

No. _____

In the Supreme Court of the United States

ERIC DAVID MARRUFO,

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

APPENDIX 2 TO PETITION FOR WRIT OF CERTIORARI

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,)
)
Plaintiff,)
) CR-17-0976-TUC-CKJ (EJM)
vs.)
) Tucson, Arizona
Eric David Marrufo,)
) August 16, 2022
) 9:07 a.m.
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY RETRIAL DAY TWO

BEFORE: THE HONORABLE CINDY K. JORGENSEN
UNITED STATES SENIOR DISTRICT JUDGE

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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

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1 P R O C E E D I N G S

2 (Proceedings commenced at 9:07 a.m., as follows:)

3 THE COURT: And good morning.

4 And the record may reflect the presence of counsel,
5 the defendant, the absence of the jury.

6 Anything we need to bring up before we start with
7 the jury?

8 MR. CASSELL: No.

9 MR. JACOBS: No.

10 THE COURT: Okay. And I did ask Armida to reseat
11 them. Just since we have these seats up front, why not spread
12 people out a little bit? So they're going to be reseated to
13 use the front seats in the row.

14 So all right. You can go ahead and get the jury.

15 THE CLERK: All right.

16 THE COURT: Good morning.

17 (Jury panel present at 9:09 a.m.)

18 THE COURT: Good morning. We'll give you time to
19 find your new seats. We thought we would spread you out.

20 Grab your things and take your time, and after you get settled
21 you can have a seat. We thought we would seat you more
22 comfortably. Your home away from home for a couple of days.
23 And we have a chart. I think Armida gave you all a little
24 chart.

25 So everybody is seated and we're ready to proceed.

1 We had opening remarks yesterday, and so the
2 government may call its first witness.

3 MS. WANG: Thank you, your Honor. The United States
4 calls Shannon Martucci.

5 THE COURT: All right. Good morning. You can come
6 right up to the witness stand and remain standing, and we'll
7 have the clerk swear you in as a witness.

8 SHANNON MARTUCCI, PLAINTIFF WITNESS, SWORN

9 THE CLERK: Thank you. Please be seated.

10 Please speak directly into the microphone. State
11 your full name for the record and spell your last name.

12 THE WITNESS: Shannon Gay Martucci, M-a-r-t-u-c-c-i.

13 THE COURT: And, Ms. Wang, you may proceed.

14 MS. WANG: Thank you.

15 DIRECT EXAMINATION

16 BY MS. WANG:

17 Q. Ms. Martucci, can you tell us about yourself and where
18 you work?

19 A. Sure. My name is Shannon Martucci, as I've said. I'm a
20 child and adolescent forensic interviewer with the Federal
21 Bureau of Investigation. I work in the victim services
22 division. That's housed in headquarters in Washington, D.C.
23 However, there's about 22 of us that do forensic interviews
24 for the FBI, so I sit in the Atlanta field office and cover
25 multiple states.

1 Q. And how long have you been a forensic interviewer with
2 the FBI?

3 A. With the FBI, I've been a forensic interviewer for almost
4 eight years.

5 Q. And prior to that were you a forensic interviewer with a
6 different agency?

7 A. Yes. I worked at a child advocacy center in Tampa,
8 Florida, and I was a forensic interviewer there as well.

9 Q. How long did you do that?

10 A. I was with the CAC in Tampa for about four and a
11 half years.

12 Q. So all told, total, how many years have you been a
13 forensic interviewer?

14 A. About twelve and a half years.

15 Q. Can you briefly tell us what a forensic interviewer does?

16 A. So our role is to conduct investigative interviews with
17 minor victims, sometimes adults if they have intellectual
18 disabilities and occasionally adults who have some significant
19 trauma from abuse, that's what our wheelhouse is in. In those
20 interviews, what we do is we are attempting to gain factual
21 statements from minor victims to help support accurate and
22 fair decision-making in the criminal justice and child welfare
23 systems. We do that by conducting interviews that are
24 designed to be nonleading, nonsuggestive, developmentally
25 appropriate, and trauma-informed.

1 Q. How many forensic interviews have you done in your
2 career?

3 A. It's over 1700.

4 Q. What are the typical ages of the children that you're
5 interviewing?

6 A. I'll interview children as young as two years old if
7 they're verbal, up to eighteen years old. And as I said,
8 sometimes it will be adults as well, but you asked
9 specifically about children. So two to eighteen.

10 Q. In your job with the FBI, are you typically interviewing
11 children for possible federal violations of the law?

12 A. That's correct, with the FBI, yes.

13 Q. And do you also do some interviews that are related to
14 offenses that occur on Indian country or on Indian
15 reservations?

16 A. Yes, I do.

17 Q. And are those interviews sometimes with tribal members?

18 A. Yes.

19 Q. Can you tell us what degrees you hold?

20 A. A Bachelor's of Science degree in psychology from the
21 University of Georgia. I have a Master's of Science degree in
22 professional counseling from Georgia State University.

23 Q. And can you tell us what training you've received to
24 become a forensic interviewer?

25 A. As part of my training as a forensic interviewer, I've

1 attended multiple clinics that are -- what all forensic
2 interviewers attend to become forensic interviewers. And so
3 my first clinic was after I -- well, prior to my employment at
4 the CAC, I did a clinic at the National Children's Advocacy
5 Center. It's a 40-hour clinic that teaches you the basics of
6 forensic interviewing. And then, of course, I had on-the-job
7 training once I started my role as a forensic interviewer at
8 the CAC.

9 Following that, I did an advanced forensic interviewer
10 training in Minnesota, and that was the CornerHouse forensic
11 interview training. That was another 40-hour clinic. And in
12 addition to that, I did the American professional Society
13 Against the Abuse of Children's 40-hour training clinic as
14 well, and that was in Tampa.

15 Q. And when you went to go work for the FBI, did you also do
16 additional training there?

17 A. Yes. So part of the training with the FBI is learning
18 the FBI's forensic interview protocol. And that involves
19 about three months of learning the protocol, practicing the
20 protocol, shadowing another FBI forensic interviewer. And
21 then before they allow you to go out on your own, they will be
22 shadowing you for an extended period of time, making sure you
23 have everything down when it comes to the FBI forensic
24 interviewing protocol.

25 Q. And, Ms. Martucci, because everything is being taken down

1 by the court reporter, I'm going to ask you to slow down just
2 a little bit so she can get everything, all the words.

3 Can you describe what training you received that was
4 specific to the area of child sexual abuse?

5 A. So, you know, even in undergrad we touch on the topics of
6 child sexual abuse when you're in a psychology program and
7 then, in addition to that, more extensive review of that when
8 you're in your master's program. A lot to do with the child
9 development classes that you take and learning about trauma
10 and, you know, how that affects child victims, adult victims.

11 And then in addition to that, ongoing training. Every --
12 about every year, I attend at least one national conference,
13 and those conferences are typically conferences about child
14 abuse. So for example, the National Symposium on Child Abuse,
15 that takes place in Huntsville, Alabama every year. I
16 typically attend that conference, present at that conference,
17 but then also spend time taking courses and learning about any
18 advancements in our field and also learning about any of the
19 newer research that's available as it relates to child abuse
20 and forensic interviewing.

21 And then also, as part of being an FBI child and
22 adolescent forensic interviewer, we have a quarterly
23 literature review where we sit with one another and we
24 review the literature, anything that's new in the field or
25 things we need to discuss that might inform our practice. So

1 we spend time every quarter doing that now. And in addition
2 to that, we have peer review that we do every -- well, it's
3 typically every quarter. Twice a year, all of us get
4 together, but then I have an individual peer review I do with
5 my supervisor where we review one of our interviews and get
6 feedback and consultation on cases to again better inform our
7 practice and make us better at what we do.

8 Q. And are there -- as part of your job, are there also
9 regular accreditations that need to be done?

10 A. Not necessarily. We are part of the National Children's
11 Alliance which is the accrediting body that oversees all child
12 advocacy centers throughout the country. So we have a
13 memorandum of understanding with the National Children's
14 Alliance that allows us to work with our child advocacy
15 centers. And as part of that memorandum, we are required to
16 fulfill all of their requirements for forensic interviewers
17 that are working for accredited child advocacy centers. So we
18 have to uphold whatever the accreditation standards are for
19 forensic interviewers, the same ones that would be held for
20 child advocacy centers.

21 Q. Thank you, Ms. Martucci.

22 MS. WANG: And, your Honor, I believe this witness
23 has already been qualified as an expert witness on the topic
24 of child sexual abuse.

25 THE COURT: Yes, you may proceed.

1 BY MS. WANG:

2 Q. In this particular case, are you testifying as a blind
3 expert?

4 A. Yes.

5 Q. And what does that mean?

6 A. I don't have any knowledge of the facts of this case.
7 I'm not privy to that.

8 Q. Have you read anything about this case?

9 A. I have not.

10 Q. And has anybody talked to you about the facts of this
11 case?

12 A. No.

13 Q. Ms. Martucci, is child sexual abuse typically something
14 that's committed by a stranger or somebody that's known to the
15 child?

16 A. Strangers committing child abuse is actually very rare.
17 It is almost always somebody that the child knows, loves, and
18 trusts that is the abuser.

19 Q. I'd like to ask you about the term "grooming." What does
20 that mean?

21 A. Grooming is offender behavior that happens. Typically,
22 it involves actions on behalf of the offender with the goal of
23 lowering the child's inhibitions and gaining more access to
24 the child. So some grooming behavior would typically include
25 things like gift-giving, spending a lot of extra time and

1 focusing a lot of attention on a child, all of that to make
2 that child, you know, kind of endeared to the offender. Makes
3 them more compliant to the offender.

4 And then, also it may include in that lowering of
5 inhibitions introducing things to the child that most of us
6 would deem as inappropriate, so maybe telling an inappropriate
7 joke, exposing them to pornography, beginning to help them
8 kind of desensitize to inappropriate touching by starting off
9 with maybe some tickling or massaging that may lead to more
10 inappropriate sexual contact. All of this is so the child --
11 they tend to be pretty confused by what's happening because,
12 again, it's somebody that they truly care about typically. So
13 the behaviors and the boundaries that are being crossed,
14 that's very confusing to the child because they love that
15 extra attention, of course, they love the gifts, what they
16 don't love is the abuse and the inappropriate contact.

17 Q. And, Ms. Martucci, you sort of described something that's
18 more of a process than a single event; is that correct?

19 A. Yes. Grooming takes time.

20 Q. And you testified just now that one of the end goals is
21 you end up with a victim who is more compliant; is that
22 correct?

23 A. That's correct. And more access as well.

24 Q. Do these gradual steps that you described in grooming,
25 pushing the envelope on touching, does that tend to make a

1 child more cooperative, for lack of a better word, once the
2 sex begins?

3 A. Yes. It can certainly make a child be more compliant
4 when the actual more egregious contact starts to happen, yes.

5 Q. And is there a process -- I'm not sure exactly how to
6 phrase it, but is there a progression that you see sometimes
7 in sexual -- in the -- I don't want to say severity, but in
8 the -- I guess in the egregiousness of the sexual act?

9 A. Yes. So the contact does usually start as less
10 aggressive, so oftentimes the contact starts, as I mentioned,
11 with massages or tickling, and it may progress to kind of like
12 a graze against the genitals. And a lot of times when that
13 happens, it's so the offender can kind of gauge what's going
14 to happen if they do that. Does the child react at all? If
15 the child has no reaction, then that offender may think okay,
16 I can progress and maybe do a little more contact or go
17 underneath the clothing or go underneath the shirt and see if
18 there's a reaction to that. It's also kind of seeing where
19 that kid is going to be, so if they have a reaction to that
20 contact that's negative --

21 MR. JACOBS: Objection, your Honor. Can we
22 approach?

23 THE COURT: No, we can at a recess.

24 No, overruled. Go ahead.

25 THE WITNESS: When we have a reaction that's sort of

1 negative, the offender can kind of step back and, hey, maybe I
2 don't need to progress with this child at this time. But if
3 it is being successful, they can start to kind of push the
4 lines, push the boundaries and continue to do those touches,
5 not having them feel terrible or painful to the child at first
6 because, again, it's sort of warming that child up for what's
7 to come --

8 MR. JACOBS: New objection, Judge; impermissible
9 testimony.

10 THE COURT: No, overruled.

11 BY MS. WANG:

12 Q. Ms. Martucci, does grooming make it harder for a child to
13 tell someone what is happening to them?

14 A. Yes, absolutely.

15 Q. And how does that -- how does it do that?

16 A. So as I mentioned with that contact that can happen,
17 again that's going to make that child feel as though they're
18 compliant in what's going on. And so when the touching is
19 happening, if they didn't say no or they didn't have a
20 negative reaction or when the touching did become something
21 that was unwanted and they still didn't say no, they can then
22 feel like they've been a participant or willing participant in
23 that abuse.

24 And that shame and that guilt can make it really, really
25 difficult for a child to talk about what's happened to them

1 because they're fearful that someone, one, may not believe
2 them or, two, may not support them if they talk about it. In
3 addition to that, with that grooming behavior, when the
4 child -- again, the disclosure is difficult in and of itself
5 because it's hard for anyone to talk about traumatic
6 experiences. But when you compound that with somebody that
7 the child knows and loves and trusts, that also makes it even
8 more challenging for them to share what's happened to them.

9 Q. And you mentioned earlier, you talked about gift-giving
10 or giving a child extra attention. To be clear, those things
11 by themselves do not constitute grooming; is that correct?

12 A. No, of course not.

13 Q. When you talk about grooming, are you talking about doing
14 those things with the intent to commit a sexual act?

15 A. Yes, I am.

16 Q. How do children typically respond to grooming?

17 A. Positively. Any child really likes to get presents. Any
18 child typically really likes to have undivided, one-on-one
19 attention. Especially if you're a child in maybe a large
20 familiar, having undivided attention from an adult is really
21 extra special for a kid like that in particular. And so most
22 children respond very favorably to one-on-one attention and to
23 presents, of course.

24 Q. And I want to circle back to something else that you said
25 earlier. If child sexual abuse is being committed by a loved

1 one, is that going to be additionally confusing to the child?

2 A. Yes.

3 Q. And why is that?

4 A. Because there's some loyalty when you care about someone
5 and when you love someone. And sometimes the offender has
6 said, If you tell, if you talk to anybody about this, you're
7 going to lose me. So again, the child doesn't love the abuse
8 but loves the offender. So they just want the abuse to stop,
9 but they don't want the offender to necessarily go away,
10 especially young children, because they do care about them and
11 they don't want to lose the extra attention or presents. So
12 it does make it really, really difficult for a child to talk
13 about those things.

14 Q. What are some common ways that children react to sexual
15 abuse as it's happening?

16 A. So a lot of children may dissociate when sexual abuse is
17 happening.

18 Q. What does that mean? What does "dissociation" mean?

19 A. So dissociation is sort of like a mental escape for a
20 person when you physically can't escape somewhere. So when
21 somebody is dissociating, their brain sort of tries to help
22 them cope with that. So I've had plenty of cases where a
23 child may be being molested, and they're focusing on, like, a
24 spot on the ceiling. And while they can't tell me everything
25 about what happened during the molestation, they can describe

1 every single detail about the holes in the ceiling, the
2 coloring of it, what it looked like, you know, every detail
3 about the one spot that they fixated on. Or I've had plenty
4 of case where a child may be even given an iPad to be watching
5 while the abuse is happening, so they're looking and fixating
6 on the iPad to sort of not focus on the physical things that
7 are happening to them.

8 Q. You talked about coping just now in your answer. What's
9 the purpose of having a coping mechanism?

10 A. It's just to preserve you from that trauma that you're
11 experiencing. You know, your body is kind of overwhelmed,
12 your senses are overwhelmed with what's happening, so that's
13 your brain, your body's way of just sort of protecting you and
14 helping you to cope with what's happening.

15 Q. Do most child sexual abuse victims tell someone right
16 away that they've been abused?

17 A. It's pretty uncommon for kids to tell right away. It's
18 typically what we see as a more delayed disclosure. That is
19 the most common.

20 Q. And some kids never -- never disclose; correct?

21 A. Absolutely.

22 Q. What are some reasons why children don't disclose right
23 away?

24 A. There are a lot of reasons, and they're going to be
25 individual to each victim. But some of the reasons may be

1 fear of the perpetrator, especially if it's been a
2 particularly violent offender. It may be that they're feeling
3 shameful. As we talked about with compliant victims, they may
4 have an added layer of shame or guilt because they feel like
5 they were some kind of a willing participant in what was
6 happening. Fear of the unknown. Not knowing what's going to
7 happen if they do tell. If, for example, if the perpetrator
8 is a family member, will that perpetrator be taking away from
9 that family? Will the child be taken away from the family?
10 Fear that the nonoffendering caregiver may not be supportive
11 of the child victim. There's a lot of unknowns when it comes
12 to telling what's happening, and so that, in and of itself,
13 can be one of the biggest barriers for kids. Or again, that
14 simple fact of not wanting something bad to happen to the
15 perpetrator because a lot of times, again, they do care about
16 the perpetrator.

17 Q. Is it easy or is it difficult for kids to come forward
18 and report sex abuse?

19 A. It's incredibly difficult for anyone to come forward and
20 report sexual abuse, especially children.

21 Q. Is it common for a child, of course, depending on the
22 age, but is it common for a child not to understand what is
23 happening is even something that's not normal or wrong?

24 A. Yeah, I failed to mention that. A lot of times kids
25 disclose accidentally, and that happens when a child, as we

1 said, doesn't know what's happening, that it's wrong because,
2 of course, children aren't supposed to have sexual knowledge.
3 So you may see a child acting out, like, in their kindergarten
4 class or saying something really inappropriate that an adult
5 overhears, and a lot of times that's what we call an
6 "accidental disclosure." Because the child doesn't think
7 anything is wrong with what they're saying because they've
8 been having these things happen to them, so they don't -- they
9 have no clue that what's happening or the touches that they're
10 receiving aren't okay.

11 We've had cases of women in college who realized that
12 they were sexually abused when they talked to their friends,
13 and their friends are telling them, No, that's not what dads
14 are supposed to do to you. And they had no idea even into
15 adulthood some of the contact that was happening was
16 inappropriate because that's their normal.

17 Q. When children do come forward, do they typically disclose
18 everything at once or is it an ongoing process?

19 A. Disclosure is definitely a process. It takes time.

20 Q. Can you tell us how that process typically starts?

21 A. A lot of times it starts with maybe a tentative
22 disclosure or like an accidental disclosure as I just
23 described, but you may see a child sort of testing the waters.
24 So they may tell, like, a peer or their mother a little bit
25 about what's happened, and they're going to gauge that

1 response to see what the reaction is. So if the reaction is
2 negative or if the child simply perceives the reaction is
3 negative because some parents may react with shock and the
4 child views the shock as a negative response, that can often
5 shut the child down in that initial disclosure so that they
6 don't provide any additional detail because they want to
7 protect the person that they're telling or they're worried
8 that that person is, you know, disgusted by them or ashamed of
9 them or doesn't believe them. So it usually starts with more
10 of a tentative disclosure, and then with the right supports
11 and the right people doing interviews and things like that, we
12 often can find there's a lot more detail that can be provided
13 as that child becomes, you know, better at talking about it
14 and feeling safer with talking about it.

15 Q. And do child abuse victims, do they typically disclose
16 all the details right away or is it more of a process?

17 A. It's definitely more of a process. The details tend to
18 come with time, if ever.

19 Q. I think you testified earlier that a child will typically
20 tell I think you said a peer or a trusted adult; is that
21 correct?

22 A. Uh-huh.

23 Q. If sexual abuse, assuming that the abuse is happening
24 over a period, a time period, is there a typical way that you
25 would expect a child to behave outside of either the home or

1 wherever that abuse is happening? So, for instance, when the
2 child's at school or at somebody else's house.

3 A. So I wouldn't say there's any one way a child abuse
4 victim is going to behave. We do talk about some red flags
5 that you might see in a child victim, things like regressive
6 behaviors, you know, which means kind of going back to
7 behaviors that they have outgrown, so bed-wetting, defecating
8 in your pants, having, you know, frequent nightmares,
9 thumb-sucking, things like that. You may see a child acting
10 out physically or aggressively or you may see a child acting
11 out sexually, especially young children, again, not knowing
12 that that's not appropriate. Or you can also see a child who,
13 because things are so out of control with the abuse that's
14 happening, become very controlling in other aspects of their
15 life. So you may see them excelling at everything else.
16 They're an amazing student, they're an amazing athlete because
17 those are the things that they can control. We see them --
18 some kids develop eating disorders, self-harming behaviors,
19 things like that. And then, of course, some victims show no
20 symptoms at all.

21 Q. Ms. Martucci, is it possible in some circumstances for a
22 child to feel good during certain aspects of sexual abuse even
23 if they don't like what's happening?

24 A. Of course. So sexual contact is supposed to feel good,
25 and so if done correctly, somebody who wants to be successful

1 and have ongoing contact with the child, they don't want that
2 to be painful for the child. So they are going to try to make
3 that as pleasurable as possible for the child, so absolutely.
4 The child can even seek out the sexual contact because it does
5 feel good. And that isn't necessarily uncommon because,
6 again, that is supposed to feel good. It's designed to feel
7 good.

8 Q. How does that, what you just talked about, how does that
9 affect a child victim when the abuse does feel good?

10 A. Again, I think that speaks to compliance, so when a child
11 is kind of benefiting from that because it's pleasurable, that
12 shame, that embarrassment, that guilt tends to be exacerbated
13 because, you know, it's confusing. It feels good but I don't
14 like it, so that's a very difficult thing for a kid to come to
15 grips with. Also, I love this person that's doing this to me,
16 I don't think they're a bad person, but this is making me feel
17 bad. So again, incredibly, incredibly confusing for a young
18 mind.

19 Q. Does that make it harder to disclose?

20 A. Yes, absolutely.

21 Q. Is it typical for you to see child sexual abuse victims
22 recall the core event or the core sex act but not necessarily
23 remember all the surrounding details?

24 A. Yeah, that's very common.

25 Q. And why is that?

1 A. Well, as I mentioned, that dissociation, so you're kind
2 of checking out of your body at times when the abuse is
3 happening, so you may not be attuned to kind of all the
4 peripheral things that are going on. And so similar to
5 somebody who's experienced some other type of trauma like a
6 car accident, you're not going to remember every single detail
7 that led up to it, but the event itself you're typically going
8 to be able to recall.

9 Q. And you talked about trauma. A car accident obviously
10 can be a very traumatic event. Can sex abuse be similarly
11 traumatic?

12 A. Yeah. I mean, trauma is relative, but sex abuse -- it's
13 considered a trauma to those who feel they've been traumatized
14 by it, yes.

15 Q. If you have multiple people involved in a car crash,
16 would you expect that each person would recall different
17 aspects of the car crash or different things about the crash
18 depending on what is most significant to them?

19 A. Yes, I would.

20 MR. JACOBS: Foundation.

21 THE COURT: No, overruled.

22 BY MS. WANG:

23 Q. Would you expect that they would still recall that core
24 event or the core act of the car crash itself?

25 A. Yes, I would.

1 Q. Do children or I guess anybody tend to remember events
2 that they perceive as more significant or more unusual,
3 whatever that may be?

4 A. Yes. If it's something outside the scope of normal, even
5 with within the abuse context, then yes, they tend to remember
6 those details a little bit better.

7 Q. What are some events that might be more memorable
8 within -- assuming that the abuse is ongoing, what would be
9 some of the more memorable events?

10 A. So in interviews, in fact, when we are talking to kids
11 about the abuse that they have experienced, we oftentimes help
12 them frame the context when we're talking to them so that we
13 can get more detail.

14 So a lot of times the events they may recall best are the
15 very first event. So a lot of times we'll have that child
16 walk us through the very first incident of abuse from start to
17 finish, and that we usually get a lot more detail. Especially
18 if the abuse is habitual, it's a lot harder for them to
19 remember every detail, of course, of every event. And then
20 the last time that the abuse happened, oftentimes we can get a
21 lot more detail talking about the very last time.

22 Other questions we may ask to help elicit more detail is
23 the worst time, the time it was the most painful. Bizarre sex
24 acts are often events they can remember more readily, if they
25 were forced to perpetrate on another child or do something

1 outside the scope of what was normally happening in the abuse.
2 Like, if the child was forced to perform fellatio, and that's
3 not something they ever had to do any other times, they may
4 remember the first time they were forced to do that. So there
5 are significant events that might happen.

6 Also, there may be times that line up with a significant
7 event in the child's life outside of the abuse. So a time
8 that happened at their birthday party they might recall
9 better. A time that happened Christmas or on a religious
10 holiday that they celebrate, that may be an event that they
11 recall with a little bit more detail because it was an
12 important event for that child in general that day and then
13 something negative happened.

14 Q. You said that if abuse is habitual, someone is not going
15 to remember each and every specific time; is that correct?

16 A. Yes, that's correct.

17 Q. But they might remember the first time or the last time
18 or an usual time?

19 A. Correct.

20 Q. Are children or adults for that matter typically able to
21 remember exact dates or times that something happened?

22 A. No. Most people aren't great about at that I found,
23 especially kids.

24 Q. What are some things that can help a child remember like
25 the time frame that something happened?

1 A. So the markers, like I mentioned, if there is a
2 significant event in that child's life that they are
3 remembering, so, you know, the last day of school, the first
4 day of summer vacation, if it happened in a different location
5 than where it normally happened, if it happened on a holiday,
6 or, you know, at a religious event or ceremonial event, things
7 like that may be times that the child is able to provide more
8 detail about because the day itself was already impactful on
9 the child and a day that they might have remembered anyway.

10 Q. Ms. Martucci, you talked a little bit at the beginning
11 about what you do as a forensic interviewer. Are you a law
12 enforcement investigator?

13 A. I'm not a law enforcement investigator. My role is as --
14 even within the FBI, I'm not, like, a gun carrier, I'm not a
15 police officer, I'm not an agent. My role is as an
16 investigative interviewer. So while I work with a
17 multidisciplinary team that includes law enforcement, I am not
18 an investigator.

19 Q. Is it your job as a forensic interviewer to decide
20 whether or not a particular sexual abuse allegation happened?

21 A. Absolutely not. That is the job of a judge and a jury.

22 Q. I'm going to ask -- I have just a couple of additional
23 questions for you.

24 Is it possible for a perpetrator to commit sexual abuse
25 without other family members or friends knowing that it's

1 going on?

2 A. Yes. I have had cases where the abuse is happening to
3 multiple victims in the same room that don't know that the
4 other one is being victimized. Absolutely.

5 Q. Is sex abuse typically going to be something that's
6 hidden or done in private?

7 A. Most intimate acts in general are done in private, so
8 yes, absolutely, sexual abuse is going to be done --

9 MR. JACOBS: Judge, there was an objection.

10 THE COURT: Wait. Mr. Jacobs, if you have an
11 objection, if you could go ahead and stand so --

12 MR. JACOBS: We'll object to speculation here,
13 Judge.

14 THE COURT: No. Overruled.

15 BY MS. WANG:

16 Q. Is it possible for a perpetrator to commit sexual abuse
17 without close family members or partners or other adults
18 knowing?

19 A. Yes.

20 Q. Is it possible for a perpetrator to commit child sexual
21 abuse while still being involved in normal adult intimate or
22 sexual relationships?

23 A. Yes.

24 Q. So those two things are not mutually exclusive?

25 A. Correct.

1 Q. Is it possible for a perpetrator to love or care for a
2 child that they're also sexually abusing?

3 A. Absolutely.

4 MR. JACOBS: Judge, object again to scope. Those
5 are offender characteristics, Judge.

6 THE COURT: No, overruled.

7 MS. WANG: Those are all the questions I have at
8 this time.

9 THE COURT: All right. Cross-examination.

10 MR. JACOBS: Thank you, Judge.

11 CROSS-EXAMINATION

12 BY MR. JACOBS:

13 Q. Good morning, Ms. Martucci.

14 A. Good morning.

15 Q. Do you remember when you started doing this work, what
16 the year was?

17 A. In 2010 as a forensic interviewer, yes.

18 Q. And you had attended undergraduate college; is that
19 right?

20 A. I had attended undergraduate and a master's program as
21 well.

22 Q. And when was that?

23 A. My undergraduate, I graduated in 2005. And for my
24 master's program, I graduated in 2009.

25 Q. Okay. And you had indicated to us that you had attended

1 some training in support of your current employment; right?
2 Your current job. And that was 40 hours of a training class;
3 is that right?

4 A. There were three separate ones, and each was a 40-hour
5 clinic a piece.

6 Q. That's about a week?

7 A. Correct.

8 Q. So about fifteen days of training is what you've had?

9 A. Correct.

10 Q. Fifteen days?

11 A. As it relates to forensic interview clinics, yes.

12 Q. Okay. And you work for the FBI; is that right?

13 A. I do.

14 Q. It's a police agency?

15 A. It's an investigative agency, yes.

16 Q. And they investigate allegations of crimes; right?

17 A. Yes.

18 Q. In order to develop evidence to prosecute those crimes;
19 is that true?

20 A. To corroborate or refute allegations, yes.

21 Q. And you're working today for the prosecutors; is that
22 right?

23 A. The prosecution did ask me to testify today as an expert
24 witness.

25 Q. Would it be fair to say that in the scope of your

1 employment that's a very common thing for you?

2 A. It has not been common for me, no.

3 Q. Ever testify for the defense in any case?

4 A. I've never been asked by a defense counsel to testify in
5 a case.

6 Q. So you're mostly -- you're exclusively a prosecution
7 witness; is that true?

8 A. Thus far in my career, I've only been asked by
9 prosecution to testify.

10 Q. Okay. We talked a little bit -- you talked a little bit
11 about grooming. Is it fair -- what I understood from your
12 testimony was that grooming was a circumstance where the
13 parent was attempting to influence the behavior of the child.
14 Is that fair to say?

15 A. When I was talking about grooming, I was specifically
16 referring to an offender attempting to --

17 Q. All right.

18 A. -- elicit certain behavior from the child.

19 Q. So when you're talking about grooming, it's not an
20 ordinary act of parenting?

21 A. No.

22 Q. Would it be fair to say that every parents attempts to
23 influence the behavior of their child?

24 A. I think that would be fair to say.

25 Q. Don't spill your milk or I'm going to punish you. Is

1 that -- that's grooming or no?

2 A. Not in the context of what I was referring to, which is
3 grooming in the context of the goal being to sexually abuse a
4 child.

5 Q. Is it true that the parents routinely do nice things for
6 their children?

7 A. Yes, generally.

8 Q. Is it true that parents may do something special on some
9 special occasion for their children?

10 A. Yes, of course.

11 Q. Is it true that a parent may spend extra time with a
12 child?

13 A. Yes.

14 Q. On some special occasion?

15 A. Yes, absolutely.

16 Q. Is it the case that parents will seek to be endeared by
17 their children?

18 A. Yes, most parents.

19 Q. And these behaviors, would you say these are normal in
20 any parenting situation?

21 A. The ones you were describing, yes.

22 Q. If I see a child at Dairy Queen being bought an ice cream
23 cone by a parent, am I able to conclude from that that there's
24 sexual abuse there?

25 A. Absolutely not.

1 Q. Why?

2 A. In the scenario of somebody buying an ice cream for the
3 child?

4 Q. That's what I just asked, yeah.

5 A. I don't think it would be fair to assume that that is an
6 act of grooming. But when you put it in the context of other
7 things that may be happening, then you may see some of those
8 indicators that grooming behavior is going on.

9 Q. So potentially, any such act could be in support of
10 grooming for a sex act?

11 A. Potentially.

12 Q. All right. Any ice cream cone that's purchased could be?

13 A. It could be part of a grooming process if the end goal
14 for that person buying it is to molest the child.

15 Q. Any toy that's purchased?

16 A. It could be.

17 Q. Any extra time spent with the child?

18 A. It could be.

19 Q. And in the work that you do, you see that type of thing a
20 lot, don't you?

21 A. Grooming behaviors?

22 Q. Yes.

23 A. Yes.

24 Q. Do you ever find yourself looking at ordinary family
25 interactions and just having it in your mind, boy, that could

1 be grooming?

2 MS. WANG: Objection; relevance.

3 THE COURT: You may answer. Go ahead.

4 THE WITNESS: What you're referring to is kind of
5 the nature of working in a child abuse field, and it's pretty
6 common that people that work in the child abuse field have a
7 very skewed view of the world. So yes, I've definitely had
8 times where I might look at something and think, Is that
9 something that's not appropriate, more so than a layperson
10 would.

11 BY MR. JACOBS:

12 Q. Very skewed view of the world?

13 A. At times. Unfortunately.

14 Q. Let me ask you this: When children report sexual abuse
15 about a parent, are there ever false reports?

16 A. They're very uncommon, but it can happen.

17 Q. So you talked about the reasons why a child would delay,
18 you talked about those things. Tell me the reasons, then, why
19 a child would give a false report.

20 A. Times where false reports happen, the most common
21 occurrence for false reporting has to do with custody
22 disputes. So if there's a major custody dispute happening in
23 the home, that was where we see the largest incident of false
24 reports. And that may be a parent coaching a child to say
25 something that's not true, or a parent who is already in

1 distress interpreting something a child has said or done as
2 abuse and it's not accurate.

3 Q. So then a divorce or a parents not getting along, would
4 that be sort of a source of concern?

5 A. Again, my knowledge of that is specific to custodial
6 disputes. So I don't know about parents just not getting
7 along, but custodial disputes.

8 Q. Disagreement about who gets the kids?

9 A. Sure.

10 Q. Why would that -- what kinds of mechanisms do we see to
11 cause the child to give a false report?

12 A. It may be that the child is being coached by a parent to
13 report something that is not true.

14 Q. Do children ever do this spontaneously because, say, they
15 think it helps?

16 A. I don't want to speak to that because I don't have great
17 knowledge of that. Again, the ma- -- again, as I said, it's
18 very rare for children to false report, and in the times that
19 we know it happens, it's more often than not in relation to a
20 custodial dispute.

21 Q. And that would be the No. 1 -- in your view, the No. 1
22 reason for false reports?

23 A. That's typically the No. 1 reason for false reports.

24 Q. In understanding what happened with the child, would it
25 ever be important to look at the child's medical records?

1 A. It can be important, yes.

2 Q. Would it ever be important to look at the child's school
3 records?

4 A. It can be as it relates to if there was, like, a
5 disclosure made at school or something said to the counselor
6 or behavior issues that maybe happened around the time the
7 abuse is going on, it can be.

8 Q. But then as I understood it, your testimony was that
9 children may act out if they're victims of sexual abuse; is
10 that true?

11 A. In some instances they might, yes.

12 Q. They may exhibit unusual behaviors; is that true?

13 A. In some instances they might.

14 Q. They may do very poorly in school; is that possible?

15 A. In some instances they might.

16 Q. They may exhibit unusual behavior around other adults; is
17 that true?

18 A. In some instances.

19 Q. And are there circumstances where -- that you've seen
20 where adults surrounding the child notice something?

21 A. Yeah, we've had times where other adults notice behavior
22 that they find concerning.

23 Q. If you know, would it be fair to say that the more people
24 who are in contact with the victims would be the more likely
25 that something would be detected when it's happened?

1 A. Only in circumstances where the victim is having some
2 type of behavior or acting out. But again, that's not the
3 norm necessarily. They don't always.

4 Q. You talked about victims of child abuse having very
5 focused memory, did I get that right, of the events and the
6 acts that were involved?

7 A. That they might be able to remember the core act as
8 opposed to some of the peripheral details, yes.

9 Q. "Core." That's the term you used. "Core act." And not
10 the surrounding details?

11 A. Yes. At times.

12 Q. If you know, can you tell me if that's also a feature
13 that we would have with someone who is lying?

14 A. I don't know the answer to that.

15 Q. Okay. And likewise, if a person were able to fix
16 something precisely in time versus someone who just isn't able
17 to do that, is that common for children?

18 A. Can you rephrase?

19 Q. I think you testified that child abuse victims often have
20 difficulty giving the exact date on which something occurred?

21 A. Yes, I did.

22 Q. And same question, if you know, is that also a feature of
23 someone who is lying?

24 A. I can't speak to that.

25 MR. JACOBS: I don't have any further questions.

1 Thank you.

2 THE WITNESS: Thank you.

3 THE COURT: Redirect.

4 MS. WANG: Thank you, your Honor.

5 REDIRECT EXAMINATION

6 BY MS. WANG:

7 Q. I want to ask you, so I think Mr. Jacobs is going to make
8 a big deal about the fact that you said you have a skewed view
9 of the world. You've done 1700 forensic interviews; correct?

10 A. I have.

11 Q. What's the topic of most of these interviews that you've
12 done?

13 A. The majority is child sexual abuse.

14 Q. And you've made a career, this is your career, in talking
15 to children about some of the worst things that has ever
16 happened to them; is that correct?

17 A. That is correct.

18 Q. You talked about trauma. You talked a lot with kids and
19 young adults about traumatic events that have happened. Have
20 you heard of the term "vicarious trauma"?

21 A. Yes.

22 Q. Is that something that forensic interviewers can
23 experience?

24 A. Absolutely.

25 Q. And what do you do to safeguard yourself against

1 experiencing -- or, can you explain what vicarious trauma is?

2 A. So vicarious trauma is basically people that work in
3 fields --

4 MR. JACOBS: Object to relevance.

5 THE COURT: No, overruled.

6 THE WITNESS: People who work in fields like child
7 abuse or law enforcement where they come into contact every
8 single day with people who are suffering in some way, as a
9 result of that contact on a day-to-day basis, you can kind of
10 take on some of that trauma at times. And so, you know,
11 sometimes it may come across as somebody who has, you know,
12 depression a little bit or that they are, you know, just sort
13 of taking in some of that trauma. And it can affect your
14 body, it can affect your attitude. A lot of people,
15 especially law enforcement or people that work in this field,
16 report, like, somatic issues that they may have as a result of
17 taking on that trauma every single day and hearing some of the
18 worst things you can hear come out of a child's mouth every
19 single day.

20 So as a professional, things that we do -- and we
21 spend time learning about it, right, and we spend time trying
22 to manage that within ourselves. And our supervisors all know
23 and are aware of those things, so things like taking your
24 vacations and completely unplugging and unwinding are things
25 that are encouraged for us to do. So when I'm home, I'm home.

1 When I turn my phone off, my phone is off. I'm not responding
2 to work, things like that. Just spending time enjoying my own
3 children, doing the things that I need to do to, you know, to
4 deal with my own self-care. That's a big buzzword now. So
5 self-care, right. Going on walks, exercising, cooking dinner
6 with my husband, things like that, that kind of, you know,
7 counterbalance some of the evil that you're hearing every
8 single day.

9 BY MS. WANG:

10 Q. And notwithstanding all of that, you're a blind expert in
11 this case; correct?

12 A. Yes.

13 Q. So you're not aware of any of the facts in this case?

14 A. I am not, no.

15 Q. Ms. Martucci, I just want to ask you, I want to follow up
16 with a couple of other things.

17 You said that the majority of -- or, a large percentage
18 of false reporting occurs when there's a major custody dispute
19 ongoing on; is that correct?

20 A. Yes.

21 Q. If there is not a custody dispute going on, would you
22 expect that there might be -- it might be less likely for
23 false report?

24 A. Yeah. Again, false reports are uncommon outside of the
25 scope custodial issues.

1 Q. Let me ask you this: You were asked about school
2 records, and I think your answer was it depends on whether
3 there's anything that would have been recorded; correct?

4 A. Correct. In fact, in preparing for interviews, I rarely
5 am going to ask for the school records unless there's some
6 major reason to do so. I might ask if there's been any
7 therapy records or things like that, or I might ask if there's
8 prior reports to children and family services. I rarely ask
9 about school records unless I've been told that there's
10 something in the records that may be pertinent to the
11 investigation itself or to the concerns.

12 Q. And with regard to medical records, let me ask you this:
13 A child is dependent on a parent taking them to the doctor;
14 correct?

15 A. Yes.

16 Q. Typically?

17 A. Uh-huh.

18 Q. If somebody is committing sexual abuse, would you expect
19 them to take the child to the doctor in response to perhaps
20 physical things that are happening with regard to the sexual
21 abuse?

22 MR. JACOBS: Object to foundation.

23 THE COURT: No, overruled.

24 THE WITNESS: I don't know that I can speak to that.
25 I don't know that I would or would not expect them. I think

1 it would depend on the circumstance and what the complaint of
2 the child is. So in the context of being taken to medical
3 appointments, if you have a family that does do those things
4 regularly and sees the pediatrician as they're supposed to,
5 yes, I would expect them to continue that care. But if you
6 have a family where they don't keep up with those types of
7 appointments, they historically don't keep up with the care of
8 the child, then I wouldn't necessarily expect them to keep up
9 with that care of the child whether or not there's a
10 complaint.

11 BY MS. WANG:

12 Q. So the medical records would only be relevant if there
13 were actually records that existed?

14 A. Correct.

15 MS. WANG: That's all I have. Thank you.

16 THE COURT: All right. Any questions from the
17 jury for this witness? And if you do have questions, you can
18 just write them on a piece of paper.

19 All right. And may this witness step down and be
20 excused?

21 MS. WANG: Yes, your Honor.

22 THE COURT: Thank you. You may step down and be
23 excused.

24 THE WITNESS: Thank you.

25 THE COURT: And the government may call its next

1 witness.

2 MR. CASSELL: Your Honor, can I just step out? I
3 just need to see if she's here.

4 THE COURT: Sure.

5 MR. CASSELL: Your Honor, would it be possible to
6 take a five-minute break? I don't want everybody to
7 necessarily wait in place.

8 THE COURT: All right. Let's take a 10-minute
9 break.

10 MR. CASSELL: Thank you, your Honor.

11 THE COURT: Go back in the room for five minutes.
12 So let's take a brief, 10-minute recess.

13 (Jury panel excused at 10:02 a.m.)

14 THE COURT: All right. We'll take a ten-minute
15 break.

16 MR. JACOBS: Judge, I think we had a pending
17 objection we were going to get to on a break.

18 THE COURT: Oh, all right. The jury is absent. Go
19 ahead.

20 MR. JACOBS: That's fine, Judge.

21 We had some testimony that amounted to offender
22 characteristics including some extremely troubling testimony
23 regarding couldn't a person be -- an offender be in a sexual
24 relationship and also be molesting children? That's
25 impermissible testimony, Judge, for a witness, an expert

1 witness to come up and tell us what offender behaviors are and
2 what offenders are like. And this is way over the line, and
3 it was given here over objection. So I really object to this.
4 I think the only remedy is a mistrial, frankly, because I
5 don't think we can unring that bell. But the testimony is
6 given. It's either that or strike it or something, but, you
7 know, we didn't have this trouble --

8 THE COURT: Do you have any case law supporting
9 that?

10 MR. JACOBS: I do not at my fingerprints.

11 THE COURT: Okay.

12 MR. JACOBS: But basically, an expert is not allowed
13 to come in and say this is what the behavior of a sex offender
14 is like. And here we have testimony that now they're saying,
15 well, oh, they might have a girlfriend, they might be getting
16 sex, and, yeah, they can do this. And she can testify as to
17 victim characteristics, but here we're way over the line.

18 THE COURT: All right. Ms. Wang.

19 MS. WANG: She's able to testify to her training and
20 experience based on the 1700 interviews that she's done with
21 children and the patterns and the information that she has
22 from that experience. I did not ask her about girlfriends or
23 anything specific. She is a blind expert, she has no facts of
24 this case, so she's not testifying as to this particular
25 defendant.

1 The question was whether it was possible in child
2 sexual abuse cases for someone to be in both an adult sexual
3 relationship as well as molest children. And based on her
4 training and experience, she can answer that.

5 MR. JACOBS: I have little doubt that she has an
6 opinion on it in her skewed view of the world, her words, but
7 it's not one that she can give to a jury in this case. And to
8 profile an offender, folks, these are things to look for --

9 THE COURT: All right. And I'm looking at the --
10 you know, counsel, if you want to get me any case law, I'm
11 looking at the Starks case which is actually Judge Bernini
12 who, I think, is going to retire soon or has. So that's
13 actually a state court case about the use of experts. So if
14 counsel just want to get me some case law. I don't know if we
15 discussed -- I think we discussed it very briefly in the first
16 trial.

17 MS. WANG: She testified to it in the first trial.

18 THE COURT: Right. And I don't know if there was an
19 objection at that time --

20 MS. WANG: I don't believe there was.

21 THE COURT: -- or not.

22 So if you want to get me something to support your
23 argument, obviously you can't have profile -- you can't
24 profile a defendant and his characteristics --

25 MR. JACOBS: Well, that's what we're arguing

1 happened.

2 THE COURT: -- and have experts talk about that, as
3 opposed to just general ideas about the dynamics of child
4 sexual abuse.

5 MR. JACOBS: Unfortunately, when we went to the
6 relationships they may have and people they may be with, we
7 went to profiling. So profile evidence has been given in this
8 matter unlawfully. There's no other way to put it.

9 THE COURT: All right. So you're --

10 MR. JACOBS: It's a mistrial.

11 THE COURT: -- objection is preserved. And if
12 counsel want to get me any case law that might support either
13 position.

14 So I'll deny -- you're requesting a mistrial. I'll
15 deny your request for a mistrial but would appreciate
16 something from counsel, the best case that you feel you have
17 supporting your position.

18 So now we have about a five-minute recess, so let's
19 take a short recess and start up again.

20 MS. WANG: Thank you, your Honor.

21 MR. JACOBS: Thank you.

22 (Recess from 10:07 a.m. to 10:17 a.m.)

23 MS. WANG: Judge, we're going to recall Ms. Martucci
24 for a couple of extra questions. It shouldn't take more than
25 five minutes.

1 THE COURT: Okay. And do you have your next
2 witness?

3 MS. WANG: We do. She's here.

4 THE COURT: And I'll let you, Mr. Jacobs, obviously
5 question the witness.

6 MR. CASSELL: Judge, sorry about the delay. We
7 actually are stacking up all of our witnesses in
8 anticipation --

9 THE COURT: We have such a nice witness room, don't
10 we?

11 MR. CASSELL: We do.

12 THE COURT: Maybe it needs to be better decorated.

13 MR. CASSELL: Our anticipation is absolutely getting
14 done tomorrow just based on the speed with which Ms. Martucci
15 was done. So we are making arrangements so that pretty much
16 we can call four of our five today which leaves just
17 Detective Garcia and some recordings tomorrow.

18 THE COURT: And you told Mr. Jacobs that?

19 MR. JACOBS: Generally.

20 MR. CASSELL: In general.

21 MR. JACOBS: He told us generally.

22 THE COURT: Be ready.

23 MR. JACOBS: Well --

24 MR. CASSELL: Our thought all along is that we
25 expect that we'll be done with our case-in-chief tomorrow.

1 THE COURT: Okay. So witnesses sometimes are
2 inconvenienced and have to wait in waiting rooms and be on
3 call, so just make sure you have your people available. Have
4 they be subpoenaed, your folks?

5 MR. JACOBS: Tomorrow. For tomorrow?

6 THE COURT: Sure.

7 MR. JACOBS: Wednesday.

8 THE COURT: When do you think you'll finish? Do you
9 think you'll finish before tomorrow --

10 MR. CASSELL: The speed we're going right now,
11 Judge, I think we can be done by mid-afternoon tomorrow.

12 THE COURT: Okay.

13 MR. CASSELL: Early to mid-afternoon.

14 THE COURT: So have a few people available for
15 Wednesday afternoon.

16 MR. JACOBS: We'll see what we can do, Judge. I
17 can't promise but we'll see.

18 THE COURT: Have they been subpoenaed?

19 MR. JACOBS: Yes, they were subpoenaed, but the
20 subpoenas always read the first day of trial.

21 THE COURT: Right.

22 MR. JACOBS: And then we adjust --

23 THE COURT: And they're supposed to say in touch.

24 MR. JACOBS: So we adjust the date. But they've
25 been -- they were aimed at Friday, then they got re-aimed at

1 Thursday. And now potentially some of them may be re-aimed
2 for tomorrow afternoon for mid-afternoon, which is sort of,
3 what, a two-hour window, maybe?

4 THE COURT: Sure.

5 MR. JACOBS: And if it's possible we'll do it.

6 THE COURT: Great.

7 MR. JACOBS: Brad is right here. He's in contact.
8 He just handed me a list of the current status.

9 THE COURT: Okay. Great.

10 MR. JACOBS: We're not -- the only purpose of
11 subpoenas with these witnesses, Judge, is not to compel their
12 appearance but to permit it with their employers.

13 THE COURT: Right. And I know sometimes witnesses
14 can be greatly inconvenienced, but it's just the nature of
15 trials.

16 MR. CASSELL: Better than the jurors.

17 MR. JACOBS: We're not compelling any of our
18 witnesses to be present. They're present if they choose to
19 be.

20 THE COURT: I think some of them are from Phoenix,
21 too.

22 MR. JACOBS: That's correct, yes.

23 THE COURT: So they have to make that drive.

24 MR. JACOBS: Yes, they do.

25 THE COURT: So now where are we? Where's

1 Ms. Martucci?

2 MR. CASSELL: My understanding when I came in was
3 she was on her way up, so let me step out and I'll check.

4 MR. JACOBS: Judge, Mr. Hunt is asking me what time
5 we should --

6 THE COURT: We can go off the record now.

7 (Off-the-record discussion.)

8 THE COURT: You're back. So have a seat.

9 And I'll explain to the jury a few more questions.
10 Give Mr. Jacobs an opportunity to cross-examination.

11 So, Armida, if you can bring in the jury.

12 THE CLERK: Sure, Judge.

13 (Jury panel present at 10:23 a.m.)

14 THE CLERK: Please rise for the jury.

15 THE COURT: All right. The jury is back. Everyone
16 may be seated.

17 And, members of the jury, during the break the
18 government requested to have Ms. Martucci come back to answer
19 some additional questions. So she's back on the stand and
20 she's already been sworn in as a witness.

21 So go ahead, Ms. Wang.

22 MS. WANG: Thank you, your Honor.

23 FURTHER REDIRECT EXAMINATION

24 BY MS. WANG:

25 Q. And Ms. Martucci, I apologize. I wanted to clarify a

1 couple of questions that you were asked at the end.

2 You testified earlier that it's possible -- it's possible
3 for sexual abuse to occur without other individuals, family
4 members knowing that it was going on. Is that based on your
5 experience interviewing children as part of your job?

6 A. Yes.

7 Q. And is that based on your experience interviewing them
8 throughout the 1700 forensic interviews that you've done?

9 A. Yes, that's correct.

10 Q. And you testified earlier also that it's possible there
11 are -- it's possible for sexual abuse to occur while someone
12 is also in other relationships; is that correct?

13 MR. JACOBS: Objection, your Honor. Same objection.

14 THE COURT: I'll let her follow up with that. Go
15 ahead.

16 BY MS. WANG:

17 Q. And is that also based on your experience interviewing
18 children, the 1700 forensic interviews that you've done?

19 A. Yes.

20 MR. JACOBS: Renew objection, Judge. Move -- well,
21 we --

22 THE COURT: Yes, you made your record, so I'll let
23 you question the witness if you like.

24 Any further questions?

25 MS. WANG: No, your Honor.

1 THE COURT: Mr. Jacobs, any further questions for
2 the witness?

3 MR. JACOBS: No, not based on that.

4 THE COURT: All right. Then, thank you, ma'am. You
5 may step down.

6 And the government may call its next witness.

7 MR. CASSELL: The government will call Erica
8 Marrufo, your Honor.

9 THE COURT: All right. Good morning, Ms. Marrufo.
10 You can come right up here to the witness stand. And if you
11 could just remain standing, and the clerk will swear you in as
12 a witness.

13 ERICA MARRUFO, PLAINTIFF WITNESS, SWORN

14 THE CLERK: Thank you, please be seated.

15 Please speak directly into the microphone. State
16 your full name, spelling your last name.

17 THE WITNESS: Erica Dominique Marrufo,
18 M-a-r-r-u-f-o.

19 THE COURT: And you may proceed.

20 MR. CASSELL: Thank you, your Honor.

21 DIRECT EXAMINATION

22 BY MR. CASSELL:

23 Q. Ms. Marrufo, where are you employed?

24 A. The military.

25 Q. The military? Which branch of the military do you serve

1 in?

2 A. The Navy.

3 Q. Are you on active duty?

4 A. Yes.

5 Q. Where do you live?

6 A. Washington, D.C.

7 Q. Is that because the Navy tells you you have to?

8 A. Yes.

9 Q. Are you currently married?

10 A. Yes.

11 Q. What month and year were you born in?

12 A. February 2000.

13 Q. And what's the name of your biological mother?

14 A. Sylvia Muro.

15 Q. And how about your biological father? Who is that?

16 A. Eric Marrufo.

17 Q. Okay. And do you see your father in the courtroom today?

18 A. Yes.

19 Q. Could you please -- and you may have to stand to be able
20 to see him, but can you please point him out and describe an
21 article of clothing he's wearing?

22 A. He's wearing maroon tie. He has glasses and black hair.

23 MR. CASSELL: Your Honor, ask the record to reflect
24 the positive identification of the defendant.

25 THE COURT: Yes. The record may so reflect.

1 BY MR. CASSELL:

2 Q. Ms. Marrufo, have you ever lived with the defendant?

3 A. Yes.

4 Q. And where was that when you lived just with the
5 defendant?

6 A. In his house in Tucson, Arizona.

7 Q. Okay. And was that on an Indian reservation, do you
8 recall?

9 A. Yes.

10 Q. Which Indian reservation?

11 A. The Yaqui Tribe.

12 Q. Okay. And do you recall about how old you were when you
13 lived in the defendant's house?

14 A. Between six and eight.

15 Q. Six and eight years old?

16 A. Yes.

17 Q. And I believe you testified that you were born in early
18 2000; is that right?

19 A. Yes.

20 Q. So do the dates August 1st, 2006 to August 1st, 2008
21 sound right to you?

22 A. Yes.

23 Q. What grades were you -- were you in at this time?

24 A. I was in first grade.

25 Q. So first grade and second grade?

1 A. Yes.

2 Q. Because that was over the course of about two
3 school years; right?

4 A. Yes.

5 Q. Okay. So you were in first and second grade?

6 A. Yes.

7 Q. All right. And I'm going to show you what's been marked
8 as Prosecution Exhibit 14.

9 MR. CASSELL: I believe this has been admitted,
10 your Honor.

11 THE COURT: I don't know if --

12 MR. CASSELL: I'm not sure with the clerk.

13 THE COURT: Any objection to admission of 14?

14 MR. JACOBS: No objection, Judge.

15 THE COURT: 14 is admitted.

16 (Exhibit 14 entered into evidence.)

17 THE COURT: And let me tell the jury about exhibits.
18 So you'll see some of these exhibits on your document screen
19 there, on the screen there if they're admitted into evidence.
20 If they have not yet been admitted, sometimes the lawyer will
21 be showing a witness and an exhibit hasn't been admitted yet,
22 so you won't see it. And you will have hard copies of these
23 exhibits for you when you start your deliberations, so you'll
24 actually have the hard copies.

25 All right. So go ahead. That's Exhibit 14. Go

1 ahead.

2 BY MR. CASSELL:

3 Q. Erica, can you see Exhibit 14 on the monitor in front of
4 you?

5 A. Yes.

6 Q. And do you recognize the three children depicted in
7 Exhibit 14?

8 A. Yes.

9 Q. Who are they?

10 A. Me, my sister, and my brother.

11 Q. Okay. Your sister, what's your sister's name?

12 A. Rosalinda Marrufo.

13 Q. Okay. And who is your brother? What's his name?

14 A. Joseph Marrufo.

15 Q. And are you depicted in the picture?

16 A. Yes.

17 Q. Where are you in the picture?

18 A. I'm in the middle holding Joseph.

19 MR. CASSELL: And, your Honor, I believe it's being
20 published; correct?

21 THE COURT: Yes.

22 BY MR. CASSELL:

23 Q. And is that your sister wearing the dress next to you?

24 A. Yes.

25 Q. And the little guy who's wearing the jeans that you seem

1 to have your hand around, is that your brother Joseph?

2 A. Yes.

3 Q. Okay. And is that about how the three of you appeared in
4 2006?

5 A. I guess.

6 Q. Okay. All right. Now, I believe -- I don't believe you
7 testified to how old Rosa is. How old is she compared to you?

8 A. She's a year younger. She was in kindergarten.

9 Q. When you were in which grade?

10 A. So I was six, she was five.

11 Q. Okay. All right. And how about Joseph? How much
12 younger than you is he?

13 A. He's four years younger than me.

14 Q. Four? Four years younger?

15 A. Yes.

16 Q. Okay. Did you live alone with the defendant and Rosa and
17 Joseph?

18 A. Yes.

19 Q. At this time of your life, were there any people who
20 would sleep over on occasion?

21 A. No.

22 Q. And when I say "on occasion," I mean ever. Would there
23 ever be people who would sleep over?

24 A. I guess sometimes his girlfriends would sleep over.

25 Q. Every once in a while?

1 A. Yes.

2 Q. Okay. How about family members? Would family members
3 sleep over every once in a while?

4 A. No.

5 Q. Okay. And you mentioned girlfriends would might sleep
6 over. Was this a regular occurrence?

7 A. It was multiple times.

8 Q. Okay. Over the course of how long?

9 A. Between two years, I guess.

10 Q. The two years?

11 A. Yes.

12 Q. Okay. I mean, try to explain to the jury how often this
13 would happen over the course of, let's say, a month.

14 A. I don't know. I don't know.

15 Q. Was it regular enough that you -- that you noticed it
16 happening a lot?

17 A. Yes.

18 Q. Okay. Erica, did the defendant, your father, did he
19 engage in sexual acts with you when you resided with him?

20 A. Yes.

21 Q. And I'm talking about the period of time between
22 August 1st, 2006, August 1st, 2008. That was when you resided
23 with him?

24 A. Yes.

25 Q. And that was when the sexual acts happened?

1 A. Yes.

2 Q. When these acts happened, was there anyone else ever
3 around?

4 A. No.

5 Q. Did this usually happen in a bedroom?

6 A. Yes.

7 Q. So fair to say, to the best of your recollection, it was
8 just you and the defendant?

9 A. Yes.

10 Q. Nobody else?

11 A. No.

12 Q. Did the defendant ever rape you, Erica?

13 A. Yes.

14 Q. Did he rape you one time or multiple times?

15 A. One time.

16 Q. Now, over the course of the two-year period that you
17 lived with him, was the rape the first sexual act that
18 happened to you or was it just the most vivid sexual act that
19 happened to you?

20 A. It was the most vivid.

21 Q. Was it the first?

22 A. No.

23 Q. Where in the defendant's house did the rape happen?

24 A. In my bedroom.

25 Q. In your bedroom?

1 A. Yes.

2 Q. Okay. Where were you just before the defendant entered
3 your bedroom?

4 A. I was on my bed.

5 Q. Okay. And what kind of bed did you have?

6 A. I had a bunk bed.

7 Q. A bunk bed?

8 A. Yes.

9 Q. Okay. And were you on the lower bunk or the higher bunk?

10 A. The lower bunk.

11 Q. What were you doing in your bedroom at this time?

12 A. Trying to go to sleep.

13 Q. What time of day was this?

14 A. Nighttime.

15 Q. Nighttime?

16 Was anyone else with you in the bedroom --

17 A. No.

18 Q. -- prior to the defendant coming in?

19 A. No.

20 Q. Where were your siblings when you were in the bedroom, do
21 you recall?

22 A. They were in the living room on the couch, asleep.

23 Q. Okay. Now, before the defendant came into the room, what
24 were you wearing?

25 A. Pajamas.

1 Q. So just normal sleep clothes for you?

2 A. Yes.

3 Q. Okay. Were you laying on -- you said you were laying
4 down in your bed. Were you laying on your stomach, your
5 sides, your back? How were you situated?

6 A. I was laying down on my back.

7 Q. Your back.

8 A. Yes?

9 Q. Okay. So at some point did the defendant come into your
10 room?

11 A. Yes.

12 Q. Okay. Where did he go in your room?

13 A. He went to lay with me

14 Q. On your bed?

15 A. Yes.

16 Q. And you said he came to lay with you. In relation to
17 you, you're laying on your back on your bed, where did he go
18 in relation to you?

19 A. On top of me.

20 Q. How big was he compared to you?

21 A. He was a grown man.

22 Q. About the size he is now?

23 A. Yes.

24 Q. And how small were you?

25 A. I was a little kid, six.

1 Q. Were you about the size of the child you see in the
2 picture?

3 A. Yes.

4 Q. Of you in the picture?

5 A. Yes.

6 MR. CASSELL: For the record, I just took Exhibit 14
7 off the ELMO.

8 BY MR. CASSELL:

9 Q. Erica, what was the next event that happened after the
10 defendant got on top of you?

11 A. I just remember the rape happening.

12 Q. Okay. And did you resist?

13 A. Yes, I tried to.

14 Q. How did you do that?

15 A. I pushed against him with my legs and I asked him to
16 stop.

17 Q. And when you said, Stop, you asked him to stop, how did
18 he respond? Did he say anything?

19 A. He said it's okay, it's not going to hurt.

20 Q. And he was on top of you at this point?

21 A. Yes.

22 Q. Erica, where did his penis go?

23 A. Inside of me.

24 Q. Did his penis penetrate your vulva and enter your vagina?

25 A. Yes.

1 Q. When you were a little girl, did you call that part of
2 your body the part of your body where you would use to go to
3 bathroom?

4 A. Yes.

5 Q. How many times did the defendant's penis go inside of
6 you?

7 A. Just once.

8 Q. Just once?

9 A. Yes.

10 Q. So it wasn't back and forth?

11 A. No.

12 Q. Erica, was that painful for you?

13 A. Yes. I'm sorry.

14 Q. It's okay. There's Kleenex there. And if you need to
15 pour yourself some water, do that.

16 I believe you just testified that it was painful for you.
17 What did you do in response to the pain?

18 A. I screamed.

19 Q. And how did the defendant respond when you screamed?

20 A. He pulled himself off of me and started apologizing.

21 Q. When he pulled -- and you said he pulled himself off of
22 you. Did he pull his penis out of your vagina?

23 A. Yes.

24 Q. And when he did that, what did you see on you and on the
25 bed?

1 A. There was blood everywhere.

2 Q. And where did you go after that?

3 A. I went to the bathroom to clean myself up.

4 Q. When you say clean yourself up, what did you do? What
5 did you do to do that in the bathroom?

6 A. I just went to clean the blood off of me.

7 Q. Where was the blood located? Was it on your clothes?

8 A. It was on me, it was on the bed, it was on the floor.

9 Q. Erica, were you in pain when you walked from your bed to
10 your bathroom?

11 A. Yes.

12 Q. And I should ask, did you go to a bathroom that was
13 located next to your room?

14 A. Yes.

15 Q. Did the pain you were feeling when you walked to the
16 bathroom affect your ability to walk?

17 A. Yes.

18 Q. And you mentioned that you cleaned up. Did you change
19 your clothes?

20 A. Yes.

21 Q. Where did you eventually end up sleeping that night?

22 A. We went to sleep in his bedroom.

23 Q. You say "we," who do you mean?

24 A. Me and my dad.

25 Q. Do you remember, Erica, how you go into the defendant's

1 bed that night?

2 A. No.

3 Q. Do you remember your brother, Joseph, or your sister,
4 Rosalinda, seeing them at any point that time?

5 A. No.

6 Q. Did you eventually go to sleep, Erica?

7 A. Yes.

8 Q. The next morning when you woke up, how did you feel
9 physically?

10 A. I was in a lot of pain.

11 Q. That next day, where did you spend a good majority of
12 your time?

13 A. In the living room.

14 Q. Okay. And this is in your dad's house still?

15 A. Yes.

16 Q. Do you recall Joseph and Rosa being around --

17 A. Yes.

18 Q. -- the next day?

19 A. Yes.

20 Q. When it came to Joseph and Rosa, what was going through
21 your mind? What were you thinking?

22 A. I didn't want them to find out.

23 Q. What kept you from telling -- from telling them?

24 A. I was trying to protect them, I guess.

25 Q. Okay. Erica, do you recall receiving a gift that next

1 day?

2 A. Yes.

3 Q. So this is the day after you were raped by your dad?

4 A. Yes.

5 Q. Who gave you a gift?

6 A. My dad did.

7 Q. And what was that gift?

8 A. It was a radio clock thing. It was white and it had
9 green trim and it was Hannah Montana.

10 Q. Okay. And what did you think of that gift?

11 A. I loved it.

12 Q. And was it normal for your dad to give you gifts like
13 that, other than like Christmas or birthdays?

14 A. No.

15 Q. It wasn't normal?

16 A. No.

17 Q. Okay. How long did you eventually keep that clock,
18 Erica?

19 A. I kept it for a long time.

20 Q. Yeah, what made you keep the clock that long?

21 A. It was my favorite gift. I used it all the time.

22 Q. Erica, did the defendant ever try to talk to you about
23 what happened that night when he raped you?

24 A. I don't remember.

25 Q. Did he ever take you to a doctor?

1 A. No.

2 Q. Even though you were in pain?

3 A. Yes.

4 Q. He never took you to a doctor?

5 A. No.

6 Q. Okay. So you were between six and eight when this
7 happened?

8 A. Yes.

9 Q. Did anyone ever find out about the rape? I mean, other
10 than you and your dad, did anyone ever find out about the rape
11 until you were much older?

12 A. No.

13 Q. I think you testified earlier that the rape was not the
14 first sexual act that happened; correct?

15 A. Correct.

16 Q. But is it fair to say it was the one sexual act that you
17 remember the most?

18 A. Yes.

19 Q. The most vivid?

20 A. Yes.

21 Q. Now, I think you also testified that this happened in
22 your room; right?

23 A. Yes.

24 Q. Did most of the other sexual acts happen in the
25 defendant's room?

1 A. Yes.

2 Q. Let's talk about the defendant's room. Do you remember
3 something unique about the entryway to the defendant's room
4 and how it -- how it worked with the closet door?

5 A. Yes.

6 Q. Describe that for the jury.

7 A. His room door would open and interlock with the closet
8 door and lock with the handles to where you couldn't get in.

9 Q. Could you repeat that? It interlocked with the door
10 handles. I couldn't quite pick up what you said at the end
11 there.

12 A. His room door would interlock with the closet door.
13 Their handles would interlock.

14 Q. Okay. And so when that happened, was it physically
15 possible for the door to open as you wanted -- if somebody
16 outside wanted to come in?

17 A. No.

18 Q. So it effectively was like a block of the door?

19 A. Yes.

20 Q. Okay. Erica, do you ever remember viewing pornography
21 with the defendant?

22 A. Yes.

23 Q. What kind of pornography did you view with him?

24 A. Video.

25 Q. Like on a VCR tape or a DVD?

1 A. Yes.

2 Q. Where would you view the pornography with your dad?

3 A. In his room.

4 Q. In his room?

5 A. Yes.

6 Q. Okay. And approximately how many times do you think you
7 viewed videos like that with the defendant?

8 A. A couple of times.

9 Q. I'm talking about over a two-year period, do you think
10 we're talking once a month? How often do you think?

11 A. I don't know. I just know that it was multiple times.

12 Q. Okay. Now, you've already testified about your -- the
13 defendant raping you, and you're going to testify about some
14 other things. As it relates to all the sexual acts that were
15 happening, did the viewing of the pornography happen before,
16 during, after or all three with the sexual acts?

17 A. You're saying throughout 2006 to 2008?

18 Q. Yeah.

19 A. Throughout.

20 Q. Throughout the two years?

21 A. Yes.

22 Q. Okay. Erica, do you remember occasions when the
23 defendant's penis would be inside your mouth?

24 A. Yes.

25 Q. Did it happen one time or multiple times?

1 A. Multiple times.

2 Q. Who told you to place the defendant's penis inside your
3 mouth?

4 A. He did.

5 Q. The defendant did?

6 A. Yes.

7 Q. Okay. When these acts happened, would his penis be soft
8 or hard?

9 A. Hard.

10 Q. So his penis was erect?

11 A. Yes.

12 Q. When his penis was in your mouth, how did that make you
13 feel?

14 A. I thought it was gross.

15 Q. And when that act would happen, and I believe you
16 testified it happened multiple times, when these acts would
17 happen, would his penis stay in your mouth or would it go in
18 and out of your mouth?

19 A. In and out.

20 Q. And who directed you to do that?

21 A. He did.

22 Q. When that would happen, Erica, would anything come out of
23 the defendant's penis?

24 A. Yes.

25 Q. What would come out of the defendant's penis?

1 A. A liquid.

2 Q. Liquid or a fluid?

3 A. Yes.

4 Q. Okay. And is there something that really sticks out
5 about this liquid or this fluid?

6 A. It tasted gross.

7 Q. You said it tasted gross. At any point did the defendant
8 talk to you about that, about the taste?

9 A. He thought it was funny one time when I went to go spit
10 it out in the toilet.

11 Q. Okay. Is that because the fluid would usually end up in
12 your mouth?

13 A. Yes.

14 MR. CASSELL: Your Honor, may I have a brief moment?

15 THE COURT: Yes.

16 BY MR. CASSELL:

17 Q. You were testifying that the fluid would end up in your
18 mouth. Who would direct you to do that?

19 A. My dad did.

20 Q. And what would you usually do with the fluid if it did
21 end up in your mouth?

22 A. I would spit it out.

23 Q. And was that the point where your dad indicated that he
24 thought it was funny?

25 A. Yes.

1 Q. What would he do to make you see that he thought it was
2 funny?

3 A. He would say that I was making a funny face or something.

4 Q. Would he laugh at you?

5 A. Yes.

6 Q. Erica, what time of day would these kinds of sex acts
7 happen?

8 A. At night.

9 Q. All of them?

10 A. Yes.

11 Q. And I believe you testified that this would happen
12 multiple times?

13 A. Yes.

14 Q. And just to be safe, these acts happened while you lived
15 with the defendant in his house?

16 A. Yes.

17 Q. August 1st, 2006 to August 1st, 2008?

18 A. Yes.

19 Q. And during those years you were six to eight years old?

20 A. Yes.

21 Q. Erica, do you remember occasions when your hand would
22 touch the defendant's penis?

23 A. Yes.

24 Q. Did this kind of act happen one time or multiple times?

25 A. Multiple times.

1 Q. And is this similar to the occasions when your mouth
2 would be on his penis? You would say you couldn't put a
3 number on it, just that it happened multiple times?

4 A. Yes.

5 Q. Okay. Erica, who told you to place the defendant's penis
6 in your hands?

7 A. He did.

8 Q. And was this skin-on-skin contact, your hands directly
9 touching his penis?

10 A. Yes.

11 Q. Skin-on-skin contact?

12 A. Yes.

13 Q. And when these acts would happen, would his penis be hard
14 or soft?

15 A. Hard.

16 Q. Erica, when your hand would be on his penis, what motion
17 would you be making?

18 A. Up and down or side to side.

19 Q. Alongside his penis?

20 A. Yes.

21 Q. Who directed you to make this motion?

22 A. He did.

23 Q. The defendant did?

24 A. Yes.

25 Q. And when that happened, would anything come out of his

1 penis?

2 A. Yes.

3 Q. And was this the same fluid or liquid that you testified
4 to earlier?

5 A. Yes.

6 Q. And where did that fluid or liquid end up when you would
7 use your hand to rub his penis?

8 A. Sometimes on him, sometimes in my mouth.

9 Q. And when it ended up in your mouth, who was directing you
10 to do that?

11 A. He was.

12 Q. Now, you've testified about times when your mouth would
13 be on his penis. You testified about times when your hand
14 would be on his penis. Did these acts happen all by
15 themselves, or would they happen kind of together?

16 I may not have asked that very well. Let me ask it a
17 different way.

18 Were there occasions when your hand would touch his penis
19 and your mouth would touch his penis?

20 A. Yes.

21 Q. Okay. So if your hand was touching his penis and the
22 liquid would come out, were there occasions where you would
23 put your mouth on his penis?

24 A. Yes.

25 Q. And was that to get the fluid that would come out to go

1 in your mouth?

2 A. Yes.

3 Q. And who directed you to do that?

4 A. He did.

5 Q. The defendant did?

6 A. Yes.

7 Q. And what time of day would these kinds of sexual acts
8 happen, day or night?

9 A. At night.

10 Q. All of them?

11 A. Yes.

12 Q. Erica, how did these acts make you feel?

13 A. Gross.

14 Q. And these acts of your hand being on the defendant's
15 penis, were these acts happening between August 1st, 2006 and
16 August 1st, 2008 when you were living with your dad in his
17 house?

18 A. Yes.

19 Q. And these acts were on the Pascua Yaqui reservation?

20 A. Yes.

21 Q. Erica, do you remember occasions when the defendant's
22 mouth would touch your vagina?

23 A. Yes.

24 Q. Did this act happen one time or multiple times?

25 A. One time.

1 Q. One time?

2 A. Yes.

3 Q. And what time of day did this act happen?

4 A. At night.

5 Q. When that act happened, was it his mouth directly
6 touching the skin?

7 A. Yes.

8 Q. But it was touching your vulva, your vagina?

9 A. Yes.

10 Q. Now, you testified earlier that the occasions when your
11 mouth would be on his penis and your hand would be on his
12 penis, sometimes those happened together?

13 A. Yes.

14 Q. Is that how it was on this occurrence when his mouth was
15 on your vagina, or can you remember that?

16 A. I don't remember.

17 Q. Okay. But you do remember that it happened?

18 A. Yes.

19 Q. And did this act, the act of his mouth being -- or, his
20 mouth touching your vagina, did that happen between
21 August 1st, 2006 and August 1st, 2018?

22 A. Yes.

23 Q. When you were living with the defendant in his house?

24 A. Yes.

25 Q. Erica, when the defendant would touch you like that, how

1 did it make you feel physically?

2 A. It made me feel good.

3 Q. How did it make you feel emotionally?

4 A. Confused.

5 Q. Why were you confused?

6 A. I don't know.

7 Q. It's just how you felt?

8 A. Yes.

9 Q. Okay. Did you feel like you could talk to anybody about
10 what was happening between you and your dad in his bedroom?

11 A. No.

12 Q. Did you feel like you had to hide it?

13 A. Yes.

14 Q. And feeling like you had to hide it, did that add to the
15 confusion? Because it was something that made you feel good
16 physically; right?

17 A. Yes.

18 Q. Was there one specific act that made you feel
19 particularly confused that you've talked about already?

20 A. I don't know.

21 Q. Erica, when you were in the bedroom when you were a child
22 with your dad, as you've just testified to, during all these
23 different sex acts how did your dad treat you?

24 A. Really nice.

25 Q. Did you like it that he was nice to you?

1 A. Yes.

2 Q. Why?

3 A. I don't know, he was nice. Obviously, I liked that he
4 was nice.

5 Q. Because he was your dad; right?

6 A. Yeah.

7 Q. How did it compare to how he treated you in the bedroom
8 with how he would treat you outside the bedroom in normal
9 life? How did it compare?

10 A. He was more stern, I guess, outside of the bedroom.

11 Q. Like, more of a disciplinarian as a father?

12 A. Yeah.

13 Q. And I'm talking about like in normal life, like when
14 you're playing with your siblings or, you know, outside. Is
15 that what you're talking about?

16 A. Yes.

17 Q. At any point over the period of the sexual abuse, Erica,
18 did the defendant ever talk to you about what might happen if
19 you told anybody what was happening in his bedroom?

20 A. I think I remember him saying something about him getting
21 in trouble.

22 Q. If you told?

23 A. Yeah.

24 Q. Did you believe him?

25 A. Yes.

1 Q. Erica did you ever tell anyone about what the defendant
2 did to you over the two-year period prior to the summer of
3 2015?

4 A. No.

5 Q. Never told your mom?

6 A. No.

7 Q. Was your mom living with you at this time?

8 A. No.

9 Q. Where was she living at this time? Do you even know?

10 A. No.

11 Q. Did you ever tell your grandmother?

12 A. No.

13 Q. Did you ever tell your sister?

14 A. No.

15 Q. Any friends?

16 A. No.

17 Q. Never told anybody?

18 A. I never told anybody.

19 Q. Until the summer of 2015?

20 A. Yes.

21 Q. What kept you from saying anything to anyone?

22 A. I was scared.

23 Q. Scared. What were you scared of?

24 A. I don't know.

25 Q. What did you think would happen if you did tell anyone

1 what the defendant was doing to you?

2 A. He would get in trouble.

3 Q. Did you want the defendant to get into any trouble?

4 A. No.

5 Q. Over that two-year period when you lived with your dad
6 and he was sexually abusing you, did you love your dad at the
7 same time?

8 A. Yes.

9 Q. And would you have done anything to get that love from
10 him?

11 A. Yes.

12 Q. At some point toward the end of the summer in 2008, right
13 around the beginning of August, did you stop living with your
14 dad?

15 A. Yes.

16 Q. And so was that right around the beginning of school
17 going back?

18 A. Yes.

19 Q. Okay. When you moved out of the defendant's house in
20 early August of 2008, were you aware of any sexual abuse of
21 your sister, Rosa?

22 A. No.

23 Q. Where did you move to, do you recall?

24 A. I was living with my mom.

25 Q. Do you know where?

1 A. No.

2 Q. Okay. So once you moved out of your dad's house, how did
3 you go about trying to live your life going forward? How did
4 you handle that?

5 A. I just tried to put it behind me, I guess.

6 Q. Did you try to forget what he did to you?

7 A. Yes.

8 Q. Did that make it a little bit easier for you to deal with
9 the pain of those memories?

10 A. Yes.

11 Q. Let's move to a little later time in your life when you
12 were 15. Where were you living when you were about 15 years
13 old? And I'm talking about summer of 2015.

14 A. I was living with my mom in Glendale, Arizona.

15 Q. Okay. And when you were about that age, did you belong
16 to any churches?

17 A. Yes.

18 Q. Yes? Okay. What's the name the church you belonged to
19 in 2015?

20 A. Pure Heart Church.

21 Q. I'm sorry?

22 A. Pure Heart Church.

23 Q. Pure Heart?

24 A. Yes.

25 Q. Did that church offer week-long summer camp trips to

1 middle and high school kids?

2 A. Yes.

3 Q. Where were those camps, do you recall?

4 A. They were in California or Prescott.

5 Q. Prescott, Arizona?

6 A. Yes.

7 Q. Okay. Did you enjoy those camps?

8 A. Yes.

9 Q. Bet you enjoyed the weather; right?

10 A. Yes.

11 Q. Getting away from the heat?

12 A. Yeah.

13 Q. Where were you living at that time? I don't know if you
14 testified to that.

15 A. I was living with my mom in Arizona.

16 Q. In Arizona. In the Phoenix area?

17 A. Glendale.

18 Q. Glendale. Okay.

19 Now, getting back to the camp, when you were at the camp,
20 were there any presentations that made you think about what
21 the defendant did to you?

22 A. Yes.

23 Q. Okay. And what kind of presentation brought those
24 memories back for you? And I'm talking about in the summer of
25 2015.

1 A. They played a video about a little boy who was being
2 sexually abused by his soccer coach.

3 Q. And what was the -- what happened in the video?

4 A. It showed a little boy playing soccer, and his coach
5 would take him back to some room. And then it just showed
6 that, and then at the end it showed the coach grabbing the
7 little boy's sister and taking her to that room.

8 Q. Okay. And what did the little boy do in the video?

9 A. The little boy went -- after he seen that, he went and
10 told somebody what was happening.

11 Q. And why did the little boy do that?

12 A. Because he had seen something was happening to his
13 sister.

14 Q. So he was protecting his sister?

15 A. Yes.

16 Q. How did that affect you, seeing that video and hearing
17 that message?

18 A. I guess it was like the first time I had seen a video
19 like that, like, happening to a kid. And, like, it just made
20 me a little sad and confused and, you know.

21 Q. And based on those feelings, what action did you take?

22 A. I went and talked with my friend, Brenna.

23 Q. Brenna?

24 A. Yes.

25 Q. Is that Brenna Canaday?

1 A. Yes.

2 Q. Okay. And did you talk to any other friends?

3 A. I talked to my friends Abbey and Michael.

4 Q. Okay. And that's Abbey McKenzie?

5 A. Yes.

6 Q. And Michael, what's last Michael's last name?

7 A. Tryon. Tryon.

8 Q. How do you spell that?

9 A. T-r-y-o-n.

10 Q. Okay. And Brenna and Abbey, at that time were they your
11 two best friends?

12 A. Yes.

13 Q. Okay. Were they about your age?

14 A. Yes.

15 Q. So they were both about 15 or 16, around that age in the
16 summer of 2015?

17 A. Yes.

18 Q. How did it make you feel to confide in your closest
19 friends?

20 Actually, you know what, hold on. Let's back up.

21 What you did you tell them? Before we start talking
22 about how it made you feel, what did you tell Brenna and
23 Abbey?

24 A. I just told them that I had been sexually abused by my
25 dad.

1 Q. Did you go into any specifics?

2 A. No.

3 Q. Now, how did it make you feel to confide that in your
4 closest friends?

5 A. They were really nice and they comforted me.

6 Q. And how did that make you feel to be comforted?

7 A. Good.

8 Q. Did you feel safer?

9 A. Yes.

10 Q. Now, you confided in a couple of friends who were your
11 age. Did you ever confide in any adults while you were at the
12 church camp in California?

13 A. Yes.

14 Q. Okay. Who was the adult that you confided in while you
15 were at the church camp?

16 A. Pastor Michael Delster.

17 Q. Delster?

18 A. Yes.

19 Q. Is that spelled D-e-l-s-t-e-r?

20 A. Yes.

21 Q. Who is Pastor Mike?

22 A. He was the youth pastor.

23 Q. All right. Did you want to talk to Pastor Mike?

24 A. No.

25 Q. Who told you you should talk to Pastor Mike?

1 A. Brenna did.

2 Q. Brenna?

3 A. Yes.

4 Q. Okay. Why didn't you want to talk to Pastor Mike about
5 what had happened to you?

6 A. Because I knew he was going to tell my mom.

7 Q. Pastor Mike was?

8 A. Yes.

9 Q. So did you want your mom to find out?

10 A. No.

11 Q. Why not?

12 A. I mean, who would want to tell their mom that? I just
13 knew it was going to be heartbreaking for her.

14 Q. So you didn't want to talk to Pastor Mike. Was there
15 something that changed your mind about talking to him?

16 Something that happened?

17 A. Me and Brenna were talking, and then this song came on
18 called "Out of Hiding." It's a Christian song. And I felt
19 like God was kind of, like, telling me that it was going to be
20 okay. So I decided to listen to Brenna and talk to Pastor
21 Mike.

22 Q. Okay. When you talked to Pastor Mike, did you do that at
23 the camp?

24 A. Yes.

25 Q. And when you talked to Pastor Mike, did you go into

1 detail about what the defendant did to you?

2 A. No.

3 Q. What did you tell him?

4 A. I told him that I had been sexually abused by my dad.

5 Q. Okay. No more detail than that?

6 A. (Shaking head.) No.

7 Q. Okay. So these times when you talked to Brenna and Abbey
8 and Pastor Mike, did you talk to anybody else while you were
9 at the camp? And I guess Michael Tryon also, anybody else
10 while you were at the camp?

11 A. No.

12 Q. Did it come up anymore while you were at the camp?

13 A. No.

14 Q. Now, at some point you eventually came home to Arizona,
15 didn't you?

16 A. Yes.

17 Q. And when you got back, where did you go in Arizona? Did
18 they drop you off at your house or at the church?

19 A. They dropped us off at the church.

20 Q. You came back, like, on a bus or something like that?

21 A. Yeah.

22 Q. And when you arrived at the church, who was there to pick
23 you up?

24 A. My mom was.

25 Q. And at some point, did you sit down in, like, a

1 conference room with a bunch of adults?

2 A. Yes.

3 Q. Who were the adults?

4 A. Nancy McKenzie and Michael Delster and my mom.

5 Q. Okay. And you?

6 A. And me.

7 Q. Okay. So just the four of you?

8 A. Yes.

9 Q. Now, you said Nancy McKenzie. Is that Abbey McKenzie's
10 mom?

11 A. Yes.

12 Q. Why was she there, do you know?

13 A. Because she had been through something similar when she
14 was little.

15 Q. Now, at this moment when you're sitting down in the
16 conference room with these people, your mom doesn't -- didn't
17 know what had happened; correct?

18 A. Correct.

19 Q. But at that point, who did know what had happened to you,
20 what the defendant did to you?

21 A. Pastor Mike and Nancy.

22 Q. Okay. And what about your friends?

23 A. And Brenna and Abbey and Michael.

24 Q. That's five people you just said who knew what had
25 happened before you told your mother; is that right?

1 A. Yes.

2 Q. Did your mom find out what happened to you in that
3 conference room?

4 A. Yes.

5 Q. Did you want to tell your mom what had happened to you?

6 A. No.

7 Q. Why not?

8 A. Because I didn't want -- I just didn't want her to know.

9 Q. When you told her what happened, how did she appear to
10 you?

11 A. She was -- she, like, pursed her lips and started, like,
12 shaking and crying and she looked really mad.

13 Q. Did you go into a lot of detail for your mom about what
14 the defendant did to you when you lived with him?

15 A. I went into more detail than I did with Brenna and Mike
16 and Michael and Abbey.

17 Q. Okay. How much detail did you go into with your mom?
18 What did you tell her?

19 A. I told her that I had been raped by my dad. And she
20 asked if there was penetration and I said yes, and then I told
21 her that there was blood everywhere. And then that was it.

22 Q. Now, after telling your mom what the defendant did to
23 you, what options did you have about what to do next? Was it
24 in your control?

25 A. She told me that I had options. She said I could either

1 go to the police, or I could just try to move on, and she
2 would put me in, like, therapy or something.

3 Q. And you're saying "she." Are you talking about your
4 mother, Sylvia Muro?

5 A. Yes.

6 Q. Okay. Now, whose choice was it, Erica, about whether to
7 go to the police or not?

8 A. It was mine.

9 Q. And how old were you at this time?

10 A. Fifteen.

11 Q. Okay. Who gave you that choice?

12 A. My mom.

13 Q. At this time, were you living with your dad in any way?

14 A. No.

15 Q. Were you aware of any custody dispute or anything like
16 that going on between your mom and your dad?

17 A. No.

18 Q. What did you decide to do about calling the police,
19 Erica?

20 A. I decided that I wanted to call them.

21 Q. And whose decision was that?

22 A. Mine.

23 Q. I mean, we're here. Did you call the police?

24 A. Yes.

25 Q. Now, just a last couple of questions. You know, you've

1 testified that you didn't tell anyone about the sexual acts
2 until you were 15.

3 A. Yes.

4 Q. Right?

5 Other than the people you told right around the church
6 camp, and I think we talked about six of them, who else
7 outside of law enforcement have you told about this?

8 A. No one.

9 Q. So am I right that the only time you spoke to your mother
10 about the sexual acts was when you returned from the church
11 camp in that conference room?

12 A. Yes.

13 Q. That's the only time you've ever talked to her about it?

14 A. Yes.

15 Q. How about your sister, Rosa? Have you ever spoken with
16 Rosa about what the defendant did to you?

17 A. No.

18 Q. Never?

19 A. Never.

20 MR. CASSELL: No further questions, your Honor.

21 THE COURT: All right. Cross-examination.

22 MR. JACOBS: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MR. JACOBS:

25 Q. Good morning, Erica.

1 A. Good morning.

2 Q. You've been up there for a little while. Are you okay to
3 stay there or do you need a break?

4 A. I'm okay.

5 Q. Okay. Erica, I'm going to ask you some questions to
6 follow up what you've just had to tell us, okay?

7 A. Okay.

8 Q. You're out of Washington, D.C., now?

9 A. Yes.

10 Q. And you're with the Navy? Did I hear that right?

11 A. Yes.

12 Q. What do you do for the Navy?

13 A. I'm military police.

14 Q. Really?

15 A. Yes.

16 Q. How long have you been with the Navy?

17 A. A little over a year now.

18 Q. Do you like your work?

19 A. Yeah.

20 Q. Let me ask you, when this -- when the things that you're
21 describing to us happened, you were residing with your dad; is
22 that right?

23 A. Yes.

24 Q. Is that -- that's Eric Marrufo, the man I'm pointing to?

25 A. Yes.

1 Q. You were not -- your mom was not living in that home; is
2 that right?

3 A. Correct.

4 Q. Erica, do you know the address that that was -- that
5 home?

6 A. No.

7 Q. If I told you that it was 5480 West He Ka Voo'o, would
8 you know if that was true or not?

9 A. He Ka Voo'o sounds familiar.

10 Q. He Ka Voo'o sounds familiar? How about the number?

11 A. I don't know.

12 Q. I just want to know what you remember.

13 Tell me about how big the house was that you were living
14 in?

15 A. It had three bedrooms, a living room, a dining room, and
16 a kitchen.

17 Q. Three bedrooms, a dining room, and a kitchen. Was there
18 a living room?

19 A. Yes.

20 Q. Was that separate from the dining room or was it the same
21 thing?

22 A. It was severed from the dining room.

23 Q. Three bedrooms, a dining room, a living room, and a
24 kitchen?

25 A. Yes.

1 Q. Is that right?

2 A. Yes.

3 Q. And they were different rooms; is that right?

4 A. Yes.

5 Q. Were all the bedrooms used as bedrooms at this time?

6 A. Yes.

7 Q. So tell me who slept in each room of the three.

8 A. Me, Rose, and Joseph would sleep in -- all over the

9 house.

10 Q. Sleep where?

11 A. All over the house.

12 Q. So where was that?

13 A. So my bedroom or the living room. Joseph would have his

14 own room, but he wouldn't sleep in it that much.

15 Q. Why not?

16 A. He was scared.

17 Q. Okay. Did your dad stay in a particular room?

18 A. Yes. His bedroom.

19 Q. So we have three bedrooms, one is your dad's?

20 A. Yes.

21 Q. One is did you say yours?

22 A. Mine and my sister's.

23 Q. Yours and your sister's. And that's Rosa?

24 A. Yes, yes.

25 Q. And the other one was Joseph's?

1 A. Yes.

2 Q. But at times you slept everywhere in the house; is that
3 right?

4 A. Yes. Like sometimes the living room.

5 Q. What about with your dad? Did you testify that you slept
6 with your dad?

7 A. I would sleep in my dad's room sometimes, yes.

8 Q. And what about the other children? Did you ever see Rosa
9 sleep with your dad?

10 A. No.

11 Q. Ever see Joseph sleep with your dad?

12 A. No.

13 Q. You've described instances when you had -- when your dad
14 had raped you. That was your word; right?

15 A. Yes.

16 Q. Was Rosa present at that time?

17 A. No.

18 Q. You've described -- I'm sorry to be blunt about it, but
19 you've described your dad having his penis in your mouth. Do
20 you remember testifying about that?

21 A. Yes.

22 Q. Was Rosa present at that time?

23 A. No.

24 Q. When you've described circumstances where you say your
25 dad's mouth touched your vagina, do you remember that?

1 A. Yes.

2 Q. Was Rosa present at that time?

3 A. No.

4 Q. During these incidents, was any other adult present?

5 A. No.

6 Q. Did the home have a garage?

7 A. It had a carport.

8 Q. Carport. During the time that these things were

9 occurring, 2006 to 2008, was there anybody else ever living in
10 the home?

11 A. No.

12 Q. Not ever?

13 A. No.

14 Q. No one stayed overnight or did they?

15 A. Sometimes. His girlfriends would stay over sometimes.

16 Q. How many girlfriends are we talking about?

17 A. I don't know, I remember, like, two.

18 Q. And they were staying overnight?

19 A. Yes, but not at the same time.

20 Q. So you're telling us today that no other person lived in
21 that home during this time; is that right?

22 A. Correct.

23 Q. Did you ever tell anybody anything different?

24 A. No.

25 Q. Erica, before you came here today, how many times had you

1 described what was happening with your dad as you've described
2 it today? How many times have you described that?

3 A. What do you mean?

4 Q. You explained all the things that happened with you and
5 your father here today.

6 A. Yes.

7 Q. Do you remember?

8 Had you ever gone through that explanation before?

9 A. Yes.

10 Q. How many times?

11 A. I practiced my testimony with my lawyers.

12 Q. Who are your lawyers?

13 A. Matt, Briana, Rui and Scott and Jovana.

14 Q. Individuals seated here today?

15 A. Yes.

16 Q. At the prosecution's table?

17 A. Yes.

18 Q. Mr. Cassell would be one person you rehearsed with?

19 A. Yes.

20 Q. Ms. Wang?

21 A. Yes.

22 Q. And who is the lady in the middle?

23 A. Briana.

24 Q. Okay. And you rehearsed with her also?

25 A. Yes.

1 Q. How many times?

2 A. Ten throughout since 2015 maybe.

3 Q. About ten times?

4 A. Yeah.

5 Q. And you talked to them about what to say?

6 A. Yes.

7 Q. You refer to them as your lawyers; is that right?

8 A. Yes.

9 Q. Erica, I'm going to read off a list of names. You may

10 know these people, you may not. Okay?

11 A. Okay.

12 Q. If you recognize somebody, I'll ask you who it is. Okay?

13 A. Okay.

14 Q. Is that all right with you?

15 A. Yes.

16 Q. Angela Vazquez, do you know her?

17 A. No.

18 Q. How about Adam Marrufo?

19 A. Yes.

20 Q. Who is Adam Marrufo?

21 A. I think he's my dad's brother.

22 Q. Your dad's brother. How often did you see Adam Marrufo?

23 A. Every now and then, maybe at family events and that's it.

24 Q. And this is specifically as to the August 2006 to

25 August 2008 time period?

1 A. Yes.

2 Q. So you did see Adam Marrufo during that time?

3 A. Yes.

4 Q. And he saw you?

5 A. Yes.

6 Q. Did you speak to him?

7 A. No.

8 Q. Did you ever see him -- well, strike that.

9 Was there -- did you have a grandmother?

10 A. Yes.

11 Q. Is that Linda Marrufo?

12 A. Yes.

13 Q. Did you ever go to parties at her residence?

14 A. Yes.

15 Q. Did you ever go to family events during this time period?

16 A. Yes.

17 Q. Okay. And did you see Adam Marrufo at those family

18 events?

19 A. Yes.

20 Q. Was Adam Marrufo ever at the home during this time

21 period?

22 A. Only if we had a party at my house.

23 Q. Did you have parties at your house very much during the

24 time frame, say, 2006 to 2008.

25 A. Every now and then, I guess.

1 Q. And Adam was there?

2 A. Sometimes.

3 Q. What about Tasha Garnett?

4 A. No.

5 Q. Did you ever hear that name?

6 A. I don't know who that is.

7 Q. How about Jose Vazquez?

8 A. No.

9 Q. How about Bridget Corkhill?

10 A. No.

11 Q. That might be one of your dad's girlfriends?

12 A. I don't know.

13 Q. Did you know anybody who had a nickname of Tinker Bell?

14 A. Yes.

15 Q. Who was Tinker Bell?

16 A. Tinker was one of my dad's girlfriends.

17 Q. Okay. And did you know Tinker's real name?

18 A. No.

19 Q. How about Luganda (ph.) Bencomo? Does that name ring any

20 bells?

21 A. No.

22 Q. How about Lulu?

23 A. No.

24 Q. You never heard of Lulu?

25 A. No.

1 Q. Was there a neighbor lady who lived next door?

2 A. I don't know.

3 Q. You don't know?

4 A. No.

5 Q. Is it possible, Erica, that you were over at the
6 neighbor's lady even on a daily basis?

7 A. I don't remember.

8 Q. You don't remember anybody named Lulu, is that what
9 you're telling us today?

10 A. Yes. I don't know anybody named Lulu.

11 Q. What about Ray Arreola?

12 A. I know the name Ray, but I don't know the last name.

13 Q. All right. How about Sally Aleman or Aleman?

14 A. I don't know who that is.

15 Q. And you had stated -- I just want to make sure, your
16 grandmother -- your grandmother on your father's side is named
17 Linda; is that right?

18 A. Yes.

19 Q. Okay. Do you know if she's still living?

20 A. I think she passed away.

21 Q. Before you went to live with your dad, where were you
22 living, if you know?

23 A. I don't.

24 Q. After you lived with your dad, you moved in with your
25 mother; is that right?

1 A. Yes.

2 Q. Did you ever observe your parents to be in arguments?

3 A. Not after I moved in with my mom.

4 Q. Okay. Did you ever observe your parents to be in an
5 argument?

6 A. Yes, when I was little.

7 Q. Isn't it true that was a pretty frequent thing?

8 A. Yes.

9 Q. Isn't it true that some of these arguments were over who
10 was going to have custody of you?

11 A. I don't remember.

12 Q. They didn't get along; is that fair to say?

13 A. Yes.

14 Q. Did that upset you --

15 A. Yes.

16 Q. -- the fact that they didn't get along?

17 A. Yes.

18 Q. How did that make you feel?

19 A. Sad, I guess.

20 Q. As a child, if you remember, did you want to have both
21 your parents living with you?

22 A. Yes.

23 Q. It's not how it was, was it?

24 A. No.

25 Q. Were there ever -- I think I may have asked this, I just

1 want to make sure, absolutely sure what your memory is. Were
2 there ever overnight guests at the He Ka Voo'o residence?

3 A. Sometimes his girlfriends.

4 Q. Anybody else?

5 A. If there was a party, it would usually last all night.

6 Q. If somebody said otherwise, if somebody said suppose that
7 were frequent guests there or people living there, would that
8 person be mistaken or you just didn't remember it?

9 A. I don't know. I don't remember.

10 Q. Okay. So you might not remember; is that fair?

11 A. Yes.

12 Q. I want to know what you remember.

13 Tell me about Brenna.

14 A. Brenna?

15 Q. Yeah.

16 A. She was my best friend.

17 Q. Your best friend?

18 A. Yes.

19 Q. She about your same age or do you know?

20 A. Yeah, her birthday's a few weeks after mine.

21 Q. Brenna was -- was she in your school or just church
22 group?

23 A. Just church.

24 Q. Church group. Was there a drama club there?

25 MR. CASSELL: Objection; relevance.

1 THE COURT: No, overruled. You can answer.

2 THE WITNESS: No.

3 BY MR. JACOBS:

4 Q. There was not? Okay. Did you participate with Brenna in
5 any activities at the church group?

6 A. Yes.

7 Q. What activities?

8 A. We would sing together.

9 Q. Singing?

10 A. Yeah, we would worship.

11 Q. Okay. What else?

12 A. That's it.

13 Q. If you know, did Brenna have a lot of other friends also?

14 A. Yes.

15 MR. CASSELL: Objection; relevance.

16 THE COURT: You can answer. Go ahead.

17 THE WITNESS: Yes.

18 BY MR. JACOBS:

19 Q. Was she someone you admired?

20 A. I guess.

21 Q. Was she sort of the leader of your friend group as far as
22 you observed?

23 A. The leader? I wouldn't say she was the leader. I would
24 say we were all friends.

25 Q. Okay. Did you ever hear the term, you know, "popular

1 girl" in a school situation? Ever hear that term?

2 A. Yes.

3 Q. What does that mean?

4 A. You're popular. Everyone knows you, I guess.

5 Q. Maybe influential with your peers?

6 A. I guess.

7 Q. Brenna that type of popular girl?

8 A. I guess.

9 Q. Did you want Brenna to like you?

10 A. I didn't, like, want her to like me. We were friends.

11 Q. Did you ever talk to your grandmother during this time
12 period?

13 A. No.

14 Q. Not ever?

15 A. Never.

16 Q. Not one word?

17 A. You're talking about --

18 THE COURT: What time period?

19 MR. JACOBS: I'll rephrase. Judge, I'll withdraw
20 that and rephrase.

21 BY MR. JACOBS:

22 Q. Did you ever talk to your grandmother about anything
23 during this time period?

24 THE COURT: What time period?

25 ///

1 BY MR. JACOBS:

2 Q. When I say the "time period," I mean from August of 2006
3 to August of 2008.

4 A. Okay.

5 Q. Okay. Is that okay with you? When I say the "time
6 period," that's what I mean.

7 During this time period, did you ever speak to your
8 grandmother about anything?

9 A. No.

10 Q. Never one word?

11 A. No.

12 Q. Okay. Did you ever speak to any other member of your
13 family at these family parties when they came over about
14 anything?

15 A. No.

16 Q. Did any adult ever help you with your homework?

17 A. My dad did.

18 Q. Anybody else?

19 A. Not that I remember.

20 Q. Ever?

21 A. No.

22 Q. I just have a couple more questions, Judge.

23 At the time that you revealed this information in 2015,
24 did you think that there was some possibility that your dad
25 might return to your home to live?

1 A. No.

2 Q. When you talked to these friends of yours, there were
3 three of them, weren't there?

4 A. Yes.

5 Q. At the church camp?

6 A. Yes.

7 Q. Did they tell you about their own experiences at all?

8 A. No.

9 Q. And you had mentioned Nancy.

10 A. Yes.

11 Q. What's her last name?

12 A. McKenzie.

13 Q. Did she tell you about her prior experiences when you
14 were sitting there with Pastor Mike?

15 A. I just know that she had been through something similar.

16 Q. Did she tell you that?

17 A. I can't remember. I think it might have been in the
18 conference room.

19 Q. Uh-huh.

20 A. But she didn't really go into detail.

21 Q. Okay. Do you remember anything she did say in substance,
22 not what her words were? Was she trying to encourage you to
23 speak, something like that?

24 A. She was just there, I guess, as an adult with the church
25 so Pastor Mike didn't have to be in there and also, I guess,

1 to be of comfort and encourage, I guess.

2 Q. And you earlier said you spoke to Brenna first; is that
3 right?

4 A. Yes.

5 Q. I don't want to know what she said, but what was her
6 reaction? Was it surprise? Was it support? What kinds of
7 feelings were you getting from her?

8 A. It was instant support.

9 Q. Okay. Was she agitated or excited about what you had to
10 say?

11 A. She was sad.

12 Q. Okay. So she was showing a lot of emotion?

13 A. Yes.

14 Q. Okay.

15 A. Empathy.

16 Q. Did she encourage you to say more?

17 A. What do you mean?

18 Q. Well, did she say, Tell me more about that?

19 A. No.

20 Q. Did she say, Wow, we've got to go tell somebody about
21 this?

22 A. She was comforting me, and then she said I think you
23 should tell Pastor Mike, but only if I wanted to.

24 Q. Did she at any time -- I don't know, I wasn't there. Did
25 she at any time suggest that she might tell Pastor Mike?

1 A. No.

2 Q. And again, I wasn't there. Did she at any time tell you
3 what to say to Pastor Mike?

4 A. No.

5 Q. Did she suggest anything you might tell him?

6 A. No.

7 Q. Words you might use?

8 A. No.

9 Q. Okay. Did you ever get in disciplinary trouble when you
10 were a kid?

11 A. Yes.

12 Q. Ever do things that were bad?

13 A. I don't remember.

14 Q. You're an adult now; right?

15 A. Yes.

16 Q. You've seen children misbehave?

17 A. Yes.

18 Q. Did you ever do those kinds of things when you were a
19 child?

20 A. I feel like it was --

21 Q. I'm sorry, I didn't hear?

22 A. I feel like I was a well-behaved kid.

23 Q. Did you ever -- did your dad ever discipline you?

24 A. Yes.

25 Q. Did he ever spank you?

1 A. Yes.

2 Q. Did he ever yell at you?

3 A. Yes.

4 Q. But that's not we're talking about here today, the
5 ordinary discipline. That's not the abuse you're describing;
6 is that right?

7 A. I don't know what you mean.

8 Q. So you're not sure.

9 A. The abuse we're talking about today is the sexual abuse.

10 Q. And it's not discipline?

11 A. No.

12 Q. That's a different thing; is that right?

13 A. Yes.

14 Q. Okay. If you will wait one moment.

15 (Pause.)

16 MR. JACOBS: I don't have any further questions.

17 Thank you.

18 THE COURT: All right. Redirect.

19 MR. CASSELL: Thank you, your Honor.

20 REDIRECT EXAMINATION

21 BY MR. CASSELL:

22 Q. Erica.

23 A. Yes.

24 Q. When you told Brenna Canaday that your dad sexually
25 abused you, I can't believe I'm having to ask you this, but

1 did you tell Brenna Canaday that because you wanted her to
2 like you?

3 A. No.

4 Q. Were you telling her that to get sympathy from her?

5 A. No.

6 Q. Were you telling her that because she was your best
7 friend?

8 A. Yes. I felt like I could trust her.

9 Q. Mr. Jacobs asked you some questions about seeing your
10 parents argue apparently when you were three or four or five
11 years old?

12 A. Yes.

13 Q. When you were 15 years old and you disclosed that your
14 dad had been sexually abusing you, did you care about who had
15 custody, who might have custody of you and Joseph and Rosa?

16 A. No.

17 Q. Was that on your mind at all?

18 A. No.

19 Q. Mr. Jacobs went through a bunch of different names. It
20 sounded like you didn't recognize a lot of them. There was a
21 few that you did recognize. I think it was your Uncle Adam?

22 A. Yes.

23 Q. Somebody named Ray?

24 A. Yes.

25 Q. Your grandmother Linda and somebody named Tinker?

1 A. Yes.

2 Q. Were any of those people around at the time when your dad
3 decided to sexually abuse you?

4 A. No.

5 Q. You mentioned that there were parties that would
6 sometimes happen. Did your dad decide to sexually abuse you
7 while these parties were going on?

8 A. No.

9 Q. Did your dad ever sexually abuse you in the common areas
10 of that house?

11 A. No.

12 Q. So he never sexually abused you when there might be other
13 people around to see it happen?

14 A. Never.

15 Q. At any point -- you testified that you had met with the
16 trial team, you mentioned all of our names --

17 A. Yes.

18 Q. -- to go over the questions we were going to ask you; is
19 that right?

20 A. Yes.

21 Q. Did we tell you what the answers should be?

22 A. No.

23 Q. Was it just practicing so that this environment would be
24 as comfortable as possible for you?

25 A. Yes.

1 Q. Did we coach you in any way, Erica?

2 A. No.

3 MR. CASSELL: Thank you.

4 THE COURT: Any questions from the jury for this
5 witness?

6 MR. JACOBS: I think I have a little bit of recross,
7 if I can just have one moment.

8 I don't have anything further, Judge.

9 THE COURT: All right. Thank you.

10 So we have a question? All right. Go ahead and
11 write it out. Take your time. And then you'll give it to the
12 clerk, Armida.

13 Okay. If I can see counsel at sidebar, please.

14 (At sidebar.)

15 THE COURT: Okay. I'm going to number these 1 and
16 2, and then we'll all read them and then we'll talk about them
17 on the record.

18 (Off-the-record discussion.)

19 THE COURT: I think the last time I asked the
20 questions. Is that how you want to do this?

21 MR. JACOBS: That's fine.

22 MR. CASSELL: I'd rather the Court ask the
23 questions.

24 THE COURT: And I'll give you a chance to follow up.

25 MR. CASSELL: And the government doesn't object to

1 any of the questions.

2 MR. JACOBS: No --

3 THE COURT: Any objection?

4 MR. JACOBS: No. Subject to foundation.

5 (Open court.)

6 THE COURT: All right. So a couple of questions
7 from the jury.

8 What was the custody agreement between your mom and
9 your dad?

10 THE WITNESS: I don't know.

11 THE COURT: And where was your mother during this
12 time, which is the time charged that the acts occurred? Where
13 was your mom?

14 THE WITNESS: I don't know. She -- I don't know
15 where she was.

16 THE COURT: And did the kids, meaning the three of
17 you, go back and forth between your mom and dad during this
18 period of time?

19 THE WITNESS: I think that's what the custody was
20 about. We were on a -- the Yaqui Tribe and she let us visit
21 our dad, but he ended up not giving us back to our mom. And
22 when my mom took us, the Tribe tried to say if she didn't
23 bring us back, that we wouldn't -- she wouldn't get to see us
24 or have custody of us again. So she brought us back and she
25 left.

1 THE COURT: Okay. So did you visit back and forth
2 during this two-year period of the charges or just live with
3 your dad?

4 THE WITNESS: I visited back and forth maybe like a
5 couple times.

6 THE COURT: Okay. Were both Brenna and Abbey
7 present when you confided the allegations or was it separate?

8 THE WITNESS: It was separate.

9 THE COURT: Any follow-up questions from counsel?

10 MR. JACOBS: I have one, Judge.

11 THE COURT: Okay.

12 MR. CASSELL: Nothing from the government,
13 your Honor.

14 RECROSS-EXAMINATION

15 BY MR. JACOBS:

16 Q. Erica.

17 A. Yes.

18 Q. I guess maybe I got this wrong, but were you asked
19 previously if there was a custody dispute between your
20 parents?

21 A. Yes.

22 Q. Did you previously say there was not?

23 A. I said I didn't know, I think.

24 Q. Just now, did you have something completely other to tell
25 us. You just described a custody dispute, didn't you?

1 A. Yes, when she asked that question.

2 Q. What's the reason for this? Why didn't you give this
3 information when you were asked? What's the reason?

4 A. I don't know. I just didn't remember it, I guess.

5 Q. You didn't remember all this detail?

6 MR. CASSELL: Objection; argumentative. She's
7 answered the question, your Honor.

8 THE COURT: Yes. Ask another question, Mr. Jacobs.

9 BY MR. JACOBS:

10 Q. Is there any other question that any party asked you
11 today that you didn't know the answer to but you didn't say?

12 A. No.

13 MR. JACOBS: Okay. Nothing further. Thank you.

14 THE COURT: All right. So no additional questions
15 from the government?

16 MR. CASSELL: No.

17 THE COURT: Is that right?

18 Any additional questions from the jury for this
19 witness?

20 All right. Thank you, ma'am. You may step down.

21 And, members of the jury, let's go ahead and take
22 our lunch recess until 1:15. So remember to follow the
23 Court's admonition. You can talk about anything you'd like,
24 but don't talk about the case with each other until you have
25 it for final deliberations. So have a good lunch. We'll see

1 you back at 1:15.

2 And again, you can leave your things in the
3 courtroom if you like or bring them back to the jury room.
4 We'll lock the courtroom.

5 (Jury panel excused at 11:51 a.m.)

6 THE COURT: All right. The record may reflect the
7 absence of the jury, the presence of counsel and the
8 defendant.

9 So I wanted to talk with counsel a little bit more
10 about Mr. Jacobs' objection to the testimony from Ms. Martucci
11 about the issue of whether people who molest children also can
12 have adult sexual relationships; in other words, it's not
13 exclusivity. And I note back, Ms. Wang, you indicated that
14 that had been testified previously.

15 MS. WANG: That's correct.

16 THE COURT: And I do see that. There was a
17 question, I'm looking at page 32, "Is it possible for someone
18 to commit child sexual abuse while still being in normal adult
19 sexual relationships?"

20 "Yes."

21 And I don't know if it was discussed on cross. I
22 haven't gotten that far yet in the transcript.

23 So in looking at also the transcript when we talked
24 about the Court ruling on the admissibility and the Court
25 talking about its gatekeeping duties, I'm looking at

1 Document 311, page 53, I ask, "Does the government intend to
2 present any evidence or any testimony regarding the modus
3 operandi of child molesters? I guess maybe that ties in with
4 her opinion, such as the grooming, those sorts of opinions.
5 So maybe those are kind of linked together."

6 And Ms. Wang, you say, "Yeah, I think we're
7 definitely going to present grooming and victimization
8 testimony. I think in general, the case law sort of warns us
9 to steer away, to not dwell too much on making broad
10 generalizations about defendants."

11 And I say, "Right."

12 And you say, "... we're cognizant of that. It's
13 going to be primarily focused on the victim," and the
14 grooming. "But I don't -- there are areas we won't tread into
15 per the case law."

16 And I say, "Right. Okay."

17 I'm just giving you some things that I found.

18 So then I'm looking at the government's notice, the
19 proposed expert testimony. And I'm not sure if there's
20 anything in that notice that talks about this particular
21 opinion being given by Ms. Martucci. Maybe it's there and I
22 just haven't found it yet. So I am interested to see if there
23 is a case that says that an expert like Ms. Martucci can give
24 that opinion.

25 I mean, I must say, Mr. Jacobs, at the first trial a

1 lot your case was about the fact that many witnesses had been
2 disclosed for this trial that the defendant had adult sexual
3 relationships; the inference being, How could he possibly be
4 molesting his children if he has all these girlfriends or
5 adult sexual relationships? So this could be potentially
6 seen -- I'm just thinking out loud.

7 MR. JACOBS: Sure.

8 THE COURT: -- as rebuttal to that argument, but
9 it's presented in the government's case-in-chief.

10 So that's just some of my comments. I don't know if
11 either side wants to talk about it right now or at some other
12 time. I mean, you already moved for a mistrial saying it's
13 improper.

14 MR. JACOBS: My instructions from the Court are to
15 brief the issue.

16 THE COURT: I'm sorry, I can't hear you.

17 MR. JACOBS: My instructions from the Court are to
18 brief the issue.

19 THE COURT: Right.

20 MR. JACOBS: And I intend to do that. I'd like to
21 do a proper job of it to make sure that I've got, you know,
22 good authority for what my general understanding of the law
23 is. I'd like to be sure. The testimony has been given. We
24 can't undo that. A mistrial could be granted at any time, so
25 I don't think there's -- it needs to be dispositively argued

1 right at this minute.

2 THE COURT: Okay. I'm just throwing some things
3 out, some ideas.

4 All right. Ms. Wang, did you want to say anything
5 right now about that or we can talk about it at another break.

6 MS. WANG: Just briefly, your Honor.

7 THE COURT: Go ahead.

8 MS. WANG: There's certainly no notice issue because
9 that question was asked at the previous trial, so Mr. Jacobs
10 has had plenty of notice on that.

11 I did clarify with Ms. Martucci this is based on her
12 interview with the children. She is a blind expert. It does
13 go to victimization in general and child sexual abuse in
14 general. I'm not sure if I was particularly artful in asking
15 her the first time. We did bring her back to clarify that it
16 was based on her experience conducting the interviews and not
17 with anything else.

18 And so I would argue, I would submit to the Court
19 that -- also along the same lines, in the first trial and
20 because the witnesses had the notice that the defendant -- I
21 believe it's Bridget Corkhill who testified last time
22 extensively about the sexual relationship that she had with
23 the defendant, I think it does rebut some of that. I think it
24 rebuts some of what the defendant said in opening, you know,
25 and I think it's relevant in this case.

1 We will do some additional briefing for the Court.
2 In any event, I don't think it rises to the level of requiring
3 a mistrial in this case regardless of what the Court rules on
4 the objection.

5 THE COURT: All right. And you can argue -- well,
6 grooming practices are definitely something that the offender
7 is doing, so that's an offender characteristic that I already
8 said was admissible. And the case law is very clear on that,
9 about grooming.

10 So I'm just wondering, I just want to make sure, my
11 concern is, is this defendant-profile testimony? We see this
12 a lot in drug courier cases. It's much more common in this
13 district where we -- profile testimony for drug couriers is,
14 well --

15 MR. JACOBS: Universal.

16 THE COURT: But there has to be a certain record
17 made and everything.

18 So in any event, the options would be it's
19 completely admissible and we're fine; or I could give some
20 sort of a curative instruction to the jury and tell them to
21 disregard it; or I could tell them it's not substantive
22 evidence of guilt and it could be used for other purposes,
23 which would draw more attention to it. So --

24 MR. JACOBS: As --

25 THE COURT: -- I'm just brainstorming with both

1 sides. So we'll talk about it more, but I just wanted to let
2 you know kind of what I'm thinking about it given the fact
3 that it was, you know, objected to and --

4 MR. JACOBS: Well, Judge, particularly troubling was
5 that the government's effort to cure it was simply to double
6 down on it and have the witness repeat it.

7 THE COURT: Well, I don't think, really, Mr. Jacobs,
8 it's a big issue in dispute. I think it's very -- I think
9 it's relevant to this jury that doesn't have a common bank of
10 knowledge about child sexual abuse. But for those of us that
11 do, everybody else in this courtroom who is at counsel table,
12 I don't think it's disputed that people who sexually abuse
13 children often and perhaps normally have other adult
14 relationships.

15 I mean, this isn't some area that I'm concerned, Oh,
16 my gosh, this is not true and the jury is misled. So I think
17 it's clearly -- your expert would probably agree that often
18 people who molest children have adult sexual relationships.
19 So I'm not concerned, Oh, my gosh, this is sending the jury
20 down the wrong path and it's absolutely not true. I'm just
21 concerned about whether that type of testimony is admissible
22 from an expert.

23 MR. JACOBS: And it would be just --

24 THE COURT: Because I think that's one of the
25 arguments you're making, is that, Oh, look, he had all these

1 adult female -- relationships with adult females and therefore
2 how could he have done this?

3 MR. JACOBS: He may have, Judge. But, you know,
4 that testimony from an expert in this situation is illegal
5 profiling evidence. It may be true. The profile elements may
6 be true. There's nobody here among counsel or Court who
7 hasn't seen any number of child molestation cases and could
8 tick off a list of offender-profile characteristics. I think
9 we all could and they're probably accurate. But the trouble
10 is having an expert give them to the jury is illegal.

11 MS. WANG: And, your Honor, I don't think one
12 question is going to make it profiling evidence; I'm not
13 conceding that it is profiling evidence in the first place.

14 Mr. Cassell just reminded me that the defendant
15 himself in his statement that we're going to play talks about
16 the fact that he had other women and that he had other things
17 so he doesn't need to do this. And, you know, that's directly
18 on point there.

19 Again, the testimony of this particular blind
20 witness, she was not engaged in profiling, and, you know, it
21 doesn't -- it doesn't -- it still goes to her expert testimony
22 as to victimization, grooming, et cetera.

23 THE COURT: All right. Thank you, counsel.

24 And so let's break for lunch and we'll see everybody
25 back at 1:15. Thank you.

1 MR. JACOBS: Thank you, Judge.

2 (A lunch recess was taken at 12:01 p.m.)

3 (Proceedings commenced at 1:20 p.m, as follows:)

4 THE COURT: The record may reflect the presence of
5 counsel and the defendant and the absence of the jury.

6 MR. JACOBS: Just a brief bit of housekeeping.

7 We were down on 5 seeking to avoid the jury, and
8 Aubrey, she encountered one of our jurors. And he asked her
9 some question like where was he supposed to be, and she sort
10 of froze because she knew about the admonition. She didn't
11 know what to say, and she said something like, I can't talk to
12 you, or something like that. It seemed very abrupt. But I
13 think she also added that, Yeah, it's the 6th floor, or
14 something.

15 I didn't want the juror to feel offended. She's a
16 very young person and didn't know what to do. But that's what
17 happened.

18 THE COURT: It doesn't sound like she did anything
19 wrong.

20 MR. JACOBS: I don't think she did, Judge, but I
21 thought we better let you know.

22 THE COURT: Okay.

23 MR. JACOBS: I didn't want the juror to feel
24 offended.

25 THE COURT: Okay. So you don't want me to draw any

1 additional attention to it?

2 MR. JACOBS: Mr. Cassell and I feel probably feel
3 that the admonition covers it.

4 THE COURT: Okay. Great.

5 MR. JACOBS: It was strictly incidental. Nobody did
6 anything.

7 THE COURT: All right. So, Armida, if you can get
8 the jury.

9 MR. CASSELL: Your Honor, the only other thing, and
10 this isn't anything other than just letting the Court know
11 that our expectation, things are moving so quickly we are
12 instructing all three of our remaining three witnesses to be
13 in the courthouse, and we think we may get to our last witness
14 today. It's conceivable. Just with the pace that everything
15 is going, we're going to be prepared. I think that it's very,
16 very possible that we'll have rested by lunchtime tomorrow.

17 THE COURT: Okay. So wait, so you will have
18 witnesses tomorrow morning?

19 MR. CASSELL: There's no way we're finishing today,
20 but we may be able to actually call our last witness,
21 Detective Garcia, before the end of the day. It depends on
22 how things go with Agent Grant and Rosalinda Marrufo.

23 THE COURT: And last time, remind me, did the
24 government play an interview of the defendant, portions of it?

25 MR. CASSELL: We did. We played the whole thing.

1 We do not intend to play both of them all the way through.

2 THE COURT: And did the juror have something to
3 follow along?

4 MR. CASSELL: If you recall, Judge, the recording
5 had the transcripts spliced into it so they could see it on
6 the view screen, and they were able take both recordings back
7 with them to deliberations.

8 THE COURT: And how long did that portion of the
9 trial take?

10 MR. CASSELL: The two interviews?

11 THE COURT: Right.

12 MR. CASSELL: Probably four and a half hours.

13 MR. JACOBS: It was hours, Judge.

14 THE COURT: Hours in front of the jury?

15 MR. JACOBS: Yes, that's what we did. We had a long
16 period of time.

17 THE COURT: Okay. So that -- all right.

18 MR. CASSELL: But the recordings are going to be
19 with -- the portion of the government's case that will be the
20 recordings will be with Detective Garcia, so he will not
21 finish today. But I think it's possible that we could get
22 done with Agent Grant.

23 THE COURT: And we might want to, just for the sake
24 of the jury's sanity, break up maybe the interviews. Maybe
25 you don't want to do that. Do some of it today and do some of

1 it tomorrow.

2 MR. CASSELL: We may be able to do that.

3 THE COURT: Whatever you want to do.

4 MR. CASSELL: I just wanted to let the Court know
5 that I think we're definitely going to rest before lunch
6 tomorrow.

7 THE COURT: Okay. The defense is on notice.

8 MR. JACOBS: Well, and, Judge, of course, I don't
9 want to create a situation where the jurors are unused and
10 they feel like their time is being wasted. I'm just concerned
11 because the one anchor that we have here is Dr. Leite first
12 thing Friday morning, so if we can look at any other way of
13 doing this. The civilian witnesses, since we have a moment,
14 Brad is going to go ahead and give the testimony on behalf of
15 Linda who is deceased, if you recall.

16 THE COURT: Right. We already have a stipulation
17 about that. Do we have a stipulation or it just came into
18 evidence?

19 MR. CASSELL: Not a stipulation -- well, not a
20 stipulation that comes into evidence. I think we agree on the
21 breadth of his testimony, though.

22 THE COURT: Okay.

23 MR. JACOBS: And then one, two, three, four, five,
24 six, seven, eight civilians are on Mr. Hunt's list here. And
25 the thing is there are a lot of them, but they're very quick.

1 THE COURT: Right.

2 MR. JACOBS: Because the scope of their testimony is
3 so narrow that, I don't remember, some of them were five
4 minutes, some of them ten. I think Corkhill was longer. So
5 although they're numerous --

6 THE COURT: They'll go quickly also.

7 MR. JACOBS: -- they'll go very quickly. So
8 frankly, I don't know, I doubt we're going to get all of them
9 tomorrow afternoon. Brad was last -- when the pointer was
10 last on him, it was 2 p.m. I expect as a result of this
11 discussion, we'll move it up to noon, and they'll shake their
12 fists at us again.

13 THE COURT: Okay. Do what you can. If we do have
14 to take some time off, we want to give the jury a chunk of
15 time, like the morning or the afternoon, and not one witness
16 at 2 for five minutes, one at 3 for five minutes.

17 MR. JACOBS: No, we don't want to do that.

18 MR. CASSELL: And, your Honor, if possible, I mean,
19 or if necessary, we could certainly hold off calling our final
20 witness today and just have him start tomorrow. That would
21 just basically -- I mean, I cannot imagine we're going to be
22 done with Agent Grant before 3:30 to 4:00. But I'm just more
23 reacting to how fast things have been going. We've just been
24 moving really quickly.

25 THE COURT: That's normally a good thing.

1 MR. JACOBS: Normal in a retrial because you've done
2 it before.

3 THE COURT: Done it once before.

4 All right. So go ahead, Armida.

5 THE CLERK: Please rise for the jury.

6 (Jury panel present at 1:26 p.m.)

7 THE COURT: And everyone may be seated.

8 And the record may reflect the presence of the jury.

9 And the government may call its next witness.

10 MR. CASSELL: Thank you, your Honor. The United
11 States calls Rosalinda Marrufo.

12 THE COURT: All right. Ms. Marrufo, you may come
13 into the courtroom and come on up to the witness stand right
14 up here. Just walk right up here. And if you can just remain
15 standing for a minute, I'm going to have the clerk swear you
16 in as a witness.

17 ROSALINDA MARRUFO, PLAINTIFF WITNESS, SWORN

18 THE CLERK: Thank you. Please be seated.

19 Please speak directly into the microphone. State
20 your full name, spelling your last name.

21 THE WITNESS: Rosalinda Marrufo, M-a-r-r-u-f-o.

22 THE COURT: All right. Ms. Wang, you may proceed.

23 MS. WANG: Thank you.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MS. WANG:

3 Q. Rosalinda, do you go by Rosa for short?

4 A. Yes.

5 Q. Rosa, how old are you?

6 A. I'm 21.

7 Q. What's your date of birth?

8 A. August 7th, 2001.

9 Q. Can you -- could you go ahead and repeat that again?

10 A. August 7th, 2001.

11 Q. You just had a birthday pretty recently?

12 A. Yes.

13 Q. What year did you graduate high school?

14 A. 2019.

15 Q. Who is your biological mother?

16 A. Sylvia Muro.

17 Q. And who is your biological --

18 THE COURT: We have two microphones there. Maybe
19 you can pull them both over. We want to make sure everybody
20 on the jury can hear what you're saying.

21 Go ahead.

22 BY MS. WANG:

23 Q. Go ahead and repeat the answer. Who is your biological
24 mother?

25 A. Sylvia Muro.

1 Q. And who is your biological father?

2 A. Eric Marrufo.

3 Q. Rosa, are you married?

4 A. Yes.

5 Q. Are you a mom these days as well?

6 A. Yes.

7 Q. Do you currently live in California?

8 A. Yes.

9 Q. Do you recognize your father, Eric Marrufo, in the
10 courtroom here today?

11 A. Yes.

12 Q. Can you point out where he's sitting and what he's
13 wearing?

14 A. He's sitting to my left in a suit.

15 Q. Can you describe anything else about what he's wearing?

16 A. He has glasses and a mustache.

17 MS. WANG: Your Honor, may the record reflect the
18 defendant's been identified?

19 THE COURT: Yes.

20 BY MS. WANG:

21 Q. Do you have any other siblings who also have the same mom
22 and dad?

23 A. Yes.

24 Q. And who are they?

25 A. Erica Marrufo and Joseph Marrufo.

1 Q. How old is Erica?

2 A. She's 22.

3 Q. And how about Joseph? How old is Joseph now?

4 A. He's 18.

5 Q. During the time period of August 1st, 2006 through
6 August 1st of 2008, did you live with the defendant at his
7 house?

8 A. Yes.

9 Q. And what grade did you start when you first started
10 living with him?

11 A. Kindergarten.

12 Q. Where was his house located?

13 A. On the Pascua Yaqui Indian reservation.

14 Q. Is that here in Tucson?

15 A. Yes.

16 Q. In the District of Arizona?

17 A. Yes.

18 Q. Do you remember the name of the street that his house was
19 on?

20 A. It was called He Ka Voo D.

21 Q. Can you just describe a little bit what the house was
22 like and the area surrounding it?

23 A. It was located on a cul de sac. There was a chain-link
24 fence. There was no grass in the back yard, bars on the
25 window.

1 Q. Is the area or the neighborhood that the house was in,
2 you testified it's on the reservation, is it in sort of a
3 semidesert area?

4 A. Yes.

5 Q. During those two years that you lived with the defendant
6 at his house, did anyone else live there?

7 A. My sister and my brother.

8 Q. Besides your siblings, did anyone else live at that
9 house?

10 A. No.

11 Q. Just the defendant?

12 A. Yes.

13 Q. Did your mom live at the house at any point during those
14 two years?

15 A. No.

16 Q. Did the defendant have girlfriends during the time that
17 time period, those two years that we're talking about? Did he
18 have any girlfriends that you know of?

19 A. Yes.

20 Q. Did the girlfriends, would they occasionally sleep over
21 at the house?

22 A. Yes.

23 Q. How frequently?

24 A. Just kind of sporadically, not ever for very long.

25 Q. So not every evening?

1 A. No.

2 Q. Were there many evenings when it was just you, your
3 siblings, and your dad?

4 A. Yes.

5 Q. Did you have parties sometimes at the house?

6 A. Sometimes.

7 Q. I guess I shouldn't say "you." Did your dad have parties
8 sometimes at the house?

9 A. Yes.

10 Q. How frequently were those parties?

11 A. Maybe a couple times out of the year.

12 Q. Would you say not very frequently?

13 A. Yes.

14 Q. When you would have those parties, would there
15 occasionally be people sleeping over at the house during those
16 times?

17 A. Yes.

18 Q. Rosa, did the defendant drink alcohol at home during the
19 time that you lived there?

20 A. Yes.

21 Q. Can you describe what he was like when he drank?

22 A. He was more angry and he would sometimes throw things.
23 We kind of tried to stay out of the way, so --

24 Q. You would try to stay out of his way because he was
25 angry?

1 A. Yes.

2 Q. Was he angry at you --

3 A. Sometimes.

4 Q. -- or would -- sometimes.

5 Was he ever angry at your siblings, Erica or Joseph?

6 A. Yes.

7 Q. Rosa, I want to ask you some questions at this point
8 about things that happened during that time period. Okay?

9 A. Okay.

10 Q. Did the defendant ever engage in sexual acts with you?

11 A. Yes.

12 Q. Did it happen once or more than once?

13 A. More than once.

14 Q. Did the sexual acts happen on a regular basis when you
15 lived at the house between August of 2006 to August 2008?

16 A. Yes.

17 Q. Did these sexual acts occur mostly during the day or at
18 night?

19 A. At night.

20 Q. I want to ask you about the first time that one of these
21 sexual acts happened. What grade were you in when it happened
22 for the first time?

23 A. I was in kindergarten.

24 Q. What grade was Erica in when you were in kindergarten?

25 A. She was in first grade.

1 Q. Where did the sexual act take place?

2 A. At our house in the living room.

3 Q. This is the house on the reservation?

4 A. Yes.

5 Q. Who was there in the living room?

6 A. It was just me, my sister, and Eric.

7 Q. Do you remember if Joseph was there?

8 A. He wasn't there.

9 Q. Was there anybody else in the house?

10 A. No.

11 Q. Can you tell us what happened?

12 A. We were sitting on the couch, and Eric was in his
13 underwear. And he had asked me if me and my sister had ever
14 kissed before. And I said yes, and he asked us to show him,
15 and I kissed her on the cheek. And he said, No, on the lips.
16 And he told me to kiss her on the lips and I did. And then he
17 asked us to kiss him on the lips.

18 Q. And did you do what he told you to do?

19 A. Yes.

20 Q. Was it normal for you to kiss your sister, Erica, on the
21 lips like that?

22 A. No.

23 Q. Would you kiss the defendant on the lips typically?

24 A. No.

25 Q. What happened after you kissed your sister on the lips

1 and then the defendant?

2 A. He removed his underwear and told my sister to put his
3 penis in her mouth and to show me how to do that and then told
4 me to do it as well.

5 Q. I'm going to back up just a little bit.

6 Were you and Erica, were you guys wearing clothes at that
7 time?

8 A. I can't remember.

9 Q. At the beginning, before he told you to kiss your sister
10 and to kiss him, were you clothed? Were you wearing clothes?

11 A. Yes.

12 Q. At some point did those clothes come off?

13 A. Yes, but I don't remember if it was before we had started
14 or during.

15 Q. Okay. How did the clothes come off? Did somebody tell
16 us you to take them off?

17 A. Yes.

18 Q. Who?

19 A. Eric.

20 Q. The defendant?

21 A. Yes.

22 Q. And did you do what he told you to do and take your
23 clothes off?

24 A. Yes.

25 Q. You testified that he put his penis in Erica's mouth

1 first; is that correct?

2 A. Yes.

3 Q. And then he told her to show you what to do; is that
4 correct?

5 A. Yes.

6 Q. Can you describe that or what happened?

7 A. I put his penis in my mouth and we took turns, me and
8 Erica took turns putting his penis in our mouth after that.
9 And then I remember after a while, Erica had told me that we
10 were supposed to lick the white stuff when he was done.

11 Q. When the defendant put his penis in your mouth, was it
12 soft or was it hard?

13 A. It was hard.

14 Q. Did it have anything on it or was it direct skin-to-skin
15 contact with your mouth?

16 A. It was skin-to-skin contact.

17 Q. Do you remember what it smelled like?

18 A. I remember smelling sweat and alcohol.

19 Q. When the defendant put his penis in your mouth, did he
20 tell you or instruct you to do anything?

21 A. I remember him telling us to make sure that we don't bite
22 him and be careful with our teeth.

23 Q. And did you do that? Were you careful per his
24 instructions?

25 A. Yes.

1 Q. Did he tell you to do something with your hands when he
2 had his penis in your mouth?

3 A. I can't remember.

4 Q. Do you remember if you did do something with your hands?

5 A. No. I don't remember.

6 Q. Did you ever touch his penis with your hand?

7 A. Yes.

8 Q. And why did you do that?

9 A. When he asked us to.

10 Q. At that age or during that time, did you know before that
11 first time that it happened, did you know what you were
12 supposed to do?

13 A. No.

14 Q. Did the defendant ever tell you to suck on his penis or
15 to lick it or anything to that effect?

16 A. Yes.

17 Q. And did you do what he told you to do?

18 A. Yes.

19 Q. You testified that something eventually came out of his
20 penis; is that correct?

21 A. Yes.

22 Q. Can you describe what it looked like?

23 A. It was white and sticky.

24 Q. What did you do with it?

25 A. I did what Erica told me to do and I put it my mouth.

1 Q. What did it taste like?

2 A. It was sour and bitter.

3 Q. After you put the white stuff in your mouth, what did you
4 do?

5 A. I remember feeling really gross and wanting to get up,
6 and I just went to the restroom and I brushed my teeth.

7 Q. Was that the first time that the defendant did something
8 sexual with you?

9 A. Yes.

10 Q. Were there other times during the two years that you
11 lived with the defendant on the reservation, were there other
12 times that he put his penis in your mouth?

13 A. Yes.

14 Q. Where would it happen those other times?

15 A. It would happen in the living room, sometimes in his
16 bedroom, and in his bathroom that was in his room.

17 Q. Did he have his own bedroom?

18 A. Yes.

19 Q. And you said he had his own -- did he have his own
20 bathroom that was attached to his bedroom?

21 A. Yes.

22 Q. If somebody were in his bedroom, would you be able to go
23 to the bathroom without having to go through the hallway or
24 the rest of the house?

25 A. Yes.

1 Q. During these other times that the defendant put his penis
2 in your mouth, was his penis soft or was it hard?

3 A. It was hard.

4 Q. Was it always hard when he put it in your mouth?

5 A. Yes.

6 Q. And during these other times, what would he tell you to
7 do when he put his penis in your mouth?

8 A. He would just instruct us on what he wanted us to do.

9 Q. And what would he say? What kind of instructions would
10 he give?

11 A. The same as the first time, just to be careful. And
12 sometimes he would just tell us when to change how we did it,
13 like the speed and stuff.

14 Q. The speed. Can you describe what you mean by the speed
15 of it?

16 A. The oral sex, when he would put his penis in my mouth.

17 Q. When you were that age, did you know what oral sex was?

18 A. No.

19 Q. Did you also touch his penis with your hand during these
20 other times that he would put his penis in your mouth?

21 A. Yeah.

22 Q. Was that yes?

23 A. Yes, sorry.

24 Q. Did he ever tell you what to do with your hands when they
25 were touching him?

1 A. Yes.

2 Q. I'm sorry, what was that?

3 A. Yes.

4 Q. What would he tell to you do?

5 A. He would tell us to -- he would tell me to suck it
6 sometimes.

7 Q. And did you do that?

8 A. Yes.

9 Q. During those two years, you testified that it happened on
10 a regular basis. Would you say that it happened frequently or
11 not frequently?

12 A. Frequently.

13 Q. This particular sex act where he would put his penis in
14 your mouth.

15 A. Yes.

16 Q. You said you were in kindergarten the first time this
17 happened. What grade were you in the last time that it
18 happened?

19 A. I was in first grade.

20 Q. And you started kindergarten in August of 2006; is that
21 correct?

22 A. Yes.

23 Q. Did you turn five right as you were starting
24 kindergarten?

25 A. Yes.

1 Q. Would you have started first grade in August of 2007?

2 A. Can you say that again?

3 Q. Would you have started first grade in August of 2007,
4 around the time you turned six years old?

5 A. Yes.

6 Q. Rosa, do you remember a time when someone came to the
7 door or knocked on the door while the defendant was having
8 oral sex with you?

9 A. Yes.

10 Q. Can you describe what happened then?

11 A. We were in the living room, and I remember me and Erica
12 were on the couch unclothed, and he was also on the couch
13 unclothed. And in the middle of us giving him oral sex, we
14 heard somebody walking toward the door. And he told us to
15 stop, and he jumped up and told us to go to our rooms and get
16 dressed and stay in there for a little bit and then come out.
17 And he answered the door as we left.

18 Q. And did you do what he told you to do and get dressed and
19 leave the room?

20 A. Yes.

21 Q. Was there a different sex act that the defendant did with
22 you during that time period?

23 A. Yes.

24 Q. And this particular sex act, where would it take place?

25 A. In his bedroom.

1 Q. Can you tell us what would happen in his bedroom?

2 A. He would put his fingers into my vagina and touch his
3 penis.

4 Q. Where in the bedroom would this happen?

5 A. On his bed.

6 Q. Would you both be laying down?

7 A. Yes.

8 Q. And how would you be laying down? Can you describe the
9 way your bodies would be positioned?

10 A. Most times he was on his back, one hand reaching over,
11 and I was laying down next to him undressed.

12 Q. Would you be facing toward him or away from him?

13 A. Away from him.

14 Q. You said that he would insert his fingers inside of you;
15 is that correct?

16 A. Yes.

17 Q. And you testified that he would insert his fingers into
18 your vagina?

19 A. Yes.

20 Q. And was that direct skin-to-skin contact?

21 A. Yes.

22 Q. He didn't have anything on his finger, it was -- I'm
23 sorry. He didn't have anything covering his finger, it was
24 just direct; right?

25 A. Yes.

1 Q. What was he doing to himself when he inserted his fingers
2 inside you?

3 A. He was touching his penis, masturbating.

4 Q. And was his penis soft or hard?

5 A. It was hard.

6 Q. Would he say anything to you during this particular sex
7 act? Is there anything he would say?

8 A. I don't remember specific phrases as it was happening. I
9 remember he would shush me if I said anything.

10 Q. He would shush you?

11 A. Yes.

12 Q. And what would you say?

13 A. Excuse me.

14 Q. Take your time.

15 A. It was painful, so sometimes I would squirm and say,
16 "Ow," and he would shush me.

17 Q. How did it feel when he did this?

18 A. It hurt.

19 Q. Were you scared?

20 A. Yes.

21 Q. What would eventually happen to make him stop inserting
22 his fingers inside you during the act itself?

23 A. He would ejaculate.

24 Q. Did the defendant say anything to you after he was
25 finished or done?

1 A. I can't remember anything specific he would say.

2 Q. Did you ever zone out during these sex acts when the
3 defendant was doing that?

4 A. Yes.

5 Q. Can you describe that?

6 A. I just remember not wanting to be there and tried to
7 think of other things.

8 Q. What would you focus on when he was doing those things to
9 you?

10 A. Sometimes I would just think about what I was going to do
11 the next day or think about a movie or my mom.

12 Q. Did the defendant penetrate you with his fingers one time
13 or more than one time?

14 A. More than one time.

15 Q. On these multiple occasions when he did this, would it
16 follow pretty much the same pattern? Would he basically do
17 the same thing each and every time?

18 A. Yes.

19 Q. This particular sex act, would you say that he did
20 frequently or not frequently?

21 A. Not frequently.

22 Q. Did he have oral sex with you more frequently than
23 inserting his fingers inside of you?

24 A. Yes.

25 Q. What grade were you in the first time he did this?

1 A. I was in kindergarten.

2 Q. What about the last time? When was the last time he did
3 it?

4 A. First grade.

5 Q. Did he stop when you moved away?

6 A. Yes.

7 Q. Was Erica ever in the room when the defendant would
8 insert his fingers inside you?

9 A. No.

10 Q. Was anybody else ever in the room when this happened?

11 A. No.

12 Q. Were there ever any adults in the house when this
13 happened?

14 A. No.

15 Q. Do you recall Erica being present on some of the
16 occasions when he would have oral sex with you?

17 A. Yes.

18 Q. Both of you, he put his penis in both your mouth and
19 Erica's mouth; is that correct?

20 A. Yes.

21 Q. Did you ever sleep in the defendant's bed in his bedroom?

22 A. Yes.

23 Q. When you would sleep in his bedroom, would he wear
24 clothes?

25 A. Sometimes. He would wear his boxers.

1 Q. Were there other times that he was naked?

2 A. Yes.

3 Q. Did you ever take showers with the defendant?

4 A. Yes.

5 Q. And obviously during the showers, would you have been
6 clothed or not clothed?

7 A. Not clothed.

8 Q. Did anyone else take showers with you and the defendant?

9 A. Sometimes Erica would be there.

10 Q. And would all three of you be naked in the shower?

11 A. Yes.

12 Q. Did you ever try to -- did you ever try to resist what
13 the defendant did to you, either the oral sex or the
14 penetration with his fingers?

15 A. Yes.

16 Q. Can you tell us what you would do to try to resist?

17 A. I remember one time I was in his bed clothed, and I was
18 pretending to just fall asleep, and I was just too tired. And
19 he had asked me to remove my clothes, because he was naked.
20 And I told him, No, I'm tired, I just want to go to sleep.
21 And I pretended to just fall asleep.

22 Q. Did you ever -- so you were five and six when you lived
23 at his house; right?

24 A. Yes.

25 Q. Were you -- you were potty-trained obviously by that

1 time; correct?

2 A. Yes.

3 Q. Did you ever wet the bed during any of these sexual acts
4 or in general when you were at the defendant's house?

5 A. In general. Not during.

6 Q. How would the defendant react when you would wet the bed?

7 A. He was very angry with me, especially when it happened in
8 his bedroom.

9 Q. Did you ever wet the bed to try to get out of doing
10 something?

11 A. Yes.

12 Q. And would that work?

13 A. Yes.

14 Q. During and immediately after these instances of sexual
15 abuse, did the defendant behave differently toward you than he
16 normally did?

17 A. Yes.

18 Q. Can you describe that?

19 A. He was less angry with us. He would leave us alone to
20 play with each other during the day instead of asking us to do
21 little tasks around the house. Sometimes he would let us stay
22 up later or drink more soda with dinner.

23 Q. So to you, he would be nicer to you after one of these
24 sexual acts would take place; is that correct?

25 A. Yes.

1 Q. Did the defendant ever tell you not to tell anyone what
2 was happening?

3 A. Yes.

4 Q. What did he say?

5 A. He said that it was our special time, and that we weren't
6 supposed to tell anybody. And that if we did, then he would
7 get taken away, and we would get taken away, and me and my
8 sister would be split up, and my little brother would be split
9 from us as well.

10 Q. Did you believe him when he told you these things?

11 A. Yes.

12 Q. And you didn't want any of those things to happen;
13 correct?

14 A. Yes.

15 Q. You didn't want to be split up from your sister or your
16 brother?

17 A. No.

18 Q. Did you believe him when he told you that it was
19 something special between the two of you?

20 A. Yes.

21 Q. Did you like the attention that you got from him despite
22 the sexual acts that were happening?

23 A. Yes.

24 Q. Do you remember if the defendant had a TV in his bedroom?

25 A. Yes.

1 Q. Did he ever show you anything on the TV?

2 A. What do you mean?

3 Q. Did he ever show you any videos or anything on the TV
4 other than maybe cartoons or regular movies?

5 A. Not that I can remember.

6 Q. Rosa, at the time that these acts of sexual abuse were
7 taking place, did you understand what was happening or realize
8 what was happening to you? Did you comprehend that those
9 weren't normal things to do?

10 A. No.

11 Q. When did you first start to realize?

12 A. After I had left, I moved in with my mom and I was older.

13 Q. How did you feel when you first -- when you were older
14 and you first started to realize what the defendant had done
15 with you?

16 A. I felt sick and gross and really embarrassed.

17 Q. Why did you feel embarrassed?

18 A. I just I felt like I had let him do those things to me
19 and my sister.

20 Q. You said you felt like you had let him do those things to
21 you and your sister. Did you feel like you were responsible
22 in some way for what had happened?

23 A. Yes.

24 Q. Did you and Erica and Joseph eventually move away from
25 the reservation in 2008?

1 A. Yes.

2 Q. And where did you move to?

3 A. We moved to California.

4 Q. Would that have been end of first grade, beginning of
5 second grade?

6 A. Yes.

7 Q. After you moved away, was the defendant, was he a part of
8 your life anymore?

9 A. No.

10 Q. Other than this case, have you seen him at all since
11 moving away in second grade?

12 A. No.

13 Q. Between August 2006 and August 2008, did you see much of
14 your mom during those two years?

15 A. No.

16 Q. How many times would you say you saw her during those two
17 years total?

18 A. I don't know, maybe a couple of times each year.

19 Q. Would she come to the reservation to visit with you guys?

20 A. Yes.

21 Q. Other than those two times a year that you would see her,
22 did she live there at the house? Did she ever live there at
23 the house during that time period?

24 A. No.

25 Q. Do you know whether or not your mom is a tribal member?

1 A. No.

2 Q. You don't know or she's -- you don't know whether she is
3 or not?

4 A. No. I don't know.

5 Q. In 2015 when Erica first reported something, did your mom
6 have full custody of all three kids -- you, Erica, and Joseph?

7 A. Yes.

8 Q. And in 2015, were you aware of anything that would have
9 led you to believe that the defendant was trying to get any
10 amount of custody back of the kids?

11 A. No.

12 Q. Did you ever plan on telling anyone what the defendant
13 did to you?

14 A. No.

15 Q. Why not?

16 A. I felt a lot of shame about it, and I just didn't feel
17 comfortable ever sharing that with anybody. I pushed it down
18 and tried to forget about it.

19 Q. Did you ever want to report what he did to the police?
20 Was that ever something you wanted to do?

21 A. No.

22 Q. Were you pretty upset when Erica first reported something
23 had happened?

24 A. Yes.

25 Q. Do you remember doing a forensic interview at the child

1 advocacy center? I believe it was in Phoenix in 2015.

2 A. Yes.

3 Q. How old were you in 2015?

4 A. I was 13 or 14.

5 Q. During that first interview, did you want to talk about
6 anything that the defendant had done?

7 A. No.

8 Q. Why not?

9 A. I had spent a lot of time pushing it down and trying to
10 forget about it and pretend it never happened. And then I
11 heard Erica had said something, and I was just very upset and
12 coming to terms with it. And I was just too embarrassed to
13 tell anybody.

14 Q. Did you do a follow-up interview in 2017?

15 A. Yes.

16 Q. Between -- well, I guess at any point, did you ever talk
17 to your mom about what had happened?

18 A. No.

19 Q. Did you ever talk to Erica about what had happened?

20 A. No.

21 Q. Other than knowing that Erica had reported something, did
22 the two of you ever talk about what had happened to you?

23 A. No.

24 Q. In 2017, did you feel more willing to talk about the
25 sexual acts that had happened?

1 A. Yes.

2 Q. And why was that?

3 A. I was a little bit older, and I knew that it was probably
4 the right choice to say something. I was more ready since
5 some time had passed and I was able to think about it.

6 Q. And in 2017, there were no custody issues going on;
7 correct? Your mom had full custody of the three of you
8 already?

9 A. Correct.

10 Q. And to your knowledge, there was no custody issues going
11 on; correct?

12 A. Yes.

13 Q. During the 2017 interview, do you remember writing some
14 things down on a piece of paper that the defendant had done?

15 A. Yes.

16 Q. Why did you write it down instead of saying it out loud?

17 A. I just felt like it was easier. I felt less vulnerable
18 having to look someone up in the eyes and tell them what had
19 happened. And I felt that writing it and having them read it
20 when I had left was just easier for me.

21 Q. And to this day, is it still difficult to talk about it
22 in front of people?

23 A. Yes.

24 Q. I'm going to show you what's already been admitted as
25 Exhibit No. 2.

1 THE COURT: So No. 2 has already been admitted?

2 MR. JACOBS: Subject to prior objection.

3 THE COURT: All right.

4 BY MS. WANG:

5 Q. I'm going to try to -- I think I made it worse. Is this
6 the same note that you wrote in 2017 during that interview
7 describing some of the sex acts that the defendant did with
8 you and Erica?

9 A. Yes.

10 Q. And was one of the sex acts that you described in writing
11 oral sex?

12 A. Yes.

13 Q. Among other things?

14 A. Yes.

15 Q. Have you, to this day, to today, have you and Erica
16 talked about what the defendant did to the two of you?

17 A. No.

18 Q. To this day, have you talked with your mom about what the
19 defendant did?

20 A. No.

21 Q. How do you feel, what do you feel when you think about
22 the possibility of talking to them and telling them,
23 disclosing to them?

24 A. I don't think I'm ready to do that at this point. I
25 don't know if I would ever be ready to discuss it with them.

1 Q. I'm going to show you what's been marked as Exhibit
2 No. 14 without objection. Do you recognize this photo?

3 THE COURT: This has been admitted?

4 THE CLERK: What exhibit?

5 MS. WANG: Exhibit 14. It's already been admitted.

6 MR. JACOBS: It has been admitted, Judge.

7 BY MS. WANG:

8 Q. Do you recognize this photo, Rosa?

9 A. Yes.

10 Q. I'm actually going to turn it around. Can you read that
11 date on there?

12 A. January 2006.

13 Q. Is that you, Erica, and Joseph?

14 A. Yes.

15 Q. And would this have been shortly before you went to go
16 live with the defendant on the reservation?

17 A. Yes.

18 Q. And would this have been shortly before the sexual acts
19 that you testified to and described again?

20 A. Yes.

21 MS. WANG: I have no further questions at this time.

22 THE COURT: All right. Cross-examination.

23 MR. JACOBS: Thank you, Judge.

24 ///

25 ///

1 CROSS-EXAMINATION

2 BY MR. JACOBS:

3 Q. Good afternoon, Rosa. Do you need a moment? Are you
4 okay? Do you need a break?

5 A. I'm okay.

6 Q. So Rosa, you said that you lived in California; is that
7 right?

8 A. Yes.

9 Q. Where in California?

10 A. Lucerne Valley.

11 Q. What's that near? Is that near a big city?

12 A. Apple Valley is the bigger city.

13 Q. Okay. Do you work there?

14 A. Oh, I'm sorry. I think I misheard you. Are you asking
15 where I moved or where I live now?

16 Q. I'm asking where you live right now.

17 A. Oh, I live in Oceanside.

18 Q. Okay. Do you have a job?

19 A. No.

20 Q. And you're how old?

21 A. I'm 21.

22 Q. Did I hear you say you were married?

23 A. Yes.

24 Q. And that you have children?

25 A. Yes.

1 Q. How many children do you have?

2 A. I have a daughter and I'm currently pregnant.

3 Q. Oh. Congratulations.

4 A. Thank you.

5 Q. How old is your daughter?

6 A. She's one.

7 Q. She's one. Have you ever had a job of any kind?

8 MS. WANG: Objection; relevance, your Honor.

9 THE COURT: Yeah, sustained.

10 BY MR. JACOBS:

11 Q. You were describing some events that had happened at the
12 residence where you say you lived with your brother, sister,
13 and your father; is that right?

14 A. Yes.

15 Q. Do you know if that was on a street called He Ka Voo'o?

16 A. It was called He Ka Voo D.

17 Q. And that's where you lived?

18 A. Yes.

19 Q. And there was a house there that you lived in?

20 A. Yes.

21 Q. And how many rooms were in this house?

22 A. Three.

23 Q. What were the rooms?

24 A. There was the master bedroom, mine and my sister's
25 bedroom, and my brother's bedroom.

1 Q. So the three bedrooms?

2 A. Yes.

3 Q. Was there a living room?

4 A. Yes.

5 Q. Was there a dining room?

6 A. Yes.

7 Q. And was there a kitchen?

8 A. Yes.

9 Q. Was there, like, a garage or a carport, something like
10 that?

11 A. I remember it being an open carport, and there was a
12 small room on the outside where the laundry room was.

13 Q. Did I hear you say this was sort of a corner lot
14 situation?

15 A. We lived on a cul de sac, but we weren't at the end of
16 it.

17 Q. So there were houses on either side of you?

18 A. Yes.

19 Q. Did you know people, if you remember, in these other
20 houses?

21 A. Yes.

22 Q. Who did you know who was in the neighborhood?

23 A. I remember there was a girl I went to school with who
24 lived on the cul de sac. She was a little further, but I
25 remember she lived a few houses down.

1 Q. Anybody else you remember?

2 A. No.

3 Q. Hang on one second.

4 Rosa, if it's okay with you, I'm going to read you a list
5 of people you may recognize, you may not. Okay? So just let
6 us know if you recognize any of these names.

7 Do you know Angela Vazquez?

8 A. No.

9 Q. Do you know Adam Marrufo?

10 A. Yes. I recognize the name.

11 Q. Who is that? Who is Adam Marrufo?

12 A. I believe he's Eric's brother.

13 Q. Did you, during this time -- I'm going to refer to the
14 time period. I'm going to say, Hey, during the time period.
15 What I mean by that is between August of 2006 and August of
16 2008. Okay?

17 Has that been the time period you've been talking about
18 here on the witness stand?

19 A. Yes.

20 Q. So if I say the time period, you'll know that that's the
21 date range I'm talking about; right?

22 A. Yes.

23 Q. So did you have any contact with Adam Marrufo during that
24 time period?

25 A. Not that I can remember.

1 Q. Not at all?

2 A. Not that I can remember.

3 Q. Okay. How about Tasha Garnett. Do you know that name?

4 A. No.

5 Q. How about Jose Vazquez?

6 A. No.

7 Q. What about Bridget Corkhill?

8 A. I recognize the name Bridget. I think that was one of
9 his girlfriends.

10 Q. Okay. Did she have another name?

11 A. What do you mean?

12 Q. Sometimes people have nicknames.

13 A. Not that I knew of.

14 Q. What about Tinker Bell?

15 A. I thought that was a different woman.

16 Q. Okay.

17 A. I remember that being someone else.

18 Q. That was a different person?

19 A. Yes.

20 Q. Okay. Do you remember a Luganda (ph.) Bencomo?

21 A. No.

22 Q. She might have gone by Lulu?

23 A. No.

24 Q. Was there a lady who lived next door?

25 A. I think I can vaguely remember somebody. I don't

1 remember if she was next door or a couple houses down, but I
2 think I recognize Lulu.

3 Q. Were you over at her house a lot?

4 A. Yes, I remember seeing her a couple of times.

5 Q. Did Erica go with you when you went over to her house
6 sometimes?

7 A. Yes.

8 Q. Had a lot of contact with her?

9 A. Yes.

10 Q. Okay. What about Ray Arreola? Do you know that person?

11 A. Yes.

12 Q. Who is that?

13 A. I remember him going by Uncle Ray, but I don't know if
14 he's related or if he was just a friend.

15 Q. Have you seen family situations where there are honorary
16 uncles and nobody really knows?

17 A. Yes.

18 Q. Is that what we had here?

19 A. I think so.

20 Q. Was it fair to say he was pretty close to the family?

21 A. I remember him being close to Eric. I don't know about
22 the rest of the family.

23 Q. What about you, did you talk to Ray Arreola very much?

24 A. No.

25 Q. What about Sally Aleman or Aleman. Do you know that

1 name?

2 A. No.

3 Q. Okay. Do you remember Linda Marrufo?

4 A. Yes.

5 Q. Who is that?

6 A. My grandmother.

7 Q. Grandmother.

8 And did you ever see her during the time period? Again,
9 in 2008 to -- 2006 to 2008.

10 A. Yes.

11 Q. How often?

12 A. Sometimes she would babysit us or we would go over for a
13 barbecue.

14 Q. So she babysat you, in fact, at the He Ka Voo'o
15 residence; isn't that true?

16 A. Not that I can remember. I can remember usually we would
17 go over to her house.

18 Q. To her house.

19 Okay. And how far away from your house was that?

20 A. Maybe a couple of streets. I'm not sure.

21 Q. Okay. But pretty close; is that right?

22 A. I think so.

23 Q. Okay. You were there, I wasn't. So I'm trying to
24 understand was this 10 miles away, was this just down the
25 block? What are we talking about?

1 A. I don't know exactly, but I think she was pretty close to
2 us. I don't remember.

3 Q. And that you would -- your dad would take you over there
4 to be babysat, is that what you're telling us?

5 A. Yes.

6 Q. And how often was that?

7 A. I don't know exactly. Occasionally.

8 Q. You told us about the sexual acts that happened with the
9 defendant, Mr. Marrufo. Do you remember that?

10 A. Yes.

11 Q. And that you said your sister was present during those;
12 is that right?

13 A. Most times, yes.

14 Q. How many times did these things happen and your sister
15 was present? I know you're not going to be able to say
16 exactly, but can you give us a sense?

17 A. I don't know. I remember them happening pretty
18 frequently. They kind of blur together. Maybe a few times a
19 month.

20 Q. A few times alone?

21 A. A few times a month.

22 Q. A few times a month.

23 So if it was 24 months, right, within the time period,
24 we'd be talking a few times 24. Like a hundred times, maybe?

25 A. It's hard to say because they didn't happen on a

1 schedule.

2 Q. Sure.

3 A. Sometimes it would happen in a cluster, and then it
4 wouldn't happen for a while, and then and it would happen
5 again.

6 Q. And I'm just trying to know what you experienced. Is it
7 about 100 times that this would have happened?

8 MS. WANG: Asked and answered; objection.

9 THE COURT: You can -- go ahead. You can answer.

10 THE WITNESS: I don't know.

11 BY MR. JACOBS:

12 Q. But your sister was present?

13 A. During some of the times, yes.

14 Q. And you're sure?

15 A. Yes.

16 Q. Coming here today, had you ever gone through your
17 testimony that you were going to present here today with any
18 other person?

19 A. What do you mean?

20 Q. Did you ever talk about your testimony that you were
21 going to give today with any other people in this room?

22 A. Other than -- with the people in this room or other than
23 the --

24 Q. People who you see in this room.

25 A. Yes.

1 Q. Which people?

2 A. The three people at the table.

3 Q. What are their names?

4 A. Matt and Rui.

5 Q. Matt and Rui?

6 A. Yes.

7 Q. Is there another person seated there?

8 A. Yes, but I mostly spoke with Matt and Rui.

9 Q. Okay. About how many times? Could it be ten?

10 A. Maybe a couple times. Less than ten but more than five.

11 Q. Sounds reasonably precise. Are you sure about that?

12 A. Yes.

13 Q. And you were asked earlier as to whether or not there was
14 any kind of an argument among your parents over custody, where
15 you were going to live. Do you remember being asked that?

16 A. Yes.

17 Q. Did you say there was not or you didn't know?

18 A. There was not.

19 Q. And you're sure?

20 A. Yes.

21 MS. WANG: Your Honor, if I could ask counsel to
22 clarify the time frame of that last question.

23 THE COURT: Yes, would you rephrase that so it's --

24 BY MR. JACOBS:

25 Q. During the time period -- well, strike that.

1 Prior to 2006, you were not living with your father or
2 maybe you don't remember.

3 THE COURT: Well, that's two questions.

4 BY MR. JACOBS:

5 Q. All right. Do you remember where you lived prior to
6 2006, living at He Ka Voo'o?

7 A. No.

8 Q. Do you remember any time prior to 2006 when you lived
9 with your mother?

10 A. Yes.

11 Q. And then you came to live with your father; is that true?

12 A. Yes.

13 Q. And then you went to live later with your mother after
14 2008?

15 A. Yes.

16 Q. Okay. And you're sure about that?

17 A. Yes.

18 Q. And my question was, at any of the times, was there -- in
19 that range, 2006 to 2008, was there any argument between your
20 parents about where you were going to live?

21 A. Yes.

22 Q. Okay. Pretty nasty arguments sometimes?

23 A. I don't know.

24 Q. I understand you were a child. Did you see your parents
25 arguing?

1 A. Yes.

2 Q. Did it upset you?

3 A. Yes.

4 Q. Did you wish they wouldn't do it?

5 A. Yes.

6 Q. You told, I believe, Ms. Wang that you had never
7 discussed this matter, what happened, ever with Erica; is this
8 true?

9 A. Yes.

10 Q. And that you never discussed this matter with your
11 mother, Sylvia Muro; is that true?

12 A. Yes.

13 MR. JACOBS: Judge, may I have one moment?

14 THE COURT: Yes.

15 BY MR. JACOBS:

16 Q. Rosalinda, you've given us some answers today about
17 things that you remember. You remember doing that? Today we
18 asked you questions, you gave us answers?

19 A. Yes.

20 Q. Those are the things that you were able to remember;
21 right?

22 A. Yes.

23 Q. And in some cases you said you weren't able to remember
24 things. Do you remember that?

25 A. Yes.

1 Q. The answers that you gave us of things you remembered,
2 are you sure?

3 A. Yes.

4 Q. No question?

5 A. Yes.

6 MR. JACOBS: All right. I have no further
7 questions.

8 THE COURT: All right. Redirect.

9 MS. WANG: Just briefly, your Honor.

10 REDIRECT EXAMINATION

11 BY MS. WANG:

12 Q. Did Ray Arreola ever live at the house when you guys
13 lived there during that two-year time period?

14 A. No.

15 Q. Did he ever stay the night?

16 A. No.

17 Q. When you met with myself and Mr. Cassell and the case
18 agent, was that to prepare you to answer questions in a
19 courtroom setting?

20 A. Yes.

21 Q. And were you ever coached on what to say?

22 A. No.

23 Q. Were you ever told to answer in a certain way or that you
24 had to give a certain answer?

25 A. No.

1 Q. I want to ask just one more question.

2 So in 2008 when you went to go live with your mom, when
3 you and Erica and Joseph went to go live with your mom, did
4 she have full custody of the three of you?

5 A. Yes.

6 Q. And at that time from 2008 on until you guys became
7 adults, you're not aware of any custody issues where the
8 defendant was trying to get custody -- any amount of custody
9 back; is that correct?

10 A. Correct.

11 Q. Okay. All of the custody issues would have happened
12 prior to 2006; is that correct?

13 A. Yes.

14 Q. And, I'm sorry, I should clarify: possibly during the
15 time period you lived on the reservation.

16 But it all happened when guys were very young children;
17 correct?

18 A. Correct.

19 MS. WANG: That's all I have.

20 THE COURT: Any questions from the jury for this
21 witness?

22 (No response.)

23 THE COURT: All right. Thank you, Ms. Marrufo. You
24 may step down.

25 And the government may call its next witness.

1 MR. CASSELL: Your Honor, we'll call Agent Briana
2 Grant.

3 THE COURT: All right.

4 BRIANA GRANT, PLAINTIFF WITNESS, SWORN

5 THE CLERK: Thank you, please be seated.

6 Please speak directly into the microphone. Stating
7 your full name and spelling your last name.

8 THE WITNESS: Briana Grant, G-r-a-n-t.

9 DIRECT EXAMINATION

10 BY MR. CASSELL:

11 Q. Good afternoon, Agent Grant. Where do you work
12 currently?

13 A. I work for the FBI.

14 Q. Okay. And how long have you been with the FBI?

15 A. Almost 12 -- almost 12 years.

16 Q. Okay. And what is your current position with the FBI?

17 A. I am a supervisory special agent in the crimes against
18 children, behavioral analysis unit.

19 Q. And what is -- that's a lot of words. What does all that
20 mean?

21 A. Essentially, I am a profiler in training, and I help
22 other FBI agents in the field or state and local tribal
23 officers with cases that are difficult related to crimes
24 against children. And I provide them with all sorts of
25 assistance with those kinds of cases.

1 Q. Okay. And when did you start -- you said you were
2 training or in training, excuse me. When did you start that
3 position?

4 A. October of 2021.

5 Q. Okay. Have you at any point been an investigator into
6 offenses that happened on Indian country?

7 A. Yes, I was.

8 Q. And when did you -- where was your first duty station?

9 A. It was in Tucson, Arizona.

10 Q. When did you come here to Tucson?

11 A. 2011.

12 Q. Okay. And what was your job when you came to Tucson in
13 2011 for the FBI?

14 A. So I was what we call a "case agent." It's an
15 investigator or special agent. I started out working
16 organized crime and drug cases and then transitioned over to
17 Indian country and worked probably about 98 percent crimes
18 against children and sex crimes.

19 Q. Okay. And approximately the summary of 2015, were you
20 assigned to the case that you've been here for, the Marrufo
21 case?

22 A. Yes, I was.

23 Q. All right. Were you the first, original case agent on
24 this case?

25 A. I was.

1 Q. And did you work this case alongside anyone else?

2 A. I did. I worked it with Pascua Yaqui Police Department
3 Detective Jacob Garcia.

4 Q. Okay. Now, why was someone from the Pascua Yaqui Police
5 Department assigned to the case to work with you?

6 A. So basically, it's dual jurisdiction. So tribal has
7 jurisdiction and also the FBI has jurisdiction of crimes that
8 occur on Indian lands.

9 Q. You say crimes occurring on Indian lands, are you
10 familiar with the territorial jurisdiction of the Pascua Yaqui
11 Indian reservation?

12 A. Yes.

13 Q. Are you familiar with the location of the house where the
14 offenses are alleged to have occurred in this case?

15 A. Yes, I am.

16 Q. Is that house located on the Pascua Yaqui Indian
17 reservation?

18 A. Yes, it is.

19 Q. Okay. So the suspect in this case was Eric Marrufo. Do
20 you see him in the courtroom today?

21 A. Yes.

22 Q. Could you please point him out and describe an article of
23 clothing?

24 A. He's sitting at the table to my left wearing glasses,
25 dark hair, braided, maroon tie --

1 MR. CASSELL: Your Honor, --

2 THE WITNESS: -- sorry. I said maroon tie.

3 MR. CASSELL: Your Honor, after that, if the record
4 could reflect the positive identification of the defendant?

5 THE COURT: Yes, the record may so reflect.

6 BY MR. CASSELL:

7 Q. So in a case like this, Agent Grant, who are the first
8 people that you want to talk to when you get an allegation of
9 sexual abuse?

10 A. So the first people that I want to talk to are the
11 victims who -- typically, the ones who are alleging that an
12 abuse has happened.

13 Q. Okay. And is there a certain setting where -- well,
14 describe for the jury how you first speak with victims of an
15 offense.

16 A. Okay. So if I'm speaking with kids, I don't conduct the
17 interview myself. It's best practice to have them go to a
18 children advocacy center and meet with someone who is a
19 forensic interviewer. So a forensic interviewer is someone
20 who is specifically trained to work with children. They have
21 typically backgrounds in psychology or social work, and they
22 know how to ask developmentally appropriate questions in a way
23 that's not going to lead the child. So the purpose is to get
24 an unbiased account of what happened without any sort of
25 leading or suggestibility and have it be solely the victim's

1 account of what happened.

2 Q. And is that what happened in this case? Was a forensic
3 interview scheduled?

4 A. Yes, it was.

5 Q. And who scheduled that?

6 A. I did.

7 Q. And was that your decision to schedule one?

8 A. Yes, it was.

9 Q. Now, where did the forensic interviews of Erica Marrufo
10 and Rosalinda Marrufo take place?

11 A. They were at the Glendale children's advocacy center.

12 Q. And this was in September of 2015?

13 A. Yes.

14 Q. Why in Glendale?

15 A. So a lot of times we try to make things easier for the
16 victims. And they lived further up north, so we wanted to
17 accommodate them and -- accommodate their mother's schedule
18 and then the kids in school, so accommodate their schedule as
19 well.

20 Q. Okay. Now, as an agent who handles these kinds of
21 investigations, why are forensic interviews important?

22 A. So again, they're important because we want an unbiased
23 account. A forensic interview is a legally defensible,
24 developmentally appropriate, and trauma-informed process. So
25 we want the kid's words to be the kid's words. We, again, are

1 very concerned with suggestibility, and we do not want to put
2 any ideas in their head essentially. So that's the reason why
3 we go with people who are specifically trained, who know how
4 to do that, and for it to be an unbiased process.

5 Q. Who is in the room when a forensic interview is being
6 conducted?

7 A. So it's only the forensic interviewer and the child.

8 Q. And is that recorded in any way?

9 A. Yes. So it is -- it's audio- and video-recorded. And
10 then also, typically a law enforcement officer like myself
11 would sit and watch the interview as it's taking place, like
12 through a live feed, essentially.

13 Q. And is that what happened in the forensic interviews of
14 Erica and Rosalinda Marrufo in September of 2015?

15 A. Yes, it is.

16 Q. So you were in another room?

17 A. Correct.

18 Q. Did they know you were there?

19 A. Well, yes, they did because the forensic interviewer,
20 Karen Blackwell, told them that there were video cameras.
21 They were being audio- and video-recorded, and I was watching
22 from another room. But they can't see me or hear me.

23 Q. Okay. And are you able to give feedback based on what
24 you're viewing to the forensic interviewer so that you can --
25 if any questions come up for you, that you can have asked if

1 they're appropriate?

2 A. Yes. So the forensic interviewer is not an investigator,
3 so they may not be aware of the elements that we need to
4 prove, so there may be certain questions that I feel may need
5 further explaining.

6 Q. All right. And so safe to say you witnessed both
7 forensic interviews in this case?

8 A. Correct. Yes.

9 Q. All right. And after they were completed, what did you
10 want to do next as part of your investigation?

11 A. So we always want to talk to the subject about the
12 accusations.

13 Q. And so is that what you did next in this case?

14 A. Yes, it is.

15 Q. All right. And when was that approximately that you
16 first talked to the defendant in this case?

17 A. That was November 13th, 2015.

18 Q. All right. And when you speak with someone about
19 allegations like this, is it common to read them their Arizona
20 vs. Miranda rights?

21 A. Yes, it is.

22 Q. Is there a form that you use to read somebody these
23 rights?

24 A. Yes.

25 Q. And did you do that in this case?

1 A. Yes, I did.

2 Q. Did you go by yourself to interview the defendant?

3 A. I did not. I went with my partner, Detective Garcia.

4 Q. And that's Detective Jacob Garcia with the Pascua Yaqui
5 Police Department?

6 A. Correct. Yes.

7 MR. CASSELL: Your Honor, may I have a quick moment?

8 THE COURT: Yes.

9 BY MR. CASSELL:

10 Q. After reading the defendant his Miranda rights, did he
11 agree to waive those rights and talk to you and
12 Detective Garcia?

13 A. Yes, he did.

14 Q. All right. And when a person does that, is there a form
15 that you have them fill out to memorialize that decision?

16 A. Yes. We actually read the form, have them read it, ask
17 any questions, and then sign that form.

18 Q. And I'm going to show you what's been marked Prosecution
19 Exhibit 5.

20 MR. CASSELL: This has been admitted into evidence
21 in a previous hearing, your Honor.

22 THE COURT: 5 is admitted and may be published.

23 (Exhibit 5 entered into evidence.)

24 BY MR. CASSELL:

25 Q. I'm going to show you -- actually, before we --

1 MR. CASSELL: Your Honor, may I have a brief moment
2 to talk to co-counsel?

3 THE COURT: Yes.

4 MR. JACOBS: Judge, may we approach?

5 THE COURT: Yes.

6 (At sidebar.)

7 MR. JACOBS: It's the simplest way to do this.

8 MR. CASSELL: Your Honor, right before, I noticed
9 this which I'm pretty sure that --

10 MR. JACOBS: That won't do.

11 MR. CASSELL: And we certainly all agree that that
12 can't go in front of the jury, that's why I pulled this down.

13 THE COURT: Good.

14 MR. CASSELL: Anyway.

15 MS. WANG: And it was not published.

16 MR. CASSELL: It was never published.

17 And for the record, I'm showing the Judge Exhibit 5.

18 And I think the parties, we all agree that this
19 can't go to the jury as is. And what I intend to do is just
20 ask Agent Grant if this is -- if Exhibit 5 is, in fact, a
21 Miranda waiver. She filled it out, he signed it, and then
22 move on.

23 THE COURT: Okay. And if you want to create a
24 document and white that out and --

25 MR. CASSELL: We can. I think it's probably just as

1 easy to keep going as opposed to putting a bunch of attention
2 on it.

3 THE COURT: And you say exhibits have been admitted,
4 not during this trial.

5 MR. CASSELL: At the last trial.

6 THE COURT: Okay. So we need to -- so when you say
7 things have been admitted --

8 MR. JACOBS: Let me be clear, this is a separate
9 trial. And the Court has been admitting exhibits here. And
10 when Matt says they're admitted, he means in the prior trial.
11 When I say, "subject to prior objections," what I mean is what
12 we talked about earlier. Not relitigating prior arguments.

13 MR. CASSELL: I think our understanding is that when
14 exhibits are admitted in a previous trial, they're admitted
15 for the next -- for all other proceedings even though
16 Mr. Jacobs objected to certain exhibits.

17 MR. JACOBS: As long as I have the benefit of my
18 prior objection at the time when --

19 THE COURT: I think you should make a record,
20 though, for this trial either outside the presence of the
21 jury, just so there's a clear -- and also, if all these
22 exhibits have already been admitted, the clerk has to put a
23 date that they're admitted.

24 MR. CASSELL: Those are on our exhibit list, the
25 date; the dates where they were admitted.

1 THE COURT: The last time?

2 MR. CASSELL: Uh-huh.

3 THE COURT: I think we should look at it that this
4 is a brand new trial. If you could give me a list.

5 MR. JACOBS: What I expressed in the pretrial
6 conference was that I didn't want to relitigate each
7 objection, each exhibit when we already had a Court ruling on
8 the exact same circumstances.

9 MR. CASSELL: Judge, we're close to the
10 mid-afternoon break. What we could do is go through all the
11 exhibits real quick and just say for the -- Mr. Jacobs can
12 make his record regarding all these exhibits. The jurors
13 won't be here, and we can take care of it outside the presence
14 and keep things moving along.

15 THE COURT: We can do that any time. You said this
16 was already admitted. This was back in September. Subsequent
17 trials are a little different. There's things that happen.

18 MR. CASSELL: That's true. And I think that what
19 the clerk told me before we started today is that, for
20 example, with the picture, she is handwriting on our exhibit
21 list today's date even though our exhibit list says, you know,
22 September the 21st, or whatever the date was.

23 THE COURT: Right. That way her minute entry
24 reflects these exhibits were admitted this day.

25 But in any event, if you want to ask her a few more

1 questions and we'll take an afternoon break?

2 MR. CASSELL: I can.

3 MR. JACOBS: That will be fine, Judge.

4 THE COURT: Okay.

5 (Open court.)

6 THE COURT: All right. Mr. Cassell, you may
7 continue.

8 MR. CASSELL: And, your Honor, I'm going to show the
9 witness what's been marked as Prosecution Exhibit 5. I'm not
10 going publish this.

11 BY MR. CASSELL:

12 Q. Agent Grant, do you recognize Prosecution Exhibit 5?

13 A. I do.

14 Q. And what is that form on Exhibit 5?

15 A. That is our Advice of Rights form.

16 Q. And is this the form that you had the defendant fill out
17 on November 13th of 2015?

18 A. Yes, it is.

19 Q. And do you see the defendant's signature?

20 A. I do.

21 Q. Were you there when he signed this form?

22 A. Yes, I was.

23 Q. Who else was there and who signed as a witness of this --
24 of him filling this form out?

25 A. Detective Garcia with Pascua Yaqui Police Department.

1 Q. And does it give a time?

2 A. Yes.

3 Q. And what is that time?

4 A. 10:36 a.m.

5 MR. CASSELL: I'm going to take Exhibit 5 off the
6 ELMO.

7 BY MR. CASSELL:

8 Q. So, Agent Grant, this interview that took place, was it
9 recorded in any way?

10 A. Yes, it was.

11 Q. How was it recorded?

12 A. Audio-recorded.

13 Q. Okay. And is that a pretty standard process for the FBI?

14 A. At the time it was not, but it is now, yes.

15 Q. Okay. And this audio recording, was a transcript
16 eventually made of that -- of that audio recording?

17 A. Yes, it was.

18 MR. CASSELL: And, your Honor, at this point the
19 government has two exhibits to enter into evidence or we would
20 move to admit into evidence. One is Exhibit 3 which is a
21 transcript and the other is Exhibit 4 which is an audio
22 recording of the interview that has the transcript kind of
23 spliced into it.

24 THE COURT: All right. Any objection?

25 MR. JACOBS: Subject to pretty extensive prior

1 objections.

2 THE COURT: All right. So Exhibits 3 and 4 are
3 admitted.

4 (Exhibit 3 and 4 entered into evidence.)

5 THE COURT: So we'll take a break --

6 MR. CASSELL: I'm not going play it right now.

7 THE COURT: Okay. Go ahead.

8 BY MR. CASSELL:

9 Q. Agent Grant, the interview that took place on
10 November 13th of 2015, you indicated that it was recorded.
11 About how long was it?

12 A. It was about two hours.

13 Q. The interview took two hours?

14 A. Correct.

15 Q. Okay. And we're not going to play the full interview
16 here, so I just want to ask you a few questions generally
17 about that, about this interview in November of 2015.

18 How would you describe the first 30 to 45 minutes of this
19 interview? What, in general, did you talk about with the
20 defendant?

21 A. Basically, just talked about background information to
22 get to know him a little bit, who he was the father of, who he
23 was prior -- previously married to. Mostly background-type
24 information.

25 Q. Okay. Now, in your practice as an investigator, when you

1 first meet with a subject and you interview them about
2 allegations, especially allegations like this, is it pretty
3 common to try -- you don't dive right in; right?

4 A. No, absolutely not.

5 Q. So is it pretty common to have, maybe not necessarily a
6 conversation like you had in this case, some conversation to
7 establish rapport?

8 A. Yes.

9 Q. Okay. And would you say that the conversation you had
10 with the defendant in this case was pretty similar to your
11 standard practice or did it deviate in some way?

12 A. No, I would say it was pretty standard.

13 Q. Okay. So some of it was rapport-building?

14 A. There was some rapport-building, yes.

15 Q. How would you describe the defendant's, for lack of a
16 better word, talkativeness during the first 45 minutes or so,
17 30 to 45 minutes of the interview?

18 A. Eric can talk a lot.

19 Q. You say, "Eric," you mean the defendant?

20 A. Yes.

21 Q. All right. And did he do that in this case?

22 A. Yes.

23 Q. Or in the first 30, 45 minutes of this interview?

24 A. Yes.

25 Q. Who was he talking about?

1 A. Himself and his family, essentially.

2 Q. Okay. Now, at some point, though, did you confront the
3 defendant with the allegations that have been made against
4 him? I mean, that's why you were there; right?

5 A. Yes, I did.

6 Q. Okay. And in general, what was his response to the --
7 you confronting him with the allegations that had been made
8 against him by Rosalinda and Erica?

9 A. He denied.

10 Q. He denied?

11 A. Yes.

12 Q. So he said he didn't do it?

13 A. Correct.

14 Q. At some point -- actually, I'll take that back.

15 So you spent a long time there. What was most of the
16 time being spent doing if he denied it?

17 A. So in an interview we don't just show up and say, Hey,
18 did you do it? No? Okay. Thank you very much and leave. So
19 the point of it is to get additional information, to get
20 details that we can corroborate later on. I'm also trying to
21 corroborate with him details that I was previously told. So
22 basically, it's to get those details and then try to get his
23 side of the story of what happened or may have happened.

24 Q. Okay. Now, at that point when you came to interview the
25 defendant in November of 2015, had you spoken with anybody

1 other than the -- I say you spoke, had you heard from any
2 witnesses who were in that area of the house between
3 August 1st, 2006 and 2008? Did you talk to anybody who was in
4 that area who would have been able to give you any information
5 about these allegations?

6 A. At that point, no.

7 Q. Just Erica and Rosalinda in the forensic interview?

8 A. Erica, Rosalinda with the forensic interview, and then
9 their mother as well.

10 Q. Okay. But she wasn't present for any of that; correct?

11 A. For?

12 Q. The time of the abuse, she wasn't living at the house.

13 A. Correct.

14 Q. Or wasn't, like, living in the neighborhood or anything?

15 A. Correct.

16 Q. Okay. Now, Agent Grant, how would you describe the
17 defendant's demeanor during this November of 2015 interview?

18 A. I mean, he was pretty talkative. He was nervous at a
19 couple of points after we had basically confronted him with
20 the allegations. But overall, pretty talkative. Would look
21 me in the eyes. Was answering the questions. Deflected a
22 little bit but not too bad. He did use some cognitive
23 distortions.

24 Q. What does that mean?

25 A. So cognitive distortions are things that we -- every

1 person uses. Oftentimes, we use them to deal with cognitive
2 dissonance. So when our behaviors don't match our thoughts
3 and our beliefs, it creates what we call "cognitive
4 dissonance," so we use these cognitive distortions to
5 essentially rationalize the incongruity between the two.

6 MR. JACOBS: Objection to foundation.

7 THE COURT: No. Overruled.

8 THE WITNESS: If they don't match, the cognitive
9 distortions help rationalize those things and makes us feel
10 better essentially with either what we're thinking or what
11 we're doing.

12 BY MR. CASSELL:

13 Q. Now, you testified that the defendant was talkative
14 throughout the interview. Was he -- what was his -- if
15 there's a scale, how talkative was he after you confronted him
16 with the allegations compared to before you confronted him?

17 A. He was less talkative.

18 Q. Okay. But was he still pretty chatty?

19 A. Yeah. Yeah, he was talking. He wasn't necessarily
20 talking specifically about what we -- what I was asking him,
21 but he was still talking about other things.

22 Q. Okay. At any point did the defendant cry?

23 A. Not -- no.

24 Q. At any point did you have to give him any tissues to wipe
25 his nose?

1 A. No.

2 Q. At any point did he go 10, 15 seconds or minutes without
3 saying anything when he was asked a question?

4 A. Not that I recall.

5 Q. You mentioned that he was giving you eye contact. Did
6 that continue throughout the interview, this 2015 interview?

7 A. As far as I remember, yes.

8 Q. Okay. Were there any times when he would stare off into
9 space at a wall or at the table in front of him instead of
10 looking at you in the eye? For lengthy periods of time.

11 A. Not for lengthy periods of time, no.

12 MR. CASSELL: Okay. Your Honor, I'm about to take a
13 turn into a different portion of the investigation. This
14 might be a good time for a break. I don't want to tell the
15 Court how to conduct its business.

16 THE COURT: No, that's fine. Let's take a 15-minute
17 afternoon recess. Please continue to follow the Court's
18 admonition. And you can leave the things here in the
19 courtroom if you like, and we'll see you back in 15 minutes.

20 (Jury panel excused at 3:02 p.m.)

21 THE COURT: All right. The record may reflect the
22 absence of the jury.

23 So, counsel, just so we're clear, let's move to
24 admit the exhibits during this trial. If there's some
25 stipulations, you can let the clerk know. So that the date

1 admitted will be today's date or whatever date we admit them
2 during this trial. And then if you want to renew the
3 objections or just in general preserve, Mr. Jacobs, all the
4 objections that you previously made to any exhibits, and the
5 government the same thing, we can certainly put that on the
6 record.

7 So all right. So we will stand at recess in this
8 matter.

9 MR. CASSELL: Thank you, your Honor.

10 MR. JACOBS: Okay. That's fine.

11 (Recess from 3:03 p.m. to 3:18 p.m.)

12 THE COURT: The record may reflect the presence of
13 counsel, the defendant.

14 Are we ready for the jury?

15 MR. JACOBS: Mr. Cassell and I were just discussing
16 that after the last trial in this matter, he was in another
17 trial before this division which had also a statement, a
18 rolling statement of this nature. And that the Court, in his
19 view, gave a very excellent instruction regarding redactions,
20 and he was about to ask whether I would object to such
21 instruction. And the answer is if it's as good as he says it
22 is, I have no objection. The Court did give some sort of
23 instruction.

24 MR. CASSELL: That was that murder case, Judge, and
25 it was maybe a month after we did this one. And you mentioned

1 in that case, that was the Gilbert Jose homicide --

2 THE COURT: Yes.

3 MR. CASSELL: -- you referenced this case in that
4 one. And I happened to just be the common thread through it,
5 that because of the redactions that we had in this case back
6 in September of '21, that you thought it was a good idea to
7 instruct the jury in October of '21, a totally different case.
8 And I kind of made a note that I thought that that was a good
9 policy to have.

10 THE COURT: Did we give them a written instruction
11 or I just told them something?

12 MR. CASSELL: I believe it may have been a written
13 instruction. I would have to go look through those materials.
14 But given the fact that probably we may start the recording in
15 the next session, I thought it might be a good idea to bring
16 it to the Court's attention. It's something I really just
17 thought of while I was walking up the stairs earlier today, so
18 I apologize for just bringing it up.

19 THE COURT: So you're not going to play the
20 recording today?

21 MR. CASSELL: I think we will. I think we'll get to
22 it.

23 MR. JACOBS: I think it's headed in that direction,
24 Judge.

25 MR. CASSELL: Because Agent Grant is almost done.

1 THE COURT: All right. So let me try to see if we
2 can --

3 MR. CASSELL: And we're all technologically ready
4 for this.

5 THE COURT: Cheryl, would you be able to find that
6 easily? No. She's a little busy.

7 MR. JACOBS: There's the ask.

8 MR. CASSELL: It was only six days, Cheryl. I'm
9 kidding.

10 THE REPORTER: I would need a break.

11 THE COURT: You think it was something in writing
12 that I read to them? I don't know if it was ever admitted.
13 Maybe it was just typed up.

14 MR. CASSELL: Now that I think of it, I think you
15 may have just said it to the jury.

16 THE COURT: The idea would be to let them know that
17 we're giving them -- certain portions have been redacted, and
18 they shouldn't consider or speculate why that is. It's just
19 not relevant to this case.

20 MR. CASSELL: Right. In that case, the reason why
21 we did a bunch of redactions is because there were a lot of
22 different references to gangs. This case, it's almost totally
23 because the defendant was in jail when he was being
24 interviewed, so we were trying to make sure that that didn't
25 come out.

1 MR. JACOBS: And the concern from last time was that
2 unavoidably, the audio breaks, you know, when you redact it
3 sounds different.

4 MR. CASSELL: Right.

5 MR. JACOBS: So it would be audible that there was a
6 redaction.

7 MR. CASSELL: It's pretty obvious to everybody that
8 stuff is being taken out.

9 THE COURT: So can I say or would it be fair to say
10 that the parties have stipulated to certain portions being
11 redacted because it's not relevant to this trial.

12 MR. JACOBS: And I would say "agreed."

13 THE COURT: "Agreed." So it doesn't look like --

14 MR. CASSELL: Well, especially because we're going
15 to have a written stipulation regarding Indian status, I think
16 we can just say agreed to the redactions.

17 THE COURT: Why don't I just take a shot at telling
18 them this. And if you want to supplement something in
19 writing --

20 MR. CASSELL: And I'll give you a heads-up when I'm
21 about to start the recording, and then you can address the
22 jury. And you'll have a little bit of time before we get to
23 that point if you want to draft something or --

24 THE COURT: All right. Sounds good.

25 MR. CASSELL: All right.

1 THE COURT: Okay. So we're ready for the jury.

2 THE CLERK: Please rise for the jury.

3 (Jury panel present at 3:23 p.m.)

4 THE COURT: All right. Everyone may be seated.

5 And the record may reflect the jury is now present.

6 And, Mr. Cassell, you may continue.

7 MR. CASSELL: Thank you, your Honor.

8 BY MR. CASSELL:

9 Q. Okay. Agent Grant, when we broke, you were at the end of
10 your interview with the defendant on November 13th of 2015; is
11 that right?

12 A. Yes.

13 Q. Okay. I did want to ask you a couple of questions that I
14 think I neglected to ask you about that interview.

15 Now, early on in the interview, did it seem to you in
16 looking at the defendant that he was speaking to you or
17 Detective Garcia one more than the other?

18 A. Yes, it did.

19 Q. And who was the defendant placing most of his attention
20 on in this first interview?

21 A. On me.

22 Q. Okay. Did the defendant ever give you any indication as
23 to why or if you -- if you -- if you were to testify as to why
24 you think that is, would you be speculating?

25 A. Yes.

1 MR. JACOBS: Object to speculation.

2 MR. CASSELL: I just asked her if she would be
3 speculating. I think she said yes.

4 THE COURT: Yes.

5 BY MR. CASSELL:

6 Q. Okay. Let me ask you another couple of questions.

7 Throughout this interview in November of 2015, did the
8 defendant ever mention the name Ray Arreola?

9 A. No, he did not.

10 Q. Did he ever mention the possibility that Ray Arreola
11 spent every waking moment at his house during the charged time
12 frame 2006 to 2008?

13 A. Did he not say anything about a Ray.

14 Q. Anybody named Ray?

15 A. Nobody named Ray.

16 Q. All right. And do you recall at some point after you
17 confronted the defendant with the allegations against him, do
18 you recall the defendant saying words to the effect of, I had
19 women if my life to do this to?

20 A. Yes, he did.

21 Q. Okay. All right. So once the interview was over,
22 Agent Grant, did you feel like you had everything you needed
23 in this case to finish it or was there more?

24 A. There was a lot more than needed to be done.

25 Q. Okay. What other investigative steps did you take over

1 the next year or so in this case?

2 A. We conducted multiple interviews.

3 Q. Okay. Did you interview Linda Marrufo and Adam Marrufo?

4 A. Yes, I did.

5 Q. All right. And Linda Marrufo is the defendant's mother;
6 correct?

7 A. Correct.

8 Q. And Adam Marrufo is the defendant's brother?

9 A. Yes.

10 Q. Okay. When you interviewed Linda Marrufo, what did she
11 tell you about what she saw and her interactions with the
12 defendant and the girls?

13 A. She did not see him engage in sexual acts with the girls.

14 Q. Was that surprising to you that she said that?

15 A. Not at all.

16 Q. I mean, this is the defendant's mother; right?

17 A. Correct.

18 Q. Did Linda Marrufo indicate to you whether she ever slept
19 over at the defendant's house?

20 A. No, she did not sleep over there as far as I remember.

21 Q. Okay. And am I correct in summarizing that Linda Marrufo
22 basically told you that she saw nothing, she heard nothing,
23 and the kids didn't tell her anything about any sexual abuse?

24 A. That's correct.

25 Q. Okay. And is it correct that Linda Marrufo is deceased

1 today?

2 A. That's what I was told.

3 Q. Okay. Now, how old was Rosalinda Marrufo when she was
4 first interviewed in September of 2015?

5 A. She had just turned 14.

6 Q. Okay. Now, in approximately April of 2014 (sic), did you
7 learn that Rosalinda wanted to do another forensic interview?

8 A. Yes, I did.

9 Q. Who told you that?

10 A. Her mother, Sylvia Muro.

11 Q. Okay. Now, you had already interacted with Rosalinda at
12 this point; correct?

13 A. Yes.

14 Q. So did you automatically set up another forensic
15 interview or did you talk to Rosalinda first?

16 A. I spoke with Rosalinda first.

17 Q. And what did you want to talk to her about before
18 scheduling a forensic interview?

19 A. I wanted to make sure that she wanted to participate in
20 another forensic interview and it was not at the direction of
21 her mother.

22 Q. Okay. All right. So after speaking with Rosalinda, what
23 action did you take?

24 A. I contacted the previous interviewer who had done her
25 initial interview.

1 Q. Was that Karen Blackwell?

2 A. Yes.

3 Q. And who is Karen Blackwell?

4 A. Karen Blackwell was at the time a child adolescent
5 forensic interviewer for the FBI.

6 Q. Okay.

7 A. She is an LCSW so she has -- she's a licensed clinical
8 social worker.

9 MR. JACOBS: Object to hearsay.

10 THE COURT: No, overruled.

11 Go ahead.

12 THE WITNESS: And is very --

13 BY MR. CASSELL:

14 Q. What's LCSW?

15 A. A licensed clinical social worker. And she's done a lot
16 of these interviews and she was -- I wanted to keep it with
17 the same interviewer.

18 Q. She was the one who performed the interview in
19 September of 2015?

20 A. Correct.

21 Q. Okay.

22 A. Yes.

23 Q. And was the interview done at the same location in
24 Glendale?

25 A. Yes, it was.

1 Q. All right. So you mentioned Karen Blackwell. You sat in
2 on the trial earlier today for Shannon Martucci. Does Karen
3 Blackwell basically do the same job as Shannon Martucci?

4 A. She did, yes.

5 Q. Or at that time?

6 A. Correct. At that time, yes.

7 Q. Okay. You know, I asked you who was present for the
8 previous forensic interview. I didn't ask you who
9 specifically wasn't there in September of 2015. Was Sylvia
10 Muro, the mother of Rosalinda and Erica Marrufo, was she
11 present for the September 2015 forensic interview?

12 A. She was at the advocacy center, but she was not in the
13 room. Parents, siblings, friends, are not allowed in the
14 room. It is just the forensic interviewer and the child
15 victim.

16 Q. Okay. And was that the case in this next forensic
17 interview?

18 A. It was.

19 Q. Now, what date did this second forensic interview of
20 Rosalinda take place?

21 A. April 4th, 2017.

22 Q. Okay. Now, did Erica Marrufo require a second forensic
23 interview?

24 A. She did not.

25 Q. Did you witness this second forensic interview in

1 April of 2017 like you did the first, over a live feed?

2 A. Yes, I did.

3 Q. Okay. During this second interview, did Rosalinda write
4 anything down?

5 A. Yes, she did.

6 Q. And is that what we saw earlier in the trial, Exhibit 2,
7 the handwriting that's depicted in Exhibit 2?

8 A. I'm not sure if it was Exhibit 2, but yes, you did see
9 it.

10 Q. I'll show you what's been marked as Exhibit 2.

11 MR. CASSELL: Do you want me to hand it to her so
12 we -- your Honor, may I approach?

13 THE COURT: Yes.

14 BY MR. CASSELL:

15 Q. I'm going to hand you -- oh, there's no plexiglass --
16 Exhibit 2.

17 THE COURT: We're all transitioning.

18 BY MR. CASSELL:

19 Q. Do you recognize what's on Exhibit 2?

20 A. Yes, I do.

21 Q. Okay. And is that -- is Exhibit 2 what you understand to
22 be Rosalinda's written words?

23 A. Yes, this is a copy of the original.

24 Q. And you saw her write those things down over the live
25 feed?

1 A. Yes, I did.

2 Q. I'm going to go ahead and pull Exhibit 2 back.

3 Is it fair to say that Rosalinda was more comfortable
4 writing than she was speaking about the allegations?

5 A. Absolutely.

6 Q. After the forensic interview of Rosalinda was conducted,
7 what did you want to do next in the investigation?

8 A. Well, we had additional details, additional allegations,
9 so I wanted to go back and speak with Eric again about the new
10 information.

11 Q. When you said "Eric," you mean the defendant?

12 A. Yes.

13 Q. I just want to make clear because we have Erica and we
14 also have Eric.

15 So did you eventually speak with the defendant?

16 A. Yes, I did.

17 Q. And what day was this?

18 A. That was May 23rd, 2017.

19 Q. Okay. And who was there for the interview?

20 A. Myself and Pascua Yaqui Police Department Detective Jacob
21 Garcia.

22 Q. Okay. And when you went to go interview the defendant,
23 did you have it audio-recorded?

24 A. Yes, I did.

25 Q. All right. And same as the first one?

1 A. Correct.

2 Q. Okay. And did you read the defendant's -- the defendant
3 his Miranda rights same as you did in the first one?

4 A. Yes, I did.

5 Q. Did he waive those rights?

6 A. Yes, he did.

7 Q. And did you fill out -- have him fill out another Miranda
8 waiver?

9 A. Yes.

10 Q. Okay. I'm going to show you --

11 MR. CASSELL: I'd like to show the witness an
12 exhibit and not have it published.

13 THE COURT: Yes. Using the screen?

14 MR. CASSELL: Sorry. I keep forgetting. I get so
15 used to the ELMO.

16 Can I approach the witness?

17 THE COURT: Yes.

18 BY MR. CASSELL:

19 Q. I just handed the witness what's been marked as
20 Prosecution Exhibit 9.

21 Do you recognize Exhibit 9, Agent Grant?

22 A. Yes, I do.

23 Q. What's on Exhibit 9? What's depicted there?

24 A. That is the Advice of Rights form.

25 Q. Okay. And is that similar to the one that you testified

1 earlier about which was Prosecution Exhibit 5?

2 A. Yeah. It's the standard form that we use for any time
3 that we provide the rights to someone.

4 Q. Okay. And did you have the defendant fill that form out?

5 A. Yes, I did.

6 Q. Okay. Is your name on there as a witness?

7 A. Yes, it is.

8 Q. Is the defendant's signature on there?

9 A. Yes, it is.

10 Q. Is Detective Garcia's signature on there as a witness?

11 A. Yes, it is.

12 Q. I'm going to go ahead and retrieve that from you.

13 Does this form fairly and accurately depict -- or, is it
14 in the same condition as the form that you -- the original
15 form that you had him fill out?

16 A. Yes.

17 Q. Okay. Fair and accurate depiction?

18 A. Yes.

19 MR. CASSELL: Okay. Your Honor, I move to admit
20 Exhibit 9.

21 THE COURT: Any objection?

22 MR. JACOBS: If I may just look at it.

23 Judge, prior to -- subject to the prior objection.

24 THE COURT: Yes. And that's noted for the record.

25 Exhibit 9 is admitted.

1 (Exhibit 9 entered into evidence.)

2 MR. JACOBS: Very well. Thank you.

3 BY MR. CASSELL:

4 Q. Okay. So he's waived his rights, you start talking to
5 him. About how long was the second interview with the
6 defendant?

7 A. About three and a half hours.

8 Q. Okay. And going into this second interview, what were
9 your goals in terms of this -- now that you had this new
10 information? Or, you had more information since the last time
11 you had seen the defendant, what were your goals?

12 A. My goal was to inform him of the new allegations and then
13 elicit a truthful response from him and get his side of the
14 story.

15 Q. Okay. And did you go into this interview with
16 Prosecution Exhibit 2, the handwritten note that Rosa had
17 written?

18 A. Yes, I did.

19 Q. Okay. And did you show him at some point in that second
20 interview in May of 2017 the note that Rosa had written in
21 April of 2017?

22 A. Yes, I did.

23 Q. All right. How did the defendant's demeanor change when
24 you showed him Exhibit 2?

25 A. It changed a lot.

1 Q. What was he like before you showed it to him? Was he
2 pretty similar to the way he was in November of 2015?

3 A. Yes.

4 Q. And how was that?

5 A. Talkative, direct eye contact, answering questions more
6 directly, less qualifiers.

7 Q. Okay. And how did that change after you showed him
8 Prosecution Exhibit 2 and the discussion that happened after
9 that?

10 A. Less eye contact, he appeared to be more nervous, I
11 believe his hands were shaking, he was qualifying a lot when
12 he did speak. Again, cognitive distortions, deflecting, and
13 he did cry pretty, for lack of a better word, badly --

14 Q. Okay.

15 A. -- at one point. He kind of looked defeated. He was
16 more withdrawn into himself, kind of more hunched over, if you
17 will.

18 Q. Okay. And were there any moments where the defendant
19 would go seconds, even minutes without talking when you were
20 asking -- you or Detective Garcia were asking him questions
21 about this exhibit?

22 A. Yes.

23 Q. And how did that compare to the November of 2015
24 interview? Were there ever long pauses like that?

25 A. No.

1 Q. Now, we're going to play the interview with our next
2 witness, Agent Grant. At the end of the interview, -- well,
3 actually, let me just ask you, is it fair to say that the
4 defendant, during this second interview in May of 2017, said,
5 "I am beyond sorry and beyond apologetic on the accusations"?
6 Did he say that?

7 A. Yes.

8 Q. When the defendant was asked, "Could there be some truth
9 there?", and by "there" Detective Garcia said those words and
10 was pointing at Prosecution Exhibit 2 which was Rosa's
11 handwritten note, did the defendant say, "There could be some
12 truth to that"?

13 A. Yes, he did.

14 Q. And when he was asked, "Could there be some truth
15 there?", did you see him nod his head?

16 A. Yes.

17 Q. Was it clear that you were -- that Detective Garcia was
18 talking about Prosecution Exhibit 2?

19 A. Yes.

20 Q. Rosa's note.

21 A. Yes.

22 Q. And Rosa's note said what?

23 A. Well, what she had testified to about her and Erica
24 performing oral sex on him.

25 Q. Okay. Was it talking about him being a bad dad?

1 A. No.

2 Q. Was it talking about him emotionally abusing them?

3 A. No.

4 Q. It was talking about him sexually abusing them?

5 A. Correct.

6 Q. Was it clear, was it made clear to him that that's what
7 you were there to talk to him about?

8 A. Yes.

9 MR. JACOBS: Object to form.

10 BY MR. CASSELL:

11 Q. Did you care --

12 THE COURT: -- stand --

13 MR. JACOBS: Object to form.

14 THE COURT: No, overruled.

15 BY MR. CASSELL:

16 Q. Did you care -- other than the sexual abuse, did you care
17 about what kind of dad Eric Marrufo was to his daughters?

18 Aside from the sexual abuse.

19 A. Not necessarily pertinent to the investigation.

20 Q. At the end of the interview, Agent Grant, the defendant
21 had one question for you; is that right?

22 A. Yes.

23 Q. What was that question?

24 A. He asked me if I was going to tell his family what he
25 told me.

1 Q. And what did you say back to him?

2 A. I told him no, that it was up to him whether he was going
3 to tell him family or not, and that was not my place to do
4 that.

5 Q. And how did he appear after you told him that? What was
6 his reaction?

7 A. He seemed relieved.

8 Q. Okay. How would you describe his overall demeanor after
9 the interview was over?

10 A. Again, defeated and just kind of tearful and, for lack of
11 a better word, ashamed.

12 MR. CASSELL: Your Honor, may I have a brief moment?

13 THE COURT: Yes.

14 MR. CASSELL: No further questions, your Honor.

15 THE COURT: All right. Cross-examination.

16 MR. JACOBS: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. JACOBS:

19 Q. Good afternoon, Agent Grant. I need a second to get
20 caught up here.

21 A. Good afternoon.

22 Q. You presently work for the FBI?

23 A. Yes.

24 Q. And when was the first date that you had contact with the
25 investigation in this matter?

1 A. I believe Detective Garcia contacted me on July 15th,
2 2015.

3 Q. 2015?

4 A. Correct.

5 Q. You have a different job with the FBI today than you did
6 in July of 2015?

7 A. Yes.

8 Q. What's the difference in the job?

9 A. So the difference is at that time I was -- my title was
10 special agent. Now I'm supervisory special agent. At that
11 time I was a case agent so I actually conducted
12 investigations. At this point I am more of in a consulting
13 role and help with investigations.

14 Q. So would it be fair to say -- tell me if that is right or
15 not, I have no idea, would it be fair to say that the
16 involvement you have with this case today is not involvement
17 you would have with a case that started today. You're
18 involved with this case -- let me strike that and restate
19 that.

20 Your level of involvement in this case, the fact that
21 you're testifying today, is consistent with work you were
22 doing back then but not the work you're doing today?

23 A. Not necessarily. I could testify in the current position
24 that I'm in for a case.

25 Q. Is it fair to say that you have been involved with this

1 case then since 2015?

2 A. Yeah.

3 Q. And that you've been involved with Erica Marrufo since
4 2015?

5 A. I've known her as the investigator for the case, yes.

6 Q. You were present when Erica Marrufo testified; is that
7 right?

8 A. Yes.

9 Q. Did you hear her testify that she had met with you more
10 than once?

11 A. Yes.

12 Q. Did you hear her testify that she thought it was about 10
13 times?

14 A. Yes.

15 Q. Is that accurate?

16 A. I would say it was probably less than that, but --

17 Q. How many would you say?

18 A. I'm not sure. I would say less than that, and I was not
19 always present for every meeting as well.

20 Q. Well, this is a criminal investigation, yes?

21 A. Correct.

22 Q. Is it important to keep good records in a criminal
23 investigation?

24 A. Yes.

25 Q. Is it important to be accurate about facts in this type

1 of case?

2 A. Yes.

3 Q. So when I ask you how many times you met with Erica
4 Marrufo, there's a definite number. Would you agree with me?

5 A. Yes.

6 Q. Would it be important to keep records of that type of
7 thing?

8 A. I don't typically keep track of how many times I meet
9 with my victims for trial prep.

10 Q. So you regard Eric as one your victims; is that right?

11 A. One of my cases.

12 Q. Okay. And what types things did you discuss with Erica
13 prior to her testimony today?

14 A. I did not speak with her about her testimony. It was
15 primarily the prosecutor speaking with her and doing trial
16 preparation.

17 Q. Okay. How many times would you say you've seen Erica
18 Marrufo since 2015?

19 A. Less than 10.

20 Q. Less than 10. So Erica's recollection wasn't accurate;
21 is that right?

22 A. That I was present would be less than 10.

23 Q. She said 10 times. That was not accurate.

24 A. I can't say whether that was accurate or not because I
25 was not present at every meeting that she may have been at

1 with the AUSA's.

2 Q. Did you hear Erica say anything else in her testimony
3 that wasn't accurate?

4 A. No.

5 Q. Did you hear her at any point deny that there was any
6 custody dispute between her parents? Did you hear that?

7 A. I heard -- I think that she was confused about that
8 question.

9 Q. Did you hear her later give a pretty extensive answer in
10 response to a jury question?

11 A. Yes.

12 Q. Did Erica Marrufo ever tell you anything that
13 subsequently you discovered to be false?

14 A. No.

15 Q. You first had contact with this case in 2015; is that
16 right?

17 A. Yes.

18 Q. Now, did you have a -- well, you were a police officer at
19 that time; right? An FBI agent?

20 A. Correct.

21 Q. And in your role in a case, did you ever recommend as to
22 whether a case should or shouldn't be charged?

23 A. I present the facts of the case to the AUSA's.

24 Q. When do you do that?

25 A. It depends on the case.

1 Q. In this particular case, did you make a presentation to
2 the AUSA in 2015?

3 A. No.

4 Q. Why?

5 A. I guess I don't know what your definition of presentation
6 is, but that's not how it works.

7 Q. Well, tell me how it does work when you're seeking -- you
8 believe a criminal charge should be instituted. How does it
9 work?

10 A. You -- well, sometimes you -- it depends. It depends on
11 the case. So sometimes you involve the AUSA's very early on
12 in the case. Sometimes you don't. Sometimes you wait till
13 later on. And in my opinion, in 2015 the case was not
14 complete. There were additional things that needed to be
15 done, and so I would not just interview victims and the
16 subject and then say, Here you go.

17 Q. Put another way, in 2015 you felt there wasn't enough
18 evidence; is that right?

19 A. There was more that I wanted to do on it.

20 Q. I didn't understand the answer.

21 A. There was more that I wanted to do on the case.

22 Q. Yes.

23 A. It's not just a: get this statement; get the victim's
24 statement; get the subject's statement; and close the case.
25 That's not a thorough investigation.

1 Q. Well, talking about a thorough investigation, would it
2 ever be important in this work, in the type of case you're
3 investigating, to obtain school records of alleged victims?

4 A. Sometimes, yes.

5 Q. Was that done here?

6 A. No.

7 Q. Why are the school records important?

8 A. Why can they be important?

9 Q. Why?

10 A. They can show indicators or behavioral changes within a
11 potential victim or disclosures, potentially, if they disclose
12 to other people.

13 Q. And did you hear Ms. Martucci say that these types of
14 behaviors can show that somebody might be a victim? Is that
15 right?

16 A. Yes, those would be the indicators.

17 Q. And yet you didn't take any school records here. Why?

18 A. It was eight or nine years after the -- after the
19 incidents happened, and at that point I don't believe that I
20 knew where they were going to school.

21 Q. Isn't that something that you would investigate?

22 A. Yes.

23 Q. And did you?

24 A. I didn't learn about it until much later on.

25 Q. Didn't learn that they went to school? I'm not following

1 your answer.

2 A. No.

3 Q. They went to school, you assume?

4 A. Correct. I did not know they went to school until much
5 later.

6 Q. Would that have been a fairly easy matter to determine as
7 an investigator?

8 A. If it was fairly easy, I probably would have done it.

9 Q. How hard could it be to determine where somebody went to
10 school?

11 A. I have to have them tell me where they went to school.

12 Q. You spoke to these victims; is that right?

13 A. I do not do interviews with the victims. What was
14 provided is what's in the forensic interview. And if that
15 wasn't asked in the forensic interview, then I don't go back
16 and reinterview them following their forensic interview.

17 Q. So what you're telling us is that you didn't obtain
18 school records because it would have been too much trouble and
19 too difficult to find out where they went to school?

20 A. No, that not what I'm saying.

21 Q. Then was your testimony, then?

22 A. We did not get them because of the time frame. They did
23 not disclose anything about telling anybody at the school, and
24 they did not remember where they went to school at the time,
25 neither did the mother. And I don't believe Eric ever

1 mentioned where they went to school.

2 Q. Well, these important records, you didn't go get them
3 because you were unable to choose where a child went to
4 school? Two children.

5 A. I did not get them.

6 Q. Would you agree with me they might be important here?

7 A. In this specific case, probably not.

8 Q. Okay. How about medical records? Did you obtain any
9 medical records in this case?

10 A. Yes, I did.

11 Q. Where did you get those from?

12 A. I don't recall at this point whether it was either IHS or
13 Tucson Medical. I don't recall.

14 Q. Okay.

15 A. I would guess, but guessing is IHS.

16 Q. In this matter, was there any type of physical evidence
17 that you discovered?

18 A. Could you be more specific?

19 Q. Well, I guess this would be a rape case; isn't that
20 right?

21 A. Yes.

22 Q. Many years prior, isn't that so?

23 A. Correct.

24 Q. Did you collect any physical evidence? You may not have,
25 I just want to know.

1 A. In a delayed disclosure case and even in a case where the
2 rape happened within so many days or whatever, there's usually
3 not physical evidence.

4 Q. So is the answer to my question a simple no?

5 A. That there were no records to indicate that they were
6 raped?

7 Q. What I'm asking -- it doesn't seem like a very difficult
8 question with me that I'm asking. Did you take in any
9 physical evidence? If you didn't, then the answer is no. Did
10 you take in any physical evidence in this case?

11 A. Yes.

12 Q. What did you take in?

13 A. There are -- may I ask you a question?

14 Q. Well, I think I'm usually the one who asks the questions
15 here.

16 MR. CASSELL: Objection, your Honor. Can we just go
17 to sidebar and figure out what the defendant's counsel is
18 actually asking because it's obviously unclear to the witness.

19 BY MR. JACOBS:

20 Q. In a rape case, do you sometimes take in materials from
21 an emergency room?

22 A. When it is disclosed within a certain time period, yes;
23 not eight or nine years later.

24 Q. Okay. But you do sometimes. The answer to that question
25 is yes, would you agree with me?

1 A. Yes.

2 Q. Did you do any -- did you collect any such evidence in
3 this case?

4 A. No.

5 Q. Okay. Were you able to collect any items of clothing or
6 materials that survived from the time of these alleged sexual
7 contacts?

8 A. No.

9 Q. Did you collect any photographs or depictions of the
10 residence in which this is alleged to have occurred?

11 A. Yes.

12 Q. Okay. Tell me about the work you did with respect to
13 obtaining information from that residence.

14 A. The residence --

15 Q. Did you go there?

16 A. I have seen the residence.

17 Q. Okay. What is the address?

18 A. 5480 West He Ka Voo'o.

19 Q. And how many times did you go there?

20 A. I don't recall.

21 Q. Do you know anything about the interior layout of the
22 residence?

23 A. I do not.

24 Q. Did you ever enter the residence at any time?

25 A. I did not.

1 Q. What was your purpose in going to the residence?

2 A. To know where it was.

3 Q. Other than what's been shown to you in Exhibit 2, are
4 there any other writings of either alleged victim that you
5 collected?

6 A. No.

7 Q. Writings.

8 Did you obtain any records from this Pure Heart Church at
9 all?

10 A. No.

11 Q. Why not?

12 A. They did not keep any records on what was disclosed
13 during the meeting that they had.

14 Q. If you know, were there educational records there
15 relevant to the church's education program that we heard
16 described?

17 A. I don't know that.

18 Q. They didn't check on that either?

19 A. She did not attend school there. It was church, a
20 church.

21 Q. You spoke to witnesses. Linda Marrufo. You described
22 that, yes?

23 A. Yes.

24 Q. And also to -- I want to make sure I have this right.
25 Adam Marrufo; is that right?

1 A. Correct.

2 Q. Did you talk to any other adult witnesses who would have
3 had contact with the home in the time period of 2006 to 2008?

4 A. Yes.

5 Q. About how many witnesses did you talk to?

6 A. Throughout the whole case, I spoke with about 17
7 different people.

8 Q. You spoke with Linda Marrufo; is that right?

9 A. Yes.

10 Q. Did Linda Marrufo ever tell you that she would babysit
11 the victims at her residence?

12 A. Yes.

13 Q. And did she say how many times?

14 A. I don't believe that she did.

15 Q. Or with what frequency?

16 A. I think at one point it was pretty regularly when Eric
17 was working.

18 Q. Do you know for how long?

19 A. I do not remember.

20 Q. But that this was a regular thing?

21 A. When Eric was working, I believe so.

22 Q. Did you spend any time with Rosa Marrufo relevant -- in
23 reference to this case? You.

24 A. Not really other than when we were doing trial prep and
25 at the forensic interviews.

1 Q. How many times do you believe you had been with Rosa
2 Marrufo?

3 A. I don't know.

4 Q. Again, same question, wouldn't this be a pretty important
5 fact to note in your investigation records?

6 A. And I don't keep track of how many times I meet with the
7 prosecutors.

8 Q. You testified that in 2017 you met with Eric Marrufo
9 again; is that right?

10 A. Correct.

11 Q. And you had met with him previously?

12 A. Correct.

13 Q. And you told us about the answers that he gave to
14 questions you asked him in 2015; is that right?

15 A. I'm sorry, can you say that again?

16 Q. You interviewed Eric Marrufo in 2015.

17 A. Correct.

18 Q. At that time, if I understand correctly, you confronted
19 him with statements made by Erica Marrufo; is that right?

20 A. Yes.

21 Q. And not any by Rosa Marrufo; is that right?

22 A. Not specifics.

23 Q. Okay. But you confronted him with Erica Marrufo's and
24 not with Rosa's?

25 A. I believe that I told him Rosa had said the same thing

1 happened to her.

2 Q. Okay. And at that time, you stated, if I understood
3 correctly, that he was talkative, he made eye contact, he
4 didn't use a lot of qualifiers. Are those accurate?

5 A. Yes.

6 Q. And that in your experience -- well, in your training and
7 experience, are you trained to note signs that a person
8 perhaps is under stress when giving responses to your
9 investigative questions?

10 A. I don't know that we're necessarily trained in that.

11 Q. What was your reason for -- what was the significance of
12 eye contact to you?

13 A. For me, it would be -- it could be thinking. It could be
14 not wanting to answer the question. A way to escape the
15 situation.

16 Q. And if a person did make direct eye contact, it would be
17 the opposite?

18 A. Not necessarily.

19 Q. Okay.

20 A. It could be.

21 Q. That a person is talkative, is that -- what's the
22 significance of that?

23 A. It was just an observation.

24 Q. Okay. In your work you interview a great many people;
25 yes?

1 A. I guess it depends on how you define "great many."

2 Q. You interview -- how often do you interview criminal
3 suspects?

4 A. Not as much anymore. But when I was in the field, with
5 every case that I had, so several times a year.

6 Q. So when you're interviewing Eric Marrufo the first time,
7 would it be fair to say that his responses were not
8 inconsistent with someone who didn't do it?

9 A. I don't know if I can --

10 MR. CASSELL: Objection, that calls for the witness
11 to make a judgment about whether somebody actually did
12 something.

13 THE COURT: Yes, sustained. Go ahead.

14 BY MR. JACOBS:

15 Q. During your interview in 2015 with Eric Marrufo, was
16 there any overt evidence or did you see anything that
17 convinced you that he was lying to you?

18 MR. CASSELL: Same objection, your Honor. The
19 defense counsel is asking the witness to be a human lie
20 detector. Nobody can do that except the jury.

21 BY MR. JACOBS:

22 Q. What significance did you attach to the talkative, direct
23 eye contact, and less qualifiers?

24 A. I was noticing a baseline behavior and then changes in
25 that behavior.

1 Q. You saw some changes. At what point did his behavior
2 change? Was it in 2017?

3 A. It was significantly different in 2017.

4 Q. And was it specifically after you showed him this Exhibit
5 No. 2?

6 A. Yes.

7 Q. And then if I understood correctly, you said he became
8 more nervous?

9 A. Correct.

10 Q. He began using more qualifiers?

11 A. Correct.

12 Q. And looking defeated?

13 A. Correct.

14 Q. Having been confronted with these allegations of his
15 daughter; is that right?

16 A. Yes.

17 Q. So before he received the allegations, he was talkative.
18 After, he wasn't. Is that right?

19 A. Correct.

20 Q. You've done this type of investigation quite a bit,
21 haven't you?

22 A. Since this case, yes.

23 Q. In your experience, when individuals are confronted with
24 this type allegation, is it fair to say they have a variety of
25 actions?

1 A. Yes.

2 Q. They may become angry, isn't that so?

3 A. It's possible.

4 Q. They may look defeated, isn't that so?

5 A. It's possible.

6 Q. They may be shy, isn't that so?

7 A. It's possible.

8 Q. The individuals may have any type reaction of being
9 confronted with: Your daughter told us you did this. Is that
10 true?

11 A. Yes.

12 Q. Did Eric Marrufo ever tell you at any point, Yes, I did
13 it. I raped my daughters?

14 A. In those words, no.

15 Q. No. Did Eric Marrufo -- strike that.

16 Is there a term that you're familiar with of "debrief."
17 Do you know that term?

18 A. Yes.

19 Q. When a criminal suspect debriefs, what does that mean?

20 A. I am not familiar with it in that context.

21 Q. Okay. Under some circumstances in a criminal
22 investigation, is it true that suspects sometimes make a
23 complete confession?

24 A. Yes.

25 Q. As to every aspect of the offense.

1 A. No, not every aspect.

2 Q. They sometimes or never?

3 A. You can't say an absolute. I'm sure it does happen, but
4 is it likely? No.

5 Q. But the parts of Eric's statement that you found
6 significant were two lines, "I am beyond sorry," and, "There
7 could be some truth in that." Is that right?

8 A. There were many things. It was a culmination of things
9 that I found significant.

10 Q. All right. But those are the two that you just told us
11 about; is that right?

12 A. Those -- yes.

13 Q. All right. You characterized -- you were asked about
14 what kind of a dad Eric Marrufo was. Do you remember that?

15 A. No. I was -- no.

16 Q. Okay. Would you have given a response of that the manner
17 of his parenting or the kind of dad he was, was, quote, Not
18 necessarily pertinent to this investigation. Is that
19 accurate?

20 A. That's what I said.

21 Q. Okay. So you do remember.

22 All right. Now, the initial forensic interviews took
23 place in 2015; is that right?

24 A. Correct.

25 Q. Subsequently, Rosalinda Marrufo was reinterviewed in

1 2017?

2 A. Correct.

3 Q. How much time elapsed between her initial interview and
4 that second interview?

5 A. About three -- two and a half --

6 Q. Two and a half years?

7 A. A year and a half, excuse me.

8 Q. A year and a half. About 18 months --

9 A. Correct.

10 Q. -- later, that she decided or stated that she wanted to
11 be interviewed; is that right?

12 A. Correct.

13 Q. About 18 months.

14 And it was then that you went and spoke with the
15 defendant the second time; is that right?

16 A. Correct.

17 Q. And that's why there's such a big gap in between these
18 two interviews; is that right?

19 A. Yes.

20 MR. JACOBS: Okay. I don't have any further
21 questions. Thank you.

22 THE COURT: Any redirect?

23 MR. CASSELL: Just a moment, your Honor.

24 ///

25 ///

REDIRECT EXAMINATION

1
2 BY MR. CASSELL:

3 Q. Agent Grant, you testified that you never went into the
4 residence where the defendant resided from 2006 to 2008. When
5 you received this case for investigation in 2015, who
6 resided -- well, did the defendant still reside at that
7 residence?

8 A. No, he did not.

9 Q. Was there a reason why you decided that you didn't need
10 to go inside the residence?

11 A. At the time, he wasn't residing there. It was somebody
12 else. And I didn't think that it was -- I needed to go
13 inside.

14 Q. Okay. Is it safe to say that, I mean -- well, is it -- I
15 don't want to put words in your mouth. Is it a fair -- is it
16 a fair guess that the defendant's furniture wasn't there
17 anymore?

18 MR. JACOBS: Object to speculation.

19 THE COURT: No, overruled.

20 THE WITNESS: Yeah, it's fair to say that.

21 BY MR. CASSELL:

22 Q. Did that go into your reasoning for not going into this
23 residence?

24 A. It would have been somebody else's house, completely
25 different. The only thing that would have remained the same

1 potentially would be the layout of the house, and that we
2 received from -- the tribal authority provided I think a
3 blueprint of the house.

4 Q. So you have that?

5 A. I believe so.

6 Q. Okay. Mr. Jacobs has asked all of the witnesses about
7 the number of times they've met with myself and Ms. Wang.
8 Have you testified in trials before?

9 A. Yes, I have.

10 Q. And is it commonplace, in your experience as a case
11 agent, for AUSA's like myself and Ms. Wang to meet with their
12 witnesses before having them testify?

13 A. Yes, it is.

14 Q. Multiple times before they testify?

15 A. If needed, yes.

16 Q. Is there anything -- anything unusual in the meetings
17 that Ms. Wang and I had with young women who are testifying
18 about things that happened when we were five to eight years
19 old?

20 A. No.

21 MR. JACOBS: Object to relevance.

22 THE COURT: No. Overruled.

23 BY MR. CASSELL:

24 Q. I'm sorry, I didn't hear you.

25 A. No.

1 Q. Have you ever been involved in a case involving
2 allegations like this where the prosecutors didn't meet with
3 the victims?

4 A. No.

5 MR. CASSELL: I don't have any other questions,
6 your Honor. Thank you.

7 THE COURT: All right. Any questions from the jury
8 for this witness?

9 All right. Armida will collect that question.

10 (At sidebar.)

11 THE COURT: Any objection?

12 MR. JACOBS: The answering is no, but --

13 MS. WANG: I wanted to ask if we should start our
14 next witness or we should wait till tomorrow. We're not going
15 to get through.

16 MR. CASSELL: I would say I have maybe five to
17 10 minutes of questioning before the video -- or, the audio
18 starts. We could certainly get to that point and then say,
19 your Honor, we're going to start the audio. Or we can keep
20 going, start the audio.

21 THE COURT: I wanted us to kind of break it up.

22 MR. CASSELL: It's a lengthy audio.

23 MS. WANG: I feel like they've had a really long
24 day.

25 MR. CASSELL: It's been a long day. Whatever your

1 pleasure is, your Honor.

2 MR. JACOBS: I just --

3 THE COURT: You know what, if you want, you're going
4 to have to come over here.

5 MR. JACOBS: I just observed, your Honor, it looks
6 like there's going to be some time gaps coming up. But as the
7 Court said, it may be more productive to have the recesses.
8 So I'll submit on the matter.

9 THE COURT: Okay. Well, we can go till quarter to
10 five.

11 MR. CASSELL: Okay.

12 MR. JACOBS: Thank you.

13 (Open court.)

14 THE COURT: All right. A question from the jury.

15 Was Sylvia observing the live feed of either victim
16 during the forensic interview?

17 THE WITNESS: No, she was not. She was in a
18 completely separate area, not allowed to be anywhere near
19 them.

20 THE COURT: Any follow-up questions from counsel?

21 MR. CASSELL: None from the government.

22 THE COURT: Mr. Jacobs?

23 MR. JACOBS: None from the defense.

24 THE COURT: Any additional questions from the jury
25 for this witness?

1 (No response.)

2 THE COURT: All right. Thank you, Agent. You may
3 step down.

4 And the government may call its next witness.

5 MR. CASSELL: Thank you, your Honor. Our next
6 witness is former Pascua Yaqui detective, Jacob Garcia.

7 THE COURT: All right. Sir, if you could come
8 forward to the witness stand please, and remain standing here,
9 and we'll have you sworn in as a witness.

10 JACOB GARCIA, PLAINTIFF WITNESS, SWORN

11 THE CLERK: Thank you. Please be seated.

12 Please speak directly into the microphone. State
13 your full name, spelling your last name.

14 THE WITNESS: Jacob Garcia, G-a-r-c-i-a.

15 DIRECT EXAMINATION

16 BY MR. CASSELL:

17 Q. Mr. Garcia, where do you work?

18 A. I'm retired.

19 Q. All right. Congratulations.

20 Have you ever worked for the Pascua Yaqui Police
21 Department?

22 A. Yes.

23 Q. Do you have any law enforcement experience outside of the
24 Pascua Yaqui Police Department?

25 A. Yes.

1 Q. Okay. About how much law enforcement experience do you
2 have as a whole?

3 A. About 33.5 years.

4 Q. Okay. All right. And about how long -- how much of that
5 33 and a half years was with the Pascua Yaqui Police
6 Department?

7 A. 26.3.

8 Q. Okay. You're getting very precise with us. I like that.
9 What was your position primarily with the Pascua Yaqui
10 Police Department?

11 A. I was employed in the capacity as a tribal detective.

12 Q. Okay. When did you start working as a tribal detective?

13 A. I was hired back in August of 1995.

14 Q. As a tribal detective?

15 A. Yes.

16 Q. And so did you serve as a tribal detective for that
17 entire length of time with Pascua Yaqui?

18 A. Yes.

19 Q. Okay. So then you had been a Pascua Yaqui detective for
20 close to 20 years in the summer of 2015?

21 A. Yes.

22 Q. Okay. In that summer of 2015, were you assigned to work
23 a case along with FBI involving the defendant, Eric Marrufo?

24 A. Yes.

25 Q. All right. Why was Pascua Yaqui PD involved in this

1 case?

2 A. The mother of the victim reported it to the Pascua Yaqui
3 Police Department.

4 Q. Okay. And did you determine -- were you the one who
5 fielded that call?

6 A. It was assigned to me, yes.

7 Q. Okay. Was it ever determined that you didn't have
8 jurisdiction to investigate it?

9 A. Yes.

10 Q. Okay.

11 A. Only because of the years.

12 Q. Okay. Well, let me ask you this: Did you ever decide
13 that the location of the alleged abuse in this case was -- did
14 you ever make the determination that that happened on the
15 Indian reservation?

16 A. Yes.

17 Q. And did you decide -- did you determine that it was?

18 A. Yes.

19 Q. Okay. Do you see the defendant, Eric Marrufo, in this
20 courtroom?

21 A. Yes, I do.

22 Q. And do you recognize him from having interviewed him?

23 A. Yes.

24 Q. Could you please point him out and describe an article of
25 clothing?

1 A. Yes, he's sitting in the corner wearing a white shirt,
2 black jacket, tie, glasses, short hair.

3 MR. CASSELL: Your Honor, if the record could
4 reflect the positive identification of the defendant?

5 THE COURT: Yes, the record may so reflect.

6 BY MR. CASSELL:

7 Q. Detective Garcia, what I was getting at is did you
8 eventually find out where the defendant resided between 2006
9 to 2008?

10 A. Yes.

11 Q. Do you know where that house is?

12 A. It was located within the boundaries of the Pascua Yaqui
13 Tribe.

14 Q. Okay. All right. When did you eventually speak with the
15 defendant in this case?

16 A. It was maybe a couple of -- either a month or so after
17 initially receiving the case.

18 Q. Let me ask you this: You fielded the call for Pascua
19 Yaqui PD. Was Pascua Yaqui PD the only law enforcement
20 investigative agency that was involved in the investigation?

21 A. No.

22 Q. What other agency was involved?

23 A. The Federal Bureau of Investigation, FBI.

24 Q. Okay. And did one of you -- who was the agent who was
25 appointed to run the investigation for the FBI side?

1 A. Special Agent Briana Grant.

2 Q. And was the decision made, formal or otherwise, between
3 and you Agent Grant as to who should run the investigation or
4 be the primary agency to lead it?

5 A. Yes.

6 Q. Who was that? Which agency was that?

7 A. It was the FBI.

8 Q. Okay. So Agent Grant kind of took the case and ran with
9 it?

10 A. Yes.

11 Q. But you were there to help; correct?

12 A. Yes.

13 Q. All right. Did you eventually speak with the defendant
14 in November of 2015?

15 A. Yes.

16 Q. All right. Was that discussion audio-recorded?

17 A. Yes.

18 Q. And who was with you when you went out to interview the
19 defendant?

20 A. Special Agent Grant.

21 Q. Did you witness the defendant being read his Miranda
22 rights?

23 A. Yes.

24 Q. Did he waive those rights?

25 A. Yes.

1 Q. Is there a form that you and Special Agent Grant used to
2 memorialize that waiver?

3 A. Yes.

4 Q. Did you sign that form?

5 A. Yes, I did.

6 Q. As a witness?

7 A. Yes.

8 Q. Okay. Early in the interview, was it pretty clear that
9 the defendant was speaking to one of you more than the other?

10 A. Yes.

11 Q. Who was he speaking to?

12 A. Special Agent Grant.

13 Q. Okay. Now, I don't want to get into the specifics of the
14 first interview, Detective -- sorry. Mr. Garcia. That's
15 going to be a tough habit for me to break. I don't want to
16 get too much into the details of the first interview, but is
17 it fair to say that the defendant denied sexually abusing his
18 daughters in the first interview?

19 A. Yes.

20 Q. How would you describe his demeanor in the first
21 interview?

22 A. He was pretty positive. He talked about things that he
23 was doing, how he was helping other inmates get along.

24 MR. CASSELL: Your Honor, can I have a --

25 MR. JACOBS: Why don't we come up to sidebar?

1 THE COURT: Let Mr. Cassell finish his --

2 BY MR. CASSELL:

3 Q. Let me ask you, Agent -- golly, Mr. Garcia, after the
4 interview was over, did you feel like you had gotten
5 everything you needed from the interview of the defendant?

6 A. No.

7 Q. And did you eventually speak to the defendant a second
8 time?

9 A. Yes.

10 Q. Okay. Now, he had already denied that he sexually abused
11 his daughters in the first interview; correct?

12 A. Yes.

13 Q. All right. And when you spoke with him a second time,
14 this was sometime later. It was about a year and a half
15 later, was it not?

16 A. Yes.

17 Q. In about May of 2017?

18 A. Yes.

19 Q. Okay. Who was it who interviewed him? Was it you and
20 Agent Grant again or was there somebody else?

21 A. Yes, myself and Special Agent Grant.

22 Q. So nothing different?

23 A. No.

24 Q. Okay. And was --

25 THE COURT: Let me just see counsel at sidebar

1 before you ask that next question.

2 (At sidebar.)

3 THE COURT: First let me ask you, does he know not
4 to say --

5 MR. CASSELL: Yes.

6 THE COURT: -- he's in custody?

7 MR. CASSELL: Yes.

8 THE COURT: Because you're going to get into the
9 second interview that took place at the same place, and I
10 don't want him to say again.

11 MR. CASSELL: I can certainly -- I can certainly
12 reiterate it to him, your Honor. It would involve us, you
13 know, breaking.

14 THE COURT: Right.

15 MR. CASSELL: You know.

16 THE COURT: It sounds like --

17 MR. CASSELL: We made that clear to every single one
18 of our witnesses. I think he just made a mistake.

19 MR. JACOBS: He sure did.

20 THE COURT: I'm just not sure if he made a mistake
21 or he just thinks it's okay.

22 MR. CASSELL: No. No, he knows, your Honor. He was
23 a law enforcement agent for a long time. I think he just made
24 a mistake. I mean, you know, Mr. Jacobs is helping make the
25 record.

1 THE COURT: Now, wait a minute, first should we
2 excuse the jury at this point? How much longer do you have
3 with this witness before you play the tape?

4 MR. CASSELL: Not long at all, actually.

5 THE COURT: Okay. But he's going to be back
6 tomorrow?

7 MR. CASSELL: I was just going to lay the foundation
8 for the second interview, the transcript and the audio
9 recording.

10 THE COURT: Okay. Why don't I excuse the jury for
11 the evening and then we can discuss.

12 MR. JACOBS: My motion for mistrial.

13 THE COURT: That's fine. Let's do that.

14 (Open court.)

15 THE COURT: All right. Members of the jury, I'm
16 going to let you go home for the evening. So we'll have the
17 evening recess. I have some other issues I need to discuss
18 with the lawyers outside of your presence.

19 So please continue to follow the Court's admonition
20 throughout the evening. Have a good evening. And I have one
21 short hearing at 9:00. So if you can come at 9:15, we'll get
22 started then.

23 So have a good evening, and we'll see you tomorrow
24 at 9:15. Thank you.

25 (Jury panel excused at 4:22 p.m.)

1 THE COURT: And, sir, you can step down, and we'll
2 see you tomorrow morning.

3 The record may reflect the absence of the jury.

4 So go ahead, Mr. Jacobs.

5 MR. JACOBS: Well, Judge, that would be a motion for
6 a mistrial. We went through an entire prior jury trial --

7 THE COURT: Oh, hold on a minute.

8 Sir, do you want to come out and get -- did you
9 leave something in here? Come on in.

10 (Pause.)

11 THE COURT: All right. The record may reflect the
12 absence of the jury.

13 Go ahead, Mr. Jacobs.

14 MR. JACOBS: Well, the motion is for a mistrial. We
15 made it through the whole first jury trial.

16 THE COURT: You're tall and you're away from the
17 microphone, so come on up.

18 MR. JACOBS: I'll come up.

19 THE COURT: It's easier for me and Cheryl.

20 MR. JACOBS: I'm not very often accused of being
21 hard to hear.

22 You know, once again, it's a motion for mistrial.
23 This was kept from the jury successfully through the entire
24 first jury trial, and here a witness just simply comes out
25 with it.

1 MR. CASSELL: Your Honor, I would dispute that. We
2 did not make it through the first jury trial. Several of
3 Mr. Jacobs' witnesses mentioned him getting locked up,
4 mentioned him getting arrested. We did not get through the
5 first trial without mentions of that. I will admit though,
6 obviously the witness mentioned other inmates. It was a
7 mistake. It certainly wasn't anything nefarious. But to
8 suggest, as Mr. Jacobs just did, that we got through the whole
9 trial without anybody saying anything, that's just not true.
10 His own witnesses did that last trial and there was no
11 mistrial.

12 THE COURT: Okay. And you can certainly make your
13 record on that and, you know what, I don't remember. So
14 you'll be --

15 MR. CASSELL: I definitely remember.

16 THE COURT: You're much younger.

17 So go ahead.

18 MR. JACOBS: It was arrested and locked up. It was
19 not inmate. So we have the detective saying basically this
20 occurred in, you know, in a prison. There's no --

21 THE COURT: I think he said he had helped inmates.

22 MR. JACOBS: Helped other inmates. The whole thing
23 came out and it's done.

24 THE COURT: Okay. Well, that's what came out. So
25 your motion for mistrial --

1 MR. JACOBS: It's a motion for a mistrial. And I'll
2 just point out, with the other concern with Ms. Martucci's
3 profiling evidence, we're in the presence of cumulative error.
4 Now we have two sources of problems, two motions for mistrial.
5 So --

6 THE COURT: Okay. And let me hear from the
7 government.

8 MR. CASSELL: I don't think one has anything to do
9 with the other. The fact that Mr. Jacobs makes 10 different
10 motions for a mistrial for 10 different reasons, they're not
11 interrelated in any way.

12 THE COURT: Right. And the parties -- we're going
13 to talk more about the expert, the issue. Both sides want an
14 opportunity to look at that so that's separate. So let's just
15 talk about the mention of the word "inmates."

16 MR. CASSELL: And, your Honor, we talked about it at
17 sidebar. I believe it was really just a slip of the tongue.
18 I really don't think that there was any intent by -- he's a
19 retired detective. He's got lots of time. He knows he's not
20 supposed to say that, but I really don't think that he ever
21 intended to slip one past anybody to -- or, any nefarious
22 intent to let the jury know the defendant was an inmate. I
23 think -- I think he made a mistake, your Honor. I don't think
24 this rises to the level of a mistrial, though.

25 One of the reasons why I kept on wanting to go on

1 with my exam was not to put any more attention on this. This
2 has happened in other trials that I've been in. The Court
3 either gave a curative instruction or it didn't put any other
4 attention on the slip of the tongue. And the Ninth Circuit
5 saw that on appeal and actually said it was not a harmful
6 error. So this is not a fatal error to a criminal case when
7 one witness mentions that somebody was in custody at some
8 time.

9 And, you know, this was in 2015 -- or, 2017 -- '15
10 and '17 when these interviews were performed which is far and
11 away from 2006, 2008 which is when the allegations are
12 alleged.

13 For all those reasons, your Honor -- we can
14 certainly brief this more if you like. I have an entire Ninth
15 Circuit briefing on it.

16 THE COURT: And it's only 4:30.

17 MR. CASSELL: And I'm more than happy to go dust
18 that off and provide the Court with all that case law. It's
19 going to support the United States' position. There should
20 not be a mistrial in this case over one word.

21 THE COURT: Okay. So I'll give counsel both an
22 opportunity this evening to brief it. I would appreciate --
23 you mentioned the Ninth Circuit. If there's any Ninth Circuit
24 case law --

25 MR. CASSELL: There is.

1 THE COURT: -- I'm sure it's pretty fact-specific,
2 but there's got to be something like this that comes up.
3 These criminal trials are constantly occurring.

4 So, Mr. Jacobs, if I do deny your motion for
5 mistrial, would you prefer a cautionary instruction to the
6 jury or would you prefer nothing being mentioned?

7 MR. JACOBS: Well, I'm not --

8 THE COURT: Or do you want to think about that?

9 MR. JACOBS: Yeah, my feeling is that it's fatal.

10 THE COURT: Okay. But assuming I disagree.

11 MR. JACOBS: It wasn't a word. It was a sentence.

12 THE COURT: Right. Assuming I disagree with you, I
13 want you to think about what remedy. Would you want me not to
14 do anything and just forge ahead, or would you want me to tell
15 the jury that they're to disregard that statement?

16 MR. JACOBS: The Court puts me in a position of
17 advocating for a remedy to which something that I think no
18 remedy -- I can't think of a remedy that exists. So I don't
19 know what to suggest because this is so serious. It's not
20 just a slip. It was a -- I mean, it was a whole statement.
21 You know, Hey, he's getting along with the other inmates. I
22 can't conceive of unringing that bell with any possible --
23 what would you tell them? Oh, the agent made a statement and
24 you should just disregard.

25 THE COURT: All right. Well, think about it and let

1 me know in the morning. If you have no position, that's fine
2 if you just say, I don't have a position. I'm just curious to
3 get your input in the event that's the route I'm thinking of
4 going.

5 MR. JACOBS: I'm used to arguing in the alternative,
6 which is what the Judge is asking me. But I'm a little bereft
7 of ideas short of a mistrial here.

8 THE COURT: Okay. And so we'll talk about it more
9 in the morning.

10 And I guess we probably don't want to talk yet about
11 the issue of the testimony from Ms. Martucci about -- her
12 testimony regarding -- well, this was asked at the last trial,
13 "Is it possible for someone to commit child sexual abuse while
14 still being in normal adult sexual relationships?" And the
15 answer was, "Yes." So that testimony.

16 I get the impression that counsel wanted some
17 additional time to think about that before we address that
18 again. Whether that's -- you moved for a mistrial, but
19 whether it's improper or not and why it is or why it isn't. I
20 thought you both wanted to do some research or think about
21 that. Is that right, Mr. Jacobs?

22 MR. JACOBS: Yes. And the Court mentioned a case,
23 and the name escaped me. The Court had some authority. I
24 would dearly like to remember what that was.

25 THE COURT: Well, let's see.

1 MR. JACOBS: It would help to --

2 THE COURT: There are some different things I
3 mentioned.

4 MR. JACOBS: It started with an S. I only mention
5 it --

6 THE COURT: Starks?

7 MR. JACOBS: Yes, that's right.

8 THE COURT: It's actually a Supreme Court. It's an
9 Arizona -- State of Arizona case.

10 MR. JACOBS: Do you have a cite on that?

11 THE COURT: Yes. I have a Westlaw cite, 2021 case,
12 2021 Westlaw 2154043.

13 MR. JACOBS: WL still?

14 THE COURT: Yes, that's the Westlaw cite.

15 MR. JACOBS: I'm not familiar with that case.

16 THE COURT: And I'm not sure, I don't think really
17 that this is an issue of defendant-profile testimony. It's
18 not like it's testimony that's saying because of these
19 particular traits he committed these crimes. This is almost
20 the opposite of that. So I'm not sure that it really falls
21 into that kind of, Is this defendant-profile type of
22 testimony. It's more, to me, it seems like it's more rebuttal
23 that the government's presenting based on your theory that you
24 presented at the last trial and you're going to present at
25 this trial, that because your client has normal adult sexual

1 relationships that he's less likely to abuse his daughter.

2 Nobody is saying -- nobody ever objected to that
3 kind of -- is that character testimony? I don't know what it
4 is, but nobody ever objected to the relevancy of that kind of
5 testimony coming in either last trial or this trial, so --

6 MR. JACOBS: My memory is not perfect, but it seemed
7 to me there was testimony last time of individuals who had
8 been within the home and some were girlfriends. And I think
9 there was one bit of testimony which was he was with the
10 girlfriend I guess in the garage, a carport or something, and
11 a child came upon them having sex. So I don't know that that
12 was an argument. It was -- I don't recall ever arguing that
13 he can't have done this because he had girlfriends.

14 THE COURT: And I don't recall the details. And
15 maybe you were just bringing that out to show that there were
16 people in and out of the home.

17 MR. JACOBS: Right.

18 THE COURT: And not that -- but then why would you
19 get into the fact that they were girlfriends? In other words,
20 there was an adult sexual relationship with these --

21 MR. JACOBS: Well, it goes to --

22 THE COURT: -- these various women at the same time
23 that these allegations --

24 MR. JACOBS: What I did argue is that no adult saw
25 anything. The government argues strenuously, hey, that's not

1 dispositive of guilt or innocence. He would have done it
2 clandestinely. He would have made sure nobody was around.
3 But then we say, well, by the way, there was an incident where
4 he was trying to hide something and it didn't work too well.
5 So that's the argument.

6 THE COURT: And I don't remember, I didn't read a
7 transcript of the trial in September, if you, in fact, argued
8 that because he has adult sexual relationships at the time of
9 these allegations, that it makes it less likely he's going to
10 commit these kind of crimes. I don't remember if you
11 argued --

12 MR. JACOBS: I certainly don't plan to make any such
13 argument in this trial here. I don't believe I did last time.
14 But in any case, I'm not going to make such an argument. I
15 don't even think it's necessarily true.

16 THE COURT: That what?

17 MR. JACOBS: That because he had a girlfriend,
18 therefore it was impossible --

19 THE COURT: Yeah, I think we -- wouldn't you agree
20 that -- I think your expert would probably say the same thing.
21 Just because someone has an adult sexual relationship doesn't
22 mean they won't or can't molest a child.

23 MR. JACOBS: I previously commented that the
24 attorneys assembled and the Court assembled here have seen
25 enough sexual abuse cases to know that that truly isn't

1 consistent with any of our experience, so I'm not going to
2 argue that. Among other things, it isn't true. But that
3 doesn't mean it isn't profile evidence, and it doesn't mean it
4 wasn't improperly presented profile evidence. Just because
5 something is true is not a defense to improperly offering it.
6 There's plenty of expert testimony that's true that we're not
7 going to be hearing from our expert.

8 THE COURT: Why is it profile evidence?

9 MR. JACOBS: Because it goes to the characteristics
10 of the offender and not in any way toward the victims.

11 THE COURT: Well, in what way is the government
12 trying to use that in their case-in-chief?

13 MR. JACOBS: Well, they're trying to argue that
14 we're arguing that because he had a girlfriend, he couldn't
15 have done this. The government itself has used the word
16 "rebuttal" in response to a nonexistent argument. So if this
17 is to be rebuttal testimony, rebuttal of what? Oh, you didn't
18 argue that? Well, I was thinking you might. No. You don't
19 get to introduce rebuttal testimony to an argument you think
20 the defense might offer.

21 MR. CASSELL: The defendant literally said that in
22 his interview, and Agent Grant testified to that.

23 MS. WANG: Today.

24 MR. CASSELL: Today. Just like less than an hour
25 ago.

1 THE COURT: All right. So --

2 MR. CASSELL: It certainly was coming out in the
3 case-in-chief.

4 THE COURT: All right. So I'm just exploring this
5 again with counsel.

6 So let me just give -- Ms. Wang, do you want to say
7 anything right now or do you want to talk about this later?

8 MS. WANG: Just to reiterate what Mr. Cassell said,
9 Ms. Grant -- Agent Grant testified on her direct that one of
10 the reasons he gave in the 2015 interview denying that he had
11 committed any child sexual abuse was because he had other
12 women that he could do this stuff to; therefore, did not need
13 to do that with his own children. I think that that is
14 certainly information that the jury -- I think that goes to
15 victimization which is permissible and proper expert witness
16 testimony.

17 We agree with the Court obviously that it's not
18 profile testimony. It's one question that talks about the
19 possibility that both things are not mutually exclusive. But
20 it doesn't single out this particular defendant or any
21 characteristics of this particular defendant, and it does
22 rebut something that he himself said in his interview. And
23 that even if Mr. Jacobs stands up here and says, Well, I
24 wasn't going to make that argument, I think it's certainly an
25 argument that he has already previewed and an argument that is

1 implied in the witnesses that he's going to call and in the
2 arguments that we believe he's going to make in closing. And
3 I think it was proper.

4 MR. JACOBS: Once again, the time for rebuttal is
5 after the witness that you're trying to rebut has been called.
6 So rebuttal is not an anticipatory evidentiary maneuver, it is
7 a responsive. And here, the government can say, Oh, we were
8 thinking he might so we went ahead. No. That's not how this
9 is done. It's not even fair.

10 THE COURT: All right. Well, I can hear more if
11 counsel indicated you wanted to do some research on it. It
12 doesn't seem to me that it's not -- it's not the type of
13 profile evidence that we look to in some of the cases. It's
14 not trying to profile this offender in some way.

15 It does appear to me -- again, I can hear more from
16 counsel -- to be the kind of testimony that's outside the
17 normal province of the average juror, so I think it would be
18 within the realm of expert testimony. And I think
19 Ms. Martucci has her -- her expertise and the reliability for
20 this type of evidence to be presented has been established
21 because it is based on her interviews of these -- how many
22 victims? How many victims?

23 MR. CASSELL: 1700.

24 THE COURT: 1700. So it's based on information that
25 she's received in these interviews of victims who are talking

1 about sexual abuse, so I think it is reliable. It's based on
2 her expertise and what she's learned in these interviews from
3 the various children. So it is reliable.

4 And I think it would be the subject of expert
5 testimony because I think it's not the kind of information
6 that is within the normal province of the average juror, so I
7 think it falls within that category. So those are just my
8 preliminary thoughts about that. I don't think it's profile
9 testimony, though. It definitely is about the defendant,
10 though, and not about victims. I think when we're talking
11 about grooming, that is about the defendant also. And a lot
12 of cases do validate that idea that the government can present
13 a witness to talk about the grooming of victims.

14 MR. JACOBS: And they certainly did here without any
15 objection because it does relate to the victims.

16 THE COURT: Right. May be you objected initially.
17 I don't remember --

18 MR. JACOBS: I'm sure it was (unintelligible) --

19 THE COURT: I think you wanted to preclude --

20 MR. JACOBS: -- but it's a very different
21 qualitative thing. I agree with the Court's observation; it
22 relates only to the defendant.

23 THE COURT: All right. So let's go ahead and
24 recess. I have a 9:00 matter, so we should get started around
25 9:15. And we'll talk briefly tomorrow before we start with

1 the jury about the motion for mistrial.

2 You can send me what you've got and send it to
3 Mr. Jacobs also if you have something already written up on
4 this, on the motion for mistrial.

5 MR. CASSELL: I do.

6 MR. JACOBS: I certainly don't.

7 THE COURT: Thank you. We'll stand at recess in
8 this matter.

9 (Proceedings adjourned at 4:40 p.m.)

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C E R T I F I C A T E

I, Cheryl L. Cummings, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated this 16th day of September, 2022.

/s/Cheryl L. Cummings

Cheryl L. Cummings, RDR-CRR-RMR-CRC-CRI
Federal Official Court Reporter

FILED	LODGED
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AUG 19 2022	
CLERK US DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,
v.
Eric David Marrufo,
Defendant.

No. CR-17-00976-001-TUC-CKJ (EJM)

VERDICT

COUNT 6

WE THE JURY, FIND THE DEFENDANT, ERIC DAVID MARRUFO,

GUILTY, as charged in Count Six of the Superseding Indictment charging
Abusive Sexual Contact of a Child, E.M.

Juror #11

Date: 08/19/2022

Foreperson's signature

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AUG 19 2022	
CLERK US DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,
v.
Eric David Marrufo,
Defendant.

No. CR-17-00976-001-TUC-CKJ (EJM)

VERDICT

COUNT 5

WE THE JURY, FIND THE DEFENDANT, Eric David Marrufo,

GUILTY, as charged in Count Five of the Superseding Indictment charging
Aggravated Sexual Abuse of a Child, R.M.

JUROR #11

Date: 08/19/2022

Foreperson's signature

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AUG 19 2022	
CLERK US DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,
v.
Eric David Marrufo,
Defendant.

No. CR-17-00976-001-TUC-CKJ (EJM)

VERDICT

COUNT 4

WE THE JURY, FIND THE DEFENDANT, Eric David Marrufo,

GUILTY, as charged in Count Four of the Superseding Indictment
charging Aggravated Sexual Abuse of a Child, E.M.

JUROR #11

Date: 08/19/2022

Foreperson's signature

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AUG 19 2022	
CLERK US DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,
v.
Eric David Marrufo,
Defendant.

No. CR-17-00976-001-TUC-CKJ (EJM)

VERDICT

COUNT 3

WE THE JURY, FIND THE DEFENDANT, ERIC DAVID MARRUFO,

GUilty, as charged in Count Three of the Superseding Indictment
charging Aggravated Sexual Abuse of a Child, R.M.

JUROR #11

Date: 08/19/2022

Foreperson's signature

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AUG 19 2022	
CLERK US DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,
v.
Eric David Marrufo,
Defendant.

No. CR-17-00976-001-TUC-CKJ(EJM)

VERDICT
COUNT 2

WE THE JURY, FIND THE DEFENDANT, ERIC DAVID MARRUFO,

GUILTY, as charged in Count Two of the Superseding Indictment
charging Aggravated Sexual Abuse of a Child, E.M.

JUROR #11

Date: 08/19/2022

Foreperson's signature

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CLERK US DISTRICT COURT DISTRICT OF ARIZONA	
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,
v.
Eric David Marrufo,
Defendant.

No. CR-17-00976-001-TUC-CKJ (EJM)

VERDICT

COUNT 1

WE THE JURY, FIND THE DEFENDANT, Eric David Marrufo,

GUILTY, as charged in Count One of the Superseding Indictment charging
Aggravated Sexual Abuse of a Child, E.M.

JUROR #11

Date: 08/19/2022

Foreperson's signature

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Attorney for: ERIC DAVID MARRUFO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,)	
)	No. 4:17-cr-00976-CKJ-BPV-1
Plaintiff,)	
)	
vs.)	MOTION FOR MISTRIAL
)	
ERIC DAVID MARRUFO,)	
)	
Defendant.)	
)	

COMES NOW the Defendant, ERIC DAVID MARRUFO, by and through counsel undersigned, and hereby requests that the court order a mistrial in this case based on the prosecution's eliciting through expert testimony that constitutes improper character profile evidence in violation of *Rules 401, 402, 403, 404(a), 702, Federal Rules of Evidence (Fed.R.Evid.)* and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), and by eliciting testimony from Detective Garcia that the Defendant had been in prison in violation of *Rule 404(b)(1), Fed.R.Evid.* Individually, these errors warrant the grant of a mistrial, however, even assuming arguendo, they did not, the cumulative

impact of these errors are overwhelmingly prejudicial and there it is not now possible for the Defendant to receive a fair trial.

1. Improper character profile evidence

During trial, the Government elicited from its expert, Shannon Martucci that even if an offender who has a normal adult sexual relationship, that does not mean that they do not engage in child molestation. The undersigned objected to that evidence being improper character profile evidence and requested a mistrial. The court denied the motion, finding that Martucci's testimony fell within the scope of authorized expert testimony because the testimony was relevant to assist the trier of fact understand the evidence or to determine a fact in issue. The court's decision is incorrect as more fully explained herein.

The principles governing the admission of expert testimony are set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, supra. The Federal Rules of Evidence require that the trial judge ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable. *Daubert*, 509 U.S. at 589, 113 S. Ct. at 2795; *Rule 402, Fed.R.Evid.* (Evidence is admissible only if relevant).

The primary focus of the trial court's obligation is Rule 702. "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue" an expert "may testify thereto." *Daubert*, 509 U.S. at 589, 113 S. Ct. at 2795. Hence, the court's ruling, although flawed, is in line with what is required under *Daubert*.

Daubert noted that the determination under Rule 702 goes primarily to relevance. "Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful." *Daubert*, 509 U.S. at 591, 113 S. Ct. at 2795–96, quoting 3 Weinstein & Berger ¶ 702[02], p. 702–18. The proffered expert testimony must be sufficiently tied to the facts of the case that it will aid the jury in

resolving a factual dispute”. *Id.* (*emphasis added*), citing to *United States v. Downing*, 753 F.2d 1224, 1242 (3rd Cir. 1985).

The consideration has been aptly described by Judge Becker as one of “fit.” “Fit” is not always obvious, and scientific validity for one purpose is not necessarily scientific validity for other, unrelated purposes. *See Starrs, Frye v. United States Restructured and Revitalized: A Proposal to Amend Federal Evidence Rule 702*, 26 *Jurimetrics J.* 249, 258 (1986). *The study of the phases of the moon, for example, may provide valid scientific “knowledge” about whether a certain night was dark, and if darkness is a fact in issue, the knowledge will assist the trier of fact. However (absent creditable grounds supporting such a link), evidence that the moon was full on a certain night will not assist the trier of fact in determining whether an individual was unusually likely to have behaved irrationally on that night. Rule 702’s “helpfulness” standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility.*

Daubert v. Merrell Dow Pharms., Inc., 509 U.S. at 591–92, 113 S. Ct. at 2795–96.

Character profile testimony may be introduced by the Government “only to rebut specific attempts by the defense to suggest innocence based on the particular characteristics described in the profile.” *United States v. Wells*, 879 F.3d 900, 921–22 (9th Cir. 2018), quoting *United States v. Beltran–Rios*, 878 F.2d 1208, 1213, n. 2 (9th Cir. 1989). *See also United States v. Gillespie*, 852 F.2d 475, 480 (9th Cir. 1988) (finding error in admitting testimony of clinical psychologist on characteristics common to child molesters, where defendant never put general character at issue or offered testimony of specific character traits that rendered him incapable of molesting a female child). *Wells*, *supra*.

In *Wells*, the Ninth Circuit found the Government’s argument disingenuous when it tried to distinguish the expert testimony from criticized profile evidence “by arguing that his actual testimony was much broader than Wells’ portrayal thereof; his criminal profile was not ‘personal’ to, or based on an examination of, Wells; and his testimony was not the key evidence of Wells’ guilt.” *Id.*, 879 F.3d

at 919–20. The Court found that the expert’s testimony was *made personal* to Wells by the Government’s admitted use of the expert’s profile to “fit” Wells’ personal characteristics. *United States v. Wells*, 879 F.3d 900, 919–20 (9th Cir. 2018).

This is precisely what the Government has done in this case. The Defendant did not offer evidence of his personal adult relationships to show he did not commit the sexual acts alleged in this case, yet the Government elicited testimony essentially that the Defendant’s personal lifestyle can be disregarded when considering whether he is guilty as charged. The prejudicial character profile testimony by the Government’s expert witness constituted irrelevant and prejudicial “group character evidence” under *Rule 404(a)*, *Fed.R.Evid.* and has made it impossible for the Defendant to receive a fair trial as this profile evidence will loom in the minds of the jurors during deliberations. Mistrial is the only remedy because with the expert testimony that persons in normal sexual relationships also sexually abusing children, the jury will not assess the Defendant’s character on its own, but will dismiss same because the expert said they can.

2. Prejudicial comment on the Defendant having been in prison

Except when offered to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident”, *Rule 404(b)(2)*, *Fed.R.Evid.*, evidence of a prior crime, wrong, or incident “is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” *Rule 404(b)(1)*, *Fed.R.Evid.* *United States v. Charley*, 1 F.4th 637, 647 (9th Cir. 2021).

“A [trial court’s] decision to admit evidence that suggests prior criminal acts without any real probative value constitutes error.” *United States v. Neill*, 166 F.3d

943, 946 (9th Cir. 1999) (finding error in court's admission of testimony concerning defendant's work release status).

Here, the evidence identifying that the Defendant had been in prison had absolutely no probative value other than the impermissible evidence of his bad character. Prior to trial, the court ordered that the defendant's prior criminal history not be elicited by the Government. However, Detective Garcia not only testified as to the Defendant's inmate status, but that he was a mentor to other inmates and got along well with them.

Whether the Government intended to elicit testimony of the Defendant's prior prisoner status is of no moment because the immeasurable prejudice inures to the Defendant whether it was intended or not. The Government having been placed on notice that the Defendant's prior criminal record was inadmissible unless he testified, was duty bound to ensure the witnesses were made aware of that ruling.

Notwithstanding the inadmissibility of character evidence that does not meet any of the exceptions in *Rule 404(b)(2)*, *Fed.R.Evid.*, *Rule 403* precludes the admission of such evidence when the danger of unfair prejudice substantially outweighs the probative value of the evidence.¹ *United States v. Ubaldo*, 859 F.3d 690, 705 (9th Cir. 2017).

As stated above, there is no probative value to the testimony about the Defendant having been in prison. It may only serve as evidence that the Defendant is a bad person. While *Rule 404(b)(2)* functions as an exception to 404(b)(1), it not as an exception to *Rule 403*. *United States v. McElmurry*, 776 F.3d 1061, 1067 (9th Cir. 2015). Of course, there being no probative value of the evidence at all, there remains only a substantial danger of unfair prejudice. Moreover, compounding the

¹ If the evidence is not admissible pursuant to *Rule 404(b)(2)*, the weighing assessment in *Rule 403* is unnecessary.

error in admitting the improper character profile testimony, the jury will now have at the forefront of its consideration of the Defendant's guilt or innocence, that the Defendant is not normal male with adult sexual relationships that may also molest children but, he is a convicted felon that has adult sexual relationships and, he has committed crimes before so he probably committed these as well. The prejudicial impact of information about the Defendant having been in prison is so prejudicial that it is impossible for him to now receive a fair trial. The only remedy is for the court to grant the Defendant's motion for a mistrial.

3. Cumulative error

The court may find that “the combined effect of multiple trial errors may give rise to a due process violation if it renders a trial fundamentally unfair, even where each error considered individually would not require reversal.” *Parle v. Runnels*, 505 F.3d 922, 928 (9th Cir. 2007), citing to *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S. Ct. 1868, 40 L. Ed. 2d 431 (1974) and *Chambers v. Mississippi*, 410 U.S. 284, 290, n. 3, 298, 302-303, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973).

The Defendant submits that the individual errors discussed above each require that the court grant the Defendant's motion for mistrial, however, the cumulative impact of these errors have had an overwhelming prejudicial impact upon the jury that no attempt at a curing instruction will remedy. The Government's witnesses have tainted the fairness of this trial to the extent that it immeasurably encroaches upon the Defendant's due process right to a fair trial by an unbiased fact-finder. Undersigned counsel conducted no *voir dire* on the question of whether the jury knew people who had been in prison or whether the jury had a problem believing that people having been in prison are rehabilitated or more likely than others to commit felony offenses. More particular, whether they

believe that someone having been in prison may be more likely to commit a sex offense upon their release.

It is simply not possible to ascertain what each individual juror may discern and decide from the prejudicial character profile testimony in conjunction with the testimony that the Defendant has been in prison before. The court must determine whether the combined effect of these errors rendered the criminal defense *far less persuasive* and may have a *substantial and injurious effect or influence* on the jury's verdict. *Parle v. Runnels*, 505 F.3d at 928 (9th Cir. 2007)(internal citations omitted).

The error is not harmless. The court must consider the overall strength of the prosecution's case because “a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.” *Parle*, 505 F.3d at 928, quoting *Strickland v. Washington*, 466 U.S. 668, 696, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

The Defendant has been previously tried and a mistrial granted due to the jury being unable to reach a unanimous verdict and perhaps the Government's case is not as strong as it would argue to the jury. The witnesses against the Defendant did not unanimously convince the jury of the Defendant's guilt in the prior trial, and that jury was not given the improper and prejudicial evidence that has occurred here.

RESPECTFULLY SUBMITTED this 17th day of August, 2022.

LAW OFFICES OF HENRY JACOBS

PLLC

By: s/ *Henry L. Jacobs*

Henry L. Jacobs, Esq.
Attorney for Defendant

DISTRICT JUDGE'S MINUTES
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA – TUCSON

Senior U.S. District Judge: Cindy K. Jorgenson Date: September 22, 2021

USA v. Eric David Marrufo Case Number: CR-17-00976-TUC-CKJ (EJM)

Assistant U.S. Attorneys: Matthew Cassell and Rui Wang

Attorney for the defendant: Henry L. Jacobs (CJA)

Court reporter: Cheryl Cummings

Courtroom deputy: Sandra G. Fuller

The defendant is present and in custody.

JURY TRIAL - DAY 7:

9:00 a.m. All jurors are present. Jury deliberations continue for a second day.

12:40 p.m. Lunch is provided to the jurors.

3:34 p.m. – 3:37 p.m. The Court, counsel, and the defendant are present and discuss responses to the jury's two questions. The Court and counsel prepare written responses which are provided to the jury.

3:58 p.m. The Court, counsel, and the defendant are present and discuss a response to the jury's third question. There being no objection by counsel, the Court will read the Allen charge to the jury.

4:09 p.m. The jury enters the courtroom. The Court reads the Allen instruction to the jury.

4:12 p.m.-4:15 p.m. The jury is excused to continue deliberations. The Court and counsel discuss legal matters.

4:30 p.m. The Court, counsel, and the defendant are present and discuss the jury's fourth question.

4:33 p.m. The jury enters the courtroom. The Court declares a mistrial due to the jury being deadlocked. The jury is released from the admonition and excused from the courtroom.

4:35 p.m. The Court sets a status conference to discuss a new trial date on **September 28, 2021 at**

11:00 a.m. The defendant agrees to be present via video teleconference on this date.

Jury trial: 9:00 a.m. to 4:38 p.m. (28 minutes)

Jury deliberation: 9:00 a.m. to 4:33 p.m. (7 hours and 33 minutes)

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CLERK US DISTRICT COURT
DISTRICT OF ARIZONA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Eric David Marrufo,

Defendant.

CR 17-00976-CKJ (EJM)

**SUPERSEDING
INDICTMENT**

Violations:

18 U.S.C. §§ 2241(c), 2246(2) and 1153
(Aggravated Sexual Abuse of a Child)
Counts 1-5

18 U.S.C. §§ 2244(a)(5), 2246(3) and 1153
(Abusive Sexual Contact of a Child)
Count 6

THE GRAND JURY CHARGES:

VICTIM CASE

COUNT 1

Between on or about August 1, 2006 and on or about August 1, 2008, in the District of Arizona, within the confines of the Pascua Yaqui Tribe, Indian Country, ERIC DAVID MARRUFO, an Indian, did knowingly engage in and attempt to engage in a sexual act with the victim, E.M, a child under the age of 12, to wit: contact between the defendant's penis and E.M.'s vulva, upon penetration, however slight, in violation of Title 18 United States Code Sections 2241(c), 2246(2), and 1153.

COUNT 2

Between on or about August 1, 2006 and on or about August 1, 2008, in the District of Arizona, within the confines of the Pascua Yaqui Tribe, Indian Country, ERIC DAVID MARRUFO, an Indian, did knowingly engage in and attempt to engage in a sexual act with

1 the victim, E.M, a child under the age of 12, to wit: causing the intentional touching of the
2 defendant's penis by the mouth of E.M., in violation of Title 18 United States Code
3 Sections 2241(c), 2246(2), and 1153.

4 **COUNT 3**

5 Between on or about August 1, 2006 and on or about August 1, 2008, in the District
6 of Arizona, within the confines of the Pascua Yaqui Tribe, Indian Country, ERIC DAVID
7 MARRUFO, an Indian, did knowingly engage in and attempt to engage in a sexual act with
8 the victim, R.M, a child under the age of 12, to wit: causing the intentional touching of the
9 defendant's penis by the mouth of R.M., in violation of Title 18 United States Code
10 Sections 2241(c), 2246(2), and 1153.

11 **COUNT 4**

12 Between on or about August 1, 2006 and on or about August 1, 2008, in the District
13 of Arizona, within the confines of the Pascua Yaqui Tribe, Indian Country, ERIC DAVID
14 MARRUFO, an Indian, did knowingly engage in and attempt to engage in a sexual act with
15 the victim, E.M, a child under the age of 12, to wit: the intentional touching by the
16 defendant's mouth on the genitalia of E.M., in violation of Title 18 United States Code
17 Sections 2241(c), 2246(2), and 1153.

18 **COUNT 5**

19 Between on or about August 1, 2006 and on or about August 1, 2008, in the District
20 of Arizona, within the confines of the Pascua Yaqui Tribe, Indian Country, ERIC DAVID
21 MARRUFO, an Indian, did knowingly engage in and attempt to engage in a sexual act with
22 the victim, R.M, a child under the age of 12, to wit: the intentional touching by the
23 defendant's hands on the genitalia of R.M., with the intent to abuse, humiliate, harass,
24 degrade, and arouse and gratify the sexual desire of any person, in violation of Title 18
25 United States Code Sections 2241(c), 2246(2), and 1153.

26 **COUNT 6**

27 Between on or about August 1, 2006 and on or about August 1, 2008, in the District
28 of Arizona, within the confines of the Pascua Yaqui Tribe, Indian Country, ERIC DAVID

1 MARRUFO, an Indian, did knowingly cause a sexual contact, with the victim, E.M., a
2 child under the age of 12, to wit: the intentional and direct touching of the defendant's
3 penis with E.M.'s hand, with the intent to abuse, humiliate, harass, degrade, and arouse and
4 gratify the sexual desire of any person, in violation of Title 18 United States Code Sections
5 2244(a)(5), 2246(3), and 1153.

6
7 A TRUE BILL

8 /s/

9 FOREPERSON OF THE GRAND JURY
Dated: June 9, 2021

10
11 GLENN B. McCORMICK
Acting United States Attorney
District of Arizona

**REDACTED FOR
PUBLIC DISCLOSURE**

12 /s/

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14 MATTHEW C. CASSELL
RUI WANG
Assistant U.S. Attorneys
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