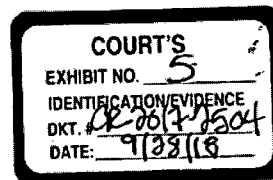
STAGE ONE: STANDARD VERDICT FORM

We, the Jury, find beyond a reasonable doubt Jose Garcia-Chicol guilty of Rape.


FOREPERSON

We, the Jury, find Jose Garcia-Chicol not guilty.

FOREPERSON





AMCI 2d 8301-VF
CRIMINAL ATTEMPT—RAPE.

STAGE ONE: STANDARD VERDICT FORM

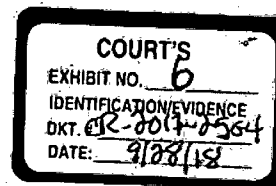
We, the Jury, find beyond a reasonable doubt Jose Garcia-Chicol guilty of Attempted Rape.



FOREMAN

We, the Jury, find Jose Garcia-Chicol not guilty.

FOREMAN



AMCI 2d 8301-VF

STAGE ONE: STANDARD VERDICT FORM

We, the Jury, find beyond a reasonable doubt Jose Garcia-Chicol guilty of Rape.



FOREPERSON

OR

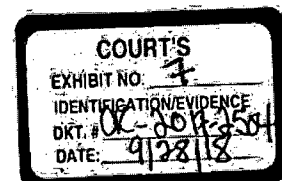
We, the Jury, find beyond a reasonable doubt Jose Garcia-Chicol guilty of Attempted Rape:

FOREPERSON

OR

We, the Jury, find Jose Garcia-Chicol not guilty.

FOREPERSON



1 ask the State, are there any victim-impact statements?

2 MS. WILLIAMS: No, Your Honor.

3 THE COURT: Thank you.

4 Now I'll listen to allocution. Thank you,

5 *(Pause in the proceedings.)*

6 THE COURT: You need to talk -- talk to the jury.

7 THE DEFENDANT: First of all, from my heart I would
8 like to thank you for the time that you've been here. I
9 hope that during these three days it hasn't been too
10 troublesome or too tiring for you.

11 I do appreciate you and I do have some things
12 that I want to say, but I don't want to say things that
13 are going to hurt me in the future because I am planning
14 on appealing, so it's better for me -- it's better for me
15 not to say any more. I just ask God to bless each one of
16 you and thank you for your time.

17 What I want to say from the bottom of my heart
18 is what was said about me here and what I was accused of I
19 never did. What I have to say from my heart is that no
20 one expects something like this to happen, and what I'm
21 going through I think is a -- a small thing.

22 The first day, when I got put into jail, I felt
23 like I was going to die, but I began to see things
24 differently. I accepted God into my heart and those
25 things started looking small.

1 I'm not going to deny my -- I feel my heart's
2 just destroyed.. What else can I do except that -- except
3 to accept your decisions, and I appreciate you.

4 If I were able to show you some videos as a dad
5 and if my wife were here, you would know that I haven't
6 been happy one single day being separated from my
7 children. The short time that I was able to spend with my
8 wife and my kids, to me it seemed like I was living 30, 35
9 years with them. I was able to enjoy every minute that I
10 spent with them. There wasn't one opportunity that I
11 missed for us to go and be somewhere fun like -- like Play
12 City.

13 Every day we would go somewhere. We would go
14 out to the park. If it was hot, it was cold, I would be
15 out there with my kids. My wife is a witness. She knows
16 that I don't like to just stay home.

17 As I said yesterday, I work from Monday to
18 Friday and as soon as I would get home I would say to my
19 wife let's go somewhere. I would get home Friday evening
20 or Friday afternoon, I would say to my wife come on, let's
21 get ready. Let's get the kids and let's go out to eat.

22 I never missed a moment with my kids; I never
23 missed a moment with my wife. The time that we were
24 together, the time that we were married, I really enjoyed.
25 Not only with my kids, I enjoyed the other kids. I

1 enjoyed my --

2 THE COURT: All right. I've -- I've heard enough.

3 THE INTERPRETER: Yeah.

4 THE COURT: I've heard enough. Thank you.

5 THE INTERPRETER: Yeah.

6 THE DEFENDANT: Gracias.

7 Thank you very much for your attention and God
8 bless you.

9 THE COURT: If he wants to proffer more, he can
10 proffer more, but I've heard enough.

11 (Pause in the proceedings.)

12 THE COURT: All right. I am going to follow the
13 recommendation of the jury and sentence you, Mr. Garcia,
14 to life in the Arkansas Department of Corrections. I'm
15 going to impose \$150 court costs, \$1000 fine, 250 --

16 Or that's DNA fee.

17 MS. WILLIAMS: \$250.

18 THE COURT: \$250 DNA fee, \$250 sex offender fee,
19 400 --

20 Is it \$500 Public Defender fee?

21 MR. WARDEN: 500, Your Honor.

22 THE COURT: \$500 Public Defender fee, require you to
23 register as a sex offender.

24 (Pause in the proceedings.)

25 THE COURT: All right. And I'm certain that your

1 attorneys have talked to you about your rights of an
2 appeal. Under the law, I've got to cover this with you.
3 A final judgment will be entered in this matter. In fact,
4 I'll ask the prosecutor if they can get a disposition
5 sheet and a final order -- sentencing order.

6 MS. WILLIAMS: Yes, Your Honor.

7 THE COURT: That will be done in the next few days.
8 Now, the date that that order and that disposition sheet
9 is filed, from that date you have 30 days after the entry
10 of that judgment that you can file your appeal.

11 Do you understand?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Mr. Garcia, I'm going to
14 surrender you to the custody of the sheriff.

15 MS. WILLIAMS: Your Honor, I would also like to make
16 sure that that -- it goes on record that the no contact
17 order remains in effect, Your Honor.

18 THE COURT: Thank you.

19 The no contact order with Stephanie Posada shall
20 remain in effect.

21 Thank you.

22 Deputy, please take Mr. Garcia into custody. I
23 would like him to be transferred out of this door, Deputy.

24 This south door.

25 (At 3:53 p.m. the defendant is taken out of