

No. _____

IN THE
Supreme Court of the United States

GERARDO ORTIZ,

Petitioner,

v.

SECRETARY OF CORRECTIONS, CDCR,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

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

GERARDO ORTIZ,

Petitioner-Appellant,

v.

SECRETARY OF CORRECTIONS, CDCR,

Respondent-Appellee.

No. 20-56359

D.C. No.
2:18-cv-01409-RS WL-MAA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Submitted November 8, 2023**
Pasadena, California

Before: WALLACE, W. FLETCHER, and OWENS, Circuit Judges.

California state prisoner Gerardo Ortiz appeals from the district court's denial of his 28 U.S.C. § 2254 habeas petition challenging his convictions for various forcible sexual crimes against a minor. "We review the district court's denial of habeas relief de novo." *Panah v. Chappell*, 935 F.3d 657, 663 (9th Cir. 2021).

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

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

2019). Ortiz's federal habeas petition is subject to the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), under which he is entitled to relief only if the state court's adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," 28 U.S.C. § 2254(d)(1), or "was based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding," *id.* § 2254(d)(2).

Where the last state-court decision on the merits is not accompanied by reasons, the federal habeas court must "'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale . . . [and] presume that the unexplained decision adopted the same reasoning." *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018). Here, the California Supreme Court summarily denied Ortiz's petition for review, so the California Court of Appeal's decision provides the "relevant rationale." *Id.* As the parties are familiar with the facts, we do not recount them here. We affirm.

1. Ortiz attacks his conviction based on the admission at trial of the victim's preliminary hearing testimony. He argues that admitting this testimony violated the Confrontation Clause. Under the deferential standard of AEDPA, *see* 28 U.S.C. § 2254(d), the California Court of Appeal did not err in denying this claim. "Where testimonial evidence is at issue . . . the Sixth Amendment demands

... unavailability and a prior opportunity for cross-examination." *Crawford v. Washington*, 541 U.S. 36, 68 (2004). The California Court of Appeal reasonably concluded that the victim was unavailable because she refused to testify. There is no U.S. Supreme Court authority on the measures a trial court must take before declaring unavailable a witness who is present in court and has no claim of privilege but still refuses to testify. In the absence of any such authority, the California Court of Appeal decision could not be "contrary to, or involve[] an unreasonable application of, clearly established Federal law." 28 U.S.C. § 2254(d)(1).

We are not persuaded by Ortiz's argument that the California Court of Appeal violated *Barber v. Page*, 390 U.S. 719 (1968), which requires that a prosecutor make a "good-faith effort" to produce an absent witness for the unavailability exception to the confrontation requirement to apply. *Id.* at 724–25. This case does not "fall[] squarely within" *Barber*. *See Moses v. Payne*, 555 F.3d 742, 753 (9th Cir. 2009). *Barber* concerned a prosecutor's failure to secure a witness's physical presence at trial, *see* 390 U.S. at 723–25, whereas this case involved a witness who was present but refused to testify. Therefore, the California Court of Appeal did not commit AEDPA error when it concluded that the witness was unavailable.

The California Court of Appeal also reasonably decided under *Crawford* that

Ortiz had an adequate opportunity to cross-examine the witness at the preliminary hearing. *See, e.g., Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (“Generally speaking, the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent the defense might wish.”). As a result, admission of the witness’s preliminary hearing testimony was not “contrary to, or . . . an unreasonable application of, clearly established Federal law.” 28 U.S.C. § 2254(d)(1).

2. Ortiz also asserts that the California Court of Appeal “fail[ed] ‘to consider key aspects of the record’” in denying Ortiz’s Confrontation Clause claim and therefore made an “unreasonable determination of the facts.” *Milke v. Ryan*, 711 F.3d 998, 1010 (9th Cir. 2013) (quoting *Taylor v. Maddox*, 366 F.3d 992, 1008 (9th Cir. 2004), *abrogated on other grounds by Cullen v. Pinholster*, 563 U.S. 170, 185 (2011)). Specifically, Ortiz contends that the California Court of Appeal overlooked the fact that the trial court never corrected the prosecutor’s misstatement that the witness had a right not to testify.

The record belies this argument. The California Court of Appeal did not “fail ‘to consider’” the prosecutor’s misstatement; the first line of its opinion acknowledged that “[r]egrettably, the prosecutor incorrectly informed the young victim of several sex crimes that she had a choice whether to testify at trial.” But, after recognizing this misstatement, the California Court of Appeal determined that

the trial court took “reasonable steps” to correct it and convey to the witness that she had no right to refuse to testify. Under 28 U.S.C. § 2254(d)(2), the California Court of Appeal’s factual determinations to this effect were not “actually unreasonable” based on the evidence in the record. *Taylor*, 366 F.3d at 999.

3. Finally, Ortiz contends that the prosecutor committed misconduct by telling the witness that she had the right not to testify at trial. Ortiz did not raise his prosecutorial misconduct claim in his direct appeal to the California Supreme Court, so he did not exhaust this claim. *See* 28 U.S.C. § 2254(b)(1)(A); *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (“[T]he prisoner must ‘fairly present’ his claim in *each* appropriate state court (including a state supreme court with powers of discretionary review)” (quoting *Duncan v. Henry*, 513 U.S. 364, 365 (1995) (emphasis added))).

Ortiz concedes that his “presentation of the legal theory” as to his prosecutorial misconduct claim was “less clear,” and that he did not cite any prosecutorial misconduct cases in his brief. Yet he argues that his petition adequately alerted the California Supreme Court to the substance of this claim because it presented the operative facts, cited the Due Process Clause, and included as an attachment the California Court of Appeal’s opinion, which considered this claim. The Supreme Court has “rejected the contention that the petitioner satisfied the exhaustion requirement of 28 U.S.C. § 2254(b) by presenting the state courts

only with the facts necessary to state a claim for relief” or “mak[ing] a general appeal to a constitutional guarantee as broad as due process.” *Gray v. Netherland*, 518 U.S. 152, 163 (1996). Accordingly, the failure to exhaust precludes review of Ortiz’s prosecutorial misconduct claim.

AFFIRMED.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GERARDO ORTIZ,
v.
Petitioner,
SECRETARY OF CORRECTIONS,
Respondent.

Case No. 2:18-cv-01409-RSWL-MAA

JUDGMENT

Pursuant to the Order Accepting Report and Recommendation of the United States Magistrate Judge,

IT IS ORDERED AND ADJUDGED that the Petition is denied and the action is dismissed with prejudice.

DATED: November 10, 2020

/S/ RONALD S.W. LEW
RONALD S. W. LEW
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GERARDO ORTIZ,
Petitioner,
v.
SECRETARY OF CORRECTIONS,
Respondent.

Case No. 2:18-cv-01409-RS/TL-MAA

ORDER ACCEPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the other records on file herein, and the Report and Recommendation of the United States Magistrate Judge.

The time for filing objections, after extensions thereto, has expired, and no objections have been made.

IT THEREFORE IS ORDERED that (1) the Report and Recommendation of the Magistrate Judge is accepted; and (2) Judgment shall be entered denying the Petition and dismissing this action with prejudice.

DATED: November 10, 2020

/S/ RONALD S.W. LEW

RONALD S. W. LEW
UNITED STATES DISTRICT JUDGE

CV 18-1409-RSWL (SP)
Lodged Document 8

Filed 6/10/16

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

COURT OF APPEAL – SECOND DIST.

F I L E D

ELECTRONICALLY

Jun 10, 2016

THE PEOPLE,

B259840

JOSEPH A. LANE, Clerk

Plaintiff and Respondent,

klewis Deputy Clerk

v.

(Los Angeles County
Super. Ct. No. KA101692)

GERARDO ORTIZ,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, George Genesta, Judge. Affirmed.

Nancy J. King, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Regrettably, the prosecutor incorrectly informed the young victim of several sex crimes that she had a choice whether to testify at trial. A witness under subpoena has a duty to testify, not a choice. (*People v. Smith* (2003) 30 Cal.4th 581, 624.) Despite this misstatement, the prosecutor ensured that the victim was present at defendant's trial, the court informed her of the importance of testifying, and the victim testified over two days until she suffered an emotional breakdown. Under these circumstances, we conclude the trial court properly found her unavailable and properly admitted her preliminary hearing testimony. We affirm the judgment of conviction.

FACTS AND PROCEDURE

1. Charges Against Defendant

In a seven-count information, defendant was charged with forcible rape of a victim under 14 years, forcible lewd act upon a child, forcible oral copulation on a child under 14 years, sexual penetration by a foreign object on a child under 14, and two counts of aggravated sexual assault of a child. Two prior convictions within the meaning of Penal Code section 1203, subdivision (e)(4) and two (incorrectly alleged as three) prior convictions within the meaning of section 667.5, subdivision (b) were alleged.

2. Monica—the Victim of Defendant's Sex Crimes—Refuses to Testify

Monica was 13, when the sex acts underlying defendant's convictions occurred. Monica's mother rented a room in a house owned by defendant's mother, where defendant also lived. When she first reported defendant's conduct to police (following the urging of her friend), Monica was timid, shy, and quiet. She was emotional. Monica did not want to discuss the incident with the nurse practitioner who examined her.

Monica testified at the preliminary hearing, but her testimony was interrupted because she became upset and needed a break. During her testimony, she scratched her arm profusely causing it to bleed.

On the day she was supposed to testify at defendant's trial, Monica ran away from home. She ran away to avoid testifying. Monica was located and escorted to court.

Prior to trial, the court held a hearing to determine whether Monica was unavailable to testify. The nature of defendant's appellate arguments require extensive quotation from that hearing.

First, the prosecutor commenced questioning Monica as follows:

"Q [Prosecutor:] And you were explained that you have the right to choose whether or not you'd like to testify today, correct?

"A Yes.

"Q Have you made a decision on whether or not you would like to testify today?

"A Yes.

"Q And what is your decision?

"A I wouldn't like to testify."

The court then inquired as follows:

"The Court: Have you spoken to anyone or anyone spoken to you about why it would be important for you to testify in this case?

"The Witness: Yes.

"The Court: And who have you spoken to?

"The Witness: Mr.—

"The Court: The prosecutor, the man that's asking the questions or someone else?"

The prosecutor then resumed asking questions as follows:

"Q Have I spoken to you about whether it's important for you to testify?

"A Yes.

"Q And have I given you the decision to choose whether or not you want to testify?

"A Yes.

"Q And your choice is that you do not want to testify?

"A Yes.

“Q Has any—do you think that speaking to a counselor or anything else would help you in any way to make this decision?

“A Can you repeat the question[?]

“Q If you were to speak to a counselor appointed—a counselor appointed by the court, would that help you in any way to make your decision on whether or not to testify in this case?

“A No.

“Q And you’re I guess—so you do not want to testify in this case at all?

“A Yes.

“Q Do you think anything would change your mind in regards to that?

“A No.”

The court then explained the importance of testifying to Monica:

“The Court: [The prosecutor] told you it’s your decision whether you wish to testify or not. However, you are a witness in this action and that the court considers it very important that you testify in this case and the jury can hear your words and see you as you testify. [¶] Do you understand the importance of that?”

“The Witness: Yes.

“The Court: And do you understand the importance and seriousness of the charges in this case?

“The Witness: Yes.

“The Court: And the events that occurred that you were involved in? You recall that, too, right?

“The Witness: Yes.

“The Court: And it’s very important not only for yourself but for the system to operate that you be able to testify or testify in this trial rather than your prior testimony at the previous proceeding at the preliminary hearing. Do you understand that?

“The Witness: Yes.

“The Court: Has anyone also talked to you about the importance for you to testify such as your mother or anyone else encourage you to testify?

“The Witness: No.

“The Court: If I had a counselor talk to you about those events that you experienced and the importance for you to tell your story in front of the jury about what happened, would that help you in deciding whether you may change your mind in testifying?

“The Witness: No.”

The court then suggested other options that might persuade Monica to testify.

“The Court: Would any amount of time, If I gave you a half hour or the rest of the day to think about it and [the prosecutor] talked to you again or a counselor talked to you again about the importance for you to testify, would that assist you in rethinking your position at this time?

“The Witness: No.

“The Court: Is there a point in time when you decided you no longer wanted to testify in this case? In other words, when did you reach that decision?

“The Witness: Yesterday.

“The Court: Yesterday, and was that when you were told that you needed to be in court today to testify?

“The Witness: Yes.

“The Court: And when you were told you had to testify, what was your reaction? Were you upset, or was your thinking that you maybe testify, not testify or did you decide at that time you didn’t want to testify?

“The Witness: I didn’t want to testify.

“The Court: It’s my understanding that you were told to be here in court at what time this morning?

“The Witness: 8:00.

“The Court: Eight o’clock. And you did not leave your house voluntarily to come to court, did you?

“The Witness: No.

“The Court: And why didn’t you want to come to court? Is it because you didn’t want to testify in this case?

“The Witness: No, I didn’t.

“The Court: Excuse me?

“The Witness: I didn’t want to testify.

“The Court: It’s my understanding that you left your residence when the police were coming to talk to you about coming and testifying; is that correct?

“The Witness: Yes.

“The Court: Would it be fair to say that you ran away?

“The Witness: Yes.

“The Court: And why did you run away?

“The Witness: Because I didn’t want to be here.

“The Court: Are you here because you were told you had to be here today?

“The Witness: Yes.

“The Court: How did you get to court?

“The Witness: Detective Burke and Judy came for me.

“The Court: Okay. Now, the law gives me certain powers in regards to witnesses who do not want to testify and I normally exercise certain powers. However, there are only certain things I can do because of your age and because of the nature of the crimes involved here. But if I had you wait in an office here in this building . . . and you couldn’t leave until I told you you could do so and that I would check on you or have you come down in the morning or in the afternoon to see whether you changed your mind, if I told that was maybe going to be the situation, would that cause you to rethink your position?

“The Witness: No.”

Defense counsel stated that he “believe[d] the prosecution has fully exercised their due diligence in getting the witness to appear.”

The court indicated that Monica had no privilege upon which to ground her refusal to testify. The court stated, “She is a witness who refuses to cooperate in testifying under

oath before a jury.” Additionally, the court stated, “She’s a 14-year-old person at this point who is insistent on not testifying under any circumstance. [¶] Therefore, the court will not engage in the exercise of holding her here as a possible witness and her changing her mind. And the court finds that under [Evidence Code section 240] this showing has been made. That she is legally unavailable to testify at the time of trial.”

At defense counsel’s request, the court agreed that Monica should appear before the jury. Monica appeared before the jury and began testifying. She answered questions posed by the prosecutor. In addition to a description of defendant’s conduct,¹ Monica testified that “it’s just too much for me and because I’m scared and anxious and right now I’m really uncomfortable.” She testified that she was scared of being in the same room as defendant. When Monica stopped answering questions and testified that she did not want to answer all of the questions, the court instructed her: “As a witness you cannot choose which questions you wish to answer or not answer. You’re supposed to answer all questions.” The court indicated for the record that Monica “has sat with her shoulders slumped and her face looking down, her affect has been muted except for a couple instances where she teared up and cried quietly to herself.”

The next day, Monica resumed testifying. She testified that it was hard for her to answer questions because she did not like using defendant’s name. She testified that she failed to answer all of the questions because it was hard for her to testify. After offering her a tissue, the court asked Monica if it would help her to take a break, and Monica answered affirmatively. At the end of the break, Monica refused to leave the bathroom. A deputy sheriff, her mother, and a victim advocate tried to persuade her to come out of the bathroom. Eventually Monica exited, sat on a bench, and cried.

Monica was brought to the courtroom and the court asked her how she was feeling. Monica responded, “Anxious and uncomfortable.” She said that she did not want to be in court and that testifying was making her anxious. She did not want to testify because testifying evoked bad memories.

¹ We have not summarized Monica’s substantive testimony because it was stricken.

Monica left the courtroom, and the court noted that when she testified the prior day, she was holding a teddy bear and gripping it. The court was concerned about Monica's emotional state.

The court evaluated the situation as follows: "This child is obviously disturbed, obviously doesn't want to be here and is being selective in terms of responding to questions. A witness cannot be selective in regards to whether they wish to answer a question or not answer a question. The record is quite clear in terms of how the court has instructed this witness that she cannot pick and choose what questions she wishes to answer where she does have a current recollection of the event within the content of the question. The court will make such a finding that there was a—simply a willful refusal. However, the willful refusal is based upon the court's observations of her mental and emotional state and the actual result is that we have a person here who simply is not testifying according to her memory of the events and is not helpful to the trier of fact"

Defense counsel requested the case be dismissed because he was unable to cross-examine Monica. Following the court's rejection of that position, defense counsel requested the court strike her substantive testimony but allow the jurors to make judgments about Monica's credibility based on their observations of her. The court granted that motion.

Monica's preliminary hearing testimony was then read to jurors.

3. Monica's Preliminary Hearing Testimony

At the preliminary hearing, Monica testified that she did not want to be in court.

Monica and defendant lived in the same home. On November 15, 2012, defendant spoke to her while she was in the kitchen and made her feel uncomfortable. Monica told defendant that she was 13 years old. At the time defendant spoke to her, Monica was wearing elastic shorts.

Shortly after their conversation in the kitchen, defendant was in his room and told Monica to come to him. Defendant made her sit down on a chair. He did this by placing his right hand on her left shoulder. When Monica was "about to leave" defendant

grabbed her and sat her down on the bed and then laid her down on his bed. Defendant kissed her. Monica was scared.

On a drawing Monica indicated that defendant touched her in the groin. Defendant pulled down her shorts. Defendant touched her inside and outside her vagina with his right hand and with his penis. He also orally copulated her. Defendant put his finger inside Monica's vagina between five and seven times. He inserted his penis in her vagina five times. Defendant held Monica's shoulder to prevent her from getting out of bed.

Monica did not give defendant permission to touch her. She also did not tell him to stop. She tried to get up once before the sexual conduct started.

Monica was cross-examined by defense counsel.

4. Other Witnesses at Trial

Deputy Sheriff Myra Sotomayor interviewed Monica at the police station. Monica reported that defendant spoke to her in the kitchen and asked how old she was. Defendant told her that she had a nice body and that he wanted to show her something in his room. When Monica went into his room, defendant grabbed her arm and "sat her" on a chair. Defendant sat down next to her and kissed her. Defendant locked the door.

Defendant then laid her down on his bed and pulled up her shorts. When she tried to get up, defendant pushed her down, at which point Monica froze. Defendant penetrated her vagina about seven times with his fingers on his right hand. He orally copulated her. He also put his penis inside her vagina.

Detective Jeffrey Burke also interviewed Monica about defendant. She told him that she was in the kitchen when defendant approached and complemented her. Defendant asked how old she was and Monica responded that she was 13. Defendant told her to come inside his room. When Monica agreed to speak to him, defendant grabbed her arms and sat her down on a chair inside his room. Defendant began complementing her and kissed her. Monica was scared.

Defendant then laid her down on his bed, laid on top of her, and removed her black shorts. Monica tried to sit up but defendant pushed her shoulders down. Defendant

licked her vagina. He pulled her underwear to the side and inserted his fingers in her vagina. He also kissed and licked her vagina. Defendant then opened his pants and inserted his penis in her vagina. Monica did not scream; she was in shock and froze. She was afraid if she yelled defendant would hurt her. Monica told Detective Burke that she did not fight defendant. She did not immediately tell anyone about defendant's conduct because she was scared and embarrassed.

A video of Monica's forensic interview was played for jurors. During the interview, Monica stated that she was in the kitchen and defendant told her how pretty she was and complemented her. Monica felt uncomfortable. As she walked to her bedroom, defendant told her he wanted to show her something in his room. Defendant sat her down on the chair and leaned over to kiss her. Monica tried to get up and defendant sat her down on the bed and closed the door. He took off her shorts, put his mouth in her vagina, and then inserted his penis in her vagina. Defendant had his hands on Monica's shoulder when he inserted his penis in her vagina. Defendant also inserted his finger in her vagina. Monica tried to get up but defendant pushed her down. Monica was afraid if she yelled, defendant would hurt her. She explained, "... I wanted to yell, I wanted to do something to stop it, but just, I was just ... stopping myself from doing that cause I didn't want anything else to happen to me."

Physical evidence showed that semen was present in samples from Monica's vulva, anus, and hymen as well as the underwear she was wearing. Defendant was a contributor to the semen found on Monica's underwear with the possibility of a random match equaling one in 9.28 quadrillion people. No conclusions could be drawn from the other samples.

Defendant's mother was the sole defense witness. She testified that Monica regularly spoke to defendant.

5. Verdict and Sentence

Jurors convicted defendant of all charged crimes. Defendant admitted the prior offenses.

Defendant was sentenced to an aggregate term of 47 years to life in prison. Defendant was also sentenced to a two-year concurrent term on an unrelated case. Sentence on the remaining counts was stayed.

This appeal followed in which defendant challenged the use of Monica's preliminary hearing testimony.

DISCUSSION

“A criminal defendant has the right, guaranteed by the confrontation clauses of both the federal and state Constitutions, to confront the prosecution’s witnesses. (U.S. Const., 6th Amend.; Cal. Const., art. 1, § 15.) The right of confrontation ‘seeks “to ensure that the defendant is able to conduct a ‘personal examination and cross-examination of the witness, in which [the defendant] has an opportunity, not only of testing the recollection and sifting the conscience of the witness, but of compelling him to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief.”’ [Citations.] To deny or significantly diminish this right deprives a defendant of the essential means of testing the credibility of the prosecution’s witnesses, thus calling “into question the ultimate “integrity of the fact-finding process.”’” (People v. Herrera (2010) 49 Cal.4th 613, 620-621.) “[T]he right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country’s constitutional goal. Indeed, . . . to deprive an accused of the right to cross-examine the witnesses against him is a denial of the Fourteenth Amendment’s guarantee of due process of law.” (Alvarado v. Superior Court (2000) 23 Cal.4th 1121, 1137.)

Despite these important principles, the confrontation right is not absolute. (*Alvarado v. Superior Court, supra*, 23 Cal.4th at p. 1138.) It ““may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.”” (*Id.* at p. 1139.) ““Traditionally, there has been “an exception to the confrontation requirement where a witness is unavailable and has given testimony at previous judicial proceedings against the same defendant [and] which was subject to cross-

examination”” (*People v. Herrera*, *supra*, 49 Cal.4th at p. 621.) “Pursuant to this exception, the preliminary hearing testimony of an unavailable witness may be admitted at trial without violating a defendant’s confrontation right.” (*Ibid.*) The principal issue in this case is whether the trial court properly concluded Monica was unavailable.

1. The Trial Court Properly Found Monica Was Unavailable as a Witness

Defendant argues that Monica had no right to refuse to testify. Defendant further argues that the trial court erred in finding Monica unavailable and that the court should have ordered Monica to testify and threatened adverse circumstances if she continued to refuse to testify. As we shall explain, the trial court properly concluded Monica was unavailable.

“[A] witness who is physically available yet refuses to testify, after the court has used all available avenues to coerce such testimony, is unavailable. This is true even though such a witness does not fit neatly into one of the subdivisions of Evidence Code section 240.” (*People v. Francis* (1988) 200 Cal.App.3d 579, 587.) “[T]he witness is no more available when his body is present but he refuses to testify and the court is unable to compel him to do so by its process.” (*Id.* at p. 588.) However, the trial court must take “reasonable steps to induce the witness to testify unless it is obvious that such steps would be unavailing.” (*People v. Sul* (1981) 122 Cal.App.3d 355, 365 [holding that incarceration alone may not be reasonable]; *People v. Walker* (1983) 145 Cal.App.3d 886, 894 [following *Sul*.]) When a witness is unavailable, the witness’s prior testimony may be read if it was subject to cross-examination. (Evid. Code, § 1291; *Crawford v. Washington* (2004) 541 U.S. 36, 59.)

“Witnesses under subpoena and present in court have a duty to testify in accordance with the rules of evidence, a duty trial courts have the power to enforce.” (*People v. Smith* (2003) 30 Cal.4th 581, 624 (*Smith*).) However, the trial court’s ability to enforce the duty to testify is limited in the context of a victim of a sexual assault. Code of Civil Procedure section 1219 “prohibits a trial court from *jailing for contempt* a sexual assault victim who refuses to testify against the attacker.” (*People v. Cogswell* (2010) 48 Cal.4th 467, 478.) “Although any crime victim may be traumatized by the experience,

sexual assault victims are particularly likely to be traumatized because of the nature of the offense. To relive and to recount in a public courtroom the often personally embarrassing intimate details of sexual assault far overshadows the usual discomforts of giving testimony as a witness. And the defense may, through rigorous cross-examination, try to portray the victim as a willing participant. [Citation.] Also, seeing the attacker again—this time in the courtroom—is for many sexual assault victims a visual reminder of the harrowing experience suffered, addition to their distress and discomfort on the witness stand.” (*Ibid.*)

Our high court applied these principles in *Smith, supra*, 30 Cal.4th 581, a case similar to this one. *Smith* involved a witness who refused to testify unless she could tell jurors that she did not agree with the death penalty. As relevant here, our high court held: the fact that “Mary G. was physically present in the courtroom and merely refused to testify does not preclude a finding of unavailability. . . . Courts have admitted ‘former testimony of a witness who is physically available but who refuses to testify (without making a claim of privilege) if the court makes a finding of unavailability only after taking reasonable steps to induce the witness to testify unless it is obvious that such steps would be unavailing.’” (*Id.* at pp. 623-624, citation omitted.) The high court rejected the defendant’s argument that the trial court should have fined the recalcitrant witness for contempt. (*Id.* at p. 624.) It concluded that “[t]he court’s efforts to induce Mary G. to testify were reasonable under the unusual circumstances of this case. The court questioned her under oath and asked whether additional time or prosecution for criminal contempt would change her mind. It had no power to incarcerate this victim of sexual assault for refusing to testify concerning that assault.” (*Ibid.*)

Smith is dispositive of defendant’s arguments. Although *Smith* recognized, as defendant argues, that a witness under subpoena has a duty to testify, a present witness who refuses to testify may be found unavailable if the court undertook reasonable steps to induce the witness to testify. (*Smith, supra*, 30 Cal.4th at p. 624.) Here, the court took reasonable steps. The court warned Monica that she was a witness and “the court considers it very important that you testify in this case and the jury can hear your words

and see you as you testify.” The court asked Monica if she would rethink her decision not to testify if she spoke to a counselor, or if the court gave her more time. The court asked if Monica were placed in a locked room if that would change her mind and make her decide to testify. The court further insisted that Monica appear before the jury so that the jury could observe her, causing Monica to actually testify. The court found Monica unavailable after she testified over the course of two days and then proceeded to lock herself in the bathroom after an emotional breakdown. The court was not required to take additional steps to force Monica to continue testifying. (*Ibid.* [“Trial courts ‘do not have to take extreme actions before making a finding of unavailability.’”].)

2. *The Prosecutor’s Statements to Monica Did Not Require the Exclusion of Her Prior Testimony*

Defendant argues that the prosecution caused Monica’s unavailability and therefore the prosecution could not use her prior testimony. Defendant relies on Evidence Code section 240, subdivision (b), which provides: “A declarant is not unavailable as a witness if the exemption, preclusion, disqualification, death, inability, or absence of the declarant was brought about by the procurement or wrongdoing of the proponent of his or her *statement for the purpose of preventing the declarant from attending or testifying.*” (Italics added.)

Defendant did not raise this issue in the trial court. Assuming it is preserved, he demonstrates no error. No fair reading of the record supported the interpretation that the prosecutor had the purpose of preventing Monica from attending trial or testifying at trial. Monica was an important prosecution witness who the prosecutor wanted to testify. The prosecutor ensured that Monica was present in court. (Even defense counsel acknowledged the prosecutor exercised due diligence.) Monica testified on direct examination until she broke down emotionally, locked herself in the bathroom, and emerged in tears. Although the prosecutor erred in telling Monica she had a choice to testify, the prosecutor did not prevent or have the purpose of preventing Monica from testifying.

Moreover, the prosecutor was not the cause of Monica's reluctance to testify. Instead, as our Supreme Court recognized in *People v. Cogswell, supra*, 48 Cal.4th at page 478 sexual assault victims may be traumatized by the nature of the offense and uncomfortable testifying in court. Monica's statements to the court revealed that she fell within this category of victims. Monica testified that "it's just too much for me and because I'm scared and anxious and right now I'm really uncomfortable." She testified that she was scared of being in the same room as defendant. It was defendant's conduct, not the prosecutor's, that caused Monica's refusal to testify.

Defendant insinuates that the prosecutor committed prosecutorial misconduct by telling Monica that she had the choice not to testify. Assuming that the prosecutor's misstatement of the law (which was corrected by the trial court) amounted to misconduct, there was no prejudice because the trial court told Monica it was important for her to testify, and she then testified until she suffered an emotional breakdown. Defendant ignores the critical facts that the prosecutor forced Monica to appear in court even though she ran away, and that Monica actually testified. These significant facts belie his argument that his trial "was infected by the prosecutor's advice to" the victim that she could decide whether to testify.

3. Defendant Had the Same Motive for Cross-examination at the Preliminary Hearing and at Trial

The confrontation clause permits the introduction of prior testimony only if the defendant had a similar motive for cross-examination in the prior proceeding. (Evid. Code, § 1291, subd. (a)(2);² *Crawford v. Washington, supra*, 541 U.S. at p. 59.) Defendant argues that he did not have a similar motive at the preliminary hearing as at trial. His argument lacks merit.

² Evidence Code section 1291, subdivision (a)(2) provides: "(a) Evidence of former testimony is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and: [¶] . . . [¶] (2) The party against whom the former testimony is offered was a party to the action or proceeding in which the testimony was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which he has at the hearing."

In both proceedings defendant sought to discredit the prosecution's theory. (*People v. Carter* (2005) 36 Cal.4th 1114, 1173.) “[A]s long as a defendant was provided the *opportunity* for cross-examination, the admission of preliminary hearing testimony under Evidence Code section 1291 does not offend the confrontation clause of the federal Constitution simply because the defendant did not conduct a particular form of cross-examination that in hindsight might have been more effective.” (*Id.* at pp. 1173-1174; see *People v. Zapien* (1993) 4 Cal.4th 929, 976.) Therefore, even if as defendant argues his counsel did not seek to challenge Monica's credibility at the preliminary hearing, he had the opportunity to do so. Moreover, it appears defense counsel did seek to challenge Monica's credibility. He went through the events with Monica and elicited testimony that she did not tell defendant to stop. In short, the trial court did not err in finding Monica unavailable and admitting Monica's preliminary hearing testimony.

DISPOSITION

The judgment is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

ATTORNEY GENERAL

COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA

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

No. KA101692-01

vs

01) ORTIZ, GERARDO

Volume 1 of 1 Volumes
Notice of appeal filing date: 10-27-14

Defendant(s) and **APPELLANT**

CLERK'S TRANSCRIPT
PAGE 1 to 215

Appearances:

Appeal from the Superior Court,
County of Los Angeles – East District

Counsel for Plaintiff:

Honorable GEORGE GENESTA
Judge

THE ATTORNEY GENERAL

Counsel for Defendant:

C.A.P.

Date Mailed to:

Defendant (in pro per)

Defendant's Trial Attorney

Defendant's Appellate Attorney

District Attorney

Attorney General

DEC 2 3 2014

002

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA **000001**

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT A

HON. BRIAN HOFFSTADT, JUDGE

5 THE PEOPLE OF THE STATE OF CALIFORNIA,)
6 PLAINTIFF,)
7 VS.) NO. KA101692
8 01) GERARDO ORTIZ,)
9 DEFENDANT.)

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FILED
Superior Court of California
County of Los Angeles
OCT 11 2013
Sheri R. Carter, Executive Officer/Clerk
By: Albino A. Catindig
Deputy

PRELIMINARY HEARING

REPORTER'S TRANSCRIPT OF PROCEEDINGS
OCTOBER 2, 2013

APPEARANCES:

FOR PEOPLE: JACKIE LACEY, DISTRICT ATTORNEY
BY: MICHAEL MATOBA, DEPUTY
18000 FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET, 18TH FLOOR
LOS ANGELES, CALIFORNIA 90012

FOR DEFENDANT: JANICE FUKAI, ALTERNATE PUBLIC DEFENDER
BY: SALVADOR BARAJAS, DEPUTY
320 WEST TEMPLE STREET
SUITE 335
LOS ANGELES, CALIFORNIA 90012

HTA: 10-23-13
DEPT.: EA F

JACQUELINE CUMMINGS
CSR NO. 8618
OFFICIAL REPORTER

ORIGINAL

1 M A S T E R I N D E X

2 CHRONOLOGICAL INDEX OF WITNESSES

3

4	PEOPLE'S WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
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6	MONICA DOE	4	26	28	
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7

8	MAYRA SOTOMAYOR	40	45		
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DEFENDANT'S:

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(NONE)

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EXHIBITS

21

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PEOPLE'S:	IDENTIFICATION	EVIDENCE
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1 - DIAGRAM OF GIRL	16	49
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2 - DIAGRAM OF BOY	18	49
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1 CASE NUMBER: KA101692
2 CASE NAME: PEOPLE VS. GERARDO ORTIZ
3 POMONA, CALIFORNIA OCTOBER 2, 2013
4 DEPARTMENT A HON. BRIAN HOFFSTADT, JUDGE
5 REPORTER: JACQUELINE CUMMINGS, CSR NO. 8618
6 TIME: 10:56 A.M.
7
8 APPEARANCES:
9 DEFENDANT GERARDO ORTIZ, PRESENT WITH COUNSEL,
10 SALVADOR BARAJAS, ALTERNATE DEPUTY PUBLIC DEFENDER;
11 MICHAEL MATOBA, DEPUTY DISTRICT ATTORNEY,
12 REPRESENTING THE PEOPLE OF THE STATE OF
13 CALIFORNIA.
14
15 THE COURT: WE'RE HERE ON THE MATTER OF PEOPLE VERSUS
16 GERARDO ORTIZ MATTERS KA101692 AND KA101042.
17 COUNSEL, I'D LIKE YOU TO STATE YOUR APPEARANCES
18 FOR THE RECORD.
19 MR. BARAJAS: SALVADOR BARAJAS, DEPUTY ALTERNATE PUBLIC
20 DEFENDER, ON BEHALF OF MR. ORTIZ, WHO IS PRESENT AND IN
21 CUSTODY.
22 MR. MATOBA: MICHAEL MATOBA FOR THE PEOPLE.
23 THE COURT: GOOD MORNING TO ALL OF YOU. WE'RE HERE THIS
24 MORNING FOR PRELIMINARY HEARING ON THE 101692 MATTER. IT
25 LOOKS LIKE THE OTHER MATTER IS TRAILING IT.
26 MR. BARAJAS: YES, A SENTENCING MATTER.
27 THE COURT: OKAY. MR. ORTIZ, IS YOUR TRUE NAME GERARDO
28 ORTIZ?

1 THE DEFENDANT: YES.

2 THE COURT: IS YOUR DATE OF BIRTH JUNE 8, 1976?

3 THE DEFENDANT: YES.

4 THE COURT: THIS IS THE TIME AND PLACE FOR PRELIMINARY
5 HEARING.

6 MR. BARAJAS, IS THE DEFENSE READY TO PROCEED?

7 MR. BARAJAS: YES, SIR.

8 THE COURT: MR. MATOBA, ARE THE PEOPLE READY?

9 MR. MATOBA: YES, YOUR HONOR.

10 THE COURT: JUST FOR THE COURT'S EDIFICATION, WHAT'S THE
11 TIME ESTIMATE, DO YOU THINK, MR. MATOBA?

12 MR. MATOBA: PROBABLY AT LEAST AN HOUR. I DID WANT TO
13 JUST STATE FOR THE RECORD THE PEOPLE DID CONVEY AN OFFER TO
14 THE DEFENDANT TODAY OF 40 YEARS STATE PRISON. THAT OFFER
15 WILL BE TAKEN OFF THE TABLE ONCE THE PRELIMINARY HEARING
16 STARTS AND POTENTIALLY, DEPENDING ON HOW THE PRELIM GOES,
17 THERE COULD BE LIFE CHARGES OR ALLEGATIONS THAT ARE
18 SUBSEQUENTLY ADDED.

19 THE COURT: OKAY. UNDERSTOOD.

20 DOES THE DEFENSE WAIVE FURTHER READING OF THE
21 COMPLAINT?

22 MR. BARAJAS: YES.

23 THE COURT: IS THERE A MOTION TO EXCLUDE WITNESSES FROM
24 THE DEFENSE?

25 MR. BARAJAS: YES.

26 THE COURT: PEOPLE JOIN?

27 MR. MATOBA: YES.

28 THE COURT: ALL WITNESSES ARE ORDERED TO REMAIN OUTSIDE

1 UNTIL THEY ARE CALLED TO TESTIFY, AND NOT TO CONFER WITH ONE
2 ANOTHER UNTIL THEY HAVE TESTIFIED AS WELL.

3 THE DISTRICT ATTORNEY, I ASSUME, HAS DESIGNATED
4 THEIR INVESTIGATING OFFICER. WHAT IS THAT OFFICER'S NAME?

5 DETECTIVE BURKE: IT'S DETECTIVE JEFFREY BURKE,
6 J-E-F-F-R-E-Y, LAST NAME IS BURKE, B-U-R-K-E.

7 THE COURT: AS YOUR INVESTIGATING OFFICER, DEPUTY BURKE
8 WILL BE PERMITTED TO REMAIN IN THE COURTROOM NOT WITHSTANDING
9 THE EXCLUSION ORDER.

10 PARTIES, PLEASE GIVE ME A MOMENT TO PULL UP THE
11 JURY INSTRUCTIONS FOR THESE PROCEEDINGS AND THEN WE'LL BEGIN.

12 MR. MATOBA: DO YOU WANT ME TO GO GET MY WITNESS?

13 THE COURT: YES, THAT'S FINE.

14 PEOPLE MAY CALL THEIR FIRST WITNESS. MR. MATOBA,
15 ARE WE USING THIS WITNESS'S FULL NAME OR REDACTED VERSION?

16 MR. MATOBA: IT WILL BE THE REDACTED VERSION. IT WILL
17 BE A DOE.

18 THE CLERK: USING THE FIRST NAME?

19 MR. MATOBA: YES, FIRST NAME.

20 THE COURT: YOU MAY PROCEED, MR. MATOBA.

21 MR. MATOBA: PEOPLE CALL MONICA DOE TO THE STAND.

22 THE CLERK: RAISE YOUR RIGHT HAND.

23 YOU DO SOLEMNLY STATE THAT THE TESTIMONY YOU MAY
24 GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE
25 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP
26 YOU GOD?

27 THE WITNESS: YES.

28 THE CLERK: THANK YOU. PLEASE HAVE A SEAT UP HERE IN

1 THE WITNESS STAND.

2 CAN YOU PLEASE TELL US YOUR FIRST NAME ONLY AND
3 SPELL IT FOR THE RECORD?

4 THE WITNESS: MONICA, M-O-N-I-C-A.

5 THE CLERK: THANK YOU.

6 AND CAN WE HAVE THE WITNESS ADVOCATE STATE HER
7 NAME FOR THE RECORD?

8 MS. GARDNER: JUDY GARDNER, J-U-D-Y, G-A-R-D-N-E-R.

9 THE CLERK: THANK YOU.

10 THE COURT: YOU MAY PROCEED, MR. MATOBA.

11 MR. MATOBA: THANK YOU, YOUR HONOR.

12

13 MONICA DOE,

14 HAVING BEEN CALLED AS A WITNESS BY AND

15 ON BEHALF OF THE PEOPLE, HAVING BEEN

16 DULY SWORN, WAS EXAMINED AND TESTIFIED

17 AS FOLLOWS:

18

19 DIRECT EXAMINATION

20 BY MR. MATOBA:

21 Q. GOOD MORNING, MONICA. I WANT TO DIRECT YOUR
22 ATTENTION BACK TO NOVEMBER 15TH, 2012. IS THAT DAY A FEW
23 DAYS BEFORE YOUR BIRTHDAY?

24 A. YES.

25 Q. WHEN IS YOUR BIRTHDAY?

26 A. NOVEMBER 17TH.

27 Q. AND HOW OLD ARE YOU RIGHT NOW?

28 A. 14.

1 Q. AND WHAT YEAR WERE YOU BORN?

2 A. 1998.

3 Q. BACK ON NOVEMBER 15TH, 2012, DID YOU LIVE AT 11003
4 GOMEZ PALACIO DRIVE?

5 A. YES.

6 Q. IS THAT IN THE CITY OF SOUTH EL MONTE, COUNTY OF
7 LOS ANGELES?

8 A. YES.

9 Q. WHILE YOU WERE LIVING AT THAT LOCATION, IS THERE
10 SOMEONE IN THIS COURTROOM WHO ALSO LIVED WITH YOU AT THAT
11 LOCATION?

12 A. YES.

13 Q. CAN YOU PLEASE POINT THAT PERSON OR PERSONS OUT
14 AND DESCRIBE WHAT THEY'RE WEARING?

15 A. HE'S WEARING A BLUE SHIRT.

16 Q. CAN YOU PLEASE POINT TO HIM FOR THE JUDGE?

17 A. (INDICATING.)

18 THE COURT: THE RECORD WILL REFLECT THE WITNESS HAS, BY
19 WARDROBE AND BY LOCATION IN THE COURTROOM, IDENTIFIED
20 MR. ORTIZ.

21 YOU MAY PROCEED.

22 Q. BY MR. MATOBA: WHAT IS YOUR RELATIONSHIP WITH
23 MR. ORTIZ?

24 A. NOTHING.

25 Q. YOU'RE NOT RELATED TO HIM BY FAMILY?

26 A. NO.

27 Q. DID HE LIVE AT THAT LOCATION?

28 A. YES.

1 Q. IN REGARDS TO YOUR FAMILY, WAS YOUR FAMILY ALSO
2 LIVING AT THAT LOCATION?

3 A. YES.

4 Q. WHO IN YOUR FAMILY WAS LIVING AT THAT LOCATION?

5 A. MY MOM AND MY BROTHER.

6 Q. AND DID YOU HAVE A ROOM OR HOW WERE THE LIVING
7 ARRANGEMENTS?

8 A. IT WAS A ROOM.

9 Q. AND WAS THERE ANY LOCKS TO YOUR ROOM?

10 A. NO.

11 Q. SO YOU LIVED IN A HOUSE WITH MR. ORTIZ?

12 A. YES.

13 Q. IS THERE ANYONE ELSE WHO, FROM MR. ORTIZ'S FAMILY,
14 WHO ALSO LIVED AT THAT HOUSE?

15 A. HIS MOM AND HIS BROTHERS.

16 Q. ON THAT DATE AT APPROXIMATELY 5:45, WERE YOU --
17 DID YOU GO TO THE KITCHEN AREA?

18 A. YES.

19 Q. WHY DID YOU GO TO THE KITCHEN?

20 THE COURT: ARE WE TALKING A.M. OR P.M.?

21 MR. MATOBA: I'M SORRY, P.M..

22 Q. WHY DID YOU GO TO THE KITCHEN?

23 A. TO GET SOMETHING FROM THE FRIDGE.

24 Q. WHAT WERE YOU GETTING?

25 A. WATER.

26 Q. AND WHEN YOU GOT SOMETHING, WHAT HAPPENED WHILE
27 YOU WERE IN THE KITCHEN?

28 A. HE STARTED TALKING TO ME IN A VERY UNCOMFORTABLE

1 WAY.

2 Q. WHEN YOU SAY "HE," WHO ARE YOU REFERRING TO?

3 A. I DON'T KNOW HOW TO SAY HIS NAME.

4 Q. ARE YOU REFERRING TO THE PERSON WHO YOU PREVIOUSLY
5 IDENTIFIED?

6 A. YES.

7 Q. MR. ORTIZ?

8 A. YES.

9 Q. AND WHEN YOU SAY HE WAS MAKING YOU UNCOMFORTABLE,
10 CAN YOU DESCRIBE WHAT YOU MEAN BY THAT?

11 A. CAN YOU REPEAT THE QUESTION?

12 Q. YES. YOU SAID THAT HE SAID SOME THINGS THAT MADE
13 YOU FEEL UNCOMFORTABLE. WHAT EXACTLY DID HE SAY?

14 A. I DON'T REALLY REMEMBER.

15 Q. YOU JUST REMEMBER -- DO YOU REMEMBER KIND OF SOME
16 OF THE THINGS THAT HE WAS TALKING ABOUT? MAYBE NOT THE EXACT
17 WORDS, BUT SOME OF THE THINGS HE WAS TALKING TO YOU ABOUT?

18 A. NO, I DON'T REMEMBER.

19 Q. DID HE ASK YOU HOW OLD YOU WERE?

20 A. YES.

21 Q. DID YOU TELL HIM HOW OLD YOU WERE?

22 A. YES.

23 Q. AND WHAT DID YOU TELL HIM?

24 A. THAT I WAS 13.

25 Q. DID HE SAY ANYTHING AFTER YOU TOLD HIM YOU WERE
26 13?

27 A. YES. HE TOLD ME THAT HE THOUGHT I WAS OLDER.

28 Q. AND AFTER -- DO YOU KNOW HOW LONG YOU SPOKE TO

1 HIM?

2 A. LIKE THREE MINUTES.

3 Q. AND AFTER YOU SPOKE TO HIM, WHAT DID YOU DO?

4 A. I WAS HEADING BACK TO MY ROOM.

5 Q. AS YOU GOT TO YOUR ROOM, WHAT HAPPENED?

6 A. HE WAS STANDING OUTSIDE THE DOOR OF HIS ROOM.

7 Q. WHAT HAPPENED NEXT?

8 A. I DON'T REMEMBER.

9 Q. YOU MENTIONED THAT HE WAS STANDING NEAR HIS
10 BEDROOM DOOR.

11 A. YES.

12 Q. YOU WERE STANDING NEAR -- WHERE WERE YOU AT?

13 A. OUTSIDE MY BEDROOM DOOR.

14 Q. DID YOU GUYS CONTINUE TO TALK AT ALL?

15 A. NO.

16 Q. DID YOU GO ANYWHERE?

17 A. BECAUSE HE WAS STANDING RIGHT THERE AND I WAS
18 THINKING THAT HE WAS GOING TO COME UP TO ME AND HE WAS
19 TELLING ME TO COME OVER HERE BUT --

20 MR. BARAJAS: OBJECTION. SPECULATION. MOTION TO STRIKE
21 LATTER PART OF THE ANSWER.

22 THE COURT: AS TO WHAT SHE THOUGHT ABOUT WHAT HE WAS
23 THINKING, SUSTAINED.

24 Q. BY MR. MATOBA: MONICA, YOU MENTIONED THAT THERE
25 WAS SOME -- THAT YOU WERE -- DID YOUR TWO DOORS, YOUR DOOR TO
26 YOUR ROOM AND HIS BEDROOM, HOW CLOSE WERE THEY? CAN YOU
27 POINT TO SOMETHING IN THE COURTROOM?

28 A. LIKE FROM THAT CHAIR, AROUND THERE.

1 Q. WHICH CHAIR ARE YOU REFERRING TO?

2 A. THE THIRD ONE.

3 Q. FROM WHERE YOU'RE AT TO WHERE I AM?

4 A. YES.

5 THE COURT: THE RECORD WILL REFLECT, BASED ON THE
6 DIAGRAM OF THIS COURTROOM, THAT'S PROBABLY 14 OR 15 FEET
7 AWAY.

8 Q. BY MR. MATOBA: DID YOU GO ANYWHERE AFTER YOU WERE
9 FACING MR. ORTIZ?

10 A. YES. HE -- WELL, I WAS THINKING THAT HE WAS GOING
11 TO COME UP TO ME.

12 MR. BARAJAS: MOTION TO STRIKE. SPECULATION.

13 THE COURT: I'LL SUSTAIN AS CURRENTLY PROVIDED.

14 Q. BY MR. MATOBA: DID YOU SEE HIM COME TOWARDS YOU?

15 A. NO, I WAS SAYING THAT I WAS THINKING.

16 Q. OKAY. SO YOU WERE THINKING YOURSELF THAT HE
17 MIGHT?

18 A. YES.

19 Q. BUT WHAT HAPPENED WHILE YOU WERE FACING MR. ORTIZ?

20 A. HE WAS TELLING ME TO COME TOWARD HIM.

21 Q. AND DO YOU REMEMBER WHAT HE SAID ABOUT COMING
22 TOWARDS HIM?

23 A. NO.

24 Q. DID YOU ACTUALLY GO TOWARDS HIM, THOUGH?

25 A. YES.

26 Q. WHEN YOU GOT CLOSER TO HIM, WHAT HAPPENED?

27 A. HE SAT ME DOWN ON A CHAIR THAT HE HAD ON THE SIDE.

28 Q. NOW WAS THIS IN THE HALLWAY OR WAS THIS SOMEWHERE

1 ELSE?

2 A. IT WAS INSIDE HIS ROOM.

3 Q. NOW, DO YOU KNOW HOW YOU GOT INTO HIS ROOM?

4 LET ME ASK A DIFFERENT QUESTION THEN.

5 DID YOU WANT TO GO INTO HIS ROOM?

6 A. NO.

7 Q. DID YOU TELL HIM YOU DIDN'T WANT TO GO INTO HIS
8 ROOM?

9 A. NO.

10 Q. IF YOU DIDN'T WANT TO GO INTO HIS ROOM, HOW DID
11 YOU GET INTO HIS ROOM?

12 A. I DON'T REMEMBER.

13 Q. AT ANY POINT DID MR. ORTIZ TOUCH YOU?

14 A. YES.

15 Q. WHEN WAS THE FIRST TIME HE TOUCHED YOU?

16 A. I DON'T REMEMBER.

17 Q. YOU DO REMEMBER THAT HE DID, IN FACT, TOUCH YOU,
18 THOUGH?

19 A. YES.

20 Q. YOU MENTIONED THAT YOU HAD GONE TO A CHAIR IN HIS
21 BEDROOM. WHERE DID YOU GO IN REGARDS -- WHAT DID YOU DO WHEN
22 YOU GOT TO THAT CHAIR?

23 A. NOTHING.

24 Q. WERE YOU STANDING? SITTING?

25 A. I WAS SITTING.

26 Q. DID YOU WALK OVER TO THAT CHAIR OR DID MR. ORTIZ
27 HELP YOU GET THERE?

28 MR. BARAJAS: OBJECTION. LEADING.

1 THE COURT: OVERRULED.

2 THE WITNESS: CAN YOU REPEAT THE QUESTION?

3 Q. BY MR. MATOBA: HOW DID YOU GET TO THE CHAIR? DID
4 YOU WALK? DID HE HELP YOU? EXPLAIN TO US.

5 A. HE HELPED ME GET TO THE CHAIR.

6 Q. HOW DID HE DO THAT?

7 A. HE GOT ME FROM MY SHOULDER AND HE SAT ME DOWN ON
8 THE CHAIR.

9 Q. YOU SAID GOT YOU BY YOUR SHOULDER. HOW DID HE GET
10 YOU BY YOUR SHOULDER? CAN YOU DESCRIBE IT FOR US?

11 A. LIKE ABOUT LIKE THIS (INDICATING.)

12 MR. MATOBA: FOR THE RECORD THE WITNESS TOOK HER RIGHT
13 HAND AND PLACED IT ON HER LEFT SHOULDER.

14 THE COURT: THE RECORD WILL SO REFLECT.

15 Q. BY MR. MATOBA: WHEN HE PUT HIS HAND ON YOUR
16 SHOULDER, DID YOU FEEL HIM MOVE YOU IN ANY WAY?

17 A. YES.

18 Q. CAN YOU DESCRIBE THAT?

19 A. CAN YOU REPEAT IT AGAIN?

20 Q. WHEN HE PUT HIS HAND ON YOUR SHOULDER, YOU SAID
21 YOU FELT HIM TOUCH YOU. CAN YOU DESCRIBE HOW HE WAS GUIDING
22 YOU TO THE CHAIR OR HOW IT FELT?

23 MONICA, IN REGARDS TO HIS HAND ON YOUR SHOULDER,
24 CAN YOU DESCRIBE WITH HOW MUCH FORCE, IF ANY, WAS USED?

25 A. NOT THAT MUCH.

26 Q. NOW, YOU GOT TO THE CHAIR. ONCE YOU GOT TO THE
27 CHAIR, WHAT HAPPENED?

28 A. HE STARTED TALKING TO ME ABOUT -- I DON'T KNOW.

1 Q. MONICA, I WANT YOU TO THINK BACK TO THAT DAY, AND
2 I KNOW IT'S TOUGH TO THINK BACK TO THAT DAY, BUT DO YOU
3 REMEMBER WHAT MR. ORTIZ SAID TO YOU? IF YOU NEED A SECOND TO
4 THINK ABOUT IT, THAT'S OKAY.

5 A. I REALLY DON'T REMEMBER.

6 Q. NOW WERE YOU GIVEN -- WERE ANY COMPLIMENTS GIVEN
7 TO YOU?

8 A. YES.

9 Q. DO YOU REMEMBER WHAT ANY OF THOSE COMPLIMENTS
10 WERE?

11 A. NO.

12 Q. NOW, AFTER YOU TALKED TO MR. ORTIZ, WHAT HAPPENED
13 NEXT?

14 A. I WAS ABOUT TO LEAVE, BUT INSTEAD HE GRABBED ME BY
15 THE SHOULDERS AND HE GRABBED ME -- I MEAN, AND HE SAT ME DOWN
16 ON THE BED.

17 Q. AND ONCE YOU SAT DOWN ON THE BED, WHAT HAPPENED?

18 A. CAN YOU REPEAT THE QUESTION?

19 Q. YES. MONICA, WHEN HE SAT YOU DOWN ON THE BED,
20 WHAT HAPPENED AFTER YOU GOT SAT DOWN ON THE BED?

21 A. HE GRABBED ME BY THE SHOULDER AND HE LAID ME DOWN.

22 Q. AND WHAT HAPPENED AFTER THAT?

23 MONICA, AFTER YOU GOT LAID DOWN ON THE BED, WHAT
24 HAPPENED NEXT?

25 A. THINGS JUST GOT OUT OF HAND.

26 Q. WHEN YOU SAY THINGS GOT OUT OF HAND, WHAT
27 HAPPENED?

28 MONICA, I WANT YOU TO START FROM THE VERY

1 BEGINNING FROM WHEN YOU WERE LAID DOWN ON THE BED AND JUST
2 TELL US WHAT HAPPENED FROM THE BEGINNING, THE MIDDLE, TO THE
3 END. OKAY?

4 MONICA, ARE YOU OKAY? YOU SEEM TO BE A LITTLE
5 UPSET. ARE YOU UPSET?

6 A. KIND OF.

7 Q. DO YOU NEED A FEW MINUTES?

8 A. YES.

9 MR. MATOBA: WITH THE COURT'S PERMISSION CAN WE TAKE --
10 THE COURT: WHAT TYPE OF RECESS? HOW LONG?

11 MR. MATOBA: JUST A FEW MINUTES, FOUR OR FIVE MINUTES.

12 THE COURT: WE CAN TAKE A FIVE MINUTE RECESS.

13 MR. MATOBA: THANK YOU.

14

15 (RECESS TAKEN.)

16

17 THE COURT: WE ARE BACK ON THE RECORD IN THE MATTER OF
18 PEOPLE VERSUS GERARDO ORTIZ. MS. DOE IS STILL ON THE STAND,
19 AND EVERYONE IS PRESENT.

20 THE COURT DID NOT TAKE UP ANY OTHER MATTERS DURING
21 THE BREAK, SO WE ARE CONSISTENT WITH THE CONTINUOUS PRELIM
22 RULE.

23 MR. MATOBA.

24 MR. MATOBA: THANK YOU.

25 Q. MONICA, DO YOU WANT TO BE HERE TODAY?

26 A. NO.

27 Q. AND THE ONLY REASON YOU'RE HERE IS BECAUSE A
28 SUBPOENA WAS GIVEN TO YOUR MOM TO BRING YOU TO COURT?

1 A. YES.

2 Q. NOW GOING BACK TO THE BEDROOM, YOU SAID MR. ORTIZ
3 LAID YOU DOWN ON THE BED. CAN YOU TELL US WHAT HAPPENED
4 NEXT?

5 MONICA, WE TALKED ABOUT HOW YOU GOT TO THE
6 BEDROOM. DO YOU REMEMBER THAT?

7 A. YES.

8 Q. OKAY. AND YOU SAID THAT YOU WERE TAKEN TO THE BED
9 AND YOU LIED DOWN?

10 A. YES.

11 Q. RIGHT AFTER YOU LIED DOWN CAN YOU TELL US WHAT
12 HAPPENED?

13 MONICA, DID ANY KISSING OCCUR?

14 A. YES.

15 Q. WHO KISSED WHO?

16 A. HE KISSED ME.

17 Q. OKAY. WHEN HE KISSED YOU, DID ANYTHING HAPPEN?

18 MR. BARAJAS: OBJECT TO VAGUE AS TO WHEN, AS TO TIME.

19 MR. MATOBA: I CAN REPHRASE.

20 THE COURT: PLEASE.

21 Q. BY MR. MATOBA: AFTER YOU GOT KISSED, DID ANYTHING
22 ELSE HAPPEN AFTER YOU GOT KISSED?

23 MONICA, AFTER YOU WERE KISSED, WERE YOU ABLE TO
24 LEAVE THE ROOM?

25 A. NO.

26 Q. WHY WEREN'T YOU ABLE TO LEAVE THE ROOM?

27 MR. BARAJAS: YOUR HONOR, IT WOULD APPEAR THAT THE
28 WITNESS ADVOCATE IS MAKING SOME TYPE OF GESTURE TO THE

1 WITNESS AS IF NODDING IN THE AFFIRMATIVE. I WOULD OBJECT TO
2 HER PRESENCE OF DOING THAT IF SHE'S GOING TO BE SITTING
3 THERE.

4 THE COURT: I DIDN'T SEE THAT AT ALL. ASK THE WITNESS
5 ADVOCATE TO NOT IN ANY SENSE GESTURE, IF THAT'S WHAT WAS
6 HAPPENING.

7 Q. BY MR. MATOBA: MONICA, CAN YOU TELL US WHAT
8 HAPPENED IN THAT BEDROOM?

9 MONICA, WHY DON'T WE START WITH TALKING ABOUT SOME
10 OTHER THINGS FIRST.

11 DO YOU REMEMBER WHAT YOU WERE WEARING THAT DAY?

12 A. I WAS WEARING A PURPLE SHIRT AND I THINK IT WAS
13 BLACK SHORTS, I THINK.

14 Q. NOW, ARE THESE THE SHORTS THAT HAVE LIKE A BUTTON
15 TO KEEP THEM UP OR WHAT KIND OF SHORTS ARE THEY?

16 A. JUST -- THEY'RE KIND OF LIKE BASKETBALL SHORTS.

17 Q. SO JUST KEPT UP BY THE ELASTIC BAND?

18 A. YES.

19 Q. AND DID YOU HAVE ANY PANTIES ON?

20 A. YES.

21 Q. NOW, WERE YOU SCARED WHEN YOU WERE IN THE ROOM?

22 A. YES.

23 Q. WHY WERE YOU SCARED?

24 A. BECAUSE I KNEW THAT SOMETHING WAS GOING TO HAPPEN
25 TO ME.

26 Q. AND DID YOU WANT TO DO WHAT WAS GOING TO HAPPEN TO
27 YOU OR DID YOU WANT TO BE IN THAT BEDROOM?

28 A. NO.

1 Q. DID SOMETHING HAPPEN TO YOU WHILE YOU WERE IN THAT
2 BEDROOM?

3 A. YES.

4 Q. NOW, DID YOU WANT WHATEVER HAPPENED TO YOU IN THE
5 BEDROOM TO HAPPEN?

6 A. NO.

7 Q. DID YOU TELL MR. ORTIZ TO STOP?

8 A. NO.

9 Q. DID YOU GIVE HIM PERMISSION TO DO WHATEVER HE DID?

10 A. NO.

11 Q. NOW, IN REGARDS TO WHERE -- DID MR. ORTIZ TOUCH
12 YOU IN ANY WAY OTHER THAN WHAT WE'VE TALKED ABOUT BEFORE?
13 DID HE TOUCH YOU?

14 A. YES.

15 Q. NOW LET'S START WITH, DID HE TOUCH YOU WITH HIS
16 HANDS?

17 A. YES.

18 Q. WHERE DID HIS HANDS TOUCH YOU?

19 MONICA, WOULD IT BE EASIER FOR YOU IF YOU WERE TO
20 WRITE IT DOWN OR DRAW IT WHERE YOU WERE TOUCHED?

21 MR. MATOBA: YOUR HONOR, I HAVE A DRAWING. MAY IT BE
22 MARKED AS PEOPLE'S 1?

23 THE COURT: THAT'S FINE.

24
25 (MARKED FOR IDENTIFICATION PEOPLE'S
26 EXHIBIT 1, DIAGRAM OF GIRL.)

27
28 Q. BY MR. MATOBA: MONICA -- IT APPEARS TO BE A BODY

1 OF A GIRL. I'M GIVING YOU A PEN. CAN YOU USE THE PEN AND
2 PLEASE POINT TO THE LOCATIONS WHERE THE DEFENDANT TOUCHED
3 YOU? AND CAN YOU CIRCLE THOSE?

4 A. (INDICATING.)

5 Q. OKAY. DID HE TOUCH YOU ANYPLACE ELSE?

6 A. NO.

7 Q. NOW, IN REGARDS TO -- YOU CIRCLED A PLACE ON THAT
8 DRAWING. DID -- IN ORDER TO TOUCH -- YOU MENTIONED YOU WERE
9 WEARING CLOTHES THAT DAY?

10 A. YES.

11 Q. WHAT HAPPENED TO YOUR CLOTHES TO ALLOW MR. ORTIZ
12 TO TOUCH YOU IN THAT SPOT?

13 A. HE PULLED DOWN MY SHORTS.

14 Q. DID YOU WANT HIM TO DO THAT?

15 A. NO.

16 Q. NOW, WHEN HE TOUCHED YOU IN THE LOCATION THAT YOU
17 CIRCLED, DO YOU KNOW ANOTHER NAME FOR THAT REGION? AND
18 HOWEVER YOU WANT TO REFER TO IT IS FINE.

19 IN REGARDS TO THE PLACE THAT YOU CIRCLED, WHAT
20 PARTS OF THE DEFENDANT'S BODY TOUCHED YOU THERE?

21 A. HIS HANDS.

22 Q. AND WHAT DID HE DO WITH HIS HAND WHEN HE WAS
23 TOUCHING YOU THERE?

24 MONICA, YOU DREW ON THIS DIAGRAM WHERE YOU GOT
25 TOUCHED. DID HE USE ANY OTHER PARTS OF HIS BODY, OTHER THAN
26 HIS HANDS, ON THAT AREA?

27 MR. MATOBA: YOUR HONOR, I HAVE ANOTHER DOCUMENT. IT
28 APPEARS TO BE A PICTURE OF A MALE. MAY IT BE MARKED AS

1 PEOPLE'S 2?

2 THE COURT: THAT'S FINE.

3

4 (MARKED FOR IDENTIFICATION PEOPLE'S
5 EXHIBIT 2, DIAGRAM OF BOY.)

6

7 Q. BY MR. MATOBA: MONICA, I'M SHOWING YOU WHAT'S
8 BEEN MARKED AS PEOPLE'S 2. CAN YOU PLEASE CIRCLE THE
9 PARTS -- WE'LL SAY THAT PEOPLE'S 2 IS MR. ORTIZ. CAN YOU
10 PLEASE CIRCLE THE PARTS THAT TOUCHED YOU, AND WHAT YOU
11 INDICATED ON PEOPLE'S 1, WHAT PARTS OF HIS BODY TOUCHED YOU
12 THERE?

13 A. (INDICATING.)

14 Q. DID ANY OTHER PARTS OF HIS BODY TOUCH YOU THERE?

15 A. NO.

16 Q. DID YOU RECEIVE -- NOW YOU MENTIONED ON THIS ONE
17 SPOT ON PEOPLE'S 1 THAT HE TOUCHED YOU. DID HE TOUCH YOU ON
18 THE OUTSIDE, ON THE INSIDE, OR SOMETHING ELSE?

19 A. INSIDE AND OUTSIDE.

20 Q. AND WAS THAT DONE WITH WHAT PART OF HIS BODY?

21 LET ME DO IT THIS WAY. YOU CIRCLED ON PEOPLE'S 2
22 WHAT APPEARS TO BE THE RIGHT HAND; IS THAT CORRECT?

23 A. YES.

24 Q. AND YOU ALSO CIRCLED THE PART THAT APPEARS TO BE
25 THE PENIS. WOULD THAT BE CORRECT?

26 A. YES.

27 Q. I'M GOING TO ASK YOU IN REGARDS TO THE HAND, DID
28 HIS HAND TOUCH YOU ON THE OUTSIDE, INSIDE, OR SOMEWHERE ELSE?

1 A. INSIDE AND OUTSIDE.

2 Q. OKAY. AND CAN YOU DESCRIBE HOW HE TOUCHED ON THE
3 OUTSIDE? CAN YOU SHOW US MAYBE HOW HE WAS TOUCHING?

4 YOUR HONOR, THE WITNESS IS ACTUALLY STARTING TO
5 BLEED.

6 THE COURT: STARTING TO BLEED?

7 MR. MATOBA: YES. SHE'S SCRATCHING HER ARM AND SHE'S
8 STARTING TO BLEED.

9 THE COURT: IT WOULD MAKE SENSE TO TAKE A BREAK AT THIS
10 TIME AND RECESS AFTER LUNCH?

11 MR. MATOBA: YES.

12 THE COURT: WE'LL RECESS UNTIL 1:30.

13 MR. BARAJAS: MAY I ASK TO COME BACK AT 1:45? I HAVE A
14 ONE-HOUR MEETING THAT STARTS AT 12:30.

15 THE COURT: WE HAVE A TWO-HOUR PRELIM AFTER THIS, AND
16 MR. MATOBA HAS TO BE SOMEWHERE AT 2:00.

17 MR. BARAJAS: THAT'S FINE.

18 THE COURT: WE'LL BE IN RECESS UNTIL 1:30.

19

20 (THE NOON RECESS WAS TAKEN UNTIL

21 1:30 P.M. OF THE SAME DAY.)

22

23

24

25

26

27

28

1 CASE NUMBER: KA101692
2 CASE NAME: PEOPLE VS. GERARDO ORTIZ
3 POMONA, CALIFORNIA ^ DATE
4 DEPARTMENT A HON. BRIAN HOFFSTADT, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: JACQUELINE CUMMINGS, CSR 8618
7 TIME: 1:35 P.M.
8

9 THE COURT: WE ARE BACK ON THE RECORD IN THE GERARDO
10 ORTIZ MATTER. THE COURT HAS BROKEN FOR LUNCH BUT HAS TAKEN
11 UP-NO-HOURS DURING THE LUNCH HOUR, SO WE'RE CONSISTENT WITH
12 THE CONTINUOUS PRELIM RULE.

13 MR. MATOBA, IF YOU WISH TO PUT YOUR WITNESS BACK
14 ON THE STAND TO CONTINUE.

15 MR. MATOBA: THANK YOU.

16 THE COURT: HAVE A SEAT. GOOD AFTERNOON.

17 YOU MAY PROCEED, MR. MATOBA.

18 Q. BY MR. MATOBA: MONICA, WE TALKED ABOUT THE
19 PICTURES, PEOPLE'S 1 AND PEOPLE'S 2. NOW YOU MENTIONED THAT
20 MR. ORTIZ TOUCHED YOU WITH HIS HAND TO THE SPOT THAT YOU
21 INDICATED ON PEOPLE'S 1 BETWEEN YOUR LEGS; IS THAT CORRECT?

22 A. YES.

23 Q. WHAT ABOUT THE OTHER PART, THE PENIS THAT YOU
24 CIRCLED? DID HE TOUCH YOU THERE AS WELL?

25 A. YES.

26 Q. DID HE DO ANYTHING WITH HIS MOUTH AT ALL?

27 A. YES.

28 Q. WHAT DID HE DO WITH HIS MOUTH?

1 WOULD IT BE EASIER FOR YOU TO POINT TO WHERE HIS
2 MOUTH TOUCHED ON YOUR BODY?

3 A. (INDICATING.)

4 Q. CAN YOU PLEASE MAKE AN X ON PEOPLE'S 1 WHERE HE
5 USED HIS MOUTH TO TOUCH YOUR BODY?

6 A. (INDICATING.)

7 MR. MATOBA: YOUR HONOR, FOR THE RECORD THE WITNESS MADE
8 AN "X" ON THE LOCATION BETWEEN THE LEGS OF THE PICTURE.

9 THE COURT: THE RECORD WILL SO REFLECT.

10 Q. BY MR. MATOBA: AND APPROXIMATELY HOW LONG DID HIS
11 MOUTH TOUCH YOU THERE?

12 A. LIKE AROUND -- I THINK TWO TO THREE MINUTES.

13 Q. OKAY. AND HOW LONG WITH HIS HAND DID HE TOUCH YOU
14 IN THAT REGION?

15 A. I THINK FOUR TO FIVE MINUTES.

16 Q. YOU MENTIONED THAT WITH HIS HAND IT WENT INSIDE
17 YOU. DO YOU KNOW HOW MANY TIMES HIS FINGER OR HIS HAND WENT
18 INSIDE YOU?

19 A. LIKE AROUND FIVE, I THINK, OR SEVEN.

20 Q. BETWEEN FIVE OR SEVEN TIMES?

21 A. (NO AUDIBLE RESPONSE.)

22 Q. IS THAT A "YES?"

23 A. YES.

24 Q. AND YOU -- WAS IT HIS HAND, HIS FINGERS, OR WHAT
25 PART OF HIS HAND?

26 A. HIS FINGERS.

27 Q. WAS IT ONE FINGER? MORE THAN ONE?

28 A. I'M NOT SURE.

1 Q. NOW, IN REGARD TO HIS PENIS, DID HIS PENIS GO
2 INSIDE OF YOU?

3 A. YES.

4 Q. DO YOU KNOW HOW MANY TIMES DID HIS PENIS GO INSIDE
5 OF YOU?

6 A. BETWEEN FIVE OR SOMETHING.

7 Q. DO YOU KNOW HOW LONG THAT WENT ON FOR?

8 A. I THINK FIVE MINUTES.

9 Q. NOW WITH HIS PENIS, WHEN IT WENT INSIDE YOU, DID
10 IT COME ALL THE WAY OUT OR STILL STAY INSIDE WHEN YOU'RE
11 SAYING THESE FIVE TO SEVEN TIMES?

12 A. IT CAME ALL THE WAY OUT.

13 MR. BARAJAS: I DIDN'T HEAR THE ANSWER.

14 THE COURT: SHE SAID IT CAME ALL THE WAY OUT.

15 Q. BY MR. MATOBA: NOW, YOU MENTIONED THAT HE USED
16 HIS MOUTH TO TOUCH YOU OR TO KISS YOU BETWEEN YOUR LEGS.

17 A. YES.

18 Q. AND YOU ALSO DESCRIBED HIS PENIS ALSO TOUCHED YOU
19 THERE AND HIS HANDS. CAN YOU PLEASE TELL ME WHAT HAPPENED
20 FIRST?

21 A. HIS MOUTH AND HIS FINGER.

22 Q. SO THE MOUTH WAS FIRST?

23 A. YES.

24 Q. THEN THE FINGERS?

25 A. YES.

26 Q. AND THEN AFTER THE FINGERS, WHAT WAS IT? IS IT
27 EASIER FOR YOU TO POINT?

28 A. YES.

1 Q. CAN YOU PLEASE POINT TO WHAT THE LAST PART WAS?

2 A. (INDICATING.)

3 MR. MATOBA: SHE INDICATED ON PEOPLE'S 2, THE PENIS.

4 THE COURT: THE RECORD WILL REFLECT THE WITNESS DID
5 POINT THERE, YES.

6 Q. BY MR. MATOBA: NOW, WHILE -- WHAT WAS GOING ON
7 WITH THE MOUTH? DID YOU STILL HAVE YOUR PANTIES ON?

8 A. I HAD THEM TO THE SIDE.

9 Q. OKAY. WHO MOVED THEM TO THE SIDE?

10 LET ME ASK YOU THIS. DID YOU MOVE THEM TO THE
11 SIDE?

12 A. NO.

13 Q. DID SOMEONE ELSE MOVE THEM TO THE SIDE?

14 A. YES.

15 Q. WHEN THE FINGERS WERE TOUCHING YOU THERE, DID YOU
16 STILL HAVE YOUR PANTIES ON?

17 A. YES.

18 Q. NOW, WHAT ABOUT WHEN HIS PENIS WAS TOUCHING YOU
19 BETWEEN YOUR LEGS? WERE YOU STILL WEARING YOUR PANTIES?

20 A. I'M NOT SURE THAT I DID.

21 Q. I JUST WANT TO BE SURE I UNDERSTAND. IS IT "I'M
22 NOT SURE IF I DID" OR "I'M NOT SURE" AND THEN YOU SAID "I
23 DID?" I'M JUST TRYING TO MAKE SURE WHAT EXACTLY YOU SAID.

24 A. "I'M NOT SURE," AND THEN I SAID "OR THAT I DID."

25 Q. LET ME JUST RE ASK THE QUESTION TO MAKE SURE I
26 UNDERSTAND. OKAY?

27 WERE YOUR PANTIES ON WHILE HIS PENIS WAS TOUCHING
28 YOU BETWEEN THE LEGS?

1 A. YES.

2 Q. NOW, WHEN YOU SAW -- DID YOU SEE HIS PENIS AT ANY
3 POINT?

4 A. NO.

5 Q. NOW DID YOU TRY AND GET UP FROM THE BED?

6 A. YES.

7 Q. WHAT KEPT YOU FROM GETTING UP FROM THE BED?

8 A. HE WAS HOLDING ME DOWN FROM MY SHOULDER.

9 Q. HOW MANY TIMES DID YOU TRY AND GET UP?

10 A. ONCE.

11 Q. WERE YOU ABLE TO LEAVE OR GET AWAY FROM HIM?

12 A. NO.

13 Q. WHAT CAUSED MR. ORTIZ TO STOP?

14 A. HE HEARD THE PHONE RINGING AND HE WENT TO GO
15 ANSWER IT.

16 Q. AND DID -- WHEN THE PHONE WAS RINGING, WHAT DID
17 YOU DO?

18 A. I GOT UP AND I LEFT.

19 Q. WHERE DID YOU GO?

20 A. I WENT IN TO LOCK MYSELF IN THE RESTROOM.

21 Q. AND DID YOU TELL SOMEONE THAT THIS HAD OCCURRED
22 RIGHT AFTER IT HAD HAPPENED?

23 A. NO.

24 Q. WHO DID YOU TELL -- WHO WAS THE FIRST PERSON YOU
25 TOLD THAT IT HAD HAPPENED?

26 A. A FRIEND OF MINE.

27 Q. WHAT'S THAT FRIEND'S NAME?

28 A. LEO.

1 THE COURT: HOW DO YOU SPELL THAT?

2 THE WITNESS: L-E-O.

3 THE COURT: THANK YOU.

4 Q. BY MR. MATOBA: DID YOU TELL ANYONE ELSE?

5 A. AND MY MOM, AND THAT WAS IT.

6 Q. AND YOU TOLD YOUR MOM, YOU TALKED TO -- THE POLICE
7 CAME OUT?

8 A. YES.

9 Q. AND DID YOU TELL THE POLICE OFFICER EVERYTHING
10 THAT HAPPENED?

11 A. YES.

12 Q. AND WERE YOU TRUTHFUL TO THE POLICE OFFICER?

13 A. YES.

14 Q. NOW, DO YOU KNOW WHETHER OR NOT -- DO YOU KNOW,
15 FIRST OF ALL, WHAT AN ERECT PENIS IS?

16 A. YES.

17 Q. DO YOU KNOW WHETHER OR NOT THE DEFENDANT HAD AN
18 ERECT PENIS?

19 A. YES.

20 Q. HOW DO YOU KNOW THAT?

21 A. BECAUSE I FELT IT.

22 Q. NOW, DID YOU WANT MR. ORTIZ TO DO ANY OF THESE
23 THINGS TO YOU?

24 A. NO.

25 Q. HOW MANY TIMES WOULD YOU SAY YOU TRIED TO GET AWAY
26 FROM MR. ORTIZ?

27 A. ONCE.

28 Q. AND THAT WAS WHEN YOU WERE ON THE BED?

1 A. YES.

2 Q. WHEN DID YOU FIRST TRY AND GET AWAY IN RELATION TO
3 WHAT YOU'VE DESCRIBED AS HAPPENED? WAS IT BEFORE, DURING OR
4 AFTER, YOU KNOW, THE INCIDENT INVOLVING THE MOUTH, THE HANDS
5 OR THE PENIS?

6 A. BEFORE.

7 Q. BEFORE ALL THREE OF THEM?

8 A. YES.

9 Q. NOW, IN REGARDS TO -- YOU MENTIONED THAT THERE WAS
10 SOME KISSING DONE EARLY ON BEFORE WHAT HAPPENED TO YOU WITH
11 HIS MOUTH, HIS FINGERS, AND HIS PENIS. WHO STARTED THE
12 KISSING?

13 A. HE DID.

14 Q. DID YOU KISS HIM BACK?

15 A. NO.

16 Q. WHEN HE WAS KISSING YOU, DID ANYTHING ELSE HAPPEN
17 WHEN HE WAS KISSING YOU WITH HIS MOUTH?

18 A. NO.

19 Q. RIGHT AFTER HE KISSED YOU WITH HIS MOUTH, WHAT WAS
20 THE VERY NEXT THING THAT HAPPENED?

21 DO YOU REMEMBER WHAT HAPPENED RIGHT AFTER?

22 A. NO.

23 MR. MATOBA: NOTHING FURTHER FOR THIS WITNESS.

24 THE COURT: MR. BARAJAS?

25

26 CROSS-EXAMINATION

27 BY MR. BARAJAS:

28 Q. AS OF NOVEMBER 15TH, 2012, HOW LONG HAD YOU BEEN

1 LIVING AT THE HOUSE WITH MR. ORTIZ?

2 A. LIKE AROUND -- I THINK THREE OR FOUR MONTHS.

3 Q. AND YOU WERE LIVING THERE WITH YOUR MOTHER AND
4 YOUR BROTHER?

5 A. YES.

6 Q. WERE YOU ALL SHARING A ROOM OR MORE THAN ONE ROOM?

7 A. WE WERE ALL SHARING A ROOM.

8 Q. AND HOW MANY BEDROOMS ARE IN THIS HOUSE?

9 A. THREE, I THINK.

10 Q. OKAY. AND WHERE IN RELATION TO YOUR BEDROOM WAS
11 MR. ORTIZ'S BEDROOM? WAS IT ON THE SAME FLOOR?

12 A. YES.

13 Q. IS THIS A SINGLE STORY HOUSE?

14 A. YES.

15 Q. WAS THE ROOM NEXT TO YOUR ROOM OR WAS IT DOWN THE
16 HALL? DO YOU REMEMBER?

17 A. IT WAS DOWN THE HALL.

18 Q. OKAY. AND YOU INDICATED THAT YOU WERE IN THE
19 KITCHEN WHEN YOU BEGAN SPEAKING WITH MR. ORTIZ; IS THAT
20 CORRECT?

21 A. YES.

22 Q. AND YOU WENT TO THE KITCHEN TO GET SOMETHING TO
23 DRINK; IS THAT CORRECT?

24 A. YES.

25 Q. AND DID YOU GET ANYTHING TO EAT?

26 A. YES.

27 Q. I'M SORRY?

28 A. YES.

1 Q. DID YOU REMEMBER GETTING A SANDWICH, MAKING A
2 SANDWICH OR SOMETHING LIKE THAT?

3 A. YES.

4 Q. DO YOU REMEMBER GOING TO YOUR ROOM WITH THAT
5 SANDWICH?

6 A. YES.

7 Q. IS THAT A "YES?"

8 A. YES.

9 Q. OKAY. SO I TAKE IT YOU HAD A CONVERSATION WITH
10 HIM IN THE KITCHEN, YOU GOT YOURSELF SOMETHING TO DRINK; IS
11 THAT CORRECT?

12 A. YES.

13 Q. AND YOU MADE YOURSELF A SANDWICH; IS THAT CORRECT?

14 A. YES.

15 Q. NOW, WAS MR. ORTIZ IN THE KITCHEN WHEN YOU GOT
16 YOUR DRINK?

17 A. YES.

18 Q. WAS HE IN THE KITCHEN WHILE YOU MADE YOUR
19 SANDWICH?

20 A. YES.

21 Q. WHAT KIND OF SANDWICH DID YOU MAKE?

22 A. A HAM ONE.

23 Q. A HAM SANDWICH? OKAY. AND AT SOME POINT WHILE
24 YOU WERE IN THE KITCHEN MAKING YOUR SANDWICH, DID YOU PUT IT
25 ON A PLATE?

26 A. YES.

27 Q. WHILE YOU WERE DOING THAT, WAS MR. ORTIZ STILL IN
28 THE KITCHEN?

1 A. YES.

2 Q. AT WHAT POINT DO YOU RECALL, IF ANY, MR. ORTIZ
3 LEAVING THE KITCHEN -- LET ME ASK YOU ANOTHER WAY.

4 DID HE LEAVE THE KITCHEN BEFORE YOU LEFT THE
5 KITCHEN?

6 A. YES.

7 Q. AND DID YOU SEE WHERE HE WENT?

8 A. NO. ONLY REMEMBER THAT HE WENT DOWN THE HALL.

9 Q. HE WENT DOWN THE HALL. AND DO YOU RECALL BY GOING
10 DOWN THE HALL, WAS THAT IN THE DIRECTION OF HIS BEDROOM?

11 A. I THINK SO.

12 Q. WOULD THAT BE IN THE DIRECTION OF YOUR BEDROOM?

13 A. YES.

14 Q. SO YOU SAW HIM LEAVE THE KITCHEN, YOU SAW HIM GO
15 DOWN THE HALL TOWARDS HIS BEDROOM. HOW LONG DID YOU REMAIN
16 IN THE KITCHEN AFTER HE LEFT TO GO DOWN THE HALLWAY?

17 A. LIKE AROUND FIVE MINUTES.

18 Q. FIVE MINUTES? OKAY. AND IS THAT WHEN YOU TOOK
19 YOUR PLATE OF FOOD, YOUR SANDWICH, YOUR HAM SANDWICH WITH YOU
20 DOWN THE HALLWAY?

21 A. YES.

22 Q. AND DID YOU -- THE WAY THIS HALLWAY IS SET UP, DO
23 YOU GET TO YOUR BEDROOM BEFORE YOU GET -- OR DO YOU HAVE TO
24 PASS MR. ORTIZ'S BEDROOM?

25 A. BEFORE.

26 Q. YOUR BEDROOM, YOU CAN GET TO YOUR BEDROOM BEFORE
27 YOU GET TO MR. ORTIZ'S BEDROOM?

28 A. YES.

1 Q. IS THAT CORRECT? AND AS YOU WALKED TO YOUR
2 BEDROOM, DID YOU AT ANY POINT GO FIRST INTO MR. ORTIZ'S
3 BEDROOM?

4 A. CAN YOU REPEAT THE QUESTION?

5 Q. AS YOU LEFT THE KITCHEN YOU HAVE A PLATE WITH A
6 SANDWICH ON IT; IS THAT CORRECT?

7 A. YES.

8 Q. DID YOU HAVE A DRINK WITH YOU OR DID YOU LEAVE
9 YOUR DRINK IN THE KITCHEN?

10 A. I LEFT IT IN THE KITCHEN.

11 Q. YOU LEFT IT IN THE KITCHEN?

12 A. YES.

13 Q. SO YOU'RE WALKING DOWN THE HALLWAY WITH YOUR PLATE
14 OF FOOD AND DID YOU GO DIRECTLY TO YOUR BEDROOM FIRST?

15 A. I WAS GOING TO -- I WAS ALREADY OPENING THE DOOR.

16 Q. REPEAT THAT AGAIN.

17 A. I WAS GOING TO -- I WAS OPENING THE DOOR.

18 Q. YOU WERE ABOUT TO OPEN THE DOOR TO YOUR BEDROOM?

19 A. YES.

20 Q. AND IS THAT WHEN YOU MET WITH MR. ORTIZ AGAIN?

21 A. YES.

22 Q. AND WHERE WAS MR. ORTIZ STANDING?

23 A. IN HIS ROOM.

24 Q. IN HIS ROOM. WAS HIS DOOR OPEN?

25 A. YES.

26 Q. COULD YOU SEE HIM THROUGH THE OPEN DOORWAY?

27 A. YES.

28 Q. WAS HE STANDING OR SITTING, OR WHAT WAS HE DOING?

1 A. HE WAS STANDING.

2 Q. OKAY. AND DID YOU WALK OVER TO HIS BEDROOM?

3 A. WELL, WHEN HE ASKED ME TO GO OVER THERE.

4 Q. OKAY. SO YOU'RE SAYING HE ASKED YOU TO COME OVER
5 TO HIS BEDROOM?

6 A. YES.

7 Q. DID YOU HAVE YOUR PLATE OF FOOD WITH YOU?

8 A. YES.

9 Q. DID YOU, AT ANY POINT, DO YOU REMEMBER OFFERING
10 HIM A BITE OF YOUR SANDWICH?

11 A. NO.

12 Q. WHAT DID YOU DO WITH THE PLATE WITH THE SANDWICH?

13 A. I HAD IT ON MY HANDS ALL THE TIME UNTIL HE GOT IT
14 AND PUT IT ON THE CHAIR.

15 Q. WHEN YOU WALKED INTO THE BEDROOM, DID YOU
16 IMMEDIATELY SIT IN THE CHAIR?

17 A. NO.

18 Q. WHERE WAS THE CHAIR IN RELATION TO THE DOOR?

19 A. IT WAS RIGHT NEXT TO THE DOOR.

20 Q. RIGHT NEXT TO THE DOOR. AND AS YOU WALKED IN, DID
21 HE INVITE YOU TO SIT DOWN?

22 A. NO.

23 Q. DID YOU SIT DOWN BY YOURSELF?

24 A. NO.

25 Q. DID HE LEAD YOU TO THE CHAIR?

26 A. YES.

27 Q. BUT IT'S RIGHT NEXT TO THE DOOR?

28 A. YES.

1 Q. WHAT HAPPENED TO THE PLATE OF FOOD?

2 A. I HAD IT WITH ME.

3 Q. AT WHAT POINT DID YOU PUT THE PLATE OF FOOD ASIDE?

4 MR. MATOBA: OBJECTION. NO FOUNDATION.

5 THE COURT: SUSTAINED. WELL, I'LL JUST ASK HIM TO ASK
6 IT A DIFFERENT WAY.

7 Q. BY MR. BARAJAS: AND WHEN YOU WERE LED TO THE
8 CHAIR, DID YOU HAVE A PLATE OF FOOD WITH YOU?

9 A. YES.

10 Q. DID YOU SIT DOWN?

11 A. YES.

12 Q. WHAT DID YOU DO WITH THE PLATE OF FOOD?

13 A. I HAD IT ON MY LAP.

14 Q. YOU HAD IT ON YOUR LAP. AT ANY POINT IN TIME DID
15 YOU SET THE PLATE OF FOOD ASIDE OFF OF YOUR LAP?

16 A. NO.

17 Q. DID MR. ORTIZ TAKE THE PLATE OF FOOD?

18 A. YES.

19 Q. WHERE DID HE PUT THE PLATE OF FOOD?

20 A. HE PUT IT LIKE ON THE SIDE OF THE CHAIR.

21 Q. AT ANY POINT WHILE HE TOOK THAT PLATE OF FOOD DID
22 YOU EVER OFFER HIM ANY PART OF THAT FOOD?

23 A. NO.

24 Q. AS YOU SAT IN THE CHAIR WAS HE SITTING ON HIS BED?

25 A. YES.

26 Q. AND WERE YOU TALKING?

27 A. NO.

28 Q. YOU WERE NOT TALKING. WAS HE SAYING ANYTHING?

1 A. YES.

2 MR. MATOBA: WAS THAT A "NO?" FOR THE LAST QUESTION SHE
3 SHOOK HER HEAD.

4 THE COURT: RE ASK THE QUESTION.

5 Q. BY MR. BARAJAS: WHILE YOU WERE SITTING IN THE
6 CHAIR AND HE WAS SITTING ON THE BED, WERE YOU TALKING WITH
7 EACH OTHER?

8 A. HE WAS, I WASN'T.

9 Q. YOU HAD YOUR PLATE OF FOOD ON YOUR LAP; IS THAT
10 CORRECT?

11 A. YES.

12 Q. AT ANY POINT IN TIME WHILE HE SAT ON THE BED DID
13 YOU KISS HIM?

14 A. HE DID, BUT I DIDN'T.

15 Q. DID YOU EVER LEAN OVER TO KISS HIM?

16 A. NO.

17 Q. DID HE LEAN OVER TO KISS YOU?

18 A. YES.

19 Q. DID YOU TELL HIM TO STOP?

20 A. NO.

21 Q. YOU'RE SITTING IN THE CHAIR BY THE DOOR. DID YOU
22 GET UP TO LEAVE?

23 A. I WAS GOING TO, BUT HE HELD ME DOWN.

24 Q. NOW YOU INDICATE THAT AT A CERTAIN POINT IN TIME
25 HE TOUCHED YOU BELOW THE WAIST WITH HIS HAND; IS THAT
26 CORRECT?

27 A. YES.

28 Q. WITH HIS LIPS; IS THAT CORRECT?

1 A. YES.

2 Q. AND WITH HIS PENIS; IS THAT CORRECT?

3 A. YES.

4 Q. NOW YOU'VE INDICATED THAT HE TOUCHED YOU WITH
5 HIS -- THAT HE KISSED YOU DOWN BELOW YOUR WAIST FOR TWO OR
6 THREE MINUTES; IS THAT CORRECT?

7 A. YES.

8 Q. DID YOU HAVE A WATCH?

9 A. NO.

10 Q. DID YOU HAVE A CLOCK IN THE ROOM?

11 A. NO.

12 Q. YOU DON'T REALLY KNOW HOW LONG IT WAS?

13 WHEN YOU SAY

14 MR. MATOBA: WAS THERE AN ANSWER TO THAT?

15 Q. BY MR. BARAJAS: YOU REALLY DON'T KNOW HOW LONG IT
16 WAS?

17 A. I'M JUST LIKE ESTIMATING.

18 Q. YOU'RE JUST GUESSTIMATING?

19 MR. MATOBA: SHE SAID "ESTIMATING."

20 Q. BY MR. BARAJAS: YOU'RE JUST ESTIMATING?

21 A. YES.

22 Q. BUT YOU DIDN'T HAVE ACCESS TO A CLOCK; RIGHT?

23 A. NO.

24 Q. AND YOU WEREN'T LOOKING AT A CLOCK ON THE DRESSER
25 OR ON THE WALL OR ANYTHING LIKE THAT?

26 A. NO.

27 Q. WAS THERE A TV ON IN THE ROOM?

28 A. YES.

1 Q. DO YOU REMEMBER WHAT WAS ON THE TV AT THE TIME?

2 A. NO.

3 Q. OKAY. SO YOU WEREN'T PAYING ATTENTION TO THOSE
4 DETAILS; IS THAT CORRECT?

5 A. YES.

6 Q. YOU INDICATED THAT WHEN HE TOUCHED YOU WITH HIS
7 HANDS IT WAS ABOUT FOUR OR FIVE MINUTES; IS THAT CORRECT?

8 A. YES.

9 Q. BUT YOU WEREN'T LOOKING AT A CLOCK, YOU WEREN'T
10 SURE; IS THAT RIGHT?

11 A. YES.

12 Q. AND YOU INDICATE THAT HE HAD HIS PENIS INSIDE OF
13 YOU; IS THAT CORRECT?

14 A. YES.

15 Q. FOR NO MORE THAN FIVE MINUTES?

16 A. YES.

17 Q. AGAIN, YOU'RE NOT SURE HOW LONG THAT WOULD HAVE
18 BEEN; IS THAT CORRECT?

19 A. YES.

20 Q. YOU INDICATED YOU TOLD YOUR FRIEND ABOUT THIS
21 INCIDENT. WAS THAT LEO?

22 A. YES.

23 Q. AND THIS HAPPENED AT ABOUT 5:30 IN THE AFTERNOON
24 OF THE DAY; RIGHT?

25 A. YES.

26 Q. DID YOU IMMEDIATELY GO TELL LEO?

27 A. NO.

28 Q. WHEN DID YOU TELL LEO?

1 A. TWO DAYS.

2 Q. HOW MANY?

3 A. TWO DAYS AFTER.

4 Q. TWO DAYS AFTER.

5 AND YOU TOLD NO ONE BEFORE THEN?

6 A. NO.

7 Q. AT A CERTAIN POINT YOU INDICATE THAT HE LEFT THE
8 ROOM BECAUSE THE PHONE RANG?

9 A. YES.

10 Q. IS THAT WHEN YOU LEFT THE ROOM?

11 A. YES.

12 Q. WHAT -- DID YOU PUT YOUR CLOTHES BACK ON OR DID
13 YOU JUST GET UP AND LEAVE?

14 A. I PUT THEM BACK ON AND I LEFT.

15 Q. WHEN YOU SAID YOU PUT YOUR CLOTHES BACK ON, WHAT
16 CLOTHING DID YOU PUT BACK ON?

17 A. MY SHORTS.

18 Q. YOU STILL HAD YOUR UNDERWEAR ON --

19 A. YES.

20 Q. -- IS THAT CORRECT?

21 AND YOU WENT TO THE BATHROOM AND YOU LOCKED
22 YOURSELF INTO THE BATHROOM?

23 A. YES.

24 Q. AND HOW LONG AFTER THAT DID YOU SEE ANYONE ELSE IN
25 THE HOUSE?

26 A. CAN YOU REPEAT THE QUESTION?

27 Q. HOW LONG AFTER THIS INCIDENT DID YOU SEE SOMEONE
28 ELSE AT THE HOUSE?

1 A. NO ONE.
2 Q. YOU DIDN'T SEE ANYONE AFTER THAT?
3 A. NO.
4 Q. DID YOUR MOTHER COME HOME LATER THAT DAY?
5 A. YES.
6 Q. WHAT TIME DID SHE COME HOME?
7 A. LIKE AROUND 12:00.
8 Q. HOW ABOUT YOUR BROTHER?
9 A. HE WAS SLEEPING.
10 Q. HE WAS SLEEPING AT THE TIME?
11 A. YES.
12 Q. HOW OLD IS YOUR BROTHER?
13 A. HE'S TEN.
14 Q. OKAY. YOU INDICATE THAT YOU KNEW HIS PENIS WAS
15 ERECT; IS THAT CORRECT?
16 A. YES.
17 Q. BUT YOU DIDN'T SEE HIS PENIS?
18 A. NO.
19 Q. OKAY. WAS THIS THE FIRST TIME YOU HAD SEEN OR
20 FELT AN ERECT PENIS?
21 A. YES.
22 Q. I TAKE IT YOU NEVER HAD SEX BEFORE?
23 A. CAN YOU REPEAT THE QUESTION?
24 Q. HAVE YOU HAD SEX BEFORE THIS INCIDENT?
25 A. YES.
26 Q. AND AT LEAST TWICE; RIGHT?
27 A. YES.
28 Q. SO IT'S FAIR TO SAY THAT YOU'VE SEEN OR FELT AN

1 ERECT PENIS?

2 A. YES.

3 Q. DID THOSE INCIDENTS OCCUR WHILE YOU WERE LIVING AT
4 THE HOUSE?

5 A. NO.

6 Q. DID THOSE INCIDENTS OCCUR WITH YOUR CONSENT?

7 A. WITH WHAT?

8 Q. DID YOU AGREE TO HAVE SEX THOSE TWO OTHER TIMES?

9 A. YES.

10 Q. WERE THEY BOYS YOUR AGE OR OLDER?

11 A. MY AGE.

12 Q. WERE ANY OF THOSE TWO INCIDENTS REPORTED TO THE
13 POLICE IN ANY WAY OR FASHION?

14 A. NO.

15 MR. MATOBA: OBJECTION. RELEVANCE.

16 THE COURT: SUSTAINED.

17 MR. BARAJAS: NO FURTHER QUESTIONS.

18 MR. MATOBA: MOTION TO STRIKE IF THERE WAS ANY ANSWER.
19 I DIDN'T KNOW IF THERE WAS ONE.

20 THE COURT: IF THERE'S ANY ANSWER, IT'S STRICKEN.

21 ANY FURTHER QUESTIONS?

22 MR. MATOBA: YES, JUST BRIEFLY.

23

24 REDIRECT EXAMINATION

25 BY MR. MATOBA:

26 Q. YOU SAID YOUR MOM CAME HOME. YOU SAID SHE CAME
27 HOME AT 12 O'CLOCK. WAS THAT AT NIGHT OR THE NEXT DAY?

28 A. THE NEXT DAY.

CV 18-1409-RS WL (SP)
Lodged Doc 4 Volume 1

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA, } DEC 18 2014
PLAINTIFF-RESPONDENT, }
VS. } CASE NO. KA101692
01) GERARDO ORTIZ, }
DEFENDANT-APPELLANT. }  COPY

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE GEORGE GENESTA, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL
OCTOBER 23, 2013; APRIL 9, 2014; JUNE 24, 2014;
SEPTEMBER 8, 9, 10, 2014

APPEARANCES:

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FOR DEFENDANT-APPELLANT:

IN PROPRIA PERSONA

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1-46/300
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901-1049/1200

NANCY L. WILSON, CSR NO. 9228
OFFICIAL REPORTER

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT EA T HON. GEORGE GENESTA, JUDGE
4
5 PEOPLE OF THE STATE OF CALIFORNIA,)
6 PLAINTIFF,)
7 VS.)CASE NO. KA101692
8 01) GERARDO ORTIZ,
9 DEFENDANT.
10

11 REPORTERS' TRANSCRIPT OF PROCEEDINGS
12 OCTOBER 23, 2013; APRIL 9, 2014, JUNE 24, 2014;
13 SEPTEMBER 8, 9, 10, 11, 12, 2014; OCTOBER 27, 2014
14
15

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30 NANCY L. WILSON, CSR NO. 9228
31 OFFICIAL REPORTERS
32

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TUESDAY, SEPTEMBER 9, 2014; VOLUME 1

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305

1 THE COURT: NO ADDITIONAL OFFERS BY THE
2 PEOPLE?

3 MR. MATOBA: NO. THE 20 YEARS IS A FIRM
4 OFFER.

5 THE COURT: OKAY. SO REJECTED?

6 MR. NEWTON: YES, YOUR HONOR.

7 THE COURT: OKAY. ALL RIGHT. THEN ALL
8 PARTIES READY?

9 MR. MATOBA: YES.

10 MR. NEWTON: YES, YOUR HONOR.

11 THE COURT: OKAY. LET'S BRING OUT THE
12 JURORS.

13 MR. MATOBA: YOUR HONOR, ACTUALLY BEFORE THE
14 JURORS, THE VICTIM --

15 THE COURT: ARE YOU REQUESTING TO --

16 MR. MATOBA: -- TO CALL HER TO THE STAND?

17 THE COURT: DO YOU ANTICIPATE HER NOT
18 TESTIFYING OR YOU'RE NOT SURE?

19 MR. MATOBA: SHE'S STILL MAKING HER DECISION
20 ON THAT AND WE CAN PROCEED WITH HER AS AN UNAVAILABLE
21 WITNESS AND WE'RE NOT CONCERNED WITH THAT IN THE
22 LEAST.

23 THE COURT: WOULD YOU LIKE TO TAKE THAT UP
24 NOW?

25 MR. MATOBA: I'D LIKE TO TAKE THAT UP NOW
26 JUST BECAUSE SHE --

27 THE COURT: LET'S BRING HER IN. REMAIN
28 STANDING RIGHT THERE. FACE MY CLERK AND RAISE YOUR

1 RIGHT HAND.

2

3 402 HEARING

4

5 *MONICA DOE,*

6 CALLED AS A WITNESS, HAVING BEEN FIRST
7 DULY SWORN, TESTIFIED AS FOLLOWS:

8

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

14 THE WITNESS: YES.

15 THE CLERK: PLEASE BE SEATED. AND CAN I
16 PLEASE HAVE YOU STATE YOUR FIRST NAME AND SPELL IT
17 FOR THE RECORD, PLEASE.

18 THE WITNESS: MONICA, M-O-N-I-C-A.

19 THE COURT: CAN YOU PULL THE MICROPHONE
20 TOWARD YOU MONICA. AND MONICA IS PRESENT IN COURT
21 WITH THE VICTIM ADVOCATE PRESENT. YOU MAY INQUIRE.

22

23 *DIRECT EXAMINATION*

24

25 BY MR. MATOBA:

26 Q MONICA, YOU'RE HERE IN COURT TODAY AND
27 WE'RE GOING TO ASK YOU TO TESTIFY. YOU'VE BEEN
28 EXPLAINED -- HAVE YOU BEEN EXPLAINED YOUR RIGHTS AS A

1 VICTIM IN THIS CASE?

2 A YES.

3 Q AND DO YOU UNDERSTAND ALL OF THOSE
4 RIGHTS AS A VICTIM?

5 A YES.

6 Q AND YOU WERE EXPLAINED THAT YOU HAVE
7 THE RIGHT TO CHOOSE WHETHER OR NOT YOU'D LIKE TO
8 TESTIFY TODAY, CORRECT?

9 A YES.

10 Q HAVE YOU MADE A DECISION ON WHETHER OR
11 NOT YOU WOULD LIKE TO TESTIFY TODAY?

12 A YES.

13 Q AND WHAT IS YOUR DECISION?

14 A I WOULDN'T LIKE TO TESTIFY.

15 MR. MATOBA: YOUR HONOR, I DON'T KNOW IF THE
16 COURT WISHES TO INQUIRE ANY FURTHER ABOUT IT.

17 THE COURT: HAVE YOU SPOKEN TO ANYONE OR
18 ANYONE SPOKEN TO YOU ABOUT WHY IT WOULD BE IMPORTANT
19 FOR YOU TO TESTIFY IN THIS CASE?

20 THE WITNESS: YES.

21 THE COURT: AND WHO HAVE YOU SPOKEN TO?

22 THE WITNESS: MR. --

23 THE COURT: THE PROSECUTOR, THE MAN THAT'S
24 ASKING THE QUESTIONS OR SOMEONE ELSE? MR. MATOBA, DO
25 YOU WANT TO --

26 MR. MATOBA: YES, I CAN ASK HER.

27 Q HAVE I SPOKEN TO YOU ABOUT WHETHER
28 IT'S IMPORTANT FOR YOU TO TESTIFY?

1 A YES.

2 Q AND HAVE I GIVEN YOU THE DECISION TO
3 CHOOSE WHETHER OR NOT YOU WANT TO TESTIFY?

4 A YES.

5 Q AND YOUR CHOICE IS THAT YOU DO NOT
6 WANT TO TESTIFY?

7 A YES.

8 Q HAS ANY -- DO YOU THINK THAT SPEAKING
9 TO A COUNSELOR OR ANYTHING ELSE WOULD HELP YOU IN ANY
10 WAY TO MAKE THIS DECISION?

11 A CAN YOU REPEAT THE QUESTION.

12 Q IF YOU WERE TO SPEAK TO A COUNSELOR
13 APPOINTED -- A COUNSELOR APPOINTED BY THE COURT,
14 WOULD THAT HELP YOU IN ANY WAY TO MAKE YOUR DECISION
15 ON WHETHER OR NOT TO TESTIFY IN THIS CASE?

16 A NO.

17 Q AND YOU'RE I GUESS -- SO YOU DO NOT
18 WANT TO TESTIFY IN THIS CASE AT ALL?

19 A YES.

20 Q DO YOU THINK ANYTHING WOULD CHANGE
21 YOUR MIND IN REGARDS TO THAT?

22 A NO.

23 THE COURT: MR. MATOBA TOLD YOU IT'S YOUR
24 DECISION WHETHER YOU WISH TO TESTIFY OR NOT.
25 HOWEVER, YOU ARE A WITNESS IN THIS ACTION AND THAT
26 THE COURT CONSIDERS IT VERY IMPORTANT THAT YOU
27 TESTIFY IN THIS CASE AND THE JURY CAN HEAR YOUR WORDS
28 AND SEE YOU AS YOU TESTIFY.

1 DO YOU UNDERSTAND THE IMPORTANCE OF
2 THAT?

3 THE WITNESS: YES.

4 THE COURT: AND DO YOU UNDERSTAND THE
5 IMPORTANCE AND SERIOUSNESS OF THE CHARGES IN THIS
6 CASE?

7 THE WITNESS: YES.

8 THE COURT: AND THE EVENTS THAT OCCURRED
9 THAT YOU WERE INVOLVED IN? YOU RECALL THAT, TOO,
10 RIGHT?

11 THE WITNESS: YES.

12 THE COURT: AND IT'S VERY IMPORTANT NOT ONLY
13 FOR YOURSELF BUT FOR THE SYSTEM TO OPERATE THAT YOU
14 BE ABLE TO TESTIFY OR TESTIFY IN THIS TRIAL RATHER
15 THAN YOUR PRIOR TESTIMONY AT THE PREVIOUS PROCEEDING
16 AT THE PRELIMINARY HEARING. DO YOU UNDERSTAND THAT?

17 THE WITNESS: YES.

18 THE COURT: HAS ANYONE ALSO TALKED TO YOU
19 ABOUT THE IMPORTANCE FOR YOU TO TESTIFY SUCH AS YOUR
20 MOTHER OR ANYONE ELSE ENCOURAGE YOU TO TESTIFY?

21 THE WITNESS: NO.

22 THE COURT: IF I HAD A COUNSELOR TALK TO YOU
23 ABOUT THOSE EVENTS THAT YOU EXPERIENCED AND THE
24 IMPORTANCE FOR YOU TO TELL YOUR STORY IN FRONT OF THE
25 JURY ABOUT WHAT HAPPENED, WOULD THAT HELP YOU IN
26 DECIDING WHETHER YOU MAY CHANGE YOUR MIND IN
27 TESTIFYING?

28 THE WITNESS: NO.

1 THE COURT: WOULD ANY AMOUNT OF TIME, IF I
2 GAVE YOU A HALF HOUR OR THE REST OF THE DAY TO THINK
3 ABOUT IT AND MR. MATOBA TALKED TO YOU AGAIN OR A
4 COUNSELOR TALKED TO YOU AGAIN ABOUT THE IMPORTANCE
5 FOR YOU TO TESTIFY, WOULD THAT ASSIST YOU IN
6 RETHINKING YOUR POSITION AT THIS TIME?

7 THE WITNESS: NO.

8 THE COURT: IS THERE A POINT IN TIME WHEN
9 YOU DECIDED YOU NO LONGER WANTED TO TESTIFY IN THIS
10 CASE? IN OTHER WORDS, WHEN DID YOU REACH THAT
11 DECISION?

12 THE WITNESS: YESTERDAY.

13 THE COURT: YESTERDAY. AND WAS THAT WHEN
14 YOU WERE TOLD THAT YOU NEEDED TO BE IN COURT TODAY TO
15 TESTIFY?

16 THE WITNESS: YES.

17 THE COURT: AND WHEN YOU WERE TOLD YOU HAD
18 TO TESTIFY, WHAT WAS YOUR REACTION? WERE YOU UPSET,
19 OR WAS YOUR THINKING THAT YOU MAYBE TESTIFY, NOT
20 TESTIFY OR DID YOU DECIDE AT THAT TIME YOU DIDN'T
21 WANT TO TESTIFY?

22 THE WITNESS: I DIDN'T WANT TO TESTIFY.

23 THE COURT: IT'S MY UNDERSTANDING THAT YOU
24 WERE TOLD TO BE HERE IN COURT AT WHAT TIME THIS
25 MORNING?

26 THE WITNESS: 8:00.

27 THE COURT: EIGHT O'CLOCK. AND YOU DID NOT
28 LEAVE YOUR HOUSE VOLUNTARILY TO COME TO COURT, DID

1 YOU?

2 THE WITNESS: NO.

3 THE COURT: AND WHY DIDN'T YOU WANT TO COME
4 TO COURT? IS IT BECAUSE YOU DIDN'T WANT TO TESTIFY
5 IN THIS CASE?

6 THE WITNESS: NO, I DIDN'T.

7 THE COURT: EXCUSE ME?

8 THE WITNESS: I DIDN'T WANT TO TESTIFY.

9 THE COURT: IT'S MY UNDERSTANDING THAT YOU
10 LEFT YOUR RESIDENCE WHEN THE POLICE WERE COMING TO
11 TALK TO YOU ABOUT COMING AND TESTIFYING; IS THAT
12 CORRECT?

13 THE WITNESS: YES.

14 THE COURT: WOULD IT BE FAIR TO SAY THAT YOU
15 RAN AWAY?

16 THE WITNESS: YES.

17 THE COURT: AND WHY DID YOU RUN AWAY?

18 THE WITNESS: BECAUSE I DIDN'T WANT TO BE
19 HERE.

20 THE COURT: ARE YOU HERE BECAUSE YOU WERE
21 TOLD YOU HAD TO BE HERE TODAY?

22 THE WITNESS: YES.

23 THE COURT: HOW DID YOU GET TO COURT?

24 THE WITNESS: DETECTIVE BURKE AND JUDY CAME
25 FOR ME.

26 THE COURT: OKAY. NOW, THE LAW GIVES ME
27 CERTAIN POWERS IN REGARDS TO WITNESSES WHO DO NOT
28 WANT TO TESTIFY AND I NORMALLY EXERCISE CERTAIN

1 POWERS. HOWEVER, THERE ARE ONLY CERTAIN THINGS I CAN
2 DO BECAUSE OF YOUR AGE AND BECAUSE OF THE NATURE OF
3 THE CRIMES INVOLVED HERE. BUT IF I HAD YOU WAIT IN
4 AN OFFICE HERE IN THIS BUILDING WHILE THIS TRIAL --
5 UNTIL THIS TRIAL -- IF I HAD YOU WAIT IN AN OFFICE IN
6 THIS BUILDING AND YOU COULDN'T LEAVE UNTIL I TOLD YOU
7 YOU COULD DO SO AND THAT I WOULD CHECK ON YOU OR HAVE
8 YOU COME DOWN IN THE MORNING OR IN THE AFTERNOON TO
9 SEE WHETHER YOU CHANGED YOUR MIND, IF I TOLD YOU THAT
10 WAS MAYBE GOING TO BE THE SITUATION, WOULD THAT CAUSE
11 YOU TO RETHINK YOUR POSITION?

12 THE WITNESS: NO.

13 THE COURT: SO EVEN IF I TOLD YOU YOU'RE
14 GOING TO HAVE TO STAY HERE AND I'M GOING TO CALL YOU
15 BACK AND SEE WHETHER YOU WANT TO TESTIFY OR NOT
16 TESTIFY, THAT'S NOT GOING TO CHANGE YOUR POSITION AT
17 ALL?

18 THE WITNESS: NO.

19 THE COURT: DOES COUNSEL HAVE ANY OTHER
20 QUESTIONS YOU WISH THE COURT TO MAKE INQUIRIES ON?

21 MR. NEWTON: I WOULD ONLY ASK YOU TO INQUIRE
22 AS TO WHETHER I HAVE ASKED TO INTERVIEW HER AND
23 WHETHER SHE HAS REFUSED TO DO SO.

24 THE COURT: DEFENSE COUNSEL HAS INDICATED
25 THAT HE -- HAS IT EVER BEEN TOLD TO YOU THAT THE
26 DEFENSE COUNSEL OR HIS INVESTIGATOR WOULD LIKE TO
27 TALK TO YOU.

28 THE WITNESS: YES.

1 THE COURT: OKAY. AND DID YOU INDICATE THAT
2 YOU WOULD LIKE TO TALK TO HIM OR NOT TALK TO HIM?
3 THE WITNESS: I DID.
4 THE COURT: YOU SAID YOU WOULD TALK TO HIM?
5 THE WITNESS: YES.
6 THE COURT: WHAT IS YOUR POSITION NOW?
7 THE WITNESS: (NO AUDIBLE RESPONSE.)
8 THE COURT: YOU DON'T WANT TO TALK TO HIM OR
9 YOU DO WANT TO TALK TO HIM?
10 THE WITNESS: NO, I DON'T.
11 THE COURT: YOU DON'T WANT TO TALK TO HIM?
12 THE WITNESS: NO.
13 THE COURT: DID YOU CHANGE YOUR MIND?
14 THE WITNESS: YES.
15 MR. NEWTON: YOUR HONOR, I'M SORRY.
16 THE COURT: AT WHAT POINT IN TIME DID YOU
17 CHANGE YOUR MIND?
18 THE WITNESS: YESTERDAY.
19 THE COURT: YESTERDAY?
20 THE WITNESS: YES.
21 THE COURT: DID ANYONE ENCOURAGE YOU NOT TO
22 TALK TO HIM?
23 THE WITNESS: NO.
24 THE COURT: WAS IT THE SAME TIME THAT YOU
25 DECIDED YOU DIDN'T WANT TO COME TO COURT?
26 THE WITNESS: YES.
27 MR. NEWTON: NO INFORMATION THAT SHE WAS
28 GOING TO TALK TO ME WAS EVER COMMUNICATED TO ME. IT

1 WAS ALWAYS SHE'S THINKING ABOUT IT. SHE'S THINKING
2 ABOUT IT AND THEN YESTERDAY IT WAS NO.

3 THE COURT: ANYTHING ELSE?

4 MR. NEWTON: NO, SIR, THANK YOU.

5 THE COURT: ANYTHING ELSE, MR. MATOBA?

6 MR. MATOBA: NO.

7 THE COURT: IS THERE ANYTHING I CAN DO TO
8 ASSIST YOU IN TERMS OF GIVING YOU TIME TO THINK ABOUT
9 THIS OR ANYTHING I CAN TELL YOU OR SOMEONE TO TALK TO
10 YOU THAT WOULD CAUSE YOU TO RECONSIDER TESTIFYING IN
11 THIS CASE?

12 THE WITNESS: NO.

13 THE COURT: OKAY. YOU CAN STEP DOWN. THANK
14 YOU. YOU CAN TAKE HER INTO THE HALLWAY. THE WITNESS
15 HAS EXITED THE COURTROOM. MR. MATOBA.

16 MR. MATOBA: YOUR HONOR, THE PEOPLE HAVE
17 EXERCISED DUE DILIGENCE TO GET HER TO COURT. I
18 BELIEVE AT THIS POINT SINCE SHE HAS EXERCISED THE
19 STATUTORY PROVISION OR PRIVILEGE, SHE'S AN
20 UNAVAILABLE WITNESS.

21 THE COURT: SHE DOESN'T HAVE A PRIVILEGE.
22 THERE IS NO PRIVILEGE ASSERTION HERE. SHE IS A
23 WITNESS WHO REFUSES TO COOPERATE IN TESTIFYING UNDER
24 OATH BEFORE A JURY.

25 THE QUESTION IS WHETHER THE COURT HAS
26 EXERCISED ALL OF ITS OPTIONS UNDER 1240 SUCH THAT SHE
27 IS LEGALLY UNAVAILABLE FOR PURPOSES OF TESTIFYING AND
28 WHETHER PRIOR TESTIMONY OF THIS WITNESS CAN BE

1 INTRODUCED IN LIEU OF HER ACTUAL TESTIMONY.

2 IS THAT WHAT YOU'RE INDICATING TO THE
3 COURT?

4 MR. MATOBA: YES, YOUR HONOR. I THINK
5 IT'S -- THE WAY I LOOKED AT IT IS WHAT THE
6 LEGISLATURE DID IT CREATED A PROVISION -- MAYBE IT'S
7 NOT A DIRECT PRIVILEGE IN THE EVIDENCE CODE BUT THEY
8 PRETTY MUCH LEFT A LOOPHOLE AND THAT'S THE WAY I
9 LOOKED AT IT. I THINK THE COURT MORE ACCURATELY
10 STATED THE WAY THAT IT IS SET UP, BUT I THINK IT WAS
11 THE INTENT OF THE LEGISLATURE.

12 THE COURT: THE LEGISLATURE DID NOT CREATE
13 ANY PRIVILEGE BECAUSE THEN A PRIVILEGE CAN BE
14 ASSERTED AND THAT'S END OF STORY.

15 WHAT THE LEGISLATURE HAS DONE IS
16 CREATED A SPECIAL CLASS OF UNCOOPERATIVE WITNESSES IN
17 WHICH IT RESTRICTED THE COURT'S GENERAL OPTIONS OF
18 COMPELLING TESTIMONY INCLUDING CONTEMPT AND PLACEMENT
19 IN A JAIL UNTIL THE WITNESS IS WILLING TO TESTIFY AND
20 CAN BE KEPT INCARCERATED UNTIL THEY CHANGE THEIR MIND
21 UNTIL THE TRIAL IS OVER WITH.

22 THE COURT DOES HAVE THE OPTION TO
23 RESTRICT HER LIBERTY SHORT OF JAIL SUCH AS HAVING HER
24 WAIT IN THE HALLWAY OR IN YOUR OFFICE BUT I CANNOT
25 THREATEN CONTEMPT AS FAR AS INCARCERATION. SO I
26 COULD FIND HER IN CONTEMPT BUT MY OPTIONS OF COERCING
27 HER COOPERATION OR HER WEIGHING INCARCERATION VERSUS
28 TESTIFYING IS OFF THE TABLE. THE COURT HAS EXERCISED

1 OR ATTEMPTED TO USE THOSE STEPS THAT ARE RECOMMENDED
2 ON PERSONS OF HER CLASS AS A WITNESS. I BELIEVE I'VE
3 COVERED ALL OF THOSE BASES.

4 ARE YOU REQUESTING AT THIS TIME THE
5 COURT DECLARE HER UNAVAILABLE UNDER SECTION 1240 OF
6 THE EVIDENCE CODE?

7 MR. MATOBA: YES, YOUR HONOR.

8 THE COURT: COUNSEL, DO YOU WISH TO BE
9 HEARD?

10 MR. NEWTON: I DO, YOUR HONOR. I AGREE WITH
11 MR. MATOBA IN MY DISCUSSIONS WITH HIM. I BELIEVE THE
12 PROSECUTION HAS FULLY EXERCISED THEIR DUE DILIGENCE
13 IN GETTING THE WITNESS TO APPEAR. YOU PROBABLY DON'T
14 AT THIS TIME WANT TO ADDRESS MY OBJECTIONS TO HER
15 PREVIOUS PRELIM TESTIMONY.

16 THE COURT: THAT'S A SEPARATE ISSUE.

17 MR. NEWTON: THAT'S A SEPARATE ISSUE.
18 AGAIN, THE COURT HAS ACCURATELY STATED.

19 THE COURT: DUE DILIGENCE IS NOT AN ISSUE
20 BEFORE THE COURT. THE COURT HAS THE WITNESS HERE.
21 THE QUESTION IS WHETHER A RECORD HAS BEEN ESTABLISHED
22 AND THE COURT CAN MAKE A FINDING THAT SHE'S NOT
23 AVAILABLE FOR TESTIMONY. THE COURT IS SATISFIED THAT
24 SHOWING HAS BEEN MADE. THAT SHE IS AN UNCOOPERATIVE
25 WITNESS WHO REFUSES TO TESTIFY BEFORE THIS JURY.
26 THAT I'VE OFFERED HER COUNSELING. I'VE OFFERED HER
27 THE OPPORTUNITY TO BE SPOKEN TO IN REGARDS HAVING HER
28 TESTIFY AND SO INDICATED TO HER HOW IMPORTANT THAT

1 IS. WITH THAT SHE STILL REFUSES TO TESTIFY.

2 I TOLD HER THAT I CAN RESTRICT HER
3 FREEDOM AND THAT SHE WOULD BE REQUIRED TO STAY IN
4 THIS COURTHOUSE IF I TOLD HER TO STAY IN A ROOM OR
5 PLACE BEFORE -- AND I WOULD SUMMON HER OUT TO SEE
6 WHETHER SHE HAS CHANGED HER MIND AND SHE'S INDICATED
7 THAT WOULD NOT MAKE A DIFFERENCE.

8 SHE HAS LEFT ME NO OTHER OPTIONS IN
9 TERMS OF ATTEMPTING TO GET HER COOPERATION AS A
10 WITNESS OR TO USE WHATEVER COURSE OF MEASURES THE
11 COURT HAS IN ITS TOOL CHEST TO GET HER COOPERATION
12 AND ALL HAVE BEEN UNSUCCESSFUL. THE COURT IS,
13 THEREFORE, SATISFIED AS TO THIS PARTICULAR CLASS OF
14 WITNESSES. THERE'S NO SENSE THAT I SHOULD ORDER HER
15 TO REMAIN IN THE D.A.'S OFFICE OR IN THE COURTHOUSE
16 AS A MEANS OF COERCING HER COOPERATION. SHE'S A
17 14-YEAR-OLD PERSON AT THIS POINT WHO IS INSISTENT ON
18 NOT TESTIFYING UNDER ANY CIRCUMSTANCE.

19 THEREFORE, THE COURT WILL NOT ENGAGE
20 IN THE EXERCISE OF HOLDING HER HERE AS A POSSIBLE
21 WITNESS AND HER CHANGING HER MIND. AND THE COURT
22 FINDS THAT UNDER 1240 THIS SHOWING HAS BEEN MADE.
23 THAT SHE IS LEGALLY UNAVAILABLE TO TESTIFY AT THE
24 TIME OF TRIAL.

25 PEOPLE, WHAT ARE YOU REQUESTING NOW IN
26 REGARDS TO HER LEGAL UNAVAILABILITY IN TERMS OF AN
27 ALTERNATE FORM OF TESTIMONY OF THIS WITNESS?

28 MR. MATOBA: SINCE SHE IS AN UNAVAILABLE

1 WITNESS, THE PEOPLE ARE ASKING TO USE THE PRIOR
2 TESTIMONY AND HAVE THAT ADMITTED.

3 THE COURT: IS THERE AN OBJECTION?

4 MR. NEWTON: THERE IS, YOUR HONOR. I HAVE
5 TWO OBJECTIONS. THE FIRST -- AND I APPRECIATE THE
6 COURT'S PATIENCE ON THIS. I DON'T THINK THIS
7 OBJECTION HAS EVER BEEN MADE BEFORE SO I JUST WANT TO
8 MAKE SURE I DO IT CAREFULLY FOR THE RECORD.

9 UNDER CRAWFORD V. WASHINGTON WHICH
10 SPECIFICALLY STATES PRELIMINARY TRANSCRIPT TESTIMONY
11 WHICH IS WHAT WE'RE GOING TO BE DEALING WITH HERE IS
12 TESTIMONIAL HEARSAY AND THEN WE GO TO OUR NEXT
13 THRESHOLD QUESTION OF WAS THERE A PRIOR SAME OR
14 SIMILAR OPPORTUNITY AND MOTIVE TO CROSS-EXAMINE. I
15 THINK IN THIS STATE THERE IS NOT THAT AT A
16 PRELIMINARY HEARING. IT IS BECAUSE IN A CALIFORNIA
17 PRELIM THERE IS A BAN ON DISCOVERY AND THE HEARSAY
18 RULES ARE RELAXED. SO NEVERMINDING WHAT ACTUALLY
19 HAPPENS AT A PRELIM OR WHETHER THE DEFENSE ATTORNEY
20 AT THE TIME ASKED A QUESTION OR DIDN'T OR TRIED TO
21 VIOLATE THE RULES JUST STATUTORILY YOU DO NOT HAVE
22 THE SAME OPPORTUNITY TO CONFRONT AND CROSS-EXAMINE AT
23 A PRELIMINARY HEARING THAT YOU DO AT TRIAL.

24 AND THIS REALLY GOES TO THE HEART OF
25 THE SIXTH AMENDMENT ANALYSIS. I KNOW CRAWFORD
26 PURPORTS TO BACK OFF ON IT A LITTLE BIT. BUT IN THIS
27 CASE WE'RE NOT DEALING WITH A PIECE OF SCIENTIFIC
28 EVIDENCE OR A WITNESS OR ANYTHING. THIS IS THE

1 COMPLAINING WITNESS AND THE RIGHT TO CONFRONT AND
2 CROSS-EXAMINE YOUR ACCUSER IS WHAT IS HELD SACROSANCT
3 BY THE SIXTH AMENDMENT.

4 IT'S NOT ONLY THE RIGHT TO CONFRONT
5 AND CROSS-EXAMINE, IT'S ALSO THE JURY'S RIGHT TO
6 ASSESS THAT WITNESS' CREDIBILITY AND ESPECIALLY IN
7 THIS CASE WHERE WE DO HAVE HER MAKING SOME
8 CONFLICTING STATEMENTS TO LAW ENFORCEMENT AND THAT
9 HER TESTIMONY IS THE ONLY EVIDENCE OF THE FORCE OR
10 FEAR ELEMENT NECESSARY FOR EVERY SINGLE COUNT. AND
11 THAT CONCLUDES MY FIRST OBJECTION SO HOPEFULLY I DID
12 THAT RIGHT FOR THE APPEALS COURT.

13 MY SECOND ONE, THE ONE YOU CAN
14 PROBABLY GUESS, AT THE PRELIMINARY HEARING I DON'T
15 THINK THERE WAS SUFFICIENT QUESTIONING TO EVEN GET TO
16 ANYTHING SUFFICIENT TO GET PAST REASONABLE DOUBT.
17 AND IF THE COURT IS ABLE TO LOOK AT THE PRELIM
18 TRANSCRIPT, YOU'LL SEE EVERY ANSWER TO EVERY QUESTION
19 THAT MS. MONICA DOE --

20 THE COURT: THAT'S A SEPARATE QUESTION.

21 MR. NEWTON: OKAY.

22 THE COURT: THAT'S 1118.1 MOTION IF WE GET
23 THERE. THE ONLY ISSUE IS THE USING OF HER PRIOR
24 TESTIMONY IN LIEU OF LIVE TESTIMONY.

25 MR. NEWTON: YES, YOUR HONOR.

26 THE COURT: ANYTHING FURTHER?

27 MR. NEWTON: NO, SIR. THANK YOU.

28 THE COURT: YOUR ARGUMENT IN THEORY IS

1 COMPELLING. NOW I WANT TO HEAR AS TO WHAT YOU CAN
2 POINT OUT IN THE PRELIMINARY TRANSCRIPT WHERE THERE
3 WAS -- THE ATTORNEY WAS CUT OFF FROM EXPLORING
4 DIFFERENT AREAS OF EXAMINATION THAT YOU BELIEVE WOULD
5 HAVE BEEN CRITICAL IN EXAMINING A WITNESS OF THIS
6 SORT WITH THE CHARGES AND ALLEGATIONS THAT SHE HAS
7 MADE.

8 CAN YOU DIRECT THE COURT TO ANY
9 PORTION OF THE TRANSCRIPT WHERE THE MOTIVE AND
10 WILLINGNESS BY COUNSEL TO EXAMINE WAS FRUSTRATED BY
11 THE COURT EITHER ON ITS OWN MOTION, ENTERING AN
12 OBJECTION OR BY SUSTAINING AN OBJECTION BY THE
13 PEOPLE?

14 MR. NEWTON: I DON'T THINK BY OBJECTION,
15 YOUR HONOR. AND LET ME BE CLEAR. MY OBJECTION IS
16 THAT THERE'S A STATUTORY BAR SO THAT --

17 THE COURT: I UNDERSTAND THE THEORY.
18 HOWEVER, THE QUESTION AND PRACTICE IS WHETHER
19 CROSS-EXAMINING A VICTIM DIRECTLY ABOUT WHAT THE
20 ALLEGATIONS ARE IS SIGNIFICANTLY DIFFERENT THAN
21 ASKING THE QUESTIONS ABOUT EXTRANEous MATTERS OTHER
22 THAN THE INCIDENT THAT MAY BE CONSIDERED DISCOVERY --
23 WHEN THOROUGHLY EXAMINING A VICTIM AS TO WHAT SHE
24 CLAIMS OCCURRED AND THE CIRCUMSTANCES UNDER WHICH
25 THEY OCCURRED AND WHO WAS PRESENT OR NOT PRESENT AND
26 WHAT WAS THE ROOM AND WHAT WAS THE TIME OF DAY AND SO
27 FORTH AND SO ON OR HER KNOWLEDGE OF THE DEFENDANT,
28 THE RELATIONSHIP AND SO FORTH IS ALL FAIR GAME.

1 IS THERE ANYTHING IN THE PRELIMINARY
2 TRANSCRIPT THAT INDICATES THE ATTORNEY WAS PREVENTED
3 FROM EXPLORING ANY OF THESE AREAS?

4 MR. NEWTON: NOT BY THE COURT OR THE
5 PROSECUTOR. BY HER LACK OF MEMORY, YES, SIR.

6 THE COURT: YOU SAY BY HER LACK OF MEMORY?

7 MR. NEWTON: YES, YOUR HONOR. IF YOU LOOK
8 AT THE PRELIMINARY HEARING TRANSCRIPT, HER ANSWER TO
9 EVERY QUESTION WAS I DON'T REMEMBER AND IT WOULD
10 SIMPLY BE FOLLOWED BY THE PROSECUTOR TELLING HER WHAT
11 TO REMEMBER. AND THEN IT WAS ALL SUPPLEMENTED
12 BECAUSE OF THE HEARSAY PROVISIONS BY DETECTIVE BURKE
13 BRINGING IN ALL THE STATEMENTS TO GET OVER THAT
14 PROBABLE CAUSE WHICH IS THEIR RIGHT TO DO AT A
15 PRELIM.

16 MR. MATOBA: NO, ACTUALLY --

17 THE COURT: ACTUALLY, THERE'S RULES,
18 EVIDENTIARY RULES. THERE'S A PERSON CLAIMS THEY
19 DON'T RECALL. THEY'RE PRESENTED WITH A PRIOR
20 STATEMENT. THEY SAY I STILL DON'T RECALL OR DON'T
21 RECALL MAKING THAT STATEMENT. AND SOMEONE WHO HAD --
22 SHE HAD MADE A PRIOR INCONSISTENT STATEMENT TO MAY
23 TESTIFY AS TO WHAT THAT PRIOR STATEMENT IS. THAT IS
24 ALL WITHIN THE BOUNDS OF NORMAL EVIDENTIARY RULINGS
25 OUTSIDE OF EVEN A PRELIMINARY HEARING.

26 WAS THERE 115 TESTIMONY?

27 MR. NEWTON: I BELIEVE THERE WAS. I BELIEVE
28 DETECTIVE BURKE TESTIFIED TO A GOOD PORTION OF HER --

1 MR. MATOBA: AFTER SHE TESTIFIED,
2 YOUR HONOR, THE DETECTIVE ACTUALLY IMPEACHED HER
3 TESTIMONY WITH CERTAIN STATEMENTS. IT'S NOT --

4 THE COURT: IT'S NOT 115 TESTIMONY ONCE A
5 PERCIPIENT WITNESS TESTIFIES.

6 MR. MATOBA: CORRECT.

7 THE COURT: THEN IT BECOMES IMPEACHMENT OR
8 PRIOR STATEMENT TESTIMONY UNDER THE EVIDENCE CODE.
9 IS THAT HOW YOU CHARACTERIZE IT, MR. MATOBA?

10 MR. MATOBA: YES, THERE WAS NO PROP 115.

11 THE COURT: I'M LOOKING FOR ACTUAL PREJUDICE
12 HERE. NOT MEDICAL PREJUDICE GIVEN CALIFORNIA
13 LIMITATION OF THE PRELIMINARY HEARING. THAT WAS, IN
14 FACT, PRESENT PREVENTED THE ATTORNEY AT THE
15 PRELIMINARY HEARING FROM ENGAGING IN ANY ROBUST
16 INVESTIGATION OF THE WITNESS OR THE OFFICER WHO TOOK
17 THE STATEMENTS.

18 MR. NEWTON: NO, SIR. NEITHER THE COURT NOR
19 THE PROSECUTOR PREVENTED THE ATTORNEY.

20 THE COURT: THEN NOT HEARING ANY ADDITIONAL
21 AREAS IN WHICH THE COURT COULD FOCUS ON THAT IT WOULD
22 BE A CONSTITUTIONAL VIOLATION UNDER CRAWFORD OR ANY
23 OTHER LACK OF OPPORTUNITY OR MOTIVE TO EXAMINE THIS
24 WITNESS THOROUGHLY, THE COURT FINDS THAT THIS PRIOR
25 PRELIMINARY TRANSCRIPT MAY BE UTILIZED FOR PURPOSES
26 OF IN LIEU OF THE WITNESS.

27 NOW, HERE'S A PROCEDURAL POINT. WHEN
28 A PERSON ASSERTS THE FIFTH AMENDMENT, THE COURT TAKES

1 THAT OUTSIDE THE PRESENCE OF THE JURY BECAUSE THE
2 JURY IS NOT HERE TO HEAR WITNESS ASSERT A PRIVILEGE.
3 IF THE WITNESS IS ASSERTING A MARITAL COMMUNICATIONS
4 PRIVILEGE, THAT'S TAKEN OUTSIDE THE PRESENCE OF THE
5 JURY. THE JURY NEVER HEARS WHY A CERTAIN WITNESS IS
6 NOT CALLED. THE PRIVILEGE IS ASSERTED.

7 THIS WITNESS DOES NOT HAVE A
8 PRIVILEGE. THIS IS AN UNCOOPERATIVE WITNESS. THE
9 QUESTION I HAVE IS WHETHER THIS JURY SHOULD FIRST
10 HEAR HER UNWILLINGNESS TO FIRST ANSWER QUESTIONS
11 BEFORE I THEN DECLARE BEFORE THE JURY THAT SHE'S NOW
12 LEGALLY UNAVAILABLE TO TESTIFY AND IN LIEU OF HER
13 TESTIMONY WE WILL NOW HAVE HER PRELIMINARY HEARING
14 TRANSCRIPT READ.

15 WHAT IS YOUR POSITION ON THAT,
16 COUNSEL?

17 MR. NEWTON: I WOULD LIKE THE JURY TO KNOW
18 THAT SHE IS UNWILLING TO TESTIFY.

19 THE COURT: AND OBSERVE HER. IS THAT WHAT
20 YOU'RE SAYING?

21 MR. NEWTON: YES, YOUR HONOR.

22 THE COURT: MR. MATOBA.

23 MR. MATOBA: I THINK UNDER 352 THAT IT'S
24 NOT -- I MEAN IF SHE IS ENTITLED TO NOT OR THROUGH
25 THE PROCESS THAT THE COURT DESCRIBES AND SHE'S -- THE
26 COURT HAS DONE IT OUTSIDE THE PRESENCE OF THE JURY
27 AND THAT'S THE WHOLE BASIS OF IT, I DON'T SEE WHY
28 IT'S RELEVANT OR NECESSARY, AND I WOULD SUBMIT.

1 THE COURT: WELL, HERE'S THE QUESTION. THIS
2 JURY STILL HAS THE RIGHT TO WEIGH CREDIBILITY ON HER
3 PRIOR TESTIMONY BUT HOW DO THEY ENGAGE IN THAT
4 PROCESS IF THEY DON'T HAVE AN OPPORTUNITY TO OBSERVE
5 HER OR WHY SHE DOESN'T WANT TO TESTIFY OR HER REASONS
6 FOR NOT WANTING TO TESTIFY. SHE IS NO DIFFERENT THAN
7 ANY OTHER WITNESS AS FAR AS THAT'S CONCERNED.

8 I HAVE MISGIVINGS ABOUT JUST SIMPLY
9 DOING THIS OUTSIDE THE JURY AND SAYING OKAY, NOW,
10 THIS IS NOT A PERSON WHO HAS LEFT THE JURISDICTION.
11 THIS IS A PERSON WHO HAS -- IS NOT DEAD OR PHYSICALLY
12 OR MENTALLY INCAPACITATED. THIS IS A PERSON WHO
13 REFUSES TO TESTIFY. AND I BELIEVE THE JURY HAS A
14 RIGHT TO HEAR HER SAY I DON'T WANT TO ANSWER ANY
15 QUESTIONS. AND THERE WILL BE A POINT WHERE I WILL
16 SAY THAT SHE IS NO LONGER COOPERATING AND THEN I'M
17 NOT GOING TO GET INTO THE GROUNDS OR GO INTO THE
18 THINGS I'VE ALREADY GONE INTO. THAT'S A PRELIMINARY
19 FACT ISSUE I THINK AS FAR AS THE COURT IS CONCERNED
20 WITH A 402. I THINK THIS IS JUST SIMPLY FOR PURPOSES
21 OF THIS JURY THEN HAVING THE OPPORTUNITY TO SEE HER
22 REFUSE TO TESTIFY AND MAKE THEIR OWN EVALUATION.

23 MR. MATOBA: YOUR HONOR, MAY I BE -- BASED
24 ON THE COURT'S POSITION, I'LL TALK TO THE VICTIM.
25 MAYBE SHE'LL RECONSIDER IF SHE KNOWS SHE'S GOING TO
26 BE IN FRONT OF THE JURY ANYWAY.

27 THE COURT: WHY DON'T YOU TALK TO HER.

28 MR. MATOBA: MAY I HAVE A MOMENT?

1 THE COURT: YES, YOU MAY.

2

3 (WHEREUPON THERE WAS A PAUSE
4 IN THE PROCEEDINGS.)

5

6 MR. MATOBA: YOUR HONOR, SHE'S ASKING FOR
7 FIVE MINUTES

8 THE COURT: EVERYONE WANTS FIVE MINUTES.

9 MR. MATOBA: I UNDERSTAND, YOUR HONOR. I'M
10 JUST CONVEYING HER REQUEST.

11 THE COURT: WHAT WE'RE GOING TO DO IS BRING
12 THE JURORS OUT. I'LL DO MY OPENING INSTRUCTIONS AND
13 WE'LL TAKE OUR BREAK AND THEN WE'LL COME BACK AND
14 SEE -- THE OPENING STATEMENTS AND SEE WHERE SHE'S AT.

15 MR. NEWTON: YOUR HONOR, REAL QUICK. I
16 THINK I SAID DETECTIVE BURKE TESTIFIED AT THE PRELIM.
17 IT MAY HAVE BEEN DETECTIVE SOTOMAYOR. I THINK I WAS
18 WRONG ON THAT.

19 THE COURT: ALL RIGHT. THEN LET'S BRING THE
20 JURORS OUT.

21 MR. MATOBA: MAY I JUST RUN OUT AND LET THEM
22 KNOW WHAT'S GOING ON?

23

24 (THE FOLLOWING PROCEEDINGS WERE HELD
25 IN OPEN COURT IN THE PRESENCE OF THE
26 JURY:)

27

28 THE COURT: CONTINUE ON THE RECORD ON THE

1 PEOPLE OF THE STATE OF CALIFORNIA VERSUS GERARDO
2 ORTIZ. THE DEFENDANT IS PRESENT IN COURT. ALL
3 COUNSEL ARE PRESENT AND ALL THE JURORS IN THEIR
4 APPROPRIATE SEATS.

5 I APOLOGIZE, LADIES AND GENTLEMEN, FOR
6 THIS VERY LATE START. I HAD TOLD YOU YESTERDAY AND
7 MADE A PROMISE WE WERE GOING TO TRY THIS CASE AS
8 EFFICIENTLY AS POSSIBLE AND LOW AND BEHOLD YOU'VE
9 BEEN SITTING AROUND HERE FOR A NUMBER OF HOURS
10 WITHOUT ANYTHING GETTING DONE AND IS THIS ANY WAY TO
11 RUN AN AIRLINE? NO, IT'S NOT. THERE ARE REASONS WHY
12 WE'RE NOT GETTING STARTED, THE REASONS I CAN'T SHARE
13 WITH YOU AT THIS POINT IN TIME. THE FACT IS WE HAVE
14 WE HAD A DELAY.

PREINSTRUCTIONS

18 WITH THAT BEING SAID, I WILL NOW
19 EXPLAIN SOME BASIC RULES OF LAW AND
20 PROCEDURE. THESE RULES ENSURE BOTH
21 SIDES RECEIVE A FAIR TRIAL.

22 DURING THE TRIAL DO NOT TALK
23 ABOUT THE CASE OR ABOUT ANY OF THE
24 PEOPLE OR ANY SUBJECT INVOLVED IN THE
25 CASE WITH ANYONE. NOT EVEN YOUR
26 FAMILY, FRIENDS, SPIRITUAL ADVISORS
27 OR THERAPISTS. YOU MUST NOT TALK
28 ABOUT THESE THINGS WITH THE OTHER

1 JURORS EITHER UNTIL THE TIME COME FOR
2 YOU TO BEGIN YOUR DELIBERATIONS.

3 AS JURORS, YOU MAY DISCUSS THIS
4 CASE ONLY TOGETHER AFTER ALL THE
5 EVIDENCE HAS BEEN PRESENTED, THE
6 ATTORNEYS HAVE COMPLETED THEIR
7 ARGUMENTS AND I HAVE INSTRUCTED YOU
8 ON THE LAW.

9 AFTER I TELL TO YOU BEGIN YOUR
10 DELIBERATIONS, YOU MAY DISCUSS THIS
11 CASE ONLY IN THE JURY ROOM AND ONLY
12 WHEN ALL JURORS ARE PRESENT. YOU
13 MUST NOT ALLOW ANYTHING THAT HAPPENS
14 OUTSIDE OF THE COURTROOM TO AFFECT
15 YOUR DECISION UNLESS I TELL YOU
16 OTHERWISE.

17 YOU MUST NOT ALLOW -- STRIKE
18 THAT. DO NOT -- DURING THE TRIAL DO
19 NOT READ, LISTEN TO OR WATCH ANY NEWS
20 REPORT OR COMMENTARY ABOUT THIS CASE
21 IF ANY. DO NOT DO ANY RESEARCH ON
22 YOUR OWN OR AS A GROUP. DO NOT USE A
23 DICTIONARY, THE INTERNET OR OTHER
24 REFERENCE MATERIALS. DO NOT
25 INVESTIGATE THE FACTS OR THE LAW. DO
26 NOT CONDUCT ANY TESTS OR EXPERIMENTS
27 OR VISIT THE SCENE OF ANY EVENT
28 INVOLVED IN THIS CASE. IF YOU HAPPEN

1 TO PASS BY THE SCENE, DO NOT STOP OR
2 INVESTIGATE.

3 DURING THE TRIAL DO NOT SPEAK TO
4 ANY PARTY, WITNESS OR LAWYER INVOLVED
5 IN THE TRIAL. DO NOT LISTEN TO
6 ANYONE WHO TRIES TO TALK TO YOU ABOUT
7 THE CASE OR ABOUT ANY OF THE PEOPLE
8 OR SUBJECTS INVOLVED IN IT. IF
9 SOMEONE ASKS YOU ABOUT THE CASE, TELL
10 HIM OR HER THAT YOU CANNOT DISCUSS
11 IT. IF THAT PERSON KEEPS TALKING TO
12 YOU ABOUT THE CASE, YOU MUST END THE
13 CONVERSATION.

14 IF YOU RECEIVE ANY INFORMATION
15 ABOUT THIS CASE FROM ANY SOURCE
16 OUTSIDE OF THE TRIAL, EVEN
17 UNINTENTIONALLY, DO NOT SHARE THAT
18 INFORMATION WITH ANY OTHER JURORS.

19 IF YOU DO RECEIVE SUCH INFORMATION OR
20 IF ANYONE TRIES TO INFLUENCE YOU OR
21 ANY JUROR, YOU MUST IMMEDIATELY TELL
22 THE BAILIFF.

23 SOME WORDS OR PHRASES THAT MAY BE
24 USED DURING THIS TRIAL HAVE LEGAL
25 MEANINGS THAT ARE DIFFERENT FROM
26 THEIR MEANINGS IN EVERYDAY USE.
27 THESE WORDS AND PHRASES WILL BE
28 SPECIFICALLY DEFINED IN THESE

1 INSTRUCTIONS. PLEASE BE SURE TO
2 LISTEN CAREFULLY AND FOLLOW THE
3 DEFINITIONS THAT I GIVE YOU. WORDS
4 AND PHRASES NOT SPECIFICALLY DEFINED
5 IN THE INSTRUCTIONS ARE TO BE APPLIED
6 USING THEIR ORDINARY EVERYDAY
7 MEANINGS.

8 KEEP AN OPEN MIND THROUGHOUT THE
9 TRIAL. DO NOT MAKE UP YOUR MIND
10 ABOUT THE VERDICT OR ANY ISSUE UNTIL
11 AFTER ALL OF YOU HAVE DISCUSSED THIS
12 CASE WITH THE OTHER JURORS DURING
13 DELIBERATIONS.

14 DO NOT TAKE ANYTHING I SAY OR DO
15 DURING THE TRIAL AS AN INDICATION OF
16 WHAT I THINK ABOUT THE FACTS, THE
17 WITNESSES OR WHAT THEIR VERDICT
18 SHOULD BE. DO NOT LET BIAS,
19 SYMPATHY, PREJUDICE OR PUBLIC OPINION
20 INFLUENCE YOUR DECISION.

21 YOU HAVE BEEN GIVEN NOTEBOOKS.
22 YOU MAY TAKE NOTES DURING THE TRIAL.
23 DO NOT REMOVE THEM FROM THE
24 COURTROOM. YOU MAY TAKE YOUR NOTES
25 INTO THE JURY ROOM DURING
26 DELIBERATIONS. I DO NOT MEAN TO
27 DISCOURAGE YOU FROM TAKING NOTES BUT
28 HERE ARE SOME POINTS TO CONSIDER IF

1 YOU DO TAKE NOTES. NOTE-TAKING MAY
2 TEND TO DISTRACT YOU. IT MAY AFFECT
3 YOUR ABILITY TO LISTEN CAREFULLY TO
4 ALL THE TESTIMONY AND TO WATCH THE
5 WITNESSES AS THEY TESTIFY. AND THE
6 NOTES ARE FOR YOUR OWN INDIVIDUAL USE
7 TO HELP YOU REMEMBER WHAT HAPPENED
8 DURING THE TRIAL. PLEASE KEEP IN
9 MIND THAT YOUR NOTES MAY BE
10 INACCURATE OR INCOMPLETE.

11 I WILL NOW EXPLAIN THE
12 PRESUMPTION OF INNOCENCE AND THE
13 PEOPLE'S BURDEN OF PROOF. THE
14 DEFENDANT HAS ENTERED A PLEA OF NOT
15 GUILTY TO THE CHARGES. THE FACT THAT
16 A CRIMINAL CHARGE HAS BEEN FILED
17 AGAINST THE DEFENDANT IS NOT EVIDENCE
18 THAT THE CHARGE IS TRUE. YOU MUST
19 NOT BE BIASED AGAINST THE DEFENDANT
20 JUST BECAUSE HE HAS BEEN ARRESTED,
21 CHARGED WITH AN OFFENSE OR BROUGHT TO
22 TRIAL. A DEFENDANT IN A CRIMINAL
23 CASE IS PRESUMED TO BE INNOCENT.
24 THIS PRESUMPTION REQUIRES THAT THE
25 PEOPLE PROVE THE DEFENDANT GUILTY
26 BEYOND A REASONABLE DOUBT. WHENEVER
27 I TELL YOU THE PEOPLE MUST PROVE
28 SOMETHING, I MEAN THEY MUST PROVE IT

1 BEYOND A REASONABLE DOUBT UNLESS I
2 SPECIFICALLY TELL YOU OTHERWISE.
3 PROOF BEYOND A REASONABLE DOUBT
4 IS PROOF THAT LEAVES YOU WITH AN
5 ABIDING CONVICTION THAT THE CHARGE IS
6 TRUE. THE EVIDENCE NEED NOT
7 ELIMINATE ALL POSSIBLE DOUBT BECAUSE
8 EVERYTHING IN LIFE IS OPEN TO SOME
9 POSSIBLE OR IMAGINARY DOUBT.
10 IN DECIDING WHETHER THE PEOPLE
11 HAVE PROVED THEIR CASE BEYOND A
12 REASONABLE DOUBT, YOU MUST
13 IMPARTIALLY COMPARE AND CONSIDER ALL
14 THE EVIDENCE RECEIVED THROUGHOUT THE
15 ENTIRE TRIAL. UNLESS THE EVIDENCE
16 PROVES THE DEFENDANT GUILTY BEYOND A
17 REASONABLE DOUBT, HE IS ENTITLED TO
18 AN ACQUITTAL AND YOU MUST FIND HIM
19 NOT GUILTY.
20 YOU MUST DECIDE WHAT THE FACTS
21 ARE IN THIS CASE. YOU MUST USE ONLY
22 THE EVIDENCE AS PRESENTED IN THIS
23 COURTROOM. EVIDENCE IS THE SWORN
24 TESTIMONY OF WITNESSES, EXHIBITS
25 ADMITTED INTO EVIDENCE AND ANYTHING
26 ELSE I TELL YOU TO CONSIDER AS
27 EVIDENCE. NOTHING THAT THE ATTORNEYS
28 SAY IS EVIDENCE. IN THEIR OPENING

1 STATEMENTS AND CLOSING ARGUMENTS THE
2 ATTORNEYS WILL DISCUSS THIS CASE BUT
3 THEIR REMARKS ARE NOT EVIDENCE.
4 THEIR QUESTIONS ARE NOT EVIDENCE.
5 ONLY THE WITNESS' ANSWERS ARE
6 EVIDENCE. THE ATTORNEYS QUESTIONS
7 ARE ONLY SIGNIFICANT IN THAT THEY
8 HELP YOU TO UNDERSTAND THE WITNESS'
9 ANSWERS. DO NOT ASSUME THAT
10 SOMETHING IS TRUE JUST BECAUSE ONE OF
11 THE ATTORNEYS ASKS A QUESTION THAT
12 SUGGESTS IT IS TRUE.

13 DURING THE TRIAL THE ATTORNEYS
14 MAY OBJECT TO QUESTIONS ASKED OF A
15 WITNESS. I WILL RULE ON THE
16 OBJECTIONS ACCORDING TO THE LAW. IF
17 I SUSTAIN AN OBJECTION, THE WITNESS
18 WILL NOT BE PERMITTED TO ANSWER AND
19 YOU MUST IGNORE THE QUESTION. IF THE
20 WITNESS DOES NOT ANSWER, DO NOT GUESS
21 WHAT THE ANSWER MIGHT HAVE BEEN OR
22 WHY I RULED AS I DID. IF I ORDER
23 TESTIMONY STRICKEN FROM THE RECORD
24 YOU MUST DISREGARD IT. YOU MUST NOT
25 CONSIDER THAT TESTIMONY FOR ANY
26 PURPOSE.
27 YOU MUST DISREGARD ANYTHING YOU
28 SEE OR HEAR WHEN THE COURT IS NOT IN

1 SESSION EVEN IF IT WAS DONE OR SAID
2 BY ONE OF THE PARTIES OR WITNESSES.
3 THE COURT REPORTER IS MAKING A
4 RECORD OF EVERYTHING THAT IS SAID
5 DURING THE TRIAL. IF YOU DECIDE THAT
6 IT'S NECESSARY, YOU MAY ASK THAT THE
7 COURT REPORTER'S NOTES BE READ TO
8 YOU. YOU MUST ACCEPT THE COURT
9 REPORTER'S NOTES AS ACCURATE.
10 YOU ALONE MUST JUDGE THE
11 CREDIBILITY OR BELIEVABILITY OF THE
12 WITNESSES. IN DECIDING WHETHER THE
13 TESTIMONY IS TRUE OR ACCURATE USE
14 YOUR COMMON SENSE AND LIFE
15 EXPERIENCE. YOU MUST -- THE
16 TESTIMONY OF EACH WITNESS MUST BE
17 JUDGED BY THE SAME STANDARD. YOU
18 MUST SET ASIDE ANY BIAS OR PREJUDICE
19 YOU MAY HAVE INCLUDING ANY BASED ON
20 THE WITNESS' DISABILITY, GENDER,
21 RACE, RELIGION, ETHNICITY, SEXUAL
22 ORIENTATION, GENDER IDENTITY, AGE,
23 NATIONAL ORIGIN OR SOCIOECONOMIC
24 STATUS. YOU MAY BELIEVE ALL, PART OR
25 NONE OF ANY WITNESS' TESTIMONY.
26 CONSIDER THE TESTIMONY OF EACH
27 WITNESS AND DECIDE HOW MUCH OF IT YOU
28 BELIEVE.

1 IN EVALUATING A WITNESS'
2 TESTIMONY YOU MAY CONSIDER ANYTHING
3 THAT REASONABLY TENDS TO PROVE OR
4 DISPROVE THE TRUTH OR ACCURACY OF
5 THAT TESTIMONY. AMONG THE FACTORS
6 YOU MAY CONSIDER ARE:
7 HOW WELL COULD THE WITNESS SEE,
8 HEAR OR OTHERWISE DESCRIBE WHAT
9 HAPPENED? STRIKE THAT.
10 HOW WELL COULD THE WITNESS SEE,
11 HEAR OR OTHERWISE PERCEIVE THE THINGS
12 ABOUT WHICH THE WITNESS TESTIFIED?
13 HOW WELL WAS THE ABLE WITNESS TO
14 REMEMBER AND DESCRIBE WHAT HAPPENED?
15 WHAT WAS THE WITNESS' BEHAVIOR
16 WHILE TESTIFYING?
17 DID THE WITNESS UNDERSTAND THE
18 QUESTIONS AND ANSWER THEM DIRECTLY?
19 WAS THE WITNESS' TESTIMONY
20 INFLUENCED BY A FACTOR SUCH AS BIAS
21 OR PREJUDICE, A PERSONAL RELATIONSHIP
22 WITH SOMEONE INVOLVED IN THE CASE OR
23 A PERSONAL INTEREST IN HOW THE CASE
24 IS DECIDED?
25 WHAT WAS THE WITNESS' ATTITUDE
26 ABOUT THE CASE OR ABOUT TESTIFYING?
27 DID THE WITNESS MAKE A STATEMENT
28 IN THE PAST THAT IS CONSISTENT OR

1 INCONSISTENT WITH HIS OR HER
2 TESTIMONY?

3 HOW REASONABLE IS THE TESTIMONY
4 WHEN YOU CONSIDER ALL THE OTHER
5 EVIDENCE IN THE CASE?

6 DID OTHER EVIDENCE PROVE OR
7 DISPROVE ANY FACT ABOUT WHICH THE
8 WITNESS TESTIFIED?

9 DID THE WITNESS ADMIT TO BEING
10 UNTRUTHFUL?

11 DO NOT AUTOMATICALLY REJECT
12 TESTIMONY JUST BECAUSE OF
13 INCONSISTENCIES OR CONFLICTS.

14 CONSIDER WHETHER THE DIFFERENCES ARE
15 IMPORTANT OR NOT. PEOPLE SOMETIMES
16 HONESTLY FORGET THINGS OR MAKE
17 MISTAKES ABOUT WHAT THEY REMEMBER.

18 ALSO, TWO PEOPLE MAY WITNESS THE SAME
19 EVENT YET SEE OR HEAR IT DIFFERENTLY.
20 IF YOU DO NOT BELIEVE A WITNESS'
21 TESTIMONY THAT HE OR SHE NO LONGER
22 REMEMBERS SOMETHING, THAT TESTIMONY
23 IS INCONSISTENT WITH THE WITNESS'
24 EARLIER STATEMENT ON THAT SUBJECT.

25 IF YOU DECIDE THAT A WITNESS
26 DELIBERATELY LIED ABOUT SOMETHING
27 SIGNIFICANT IN THIS CASE, YOU SHOULD
28 CONSIDER NOT BELIEVING ANYTHING THAT

1 WITNESS SAYS OR IF YOU THINK THE
2 WITNESS LIED ABOUT SOME THINGS BUT
3 TOLD THE TRUTH ABOUT OTHERS, YOU MAY
4 SIMPLY ACCEPT THE PART THAT YOU THINK
5 IS TRUE AND IGNORE THE REST.

6 AT THIS TIME EACH COUNSEL WILL BE
7 GIVEN AN OPPORTUNITY TO MAKE AN
8 OPENING STATEMENT. AN OPENING
9 STATEMENT IS NOT ARGUMENT. ARGUMENT
10 TAKES PLACE AT THE END OF THE TRIAL.
11 AN OPENING STATEMENT IS SIMPLY AN
12 OUTLINE OF WHAT COUNSEL BELIEVES THE
13 EVIDENCE WILL SHOW IN THIS TRIAL.

14 MR. MATOBA.

15
16 OPENING STATEMENTS

17
18 MR. MATOBA: THANK YOU. LADIES AND
19 GENTLEMEN, ON NOVEMBER 15TH, 2012, MONICA WAS AT
20 HOME. SHE WAS AT HOME AT A HOUSE WHERE HER MOM WORKS
21 AND HER MOM WAS AT WORK THAT PARTICULAR DAY AND LEFT
22 HER ALONE. NOW, SHE LIVES AT A HOUSE THAT HER MOM
23 RENTS A ROOM AND A LOT OF PEOPLE LIVE IN IT. IT'S
24 NOT JUST HER FAMILY. THERE'S OTHER PEOPLE. AND THE
25 DEFENDANT IS ONE OF THOSE INDIVIDUALS.

26 SHE GOES TO THE KITCHEN AREA TO GET
27 SOMETHING TO DRINK AND GET SOMETHING TO EAT AND IS
28 WALKING BACK AND WHILE SHE'S IN THE KITCHEN THE

1 DEFENDANT APPROACHES HER AND STARTS TELLING HER HOW
2 PRETTY SHE IS, STARTS TELLING HER ABOUT, YOU KNOW, IF
3 SHE WORKS OUT A LITTLE MORE HOW, YOU KNOW, SHE MIGHT
4 LOOK EVEN BETTER. AND SHE STARTS TO GET A LITTLE
5 CREEPED OUT BECAUSE, YOU KNOW, THE GUY IS
6 SUBSTANTIALLY OLDER THAN SHE IS. SO SHE STARTS
7 WALKING BACK TOWARDS HER ROOM AND WHILE SHE'S THERE,
8 THE DEFENDANT SAYS WELL, WHY DON'T YOU COME INTO MY
9 ROOM. I WANT TO SHOW YOU SOMETHING REAL QUICK. AND
10 SHE KIND OF HESITATES AT FIRST AND THEN SHE SAYS
11 WELL, YOU KNOW, JUST ACROSS THE HALL. THERE'S
12 ANOTHER FAMILY THERE. THE DOOR IS OPEN. SHE KIND OF
13 GETS TO THE FRONT OF THE DOOR. THE DEFENDANT THEN
14 GRABS HER BY THE ARM AND KIND OF PULLS HER INTO THE
15 ROOM AND ALL OF A SUDDEN THINGS START HAPPENING. THE
16 DOOR IS CLOSED. SHE CAN'T GET OUT.

17 NOW, MONICA HAS BEEN MOLESTED BEFORE.
18 SHE HAD AN UNCLE WHO HAD BEEN -- WHO HAD MOLESTED
19 HER. SO AS THINGS STARTED TO PROCEED, SHE STARTED TO
20 FREEZE. SHE STARTED THINKING ABOUT ALL THE DIFFERENT
21 THINGS OF HOW IT HAPPENED BEFORE AND HOW SHE COULDN'T
22 DO ANYTHING. SHE TRIED.

23 NOW, AT ONE POINT THE DEFENDANT STARTS
24 TAKING OFF HER PANTS AND SHE TRIES TO STOP AND SHE
25 ACTUALLY AT ONE POINT TRIES TO GET UP BECAUSE HE
26 TAKES HER OVER TO THE BED. THE DEFENDANT PUSHES HER
27 BACK DOWN. HE CONTINUES TO TAKE OFF HER CLOTHES AND
28 THEN SHE STARTS GETTING TO THAT STATE WHERE SHE JUST

1 FREEZES. SHE JUST COMPLETELY FREEZES. SHE DOESN'T
2 DO ANYTHING. JUST STARTS THINKING I NEED TO DO
3 SOMETHING. I NEED TO DO SOMETHING BUT SHE CAN'T.

4 THE DEFENDANT USES HIS MOUTH AND
5 PLACES IT ON HER VAGINA. IT'S CALLED ORAL
6 COPULATION. HE THEN USES HIS FINGER AND DIGITALLY
7 PENETRATES HER IN HER VAGINA, AND THEN HE STARTS TO
8 HAVE SEX WITH HER. HIS PENIS GOES INTO HER VAGINA.

9 NOW, MONICA IS GOING TO COME INTO
10 COURT TODAY. SHE'S GOING TO TAKE THE STAND. AND
11 LADIES AND GENTLEMEN, ON THAT -- TODAY, I DON'T KNOW
12 IF SHE'S GOING TO WANT TO TESTIFY. THIS IS SOMETHING
13 THAT'S BEEN VERY PAINFUL FOR HER. IT'S AFFECTED HER
14 DEEPLY. AND SHE MAY CHOOSE THAT SHE MAY NOT WANT TO
15 SAY ANYTHING. BUT THE EVIDENCE WILL SHOW YOU BEYOND
16 A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED THESE
17 CRIMES. YOU DON'T JUST HAVE HER TESTIMONY.

18 RIGHT AFTER THIS INCIDENT SHE DIDN'T
19 GO TELL ANYONE RIGHT AWAY BUT SHE TALKED TO SOME
20 FRIENDS ABOUT IT AND THEN WENT AND THEY CONVINCED HER
21 TO GO TO THE POLICE. THIS IS TWO DAYS AFTER THIS
22 HAPPENED. THE POLICE INTERVIEW HER AND SHE GOES TO
23 WHAT'S CALLED A SART EXAM. A SEXUAL ASSAULT EXAM IN
24 WHICH THEY EXAMINE, D.N.A. SAMPLES ARE TAKEN AND THEY
25 EXAMINE HER.

26 YOU'RE GOING TO HEAR TESTIMONY FROM
27 TOYETTA BEUKES WHO'S A NURSE AND SHE'S A SART NURSE,
28 A SEXUAL ASSAULT NURSE. SHE'S GOING TO TELL YOU ALL

1 ABOUT THE EXAM THAT SHE PERFORMED, WHAT SHE LOOKS FOR
2 AND ALSO SOME OF THE GENERAL THINGS BECAUSE THERE'S A
3 LOT OF MYTHS OUT THERE ABOUT SEXUAL ASSAULT. THERE'S
4 QUESTIONS ABOUT WELL, YOU KNOW, THE HYMEN, IF IT'S
5 PRESERVED OR NOT, WELL, THAT WOULD SHOW IF SOMEONE IS
6 A VIRGIN OR NOT A VIRGIN, THINGS OF THAT NATURE. AND
7 SHE'S GOING TO TALK ABOUT THOSE TYPES OF THINGS
8 BECAUSE SHE'S EXPERIENCED IN THIS FIELD. SHE'S
9 FAMILIAR WITH IT. SHE'S GOING TO EXPLAIN SOME OF THE
10 THINGS, MAYBE SOME OF THE MISCONCEPTIONS PEOPLE HAVE
11 ABOUT SEXUAL ASSAULT.

12 SHE'S GOING TO ALSO TESTIFY THAT SHE
13 DID TAKE SOME SAMPLES. THERE WERE SOME COLLECTIONS
14 OF THE UNDERWEAR THAT SHE WAS WEARING THAT DAY AS
15 WELL AS I MENTIONED SOME SWABS. AND SHE'S GOING TO
16 ACTUALLY SHOW YOU A KIT, WHAT'S CALLED A SART KIT,
17 AND HOW IT'S USED AND KIND OF WALK YOU THROUGH THE
18 WHOLE PROCESS.

19 THOSE WERE THEN GIVEN TO A DEPUTY AND
20 THE DEPUTIES AND ONCE THEY IDENTIFIED THE DEFENDANT
21 THEY WENT TO GO GET A D.N.A. SAMPLE FROM THE
22 DEFENDANT. AND WHEN THE DEPUTIES WENT TO GO GET THE
23 D.N.A. SAMPLE FROM THE DEFENDANT, THE FIRST TIME HE
24 REFUSED. HE DIDN'T WANT TO GIVE A SAMPLE. THEN
25 ANOTHER DETECTIVE CAME AND TOLD HIM AGAIN, YOU KNOW,
26 THERE'S A COURT ORDER HERE. YOU NEED GIVE A D.N.A.
27 SAMPLE. HE DID AT THAT POINT.

28 THE D.N.A. WAS THEN COMPARED AND

1 YOU'LL HEAR FROM BETTY RING. SHE'S A D.N.A. ANALYST.
2 SHE PRETTY MUCH HANDLES THAT FOR THE LOS ANGELES
3 SHERIFF'S CRIME LAB. AND SHE'S GOING TO TALK ABOUT
4 D.N.A., WHAT IT IS, HOW IT'S USED AND WHAT YOU CAN
5 DETERMINE FROM IT.

6 AND THE EVIDENCE WILL SHOW THAT THE
7 DEFENDANT'S D.N.A. WAS FOUND ON HER PANTIES AND WAS
8 ALSO FOUND ON ONE OF THE D.N.A. SAMPLES. IT WAS AN
9 AREA THAT WAS COLLECTED NEAR THE ANAL REGION AND
10 SHE'S GOING TO EXPLAIN WHAT EXACTLY, WHERE THAT IS
11 AND THE RELEVANCE OF WHY THEY TAKE IT FROM THAT
12 LOCATION. AND THAT EVIDENCE, THE D.N.A. IS
13 CONSISTENT WITH THE DEFENDANT'S. AND SHE'S GOING TO
14 TELL YOU ALL ABOUT THE VALUES AND OTHER THINGS OF
15 THAT AND, YOU KNOW, WITH WHAT DEGREE, CERTAINTY IN
16 REGARDS TO THE CONSISTENCY AND HOW THAT WORKS OUT.

17 YOU'RE ALSO GOING TO HEAR FROM SOME OF
18 THE PEOPLE WHO ALSO INTERVIEWED THE VICTIM, AND
19 THEY'RE GOING TO TALK TO YOU ABOUT SOME OF THE
20 TECHNIQUES THAT ARE VERY IMPORTANT IN DOING THESE
21 TYPES OF INTERVIEWS.

22 AND AT THE CONCLUSION OF THIS TRIAL,
23 LADIES AND GENTLEMEN, THE EVIDENCE WILL SHOW BEYOND A
24 REASONABLE DOUBT THAT THE DEFENDANT COMMITTED EACH
25 AND EVERY ONE OF THESE ACTS. AND I'M GOING TO ASK
26 YOU TO HOLD HIM ACCOUNTABLE TO FIND HIM GUILTY ON ALL
27 CHARGES. THANK YOU VERY MUCH.

28 THE COURT: MR. NEWTON.

1 MR. NEWTON: THANK YOU, YOUR HONOR. LADIES
2 AND GENTLEMEN, GOOD AFTERNOON. IT'S NOVEMBER 15TH,
3 2012 AND THERESA QUINONEZ'S RESIDENCE IN EL MONTE IS
4 FILLED WITH PEOPLE. THERESA HERSELF IS HOME. HER
5 ADULT SON, GUSTAVO, IS IN THE BACKYARD WITH ANYWHERE
6 FROM TWO TO FOUR OF HIS ADULT FRIENDS. HER OTHER
7 ADULT SON, MY CLIENT, MR. JERRY ORTIZ IS HOME. AND
8 SO ARE SOME OF THE PEOPLE TO WHOM THERESA RENTS
9 ROOMS. AN ADULT COUPLE, ADRIAN AND TINA ARE HOME IN
10 THEIR ROOM. AND SO IS MONICA DOE AND HER LITTLE
11 BROTHER.

12 NOW, AS YOU HEARD THE GOVERNMENT'S
13 PROSECUTOR SAID IT ALL KIND OF STARTED IN THE KITCHEN
14 AND WHO EXACTLY SAID WHAT TO WHO AND WHO WAS IN THERE
15 FIRST, IT'S A MATTER OF SOME DEBATE BUT IT'S BEEN A
16 COUPLE OF YEARS REMEMBER THAT.

1 THEY WOULD HAVE YOU BELIEVE THAT JERRY
2 ORTIZ HAD HIS WAY WITH HER AND THAT THE WHOLE TIME
3 SHE SAID NOTHING, DID NOTHING. AND THEY'RE GOING TO
4 MAKE SOME PRETTY BIZARRE EXCUSES FOR WHY SHE DIDN'T
5 JUST GET UP AND WALK OUT THE BEDROOM DOOR WHICH BY
6 THE WAY WIDE OPEN FOR HALF OF THIS. OR WHY SHE
7 DIDN'T CALL OUT TO ANY OF AS MANY AS EIGHT OTHER
8 ADULTS IN THE HOUSE AT THAT TIME.

9 NOW, YOU ARE GOING TO SEE SOME
10 EVIDENCE IN THIS CASE. AS THE PROSECUTOR POINTED OUT
11 YOU'RE GOING TO HEAR ABOUT SOME D.N.A. FROM THE
12 LOS ANGELES COUNTY SHERIFF'S DEPARTMENT CRIME LAB.
13 YOU'RE GOING TO HEAR ABOUT A SEXUAL ASSAULT EXAM
14 PERFORMED BY A CERTIFIED SEXUAL ASSAULT NURSE. AND
15 YOU'RE GOING TO SEE AND HEAR SOME WITNESS TESTIMONY.

16 LADIES AND GENTLEMEN, NONE OF THAT
17 SCIENCE, NONE OF THE PHYSICAL EVIDENCE IS GOING TO
18 SHOW YOU A FORCIBLE SEX CRIME. WHAT IT IS GOING TO
19 SHOW YOU IS THAT AN ALLEGATION WAS MADE BY A TROUBLED
20 YOUNG LADY WHO WAS ACTUALLY FORCED TO GO TO THE
21 POLICE DEPARTMENT AND MAKE THE ALLEGATION. SHE WAS
22 FORCED TO TESTIFY AT THE PRELIMINARY HEARING IN THIS
23 CASE. SHE MAY OR MAY NOT HAVE TO TESTIFY IN FRONT OF
24 YOU. THAT'S HER OPTION. AND FOR THOSE REASONS I
25 WANT YOU TO PAY ATTENTION TO THE EVIDENCE YOU DON'T
26 SEE. I WANT YOU TO ASK WHY DID THE GOVERNMENT USE
27 100 PERCENT OF ITS SOPHISTICATED D.N.A. ANALYSIS
28 TECHNOLOGY TO DO NOTHING MORE THAN SUPPORT MONICA'S

1 ALLEGATION? I WANT YOU TO ASK WHY GOVERNMENT
2 INVESTIGATORS DID NOT QUESTION ONE SINGLE NEUTRAL
3 THIRD PARTY WITNESS. WHY DIDN'T THEY QUESTION THIS
4 YOUNG MAN LEO WHO DRAGGED MONICA TO THE POLICE
5 STATION AND MADE HER MAKE THIS REPORT?

6 WHY DIDN'T THEY QUESTION THE HOMEOWNER
7 THERESA QUINONES WHO WAS HOME DURING THE ALLEGED TIME
8 FRAME?

9 WHY DIDN'T THEY QUESTION ANY OF THE
10 PEOPLE IN THE BACKYARD HOME DURING THE ALLEGED TIME
11 FRAME?

12 WHY DIDN'T THEY QUESTION ADRIAN AND
13 TINA WHO WERE IN THE ADJOINING ROOM WITH DIRECT LINE
14 OF SIGHT INTO THIS BEDROOM DURING THE ALLEGED TIME
15 FRAME?

16 NOW, FOLKS, ONCE YOU'VE SEEN ALL OF
17 THE EVIDENCE I'M CONVINCED THAT YOU WILL HAVE NO
18 CHOICE BUT TO VOTE JERRY ORTIZ NOT GUILTY. THANK
19 YOU.

20 THE COURT: PEOPLE. REMAIN STANDING RIGHT
21 THERE, FACE MY CLERK AND RAISE YOUR RIGHT HAND.

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

10 THE WITNESS: YES.

11 THE CLERK: PLEASE BE SEATED. CAN I PLEASE
12 HAVE YOU STATE YOUR FIRST NAME AND SPELL IT FOR THE
13 RECORD, PLEASE.

14 THE WITNESS: MONICA M-O-N-I-C-A.

15 THE CLERK: THANK YOU.

16 THE COURT: YOU MAY INQUIRE.

18 | DIRECT EXAMINATION

20 BY MR. MATOBA:

21 Q MONICA, WHAT'S YOUR BIRTHDAY?

22 A NOVEMBER 17, 1998.

23 Q NOW --

24 THE BAILIFF: YOUR HONOR, I'M SORRY, JUROR
25 NO. 1 IS RAISING HER HAND.

26 THE COURT: CAN YOU PUSH THE MICROPHONE
27 TOWARD YOU AND SPEAK INTO THE MICROPHONE. COULD YOU
28 REPEAT YOUR ANSWER.

1 THE WITNESS: NOVEMBER 17, 1998.

2 BY MR. MATOBA:

3 Q AND ON NOVEMBER 15TH, 2012, WAS THAT
4 TWO DAYS BEFORE YOUR BIRTHDAY?

5 A YES.

6 Q ON THAT DATE, HOW OLD WERE YOU? ABOUT
7 TWO YEARS AGO?

8 A THIRTEEN.

9 Q NOW, WERE YOU LIVING AT 11003 GOMEZ
10 PALACIO DRIVE IN THE CITY OF SOUTH EL MONTE, COUNTY
11 OF LOS ANGELES?

12 A YES.

13 Q AND WHILE YOU WERE LIVING AT THAT
14 LOCATION ON THAT PARTICULAR DAY DID SOMETHING HAPPEN
15 TO YOU IN THE AFTERNOON?

16 A YES.

17 Q AND WHEN YOU LIVED AT THAT LOCATION,
18 WHO IN YOUR IMMEDIATE FAMILY? DOES ANYONE LIVE WITH
19 YOU AT THAT LOCATION?

20 A (NO AUDIBLE RESPONSE.)

21 Q MONICA, DO YOU UNDERSTAND THE
22 QUESTION?

23 A NO.

24 Q DO YOUR PARENTS LIVE WITH YOU AT THAT
25 LOCATION?

26 A YES.

27 Q WHICH ONE OR BOTH OF YOUR PARENTS?

28 A MY MOM.

1 Q AND WHAT ABOUT -- DO YOU HAVE ANY
2 OTHER SIBLINGS WHO LIVE AT THAT LOCATION?
3 A YES, MY LITTLE BROTHER.
4 Q NOW, ON THIS PARTICULAR DATE AT
5 APPROXIMATELY FIVE O'CLOCK IN THE EVENING, WAS ANY OF
6 YOUR FAMILY HOME WITH YOU?
7 A JUST MY BROTHER.
8 Q AND WHERE WAS YOUR BROTHER AT?
9 A IN OUR ROOM.
10 Q AND WHILE YOU WERE AT YOUR HOUSE ON
11 THAT PARTICULAR DAY, AT SOME POINT DID YOU GO TO THE
12 KITCHEN AREA?
13 A YES.
14 Q AND WHILE YOU WERE IN THE KITCHEN,
15 WHAT HAPPENED?
16 THE COURT: DO YOU NEED A MOMENT? CAN YOU
17 ANSWER THE QUESTION?
18 THE WITNESS: NO.
19 THE COURT: DID YOU GET THAT, MADAM
20 REPORTER?
21 THE COURT REPORTER: YES.
22 BY MR. MATOBA:
23 Q MONICA, WAS THERE ANYONE ELSE WITH YOU
24 IN THE KITCHEN?
25 A YES.
26 Q IS THAT PERSON OR PERSONS PRESENT IN
27 THE COURTROOM TODAY?
28 A YES.

1 Q CAN YOU PLEASE POINT TO THAT
2 INDIVIDUAL OR INDIVIDUALS?

3 A (POINTING).

4 Q AND DO YOU KNOW WHAT COLOR THEY'RE
5 WEARING OR WHETHER OR NOT THEY HAVE HAIR?

6 A YES.

7 Q OKAY. CAN YOU DESCRIBE THAT PERSON A
8 LITTLE BIT? IS IT A MAN? WOMAN?

9 A A MAN WITH GLASSES.

10 THE COURT: THE WITNESS HAS POINTED IN THE
11 DIRECTION OF THE DEFENDANT AND IDENTIFIED THE PERSON
12 WITH THE ONLY GLASSES WOULD BE THE DEFENDANT FOR THE
13 RECORD.

14 BY MR. MATOBA:

15 Q AND WHILE YOU WERE IN THE KITCHEN, DID
16 HE SAY SOMETHING TO YOU?

17 A YES.

18 Q WHAT WERE YOU DOING WHILE YOU WERE IN
19 THE KITCHEN?

20 THE COURT: CAN YOU ANSWER THE QUESTION?

21 THE WITNESS: NO.

22 THE COURT: IS IT BECAUSE YOU DON'T REMEMBER
23 OR YOU DON'T WANT TO ANSWER?

24 THE WITNESS: I DON'T REMEMBER.

25 BY MR. MATOBA:

26 Q DID -- WHILE YOU WERE IN THE KITCHEN,
27 THERE WAS -- YOU MENTIONED THAT THE DEFENDANT WAS
28 ALSO PRESENT. DID YOU HAVE A CONVERSATION WITH HIM?

1 A YES.
2 Q WHAT DID YOU TALK ABOUT?
3 A I DON'T REMEMBER.
4 Q NOW, MONICA, I KNOW THAT YOU'VE HAD TO
5 COME BEFORE IN A COURTROOM TO TESTIFY BEFORE; IS THAT
6 RIGHT?
7 A YES.
8 Q AND THAT WAS BACK IN OCTOBER 2ND,
9 2013?
10 A YES.
11 Q AND ON THAT PARTICULAR DAY DID YOU
12 WANT TO COME TO COURT?
13 A NO.
14 Q ON TODAY'S DATE, DID YOU WANT TO COME
15 TO COURT?
16 A NO.
17 Q WHY DON'T YOU WANT TO COME TO COURT?
18 A I DIDN'T WANT TO COME BECAUSE THIS
19 JUST -- IT'S JUST TOO MUCH FOR ME AND BECAUSE I'M
20 SCARED AND ANXIOUS AND RIGHT NOW I'M REALLY
21 UNCOMFORTABLE.
22 Q OKAY. WHAT ARE YOU SCARED OF?
23 A (NO AUDIBLE RESPONSE.)
24 Q MONICA, WHAT ARE YOU SCARED OF?
25 A (NO AUDIBLE RESPONSE.)
26 Q WHY DON'T YOU TAKE A DEEP BREATH
27 FIRST, HOLD IT IN AND THEN JUST LET IT OUT SLOWLY.
28 NOW, I'M GOING TO ASK YOU AGAIN WHAT ARE YOU SCARED

1 OF?

2 A JUST BEING HERE AND BEING IN THE SAME
3 ROOM AS THAT PERSON.

4 Q NOW, WHEN YOU MENTIONED THAT THERE WAS
5 A CONVERSATION IN THE KITCHEN, DID YOU STAY IN THE
6 KITCHEN WITH THAT PERSON?

7 A YES.

8 Q AND YOU CONTINUED TO TALK ABOUT SOME
9 THINGS THAT YOU DON'T SEEM TO REMEMBER?

10 A YES.

11 Q DO YOU REMEMBER WHETHER OR NOT YOU
12 FELT COMFORTABLE OR NOT IN THE KITCHEN?

13 A NO.

14 Q YOU DON'T REMEMBER OR WHAT OR DID YOU
15 NOT FEEL COMFORTABLE?

16 A I DIDN'T FEEL COMFORTABLE.

17 Q NOW, AFTER YOU MENTIONED YOU DIDN'T
18 FEEL COMFORTABLE, WHAT DID YOU DO BECAUSE YOU WEREN'T
19 COMFORTABLE?

20 A I DON'T REMEMBER.

21 THE COURT: I DIDN'T HEAR YOU.

22 THE WITNESS: I DON'T REMEMBER.

23 BY MR. MATOBA:

24 Q DID YOU STAY IN THE KITCHEN? DID YOU
25 LEAVE THE KITCHEN? DID YOU DO, YOU KNOW, WHAT --
26 WHAT, IF ANYTHING, DID YOU DO?

27 A I STAYED IN THE KITCHEN.

28 Q AND AFTER YOU STAYED IN THE KITCHEN,

1 DID MR. ORTIZ STAY IN THE KITCHEN WITH YOU?

2 A I DON'T REMEMBER.

3 Q NOW, AT A CERTAIN POINT DID YOU LEAVE
4 THE KITCHEN?

5 A YES.

6 Q AND WHILE YOU WERE LEAVING THE KITCHEN
7 AREA, DID YOU GO DIRECTLY TO YOUR ROOM?

8 A (NO AUDIBLE RESPONSE.)

9 Q MONICA, DID YOU GO DIRECTLY IN YOUR
10 ROOM ON THAT PARTICULAR DAY OR DID YOU GO SOMEWHERE
11 ELSE?

12 A I DON'T REMEMBER.

13 Q NOW, MONICA, YOU'VE MENTIONED THAT YOU
14 DO NOT WANT TO BE HERE IN COURT TODAY AS WELL,
15 CORRECT?

16 A YES.

17 Q AND ACTUALLY, YOU WERE SUPPOSED TO BE
18 HERE IN THE MORNING, CORRECT, TO TESTIFY?

19 A YES.

20 Q AND WHAT HAPPENED THIS MORNING? THIS
21 MORNING, DID YOU COME DIRECTLY TO COURT?

22 A NO.

23 Q WHAT HAPPENED?

24 A I LEFT.

25 Q DID YOU LEAVE THE HOUSE THAT YOU WERE
26 CURRENTLY LIVING AT?

27 A YES.

28 Q DID YOU RUN AWAY FROM HOME?

1 A YES.
2 Q AND WHY DID YOU RUN AWAY FROM HOME?
3 A BECAUSE I KNEW THAT I HAD TO TESTIFY
4 AND I DIDN'T WANT TO.

5 Q AND DID YOU HAVE A -- AND THE
6 DETECTIVE ACTUALLY BROUGHT YOU TO COURT?

7 A YES.

8 Q NOW, WHILE YOU WERE AT YOUR HOUSE, DID
9 YOU HAVE AN OPPORTUNITY -- DID YOU EVER GO INTO THE
10 DEFENDANT'S ROOM, BEDROOM?

11 A (NO AUDIBLE RESPONSE.)

12 Q MONICA, WERE YOU EVER IN THE
13 DEFENDANT'S ROOM?

14 THE COURT: CAN YOU ANSWER THE QUESTION?

15 THE WITNESS: NO.

16 THE COURT: IS IT BECAUSE YOU DON'T WANT TO
17 OR BECAUSE YOU DON'T RECALL OR BOTH?

18 THE WITNESS: BOTH.

19 THE COURT: I CAN'T HEAR YOU, MA'AM.

20 THE WITNESS: BOTH.

21 MR. MATOBA: YOUR HONOR, I HAVE A
22 PHOTOGRAPH. IT'S TWO PHOTOS. MAY IT BE MARKED AS
23 PEOPLE'S 1 AND A SECOND PHOTOGRAPH THAT HAS TWO
24 PHOTOS AS WELL. MAY IT BE MARKED AS PEOPLE'S 2.

25 THE COURT: SO MARKED.

26

27 (PEOPLE'S EXHIBIT NO. 1, TWO PHOTOGRAPHS,
28 WAS MARKED FOR IDENTIFICATION.)

1 (PEOPLE'S EXHIBIT NO. 2, TWO PHOTOGRAPHS,
2 WAS MARKED FOR IDENTIFICATION.)
3

4 BY MR. MATOBA:

5 Q MONICA, I'M GOING TO SHOW YOU TWO
6 PICTURES. DO YOU RECOGNIZE THE PICTURE, TWO PICTURES
7 THAT ARE MARKED AS PEOPLE'S 1?

8 A YES.

9 Q AND WHAT IS THAT A PICTURE OF?

10 A (NO AUDIBLE RESPONSE.)

11 Q MONICA, IS THAT A PICTURE OF WHAT
12 APPEARS TO BE SOME UNDERWEAR, CORRECT?

13 A YES.

14 Q AND ARE THOSE YOUR UNDERWEAR?

15 A YES.

16 Q WERE THOSE THE UNDERWEAR YOU WERE
17 WEARING ON THE 15TH, THE DAY WE'RE TALKING ABOUT?

18 A YES.

19 Q SHOWING YOU WHAT'S BEEN MARKED AS
20 PEOPLE'S 2, THERE'S ALSO TWO PICTURES. IT APPEARS TO
21 BE SOME SHORTS. DO YOU RECOGNIZE THOSE PICTURES?

22 A YES.

23 Q IS THAT A PICTURE OF THE SHORTS YOU
24 WERE WEARING THAT NIGHT?

25 A YES.

26 Q NOW, DID SOMETHING HAPPEN WITH YOU
27 INVOLVING MR. ORTIZ ON THAT NIGHT THAT'S CAUSING YOU
28 TO BE SCARED TODAY?

1 A YES.
2 Q WAS IT SOMETHING THAT YOU WANTED TO
3 HAVE HAPPEN TO YOU?
4 A NO.
5 Q DO YOU REMEMBER WHAT HAPPENED TO YOU?
6 A YES.
7 Q DID YOU GO INTO -- DID MR. ORTIZ DO
8 SOMETHING TO YOU?
9 A YES.
10 Q WAS IT SOMETHING THAT YOU LIKED OR
11 DISLIKED?
12 A DISLIKED.
13 Q CAN YOU TELL ME A LITTLE BIT ABOUT
14 WHAT HAPPENED?
15 A (NO AUDIBLE RESPONSE.)
16 Q MONICA, DID -- WHILE YOU WERE IN THE
17 ROOM, AT ANY POINT DID THE DEFENDANT TOUCH YOU?
18 A YES.
19 Q WHAT PART OF HIS BODY DID HE TOUCH YOU
20 WITH?
21 A (NO AUDIBLE RESPONSE.)
22 MR. MATOBA: YOUR HONOR, I HAVE WHAT'S
23 ANOTHER TWO PICTURES. I'D LIKE TO MARK THE FIRST
24 SET. IT APPEARS TO BE A PICTURE OF A MALE BODY, THE
25 FRONT AS WELL AS THE BACK. MAY IT BE MARKED AS
26 PEOPLE'S 3.
27 THE COURT: SO MARKED.
28 ///

1 (PEOPLE'S EXHIBIT NO. 3, TWO PHOTOGRAPHS,
2 WAS MARKED FOR IDENTIFICATION.)
3

4 MR. MATOBA: I ALSO HAVE A PICTURE OF A
5 FEMALE. MAY IT BE MARKED AS PEOPLE'S 4.
6

7 THE COURT: SO MARKED.
8

9 (PEOPLE'S EXHIBIT NO. 4, PHOTOGRAPH,
10 WAS MARKED FOR IDENTIFICATION.)
11

12 MR. MATOBA: THERE ARE TWO PICTURES OF THAT.
13 IT APPEARS TO BE THE FRONT AND BACK OF A FEMALE
14 ANATOMY.
15

16 Q MONICA, SHOWING YOU THE PICTURE THAT'S
17 BEEN MARKED AS PEOPLE'S 3, DID THE DEFENDANT TOUCH
18 YOU WITH HIS BODY?
19

20 A YES.
21

22 Q CAN YOU --
23

24 THE COURT: MR. MATOBA, COULD YOU POSITION
25 YOURSELF SUCH THAT YOU DON'T OBSTRUCT THE JURY'S
26 VIEW.
27

28 MR. MATOBA: YOUR HONOR, COULD YOU INQUIRE
29 IF I'M OKAY. I'M RIGHT HERE.
30

31 THE COURT: YOU'RE FINE.
32

33 BY MR. MATOBA:
34

35 Q NOW, MONICA, IN REGARDS TO THIS
36 PICTURE, COULD YOU CIRCLE THE PARTS OF HIS BODY THAT
37 TOUCHED YOU?
38

1 A (THE WITNESS COMPLIES.)

2 MR. MATOBA: YOUR HONOR, FOR THE RECORD THE
3 WITNESS TOOK A PEN AND APPEARS TO CIRCLE WHAT APPEARS
4 TO BE THE PENIS, THE LEFT HAND AND THE MOUTH OF THE
5 FIGURE.

6 THE COURT: SO NOTED.

7 BY MR. MATOBA:

8 Q NOW, I'M GOING TO SHOW YOU WHAT HAS
9 BEEN MARKED AS PEOPLE'S 4. CAN YOU PLEASE INDICATE,
10 FIRST OF ALL, YOU -- ONE OF THE PLACES YOU CIRCLED
11 WAS THE MOUTH OF THE BOY; IS THAT RIGHT?

12 A YES.

13 Q WHAT PART OF YOUR BODY DID HE -- I'M
14 GOING TO GIVE YOU ACTUALLY A PINK HIGHLIGHTER. CAN
15 YOU PLEASE CIRCLE THE PART OF THE BODY THAT -- WHERE
16 HE TOUCHED YOU WITH HIS MOUTH?

17 A (THE WITNESS COMPLIES.)

18 Q NOW, I'M ALSO GOING TO SHOW YOU THE
19 BACK. IS THERE ANY PART IN REGARDS TO HIS MOUTH THAT
20 HE TOUCHED EITHER ON THE FRONT OR THE BACK OF
21 PEOPLE'S 4?

22 A NO.

23 Q SO YOU JUST CIRCLED -- THOSE TWO
24 LOCATIONS. IS THAT THE ONLY PLACE THAT HE TOUCHED
25 YOU WITH HIS MOUTH?

26 A YES.

27 Q NOW, THE PLACE THAT YOU CIRCLED WITH
28 THE HAND, DO YOU KNOW IF IT WAS THE LEFT HAND, THE

1 RIGHT HAND THAT HE TOUCHED YOU WITH?

2 A NO.

3 Q YOU JUST CIRCLED THE HAND BECAUSE YOU
4 GOT TOUCHED BY A HAND AT A CERTAIN POINT?

5 A YES.

6 Q OKAY. AND WHERE DID HIS HAND TOUCH
7 YOU? CAN YOU PLEASE USE THIS BLUE PEN AND CAN YOU
8 PLEASE CIRCLE THE SPOTS WHERE HIS HAND TOUCHED YOU?

9 A (THE WITNESS COMPLIES.)

10 Q AND I'M GOING TO ASK YOU ALSO AND,
11 YOUR HONOR, FOR THE RECORD THE WITNESS TOOK THE BLUE
12 PEN AND CIRCLED THE VAGINA OF THE GIRL THAT'S
13 INDICATED IN PEOPLE'S 4.

14 THE COURT: SO NOTED.

15 BY MR. MATOBA:

16 Q NOW, I'M GOING TO ALSO ASK YOU TO TAKE
17 THE BLUE PEN AND I'M GOING TO ASK YOU TO MAKE AN X
18 WHERE HE TOUCHED YOU WITH HIS PENIS AND THAT'S ON
19 EITHER PICTURE OF PEOPLE'S 4. ACTUALLY, CAN YOU
20 PLACE AN X THERE?

21 A (THE WITNESS COMPLIES.)

22 MR. MATOBA: YOUR HONOR, FOR THE RECORD THE
23 WITNESS INITIALLY CIRCLED WHAT APPEARED TO BE THE
24 VAGINA AREA AND THEN PLACED AN X.

25 THE COURT: SO NOTED.

26 BY MR. MATOBA:

27 Q MONICA, DID YOU WANT HIM TO TOUCH YOU
28 IN ANY OF THOSE POSITIONS OR THOSE SPOTS?

1 A NO.
2 Q NOW, YOU CIRCLED THE MOUTH OF THE BOY
3 FIGURE AND ALSO THE MOUTH OF THE GIRL FIGURE. WAS
4 THERE ANY KISSING DONE?
5 A YES.
6 Q DID YOU WANT TO KISS MR. ORTIZ?
7 A NO.
8 Q NOW, YOU ALSO INDICATED THAT THE HAND
9 TOUCHED YOU ON THE PICTURE OF THE GIRL IN THE VAGINA
10 AREA. DID THAT OCCUR?
11 A YES.
12 Q NOW, WHAT PART OF THE VAGINA DID HE
13 TOUCH YOU?
14 A (NO AUDIBLE RESPONSE.)
15 Q MONICA, I'M GOING TO GIVE YOU A PEN
16 AND THERE'S A KLEENEX BOX RIGHT IN FRONT OF YOU.
17 WOULD IT BE EASIER TO SHOW WHAT HAPPENED WITH HIS
18 HAND IF THE KLEENEX BOX IS YOUR VAGINA WHERE AND HOW
19 HE TOUCHED YOU?
20 THE COURT: CAN YOU DO THAT OR IS IT TOO
21 HARD FOR YOU?
22 THE WITNESS: (NO AUDIBLE RESPONSE.)
23 BY MR. MATOBA:
24 Q MONICA, DID HE TOUCH YOU ON THE
25 OUTSIDE OF THE VAGINA?
26 A (NO AUDIBLE RESPONSE.)
27 THE COURT: CAN YOU ANSWER THE QUESTIONS,
28 MONICA?

1 THE WITNESS: NO.
2 THE COURT: IS IT BECAUSE YOU DON'T REMEMBER
3 OR BECAUSE YOU DON'T WANT TO?
4 THE WITNESS: I DON'T WANT TO.
5 THE COURT: OKAY.
6 BY MR. MATOBA:
7 Q MONICA, DID HE TOUCH YOU WITH HIS HAND
8 INSIDE OF YOUR VAGINA?
9 A (NO AUDIBLE RESPONSE.)
10 THE COURT: AGAIN, MONICA, CAN YOU ANSWER
11 THE QUESTION?
12 THE WITNESS: NO.
13 THE COURT: IS IT BECAUSE YOU DON'T REMEMBER
14 OR BECAUSE YOU DON'T WANT TO?
15 THE WITNESS: I DON'T WANT TO.
16 BY MR. MATOBA:
17 Q NOW, MONICA, YOU ALSO CIRCLED THE
18 LOCATION FOR THE BOY'S PENIS. DID HIS PENIS TOUCH
19 YOUR VAGINA?
20 A YES.
21 Q WAS IT INSIDE OR OUTSIDE?
22 A (NO AUDIBLE RESPONSE.)
23 THE COURT: CAN YOU ANSWER THE QUESTION,
24 MONICA?
25 THE WITNESS: NO.
26 THE COURT: IS IT BECAUSE YOU DON'T REMEMBER
27 OR BECAUSE YOU DON'T WANT TO ANSWER THE QUESTION?
28 THE WITNESS: I DON'T WANT TO ANSWER THAT

1 QUESTION.

2 THE COURT: LET ME SEE COUNSEL SIDE BAR WITH
3 THE REPORTER.

4

5 (THE FOLLOWING PROCEEDINGS WERE
6 HELD AT THE SIDE BAR OUTSIDE THE
7 HEARING OF THE JURY:)

8

9 THE COURT: THE COURT WOULD NOTE THOSE
10 INSTANCES WHERE A QUESTION WAS POSED TO THIS WITNESS
11 AND WHERE THERE WAS NO AUDIBLE RESPONSE FROM THE
12 WITNESS AND NO INQUIRY BY THE COURT AS TO WHETHER SHE
13 WAS ABLE TO ANSWER THE QUESTION, WHETHER BECAUSE SHE
14 DIDN'T REMEMBER, BECAUSE SHE DIDN'T WANT TO, IN THOSE
15 INSTANCES SHE SAT MUTE AND IT WAS WHAT THE COURT
16 WOULD CHARACTERIZE AS A PREGNANT PAUSE IN WHICH THERE
17 WAS SILENCE FOR A PERIOD OF TIME THAT SHE WAS
18 INCLINED TO ANSWER SHE COULD HAVE ANSWERED AS SHE WAS
19 GIVEN PLENTY OF TIME TO THINK ABOUT IT IN THOSE
20 INSTANCES WHERE THE COURT DID NOT INTERVENE OR WHERE
21 SHE WAS FURTHER QUESTIONED ABOUT WHY SHE WAS NOT
22 RESPONDING. IN THOSE INSTANCES COUNSEL SIMPLY WENT
23 ON TO ASK ANOTHER QUESTION.

24 THE COURT IN THOSE OTHER INSTANCES
25 WHERE SHE SAT MUTE FOR A PERIOD OF TIME NOT ANSWERING
26 THE QUESTION OF COUNSEL, THE COURT WAITED FOR A
27 PASSAGE OF TIME WHICH I DEEMED SUFFICIENT FOR HER TO
28 GATHER HER THOUGHTS OR HER EMOTIONS. SHE SAT MUTE

1 UNTIL THE COURT MADE AN INQUIRY AS TO WHETHER SHE
2 COULD ANSWER THE QUESTION. IN THOSE INSTANCES SHE
3 SAID NO. AND THEN I ASKED HER IS IT BECAUSE SHE
4 COULDN'T REMEMBER OR BECAUSE SHE DID NOT WANT TO
5 ANSWER THE QUESTION AND THE RECORD SPEAKS FOR ITSELF.

6 THE COURT CONDUCTED A 402 MOTION
7 REGARDING HER AVAILABILITY AS A WITNESS. I
8 MISCHARACTERIZED IT AS 1240 OF THE EVIDENCE CODE.
9 IT'S 240 OF THE EVIDENCE CODE. HOWEVER, THE COURT
10 MADE A PRELIMINARY FINDING. THE COURT SHOULD BE
11 CLEAR THAT IF THE CIRCUMSTANCES OF HER CONTINUED
12 REFUSAL TO TESTIFY THE COURT CAN FIND HER LEGALLY
13 UNAVAILABLE. HOWEVER, BECAUSE SHE DID NOT HOLD ANY
14 PRIVILEGE THAT THE COURT IS AWARE OF, SHE STILL IS
15 SUBJECT TO THE COURT'S CONTEMPT POWERS HOWEVER
16 LIMITED THEY ARE AND THAT SHE COULD BE PLACED ON THE
17 WITNESS STAND TO TESTIFY.

18 AT THIS POINT IN TIME LOOKING FORWARD
19 IF WE CONTINUE ON WITH HER SAME RESPONSES TO THE SAME
20 QUESTIONS ON DIRECT, IF SHE HAS THE SAME RESPONSE ON
21 CROSS-EXAMINATION WHERE SHE REFUSES TO ANSWER
22 QUESTIONS IT'S A DIFFERENT STORY IN TERMS OF WHETHER
23 THERE WILL BE A MOTION TO STRIKE HER ENTIRE TESTIMONY
24 BECAUSE OF HER SELECTIVE INVOCATION OF NOT WANTING TO
25 TESTIFY.

26 THE COURT HAS ALREADY COVERED THE
27 GROUNDS OF THE LIMITS OF MY CONTEMPT POWERS WITH THIS
28 WITNESS IF I WERE TO FIND HER IN CONTEMPT IN TERMS OF

1 HER WILLINGNESS TO ANSWER QUESTIONS. IT WOULD APPEAR
2 TO THE COURT THAT SHE HAS CHOSEN SELECTIVELY TO
3 TESTIFY OR NOT TESTIFY AS TO CERTAIN FACTS. SHE HAS
4 SAT WITH HER SHOULDERS SLUMPED AND HER FACE LOOKING
5 DOWN, HER AFFECT HAS BEEN MUTED EXCEPT FOR A COUPLE
6 OF INSTANCES WHERE SHE TEARED UP AND CRIED QUIETLY TO
7 HERSELF.

8 IT WOULD APPEAR THAT THIS WOULD
9 CONTINUE ON IF THE COURT ALLOWED THE EXAMINATION TO
10 CONTINUE. THE COURT HAS TWO CONCERNS. IF I ALLOW
11 THIS TO CONTINUE, HER EMOTIONAL AND PSYCHOLOGICAL
12 HEALTH I BELIEVE IS DETRIMENTAL TO THIS PERSON IF I
13 ALLOW THE EXAMINATION TO CONTINUE.

14 A WITNESS DOES NOT HAVE THE RIGHT TO
15 REFUSE TO ANSWER A QUESTION OR CHOOSE THE QUESTIONS
16 OF WHICH THEY WISH TO ANSWER ALTHOUGH IT HAS NOT BEEN
17 REQUESTED OF THIS COURT BY THE PEOPLE TO ORDER HER TO
18 ANSWER THE QUESTION. IT IS CLEAR BASED UPON MY
19 INQUIRY WITH HER UNDER THE 402 MOTION THAT SHE IS
20 ACTING CONSISTENT WITH HER STATED PURPOSE OF NOT
21 TESTIFYING.

22 WHAT IS THE PEOPLE'S POSITION AT THIS
23 TIME?

24 MR. MATOBA: YOUR HONOR, I HAVE JUST A FEW
25 MORE QUESTIONS. I DON'T THINK I HAVE TOO MUCH MORE
26 BECAUSE OF I THINK HER STATE OF MIND. I WOULD THINK
27 THAT THE DEFENSE HAS THE OPPORTUNITY TO QUESTION HER.
28 DEPENDING ON THAT I THINK THAT THE, YOU KNOW, IT --

1 THE COURT CAN MAKE ITS DECISION. I DO WANT TO
2 INDICATE THAT SHE IS IN A BETTER STATE THAN SHE WAS
3 AT THE PRELIMINARY HEARING. SHE AT LEAST ON THAT
4 INSTANCE SHE WAS SCRATCHING HERSELF ON HER ARM AND
5 ACTUALLY STARTED BLEEDING AND WE HAD TO TAKE A COURT
6 BREAK IN REGARDS TO THAT.

7 WE HAVE TALKED TO HER AND TOLD HER AND
8 ADVISED HER ABOUT BOTH HER ABILITY TO CHOOSE NOT TO
9 TESTIFY AS WELL AS TESTIFY AND THAT IT IS ULTIMATELY
10 HER DECISION. SO WE HAVE BEEN VERY CLEAR ABOUT I
11 KNOW THE COURT DID MAKE AN INQUIRY AND I DID ON THE
12 WAY AND I JUST WANTED TO PUT THAT ON THE RECORD.

13 THE COURT: I AM INCLINED AT THIS POINT TO
14 TELL THIS WITNESS THAT SHE HAS TO ANSWER ALL THE
15 QUESTIONS POSED TO HER. SHE CANNOT CHOOSE TO ANSWER
16 THOSE QUESTIONS SHE WISHES TO ANSWER BASED UPON HER
17 INDICATION THAT SHE DIDN'T ANSWER QUESTIONS BECAUSE
18 SHE DIDN'T WANT TO. SO I'M SIMPLY GOING TO TELL HER
19 NOW FROM ANY QUESTION HERE ON OUT THAT SHE HAS TO
20 ANSWER ALL QUESTIONS POSED TO HER.

21 IS THERE A PROBLEM WITH THAT BY EITHER
22 COUNSEL?

23 MR. NEWTON: NO.

24 MR. MATOBA: NO.

25 THE COURT: YOU INFORMED HER THAT IT WAS UP
26 TO HER WHETHER SHE WAS GOING TO ANSWER THE QUESTIONS
27 OR NOT WHEN CALLED AND IF SHE WAS GOING TO TAKE THE
28 SAME POSITION SHE DID IN THE 402 MOTION THAT SHE HAD

1 TO REFUSE TO TESTIFY. WE HAVE A MIXED SITUATION
2 HERE.

3 MR. MATOBA: I UNDERSTAND, YOUR HONOR.

4 THE COURT: WE HAVE A SITUATION WHERE HOW WE
5 APPROACH THIS IS WHETHER -- HOW FAR THIS GOES ON IN
6 TERMS OF WHETHER WE GET TO THE ISSUE OF CROSS.

7 MR. MATOBA: I UNDERSTAND.

8 THE COURT: OKAY. ALL RIGHT. WE'LL TAKE
9 THAT TURN WHEN WE COME.

10

11 (THE FOLLOWING PROCEEDINGS WERE HELD
12 IN OPEN COURT IN THE PRESENCE OF THE
13 JURY:)

14

15 THE COURT: MONICA, THERE ARE TIMES WHEN A
16 QUESTION WAS POSED TO YOU BY MR. MATOBA IN WHICH YOU
17 REMAINED QUIET AND THE COURT INQUIRED OF YOU WHETHER
18 YOU WERE ABLE TO ANSWER THE QUESTION AND YOU SAID NO.
19 I HAD ASKED YOU WHETHER YOU WERE UNABLE TO ANSWER THE
20 QUESTION BECAUSE YOU DO NOT RECALL THE EVENT IN WHICH
21 YOU ARE BEING QUESTIONED ABOUT OR THAT YOU DID NOT
22 WANT TO ANSWER THE QUESTION. IN MANY INSTANCES YOU
23 RESPONDED YOU DID NOT WANT TO ANSWER. THERE ARE
24 OTHER QUESTIONS THAT HAVE BEEN POSED TO YOU IN WHICH
25 YOU DID GIVE ANSWERS.

26 AS A WITNESS YOU CANNOT CHOOSE WHICH
27 QUESTIONS YOU WISH TO ANSWER OR NOT ANSWER. YOU'RE
28 SUPPOSED TO ANSWER ALL QUESTIONS. IF YOU DO NOT

1 RECALL OR YOUR MEMORY IS NOT THERE TO ANSWER THE
2 QUESTION, THEN YOU MUST SAY SO. BUT YOU CAN'T DECIDE
3 NOT TO ANSWER A QUESTION SIMPLY BECAUSE YOU DON'T
4 WANT TO ANSWER.

5 DO YOU UNDERSTAND THAT?

6 THE WITNESS: YES.

7 THE COURT: MR. MATOBA.

8 BY MR. MATOBA:

9 Q MONICA, YOU MENTIONED THAT MR. ORTIZ'S
10 MOUTH TOUCHED YOUR VAGINA; IS THAT CORRECT?

11 A YES.

12 Q DID HE DO ANYTHING WITH HIS MOUTH
13 WHILE HE WAS TOUCHING YOUR VAGINA WITH HIS MOUTH?

14 A I DON'T REMEMBER.

15 Q WHEN HIS FINGER OR HANDS TOUCHED YOUR
16 VAGINA DID HE TOUCH THE OUTSIDE OF YOUR VAGINA?

17 A YES.

18 Q DID HE TOUCH THE INSIDE OF YOUR
19 VAGINA?

20 A YES.

21 Q YOU MENTIONED HIS PENIS ALSO TOUCHED
22 YOUR BODY.

23 A YES.

24 Q DID HIS PENIS TOUCH THE INSIDE OF YOUR
25 VAGINA?

26 A YES.

27 Q IN ANY OF THESE THINGS DID YOU WANT
28 HIM TO DO ANY OF THESE THINGS?

1 A NO.
2 Q WERE YOU IN MR. ORTIZ'S BEDROOM WHEN
3 THIS OCCURRED?
4 A YES.
5 Q DID YOU WANT TO BE IN MR. ORTIZ'S
6 BEDROOM?
7 A NO.
8 Q DID MR. ORTIZ ASK YOU TO COME INTO HIS
9 ROOM?
10 A I DON'T REMEMBER.
11 Q AT ANY POINT DID MR. ORTIZ TOUCH YOUR
12 ARM OR YOUR SHOULDER TO GET YOU TO COME INTO THE
13 ROOM?
14 A (NO AUDIBLE RESPONSE.)
15 THE COURT: DO YOU RECALL HOW YOU GOT INTO
16 THE ROOM?
17 THE WITNESS: NO.
18 BY MR. MATOBA:
19 Q MONICA, AT ANY POINT DID YOU TRY AND
20 LEAVE MR. ORTIZ'S ROOM?
21 A YES.
22 Q DID MR. ORTIZ STOP YOU IN ANY WAY?
23 A (NO AUDIBLE RESPONSE.)
24 Q MONICA --
25 THE COURT: CAN YOU ANSWER THE QUESTION?
26 THE WITNESS: NO.
27 THE COURT: WHY CAN'T YOU ANSWER THE
28 QUESTION.

1 THE WITNESS: I DON'T REMEMBER.
2 THE COURT: NEXT QUESTION.
3 BY MR. MATOBA:
4 Q AT ANY POINT DID MR. ORTIZ PUSH YOU TO
5 THE BED?
6 A (NO AUDIBLE RESPONSE.)
7 Q MONICA, AT ANY POINT WERE YOU PUSHED
8 TO THE BED?
9 A I DON'T REMEMBER.
10 Q DID YOU TALK TO -- AFTER YOU WERE IN
11 THE ROOM DID YOU GO TO THE BATHROOM AFTERWARDS?
12 A YES.
13 Q AND DID YOU LOCK YOURSELF IN THE
14 BATHROOM?
15 A YES.
16 Q DID YOU EVENTUALLY COME OUT OF THE
17 BATHROOM AND RUN TO YOUR ROOM?
18 A YES.
19 Q DO YOU KNOW THE TERM IN REGARDS TO A
20 PENIS EJACULATION? HAVE YOU EVER HEARD THAT TERM
21 BEFORE?
22 A YES.
23 Q WHEN MR. ORTIZ'S PENIS WAS INSIDE YOUR
24 VAGINA, DID EJACULATION OCCUR?
25 A I DON'T KNOW.
26 Q DID SOMETHING STOP MR. ORTIZ IN THE
27 MIDDLE OF HIS PENIS BEING INSIDE YOUR VAGINA?
28 A YES.

1 Q AND DID SOMETHING -- WHAT WAS THAT
2 SOMETHING THAT CAUSED IT TO STOP?
3 A THE PHONE.
4 Q DID A PHONE RING?
5 A YES.
6 Q AND WHAT DID MR. ORTIZ DO ONCE THE
7 PHONE RANG?
8 A HE ANSWERED IT.
9 Q AND WHAT DID YOU DO ONCE HE STARTED TO
10 ANSWER THE PHONE?
11 A (NO AUDIBLE RESPONSE.)
12 Q MONICA, IS THAT WHEN YOU TRIED TO
13 LEAVE THE ROOM?
14 A YES.
15 Q NOW, DID YOU GO TO THE POLICE RIGHT
16 AFTER THIS HAD HAPPENED?
17 A NO.
18 Q DID YOU TALK TO A FRIEND FIRST?
19 A YES.
20 Q AND WHAT WAS THE NAME OF THAT FRIEND?
21 A LEO.
22 Q NOW, DID -- WHEN TALKING WITH LEO, DID
23 YOU TELL HIM ABOUT WHAT HAPPENED?
24 A YES.
25 Q AND DID LEO TELL YOU TO GO TO THE
26 POLICE?
27 A YES.
28 Q AND DID YOU GO TO THE POLICE?

1 A YES.
2 Q WHEN YOU GOT TO THE POLICE, DID YOU
3 TALK TO THE POLICE ABOUT WHAT HAD HAPPENED?
4 A YES.
5 Q AND DID YOU ALSO -- AND WAS THAT TWO
6 DAYS AFTER THE INCIDENT HAPPENED?
7 A YES.
8 Q THAT WAS ACTUALLY ON YOUR BIRTHDAY?
9 A YES.
10 Q AND YOU THEN -- THE VERY NEXT DAY DID
11 YOU GO TO THE HOSPITAL?
12 A YES.
13 Q AND DID YOU GO TO A NURSE WHO DID AN
14 EXAMINATION?
15 A YES.
16 Q AND SHE DID A LOT OF THINGS LOOKING AT
17 YOUR BODY PARTS?
18 A YES.
19 Q AND AFTER THAT, DID YOU ALSO SPEAK
20 WITH A DETECTIVE BURKE ABOUT WHAT HAD HAPPENED?
21 A (NO AUDIBLE RESPONSE.)
22 Q IS DETECTIVE BURKE IN COURT TODAY?
23 A YES.
24 Q AND WHERE IS HE SITTING?
25 A RIGHT THERE (POINTING).
26 THE COURT: THE WITNESS IS POINTING AT
27 COUNSEL TABLE.
28

1 BY MR. MATOBA:

2 Q AND DID YOU ALSO HAVE AN
3 OPPORTUNITY -- DO YOU REMEMBER GOING TO A PLACE
4 CALLED THE CHILD'S ADVOCACY CENTER?

5 A YEAH, YES.

6 Q AND THAT WAS A PLACE WHERE YOU WERE
7 INTERVIEWED BY A PERSON BY THE NAME OF SUSY FLORES?

8 A YES.

9 Q AND YOU TALKED TO HER ABOUT WHAT
10 HAPPENED?

11 A YES.

12 Q AND DID YOU TELL -- WHEN YOU SPOKE TO
13 THE POLICE, DID YOU TELL THE POLICE THE TRUTH ABOUT
14 WHAT HAD HAPPENED?

15 A YES.

16 Q WHEN YOU SPOKE TO SUSY FLORES, DID YOU
17 TELL HER THE TRUTH ABOUT WHAT HAD HAPPENED?

18 A YES.

19 Q HAVE YOU EVER HAD SOMETHING LIKE THIS
20 HAPPEN TO YOU BEFORE?

21 A YES.

22 Q WAS THIS A FAMILY MEMBER WHO HAD DONE
23 IT BEFORE?

24 A YES.

25 Q AN UNCLE OR SOME OTHER RELATIVE OR
26 FRIEND?

27 A SOME OTHER RELATIVE.

28 Q AND WHEN THIS WAS HAPPENING WITH

1 MR. ORTIZ, WERE YOU ABLE TO MOVE?
2 A NO.
3 Q WHAT WERE YOU THINKING OF WHEN THAT --
4 WHEN YOU COULDN'T MOVE?
5 A ABOUT WHAT HAPPENED THE FIRST TIME.
6 Q WERE YOU SCARED?
7 A YES.
8 Q WERE YOU ABLE TO SCREAM WHEN YOU WERE
9 WITH MR. ORTIZ?
10 A NO.
11 Q WERE YOU ABLE TO SAY ANYTHING?
12 A NO.
13 Q AND WHY WAS THAT?
14 A (NO AUDIBLE RESPONSE.)
15 MR. MATOBA: YOUR HONOR, COULD THE COURT
16 INQUIRE AND ASK THE WITNESS TO ANSWER THE QUESTION.
17 THE COURT: CAN YOU ANSWER THE QUESTION,
18 MONICA.
19 THE WITNESS: YES. BECAUSE I WAS IN SHOCK
20 AND I JUST FROZE.
21 THE COURT: DID THE JURY HEAR THE ANSWER?
22 COULD YOU REPEAT YOUR ANSWER.
23 THE WITNESS: BECAUSE I WAS IN SHOCK AND I
24 FROZE.
25 MR. MATOBA: NOTHING FURTHER FOR THIS
26 WITNESS
27 THE COURT: MR. NEWTON.
28 MR. NEWTON: THANK YOU, YOUR HONOR.

1 THE COURT: DO YOU NEED A BREAK, MONICA?
2 THE WITNESS: YES.
3 THE COURT: LADIES AND GENTLEMEN, WE'RE
4 GOING TO BE BREAKING ABOUT TEN AFTER ANYWAYS.
5 PROBABLY THIS IS AN LOGICAL TIME FOR US TO TAKE OUR
6 EVENING RECESS UNTIL TOMORROW MORNING AND START
7 CROSS-EXAMINATION UNIMPEDED.
8 MR. MATOBA: YOUR HONOR, ACTUALLY, CAN WE GO
9 SIDEBAR REAL QUICK?
10 THE COURT: I'LL SEE COUNSEL SIDEBAR REAL
11 QUICK WITHOUT THE REPORTER.
12
13 (PROCEEDINGS WERE HELD AT THE
14 SIDEBAR WHICH WERE NOT REPORTED.)
15
16 THE COURT: MONICA, YOU'RE ORDERED TO RETURN
17 TO THIS COURT TOMORROW MORNING AT 9:15 IN THE
18 DISTRICT ATTORNEY'S OFFICE?
19 MR. MATOBA: YES, YOUR HONOR.
20 THE COURT: IN THE OFFICE OF THE DISTRICT
21 ATTORNEY. DO YOU UNDERSTAND?
22 THE WITNESS: YES.
23 THE COURT: THAT'S THE ORDER. YOU CAN STEP
24 DOWN. WATCH YOUR STEP. OKAY.
25 MR. MATOBA: YOUR HONOR, AFTER THE JURY IS
26 EXCUSED I DO NEED TO MAKE ONE OTHER ORDER.
27 THE COURT: THAT'S RIGHT. LADIES AND
28 GENTLEMEN AT THIS POINT IN TIME WE'RE GOING TO TAKE

1 OUR EVENING RECESS UNTIL 9:30 TOMORROW MORNING. THE
2 COURT HAS ANOTHER MATTER WE NEED TO HANDLE AND I HOPE
3 WE CAN BE READY AT 9:30 AND GET STARTED. HOWEVER,
4 EVERY TRIAL HAS A LIFE OF ITS OWN AND WE DO HAVE TO
5 ROLL WITH THE PUNCHES DEPENDING ON THINGS THAT HAPPEN
6 AND WE JUST KIND OF WORK WITH IT AND MOVE ON FROM
7 THERE.

8 THE COURT ADMONISHED YOU REGARDING
9 YOUR CONDUCT. IT APPLIES MORESO NOW THAN EVER
10 BECAUSE NOW YOU HEARD SOME TESTIMONY IN THIS MATTER.
11 AND THAT WHEN YOU GET HOME, THOSE WHO ARE CURIOUS AS
12 TO THE NATURE OF YOUR JURY DUTY, THE NATURE OF THIS
13 TRIAL ARE GOING TO PROBE AND PROD YOU TO SEE WHETHER
14 YOU HAVE A WEAK SPOT IN ORDER TO DISCLOSE. OR YOU,
15 YOURSELF, WOULD LIKE TO UNLOAD EMOTIONALLY AND GET
16 THIS OFF YOUR CHEST AND TALK TO SOMEONE ELSE BUT YOU
17 CAN'T DO IT. THAT'S WHAT I MEAN IS YOU HAVE TO
18 INTERNALIZE EVERYTHING UNTIL I TELL YOU NOW YOU CAN
19 BEGIN YOUR DELIBERATIONS.

20 I KNOW YOU'RE GOING TO FOLLOW THE
21 COURT'S ADMONITION REGARDING YOUR CONDUCT. I KNOW
22 YOU'RE NOT GOING TO DISCUSS IT WITH ANYONE OR DO ANY
23 RESEARCH ON YOUR OWN OR AS A GROUP. NOR ARE YOU
24 GOING TO DO ANY OTHER INVESTIGATION OF THE PARTIES
25 OFF THE RECORD IN THESE PROCEEDINGS OR THE LAW.

26 SO WITH THAT BEING SAID, I'LL LEAVE
27 YOU THIS FINAL ADMONITION. IT IS YOUR DUTY NOT TO
28 CONVERSE AMONG YOURSELVES OR WITH ANYONE ELSE ON ANY

1 SUBJECT CONNECTED WITH THIS TRIAL OR FORM OR EXPRESS
2 AN OPINION ON IT UNTIL THE CASE IS SUBMITTED TO YOU
3 FOR YOUR DELIBERATIONS AND VERDICT.

4 PLEASE LEAVE YOUR NOTEBOOKS ON YOUR
5 SEAT, RETRIEVE ANY PERSONAL ITEMS FROM THE JURY
6 DELIBERATION ROOM AND PLEASE ASSEMBLE OUTSIDE OUR
7 COURTROOM DOORS NO LATER THAN 9:30 A.M. TOMORROW
8 MORNING. THANK YOU. JUROR NO. 12, TOMORROW IS 9:30.

9

10 (THE FOLLOWING PROCEEDINGS WERE HELD
11 IN OPEN COURT OUTSIDE THE PRESENCE OF
12 THE JURY:)

13

14 THE COURT: YOU HAVE A WITNESS TO BE ORDERED
15 BACK, MR. MATOBA.

16 MR. MATOBA: I DO. I HAVE TWO. I HAVE
17 MS. BEUKES, THE NURSE, AS WELL AS THE MOTHER TO HAVE
18 THE MINOR BECAUSE THE MINOR IS UNDER AGE.

19 THE COURT: DO YOU WANT TO BRING IN
20 MS. BEUKES NOW AND SHE CAN BE ORDERED BACK.

21 MR. MATOBA: I DID. I PUT A CALL TO MY
22 OFFICE TO HAVE HER COME UP BECAUSE SHE HAS OTHER
23 WORK, AND I THINK THE COURT IS GOING TO HAVE TO ORDER
24 HER BACK BECAUSE OF HER RATHER BUSY SCHEDULE.

25 THE COURT: WE HAVE AN INTERPRETER COMING
26 IN. THERE WE GO.

27 MR. MATOBA: YOUR HONOR, THE WITNESS'S NAME
28 IS OFELIA GARCIA. BASED ON PRIOR CONVERSATION

1 O-F-E-L-I-A, GARCIA, G-A-R-C-I-A.

2 THE COURT: WHEN DO YOU WANT HER ORDERED
3 BACK FOR?

4 MR. MATOBA: THE SAME TIME THAT THE COURT
5 WANTS THE MINOR THERE WHICH I BELIEVE IS --

6 THE COURT: 9:15.

7 MR. MATOBA: YES, 9:15 IS FINE. ACTUALLY,
8 NINE O'CLOCK JUST TO MAKE SURE TO GET THROUGH THE
9 LINE.

10 THE COURT: WOULD THE INTERPRETER IDENTIFY
11 HIMSELF FOR THE RECORD.

12 THE INTERPRETER: EMILIO PIGNOCCHI, OATH ON
13 FILE.

14 THE COURT: THANK YOU. MA'AM, YOU'RE
15 ORDERED TO RETURN TO THIS COURT WITHOUT FURTHER
16 ORDER, NOTICE OR SUBPOENA WITH YOUR DAUGHTER, MONICA,
17 AT 9:00 A.M. IN THE DISTRICT ATTORNEY'S OFFICE. DO
18 YOU UNDERSTAND?

19 DEFENDANT'S MOTHER: TOMORROW?

20 THE COURT: YES.

21 THE WITNESS: OKAY.

22 THE COURT: THANK YOU. THAT'S THE ORDER.
23 YOU'RE NOT GOING TO HAVE A PATROL CAR GO OUT THERE TO
24 BRING THEM TO COURT, MR. MATOBA?

25 MR. MATOBA: I'M GOING TO TALK TO THE
26 DETECTIVE BUT I BELIEVE WE CAN WORK SOMETHING OUT TO
27 HELP.

28 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

1 THE WITNESS: OKAY.

2 MR. MATOBA: AS SOON AS MS. BEUKES COMES
3 UP --

4 THE COURT: JUST AS A MATTER OF GIVEN THE
5 EXPERIENCE TODAY, I WOULD THINK THAT WOULD BE A GOOD
6 IDEA, THAT WAY WE KNOW IT'S GOING TO BE AN ISSUE IT
7 WILL BE DEALT WITH RATHER THAN DELAYING SENDING
8 SOMEBODY OUT LOOKING FOR HER.

9 MR. MATOBA: I UNDERSTAND, YOUR HONOR.
10 THAT'S WHAT THE PEOPLE HAD INTENDED TO DO. I JUST
11 DIDN'T WANT IT SAID IN FRONT OF MOM BECAUSE OF THE
12 FACT THAT MOM MAY HAVE UNDERSTOOD. SHE UNDERSTOOD A
13 LITTLE BIT OF ENGLISH.

14 MR. NEWTON: YOUR HONOR, DOES THE COURT
15 ACTUALLY NEED MYSELF AND MR. ORTIZ?

16 THE COURT: OH, YOU CAN TAKE MR. ORTIZ BACK.
17 AND COUNSEL, UNLESS THERE'S SOME OTHER MATTERS TO BE
18 TAKEN UP?

19 MR. NEWTON: NO, SIR. THANK YOU VERY MUCH.

20 THE COURT: YES, YOU ARE EXCUSED.

21 MR. NEWTON: I'LL SEE YOU IN THE MORNING.
22 WAS IT 9:30?

23 THE COURT: 9:30.

24 THE WITNESS: HI THERE, I'M ALL READY.

25 THE COURT: YES, YOU ARE. UNFORTUNATELY
26 WE'RE NOT. COULD YOU IDENTIFY YOUR WITNESS FOR THE
27 RECORD.

28 THE WITNESS: YES, GOOD AFTERNOON. MY NAME

1 IS TOYETTA BEUKES, T-O-Y-E-T-T-A, BEUKES, B AS IN BOY
2 E-U-K-E-S AS IN SAM.

3 THE COURT: YOU'RE QUITE FAMILIAR WITH THIS
4 DEPARTMENT AND BEEN HERE JUST RECENTLY.

5 THE WITNESS: YES, I HAVE.

6 THE COURT: WHAT TIME DO YOU WANT THIS
7 WITNESS ORDERED BACK?

8 MR. MATOBA: WELL, YOUR HONOR, DUE TO HER
9 SCHEDULE AND ALSO THE SCHEDULE OF MY OTHER WITNESSES
10 I'M GOING TO ASK THURSDAY MORNING JUST TO -- I KNOW
11 SHE HAS A VERY BUSY SCHEDULE, SO WE DO HAVE SOME
12 OTHER WITNESSES INTENDED FOR THE AFTERNOON TOMORROW.
13 WE HAVE LIMITED AVAILABILITY AS WELL, THE
14 CRIMINALIST. SO I BELIEVE TOMORROW WE'LL AT LEAST
15 HAVE THE VICTIM AS WELL AS WHATEVER -- I CAN HAVE
16 OTHER WITNESSES FILL IN THE GAPS IF NEEDED.

17 THE COURT: YOU WILL. OKAY. YOU'RE ORDERED
18 TO APPEAR TO THIS COURT WITHOUT FURTHER ORDER, NOTICE
19 OR SUBPOENA 9:00 A.M. THURSDAY, SEPTEMBER 8 -- EXCUSE
20 ME, 11:00 IN THIS DEPARTMENT. UNDERSTOOD?

21 THE WITNESS: I'LL SEE YOU THEN.

22 THE COURT: THANK YOU VERY MUCH.

23 MR. MATOBA: THANK YOU, YOUR HONOR.

24 THE COURT: THANK YOU.

25

26 (AT 4:06 P.M., AN ADJOURNMENT WAS TAKEN
27 UNTIL 9:30 A.M. ON SEPTEMBER 10, 2014.)

28 ///

(THE NEXT PAGE IS NO. 901.)

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1 CASE NAME: 01) GERARDO ORTIZ
2 CASE NUMBER: KA101692
3 POMONA, CALIFORNIA WEDNESDAY, SEPTEMBER 10, 2014
4 DEPARTMENT EA T HON. GEORGE GENESTA, JUDGE
5 REPORTER: NANCY L. WILSON, CSR NO. 9228
6 TIME: A.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)
8

9 (THE FOLLOWING PROCEEDINGS WERE HELD
10 IN OPEN COURT OUTSIDE THE PRESENCE OF
11 THE JURY:)

12
13 THE COURT: BACK ON THE RECORD ON THE ORTIZ
14 MATTER. DEFENDANT IS PRESENT. COUNSEL ARE PRESENT.
15 THE JURORS ARE NOT PRESENT.

16 THE COURT RECEIVED THIS MOTION
17 DEFENDANT'S MOTION TO INCLUDE VICTIM'S PRIOR SEXUAL
18 CONDUCT. THE COURT HAS READ AND REVIEWED THE MOTION
19 AND THE DECLARATION IN SUPPORT.

20 HERE'S THE PROBLEM I HAVE WITH THE
21 REQUEST TO CROSS-EXAMINE HER ON HER PRIOR SEXUAL
22 CONDUCT IN THIS MATTER. UNDER THE THEORY THAT
23 SOMEHOW THAT WOULD BE RELEVANT TO THE DEFENSE THAT
24 WHATEVER SEX, IF SEX TOOK PLACE, IT WAS CONSENSUAL,
25 NOT FORCIBLE. I THINK THERE'S A CONFUSION OF TERMS
26 IN TERMS OF CONSENT TO HAVE SEX AND THE PERSON'S
27 HAVING PRIOR EXPERIENCE IN HAVING SEX. THE TWO DO
28 NOT EQUATE.

1 RELEVANT PRIOR SEXUAL CONDUCT HAS TO
2 GO TO SUPPORT THE THEORY THAT INFORMS THE JURY THAT
3 THIS WAS NOT FORCIBLE BUT CONSENSUAL. THE FACT THAT
4 SHE SIMPLY IS EXPERIENCED AT HER VERY YOUNG AGE
5 SIMPLY MEANS THAT SHE'S EXPERIENCED AT A VERY YOUNG
6 AGE WHETHER SHE SAT HERE CLUTCHING A TEDDY BEAR AND
7 WAS A 14-YEAR-OLD GIRL ON THE WITNESS STAND.

8 HOW SHE APPEARS, HOW SHE LOOKS, HOW
9 YOUTHFUL SHE IS IS -- DOES NOT GO TO THE ISSUE OF
10 WHETHER SHE CONSENTED OR WHETHER SHE WAS A VICTIM OF
11 A FORCIBLE SEXUAL ENCOUNTER.

12 CAN YOU CLEAR THAT UP FOR ME, COUNSEL,
13 BECAUSE I DON'T SEE THE LOGICAL EVIDENTIARY
14 CONNECTION BETWEEN THE TWO.

15 MR. NEWTON: NO, YOUR HONOR. MY CONCERN
16 CLEARLY IF SHE WAS AN ADULT NONE OF THAT STUFF WOULD
17 BE RELEVANT. MY CONCERN IS THE JURY IS SAYING HEY,
18 LOOK, SHE'S A CHILD. THERE'S NO WAY SHE'D EVER
19 CONSENT TO SEX. CHILDREN DON'T DO THAT. AND SO THAT
20 MAKES IT RELEVANT HERE AND ESPECIALLY TO THE EXTENT,
21 YOU KNOW, WE'RE TALKING ABOUT VIRGINITY MYTHS AND
22 SHE'S UP THERE WITH HER TEDDY BEAR WHICH I SUSPECT
23 SHE NEVER OWNED BEFORE THE DAY OF TRIAL JUST FOR THE
24 JURY TO SEE. YOU KNOW, WE'RE DOING EVERYTHING WE CAN
25 TO SUPPORT THE IDEA THAT SHE'S A CHILD AND SHE WOULD
26 NEVER CONSENT TO SEX BECAUSE SHE'S A CHILD. AND
27 THAT'S MY CONCERN IS THAT WE'RE GOING THAT WAY AND
28 WE'RE KIND OF SHEDDING THIS LIGHT ON HER. IT'S JUST

1 NOT TRUE.

2 THE COURT: FIRST OF ALL, I HAVE NOT HEARD
3 ANY EVIDENCE YET. WHAT IS THE EVIDENCE OF FORCIBLE
4 RAPE? I HAVE NOT HEARD IT HERE OTHER THAN THE FACT
5 THAT SHE DID NOT CONSENT TO IT IN A GENERAL SENSE.

6 I HAVE NOT HEARD WHETHER THERE'S
7 PHYSICAL EVIDENCE AND IF THERE'S A LACK OF PHYSICAL
8 EVIDENCE THAT GOES TO THE QUESTION THAT YOU CAN ARGUE
9 TO THE JURY. I AM LOOKING FOR SOME KIND OF HOOK THAT
10 SIMPLY SAYS EXPERIENCE EQUATES TO CONSENT OR
11 EXPERIENCE DEMYSTIFIES THE AURA THAT YOU'RE CLAIMING
12 OF A YOUNG VIRGINAL VICTIM HERE WHO WOULD NOT ENGAGE
13 IN CONSENSUAL SEX WITH A MAN ALMOST TWICE HER AGE OR
14 TWICE HER AGE AND PLUS.

15 WE'RE NOT DEALING IN MYTH-MAKING HERE
16 OR DISPELLING. LEAVE IT FOR ARGUMENT. YOU CAN
17 CROSS-EXAMINE TO YOUR HEART'S DELIGHT THE SART NURSE
18 IN TERMS OF HER FINDINGS I GUESS WAS SOME INDICATION
19 IN THE MOVING PAPERS AND I BELIEVE YOUR OPENING
20 STATEMENT THAT HER HYMEN WAS STILL INTACT; IS THAT
21 CORRECT?

22 MR. MATOBA: NO, YOUR HONOR. IT WAS MORE
23 OF -- IT WAS DISCUSSING WITH THE JURY THAT THERE'S
24 THIS MYTH THAT A LOT OF JURORS AND A LOT OF PEOPLE
25 BELIEVE THAT IF THE HYMEN IS INTACT, THEREFORE, YOU
26 CAN DETERMINE IF SOMEONE IS A VIRGIN OR NOT. IT WAS
27 MORE JUST LETTING THEM KNOW THERE WAS GOING TO BE
28 SOME MYTHS DISPELLED IN REGARDS TO THAT.

1 THE COURT: WHAT IS THE RELEVANCE OF THAT?

2 MR. MATOBA: THE RELEVANCE IS TO DISPEL. A
3 LOT OF PEOPLE THINK IF IT'S INTACT OR NOT INTACT,
4 THAT GIVES A SIGN OF SOME SORT OF SEXUAL CONDUCT.

5 THE COURT: I GUESS I'M QUESTIONING, WAS IT
6 INTACT OR NOT INTACT?

7 MR. MATOBA: IT COULD BE IN EITHER
8 SITUATION.

9 THE COURT: NO, IN THIS SITUATION. I MEAN
10 WHAT WAS THE FINDING OF THE SART NURSE AND WHAT'S THE
11 RELEVANCE? WHAT I'M GETTING AT IS --

12 MR. MATOBA: MY ANSWER TO THAT IS IT'S NOT
13 RELEVANT BECAUSE IT COULD BE INTACT OR IT COULD NOT
14 BE INTACT AND A PERSON COULD EITHER HAVE SEX OR NOT
15 HAVE SEX.

16 THE COURT: I'M JUST WONDERING WHY IT WAS
17 RAISED AND MADE AN ISSUE. THE ISSUE -- YOU CAN
18 CROSS-EXAMINE THE SART NURSE IN TERMS OF WHAT SHE
19 NORMALLY LOOKS FOR WHEN THERE'S FORCIBLE SEX AND SO
20 FORTH LIKE THAT, WHETHER THERE'S ANY INJURY OR
21 BRUISES OR THINGS LIKE THAT, THE LEVEL OF RESISTANCE
22 IS INVOLVED IN, I DON'T KNOW WHAT THE LEVEL OF
23 EVIDENCE THE PEOPLE WILL BE INTRODUCING IN THE LEVEL
24 OF RESISTANCE. IF THE LEVEL OF RESISTANCE IS SUCH
25 THAT IT WAS NOMINAL FOR THE REASONS STATED BY THE
26 VICTIM, IT'S FOR THE JURY TO DETERMINE THAT'S
27 SUFFICIENT FOR THE PURPOSE OF THE CHARGE. THERE'S
28 NOTHING IN TERMS OF SEXUAL EXPERIENCE OF A 13 YEAR

1 OLD THAT BECOMES RELEVANT IN WITH REGARDS TO WHETHER
2 SHE CONSENTED TO SEX WITH THIS DEFENDANT.

3 SEXUAL CONDUCT EVIDENCE HAS TO BE
4 RELEVANT TO THE ISSUE IN QUESTION AND COUNSEL HAS NOT
5 REACHED THAT THRESHOLD.

6 DO YOU WISH TO MAKE A FURTHER RECORD?

7 MR. NEWTON: NO, YOUR HONOR. THANK YOU.

8 THE COURT: ALL RIGHT. THE MOTION IS
9 DENIED. ANYTHING ELSE? MR. MATOBA, YOU INDICATED
10 THAT YOU'D LIKE TO REOPEN THE CROSS?

11 MR. MATOBA: YES, YOUR HONOR. I THINK THAT
12 ON A DIFFERENT DAY, MAYBE A DIFFERENT ATTITUDE
13 BECAUSE SHE WAS TAKEN WHEN SHE RAN AWAY THAT SHE
14 MIGHT BE A LITTLE MORE RECEPTIVE TO SOME QUESTIONING
15 AND I JUST WANT THE OPPORTUNITY --

16 THE COURT: I'LL LET YOU EXPLORE IT.

17 MR. MATOBA: THANK YOU.

18 THE COURT: ANYTHING ELSE? LET'S BRING THEM
19 OUT.

20
21 (THE FOLLOWING PROCEEDINGS WERE HELD
22 IN OPEN COURT IN THE PRESENCE OF THE
23 JURY:)

24
25 THE COURT: CONTINUE ON THE RECORD ON THE
26 PEOPLE OF THE STATE OF CALIFORNIA VERSUS GERARDO
27 ORTIZ. DEFENDANT IS PRESENT IN COURT. ALL COUNSEL
28 ARE PRESENT. ALL JURORS IN THEIR APPROPRIATE SEATS

1 AND MONICA DOE IS UNDER THE WITNESS STAND STILL UNDER
2 OATH. GOOD MORNING. THANK YOU FOR YOUR PATIENCE.

3 MR. MATOBA, DO YOU HAVE ANY QUESTIONS
4 YOU WISH TO REOPEN?

5 MR. NEWTON: YES, YOUR HONOR, PLEASE.

6 THE COURT: OKAY. YOU MAY.

7 MR. MATOBA: THANK YOU.

8

9 *MONICA DOE,*

10 CALLED AS A WITNESS, HAVING BEEN PREVIOUSLY
11 SWORN, TESTIFIED FURTHER AS FOLLOWS:

12

13 ***DIRECT EXAMINATION RESUMED***

14

15 BY MR. MATOBA:

16 Q GOOD MORNING, MONICA.

17 A GOOD MORNING.

18 Q NOW, CAN YOU DESCRIBE HOW YOU KNOW
19 MR. ORTIZ?

20 A (NO AUDIBLE RESPONSE.)

21 THE COURT: MONICA, CAN YOU ANSWER THE
22 QUESTION?

23 THE WITNESS: NO.

24 BY MR. MATOBA:

25 Q DO YOU UNDERSTAND THE QUESTION?

26 A NO.

27 Q OKAY. IF YOU DON'T UNDERSTAND ANY
28 QUESTION, JUST LET ME KNOW, LET THE JUDGE KNOW OR LET

1 THE DEFENSE ATTORNEY KNOW AND WE'LL ASK IT A
2 DIFFERENT WAY. OKAY?

3 THE COURT: UNDERSTOOD?

4 THE WITNESS: YES.

5 THE COURT: OKAY. YOU NEED TO SPEAK UP
6 LOUDLY SO EVERYONE IN THIS COURTROOM CAN HEAR YOU.
7 ALL RIGHT? SO IF YOU'RE GOING TO HAVE A SOFT VOICE,
8 THEN YOU NEED HAVE A SOFT VOICE INTO THE MICROPHONE
9 WILL GIVE YOU A BIG VOICE. OKAY.

10 THE WITNESS: OKAY.

11 THE COURT: THANK YOU.

12 BY MR. MATOBA:

13 Q PRIOR TO THE DATE THAT THIS INCIDENT
14 HAPPENED WITH MR. ORTIZ, HAD YOU SEEN MR. ORTIZ
15 BEFORE?

16 A YES.

17 Q AND HE LIVED IN THE SAME HOUSE THAT
18 YOU DID?

19 A YES.

20 Q HOW MANY OTHER PEOPLE LIVED IN THIS
21 HOUSE?

22 A I'M NOT SURE.

23 Q YOU MENTIONED YOUR MOTHER, AND YOU
24 YOUR BROTHER LIVED IN ONE ROOM?

25 A YES.

26 Q AND WAS YOUR ROOM ACROSS FROM
27 MR. ORTIZ'S ROOM?

28 A I DON'T REMEMBER.

1 Q OKAY. WAS HIS ROOM NEAR YOUR ROOM?
2 A YES.
3 Q APPROXIMATELY HOW FAR WAS YOUR ROOM
4 FROM HIS ROOM? AND IF IT'S EASIER FOR YOU TO POINT
5 TO SOMETHING IN THE COURTROOM, THAT'S OKAY.
6 A I'M NOT SURE.
7 Q OKAY. WAS YOUR ROOM -- SAY WHERE
8 YOU'RE AT TO THE BACK WALL, IS THAT TOO FAR?
9 A TOO FAR.
10 Q NOW, LET ME START WALKING TOWARDS YOU
11 AND I'M GOING TO START WALKING FROM THIS BACK WALL,
12 I'M GOING TO START WALKING TOWARDS YOU. TELL ME WHEN
13 TO STOP WHEN IT'S APPROXIMATELY WHERE YOUR ROOM IS
14 FROM HIS ROOM.
15 A STOP.
16 MR. MATOBA: APPROXIMATELY EIGHT TO
17 TEN FEET, YOUR HONOR.
18 THE COURT: NINE FEET. OKAY.
19 BY MR. MATOBA:
20 Q AND DID YOU SEE MR. ORTIZ AROUND THE
21 HOUSE?
22 A YES.
23 Q DID YOU EVER TALK TO HIM AND HAVE ANY
24 CONVERSATIONS WITH HIM?
25 A NO.
26 Q WOULD YOU SAY HELLO OR GOOD-BYE TO
27 HIM?
28 A NO.

1 Q NOW, DO YOU REMEMBER YOU'VE SPOKEN TO
2 THE POLICE ABOUT THIS AND YOU'VE ALSO SPOKEN TO SUSY
3 FLORES AT THE CHILD ADVOCACY CENTER?

4 A YES.

5 Q DO YOU REMEMBER THAT?

6 A YES.

7 Q WAS IT EASIER FOR YOU TO TALK WITH THE
8 POLICE OR WITH SUSY?

9 A WITH SUSY.

10 Q OKAY. WAS IT EASIER FOR YOU TO TALK
11 TO SUSY THAN HERE IN THE JURY ROOM?

12 A YES.

13 Q WHY IS IT EASIER FOR YOU TO SPEAK TO
14 SUSY?

15 A BECAUSE IT WAS JUST ME AND HER.

16 Q OKAY. WHEN YOU WERE TALKING TO SUSY,
17 WERE YOU IN JUST A ROOM JUST THE TWO OF YOU?

18 A YES.

19 Q DO YOU LIKE SPEAKING IN FRONT OF
20 GROUPS OF PEOPLE?

21 A NO.

22 Q IS THAT WHY IT'S KIND OF TOUGH FOR YOU
23 TO SPEAK IN COURT TODAY?

24 A YES.

25 Q AND YESTERDAY AS WELL?

26 A YES.

27 Q NOW, YOU HAD MENTIONED THERE'S A LOT
28 OF THINGS THAT YOU DON'T SEEM TO REMEMBER ABOUT WHAT

1 HAPPENED WITH MR. ORTIZ.

2 DO YOU KNOW WHERE IT HAPPENED?

3 A YES.

4 Q WHERE DID IT HAPPEN?

5 A (NO AUDIBLE RESPONSE.)

6 Q LET ME NARROW THE QUESTION DOWN A
7 LITTLE BIT FOR YOU. DID IT HAPPEN AT YOUR HOUSE
8 WHERE YOU WERE LIVING AT THE TIME?

9 A YES.

10 Q DID IT HAPPEN IN A ROOM WITHIN THE
11 HOUSE?

12 A YES.

13 Q DID IT HAPPEN IN YOUR ROOM?

14 A NO.

15 Q DID IT HAPPEN IN LIKE A FAMILY ROOM OR
16 A LIVING ROOM?

17 A NO.

18 Q WHOSE ROOM DID IT HAPPEN IN?

19 A (NO AUDIBLE RESPONSE.)

20 Q MONICA, CAN YOU ANSWER THE QUESTION?

21 A NO.

22 Q AND WHY CAN'T YOU ANSWER THAT
23 QUESTION?

24 THE COURT: CAN YOU EXPLAIN TO THE COURT WHY
25 YOU CANNOT ANSWER THAT QUESTION.

26 THE WITNESS: IT'S HARD FOR ME TO SAY.

27 BY MR. MATOBA:

28 Q OKAY. WELL, CAN YOU TRY AND EXPLAIN

1 THE BEST THAT YOU CAN AND JUST TELL US WHY IT'S TOUGH
2 FOR YOU TO TALK ABOUT.

3 A (NO AUDIBLE RESPONSE.)

4 THE COURT: DO YOU REMEMBER WHAT ROOM IT
5 TOOK PLACE IN?

6 THE WITNESS: YES.

7 THE COURT: WHAT ROOM DID IT TAKE PLACE IN?

8 THE WITNESS: (NO AUDIBLE RESPONSE.)

9 THE COURT: IF YOU HAVE A MEMORY OF THE
10 ROOM, TELL US WHAT THE ROOM WAS.

11 BY MR. MATOBA:

12 Q DID IT HAPPEN IN THE KITCHEN, MONICA?

13 A NO.

14 Q DID IT HAPPEN IN MR. ORTIZ'S ROOM?

15 MR. NEWTON: OBJECTION, LEADING.

16 THE WITNESS: YES.

17 THE COURT: OVERRULLED.

18 BY MR. MATOBA:

19 Q DO YOU NOT LIKE SAYING MR. ORTIZ'S
20 NAME?

21 A NO.

22 Q IS THAT PART OF THE REASON WHY IT'S
23 HARD FOR YOU TO SAY IS BECAUSE YOU DO NOT LIKE TO SAY
24 MR. ORTIZ?

25 A YES.

26 Q OKAY. WOULD IT BE EASIER FOR YOU TO
27 USE THE WORD DEFENDANT?

28 A YES.

1 Q OKAY. SO WHEN YOU WERE -- YOU SAID
2 THAT IT HAPPENED IN THE DEFENDANT'S ROOM?

3 A YES.

4 Q HOW DID YOU GET TO THE DEFENDANT'S
5 ROOM?

6 A (NO AUDIBLE RESPONSE.)

7 Q MONICA, DID -- I KNOW THAT THIS IS
8 SOME TOUGH MATERIAL THAT YOU DON'T REALLY WANT TO
9 TALK ABOUT. BUT I WOULD LIKE YOU TO ANSWER JUST A
10 FEW QUESTIONS FOR ME. CAN YOU TRY TO DO THAT?

11 A (NO AUDIBLE RESPONSE.)

12 Q MONICA, CAN YOU ANSWER SOME QUESTIONS?

13 A NO.

14 THE COURT: MONICA, DO YOU RECALL YESTERDAY
15 THAT I TOLD YOU YOU CAN'T PICK AND CHOOSE WHICH
16 QUESTIONS YOU WANT TO ANSWER AND OTHER QUESTIONS THAT
17 YOU REFUSE TO ANSWER?

18 THE WITNESS: YES.

19 THE COURT: ARE YOU REFUSING TO ANSWER?

20 THE WITNESS: NO.

21 THE COURT: IF YOU'RE NOT REFUSING TO
22 ANSWER, THEN GIVE US YOUR BEST ANSWER WITHOUT
23 GUESSING.

24 THE WITNESS: OKAY.

25 THE COURT: AS HARD AS IT IS, CAN YOU ANSWER
26 THE QUESTION NOW?

27 THE WITNESS: YES.

28

1 BY MR. MATOBA:

2 Q OKAY. I'M GOING TO REPEAT THE
3 QUESTION FOR YOU.

4 WHEN -- YOU MENTIONED THAT IT HAPPENED
5 IN THE DEFENDANT'S ROOM. HOW DID YOU GET TO THE
6 DEFENDANT'S ROOM?

7 A I'M NOT SURE.

8 Q DID YOU WALK? DID YOU RUN? DID
9 SOMETHING ELSE HAPPEN?

10 A (NO AUDIBLE RESPONSE.)

11 Q LET ME ASK IT A DIFFERENT WAY THEN.
12 WHEN YOU WERE -- AFTER YOU LEFT THE
13 KITCHEN, DID YOU START WALKING BACK TOWARDS YOUR
14 ROOM?

15 A YES.

16 Q AND WHEN YOU WENT TO THE KITCHEN, DID
17 YOU GRAB SOME THINGS EITHER TO EAT OR DRINK?

18 A YES.

19 Q AND YOU WERE CARRYING SOME OF THOSE
20 THINGS BACK WITH YOU TO YOUR ROOM?

21 A YES.

22 Q AND WHEN YOU GOT TO YOUR -- NEAR YOUR
23 BEDROOM AND NEAR THE DEFENDANT'S BEDROOM, DID YOU
24 WALK INTO HIS ROOM?

25 A YES.

26 Q NOW, DID MR. ORTIZ TELL YOU TO COME
27 INTO HIS ROOM OR DID HE INVITE YOU TO COME INTO HIS
28 ROOM?

1 A I DON'T REMEMBER.
2 Q NOW, WHEN YOU GOT TO THE ROOM, DID YOU
3 ACTUALLY GO INSIDE OF THE ROOM?
4 A (NO AUDIBLE RESPONSE.)
5 Q DO YOU NEED ME TO REPEAT THE QUESTION?
6 A YES.
7 Q MONICA, DID YOU AT A CERTAIN POINT GO
8 INSIDE THE DEFENDANT'S ROOM?
9 A YES.
10 Q WHEN YOU GOT IN THE ROOM, DID YOU
11 STAND IN THE ROOM? DID YOU SIT IN THE ROOM? WHERE
12 DID YOU GO?
13 A I STAND.
14 Q OKAY. YOU STOOD IN THE ROOM?
15 A YES.
16 Q AND THEN AFTER YOU STOOD IN THE ROOM,
17 DID THE DEFENDANT SAY ANYTHING TO YOU?
18 A I DON'T REMEMBER.
19 Q NOW, YOU SAY THAT YOU DON'T REMEMBER
20 HOW YOU GOT IN THE ROOM. WOULD LOOKING AT THE
21 PRELIMINARY HEARING TRANSCRIPT HELP REFRESH YOUR
22 MEMORY?
23 THE COURT: WHY DON'T YOU JUST SIMPLY ASK
24 HER DO YOU RECALL TESTIFYING TO THIS EFFECT? USE
25 THAT TECHNIQUE.
26 MR. MATOBA: THAT'S FINE, YOUR HONOR.
27 Q DID YOU TESTIFY AT THE PRELIMINARY
28 HEARING?

1 A YES.
2 Q AND DID YOU REMEMBER TESTIFYING -- THE
3 QUESTION WAS WHAT HAPPENED WHILE YOU WERE FACING
4 MR. ORTIZ?
5 AND YOU RESPONDED, HE WAS TELLING ME
6 TO COME TOWARDS HIM.
7 DID YOU SAY THAT?
8 A YES.
9 Q AND THEN THE FOLLOWING QUESTION WAS
10 ASKED, DID YOU ACTUALLY GO TOWARDS HIM, THOUGH?
11 ANSWER, YOU SAID YES.
12 IS THAT WHAT HAPPENED?
13 A YES.
14 Q AND THEN THE QUESTION WAS ASKED OF
15 YOU:
16 WHEN YOU GOT CLOSER TO HIM WHAT
17 HAPPENED?
18 ANSWER: HE SAT ME DOWN ON A CHAIR
19 THAT HE HAD ON THE SIDE.
20 DID YOU SAY THAT?
21 A YES.
22 THE COURT: DOES THAT REFRESH YOUR
23 RECOLLECTION OF WHAT HAPPENED AFTER THAT EVENT?
24 THE WITNESS: YES.
25 BY MR. MATOBA:
26 Q NOW, WHEN YOU GOT TO THE CHAIR, DID
27 SOMETHING HAPPEN WHILE YOU WERE AT THE CHAIR?
28 A YES.

1 Q OKAY. WHAT HAPPENED?
2 THE COURT: TELL US WHAT YOU REMEMBER,
3 MONICA.
4 BY MR. MATOBA:
5 Q MONICA, DO YOU NEED ME TO REPEAT THE
6 QUESTION FOR YOU?
7 A YES.
8 Q WHEN YOU GOT TO THE CHAIR, WHAT
9 HAPPENED AFTER YOU GOT TO THE CHAIR?
10 THE COURT: DO YOU REMEMBER WHAT HAPPENED
11 AFTER YOU GOT TO THE CHAIR, MONICA?
12 THE WITNESS: YES.
13 THE COURT: YES? TELL US WHAT YOU REMEMBER.
14 THE WITNESS: (NO AUDIBLE RESPONSE.)
15 THE COURT: IS THERE A REASON WHY YOU CAN'T
16 TELL US WHAT YOU REMEMBER?
17 THE WITNESS: YES.
18 THE COURT: WHAT IS THAT REASON?
19 THE WITNESS: IT'S HARD FOR ME TO SAY.
20 THE COURT: I'M SORRY?
21 THE WITNESS: IT'S HARD FOR ME TO SAY.
22 THE COURT: IT'S HARD FOR YOU TO SAY. I
23 UNDERSTAND THAT. THIS IS VERY DIFFICULT. CAN YOU
24 TAKE A DEEP BREATH AND GIVE IT A TRY. CAN YOU TAKE A
25 DEEP BREATH AND GIVE IT A TRY.
26 THE WITNESS: YES.
27 THE COURT: OKAY. TELL US WHAT HAPPENED
28 AFTER YOU SAT IN THE CHAIR.

1 THE WITNESS: (NO AUDIBLE RESPONSE.)

2 BY MR. MATOBA:

3 Q MONICA, IS IT EASIER FOR YOU IF YOU
4 WERE TO FACE THIS WAY AND IF I STAND RIGHT HERE AND
5 YOU JUST LOOK OVER IN MY DIRECTION LIKE THAT AND TALK
6 TO ME LIKE RIGHT HERE?

7 A NO.

8 Q NO? WOULD YOU RATHER FACE WHERE YOU
9 WERE BEFORE?

10 A YES.

11 Q WOULD IT MORE COMFORTABLE FOR YOU TO
12 MAYBE SIT IN A DIFFERENT CHAIR?

13 A NO.

14 Q OKAY.

15 THE COURT: CAN YOU ANSWER THE QUESTION NOW,
16 MONICA? YES OR NO?

17 THE WITNESS: NO.

18 BY MR. MATOBA:

19 Q MONICA, IN REGARDS TO THE CHAIR, DO
20 YOU REMEMBER TESTIFYING IN REGARDS TO AT THE PRIOR
21 DATE ABOUT WHAT HAPPENED IN THE CHAIR?

22 A I DON'T UNDERSTAND THE QUESTION.

23 Q OKAY. DID YOU TESTIFY BEFORE AT THE
24 PRELIMINARY HEARING ABOUT WHAT HAPPENED AT THE CHAIR?

25 A YES.

26 Q DID YOU TESTIFY --

27 MR. NEWTON: OBJECTION, LEADING.

28 YOUR HONOR, SHE ALREADY SAID SHE REMEMBERS THIS.

1 THE COURT: THE COURT IS GOING TO ALLOW SOME
2 LEEWAY IN REGARDS TO LEADING QUESTIONS BASED UPON A
3 PRIOR RECORD.

4 MR. NEWTON: THANK YOU, YOUR HONOR.

5 BY MR. MATOBA:

6 Q NOW, DID YOU SAY AT A PRIOR DATE --
7 THE QUESTION WAS:

8 HOW DO YOU GET TO THE CHAIR? DID YOU
9 WALK? DID HE HELP YOU? EXPLAIN TO US.

10 ANSWER: HE HELPED ME GET TO THE
11 CHAIR.

12 IS THAT WHAT YOU ANSWERED?

13 A YES.

14 Q AND WHEN YOU SAY HE HELPED ME GET TO
15 THE CHAIR, WAS THE ONLY TWO PEOPLE IN THE ROOM YOU
16 AND THE DEFENDANT?

17 A YES.

18 Q THE NEXT QUESTION WAS:

19 HOW DID HE DO THAT?

20 ANSWER: HE GOT ME FROM MY SHOULDER
21 AND HE SAT ME DOWN ON THE CHAIR.

22 IS THAT HOW YOU ANSWERED?

23 A YES.

24 Q AND IS THAT WHAT HAPPENED?

25 A YES.

26 Q DID YOU ALSO SAY YOU SAID --

27 MR. NEWTON: YOUR HONOR, CAN I JUST LODGE A
28 CONTINUING OBJECTION SO I DON'T HAVE TO KEEP

1 INTERRUPTING.

2 THE COURT: SO NOTED.

3 MR. NEWTON: THANK YOU.

4 BY MR. MATOBA:

5 Q THE QUESTION WAS:

6 YOU SAID HE GOT YOU BY YOUR SHOULDER.

7 HOW DID HE GET YOU BY YOUR SHOULDER? CAN YOU
8 DESCRIBE IT FOR US?

9 ANSWER: LIKE ABOUT LIKE THIS.

10 AND YOU SHOWED THE COURT AND I STATED
11 FOR THE RECORD THE WITNESS TOOK HER RIGHT HAND AND
12 PLACED IT ON HER LEFT SHOULDER.

13 AND THE COURT SAID THE RECORD WILL SO
14 REFLECT.

15 IS THAT HOW HE PUT HIS HAND ON YOU?

16 A YES.

17 Q NOW, WHEN HE PUT HIS HANDS ON YOUR
18 SHOULDER, DID HE PUSH YOU A LITTLE BIT?

19 A I DON'T REMEMBER.

20 Q WOULD LOOKING AT THE -- HEARING THE
21 TRANSCRIPT, WOULD THAT HELP REFRESH YOUR MEMORY?

22 A YES.

23 QUESTION: WHEN HE PUT HIS HAND ON
24 YOUR SHOULDER, DID YOU FEEL HIM MOVE YOU IN ANY WAY?

25 ANSWER: YES.

26 QUESTION: CAN YOU DESCRIBE THAT?

27 ANSWER: CAN YOU REPEAT IT AGAIN.

28 QUESTION: WHEN HE PUT HIS HAND ON

1 YOUR SHOULDER YOU SAID YOU FELT HIM TOUCH YOU. CAN
2 YOU DESCRIBE HOW HE WAS GUIDING YOU TO THE CHAIR OR
3 HOW IT FELT?

4 MONICA, IN REGARDS TO HIS HAND ON YOUR
5 SHOULDER, CAN YOU DESCRIBE WITH HOW MUCH FORCE, IF
6 ANY, WAS USED?

7 ANSWER: NOT THAT MUCH.

8 IS THAT WHAT YOU SAID?

9 A YES.

10 Q IS THAT WHAT HAPPENED?

11 A YES.

12 Q NOW, AT THE POINT THAT YOU GOT TO THE
13 CHAIR, THE QUESTION WAS ASKED OF YOU WHAT HAPPENED.
14 CAN YOU TELL US WHAT HAPPENED ONCE YOU GOT TO THE
15 CHAIR?

16 THE COURT: THERE'S SOME TISSUE RIGHT THERE,
17 MONICA. IF WE TOOK A BREAK, WOULD THAT HELP YOU.

18 THE WITNESS: YES.

19 THE COURT: AND IF WE TOOK A BREAK AND WE
20 CAME BACK FROM THAT BREAK, WOULD YOU BE ABLE TO
21 ANSWER THE QUESTIONS? MONICA?

22 THE WITNESS: NO.

23 THE COURT: BUT YOU BELIEVE YOU NEED A BREAK
24 RIGHT NOW?

25 THE WITNESS: YES.

26 THE COURT: WE'RE GOING TO TAKE FIVE
27 MINUTES. OKAY?

28 THE WITNESS: OKAY.

1 THE COURT: ALL RIGHT. LADIES AND
2 GENTLEMEN, WE'RE GOING TO TAKE A FIVE-MINUTE RECESS.
3 PLEASE GO BACK IN THE JURY DELIBERATION ROOM. YOU'LL
4 BE RESTRICTED TO THE DELIBERATION ROOM. WE'LL BUZZ
5 YOU WHEN WE'RE READY. THE COURT'S PREVIOUS
6 ADMONITION REGARDING YOUR CONDUCT CONTINUES TO APPLY.
7 LEAVE YOUR NOTEBOOK ON YOUR SEAT.

8

9 (THE FOLLOWING PROCEEDINGS WERE HELD
10 IN OPEN COURT OUTSIDE THE PRESENCE OF
11 THE JURY:)

12

13 THE COURT: ALL THE JURORS HAVE EXITED THE
14 COURTROOM. YOU CAN STEP DOWN, MONICA. LEAVE THE
15 DEFENDANT HERE FOR A SECOND.

16 ALL RIGHT, MR. MATOBA, WHAT ARE WE
17 GOING TO DO?

18 MR. MATOBA: WE'RE GOING SLOW BUT I MEAN SHE
19 IS ANSWERING SOME OF THE QUESTIONS.

20 THE COURT: WELL, THE QUESTION IS WHETHER
21 WE'RE GOING TO CONTINUE ON THE PACE OF PRIOR RECORDED
22 TESTIMONY. YOU KNOW, WE HAVE A WITNESS WHO'S JUST
23 NOT ANSWERING THE QUESTION. IT'S NOT A QUESTION OF I
24 DON'T RECALL OR I DON'T REMEMBER. WE HAVE A PERSON
25 WHO'S REFUSING TO ANSWER. WHETHER IT'S BECAUSE OF AN
26 EMOTIONAL ROAD BLOCK OR SHE JUST DOES NOT WANT TO DO
27 IT THE BOTTOM LINE IS THIS SHE'S NOT ANSWERING THE
28 QUESTIONS.

1 MR. MATOBA: YOUR HONOR, IF THE COURT IS,
2 YOU KNOW, BASED UPON THAT GOING TO DECLARE HER
3 UNAVAILABLE.

4 THE COURT: I'M NOT GOING TO DECLARE
5 ANYTHING BECAUSE IT'S NOT BEEN REQUESTED NOR HAS IT
6 BEEN -- I DON'T DO THINGS ON MY OWN.

7 MR. MATOBA: WELL, THE COURT DOES HAVE TO
8 MAKE A FINDING THAT SHE'S NOT ANSWERING QUESTIONS.
9 IF THE COURT MAKES THAT FINDING THEN I CAN REQUEST
10 THAT SHE BE DECLARED UNAVAILABLE AT THIS POINT BUT,
11 YOU KNOW, SHE HAS BEEN ANSWERING QUESTIONS. I KNOW
12 THAT THE PACE IS NOT, YOU KNOW, FAVORABLE TO I THINK
13 EVERYBODY INVOLVED. BUT IF THE COURT MAKES A FINDING
14 THAT SHE IS NOT ANSWERING QUESTIONS, THEN --

15 THE COURT: ARE YOU ASKING THE COURT TO MAKE
16 THAT FINDING OR DO YOU WISH TO CONTINUE AT THIS PACE?
17 IT'S YOUR CALL.

18 MR. MATOBA: YOU KNOW WHAT? SHE IS
19 ANSWERING QUESTIONS SO I MEAN IT'S NOT PREFERABLE
20 BUT, YOU KNOW, SHE IS ANSWERING IT SO I HAVE TO --

21 THE COURT: SHE'S ANSWERING IN THE SENSE
22 THAT SHE'S ACKNOWLEDGING HER PRIOR TESTIMONY.

23 MR. MATOBA: CORRECT.

24 THE COURT: WE'LL SEE WHERE IT GOES ON
25 CROSS. ANYTHING ELSE? ALL RIGHT. WE'RE ON BREAK
26 UNTIL QUARTER TILL, FIVE MINUTES.

28 (BRIEF RECESS)

1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT OUTSIDE THE PRESENCE OF
3 THE JURY:)

4
5 THE COURT: BACK ON THE RECORD ON THE ORTIZ
6 MATTER. DEFENDANT IS PRESENT IN COURT. COUNSEL IS
7 PRESENT. WHERE'S MONICA DOE?

8 MR. MATOBA: I BELIEVE SHE'S IN THE
9 BATHROOM. I DID NOT SEE HER ACTUALLY GO IN BUT BASED
10 ON THE OFFICERS WHO ARE PRESENT, THAT'S WHAT I'VE
11 BEEN INFORMED.

12 THE COURT: IS THE VICTIM'S ADVOCATE WITH
13 HER?

14 MR. MATOBA: YES. SHE SAYS SHE'S TRYING TO
15 TALK TO HER -- HER AND HER MOTHER ARE TRYING TO TALK
16 TO HER TO COME OUT OF THE STALL.

17 THE COURT: WHEN DID THAT CONVERSATION JUST
18 TAKE PLACE?

19 MR. MATOBA: ABOUT 15, 20 SECONDS AGO.
20 THEY'RE ALSO ONE OF THE DEPUTIES WHO WAS INTERVIEWED
21 HER ALSO WENT IN TO TALK TO HER. SO I BELIEVE
22 THEY'RE TRYING TO TAKE CARE OF THAT.

23 THE COURT: WHY DON'T YOU CHECK ON THE
24 STATUS.

25 MR. MATOBA: THANK YOU.

26

27 (BRIEF RECESS)

28 ///

1 (THE FOLLOWING PROCEEDINGS WERE HELD
2 IN OPEN COURT OUTSIDE THE PRESENCE OF
3 THE JURY:)

4
5 THE COURT: WE'RE BACK ON THE RECORD. THE
6 DEFENDANT IS PRESENT. THE PEOPLE ARE PRESENT. ALL
7 COUNSEL ARE PRESENT. WHAT'S OUR STATUS OF MONICA
8 DOE?

9 MR. MATOBA: YOUR HONOR, SHE WAS INITIALLY
10 JUST TO LET THE COURT KNOW -- I DON'T KNOW IF IT WAS
11 ON THE RECORD BEFORE BECAUSE I WAS RUNNING BETWEEN
12 BUT SHE INITIALLY WENT INTO THE BATHROOM. SHE WAS IN
13 THE BATHROOM ON THE GROUND AND WE WERE TRYING TO --
14 SOME OF THE VICTIM ADVOCATE WAS TRYING TO CONVINCE
15 HER TO COME OUT OF THE BATHROOM AT THE TIME. SHE WAS
16 INITIALLY REFUSING TO COME OUT OF THE BATHROOM. SHE
17 IS NOW CURRENTLY OUT OF THE BATHROOM. SHE IS SITTING
18 DOWN ON A BENCH OUTSIDE AND, YOU KNOW, THEY'RE
19 TALKING TO HER AS WE SPEAK.

20 THE COURT: WHAT WAS HER EMOTIONAL STATE
21 THAT YOU OBSERVED?

22 MR. MATOBA: WHEN SHE WAS ON THE BENCH SHE
23 APPEARED TO BE IN TEARS.

24 THE COURT: ARE THE PEOPLE MAKING ANY
25 REQUESTS AT THIS POINT IN TIME?

26 MR. MATOBA: YOUR HONOR, I BELIEVE AT THIS
27 POINT SHE WILL SAY THAT SHE'S GOING TO REFUSE ANY
28 FURTHER QUESTIONING BASED ON MY INQUIRY AND I WOULD

1 JUST ASK -- I HATE TO DO THIS BUT HAVE HER COME UP
2 AND STATE ON THE RECORD THAT SHE IS GOING TO REFUSE
3 JUST SO WE HAVE A COMPLETE RECORD.

4 THE COURT: I'LL BRING HER IN. BUT THE
5 COURT -- I THINK WE'VE MADE MORE THAN A SUFFICIENT
6 RECORD FOR UNAVAILABILITY. WHY DON'T YOU HAVE HER
7 COME IN. I'LL HEAR ARGUMENT FROM YOU, COUNSEL, IF
8 YOU WISH.

9 MR. NEWTON: I WILL, YOUR HONOR. WOULD YOU
10 LIKE FOR ME TO WAIT FOR MR. MATOBA TO COME BACK?

11 THE COURT: YES. I JUST WANT TO MAKE A
12 RECORD NOW. WHY DON'T YOU JUST HAVE A SEAT RIGHT
13 THERE.

14 WE'RE BACK ON THE RECORD CONTINUING ON
15 THE RECORD ON THE ORTIZ MATTER.

16 MONICA, WOULD YOU PLEASE COME FORWARD.
17 WHY DON'T YOU COME AND HAVE A SEAT RIGHT OVER HERE.
18 YOU AND I ARE GOING TO HAVE A LITTLE CONVERSATION.
19 MONICA, HOW ARE YOU FEELING?

20 THE WITNESS: ANXIOUS AND UNCOMFORTABLE.

21 THE COURT: AND WHEN YOU FOUND OUT YOU HAD
22 TO COME TO COURT, THAT'S WHY YOU RAN AWAY YESTERDAY?

23 THE WITNESS: YES.

24 THE COURT: AND IT'S MY UNDERSTANDING THAT
25 DURING OUR BREAK THAT YOU WENT INTO THE RESTROOM AND
26 YOU DIDN'T WANT TO COME OUT; IS THAT CORRECT?

27 THE WITNESS: YES.

28 THE COURT: AND WAS THAT BECAUSE YOU DON'T

1 WANT TO BE HERE?

2 THE WITNESS: YES.

3 THE COURT: AND YOU'RE TESTIFYING IN THIS
4 CASE IS MAKING YOU FEEL UNCOMFORTABLE AND ANXIOUS?

5 THE WITNESS: YES.

6 THE COURT: NOW, THERE ARE TIMES WHERE YOU
7 REFUSE TO ANSWER QUESTIONS EVEN THOUGH YOU HAD A
8 RECOLLECTION OF WHAT HAPPENED; IS THAT CORRECT?

9 THE WITNESS: YES.

10 THE COURT: BUT YOU JUST DON'T WANT TO BE
11 HERE AND TESTIFY; IS THAT RIGHT?

12 THE WITNESS: YES.

13 THE COURT: IS THAT BECAUSE OF THE MEMORIES
14 OF THE EVENT?

15 THE WITNESS: YES.

16 THE COURT: ARE THEY BAD MEMORIES?

17 THE WITNESS: YES.

18 THE COURT: IS THERE ANY OTHER REASON WHY
19 YOU'RE REFUSING TO TESTIFY?

20 THE WITNESS: NO.

21 THE COURT: IS THAT THE REASON WHY YOU'RE
22 NOT TESTIFYING?

23 THE WITNESS: YES.

24 THE COURT: IF WE STARTED UP AGAIN AND
25 BROUGHT THE JURY OUT, WOULD YOU BE TESTIFYING THE
26 SAME WAY YOU'VE BEEN PREVIOUSLY TESTIFYING?

27 THE WITNESS: NO.

28 THE COURT: IN OTHER WORDS, IF YOU HAVE --

1 SOMETIMES YOU DIDN'T ANSWER. YOU JUST SAT THERE.
2 YOU DON'T WANT TO BE HERE, DO YOU?

3 THE WITNESS: NO.

4 THE COURT: I'M NOT GOING TO MAKE ANY
5 FURTHER INQUIRIES. I THINK THE RECORD IN TOTALITY
6 SPEAKS FOR ITSELF. YOU CAN STEP DOWN NOW, MONICA.
7 OKAY? WAIT WITH HER IN THE HALLWAY.

8 JUST FOR THE RECORD, MONICA HAS BEEN
9 PRESENT HERE WITH THE VICTIM'S ADVOCATE AT ALL TIMES
10 IN WHICH SHE'S BEEN TESTIFYING. FOR THE RECORD
11 YESTERDAY WHEN SHE TESTIFIED SHE HAD A TEDDY BEAR IN
12 HER ARMS AND SHE GRIPPED IT. THIS COURT MADE A
13 RECORD YESTERDAY SIDEBAR IN REGARDS TO THIS COURT'S
14 OBSERVATIONS OF MONICA, HER EMOTIONAL STATE. THE
15 COURT IS VERY CONCERNED ABOUT HER EMOTIONAL STATE AND
16 HER REACTIONS TO BEING QUESTIONED ABOUT THESE EVENTS.
17 THE COURT HAS OBSERVED HER AT VARIOUS TIMES WHERE SHE
18 REFUSED TO ANSWER QUESTIONS OR JUST SAT THERE MUTE.
19 I THINK I COVERED THAT YESTERDAY.

20 WE HAVE A REPETITION AGAIN TODAY. THE
21 REPETITION IS THAT SHE SOMETIMES JUST SITS THERE MUTE
22 AND EITHER THE COURT TRIES TO ENCOURAGE HER TO ANSWER
23 OR TO GET AN UNDERSTANDING WHY SHE'S NOT ANSWERING OR
24 THE PEOPLE JUST GO ON TO ANOTHER QUESTION OR
25 REFORMULATE THE QUESTION.

26 AT THIS POINT WE'VE BEEN UTILIZING OR
27 THE PEOPLE HAVE BEEN UTILIZING PRIOR TESTIMONY IN
28 WHICH SHE'S SIMPLY THERE AFFIRMING THE ANSWERS AND

1 NOW SHE'S SIMPLY ACTING AS A PERSON AFFIRMING PRIOR
2 TESTIMONY BUT, IN ESSENCE, IS NOT TESTIFYING BASED
3 UPON A CURRENT MEMORY OF THE EVENTS.

4 THE COURT HAS READ PEOPLE VERSUS
5 FRANCIS, 200 CAL. APP. 3D 579 AND PEOPLE VERSUS
6 FRANCIS IS A VERY INSTRUCTIVE IN THIS CASE WHERE A
7 PERSON WHO IS PHYSICALLY PRESENT AND CAN TESTIFY BUT
8 DOES NOT NEATLY FIT WITHIN ALL OF THE PARAMETERS OF
9 SECTION 240, NONETHELESS CAN STILL BE FOUND
10 UNAVAILABLE UNDER SECTION 240.

11 MR. NEWTON: YOUR HONOR, WHAT'S THE YEAR ON
12 THAT CASE?

13 THE COURT: IT IS A 1988 CASE.

14 MR. NEWTON: JUST FOR THE RECORD, THAT'S
15 BEFORE CRAWFORD?

16 THE COURT: YES, IT IS. AND IT IS DEALING
17 WITH ALSO THE QUESTION OF UNAVAILABILITY, ALSO THE
18 DEFENDANT'S RIGHT TO CONFRONTATION AND
19 CROSS-EXAMINATION. SPECIFICALLY ON THE SECOND TO
20 LAST PARAGRAPH ON PAGE 587, THE COURT STATED WE FIND
21 THAT A WITNESS WHO IS PHYSICALLY AVAILABLE YET
22 REFUSES TO TESTIFY AFTER THE COURT HAS USED ALL
23 AVAILABLE AVENUES TO COERCE SUCH TESTIMONY IS
24 UNAVAILABLE.

25 THIS IS TRUE EVEN THOUGH SUCH A
26 WITNESS DOES NOT NEATLY FIT -- DOES NOT FIT NEATLY
27 INTO ONE OF THE SUBDIVISIONS OF EVIDENCE CODE SECTION
28 240.

1 IT ALSO MENTIONS THAT THE COURT DOES
2 NOT NECESSARILY HAVE TO USE ITS CONTEMPT POWERS WHEN
3 IT'S CLEAR AND OBVIOUS THAT THE WITNESS IS NOT GOING
4 TO TESTIFY AND HAS SO INDICATED AND HAS SO
5 DEMONSTRATED. AND THAT EVEN IF THE COURT RESORTED TO
6 IT'S CONTEMPT POWERS THE RESULT WOULD BE THE SAME.

7 THIS IS A CLASSIC CASE THAT DOES NOT
8 FIT NEATLY INTO THE SUBJECT MATTER. IN FACT, THIS
9 WITNESS WHO IS 14 YEARS OLD -- 15 -- 16?

10 MR. MATOBA: FIFTEEN.

11 THE COURT: FIFTEEN. COULD HAVE AT THE TIME
12 OF THE PRELIMINARY HEARING BEEN VIDEOTAPED
13 EXAMINATION UPON WRITTEN NOTICE BY THE PEOPLE. AND
14 THAT THE COURT COULD HAVE MADE A FINDING THAT IT
15 WOULD HAVE BEEN DETRIMENTAL TO THIS MINOR'S MENTAL
16 HEALTH TO TESTIFY IN THE PROCEEDING AND, THEREFORE,
17 ALLOW THE VIDEOTAPED PRELIMINARY PROCEEDING TO BE IN
18 LIEU OF TESTIMONY.

19 IF, IN FACT, THAT WAS THE SITUATION,
20 THIS COURT WOULD HAVE MADE SUCH A FINDING BASED UPON
21 ITS OWN OBSERVATIONS.

22 THIS CHILD IS OBVIOUSLY DISTURBED,
23 OBVIOUSLY DOESN'T WANT TO BE HERE AND IS BEING
24 SELECTIVE IN TERMS OF RESPONDING TO QUESTIONS. A
25 WITNESS CANNOT BE SELECTIVE IN REGARDS TO WHETHER
26 THEY WISH TO ANSWER A QUESTION OR NOT ANSWER A
27 QUESTION. THE RECORD IS QUITE CLEAR IN TERMS OF HOW
28 THE COURT HAS INSTRUCTED THIS WITNESS THAT SHE CANNOT

1 PICK AND CHOOSE WHAT QUESTIONS SHE WISHES TO ANSWER
2 WHERE SHE DOES HAVE A CURRENT RECOLLECTION OF THE
3 EVENT WITHIN THE CONTENT OF THE QUESTION. THE COURT
4 WILL MAKE SUCH A FINDING THAT THERE WAS A -- SIMPLY A
5 WILLFUL REFUSAL. HOWEVER, THE WILLFUL REFUSAL IS
6 BASED UPON THE COURT'S OBSERVATIONS OF HER MENTAL AND
7 EMOTIONAL STATE AND THE ACTUAL RESULT IS THAT WE HAVE
8 A PERSON HERE WHO SIMPLY IS NOT TESTIFYING ACCORDING
9 TO HER MEMORY OF THE EVENTS AND IS NOT HELPFUL TO THE
10 TRIER OF FACT IN REGARDS TO NOMINAL EVENTS THAT SHE
11 IS TESTIFYING TO LIKE I WAS IN THE KITCHEN. I DID
12 HAVE A -- SOME FOOD. HOWEVER, WE GET TO THE ACTUAL
13 ISSUES IN PLAY AND WE HAVE NO TESTIMONY FROM HER.

14 WE QUESTIONED HER WHETHER IT'S BECAUSE
15 SHE DOESN'T HAVE A CURRENT RECOLLECTION AND THE TIME
16 THAT SHE TESTIFIES AT SUCH. AT OTHER TIMES SHE DOES
17 HAVE A RECOLLECTION BUT REFUSES TO ANSWER.

18 WOULD YOU LIKE TO BE FURTHER HEARD ON
19 THIS, MR. NEWTON?

20 MR. NEWTON: I WOULD, YOUR HONOR. SO FIRST
21 I WOULD RESTATE MY OBSERVATION FROM YESTERDAY AS TO
22 THE STATUTORY LIMITS OF CALIFORNIA PRELIMS. BUT ALSO
23 AT THIS POINT GIVEN THAT SHE HAS TAKEN THE STAND, SHE
24 HAS ANSWERED SOME QUESTIONS I'M JUST FLAT OUT BEING
25 DENIED THE ABILITY TO CROSS-EXAMINE HER AT THIS POINT
26 BECAUSE SHE HAS ANSWERED SOME QUESTIONS. SO ON THAT
27 NOTE, YOU KNOW, I WOULD CERTAINLY MOVE TO DISMISS.

28 THE COURT: YOU HAVE AN OPTION, COUNSEL.

1 YOU CAN MOVE TO STRIKE HER ENTIRE TESTIMONY AND THEN
2 THE COURT WILL RELY SIMPLY AND SOLELY ON HER PRIOR
3 TESTIMONY OF THE PRELIMINARY HEARING TRANSCRIPT WHICH
4 THE COURT HAS ALREADY COVERED IN ITS PRELIMINARY
5 RULING ON HER UNAVAILABILITY AND PRETRIAL PROCEEDING.
6 THAT WAS THE COURT'S PRELIMINARY RULING.

7 THE ACTUALITY OF HER COOPERATION HAS
8 BEEN NOW EXPERIENCED IN HER ACTUAL TESTIMONY OR LACK
9 OF TESTIMONY. SO THE COURT'S PRELIMINARY FINDINGS
10 REMAIN THE SAME. WE COVERED THE ISSUE OF WHETHER THE
11 PRELIMINARY HEARING TRANSCRIPT CAN BE USED IN LIEU OF
12 TESTIMONY IF SHE'S FOUND UNAVAILABLE UNDER 240.

13 BASED UPON HER ACTUAL TESTIFYING IN
14 THIS COURT AND UPON REQUEST OF THE PEOPLE TO FIND HER
15 UNAVAILABLE, THE COURT IS NOW PREPARED TO FIND HER
16 UNAVAILABLE AS A WITNESS EITHER FOR TESTIMONY PERIOD.
17 YOUR CALL IN REGARDS TO WHETHER YOU WISH TO HAVE THE
18 JURY CONSIDER HER TESTIMONY IN LIGHT OF -- AND THEIR
19 OBSERVATIONS OF HER TESTIMONY IN THE CONTEXT ALSO OF
20 THE TESTIMONY OF THE PRELIMINARY TRANSCRIPT OR IF YOU
21 WISH SIMPLY TO HAVE ME STRIKE HER ENTIRE TESTIMONY.
22 I'LL HEAR ARGUMENT ON THAT.

23 MR. NEWTON: SURE. GIVEN THAT MOST OF HER
24 TESTIMONY WAS SIMPLY READING FROM THE PRELIMINARY
25 TRANSCRIPT, AT LEAST MY OTHER CONCERN, THE CONCERN
26 DEFENSE ATTORNEYS GIVE THROUGHOUT THE JURY CAN'T
27 UNHEAR.

28 THE COURT: EXCUSE ME?

1 MR. NEWTON: THE JURY CANNOT UNHEAR WHAT
2 THEY'VE HEARD. OBVIOUSLY YOU'RE GOING TO INSTRUCT
3 THEM TO STRIKE THAT BUT HOW MUCH DOES THAT UNRING THE
4 BELL.

5 THE COURT: WELL, THE POINT I'M MAKING IS
6 THAT YOU CAN -- YOU'VE HAD OPPORTUNITY TO LISTEN TO
7 HER TESTIMONY. YOU CAN REFER TO HER TESTIMONY AND
8 THEN YOU LOOK AT THAT TESTIMONY IN LIGHT OF WHAT
9 OTHER TESTIMONY OR EVIDENCE IS PRESENTED AND THEY CAN
10 MAKE THE CALL.

11 IF I AM STRIKING HER TESTIMONY
12 ENTIRELY AND BASICALLY DISREGARDING, YOU KNOW, WHAT
13 OCCURRED HERE AND WE'RE NOW RELYING UPON THE
14 PRELIMINARY TRANSCRIPT AND I'M DECLARING HER
15 UNAVAILABLE, SO I CAN DECLARE HER UNAVAILABLE BUT A
16 LOT THE TESTIMONY TO STAND AS IT IS FOR PURPOSES THAT
17 YOU THINK MAYBE YOUR INTERESTS AND YOUR INTERESTS OF
18 YOUR CLIENT. THAT'S YOUR CALL. IT'S NOT A QUESTION
19 OF UNRINGING A BELL. I CAN TELL THEM TO IGNORE IT.
20 BUT I'M PLACING IN YOUR HANDS AS TO WHETHER YOU STILL
21 WANT THIS TESTIMONY TO REMAIN FOR PURPOSES OF
22 COMPARISON AND CONTRAST OR NOT OR OBSERVATIONS OF HOW
23 SHE GAVE HER ANSWERS AND SO FORTH.

24 MR. NEWTON: I WOULD WANT IT TO REMAIN
25 SIMPLY FOR THE OBSERVATIONS OF HOW SHE GAVE HER
26 ANSWER. OBVIOUSLY I STILL HAVE A SIXTH AMENDMENT
27 CONCERN.

28 THE COURT: I BELIEVE I CAN STRIKE THE

1 TESTIMONY BUT ALLOW THE JURORS TO VIEW HER
2 PRELIMINARY HEARING TESTIMONY IN LIGHT OF THEIR
3 OBSERVATIONS OF HOW SHE WAS HERE AS A WITNESS.

4 MR. MATOBA?

5 MR. MATOBA: IF THAT'S WHAT THE DEFENSE
6 REQUEST IS, I HAVE NO OBJECTION TO THAT.

7 THE COURT: IS THAT YOUR REQUEST?

8 MR. NEWTON: MY REQUEST IN LIEU OF BEING
9 ABLE TO HAVE THE CASE DISMISSED UNDER SIXTH
10 AMENDMENT, YES, SIR.

11 THE COURT: ARE YOU REQUESTING THE COURT TO
12 THEN STRIKE HER TESTIMONY BUT THE JURORS ARE ENTITLED
13 TO MAKE JUDGMENTS IN TERMS OF HER CREDIBILITY,
14 BELIEVABILITY BASED UPON THEIR OBSERVATIONS OF HER?

15 MR. NEWTON: YES, YOUR HONOR.

16 THE COURT: THAT MOTION IS GRANTED.

17 MR. NEWTON: THANK YOU, YOUR HONOR.

18 THE COURT: THE COURT HAS FOUND HER
19 UNAVAILABLE. I'VE SAID THE PRELIMINARY HEARING
20 TRANSCRIPT TO BE USED IN LIEU OF HER TESTIMONY, HER
21 LIVE TESTIMONY AT THIS POINT. DO YOU HAVE A READER
22 AVAILABLE?

23 MR. MATOBA: I DO HAVE A READER. I JUST
24 NEED TO MAKE SOME ADDITIONAL COPIES, AND I JUST
25 WANTED TO GO OVER WITH COUNSEL SOME OBJECTIONS IN
26 REGARDS TO THAT.

27 I HAVE OTHER WITNESSES AVAILABLE THAT
28 WE CAN CALL SO THAT WAS THE ONE THING I THINK COUNSEL

1 AND I DO NEED TO GO OVER BECAUSE THERE ARE SOME
2 OBJECTIONS.

3 THE COURT: OKAY. SO ARE YOU GOING TO CALL
4 SOME OTHER WITNESSES AT THIS POINT?

5 MR. MATOBA: WE CAN DO THAT FOR THE TIME.

6 THE COURT: WHY DON'T WE BRING OUT THE
7 JURORS NOW.

8 MR. MATOBA: YOUR HONOR, MAY I HAVE FIVE
9 MINUTES JUST TO LET THE VICTIM GO.

10 THE COURT: NO. YOU CAN TELL THEM SHE CAN
11 GO BUT YOU COME RIGHT BACK BECAUSE MY OTHER FIVE
12 MINUTES TURNED INTO 20 -- IT'S TURNED INTO AN HOUR.

13 MR. MATOBA: WELL, I KNOW. I HAD MY OTHER
14 CASE.

15 THE COURT: WELL, I HAD ACTUALLY SET ASIDE
16 11:45 FOR YOU TO GO THERE. YOU WENT ON YOUR OWN.
17 IT'S A SEPARATE QUESTION.

18 MR. MATOBA: I APOLOGIZE, YOUR HONOR.

19 THE COURT: YOU HAD FIVE MINUTES. LET'S
20 BRING OUT THE JURORS.

21
22 (THE FOLLOWING PROCEEDINGS WERE HELD
23 IN OPEN COURT IN THE PRESENCE OF THE
24 JURY:)

25
26 THE COURT: WE'LL CONTINUE ON THE RECORD ON
27 THE ORTIZ MATTER. DEFENDANT IS PRESENT IN COURT.
28 ALL COUNSEL ARE PRESENT. ALL JURORS IN THEIR

1 APPROPRIATE SEATS.

2 LADIES AND GENTLEMEN, AT THIS POINT IN
3 TIME I HAVE DECLARED MONICA DOE LEGALLY UNAVAILABLE
4 AS A WITNESS. YOU WILL NOT HEAR ANY FURTHER LIVE
5 TESTIMONY FROM HER. HER TESTIMONY -- THE TESTIMONY
6 THAT YOU DID HEAR FROM HER IS NOW STRICKEN FROM THE
7 RECORD.

8 IN LIEU OF HER LIVE TESTIMONY LATER ON
9 WE WILL HAVE A READBACK OF HER TESTIMONY AT A
10 PRELIMINARY HEARING OR PRIOR PROCEEDING. AT THAT
11 TIME I WILL GIVE YOU FURTHER INSTRUCTIONS IN TERMS
12 OF -- WELL, I'LL TELL YOU NOW. HOWEVER, IN REVIEWING
13 ALL OF THE EVIDENCE IN THIS CASE INCLUDING HER PRIOR
14 STATEMENTS AND TESTIMONY YOU CAN TAKE INTO ACCOUNT IN
15 EVALUATING THE TRUTH, VERACITY OR WEIGHT OF THAT
16 EVIDENCE. YOU CAN INCLUDE YOUR OBSERVATIONS OF
17 MONICA DOE WHILE SHE TESTIFIED BEFORE YOU YESTERDAY
18 AND TODAY. BUT HER ACTUAL TESTIMONY IS BEING
19 STRICKEN.

20 AT THIS POINT WE WILL TAKE SOME OTHER
21 WITNESSES BEFORE WE GET TO HER PRIOR TESTIMONY.

22 MR. MATOBA.

23 MR. MATOBA: THANK YOU.

24 THE COURT: WHO IS THIS WITNESS?

25 MR. MATOBA: THIS IS DEPUTY KLINSKI.

26 THE COURT: PLEASE COME FORWARD, SIR. MADAM
27 CLERK, PLEASE SWEAR THE WITNESS.

28 ///

10 THE WITNESS: YES, I DO.

11 THE CLERK: PLEASE BE SEATED. CAN I PLEASE
12 HAVE YOU STATE YOUR FIRST AND LAST NAME AND SPELL IT
13 FOR THE RECORD, PLEASE.

14 THE WITNESS: ALAN KLINSKI, A-L-A-N
15 K-L-I-N-S-K-I.

16 THE COURT: THANK YOU. YOU MAY INQUIRE.

17 MR. MATOBA: THANK YOU.

19 DIRECT EXAMINATION

21 BY MR. MATOBA:

22 Q WHAT IS YOUR OCCUPATION AND
23 ASSIGNMENT?

24 A I'M A SERGEANT WITH THE LOS ANGELES
25 COUNTY SHERIFF'S DEPARTMENT CURRENTLY ASSIGNED TO
26 MEN'S CENTRAL JAIL.

27 Q AND HOW LONG HAVE YOU BEEN A DEPUTY
28 SHERIFF?

1 A I'VE BEEN ON THE SHERIFF'S DEPARTMENT
2 FOR 16 YEARS.

3 Q DIRECTING YOUR ATTENTION TO
4 NOVEMBER 18TH, 2012, DID YOU ASSIST WITH A MEDICAL OR
5 A SART EXAMINATION FOR BEEN INDIVIDUAL BY THE NAME OF
6 GERARDO ORTIZ?

7 A YES, HE IS.

8 Q IS HE PRESENT IN COURT TODAY?

9 A YES, YES.

10 Q CAN YOU DESCRIBE WHERE HE'S LOCATED
11 AND WHAT HE'S WEARING?

12 A THE GENTLEMAN SEATED AT THE COUNSEL
13 TABLE WEARING THE BLACK SUIT.

14 THE COURT: IDENTIFYING THE DEFENDANT FOR
15 THE RECORD.

16 BY MR. MATOBA:

17 Q AT A CERTAIN POINT -- FIRST OF ALL,
18 DID THE SART EXAM OCCUR AT A MEDICAL FACILITY?

19 A IT WAS SCHEDULED TO, YES.

20 Q AND DID YOU SPEAK TO MR. ORTIZ ABOUT
21 HOW HE WAS GOING TO GO THROUGH A SEXUAL ASSAULT
22 EXAMINATION, A MEDICAL EXAMINATION?

23 A WHAT I RECALL WE EXPLAINED TO HIM THAT
24 HE WAS THERE FOR A D.N.A. EXAM.

25 Q AND WHEN YOU MENTIONED TO HIM ABOUT
26 THE D.N.A. EXAM AND THAT -- DID YOU TELL HIM HE
27 NEEDED TO GIVE A SAMPLE?

28 A I DON'T RECALL EXACTLY HOW I EXPLAINED

1 THE PROCEDURE WOULD BE.

2 Q DID YOU GO THROUGH SOME MEDICAL
3 PAPERWORK WITH HIM?

4 A YES.

5 Q AND DID HE -- AND AFTER YOU WERE GOING
6 TO GET THE SAMPLE, DID YOU NOTICE WHETHER HE WAS
7 ACTING DIFFERENTLY?

8 A AS WE WERE WAITING IN THE WAITING
9 ROOM, HE BECAME MORE NERVOUS AS TIME WENT ON.

10 Q AND WHAT WERE SOME OF THE THINGS THAT
11 CAUSED YOU TO BELIEVE HE WAS NERVOUS?

12 A THE WAY HE WAS -- HIS MANNERISM,
13 SHAKING HIS FOOT.

14 Q DID -- AT A CERTAIN POINT, DID HE
15 REACT IN A CERTAIN WAY IN REGARDS TO THE REQUEST FOR
16 THE D.N.A.?

17 A AT ONE POINT IN TIME HE STARTED
18 STANDING UP. HE STARTED TO RAISE HIS VOICE AND STATE
19 THAT HE DIDN'T WANT TO HAVE THE EXAM DID YOU KNOW.

20 Q DID YOU TRY AND GET HIM TO RELAX?

21 A YES.

22 Q AND DID HE APPEAR TO RELAX?

23 A NO. HE WAS NERVOUS ABOUT HAVING --
24 GOING THROUGH THE EXAM.

25 Q AND WAS HE ALSO TAKEN TO A DOCTOR BY
26 THE NAME OF DR. ESTRID, E-S-T-R-I-D, HAGER?

27 A I DO BELIEVE THAT WAS THE DOCTOR THAT
28 WAS ON DUTY THAT NIGHT.

1 Q AND WAS HE ADVISED THAT HE WAS GOING
2 TO BE GIVEN A SEXUAL ASSAULT EXAMINATION?

3 A YES.

4 Q AND DID HE REFUSE TO GIVE A SEXUAL
5 ASSAULT EXAMINATION?

6 A YES, HE DID.

7 Q SO HE REFUSED TO GIVE A D.N.A. SAMPLE
8 AS WELL AS THE -- GO THROUGH THE SEXUAL ASSAULT
9 EXAMINATION?

10 A THAT IS CORRECT.

11 Q AND WAS THAT ON NOVEMBER 18TH, 2012?

12 A YES, IT WAS.

13 MR. MATOBA: NOTHING FURTHER FOR THIS
14 WITNESS.

15 THE COURT: CROSS.

16

17 ***CROSS-EXAMINATION***

18

19 BY MR. NEWTON:

20 Q SERGEANT KLINSKI, GOOD MORNING.

21 A GOOD MORNING, SIR.

22 Q NOW, JUST REALLY QUICK, WHEN YOU SAY
23 YOU TRIED TO GET HIM TO RELAX, IT'S PROBABLY A LITTLE
24 DIFFERENT WHEN A JAILER TRIES TO GET YOU TO RELAX
25 THAN SAY, YOU KNOW, A TEDDY BEAR, RIGHT?

26 MR. MATOBA: OBJECTION, ARGUMENTATIVE,
27 VAGUE.

28 THE COURT: LET ME REPHRASE.

1 BY MR. NEWTON:

2 Q IS IT COMMON THAT, YOU KNOW, MAYBE
3 PEOPLE IN CUSTODY DON'T WANT TO RELAX WHEN YOU TELL
4 THEM TO?

5 A I THINK IT WOULD BE A SAFE STATEMENT
6 TO SAY THAT IF A PERSON DOESN'T WANT TO RELAX NO
7 MATTER WHERE THEY'RE AT, IT'S UP TO THAT PERSON IF
8 THEY'RE GOING TO -- HOW THEY WANT TO ACT.

9 Q OKAY. AND I MEAN WHEN YOU WERE AT THE
10 MEDICAL CENTER, WERE YOU ARMED?

11 A YES, WE WERE.

12 Q SO YOU WERE ARMED. IS IT FAIR TO SAY
13 THAT'S GENERALLY NOT RELAXING WHEN SOMEONE IS IN
14 CUSTODY AND ARMED?

15 THE COURT: COUNSEL, LEAVE THAT FOR
16 ARGUMENT.

17 MR. NEWTON: VERY WELL, YOUR HONOR. THANK
18 YOU.

19 Q NOW, DO YOU KNOW ANYTHING ABOUT THE
20 ACTUAL EXAM ITSELF, OR WERE YOU JUST TRANSPORTING HIM
21 THERE FOR THE DOCTOR TO DO THE EXAM?

22 A WE WERE THERE FOR THE TRANSPORT.
23 WE'RE THERE FOR THE TRANSPORT BECAUSE HE IS ACTUALLY
24 COMING FROM THE INMATE RECEPTION CENTER AND I WAS
25 WORKING IN TEMPLE STATION AT THE TIME SO WE MET OTHER
26 DEPUTIES OVER THERE AND JUST TO HAVE THE SART EXAM
27 PERFORMED AND WE WERE THERE TO GATHER THE EVIDENCE
28 AND IF IT WAS COMPLETED AND TAKE THE EVIDENCE BACK.

1 Q SO YOU DON'T KNOW THAT MUCH ABOUT THE
2 ACTUAL EXAM, DO YOU?

3 A NO.

4 Q OKAY. GREAT. NOW, AT SOME POINT AND
5 I'M NOT SURE IF THIS IS YOURSELF OR ANOTHER DEPUTY,
6 THERE WAS A COURT ORDER FOR HIM TO SURRENDER HIS
7 D.N.A.; IS THAT CORRECT? ARE YOU AWARE OF THAT?

8 A I HAVE NO IDEA ABOUT THAT.

9 Q OKAY. IN THAT CASE, THAT WAS NOT YOU.
10 IN THAT CASE, I HAVE NO FURTHER QUESTIONS FOR THIS
11 WITNESS, YOUR HONOR. THANK YOU.

12 THE COURT: THANK YOU. REDIRECT.

13 MR. MATOBA: NO, THANK YOU.

14 THE COURT: THANK YOU, SIR. YOU CAN STEP
15 DOWN. WATCH YOUR STEP. CALL YOUR NEXT WITNESS.
16 PLEASE COME FORWARD. MADAM CLERK.

17

18 *MYRA SOTOMAYOR,*

19 CALLED AS A WITNESS, HAVING BEEN FIRST
20 DULY SWORN, TESTIFIED AS FOLLOWS:

21

22 THE CLERK: YOU DO SOLEMNLY STATE THAT THE
23 TESTIMONY YOU ARE ABOUT TO GIVE IN THE CAUSE NOW
24 PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE
25 WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU
26 GOD.

27 THE WITNESS: YES.

28 THE CLERK: PLEASE BE SEATED.

1 THE WITNESS: GOOD MORNING.
2 THE CLERK: CAN I PLEASE HAVE YOU STATE YOUR
3 FIRST AND LAST NAME AND SPELL IT FOR THE RECORD,
4 PLEASE.

5 THE WITNESS: MY FIRST NAME IS MYRA,
6 M-Y-R-A, LAST NAME IS SOTOMAYOR, S-O-T-O-M-A-Y-O-R.

7 THE COURT: THANK YOU. YOU MAY INQUIRE.

8 MR. MATOBA: YOUR HONOR, CAN WE GO BRIEF
9 SIDEBAR WITH COUNSEL. I JUST WANTED TO DISCUSS
10 SOMETHING REALLY QUICK.

11 THE COURT: DO WE NEED THE REPORTER?

12 MR. MATOBA: NO, WE DO NOT NEED THE
13 REPORTER. JUST BRIEF.

14

15 (PROCEEDINGS WERE HELD AT THE
16 SIDEBAR WHICH WERE NOT REPORTED.)

18 MR. MATOBA: DID SHE GET SWORN IN?

19 THE CLERK: UH-HUH.

20 MR. MATOBA: THANK YOU.

21

22 *DIRECT EXAMINATION*

23

24 BY MR. MATOBA:

25 Q DEPUTY, WHAT IS YOUR OCCUPATION AND
26 ASSIGNMENT?

27 A CURRENTLY I'M A DETECTIVE WITH THE
28 CHILD INVESTIGATIVE UNIT.

1 Q AND DIRECTING YOUR ATTENTION TO
2 NOVEMBER 15TH, 2012, WERE YOU WORKING AT TEMPLE
3 STATION?

4 A YES.

5 Q AND HOW LONG HAVE YOU BEEN A SHERIFF'S
6 DEPUTY?

7 A SEVEN AND A HALF YEARS.

8 Q NOW, ON THAT DATE DID AN INDIVIDUAL
9 COME TO COURT OR I'M SORRY, AN INDIVIDUAL THAT YOU
10 SAW PREVIOUSLY IN COURT, DID THAT PERSON COME INTO
11 THE STATION?

12 A YES.

13 Q AND WITHOUT REFERRING TO HER LAST
14 NAME, IF YOU PLEASE SAY WHAT HER FIRST NAME WAS?

15 A I NEED TO REFER TO MY -- REMEMBER HER
16 AS A VICTIM, SORRY.

17 Q WOULD YOUR REPORT HELP REFRESH YOUR
18 RECOLLECTION?

19 A YES, IT'S MONICA.

20 Q AND WHEN YOU -- DID YOU TAKE A REPORT
21 FROM MONICA?

22 A YES.

23 Q AND YOU INTERVIEWED HER ABOUT
24 SOMETHING THAT HAD HAPPENED TO HER A FEW DAYS PRIOR?

25 A YES.

26 Q WHAT DAY DID SHE TELL YOU EXACTLY THE
27 INCIDENT OCCURRED?

28 A SHE STATED IT OCCURRED ON

1 NOVEMBER 15TH AT ABOUT 6 O'CLOCK IN THE AFTERNOON.
2 Q AND DID SHE TELL YOU WHERE SHE WAS?
3 A SHE SAID SHE WAS IN HER HOUSE. WELL,
4 THE ROOM -- THE HOUSE THAT HER MOM RENTED A ROOM FROM
5 ON GOMEZ PALACIO IN THE CITY OF EL MONTE.
6 Q IS THAT THE ADDRESS OF 11003 GOMEZ
7 PALACIO DRIVE, CITY OF SOUTH EL MONTE, COUNTY OF
8 LOS ANGELES.
9 A YES.
10 Q AND WHEN YOU -- WHAT DID SHE TELL YOU
11 SHE WAS DOING IN THE RESIDENCE?
12 A SHE LIVED THERE.
13 Q AND DID SHE TELL YOU WHAT HAPPENED
14 WHILE SHE WAS AT THE HOUSE?
15 A YES.
16 Q WHAT DID SHE SAY HAPPENED?
17 A SHE STATED ON -- ON THAT AFTERNOON SHE
18 WENT TO GRAB A GLASS OF APPLE JUICE, SHE WAS THIRSTY,
19 SO SHE WALKS INTO THE KITCHEN AND SHE GOES AND SHE
20 GETS A GLASS OF APPLE JUICE. AS SHE'S POURING THE
21 APPLE JUICE INTO THE CUP, A CONVERSATION HAS STARTED
22 BECAUSE THERE'S HER ROOMMATE WHO LIVES -- WHO'S IN
23 KITCHEN WITH HER.
24 Q WHEN YOU SAY ROOMMATE, DID YOU MEAN IT
25 WAS SOMEONE WHO LIVES IN THE SAME ROOM AS HER OR
26 SOMEONE WHO LIVED IN THE SAME HOUSE?
27 A SOMEONE WHO LIVED IN THE SAME HOUSE.
28 THE VICTIM STATED THAT HER MOM RENTED A ROOM FROM THE

1 INDIVIDUAL'S MOM AND SO THE ROOMS WERE NEXT TO EACH
2 OTHER.

3 Q AND DID SHE TELL YOU HOW LONG -- HOW
4 MANY MONTHS THAT HER AND HER FAMILY HAD BEEN LIVING
5 THERE?

6 A SHE STATED SHE LIVED THERE FOR ABOUT
7 SIX MONTHS.

8 Q AND DID SHE TELL YOU WHETHER OR NOT
9 SHE HAD SPOKEN IN ANY BASIS TO MR. ORTIZ?

10 A SHE STATED THAT THAT DAY SHE WALKED IN
11 WHILE HE WAS IN THE KITCHEN WAS THE FIRST TIME THAT
12 SHE HAD TALKED TO HIM.

13 Q AND DID SHE SAY WHAT THE DEFENDANT HAD
14 SAID TO HER?

15 A HE ASKED HER HOW OLD ARE YOU.

16 Q AND WHAT DID SHE SAY?

17 A SHE SAID SHE ANSWERED THAT SHE WAS 13.

18 Q AND WHAT ELSE DID SHE TELL YOU THAT HE
19 SAID?

20 A SHE SAID THAT HE ANSWERED WHILE
21 LOOKING AT HER WOW, YOU LOOK OLDER THAN 13.

22 Q DID HE GIVE ANY OTHER COMPLIMENTS TO
23 HER?

24 A JUST THAT SHE HAD A NICE BODY.

25 Q AND DID SHE SAY APPROXIMATELY HOW LONG
26 THAT CONVERSATION LASTED?

27 A SHE SAID THE CONVERSATION LASTED ABOUT
28 FIVE MINUTES.

1 Q AND WHAT DID SHE SAY HAPPENED NEXT?

2 A SHE SAID THAT HE WALKS OUT OF THE
3 KITCHEN AND PROCEEDS TO GO TO HIS ROOM AS SHE'S
4 FINISHING HER APPLE JUICE IN THE KITCHEN.

5 Q AND WHAT DID SHE SAY HAPPENED NEXT?

6 A SHE SAID SHE FINISHED DRINKING HER
7 APPLE JUICE AND SHE WAS WALKING TO HER ROOM WHICH IS
8 NEXT TO HIS.

9 Q AND WHAT ELSE DID SHE SAY?

10 A AND SHE SAYS THAT HE WAS STANDING BY
11 THE DOORWAY AND SAYS HEY, I NEED TO SHOW YOU
12 SOMETHING. COME INTO MY ROOM.

13 Q AND WHAT DID SHE SAY SHE WAS THINKING
14 AT THAT TIME AT THE TIME?

15 A IN HER MIND SHE SAID SHE DIDN'T THINK
16 NOTHING OF IT SO SHE WALKED INTO THE ROOM.

17 Q AND THEN WHEN SHE SAID SHE WALKED INTO
18 THE ROOM, WHAT DID SHE SAY HAPPENED?

19 A SHE SAID THAT WHEN SHE WALKED INTO THE
20 ROOM, THAT HE GRABBED HER BY THE ARM AND SAT HER ON A
21 CHAIR.

22 Q AND WHAT DID SHE TELL YOU HAPPENED
23 NEXT?

24 A SO WHILE SHE'S SITTING ON THE CHAIR,
25 HE'S STANDING ABOUT AN ARM'S DISTANCE AWAY FROM HER,
26 AND HE CONTINUES TO SAY ABOUT HOW SHE LOOKS OLDER
27 THAN SHE LOOKS, HER BEING 13 BUT THAT IF SHE WERE TO
28 WORK OUT, THAT SHE WOULD HAVE A BETTER FIGURE THAN

1 WHAT SHE DID.

2 Q AND DID SHE SAY WHAT ELSE HE SAID?

3 A AND THEN HE PROCEEDS TO SIT DOWN NEXT
4 TO HER.

5 Q DID SHE TELL YOU WHAT HAPPENED NEXT?

6 A AND THEN HE LEANED IN FOR A KISS, AND
7 WHEN HE KISSED HER HE PUT HIS TONGUE INTO HER MOUTH.

8 Q DID SHE SAY WHETHER OR NOT SHE WANTED
9 TO BE KISSED?

10 A SHE DID NOT SAY.

11 Q WHAT ELSE DID SHE TELL YOU?

12 A SHE SAID THAT AFTER THAT HE SAYS HOLD
13 ON. I'VE GOT TO SHOW YOU SOMETHING. GETS UP, GOES
14 TO THE DOOR AND LOCKS IT.

15 Q AND WHAT DID SHE SAY HE DID NEXT?

16 A AFTER HE LOCKED THE DOOR, HE WALKS
17 BACK TO HER, GRABS HER BY THE ARMS, PUTS BOTH OF HIS
18 HANDS ON HER ARMS, PICKS HER UP. THEN SHE SAYS THAT
19 HE GENTLY PUT HER -- LAID HER DOWN ON THE BED FACE
20 UP.

21 Q AND WHAT DID SHE SAY? DID SHE TELL --
22 DID SHE DESCRIBE THE CONDITION OF THE ROOM?

23 A NO.

24 Q DID SHE SAY WHETHER THE LIGHTS WERE ON
25 OR OFF?

26 A THE LIGHTS WERE ON. THE LIGHTS WERE
27 ON.

28 Q AND DID SHE DESCRIBE WHAT SHE WAS OR

1 WHERE SHE -- WHERE HE LAID HER DOWN EXACTLY?

2 A HE LAID HER DOWN IN THE BED FACE UP
3 WITH THE LIGHTS ON.

4 Q AND WHAT DID SHE SAY HAPPENED NEXT?

5 A SHE SAID THAT HE THEN PROCEEDS TO PULL
6 DOWN HER SHORTS. SHE SAID THAT IT WAS -- IT WASN'T
7 HARD TO PULL DOWN HER SHORTS BECAUSE THEY WERE
8 ELASTIC. SO THEN HE PROCEEDS TO PULL DOWN HIS -- HER
9 SHORTS DIDN'T SAY TO WHAT LENGTH BUT THAT SHE TRIED
10 TO KIND OF BE LIKE GOT UP TO BE KIND OF LIKE WHAT'S
11 GOING ON. BUT THEN HE PUTS HIS LEFT HAND ON HER
12 RIGHT SHOULDER AND BRINGS HER DOWN.

13 Q NOW, DID SHE SAY -- DID SHE TELL YOU
14 WHETHER OR NOT SHE WAS TRYING TO GET AWAY FROM HIM?

15 A SHE'S A VERY TIMID GIRL AND SO SHE
16 DIDN'T SAY THAT SHE WAS TRYING TO GET AWAY FROM HIM,
17 BUT SHE DID SAY THAT SHE DIDN'T KNOW WHAT WAS GOING
18 ON. IT'S ONE OF THOSE SITUATIONS WHERE SHE FROZE.
19 SHE DIDN'T KNOW HOW TO HELP HERSELF, WHAT WAS GOING
20 ON. SHE DIDN'T KNOW. SHE DIDN'T YELL. SHE DIDN'T
21 DO ANY OF THAT.

22 Q DID SHE SAY WHETHER OR NOT ANYTHING
23 HAD HELD HER TO THE BED?

24 A HIS LEFT ARM.

25 Q AND DID SHE SAY WHETHER OR NOT WHERE
26 HIS LEFT ARM WAS EXACTLY?

27 A ON HER RIGHT SHOULDER.

28 Q AND DID SHE DESCRIBE HOW MUCH WEIGHT

1 HE WAS PUTTING DOWN ON HER?

2 A AS HE WAS HOLDING HER DOWN WITH HIS
3 LEFT HAND HE WAS ON TOP OF HER I BELIEVE THE WORD.

4 Q DO YOU REMEMBER THE EXACT WORDING?

5 A HE LEANED IN -- LIKE HE LEANED HIS
6 BODY ON HER.

7 Q AND DID SHE SAY WHETHER OR NOT SHE
8 COULD MOVE AT THAT POINT?

9 A NO, SHE DIDN'T.

10 Q DID HE -- AND WHILE HE WAS HOLDING
11 HER, DID SHE SAY WHAT HAPPENED NEXT?

12 A SHE SAID THAT AS HE WAS HOLDING HER
13 WITH HIS LEFT -- WITH THE LEFT ARM AND HIS BODY
14 LEANED ON HER, HE THEN PROCEEDS TO PENETRATE HER
15 VAGINA WITH HIS RIGHT HAND. SHE SAID APPROXIMATELY
16 MAYBE SEVEN TIMES AS HE WOULD KISS HER VAGINA AS
17 WELL. AND SHE STATED THIS LASTED ABOUT -- HE
18 PENETRATED HER ABOUT SEVEN TIMES BUT THAT IT LASTED
19 ABOUT TWO MINUTES.

20 Q NOW, WHEN YOU ASKED HER SPECIFICALLY
21 ABOUT, YOU KNOW, PENETRATION, DID YOU ASK HER WHETHER
22 OR NOT THE FINGERS ACTUALLY WENT INSIDE HER VAGINA OR
23 JUST THE OUTSIDE?

24 A NO, SHE SAID THEY WENT INTO HER
25 VAGINA.

26 Q AND WHEN SHE DESCRIBED WHAT HIS --
27 SAID THAT THERE WAS SOME SORT OF KISSING. HOW DID
28 SHE DESCRIBE THE KISSING AGAIN?

1 A THE KISSING HER VAGINA.
2 Q AND DID SHE ACTUALLY SAY WHETHER OR
3 NOT HIS MOUTH WAS TOUCHING HER VAGINA?
4 A YES, HIS MOUTH WAS TOUCHING HER
5 VAGINA.
6 Q AND DID YOU ASK HER WHAT HAPPENED WITH
7 HER UNDERWEAR?
8 A SHE SAID THAT AS HE WAS PENETRATING
9 HER, HE NEVER PULLED DOWN HER UNDERWEAR, THAT HE
10 WOULD JUST PULL THEM OFF TO THE SIDE.
11 Q AND THEN DID SHE SAY APPROXIMATELY HOW
12 LONG THIS WENT ON FOR?
13 A SHE SAID MAYBE ABOUT TWO MINUTES.
14 Q AND DID SHE TRY AND GET UP THROUGHOUT
15 THIS ENTIRE EVENT?
16 A THE ONLY TIME THAT SHE TRIED TO GET UP
17 WAS INITIALLY WHEN HE PULLED DOWN HER PANTS BUT THEN
18 WHEN HE PUT HIS LEFT HAND ON HER, SHE LAID DOWN AND
19 THAT'S WHEN SHE SAYS THAT SHE FROZE, DIDN'T KNOW WHAT
20 TO DO, HOW TO HELP HERSELF.
21 Q AND DID HE CONTINUE TO HOLD HER DOWN?
22 A YES, AND THEN SHE SAID THAT AFTER THE
23 TWO MINUTES TIME LAPSE KIND OF WENT ON, HE STILL HAD
24 HIS LEFT HAND ON HER RIGHT SHOULDER AND THAT'S WHEN
25 HE -- USING HIS RIGHT HAND TOOK OUT HIS ERECT PENIS
26 AND PENETRATED HER.
27 Q NOW, DID SHE ACTUALLY USE THE WORD AN
28 ERECT PENIS OR HOW DID SHE ACTUALLY DESCRIBE IT?

1 A SHE JUST SAID PULLED OUT HIS PENIS AND
2 WENT IN ME BUT I ASKED HEY, WAS IT ERECT? WAS IT
3 BIG? WAS IT HARD? AND LIKE I SAID, SHE WAS A VERY
4 TIMID GIRL AND KNOWING THE VERBIAGE THAT WE HAD TO
5 USE, I JUST SAID WAS IT BIG? WAS IT LITTLE? WAS IT
6 HARD? BUT I WROTE ERECT.

7 Q AND BASED UPON THE WORDS THAT YOU USED
8 WITH HER, YOU WERE ABLE TO DETERMINE SHE WAS
9 DESCRIBING AN ERECT PENIS?

10 A CORRECT.

11 Q AND DID SHE SAY WHETHER OR NOT WHAT HE
12 DID NEXT WITH HIS PENIS?

13 A HE THRUSTED HER ABOUT FIVE TIMES.

14 Q AND DID SHE DESCRIBE WHETHER OR NOT OR
15 DID YOU ASK HER WHETHER OR NOT A CONDOM WAS PLACED
16 ON?

17 A I DID ASK HER. I SAID DID HE PUT ON A
18 CONDOM, AND SHE SAID HE DID NOT.

19 Q AND DID SHE -- DID YOU ASK HER ABOUT
20 EJACULATION?

21 A I SAID DID HE FINISH? DID HE
22 EJACULATE? AND SHE SAID NO, BECAUSE THE PHONE RANG.

23 Q AND WHAT DID SHE SAY HAPPENED AFTER
24 THE PHONE RANG?

25 A SHE SAID WHEN THE PHONE RANG HE GOT
26 OFF OF HER AND WENT TO ANSWER THE PHONE.

27 Q AND WHILE THIS HAPPENED, HOW DID SHE
28 SAY SHE RESPONDED?

1 A SHE SAID THAT THE PHONE RANG AND SO
2 THEN HE WAS TALKING TO SOMEBODY, OPENS -- PUTS DOWN
3 ON HIS CLOTHES, OPENS THE DOOR AND WALKS OUT. SO SHE
4 IMMEDIATELY GETS UP, GRABS HER UNDERWEAR -- I MEAN
5 GRABS HER SHORTS, GETS UP AND GOES TO THE RESTROOM
6 AND LOCKS HERSELF IN THERE.

7 Q AND DID SHE SAY THAT -- HOW LONG SHE
8 STAYED IN THE RESTROOM?

9 A SHE SAID SHE STAYED IN THE RESTROOM
10 UNTIL SHE KNEW THAT NOBODY WOULD HURT HER AGAIN OR
11 SHE USED THE WORD RAPE.

12 Q SO THE WAY THAT SHE ACTUALLY DESCRIBED
13 IT SHE SAID SHE STAYED IN THE BATHROOM UNTIL WHAT?

14 A UNTIL SHE KNEW THAT NOBODY WOULD RAPE
15 HER.

16 Q DID SHE TELL YOU WHETHER OR NOT SHE
17 HAD SHOWERED?

18 A SHE SAID THAT SHE DIDN'T SHOWER UNTIL
19 THE NEXT DAY.

20 Q AND THAT WOULD BE -- WHAT DAY?

21 A THE NOVEMBER 16TH.

22 Q DID SHE TELL YOU WHETHER OR NOT SHE
23 HAD SPOKEN TO ANYONE IN THE HOUSE ABOUT WHAT HAD
24 HAPPENED?

25 A SHE DID NOT TELL ANYBODY.

26 Q DID YOU ASK HER WHETHER OR NOT SHE HAD
27 YELLED FOR HELP OR ASKED FOR HELP?

28 A THAT'S WHAT I ASKED HER, IF SHE TRIED

1 TO ASK FOR HELP, IF SHE TOLD ANYBODY. AND SHE SAID
2 NO. SHE SAID AT THAT MOMENT SHE COULDN'T BELIEVE
3 WHAT WAS HAPPENING TO HER, THAT SHE FROZE, AND SHE
4 DIDN'T KNOW HOW TO HELP HERSELF. SO SHE JUST -- ALL
5 THESE THOUGHTS SHE SAID WERE GOING THROUGH HER MIND
6 BUT SHE FROZE.

7 Q WHEN YOU QUESTIONED HER, DID SHE EVER
8 MENTION THAT SHE'D BEEN THE VICTIM OF A PRIOR SEXUAL
9 ABUSE?

10 A NO, I DIDN'T ASK HER THAT.

11 Q DID SHE DESCRIBE TO YOU WHAT HAPPENED
12 TO HER PANTS AND HER UNDERWEAR?

13 A SHE TOOK THEM OFF. SHE PUT THEM IN
14 THE DIRTY CLOTHES AND SHE LEFT THEM THERE.

15 Q NOW, AFTER -- CAN YOU DESCRIBE WHAT
16 EMOTIONAL STATE SHE WAS IN WHEN YOU WERE TALKING TO
17 HER?

18 A LIKE I SAID, SHE WAS A VERY TIMID
19 GIRL. AND AS A FEMALE DEPUTY THEY'RE WAITING TO GET
20 THE ELEMENTS AND GETTING THE REPORT, MAKING SURE THAT
21 IT'S A DETAILED REPORT AND MAKING HER FEEL
22 COMFORTABLE, IT WAS DIFFICULT BECAUSE SHE'S VERY
23 TIMID. AND SO WHEN YOU USE WORDS AS IN PENIS, ERECT,
24 THEY TEND TO GET SHY. BUT I WAS ABLE TO TALK TO HER
25 AND SHE WAS JUST REALLY SHY, EMBARRASSED, JUST
26 CURLED, TIMID.

27 Q DID SHE -- WAS SHE UPSET?

28 A SAD. MAYBE -- I THINK OF ANYTHING

1 MORE EMBARRASSED AND DISAPPOINTED.

2 Q YOU SAY SHE WAS SAD. HOW DO YOU KNOW
3 THAT SHE WAS SAD?

4 A SHE CRIED.

5 Q WAS SHE CRYING THROUGHOUT THE TIME
6 THAT YOU WERE INTERVIEWING HER?

7 A YES.

8 Q NOW, AFTER SHE TOLD YOU THIS, WHAT WAS
9 THE NEXT STEP OF WHAT YOU DID IN REGARDS TO THE
10 INVESTIGATION?

11 A AFTER THE INVESTIGATION AND I
12 DETERMINED THAT THE ELEMENTS OF THE CRIME WERE THERE
13 AND THE NEXT STEP IS TO CALL THE NURSE, THE SART EXAM
14 AND TO GO GET HER EXAMINED AND SO AFTER I TRANSPORTED
15 HER AND HER MOTHER WITH ME TO THE SAN GABRIEL
16 HOSPITAL AND SHE GOT A SART EXAM CONDUCTED.

17 Q YOU'RE REFERRING TO A SART EXAM, ARE
18 YOU REFERRING TO LIKE A SEXUAL ASSAULT EXAMINATION?

19 A YES.

20 Q NOW, DID YOU STAY AT THAT TIME FOR THE
21 SART EXAMINATION ITSELF?

22 A THE WAY I GOT THE CALL, MY SHIFT WAS
23 FROM 6:00 TO 2:00 IN THE MORNING AND SO WHEN I GOT
24 THE CALL, IT WAS ABOUT 10:45 AND SO BY THE TIME I
25 FINISHED MY INVESTIGATION AND DROVE HER, MY SHIFT WAS
26 OVER. AND SO -- AND THEN WHEN THEY GET -- WHEN THEY
27 GET EXAMINED THEY GO INTO THE NURSE'S OFFICE AND THEY
28 GET THEIR INFORMATION TAKEN WHILE I STOOD IN ANOTHER

1 ROOM TO START WRITING THE REPORT. AND SO I WASN'T
2 THERE FOR THE PROCESS OF THE DEFENDANT AND MY PARTNER
3 CAME AT ABOUT 1:45, TWO O'CLOCK TO RELIEVE ME SO THAT
4 I CAN GO HOME.

5 Q THE PARTNER THAT RELIEVED YOU?

6 A DEPUTY RIVAS.

7 MR. MATOBA: THANK YOU. I HAVE NO FURTHER
8 QUESTIONS FOR THIS WITNESS.

9 THE COURT: CROSS.

10 MR. NEWTON: DO YOU WANT IT RIGHT NOW,
11 YOUR HONOR?

12 THE COURT: YES.

13 WELL, YOU KNOW WHAT? I TAKE IT IT'S
14 GOING TO BE LONGER THAN FIVE MINUTES OR IS IT?

15 MR. NEWTON: PROBABLY.

16 THE COURT: IT WILL TAKE US FIVE MINUTES TO
17 EXIT THE COURTROOM ANYWAY. YOU CAN STEP DOWN.

18 LADIES AND GENTLEMEN, I LEAVE YOU THIS
19 ADMONITION. IT IS YOUR DUTY NOT TO CONVERSE AMONG
20 YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT
21 CONNECTED WITH THIS TRIAL OR FORM OR EXPRESS AN
22 OPINION ON IT UNTIL THE CASE IS SUBMITTED TO YOU FOR
23 YOUR DELIBERATIONS AND VERDICT. MORE IMPORTANTLY DO
24 NOT DISCUSS THIS MORNING'S TESTIMONY OR MONICA DOE'S
25 CONDUCT WITH EACH OTHER OR ANYONE ELSE.

26 WITH THAT BEING SAID, LEAVE YOUR
27 NOTEBOOK ON YOUR SEAT, RETRIEVE ANY PERSONAL ITEMS
28 FROM THE JURY DELIBERATION ROOM. RETURN AT 1:30 P.M.

1 AND I FULLY HOPEFULLY EXPECT WE'LL START AT 1:30 P.M.
2 AND WE'LL PICK UP THE PACE IN THIS TRIAL. THANK YOU
3 FOR YOUR PATIENCE AND UNDERSTANDING. HAVE A NICE
4 LUNCH.

5
6 (THE FOLLOWING PROCEEDINGS WERE HELD
7 IN OPEN COURT OUTSIDE THE PRESENCE OF
8 THE JURY:)

9
10 THE COURT: THE RECORD SHOULD REFLECT WE HAD
11 A SIDEBAR CONFERENCE IN WHICH COUNSEL ASKED TO TAKE A
12 WITNESS OUT OF ORDER IN TERMS OF IMPEACHMENT OF THE
13 PRELIMINARY HEARING.

14 THERE'S NO OBJECTION BY THE DEFENSE
15 AND THE COURT CONTROLS THE ORDER OF PROOF. AND GIVEN
16 THE PACE OF THIS TRIAL AND THE CIRCUMSTANCES OF
17 MONICA DOE, WE'VE HAD WITNESSES WAITING IN THE WINGS
18 AND BACKING UP SO THE COURT EXERCISED ITS DISCRETION
19 ALLOWING THE WITNESS TO BE CALLED OUT OF ORDER.
20 HOWEVER, THERE WAS NO OBJECTION TO IT. THAT'S THE
21 REASON THIS WITNESS TESTIFIED AT THIS TIME. COURT IS
22 IN RECESS.

23
24 (AT 12:00 P.M. A NOON RECESS WAS TAKEN
25 UNTIL 1:30 P.M. OF THE SAME DAY.)

26 ///
27 ///
28 ///

1 CASE NAME: 01) GERARDO ORTIZ
2 CASE NUMBER: KA101692
3 POMONA, CALIFORNIA WEDNESDAY, SEPTEMBER 10, 2014
4 DEPARTMENT EA T HON. GEORGE GENESTA, JUDGE
5 REPORTER: NANCY L. WILSON, CSR NO. 9228
6 TIME: P.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)
8

9 (THE FOLLOWING PROCEEDINGS WERE HELD
10 IN OPEN COURT OUTSIDE THE PRESENCE OF
11 THE JURY:)

12
13 THE COURT: BACK ON THE RECORD ON THE ORTIZ
14 MATTER. ALL PARTIES ARE PRESENT. DEPUTY HENSON, ONE
15 OF THE JURORS APPROACHED YOU REGARDING A MATTER.

16 THE BAILIFF: YES, YOUR HONOR. JUROR
17 NO. SEVEN APPROACHED ME, TOLD ME THAT THE DEPUTY IN
18 UNIFORM, THE MALE DEPUTY IN UNIFORM SHE REALIZES IS
19 NOW -- WELL, SHE REALIZES NOW THAT THAT GENTLEMAN IS
20 HER PARENTS' NEIGHBOR AND SHE DIDN'T EVEN KNOW HE WAS
21 A POLICE OFFICER.

22 THE COURT: AND YOU WERE REFERRING TO THE
23 DEPUTY THAT TESTIFIED; IS THAT CORRECT?

24 THE BAILIFF: YES, YOUR HONOR, THE MALE
25 DEPUTY.

26 THE COURT: YES. EITHER COUNSEL?

27 MR. NEWTON: I HAVE NO ISSUE, YOUR HONOR.

28 MR. MATOBA: NO.

1 THE COURT: OKAY. VERY GOOD. ANYTHING ELSE
2 TO TAKE UP? HEARING NONE, DO YOU HAVE A READER THIS
3 AFTERNOON?

4 MR. MATOBA: I DO.

5 THE COURT: BRING OUT THE JURORS.

6

7 (THE FOLLOWING PROCEEDINGS WERE HELD
8 IN OPEN COURT IN THE PRESENCE OF THE
9 JURY:)

10

11 THE COURT: AGAIN, CONTINUE ON THE RECORD ON
12 THE ORTIZ MATTER. ALL PARTIES ARE PRESENT. ALL
13 JURORS IN THEIR APPROPRIATE SEATS. WITNESS STILL ON
14 THE WITNESS STAND UNDER OATH. PEOPLE HAVE COMPLETED
15 THEIR CROSS. I MEAN DIRECT.

16 MR. MATOBA: YES, YOUR HONOR.

17 THE COURT: MR. NEWTON, YOU MAY CROSS.

18 MR. NEWTON: THANK YOU, YOUR HONOR.

19

20 **CROSS-EXAMINATION**

21

22 BY MR. NEWTON:

23 Q IS IT DEPUTY OR DETECTIVE?

24 A I'M A DETECTIVE NOW BUT I AM A DEPUTY
25 BACK THEN SO WHATEVER YOU FEEL LIKE.

26 Q WELL, LET'S GO WITH DETECTIVE. GOOD
27 AFTERNOON.

28 A GOOD AFTERNOON.

1 Q MOST OF WHAT I'M GOING TO ASK YOU IS
2 PROBABLY GOING TO BE STRAIGHT OFF OF YOUR REPORT SO
3 IF YOU DON'T REMEMBER SOMETHING, I KNOW IT'S BEEN A
4 WHILE, JUST REFER BACK TO IT. ALL RIGHT?

5 A THANK YOU.

6 Q NOW, WHEN MONICA FIRST CAME AND MADE
7 THE INITIAL REPORT TO YOU, DID SOMEONE ACTUALLY BRING
8 HER THERE?

9 A I THINK HER FRIEND DROVE HER, BUT I
10 ONLY TALKED TO MONICA.

11 Q OKAY. SO YOU DIDN'T INTERVIEW HIM. I
12 THINK THAT WAS LEO?

13 A NO.

14 Q I JUST WANT TO CLARIFY. WHEN MONICA
15 SAID SHE CAME INTO THE ROOM AND THEN SHE ACTUALLY
16 CAME INTO THE ROOM UNDER HER OWN POWER FROM HALLWAY,
17 RIGHT? I THINK HE ASKED HER TO COME IN OR SOMETHING
18 LIKE THAT?

19 A HIS QUESTION WAS I WANT TO SHOW YOU
20 SOMETHING.

21 Q OKAY.

22 A SO SHE DIDN'T THINK NOTHING OF IT AND
23 WALKED IT.

24 Q ALL RIGHT. AND SHE TOLD YOU THAT HE
25 GRABBED HER BY THE RIGHT ARM AND SAT HER ON A GRAY
26 CHAIR, CORRECT?

27 A CORRECT.

28 Q HE DIDN'T PUSH HER INTO THE CHAIR OR

1 SHOVE HER OR ANYTHING LIKE THAT?

2 A (THE WITNESS SHAKES HIS HEAD.)

3 THE COURT: YOU'RE SHAKING YOUR HEAD.

4 THE WITNESS: I BELIEVE THAT'S WHAT SHE
5 SAID.

6 BY MR. NEWTON:

7 Q I'M SORRY, YOUR HONOR. THAT ONE WAS
8 ON ME AND I THINK BOTH OF US KNOW NOT TO DO THE HEAD
9 SHAKE.

10 ALL RIGHT. AND THEN AT SOME POINT SHE
11 TOLD YOU HE PLACED HIS HANDS ON HER ELBOWS AND HAD
12 HER STAND UP FROM THE CHAIR.

13 A YES, TO GUIDE HER ONTO THE BED.

14 Q ALL RIGHT. I MEAN SHE WASN'T JUST
15 DEAD WEIGHT THOUGH? HE DIDN'T PHYSICALLY LIFT HER UP
16 INTO THE AIR?

17 A SHE EXPLAINED THAT HE PUT BOTH OF HIS
18 HANDS ON HER ELBOWS TO GENTLY LAY HER ON THE BED.

19 Q OKAY. SO IS IT FAIR TO SAY WE'RE
20 UNCLEAR IF SHE STOOD UP UNDER HER OWN POWER OR NOT.

21 A YES.

22 Q OKAY. AND I'M JUST GOING TO FAST
23 FORWARD A LITTLE BIT BECAUSE YOU'VE GONE THROUGH MOST
24 OF YOUR REPORT, THE POINT WHERE SHE SAID THAT HE TOOK
25 HER SHORTS OFF, NOW, SHE SAID SHE WAS ACTUALLY LAYING
26 FLAT ON THE BED AT THE TIME, RIGHT?

27 A CORRECT.

28 Q AND SHE DIDN'T HELP HIM IN ANY WAY GET

1 HER SHORTS OFF?

2 A NO, SHE DID NOT SAY.

3 Q BUT HE DID HAVE A HAND ON HER SHOULDER
4 AT THAT POINT?

5 A SHE EXPLAINED THAT HE HAD A -- WHEN
6 SHE TRIED TO -- WHEN HE PULLED DOWN HIS SHORTS, THAT
7 THEY EASILY CAME OFF BECAUSE SHE HAD THE ELASTIC
8 AROUND THE WAISTBAND, THAT WHEN HE STARTED PULLING
9 THEM DOWN, THAT THAT'S WHEN SHE PUT -- THAT'S WHEN HE
10 PUT HIS LEFT HAND ON HER RIGHT SHOULDER. AND THAT'S
11 WHEN SHE TRIED TO GET UP AND THEN PUT HER BACK DOWN.

12 Q OKAY. I'LL GET TO THE GETTING UP
13 THING HERE IN A SECOND. I'M JUST TRYING TO CLARIFY.

14 A OKAY.

15 Q WAS PULLING THE SHORT OFF WITH ONE
16 HAND AND HAD ANOTHER HAND ON HER SHOULDER OR WAS THAT
17 GOING ON AT THE SAME TIME OR AT SEPARATE TIMES?

18 A I DON'T KNOW. THAT'S JUST HOW SHE
19 EXPLAINED IT.

20 Q NOW, AT SOME POINT IN TIME AND I
21 BELIEVE WHEN IT WAS -- HE WAS PERFORMING ORAL SEX ON
22 HER, SHE ACTUALLY WENT TO LIFT HER HEAD UP, CORRECT?

23 A SHE LIFTED UP HER HEAD WHEN HE WAS
24 PULLING DOWN HER SHORTS BEFORE THE ORAL SEX.

25 Q OKAY. SO AT SOME POINT IN THERE SHE
26 ACTUALLY DID GO AHEAD AND LIFT HER HEAD UP?

27 A CORRECT.

28 Q NOW, I'M GOING TO FAST FORWARD ALL THE

1 WAY TO THE END, THE POINT WHERE SHE GOES TO THE --
2 GOES OUT TO THE BATHROOM.

3 A CORRECT.

4 Q SO SHE TOLD YOU THAT ONCE THE PHONE
5 RANG, SHE GOT UP FROM THE BED, GRABBED HER SHORTS,
6 PUT THEM ON AND THEN LOCKED HERSELF IN THE RESTROOM
7 SO THAT HE COULD NOT RAPE HER AGAIN. DOES THAT
8 SOUND --

9 A I DON'T KNOW IF SHE GRABBED THE SHORTS
10 AND PUT THEM ON BUT SHE SAID SHE GRABBED THEM AND
11 WENT TO THE RESTROOM.

12 Q OKAY. I DON'T GET HER TO TESTIFY FOR
13 THIS SO IF YOU WANT TO REFRESH YOUR MEMORY FROM YOUR
14 REPORTS IF THE COURT WOULD ALLOW THAT.

15 MR. MATOBA: YOUR HONOR, I BELIEVE IT'S AN
16 IMPROPER AT THIS POINT IF SHE DOESN'T REMEMBER THEN
17 SHE CAN REFRESH.

18 THE COURT: SHE MAY REFRESH HER MEMORY.
19 BY MR. NEWTON:

20 Q IT'S ON PAGE SIX OF YOUR REPORT.

21 A OH, PAGE SIX.

22 Q THIRD PARAGRAPH?

23 A IT SAYS TO PUT THEM ON.

24 Q OKAY. I JUST WANT TO KEEP IT ALL IN
25 ONE. SHE GRABBED HER SHORTS?

26 A YES.

27 Q SHE PUT THEM ON AND THEN SHE LOCKED
28 HERSELF IN THE RESTROOM?

1 A CORRECT.

2 Q SO THAT HE WOULDN'T RAPE HER AGAIN IS
3 WHAT SHE TOLD YOU.

4 A YES.

5 Q AND AT THE END OF ALL OF THIS SHE TOLD
6 YOU SHE COULDN'T MOVE OR YELL AND SHE DIDN'T KNOW
7 WHY. SHE BASICALLY FROZE, RIGHT?

8 A YES.

9 Q SHE ALSO TOLD YOU SHE NEVER THOUGHT
10 ANYTHING LIKE WHAT SHE WENT THROUGH WOULD EVER HAPPEN
11 TO HER; IS THAT CORRECT?

12 A YES.

13 Q AND AT THAT TIME YOU DIDN'T KNOW THAT
14 SOMETHING LIKE THIS HAD ACTUALLY HAPPENED TO HER?

15 A NO, I DIDN'T KNOW.

16 Q SO SHE WASN'T TOTALLY STRAIGHT WITH
17 YOU. IS THAT FAIR TO SAY?

18 MR. MATOBA: OBJECTION, YOUR HONOR.

19 THE COURT: WELL.

20 MR. MATOBA: IT'S AN IMPROPER --

21 THE COURT: SUSTAINED.

22 BY MR. NEWTON:

23 Q YOU FOUND OUT LATER SOMETHING HAD
24 ACTUALLY HAPPENED TO HER?

25 A I DIDN'T. I DON'T KNOW. I NEVER
26 KNEW. I DON'T KNOW THAT SOMETHING ELSE HAPPENED TO
27 HER IN THE PAST.

28 Q OH, OKAY. THAT'S MY FAULT. I THOUGHT

1 YOU TOLD THE PROSECUTOR THAT YOU DID KNOW THAT
2 SOMETHING HAD HAPPENED TO HER IN THE PAST?

3 MR. MATOBA: OBJECTION, YOUR HONOR, COUNSEL
4 IS TESTIFYING.

5 THE COURT: COUNSEL, JUST LEAVE IT TO A
6 QUESTION, COUNSEL.

7 MR. NEWTON: VERY WELL, YOUR HONOR.

8 Q WE'LL JUST STICK WITH WHAT'S IN YOUR
9 REPORT. OKAY.

10 A OKAY.

11 Q ALL RIGHT. SO SHE JUST TOLD YOU SHE
12 DIDN'T THINK ANYTHING LIKE WHAT SHE WENT THROUGH
13 WOULD EVER HAPPEN TO HER?

14 A CORRECT.

15 Q THAT'S WHAT SHE TOLD YOU. OKAY.

16 NOW, THROUGHOUT THIS WHOLE THING SHE
17 NEVER TOLD YOU THAT SHE HAD EVER TOLD MY CLIENT NO,
18 SHE NEVER EXPRESSED ANY KIND OF LACK OF CONSENT, LIKE
19 HEY, DON'T DO THAT. I DON'T WANT TO DO THIS?

20 MR. MATOBA: OBJECTION, CALLS FOR A LEGAL
21 CONCLUSION.

22 MR. NEWTON: I'M ACTUALLY ASKING WHAT SHE
23 TOLD HER, YOUR HONOR.

24 THE COURT: IT'S THE FORM OF THE QUESTION.
25 WHY DON'T YOU REPHRASE YOUR QUESTION.

26 MR. NEWTON: THANK YOU, YOUR HONOR.

27 Q DID MONICA EVER TELL YOU DURING YOUR
28 INTERVIEW THAT SHE EVER TOLD MY CLIENT THROUGHOUT

1 THIS ENTIRE INCIDENT NO?

2 A NO, SHE DID NOT.

3 Q OKAY. IN FACT, SHE SAID SHE NEVER
4 SAID ANYTHING TO HIM, CORRECT?

5 A CORRECT.

6 MR. NEWTON: I HAVE NO FURTHER QUESTIONS,
7 YOUR HONOR. THANK YOU.

8 THE COURT: REDIRECT.

9

10 *REDIRECT EXAMINATION*

11

12 BY MR. MATOBA:

13 Q WHEN MONICA WAS TELLING YOU ABOUT WHAT
14 HAD HAPPENED AND WHEN SHE WAS ON THE BED, DID SHE
15 SAY -- SHE SAID SHE FROZE COMPLETELY?

16 A SHE DESCRIBED IT AS FROZE.

17 Q SO SHE WASN'T MOVING AT ALL?

18 A CORRECT.

19 Q SHE WASN'T MOVING HER ARMS. SHE
20 WASN'T MOVING HER LEGS.

21 A SHE SAID SHE DIDN'T SAY -- SHE SAID
22 NO. SHE NEVER SAID ANYTHING ABOUT HER GETTING UP
23 OR -- FROM WHEN SHE WAS DESCRIBING IT, IT KIND OF
24 JUST SEEMED LIKE SHE WAS MORE AFRAID TO GET UP AND
25 THAT SHE -- WITH HIS LEFT HAND --

26 MR. NEWTON: OBJECT AS TO SPECULATION AND
27 MOVE TO STRIKE THAT.

28 THE COURT: YOU'RE NOT BEING ASKED TO READ

ATTORNEY GENERAL

COURT OF APPEAL
SECOND APPELLATE DISTRICT
STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and RESPONDENT

No. KA101692-01

vs

01) ORTIZ, GERARDO

Volume 1 of 1 Volumes
Notice of appeal filing date: 10-27-14

Defendant(s) and APPELLANT

CLERK'S TRANSCRIPT
PAGE 1 to 215

Appearances:

Counsel for Plaintiff:

THE ATTORNEY GENERAL

Appeal from the Superior Court,
County of Los Angeles – East District

Honorable GEORGE GENESTA
Judge

Counsel for Defendant:

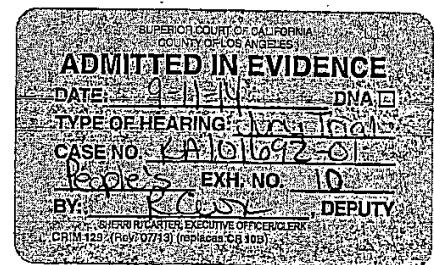
C.A.P.

Date Mailed to:

Defendant (in pro per)
Defendant's Trial Attorney
Defendant's Appellate Attorney
District Attorney
Attorney General

DEC 23 2014

000080



000081

1 Video of CAC Interview

2

3

4 CASE NO.: KA101692

5

CASE NAME: People v. GERARDO ORTIZ

6

CHARGE: PC 261(A)(2), PC 288(B)(1), PC 288A(C)(2)(B), PC 289(A)(1)(B)

7

DEPUTY D.A.: MICHAEL MATOBA

8

D.A. UNIT: POMONA

9

10

11

12

LEGEND

13

I - Susy Flores, CAC Interviewer

14

V - Monica Diaz, victim

15

*** Unintelligible

16

17

18

19

20

21

TRANSCRIPT PROVIDED BY

22

Los Angeles County District Attorney's Office

23

24

25

26

27

28

HG

000082

1 12:18:08 (START of VIDEO)

2 I – Come in here with me, okay? I'm gonna ask-I'm gonna, yes, I'm gonna ask for you to sit in that chair
3 over there and I'm gonna sit here, okay? Alrighty. So how are you today, Monica?

4 V – I'm good.

5 I – You're good? Alrighty. Well my name is Susy and my job here is just talk with, uh, kids and teens
6 about all different kinds of things, okay?

7 V – Mhmm

8 I – Um, so I want you to know that you can say whatever it is you want to say in this room.

9 V – Okay.

10 I – Okay? Alrighty. Before we begin our time talking I want to go over a few things with you so you
11 understand. The first is if I ask you a question and you don't know the answer I just want you to say I
12 don't know.

13 V – Okay.

14 I – Okay? So we're gonna practice that right now so if I asked you, Monica, what is my dog's name?
15 What-what would you say?

16 V – I don't know.

17 I – That's right because I didn't tell you, but if I were to ask you do you have a dog? What would you
18 say?

19 V – That yes, I do

20 I – Okay.

21 V – have a dog.

22 I – What kind of dog do you have?

23 O – A chihuahua mixed with a terrier.

24 I – Okay. Chihuahua mixed with terrier. Okay. And what's your dog's name?

25 V – Uh, it's kinda like a weird name. It's Moo.

26 I – Moo?

27 V – Yeah, cuz he's like-he looks like a cow.

28

000083

1 I – Okay. Okay, um, and if I ask you a question and you don't know what I mean or what I'm saying you
2 can say I don't know what you mean and I'll ask it in a different way.

3 V – Okay.

4 I – Okay? So if I were to ask you, uh, Monica, what is your orientation right now? What would you say?

5 V – I don't know what you mean.

6 I – Okay. Cause it's kind of a hard word so I'm gonna ask it in a different way. So, Monica, are you
7 sitting down or standing up?

8 V – Sitting down.

9 I – Okay. And, um, sometimes I make mistakes and say the wrong thing and when I do you can correct
10 me.

11 V – Okay.

12 I – Okay? So if I say, Monica, you-you are thirty years old, what would you say?

13 V – Say I'm actually thir-I'm fourteen.

14 I – You're fourteen?

15 V – Yes.

16 I – Okay. Alright. Thanks for telling me.

17 V – Mhmm

18 I – Um, I don't know what's happened to you so I won't be able to help you with any of the answers to
19 any of my questions.

20 V – Okay.

21 I – Alrighty?

22 V – Mhmm

23 I – Okay. Um, Monica, are people supposed to lie?

24 V – No.

25 I – No? What happens if somebody tells a lie?

26 V – They get in trouble. They get in trouble if they tell lies I guess.

27 I – Okay. And what would happen if you told a lie to your mom?

28 V – Uh, she would get disappointed and start telling me why I lied to her, why I didn't tell her the truth.

000084

1 I – Okay. Alright. Well today it's really important to tell me the truth. Do you promise that you will tell
2 me the truth?

3 V – Yes.

4 I – Will you tell me any lies?

5 V – No.

6 I – Alright. Well how about you, uh, tell me about things that you like to do.

7 V – I don't know-I don't really-I just like, uh, listening to music and pretty much hanging out with my
8 friends.

9 I – Okay. And you said you like listening to music. Tell me more about that.

10 V – Uh, like what do you mean?

11 I – What kind of music do you like?

12 V – Oh, like pretty much, uh, heavy metal.

13 I – Mhmm

14 V – Pretty much that heavy.

15 I – Heavy metal?

16 V – Yeah.

17 I – Okay. Any particular bands?

18 V – Uh, Pantero, Cowboys for, um, uh, all of the American Rejects and all those kind.

19 I – Okay. Alright and you also said that you like hanging out with your friends.

20 V – Yeah.

21 I – Tell me more about that?

22 V – Um, pretty much all we, uh, I just hang out with them at the park or at their houses for just a while.

23 I – Okay. Alright thank you for telling me about that.

24 V – Mhmm

25 I – Um, tell me about things you do not like to do.

26 V – Um, I don't like to stay indoors that much.

27 I – Mhmm

28 V – I don't and I don't really like to stay in one place for ***

000085

1 I – Mhmm

2 V – I like to be going all around.

3 I – Mhmm. Tell me more about not liking to be indoors.

4 V – Um, not used to being indoors cause, I don't know, I don't have anything to do.

5 I – Mhmm

6 V – Yeah and I feel too closed in there.

7 I – Okay. I understand. Okay. Well thank you for telling me about those things.

8 V – Mhmm

9 I – Uh, Monica, tell me why you came to talk with me today.

10 V – Uh, not sure. I'm guessing-I'm guessing its cause of what happened. I guess. I'm not that sure.

11 I – Tell me-tell me about that. You said because of what happened. Tell me about that.

12 V – Um, what happened on a Thursday night. I'm guessing when I got home.

13 I – Tell me-tell me more about that.

14 V – Uh, well I was actually in the kitchen.

15 I – Mhmm

16 V – Grabbing something from the refrigerator.

17 I – Mhmm

18 V – Um, so I'm guessing the-the guy, I'm not sure what his name is

19 I – Mhmm

20 V – He goes into the kitchen just asking-comes up to me saying, um, saying how pretty I was and just
21 kept going on with these all sorts of comments.

22 I – Mhmm

23 V – And I was just right there trying to do what I was doing. Just like I felt uncomfortable, I didn't know
24 what to do. I was just surprised. I was in shock. Like I don't, you know, should I just leave or should I tell
25 him something.

26 I – Mhmm

27 V – I didn't know what to say. It's just he kept going on with that and he kept telling me that if I-how old
28 I was and if-if that I looked older. And then he kept continuing with that and he just left afterwards.

000086

1 I – Mhmm

2 V – So I stayed in the kitchen and a few minutes hoping to see if he was gonna, uh, not come back.

3 I – Mhmm

4 V – So instead I waited for like I think five-five-five or three minutes.

5 I – Mhmm

6 V – And I went already walking into my room. So I-I'm already right there like in the hallway right in
7 front of my door and he has his door open right in front.

8 I – Mhmm

9 V – It's standing in front of the door and he just goes-he goes up to me saying "oh, can-come here. I want
10 to show you something".

11 I – Mhmm

12 V – I wasn't sure if I should go or not, but there was peep, um, there was a room right next to it with their
13 door open so I was hoping they could see me.

14 I – Mhmm

15 V – So I-I'm like a distance away from them.

16 I – Mhmm

17 V – And he goes and he just gets me and he gets me by the arms.

18 I – Mhmm

19 V – And he sits me down in the chair and he starts saying, um, he starts saying "oh, if you keep, um,
20 working out you'll have a nice body and that I look-that if I keep doing that you'll-I'll look better".

21 I – Mhmm

22 V – And he just keeps saying those things again. Telling-telling me if I would-what if what he was doing
23 was right and I said I didn't know what to say.

24 I – Mhmm

25 V – And he sits down-he sits down-sits down on the bed.

26 I – Mhmm

27 V – And he starts saying those things all over again and then he's leans over he kisses me, like, twice
28 touching my, like, rubbing my leg.

000087

1 I – Mhmm

2 V – And I was just didn't know what to do cause I was just sitting there. I didn't-I was gon-I didn't know
3 how to react.

4 I – Mhmm

5 V – So then I was already getting up and he just gets me and he just sits me down on the bed. Closes the
6 door and that's when he starts kissing me again and after starts touching my body all over again.

7 I – Mhmm

8 V – And then he leans me down on the bed and he takes off my bottoms and, but the same time he was
9 kind of holding-he was holding me down. So and once he takes off my bottom he goes-he puts his mouth
10 in my vagina and that's when he unbuckles his belt and he sticks his penis inside me.

11 I – Mhmm

12 V – And he does it and I-that's when I tried to get up, but he doesn't let me get up. He pushes me-he puts
13 me down again and doesn't let

14 I – Mhmm

15 V – doesn't let go of me. But after that I was-I was-I was going to scream, but for some reason I didn't,
16 like, I didn't respond to that.

17 I – Okay.

18 V – And then-and then after that the phone rang.

19 I – Mhmm

20 V – So I was hoping and once he stopped that I got all my-I put on my shorts.

21 I – Mhmm

22 V – And I just ended up-he answered the phone. He-he buck-he buckled up his pants again. He opened
23 the door and he-and he looked to see if anybody was there.

24 I – Mhmm

25 V – And he told me “oh, go to the restroom” so what I do is I just went into the restroom and I locked
26 myself in there.

27 I – Mhmm

28 V – And I don't come out until like ten minutes after.

1 I - Mhmm

000088

2 V - And I stay in there and I go into my room and that's it.

3 I - Okay. Alrighty. Um, and has this happened one time, more than one time or something else?

4 V - Uh, that was just one time.

5 I - One time? Okay. Um, who-who, um, who is the guy? Cause you said he's a guy.

6 V - Uh huh

7 I - Do you know his name?

8 V - He was the-the lady that we're renting a room from.

9 I - Uh huh

10 V - her son.

11 I - Okay. Alrighty. Okay. Um, and you said that, um, you said that the guy, um, when you were walking
12 to your room told you to come here I want to show you something.

13 V - Mhmm

14 I - Okay. What happened next from there?

15 V - Oh from there?

16 I - Mhmm

17 V -- I was just standing there he, I thought like, if I don't go over there he'll like come get me by like the
18 arm.

19 I - Mhmm

20 V - And I uh *** so I just walk a little bit and I'm just like a distance away, not that close.

21 I - Mhmm

22 V -- But, obviously I was kind of like in, not in-front but, like the- there was a room.

23 I - Mhmm

24 V -- And they had their door open so there- the other family was there.

25 I - Mhmm

26 V - So I was just like right next to it to see if they could see me.

27 I - Mhmm

28 V - So I was just standing there from a distance.

000089

1 I – And what did you say or what did you do when, when the guy told you to come into the room.

2 V – I didn't do anything I was just standing there

3 I – Mhmm, okay

4 V – And you said uhm, you said that the guy also grabbed you by the arms.

5 I – Tell me how... tell me more about that, about how he grabbed you.

6 V – It was like by like the arms right here

7 I – Mhmm

8 V – Mhmm

9 I – And how did you feel when that happened?

10 V – I felt uncomfortable

11 I – Mhmm, what did you think was going to happen?

12 V – Uh... I don't know.

13 I – Okay, alrighty. Uhm and then you said that when he grabbed you by the arms that he sat you down on
14 the chair.

15 V – Mhmm

16 I – what happened when he sat you down on the chair?

17 V – He was just standing up, just kept talking about the things all over again.

18 I – Mhmm

19 V – Mhmm

20 I – And how did, how did that that make you feel when he was saying all those things to you?

21 V – I felt uncomfortable, I just, I just... I don't know.

22 I – Mhmm and what did you say when he saying those things to you?

23 V – I didn't say anything, I was just quite.

24 I – Okay, alright. Uhm, and you said that he started he started kissing you?

25 V – Mhmm

26 I – Tell me everything about that, the kissing

27 V – He well he pretty much tried to stick his tongue inside

28 I – Mhmm, okay and where were you when uhm when the guy started kissing you?

000090

1 V – I was still sitting on the chair

2 I – Okay, and how was what position was his body in?

3 V -- He was leaning forward, *** and sitting on the bed but, leaning.

4 I – Okay, and where were his hand while he was kissing you?

5 V – They were on my legs

6 I – Okay and what were his hands doing when they were on, on your legs?

7 V – Uhm... I don't really know how to describe that. It's just, like as if he was going like that, like just
8 getting there and just going like that.

9 I – Okay, alrighty. It looks like you just kind of ran your hand down your leg.

10 V -- Mhmm

11 I -- Like you were at your thigh?

12 V -- Yeah

13 I – Okay, alrighty. Uhm... and how did that feel to your body when he was kissing you?

14 V – I felt very, very uncomfortable I felt like, I don't know how to say it. It pretty much just felt
15 uncomfortable.

16 I – Okay, alrighty. And what were you doing when he was kissing you?

17 V – I was just sitting there standing still I didn't know how to react.

18 I – Okay alrighty, uhm and then you said that uhm that the guy closed the door

19 V – Mhmm

20 I – How did you feel when, when he closed the door?

21 V – I felt like something was really going to happen so I pretty much that's when I wanted to get out ***
22 and leave.

23 I – And what did you do when he closed the door?

24 V – I was already standing up trying to like trying before the the door was closing.

25 I -- Mhmm

26 V--Already trying to get up trying to leave but that's when he stopped me and he closed the door.

27 I – Okay, and how did you feel when he stopped you?

28

000091

1 V – I just... I was just thinking this can't be happening again to me.

2 I –Okay, okay, uhm and then you said that he started uhm touching your body?

3 V -- Mhmm

4 I--Tell me everything about the touching.

5 V – He pretty much started touching uhm *** my breasts and then from there was down to where my
6 thighs were.

7 I – Mhmm and you said he was touching your breasts, what kind of touching was that?

8 V – Well not touching but it's like he was grabbing.

9 I – Okay and what happened next?

10 V – Then that's when he just uhm he started uhm pulling down my shorts.

11 I – And where were you when uhm when he started pulling down your shorts?

12 V – mmm... ***

13 I – Where in the room were you?

14 V – Oh I was uhm, that's when I was when he just lay me down on the bed and was holding me down.

15 I – You said he laid me down on the bed, tell me everything about that.

16 V – Well when I was sitting down already

17 I – Un-huh

18 V -- That's when he, I was already, to leave the door, before he closed the door, he got me and that when
19 he just, he laid me down, like set me down and then that's when he put his hand like on my, I think right
20 here.

21 I – Mhmm

22 V – Right here and he pushed and he laid me down.

23 I – Mhmm, you said he got me, what do you mean? When he got me.

24 V – By uhm, uh *** I don't' I don't really get the questions.

25 I – Okay uhm, you said he got me and then he put me down on the bed.

26 V – Mhmm

27 I – How did how did he get you?

28 V – Oh from the arms again

1 I – Mhmm and how did you feel when he got you by the arms? **000092**
2 V – Well the same thing, uncomfortable, I just...
3 I – Mhmm, what did you think was going to happen?
4 V – I didn't really, I was, I didn't really know what I was thinking. It's like my mind was sort of blank.
5 I – Okay, alrighty and so what happened next, you say he put you on the bed?
6 V – mhmm, and that's when he started pulling down my shorts.
7 I – Mhmm,
8 V – And that's when put his, he stuck his mouth in my vagina and kept doing that and after that he stuck
9 his finger.
10 I – Okay and uh when when he was pulling down his your shorts what were you doing?
11 V – Nothing, I was already like I was I was trying to like yell but I didn't nothing came out it was just.
12 I – Mhmm, what do you think was stopping you from yelling?
13 V – That if I yelled something was going to happen to me, like even worse.
14 I – okay, so you said uhm he pulled down your shorts
15 V – Mhmm
16 I – And then what happened next?
17 V – He, he went down on me like he put his mouth in my vagina and like I said he stuck his finger
18 inside.
19 I – And how did that feel to your body when he put his mouth to your vagina?
20 V – It felt... I don't... I don't know how to explain it, it just, it everything felt uncomfortable I felt, I felt
21 disgusting, I felt gross...
22 I – Alright, and what umm, what position was your body in, when umm he put his his mouth to your
23 vagina?
24 V – Umm, I was just like umm laying there
25 I – And what position was his body in?
26 V – Mmm I'm not sure
27 I – Ok, alrighty, and then you said you, you umm, said you umm stuck his fingers, ok tell me everything
28 about that

1 V-Well umm, while he was doing that he just ended up sticking his fingers inside

2 I-Mmm hmm, ok, and how did that feel?

000093

3 V-That now, that felt very uncomfortable just...

4 I-tell me more about it feeling uncomfortable

5 V-I don't really know how to explain it, just..

6 I-Just try your best. However you can.

7 V-Ummmm, ummm, I don't know how...to explain it

8 I-Ok, and what were you doing when umm he put his fingers inside your vagina

9 V-I was just thinking like when just like, how did I get myself in this situation and why didn't I get out of
10 there, why am I not reacting, like yelling or something

11 I-Mmm hmm, ok, and then what happened next from there?

12 V-Umm that's when he started unbuckling his umm jeans, that's when he stuck his penis inside me

13 I-Ok, so uh, he was unbuckling his jeans and what happened next?

14 V-That's when I was already umm getting up, like sitting up, but that's when he held me down

15 I-Tell me more about how he held you down

16 V-He got his hand and he just like I think like on my shoulder

17 I-Uh huh

18 V-And he just like put me like umm like held me down like that just holding me

19 I-Mmm hmm, and how did you feel when he was holding you?

20 V-Umm,I don't know, just....I don't know how to say this...just, it's just.....let's just umm, just say
21 that everything felt uncomfortable, like, it felt like if I was umm, there again like that cause I had it
22 happen to me once before and it felt like if I was in that situation again.

23 I-Ok, ok, and so what happened next? Next you said he, he pulled down his pants

24 V-Mm hmm, and then he, he stuck his penis inside me, and that's when he just umm I don't know how to
25 say that word, umm, thrusting I think it is? Yeah he kept thrusting and just

26 I-And when he was thrusting what, where were, where were his hands?

27 V-There, one of his hands was on my shoulder

28 I-Mmm hmm

1 V-And the other one was just on the bed like that, just

2 I-And tell me everything you heard when he was thrusting

000094

3 V-I didn't, he didn't, he didn't say anything

4 I-And how did it feel to your body when he was thrusting?

5 V-I don't know, just, I don't know, I don't know how to explain that feeling, I don't know

6 I-Ok, alright, so umm, you said he was thrusting and what were you doing?

7 V-Nothing. I was just hoping, I was just, I was just like, like I wanted to like, I wanted to yell, I wanted to
8 do something to stop it, but just, I was just so so stopping myself from doing that cause I didn't want
9 anything else to happen to me

10 I-And what, what happened next?

11 V-The, the that's when the phone rang.

12 I-Mmm hmm

13 V-He stopped and that's when he answered it

14 I-Mmm hmm, and what did you do?

15 V-Nothing, that's when I just realized umm, I'm gonna go have time to at least like put back on my shorts
16 and get out of there, and that's what I did, I just got up and put em back on and I left.

17 I-Ok, alright, now you said umm, there was other people in the room, in the, I'm sorry in the next room

18 V-Yeah. I was uh, I think there was yeah. Not sure. Cause I heard the TV on and, well the door was wide
19 open so

20 I-Ok, and uh who else was home?

21 V-His like, his um, I think his mom was home, that family was home, and my little brother was in there

22 I-Ok, and where were they?

23 V-Uh the other family was in the room and my brother was in my room

24 I-Ok, and where was the mom?

25 V-She was in her room, she was I think just asleep, I don't know if she was laying down or sleeping

26 I-Ok, and um you had said you went to the bathroom, and what did you do after that?

27 V-Nothing I just locked myself in there for like I think 10 or 5 minutes?

28 I-Ok, and um, what did um, the guy say about telling?

1 V-Mmm he didn't say anything

000095

2 I-And who, who else knows about this?

3 V-Umm, only one of my friends

4 I-And how does your friend know?

5 V-Cause I, I told her I needed to talk to him, I needed someone to talk to, I talked to him, yeah, that's
6 when I told him

7 I-And what did you tell him?

8 V-Well I told him everything that happened

9 I-Mmm hmm

10 V- And he, and he just thought it was wrong of me just to stay quiet

11 I-So what happened next?

12 V-That's when he just took me to the station, that's when, to go report it

13 I-Ok, ok. Monica, I'm gonna take a quick break and ask for you to wait for me right here and I'll be back
14 in just a little bit. Ok. Excuse me. (left room)

15 I-I'm back. How are you doing?

16 V-I'm good

17 I-Ok, umm, alrighty, umm, I wanted to, you said umm, Monica you said umm, that at one point you
18 started thinking umm, this can't be happening to me again.

19 V-Mmm hmm

20 I-What, what do you mean?

21 V-By that? What I mean by that? Uh, well, it cause I've had that already happen to me once when I was
22 small, so I was just thinking that, this just can't be happening again.

23 I-How old were you?

24 V-Like around 6 or 7

25 I-Ok, and umm, you were about 6 or 7 and did someone know about it?

26 V-No, not ***

27 I-Was it reported?

28 V-Umm yeah

1 I-Who was it reported to?

2 V-I don't remember, I don't

000096

3 I-Where were you living when that happened?

4 V-Umm, I don't, I'm not that sure, I don't remember anything that well

5 I-Mmm hmm, and who was the person, that did that?

6 V-Mmm I think he was umm, I'm not sure if he was a friend of my dad, or one of my uncles, I'm not that
7 sure

8 I-Ok, ok and where were you when it happened?

9 V-I was at home.

10 I- At home?

11 V- Mmm hmm

12 I-Ok, and uh, and uh, I know you said it was reported, but does, did you tell anybody else about it?

13 V-Mmm no

14 I-Who reported it?

15 V-It was my, my dad

16 I-Your dad reported it? Ok, so your dad knows?

17 V-Mmm hmm

18 I-Anybody else?

19 V-No

20 I-What did you dad say, do you remember, when he found out?

21 V-Why didn't I tell him before, why didn't I like do anything, say anything

22 I-Mmm hmm, ok and what happened to the person?

23 V-Uh, I don't know what happened, um, I didn't really wanna know what happened so..

24 I-Ok

25 V-They didn't tell me anything

26 I-Ok, umm, alrighty , well umm, I'm done with my questions ok, is there something else you can think of
27 that you haven't told me?

28 V-No

000097

1 I-No. Alright. Well thank you for coming to talk with me today, alright. I'm gonna walk you back with
2 your mom ok. (END OF INTERVIEW) 12:48:25
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