

IN THE SUPERIOR COURT OF THE SAN DIEGO JUDICIAL DISTRICT
CENTRAL DIVISION
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

DEPARTMENT NO. 55

HONORABLE KENNETH K. SO, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,) SUPERIOR COURT
PLAINTIFF,) CASE NO. SCD241238
VS.) DISTRICT ATTORNEY
RICHARD ERIC ROSS,) CASE NO. ADE743
DEFENDANT.) PAGES 326 THROUGH 610,
INCLUSIVE.
_____)
)

REPORTER'S TRIAL TRANSCRIPT

APRIL 1, 2, 3 AND 4, 2014

VOLUME 2

APPEARANCES:

FOR THE PLAINTIFF,
THE PEOPLE OF THE
STATE OF CALIFORNIA:

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CERTIFIED ELECTRONIC COPY

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I N D E X -- PAGE 1

VOLUME 2

PEOPLE VS. RICHARD ERIC ROSS, SCD241238

PAGE

PROCEEDINGS

TUESDAY, APRIL 1, 2014 - 9:17 A.M.....	326
TUESDAY, APRIL 1, 2014 - 1:36 P.M.....	350
WEDNESDAY, APRIL 2 - 9:31 A.M.....	380
WEDNESDAY, APRIL 2 - 1:31 P.M.....	448
THURSDAY, APRIL 3 - 8:49 A.M.....	507
THURSDAY, APRIL 3 - 1:44 P.M.....	584
FRIDAY, APRIL 4, 2014 - 10:29 A.M.....	588

CHRONOLOGICAL WITNESSES

APRIL 1, 2014

<u>SCHULTZ, CHRISTINA CUARON - VOL. 2</u>	
THE PEOPLE'S WITNESS.....	330
DIRECT EXAMINATION	
BY MS. DI TILLIO:.....	331
CROSS-EXAMINATION	
BY MS. OLIVER:.....	356
REDIRECT EXAMINATION	
BY MS. DI TILLIO:.....	367
RECROSS-EXAMINATION	
BY MS. OLIVER:.....	372

I N D E X -- PAGE 2

VOLUME 2

PEOPLE VS. RICHARD ERIC ROSS, SCD241238

	<u>PAGE</u>
<u>APRIL 2, 2014</u>	
<u>FORTIN, LAURIE - VOL. 2</u>	
THE PEOPLE'S WITNESS.....	394
DIRECT EXAMINATION	
BY MS. DI TILLIO:.....	394
CROSS-EXAMINATION	
BY MS. OLIVER:.....	413
REDIRECT EXAMINATION	
BY MS. DI TILLIO:.....	417
RECROSS-EXAMINATION	
BY MS. OLIVER:.....	420
REDIRECT EXAMINATION	
BY MS. DI TILLIO:.....	422
<u>R., TAMI - VOL. 2</u>	
THE DEFENSE WITNESS.....	423
DIRECT EXAMINATION	
BY MS. OLIVER:.....	423
CROSS-EXAMINATION	
BY MS. DI TILLIO:.....	424
<u>L., MELISSA - VOL. 2</u>	
THE PEOPLE'S WITNESS IN REBUTTAL.....	222
DIRECT EXAMINATION	
BY MS. DI TILLIO:.....	456
CROSS-EXAMINATION	
BY MS. OLIVER:.....	458
<u>L., ALLAN - VOL. 2</u>	
THE PEOPLE'S WITNESS.....	260
DIRECT EXAMINATION	
BY MS. DI TILLIO:.....	459
CROSS-EXAMINATION	
BY MS. OLIVER:.....	462
REDIRECT EXAMINATION	
BY MS. DI TILLIO:.....	464
RECROSS-EXAMINATION	
BY MS. OLIVER:.....	464

I N D E X -- PAGE 3
OF EXHIBITS
VOLUME 2

PEOPLE VS. RICHARD ROSS, SCD241238

PAGE

COURT'S EXHIBITS MARKED FOR IDENTIFICATION

EXHIBIT 13 - VIDEO CD, INTERVIEW OF HANNAH C. ON 5/30/2012, INTERVIEWED BY CHRISTINA SCHULTZ VOL. 2.....	341
EXHIBIT 13A - 38-PAGE DOCUMENT, TRANSCRIPT OF THE DIALOGUE OF COURT'S EXHIBIT 13 VOL. 2.....	341
EXHIBIT 14 - 8 1/2 BY 11-INCH PAGE CONTAINING DRAWING OF FEMALE ANATOMICAL FIGURE, FRONT; VOL. 2.....	342
EXHIBIT 15 - 8 1/2 BY 11-INCH PAGE CONTAINING DRAWING OF FEMALE ANATOMICAL FIGURE, BACK VOL. 2.....	342
EXHIBIT 16 - VIDEO CD, INTERVIEW OF BREANNA L. ON 5/30/2012, INTERVIEWED BY CHRISTINA SCHULTZ VOL. 2.....	348
EXHIBIT 16A - 54-PAGE DOCUMENT, TRANSCRIPT OF THE DIALOGUE OF COURT'S EXHIBIT 16 VOL. 2.....	348
EXHIBIT 17 - 8 1/2 BY 11-INCH PAGE DEPICTING ANATOMICAL DRAWING OF GIRL, FRONT VOL. 2.....	352
EXHIBIT 18 - 8 1/2 BY 11-INCH PAGE DEPICTING ANATOMICAL DRAWING OF GIRL, BACK VOL. 2.....	354
EXHIBIT 19 - 8 1/2 BY 11-INCH PAGE DEPICTING ANATOMICAL DRAWING OF BOY, FRONT VOL. 2.....	355

I N D E X -- PAGE 4
OF EXHIBITS
VOLUME 2

PEOPLE VS. RICHARD ROSS, SCD241238

PAGE

COURT'S EXHIBITS MARKED FOR IDENTIFICATION

EXHIBIT 20 - 8 1/2 BY 11-INCH PAGE DEPICTING ANATOMICAL DRAWING OF BOY, BACK VOL. 2.....	354
EXHIBIT 21 - CERTIFIED COPY OF REQUEST FOR CIVIL HARASSMENT RESTRAINING ORDER WITH DECLARATION, SEVEN PAGES TOTAL VOL. 2.....	425

COURT'S EXHIBITS RECEIVED INTO EVIDENCE

EXHIBIT 1 THROUGH 20 VOL. 2.....	422
EXHIBIT 21 VOL. 2.....	425

1 SAN DIEGO, CALIFORNIA; TUESDAY, APRIL 1, 2014

2 9:17 A.M.

3 ---000---

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
5 COURT, OUTSIDE THE PRESENCE OF THE JURORS AND
6 THE ALTERNATE JURORS.)

7 ---000---

8 THE COURT: THE RECORD WILL REFLECT THE DEFENDANT
9 AND ATTORNEYS ARE PRESENT.

10 MS. OLIVER: YOUR HONOR, AFTER RE-REVIEWING THE
11 TRANSCRIPT THAT MISS DI TILLIO PROVIDED ME IN REGARD TO
12 BREANNA'S FORENSIC INTERVIEW, I E-MAILED HER ON SUNDAY,
13 MARCH 30TH. IT WAS EXTREMELY LATE IN THE EVENING. SO IT
14 WAS REALLY ALMOST LIKE THE NEXT DAY.

15 IN ANY EVENT, TELLING HER THAT I WOULD BE
16 OPPOSING THE CONTENT ON PAGES 41 THROUGH 43 OF BREANNA'S
17 FORENSIC INTERVIEW AND ASKING HER WOULD SHE BE OPPOSED TO
18 REDACTING THAT PORTION.

19 THE REASON FOR MY OBJECTION IS BECAUSE, ON
20 PAGE 41, LINE 1, MISS SCHULTZ ASKS BREANNA, "OKAY. HAVE
21 YOU EVER SEEN ERIC TOUCHING OR BOTHERING OTHER KIDS?"

22 AND BREANNA'S RESPONSE IS, "NO, HE JUST --
23 WELL, MY SISTER AND MY FRIEND MELANIE -- NO, MADISON.
24 SHE CAME TO MY HOUSE, LEFT THE DOG -- SHE LEFT A DOG AT
25 MY HOUSE. AND, LIKE, I KEPT ON PLAYING WITH IT. AND NOW
26 -- IT'S HER FAVORITE TOY NOW. HE CARRIED BOTH OF THOSE
27 GIRLS AT THE SAME TIME AND KEPT HIS FINGER IN HER PRIVATE
28 WHILE HE WAS CARRYING THEM. AND HE DOES THIS TO ME."

1 SO BASED UPON THAT, I ASKED HER TO REDACT
2 BECAUSE THE CONVERSATION THEN GOES ON TALKING ABOUT
3 MADISON, MISS SCHULTZ TRYING TO ELICIT INFORMATION ABOUT
4 MADISON, WHO IS LATER REFERRED TO AS MELANIE ON PAGE 42.
5 AND THEN THAT CONVERSATION ENDS ON PAGE 43, ON LINE 6.

6 AND ALSO ON PAGE 4 -- I'M SORRY -- PAGE 43,
7 ON LINE 4, BREANNA SAID, "NO" --

8 MICHELLE ASKED, "DID YOU EVER SEE ERIC
9 TOUCHING MELANIE?"

10 AND SHE SAID, "NO, HE NEVER TOUCHED
11 MELANIE."

12 SO THERE'S SOME DISCUSSION ABOUT A MELANIE
13 AND/OR A MADISON.

14 THE COURT: OKAY.

15 MS. DI TILLIO: SO, YOUR HONOR, WHEN I REVIEWED
16 MISS OLIVER'S REQUEST, I TOOK A LOOK AT THE SPECIFIC
17 LANGUAGE TO WHICH SHE REFERRED, WHICH STARTS ON PAGE 41,
18 LINE 1, AND THEN CONTINUES ALL THROUGH THAT PAGE, PAGE 43
19 AND A PORTION OF -- 42 AND A PORTION OF 43, UP TO LINE --
20 BASICALLY, THE END OF LINE 1.

21 AND SO I HAVE PREPARED A REDACTED
22 TRANSCRIPT. AND I REQUESTED THAT MY TECHNICAL DEPARTMENT
23 PREPARE A REDACTED VIDEO, TAKING THAT PORTION OUT WHERE
24 THERE IS SOME REFERENCE TO OTHER CHILDREN.

25 THE COURT: AND WHEN IS THAT GOING TO BE --

26 MS. DI TILLIO: THE TRANSCRIPT IS BEING COPIED
27 RIGHT NOW. THEY'RE WORKING ON IT. I DON'T THINK IT'S
28 GOING TO TAKE VERY LONG, BUT, SINCE THERE ARE TWO VIDEOS,

1 I JUST OPT TO PLAY THE OTHER ONE FIRST. I UNDERSTAND
2 THERE'S NO REQUESTS FOR REDACTIONS ON THAT ONE.

3 AND BY THAT TIME I AM ASSUMING IT WILL BE
4 DONE, I WOULD JUST LIKE A COUPLE MINUTES TO REVIEW IT
5 WITH MISS OLIVER.

6 THE COURT: OH, NO, NO. I WANT YOU TO BOTH REVIEW
7 IT, BE SURE IT'S BEEN EXCISED.

8 ANYTHING ELSE?

9 MS. OLIVER: NOT THAT I KNOW OF.

10 MS. DI TILLIO: ASSUMING WE STAY SORT OF ON TRACK
11 THIS MORNING, WE MAY BE DONE THIS MORNING WITH THESE
12 WITNESSES. AND THEN I JUST HAVE THE ONE LAST WITNESS
13 TOMORROW MORNING. SHE CAN'T BE HERE THIS AFTERNOON.
14 SO --

15 THE COURT: AND THEN YOU HAVE DR. -- YOUR DOCTOR?

16 MS. OLIVER: EISEN, UH-HUH.

17 THE COURT: TOMORROW SOMETIME?

18 MS. OLIVER: I SPOKE WITH HIM. I DON'T THINK -- I
19 DON'T THINK HE WILL BE ABLE TO TESTIFY TOMORROW, NOT
20 UNTIL THURSDAY, BUT I'M GOING TO TOUCH BASES WITH HIM
21 TODAY.

22 THE COURT: OKAY. SO THEN IT LOOKS LIKE WE'RE
23 ARGUING THURSDAY, AFTER HE TESTIFIES.

24 MS. OLIVER: AND SO I WILL --

25 MS. DI TILLIO: I DON'T MEAN TO PRY.

26 BUT, IF YOUR CLIENT TESTIFIES, WOULD THAT BE
27 WEDNESDAY OR THURSDAY?

28 BECAUSE THEN I'LL BE DONE ON WEDNESDAY WITH

1 MY CASE-IN-CHIEF.

2 MS. OLIVER: IF HE WERE TO TESTIFY, I DON'T SEE --
3 I'D PUT HIM ON BEFORE DR. EISEN. I DON'T HAVE TO HAVE --
4 WE DON'T HAVE TO HAVE --

5 THE COURT: I'M JUST TRYING TO FIGURE OUT WHEN --
6 WE NEED TO TALK ABOUT JURY INSTRUCTIONS AND THE VERDICT
7 FORMS SOMETIME. AND I CAN GIVE THEM AN ESTIMATE OF THE
8 CASE.

9 SO IT LOOKS LIKE THE CASE IS GOING TO BE
10 ARGUED THURSDAY, AND WE MIGHT NOT FILL THE DAY TOMORROW
11 WITH WITNESSES.

12 MS. OLIVER: BUT, LIKE I SAID, I'M IN COMMUNICATION
13 WITH HIM. I SHOULD HAVE A BETTER IDEA OF EVERYTHING
14 TODAY.

15 THE COURT: OKAY.

16 MS. OLIVER: HOPEFULLY, DURING A BREAK OR
17 SOMETHING.

18 THE COURT CLERK: I'LL MAKE SURE THEY'RE ALL HERE
19 BEFORE I BRING THEM?

20 OH, THEY'RE ALL HERE.

21 DEPUTY SANCHEZ: I'M SURE THEY ARE.

22 ---OOO---

23 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
24 COURT, WITHIN THE PRESENCE OF THE JURORS AND
25 THE ALTERNATE JURORS.)

26 ---OOO---

27 THE COURT: THE RECORD WILL REFLECT THE DEFENDANT
28 AND THE ATTORNEYS ARE PRESENT, AS WELL AS OUR JURORS AND

1 ALTERNATE JURORS.

2 GOOD MORNING, LADIES AND GENTLEMEN. I HOPE
3 YOU STAYED DRY THIS MORNING.

4 WE'RE GOING TO CONTINUE WITH THE EVIDENCE IN
5 THE TRIAL. I ANTICIPATE AND THE LAWYERS ANTICIPATE THAT
6 THIS CASE WILL BE ARGUED TO THE JURY ON THURSDAY.
7 SOMETIMES WE MIGHT BE DARK. SOMETIMES WE HAVE DIFFICULTY
8 SCHEDULING WITNESSES. THAT MAY COME UP IN THIS CASE, BUT
9 THE BEST ESTIMATE FROM THE LAWYERS RIGHT NOW IS THE CASE
10 IS GOING TO BE ARGUED SOMEWHERE AROUND THURSDAY, GIVE OR
11 TAKE. SO PLEASE DON'T NECESSARILY HOLD US TO THAT DATE.

12 THE NEXT WITNESS, PLEASE.

13 MS. DI TILLIO: THANK YOU, YOUR HONOR.

14 THE PEOPLE CALL CHRISTINA SCHULTZ.

15 THE COURT CLERK: DO YOU SOLEMNLY STATE, UNDER
16 PENALTY OF PERJURY, THAT THE EVIDENCE THAT YOU SHALL GIVE
17 IN THIS MATTER SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
18 NOTHING BUT THE TRUTH?

19 THE WITNESS: YES.

20 THE COURT CLERK: THANK YOU.

21 PLEASE BE SEATED AT THE WITNESS STAND.

22 PLEASE STATE AND SPELL YOUR FULL NAME FOR
23 THE RECORD.

24 THE WITNESS: CHRISTINA CUARON SCHULTZ,
25 C-H-R-I-S-T-I-N-A, LAST NAME SCHULTZ, S-C-H-U-L-T-Z.

26 THE COURT: COULD YOU SPELL THE MIDDLE NAME,
27 PLEASE?

28 THE WITNESS: C-U-A-R-O-N.

1 CHRISTINA CUARON SCHULTZ,
2 A WITNESS CALLED ON BEHALF OF THE PLAINTIFF, THE PEOPLE
3 OF THE STATE OF CALIFORNIA, HAVING BEEN DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5

6

DIRECT EXAMINATION

7

8 BY MS. DI TILLIO:

9 Q. GOOD MORNING, MA'AM.

10 A. GOOD MORNING.

11 Q. HOW ARE YOU CURRENTLY EMPLOYED?

12 A. EMPLOYED WITH PALOMAR HEALTH CHILD ABUSE
13 PROGRAM.

14 Q. IN WHAT CAPACITY?

15 A. I AM THE BILINGUAL INTERVIEWER FOR THE
16 PROGRAM.

17 Q. WHAT DOES THAT MEAN, TO BE AN INTERVIEWER?

18 A. AT THE REQUEST OF LAW ENFORCEMENT OR CPS, WE
19 ARE ASKED TO CONDUCT THE LEGAL INTERVIEW WITH THE CHILD.

20 Q. AND IS THERE SOMETHING DIFFERENT ABOUT YOUR
21 INTERVIEW WITH THE CHILD THAN MAYBE A POLICE OFFICER'S
22 INTERVIEW WITH A CHILD?

23 A. YES. WE DO FOLLOW A PROTOCOL IN
24 INTERVIEWING THE CHILD.

25 Q. WHAT KIND OF PROTOCOL?

26 A. THIS PROTOCOL INVOLVES -- THERE'S THE
27 PREINTERVIEW, WHERE WE DO MEET WITH THE REFERRING AGENCY,
28 SO LAW ENFORCEMENT OR CPS, TO GATHER JUST A BRIEF SUMMARY

1 OF WHAT THE CONCERN IS.

2 AND THEN, DURING THE INTERVIEW PORTION, WE
3 INTRODUCE THE CHILD TO THE INTERVIEW ROOM. WE EXPLAIN
4 WHAT OUR ROLE IS. AND WE DO SOME RAPPORT BUILDING WITH
5 THE CHILD, TO TRY TO GET THE CHILD COMFORTABLE WITH THE
6 ROOM. AND WE INFORM THEM OF -- IT'S AN OPPORTUNITY,
7 ALSO, TO GET AN IDEA OF THE CHILD'S DEVELOPMENT LEVEL,
8 THEIR LEVEL OF LANGUAGE.

9 WE DO ASK THE CHILD TO FOLLOW SOME
10 GUIDELINES IN THE ROOM, WHICH INCLUDE TO PLEASE LET US
11 KNOW IF WE ASK THEM A QUESTION THAT THEY DON'T UNDERSTAND
12 OR TO SAY A WORD THAT THEY DON'T UNDERSTAND.

13 WE ASK THE CHILD TO CORRECT THE INTERVIEWER
14 IF THE INTERVIEWER SAYS SOMETHING THAT'S NOT CORRECT. WE
15 LET THEM KNOW THAT SOMETIMES A QUESTION IS REPEATED. AND
16 WE ALSO ASK THE CHILD TO MAKE AN AGREEMENT TO TELL THE
17 TRUTH.

18 THEN WE DO GO INTO THE TRANSITION PORTION OF
19 THE INTERVIEW, WHERE WE TYPICALLY ASK, "TELL ME WHY YOU
20 CAME HERE TODAY."

21 AT THAT POINT, IF THE CHILD HAS MADE A
22 DISCLOSURE, WE WILL TRY TO GATHER AS MUCH INFORMATION
23 ABOUT THAT EVENT OR EVENTS, THE WHO, WHAT, WHEN, WHERE.
24 AND WE DO -- AS SOON AS WE HAVE FELT THAT WE'VE EXPLORED
25 EVERYTHING WITH THE CHILD, WE DO CHECK IN WITH THE
26 INDIVIDUALS OBSERVING, LAW ENFORCEMENT, CPS. AND THERE
27 IS THE -- ON THE OTHER SIDE OF THE MIRROR, THE OBSERVERS,
28 CHECK IN WITH THEM.

1 AND THEN WE GO BACK TO THE ROOM WITH THE
2 CHILD, AND WE DO CLOSURE WITH THE CHILD. AND THEN,
3 DURING THE POST-INTERVIEW PORTION, WE WILL MEET WITH THE
4 FAMILY THEN OR THE CAREGIVER AND WITH THE TEAM TO DO SUCH
5 THINGS AS REFER FOR COUNSELING, OR IT'S AN OPPORTUNITY
6 FOR THE OTHER TEAM MEMBERS TO TALK ABOUT WHAT THEIR NEXT
7 STEPS WILL BE.

8 Q. DOES THIS PARTICULAR PROTOCOL HAVE A NAME?

9 A. WE WERE TRAINED WITH THE CHILD FORENSIC
10 INTERVIEWING -- IT'S CALLED CFIT, "CHILD FORENSIC
11 INTERVIEW TRAINING."

12 Q. AND DOES IT FOLLOW THE NATIONAL PROTOCOL?

13 A. IT IS A NATIONALLY-RECOGNIZED PROTOCOL.

14 Q. AND IS IT THE SAME FORMAT OR STYLE OF
15 INTERVIEW THAT YOU WOULD CONDUCT WITH ALL OF THE CHILDREN
16 THAT YOU INTERVIEW?

17 A. YES.

18 Q. DO YOU HAVE A PARTICULAR TRAINING OR
19 BACKGROUND THAT QUALIFIES YOU FOR THIS PARTICULAR
20 POSITION?

21 A. YES. IT IS REQUIRED THAT WE HAVE A MASTER'S
22 LEVEL. I HAVE A MASTER'S DEGREE IN SOCIAL WORK.

23 Q. AND HOW LONG HAVE YOU BEEN ENGAGED IN THIS
24 TYPE OF EMPLOYMENT?

25 A. ALMOST 10 YEARS.

26 Q. AND YOU INDICATED IT'S AT PALOMAR HOSPITAL.
27 EXPLAIN TO US HOW THAT WORKS.

28 A. THE PALOMAR HEALTH SYSTEM OPERATES THE

1 FORENSIC HEALTH SERVICES DEPARTMENT. AND UNDER THAT
2 DEPARTMENT, WE HAVE THE SEXUAL ABUSE RESPONSE TEAM, THE
3 SART PROGRAM, AND ALSO THE CHILD ABUSE PROGRAM. AND THAT
4 IS WHAT I'M INVOLVED IN, THE CHILD ABUSE PROGRAM. IN
5 ADDITION TO INTERVIEWS, WE DO MEDICAL EXAMS AS WELL.

6 Q. BUT NOT YOU, YOURSELF?

7 A. NOT MYSELF.

8 Q. AND IS THE PROTOCOL ITSELF -- IS THIS
9 SOMETHING THAT YOU WOULD MODIFY, DEPENDING ON THE AGE OF
10 THE CHILD?

11 A. WELL, AGAIN, WE WOULD TRY TO LAY ALL THE
12 GROUND RULES FOR A CHILD THAT IS CAPABLE OF UNDERSTANDING
13 THAT. WE WILL INTERVIEW AS YOUNG AS THREE YEARS OLD, BUT
14 WE WOULD PROBABLY NOT INCLUDE SOME OF THOSE PIECES TO THE
15 INTERVIEW, BUT, TYPICALLY, WE WOULD TRY TO INCLUDE
16 EVERYTHING.

17 Q. AND IS THERE AN UPPER AGE TO WHICH YOU
18 WOULD --

19 A. WE INTERVIEW TEENS AS WELL AS
20 DEVELOPMENTALLY DELAYED ADULTS.

21 Q. AND YOU INDICATED THAT IT WOULD BE -- YOU
22 DESCRIBED FOR US HOW IT WOULD BE DIFFERENT THAN A LAW
23 ENFORCEMENT INTERVIEW.

24 WHY IS THAT IMPORTANT?

25 A. WHY WOULD --

26 Q. YOUR STYLE OF INTERVIEW OF A CHILD, THIS
27 PARTICULAR PROTOCOL AND METHOD, WHY IS THAT IMPORTANT?

28 A. WELL, IT IS A STRUCTURED INTERVIEW. AND WE

1 DO THAT AS WAYS TO, NUMBER ONE, REDUCE THE NUMBER OF
2 TIMES THAT A CHILD IS INTERVIEWED, WITH HOPE THAT WE
3 WOULD INCREASE THE ACCURACY IN WHAT THE CHILD IS
4 PRESENTING AND INCREASE THE QUANTITY OF INFORMATION THAT
5 A CHILD PROVIDES.

6 Q. AND YOU TALKED A LITTLE BIT ABOUT
7 INTRODUCING THE CHILD TO THE ROOM AND THEN A RAPPORT
8 BUILDING PROCESS.

9 AND WHY IS THAT RAPPORT BUILDING IMPORTANT?

10 A. WELL, WITH CHILDREN, YOU DO WANT THEM TO
11 FEEL COMFORTABLE. OFTEN, WHEN A CHILD IS BROUGHT TO AN
12 UNFAMILIAR SETTING OR THEY KNOW POLICE ARE INVOLVED, THEY
13 SOMETIMES WILL BE AFRAID THAT THEY'VE DONE SOMETHING
14 WRONG. SO WE TRY TO GET THEM COMFORTABLE WITH THE
15 ENVIRONMENT.

16 Q. AND YOU INDICATED, ALSO, IT'S A WAY FOR YOU
17 TO SORT OF GAUGE WHERE THEY ARE DEVELOPMENTALLY; IS THAT
18 RIGHT?

19 A. YES.

20 Q. AND YOU TALKED A LITTLE BIT ABOUT WHAT
21 SOUNDS LIKE GIVING THE CHILD PERMISSION TO CORRECT YOU.

22 WHY IS THAT IMPORTANT?

23 A. WELL, OFTEN, CHILDREN, WHEN FACED WITH AN
24 ADULT, THEY KIND OF PUT THE ADULT UP ABOVE THEM, AND
25 THEY'RE BELOW THE ADULT. AND THE ADULT IS ALL KNOWING TO
26 THEM. SO WE DO THAT TO REDUCE COMMUNICATION ERRORS
27 BETWEEN THE CHILD AND ADULT.

28 Q. AND DO YOU ALSO GIVE THE CHILDREN PERMISSION

1 TO TELL YOU THAT THEY DON'T KNOW THE ANSWER TO A
2 QUESTION?

3 A. YES. THAT IS ANOTHER PIECE OF THAT. WE LET
4 THEM KNOW THAT IT'S OKAY IF THEY DO NOT KNOW AN ANSWER TO
5 SOMETHING, THAT IT'S OKAY AND NOT TO GUESS ABOUT THAT.

6 Q. DO YOU GO THROUGH THE UNDERSTANDING OF
7 WHAT'S TRUE AND WHAT'S NOT TRUE?

8 A. WELL, THE LATEST RESEARCH THAT WE -- AGAIN,
9 THIS IS A MODEL THAT IS RESEARCH BASED. AND WHAT WE HAVE
10 DONE MORE IN THE PAST COUPLE YEARS IS SIMPLY ASK THE
11 CHILD TO MAKE A PROMISE TO TELL THE TRUTH.

12 Q. AND IN YOUR CAPACITY AS A FORENSIC
13 INTERVIEWER, DID YOU HAVE THE OPPORTUNITY TO INTERVIEW AN
14 INDIVIDUAL BY THE NAME OF HANNAH, THE LAST INITIAL C.?

15 A. YES.

16 Q. AND DID THAT TAKE PLACE ON MAY 30TH, 2012?

17 A. YES.

18 Q. DO YOU RECALL THAT INTERVIEW, SPECIFICALLY?

19 A. I DO.

20 Q. DID YOU HAVE THE OPPORTUNITY TO REVIEW IT
21 BEFORE COMING IN?

22 A. YES, I DID.

23 Q. AND DO YOU RECALL, SPECIFICALLY, HOW MUCH
24 INFORMATION YOU KNEW ABOUT THE CASE BEFORE YOU SAT DOWN
25 WITH HANNAH?

26 A. TYPICALLY, IT'S AN EARLY STAGE OF THE
27 INVESTIGATION. SO, OFTEN, IT'S WHAT MAYBE THE DEPUTY HAS
28 IN THEIR REPORT, WHICH IS A SYNOPSIS. SO, USUALLY, IT'S

1 VERY LITTLE INFORMATION THAT I HAVE.

2 Q. IS IT HELPFUL TO YOU TO HAVE VERY LITTLE
3 INFORMATION, OR DOES IT PLAY A ROLE?

4 A. WELL, IT'S GOOD TO HAVE SOME INFORMATION,
5 BUT IT'S BETTER TO GO IN AND TRY TO GET THE INFORMATION
6 FROM THE CHILD AS WELL.

7 Q. AND WHEN YOU GET THE INFORMATION FROM THE
8 CHILD, DO YOU -- ARE THERE SPECIFIC TYPES OF QUESTIONS
9 THAT YOU USE OR AVOID WHEN INTERVIEWING A CHILD?

10 A. WE TRY TO USE OPEN-ENDED QUESTIONS VERSUS
11 CLOSED-ENDED QUESTIONS.

12 Q. WHY IS THAT?

13 A. WELL, WHEN A CHILD IS FACED WITH A "YES" OR
14 "NO," A CLOSED-ENDED QUESTION, YOU'RE LESS LIKELY TO GET
15 MORE INFORMATION. USUALLY, IF YOU HAVE AN OPEN-ENDED
16 QUESTION, THE CHILD WILL HAVE WHAT'S CALLED "FREE
17 RECALL." AND THEY'RE ABLE TO, TYPICALLY, GATHER A LOT
18 MORE INFORMATION WITH AN OPEN-ENDED QUESTION.

19 Q. AND WHEN YOU'RE GATHERING INFORMATION, IS
20 THE INFORMATION PROVIDED FROM THE CHILD, OR ARE YOU
21 PROVIDING THE CHILD INFORMATION THAT THEY DID NOT HAVE
22 BEFORE THEY WALKED IN THE ROOM?

23 A. WE TRY TO AVOID THE LEADING QUESTION. SO,
24 AGAIN, IT'S WHAT THE CHILD HAS TO SAY.

25 Q. AND THEN YOU'RE TRAINED IN TRYING TO GIVE
26 THE CHILD A PLACE WHERE THEY CAN DISCLOSE THAT TO YOU?

27 A. CORRECT, AND ASKING DEVELOPMENTALLY
28 APPROPRIATE QUESTIONS.

1 Q. DO YOU RECALL HOW OLD HANNAH WAS WHEN YOU
2 INTERVIEWED HER?

3 A. I DON'T REMEMBER.

4 Q. OKAY. WAS THE INTERVIEW VIDEOTAPED?

5 A. YES. ALL OF OUR INTERVIEWS ARE VIDEOTAPED.

6 Q. WHY IS THAT?

7 A. AGAIN, TO -- IT'S TO REDUCE THE NUMBER OF
8 TIMES A CHILD IS INTERVIEWED. YOU KNOW, LAW ENFORCEMENT,
9 CPS, OFTEN NEED INFORMATION ON THE CHILD. SO IT IS
10 VIDEOTAPED SO THAT THEY CAN WATCH IT, IF THEY'RE NOT
11 PRESENT AT THE INTERVIEW. AND THEN IT'S ALSO USED --
12 IT'S PRESERVED IN A CASE WHERE IT WILL GO TO COURT LATER.

13 Q. DURING THE COURSE -- DURING THE COURSE OF
14 ANY INTERVIEW, DO YOU HAVE CERTAIN TOOLS THAT YOU'RE ABLE
15 TO UTILIZE TO HELP YOU UNDERSTAND BETTER WHAT KIND OF
16 DISCLOSURE THE CHILD GIVES?

17 A. YEAH. WE -- IF APPROPRIATE, WE WILL BE ABLE
18 TO USE -- OUR PROTOCOL ALLOWS US TO DO THIS -- ANATOMICAL
19 DRAWINGS OR ANATOMICAL DOLLS. AND, AGAIN, THEY'RE USED
20 AS TOOLS TO ASSIST THE CHILD IN PROVIDING INFORMATION OR
21 TO BETTER ARTICULATE WHAT HAS HAPPENED TO THEM AS FAR AS
22 TOUCH.

23 Q. AND SO, SPECIFICALLY, JUST -- I JUST WANT TO
24 BE SPECIFIC ABOUT THIS CASE.

25 YOU TALKED ABOUT, BEFORE INTERVIEWING THE
26 CHILD, THAT YOU HAVE JUST A LITTLE BIT OF INFORMATION
27 FROM LAW ENFORCEMENT?

28 A. UH-HUH.

1 Q. DO YOU REMEMBER, SPECIFICALLY, IN THIS CASE,
2 WHAT YOU KNEW GOING IN?

3 A. WITH THE FIRST CHILD?
4 THAT THERE WAS A CONCERN OF SOME SORT OF
5 TOUCHING INVOLVING THE CHILD'S STEPSISTER'S STEPFATHER.

6 Q. SO YOU INTERVIEWED TWO CHILDREN ON THE SAME
7 DAY; IS THAT RIGHT?

8 A. YES.

9 Q. IN ADDITION TO HANNAH, WHO ELSE DID YOU
10 INTERVIEW?

11 A. THERE WAS ANOTHER CHILD BY THE NAME OF --

12 Q. YOU CAN SAY HER FIRST NAME.

13 A. -- BREANNA.

14 Q. AND DID YOU INTERVIEW BREANNA FIRST?

15 A. I BELIEVE BREANNA WAS FIRST AND HANNAH
16 SECOND.

17 Q. AND YOU HAD SOME GENERAL FRAMEWORK, KNOWING
18 WHAT WAS GOING ON, BEFORE YOU INTERVIEWED HANNAH?

19 A. YES. AND, ALSO, THERE -- I WAS TOLD THAT
20 THERE WAS NOT ONLY CONCERN WITH HANNAH, BUT THERE HAD
21 BEEN A CONCERN POSSIBLY WITH TOUCHING INVOLVING BREANNA
22 AS WELL.

23 MS. DI TILLIO: OKAY. AND SO WE'RE JUST GOING TO TALK
24 ABOUT THOSE TWO CHILDREN TODAY.

25 AND I'D LIKE TO PLAY YOUR INTERVIEW WITH
26 HANNAH AT THIS TIME.

27 YOUR HONOR, MAY I HAVE PERMISSION?

28 THE COURT: INITIALLY, COULD I HAVE THE LAWYERS AND

1 THE COURT REPORTER, PLEASE?

2 ---OOO---

3 (THE FOLLOWING PROCEEDINGS WERE HELD AT SIDEBAR,
4 OUTSIDE THE PRESENCE OF THE JURORS AND
5 THE ALTERNATE JURORS.)

6 ---OOO---

7 THE COURT: THIS IS A STANDARD INTERVIEW AT PALOMAR
8 HOSPITAL; CORRECT?

9 MS. DI TILLIO: YES.

10 THE COURT: AND THERE'S NOTHING OUT OF THE ORDINARY
11 IN THIS INTERVIEW -- AM I CORRECT? -- OTHER THAN JUST THE
12 QUESTIONS THAT WERE ASKED AND THE ANSWERS THAT WERE
13 GIVEN?

14 MS. OLIVER: YES.

15 MS. DI TILLIO: I DON'T BELIEVE SO.

16 THE COURT: I JUST NEED TO MAKE THE FINDINGS UNDER
17 EVIDENCE CODE SECTION 1360. AND I FIND THAT THEY'RE
18 SATISFIED.

19 AND THE COURT REPORTER -- EVERYBODY IS
20 STIPULATING SHE DOESN'T HAVE TO TRANSCRIBE WHAT'S ON THE
21 VIDEO?

22 MS. OLIVER: YES.

23 MS. DI TILLIO: I WOULD STIPULATE THAT, YES.

24 THE COURT: ALL RIGHT. THANK YOU.

25 ---OOO---

26 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
27 COURT, WITHIN THE PRESENCE OF THE JURORS AND
28 THE ALTERNATE JURORS.)

1 ---000---

2 THE COURT: AND THE VIDEO IS MARKED AS?

3 MS. DI TILLIO: IT'S GOING TO BE MARKED PEOPLE'S
4 NEXT-IN-ORDER.

5 THE COURT CLERK: COURT'S EXHIBIT 13.

6 MS. DI TILLIO: COURT'S 13.

7 AND I HAVE A TRANSCRIPT I'D ASK TO MARK AS
8 13A.

9 ---000---

10 (THE FOLLOWING WERE MARKED/IDENTIFIED AS
11 COURT'S EXHIBITS FOR IDENTIFICATION:

12 13 - VIDEO CD, INTERVIEW OF HANNAH C. ON
13 5/30/2012, INTERVIEWED BY CHRISTINA SCHULTZ;
14 13A - 38-PAGE DOCUMENT, TRANSCRIPT OF THE
15 DIALOGUE OF COURT'S EXHIBIT 13.)

16 ---000---

17 MS. DI TILLIO: AND, YOUR HONOR, I'M GOING TO
18 ACTUALLY PLAY IT OFF OF MY COMPUTER BECAUSE IT'S FASTER.
19 BUT I HAVE A COPY OF THE DISK AS THE EXHIBIT.

20 THE COURT: THAT'S FINE.

21 LADIES AND GENTLEMEN, AS FAR AS TRANSCRIPTS
22 ARE CONCERNED, A TRANSCRIPT IS SIMPLY ONE HUMAN BEING'S
23 ATTEMPT TO WRITE DOWN WHAT WAS SAID ON THE VIDEO.

24 IF THERE IS A DISCREPANCY BETWEEN THE
25 TRANSCRIPT AND WHAT IS ACTUALLY SAID, WHAT IS ACTUALLY
26 SAID IS THE EVIDENCE.

27 MS. DI TILLIO: MISS OLIVER, IF I MOVE IT LIKE
28 THAT, ARE YOU COMFORTABLE WITH THAT?

1 MS. OLIVER: YES.

2 MS. DI TILLIO: IS THAT OKAY?

3 MS. OLIVER: YES.

4 ---000---

5 (THEREUPON, COMMENCING AT 9:30 A.M., COURT'S
6 EXHIBIT 13 WAS PLAYED IN OPEN COURT, CONCLUDING
7 AT 10:40 A.M., NOT REPORTED.)

8 ---000---

9 THE COURT: WOULD YOU HAND THE TRANSCRIPTS DOWN TO
10 THE BAILIFF, PLEASE?

11

12 BY MS. DI TILLIO:

13 Q. I HAVE A FEW QUESTIONS TO ASK ABOUT SOME
14 INTERACTIONS WE OBSERVED DURING THE VIDEO.

15 WHEN YOU SPOKE WITH HANNAH, YOU USED A
16 DRAWING OF A GIRL TO ALLOW HER TO DESCRIBE OR POINT OUT
17 SOME OF THE BODY PARTS.

18 MAY I APPROACH, YOUR HONOR?

19 THE COURT: YES.

20 ---000---

21 (THE FOLLOWING WERE MARKED/IDENTIFIED AS
22 COURT'S EXHIBITS FOR IDENTIFICATION:

23 14 - 8 1/2 BY 11-INCH PAGE CONTAINING DRAWING
24 OF FEMALE ANATOMICAL FIGURE, FRONT;
25 15 - 8 1/2 BY 11-INCH PAGE CONTAINING DRAWING
26 OF FEMALE ANATOMICAL FIGURE, BACK.)

27 ---000---

28 ///

1 BY MS. DI TILLIO:

2 Q. I'M GOING TO SHOW YOU WHAT I'D ASK BE MARKED
3 AS COURT'S EXHIBIT 14 AND 15. LET ME SHOW YOU 14 FIRST.

4 AND CAN YOU DESCRIBE WHAT 14 IS FOR US,
5 PLEASE, COURT'S EXHIBIT 14?

6 A. THIS IS A FEMALE ANATOMICAL DRAWING. AND IT
7 IS WHERE HANNAH IDENTIFIED THE DIFFERENT BODY PARTS THAT
8 SHE SAID ERIC TOUCHED HER.

9 Q. OKAY. AND LET ME JUST BRING UP THOSE
10 DRAWINGS.

11 AND THAT STARTS OFF AS A PREPRINTED DRAWING,
12 JUST THE OUTLINE, CORRECT?

13 A. CORRECT.

14 Q. AND THEN YOU HAD HER -- SHE HERSELF MAKES
15 SOME ADDITIONAL DRAWINGS ON THERE; IS THAT RIGHT?

16 A. YES.

17 Q. AND THAT'S JUST THE FRONT SIDE OF THE PAPER;
18 IS THAT RIGHT?

19 A. CORRECT.

20 Q. OKAY. AND I'M GOING TO SHOW YOU COURT'S
21 EXHIBIT NUMBER 15.

22 DO YOU RECOGNIZE THAT DRAWING?

23 A. YES.

24 Q. CAN YOU DESCRIBE THAT FOR US?

25 A. THIS IS THE BACK SIDE OF THE SAME ANATOMICAL
26 DRAWING WHERE HANNAH IDENTIFIED THE BODY PART WHERE SHE
27 SAID ERIC TOUCHED HER.

28 Q. AND THOSE WERE THE DRAWINGS THAT SHE CREATED

1 IN CONJUNCTION WITH YOUR INTERVIEW OF HER; IS THAT
2 CORRECT?

3 A. YES.

4 Q. SO GOING BACK TO COURT'S EXHIBIT 14, TO THE
5 FRONT SIDE OF THE GIRL -- IS THAT RIGHT?

6 A. YES.

7 Q. ALL RIGHT. AND THERE ARE THREE CIRCLES THAT
8 WERE DRAWN ON THE DRAWING WHEN THOSE -- THERE'S ONE THAT
9 GOES -- WHAT APPEARS TO BE THE BREAST AREA? WOULD THAT
10 BE FAIR?

11 A. YES.

12 Q. AND THEN A SMALL ONE OVER THE VAGINAL AREA?

13 A. YES.

14 Q. AND THEN A LARGER ONE TOWARDS THE BOTTOM ON
15 THE LEGS?

16 A. CORRECT.

17 Q. WHEN HANNAH WAS TALKING ABOUT HER THIGHS,
18 WHAT AREA DID SHE MARK WITH THE CIRCLE?

19 A. THE LOWEST PART, THE BOTTOM CIRCLE.

20 Q. THE PART THAT CORRESPONDS WITH THE CHILD'S
21 THIGHS IN THE DRAWING?

22 A. YES.

23 Q. ALL RIGHT. AND WHEN SHE TALKED ABOUT HER
24 FRONT PRIVATE, WHAT PART OF THE DRAWING WAS SHE
25 REFERENCING?

26 A. THE VAGINA, VAGINAL AREA.

27 Q. AND THAT'S THE SMALLER CIRCLE?

28 A. YES, THE CENTER.

1 Q. AND I THINK HER REFERENCE DURING THE
2 INTERVIEW WAS -- I THINK SHE USED THE TERM "CHI-CHIS."
3 IS THAT A TERM YOU'VE HEARD BEFORE?

4 A. YES.

5 Q. AND WHAT PART OF THE BODY DID SHE TOUCH WHEN
6 SHE WAS TALKING ABOUT THE CHI-CHIS?

7 A. THE TOP CIRCLE, LIKE THE BREAST AREA.

8 Q. AND REFERRING YOU TO COURT'S 15, IS THAT THE
9 BACKSIDE OF THE CHILD?

10 A. YES.

11 Q. OKAY. AND THERE'S ONE CIRCLE THERE; IS THAT
12 RIGHT?

13 A. YES.

14 Q. WHAT DOES THAT CORRESPOND TO?

15 A. THE BUTTOCKS.

16 Q. AND WHAT WAS SHE REFERRING TO WHEN SHE
17 CIRCLED THE BUTTOCKS? WHAT WAS THE PHRASE SHE USED FOR
18 IT? DO YOU RECALL?

19 A. I DON'T REMEMBER.

20 Q. SHE TALKED ABOUT TOUCHING OF HER BOTTOM.

21 DOES THAT CORRESPOND WITH THE AREA SHE
22 CIRCLED THERE ON THE PICTURE?

23 A. YES.

24 MS. DI TILLIO: THANK YOU.

25 AND, YOUR HONOR, I THINK THIS MIGHT BE A
26 GOOD MOMENT FOR A BREAK, IF THAT'S ALL RIGHT WITH THE
27 COURT.

28 THE COURT: YES.

1 WE'RE GOING TO TAKE OUR MORNING RECESS.

2 LADIES AND GENTLEMEN, YOU'RE REMINDED NOT TO
3 TALK ABOUT THE CASE, NOT TO FORM OR EXPRESS AN OPINION
4 ABOUT THE CASE, NOT TO DISCUSS THE MATTER AT ALL UNTIL
5 THE MATTER IS SUBMITTED TO YOU.

6 WE'LL TAKE 15 MINUTES.

7 ---OOO---

8 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
9 COURT, OUTSIDE THE PRESENCE OF THE JURORS AND
10 THE ALTERNATE JURORS.)

11 ---OOO---

12 THE COURT: OKAY. WE'LL BE IN RECESS.

13 MS. DI TILLIO: THANK YOU, YOUR HONOR.

14 ---OOO---

15 (THEREUPON COURT WAS IN RECESS.)

16 ---OOO---

17 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
18 COURT, OUTSIDE THE PRESENCE OF THE JURORS AND
19 THE ALTERNATE JURORS.)

20 ---OOO---

21 THE COURT: I'M MAKING THE FINDINGS UNDER EVIDENCE
22 CODE SECTION 1360 THAT ALLOW THE INTRODUCTION OF THE
23 VIDEOTAPE, THAT THERE IS SUFFICIENT INDICIA OF
24 RELIABILITY.

25 ---OOO---

26 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
27 COURT, WITHIN THE PRESENCE OF THE JURORS AND
28 THE ALTERNATE JURORS.)

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THE COURT: THE RECORD WILL REFLECT THE DEFENDANT AND ATTORNEYS ARE PRESENT, AS WELL AS OUR JURORS AND ALTERNATE JURORS.

PLEASE CONTINUE.

MS. DI TILLIO: THANK YOU, YOUR HONOR.

Q. MISS SCHULTZ, EARLIER WE TALKED ABOUT THAT YOU HAD CONDUCTED TWO INTERVIEWS ON THAT SAME DAY; IS THAT CORRECT?

A. YES.

Q. ALL RIGHT. AND WAS THE OTHER INTERVIEW WITH BREANNA?

A. YES.

Q. AND IT ALSO TOOK PLACE ON THE SAME DAY, MAY 30TH, 2012, AT PALOMAR HOSPITAL?

A. CORRECT.

Q. DO YOU RECALL HOW OLD SHE WAS AT THE TIME OF THE INTERVIEW?

A. I DON'T REMEMBER HER AGE EITHER.

Q. DO YOU REMEMBER HER BEING OLDER OR YOUNGER THAN HER SISTER, HANNAH?

A. I'D SAY ABOUT THE SAME AGE.

Q. AND WAS THAT ALSO VIDEOTAPED?

A. YES.

Q. IN THE SAME ROOM?

A. YES.

Q. IS THAT THE ONLY ROOM YOU HAVE THERE, OR DO YOU HAVE MULTIPLE?

1 A. WE JUST HAVE ONE AT OUR CENTER.

2 ---000---

3 (THE FOLLOWING WERE MARKED/IDENTIFIED AS

4 COURT'S EXHIBITS FOR IDENTIFICATION:

5 16 - VIDEO CD, INTERVIEW OF BREANNA L. ON

6 5/30/2012, INTERVIEWED BY CHRISTINA SCHULTZ;

7 16A - 54-PAGE DOCUMENT, TRANSCRIPT OF THE

8 DIALOGUE OF COURT'S EXHIBIT 16.)

9 ---000---

10 MS. DI TILLIO: ALL RIGHT. I'D LIKE TO SHOW THE

11 VIDEO OF YOUR INTERVIEW WITH BREANNA.

12 AND I'M GOING TO PLAY WHAT IS MARKED AS

13 COURT'S EXHIBIT 16.

14 THE COURT: AND THE BAILIFF WILL HAND OUT

15 TRANSCRIPTS. AND THE TRANSCRIPT IS MARKED AS 16A.

16 AND, ONCE AGAIN, LADIES AND GENTLEMEN, THE

17 TRANSCRIPT IS ONE HUMAN BEING'S ATTEMPT TO WRITE DOWN

18 WHAT WAS SAID.

19 IF THERE'S A DISCREPANCY BETWEEN THE

20 TRANSCRIPT AND THE ACTUAL WORDS ON THE RECORDING, THE

21 WORDS ON THE RECORDING ARE WHAT GOVERNS.

22 MS. OLIVER: I'M SORRY, YOUR HONOR.

23 MAY I STEP OUTSIDE BEFORE WE BEGIN?

24 THE COURT: YES.

25 MS. OLIVER: THANK YOU.

26 ---000---

27 (PAUSE IN PROCEEDINGS.)

28 ---000---

1 MS. OLIVER: THANK YOU.

2 ---000---

3 (THEREUPON, COMMENCING AT 11:10 A.M., COURT'S
4 EXHIBIT 16 WAS PLAYED IN OPEN COURT, PAUSED
5 AT 11:47 A.M., NOT REPORTED.)

6 ---000---

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
8 GOING TO STOP FOR LUNCH. I KNOW IT'S EARLY.

9 IF YOU WOULD LEAVE THE TRANSCRIPTS ON YOUR
10 SEAT?

11 AND COME BACK AT 1:30.

12 YOU'RE REMINDED NOT TO TALK ABOUT THE CASE.
13 YOU'RE NOT TO FORM OR EXPRESS AN OPINION ABOUT THE CASE.
14 YOU'RE NOT TO DISCUSS THE MATTER AT ALL UNTIL THE MATTER
15 IS SUBMITTED TO YOU.

16 1:30 THIS AFTERNOON.

17 ---000---

18 (THEREUPON THE PROCEEDINGS IN THIS MATTER
19 WERE RECESSED FOR LUNCH.)

20 ---000---

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1 SAN DIEGO, CALIFORNIA; TUESDAY, APRIL 1, 2014

2 1:36 P.M.

3 ---000---

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
5 COURT, WITHIN THE PRESENCE OF THE JURORS AND
6 THE ALTERNATE JURORS.)

7 ---000---

8 THE COURT: ALL RIGHT. THE RECORD WILL REFLECT THE
9 DEFENDANT AND ATTORNEYS ARE PRESENT, AS WELL AS OUR
10 JURORS AND ALTERNATE JURORS.

11 AND WE'RE GOING TO CONTINUE WITH THE
12 EVIDENCE.

13 FOR REFERENCE, WOULD YOU LET US KNOW WHAT
14 PAGE OF THE TRANSCRIPT WE WERE ON, PLEASE?

15 MS. DI TILLIO: YES. I TURNED THE PAGE.

16 MS. OLIVER: I BELIEVE WE'RE ON PAGE 26.

17 MS. DI TILLIO: 26.

18 OKAY. THANK YOU.

19 WE WERE ON PAGE 26. AND, TIMewise, WE'RE AT
20 35 MINUTES, STOPPED AT 44 SECONDS, AND START AT 35:41.

21 BACK UP A LITTLE BIT.

22 ---000---

23 (THEREUPON, COMMENCING AT 1:36 P.M., COURT'S
24 EXHIBIT 16 WAS PLAYED IN OPEN COURT, PAUSED
25 AT 2:05 P.M., NOT REPORTED.)

26 ---000---

27 THE COURT: ALL RIGHT. WE'RE GOING TO TAKE A QUICK
28 RECESS. I THINK SOMEBODY NEEDS TO USE THE FACILITIES.

1 YOU'RE REMINDED NOT TO TALK ABOUT THE CASE,
2 NOT TO FORM OR EXPRESS AN OPINION ABOUT THE CASE, NOT TO
3 DISCUSS THE MATTER AT ALL UNTIL THE MATTER IS SUBMITTED
4 TO YOU.

5 PLEASE LEAVE THE TRANSCRIPTS ON YOUR SEAT.

6 ---000---

7 (THEREUPON COURT WAS IN RECESS.)

8 ---000---

9 THE COURT: ALL RIGHT. LET'S CONTINUE.

10 ---000---

11 (THEREUPON, COMMENCING AT 2:14 P.M., COURT'S
12 EXHIBIT 16 WAS PLAYED IN OPEN COURT, CONCLUDING
13 AT 2:25 P.M., NOT REPORTED.)

14 ---000---

15 BY MS. DI TILLIO:

16 Q. MISS SCHULTZ, SO I HAD A COUPLE QUESTIONS
17 ABOUT THAT PARTICULAR INTERVIEW.

18 I NOTICED THAT YOU ASKED BREANNA A COUPLE
19 TIMES IF THIS HAPPENED "ONCE OR MORE THAN ONCE."

20 IS THERE A REASON YOU CHOSE THAT PHRASE OF A
21 QUESTION VERSUS "HOW MANY TIMES DID IT HAPPEN"?

22 A. YEAH. WE WOULD NOT ASK A CHILD TO -- THAT
23 WOULD BE HAVING THE CHILD GUESS ABOUT THAT. BECAUSE, IF
24 IT'S HAPPENED MULTIPLE TIMES, IT WOULD BE UNLIKELY THEY
25 WOULD GIVE AN ACCURATE ANSWER TO THAT.

26 CHILDREN DON'T REALLY HAVE A CONCEPT OF --
27 IF SOMETHING HAS HAPPENED MULTIPLE TIMES, IT'S DIFFICULT
28 FOR THEM TO BE ABLE TO IDENTIFY THAT.

1 Q. SO THEY CAN DELINEATE MORE THAN ONCE, BUT
2 NOT, SPECIFICALLY, FIVE, SIX, SEVEN?

3 A. CORRECT.

4 Q. AND I HAVE SOME PHOTOGRAPHS I'D LIKE TO SHOW
5 YOU.

6 LIKewise, THERE WAS SOME DRAWING THAT
7 HAPPENED IN THE ROOM WITH BREANNA, LIKE THAT HAPPENED
8 WITH HANNAH.

9 AND DID YOU --

10 I'VE GOT FOUR MORE. SO --

11 THE COURT CLERK: COURT'S 17.

12 MS. DI TILLIO: 17.

13 THE COURT CLERK: OKAY.

14 ---000---

15 (THE FOLLOWING WAS MARKED/IDENTIFIED AS

16 COURT'S EXHIBIT FOR IDENTIFICATION:

17 17 - 8 1/2 BY 11-INCH PAGE DEPICTING

18 ANATOMICAL DRAWING OF GIRL, FRONT.)

19 ---000---

20 BY MS. DI TILLIO:

21 Q. I'M GOING TO SHOW YOU COURT'S EXHIBITS --
22 I'M GOING TO SHOW YOU WHAT'S MARKED AS COURT'S NUMBER 17.
23 I'LL GIVE YOU THE WHOLE STACK, AND YOU CAN FLIP THROUGH.

24 DO YOU RECOGNIZE THAT PHOTOGRAPH?

25 A. YES.

26 Q. IS THAT THE DRAWING THAT YOU AND -- WELL,
27 BREANNA CREATED FOR YOU IN THE COURSE OF THE INTERVIEW?

28 A. THAT SHE IDENTIFIED THE DIFFERENT BODY

1 PARTS.

2 Q. OKAY. AND WE'LL LOOK AT THAT.

3 SO IN FRONT OF YOU YOU HAVE 17.

4 IS THAT THE FRONT SIDE OF THE CHILD?

5 A. YES.

6 Q. AND IT'S A LITTLE GIRL?

7 A. YES.

8 Q. AND IS THIS, DURING THE COURSE OF THE
9 INTERVIEW, WHEN YOU WERE HAVING HER IDENTIFY HER OWN BODY
10 PARTS?

11 A. CORRECT.

12 Q. OKAY. AND WHEN SHE TALKED ABOUT THE AREA
13 AROUND THE MOUTH, WAS THAT -- IS THAT WHERE SHE CIRCLED
14 THERE WHEN SHE TALKED ABOUT KISSING?

15 A. YES.

16 Q. AND WAS SHE TALKING ABOUT KISSING TO HER OWN
17 BODY AT THAT POINT?

18 A. UMM, WHEN SHE IDENTIFIED THE MOUTH AREA?

19 Q. YES.

20 A. YES.

21 Q. AND THEN THERE'S A CIRCLE ON WHAT WOULD
22 APPEAR TO BE THE RIGHT BREAST; IS THAT ACCURATE?

23 A. YES.

24 Q. AND DID SHE HAVE A -- DO YOU RECALL IF SHE
25 HAD A SPECIFIC NAME FOR THAT?

26 A. I DON'T REMEMBER WHAT TERM SHE USED.

27 Q. OKAY. WHEN SHE USED THE -- WHEN SHE USED
28 THE TERM "BOOBIES," WHAT PART OF THE DRAWING WAS SHE

1 REFERRING TO?

2 A. THE BREAST AREA.

3 Q. AND WHEN SHE TALKED ABOUT HER -- HER

4 "PRIVATE," WHAT SPECIFIC AREA ON THE BODY WAS SHE

5 REFERRING TO?

6 A. THE VAGINAL AREA OF THE DRAWING.

7 Q. AND IS THAT THE SMALL CIRCLE THAT'S OVER THE

8 VAGINAL AREA OF THIS PARTICULAR DRAWING?

9 A. YES.

10 Q. SO THERE'S A SMALL CIRCLE, A LARGER CIRCLE

11 AS WELL.

12 WHAT WAS SHE TALKING ABOUT, DO YOU RECALL,

13 WHEN SHE WOULD DELINEATE BETWEEN THE SMALLER CIRCLE AND

14 SMALLER CIRCLE?

15 A. I THINK WHEN SHE WAS REFERRING TO WHEN SHE

16 WAS TALKING ABOUT THE BURNING FEELING SHE WAS HAVING.

17 Q. OH.

18 AND YOU HAD HER DRAW THAT ON THE PICTURE?

19 A. YES.

20 ---000---

21 (THE FOLLOWING WAS MARKED/IDENTIFIED AS

22 COURT'S EXHIBIT FOR IDENTIFICATION:

23 18 - 8 1/2 BY 11-INCH PAGE DEPICTING

24 ANATOMICAL DRAWING OF GIRL, BACK.)

25 ---000---

26 BY MS. DI TILLIO:

27 Q. AND I SHOW YOU WHAT'S MARKED -- WHICH WOULD

28 BE COURT'S 18, THE NEXT ONE IN FRONT OF YOU, THE BACKSIDE

1 OF THE GIRL DRAWING?

2 A. YES.

3 Q. DID SHE MAKE ANY NOTATION ON THAT AS HAVING
4 BEEN TOUCHED ON ANY OF THAT PART OF HER BODY?

5 A. DID NOT CIRCLE ANYTHING.

6 ---000---

7 (THE FOLLOWING WAS MARKED/IDENTIFIED AS
8 COURT'S EXHIBIT FOR IDENTIFICATION:

9 19 - 8 1/2 BY 11-INCH PAGE DEPICTING
10 ANATOMICAL DRAWING OF BOY, FRONT.)

11 ---000---

12 BY MS. DI TILLIO:

13 Q. FLIPPING TO, THEN, WHAT WOULD BE COURT'S 19,
14 IS THAT THE GIRL DRAWING OR THE BOY DRAWING?

15 A. EXHIBIT 19 IS THE MALE DRAWING.

16 Q. AND WHEN SHE TALKED ABOUT THE BOY'S OR THE
17 MAN'S PRIVATE AND SHE REFERRED TO THE "WIENER," WHAT PART
18 OF THE BODY DID SHE CIRCLE THERE?

19 A. THE AREA WHERE THE PENIS WOULD BE.

20 Q. AND THEN WHEN SHE TALKED ABOUT -- WHEN SHE
21 TALKED ABOUT ERIC LICKING HER PRIVATE, WHAT PART OF THE
22 BODY ON THE BOY PART DID SHE HIGHLIGHT OR DRAW?

23 A. SHE CIRCLED THE MOUTH AREA.

24 Q. AND IS THAT WHEN SHE TALKED ABOUT THE TONGUE
25 NOT BEING VISIBLE, BUT IT WOULD BE IN THAT AREA?

26 A. YES.

27 ---000---

28 (THE FOLLOWING WAS MARKED/IDENTIFIED AS

1 COURT'S EXHIBIT FOR IDENTIFICATION:
2 20 - 8 1/2 BY 11-INCH PAGE DEPICTING
3 ANATOMICAL DRAWING OF BOY, BACK.)

4 ---000---

5 BY MS. DI TILLIO:

6 Q. AND THEN THE NEXT ONE WOULD BE 20.
7 WOULD THAT BE ACCURATE, COURT'S 20?

8 A. YES.

9 Q. AND THIS IS THE BOY -- THE BACK OF THE BOY'S
10 SIDE?

11 A. YES.

12 Q. AND SHE DID NOT MAKE ANY NOTATIONS ON THAT
13 PART AS WELL; CORRECT?

14 A. RIGHT.

15 Q. NOW, THE NEXT PICTURE THAT YOU HAVE IN FRONT
16 OF YOU IS COURT'S EXHIBIT NUMBER 10.

17 DO YOU RECOGNIZE THAT DRAWING?

18 A. YES.

19 Q. AND WHEN DID BREANNA MAKE THIS DRAWING
20 DURING YOUR INTERVIEW WITH HER?

21 A. WELL, AT ONE POINT, SHE WAS TRYING TO
22 DESCRIBE TO ME THIS TOY, THIS BUZZING THING THAT SHE SAID
23 ERIC USED ON HER. AND SHE REQUESTED IF SHE COULD DRAW IT
24 FOR ME. SO THIS IS A DRAWING OF THIS TOY BUZZING THING
25 (INDICATING).

26 Q. ALL RIGHT. AND THE PART THAT IS THE
27 CIRCLED, WHICH IS MOSTLY TOWARDS THE CENTER OF THE
28 DRAWING, WITH THE SQUIGGLY LINES COMING OUT OF IT, WHAT

1 PART WAS SHE REFERENCING THAT WHEN SHE DREW THAT, JUST
2 THE CIRCLED PORTION?

3 A. THE PART THAT WAS USED TO TOUCH HER.

4 Q. AND THEN DID SHE DESCRIBE WHAT THE CORD,
5 WHAT THE SQUIGGLY PART WAS COMING OUT OF THE CIRCLE?

6 A. SOME SORT OF CORD OR CHARGER.

7 Q. WHAT ABOUT THE SQUARE, RECTANGULAR-ISH
8 OBJECT ON THE LOWER LEFT-HAND SIDE OF THE PHOTOGRAPH?

9 A. YOU KNOW, I DON'T REMEMBER THAT.

10 Q. OKAY. WHEN SHE TALKED ABOUT -- WHEN SHE
11 TALKED, IN THE VIDEO, ABOUT A CHARGER, DID SHE MAKE A
12 DRAWING ON THAT -- ON THAT PIECE OF PAPER AS WELL?

13 A. WELL, YES.

14 Q. WAS THAT THE SQUARE PART THERE?

15 A. I'M THINKING, YES, THAT'S WHAT IT WAS.

16 Q. ALL RIGHT. AND THEN THERE ARE SOME -- KIND
17 OF LOOKS LIKE MARKS WITH A MARKER JUST POINTING OUT THE
18 PARTICULAR PORTION OF THAT PHOTOGRAPH OF A CHARGER.

19 WAS SHE HIGHLIGHTING? WHAT WAS SHE DOING
20 WITH THAT?

21 A. I DON'T KNOW WHAT SHE WAS DOING WITH THAT.

22 Q. WAS SHE MARKING THE PAPER WITH HER PEN WHILE
23 SHE WAS DRAWING?

24 A. YES.

25 MS. DI TILLIO: ALL RIGHT. THANK YOU.

26 THANK YOU.

27 I HAVE NOTHING FURTHER AT THIS TIME.

28 THE COURT: CROSS-EXAMINATION.

1 MS. OLIVER: THANK YOU.

2

3

CROSS-EXAMINATION

4

5 BY MS. OLIVER:

6 Q. MISS SCHULTZ, WHEN YOU WERE INTERVIEWING
7 BREANNA, DID YOU NOTICE WHETHER SHE WOULD DESCRIBE EVENTS
8 TO YOU AS IF SHE HAD ACTUALLY WITNESSED THEM AND THEN
9 LATER ADMIT THAT SHE HAD NOT WITNESSED AN EVENT BUT
10 SOMEONE HAD TOLD HER SOMETHING?

11 A. THERE WERE TIMES WHERE SHE WAS DESCRIBING
12 SOMETHING, AND THEN WE DID LATER CLARIFY "WAS THAT
13 SOMETHING THAT YOU SAW OR HEARD THAT HAPPENED?"

14 AND SHE DID CLARIFY LATER.

15 Q. AND THE CLARIFICATION WOULD BE THAT SHE
16 DIDN'T ACTUALLY WITNESS IT OR EXPERIENCE IT, THAT SOMEONE
17 HAD TOLD HER?

18 A. CORRECT.

19 Q. NOW, YOU MENTIONED THAT, AT PALOMAR
20 HOSPITAL, WHERE YOU WORK, THAT THEY ALSO -- THE UNIT THAT
21 YOU WORK IN, THEY ALSO DO PHYSICAL EXAMINATIONS OF
22 CHILDREN?

23 A. YES.

24 Q. AND THE PHYSICAL EXAMINATIONS, WHERE ARE
25 THEY DONE IN PROXIMITY TO WHERE THE ACTUAL INTERVIEWS ARE
26 CONDUCTED?

27 A. A COUPLE OF ROOMS AWAY. WE HAVE A MEDICAL
28 EXAM ROOM IN THE SAME BUILDING.

1 Q. AND HOW SOON AFTER A CHILD MAKES A
2 DISCLOSURE DO YOU INTERVIEW THAT CHILD?

3 A. WELL, IT DEPENDS. SOMETIMES A CHILD WILL BE
4 BROUGHT IN TO A FORENSIC INTERVIEW, AND THEY HAVE NOT YET
5 MADE ANY TYPE OF DISCLOSURE. SO IT JUST DEPENDS ON THE
6 CASE.

7 Q. SO IT'S A CASE-BY-CASE BASIS?

8 A. YES.

9 Q. AND PRIOR TO YOU CONDUCTING YOUR INTERVIEW,
10 WHAT INFORMATION ARE YOU PROVIDED?

11 A. WELL, WE -- IF THE REFERRING AGENCY HAS
12 INFORMATION ABOUT WHAT -- IF THE CHILD HAS MADE A
13 DISCLOSURE, WHAT WAS SAID, WHO HE OR SHE TOLD, AND WHAT
14 HAPPENED.

15 Q. AND IF A MEDICAL EXAMINATION WAS DONE PRIOR
16 TO YOUR INTERVIEW, WOULD YOU RECEIVE THAT INFORMATION AS
17 WELL?

18 A. SOMETIMES.

19 Q. IF A MEDICAL EXAMINATION WAS NOT CONDUCTED
20 ON A CHILD PRIOR TO YOUR INTERVIEW, HAVE YOU HAD AN
21 OCCASION TO RECOMMEND A MEDICAL EXAMINATION AT THE
22 CONCLUSION OF YOUR INTERVIEW?

23 A. IT WOULD BE SOMETHING THAT WOULD BE
24 DISCUSSED WITH THE TEAM.

25 Q. AND WHO IS -- WHEN YOU SAY THE "TEAM," WHO
26 ARE YOU REFERRING TO?

27 A. I'M REFERRING TO THE REFERRING DETECTIVE, IF
28 THERE'S A CHILD PROTECTIVE SERVICES INVOLVED. SOMETIMES

1 WE HAVE A DISTRICT ATTORNEY THAT HAS BEEN PRESENT. AND
2 SO IT WOULD BE THAT TEAM.

3 Q. AND WHEN IS THE DISCUSSION -- IF YOU WERE TO
4 THINK THAT THE RECOMMENDATION FOR A PHYSICAL EXAMINATION
5 IS WARRANTED BASED UPON AN INTERVIEW, WHEN DOES THE TEAM
6 GET TOGETHER AND MEET TO DISCUSS THAT?

7 A. IMMEDIATELY AFTER THE INTERVIEW WITH THE
8 CHILD, WE'LL MEET.

9 Q. AND IF A RECOMMENDATION IS MADE FOR A
10 MEDICAL EVALUATION, WHEN IS THE MEDICAL EVALUATION
11 USUALLY SCHEDULED?

12 A. WELL, IF THERE'S A CONCERN THAT IT'S
13 SOMETHING ACUTE, MEANING THAT IT HAS BEEN WITHIN THE PAST
14 COUPLE DAYS OF AN ALLEGED INCIDENT, WE TRY TO GET THAT
15 DONE AS SOON AS POSSIBLE.

16 AT OUR CENTER WE DO HAVE AN ON-CALL DOCTOR,
17 BUT, DEPENDING ON SCHEDULING -- IF, SAY, THE ABUSE
18 OCCURRED SEVERAL MONTHS AGO, YEARS AGO, THEN WE WOULD
19 ARRANGE WITHIN THAT WEEK, PROBABLY, BUT KIND OF LOOK AT
20 EVERYBODY'S SCHEDULE TO SEE WHAT WORKS BEST FOR THE
21 FAMILY.

22 Q. AND SO A MEDICAL EXAMINATION CAN BE
23 CONDUCTED FOR ALLEGATIONS OF ABUSE THAT HAVE OCCURRED
24 MONTHS PRIOR?

25 A. YES.

26 Q. AND ALSO A RECOMMENDATION FOR A MEDICAL
27 EVALUATION CAN BE DONE FOR ALLEGATIONS OF ABUSE THAT
28 ALLEGEDLY OCCURRED EVEN YEARS PRIOR?

1 A. YES.

2 Q. NOW, AT THE CONCLUSION OF YOUR INTERVIEW
3 WITH HANNAH, DID YOU REQUEST A MEDICAL EVALUATION BE DONE
4 OF HER?

5 A. I WOULD NEED TO REFER TO MY REPORT. I DON'T
6 KNOW WHAT HAPPENED WITH THAT.

7 Q. DID YOU BRING YOUR REPORT WITH YOU?

8 A. I DO HAVE A COPY OF MY REPORT WITH ME.

9 Q. AND THE REPORT THAT YOU'RE REFERRING TO, IS
10 THAT THE SOCIAL WORK INTERVIEW SUMMARY?

11 A. YES.

12 Q. IF YOU HAVE IT WITH YOU, IF YOU CAN PLEASE
13 TAKE A LOOK AT IT?

14 A. YEAH. AND I'M PRETTY SURE IT'S NOT STATED
15 IN THERE THAT A MEDICAL -- I'LL PULL IT OUT.

16 Q. OKAY.

17 A. OKAY. AND THAT WOULD BE SOMETHING I WOULD
18 NOTE IN THE HISTORY. IF THEY'VE HAD AN EXAM BEFORE THE
19 INTERVIEW, THAT WOULD BE SOMETHING IN THE HISTORY, BUT
20 SOMETIMES MY REPORT WILL GET DONE PRETTY QUICKLY, AND
21 THEN, LATER, A MEDICAL EXAM WAS DONE. SO --

22 Q. OKAY. SO I'M GOING TO ASK YOU THE FIRST
23 QUESTION.

24 IN YOUR REPORT, UNDER THE CONCLUSIONS AND
25 RECOMMENDATIONS SECTION, DID YOU RECOMMEND THAT HANNAH
26 UNDERGO A MEDICAL EXAMINATION?

27 A. IT'S NOT STATED IN MY REPORT.

28 Q. IF YOU HAD MADE THAT RECOMMENDATION, WOULD

1 YOU HAVE STATED IT IN YOUR REPORT?

2 A. YES, I WOULD HAVE.

3 Q. IN REGARDS TO HANNAH, WAS THERE A DISCUSSION
4 BY THE TEAM FOR HER TO HAVE A MEDICAL EXAMINATION?

5 A. I'LL TELL YOU, GENERALLY SPEAKING, IF A
6 CHILD HAS SAID THAT THERE HAS BEEN TOUCHING AND THEY
7 DON'T DESCRIBE THAT IT HAS BEEN UNDER THE CLOTHES OR IF
8 THERE WAS PENETRATION, THEN, OFTEN, WE MAY DECIDE NOT TO
9 DO AN EXAM, IF IT'S NOT LIKE AN ACUTE SITUATION, WHERE
10 THEY MIGHT BE ABLE TO COLLECT DNA OR THAT KIND OF
11 EVIDENCE. SO --

12 Q. SO, FOR HANNAH, THE TEAM DID NOT DISCUSS
13 WHETHER OR NOT A MEDICAL EVALUATION SHOULD BE DONE IN HER
14 CASE?

15 A. YEAH. I DON'T RECALL THAT.

16 Q. NOW, YOU MENTIONED THAT THE TEAM -- THAT
17 THERE WON'T BE A RECOMMENDATION IF IT DOESN'T SEEM AS IF
18 THERE -- IF TIME HAS PASSED, AND YOU CAN'T COLLECT DNA;
19 IS THAT CORRECT?

20 A. YES.

21 Q. AND, ALSO, YOU SAID THAT A RECOMMENDATION
22 MAY NOT BE MADE IF IT'S NOT AN ACUTE --

23 CAN YOU JUST REPEAT WHAT YOU SAID?

24 A. YEAH. OKAY. SO IT MAY BE DECIDED TO NOT GO
25 FORWARD WITH THE MEDICAL EXAM IF, FOR EXAMPLE, THE ABUSE
26 OCCURRED YEARS AGO OR IF THE ABUSE WAS RECENT, BUT THERE
27 WASN'T ANY TYPE OF PENETRATION DESCRIBED.

28 HOWEVER, IF THE CHILD DOES SAY SOMETHING

1 HAPPENED WITHIN THE PAST COUPLE OF DAYS, TOUCHING, THEN
2 WE WOULD LIKELY RECOMMEND AN EXAM.

3 Q. AND WHEN YOU INTERVIEWED HANNAH, DIDN'T
4 HANNAH MAKE ALLEGATIONS THAT ERIC TOUCHED HER VAGINA WITH
5 HIS FINGERS ON THE INSIDE?

6 A. I WOULD NEED TO REFER TO MY REPORT.

7 Q. PLEASE DO SO.

8 A. UH-HUH.

9 OKAY. YES. IT DID SAY THAT SHE DESCRIBED
10 THAT HE PUT IT ON THE INSIDE.

11 Q. AND SO THE ONLY THING -- SO THERE ARE OTHER
12 THINGS THAT CAN BE FOUND THROUGH A PHYSICAL EXAMINATION
13 BESIDES DNA; IS THAT CORRECT?

14 A. POSSIBLY.

15 Q. YOU SAY POSSIBLY?

16 A. YES.

17 Q. SO POSSIBLY SOMETHING OTHER THAN DNA CAN BE
18 FOUND IN AN EXAMINATION?

19 A. YES.

20 Q. WOULD THAT POSSIBILITY INCLUDE SCARRING?

21 A. POSSIBLY.

22 MS. DI TILLIO: OBJECTION. CALLS FOR SPECULATION.

23 THE COURT: OVERRULED.

24

25 BY MS. OLIVER:

26 Q. AND COULD IT ALSO INCLUDE TEARING?

27 A. POSSIBLY, YES.

28 Q. SO A PHYSICAL EXAMINATION WOULD BE A

1 MECHANISM TO TRY TO CONFIRM WHAT A CHILD HAS SAID; IS
2 THAT CORRECT?

3 A. YES. OR TO SAY THAT IT'S -- IT'S CONSISTENT
4 WITH WHAT THE CHILD HAS ALLEGED.

5 Q. NOW, IN REGARDS TO BREANNA, WAS THERE A
6 DISCUSSION AMONGST THE TEAM THAT A MEDICAL EXAMINATION BE
7 CONDUCTED?

8 A. IT'S NOT STATED IN MY REPORT.

9 Q. IN THE REPORT FOR BREANNA?

10 A. YES.

11 MS. OLIVER: YOUR HONOR, MAY I APPROACH?

12 THE COURT: YES.

13 MS. OLIVER: THANK YOU.

14 THE WITNESS: OH, I'M SORRY. I'M LOOKING AT THE
15 WRONG ONE.

16

17 BY MS. OLIVER:

18 Q. OKAY. NOT HANNAH.

19 IN REGARDS TO BREANNA?

20 A. OKAY. YES.

21 SO I NOTED IN MY REPORT THAT IT WAS
22 DISCUSSED THAT -- SUGGESTED A MEDICAL EXAM BE DONE.

23 Q. AND AS OF THE DATE OF YOUR REPORT, HAD A
24 REQUEST FOR MEDICAL EXAMINATION BEEN CONDUCTED?

25 A. NOT ACCORDING TO MY REPORT.

26 AND JUST A NOTE ABOUT MY REPORT. SOMETIMES
27 I WILL GET THEM DONE --

28 MS. OLIVER: OBJECTION, YOUR HONOR. NONRESPONSIVE.

1 NO QUESTION PENDING.

2 THE COURT: ALL RIGHT. THAT'S SUSTAINED.

3

4 BY MS. OLIVER:

5 Q. MISS SCHULTZ, YOU TALKED EARLIER ABOUT THE
6 PROTOCOL THAT YOU FOLLOW IN REGARDS TO INTERVIEWING
7 CHILDREN; IS THAT CORRECT?

8 A. YES.

9 Q. AND YOU WERE TALKING ABOUT THE DIFFERENT
10 TYPES OF QUESTIONS THAT YOU USE AND WHY.

11 YOU MENTIONED THAT YOU USED OPEN-ENDED
12 QUESTIONS, AS OPPOSED TO "YES" OR "NO" QUESTIONS; IS THAT
13 CORRECT?

14 A. I DID STATE THAT WE TRY TO BEGIN WITH THE
15 OPEN-ENDED QUESTIONS. THERE MAY BE A TIME IN THE
16 INTERVIEW THAT YOU MAY NEED TO GET A LITTLE MORE DIRECT,
17 BUT WE -- CERTAINLY, THAT'S OUR FIRST CHOICE, ARE THE
18 OPEN-ENDED QUESTIONS.

19 Q. WHAT IS "SUGGESTIBILITY"?

20 A. "SUGGESTIBILITY" IS WHEN YOU ARE TALKING TO
21 A CHILD, AND YOU ARE PROVIDING -- POTENTIALLY PROVIDING
22 THE INFORMATION TO THE CHILD.

23 Q. WITHIN THE FORM OF THE QUESTION ITSELF?

24 A. YEAH.

25 Q. AND WHAT ARE THE DANGERS OF SUGGESTIBILITY?

26 A. WELL, ESPECIALLY TO A YOUNG CHILD -- WELL,
27 I'M SORRY. LET ME GO BACK.

28 SUGGESTIBILITY COULD BE IN TERMS OF A CHILD

1 OR AN ADULT BEING EASILY SWAYED BECAUSE OF THE WAY YOU
2 ASK THE QUESTION.

3 Q. AND WHAT ARE THE DANGERS OF SUGGESTIBILITY?

4 A. THE DANGERS WOULD BE THAT A CHILD GIVES
5 INACCURATE INFORMATION.

6 Q. AND ARE YOUNGER CHILDREN -- I GUESS, ARE
7 THEY MORE SUSCEPTIBLE TO SUGGESTIBILITY THAN OLDER
8 CHILDREN?

9 A. YES.

10 Q. AND WHEN YOU SAY THAT SOMEONE IS YOUNGER,
11 WHAT AGE RANGE ARE YOU REFERRING TO?

12 A. THREE, FOUR, FIVE, THAT -- ESPECIALLY THAT
13 AGE RANGE IS WHEN YOU NEED TO BE VERY CAREFUL.

14 Q. AND THEN WHAT ABOUT THE AGE RANGE OF SIX TO
15 10?

16 A. WELL, I MEAN, WE STILL WOULD BE CAREFUL, BUT
17 YOU'RE NOT AS AT RISK, LIKE YOU WOULD BE WITH THOSE
18 YOUNGER CHILDREN.

19 Q. SO WOULD YOU BE AT MORE RISK WITH A SEVEN-,
20 EIGHT-YEAR-OLD?

21 A. IT WOULD DEPEND ON THE CHILD, ALSO.

22 Q. SO EACH CHILD IS ALSO DIFFERENT?

23 A. YES.

24 Q. AND ARE KIDS -- ARE CHILDREN -- ARE THEY
25 ABLE TO PICK UP ON CUES OR SIGNALS THAT ADULTS ARE
26 PUTTING OUT?

27 MS. DI TILLIO: OBJECTION. VAGUE, YOUR HONOR.

28 THE COURT: SUSTAINED.

1 BY MS. OLIVER:

2 Q. WHEN YOU ARE INTERVIEWING A CHILD, YOUR JOB
3 IS NOT TO DETERMINE WHETHER OR NOT THEY'RE LYING OR
4 TELLING THE TRUTH; IS THAT CORRECT?

5 A. CORRECT.

6 Q. YOUR JOB IS JUST TO GATHER INFORMATION?

7 A. YES.

8 Q. WHEN YOU ARE INTERVIEWING THE CHILD, DO YOU
9 KNOW WHETHER OR NOT THAT CHILD HAS DISCUSSED THE CASE
10 WITH OTHER PEOPLE PRIOR TO YOU INTERVIEWING THEM?

11 A. SOMETIMES THAT WILL BE GIVEN IN THE HISTORY.
12 AND THAT'S USUALLY A QUESTION I WOULD ASK THE CHILD
13 THEMSELVES, IS "HAVE YOU DISCUSSED THIS?" OR "WHO HAVE
14 YOU TALKED TO ABOUT THIS?"

15 Q. AND, FOR EXAMPLE, IN THIS PARTICULAR CASE,
16 YOU ASKED BREANNA, AT THE BEGINNING OF THE INTERVIEW, IF
17 SHE HAD DISCUSSED WHAT HAPPENED WITH ANYONE; IS THAT
18 CORRECT?

19 A. YES.

20 Q. AND SHE SAID "NO"?

21 A. SHE MAY HAVE SAID THAT IN THE BEGINNING, BUT
22 THEN SHE LATER DID SPECIFIES WHO SHE TALKED TO ABOUT
23 THAT.

24 Q. SO, INITIALLY, SHE SAID THAT SHE HAD NOT
25 SPOKEN WITH SOMEONE, BUT THEN, LATER IN THE INTERVIEW, IT
26 CAME OUT THAT SHE HAD DISCUSSED THINGS WITH CERTAIN --

27 A. YEAH. I WOULD NEED TO LOOK AT THE SPECIFIC
28 QUESTION OR THE -- WHAT LED TO MY QUESTION AND HER

1 RESPONSE. SO --

2 Q. WELL, WHEN YOU WERE WATCHING THE VIDEO OF
3 THE INTERVIEW THAT YOU CONDUCTED WITH BREANNA, DID YOU
4 NOTICE ANY OF THAT WHEN YOU WERE WATCHING THE VIDEO?

5 A. ANY OF WHAT?

6 Q. DID YOU NOTICE WHETHER OR NOT -- WELL,
7 INITIALLY, BREANNA SAID THAT SHE HAD NOT DISCUSSED THE
8 CASE OR ANYTHING WITH SOMEONE; CORRECT?

9 A. UH-HUH, YES.

10 Q. AND THEN, LATER, DURING YOUR INTERVIEW, WHEN
11 YOU WOULD QUESTION HER, SHE WOULD ADMIT THAT THE
12 INFORMATION THAT SHE WAS PROVIDING WAS NOTHING THAT SHE
13 HAD ACTUALLY WITNESSED, BUT THINGS THAT SHE WAS TOLD; IS
14 THAT CORRECT?

15 A. RIGHT. SHE LATER CLARIFIED.

16 Q. YOU CALL IT A CLARIFICATION.

17 BUT IT WAS A DIRECT CHANGE IN WHAT SHE HAD
18 SAID; IS THAT CORRECT?

19 A. YEAH. I WOULD CALL IT CLARIFICATION.

20 Q. AND WHY WOULD YOU CALL IT CLARIFICATION?

21 A. AGAIN, IF A CHILD INITIALLY DENIED THAT THEY
22 HAD -- MAYBE -- YOU HAVE TO KIND OF LOOK AT THE BIG
23 PICTURE.

24 SO WHAT DID YOU TELL ABOUT THAT?

25 WELL, MAYBE I SHOULD HAVE BEEN MORE
26 SPECIFIC.

27 DID YOU TELL SOMEBODY ABOUT X?

28 DO YOU KNOW WHAT I MEAN?

1 SO I WOULD HAVE TO -- I WOULD HAVE TO LOOK
2 BACK AT WHAT EXACTLY WAS ASKED BEFORE.

3 Q. SO IF A CHILD CHANGES SOMETHING THAT THEY
4 TELL YOU IN AN INTERVIEW, YOU JUST CONSIDER THAT A
5 CLARIFICATION?

6 A. WELL, IT JUST DEPENDS ON WHAT EXACTLY THEY
7 CHANGED. SOMETIMES. NOT ALWAYS A CLARIFICATION.

8 Q. DO YOU RECALL THE DATE THAT YOU DRAFTED YOUR
9 SOCIAL WORK INTERVIEW SUMMARY FOR HANNAH?

10 A. NO. I DON'T NOTE THAT IN MY REPORT. SO I
11 DON'T KNOW. IT COULD HAPPEN THAT SAME DAY. IT COULD
12 HAVE BEEN THAT WEEK OR TWO WEEKS LATER. IT'S HARD TO
13 KNOW.

14 MS. OLIVER: THANK YOU.

15 NOTHING FURTHER.

16 THE COURT: REDIRECT.

17 MS. DI TILLIO: THANK YOU.

18

19 **REDIRECT EXAMINATION**

20

21 BY MS. DI TILLIO:

22 Q. HAS IT BEEN YOUR EXPERIENCE THAT THERE ARE
23 TIMES WHEN PHYSICAL EXAMINATIONS OF CHILDREN DO NOT YIELD
24 ANY FINDINGS, EVEN WHEN IT'S OTHERWISE CORROBORATED
25 ABUSE?

26 A. YES. FROM WHAT I'VE SEEN AT OUR CENTER AND
27 IN CASES THAT I'VE HEARD, YES.

28 Q. SO, ULTIMATELY, THE DECISION IN THIS

1 PARTICULAR CASE IS WITH THE INVESTIGATING AGENCY AS TO --
2 EVEN IF YOU MAKE A RECOMMENDATION, IT'S UP TO THE AGENCY
3 THAT'S BRINGING YOU THE CASE?

4 A. CORRECT. AND, REALLY, THE PARENT WILL HAVE
5 A -- A SAY IN THAT AS WELL.

6 Q. AND THE SITUATIONS THAT YOU EARLIER
7 DESCRIBED, WHERE YOU'RE AWARE THAT THERE IS SOMETIMES
8 SCARRING OR TEARING EVEN IN WEEKS OR MONTHS LATER, WHAT
9 KIND OF ABUSE IS GENERALLY DESCRIBED IN THOSE CASES?

10 A. FROM WHAT I HAVE HEARD, SOME SORT OF
11 PENETRATION, PENILE, DIGITAL PENETRATION.

12 Q. SOMETHING SIGNIFICANT OR MINOR?

13 A. IT DEPENDS.

14 Q. AND WHEN YOU TALKED ABOUT "ACUTE," ARE YOU
15 FAMILIAR WITH THE CHILD VICTIM PROTOCOL THAT OUTLINES A
16 72-HOUR PERIOD OF TIME?

17 A. IF SOMETHING HAS OCCURRED WITHIN, YES, LESS
18 THAN 72 HOURS, THAT WOULD BE ACUTE.

19 Q. THE -- WHEN BREANNA WAS DISCUSSING EVENTS
20 AND THEN LATER CLARIFIED AND INDICATED THAT THERE WERE
21 THINGS THAT WERE TOLD TO HER, WAS THAT WHEN SHE WAS
22 DISCUSSING EVENTS RELATED TO HER OR TO HANNAH?

23 A. (NO AUDIBLE RESPONSE.)

24 Q. IS THAT QUESTION CLEAR OR MURKY?

25 A. SAY IT AGAIN, PLEASE.

26 Q. OKAY. SO WE TALK A LITTLE BIT --
27 MISS OLIVER ASKED YOU QUESTIONS ABOUT HOW BREANNA
28 DESCRIBED SOME EVENTS, AND THEN YOU CLARIFIED WITH HER

1 THAT THOSE WERE THINGS SHE DIDN'T EXPERIENCE BUT THAT
2 SOMEONE HAD TOLD HER.

3 WAS SHE TALKING ABOUT THINGS THAT HAPPENED
4 TO HER OR THINGS THAT HAD HAPPENED TO HER SISTER?

5 A. I DON'T KNOW. I THINK ABOUT WHAT HAPPENED
6 TO HER.

7 Q. WHEN YOU WERE TALKING TO HER ABOUT THE
8 THINGS THAT HAD HAPPENED TO HER SISTER IN THE BED --

9 A. AGAIN, IT'S HARD TO KNOW IF --

10 Q. OKAY. I'M GOING TO GET YOU TO THAT POINT.

11 A. THANK YOU.

12 Q. I'M GOING TO FIND IT.

13 IN THE INTERIM, LET ME ASK YOU SOME OTHER
14 STUFF.

15 MISS OLIVER WAS TALKING TO YOU A LITTLE BIT
16 ABOUT SUGGESTIBILITY AND THE DANGER OF THAT BEING THAT
17 YOU MIGHT GET SOME INACCURATE INFORMATION.

18 DURING THE COURSE OF YOUR INTERVIEW, DO YOU
19 DO THINGS THAT SORT OF CONTROL FOR THE POSSIBILITY OF
20 SUGGESTING THINGS TO CHILDREN?

21 A. WELL, WE TALKED ABOUT HOW WE DO THE GROUND
22 RULES TO LET A CHILD KNOW THAT, IF THEY DON'T KNOW AN
23 ANSWER, IT'S OKAY OR, IF THEY DON'T UNDERSTAND SOMETHING,
24 TO LET US KNOW OR TO CORRECT THE INTERVIEWER IF SOMETHING
25 IS STATED THAT'S NOT CORRECT.

26 SO --

27 Q. AND YOU TALKED ABOUT USING OR AT LEAST
28 STARTING OFF WITH OPEN-ENDED QUESTIONS; IS THAT RIGHT?

1 A. YES.

2 Q. AND WHAT DOES A LEADING QUESTION MEAN TO
3 YOU?

4 A. WHEN YOU PROVIDE THE ANSWER IN THE QUESTION
5 THAT YOU ASK, WHEN YOU PROVIDE THAT INFORMATION IN THE
6 QUESTION.

7 Q. WELL, COULD YOU GIVE US AN EXAMPLE OF WHAT
8 THAT WOULD MEAN?

9 A. WELL, "I HEARD LITTLE JOEY HIT YOU ON THE
10 HEAD; IS THAT CORRECT?"

11 OR "IS THAT TRUE THAT JOEY HIT YOU ON THE
12 HEAD?"

13 THAT'S A LEADING QUESTION.

14 Q. OR ALONG THOSE LINES, IF YOU SAID, "I HEARD
15 JOEY HIT YOU IN THE HEAD," AND YOU FOLLOWED WITH, "HOW
16 DID THAT FEEL?" WOULD THAT BE SUGGESTING THAT THAT EVENT
17 HAD ACTUALLY OCCURRED?

18 A. YES.

19 Q. AND SO -- BUT THERE ARE TIMES WHEN YOU HAVE
20 TO ASK MORE DIRECT QUESTIONS?

21 A. MORE DIRECT QUESTIONS, YES.

22 Q. AND WHAT'S THE DIFFERENCE BETWEEN A DIRECT
23 QUESTION AND A LEADING QUESTION?

24 A. WELL, DIRECT, YOU'RE USING PROMPTS OR CUES
25 FOR THE CHILD, AGAIN, VERSUS PROVIDING THAT INFORMATION
26 TO THE CHILD.

27 Q. SO UTILIZING INFORMATION THE CHILD HAS
28 ALREADY GIVEN YOU AND REFOCUSING THEM BACK TO THAT POINT?

1 A. SURE. YEAH. THAT'S A GOOD WAY TO DESCRIBE
2 THAT.

3 Q. IS IT SOMETIMES DIFFICULT WITH CHILDREN TO
4 KEEP THEM --

5 WELL, LET'S PUT IT THIS WAY.

6 WHEN A CHILD SPEAKS TO YOU, DO THEY ALWAYS
7 DISCLOSE EVERYTHING TO YOU IN A VERY LINEAR FASHION, FROM
8 POINT A TO POINT B?

9 A. NO. IN FACT, ESPECIALLY IF SOMETHING HAS
10 OCCURRED FOR A LONG TIME AND THERE HAVE BEEN MULTIPLE
11 INCIDENTS, WE -- IN MY EXPERIENCE, I SEE A CHILD
12 SOMETIMES WILL JUMP AROUND A LITTLE BIT AND KIND OF GIVE
13 SOME PIECES ABOUT THIS INCIDENT AND THEN GO BACK TO
14 ANOTHER INCIDENT.

15 SO IT DOES SORT OF TAKE SOME -- SOMETHING ON
16 MY END TO TRY TO DIRECT THEM WITH A LITTLE BIT MORE OF A
17 DIRECT QUESTION, TO TRY TO GET A CLEAR UNDERSTANDING OF
18 WHAT THEY'RE TELLING ME.

19 Q. AND IS IT SORT OF LIKE GIVING A CHILD A SIGN
20 POST ALONG THE ROAD, TO GO BACK TO THIS POINT INTO TIME?
21 SO BRING THEM BACK AROUND?

22 A. SURE.

23 Q. DO YOU -- DO YOU ATTEMPT TO AVOID
24 INTRODUCING TOPICS TO THE CHILD THAT THE CHILD IS NOT
25 AWARE OF?

26 A. YES.

27 Q. AND WHY IS THAT IMPORTANT?

28 A. WELL, AGAIN, WE WOULDN'T WANT TO -- WE WANT

1 TO TRY TO GET AS RELIABLE AND ACCURATE INFORMATION AS
2 POSSIBLE FROM THE CHILD.

3 Q. AND IF YOU INTRODUCE THE TOPIC, THAT WOULD
4 SORT OF NOT ALLOW THE INFORMATION TO COME FROM HIM OR
5 HER?

6 A. CORRECT.

7 MS. DI TILLIO: THANK YOU.

8 I HAVE NOTHING FURTHER.

9 THE COURT: RE-CROSS?

10 MS. OLIVER: JUST BRIEFLY.

11

12 **RE-CROSS-EXAMINATION**

13

14 BY MS. OLIVER:

15 Q. MISS SCHULTZ, YOU RECEIVED SPECIAL TRAINING
16 ON THE PROPER WAYS TO QUESTION A CHILD; IS THAT CORRECT?

17 A. YES.

18 Q. NOW, WHEN YOU QUESTION --

19 WELL, STRIKE THAT.

20 IF ANOTHER PERSON QUESTIONS A CHILD, YOU
21 DON'T KNOW IF THEY FOLLOW THE SAME PROTOCOL THAT YOU WERE
22 TRAINED TO FOLLOW; IS THAT CORRECT?

23 A. CORRECT.

24 Q. AND SO WHEN YOU ARE INTERVIEWING A CHILD,
25 YOU DON'T KNOW IF INFORMATION HAS BEEN SUGGESTED TO THEM
26 PREVIOUSLY; IS THAT CORRECT?

27 A. I DON'T KNOW THAT.

28 MS. OLIVER: THANK YOU.

1 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
2 COURT, OUTSIDE THE PRESENCE OF THE JURORS AND
3 THE ALTERNATE JURORS.)

4 ---000---

5 THE COURT: SO TOMORROW WE'VE GOT ONE WITNESS FOR
6 THE PEOPLE?

7 MS. DI TILLIO: YES, YOUR HONOR.

8 AND IT'S MY UNDERSTANDING MISS OLIVER IS
9 GOING TO RECALL A PRIOR WITNESS FOR A BRIEF ADDITIONAL
10 TESTIMONY.

11 MS. OLIVER: YES. AND I DON'T KNOW IF I'M GOING TO
12 CALL DR. EISEN.

13 THE COURT: OKAY. WHO'S THE WITNESS YOU'RE GOING
14 TO RECALL?

15 MS. OLIVER: TAMI.

16 THE COURT: AND HOW LONG DO YOU THINK THAT WILL
17 TAKE?

18 MS. OLIVER: TAMI?

19 MAYBE NOT EVEN 10 MINUTES. LIKE, SHE'S
20 GOING TO BE BRIEF.

21 THE COURT: SO WE MAY BE --

22 MS. OLIVER: WE MAY BE DONE TOMORROW.

23 THE COURT: INSTRUCTING TOMORROW AND ARGUING?

24 MS. OLIVER: POSSIBLY.

25 MS. DI TILLIO: OKAY.

26 THE COURT: OKAY. SO I NEED TO BE SURE THAT WE
27 HAVE THE CORRECT VERDICT FORMS.

28 MS. DI TILLIO: RIGHT.

1 THE COURT: AND JURY INSTRUCTIONS.

2 MS. DI TILLIO: I HAD A COUPLE OF MODIFICATIONS
3 THAT I WANTED TO MAKE TO THE JURY INSTRUCTIONS. I DON'T
4 THINK THE VERDICT FORMS -- I'M NOT SURE IF I PROVIDED THE
5 VERDICT FORMS. I DO HAVE THOSE COMPLETED, BUT THE
6 INSTRUCTIONS I HAVE TO TWEAK JUST A LITTLE BIT.

7 WE CAN EITHER -- WE COULD COME BACK TOMORROW
8 AT 8:30. SO WE COULD TAKE A LONG -- WORK INTO THE LUNCH
9 HOUR, DEPENDING ON WHATEVER IS CONVENIENT FOR THE COURT.

10 THE COURT: WELL, WE'VE GOT A SENTENCING AT 8:30
11 THAT WILL PROBABLY TAKE 15 MINUTES OR 20 MINUTES.

12 MS. DI TILLIO: WELL, WHAT I CAN DO AS WELL, I CAN
13 E-MAIL MISS OLIVER MY COMPLETED PROPOSED JURY
14 INSTRUCTIONS.

15 THE COURT: AND VERDICT FORMS.

16 AND COULD YOU E-MAIL MARIA AS WELL, PLEASE?

17 MS. DI TILLIO: I WILL.

18 AND, THAT WAY, WE HAVE A CHANCE TO REVIEW
19 THEM TONIGHT OR TOMORROW MORNING EARLY. IT SHOULD
20 SHORTEN DOWN THE TIMEFRAME.

21 THE COURT: ALL RIGHT. SO WHAT LESSER-INCLUDED
22 OFFENSES ARE YOU -- ARE EITHER OF YOU SUGGESTING THE
23 COURT SHOULD GIVE INSTRUCTIONS ON?

24 MS. OLIVER: YOUR HONOR, I'M STILL -- I'M STILL
25 GOING -- REVIEWING THE EVIDENCE -- WELL, WHAT I BELIEVE
26 THE EVIDENCE SHOWED AND GOING THROUGH THE CHARGED
27 CONDUCT. I'LL HAVE A BETTER ANSWER FOR THE COURT
28 TOMORROW.

1 THE COURT: WELL, I JUST -- I'M JUST TRYING TO GET
2 A SENSE OF WHETHER OR NOT WE'RE GOING TO BE IN A POSITION
3 TO ARGUE THE CASE TOMORROW OR NOT. WE'LL -- I DON'T WANT
4 TO RUSH ANYBODY.

5 MS. DI TILLIO: RIGHT.

6 THE COURT: THAT'S THE THING, TOO.

7 SO WHY DON'T YOU SEND US WHAT YOU HAVE?

8 AND WE'LL PLAY IT BY EAR.

9 MISS FORTIN IS GOING TO BE HOW LONG, AN
10 HOUR?

11 MS. DI TILLIO: AT THE MOST, AT THE MOST.

12 THE COURT: SO WE SHOULD HAVE -- WE SHOULD FINISH
13 THE EVIDENCE BY THE MORNING.

14 MS. DI TILLIO: UNLESS THE DEFENDANT DECIDES TO
15 TESTIFY.

16 THE COURT: TAKES THE STAND.

17 AND THEN, IF THAT'S THE CASE, IT MIGHT GO A
18 LITTLE LONGER. WE'LL TALK ABOUT JURY INSTRUCTIONS. AND
19 I DON'T WANT TO RUSH ANYBODY TOMORROW TO -- I MAY, IF
20 THERE'S TIME, READ THE INSTRUCTIONS AND LET YOU ARGUE ON
21 THURSDAY.

22 MS. OLIVER: OKAY.

23 THE COURT: IF WE CAN AGREE ON THE INSTRUCTIONS.

24 MS. DI TILLIO: I THINK WE'LL BE CLOSE.

25 THE COURT: OKAY.

26 ALL RIGHT. THANKS.

27 MS. OLIVER: THANK YOU.

28 THE COURT: WHY DON'T YOU COME AT 8:50?

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(THEREUPON THE PROCEEDINGS IN THIS MATTER
WERE RECESSED UNTIL WEDNESDAY, APRIL 2, 2014,
AT 9:00 A.M., FOR FURTHER PROCEEDINGS.)

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1 SAN DIEGO, CALIFORNIA; WEDNESDAY, APRIL 2, 2014

2 9:31 A.M.

3 ---000---

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
5 COURT, OUTSIDE THE PRESENCE OF THE JURORS AND
6 THE ALTERNATE JURORS.)

7 ---000---

8 THE COURT: ALL RIGHT. THE RECORD WILL REFLECT THE
9 ATTORNEYS AND THE DEFENDANT ARE HERE IN THE ROSS MATTER.

10 MS. OLIVER: YOUR HONOR, I ADVISED MISS DI TILLIO
11 THIS MORNING THAT I WOULD BE SEEKING TO INTRODUCE A COURT
12 CERTIFIED COPY OF THE REQUEST FOR CIVIL HARASSMENT
13 RESTRAINING ORDERS THAT WAS FILED WITH THE COURT ON
14 MAY 21ST, 2012, OUT OF THE SAN DIEGO SUPERIOR COURT.

15 AND THE PERSON SEEKING PROTECTION IS MELISSA
16 (L.), MELISSA L. SHE TESTIFIED IN THIS TRIAL PREVIOUSLY.

17 AND THE REASON WHY I'M SEEKING TO ADMIT THIS
18 IS BECAUSE, ON THE STAND, MISS (L.) TESTIFIED THAT SHE --
19 THAT NEITHER -- THAT BREANNA WAS NOT QUESTIONED, THAT SHE
20 GAVE NO STATEMENTS AS TO ANY ALLEGED CONDUCT, NO DETAILS
21 AND INFORMATION.

22 HOWEVER, IN HER DECLARATION, SHE WRITES
23 THAT, "AT THAT POINT WE WERE CONTACTED" -- OH, IN REGARDS
24 TO BREANNA -- "SHE TOLD US WHAT HAPPENED. UPON" -- I'M
25 SORRY -- HANNAH.

26 "UPON THE TRUTH COMING OUT, BREANNA
27 ADMITTED THAT ERIC HAD BEEN TOUCHING
28 HER PRIVATE AREAS. IT TURNED OUT TO BE

1 A TIMEFRAME EQUIVALENT TO APPROXIMATELY
2 TWO YEARS."

3 AND THAT WAS DATED ON THE ALLEGED DATE OF
4 THE INCIDENT WITH HANNAH, ON MAY 21ST, 2012.

5 AND THEN THERE IS ANOTHER -- I'M NOT SURE IF
6 THERE'S ANOTHER ISSUE THAT WE NEED TO BRING UP.

7 THE COURT: ALL RIGHT. SO THAT'S WHAT YOU WANT TO
8 INTRODUCE.

9 AND IS THERE OBJECTION FROM THE PEOPLE?

10 MS. DI TILLIO: YES, YOUR HONOR.

11 THE COURT: AND WHAT'S THE OBJECTION?

12 MS. DI TILLIO: THE OBJECTION IS THAT, FIRST OF
13 ALL, THE WITNESS TESTIFIED AND WAS NEVER ASKED ABOUT THIS
14 STATEMENT AT ALL, WAS NEVER GIVEN THE OPPORTUNITY TO
15 EITHER EXPLAIN IT OR PUT IT IN A CONTEXT.

16 AND IT'S -- IT'S UNCLEAR FROM JUST THIS
17 DECLARATION -- THE DECLARATION DOES NOT INDICATE THAT SHE
18 ACTUALLY INTERVIEWED THE CHILD, JUST THAT SHE HAD THIS
19 INFORMATION.

20 AND ALLAN TESTIFIED ALREADY AS TO THE
21 DISCLOSURE THAT THE CHILD MADE TO HIM.

22 SO GIVEN THAT THEY'RE MARRIED, IT'S FEASIBLE
23 SHE GOT THE INFORMATION FROM HIM. AND I THINK THAT,
24 WITHOUT THE WITNESS AND JUST PUTTING ON THIS DECLARATION,
25 IT'S ASKING THE JURY TO SPECULATE ABOUT WHAT'S GOING ON.
26 AND IT'S NOT PROPER IMPEACHMENT, SINCE SHE WASN'T ASKED
27 ANYTHING ABOUT IT.

28 THE COURT: WELL, DOES SHE HAVE TO BE ASKED ABOUT

1 IT?

2 MS. DI TILLIO: WELL, I THINK SHE SHOULD HAVE BEEN
3 CONFRONTED WITH THE STATEMENT, IF IT'S AN INCONSISTENT
4 STATEMENT.

5 THE COURT: IS THAT WHAT THE EVIDENCE CODE SAYS?

6 MS. DI TILLIO: SHE WAS EXCUSED.

7 THE COURT: WAIT A MINUTE.

8 IS THAT WHAT THE EVIDENCE CODE SAYS?

9 MS. DI TILLIO: BUT MY POINT IS, YOUR HONOR, THIS
10 IS NOT A STATEMENT THAT SHE IS MAKING THAT IS
11 INCONSISTENT AS TO WHAT SHE HAS TESTIFIED.

12 THE COURT: ALL RIGHT. SO WHAT IS THE STATEMENT
13 THAT'S IN THERE THAT SHE'S TALKING ABOUT? WHAT IS THE
14 STATEMENT?

15 MS. DI TILLIO: IT SAYS THAT -- I CAN READ THE
16 WHOLE STATEMENT, BUT I THINK THE PERTINENT PART:

17 "UPON THE TRUTH COMING OUT, BREANNA
18 ADMITTED THAT ERIC HAS BEEN TOUCHING
19 HER PRIVATE AREAS. IT TURNED OUT TO BE
20 A TIMEFRAME EQUIVALENT TO APPROXIMATELY
21 TWO YEARS."

22 THAT DOES NOT INDICATE THAT SHE ASKED THE
23 CHILD ANYTHING. THIS IS HER DECLARATION OF INFORMATION
24 THAT SHE WAS MADE AWARE OF. SO IT'S NOT INCONSISTENT.

25 THE COURT: SO WHY IS IT INCONSISTENT?

26 MS. OLIVER: YOUR HONOR, I BELIEVE IT'S
27 INCONSISTENT. THIS WAS FILED AT 2:18. AND I BELIEVE
28 THAT MELISSA TESTIFIED THAT SHE MADE IT -- THAT THERE WAS

1 A POINT MADE FOR THE GIRLS NOT TO DISCUSS ANYTHING.

2 SHE SAID THAT THERE WAS NO DISCUSSION, THAT
3 THERE WAS NO QUESTIONING.

4 AND SO, IF THAT WERE -- AND I BELIEVE THAT
5 ALLAN TESTIFIED --

6 THE COURT: CAN I SEE THAT DECLARATION, PLEASE?

7 MS. OLIVER: YES.

8 ALLAN TESTIFIED THAT HE -- THAT, WHEN HE
9 QUESTIONED BREANNA, THAT HE ONLY ASKED HER IF ERIC HAD
10 TOUCHED HER, AND SHE SAID "YES."

11 AND SO IF THAT WERE THE CASE, THEN IT WOULD
12 -- THE TIMEFRAME WOULD NOT BE CONTAINED IN MELISSA'S
13 DECLARATION.

14 THE COURT: SO THE ISSUE IS HOW DID MISS (L.) KNOW
15 THAT IT WAS A TWO-YEAR PERIOD OF TIME? IS THAT IT,
16 BASICALLY?

17 MS. OLIVER: YES.

18 THE COURT: ALL RIGHT. THE OBJECTION IS OVERRULED.

19 I'M GOING TO LET IT IN.

20 ANYTHING ELSE?

21 MS. DI TILLIO: YES, YOUR HONOR.

22 THIS MORNING, I WAS PROVIDED WITH A PORTION
23 OF AN E-MAIL. AND IT'S ALLEGED TO HAVE COME FROM TAMI
24 (R.) TO ANITA ROSS. AND IT'S MY UNDERSTANDING THAT'S THE
25 DEFENDANT'S MOTHER. AND IT'S JUST A PORTION OF AN E-MAIL
26 THAT WAS SENT ON FRIDAY, JUNE 1ST, 2012, AT 12:06 A.M.

27 IT IS -- IT DOES NOT INDICATE -- IT
28 INDICATES THAT IT'S FROM TAMI (R.), AT HER WORK E-MAIL

1 ADDRESS, AND THEN TO MISS ROSS'S E-MAIL ADDRESS. AND IT
2 WAS FORWARDED TO WHOMEVER FROM -- IT APPEARS TO HAVE BEEN
3 FORWARDED FROM A WOMAN BY THE NAME OF JOY PALLITO TO THE
4 DEFENDANT'S PRIOR ATTORNEY ON JANUARY 16TH, 2013.

5 THE FORWARDED PORTION INDICATES:

6 "FYI I FOUND THIS E-MAIL BURIED IN
7 ERIC'S G-MAIL ACCOUNT. I HOPE IT
8 HELPS OUT."

9 SIGNED "JOY."

10 AND THEN THE E-MAIL ITSELF FROM TAMI (R.) TO
11 ANITA ROSS INDICATES:

12 "YES, VERY HARD, ESPECIALLY WHEN
13 THERE ARE MIXED FAMILIES. I REALLY
14 DO APPRECIATE THIS INPUT AND CONSIDER
15 YOU FAMILY AS WELL. THANKS AGAIN FOR
16 THE SUPPORT. AND WE WILL GET THROUGH
17 THIS. I WENT TO SEE BRE TONIGHT. I
18 JUST DO NOT BELIEVE HOW THEY HAVE
19 MANIPULATED HER INTO EVER THINKING ERIC
20 WOULD EVER DO ANYTHING TO HARM HER.
21 SHE'S THE SWEETEST THING AND SO LOVEABLE...
22 I WILL E-MAIL OR CALL IF I NEED ANYTHING.
23 AGAIN, I DO APPRECIATE THE INPUT AND
24 SUPPORT. HANG IN THERE. I WILL DO WHAT
25 I CAN FOR ERIC. HE'S A GOOD MAN AND I
26 STAND BY HIM AND WILL DO WHAT I CAN AND KEEP
27 YOU POSTED."

28 I SPOKE TO MISS (R.) ABOUT THIS BRIEFLY THIS

1 MORNING, ONCE I WAS PROVIDED THIS. AND SHE INDICATES TO
2 ME SHE HAS NO RECOLLECTION OF ACTUALLY HAVING SENT THIS,
3 TYPING THIS AND SENDING THIS.

4 SHE DID LOOK THROUGH HER PHONE AND FOUND
5 THAT THIS WAS PART OF A LARGER SERIES OF E-MAILS FROM HER
6 E-MAIL ACCOUNT TO MISS ROSS'S E-MAIL ACCOUNT AT
7 12:00 O'CLOCK IN THE MORNING ON THE DAY THAT THE POLICE
8 WERE GOING TO SERVE THE SEARCH WARRANT, AND THE DEFENDANT
9 WAS STILL LIVING IN THE HOME.

10 AS SHE INDICATES, SHE DID NOT SEND THIS.
11 SHE DOES NOT BELIEVE SHE SENT THIS, AND THERE'S NO REAL
12 FOUNDATION FOR ADMITTING THIS PARTICULAR E-MAIL.

13 I WOULD OBJECT TO ITS INTRODUCTION. AND I
14 WOULD OBJECT TO MISS (R.) HAVING TO TAKE THE STAND TO
15 EXPLAIN THIS.

16 I THINK IT'S CLEAR THAT, AT SOME POINT, THE
17 DEFENDANT WAS AWARE OF THIS E-MAIL BECAUSE IT CAME OUT OF
18 HIS G-MAIL ACCOUNT, WHICH IS NOWHERE LISTED ON THE "TO,"
19 THE "FROM" OR EVEN ANY OF THE CARBON COPIES THAT ARE
20 ASSOCIATED WITH THIS E-MAIL.

21 SO I'D OBJECT TO THE FOUNDATION OF IT.

22 THE COURT: SO WHAT'S THE RELEVANCE OF THE E-MAIL?

23 MS. OLIVER: YOUR HONOR, I'M NOT SEEKING TO ADMIT
24 THE E-MAIL ITSELF.

25 THE COURT: ALL RIGHT. WHAT ARE YOU SEEKING TO
26 ADMIT?

27 MS. OLIVER: I WAS SEEKING TO QUESTION MISS (R.)
28 REGARDING THE STATEMENT THAT SHE CAN'T BELIEVE HOW THEY

1 MANIPULATED HER, REFERRING TO BREANNA, INTO THINKING ERIC
2 WOULD DO HARM TO HER.

3 SO I WAS PLANNING ON QUESTIONING HER IN
4 REGARDS TO THAT. I DID NOT HAVE ACCESS TO THE FULL
5 STRING OF E-MAILS.

6 AND WHEN MY OFFICE ATTEMPTED TO SPEAK WITH
7 TAMI, SHE REFUSED.

8 THE COURT: SO YOU WANT HER TO SAY WHAT, THAT SHE
9 BELIEVED THE POLICE MANIPULATED --

10 MS. OLIVER: NOT THE POLICE.

11 THE COURT: -- BREANNA?

12 MS. OLIVER: NOT THE POLICE, YOUR HONOR. ALLAN,
13 ALLAN AND MELISSA.

14 THE COURT: ALLAN AND MELISSA MANIPULATED --

15 MS. OLIVER: YES.

16 THE COURT: ALL RIGHT. SO --

17 OKAY. SO IS THERE AN OBJECTION TO THAT
18 TESTIMONY FROM THE PEOPLE?

19 MS. DI TILLIO: YES, YOUR HONOR.

20 THE COURT: AND THE GROUNDS FOR -- THE LEGAL
21 GROUNDS FOR THE OBJECTION IS WHAT?

22 MS. DI TILLIO: IS THAT IT'S SPECULATIVE, AND IT'S
23 HEARSAY. IT WOULD BE BASED ON HEARSAY.

24 THE COURT: AND IT --

25 OKAY. WHAT'S THE FOUNDATION FOR ANY OF THIS
26 ANYWAY?

27 MS. OLIVER: AGAIN, I'M NOT SEEKING TO ADMIT THE
28 E-MAIL ITSELF.

1 THE COURT: RIGHT.

2 YOU WANT MISS (R.) TO SAY ALLAN AND MELISSA
3 MANIPULATED BREANNA.

4 MS. OLIVER: THAT'S WHAT -- THAT WAS HER BELIEF
5 BASED UPON HER PERSONAL EXPERIENCE WITH THOSE PARTICULAR
6 INDIVIDUALS.

7 THE COURT: OKAY. SO -- AND SO YOU'D BE OKAY IF
8 SHE CAME IN AND SAID TODAY THAT MELISSA AND ALLAN DID NOT
9 MANIPULATE BREANNA?

10 MS. OLIVER: THAT SHE DOES NOT BELIEVE THAT. AND
11 SO THEN THAT'S WHEN I WOULD SEEK TO IMPEACH HER WITH THE
12 E-MAIL.

13 THE COURT: ALL RIGHT. SO -- OKAY.

14 SO HOW IS THAT OPINION OF SOMEBODY
15 MANIPULATING A WITNESS LEGALLY ADMISSIBLE?

16 MS. OLIVER: WELL, BECAUSE IT GOES TOWARDS THE
17 POSSIBLE -- THE MOTIVE THAT WE -- THE MOTIVE IN REGARDS
18 TO ALLAN THAT WAS DISCUSSED IN THEIR WHOLE FAMILY DYNAMIC
19 IN REGARDS TO THE THREE-WAY. I THINK THAT IT'S JUST AS
20 RELEVANT.

21 THE COURT: WELL, YOU HAVE ALL OF THAT -- YOU HAVE
22 THE -- THERE IS EVIDENCE OF A THREE-WAY. SO THERE IS
23 MOTIVE THAT YOU CAN ARGUE.

24 MS. OLIVER: YES.

25 THE COURT: YOU'RE TALKING ABOUT A CONCLUSION OF
26 TAMI OR ESSENTIALLY --

27 RIGHT? THAT'S WHAT YOU'RE TALKING ABOUT
28 NOW?

1 MS. OLIVER: I'M NOT ASKING TAMI -- I'M ASKING TAMI
2 -- I WOULD HOPE TO ASK HER THAT, GIVEN WHAT SHE KNOWS
3 ABOUT HER OWN DAUGHTER, THE RELATIONSHIP THAT SHE HAS HAD
4 AND THE PROBLEMS THAT SHE'S HAD WITH ALLAN AND MELISSA,
5 DID SHE BELIEVE, WHEN THESE ALLEGATIONS CAME OUT, THAT
6 THEY HAD MANIPULATED BREANNA?

7 AND I THINK THAT'S RELEVANT. AND I ALSO
8 THINK THAT THAT IS CONSISTENT OR MAY CORROBORATE THE
9 TESTIMONY. MELISSA TESTIFIED THAT SHE BELIEVED -- OR NOT
10 THAT SHE BELIEVED -- BUT SHE TESTIFIED THAT, WHEN THE
11 ALLEGATIONS CAME OUT, THAT TAMI SUPPORTED ERIC, MR. ROSS,
12 AND THAT CPS BELIEVED THAT TAMI SUPPORTED MR. ROSS.

13 AND SO I THINK THAT THIS GOES INTO THE WHOLE
14 BIG PICTURE OF WHAT WAS ACTUALLY GOING ON DURING THIS
15 TIMEFRAME.

16 SO I UNDERSTAND THAT TAMI SAID THAT SHE
17 DOESN'T REMEMBER SENDING OUT THIS E-MAIL, BUT THE E-MAIL
18 WAS TO HER WORK ADDRESS. IT WASN'T TO A PERSONAL E-MAIL
19 ACCOUNT.

20 AND MISS (R.) -- I'M SORRY -- TAMI WAS ABLE
21 TO PULL UP THE WHOLE SERIES OF E-MAIL EXCHANGE BETWEEN
22 HER AND MISS ROSS.

23 AND FROM READING THOSE PARTICULAR -- THE
24 STRING OF E-MAILS, IT DOES NOT APPEAR AS IF THOSE E-MAILS
25 WERE GENERATED BY ANYONE OTHER THAN MISS (R.).

26 THE COURT: HOW IS THIS ANY DIFFERENT FROM ALLAN
27 COMING IN AND TESTIFYING "I'M VOUCHING FOR WHAT BREANNA
28 SAID. I'VE KNOWN HER FOR A LONG TIME. SHE'S TRUTHFUL"?

1 HOW IS THIS ANY DIFFERENT FROM THAT?

2 AND THAT WOULD NOT BE ADMISSIBLE, WOULD IT?

3 MS. OLIVER: FOR HIM TO SAY THAT HE BELIEVED
4 BREANNA BECAUSE SHE'S ALWAYS TRUTHFUL?

5 THE COURT: NO, THAT SHE -- THAT HE BELIEVED
6 BREANNA BECAUSE SHE'S TELLING THE TRUTH.

7 "I KNOW MY DAUGHTER, AND SHE'S TELLING THE
8 TRUTH."

9 ISN'T THIS THE FLIP SIDE OF THAT?

10 "I KNOW MY DAUGHTER, AND SHE IS NOT TELLING
11 THE TRUTH."

12 MS. OLIVER: I DON'T THINK SO, ESPECIALLY WHEN
13 MISS SCHULTZ, YESTERDAY, TALKED ABOUT SUGGESTIBILITY AND
14 THINGS OF THAT NATURE.

15 AND SO I THINK, WHEN YOU HAVE THAT
16 COMPONENT, IT'S NOT NECESSARILY VOUCHING, BUT I THINK IT
17 ALSO GOES TOWARDS THINGS SUCH AS SUGGESTIBILITY AND
18 THINGS OF THAT NATURE.

19 IT JUST SO HAPPENS THAT TAMI USED THE WORD
20 "MANIPULATED," AS OPPOSED TO "SUGGESTING."

21 THE COURT: ANYTHING ELSE FROM THE PEOPLE?

22 MS. DI TILLIO: YES, YOUR HONOR.

23 ESSENTIALLY, IT WOULD BE ASKING THE WITNESS
24 TO GIVE AN OPINION AS TO THE TRUTH OF THE DISCLOSURE.
25 THE OPINION WOULD BE THAT IT WAS A LIE, BUT IT'S ASKING
26 THIS WITNESS TO GIVE THEIR OPINION AS TO THE CREDIBILITY
27 OF THE WITNESS.

28 THERE IS NO EVIDENCE THAT THE CHILDREN --

1 WHETHER SHE THINKS THAT MELISSA AND ALLAN MAY HAVE PUT
2 SOMETHING IN THE CHILD'S HEAD, THERE'S NO EVIDENCE TO
3 SUPPORT THAT BECAUSE ALL THE WITNESSES HAVE SAID IS THAT
4 THAT DIDN'T HAPPEN. SO THERE'S NOTHING TO INDICATE THAT
5 THAT HAPPENED.

6 IF SHE WAS TALKING ABOUT AN EVENT WHERE SHE
7 WITNESSED THESE PEOPLE BADGERING HER CHILD, THAT MIGHT BE
8 A DIFFERENT STORY, BUT THIS IS HER OWN OPINION, IN
9 DISCUSSIONS WITH THE DEFENDANT'S MOTHER, AS TO THE CHILD.

10 SO I THINK THAT IT'S -- IT'S WAY BEYOND WHAT
11 WOULD BE RELEVANT IN THIS CONTEXT.

12 THE COURT: ALL RIGHT. AND SO WHAT I'M RULING IS
13 I'M RULING AS FOLLOWS:

14 I THINK IT'S INADMISSIBLE OPINION TESTIMONY.
15 IT CALLS FOR A CONCLUSION. AND, UNDER 352, I'M GOING TO
16 EXCLUDE IT.

17 I THINK YOU HAVE ENOUGH EVIDENCE IN THE
18 RECORD TO MAKE THE ARGUMENTS -- AND I'M REFERRING TO
19 MISS OLIVER NOW -- TO MAKE THE ARGUMENTS THAT WE HAVE
20 TALKED ABOUT ALREADY, THAT I'M SURE YOU'RE GOING TO MAKE,
21 IN PARTICULAR, THE SUGGESTIBILITY AND HOW ANY OF THE
22 QUESTIONING WAS ACCOMPLISHED.

23 SO WHAT I'M TALKING ABOUT -- I'M TALKING
24 ABOUT NOT INQUIRING ABOUT THAT PARTICULAR CONCLUSION WHEN
25 YOU PUT MISS (R.) ON THE STAND.

26 MS. DI TILLIO: WELL, THEN I WOULD ASK FOR AN OFFER
27 OF PROOF AS TO WHY SHE WOULD BE CALLED AT ALL.

28 THE COURT: AND THE OFFER OF PROOF IS, FOR

1 MISS (R.), ON YOUR -- WHEN IT'S YOUR TURN TO PRODUCE
2 EVIDENCE, MISS (R.) WILL SAY WHAT?

3 MS. OLIVER: YOUR HONOR, THAT WAS THE SOLE PURPOSE
4 OF CALLING MISS (R.).

5 THE COURT: OKAY. AND --

6 ALL RIGHT. SO IF THAT'S THE SOLE PURPOSE OF
7 CALLING MISS (R.) --

8 MS. OLIVER: OH, I'M SORRY, YOUR HONOR. THERE
9 WOULD BE ANOTHER REASON.

10 THE COURT: AND WHAT IS THAT?

11 MS. OLIVER: YOUR HONOR, I BELIEVE THAT KARINA,
12 WHEN SHE TESTIFIED, SHE INDICATED THAT, WHEN MR. ROSS
13 ALLEGEDLY PULLED DOWN HIS PANTS AND EXPOSED HIMSELF, THAT
14 HE DID NOT HAVE A SCAR. AND I WOULD BE CALLING MISS (R.)
15 TO THE STAND FOR THAT.

16 THE COURT: THAT'S FINE.

17 TO DESCRIBE WHERE THE SCAR IS?

18 MS. OLIVER: YES.

19 THE COURT: OKAY. THAT'S FINE.

20 MS. DI TILLIO: DO YOU HAVE ANY PHOTOS OR ANYTHING
21 LIKE THAT?

22 MS. OLIVER: NO.

23 THE COURT: ANYTHING ELSE?

24 SO HOW LONG DO WE ANTICIPATE THE EVIDENCE IS
25 GOING TO BE THIS MORNING?

26 MS. DI TILLIO: THIS MORNING?

27 AT LEAST AN HOUR, I WOULD THINK, FOR BOTH
28 THE WITNESSES. AND I WOULD -- I DO NEED TO DETERMINE

1 WHETHER OR NOT I'M GOING TO CALL ANY REBUTTAL.

2 THE COURT: OKAY.

3 MS. DI TILLIO: BECAUSE I'M ASSUMING THAT THIS --
4 MISS (R.) AND THE RESTRAINING ORDER IS GOING TO COME IN
5 IN DEFENDANT'S CASE.

6 SO I THINK WE NEED TO ALSO TALK ABOUT
7 WHETHER OR NOT THERE WILL BE ANY OTHER DEFENSE WITNESSES,
8 JUST SO THAT WE CAN FIGURE OUT WHERE WE ARE IN
9 SCHEDULING.

10 THE COURT: HAVE YOU MADE A DECISION ABOUT ANY
11 OTHER WITNESSES, MISS OLIVER?

12 MS. OLIVER: YOUR HONOR, I WILL NOT BE CALLING
13 DR. EISEN.

14 THE COURT: AND HOW ABOUT THE DEFENDANT? DO YOU
15 KNOW YET?

16 MS. OLIVER: THAT HAS NOT BEEN DETERMINED.

17 THE COURT: THAT DECISION POINT IS COMING UP PRETTY
18 QUICKLY.

19 MS. OLIVER: I KNOW.

20 THE COURT: ALL RIGHT. ARE WE READY TO GO THEN?

21 MS. DI TILLIO: CERTAINLY.

22 JUST -- OKAY. I'M GOING TO CALL MY WITNESS
23 AND THEN REST. SO MISS (R.) WILL HAVE TO JUST WAIT.

24 SHE'LL BE YOUR WITNESS.

25 MS. OLIVER: UH-HUH.

26 MS. DI TILLIO: OKAY. ALL RIGHT.

27 THE COURT: AND AS FAR AS ALL OF THE EXHIBITS, ANY
28 OBJECTION TO ANY OF THE EXHIBITS SO FAR?

1 MS. OLIVER: NOT THUS FAR.

2 THE COURT: OKAY. SO AT SOME POINT YOU'RE GOING TO
3 FORMALLY MOVE THEM.

4 MS. DI TILLIO: YES.

5 THE COURT: SO MY CLERK CAN KEEP TRACK OF THEM ALL.
6 THANK YOU.

7 WOULD YOU BRING THE JURY IN?

8 ---OOO---

9 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
10 COURT, WITHIN THE PRESENCE OF THE JURORS AND
11 THE ALTERNATE JURORS.)

12 ---OOO---

13 THE COURT: ALL RIGHT. THE RECORD WILL REFLECT THE
14 DEFENDANT AND THE ATTORNEYS ARE PRESENT, AS WELL AS OUR
15 PATIENT JURY.

16 THANK YOU VERY MUCH FOR BEING PATIENT.

17 SOMETIMES WE HAVE LOTS OF THINGS GOING ON IN
18 THIS COURTHOUSE AND IN THIS COURTROOM. JURORS' PATIENCE
19 IS APPRECIATED.

20 I THINK OUR ESTIMATE OF THE CASE IS STILL ON
21 TRACK. AND THE CASE WILL PROBABLY BE TO YOU SOMETIME
22 TOMORROW.

23 NEXT WITNESS, PLEASE.

24 MS. DI TILLIO: THANK YOU, YOUR HONOR.

25 THE PEOPLE CALL LAURIE FORTIN.

26 THE COURT CLERK: DO YOU SOLEMNLY STATE, UNDER
27 PENALTY OF PERJURY, THAT THE EVIDENCE THAT YOU SHALL GIVE
28 IN THIS MATTER SHALL BE THE TRUTH, THE WHOLE TRUTH, AND

1 NOTHING BUT THE TRUTH?

2 THE WITNESS: I DO.

3 THE COURT CLERK: THANK YOU.

4 PLEASE BE SEATED AT THE WITNESS STAND.

5 PLEASE STATE AND SPELL YOUR FULL NAME FOR
6 THE RECORD.

7 THE WITNESS: IT'S LAURIE FORTIN, L-A-U-R-I-E.
8 "FORTIN" IS F-O-R-T-I-N.

9 THE COURT: GO AHEAD.

10

11

LAURIE FORTIN,

12 **A WITNESS CALLED ON BEHALF OF THE PLAINTIFF, THE PEOPLE**

13 **OF THE STATE OF CALIFORNIA, HAVING BEEN DULY SWORN,**

14 **TESTIFIED AS FOLLOWS:**

15

16

DIRECT EXAMINATION

17

18 BY MS. DI TILLIO:

19 Q. GOOD MORNING, MA'AM.

20 A. GOOD MORNING.

21 Q. MISS FORTIN, HOW ARE YOU CURRENTLY EMPLOYED?

22 A. I WORK AT THE CHADWICK CENTER, WHICH IS PART
23 OF RADY CHILDREN'S HOSPITAL. AND I'M THE CLINICAL
24 COORDINATOR OF THEIR FORENSIC INTERVIEWING PROGRAM.

25 Q. WHAT IS THE CHADWICK CENTER?

26 A. IT'S A CHILD ADVOCACY CENTER, WHICH ARE
27 CHILD ABUSE CENTERS. ACROSS THE NATION, THERE'S ABOUT
28 900 OF THEM. AND THEY'RE TASKED WITH THE PREVENTION,

1 EVALUATION AND TREATMENT OF CHILD ABUSE.

2 Q. AND YOU INDICATED YOU'RE THE CLINICAL
3 COORDINATOR OF?

4 A. THE FORENSIC INTERVIEWING PROGRAM.

5 Q. AND WHAT'S THE FORENSIC INTERVIEWING
6 PROGRAM?

7 A. CHADWICK CENTER HAS THREE OR FOUR MAIN
8 PROGRAMS. THE FORENSIC INTERVIEWING PROGRAM IS PART OF
9 MEDICAL -- FORENSIC AND MEDICAL SERVICES PROGRAM OR A
10 PORTION OF THE PROGRAM.

11 AND THAT IS TASKED WITH CONDUCTING FORENSIC
12 EXAMS OF ALLEGED CHILD ABUSE VICTIMS AS WELL AS THE
13 FORENSIC INTERVIEWS. AND THE INTERVIEWS ARE CONDUCTED AT
14 THE REQUEST OF AN INVESTIGATIVE BODY, WHEN THERE'S BEEN
15 AN ALLEGATION THAT'S BEEN MADE.

16 Q. AND WHAT DOES IT MEAN TO BE THE CLINICAL
17 COORDINATOR?

18 A. I CONDUCT INTERVIEWS AS WELL AS SUPERVISE
19 AND TRAIN AND CONDUCT PEER REVIEW WITH THE OTHER
20 INTERVIEWERS.

21 Q. HOW LONG HAVE YOU BEEN THE CLINICAL
22 SUPERVISOR THERE?

23 A. SUPERVISOR SINCE 2007. AND I'VE WORKED
24 THERE SINCE 2000.

25 Q. AND HOW MANY FORENSIC INTERVIEWS DO YOU
26 THINK THAT YOU'VE COMPLETED IN YOUR CAREER?

27 A. OH, I'M UP TO ABOUT 2,500.

28 Q. AND YOU INDICATED THAT YOU ALSO SUPERVISE

1 AND DO PEER REVIEW OF OTHER INTERVIEWS DONE BY OTHER
2 FORENSIC INTERVIEWERS THERE AT CHADWICK?

3 A. YES.

4 Q. HOW MANY FORENSIC INTERVIEWERS ARE THERE AT
5 CHADWICK?

6 A. THERE'S FOUR OF US, TOTAL.

7 Q. AND ARE YOU --
8 HAVE YOU TESTIFIED IN COURT BEFORE AS AN
9 EXPERT WITNESS?

10 A. I HAVE.

11 Q. IN WHAT CAPACITY, IN REGARDS TO WHAT TOPICS?

12 A. DELAYED DISCLOSURE, CHILD SEXUAL ABUSE
13 DYNAMICS, SUGGESTIBILITY, OFFENDER DYNAMICS.

14 Q. DO YOU ALSO TEACH IN THIS PARTICULAR AREA?

15 A. I DO.

16 Q. AND WHAT KIND OF TEACHING HAVE YOU DONE?

17 A. I'M -- IN ADDITION TO WORKING AT CHADWICK,
18 I'M ALSO A CONTRACTED TRAINER WITH THE PUBLIC CHILD
19 WELFARE TRAINING ACADEMY, WHICH TRAINS NEW AND
20 EXPERIENCED CHILD WELFARE WORKERS.

21 I DO THAT, AGAIN, ON A REGULAR BASIS, BUT
22 I'VE TRAINED BOTH AT THE LOCAL, STATE AND NATIONAL LEVEL
23 ON THE AREAS OF INTERVIEWING, CHILD SEXUAL ABUSE
24 DYNAMICS, ANYTHING RELATED TO CHILD SEXUAL ABUSE. I'VE
25 SPECIALIZED IN THAT AREA FOR 22 YEARS.

26 Q. AND WHAT IS YOUR -- YOUR TRAINING THAT
27 QUALIFIES YOU FOR THE PARTICULAR POSITION THAT YOU HOLD?

28 A. THE CHADWICK CENTER REQUIRES THAT THE

1 INTERVIEWERS HAVE A MASTER'S LEVEL DEGREE -- SO I HAVE A
2 MASTER'S IN SOCIAL WORK -- AND THAT AT LEAST YOU'RE
3 LICENSE ELIGIBLE IN THE STATE -- AND I'VE BEEN LICENSED
4 AS A CLINICAL SOCIAL WORKER SINCE 1993 WITHIN CALIFORNIA
5 -- AND THAT YOU BE TRAINED IN AREAS RELATED TO CHILD
6 SEXUAL ABUSE, MEMORY AND SUGGESTIBILITY, BEST PRACTICE
7 INTERVIEWING TECHNIQUES, DEVELOPMENT, CHILD DEVELOPMENTAL
8 ISSUES.

9 AND WE -- OUR PROGRAM WILL TRAIN IN
10 INTERVIEWS APPROXIMATELY THREE MONTHS BEFORE THEY
11 ACTUALLY CONDUCT THEIR FIRST INTERVIEW. AND THEY DO THAT
12 THROUGH ROLE PLAY, THROUGH OBSERVATION OF INTERVIEWS OVER
13 AND OVER AND OVER, AS WELL AS ATTEND THE CALIFORNIA STATE
14 FORENSIC TRAINING, WHICH IS A WEEK-LONG TRAINING PROGRAM.

15 Q. AND YOU'VE DONE ALL OF THOSE?

16 A. YEAH.

17 Q. AND DO YOU STAY CURRENT ON THE RESEARCH IN
18 THE AREAS THAT YOU'VE ALREADY TALKED ABOUT:
19 SUGGESTIBILITY, CHILD SEXUAL ABUSE, DELAYED DISCLOSURE?

20 A. YES.

21 Q. DO YOU -- CAN YOU EXPLAIN TO US WHAT
22 "SUGGESTIBILITY" MEANS IN THE CONTEXT OF INTERVIEWING
23 CHILDREN?

24 A. IN THE CONTEXT OF FORENSIC INTERVIEWING, IT
25 HAS TO DO WITH THE DEGREE TO WHICH A CHILD IS -- CAN BE
26 INFLUENCED, THE DEGREE TO WHICH A CHILD'S MEMORY CAN BE
27 INFLUENCED, AND THAT MEMORY COULD BE EITHER THE ENCODING
28 PROCESS, THE STORAGE PROCESS OR RETRIEVING INFORMATION.

1 Q. LET'S TALK ABOUT THE ENCODING PROCESS.
2 WHAT DOES THAT MEAN?

3 A. THAT MEANS THAT A CHILD CAN BE TOLD
4 SOMETHING. SO THEY ENCODE IT. THEY TAKE IT IN THAT WAY.
5 RETRIEVING IT, WHAT A CHILD'S REMEMBERING OR REPORTING,
6 CAN ALSO BE INFLUENCED TO DIFFERENT DEGREES BASED ON HOW
7 THEY'RE BEING ASKED OR WHAT THEY'RE BEING TOLD ABOUT IT.

8 Q. AND, IN YOUR EXPERIENCE, WHAT ARE SOME
9 SCENARIOS IN WHICH A CHILD WOULD BE -- SOMETHING MIGHT BE
10 SUGGESTED TO A CHILD?

11 A. FOR INTERVIEW TECHNIQUES, ASKING THEM
12 LEADING OR SUGGESTIVE QUESTIONS.

13 Q. AND DOES THE CHADWICK CENTER FOLLOW ANY
14 PARTICULAR PROTOCOL IN REGARDS TO INTERVIEWING CHILDREN
15 THAT ATTEMPTS TO CONTROL FOR THAT SPECIFIC TYPE OF THING,
16 SUGGESTIBILITY?

17 A. YES. NOT JUST CHADWICK CENTER. THE FIELD
18 HAS VERY CLEAR PROTOCOLS, INTERVIEWING PROTOCOLS. THE
19 MOST RESEARCHED BASED INTERVIEWING PROTOCOLS IS THE
20 NICHD, WHICH IS THE NATIONAL INSTITUTE OF CHILD HEALTH
21 AND HUMAN DEVELOPMENT.

22 AND THAT REALLY EMPHASIZES MINIMIZING ANY
23 LEADING AND SUGGESTIVE QUESTIONS AND REALLY FOCUSING ON
24 TRYING TO GATHER INFORMATION FROM KIDS THROUGH AN
25 OPEN-ENDED, KIND OF NARRATIVE QUESTION TYPE OR FOCUSED-
26 TYPE QUESTIONS.

27 Q. BEFORE FOLLOWING THE PROTOCOL, BEFORE AN
28 INTERVIEWER WOULD START DISCUSSING THE ABUSE, IS THERE A

1 PROCEDURE IN PLACE LEADING UP TO THAT PORTION OF THE
2 QUESTIONING?

3 A. YEAH. ANOTHER PART OF THE PROTOCOL, AGAIN,
4 WHICH IS PART OF THE NICHD PROTOCOL, IS TO GO OVER SOME
5 CONVERSATIONAL RULES OR GROUND RULES, WHICH GIVES KIDS
6 PERMISSION TO NOT GUESS AT WHAT IT IS THAT THEY'RE BEING
7 ASKED BUT TO TRY TO STAY WITH THE TRUTH, TO GIVE THEM
8 PERMISSION TO CORRECT THE INTERVIEWER, IF THE INTERVIEWER
9 GETS SOMETHING WRONG, TO BE ABLE TO SPEAK UP AND SAY THEY
10 DON'T UNDERSTAND IF THEY DON'T UNDERSTAND WHAT'S BEING
11 ASKED OF THEM.

12 Q. WHY ARE THOSE GROUND RULES IMPORTANT?

13 A. AGAIN, TO MINIMIZE INACCURACIES AND TO
14 MINIMIZE ANY MISUNDERSTANDING BETWEEN THE INTERVIEWER AND
15 THE CHILD.

16 Q. AND DOES THE PROTOCOL ALLOW FOR THE
17 INTERVIEWER TO ASK THE CHILD TO PROMISE TO TELL THE TRUTH
18 OR TO TALK ABOUT ONLY THINGS THAT HAD HAPPENED?

19 A. YES.

20 Q. AND IS THAT BEFORE THERE'S ANY DISCUSSION
21 ABOUT THE REASON FOR THE INTERVIEW?

22 A. TYPICALLY, YES.

23 Q. AND THEN HOW -- HOW DOES THE PROTOCOL
24 CONTEMPLATE SEGUEING FROM THIS RAPPORT-BUILDING PROCESS
25 INTO THE ACTUAL FACT-FINDING PROCESS?

26 A. IT'S CALLED THE KIND OF TRANSITION PHASE.
27 AND, AGAIN, MOVING FROM NEUTRAL TOPICS OF RAPPORT
28 BUILDING TO THE REASON WHY THE CHILD'S THERE, THE MOST

1 COMMON OR RECOMMENDED SEGUE INTO THAT IS TO SAY, "TELL ME
2 WHY YOU CAME HERE TODAY." SO AN OPEN-ENDED KIND OF
3 GENERAL PROMPT AS TO WHY THE CHILD'S THERE.

4 Q. AND THEN, DURING THE COURSE OF THE
5 INTERVIEW, ARE THERE WAYS IN WHICH THE INTERVIEWER WOULD
6 LOOK FOR EVIDENCE OF PRIOR SUGGESTION TO THE CHILD?

7 A. THERE'S SOMETHING IN THE FIELD CALLED
8 "SOURCE MONITORING," SO BEING THE -- THE INTERVIEWER
9 BEING ABLE TO TRY TO MONITOR THE SOURCE OF THE CHILD'S
10 INFORMATION.

11 SO DID THAT CHILD -- ARE THEY SAYING THIS
12 BECAUSE THEY'VE HEARD IT? BECAUSE THEY'VE BEEN TOLD IT?
13 BECAUSE THEY'VE ACTUALLY EXPERIENCED IT? BECAUSE THEY'VE
14 WITNESSED IT?

15 SO BEING ABLE TO -- REGARDLESS OF WHAT THE
16 CHILD SAYS, BEING ABLE TO DIFFERENTIATE WHAT IS THE
17 SOURCE OF THEIR INFORMATION.

18 Q. DO YOU LOOK FOR WHETHER OR NOT THE CHILD IS
19 HIGHLY DETAILED WITH THEIR STATEMENT?

20 A. HIGHLY DETAILED?

21 Q. YES, IF THEY GIVE DETAILS.

22 A. WELL, THE PURPOSE -- ONE OF THE MAIN
23 PURPOSES OF THE INTERVIEW IS TO TRY TO GATHER AS MUCH
24 POSSIBLE -- AS MUCH INFORMATION AS POSSIBLE AS TO WHAT
25 MAY HAVE OCCURRED.

26 SO THAT MEANS, YOU KNOW, AGAIN, AS DETAILED
27 AS POSSIBLE, IF THE CHILD CAN PROVIDE A SEQUENTIAL
28 ACCOUNT OF WHAT'S HAPPENED, DIFFERENT LOCATIONS,

1 DIFFERENT POTENTIAL ACTS. IT'S REALLY TO GATHER AS MUCH
2 QUALITY INFORMATION AND ACCURACY AS POSSIBLE WITHIN THAT
3 FRAMEWORK.

4 Q. YOU TALKED ABOUT THE NUMBER OF ACTS.
5 GENERALLY SPEAKING, ARE CHILDREN --
6 AND WE'RE TALKING -- LET'S TALK HERE ABOUT
7 CHILDREN UNDER THE AGE OF 14.

8 ARE THEY, GENERALLY SPEAKING, ABLE TO GIVE
9 YOU GOOD -- A GOOD NUMBER?

10 IF YOU SAY "HOW MANY TIMES DID SOMETHING
11 HAPPEN," WILL THEY BE ABLE TO PROVIDE THAT INFORMATION?

12 A. WELL, UNDER 14 IS A HUGE AGE RANGE. SO A
13 PRESCHOOLER IS GOING TO BE VERY DIFFERENT THAN A
14 13-YEAR-OLD. SO A KID'S ABILITY TO UNDERSTAND AND BE
15 ABLE TO REPORT ACCURATELY TIME CONCEPTS INCREASES WITH
16 AGE.

17 IF YOU ASK A PRESCHOOLER, "WHEN DID THIS
18 HAPPEN?" AND IT WAS YESTERDAY -- AND EVERY DAY IS
19 YESTERDAY -- I DON'T KNOW IF IT'S REALLY YESTERDAY.

20 OR WAS IT A MONTH AGO?

21 SO -- BUT EVEN THOUGH OLDER KIDS CAN DO THAT
22 A LITTLE BIT BETTER, KIDS IN GENERAL, UNDER 14, HAVE
23 DIFFICULTY PLACING EVENTS IN TIME, BEING ABLE TO SPECIFY
24 HOW MANY TIMES SOMETHING HAPPENED, IF IT'S MULTIPLE OR
25 CHRONIC.

26 DURATION OF TIME IS ALSO VERY -- YOU KNOW,
27 HOW LONG SOMETHING LASTED. AND WHEN WE ASK KIDS THOSE
28 DIFFICULT DEVELOPMENTAL QUESTIONS, WE WANT TO BE CAREFUL

1 ABOUT THAT BECAUSE THAT COULD ENCOURAGE THEM TO GUESS.
2 AND IF WE'RE TRYING TO GET ACCURATE INFORMATION, WE WOULD
3 WANT TO MINIMIZE ASKING DEVELOPMENTALLY INAPPROPRIATE
4 QUESTIONS.

5 Q. SO IN YOUR PRACTICE, WOULD YOU ASK A CHILD
6 UNDER THE AGE OF 10 IF SOMETHING HAPPENED "ONCE OR MORE
7 THAN ONCE," OR WOULD YOU ASK THEM "HOW MANY TIMES DID
8 THIS HAPPEN"?

9 A. THE RULE OF THUMB IS TO SAY "ONE TIME OR
10 MORE THAN ONE TIME" VERSUS "HOW MANY TIMES?"

11 Q. AND YOU INDICATED THAT YOU'RE ALSO FAMILIAR
12 WITH THE RESEARCH IN THIS PARTICULAR AREA IN TERMS OF
13 SUGGESTIBILITY.

14 HAVE THERE BEEN EXPERIMENTS CONDUCTED TRYING
15 TO GAUGE THE LEVEL OF SUGGESTIBILITY OF CHILDREN?

16 A. THERE'S A LOT OF OLD -- PRIMARILY, OLD
17 RESEARCH, EARLY IN THE FIELD, WHEN SEXUAL ABUSE BECAME
18 KIND OF MORE PUBLIC OR AN ISSUE. THERE'S A LOT OF
19 STUDIES THAT WERE DONE ON KIDS' SUGGESTIBILITY.

20 AND THE MAJORITY OF THOSE STUDIES HAD TO DO
21 WITH VERY YOUNG KIDS, PRESCHOOL-AGE CHILDREN. AND THOSE
22 STUDIES WERE VERY CLEAR THAT VERY YOUNG KIDS ARE HIGHLY
23 SUGGESTIBLE.

24 Q. I THINK YOU INDICATED, THE OLDER THE CHILD,
25 THE LESS SUGGESTIBLE?

26 A. THOSE STUDIES DID SHOW THAT THERE'S A
27 DRAMATIC DEVELOPMENTAL KIND OF TREND. SO SUGGESTIBILITY
28 DECREASES WITH AGE.

1 Q. AND IN THOSE PARTICULAR EXPERIMENTS, THEY
2 WERE DESIGNED TO INTRODUCE HIGHLY SUGGESTIVE QUESTIONS OR
3 HIGHLY SUGGESTIVE CIRCUMSTANCES TO YOUNG CHILDREN? WOULD
4 THAT BE FAIR?

5 A. YES.

6 Q. AND THAT WAS THE INTENTION OF THE STUDIES,
7 WAS TO INTRODUCE THE SUGGESTIVE SCENARIO AND THEN SEE
8 WHAT THE ANSWERS WERE? YES?

9 A. YES.

10 Q. HAVE ANY EXPERIMENTS BEEN CONDUCTED IN WHICH
11 THE IDEA THAT THE CHILD HAD BEEN SEXUALLY ABUSED BY A
12 CLOSE FAMILY MEMBER WAS INTRODUCED TO THE CHILD WHEN THAT
13 WASN'T THE CASE?

14 A. WELL, AGAIN, THE EARLY STUDIES WERE
15 LABORATORY EXPERIMENTAL STUDIES. SO THE GENERALIZED
16 ABILITY FROM A LAB STUDY WHERE A STRANGER COMES IN AND
17 BREAKS A VASE AND THEN ASKS KIDS ABOUT THAT IN A HIGHLY
18 SUGGESTIVE MANNER -- ONE OF THE ATTACKS ON THAT EARLY
19 RESEARCH IS THAT IT'S NOT GENERALIZABLE TO THE REAL
20 WORLD, WHERE SOMEBODY IS BEING MOLESTED BY SOMEBODY CLOSE
21 TO THEM. THOSE ARE TWO VERY DIFFERENT -- HAVE TWO VERY
22 DIFFERENT SETS OF QUALITIES.

23 Q. AND IT WOULD BE UNETHICAL, IN THAT SCENARIO
24 YOU TALKED ABOUT, INTRODUCING A STRANGER THAT BROKE A
25 VASE -- IT WOULD BE UNETHICAL IN THE RESEARCH FIELD TO
26 INTRODUCE AN IDEA TO THE CHILD IN THAT SCENARIO THAT THEY
27 HAD BEEN SEXUALLY ABUSED BY SOMEONE CLOSE TO THEM? WOULD
28 YOU AGREE?

1 A. IN, LIKE, THAT LABORATORY STUDY?

2 Q. YES.

3 A. YES.

4 Q. ARE CHILDREN ABLE TO BE RESISTANT TO THE
5 IDEA THAT SOMETHING HAPPENED TO THEM WHEN IT DID NOT?

6 A. YES.

7 Q. AND CAN YOU GIVE US SORT OF AN IDEA OF HOW
8 THAT MIGHT HAPPEN?

9 A. AGAIN, KIDS' RESISTANCE INCREASES WITH AGE.
10 PART OF THAT -- THE CONVERSATIONAL RULES I TALKED ABOUT,
11 WHERE I SAID THAT, YOU KNOW, "IF I GET SOMETHING WRONG,
12 PLEASE TELL ME," OR "IF I MAKE A MISTAKE, PLEASE TELL ME"
13 -- AND, WITH YOUNGER AGE KIDS, I'LL ACTUALLY MAKE A
14 MISTAKE ON PURPOSE WITHIN A COUPLE OF SENTENCES AFTER
15 THAT TO SEE IF THEY WILL CORRECT ME.

16 AND THAT SHOWS THAT THEY'RE MORE RESISTANT
17 TO THAT SUGGESTIBILITY. SO IF I WERE TO GET SOMETHING
18 WRONG OR TELL THEM SOMETHING THAT WAS WRONG, THAT, WITH
19 AGE, THE -- HOPEFULLY, THE INDICATION WOULD BE THAT THEY
20 WOULD CORRECT ME. THEY WOULD BE RESISTANT TO ME TELLING
21 THEM SOMETHING HAPPENED WHEN IT ACTUALLY DIDN'T HAPPEN.

22 Q. IN -- AND I WANT TO TALK A LITTLE BIT ABOUT
23 DELAYED DISCLOSURE.

24 WHAT DOES THAT MEAN?

25 A. IN THE FIELD OF CHILD SEXUAL ABUSE, THEY
26 TALK ABOUT, YOU KNOW, DISCLOSURE PATTERNS OF CHILDREN WHO
27 ARE BEING SEXUALLY ABUSED. AND THE RESEARCH, THE
28 CONSENSUS IN THE FIELD THAT WE'VE FINALLY REACHED IS THAT

1 THE MAJORITY OF KIDS DO DELAY IN DISCLOSING SEXUAL ABUSE.
2 AND WE KNOW THAT TO BE -- THE MOST RELIABLE
3 STUDIES THAT TELL US THAT ARE RETROSPECTIVE STUDIES,
4 WHICH ARE STUDIES OF ADULTS WHO REPORT A CHILDHOOD
5 HISTORY OF SEXUAL ABUSE. AND, OF THOSE, ONLY ABOUT A
6 THIRD TOLD AS CHILDREN, AS MINORS. AND EVEN THOSE THAT
7 DID TELL WERE OFTEN AFTER DELAYS OF WEEKS TO MONTHS.

8 Q. BASED ON YOUR UNDERSTANDING OF THE RESEARCH
9 IN YOUR OWN PRACTICE, WHY IS THAT? WHY WOULD CHILDREN
10 DELAY IN DISCLOSING ABUSE SUCH AS THIS, SEXUAL ABUSE?

11 A. THE RESEARCH FACTORS THAT HAVE EMERGED THAT
12 CONTRIBUTE TO DELAY OR EVEN WHAT WE CALL FALSE DENIALS,
13 FALSELY DENYING TRUE ABUSE, ARE:

14 WHEN THE PERPETRATOR IS A FAMILIAL FIGURE TO
15 THE CHILD; WHEN THE CHILD PERCEIVES THEY'RE NOT GOING TO
16 BE BELIEVED OR SUPPORTED BY THEIR PRIMARY CARETAKER;
17 FEAR, FEAR OF GETTING IN TROUBLE, GETTING SOMEBODY IN
18 TROUBLE, BREAKING UP THE FAMILY; AGE -- YOUNGER CHILDREN
19 ARE LESS LIKELY TO DISCLOSE IN A FORMAL SETTING THAN
20 OLDER CHILDREN -- GENDER -- BOYS ARE LESS LIKELY TO
21 DISCLOSE THAN GIRLS.

22 THAT'S WHAT THE RESEARCH SAYS.

23 AND IN MY OWN CLINICAL EXPERIENCE,
24 INTERVIEWING THOUSANDS OF CHILDREN, WE DO TRY TO ASSESS
25 WITHIN THAT INTERVIEW WHAT MAY HAVE BEEN A BARRIER TO
26 THEM TELLING OR WHY THEY FELT THAT THEY COULDN'T TELL.

27 AND SOME OF THOSE SAME ANSWERS HAVE BEEN
28 PARROTED BY KIDS WITHIN THE FORENSIC SETTING. SOME

1 ADDITIONAL ARE, AGAIN, SCARED THAT THEY'RE GOING TO GET
2 IN TROUBLE, SCARED THAT THEY'RE NOT GOING TO BE BELIEVED,
3 EMBARRASSED, ASHAMED, FEEL RESPONSIBLE.

4 Q. WHEN YOU SAY THEY "FEEL RESPONSIBLE," WHAT
5 DOES THAT MEAN?

6 A. THAT SOMEHOW THEY ENCOURAGED OR LIKED OR
7 CONTRIBUTED TO THE ABUSE.

8 Q. THEY FEEL LIKE THEY WERE PART OF THE
9 CONDUCT? THEY WERE AN ACCOMPLICE TO THE CONDUCT?

10 A. THAT -- THE OLDER KIDS CAN ARTICULATE IT
11 BETTER THAN YOUNGER KIDS -- BUT THAT THEY -- SOMEHOW IT
12 WAS LIKE A MUTUAL EXCHANGE VERSUS SOMEBODY DOING
13 SOMETHING TO THEM.

14 Q. DO CHILDREN, ESPECIALLY YOUNGER CHILDREN,
15 HAVE DIFFICULTY PUTTING THE SEXUAL ABUSE IN CONTEXT OR
16 UNDERSTANDING THAT THEY WERE ACTUALLY BEING ABUSED?

17 A. YES. THAT'S VERY COMMON WITH, LIKE,
18 PRESCHOOLERS BECAUSE THEY DON'T HAVE LIFE EXPERIENCE TO
19 FIT THIS THING INTO. AND THEY OFTEN DON'T REALLY KNOW
20 WHAT IT IS. AND SO THEY MIGHT NOT TELL ABOUT IT BECAUSE
21 THEY JUST DON'T KNOW IT AS ABUSE.

22 Q. SO THEY DON'T NECESSARILY KNOW IT'S, QUOTE,
23 UNQUOTE, "WRONG"?

24 A. RIGHT.

25 Q. AND YOU INDICATED THAT SOMETIMES THE CHILD
26 WOULD HAVE A RELATIONSHIP WITH THE ABUSER.

27 DOES THE -- IS THERE A CORRELATION BETWEEN
28 HOW CLOSE THE TWO ARE TO THE LENGTH OF THE DELAY IN

1 DISCLOSURE?

2 A. YES. THAT'S ONE OF THE FACTORS THAT'S BEEN
3 IDENTIFIED. THE CLOSER THE RELATIONSHIP, PARTICULARLY IF
4 IT'S A FAMILIAL MEMBER THAT'S THE SUSPECT, THEN THE MORE
5 LIKELY FOR THE CHILD TO DELAY IN DISCLOSING.

6 Q. DO SOMETIMES CHILDREN ENJOY SPENDING TIME
7 WITH THEIR ABUSER?

8 A. YES.

9 Q. DO THEY SOMETIMES MAYBE PUT UP WITH THE
10 ABUSE IN ORDER TO MAINTAIN A RELATIONSHIP?

11 A. THERE'S A RELATIONSHIP -- OFTEN, ESPECIALLY,
12 IF IT'S SOMEBODY WELL KNOWN TO THE CHILD OR THAT THE
13 CHILD HAS A RELATIONSHIP WITH, IT'S NOT UNCOMMON THAT THE
14 CHILD IS GETTING A LOT OF POSITIVE ATTRIBUTES FROM THE
15 RELATIONSHIP, GETTING THEIR NEEDS MET, GETTING ATTENTION,
16 GETTING LOVE, SEPARATE FROM POTENTIAL SEXUAL ABUSE THAT
17 MIGHT BE GOING ON.

18 Q. AND IN CASES WHERE YOU'VE READ ABOUT AND
19 ALSO INTERVIEWED CHILDREN WHO HAVE DELAYED THEIR
20 DISCLOSURE, DOES SOMETIMES THE ABUSER HAVE A CLOSE
21 RELATIONSHIP WITH THE CHILD'S PARENT OR OTHER CLOSE
22 RELATIVE?

23 A. YES.

24 Q. WHAT ABOUT PARTICULAR PATTERNS OF
25 DISCLOSURE? DO KIDS NORMALLY COME IN AND GIVE YOU A VERY
26 LINEAL DESCRIPTION OF THE ABUSE THAT THEY'VE EXPERIENCED?

27 A. NO.

28 Q. DO THE KIDS TALK DIFFERENTLY THAN ADULTS

1 TALK?

2 A. YES.

3 Q. TELL US A LITTLE BIT ABOUT THAT.

4 A. WELL, AGAIN, IT'S DEVELOPMENTAL. THE OLDER
5 THAT KIDS GET, THE MORE NARRATIVE THEY ARE. THE YOUNGER
6 KIDS NEED MUCH MORE KIND OF PROMPTS OR DIRECT QUESTIONS
7 BECAUSE, WHEN YOU JUST SAY "TELL ME ABOUT WHATEVER,"
8 THAT'S VERY BROAD FOR A PRESCHOOLER.

9 Q. DO KIDS THINK IN VERY CONCRETE MANNERS?

10 A. THE YOUNGER THE AGE OF THE CHILD, THE MORE
11 LITERAL AND CONCRETE. IT'S NOT UNTIL, YOU KNOW,
12 DEVELOPMENTALLY, THEY SAY, YOUNG TEENAGE YEARS WHERE YOU
13 HAVE COMPLETE ABSTRACT THINKING ABILITY.

14 Q. SO THE WAY YOU ASK A QUESTION IS IMPORTANT
15 THE YOUNGER THE CHILD, ESPECIALLY?

16 A. YES.

17 Q. THEY'RE GOING TO ANSWER WHAT YOU'RE ASKING
18 THEM?

19 A. YES.

20 Q. THE -- DO YOU FIND THAT, AS THE CHILD
21 DISCLOSES, THAT THEY -- SORT OF IT'S A PROCESS, AND THEY
22 CONTINUE TO GIVE MORE DETAIL?

23 A. I MEAN, WHEN YOU LOOK AT DISCLOSURE
24 PATTERNS, WHICH I MENTIONED DELAYED DISCLOSURE IS ONE
25 ASPECT -- ABOUT HOW AND TO WHOM, WHEN, THAT ALL REFERS TO
26 DISCLOSURE PATTERNS.

27 SO WHEN A CHILD DISCLOSED, THEY MAY DELAY,
28 BUT HOW THEY DISCLOSE IS ALSO WHAT WE CONSIDER A PROCESS,

1 THAT KIDS DON'T COME IN THE VERY FIRST TIME -- OR WHOEVER
2 THEY'RE INTERVIEWED BY THE VERY FIRST TIME -- AND TELL
3 EVERY SINGLE DETAIL.

4 AND THAT'S BECAUSE HUMANS DON'T DO THAT
5 REGARDLESS OF AGE, THAT, IF YOU'RE NOT -- YOU DON'T
6 REMEMBER ALL THE DETAILS OF AN EVENT IN ONE SITTING, ONE
7 RETRIEVAL ABILITY, THAT IT OFTEN TAKES MULTIPLE
8 INTERVIEWS TO HELP TO REHEARSE THE MEMORY AS WELL TO
9 REMEMBER, TO RECALL THE MEMORY, TO PROVIDE DETAILS.

10 AND SO KIDS MAY INITIALLY DISCLOSE SOME
11 ASPECTS OF IT. THEY MIGHT DISCLOSE ADDITIONAL
12 INFORMATION, WHAT WE CALL AN INCREMENTAL DISCLOSURE.

13 THEY MAY ACTUALLY TAKE BACK SOME OF WHAT
14 THEY PREVIOUSLY SAID BASED ON HOW THE PEOPLE AROUND THEM
15 ARE REACTING TO WHAT IT IS THAT THEY'RE SAYING.

16 SO THAT DISCLOSURE IS -- THEY CAN PARTIALLY
17 DISCLOSE, TENTATIVELY DISCLOSE. THEY MAY THEN MOVE INTO
18 WHAT WE CALL "ACTIVE DISCLOSURE." THEY MAY RECALL OR
19 TAKE BACK ALL OR PORTIONS OF WHAT THEY'VE SAID.

20 AND THEN THEY MAY ACTUALLY REAFFIRM
21 WHAT THEY'VE SAID EARLIER. AND THEY CAN MOVE THROUGH
22 THOSE PROCESSES IN NO NECESSARILY LINEAR ORDER.

23 Q. DO YOU --

24 YOU ALSO INTERVIEW CHILDREN WHO HAVE BEEN
25 PHYSICALLY ABUSED; IS THAT CORRECT?

26 A. WE DO.

27 Q. AND BASED ON YOUR CLINICAL EXPERIENCE, DO
28 YOU NOTE WHETHER -- HAVE YOU NOTED WHETHER OR NOT SEXUAL

1 ABUSE CARRIES A STIGMA THAT PHYSICAL ABUSE DOES NOT?

2 A. IT DOES. I MEAN, THAT'S PRETTY CLEAR IN MY
3 EXPERIENCE AS WELL AS THE LITERATURE. THAT LEVEL OF
4 SEXUALITY, IN GENERAL, IS A VERY TABU TOPIC FOR A LOT OF
5 DIFFERENT CULTURES.

6 SO THERE'S SOME TABU-NESS AROUND JUST
7 TALKING ABOUT IT, BUT THERE'S A DIFFERENT LEVEL OF SHAME
8 AND GUILT THAT COMES WITH SEXUAL ABUSE THAT IS NOT
9 NECESSARILY PRESENT WITH PHYSICAL ABUSE.

10 Q. AND IS THAT A FACTOR THAT MIGHT FIGURE INTO
11 A DELAY IN DISCLOSURE?

12 A. YES.

13 Q. WHAT ABOUT WHEN A CHILD ULTIMATELY DOES COME
14 IN AND SPEAK TO YOU OR ONE OF YOUR FELLOW INTERVIEWERS,
15 AND THEY DISCLOSE? DO THEY TYPICALLY SEEM DISTRAUGHT OR
16 CRY, OR WHAT DO THEY TYPICALLY LOOK LIKE?

17 A. VASTLY VARIABLE. I MEAN, HOW KIDS PRESENT
18 ARE ALL OVER THE SPECTRUM.

19 Q. IS IT UNUSUAL TO SEE A CHILD SPEAKING
20 NONCHALANTLY ABOUT SEXUAL ABUSE?

21 A. IS IT UNUSUAL?

22 NO.

23 Q. AND IF YOU WATCHED A VIDEO AND TURNED DOWN
24 THE SOUND OF AN INTERVIEW, WOULD IT APPEAR -- I MEAN,
25 WOULD YOU BE ABLE TO NOTICE THAT MOMENT IN TIME WHEN YOU
26 TRANSITION FROM RAPPORT BUILDING INTO DISCLOSURE, OR DOES
27 IT APPEAR TO BE JUST PART OF A LARGER CONVERSATION?

28 A. AGAIN, SOMETIMES; SOMETIMES NOT. EVERY

1 CHILD IS VERY DIFFERENT. IT DEPENDS ON THEIR OWN
2 INTERNAL RESOURCES, EXTERNAL SUPPORTS.

3 YOU KNOW, SOME OF THE THINGS THAT PEOPLE
4 FORGET ABOUT IS THAT, TYPICALLY, ACTUALLY, THE PARENTS
5 ARE MORE DISTRAUGHT THAN THE CHILD BECAUSE THE CHILD HAS
6 BEEN LIVING WITH IT. THEY'VE LEARNED TO KIND OF DEAL
7 WITH IT OR DETACH FROM IT. WHEREAS, THE PARENTS ARE
8 LEARNING ABOUT THIS RIGHT NOW. AND SO THEY HAVE A MUCH
9 STRONGER REACTION.

10 SO KIDS' VARIABILITY IN HOW -- WHERE THEY
11 ARE WITH THEIR ABUSE PROCESS OR IF THERE'S LEVELS OF
12 TRAUMA THAT HAVE KIND OF BEEN IMPACTED DETERMINES KIND OF
13 WHERE THEY ARE WHEN YOU'RE INTERVIEWING THEM.

14 Q. AND WHEN CHILDREN THAT YOU'VE EXPERIENCED
15 THAT TEND TO DELAY DISCLOSURE FOR A SIGNIFICANT PERIOD OF
16 TIME -- MAYBE MONTHS OR EVEN YEARS -- HAS IT BEEN YOUR
17 EXPERIENCE THAT THEY JUST ONE DAY DECIDE TO DISCLOSE, OR
18 ARE THERE OFTEN EVENTS THAT LEAD TO THEM DISCLOSING?

19 A. AGAIN, ASKING KIDS WITHIN THE INTERVIEW
20 SETTING "WHAT MADE YOU TELL NOW?" KIND OF THING, TO BE
21 ABLE TO COLLECT THAT CLINICAL INFORMATION, THEY MAY SAY
22 BECAUSE THEY COULDN'T HOLD THE SECRET ANYMORE. IT WAS
23 BOTHERING THEM. THEY -- THE SUSPECT OR PERPETRATOR MAYBE
24 IS GONE OR ABSENT. SO THEY FEEL SAFER TO TELL.

25 THERE COULD BE SOMETHING, AGAIN, WITHIN THE
26 FAMILY DYNAMICS THAT PROMPTED THE DISCLOSURE. I'VE HAD
27 KIDS SAY THAT THEY WERE CONCERNED THAT IT WAS GOING TO
28 HAPPEN TO THEIR SIBLING. SO THAT MADE THEM TELL. OR

1 SOME OTHER FAMILY MEMBER THEY WERE CONCERNED ABOUT. SO
2 MORE OF A PROTECTIVE NATURE THAT MADE THEM DISCLOSE.

3 AGAIN, IT'S VERY VARIABLE FOR EACH CHILD.

4 Q. AND HAVE YOU HAD SCENARIOS WHERE SOMEONE
5 ELSE, TO COIN A TERM, "RIPPED OFF THE BAND-AID" FOR THIS
6 CHILD? LIKE, THERE WAS A PRECIPITATING EVENT, THAT THEN
7 THE CHILD FELT SAFE TO DISCLOSE?

8 A. LIKE I SAID, IT DEPENDS WHAT. THAT'S WHY I
9 SAID THERE COULD BE FAMILY EVENTS OR SOMETHING THAT MIGHT
10 HAVE -- I'VE HAD KIDS SAY THEY WERE SITTING AND WATCHING
11 OPRAH, WHO DEPICTED AN ABUSE STORY. AND THEY STARTED
12 CRYING, AND THAT PROMPTED THE DISCLOSURE.

13 SO, AGAIN, IT'S VERY VARIABLE FOR EACH
14 CHILD. SOME PARENTS, YOU KNOW, WITH THE EDUCATION AND
15 PUBLIC KNOWLEDGE ABOUT SEXUAL ABUSE, WILL TALK TO THEIR
16 KIDS ABOUT IT, REGULARLY OR PERIODICALLY.

17 "NOBODY SHOULD TOUCH YOU. HAS ANYBODY
18 TOUCHED YOU?"

19 SO IT COULD BE SIMPLY SOMEBODY ACTUALLY
20 ASKING THEM ABOUT IT.

21 Q. HAVE YOU HAD SCENARIOS WHERE SIBLINGS HAVE
22 DISCLOSED ABUSE, AND IT PROMPTED A DELAYED DISCLOSURE
23 FROM ANOTHER CHILD?

24 A. I'VE HAD SIBLINGS DISCLOSE, WHICH PROMPTED
25 OTHER SIBLINGS TO DISCLOSE, YES.

26 MS. DI TILLIO: THANK YOU.

27 I HAVE NOTHING FURTHER AT THIS TIME.

28 THE COURT: CROSS-EXAMINATION.

1 MS. OLIVER: THANK YOU.

2

3

CROSS-EXAMINATION

4

5 BY MS. OLIVER:

6 Q. WHEN YOU CONDUCT AN INTERVIEW OF A CHILD,
7 ARE YOU TRYING TO DETERMINE IF THEY -- IF THAT CHILD IS
8 TELLING THE TRUTH OR LYING?

9 A. NO.

10 Q. AND WHY NOT?

11 A. BECAUSE THAT'S NOT OUR ROLE.

12 Q. AND SO YOUR ROLE IS TO BASICALLY GATHER
13 INFORMATION FROM THAT PARTICULAR CHILD?

14 A. CORRECT.

15 Q. SO IN INTERVIEWING A CHILD, DO YOU EVER KNOW
16 IF THEY'RE TELLING THE TRUTH OR LYING?

17 A. DO I KNOW, 100 PERCENT?

18 Q. DO YOU KNOW?

19 A. NO, NOT NECESSARILY.

20 Q. IN YOUR EXPERIENCE, HAVE THERE BEEN
21 SITUATIONS WHERE A CHILD MAY DISCLOSE ALLEGATIONS OF
22 SEXUAL ABUSE AS A CHILD BUT, AS AN ADULT, THEY RECANT?

23 MS. DI TILLIO: OBJECTION. VAGUE.

24 THE COURT: OVERRULED.

25 THE WITNESS: NOT THAT COMES TO MIND.

26

27 BY MS. OLIVER:

28 Q. WHEN -- WHEN YOU'RE WORKING A CASE, HOW LONG

1 DO YOU FOLLOW A PARTICULAR CASE AFTER YOU'VE INTERVIEWED
2 A CHILD?

3 A. SO IN MY CURRENT ROLE AS A FORENSIC
4 INTERVIEWER, WE CONDUCT, TYPICALLY, ONE TIME OR MAYBE
5 MULTIPLE INTERVIEWS, DEPENDING ON THE DYNAMICS, AND THEN
6 REFER THE CHILD ON FOR POTENTIAL COUNSELING OR ANY NEEDED
7 SERVICES. SO OUR ROLE IS VERY LIMITED.

8 Q. OKAY. YOU SAY THAT, IN YOUR ROLE, THAT YOU
9 REFER THE CHILD OUT FOR ADDITIONAL SERVICES, IF NEEDED?

10 A. LIKE COUNSELING OR IF THERE'S OTHER THINGS,
11 YOU KNOW, WITHIN THE CONTEXT OF HAVING INTERACTION WITH
12 THIS FAMILY. LET'S SAY THE MOM DISCLOSES THERE'S BEEN
13 SOME DOMESTIC VIOLENCE. I MIGHT PROVIDE A REFERRAL FOR
14 THAT. SO WHATEVER THE NEEDS ARE ASSESSED, BASED ON OUR
15 CONTACT WITH THE FAMILY, I WOULD REFER.

16 Q. ARE YOU FAMILIAR WITH PALOMAR HOSPITAL?

17 A. YES.

18 Q. AND DO THEY HAVE A SIMILAR PROGRAM AT THEIR
19 PARTICULAR HOSPITAL?

20 A. THEY DO. PALOMAR AND CHADWICK ARE THE TWO
21 CHILD ADVOCACY CENTERS IN THIS COUNTY.

22 Q. WHEN YOU WERE TALKING ABOUT SUGGESTIBILITY,
23 YOU INDICATED THAT VERY YOUNG KIDS ARE MORE SUGGESTIBLE;
24 IS THAT CORRECT?

25 A. CORRECT.

26 Q. WHEN YOU SAY "VERY YOUNG KIDS," WHAT AGE ARE
27 YOU TALKING ABOUT?

28 A. THREE- AND FOUR-YEAR-OLDS.

1 Q. AND THEN WHAT ABOUT AGES FIVE AND SIX?

2 A. AGAIN, IT STARTS TO DECREASE WITH AGE.
3 ACTUALLY, SOME EARLY RESEARCH COMPARED THE THREE- AND
4 FOUR-YEAR-OLDS WITH FIVE- AND SIX-YEAR-OLDS. AND THERE
5 WAS ACTUALLY DRAMATIC DIFFERENCES BETWEEN THOSE AGE
6 GROUPS IN TERMS OF SUGGESTIBILITY.

7 Q. AND WHEN YOU SAY "EARLY RESEARCH," WHAT TIME
8 PERIOD ARE YOU SPEAKING OF?

9 A. OH, IN THE 90'S. CECI AND BRUCK WERE THE
10 TWO RESEARCHERS THAT DID A LOT OF THAT SUGGESTIBILITY
11 RESEARCH. SO THEIR SAM STONE STUDY WAS ONE THAT COMPARED
12 THOSE TWO PARTICULAR AGE GROUPS.

13 Q. BEFORE THE 80'S, WAS THERE A LOT OF RESEARCH
14 INTO THE AREA OF SUGGESTIBILITY?

15 A. NO.

16 Q. AND YOU'VE MENTIONED A STUDY FROM THE EARLY
17 90'S?

18 A. IT WAS EITHER, LIKE, LATE 80'S OR EARLY,
19 EARLY 90'S.

20 Q. SO STILL SOMEWHERE IN THE SAME TIMEFRAME?

21 A. YES.

22 Q. HAS THERE BEEN ANY RESEARCH ON
23 SUGGESTIBILITY IN THE 2000'S?

24 A. YES.

25 Q. AND THE RESEARCH ON SUGGESTIBILITY IN THE
26 2000'S, DID THEY DO A COMPARATIVE STUDY BETWEEN HOW
27 SUGGESTIBLE THREE- AND FOUR-YEAR-OLDS ARE, AS OPPOSED TO
28 FIVE- AND SIX-YEAR-OLDS?

1 A. YEAH. I MEAN, THERE'S A LOT OF STUDIES OUT
2 THERE. AND THEY HAVE LOOKED AT COMPARING THESE DIFFERENT
3 AGE GROUPS. AND, CONSISTENTLY, THEY HAVE FOUND THAT THE
4 SUGGESTIBILITY DECREASES WITH AGE, WHICH IS A PRETTY
5 COMMON KNOWN FACTOR WITHIN THE FIELD.

6 THE DIFFERENCE, TOO, WITH RESEARCH IN THE
7 2000'S IS THAT WE HAVE PERFECTED HOW WE INTERVIEW KIDS.

8 Q. OKAY.

9 A. SO, AGAIN, THAT EARLY RESEARCH USED VERY
10 LEADING, SUGGESTIVE, COERCIVE-TYPE TECHNIQUES. AND
11 THAT'S -- WHEN YOU USE BEST PRACTICE TECHNIQUES, KIDS'
12 SUGGESTIBILITY, REGARDLESS OF AGE, GOES DOWN
13 DRAMATICALLY. SO IT DEPENDS ON HOW YOU'RE QUESTIONING
14 KIDS, WHICH IS GOING TO CONTRIBUTE TO HOW SUGGESTIBLE
15 THEY ARE.

16 Q. AND YOU LEARNED ALL OF THIS THROUGH YOUR
17 VAST ARRAY OF TRAINING AND EXPERIENCE; IS THAT CORRECT?

18 A. YES.

19 Q. NOW, HAVE YOU HAD A SITUATION WHERE A PARENT
20 WILL HAVE A CONVERSATION WITH THEIR CHILD PRIOR TO AN
21 INTERVIEW, AND YOU LEARN THAT THEY HAD SPOKEN WITH THEM
22 IN A VERY SUGGESTIVE WAY?

23 A. PARENTS OFTEN, WHEN THEY FIND OUT THEIR KIDS
24 HAVE BEEN POTENTIALLY SEXUALLY ABUSED, WILL ASK THEM SOME
25 QUESTIONS BEFORE THEY COME IN FOR THE ACTUAL FORENSIC
26 INTERVIEW. YES.

27 Q. PRIOR TO INTERVIEWING THE CHILD, DO YOU EVER
28 QUESTION THE PARENT ON HOW THEY'VE QUESTIONED THEIR

1 CHILD?

2 A. BEFORE WE DO THE INTERVIEW, OUR PROTOCOL IS
3 TO, TYPICALLY, MEET WITH THE PARENT. IF IT'S A VERY
4 YOUNG CHILD, YOU WANT TO MEET WITH THE PARENT. YOU NEED
5 SOME INFORMATION BECAUSE THEY CAN ONLY TELL YOU SO MUCH.

6 YOU NEED SOME BASIC INFORMATION ABOUT, YOU
7 KNOW, WHAT THE ALLEGATIONS ARE, IF THE CHILD -- WHO THE
8 CHILD FIRST DISCLOSED TO AND WHAT WAS THE CONTEXT FOR
9 THEIR DISCLOSURE. LIKE, WHAT PROMPTED IT IS VERY
10 IMPORTANT -- I WANT TO KNOW -- AS WELL AS --

11 SO IF A CHILD DISCLOSED TO A PARENT, I'LL
12 WANT TO KNOW, FROM THAT PARENT, WHAT WAS THE SETTING,
13 WHAT WAS THE CONTEXT, WHAT DID YOU ASK, WHAT WERE THE
14 RESPONSES?

15 YES, IT'S IMPORTANT TO -- FOR ME TO KNOW
16 THAT.

17 MS. OLIVER: OKAY. THANK YOU.

18 NOTHING FURTHER.

19 THE COURT: REDIRECT.

20 MS. DI TILLIO: THANK YOU.

21

22 **REDIRECT EXAMINATION**

23

24 BY MS. DI TILLIO:

25 Q. A PARENT SIMPLY ASKING A CHILD WHAT
26 HAPPENED, YOU WOULDN'T CONSIDER THAT PARTICULARLY TO BE
27 SUGGESTIVE, WOULD YOU?

28 A. NO. "WHAT HAPPENED" IS ACTUALLY A FOCUSED,

1 SPECIFIC QUESTION THAT'S VERY ACCEPTABLE IN THE FIELD AS
2 A QUESTIONING TECHNIQUE.

3 Q. IT DOESN'T SUGGEST THAT SOMETHING DID
4 HAPPEN?

5 A. NO.

6 Q. AND YOU FIND IT'S FAIRLY NORMAL FOR A
7 PARENT, WHEN CONFRONTED WITH AN ALLEGATION OF ABUSE, TO
8 ASK THEIR CHILD, "WHAT HAPPENED?"

9 A. CORRECT.

10 Q. AND WOULD YOU FIND, IN THAT SCENARIO, WHEN
11 THERE ARE OTHER SIBLINGS, THAT A PARENT MIGHT INQUIRE OF
12 THE OTHER SIBLINGS IF THEY WERE OKAY?

13 A. THAT'S COMMON AS WELL.

14 Q. SOMETHING YOU WOULD EXPECT OF MOST PARENTS?

15 A. YES.

16 Q. AND WOULD YOU CONSIDER THAT TO BE A HIGHLY
17 SUGGESTIVE ENVIRONMENT IMPOSED BY THE PARENT ONTO THE
18 CHILD?

19 A. NOT IN AND OF ITSELF. AGAIN, IT DEPENDS ON
20 THE QUESTIONING TECHNIQUE OR THE SETTING OF THE -- OF THE
21 QUESTIONING, HOW THE CHILD'S BEING QUESTIONED, THE TONE.

22 Q. REPEATED QUESTIONING?

23 A. REPEATED QUESTIONING. AND THE AGE OF THE
24 CHILD, AGAIN, IS A BIG FACTOR.

25 Q. OKAY. SO A YOUNG CHILD, THAT MIGHT MEAN ONE
26 THING, BUT, YOU KNOW, SEVEN, EIGHT, NINE, 10, IT'S A
27 WHOLE DIFFERENT SCENARIO IF THE PARENT IS JUST ASKING THE
28 CHILD WHAT HAPPENED?

1 A. WHAT HAPPENED.

2 I THINK THE MORE RECENT RESEARCH, 2000'S,
3 AGAIN, THAT WHEN A CHILD, REGARDLESS OF AGE, IS ASKED
4 QUESTIONS IN A -- IN A BEST PRACTICE WAY, THAT THE
5 CHANCES OF, YOU KNOW -- THAT THE SUGGESTIBILITY IS
6 DECREASED SIGNIFICANTLY.

7 AND THIS EARLY SUGGESTIBILITY RESEARCH,
8 AGAIN, WAS VERY CONCERNING BECAUSE THE FIELD WAS
9 CONCERNED ABOUT FALSE ALLEGATIONS.

10 YOU COULD TELL A THREE-YEAR-OLD SOMETHING
11 HAPPENED, AND THEY'D ENDORSE IT. SO THE FIELD SHOULD
12 HAVE BEEN CONCERNED ABOUT FALSE ALLEGATIONS, BUT, AS A
13 RESULT OF THAT EARLY WORK, WE'VE PERFECTED, AGAIN, THE
14 INVESTIGATIVE INTERVIEWING BECAUSE WE WANT TO MINIMIZE
15 ANY FALSE ALLEGATIONS JUST AS MUCH AS WE WANT TO MINIMIZE
16 FALSE DENIALS, KIDS DENYING TRUE ABUSE.

17 SO TRYING TO PERFECT HOW WE GET INFORMATION
18 FROM KIDS IN A WAY THAT DECREASES SUGGESTIBILITY AND
19 DECREASES ERRORS.

20 Q. AND THAT'S WHY IT'S HELPFUL FOR YOU TO KNOW
21 WHO ASKED THE CHILD WHAT TYPES OF QUESTIONS BEFORE YOU GO
22 INTO AN INTERVIEW?

23 A. NOT JUST FOR ME, BUT FOR THE INVESTIGATION,
24 IT'S IMPORTANT THAT WE KNOW HOW THAT DISCLOSURE OCCURRED.

25 Q. AND, OFTEN, YOU CAN ACTUALLY GET THAT
26 INFORMATION DIRECTLY FROM THE CHILD AS WELL?

27 A. YES. WE ASK KIDS ABOUT THEIR DISCLOSURE
28 PROCESS WITHIN THE INTERVIEW.

1 Q. YOU TALKED ABOUT THAT YOU COULD NEVER TELL
2 100 PERCENT IF THE CHILD WAS TELLING THE TRUTH.

3 YOU'RE NEVER PRESENT WHEN ANY OF THE ALLEGED
4 ABUSE OCCURS; IS THAT RIGHT?

5 A. THAT'S CORRECT.

6 Q. ARE THERE THINGS THAT YOU LOOK FOR WITHIN AN
7 INTERVIEW TO GET A SENSE OF THE CHILD'S DISCLOSURE AND
8 WHETHER OR NOT IT SEEMS LEGITIMATE TO YOU?

9 A. AGAIN, I MEAN, MY ROLE IS TO PROVIDE A
10 NEUTRAL, SAFE, CHILD-FRIENDLY ENVIRONMENT FOR A CHILD TO
11 BE ABLE TO TALK ABOUT WHAT MIGHT HAVE HAPPENED TO THEM
12 AND DOING THAT IN A WAY BY ASKING QUESTIONS THAT ARE BEST
13 PRACTICE.

14 AND I DON'T GLEAN FROM THAT, ONE WAY OR
15 ANOTHER, WHETHER I THINK THE CHILD IS TELLING THE TRUTH
16 OR NOT. THAT INFORMATION IS BEING GATHERED FOR THE
17 INVESTIGATORS TO -- IT'S ULTIMATELY UP TO THE COURTS TO
18 DECIDE, YOU KNOW, WHAT TRULY HAPPENED.

19 MY JOB IS TO GATHER THE INFORMATION USING
20 BEST PRACTICE TECHNIQUES.

21 MS. DI TILLIO: THANK YOU.

22 I HAVE NOTHING FURTHER.

23 THE COURT: RE CROSS.

24

25 **RE CROSS-EXAMINATION**

26

27 BY MS. OLIVER:

28 Q. ARE THERE ANY CONCERNS ABOUT A PARENT

1 QUESTIONING A CHILD WITH ANOTHER CHILD PRESENT ABOUT
2 SEXUAL ABUSE?

3 A. IS THERE CONCERNS ABOUT THAT?

4 Q. YES.

5 A. I THINK, IDEALLY, YOU WANT TO QUESTION KIDS
6 INDIVIDUALLY, YOU KNOW, BY THEMSELVES. WHEN
7 INVESTIGATIONS -- WHEN THE INVESTIGATORS -- WHETHER
8 YOU'RE CHILD PROTECTIVE SERVICES OR POLICE, THERE ARE
9 PROTOCOLS TO INTERVIEW KIDS BY THEMSELVES, WITHOUT THE
10 INFLUENCE OF ANYBODY, WHETHER IT'S A PARENT OR ANOTHER
11 CHILD. SO, IDEALLY, YOU WANT TO HAVE KIND OF A
12 ONE-ON-ONE INTERVIEW WITH THE CHILD.

13 Q. OKAY. AND IS THAT BECAUSE, WHEN YOU
14 INTERVIEW THAT ONE PARTICULAR CHILD, YOU WANT TO MAKE
15 SURE THAT THAT CHILD IS TALKING ABOUT THEIR OWN
16 EXPERIENCE AND NOT WHAT THEY MAY HAVE HEARD FROM ANOTHER
17 SOURCE?

18 A. YEAH. AGAIN, AND THAT'S WHY WE DO THAT
19 SOURCE MONITORING, BECAUSE IT'S NOT JUST THEIR OWN
20 EXPERIENCE. BECAUSE WE INTERVIEW KIDS THAT MIGHT HAVE
21 WITNESSED SOMETHING, BUT -- WHAT THEY HEAR CAN BE
22 IMPORTANT, BUT I WANT TO KNOW, SPECIFICALLY, WHAT THEY
23 HAVE SEEN OR EXPERIENCED DIRECTLY.

24 MS. OLIVER: OKAY. THANK YOU.

25 NOTHING FURTHER.

26 MS. DI TILLIO: I JUST HAVE ONE FOLLOW-UP QUESTION.

27 ///

28 ///

REDIRECT EXAMINATION

1

2

3 BY MS. DI TILLIO:

4 Q. SIMPLY BECAUSE A CHILD IS EXPOSED TO A
5 POTENTIALLY SUGGESTIVE ENVIRONMENT DOES NOT MEAN THAT
6 THEY WERE NECESSARILY INFLUENCED BY THAT ENVIRONMENT?
7 WOULD THAT BE FAIR?

8 A. THAT'S CORRECT.

9 MS. DI TILLIO: THANK YOU.

10 NOTHING FURTHER.

11 MS. OLIVER: NOTHING FURTHER.

12 THE COURT: THANK YOU.

13 THE WITNESS: ALL RIGHT. THANK YOU.

14 THE COURT: ARE THERE ANY FURTHER WITNESSES AT THIS
15 TIME?

16 MS. DI TILLIO: NO, YOUR HONOR. NO FURTHER
17 WITNESSES.

18 THE COURT: AND AS FAR AS THE EXHIBITS, YOU'RE
19 MOVING --

20 MS. DI TILLIO: THE PEOPLE WOULD MOVE EXHIBITS 1
21 THROUGH -- I BELIEVE WE'RE UP TO 20 -- INTO EVIDENCE.

22 THE COURT: FOR THE RECORD, ANY OBJECTION?

23 MS. OLIVER: NO.

24 THE COURT: ALL RIGHT. 1 THROUGH 20 ARE RECEIVED.

25 ---000---

26 (THEREUPON COURT'S EXHIBITS 1 THROUGH 20, HAVING
27 BEEN PREVIOUSLY MARKED FOR IDENTIFICATION, WERE
28 RECEIVED INTO EVIDENCE.)

1 Q. WHERE DID HE HAVE A SCAR?

2 A. ON HIS LEGS, IN THE BACK OF HIS LEGS.

3 Q. AND DID HE HAVE ANY SCARS ON THE FRONT OF
4 HIS LEGS?

5 A. I DON'T RECALL. I DON'T THINK SO.

6 Q. AND DID HE HAVE ANY SCARS NEAR HIS GROIN
7 AREA?

8 A. I DON'T REMEMBER.

9 MS. OLIVER: THANK YOU.

10 NOTHING FURTHER.

11 THE COURT: CROSS-EXAMINATION.

12 MS. DI TILLIO: THANK YOU.

13

14

CROSS-EXAMINATION

15

16 BY MS. DI TILLIO:

17 Q. YOU INDICATED THAT THE SCARS TO HIS LEGS
18 WERE ON THE BACKS OF HIS LEGS; IS THAT RIGHT?

19 A. YES.

20 Q. WOULD IT BE THE BACKS OF HIS THIGHS OR THE
21 BACKS OF HIS CALVES, LIKE, HIS CALVES?

22 A. MORE OF HIS CALVES.

23 Q. SO BELOW THE KNEE?

24 A. YES.

25 MS. DI TILLIO: THANK YOU.

26 NOTHING FURTHER.

27 THE COURT: ANYTHING ON REDIRECT?

28 MS. OLIVER: NO, YOUR HONOR.

1 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU CAN
2 STEP DOWN. THANK YOU.

3 IS THERE ANY FURTHER EVIDENCE ON BEHALF OF
4 DEFENDANT?

5 MS. OLIVER: YOUR HONOR, AT THIS TIME THE DEFENSE
6 WOULD LIKE TO MARK --

7 THE COURT CLERK: COURT'S EXHIBIT 21.

8 THE COURT: AND BRIEFLY DESCRIBE WHAT COURT'S
9 EXHIBIT 21 IS, FOR THE RECORD.

10 MS. OLIVER: COURT'S EXHIBIT 21 IS A COURT
11 CERTIFIED COPY OF A REQUEST FOR A CIVIL HARASSMENT
12 RESTRAINING ORDER THAT WAS FILED WITH THE SAN DIEGO
13 SUPERIOR COURT ON MAY 21ST, 2012, AT 2:18 P.M.

14 THE COURT: THANK YOU.

15 AND WE'RE GOING TO PUT THAT RIGHT UP HERE.
16 AND I'M SURE YOU'LL REFER TO IT AT -- DURING YOUR
17 ARGUMENT.

18 MS. OLIVER: THANK YOU. THE DEFENSE WOULD LIKE TO
19 HAVE COURT'S EXHIBIT 21 ADMITTED INTO EVIDENCE.

20 AND, WITH THAT, DEFENSE RESTS.

21 THE COURT: 21 IS RECEIVED.

22 ---000---

23 (THE FOLLOWING WAS MARKED/IDENTIFIED AS
24 COURT'S EXHIBIT FOR IDENTIFICATION AND
25 RECEIVED INTO EVIDENCE:

26 21 - CERTIFIED COPY OF REQUEST FOR CIVIL
27 HARASSMENT RESTRAINING ORDER WITH
28 DECLARATION, SEVEN PAGES TOTAL.)

1 MS. OLIVER: OKAY.

2 MS. DI TILLIO: OKAY.

3 THE COURT: SO I'LL SEND THEM BACK TO COME BACK AT
4 1:30.

5 ---000---

6 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
7 COURT, WITHIN THE PRESENCE OF THE JURORS AND
8 THE ALTERNATE JURORS.)

9 ---000---

10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WHAT
11 I'M GOING TO DO IS I'M GOING TO GIVE YOU AN EARLY LUNCH
12 HOUR.

13 WE NEED TO TALK A LITTLE BIT ABOUT THE JURY
14 INSTRUCTIONS THAT I'M GOING TO BEGIN READING TO YOU THIS
15 AFTERNOON.

16 SO YOU'RE GOING TO BE FREE UNTIL 1:30 THIS
17 AFTERNOON. IT'S ABOUT 10:40 RIGHT NOW.

18 YOU'RE REMINDED NOT TO TALK ABOUT THE CASE,
19 NOT TO FORM OR EXPRESS AN OPINION ABOUT THE CASE. YOU'RE
20 NOT TO DISCUSS THE MATTER AT ALL UNTIL THE MATTER IS
21 SUBMITTED TO YOU.

22 MY BEST ESTIMATE RIGHT NOW -- THE ATTORNEYS'
23 AND MY BEST ESTIMATE WILL BE THAT YOU'RE GOING TO BE
24 INSTRUCTED TODAY. I WOULD RATHER NOT INTERRUPT THEIR
25 ARGUMENTS. THEN TOMORROW MORNING, AT 9:00 O'CLOCK, THEY
26 WILL BEGIN THEIR ARGUMENTS. AND THEY WILL FINISH THEIR
27 ARGUMENTS TOMORROW. AND THEN THE CASE WILL BE SUBMITTED
28 TO THE JURY TOMORROW.

1 SO HAVE A NICE LUNCH. I'LL SEE YOU BACK
2 HERE AT 1:30.

3 ---000---

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
5 COURT, OUTSIDE THE PRESENCE OF THE JURORS AND
6 THE ALTERNATE JURORS.)

7 ---000---

8 THE COURT: WHY DON'T WE TAKE A FIVE-MINUTE RECESS?

9 AND BEFORE I FORGET, WE'RE GOING TO NEED A
10 CLEAN COMPUTER TO RUN THE DVD, A COMPUTER WITHOUT ANY
11 PROGRAMS ON IT.

12 MS. DI TILLIO: RIGHT. GOT IT.

13 ---000---

14 (THEREUPON COURT WAS IN RECESS.)

15 ---000---

16 THE COURT: ALL RIGHT. LET'S TALK ABOUT VERDICT
17 FORMS FIRST.

18 ALL RIGHT. SO WE HAVE VERDICT FORMS FOR ALL
19 18 COUNTS.

20 MS. DI TILLIO: THAT'S CORRECT. I DID NOT INCLUDE
21 ONE FOR THE LIO THAT I PROPOSE IN MY JURY INSTRUCTIONS
22 BASED ON WHETHER OR NOT WE WERE GOING TO GIVE THAT, BUT,
23 CERTAINLY, THIS IS THE FORMAT.

24 THE COURT: AND THE LIO, WHICH JURY INSTRUCTION IS
25 THAT?

26 MS. DI TILLIO: YOUR HONOR, I INCLUDED -- I
27 INCLUDED A LESSER-INCLUDED OFFENSE OF ATTEMPTED SEXUAL
28 PENETRATION OF A CHILD UNDER THE AGE OF 10. AND THAT

1 IS --

2 THE COURT: FOR COUNT?

3 MS. DI TILLIO: FOR -- FOR COUNTS 1, 12, 15.

4 AND I INCLUDED THAT TOWARDS THE END OF THE
5 JURY INSTRUCTION PACKET. I PUT IN 3518 FOR THE LIO.

6 THE COURT: WHAT ABOUT 17?

7 MS. DI TILLIO: SO -- WELL, AND THAT -- AND THAT
8 WOULD ALSO INCLUDE 8, I BELIEVE. BOTH 8 AND 17 CHARGE
9 THE INTERCOURSE.

10 THE COURT: WOULD HAVE ATTEMPTED --

11 MS. DI TILLIO: COULD HAVE ATTEMPTED AS WELL, IF
12 REQUESTED, IF THE EVIDENCE SUPPORTS IT.

13 THE COURT: 1, 12, 17 AND WHAT ELSE?

14 1 --

15 MS. DI TILLIO: THE PENETRATION COUNTS ARE 1, 12
16 AND 15. THE INTERCOURSE CHARGES ARE 8 AND 17.

17 THE COURT: 17.

18 SO MY SENSE IS THE EVIDENCE IS -- THE STATE
19 OF THE EVIDENCE IS SUCH, IF THE JURY DOESN'T BELIEVE
20 THERE'S PENETRATION, THE ATTEMPT -- ATTEMPTED WOULD BE
21 NECESSARY.

22 MS. DI TILLIO: YOUR HONOR, HERE'S SORT OF -- LET
23 ME JUST PULL THAT UP REAL QUICK.

24 MS. OLIVER: ARE YOU PULLING UP 3518?

25 MS. DI TILLIO: NO. I'M PULLING UP -- MY ISSUE
26 WITH GIVING THE LIO OF THE INTERCOURSE IS THIS, THAT IT'S
27 THE PEOPLE'S POSITION THAT THE 288.7(A) IS A GENERAL
28 INTENT CRIME. AND AN ATTEMPT WOULD BE A SPECIFIC INTENT,

1 WOULD HAVE TO HAVE THE SPECIFIC INTENT TO ATTEMPT THAT
2 PARTICULAR CRIME.

3 AND SO I DON'T THINK THAT A SPECIFIC INTENT
4 CRIME CAN BE THE LIO OF A GENERAL INTENT CRIME.

5 THE REASON THAT THE 288.7(B) IN CONJUNCTION
6 WITH PENETRATION -- NOT ORAL COP, BUT PENETRATION --
7 THAT'S A SPECIFIC INTENT CRIME. AND THAT'S WHY I THINK
8 THE LIO APPLIES ONLY TO THE PENETRATION COUNTS, THE
9 DIGITAL PENETRATION COUNTS, AND NOT TO THE INTERCOURSE
10 COUNTS.

11 THEY ARE --

12 THE COURT: SO WHAT IF THE JURY FINDS THAT THERE
13 WASN'T PENETRATION FOR THE --

14 MS. DI TILLIO: SO THERE'S THE BACKUP ON EACH OF
15 THOSE AS TO PENIS TO VAGINA, AS 288(A)'S ARE CHARGED.

16 THE COURT: RIGHT. SO THE ELEMENTS --

17 LET ME WORK THROUGH THIS.

18 MS. DI TILLIO: SURE. I SHOULD HAVE PROVIDED MY
19 COLOR-CODED CHART.

20 THE COURT: YEAH. IT WOULD BE HELPFUL -- IF IT
21 WOULD BE HELPFUL FOR US TO UNDERSTAND IT, YES.

22 MS. DI TILLIO: I CAN DO THAT.

23 WELL, MY TAKE ON IT, AT LEAST, I CAN DO
24 THAT.

25 MS. OLIVER: WELL, I DON'T NECESSARILY AGREE WITH
26 THE PREMISE THAT, JUST BECAUSE AN OFFENSE IS A GENERAL
27 INTENT, THEN YOU CAN'T HAVE AN ATTEMPT, WHICH JUST MAKES
28 IT SPECIFIC INTENT, BECAUSE ATTEMPT IS A DIFFERENT CRIME

1 IN AND OF ITSELF.

2 THE COURT: WELL, THAT'S -- -- ALL RIGHT. I SEE --
3 I THINK I UNDERSTAND THE THEORY.

4 MS. DI TILLIO: WELL, YOUR HONOR, I MEAN, IF I MAY?

5 THE COURT: LET ME LOOK AT SOMETHING.

6 MS. DI TILLIO: CERTAINLY.

7 THE COURT: AND THEN YOU'LL HAVE ALL THE TIME.

8 ---000---

9 (PAUSE IN PROCEEDINGS.)

10 ---000---

11 THE COURT: OKAY. MISS OLIVER, WHAT'S YOUR
12 POSITION?

13 MS. OLIVER: AND WE'RE TALKING IN REGARDS TO COUNTS
14 8 AND 17?

15 THE COURT: YES.

16 OKAY. SO THE USE NOTE, UNDER 460, SAYS:

17 "AN ATTEMPTED OFFENSE IS A SPECIFIC
18 INTENT CRIME EVEN IF THE UNDERLYING
19 CRIME REQUIRES ONLY GENERAL INTENT."

20 SO I THINK I'M REQUIRED TO GIVE THE ATTEMPT
21 FOR 8, 17, 1, 12 AND 15, WHICH MEANS WE NEED TWO VERDICT
22 FORMS FOR EACH OF THOSE COUNTS.

23 SO TELL ME -- TELL ME IF YOU THINK THAT'S
24 WRONG.

25 8 AND 17 ARE THE SEXUAL INTERCOURSE CHARGES;
26 RIGHT?

27 MS. DI TILLIO: YES. AND WE'RE ALSO GOING TO DO
28 THE DIGITAL PENETRATION.

1 THE COURT: SO WE'LL NEED 460, THE INTENT.

2 MS. DI TILLIO: 460 IS IN THERE, EXCEPT THAT I
3 WOULD HAVE TO CHANGE THE LANGUAGE TO BE COMMENSURATE WITH
4 ALL THE CHARGES, AS OPPOSED TO HOW IT IS NOW WITH JUST
5 THE SEXUAL PENETRATION.

6 THE COURT: YES.

7 MS. DI TILLIO: SO I COULD JUST DO A SEPARATE 460,
8 OR I CAN INCLUDE THE INTERCOURSE LANGUAGE IN THIS ONE,
9 COMBINE IT.

10 WHAT DOES THE COURT PREFER?

11 THE COURT: WELL, LET ME FIND WHERE 460 IS IN YOUR
12 PACKET.

13 MS. DI TILLIO: IT'S TOWARDS THE END.

14 MS. OLIVER: IT'S RIGHT BEFORE THE PRE-DELIBERATION
15 INSTRUCTIONS.

16 MS. DI TILLIO: IT'S PAGE 34 OUT OF 39.

17 THE COURT: AND I WOULD JUST ADD THE LANGUAGE FOR
18 -- WITHIN 460, ATTEMPT FOR COUNTS 1, 12 AND 15 AS WELL.

19 EXCUSE ME.

20 I WOULD ADD THE LANGUAGE FOR COUNTS 8 AND 17
21 AS WELL.

22 MS. DI TILLIO: WITHIN THE SAME INSTRUCTION, OKAY.

23 THE COURT: YES.

24 MS. DI TILLIO: I'LL DRAFT THAT. THEN WE'LL HAVE
25 TO CHANGE -- WELL, I'LL AUGMENT 35 -- I USED 3518. SINCE
26 WE'LL GIVE DIFFERENT VERDICT FORMS -- SO I'LL JUST
27 AUGMENT THOSE AS WELL.

28 THE COURT: THAT'S WHAT GETS VERY CONFUSING.

1 MS. DI TILLIO: I CAN'T STAND THAT INSTRUCTION.

2 CAN YOU DO ANYTHING ABOUT THAT ONE?

3 THE COURT: NO. I WISH WE COULD BUT --

4 SO IT'S 1, 12 AND 15; RIGHT?

5 MS. OLIVER: UH-HUH. BECAUSE IT JUST SAYS 1 AND

6 15.

7 THE COURT: SO THEN WE HAVE TO ADD 12. AND THEN WE
8 HAVE TO HAVE THE LANGUAGE FOR COUNTS 8 AND 17.

9 AS FAR AS --

10 WITH THOSE CHANGES TO THE VERDICT FORMS, IS
11 THERE ANYTHING ANYBODY ELSE WOULD LIKE TO SAY CONCERNING
12 THE VERDICT FORMS?

13 MS. OLIVER: NOT CONCERNING -- WELL, I HAVE
14 QUESTIONS ABOUT OTHER LIO'S.

15 THE COURT: WHAT OTHER LIO'S?

16 MS. OLIVER: I NOTICED FOR --

17 OR SHOULD I JUST WAIT UNTIL WE GET TO THAT
18 JURY INSTRUCTION?

19 THE COURT: WELL, ALL RIGHT.

20 SO WHY DON'T WE DO IT THIS WAY?

21 WHY DON'T YOU TELL ME WHAT OTHER LIO'S YOU
22 THINK THE COURT -- OR WHAT OTHER VERDICT FORMS FOR LIO'S
23 DO YOU THINK THE COURT SHOULD BE GIVING?

24 MS. OLIVER: PENAL CODE SECTION 242 AND 240.

25 THE COURT: SO THAT'S BATTERY AND ASSAULT.

26 MS. OLIVER: YES.

27 THE COURT: ALL RIGHT. SO AS I UNDERSTAND IT, THE
28 PEOPLE INDICATED THERE WAS A CASE WHICH INDICATED THAT

1 BATTERY WAS NOT A LESSER-INCLUDED OFFENSE OF THESE SEXUAL
2 OFFENSES.

3 I THOUGHT I HEARD HER --

4 MS. DI TILLIO: YOU DID. AND I AM.

5 THE COURT: YOU SAY THAT --

6 MS. DI TILLIO: I DID. AND I AM TRYING TO PULL
7 THAT UP RIGHT NOW, THAT CASE.

8 IT IS -- BATTERY IS NO LONGER AN LIO OF 288.
9 I THINK THE JURY IS STILL OUT -- QUOTE, UNQUOTE -- THE
10 JURY IS STILL OUT ON -- ON ASSAULT. I MEAN, I THINK THAT
11 THE LANGUAGE IN THE BATTERY DECISION KIND OF MEANS
12 ASSAULT IS SORT OF OUT OF THE WINDOW -- YOU KNOW, OUT OF
13 THE ARENA, TOO, BUT I THINK, CURRENTLY, IT'S STILL --
14 IT'S STILL TECHNICALLY AN LIO.

15 THE COURT: SO THEN WE'D HAVE TO HAVE ASSAULT
16 VERDICT FORMS.

17 MS. DI TILLIO: WELL, I THINK, IF THE EVIDENCE
18 SUPPORTS IT -- AND I DON'T -- I DON'T NECESSARILY THINK
19 THE EVIDENCE SUPPORTS AN ASSAULT UNDER THESE -- LET ME
20 PULL UP THE INSTRUCTION UNDER THESE PARTICULAR
21 CIRCUMSTANCES.

22 THE COURT: WHY DON'T YOU CITE THE CASE FIRST, SO I
23 CAN LOOK AT IT?

24 MS. DI TILLIO: I AM. YES, YES.

25 IT IS *PEOPLE VERSUS SHOCKLEY*,
26 S-H-O-C-K-L-E-Y. AND IT'S 58 CAL.4TH 400.

27 THE COURT: I'LL BE RIGHT BACK.

28 ---000---

1 (THEREUPON COURT WAS IN RECESS.)

2 ---000---

3 THE COURT: ALL RIGHT. YOU'VE HAD A CHANCE TO
4 REVIEW *SHOCKLEY*?

5 MS. OLIVER: YES, YOUR HONOR.

6 THE COURT: EVERYBODY?

7 IT SEEMS TO ME THAT THE SUPREME COURT HAS
8 INDICATED, AS FAR AS 288, BATTERY IS NOT A LESSER-
9 INCLUDED OFFENSE.

10 MS. OLIVER: WELL, NOT 288, SPECIFICALLY. I
11 BELIEVE THAT THEY DEALT WITH 288(B)(1), SUBSECTION (B),
12 SUBSECTION (1). THAT'S WHAT THIS CASE, *SHOCKLEY*, WAS
13 ABOUT.

14 THE COURT: RIGHT. RIGHT.

15 SO FOR COUNTS 2 --

16 MS. OLIVER: I THINK IT'S JUST COUNT 2.

17 THE COURT: COUNT 2, THERE WOULD BE NO
18 LESSER-INCLUDED OFFENSE.

19 MS. OLIVER: IS THAT JUST -- IS THE COURT SAYING
20 THERE'S NO LESSER-INCLUDED OF BATTERY?

21 WHICH IS WHAT *SHOCKLEY* DEALT WITH.

22 THE COURT: YES.

23 MS. OLIVER: THEN WHAT ABOUT ASSAULT, 240, WHICH IS
24 STILL LISTED AS AN LIO IN THE JURY INSTRUCTIONS?

25 THE COURT: SO LET'S TALK ABOUT WHAT THE EVIDENCE
26 WAS FOR 2.

27 WHAT'S THE PEOPLE'S POSITION AS FAR AS
28 ASSAULT?

1 MS. DI TILLIO: GENERALLY, MY POSITION -- AND
2 SPECIFICALLY RELATED TO THESE FACTS -- IS THAT THIS
3 CONDUCT DOES NOT AMOUNT TO AN ASSAULT, THAT IF THE
4 ALLEGATIONS ARE TO BE BELIEVED, THAT THEY RISE TO THE
5 LEVEL OF THE CHARGED OFFENSES AND NOT A LESSER-INCLUDED
6 OF ASSAULT.

7 I DON'T BELIEVE THAT THERE'S EVIDENCE TO
8 SUGGEST THAT THERE WAS AN ASSAULT THAT HAPPENED WITHOUT
9 THE SEXUAL INTENT. AND SO IF THE SEXUAL INTENT IS THERE,
10 IT'S NOT AN ASSAULT. IT'S A MOLEST.

11 THE COURT: AND IF THE SEXUAL INTENT IS NOT THERE?

12 MS. DI TILLIO: THEN, THEORETICALLY, THERE COULD BE
13 AN ASSAULT, BUT ALL OF THE TOUCHING IS COUPLED WITH THE
14 LOCATIONS ON THE BODY, SUCH AS THE VAGINA, THE -- AND THE
15 PENIS TO THE VAGINA, ALL OF THAT TYPE OF TOUCHING.

16 EITHER THE JURY BELIEVES THAT IT HAPPENED --
17 CLEARLY, THAT'S, YOU KNOW, SEXUAL TOUCHING -- OR THE JURY
18 DOESN'T BELIEVE THAT IT HAPPENED. AND THEN THERE'S
19 NOTHING. THERE'S LITTLE ROOM IN BETWEEN, UNDER THESE
20 FACTS, FOR THIS TOUCHING TO HAVE BEEN ANYTHING OTHER THAN
21 A MOLEST.

22 I DON'T THINK THAT ASSAULT APPLIES UNDER
23 THESE FACTS, ESPECIALLY TO THE ORAL COPULATIONS, THE
24 INTERCOURSE THE PENETRATIONS. THOSE CAN BE NOTHING BUT
25 WHAT'S CHARGED VERSUS SIMPLE ASSAULT.

26 THE COURT: WHAT ABOUT COUNT 2, THE ONE DEALING
27 WITH HANNAH?

28 MS. DI TILLIO: WELL, COUNT 2 IS A SPECIFIC INTENT

1 288, BASICALLY, WITH THE USE OF FORCE. SO THERE HAS TO
2 BE -- WELL, I DON'T -- I DON'T THINK THAT, GIVEN THE
3 LOCATION OF THE TOUCHING, THAT IT'S ALLEGED,
4 SPECIFICALLY, THE VAGINA, THAT THAT COULD BE CONSIDERED
5 AN ASSAULT VERSUS A 288(B), WHICH IS -- I'M SORRY -- IT'S
6 A -- YES, SPECIFIC INTENT.

7 IT'S JUST -- IT'S NOT A SHOULDER. IT'S NOT
8 A BUTTOCKS. IT'S NOT AN INNOCUOUS LOCATION OF THE BODY
9 WHERE THERE CAN BE AN ARGUMENT THAT IT'S JUST AN ASSAULT.
10 IT'S HER VAGINA.

11 SO IT'S MY POSITION THAT ASSAULT IS NOT A
12 LESSER-INCLUDED OFFENSE OF THE 288(B).

13 THE COURT: LET ME ASK MISS OLIVER.

14 AS FAR AS THE 288(A) SECTION, WHAT IS YOUR
15 POSITION AS TO LESSER-INCLUDED OFFENSES?

16 MS. OLIVER: I BELIEVE THAT THEY SHOULD BE GIVEN,
17 BOTH THE ASSAULT AND BATTERY.

18 THE COURT: AND THE PEOPLE'S POSITION?

19 MS. DI TILLIO: YOUR HONOR, IT'S THE PEOPLE'S
20 POSITION THAT BATTERY IS NOT A LESSER-INCLUDED OF LEWD
21 CONDUCT ON A CHILD. THE ONLY DIFFERENCE BETWEEN A 288(A)
22 AND A 288(B), ESSENTIALLY, IS THE USE OF FORCE TO
23 ACCOMPLISH THE 288(B).

24 THE COURT: I THINK I UNDERSTAND THAT. IT'S AN
25 ADDITIONAL ELEMENT, THE USE OF FORCE.

26 MS. DI TILLIO: EXACTLY.

27 THAT'S WHY *SHOCKLEY* IS ON POINT, THAT
28 THERE'S A DIFFERENCE BETWEEN A 288(A) AND A BATTERY.

1 SO I DO NOT BELIEVE A BATTERY IS A
2 LESSER-INCLUDED OFFENSE OF 288(A) ANYMORE. AND,
3 LIKewise, I HAVE THE SAME ARGUMENT WITH THE LOCATION OF
4 THESE TOUCHINGS ARE ALL VAGINA, VAGINA, VAGINA,
5 INTERCOURSE, DIGITAL PENETRATION.

6 ALL OF THESE ARE -- THEY'RE NOT ASSAULT --
7 IT'S MY ARGUMENT THAT IT'S NOT, UNDER THESE FACTS, A
8 LESSER-INCLUDED OFFENSE, GIVEN THE LOCATION OF THESE
9 TOUCHINGS.

10 MS. OLIVER: YOUR HONOR, MAY I BE HEARD ON THAT
11 BRIEFLY?

12 THE COURT: OF COURSE.

13 MS. OLIVER: YOUR HONOR, I DON'T BELIEVE THAT --
14 BECAUSE OF THE LOCATION OF THE ALLEGED TOUCHING, I DON'T
15 BELIEVE THAT, IN AND OF ITSELF, MAKES AN LIO
16 INAPPROPRIATE IN THIS PARTICULAR CASE, ESPECIALLY WHEN
17 THE BODY OF THE DESCRIPTION OF THE LEWD ACT UPON A CHILD
18 -- IT SAYS IT IS A LEWD AND LASCIVIOUS ACT UPON, WITH THE
19 BODY AND ANY PART OR MEMBER.

20 AND SO -- BECAUSE IT WAS ANTICIPATED THAT
21 ANY PART OF A CHILD'S BODY WOULD FALL UNDER THAT
22 PARTICULAR CODE SECTION. AND WHEN THE JURY INSTRUCTIONS
23 WERE DEVELOPED, THEY WERE DEVELOPED WITH THAT PARTICULAR
24 LANGUAGE IN MIND.

25 AND SO YOU CAN'T -- AND SO I'M SAYING THAT I
26 THINK THAT IT WAS A FACT THAT YOU COULD HAVE A SITUATION
27 WHERE THE VAGINA COULD BE TOUCHED AND, YET, STILL THEY
28 MADE AN LIO OF ASSAULT, AN LIO OF BATTERY.

1 I BELIEVE -- I KNOW THE COURT'S POSITION IN
2 REGARDS TO THE BATTERY, GIVEN THE COURT'S COMMENTS IN THE
3 *SHOCKLEY* CASE, BUT I BELIEVE THAT THE LIO STILL APPLIES.
4 I DON'T BELIEVE THAT A LOCATION ON A BODY EXCLUDES AN LIO
5 FROM BEING GIVEN, ESPECIALLY WHEN IT'S IN THAT PARTICULAR
6 AREA OF THE BODY, IS ENCOMPASSED IN THE STATUTE.

7 MS. DI TILLIO: YOUR HONOR, THE REQUIREMENT OF AN
8 ASSAULT MEANS THE APPLICATION OF FORCE, MEANING TO TOUCH
9 IN A HARMFUL OR OFFENSIVE MANNER.

10 AND THIS IS WHY, I THINK, I WAS A LITTLE
11 SURPRISED THAT THE *SHOCKLEY* DECISION DID NOT REACH THE
12 ISSUE OF ASSAULT AS WELL BECAUSE ASSAULT REQUIRES THAT
13 APPLICATION OF FORCE TO TOUCH IN A HARMFUL OR OFFENSIVE
14 MANNER.

15 AND THAT'S VERY SIMILAR TO THE ELEMENT OF
16 BATTERY THAT THE COURT HAD AN ISSUE WITH AND THAT, OF
17 COURSE, YOU CAN COMMIT A 288(A), AND IT NOT BE CONSIDERED
18 A HARMFUL OR OFFENSIVE TOUCHING.

19 SO I THINK THAT, UNDER THESE CIRCUMSTANCES,
20 THAT THE GREATER CRIME COULD BE COMMITTED WITHOUT HAVING
21 DONE THE TOUCHING IN A RUDE OR ANGRY OR HARMFUL OR
22 OFFENSIVE MANNER.

23 AND SO --

24 THE COURT: THAT, ESSENTIALLY, IS THE ARGUMENT.

25 MS. DI TILLIO: RIGHT.

26 THE COURT: THAT THE CONCEPT -- I MEAN, THAT'S THE
27 ARGUMENT THAT -- THOSE ARE THE ARGUMENTS THAT BOTH THE
28 MAJORITY AND THE CONCURRING AND DISSENTING OPINION WERE

1 RAISING, WHETHER, AS A MATTER OF LAW, THE ACT THAT WAS
2 DONE WAS GOING TO BE RUDE OR OFFENSIVE.

3 MS. DI TILLIO: WE HAD EVIDENCE IN THIS VERY CASE
4 THAT THERE WAS SOME TOUCHING THAT ONE OF THE CHILDREN
5 ENJOYED AND DID NOT FIND RUDE OR OFFENSIVE. AND IN THAT
6 CASE THE CRIME STILL OCCURRED.

7 IT WASN'T OFFENSIVE TO THE CHILD, BUT IT'S
8 STILL A CRIME IF THE JURY BELIEVES THAT IT HAPPENED. AND
9 SO THAT'S WHY I DON'T THINK THAT, NECESSARILY, ASSAULT IS
10 A LESSER INCLUDED OF MOLEST.

11 ---000---

12 (PAUSE IN PROCEEDINGS.)

13 ---000---

14 THE COURT: ALL RIGHT. LET'S TALK ABOUT COUNTS 1,
15 2 AND 3 FIRST. AND THOSE ARE THE COUNTS THAT ARE
16 DIRECTLY RELATED TO HANNAH.

17 SO THE EVIDENCE THAT'S BEEN PRESENTED
18 INDICATES -- I MEAN, COUNT 2 IS DIRECTLY ON POINT FOR THE
19 *SHOCKLEY* CASE.

20 AM I MISSING SOMETHING ABOUT THAT?

21 COUNT 2 IS THE 288(B)(1).

22 MS. OLIVER: CORRECT.

23 THE COURT: *SHOCKLEY* SAYS BATTERY IS NOT A
24 LESSER-INCLUDED OFFENSE. BY ANALOGY, THE PEOPLE ARE
25 ARGUING ASSAULT IS NOT A LESSER-INCLUDED FOR THE SAME --
26 I THINK, FOR THE SAME REASONS.

27 AM I -- AM I UNDERSTANDING THAT CORRECTLY?

28 MS. DI TILLIO: YES.

1 THE COURT: OKAY. AND FOR COUNT 1, IS IT THE
2 POSITION OF THE PEOPLE THAT THERE ARE NO LESSER-INCLUDED
3 OFFENSES?

4 MS. DI TILLIO: WE'RE GIVING THE LESSER-INCLUDED OF
5 ATTEMPTED PENETRATION.

6 THE COURT: BUT YOU THINK THERE ARE NO OTHER
7 LESSER-INCLUDED OFFENSES.

8 AND SO WHY?

9 MS. DI TILLIO: YES. AND THE INTENT -- THE ONLY
10 OTHER POTENTIAL DISCUSSION WE COULD HAVE OF AN LIO WOULD
11 BE A 288(A), BUT THE INTENT IS SOMEWHAT DIFFERENT THAT'S
12 REQUIRED FOR 288.7 AS IT IS FOR 288(A) AND, SPECIFICALLY,
13 THE (B), THE SPECIFIC INTENT PORTION OF 288.7.

14 BECAUSE THE PENETRATION REQUIRED IS FOR THE
15 PURPOSES OF EITHER SEXUAL ABUSE, CAUSING PAIN, INJURY,
16 DISCOMFORT, OR FOR THE PURPOSE OF SEXUAL ABUSE, AROUSAL
17 AND GRATIFICATION.

18 THE 288 ALLOWS FOR GRATIFYING LUST,
19 PASSIONS, OR SEXUAL DESIRES OF THEMSELVES OR THE CHILD.

20 SO THE INTENT REQUIREMENT IS DIFFERENT
21 BETWEEN THE TWO CHARGES. AND I THINK THAT, OTHER THAN
22 THE ATTEMPTED -- I DON'T THINK ASSAULT OR BATTERY WOULD
23 APPLY TO THE 288.7 BECAUSE WE ARE TALKING ABOUT A SEXUAL
24 ORGAN, HER VAGINA, THE ONLY PART OF THE BODY THAT APPLIES
25 UNDER THAT PARTICULAR CODE SECTION.

26 AND JUST TO HIGHLIGHT A COMMENT THAT
27 MISS OLIVER MADE EARLIER ABOUT 288(A) HAVING LIO'S --
28 ASSAULT, POTENTIALLY BATTERY -- BUT I THINK JUST

1 ASSAULT -- THAT REALLY DOES APPLY WHEN THE 288 IS TO WHAT
2 COULD BE AN OTHERWISE INNOCENT OR INNOCUOUS PART OF THE
3 BODY BECAUSE IT DOES APPLY FROM HEAD TO TOE.

4 SO YOU CAN HAVE A 288 (A) TO THE SHOULDER, AS
5 YOU CAN TO A VAGINA, BUT I THINK THAT IF --

6 THE COURT: BUT ISN'T THAT COUNT 3?

7 MS. DI TILLIO: YES. BUT THAT --

8 THE COURT: RIGHT. RIGHT.

9 MS. DI TILLIO: SO WHAT I'M SAYING, IN TERMS OF THE
10 ASSAULT BEING THE LIO, I THINK THAT MAYBE AN ASSAULT, AS
11 AN LIO, APPLIES WHEN WE HAVE TOUCHING OF OTHER BODY
12 PARTS. SHE WAS TALKING ABOUT, YOU KNOW, BEING SPECIFIC
13 ABOUT THE BODY PARTS. IF YOU TOUCH THE SHOULDER, YOU
14 COULD GIVE THE 240 AS A LIO.

15 THE COURT: WELL, IN COUNT 3, WHAT IS THE -- WHAT
16 IS THE ACT THAT'S ALLEGED?

17 MS. DI TILLIO: THE TOUCHING OF THE VAGINA IN THE
18 LIVING ROOM WITH THE HAND. IT'S NOT THE INCIDENT THAT
19 HAPPENED IN THE BEDROOM.

20 THE COURT: SO COUNT 3 IS, ESSENTIALLY, THE
21 TOUCHING OF THE VAGINA AS WELL.

22 MS. DI TILLIO: YES, DURING THE HUG IN THE
23 DOWNSTAIRS AREA.

24 I'M GOING TO GIVE YOU MY CHART.

25 THE COURT: RIGHT.

26 SO -- WELL, I WANT TO BE SURE. I MEAN,
27 THAT'S THE WHOLE POINT -- THAT'S THE WHOLE POINT OF THIS
28 EXERCISE. THE WHOLE POINT OF THIS EXERCISE IS TO FRAME

1 THE QUESTIONS SO THE JURY UNDERSTANDS EXACTLY WHAT THE
2 THEORY -- WHAT THE THEORY IS.

3 SO LET'S GO TO THE VERDICT FORM FOR COUNT 3.

4 IT SAYS "DEFENDANT'S HAND TO CHILD'S BODY IN
5 THE LIVING ROOM."

6 BUT YOUR THEORY IS MORE THAN THAT.

7 MS. DI TILLIO: YES. AND THAT'S HOW -- THE
8 ALLEGATION HAS THE SUBSTANTIAL SEXUAL CONDUCT. AND
9 THAT'S -- THAT'S HOW IT'S CHARGED. SO THAT'S WHY. THE
10 VERDICT FORM GOES ALONG WITH HOW IT'S CHARGED.

11 THE COURT: RIGHT. BUT IT'S NOT JUST ANY PART OF
12 THE BODY.

13 MS. DI TILLIO: RIGHT, WHICH IS WHY THE SPECIAL
14 ALLEGATION IS ON THERE, THE SUBSTANTIAL SEXUAL CONDUCT.
15 SO IT'S SPECIFICALLY TO THE TOUCHING OF THE VAGINA IN THE
16 LIVING ROOM.

17 THE COURT: SO DON'T YOU THINK WE NEED TO MAKE THAT
18 PRETTY CLEAR --

19 MS. DI TILLIO: WE CAN DO THAT.

20 THE COURT: -- IN THE VERDICT FORM ITSELF?

21 OKAY. MISS OLIVER, YOUR TURN TO SAY
22 SOMETHING, IF YOU'D LIKE.

23 MS. OLIVER: WELL, I GUESS THIS IS THE FIRST THAT
24 I'M HEARING THAT COUNT 3 IS SPECIFICALLY FOR THE VAGINA.
25 BECAUSE, BASED UPON THE CHARGING DOCUMENT, BASED UPON THE
26 VERDICT FORM, THEY WEREN'T SPECIFIC AS TO THAT, EVEN
27 THOUGH THEY BOTH HAVE "TO WIT" AND A VERY DETAILED
28 DESCRIPTION.

1 AND SO AT THIS POINT IN TIME, ARE THOSE
2 DOCUMENTS GOING TO BE CHANGED? AND IS THE "TO WIT" GOING
3 TO BE NOW "VAGINA"?

4 MS. DI TILLIO: THE "TO WIT" REALLY DOESN'T EVEN
5 HAVE TO EVEN SPECIFY WHERE, AS LONG AS THE JURY
6 ULTIMATELY AGREES. THE "TO WIT" IS USED TO NARROW DOWN
7 MULTIPLE OFFENSES AND MAKE IT CLEAR TO THE JURY.

8 THE COURT: RIGHT. BUT, SEE, IN THE CONTEXT OF
9 DECIDING WHETHER OR NOT TO GIVE LESSER-INCLUDED
10 INSTRUCTIONS, THE ARGUMENT THAT YOU'RE MAKING IS THERE
11 CAN'T BE ANY LESSER-INCLUDED OFFENSE INSTRUCTIONS BECAUSE
12 WHAT I'M REALLY LOOKING FOR IS FOR THE JURY TO AGREE THAT
13 AN ACTION WAS TAKEN WHERE A SEXUAL ORGAN WAS IN PLAY.
14 AND, THEREFORE, THERE ARE NO -- AS I UNDERSTAND YOUR
15 ARGUMENT, THERE ARE NO OTHER LESSER-INCLUDED OFFENSE
16 INSTRUCTIONS.

17 MS. DI TILLIO: RIGHT.

18 THE COURT: SO IF THAT'S THE CASE -- AND I
19 UNDERSTAND THAT -- THEN WE'RE REALLY FOCUSING ON EXACTLY
20 WHAT'S IN FRONT OF THE JURY. THEN I THINK WE NEED TO
21 MODIFY THAT VERDICT FORM WITH THAT IN MIND.

22 BECAUSE WHAT I'M INCLINED TO DO IS TO GIVE
23 THAT AND NOT TO GIVE THE -- THE -- BASED ON THE FACTS OF
24 THIS CASE -- I MEAN, I THINK, AS I UNDERSTAND THE
25 PEOPLE'S ARGUMENT, THE PEOPLE'S ARGUMENT IS, LOOK,
26 BECAUSE OF WHERE THE TOUCHING WAS, IT'S NOT LIKE THE
27 TOUCHING WAS TO A NONSEXUAL PART OF THE BODY OR A PART OF
28 THE BODY THAT COULD BE CONSIDERED NONSEXUAL.

1 AND, THEREFORE, BECAUSE OF THAT, THERE
2 REALLY ISN'T A GOOD REASON, BASED ON THE SPECIFIC FACTS
3 OF THE CASE, TO GIVE LESSER-INCLUDED INSTRUCTIONS DEALING
4 WITH ASSAULT AND BATTERY.

5 MS. DI TILLIO: CORRECT.

6 THE COURT: IS THAT A FAIR SUMMARY OF WHAT YOU'RE
7 SAYING?

8 MS. DI TILLIO: YES.

9 THE COURT: OKAY. THIS IS WHAT I'M GOING TO DO.
10 I'M GOING TO READ THE GENERAL INSTRUCTIONS AT 1:30. AND
11 THEN WE'RE GOING TO TALK A LITTLE BIT MORE.

12 MS. OLIVER: OKAY.

13 THE COURT: SO IT WILL TAKE ME PROBABLY ABOUT 45
14 MINUTES TO READ THE GENERAL INSTRUCTIONS DEFINING THESE.
15 AND I THINK WE CAN HOLD OFF READING THESE SPECIFIC
16 INSTRUCTIONS UNTIL WE HAVE IT NAILED DOWN A LITTLE BIT.

17 MS. OLIVER: I HAVE A QUESTION ABOUT TWO GENERAL
18 ONES.

19 THE COURT: GO AHEAD.

20 MS. OLIVER: I NOTICED THAT 224 WAS NOT IN THE
21 PACKET. AND THAT'S THE ONE THAT DEFINES "CIRCUMSTANTIAL
22 EVIDENCE."

23 THE COURT: THAT WOULD BE A NICE INSTRUCTION TO
24 HAVE.

25 MS. DI TILLIO: YOUR HONOR --

26 THE COURT: GO AHEAD.

27 MS. DI TILLIO: WELL, I DID INCLUDE 223, WHICH IS
28 THE DEFINITION OF "CIRCUMSTANTIAL EVIDENCE."

1 I DID NOT INCLUDE 224 BECAUSE THIS IS NOT A
2 CASE WHICH RELIES SUBSTANTIALLY ON CIRCUMSTANTIAL
3 EVIDENCE TO ESTABLISH ANY ELEMENT OF THE CASE. IT IS
4 DIRECT EVIDENCE. IT IS THE TESTIMONY OF THE WITNESSES,
5 THE VICTIMS.

6 AND AS PART OF THE USE NOTES, IT INDICATES
7 -- THE BENCH NOTES INDICATE THAT THE COURT HAS A SUA
8 SPONTE DUTY TO INSTRUCT, IF THE PROSECUTION RELIES
9 SUBSTANTIALLY ON CIRCUMSTANTIAL EVIDENCE TO ESTABLISH ANY
10 ELEMENT OF THE CASE, WHICH IS WHY I DID NOT INCLUDE IT.

11 AND, IN ANY EVENT, I THINK WE WOULD
12 PROBABLY, IF THE COURT DID WANT TO GIVE IT, WOULD NEED TO
13 GIVE 225, GIVEN THAT SO MANY OF THE CHARGES ARE SPECIFIC
14 INTENT CRIMES. AND THAT COVERS BOTH -- KIND OF COVERS
15 BOTH.

16 THE COURT: I THINK WE NEED TO GIVE 225.

17 MS. DI TILLIO: 225, OKAY.

18 THE COURT: AND WHAT OTHER INSTRUCTION?

19 MS. OLIVER: AND 226, THE ONE THAT DEALS WITH
20 WITNESSES.

21 THE COURT: YES.

22 MS. OLIVER: AND THAT ONE --

23 HOW DOES THE COURT FEEL ABOUT THE LANGUAGE
24 "WHAT IS THE WITNESS'S CHARACTER FOR TRUTHFULNESS"?

25 MS. DI TILLIO: WE DIDN'T HAVE ANY CHARACTER
26 WITNESSES.

27 I'M SORRY. I DIDN'T MEAN TO INTERRUPT YOU.

28 MS. OLIVER: AND I BRING THAT UP BECAUSE I BELIEVE

1 IN HANNAH'S -- I'M SORRY -- IF BREANNA'S INTERVIEW WITH
2 MISS SCHULTZ SHE TALKED ABOUT HOW HANNAH IS A LIAR. SHE
3 BELIEVES HER THIS TIME, BUT HANNAH IS A LIAR.

4 AND SO THAT'S WHY I BRING THAT UP.

5 THE COURT: ALL RIGHT. I'LL GIVE THAT. SOME OF
6 THAT CHARACTER EVIDENCE SNUCK IN.

7 ANYTHING ELSE?

8 MS. OLIVER: I THINK THAT'S IT AS FAR AS THE
9 GENERAL ONES.

10 THE COURT: ALL RIGHT. SO OTHER THAN THAT -- SO
11 I'M JUST GENERALLY GOING TO READ MOST OF THE GENERAL
12 ONES, EXCEPT FOR THE ONES THAT ARE GOING TO BE DEALING
13 WITH THESE LESSER-INCLUDED OFFENSE INSTRUCTIONS.

14 MS. OLIVER: OKAY.

15 THE COURT: AND THEN WE'LL TALK A LITTLE BIT
16 FURTHER ABOUT THE VERDICT FORMS AND THE MORE SPECIFIC AND
17 LESSER-INCLUDED OFFENSE INSTRUCTIONS.

18 MS. OLIVER: OKAY. THANK YOU.

19 THE COURT: AND THAT WILL OCCUR AFTER THE PEOPLE
20 HAVE DECIDED WHETHER OR NOT TO CALL ANY REBUTTAL
21 WITNESSES.

22 MS. DI TILLIO: YES.

23 ---000---

24 (THEREUPON THE PROCEEDINGS IN THIS MATTER
25 WERE RECESSED FOR LUNCH.)

26 ---000---

27 ***

28

1 SAN DIEGO, CALIFORNIA; WEDNESDAY, APRIL 2, 2014

2 1:31 P.M.

3 ---OOO---

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
5 COURT, OUTSIDE THE PRESENCE OF THE JURORS AND
6 THE ALTERNATE JURORS.)

7 ---OOO---

8 THE COURT: ALL RIGHT. THE RECORD WILL REFLECT THE
9 DEFENDANT AND THE ATTORNEYS ARE PRESENT.

10 MS. DI TILLIO: YOUR HONOR, OVER THE LUNCH HOUR,
11 JUST BRIEFLY, I HAD THE OPPORTUNITY TO SPEAK TO BOTH
12 MELISSA AND ALLAN REGARDING THE EVIDENCE THAT WAS
13 INTRODUCED BY THE DEFENSE THIS MORNING, SPECIFICALLY, THE
14 DECLARATION.

15 AND MISS -- MELISSA, WHO FILLED OUT THE
16 FORM, INDICATED TO ME SHE GOT THE INFORMATION FOR THE
17 DECLARATION FROM HER HUSBAND. THAT WAS IN A STATEMENT
18 THAT SHE MADE TO BOTH MISS OLIVER AND MYSELF VIA SPEAKER
19 PHONE.

20 AND THEN JUST NOW I HAD THE OPPORTUNITY TO
21 SPEAK TO ALLAN. AND HE INDICATED THAT THERE WAS -- WHERE
22 THIS INFORMATION, SPECIFICALLY, CAME FROM -- AND WHAT I'M
23 SEEKING TO INTRODUCE -- WAS THAT, WHEN THEY WERE IN THE
24 BACKYARD, HE AND BREANNA, THE MOMENT WHEN SHE PUT HER
25 HANDS ON HIS FACE AND SAID NOT TO CRY, HE HAD LOOKED TO
26 THE SIDE AND WAS LOOKING FOR A WAY TO GET THE CHILD OUT
27 OF THE SITUATION. SO HE WAS LOOKING AROUND.

28 AND HE TURNED BACK TO HER AND ASKED HER HOW

1 LONG IT HAD HAPPENED -- HOW LONG IT HAD BEEN HAPPENING.
2 AND SHE INDICATED SOMETHING ABOUT IT HAPPENING AT THE
3 LAST APARTMENT, WHICH IS WHERE THEY GOT THE TIMEFRAME FOR
4 THE TWO YEARS.

5 AND HE SAID TO HER, "WHY DIDN'T YOU TELL ME
6 BEFORE?"

7 AND SHE SPECIFICALLY SAID SHE THOUGHT ERIC
8 WAS FAMILY, AND SHE DIDN'T WANT TO HURT HER FAMILY.

9 AND HIS ANSWER TO HER WAS, "FAMILY DOESN'T
10 DO THAT."

11 SO I AM SEEKING TO INTRODUCE THE REST OF
12 THAT STATEMENT, AS OPPOSED TO JUST A PORTION OF IT,
13 BECAUSE I DO THINK IT GIVES CONTEXT TO THE STATEMENT.
14 AND I THINK THAT'S SORT OF, IN THE TOTALITY OF THE
15 CIRCUMSTANCES, GIVEN WHAT'S BEEN GOING ON IN THIS CASE --
16 AND THE ARGUMENTS ARE WHAT WAS SAID TO THE CHILDREN, WHEN
17 IT WAS SAID TO THE CHILDREN -- I THINK IT'S IMPORTANT
18 THAT THAT WHOLE CONVERSATION COME IN TOGETHER.

19 THE COURT: AND --

20 ALL RIGHT. AND YOU WOULD DO THAT THROUGH
21 THE WITNESSES; CORRECT?

22 MS. DI TILLIO: YES, YES. MELISSA AND ALLAN ARE
23 HERE.

24 THE COURT: AND IS THERE AN OBJECTION TO THAT?

25 AND, IF SO, WHAT IS THE LEGAL GROUNDS FOR
26 THE OBJECTION?

27 MS. OLIVER: YES. THE OBJECTION IS NOT TO -- IS TO
28 ANYTHING THAT ALLAN WOULD TESTIFY TO AFTER HE QUESTIONED

1 BREANNA, "HOW LONG HAS IT BEEN HAPPENING?"

2 AND SHE REPLIED "AT THE LAST APARTMENT."

3 I BELIEVE THAT THAT IS PROPER REBUTTAL,
4 GIVEN THE EVIDENCE THAT DEFENSE PUT IN IN ITS
5 CASE-IN-CHIEF.

6 I BELIEVE THAT THE, "WHY DIDN'T YOU TELL ME
7 BEFORE?" AND BREANNA'S RESPONSE, "BECAUSE ERIC IS FAMILY"
8 -- I BELIEVE -- THAT PART OF THE CONVERSATION, I BELIEVE,
9 IS BEYOND THE SCOPE OF -- IT'S BEYOND THE SCOPE.

10 I BELIEVE THAT IT'S IMPROPER REBUTTAL
11 BECAUSE IT DOES NOT REBUT ANYTHING THAT THE DEFENSE PUT
12 IN IN ITS CASE-IN-CHIEF, WHAT THAT ISSUE IS, WHAT WAS
13 CONTAINED IN MELISSA'S DECLARATION AND ENDS UP WITH THE
14 TIMELINE.

15 AND SO I BELIEVE THAT, IF ALLAN IS ABLE TO
16 BASICALLY TALK ABOUT ANOTHER CONVERSATION THAT HE HAD IN
17 REGARDS TO WHY SHE DID NOT DISCLOSE -- AGAIN, I BELIEVE
18 THAT THAT IS BEYOND THE SCOPE. AND I'D ASK THE COURT TO
19 EXCLUDE THAT.

20 MS. DI TILLIO: JUST TO MAKE A POINT, THE RELEVANCE
21 OF THE DEFENSE'S PAPERS, AS WAS DISCUSSED WHEN THEY WERE
22 INTRODUCED, WAS NOT THE TIMELINE, BUT IT WAS THAT A
23 CONVERSATION HAD HAPPENED WITH THIS CHILD ABOUT WHERE
24 THIS OCCURRED, THEREBY ALLOWING MELISSA TO FILE THE
25 DECLARATION.

26 SO THE QUESTION WAS WHERE THE INFORMATION
27 CAME FROM, THE IMPLICATION BEING THAT THERE WAS ANOTHER
28 CONVERSATION WITH THE CHILD.

1 THIS IS THAT CONVERSATION. AND SO I THINK
2 IT'S FAIR FOR ME TO BE ABLE TO PUT ON THE TOTALITY OF
3 THAT CONVERSATION, AS SHORT AS IT IS.

4 MS. OLIVER: I BELIEVE THAT, WHEN I PUT THE
5 DECLARATION OF MELISSA IN, THAT WAS NOT ONLY TO SHOW THAT
6 THERE HAD BEEN A DISCUSSION, BUT IT WAS ALSO BECAUSE THE
7 DEFENSE BELIEVED THAT THAT WAS IN DIRECT CONFRONTATION TO
8 HOW MELISSA HAD TESTIFIED. SO THAT WAS THE PURPOSE OF
9 THAT PARTICULAR PIECE OF EVIDENCE.

10 AGAIN, FOR ALLAN TO GO INTO A CONVERSATION
11 HE HAD WITH BREANNA AS TO WHY SHE DID NOT DISCLOSE, I
12 DON'T BELIEVE THAT THAT, AGAIN, IS PROPER REBUTTAL, GIVEN
13 WHAT'S CONTAINED IN THAT PARTICULAR DOCUMENT AND HOW THE
14 DEFENSE HAS INDICATED -- THE REASON WHY THE DEFENSE MOVED
15 IT INTO EVIDENCE.

16 THE COURT: OKAY. AND I'M GOING TO RULE AS
17 FOLLOWS.

18 AS I UNDERSTAND -- AS I UNDERSTAND THE
19 PURPOSE OF INTRODUCING THE CIVIL HARASSMENT RESTRAINING
20 ORDER, THE PURPOSE FOR INTRODUCING THAT IS SOMEHOW TO
21 TALK ABOUT THE TIMELINE OF THE DURATION OF ANY ALLEGED
22 ACTS OF THE DEFENDANT AND HOW THE WITNESS RECEIVED THAT
23 INFORMATION AND WHETHER OR NOT -- AS I UNDERSTAND IT,
24 WHETHER OR NOT THAT WAS SOME SUGGESTIBILITY, THAT THE
25 WITNESS MIGHT HAVE MADE STATEMENTS IN FRONT OF BREANNA,
26 WHICH WOULD RELATE TO BREANNA'S ULTIMATE STATEMENT.

27 AM I -- AM I ON THE SAME PAGE AS YOU?

28 MS. OLIVER: YES, YOUR HONOR. IT WAS BECAUSE

1 MELISSA -- BECAUSE OF THE WAY SHE TESTIFIED, I BELIEVE
2 THAT, IF THERE HAD NOT BEEN SOME KIND OF DISCUSSION WITH
3 BREANNA IN REGARDS TO WHAT HAPPENED, SHE WOULD NOT HAVE
4 BEEN ABLE TO PUT CERTAIN INFORMATION IN HER DECLARATION.

5 THE COURT: ALL RIGHT. AND SO NOW THE PEOPLE ARE
6 SEEKING TO EXPLAIN HOW MELISSA RECEIVED THAT INFORMATION.

7 AM I RIGHT?

8 MS. DI TILLIO: YES. SHE RECEIVED IT FROM ALLAN,
9 WHO RECEIVED IT FROM BREANNA. AND THAT'S RELEVANT
10 BECAUSE, AS COUNSEL JUST INDICATED, IF THERE HAD NOT BEEN
11 ANOTHER CONVERSATION WITH BREANNA, SHE COULD NOT HAVE
12 FILLED OUT THE TRO THE WAY SHE DID. AND SO THAT'S WHY I
13 THINK THE CONVERSATION IS IMPORTANT.

14 THE COURT: AND SO -- ALL RIGHT. OKAY.

15 MS. OLIVER: AND SO -- BUT TO ALLOW THE QUESTIONING
16 OF HOW THE DISCLOSURE -- WHY THE DISCLOSURE WAS DELAYED,
17 I BELIEVE THAT THAT GOES INTO A DIFFERENT AREA, BECAUSE
18 AT THAT POINT ALLAN -- THAT INFORMATION IS NOT CONTAINED
19 IN THE DECLARATION, HOW ALLAN QUESTIONED BREANNA AS TO
20 "HOW LONG HAS THIS BEEN GOING ON" OR "WHY DIDN'T YOU TELL
21 ME?"

22 THAT'S NOT CONTAINED IN THE DECLARATION THAT
23 WAS PUT FORTH BY MELISSA, WHICH WAS WHAT WAS AT ISSUE.

24 AND SO I BELIEVE THAT ANYTHING MORE ABOUT
25 THE DISCLOSURE AND WHY IT TOOK SO LONG, WHY IT WAS
26 DELAYED, I BELIEVE THAT THAT IS BEYOND THE SCOPE, THAT
27 PART.

28 I BELIEVE THAT MELISSA CAN TESTIFY THAT,

1 "BREANNA DIDN'T TELL ME. SHE TOLD ALLAN, AND ALLAN TOLD
2 ME."

3 AND ALLAN CAN TAKE THE STAND AND SAY,
4 "BREANNA, WHEN I SPOKE WITH HER, SHE TOLD ME THAT IT
5 HAPPENED AT THE OLD APARTMENT, AND I CALCULATED BACK.
6 AND I FIGURED IT WAS ABOUT TWO YEARS, AND I TOLD
7 MELISSA."

8 I BELIEVE THAT THAT ADDRESSES WHAT'S
9 CONTAINED IN THE DECLARATION.

10 THE COURT: OKAY. ANYTHING ELSE?

11 MS. DI TILLIO: WELL, JUST THAT THE ENTIRE CRUX OF
12 THE DEFENSE CASE, AS I CAN TELL IT, IS THE CONTAMINATION
13 OF THESE CHILDREN AND WHAT THEY SAID AND TO WHOM.

14 AND THAT'S WHY I THINK THE TOTALITY OF --
15 THE RULE OF COMPLETENESS, IF THIS IS PART OF THE SAME
16 STATEMENT THAT THE CHILD MADE -- IT'S TWO EXTRA, THREE
17 EXTRA LINES -- I THINK IT'S IMPORTANT FOR THE JURY TO
18 HAVE THE WHOLE STATEMENT VERSUS ALLOWING THEM TO THEN
19 SPECULATE THAT THERE WAS MORE.

20 MS. OLIVER: HOWEVER, YOUR HONOR, I BELIEVE THAT --

21 THE COURT: LAST WORD.

22 MS. OLIVER: LAST WORD.

23 I BELIEVE THAT ALLAN ADVISED COUNSEL THAT,
24 WHEN HE WAS ON THE STAND, THAT HE WOULD HAVE BEEN FREE TO
25 VOLUNTEER THAT INFORMATION, BUT COUNSEL HAD MOVED ON TO
26 ANOTHER QUESTION.

27 AND SO, AGAIN, I DIDN'T RAISE THAT IN MY
28 CASE-IN-CHIEF. AND I BELIEVE THAT THAT IS THE WHOLE

1 PURPOSE OF REBUTTAL, TO REBUT THE DEFENSE EVIDENCE.

2 AND I DON'T BELIEVE THAT GOING INTO HOW,
3 WHEN AND WHY A PERSON DISCLOSED AT THAT TIME -- I DON'T
4 BELIEVE THAT I PUT ON ANY EVIDENCE. I BELIEVE IT'S
5 IMPROPER REBUTTAL.

6 THE COURT: OKAY. AND I'M GOING -- I'M GOING TO
7 RULE AS FOLLOWS.

8 I'M GOING TO OVERRULE THE OBJECTION. I
9 THINK IT JUST PUTS EVERYTHING IN CONTEXT. IT'S NOT THAT
10 LONG. IT'S ONE -- IT CAN'T TAKE MORE THAN 10 SECONDS TO
11 FINISH IT UP. AND IT'S A COMPLETE CONVERSATION THAT
12 ALLAN HAD WITH BREANNA.

13 MS. OLIVER: YOUR HONOR, MAY I JUST MAKE ONE MORE
14 SIDENOTE, FOR THE RECORD?

15 THE COURT: SURE.

16 MS. OLIVER: JUST FOR THE RECORD, ANOTHER REASON
17 WHY I WOULD OBJECT IS BECAUSE, EARLIER TODAY, WE DID HAVE
18 EXPERT TESTIMONY IN REGARDS TO DISCLOSURE, THE TIMING OF
19 IT AND DIFFERENT THINGS OF THAT NATURE.

20 AND IF THE DEFENSE HAD THAT PARTICULAR PIECE
21 OF EVIDENCE, THEN THAT MAY HAVE AFFECTED HOW THE DEFENSE
22 QUESTIONED THAT PARTICULAR EXPERT, WHO IS NO LONGER
23 AVAILABLE, SINCE NOW WE'RE NOT JUST GETTING INTO A
24 CLARIFICATION IN TERMS OF HOW A PIECE OF INFORMATION GOT
25 INTO A DECLARATION, BUT NOW WE'RE GOING INTO THE NATURE
26 OF DISCLOSURE.

27 AND SO THE DEFENSE OBJECTS ON THAT GROUND AS
28 WELL.

1 AND, WITH THAT, SUBMITTED.

2 THE COURT: ALL RIGHT.

3 OKAY. THANK YOU.

4 MS. DI TILLIO: MY WITNESSES ARE HERE.

5 ---000---

6 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
7 COURT, WITHIN THE PRESENCE OF THE JURORS AND
8 THE ALTERNATE JURORS.)

9 ---000---

10 THE COURT: THE RECORD WILL REFLECT THE DEFENDANT
11 AND ATTORNEYS ARE PRESENT, AS WELL AS OUR JURORS AND
12 ALTERNATE JURORS.

13 REBUTTAL WITNESSES?

14 MS. DI TILLIO: THANK YOU, YOUR HONOR.

15 CALL MELISSA L.

16 THE COURT: TAKE THE STAND.

17 YOU'VE ALREADY BEEN SWORN. YOU'RE UNDER
18 OATH.

19 THE WITNESS: OKAY.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 -- "BREANNA ADMITTED THAT ERIC HAS BEEN
2 TOUCHING HER PRIVATE AREAS. AND IT
3 TURNED OUT TO BE A TIMEFRAME EQUIVALENT
4 TO APPROXIMATELY TWO YEARS."

5 A. YES.

6 Q. WHERE DID YOU GET THE INFORMATION THAT -- AS
7 TO THE DURATION OF TIME?

8 A. AT THE TIME THAT MY SISTER WAS -- WAS --
9 WELL, ALLAN AND I WERE THERE AT THE SCENE BEFORE ANYBODY.
10 AND WHEN MY SISTER SHOWED UP AND THE GIRLS WERE STANDING
11 WITH MY SISTER, I WALKED AWAY TO CALL MY BOSS BECAUSE I'D
12 JUST WALKED OUT OF WORK, JUST SAYING "I'M LEAVING." AND
13 I CALLED HER TO TELL HER THAT I HAVE A SITUATION. I'M
14 NOT COMING BACK.

15 ALLAN FOLLOWED ME AND, AFTER THE FACT,
16 MENTIONED SOMETHING THAT BREANNA HAD SAID TO HIM
17 REFERENCING THE SITUATION IN THEIR PRIOR APARTMENT.

18 SO --

19 Q. DID YOU DO SOME MENTAL MATH TO DISCERN --

20 A. YES.

21 Q. -- HOW LONG THE TIMEFRAME WAS?

22 A. YES.

23 Q. ALL RIGHT. SO THE INFORMATION CAME FROM
24 YOUR HUSBAND?

25 A. RIGHT.

26 Q. AND IT WAS YOUR UNDERSTANDING HE HAD GOTTEN
27 IT FROM BREANNA?

28 A. RIGHT.

1 Q. AND THAT WAS THE SAME DAY THAT -- WHILE THE
2 POLICE WERE THERE AND EVERYTHING ELSE WAS GOING ON?

3 A. YES.

4 MS. DI TILLIO: OKAY. THANK YOU.

5 I HAVE NOTHING FURTHER.

6 THE COURT: CROSS-EXAMINATION.

7 MS. OLIVER: JUST BRIEFLY.

8

9

CROSS-EXAMINATION

10

11 BY MS. OLIVER:

12 Q. MELISSA, WHEN ALLAN OBTAINED THAT
13 INFORMATION FROM BREANNA, WERE YOU ABLE TO HEAR WHAT THEY
14 WERE TALKING ABOUT?

15 A. NO, I WASN'T.

16 MS. OLIVER: THANK YOU.

17 NOTHING FURTHER.

18 THE COURT: ANYTHING ELSE?

19 MS. DI TILLIO: NO, YOUR HONOR.

20 THE COURT: THANK YOU.

21 MS. DI TILLIO: PEOPLE CALL ALLAN L.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Q. WHAT HAPPENED AFTER THAT?

2 A. I ASKED HER, "WHERE?"

3 AND SHE SAID HER PRIVATES.

4 Q. WHAT'S THE NEXT PART OF THAT CONVERSATION?

5 A. SHE GRABBED MY CHEEKS AND STARTED TELLING
6 ME, "DADDY, PLEASE DON'T CRY. PLEASE DON'T CRY."

7 Q. WHAT DID YOU DO AFTER THAT?

8 A. I WAS LOOKING AROUND THE SIDE OF THE YARD
9 AT THE FENCE. THERE WAS A FENCE ON THE LEFT SIDE. I WAS
10 TRYING TO THINK OF A WAY TO GET BREANNA OUT OF THE
11 BACKYARD WITHOUT HAVING TO GO THROUGH THE HOUSE. I
12 WAS --

13 Q. I'M SORRY. GO AHEAD.

14 A. I WAS THINKING OF PUTTING HER OVER THE FENCE
15 AND TELLING HER TO RUN TO THE CAR.

16 Q. DID YOU ACTUALLY SAY THAT TO HER, OR WAS
17 THAT JUST THAT JUST PART OF YOUR THOUGHT PROCESS?

18 A. IT WAS PART OF MY THOUGHT PROCESS.

19 Q. DID YOU AND BREANNA HAVE ANY FURTHER
20 DISCUSSION WHEN YOU WERE IN THAT MOMENT, WITH HER HANDS
21 ON YOUR FACE?

22 A. YES.

23 Q. WHAT ELSE HAPPENED?

24 A. I KNEW THAT I HAD ASKED HER BEFORE, IN THE
25 PAST, THAT -- IF ANYBODY HAS EVER DONE ANYTHING
26 INAPPROPRIATE -- OR I DON'T REMEMBER THE EXACT PHRASE --
27 BUT HAS BEEN INAPPROPRIATE WITH HER.

28 AND I ASKED HER, "HOW LONG HAS THIS BEEN

1 HAPPENING?"

2 AND SHE SAID, "IT HAPPENED AT THE LAST
3 APARTMENT."

4 Q. AND DID SHE SAY ANYTHING ELSE? OR DID YOU
5 ASK HER ANYTHING ELSE?

6 A. AND I ASKED HER WHY SHE DIDN'T TELL ME
7 BEFORE, WHEN I ASKED.

8 Q. WHAT DID SHE SAY?

9 A. SHE TOLD ME THAT SHE -- SHE DIDN'T TELL ME
10 BECAUSE SHE THOUGHT ERIC WAS FAMILY, AND SHE DIDN'T WANT
11 TO HURT HER FAMILY.

12 Q. DID YOU SAY ANYTHING IN RESPONSE TO THAT?

13 A. I TOLD HER, "FAMILY DOESN'T DO THAT."

14 Q. DID THE CONVERSATION END THERE?

15 A. I DON'T REMEMBER EXACTLY.

16 Q. DID YOU ASK HER ANYMORE QUESTIONS ABOUT WHAT
17 HAD HAPPENED TO HER?

18 A. NO.

19 Q. AND WAS THAT THE LAST TIME THAT YOU ASKED
20 BREANNA QUESTIONS ABOUT WHAT HAPPENED WITH HER AND ERIC?

21 A. THAT IS THE ONLY TIME I'VE ASKED BREANNA
22 QUESTIONS.

23 MS. DI TILLIO: THANK YOU.

24 I HAVE NO FURTHER QUESTIONS.

25 THE COURT: CROSS?

26 ///

27 ///

28 ///

CROSS-EXAMINATION

1

2

3 BY MS. OLIVER:

4 Q. THE STATEMENT THAT YOU JUST MADE, THAT YOU
5 HAD THE CONVERSATION WITH BREANNA IN THE BACKYARD, AND
6 YOU ASKED HER WHY HADN'T SHE TOLD YOU, AND SHE SAID SHE
7 DIDN'T TELL BECAUSE SHE THOUGHT THAT ERIC WAS FAMILY, AND
8 YOU SAID "FAMILY DOESN'T DO THAT," DID YOU REPORT THAT
9 PARTICULAR STATEMENT TO ANYONE?

10 A. I BELIEVE I DID.

11 Q. TO WHO?

12 A. ARE YOU REFERRING TO, LIKE, THE POLICE, THE
13 STATEMENT?

14 Q. I'M ASKING, DID YOU MAKE A STATEMENT TO THE
15 POLICE, TELLING THEM THAT BREANNA SAID THAT SHE HAD NOT
16 TOLD YOU THAT BEFORE BECAUSE SHE THOUGHT THAT ERIC WAS
17 FAMILY?

18 A. I BELIEVE I DID.

19 Q. WHEN DO YOU BELIEVE YOU TOLD THAT TO THE
20 POLICE?

21 A. I DON'T REMEMBER.

22 Q. HOW MANY TIMES DID YOU TALK TO THE POLICE IN
23 THIS CASE?

24 A. I DON'T REMEMBER.

25 Q. MORE THAN ONE OCCASION?

26 A. I DON'T REMEMBER. I KNOW THE DAY OF.

27 Q. ON THE DAY OF? WOULD THAT BE THE MAY 21ST,
28 2012 DATE?

1 A. YES, YES.

2 Q. AND SO YOU BELIEVE, ON THAT DAY, THAT YOU
3 TOLD SOMEONE THAT?

4 A. (NO AUDIBLE RESPONSE.)

5 Q. IS THAT WHAT YOU SAID?

6 A. YES.

7 Q. DO YOU REMEMBER WHICH OFFICER YOU TOLD THAT
8 TO?

9 A. I DO NOT.

10 Q. HOW MANY OFFICERS DID YOU SPEAK TO THAT DAY?

11 A. I DON'T REMEMBER.

12 Q. HOW MANY OFFICERS WERE ON SCENE?

13 A. MORE THAN TWO.

14 Q. DID YOU TELL ONE OF THE OFFICERS --
15 STRIKE THAT.

16 DO YOU REMEMBER SPEAKING WITH DEPUTY NICKLO?

17 A. I DON'T REMEMBER THE OFFICER'S NAME.

18 Q. AND YOU DON'T REMEMBER SPEAKING WITH DEPUTY
19 LOPEZ?

20 A. I DON'T REMEMBER THEIR NAMES.

21 Q. BUT YOU ARE SURE THAT YOU SPECIFICALLY TOLD
22 THEM THAT, THAT YOU TOLD BREANNA THAT "FAMILY DOESN'T DO
23 THAT"?

24 A. I TOLD THEM ABOUT EVERY DETAIL OF THE
25 CONVERSATION I HAD IN THE BACKYARD AT THAT TIME. AND
26 THAT WOULD HAVE BEEN PART OF THE CONVERSATION.

27 Q. BUT WHEN YOU TESTIFIED IN THIS TRIAL
28 PREVIOUSLY, AND YOU WERE TESTIFYING ABOUT EVERY DETAIL

1 THAT TOOK PLACE IN THAT CONVERSATION, YOU DIDN'T MENTION
2 IT INITIALLY; IS THAT CORRECT?

3 A. YOU MEAN THE OTHER DAY, WHEN I WAS HERE?

4 Q. THE OTHER DAY WHEN YOU WERE HERE?

5 A. THE OTHER DAY WHEN I WAS HERE --

6 Q. YOU DID NOT TESTIFY TO THAT; IS THAT
7 CORRECT?

8 A. -- I DID NOT TESTIFY TO THAT.

9 MS. OLIVER: THANK YOU.

10 NOTHING FURTHER.

11 THE COURT: REDIRECT.

12 MS. DI TILLIO: JUST BRIEFLY.

13

14 **REDIRECT EXAMINATION**

15

16 BY MS. DI TILLIO:

17 Q. WERE YOU SPECIFICALLY ASKED, THE OTHER DAY
18 WHEN YOU TESTIFIED, ABOUT THAT PORTION OF YOUR
19 CONVERSATION WITH BREANNA?

20 A. NO, I WAS NOT.

21 MS. DI TILLIO: THANK YOU.

22 I HAVE NOTHING FURTHER.

23 THE COURT: RECROSS?

24

25 **RECROSS-EXAMINATION**

26

27 BY MS. OLIVER:

28 Q. BUT WHEN YOU WERE HERE A COUPLE OF DAYS AGO,

1 WEREN'T YOU ASKED, "WAS THERE ANYTHING ELSE THAT BREANNA
2 TOLD YOU"?

3 A. I DON'T REMEMBER.

4 MS. OLIVER: THANK YOU.

5 NOTHING FURTHER.

6 THE COURT: ANYTHING ELSE?

7 MS. DI TILLIO: NO, YOUR HONOR. THANK YOU.

8 THE COURT: THANK YOU, SIR.

9 ANY FURTHER REBUTTAL EVIDENCE?

10 MS. DI TILLIO: NO, YOUR HONOR.

11 THE COURT: ANY SURREBUTTAL EVIDENCE?

12 MS. OLIVER: NO, YOUR HONOR.

13 THE COURT: LADIES AND GENTLEMEN, YOU HAVE HEARD
14 ALL OF THE EVIDENCE IN THE CASE. AND THE REMAINING PART
15 OF THIS CASE WILL BE FOR ME TO GIVE YOU JURY INSTRUCTIONS
16 AND FOR THE ATTORNEYS TO ARGUE.

17 I'M GOING TO READ A SELECTION OF JURY
18 INSTRUCTIONS FOR YOU. I'M GOING TO GIVE YOU FURTHER JURY
19 INSTRUCTIONS TOMORROW, AND WE'LL EXPLAIN THE VERDICT
20 FORMS TOMORROW.

21 THE ATTORNEYS WILL HAVE A CHANCE TO ARGUE
22 THEIR CASE TOMORROW BEGINNING AT 9:00 O'CLOCK. IT WILL
23 PROBABLY TAKE ME HALF AN HOUR, 45 MINUTES TO READ
24 INSTRUCTIONS.

25 I KNOW YOU JUST CAME BACK FROM LUNCH. AND I
26 KNOW SOMETIMES THE INSTRUCTIONS MAY NOT BE THE MOST
27 EXCITING LANGUAGE THAT YOU HAVE HEARD. THE INSTRUCTIONS,
28 HOWEVER, ARE THE RULES THAT YOU ARE REQUIRED TO FOLLOW

1 WHEN YOU MAKE YOUR DECISIONS.

2 I WILL INSTRUCT YOU ON THE LAW THAT APPLIES
3 TO THE CASE. I WILL GIVE YOU A COPY OF THE INSTRUCTIONS
4 TO USE IN THE JURY ROOM. THE INSTRUCTIONS THAT YOU
5 RECEIVE MAY BE PRINTED, TYPED, OR WRITTEN BY HAND.

6 CERTAIN SECTIONS MAY HAVE BEEN CROSSED OUT
7 OR ADDED. DISREGARD ANY DELETED SECTIONS AND DO NOT TRY
8 TO GUESS WHAT THEY MIGHT HAVE BEEN. ONLY CONSIDER THE
9 FINAL VERSION OF THE INSTRUCTIONS IN YOUR DELIBERATIONS.

10 YOU MUST DECIDE WHAT THE FACTS ARE. IT IS
11 UP TO ALL OF YOU, AND YOU ALONE, TO DECIDE WHAT HAPPENED
12 BASED ONLY ON THE EVIDENCE THAT HAS BEEN PRESENTED TO YOU
13 IN THIS TRIAL.

14 DO NOT LET BIAS, SYMPATHY, PREJUDICE OR
15 PUBLIC OPINION INFLUENCE YOUR DECISION. BIAS INCLUDES,
16 BUT IS NOT LIMITED TO, BIAS FOR OR AGAINST THE WITNESSES,
17 ATTORNEYS, DEFENDANT OR ALLEGED VICTIMS BASED ON
18 DISABILITY, GENDER, NATIONALITY, NATIONAL ORIGIN, RACE OR
19 ETHNICITY, RELIGION, GENDER IDENTITY, SEXUAL ORIENTATION,
20 AGE OR SOCIOECONOMIC STATUS.

21 YOU MUST FOLLOW THE LAW AS I EXPLAIN IT TO
22 YOU EVEN IF YOU DISAGREE WITH IT. IF YOU BELIEVE THAT
23 THE ATTORNEYS' COMMENTS ON THE LAW CONFLICT WITH MY
24 INSTRUCTIONS, YOU MUST FOLLOW MY INSTRUCTIONS.

25 PAY CAREFUL ATTENTION TO ALL OF THESE
26 INSTRUCTIONS AND CONSIDER THEM TOGETHER. IF I REPEAT ANY
27 INSTRUCTION OR IDEA, DO NOT CONCLUDE THAT IT IS MORE
28 IMPORTANT THAN ANY OTHER INSTRUCTION OR IDEA JUST BECAUSE

1 I REPEATED IT.

2 SOME WORDS OR PHRASES USED DURING THIS TRIAL
3 HAVE LEGAL MEANINGS THAT ARE DIFFERENT FROM THEIR
4 MEANINGS IN EVERYDAY USE. THESE WORDS AND PHRASES WILL
5 BE SPECIFICALLY DEFINED IN THESE INSTRUCTIONS.

6 PLEASE BE SURE TO LISTEN CAREFULLY AND
7 FOLLOW THE DEFINITIONS THAT I GIVE YOU. WORDS AND
8 PHRASES NOT SPECIFICALLY DEFINED IN THESE INSTRUCTIONS
9 ARE TO BE APPLIED USING THEIR ORDINARY, EVERYDAY
10 MEANINGS.

11 SOME OF THESE INSTRUCTIONS MAY NOT APPLY,
12 DEPENDING ON YOUR FINDINGS ABOUT THE FACTS OF THE CASE.
13 DO NOT ASSUME, JUST BECAUSE I GIVE A PARTICULAR
14 INSTRUCTION, THAT I AM SUGGESTING ANYTHING ABOUT THE
15 FACTS. AFTER YOU HAVE DECIDED WHAT THE FACTS ARE, FOLLOW
16 THE INSTRUCTIONS THAT DO APPLY TO THE FACTS AS YOU FIND
17 THEM.

18 DO NOT USE THE INTERNET, A DICTIONARY OR
19 ENCYCLOPEDIA IN ANY WAY IN CONNECTION WITH THIS CASE,
20 EITHER ON YOUR OWN OR AS A GROUP. DO NOT INVESTIGATE THE
21 FACTS OR THE LAW OR DO ANY RESEARCH REGARDING THIS CASE
22 EITHER ON YOUR OWN OR AS A GROUP. DO NOT CONDUCT ANY
23 TESTS OR EXPERIMENTS OR VISIT THE SCENE OF ANY EVENT
24 INVOLVED IN THIS CASE. IF YOU HAPPEN TO PASS BY THE
25 SCENE, DO NOT STOP OR INVESTIGATE.

26 YOU HAVE BEEN GIVEN NOTEBOOKS AND MAY HAVE
27 TAKEN NOTES DURING THE TRIAL. YOU MAY USE YOUR NOTES
28 DURING DELIBERATIONS. YOUR NOTES ARE FOR YOUR OWN

1 INDIVIDUAL USE, TO HELP YOU REMEMBER WHAT HAPPENED DURING
2 THE TRIAL.

3 PLEASE KEEP IN MIND THAT YOUR NOTES MAY BE
4 INACCURATE OR INCOMPLETE.

5 IF THERE IS A DISAGREEMENT ABOUT THE
6 TESTIMONY AT TRIAL, YOU MAY ASK THAT THE COURT REPORTER'S
7 RECORD BE READ TO YOU. IT IS THE RECORD THAT MUST GUIDE
8 YOUR DELIBERATIONS, NOT YOUR NOTES. YOU MUST ACCEPT THE
9 COURT REPORTER'S RECORD AS ACCURATE.

10 PLEASE DO NOT REMOVE YOUR NOTES FROM THE
11 JURY ROOM. AT THE END OF THE TRIAL, YOUR NOTES WILL BE
12 COLLECTED AND DESTROYED.

13 IT IS ALLEGED THAT THE CRIMES OCCURRED ON
14 VARIOUS DATES. THE PEOPLE ARE NOT REQUIRED TO PROVE THAT
15 THE CRIME TOOK PLACE EXACTLY ON THOSE DAYS BUT ONLY THAT
16 IT HAPPENED REASONABLY CLOSE TO THOSE DAYS.

17 THE FACT THAT A CRIMINAL CHARGE HAS BEEN
18 FILED AGAINST THE DEFENDANT IS NOT EVIDENCE THAT THE
19 CHARGE IS TRUE. YOU MUST NOT BE BIASED AGAINST THE
20 DEFENDANT JUST BECAUSE HE HAS BEEN ARRESTED, CHARGED WITH
21 A CRIME, OR BROUGHT TO TRIAL.

22 A DEFENDANT IN A CRIMINAL CASE IS PRESUMED
23 TO BE INNOCENT. THIS PRESUMPTION REQUIRES THAT THE
24 PEOPLE PROVE A DEFENDANT GUILTY BEYOND A REASONABLE
25 DOUBT.

26 WHENEVER I TELL YOU THE PEOPLE MUST PROVE
27 SOMETHING, I MEAN THEY MUST PROVE IT BEYOND A REASONABLE
28 DOUBT, UNLESS I SPECIFICALLY TELL YOU OTHERWISE.

1 PROOF BEYOND A REASONABLE DOUBT IS PROOF
2 THAT LEAVES YOU WITH AN ABIDING CONVICTION THAT THE
3 CHARGE IS TRUE.

4 THE EVIDENCE NEED NOT ELIMINATE ALL POSSIBLE
5 DOUBT BECAUSE EVERYTHING IN LIFE IS OPEN TO SOME POSSIBLE
6 OR IMAGINARY DOUBT.

7 IN DECIDING WHETHER THE PEOPLE HAVE PROVED
8 THEIR CASE BEYOND A REASONABLE DOUBT, YOU MUST
9 IMPARTIALLY COMPARE AND CONSIDER ALL THE EVIDENCE THAT
10 WAS RECEIVED THROUGHOUT THE ENTIRE TRIAL. UNLESS THE
11 EVIDENCE PROVES THE DEFENDANT GUILTY BEYOND A REASONABLE
12 DOUBT, HE IS ENTITLED TO AN ACQUITTAL, AND YOU MUST FIND
13 HIM NOT GUILTY.

14 EVIDENCE IS THE SWORN TESTIMONY OF
15 WITNESSES, THE EXHIBITS ADMITTED INTO EVIDENCE, AND
16 ANYTHING ELSE I'VE TOLD YOU TO CONSIDER AS EVIDENCE.

17 NOTHING THE ATTORNEYS SAY IS EVIDENCE. IN
18 THEIR OPENING STATEMENTS AND CLOSING ARGUMENTS, THE
19 ATTORNEYS DISCUSSED THE CASE, BUT THEIR REMARKS ARE NOT
20 EVIDENCE. THEIR QUESTIONS ARE NOT EVIDENCE. ONLY THE
21 WITNESSES' ANSWERS ARE EVIDENCE.

22 THE ATTORNEYS' QUESTIONS ARE SIGNIFICANT
23 ONLY IF THEY HELP YOU TO UNDERSTAND THE WITNESSES'
24 ANSWERS. DO NOT ASSUME THAT SOMETHING IS TRUE JUST
25 BECAUSE ONE OF THE ATTORNEYS ASKED A QUESTION THAT
26 SUGGESTED IT WAS TRUE.

27 DURING THE TRIAL, THE ATTORNEYS MAY HAVE
28 OBJECTED TO QUESTIONS OR MOVED TO STRIKE ANSWERS GIVEN BY

1 THE WITNESSES. I RULED ON THE OBJECTIONS ACCORDING TO
2 THE LAW.

3 IF I SUSTAINED AN OBJECTION, YOU MUST IGNORE
4 THE QUESTION. IF THE WITNESS WAS NOT PERMITTED TO
5 ANSWER, DO NOT GUESS WHAT THE ANSWER MIGHT HAVE BEEN OR
6 WHY I RULED AS I DID.

7 IF I ORDER TESTIMONY STRICKEN FROM THE
8 RECORD, YOU MUST DISREGARD IT AND MUST NOT CONSIDER THAT
9 TESTIMONY FOR ANY PURPOSE.

10 YOU MUST DISREGARD ANYTHING YOU SAW OR HEARD
11 WHEN THE COURT WAS NOT IN SESSION, EVEN IF IT WAS DONE OR
12 SAID BY ONE OF THE PARTIES OR WITNESSES.

13 THE COURT REPORTER HAS MADE A RECORD OF
14 EVERYTHING THAT WAS SAID DURING THE TRIAL. IF YOU DECIDE
15 THAT IT IS NECESSARY, YOU MAY ASK THE COURT REPORTER'S
16 RECORD BE READ TO YOU. YOU MUST ACCEPT THE COURT
17 REPORTER'S RECORD AS ACCURATE.

18 FACTS MAY BE PROVED BY DIRECT OR
19 CIRCUMSTANTIAL EVIDENCE OR BY A COMBINATION OF BOTH.

20 *DIRECT EVIDENCE* CAN PROVE A FACT BY ITSELF.

21 FOR EXAMPLE, IF A WITNESS TESTIFIES HE SAW
22 IT RAINING OUTSIDE BEFORE HE CAME INTO THE COURTHOUSE,
23 THAT TESTIMONY IS DIRECT EVIDENCE THAT IT WAS RAINING.

24 *CIRCUMSTANTIAL EVIDENCE* ALSO MAY BE CALLED
25 *INDIRECT EVIDENCE*.

26 *CIRCUMSTANTIAL EVIDENCE* DOES NOT DIRECTLY
27 PROVE THE FACT TO BE DECIDED BUT IS EVIDENCE OF ANOTHER
28 FACT, OR GROUP OF FACTS, FROM WHICH YOU MAY LOGICALLY AND

1 REASONABLY CONCLUDE THE TRUTH OF THE FACT IN QUESTION.

2 FOR EXAMPLE, IF A WITNESS TESTIFIES THAT HE
3 SAW SOMEONE COME INSIDE WEARING A RAINCOAT COVERED WITH
4 DROPS OF WATER, THAT TESTIMONY IS CIRCUMSTANTIAL EVIDENCE
5 BECAUSE IT MAY SUPPORT A CONCLUSION THAT IT WAS RAINING
6 OUTSIDE.

7 BOTH DIRECT AND CIRCUMSTANTIAL EVIDENCE ARE
8 ACCEPTABLE TYPES OF EVIDENCE TO PROVE OR DISPROVE THE
9 ELEMENTS OF A CHARGE, INCLUDING INTENT AND MENTAL STATE
10 AND ACTS NECESSARY TO A CONVICTION, AND NEITHER IS
11 NECESSARILY MORE RELIABLE THAN THE OTHER. NEITHER IS
12 ENTITLED TO ANY GREATER WEIGHT THAN THE OTHER. YOU MUST
13 DECIDE WHETHER A FACT IN ISSUE HAS BEEN PROVED BASED ON
14 ALL THE EVIDENCE.

15 THE PEOPLE MUST PROVE NOT ONLY THAT THE
16 DEFENDANT DID THE ACTS CHARGED BUT ALSO THAT HE ACTED
17 WITH A PARTICULAR INTENT AND/OR MENTAL STATE. THE
18 INSTRUCTION FOR EACH CRIME EXPLAINS THE INTENT AND/OR
19 MENTAL STATE REQUIRED. THE INTENT AND/OR MENTAL STATE
20 MAY BE PROVED BY CIRCUMSTANTIAL EVIDENCE.

21 BEFORE YOU MAY RELY ON CIRCUMSTANTIAL
22 EVIDENCE TO CONCLUDE THAT A FACT NECESSARY TO FIND THE
23 DEFENDANT GUILTY HAS BEEN PROVED, YOU MUST BE CONVINCED
24 THAT THE PEOPLE HAVE PROVED EACH FACT ESSENTIAL TO THAT
25 CONCLUSION BEYOND A REASONABLE DOUBT.

26 ALSO, BEFORE YOU MAY RELY ON CIRCUMSTANTIAL
27 EVIDENCE TO CONCLUDE THAT THE DEFENDANT HAD THE REQUIRED
28 INTENT AND/OR MENTAL STATE, YOU MUST BE CONVINCED THAT

1 THE ONLY REASONABLE CONCLUSION SUPPORTED BY THE
2 CIRCUMSTANTIAL EVIDENCE IS THAT THE DEFENDANT HAD THE
3 REQUIRED INTENT AND/OR MENTAL STATE.

4 IF YOU CAN DRAW TWO OR MORE REASONABLE
5 CONCLUSIONS FROM THE CIRCUMSTANTIAL EVIDENCE, AND ONE OF
6 THOSE REASONABLE CONCLUSIONS SUPPORTS A FINDING THAT THE
7 DEFENDANT DID HAVE THE REQUIRED INTENT AND/OR MENTAL
8 STATE, AND ANOTHER REASONABLE CONCLUSION SUPPORTS A
9 FINDING THAT THE DEFENDANT DID NOT, YOU MUST CONCLUDE
10 THAT THE REQUIRED INTENT AND/OR MENTAL STATE WAS NOT
11 PROVED BY THE CIRCUMSTANTIAL EVIDENCE.

12 HOWEVER, WHEN CONSIDERING CIRCUMSTANTIAL
13 EVIDENCE, YOU MUST ACCEPT ONLY REASONABLE CONCLUSIONS AND
14 REJECT ANY THAT ARE UNREASONABLE.

15 YOU ALONE MUST JUDGE THE CREDIBILITY OR
16 BELIEVABILITY OF THE WITNESSES.

17 IN DECIDING WHETHER TESTIMONY IS TRUE AND
18 ACCURATE, USE YOUR COMMON SENSE AND EXPERIENCE. YOU MUST
19 JUDGE THE TESTIMONY OF EACH WITNESS BY THE SAME
20 STANDARDS, SETTING ASIDE ANY BIAS OR PREJUDICE YOU MAY
21 HAVE. YOU MAY BELIEVE ALL, PART, OR NONE OF ANY
22 WITNESS'S TESTIMONY. CONSIDER THE TESTIMONY OF EACH
23 WITNESS AND DECIDE HOW MUCH OF IT YOU BELIEVE.

24 IN EVALUATING A WITNESS'S TESTIMONY, YOU MAY
25 CONSIDER ANYTHING THAT REASONABLY TENDS TO PROVE OR
26 DISPROVE THE TRUTH OR ACCURACY OF THAT TESTIMONY.

27 AMONG THE FACTORS THAT YOU MAY CONSIDER ARE:
28 HOW WELL COULD THE WITNESS SEE, HEAR OR

1 OTHERWISE PERCEIVE THE THINGS ABOUT WHICH THE WITNESS
2 TESTIFIED?

3 HOW WELL WAS THE WITNESS ABLE TO REMEMBER
4 AND DESCRIBE WHAT HAPPENED?

5 WHAT WAS THE WITNESS'S BEHAVIOR WHILE
6 TESTIFYING?

7 DID THE WITNESS UNDERSTAND THE QUESTIONS AND
8 ANSWER THEM DIRECTLY?

9 WAS THE WITNESS'S TESTIMONY INFLUENCED BY A
10 FACTOR SUCH AS BIAS OR PREJUDICE, A PERSONAL RELATIONSHIP
11 WITH SOMEONE INVOLVED IN THE CASE OR A PERSONAL INTEREST
12 IN HOW THE CASE IS DECIDED?

13 WHAT WAS THE WITNESS'S ATTITUDE ABOUT THE
14 CASE OR ABOUT TESTIFYING?

15 DID THE WITNESS MAKE A STATEMENT IN THE PAST
16 THAT IS CONSISTENT OR INCONSISTENT WITH HIS OR HER
17 TESTIMONY?

18 HOW REASONABLE IS THE TESTIMONY WHEN YOU
19 CONSIDER ALL THE OTHER EVIDENCE IN THE CASE?

20 DID OTHER EVIDENCE PROVE OR DISPROVE ANY
21 FACT ABOUT WHICH THE WITNESS TESTIFIED?

22 WHAT IS THE WITNESS'S CHARACTER FOR
23 TRUTHFULNESS?

24 DO NOT AUTOMATICALLY REJECT TESTIMONY JUST
25 BECAUSE OF INCONSISTENCIES OR CONFLICTS. CONSIDER
26 WHETHER THE DIFFERENCES ARE IMPORTANT OR NOT.

27 PEOPLE SOMETIMES HONESTLY FORGET THINGS OR
28 MAKE MISTAKES ABOUT WHAT THEY REMEMBER. ALSO, TWO PEOPLE

1 MAY WITNESS THE SAME EVENT, YET SEE OR HEAR IT
2 DIFFERENTLY.

3 IF YOU DO NOT BELIEVE A WITNESS'S TESTIMONY
4 THAT HE OR SHE NO LONGER REMEMBERS SOMETHING, THAT
5 TESTIMONY IS INCONSISTENT WITH THE WITNESS'S EARLIER
6 STATEMENT ON THAT SUBJECT.

7 IF YOU DECIDE THAT A WITNESS DELIBERATELY
8 LIED ABOUT SOMETHING SIGNIFICANT IN THIS CASE, YOU SHOULD
9 CONSIDER NOT BELIEVING ANYTHING THAT WITNESS SAYS. OR IF
10 YOU THINK A WITNESS LIED ABOUT SOME THINGS BUT TOLD THE
11 TRUTH ABOUT OTHERS, YOU MAY SIMPLY ACCEPT THE PART THAT
12 YOU THINK IS TRUE AND IGNORE THE REST.

13 THE CRIMES CHARGED IN COUNTS 1 THROUGH 18
14 REQUIRE PROOF OF THE UNION OR JOINT OPERATION OF ACT AND
15 WRONGFUL INTENT.

16 THE FOLLOWING CRIMES REQUIRE GENERAL
17 CRIMINAL INTENT: COUNTS 4, 5, 7 AND 14, COPULATION WITH
18 A CHILD 10 YEARS OF AGE OR YOUNGER, AND COUNTS 8 AND 17,
19 SEXUAL INTERCOURSE WITH A CHILD 10 YEARS OF AGE OR
20 YOUNGER.

21 FOR YOU TO FIND A PERSON GUILTY OF THESE
22 CRIMES, THAT PERSON MUST NOT ONLY COMMIT THE PROHIBITED
23 ACT BUT MUST DO SO WITH WRONGFUL INTENT.

24 A PERSON ACTS WITH WRONGFUL INTENT WHEN HE
25 OR SHE INTENTIONALLY DOES A PROHIBITED ACT. HOWEVER, IT
26 IS NOT REQUIRED THAT HE OR SHE INTEND TO BREAK THE LAW.
27 THE ACT REQUIRED IS EXPLAINED IN THE INSTRUCTION FOR THAT
28 CRIME.

1 THE FOLLOWING CRIMES REQUIRE A SPECIFIC
2 INTENT OR MENTAL STATE: COUNTS 1, 10, 12 AND 15, SEXUAL
3 PENETRATION WITH A CHILD 10 YEARS OF AGE OR YOUNGER,
4 COUNT 2, FORCIBLE LEWD ACT ON A CHILD UNDER 14, AND
5 COUNTS 3, 6, 9, 11, 13, 16 AND 18, LEWD ACT ON A CHILD
6 UNDER 14.

7 IF YOU FIND A PERSON GUILTY OF THESE CRIMES,
8 THAT PERSON MUST NOT ONLY INTENTIONALLY COMMIT THE
9 PROHIBITED ACT BUT MUST DO SO WITH A SPECIFIC INTENT
10 AND/OR MENTAL STATE. THE ACT AND THE SPECIFIC INTENT
11 AND/OR MENTAL STATE REQUIRED ARE EXPLAINED IN THE
12 INSTRUCTION FOR THAT CRIME.

13 NEITHER SIDE IS REQUIRED TO CALL ALL
14 WITNESSES WHO MAY HAVE INFORMATION ABOUT THE CASE OR TO
15 PRODUCE ALL PHYSICAL EVIDENCE THAT MIGHT BE RELEVANT.

16 THE TESTIMONY OF ONLY ONE WITNESS CAN PROVE
17 ANY FACT. BEFORE YOU CONCLUDE THAT THE TESTIMONY OF ONE
18 WITNESS PROVES A FACT, YOU SHOULD CAREFULLY REVIEW ALL
19 THE EVIDENCE.

20 IF YOU DETERMINE THERE IS A CONFLICT IN THE
21 EVIDENCE, YOU MUST DECIDE WHAT EVIDENCE, IF ANY, TO
22 BELIEVE. DO NOT SIMPLY COUNT THE NUMBER OF WITNESSES WHO
23 AGREE OR DISAGREE ON A POINT AND ACCEPT THE TESTIMONY OF
24 THE GREATER NUMBER OF WITNESSES.

25 ON THE OTHER HAND, DO NOT DISREGARD THE
26 TESTIMONY OF ANY WITNESS WITHOUT A REASON OR BECAUSE OF
27 PREJUDICE OR A DESIRE TO FAVOR ONE SIDE OR THE OTHER.
28 WHAT IS IMPORTANT IS WHETHER THE TESTIMONY OR ANY OTHER

1 EVIDENCE CONVINCES YOU, NOT JUST THE NUMBER OF WITNESSES
2 WHO TESTIFY ABOUT A CERTAIN POINT.

3 THE PEOPLE PRESENTED EVIDENCE THAT THE
4 DEFENDANT COMMITTED THE CRIME OF ANNOYING OR MOLESTING A
5 CHILD THAT WAS NOT CHARGED IN THIS CASE. THIS CRIME IS
6 DEFINED FOR YOU IN THESE INSTRUCTIONS.

7 YOU MAY CONSIDER THIS EVIDENCE ONLY IF THE
8 PEOPLE HAVE PROVED, BY A PREPONDERANCE OF THE EVIDENCE,
9 THAT THE DEFENDANT, IN FACT, COMMITTED THE UNCHARGED
10 OFFENSE.

11 PROOF BY PREPONDERANCE OF THE EVIDENCE IS A
12 DIFFERENT BURDEN OF PROOF FROM PROOF BEYOND A REASONABLE
13 DOUBT. A FACT IS PROVED BY A PREPONDERANCE OF THE
14 EVIDENCE IF YOU CONCLUDE THAT IT IS MORE LIKELY THAN NOT
15 THAT THE FACT IS TRUE.

16 IF THE PEOPLE HAVE NOT MET THIS BURDEN OF
17 PROOF, YOU MUST DISREGARD THIS EVIDENCE ENTIRELY.

18 IF YOU DECIDE THAT THE DEFENDANT COMMITTED
19 THE UNCHARGED OFFENSE, YOU MAY, BUT ARE NOT REQUIRED, TO
20 CONCLUDE FROM THAT EVIDENCE THAT THE DEFENDANT WAS
21 DISPOSED OR INCLINED TO COMMIT SEXUAL OFFENSES AND, BASED
22 ON THAT DECISION, ALSO CONCLUDE THAT THE DEFENDANT WAS
23 LIKELY TO COMMIT AND DID COMMIT THE OFFENSES CHARGED
24 HERE.

25 IF YOU CONCLUDE THAT THE DEFENDANT COMMITTED
26 THE CHARGED OFFENSE, THAT CONCLUSION IS ONLY ONE FACTOR
27 TO CONSIDER ALONG WITH ALL THE OTHER EVIDENCE.

28 IT IS NOT SUFFICIENT, BY ITSELF, TO PROVE

1 THAT THE DEFENDANT IS GUILTY OF THE CHARGED OFFENSES.
2 THE PEOPLE MUST STILL PROVE EACH CHARGE AND ALLEGATION
3 BEYOND A REASONABLE DOUBT.

4 DO NOT CONSIDER THIS EVIDENCE FOR ANY OTHER
5 PURPOSE.

6 IT IS ALLEGED THAT THE DEFENDANT ANNOYED OR
7 MOLESTED A CHILD, IN VIOLATION OF PENAL CODE SECTION
8 647.6.

9 TO PROVE THAT THE DEFENDANT IS GUILTY OF
10 THIS CRIME, THE PEOPLE MUST PROVE THAT:

11 THE DEFENDANT ENGAGED IN CONDUCT DIRECTED AT
12 A CHILD (KARINA);

13 A NORMAL PERSON, WITHOUT HESITATION, WOULD
14 HAVE BEEN DISTURBED, IRRITATED, OFFENDED OR INJURED BY
15 THE DEFENDANT'S CONDUCT;

16 THE DEFENDANT'S CONDUCT WAS MOTIVATED BY AN
17 UNNATURAL OR ABNORMAL SEXUAL INTEREST IN THE CHILD;

18 AND, 4, KARINA WAS UNDER THE AGE OF 18 YEARS
19 AT THE TIME OF THE CONDUCT.

20 IT IS NOT NECESSARY THAT THE CHILD ACTUALLY
21 BE IRRITATED OR DISTURBED. IT IS ALSO NOT NECESSARY THAT
22 THE CHILD ACTUALLY BE TOUCHED. IT IS NOT A DEFENSE THAT
23 THE CHILD MAY HAVE CONSENTED TO THE ACT.

24 YOU HAVE HEARD EVIDENCE OF STATEMENTS THAT A
25 WITNESS MADE BEFORE THE TRIAL.

26 IF YOU DECIDE THAT THE WITNESS MADE THOSE
27 STATEMENTS, YOU MAY USE THOSE STATEMENTS IN TWO WAYS:

28 1, TO EVALUATE WHETHER THE WITNESS'S

1 TESTIMONY IN COURT IS BELIEVABLE;

2 AND, 2, AS EVIDENCE THAT THE INFORMATION IN
3 THOSE EARLIER STATEMENTS IS TRUE.

4 YOU HAVE HEARD TESTIMONY FROM A CHILD WHO IS
5 AGE 10 OR YOUNGER. AS WITH ANY OTHER WITNESS, YOU MUST
6 DECIDE WHETHER THE CHILD GAVE TRUTHFUL AND ACCURATE
7 TESTIMONY.

8 IN EVALUATING THE CHILD'S TESTIMONY, YOU
9 SHOULD CONSIDER ALL OF THE FACTORS SURROUNDING THAT
10 TESTIMONY, INCLUDING THE CHILD'S AGE AND LEVEL OF
11 COGNITIVE DEVELOPMENT.

12 WHEN YOU EVALUATE THE CHILD'S COGNITIVE
13 DEVELOPMENT, CONSIDER THE CHILD'S ABILITY TO PERCEIVE,
14 UNDERSTAND, REMEMBER AND COMMUNICATE.

15 WHILE A CHILD AND AN ADULT WITNESS MAY
16 BEHAVE DIFFERENTLY, THAT DIFFERENCE DOES NOT MEAN THAT
17 ONE IS MORE OR LESS BELIEVABLE THAN THE OTHER. YOU
18 SHOULD NOT DISCOUNT OR DISTRUST THE TESTIMONY OF A
19 WITNESS JUST BECAUSE HE OR SHE IS A CHILD.

20 WITNESSES WERE ALLOWED TO TESTIFY AS EXPERTS
21 AND TO GIVE OPINIONS. YOU MUST CONSIDER THE OPINIONS,
22 BUT YOU ARE NOT REQUIRED TO ACCEPT THEM AS TRUE OR
23 CORRECT. THE MEANING AND IMPORTANCE OF ANY OPINION ARE
24 FOR YOU TO DECIDE.

25 IN EVALUATING THE BELIEVABILITY OF AN EXPERT
26 WITNESS, FOLLOW THE INSTRUCTIONS ABOUT THE BELIEVABILITY
27 OF WITNESSES GENERALLY. IN ADDITION, CONSIDER THE
28 EXPERT'S KNOWLEDGE, SKILL, EXPERIENCE, TRAINING AND

1 EDUCATION, THE REASONS THE EXPERT GAVE FOR ANY OPINION,
2 AND THE FACTS OR INFORMATION ON WHICH THE EXPERT RELIED
3 IN REACHING THAT OPINION.

4 YOU MUST DECIDE WHETHER INFORMATION ON WHICH
5 THE EXPERT RELIED WAS TRUE AND ACCURATE. YOU MAY
6 DISREGARD ANY OPINION THAT YOU FIND UNBELIEVABLE,
7 UNREASONABLE OR UNSUPPORTED BY THE EVIDENCE.

8 AN EXPERT WITNESS MAY BE ASKED A
9 HYPOTHETICAL QUESTION. A *HYPOTHETICAL QUESTION* ASKS THE
10 WITNESS TO ASSUME CERTAIN FACTS ARE TRUE AND TO GIVE AN
11 OPINION BASED ON THE ASSUMED FACTS. IT IS UP TO YOU TO
12 DECIDE WHETHER AN ASSUMED FACT HAS BEEN PROVED. IF YOU
13 CONCLUDE THAT AN ASSUMED FACT IS NOT TRUE, CONSIDER THE
14 EFFECT OF THE EXPERT'S RELIANCE ON THAT FACT IN
15 EVALUATING THE EXPERT'S OPINION.

16 IF THE EXPERT WITNESSES DISAGREED WITH ONE
17 ANOTHER, YOU SHOULD WEIGH EACH OPINION AGAINST THE OTHER.
18 YOU SHOULD EXAMINE THE REASONS GIVEN FOR EACH OPINION AND
19 THE FACTS OR OTHER MATTERS ON WHICH EACH WITNESS RELIED.
20 YOU MAY ALSO COMPARE THE EXPERTS' QUALIFICATIONS.

21 A DEFENDANT HAS AN ABSOLUTE CONSTITUTIONAL
22 RIGHT NOT TO TESTIFY. HE MAY RELY ON THE STATE OF THE
23 EVIDENCE AND ARGUE THAT THE PEOPLE HAVE FAILED TO PROVE
24 THE CHARGES BEYOND A REASONABLE DOUBT.

25 DO NOT CONSIDER, FOR ANY REASON AT ALL, THE
26 FACT THAT THE DEFENDANT DID NOT TESTIFY. DO NOT DISCUSS
27 THAT FACT DURING YOUR DELIBERATIONS OR LET IT INFLUENCE
28 YOUR DECISION IN ANY WAY.

1 THE DEFENDANT IS CHARGED WITH ENGAGING IN
2 SEXUAL PENETRATION WITH A CHILD 10 YEARS OF AGE OR
3 YOUNGER, IN VIOLATION OF PENAL CODE SECTION 288.7(B), IN
4 COUNTS 1, 10, 12 AND 15.

5 TO PROVE THE DEFENDANT IS GUILTY OF THIS
6 CRIME, THE PEOPLE MUST PROVE THAT:

7 1, THE DEFENDANT ENGAGED IN AN ACT OF SEXUAL
8 PENETRATION WITH THE VICTIM;

9 2, WHEN THE DEFENDANT DID SO, THE VICTIM WAS
10 10 YEARS OF AGE OR YOUNGER;

11 3, AT THE TIME OF THE ACT, THE DEFENDANT WAS
12 AT LEAST 18 YEARS OLD.

13 *SEXUAL PENETRATION* MEANS PENETRATION,
14 HOWEVER SLIGHT, OF THE GENITAL OR ANAL OPENING OF THE
15 OTHER PERSON BY ANY FOREIGN OBJECT, SUBSTANCE,
16 INSTRUMENT, DEVICE, OR ANY UNKNOWN OBJECT, FOR THE
17 PURPOSE OF SEXUAL ABUSE, AROUSAL OR GRATIFICATION.

18 AN *UNKNOWN OBJECT* INCLUDES ANY FOREIGN
19 OBJECT, SUBSTANCE, INSTRUMENT, OR DEVICE, OR ANY PART OF
20 THE BODY, INCLUDING A PENIS, IF IT IS NOT KNOWN WHAT
21 OBJECT PENETRATED THE OPENING.

22 A *FOREIGN OBJECT, SUBSTANCE, INSTRUMENT OR*
23 *DEVICE*, INCLUDES ANY PART OF THE BODY EXCEPT A SEXUAL
24 ORGAN.

25 THE DEFENDANT IS CHARGED IN COUNTS 4, 5, 7
26 AND 14 WITH ENGAGING IN ORAL COPULATION WITH A CHILD 10
27 YEARS OF AGE OR YOUNGER, IN VIOLATION OF PENAL CODE
28 SECTION 288.7(B).

1 TO PROVE THAT THE DEFENDANT IS GUILTY OF
2 THIS CRIME, THE PEOPLE MUST PROVE THAT:

3 1, THE DEFENDANT ENGAGED IN AN ACT OF ORAL
4 COPULATION WITH THE CHILD;

5 2, WHEN THE DEFENDANT DID SO, THE CHILD WAS
6 10 YEARS OF AGE OR YOUNGER;

7 3, AT THE TIME OF THE ACT, THE DEFENDANT WAS
8 AT LEAST 18 YEARS OLD.

9 ORAL COPULATION IS ANY CONTACT, NO MATTER
10 HOW SLIGHT, BETWEEN THE MOUTH OF ONE PERSON AND THE
11 SEXUAL ORGAN OR ANUS OF ANOTHER PERSON. PENETRATION IS
12 NOT REQUIRED.

13 THE DEFENDANT IS CHARGED IN COUNT 2 WITH A
14 LEWD OR LASCIVIOUS ACT BY FORCE OR FEAR ON A CHILD UNDER
15 THE AGE OF 14 YEARS, IN VIOLATION OF PENAL CODE SECTION
16 288(B)(1).

17 TO PROVE THAT THE DEFENDANT IS GUILTY OF
18 THIS CRIME, THE PEOPLE MUST PROVE THAT:

19 1, THE DEFENDANT WILLFULLY TOUCHED ANY PART
20 OF A CHILD'S BODY, EITHER ON THE BARE SKIN OR THROUGH THE
21 CLOTHING;

22 2, IN COMMITTING THE ACT, THE DEFENDANT USED
23 FORCE, VIOLENCE, DURESS, MENACE, OR FEAR OF IMMEDIATE AND
24 UNLAWFUL BODILY INJURY TO THE CHILD OR SOMEONE ELSE;

25 3, THE DEFENDANT COMMITTED THE ACT WITH THE
26 INTENT OF AROUSING, APPEALING TO, OR GRATIFYING THE LUST,
27 PASSIONS, OR SEXUAL DESIRES OF HIMSELF OR THE CHILD;

28 AND, 4, THE CHILD WAS UNDER THE AGE OF 14

1 YEARS AT THE TIME OF THE ACT.

2 SOMEONE COMMITS AN ACT *WILLFULLY* WHEN HE OR
3 SHE DOES IT WILLINGLY OR ON PURPOSE. IT IS NOT REQUIRED
4 THAT HE OR SHE INTEND TO BREAK THE LAW, HURT SOMEONE
5 ELSE, OR GAIN ANY ADVANTAGE.

6 ACTUALLY AROUSING, APPEALING TO, OR
7 GRATIFYING THE LUST, PASSIONS, OR SEXUAL DESIRES OF THE
8 PERPETRATOR OR THE CHILD IS NOT REQUIRED.

9 THE *FORCE* USED MUST BE SUBSTANTIALLY
10 DIFFERENT FROM OR SUBSTANTIALLY GREATER THAN THE FORCE
11 NEEDED TO ACCOMPLISH THE ACT ITSELF.

12 *DURESS* MEANS THE USE OF A DIRECT OR IMPLIED
13 THREAT OF FORCE, VIOLENCE, DANGER, HARDSHIP, OR
14 RETRIBUTION SUFFICIENT TO CAUSE A REASONABLE PERSON TO DO
15 OR SUBMIT TO SOMETHING THAT HE OR SHE WOULD NOT OTHERWISE
16 DO OR SUBMIT TO.

17 WHEN DECIDING WHETHER THE ACT WAS
18 ACCOMPLISHED BY DURESS, CONSIDER ALL THE CIRCUMSTANCES,
19 INCLUDING THE AGE OF THE CHILD AND HIS OR HER
20 RELATIONSHIP TO DEFENDANT.

21 AN ACT IS ACCOMPLISHED BY *FEAR* IF THE CHILD
22 IS ACTUALLY AND REASONABLY AFRAID.

23 IT IS NOT A DEFENSE THAT THE CHILD MAY HAVE
24 CONSENTED TO THE ACT.

25 THE DEFENDANT IS CHARGED IN COUNTS 3, 6 , 9,
26 11, 13, 16 AND 18 WITH COMMITTING A LEWD OR LASCIVIOUS
27 ACT ON A CHILD UNDER THE AGE OF 14 YEARS, IN VIOLATION OF
28 PENAL CODE SECTION 288(A).

1 TO PROVE THAT THE DEFENDANT IS GUILTY OF
2 THESE CRIMES, THE PEOPLE MUST PROVE THAT:

3 1, THE DEFENDANT WILLFULLY TOUCHED ANY PART
4 OF A CHILD'S BODY, EITHER ON THE BARE SKIN OR THROUGH THE
5 CLOTHING;

6 2, THE DEFENDANT COMMITTED THE ACT WITH THE
7 INTENT OF AROUSING, APPEALING TO OR GRATIFYING THE LUST,
8 PASSIONS, OR SEXUAL DESIRES OF HIMSELF OR THE CHILD;

9 AND, 3, THE CHILD WAS UNDER THE AGE OF 18
10 YEARS AT THE TIME OF THE ACT.

11 SOMEONE COMMITS AN ACT *WILLFULLY* WHEN HE OR
12 SHE DOES IT WILLINGLY OR ON PURPOSE. IT IS NOT REQUIRED
13 THAT HE OR SHE INTEND TO BREAK THE LAW, HURT SOMEONE
14 ELSE, OR GAIN ANY ADVANTAGE.

15 ACTUALLY AROUSING, APPEALING TO, OR
16 GRATIFYING THE LUST, PASSIONS, OR SEXUAL DESIRES OF THE
17 PERPETRATOR OR THE CHILD IS NOT REQUIRED.

18 IT IS NOT A DEFENSE THAT THE CHILD MAY HAVE
19 CONSENTED TO THE ACT.

20 MS. DI TILLIO: YOUR HONOR, MAY I INTERRUPT FOR A
21 BRIEF MOMENT, JUST TO ASK FOR A BRIEF SIDEBAR?

22 THE COURT: YES.

23 WITH THE REPORTER?

24 MS. DI TILLIO: SURE.

25 ---000---

26 (THE FOLLOWING PROCEEDINGS WERE HELD AT
27 SIDEBAR, OUTSIDE THE PRESENCE OF THE JURORS
28 AND THE ALTERNATE JURORS.)

1 INSTRUCTION TOMORROW.

2 MS. DI TILLIO: I THINK THAT WE MIGHT HAVE BEEN
3 UNDER THE IMPRESSION THAT THAT'S WHAT YOUR HONOR WAS
4 DOING.

5 THE COURT: OKAY.

6 MS. DI TILLIO: BUT THAT'S WHY I SAID I WANTED TO
7 JUST AVOID --

8 THE COURT: OKAY. I'LL PULL THIS OUT. AND WE'LL
9 LET YOU --

10 MS. OLIVER: OKAY.

11 MS. DI TILLIO: OKAY. THANK YOU.

12 ---OOO---

13 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
14 COURT, WITHIN THE PRESENCE OF THE JURORS AND
15 THE ALTERNATE JURORS.)

16 ---OOO---

17 THE COURT: I HAVE ABOUT 15 MORE MINUTES OF JURY
18 INSTRUCTIONS TO READ TO YOU. AND I'M GOING TO DO THAT
19 TOMORROW MORNING.

20 AND THEN THE ATTORNEYS ARE GOING TO HAVE A
21 CHANCE TO ARGUE THEIR CASE TOMORROW. AND THEN THE CASE
22 WILL BE SUBMITTED TO THE JURY, BUT I'D LIKE NOT TO BREAK
23 UP THE ARGUMENTS OF THE ATTORNEYS. SO THAT'S WHY WE'RE
24 JUST GOING TO HAVE THE ARGUMENTS IN ONE COMPLETE DAY.

25 ESSENTIALLY, WHAT THAT MEANS IS YOU GET TO
26 GO HOME TODAY.

27 SO YOU'RE REMINDED NOT TO TALK ABOUT THE
28 CASE. YOU'RE NOT TO FORM OR EXPRESS AN OPINION ABOUT THE

1 CASE. YOU'RE NOT TO DISCUSS THE MATTER AT ALL UNTIL THE
2 MATTER IS SUBMITTED TO YOU.

3 TOMORROW MORNING AT 9:00 O'CLOCK. WE'LL SEE
4 EVERYBODY HERE TOMORROW MORNING AT 9:00 O'CLOCK.

5 ---000---

6 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
7 COURT, OUTSIDE THE PRESENCE OF THE JURORS AND
8 THE ALTERNATE JURORS.)

9 ---000---

10 THE COURT: OKAY. LET'S TALK A LITTLE BIT MORE --

11 MS. DI TILLIO: YOUR HONOR, CAN I HAVE 30 SECONDS
12 TO GO TALK TO ALLAN AND MELISSA OUTSIDE?

13 THEY BROUGHT AN ISSUE TO MY ATTENTION THAT I
14 THINK I NEED TO INQUIRE OF THEM A LITTLE BIT FURTHER. I
15 THINK IT MIGHT BE NOT MUCH OF ANYTHING BUT --

16 THE COURT: YES.

17 MS. DI TILLIO: THANK YOU.

18 THE COURT: I'LL GIVE YOU FIVE MINUTES.

19 ---000---

20 (THEREUPON COURT WAS IN RECESS.)

21 ---000---

22 THE COURT: ALL RIGHT. SO WE'RE BACK ON THE
23 RECORD.

24 THE ATTORNEYS AND THE DEFENDANT ARE PRESENT.

25 MS. DI TILLIO: THANK YOU, YOUR HONOR.

26 IT WAS BROUGHT TO MY ATTENTION BY ALLAN AND
27 MELISSA -- ACTUALLY, MELISSA, RIGHT BEFORE SHE CAME IN --
28 THAT, BEFORE ALLAN WAS GOING TO TESTIFY, WHEN WE WERE

1 DISCUSSING THE PROPOSED EVIDENCE, THAT THE JURORS WERE
2 OUTSIDE. THERE ARE ALSO A WHOLE HOST OF JURORS FOR
3 DEPARTMENT 54, I BELIEVE.

4 AND ALLAN AND MELISSA WERE BEYOND DEPARTMENT
5 57 AND THAT THE DEFENDANT'S -- WHO I KNOW TO BE HIS
6 MOTHER -- AND THEN THERE'S A GENTLEMAN AND ANOTHER LADY
7 HERE -- WERE ALL OUTSIDE. AND THEY WERE BETWEEN THE
8 JURORS AND ALLAN AND MELISSA.

9 AND THE GENTLEMAN WAS SPEAKING TO THE
10 YOUNGER LADY IN A VERY LOUD VOICE, FACING AWAY FROM ALLAN
11 AND MELISSA, BUT FACING TOWARDS THE JURORS, SAYING, "HE
12 BETTER NOT FUCKING SAY ANYTHING ELSE ABOUT HIM."

13 IT WAS NOT SAID WHO IT WAS TO, BUT, WHEN THE
14 GENTLEMAN SAID THAT TO THE YOUNGER LADY, SHE LOOKED RIGHT
15 AT ALLAN. AND ALLAN AND MELISSA WERE BEHIND THE
16 GENTLEMAN. AND THEY HEARD EVERYTHING THAT WAS SAID AND
17 -- EVEN THOUGH HE WAS FACING TOWARDS THE JURORS.

18 SO, APPARENTLY, THERE WAS VERY LITTLE OTHER
19 CONVERSATION. WHEN THE JURORS FOR DEPARTMENT 54 WENT
20 INSIDE AND WERE CALLED, THE -- OUR AUDIENCE MEMBERS
21 THOUGHT IT WAS THIS CASE, GOT A LITTLE UPSET THAT THEY
22 WEREN'T BEING CALLED IN YET AND THEN MOVED EVEN CLOSER TO
23 THE JURORS AND SAT DOWN. AND THERE WAS SOME CONVERSATION
24 THAT CONTINUED. ALLAN AND MELISSA WERE NOT CLOSE ENOUGH
25 TO HEAR IT.

26 SO IT'S NOT CLEAR THAT THE JURORS REALLY
27 WERE MADE AWARE OF WHAT WAS GOING ON, BUT I WOULD JUST
28 ASK THAT THE COURT ADMONISH THEM TO NOT HAVE ANY

1 CONVERSATIONS NEXT TO THE JURORS.

2 THE COURT: ALL RIGHT. I'LL DO THAT.

3 OKAY. LET'S TALK ABOUT THE PINPOINT
4 INSTRUCTIONS THE PEOPLE ARE REQUESTING.

5 ESSENTIALLY, WHAT YOU'RE SEEKING TO ADD IS
6 "PENETRATION OF THE GENITAL OPENING REFERS TO THE
7 PENETRATION OF THE LABIA MAJORA, NOT THE VAGINA."

8 MS. DI TILLIO: YES, YOUR HONOR.

9 AND THAT IS REFERENCED IN THE USE NOTES TO
10 1128 IN THE CALCRIM. IT SHOULD, FRANKLY, BE ON BOTH 1127
11 AND 1128. THEY BOTH DESCRIBE PENETRATION.

12 AND IT'S REFERENCE TO *PEOPLE V. QUINTANA*, A
13 2001 CASE, 89 CAL.APP.4TH 1362, WHICH DEFINES PENETRATION
14 OF GENITAL OPENING REFERRING TO PENETRATION OF THE LABIA
15 MAJORA AND NOT THE VAGINA.

16 THAT CASE TALKS ABOUT THERE'S A WHOLE AREA
17 OF ANATOMY THERE, AND IT DOESN'T HAVE TO BE INTRODUCED
18 ALL THE WAY INTO THE VAGINA.

19 I THINK, GIVEN HOW THE CHILDREN HAVE
20 DESCRIBED THE ACTS, IT'S APPROPRIATE TO GIVE IN THIS
21 PARTICULAR FACTUAL SCENARIO. AND IT IS, AS I INDICATED,
22 THE AUTHORITY IN THE BENCH NOTES OF 1128 OF THE CALCRIM.

23 THE COURT: ALL RIGHT. WHAT'S YOUR POSITION?

24 MS. OLIVER: YOUR HONOR, I PREFER THAT THAT
25 PARTICULAR LANGUAGE NOT BE GIVEN. I'M TRYING TO PULL UP
26 1128 RIGHT NOW.

27 MS. DI TILLIO: DO YOU WANT THIS?

28 MS. OLIVER: BECAUSE I WAS REVIEWING THE *QUINTANA*

1 CASE. AND IN THAT CASE THERE WERE PHYSICAL EXAMINATIONS.
2 THERE WAS A PHYSICAL EXAMINATION DONE THAT SHOWED
3 EVIDENCE OF TRAUMA TO VARIOUS PARTS OF THE FEMALE
4 ANATOMY, WHICH WE DO NOT HAVE IN THIS PARTICULAR CASE.
5 AND IN *QUINTANA* THE MEDICAL EVIDENCE HELPED SUPPORT THE
6 VICTIM'S CLAIMS IN THAT PARTICULAR CASE.

7 THE COURT: THE CONCERN I HAVE WITH THE SPECIFIC
8 LANGUAGE IS THE DEFINITION OF "LABIA MAJORA," WHICH WE
9 DON'T HAVE EVIDENCE OF IN THIS TRIAL.

10 MS. DI TILLIO: OKAY.

11 THE COURT: SO --

12 MS. DI TILLIO: I -- I -- IN MY OPINION, IT'S A
13 FAIRLY COMMON TERM, BUT I HAVE COME TO LEARN THAT SOME
14 PEOPLE HAVE VERY LITTLE UNDERSTANDING OF THEIR OWN
15 ANATOMY, BUT I THINK IT'S A COMMON TERM.

16 I MEAN, I DON'T THINK IT REQUIRES ANY
17 SPECIAL DEFINITION. SO THAT WOULD BE MY REQUEST, TO GIVE
18 THE INSTRUCTION.

19 THE COURT: ALL RIGHT. WELL, I MEAN, THERE ARE
20 OTHER WAYS TO SAY IT. I MEAN, YOU COULD QUOTE THE
21 LANGUAGE THAT *QUINTANA* QUOTES.

22 MS. DI TILLIO: I DO THINK THAT THERE NEEDS TO
23 BE --

24 THE COURT: YOU COULD SAY "PENETRATION OF THE
25 EXTERNAL GENITAL ORGAN, AS OPPOSED TO THE VAGINA."

26 ISN'T THAT THE CONCEPT THAT WE'RE TRYING --

27 MS. DI TILLIO: YES.

28 SO IN LIEU OF THE PHRASE "LABIA MAJORA," I

1 WOULD ASK THAT THE COURT INCLUDE THAT LANGUAGE, "EXTERNAL
2 GENITAL ORGANS, NOT THE VAGINA."

3 THE COURT: YES. WELL, EXCEPT IT --

4 MS. DI TILLIO: OR "PENETRATION OF THE GENITAL
5 OPENING INCLUDES PENETRATION OF THE EXTERNAL GENITAL
6 ORGANS."

7 MS. OLIVER: YOUR HONOR, I'D BE OPPOSED TO ANY OF
8 THAT LANGUAGE, ESPECIALLY GIVEN THE FACT THAT -- GIVEN
9 HOW BREANNA TESTIFIED IN THE VARIOUS FORMS AND FASHIONS,
10 ABOUT WHAT MAY OR MAY NOT HAVE OCCURRED, THAT, COUPLED
11 WITH THE FACT THAT THERE WAS NO PHYSICAL EXAMINATION DONE
12 TO -- TO PROVE OR DISPROVE THOSE PARTICULAR CLAIMS.

13 I THINK THAT THERE'S A DANGER, WHEN WE START
14 DEFINING WHAT PENETRATION CAN INCLUDE -- I THINK WE'RE
15 KIND OF TREADING INTO DANGEROUS TERRITORY BECAUSE IT
16 SEEMS TO ME, THE WAY THIS READS, IT READS A LITTLE -- IT
17 READS A LITTLE PREJUDICIAL AND JUST A LITTLE LEADING.

18 I BELIEVE THAT THE JURY INSTRUCTION, AS
19 GIVEN OR AS STATED IN 227 -- IT CLEARLY DEFINES WHAT
20 SEXUAL INTERCOURSE IS. AND THIS INSTRUCTION, 1127, THAT
21 WAS REVISED ON -- IN FEBRUARY OF 2013 -- IT WAS REVISED
22 WELL AFTER THE *QUINTANA* CASE WAS PUBLISHED.

23 AND SO I SAY THAT TO MEAN THAT, IF THEY
24 WANTED A DEFINITION OF PENETRATION TO INCLUDE OF THE
25 GENITAL OPENING, REFERRING TO PENETRATION OF AN EXTERNAL
26 ORGAN OR ANYTHING OF THAT NATURE, THEY WOULD HAVE DEFINED
27 IT IN THAT PARTICULAR JURY INSTRUCTION, LIKE THEY'VE
28 DEFINED OTHER PARTICULAR THINGS, SUCH AS SEXUAL

1 INTERCOURSE, SODOMY, THINGS OF THAT NATURE.

2 SO I'D OBJECT TO THE PINPOINT INSTRUCTION AS
3 A WHOLE. AND I'D ALSO LIKE TO NOTE --

4 THE COURT: SO --

5 MS. OLIVER: SORRY.

6 THE COURT: LET ME ASK THIS QUESTION.

7 ARE YOU SAYING THAT, IF THE EXTERNAL ORGANS
8 ARE PENETRATED, THAT'S NOT SEXUAL INTERCOURSE?

9 MS. OLIVER: WHAT I'M SAYING IS I BELIEVE THAT THIS
10 INSTRUCTION IS DEFINED CLEAR ENOUGH WITHOUT ANY PINPOINT
11 INSTRUCTION, ESPECIALLY WHEN IN 1127 --

12 THE COURT: SO WHAT'S THE DEFINITION OF "GENITALIA"
13 THEN?

14 SO YOUR POSITION IS THAT THE STANDARD
15 INSTRUCTION IS SUFFICIENT?

16 MS. OLIVER: THE STANDARD INSTRUCTION IS
17 SUFFICIENT.

18 THE COURT: ALL RIGHT. SO THE PEOPLE'S POSITION IS
19 YOU WANT A LITTLE BIT MORE SPECIFICITY ABOUT THE
20 DEFINITION OF "GENITALIA"?

21 MS. DI TILLIO: "GENITALIA." BECAUSE IT SAYS
22 "VAGINA OR GENITALIA."

23 THE COURT: SO WHAT ARE YOU PROPOSING THAT IS IN
24 THE COMMON EXPERIENCE OF JURORS?

25 MS. DI TILLIO: "THE GENITALIA INCLUDES THE
26 EXTERNAL GENITAL ORGANS."

27 THE COURT: INSTEAD OF THE SENTENCE, "PENETRATION
28 OF THE GENITAL OPENING REFERS TO PENETRATION OF THE LABIA

1 MAJORA, NOT THE VAGINA."

2 MS. DI TILLIO: YES.

3 THE COURT: AND YOU'RE OBJECTING TO THE SENTENCE,
4 "GENITALIA INCLUDES EXTERNAL GENITAL ORGANS"?

5 MS. OLIVER: YES.

6 THE COURT: ALL RIGHT. YOUR OBJECTION IS NOTED.

7 MS. OLIVER: AND SO I DIDN'T HEAR THE ENTIRE --

8 MS. DI TILLIO: SO AT -- 1128 SHOULD INCLUDE THIS,
9 TOO. SO I'LL PREPARE A NEW ONE FOR THAT, BUT AT THE END
10 OF 1127, WHERE IT INDICATES "SEXUAL INTERCOURSE MEANS ANY
11 PENETRATION, NO MATTER HOW SLIGHT, OF THE VAGINA OR
12 GENITALIA BY THE PENIS," THEN INSERT THE SENTENCE,
13 "GENITALIA INCLUDES THE EXTERNAL GENITAL ORGANS."

14 AND THEN IT GOES BACK TO THE STANDARD
15 PORTION OF THE INSTRUCTION THAT READS, "EJACULATION IS
16 NOT REQUIRED."

17 AND I CAN HAND OUT COPIES OF THOSE.

18 THE COURT: YES, IF YOU'D PLEASE DO THAT.

19 AND I THINK THAT FOLLOWS THE DEFINITION IN
20 *QUINTANA*. AND IT ACTUALLY FOLLOWS THE DEFINITION IN
21 *KARSAI*, K-A-R-S-A-I, WHICH WAS DISAPPROVED ON OTHER
22 GROUNDS.

23 ALL RIGHT. LET'S GO BACK TO OUR QUESTION
24 WHICH WE TALKED ABOUT BEFORE WE BROKE FOR LUNCH DEALING
25 WITH THE LESSER-INCLUDED OFFENSE.

26 MS. OLIVER: YOUR HONOR, BEFORE WE DO, IS THE COURT
27 GOING TO ALSO INCLUDE THAT ADDITIONAL LANGUAGE NOW IN
28 1128?

1 THE COURT: YES. AND YOU'RE OBJECTING --

2 MS. OLIVER: SAME OBJECTION.

3 THE COURT: -- AS WELL?

4 RIGHT.

5 AND YOU WILL PROVIDE 1127 AND 1128?

6 MS. DI TILLIO: YES.

7 THE COURT: ALL RIGHT. LET'S TALK THEN ABOUT THE
8 LESSER-INCLUDED OFFENSE INSTRUCTIONS.

9 LET ME SEE IF I CAN SUMMARIZE WHERE WE WERE.

10 AND YOU WILL CORRECT ME IF I HAVE GOT YOUR
11 POSITIONS INCORRECT.

12 WE HAVE OFFENSES ALLEGED UNDER PENAL CODE
13 SECTION 288.7(B). AND THOSE ARE SEXUAL PENETRATION
14 OFFENSES.

15 AND WHAT IS THE PEOPLE'S POSITION AS FAR AS
16 WHAT THE LESSER-INCLUDED OFFENSES ARE FOR 288.7(B)?

17 MS. DI TILLIO: THAT IT SHOULD JUST BE THE
18 ATTEMPTED 288.7(B) AND ONLY AS IT RELATES TO PENETRATION.

19 THE COURT: AND THE DEFENSE'S POSITION FOR
20 288.7(B), THE PENETRATION, IS WHAT?

21 MS. OLIVER: THAT THE LIO SHOULD BE THE ATTEMPTED,
22 242, WHICH WE DISCUSSED EARLIER, AND THE 240.

23 THE COURT: AND THE PEOPLE'S POSITION AS FAR AS THE
24 240 AND THE 242 FOR THE PENETRATION OFFENSES UNDER
25 288.7(B) IS WHAT?

26 MS. DI TILLIO: THE PEOPLE DO NOT BELIEVE THE FACTS
27 SUPPORT JUST AN ASSAULT OR A BATTERY UNDER THESE FACTUAL
28 SCENARIOS. THERE IS -- EITHER THERE WAS PENETRATION OR

1 THERE WASN'T, BUT THE TYPE OF TOUCHING THAT OCCURRED CAN
2 REALLY ONLY BE DEFINED AS EITHER A 288.7(B) OR AN ATTEMPT
3 OF THAT AND THAT IT DOES NOT RISE TO THE LEVEL OF -- OR
4 IT DOES NOT INCLUDE AN ASSAULT, GIVEN THAT THERE IS THAT
5 REQUIREMENT WITH ASSAULT THAT THE TOUCHING BE RUDE OR IN
6 AN OFFENSIVE MANNER. AND THAT'S NOT A REQUIREMENT OF THE
7 288.7(B).

8 AND SO I THINK THAT ADDS AN EXTRA ELEMENT TO
9 THE OFFENSE OF THE LIO, WHICH -- OF THE LESSER OFFENSE,
10 WHICH WOULD MEAN IT WOULD NOT BE AN LIO.

11 THE COURT: ALL RIGHT. SO NOW I UNDERSTAND YOUR
12 POSITION.

13 ESSENTIALLY, WHAT WE'RE REALLY TALKING ABOUT
14 -- WE'RE TALKING ABOUT COUNT 1, COUNT 10, COUNT 12 --

15 MS. DI TILLIO: 15.

16 THE COURT: -- AND COUNT 15.

17 MS. DI TILLIO: DOES THE COURT WANT MY EXTRA COPY
18 OF THIS LITTLE CHEAT SHEET THAT I MADE FOR MYSELF?

19 THE COURT: THAT MIGHT BE HELPFUL, ALTHOUGH I'VE
20 MADE MY OWN CHEAT SHEET.

21 MS. DI TILLIO: OKAY.

22 THE COURT: SO THERE WOULD BE FOUR COUNTS: 1, 10,
23 12 AND 15.

24 ALL RIGHT. SO WHAT IS YOUR POSITION AS FAR
25 AS THE LESSER-INCLUDED OFFENSES, IF ANY, FOR THE SEXUAL
26 INTERCOURSE, WHICH IS --

27 MS. DI TILLIO: 8 AND 17.

28 THE COURT: -- 8 AND 17?

1 MS. DI TILLIO: ALSO THE ATTEMPTED SEXUAL
2 INTERCOURSE. AND THAT WOULD BE IT.

3 IF THE COURT LOOKS AT THE FOLLOWING
4 CHARGES -- ALSO CHARGED WITH THE 288(A), SAME CONDUCT.
5 SO 9 AND 18 ARE PENIS TO VAGINA.

6 SO I THINK, IN TERMS OF LIO'S FOR COUNT 8
7 AND COUNT 17, THE LIO'S WOULD BE ATTEMPTED INTERCOURSE,
8 WHICH I THINK WE ARE PROVIDING. AND, AGAIN, I BELIEVE
9 THAT'S THE ONLY LESSER-INCLUDED.

10 THE COURT: AND WHAT'S THE DEFENDANT'S POSITION?

11 MS. OLIVER: IN REGARDS TO 8 AND 17?

12 THE COURT: YES.

13 MS. OLIVER: I WOULD SUBMIT ON 8 AND 17. I BELIEVE
14 THAT THE ATTEMPTED SHOULD BE GIVEN. SO I DO AGREE WITH
15 THAT ONE, FOR 8 AND 17.

16 THE COURT: WHAT ABOUT THE ASSAULT, ASSAULT AND THE
17 BATTERY?

18 MS. OLIVER: WELL, AS IT'S -- AS IT'S DESCRIBED IN
19 THE JURY INSTRUCTION, I DON'T BELIEVE THE WAY THAT -- I
20 DON'T BELIEVE THE EVIDENCE WOULD SUPPORT THOSE TWO LIO'S
21 IN REGARDS TO COUNTS 8 AND 17 AS FAR AS A BATTERY OR A
22 SIMPLE ASSAULT.

23 I THINK IT WOULD BE A DIFFERENT SITUATION IF
24 TESTIMONY HAD COME OUT ABOUT SOMEONE SLEEPING OR
25 SOMETHING OF THAT NATURE, BUT THERE WAS NO EVIDENCE OF
26 THAT.

27 SO --

28 THE COURT: ALL RIGHT. SO, FOR 8 AND 17, WE'RE

1 GOING TO GIVE THE 288.7(A) INSTRUCTION AND AN ATTEMPT
2 INSTRUCTION AS THE LESSER-INCLUDED OFFENSE.

3 AND LET'S TALK ABOUT THE 288(A)'S.

4 NO. LET'S TALK ABOUT THE 288.7(B), ORAL
5 COPULATION, ALLEGED OFFENSES.

6 MS. DI TILLIO: I'LL GO FIRST.

7 THE COURT: ALL RIGHT. GO AHEAD.

8 MS. DI TILLIO: YOUR HONOR, I DON'T THINK THAT
9 THERE ARE ANY LIO'S TO GIVE. I THINK THAT --

10 THE COURT: IT HAPPENED, OR IT DIDN'T.

11 MS. DI TILLIO: -- IT HAPPENED OR IT DIDN'T.

12 IT'S A GENERAL INTENT CRIME. I DON'T THINK
13 WE CAN ATTRIBUTE ANY SPECIFIC INTENT TO EVEN -- THERE
14 ISN'T EVEN AN ATTEMPTED ORAL COPULATION, GIVEN THE STATE
15 OF THE EVIDENCE AS IT IS. SO I THINK IT'S JUST THE
16 288.7(B)'S.

17 I DON'T THINK THAT THERE'S AN ASSAULT. I
18 THINK I MAY HAVE INDICATED EARLIER THERE WAS ACTUALLY
19 DISCUSSION FROM THE CHILD THAT THERE WERE -- THAT IT WAS
20 NOT -- THAT IT WAS PLEASURABLE AT LEAST ONCE. SO I
21 THINK, CERTAINLY, THAT'S NOT AN ASSAULT.

22 THE COURT: MISS OLIVER, WHAT'S YOUR WISH?

23 MS. OLIVER: SUBMIT ON THE ORAL COPULATION.

24 THE COURT: WELL, I THINK THAT'S RIGHT BASED ON THE
25 STATE OF THE EVIDENCE, NO -- NO LESSER-INCLUDED OFFENSE
26 INSTRUCTIONS.

27 MS. OLIVER: IS THE COURT LOOKING FOR THE
28 PARTICULAR COUNTS?

1 THE COURT: I THINK THAT'S 4, 5 --

2 MS. DI TILLIO: OH, YEAH, 4, 5, 7, 14.

3 THE COURT: ALL RIGHT.

4 ALL RIGHT. AS FAR AS THE 288(A)'S?

5 MS. DI TILLIO: YOUR HONOR, LIKEWISE, I DON'T
6 BELIEVE THERE ARE ANY LIO'S. AND I UNDERSTAND THAT,
7 FIRST OF ALL, THERE WERE NO ATTEMPTS. THERE WERE TOUCHES
8 THAT OCCURRED. SO I DON'T THINK WE NEED TO TALK ABOUT AN
9 ATTEMPTED LEWD ACT.

10 I DON'T BELIEVE BATTERY STILL EXISTS AS A
11 LESSER-INCLUDED OFFENSE AFTER *SHOCKLEY*. AND IN THIS
12 PARTICULAR CASE, I DO NOT THINK ASSAULT APPLIES, SIMPLE
13 ASSAULT, GIVEN THE FACTS OF THIS CASE.

14 I DON'T THINK THAT THERE WAS ANY CONDUCT
15 THAT WOULD QUALIFY AS AN ASSAULT GIVEN THE REQUIREMENT --
16 WHERE DID THEY GO -- THAT THE APPLICATION OF FORCE MEANS
17 TO TOUCH IN A HARMFUL OR OFFENSIVE MANNER, EITHER IN A
18 RUDE OR ANGRY WAY. AND I JUST -- IN THIS PARTICULAR
19 CASE, I DON'T THINK THE FACTS SUPPORT IT.

20 THE TYPES OF TOUCHING THAT WE HAVE ARE
21 TOUCHING OF THE VAGINA, PENETRATION OF THE VAGINA,
22 INSERTION OF AN OBJECT INTO THE VAGINA. AND I JUST DON'T
23 SEE THOSE AS NECESSARILY INCLUDING HARMFUL OR OFFENSIVE
24 OR RUDE OR ANGRY, AS WOULD BE REQUIRED FOR AN ASSAULT.

25 MS. OLIVER: I UNDERSTAND WHERE THE ALLEGED
26 LOCATIONS ARE. HOWEVER, ONE OF THE ELEMENTS THAT THE
27 PEOPLE ARE REQUIRED TO PROVE IS NOT ONLY THAT THE
28 TOUCHING OCCURRED BUT ALSO WITH THE INTENT OF AROUSING,

1 APPEALING TO, OR GRATIFYING THE LUST, PASSIONS, OR SEXUAL
2 DESIRES OF HIMSELF OR THE CHILD. THAT IS AN ELEMENT.

3 SO THE JURY COULD FIND THAT A TOUCHING DID
4 OCCUR, BUT THEY CAN FIND THAT ELEMENT 2 WAS NOT MET. AND
5 IF THEY DO, THEN I THINK WHAT WE HAVE DESCRIBED IS AN
6 ASSAULT.

7 MS. DI TILLIO: WELL, IT WOULD HAVE TO BE A HARMFUL
8 TOUCHING IN A RUDE MANNER.

9 MS. OLIVER: OR OFFENSIVE.

10 THE COURT: ALL RIGHT. SEE, I WOULD -- I WOULD --
11 MISS OLIVER, I UNDERSTAND THE LOGIC OF THE ARGUMENT. I
12 WOULD SAY IT WOULD PROBABLY BE MORE APPROPRIATE IF OTHER
13 PARTS OF THE BODY HAD BEEN TOUCHED, AS OPPOSED TO THESE
14 PARTICULAR PARTS, BECAUSE THESE PARTICULAR PARTS, I MEAN,
15 ARE -- IT'S NOT AN ACCIDENTAL TOUCHING, IT SEEMS, IN THAT
16 THESE ARE TOUCHINGS OF SEXUAL ORGANS, AS OPPOSED TO --
17 YOU CAN HAVE A 288 BY TOUCHING THE THIGHS, FOR EXAMPLE,
18 BUT THAT'S NOT WHAT THE PEOPLE HAVE ALLEGED.

19 SO I THINK WE'RE GOING FULL CIRCLE AND
20 COMING BACK TO THE ARGUMENT, THE DISCUSSION WE HAD THIS
21 MORNING, ABOUT WHERE SOME OF THESE TOUCHINGS TOOK PLACE.

22 MS. OLIVER: I UNDERSTAND THAT, BUT I ALSO KNOW
23 THAT --

24 THE COURT: AND, YOU KNOW, WE'RE GETTING INTO THE
25 WEEDS BECAUSE I THINK THIS IS THE BOTTOM LINE. THE
26 BOTTOM LINE IS YOU BELIEVE THE KIDS, OR YOU DON'T BELIEVE
27 THE KIDS.

28 ISN'T THAT THE BOTTOM LINE FOR THIS CASE?

1 MAYBE I'M MISSING SOMETHING, BUT I DON'T
2 THINK I AM. WE'RE REALLY TALKING ABOUT THE TECHNICAL
3 ASPECTS OF THE LAW HERE.

4 AND I'M TRYING TO FOCUS THIS IN A WAY THAT
5 THE JURY HAS A SENSE TO TAKE A LOOK AT WHAT THE EVIDENCE
6 IS AND GIVE THEM THE OPPORTUNITY TO ESSENTIALLY DECIDE
7 WHAT HAPPENED AND WHAT'S TO BE -- WHAT THE ACTUAL FACTS
8 ARE IN THIS CASE.

9 AND SO, FOR THE 288(A)'S, MISS OLIVER, YOUR
10 POSITION IS THAT -- IS WHAT?

11 MS. OLIVER: MY POSITION IS THAT THERE SHOULD BE
12 THE LIO OF ASSAULT GIVEN.

13 THE COURT: OKAY.

14 MS. OLIVER: AND THAT IS BECAUSE THE EVIDENCE
15 VARIES. AND WE REALLY DON'T KNOW -- JURORS, THEY DO
16 DIFFERENT THINGS, AND THEY DECIDE ON DIFFERENT THINGS.
17 DESPITE, YOU KNOW, WHAT THE ATTORNEYS MAY BELIEVE, OR THE
18 COURT, JURORS TEND TO HAVE -- THEY HAVE A MIND OF THEIR
19 OWN. AND THEY DECIDE -- AND THEY'RE THE ONES WHO ARE
20 GOING TO DECIDE WHAT THE FACTS OF THE CASE ARE.

21 AND THE JURORS -- THEY COULD DECIDE THAT ONE
22 OF THE -- THAT SOMEONE WAS MISTAKEN, THAT MAYBE A
23 TOUCHING DID OCCUR NOT IN A MANNER IN WHICH THEY
24 TESTIFIED.

25 AND IF THAT WERE THE CASE, THEN THE PEOPLE
26 MAY NOT BE ABLE TO MEET THEIR BURDEN FOR EACH ELEMENT,
27 BUT WHAT THEY COULD BELIEVE WAS TESTIFIED TO OR PROVEN
28 COULD BE AN LIO. IT COULD BE THE ASSAULT.

1 THE COURT: OKAY.

2 ALL RIGHT. UNDER THE LOGIC EXPRESSED BY THE
3 *SHOCKLEY* CASE -- I'M BOUND TO ACCEPT *SHOCKLEY*. I'M
4 REQUIRED TO ACCEPT *SHOCKLEY* AND TO FOLLOW *SHOCKLEY* AS FAR
5 AS BATTERY IS CONCERNED.

6 SO THE SUPREME COURT HAS SAID BATTERY IS NOT
7 A LESSER-INCLUDED OFFENSE OF 288(B)(1).

8 AND THE DISTINCTION BETWEEN 288(B)(1) AND
9 288(A) IS SIMPLY WHAT?

10 MS. DI TILLIO: USE OF FORCE.

11 THE COURT: AND SO I THINK, UNDER THAT LOGICAL
12 REASONING, 288 -- FOR 288(A), THERE IS NO BATTERY.

13 SO I'M INCLINED NOT TO GIVE A
14 LESSER-INCLUDED OFFENSE OF ASSAULT FOR -- AS WELL. IF
15 BATTERY IS NOT A LESSER-INCLUDED OFFENSE, I'M NOT SURE
16 HOW ASSAULT CAN BE A LESSER-INCLUDED OFFENSE.

17 AND SO UNDER THE LOGIC OF THE *SHOCKLEY* CASE
18 AND UNDER *AUTO EQUITY*, WHICH I'M NOW REQUIRED TO FOLLOW,
19 I'M NOT GOING TO GIVE THE LESSER-INCLUDED OFFENSE
20 INSTRUCTIONS FOR 288(A).

21 NOW, FOR THE PENETRATION -- BECAUSE WE'RE
22 GOING TO BE GIVING THE -- THE -- LET ME START AGAIN.

23 LET'S TALK WITH 288.7(B) AND THOSE OFFENSES.

24 MS. DI TILLIO: WHICH ONES, YOUR HONOR, THE
25 PENETRATION OR THE ORAL COP?

26 THE COURT: THE PENETRATION. NOT THE ORAL COP.

27 MS. OLIVER: BEFORE WE GO THERE -- SO, IN TERMS OF
28 THE 288(A)'S, THE LIO'S OF 240 AND 242 YOU'RE NOT GIVING?

1 THE COURT: NOT GIVING.

2 MS. OLIVER: OKAY.

3 THE COURT: THOSE ARE THE ONES -- YOU'RE REQUESTING
4 THE 240(A). AND I'M NOT GIVING IT.

5 I'M NOT GOING TO GIVE IT BASED ON THE
6 LOGICAL REASONING STEMMING FROM THE ANALYSIS OF THE
7 *SHOCKLEY* CASE.

8 MS. OLIVER: OKAY.

9 THE COURT: OKAY?

10 AS FAR AS THE 288.7(B), AS OPPOSED TO THE
11 ORAL COPULATION, SO WHAT IS THE DISTINCTION BETWEEN THE
12 ORAL COPULATION AND PENETRATION THEORIES?

13 MS. DI TILLIO: FACTUALLY, IN THIS CASE, IT'S
14 WHETHER OR NOT PENETRATION OCCURRED.

15 SO ON THE PENETRATION COUNTS OR THE
16 INTERCOURSE COUNTS, THERE IS A THEORY THAT THE ATTEMPT
17 COULD BE INCLUDED BECAUSE THERE WAS AN ATTEMPT TO COMMIT
18 THE CRIME, AND IT WAS INEFFECTUAL, BECAUSE THERE WAS NO
19 ENTRY. THE ORAL COP, IT EITHER HAPPENED, OR IT DIDN'T.

20 THE COURT: RIGHT. THAT'S THE DISTINCTION THAT I'M
21 MAKING.

22 ALL RIGHT. SO -- BUT FOR THE PENETRATION
23 PART, MISS OLIVER IS ARGUING WE SHOULD CONTINUE TO GIVE
24 THE LESSER-INCLUDED OFFENSE INSTRUCTIONS FOR 240 AND 242.

25 AM I RIGHT ABOUT THAT?

26 MS. OLIVER: YOU ARE RIGHT ABOUT THAT.

27 THE COURT: AND WHY SHOULD WE NOT DO THAT?

28 MS. DI TILLIO: I THINK THE SAME LOGIC FOLLOWS,

1 YOUR HONOR.

2 I THINK THAT, BASED ON THE *SHOCKLEY* CASE,
3 THE 288.7(B), ALL RIGHT, ORAL COP, IF THE CHILD WERE 11,
4 IT WOULD NOT BE A 288.7(B). IT WOULD BE AN (A), JUST A
5 288(A) OR SOME OTHER ORAL COP CHARGES, BUT, IF THE COURT
6 IS INDICATING THAT THE COURT WOULD NOT GIVE LIO'S TO A
7 288(A) BASED ON THESE FACTS, THE ONLY FACTOR THAT REALLY
8 IS DIFFERENT IN THIS CASE IS THE AGE OF THE CHILD.

9 SO IF THE LESSERS DON'T APPLY FACTUALLY TO
10 THE -- TO THIS FACTUAL SCENARIO, OKAY, THEN I DON'T THINK
11 IT SHOULD EXTEND TO THE 288.7(B).

12 THE ONLY THING THAT BRINGS IT INTO THAT
13 REALM IS THE AGE OF THE CHILD, WHICH IS BELOW A CERTAIN
14 LEVEL WHERE THE LEGISLATURE SAYS, "WE PUNISH THAT
15 DIFFERENTLY," BUT, FACTUALLY, IT'S NOT REALLY ALL THAT
16 DIFFERENT THAN IF WE'RE TALKING AN ORAL COP OR A 288(A)
17 ON AN OLDER CHILD, BETWEEN 11 AND 14.

18 SO I DON'T THINK THAT THE FACTS OF THIS CASE
19 WARRANT ASSAULT OR BATTERY, ESPECIALLY SINCE --
20 ESPECIALLY WITH THE ORAL COP, THE CHILD DESCRIBED THAT
21 THE TOUCHING WAS NOT RUDE, OFFENSIVE, HARMFUL, ANY OF
22 THOSE THINGS.

23 MS. OLIVER: YOUR HONOR, I BELIEVE I SUBMITTED ON
24 THE ORAL COP.

25 THE COURT: RIGHT.

26 YOU SUBMITTED ON THE ORAL COPS; RIGHT?

27 MS. OLIVER: UH-HUH.

28 THE COURT: BUT, RIGHT NOW, WE'RE TALKING ABOUT THE

1 PENETRATION OFFENSES, WHICH I BELIEVE ARE --

2 MS. DI TILLIO: OH, I'M SORRY, YOUR HONOR. I --
3 YOU SHOULD HAVE STOPPED ME SOONER THEN. YOU LET ME KEEP
4 TALKING.

5 THE COURT: WE'RE TALKING ABOUT THE PENETRATION
6 OFFENSES --

7 MS. DI TILLIO: GOT IT.

8 THE COURT: -- WHICH I THINK ARE 1 --

9 MS. OLIVER: 10, 12 AND 15.

10 THE COURT: -- 10, 12 AND 15.

11 MS. OLIVER: YES.

12 THE COURT: I SEE A DISTINCTION BETWEEN PENETRATION
13 WITH A FINGER AND THE ORAL COPULATION. AND SO I THINK,
14 TO BE SAFE, FOR THOSE OFFENSES -- 1, 10, 12 AND 15 --
15 LET'S GIVE THE THREE LESSER-INCLUDED OFFENSE
16 INSTRUCTIONS.

17 MS. DI TILLIO: SO THE ATTEMPT AND THE ASSAULT AND
18 BATTERY?

19 THE COURT: AND A BATTERY.

20 MS. DI TILLIO: OKAY. SO THE COURT'S -- OKAY.

21 THE COURT: AND THE OVERARCHING GOAL HERE IS TO
22 PROVIDE THE JURY AN OPTION TO MAKE THE FACTUAL FINDING
23 BASED ON THE EVIDENCE THAT'S BEEN PRESENTED.

24 MS. OLIVER: SO FROM -- ACCORDING TO MY NOTES, I
25 THINK WE'RE -- I THINK WE'VE COVERED ALL THE OFFENSES
26 EXCEPT --

27 THE COURT: SO DO I.

28 BUT WHAT --

1 MS. OLIVER: EXCEPT WHAT DID WE DO WITH COUNT 2?

2 MS. DI TILLIO: WE HAVEN'T.

3 MS. OLIVER: OKAY.

4 MS. DI TILLIO: THAT'S THE ONE THAT'S LEFT OUT
5 THERE. AND I THINK THAT THE ONLY REAL LIO WE COULD TALK
6 ABOUT IS AN ATTEMPT 288(B). I DON'T THINK, FACTUALLY,
7 THAT APPLIES HERE.

8 THE COURT: I THINK WE OUGHT TO GIVE IT.

9 MS. DI TILLIO: BUT WE COULD GIVE IT. SO ALL
10 RIGHT.

11 MS. OLIVER: AND SO THE COURT IS NOT GOING TO GIVE
12 THE ASSAULT ON THAT ONE?

13 THE COURT: I'M NOT GOING TO GIVE THE ASSAULT ON
14 THAT ONE FOR THE SAME LOGIC THAT --

15 MS. OLIVER: OF *SHOCKLEY*.

16 THE COURT: YES.

17 MS. DI TILLIO: ALL RIGHT. CAN I RECAP, SO THAT
18 WE'RE ALL IN THE SAME PLACE WHEN I DO THESE?

19 COUNT 1, WE'RE GOING TO GIVE THE
20 PENETRATION, THE ATTEMPT PENETRATION, THE 240, THE 242.

21 THE COURT: YES.

22 MS. DI TILLIO: COUNT 2 IS 288(B) AND ATTEMPTED
23 288(B). COUNT 3, NOTHING. 4, NOTHING. 5, NOTHING.
24 THAT'S 288(A) AND THEN TWO ORAL COPS.

25 COUNT 6, 288(A), WE'RE NOT GIVING ANY.
26 COUNT 7, ORAL COP, WE'RE NOT GIVING. COUNT 8,
27 INTERCOURSE PLUS ATTEMPT INTERCOURSE.

28 COUNTS 9, 10, 11 -- THAT'S 288(A) -- I'M

1 SORRY, NOT 10. SORRY. 9 -- SO 10 IS GOING TO BE THE
2 ATTEMPT PLUS THE 240 AND THE 242.

3 THE COURT: RIGHT.

4 MS. DI TILLIO: AND THEN NOTHING ON 11. 12 IS THE
5 ATTEMPT AND THE 242. NOTHING ON 13. NOTHING ON 14. ON
6 15, THE ATTEMPT AND THE 240 AND 242. NOTHING ON 16. 17
7 WOULD BE ATTEMPT. AND NOTHING ON 18.

8 THE COURT: YES.

9 MS. OLIVER: THAT'S WHAT I HAVE.

10 MS. DI TILLIO: GOOD.

11 THE COURT: ALL RIGHT. SO THAT MEANS WE NEED TO
12 ADJUST A COUPLE OF THOSE OTHER INSTRUCTIONS.

13 MS. DI TILLIO: YES, WE DO.

14 SO WHY DOESN'T EVERYBODY SHOW UP ABOUT 8:30
15 TOMORROW MORNING?

16 MS. DI TILLIO: I'LL GO THROUGH THESE TONIGHT AND
17 SEE IF I CAN'T MAKE THEM COMPORT WITH EVERYTHING WE'VE
18 DISCUSSED.

19 I'LL TRY MY BEST TO SEND THEM TO YOU
20 TONIGHT, MISS OLIVER, AND TO THE COURT, SO THAT WE HAVE
21 THEM FIRST THING IN THE MORNING.

22 MS. OLIVER: OKAY.

23 THE COURT: AND I KNOW WE'RE TALKING ABOUT
24 TECHNICALITIES OF THIS. AND I KNOW IT MIGHT NOT -- I
25 KNOW THE ARGUMENT SEEMS TO BE WHO DO YOU BELIEVE, NOT THE
26 TECHNICAL ASPECTS.

27 MS. DI TILLIO: RIGHT.

28 BUT THAT'S WHERE WE GET HUNG UP, ISN'T IT?

1 THE COURT: I GUESS WE'RE GOING TO NEED VERDICT
2 FORMS. ESSENTIALLY, WE'LL HAVE A PACKET FOR EACH COUNT
3 WITH THE LESSER-INCLUDED OFFENSES.

4 AND WHAT I DO IS I WILL WALK RIGHT UP TO THE
5 JURY WITH THE VERDICT FORMS AFTER YOU'VE ARGUED. AND
6 I'LL TELL THEM HOW TO DO IT.

7 MS. DI TILLIO: OKAY.

8 THE COURT: AND YOU CAN DO -- YOU'RE WELCOME TO DO
9 THAT, TOO, BUT I'M GOING TO TELL THEM, BEFORE THEY CAN --
10 AND THE ONLY WAY THEY GET TO A LESSER IS TO FIND HIM NOT
11 GUILTY OF THE GREATER.

12 ---000---

13 (THEREUPON THE PROCEEDINGS IN THIS MATTER
14 WERE RECESSED UNTIL THURSDAY, APRIL 3, 2014,
15 AT 9:00 A.M., FOR FURTHER PROCEEDINGS.)

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1 SAN DIEGO, CALIFORNIA; THURSDAY, APRIL 3, 2014

2 8:49 A.M.

3 ---OOO---

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
5 COURT, OUTSIDE THE PRESENCE OF THE JURORS AND
6 THE ALTERNATE JURORS.)

7 ---OOO---

8 THE COURT: SO WE'VE GOT NEW VERDICT FORMS.

9 ALL RIGHT. EVERYBODY IS OKAY WITH THE
10 VERDICT FORMS, AS CURRENTLY SUBMITTED?

11 MS. DI TILLIO: I AM.

12 THE COURT: AND, IF NOT, MISS OLIVER IS GOING TO
13 LET ME KNOW, OTHER THAN WHAT WE'VE ALREADY TALKED ABOUT.

14 AND THEN WE HAD TO -- SO WE HAVE NEW JURY
15 INSTRUCTIONS THEN.

16 MS. DI TILLIO: AND I THINK 3518 IS -- REALLY, THE
17 ONLY BIG CHANGE, WITH THE LESSERS, THEY ADDED, OBVIOUSLY.

18 THE COURT: RIGHT.

19 MS. DI TILLIO: AND THEN WHAT I DID FOR 460, I
20 CHANGED THE LANGUAGE A LITTLE BIT BECAUSE IT SEEMED
21 INCREDIBLY CUMBERSOME TO DO ALL OF THESE COUNTS IN THE
22 WAY THAT IT PREVIOUSLY HAD BEEN.

23 SO INSTEAD OF PUTTING EACH PARTICULAR COUNT
24 IN THAT LANGUAGE, WHERE IT DESCRIBES "TO PROVE," I JUST
25 -- I USED "GREATER CRIME" AND "LESSER CRIME." AND I USED
26 THE COUNT NUMBERS.

27 SO IT STATES, "THE DEFENDANT TOOK A DIRECT
28 BUT INEFFECTIVE STEP TOWARDS COMMITTING THE GREATER

1 CRIME." AND THEN "THE DEFENDANT COMMITTED THE GREATER
2 CRIME," AS OPPOSED TO PUTTING EACH INDIVIDUAL CRIME IN
3 THERE.

4 THE COURT: THAT'S FINE.

5 MS. OLIVER: WHERE IS THIS?

6 MS. DI TILLIO: IT'S RIGHT AFTER 518.

7 THE COURT: DEFINITION OF ATTEMPT.

8 MS. DI TILLIO: IT SHOULD BE RIGHT THERE.

9 MS. OLIVER: OH.

10 THE COURT: AND, WHILE WE'RE WAITING FOR THE JURY,
11 I JUST WANTED TO MAKE -- HAVE THE RECORD BE CLEAR,
12 YESTERDAY, MISS OLIVER OBJECTED TO A PORTION OF ALLAN'S
13 TESTIMONY ON REBUTTAL AS OUTSIDE THE SCOPE OF HER CASE,
14 ESSENTIALLY.

15 AND I WASN'T FULLY ARTICULATE ABOUT THE
16 REASONS FOR LETTING IT IN.

17 AND MY VIEW OF WHY THAT STATEMENT CAME IN IS
18 AS FOLLOWS:

19 THE RESTRAINING ORDER DECLARATION RAISED
20 ISSUES OF SUGGESTIBILITY. AND I BELIEVE THAT ALLAN'S
21 TESTIMONY ON REBUTTAL WAS DIRECTLY -- WAS DIRECTED IN
22 RELATIONSHIP TO THAT EVIDENCE AND WAS EVIDENCE THAT ANY
23 STATEMENT MADE BY BREANNA WAS NOT BECAUSE OF
24 SUGGESTIBILITY.

25 HOW LONG DO YOU THINK YOU'RE GOING TO ARGUE?

26 MS. DI TILLIO: ABOUT 40, 45 MINUTES.

27 THE COURT: I'M JUST TRYING TO PLAN BREAKS.

28 MS. DI TILLIO: MAYBE 40 MINUTES.

1 THE COURT: BECAUSE I DON'T LIKE TO INTERRUPT AN
2 ARGUMENT.

3 SO WHAT I'LL PROBABLY DO, THEN, IS I'LL READ
4 THE INSTRUCTIONS, HAVE YOU ARGUE, AND THEN TAKE A BREAK.

5 MS. DI TILLIO: OKAY.

6 MS. OLIVER: OKAY.

7 ---OOO---

8 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
9 COURT, WITHIN THE PRESENCE OF THE JURORS AND
10 THE ALTERNATE JURORS.)

11 ---OOO---

12 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

13 TODAY WHAT WE'RE GOING TO DO IS I'M GOING TO
14 READ YOU SOME MORE JURY INSTRUCTIONS. THAT WILL PROBABLY
15 TAKE ME 10 OR 15 MINUTES. AND THEN THE ATTORNEYS ARE
16 GOING TO HAVE A CHANCE TO ARGUE THE CASE.

17 THE DEFENDANT IS CHARGED IN COUNTS 8 AND 17
18 WITH ENGAGING IN SEXUAL INTERCOURSE WITH A CHILD 10 YEARS
19 OF AGE OR YOUNGER, IN VIOLATION OF PENAL CODE SECTION
20 288.7(A).

21 TO PROVE THAT THE DEFENDANT IS GUILTY OF
22 THIS CRIME, THE PEOPLE MUST PROVE THAT:

23 1, THE DEFENDANT ENGAGED IN AN ACT OF SEXUAL
24 INTERCOURSE WITH BREANNA L.;

25 2, WHEN THE DEFENDANT DID SO, BREANNA L. WAS
26 10 YEARS OF AGE OR YOUNGER;

27 3, AT THE TIME OF THE ACT THE DEFENDANT WAS
28 AT LEAST 18 YEARS OLD.

1 *SEXUAL INTERCOURSE* MEANS ANY PENETRATION, NO
2 MATTER HOW SLIGHT, OF THE VAGINA OR GENITALIA BY THE
3 PENIS. *GENITALIA* INCLUDES THE EXTERNAL GENITAL ORGANS.
4 EJACULATION IS NOT REQUIRED.

5 IF YOU FIND THE DEFENDANT GUILTY OF TWO OR
6 MORE SEX OFFENSES AS CHARGED IN COUNTS 2, 3, 6, 9, 11,
7 13, 16 AND 18, YOU MUST THEN DECIDE WHETHER THE PEOPLE
8 HAVE PROVED THE ADDITIONAL ALLEGATION THAT THOSE CRIMES
9 WERE COMMITTED AGAINST MORE THAN ONE VICTIM.

10 THE PEOPLE HAVE THE BURDEN OF PROVING THIS
11 ALLEGATION BEYOND A REASONABLE DOUBT. IF THE PEOPLE HAVE
12 NOT MET THIS BURDEN, YOU MUST FIND THAT THIS ALLEGATION
13 HAS NOT BEEN PROVED.

14 IF YOU FIND THE DEFENDANT GUILTY OF THE
15 CRIMES CHARGED IN COUNTS 2, 3, 6, 9, 11, 13, 16 AND 18,
16 YOU MUST THEN DECIDE WHETHER, FOR EACH CRIME, THE PEOPLE
17 HAVE PROVED THE ADDITIONAL ALLEGATION THAT DEFENDANT
18 ENGAGED IN SUBSTANTIAL SEXUAL CONDUCT WITH THE VICTIM.

19 YOU MUST DECIDE WHETHER THE PEOPLE HAVE
20 PROVED THIS ALLEGATION FOR EACH CRIME AND RETURN A
21 SEPARATE FINDING FOR EACH CRIME.

22 TO PROVE THIS ALLEGATION, THE PEOPLE MUST
23 PROVE THAT:

24 THE DEFENDANT HAD SUBSTANTIAL SEXUAL CONDUCT
25 WITH THE VICTIM.

26 *SUBSTANTIAL SEXUAL CONDUCT* INCLUDES
27 MASTURBATION OF THE VICTIM.

28 *MASTURBATION* IS DEFINED AS ANY GENITAL

1 TOUCHING, HOWEVER SLIGHT.

2 THE PEOPLE HAVE THE BURDEN OF PROVING EACH
3 ALLEGATION BEYOND A REASONABLE DOUBT. IF THE PEOPLE HAVE
4 NOT MET THIS BURDEN, YOU MUST FIND THAT THE ALLEGATION
5 HAS NOT BEEN PROVED.

6 EACH OF THE COUNTS CHARGED IN THIS CASE IS A
7 SEPARATE CRIME. YOU MUST CONSIDER EACH COUNT SEPARATELY
8 AND RETURN A SEPARATE VERDICT FOR EACH ONE.

9 IF YOU FIND THAT THE DEFENDANT IS NOT GUILTY
10 OF A GREATER CHARGED CRIME, YOU MAY FIND HIM GUILTY OF A
11 LESSER CRIME IF YOU ARE CONVINCED BEYOND A REASONABLE
12 DOUBT THAT THE DEFENDANT IS GUILTY OF THAT LESSER CRIME.
13 A DEFENDANT MAY NOT BE CONVICTED OF BOTH A GREATER AND
14 LESSER CRIME FOR THE SAME CONDUCT.

15 NOW, I WILL EXPLAIN TO YOU WHICH CHARGES ARE
16 AFFECTED BY THIS INSTRUCTION.

17 ATTEMPTED SEXUAL PENETRATION IS A LESSER
18 CRIME OF SEXUAL PENETRATION OF A CHILD 10 YEARS OF AGE OR
19 YOUNGER, AS CHARGED IN COUNTS 1, 10, 12 AND 15.

20 ASSAULT IS A LESSER CRIME OF SEXUAL
21 PENETRATION OF A CHILD 10 YEARS OF AGE OR YOUNGER, AS
22 CHARGED IN COUNTS 1, 10, 12 AND 15.

23 BATTERY IS A LESSER CRIME OF SEXUAL
24 PENETRATION OF A CHILD 10 YEARS OF AGE OR YOUNGER AS
25 CHARGED IN COUNTS 1, 10, 12 AND 15.

26 ATTEMPTED FORCIBLE LEWD ACT ON A CHILD IS A
27 LESSER CRIME OF FORCIBLE LEWD ACT ON A CHILD, AS CHARGED
28 IN COUNT 2.

1 ATTEMPTED SEXUAL INTERCOURSE WITH A CHILD 10
2 YEARS OF AGE OR YOUNGER IS A LESSER CRIME OF SEXUAL
3 INTERCOURSE WITH A CHILD 10 YEARS OF AGE OR YOUNGER, AS
4 CHARGED IN COUNTS 8 AND 17.

5 IT IS UP TO YOU TO DECIDE THE ORDER IN WHICH
6 YOU CONSIDER EACH CRIME AND THE RELEVANT EVIDENCE, BUT I
7 CAN ACCEPT A VERDICT OF GUILTY OF A LESSER CRIME ONLY IF
8 YOU HAVE FOUND THE DEFENDANT NOT GUILTY OF THE
9 CORRESPONDING GREATER CRIME.

10 FOR COUNTS 1, 2, 8, 10, 12, 15 AND 17, YOU
11 WILL RECEIVE MULTIPLE VERDICT FORMS.

12 FOLLOW THESE DIRECTIONS BEFORE YOU GIVE ME
13 ANY COMPLETED AND SIGNED FINAL VERDICT FORM. RETURN ANY
14 UNUSED VERDICT FORMS TO ME UNSIGNED.

15 IF ALL OF YOU AGREE THE PEOPLE HAVE PROVED
16 THAT THE DEFENDANT IS GUILTY OF THE GREATER CRIME,
17 COMPLETE AND SIGN THE VERDICT FORM FOR GUILTY OF THAT
18 CRIME. DO NOT COMPLETE OR SIGN ANY OTHER VERDICT FORM
19 FOR THAT COUNT.

20 IF ALL OF YOU AGREE THE PEOPLE HAVE NOT
21 PROVED THAT THE DEFENDANT IS GUILTY OF THE GREATER CRIME
22 AND ALSO AGREE THAT THE PEOPLE HAVE PROVED THAT HE IS
23 GUILTY OF A LESSER CRIME, COMPLETE AND SIGN THE VERDICT
24 FORM FOR GUILTY OF THE LESSER CRIME. DO NOT COMPLETE OR
25 SIGN ANY OTHER VERDICT FORM FOR THAT COUNT.

26 IF ALL OF YOU AGREE THAT THE PEOPLE HAVE NOT
27 PROVED THE DEFENDANT IS GUILTY OF THE GREATER OR LESSER
28 CRIME, COMPLETE AND SIGN THE VERDICT FORMS FOR NOT

1 GUILTY.

2 IF ALL OF YOU CANNOT AGREE WHETHER THE
3 PEOPLE HAVE PROVED THAT THE DEFENDANT IS GUILTY OF A
4 CHARGED OR LESSER CRIME, INFORM ME ONLY THAT YOU CANNOT
5 REACH AGREEMENT AS TO THAT COUNT AND DO NOT COMPLETE OR
6 SIGN ANY VERDICT FORM FOR THAT COUNT.

7 WHENEVER I TELL YOU THE PEOPLE MUST PROVE
8 SOMETHING, I MEAN THEY MUST PROVE IT BEYOND A REASONABLE
9 DOUBT UNLESS I SPECIFICALLY TELL YOU OTHERWISE.

10 TO PROVE THAT THE DEFENDANT IS GUILTY OF THE
11 CRIME OF THE LESSER ATTEMPTED CRIME FOR COUNTS 1, 2, 8,
12 10, 12, 15 AND 17, THE PEOPLE MUST PROVE THAT:

13 1, THE DEFENDANT TOOK A DIRECT BUT
14 INEFFECTIVE STEP TOWARD COMMITTING THE GREATER CRIME;
15 AND, 2, THE DEFENDANT INTENDED TO COMMIT THE
16 GREATER CRIME.

17 A DIRECT STEP REQUIRES MORE THAN MERELY
18 PLANNING OR PREPARING TO COMMIT THE GREATER CRIME. A
19 DIRECT STEP IS ONE THAT GOES BEYOND PLANNING OR
20 PREPARATION AND SHOWS THAT A PERSON IS PUTTING HIS OR HER
21 PLAN INTO ACTION. A DIRECT STEP INDICATES A DEFINITE AND
22 UNAMBIGUOUS INTENT TO COMMIT THE GREATER CRIME. IT IS A
23 DIRECT MOVEMENT TOWARDS THE COMMISSION OF THE CRIME AFTER
24 PREPARATIONS ARE MADE. IT IS AN IMMEDIATE STEP THAT PUTS
25 THE PLAN IN MOTION SO THAT THE PLAN WOULD HAVE BEEN
26 COMPLETED IF SOME CIRCUMSTANCE OUTSIDE THE PLAN HAD NOT
27 INTERRUPTED THE ATTEMPT.

28 TO DECIDE WHETHER DEFENDANT INTENDED TO

1 COMMIT THE GREATER CRIME, PLEASE REFER TO THE SEPARATE
2 INSTRUCTIONS THAT I HAVE GIVEN YOU ON THAT CRIME.

3 THE DEFENDANT MAY BE GUILTY OF ATTEMPT EVEN
4 IF YOU CONCLUDE THAT THE GREATER CRIME WAS ACTUALLY
5 COMPLETED.

6 I HAVE A FEW MORE JURY INSTRUCTIONS TO GIVE
7 YOU. AND I WILL GIVE THOSE TO YOU AFTER THE ATTORNEYS
8 HAVE HAD AN OPPORTUNITY TO GIVE THEIR CLOSING ARGUMENTS.

9 AT THIS TIME, LADIES AND GENTLEMEN, IT'S
10 TIME TO HEAR THE ARGUMENTS OF THE LAWYERS. EACH ATTORNEY
11 HAS THE OPPORTUNITY TO PERSUADE YOU OF THEIR
12 INTERPRETATION OF THE EVIDENCE. PLEASE REMEMBER THAT
13 WHAT THE ATTORNEYS SAY IS NOT EVIDENCE.

14 FIRST, THE PEOPLE HAVE AN OPPORTUNITY TO
15 PRESENT AN OPENING ARGUMENT. THEN DEFENSE HAS AN
16 OPPORTUNITY TO PRESENT ITS ARGUMENT. AND, FINALLY, THE
17 PEOPLE HAVE THE OPPORTUNITY TO REBUT THE POINTS RAISED BY
18 THE DEFENSE.

19 WHEN THAT IS COMPLETED, I HAVE THREE OR FOUR
20 MORE INSTRUCTIONS TO READ TO YOU. I WILL SHOW YOU THE
21 VERDICT FORMS AND SHOW YOU HOW YOU'RE TO COMPLETE THEM.
22 AND THEN YOU WILL HAVE THE CHANCE TO GO TO THE JURY ROOM
23 AND BEGIN DELIBERATIONS.

24 IF EITHER ATTORNEY MISSTATES THE EVIDENCE,
25 YOU WILL RELY ON THE EVIDENCE AS IT WAS PRESENTED IN THE
26 TRIAL. AND IF EITHER ATTORNEY MISSTATES THE LAW, YOU
27 WILL RELY ON THE LAW AS I HAVE INSTRUCTED YOU.

28 PEOPLE'S OPENING ARGUMENT?

1 MS. DI TILLIO: THANK YOU, YOUR HONOR.

2 MAY I UTILIZE THE WELL?

3 THE COURT: YES.

4 MS. DI TILLIO: I HOPE YOU CAN ALL SEE THAT, BUT,
5 IF NOT, I'M GOING TO TALK THROUGH IT A LITTLE BIT, SO
6 THAT WE'LL ALL BE ON THE SAME PAGE.

7 GOOD MORNING.

8 THIS IS THE CASE OF THE PEOPLE VERSUS
9 RICHARD ROSS, ERIC. EVERYONE CALLS HIM ERIC.

10 WE TALKED AT THE VERY BEGINNING ABOUT THIS
11 IS A CASE THAT INVOLVES FEAR, SECRETS, BROKEN PROMISES,
12 VIOLATIONS.

13 TWO LITTLE GIRLS, NINE AND SEVEN, LITTLE
14 GIRLS THAT SHOULD HAVE FELT SAFE IN THE DEFENDANT'S CARE,
15 LITTLE GIRLS THAT SHOULD HAVE FELT SAFE IN THE
16 DEFENDANT'S HOME.

17 HANNAH AND BREANNA.

18 ULTIMATELY, IN THIS CASE, WHAT IT BOILS DOWN
19 TO IS DO YOU BELIEVE WHAT THESE CHILDREN HAVE TOLD YOU?

20 DO YOU BELIEVE WHAT THEY SAID HAPPENED TO
21 THEM?

22 I HIT AUTO CORRECT. I MADE A TYPO THERE ON
23 THE NAME.

24 THAT'S REALLY THE CRUX OF THIS CASE. THAT'S
25 REALLY THE ESSENCE OF WHAT YOU HAVE TO DECIDE. AND IT'S
26 NOT AN EASY TASK. IT'S NOT AN EASY TASK AT ALL, BUT I'D
27 LIKE YOU TO CONSIDER THE TOTALITY OF THE CIRCUMSTANCES,
28 CONSIDER ALL OF THE EVIDENCE IN THIS CASE, LISTEN TO

1 EVERYTHING, LOOK AT EVERYTHING, THINK ABOUT EVERYTHING,
2 NOT ONE PIECE HERE, ONE PIECE THERE, BUT THE WHOLE THING
3 AS A WHOLE. BECAUSE THAT'S HOW WE WORK. THAT'S HOW
4 HUMANS OPERATE. THAT'S HOW CASES ARE.

5 WHEN WE TALK ABOUT SOMETHING, WE DON'T TALK
6 ABOUT ONE LITTLE DETAIL HERE, ONE LITTLE DETAIL THERE.
7 WE HAVE TO TALK ABOUT EVERYTHING BECAUSE THAT'S HOW IT
8 ALL MAKES SENSE. IT'S LIKE ONE BIG PUZZLE.

9 AND YOU HAVE SEVERAL TOOLS AT YOUR DISPOSAL,
10 KIND OF LIKE A TOOLBOX.

11 RIGHT?

12 WE TALKED ABOUT BOXES EARLIER ON, DURING
13 JURY SELECTION. HERE'S ANOTHER REFERENCE TO THAT. YOU
14 HAVE, AS JURORS, A TOUGH JOB, BUT WE GIVE YOU SOME TOOLS
15 THAT YOU CAN USE IN ORDER TO DO THAT JOB.

16 AND I'M GOING TO TALK A LITTLE BIT
17 THROUGHOUT THIS PRESENTATION ABOUT WHAT SOME OF THOSE
18 TOOLS ARE, BUT ONE OF THE BOXES THAT WE TALKED ABOUT THAT
19 I THINK IS VERY IMPORTANT AND SOMETHING TO KEEP AT THE
20 FOREFRONT OF YOUR MINDS AS WE START TALKING ABOUT AND
21 ARGUING THIS CASE TO YOU IS NOT SPECULATING.

22 BECAUSE WE TALKED ABOUT, COLLECTIVELY, WE'RE
23 GOING TO FILL THIS ONE BOX. AND WE'RE GOING TO PUT THE
24 EVIDENCE IN THERE. AND WE'RE GOING TO PUT THE WITNESSES'
25 TESTIMONY, THEIR Demeanor, THE WAY THEY CAME ACROSS,
26 THEIR PRIOR STATEMENTS, DOCUMENTS, PICTURES, ALL OF THAT,
27 BECAUSE WE DID THAT TOGETHER. WE WERE ALL TOGETHER AND
28 RECEIVED ALL OF THAT TOGETHER, AND THAT'S THE ONLY PLACE

1 YOU CAN DRAW FROM.

2 YOU HAVE TO BRING, OBVIOUSLY, YOUR LOGIC AND
3 YOUR COMMON SENSE TO SIFT THROUGH THAT STUFF, BUT YOU
4 CAN'T SPECULATE ON WHAT MIGHT HAVE HAPPENED. YOU CAN'T
5 SPECULATE ABOUT THINGS THAT ARE NOT EVIDENCE BEFORE YOU.

6 AND I THINK IT'S IMPORTANT TO KEEP THAT IN
7 MIND AS WE GO THROUGH THIS.

8 WHAT ARE SOME OF THE TOOLS?

9 WHAT IS SOME OF THE EVIDENCE?

10 THE WITNESS STATEMENTS. THEY TOOK THE
11 STAND. BOTH THE LITTLE GIRLS AND THEIR PARENTS AND OTHER
12 WITNESSES TOOK THE STAND. AND YOU HAVE THE ABILITY TO
13 THINK ABOUT HOW THEY TESTIFIED. YOU ALSO HAVE THE
14 ABILITY TO LOOK AND LISTEN AND THINK ABOUT THEIR FORENSIC
15 INTERVIEWS, WHICH WERE STATEMENTS THAT WERE GIVEN VERY
16 CLOSE IN TIME TO WHEN THIS ALL HAPPENED.

17 THERE'S CORROBORATION. IT'S A VERY
18 IMPORTANT TOOL. IT'S A VERY SIGNIFICANT THING TO THINK
19 ABOUT IS HOW A LOT OF THINGS IN THIS CASE ARE
20 CORROBORATED BY EACH OTHER AND BY OTHER THINGS.

21 THE TESTIMONY OF THE WITNESSES AND THE
22 PHOTOGRAPHS THAT WE WENT THROUGH TOGETHER. WE -- IT
23 WASN'T A PARTICULARLY LONG TRIAL, BUT WE DID HAVE SOME
24 FITS AND STARTS. AND SO WE WERE A LITTLE BIT BROKEN UP.
25 SO I'M SORRY IF I GO THROUGH SOME STUFF THAT I KNOW YOU
26 ALL ALREADY KNOW.

27 AND WE'VE BEEN THROUGH ALL OF THIS TOGETHER,
28 BUT I WANT TO HIGHLIGHT SOME OF THESE IMPORTANT THINGS

1 BECAUSE I THINK THEY PLAY INTO WHETHER OR NOT YOU'RE ABLE
2 TO COME TO A CONCLUSION IN THIS CASE.

3 SO WE START BACK WITH ALLAN AND TAMI. AND
4 THAT'S SORT OF THE START OF THE FAMILY TREE. THEY SPLIT
5 IN 2007, YOU HEARD. AND ALLAN TESTIFIED ABOUT THE
6 BREAKUP AND HOW THAT HAPPENED AND HOW HE DIDN'T BLAME THE
7 DEFENDANT FOR IT. HE BLAMED HIS WIFE.

8 I MEAN, HE WAS MARRIED TO TAMI. HE WAS NOT
9 MARRIED TO THE DEFENDANT. OKAY. THEY WERE FRIENDS.
10 THEY ALL KNEW EACH OTHER. THINGS HAPPEN AS CONSENTING
11 ADULTS, AND THAT'S FINE. THEY'RE CONSENTING ADULTS, BUT,
12 ULTIMATELY, WHAT HAPPENED AFTER THAT WAS SOMETHING
13 BETWEEN A HUSBAND AND A WIFE THAT HE PUT BLAME ON HIS
14 WIFE FOR, WHICH IS REASONABLE.

15 BUT, DESPITE THAT, HE WAS ABLE TO PUT HIS
16 CHILD AND HER NEEDS BEFORE EVERYBODY ELSE. SO IT WASN'T
17 ABOUT HIM, AND IT WASN'T ABOUT TAMI. IT CERTAINLY WASN'T
18 ABOUT THE DEFENDANT. IT WAS ABOUT BREANNA.

19 AND HE WAS ABLE TO DO THAT BY SAYING,
20 INITIALLY, "SHE'LL SPEND SIX WEEKS HERE, SIX WEEKS
21 THERE." "I DON'T REALLY WANT TO BE WITHOUT HER THAT
22 LONG."

23 HE MOVED TO SAN DIEGO FROM OUT OF STATE.
24 AND NOT ONLY THAT, WHEN SHE STARTED GOING TO SCHOOL, AND
25 THE QUALITY OF THE SCHOOL MADE A DIFFERENCE, HE EVEN
26 MOVED WITHIN THE COUNTY. AND HE WORKED IT OUT. THEY
27 WORKED IT OUT. 50-50 CUSTODY, IT WAS NOT A PROBLEM.
28 THEY ARE GROWN ADULTS.

1 THEY MANAGED THEIR LIVES VERY WELL. THEY
2 MANAGED THE SHARED CUSTODY OF THIS CHILD. AND IT BECAME
3 MORE OF AN EXTENDED FAMILY, AS OPPOSED TO BEING VERY
4 SEPARATED. THEY DID THINGS TOGETHER. EVEN AFTER THE
5 DIVORCE, ALL FOUR ADULTS AND THE TWO CHILDREN MANAGED TO
6 DO THINGS TOGETHER, BIRTHDAY PARTIES, SPECIAL EVENTS,
7 SWITCHING WEEKS, IF THEY NEEDED TO. THEY SUPPORTED EACH
8 OTHER AS A FAMILY, AS A UNIT.

9 AND I THINK THAT'S VERY IMPORTANT BECAUSE A
10 LOT OF THINGS HAVE BEEN SORT OF HINTED AT, NOT PROVEN,
11 BUT HINTED AT, THAT THERE WAS SOME ANIMOSITY THAT ALLAN
12 HAD TOWARDS THE DEFENDANT.

13 AND YOU HAD THE ABILITY TO OBSERVE HIM ON
14 THE STAND.

15 AND HE TESTIFIED, "NO, THAT'S NOT AT ALL THE
16 CASE. I HAD NOTHING AGAINST HIM. I DIDN'T LIKE HIM. I
17 DIDN'T DISLIKE HIM."

18 HE WAS TAMI'S BOYFRIEND, AND THAT WAS JUST
19 THE REALITY OF IT. AND THE DEFENDANT WAS AROUND FOR THE
20 ENTIRE TIME. FOR THOSE FIVE YEARS BETWEEN WHEN THERE'S
21 THE SPLIT AND THEN THESE INCIDENTS COME TO LIGHT, HE'S
22 BEEN THERE THIS WHOLE TIME.

23 ALLAN AND MELISSA. AFTER THE DIVORCE, ALLAN
24 MEETS, DATES AND ULTIMATELY MARRIES MELISSA. SHE BROUGHT
25 A CHILD INTO THEIR FAMILY AS WELL. SHE BROUGHT HANNAH.
26 AND IT JUST BECAME KIND OF LIKE THE *BRADY BUNCH*, WHERE
27 YOU HAVE TWO SORT OF JOINED FAMILIES. AND IT WAS NOT AN
28 ISSUE.

1 THE GIRLS GOT ALONG LIKE SISTERS. THEY HAD
2 A LOVE/HATE RELATIONSHIP, LIKE A LOT OF SISTERS DO. THEY
3 GOT ALONG REALLY WELL. THEY BUGGED EACH OTHER
4 FREQUENTLY. SOUNDS LIKE A NORMAL FAMILY, NOT REALLY THAT
5 BIG OF A DEAL THAT THERE WERE NOW, ALL OF A SUDDEN, THIS
6 JOINING OF THE FAMILIES. AND PROBABLY A VERY POSITIVE
7 THING FOR THE GIRLS TO BECOME -- TO HAVE SISTERS.

8 THERE WAS A SHARED CUSTODY AGREEMENT WITH
9 HANNAH'S DAD, BUT, MOSTLY, HANNAH STAYED WITH HER MOM AND
10 ALLAN AND THEN EVERY OTHER WEEKEND WITH HER DAD.

11 AND THEN THE GIRLS ULTIMATELY WENT TO THE
12 SAME SCHOOL TOGETHER. SO THIS WAS WORKING OUT. THERE
13 WAS NO ANIMOSITY TOWARDS THE DEFENDANT BY ALLAN, BY
14 MELISSA, BY TAMI. NOBODY SPOKE ILL OF HIM IN FRONT OF
15 THE CHILDREN. NOBODY HAD AN AX TO GRIND, UNTIL MAY 21ST,
16 2012, WHEN SOMETHING DID HAPPEN THAT EVERYBODY BECAME
17 AWARE OF.

18 YOU LEARNED THAT, INFREQUENTLY, HANNAH WOULD
19 GO TO THE DEFENDANT'S HOUSE WITH THE THOUGHT THAT TAMI
20 WOULD DROP THEM OFF AT SCHOOL ON A MONDAY MORNING, WHEN
21 MELISSA HAD TO WORK A LITTLE EARLY.

22 AND SO THIS WORKED OUT. AND EVERYBODY LIVED
23 CLOSE BY. THE SCHOOL WAS CLOSE BY. AND SHE WENT TO THE
24 HOUSE. OKAY. BUT WHEN SHE GETS THERE, IT'S VERY EARLY.
25 IT'S VERY EARLY. IT'S LIKE 6:00 SOMETHING, BEFORE 7:00.

26 AND THE DEFENDANT SAYS, "HERE, GIVE ME A
27 HUG. HI, NICE TO SEE YOU. LET ME FIX YOU BREAKFAST."

28 OKAY. EVERYTHING IS FINE. HE'S ON THE

1 COMPUTER. SHE EATS HER BREAKFAST.

2 AND THEN HE SAYS, "COME HERE, I WANT TO GIVE
3 YOU ANOTHER HUG."

4 SHE DOES BECAUSE SHE'S NINE.

5 AND WHY WOULDN'T SHE?

6 SHE TOLD YOU SHE THOUGHT IT WAS KIND OF ODD.
7 THEY WEREN'T REALLY HUGGY TYPES, THE TWO OF THEM, BUT,
8 OKAY. AND SO SHE DID. AND WHILE HE HUGGED HER, HE
9 TOUCHED HER. AND THAT'S WHERE IT STARTED WITH HER. IT
10 STARTED ON HER BOTTOM, ON HER LEGS, AROUND HER VAGINA.

11 AND SHE DESCRIBED IT. AND WE'LL TALK A
12 LITTLE BIT ABOUT LATER ABOUT HOW SHE DESCRIBED IT, BUT
13 SHE SAID HE WAS LIKE SQUEEZING, AND IT HURT. AND SHE
14 DIDN'T KNOW WHAT TO DO.

15 BECAUSE AS YOU LEARNED THROUGHOUT THIS CASE
16 -- AND PARTICULARLY FROM LAURIE FORTIN -- SOMETIMES KIDS
17 JUST DON'T HAVE AN ABILITY TO PUT CONDUCT IN A CERTAIN
18 PLACE.

19 LIKE WE, AS ADULTS, MIGHT KNOW, "HEY, THAT
20 MADE ME FEEL UNCOMFORTABLE, AND IT'S WRONG."

21 AS A CHILD, SHE KNEW, "HEY, THAT MADE ME
22 FEEL UNCOMFORTABLE," BUT DIDN'T QUITE KNOW WHAT TO DO
23 WITH THAT.

24 SO HERE'S THIS AWKWARD SITUATION. HE'S
25 TELLING HER, YOU KNOW, "YOU'RE BECOMING A WOMAN," WHILE
26 HE'S TOUCHING HER IN HER WOMANLY PARTS. AND THAT FREAKED
27 HER OUT A LITTLE BIT.

28 AND THAT'S COUNT 3. AND WHAT I TRIED TO DO

1 IS SORT OF PUT THE COUNTS IN AS WE TALK ABOUT THE
2 CONDUCT, SO THAT IT MAKES SENSE. IT'S A LOT. IT'S A LOT
3 OF COUNTS. AND THERE'S A LOT OF LESSER-INCLUDEDS. AND
4 THE JUDGE READ YOU THE INSTRUCTIONS AND IS GOING TO GIVE
5 YOU THE VERDICT FORMS.

6 ULTIMATELY, YOU'LL BE ABLE TO WORK IT ALL
7 OUT BECAUSE, AT THE END OF THE DAY, YOU REALLY HAVE TO
8 THINK ABOUT, YOU KNOW, DO WE BELIEVE WHAT THESE CHILDREN
9 SAID?

10 COUNT 3 IS THAT TOUCHING RIGHT THERE, WHERE
11 HE TOUCHES HER VAGINA IN THE LIVING ROOM OF THE HOUSE.

12 SHE SAYS, "YOU KNOW WHAT? I'M GOING TO GO
13 SEE IF BREANNA IS AWAKE NOW."

14 BECAUSE THAT WAS HER WAY TO GET OUT OF THAT
15 SITUATION. SHE COULDN'T LEAVE.

16 WHERE WAS SHE GOING TO GO?

17 AND SO SHE GOES UPSTAIRS. AND BREANNA IS
18 UP. AND THEY START PLAYING *CANDY LAND*, WHAT NORMAL YOUNG
19 CHILDREN MIGHT DO.

20 TAMI IS STILL THERE AT THAT POINT,
21 SHOWERING, GETTING READY FOR WORK. AND THEN SHE LEAVES.
22 AND WHEN SHE LEAVES, THE DEFENDANT STARTS PLAYING
23 CHILDREN'S GAMES, JUST PLAYING LITTLE GAMES WITH THE
24 KIDS.

25 THEY HAVE THIS GAME WHERE THEY PLAY "FIND
26 ME." AND IT SOUNDED LIKE BREANNA KNEW PRETTY WELL HOW
27 THIS GAME WORKED. AND THIS IS SOMETHING KIND OF NEW FOR
28 HANNAH.

1 AND SO THEY HIDE UNDER THE COVERS, AND HE
2 TRIES TO GRAB THEM OUT OF THE COVERS. AND THEY'RE ALL ON
3 THE BED TOGETHER. AND HE PULLS THEM OUT BY THEIR FEET,
4 BUT HE DIDN'T PULL HANNAH BY HER FEET. HE PULLED HANNAH
5 BY HER THIGHS.

6 AND THAT WAS A LITTLE RED FLAG FOR HER,
7 LIKE, "OKAY, I'M STILL A LITTLE BIT UNCOMFORTABLE HERE.
8 WHAT'S GOING ON?"

9 AND HER PANTS KIND OF COME DOWN. SHE PULLS
10 THEM BACK UP. AND THEN THEY SWITCH TO WATCHING T.V.

11 SO THEY SAY, "HEY, YOU KNOW WHAT? DO YOU
12 HAVE ANY KIDS" --

13 SHE SAYS TO HIM, "DO YOU HAVE ANY KIDS'
14 CHANNEL?"

15 AND HE SAYS, "YEAH, SURE."

16 AND THEY PUT ON SOME KIDS T.V., WHAT LITTLE
17 GIRLS WATCH. AND THE TWO GIRLS ARE IN THE BED, WATCHING
18 T.V. AND THE DEFENDANT GETS IN THE BED WITH THEM, GETS
19 IN THE BED WITH THEM.

20 WHAT'S HE DOING?

21 WHAT'S HE DOING IN A BED WITH TWO LITTLE
22 GIRLS, WATCHING KIDS' T.V., AFTER ALREADY HAVING TOUCHED
23 HANNAH DOWNSTAIRS?

24 HE CONTINUES. THE TOUCHING CONTINUES. AND
25 IT'S IN THE BED WHERE HE STARTS TO PULL ON HER PANTS, HER
26 LITTLE JEGGINGS. SHE TALKED ABOUT LITTLE ELASTIC WAIST
27 PANTS. AND HE PULLS THEM DOWN.

28 AND SHE'S NOW RED ALERT, LIKE, "OKAY, THIS

1 IS NOT OKAY."

2 AND SHE -- HE TRIES TO GET HER LEGS OPEN TO
3 TOUCH HER VAGINA, AND SHE TRIES TO KEEP HER LEGS CLOSED.
4 BUT, AS SHE TALKED ABOUT AND AS YOU CAN OBSERVE, HE'S
5 BIG. HE'S WAY BIGGER THAN SHE IS. SHE'S JUST A LITTLE
6 KID. AND SHE COULDN'T STOP IT. SHE COULDN'T KEEP HER
7 LEGS CLOSED. AND SHE COULDN'T KEEP HIS HANDS OFF OF HER
8 VAGINA.

9 AND THAT'S COUNT 2. HE FORCED HER LEGS OPEN
10 IN ORDER TO TOUCH HER VAGINA.

11 AND THEN, WHILE HE WAS THERE, HE STARTED TO
12 PUT HIS FINGER IN IT. AND YOU'LL LEARN -- AND YOU'VE
13 HEARD IN THE INSTRUCTIONS -- YOU GO BACK OVER THEM WHEN
14 YOU GET A CHANCE AND TAKE A LOOK -- WE'RE JUST TALKING A
15 LITTLE BIT OF PENETRATION HERE. IT DOESN'T HAVE TO BE
16 SIGNIFICANT. DOESN'T HAVE TO BE ALL THE WAY INSIDE.
17 JUST THE OUTER PART, PENETRATION OF THAT OUTER PART.
18 THAT'S ALL THAT THE LAW REQUIRES. THAT'S IT.

19 AND THAT'S WHAT HANNAH DESCRIBED, HOW HE
20 STARTED TO PUT HIS FINGER INSIDE OF HER, AND IT HURT.
21 SHE FELT UNCOMFORTABLE. AND SHE GOT UP AND RAN TO THE
22 BATHROOM. AND SHE EVEN TRIED TO GO TO THE BATHROOM AND
23 FELT LIKE SHE COULDN'T. SHE DESCRIBED HIS FINGER AS
24 FEELING HARD AND UNCOMFORTABLE, AND SHE DIDN'T LIKE IT.

25 AND SO, AS I SAID, THE COURT ALREADY
26 INSTRUCTED YOU ON THESE. IT'S JUST TO HIGHLIGHT THOSE
27 THREE PARTICULAR ACTS THAT HAPPENED IN THE BEDROOM WITH
28 HANNAH UPSTAIRS, THE FORCIBLE LEWD ACT.

1 YOU GOT -- YOU ALREADY RECEIVED AN
2 INSTRUCTION THAT A LESSER-INCLUDED OFFENSE OF THAT
3 FORCIBLE LEWD ACT IS AN ATTEMPTED FORCIBLE LEWD ACT. HE
4 TRIED TO DO IT AND WASN'T ABLE TO. BUT I WOULD SUBMIT TO
5 YOU THAT HE WAS ABLE TO COMPLETE EACH AND EVERY ONE OF
6 THESE CHARGED OFFENSES.

7 THERE'S ALSO A LEWD ACT JUST FOR THE
8 TOUCHING OF THE VAGINA. IF YOU FEEL LIKE THERE WASN'T
9 SUFFICIENT FORCE, BUT HE DID TOUCH HER VAGINA, THAT'S
10 ANOTHER COUNT THERE. AND THAT THERE WAS PENETRATION,
11 HOWEVER SLIGHT, OF THE GENITAL OPENING BY A FOREIGN
12 OBJECT, HIS FINGER. AND SHE WAS UNDER 10. AND SHE WAS
13 NINE YEARS OLD AT THE TIME.

14 SO SHE FREAKED OUT. SHE GETS UP, GOES TO
15 THE BATHROOM. THERE'S A CONVERSATION THAT HAPPENS WITH
16 BREANNA. AND HANNAH DESCRIBES HOW SHE DOESN'T REALLY
17 WANT TO SAY ANYTHING. SHE IS KIND OF A MESS AT THIS
18 POINT. AND RIGHTFULLY SO. SHE'S BEEN VIOLATED A NUMBER
19 OF WAYS.

20 AND SO THERE'S AN EXCHANGE WITH BREANNA.

21 SHE SAYS, "YOU WANT TO HAVE THIS FRUIT
22 ROLLUP?"

23 OKAY. THERE'S A MOMENT WHERE SHE'S TRYING
24 TO EXPOSE HERSELF. SHE MAKES A DECISION. SHE MAKES A
25 DECISION TO GO, TO RUN, TO RUN. AND SHE DOES. AND HE
26 GIVES CHASE. HE FOLLOWS HER. THIS BIG, LARGE MAN RAN
27 AFTER HER.

28 NOW, YOU SAW HANNAH WHEN SHE TESTIFIED HERE,

1 BUT YOU ALSO SAW HER ON THE VIDEO, MUCH SMALLER. THIS
2 LITTLE GIRL RAN AWAY. AND HE FOLLOWED HER, AND HE CAUGHT
3 HER.

4 AND SHE MANAGED -- VERY BRIGHT -- TO GET
5 AWAY FROM HIM AGAIN. LOST HER SHOE, FUMBLING AROUND FOR
6 THE SHOE. WHEN SHE GOT RID OF THAT SHOE, HE LOOSENED HIS
7 GRIP, AND SHE RAN OFF AGAIN. HE CHASED HER AGAIN. HE
8 DIDN'T WANT ANYBODY TO FIND OUT WHAT HAPPENED, TO KNOW
9 WHAT HAPPENED. THIS IS A SECRET. THIS IS STUFF PEOPLE
10 DON'T TALK ABOUT.

11 AND HE HURT HIMSELF IN THE PROCESS. AND YOU
12 LEARNED THAT SHE RAN FROM THE FRONT DOOR THROUGH THE
13 PARKING LOT, ACROSS THE PARKING LOT, AROUND THE CORNER,
14 ALL THE WAY AROUND THE OTHER HOUSE, UP TO A GATE, AND
15 THEN STOPPED BECAUSE SHE RAN OUT OF ROOM. SHE COULDN'T
16 GO ANY FURTHER. THERE WAS NOWHERE ELSE TO GO. THERE'S A
17 FENCE CORNERED WITH ANOTHER FENCE. AND THAT WAS IT. SHE
18 WAS STUCK.

19 AND HE GOT HIS HANDS ON HER. SO, AS YOU CAN
20 IMAGINE, AS WHAT SEEMS WOULD BE THE CASE, THIS IS VERY
21 CHAOTIC.

22 RIGHT?

23 THERE'S A LOT GOING ON. AND SHE'S OLD
24 ENOUGH AND SMART ENOUGH TO KNOW THAT IT WAS NOT OKAY.

25 AND SO SHE SAYS, "YOU KNOW WHAT? I NEED TO
26 SPEAK TO ALLAN."

27 AND YOU HEARD FROM MULTIPLE WITNESSES THAT
28 ALLAN IS LIKE THIS ROCK. HE IS THE CALM ONE. THERE'S

1 EVERYTHING ELSE BLOWING UP AROUND HIM, BUT ALLAN REMAINS
2 CALM. AND YOU WERE ABLE TO WITNESS THAT HERE. AND ALL
3 THE OTHER WITNESSES TALKED ABOUT IT, THAT HE'S JUST THIS
4 GUY THAT CAN BE THE BEDROCK.

5 RIGHT?

6 AND SO, NATURALLY, HANNAH WANTS TO TALK TO
7 ALLAN. MAKES SENSE.

8 AND SO SHE IS ABLE TO GET HIM ON THE PHONE,
9 BUT SHE DID TELL YOU THAT THE DEFENDANT SAID "DON'T SAY
10 ANYTHING." BREANNA ACTUALLY TOLD YOU THAT, TOO.

11 THE DEFENDANT SAID, "DON'T SAY ANYTHING
12 ABOUT WHAT HAPPENED. TELL THEM I HURT MYSELF ON THE
13 STAIRS."

14 AND SO THERE ARE MORE LIES, LIES ON TOP OF
15 LIES, ON TOP OF SECRETS.

16 BUT HANNAH DID TELL. AND, OF COURSE, HER
17 PARENTS IMMEDIATELY REACTED.

18 AND YOU HEARD FROM LAURIE FORTIN THAT,
19 OFTEN, PARENTS WILL, YOU KNOW, SAY, "WHAT HAPPENED? WHAT
20 HAPPENED?"

21 OF COURSE THEY DO. THAT'S WHAT PARENTS DO.
22 IT'S THEIR JOB. THEY'RE SUPPOSED TO TAKE CARE OF THEIR
23 CHILDREN. THEY NEED TO KNOW WHAT HAPPENED.

24 HOW CAN THEY FIX THINGS?

25 HOW CAN THEY TAKE THEIR CRYING NINE-YEAR-OLD
26 CHILD AND FIX ANYTHING IF THEY DON'T KNOW WHAT HAPPENED?

27 SO ALLAN SAYS -- YOU KNOW, PRACTICALLY
28 DOESN'T HAVE TO SAY ANYTHING ON THE PHONE.

1 HANNAH SAYS, "HE TOUCHED ME."

2 HE SAYS, "OKAY. WE'RE OUT OF HERE," GRABBED
3 MELISSA AND VERY QUICKLY MADE A 15-MINUTE RIDE INTO ABOUT
4 FIVE OR SIX MINUTES, MADE IT OVER THERE, MADE IT THERE
5 BEFORE THE COPS GOT THERE, EVEN THOUGH THEY CALLED 911
6 ALONG THE WAY.

7 AND YOU HEARD MELISSA. SHE JUMPED OUT OF
8 THE CAR EVEN BEFORE IT STOPPED MOVING BECAUSE SHE'S A
9 MOM. AND SHE KNEW HER DAUGHTER WAS IN TROUBLE. AND
10 HERE'S THIS GUY THAT'S NOT HER DAD. AND SHE NEEDS TO GET
11 HIM OUT OF THERE -- GET HER OUT OF THERE. AND SHE DID.
12 SHE GRABBED HER CHILD AND GOT HER OUT, PUT HER ARMS
13 AROUND HER, PUT HER IN THE CAR. THEY CRIED TOGETHER.

14 BUT SHE TRIED TO GET BREANNA, TOO. AND
15 DEFENDANT WOULDN'T GIVE HER UP. NOW, BREANNA IS NOT THE
16 DEFENDANT'S DAUGHTER. HE IS NOT MARRIED TO HER MOM. HE
17 HAS NO -- YOU KNOW, HE IS NOT ANYTHING TO HER, OTHER THAN
18 MOM'S BOYFRIEND.

19 RIGHT?

20 BUT HE SAYS, "NO, MELISSA, YOU CAN'T TAKE
21 BREANNA."

22 AND THEN ALLAN IS THERE.

23 AND HE SAYS, "WELL, SHE'S MY DAUGHTER. YES,
24 I CAN."

25 AND HE PUTS UP A FIGHT AND SAYS, "NO, YOU'RE
26 NOT TAKING HER. LET ME CALL TAMI. IT'S NOT YOUR WEEK."

27 ALL OF A SUDDEN, THERE'S THIS, "LET'S SHIFT
28 THE FOCUS OFF THE KIDS. LET'S PUT THE ATTENTION ON IT'S

1 NOT YOUR TIME WITH HER. IT'S NOT YOUR WEEK. SHE'S OURS
2 THIS WEEK."

3 AND SO ALLAN SMARTLY PLAYS ALONG AND SAYS,
4 "OKAY. LET ME JUST TALK TO HER. SHE'S REALLY UPSET.
5 LET ME JUST TALK TO HER."

6 OKAY. BECAUSE THE DEFENDANT HAS AN
7 INVESTMENT IN BREANNA. THIS HAS BEEN GOING ON A LONG
8 TIME WITH BREANNA. HE LIVED IN THE HOME WITH HER. THEY
9 HAD PROMISES WITH EACH OTHER. SHE HAD PROMISED HIM NOT
10 TO TELL. THEY SHARED A SECRET, A BIG SECRET. AND SHE
11 WAS A LITTLE KID, SEVEN. HE COULD NOT RISK THIS GETTING
12 OUT.

13 SO HE SAID, "NO, YOU'RE NOT TAKING HER."

14 SO ALLAN, AS I SAID -- HE SAYS, YOU KNOW,
15 "LET ME JUST" -- "LET ME JUST TALK TO HER. LET ME SEE IF
16 EVERYTHING IS OKAY."

17 CALM, VERY CALM. LET'S INSERT SOME CALM
18 INTO THE SITUATION. SO THEY GO INTO THE BACKYARD.

19 AND HE SAYS TO HER, "HAS ANYTHING HAPPENED
20 TO YOU?"

21 THAT'S WHAT A PARENT DOES.

22 "HAS ANYTHING HAPPENED TO YOU?"

23 AND SHE SAID, "YES."

24 AND HE SAID -- YOU KNOW, HE THOUGHT BACK --
25 "WE'VE HAD A CONVERSATION BEFORE."

26 BECAUSE, AS MISS FORTIN DESCRIBED FOR YOU,
27 NOW, YOU KNOW, TOUCHING AND APPROPRIATE TOUCHING, GOOD
28 TOUCH, BAD TOUCH, THAT'S THE KIND OF THINGS THAT PARENTS

1 TALK ABOUT WITH THEIR KIDS THROUGHOUT THEIR ENTIRE LIFE.

2 YOU TALK ABOUT, AT ANY AGE, "NO ONE SHOULD
3 TOUCH YOU. IF SOMEONE TOUCHES YOU, LET ME KNOW."

4 ALL THE THINGS WE DO WITH OUR CHILDREN TO
5 TRY TO PREPARE THEM FOR THE WORLD, TO TRY TO AVOID SOME
6 STRANGER COMING UP AND DOING SOMETHING TO THEM, TRYING TO
7 SAY, "HEY, LET ME KNOW."

8 BUT WHAT YOU ALSO LEARN IS IT OFTEN DOESN'T
9 HAPPEN.

10 AND SO ALLAN SAID, YOU KNOW, "I ASKED YOU
11 BEFORE HAS ANYTHING INAPPROPRIATE EVER HAPPENED."

12 HE DIDN'T SAY "ANYTHING WITH ERIC," JUST
13 "TELL ME IF ANYTHING HAPPENED TO YOU."

14 SHE SAID, "NO, NOTHING HAD HAPPENED."

15 SO HE SAYS, YOU KNOW, "I ASKED YOU BEFORE.
16 HOW COME YOU DIDN'T TELL ME BEFORE?"

17 SHE SAID, "WELL, YOU KNOW, HE WAS FAMILY. I
18 DIDN'T WANT TO HURT MY FAMILY."

19 AND THAT MAKES SENSE. IT MAKES SENSE IN THE
20 BROADER CONTEXT BECAUSE YOU LEARNED FROM LAURIE FORTIN
21 THAT, YOU KNOW, THE CLOSER A CHILD IS TO THEIR
22 PERPETRATOR, THE LESS LIKELY THEY'RE GOING TO TELL. THEY
23 HAVE A RELATIONSHIP WITH THIS PERSON. SHE HAD A
24 RELATIONSHIP WITH ERIC.

25 SHE WAS SEVEN.

26 WHAT'S SHE GOING TO SAY?

27 SO --

28 AND HE SAID, "WELL, HOW LONG HAS THIS BEEN

1 GOING ON?"

2 AND SHE REFERENCED THE PRIOR HOUSE. AND
3 THAT WAS THE END. THAT WAS IT. THEY DIDN'T TALK ABOUT
4 IT ANYMORE.

5 AND MELISSA TESTIFIED TO THAT. TAMI
6 TESTIFIED TO THAT, AND ALLAN TESTIFIED TO THAT. THEY
7 DIDN'T ASK THOSE KIDS QUESTIONS.

8 HANNAH AND BREANNA TESTIFIED THEY DIDN'T
9 TALK ABOUT IT WITH EACH OTHER.

10 WHO WANTS TO TALK ABOUT THIS?

11 BREANNA HAS KEPT A LID ON THIS SECRET FOR
12 OVER A YEAR, ALMOST TWO YEARS. SHE DIDN'T WANT TO TALK
13 ABOUT IT. HANNAH WAS SO UPSET ABOUT IT THE VERY FIRST
14 TIME IT HAPPENED TO HER THAT SHE RAN AWAY. SHE WAS UPSET
15 AND TRAUMATIZED. SHE DIDN'T WANT TO TALK ABOUT IT.

16 PEOPLE DON'T WANT TO TALK ABOUT THIS STUFF.
17 AND THEY DIDN'T UNTIL THEY GOT TO THE FORENSIC INTERVIEW.
18 AND THIS IS SOMEBODY WHO'S TRAINED TO INTERVIEW KIDS.
19 THEY INTERVIEW THEM APPROPRIATELY. THEY KNOW WHAT
20 THEY'RE DOING. THEY KNOW HOW TO ASK QUESTIONS. AND IT'S
21 A FORENSICALLY SOUND MANNER.

22 SO ALL THEY'RE DOING IS GETTING INFORMATION
23 FROM THE CHILDREN. THEY HAVE A VERY BRIEF SNIPPET OF
24 INFORMATION ALWAYS FROM LAW ENFORCEMENT AS TO WHAT
25 HAPPENED, AS TO WHY WE'RE ALL HERE.

26 OF COURSE, YOU DON'T WANT TO GO INTO AN
27 INTERVIEW AND SAY, "HEY, WHAT'S GOING ON TODAY?"

28 YOU'LL BE IN THERE FOR THREE HOURS WITH A

1 LITTLE KID. SO THEY NEED TO MAKE SURE, YOU KNOW, THEY
2 HAVE SOME INFORMATION. AND THEN THE GOAL IS JUST FOR THE
3 CHILDREN TO TELL THEIR STORY. AND THESE GIRLS DID. THEY
4 WERE ABLE TO TALK ABOUT WHAT HAPPENED.

5 ALTHOUGH INTERVIEWED SECOND, I WANT TO TALK
6 ABOUT HANNAH FIRST A LITTLE BIT.

7 SHE DESCRIBED HOW SHE RAN AWAY. AND, AS I
8 MENTIONED, SHE DIDN'T REALLY HAVE A RELATIONSHIP WITH THE
9 DEFENDANT. THEY WERE NOT VERY CLOSE. THEY DIDN'T
10 DISLIKE EACH OTHER, BUT THEY WEREN'T PARTICULARLY CLOSE.

11 AND SO AS MISS FORTIN SAID THE CLOSER THE
12 RELATIONSHIP, THE MORE LIKELY TO DELAY THE DISCLOSURE.
13 THE LESS OF A RELATIONSHIP, THE MORE LIKELY THAT YOU'RE
14 GOING TO GET A DISCLOSURE EARLY ON.

15 AND SHE WAS A LITTLE BIT OLDER. SO OLDER
16 KIDS HAVE A TENDENCY TO TELL. AND SHE DID.

17 SHE SAID, "HE TOUCHED ME IN THE WRONG
18 PLACES."

19 SHE WAS GROSSED OUT WITH THE HUG, DIDN'T
20 KNOW WHAT TO DO WITH IT. AND WHEN HE GRABBED HER VAGINA,
21 IT HURT. SHE SHARED THAT HE TALKED ABOUT HER BECOMING A
22 WOMAN. AND SHE WAS SCARED. HE'S A GROWN MAN, AND SHE'S
23 A LITTLE KID.

24 SHE DESCRIBED THE ACT. SHE FELT, WHEN HE
25 PENETRATED HER, HIS HARD FINGER STARTED TO GO INTO HER A
26 LITTLE BIT AND HOW SHE FELT BAD AND WEIRD ABOUT WHAT HE
27 HAD BEEN DOING TO HER.

28 AND, IMPORTANTLY AND INTERESTINGLY, SHE

1 DENIED OTHER FORMS OF TOUCHING OR ABUSE. I'M GOING TO
2 TALK LATER ON ABOUT THIS, BUT I THINK IT'S AN IMPORTANT,
3 YOU KNOW, LITTLE POINT TO SORT OF HIGHLIGHT BECAUSE IT
4 WAS THROWN AROUND QUITE A BIT THAT MAYBE SOMEBODY
5 SUGGESTED TO THESE CHILDREN THAT THEY HAD BEEN TOUCHED BY
6 THIS DEFENDANT.

7 SHE DENIED OTHER FORMS OF TOUCHING OR ABUSE.
8 SHE DENIED IT HAPPENED BEFORE, THAT THERE WAS ANY
9 TOUCHING.

10 "WHEN GIVEN THE OPPORTUNITIES, DID HE TOUCH
11 ANY OTHER PART OF YOUR BODY?"

12 SHE DIDN'T LAY IT ON THICK.

13 SHE DIDN'T SAY, "OH, HE TOUCHED 16 DIFFERENT
14 PARTS OF ME, 17 DIFFERENT PARTS."

15 SHE DESCRIBED THESE THREE VERY DISCREET
16 SCENARIOS OR CRIMES, AND THAT WAS IT. THAT WAS ALL SHE
17 SAID.

18 HER STATEMENT IS CORROBORATED BY OTHER
19 WITNESSES, BY ANOTHER VICTIM. YOU HEARD FROM KARINA.

20 AND THE LAW THAT THE JUDGE READ TO YOU
21 INDICATES THAT, IF YOU FEEL -- NOT BEYOND A REASONABLE
22 DOUBT -- BUT BY A PREPONDERANCE OF THE EVIDENCE THAT THE
23 DEFENDANT COMMITTED A CRIME AGAINST HER, WHICH WAS
24 ANNOYING OR MOLESTING A CHILD -- AND YOU'VE HEARD THAT
25 INSTRUCTION -- YOU CAN CONSIDER THAT AS EVIDENCE IN HIS
26 GUILT IN THE CHARGES WHICH HE'S FACING TODAY.

27 SO IF YOU BELIEVE KARINA WHEN SHE SAID, YOU
28 KNOW, "I WAS JUST MINDING MY BUSINESS, HANGING OUT WITH

1 BREANNA. HE BROUGHT ME IN THE ROOM. HE PULLED HIS PANTS
2 DOWN JUST ENOUGH TO EXPOSE HIS PENIS THAT HE'S PLAYING
3 WITH AND SAYS, 'HEY, YOU CAN TOUCH IT IF YOU WANT TO,'"
4 IT SOUNDS A LOT LIKE THE OTHER CONDUCT HE'S DOING WITH
5 HANNAH AND BREANNA.

6 AND YOU CAN USE THAT AS EVIDENCE THAT HE
7 COMMITTED THESE CHARGED CRIMES.

8 LOOK AT WHAT THE CONDUCT WAS WITH BREANNA.
9 EVERY SINGLE CHARGE IN THIS CASE THAT'S CHARGED IS A
10 SEPARATE CRIME THAT YOU HAVE TO DECIDE, INDEPENDENTLY,
11 BEYOND A REASONABLE DOUBT.

12 BUT WHAT I SAID EARLIER -- THINK ABOUT THE
13 TOTALITY. LOOK AT WHAT'S GOING ON WITH BREANNA.

14 NOW, DOES IT MAKE SENSE THAT THESE THINGS
15 ARE ALSO HAPPENING WITH HANNAH?

16 THE DEFENDANT'S ALONE WITH THESE CHILDREN,
17 AND HE'S TOUCHING THEM. IT ALL FITS.

18 WE TALKED A LITTLE BIT OR QUITE A BIT,
19 ACTUALLY, WITH LAURIE FORTIN ABOUT A DELAYED DISCLOSURE.
20 AND WHAT THAT MEANS -- BASICALLY, IT BOILS DOWN TO KIDS
21 DON'T TELL RIGHT AWAY.

22 I THINK A LOT OF TIMES PEOPLE HAVE THIS
23 PERCEPTION THAT, IF A CHILD WAS VICTIMIZED BY SOMEBODY,
24 THEY WOULD TELL RIGHT AWAY, VERY LOUDLY, FOR ALL THE
25 WORLD TO HEAR. THEY WOULD ACT MORE LIKE HANNAH. AND
26 THAT HAPPENS SOMETIMES, BUT A LOT OF THE TIMES IT
27 DOESN'T.

28 AND MISS FORTIN DESCRIBED FOR YOU, BOTH

1 BASED ON THE LITERATURE AND ON HER EXPERIENCE, HOW LOTS
2 OF VICTIMS DON'T TELL. THEY DON'T TELL RIGHT AWAY.

3 THEY HAVE -- AND SOME OF THE FACTORS THAT GO
4 INTO THAT ARE THIS CLOSE RELATIONSHIP WITH THE GUY,
5 ENJOYING TIME WITH HIM. OTHER THAN THE CONDUCT THAT SHE
6 DIDN'T LIKE, THEY HAD A GOOD TIME TOGETHER, BREANNA AND
7 ALLAN -- AND ERIC. SORRY.

8 THEY HAD A GOOD TIME TOGETHER. THERE WERE
9 THINGS THAT THEY DID THAT SHE ENJOYED AND THAT SHE DIDN'T
10 NECESSARILY WANT TO MISS OUT ON.

11 AND EVEN DURING THE COURSE OF HER FORENSIC
12 INTERVIEW, SHE TALKED ABOUT HOW SHE WAS GOING TO MISS HIM
13 AND MISS SPENDING TIME WITH HIM AND MISS PLAYING ON HIS
14 COMPUTER AND RIDING IN HIS TRUCK AND ALL OF THOSE THINGS.

15 RIGHT?

16 THEY THINK -- KIDS THINK THAT, "I'M GOING TO
17 GET IN TROUBLE," "I DID SOMETHING WRONG."

18 WHO DO YOU THINK MAKES THEM FEEL THAT WAY?

19 RIGHT?

20 THE PERSON PERPETRATING THE ABUSE ON THEM
21 MAKES THEM FEEL LIKE, "THIS IS OUR LITTLE SECRET, BUT YOU
22 WERE A PART OF IT, TOO. YOU WERE A PART OF IT, TOO."

23 AND SHE WAS BECAUSE SHE SAID, YOU KNOW, "I
24 WAS EVEN SURPRISED THE FIRST TIME I ACTUALLY KIND OF
25 ENJOYED IT. AFTERWARDS, I DIDN'T LIKE IT ANYMORE."

26 BUT THE FIRST ORAL COP, SHE DESCRIBED THAT
27 SHE ENJOYED IT. THAT'S A NORMAL PHYSIOLOGICAL RESPONSE
28 SHE HAD TO SOMETHING HE WAS DOING. AND SHE IS SEVEN.

1 AND SHE HAS NO IDEA WHERE TO PUT THAT IN CONTEXT.

2 RIGHT?

3 AND WE TALKED ABOUT THAT. THEY LACK CONTEXT
4 FOR THE ACTS. AND THEY FEAR NOT BEING BELIEVED. THEY
5 FEAR NOT BEING BELIEVED. AND YOU HEARD ABOUT THAT AS
6 WELL, THAT, YOU KNOW, "I DIDN'T THINK" --

7 "WHO'S GOING TO BELIEVE ME?"

8 RIGHT?

9 WHO'S GOING TO BELIEVE THIS LITTLE KID?

10 AND THAT'S COMMON. IT HAPPENS. THE YOUNGER
11 THE CHILDREN, THE MORE OF A DELAY. AND SHE WAS PRETTY
12 YOUNG.

13 WE TALKED ABOUT PATTERNS OF DISCLOSURE, THAT
14 THEY'RE DELAYED. THAT CAN BE INCREMENTAL. SO IT'S A
15 PROCESS.

16 RIGHT?

17 SO THE FIRST TIME SHE TELLS, WHEN THE
18 BAND-AID IS RIPPED OFF, OKAY, HANNAH LETS THE CAT OUT OF
19 THE BAG, ESSENTIALLY. AND THE BAND-AID IS RIPPED OFF.
20 BREANNA TELLS, BUT JUST A LITTLE BIT.

21 AND SHE TALKED EVEN IN HER FORENSIC ABOUT
22 HOW SHE TOLD HER DAD JUST A LITTLE BIT. AND THAT'S NOT
23 AN UNCOMMON THING TO SEE IN THE COURSE OF INTERVIEWING
24 CHILDREN WHO DELAY THEIR DISCLOSURE, OR ANY CHILD,
25 REALLY, THAT IT'S A PROCESS. THEY GIVE YOU A LITTLE BIT.

26 AND IF THEY FEEL SAFE, RIGHT, IF THERE'S AN
27 AVENUE FOR THEM TO FEEL SAFE, SUPPORTED, BELIEVED, THEY
28 WILL FILL YOU IN ON THE BLANKS.

1 RIGHT?

2 SO IT'S A PROCESS. AND SHE TOLD HER DAD A
3 LITTLE BIT, BUT THEN SHE TOLD CHRISTINA SCHULTZ THE REST
4 OF THE STORY.

5 THERE ARE FALSE DENIALS THAT HAPPEN ALONG
6 THIS CONTINUUM OF DISCLOSURE. SOMETIMES KIDS WILL BE
7 CONFRONTED AND DENY AND SAY NOTHING HAPPENED.

8 AND WE KNOW BREANNA DID.

9 SHE SAID, "NO, I HAVEN'T BEEN TOUCHED
10 INAPPROPRIATELY."

11 THAT'S AN INTERESTING CHOICE OF WORDS
12 BECAUSE, AS WE GO BACK TO WHAT DOES THIS CHILD KNOW ABOUT
13 THE TOUCHING, DOES SHE EVEN KNOW IT'S INAPPROPRIATE?

14 DOES SHE EVEN KNOW THAT WHAT'S HAPPENING TO
15 HER IS WRONG WHEN SHE'S SIX?

16 AND SOMETIMES, YOU KNOW, THE PHYSICAL
17 APPEARANCE WHEN THEY DISCLOSE, THEY'RE NOT SITTING THERE
18 BAWLING, CRYING, BEING UPSET ABOUT IT. THEY'RE LITTLE
19 KIDS, MATTER OF FACT, JUST TALKING ABOUT IT, HAVING A
20 CONVERSATION.

21 THERE WERE MANY FACTORS THAT RELATED TO
22 BREANNA THAT COINCIDE WITH THAT DELAYED DISCLOSURE. WE
23 ALREADY TALKED ABOUT THESE.

24 SHE, DURING THE COURSE OF HER INTERVIEW AND
25 THE COURSE OF HER TESTIMONY HERE, DESCRIBED SEVERAL ACTS.
26 I'M GOING TO GO THROUGH THEM JUST A LITTLE BIT.

27 SHE DESCRIBED ORAL COPULATION, TOUCHING OF
28 HER VAGINA, INTERCOURSE, A VIBRATOR AND SEXUAL

1 PENETRATION.

2 RIGHT?

3 SO ORAL COPULATION, ANY CONTACT, NO MATTER
4 HOW SLIGHT, BETWEEN THE MOUTH OF ONE PERSON AND THE
5 SEXUAL ORGAN OF ANOTHER.

6 THERE DOES NOT NEED TO BE ANY PENETRATION
7 FOR AN ORAL COPULATION.

8 AND WE LEARNED FROM BREANNA THAT HE WOULD
9 USE HIS TONGUE TO LICK HER VAGINA ON MORE THAN ONE
10 OCCASION. AND THAT'S HOW IT'S CHARGED, COUNT 4 AT THE
11 OLD HOUSE.

12 AND THE WAY IT'S CHARGED, TO MAKE SENSE, AS
13 BOTH CHRISTINA SCHULTZ AND LAURIE FORTIN TOLD YOU, KIDS
14 ARE NOT CAPABLE OF REALLY SAYING, "IT HAPPENED 16 TIMES.
15 IT HAPPENED 17 TIMES."

16 THEY CAN TELL YOU IT HAPPENED ONCE OR MORE
17 THAN ONCE AND WHERE IT HAPPENED.

18 AND THAT'S WHAT SHE DID.

19 SHE SAID, IN THE OLD HOUSE, IT HAPPENED MORE
20 THAN ONCE. SO ONE TIME IN THE OLD HOUSE AND THEN A
21 SUBSEQUENT, SEPARATE TIME, AS COUNT 5, IN THE OLD HOUSE.
22 AND IN THE NEW HOUSE, IT HAPPENED ONCE IN THE LIVING ROOM
23 THAT SHE COULD RECALL AND ONCE IN THE BEDROOM THAT SHE
24 COULD RECALL. SO THE LIVING ROOM IS COUNT 7, AND THE
25 BEDROOM IS COUNT 14. AND THAT'S THE HOUSE THEY LIVED IN
26 WHEN THIS ALL CAME ABOUT.

27 TOUCHING OF THE VAGINA, THAT'S THE LEWD ACT.
28 BASICALLY, IT'S ANY TOUCHING OF THE CHILD WITH LEWD

1 INTENT, SEXUAL INTENTS, INTENDED TO AROUSE, GRATIFY,
2 SATISFY THE LUST, THE PASSION OF THE DEFENDANT OR THE
3 CHILD.

4 AND SO THERE ARE MULTIPLE ACTS THAT ARE
5 CHARGED AS LEWD ACTS. THESE ARE WHAT WE CALL 288(A)'S.
6 AND COUNT 6 IS JUST ONE INCIDENT IN THE OLD HOUSE. AND
7 THEN COUNTS 9 THROUGH 18, A LITTLE BIT MORE SPECIFIC.
8 COUNT 9, HIS PENIS TOUCHED HER VAGINA IN THE LIVING ROOM
9 IN THE NEW HOUSE. IF YOU FIND THAT THAT HAPPENED ONCE IN
10 THE LIVING ROOM OF THE NEW HOUSE, GUILTY OF COUNT 9.

11 THE VIBRATOR TOUCHING HER VAGINA, SHE TALKED
12 ABOUT BOTH OUTSIDE AND INSIDE. WE'RE GOING TO GET TO THE
13 INSIDE IN A MINUTE.

14 SHE TALKED ABOUT HOW THE BUZZY TOY, AS SHE
15 DESCRIBED IT, TOUCHED THE OUTSIDE AND THE INSIDE OF THE
16 VAGINA. SO IT HAPPENED IN THE LIVING ROOM OF THE NEW
17 HOUSE. THAT'S COUNT 11.

18 HIS FINGER TOUCHED HER VAGINA IN THE LIVING
19 ROOM OF THE NEW HOUSE, COUNT 13. AND HIS HAND TO HER
20 VAGINA IN THE BEDROOM, COUNT 16. HIS PENIS TO HER VAGINA
21 IN THE BEDROOM, COUNT 18.

22 SO NOT EVERY SINGLE THING SHE DESCRIBED IS
23 CHARGED. THESE ARE VERY SPECIFIC INCIDENTS THAT SHE WAS
24 ABLE TO RECALL WITH SOME CLARITY.

25 ATTACHED TO ALL OF THOSE PREVIOUS COUNTS IS
26 AN ALLEGATION OF SUBSTANTIAL SEXUAL CONDUCT. AND THIS
27 CASE -- IT'S KIND OF EASY BECAUSE, IF YOU FEEL LIKE THE
28 AREA THAT HE TOUCHED WAS HER VAGINA, THEN THIS IS A TRUE

1 ALLEGATION. HE DID COMMIT SUBSTANTIAL SEXUAL CONDUCT ON
2 HER BECAUSE IT'S ANY GENITAL TOUCHING, HOWEVER SLIGHT.

3 SO THE TERM THAT'S USED IS "MASTURBATION,"
4 BUT THAT INCLUDES ANY TOUCHING. IT DOESN'T HAVE TO BE
5 RUBBING. THERE DOESN'T HAVE TO BE EJACULATION. THERE
6 DOES NOT HAVE TO BE ANYTHING ON THE PART OF EITHER
7 PERSON, OTHER THAN SLIGHT TOUCHING OF THE GENITALS.

8 IN THIS CASE IT'S THE VAGINA. IT'S JUST
9 VERY CLEAR.

10 THERE'S ALSO, ON EACH OF THOSE COUNTS, AN
11 ALLEGATION THAT, IF YOU BELIEVE HE COMMITTED THESE
12 SPECIFIED CRIMES AGAINST MORE THAN ONE VICTIM, BREANNA
13 AND HANNAH, IF HE TOUCHED THEM BOTH, IF YOU BELIEVE, YES,
14 THEN IT'S TRUE THAT HE COMMITTED THOSE CRIMES AGAINST
15 MORE THAN ONE VICTIM.

16 SHE TALKED ABOUT SEXUAL PENETRATION. AS I
17 INDICATED EARLIER, IT'S PENETRATION, HOWEVER SLIGHT, OF
18 THE GENITAL OR ANAL OPENING -- IN THIS CASE WE'RE TALKING
19 ABOUT THE GENITAL OPENING -- WITH ANY FOREIGN OBJECT, FOR
20 THE PURPOSES OF SEXUAL ABUSE, SEXUAL AROUSAL,
21 GRATIFICATION.

22 I THINK IT'S KIND OF A NO-BRAINER. THE
23 LOCATIONS WHERE HE'S TOUCHING HER, IT'S PRETTY CLEAR
24 WHAT'S GOING ON IN HIS MIND. IF YOU BELIEVE HE TOUCHED
25 HER AND WHERE HE TOUCHED HER, I MEAN, IT'S NOT REALLY
26 THAT MUCH OF A LEAP TO UNDERSTAND THAT HE HAD SEXUAL
27 AROUSAL OR GRATIFICATION IN MIND. AND IT INCLUDES THE
28 EXTERNAL GENITAL OPENINGS.

1 THOSE COUNTS ARE 10, 12 AND 15. 10 IS THE
2 VIBRATOR INTO THE VAGINA. SO SHE TALKED ABOUT HOW HE
3 WOULD PUT IT INSIDE, HOW HE USED LUBRICANT TO DO THAT, TO
4 GET IT INSIDE OF HER, AND HOW SHE WOULD FEEL IT ON THE
5 INSIDE OF HER.

6 RIGHT?

7 AND THAT HAPPENED IN THE LIVING ROOM, IN THE
8 NEW HOUSE. AND DIGITAL PENETRATION IN THE LIVING ROOM,
9 DIGITAL PENETRATION IN THE BEDROOM, THAT HE WOULD PUT HIS
10 FINGERS IN HER JUST A LITTLE BIT. THAT'S ALL THAT'S
11 REQUIRED.

12 INTERCOURSE IS ANY PENETRATION, HOWEVER
13 SLIGHT. SO IT DOES NOT NEED TO BE WHAT YOU MIGHT THINK
14 YOUR GENERAL TERMS OF INTERCOURSE ARE. IT'S HIS PENIS
15 GOING, ANY PART, INSIDE OF HER VAGINA. AND IT HAPPENED
16 IN THE LIVING ROOM. IT HAPPENED IN THE BEDROOM. AND
17 THOSE ARE JUST THE TWO THAT ARE CHARGED.

18 EJACULATION IS NOT REQUIRED. YOU HAVE
19 HEARD, THOUGH, THAT IT DID HAPPEN IN THIS CASE. AND SHE
20 TALKED ABOUT HOW HE "PEED" ON HER OUT OF HIS WIENER, AND
21 IT BURNED.

22 RIGHT?

23 SO CAN YOU USE THAT AS CIRCUMSTANTIAL
24 EVIDENCE THAT EJACULATION OCCURRED?

25 OF COURSE. OF COURSE.

26 AND DOES THAT GO TO SUBSTANTIATE THAT HE HAD
27 TOUCHING AND INTERCOURSE WITH HER?

28 YES.

1 WHAT YOU NEED TO THINK ABOUT, REALLY, WITH
2 BREANNA, I THINK, IS CONSIDER THE LEVEL OF DETAIL SHE
3 GAVE IN HER STATEMENT. SHE'S ABLE TO DESCRIBE MULTIPLE
4 ACTS, DIFFERENT ROOMS. SHE TALKED ABOUT HOW THEY HAD
5 THIS RELATIONSHIP WHERE THERE WERE TIMES WHERE HE'D SHOW
6 HER VIDEOS OF ADULTS DOING THESE KINDS OF THINGS AND
7 TALKED ABOUT HOW HE WAS GOING TO DO THAT WITH HER AND HOW
8 HE WANTED TO DO THAT WITH HER AND EVEN SAID ONE TIME --
9 ASKED PERMISSION, YOU KNOW, IF SHE WANTED TO DO THAT WITH
10 HIM.

11 AND THEY WERE ADULTS DOING THINGS ON VIDEO.
12 RIGHT?

13 AND SHE DIDN'T KNOW. SHE DIDN'T KNOW WHAT
14 WAS GOING ON.

15 LOOK AT THE TERM SHE USED, THAT THEY WOULD
16 "PLAY TOGETHER" AND THAT THERE WOULD BE "TOYS."

17 RIGHT?

18 HE SAID, "OH, I HAVE A TOY FOR YOU."

19 SO SHE'S ALL EXCITED.

20 "OH, YOU GOT SOME LEGOS?"

21 BECAUSE SHE'S LIKE SIX, SEVEN.

22 "YOU'VE GOT SOME TOYS? LET'S PLAY."

23 "NO, NOT LEGOS. NO, I GOT A TOY FOR US."

24 SHE SAID SHE KNEW WHAT THAT MEANT AT THAT
25 POINT BECAUSE THIS HAS BEEN GOING ON.

26 SHE USES AGE APPROPRIATE TERMS FOR ALL THE
27 BODY PARTS. SHE DOESN'T GO IN THERE AND SAY "VAGINA" AND
28 "PENIS" AND "BREAST." NO. SHE TALKS LIKE A KID HER AGE

1 WOULD TALK.

2 AND SHE TALKED ABOUT INITIALLY BEING
3 SURPRISED ABOUT LIKING SOME OF THE CONDUCT AND HOW THAT
4 CAN BE DISCONCERTING.

5 SHE TALKED ABOUT THIS BUZZY THING.

6 RIGHT?

7 AND SHE EVEN DESCRIBED IT. I DON'T KNOW IF
8 YOU REMEMBER, IN THE VIDEO, SHE SAID -- SHE DESCRIBES THE
9 VIBRATION. SHE MADE THE VIBRATION SOUND.

10 OKAY. SHE TALKED ABOUT HOW IT WAS SHAPED
11 AND WHAT IT DID. AND SHE TALKED ABOUT THE LUBRICANT HE
12 USED. AND IT WAS WEIRD AND GROSS. AND BECAUSE SHE WAS
13 LAYING DOWN WHEN HE PUT IT ON HER, IT DRIPPED DOWN AROUND
14 HER BOTTOM.

15 THE BURNING -- SHE DIDN'T, OBVIOUSLY, USE
16 THE TERM "EJACULATION," BUT SHE TALKED ABOUT HOW HE
17 "PEED" ON HER, AND IT BURNED.

18 SHE DESCRIBED THE VIDEOS, ABOUT THE GIRL
19 SAYING "OH, OH" IN A LOUD VOICE.

20 THESE ARE THINGS THAT NO SEVEN-YEAR-OLD
21 SHOULD KNOW. THESE ARE THINGS THAT A CHILD SAYS BECAUSE
22 THEY'VE HAPPENED TO HER.

23 AND, INTERESTINGLY ENOUGH, AS WELL, SHE
24 DENIED OTHER TYPES OF TOUCHING. SO SHE WAS GIVEN THE
25 OPPORTUNITY TO SAY WHATEVER SHE WANTED TO SAY. SHE
26 WASN'T BEING QUESTIONED. SHE WASN'T BEING INTERROGATED.
27 SHE WASN'T BEING CONFRONTED.

28 "JUST TELL ME YOUR STORY."

1 "DID HE EVER TOUCH YOUR BOTTOM?"

2 "NO."

3 SHE DENIED. SHE DENIED OTHER LOCATIONS.
4 SHE DENIED OTHER BODY PARTS. SHE SAID THOSE THINGS
5 DIDN'T HAPPEN.

6 AND THAT'S VERY IMPORTANT BECAUSE, IF YOU'RE
7 GOING TO SAY A KID IS MAKING THIS STUFF UP, WELL, SHOOT
8 FOR THE MOON.

9 "YEAH, YEAH, OF COURSE. DID HE TOUCH MY
10 BOTTOM? OF COURSE HE TOUCHED MY BOTTOM. YEAH, HE
11 TOUCHED IT 100 TIMES."

12 "DID HE PUT THINGS IN THERE, TOO?"

13 "OH, YEAH, HE SURE DID. HE YELLED AT ME.
14 HE HIT ME."

15 ALL THESE OUTLANDISH THINGS SHE COULD HAVE
16 SAID, BUT SHE DIDN'T. SHE WAS VERY, VERY SPECIFIC ABOUT
17 THE THINGS HE DID AND THE THINGS HE DIDN'T DO.

18 AND SHE SAID SHE WAS SCARED TO TELL. SHE
19 THOUGHT ABOUT IT BEFORE. SHE THOUGHT ABOUT TELLING HER
20 MOM. SHE COULDN'T DO IT. SHE JUST COULDN'T DO IT.

21 AND, FINALLY, WHEN SHE KNEW THAT THE COPS
22 WERE ON THEIR WAY, SHE WAS SAFE, AND SHE TOLD. AND SHE
23 FELT GOOD ABOUT FINALLY TELLING.

24 IN HER CHARGES, HER STATEMENT, IT'S
25 CORROBORATED, TOO. THE INTERNAL CORROBORATION WITHIN
26 THAT STATEMENT IS HUGE. ALL THOSE LITTLE DETAILS, ALL
27 THAT LITTLE INFORMATION THAT SHE NEVER WOULD HAVE KNOWN,
28 HAD IT NOT BEEN VISITED UPON HER. ALL THOSE THINGS,

1 THAT'S CORROBORATION IN AND OF ITSELF, BUT ON TOP OF THAT
2 SHE'S CORROBORATED BY KARINA.

3 WE TALKED ABOUT THAT BEFORE. YOU CAN USE IT
4 ON BREANNA'S CHARGES AND HANNAH'S CHARGES.

5 SHE WAS, FRANKLY, CORROBORATED BY HANNAH.
6 YES, THEY ARE SEPARATE CHARGES. YOU DECIDE INDIVIDUALLY,
7 BUT YOU CONSIDER THE CONTEXT. AND YOU CONSIDER HANNAH --

8 BREANNA TALKED ABOUT HOW THEY WERE IN THE
9 BEDROOM. SO DID HANNAH. THEY TALKED ABOUT PLAYING THE
10 GAME TOGETHER. THEY TALKED ABOUT BEING UNDER THE COVERS.
11 THEY TALKED ABOUT HOW SHE RAN AWAY. THEY BOTH HAD THE
12 SAME STORY TO TELL YOU IN THEIR OWN WAY.

13 BUT THIS, I THINK, IS HUGE, THIS BUZZY TOY,
14 BECAUSE, FRANKLY, LOOK AT THE PICTURES.

15 RIGHT?

16 ON THE RIGHT IS THE PICTURE THAT BREANNA
17 DREW.

18 SHE SAID, YOU KNOW, "I CAN'T REALLY DESCRIBE
19 IT ALL THE WAY. LET ME DRAW IT FOR YOU."

20 SO THEY BREAK OUT A CLEAN PIECE OF PAPER.
21 AND SHE DID THE CIRCLE. AND THIS WAS THE PART THAT WENT
22 IN HER. AND SHE PUT THE LITTLE LINES TO DESCRIBE THE
23 VIBRATION, THE SENSATION OF THIS THING VIBRATING.

24 AND SHE DREW THE LINE TO INDICATE THE CORD
25 AND THE LITTLE BOX FOR THE CHARGER. AND, LO AND BEHOLD,
26 WE SHOWED THAT PICTURE TO TAMI BECAUSE SHE DESCRIBED THEY
27 HAD PRETTY MUCH THE EXACT SAME THING IN THEIR HOUSE, THAT
28 TAMI AND THE DEFENDANT USED TOGETHER.

1 AND IT WAS SOMETHING THAT I THINK, IF I
2 RECALL CORRECTLY, SHE SAID THE DEFENDANT BROUGHT INTO THE
3 RELATIONSHIP WITH HIM. AND SHE THOUGHT IT MIGHT HAVE HAD
4 ONE MORE CORD, BUT THAT IT LOOKED JUST LIKE THAT. I
5 MEAN, THE PICTURES SIDE-BY-SIDE.

6 COULD SHE HAVE SEEN THIS IN PASSING?

7 SURE. BUT THE VIBRATION, THE SENSATION, THE
8 USE OF THE LUBRICANT TO GET IT INSIDE OF HER, THOSE ARE
9 THINGS THAT HAPPENED TO HER.

10 AND, FRANKLY, THE SUGGESTIBILITY IN THIS
11 CASE IS SORT OF, I THINK, A RED HERRING BECAUSE IT'S BEEN
12 SAID AND TALKED ABOUT, BUT, FRANKLY, THERE'S NO EVIDENCE
13 AT ALL IN THIS CASE TO SUPPORT -- NONE, NONE, NONE --
14 THAT SOMEBODY SAID TO EITHER OR BOTH OF THESE CHILDREN,
15 "ERIC DID TERRIBLE THINGS TO YOU. HE DID TERRIBLE THINGS
16 TO YOU. HE TOUCHED YOU HERE. HE TOUCHED YOU THERE. HE
17 PUT HIS MOUTH ON YOU HERE. HE PUT THESE THINGS INSIDE OF
18 YOU. ERIC DID ALL OF THESE THINGS TO YOU."

19 THERE'S ABSOLUTELY NO EVIDENCE TO SUPPORT
20 IT. SO DON'T GET CAUGHT UP IN GOING OUTSIDE OF THE BOX
21 AND SPECULATING AS TO, "WELL, MAYBE THEY DID."

22 YOU KNOW. THEY TESTIFIED. THEY SAID THEY
23 DIDN'T. THERE WAS NOTHING TO SAY THE OPPOSITE. THERE'S
24 NO EVIDENCE TO SUPPORT THAT THEY CAME IN HERE AND LIED TO
25 YOU ABOUT WHETHER OR NOT THEY TOLD THEIR CHILDREN WHAT TO
26 SAY, THAT THEY DRAGGED THEIR CHILDREN THROUGH THIS
27 PROCESS, THIS HORRENDOUS PROCESS FOR A LITTLE KID.

28 FOR WHAT?

1 FOR WHY?

2 THAT'S A QUESTION, IF YOU WANT TO GO DOWN
3 THAT ROAD, YOU HAVE TO ANSWER.

4 WHY?

5 WHY IN THE WORLD WOULD ANYBODY GET TWO
6 LITTLE CHILDREN TO GET TOGETHER ON A STORY LIKE THIS?

7 THAT SOUNDS, FRANKLY, HORRIFYING AND
8 INCREDIBLE BECAUSE WE DON'T WANT TO THINK THAT PEOPLE DO
9 THESE THINGS TO LITTLE KIDS. BUT THEY DO.

10 AND THE DEFENDANT DID IN THIS CASE. HE DID
11 THESE THINGS TO THESE LITTLE GIRLS. BECAUSE, IF YOU WERE
12 TO BELIEVE THAT SOMEBODY PUT THIS IDEA IN THEIR HEADS,
13 THAT THEY WOULD SACRIFICE THE INNOCENCE OF THEIR OWN
14 LITTLE CHILDREN TO COME IN HERE AND TELL YOU THAT HE'S A
15 BAD GUY, HE DID ALL OF THESE THINGS, AND YOU SHOULD
16 CONVICT HIM OF ALL OF THESE THINGS, YOU HAVE TO SAY,
17 "WHY?"

18 IF SOMEBODY DOESN'T LIKE ANOTHER PERSON,
19 OKAY, FINE. WE DON'T ALL LIKE PEOPLE THAT WE KNOW. WE
20 TOLERATE PEOPLE SOMETIMES IN OUR LIVES, BUT THIS IS AN
21 EXTREME.

22 AND TO HAVE GONE FIVE YEARS WITHOUT A
23 PROBLEM, WITHOUT A PROBLEM, AND, ALL OF A SUDDEN, THERE'S
24 SOME WITCH HUNT AGAINST THE DEFENDANT, THAT'S
25 SPECULATION. THAT IS ASKING YOU TO GO BEYOND WHAT YOU
26 HAD SIGNED UP TO DO, WHICH WAS TO EVALUATE THE EVIDENCE
27 IN THIS CASE.

28 AND THE EVIDENCE IN THIS CASE, FRANKLY,

1 SUPPORTS ONLY ONE CONCLUSION: THAT THIS DEFENDANT IS
2 GUILTY OF ALL OF THE 18 COUNTS OF WHICH HE'S CHARGED.

3 AND I WOULD ASK YOU TO FIND HIM SO.

4 THANK YOU.

5 THE COURT: WE'RE GOING TO TAKE OUR MORNING RECESS
6 AT THIS TIME, LADIES AND GENTLEMEN.

7 YOU'RE REMINDED NOT TO TALK ABOUT THE CASE,
8 NOT TO FORM OR EXPRESS AN OPINION ABOUT THE CASE, NOT TO
9 DISCUSS THE MATTER AT ALL UNTIL THE MATTER IS SUBMITTED
10 TO YOU.

11 IF THE AUDIENCE WILL REMAIN IN THE
12 COURTROOM, PLEASE?

13 I'D LIKE THE JURORS TO PROCEED ON YOUR
14 BREAK.

15 ---000---

16 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
17 COURT, OUTSIDE THE PRESENCE OF THE JURORS AND
18 THE ALTERNATE JURORS.
19 THE AUDIENCE MEMBERS REMAINED IN THE COURTROOM.)

20 ---000---

21 THE COURT: THE RECORD WILL REFLECT THE JURORS AND
22 ALTERNATE JURORS HAVE LEFT.

23 AND I WANT TO BE SURE THAT THE AUDIENCE IS
24 AWARE THAT THEY ARE NOT TO MAKE ANY COMMENTS THAT WILL BE
25 OVERHEARD BY THIS JURY. THAT IS NOT TO HAPPEN. IF IT
26 DOES HAPPEN, THEY WILL BE IN CONTEMPT.

27 WE'LL BE IN RECESS.

28 ---000---

1 (THEREUPON COURT WAS IN RECESS.)

2 ---000---

3 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
4 COURT, OUTSIDE THE PRESENCE OF THE JURORS AND
5 THE ALTERNATE JURORS.)

6 ---000---

7 MS. DI TILLIO: WE NEED TO GIVE 950 AND 960 AS
8 WELL, WHICH ARE ASSAULT AND BATTERY. I HAVE THEM CLIPPED
9 HERE IN MY BOOK, IF YOUR HONOR JUST WANTS TO USE MY BOOK.

10 THE COURT: NO, NO.

11 WILL YOU E-MAIL THEM TO HER?

12 MS. DI TILLIO: YES.

13 THE COURT: HOW LONG DO YOU THINK YOU'RE GOING TO
14 BE, HALF-HOUR, 40 MINUTES?

15 MS. OLIVER: SOMEWHERE UP IN THERE, YEAH.

16 THE COURT: I WON'T TAKE ANOTHER BREAK. WE'LL JUST
17 GO RIGHT INTO --

18 MS. OLIVER: OKAY.

19 MS. DI TILLIO: DO YOU WANT ME TO INDICATE TO WHICH
20 CHARGE IT APPLIES, OR DO YOU WANT ME TO SAY, "THE
21 DEFENDANT IS CHARGED AS A LESSER OFFENSE WITH ASSAULT AND
22 BATTERY"?

23 THE COURT: THAT'S FINE. BECAUSE IT'S ALREADY
24 DEFINED.

25 IS THIS BOTH OF THEM, BOTH ASSAULT AND
26 BATTERY?

27 MS. DI TILLIO: DID YOU WANT TO TAKE A LOOK AT
28 THEM?

1 MS. OLIVER: JUST E-MAIL THEM TO ME.

2 MS. DI TILLIO: I DID E-MAIL THEM TO YOU.

3 THE COURT: ARE YOU READY?

4 ---000---

5 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
6 COURT, WITHIN THE PRESENCE OF THE JURORS AND
7 THE ALTERNATE JURORS.)

8 ---000---

9 THE COURT: ALL RIGHT. THE RECORD WILL REFLECT THE
10 DEFENDANT AND ATTORNEYS ARE PRESENT, AS WELL AS OUR
11 JURORS AND ALTERNATE JURORS.

12 DEFENSE ARGUMENT?

13 MS. OLIVER: THANK YOU.

14 THIS CASE COMES DOWN TO CREDIBILITY AND
15 BELIEVABILITY.

16 WHO DO YOU BELIEVE?

17 AND WHO DO YOU DISBELIEVE?

18 NOW, THE WAY THE DISTRICT ATTORNEY WANTS YOU
19 TO REVIEW THE EVIDENCE, THINK ABOUT THE EVIDENCE,
20 CONSIDER THE EVIDENCE IS FROM BACK HERE. THEY WANT YOU
21 TO TAKE A STEP BACK, LOOK AT EVERYTHING IN A HUGE, BIG,
22 SPREAD-OUT FORM. AND THEY'RE HOPING THAT THEY CAN
23 CONVINCING YOU THAT THEY HAVE PROVEN THEIR JOB BEYOND A
24 REASONABLE DOUBT.

25 BUT WHEN I MET WITH YOU AND SPOKE WITH YOU
26 IN MY OPENING, I ASKED THAT YOU LISTEN VERY CAREFULLY TO
27 EACH AND EVERY WITNESS, THAT YOU CAREFULLY EXAMINE EACH
28 PIECE OF EVIDENCE. AND I SAID BECAUSE I WAS CONVINCED

1 THAT I DID NOT BELIEVE THAT THEY WOULD BE ABLE TO PROVE
2 THEIR CASE BEYOND A REASONABLE DOUBT.

3 I'M ASKING THAT YOU COME CLOSER, TAKE A
4 CLOSER LOOK, TO REALLY SEE WHAT'S GOING ON WITH THIS
5 FAMILY. SEE, THE FUNNY THING ABOUT THE TRUTH IS, NO
6 MATTER HOW MANY WAYS YOU TRY TO COVER IT UP, IT ALWAYS
7 SEEMS TO SNEAK SOUTH. IF YOU'RE LISTENING FOR IT, IF
8 YOU'RE WATCHING FOR IT, THE TRUTH WILL COME OUT.

9 NOW, I SAY THAT BECAUSE THE WAY, THE PEOPLE
10 HAVE PRESENTED THE CASE, THEY MAKE IT SEEM AS IF THERE IS
11 NO WAY, NO FORM OR FASHION THAT ANYONE SPOKE WITH HANNAH
12 OR BREANNA PRIOR TO GOING TO THEIR FORENSIC INTERVIEWS.
13 AND THEY EVEN POSED SOME DIFFERENT QUESTIONS. AND I
14 WROTE THEM DOWN BECAUSE THESE ARE QUESTIONS THAT I CAN
15 CERTAINLY ANSWER.

16 SHE SAID, "WHY WOULD PEOPLE GET TWO KIDS
17 TOGETHER TO LIE?"

18 SHE ALSO SAID THAT SUGGESTIBILITY IS A RED
19 HERRING BECAUSE THERE'S NO EVIDENCE THAT SOMEONE TOLD THE
20 GIRLS WHAT TO SAY.

21 BUT I SUBMIT TO YOU THAT SHE'S WRONG.
22 BECAUSE, IN THE FORENSIC INTERVIEW OF BREANNA, SHE TALKS
23 ABOUT THINGS THAT SHE WAS TOLD BY HANNAH.

24 IF THERE WAS NO DISCUSSION, HOW WOULD SHE
25 KNOW?

26 SO, WE'RE GOING TO TAKE A LOOK. AND WE'RE
27 GOING TO FIRST TAKE A LOOK AT THE FAMILY DYNAMICS BECAUSE
28 THE HISTORY OF THIS FAMILY IS EXTREMELY IMPORTANT, TO

1 REALLY GET A FLAVOR OF WHAT'S GOING ON.

2 SO YOU HAVE ALLAN AND TAMI. AND THEY'RE
3 MARRIED. AND THEY HAVE BREANNA. AND ONE DAY THEY GO TO
4 A WEDDING. AND IN THE WEDDING PARTY IS MR. ROSS. AND
5 HE'S IN THE SAME WEDDING PARTY AS TAMI. AND YOU HEARD
6 THAT THEY KNEW EACH OTHER PREVIOUSLY.

7 WELL, AT THE WEDDING, THE THREE OF THEM GET
8 TOGETHER AND DECIDE THAT THEY'RE GOING TO HAVE A SEXUAL
9 ESCAPADE.

10 AND YOU HEARD ALLAN, AND YOU HEARD TAMI SAY
11 THAT IT HAPPENED ONCE. BUT ONCE WAS ENOUGH FOR TAMI TO
12 CONTINUE HER FRIENDSHIP WITH MR. ROSS. AND THAT WAS
13 ENOUGH TO END THE MARRIAGE OF TAMI AND ALLAN.

14 NOW, ACCORDING TO ALLAN, NOTHING BOTHERS
15 HIM. SO, INITIALLY, HE SAID, WELL, HE WAS, YOU KNOW, HE
16 WAS FINE. HE WASN'T UPSET.

17 AND THEN HE SAID, "WELL, I DID BLAME TAMI
18 FOR THE BREAKUP OF THE MARRIAGE."

19 BUT THEN, WHEN I ASKED, "WELL, WERE YOU
20 UPSET THAT SHE CONTINUED HER FRIENDSHIP WITH MR. ROSS?"
21 HE SAID, "NO, NO I WASN'T UPSET."

22 "WELL, WERE YOU UPSET WHEN TAMI LEFT ANOTHER
23 STATE WITH YOUR CHILD AND MOVED?"

24 "NO, I WASN'T UPSET."

25 "DID SHE TELL YOU THAT SHE WAS GOING TO
26 LEAVE?"

27 "NO. SHE DID NOT TELL ME SHE WAS LEAVING."

28 "WERE YOU UPSET THAT SHE DID NOT TELL YOU

1 THAT SHE WAS LEAVING BEFORE MOVING TO ANOTHER STATE?"

2 "NO, I WASN'T UPSET."

3 "DID SHE MOVE IN WITH MR. ROSS?"

4 "YES."

5 "DID THAT UPSET YOU?"

6 "NO, NO. I WASN'T UPSET THAT SHE MOVED IN

7 WITH THE MAN THAT BROKE UP OUR MARRIAGE."

8 "OKAY. AND SHE TOOK BREANNA WITH HER; IS
9 THAT CORRECT?"

10 "YES."

11 "AND THAT DIDN'T UPSET YOU EITHER?"

12 "NO, THAT DIDN'T UPSET ME."

13 "SHE MOVED BREANNA INTO THE HOUSE WITH

14 MR. ROSS; IS THAT CORRECT?"

15 "YES, SHE DID."

16 "DID THAT UPSET YOU?"

17 "NO."

18 "DID SHE ASK YOU FOR PERMISSION OR LET YOU
19 KNOW THAT SHE WAS GOING TO TAKE YOUR CHILD AND MOVE YOUR
20 CHILD TO ANOTHER STATE, IN THE HOUSE WITH THE MAN YOUR
21 WIFE HAD THE AFFAIR WITH? DID THAT BOTHER YOU?"

22 "NO. THAT DIDN'T UPSET ME EITHER."

23 THAT'S IMPORTANT BECAUSE NOT ONLY ARE YOU
24 SUPPOSED TO JUDGE THE EVIDENCE, BUT YOU JUDGE THE
25 BELIEVABILITY AND THE CREDIBILITY OF EACH AND EVERY
26 WITNESS.

27 AND IF YOU BELIEVE THAT A WITNESS LIED, JUST
28 BECAUSE THEY TOOK THAT STAND AND SAID WORDS DOES NOT MEAN

1 THAT YOU HAVE TO ACCEPT THEIR LIES AS TRUTH.

2 NOW, NO, ALLAN DID NOT TAKE THE STAND AND
3 SAY, "WELL, I LIED. WHEN I JUST SAID I WASN'T UPSET, NO,
4 I REALLY WAS UPSET."

5 BUT YOU USE YOUR COMMON SENSE AND YOUR LIFE
6 EXPERIENCE. YOU DON'T CHECK THAT AT THE DOOR. YOU USE
7 THAT IN EVALUATING THE CREDIBILITY OF EACH WITNESS.

8 I SUBMIT TO YOU THAT ALLAN WAS THE OPPOSITE
9 OF WHAT HE SAID AND THAT HE WAS VERY UPSET. HE WAS
10 EXTREMELY UPSET THAT HIS EX-WIFE TOOK HIS CHILD TO
11 ANOTHER STATE, WITHOUT HIS CONSENT, WITHOUT HIS
12 PERMISSION, WITHOUT HIS KNOWLEDGE, MOVED IN WITH THE MAN
13 THAT SHE CHEATED ON HIM WITH, WITH HIS DAUGHTER, AND
14 DIDN'T EVEN SAY AS MUCH AS, "HELLO, CAN I DO IT? HOW DO
15 YOU FEEL ABOUT IT?"

16 I SUBMIT TO YOU THAT HE WAS NOT HONEST IN
17 HIS RESPONSES. AND THAT IS THE FOUNDATION FOR WHY WE ARE
18 HERE TODAY. IT IS THAT FAMILY DYNAMIC, THAT FAMILY
19 RELATIONSHIP.

20 SO ALLAN MEETS MELISSA, AND THE TWO OF THEM
21 GET TOGETHER. AND WE HEARD MELISSA SAY THAT SHE NEVER
22 LIKED MR. ROSS. NEVER. SHE GOT A BAD FEELING FROM HIM
23 BECAUSE SHE BELIEVED THAT HE HAD A LITTLE TOO MUCH SAY IN
24 THE REARING OF BREANNA.

25 NOW, DESPITE WHAT HER ACTUAL WORDS SAY, WE
26 KNOW THIS BECAUSE SHE SAID THAT, WHEN THE FOUR OF THEM
27 WOULD GET TOGETHER AND THEY WOULD HAVE DISCUSSIONS ON
28 DECISIONS THAT NEEDED TO BE MADE REGARDING BREANNA, THAT,

1 IF THEY COULD NOT COME TO AN AGREEMENT, MR. ROSS -- HE
2 WOULD SAY, "WE'RE GOING TO GET A LAWYER. WE'RE GOING TO
3 GET A LAWYER."

4 SO WHEN ALLAN WAS ASKED ABOUT THIS, ALLAN
5 SAID IT DIDN'T UPSET HIM THAT THIS MAN WOULD TELL HIM
6 THAT HE WOULD GET A LAWYER IN REGARDS TO HIS OWN CHILD.
7 HE SAID IT DIDN'T UPSET HIM. IT DIDN'T BOTHER HIM.

8 MELISSA ALSO SAID THAT SHE DIDN'T LIKE
9 MR. ROSS BECAUSE, WHEN ALLAN AND TAMI WOULD DO AN E-MAIL
10 EXCHANGE, SHE BELIEVED THAT MR. ROSS MANIPULATED TAMI.
11 AND HE WOULD BE THE ONE TO RESPOND.

12 BUT THEN, WHEN I QUESTIONED HER FURTHER, SHE
13 ADMITTED THAT SHE DIDN'T KNOW IF TAMI WANTED MR. ROSS TO
14 RESPOND TO ALLAN. AND SHE DIDN'T KNOW HOW MUCH TAMI
15 REALLY WANTED OR NEEDED MR. ROSS TO HELP BE HER VOICE UP
16 AGAINST ALLAN. SHE DIDN'T KNOW.

17 THAT'S IMPORTANT BECAUSE THAT IS ANOTHER
18 LAYER OF THE FOUNDATION OF WHY WE'RE HERE TODAY.

19 THE REASON WHY PEOPLE WOULD GET TOGETHER AND
20 PUT TWO KIDS THROUGH THIS IS BECAUSE THE NUMBER ONE GOAL,
21 THE NUMBER ONE GOAL WAS TO REMOVE RICHARD ERIC ROSS FROM
22 THAT FAMILY, TO REMOVE HIM FROM THAT FAMILY SO THAT THEY
23 CAN CONTINUE GOING ON ABOUT THEIR BUSINESS WITHOUT HIM.
24 THAT IS THE WHOLE REASON.

25 THEY NEVER LIKED HIM. THIS IS NOT A
26 SITUATION WHERE IT'S FIVE YEARS OF JUST BLISS AND, ALL OF
27 A SUDDEN, THESE ALLEGATIONS COME UP.

28 ALLAN HAS BEEN QUESTIONING BREANNA FOR

1 SOMETIME, JUST HOPING FOR A DAY THAT SHE SAID "YES." HE
2 ASKED HER REPEATEDLY, REPEATEDLY, BECAUSE HE WAS LOOKING
3 FOR AN OPPORTUNITY. HE WAS LOOKING FOR THIS OPPORTUNITY
4 FOR THE ULTIMATE PAYBACK. HE'S GOING TO BREAK UP ERIC'S
5 LIFE THE SAME WAY HE BROKE UP HIS MARRIAGE.

6 NOW, WE HEARD FROM SEVERAL DIFFERENT PEOPLE.
7 SO WE'VE TALKED ABOUT ALLAN A LITTLE BIT, AND WE'VE
8 TALKED ABOUT MELISSA A LITTLE BIT. SO NOW WE'RE GOING TO
9 HAVE A CONVERSATION ABOUT KARINA.

10 AND WHY WOULD KARINA SAY THE THINGS THAT SHE
11 SAID?

12 WELL, IF YOU NOTICED, THE TIMING OF WHEN
13 KARINA DISCLOSED IS VERY INTERESTING BECAUSE THAT
14 HAPPENED AFTER SHE FOUND OUT FROM HER MOTHER, AFTER HER
15 MOTHER CAME AND HAD A DISCUSSION WITH HER AND HER MOTHER
16 WAS UPSET AND HER AUNT TAMI, BREANNA'S MOTHER, WAS UPSET.
17 AND SHE HAD LEARNED THAT BREANNA HAD BEEN TAKEN AWAY FROM
18 HER AUNT TAMI. AND SHE WAS SAD BY ALL OF THAT.

19 AND IT'S AT THAT POINT THAT SHE SAYS, "OH,
20 WELL, HE TOUCHED ME TOO."

21 OR HE SAID, "DO YOU WANT TO" -- YOU KNOW,
22 "I'LL PULL DOWN MY PANTS." YOU KNOW, "DO YOU WANT TO
23 TOUCH MY PENIS?"

24 NOTICE SHE'S NOT CHARGED. HER NAME IS NOT
25 GOING TO APPEAR IN ANY OF THOSE VERDICT FORMS.

26 THE DISTRICT ATTORNEY HAS SAID THAT, WITH
27 KARINA'S STATEMENT, THAT YOU CAN USE THAT TO CORROBORATE
28 BOTH HANNAH AND BREANNA AND TO SAY THAT, BECAUSE KARINA

1 SAYS THIS, THAT MR. ROSS IS MORE LIKELY TO HAVE COMMITTED
2 THE OFFENSES, BUT WHAT KARINA SAID IS DIFFERENT THAN WHAT
3 EITHER OF THE OTHER GIRLS SAID.

4 IT'S COMPLETELY DIFFERENT. THERE ARE NO
5 ALLEGATIONS OF PHYSICAL TOUCHING EVEN DEALING WITH
6 KARINA. SO, REALLY, THE ONLY REASON WHY SHE'S HERE, THE
7 ONLY REASON WHY WE'RE TALKING ABOUT HER IS BECAUSE THE
8 D.A. HOPES THAT YOU SAY, "OKAY, WELL, THERE ARE TWO
9 ALLEGED VICTIMS, AND THEN ANOTHER GIRL. SO -- ONE, TWO,
10 THREE -- THAT MUST EQUAL GUILTY."

11 BUT THAT'S NOT THE CASE. THAT'S NOT THE
12 CASE.

13 WHEN WE LOOK AT HANNAH AND BREANNA'S
14 STATEMENTS, BOTH GIRLS WENT INTO THEIR FORENSIC
15 INTERVIEWS SAYING THAT THEY HAD NOT SPOKEN WITH ANYONE
16 ABOUT THE FACTS OF THE CASE.

17 AND THEY BOTH PROMISED TO TELL THE TRUTH.
18 AND WE SAW THAT ON THAT T.V. SCREEN, WHEN THEY'RE BOTH
19 INTERVIEWED BY MISS SCHULTZ. BUT, IF YOU NOTICE, IN
20 HANNAH'S INTERVIEW, MISS SCHULTZ HAD TO CORRECT HER THREE
21 TIMES.

22 SHE USED THE WORDS, "WELL, HANNAH, I'M
23 CONFUSED RIGHT NOW BECAUSE YOU TOLD ME THIS EARLIER, AND
24 NOW YOU'RE TELLING ME THAT."

25 MISS SCHULTZ WAS CONFUSED THREE TIMES,
26 AROUND THREE TIMES IN HANNAH'S INTERVIEW. THE CONFUSION
27 CAME FROM A DISCREPANCY IN WHAT HANNAH WAS SAYING AND HOW
28 SHE WAS GIVING CONTRADICTIONARY INFORMATION IN HER

1 INTERVIEW. THAT'S WHERE HER CONFUSION CAME FROM.

2 AND THAT'S IMPORTANT TO KNOW BECAUSE WE
3 KNOW, IN BREANNA'S INTERVIEW, BREANNA SAID THAT HANNAH IS
4 A LIAR AND THAT SHE LIES ABOUT THINGS. AND WE KNOW THAT
5 ALLAN TOLD US THAT HANNAH WILL LIE TO GET OUT OF TROUBLE.
6 THESE ARE THE THINGS THAT WE KNOW.

7 WE ALSO KNOW THAT ON MAY 21ST, 2012, HANNAH
8 SAYS THAT SHE WAS IN THE BED WITH BREANNA AND, AS THEY
9 CALL HIM, ERIC. AND SHE WANTS YOU TO BELIEVE THAT, WHILE
10 THEY WERE IN THE BED, THAT HE PULLED DOWN HER PANTS WITH
11 HIS HAND. SHE SAID THE BELT LOOPS, BUT YOU HAVE A
12 PICTURE OF THE PANTS. THERE ARE NO LOOPS. THAT HE USED
13 BOTH HANDS TO PULL DOWN HER PANTS AND INSERT HIS FINGER
14 NEAR HER VAGINA. ALL THE WHILE, BREANNA IS IN THE SAME
15 BED AND DOESN'T FEEL A THING, DOESN'T KNOW A THING,
16 DOESN'T KNOW ANYTHING.

17 ALL BREANNA KNOWS IS THAT ONE MINUTE HANNAH
18 GETS OUT OF THE BED. NEVER SAYS ANYTHING ABOUT HER PANTS
19 BEING DOWN, HER PANTIES BEING DOWN, ANYTHING OF THAT
20 NATURE.

21 HANNAH AND BREANNA, THEY GIVE TWO DIFFERENT
22 STORIES, AGAIN, WHEN HANNAH SAYS THAT SHE'S INSIDE THE
23 BATHROOM AND BREANNA COMES INSIDE THE BATHROOM WITH HER.
24 BUT THEN BREANNA SAYS, WHEN SHE WAS GETTING READY TO HAND
25 HANNAH THE FRUIT ROLLUP, THAT SHE JUST STUCK HER HAND IN
26 THE DOOR. SHE NEVER WENT INSIDE OF THE BATHROOM. THOSE
27 TWO THINGS ARE COMPLETELY DIFFERENT.

28 AND SHE -- THE D.A. -- SHE MAY COME UP AND

1 SAY, "WELL, THAT'S NOT A BIG DIFFERENCE. ALL THAT'S
2 IMPORTANT IS THAT THE GIRLS SAY THAT A TOUCHING
3 HAPPENED."

4 BUT IT'S NOT ENOUGH FOR SOMEONE TO JUST SAY
5 SOMETHING HAPPENED, AND THERE BE NO OTHER EVIDENCE TO
6 SUPPORT THAT. THERE'S NOTHING ELSE.

7 IT IS A GOOD THING THAT, AS WE SIT HERE,
8 THAT THIS MAN SITS HERE WITH THE PRESUMPTION OF
9 INNOCENCE. IT IS A GOOD THING THAT HE HAS THAT IN THIS
10 VERY MOMENT. BECAUSE HE HAS THE PRESUMPTION OF INNOCENCE
11 AND BECAUSE HE DID NOT BEAR THE BURDEN. BUT THE PEOPLE
12 BEAR THE BURDEN TO PROVE THAT EACH AND EVERY ONE OF YOU
13 (SIC) -- EACH AND EVERY ELEMENT OF EACH AND EVERY CHARGE
14 BEYOND A REASONABLE DOUBT. BECAUSE OF THAT, YOU HAVE THE
15 RESPONSIBILITY, YOU HAVE THE JOB TO GO THROUGH
16 EVERYTHING, TO SEE IF SHE'S DONE HER JOB.

17 NOW, IT WOULD HAVE BEEN NICE -- IT WOULD
18 HAVE BEEN SO NICE IF WE HAD A MEDICAL EXAMINATION. IT
19 WOULD HAVE BEEN SO NICE IF WE HAD SOME KIND OF MEDICAL
20 FINDINGS IN THIS CASE TO HELP SHED SOME LIGHT ON WHAT
21 HAPPENED.

22 IT WOULD BE NICE BECAUSE THE MEDICAL
23 FINDINGS -- WE WOULD NOT HAVE TO KIND OF SIFT THROUGH
24 THOSE TO SEE IF THOSE ARE TELLING THE TRUTH OR IF THOSE
25 ARE LYING. THOSE WOULD HAVE BEEN CONCRETE.

26 UNFORTUNATELY, WE DON'T HAVE THOSE. NOW,
27 WHEN DETECTIVE LOPEZ WAS QUESTIONED, "WHY DIDN'T YOU DO
28 ANY MEDICAL FINDINGS?" HE KIND OF GAVE ME THE RUNAROUND.

1 "WELL," HE SAID, "THERE'S A 72-HOUR RULE.
2 AND, YOU KNOW, I DON'T ORDER THEM IF IT'S BEYOND 72 HOURS
3 BECAUSE I DON'T BELIEVE THAT THEY'RE GOING TO YIELD
4 SIGNIFICANT RESULTS."

5 WELL, THEN WHY DID YOU SCHEDULE THE
6 INTERVIEW FOR NINE DAYS LATER?

7 WHY WOULD YOU DO THAT?

8 WE KNOW THAT THESE MEDICAL EXAMINATIONS CAN
9 BE DONE ANY TIME AT THESE HOSPITALS.

10 SO THEN WHY WOULD YOU WAIT UNTIL YOU BELIEVE
11 THAT THERE MAY NOT BE ANY PHYSICAL EVIDENCE?

12 WHY?

13 UNLESS YOU DID NOT BELIEVE THAT A PHYSICAL
14 EXAMINATION WOULD YIELD ANY EVIDENCE BASED UPON WHAT YOU
15 HEARD IN THOSE PARTICULAR INTERVIEWS AND WHAT YOU KNEW
16 ABOUT THE CASE.

17 EVEN AFTER BREANNA HAD HER INTERVIEW, THE
18 TEAM MET -- THAT TEAM INCLUDED DETECTIVE LOPEZ AND, THEY
19 SAID, I THINK -- MISS SCHULTZ SAID, I THINK, THAT MAYBE
20 SHE SHOULD HAVE A MEDICAL EXAMINATION DONE.

21 IT COULD HAVE BEEN CONDUCTED RIGHT DOWN THE
22 HALL, RIGHT THEN. WE COULD HAVE GOT TO THE BOTTOM OF
23 THIS. NO MEDICAL EXAMINATION AT ALL.

24 NOW, IT'S FUNNY HOW DETECTIVE LOPEZ SAID
25 THAT THERE'S THIS 72-HOUR RULE, BUT THEN, WHEN
26 MISS SCHULTZ WAS QUESTIONED, SHE SAID THAT SHE'S SEEN
27 MEDICAL EXAMINATIONS ORDERED FOR KIDS WHO DISCLOSE ABOUT
28 A -- LESS ABUSE THAT HAPPENED DAYS, WEEKS, MONTHS, EVEN

1 YEARS PRIOR.

2 WHY WOULD ANYONE ORDER A MEDICAL EVALUATION
3 YEARS AFTER THE ALLEGED INCIDENT IF THEY DIDN'T THINK
4 THEY COULD FIND ANYTHING?

5 WHY?

6 BECAUSE THEY KNOW THAT, IF YOU DO A MEDICAL
7 EXAMINATION, YOU CAN STILL FIND EVIDENCE THAT SOMETHING
8 HAS OCCURRED.

9 DETECTIVE LOPEZ SAYS, "WELL, I WILL ONLY
10 ORDER THEM AFTER THE 72 HOURS IF THERE WAS SOMETHING THAT
11 I BELIEVE HAPPENED."

12 AND YOU HAVE HIS TESTIMONY. YOU CAN ASK FOR
13 IT BACK.

14 HE SAID, "I'LL ORDER IT AFTER 72 HOURS IF I
15 BELIEVE SOMETHING HAPPENED."

16 BUT, AFTER THE INTERVIEWS, EVEN THOUGH THE
17 TEAM SAID, "MAYBE WE SHOULD HAVE ONE," HE NEVER ORDERED
18 ONE. HE NEVER ORDERED ONE, DESPITE THE FACT THAT HE SAID
19 THAT HE HAS DONE SO IN THE PAST IF HE BELIEVED SOMETHING
20 HAPPENED.

21 WE ALSO FOUND OUT FROM MISS SCHULTZ THAT NOT
22 ONLY DOES LAW ENFORCEMENT -- IS IT THEIR RESPONSIBILITY
23 TO MAKE THE REQUEST FOR THE MEDICAL EXAMINATION, BUT SHE
24 ALSO SAID THAT THE PARENTS -- THAT THEY HAVE A SAY-SO IN
25 WHETHER OR NOT A MEDICAL EXAMINATION IS GOING TO BE DONE.
26 YET, NO MEDICAL EXAMINATION DONE IN THIS CASE.

27 NOW, THE D.A. MENTIONED SOMETHING ABOUT,
28 WELL , MR. ROSS HAD -- HE WAS -- HAD A -- HE WAS VESTED

1 IN BREANNA. AND THERE WAS A SECRET THERE, AND HE DIDN'T
2 WANT THE SECRET TO GET OUT WITH BREANNA.

3 HE DIDN'T WANT THE SECRET TO GET OUT WITH
4 HANNAH.

5 AND HE TOLD HANNAH, YOU KNOW, "WHEN YOU USE
6 THE PHONE, LIKE, MAKE SURE YOU TELL EVERYONE THAT I GOT
7 HURT."

8 WHAT SENSE DOES THAT MAKE?

9 YOU'RE GOING TO GIVE HER THE PHONE AND SAY,
10 "MAKE SURE YOU TELL EVERYONE THAT I HURT MY ANKLE"?

11 WHY?

12 IF YOU HAD REALLY JUST MOLESTED A CHILD, WHY
13 WOULD YOU GIVE THEM THE PHONE?

14 WHY WOULD YOU DIAL THE NUMBER AND LET THEM
15 MAKE A PHONE CALL TO A PARENT, KNOWING THAT THAT'S WHO
16 THEY'RE GETTING READY TO CALL?

17 AND WHEN SHE SAYS, "CAN I HAVE SOME
18 PRIVACY?" WHY WOULD YOU GIVE HER THAT PRIVACY?

19 WHY, IF YOU KNEW THAT THIS WAS JUST GOING
20 ON, IF YOU KNEW THAT YOU HAD JUST TOUCHED HER, YOU HAD
21 JUST CHASED HER, YOU JUST GRABBED HER BY THE ARM TO BRING
22 HER BACK IN THE HOUSE?

23 AND SHE SAYS, "CAN I MAKE A PHONE CALL? I
24 WANT TO CALL MY MOM. I WANT TO CALL MY DAD."

25 YOU'RE GOING TO SAY, "OH, OKAY, LET ME DIAL
26 THE NUMBER FOR YOU," IF THAT HAD JUST HAPPENED?

27 AND SHE SAID, "WELL, CAN I TALK IN PRIVATE?"

28 "SURE. I'LL GIVE YOU ALL THE PRIVACY YOU

1 NEED."

2 HANNAH SAID THAT SHE BELIEVED THAT MR. ROSS
3 HEARD WHAT SHE WAS SAYING TO ALLAN.

4 IF THAT'S THE CASE, IF YOU HAD DONE
5 SOMETHING WRONG, WHY WOULDN'T YOU LEAVE?

6 WHAT'S STOPPING HIM FROM GETTING INTO A CAR
7 AND LEAVING THE SCENE, KNOWING THAT SHE JUST ACCUSED HIM
8 OF TOUCHING HER?

9 WHY WOULD HE STAY AT THE SCENE, WAITING FOR
10 THEM TO COME OVER, IF IT HAPPENED?

11 HE HAD PLENTY OF TIME TO GET AWAY, BUT HE
12 DIDN'T. HE STAYED AT THE HOUSE. AND THAT'S VERY
13 TELLING. HE STAYED THERE.

14 WHEN HE STAYED THERE, WE HEARD FROM THE
15 DEPUTY NICKLO THAT HE SPOKE WITH HIM. HE WAS
16 COOPERATIVE. HE WAS IN A LITTLE PAIN, BUT HE WAS
17 COOPERATIVE. AND HE WASN'T ARRESTED THAT DAY. HE WASN'T
18 ARRESTED ON MAY 21ST, 2012.

19 THE FORENSIC INTERVIEWS WERE DONE NINE DAYS
20 LATER. HE WASN'T ARRESTED THEN, EITHER. HE WASN'T IN
21 HIDING. HE DIDN'T FLEE. HE STUCK AROUND. HE STUCK
22 AROUND.

23 AND HE KEPT LIVING WITH TAMI, WHO SUPPORTED
24 HIM, WHO BELIEVED HIM. TAMI DIDN'T START CHANGING HER
25 STORY UNTIL SHE STARTED REALIZING REAL QUICK THAT HER
26 SUPPORT OF MR. ROSS MAY CAUSE HER TO LOSE HER DAUGHTER.
27 CPS FOUND THAT SHE WAS SUPPORTIVE OF MR. ROSS. MELISSA
28 KNEW THAT SHE WAS SUPPORTIVE OF MR. ROSS AND DID NOT LIKE

1 IT. AND THERE WAS DISCUSSION ABOUT MAYBE ALLAN AND
2 MELISSA GETTING FULL CUSTODY OF BREANNA BECAUSE OF THIS.

3 IT'S THE ULTIMATE PRIZE. THE ULTIMATE GOAL.
4 NOW, THERE WAS TALK ABOUT SOME DIFFERENT
5 SEXUAL THINGS.

6 AND THE PROSECUTION SAID, "WELL, HOW WOULD A
7 CHILD KNOW ABOUT THESE THINGS?"

8 WELL, EVEN THOUGH BREANNA SAID, "I NEVER
9 WENT THROUGH MY MOMMY'S DRAWERS. I ONLY WENT IN THERE TO
10 PLAY DRESS-UP OR TO WATCH T.V.," WE THEN LEARNED THAT SHE
11 KNEW ABOUT DIFFERENT ITEMS THAT WERE IN THE NIGHTSTAND.
12 SHE KNEW ABOUT GUNS THAT WERE IN THE NIGHTSTANDS AND
13 CLEANING SUPPLIES AND CELL PHONES AND VARIOUS THINGS.

14 SHE KNOWS BECAUSE SHE'S BEEN RUMMAGING
15 THROUGH THOSE DRAWERS. AND THAT'S WHAT KIDS DO. THEY'RE
16 NOSEY. THEY RUMMAGE. THEY GO THROUGH STUFF. AND THE
17 MORE YOU TELL THEM "DON'T GO IN," THE MORE TEMPTING IT
18 LOOKS AND THE MORE THEY'RE GUARANTEED TO GO INSIDE AND AT
19 LEAST TAKE A LITTLE PEEK.

20 SHE'S BEEN IN THE NIGHTSTAND. SHE'S BEEN IN
21 THAT ROOM, AND SHE KNOWS THE THINGS THAT ARE GOING ON.
22 SHE ADMITTED THAT ON MAY 21ST, 2012, THAT MR. ROSS WAS
23 DOWNSTAIRS ON THE COMPUTER AND THAT SHE WAS PEEKING TO
24 SEE WHAT HE WAS LOOKING AT. AND THAT'S WHEN SHE NOTICED
25 THAT, ON THE COMPUTER SCREEN, SHE SAW A MAN AND A WOMAN
26 ENGAGED IN ADULT ACTIVITY.

27 IT'S BECAUSE SHE WAS PEEKING. THAT'S WHY
28 SHE'S BEEN EXPOSED TO SOME OF THESE THINGS. THAT AND THE

1 FACT THAT SHE ADMITTED THAT SHE WALKED IN ON HER MOM AND
2 MR. ROSS. SHE WALKED IN ON THEM. SO SHE'S SEEN THIS
3 ACTIVITY.

4 AND I SUBMIT TO YOU THAT, ONCE A CHILD WALKS
5 IN ON THEIR PARENTS -- I DON'T CARE HOW YOUNG YOU ARE --
6 YOU ARE NEVER GOING TO FORGET THAT. YOU WILL BE AN
7 ADULT, AND THAT WILL BE TATTOOED IN YOUR MIND.

8 EVERYONE IN THAT FAMILY WAS TALKING. WE
9 KNOW THAT BECAUSE THEY EACH KNEW A LITTLE BIT OF
10 SOMETHING THAT THEY WOULD NOT HAVE KNOWN IF THERE WAS NO
11 DISCUSSION. WE KNOW THAT THEY WERE TALKING. WE KNOW
12 THAT THEY WERE DISCUSSING THESE THINGS.

13 WHEN A PARENT QUESTIONS THEIR CHILD ABOUT AN
14 INCIDENT AND THEY SAY, "DID SOMETHING HAPPEN? TELL ME
15 WHAT HAPPENED," WHO'S GOING TO STOP AND SAY, "STOP, YOU
16 TOLD ME TOO MUCH. YOU TOLD ME TOO MUCH, AND I DON'T WANT
17 TO KNOW."

18 AND KIDS TALK. THEY TALK TO EACH OTHER.
19 THEY TALK AMONGST THEMSELVES. EVEN IF YOU TELL THEM,
20 "DON'T SAY ANYTHING," THEY TELL EVERYBODY. THAT IS THE
21 NATURE OF BEING A CHILD.

22 SO TO THINK THAT YOU HAVE THESE PEOPLE --
23 YOU HAVE HANNAH AND BREANNA AND ALLAN AND MELISSA, AND
24 THIS ALLEGED CONDUCT HAPPENED. AND YOU HAVE TAMI, AND
25 THIS ALLEGED CONDUCT HAPPENED. AND TO THINK THAT THERE
26 WAS NO DISCUSSION, I SUBMIT TO YOU THAT THAT IS NOT TRUE.

27 AS I'VE MENTIONED, RICHARD ERIC ROSS -- HE
28 SITS BEFORE YOU WITH THE PRESUMPTION OF INNOCENCE. HE'S

1 NOT JUST A CASE NUMBER. HE'S NOT JUST A TRIAL. THIS IS
2 A MAN WHO IS CHARGED WITH SOME VERY SERIOUS OFFENSES.

3 AND IT IS UP TO YOU, AGAIN, TO DECIDE IF HE
4 WILL BE CONVICTED OF THOSE OFFENSES. IT IS UP TO YOU TO
5 DECIDE IF THE D.A. HAS PROVEN THEIR CASE BEYOND A
6 REASONABLE DOUBT.

7 NOW, IF YOU'RE THINKING "MAYBE HE DID
8 SOMETHING," THAT'S NOT GUILTY. IF YOU'RE THINKING "HE
9 PROBABLY DID SOMETHING," THAT'S NOT GUILTY. IF YOU'RE
10 THINKING "MAYBE HE DID A LITTLE SOMETHING," THAT'S NOT
11 GUILTY. IF YOU'RE THINKING "MORE LIKELY THAN NOT," THAT
12 IS STILL NOT GUILTY.

13 YOU HAVE TO BE CONVINCED BEYOND A REASONABLE
14 DOUBT. AND THAT IS PROOF THAT LEAVES YOU WITH AN ABIDING
15 CONVICTION THAT THE CHARGE IS TRUE. YOU HAVE TO KNOW IT
16 HERE (INDICATING). YOU HAVE TO KNOW IT. AND YOU HAVE TO
17 BE CONVINCED WHEN YOU RENDER YOUR DECISION BECAUSE YOU
18 ONLY GET ONE BITE AT THE APPLE. AND ONCE YOU'VE DECIDED,
19 THAT'S IT.

20 SO I ASK, WHEN YOU THINK ABOUT THE EVIDENCE
21 AND YOU WEIGH IT AND YOU THINK ABOUT EVERYTHING THAT WAS
22 SAID HERE AND YOU THINK ABOUT HOW THOSE WITNESSES
23 TESTIFIED AND HOW THEIR Demeanor WAS AND HOW IT WAS ON
24 THAT T.V. SCREEN AND WHEN THE GIRLS -- WHEN THEY WERE
25 PROBED AND ASKED MORE QUESTIONS AND THEY LOOKED UP IN THE
26 SKY, AS IF THEY WERE LOOKING FOR ANSWERS, I'M ASKING YOU
27 LOOK AT THAT, CONSIDER THAT IN DETERMINING WHETHER OR NOT
28 SHE'S PROVEN THAT HE'S GUILTY.

1 AND IF YOU DON'T THINK SHE'S DONE HER JOB,
2 I'M ASKING THAT YOU FIND HIM NOT GUILTY, NOT GUILTY OF
3 EVERYTHING.

4 THANK YOU.

5 THE COURT: PEOPLE'S CLOSING ARGUMENT.

6 MS. DI TILLIO: THANK YOU, YOUR HONOR.

7 SO THE JUDGE MENTIONED TO YOU SEVERAL TIMES
8 THAT, NO MATTER WHAT WE SAY -- YOU KNOW, WE'RE LAWYERS.
9 WE LIKE TO TALK.

10 RIGHT?

11 THE WORDS THAT COME OUT OF OUR MOUTHS ARE
12 NOT EVIDENCE. WE CAN ARGUE. WE CAN TELL YOU WHAT WE
13 FEEL, BUT, IF THERE'S A DIFFERENCE BETWEEN WHAT YOU
14 BELIEVE THE EVIDENCE TO HAVE BEEN -- BECAUSE, ULTIMATELY,
15 YOU DECIDE WHAT THE FACTS ARE IN THIS CASE -- YOU GO WITH
16 WHAT YOU KNOW THE FACTS TO BE, NOT WHAT WE ARGUE, JUST
17 BECAUSE THAT'S AN ARGUMENT WE MADE TO YOU.

18 RIGHT?

19 BUT THERE ARE SOME THINGS THAT HAVE BEEN
20 ARGUED THAT I THINK NEED SOME CLARIFICATION. BECAUSE YOU
21 CAN'T JUST SAY, "DESPITE WHAT THE WITNESS SAID, WE KNOW
22 IT'S NOT TRUE."

23 WE CAN'T SAY TO YOU, "JURORS, YOU KNOW WHAT?
24 FORGET IT ALL. FORGET EVERYTHING YOU SAW AND HEARD AND
25 ALL THE WITNESSES' TESTIMONY. AND, YOU KNOW, WE ALL KNOW
26 THAT'S NOT TRUE."

27 HOW DO WE KNOW THAT?

28 THERE'S ABSOLUTELY NOTHING THAT REFUTED WHAT

1 THEY SAID. WHEN THEY SAID THEY DIDN'T HAVE AN AX TO
2 GRIND AGAINST THE DEFENDANT, THAT'S THE TRUTH. OF
3 COURSE, YOU JUDGE THEIR CREDIBILITY. BUT LOOK AT WHAT
4 THEY SAID. LOOK AT HOW THEY SAID IT. THINK ABOUT THE
5 CONTEXT OF IT.

6 THEY DIDN'T SAY, "YEAH, WE HATE HIM NOW
7 BECAUSE WE KNOW WHAT HE DID TO THE CHILDREN."

8 THEY JUST SAID, "LOOK, WE DIDN'T HAVE AN AX
9 TO GRIND WITH HIM. WE DIDN'T HAVE A PROBLEM WITH HIM.
10 WE MAY NOT HAVE LIKED HIM AND GONE ON FISHING TRIPS WITH
11 HIM, BUT THAT DOESN'T MEAN WE'RE GOING TO SET HIM UP TO
12 BE CONVICTED OF MOLESTING TWO LITTLE CHILDREN BECAUSE
13 THAT'S THE ULTIMATE GOAL."

14 I NEVER HEARD THAT. I NEVER HEARD THAT IN
15 THIS TRIAL, THAT THE ULTIMATE GOAL IS TO BURY THE
16 DEFENDANT UNDER THESE CHARGES. THAT'S PURE SPECULATION.

17 I MEAN, THAT MEETS ON ALL FOURS THE
18 DEFINITION OF ASKING YOU TO SPECULATE ABOUT SOMETHING
19 THAT DID NOT COME INTO THIS COURTROOM AS EVIDENCE.

20 EVERY SINGLE PERSON WHO TOOK THE STAND LIED?

21 EVERY PERSON THAT'S INVOLVED IN THIS CASE?

22 THE FAMILY LIED TO YOU ABOUT WHAT THEIR REAL
23 ULTERIOR MOTIVES WERE?

24 AND THEY KEPT UP THIS FACADE WITH THE POLICE
25 INVESTIGATION, WITH THE FORENSIC INTERVIEWS, WITH
26 TESTIMONY IN COURT IN FRONT OF YOU, UNDER
27 CROSS-EXAMINATION?

28 ALLAN NEVER SAID HANNAH LIES TO GET OUT OF

1 TROUBLE. HE WAS ASKED THAT QUESTION.

2 HE SAID, "I DON'T KNOW THAT SHE DOES THAT."

3 HE NEVER SAID, "YES, THAT'S WHAT SHE DOES."

4 IT'S IMPORTANT. IT'S IMPORTANT TO KEEP IN

5 MIND WHAT WAS ACTUALLY SAID AND WHAT THE WITNESSES

6 ACTUALLY TESTIFIED TO, RATHER THAN WHAT WE MAY WANT TO

7 HAVE HEARD THEM SAY.

8 WHEN ALLAN AND TAMI SPLIT AND THE DEFENDANT

9 WAS IN THE PICTURE RIGHT AWAY -- AND ALLAN MIGHT HAVE

10 WANTED SOME PAYBACK -- WELL, STRIKE WHEN THE IRON IS HOT.

11 RIGHT?

12 IF THIS WAS SUCH A BIG DEAL THAT SHE MOVED

13 IN WITH THE DEFENDANT AND THAT SHE WAS SPLITTING UP THEIR

14 HOUSEHOLD, WOULDN'T HE HAVE DONE SOMETHING THEN?

15 WOULDN'T HE HAVE DONE SOMETHING THE LAST

16 FIVE YEARS THAT HAVE GONE BY?

17 I MEAN, CERTAINLY, HE WOULD HAVE HAD A LOT

18 MORE TO SAY WHEN THE CHILD IS PRACTICALLY A BABY, AND THE

19 HOUSEHOLD IS BEING SPLIT UP.

20 BUT TO SAY THAT THAT FESTERED FOR FIVE

21 YEARS, THROUGH REPEATED E-MAILS AND SIT-DOWNS AND FAMILY

22 OCCASIONS AND BIRTHDAYS AND OTHER THINGS, THAT JUST

23 FESTERED AND FESTERED AND FESTERED, AND, ALL OF A SUDDEN,

24 THIS IS THE BEST THING THAT ALLAN COULD COME UP WITH, IS

25 TO DRAG THESE CHILDREN THROUGH THE ALLEGATIONS OF MOLEST?

26 THAT'S PURE SPECULATION. AND IT HAS NO PART

27 IN YOUR DECISION BECAUSE THERE'S ZERO EVIDENCE TO SUPPORT

28 THAT CONTENTION, ZERO, NOTHING, NOT A SHRED, EXCEPT IF

1 YOU GO BACK IN THERE AND SAY, "YEAH, I KNOW THEY ALL SAID
2 EVERYBODY GOT ALONG FINE, BUT WE DON'T BELIEVE ONE OF
3 THEM. WE DON'T BELIEVE ANY OF THEM."

4 CERTAINLY, THIS FAMILY'S NUMBER ONE GOAL WAS
5 NOT GET THE DEFENDANT OUT OF THE PICTURE BECAUSE THERE
6 WERE A MYRIAD OF OTHER WAYS TO HAVE DONE IT, FIVE YEARS
7 TO HAVE DONE IT.

8 THEIR GOAL, CLEARLY, IF YOU LOOK AT WHAT
9 THEY DID, WAS TO CARE FOR THEIR DAUGHTERS. THEY MOVED
10 CLOSER TOGETHER. THEY PUT THEM IN THE SAME SCHOOL. THEY
11 COPARENTED. THEY GOT ALONG BECAUSE THEY HAD TO. THEY
12 HAVE THESE CHILDREN. THAT WAS THEIR GOAL, WAS TO HAVE A
13 FAMILY AND A SAFE FAMILY. NOT TO DESTROY THE DEFENDANT.

14 THERE WERE A COUPLE OF OTHER THINGS THAT
15 WERE SAID THAT I THINK WARRANT SOME CLARIFICATION.

16 KARINA NEVER SAID THE DEFENDANT TOUCHED HER.

17 SHE DIDN'T SAY, "OH, YEAH, YEAH, YEAH, HE
18 TOUCHED ME, TOO."

19 SHE DIDN'T SAY THAT.

20 SHE SAID SHE FELT REALLY BADLY THAT SHE HAD
21 NOT SAID SOMETHING BEFORE BECAUSE MAYBE THIS WOULDN'T
22 HAVE HAPPENED. THAT'S WHAT SHE SAID.

23 SHE SAID, "I NEVER TOLD, AND I FELT BAD.
24 AND THAT'S WHY I FINALLY TOLD MY MOM, ONCE I HEARD WHAT
25 HAPPENED TO HANNAH AND BREANNA.

26 NOW, IF THIS IS ONE BIG WITCH HUNT, WELL,
27 LIKE I SAID EARLIER, LAY IT ON THICK.

28 "OH, YEAH, HE TOUCHED ME. HE DID THIS. HE

1 DID THAT. HE DID ALL OF THESE THINGS TO ME."

2 SHE DIDN'T SAY THAT.

3 SHE SAID, "YOU KNOW WHAT? I WASN'T OVER
4 THERE THAT OFTEN. I DIDN'T KNOW HIM THAT WELL, BUT ONE
5 TIME HE EXPOSED HIMSELF TO ME, WANTED ME TO" -- YOU KNOW,
6 "SAID, 'YOU CAN TOUCH IT IF YOU WANT TO.'"

7 AN INVITATION, STARTED OFF SMALL.

8 STARTED OFF SMALL WITH BREANNA AND HANNAH,
9 TOO. HE TESTED THE WATER. HE PUT HIS TOES IN THE WATER
10 WITH HANNAH. HE TOUCHED HER DOWNSTAIRS, AND SHE DIDN'T
11 RUN OUT OF THE HOUSE SCREAMING. SHE STAYED. SHE WENT
12 UPSTAIRS.

13 HE HAD THE OPPORTUNITY TO TOUCH HER AGAIN
14 BECAUSE HE HAD PUT HIS TOE IN THE WATER. AND SHE DIDN'T
15 REACT. SHE DIDN'T CALL HIM OUT ON IT. SHE DIDN'T YELL,
16 SCREAM, RUN AWAY AT THAT TIME.

17 SO HE KEPT GOING. HE WENT A LITTLE FURTHER.
18 HE WENT A LITTLE FURTHER, ULTIMATELY TO THE POINT WHERE
19 HE PUT HIS FINGER IN HER.

20 AND HAVING THE MEDICAL EXAM, THE DETECTIVE
21 TOLD YOU -- EVEN CHRISTINA SCHULTZ TOLD YOU -- THAT'S NOT
22 WHAT GETS TO THE BOTTOM OF ANYTHING. YOU DO. IT MAY OR
23 MAY NOT HAVE SHOWN ANYTHING AT ALL.

24 CERTAINLY, AN ORAL COPULATION THAT HAPPENED
25 IN ANOTHER HOUSE YEARS AGO -- THERE WOULD BE EVIDENCE OF
26 THAT?

27 ABSOLUTELY NOT.

28 BUT THAT'S, AGAIN, AN INVITATION TO

1 SPECULATE, "WELL, WHAT WOULD THAT HAVE SHOWN?"

2 WELL YOU DON'T KNOW. WE DON'T KNOW. AND IT
3 DIDN'T HAPPEN. SO YOU HAVE TO SEPARATE THAT OUT AND
4 DECIDE, BASED ON WHAT WE HAVE, WHAT HAPPENED.

5 AND JUST BECAUSE SOMEONE SAYS SOMETHING,
6 IT'S NOT ENOUGH. IT'S NOT ENOUGH FOR SOMEONE TO SAY THAT
7 IT HAPPENED.

8 ACTUALLY, IT IS. THE TESTIMONY OF ONLY ONE
9 WITNESS CAN PROVE ANY FACT. YOU SHOULD CAREFULLY REVIEW
10 THE EVIDENCE.

11 YOU DECIDE, DID A WITNESS PROVE A FACT?

12 AND IF YOU BELIEVE THAT WITNESS, YES, THE
13 WORD OF ONE WITNESS IS ENOUGH. THE LAW ALLOWS FOR THAT.

14 THESE ARE THE THINGS -- THESE ARE THE CRIMES
15 THAT HAPPEN IN SECRET. THERE ARE VERY RARELY EVER ANY
16 WITNESSES -- NOT BY ACCIDENT. IT'S BY DESIGN.

17 "WHEN DO THESE TOUCHINGS HAPPEN TO YOU,
18 BREANNA?"

19 "WHEN MY MOTHER WASN'T HOME."

20 "WHEN DID IT HAPPEN TO HANNAH?"

21 "WHEN THERE WAS NO OTHER ADULT TO KEEP HER
22 SAFE."

23 IT'S BY DESIGN. SO YOU HAVE THE WORD OF
24 CHILDREN THAT'S WHAT HAPPENED TO THEM. THAT'S THEIR
25 STORY. AND THERE'S MORE THAN SUFFICIENT EVIDENCE TO
26 CONVICT THE DEFENDANT IN THIS CASE.

27 YOU HEARD ABOUT BREANNA PEEKING OVER THE
28 RAILING -- WHICH, ACTUALLY, WAS NOT BREANNA. IT WAS

1 HANNAH. AND SHE WASN'T PEEKING.

2 SHE SAID SHE LOOKED BACK TO SEE WHAT THE
3 DEFENDANT WAS DOING WHEN SHE WENT UPSTAIRS, AND SHE SAW
4 HIM ON HIS COMPUTER.

5 YOU HEARD THAT BREANNA WALKED IN ON TAMI AND
6 THE DEFENDANT. THAT NEVER HAPPENED. SHE NEVER TESTIFIED
7 TO THAT. THAT IS NOT AT ALL WHAT SHE SAID.

8 AND IT'S VERY IMPORTANT THAT YOU KEEP THAT
9 CLEAR BECAUSE THAT'S THE IDEA THAT SOMEBODY -- THEY SAW
10 SOMETHING. THEY HEARD SOMETHING. SOMEONE SUGGESTED TO
11 THEM THIS HAPPENED TO THEM AT THE HANDS OF THE DEFENDANT.
12 IT'S NOT THE CASE.

13 THEY TOLD YOU IT HAPPENED TO THEM AT THE
14 HANDS OF THE DEFENDANT BECAUSE IT DID. AND YOU NEED TO
15 FIND HIM GUILTY OF THE CHARGES.

16 THANK YOU.

17 THE COURT: I HAVE A FEW MORE JURY INSTRUCTIONS TO
18 READ TO YOU. I'M GOING TO DEFINE THE LESSER-INCLUDED
19 OFFENSES OF ASSAULT AND BATTERY.

20 THE DEFENDANT IS CHARGED AS A LESSER OFFENSE
21 WITH ASSAULT.

22 TO PROVE THE DEFENDANT IS GUILTY OF THIS
23 CRIME, THE PEOPLE MUST PROVE THAT:

24 THE DEFENDANT DID AN ACT WHICH, BY ITS
25 NATURE, WOULD DIRECTLY AND PROBABLY RESULT IN THE
26 APPLICATION OF FORCE TO A PERSON;

27 THE DEFENDANT DID THAT ACT WILLFULLY;
28 WHEN THE DEFENDANT ACTED, HE WAS AWARE OF

1 FACTS THAT WOULD LEAD A REASONABLE PERSON TO REALIZE
2 THAT, BY HIS ACT --

3 LET ME START THAT AGAIN.

4 WHEN THE DEFENDANT ACTED, HE WAS AWARE OF
5 FACTS THAT WOULD LEAD A REASONABLE PERSON TO REALIZE THAT
6 HIS ACT, BY ITS NATURE, WOULD DIRECTLY AND PROBABLY
7 RESULT IN THE APPLICATION OF FORCE TO SOMEONE.

8 SOMEONE COMMITS AN ACT WILLFULLY WHEN HE OR
9 SHE DOES IT WILLINGLY OR ON PURPOSE. IT IS NOT REQUIRED
10 THAT HE OR SHE INTEND TO BREAK THE LAW, HURT SOMEONE
11 ELSE, OR GAIN ANY ADVANTAGE.

12 THE TERMS *APPLICATION OF FORCE* AND *APPLIED*
13 *FORCE* MEAN TO TOUCH IN A HARMFUL OR OFFENSIVE MANNER.
14 THE SLIGHTEST TOUCHING CAN BE ENOUGH IF IT IS DONE IN A
15 RUDE OR ANGRY WAY.

16 MAKING CONTACT WITH ANOTHER PERSON,
17 INCLUDING THROUGH HIS OR HER CLOTHING, IS ENOUGH. THE
18 TOUCHING DOES NOT HAVE TO CAUSE PAIN OR INJURY OF ANY
19 KIND.

20 THE PEOPLE ARE NOT REQUIRED TO PROVE THE
21 DEFENDANT ACTUALLY INTENDED TO USE FORCE AGAINST SOMEONE
22 WHEN HE ACTED.

23 NO ONE NEEDS TO ACTUALLY HAVE BEEN INJURED
24 BY THE DEFENDANT'S ACT, BUT, IF SOMEONE WAS INJURED, YOU
25 MAY CONSIDER THAT FACT, ALONG WITH ALL THE OTHER
26 EVIDENCE, IN DECIDING WHETHER THE DEFENDANT COMMITTED AN
27 ASSAULT.

28 THE DEFENDANT IS CHARGED WITH BATTERY AS A

1 LESSER-INCLUDED OFFENSE.

2 TO PROVE THAT THE DEFENDANT IS GUILTY OF
3 THIS CRIME, THE PEOPLE MUST PROVE THAT:

4 THE DEFENDANT WILLFULLY AND UNLAWFULLY
5 TOUCHED THE CHILD IN A HARMFUL OR OFFENSIVE MANNER.

6 SOMEONE COMMITS AN ACT WILLFULLY WHEN HE OR
7 SHE DOES IT WILLINGLY OR ON PURPOSE. IT IS NOT REQUIRED
8 THAT HE OR SHE INTEND TO BREAK THE LAW, HURT SOMEONE
9 ELSE, OR GAIN ANY ADVANTAGE.

10 THE SLIGHTEST TOUCHING CAN BE ENOUGH TO
11 COMMIT A BATTERY IF IT IS DONE IN A RUDE OR ANGRY WAY.
12 MAKING CONTACT WITH ANOTHER PERSON, INCLUDING THROUGH HIS
13 OR HER CLOTHING, IS ENOUGH. THE TOUCHING DOES NOT HAVE
14 TO CAUSE PAIN OR INJURY OF ANY KIND.

15 WHEN YOU GO TO THE JURY ROOM, THE FIRST
16 THING YOU SHOULD DO IS CHOOSE A FOREPERSON. THE
17 FOREPERSON SHOULD SEE TO IT THAT YOUR DISCUSSIONS ARE
18 CARRIED ON IN AN ORGANIZED WAY AND THAT EVERYONE HAS A
19 FAIR CHANCE TO BE HEARD.

20 IT IS YOUR DUTY TO TALK WITH ONE ANOTHER AND
21 TO DELIBERATE IN THE JURY ROOM. YOU SHOULD TRY TO AGREE
22 ON A VERDICT, IF YOU CAN.

23 EACH OF YOU MUST DECIDE THE CASE FOR
24 YOURSELF BUT ONLY AFTER YOU HAVE DISCUSSED THE EVIDENCE
25 WITH THE OTHER JURORS. DO NOT HESITATE TO CHANGE YOUR
26 MIND IF YOU BECOME CONVINCED THAT YOU ARE WRONG BUT DO
27 NOT CHANGE YOUR MIND JUST BECAUSE OTHER JURORS DISAGREE
28 WITH YOU.

1 I AM GOING TO SHOW YOU THE VERDICT FORMS.

2 ALL RIGHT. THIS IS A VERDICT FORM.

3 EIGHTEEN COUNTS. THERE ARE 18 SETS OF VERDICT FORMS.

4 WHEN YOU HAVE REACHED A VERDICT, YOUR
5 FOREPERSON WILL DATE IT AND PUT THEIR SEAT NUMBER HERE.

6 I DON'T WANT YOUR NAME. I WANT YOUR SEAT NUMBER.

7 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.

8 AND THE REASON WE WANT YOUR SEAT NUMBER IS
9 ALL OF THIS IS PUBLIC RECORD. WE DON'T WANT YOUR NAME.
10 WHEN THIS CASE IS CONCLUDED, YOUR NAMES ARE DELETED FROM
11 ANY PUBLIC RECORD. SO WE JUST WANT YOUR SEAT NUMBER.

12 SO YOU ARE TO DETERMINE WHETHER HE IS GUILTY
13 OR NOT GUILTY OF THE CRIME AND FILL IT IN. DATE IT AND
14 SIGN.

15 NOW, I'VE INDICATED THAT THERE ARE SETS OF
16 VERDICT FORMS FOR CERTAIN COUNTS. AND THERE ARE SETS OF
17 VERDICT FORMS FOR CERTAIN COUNTS BECAUSE SOME OF THESE
18 COUNTS INCLUDE LESSER-INCLUDED OFFENSES.

19 THE JURY INSTRUCTION FOR THE LESSER-INCLUDED
20 OFFENSES IS AN INSTRUCTION THAT I'VE JUST READ TO YOU.
21 IT'S 3518. AND YOU'LL HAVE THIS JURY INSTRUCTION IN THE
22 JURY ROOM WHEN YOU DELIBERATE.

23 THERE'S A GREATER OFFENSE FOR SOME OF THESE
24 COUNTS, AND THERE ARE LESSER-INCLUDED OFFENSES FOR SOME
25 OF THESE COUNTS. JURY INSTRUCTION 3518 TELLS YOU HOW YOU
26 ARE TO HANDLE LESSER-INCLUDED OFFENSES. IT'S JURY
27 INSTRUCTION 3518.

28 FOR EXAMPLE, LET'S TAKE -- FOR EXAMPLE, I'LL

1 PICK A COUNT. THIS IS COUNT 1.

2 COUNT 1 DEALS WITH THE CHARGE THAT DEFENDANT
3 COMMITTED THE CRIME OF SEXUAL PENETRATION WITH A CHILD 10
4 YEARS OR YOUNGER, AS CHARGED IN COUNT 1, THAT IS,
5 DEFENDANT'S FINGER WITH THE CHILD'S VAGINA IN THE MASTER
6 BEDROOM. THE VICTIM, HANNAH C.

7 YOU WILL NOTE THERE ARE FOUR VERDICT FORMS
8 INCLUDED IN THE PACKET FOR COUNT 1. THE GREATER OFFENSE
9 IS SEXUAL PENETRATION WITH A CHILD 10 YEARS OLD OR
10 YOUNGER. THE LESSER-INCLUDED OFFENSES INCLUDE THE
11 VERDICT FORM FOR ATTEMPTED PENETRATION, THE
12 LESSER-INCLUDED OFFENSE OF ASSAULT AND THE
13 LESSER-INCLUDED OFFENSE OF BATTERY.

14 AS JURY INSTRUCTION 3518 STATES, IF YOU
15 AGREE THE PEOPLE HAVE PROVED THE DEFENDANT IS GUILTY OF
16 THE GREATER CRIME, COMPLETE AND SIGN THE VERDICT FORM FOR
17 GUILTY OF THAT CRIME. THAT COULD BE THE GREATER OFFENSE
18 IN COUNT 1 OF SEXUAL PENETRATION.

19 DO NOT COMPLETE OR SIGN ANY OTHER VERDICT
20 FORM FOR THAT COUNT.

21 SO IF YOU FIND HIM GUILTY OF THE GREATER
22 CRIME, YOU LEAVE THE OTHER THREE JURY VERDICT FORMS
23 BLANK, AND YOU'VE COMPLETED YOUR WORK ON COUNT 1.

24 IF ALL OF YOU AGREE THAT THE PEOPLE HAVE NOT
25 PROVED THE DEFENDANT IS GUILTY OF THE GREATER CRIME AND
26 ALSO AGREE THAT THE PEOPLE -- AND ALSO AGREE THE PEOPLE
27 HAVE PROVED THAT HE'S GUILTY OF A LESSER CRIME, COMPLETE
28 AND SIGN THE VERDICT FORM FOR GUILTY OF THE LESSER CRIME.

1 DO NOT COMPLETE OR SIGN ANY OTHER VERDICT FORM FOR THAT
2 COUNT.

3 IF ALL OF YOU AGREE THE PEOPLE HAVE NOT
4 PROVED THE DEFENDANT IS GUILTY OF THE GREATER OR LESSER
5 CRIME, COMPLETE AND SIGN THE VERDICT FORM FOR NOT GUILTY.

6 IF ALL OF YOU CANNOT AGREE WHETHER THE
7 PEOPLE HAVE PROVED THE DEFENDANT IS GUILTY OF THE CHARGED
8 OR LESSER CRIME, INFORM ME ONLY THAT YOU CANNOT REACH
9 AGREEMENT AS TO THAT COUNT AND DO NOT COMPLETE OR SIGN
10 ANY VERDICT FORM FOR THAT COUNT.

11 I CANNOT ACCEPT A VERDICT FORM FOR A LESSER
12 CRIME UNLESS YOU HAVE FOUND THE DEFENDANT NOT GUILTY OF
13 THE GREATER CRIME.

14 KEEP AN OPEN MIND AND OPENLY EXCHANGE YOUR
15 THOUGHTS AND IDEAS ABOUT THIS CASE. STATING YOUR
16 OPINIONS TOO STRONGLY AT THE BEGINNING OR IMMEDIATELY
17 ANNOUNCING HOW YOU PLAN TO VOTE MAY INTERFERE WITH AN
18 OPEN DISCUSSION. PLEASE TREAT ONE ANOTHER COURTEOUSLY.
19 YOUR ROLE IS TO BE AN IMPARTIAL JUDGE OF THE FACTS, NOT
20 TO ACT AS AN ADVOCATE FOR ONE SIDE OR THE OTHER.

21 AS I TOLD YOU AT THE BEGINNING OF THIS
22 TRIAL, DO NOT TALK ABOUT THE CASE OR ABOUT ANY OF THE
23 PEOPLE OR ANY SUBJECT INVOLVED IN IT WITH ANYONE,
24 INCLUDING, BUT NOT LIMITED TO, YOUR SPOUSE OR OTHER
25 FAMILY OR FRIENDS, SPIRITUAL LEADERS OR ADVISORS OR
26 THERAPISTS.

27 YOU MUST DISCUSS THE CASE ONLY WHEN YOU'RE
28 INSIDE THE JURY ROOM AND ONLY WHEN ALL JURORS ARE

1 PRESENT.

2 SO THAT MEANS NO DISCUSSION OF THE CASE
3 WHILE YOU'RE WAITING TO COME IN.

4 DO NOT DISCUSS YOUR DELIBERATIONS WITH
5 ANYONE. DO NOT COMMUNICATE USING *FACEBOOK*, THE INTERNET,
6 *TWITTER*, OR ANY OTHER SOCIAL MEDIA.

7 IT IS VERY IMPORTANT THAT YOU NOT USE THE
8 INTERNET, A DICTIONARY OR ENCYCLOPEDIA IN ANY WAY IN
9 CONNECTION WITH THIS CASE DURING YOUR DELIBERATIONS.

10 DURING THE TRIAL, SEVERAL ITEMS WERE
11 RECEIVED INTO EVIDENCE AS EXHIBITS. YOU MAY EXAMINE
12 WHATEVER EXHIBITS YOU THINK WILL HELP YOU IN YOUR
13 DELIBERATIONS. THESE EXHIBITS -- ALL THE EXHIBITS WILL
14 BE SENT INTO THE JURY ROOM WITH YOU WHEN YOU BEGIN TO
15 DELIBERATE.

16 IF YOU NEED TO COMMUNICATE WITH ME WHILE YOU
17 ARE DELIBERATING, SEND A NOTE THROUGH THE BAILIFF, SIGNED
18 BY THE FOREPERSON OR BY ONE OR MORE MEMBERS OF THE JURY.

19 THAT IS, WITH YOUR SEAT NUMBER.

20 TO HAVE A COMPLETE RECORD OF THIS TRIAL, IT
21 IS IMPORTANT THAT YOU NOT COMMUNICATE WITH ME, EXCEPT VIA
22 WRITTEN NOTES. IF YOU HAVE QUESTIONS, I WILL TALK WITH
23 THE ATTORNEYS BEFORE I ANSWER. SO IT MAY TAKE SOME TIME.
24 YOU SHOULD CONTINUE YOUR DELIBERATIONS WHILE YOU WAIT FOR
25 MY ANSWER. I WILL ANSWER ANY QUESTIONS IN WRITING OR
26 ORALLY HERE IN OPEN COURT.

27 DO NOT REVEAL TO ME OR ANYONE ELSE HOW THE
28 VOTE STANDS ON THE QUESTION OF GUILT OR ISSUES IN THIS

1 CASE UNLESS I ASK YOU TO DO SO.

2 YOUR VERDICT ON EACH COUNT AND ANY SPECIAL
3 FINDINGS MUST BE UNANIMOUS. THIS MEANS THAT, TO RETURN A
4 VERDICT, ALL OF YOU MUST AGREE TO IT.

5 DO NOT REACH A DECISION BY THE FLIP OF A
6 COIN OR BY ANY SIMILAR ACT.

7 IT IS NOT MY ROLE TO TELL YOU WHAT YOUR
8 VERDICT SHOULD BE. DO NOT TAKE ANYTHING I SAID OR DID
9 DURING THE TRIAL AS AN INDICATION OF WHAT I THINK ABOUT
10 THE FACTS, THE WITNESSES OR WHAT YOUR VERDICT SHOULD BE.

11 YOU MUST REACH YOUR VERDICT WITHOUT ANY
12 CONSIDERATION OF PUNISHMENT.

13 YOU WILL BE GIVEN ALL OF THE VERDICT FORMS.
14 AS SOON AS ALL JURORS HAVE AGREED ON A VERDICT, THE
15 FOREPERSON MUST DATE AND SIGN THE APPROPRIATE VERDICT
16 FORMS AND NOTIFY THE BAILIFF.

17 IF YOU ARE UNABLE TO REACH A UNANIMOUS
18 DECISION ON ONLY ONE OR ONLY SOME OF THE CHARGES, FILL IN
19 THOSE VERDICT FORMS ONLY AND NOTIFY THE BAILIFF. RETURN
20 ANY UNSIGNED VERDICT FORM.

21 AS FAR AS THE ALTERNATE JURORS ARE
22 CONCERNED, YOU ARE BOUND BY ALL OF THESE ADMONITIONS.
23 YOU ARE NOT TO FORM OR EXPRESS AN OPINION ABOUT THE CASE.
24 YOU'RE NOT TO DISCUSS THE CASE AT ALL. YOU'RE NOT TO
25 THINK ABOUT HOW YOU WOULD DECIDE IF YOU WERE DECIDING.
26 WE WILL NOTIFY YOU WHEN YOU ARE NEEDED OR WHEN A VERDICT
27 IS REACHED.

28 SO, RIGHT NOW, WHAT'S GOING TO HAPPEN IS THE

1 12 JURORS ARE GOING TO GO INTO THE JURY ROOM. I'M GOING
2 TO ASK THAT YOU WRITE DOWN ON A SHEET OF PAPER YOUR PHONE
3 NUMBER, THAT IS, A PHONE NUMBER WHERE WE CAN REACH YOU.
4 AND THEN YOU CAN GO ABOUT YOUR EVERYDAY ACTIVITY AS LONG
5 AS WE CAN REACH YOU AND GET YOU DOWN HERE IN AN HOUR OR
6 SO IN CASE YOUR SERVICES ARE NEEDED.

7 WOULD YOU PLEASE SWEAR THE BAILIFF?

8 THE COURT CLERK: DO YOU SOLEMNLY STATE THAT YOU
9 WILL KEEP THIS JURY TOGETHER IN SOME QUIET AND CONVENIENT
10 PLACE, THAT YOU WILL PERMIT NO PERSON TO SPEAK WITH THEM
11 OR COMMUNICATE WITH THEM, NOR WILL YOU SPEAK WITH THEM
12 YOURSELF ABOUT THIS CAUSE, UNLESS BY THE ORDER OF THE
13 COURT OR TO ASK THEM IF THEY HAVE AGREED UPON A VERDICT,
14 AND YOU WILL RETURN THEM INTO COURT WHEN THEY HAVE SO
15 AGREED OR WHEN SO ORDERED, SO HELP YOU GOD?

16 DEPUTY SANCHEZ: I WILL.

17 ---000---

18 (THEREUPON THE JURY OF 12 WAS EXCUSED TO BEGIN
19 DELIBERATING AND EXITED THE COURTROOM.)

20 ---000---

21 THE COURT: AS FAR AS THE ALTERNATE JURORS ARE
22 CONCERNED, THE CLERK IS GOING TO PICK UP YOUR PHONE
23 NUMBER AND NAME.

24 AND I NEED TO THANK YOU FOR YOUR ATTENDANCE,
25 FOR BEING ON TIME, YOUR ATTENTION. WE WILL CALL YOU WHEN
26 YOUR SERVICES ARE NEEDED OR WHEN A VERDICT IS REACHED.
27 AND YOU CAN GO ABOUT YOUR EVERYDAY ACTIVITIES.

28 THANK YOU VERY MUCH.

1 ANYTHING ELSE THAT WE NEED TO TALK ABOUT?

2 MS. OLIVER: NO.

3 MS. DI TILLIO: NO. I DON'T THINK SO.

4 THE COURT: THANK YOU FOR A WELL-TRIED CASE.

5 MS. OLIVER: THANK YOU.

6 MS. DI TILLIO: THANK YOU, YOUR HONOR.

7 ---000---

8 (THEREUPON THE PROCEEDINGS IN THIS MATTER
9 WERE RECESSED PENDING DELIBERATION BY THE JURY.)

10 ---000---

11 (THEREUPON THE PROCEEDINGS IN THIS MATTER
12 WERE RECESSED FOR LUNCH.)

13 ---000---

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1 SAN DIEGO, CALIFORNIA; THURSDAY, APRIL 3, 2014

2 1:44 P.M.

3 ---000---

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
5 COURT, OUTSIDE THE PRESENCE OF THE JURORS.)

6 ---000---

7 THE COURT: ALL RIGHT. THE RECORD WILL REFLECT THE
8 DEFENDANT AND ATTORNEYS ARE PRESENT.

9 WE'VE RECEIVED OUR FIRST NOTE FROM THE JURY.

10 IT INDICATES:

11 "JUROR NUMBER 7: 1, 911 TIME?"

12 QUESTION MARK.

13 "2, OR COPY OF 911 TAPE?"

14 AND MY PROPOSED RESPONSE IS:

15 "YOU HAVE RECEIVED ALL OF THE EVIDENCE
16 IN THIS CASE."

17 DOES ANYBODY OBJECT TO THE RESPONSE AS I
18 HAVE PROPOSED IT?

19 MS. DI TILLIO: NO.

20 MS. OLIVER: NO, YOUR HONOR.

21 THE COURT: THAT'S WHAT WE WILL SEND IN.

22 MS. OLIVER: THANK YOU.

23 THE COURT: WE'LL LET YOU KNOW WHEN WE HEAR FROM
24 THEM NEXT.

25 MS. DI TILLIO: I MIGHT HANG AROUND.

26 ---000---

27 (THEREUPON THE PROCEEDINGS IN THIS MATTER
28 WERE RECESSED PENDING DELIBERATION OF THE JURY.)

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(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT, OUTSIDE THE PRESENCE OF THE JURORS.)

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THE COURT: THE RECORD WILL REFLECT THE DEFENDANT AND THE ATTORNEYS ARE PRESENT.

AND WE HAVE RECEIVED TWO NOTES FROM THE JURORS.

NOTE NUMBER 2 INDICATES:

"CAN YOU PLEASE EXPLAIN THE CITATION AT THE END OF EACH VERDICT," QUOTE, "'DID OR DID NOT,'" UNQUOTE? QUOTE, "'MORE THAN ONE,'" UNQUOTE, "FOR THIS CHARGE SPECIFIC?" "JUROR NUMBER 7."

NOTE NUMBER 3 LOOKS LIKE IT WAS WRITTEN BY TWO JURORS.

ONE SAYS:

"WE NEED TO HEAR ABOUT ORAL COPULATION IN BREANNA'S ROOM, TESTIMONY ON THE STAND BY BREANNA." "NUMBER 7."

ADDITIONALLY, THERE'S A NOTE THAT SAYS:

"WE WOULD LIKE ALL OF BREANNA'S TESTIMONY AS A WITNESS, PLEASE." "NUMBER 12."

ALL RIGHT. SO I INTEND TO SEND IN THE COURT REPORTER TO READ BREANNA'S TESTIMONY. AND THAT WOULD

1 ANSWER NOTE NUMBER 3.

2 DOES ANYBODY HAVE A PROBLEM WITH THAT?

3 MS. DI TILLIO: NO, YOUR HONOR.

4 MS. OLIVER: NO, YOUR HONOR.

5 THE COURT: OKAY. SO LET'S TALK ABOUT NOTE NUMBER
6 2.

7 "CAN YOU PLEASE EXPLAIN THE CITATION
8 AT THE END OF EACH VERDICT?"

9 CAN I HAVE THE JURY INSTRUCTIONS, PLEASE?
10 AREN'T THESE THE JURY INSTRUCTIONS, 3181 AND
11 3250?

12 MS. DI TILLIO: YES. THAT'S THE IMPRESSION I GET.
13 THAT'S THE ONLY CHARGES THAT HAVE THOSE ALLEGATIONS. AND
14 THOSE ARE THE TWO THAT DEAL SPECIFICALLY WITH THAT ISSUE.
15 SO I WOULD JUST REFER THEM TO THOSE TWO INSTRUCTIONS.

16 SO --

17 THE COURT: SO THE PROPOSED RESPONSE WOULD BE:

18 "PLEASE REFER TO JURY INSTRUCTIONS
19 3181 AND 3250."

20 ANYBODY HAVE A PROBLEM WITH THAT?

21 MS. DI TILLIO: NO, YOUR HONOR.

22 MS. OLIVER: NO, YOUR HONOR.

23 THE COURT: SO THE BAILIFF WILL SEND IN THE NOTE.
24 AND THEN THE COURT REPORTER WILL GO READ THE TESTIMONY.

25 THE COURT CLERK: 3181 AND 3150?

26 MS. DI TILLIO: 3250.

27 ---000---

28 (THEREUPON THE PROCEEDINGS WERE RECESSED

1 PENDING DELIBERATION OF THE JURY.)

2 ---000---

3 (THEREUPON THE PROCEEDINGS IN THIS MATTER
4 WERE RECESSED UNTIL FRIDAY, APRIL 4, 2014,
5 AT 9:00 A.M., FOR FURTHER PROCEEDINGS.)

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1 SAN DIEGO, CALIFORNIA; FRIDAY; APRIL 4, 2014

2 10:29 A.M.

3 ---OOO---

4 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
5 COURT, OUTSIDE THE PRESENCE OF THE JURORS.)

6 ---OOO---

7 THE COURT: ALL RIGHT. THE RECORD WILL REFLECT THE
8 DEFENDANT AND ATTORNEYS ARE PRESENT IN THE ROSS CASE.

9 WE'VE RECEIVED A NOTE FROM THE JURY.

10 "IF WRONG WORDS ARE WRITTEN ON JURY
11 VERDICT SHEET, HOW ARE THEY CORRECTED?
12 SHOULD IT BE ONE LINED?"

13 ANYBODY HAVE A SUGGESTION THEY'D LIKE TO --

14 MS. DI TILLIO: YES.

15 THE COURT: -- MAKE?

16 MS. DI TILLIO: I WOULD SUGGEST WE JUST PROVIDE
17 THEM WITH A CLEAN SET OF VERDICT FORMS. AND THEN THEY
18 CAN USE A CLEAN FORM FOR WHICHEVER COUNT THEY NEED TO
19 REPLACE.

20 MS. OLIVER: I'M FINE WITH THAT.

21 THE COURT: ALL RIGHT. THAT'S WHAT WE'LL DO.

22 MS. DI TILLIO: DO YOU HAVE A SET, OR WOULD YOU
23 LIKE THIS SET?

24 I BELIEVE THESE ARE ALL HERE.

25 THE COURT: WE'RE GOING TO DOUBLE-CHECK THAT. WE
26 MADE A COPY OF WHAT WE SENT IN. SO WE'RE GOING TO
27 DOUBLE-CHECK THAT.

28 AND THE DIFFICULTY IS THIS. I WANT TO KEEP

1 THEM TOGETHER BECAUSE OF THE LESSER-INCLUDED OFFENSES.

2 MS. DI TILLIO: YEAH. THESE ARE -- I CAN CLIP
3 THEM, AS YOUR HONOR DID.

4 THE COURT CLERK: DID YOU WANT TO COMPARE THOSE
5 WITH MY COPY?

6 THE COURT: LET'S COMPARE THOSE.

7 THE COURT CLERK: THE ONES THAT WERE CLIPPED -- I
8 ACTUALLY STAPLED THEIRS. I SENT THEM IN THE WAY THEY
9 WERE. THAT'S AN EXACT COPY OF --

10 THE COURT: OFF THE RECORD.

11 ---000---

12 (THEREUPON A DISCUSSION WAS HELD OFF THE RECORD.)

13 ---000---

14 THE COURT: BACK ON THE RECORD.

15 ALL RIGHT. WE'VE HAD SOME DISCUSSIONS OFF
16 THE RECORD ABOUT HOW TO RESPOND TO THIS. AND --

17 MS. DI TILLIO: THESE ALL LOOK ACCURATE. AND --

18 THE COURT: AND I THINK THE DISCUSSION WAS THEY
19 MAY --

20 OFF THE RECORD FOR A MOMENT.

21 ---000---

22 (THEREUPON A DISCUSSION WAS HELD OFF THE RECORD.)

23 ---000---

24 THE COURT: HOW ABOUT "YOU MAY MAKE A CHANGE BY
25 CROSSING OUT"?

26 MS. DI TILLIO: CAN I JUST PUT SOMETHING OUT THERE?

27 THE COURT: YES.

28 MS. DI TILLIO: I THINK WE'RE ALL OPERATING UNDER

1 THE ASSUMPTION THAT THEY HAVE MADE A MISTAKE. AND I
2 DON'T REALLY SEE ANY MISTAKES IN OUR VERDICT FORMS, BUT
3 THAT MIGHT BE AN ASSUMPTION.

4 SHOULD WE INQUIRE IF IT'S A MISTAKE --
5 I MEAN, I DON'T WANT TO DELVE INTO WHAT
6 THEY'RE DOING.

7 BUT SHOULD WE INQUIRE IF IT IS A MISTAKE
8 THEY MADE OR THAT WAS ALREADY ON THE PRINTED FORM?

9 I DON'T GET THAT SENSE FROM THE QUESTION,
10 BUT I DON'T WANT TO ASSUME, EITHER.

11 THE COURT: WELL, I CAN INQUIRE. I CAN BRING THEM
12 ALL IN HERE AND INQUIRE. AND I'LL BE VERY CAREFUL ABOUT
13 WHAT I ASK. AND IF, IN FACT, THEY'VE WRITTEN SOMETHING
14 AND THEY WANT TO CORRECT IT, WHAT I'M GOING TO TELL THEM
15 IS THAT THEY CAN DRAW A LINE THROUGH WHAT THEY'VE WRITTEN
16 AND INITIAL IT WITH THEIR SEAT NUMBER OR, IF THEY WOULD
17 LIKE, WE CAN GIVE THEM A CLEAN VERDICT FORM FOR THE COUNT
18 THEY'RE TALKING ABOUT.

19 AND IS THAT AGREEABLE, THAT INQUIRY?

20 BRINGING THEM ALL IN, THAT MEANS HE NEEDS
21 COVER.

22 MS. DI TILLIO: I DON'T MEAN TO STIR THE POT OR
23 MAKE IT ANY MORE DIFFICULT.

24 THE COURT: NO. I THINK THAT'S A FAIR -- A FAIR
25 POINT, THAT WE OUGHT TO FIGURE OUT EXACTLY WHAT IT IS
26 THAT THEY'RE ASKING.

27 ---OOO---

28 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN

1 COURT, WITHIN THE PRESENCE OF THE JURORS.)

2 ---OOO---

3 THE COURT: THE RECORD WILL REFLECT THE DEFENDANT
4 AND THE ATTORNEYS ARE PRESENT, AS WELL AS THE 12 MEMBERS
5 OF OUR JURY.

6 I'VE RECEIVED A NOTE.

7 AND IT INDICATES AS FOLLOWS:

8 "IF WRONG WORDS ARE WRITTEN ON THE JURY
9 VERDICT SHEET, HOW ARE THEY CORRECTED?
10 SHOULD IT BE ONE LINED?"

11 AND THAT'S NUMBER 7. AND THAT WAS JUROR
12 NUMBER 7.

13 AND IF I UNDERSTAND THE QUESTION CORRECTLY,
14 I'M ASSUMING IT MEANS, IF A WORD WAS WRITTEN ON THE
15 VERDICT FORM AND YOU WANT TO CORRECT IT --

16 JUROR NO. 7: YES

17 THE COURT: -- HOW DO YOU DO THAT?

18 JUROR NO. 7: CORRECT.

19 THE COURT: AND WHAT I'M TELLING YOU IS ALL YOU
20 NEED TO DO IS YOU NEED TO CROSS IT OUT, PUT YOUR JUROR
21 SEAT NUMBER, LIKE, INITIALS, LIKE YOUR INITIALS.

22 JUROR NO. 7: OH.

23 THE COURT: AND MAKE SURE THAT THAT'S LEGIBLE, SO
24 THAT THE VERDICT FORM IS LEGIBLE WHEN IT IS COMPLETED.

25 IF IT IS WRITTEN IN A WAY THAT IT IS TOTALLY
26 -- THAT YOU CANNOT READ IT, THAT WE CANNOT UNDERSTAND
27 WHAT IT IS, YOU CAN ALWAYS REQUEST ANOTHER VERDICT FORM.
28 AND WE'LL GIVE YOU A CLEAN COPY OF THAT VERDICT FORM.

1 BUT, IF YOU CAN DO IT WITH THE VERDICT FORM THAT YOU'VE
2 ALREADY BEEN -- THE VERDICT FORM OR FORMS THAT YOU'VE
3 ALREADY BEEN SUPPLIED --

4 JUROR NO. 7: WE CAN DO IT.

5 THE COURT: -- YOU CAN DO IT THAT WAY. JUST LIKE
6 YOU WOULD, FOR EXAMPLE, CORRECT A CHECK.

7 JUROR NO. 7: OKAY.

8 THE COURT: ALL RIGHT.

9 JUROR NO. 7: THANK YOU.

10 THE COURT: SO I'M GOING TO ASK THAT YOU FOLLOW THE
11 BAILIFF BACK INTO THE DELIBERATION ROOM.

12 JUROR NO. 7: THANK YOU.

13 ---000---

14 (THEREUPON THE PROCEEDINGS IN THIS MATTER
15 WERE RECESSED PENDING DELIBERATION OF THE JURY.)

16 ---000---

17 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
18 COURT, WITHIN THE PRESENCE OF THE JURORS.)

19 ---000---

20 THE COURT: ALL RIGHT. THE RECORD WILL REFLECT THE
21 DEFENDANT AND ATTORNEYS ARE PRESENT, AS WELL AS OUR 12
22 JURORS.

23 AND AS I UNDERSTAND IT, JUROR NUMBER 7 IS
24 THE FOREPERSON.

25 AND WE'VE BEEN NOTIFIED THAT VERDICTS HAVE
26 BEEN REACHED.

27 IS THAT CORRECT, SIR?

28 JUROR NO. 7: YES, SIR.

1 THE COURT: WOULD YOU HAND THE VERDICT FORMS TO THE
2 BAILIFF?

3 WOULD THE CLERK PLEASE READ THE VERDICTS?

4 THE COURT CLERK:

5 "IN THE SUPERIOR COURT OF THE STATE OF
6 CALIFORNIA, IN AND FOR THE COUNTY OF
7 SAN DIEGO;

8 "THE PEOPLE OF THE STATE OF CALIFORNIA,
9 PLAINTIFF, VERSUS RICHARD ERIC ROSS,
10 DEFENDANT;

11 "SC NUMBER SCD241238, D.A. NUMBER ADE743;

12 "VERDICT:"

13 "WE, THE JURY IN THE ABOVE-ENTITLED
14 CAUSE FIND THE DEFENDANT, RICHARD ERIC
15 ROSS, NOT GUILTY OF THE CRIME OF SEXUAL
16 PENETRATION WITH A CHILD 10 YEARS OLD OR
17 YOUNGER, AS CHARGED IN COUNT 1 OF THE
18 AMENDED INFORMATION, TO WIT, DEFENDANT'S
19 FINGER TO CHILD'S VAGINA IN THE MASTER
20 BEDROOM."

21 "VICTIM: HANNAH C. ON OR ABOUT MAY 21,
22 2012."

23 "DATED 4-3-2014."

24 "7, FOREPERSON."

25 "VERDICT."

26 SAME COURT, TITLE AND CAUSE.

27 "VERDICT:"

28 "WE, THE JURY IN THE ABOVE-ENTITLED CAUSE

1 FIND THE DEFENDANT, RICHARD ERIC ROSS,
2 GUILTY OF THE CRIME OF ATTEMPTED SEXUAL
3 PENETRATION OF A CHILD AGE 10 OR
4 YOUNGER, A LESSER-INCLUDED OFFENSE OF
5 COUNT 1, SEXUAL PENETRATION OF A CHILD
6 AGE 10 OR YOUNGER."
7 "DATED 4-3-2014."
8 "JUROR 7, FOREPERSON."
9 "VERDICT:"
10 SAME COURT, TITLE AND CAUSE.
11 "VERDICT:"
12 "WE, THE JURY IN THE ABOVE-ENTITLED CAUSE,
13 FIND THE DEFENDANT, RICHARD ERIC ROSS,
14 GUILTY OF THE CRIME OF FORCIBLE LEWD ACT
15 ON A CHILD, AS CHARGED IN COUNT 2 OF
16 THE AMENDED INFORMATION, TO WIT,
17 DEFENDANT TOUCHED VICTIM'S VAGINA IN
18 THE MASTER BEDROOM."
19 "VICTIM, HANNAH C., ON OR ABOUT MAY 21,
20 2012."
21 "WE FURTHER FIND THAT DEFENDANT DID
22 HAVE SUBSTANTIAL SEXUAL CONDUCT WITH
23 HANNAH C., A CHILD UNDER THE AGE OF
24 14, WITHIN THE MEANING OF PENAL CODE
25 SECTION 1203.066(A)(8)."
26 "WE FURTHER FIND THAT DEFENDANT DID NOT
27 COMMIT AN OFFENSE SPECIFIED IN
28 SUBDIVISION (C) AGAINST MORE THAN ONE

1 VICTIM, WITHIN THE MEANING OF PENAL
2 CODE SECTION 667.61(B)(C)(E)."
3 "DATED 4-3-2014."
4 "7, FOREPERSON."
5 "VERDICT."
6 SAME COURT, TITLE AND CAUSE.
7 "VERDICT:"
8 "WE, THE JURY IN THE ABOVE-ENTITLED
9 CAUSE, FIND THE DEFENDANT, RICHARD ERIC
10 ROSS, GUILTY OF THE CRIME OF LEWD ACT
11 ON A CHILD, AS CHARGED IN COUNT 3 OF
12 THE AMENDED INFORMATION, TO WIT,
13 DEFENDANT'S HAND TO CHILD'S VAGINA IN
14 THE LIVING ROOM."
15 "VICTIM: HANNAH C., ON OR ABOUT MAY 21,
16 2012."
17 "WE FURTHER FIND THAT DEFENDANT DID
18 HAVE SUBSTANTIAL SEXUAL CONDUCT WITH
19 HANNAH C., A CHILD UNDER THE AGE OF
20 14, WITHIN THE MEANING OF PENAL CODE
21 SECTION 1203.066(A)(8)."
22 "WE FURTHER FIND THAT DEFENDANT DID
23 COMMIT AN OFFENSE SPECIFIED IN
24 SUBDIVISION (C) AGAINST MORE THAN ONE
25 VICTIM, WITHIN THE MEANING OF PENAL
26 CODE SECTION 667.61(B)(C)(E)."
27 "DATED 4-3-2014."
28 "7, FOREPERSON."

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"VERDICT."
SAME COURT, TITLE AND CAUSE.
"VERDICT:"
"WE, THE JURY IN THE ABOVE-ENTITLED
CAUSE, FIND THE DEFENDANT, RICHARD
ERIC ROSS, GUILTY OF THE CRIME OF ORAL
COPULATION WITH A CHILD AGE 10 YEARS OLD
OR YOUNGER, AS CHARGED IN COUNT 4 OF
THE AMENDED INFORMATION, TO WIT,
DEFENDANT'S MOUTH TO CHILD'S VAGINA IN
THE OLD HOUSE."
"VICTIM: BREANNA L., BETWEEN MAY 1,
2009, AND MAY 31, 2011."
"DATED, 4-3-2014."
"7, FOREPERSON."
"VERDICT."
SAME COURT, TITLE AND CAUSE.
"VERDICT:"
"WE, THE JURY IN THE ABOVE-ENTITLED
CAUSE, FIND THE DEFENDANT, RICHARD
ERIC ROSS, GUILTY OF THE CRIME OF ORAL
COPULATION WITH A CHILD 10 YEARS OLD OR
YOUNGER, AS CHARGED IN COUNT 5 OF
THE AMENDED INFORMATION, TO WIT,
DEFENDANT'S MOUTH TO CHILD'S VAGINA IN
THE OLD HOUSE, SUBSEQUENT INCIDENT."
"VICTIM: BREANNA L., BETWEEN MAY 1,
2009, AND MAY 31, 2011."

1 "DATED, 4-3-2014."

2 "7, FOREPERSON."

3 "VERDICT."

4 SAME COURT, TITLE AND CAUSE.

5 "VERDICT:"

6 "WE, THE JURY IN THE ABOVE-ENTITLED
7 CAUSE, FIND THE DEFENDANT, RICHARD
8 ERIC ROSS, GUILTY OF THE CRIME OF LEWD
9 ACT UPON A CHILD, AS CHARGED IN COUNT 6
10 OF THE INFORMATION, TO WIT, DEFENDANT'S
11 HAND TO CHILD'S VAGINA, OLD HOUSE."

12 "VICTIM: BREANNA L., BETWEEN MAY 1,
13 2009, AND MAY 31, 2011."

14 "WE FURTHER FIND THAT DEFENDANT DID
15 HAVE SUBSTANTIAL SEXUAL CONDUCT WITH
16 BREANNA L., A CHILD UNDER THE AGE OF
17 14, WITHIN THE MEANING OF PENAL CODE
18 SECTION 1203.066(A)(8)."

19 "WE FURTHER FIND THAT DEFENDANT DID NOT
20 COMMIT AN OFFENSE SPECIFIED IN
21 SUBDIVISION (C) AGAINST MORE THAN ONE
22 VICTIM, WITHIN THE MEANING OF PENAL CODE
23 SECTION 667.61(B)(C)(E)."

24 "DATED 4-3-2014."

25 "7, FOREPERSON."

26 "VERDICT:"

27 SAME COURT, TITLE AND CAUSE.

28 "VERDICT:"

1 "WE, THE JURY IN THE ABOVE-ENTITLED
2 CAUSE, FIND THE DEFENDANT, RICHARD ERIC
3 ROSS, GUILTY OF THE CRIME OF ORAL
4 COPULATION WITH A CHILD 10 YEARS OLD OR
5 YOUNGER, AS CHARGED IN COUNT 7 OF THE
6 AMENDED INFORMATION, TO WIT,
7 DEFENDANT'S MOUTH TO CHILD'S VAGINA IN
8 THE LIVING ROOM OF THE NEW HOUSE."
9 "VICTIM: BREANNA L., BETWEEN JUNE 1,
10 2011, AND MAY 21, 2012."
11 "DATED, 4-3-2014."
12 "7, FOREPERSON."
13 "VERDICT."
14 SAME COURT, TITLE AND CAUSE.
15 "VERDICT:"
16 "WE, THE JURY IN THE ABOVE-ENTITLED
17 CAUSE, FIND THE DEFENDANT, RICHARD ERIC
18 ROSS, NOT GUILTY OF THE CRIME OF SEXUAL
19 INTERCOURSE WITH A CHILD 10 YEARS OLD
20 OR YOUNGER, AS CHARGED IN COUNT 8 OF THE
21 AMENDED INFORMATION, TO WIT, DEFENDANT'S
22 PENIS TO CHILD'S VAGINA IN THE LIVING
23 ROOM OF THE NEW HOUSE."
24 "VICTIM: BREANNA L., BETWEEN JUNE 1,
25 2011, AND MAY 21, 2012."
26 "DATED, 4-3-2014."
27 "7, FOREPERSON."
28 "VERDICT."

1 SAME COURT, TITLE AND CAUSE.

2 "VERDICT:"

3 "WE, THE JURY IN THE ABOVE-ENTITLED
4 CAUSE, FIND THE DEFENDANT, RICHARD ERIC
5 ROSS, NOT GUILTY OF THE CRIME OF ATTEMPTED
6 SEXUAL INTERCOURSE WITH A CHILD 10 YEARS
7 OF AGE OR YOUNGER, A LESSER-INCLUDED
8 OFFENSE OF COUNT 8, SEXUAL INTERCOURSE
9 WITH A CHILD AGE 10 OR YOUNGER."

10 "DATED, 4-3-2014."

11 "7, FOREPERSON."

12 "VERDICT."

13 SAME COURT, TITLE AND CAUSE.

14 "VERDICT:"

15 "WE, THE JURY IN THE ABOVE-ENTITLED
16 CAUSE, FIND THE DEFENDANT, RICHARD ERIC
17 ROSS, NOT GUILTY OF THE CRIME OF LEWD
18 ACT UPON A CHILD, AS CHARGED IN COUNT 9
19 OF THE AMENDED INFORMATION, TO WIT,
20 DEFENDANT'S PENIS TO CHILD'S VAGINA IN
21 THE LIVING ROOM OF THE NEW HOUSE."

22 "VICTIM: BREANNA L., BETWEEN JUNE 1,
23 2011, AND MAY 21, 2012."

24 "WE FURTHER FIND THAT THE DEFENDANT DID
25 NOT HAVE SUBSTANTIAL SEXUAL CONDUCT WITH
26 BREANNA L., A CHILD UNDER THE AGE OF 14,
27 WITHIN THE MEANING OF PENAL CODE SECTION
28 1203.066(A)(8)."

1 "WE FURTHER FIND THAT DEFENDANT DID NOT
2 COMMIT AN OFFENSE SPECIFIED IN
3 SUBDIVISION (C) AGAINST MORE THAN ONE
4 VICTIM, WITHIN THE MEANING OF PENAL CODE
5 SECTION 667.61(B) (C) (E) ."
6 "DATED, 4-3-2014."
7 "7, FOREPERSON."
8 "VERDICT."
9 SAME COURT, TITLE AND CAUSE.
10 "VERDICT:"
11 "WE, THE JURY IN THE ABOVE-ENTITLED CAUSE,
12 FIND THE DEFENDANT, RICHARD ERIC ROSS,
13 GUILTY OF THE CRIME OF SEXUAL PENETRATION
14 WITH A CHILD 10 YEARS OLD OR YOUNGER, AS
15 CHARGED IN COUNT 10 OF THE AMENDED
16 INFORMATION, TO WIT, OBJECT TO CHILD'S
17 VAGINA IN THE LIVING ROOM OF THE NEW HOUSE."
18 "VICTIM: BREANNA L., BETWEEN JUNE 21, 2011,
19 AND MAY 21, 2012."
20 "DATED, 4-3-2014."
21 "7, FOREPERSON."
22 "VERDICT."
23 SAME COURT, TITLE AND CAUSE.
24 "VERDICT:"
25 "WE, THE JURY IN THE ABOVE-ENTITLED CAUSE,
26 FIND THE DEFENDANT, RICHARD ERIC ROSS,
27 GUILTY OF THE CRIME OF LEWD ACT UPON A
28 CHILD, AS CHARGED IN COUNT 11 OF THE

1 AMENDED INFORMATION, TO WIT, OBJECT TO
2 CHILD'S VAGINA IN THE LIVING ROOM OF
3 THE NEW HOUSE."
4 "VICTIM: BREANNA L., BETWEEN JUNE 1,
5 2011, AND MAY 21, 2012."
6 "WE FURTHER FIND THAT DEFENDANT DID
7 HAVE SUBSTANTIAL SEXUAL CONDUCT WITH
8 BREANNA L., A CHILD UNDER THE AGE OF
9 14, WITHIN THE MEANING OF PENAL CODE
10 SECTION 1203.066(A)(8)."
11 "WE FURTHER FIND THAT DEFENDANT DID NOT
12 COMMIT AN OFFENSE SPECIFIED IN
13 SUBDIVISION (C) AGAINST MORE THAN ONE
14 VICTIM, WITHIN THE MEANING OF PENAL
15 CODE SECTION 667.61(B)(C)(E)."
16 "DATED 4-3-2014."
17 "7, FOREPERSON."
18 "VERDICT:"
19 SAME COURT, TITLE AND CAUSE.
20 "VERDICT:"
21 "WE, THE JURY IN THE ABOVE-ENTITLED
22 CAUSE, FIND THE DEFENDANT, RICHARD
23 ERIC ROSS, GUILTY OF THE CRIME OF
24 SEXUAL PENETRATION WITH A CHILD 10
25 YEARS OLD OR YOUNGER, AS CHARGED IN
26 COUNT 12 OF THE AMENDED INFORMATION,
27 TO WIT, DEFENDANT'S FINGER TO CHILD'S
28 VAGINA IN THE LIVING ROOM OF THE NEW

1 HOUSE."

2 "VICTIM: BREANNA L., BETWEEN JUNE 1,

3 2011, AND MAY 21, 2012."

4 "DATED, 4-3-2014."

5 "7, FOREPERSON."

6 "VERDICT."

7 SAME COURT, TITLE AND CAUSE.

8 "VERDICT:"

9 "WE, THE JURY IN THE ABOVE-ENTITLED

10 CAUSE, FIND THE DEFENDANT, RICHARD

11 ERIC ROSS, GUILTY OF THE CRIME OF LEWD

12 ACT UPON A CHILD, AS CHARGED IN COUNT 13

13 OF THE AMENDED INFORMATION, TO WIT,

14 DEFENDANT'S HAND TO VICTIM'S VAGINA IN

15 THE LIVING ROOM OF THE NEW HOUSE."

16 "VICTIM: BREANNA L., BETWEEN JUNE 21,

17 2011, AND MAY 21, 2012."

18 "WE FURTHER FIND THAT DEFENDANT DID HAVE

19 SUBSTANTIAL SEXUAL CONDUCT WITH BREANNA L.,

20 A CHILD UNDER THE AGE OF 14, WITHIN THE

21 MEANING OF PENAL CODE SECTION

22 1203.066 (A) (8)."

23 "WE FURTHER FIND THAT THE DEFENDANT

24 DID COMMIT AN OFFENSE SPECIFIED IN

25 SUBDIVISION (C) AGAINST MORE THAN ONE

26 VICTIM, WITHIN THE MEANING OF PENAL

27 CODE SECTION 667.61 (B) (C) (E)."

28 "DATED 4-3-2014."

1 "7, FOREPERSON."
2 "VERDICT."
3 SAME COURT, TITLE AND CAUSE.
4 "VERDICT:"
5 "WE, THE JURY IN THE ABOVE-ENTITLED
6 CAUSE, FIND THE DEFENDANT, RICHARD
7 ERIC ROSS, GUILTY OF THE CRIME OF
8 ORAL COPULATION WITH A CHILD 10 YEARS
9 OLD OR YOUNGER, AS CHARGED IN COUNT 14
10 OF THE AMENDED INFORMATION, TO WIT
11 DEFENDANT'S MOUTH TO VICTIM'S VAGINA IN
12 THE CHILD'S BEDROOM OF THE NEW HOUSE."
13 "VICTIM: BREANNA L., BETWEEN JUNE 1,
14 2011, AND MAY 21, 2012."
15 "DATED, 4-3-2014."
16 "7, FOREPERSON."
17 "VERDICT:"
18 SAME COURT, TITLE AND CAUSE.
19 "VERDICT:"
20 "WE, THE JURY IN THE ABOVE-ENTITLED
21 CAUSE, FIND THE DEFENDANT, RICHARD ERIC
22 ROSS, GUILTY OF THE CRIME OF SEXUAL
23 PENETRATION WITH A CHILD 10 YEARS OLD
24 OR YOUNGER, AS CHARGED IN COUNT 15 OF
25 THE AMENDED INFORMATION, TO WIT,
26 DEFENDANT'S FINGER TO CHILD'S VAGINA IN
27 THE CHILD'S BEDROOM OF THE NEW HOUSE."
28 "VICTIM: BREANNA L., BETWEEN JUNE 1,

1 2011, AND MAY 21, 2012."
2 "DATED 4-3-2014."
3 "7, FOREPERSON."
4 "VERDICT."
5 SAME COURT, TITLE AND CAUSE.
6 "VERDICT:"
7 "WE, THE JURY IN THE ABOVE-ENTITLED
8 CAUSE, FIND THE DEFENDANT, RICHARD
9 ERIC ROSS, GUILTY OF THE CRIME OF LEWD
10 ACT UPON A CHILD, AS CHARGED IN COUNT 16
11 OF THE AMENDED INFORMATION, TO WIT,
12 DEFENDANT'S HAND TO CHILD'S VAGINA IN
13 THE CHILD'S BEDROOM OF THE NEW HOUSE."
14 "VICTIM: BREANNA L., BETWEEN JUNE 1,
15 2011, AND MAY 21, 2012."
16 "WE FURTHER FIND THAT DEFENDANT DID
17 HAVE SUBSTANTIAL SEXUAL CONDUCT WITH
18 BREANNA L., A CHILD UNDER THE AGE OF
19 14, WITHIN THE MEANING OF PENAL CODE
20 SECTION 1203.066(A)(8)."
21 "WE FURTHER FIND THAT DEFENDANT DID
22 NOT COMMIT AN OFFENSE SPECIFIED IN
23 SUBDIVISION (C) AGAINST MORE THAN ONE
24 VICTIM, WITHIN THE MEANING OF PENAL
25 CODE SECTION 667.61(B)(C)(E)."
26 "DATED, 4-3-2014."
27 "7, FOREPERSON."
28 "VERDICT."

1 SAME COURT, TITLE AND CAUSE.
2 "VERDICT:"
3 "WE, THE JURY IN THE ABOVE-ENTITLED
4 CAUSE, FIND THE DEFENDANT, RICHARD ERIC
5 ROSS, NOT GUILTY OF THE CRIME OF SEXUAL
6 INTERCOURSE WITH A CHILD 10 YEARS OLD OR
7 YOUNGER, AS CHARGED IN COUNT 17 OF THE
8 AMENDED INFORMATION, TO WIT, DEFENDANT'S
9 PENIS TO CHILD'S VAGINA IN THE CHILD'S
10 BEDROOM OF THE NEW HOUSE."
11 "VICTIM: BREANNA L., BETWEEN JUNE 1,
12 2011, AND MAY 21, 2012."
13 "DATED 4-4-2014."
14 "7, FOREPERSON."
15 "VERDICT."
16 SAME COURT, TITLE AND CAUSE.
17 "VERDICT:"
18 "WE, THE JURY IN THE ABOVE-ENTITLED
19 CAUSE, FIND THE DEFENDANT, RICHARD ERIC
20 ROSS, NOT GUILTY OF THE CRIME OF
21 ATTEMPTED SEXUAL INTERCOURSE WITH A
22 CHILD 10 YEARS OF AGE OR YOUNGER, A
23 LESSER-INCLUDED OFFENSE OF COUNT 17,
24 SEXUAL INTERCOURSE WITH A CHILD AGE
25 10 OR YOUNGER."
26 "DATED, 4-4-2014."
27 "7, FOREPERSON."
28 "VERDICT."

1 SAME COURT, TITLE AND CAUSE.

2 "VERDICT:"

3 "WE, THE JURY IN THE ABOVE-ENTITLED
4 CAUSE, FIND THE DEFENDANT, RICHARD ERIC
5 ROSS, NOT GUILTY OF THE CRIME OF LEWD
6 ACT UPON A CHILD, AS CHARGED IN COUNT 18
7 OF THE AMENDED INFORMATION, TO WIT,
8 DEFENDANT'S PENIS TO CHILD'S VAGINA IN
9 THE CHILD'S BEDROOM OF THE NEW HOUSE."

10 "VICTIM: BREANNA L., BETWEEN JUNE 1,
11 2011, AND MAY 21, 2012."

12 "WE FURTHER FIND THAT DEFENDANT DID NOT
13 HAVE SUBSTANTIAL SEXUAL CONDUCT WITH
14 BREANNA L., A CHILD UNDER THE AGE OF
15 14, WITHIN THE MEANING OF PENAL CODE
16 SECTION 1203.066(A) (8) ."

17 "WE FURTHER FIND THAT DEFENDANT DID NOT
18 COMMIT AN OFFENSE SPECIFIED IN
19 SUBDIVISION (C) AGAINST MORE THAN ONE
20 VICTIM, WITHIN THE MEANING OF PENAL
21 CODE SECTION 667.61(B) (C) (E) ."

22 "DATED, 4-4-2014."

23 "7, FOREPERSON."

24 "VERDICT."

25 LADIES AND GENTLEMEN OF THE JURY, WERE THESE
26 AND ARE THESE YOUR VERDICTS AS READ?

27 ----000----

28 (THEREUPON THE JURY RESPONDED AFFIRMATIVELY

1 IN UNISON.)

2 ---000---

3 THE COURT: DOES EITHER SIDE WISH TO POLL THE JURY?

4 MS. DI TILLIO: NO, YOUR HONOR.

5 MS. OLIVER: NO, YOUR HONOR.

6 THE COURT: PLEASE RECORD THE VERDICTS.

7 THE COURT CLERK: THE VERDICTS ARE RECORDED.

8 THE COURT: COUNSEL, DO YOU WAIVE READING OF THE
9 VERDICTS AS RECORDED?

10 MS. DI TILLIO: YES, YOUR HONOR.

11 MS. OLIVER: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU
13 HAVE COMPLETED YOUR SERVICE AS A TRIAL JUROR IN THIS
14 CASE. BEFORE I LET YOU GO, I HAVE ANOTHER INSTRUCTION TO
15 READ TO YOU.

16 NOW THAT THE CASE IS OVER, YOU MAY CHOOSE
17 WHETHER OR NOT TO DISCUSS THE CASE AND YOUR DELIBERATIONS
18 WITH ANYONE. I REMIND YOU THAT, UNDER CALIFORNIA LAW,
19 YOU MUST WAIT AT LEAST 90 DAYS BEFORE NEGOTIATING OR
20 AGREEING TO ACCEPT ANY PAYMENT FOR INFORMATION ABOUT THE
21 CASE.

22 ON BEHALF OF ALL OF OUR JUDGES, I NEED TO
23 THANK YOU FOR YOUR TIME AND EFFORT. WE PULL YOU OUT OF
24 YOUR EVERYDAY ROUTINE. WE PUT YOU IN A ROOM WITH 11
25 OTHER STRANGERS, AND WE TELL YOU TO MAKE NICE, THAT IS,
26 TO WORK TOGETHER. WITHOUT YOUR WORK, WITHOUT YOUR
27 EFFORT, OUR SYSTEM DOES NOT WORK.

28 I TELL ALL THE JURORS THAT APPEAR IN FRONT

1 OF ME THAT I BELIEVE THAT WHAT YOU DO AS A TRIAL JUROR IS
2 PROBABLY THE MOST IMPORTANT THING WE DO AS CITIZENS. I
3 THINK IT'S MORE IMPORTANT THAN VOTING. I THINK IT'S MORE
4 IMPORTANT THAN PAYING TAXES, WHICH IS SOMETHING THAT
5 WE'RE GOING TO BE DOING HERE PRETTY SOON.

6 AND THE REASON IS REALLY VERY SIMPLE. THE
7 CORNERSTONE, THE FOUNDATION OF OUR SYSTEM OF JUSTICE IS
8 TO BE JUDGED BY ONE'S PEERS. THAT'S WHO YOU ARE.
9 WITHOUT YOUR PARTICIPATION, OUR SYSTEM CANNOT WORK.

10 THIS SYSTEM HAS WORKED VERY WELL FOR MANY,
11 MANY YEARS, BUT, WITHOUT YOUR EFFORT, THAT WILL NOT
12 HAPPEN.

13 AND SO ON BEHALF OF OUR COURT, I NEED TO
14 THANK YOU FOR COMING DOWN AND TAKING THE TIME AND DOING
15 THIS WITH US.

16 LET ME TELL YOU A LITTLE BIT ABOUT SOME OF
17 THE RULES THE LAW PUTS IN PLACE FOR YOUR CONVENIENCE AND
18 PROTECTION.

19 THE LAWYERS IN THIS CASE, OR THEIR
20 REPRESENTATIVES, MAY NOW TALK TO YOU ABOUT THE CASE,
21 INCLUDING YOUR DELIBERATIONS AND VERDICT. THOSE
22 DISCUSSIONS MUST OCCUR AT A REASONABLE TIME AND PLACE AND
23 WITH YOUR CONSENT.

24 PLEASE TELL ME IMMEDIATELY IF ANYONE
25 UNREASONABLY CONTACTS YOU WITHOUT YOUR CONSENT. ANYONE
26 WHO VIOLATES THESE RULES IS VIOLATING A COURT ORDER AND
27 MAY BE FINED.

28 I'M ORDERING THE COURT'S RECORD OF ANY

1 PERSONAL JUROR IDENTIFYING INFORMATION, INCLUDING NAMES,
2 ADDRESSES AND TELEPHONE NUMBERS, BE SEALED PENDING
3 FURTHER ORDER OF THE COURT.

4 IF, IN THE FUTURE, THE COURT IS ASKED TO
5 DECIDE WHETHER THIS INFORMATION WILL BE RELEASED, NOTICE
6 WILL BE SENT TO ANY JUROR WHOSE INFORMATION IS INVOLVED.
7 YOU MAY OPPOSE THE RELEASE OF THIS INFORMATION AND ASK
8 THAT ANY HEARING ON THE RELEASE BE CLOSED TO THE PUBLIC.

9 THE COURT WILL THEN DECIDE WHETHER AND UNDER
10 WHAT CONDITIONS ANY INFORMATION MAY BE DISCLOSED.

11 AGAIN, THANK YOU VERY MUCH FOR YOUR SERVICE.
12 YOU ARE EXCUSED.

13 IF YOU WOULD LIKE, SOMETIMES THE LAWYERS
14 WOULD LIKE TO TALK WITH YOU. AND I'LL GIVE THEM A CHANCE
15 TO DO THAT. THEY'LL BE OUT MOMENTARILY. YOU ARE NOT
16 REQUIRED TO STICK AROUND. YOU CAN GO ABOUT YOUR EVERYDAY
17 ROUTINE NOW.

18 THANK YOU VERY MUCH.

19 ---000---

20 (THEREUPON THE JURORS WERE EXCUSED AND EXITED
21 THE COURTROOM.)

22 ---000---

23 THE COURT: NORMAL SENTENCING DATE WOULD BE?

24 THE COURT CLERK: MAY 2, 8:30, IN DEPARTMENT 55.

25 MS. OLIVER: OKAY.

26 MS. DI TILLIO: SOUNDS GOOD.

27 THE COURT: ALL RIGHT.

28 MS. DI TILLIO: IF HE'S NOT ALREADY, I'D ASK THE

1 DEFENDANT BE HELD NO BAIL.

2 THE COURT: ANY DISCUSSION ABOUT THAT STATUS?

3 MS. OLIVER: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. NO BAIL STATUS.

5 MS. DI TILLIO: THANK YOU, YOUR HONOR.

6 ---000---

7 (THEREUPON THE PROCEEDINGS IN THIS MATTER
8 WERE RECESSED UNTIL FRIDAY, MAY 2, 2014, AT
9 8:30 A.M., FOR FURTHER PROCEEDINGS.)

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PEOPLE OF THE STATE OF CALIFORNIA,)	SUPERIOR COURT
)	CASE NO. SCD241238
PLAINTIFF,)	
)	DISTRICT ATTORNEY
VS.)	CASE NO. ADE743
)	
RICHARD ERIC ROSS,)	
)	
DEFENDANT.)	
)	

DATE OF PROCEEDINGS: APRIL 1, 2, 3 AND 4, 2014

STATE OF CALIFORNIA)
) SS.
 COUNTY OF SAN DIEGO)

I, CYNTHIA K. WHITE, OFFICIAL COURT REPORTER
 FOR THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF
 SAN DIEGO, DO HEREBY CERTIFY:

 THAT I REPORTED THE FOREGOING PROCEEDINGS AND THE
 TESTIMONY ADDUCED IN MACHINE SHORTHAND;

 AND THAT THE FOREGOING TRANSCRIPT, CONSISTING OF
 PAGES NUMBERED FROM 326 THROUGH 610, INCLUSIVE, IS A TRUE,
 COMPLETE AND CORRECT TRANSCRIPTION OF SAID PROCEEDINGS, TO THE
 BEST OF MY ABILITY.

 DATED AT SAN DIEGO, CALIFORNIA, THIS 26TH DAY OF
 JUNE, 2014.

CYNTHIA K. WHITE
 CSR NO. 4460