

**IN THE SUPREME COURT FOR THE STATE OF MICHIGAN**  
**Appeal from the Michigan Court of Appeals**

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People of the State of Michigan,  
Plaintiff-Appellee,

v.

Daniel Albert Loew,  
Defendant-Appellant and Cross-Appellee.

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On Appeal from the Michigan Court of Appeals  
Docket No. 352056

On Appeal from the 48<sup>th</sup> Circuit Court for  
County of Allegan  
Case No. 18-021709-FC

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**DEFENDANT-APPELLANT'S APPENDIX**

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STATE OF MICHIGAN

48<sup>TH</sup> JUDICIAL CIRCUIT COURT (ALLEGAN COUNTY)

THE PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 18-21709-FC

DANIEL ALBER LOEW,

Defendant.

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JURY TRIAL - DAY ONE

BEFORE THE HONORABLE MARGARET ZUZICH BAKKER, CIRCUIT JUDGE

Allegan, Michigan - Tuesday, August 27, 2019

APPEARANCES:

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1 Allegan, Michigan

2 Tuesday, August 27, 2019 - 8:45 a.m.

3 THE COURT: All right. We are here in regards to  
4 the case of the People versus Loew. It's file 18-21709.

5 So hopefully we will get started very close to 9  
6 as far as picking a jury. But I did want to go over the  
7 witness lists and if you could advise me as to what witnesses  
8 are going to be called. Ms. Jipp, if you would start.

9 MS. JIPP: Yes. We anticipate Trooper Desch,  
10 Trooper Workman --

11 THE COURT: Oh, that's --

12 MS. JIPP: Oh, sorry.

13 THE COURT: -- got to go a little slow. I am  
14 checking them off. Thank you. Yes.

15 MS. JIPP: Trooper Desch, Trooper Workman --

16 THE COURT: Yes.

17 MS. JIPP: Jenna Bluhm, Taylor Bluhm, Anna Bluhm,  
18 Angela Gensler, Audriana Ordonez, Lisa Oravetz, Michelle  
19 Schmitt and Tom Cottrell.

20 THE COURT: Thank you. Witnesses the defense  
21 intends to call.

22 MR. MAESEN: Your Honor, my list wouldn't print off  
23 this morning. So I don't have it right in front of me. But  
24 I can tell you some of them, if that would help. And some -  
25 we have a very extensive list, but we may not call all of

1           them.   But --

2                   MS. JIPP:    Are you sticking with Mr. Antkoviak's?  
3   I have a copy if you would like to look at that.

4                   MR. MAESEN:   Yeah.  Actually, I think we are  
5   going to amend that and probably not call quite all of those.

6                   Thank you.  This may not be the order we call them  
7   in, but.

8                   THE COURT:    It doesn't matter.

9                   MR. MAESEN:    Okay.

10                  THE COURT:    I just need to know --

11                  MR. MAESEN:    Yep.  Daniel Loew, the Defendant,  
12   Brooke Heppe, his wife, Scott Heppe, same spelling of the last  
13   name, Heppe, excuse me, Jane Heppe, some of these may be  
14   called also.  But if the prosecution calls them, we probably  
15   won't recall them.  Lindsay Carroll, C-a-r-r-o-l-l.  Jessica  
16   Milburn, M-i-l-b-u-r-n.  Those are the ones I think for sure  
17   we are going to call.  There is the possibility, although  
18   I think it's unlikely, may also call Martin Loew, the same  
19   last name as the Defendant, Nathan Campbell, spelled like  
20   the soup.  Mark Calcott and then Lacy, L-a-c-y Taylor.  
21   And then last would be Danielle Devriendt, D-e-v-r-i-e-n-d-t.

22                  THE COURT:    I have two other names, Daniel Swerdlow  
23   Freid and Betty Gentzler; are those not being called?

24                  MR. MAESEN:    Daniel Freid was used, primarily  
25   to give advice.  He is not anticipated to be a actual witness

1 at trial. So yes, he will not be called.

2 And then Betty Gentzler, I don't know, we don't  
3 plan on calling.

4 THE COURT: So in regards to -- I know Thomas  
5 Cottrell is an expert witness or request, will be requested.  
6 Is there any other expert witnesses?

7 MS. JIPP: Lisa Oravetz and Michelle Schmitt  
8 both work for the Michigan State Police lab, so we will  
9 be certifying them as experts.

10 THE COURT: Any experts on your list?

11 MR. MAESEN: Other than those two from the State  
12 Police, no.

13 THE COURT: So in regards to openings and closings,  
14 I am probably going to limit you. We've got a lot of  
15 witnesses to get through in three days.

16 MR. MAESEN: I know. I know.

17 THE COURT: So I don't -- I think you should be  
18 able to do your openings in 20 minutes.

19 MR. MAESEN: Oh, I can keep it under 10, I am  
20 pretty concise.

21 THE COURT: All right. And then we will talk  
22 about closings when we get there. Voir dire, I will -- I am  
23 not going to rein you in until it seems to me like you need  
24 to be reined in.

25 MR. MAESEN: Sure.

1 THE COURT: So keep that in mind. I think we need  
2 to get this jury picked by noon.

3 MR. MAESEN: No, I agree.

4 THE COURT: And that's going to be a very difficult  
5 process.

6 MR. MAESEN: I agree.

7 THE COURT: So we are going to call 14, obviously.  
8 And we have 60 jurors right now. We called in -- we called  
9 75. That's -- we usually have a 20% dropoff. So my guess is  
10 we will remain around 60-65 for what we have. If we have a  
11 juror who feels that they can't say something in front of  
12 the entire group, go into chambers with the two of you and  
13 talk with that juror privately. Other than that, I don't  
14 think we need to discuss anything else unless you --

15 MS. JIPP: Yes, your Honor. I did find a motion to  
16 amend the information. We had noticed that previously. But  
17 I think due to short notice, Mr. Maesen was unable to attend  
18 at that time, so we said we would address it right before we  
19 proceeded to trial.

20 That was the People's request to add an additional  
21 count of CSC 3<sup>rd</sup> degree under the theory of penis/mouth  
22 contact. Throughout the investigation and the forensic  
23 interview, the victim details repeatedly that he would have  
24 her perform oral sex. So we did not want to confuse the  
25 jury by not including that -- that type of behavior in the

1 information. So we would request that the Court allow us  
2 to add an additional count of CSC 3<sup>rd</sup>.

3 THE COURT: Response.

4 MR. MAESEN: I just would ask for clarification.  
5 Is that tied to a specific incident or are they just kind  
6 of saying that could fall anywhere within the case?

7 MS. JIPP: It would specifically relate to the  
8 incident that the victim claims occurred in the vehicle.  
9 And that was one of the specific instances she -- she kind  
10 of goes into a little bit more detail, where he grabs her  
11 head and forces it down to perform a blow job.

12 MR. MAESEN: But it --

13 THE COURT: Does that answer your question.

14 MR. MAESEN: Yeah, I know the incident she is  
15 speaking of.

16 THE COURT: All right.

17 MS. JIPP: And I do have the amended prepared if  
18 the Court does choose to grant this motion.

19 THE COURT: Well, as the parties are aware, it's  
20 a fairly liberal rule in regards to amendment of information.  
21 You could go through the whole case and amend it at the end.

22 MR. MAESEN: Right.

23 THE COURT: It makes more sense to amend it at  
24 the beginning, so.

25 Thank you.

1 All right. We will take a brief adjournment.  
2 Hopefully we will be able to get the jury in here within the  
3 next ten minutes.

4 MS. JIPP: Thank you, your Honor.

5 (at 8:53 a.m., Court adjourned)

6 (at 9:07 a.m., Court reconvened)

7 THE COURT: We are going to bring the jury in, so  
8 please remain standing for the jury.

9 (at 9:08 a.m., jury brought back in)

10 THE COURT: Thank you.

11 Okay. If we are running out of chairs, we -- we can  
12 up and sit in the jury box itself. Thank you. It looks like  
13 we are pretty full up. There is one over there. There is  
14 one right in the back.

15 You may be seated. Thank you.

16 Good morning. We are here in file 18-21709, People  
17 versus Daniel Albert Loew.

18 Ladies and gentlemen, I am Judge Bakker. It's my pleasure  
19 and privilege to welcome you to the 48<sup>th</sup> Judicial Circuit Court  
20 of Allegan County.

21 I know that jury duty may be a new experience for  
22 some of you. Jury duty is one of the most serious duties that  
23 members of a free society are asked to perform. Our system of

1 self-government could not exist without it. The jury is an  
2 important part of this Court. The right to a jury trial is an  
3 ancient tradition and part of our heritage.

4 The law says that both a person who is accused of a  
5 crime and the prosecution have the right to a trial, not by  
6 one person, but by a jury of 12 impartial persons. Jurors  
7 must be free as humanly possible from bias, prejudice, or  
8 sympathy, for either side. Each side in a trial is entitled  
9 to jurors who keep open minds until the time comes to decide  
10 the case.

11 A trial begins with jury selection. The  
12 purpose of this process is to obtain information about you  
13 that will help choose a fair and impartial jury to hear this  
14 case. During jury selection, the lawyers and I will ask you  
15 questions. This is called the voir dire. The questions are  
16 meant to find out if you know anything about the case. Also,  
17 we need to find out if you have any opinions or personal  
18 experiences that might influence you for or against  
19 the prosecution, the Defendant, or any witness. One or more  
20 of these things could cause you to be excused in this  
21 particular case, even though you may be qualified to  
22 be a juror otherwise.

23 The questions may probe deeply into your attitudes,

1 beliefs, and experiences. They are not meant to be an  
2 unreasonable prying into your private life. The law requires  
3 that we get this information so that an impartial jury can  
4 be chosen.

5 If you do not hear or understand a question, you  
6 should say so. If you do understand it, you should answer  
7 it truthfully and completely.

8 Please do not hesitate to speak freely about  
9 anything you believe we should know.

10 During jury selection you may be excused from  
11 serving on the jury in one of two ways. First, I might excuse  
12 you for cause. That is, I might decide that there is a valid  
13 reason why you cannot or should not serve in this  
14 case. Or a lawyer from one side or the other may excuse you  
15 without giving any reason for doing so. This is called a  
16 peremptory challenge. The law gives each side the right to  
17 excuse a certain number of jurors in this way.

18 If you are excused, you should not feel bad or  
19 take it personally. As I explained before, there simply  
20 may be something that causes you to be excused from this  
21 particular case.

22 I will now ask all of the jurors to stand. The  
23 clerk is going to swear you in to answer truthfully, fully and  
24 honestly all of the questions you will be asked about your  
25 qualifications to serve as a juror in this case. If you have

1 religious beliefs against taking an oath, you may affirm that  
2 you will answer all of the questions truthfully, fully, and  
3 honestly.

4 MS. FURHMAN: Please raise your right hands.

5 Do you solemnly swear or affirm that you will  
6 truthfully answer all of the questions that may be put to you  
7 touching upon your qualifications to sit as jurors in this  
8 case? If so, answer "I do".

9 JURY PANEL: I do.

10 MS. FUHRMAN: Thank you.

11 THE COURT: I would like to introduce you to some  
12 of the members of the staff that are here. You've already  
13 met Mr. Buxton, he is our bailiff for today and for the next  
14 several days.

15 You just heard from Katey Fuhrman. She is the  
16 clerk from the clerk's office and will be assisting us at  
17 the beginning and at the end of the trial.

18 Making sure that everything is being recorded and  
19 heard properly and also dealing with other administrative  
20 issues is Anne Lange. And she is -- has the headset on and  
21 is seated to my right.

22 This is a criminal case involving the charge of two  
23 counts of criminal sexual conduct in the first degree,

1 criminal sexual conduct in the second degree, and two counts  
2 of criminal sexual conduct in the third degree, which I  
3 will explain more fully later.

4 The charges are made against the Defendant who is  
5 seated at defense table, Daniel Albert Loew. And his  
6 attorney is Ryan Anthony Maesen.

7 The prosecutor for this case is Emily Jipp and  
8 seated next to her is Trooper Desch.

9 I am going to name the witnesses that may be  
10 called in this case. Jenna Bluhm, Taylor Bluhm, Jane Heppe,  
11 Angela Gentzler, Audriana Ordonez --

12 MS. JIPP: Ordonez.

13 THE COURT: -- Trooper Eric Desch, Thomas Cottrell,  
14 Trooper Todd Workman, Anna Bluhm, Michelle Schmidt, Lisa  
15 Orovetz, Brouk Heppe, Scott Heppe, Lindsay Carroll, Jessica  
16 Milburn, Martin Loew, Nathaniel Campbell, Mark Calcutt,  
17 Lacy Taylor, Daniel Devriendt, and Daniel Loew.

18 As I indicated when you were in the other room,  
19 this jury is expected to last three days.

20 As indicated, this is a criminal case. The paper  
21 used to charge the Defendant with a crime is called an  
22 information. I am going to read the information to you.

23 On or about December 15<sup>th</sup> through January 2018,  
24 in Salem Township in the county of Allegan, it's alleged

1 that the Defendant did engage in count one, engage in  
2 sexual penetration, penis/vagina, with Jenna Bluhm, causing  
3 personal injury to said victim and using force or coercion  
4 to accomplish sexual penetration.

5 Count two alleges that the Defendant engaged in  
6 sexual penetration, to-wit, penis/vagina, with Jenna Bluhm,  
7 using force or coercion to accomplish the sexual  
8 penetration.

9 Count three alleges that the Defendant engaged in  
10 sexual contact with another person, to-wit, Jenna Bluhm,  
11 causing personal injury to said victim and using force or  
12 coercion to accomplish the sexual contact.

13 Count four alleges that the Defendant engaged in  
14 sexual penetration, to-wit, penis/genital opening, with Jenna  
15 Bluhm, causing personal injury to said victim and using  
16 force or coercion to accomplish sexual penetration.

17 Count five alleges that the Defendant did engage  
18 in sexual penetration, to-wit, penis/mouth, with a child who  
19 was at least 13 years of age, but under 16 years. That is  
20 criminal sexual conduct in the third degree.

21 The Defendant has pled not guilty to these charges.  
22 You should clearly understand that the information I have  
23 just read is not evidence. An information is read in every  
24 criminal trial so that the Defendant and the jury can hear

1 the charges. You must not think it is evidence of his  
2 guilt or that he must be guilty because he has been charged.

3 I am going to read you some presumptions or tenets  
4 of the law. There are three.

5 The first is that a person accused of a crime is  
6 presumed to be innocent. That means you must start with the  
7 presumption that the Defendant is innocent.

8 This presumption continues throughout the trial and  
9 entitles the Defendant to a verdict of not guilty, unless  
10 you are satisfied beyond a reasonable doubt that he is guilty.

11 Every crime is made up of parts called elements.  
12 The prosecutor must prove each element of the crime beyond  
13 a reasonable doubt.

14 The Defendant is not required to prove his  
15 innocence or to do anything.

16 If you find that the prosecutor has not proven  
17 every element beyond a reasonable doubt, then you must find  
18 the Defendant not guilty.

19 A reasonable doubt is a fair, honest doubt, growing  
20 out of the evidence or lack of evidence. It is not merely  
21 an imaginary or possible doubt, but a doubt based on reason  
22 and common sense. A reasonable doubt is just that, a doubt  
23 that is reasonable after a careful and considered  
24 examination of the facts and circumstances of this case.

25 We are now going to select the members to start the

1 jury selection. We are going to pick 14 jurors. At the end  
2 of the trial, we will, by a random draw, reduce the number  
3 of jurors to 12. But we will have 14 because we have  
4 several days of trial. And then if someone cannot return  
5 because of an illness or some other reason, we still can  
6 continue with the trial.

7 So this is going to be a little bit uncomfortable,  
8 but I think I am going to need to have the parties that are  
9 in the jury box just move out temporarily, because we are  
10 going to start with the first juror to sit in the very back,  
11 where the gentleman with the white, kind of multicolored or  
12 whatever shirt, that's juror number one. And then we are  
13 going to go all the way down that row. And then start with  
14 juror number eight, yes, number eight, with the woman who  
15 has on the black shirt. And that will be juror number eight,  
16 so that's how we are going to begin.

17 So the people who are in the jury box right now,  
18 and I apologize our courtrooms are not typically big enough  
19 for some of the work we do.

20 If the clerk would start by calling the first juror  
21 to box number one, and Mr. Buxton will assist you in regards  
22 to where you need to sit.

23 MS. FUHRMAN: Juror number 124, Albert Kuiper.  
24 In seat number two, juror number 117, Kim Kelly. In seat  
25 number three, juror number 92, Sarah Henrickson. In seat

1 number four, juror number 135, Michael Marcy. In seat number  
2 five, juror number 111, Sandy Jimenez. In seat number six,  
3 juror number 113, Michael Johnson. Seat number seven,  
4 juror number 155, Mindy Roelofs. Seat number eight, juror  
5 number 178, Lindsay Woltman.

6 MS. JIPP: I'm sorry, can you state that name  
7 again?

8 MS. FUHRMAN: Woltman. W-o-l-t-m-a-n.  
9 In seat number nine, juror number 121, Mark Kroeze. In  
10 seat number ten, juror number 125, Zachary Langkamp. Seat  
11 number eleven, juror number 165, Allie Tencate. In seat  
12 number twelve, juror number 116, Gordon Kelley. In seat  
13 number thirteen, juror number 146, Lacey Morton. And in seat  
14 fourteen, juror number 168, Kenneth Vannoord.

15 THE COURT: So those of you that are standing can  
16 find an empty seat, that would be great. Thank you.

17 So I am going to start off with a few questions.  
18 Has anyone that's currently seated and maybe I should make  
19 this cautionary note, everyone who is here should listen.  
20 Because the potential is that you could still be picked.  
21 It's very rare that we pick a jury immediately. So that  
22 will maybe help reduce the number of repetitive questions.

23 Has anyone been on a jury before? I am going to  
24 just address the people who are in the box right now. I  
25 know I didn't explain that. So Mr. Kuiper?

1 MR. KUIPER: Yeah.

2 THE COURT: All right. When were you on a jury,  
3 sir?

4 MR. KUIPER: Probably 30 years ago.

5 THE COURT: All right. Would it impact your  
6 ability to sit and be fair in this case?

7 MR. KUIPER: (Inaudible).

8 THE COURT: Do you remember if it was criminal or  
9 civil?

10 MR. KUIPER: Criminal.

11 THE COURT: Criminal. All right. Was it in  
12 Allegan?

13 MR. KUIPER: No, Indianapolis.

14 THE COURT: Okay. Thank you. No one else has  
15 ever been on a jury before? Does anyone know someone else  
16 that's sitting in the box right now? Does anyone have any  
17 health concerns? We usually take a break every hour and a  
18 half to two hours. Anyone have any health concerns where  
19 they can't sit and listen?

20 JUROR: The only -- I can't hear real good. So --

21 THE COURT: All right.

22 JUROR: -- I would have a problem with that, but.

23 THE COURT: All right. Well, let me get closer  
24 to my microphone.

25 JUROR: I had a hard time in the other room, so.

1 THE COURT: Did you? Okay. Well, that room is  
2 not the best. Can you hear me if I talk into the microphone?

3 JUROR: Yep.

4 THE COURT: All right. If you can't hear  
5 something, just let us know.

6 JUROR: Thank you.

7 THE COURT: All right.

8 Did anyone, in listening to the witness list,  
9 recognize any of the names on the witness list?

10 Has anyone here ever been involved in a case that  
11 involves sexual -- criminal sexual conduct, either as a  
12 witness, a victim, a Defendant, or just someone who know --  
13 has had a friend or a relative that's been involved in that  
14 type of a situation?

15 JUROR: I had a relative that was.

16 THE COURT: You had a relative. And how long  
17 ago was that?

18 JUROR: Oh, probably four years ago --

19 THE COURT: Okay.

20 JUROR: -- three and a half years ago about.

21 THE COURT: All right. Was there a criminal  
22 investigation or anything like that?

23 JUROR: Yeah, he was prosecuted.

24 THE COURT: Okay. Would that affect your ability  
25 to sit and be fair in this case?

1 JUROR: Yeah, I have some opinions on stuff --  
2 you know, so.

3 THE COURT: Sure. I think everyone has opinions  
4 about it.

5 JUROR: I have a very low tolerance for it, so  
6 you know, I mean.

7 THE COURT: Correct.

8 JUROR: You hear about it until it affected one  
9 of your family and it's -- I've been upset ever since.

10 THE COURT: Okay. Well the -- I think what we  
11 would all acknowledge is that criminal sexual conduct is --  
12 is wrong. Sexually assaulting someone is wrong. The issue  
13 is whether or not you can put aside your feelings about how  
14 wrong that is and listen to the -- to the evidence in this  
15 case and decide whether or not there was a criminal act in  
16 this case. So it's separating out -- because we all have  
17 biases about things, right? So it's kind of separating  
18 that out and saying, "That's my bias, I think you know, just  
19 hearing this makes me, you know, kind of upset." It should  
20 make you upset, right? That's a horrible thing to have  
21 happened if it happened. But you have to determine if it  
22 happened first, right?

23 JUROR: Yeah.

24 THE COURT: Okay. Can you do that?

25 JUROR: I can try.

1 THE COURT: All right. Someone else raised their  
2 hand and I -- I -- okay. Thank you. Is is Mr. Marcy?

3 MR. MARCY: Yes.

4 THE COURT: Okay.

5 MR. MARCY: I had a brother-in-law that was  
6 convicted of it.

7 THE COURT: Okay. When was that?

8 MR. MARCY: Approximately five years ago.

9 THE COURT: Okay. Would that affect your ability  
10 to sit and be fair in this case?

11 MR. MARCY: I don't believe so.

12 THE COURT: Okay. You could put that aside and  
13 just look at what happened here and what you hear here and  
14 make a decision based on the evidence presented here.  
15 Because that's really the role of the jury. Does that make  
16 sense?

17 MR. MARCY: Yep.

18 THE COURT: Okay. Thank you.

19 I am going to turn the questioning over to Ms.  
20 Jipp. She is the prosecutor that's handling the case today.  
21 And then Mr. Maesen will also have the ability to ask you  
22 questions.

23 And I will remind the attorneys that when -- if --  
24 if a juror is removed and a -- we start with new jurors to  
25 be asked questions of, we will limit the questioning to the

1 new jurors. We won't be going back to asking questions of  
2 the entire panel.

3 MS. JIPP: Yes, your Honor.

4 THE COURT: Thank you.

5 MS. JIPP: Give me two shakes to spin this around  
6 so I can see you guys.

7 As you've heard probably a couple of times already,  
8 my name is Emily Jipp, and I will be the prosecutor handling  
9 the case for the state of Michigan for the next three days.

10 First and foremost, just want to say thank you guys  
11 for being here. It's not like winning the lottery when you  
12 get called in for jury duty. I certainly understand and  
13 respect that. My husband was on last month's jury pool. He  
14 was not pleased to be here. So we appreciate your service  
15 and that goes for everyone out there as well.

16 We've kind of gone through some preliminary  
17 matters in terms of witnesses that you may or may not know.  
18 But I work in an office with quite a few other people. We  
19 have about ten prosecuting attorneys and various support  
20 staff. Is anyone familiar with or know someone that works  
21 up in my office here in Allegan County?

22 Yes, ma'am. Who do you know?

23 JUROR: Meredith Biedler.

24 MS. JIPP: And how do you know Meredith?

25 JUROR: I go to church with her.

1 MS. JIPP: Is your last name Roelofs?

2 MS. ROELOFS: Roelofs.

3 MS. JIPP: Roelofs, okay. Would the fact that you  
4 go to church with an attorney in my office impact your  
5 ability to stand and listen over the next three days to this  
6 case?

7 MS. ROELOFS: Probably not.

8 MS. JIPP: You don't think it will lend any bias  
9 or give my -- my case more credibility simply because you  
10 know her?

11 MS. ROELOFS: No. More emotional reasons.

12 MS. JIPP: Okay. Okay. Thank you. Anyone else?  
13 No.

14 Trooper Desch or Trooper Workman. I know that we  
15 mentioned, but I always like to go over that again, since  
16 they are law enforcement that are going to be here. No.  
17 Okay.

18 I know that you all don't know anyone within the  
19 jury panel.

20 Have you had spouses or family members serve on a  
21 jury pane and talk about that experience? No. Okay.

22 Has anyone ever, maybe, given a statement to  
23 police or been a witness in a criminal case or -- or maybe  
24 even a civil matter? No. Okay.

25 JUROR: In a criminal case, I have.

1 MS. JIPP: Okay. What was your involvement in --  
2 in a criminal case?

3 JUROR: Actually, I was convicted of a felony in  
4 1977.

5 MS. JIPP: 1977. And your -- your last name was  
6 Mr. Marcy, right?

7 MR. MARCY: Yes.

8 MS. JIPP: Okay. Now --

9 MR. MARCY: The clerk can find the record of it  
10 so.

11 MS. JIPP: Well, we appreciate your honesty. Now  
12 the fact that you were a Defendant and convicted in 1977,  
13 do you think that that makes it impossible for you to sit  
14 here as a jury member, like you are biased against maybe  
15 the state or police troopers?

16 MR. MARCY: No. I was -- I was guilty.

17 MS. JIPP: Okay. Anything else about that  
18 experience you think I should be made aware of?

19 MR. MARCY: Not really.

20 MS. JIPP: Okay. Okay. Has anyone here ever had  
21 an experience with a law enforcement officer that has left  
22 maybe a negative impression? Mr. --

23 MR. KROEZE: Kroeze.

24 MS. JIPP: -- Kroeze. Okay. Do you care to  
25 expand on that a little bit?

1 MR. KROEZE: It was in Kent County.

2 MS. JIPP: Okay.

3 MR. KROEZE: I got pulled over. I don't have my  
4 C.P.L., but I had my gun in my vehicle. I had a beer. So  
5 I was over the legal limit. The cop didn't know what to do  
6 about the gun.

7 MS. JIPP: Okay.

8 MR. KROEZE: So he ended up lying in the police  
9 report and taking me to jail for DUI. So I go through a  
10 whole jury trial to prove I was innocent.

11 MS. JIPP: Okay. Okay. So I mean, it sounds like  
12 you are going characterize, you used a pretty strong word,  
13 "lying", that was a pretty negative experience with law  
14 enforcement.

15 MR. KROEZE: Yes.

16 MS. JIPP: Do you recognize that an officer in  
17 Kent County isn't Trooper Desch or Trooper Workman that we  
18 we have present in this case today?

19 MR. KROEZE: Yeah.

20 MS. JIPP: Okay. Do you think you can set that  
21 experience aside and just listen to the evidence over the  
22 next three days and reach a decision or are you soured on  
23 the whole situation?

24 MR. KROEZE: It cost me a lot of money, so I am  
25 pretty sour on it, to be honest.

1 MS. JIPP: Okay.

2 MR. KROEZE: I think the system is flawed.

3 MS. JIPP: Okay. Okay. Thank you for sharing  
4 that. Anyone else?

5 I would like to give the example, I got a speeding  
6 ticket. I didn't feel like I was going that fast. It wasn't  
7 a particularly pleasant experience, but I understood he was  
8 doing his job. Anybody have something like that?

9 JUROR: I've gotten pulled over before for  
10 speeding.

11 MS. JIPP: Okay.

12 JUROR: And I recognized it was my fault.

13 MS. JIPP: Okay. And you are Ms. Tencate --

14 MS. TENCATE: Yes.

15 MS. JIPP: -- is that correct? Okay. So, did  
16 the officer treat you well?

17 MS. TENCATE: Yeah. He was very kind.

18 MS. JIPP: Okay.

19 MS. TENCATE: Understanding with me, even gave me  
20 less than I was going, speedwise.

21 MS. JIPP: Okay.

22 MS. TENCATE: So I could recognize it was my  
23 fault.

24 MS. JIPP: And because he maybe cut you a break  
25 and shaved the speed, would that make you biased towards

1 the victim's case?

2 MS. TENCATE: No. I was just thankful. But I  
3 wasn't biased -- I am not biased towards it at all.

4 MS. JIPP: Okay. Any -- did I see a hand over  
5 here? No.

6 JUROR: I kinda had the same thing. Been pulled  
7 over a couple of times. I had a headlight out one time and  
8 I didn't even know.

9 MS. JIPP: Okay.

10 JUROR: When he pulled me over, I didn't even  
11 know they were pulling me over. And so I pulled into a  
12 parking lot. And then he's like, "Do you know why I pulled  
13 you over?" And I had no idea. But they -- they were nice  
14 about it. They didn't give me a ticket or anything.

15 MS. JIPP: Okay. So maybe not a negative  
16 experience for you either. Anybody have a positive experience  
17 with law enforcement? A rowdy neighbor you needed to call  
18 on or --

19 JUROR: Yeah, I had like a big fight behind my  
20 house and the cop came to check on me to make sure I was  
21 okay, so.

22 MS. JIPP: Okay.

23 JUROR: Appreciated that, because I was home  
24 alone and scared at night.

25 MS. JIPP: Okay. And because they kinda did their

1 job and looked out for you, would that make you biased one  
2 way or another as you listen to the evidence over the next  
3 three days?

4 JUROR: No, I just think they did their job.

5 MS. JIPP: Okay. Okay. Anybody else feel that  
6 they have something that they should contribute? No. Okay.

7 You heard the Judge speak about reasonable doubt.  
8 And in this case, the burden is on the People. Over the next  
9 three days it will be my job and duty to bring witnesses  
10 before you and have them testify. And we have to prove each  
11 element of the crimes, as you heard Judge Bakker read off  
12 the various criminal sexual conduct charges. So does anybody  
13 coming in here have a clear picture of what reasonable doubt  
14 is in their mind?

15 Ms. Jimenez, do you want to take a crack at it?

16 MS. JIMENEZ: No, my first time here, so this is  
17 really new to me.

18 MS. JIPP: Sure. You know, people 20 years into  
19 their career struggle with this. But as you heard the Judge  
20 say, it's not beyond an imaginary doubt or a possible doubt.  
21 You need to use your reason and your common sense. Does --  
22 does that make sense? You kind of get a feel for how all of  
23 the pieces of the puzzle fit together.

24 Anybody have a problem with that nebulous concept?  
25 Okay.

1           When we talk about evidence, there is a distinction  
2 between direct and circumstantial evidence. And the Judge  
3 is going to give you a whole laundry list of instructions  
4 that you will be able to take back with you and read through  
5 and follow. But I just want to see if we can kind of  
6 distinguish between direct and indirect evidence. Does  
7 anybody have a guess as to what direct evidence would be?  
8 I am going to pick on you, Mr. Johnson.

9           MR. JOHNSON: I don't know if there is something  
10 that (inaudible) directly.

11           MS. JIPP: So how about I give you an example,  
12 you -- it's pouring down rain and you go outside and you see  
13 that it's raining. So you -- you are an eye witness and you  
14 see that. Does that make sense that that would be direct  
15 evidence? Okay. It -- it's evidence that clearly  
16 establishes a fact. So you see the rain, it must be raining.

17           So circumstantial evidence is evidence that makes  
18 you kind of use indirect reasoning to reach a fact. So you  
19 are already in the building and I walk in with an umbrella  
20 and a rain jacket, covered in water, what do you think that  
21 that could be circumstantial evidence of?

22           MR. JOHNSON: That it's raining.

23           MS. JIPP: That it's raining, right. It's as  
24 simple as that. Circumstantial evidence is something that  
25 when you kind of take it all together, it kind of helps make

1 this -- this pretty picture, right?

2 A lot of times in T.V. shows they make it seem like  
3 circumstantial evidence might not be good enough. But do  
4 we all understand that a case can be proven with direct or  
5 circumstantial evidence? Does that make sense? All right.

6 Now I know that a couple of individuals, I believe  
7 Mr. Marcey and Mr. Vannoord, am I saying that correctly?

8 MR. VANNOORD: Yep.

9 MS. JIPP: And are you -- can you hear me okay?

10 MR. VANNOORD: Yep.

11 MS. JIPP: Okay. You all mentioned having issues  
12 with family member involved in CSC cases. Has anyone here  
13 ever had any sort of other experience, and Mr. Krouze, I  
14 understand you spoke about yours, too, where you either have  
15 a family member that was a victim or a Defendant, even if  
16 it wasn't a case that involved criminal sexual conduct.  
17 Ms. Woltman?

18 MS. WOLTMAN: I was a victim as a child, but it  
19 wasn't tried.

20 MS. JIPP: Okay. As a result of your own  
21 experiences, are you going to have difficulty listening with  
22 a fair and impartial mind as we go over the evidence over the  
23 next three days.

24 MS. WOLTMAN: I am not really sure. This is giving  
25 me a lot of anxiety.

1 MS. JIPP: Okay. And you said that that was when  
2 you were a child.

3 MS. WOLTMAN: Mmmhmm.

4 MS. JIPP: Did it happen here in Michigan?

5 MS. WOLTMAN: Mmmhmm.

6 MS. JIPP: Thank you for your honesty. Anybody  
7 else, either themselves? Ms. Henrickson, am I saying that  
8 right?

9 MS. HENRICKSON: Yeah, Henrickson. I -- my sister  
10 mentioned that something might have happened to her when she  
11 was younger, but I don't know. It wasn't tried or anything.

12 MS. JIPP: Okay.

13 MS. HENRICKSON: But I -- I am not going to let  
14 that affect me.

15 MS. JIPP: Okay. Did you believe her when she  
16 came and said that to you?

17 MS. HENRICKSON: Yeah. I did. Because, I don't  
18 think she would lie about that. But I don't know. I --

19 MS. JIPP: Okay.

20 MS. HENRICKSON: I am not happy about it, but  
21 you know, I don't know. It doesn't pertain -- it's not  
22 this person or anything.

23 MS. JIPP: Sure. Sure. And you said that she  
24 came to you, but she never went to law enforcement.

25 MS. HENRICKSON: Yeah. I don't think so. I think

1 she, like, told our parents about it.

2 MS. JIPP: Okay.

3 MS. HENRICKSON: And me. But I think she told  
4 my parents more about it.

5 MS. JIPP: Okay.

6 MS. HENRICKSON: (Inaudible).

7 MS. JIPP: And as like a bystander, and dealing  
8 with somebody that has had those issues, you think you will  
9 still be able to listen fairly to the evidence presented in  
10 Court?

11 MS. HENRICKSON: Yeah.

12 MS. JIPP: Okay. Okay. Anyone else know someone  
13 accused of a crime or personal interactions with a victim?  
14 No. Okay.

15 Does everyone here understand that it's not  
16 necessarily -- well, it's not at all the victim that brings  
17 a case against a Defendant? Obviously you need a victim's  
18 cooperation to come forward and report, but then the state  
19 chooses to issue charges. They look at, kind of the facts  
20 and see what -- what crimes would apply. Does that make  
21 sense to everyone, that it's not the victim? Okay.

22 So if I was to say to you, Mr. Langkamp?

23 MR. LANGKAMP: Yep.

24 MS. JIPP: Who pressed charges in this case?

25 MR. LANGKAMP: The state.

1 MS. JIPP: Perfect. The Judge will also instruct  
2 you today that sympathy should not impact your deliberations.  
3 So if you feel that at the end of this case that the state  
4 has proven beyond a reasonable doubt all of the elements  
5 regardless of whether Mr. Loew is -- is upset or seemed like  
6 such a nice man through the whole trial. Does everyone  
7 understand that it would be your obligation to find him  
8 guilty, if I can prove all of the elements beyond a  
9 reasonable doubt? So your sympathy for him in this situation  
10 should not impact your ability to reach a decision.

11 Now punishment is something that is determined by  
12 the Court after finding of guilt. So you are only here to  
13 decide whether he is guilty or not guilty. Does anyone  
14 disagree with that? Okay.

15 So I am sure you've kind of gotten the impression  
16 from my speech so far that in a case such as this,  
17 credibility becomes a big issue. And a lot of the evidence  
18 in this case comes from testimony of witnesses. And it will  
19 be necessary for you to determine who is more credible or  
20 believable, because you might hear conflicting evidence.  
21 Does that make sense?

22 So this judgment call, it can't come from the Judge,  
23 it can't from me, it can't come from Mr. Maesen. It's got  
24 to be a decision you make as 14 jurors in the jury room. Does  
25 that make sense? Okay.

1           Mr. Johnson, would you -- not -- I'm sorry to pick  
2 on you again. Your name popped right in front of me. Would  
3 you all -- would you agree that people can lie?

4           MR. JOHNSON: Yeah.

5           MS. JIPP: I mean, pretty much anybody? Yeah.  
6 Anybody here a parent or a teacher? Okay. Have you ever  
7 been in a position where you've had to -- two -- two kids and  
8 maybe a lamp is broken and it falls on the floor. And you  
9 have to determine who is telling the truth about how that  
10 lamp broke. Anybody ever had kind of a situation like that?  
11 Yeah. Ms. Morton is shaking her head. What do you look for  
12 in those situations to determine who might be telling the  
13 truth?

14           MS. MORTON: Facial expression.

15           MS. JIPP: Facial expressions. Ms. Roelofs,  
16 what do you think? That's a good indicator?

17           MS. ROELOFS: Yeah.

18           MS. JIPP: Ms. Jimenez?

19           MS. JIMENEZ: Yes. I agree.

20           MS. JIPP: Yeah. Ms. Tencate?

21           MS. TENCATE: Yes. I agree.

22           MS. JIPP: And what -- beyond facial expressions,  
23 what might you see?

24           MS. TENCATE: Body language.

25           MS. JIPP: Body language.

1 JUROR: Tremors in the voices.

2 MS. JIPP: Okay. Just like the tone of their  
3 voice, if you know them really well. Do you think it matters  
4 if one child might be looking at getting in trouble based on  
5 what they tell you? Do you think that could influence  
6 their version of events?

7 Yeah, I see a lot of head shaking yes. Okay.  
8 Does it matter if that person has something to gain or lose  
9 by what they tell you? Maybe a loss of, you know, Ipad or  
10 T.V. time. My daughter says "toons". So does that make  
11 sense that that could be a motivator for people to not be  
12 completely honest? Yeah. So the takeaway from this is, how  
13 do you determine whether or not somebody might be telling  
14 the truth?

15 JUROR: Question them.

16 MS. JIPP: Question them and you listen to them,  
17 right? Okay.

18 So the Judge will give you various instructions  
19 about factors you can use to weigh the credibility of  
20 witnesses, how they look while testifying, whether someone  
21 has a bias or a reason to lie. Do you feel that you can  
22 observe and -- and take away those instructions and do  
23 that? Okay.

24 This is a little trickier. It's -- it's easy when  
25 you -- you make your own decision. It's sometimes a little

1 more challenging if you have a -- a point of view that  
2 differs from someone else. Does anyone here think they might  
3 have a difficult time kind of asserting their opinion or  
4 voicing their opinion in -- in a group of people? No?  
5 Okay.

6 This case does, obviously, involve criminal sexual  
7 conduct. You will hear me kind of use the word "rape".  
8 Realistically, rape doesn't exist in Michigan, because it's  
9 all categorized as different degrees of criminal sexual  
10 conduct. So does that make sense? I am not going to confuse  
11 anybody if I kind of say "sexual assault" or "rape"? What  
12 we are talking about perpetrator and a victim and some sort  
13 of sexual contact. Okay.

14 The Court also alluded to the fact that there are  
15 elements that we would need to prove. So I just wanted to  
16 kind of run through these really quickly.

17 The Defendant here is charged with two separate  
18 counts of CSC 1<sup>st</sup> and -- and there's three elements for  
19 this. That the Defendant engaged in a sexual act. That  
20 the sexual act involved entry into the victim's genital  
21 opening with his penis. And then third, that he caused  
22 personal injury and used force or coercion to complete the  
23 act. It's a whole lot at once. But does that kind of make  
24 sense as to how that would be a criminal charge, CSC 1<sup>st</sup>  
25 degree? Okay.

1 He is charged with two separate counts of CSC  
2 3<sup>rd</sup> degree as well, that he engaged in a sexual act. That  
3 the sexual act involved entry into the victim's genital  
4 opening by the Defendant's penis. And that the victim was  
5 13, 14, or 15 at the time that that occurred.

6 The second count, similar for the first element, but  
7 the second element would be entry into the victim's mouth  
8 by the Defendant's penis, while she was 13, 14, or 15.  
9 Does that make sense?

10 And then there is one count of CSC 2<sup>nd</sup>, that he,  
11 the Defendant, intentionally touched the victim's genital  
12 area, groin, inner thigh, buttock, breast or the clothing  
13 over that area, that that was done for a sexual purpose or  
14 could be reasonably thought to be done for a sexual purpose.  
15 And the Defendant caused personal injury and used force or  
16 coercion to complete the act. Make sense? Okay.

17 I am not finished yet. I apologize. We've got a  
18 couple of other issues that we need to kind of delve into.  
19 And I know we've kind of talked, have you had a any  
20 interactions with law enforcement. But have you ever had to  
21 fill out, maybe, a report or a claim for an insurance  
22 company? Anything like that? Maybe you are entitled to  
23 a benefit after someone has passed away or maybe you  
24 witnessed a car accident and had to fill out a witness  
25 statement? Mr. Maynard?

1 MR. MAYNARD: I had a claim on -- somebody broke  
2 into my home.

3 MS. JIPP: Okay. Did you have to fill out a  
4 report or make a statement based on that?

5 MR. MAYNARD: Yes.

6 MS. JIPP: Okay. After you filled out the report,  
7 looking back, were there things that you thought, oh, I  
8 didn't -- I didn't put this in the report or I should have  
9 mentioned this? Anybody else have a similar situation?  
10 Yeah? Ms. Morton, someone -- were you a victim of a crime  
11 or a car accident? What --

12 MS. MORTON: I was driving down the highway and  
13 my sunroof came off.

14 MS. JIPP: Oh.

15 MS. MORTON: Yeah.

16 MS. JIPP: Okay.

17 MS. MORTON: So I had to file an insurance report  
18 for that.

19 MS. JIPP: Okay. And was that a similar situation  
20 where you kind of thought, oh, you -- you gave the relative --  
21 relevant details and then afterwards, hmm, should have  
22 mentioned this?

23 MS. MORTON: Yeah. There was, like, little things  
24 that I thought about, like noises and stuff that --

25 MS. JIPP: Okay.

1 MS. MORTON: -- I didn't mention until after that.

2 MS. JIPP: Because you didn't include every detail  
3 that you remembered, were you being dishonest?

4 MS. MORTON: (Inaudible).

5 MS. JIPP: Okay. Do we all agree that it's kind  
6 of human or even expected that as you go along, you could  
7 maybe remember more details or things that don't seem  
8 important at first end up seeming important, does that kind  
9 of make sense? That you kind of tell people about -- maybe  
10 you went to your brother and said, oh, this happened and you  
11 tell him something that you didn't tell your sister? All  
12 right. Okay.

13 Let me use another example. Has anybody ever gone  
14 to a parade? Mr. Kelly, have you ever gone to a parade?

15 MR. KELLY: It's been a while, but yeah.

16 MS. JIPP: Yeah, okay. So we are going to pretend  
17 we are at a parade here. And there are 20 floats and 10  
18 marching bands and five people on horseback. And we are all  
19 completely alert and sober. Okay. It's like 10 o'clock on  
20 a Sunday, beautiful parade. Now later in the evening, Mr.  
21 Kelly, you go to your significant other and tell him or her  
22 all about this parade you saw, right? And do you think in  
23 that first telling that you would talk about all 20 floats,  
24 the ten marching bands, and the five people on horseback?

25 MR. KELLY: No.

1 MS. JIPP: No. Anybody think that they have that  
2 kind of photographic memory that they would go and do that?  
3 No. Okay. I am going to keep picking on you, Mr. Kelly.  
4 Would you remember all of the details of all of the floats,  
5 you think, even if you don't tell that --

6 MR. KELLY: I have a terrible memory.

7 MS. JIPP: Okay. Okay. So colors of the band  
8 uniforms?

9 MR. KELLY: Some.

10 MS. JIPP: Some. Okay. Or maybe the order that  
11 the horses appeared? It was a gray horse with green livery  
12 first and --

13 MR. KELLY: (Inaudible).

14 MS. JIPP: Okay. Okay. Now say one week later,  
15 you run into a friend and you tell her about this awesome  
16 parade you saw at 10 a.m. on a beautiful, sunny Sunday  
17 morning, right? Would you tell your friend the exact  
18 same things you told your spouse or significant other?

19 MR. KELLY: (Inaudible).

20 MS. JIPP: Ms. Morton? No. Ms. Jimenez? No.  
21 Ms. Tencate? No. Okay. Okay.

22 Would you tell your friend that, hey, I told my  
23 spouse this exact, same thing? Maybe. Maybe that would be  
24 an important thing, maybe it wouldn't. Okay.

25 Now six months later -- this must have been a really

1 good parade. Six months later, this whole parade comes up  
2 at work, right? And you mention you -- you got to go to this  
3 parade. Do you think that all of the details that you recount  
4 to your coworkers are going to be exactly the same details  
5 you gave to your spouse and then your friend? No. Okay.

6 Why do you think that is, Ms. Ross? Why do you  
7 think the details might vary?

8 MS. ROSS: Your mood, different day, I guess.

9 MS. JIPP: Okay. Maybe the energy you have you  
10 put in to telling a good story? You think -- Ms. Tencate,  
11 do you think passage of time might impact that?

12 MS. TENCATE: Yeah, I mean, I won't remember much  
13 six months later, I am sure, everything exactly the same.

14 MS. JIPP: Yeah. Yeah. I am going to take it  
15 one step further. Your significant other or spouse and goes  
16 and tells their friend all about this parade you saw, right?  
17 And their version of what you said was different. Do you  
18 think it's fair to conclude that your spouse was lying when  
19 they told their friend? I am getting a couple of head  
20 shakes. Ms. Henrickson?

21 MS. HENRICKSON: Yeah, because they don't really  
22 probably didn't even listen to my story. But they probably  
23 don't remember that well.

24 MS. JIPP: Okay. Okay. What about you, Ms.  
25 Woltman?

1 MS. WOLTMAN: I would say it would vary on how they  
2 understood your story, because they weren't there, so it  
3 wasn't there, so it wasn't their experience.

4 MS. JIPP: Okay. So not necessarily that they  
5 were lying or there is some sort of bad intent as they  
6 retell this. Okay.

7 Now, is it fair to say that you lied when you talked  
8 to your spouse because the spouse gives a different story?  
9 It's kind of a little -- a little switch up there. No?

10 Okay. Without having to go into the particular  
11 details, because I am kind of going for more of your gut  
12 reaction here, has anyone ever experienced a traumatic  
13 event in their life? Okay. You don't have to tell me about  
14 it, but just kind of -- kind of think about that for a  
15 second. How did you respond right after it occurred, Mr.  
16 Langkamp?

17 MR. LANGKAMP: Very mad.

18 MS. JIPP: Anger kind of was your first reaction.

19 MR. LANGKAMP: Beyond doubt.

20 MS. JIPP: Okay. Was that like right as it  
21 happened it was anger or were you notified -- it was anger.  
22 Okay.

23 MR. LANGKAMP: (Inaudible).

24 MS. JIPP: Okay. So when you think of yourself  
25 and you think, oh, you hear about this fight or flight

1 instinct, what do you think you are?

2 MR. LANGKAMP: There was no fight to do.

3 MS. JIPP: Okay.

4 MR. LANGKAMP: It was already gone. There was  
5 nothing you could do about it.

6 MS. JIPP: Okay. So just anger at the situation.

7 MR. LANGKAMP: Mmmhmm.

8 MS. JIPP: Okay. I'm sorry, who else raised their  
9 hand? Ms. Morton, what about you?

10 MS. MORTON: I think it depends on the  
11 circumstance, but sometime -- I mean, sadness, anger,  
12 sometimes you are in shock.

13 MS. JIPP: Mhmm. What does shock look like to  
14 you?

15 MS. MORTON: If it's me, it's not saying a whole  
16 lot of anything.

17 MS. JIPP: Mmmhmm. Kind of like a --

18 MS. JIMENEZ: Numb.

19 MS. JIPP: Ms. Jimenez, you think numb. Is that  
20 how you reacted in the situation?

21 MS. JIMENEZ: Shocked. Numb.

22 MS. JIPP: Yeah.

23 MS. JIMENEZ: Can't think.

24 MS. MORTON: Just trying to process your own  
25 feelings.

1 MS. JIPP: Okay. And what about you, Mr. Johnson?  
2 I saw you kind of nodding along.

3 MR. JOHNSON: Probably mostly shock and sadness.  
4 I guess.

5 MS. JIPP: Yeah. I don't know how traumatic  
6 you would consider this. When my daughter was eight months,  
7 she pulled up on a coffee table, you know, just trying to  
8 get her bearings. And then poof -- and just gashed right  
9 across her nose. And I always thought of myself as this  
10 like jump into action, great in a moment of crisis. And I  
11 just stood there until my husband yelled at me to go get  
12 something to start cleaning up all this blood and take care  
13 of our daughter. So is it understandable to think that  
14 your reaction, Ms. Jimenez, doesn't need to be Mr. Johnson's  
15 reaction?

16 MS. JIMENEZ: Correct.

17 MS. JIPP: And Ms. Morton, you might react  
18 differently than Mr. Langkamp. And it doesn't make any of  
19 those reactions fake or not genuine. Does that make sense?  
20 Okay.

21 Do you think after a traumatic event, that you are  
22 always able to think very clearly? No. That could be part  
23 of the shock or the numbness, right?

24 After -- after you kind of take that step back,  
25 you've had a minute to process it, do you think that you

1 might wish that you had done something differently?

2 MS. JIMENEZ: The what-ifs?

3 MS. JIPP: Yeah, the what-ifs. Okay. Do you  
4 think victims of sexual assault might respond in a huge  
5 variety of ways to the situation? Does that seem to make  
6 sense?

7 So can we keep in mind that just because you -- you  
8 didn't say you would fight, but say Mr. Langkamp said, well,  
9 I would have -- I would have fought the situation. Just  
10 because that's what you would have done, doesn't mean that  
11 you have to project that onto the victim and require that  
12 they have done that? Does that make sense? Okay.

13 We -- we mentioned this in discussing Ms.  
14 Henrickson and her sister, do we think all sexual assaults  
15 are reported? No. Okay.

16 What are some of the reasons a victim might not  
17 report the crime, Mr. -- Mr. Kuipers?

18 MR. KUIPERS: Don't want to relive it.

19 MS. JIPP: Okay. That's a big one. Ms. Woltman?

20 MS. WOLTMAN: Scared.

21 MS. JIPP: Scared, yeah. Anybody else?

22 JUROR: Maybe feel rejected.

23 MS. JIPP: Rejection.

24 JUROR: Shame.

25 MS. JIPP: Shame. Maybe, you know, don't want to

1 impact a family situation? Maybe fear of the change that  
2 could come.

3 JUROR: Scared.

4 MS. JIPP: Scared. That -- that's a big one.  
5 Yeah.

6 So I know Ms. Jimenez mentioned something and Ms.  
7 Morton mentioned something. But does anybody else here know  
8 of, maybe not a close relative, but a friend that has been  
9 a victim of a sexual assault? No. Okay. We kind of -- Mr.  
10 Kuiper, I am seeing you shake your head. Was it a -- just  
11 a friend? Male? Female?

12 MR. KUIPERS: I've had involvement in the past in  
13 a nonprofit organization. I worked with men and women who  
14 had been abused.

15 MS. JIPP: Okay.

16 MR. KUIPERS: And so I heard lots of stories.

17 MS. JIPP: Okay. Okay. Do you think, as a result  
18 of that interaction, that you would be unable to -- to listen  
19 with an unbiased mind, to the evidence over the next couple  
20 of days?

21 MR. KUIPERS: I think so.

22 MS. JIPP: Okay. Okay.

23 So can we all agree that discussing the intimate  
24 details of probably a humiliating act, with strangers,  
25 that that would be more than a victim could really handle

1 right after a sexual assault? Yeah.

2 So if I said to you, Mr. Kelly, can you -- can you  
3 turn to Ms. Tencate here and tell her about your last  
4 sexual experience with your spouse? You don't really have  
5 to do that, but did your heartrate go up a little bit?

6 MR. KELLY: Yeah.

7 MS. JIPP: Did -- did you think, oh, man, this  
8 more than I bargained for? Okay. And that's talking about  
9 a consensual sexual act, right? So can we all understand  
10 how difficult it could be for a victim to talk about things  
11 that weren't consensual? Okay.

12 Ms. Jimenez, you said that your sister -- I'm sorry,  
13 not Ms. Jimenez. Ms. Henrickson.

14 MS. HENRICKSON: Yes.

15 MS. JIPP: You said your sister came to you and  
16 disclosed that she was sexually abused.

17 MS. HENRICKSON: Yes.

18 MS. JIPP: Did she provide you proof?

19 MS. HENRICKSON: No.

20 MS. JIPP: DNA evidence or a video or --

21 MS. HENRICKSON: No. It was -- had happened a  
22 long time before that.

23 MS. JIPP: Okay. But did you still believe her  
24 based on her testimony to you?

25 MS. HENRICKSON: Yeah. I just believed that this

1 was my sister, so.

2 MS. JIPP: Okay. Okay. How many of you guys like  
3 crime dramas? C.S.I., that kind of dates me a little bit  
4 now, but I did like the original C.S.I. Okay. Ms. Woltman,  
5 I am going to pick on you then. How long, when you say  
6 something like C.S.I. or your crime drama of choice, does  
7 it take for them to solve a crime?

8 MS. WOLTMAN: A long time, I mean in a T.V. show  
9 (inaudible), but in real life, I know it's not real.

10 MS. JIPP: Okay. Okay.

11 MS. WOLTMAN: One episode.

12 MS. JIPP: So you could sit there and if you take  
13 out commercials, maybe within 40 minutes, there has been  
14 a murder, they found the murderer, and the murderer is in  
15 prison.

16 MS. WOLTMAN: Yeah.

17 MS. JIPP: Does that sound about right?

18 MS. WOLTMAN: Yeah.

19 MS. JIPP: Okay. What kind of evidence is  
20 collected to solve crimes in these types of shows?

21 MS. WOLTMAN: DNA, fingerprints, fibers.

22 MS. JIPP: Mhmm. Surveillance footage, maybe.

23 MS. WOLTMAN: Yeah.

24 MS. JIPP: And they zoom in from three miles away  
25 on license plate and it's a clear image.

1 MS. WOLTMAN: Yeah.

2 MS. JIPP: Okay. Can we all agree that these shows  
3 are a fun -- fun use of an hour, but they are not reality?  
4 Yeah.

5 Do you think in these crime dramas, when they  
6 portray a sexual assault, is there always violence?

7 MS. MORTON: (Inaudible).

8 MS. JIPP: Ms. Morton thinks maybe more often.  
9 I think maybe Ms. Roelofs is nodding her head as well.

10 Okay. Do we think that a sexual assault is always  
11 committed in a violent manner, Mr. Kelly?

12 MR. KELLY: No.

13 MS. JIPP: No. Okay. So if you were to describe  
14 the difference between sex versus rape or sexual assault,  
15 what would -- what would that difference be? That's a hard  
16 one.

17 MR. KELLY: That's how to decide.

18 MS. JIPP: Yeah. So sex would probably involve  
19 consent, does that make sense, right? Rape might be threats  
20 or an element of surprise.

21 JUROR: Force.

22 MS. JIPP: Sorry, force. Yeah. Maybe they take  
23 advantage of someone in a weakened state. Okay.

24 Does anyone here think that a victim can't be  
25 sexually assaulted and not be physically injured? Does

1 that make sense?

2 THE COURT: Too many double negatives for me.

3 MS. JIPP: Okay. Okay. Okay. A victim was  
4 sexually assaulted, they claim they are sexually assaulted  
5 and they have no physical injury. Do we think that's  
6 possible? I cleaned it up a little bit there. Okay.

7 And can we all agree that these C.S.I. shows aren't  
8 reality? I am not going to have the license plate from three  
9 miles away in the next three days. Okay.

10 I am winding down. I promise.

11 I am going to give you a hypothetical. A man works  
12 for a -- a swing shift for a factory. So he gets off work and  
13 it's like three a.m. And he thinks, oh, my goodness, little  
14 Susie has a book fair in the morning and I promised her I  
15 would give her money to buy books.

16 So as he leaves the factory, he is not in a great  
17 part of town. But he remembers that there is an A.T.M.  
18 And so in the dark, we will even say it's raining, and he  
19 goes to this A.T.M. He sees a big sign that says, oh,  
20 sorry, surveillance and light out of order. And he sits  
21 there and he punches out \$300 of cash. Susie is a huge  
22 reader, all right? He punches out all of this money and  
23 he stands there then with his back to the road. And he is,  
24 you know, 20, 40, 60. A man walks up behind him and says,  
25 "Give me all your money or I am going to kill you". And

1 he hands him the money and he walks away.

2 Can we all agree that maybe this gentleman didn't  
3 make the smartest decisions, right? I shouldn't stand out,  
4 counting a bunch of cash in a not great neighborhood in the  
5 middle of the night, right? But does anybody here doubt  
6 that a crime occurred? No. Ms. Woltman gave me a little --  
7 was that just because that was such a silly question?

8 MS. WOLTMAN: Yeah.

9 MS. JIPP: Okay. Okay. So do we think that a  
10 victim of a sexual assault is ever responsible for what  
11 happens to them? That maybe they were complicit in some sort  
12 of actions? Do you see kind of the line of reasoning I am  
13 following? So maybe a victim goes to a party and has a  
14 couple of drinks. She is sexually assaulted. Does that make  
15 it less of a crime? No. Maybe a victim wore a very  
16 revealing skirt and a low-cut top and she was sexually  
17 assaulted. No. Maybe a victim gets in a car with someone he  
18 thinks is his friend and he is sexually assaulted. Does that  
19 make it less of a crime because they somehow put themselves  
20 in that situation? Okay.

21 Who here has ever heard the phrase, "It's -- it's  
22 his word against her word"? I should probably see everybody  
23 raise their hand on this one, right? I feel like that's  
24 pretty -- pretty common phrase. It almost makes you think  
25 that someone's word couldn't be enough.

1           Now, the Judge will tell you the victim's testimony  
2 is sufficient. Her testimony is sufficient for conviction  
3 if you believe her testimony beyond a reasonable doubt. There  
4 doesn't need to be any other evidence. I -- I could meet  
5 with the victim. I could find her very believable. I could  
6 put her on the stand. She could testify. And I could say,  
7 "Thank you, your Honor." And sit down.

8           Does that concept make sense? Anybody -- anybody,  
9 having watched these C.S.I. shows going to demand DNA or  
10 demand a video of the sexual assault? Okay.

11           When someone sexually assaults another person, does  
12 that usually happen in front of a crowd or are there  
13 usually a lot of witnesses for sexual acts like that?

14           Okay. So at the end of the trial here, you are  
15 going to maybe want some more questions answered and you  
16 are going to think, that lady did a terrible job, this was  
17 the only thing I wanted to know and she didn't say anything  
18 about it. But do you all understand and appreciate that  
19 there are rules of evidence? So that maybe if you wanted to  
20 ask a question that the Court and Mr. Maesen and I can't  
21 answer for you because of these rules, does that make sense?  
22 Okay.

23           So can you just agree to decide the case based on  
24 the evidence you do hear and not what you wish you could have  
25 heard? Okay.

1           You are going to, at the end of all of this, be  
2 asked to go and deliberate, discuss your different opinions  
3 and your thoughts on different pieces of evidence. Is  
4 there anybody here that's going to have an ethical issue  
5 sitting in judgment of another person? Maybe for religious  
6 reasons or philosophical reason? Is there any question that  
7 you think, why did she not ask this?

8           Thank you.

9           THE COURT: Mr. Maesen.

10          MR. MAESEN: Good morning, everybody. Thank you  
11 for being here. We are all aware that none of you really  
12 want to be here.

13          I represent Mr. Daniel Loew, he is the Defendant  
14 in this case. And I hope for all your sakes, you are never  
15 sitting in his chair. It is not a fun place to be. If  
16 you sit here for three days and hear people spew stuff at  
17 you and -- and it's not a fun time.

18          But what we are trying to do here is get a jury  
19 that is open-minded and unbiased as possible. Now, I am  
20 going to be quite a bit more concise than the prosecutor.  
21 I am not going to be redundant. But the most important  
22 thing here is coming to this with a totally clean slate.  
23 Because right now, you really don't know anything about  
24 the case. You've heard these very generic terms like,  
25 criminal sexual assault and penetration and all of this

1 and that. But the specifics of who, him, but the what and  
2 the where and all of the parties, you don't know any of that  
3 stuff yet, correct?

4 And I want to know, is there anybody that,  
5 and this is very common in these cases, I have had cases  
6 where there are 60 jurors and 40 of them say yes to this  
7 and walk out. And we are not hopefully doing that today,  
8 is there anything that is so inherently disturbing about the  
9 allegations themselves that you feel you can't be bias -- or  
10 you can't sit here with an open mind? I know that might have  
11 been asked a little bit, but I want to really make sure.  
12 Because a lot of people, you ask them about these things,  
13 oh, well, if somebody did it to my kid, I -- I would shoot  
14 them or you know, you all say those types of things. I want  
15 to make sure that when you go to into deliberations you  
16 are looking solely at the evidence and not being overly  
17 emotional about it. Does that make sense?

18 Now, you raise your hand, you are Ms. Reolofs?

19 MS. ROELOFS: Yes.

20 MR. MAESEN: Would you explain that a little bit  
21 more?

22 MS. ROELOFS: I have three girls, so just -- it's  
23 (inaudible) hard to hear.

24 MR. MAESEN: Sure. Sure. Anybody else?

25 JUROR: Yeah, it would be my two daughters, it

1 would be pretty hard to hear.

2 MR. MAESEN: All right. Is that -- do you -- do  
3 you think that would make it impossible to be open-minded  
4 to --

5 JUROR: Probably not. Probably -- I could probably  
6 still be open-minded, but still opinionated about --

7 MR. MAESEN: Right.

8 JUROR: -- if it was my kids, absolutely.

9 MR. MAESEN: Are you one of these people that  
10 thinks that if somebody is accused they are automatically  
11 guilty?

12 JUROR: No.

13 MR. MAESEN: Okay. Because a lot of people in  
14 these cases assume that.

15 The other thing I want to get into real quick,  
16 again I don't want to -- I mean I am kind of on a little bit  
17 of a deadline here. You are going to hear a lot of different  
18 witnesses, okay. Some are going to be law enforcement. One  
19 will be the victim. A couple will be lab people from the  
20 state police. I suspect they are going to call an expert,  
21 they say -- I don't know if he is a social worker or what,  
22 but I've seen him before. Anyway, that's never met the  
23 victim that's going to talk about kids in general in these  
24 cases. It's not necessarily going to be specifically about  
25 this case.

1           You are also going to hear a number of family  
2 members of the victim. You probably will hear from the  
3 Defendant. Okay. Is there anybody that thinks they can't  
4 give equal weight to each person based on their role? Like,  
5 would you be willing to believe a cop more than, perhaps,  
6 the Defendant? Or the victim, because she is a minor, more  
7 than an adult that was in the home at the time? Because  
8 sometimes in these cases, I feel like minor victims we tend  
9 to, I don't know give them a "halo effect", where we tend  
10 to give them a little more leeway than we might an adult,  
11 if that makes sense. Does anybody feel there is -- there  
12 is -- anybody that they can't -- Mr. Kelly, what are your  
13 thoughts on that?

14           MR. KELLY: I don't think so. More than anything,  
15 it would depend on how the person presents himself.

16           MR. MAESEN: So you are assessing each person's  
17 credibility on them, not the -- not their role.

18           MR. KELLY: Sure.

19           MR. MAESEN: That's really what we want. We want  
20 you to just look at -- I know you guys talked about body  
21 language and voice tone and maybe consistency of statements.

22           And one question I want to get into, they talked  
23 at length, or the prosecutor did about the reasons somebody  
24 might report this or might not or might delay, all of these  
25 kind of things. There is no set pattern when somebody makes

1 an allegation of when they reported and it varies widely,  
2 okay, from case to case.

3 But if anybody -- argue with the proposition that  
4 sometimes things are reported that didn't happen. Does  
5 everybody accept that's possible, that people do make false  
6 reports of other people. Not just in these cases, in all  
7 kinds of things. You can see in the news all of the time,  
8 right? All these types of things. Just because, does  
9 everybody understand that just because somebody accuses  
10 somebody, that doesn't mean that it's automatically true?  
11 Do you guys understand that?

12 And even though you are going to be -- essentially  
13 this is kind of -- in a sense, a "he said/she said", in a  
14 sense, that you -- you are going to hear a lot of different  
15 statements, both the accuser and the accused. You are going  
16 to hear a whole bunch of other people, okay. Most of the  
17 trial is going to be other people.

18 And I just want to let you guys know, you know,  
19 when you are assessing credibility, it's part of your job  
20 and you are certainly welcome to and you will on deliberation  
21 kind of put everything together, you know. Because a lot of  
22 witnesses, some of the things they say, maybe there should be  
23 something that supports it. Okay. And if it's not there,  
24 you can make the decision, you know, this person said this,  
25 but then this other one said. You know what I mean, you get

1 to kind of weigh everybody together. You don't have to look  
2 at just his statement and just hers. Because obviously the  
3 two people that have the most incentive to -- to twist things  
4 would be those two people, right? So pay attention to all of  
5 the witnesses.

6 And I want to make sure, too, that -- that as we go  
7 through this, we will be respectful of your time. We do have  
8 three full days. I don't know if we will be done early on  
9 that. I know that there is a holiday weekend coming up,  
10 so we want to make sure that you guys have ample time to  
11 deliberate, not have that tied up in any way.

12 But I anticipate right now probably calling four to  
13 six witnesses. We may call a few more. A lot of times, I  
14 kind of go by how the case plays out and what I think is  
15 necessary.

16 But other than that I just -- I want to thank you  
17 guys for your time and we know you don't want to be here.  
18 But I ask that anybody who is going to be on the jury to  
19 make sure that they do their job properly and go through  
20 all of the evidence and all of the witnesses. Okay.

21 Thank you.

22 THE COURT: Challenges for cause?

23 MS. JIPP: No, your Honor.

24 THE COURT: Mr. Maesen?

25 MR. MAESEN: For cause, Lacey Morton, your Honor,

1 seat 13.

2 THE COURT: Well, Ms. Morton, I think the issue  
3 was that you had had an experience of your own, and that  
4 the issue really is, can you set that aside, listen to the  
5 evidence in this case, and make a decision based on the  
6 evidence in this case? I am going to tell you right now,  
7 this isn't fun stuff. This is hard for everyone. It may  
8 be harder for you because of your own personal experience  
9 and I understand that. But you might be able to do that and  
10 I would need to know one way or the other. No one wants  
11 to -- I would almost take my next paycheck and say, no one  
12 wants to sit here and listen to evidence about a sexual  
13 assault. I understand that it's hard. It's hard for me as  
14 a judge and I do this every day. Well, not every day, but  
15 I do this a lot. I don't have trials every day.

16 So can you set it aside? Can you make a decision  
17 based on the evidence presented in Court today?

18 MS. MORTON: (Inaudible).

19 THE COURT: I am not going to grant your challenge  
20 for cause.

21 MR. MAESEN: Okay.

22 THE COURT: Thank you. I do believe though that  
23 Mr. Marcy indicated that he is a felon and so he is not  
24 eligible for jury duty, so I am going to excuse him.

25 Seat number four. Mr. Marcy you are excused.

1                   And so I would like to go to peremptories. Ms.  
2 Jipp, do you have a peremptory challenge?

3                   MS. JIPP:     Thank you. Yes, your Honor. We would  
4 thank and excuse Mr. Kroeze.

5                   THE COURT:    I'm sorry?

6                   MS. JIPP:     We would thank and excuse Mr. Kroeze.

7                   THE COURT:    All right. Seat -- or juror 121,  
8 seat 9.

9                   MS. JIPP:     Thank you.

10                  THE COURT:    Mr. Maesen, do you have any  
11 peremptories for cause -- or for -- or peremptories right  
12 now?

13                  MR. MAESEN:    Yes, your Honor. Ms. Roelofs.

14                  THE COURT:    Ms. Roelofs, you are excused.  
15 You can excuse more than one if you wish.

16                  MR. MAESEN:    That's all I have right now, your  
17 Honor.

18                  THE COURT:    All right. That's fine. I just wanted  
19 to make sure you understood that the Court would allow  
20 that. So we need to replace seat four.

21                  MS. FUHRMAN:    In seat four, juror number 128,  
22 Carol Levandoski. In seat nine, juror number 173, Gregory  
23 Weber, in seat seven, juror number 174, Kenneth Wheatley.

24                  THE COURT:    So Ms. Levandoski, am I saying that  
25 correctly?

1 MS. LEVANDOSKI: No. It's Levandoski.

2 THE COURT: Levandoski. Thank you. Mr. Weber,  
3 and Mr. Wheatley.

4 MR. WHEATLEY: Yes.

5 THE COURT: Mr. Wheatley, I have you in the wrong  
6 seat for some reason, I apologize. So you -- have you been  
7 listening to all of the questions?

8 So right now, right off the top of your head, is  
9 there anything you can think of that you think, well, they  
10 might want to know this about me? Okay. Well, let's start  
11 with Mr Weber.

12 MR. WEBER: One of the witnesses, I believe,  
13 attended the same school with me probably a year or two  
14 behind me.

15 THE COURT: Okay. When you say school, was it  
16 like gradeschool, high school?

17 MR. WEBER: High school.

18 THE COURT: Okay. I don't want to guess your age,  
19 but that was a few years ago, right?

20 MR. WEBER: A couple.

21 THE COURT: Okay. And would that impact your  
22 ability to be fair, if you -- listening to that witness?

23 MR. WEBER: I don't believe so. I mean, we  
24 weren't like friends in school or anything, not the same  
25 circle or you know, anything like that.

1 THE COURT: Okay. So you didn't have a social  
2 connection with them.

3 MR. WEBER: No. I just kind of recognized the  
4 name and --

5 THE COURT: Okay. And Do you remember which name  
6 it was?

7 MR. WEBER: Ms. Angela Gensler.

8 THE COURT: Okay. All right. Thank you. Ms. --  
9 was it ?

10 MS. LEVANDOSKI: Levandoski.

11 THE COURT: Levandoski, I knew I was going to say  
12 it wrong. I apologize. You raised your hand.

13 MS. LEVANDOSKI: Yes. A couple of the questions,  
14 the names on the list sound familiar.

15 THE COURT: Okay. Do you remember what names?

16 MS. LEVANDOSKI: I have heard the Heppe name and  
17 the Loew name.

18 THE COURT: Okay.

19 MS. LEVANDOSKI: I have had associations with the  
20 Loew family from Dorr, Hamilton area.

21 THE COURT: Okay. And do you know Daniel Loew?

22 MS. LEVANDOSKI: No.

23 THE COURT: Okay. Have you heard about the case  
24 at all?

25 MS. LEVANDOSKI: I made a comment on Facebook

1 when the Allegan County News reported an arrest or an  
2 arraignment for a sexual assault. I don't know if he is  
3 the guy that I commented on.

4 THE COURT: Okay. Anything about --

5 MS. LEVANDOSKI: I -- I sat on a jury for a  
6 criminal sexual conduct 35 years ago.

7 THE COURT: Okay. In Allegan?

8 MS. LEVANDOSKI: In Barry County.

9 THE COURT: In Barry County. Would that impact  
10 your ability to sit and be fair in this case?

11 MS. LEVANDOSKI: No.

12 THE COURT: Would the fact that you knew the  
13 names and -- but you don't know Mr. Loew, would that impact  
14 your ability to sit and be fair?

15 MS. LEVANDOSKI: Would it impact my ability to  
16 be fair?

17 THE COURT: Mmhmm. To listen to the evidence --

18 MS. LEVANDOSKI: No.

19 THE COURT: -- make a decision based on the  
20 evidence in this case?

21 MS. LEVANDOSKI: NO.

22 THE COURT: So if you had some -- made a decision  
23 about the case and you had conversations with someone from  
24 the Heppe or the Loew family, would that be something that  
25 you would think at the time you are making a decision about

1 the evidence, would that impact you? So you are thinking,  
2 well I -- I think this, but maybe the Heppes and Loews  
3 wouldn't like that decision, so I am going to change my mind.

4 MS. LEVANDOSKI: No. I am going to judge it based  
5 on the evidence.

6 THE COURT: All right. Thank you. And Mr.  
7 Wheatley, I think you also raised your hand.

8 MR. WHEATELY: Yes. I -- I've got a son  
9 incarcerated for this particular crime in Texas right now.

10 THE COURT: Okay. And so because of that -

11 MR. WHEATLEY: Well, that and a situation with my  
12 youngest daughter also when she was in high school.

13 Okay.

14 MR. WHEATLEY: And yeah, so I don't know if I  
15 could be totally biased or not.

16 THE COURT: Thank you. I know Ms. Levandoski,  
17 did I say it right?

18 MS. LEVANDOSKI: Levandoski.

19 THE COURT: Levandoski, I -- I will get it. Ms.  
20 Levandoski, you said you were on a jury before.

21 MS. LEVANDOSKI: Yes.

22 THE COURT: Okay. Mr. Wheatley, have you been on  
23 a jury before?

24 MR. WHEATLEY: No. I have not.

25 THE COURT: Mr. Weber, have you been on a jury

1 before?

2 MR. WEBER; No.

3 THE COURT: Okay. Have any of the three of you  
4 had involvement with the prosecutor's office or Mr. Maesen  
5 in some capacity? Have you ever been involved with the police  
6 in some capacity? Let me ask that -- we've all had some  
7 involvement with the police. So Mr. Weber, what is that  
8 involvement and would it impact your ability to sit?

9 MR. WEBER: Just routine, like a traffic stop or  
10 something like that, you know.

11 THE COURT: Thank you. Levandoski.

12 MS. LEVANDOSKI: Good job.

13 THE COURT: Did I do it?

14 MS. LEVANDOSKI: Yes.

15 THE COURT: Okay. Thank you. It only took me  
16 four tries.

17 MS. LEVANDOSKI: Well, my father was in the prison  
18 system as a sergeant of the guard -- guards.

19 THE COURT: Okay.

20 MS. LEVANDOSKI: I have had officer family  
21 members.

22 THE COURT: Did you talk to them about their  
23 work?

24 MS. LEVANDOSKI: Oh, yeah.

25 THE COURT: Okay. Did they work in this area of

1 investigation, criminal sexual conduct?

2 MS. LEVANDOSKI: No.

3 THE COURT: Would you look at a police officer's  
4 testimony and evaluate it the same as you would any other  
5 witness?

6 MS. LEVANDOSKI: I have a question. I understand  
7 that officers have a certain way to present themselves and  
8 certain terminology that they use. But there is more or  
9 less, not as fluffy as a normal person would speak.

10 THE COURT: I love that, not as fluffy. Okay.  
11 I am going to tell some of my police officer friends that,  
12 that phrase, I like that.

13 Mr. Wheatley, have you had any involvement with  
14 the police?

15 MR. WHEATLEY: Yeah. A couple different times  
16 but nothing ever really stand out, I was in a car accident  
17 where there was a death in the -- in the accident. But  
18 other than that, that really wasn't anything that --

19 THE COURT: Impacts your ability --

20 MR. WHEATLEY: No. Not on that part.

21 THE COURT: All right. Thank you. Ms. Jipp?

22 MS. JIPP: Thank you.

23 Mr. Weber, you say you -- you just kind of knew of  
24 Ms. Gensler; is that accurate?

25 MR. WEBER: Correct.

1 MS. JIPP: Did you -- do you have kind of an  
2 opinion one way or another about her?

3 MR. WEBER: No. I mean, other than the name. I,  
4 you know.

5 MS. JIPP: No opinion. No kind of preconceived  
6 notion of whether --

7 MR. WEBER: Right.

8 MS. JIPP: Okay. Okay. And then Ms. Levandoski,  
9 did I do it? Okay. You said you were on a CSC jury 35  
10 years ago.

11 MS. LEVANDOSKI: Yes.

12 MS. JIPP: Can I ask, did they convict or not  
13 convict.

14 MS. LEVANDOSKI: We were a hung jury.

15 MS. JIPP: Hung jury. Okay. Do you think that  
16 your relationship with the Heppe or Loews would make you just  
17 a little more hesitant to make a decision? You don't want to  
18 anger the family? I know the Judge kind of talked about  
19 this, but --

20 MS. LEVANDOSKI: I -- I know the names. I don't  
21 know those people on the list personally.

22 MS. JIPP: Okay. Are you close friends with  
23 any -- anyone with those surnames not on the list?

24 MS. LEVANDOSKI: No.

25 MS. JIPP: No. Okay. So just kind of more from

1 being in the same small town, you are aware of them.

2 MS. LEVANDOSKI: Yep.

3 MS. JIPP: Okay. Okay. And Mr. Wheatley, you  
4 said your son was incarcerated.

5 MR. WHEATLEY: Yes.

6 MS. JIPP: Did you have to participate in any  
7 portion of that trial?

8 MR. WHEATLEY: No. We did not travel to the  
9 state.

10 MS. JIPP: Okay. Do you maintain a close  
11 relationship with him while he is incarcerated?

12 MR. WHEATLEY: Yes.

13 MS. JIPP: And knowing his experiences, having  
14 been incarcerated for a CSC, does -- will that make it  
15 difficult for you to stand in judgment of another person  
16 based on the same charges?

17 MR. WHEATLEY: No, not really, just personal  
18 feelings, you know.

19 MS. JIPP: Okay. Okay. You also mentioned  
20 something about your daughter being involved.

21 MR. WHEATLEY: Yes. She was attacked as a  
22 juvenile and went to juvenile court for that.

23 MS. JIPP: Okay. As a result of how that was  
24 handled in juvenile court, do you think that you have a  
25 jaded perspective or are you in any way --

1 MR. WHEATLEY: I struggle with mixed feelings,  
2 you know, I just don't know if I can be 100%, but I can try,  
3 I guess.

4 THE COURT: Okay. Ms. Levandoski, do you have  
5 any close friends or -- I am going to just kind of start  
6 asking you a couple other questions, I just want to make  
7 sure, close friends or relatives that have come to you and  
8 said that they were a victim of a sexual assault?

9 MS. LEVANDOSKI: Not that I am aware of, I don't  
10 remember if they did.

11 MS. JIPP: Okay. Okay. Probably something you  
12 would remember. Do you -- do you kind of understand some  
13 of the issues we went through in regards to victim -- just  
14 because a victim puts herself in -- in -- in the same house  
15 or the same vehicle with the perpetrator that doesn't mean  
16 it's their fault. Is that a concept that makes sense to  
17 you?

18 MS. LEVANDOSKI: Mhmm.

19 MS. JIPP: So you can't blame a victim just  
20 because they maybe made some poor choices. Is there  
21 anything through the whole litany of questions I asked that  
22 you thought, oh, I would have responded this way, that you  
23 feel that I should be made aware of?

24 MS. LEVANDOSKI: I brought up what I thought --

25 MS. JIPP: Okay. Okay. Do you have any children

1           yourself?

2                   MS. LEVANDOSKI:    Yes.

3                   MS. JIPP:        Okay.   More than one child?

4                   MS. LEVANDOSKI:    Two.

5                   MS. JIPP:        Two.   Did they ever argue or squabble  
6           when they were kids?

7                   MS. LEVANDOSKI:    Mmhmm.

8                   MS. JIPP:        Yeah?   Ever -- ever get into a fight  
9           and call, mom, mom, mom?   And need you to be a mediator?

10                   MS. LEVANDOSKI:    Yes.

11                   MS. JIPP:        So what would you look for when you  
12           are kind of listening to their stories of what had just  
13           occurred, as you try to assess who is more credible?

14                   MS. LEVANDOSKI:    Well, we had a tattle-tale rule.  
15           So the only time they could come to me was if someone was  
16           in physical danger.

17                   MS. JIPP:        Okay.   Okay.   So you never really had  
18           to put yourself in that situation to gauge credibility.

19                   MS. LEVANDOSKI:    I didn't.   I didn't.

20                   MS. JIPP:        Okay.   Speaking of "in physical  
21           danger", have you ever experienced a traumatic event?   And  
22           you don't have to go into the details of it.

23                   MS. LEVANDOSKI:    Mmmhmm.   Yes.

24                   THE COURT:       And do you -- were you surprised by  
25           the way you reacted to that?

1 MS. LEVANDOSKI: Yep.

2 MS. JIPP: Yeah, and what was your reaction?

3 MS. LEVANDOSKI: Well, my son cut his thumb off  
4 and when I got to the scene, I immediately went into, call  
5 911, put ice on it, you know. And then I -- I got slap  
6 happy.

7 MS. JIPP: So almost like giggly, is that?

8 MS. LEVANDOSKI: Oh yeah, started making thumbs-  
9 up jokes.

10 MS. JIPP: So while -- while now some years  
11 removed, that might seem inappropriate --

12 MS. LEVANDOSKI: Yeah.

13 MS. JIPP: -- and not maybe how you would choose  
14 to react.

15 MS. LEVANDOSKI: Right.

16 MS. JIPP: But -- so you can recognize that  
17 people react very differently to situations.

18 MS. LEVANDOSKI: Mmmhmm.

19 MS. JIPP: I might have to steal that for the  
20 future. That's a good -- that's a good story.

21 Mr. Wheatley, what about you? Have you ever  
22 experienced something traumatic?

23 MR. WHEATLEY: Yes.

24 MS. JIPP: You don't have to go into the details  
25 of it, but how did you react?

1 MR. WHEATLEY: (Inaudible) a lot of times if it's  
2 real dramatic, (inaudible).

3 MS. JIPP: Okay.

4 MR. WHEATLEY: Cry.

5 MS. JIPP: Okay.

6 MR. WHEATLEY: Just from the stress of the  
7 situation (inaudible).

8 MS. JIPP: Now your life experiences in dealing  
9 with that, do you think that would rise to the level of stress  
10 here today?

11 MR. WHEATLEY: Any -- just hard to say what might  
12 trigger.

13 MS. JIPP: Okay.

14 MR. WHEATLEY: -- a need to have an attack or  
15 whatever, you know. One of my children gets cut, chances  
16 are I am going to let my wife deal with it because I may --

17 MS. JIPP: Have a seizure.

18 MR. WHEATLEY: -- have an attack and not be able  
19 to handle the situation or I can handle the situation and  
20 directly afterwards, when things calm down, I tend to go  
21 the other way and have an attack or have a seizure or  
22 whatever.

23 MS. JIPP: Almost like the let down of the  
24 adrenaline.

25 MR. WHEATLEY: Yes.

1 MS. JIPP: Okay. What about you, Mr. Weber?

2 MR. WEBER: Yeah, we've had, you know, traumatic  
3 experiences. But I was kind of somewhat in shock and just  
4 (inaudible) a little indifferent in the situation, just the  
5 death of a parent. So you know, you've got a lot of things  
6 to deal with and you have to deal with them right now, and  
7 so the emotion just had to get put aside.

8 MS. JIPP: Kind of went into business mode.

9 MR. WEBER: Correct.

10 MS. JIPP: Okay. You can recognize that somebody  
11 else might react completely differently.

12 MR. WEBER: Oh, sure.

13 MS. JIPP: They can get slap happy or real fond,  
14 thinking of all the memories of the family.

15 MR. WEBER: Sure.

16 MS. JIPP: Okay. Have you ever had anyone come  
17 to you and report that they had been sexually abused or  
18 assaulted?

19 MR. WEBER: No, never had.

20 MS. JIPP: Know of a friend of a friend that's  
21 kind of dealt with these types of issues?

22 MR. WEBER: No.

23 MS. JIPP: Okay. Okay. I have no further  
24 questions, thank you.

25 THE COURT: Mr. Maesen?

1 MR. MAESEN: I have nothing further, your Honor.

2 THE COURT: All right. Thank you.

3 Challenges for cause?

4 MS. JIPP: Mr. Wheatley.

5 THE COURT: Mr. Wheatley, so the issue is  
6 whether or not, obviously, you have had some life experiences  
7 that have given you a certain opinion about this type of  
8 case, correct? Yeah, so the issue becomes, can you set that  
9 aside. And I know I keep saying the same thing, I know  
10 it sounds very repetitive and I apologize for that. But it  
11 really is what -- because we all have had life experiences,  
12 some are more dramatic than others, and I understand that.  
13 Is this one you can set aside and be fair?

14 MR. WHEATLEY: I don't know that I can, just --  
15 just because of the situations that occurred. And that --  
16 just my own -- my feelings about what occurred in my own  
17 family. I don't know if I can.

18 THE COURT: Thank you. Do you have a response  
19 to that Mr. Maesen?

20 MR. MAESEN: We will leave that to the Court's  
21 discretion, your Honor. There's a lot of stuff going on  
22 with this guy.

23 THE COURT: Yeah.

24 MR. MAESEN: And we respect that.

25 THE COURT: I am going to excuse you for cause,

1 Mr. Wheatley. Thank you.

2 Any other challenges for cause, Mr. Maesen?

3 MR. MAESEN: Nothing, your Honor.

4 THE COURT: Peremptories are with the prosecution.

5 MS. JIPP: I apologize, your Honor, just give me  
6 one more second.

7 I have none at this time.

8 THE COURT: Mr. Maesen?

9 MR. MAESEN: Nothing at this time, your Honor.

10 THE COURT: We need to seat nine.

11 MS. FUHRMAN: In seat nine, juror number 164,  
12 William Sunnerville.

13 THE COURT: We will take a break after this juror  
14 is asked some questions. So just in case you were wondering  
15 if you were ever going to be able find a restroom, I am  
16 going to take a break. We will be -- it's an hour and a  
17 half that we've been in here almost.

18 Good morning, Mr. Sunnerville. Have you been  
19 listening to the questions?

20 MR. SUNNERVILLE: Yeah.

21 THE COURT: All right. Have you ever been on a  
22 jury before?

23 MR. SUNNERVILLE: No.

24 THE COURT: All right. Have you ever had or did  
25 you know any of the names that were listed as possible

1 witnesses?

2 MR. SUNNERVILLE: No.

3 THE COURT: Do you know the prosecutor or the  
4 defense attorney?

5 MR. SUNNERVILLE: No.

6 THE COURT: Do you know anybody else on the jury?

7 MR. SUNNERVILLE: No.

8 THE COURT: Do you know anyone?

9 MR. SUNNERVILLE: I know him.

10 THE COURT: Okay. Have you ever been involved in  
11 a situation that involved a case of criminal sexual conduct,  
12 either as someone who is a friend or a relative?

13 MR. SUNNERVILLE: Well, there was a guy at work.

14 THE COURT: A guy at work that had been involved  
15 in a criminal sexual conduct case?

16 MR. SUNNERVILLE: Yeah.

17 THE COURT: Were you involved in that somehow,  
18 as a witness?

19 MR. SUNNERVILLE: No.

20 THE COURT: You just knew about it from work.

21 MR. SUNNERVILLE: Yeah.

22 THE COURT: Would it affect your ability to sit  
23 and be fair in this case?

24 MR. SUNNERVILLE: No.

25 THE COURT: All right. Can you think of any

1 reason, based on all of the questions we've heard, as to why  
2 you can't sit and be fair in this case?

3 MR. SUNNERVILLE: No.

4 THE COURT: Thank you. Ms. Jipp.

5 MS. JIPP: Thank you. You mentioned a gentleman  
6 you worked with --

7 MR. SUNNERVILLE: Yes.

8 MS. JIPP: -- was a family of member of his  
9 assaulted or was he the alleged perpetrator? What was --

10 MR. SUNNERVILLE: The alleged perpetrator.

11 MS. JIPP: Okay. Did you know this gentleman  
12 well?

13 MR. SUNNERVILLE: No. Just --

14 MS. JIPP: Casual.

15 MR. SUNNERVILLE: -- casual at work, yeah.

16 MS. JIPP: Okay. Okay. Have you ever had  
17 someone come to you or a member of your family have ever  
18 come -- stepped forward and said that they had been  
19 sexually assaulted or a victim of sexual abuse?

20 MR. SUNNERVILLE: No.

21 MS. JIPP: No. Okay. I kind of think this is  
22 a good gauge of a person. But we discussed traumatic  
23 incidences and how you would respond to those. Have you ever  
24 kind of had a traumatic experience?

25 MR. SUNNERVILLE: Yeah. I am a first responder

1 at work, so I've seen a few of them.

2 MS. JIPP: Oh. Okay. Okay. So how did -- I  
3 can probably guess how you would respond. In -- in a  
4 situation where it is a medical emergency or something, how  
5 would -- or how do you respond?

6 MR. SUNNERVILLE: Calmly.

7 MS. JIPP: Calmly. Do you feel like that's kind  
8 of across the board how you respond to --

9 MR. SUNNERVILLE: Yeah.

10 MS. JIPP: -- traumatic incidences?

11 MR. SUNNERVILLE: Yeah.

12 MS. JIPP: Yeah. Was there ever a point where you  
13 thought oh, I will just faint or I will get slap happy or  
14 surprise yourself how you reaction is? No. Okay.

15 You heard me give the hypothetical of the  
16 gentleman going to the A.T.M. and punching out cash. And  
17 kind of making what we would describe as bad decisions.

18 MR. SUNNERVILLE: Right.

19 MS. JIPP: Do you understand that that gentleman  
20 was still a victim of a crime even if he made a series of  
21 bad decisions?

22 MR. SUNNERVILLE: Yes.

23 MS. JIPP: Okay. You also heard me kind of detail  
24 maybe a victim, he gets into a car with his buddy thinking  
25 that he is totally safe and then he is -- he is sexually

1 assaulted. The fact that he got in the car, does that --  
2 that make him responsible or negate the criminality?

3 MR. SUNNERVILLE: No.

4 MS. JIPP: Okay. What about it maybe someone  
5 goes to a party and has a drink and is wearing a provocative  
6 outfit? Does that make them responsible if they are later  
7 sexually assaulted?

8 MR. SUNNERVILLE: No.

9 MS. JIPP: Okay. Do you understand the concept  
10 that sexual assault could be quite traumatic?

11 MR. SUNNERVILLE: Yes.

12 MS. JIPP: What are some reasons that you might  
13 think that someone wouldn't come forward right away and  
14 disclose that they had been sexually assaulted?

15 MR. SUNNERVILLE: Shame would be one.

16 MS. JIPP: Shame. Yeah.

17 MR. SUNNERVILLE: And then let's say you have to  
18 relive it.

19 MS. JIPP: Yeah. Okay. Thank you for your time,  
20 I don't believe I have any other questions.

21 THE COURT: Mr. Maesen.

22 MR. MAESEN: Nothing for this juror, your Honor.

23 THE COURT: For cause, Ms. Jipp?

24 MS. JIPP: None, your Honor.

25 THE COURT: Cause, Mr. Maesen?

1 MR. MAESEN: Nothing, your Honor.

2 THE COURT: Preempts are with the prosecution.

3 MS. JIPP: I believe we are satisfied, your  
4 Honor.

5 THE COURT: Mr. Maesen.

6 MR. MAESEN: We are satisfied, your Honor.

7 THE COURT: We have a jury.

8 MS. JIPP: Yes, your Honor.

9 MR. MAESEN: Yes, your Honor.

10 THE COURT: All right. Thank you. The jury has  
11 been selected. I would ask the members of the jury that are  
12 in the box to please rise and be sworn in. And then the  
13 rest of the members of the panel, you are welcome to leave.  
14 Obviously you can stay if you wish, but be sure to stop by  
15 the clerk's office for your vouchers. Thank you.

16 MS. FUHRMAN: Please raise your right hand. Each  
17 of you do solemnly swear or affirm that in this action now  
18 before the Court, you will justly decide the questions  
19 submitted to you. That unless you are discharged by the  
20 Court from further deliberation, you will render a true  
21 verdict and that you will render your verdict only on the  
22 evidence introduced and in accordance with the instructions  
23 of this Court, so help you God. And if so, answer, "I do."

24 JURY: I do.

25 MS. FUHRMAN: Thank you. You may be seated.

1           THE COURT:   Members of the jury, you have been  
2 chosen to decide a criminal charge made by the state of  
3 Michigan against one of your fellow citizens.

4           I am now going to read you a set of instructions  
5 that you will need to hear. All of these instructions will  
6 be given to you in writing. So you don't have to write  
7 them down now. You will get a copy of everything I read  
8 to you at the end of the trial.

9           So I am going to explain some of the legal  
10 principles you need to know and the procedure we will follow  
11 in this trial. The prosecutor makes an opening statement  
12 where she gives her theories about the case. The Defendant's  
13 lawyer does not need to make an opening statement, but he may  
14 make one after the prosecutor makes hers, or he may wait until  
15 later.

16           These statements are not evidence, they are only  
17 meant to help you understand how each side views the case.

18           To prove the charges, the prosecutor must prove  
19 the following beyond a reasonable doubt, in regards to the  
20 charge of criminal sexual conduct in the first degree, the  
21 prosecutor must prove each of the following elements beyond  
22 a reasonable doubt. First, that the Defendant engaged in  
23 a sexual act that involved entry into Jenna Bloom's genital  
24 opening by the Defendant's penis.

25           Any entry, no matter how slight, is enough. It

1 does not matter whether the sexual act was completed or  
2 whether semen was ejaculated.

3 Second, that the Defendant caused personal injury  
4 to Jenna Bluhm. Personal injury means bodily injury,  
5 disfigurement, chronic pain, pregnancy, disease, loss or  
6 impairment of a sexual or reproductive organ or mental  
7 anguish.

8 Mental anguish means extreme pain, extreme distress  
9 or extreme suffering, either at the time of the event or  
10 later, as a result of it.

11 Here are some of the things you may think about  
12 in deciding whether Jenna Bluhm suffered mental anguish.  
13 Was she upset, crying, or hysterical during the event? Did  
14 she need psychological treatment. Did the incident interfere  
15 with her ability to work or lead a normal life? Was she  
16 afraid that she or someone else would be hurt or killed?

17 Did she angry or humiliated? Did she need medication for  
18 anxiety, insomnia, or other symptoms? Did the emotional  
19 effects of the incident last a long time? Did she feel  
20 scared by the possibility of being attached again?

21 These are not the only things you should think  
22 about. No single factor is necessary. You must think about  
23 all of the facts and circumstances to decide whether Jenna  
24 Bluhm suffered mental anguish.

25 Third, the prosecutor must prove that the Defendant

1 used force or coercion to commit the sexual act. Force or  
2 coercion means that the Defendant either used physical  
3 force or did something to make Jenna Bluhm reasonably afraid  
4 of present or future danger.

5 The Defendant is also charged with the crime of  
6 criminal sexual conduct in the third degree. That's in  
7 regards to counts two and five. To prove this charge,  
8 the prosecutor must prove each of the following elements  
9 beyond a reasonable doubt. First, that the Defendant engaged  
10 in a sexual act that involved into Jenna Bluhm's genital  
11 opening by the Defendant's penis, in regards to count two  
12 or penetration into the Jenna Bluhm's mouth by the Defendant's  
13 penis in regards to count five. Any entry, no matter how  
14 slight is enough. It does not matter whether the sexual  
15 act was completed or whether semen was ejaculated.

16 Second, that Jenna Bluhm was 13, 14, or 15 years  
17 old at the time of the alleged act.

18 The Defendant is also charged with criminal sexual  
19 conduct in the second degree. And that is in regards to  
20 count three.

21 To prove this charge, the prosecutor must prove  
22 each of the following elements beyond a reasonable doubt.  
23 First, that the Defendant intentionally touched Jenna Bluhm's  
24 or made -- Ms. Jipp, what's the allegation for CSC 2?

25 MS. JIPP: Engaged in sexual contact with Jenna

1 Bluhm causing personal injury and using force or coercion to  
2 accomplish the sexual act.

3 THE COURT: No, I understand that. But in regards  
4 to the actual touching event that's alleged?

5 MS. JIPP: Breast, vaginal area.

6 THE COURT: Touching her, not forcing her to touch  
7 him.

8 MS. JIPP: Correct.

9 THE COURT: Thank you, that's what I was trying  
10 to understand.

11 The Defendant intentionally touched Jenna Bluhm's  
12 genital, groin, inner thigh, or buttock or breast area or  
13 the clothing touching that area.

14 Second, that this was done for sexual purpose or  
15 could reasonably be construed as having been done for sexual  
16 purpose.

17 And third, that the Defendant caused personal  
18 injury Jenna Bluhm.

19 Once again, personal injury means, bodily injury,  
20 disfigurement, chronic pain, pregnancy, disease, loss or  
21 impairment of a sexual reproductive organ, or mental  
22 anguish. Mental anguish remains the same in regards to the  
23 element that needs to be proven under criminal sexual conduct  
24 in the first degree.

25 Some of the things that you may consider is

1 whether or not the victim was upset, crying, or hysterical  
2 during or after the event. Did she need psychological  
3 treatment? Did it interfere with her ability to work or lead  
4 a normal life? Was she afraid that she or someone else  
5 would be hurt or killed? Did she feel angry or humiliated?  
6 Did she need medication for anxiety, insomnia, or other  
7 symptoms? Did the emotional effects of the incident last  
8 a long time? Did she feel scared afterward about the  
9 possibility of being attacked again and what -- and --  
10 that is the last one. I apologize.

11 These are not the only things you should think  
12 about. No single factor is necessary. You must think about  
13 all of the facts and circumstances to decide whether  
14 Jenna Bluhm suffered mental anguish.

15 Fourth, the prosecutor must prove that the Defendant  
16 used force or coercion to commit the sexual act. Force or  
17 coercion means, that the Defendant either used physical  
18 force or did something to make Jenna Bluhm reasonably afraid  
19 of present or future danger.

20 In regards to count four, the Defendant is charged  
21 with the crime of criminal sexual conduct in the first degree.  
22 As I have already indicated, the elements of criminal sexual  
23 conduct in the first degree, the prosecutor must prove  
24 beyond a reasonable doubt, that the Defendant engaged in a  
25 sexual act that involved entry of the genital opening by

1 the Defendant's penis. No matter how slight, any entry is  
2 enough.

3 It does not matter whether the sexual act was  
4 completed or whether semen was ejaculated. Second, that the  
5 Defendant caused personal injury to Jenna Bluhm. Once again,  
6 personal injury means bodily disfigurement, chronic pain,  
7 pregnancy, disease, loss or impairment of a sexual or  
8 reproductive organ, or mental anguish. Mental anguish  
9 remains the same as I have already explained to you regarding  
10 count one. And in count one, which also a crime of  
11 criminal sexual conduct in the first degree.

12 So Defendant is charged with five different crimes.  
13 Two counts of criminal sexual conduct in the first degree,  
14 two counts of criminal sexual conduct in the third degree,  
15 and criminal sexual conduct in the second degree.

16 The next -- after the opening statements, the  
17 next -- after the opening statements, the next process is  
18 the prosecutor presents her evidence. The prosecutor may  
19 call witnesses to testify and may show you exhibits like  
20 documents or objects.

21 The Defendant's lawyer has the right to  
22 cross-examine the prosecutor's witnesses. After the  
23 prosecutor has presented all of her evidence, the Defendant's  
24 attorney may also offer evidence, but does not have to. By  
25 law, the Defendant does not have to prove his innocence or

1 produce any evidence.

2 If the defense does call witnesses, the prosecutor  
3 has the right to cross-examine them. The prosecutor may  
4 also call witnesses to contradict the testimony of the  
5 defense witnesses.

6 After all of the evidence has been presented, the  
7 prosecutor and the Defendant's lawyer will make their  
8 closing arguments. Like the opening statements, these are  
9 not evidence. They are only meant to help you understand  
10 the evidence and the way each side sees the case. You must  
11 base your verdict only on the evidence.

12 As I've indicated, you will be getting a written  
13 copy of all of the instructions. You may refer to them  
14 during the trial in regards to these preliminary  
15 instructions.

16 Since no one can predict the course of a trial,  
17 these instructions may change at the end of the trial, but  
18 at the close of the trial, I will provide you with a copy of  
19 the final instructions which I will also read to you at that  
20 time.

21 My responsibility as the Judge in this case is to  
22 make sure the trial is run fairly and efficiently, to make  
23 decisions about evidence, and to instruct you about the law  
24 that applies to this case.

25 You must take the law as I give it to you. Nothing

1 I say is meant to reflect my own opinions about the facts  
2 of this case.

3 As jurors, you are the ones who will decide this  
4 case. Your responsibility as jurors is to decide what the  
5 facts of this case are. This is your job and no one else's.

6 You must think about all of the evidence and all  
7 of the testimony and then decide what each piece of evidence  
8 means and how important you think it is.

9 This includes how much you believe what each of the  
10 witnesses said.

11 What you decide about any fact in this case is  
12 final. When it is time for you to decide the case, you are  
13 only allowed to consider evidence that was admitted in the  
14 case.

15 Evidence includes only the sworn testimony of  
16 witnesses, the exhibits admitted into evidence, and anything  
17 else I tell you to consider as evidence.

18 It is your job to decide what the facts of this  
19 case are. You must decide which witnesses you believe and  
20 how important you think their testimony is. You do not  
21 have to accept or reject everything a witness says. You are  
22 free to believe none, all, or part of any witness's testimony.

23 In deciding which testimony you believe, you should  
24 rely on your own common sense and everyday experience.

1           However, in deciding whether you believe a witness's  
2           testimony, you must set aside any bias or prejudice you have  
3           based on race, gender, or national origin of the witness.

4                       There is no fixed set of rules for judging whether  
5           you believe a witness. But it may help to think about these  
6           questions.

7                       Was the witness able to see or hear clearly? How  
8           long was the witness watching or listening?

9                       Was anything else going on that might have  
10          distracted the witness?

11                      Does the witness seem to have a good memory?

12                      How does the witness look and act while testifying?

13                      Does the witness seem to be making an honest effort  
14          to tell the truth or does the witness seem to evade the  
15          questions or argue with the lawyers?

16                      Does the witness's age or maturity affect how you  
17          judge his or her testimony?

18                      Does the witness have any bias or prejudice or  
19          any personal interest in how this case is decided?

20                      Have there been any promises, threats, suggestions  
21          or other influences that affect how the witness testifies?

22                      In general, does the witness have any special  
23          reason to tell the truth or any special reason to lie?

24                      All in all, how reasonable does the witness's  
25          testimony seem when you think about all of the other evidence

1 in the case? The questions the lawyers ask are not evidence.  
2 Only the answers are evidence.

3 You should not think that something is true just  
4 because one of the lawyers asks questions that assume or  
5 suggest that it is.

6 I may ask some of the questions of the witnesses.  
7 These questions are not meant to reflect my opinion about  
8 the evidence. If I ask questions, my only reason would be  
9 to ask about things that may not have been fully explored.

10 During the trial, you may think of an important  
11 question that would help you understand the facts of the  
12 case. You are allowed to ask such questions. You should wait  
13 to ask the questions until after the witness has finished  
14 testifying and both sides have finished their questioning.  
15 If you still have an question after this, do not  
16 ask it yourself. Write the question down, pass it to Mr.  
17 Buxton, and we will give it to -- and he will give it to me  
18 and do not show it to other jurors.

19 If your question is not asked, it is because I  
20 determine under the law that the question should not be  
21 asked. Do not speculate about why the question was not  
22 asked. In other words, you should draw no conclusions or  
23 inferences about the facts of the case, nor should you  
24 speculate about what the answers might have been.

25 In considering the evidence, you should never give

1 greater weight to testimony merely because it was given in  
2 answer to questions submitted by members of the jury. And  
3 there are -- there is a form, I think, that's right in front  
4 of -- yes. Those are forms you can use to write down a  
5 question.

6 If you cannot hear what a witness or lawyer says,  
7 raise your hand immediately and ask to have the questions  
8 or answers repeated.

9 During the trial, the lawyers may object to certain  
10 questions or statements made by the other lawyers or  
11 witnesses. I will rule on these objections according to the  
12 law. My rulings for or against one side or the other are not  
13 meant to reflect my opinions about the facts of the case.

14 Sometimes the lawyers and I will have discussions  
15 out of your hearing. Also, while you are in the jury room,  
16 I may have to take care of matters that have nothing to do  
17 with this case. Pay no attention to these interruptions.

18 You must not discuss this case with anyone,  
19 including your family or friends. You must not even discuss  
20 it with other jurors until the time comes for you to decide  
21 the case. When it's time for you to decide the case, I will  
22 send you to the jury room for that purpose. Then you should  
23 discuss the case among yourselves, but only in the jury room  
24 and only when all of the jurors are there.

25 When the trial is over, you may, if you wish,

1 discuss the case with anyone. So what that means is, if  
2 you see me in the hallway or Ms. Jipp or Mr. Maesen, don't  
3 even say "hello", that's how serious we take this. It's  
4 very important that you have no discussions with anyone  
5 about this case, no postings on social media, no, "I am on  
6 a jury" on Facebook. It's very tempting, but it's very  
7 important that you don't do that.

8 If I call for a recess during the trial, you will  
9 go back to the jury room or allow you to leave  
10 the courtroom on your own and go about your business. I  
11 ask that if you are in trial during that day and you leave  
12 or you go out, that you have your juror button on and  
13 that will be in the folders that you have been provided --  
14 and that you will be provided in the jury room.

15 You must not discuss the case with anyone or let  
16 anyone discuss it with you or in your presence.

17 If someone tries to do that, tell him or her to  
18 stop, explain that as a juror, you are not allowed to discuss  
19 the case. If he or she continue, leave, and report the  
20 incident to me as soon as you return to Court.

21 You must not talk to the Defendant, the lawyers, or  
22 the witnesses about anything at all, even if it has nothing to  
23 do with this case. It's very important that you get your  
24 information about this case in Court, when you are acting as a  
25 jury, and when the Defendant, the lawyers, and I are all here.

1           You may take notes during the trial, if you wish,  
2           but of course you don't have to. We will provide you with  
3           paper and -- and pen for you to do that.

4           If you do take notes, you should be careful that it  
5           does not distract you from paying attention to all of the  
6           evidence.

7           When you go to the jury room to decide your verdict,  
8           you may use your notes to help you remember what happened  
9           in the courtroom.

10          If you take notes, do not let anyone else, except  
11          other jurors, see them during deliberations. We will have  
12          you leave them in the jury room during recesses.

13          Your notes will not be examined by anyone. And when  
14          your jury service concludes, your notes will be collected and  
15          destroyed.

16          As I have indicated, we have chosen a jury of 14.  
17          After you've heard all of the evidence and my instructions,  
18          we will draw lots to decide which two of you will be  
19          dismissed in order to form a jury of 12.

20          Possible penalty should not influence your decision.  
21          It is the duty of the judge to fix the penalty within the  
22          limits provided by the law.

23          I'm sorry, I am missing an instruction, so I have  
24          to look it up to be able to give it to you.

25          The restrictions I am about to describe are meant

1 to ensure that the parties get a fair trial. In our  
2 judicial system, it is crucial that jurors are not influenced  
3 by anything or anyone outside of the courtroom.

4 Now that many jurors have access to information  
5 through handheld devices and other technologies, jurors may be  
6 tempted to use those devices to learn more about some aspect  
7 of the case. But if a juror were to do this, it would harm  
8 the parties.

9 The parties' attorneys would have no way of knowing  
10 that a juror has gotten outside information and would have  
11 no choice to object if that information was false,  
12 untrustworthy, or irrelevant. No matter how careful and  
13 conscientious news reports, family members, friends, and  
14 other people outside the courtroom may be, information from  
15 any other source, whether it's television, radio, the  
16 internet, social media, will inevitably be incomplete and  
17 could be incorrect.

18 Please bear these things in mind as I read the  
19 following instructions. These restrictions apply from this  
20 moment until I discharge you from jury service. You must  
21 decide this case based solely on the evidence you see and  
22 hear in this courtroom. You must not consider information  
23 that comes from anywhere else.

24 That means during the trial, you must not read,  
25 watch, listen to news reports about the case, whether in

1 newspapers, on television, on the radio, or on the internet.

2 You must not research any aspect of the case during  
3 the trial. This means research using a cellular phone,  
4 computer, electronic device to search the internet, as well  
5 as research with traditional sources like dictionaries,  
6 reference manuals, newspapers, or magazines.

7 You must not investigate this  
8 case on your own or conduct any experiments concerning the  
9 case, including investigation or experiments using the  
10 internet, computers, cellular phones, or other electronic  
11 devices.

12 You must not visit the scene of any event at issue  
13 in this trial. If it's necessary for you to view the scene,  
14 the Court will take you there as a group, under Court  
15 supervision.

16 You must not consider as evidence any personal  
17 knowledge you have of the scene.

18 As I've indicated before, but it's very important,  
19 you must not discuss this case with anyone, even your fellow  
20 jurors until deliberations.

21 After you begin deliberations, you should discuss  
22 the case with your fellow jurors, but you should still not  
23 discuss the case with anyone else until I discharge you from  
24 jury service.

25 You must not share any information about this case

1 by any means, including cellular phones or social media  
2 until you have been discharged from jury service. If you  
3 discover that a juror has violated my instructions, please  
4 report it to the bailiff.

5 One of the issues that I would like to advise the  
6 jury about is that at the -- during deliberations, you may  
7 wish to have information about what a witness said, to  
8 have a -- recall that information. We cannot provide you  
9 with transcripts. We do not. That's the technology that  
10 is outside of our ability to provide you with. Transcripts  
11 take a long time to prepare. And it would probably take  
12 several days for our transcripts to be prepared.

13 What we can do is show you testimony on the screen  
14 and if we do that, we would have to play the entire testimony.  
15 We couldn't take just a piece of it out. So if you wanted  
16 to hear what a witness said, you would have to hear the  
17 entire witness testimony. That's why we wanted to -- I  
18 wanted to let know that, just so -- in case, unfortunately  
19 I am going back to what we can see on T.V., there are these  
20 instant transcripts. And I think there are some  
21 jurisdictions that may have that kind of technology. We just  
22 do not have that.

23 I may give you more instructions during the trial.  
24 At the end of the trial, I will give you detailed instructions  
25 about the law in this case.

1           You should consider all of my instructions as a  
2 connected series. Taken together, they are the law you must  
3 follow.

4           After all of the evidence has been presented and  
5 the lawyers have given their arguments, I will give you  
6 detailed instructions about the law that applies to this  
7 case. Then you will go into the jury room to decide your  
8 verdict. A verdict must be unanimous. That means that  
9 every juror must agree on it, it must reflect the individual  
10 decision of each juror.

11           It is very important that you keep an open mind  
12 and not make a decision about anything in this case until  
13 you go into the jury room to decide the case.

14           Is there any objections to the instructions at this  
15 time?

16           MS. JIPP: No, your Honor.

17           MR. MAESEN: Nothing, your Honor.

18           THE COURT: All right. Thank you. Ms. Jipp?

19           MS. JIPP: Thank you.

20           Thank you, your Honor. I appreciate you all being  
21 here and I won't belabor this, this morning. But there are  
22 a lot of instructions and elements that were thrown at you.  
23 That's sometimes, I am kind of a visual learner, it will  
24 help to just see them on the screen.

25           This case is about sexual assault, as you've been

1           hammered with this morning. Two counts of CSC 1, a count of  
2           CSC 2<sup>nd</sup>, and two counts of CSC 3<sup>rd</sup>. Our victim in this case  
3           is Jenna Bluhm. Jenna Bluhm turned 13 on November 24<sup>th</sup>, 2010.  
4           One month later, she was sexual assaulted by the Defendant,  
5           Daniel Loew. There is going to be testimony from different  
6           players in this case, as we spoke about during the jury  
7           selection process.

8                         Unfortunately, or fortunately, these types of  
9           sexual assaults don't occur in front of a video camera,  
10          oftentimes. And almost never occur in front of an audience.  
11          People choose to perpetrate these types of actions when they  
12          know that they have someone vulnerable, someone that they  
13          might suspect won't divulge what has been occurring. And  
14          they will certainly do it in a way that they won't get caught.

15                         So as we proceed today, I just ask that you listen  
16          to the different witness's testimony and see how the little  
17          pieces start to corroborate one another, you know, validate  
18          the different little facts that when you look at the picture  
19          as a whole, makes it that much more believable that not only  
20          was Jenna sexually assaulted, but that it was the Defendant  
21          that sexually assaulted her.

22                         So we are going to hear from today, or over the  
23          next three days, I should say -- sorry. Jenna's parents  
24          are Robert and Angela. They are separated and have been  
25          separated for some years. And Jenna's father is in prison.

1 You will hear testimony about that today. And that that  
2 actually factors in quite a bit to kind of the logistics of  
3 how the Defendant had access to this young lady.

4 She lived with her mother and her father, before  
5 her father was incarcerated. And she has an older sister,  
6 Taylor, and a younger sister, Anna, who were around to  
7 witness behavior changes and some of the interactions between  
8 Jenna and the Defendant.

9 You will also hear, at some point, from the  
10 Defendant's now mother-in-law, Jamie Heppe, and now father-  
11 in-law, Scott Heppe. And I say that because at the time  
12 that these incidents were occurring, Jamie and Scott lived  
13 in a home with the Defendant and the Defendant's girlfriend,  
14 Brook. The relationship to the victim, obviously, is that  
15 Uncle Scott and Aunt Jamie the victim's paternal aunt and  
16 uncle.

17 Okay. A little bit confusing. So, Jenna would go  
18 and stay at her aunt and uncle's home and that is how the  
19 Defendant was able to repeatedly have access to her.

20 So there were repeated sexual assaults. The first  
21 sexual assault occurred on December -- December 19<sup>th</sup> or 20<sup>th</sup>  
22 of 2015. And they continued until she finally disclosed in  
23 January of 2018. Where would these sexual assaults occur?  
24 In the bathroom, at Aunt Jamie's house, in the Defendant's  
25 truck, in the Defendant's father's trailer.

1                   And what did the sexual assaults consist of?  
2 Penetration, penis-vaginal penetration, he forced the victim,  
3 Jenna, to perform oral sex, and he groped her breasts,  
4 vagina, and buttocks.

5                   Jenna's father was set to go to prison in March  
6 of 2016. As a result of that, he decided to wed his long  
7 time girlfriend in December of 2015. And the first picture  
8 you saw on this slideshow was Jenna and her father on the  
9 day of the wedding. She is a month into her 13<sup>th</sup> year.  
10 After the wedding ceremony, family and friends gather at  
11 the aunt and uncle's home. Now it is December, but the  
12 reception is held outside. They have the garage open, there  
13 is toilet facilities outside, food and drink are outside.

14                   And Aunt Janie, who is a pretty tidy housekeeper  
15 has kind of strict instructions that the guests are supposed  
16 to stay outside. All right. Jenna, later on into the  
17 evening is thirsty. There is no more soda outside. It  
18 being her aunt's home, she goes inside. The Defendant,  
19 having made a grocery run, comes in not too long after her  
20 and calls the victim into the bathroom. She is not sure why  
21 she is going in there. She goes in to see, hey, what does  
22 Dan need. Goes in the bathroom. The Defendant proceeds to  
23 undress himself, undress her, put her down on her hands and  
24 knees, and penetrates her from behind.

25                   There is blood on her part, there are tears on her

1 part. And I think you will hear from the testimony, a whole  
2 lot of shock in regards to what has just happened.

3 Jenna doesn't tell anybody about this incident that  
4 night. She doesn't obviously disclose any of these incidents  
5 as I said earlier, until January 2018.

6 She proceeds to blame herself, believe that no  
7 one will believe her. So what you are going to have to do  
8 today is listen to the testimony of the witnesses. And as  
9 I said in voir dire and as the Judge will instruct you, her  
10 word is enough if you believe her beyond a reasonable doubt.  
11 So if you think all of the details she can give you for all  
12 of these repeated sexual assaults is enough, then you need  
13 to find the Defendant guilty.

14 After that first incident in December, she saw the  
15 Defendant again, but she didn't stay the night at her aunt's  
16 house. He didn't have long term access to her for several  
17 months. Once her dad was taken, incarcerated, Jenna began  
18 to go visit her father. And, as a minor, the way you can  
19 visit someone in prison, is you need an adult who is within  
20 so many degrees related to the prisoner, so that they can  
21 grant you access. In other words, Aunt Janie could get  
22 minor children in to see their father, because she -- she  
23 is the sister of the prisoner.

24 So the girls go to stay with their aunt so that  
25 they can then visit their father in prison. And this

1 happens about every other weekend, they would regularly  
2 go and spend all of a Saturday to visit their dad. On the  
3 nights that she stayed with her aunt, more often than not,  
4 she would fall asleep on a couch in the living room. And  
5 you will get to see photographs of this home and the set up.

6 She would awaken to the Defendant groping her  
7 breasts, groping her vaginal area, rubbing her buttocks. He  
8 would then take her by the hand, take her into a bathroom,  
9 and it's not a big bathroom, and it's not a big house. And  
10 he would very quietly, very efficiently, have sex with Jenna.  
11 He would clothe, remove himself, and leave her there to  
12 clean herself up.

13 She will detail incidents when these would happen  
14 where he would grab her by -- by the head and force her to  
15 perform oral sex before penetrating her. Most of the  
16 incidents she will disclose occurred while she was on all  
17 fours on this floor. The Defendant would not ejaculate in  
18 her, unless he ejaculated in her mouth. More often than  
19 not, he would ejaculate on the floor or a bath mat within the  
20 bathroom, wipe up some tiss -- wipe it up with some tissue,  
21 flush it away and be done with it.

22 She started to have nightmares, extreme anxiety,  
23 engaging in self-harming behaviors. And her family members  
24 will be able to corroborate that she experienced this -- this  
25 personality change. She de -- she will detail in greater

1 detail, probably because they are more distinct, two separate  
2 incidents that did not occur at Aunt Janie's house. An  
3 incident in a truck where the Defendant forces her to give  
4 him a blow job. And an incident where he has penis/vaginal  
5 penetration in her childhood bedroom in her father's trailer.

6 It's a whole lot to listen to. She will be able  
7 to give a lot of details. We will hear from Trooper Desch  
8 who first responded to meet with the family and to find out  
9 about these allegations.

10 We will hear testimony from the mother and the  
11 sisters that witnessed a facial injury that Jenna received  
12 during the course of one of these sexual assaults at her  
13 Aunt Janie's house. And we will hear, unfortunately, that  
14 there is no D.N.A. evidence. Jenna will testify that she --  
15 she made her aunt aware, she made law enforcement aware of  
16 blue bath mats that she last remembered the Defendant  
17 ejaculating on. And you will hear from Trooper Desch that  
18 aunt met him in the middle of the night at a gas station  
19 with a garbage bag full of bath mats that were green, white,  
20 and blue.

21 Those bath mats were never taken and shown to the  
22 victim. Those bath mats were not seized personally by  
23 law enforcement. But Aunt Janie turned those over and those  
24 obviously didn't have any D.N.A. on them.

25 Let's just go through really quickly, you will also

1 hear from an expert witness, Tom Cottrell, what's really  
2 important in these situations and what a lot of people that  
3 don't deal with this on a daily basis, sometimes don't  
4 understand is that behavior of child victims for CSC's can  
5 seem very bizarre, can seem unbelievable. So his testimony  
6 will help you understand and describe the types of behaviors  
7 that Jenna exhibits.

8 Just one more -- one more second and I will concede  
9 my time to defense counsel. Like I said, it's sometimes  
10 easier to see it, as opposed to hear it. So I just want  
11 to run through the elements of these criminal sexual conducts.

12 Entry into her genital opening by the Defendant's  
13 penis. It happens countless times, the first of which was  
14 December of 2015. He caused personal injury to Jenna Bluhm.  
15 She will testify that he took her virginity and that there  
16 was pain and blood. But as you heard the Judge mention,  
17 there is also a component of mental -- mental anguish,  
18 nightmares, an inability to focus, all of those issues.

19 He used force or coercion to commit the sexual act.  
20 And this means that he used physical force or did something  
21 to make her reasonably afraid. Whether that's a threat or  
22 a movement like he is going to hit her, different factors  
23 that can be used to find that there was force or coercion.

24 As you've heard before, it doesn't matter whether  
25 the sexual act was completed or semen was ejaculated. And

1 it doesn't matter how, you know, this isn't much of an issue  
2 in this case, he fully penetrated her, he ejaculated. But  
3 this is the law, so.

4 And as we went over, just to kind of see it in  
5 writing, bodily injury. And it's our argument that that  
6 pain and that blood experienced for that first sexual assault  
7 would qualify as bodily injury. But also, when you look at  
8 the -- the -- the crying and the suffering, we feel that  
9 it also qualifies under mental anguish.

10 And just a quick run down of the things that you  
11 could consider. Has she had to see a therapist? Does she  
12 struggle in school? Does she struggle in work? Was she  
13 afraid that someone else would get hurt? And you will have  
14 to hear her testimony to see how this all factors in. Did  
15 she feel angry or humiliated? Did she have insomnia or need  
16 medication and have they had a long-term effect.

17 For the sexual conduct third degree, entry into  
18 Jenna Bluhm's genital opening by Defendant's penis, and this  
19 is under the theory that Jenna was 13, 14, or 15 years old  
20 at the time. So I don't need to show personal injury, I  
21 don't need to show mental anguish. As long as I can establish  
22 that she was 13, 14, or 15, between December of 2015 and  
23 January of 2018, I would request that you find him guilty of  
24 the counts of sexual conduct, third degree. And that's  
25 based on his penis/vagina as well as an incident that we

1 will detail where he performed what -- she was forced to  
2 perform oral sex on him.

3 And then for the CSC 2<sup>nd</sup>, that he touched her for  
4 a sexual purpose and that it caused personal injury to  
5 Jenna. And once again, that's under a mental anguish theory.

6 So we ask at the end of this trial, after you  
7 listen to the victim Jenna, you listen to Trooper Desch,  
8 Trooper Workman, and her family members that were able to  
9 kind of see and witness interactions between her and the  
10 Defendant, as well as see the personality changes that Jenna  
11 began to exhibit. We ask that you put those little pieces  
12 together and see the full, complete puzzle, that the  
13 Defendant should be found guilty of two counts of  
14 criminal sexual conduct first degree, two counts of  
15 criminal sexual conduct third degree, and one count of  
16 CSC 2<sup>nd</sup>. Thank you.

17 MR. MAESEN: Thank you.

18 Thank you ladies and gentlemen.

19 First thing I want to say is, this case has been  
20 a complete nightmare for Mr. Daniel Loew to have these  
21 allegations leveled against him. He is a lifelong resident  
22 of this area, he's got a young son. He is recently married,  
23 he has a baby on the way very soon.

24 He was staying in this house at the time this  
25 allegedly occurred. I don't even know how much he really

1 knew Jenna. He was staying with his future in-laws,  
2 basically. They would sleep in one bedroom. It was a very  
3 small house. There is -- there is -- imagine that podium  
4 is like the bathroom. And I honestly don't think the  
5 bathroom is much bigger than that. You've got a bedroom on  
6 one side, his in-laws, his mom and dad -- now mom and dad  
7 in-law in it. Then he went to sleep in the other bedroom  
8 with his then fiancé. And occasionally a friend would sleep  
9 with him on the floor, on an air mattress, in front of the  
10 door.

11 Essentially what he would do on the weekends, at  
12 the home, when he wasn't working, is he and his fiancé,  
13 Brook, who you are going to hear from, he will go out in  
14 the pole barn. Presumably it was heated, he would watch  
15 T.V., they would hang out, maybe have a few beers. Then  
16 later on they would come in and go to bed.

17 Well, Jenna is claiming here is that she was there  
18 about every other weekend. I don't think it's clear she says  
19 it happened every time she was there, but multiple times.  
20 That he would get up around two or three in the morning,  
21 walk, somehow get out of the bedroom without waking everybody  
22 up. Come through, essentially find her laying on the couch,  
23 on the floor. Tiptoe around her friends and sisters that  
24 were staying the night, start groping her, somehow pick her  
25 up or somehow lead her into the bathroom without making a

1 sound. And then perform various sexual acts.

2 Now, she is clear in one of the reports in one of  
3 her statements, that she -- she would sometimes bleed. The  
4 prosecutor is correct, they did test the rugs. I think they  
5 are trying to imply that the rugs may have been changed. We  
6 can Mrs. Janie Heppe, because she is the one that owns the  
7 rugs, if they were in fact the same rugs. I believe she is  
8 going to testify she has had the same rugs forever. But I  
9 will let her explain that to you. It was tested for D.N.A.  
10 Ms. Heppe did bring them to the police voluntarily.  
11 There was D.N.A. on it. There was some of his blood on there.  
12 She never alleged he bled during it. He can explain that  
13 that's from when he cut his hand another -- another time.

14 I do believe also the state police experts will  
15 testify -- I believe this -- bodily fluids, other than blood,  
16 if you washed the rugs, probably wouldn't be there anyway.  
17 So as far as some of the other things you might expect,  
18 probably wouldn't have been there, but she was very clear  
19 about the blood.

20 Also around the time she initially disclosed this,  
21 about two years after she says it started happening, she  
22 actually talked to, I believe it's her younger sister, Anna.  
23 And I guess her Aunt Janie or Jane -- I usually call her  
24 Jane -- about this going on. And Janie and the sister said,  
25 well, why don't we try to see if this is happening. We will

1 try to catch him in the act. We will wait up one night,  
2 because -- look, I think she is a little surprised that  
3 two year that nobody wakes up, none of the dogs bark, none  
4 of that stuff.

5 And she wakes up one night, when, you know, this  
6 is supposed to happen and lo and behold, nothing happens.  
7 Nobody gets out of bed. He stays in bed the whole time.  
8 He doesn't know that they are waiting for him. And the  
9 only reason is, is because he wasn't going to do anything. So  
10 what she is trying to get you to believe is that not only  
11 does this happen for two straight years, which people do  
12 assault people for years on end sometimes. That he was able  
13 to somehow do this again and again without anything to tip  
14 anybody off. Without a single dog barking once. Without  
15 a single person just happening to get up to go to the  
16 bathroom without bumping on any of the walls next to the  
17 bedrooms, without stepping on people in his bedroom, without  
18 stepping on people in the living room.

19 And I think, even though you are certainly free to  
20 base your verdict on just the testimony, I am going to ask  
21 you to go through and see things that corroborate everybody's  
22 story. Because you do have probably more witnesses than  
23 normal for a case like this, okay. You get to hear from the  
24 trooper. You will get to hear from her and her sisters, a  
25 lot of family members.

1           But the things that if her statements are true  
2 should be there, they should be there. And they are  
3 interestingly not going to be. She also mentions and  
4 incident, I believe the first one, was at her dad's wedding.  
5 He is in -- I don't know what he is in prison for. It's not  
6 really relevant to the case, but that's why she was staying  
7 at the house. I don't know if it's closer to the prison he  
8 was in, but that's why she was there.

9           The other thing -- she also alleges that he would  
10 have taken her in there. But we have a witness that is going  
11 to say, I was at that wedding taking pictures, I never saw  
12 him leave and go in the house with anybody. Aunt Janie was  
13 pretty clear not to get the house dirty. She was really  
14 anal about her rugs and she didn't want snow and ice and  
15 slush. I don't remember the weather on December 20<sup>th</sup>, 2015.  
16 But if it's like December in Michigan, it probably wasn't  
17 real pleasant out. But she is going to testify she never  
18 saw him leave or take time alone with her.

19           Jenna testifies, or is going to probably testify  
20 in another incident that she left, I think it was his son's  
21 birthday party, maybe when he turned two. I believe he is  
22 four or five now, four and a half, maybe. And she, despite  
23 this ongoing (inaudible) just gets in his truck with him  
24 and he is somehow as he is driving down the street, he is  
25 able to somehow pull down his pants and force her to have

1 oral sex after she willingly gets in the car.

2 This is a guy that -- that has never had any  
3 accusations like this against him, that has absolutely  
4 no interest in young people at all, has no interest in her.  
5 You will hear a witness, Scott, say that he -- when he was  
6 home and Jenna was there and Brook wasn't there, he paid  
7 no attention to her. He wanted nothing to do with her. He  
8 didn't want to hang around a bunch of kids. He is a grown  
9 man. And I think at the end of the day, I just don't think  
10 you are going to find her statements to be completely  
11 credible. Especially when you consider all of the stuff  
12 that should be there to corroborate that simply is not  
13 present.

14 And they made a big thing and you know, go through  
15 the testimony probably with the expert about well, she  
16 changed. Well, at the end of it, look at common sense, do  
17 12 to 15 years olds not sometimes have changes based on  
18 being 12 to 15? I mean there is a lot. Dad just went to  
19 prison. I mean, you know, that -- there probably more  
20 reasonable explanations why somebody's behavior might change.  
21 I have a kid, and I mean, they change every day, you know,  
22 my wife does too and she is almost 40. Don't tell her I  
23 said that.

24 But there is also all kinds of rational explanations  
25 for these things. And I don't think that they are going to

1 realistically add up to the only possible conclusion is that  
2 he was sexually abusing her. Maybe she's got a lot of other  
3 stuff going on, but I -- I think at the end of this case,  
4 you are not going to have any reason to do anything but find  
5 him not guilty on all charges.

6 Thank you.

7 THE COURT: Members of the jury, we are going to  
8 break at this time for lunch. We will be back at one  
9 o'clock. So what I need you to do is go into the jury  
10 room, get your juror buttons, put those on. You can go  
11 wherever you would like, obviously, but I need you to be  
12 back in the jury room itself, come back to the jury room  
13 by one o'clock. You don't have to leave. You can stay in  
14 the jury room if you want. But you are welcome to leave.

15 Just a caution, don't talk to anybody about the  
16 case. So please rise for the jury.

17 (at 11:50 a.m., Court recessed for lunch break)

18 (at 1:05 p.m., Court reconvened after lunch break)

19 THE COURT: Just to clarify for the record a  
20 couple of things for just a minute.

21 We did excuse a juror for cause, and in regards to  
22 that, there had been a request for -- I believe it was Ms.  
23 Morton to be excused by cause by defense and the Court denied  
24 that initially. But then on a break, took an opportunity to  
25 speak with Ms. Morton in chambers with both counsel present.

1 And Ms. Chambers -- or Ms. Morton said that she had been a  
2 victim, that she was concerned that she might have some  
3 triggers listening to the testimony and suffer some form of  
4 post traumatic stress. Based on her statements in chambers,  
5 the Court determined that it should have granted the request  
6 from defense to remove that juror for cause. And that did  
7 occur once we got back on the record.

8 Is that a fair statement of what occurred off the  
9 record, Ms. Jipp?

10 MS. JIPP: Yes, your Honor.

11 THE COURT: Mr. Maesen?

12 MR. MAESEN: Yes, your Honor.

13 THE COURT: All right. Thank you.

14 I have changed the jury instructions. The  
15 instructions as read were inaccurate in regards to I believe  
16 it was count four. The prosecution has submitted a second  
17 amended felony information that corrects that issue. The  
18 issue was that the Court read it as a sexual penetration  
19 involving injury where in fact it was a sexual penetration  
20 involving a minor, correct?

21 MS. JIPP: That's accurate with the exception of  
22 it was actually count two that my office had erroneously --

23 THE COURT: Count two.

24 MS. JIPP: Yes.

25 THE COURT: All right. Thank you. So I can

1 reread those to the jury now or do it at the close. No one  
2 objected at the time that I read them initially. But I --  
3 when I did ask counsel off the record what they would want  
4 me to do, they said to read them properly at the close of the  
5 case. Is that a correct statement also, Ms. Jipp?

6 MS. JIPP: I believe that would be sufficient,  
7 your Honor, yes.

8 THE COURT: Mr. Maesen?

9 MR. MAESEN: Yes, it is.

10 THE COURT: All right. And are you ready for the  
11 jury?

12 MS. JIPP: We are, your Honor. Would you like  
13 me to wait until they come back in before I bring my witness  
14 in or have her go ahead and come in as they are filing in?

15 THE COURT: She can come in as they are filing  
16 in.

17 Please rise for the jury.

18 (at 1:05 p.m., jury entered the courtroom)

19 THE COURT: You may be seated. Ms. Jipp, the  
20 case rests with you.

21 MS. JIPP: Thank you, your Honor. We would call  
22 Jenna Bluhm.

23 THE COURT: Ms. Bluhm, can you stop right there?  
24 Raise your right hand. And Ms. Lange is going to swear you  
25 in.

1 MS. LANGE: Do you solemnly swear or affirm that  
2 the testimony you are about to give in this matter will be  
3 the truth, the whole truth, and nothing but the truth, so  
4 help you God?

5 MS. BLUHM: Yes.

6 MS. LANGE: Thank you.

7 THE COURT: You can have a seat in the witness  
8 chair, please. Thank you.

9 JENNA BLUHM

10 (at 1:06 p.m., sworn as a witness, testified as  
11 follows)

12 DIRECT EXAMINATION

13 BY MS. JIPP:

14 Q Jenna, could you state and spell your whole name?

15 A Jenna Rose Bluhm, J-e-n-n-a R-o-s-e B-l-u-h-m.

16 Q Okay. And Jenna, when is your birthday?

17 A 11/24/02.

18 Q So November 24<sup>th</sup>. How old are you right now?

19 A Sixteen.

20 Q You are sixteen now. Okay. And what grade are you going to  
21 be entering?

22 A Eleventh.

23 Q Eleventh, okay. Can you just tell me a little bit about  
24 your family? Your mom, your dad, kind of the family dynamic.

25 A Right now my mom and me are very close. My dad is

1           incarcerated right now, actually. Me and my sisters, I have  
2           three sisters, we are very close, all live together.

3   Q       Okay. You -- you live together with who exactly now?

4   A       My grandma.

5   Q       Your grandma. And then who else is in the home?

6   A       My sister, Taylor, my little sister Anna, and Brandy, my  
7           older sister.

8   Q       Okay.

9                        THE COURT: I don't mean to interrupt you. I  
10           just want to assure that if you have a cell phone on you,  
11           that it's on -- that it's turned off. I don't know if anyone  
12           does, but cell phones do need to be turned off in the  
13           courtroom.

14                       Thank you. I -- people don't think about it and  
15           I understand that. And I should have said that earlier. And  
16           I apologize for interrupting you.

17                       Thank you.

18                       MS. JIPP: That's fine.

19   BY MS. JIPP:

20   Q       And you said your mom also lives with you as well?

21   A       Mmmhmm.

22   Q       So you are kind of all with your grandma right now.

23   A       Yep.

24   Q       You said your sister, Taylor, how old is your sister, Taylor?

25   A       Twenty-two.

1 Q So she is -- I am not very good at math, four years -- six  
2 years older than you.

3 A Mmmhmm.

4 Q Okay. And then what about your sister, Anna? How old is  
5 she?

6 A Fifteen.

7 Q She is 15. So she's just about a year younger than you.

8 A Mmmhmm.

9 Q Okay. In December of 2015, how old were you?

10 A Thirteen.

11 Q Thirteen. And at that time, where were you living?

12 A At my dad's.

13 Q At your dad's house. And -- and can you give me an address  
14 or a general city?

15 A 3848 32<sup>nd</sup> Street, Hamilton.

16 Q Okay. So you were in Hamilton.

17 A Mmmhmm.

18 Q Where -- where does your grandma live, where you live right  
19 now?

20 A In Dorr, on 27<sup>th</sup> Street.

21 Q Okay. In Dorr. And back in 2015, would you say that you  
22 were closer with your mom or your dad?

23 A My dad.

24 Q Your dad. Okay.

25 A Mmmhmm.

1 Q So how would you describe your home life in December of 2015?

2 A It was kind of back and forth between my grandma's and my  
3 dad's because we -- they had joint custody. And my dad was  
4 going to prison, so we were there. And then we moved to  
5 my mom's once my dad got incarcerated.

6 Q Okay. Okay. Did -- did you feel any sort of stress or  
7 kind of emotionally how were you feeling around that time,  
8 knowing your dad was looking at being incarcerated?

9 A I was very upset. Like I knew he was going for a long -- a  
10 pretty long time. So we had to say our last goodbyes and  
11 would only be able to see him in prison for the next how many  
12 years.

13 Q Okay. And he still currently incarcerated?

14 A Mmmhmm.

15 Q Yeah. Okay. Back in December of 2015, did you know the  
16 Defendant, Daniel Loew?

17 A I didn't very much know him. I just knew that he was dating  
18 my cousin.

19 Q Okay. Could you identify for the Court Daniel Loew?  
20 Can you -- can you use your words?

21 A Right there.

22 Q Okay. The gentleman in the white shirt?

23 A Yep.

24 Q Okay. And you said that he was kind of dating -- I think  
25 you said your cousin.

1 A Yep.

2 Q What's your cousin's name?

3 A Brook.

4 Q Okay. And about how old is Brook compared to you?

5 A I -- in her 20's, I want to say.

6 Q Okay.

7 A I don't know exactly how old she is.

8 Q Okay. But -- but an older cousin.

9 A Mmmhmm.

10 Q Okay. You said you kind of knew him through your cousin.

11 Do you remember how you first met him, like --

12 A No.

13 Q -- a particular incident?

14 A No.

15 Q Okay. When you first met him, did he have any children with

16 your cousin?

17 A He had one, which is Weston, their son.

18 Q Okay. So at this time, around December, Weston, how old

19 do you think he would have been?

20 A A few months.

21 Q Okay. So he was just a little baby.

22 A Mmmhmm.

23 Q Okay. And where were your cousin or -- were your cousin

24 and the Defendant living together?

25 A At that time, I am not sure. I know my cousin lived with

1 my aunt and eventually they moved in together. But at that  
2 time, I am not sure if they were living together.

3 Q Okay. Okay. So you are not sure about in December.

4 A Mmmhmm.

5 Q But the Defendant ended up moving in with your cousin, Brook.

6 A Yep.

7 Q And they live with your --

8 A Aunt.

9 Q And what's your aunt's name?

10 A Janie.

11 Q And is she married?

12 A Yes.

13 Q And what's -- who is she married to?

14 A Scott.

15 Q Okay. So you have Janie and Scott, they are your aunt and  
16 uncle.

17 A Mmmhmm.

18 Q Is that correct? And then your cousin, Brooke. Did anybody  
19 else live in the home?

20 A Nope.

21 Q Okay. I am assuming Weston lived with Brooke and Janie and  
22 Scott.

23 A Yeah.

24 Q Okay. Do you remember the date your dad got married in  
25 December of 2015?

1 A No.

2 Q Not the exact date. Do you remember beginning, middle, or  
3 end of December?

4 A It was towards the end.

5 Q Towards the end of December. Can you kind of tell me a little  
6 bit about the wedding?

7 A I know it was at a little church. There was my dad -- the  
8 priest was one of his friends. It went very good. He got  
9 married pretty quick, though, to a woman. After the wedding,  
10 everything was going good. We went back to my aunt's house  
11 for a luncheon and everyone went there.

12 Q Okay. So it was -- it was a lunch that you -- kind of like  
13 a lunch reception.

14 A Mmmhmm.

15 Q Okay. Do you know your aunt's address?

16 A No. I do not.

17 Q Do you know what city or township she lives in?

18 A Hamilton

19 Q Hamilton. Okay.

20 A Yep.

21 Q Does she -- did she live pretty close to where your dad's  
22 house was?

23 A Yeah, just a few houses down, actually.

24 Q Okay. Is it all on one big, like, parcel of land?

25 A Yep. It's on one road.

- 1 Q Okay.
- 2 A Our house was.
- 3 Q Okay. So you went back to your aunt's house. What was the  
4 plan for the reception?
- 5 A I know that everyone was bringing their own alcohol. They  
6 were all -- I don't remember what we had to eat. But all  
7 of my dad's friends went there afterwards, all his wife's  
8 friends went there. So everyone was just hanging out for  
9 the night.
- 10 Q Okay. Do you remember what you wore for your dad's wedding?
- 11 A A dress. It was black at the -- orange at the top, and black  
12 and white stripes.
- 13 Q Okay. Did you keep that on after the ceremony as well?
- 14 A Yep.
- 15 Q Yeah. So how long did everybody hang out at this reception  
16 for -- for this luncheon?
- 17 A A few hours, I want to say. Everyone ended up staying there  
18 overnight too. So nobody really left.
- 19 Q So it was kind of a party that lasted all day.
- 20 A Mmmhmm.
- 21 Q And -- and where was the party held at your aunt's house?
- 22 A In the garage.
- 23 Q In the garage. Were there heaters or a fire going?
- 24 A Yeah. There is a woodstove in there.
- 25 Q There is a woodstove in there.

- 1 A Mmmhmm.
- 2 Q So if someone needed to use the restroom, where would somebody  
3 use the restroom?
- 4 A There was a restroom right in the garage, too, right on the  
5 side of the garage.
- 6 Q Okay. For men and women to use.
- 7 A Mmmhmm.
- 8 Q Okay. Was anybody kind of going into the -- your aunt's  
9 house?
- 10 A No. The -- they had two Chihuahuas and any time someone  
11 would enter the house, the Chihuahuas would bit their  
12 ankles or bark and --
- 13 Q Okay.
- 14 A -- and so they didn't really have much people go inside.
- 15 Q Okay. So if you were to enter the house, did the dogs know  
16 you?
- 17 A Yeah, they knew me, but they would still bark for a second  
18 until they realized it was me.
- 19 Q Okay. And so once they realized it was you, they would  
20 settle down.
- 21 A Mmmhmm.
- 22 Q Okay. So you don't have -- do you have any memory of people  
23 kind of going in and out of the house through the course  
24 of this party.
- 25 A No. Not at all.

1 Q Not. Okay. So what family members of yours were present for  
2 this?

3 A My dad, my aunt, my uncle, my grandma, my sister Taylor, my  
4 sister Anna, and I think that's the only family on my side  
5 that is was.

6 Q Okay. And was the Defendant there?

7 A Yes.

8 Q With Brooke?

9 A Mmmhmm.

10 Q Okay. Before your dad's wedding, do you have a general  
11 idea of how many times you might have interacted with the  
12 Defendant?

13 A Two, three, very rarely. I didn't know him very well.

14 Q Okay. When you turned 13, did you have a family birthday  
15 party or anything?

16 A Yeah. There was a -- I had cake and some presents opening  
17 at my Aunt Janie's house and I saw him there, but.

18 Q Okay. So the Defendant was there for your 13<sup>th</sup> birthday.

19 A Mmmhmm.

20 Q Okay. If you even had one, did you have an opinion of the  
21 Defendant? On December -- in December of 2015, at your  
22 dad's wedding?

23 A I don't even think I had one.

24 Q Okay. Okay. So if you could, just overall, describe your  
25 mood for that particular day, how you were feeling.

1 A I was happy that was my dad was getting married. He was  
2 very happy. It was like a -- he knew he was going to  
3 prison in a few months so it was like a -- all of us get  
4 together, all family, to say our last goodbyes, kind of  
5 thing.

6 Q So it was kind of a wedding, but a farewell.

7 A Mmmhmm.

8 Q Okay. At any point, did you go into the home that day or  
9 evening?

10 A Yes. I did.

11 Q And what was the purpose of that?

12 A I remember Dan and Brooke had went grocery shopping. They  
13 went and got some alcohol and some things for the party that  
14 my dad was having. And I was -- Brooke asked me to go inside  
15 and help take care of groceries with Dan.

16 Q Okay. And what time of day was this?

17 A I know it was partially dark out, so.

18 Q Okay. Okay. Did she also go inside and help with the  
19 groceries?

20 A No. She didn't.

21 Q So when you went in to help unload groceries, who was in the  
22 home?

23 A Just me and Dan.

24 Q Just you and Dan. And walk me through what happened as you  
25 unloaded these groceries.

1 A I was just putting them in the cupboards, so was he. And then  
2 I saw him walk into the bathroom and he asked me to come  
3 here. He wanted to show me something.

4 Q Okay. So you are in the kitchen unloading groceries and  
5 he says, come -- come see me in the bathroom.

6 A Mmmhmm.

7 Q Okay. At this point, before we go any further, I think it  
8 might be helpful if we have a mental picture. So I am  
9 going to approach you with some photographs.

10 A Okay.

11 Q All right. And I am going to show you what's preliminarily  
12 been marked People's Exhibits 1 through 7. If you could  
13 take a minute and flip through these photographs.

14 A Okay.

15 Q And if you could, Jenna, what are those pictures of?

16 A Janie's house.

17 Q Okay. And do those photographs accurately and fairly kind of  
18 reflect the out -- the layout of the home as it was in  
19 December of 2015?

20 A Yes.

21 Q Okay.

22 MS. JIPP: Your Honor, at this point, we would  
23 request that these be admitted and published to the jury.

24 THE COURT: Any objection?

25 MR. MAESEN: No objection, your Honor.

1 THE COURT: Thank you. They are admitted.

2 (at 1:20 p.m., People's Exhibit Numbers 1 through  
3 7 admitted into evidence)

4 MS. JIPP: Your Honor, is it okay if I pull them  
5 up on the big screen?

6 THE COURT: Well, that would be easier for  
7 publication. Then the jury would not be looking at them  
8 while testimony is going on by passing them around.

9 BY MS. JIPP:

10 Q Okay. I am going to show you a couple of these pictures  
11 and if you could, just kind of walk us through how -- how  
12 this house is laid out. So was the party that was outside  
13 in the front of the house or the back of the house?

14 A What do you mean?

15 Q Where everyone was, I think you said it was the -- I think  
16 they were hanging out in the garage, correct?

17 A Mmmhmm.

18 Q So is the garage behind the home? Where is the garage in  
19 relation to the home?

20 A It -- it's behind it.

21 Q It's behind.

22 A It's -- when you go into the driveway, the garage is right  
23 there and the house is on the side, so.

24 Q Okay. Okay. So if you were to be at the party and to enter  
25 the home out -- from the garage direction, what room would

1           you be coming into?

2    A       When you first walk into the house, there is a spare  
3           bathroom. And then when you take a right, you go into the  
4           kitchen.

5    Q       Okay. So I am looking at this picture, what room is that?

6    A       That's the living room.

7    Q       Okay. So if someone is standing where it looks like in a  
8           doorway, would they be standing in the kitchen looking into  
9           the living room?

10   A       Yes.

11   Q       Okay. And then as you kind of come around the living room,  
12           what's in the back portion of the house?

13   A       There was Brooke's bedroom, and then Weston's bedroom,  
14           Janie's bath -- Janie's bedroom and bathroom and then  
15           Brooke's bathroom, which is what you see right there.

16   Q       So just to understand you correctly. Would Janie's bedroom  
17           and bathroom be to the left of the picture?

18   A       Yes.

19   Q       And on the right of the picture, there would be Brooke and  
20           Dan's bedroom and their child's bedroom.

21   A       Yes.

22   Q       Okay. So the door on the left here you see, that's -- that's  
23           your aunt's bedroom. Is that a master bed and bath?

24   A       Yes.

25   Q       So it has their own -- their own bathroom. And then I believe

1           you described this bedroom -- or bathroom in the middle as  
2           Brooke's bathroom?

3    A       Yep.

4    Q       So if you were to be at your aunt's house, what restroom  
5           would you use?

6    A       Brooke's.

7    Q       You would use Brooke's.

8    A       Mmmhmm.

9    Q       So it was kind of the common restroom that you would use  
10           if there were visitors there.

11   A       Mmmhmm.

12   Q       What about the half bathroom right as you enter in from  
13           the back, was anyone coming in and using that bathroom the  
14           night of the party?

15   A       No.

16   Q       Okay. And that door obviously on the right then would be  
17           Brooke's bedroom; is that correct?

18   A       Yep.

19   Q       Okay. And then this is the bathroom.

20   A       Mmmhmm.

21   Q       Okay.

22                   THE COURT:    I need you to answer "yes" or "no" --

23                   THE WITNESS:    Yes.

24                   THE COURT:    -- as opposed to "mmhmms", because  
25           those don't transcribe.

1 THE WITNESS: Okay.

2 THE COURT: Okay. Thank you.

3 MS. JIPP: Okay. Thank you.

4 BY MS. JIPP:

5 Q Okay. We were talking about when the Defendant came back  
6 in that night, and what happened. Do you remember the words  
7 he used to call you into the bathroom?

8 A I just remember him saying, "Come here. I have to show you  
9 something."

10 Q Okay. Did you go into the bathroom?

11 A Yes.

12 Q What did he do when you got into the bathroom?

13 A He shut the door and locked it. And I was wearing a dress  
14 with only underwear underneath it. And I remember him taking  
15 off his clothes first. And he took off my dress and my  
16 underwear.

17 Q Okay. And was there any talking either from you or him?  
18 Do you remember any conversation as clothing was being taken  
19 off?

20 A I do remember say -- asking him what was going on, but  
21 I don't remember his response.

22 Q What were you feeling, internally, as he disrobed and took  
23 your clothing off?

24 A Fear. I was very scared. But I was very in shock and  
25 confused.

- 1 Q Okay. Do you -- you kind of detailed what you were wearing.  
2 Do you remember what he was wearing that night?
- 3 A No.
- 4 Q Okay. You said he closed and locked the doors. Were the  
5 lights on or off?
- 6 A They were on.
- 7 Q They were on. Okay. This is a picture of the bathroom, is  
8 this what the bathroom looked like on December -- in  
9 December of 2015?
- 10 A No.
- 11 Q Okay. Can you kind of just describe how the bathroom would  
12 have looked at that time?
- 13 A I remember the walls were orange. And there was an orange  
14 shower curtain. And there was flowers, it was a flower  
15 themed bathroom.
- 16 Q Okay.
- 17 A And there wasn't that rug in front of the sink. There was  
18 just an orange rug in front of the bathroom -- the rest --  
19 the toilet.
- 20 Q So there would have just been in front of -- directly in  
21 front of the toilet.
- 22 A Yes.
- 23 Q Okay. Okay. What happened after he took off his clothing?
- 24 A I remember he was touching over my body. And he started  
25 kissing my shoulder and my neck. He never kissed my lips.

1 He was just kissing my body. And I remember him turning my  
2 body around. And he had pushed my back down to the ground.  
3 And I was on my elbows and on my knees. And then he went on  
4 his knees. And as he was behind me, I just remember feeling  
5 a pain in my vagina. And he wasn't -- he was trying to force  
6 himself into me with his penis, but it wasn't going in. So  
7 it took a few times and he finally went inside of me. And  
8 I just remember feeling a very bad cramp in my stomach.

9 Q Like internally.

10 A Mmmhmm.

11 Q Okay. So you were on all hands and knees and he was behind  
12 you. Was he saying anything during this -- this -- point?

13 A Uh-uh.

14 Q Do you -- do you have any idea how long it took him to  
15 insert himself into you?

16 A No.

17 Q Okay. When he -- when he put himself inside of you, was he  
18 touching your body anywhere else with his hands?

19 A His hands were on my hips.

20 Q His hands were on your hips. What were you feeling kind of  
21 emotionally at this point?

22 A I was in shock. I didn't even really know what was going on  
23 at that point.

24 Q Okay. Did you feel at all scared in that moment or --

25 A Very.

- 1 Q Okay. Did you scream out or call for help?
- 2 A No. Because I knew no one was inside the house. I was -- it  
3 was just me and Dan inside of there.
- 4 Q Okay. How long do you think the penetration lasted?
- 5 A A minute or two at the most.
- 6 Q Okay. So from when he called you into the bathroom, to the  
7 minute he was out the door, how long do you think you were  
8 both in that bathroom together?
- 9 A Three, three and a half minutes.
- 10 Q What made him stop?
- 11 A I remember he pulled out and he ejaculated on the ground,  
12 on the hardwood floors.
- 13 Q Okay. Did he do anything with the ejaculate?
- 14 A I remember he took toilet paper and wiped it off the ground  
15 and put it into the trash can.
- 16 Q Okay. Did he talk to you after he did this? So he -- I just  
17 have got to understand, he's got his hands on your hips, he  
18 penetrates you and he ejaculates. He cleans it up. What's --  
19 what's the next thing he did?
- 20 A He put on his clothes and walked out of the bathroom.
- 21 Q Did he say anything else to you?
- 22 A No.
- 23 Q Okay. So when he left, what did you do?
- 24 A I remember I sat on the bathroom floor for a second, because  
25 my stomach was killing me. And I saw blood coming out of

- 1 my vagina to the hardwood floors.
- 2 Q What did you think about the blood in that moment?
- 3 A I had no idea what it was or what it came from. I just  
4 remember seeing some on my leg, too.
- 5 Q Had you -- had you started menstruating yet?
- 6 A Yes. So I thought it might have been my period or --
- 7 Q Okay. Did you end up having a period, did it end up being  
8 menstruation blood?
- 9 A No.
- 10 Q No. Okay. So you sat on the floor and you saw the blood on  
11 your legs and on the floor. What did you do?
- 12 A I took toilet paper and cleaned it off the hardwood floors  
13 and I flushed it down the toilet.
- 14 Q Okay. How long did it take you to kind of collect yourself  
15 before you left the bathroom?
- 16 A Two minutes, I want to say.
- 17 Q Okay. So just kind of got it together and left.
- 18 A Mmmhmm.
- 19 Q You said the lights were on. Do you -- do you remember  
20 anything distinctive about his penis or his body in that  
21 moment?
- 22 A No.
- 23 Q Okay. Okay. Do you remember smelling anything in the  
24 bathroom?
- 25 A I know that he smelled like cologne.

- 1 Q Okay. When this was happening, do you remember hearing  
2 anything in the bathroom, the dogs or anybody, people  
3 outside?
- 4 A No. I was listening to hear if anybody would come inside  
5 and hear the dogs bark.
- 6 Q Did you ever hear the dogs bark though?
- 7 A No.
- 8 Q No. So if I am understanding correctly, did anyone try to  
9 come into the bathroom while you all were in there?
- 10 A No.
- 11 Q Okay. Did you tell anybody what happened that night at all?
- 12 A No.
- 13 Q Okay. Was there anything else that you remember about the  
14 Defendant's actions that night?
- 15 A I remember after this happened in the bathroom, he must have  
16 went out into the garage. I heard the door slam. And I went  
17 out and I sat in the chair in the living room. And that  
18 night I left and I went back to my dad's. And I got new  
19 clothes on and we went back to my Aunt Janie's house in the  
20 garage. And I just tried to stay away from him. I was  
21 standing by my sister for the rest of the night. And he  
22 got very drunk and very intoxicated with everyone else.
- 23 Q Did he seem intoxicated when he had sex with you?
- 24 A No. He was just driving at the grocery store -- to the store  
25 so.

1 Q Okay. Where did you sleep that night?

2 A We went back to my dad's.

3 Q Okay.

4 A We didn't sleep there.

5 Q Okay. After that night, when do you think you saw the

6 Defendant again?

7 A I think the next time I saw him was -- I know we were waiting

8 for my dad to be able to Skype call us, so I think we went

9 up to my Aunt Janie's to Skype call my dad, my sisters and

10 me, Taylor and Anna.

11 Q Okay.

12 A And I saw him there.

13 Q And was your dad already incarcerated by that point?

14 A Yes.

15 Q Okay. How did you feel seeing him?

16 A I try not to make eye contact. I just felt like my heart

17 dropped when I saw him again.

18 Q Okay. Did he try to talk to you or get you alone?

19 A No.

20 Q No. Did he initiate any sort of conversation with you within

21 the group or pay extra attention to you?

22 A No. He -- it looked like he was almost trying to keep his

23 distance from me.

24 Q Okay. And you said that this was going back -- you saw him

25 at Aunt Janie's.

1 A Mmmhmm.

2 Q Okay. Do you kind of remember a general timeframe if that --  
3 if that first sexual assault happened at the end of  
4 December, when you would have gone back to your aunt's to  
5 Skype.

6 A I know it was a few months.

7 Q Okay. Explain this -- this Skyping thing to me.

8 A When my dad first got incarcerated, I don't remember what  
9 building he was at, but we couldn't go see him for  
10 visitation. So there was a computer and we could do a  
11 computer call with him, with everyone.

12 Q Okay. And so why would you go to Janie's to do that?

13 A She had wifi.

14 Q Okay. And you -- I am assuming you didn't.

15 A Uh-uh.

16 Q Okay. So that happened you think at least a couple of  
17 months later. Do you remember the -- the next time he  
18 sexually assaulted you? Like the precise date?

19 A No.

20 Q So how long from that December date until you -- or excuse me.  
21 Please disregard that. This happened in December and you  
22 said he ignored you when you saw him the next time. Was there  
23 a period of time where you would see him and he wouldn't  
24 sexually assault you?

25 A Yes.

1 Q Describe that -- that period of time, how those interactions  
2 would be.

3 A He never really talked to me or my sisters. He mainly just  
4 talked to Brook. We all just -- they all just figured he  
5 was shy and didn't want to really talk to us. But I never  
6 really had a bond with him or relationship or ever talked  
7 to him really.

8 Q Okay. Okay. Did he sexually assault you again?

9 A Yes.

10 Q Where were you when that happened?

11 A My aunt's.

12 Q Did you know when you went over to your aunt's that he would  
13 be there?

14 A I know that he had moved in, but I wasn't sure if he would  
15 be there or not.

16 Q Okay. And were you -- was it a time you were there to  
17 Skype or were you there for something else?

18 A It's when my dad got visitation rights where we could go see  
19 him. So we spent the night to go see him.

20 Q Okay. Kind of explain that whole process to me about these  
21 visits with your dad at prison?

22 A I remember he was in a building where we could only Skype call  
23 him. He was only there for probably three weeks, I want to  
24 guess. And then once he went into a prison where he was  
25 settled in, we could actually go visit him.

1 Q Okay. And at that point, you are still 13.

2 A Mmmhmm.

3 Q Is that right? Could you go to visit him alone?

4 A No.

5 Q No. So -- so who all would go to visit?

6 A My Aunt Janie, my Grandma Sara sometimes, and if my Grandma  
7 Sara didn't come, it was my sister Taylor. And then Anna and  
8 me.

9 Q Okay. Did you -- did you need an adult to go?

10 A Yeah. My aunt could not just take us. We had to have either  
11 our Grandma Sara or Taylor there with us.

12 Q Okay. And is that just because you were a minor?

13 A Yeah.

14 Q Okay. So I -- explain to me why you would stay at your  
15 Aunt Janie's house the night before you would go for these  
16 visits.

17 A We had to get up early and it was almost a two hour drive  
18 to get to the prison. So my aunt just wanted us there for  
19 the night so that we could just leave at 8 a.m. and get there  
20 at 10.

21 Q Okay. Okay. So kind of a convenience factor for your aunt  
22 who was doing the driving.

23 A Mmmhmm.

24 Q Now you described that your dad's house was kind of close  
25 there. Why would you not stay at your dad's house?

- 1 A At that time, me and my sister Taylor didn't very much get  
2 along or Anna. So we would just stay at my aunt's because  
3 we had a closer relationship with her.
- 4 Q Was Taylor living at your dad's house at that point?
- 5 A Yes.
- 6 Q Did she have any roommates or anything?
- 7 A Just her boyfriend, (inaudible).
- 8 Q Okay. So you weren't really getting along with her, so you  
9 weren't staying there.
- 10 A Mmmhmm.
- 11 Q What about your grandma, did she live close by?
- 12 A My Grandma Sara?
- 13 Q Yes, ma'am.
- 14 A Yeah, she lived across the road.
- 15 Q Okay. Why didn't you stay with your Grandma Sara?
- 16 A My Uncle Ron lived there, too, and she just has a small  
17 trailer. There would be no room for me and Anna at all.
- 18 Q Okay. Okay. So it was kind of a plan that you would go  
19 and stay the night with your aunt before these visits.
- 20 A Mmmhmm.
- 21 Q Do you remember when the first visit was to your dad?
- 22 A No.
- 23 Q Do you remember was it winter, spring, summer, like a season,  
24 maybe?
- 25 A No.

1 Q Okay. Okay. So walk me through going to your aunt's and  
2 being sexually assaulted. Walk me through the dynamics of  
3 that.

4 A I know we would go there on a Friday night and at the  
5 beginning when my dad first got settled in at the prison, we  
6 would go visit him every weekend with my aunt. And if my  
7 grandma didn't want to come, Taylor would come just ride  
8 along. And we would stay there every Friday night. I  
9 would sleep on the big couch. My little sister would sleep  
10 on the little -- little one on the side of the wall.

11 Q If I can just stop you for one second. I am going to pull  
12 up a picture of that. Were these the couches that they had  
13 back in 2015?

14 A Yes.

15 Q So you would sleep in the living room.

16 A Yep.

17 Q Okay. And so which -- which piece of furniture would you  
18 sleep on?

19 A I would sleep on the back one, the longest couch.

20 Q Okay. Okay. And would anybody else sleep in this room?

21 A My sister, Anna.

22 Q In the recliner or in the -- ?

23 A On the loveseat on the side of the wall.

24 Q Okay. Okay. If you were to go over there in the evening,  
25 what -- what time of day do you think you would generally

1 get over there?

2 A I do remember a few times that we had school, so we would  
3 get off the bus there sometimes, some Friday nights and stay  
4 the night there. If we didn't have school, it was just kind  
5 of whenever.

6 Q Okay. So what would you do when you would get to your  
7 aunt's? Would you all play board games together? Kind of  
8 walk me through what a Friday night might look like there.

9 A Everyone would pretty much get into pajamas. We would all  
10 eat dinner together and then my aunt would sit on the seat  
11 towards the back and my uncle would sit on the seat on the  
12 wall and we would all just watch T.V. together.

13 Q Okay. If it was nice out, would you ever be outside hanging  
14 out?

15 A Yeah, sometimes a fire.

16 Q Okay. And you said in the beginning you went almost every  
17 weekend to visit your dad.

18 A Yes.

19 Q Okay. So tell me about -- you are there, you are watching  
20 movies, who would normally go to bed first?

21 A My aunt and my uncle.

22 Q Your aunt and your uncle.

23 A Mmmhmm.

24 Q And then what -- what would the rest of you guys do?

25 A Sometimes Brook would have fires, so me, Dan, Anna, and

1 Brook would go outside and have a fire after she put Weston  
2 to bed.

3 Q Okay. Was it uncomfortable for you to be out there and  
4 hanging out there around Dan?

5 A I was more awkward. I never really talked to him at that  
6 point, neither did my sister. We all just kinda hung out.  
7 He would go get wood for the fire and it was just mainly me,  
8 Brook, and Anna that would talk.

9 Q Okay. Okay. So then who would normally go to be first on  
10 one of these evenings out of the group of you?

11 A Probably me or Anna.

12 Q Okay. And you would go and lay down on the couch.

13 A Yes.

14 Q Okay. So -- so walk me through one of the sexual assaults  
15 that would occur on one of these Friday nights.

16 A I would go on the big couch, my little sister would go on  
17 the little one. We would go to bed. Brook and Dan would  
18 stay out by the fire, drinking, whatever they were doing.  
19 They wouldn't come in until about 2 a.m. I would know that,  
20 because I would check my phone, because they would turn on  
21 the kitchen lights, because they would make food or they  
22 were pretty loud, or the dogs would bark when they come in  
23 for a second and then they would be quiet because they  
24 realized who they were. They would go to bed.

25 Q Let me -- let me stop you for a second. So they would come

1 in to the kitchen and just kind of make food or -- or fix  
2 something to drink or something like that and the dogs  
3 would bark. Would Anna ever stir because the dogs were  
4 barking?

5 A No. She is a very heavy sleeper.

6 Q Did you ever -- do you ever remember your aunt or uncle  
7 coming out and kind of saying, hey, you, keep it down or  
8 or get upset with that?

9 A No.

10 Q No. Okay. So it would wake up -- it would wake you up, but  
11 you would never have any sort of indication it woke anybody  
12 else up.

13 A Mmmhmm.

14 Q Okay. So after they kind of fixed their food and do their  
15 thing in the kitchen, what would happen?

16 A They would both go to bed in the bedroom. And then I would  
17 just go back to sleep after they went to bed. And I would  
18 walk up from someone touching me, my thighs, my boobs, my  
19 butt, everywhere, all over my body. And then I would wake  
20 up and Dan would be standing there. He would take my hand  
21 and walk me into the bathroom. And then he would shut the  
22 door and lock the door and he would -- he wouldn't turn on  
23 the lights.

24 Q Okay. When he -- when they first woke you up by coming in,  
25 would you be able to go back to sleep?

1 A At first I was and then as these -- as this kept happening  
2 I would be wide awake, because I knew that he was going to  
3 come wake me up.

4 Q So in the beginning, you -- you didn't necessarily think of  
5 him as a threat.

6 A Mmmhmm.

7 Q Okay. At that point --

8 THE COURT: Once again, I'm sorry, I have to  
9 remind you to answer "yes" or "no".

10 THE WITNESS: Okay. Sorry.

11 THE COURT: Thank you.

12 BY MS. JIPP:

13 Q Okay. So you would be able to go back to sleep.

14 A Yes.

15 Q And then as it happened more frequently, you wouldn't or  
16 you couldn't fall back asleep or?

17 A No. It might have been anxiety, it was fear that he was going  
18 to come wake me up again.

19 Q Okay. You said that he would walk and kind of touch you all  
20 over your body. Was this over your clothing or underneath  
21 your clothing?

22 A Over and under.

23 Q Okay. Did he have a favorite pair of pajamas he seemed to  
24 wear all of the time or -- or a particular outfit he would  
25 wear during these assaults?

1 A No.

2 Q Do you remember specifically different thing -- outfits you  
3 would wear to sleep at your Aunt Janie's house?

4 A I would mainly wear a big t-shirt and just underwear  
5 underneath it from my Aunt Janie.

6 Q Okay. Okay. So he would wake you up on the -- how long  
7 do you think the groping would last while you were on the  
8 couch?

9 A Until I woke up, so approximately a minute.

10 Q Do you remember ever hearing like the track suit pants like  
11 swishing or the floorboards creaking, any noise as he  
12 approached you?

13 A No. I know that he mainly wore pajama pants, fuzzy pants,  
14 so it wasn't very loud when he would come walk up close to  
15 me.

16 Q Okay. And so he would take you by the hand and he would  
17 take you into the bathroom.

18 A Yes.

19 Q Okay. And I believe -- I believe you said the lights  
20 generally were off.

21 A Yeah.

22 Q Okay. I am going to show you a picture of the bathroom again  
23 Jenna, because it's -- So when you look at this picture,  
24 when these sexual assaults started to happen in 2016, is --  
25 was there anything in this picture that wouldn't have been

- 1 present during these sexual assaults?
- 2 A I know the bathroom was a peacock theme, it was a blue.  
3 Those are not the rugs, though. They were different rugs.
- 4 Q Okay. What about the footstool and the --
- 5 A I know --
- 6 Q -- those items?
- 7 A I know there was laundry baskets. I don't remember the  
8 footstool being there.
- 9 Q Okay. Okay. Okay. So he would walk you in there Jenna,  
10 what would happen after he closed the door, would he lock  
11 it?
- 12 A Yeah.
- 13 Q And you said there was no light on. How could he see what --  
14 could see anything?
- 15 A There was a nightlight in there.
- 16 Q Okay. Would he say anything as he took you in there, like,  
17 come on, we are going to have a good time or any sort of  
18 conversation?
- 19 A No. It was mainly silence.
- 20 Q Okay. Did you ever initiate conversation or -- ?
- 21 A No.
- 22 Q No. You said the first time it happened, he kind of kissed  
23 your neck and shoulder, was that the usual course of things?
- 24 A Yes.
- 25 Q Who took off whose clothing? How did -- how did -- or did

1 you stay dressed?

2 A He would take off my clothing. He would take off his first,  
3 usually and then take off mine.

4 Q Okay. How would you be positioned?

5 A Mainly on my knees and my elbows.

6 Q How would you get there?

7 A He would turn me around and then push down on my back.

8 Q Okay. And so where would your -- if you look at this  
9 photograph, where would your body kind of be positioned  
10 within that picture?

11 A In front of the sink. And then his back would be in front  
12 of the toilet.

13 Q His back would be in front of the toilet. So would your head  
14 actually be -- would your head actually kind of be in that  
15 nook?

16 A Yes.

17 Q Okay. Were there other positions that he coordinated?

18 A I would be on my back and those are the only two really that  
19 would happen, because there wasn't very much room.

20 Q If you were on your back, how would your legs be? How would  
21 his body be?

22 A My legs would be up and my knees would be up and he would be  
23 on top of me.

24 Q Okay. How would the sexual assault end?

25 A He would pull out and ejaculate on the floor or on the rugs.

1 And he would take toilet paper and wipe it up and then he  
2 would throw it in either the trashcan or the toilet and flush  
3 it. And put his clothes on and would sneak out of the  
4 bathroom and I would just be in there.

5 Q What would you be doing in there?

6 A Sometimes crying, putting on my clothes, and then I would just  
7 go back out on to the couch.

8 Q Okay. So sometimes he would ejaculate on the floor,  
9 sometimes on the rug. Was it a loud flushing toilet?

10 A No.

11 Q No. Do you ever remember hearing the dogs bark as he came  
12 out into the --

13 A No.

14 Q -- living room? Where did the dogs sleep at night?

15 A Sometimes they slept in Brook's room, sometimes in Janie's  
16 room.

17 Q Okay. Would any of the dogs sleep out with you and Anna?

18 A One of them would sleep with Anna a lot.

19 Q Okay. But they I guess knew you and were familiar with you.

20 A Yeah.

21 Q Yeah. Okay. Did you ever hear or see any of them be real  
22 aggressive towards the Defendant?

23 A Yes. There was a little Chihuahua, I don't remember her name,  
24 but it would always attack Dan's ankles or bark at him a lot.

25 Q Okay. But on the nights this happened, you didn't see any

1 of that happen.

2 A No.

3 Q Okay. Would that be if he came in from outside --

4 A Yeah.

5 Q -- or just as he moved from one room to the next?

6 A If he would come in the door.

7 Q The main door, the exterior door?

8 A Mmmhmm.

9 Q Okay. Okay. Do you ever remember during these late night  
10 sexual assaults hearing the baby cry or anybody get up to  
11 tend the baby?

12 A No.

13 Q Okay. Do you ever, in the -- in all of the nights you slept  
14 there, remember Weston crying or -- or ?

15 A He mainly went to bed around midnight and he would wake up  
16 early and Janie would attend to him about six a.m., I want  
17 to guess. So never during the middle of the night or when  
18 I was sleeping.

19 Q Okay. Okay. You described when he penetrated you that first  
20 time that it -- that it hurt. Would he use lubrication  
21 when he would do this?

22 A My head was to the floor and I was on my knees and elbows.  
23 And he was behind me, so if he did, I wouldn't be able to see.  
24 But it didn't feel like he did.

25 Q What did that feel like as he tried to go in you?

1 A It was very -- it almost felt like a pinching around my  
2 vagina. It was a very painful feeling.

3 Q Okay. You described a cramping feeling the first time he  
4 had sex with you. Did you experience any of those kind of  
5 like internal feelings when he would have sex with you?

6 A Yeah.

7 Q So was that a common thing, you would say or --

8 A Yes.

9 Q Okay. Okay. So I think you said the first time it was,  
10 you know, less than five minutes, maybe three minutes I  
11 think you testified to. How long from him groping you to  
12 him being clothed and back into his bedroom? Can you  
13 guesstimate?

14 A Five minutes.

15 Q How long would the actual act of sex actually last?

16 A Two.

17 Q Okay. Was there ever a time he tried to like cuddle you  
18 after these events or kind of whisper sweet things to you?

19 A No. I was mainly left in the bathroom.

20 Q Okay. Do you remember ever a time where he seemed to kind of  
21 be spooked by maybe hearing a noise or seeing someone?

22 A I do remember one night towards almost when this was all over  
23 with when we called the police. He was feeling -- he was  
24 grabbing my boobs, grabbing my thighs, and I was groaning  
25 pretending to not wake up. And I remember hearing someone

1 out of their bedroom. I am not sure who it was. I heard  
2 footsteps of them getting up and he ran back into the room.  
3 And then that night I had woken up my little sister, Anna,  
4 to come sleep by my because I was scared.

5 Q Okay. And so you said, kind of towards the end. Do you  
6 king of have a general idea of when that would have been?

7 A No.

8 Q Okay. So he was -- he was grabbing you and you weren't  
9 responding.

10 A Mmmhmm.

11 Q Tell me a little bit more about waking up your sister. How  
12 did that kind of go down?

13 A When he went back into the bedroom, my little sister was  
14 sleeping on that couch like she always did and I woke her up  
15 and I was really shaken up. I remember shaking really bad  
16 and trying to hold back my tears. And I had told her that I  
17 had a really bad nightmare and I wanted her to come sleep  
18 by me.

19 Q Did she come sleep on the couch with you?

20 A She argued with me for a little bit and then she eventually  
21 did.

22 Q Okay. So did he try to come back out later that night?

23 A No.

24 Q Okay. Now you said that that first time there was blood and  
25 it was really painful. You kind of described kind of the

1 pinching. Was there ever another time where you got a  
2 physical injury from these assaults?

3 A One time I had gotten swollen eyes.

4 Q Tell me about that incident. Do you know when that would have  
5 happened in the scheme of these sexual assaults?

6 A I know it was in November.

7 Q Of what year?

8 A I want to say --

9 Q Was it close to when you told the police in January of  
10 2018 or was it --

11 A Yes.

12 Q Okay. So maybe November 2017?

13 A Mmmhmm.

14 Q Okay. Was it at Aunt Janie's house?

15 A Yes.

16 Q Why were you at Aunt Janie's house then?

17 A We were going to visit our dad the next day.

18 Q Okay. So walk me through what happened that time?

19 A I remember we went to bed like a normal night. He came out  
20 of his bedroom to come wake me up. And I was sleeping very  
21 hard, I was refusing to get up almost, like groaning, moving,  
22 not waking up. And then I remember him pinching me very hard  
23 in my boob and in my thighs to really wake me up. And  
24 eventually I did, because I didn't want anyone -- my little  
25 sister, to wake up or my aunt. So I went into the bathroom -

- 1 Q So you said you were -- sorry to interrupt. But you said  
2 you were sleeping really hard. Were you actually asleep?
- 3 A No.
- 4 Q Okay. You were just kind of pretending.
- 5 A Mmmhmm.
- 6 Q Why were you pretending?
- 7 A Because I didn't want to go into the bathroom with him.
- 8 Q Okay. So he pinches you really hard, so what do you do then?
- 9 A I pretend to wake up.
- 10 Q Okay. And then what happens?
- 11 A He takes me to the bathroom. And I remember that time he  
12 didn't take off my clothes. It was like he was waiting for  
13 me to take off my own clothes, so I did. And he took off his  
14 own clothes. And he turned me around and he had grabbed --  
15 my hair was in a bun. He grabbed my bun and I was on my  
16 knees and my elbows and he had pushed my head to the ground  
17 with his hand on my bun.
- 18 Q Had he been kind of forceful like that with you previously  
19 in terms of like pushing your head down or anything?
- 20 A No.
- 21 Q Okay. Did you say or do anything when he did that?
- 22 A I remember saying, "Ow", like, because I got -- I hurt. I  
23 had a really bad feeling on my eyelids. Like, it was like a  
24 slamming feeling almost. But I didn't say anything.
- 25 Q Was -- for this incident, was your head face -- kind of

1 tucked in where the bins were or were you -- was your head  
2 in front of the toilet? How were you positioned in the  
3 bathroom in this incident?

4 A My head would be in front of the baskets.

5 Q Okay. Was there a rug there that time or do you remember?

6 A There was a rug in front of the sink, but my head wasn't  
7 on the rug.

8 Q Okay. So what was your head on?

9 A The hardwood floor.

10 Q Okay. Kind of tucked under the counter.

11 A Mmmhmm.

12 Q Did he just push you down the once or did he -- did he  
13 maintain pressure? Describe that for me.

14 A He main -- he had his hand on my bun and he kept his hand  
15 there as he put his penis inside of me.

16 Q Okay. Do you remember -- did it feel like he was using  
17 lubricant that time or --

18 A No.

19 Q Okay. Do you remember smelling anything in the bathroom  
20 that particular evening?

21 A No. I was just mainly thinking about how my eyes were just -  
22 it was -- it was like a lot of pressure on my eyelids,  
23 because I closed my eyes. And it just felt like a really  
24 hard pressure on it.

25 Q Okay. Do you remember hearing anything?

- 1 A I remember hearing a smacking noise.
- 2 Q Like from your head from -- like what?
- 3 A His body against mine.
- 4 Q Okay. When he pushed your head down, did that make kind of  
5 knock noise on the floor or was that -- you know, did he  
6 slam your head down or just kinda push it down? Describe  
7 that for me.
- 8 A I know it didn't make a noise on the ground, but it wasn't  
9 very loud. It was -- he didn't slam it, but he also didn't  
10 slowly do it. He just pushed it.
- 11 Q Okay. Maybe he held you in that position the entire time he  
12 had sex with you?
- 13 A Yes.
- 14 Q What made his sexual assault end?
- 15 A Him ejaculating on the carpet.
- 16 Q Okay. Do you remember the rug during this incident?
- 17 A I remember a light, blue rug. And at the top of it it was  
18 almost like yarn. The kind you could put your feet on and  
19 it was kind of shaggy type of rug.
- 20 Q Okay. So similar to the rug in this picture or would you  
21 say different?
- 22 A Different.
- 23 Q Different. Okay. Little fibers, big fibers, kind of  
24 describe that a little bit better for me.
- 25 A Big Fibers. They were about a centimeter long. They looked

1           like little pieces of yarn all on top of the rug.

2    Q       Okay. Do you know -- did they feel cottony or kind of like  
3           a microfiber or -- ?

4    A       I don't know.

5    Q       Okay. Okay. Once this started happening more regularly,  
6           how would you feel about going over there, to your aunt's  
7           house?

8    A       I was scared. But I didn't want to stop going over there  
9           because that was the only way I could see my dad.

10   Q       Okay. Did you ever think about telling anyone, your sisters  
11           or your mom or anyone?

12   A       I did think about telling my sister, Taylor. But she was  
13           going through her own life stress and I didn't want to  
14           burden her.

15   Q       Okay. Would you ever -- would these happen on a Friday  
16           night, I think is what you -- you said. Would you ever go  
17           and visit and then stay another night?

18   A       Sometimes, if it was very late, if we had a very late visit  
19           and we didn't leave the prison until late, because it was  
20           a two hour drive. But when we would stay another night, I  
21           would invite my friend over to come stay that Saturday  
22           night with me because I didn't want to sleep on that couch  
23           alone.

24   Q       Okay. So who was your friend that you would bring over?

25   A       Audrey.

- 1 Q Audrey. Okay. So would she drive herself or have somebody  
2 drop her off or how would Audrey get your aunt's house?
- 3 A After the visit, we would pass her house to go back to my  
4 Aunt Janie's house and we would just pick her up.
- 5 Q Okay. And so when she stayed, where would -- where would she  
6 sleep?
- 7 A She would either sleep on the other end of the couch with  
8 me or on the living room floor.
- 9 Q Okay. Okay. Do you remember a time the Defendant coming  
10 and waking you up in the middle of the night when Audrey  
11 was there?
- 12 A No.
- 13 Q No. Do you -- do you remember Brooke and Dan having a lot  
14 of their own guests staying over at Aunt Janie's house?
- 15 A No.
- 16 Q Do you ever remember a time that he sexually assaulted you  
17 on a night when there were extra people in the home, beyond  
18 the family that you described?
- 19 A No.
- 20 Q No. Okay. Okay. When you would go over there, can you kind  
21 of describe physically how you might be feeling, knowing that  
22 you were going to be seeing him?
- 23 A I would just remember my chest would burn a lot and I would  
24 tell my Aunt Janie about it. And it was being mainly at  
25 night. And I think that was just anxiety and stress of going

1 to bed. And my Aunt Janie would give me ibuprofen a lot at  
2 night.

3 Q Okay. The time that you had your head pressed to the floor,  
4 Defendant leave first or did you leave first?

5 A Dan left first.

6 Q Okay. And then what did you do?

7 A I remember -- I don't remember if I cried or not, because I  
8 did cry a lot after he left. But I remember just putting  
9 back on my clothes and I went back out on the couch. And I  
10 went to go back to sleep. And I just felt something very  
11 heavy on my eyes. Like I tried to open them and I just felt  
12 something -- my eyes were very heavy, like I could barely  
13 see when I opened my eyes. So I woke up my Aunt Janie in  
14 her bedroom. And she told me it could have been because of  
15 eye makeup or just an allergic reaction and she was going  
16 to give me some medicine, but I said I was fine and I just  
17 tried to go back to bed.

18 Q Did you put ice or do anything like that to -- to kind of  
19 help with the swelling?

20 A I think she did give me a bag of ice, but I don't remember  
21 any medication or anything.

22 Q Okay. At any point in time, did you -- did you document  
23 this injury?

24 A When I first woke up, when I was laying on the couch after  
25 this had happened, I felt my eyes were heavy. I didn't get

1 up to go to the bathroom, I just took a picture with my  
2 phone with the flash facing me to see what it looked like.

3 Q Okay. I am going to approach you with a couple of  
4 photographs, Jenna. These have preliminarily been marked  
5 as Exhibits 8 and 9. Cold you please take a look at those?  
6 What are those, Jenna?

7 A Those are my eyes that night.

8 Q Is that the photographs you took depicting the injury you  
9 sustained that evening?

10 A Yes.

11 Q Okay. They fairly and accurately reflect, kind of, your  
12 face on that night?

13 A Yes.

14 Q Okay.

15 MS. JIPP: We would request that these be  
16 admitted, your Honor, and published to the jury.

17 MR. MAESEN: We would object at this time, your  
18 Honor. I think there needs to be a stronger foundation as  
19 to who took those and when. She claimed that night, but  
20 we don't know who took them or any kind of a causal link  
21 of where they came from.

22 THE COURT: She said she took them.

23 MR. MAESEN: Did she have some documentation from  
24 her phone or something. Let me see all the pictures she  
25 is claiming she took.

1 THE COURT: Well, I don't -- well, if your  
2 argument is that she needs more than that --

3 MR. MAESEN: I want to understand if she had --

4 THE COURT: -- a --

5 MR. MAESEN: -- taken them on a different day is  
6 what I am getting at.

7 THE COURT: Okay. Understood. They are admitted.  
8 She has indicated that she took the pictures and it's a  
9 picture of when -- of her eyes on the night that she testified  
10 to about injury. Obviously defense can go to  
11 cross-examination regarding that.

12 (at 2:05 p.m., Exhibits 7 and 8 identified and  
13 received)

14 MS. JIPP:

15 Q Jenna, you described that you kind of experienced pain across  
16 your eyelids. Was there any swelling anywhere else kind of  
17 in your facial area or was it isolated to your eyes?

18 A Just to my eyes.

19 Q To your eyes. Had you ever had any sort of allergic reaction  
20 to makeup like this before?

21 A No.

22 Q What do you believe caused this swelling?

23 A I think it was the pressure on my eyes from his hand on the  
24 back of my head, keeping it down.

25 Q Okay. At any point, did you take any allergy medication?

- 1 A The next day, instead of going to visit my dad, we went to  
2 my grandma's house and she had gave me a Benadryl because  
3 she thought it was maybe an allergic reaction to something.
- 4 Q Did the Benadryl seem to -- to help in any way with the  
5 swelling?
- 6 A No.
- 7 Q Okay. How long do you think the swelling lasted?
- 8 A It went down the next morning. That day I just remember just  
9 mainly sleeping all day, because I was so exhausted from  
10 being up all night. And then the next day, I just remember  
11 it being red because my mom was going to bring me to the  
12 hospital, but the swelling had went down.
- 13 Q Okay. And when you said red, like, across your forehead or  
14 where was the redness after the swelling went down?
- 15 A Underneath my eyes and my eyelids.
- 16 Q Okay. So it was king of red through here.
- 17 A Mmmhmm.
- 18 Q Okay. Okay. Did you send these pictures to anyone?
- 19 A My sister, Taylor.
- 20 Q Okay. Did you give her an explanation for the injury at that  
21 time?
- 22 A No. I told her I don't know why they were swollen.
- 23 Q Why do you think you told her that?
- 24 A I was too scared to tell anyone about what was going on,  
25 because I didn't think anyone would believe me.

1 Q Okay. Were you scared that the Defendant might do something  
2 to you?

3 A He was a very intimidating guy. If I might have told anyone,  
4 I think he could have done something to me.

5 Q Okay. You said you were going to go to the doctor. Did you  
6 end up having to seek professional help for this in any  
7 way?

8 A No.

9 Q Okay. Were there any other times that he sexually assaulted  
10 you that didn't happen at Aunt Janie's house?

11 A Yes. Weston's birthday party, in his truck.

12 Q Okay. And Weston is the Defendant's child, correct?

13 A Yes.

14 Q Okay. So do you remember when this party would have been?

15 A In June.

16 Q Okay. Do you know which year -- which year birthday party  
17 it would have been?

18 A No. I just remember Weston was turning two.

19 Q Okay. Weston was turning two.

20 A Mhmm.

21 Q And it was in June. Kind of walk me -- was this a daytime  
22 party, an evening party?

23 A A daytime.

24 Q A daytime party, so kind of explain how this happened.

25 A I -- we were all -- we ate dinner. We were all hanging out.

1 My Aunt Janie was getting a fire around. And I don't remember  
2 why, but I had left and went back to my mom's house where  
3 I was living at the time. And I called and asked my  
4 Aunt Janie if I could come back over, because me and my mom  
5 had gotten into an argument. And she said, "Yeah, I would  
6 come pick you up." And when I walked outside, it was Dan  
7 outside in his truck. So I went into the truck. And we were  
8 driving back to my Aunt Janie's house. And I remember  
9 turning on 30<sup>th</sup> and instead of going straight to my Aunt  
10 Janie's road, I am not quite sure the number of that, we  
11 took a right onto 142<sup>nd</sup> and we went onto this really back  
12 road. I think it's 34<sup>th</sup> Street. And I remember him pulling  
13 his pants down. And I was just looking at him. And I said,  
14 "What are you doing?" And he didn't say anything. And then  
15 he had took my head and he had put me down by his penis and  
16 shoved his penis to the back of my throat. And was just  
17 pushing my head back and forth, up and down.

18 Q How was he pushing your head back and forth?

19 A He had the back of my head.

20 Q Okay. How long do you think that that happened? How long  
21 did that last?

22 A A minute.

23 Q Okay. You said to the back of your throat. Did you feel  
24 like it was difficult to breathe or -- ?

25 A Yeah.

1 Q Okay. What made that stop?

2 A He ejaculated into my mouth.

3 Q Okay. Did he say anything after he ejaculated into your  
4 mouth or have any conversation with you while you were in  
5 the truck?

6 A I remember sitting up and I asked him, I knew him and Brooke  
7 were engaged and I asked him, "How long is this going to  
8 happen, until you get married?" And he said, "If you tell  
9 anyone, you don't want to know what happens." And I didn't  
10 say anything after that.

11 Q Do you remember feeling anything else, like any sort of  
12 tactile things in the truck as this was happening?

13 A I know the truck was very messy. There was pop cans all over  
14 the place. I just remember seeing the inside of the truck.  
15 I don't remember feeling anything around me.

16 Q Okay. Any particular smell?

17 A When he ejaculated into my mouth, I had a very bad smell and  
18 taste on my breath.

19 Q He made you perform oral sex that time, was that kind of a  
20 one off type thing or did he have you -- did he put his  
21 penis in your mouth on -- on more occasions than that?

22 A That was I think the only time.

23 Q Okay. Was there ever another time, besides Weston's and at  
24 your Aunt Janie's house that he did anything, at a park,  
25 somebody else's house, any other sexual assaults?

1 A There was one other time back at my dad's house.

2 Q This -- I am assuming your dad was in prison.

3 A Mmmhmm.

4 Q Was anyone living in the house?

5 A Not at that moment.

6 Q Okay. Do you remember what time of year that might have  
7 been?

8 A No.

9 Q Do you remember hot or cold or anything like that?

10 A No.

11 Q Okay. Do you remember if it was morning or afternoon or  
12 evening?

13 A It was afternoon.

14 Q It was afternoon. How did you and Dan end up at your dad's  
15 house alone?

16 A I remember my dad was calling me to go get pictures of the  
17 house because there was someone that was living there that  
18 had gotten arrested and he wanted me to check back there if  
19 there was anything bad back there, as in like weed pipes,  
20 anything. So he wanted me to go take pictures of the  
21 trailer and I told him I would. And I told my Aunt Janie  
22 that we had to go back there and take the pictures. And  
23 she told me that Dan could just drive me back there.

24 Q Okay. Did you object or say, "I am not -- I am not going  
25 with him."

- 1 A No. I just said okay.
- 2 Q Okay. So she gave you a key to the house. Did you have your  
3 own key?
- 4 A No.
- 5 Q No. Did anybody else have a key to the house?
- 6 A No.
- 7 Q No. So you would have had to get the key from her to get  
8 there.
- 9 A Yes.
- 10 Q So what happened once you got this key?
- 11 A I don't remember if she gave me or Dan the key. But I know  
12 we went back there and I started walking through the trailer.  
13 I went back to my dad's bedroom. I was taking pictures.  
14 And then he had taken (sic) my hand and he went into me  
15 and Anna's old room in the trailer. And I remember there  
16 was a dolphin blanket laying down. And he had pushed me.  
17 And I fell on my stomach on the bed. And he took my clothes  
18 off. And he -- I don't really remember the steps after  
19 that. I just remember it happening on that bed on the  
20 blanket.
- 21 Q Do you remember, did he ejaculate inside you or somewhere  
22 else?
- 23 A I believe on the blanket, because I remember him going into  
24 the bathroom after that and getting toilet paper and  
25 bringing it into the room.

1 Q Okay. Was he -- besides pushing you onto the bed and kind  
2 of laying on your stomach, was -- was he rough with you  
3 during this incident?

4 A I don't remember.

5 Q Okay. Okay. Do you remember how long that might have  
6 lasted?

7 A No.

8 Q Was there any sort of conversation happening?

9 A No. I just remember, after it happened, I put on my clothes  
10 and we walked outside and I locked my dad's door back up  
11 and we just went back to my aunt's.

12 Q Okay. Okay. Was there ever a time you thought, okay, he  
13 is done for, I think he is going to be caught this time?

14 A I hoped. But I really wasn't sure.

15 Q Okay. You remember a time when you can remember somebody  
16 walking in on him starting to undress you or --

17 A Never.

18 Q -- a particular time that it got rowdy or loud on his  
19 behalf?

20 A No.

21 Q Okay. Who was the first person you said something to about  
22 all of this?

23 A My dad.

24 Q Your dad. Kind of walk me through what led you to finally  
25 be at that point where you could tell somebody.

1 A I remember at -- we went to go visit my dad in the morning.  
2 Dan didn't assault me that night before. But we were on our  
3 way to the visit. We got to the visit, everything was good.  
4 And my dad was talking about Dan. I don't remember what  
5 the conversation was about. And I just looked at him and I  
6 just started crying. And I told him, "I have to tell you  
7 something." And there -- my little sister was drinking a  
8 Poweraid. And I told him that someone, and their name is  
9 on this Poweraid bottle, has been molesting me and taking  
10 advantage of me for years." And he was going through the  
11 Poweraid bottle and trying to figure out whose name was on  
12 it. And then eventually he found out that it spelled Dan.

13 Q So you have a Poweaid bottle and you kind of point to the  
14 letters.

15 A Mmmhmm.

16 Q To spell out his name.

17 A Yes. Because I didn't want to say his name out loud with  
18 my Aunt Janie right across from me.

19 Q So kind of give me a mental picture of this visitation area.

20 A It was me, Anna, and my dad on one side of chairs. And then  
21 on the other side, it was my Aunt Janie and my grandma  
22 sitting across from us.

23 Q Okay. And so when you started crying, did your aunt or your  
24 grandma kind of stop everything and ask you what was going  
25 on or?

- 1 A I remember them just looking at me, but they didn't say  
2 anything because I was juts talking to my dad.
- 3 Q Okay. As a result of telling your dad, did he say call the  
4 police right away or what was his advice to you?
- 5 A He was talking about how we had to find a way to catch Dan  
6 to have proof for him to be able to go away, because my word  
7 wasn't enough.
- 8 Q Okay. How did that make you feel when he told you that your  
9 word wasn't enough?
- 10 A He was incarcerated because of a CSC, so I believed him. And  
11 I didn't think that it was. I thought that maybe I did have  
12 to have proof.
- 13 Q Okay. So you -- you kind of followed his advice or you felt  
14 like maybe his advice was right.
- 15 A Yes.
- 16 Q Did you have any discussion with your aunt or grandma that  
17 day about kind of this -- this big disclosure with your dad?
- 18 A My Grandma Sara, she really wasn't sure what even anyone  
19 was really talking about. She was very confused. But I know  
20 while I told my dad and Anna looked at me and Janie said,  
21 "Come on, Anna, let's go get a pop." And she walked Anna up  
22 to the vending machines. And Anna told me that she asked  
23 her, "Who was I talking about?" And then Anna had told her  
24 Dan. And then --
- 25 Q So your aunt kind of found out in a roundabout way.

1 A Mmmhmm.

2 Q Really through Anna, but that same time that you were all at  
3 the prison together.

4 A Yes.

5 Q Okay. Was there, you know, any more discussion, did you just  
6 kind of move on and talk about more pleasant things? Did  
7 you end the visitation right away? What kind of -- what  
8 happened next?

9 A After that, my dad was talking about trying to find a way to  
10 catch Dan doing this to me so I would have proof. And that  
11 he would go away to prison and he was talking about maybe  
12 Anna recording with her cell phone next time we went over  
13 to my Aunt Janie's. That --

14 Q So -- so you told him that Dan had been molesting you for  
15 years. And his solution was for you to go back to the same  
16 house where he was to film him doing this to you.

17 A Yes.

18 Q Okay. Was Anna privy to this -- this secret filming?

19 A Anna didn't say anything until after we got out of the visit.  
20 And she looked at me and she said, she was not doing that,  
21 she was not recording that. She didn't want any part of it,  
22 but my Aunt Janie was on board to doing it.

23 Q So your Aunt Janie was kind of like in on this whole plan,  
24 too.

25 A Yes.

1 Q Okay. Do you remember when this all was? What -- what  
2 timeframe that you went for this visit and disclosed to your  
3 dad?

4 A I know it was winter.

5 Q It was winter. Do you remember what year?

6 A 2018.

7 Q 2018. So he assaults you in December of 2015, and I think  
8 you said it was several months before he sexually assaulted  
9 you again. In that span of two years, essentially, do you  
10 have an estimate of how many times this happened, him having  
11 sex with you?

12 A Every other weekend from when my dad was incarcerated and  
13 then from when I disclosed, so, I couldn't even give a number.

14 Q Okay. You said he did not sexually assault you the night  
15 before you went to your dad and disclosed.

16 A No.

17 Q Okay. Do you -- do you know why? Would sometimes he just  
18 not sexually assault you?

19 A Sometimes he would be gone, too, some weekends towards when  
20 I disclosed. He had a job and he would be gone some  
21 weekends and some weekends he would be there.

22 Q So he traveled for work sometimes.

23 A Yes.

24 Q So when he started traveling for work, were the assaults  
25 happening less frequently?

1 A Yes.

2 Q So if the assaults were happening less frequently, what  
3 kind of led you to -- to disclose? Like help us get there  
4 mentally. Help me understand that.

5 A I just felt disgusted with myself, with my own body, and I  
6 just had enough. I didn't want it anymore. I didn't want  
7 it to happen anymore. I felt bad for Brooke. I knew Brooke  
8 was going to get married to him soon. They were already  
9 planning a wedding. I didn't think that was right for her  
10 to marry someone like that.

11 Q Okay. Do you know have they gotten married since then?

12 A Yeah.

13 Q Okay. So you have this plan or your dad has this plan. Once  
14 you kind of know Anna is not on board, what is the plan  
15 moving forward?

16 A We -- I know I went over -- back over to my Aunt Janie's house  
17 the next weekend and Dan wasn't there. And we had went to  
18 go get pizza. And we were talking about what to do, how to  
19 make this happen, what we had to do --

20 Q Who is the "we" that went to get pizza?

21 A Just me and my Aunt Janie.

22 Q So you and your Aunt Janie, you go back over there.

23 A Yes.

24 Q At any point, did your mom know what was going on?

25 A After that visit, I had told my mom, briefly, that Dan has

1           been doing stuff to me. And they wanted to catch it on film,  
2           to be able to have proof. And she was not on board at all.

3    Q       All right. So you tell her this idea that your dad and aunt  
4           are working on and she disagrees. So were you in her custody  
5           at that time? Was she your caregiver, your mom?

6    A       Yes. The only reason why she let us come back -- me go back  
7           over there the next weekend is because I told her that Dan  
8           was not there, that he was traveling.

9    Q       And did you think that Dan was not there or did you think  
10          Dan was going to be there?

11   A       My Aunt Janie told me that he wasn't there.

12   Q       So you -- you -- your mom agrees and you think that when you  
13          go over there, you -- you are safe because Dan is away on  
14          business.

15   A       Yes.

16   Q       Okay. So do you stay Friday and Saturday night?

17   A       Just Friday.

18   Q       Just Friday night. Is Anna there with you?

19   A       Yes.

20   Q       And is Dan there Friday night?

21   A       No.

22   Q       Okay. So he comes home at some point on Saturday.

23   A       Yes. We went to go get pizza at Little Caesar's, just me  
24          and my aunt. I don't remember why Anna left that morning.  
25          She was going to a friend's house, I think, that Saturday.

1 And we were talking about it and what we should do, because  
2 I didn't want to involve Anna. And she saw -- she said to  
3 maybe buy those trail cams so I could see in the dark. But  
4 when we got back from getting pizza, Dan was there.

5 Q How did you feel seeing Dan?

6 A My heart dropped.

7 Q Did you feel scared about this plan?

8 A Yes. My Aunt Janie assured me that nothing was going to  
9 happen and I was going to be safe. She was just going to  
10 stand outside of her door and wait. And that my Uncle Scott  
11 slept with a gun, so there was nothing to worry about.

12 Q Okay. So was the plan going to be to catch him just waking  
13 up and coming out or was he supposed to actually start  
14 assaulting you and that's when she was going to intervene?

15 A Start assaulting me -- for us -- for him to come out and  
16 touch me and then bring me into the bathroom, him shut and  
17 lock the door. And then she came out.

18 Q Okay. Did she have a key to this door?

19 A No. She just said my Uncle Scott was going to kick down  
20 the door.

21 Q Okay. Okay. So you are there, this is the plan that's  
22 formulated. When you formulate this plan, are you thinking,  
23 we are going to implement this in the future or are you  
24 thinking, it's go time?

25 A In the future.

1 Q Okay. So at this point, it's still just like an idea you are  
2 formulating.

3 A Yes.

4 Q When he ends up being there, does the plan become, instead  
5 of being in the future, that we are going to -- that we are  
6 going to catch Dan tonight?

7 A Yes.

8 Q And so how -- how did you react to that?

9 A I didn't think I was ready. I was very scared. I wasn't  
10 even sure if I wanted to do it again. And I remember calling  
11 my sister to come pick me up because I saw Dan was there. And  
12 I didn't want to do it.

13 Q So you got scared.

14 A Yes.

15 Q Did your sister come and pick you up?

16 A Yes.

17 Q Did you tell your sister that night what had been happening  
18 with Dan?

19 A Yes.

20 Q And when you disclosed to her, what happened next?

21 A She told me my word was good enough and she called the police  
22 right away. I tried to argue her -- with her about it,  
23 because my dad told me that I had to have proof. But she  
24 did it anyways.

25 Q Okay. Did law enforcement come to your house that night?

- 1 A Yes.
- 2 Q And when I say, "your house", where were you living at this  
3 point, in January of 2018?
- 4 A My grandma's.
- 5 Q Your grandma's house, but with your mom and your sister.
- 6 A Yeah.
- 7 Q Okay. Okay. And so you -- you met with Trooper Doesch --
- 8 A Yes.
- 9 Q -- briefly that night? Okay. Do you remember telling  
10 anybody about these bath mats, that he would ejaculate on  
11 bath mats?
- 12 A I know my -- I told my Aunt Janie that it happened in that  
13 bathroom and that there could be a good chance that maybe  
14 his D.N.A. could be on the bath mats because he ejaculated  
15 on them a lot.
- 16 Q Okay. Did you describe to her what these bath mats looked  
17 like?
- 18 A No. I figured she knew, because they were the only ones in  
19 Brooke's bathroom.
- 20 Q Okay. I am going to show you some bath mats, Jenna. Are  
21 these the bath mats that you were sexually assaulted on?
- 22 A No.
- 23 Q Do you remember ever seeing bath mats that were green and  
24 white and blue at your aunt's house?
- 25 A No.

1 Q How many bathrooms were there at your aunt's house?

2 A Three.

3 Q Three. Okay. When you disclosed to your aunt, though, you  
4 were clear that it was the bath mats in Brooke's bathroom.  
5 Yes.

6 Q And I know that these sexual assaults occurred over several  
7 years. In your memory, what were the different bath mats  
8 you remember seeing him ejaculate on?

9 A I just remember those ones.

10 Q Those ones, the ones I just showed you? You will have to  
11 be more specific about that.

12 A Light blue ones with the yarn on top.

13 Q Okay. Okay. Do you ever remember telling a friend about the  
14 fact that Dan had sexually assaulted you?

15 A Yes. My friend, Audrey. I did not go into detail with her.  
16 I just told her to stay away from him, that he was a bad  
17 guy.

18 Q Okay. Okay. Did she kind of pry you for more details or  
19 ask any questions, really?

20 A No.

21 Q No. Okay. Did you ever think about before disclosing to  
22 your dad, telling your sister or your aunt or somebody  
23 else?

24 A Yes. I thought about it a lot, actually. I was always too  
25 scared though, because I didn't think anyone would believe

1 me.

2 Q Okay. Before -- before you disclosed what the Defendant had  
3 been doing to you, describe your relationship with your  
4 Aunt Janie.

5 A Close. I only saw her every other weekend when we went and  
6 visited my dad. But she was almost like a second mother to  
7 us after my dad was incarcerated for a lot. So she did a lot  
8 for me and Anna or tried to.

9 Q Okay. How would you describe your relationship with her now?

10 A Very distant. I barely talk to her or even see her.

11 Q What was your relationship with Brooke before this happened?

12 A Very close. She was like my sister.

13 Q And what's your relationship with Brooke now?

14 A There is not even one.

15 Q Okay. Do you ever go to your aunt's house anymore?

16 A No.

17 Q No. Okay. Once you disclosed this, did anybody ever come to  
18 you and say, "Why don't you go to those prosecutors and let  
19 them know you just lied about all of this, you made all of  
20 this up"?

21 A Yes. My Grandma Sara.

22 Q So your dad wanted you to get proof. And then his mother  
23 wanted you to go and lie to the prosecutors and say it didn't  
24 happen.

25 A Yes.

- 1 Q Okay. How has all of this affected you mentally?
- 2 A I -- I lost Brooke, like my sister, someone I could look up  
3 to. My aunt, she was like my second mom, I lost her.  
4 Mentally, it very drained me like, this has been very hard  
5 for me.
- 6 Q Are you seeing anybody in counseling or have you seen anybody  
7 in counseling?
- 8 A No.
- 9 Q No. Do you ever have any -- any nightmares or --
- 10 A A lot. I wake my mom up a lot when she comes over and sleeps  
11 by me because I have flashbacks of Dan doing this to me at  
12 night. I wake up thinking he is going to come wake me up.
- 13 Q So that would -- you would think that he was coming to get  
14 you and you would --
- 15 A Yes.
- 16 Q Okay. Jenna just give me one second to look through my  
17 notes, okay?
- 18 A Okay.
- 19 Q Just a couple more. I know I asked you did -- if you ever  
20 heard Weston maybe crying in the middle of the night. Do you  
21 ever remember anybody getting up to tend to him in the middle  
22 of the night when you were staying there?
- 23 A No. I know my Aunt Janie would attend to him a lot during  
24 the night. But Brooke would mainly sleep in a lot.
- 25 Q Okay. And you don't remember a time when the Defendant

1           approached you and things were aborted because of Weston?

2    A       No.

3    Q       No. Do you ever remember hearing the Defendant having sex  
4           with your cousin?

5    A       No.

6    Q       No. Do you ever remember hearing your aunt and uncle use  
7           their bathroom in the middle of the night?

8    A       No.

9    Q       Do you ever remember beyond the Defendant flushing the toilet  
10           after these incidents -- do you ever remember hearing that  
11           main bathroom flushing in the middle of the night?

12   A       No.

13   Q       No. Okay. When your grandmother approached you and asked  
14           you to come back to the prosecutor and -- and lie about this,  
15           around when was that?

16   A       I know it was my sister's boyfriend's dad's funeral. I am  
17           not sure when that could have been.

18   Q       Okay. But after you had disclosed.

19   A       Yes.

20   Q       Yeah. Okay. Has this impacted your relationship with your  
21           dad and your grandma?

22   A       Yes. I don't even talk to my Grandma Sara anymore. That  
23           after she had said that to me, I had lost contact pretty  
24           much all the way. And I very rarely talk to my dad. I don't  
25           even go visit him anymore.

1 Q And you were -- you were really close with him. I mean,  
2 you described a really close relationship, driving two hours  
3 every other weekend and spending a whole Saturday. Why did  
4 that change?

5 A When we would go up there, we would have to go up there with  
6 my Aunt Janie and my Grandma Sara and I just didn't even  
7 want to be in the car with them.

8 Q And why is that?

9 A A lot of times, my aunt would ask me, "Hey, did you hear  
10 anything else from the prosecutor? Hey, do you know what's  
11 going on?" And I just didn't want to talk about it.

12 Q Okay. So it's just kind of easier to -- to not have those  
13 discussions.

14 A Yes.

15 Q Okay. Thank you.

16 MS. JIPP: I have no further questions.

17 CROSS-EXAMINATION

18 BY MR. MAESEN:

19 Q You had mentioned that the first time he assaulted you was  
20 at your dad's wedding; is that correct?

21 A Yes.

22 Q And he did that in the bathroom, right?

23 A Yes.

24 Q Brooke's bathroom?

25 A Yes.

1 Q And did you testify that you had thought about maybe crying  
2 out for help, but nobody would hear you; is that correct?

3 A Yes.

4 Q Because you believed nobody was in the house.

5 A Yes.

6 Q Because you didn't hear the dogs bark or the door opening  
7 or something to that effect, right?

8 A Yes.

9 Q Did you think about crying out other times when people were  
10 obviously in the house?

11 A No.

12 Q Why?

13 A I was scared Dan might have hurt me. He could hurt me.

14 Q You are saying you think he could have hurt you, forcibly  
15 if you ran out of the bedroom?

16 A No. As we were in the bathroom together.

17 Q What about when he came up to you on the couch? Did you  
18 think about crying out then?

19 A No.

20 Q You never said, "What are do -- " nothing, at all?

21 A (No verbal response)

22 Q You mentioned earlier, did you -- you didn't -- I don't want  
23 to put words in your mouth. Didn't really communicate with  
24 him outside these incidents for the most part; is that  
25 correct?

- 1 A Yes.
- 2 Q You didn't, like, hang out with him, right?
- 3 A Just around the fires, we would all hang out, but not just  
4 me and him.
- 5 Q Were you friends on social media?
- 6 A Yeah, on Facebook.
- 7 Q Did you talk on the phone at all or text or anything?
- 8 A We would -- he would send me messages on my phone sometimes  
9 when Brooke would go to bed to come here or something.
- 10 Q Did you save those?
- 11 A Yeah. But I do not have the phone.
- 12 Q Did he ever, at any time, use words of affection towards  
13 you?
- 14 A No.
- 15 Q Like, "baby" or "I care about you" or anything like that?
- 16 A No.
- 17 Q Did you ever have a conversation about why he was doing what  
18 he was doing?
- 19 A In -- I know on Weston's birthday party, after I gave him  
20 oral sex, I asked him, what he was going to do once he got  
21 married. But he told me, you don't want to know what  
22 happens if you tell someone. That was the only conversation.
- 23 Q Now in all of these times in the house, you said you think  
24 you just wore pajama pants?
- 25 A Mainly just underwear and long t-shirts or pajama pants.

1 Q Was it always the same or different?

2 A Different.

3 Q And you say he only took you into Brooke's bathroom. No  
4 other bathroom?

5 A Yes.

6 Q Not the one by the kitchen or anywhere else?

7 A No.

8 Q Did you say earlier there was a bathroom in the garage or  
9 off the garage?

10 A It's on the side of the garage.

11 Q Is it in the house or in the garage?

12 A In the garage.

13 Q It's unusual, but okay. You also said that you believe  
14 Brooke put the baby, Weston, to bed about midnight?

15 A Yes.

16 Q Was he up prior to that, like was he out -- was he outside  
17 with them when they came in the house or where was he?

18 A He would be in the house and then they would put him to bed  
19 and they would go outside and be at the fire.

20 Q Where in the house was he?

21 A Just in the living room with all of us and then they put him  
22 to bed in his bedroom.

23 Q At midnight, was everybody else asleep at midnight at this  
24 point or no?

25 A My Aunt Janie would be going to bed, but my Uncle Scott would

- 1 be sleeping.
- 2 Q So she would come in, take the baby, put him in -- in his  
3 bedroom or whatever.
- 4 A Mmmhmm.
- 5 Q And you say he never once, that you recall, woke up in the  
6 night.
- 7 A No.
- 8 Q You never heard them get up to check on him in the night?
- 9 A I know when they would come inside after being outside they  
10 would open his bedroom door maybe just to make sure he was  
11 okay. But other than that.
- 12 Q So did they put him to bed at midnight and then go back  
13 outside or --
- 14 A Yes.
- 15 Q -- and then they would come in later.
- 16 A Yes.
- 17 Q And then you are saying after they went to bed, you are  
18 saying he would come out of his room.
- 19 A Yes.
- 20 Q How long after?
- 21 A Hour, half an hour.
- 22 Q You believe at this point Brooke was asleep?
- 23 A Yes.
- 24 Q Now you say at one point, he took you to your dad's trailer

1 at the request of your aunt, correct?

2 A Yes.

3 Q And that was to take pictures?

4 A Yes.

5 Q And this was after your dad was in prison.

6 A Yes.

7 Q Was he still the legal owner of the trailer; do you know?

8 A He never really was the owner. It was always in my Grandma  
9 Sara's name. But he just lived there.

10 Q Okay. But he had subleased it, you think or --

11 A He had people live there and pay rent, but.

12 Q Yeah. Okay. That's a sublease. And at that time, it sounds  
13 like they got kicked out for, I am guessing drugs, or  
14 something like that?

15 A Yes.

16 Q Okay. And he wanted to see what evidence there was.

17 A Yes.

18 Q You went with Dan that time, did you think to say, "Hey,  
19 you know, I don't want to go alone with this guy?"

20 A No.

21 Q And you are adamant that the first time this happened, back  
22 at the wedding, you said the bathroom rug in Brooke's was  
23 orange; is that correct?

24 A Yes. In front of the toilet. But there wasn't one in front  
25 of the sink.

1 Q And you are saying that, you saw in the pictures they are  
2 like a sky blue now, right?

3 A Yes.

4 Q You haven't -- were those ever like that when you went to  
5 the house or were those put in after the last time you went  
6 there?

7 A Put in after the last time I went there.

8 Q And you are saying that the mats you were shown today were  
9 absolutely never in Brooke's bathroom, at least when you were  
10 there; is that correct?

11 A Yes.

12 Q You never saw those -- you never saw them in another bathroom  
13 or don't you know?

14 A I never really went into Janie's bathroom. So they might  
15 have been in there, but --

16 Q But you don't know.

17 A -- they weren't in Brooke's yes.

18 Q Now you said on around, I think November 4<sup>th</sup> of 2017, you got  
19 a swollen eye. I think that's the picture there, correct?

20 A Yes.

21 Q Did you ever have swollen eyes before during any of these  
22 incidents or just that one?

23 A Just this one.

24 Q And you said your dad -- you don't have a relationship with  
25 him right at the moment; is that correct?

- 1 A Yes.
- 2 Q Because -- is it -- is it because you don't want to talk  
3 to your Aunt Janie who would take you to see him?
- 4 A Yes.
- 5 Q Would you see him if somebody else would take you?
- 6 A Yes.
- 7 Q But you are not mad at him that he told you to get more  
8 evidence; is that correct?
- 9 A No.
- 10 Q And you know now that you -- you called the police without  
11 any more evidence and here we are, right?
- 12 A Yes.
- 13 Q You are not aware of any other incidents with Dan with  
14 anybody else, correct, other than Brooke?
- 15 A No.
- 16 Q And you've not talked to Brooke since this happened.
- 17 A Since I disclosed. Yes.
- 18 Q Was that at the request of the prosecutor or somebody or was  
19 that just your choice?
- 20 A That's just our choice.
- 21 Q Now every time this happened, you said you -- you -- no noise  
22 was made. Like did you hear the bedroom door open when he  
23 came out? Like the creaking sound or a hinge or a knob  
24 turning or anything?
- 25 A They mainly slept with their bedroom door opened so the dogs

1           could go in and out, so.

2    Q       Was the bathroom door shut before you went in?

3    A       No.

4    Q       Did it make a noise when it was shut?

5    A       He would turn the handle first and then shut it and then lock

6           it.

7    Q       Was there a noise when the light switch went on?

8    A       The light was mainly off.

9    Q       And you did it by the light of a nightlight; is that correct?

10   A       Yes.

11   Q       And you are saying that you didn't tell anybody this whole

12           time because you didn't think they would believe you or

13           you were afraid of him?

14   A       Both.

15   Q       And do you know when you first disclosed this, was it around

16           January of 2018?

17   A       Yes.

18   Q       Do you know if they arrested him right away?

19   A       No.

20   Q       No, they did, or no, you don't know?

21   A       No, they didn't.

22   Q       It was some time later?

23   A       I am not sure.

24   Q       But it wasn't right away, you don't believe.

25   A       Yeah.

1 MR. MAESEN: I have nothing else. Thank you.

2 REDIRECT EXAMINATION

3 BY MS. JIPP:

4 Q You said that you thought that Brooke normally slept with  
5 their bedroom open.

6 A Yes.

7 Q When you -- when he would come and get you and take you into  
8 the bathroom, would that door still be open?

9 A Just a crack.

10 Q Okay. So it was kind of pulled to. Do you know would they  
11 sleep with a fan on or --

12 A The T.V. on.

13 Q They slept with the T.V. on. How do you -- how do you know  
14 that or you remember that if they were in their bedroom?

15 A I remember sometimes coming out of the bathroom and seeing  
16 a light in there from the T.V.

17 Q Do you remember hearing a noise from it though?

18 A No.

19 Q No. Okay. Was there ever a fan or any sort of a noise  
20 masking thing turned on in the bathroom?

21 A There was one, he would put it on sometimes, sometimes not.

22 Q Okay. So you say lights off, sometimes like an exhaust fan  
23 on.

24 A Yes.

25 Q Okay.

1 MS. JIPP: I don't have any other questions.

2 MR. MAESEN: Nothing further, your Honor.

3 THE COURT: May this witness be excused?

4 MR. MAESEN: Fine by me, yes.

5 MS. JIPP: Yes.

6 THE COURT: All right. You may step down, ma'am.

7 Thank you.

8 We are going to take our break now. So we will  
9 take 15 minutes. If you would please rise for the jury.

10 (at 2:47 p.m., Court took recess)

11 (at 3:06 p.m., Court resumed)

12 THE COURT: All rise for the jury. You may be  
13 seated. Counsel, could you approach? Juror question.

14 (at 3:10 a.m., counsel approached the bench for  
15 conference)

16 MS. JIPP: Thank you, your Honor. The People would  
17 call Trooper Desch.

18 THE COURT: Trooper, if you would come forward and  
19 be sworn in.

20 MS. LANGE: Do you solemnly swear or affirm that the  
21 testimony you are about to give in this matter will be the  
22 truth, the whole truth, and nothing but the truth, so help  
23 you God?

24 TROOPER DESCH: Yes.

25 TROOPER DESCH

1 (AT 3:11 a.m., sworn as a witness, testified as  
2 follows)

3 DIRECT EXAMINATION

4 BY MS. JIPP:

5 Q If you could just state and spell your full name for the  
6 record.

7 A Eric Desch, D-e-s-c-h.

8 Q Okay. And Trooper Desch, how are you currently employed?

9 A A trooper with the Michigan State Police, based out of the  
10 Wayland post.

11 Q Okay. And how long have you been working with the Michigan  
12 State Police?

13 A Eighteen years.

14 Q Okay. If you could just kind of describe your day-to-day  
15 duties for the jury.

16 A I am in uniform, drive a fully marked patrol car. Primary  
17 duties would be to answer calls for service from  
18 Allegan County dispatch. Call for service is when somebody  
19 calls 911 or the non-emergency line, dispatch determines  
20 if its police, fire, or ambulance type of call and then  
21 dispatch the appropriate, I guess -- appropriate unit. So  
22 yeah, answer 911 calls. And then if it's a criminal  
23 investigation that I am sent to, any criminal or any follow  
24 up for that investigation is my responsibility.

25 Q Okay. And were you working on Saturday, January 13<sup>th</sup> of 2018?

1 A I was.

2 Q Okay. And on that date, were you dispatched to 4188 27<sup>th</sup>  
3 Street in reference to a sexual assault complaint?

4 A I was.

5 Q Do you know approximately what time you arrived at that  
6 residence?

7 A Oh, it was -- it was late. I want to say the 911 call or the  
8 dispatch call was at 10 something p.m., so between 10:30 and  
9 11:00 o'clock p.m.

10 Q Okay. And was it just you that was dispatched, any other  
11 troopers show up with you?

12 A Just me.

13 Q Okay. When you first arrived, who was present in the home?

14 A Taylor Bluhm, she was the initial complainant. Jenna Bluhm  
15 was also in the home. Their mother, Angela Genstler was  
16 there. I think those are the only ones I saw in the house.  
17 There could have been others. We just stayed in the dining  
18 room area. There could have been others further in the  
19 house.

20 Q Okay. Were you aware, when you first got the call, kind of  
21 the relationship of the reporting party to the victim?

22 A Yeah. I think from the dispatch notes, I knew that Taylor,  
23 the one who was making the 911 call was calling for an  
24 incident that occurred with her daugh -- or her sister,  
25 Jenna.

1 Q Okay. Okay. Did you, when you got to the home, interview  
2 Jenna?

3 A I won't call it an interview. Because it was a CSC, a  
4 criminal sexual conduct reported that I was investigating  
5 and the victim was a minor, a juvenile, me as an untrained  
6 forensic interviewer, I typically do not interview the child,  
7 the juvenile victims. In this case, I spoke with Taylor.  
8 And since Jenna was in the room, I did ask her like a generic  
9 question. I heard the allegations from Taylor. And since  
10 the victim was Jenna, I kind of asked her, is this correct?  
11 I forget the exact question that I asked, but I wouldn't  
12 call it an interview. It's not like I set her aside and had  
13 a list of specific questions.

14 Q So is your goal, in kind of making that first contact, just  
15 gathering the minimal facts?

16 A Correct. Determine if -- determine what the allegations are  
17 and if a criminal -- a further criminal investigation is  
18 warranted. And again, since it involved a juvenile, the  
19 next step is usually interview that juvenile, which is  
20 something that I do not do.

21 Q Did you assist in coordinating a forensic interview of the  
22 victim?

23 A Correct. My responsibility would be, juveniles in this  
24 county, they go to a place called Safe Harbor here in Allegan  
25 city. And it's my job as the investigator, yeah, I

1 coordinate, I schedule that interview of the juvenile, in  
2 this case of Jenna.

3 Q Okay. Did you attend that interview at a later date?

4 A I did.

5 Q Okay. Okay. What was Jenna's demeanor that evening?

6 A Calm and quiet. She was writing on a piece of paper, writing  
7 some notes that she later gave me. Yeah, I would -- I would  
8 call it calm and quiet.

9 Q Okay. What about the demeanor of her mom and her sister,  
10 Angela and Taylor?

11 A The same. I mean, they may have been a little bit more  
12 worked up because Taylor had just learned of it that night.  
13 And what Angela, their mom told me was she learned of it  
14 just that night as well. They weren't hysterical, they  
15 weren't emotional. Yeah, I would say they were a little  
16 upset that they had to call for this type of investigation.

17 Q How long would you say you were there that -- that initial  
18 response time?

19 A Oh, wow. Thirty minutes, forty minutes.

20 Q Okay. So you kind of go in, get the basic facts you need to  
21 inform your investigation moving forward.

22 A Yeah. You know, Taylor didn't know much anyhow. So she  
23 wasn't a very long interview. And her mother didn't know  
24 a whole lot. Angela didn't know a whole lot either. So  
25 for those two interviews, you know, based on what I knew the

1 information to be, they didn't have a whole lot of  
2 information anyhow. So it would not have been just the  
3 minimal facts interview with those two, it's -- I talked  
4 with them. You know, it was full questioning for what  
5 limited information they knew.

6 Q Okay. So based on the limited information you were able to  
7 gather from Jenna's mom and sister, what was the next step  
8 in your investigation?

9 A It would have been interview the victim next, which would  
10 be to set up the interview of Jenna.

11 Q Okay.

12 A That's what my next step in line would have been.

13 Q So before you could get to that, did you hear back from  
14 Taylor or a member of Jenna's family later in the evening?

15 A I did, twice. So once I cleared the house where I talked  
16 with Taylor and Angela, I returned to the post in Wayland.  
17 And I probably got there maybe 11:30. And then through  
18 dispatch, dispatch sent me a message, "Hey, Taylor Bluhm  
19 wants you to give her a call." That was the initial  
20 complainant, the sister. So yeah, I did give her a call back,  
21 talked with her over the phone.

22 Q Okay. And why was she reaching out to you again?

23 A She was reaching out because she had just learned, like  
24 minutes before, that Defendant Daniel and Brooke had just  
25 learned that there was now a police investigation.

1 Q So she --

2 A Whereas before that, apparently he -- she did not know that  
3 the police were involved at all.

4 Q Okay. Okay. Did you speak with anyone else from the family  
5 that night?

6 A Yes. So that was just a brief phone call with Taylor. And  
7 then at 1 a.m., roughly, I got another message from  
8 dispatch to call a Jane Heppe, the aunt.

9 Q Okay. So this was now, you get the initial call of January  
10 13<sup>th</sup> and now we are into kind of the early hours of January  
11 14<sup>th</sup>.

12 A Correct. It's two, three hours later, but it's now a new --  
13 a new date.

14 Q Okay. So you get a call from Jane Heppe. Do you call her  
15 back?

16 A I do. I call her back.

17 Q Okay. And as a result of this conversation, what occurs  
18 next?

19 A So that very brief contact that I had with Jenna, where she  
20 confirmed that yes, what Taylor had told you was true, Jenna  
21 also told me that there also might be evidence on bath mats.  
22 And -- and that was the extent of that. And then I get the  
23 message to call Jane at 1 a.m. and I call her back and --

24 Q I am going to interrupt you for just a second because I need  
25 some clarification. So you think there might be some

1 potential evidence on bath mats. Were those bath mats  
2 described?

3 A Jenna called them blue bath mats.

4 Q Okay.

5 A That's the extent.

6 Q And so then you -- you kind of have this in the back of  
7 your mind as something you will need to investigate --

8 A Correct.

9 Q -- and then you are contacted by Janie. And -- and is she  
10 contacting you about what?

11 A Yeah, so I get a -- it's Jane, Janie who gets the message to  
12 me, "Hey, give me a call." And so I do call her back. And  
13 she is driving around with bath mats from her house that she  
14 wants to turn over to me. And I said, "Okay. Let's meet  
15 somewhere." And we do. She meets me at the Exxon in Dorr,  
16 just off U.S. 131, and I recover two bath mats from  
17 Aunt Janie.

18 Q Okay. So she calls you and wants to meet you with these  
19 bath mats.

20 A Yes.

21 Q And it's, at this point, by the time you call her back and  
22 coordinated this, what time did you end up meeting at this  
23 gas station?

24 A Oh, it was quarter after 1 a.m. So 1:15 a.m.

25 Q Okay.

- 1 A Somewhere around there.
- 2 Q Can you describe the interaction, in terms of like, you --  
3 you meeting her physically?
- 4 A Correct. Yep. She arrives in a vehicle, I am assuming her  
5 vehicle. We kind of meet by the gas pumps. I don't remember  
6 if there was any conversation. I know I did not -- I wasn't  
7 intending on interviewing her at that time. It was just to  
8 get -- recover the bath mats from her. Actually I can't --  
9 I can't recall any conversations or any -- any words that  
10 were spoken.
- 11 Q When she presents these -- these bath mats to you at 1:15  
12 at this gas station, how are they packaged?
- 13 A In a white, plastic garbage bag.
- 14 Q Were they folded neatly and -- and in their own separate bags  
15 or were they just kind of chucked in one -- on big bag  
16 together?
- 17 A Two bath mats. They weren't folded nicely, just kind of  
18 wadded up, put in this -- this garbage bag.
- 19 Q Okay. Did you -- at that time, open the bag to investigate  
20 the contents?
- 21 A Back at the post, I did.
- 22 Q Okay. Before we get to -- to post, is the way you received  
23 these bath mats standard procedure for collecting evidence?
- 24 A It's not often that somebody brings you evidence. Normally  
25 it's up to us to go to the scene and collect the evidence.

1 Q So ideally, how would you have collected -- so you are aware  
2 that these bath mats could maybe - these blue bath mats could  
3 maybe contain evidence. How would you have ideally gone and  
4 collected this evidence?

5 A So my -- the next step that I would have done in the  
6 investigation, is from my interview with Taylor and Angela,  
7 and the brief interaction with Jenna, I knew the address where  
8 the assaults occurred. And I know that there were these blue  
9 bath mats that might contain evidence. It was, you know,  
10 pushing 1 a.m., late at night. My shift is off, is over at  
11 2. So there is a couple of a reasons why I didn't go  
12 immediately to the house. My next step would have been --  
13 I did work the next day, starting at 4 p.m. I would have  
14 continued the investigation. The next step would have been  
15 to talk with Aunt Janie and Uncle Scott and view the -- view  
16 the venue -- the location where the alleged crimes occurred.  
17 And at that point, I would have asked Aunt Janie or Uncle  
18 Scott, "Can I look around and recover these -- these blue  
19 bath mats that I understand might have evidence."

20 Q Okay. Would you have photographed the area where you found  
21 the bath mats?

22 A Correct. Before seizing evidence, you typically photograph  
23 how you initially came upon them, how you initially saw  
24 them.

25 Q Okay. And if -- if these bath mats had been described to

1 you as blue, would you have seized any bath mats, all  
2 bath mats, kind of -- how would you have known or how would  
3 you have proceeded?

4 A Knew that the assaults occurred in a bathroom, but with such  
5 a -- at that point, a vague description, if you want a better  
6 word. I would have asked Jane or Scott to show me all of the  
7 blue bath mats in this house. Just point them out to me  
8 and I would have collected all of them.

9 Q Okay. And -- and by vague description, you are just simply,  
10 because you were only doing a minimal facts interview.

11 A Correct.

12 Q Okay.

13 A We get more details from the interview with Jenna that's not  
14 going to happen for, I think it was a week later, so.

15 Q Okay. So how long, total, were you at this gas station with  
16 Aunt Janie?

17 A Five minutes.

18 Q Okay. Okay. Did you remember asking her where the bath mats  
19 were retrieved?

20 A I did not.

21 Q Okay. Did you ask her clarifying questions like, "Hey, are  
22 there more than one set of bath mats?"

23 A I did not.

24 Q Okay. Did you ask her when she collected the bath mats?

25 A I did not.

1 Q Did you ask her whether she had worn gloves to collect the  
2 bath mats or --

3 A No. I did not ask her that.

4 Q -- or ask her if she photographed where she found the  
5 bath mats before she seized them?

6 A No. I did not ask her that.

7 Q Okay. So she hands you this bag and -- of bath mats and you  
8 don't open it there, is that --

9 A I don't remember. I may have looked in. I know I didn't take  
10 them out.

11 Q Okay.

12 A That's something I do back at the post to properly package  
13 them.

14 Q Okay.

15 MS. JIPP: At this point, your Honor, I apologize,  
16 I do not have these already marked as an exhibit.

17 THE COURT: What's the next exhibit number?  
18 No, we had nine. That was photos of the -- 10. It's  
19 exhibit 10.

20 MS. JIPP: I will state that we had other  
21 photographs marked.

22 So it would be 19.

23 THE COURT: 19 is your last number or 19 is the  
24 number that this would be.

25 MS. JIPP: This would be 19.

1 THE COURT: Thank you.

2 BY MS. JIPP:

3 Q I am going to show you what's going to be preliminarily  
4 marked as People's Exhibit Number 19. If could just describe  
5 what I am showing you.

6 A It's a bath mat, blue, white, and green in color. Two of  
7 them, same style, same color.

8 Q All right. And are these the bath mats that were brought  
9 to you at Exxon gas station by Jane Heppe?

10 A They are.

11 MS. JIPP: Your Honor, at this point I would like  
12 to admit these bath mats.

13 MR. MAESEN: No objection.

14 THE COURT: They are admitted.

15 (at 3:29 p.m., People's Exhibit Number 19 identified  
16 and received)

17 BY MS. JIPP:

18 Q Now there is some markings on these. Is that something you  
19 added as you processed the rugs or, I mean, if you could  
20 explain what those markings would be.

21 A Yeah, I did not process the rugs. They eventually went to  
22 state police crime lab, crime lab, going -- so it's the  
23 blue markings and the labels would be from the lab.

24 Q Okay. So you retrieved them from her and you take them back  
25 to your facility. What do you do with the rugs, once you

1 get back to post?

2 A I package them properly in a paper evidence bag. The one  
3 that the -- I brought with me today, sealed it, and then they  
4 just were stored in our property room until I could collect  
5 other evidence to be compared with the rugs.

6 Q And -- and how would you describe these rugs if you were to  
7 give a description?

8 A White and green color bath rugs, bath mats.

9 Q Did you, prior to processing these, take these rugs to Jenna  
10 to verify that these were the rugs that she described?

11 A I did not.

12 Q Did you take photographs of those rugs and take them to Jenna  
13 to verify that those were the rugs she was describing?

14 A I eventually took photos. I did not take them to Jenna to  
15 verify --

16 Q Okay.

17 A -- they were the same rugs she described as blue rugs.

18 Q Okay. So how do you know that these were the rugs that Jenna  
19 described?

20 A Because I assumed that Aunt Janie, who at the time, I was  
21 under the belief she had just learned of this from Jenna that  
22 night and that the bath mats might contain D.N.A. or might  
23 contain evidence. I assumed that Aunt Janie would bring me  
24 the rugs that Jenna described to her.

25 Q Okay. So we have no way to know that these were the rugs.

- 1 A Correct.
- 2 Q Okay. So after you have these and you package them and submit  
3 them to the lab, do you do anything -- did you do anything  
4 else in terms of gathering D.N.A. evidence?
- 5 A Yeah, so you would want -- assuming it's D.N.A. that we are  
6 looking for on the rugs, which was what we were looking for  
7 in this case. Yeah, it may have taken one or two months,  
8 but yeah, I did obtain D.N.A. samples from Defendant Dan and  
9 from victim Jenna.
- 10 Q And -- and how do you do that? How do you get D.N.A. from  
11 them?
- 12 A It's a buccal swab, which is basically a Q-tip that you rub  
13 on the inside of one's cheek and it just collects skin cells.
- 14 Q Okay. And then that -- was that also packaged and sent to  
15 the lab?
- 16 A Correct. It's all packaged separately.
- 17 Q Okay.
- 18 A Or the two rugs together and then the D.N.A. sample from  
19 Dan, D.N.A. sample from Jenna, all three different -- three  
20 different packagings. But they all go to the lab at the same  
21 time.
- 22 Q Okay. And so then when you came back on duty the next day,  
23 did you continue to work and investigate this sexual assault  
24 complaint?
- 25 A Correct. It was the next day that I -- that I went to Jane

1 and Scott's house.

2 Q Could -- could you tell me the address of Aunt Jane and  
3 Uncle Scott's home?

4 A 3817 32<sup>nd</sup> Street. I know it's Salem Township, here in  
5 Allegan County. I think it's a Hamilton zip code.

6 Q Okay. When you arrived at Aunt Janie and Uncle Scott's,  
7 did you interview either of them? Who -- who was present in  
8 the home?

9 A Yes. Yeah, it was at that time that I interviewed Jane and  
10 Scott in their -- in their kitchen.

11 Q Okay.

12 A And no one else was home. They had said that -- or I had  
13 heard that Dan had gone on one of his business runs. And  
14 Brooke, I heard this from Jane, Brooke went up north --  
15 northern Michigan is what I was assuming. So I don't think  
16 there was anyone else in the house. I think it was just Jane  
17 and Scott.

18 Q Okay. Did you happen to kind of survey the home and go into  
19 all of the restrooms to look at the bath mats?

20 A I did not.

21 Q Okay.

22 A Nope. I surveyed the room -- the house -- just the parts of  
23 the house, obviously talked in the kitchen. And then Jane  
24 did allow me to walk -- walk through the living room which  
25 you saw. AND then the bathroom and that hallway that you also

1 saw. The two bedrooms on either end, no I did not look into  
2 those. The bathroom that's been described as near the  
3 entryway or whatnot, I did not look into that one.

4 Q Okay. Did you photograph the interior when you went in on  
5 that particular day?

6 A Not at that time, no.

7 Q Okay. Do you remember whether there were bath mats in any  
8 of the bathrooms and if so, what they looked like?

9 A It was just the one bathroom that I looked in. Yeah, I -- I  
10 couldn't tell you if there was bath mats in that -- that one  
11 bathroom at that time or not.

12 Q Okay. When -- you -- you said you also, then, attended  
13 Jenna's Safe Harbor interview.

14 A Yes.

15 Q Okay. Did she make any disclosures during that interview?

16 A Yes.

17 Q Okay. And what was her demeanor as she kind of made these  
18 disclosures at this interview?

19 A So I watched the interview through a T.V. monitor. She is in  
20 a different room being interviewed by the trained interviewer.  
21 From what I remember, you know, seemed at times a little  
22 hesitant, like it was difficult for her. But on the same  
23 token, kind of matter of fact and you know, to the point,  
24 or maybe not to the point, but there was -- her responses to  
25 the questions were, I guess, to the point, I guess is the

1 best way to say it.

2 Q Did she -- she cry or appear to get upset at any point?

3 A I don't recall her crying at all. Upset, I think, would kind  
4 of be the same as at times she was maybe a little hesitant.  
5 But I don't recall any crying.

6 Q Okay. After you were able to view that, did you interview  
7 her mother, Angela?

8 A So I had interviewed her mother the night that the report was  
9 taken. And I may have interviewed her -- it was her that  
10 brought her to the Safe Harbor interview. And it was either  
11 then or a later date that I know I did talk with Angela a  
12 second, if not a third time.

13 Q Okay. Did you interview her younger sister, Anna?

14 A Yes. I eventually interviewed Anna.

15 Q Okay. And I know you said you spoke to Taylor that first  
16 night. Did you ever do any follow up interviews with Taylor  
17 as well?

18 A Yes. I spoke with Taylor one or two other times. And this  
19 would all be because of information that we finally got from  
20 Jenna at the Safe Harbor interview. Kind of led to okay,  
21 I need to ask, you know, Angela, Taylor, Anna, I need to ask  
22 them new questions or certain questions.

23 Q And the reasoning behind that is like, attempts to  
24 corroborate or --

25 A Correct.

1 Q Okay. Okay. Did you also interview Jenna's friend,  
2 Audriana Ordonez?

3 A I did.

4 Q Okay. Did you interview Brooke Heppe?

5 A I did not.

6 Q Okay. Were you aware of her relationship to the Defendant  
7 at that time?

8 A Correct. The night that I took the -- took the report,  
9 correct, it was told to me that Brooke was Dan's fiancé.

10 Q Okay. And was it your understanding that she also resided  
11 at Aunt Janie's home at 32<sup>nd</sup> Street in Hamilton?

12 A Correct. It was told to me that first night that -- that  
13 Dan and Brooke are engaged to marry. They live with Brooke's  
14 parents at the 3817, along with their two year old, at the  
15 time, child Weston.

16 Q So she is a member of his household where repeated sexual  
17 assaults occur and you didn't think it was necessary to  
18 interview her.

19 A It was a judgment call. No, I did not interview her. I --  
20 like I said, I was going under the belief that she was still  
21 in this relationship with Dan, even after the allegations  
22 came out. And I felt that if she had witnessed, you know,  
23 seen or heard anything inappropriate, that her still being  
24 with Dan, she would not disclose that to me. So that was  
25 a judgment call on my part and no, I did not interview Brooke.

1 Q Were you able to interview the Defendant?

2 A I was not.

3 Q Okay. Did you do anything else in regards to evidence  
4 collection beyond retrieving the bath mats, the buccal swabs,  
5 and the interviews of the individuals that we discussed?

6 A I would have to look at my report to refresh my memory, but  
7 I don't believe there is any other evidence collected. There  
8 is a dvd of the Safe Harbor interview, the buccal swabs,  
9 the bath mats. I don't believe so, but I would have to look  
10 through my report.

11 Q Do you want a second to take -- take a look at your report?

12 A Sure.

13 MS. JIPP: Your Honor, if we could just --

14 THE COURT: Go ahead.

15 MS. JIPP: -- let the witness refresh his memory.

16 BY MS. JIPP:

17 A Yeah, there was a couple other documents or photographs that  
18 I recovered that obtained from this investigation.

19 Q Okay. What -- what photographs did you take?

20 A Photographs that I took were not the first time that I spoke  
21 with Scott and Jane. But I eventually went back to that  
22 residence, the venue and took the interior photographs that  
23 have already been admitted -- admitted into evidence.

24 Q Do you remember approximately when you took those photographs?

25 A Approximately, yeah, I got this in January, it wasn't probably

1           until June or July. I mean, it will be documented in my  
2           report.

3   Q       Okay.

4   A       If you want a more specific -- but it was months -- it was  
5           months later.

6   Q       Okay. A considerable amount of time later. You said you  
7           also collected photographs. What photographs did you  
8           collect?

9   A       The photographs, the two that have been admitted into  
10          evidence of Jenna Bluhm's swollen eyelids. Jenna came to  
11          the Safe Harbor interview with the handwritten notes that  
12          she was writing down the -- the day of the initial call that  
13          I got. She also came into the interview with those  
14          photographs printed off on paper, which aren't good to me,  
15          printed photographs. But we had learned from her interview  
16          that she had taken those with her phone and sent those by  
17          text message or however, you know, digital, it works, sent  
18          those to her sister Taylor. So one of those subsequent  
19          times I spoke with Taylor was to corroborate some evidence  
20          and to see if she still corroborated some statements and also  
21          see if she had, she, Taylor, had those photographs that  
22          Jenna had sent her. And Taylor still did have those on her  
23          phone. And so in a digital format, she is able to -- I think  
24          she emailed them to me. And then that way I was able to  
25          accept them as official photographs for this investigation.

1 Q Okay. You -- you reference the -- you've referenced now  
2 twice the handwritten note from -- or notes that the victim  
3 wrote and brought with her to Safe Harbor. Was that for the  
4 purpose of reading out at the interview or was that just  
5 handed over to you?

6 A It was not read at the interview. It's something that she  
7 wanted to hand over to me. I knew, the night of the initial  
8 report, you know, when I briefly spoke with her, I knew  
9 what she was writing. You know, she told me she was, you  
10 know, taking notes of what she remembers of the different  
11 assaults. But she wasn't ready to turn it over to me then.  
12 She wasn't done with it. But then at the Safe Harbor  
13 interview, you know, a week, a week and a half later, she  
14 was done, so brought those with her to the interview as well.  
15 And those original notes were, handwritten notes were turned  
16 over to me.

17 Q Okay. Anything else that you think the jury should be made  
18 aware of in regards to your investigation?

19 A Nothing off the top of my head.

20 Q Thank you.

21 MS. JIPP: No further questions.

22 THE COURT: Mr. Maesen?

23 MR. MAESEN: Thank you.

24 CROSS-EXAMINATION

25 BY MR. MAESEN:

1 Q Good afternoon, Trooper.

2 A Hello.

3 Q In the course of this investigation, it was clear to you  
4 that they were clearly identifying Daniel Loew as the guy  
5 that was assaulting her, correct?

6 A Correct.

7 Q There was no other suspects or anything like that, correct?

8 A Correct.

9 Q And you learned this at the initial meeting at the house,  
10 I think it was around mid-January of 2018, something like  
11 that, correct?

12 A Yeah, it was January 13<sup>th</sup> --

13 Q I think that sounds right.

14 A -- 2018.

15 Q Did you, at that time, feel you had enough evidence to arrest  
16 him?

17 A No.

18 Q And you didn't -- do you know when he eventually was arrested  
19 or turned himself in?

20 A I can look at my notes again, but I think it was March --

21 Q That sounds right.

22 A -- March of 2018.

23 Q That sounds about right. I don't need the exact date.

24 A Okay.

25 Q So during that time, you were continuing the investigation.

1 A Correct.

2 Q Okay. And the additional evidence you obtained between  
3 January 13<sup>th</sup> and March was what, exactly?

4 A Everything but the rugs. So the buccal swabs were obtained  
5 after January 13<sup>th</sup>, 14<sup>th</sup>. The photographs, you know, the  
6 photographs at the house of her -- her swollen eyes, the  
7 two page handwritten notes from Jenna. Everything other  
8 than -- the rugs were collected afterwards.

9 Q Did you -- did you say those pictures of the house were taken  
10 in summer though? That would have been after his charge,  
11 correct?

12 A Correct. Yes.

13 Q So everything -- so those were taken later. And you never  
14 interviewed Daniel, correct?

15 A I was not given the opportunity.

16 Q That's fine. Did you -- were you the one that gave the  
17 buccal swab or was that somebody else?

18 A That was me.

19 Q Okay. Do you know of any other officer that spoke with him  
20 or?

21 A No. None that I know of, not for this investigation.

22 Q And you weren't obviously investigating for anything else,  
23 right?

24 A Say that again.

25 Q You weren't investigating him for anything else then either,

1 right?

2 A No, I was not.

3 Q Okay. Thank you.

4 MR. MAESEN: I have nothing else. Thank you.

5 THE COURT: Anything further?

6 MS. JIPP: No further questions.

7 THE COURT: Any questions from the jury?

8 You may step down. Thank you.

9 Next witness?

10 MS. JIPP: Can I ask -- we planned to call  
11 Trooper Workman. It might just be a minute for him to come  
12 downstairs. He is upstairs.

13 Your Honor, I believe the victim is back in the  
14 room right now. I could call her in for that question.

15 THE COURT: That would be good.

16 Jenna, you are still under oath, so you understand  
17 that, correct? You still are -- you promised to tell the  
18 truth, you are going to continue to do that; is that right?

19 THE WITNESS: Yes.

20 THE COURT: All right. Thank you. Have a seat.  
21 There was a question that was asked so I needed to just ask  
22 you this question. But I did want to see Exhibit 8 and 9.  
23 That was a reference to one of the questions that was asked  
24 from the jury. Thank you.

25 JENNA BLUHM

1 (at 3:47 p.m., retook the witness stand to  
2 address juror question)

3 THE COURT: So the question, there was a question  
4 asked by the jury about a timestamp on the photos and you  
5 didn't see the actual photos but you saw it displayed on the  
6 screen. It -- there is a timestamp on the photos themselves.  
7 So you have that information presented to you at the time  
8 of -- you don't have to just -- I -- don't publish that right  
9 now, please. I want to ask the question.

10 MS. JIPP: They were previously published. Okay.  
11 I apologize. I was just --

12 THE COURT: Well, I understand. I just want to  
13 get on with the testimony. They will have those when they  
14 deliberate. Thank you.

15 You talked about or testified about Dan taking  
16 your hand and leading you to the bathroom. Do you remember  
17 that testimony?

18 THE WITNESS: Yes.

19 THE COURT: Okay. Can you tell us what kind of  
20 pressure he used when he took your hand?

21 THE WITNESS: Just grabbed my hand.

22 THE COURT: Just grabbed your hand. Can you  
23 describe the pressure in any way?

24 THE WITNESS: I know he was -- he grabbed my  
25 boob very forcefully and my thighs very forcefully. But

1 my hand, he just grabbed it and walked me into the  
2 bathroom.

3 THE COURT: Thank you. Anything further?

4 MS. JIPP: Not in regards to that. And your  
5 Honor, if I could just ask a follow up in regards to the  
6 timestamp on the photograph?

7 THE COURT: Well, the photograph speaks for itself,  
8 correct?

9 MS. JIPP: No, I think that there needs to be a  
10 follow up question. If you want us to approach.

11 THE COURT: Yeah, why don't you do that. I am  
12 responding to questions that the jury asked. So I need to  
13 keep those to that -- those questions.

14 (at 3:50 p.m., attorneys approached the bench for  
15 conference)

16 (at 3:51 p.m., bench conference completed)

17 THE COURT: Anything further? May this witness  
18 be excused?

19 MR. MAESEN: I have nothing further of this  
20 witness.

21 MS. JIPP: I don't have any further questions.

22 THE COURT: Anything further from the jury.  
23 All right. You may step down, Jenna, thank you.

24 You are going to call Trooper Workman; is that  
25 correct?

1 MS. JIPP: Yes. He should be on his -- the  
2 People will call Detective Sergeant Workman.

3 THE COURT: If you could be sworn in. Thank you.

4 MS. LANGE: Raise your right hand. Do you  
5 solemnly swear or affirm that the testimony you are about to  
6 give in this matter will be the truth, the whole truth, and  
7 nothing but the truth, so help you God?

8 TROOPER WORKMAN: I do.

9 TROOPER TODD WORKMAN

10 DIRECT EXAMINATION

11 BY MS. JIPP:

12 Q Good afternoon.

13 A Good afternoon.

14 Q And if you could state your full name and occupation for the  
15 record.

16 A Todd Workman. I am a detective sergeant with the Michigan  
17 State Police.

18 Q Okay. And how long have you worked for the Michigan State  
19 Police?

20 A Seven years.

21 Q Now you said that you are a detective sergeant. Do you have  
22 a specialty within M.S.P.?

23 A As a detective sergeant, I strictly focus on investigations.  
24 Since I joined the state police, based on my background prior  
25 to joining the state police, I -- I worked in Children's

1 Protective Services. So I often was assigned to work on  
2 cases involving minors, from the beginning of my career.

3 Q Okay. If you could just detail for the jury, what is  
4 Safe Harbor Children's Advocacy Center?

5 A That's where we interview children, victims of child abuse or  
6 neglect, in Allegan and Barry County. We have two locations.  
7 One is here in Allegan city and one is in Hastings.

8 Q Okay. And what is the purpose of a forensic interview?

9 A The overall purpose is to give a child an opportunity to tell  
10 their story. Give them a setting, which is why we use  
11 Safe Harbor, where it's set up to allow them to do that in  
12 a comfortable place. It's kind of like a doctor's office.  
13 There is a waiting room and an interview room. And that's  
14 the purpose of the facility. It's a little bit easier than  
15 maybe going to a police station where there is patrol cars  
16 and officers in uniform walking around.

17 Q So if you are a forensic interviewer, is there specific  
18 protocol that you are supposed to follow?

19 A Yes. There is.

20 Q Okay. And -- and who generates this protocol, do you know?

21 A The Governor's Task Force on Child Abuse and Neglect  
22 developed the protocol.

23 Q Okay. And so is there special -- or specialized training to  
24 teach you the forensic protocol?

25 A There is. Yes.

1 Q And -- and have you undergone this training?

2 A Yes. I have.

3 Q Okay. How many have you either -- I guess I should say, how  
4 many have you been a part of?

5 A I don't know the exact number, but hundreds.

6 Q Okay. So what -- what general information do you try to  
7 gather prior to starting an interview?

8 A Well, prior to the interview, the interviewer would want to  
9 know what the allegations are, some background on the child,  
10 some things that they maybe they like or dislike, if they  
11 have any speech delays, obviously their age, their family  
12 dynamics, any number of other, we call it kind of preparing  
13 for the interview, those background information that would  
14 help them understand what that child is -- is all about and  
15 how to best center the interview around them so that they are  
16 comfortable.

17 Q Can you describe the interview room at Safe Harbor here in  
18 Allegan?

19 A Yeah. It's -- it's about a 10 x 10 room. A couple chairs in  
20 it, a table, some Kleenex, free of clutter. There is a video  
21 camera in the top corner, actually two video cameras, so that  
22 members of the team, really the only people in the interview  
23 room are the interviewer and the interviewee, the child. So  
24 the rest of the team, being law enforcement, Child Protective  
25 Services, a therapist, any number of people will watch from

1 another room so that it's just the interviewer and the child.

2 Q So mom or dad might bring a child there to be interviewed,  
3 but they don't go in the interview with the victim.

4 A No. No, they don't.

5 Q Okay. Can you kind of give me an example of how an  
6 interviewer might introduce themselves?

7 A Yes. So most interviewers kind of develop their own style,  
8 as far as how they relate to kids and -- and put -- put a  
9 child at ease. You know, typically, it would be something  
10 like, first name basis, "Hi, my name is Todd. I am a police  
11 officer." And ask them, you know, depending on their age,  
12 "Do you know what a police officer does?" And oftentimes  
13 they would say something like, you know, "They write my  
14 parents a ticket" or something like that. And -- and then  
15 you would say, "Yeah, you know, sometimes police officers do  
16 that. But another part of my job is talking to kids and  
17 today is my chance to talk to you and to listen to you, more  
18 importantly. And hear your story."

19 Q Do you give the children any kind of rules of the interview?

20 A Yes. Ground rules, we call them the ground rules.

21 Q Okay. And what are some of those ground rules?

22 A So we make sure that we only talk about the truth in that  
23 room. And that they have -- they can correct me if I make  
24 a mistake or correct the interviewer, if they make a mistake.  
25 That they don't guess at anything. If they don't know the

1 answer, it's okay to say "I don't know". And that if -- if  
2 the interviewer makes a mistake, that they are okay to  
3 correct the interviewer, too. Because oftentimes kids maybe  
4 don't feel like they can correct an adult. So we kind of go  
5 over those four, basic ground rules so they understand, you  
6 know, what happens in that room.

7 Q Okay. You said that additional personnel, law enforcement or  
8 C.P.S. might be in a back room kind of watching it. Is there  
9 a way for them to communicate to the interviewer if they  
10 feel that something needs to be asked or want to provide  
11 feedback?

12 A Yeah. So the interviewer typically has an earpiece where we  
13 could communicate with them.

14 Q Does the interviewer at any point tell the child what to say?

15 A No. We don't ask leading questions.

16 Q Okay. Can you give an example of a question you might ask?

17 A So typically the first question I would ask, you know after  
18 going over the ground rules and -- and developing some  
19 rapport with the child and -- and prac -- doing a kind of a  
20 practice interview that we help them understand that we ask  
21 open ended questions. The first question I would usually  
22 ask is, "Do you know why you are here?" That doesn't  
23 introduce anybody or anything into the conversation. It  
24 just opens the floor to them to provide, you know, if they  
25 do know why they are there. And if they say "no", then the

1 next question would be something like, "Well, I understand  
2 you told a friend about something that happened to you."  
3 Again, it doesn't introduce a person or a thing at all into  
4 the conversation. And usually they then start telling me  
5 about probably why we are all there that day.

6 Q Okay. And this is the protocol and procedures you follow  
7 if the child is three or if the child is 16.

8 A Correct. Yeah.

9 Q Okay. Do children always feel comfortable enough to disclose  
10 abuse?

11 A No. Sometimes they don't. And that's okay.

12 Q Okay. Do children in those circumstances ever return for a  
13 second interview?

14 A Yes. They do.

15 Q Okay. Did you have an opportunity to reviewed the forensic  
16 interview of the victim in this case, Jenna Bluhm?

17 A I did.

18 Q Okay. In your opinion did the forensic interviewer establish  
19 the ground rules for a forensic interview?

20 A Yes.

21 Q What are all of those specific ground rules again?

22 A So that we only talk about the truth, that the child doesn't  
23 guess at anything if they don't know the answer, that they  
24 tell the interviewer they don't understand something if they  
25 don't understand, and that they are -- it's okay to correct

1 the interviewer if the interviewer makes a mistake.

2 Q Okay. In your opinion, was the interviewer able to establish  
3 that Jenna knew the difference between a lie and the truth?

4 A Yes.

5 Q And if you could just describe, what was Jenna's demeanor  
6 as she disclosed?

7 A I would describe her, she was very intently listening to the  
8 interviewer and providing very informative feedback in the  
9 answers. She cried a few different times through the  
10 interview. She needed to take a pause. And the interviewer  
11 gave her that time to kind of take a moment to gather  
12 herself and then they continued on with -- with her story.

13 Q Okay. When you say she cried, did you feel she was over the  
14 top or theatrical?

15 A I did not feel that way, no.

16 Q Okay. Does Safe Harbor also offer medical exams?

17 A They do.

18 Q Okay. And do they work with other organizations that also  
19 provide those services?

20 A Yes. The Helen DeVos Center for Child Protection has office  
21 space in the building. And so depending on what works best  
22 for the family, if it works better for them to go see the  
23 doctor in Allegan or they can set up an appointment to go up  
24 to Grand Rapids.

25 Q Okay. Give me an example of a situation where a child would

1 be referred for a medical exam.

2 A Typically if there is a disclosure of some kind of skin to  
3 skin contact or sexual penetration or ejaculation, the child  
4 would typically be referred for a medical exam.

5 Q Okay. Based on the disclosures that Jenna made in the C.A.C.  
6 or the Safe Harbor interview, do you feel she should have  
7 been referred for a medical exam?

8 A Yes. Under normal circumstances, yes.

9 Q Okay. Are you aware or not whether she was referred for a  
10 medical exam?

11 A I do not believe she was.

12 Q Okay.

13 MS. JIPP: Thank you. I have no further questions.

14 CROSS-EXAMINATION

15 BY MR. MAESEN:

16 Q Good afternoon, Trooper.

17 A Good afternoon. These Safe Harbor interviews, or whatever  
18 you want to call it, they are done at Safe Harbor, these are  
19 open ended, correct?

20 A The questions?

21 Q Yes.

22 A Yes, sir.

23 Q You are not there to like challenge the child, is that  
24 correct?

25 A That's correct.

1 Q You are not there to -- to make them think you don't believe  
2 them if you don't; is that correct?

3 A That's correct.

4 Q Does -- and these are often used in part, as a tool to -- to  
5 build a prosecution against somebody; is that correct?

6 A They are used to give a child a chance to tell their story.

7 Q Which often will result in somebody being charged with a  
8 crime; is that correct?

9 A It can. Yes, sir.

10 Q Thank you.

11 MR. MAESEN: I have nothing else.

12 REDIRECT EXAMINATION

13 BY MS. JIPP:

14 Q Are there interviews that are done by Safe Harbor that then  
15 don't lead to criminal charges being pressed again --

16 A Yeah.

17 Q Okay. Thank you.

18 MS. JIPP: No further questions.

19 THE COURT: Any questions from the jury? All  
20 right. You may step down. May this witness be excused?

21 MS. JIPP: Yes.

22 MR. MAESEN: Yes.

23 THE COURT: You are excused. Thank you.

24 Do you have another witness?

25 MS. JIPP: I do, but I will need a minute, your

1 Honor.

2 THE COURT: By a minute, do you need a minute or  
3 do you need five to ten?

4 MS. JIPP: No, I need approximately one minute to  
5 go grab her.

6 THE COURT: Oh, all right. I didn't know.

7 MS. JIPP: Yeah.

8 The People would call Angela Gensler.

9 THE COURT: Ms. Gensler, if you would come forward  
10 and raise your right hand, Ms. Lange will swear you in.

11 MS. LANGE: Do you solemnly swear or affirm that  
12 the testimony you are about to give in this matter will be  
13 the truth, the whole truth, and nothing but the truth, so  
14 help you God?

15 MS. GENSLER: Yes.

16 THE COURT: If you could have a seat up here in  
17 the witness chair. Thank you.

18 ANGELA GENSLER

19 (at 4:03 p.m., sworn as a witness, testified as  
20 follows)

21 DIRECT EXAMINATION

22 BY MS. JIPP:

23 Q If you could state and spell your name for the record?

24 A Angela Gensler.

25 Q And can you spell it for me, please?

1 A A-n-g-e-l-a G-e-n-s-l-e-r.

2 Q Okay. And what is your relationship to Jenna Bluhm?

3 A I am her mother.

4 Q Okay. And do you have other children as well?

5 A Yes. I do.

6 Q Okay. And what are their names?

7 A Anna and Taylor.

8 Q And do they all have the same father?

9 A Yes.

10 Q Are you still with him --

11 A No.

12 Q -- or did you separate?

13 A We separated.

14 Q How -- how long ago did you separate?

15 A Oh, eight years ago.

16 Q Eight. Okay. Before her father, Jenna's father went to  
17 prison, where was Jenna living?

18 A Jenna was living with me.

19 Q Okay. Did you have a split custody arrangement with her  
20 father at that time?

21 A Yes.

22 Q Would she go and stay with her father --

23 A Mmmhmm.

24 Q -- as well as you?

25 A Yes.

- 1 Q Okay. So she was living with both of you.
- 2 A Yep. Yep.
- 3 Q Okay. Once he went to prison, where was Jenna living full  
4 time?
- 5 A With me.
- 6 Q Okay.
- 7 A Yep.
- 8 Q How would you describe her relationship with her dad before he  
9 went to prison?
- 10 A Oh, they had a very good relationship.
- 11 Q Okay. Okay. How would you describe your relationship with  
12 her around that time?
- 13 A Oh, we had a good relationship.
- 14 Q Okay. Okay. Did Jenna continue to work to maintain a  
15 relationship with her dad once he was incarcerated?
- 16 A Yes.
- 17 Q And what would she do to maintain that relationship?
- 18 A Taylor, Anna and Jenna all went to go visit together. She  
19 would go with her Aunt Janie to visit.
- 20 Q Okay. Okay. Do you know about how often she would go?
- 21 A They would go every other weekend.
- 22 Q Okay. Okay. So if they were going to go visit their dad  
23 with their aunt, would she -- every weekend would she stay  
24 with her Aunt Janie?
- 25 A Not on every weekend, depending on what days Janie wanted to

1 go, like, the Saturdays she wanted them to spend the night  
2 Fridays, you know, so.

3 Q So she might maybe stay on a Friday, but not necessarily  
4 stay that Saturday as well.

5 A Right. But most of the time back then they got back late,  
6 so they arrived back home at ten, you know, sometimes nine,  
7 and they just went right to Janie's and slept and then came  
8 home.

9 Q So maybe if a visit went longer it would become two nights.

10 A Yes. Because they were visiting all day.

11 Q Okay.

12 A From the time the visiting opened until the time it stopped.

13 Q Okay. And I believe Jenna testified it was about a two hour  
14 drive back.

15 A Yes.

16 Q How would you describe, during this timeframe, your daughter's  
17 relationship with her aunt?

18 A They always got along. They were -- from what I seen (sic).

19 Q And what about her relationship with Brooke?

20 A Yeah, they were very close.

21 Q In November of 2017, did Taylor and Jenna contact you in  
22 regards to Jenna experiencing some swelling in her eyes?

23 A Yes.

24 Q Okay. Detail that for me, how you found out about this.

25 A I got a call at work stating that Jenna's eyes were swelled

1 up, not knowing caused it from. So I got a picture sent and  
2 I said, "Oh, my goodness". Come to find out, I said, "Maybe  
3 we should try Benadryl", you know, get the swelling down.  
4 Maybe she got into some makeup, something.

5 Q Okay.

6 A Well, I said, I can't get out of work until 8 o'clock, but if  
7 it's not better Sunday, I will take you in.

8 Q Okay. So this was Saturday for what -- what -- approximately  
9 what time did you find out about it Saturday?

10 A It was about 10 in the morning.

11 Q Ten in the morning. Okay. And do you know, did -- was she  
12 given Benadryl?

13 A Yes.

14 Q Okay. Did you see her at any point on Saturday?

15 A I did not get out of work that night until after nine.

16 Q Okay. Were you able to see her at nine or was she already  
17 in bed?

18 A She was already in bed.

19 Q Okay. Did you see her in the morning on Sunday?

20 A Sunday her eyes were -- the swelling had went down, but there  
21 was still a little red irritation. So I thought with that  
22 swelling down, maybe we can just stick to the Benadryl and  
23 just keep it, you know --

24 Q Okay.

25 A -- keep it -- because the swelling is what really I worried

1 about.

2 Q Okay.

3 A Because her eyes were so swelled up that her eyelids were  
4 over top, you know, so.

5 Q When you say "redness", describe that redness to me.

6 A It was more of -- her eyes were so swelled then to where I  
7 seen more of the redness right in here. This is her area  
8 here, where the redness was more on Sunday.

9 Q Okay.

10 A Her eyes were swolled up Saturday, you couldn't even tell  
11 where the redness would even be.

12 Q Okay. Had she ever had an allergic reaction --

13 A No.

14 Q -- to eye makeup or anything like that?

15 A No.

16 Q Okay. Do you know, did you ever ask her about whether or not  
17 she had taken any sort of other medication?

18 A Yeah. Well, she had told me that Janie was going to give her --  
19 Aunt Janie was going to give her something. And I said,  
20 "What is it?" And she said, "I am not for sure." And I  
21 said, "No. You are not to take anything until I am -- I will  
22 get home. I will, you know, talk to my mom, which is Jenna's  
23 grandma. And I gave her the instructions to give her the  
24 Benadryl.

25 Q Okay. And so that was kind of in the morning on Saturday --

1 A Right.

2 Q -- you said, don't take anything else. Let's start with  
3 Benadryl.

4 A Yes.

5 Q Okay. And then to the best of your knowledge, the swelling  
6 lasted through the day.

7 A Yep.

8 Q Okay. How would you describe Jenna's demeanor when she was  
9 up and moving around on that Sunday?

10 A That Sunday, I had asked Jenna, I go, "Are you feeling okay?"  
11 She was very, what's the word you want to say, to herself.  
12 She didn't want to be bothered. She wanted to be left alone.  
13 She wanted to be isolated. She didn't want -- very ornery,  
14 very -- just snappy.

15 Q Okay.

16 A So I thought maybe, well, having a bad day, you know, teenage  
17 kids.

18 Q Did -- did you ask her if anything in particular had  
19 happened?

20 A I had asked her, because she looked really sad and mopey and  
21 just zombie.

22 Q Okay.

23 A Just walking around like, you know. So I did ask her and she  
24 said, "No, I'm fine. Just tired."

25 Q Okay. Okay. When did Jenna first disclose that Dan was doing

1 something to her?

2 A I was informed of that when they came back for a visit.

3 Q When they came back for a visit.

4 A Yeah, to prison with Janie.

5 Q Okay. Do you know approximately what time that would have  
6 been?

7 A I couldn't tell you an exact time. But it was probably a  
8 long day again, so I am thinking 9, 9:30.

9 Q And -- and in terms of when the police were called, was it  
10 that day or the week before that?

11 A Oh, I think I -- I am not -- I don't know on that part.  
12 Because I was not told about it because Janie said not to  
13 tell me.

14 Q Okay. So when you first find out that something is going on,  
15 do you know the extent of the allegations, that it's -- that  
16 it's sex and penetration?

17 A Just only the touching and sleeping on the couch, going under  
18 the covers, touching. That part with the penetration didn't  
19 come out until the following -- that -- it was that Sunday.

20 Q Okay. Okay. So you kind of get a little bit of the picture  
21 and then a little bit later --

22 A Yep.

23 Q -- you get the rest.

24 A Mmmhmm.

25 Q And by "that Sunday" you mean --

- 1 A That's when I found out everything.
- 2 Q And is that when like -- right when the police were called  
3 or --
- 4 A That was -- because I don't know if the -- because I -- my  
5 dad was passing away at the time.
- 6 Q Okay.
- 7 A So there was so much going on. And we were trying to keep  
8 it, the disclosure from him.
- 9 Q Okay.
- 10 A Because it -- it was just a really rough time for all of us.  
11 When I finally talked to Jenna, and it was when she got back  
12 from prison for that visit, she told me that there was going  
13 to be a plan. This is what, "It's okay, Mom. I know, but  
14 this is going to be a plan. We are going to try to do this."  
15 And I am just, I --
- 16 Q And by plan, is this the To Catch a Predator?
- 17 A Yes.
- 18 Q Okay.
- 19 A With trail cams for pretty much leaving her for bait.
- 20 Q Okay. And so what were your thoughts on this plan?
- 21 A That ain't happening.
- 22 Q Okay.
- 23 A That is not going to happen.
- 24 Q Okay. So you find out about this plan and you are --
- 25 A Totally against it.

1 Q -- totally against it. And it sounds like that happens,  
2 Jenna testified that she went to visit him January 6<sup>th</sup>,  
3 does that sound about the weekend?

4 A Mmmhmm.

5 Q And then the police --

6 THE COURT: Ma'am, I'm sorry, you have to answer,  
7 "yes" or "no".

8 THE WITNESS: Oh, yes, I'm sorry.

9 THE COURT: Mmmhmm's don't transcribe.

10 THE WITNESS: I'm sorry.

11 THE COURT: No problem. I just need to remind you.

12 BY MS. JIPP:

13 Q So that would have been January 6<sup>th</sup>, that weekend she would  
14 have come back from the prison.

15 A Yes.

16 Q January 13<sup>th</sup> is when police were called. Now Jenna testified  
17 she went back to her aunt's house that next weekend.

18 A Yes. Because they had told me Dan was not going to be there.

19 Q Okay. So you were okay with it thinking he -- he couldn't  
20 have access to her.

21 A Yes.

22 Q But you were not in support of this -- this --

23 A No.

24 Q -- plan to try to catch him. Okay. From December of 2015,  
25 when the first incident occurred, through January of 2018,

1 did you notice any personality changes in Jenna?

2 A Her grades dropped at school. She had to go to counseling.  
3 She was having nightmares, woke me up many, many times.  
4 Missed school. Totally changed from the Jenna I knew to  
5 a totally different Jenna.

6 Q Okay. You say she had nightmares. Kind of describe that for  
7 the jury, kind of how you would find her.

8 A We -- we slept in an upstairs and Jenna and Anna shared a  
9 room. And I slept in the room next to them. Jenna had come  
10 in, it was approximately -- I would say it was 4:30 a.m. in  
11 the morning and it was on a school day. And just crying  
12 hysterically, can't hardly talk. And, "Mom" and I laid her  
13 down with me and I am holding her and she is shaking and  
14 I said, "What is the matter?" "I just had a really bad  
15 nightmare." She never described it to me, never told me about  
16 it because she said she didn't want to talk about it.

17 Q Okay. Were you suspicious that something was going on with  
18 Jenna?

19 A To -- then, yes. At -- with everything changing with her.

20 Q Okay.

21 A She was -- yeah. There was something going on.

22 Q Okay. Now her father was incarcerated.

23 A Mmmhmm. Yes.

24 Q Do you think that her nightmares and -- and her poor  
25 performance at school was solely associated to that or the

1 aging process?

2 A Yeah. At first, because teenagers go through that stage.  
3 And I thought maybe it was just too much for them to go all  
4 day like that, to be in a prison, to see their dad. So I  
5 am thinking, well, maybe I should try to, you know, tell  
6 them we only can just do this maybe once a month. Let's  
7 try this, different things. Because that's the only thing  
8 I could come up with, you know.

9 Q Okay. Did Anna seem to be having these issues, these  
10 nightmares and --

11 A Anna, no.

12 Q -- poor performance? Okay. Was there a point where you  
13 thought, "Okay. This is more than her dad being  
14 incarcerated?"

15 A Mmmhmm. Yes.

16 Q Okay. And what -- what was kind of that tipping point for  
17 you?

18 A It was more or less that as the days went on, little pieces  
19 she would tell me, come out. So I was trying to put the  
20 puzzle pieces together. So when I found out that Janie had  
21 asked Jenna if Dan and her were in a relationship or messing  
22 around. That's when I talked to Jenna.

23 Q Okay. So there was some speculation --

24 A Yes.

25 Q -- that there was something going on between Dan and Jenna.

1 A Yes.

2 Q And who -- who asked who what?

3 A Excuse me?

4 Q You kind of gave a trail of how you found this information  
5 out.

6 A Yes.

7 Q Who was asking who?

8 A Well Anna had told me about Brooke and Janie asking Jenna  
9 if there was anything going on.

10 Q Okay. Okay. Did you know the Defendant before --

11 A No.

12 Q -- all of these disclosures came out?

13 A No.

14 Q No. Do you have what you would describe as a positive  
15 relationship with Janie before this came out?

16 A Yeah. Yes.

17 Q Okay. You trusted her to, you know, kind of watch after  
18 your kids.

19 A Yes.

20 Q Okay. How would you describe her relationship with her and  
21 Brooke since this has happened?

22 A I can't answer that. I don't talk to neither of them.

23 Q Okay.

24 A I don't talk to that side of the family.

25 Q Okay. Okay. Do you ever remember Jenna coming to you with

1 any other sort unexplained physical injuries?

2 A Not that I am aware of, no.

3 Q Okay. You said that Jenna was in -- in counseling or  
4 therapy; is that correct?

5 A Yes.

6 Q Approximately what timeframe was seeing a therapist?

7 A It was the school year. I would say a good three months of  
8 2016, going into 17.

9 Q Do you know why that -- that counseling stopped?

10 A She was getting better. She completed the whole program.

11 Q Okay.

12 A Yes.

13 Q So she was getting better. Did you still witness some of  
14 these disturbing behaviors, the nightmares, the --

15 A Yes.

16 Q Okay. Okay. So when you say she was getting better, do you  
17 mean scholastically, like at school?

18 A She wasn't cutting herself anymore. She completed that  
19 program.

20 Q So she was in counseling for --

21 A Yes.

22 Q -- self harm. Okay.

23 A She inflicted pain on herself to take away the pain she was  
24 feeling.

25 Q Okay. Has she continued to struggle with cutting or --

1 A She -- lot better, doing very well.

2 Q Okay.

3 MS. JIPP: I have no further questions at this  
4 time.

5 CROSS-EXAMINATION

6 MR. MAESEN:

7 Q You indicated she was in counseling for cutting herself.

8 A Yep.

9 Q How long was she in counseling for?

10 A She was in counseling for a year.

11 Q And how did she get into that? Who put her there?

12 A How did she get into that?

13 Q Yeah. The school or you, that's what I mean.

14 A Me.

15 Q Okay. You put her in there. Did you ever talk to the  
16 counselor?

17 A Yeah. Yes.

18 Q They never said anything about anything regarding this case,  
19 correct?

20 A Yes.

21 Q They never said, "Hey, she said she is being abused. Nothing  
22 like that came up."

23 A No. I was in there two sessions.

24 Q Okay. The counselor never brought it to your attention.

25 A That's disclosed information between the two of them.

1 Q Okay. And you, as the mother, don't think they would tell  
2 you that?

3 A If it was necessary.

4 MR. MAESEN: Nothing else.

5 THE COURT: Anything further? Any questions from  
6 the jury? You may step down, ma'am. Thank you.

7 Do you have any other witnesses available or -- ?

8 MS. JIPP: If you will give me two seconds, the  
9 People will call Anna Bluhm.

10 MS. LANGE: Do you solemnly swear or affirm that  
11 the testimony you are about to give in this matter will be  
12 the truth, the whole truth, and nothing but the truth,  
13 so help you God?

14 MS. BLUHM: Yes.

15 THE COURT: Have a seat in the witness chair.  
16 Thank you.

17 ANNA BLUHM

18 (at 4:20 p.m., sworn as a witness, testified as  
19 follows)

20 DIRECT EXAMINATION

21 BY MS. JIPP:

22 Q Anna, if you could state and spell your name.

23 A Anna Bluhm, A-n-n-a B-l-u-h-m.

24 Q And Anna, how old are you?

25 A Fifteen.

- 1 Q Fifteen. And how are you related to Jenna Bluhm?
- 2 A She is my sister.
- 3 Q Okay. She is your older sister.
- 4 A Yes.
- 5 Q We've heard testimony from her as well as your mother
- 6 today. I am going to just talk to you a little bit about
- 7 the time period you would go and visit your Aunt Janie.
- 8 Do you remember approximately when you started to go and stay
- 9 overnight with your Aunt Janie?
- 10 A Months, I don't remember. But I know it was around 2018
- 11 when my dad first got locked up in prison.
- 12 Q Okay. 2018, you think.
- 13 A I think so.
- 14 Q Now your dad got -- there was testimony your dad got married
- 15 in December of 2015. Do you know about how long after his
- 16 wedding he -- he was incarcerated?
- 17 A I am not sure.
- 18 Q Okay. Okay. So when your dad was incarcerated, would go and
- 19 visit him?
- 20 A Yes.
- 21 Q And who would you go with when you would go visit him?
- 22 A I would either go with my sister or my aunt.
- 23 Q Okay. And so on the days that you would go visit him, would
- 24 you go to your aunt's and stay the night before a visit?
- 25 A Yes.

- 1 Q Okay. Who would drop you off at your aunt's house or would  
2 she come and pick you up? How did that kind of work out?
- 3 A She would come pick me up from my grandma's house.
- 4 Q Okay. And so she would grab you and Jenna and take -- take  
5 you back?
- 6 A Yes.
- 7 Q And what would a normal Friday night be like at your aunt's  
8 house?
- 9 A Basically just sit around. Maybe go hang out in the garage  
10 with my cousin.
- 11 Q Okay. And so who else would be in the house on these nights?
- 12 A My cousin's now fiancé, and then my aunt, and then my  
13 uncle, and me and my sister.
- 14 Q Was the Defendant's and Brooke's child in the home at that  
15 time?
- 16 A I believe so, yes.
- 17 Q Okay. Okay. Where would you sleep when you were at your  
18 aunt's house?
- 19 A I would sleep on a couch.
- 20 Q Okay. Would anybody else sleep in that room with you?
- 21 A Yeah, my sister, Jenna.
- 22 Q Okay. And if you were to describe your sleep habits, how,  
23 what kind of sleeper would you say you are?
- 24 A A heavy sleeper.
- 25 Q Okay. Do you remember being at your aunt's house and ever

- 1 hearing maybe the baby cry or somebody go and get food out  
2 of the kitchen?
- 3 A No.
- 4 Q Okay. Were there pets in the home?
- 5 A Yeah, there was three dogs.
- 6 Q Three dogs. Okay. And where would those usually sleep?
- 7 A One would -- well, I think all three of them would sleep in  
8 my aunt's room.
- 9 Q Okay.
- 10 A Otherwise, I think Cayenne is like the littlest dog.  
11 Sometimes she would sleep in Brooke's room, I believe.
- 12 Q Okay. Would any of them ever sleep with you on the couch?
- 13 A No.
- 14 Q No. Okay. If you were to walk into the house from outside,  
15 would the dog bark at you? Would any of the dogs bark at  
16 you?
- 17 A Yeah, until they saw you.
- 18 Q Okay. So if you were in the living room and you were to walk  
19 into the bathroom, would the dog bark at you just from moving  
20 from one room to the next?
- 21 A No.
- 22 Q Okay. So it's kind of once they got to know you, they were  
23 okay with you.
- 24 A Yes.
- 25 Q Okay. Did you ever sleep with a fan on in the living room or

1 with the television still on?

2 A Sometimes the T.V., yes.

3 Q Sometimes the T.V. on. Okay. Did you ever -- or when you  
4 were there and hanging out, you said you would hang out with  
5 your cousin, outside.

6 A Yes.

7 Q How late do you think you all would normally stay up?

8 A Around probably midnight.

9 Q Okay. Okay. Who would normally be the first person to go to  
10 sleep in the house?

11 A I would.

12 Q You would. Okay. So then you can't give me the order of  
13 the rest of the people.

14 A No.

15 Q Okay. Do you ever remember a time Jenna waking you up because  
16 she was upset?

17 A Yes.

18 Q Can you tell me about that?

19 A She woke me up and I was kind of bickering with her because  
20 she said she had a nightmare. And she asked me to come sleep  
21 with her on the couch. And I was fighting with her, but  
22 then I decided to go sleep by her because she sounded pretty  
23 serious about it and really adamant to get me over there to  
24 sleep with her on the couch. So I was like, all right, yeah,  
25 I will.

- 1 Q Okay. Do you happen to remember when this would have been?
- 2 A I don't really remember, no.
- 3 Q Okay. So Jenna disclosed this on January 6<sup>th</sup>. Would this  
4 have been before that?
- 5 A Yes.
- 6 Q Okay. Were you at the prison with your sister on January 6<sup>th</sup>?
- 7 A Yes.
- 8 Q Okay. Tell me about your memories of that day at the prison.
- 9 A We were all sitting down. And then my dad and my sister  
10 started talking. And it led to her crying. And then my  
11 dad picked up a Poweraid bottle, I believe it was. And then  
12 my sister said, "Yes", because my dad was spelling out certain  
13 letters on it, pointing to letters. And then she kept saying  
14 "Yes". And the letters that she spelled was D-a-n. So I  
15 am like, all right. So then I started having like some like  
16 thoughts in my head, like, why would she be talking about  
17 him and then it all came out that day.
- 18 Q Okay. So you kind of see her spell out Dan. When she is  
19 spelling it out, this is when she is kind of crying and  
20 upset.
- 21 A Yes.
- 22 Q Were you at any point included in some sort of plan to catch  
23 Dan?
- 24 A Yes.
- 25 Q Can you tell me a little bit about that?

1 A My aunt, she wanted Jenna to pretend to sleep and me to  
2 pretend to sleep one night. And she wanted me to record if  
3 anything happened. And so she made this plan that we were  
4 going to basically bait Dan and have my sister be bait in  
5 a bathroom. And it was pretty uncomfortable.

6 Q Okay. So were you on board to help with this plan or -- ?

7 A She asked me about it and I kind of was like, "Yeah, sure",  
8 but I did not.

9 Q Okay. Okay. Do you remember going back to the house after  
10 that disclosure?

11 A No.

12 Q Okay. Were you with Jenna when she disclosed to Taylor?

13 A Yes. I was.

14 Q Okay. So were you -- you back at your mom and grandma's  
15 house on the 13<sup>th</sup>?

16 A Yes.

17 Q Okay. Okay. Do you remember on December 20<sup>th</sup>, 2015, your  
18 dad's wedding reception?

19 A Yes.

20 Q Where were most of the guests at the reception staying?

21 A They were outside in the garage because my dad had his  
22 wedding out there and everybody was practically partying,  
23 and just dancing, drinking.

24 Q Okay. So if somebody that was there for the party had to  
25 use the restroom, where would they go to the restroom?

- 1 A There is an outside bathroom, but people who were familiar  
2 with the house would go inside.
- 3 Q Okay. And when you say "go inside", what would be the first  
4 bathroom you would approach as you come into the home?
- 5 A There is one to your left as soon as you walk in the door.
- 6 Q Okay. So -- so you have that bathroom when you first walk  
7 in and then what room?
- 8 A That is the laundry room.
- 9 Q Okay. So a bathroom and a laundry room. Is the kitchen off  
10 of those rooms?
- 11 A The kitchen would be to your right.
- 12 Q Okay. Okay. And then, so then you would have to walk past  
13 the bathroom and laundry room into the kitchen and then into  
14 the living room.
- 15 A Yes.
- 16 Q Do you remember a lot of the partygoers coming in and out of  
17 the house that night?
- 18 A No.
- 19 Q Okay. Do you remember hearing the dogs barking a lot at  
20 people coming in and --
- 21 A No.
- 22 Q -- in and out of the home? I believe you said if you were  
23 "familiar with" the house, you would go in.
- 24 A Yes.
- 25 Q Were most of the party guests your dad's friends?

- 1 A Yeah.
- 2 Q Okay. Okay. So do you think them being your dad's friends,  
3 they were going in and out of your aunt's house?
- 4 A No.
- 5 Q Okay. What -- what kind of mood were you in on your dad's  
6 wedding? Were you happy, sad?
- 7 A Happy for him.
- 8 Q Happy for him. How would you describe Jenna during the day?
- 9 A She seemed pretty nervous because we had to go to the church  
10 and everything for my dad to get married. And then we got  
11 to the party and we -- she was basically like having like  
12 fun, like doing her own thing. Me and her were talking.  
13 And then she kind of didn't really talk to me much.
- 14 Q Okay. Okay. So you didn't maybe interact with her a whole  
15 lot?
- 16 A No.
- 17 Q No. Okay. Do you ever remember the Defendant leaving to go  
18 get more soda and -- and supplies for the party?
- 19 A No.
- 20 Q No. Okay. Do you have any observations really or memories  
21 of the Defendant on that day?
- 22 A No.
- 23 Q No.
- 24 A Besides that he was kind of dancing with Jenna a lot. And I  
25 just seemed -- I was like, all right, like we are all family

- 1 I guess so it's like no big deal.
- 2 Q Okay. You said he was kind of dancing with Jenna. Was that  
3 earlier in the day or later in the day? Do you remember  
4 what time --
- 5 A Later in the night.
- 6 Q Later in the night. Okay. Did you stay the night there at  
7 your aunt's house? Do you remember?
- 8 A I think I did.
- 9 Q Okay. Okay. Do you remember seeing Jenna having some --  
10 some swelling on her face?
- 11 A Yes.
- 12 Q Okay. Could you kind of just describe her -- her -- her mood  
13 the day that she had that swelling?
- 14 A Very grumpy and upset.
- 15 Q Okay. Did she ever say specifically what was bothering her?
- 16 A No.
- 17 Q No. Before she had the swelling, you had gone to your  
18 Aunt Janie's house.
- 19 A Yes.
- 20 Q When you got to your Aunt Janie's house that night, did she  
21 have swelling that you remember?
- 22 A Not that I remember.
- 23 Q Okay. I mean, do you remember her complaining about anything  
24 being wrong with her -- her face?
- 25 A No. I don't really remember the night.

- 1 Q Okay. Okay. But you remember the swelling the next day --
- 2 A Yes.
- 3 Q -- and her grumpiness. Okay. Besides that one time on the  
4 couch, at your Aunt Janie's house, do you remember other  
5 times that she kind of woke you up because she was having  
6 a bad -- bad dream or --
- 7 A It was pretty common for her to have bad dreams all of the  
8 time, so.
- 9 Q Okay. Had she ever specifically asked you to -- to sleep  
10 with her or to comfort her?
- 11 A No. Not until that night.
- 12 Q Okay. So that was the first time she kind of pulled you  
13 over --
- 14 A Yes.
- 15 Q -- and wanted you to sleep with her. Okay. Do you ever  
16 remember seeing on Jenna's phone any kind of text messages  
17 between her and -- and the Defendant?
- 18 A No.
- 19 Q Okay. How would you characterize their interactions when you  
20 would be at your aunt's house?
- 21 A They would not talk much. But whenever we were, like,  
22 watching movies in the living room, or anything, he would  
23 always sit by her.
- 24 Q Okay. Why do you think you remember that?
- 25 A I don't know. Because it's just like I guess it was just

1 common that when we all watched movies I would be on one  
2 couch and then my sister, Dan, and my cousin Brooke would  
3 be on the other. And then my Aunt Janie would be in a  
4 chair.

5 Q Okay. Okay. So when you say Brooke, Dan, and Jenna all on  
6 the couch, would Dan be sitting in the middle?

7 A Sometimes, otherwise my cousin Brooke would be sitting in a  
8 chair.

9 Q Okay. Okay. But you have a memory of him being kind of the  
10 one. What about family meals at your aunt's house, you know,  
11 breakfasts or dinners. How -- how were the interactions  
12 around the dinner table between them?

13 A Nobody would really talk much.

14 Q Okay. And that's -- that's like nobody across the board?  
15 There wasn't like Aunt Janie talk with you about school or  
16 anything like that?

17 A That would happen a lot. Like just family talk, basically.

18 Q So when you say there wasn't a lot of talk, do you mean  
19 between Dan and Jenna?

20 A For like the whole table, basically. Like nobody would talk  
21 much. We would just, like, eat. And then that would be it.

22 Q Okay. Okay. Do you ever remember a time of seeing or  
23 hearing the Defendant walk through the living room once  
24 you were asleep?

25 A No.

1 Q Okay. Do you ever remember Jenna's friend Audrey coming to  
2 stay the night?

3 A No.

4 Q No. Okay. Do you ever remember the Defendant and Brooke  
5 having friends kind of crash at the house while you all were  
6 there, too?

7 A No.

8 Q Okay. Anything else you thought was just kind of strange in  
9 terms of Dan and your sister?

10 A Not really.

11 Q Okay.

12 A No.

13 Q Okay.

14 MS. JIPP: I have no further questions.

15 MR. MAESEN: I have nothing for this witness,  
16 your Honor.

17 THE COURT: All right. You may step down. Thank  
18 you. I didn't ask, any questions from the jury? Thank  
19 you.

20 It's getting pretty close to 5.

21 MS. JIPP: Yeah, I don't think I can get through  
22 my next witness.

23 THE COURT: Right. So why don't we adjourn for  
24 the day. I have to remind you not to talk to anybody about  
25 the case. You can't go home and talk to your family members

1 or friends about what's going on. I need to have you back  
2 here, why don't we shoot for 8:45 tomorrow morning.

3 Thank you. Please rise for the -- Yes, sir?

4 JUROR: (Inaudible) How long should we expect  
5 to be here for the two days?

6 THE COURT: We typically go for the full day, so  
7 it depends on how the witnesses are going. We are stopping  
8 a little earlier today, but typically we go to 5.

9 JUROR: Okay.

10 THE COURT: Okay.

11 JUROR: Yes. Thank you.

12 JUROR: 8:45?

13 THE COURT: 8:45, please. Thank you.

14 JUROR: One other question, I thought there were  
15 like 12.

16 THE COURT: Once we get to the very end, after  
17 closing arguments and instructions, then we pull, randomly  
18 pull two people. Okay.

19 JUROR: 8:45 tomorrow?

20 THE COURT: 8:45 tomorrow.

21 Can I meet with counsel --

22 MR. MAESEN: Sure.

23 THE COURT: -- just for a few minutes, after you  
24 picked those up.

25 MS. JIPP: Yeah, thanks.

(at 4:39 p.m., proceeding concluded)

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Becky Blaine

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From: Myrene Koch  
Sent: Wednesday, August 28, 2019 4:49 PM  
To: Margaret Bakker  
Subject: RE: trial

Unfortunately, no. The forensic interviewer is supposed to check that before case review but the list often is given to interns. I noticed it after the fact at case review but by then not clear on if the victim had much support.

*Myrene K. Koch (P-62570)  
Prosecuting Attorney  
Allegan County  
113 Chestnut Street, Allegan, MI 49010  
(269) 673-0280  
(269) 673-0599 fax*

From: Margaret Bakker  
Sent: Wednesday, August 28, 2019 9:03 AM  
To: Myrene Koch <MKoch@ALLEGANCOUNTY.ORG>  
Subject: RE: trial

I thought Safe Harbor would catch it.

From: Myrene Koch  
Sent: Wednesday, August 28, 2019 9:02 AM  
To: Margaret Bakker <MBakker@ALLEGANCOUNTY.ORG>  
Subject: RE: trial

Yes, because the prior APA assigned to the case did not catch that it was missed nor did anyone else who touched the file. As a result, there will now be a checklist for CSC's in files.

From: Margaret Bakker  
Sent: Wednesday, August 28, 2019 8:50 AM  
To: Myrene Koch <MKoch@ALLEGANCOUNTY.ORG>  
Subject: RE: trial

One more question....this victim was not referred for a medical, do you know why?

---

From: Myrene Koch  
Sent: Wednesday, August 28, 2019 8:47 AM  
To: Margaret Bakker <MBakker@ALLEGANCOUNTY.ORG>  
Subject: RE: trial

---

They do but not typically for CSC's. This trooper has been given additional personal training since this investigation.

RECEIVED by MSC 11/29/2022 5:06:44 PM

From: Margaret Bakker  
Sent: Tuesday, August 27, 2019 3:41 PM  
To: Myrene Koch <MKoch@ALLEGANCOUNTY.ORG>  
Subject: trial

This trooper didn't do a very good investigation. Don't they have detectives with MSP anymore?

RECEIVED by MCOA 12/29/2020 4:00:26 PM

STATE OF MICHIGAN

48<sup>TH</sup> JUDICIAL CIRCUIT COURT (ALLEGAN COUNTY)

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THE PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 18-21709-FC

DANIEL ALBER LOEW,

Defendant.

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JURY TRIAL - DAY TWO

BEFORE THE HONORABLE MARGARET ZUZICH BAKKER, CIRCUIT JUDGE

Allegan, Michigan - Wednesday, August 28, 2019

APPEARANCES:

For the People: MS. EMILY JIPP (P80894)  
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269-673-0280

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RECORDED BY: Anne C. Lange, CER 8176  
Certified Electronic Recorder  
269-673-0305

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Allegan, Michigan

Wednesday, August 28, 2019 - 8:52 a.m.

THE COURT: We are back on the record in regards to file 18-21709. I advised counsel yesterday afternoon off the record that I was going to reviewed the issue in regards to the admissibility of a -- the prior conviction of the Defendant in regards to the 2000 -- I believe a 2015 conviction for home invasion and I did not have time to review the actual hearing, but I did do some work in regards to researching the issues.

So what I don't know and what I don't recall, and I am sure, Ms. Jipp, you do, is whether or not the home invasion involved theft. I presume it did. Is that correct?

MS. JIPP: It did, your Honor.

THE COURT: All right. Thank you.

And I know at the time I did indicate that the prosecution would be able to use that conviction to impeach if the Defendant testifies. So I am going to give you a very short time to argue that again and put, if you wish to make any statements at this time regarding that issue before the Court.

MS. JIPP: I would like an opportunity to just readdress that, your Honor. Based on our conversation

1 yesterday, I also kind of went back and talked to my  
2 coworkers and we kind of did a Westlaw search to see if there  
3 would be a situation where we felt that it would not be  
4 admissible, given the fact that yes, it was a home invasion,  
5 but the underlying offense that was committed was a crime of  
6 dishonestly. And then obviously it was penalized by greater  
7 than a year. In doing research, there has been no recent  
8 case law that says that that would not be admissible under  
9 609.

10 I believe the only situation detailed where the  
11 conviction would not be admissible under 609, would be if the  
12 only witnesses for the defense would be the Defendant himself.  
13 Because it would act in a way of kind of depriving the  
14 Defendant of an ability to present a defense at all. And also  
15 situations where the underlying offense was if not identical,  
16 so similar to the charges that they were currently facing.

17 In this situation, it was a home invasion with a  
18 larceny and we are now facing a CSC and as defense counsel  
19 listed off yesterday, there were anywhere from four to six,  
20 I can't remember what he said, witnesses that he is calling  
21 on behalf of the defense. So we don't -- don't think that  
22 that case law and that would have been 3172 MA 182, that  
23 would have applied to that. And so we don't think that that's  
24 a situation in this case. And we do think the People should  
25 be allowed a certified record of conviction and impeach him

1 on that issue.

2 THE COURT: Mr. Maesen?

3 MR. MAESEN: Well, we obviously object to that.  
4 We think it's overly prejudicial. I mean, this is a  
5 credibility case as it is. Yes, he has other people here to  
6 testify, but none of them are specifically here to prop up  
7 his credibility or talk him up about the situation involved.

8 And we think that it's pretty courageous for him  
9 to testify as it is. We ask that he have the benefit of not  
10 being prejudiced by having this criminal conviction,  
11 particularly when it's that recent, admitted.

12 THE COURT: Thank you. The -- obviously the review  
13 under M.R.E. 609 starts with whether or not it qualifies  
14 as a offense that could be considered, before you can get to  
15 that probative analysis and probative versus prejudicial  
16 analysis. And it's clear, based on the conviction, because it  
17 does involve theft, that a home invasion is a felony that  
18 would be admissible in regards to the first parameters of  
19 that rule.

20 The Court then has to consider the probative versus  
21 prejudicial effect. And in looking at that issue, there is  
22 a -- issues that have been raised by the Court of Appeals over  
23 time have involved the length of time, obviously, between the  
24 conviction and the case at hand.

25 This is a fairly recent conviction and I don't think

1 that there is a bar to that in regards to prejudicial versus  
2 probative value. And the Court would not find that as a  
3 bar.

4 It's certainly not similar in nature. The Court of  
5 Appeals, in reviewing probative versus prejudicial, does look  
6 at whether or not it's similar in nature to the crime that's  
7 charged. Home invasion, is it a second or a first, I don't  
8 know. Ms. Jipp.

9 MS. JIPP: A second. He ended up entering a plea  
10 to a second, your Honor.

11 THE COURT: Home invasion second is certainly not  
12 similar in nature to the charges before the Court today,  
13 multiple charges of criminal sexual conduct. So that is, in  
14 weighing prejudicial -- prejudicial versus probative, that is  
15 not a bar in regards to it being more prejudicial than  
16 probative.

17 Credibility is certainly an issue in this case.  
18 Although there has been several witnesses so far that the  
19 Court has heard, and there has been some indication about what  
20 other witnesses might testify to. There is some  
21 circumstantial evidence perhaps, that might be viewed in  
22 favor of one party or another, but it will certainly center  
23 on the credibility of witnesses in regards to whether or not  
24 the jury would find that the elements of the crime have been  
25 proven beyond a reasonable doubt.

1           So I think credibility is a factor that actually  
2 favors admissibility in this case. It's an important issue.  
3 It's one the jury needs to make a decision about. And so a  
4 prior conviction, I think, is valuable in regards to theft.  
5 And certainly the Court of Appeals has made it clear that  
6 it's theft crimes are perhaps lower on the ladder of probative  
7 versus prejudicial and should be given more consideration  
8 by the Court. And I appreciate that, however, I do believe  
9 that the credibility issue is important here and the home  
10 invasion second degree involving larceny or theft is still a  
11 valuable piece of information.

12           So in weighing those factors, there is still one  
13 factor to consider and that's whether or not the Defendant,  
14 that somehow or another prohibits the Defendant from  
15 presenting a defense, either by himself or -- or in some other  
16 way. It would somehow or another bar him from testifying.  
17 I think the most similar in nature case is an unpublished  
18 case by the Court of Appeals, People versus Merrick, which  
19 was decided on December 12<sup>th</sup> of 2017, very similar  
20 circumstances where the Court looked at the factual basis and  
21 the similarity to this basis or the similarity to the facts in  
22 this case.

23           The Court in that case determined that the prior  
24 conviction was admissible and interestingly enough it was  
25 also a criminal sexual conduct case in Merrick and the

1 prior home invasion was the -- home invasion was the prior  
2 conviction. They stated in that case that the Defendant  
3 argued that the admission of prior convictions were more  
4 prejudicial than probative. That the trial Court properly  
5 found evidence of the prior conviction to have some probative  
6 value, because the conviction was not so old as to be  
7 immaterial. And there was no contest in regards to it being  
8 an appropriate offense to be admitted, based on the type of  
9 offense that it was.

10 They indicated,

11 "The Court also properly determined the prior  
12 home invasion was not similar to the CSC charges,  
13 did not give rise to an improper propensity type  
14 inference."

15 And those are some of the comments made in the Merrick case.

16 So in this particular situation, in looking at  
17 probative versus prejudicial, this Court determines the  
18 factors regarding probative versus prejudicial is reviewed  
19 in a variety of Court of Appeals cases that are published and  
20 also I am looking at the Merrick case, which is unpublished,  
21 the Court feels that admissibility is appropriate and the  
22 Court will allow the prosecution to admit the prior conviction  
23 if the Defendant does testify.

24 Thank you.

25 MS. JIPP: Thank you, your Honor.

1 THE COURT: Are you ready to call your next  
2 witness?

3 MS. JIPP: We are, your Honor.

4 THE COURT: Please rise for the jury. Good  
5 morning, you may be seated. We are ready to proceed with  
6 witnesses. If you would like to proceed, Ms. Jipp, with  
7 your next witness.

8 MS. JIPP: Thank you, your Honor. We would call  
9 Taylor Bluhm.

10 MS. LANGE: Can you raise your right hand?  
11 Do you solemnly swear or affirm that the testimony you are  
12 about to give in this matter will be the truth, the whole  
13 truth, and nothing but the truth so help you God?

14 MS. BLUHM: Yes.

15 TAYLOR BLUHM

16 (at 9:02 a.m., sworn as a witness, testified as  
17 follows)

18 DIRECT EXAMINATION

19 BY MS. JIPP:

20 Q Good morning. If you could just state and spell your name  
21 for the record.

22 A Taylor Bluhm, T-a-y-l-o-r B-l-u-h-m.

23 Q Thank you for being here this morning, Taylor. If you could  
24 just tell -- tell the jury how old you are.

25 A I am 22.

1 Q You are 22. And so how many years older are you than your  
2 younger sister, Jenna?

3 A Six.

4 Q Okay. So in 2015, would you have been 19?

5 A Yes.

6 Q And that would have made Jenna about 13?

7 A Yes.

8 Q Okay. Were you living with Jenna in 2015?

9 A No.

10 Q Okay. Where were you living at that time?

11 A At my dad's trailer.

12 Q Okay. So and -- with your dad?

13 A Yes.

14 Q And how would you describe your relationship with your dad,  
15 during that time period?

16 A During that time period, it was just -- our relationship, it  
17 was okay, it was well. We were just kind of enjoying the time  
18 we had together.

19 Q Okay. And how would you describe your relationship with Jenna  
20 at that time?

21 A Good. Very good. I have always been kind of a sister/mom/  
22 friend figure to Jenna.

23 Q Okay. What about your relationship with Brooke?

24 A Good.

25 Q Yeah. Was there a period of time where you lived with Brooke?

1 A Yes.

2 Q Okay. And was -- would that have been in your Aunt Janie's  
3 house?

4 A Yes.

5 Q Would you consider your relationship with your Aunt Janie to  
6 be a positive one?

7 A Yes.

8 Q Okay. And what about with Uncle Scott?

9 A Yeah. It was positive.

10 Q Okay. So would you kind of describe your family as close  
11 knit?

12 A Yes.

13 Q Okay. Your dad got -- got married in December of 2015.

14 A Yes.

15 Q Do you remember the date?

16 A I don't remember the exact date, no.

17 Q Okay. Beginning, middle, end of December?

18 A It was towards the middle.

19 Q Okay. Okay. Walk me through kind of what that -- that day  
20 was like.

21 A Well, woke up in the morning, got ready, had some conversation  
22 with my dad about, are you really ready to get married,  
23 because you are going to prison, you know, like, that didn't  
24 really make much sense to me. But it's not my life. And got  
25 the girls ready for the day, did their hair. We went to the

1 church. They had their little ceremony there. And then we  
2 went to my aunt's because after the ceremony they were having,  
3 like, some food and just a little get together at my aunt's  
4 house for everybody to go to and mingle and whatnot. And we  
5 all did that and it seemed like a pretty okay day.

6 Q Okay. In terms of the wedding, music, photographers, kind of  
7 all -- all of that stuff?

8 A Yeah.

9 Q Okay. Were those kind of family friends or relatives that  
10 were all doing those things?

11 A Yes. Yeah, we didn't have no professionals or anything.

12 Q Okay. Okay. And so what time of day was the actual  
13 ceremony?

14 A The ceremony was, I would say, late morning.

15 Q Okay.

16 A And the get together was probably, it was often the evening  
17 time.

18 Q Okay.

19 A So late afternoon, evening time.

20 Q So it's kind of a gap in between when -- so you didn't go  
21 directly from the ceremony to the aunt's house or did  
22 everybody go ahead and go --

23 A They all went to my aunt's house after the ceremony, yeah.

24 Q Okay. Okay. And what was the set up for the reception at  
25 your aunt's house?

1 A It was in the garage. She's -- her driveway is not very big,  
2 so there was minimal parking in the driveway. But in the  
3 garage, there was tables with food set up and the music was  
4 in there. And they were able to clear a spot for like the  
5 dance floor, if you will and --

6 A Okay.

7 Q -- things like that.

8 A Okay. And so how would you describe Jenna's mood as she is  
9 at the ceremony and at the reception in the beginning of the  
10 day?

11 A The ceremony she was good, she was smiling, happy. My dad was  
12 joking around with her, twirling her around, because she  
13 had a dress on. And then later on in the day, when we first  
14 got to my aunt's, it -- she seemed okay. She was kind of  
15 talking with everybody. And then as the day kind of went on,  
16 she just kind of depleted from being around everybody I guess.

17 Q Okay. Okay. And do you think that's just kind of -- you  
18 would describe her as more introverted?

19 A Yeah. Yeah.

20 Q Okay. Do you remember at any point that the food or drink  
21 running low?

22 A No.

23 Q No. Okay. Do you remember kind of remember where people  
24 were directed to use the restroom?

25 A Yeah, they have attached to the garage is an outside bathroom.

1 And that was kind of the main bathroom that people were using.  
2 Because in that -- Janie wanted to keep people out of her  
3 house, obviously, because you know, people are coming and  
4 going. And she just didn't really want to open her house to  
5 everybody.

6 Q Okay. Was that something that she -- she made really clear  
7 to everyone or was kind of an unspoken rule?

8 A Well, whomever asked to use the restroom was guided and  
9 directed to the outside restroom.

10 Q Because they wouldn't know the home --

11 A Right. Right.

12 Q -- I guess.

13 A They would have to approach somebody that was familiar with  
14 the area to say, "I have to use the restroom, where -- you  
15 know, where can I go?"

16 Q Do you remember there being a lot of traffic in and out of  
17 the home?

18 A No.

19 Q Okay. Okay. Do you remember yourself kind of going in and  
20 hanging out inside?

21 A No.

22 Q No. Okay. Do you ever remember a period of time Jenna going  
23 inside?

24 A No.

25 Q No. Okay. Would you say most of the adults there were -- were

1 drinking alcohol?

2 A Yes.

3 Q Okay. Do you ever remember a time either the Defendant Dan  
4 or Brooke going into the home for a period of time?

5 A No. I really didn't pay too much attention.

6 Q Okay. Later in that evening, did you have any sort of  
7 standout observations about Jenna and her demeanor or her  
8 behavior?

9 A No. Not that day.

10 Q Just kind of that she just seemed depleted in general.

11 A Yep. Yep.

12 Q Okay. And what about the Defendant, any kind of observations  
13 that stuck out in your mind?

14 A No. No. Everybody was just drinking. I mean he -- he  
15 seemed to have gotten -- he got drunk fairly fast. But I  
16 mean that was --

17 Q Okay.

18 A -- everybody was having a good time, if you will, so.

19 Q Okay. Okay. Now you said that that was before your dad was  
20 going to be sent to prison. Do you know approximately when  
21 your dad was first taken into custody?

22 A I believe he was taken into custody the first time, before he  
23 got bonded out, would have been I believe in November time,  
24 I do believe. And then he got bonded out and he was out  
25 for about two months, because he was bonding out on a

1           \$250,000 bond. And then he got sentenced into prison, I  
2 believe it was March time.

3 Q       Okay. So that would have been March of 2016.

4 A       Mmmhmm.

5 Q       Okay. So when he is first taken into custody, how -- how are  
6 you and your sisters able to kind of interact with him?

7 A       We used video call. The jail had a -- where you could -- you  
8 could go into the jail you could visit or they have it where  
9 you could do like a Skype from your laptop at home.

10 Q       Okay.

11 A       And so then we were doing that at Aunt Janie's house, we were  
12 Skyping him.

13 Q       Okay. And why were you doing that at Janie's house.

14 A       Because we didn't have internet at my dad's house.

15 Q       Okay.

16 A       Or a computer.

17 Q       Do you ever remember a time, and I know this was March of  
18 2016, Do you ever remember a time thinking, Dan and Jenna  
19 seemed to kind of have weird interactions?

20 A       No.

21 Q       Around this period of time?

22 A       No.

23 Q       No. Nothing stands out to you. And was there ever a time  
24 period that you -- well, I believe -- did -- did you say  
25 that you were living with your father before he went to

1 prison?

2 A Yes.

3 Q Did you continue to live there after --

4 A Yes.

5 Q -- after he was incarcerated.

6 A Yes.

7 Q Did you have any roommates or --

8 A I -- I -- my fiancé at the time Shenavery, and I, lived  
9 together back there.

10 Q Okay. So -- so you all were living in that home. Once he  
11 was able to have visitors at prison, would you go with your  
12 sisters sometimes?

13 A Yes.

14 Q Okay. And how -- how many times do you think you took your  
15 sisters?

16 A I personally took them probably five or six times.

17 Q Okay. And so the other times they wanted to go see their  
18 dad, who would they go with?

19 A They would have to go with Janie.

20 Q Okay. Because they needed an adult.

21 A Yes.

22 Q Okay. Would -- in your memory, would the girls ever spend the  
23 night with their grandma before they would go to do these  
24 visits?

25 A No. No. They would have to stay at -- Janie preferred it if

1 they stayed at her house and then because they would have to  
2 get up so early in the morning and then they would have to go  
3 to the prison. So they would just stay there, wake up, and  
4 they would just go.

5 Q Okay. So that was kind of like, Janie says if you want to  
6 go, this is -- this is --

7 A Yeah.

8 Q -- how we are going to do it.

9 A That's what is more simple, so.

10 Q Okay. So she would stay -- or she -- Anna and Jenna would  
11 stay Friday night. Would they ever come -- come back and  
12 stay again on a Saturday night; do you know?

13 A Sometimes, yeah, they would stay there Saturday.

14 Q Okay. Okay. Do you ever recall a time that Jenna was going  
15 to come and stay with you at your father's home?

16 A Yes.

17 Q Like to -- to just visit. Was that a regular occurrence?

18 A Yes. Yeah, she -- normally the girls would stay with me. It's  
19 just when it came to visiting my dad, over the time, I stopped  
20 going. So they had -- they still wanted to see their father,  
21 and so then they would go with Janie.

22 Q Okay. And then so they would stay with her.

23 A Yeah.

24 Q Okay. Do you remember a time where Jenna was just going to  
25 stay with you to visit, not to go see her dad?

1 A Yeah. Yeah.

2 Q Okay. What's the distance between your dad's trailer and  
3 Janie's place?

4 A It's less than a mile. It's right across the cornfield.

5 Q Okay.

6 A Literally it's like kitty-corner.

7 Q Okay. So if it's nighttime, would Jenna have walked from the  
8 house to your dad's home?

9 A No.

10 Q Okay. So she would have had somebody drop her off or --

11 A Yes.

12 Q -- because she couldn't drive.

13 A Right.

14 Q Okay. Was there ever a time that Dan dropped Jenna off at  
15 the home?

16 A I do believe there was a few times.

17 Q Okay.

18 A Yes.

19 Q Was there anything about those interact -- did -- did you  
20 interact with Dan when he would drop Jenna off?

21 A I think one time briefly in the driveway. But it would have  
22 been just like a you know, wave, or whatever. That was it.

23 Q Okay. Okay. And you kind of said that you had a good  
24 relationship with -- with Brooke and Janie. What was your  
25 relationship with Dan?

1 A It was cordial -- cordial --

2 Q Okay.

3 A He was with my cousin and my fiancé at the time knew him,  
4 knew Dan prior to me knowing him, so that's kind of how I  
5 met Dan. And I mean, it was just a -- it was a cordial  
6 thing.

7 Q Yeah. Friendly enough to hand out together socially.

8 A Yeah.

9 Q Okay. It would -- wouldn't be weird for you to kind of wave  
10 and say, "hi" if he was coming.

11 A Correct.

12 Q Coming by your dad's. Was there ever a time that he dropped  
13 Jenna off that you kind of thought, well, this seems -- this  
14 seems strange or she seems uncomfortable with him?

15 A No. No. There was nothing that really popped out.

16 Q Okay. Okay. Do you remember receiving a message from your  
17 sister in November of 2017?

18 A Yes.

19 Q Okay. Can you describe what this message was that you  
20 received?

21 A It was -- she sent me a picture of her face. And I was deeply  
22 concerned because of the swelling in her face. That -- that  
23 really -- it drew my attention. And -- and I had -- you know,  
24 I was concerned and I -- I asked her what -- what -- how it  
25 happened. Because her face was so swelled up.

1 Q I am going to approach you with what was previously admitted  
2 as People's Exhibit 8 and 9. Are these the photos you  
3 received from your sister?

4 A Yes.

5 Q And approximately what time did you receive those photos?

6 A I would say it was probably about -- between 8 and 8:30 in  
7 the morning.

8 Q Okay.

9 A That she sent those to me.

10 Q Okay. Did she detail what time she noticed her injury to you?

11 A No.

12 Q Okay.

13 A Well, well she had briefly -- when I asked her, "When did this  
14 start happening?" She said that it was in the nighttime.

15 Q Okay.

16 A That is starting swelling up and getting -- and then it just  
17 progressively got more swelled and more sore and more tender.

18 Q Okay. And then she sent you the picture, you think, between  
19 8 and 8:30.

20 A Yeah.

21 Q Was that through your -- like a texting app --

22 A Yes.

23 Q -- or Facebook or --

24 A Yep.

25 Q Okay. Okay. As a result of this message, what did you end

1 up doing?

2 A Well, I approached her. She was at my grandma's house when  
3 I got to see her. And this would have been on a Saturday  
4 morning, because she stayed at Janie's house that Friday  
5 night, because they were going to go to the visit with my  
6 dad on Saturday morning. They -- both girls did not go to  
7 that visit that day. Jenna's face was so swelled up, it --  
8 she could not go. She went to my Grandma Betty's, which was  
9 my mom's mom. There I approached her and I was like, man,  
10 what's going on kid, like. And she was -- she was extremely  
11 angry. She was mad. And I -- I don't know why she was mad.  
12 I didn't know at the time. And she was just short tempered  
13 at -- I would try to say -- you know, we would put cold  
14 compression on it, give her a Benadryl. And she was just kind  
15 of like, didn't want nothing to do with nobody (sic). And  
16 I -- because I noticed she was -- she had bowel problems. So  
17 she would sometimes walk a little different because she  
18 hadn't -- you know, she was constipated, hadn't gone in quite  
19 some time. And you know, I noticed her walking was a little  
20 different. So I had asked her, you know, "Have you pooped  
21 recently? What's going on?" You know, that's a sore subject  
22 for her to even, you know, talk about. She gets so  
23 embarrassed about it. But -- and she snapped off on me and  
24 she was like, "Leave me the fuck alone", basically. And I  
25 was like, well, don't -- you know, I didn't want to make her

1 mad, but I was just concerned and asked her. And from that  
2 point, she didn't want no part of nobody (sic).

3 Q Did she say, "Yeah, I am constipated. It's none of your  
4 business."

5 A No. She was just completely lashing out. Wanting everybody  
6 to just leave her alone.

7 Q Would you say that that's typical for your sister to act  
8 that way?

9 A No. No. She is -- she is really one of the type of kids  
10 that she needs affection, she needs, you know, the family's  
11 love. She wants to talk. She -- she never angry and just  
12 telling everybody to leave her alone. That's the first, I  
13 mean, what's going on.

14 Q Okay. And kind of as a result of the way her face looked and  
15 kind of her overall demeanor that day, I mean, did that  
16 raise any suspicions in your mind? I mean, what were you  
17 thinking?

18 A Well, I asked her. I said, "Did something happen to you?"  
19 Because that's just what I am naturally going to ask her.  
20 And she -- she said no and she was really angry. And -- and  
21 just everything looked -- it looked like she had something  
22 wrong, but I didn't want to push the issue because she already  
23 looked like she didn't feel well. She -- I mean, she  
24 obviously didn't feel well. And I didn't want to just keep  
25 pushing on her when she is telling me everything is fine,

1 leave me alone. You are just being over fucking protective,  
2 you know, so.

3 Q Okay. Did you -- did you think about taking her to the  
4 hospital or --

5 A Yeah. Yeah. And I tried for that. I -- I said, you know, we  
6 should go. But everybody insisted that, give her Benadryl,  
7 it's probably her allergies acting up. And she said that  
8 nothing had happened, so we didn't have any reason to believe  
9 that it was anything.

10 Q Okay. And in your mind, did the Benadryl kind of help with  
11 the issues?

12 A I think it was -- the Benadryl seemed to have -- I don't  
13 really know what it did. But I think it was more of the  
14 cold compression of the bean bag that we had out of the  
15 freezer that she kept putting it on and then she would take  
16 it off. I think that is what brought some of the swelling  
17 down. But she still, underneath her nose and underneath her  
18 eyes and on the bridge of her nose was still really, really  
19 sore.

20 Q Did you ever see or have a -- you kind of mentioned, oh,  
21 it could be allergies. Was she known to have bad allergies?

22 A Not really at that time.

23 Q Skin sensitivities?

24 A Not really at that time, no.

25 Q No.

1 A No. That's why I was like, well, Benadryl, like instantly.  
2 And I -- I am known for going at situations and taking them to  
3 that -- I mean, right to, "Let's go to the hospital right  
4 away." Let's not even figure out if it's over-the-counter  
5 medicine will do it. Like that's just how I am with the  
6 girls. So I right away was like, let's go. But then  
7 everybody is like, "Taylor, just calm down. Just give her  
8 a Benadryl, you know, quit jumping the gun." But that's  
9 just naturally who I am.

10 Q Okay. Okay. You kind of describe your sister as she really  
11 likes affection and she likes to -- to talk and engage with  
12 the family. From 13 to 15, the time that she is saying that  
13 he was sexually assaulting her, did you notice any sort of  
14 personality changes?

15 A Yeah. She became really just telling everybody -- basically  
16 doing her own thing. Like, leave me alone, I don't want to  
17 talk. She didn't want no part of like that bonding family  
18 time. Where, if you will, we would sometimes baby her, or  
19 you know, tickle underneath her -- and just do things like  
20 that with her. She didn't want no part of nobody touching  
21 her anymore. She didn't want no part of anybody doing her  
22 hair, offering to help her.

23 Q Okay.

24 A She was just like -- I thought maybe it was a phase. She  
25 was just figuring out who she was, and you know, didn't want

1 to be coddled anymore by the family. But she was really  
2 just -- she didn't want no part of none of us.

3 Q Okay. I want to take you to January of 2018. Did you call  
4 police on January 13<sup>th</sup> of 2018?

5 A Yes.

6 Q Okay. Had you prior to that day, heard anything from Jenna  
7 about her interactions with Dan?

8 A No.

9 Q Okay. So walk me through January 13<sup>th</sup>.

10 A Okay. So I heard about this -- I don't know this whatever  
11 plan they had going on where they were trying to -- it was  
12 mentioned to me that there was something going on between  
13 Jenna and Dan. And that Janie and that side of the family  
14 had this plan to like basically use Jenna as bait --

15 Q All right. So let me stop you for just a second, for one  
16 clarification. So you heard about this -- this Dan touching  
17 Jenna or something going on with Jenna.

18 A Yeah.

19 Q Was that all on the 13<sup>th</sup> or did you hear about that and it  
20 just kind of culminated and you called the police on the  
21 13<sup>th</sup>?

22 A Yes. I heard about it and I -- I instantly - I went and got  
23 Jenna and called the police.

24 Q Okay. Okay. So you hear about this plan. When you are  
25 hearing about this, is this over phone conversations or where

1 are you versus where is Jenna?

2 A So I -- Jenna is at Janie's house and I am at my grandma's  
3 at the time. And so then I contact Jenna. And I am like,  
4 whoa, she finds out that I know something. Because I really  
5 didn't know any detail when I first found out. I was hearing  
6 about it and it was in probably five minute of me hearing  
7 about it that I was on the phone trying to get Jenna on the  
8 phone. And letting her know I am coming to get you.

9 Q Okay. Who did you -- who did you hear from? Who was that  
10 first little nugget from?

11 A My mom.

12 Q Your mom. Okay. And so you reach out to Jenna. Do you call  
13 her or do you text her?

14 A Yeah, I -- well, I text her. I tried calling, she doesn't  
15 answer. So then we are texting and I am like, "I am coming  
16 to get you." And she calls me back, because she knows that  
17 I am coming. And she was more concerned about the family,  
18 my dad's side of the family that she is going to mess up  
19 this plan that they've put together that at that time, I  
20 really didn't know the whole -- whatever plan was going on.  
21 I learned about that once I picked Jenna up from Janie's.

22 Q When you -- when you went to pick her up, did you know the  
23 full extent of the allegations?

24 A No.

25 Q Okay. So you just think something is going on between Dan

1 and Jenna --

2 A Yep.

3 Q -- and then there is some plan formulated where she is going  
4 to have to be bait.

5 A Right.

6 Q Okay. So about what time of day is this that you are getting  
7 these messages.

8 A It's late in the evening.

9 Q Okay.

10 A It's at night, yeah.

11 Q Okay. And you said you went and picked her up.

12 A Yes.

13 Q Did you pull in the driveway, go in and say "Hi" to Aunt  
14 Janie?

15 A No. I pulled in and Jenna was coming out.

16 Q Okay. So she was kind of waiting for you.

17 A Yeah.

18 Q What was her demeanor when she got into the car with you?

19 A Go. She was -- she was like, "Let's go. Go right now. Don't  
20 let him see you." I am like, "Why?" And that was because  
21 she had told them she was going with a friend to the movies.  
22 Because she didn't want to upset -- she didn't want -- they  
23 came up with this plan, so to speak, and Jenna did not --  
24 she didn't have the nerve or the backbone to say, "Hey, no,  
25 I am not doing this." So she was like, "I am going with my

1 friend to a movie, whatever. And got out of the house and  
2 got in with me. Because she didn't have that in her, to say,  
3 "Hey, Taylor is coming to get me."

4 Q Would you characterize her as a people pleaser?

5 A Jenna -- yes. At that time, she would just kind of -- she  
6 really didn't stand up for herself anymore.

7 Q Okay. So she gets in the car and she's like, would you  
8 describe it as panicked almost?

9 A Yeah. Like you need to, like let's go right now. Like as if  
10 she didn't want my vehicle or me to be seen.

11 Q Okay. Okay. Did you have a conversation about the extent of  
12 Dan's actions and --

13 A Yes. She -- I asked her, I said, "What's going on, kid?"  
14 It's exactly what I said to her. And she starts telling me.  
15 And I tell her, right off the rip, "You do not have to do  
16 this bait bullcrap. Your voice needs to be heard. It will  
17 be heard. And you need to know the power of your voice and  
18 what you gotta say. You don't have to go and do anything to  
19 prove anything to anybody. You just say your words and what  
20 has happened to you and that's enough." And so that's what we  
21 did.

22 Q Okay. So you get back to your grandma's, I assume.

23 A Yes.

24 Q And then is that when you called the police?

1 A Yes.

2 Q Okay. Before you got back with Jenna, did anybody there,  
3 your grandma or mom, or Anna know the extent of what Dan had  
4 been doing to Jenna?

5 A No.

6 Q Okay. So it's kind of like it all blew up that night.

7 A Yes.

8 Q Okay. And Trooper Desch came out and spoke to you and your  
9 mom.

10 A Okay.

11 Q As this kind of all came to light and everybody was -- was  
12 finding out about it in the family, how did Jenna seem?

13 A She was really -- she would like dry heave sometimes. She  
14 was really nerved up. And almost embarrassed. And she --  
15 you could tell she didn't feel like her voice was enough.  
16 It was like her words weren't enough to -- it was like she  
17 felt like she had to prove, you know, what happened. It was  
18 like she was set on she had to do this bait plan for anybody  
19 to believe what she had to say.

20 Q Uh-huh. Okay. How would you describe her since she kind of  
21 came forward and disclosed all of this?

22 A Things have been going okay. She is -- for -- well, since  
23 she started saying anything, she -- she ended up going into  
24 counseling. She was starting to cut herself, things like  
25 that. But then she started -- once she said what has

1 happened, she has been really anxious, really just kind of  
2 paranoid, nervous. But she is doing a lot better when it  
3 comes to knowing that she had something to say and she said  
4 it. You know, her -- her as a person, is growing, you know.  
5 But she is still -- she is traumatized.

6 Q You said paranoid. What do you think she is paranoid about?

7 A She was fearful about something happening to her. She --

8 Q By law enforcement or --

9 A No. She is fearful of Dan. Just -- I don't know what -- how,  
10 I don't know. But she -- she's just like -- he scares her.

11 Q Okay.

12 A Which is really hard for a big sister to see that.

13 Q Yeah.

14 MS. JIPP: I have no further questions.

15 THE COURT: Mr. Maesen.

16 MR. MAESEN: Sure.

17 CROSS-EXAMINATION

18 BY MR. MAESEN:

19 Q Since this case started, are you aware that your sister has  
20 had any contact with Dan at all?

21 A No.

22 Q You don't think she has seen him since it's started?

23 A No.

24 Q You are not aware of him trying to contact her, correct?

25 A Correct.

1 MR. MAESEN: That's all.

2 THE COURT: May this witness be excused?

3 MS. JIPP: Yes, ma'am.

4 THE COURT: Any -- before I -- any questions from  
5 the jury? All right. Thank you. You may step down. Thank  
6 you.

7 Next witness?

8 MS. JIPP: Yes, your Honor. I am going to have  
9 her bring her on down.

10 THE COURT: If counsel would approach?

11 (at 9:28 a.m., counsel approached the bench for  
12 a conference)

13 (at 9:28 a.m., bench conference complete)

14 JUROR: Your Honor, I am probably out of line --

15 THE COURT: Well, that -- if you have a question or  
16 need something, can you write it down, or do you need to be  
17 excused?

18 JUROR: I need to go to the restroom.

19 THE COURT: That's okay. Go ahead. We will take  
20 a five minute break.

21 JUROR: Thank you.

22 MS. LANGE: All rise.

23 THE COURT: And if other members of the jury wish  
24 to use the restroom, why don't you all go into the jury room  
25 and we will be back in in a few minutes. Thank you. I am

1 sure it will be more like ten.

2 (at 9:29 a.m., Court took a recess)

3 (at 9:42 a.m., Court resumed)

4 THE COURT: Remain standing for the jury.

5 You may be seated. Thank you. If you could call  
6 your next witness.

7 MS. JIPP: We would call Audriana Ordonez.

8 THE COURT: If you could come forward and you can  
9 stop right there, and turn towards Ms. Lange, and raise your  
10 right hand. There you go.

11 MS. LANGE: Do you solemnly swear or affirm that  
12 the testimony you are about to give in this matter will be  
13 the truth, the whole truth, and nothing but the truth, so  
14 help you God?

15 MS. ORDONEZ: Yes.

16 THE COURT: And then you can have a seat over in  
17 that chair. Thank you.

18 AUDRIANA ORDONEZ

19 (at 9:43 a.m., sworn as a witness, testified as  
20 follows)

21 DIRECT EXAMINATION

22 BY MS. JIPP:

23 Q Audrey, if you could state and spell your name for the record.

24 A Audriana Rose Ordonez. A-u-d-r-i-a--

25 THE COURT: Audriana, I can't hardly hear you. And

1 I am closer to you than perhaps that last juror is. So can  
2 you talk a little louder and get a little closer to the  
3 mic?

4 BY MS. JIPP:

5 A Audriana Rose Odornez, A-u-d-r-i-a-n-n-a R-o-s-e O-r-d-o-n-  
6 e-z.

7 Q Okay. Thank you. I think we can all hear you better now.  
8 how old are you Audrey?

9 A Sixteen.

10 Q Sixteen. What grade are you going into?

11 A Eleventh.

12 Q Eleventh. And do you know Jenna Bluhm?

13 A Yes.

14 Q Okay. How long have you known Jenna?

15 A Since first grade.

16 Q Since first grade. Okay. Were you friends in school?

17 A I think we started being friend the end of first grade, the  
18 beginning of second grade.

19 Q Okay. Okay. So would you hang out with Jenna outside of  
20 school?

21 A Yes.

22 Q Okay. And what are some of the things you guys would do  
23 together when you would hang out?

24 A Just basically hang out at each other's houses, go to the  
25 parks, have cookouts. My family does a lot of cookouts.

- 1 Q Okay. Okay. So she would come to your house, you would go  
2 to her house.
- 3 A Or we would go roller skating a lot growing up.
- 4 Q Okay. Okay. Would you ever go to her Aunt Janie's house?
- 5 A Yeah.
- 6 Q Do you kind of remember a timeframe when you started to go  
7 to Aunt Janie's house?
- 8 A When -- the summer of when we started hanging out.
- 9 Q Okay.
- 10 A Because we would go swimming all of the time.
- 11 Q Okay. You would go swimming, Aunt Janie has a pool?
- 12 A Yeah.
- 13 Q Okay. When you would go to Aunt Janie's house, who else  
14 would be there?
- 15 A Sometimes Anna and the people that live there.
- 16 Q Okay. So Aunt Janie, Uncle Scott.
- 17 A Yeah.
- 18 Q Brooke, Brooke's boyfriend, Dan?
- 19 A Yeah.
- 20 Q Okay. Do you remember Brooke and Dan having a baby when you  
21 started going over there?
- 22 A Not right away.
- 23 Q Not right away.
- 24 A No.
- 25 Q It kind of happened a little bit after that.

1 A Yeah.

2 Q Okay. Did you ever stay at Jenna's grandma's house?

3 A Yes.

4 Q Yeah. Okay.

5 A We stayed at her grandma's house like when we first started  
6 being friends.

7 Q Okay.

8 A And then her dad's house.

9 Q Okay. Was this her Grandma Betty or her Grandma Sarah's  
10 house?

11 A Betty.

12 Q Okay. Grandma Betty. What about Grandma Sara, did you ever  
13 stay at her dad's mom's house?

14 A No.

15 Q Okay. And why is that?

16 A She didn't really have, like, a room for kids to stay at. But  
17 we would visit her sometimes.

18 Q Okay. Okay. What would you do when you were at Aunt Janie's  
19 house besides swimming?

20 A Just hand out.

21 Q Okay.

22 A We wouldn't really do much besides watch T.V.

23 Q Okay. Do you know kind of, did you have a normal, set day  
24 you would go to hang out at Aunt Janie's house?

25 A No. It was just whenever she wanted to go swimming.

1 Q Okay. Okay. Did you ever spend the night at Aunt Janie's  
2 house?

3 A Yes.

4 Q Okay. Would that be a school night or a weekend night; do you  
5 remember?

6 A The weekends.

7 Q The weekend. Do you remember whether it would be a Friday or  
8 a Saturday?

9 A Most Saturdays.

10 Q Saturdays, usually. Okay. Where would you sleep when you  
11 stayed at Aunt Janie house.

12 A The living room.

13 Q The living room. And there -- can you kind of describe the  
14 furniture and where you would be sleeping?

15 A When you walk in, there is the kitchen. And you keep going  
16 straight. And then there is the living room, like straight  
17 ahead is a couch. And then there is a big, open floor. We  
18 would either sleep on the floor or the couch right there,  
19 which is like kind of next to -- there is like another open  
20 area where all the bedrooms are and it would be right there.

21 Q Okay. When you would be there and you would be hanging out  
22 in the evening, would you hang out with -- with Brooke and  
23 her boyfriend, Dan?

24 A Just Brooke sometimes.

25 Q Just Brooke sometimes. Dan wouldn't be kind of around you

1 guys?

2 A No.

3 Q Okay. And if you can kind of remember, what was the order  
4 of when people would go to bed?

5 A The people that I saw there, it would be Janie and her  
6 husband going to be first. And then I never really saw Dan.  
7 I think he would be working or in bed already. And then  
8 Brooke would stay up with us. And then when she got tired,  
9 she would go to bed. And then Jenna would fall asleep. And  
10 then I would fall asleep or we would fall asleep together.

11 Q Okay. Okay. Would you describe yourself as a heavy sleeper?

12 A Yes.

13 Q Okay. Do you remember ever waking up in the middle of the  
14 night because you would hear a dog barking or a toilet  
15 flushing?

16 A No.

17 Q Okay. What time of day would everybody kind of get up and  
18 moving in the morning?

19 A I think I would be up around 8 or 9 and they would already be  
20 up.

21 Q Okay. Okay. Would you all eat breakfast together?

22 A Yes.

23 Q Okay. How would breakfast go? Kind of -- kind of -- did  
24 everybody have their set seats that they --

25 A No. We kind of just sat down wherever. Or whoever got their

1 food made first.

2 Q Okay. Can you ever remember any sort of interactions between  
3 Dan and Jenna?

4 A Like at the table?

5 Q Sure, at the table.

6 A No. Just when we sat down, they would sit. That's it.

7 Q Okay. One sit next to the other or just kind of like you  
8 said, everybody just plops down?

9 A Well, where the table was, like the four tables, he would sit  
10 there, she would sit there, I would sit here and then  
11 someone would sit there.

12 Q Okay. Okay. What would you guys do in the morning besides  
13 breakfast?

14 A Nothing. We would either go visit her uncle, because he had  
15 bunnies, go to her grandma's, her dad's, her other grandma's,  
16 or stay there.

17 Q Okay. Did you ever stay a Sunday night or a Friday night  
18 that you can remember?

19 A I don't know.

20 Q Okay. Okay. Do you remember being at Aunt Janie's house for  
21 a bonfire in the summer of 2017?

22 A Yes.

23 Q Okay. Who else was there that night?

24 A It was just me, Brooke, Dan, Janie, and Janie's husband.

25 Q Okay. And so was everybody out at the bonfire?

1 A No. It was just me, Jenna, Brooke and Dan.

2 Q Okay. Drinking or just hanging out?

3 A Just hanging out. I think Brooke was drinking. That was  
4 it.

5 Q Okay. Okay. Who, if you can remember, who ended up going  
6 to bed first out of the group of four of you guys?

7 A Jenna.

8 Q Jenna.

9 A Yeah.

10 Q Okay. Making sure I do the right math there before. Were  
11 Janie and Scott already in bed at that point?

12 A Yeah. They were long gone in bed.

13 Q Okay. Do you know kind of what time Jenna would have gone to  
14 bed that night?

15 A Probably around like 12, because we stayed up way longer or  
16 it was between 10 and 12.

17 Q Okay. Okay. Were Jenna or Dan awake when you came in to go  
18 to bed?

19 A No.

20 Q Okay. Okay. As a result of that bonfire evening, did you  
21 have conversation with Jenna?

22 A About the bonfire?

23 Q Kind of about that -- that night. The next day, did she have  
24 a conversation to you about anything that happened the night

1 before?

2 A Not like that morning, but maybe within that week. But I  
3 don't think it was that day.

4 Q Okay. And what was -- what was the point of this conversation  
5 that she had with you?

6 A She just said stuff about Dan and that night, like about --  
7 she didn't full out say like what happened. But she said  
8 that he was very well experienced and I didn't really know  
9 what that meant at the time.

10 Q Okay. Did you get the impression that there was something  
11 sexual going on between Jenna and Dan?

12 A I didn't think so. I didn't really think about it. But she  
13 said she was very uncomfortable that morning, because they --  
14 at that table, where we normally sat, she said she didn't  
15 feel comfortable. And then I think she went to go visit her  
16 dad, because when we woke up, it was a Sunday, so I had to  
17 leave.

18 Q Okay. Okay. So she just kind of mentioned feeling  
19 uncomfortable with Dan.

20 A Yeah, and then other than that, every time I went over there,  
21 I never really seen him.

22 Q Okay. Okay. At some point, did Jenna loan you her cell  
23 phone?

24 A Yes. During school she gave it to me.

25 Q Okay. Why did she give you her cell phone?

1 A I had cracked my phone, didn't have a phone. And I like to  
2 listen to music at school, so she ended up giving me her  
3 phone. She didn't reset it. And so I had her phone and i  
4 didn't want to reset it without asking her, so I just made  
5 sure she didn't have anything important.

6 Q So you kind of have this phone that you are going to use, I  
7 guess, just to listen to music or is it going to be your  
8 phone to call or --

9 A Not call, because it wasn't activated or anything. I was  
10 just using it until I could get a new phone. But like if I  
11 had wifi, I would like text.

12 Q Okay. Okay. So it still has all of her private information.  
13 Did you happen to -- to see any communications between the  
14 Defendant and Jenna?

15 A I went through the messages, the actual text messages on  
16 the phone and I saw like everyone she had talked to. And I  
17 saw that they had a conversation. But I didn't read like  
18 details on the conversation. I just saw that they did text  
19 each other.

20 Q Okay. And this is in 2017 as well, you think?

21 A Yeah. It was that same year.

22 Q What makes you remember the fact that Dan and Jenna were  
23 having a conversation over text?

24 A Because it was weird. I didn't think they would talk. And  
25 then like, I just blew past it because it was her cousin's

1 fiancé, I think, at the time. So maybe they are just talking  
2 about Brooke or something. But I didn't think anything of it.

3 Q Okay. Could you tell, kind of, in your cursory glance who  
4 seemed to be initiating contact?

5 A I would say it would be him, because she would just do two  
6 word texts back.

7 Q Okay. So it kind of would be a big bubble from him and then  
8 and then a little bubble from her?

9 A Like a medium, like, full sentence or two bubble and then like  
10 two words from her.

11 Q Okay. But you don't -- you don't have like a distinct  
12 memory.

13 A No.

14 Q Okay. Okay. Any -- anything else that you witnessed between  
15 the Defendant and Jenna that just struck you as odd or  
16 weird?

17 A Not really. Besides her saying that when she did come out,  
18 like she said that it was very weird between them and stuff.  
19 She didn't feel comfortable around him because that night,  
20 but I didn't really see him anymore. And when we would go  
21 over there, he wouldn't be there. I think he would be at  
22 work or something.

23 Q So a lot of times you were there, you just didn't even  
24 interact with him.

25 A No. That was like the first night that we actually hung out

1 with him.

2 Q Was that bonfire night.

3 A Okay. Okay. Do you remember ever being there when the  
4 Defendant and Brooke would kind of have their own guests  
5 hanging out in their room or at the house?

6 A No.

7 Q Okay. Okay.

8 MS. JIPP: I have no further questions.

9 THE COURT: Mr. Maesen.

10 CROSS-EXAMINATION

11 BY MR. MAESEN:

12 Q This phone that -- that she gave you, is that yours to keep?

13 A No.

14 Q Do you know where that phone is now?

15 A No.

16 Q Did you keep -- did you print off any of these texts or  
17 anything?

18 A No.

19 Q And you can't say for sure who started the conversations,  
20 did you?

21 A No.

22 Q Do you know what they said or no?

23 A No.

24 Q Are you sure it was even this Dan or another Dan?

25 A It was this Dan. It's the only Dan she knows.

1 Q Do you know for sure that's the only Dan she knows?

2 A Yes.

3 MR. MAESEN: Thank you.

4 THE COURT: Anything further?

5 MS. JIPP: No further questions.

6 THE COURT: Any questions from the jury? Thank  
7 you. You may step down.

8 Thank you.

9 May this witness be excused?

10 MS. JIPP: Yes.

11 THE COURT: Thank you.

12 MR. MAESEN: Yes.

13 THE COURT: Next witness?

14 MS. JIPP: Yes, ma'am. I am just going to step  
15 out in the hallway and grab her.

16 The People would call Lisa Oravetz.

17 THE COURT: Ms. Oravetz, if you would come forward  
18 and Ms. Lange will swear you in. Thank you.

19 MS. LANGE: Do you solemnly swear or affirm that  
20 the testimony you are about to give in this matter will be  
21 the truth, the whole truth, and nothing but the truth, so  
22 help you God?

23 MS. ORAVETZ: I do.

24 MS. LANGE: Thank you.

25 MS. JIPP: I apologize. Give me two seconds.

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LISA ORAVETZ

(AT 9:57 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MS. JIPP:

Q If you could state and spell your name for the record.

A Lisa Oravetz, L-i-s-a O-r-a-v-e-t-z.

Q Okay. Ms. Oravetz, how are you employed?

A I am employed with the Michigan Department of State Police. I work at the Marquette forensic laboratory in the biology unit.

Q Okay. And how long have you been in that position?

A I have been there for about six years.

Q Okay. And how long have you been employed as a forensic scientist in general?

A Six years.

Q Okay. Okay. Could you just kind of briefly detail your educational background for us?

A Okay. I have a bachelor of science degree in biochemistry from Saginaw Valley State University. From there, I was hired into the Michigan State Police in 2013. I went through the mandatory training protocol for body fluid identification, which is the section of the biology unit that I work in. And with that training protocol I have learned all about the different body fluids that we test for. Mainly blood, semen,

1 and saliva. That was seen by the -- a senior Court qualified  
2 analyst. And after I completed that training successfully,  
3 I have successfully completed annual proficiency tests in  
4 that area since then.

5 Q Okay. Have you ever published in your field or presented  
6 trainings in your field?

7 A I have presented trainings to evidence technicians with the  
8 Michigan State Police and other local agencies within the  
9 Upper Peninsula. I teach them how to properly collect and  
10 package different types of evidence. But I have not had any  
11 publications.

12 Q Okay. Have you previously testified as an expert in the state  
13 of Michigan?

14 A I have, yes.

15 Q And have you testified specifically as to D.N.A. testing?

16 A I have testified to body fluid identification testing, not  
17 D.N.A. testing.

18 Q Okay.

19 MS. JIPP: Your Honor, we would ask that this  
20 witness be qualified as an expert in the field of forensic  
21 science.

22 MR. MAESEN: No objection.

23 THE COURT: Thank you, she is so qualified.

24 MS. JIPP: Thank you.

25 BY MS. JIPP:

1 Q Now, while working for the Michigan State Police lab, did  
2 you receive several items of evidence for testing from  
3 Trooper Eric Desch?

4 A Yes. I did.

5 Q Okay. And specifically did you receive two items marked as  
6 a blue, green, and white rug?

7 A Yes. I received two rugs.

8 Q Okay. And then did you also receive a buccal swab from  
9 Jenna Bluhm as well as the Defendant, Daniel Bluhm?

10 A Daniel Loew.

11 Q I'm sorry. I'm sorry. Daniel Loew.

12 A Yes. I received those samples.

13 Q Okay. Do they come sealed in evidence bags when they come  
14 to your lab?

15 A Yes. Yes. The rugs were sealed togeth -- were packaged  
16 together in one paper bag. And the D.N.A. samples were  
17 packaged separately.

18 Q Okay. And you performed a series of tests based on the  
19 evidence you received.

20 A Yes. I did.

21 Q Okay. And then as a result of that, did you also generate  
22 a report?

23 A Yes. I did.

24 Q Okay.

25 MS. JIPP: I am approaching the witness with what

1 has been preliminarily marked as People's Exhibit Number 20.

2 BY MS. JIPP:

3 Q I am just going to have you take a look at this. If you could  
4 just detail for the jury what that document is.

5 A This is a report of my findings from the examinations of the  
6 rugs and the D.N.A. samples.

7 Q And though this is a copy, this seems to be fairly and  
8 accurately a depiction of your report as generated.

9 A Yes. It is.

10 MS. JIPP: We would request that this be admitted  
11 into evidence, your Honor.

12 MR. MAESEN: No objection.

13 THE COURT: It's admitted. Thank you.

14 (at 10:01 a.m., People's Exhibit Number 20  
15 admitted into evidence)

16 BY MS. JIPP:

17 Q Okay. So if you could, you get this -- you get this evidence  
18 and you unpackage it. What's the first kind of step you  
19 take towards your analysis?

20 A The first thing that I do is I perform a visual exam. In this  
21 case, my first step was to look for any semen or seminal  
22 fluid. So I performed a visual exam on the rugs, to see if  
23 I could find any yellow or white colored stains that I could  
24 do additional testing on. And in this case, I did not note  
25 any. So I went ahead and used what's called an alternate

1 light source, A.L.S. is the abbreviation for that. So an  
2 A.L.S. is a screening tool that I use to locate possible  
3 body fluids. Some body fluids will fluoresce when they are  
4 exposed to different wavelengths of light. The wavelength I  
5 have is 450 nanometers. So I use that light to note any areas  
6 of fluorescence. And areas of fluorescence are marked and  
7 then from there I do subsequent chemical testing. The  
8 chemical testing that I do is for acid phosphatase. Acid  
9 phosphatase is a protein found in seminal fluid in high  
10 concentrations. So based on the areas that I found with the  
11 A.L.S., I tested for acid phosphatase, or A.P.

12 Q Okay. And what was the result as you did that acid  
13 phosphatase test?

14 A On one of the rugs, it was acid phosphatase negative, meaning  
15 there was no indication of any semen or seminal fluid. On  
16 one of the other rugs, I had two areas that were inconclusive.  
17 I got a delayed color change reaction. So on those two areas,  
18 I did further testing to confirm or not whether or not there  
19 was any semen or seminal fluid there.

20 Q And what -- what did those further tests reveal?

21 A Those further tests did not indicate the presence of semen  
22 or seminal fluid.

23 Q Okay. Now you said that you -- you test also for blood any  
24 other bodily fluids. Did you find anything in regards to  
25 blood on the rug?

1 A There were some areas of brownish-red staining on both rugs  
2 that I noted. So I did some chemical testing for blood and  
3 the testing indicated the presence of human blood on both of  
4 those rugs.

5 Q Okay. So once you determined that there is human blood, do  
6 you run any additional tests to see if that human blood  
7 matches either of the two samples provided by Jenna or Dan?

8 A So right after the chemical testing was completed, I took  
9 portions of those stains and sent them down to the Grand  
10 Rapids laboratory for D.N.A. analysis.

11 Q Okay. And when you say portions, you literally like snip  
12 little pieces of the rugs and package them.

13 A Yes.

14 Q And you kind of seal them and put them in an envelope and send  
15 them on down to Grand Rapids.

16 A Yep. They are packaged in their own individual tubes in  
17 separate envelopes and then the envelopes were sent down to  
18 Grand Rapids and that's where they did the D.N.A. process.

19 Q Okay. Do you do anything in terms of the processing of the  
20 buccal swabs from the Defendant or from Jenna Bluhm?

21 A All I did for that was to prepare them for D.N.A. So I had  
22 both buccal swabs. I processed them separately. I took  
23 cuttings from each swab, packaged them, and then sent them  
24 down to Grand Rapids.

25 Q Okay. Any -- any further testing or involvement in this case

1 that you are aware of?

2 A No.

3 Q Okay.

4 MS. JIPP: I have no further questions.

5 MR. MAESEN: I have nothing for this witness, your  
6 Honor.

7 THE COURT: All right. Any questions from the  
8 jury? All right. You may step down. Thank you. May this  
9 witness be excused?

10 MS. JIPP: Yes.

11 MR. MAESEN: Yes.

12 THE COURT: You are excused. Thank you.

13 MS. JIPP: Your Honor, if you will give me a  
14 second. I thought my next witness is in the conference room  
15 and I may have been mistaken.

16 The People would call Michelle Schmitt.

17 THE COURT: Ms. Schmitt, if you would come forward,  
18 Ms. Lange will swear you in.

19 MS. LANGE: Do you solemnly swear or affirm that  
20 the testimony you are about to give in this matter will be  
21 the truth, the whole truth, and nothing but the truth, so  
22 help you God?

23 MS. SCHMITT: I do.

24 THE COURT: Thank you. Have a seat in the witness  
25 chair.

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MICHELLE SCHMITT

(at 10:08 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MS. JIPP:

Q If you could just state and spell your name for the record.

A My name is Michelle Schmitt. S-c-h-m-i-t-t.

Q Okay. And what is your current position?

A I am a forensic scientist 12, and the Michigan state police, in the Grand Rapids laboratory in the D.N.A. and biology unit.

Q And how long have you been with the Michigan state police Grand Rapids?

A I've been with the Michigan state police for just over six years. And prior to that, I was a D.N.A. analyst and supervisor at the New York city office of the chief medical examiner, in New York city.

Q Okay. Did you have similar duties in New York city as you do here in Michigan?

A I did. However, I did perform supervisory duties as well in New York city.

Q Okay. If you could just briefly detail your educational background.

A Okay. I have a bachelor's degree in biology from Grand Valley

1 State University. And I have a master's degree in forensic  
2 molecular biology from the George Washington University in  
3 Washington, D.C.

4 Q Okay. Have you ever been published in the field of forensic  
5 science or D.N.A. specifically?

6 A I have never published in a peer review journal.

7 Q Okay. And in terms of presentations, have you ever attended  
8 any trainings or presented any trainings or presentations?

9 A I have attended numerous trainings since 2006. I have also  
10 given presentations at national conferences as well. And I  
11 have presented around the state of Michigan. I have also  
12 presented in the state of New York as well.

13 Q Okay. And have you previously testified as an expert in the  
14 courts of Michigan?

15 A Yes. I have.

16 Q Okay. And have you testified specifically as to tests  
17 performed in a D.N.A. biology lab?

18 A Yes. I have.

19 Q Okay. Thank you.

20 MS. JIPP: We would ask that this witness be  
21 qualified as an expert in the field of forensic science and  
22 D.N.A. testing.

23 MR. MAESEN: No objection.

24 THE COURT: Thank you.

25 BY MS. JIPP:

1 Q When you perform tests through your duties as a forensic  
2 scientist, do you also then generate a report?

3 A Yes. I do.

4 Q Okay. I am going to approach you with what's been  
5 preliminarily marked as People's Exhibit Number 21. If you  
6 can just take a look at this. And could you detail for the  
7 jury what that is?

8 A This is a D.N.A. report that I authored. It was completed  
9 on July 19<sup>th</sup> of 2018.

10 Q And that's in regards to the case against Daniel Loew, a  
11 suspected sexual assault.

12 A That's correct.

13 MS. JIPP: Your Honor, we would like to admit  
14 Exhibit 21.

15 MR. MAESEN: No objection.

16 THE COURT: All right. It's admitted.

17 MS. JIPP: Okay.

18 THE COURT: And for the record, she is qualified as  
19 an expert witness. I don't believe I said that. Thank you.

20 MS. JIPP: Thank you.

21 BY MS. JIPP:

22 Q If you could just walk us through when you received the items  
23 in this particular case, what was the first step in your  
24 analysis?

25 A So we received cuttings of samples that were previously tested

1 by a forensic scientist, Lisa Oravetz, in the Marquette lab.  
2 When we do that, my supervisor just assigns cases in order of  
3 readiness. So I was ready to perform the next D.N.A. batch  
4 of cases. So to do that, there is four steps in the D.N.A.  
5 process. The first step is extraction. And that's where we  
6 separate the D.N.A. from the rest of the cellular components.  
7 The second step is quantitation and that's where we determine  
8 how much D.N.A. is present in the sample. The third step  
9 is amplification and that's where we make millions of copies  
10 of the locations that we test for. And the fourth and final  
11 step is separation and analysis. And that's where we are  
12 able to look at the D.N.A. and in graph form and make  
13 comparisons if samples from -- known D.N.A. samples from  
14 individuals are submitted.

15 Q Okay. So you had the cuttings and then you had the submitted  
16 samples. Did any of the submitted samples match any of the  
17 cuttings?

18 A Before I begin, I would like to also just explain just a  
19 little bit of what D.N.A. is. D.N.A. is the basic genetic  
20 blueprint of what makes us who we are. It's what gives us  
21 two eyes, two ears, one nose. Each person's D.N.A. profile  
22 is unique, except for identical twins. And you get half your  
23 D.N.A. from your mother and half your D.N.A. from your father.  
24 So in this case, we were submitted a D.N.A. sample, 1A4E,  
25 which was a blood stain from a rug. And then we were also

1 submitted sample 1B2E, which was a second blood stain from  
2 a rug. I was submitted a D.N.A. known sample from Jenna Bluhm  
3 and a D.N.A. known sample from Daniel Loew in this case for  
4 comparison purposes.

5 Q Okay. And so you have the two samples. And Thank you for  
6 explaining D.N.A. And the two cuttings. So was there a match  
7 between one of the samples submitted and the cuttings from  
8 the rug?

9 A Well, first we were able to obtain a D.N.A. profile from  
10 Jenna Bluhm that was sufficient for comparisons and we were  
11 also able to obtain a D.N.A. profile from Daniel Loew that  
12 was sufficient for comparison purposes. The first sample that  
13 I performed D.N.A. testing on was sample 1A4E, which is a  
14 blood stain from a rug. And that was a mixture from at  
15 least two individuals, including a major male contributor.  
16 And a mixture of D.N.A. is just the D.N.A. sample having more  
17 than one person that contributed D.N.A. to that sample. The  
18 D.N.A. profile of Daniel Loew matched the major donor to the  
19 mixture of D.N.A. obtained from the blood stain from the rug,  
20 1A4E. And Jenna Bluhm was excluded as the major donor to  
21 blood stain 1A4E from the rug. And the major donor to a  
22 mixture is typically the person who donated the most D.N.A.  
23 to that sample. And any additional donors to the blood stain  
24 from the rug, 1A4E, were insufficient, there was not enough  
25 information present to make any other associations to that.

1 Q Thank you. Do you also, after you kind of do this comparative  
2 analysis to see if -- if one of the samples matches, and I am  
3 sorry, I am dumbing this way down because I am not a forensic  
4 scientist. But do you then kind of look at a probability of  
5 the fact that instead of Dan Loew, it could be person X off  
6 the street?

7 A Yes. We do. We perform a statistical calculation any time  
8 there is an association to a D.N.A. sample from a piece of  
9 evidence. And in this case, since Daniel Loew matched the  
10 major donor to blood stain 1A4E, from the rug, I did perform  
11 a statistical calculation on the probability of that D.N.A.  
12 profile from the blood stain from the rug matching somebody  
13 else in the population. And we perform that using three  
14 different population subgroups. We do that on the population  
15 database using a Caucasian D.N.A. profile, an African  
16 American, and a Hispanic. And in the Caucasian population,  
17 the -- the probability of selecting an unrelated individual  
18 from the population matching that major donor to the blood  
19 stain 1A4E, from the rug, was 1 in 563.7 octillion people.  
20 So that's how rare that D.N.A. profile was. In the African  
21 American population, it was one in 7.831 decillion, and in  
22 the Hispanic population, selecting a random person having  
23 that same D.N.A. profile from the blood stain from rug 1A4E,  
24 was one in 2 -- or in 1.234 nonillion.

25 Q Thank you. There was no additional testing performed for --

1 in this case for you.

2 A I had one additional blood stain from a rug and that was from  
3 1B2E and that was from an unknown female contributor. And  
4 both Jenna Bluhm and Daniel Loew were excluded as possible  
5 donors to the D.N.A. profile from the blood stain from the  
6 rug 1B2E.

7 Q Okay. So essentially what we have in this -- in this round  
8 of testing was Daniel Loew being an exceptionally likely  
9 contributor to the first blood stain.

10 A As the person who donated the most D.N.A. to that D.N.A.  
11 profile. His D.N.A. profile matched the major donor to  
12 blood stain from the rug 1A4E.

13 Q Okay. Thank you.

14 MS. JIPP: I have no further questions.

15 CROSS-EXAMINATION

16 BY MR. MAESEN:

17 Q Good morning.

18 A Good morning.

19 Q I just -- just to be clear here, you said there was a blood  
20 stain that had two people's blood in it.

21 A Yes. That would have been the sample that was 1A4E. And they  
22 are both called "blood stain from rug", which is why I keep  
23 giving that identifier along with it.

24 Q Sure. Was this like, I am trying to get a picture here, like  
25 two people who had bled at the same time or could somebody

- 1 have dripped blood and then somebody dripped blood later at  
2 the same spot or --
- 3 A So when we do -- when we do the original round of testing,  
4 which would be serology testing, which was performed by  
5 Lisa Oravetz, one component -- she doesn't know if that D.N.A.  
6 profile is going to be from one individual or two individuals  
7 or from countless other individuals. She just tests for the  
8 possible presence of blood or seminal fluid or the possible  
9 presence of saliva. In this case, one component of the  
10 mixture was blood, was at least blood. The other component  
11 could have also been blood. The other component could have  
12 been another type of body fluid like semen or saliva or it  
13 could have just been possible skin cells. So we can only say  
14 that one component of the mixture is blood. We can't say  
15 definitively that both components are blood.
- 16 Q And that other component is not Daniel Loew, correct?
- 17 A The other component, so it was a mixture of two individuals,  
18 Daniel Loew contributed the most D.N.A. since he matched the  
19 major contributor or the major donor to that blood stain from  
20 the rug, 1A4E. However, the minor components or the  
21 additional donor to that mixture was just an insufficient  
22 amount of D.N.A. detected. And therefore, no comparisons  
23 could be made to that minor component of that mixture.
- 24 Q So you don't know whose D.N.A. that was?
- 25 A I couldn't even make comparisons to it, based on the amount

1 of D.N.A. that was available for comparison purposes.

2 Q Is that within the same stain as his blood or ?

3 A It was just one sample that was submitted in this case. So  
4 one same was submitted, the blood stain from the rug. From  
5 that blood stain from the rug, I detected D.N.A. from two  
6 individuals. The major component of that mixture or the  
7 person who donated the most D.N.A. to that mixture matched  
8 the D.N.A. profile of Daniel Loew. The minor component to  
9 that mixture was an insufficient amount for comparison. So  
10 no additional comparisons to that minor component were done.

11 Q Okay. And was there a second stain on the rug then, too, you  
12 said?

13 A This was -- and then a second stain from the rug, which was  
14 1B2E. And I believe that was a separate rug. And that was  
15 also a blood stain. And that was consistent with an unknown  
16 female contributor. And both the D.N.A. profile from  
17 Jenna Bluhm and the D.N.A. profile from Daniel Loew were  
18 excluded as possible donors to that D.N.A. sample from the  
19 rug, 1B2E.

20 Q So you didn't find anything from Jenna's D.N.A. on the rug;  
21 is that correct?

22 A We -- for the -- what I was able to make comparisons to, she  
23 was excluded as both the major component for the blood stain,  
24 1A4E and she was excluded as the donor to blood stain from the  
25 rug 1B2E.

1 Q Thank you.

2 THE COURT: Anything further?

3 MS. JIPP: No, ma'am.

4 THE COURT: Any questions from the jury?

5 Have you written it down?

6 JUROR: Not yet. I need to get a sheet of paper.

7 THE COURT: Okay.

8 So the question from the juror is, is it possible  
9 the blood stain -- I guess I am not sure what that word is.

10 JUROR: 1A4E.

11 THE COURT: Oh, it's an E, okay. 1A4E came from  
12 Dan's son?

13 THE WITNESS: No. Each person has a -- is a  
14 unique D.N.A. profile except for identical twins. Although  
15 you would share 50% of your D.N.A. with your child, you  
16 would not have the same D.N.A. profile as your child, since  
17 you get half your D.N.A. from your mother and half your  
18 D.N.A. from your father.

19 We would be able to distinctly see that they are  
20 two different D.N.A. profiles, therefore, the D.N.A. profile  
21 of Daniel Loew would not be the same as the D.N.A. profile  
22 from a possible son or daughter of Daniel Loew.

23 THE COURT: Anything further based on the question.

24 MS. JIPP: No.

25 THE COURT: All right. You may step down. May

1 this witness be excused?

2 MS. JIPP: Yes, ma'am.

3 THE COURT: All right. Thank you. You are  
4 excused.

5 THE WITNESS: Thank you.

6 MS. JIPP: I am just going to step out and call  
7 the People's next witness.

8 The People would call Tom Cottrell.

9 THE COURT: Good morning, Mr. Cottrell. If you  
10 would raise your right hand, Ms. Lange will swear you in.

11 MS. LANGE: Do you solemnly swear or affirm that  
12 the testimony you are about to give in this matter will be  
13 the truth, the whole truth, and nothing but the truth, so  
14 help you God?

15 MR. COTTRELL: I do.

16 THOMAS COTTRELL

17 (at 10:25 a.m., sworn as a witness, testified as  
18 follows)

19 DIRECT EXAMINATION

20 BY MS. JIPP:

21 Q Thank you for being here this morning. If you could just  
22 state and spell your name for the record.

23 A Sure. Thomas Cottrell, T-h-o-m-a-s C-o-t-t-r-e-l-l.

24 Q Okay. And Mr. Cottrell, what's your occupation?

25 A I am the chief programming officer at the Y.W.C.A., West

1 Central Michigan, which is in Grand Rapids, where I oversee  
2 all of our programming on domestic violence, sexual assault,  
3 and child sexual abuse.

4 Q Okay. And how long has this program been in existence?

5 A Various elements of the program have been in existence since  
6 1977. I joined the Y.W.C.A. in 1983 as a therapist in the  
7 child sexual abuse treatment program, then became the  
8 clinical supervisor of that program, about five years later.  
9 Then the director of that program, meaning I not only  
10 supervise the staff but also took on some programming  
11 responsibilities. And then in 2003, I became the chief  
12 programming officer, basically overseeing all of our  
13 programming on sexual and domestic violence.

14 Q Okay. And so what type of programming services do you offer?

15 A With regard to all of those service areas?

16 Q Yeah, if you can just give me a little --

17 A Sure. Counseling, advocacy, we have a forensic nursing  
18 program where we do essentially rape exams at the Y.W.C.A.  
19 Therapy, group therapy, support groups, emergency housing,  
20 long term supportive housing for victims of domestic violence.

21 Q Do you work with any perpetrators?

22 A Yes. As a therapist in the child sexual abuse treatment  
23 program, a good portion of my work was conducting sex  
24 offender therapy groups and doing sex offender assessments.

25 Q Okay. It sounds like you have been with the Y for a

1 considerable amount of time. What was your position before  
2 you joined the Y?

3 A Graduate student.

4 Q Okay. Okay. And if you could just kind of detail your  
5 educational background for the jury.

6 A Sure. I have a master's degree in interpersonal social work  
7 and an undergraduate degree in child psychology, specializing,  
8 well, child psychology.

9 Q Okay. Do you belong to any professional organizations?

10 A I am a member of the Academy of Certified Social Workers,  
11 the Coalition to End Domestic and Sexual Violence. I am also  
12 a master's level, or certified as a master's level social  
13 worker in the state of Michigan.

14 Q Okay. Have you, yourself ever worked giving presentations or  
15 providing training for other social workers or therapists?

16 A Yes. I have also been an adjunct professor at Western  
17 Michigan University in their master's of social work  
18 program. So for 14 years I taught classes on advanced social  
19 work practice with children, on group therapy, and on  
20 child sexual abuse. I have also presented across the state  
21 on issues relevant to trauma, to child sexual abuse, to  
22 offender dynamics. Most recently, most of them have been  
23 through the State Court Administrator's Office. So presenting  
24 to child protective service workers and therapists who are  
25 under contract with Department of Health and Human Services.

1 Q Okay. Have you previously testified in Court in Michigan?

2 A Yes. I have been qualified as an expert in -- and it differs  
3 from trial to trial, but on issues related to child sexual  
4 abuse in 23 counties in Michigan.

5 Q Okay. Thank you. We would -- actually, let me ask you one  
6 more question, would that be for the defense or prosecution?

7 A That is for the prosecution.

8 Q Okay. Thank you.

9 MS. JIPP: We would ask that the Court qualify  
10 Mr. Cottrell as an expert in sexual assault.

11 MR. MAESEN: No objection.

12 MS. JIPP: Thank you.

13 THE COURT: He is qualified.

14 BY MS. JIPP:

15 Q I just kind of want to talk to you about some -- some key  
16 issues that we have dealt with in this case. But before I  
17 do that, have you had an opportunity to meet with and discuss  
18 this case with the victim Jenna Bluhm?

19 A No. I have not.

20 Q Okay. Have you personally met with or interviewed the  
21 Defendant, Daniel Loew?

22 A No. I have not.

23 Q So as I ask you these questions, they will be based, I guess,  
24 on your experience working with --

25 A Correct.

1 Q -- other victims and perpetrators?

2 A My training and experience and working with victims of  
3 sexual assault and individuals who sexually offend.

4 Q Okay. I wanted to first kind of talk to you about the term,  
5 "delayed disclosure", could you kind of explain what that is?

6 A Simply put, it just means there is a lapse of time between  
7 when a sexual assault of some kind occurs and when the victim  
8 of that abuse or assault discloses to someone. That timeframe  
9 can be a matter of hours, it can be a matter of decades. It  
10 really depends on a whole host of factors that are part and  
11 parcel to that assault. I am working with a client right now  
12 who is in her mid-70's, who is telling me about some of her  
13 abusive incidents for the first time. So we are literally  
14 talking about a 70 year delay in disclosure for her. The  
15 one caveat that I would certainly want to add to this is  
16 disclosure oftentimes by victims is not recognized by the  
17 people in their world. Often children in particular will  
18 indicate that they have been abused, they think they are  
19 disclosing and the adults around them quite simply don't  
20 understand that what the child is talking about. And  
21 conversely, sometimes disclosure is more a matter of finding  
22 something out, as opposed to a child coming forward willingly  
23 and talking about it, rather it might be discovered or they  
24 are caught or it's sometimes found in a journal that they  
25 have written or they are overheard talking to a friend about

1 it. So disclosure is kind of a nebulous term. It doesn't  
2 mean that that child or victim is necessarily purposely  
3 coming forward to inform people. They -- it might just be  
4 found out.

5 Q Okay. If you could just kind of detail, what are some of  
6 the reasons why victims might wait to tell?

7 A A whole host. They tend to fall into three more or less  
8 categories and they tend to overlap. So on the one side, we  
9 have victims who don't quite understand -- we are talking about  
10 child victims -- who don't quite understand what is happening  
11 to them is wrong. This usually occurs when we have very young  
12 children who have been sexually abused and that abuse is  
13 under the guise of playing a game, maybe with an older brother  
14 or a babysitter. And the child doesn't have a sense of  
15 propriety yet, with regard to their own bodies. And so they  
16 don't necessarily understand what's happened to them is  
17 wrong. And it is not painful, necessarily. So they later  
18 disclose when they are older and they kind of reframe and  
19 rethink about that abuse. And then can see with a more mature  
20 sense of right and wrong, can then talk about the abuse and  
21 disclose it. In that same category, we often have teenagers  
22 who believe they have a romantic relationship or a crush or  
23 something like that on the assailant. And believing that  
24 what is happening is -- is in their mind consensual. They  
25 later disclose, again, with some maturity or realize that

1 that relationship was exploitive in nature, may disclose later  
2 on. We also, on the other end of the continuum, have children  
3 who are so traumatized by what's happened to them, because  
4 the abuse was terrifying and painful that they simply don't  
5 have the words to describe what's happened. These are usually  
6 very severely traumatized individuals. They later disclose,  
7 potentially when signs of post traumatic stress disorder or  
8 behaviors start manifesting and people start asking them  
9 questions and then disclosure may happen. In the middle of  
10 all of that, we have children who recognize that what has  
11 happened to them is wrong, but they are strategically deciding  
12 not to tell. And they go through and I am going to make this  
13 sound more formal than it really is, but kind of a  
14 cost/benefit analysis, does it hurt more to tell the secret  
15 or hurt more to keep the secret. And when they are doing  
16 that, they are using their childlike or adolescent like  
17 metrics to kind of figure this out. So they may not be using  
18 the same reasoning and logic that we would, as adults. They  
19 are thinking in child terms. So they are weighing things  
20 like, is it my fault, will I be believed, what will I lose if  
21 I tell somebody, will I not have a place to live, will my  
22 grandparents hate me, what will people in school say. These  
23 are all things that are sometimes more critical to children  
24 than the sexual abuse itself. And that changes based on  
25 where they are developmentally. So what would bother a five

1 year old and cause them not to tell may mean absolutely  
2 nothing to a 15 year old. So we have to consider one, the  
3 age of the child and two, kind of what they believe is in  
4 the balance for them when it comes to disclosing.

5 Q So say hypothetically the abuser is either a family member or  
6 a very close family friend, could that impact in this kind of,  
7 this metric decision making of a teenager?

8 A Absolutely. It would depend on, you know, what kind of  
9 relationship that they had, was there animosity in that  
10 relationship, were they kind of battling, was this person  
11 seen as an advocated or a friend. If they were to disclose,  
12 would they be violating a sense of loyalty, would they be  
13 ostracized from the family, would they not have access to  
14 resources that they had previously or would they be fearing  
15 some kind of punishment? I mean, all of those things, when  
16 there is a close relationship between the victim and  
17 assailant come into play.

18 Q If there was physical intimidation or implied threats, would  
19 that impact the ability to disclose?

20 A Absolutely, yeah. That is part of the what we would call the  
21 "grooming process" where there is efforts made on the part  
22 of the assailant to co-opt the victim into participating, as  
23 well as keeping them silent. And sometimes that can be  
24 through threatening means. Sometimes it's through the threat  
25 of withdrawing something positive.

1 Q Okay. Do you think victims are -- ever think themselves  
2 capable of just dealing with the rape or the sexual assaults,  
3 like in -- in their own terms, all by themselves?

4 A Quite frankly, the vast majority of them do. They think they  
5 can handle it. And some, quite frankly, can. Many cannot and  
6 that's when we see the symptoms that arise because they are  
7 enduring the abuse or they are enduring keeping the secret.  
8 And that level of stress that they experience then ends up  
9 manifesting in a lot of symptoms and behaviors that then  
10 people who are observant could look at that and start asking  
11 some questions about what's going on in this child's life  
12 that they are acting this way, because it's -- foundational  
13 of that is some kind of anxiety.

14 Q Okay. Do you think behavior like self-cutting could be  
15 indicative of that kind of stress?

16 A Certainly self-injury, substance use, withdrawal, school  
17 performance, eating disorders, regression in sleep patterns  
18 for younger children, regressing in toileting, angry acting  
19 out behavior, signs of depression. All of those things are  
20 manifestations of one trauma, but also anxiety.

21 Q Okay. Okay. Are you aware of any statistics that show what  
22 percentage of sexual assaults are ever reported?

23 A Currently the thinking and most of the research is that it  
24 depends on the research that you read, but it is anywhere  
25 between 50 and 70% of child sexual abuse is not reported

1 during childhood. We know about it because adults tell us  
2 that it happened to them. But children are not reporting  
3 during their childhood.

4 Q Okay. Okay. Once they get to the point of disclosing, is  
5 it common for a victim to remember very distinctly, I guess  
6 I want to say some sort of details about the abuse but not  
7 others, like -- like dates?

8 A Absolutely. Particularly when we are talking about children.  
9 I mean, and this is not true just for children, it's true for  
10 everyone, but we remember the things that are important to  
11 us. We remember the things that are salient. And our  
12 brains are structured in the way to organize information in  
13 particular ways. Children don't organize their world by  
14 times and dates. That's kind of an adult thing that we do  
15 in order to, you know, kind of maintain our jobs and those  
16 kinds of things. So children don't use times and dates as  
17 a way of organizing information. So they don't remember or  
18 they don't usually incorporate times and days and dates into  
19 their memory about being sexually assaulted. The other piece,  
20 if they are -- if the abuse is traumatic. That's not true  
21 for all child sexual abuse. It is true for a lot of it.  
22 Traumatic memories is encoded in our brain differently than  
23 regular memory. I would make the distinction between if we  
24 have a regular memory, it's kind of like a video, you know,  
25 it has a beginning, a middle, and an end, and you can tell

1 the whole rendition of an event with all of the pieces in it.  
2 A traumatic memory, because the stress hormones that are in  
3 our bodies when we are traumatized by something, meaning  
4 we are terrified of what's happening affect how our brain  
5 encodes or organizes memory. So instead of having a video,  
6 it's like a scrap book with a bunch of pictures that got all  
7 disorganized. So there are bits and pieces, but it's not in  
8 an organized way and it's hard to tell the complete story  
9 from beginning to end, because all of those parts are not  
10 necessarily accessible at any one time. That also means that  
11 on some occasions, the story may vary depending on what parts,  
12 excuse me, what parts of the story that particular victim is  
13 accessing in the moment.

14 Q Okay. And so -- so say that's just one traumatic incident and  
15 kind of the way your brain encodes that, what if there were  
16 multiple sexual assaults over a couple of years? Would that  
17 affect the ability to recall details and dates?

18 A It depends on the abuse -- certainly dates. I mean dates for  
19 the same reason that we had talked about earlier, but  
20 specifying particularly then it occurred at a specific date  
21 when there are multiple, multiple, multiple occurrences, would  
22 make it very difficult, you know, for anyone, including a  
23 child or including an assault victim to be able to generate  
24 in terms of a memory. That's not unique to sexual assault,  
25 that's all of our memories. If we do the exact same thing

1 every day or the same thing happens to us once a week or once  
2 a month over a period of a year, it's going to be hard to  
3 distinguish in our memory which happened when. That's just  
4 a normal course of events.

5 Q Okay. Okay. What if a disclosure was going to hurt someone  
6 close to the victim, like a cousin or an aunt, could that  
7 be a factor in delaying the disclosure?

8 A It goes right back into that cost/benefit analysis. If I  
9 tell, what will be the consequence of that? And oftentimes,  
10 victims are imagining what the cost is, because they really  
11 don't know and they are often assuming the worst case  
12 scenario. But protecting another family member would be one  
13 reason that a -- a survivor of the abuse might not disclose.

14 Q So if I am to understand you correctly, would the initial  
15 disclosure always be a full, complete story of the abuse?

16 A Quite frankly, it rarely is. Even when victims are  
17 disclosing, they are still going through that cost/benefit  
18 analysis, kind of censoring the words that come out of their  
19 mouth, being careful about how the audience, whoever that  
20 may be, be it a formal investigation, be it a friend, be it  
21 a relative, they are still self-censoring in terms of what  
22 will that person think of me if I say this part of it. And  
23 there may be shame elements and embarrassment elements that  
24 also keep parts of that abuse secretive until maybe a later  
25 point in time.

1 Q Okay. Okay. I kind of want to talk about demeanor and -- and  
2 behavior now if that's all right? Are you familiar with the  
3 term called "acquaintance rape"?

4 A Yes.

5 Q Okay. And -- and describe for me what that is.

6 A The reason I hesitate is because it's often misused. But it  
7 usually -- it is usually referenced when there is a  
8 familiarity but not a well-established relationship between  
9 assailant and victim. Often used to reference and another  
10 relatively inappropriate term is "date rape" or rape between  
11 people who have a casual awareness of each other but not a  
12 friendship or a deep understanding of each other.

13 Q Okay. And so is that type of -- of sexual assault more  
14 common than a complete stranger or a random person attacking  
15 a victim?

16 A That type is more common than stranger assault. What we know  
17 of -- well, within the realm of child sexual abuse, 90 to  
18 95% of children who are abused are abused by someone they  
19 have a relationship with. The other 5%, 7%, are complete  
20 strangers. Within that 95%, there are some more casual  
21 connections. But -- and those typically are friends of  
22 family or something along those lines.

23 Q So if this was a -- a boyfriend of a -- of a cousin, but you  
24 would see them every couple of weeks, would you characterize  
25 that as acquaintance rape or -- or even a more familiar

1 relationship than that?

2 A Based on that description, I would say more familiar  
3 relationship, that would be closer to what we would frame as  
4 incest.

5 Q Okay. Have you kind of in dealing with some of those  
6 scenarios, where it might be someone that has access to a  
7 child or a teenager more regularly, have you found that --  
8 that rapists or sexual abusers kind of choose their victims  
9 for -- for particular reasons?

10 A Yes. And I teach a whole course on this, so I don't know how  
11 far you want me to get into the weeds on it.

12 Q So what might be some characteristics of a victim that --  
13 that an abuser would look for?

14 A Well, two things come into play when offenders are targeting  
15 a victim. One is simply the accessibility and how easily  
16 that person may be groomed or co-opted into participating in  
17 being kept quiet. The other is, taking into account that  
18 most acts of sexual assault are also have an emotional  
19 component to it or some other motivating component to it,  
20 meaning that offender is trying to get some emotional or  
21 psychological need met through that sexual behavior. So they  
22 will also be targeting people if they engage in some sexual  
23 contact with them, that also meet that emotional need. So  
24 if it's a need to feel close to someone, then it may be that  
25 targeted victim may be someone who already has loyalty to

1           them.  If it is a need to overpower someone, they will look to  
2           have a sense of conquest with that victim.  So it may be  
3           someone who is closer to their own age or has capacity to  
4           resist, but they overcome that resistance.  So a lot depends  
5           on what motivates the assailant in order to facilitate the  
6           abuse with a particular victim.  But usually across the board  
7           we are looking for, you know, accessibility is always a  
8           component of it and the capacity to groom that child, when  
9           we are talking about child abuse, into maintaining a silence  
10          about the assault.

11   Q       Okay.  So if a victim kind of presents as nonconfrontational,  
12           more introverted or shy, would those be characteristics that  
13           an abuser may be looking for?

14   A       Potentially, yeah.  I mean, if that could very easily be  
15           part of recognizing, perhaps, that the child doesn't have a  
16           lot of social connections or does not have a lot of natural  
17           allies to disclose to.  And where they could step in and  
18           be overpowering or have more of an influence in the grooming  
19           process.

20   Q       Okay.  Okay.  If there is a situation and a victim kind of  
21           expresses no, that she doesn't want this to happen, is it  
22           common for the victim to then not take the next step and  
23           physically resist?  Does that question make sense?

24   A       So that there is --

25   Q       The victim might -- might verbalize "no", but is it common

1 for the victim to then not fight?

2 A Yes. I mean, the short answer is yes, it is. Oftentimes  
3 there can be a -- an attempt at resistance. But one of the  
4 hallmarks of sexual assault is that victims often perceive  
5 themselves as powerless or helpless in those scenarios. And  
6 so there may not even be an attempt at a physical resistance.  
7 And again, particularly, it depends on what the grooming  
8 looks like, if that child is also afraid, if I resist, I  
9 could get hurt or if I resist, someone will find out. Or if  
10 I resist, it will get worse for me. In those cases, they may  
11 elect to, if their words won't stop the assault, they will  
12 choose to endure.

13 Q Okay. Do you think victims of rape kind of respond  
14 differently as far as exhibiting emotion?

15 A During, after?

16 Q Like when -- when they disclose the abuse. Do you -- do you  
17 think that there are different kind of reactions and ways --

18 A Oh, absolutely. You know, everyone has their own way of  
19 dealing with a very difficult event, particularly if that  
20 event is traumatizing. So one of the things that we also  
21 know is that often when victims tell their story, they have,  
22 based on how the memory is encoded, they may also experience  
23 some of the emotions that they had -- actually that they  
24 had during the abuse itself. So if during the abuse the  
25 victim shut down, was complacent, didn't express much emotion,

1 just endured, when he or she tells the story, they may  
2 basically get into that same emotional framework. And will  
3 tell it very flatly and matter of factly because they dealt  
4 with the abuse in a very flat, matter of fact way, in order  
5 to survive it. So telling the abuse is essentially a  
6 triggering event. It triggers those emotions and feelings  
7 and often those are the things that the victim experienced  
8 at the time or strategies that the victim used at the time.  
9 Over time, that presentation can change. That's my job as  
10 a therapist, to have people connect their emotions to events.  
11 And it can ultimately lead to a lot more crying and anger and  
12 those kinds of things. But initial disclosures typically  
13 don't necessarily have that element to it. Many disclosures  
14 initially are very matter of fact, but it is quite unique  
15 to each victim.

16 Q Okay. If a victim was to be raped or sexually assaulted, is  
17 it possible that the victim would be capable of kind of  
18 putting on a good front and acting like nothing happened  
19 after the fact?

20 A Many children try. If part of their agenda is, I am needing  
21 to keep this secret, they will act in ways so no one will  
22 question them. They will act -- they will basically put on  
23 a sense of normalcy so not one will question what's going  
24 on, or why are you crying, or what are you upset about. That  
25 even includes continuing to engage in rel -- you know,

1 relatively normative day-to-day interactions with their  
2 assailant, even when the assailant lives with them. And it  
3 certainly not unheard of for victims still go alone with an  
4 assailant on -- to the park or be alone with them in their  
5 room. A lot, again, depends on how that victim is reacting  
6 to the assault and how they frame that relationship. If it  
7 is framed as, this is my best buddy and these are sometimes  
8 things we do I don't like, but I would rather have that  
9 friendship or I would rather have that loyalty than disclose  
10 then they may even proactively try to engage that assailant  
11 in social activities, because those things are more valuable  
12 to them than avoiding being assaulted.

13 Q So if they are not necessarily friends, but they want to keep  
14 what would be considered shameful or traumatic incidents  
15 from -- from the whole universe finding out, they might  
16 continue to engage in -- with the perpetrator.

17 A Correct.

18 Q Okay. You kind of -- we have kind of hopped around a little  
19 bit and I apologize for that. So we've discussed kind of  
20 what would be a flat affect as they testified or other self  
21 harming behaviors. Would it be common for anger and  
22 nightmares and those kind of behaviors to be exhibited once  
23 the abuse starts, but before disclosure?

24 A Yes. Symptoms can arise at any point that there is anxiety.  
25 It doesn't have to be after disclosure. And quite frankly,

1 that's how a lot of abuse is discovered, because children are  
2 symptomatic before they tell anyone. So if someone is asking  
3 about the nightmares or the eating problems or the sexual  
4 acting out or the withdrawal, in order then, from that  
5 facilitating a disclosure because some adult is asking  
6 questions about behaviors a child is exhibiting. So certainly  
7 there can be symptoms of stress long before there is a  
8 disclosure.

9 Q Okay. So I know you testified you didn't meet with Jenna and  
10 you didn't meet with the Defendant, Daniel Loew. Did you read  
11 the police reports in this case?

12 A No.

13 Q Okay. And did you read any other lab results or anything else  
14 as a result of this case?

15 A No. I did not.

16 Q So this is just based on, your testimony today, is based on  
17 your years of experience working with this population and  
18 your education and training.

19 A That is correct.

20 MS. JIPP: I have no further questions at this  
21 time.

22 CROSS-EXAMINATION

23 BY MR. MAESEN:

24 Q Good morning.

25 A Morning.

1 Q You said earlier, and I don't want to put words in your  
2 mouth, that many of the symptoms that manifest are symptoms  
3 of trauma and anxiety; is that correct?

4 A Correct.

5 Q And I think you said things like being depressed, angry,  
6 eating disorders, self injury, things like that, correct?

7 A Correct.

8 Q Is it possible the trauma and anxiety could be caused by  
9 another life event besides sexual abuse?

10 A Absolutely.

11 Q Okay. Death in the family or divorce or -- ?

12 A Children have limited ways of manifesting stress and anxiety.  
13 That can come from a variety of sources. Trauma is a little  
14 different, when we are talking about specific trauma  
15 symptoms, we usually need something that is terrifying.  
16 And again, I think I had mentioned earlier, that not all  
17 sexual abuse is traumatizing. It is -- almost all of it is  
18 distressing and anxiety provoking. But you are correct,  
19 anxiety can come from a variety of sources.

20 Q And trauma could be something other than sexual abuse,  
21 correct?

22 A It can be, yes.

23 Q Like a death in the family or something like that,  
24 potentially.

25 A Death -- when we talk about -- I would really want to -- and

1 again, I am going to get into the weeds here a little bit,  
2 so I apologize for that. Trauma is more than a bad thing.  
3 Trauma is really a sense of terror or a life threatening  
4 event that changes how our brain processes information. The  
5 death of an individual, as painful and difficult as it is,  
6 isn't typically traumatic, unless maybe someone was in a car  
7 accident and they watched someone die next to them. In those  
8 cases, it may be traumatic, but I would be careful about  
9 using the word trauma, because it is a very specific  
10 neurobiological process.

11 Q Would you agree it's highly stressful, especially for an  
12 adolescent?

13 A For a death in the family?

14 Q Sure. Like -- I lost a parent when I was 14 --

15 A Sure.

16 Q I don't know if that's traumatic, but it wasn't fun, for sure.  
17 It was far harder then than it is now.

18 A Yes.

19 Q Is it possible that some -- that a child or an adult could  
20 exhibit some of these -- these things like being angry and  
21 depressed, is it like, could it be from a cumulative stress  
22 their whole life? Say they've had a really rough upbringing.  
23 And all of a sudden they are 15 and it may not be one specific  
24 thing, but maybe the accumulation of all of the in and out,  
25 you know, maybe they've moved around a lot, and parents with

1 their boyfriends, girlfriends, drug abuse, all those, you know  
2 what I mean, these kind of --

3 A Sure.

4 Q -- I don't want to call them Jerry Springer households, but  
5 you know what I talking about.

6 A Right.

7 Q Is that possible, that they could be manifesting these  
8 symptoms from that?

9 A The symptoms that we've talked about so far, yes. That --  
10 most of those could be associated with a whole host of  
11 different events that would cause a child stress.

12 Q And you've mentioned something earlier about grooming.  
13 Can you explain what grooming is in the context of sexual  
14 abuse?

15 A Grooming is a process that the, I will call the potential  
16 assailant, engages in that co-opts or convinces the child  
17 to participate in a sexual event or at least not resist it.  
18 And to not tell about it. Grooming can be I hesitate to use  
19 the word "gentle", but non-painful in nature, where the  
20 assailant kind of establishes a relationship with the child  
21 where the child feels like they are obligated to them or  
22 loyal to them, or it is their job to take care of them, which  
23 would include take care of them sexually. Where the child  
24 basically establishes it's my role in this household or in  
25 this relationship to do this certain thing for this individual

1 so that they will feel good and I will feel good, too, because  
2 they value me now. So that's one form of grooming. It's --  
3 it's akin to brainwashing in some ways. Then there is the  
4 other form of grooming that's basically a threat, that if  
5 you tell your you don't do this, these bad things will happen.  
6 And it can be whatever that individual threatens, from hurting  
7 them, killing them, to hurting someone else, to leaving the  
8 family, to they would go to jail and the family would be  
9 poor. But there are more threats to behave as opposed to,  
10 you know, behaving a certain way, as opposed to sort of  
11 co-opting or convincing someone that this is the right thing  
12 to do.

13 Q Is grooming usually verbal or nonverbal?

14 A It can be both. It can be a very deliberate messages or it  
15 can be, for example if you use negative things, it can be  
16 punching a wall or demonstrations of anger that may not be  
17 directed at the victim, but the victim knows exists and the  
18 victim knows this particular individual is capable of those  
19 things. So it doesn't have to be a direct threat, it can be  
20 an implied threat or just the victim knowing this person  
21 is capable of these things.

22 Q Okay. You talked earlier about, I think the offender, and  
23 what they are getting out of -- so to speak -- getting out  
24 of this. I believe you said there -- there is primarily  
25 two things, potentially and emotional need that needs to be

1 met, correct?

2 A Correct.

3 Q Or some need to overpower somebody or control maybe would be  
4 another way to put that.

5 A There is a whole host of emotional needs. Usually when I am  
6 doing training on it, I talk about a need for their own sense  
7 of competency, a need for self-esteem, a need to express  
8 anger, a need to exert dominance or control, sometimes it is  
9 strictly for sexual gratification, a need to feel close to  
10 someone, a need to express their own rage, are really the  
11 hallmarks of some form of that are typically things we are  
12 looking for as precurs -- the emotional precursors to a  
13 sexual assault.

14 Q Have you found in working with offenders that most of them,  
15 do they have multiple victims or one victim or does it just  
16 kind of depend on when they get caught?

17 A The bulk of my work is with incest offenders. Usually they  
18 are sexually assaulting a family member. And typically they  
19 are usually very few victims, one maybe two. But there are  
20 other exploitive dynamics that may be in their history with  
21 regard to just -- even within dating relationships or in their  
22 childhood sexual experiences that may not technically be  
23 classified as sexual assault, but are certainly selfish and  
24 very focused on need gratification.

25 Q Are a good percentage of the offenders, were they abused when

1 they were younger?

2 A Not necessarily. In my work with offenders, we find that  
3 probably about half of them endured some form of abuse. It  
4 tends to be more physical abuse or neglect than actual  
5 sexual assault itself. Maybe closer to a quarter have  
6 actually endured some form of sexual assault in their  
7 childhood.

8 Q So about one-fourth of them, you think.

9 A About that, yes.

10 Q Which is probably higher than one -- than in the general  
11 population, correct?

12 A General population that we look at boys who are victimized,  
13 current statistics are saying basically one in 36. And it  
14 depends on how you define abuse --

15 Q Right.

16 A -- sometimes it's as high as one in 12, depending on how  
17 abuse is defined. But yes, they are probably more represented  
18 in the offending population, but want to be very careful to  
19 say, being a sexual abuse victim does not mean someone is  
20 going to sexually offend.

21 Q Right. Of course, yeah. Most, I am sure, know but. All  
22 right. Thank you very much.

23 MS. JIPP: I do just have one follow up question.

24 REDIRECT EXAMINATION

25 BY MS. JIPP:

1 Q You kind of went into a little more detail in terms of  
2 grooming. Is it possible that there could be a sexual assault  
3 and then the grooming would come after that, whether that be  
4 to get access to the victim again or -- or what are your  
5 thoughts on that?

6 A Grooming takes place throughout. And depending on how deep  
7 a dive someone goes into the family dynamics there, there  
8 usually are some precursors prior to the first assault. Some  
9 kinds of grooming behaviors, they may not be very specific  
10 with regard to sexuality, they may just have more to do with  
11 the nature of the relationship. But once the first assault  
12 occurs, grooming can occur throughout. And it may even  
13 change over time, depending on the level of the victim's  
14 resistance.

15 Q Okay. So say the victim at first appears very physically  
16 compliant and then as time passes, starts to become less  
17 physically compliant. Could -- what -- what would you see  
18 in terms of changes in grooming?

19 A Well, again, it may be heightened. It depends on, you know,  
20 the particular strategy of the assailant. It would -- the  
21 grooming would likely be more, it would be intensified,  
22 likely, to ensure that secrecy and to ensure that compliance.  
23 So the threats may escalate if threats were a part of it or  
24 the favors may escalate of favors were a part of it or the  
25 things that would induce guilt or loyalty on the part of the

1 victim may intensify, if that was a part of the original  
2 grooming or the original dynamic.

3 Q Thank you.

4 MR. MAESEN: Nothing else, your Honor.

5 THE COURT: Any questions from the jury? Okay.  
6 Thank you. You may step down.

7 THE WITNESS: Thank you, your Honor.

8 THE COURT: May this witness be excused?

9 MS. JIPP: Yes, your Honor.

10 MR. MAESEN: Yes.

11 THE COURT: Thank you.

12 MS. JIPP: No further proofs.

13 THE COURT: Proofs are closed for the prosecution?

14 MS. JIPP: I'm sorry?

15 THE COURT: Proofs are closed for the prosecution?

16 MS. JIPP: Yes, your Honor.

17 THE COURT: I think it would be a good time to take  
18 a break. So we will take about 15 minutes. And if I just  
19 have -- meet with counsel for just a minute.

20 MR. MAESEN: Sure.

21 (at 10:59 a.m., Court recessed for morning break)

22 (at 11:20 a.m., Court reconvened after break)

23 THE COURT: Please remain standing for the jury.

24 You may be seated. Thank you.

25 The prosecution has rested, so the case is turned

1 over to the defense. I would advise everyone that the Court  
2 intends to go until a little bit closer to 12:30 for its  
3 lunch break. We will see how the testimony goes. I have  
4 some hearings at 1 o'clock. So that would give me an  
5 opportunity to participate in those hearings until we come  
6 back at about 1:30. But we will see how the testimony goes  
7 at that point.

8 Mr. Maesen?

9 MR. MAESEN: Sure. The defense is going to call  
10 Jane Heppe, your Honor. I will go grab her.

11 THE COURT: Thank you.

12 Ms. Heppe, if you would come forward and raise your  
13 right hand, Ms. Lange will swear you in.

14 MS. LANGE: Do you solemnly swear or affirm that  
15 the testimony you are about to give in this matter will be  
16 the truth, the whole truth, and nothing but the truth, so  
17 help you God?

18 MS. HEPPE: Yes.

19 THE COURT: Why don't you have a seat up in the  
20 witness chair, please. Thank you.

21 JANE HEPPE

22 (AT 11:22 a.m., sworn as a witness, testified as  
23 follows)

24 DIRECT EXAMINATION

25 BY MR. MAESEN:

1 Q Good morning. Could you please state your full name for the  
2 record?

3 A Jane Louise Heppe.

4 Q And where do you reside?

5 A 3817 32<sup>nd</sup> Street, Hamilton, Michigan.

6 THE COURT: I am struggling to hear you. And I've  
7 got a bit of congestion. So if you would just move a little  
8 closer to the microphone, thank you.

9 THE WITNESS: Sorry.

10 THE COURT: I appreciate that.

11 BY MR. MAESEN:

12 Q And just remember, every -- every yes or no question, just  
13 say "yes" or "no".

14 A Okay.

15 Q They won't -- the recorder won't pick up a head shake or --  
16 I don't think we will have any issues with that. So you  
17 obviously are familiar with this case, correct?

18 A Yes.

19 Q The general allegations and the people involved.

20 A Yes.

21 Q Okay. So I don't want to spend a whole lot of time setting  
22 that all up. You live at that address you just gave and  
23 you are aware that once upon a time -- you know who like  
24 Jenna Bluhm is, right?

25 A Yes.

1 Q And her sisters, correct?

2 A Yes.

3 Q And you know their father.

4 A Yes.

5 Q And how do you know their father?

6 A He is my brother.

7 Q And you know he is incarcerated, obviously.

8 A Yes.

9 Q Now they would come to your house soon after he was  
10 incarcerated to I guess set up a visit; is that correct?

11 A Yes.

12 Q Would they visit via internet at your house or go up there  
13 or -- or ?

14 A Well, when it first started, we would do it on a computer,  
15 because he would have been in the county.

16 Q Okay.

17 A And as he went to prison, we set up visits like every other  
18 weekend. Sometimes we went a couple of weekends in a row.

19 Q And you would go up there for the whole day?

20 A Pretty much, yes. We would go from morning and sometimes we  
21 would be there until way after four. They have a thing  
22 called "count", we would wait until after the count and then  
23 leave, because it was easier.

24 Q Okay. And who would attend these visits?

25 A Normally it was me, my mother, Anna, Jenna, and sometimes

1 Taylor would go. And then after a while, it was just me,  
2 my mom, Anna and Jenna.

3 Q Sure. Are you still making these visits?

4 A Yes.

5 Q Are you still making them with Anna and Jenna and all of them?

6 A Anna has been going regularly. Jenna goes once in a while,  
7 because she works now.

8 Q So earlier it was testified that the Defendant, Daniel Loew,  
9 I am sure -- again, I am sure you are aware of the general  
10 allegations -- when he was staying -- he was staying at your  
11 house, correct?

12 A Yes.

13 Q With Brooke, right?

14 A Yes.

15 Q And they have a son.

16 A Yes.

17 Q Another -- another baby on the way.

18 A Yes.

19 Q And they were living with you back in 2015, correct?

20 MS. JIPP: Your Honor, I am just going object at  
21 this point. Every question has been leading and I am trying  
22 to be patient with that, but this is direct examination.

23 THE COURT: Well, we are doing some preliminary  
24 questions, so.

25 MR. MAESEN: That's exactly why. Just trying

1 to speed things up.

2 THE COURT: Understood. But --

3 MR. MAESEN: And not regurgitate.

4 THE COURT: -- they were leading. Her objection  
5 is noted.

6 MR. MAESEN: Okay.

7 BY MR. MAESEN:

8 Q Did Daniel Loew stay at your house?

9 A Yes.

10 Q Did he live there?

11 A Yes.

12 Q Was he typically on the weekends?

13 A He got a job where he was out of town truck driving. So it  
14 was -- weekends he wasn't there.

15 Q Did you keep tabs on that?

16 A I didn't, like, log every weekend --

17 Q Yeah. That --

18 A -- or anything like that.

19 Q Sure. And you had -- you would have -- you wouldn't have had  
20 a reason to, right?

21 A No.

22 Q So tell me a little bit the layout of the house and who slept  
23 where when people -- when the girls would stay over.

24 A Well, I have three bedrooms.

25 Q Is this a ranch house, by the way?

1 A Yeah, it's like -- it's a Boca modular, it's kinda like a  
2 ranch style.

3 Q Okay.

4 A The girls would usually sleep in my living room because  
5 Weston had his own room and Brooke and Dan had their own room  
6 and my husband and I had our own room. The rooms are very  
7 close. It -- it would be, if you came in my house, you  
8 would come in the laundry room, then the kitchen, then through  
9 the living room. So after you get through the living room,  
10 there is the hallway and the three bedrooms and the bathroom  
11 is right there, so it's fairly close.

12 Q So that bathroom you just noted, who used that bathroom?

13 A That was technically Brooke's bathroom because I have my  
14 own bathroom in our room. Once in a while, the girls would  
15 use that bathroom. But we had an incident where they would  
16 have friends stay over and somebody stole some makeup and  
17 stuff out of the bathroom. So Brooke asked that they didn't  
18 use her bathroom anymore, that they would use the laundry  
19 room bathroom.

20 Q So after that, is that what they did?

21 A Pretty much, yes. Once in a while they might use that  
22 bathroom still, but she didn't like the idea because when they  
23 had other friends over, someone had stole makeup and she  
24 didn't like that idea.

25 Q Did you at one time remember letting Brooke remodel the

1 bathroom that you call her bathroom?

2 A Yes. So when we first got our house, she picked her colors  
3 and she done the bathroom. It was -- the walls were orange.  
4 And then she had like this really big, flowered, shower  
5 curtain. And then she had a yellow and a pink rug, because  
6 one of my -- she is not technically my niece, but I called  
7 her my niece, got married and Brooke had flowers from her  
8 wedding and she kind of coordinated her bathroom with that.

9 Q Sure.

10 A And Brooke had a -- a boyfriend at the time, he helped her  
11 pick the colors and after they had broke up, her and one of  
12 her friends redone the bathroom.

13 Q Do you remember about when that would have been?

14 A I say like 2012, 2013, somewhere in there.

15 Q They redid it from the orange color, then?

16 A Yes. They painted it like this teal-y blue and they both  
17 worked at a horse ranch. And he had peacocks, so they  
18 actually got real peacock feathers and they like made pictures  
19 and some other peacock stuff on the walls. And then she  
20 coordinated the shower curtain and the rugs together.

21 Q Okay. Do you remember what the shower curtain and the rugs  
22 looked like after she painted it blue?

23 A What color was the shower curtain?

24 Q And the rugs, yeah. If you -- if you remember.

25 A The shower curtain had like the green and the blue and the

1 off-white color kind of through it. And then the rugs were  
2 the blue and a green and a whitish color.

3 Q Do you remember if she ever had solid blue rugs in there  
4 during that time?

5 A No. I have a jade color rugs in there right now with the  
6 peacock shower curtain.

7 Q I am talking about Brooke's bathroom.

8 A Yeah. Yes. At -- at -- when she done it, she done it with  
9 the striped rugs.

10 Q Right. And are those rugs still there?

11 A No.

12 Q Where are they, to your knowledge?

13 A I had given them to the police officer.

14 Q We will get to that in a minute, just. So over the course  
15 of the two years or so when the girls were visiting to see  
16 their father in prison, by the way, what's his name again?

17 A Robert.

18 Q I don't think we've heard it this whole trial. So they were  
19 going to visit Robert, their father. Tell me again who would  
20 sleep where. And who was -- first of all, who was typically  
21 there and where would they sleep?

22 A When both girls went, not always did they both go, but when  
23 both girls went, Jenna usually slept on the couch. And I  
24 have this big, oversized chair, Anna would sleep in there  
25 or they would have a futon mattress on the floor and they

1 would be on there. Sometimes they would have friends with  
2 them. And I would go drop their friends off on my to visit.  
3 Q They would stay there Friday night with them.  
4 A Sometimes. Not always, but sometimes they would -- like Jenna  
5 had Audrey a lot of the times and Anna would have Cameron.  
6 But Cameron was also Anna and Jenna's friend, so.  
7 Q Sure.  
8 A And she was kinda like always with them a lot.  
9 Q Okay.  
10 A But not always did they always all stay.  
11 Q During this time, did Daniel and Brooke stay -- stay overnight  
12 too?  
13 A Some of the times, yes.  
14 Q They were living there then.  
15 A Yes.  
16 Q And did they have a child at that time?  
17 A Yes.  
18 Q How old was the child?  
19 A In 2015?  
20 Q Yeah. Or let me say, when was Weston born; do you know?  
21 A He was born June 3<sup>rd</sup> of 2015.  
22 Q Okay. So he would have been an infant, then, presumably  
23 the next year, correct?  
24 A Yes.  
25 Q And he stayed there, too.

- 1 A Yes.
- 2 Q And your husband, Scott, stayed there, too, correct?
- 3 A Yes.
- 4 Q Is that a complete list of the people that were typically  
5 there on a Friday night?
- 6 A Yes.
- 7 Q Did anybody -- did Daniel or Brooke ever have friends stay  
8 the night?
- 9 A Sometimes Lindsay would stay overnight because she would come  
10 from up by Kalkaska, by the U.P., kind of. She would come  
11 down and she would stay because her mother moved away, so  
12 she really didn't have a place to stay when she came down.  
13 So she stayed at our house sometimes.
- 14 Q Would that have been on a Friday night, too?
- 15 A Sometimes Fridays, sometimes she would stay the whole  
16 weekend.
- 17 Q When she stayed there, do you know where she would sleep?
- 18 A If the girls were on the sofa and on the larger chair,  
19 sometimes I would take the futon in there and Lindsay would  
20 sleep in Brooke's room on the floor on the futon.
- 21 Q Okay. Now you had then or have now three dogs.
- 22 A I have three dogs. Yes.
- 23 Q Do you have three dogs, then?
- 24 A Yes.
- 25 Q Are they the same dogs?

- 1 A Yes.
- 2 Q Do these dogs bark a lot?
- 3 A Yes.
- 4 Q When do they bark, typically? What things trigger them to  
5 bark, I guess?
- 6 A When people come over, they will bark at them at first. After  
7 they have been there for a while, they are kind of okay with  
8 you. Sometimes if they forget you are there and you get up  
9 to go to the bathroom or something, sometimes they will bark  
10 at you and stuff.
- 11 Q What kind of dogs are they?
- 12 A And usually when you are leaving, they come after you.
- 13 Q Are they big dogs or little dogs?
- 14 A One is a miniature Doberman, a minpin, and the other two  
15 are Chihuahuas.
- 16 Q Does any one of them bark more than the other two?
- 17 A Well, Sasha once in a while does because she has eye problems.  
18 So I think she barks because she doesn't see a lot.
- 19 Q Now you indicated your bedroom borders the bathroom known as  
20 Brooke's bathroom.
- 21 A Yes. I am to the left of Brooke's bathroom.
- 22 Q Are you able to, from your bedroom, typically hear if  
23 somebody is in that bathroom, if you are in your bedroom?
- 24 A Yes. I can hear like if they are in the shower or something.
- 25 Q Sure. Do you recall and you may not at the time had to --

1 thought to write this down. During these weekends when  
2 everybody would stay at the house, getting ready for the  
3 prison visit, do you recall hearing noise in that bathroom  
4 at night at all?

5 A No. Not necessarily. I don't recall hearing noises.

6 Q Sure. Do you -- and a typical night, not just a Friday  
7 night, do people ever get up in your house and use the  
8 restroom in the middle of the night?

9 A I am sure they do, but I don't hear that.

10 Q Okay.

11 A If I am sleeping, I don't hear that.

12 Q No, that's fine. I am just asking. So during those times,  
13 you don't remember hearing anything strange in the night?

14 A No.

15 Q Did you ever hear the dogs bark in the night?

16 A No.

17 Q Do your dogs typically, like, just in general, ever bark in  
18 the middle of the night for any reason?

19 A If somebody comes or if they hear doors or -- depending if  
20 the minpin was laying on the chair or something, if she could  
21 see lights coming down the road or something, she might, but.

22 Q Do you live in a rural area?

23 A I live on a dead end road.

24 Q Is it out in the country?

25 A Mmmhmm. Yes.

1 Q So you -- do you have animals that come around?

2 A Yes. There is raccoons, there is --

3 Q Deer, probably.

4 A -- possum, probably deer, yeah.

5 Q Like coyotes, okay. Do they ever bark at something outside,  
6 like it could be an animal, do you think?

7 A It could be.

8 Q Now you talked about the bath mats that were in Brooke's  
9 bathroom. And can you describe those again?

10 A They were a blue, a green, and a white. And I had -- because  
11 they didn't have the rubber on the back of them, I had taken  
12 the non-slip stuff and I put it underneath of them so they  
13 wouldn't slide around in there.

14 Q Are these the same rugs that you gave to the Trooper?

15 A Yes.

16 Q These are the rugs that were in the bathroom in January of  
17 2018.

18 A Yes.

19 Q These the ones that were in there when Jenna came forward?

20 A Yes.

21 Q How long do you think they had been in that bathroom prior to  
22 that?

23 A Ever since she had remodeled it.

24 Q Which was when?

25 A In 2012 or 2013, I don't remember the exact year.

1 Q That's fine. So what -- those -- those -- as far as you know,  
2 those are the same rugs the whole time.

3 A Yes.

4 Q She hadn't been changing them out.

5 A No.

6 Q And you are adamant those rugs came from that bathroom.

7 A Yes. Because I rolled them up myself and put them in a trash  
8 bag and gave them to the officer.

9 Q Are there different rugs in there now?

10 A Yes.

11 Q Do you know what color they are?

12 A They are like a jade-ish, blue color.

13 Q And you didn't -- those rugs, you are saying you didn't take  
14 those from other bathroom.

15 A The rugs I gave to --

16 Q The rug -- yes -- the rugs you gave to the Trooper.

17 A No. They came out of Brooke's bathroom.

18 Q You didn't grab them from another bathroom knowing there  
19 would be a problem with them, correct?

20 A No. My other bathrooms are different colors.

21 Q Sure. So after -- let me back -- do you remember when Jenna  
22 first disclosed that Daniel was doing things with her?

23 A Yes. She did it at the prison on January 6<sup>th</sup>.

24 Q When she was visiting her father.

25 A Yes.

1 Q Did she do something with a Poweraid bottle?

2 A It was either Poweraide or Gatoraid bottle, I don't remember  
3 which drink is at the prison.

4 Q Yeah, that's --

5 A It's one of those two. And she was sitting by her dad and  
6 she was pointing out letters and she was talking real quiet  
7 to him. I didn't hear what they were exactly saying. And  
8 then I seen she got teary-eyed. And then he was saying,  
9 "Well, this would be just awful" and then I brought Anna up  
10 to the pop machine at the prison, which was in the visiting  
11 room. And I was buying my brother a pop. And I asked her,  
12 "What are they talking about?", you know, and "Who?"  
13 Because I kept thinking they were -- when they kept guessing  
14 letters, I thought it was my brother's friend, Darren that  
15 they were talking about. And then I was trying to get Anna  
16 to tell me what they were -- what was going on. And she said,  
17 "No. It's Dan. You really don't get it, do you?" Or  
18 something like that she said to me. And then --

19 Q Did you believe it was this Daniel, correct?

20 A Yes.

21 Q Okay. Go on.

22 A And then me and Anna went back and gave my brother the pop.  
23 And then me and Anna went out to the bathroom at the prison.  
24 And on our way out to the bathroom, I was asking her, you  
25 know, like what was going on and had anything happened with

1 her. And I was just kind of freaked out.

2 Q Sure.

3 A Because it just came up like that.

4 Q Sure. And what was your reaction?

5 A I was angry and then confused because it's just not something  
6 that just happens.

7 Q Sure. Tell me a little about this plan, if you will, to try  
8 to catch Daniel in the act.

9 A Well, I was going to sit up all night because she was saying  
10 that it happened between like six and seven in the morning  
11 is when I guess it was going on the most.

12 Q Wait, let me back up she -- did she tell you that or how did  
13 you know that?

14 A That's what Jenna had told me.

15 Q At the prison?

16 A Yes. Well, on the way -- we didn't talk about it on the  
17 way home because my mother was in the vehicle. And I don't  
18 see the point of my mother knowing a whole bunch of stuff and  
19 being upset. She is 82 years old. So after we got back,  
20 me and Jenna went in the pole barn and I said something to my  
21 husband, because I was, you know, and then --

22 Q Is this -- is this the same day?

23 A That -- when we came back from the prison.

24 Q That night, that Saturday --

25 A On the 6<sup>th</sup>, I went into the barn and I said something to my

- 1 husband.
- 2 Q And his name is Scott?
- 3 A Scott. And then I and Jenna went inside and we were talking  
4 about the whole incident of what had been going on and I said  
5 that I would sit up all night, because they were going to  
6 be staying overnight. I would sit up all night and see if  
7 anything was happening. Then I could catch him red handed and  
8 we wouldn't be here today going through all of this, because  
9 it would have been right there.
- 10 Q What do you mean by "right there"?
- 11 A Like, he would have been caught, if he was doing this, right  
12 then and there.
- 13 Q Oh, I didn't know if you meant he would have been shot or --  
14 that's what I meant by -- ended right there -- I am not sure.  
15 Well, I -- I -- we have the case. Anyway, so you were  
16 anticipating catching him that night or at a later date?
- 17 A I was just starting to sit up on the weekends they were there.
- 18 Q Okay. Did you sit up that weekend then, that night?
- 19 A Yes. I did. I sat up. I actually took my -- I have like a  
20 footstool thing that was in my laundry room. And I sat it by  
21 my bed with the door being like three feet from me and I sat  
22 up the whole time.
- 23 Q Were the lights out?
- 24 A Yes.
- 25 Q Did you have a book or were you just sitting there listening?

1 A Yes.

2 Q Did anything happen that night?

3 A No.

4 Q Was Daniel there that night?

5 A Yes. The night we came back from the prison, yes.

6 Q Was Brooke there?

7 A Yes.

8 Q Was Weston, her son, there?

9 A Yes.

10 Q Did Jenna stay that night?

11 A Jenna was there on the sofa and I can't remember if Anna was  
12 on the -- yes, she was on the big chair that night.

13 Q She was at the house, at least, you know that.

14 A Yes.

15 Q Did you try to lay in wait for Daniel any other day besides  
16 that night, like the later weekend?

17 A The weekend after, which was the weekend of the 12<sup>th</sup>, that  
18 Friday, I stayed up and done the same thing. And Jenna was  
19 there on Saturday. Brooke and Dan had a tractor pull dinner  
20 thing because his family does tractor pulls. And they went  
21 to the Burnips hall and had a dinner thing for the Foxfire  
22 Pulls, I think it was. And I and Jenna went and got pizza  
23 from Hudsonville. And I dropped my mom off a pizza. And then  
24 we were sitting there eating pizza and stuff and when we were  
25 in the vehicle coming back from getting the pizza, I was

1 asking her things like, is there anything like technical,  
2 like birthmarks or scars or anything you could remember that  
3 would, you know, prove anything, like did you ever see him  
4 with his clothes off so that you could prove that, you know,  
5 by a birthmark or anything.

6 Q Okay. I know what you are saying.

7 A And then I was also putting my closet back together because  
8 it just -- a bunch of stuff fell, so I was like redoing my  
9 closet. And she was messaging Taylor.

10 Q Who is "she"?

11 A Jenna --

12 Q Okay.

13 A -- was messaging Taylor on that Saturday. And she kept coming  
14 into my room, saying --

15 MS. JIPP: Your Honor, I am going to object if she  
16 is going to say anything that a witness that's previously  
17 says. That's hearsay. So she is happy to -- she can talk  
18 about all of these other events. She just can't specifically  
19 say what a witness that's already testified is saying.

20 MR. MAESEN: I don't see -- I think we should let  
21 her make the statement to see whether it's hearsay or not.  
22 There is a number of exceptions.

23 THE COURT: Well, I think you need to tell me what  
24 the exception is --

25 MR. MAESEN: I --

1 THE COURT: -- that would allow the hearsay.

2 MR. MAESEN: -- didn't ask her about anything --

3

4 BY MR. MAESEN:

5 Q All right. Just don't tell about what Jenna was -- well,  
6 you had testified she was texting Taylor.

7 THE COURT: If that's something she saw, if she  
8 saw it --

9 MR. MAESEN: Sure.

10 THE COURT: -- she can testify to it.

11 BY MR. MAESEN:

12 Q Well, Jenna was showing me her phone that she had texted  
13 Taylor.

14 A Okay. And this is the weekend of the 12<sup>th</sup>.

15 Q Yes. Which was a Saturday. She was saying that --

16 THE COURT: We've just indicated that you can't  
17 say what someone else said. That's hearsay.

18 THE WITNESS: Sorry.

19 THE COURT: Thank you.

20 BY MR. MAESEN:

21 A Okay. She was messaging her. And then Taylor picked Jenna  
22 up from my house and then they left. Later, my brother had  
23 called because he had already known about the whole incident.  
24 He called. I technically had answered the phone and --

25 Q Your brother, Robert.

1 A Robert, from the prison. And he said that --

2 MS. JIPP: Your Honor, it's going to be the same  
3 exception.

4 MR. MAESEN: I let every witness for the People get  
5 up here and do nothing but hearsay for a whole day.

6 THE COURT: That's -- that's a trial strategy that  
7 you chose. And it's still hearsay. If you have an exception  
8 to the hearsay rule and she has raised an objection, I need  
9 to know what that is.

10 MR. MAESEN: I don't even know what she's going to  
11 say, so I don't have an exception right now.

12 THE COURT: All right. Then you can't say what  
13 someone else told you. Thank you.

14 BY MR. MAESEN:

15 Q Okay. So then -- so after Jenna left with Taylor, then what  
16 happened?

17 A It was shortly after she had left with Taylor, the officers  
18 got called -- the officer got called. And my brother called.  
19 And that's how we found out that the officers were over there.

20 Q Was there more than one officer?

21 A I never seen the officers at the house.

22 Q Was this your house?

23 A At the grandma's house of Jenna's.

24 Q Okay. Okay.

25 A Because that's where they went to talk to everybody. Now the

1 officer came to my house on Sunday to talk to me and my  
2 husband.

3 Q Okay. And what did you tell the officer?

4 A Whatever he asked. I showed him the layout of the house.

5 Q Did he take pictures at all?

6 A He didn't take pictures at that time, he just took pictures  
7 just a few months ago. He came back and asked if he could  
8 take pictures and I said I didn't have a problem with that.

9 Q Sure. What time of day was it when he first came to your  
10 house?

11 A When the officer came to my house?

12 Q Yeah, back in January.

13 A When he came to my house on that Sunday to talk to me and  
14 my husband, it was probably 4 or 5 in the afternoon.

15 Q And this was January.

16 A Yes.

17 Q Was it getting kind of dark out?

18 A It was still light out.

19 Q Okay. So he spoke with you and your husband. Was it just  
20 the three of you home?

21 A It was just I, my husband, and the officer at that time, yes.

22 Q Do you know where Daniel and Brooke were?

23 A Daniel went on a run that day --

24 Q For work?

25 A -- that he was leaving for a run -- yes. And Brooke went and

1 stayed at her friend, Lindsay's because Dan was I guess on  
2 the run up by there. So she went to Lindsay's, which wouldn't  
3 be uncommon.

4 Q Sure. And she would have brought her son.

5 A And she brought Weston with her.

6 Q Do you recall -- we will back up and change course. Do you  
7 recall -- during the first year or so of Weston's life, do you  
8 recall if Brooke was breastfeeding?

9 A Yes. She started breastfeeding him, a few months later  
10 I think she may have had an infection or something, so she  
11 couldn't do it, because they gave her a certain medicine, so.

12 Q Okay. Do you recall if she was doing it from when he was  
13 born?

14 A She did for a couple of months after he was born.

15 Q Do you recall if she would get up in the night to do that?

16 A She would sometimes, but he was a pretty good sleeper.

17 Q The next question is when you first learned of this from --  
18 from Jenna, why didn't you guys just call the police right  
19 away, on January 6<sup>th</sup>, when you left the prison?

20 A When we were -- when we left the prison?

21 Q Yeah, you found out at the prison that she made allegations.

22 A Yes.

23 Q Why didn't you guys just call the police right then?

24 A I honestly don't know. We were just going to try and catch  
25 him red-handed so that we knew it was really a fact.

1 Q Were you doubtful at that time?

2 A Well, yes.

3 Q Personally you?

4 A Well, yes.

5 Q You were doubtful because you didn't believe Jenna or because  
6 you didn't believe Daniel could?

7 A It's -- I just didn't believe that would happen in my house  
8 like that.

9 Q Okay. Fair enough. And you still live at the same address.

10 A Yes.

11 Q And who lives with you currently there?

12 A I and my husband.

13 Q Just the two of you?

14 A Yes.

15 Q Daniel and Brooke have moved out?

16 A Yes. They never came back after the 13<sup>th</sup>, when he went on his  
17 run. Brooke would come back occasionally to pick up stuff  
18 for Daniel and stuff, but Daniel never came back to live at  
19 my house.

20 Q And you believe that's because of the situation.

21 A Well, I asked it not to be, because --

22 Q You told him not to -- okay. He was asked not to come back.

23 A Yes.

24 Q Fair enough.

25 MR. MAESEN: I have nothing else, your Honor.

## CROSS-EXAMINATION

1

2 BY MS. JIPP:

3 Q I will try not to be repetitive and ask you questions that  
4 he has already covered. Okay. I am going to approach you  
5 with a couple of photographs here in a minute. You kind of  
6 detailed the layout of your home and we did have some prior  
7 testimony about that as well. I am going to approach you  
8 with photographs previously marked People's Exhibit Number  
9 10 through 17. And if you don't mind just taking a look  
10 through those pictures. Now what are those pictures?

11 A Do you want me to hold the picture up or --

12 Q Nope. If you can just describe --

13 A Okay.

14 Q -- what they are.

15 A Well, the first picture is Brooke's bathroom, part of the  
16 hall, and Brooke's bedroom.17 Q Okay. You don't have to go into specifics. Do these pictures  
18 fairly and accurately look like the layout of your home?

19 A Yes.

20 Q Okay. Did you, yourself take these pictures or know who  
21 took these pictures?22 A I don't know if -- the officer came and took some pictures  
23 and I believe Brooke took pictures.

24 Q Okay.

25 A But yes this is the layout of my house.

1 MS. JIPP: At this point, your Honor, we would  
2 move to admit People's Exhibits 10 through 17 and publish  
3 to the jury.

4 MR. MAESEN: I haven't seen it yet.

5 MS. JIPP: These were listed as defense exhibits,  
6 that's how I received them.

7 MR. MAESEN: They weren't by this defense counsel.  
8 We have no objection to them, your Honor.

9 THE COURT: Thank you. They are admitted.

10 (at 11:52 a.m., People's Exhibit Numbers 10 through  
11 17 were identified and received)

12 BY MS. JIPP:

13 Q I just want to be able to look at these with the jury. I  
14 love my family, but that's not my point here. Technical  
15 assistance, do you know why this is not working? Like it's  
16 showing the desktop as opposed to what I am seeing on my  
17 screen? Does that make sense?

18 MS. JIPP: I apologize, your Honor. I will figure  
19 this out and I will address this later.

20 THE COURT: All right. I don't know why that's  
21 happening. I'm sorry, I can't help you.

22 MS. JIPP: Yeah, I will put it in this mode and  
23 then, there we go. Something is working out.

24 THE COURT: And can you turn around to look and  
25 can you see that from that angle or not?

1 THE WITNESS: Yes, I can see it.

2 MS. JIPP: Okay.

3 BY MS. JIPP:

4 Q So you just testified that you first moved into the home, the  
5 bathroom was, I believe you said orange with kind of a flower  
6 décor, correct?

7 A Yes. When we very first moved in, it was just all of the  
8 primer paint and I allowed her to decorate her own bathroom.

9 Q So she kind of had jurisdiction of the bathroom. That could  
10 be hers to decorate or not.

11 A Right. As long as it was a reasonable color.

12 Q Okay. Okay. And what color is the bath mat in the photograph  
13 that you see?

14 A That one is a jade-ish, bluish, green.

15 Q Okay. Jade-ish.

16 A But I had just bought those.

17 Q Okay. So you just bought those.

18 A This one, yes.

19 Q That set of rugs. Okay. Do you know approximately when you  
20 would have purchased those?

21 A I -- when the officer took the striped ones, when I gave them  
22 to him, I purchased a color that was similar to that one,  
23 the jade-ish, bluish, green color, because it matched that  
24 shower curtain with the peacock on it. Those had like a  
25 rubber back on them, but then I liked these ones better,

1 because they were, like, softer, squishier. And them ones  
2 have only been like a few months, not that long ago that I  
3 had purchased them. I got them.

4 Q Okay. And you, I believe said that the bathroom was switched  
5 to this peacock décor in -- in what year that you testified?

6 A Probably 2012 or 13. I am not positive on the years.

7 Q Okay. And what year are you saying that she switched from  
8 orange -- or I'm sorry. So in 2012, 2013, she switched to  
9 this décor, this peacock décor. Is -- is that what your  
10 testimony was?

11 A Yes.

12 Q Okay. So from 2013 until the officer was given the rugs,  
13 you had -- you had one set of bath mats. So for six years,  
14 you only had one set of bath mats for this restroom. Is  
15 that -- is that your testimony?

16 A Yes.

17 Q Okay. And then you -- within a span of two months purchased  
18 two different sets of blue bath mats for that -- for that  
19 restroom.

20 A Yes. Because I liked these ones better than the other ones.  
21 The other ones were --

22 Q Okay.

23 A -- cheap, rubber-backed ones.

24 Q Okay. Would you say you keep a relatively clean house?

25 A I think I do, yes.

1 Q I have seen pictures, I would agree. If you could, just detail  
2 what I am seeing in this image.

3 A This one is my bedroom.

4 Q Okay. And so your -- your -- the head of your bed is actually  
5 on the wall that faces into the living room, is that -- is  
6 that accurate?

7 A Yes. Because that would be the foot of my bed right there.

8 Q So where is your bathroom in your room?

9 A Off to the left of that a little bit, maybe.

10 Q So you would walk into your bedroom and past your bed and then  
11 it would be tucked away in the corner?

12 A If you -- right at the foot of my bed right there, if you  
13 walked straight across, there is the door to my bathroom.

14 Q Okay. Okay. But you didn't wake up hearing a toilet flushing  
15 in the middle of the night.

16 A I don't recall ever waking up to a toilet flushing.

17 Q Okay.

18 A I have heard it at some point in time, but I --

19 Q But you just thought someone was using the restroom.

20 A Right.

21 Q You don't recall a specific incident of waking up because you  
22 have an older dog that might bark at noises.

23 A I could have woke up at some point with them barking at  
24 something. But she's also got glaucoma and part blind, so  
25 she kind of --

1 Q So to a certain degree, you just kind of tune her out. She  
2 is kind of -- kind of old and yappy.

3 A Well, if somebody was at my house or someone is moving around  
4 a lot in my house, they have a different kind of bark, so.

5 Q Sure. So --

6 A They are more --

7 Q -- a different bark with a stranger.

8 A -- more aggressive barks, so.

9 Q Okay. Okay. So somebody they know, that lives in the home,  
10 they are not -- they are not going to have this different  
11 type of aggressive bark.

12 A Could you repeat that?

13 Q Sure. You -- you said when the dogs saw someone they didn't  
14 know, it would be this like, different kind of aggressive  
15 bark, correct?

16 A Well, if someone is coming to my door and pounding on my  
17 door --

18 Q Yeah.

19 A -- then yeah, they have a different kind of bark because they  
20 all trail to the door if they are in the same area. Like if  
21 they were all in the living room, they would probably all  
22 trail to the door.

23 Q Yeah. Yeah. So these dogs are kind of barky and aggressive.  
24 If I can, I am going to switch gears for a little bit. In  
25 December of 2015, you hosted a wedding reception for your

1 brother, didn't you?

2 A Yes.

3 Q Had a lot of his kind of friends and your family at your  
4 house, correct?

5 A They were in the barn, yes.

6 Q Okay. Okay. Now in the barn or garage or are they two  
7 separate buildings?

8 A Well, it's like a pole barn/garage.

9 Q Okay. Okay. So it's all the same. I wanted to make sure  
10 we were talking about the same thing. And there is a  
11 bathroom attached to that, correct, where -- where guests  
12 would use the restroom.

13 A Yes. In the back of it. You would have to go out the door  
14 and go into the bathroom.

15 Q Okay. Okay. And it was kind of the unspoken rule that  
16 strangers and people weren't going to be traipsing through  
17 your house that night.

18 A Right.

19 Q Okay. I -- I guess the dogs were kind of penned up inside --

20 A Yes.

21 Q -- that night. Yeah. Okay. Could you kind of just describe  
22 your mood that day at your brother's wedding?

23 A We were just all fine. We -- all the hair and stuff got done  
24 and we went to the church. And we came back from the church  
25 because the reception and the dinner was in our pole barn.

1 It was kind of -- it wasn't like super small, but it was  
2 kind of a little bit blowy cold. I had a couple fake pine  
3 tree things for the light of the sidewalk. And then the  
4 barn was decorated.

5 Q Okay. Okay. People stayed for kind of several hours,  
6 correct, for this reception gathering?

7 A Yes. I believe they got married at three in the afternoon,  
8 maybe, and then it followed.

9 Q Okay. And then at some point, you kind of ran out of soda  
10 and some of the kind of snacky stuff for guests.

11 A No. I had plenty of food.

12 Q Okay. Okay. At any point, did you go inside that evening and  
13 just kind of call it an early night?

14 A No.

15 Q No.

16 A I brought my mother in to go to the bathroom because my  
17 mother had broke her hip December 2<sup>nd</sup> and my brother had  
18 gotten married December 19<sup>th</sup>. I brought my mother and my  
19 friend, Kathy, in because I didn't have my mom use the  
20 pole barn bathroom because it's lower.

21 Q Okay. So that was the only time you went in the home that  
22 evening before the party ended.

23 A And one other time I changed my clothes.

24 Q Okay. Okay. Don't ever recall ever seeing, like, a bunch  
25 of guests come in and out?

1 A No.

2 Q Yeah. Okay.

3 A The doors were locked. They would have had to get a key from  
4 me or my husband.

5 Q Okay. All of the doors to your home were locked --

6 A Yes.

7 Q -- that evening.

8 A Yes.

9 Q Okay. Jenna testified that she went in the home that evening.  
10 Do you have a distinct memory of giving -- and I know we are  
11 2019 and this was 2015. Do you have a distinct memory of  
12 giving her the key?

13 A No.

14 Q Okay. Do you have a distinct memory of giving Dan or Brooke  
15 the key?

16 A No. Actually when there was the dinner part and Weston stayed  
17 for the dinner, which is my grandson, which is their son,  
18 I brought Brooke in with me and she grabbed Weston's overnight  
19 bag, because Dan's parents kept Weston overnight that night.

20 Q So you even -- you even keyed in your own daughter to her  
21 home.

22 A Yes.

23 Q She wasn't given access to your home.

24 A No.

25 Q No. Okay. You never told the officer any of this when he

1 asked you about that night, though, did you?

2 A I don't believe he ever asked me about my house and a key.

3 Q A sexual assault is being alleged to have occurred in your  
4 home on the night of a wedding and you don't think it's  
5 relevant to say there was no way she or he could have gotten  
6 in the home because I had the only key.

7 A He never asked me anything about that.

8 Q And you didn't volunteer it, did you, until -- until today.

9 A I don't know if I ever told him that. I don't think he ever  
10 asked me, so I didn't.

11 Q Okay. So I am just going to kind of talk a little bit more  
12 about your conversation with Trooper Desch. You just  
13 testified that you told Trooper Desch that Jenna disclosed  
14 it was at 6 a.m., that these assaults would happen at 6 a.m.,  
15 when in fact, when you spoke to Trooper Desch, you told him  
16 it would be at 3 a.m., in the morning; isn't that correct?

17 A I don't remember.

18 Q Okay. I want to talk a little about your relationship with  
19 Jenna before all of this -- this came out. How -- how would  
20 you describe your relationship with Jenna?

21 A Right now or --

22 Q In 2015, 16, 17.

23 A I am very close to all of the kids.

24 Q They kind of came to your home, you provided food -

25 A My door was always open to them.

1 Q Unless you had it locked and would only give them a key.

2 A Well, if I -- I didn't know all of the people at the wedding  
3 reception. That is why my door was locked.

4 Q Okay. Did she, in 2015, did she seem like a happy child, I  
5 mean, I know her father was going to go to prison, but was  
6 she kind of dealing with that, you think?

7 A I believe we all were.

8 Q Would she look forward to these -- these visits to see her  
9 dad?

10 A Yes. Very much, I think.

11 Q Would you describe her having a close relationship with her  
12 father?

13 A Yes.

14 Q Yeah. Okay. Would you say she had a pretty close  
15 relationship with Brooke?

16 A They were always close, Brooke done their hair and everything.

17 Q Like, would you think, like characterize it more as like a big  
18 sister as opposed to a cousin?

19 A Kind of, yes.

20 Q All right. You mentioned when she disclosed to her dad that  
21 she kind of had tears in her eyes.

22 A Yes.

23 Q As she -- as she disclosed what was going on, did she seem  
24 sad and upset?

25 A She just seemed like she was telling him.

1 Q And your first -- your first question to Anna was, what  
2 was this name, Darren or Dan, correct?

3 A No. I was under the impression it was Darren.

4 Q Okay.

5 A Because when they were doing stuff on the bottle, there was  
6 a letter missing. I was confused.

7 Q Okay. Okay.

8 A So I -- when we went to the pop machine, I said to Anna, "Is  
9 it Darren?" And then she said, "You don't know, do you, it's  
10 Dan." so --

11 Q And then how long until you went out the bathroom with Anna?  
12 Or was it that same time you stepped out to get the pop?

13 A No. Because at that prison, it works a whole lot differently.

14 Q Sure.

15 A We went up to the pop machine and we had that discussion.  
16 Then we went back and sat down where her dad was to give him  
17 pop. And then you have to wait for the guard to bring you  
18 out. I don't remember exactly how long that was.

19 Q But you found her credible enough, "her", being Jenna, to  
20 immediately ask her younger sister if Dan had also been  
21 assaulting her, correct?

22 A I just said, "Has anything been happening with you", because  
23 I was kind of freaked out. You know, it's not an every thing  
24 somebody comes up and says.

25 Q Sure.

1 A So you just kind of -- you question it a little. I mean, it  
2 is my house.

3 Q Yeah. How long have you known the Defendant?

4 A At this time or --

5 Q In early 2018, how long had you known him?

6 A In '18, like four years.

7 Q Four years. At that point, was he engaged to your daughter?

8 A They got engaged -- I don't remember the exact date they got  
9 engaged. I'm sorry.

10 Q And they are married now, correct.

11 A Yes. Now they are married.

12 Q And expecting another child.

13 A Yes.

14 Q Correct. Your grandchild.

15 A Yes.

16 Q Okay. Is it safe to say you love the Defendant now as a  
17 member of family as well?

18 A He is a member of my family.

19 Q Safe to say that your daughter would be devastated if it came  
20 out that -- that her husband had sexually abused her cousin?

21 A I feel anybody would be devastated if that came out to be a  
22 true factor.

23 Q Sure. Sure. So it's easier to just believe that didn't  
24 happen, correct?

25 A No. It's not easier to believe that that didn't happen.

1 Q Okay. Describe your relationship with Jenna now.

2 A I and Jenna still talk. She visits her dad sometimes. I  
3 usually pick them up at their grandma's because they are not  
4 allowed to come to my house because their mom won't let them.

5 Q Okay. Do you try to ask her about what's going on in the  
6 case?

7 A Do I try to ask her?

8 Q Mhmm.

9 A I have never specifically asked her anything about the case  
10 part. Sometimes maybe her and Anna will be talking in the  
11 back and I will overhear things.

12 Q Okay. You mentioned that Brooke didn't want Jenna or Anna  
13 using her restroom any longer, that there was an issue with  
14 makeup going missing.

15 A Yes.

16 Q Okay. So if someone was to be using that bathroom in the  
17 middle of the night, you would assume it would be Brooke or  
18 Dan, correct?

19 A Not necessarily, because the girls still did use it, even  
20 though Brooke wouldn't like them to use it. They would still  
21 go in there and go to the bathroom.

22 Q Okay. Okay. Jenna ever lie to you about -- about big things  
23 in life?

24 A I don't --

25 THE COURT: If you would approach.

1 (at 12:10 p.m., attorneys approached the bench  
2 for brief conference)

3 BY MS. JIPP:

4 Q You - you testified that on January 6<sup>th</sup>, which would have been  
5 a Saturday, I believe, you normally went to visit on  
6 Saturdays, correct?

7 A We normally go on Saturdays. We had occasionally gone on  
8 Sundays.

9 Q Okay.

10 A Except when they had school, it was easier to go on a  
11 Saturday.

12 Q Yeah. Okay. So you testified that that night, you stayed  
13 up all night.

14 A Yes.

15 Q Okay. And you didn't -- you didn't hear anything.

16 A No.

17 Q But Jenna had told you that these assaults usually happened  
18 before she goes to the prison, correct?

19 A Can you repeat that?

20 Q Sure. Jenna had told you when she disclosed these assaults  
21 had occurred, they would usually happen the night before she  
22 would go to prison, correct?

23 A She was just saying they were happening, she didn't  
24 specifically say it was before she went to the prison.

25 Q Okay. Okay. She didn't tell you the next day, "Oh, he took

1 me in there and he raped me", did she?

2 A The next day --

3 Q You stayed up all night.

4 A -- so it would have been the 7<sup>th</sup>.

5 Q The next morning, she didn't come to you and say, "He -- he  
6 raped me last night, did she?

7 A No.

8 Q Okay. You said the next weekend, Jenna came back. Did Anna  
9 also come back to your home the weekend of the 13<sup>th</sup>?

10 A No. Anna wasn't there because when we went and got the pizza  
11 and stuff, it was just me and Jenna.

12 Q Okay. Okay. And Jenna was only allowed to go there because you  
13 told her mom the Defendant wasn't going to be there, that he  
14 was away on work, correct?

15 A I don't -- no. No. Because she came on a Friday. Her  
16 mother was aware of -- I was sitting up to catch them. Her  
17 mother was aware of that.

18 Q On November 4<sup>th</sup>, Jenna testified she received an injury as a  
19 result of a sexual assault. On the evening of November 4<sup>th</sup>,  
20 in the middle of the night, early hours of November 4<sup>th</sup>, you  
21 got up and got Jenna ice for her eyes, didn't you?

22 A Jenna came in my room and said her eyes were still puffy.  
23 So I got up and I went and got her ice, in like a gallon  
24 baggie. And I don't remember if I wrapped it in a washcloth  
25 or if I wrapped it in my kitchen towel. And she was laying

1 back on the couch and I put it on her eyes.

2 Q Okay. Now you -- you mentioned this weekend of the 13<sup>th</sup>,  
3 you go to get pizza. And you are kind of asking her  
4 questions, at this point you are also formulating the plan  
5 of how you are going to -- how you are going to catch Dan,  
6 correct?

7 A Well, I don't remember exactly the date we formulated that,  
8 because I stayed up on the 6<sup>th</sup> when we came back from the  
9 prison that night, so.

10 Q So you think the plan was already in place on -- having left  
11 the prison with --

12 A I told her I was going to stay up that night.

13 Q Okay. Did you -- phone in hand to try to take pictures.

14 A With me having a phone in hand?

15 Q I don't know. I am trying to figure out what the plan was.

16 A No.

17 Q Okay. So you were just going to stay up all night. I mean,  
18 how were you going to capture this sexual assault occurring?

19 A I was going to kick the door open or I actually made this  
20 thing with a coat hanger, I was going to poke it in the door,  
21 but then I just said I would kick the door open, because what  
22 would be the point of that?

23 Q Okay.

24 A If I felt there was something going on in there, I would kick  
25 the door open.

1 Q So if her word wasn't going to be enough and we had to have  
2 proof, you thought your word would be enough if you kicked  
3 the door in to see him?

4 A I am sure I would have woke up the whole house by kicking the  
5 door in. So there would have been plenty of witnesses.

6 Q Okay. So there was no plan to like actually take pictures  
7 or anything.

8 A Well, I told Anna, if I had kicked the door in, that she could  
9 take pictures. But that was on the night we came back from  
10 the prison.

11 Q Okay. How would you describe Jenna's interactions with Dan,  
12 before you found out about this disclosure?

13 A Her and Brooke and Dan and all of the kids, they would have  
14 like bonfires in front of the garage.

15 Q Okay. So you didn't see anything that you thought was  
16 strange or inappropriate.

17 A No.

18 Q Okay. You never went to Taylor and said, you know, Brooke  
19 and I think something might be going on between Dan and Jenna.

20 A I don't recall ever doing that.

21 Q Okay. Okay. What time would you and your husband go to  
22 bed generally at night?

23 A My husband would go to bed earlier. And I would stay up  
24 sometimes and watch movies or stuff with the kids.

25 Q Okay.

- 1 A Or if I was working, I would go to bed like around 10 or so,  
2 after the news.
- 3 Q Okay. Okay. Dan and Brooke and Jenna and if there were other  
4 kids, would still be up when you went to bed?
- 5 A Normally, I only work during the week, so the kids weren't --  
6 they would be there mainly on the weekends.
- 7 Q Okay. So on the times that -- that Jenna, Anna, and her  
8 friends might be there, they would still be awake once you  
9 went to bed.
- 10 A Sometimes I stayed up and watched movies with them, so.
- 11 Q Okay. Okay. Do you sleep with any sort of noise machine or  
12 fan in your room?
- 13 A No.
- 14 Q Keep a T.V. on while you go to bed?
- 15 A I don't have a T.V. in my room.
- 16 Q Okay. Did you -- Do you recall having issues with being  
17 awakened in the middle of the night because of noise in the  
18 home?
- 19 A No.
- 20 Q Okay. Would you describe yourself as a heavy sleeper?
- 21 A No.
- 22 Q No. Okay. But don't remember ever being awakened. Okay.
- 23 MS. JIPP: Give me two seconds to make sure  
24 I covered what I wanted to cover.
- 25 BY MS. JIPP:

1 Q Do you remember Jenna coming to you and describing a burning  
2 chest feeling, when she would be staying the night with you?

3 A She was on the couch the night that her eyes were puffy  
4 because she came to my house and her -- she was already  
5 complaining that her eyes were bothering her and they were  
6 kind of puffy. And she said she had heartburn and her stomach  
7 hurt.

8 Q Your testimony right now is that she came to your house with  
9 puffy eyes.

10 A They started to be bothering her. And as the night went on,  
11 they were puffy.

12 Q Did you give her Benadryl?

13 A No. I did not give her Benadryl.

14 Q Did you call her mom?

15 A No. She called her grandma the next morning, because we were  
16 going to go to the prison and her grandma was -- came and got  
17 her from my house. And she was supposed to be going to the  
18 doctor, because they were either messaging me or calling me  
19 on the way to the prison, I don't recall. But I know they  
20 were in contact with me because they needed to know, because  
21 I had a Prilosec for heartburn and she took a Prilosec. They  
22 needed to know how many milligrams that was and that the  
23 doctor needed to know that.

24 Q Okay.

25 A And that she was supposed to be going to doctor for her eyes.

1 Q So that's in November. How many additional times did she  
2 complain to you that she was experiencing this like, burning  
3 in her chest?

4 A I don't remember if she did it before.

5 Q Or complaints of stomach aches at your house?

6 A Well, she would get stomach aches off and on.

7 Q So kind of a semi-regular occurrence that she would kind of  
8 be complaining about these -- these physical ailments.

9 A Maybe her stomach.

10 Q Okay. Okay. Do you remember a birthday party for Weston.  
11 I believe it might have been -- he was born, I think you  
12 said, June of 2015.

13 A He was born June 3<sup>rd</sup>, 2015, yes.

14 Q Okay. So in 2017, did you host a second birthday party for  
15 Weston?

16 A They had a birthday party for Weston, Dan and Brooke --

17 Q At your --

18 A At my home.

19 Q Okay. Okay. And Jenna left that party after being there for  
20 a while, didn't she?

21 A Anna and Jenna both did.

22 Q Okay. And Dan went and picked Jenna up and brought her back,  
23 correct?

24 A Anna and Jenna both were supposed to come back. I don't know  
25 why -- I don't remember why Anna didn't come back. But Jenna

1           came back, yes.

2   Q       And Dan brought her back, correct?

3   A       Yes. Dan was going, I believe, to the farm or to the store,  
4           and he picked her up and brought her back for me.

5   Q       Okay. Okay.

6                   MS. JIPP:     Just give me one second. I have no  
7           further questions.

8                   THE COURT:   Thank you. Redirect?

9                   MR. MAESEN:   Yes. Thank you. I am aware of the  
10          Court's time, so this will be very brief.

11                                   REDIRECT EXAMINATION

12 BY MR. MAESEN:

13 Q       I forgot to ask you about something earlier.

14 A       Yes.

15 Q       Your brother, he went to prison. Did he own a home?

16 A       Yes. He did.

17 Q       Did he -- was it the home he occupied?

18 A       The home that he occupied?

19 Q       Yes.

20 A       Yes.

21 Q       And he owned that.

22 A       Yes.

23 Q       He had title.

24 A       As far as the title goes, the title was in my husband's name.

25 Q       Okay. Do you recall at any point being asked to go over there

1 and take pictures?

2 A Was I asked to go take pictures?

3 Q Or ask to have pictures taken of his house, after he went  
4 to prison?

5 A Well, my brother asked sometimes if we would go take pictures  
6 because he hadn't been there in a while, so, you know, he  
7 wanted pictures of -- one of his friends had planted pine  
8 trees along his property. He said take pictures of the pine  
9 trees, take a picture of my lawn, I don't care. I just want  
10 to see my house.

11 Q Do you recall going over there to see if there has been any  
12 drug activity going on?

13 A If there was drug activity going on?

14 Q Having pictures taken to validate -- all right, let me back  
15 up. Are you aware that he -- did he have anybody living  
16 with him there?

17 A In 2015 or --

18 Q Right before he went to prison.

19 A His wife was staying there.

20 Q Before she was his wife?

21 A I am sure she stayed there a few times before she was his  
22 wife.

23 Q Sure. Did he have anybody else staying there?

24 A Tonya lived there and Taylor and Shenavery lived there, I  
25 believe. Taylor and Shenavery kept moving in and out and

1 Tonya moved in and out.

2 Q Okay. Let me -- let me take a different course here for the  
3 nature of brevity. Do you recall an incident where Dan and  
4 Jenna went over there to take pictures of the trailer?

5 A No.

6 Q You don't know anything about that?

7 A No. Because my daughter would be the one that would have sent  
8 pictures to my brother. So she always done the pictures,  
9 because I don't even know how to send them to him.

10 MR. MAESEN: That's all I have. Thank you.

11 MS. JIPP: No further questions.

12 THE COURT: Any questions from the jury.

13 You may step down, ma'am.

14 We will take our recess for lunch at this time.

15 At this point, I think if we could all be back by, I think  
16 1:30 should be sufficient. But 1:30 to 1:40, so you can all  
17 have time to get lunch. All right.

18 And if you would please -- that caution, don't  
19 talk about the case among yourselves, to anyone, because you  
20 can't talk about what's going on.

21 All right. Please rise for the jury.

22 (at 12:24 p.m., Court recessed for lunch)

23 (at 1:42 p.m., Court reconvened)

24 MS. LANGE: Court is now in session.

25 THE COURT: Please remain standing for the jury.

1 They are obviously impatient.

2 MR. MAESEN: Pardon me?

3 THE COURT: They rang the bell to let us know.

4 MR. MAESEN: Oh. Oh.

5 BAILIFF: There is a jury member in the bathroom  
6 right now.

7 You can be seated.

8 Do you have a next witness ready, Mr. Maesen?

9 MR. MAESEN: I do.

10 THE COURT: All right. Thank you.

11 MR. MAESEN: Should I bring her in now or -- ?

12 THE COURT: Yeah, that would be great.

13 MS. LANGE: If you would come forward and then stop  
14 and raise your right hand. Do you solemnly swear or affirm  
15 that the testimony you are about to give in this matter will  
16 be the truth, the whole truth, and nothing but the truth, so  
17 help you God?

18 MS. MILBURN: Yes.

19 JESSICA MILBURN

20 (AT 1:45 p.m., sworn as a witness, testified as  
21 follows)

22 DIRECT EXAMINATION

23 BY MR. MAESEN:

24 Q Good afternoon, Jessica. Could you state your full name for  
25 the record?

1 A Jessica Milburn.

2 Q And where do you live at?

3 A In Hopkins.

4 THE COURT: Just for the record, can you spell your  
5 last name so we get it correctly.

6 THE WITNESS: M-i-l-b-u-r-n.

7 THE COURT: Thank you.

8 BY MR. MAESEN:

9 Q And do you know the Defendant, Daniel Loew?

10 A Yes.

11 Q How long have you known him?

12 A Four or five years.

13 Q Okay. Are you a close friend?

14 A Yeah. I know his wife.

15 Q So you are friends with Brooke?

16 A Yes. I am friends with Brooke.

17 Q Okay. Do you recall back in 2015 a wedding that you would  
18 have attended at Brooke's mother's house for her brother,  
19 Robert?

20 A Yes.

21 Q And he got married that day.

22 A Yes. Correct.

23 Q Do you recall if he was getting ready to go to prison?

24 A Yes.

25 Q Okay. Just want to make sure I have the right wedding. Now

1           you - you obviously attended that wedding. What was your role  
2           at the wedding?

3    A       I was taking some photographs.

4    Q       Were you the official photographer?

5    A       I think I was the only photographer, besides cell phones.

6    Q       Were you asked by the family?

7    A       Yes.

8    Q       Okay. So it's fair to say that you were sort of the wedding  
9           photographer.

10   A       Yes.

11   Q       Okay. Do you remember that day?

12   A       It was a long time ago, but yeah.

13   Q       Yeah. Do you remember where the wedding was, exactly -- well,  
14           let's -- do you remember where the wedding reception was  
15           held?

16   A       Yes. It was in the garage.

17   Q       Of Brooke's parent's house.

18   A       Brooke's parent's house.

19   Q       Now is this garage kind of like a pole barn?

20   A       Yes.

21   Q       Bigger than a normal garage?

22   A       Quite large.

23   Q       Okay.

24   A       Held quite a few tables.

25   Q       Do you remember how many guests there were? Estimate.

1 A Twenty.

2 Q Twenty people

3 A Yeah.

4 Q Would that include the bride and groom?

5 A Yes.

6 Q Do you recall at that time, spending any time with Daniel or  
7 Brooke?

8 A I didn't know very many people, so yeah, I spent a little bit  
9 of time.

10 Q Did you observe them at all?

11 A Yeah. But I was mostly taking pictures.

12 Q Sure. And you weren't there to specifically watch Daniel or  
13 anybody were you?

14 A No.

15 Q Did you recall at any time Daniel leaving the wedding, prior  
16 to it being over, leaving and coming back?

17 A No.

18 Q Do you recall them running out of food?

19 A No. There was lots of food.

20 Q Do you at any time recall seeing him interact with Jenna  
21 Bluhm?

22 A No.

23 Q Let me back up. Do you know who Jenna Bluhm is?

24 A Yes.

25 Q And you know how she is related to Robert, correct?

1 A That's correct. Yes.

2 Q And I take it, do you -- do you not interact with Jenna Bluhm  
3 outside the wedding then?

4 A No.

5 Q You don't see her regularly.

6 A No.

7 Q Okay. So I want to ask again, you never saw him interacting  
8 with Jenna?

9 A No.

10 Q Did you see him go in the home with Jenna?

11 A No.

12 Q Did you see Jenna go in the house?

13 A No.

14 Q Do you recall if the owner of the home, Janie, wanted people  
15 in the house?

16 A I didn't try to go in the house. We were all in the garage.

17 Q Were people directed to use the restroom attached to the  
18 garage?

19 A Yes.

20 Q And the reception as far as you understood it, you believe  
21 that it was only in the garage.

22 A Yes.

23 MR. MAESEN: I have nothing else. Thank you.

24 CROSS-EXAMINATION

25 BY MS. JIPP:

1 Q Jessica, right?

2 A Yes.

3 Q You stated you were working that day, correct?

4 A Yes.

5 Q So you were busy taking photographs of the bride and groom,  
6 correct?

7 A Mmmhmm.

8 Q Maybe some of the other guests, correct?

9 A Yes.

10 Q Do you remember what the Defendant -- what Mr. Loew was  
11 wearing that day?

12 A No.

13 Q Do you remember what Brooke was wearing that day?

14 A No.

15 Q Do you remember what Jenna was wearing that day?

16 A No.

17 Q Okay. At any point, did you, yourself, get some food or  
18 something to drink?

19 A Yes.

20 Q At any point, did you leave the immediate reception area to  
21 use the restroom yourself?

22 A I don't believe so.

23 Q Okay. You -- you don't remember using the restroom while you  
24 were there.

25 A No.

1 Q Okay. Okay. It's safe to say, because you were working,  
2 you didn't have eyes on the Defendant the entire time you  
3 were at that home, though, correct?

4 A Correct.

5 Q Okay. And you didn't have eyes, specifically, on Jenna that  
6 whole evening, correct?

7 A Correct.

8 Q You don't remember what she was even wearing, correct?

9 A No.

10 Q Thank you.

11 MR. MAESEN: I have nothing else.

12 THE COURT: Any questions from the jury? Thank  
13 you. You may step down.

14 May this witness be excused?

15 MR. MAESEN: Yes.

16 THE COURT: Thank you. Next witness.

17 MR. MAESEN: I will be calling Lindsey Carroll.

18 THE COURT: Ms. Carroll, if you would come forward  
19 and raise your right hand, Ms. Lange will swear you in.

20 MS. LANGE: Do you solemnly swear or affirm that  
21 the testimony you are about to give in this matter will be  
22 the truth, the whole truth, and nothing but the truth, so  
23 help you God?

24 MS. CARROLL: I do.

25 THE COURT: You can have a seat up at the witness

1 chair. Thank you.

2 LINDSEY CARROLL

3 (at 1:51 p.m., sworn as a witness, testified as  
4 follows)

5 DIRECT EXAMINATION

6 BY MR. MAESEN:

7 Q Good afternoon. Can you give us your name again?

8 A Lindsey Carroll.

9 Q And how do you spell your last name?

10 A C-a-r-r-o-l-l.

11 Q And where do you reside?

12 A 242 East Elder Road, Mancelona, Michigan.

13 Q Okay. Thank you. And you know the Defendant.

14 A Yes.

15 Q Do you know his wife, Brooke?

16 A Yes.

17 Q Do you know his mother-in-law and father-in-law?

18 A Yes.

19 Q Have you ever stayed the night at their address at 3817  
20 32<sup>nd</sup> Street?

21 A Yes. I have on several occasions.

22 Q And you are familiar with the house then?

23 A Yes. I am.

24 Q So when you stay there do you -- when -- how long have you  
25 been -- do you stay there now?

- 1 A No. Not so much, no.
- 2 Q Was it back when Brooke lived there?
- 3 A Back when Brooke lived there, I stayed there.
- 4 Q And when did you start staying there, approximately?
- 5 A I have been staying the night over at Brooke's house since we  
6 were in third grade.
- 7 Q Okay. Was it always that same house?
- 8 A Nope. They built the new house -- I can't remember what year,  
9 but it was when we were still in high school.
- 10 Q Okay. Would you have been staying there back, do you think,  
11 in 2015?
- 12 A Yes.
- 13 Q 16?
- 14 A Yes.
- 15 Q 17?
- 16 A Yes.
- 17 Q And would you stay overnight?
- 18 A Yes.
- 19 Q And why were you staying there overnight?
- 20 A Just because Brooke and I would be together and I just stayed  
21 there. It was easier to stay there because sometimes we would  
22 be up late. So we would stay -- I would stay the night there  
23 instead of driving home.
- 24 Q And did you have another place you could stay in the area?
- 25 A Yeah.

1 Q Okay. But you wanted to stay there.

2 A But I wanted to stay at Brooke's house, yes.

3 Q Okay. And when you stayed overnight, you slept there  
4 overnight.

5 A Yes.

6 Q Where did you sleep?

7 A It depended on who all was there. If Dan was there, I would  
8 sleep on the couch. If Jenna and Anna were there, I would  
9 sleep in the bed with Brooke. And if Dan, Jenna and Anna  
10 were all there at the same time, I would sleep on the floor  
11 in Brooke's room.

12 Q Where -- where on the floor in Brooke's room?

13 A Right -- right at the foot of her bed.

14 Q And were you a good sleeper through the night there?

15 A Usually not, not when I am sleeping on the floor.

16 Q Are you a light sleeper, in general?

17 A No. I would not say that.

18 Q Do you sleep lighter when you are in a strange place or not  
19 in your own bed?

20 A Yes. I do.

21 Q That's not unusual. So how frequent do you think you stayed  
22 the night?

23 A I stayed there enough that I was paying Janie for groceries.  
24 I would stay there several times a week, sometimes.

25 Q Was this every week, every other week, every --

1 A Every week for like a two year period I stayed there every  
2 week.

3 Q Were you going to school down here?

4 A It was just my parents -- I used to live with my parents at  
5 that time.

6 Q Sure.

7 A And I -- my parents had like no internet at their house, no  
8 nothing. So I would always be over at Brooke's house. And  
9 we were just best friends. We hung out. We worked together  
10 at Leighton's R.B.F., which is a horseback riding place.

11 Q Do you still work there?

12 A I do not work there anymore.

13 Q So you would stay -- your testimony is you would stay most  
14 weeks, you would stay at least a night or two?

15 A Yes.

16 Q Was it more frequent to stay during the week or on the  
17 weekends or --

18 A It varied.

19 Q And do you recall at -- at certain weekends you said Anna and  
20 Jenna were there as well?

21 A Yes.

22 Q Do you know why they were there?

23 A There were different reasons. Sometimes so they could go  
24 visit their dad or sometimes they were just there because  
25 Janie would take them to go do stuff or go shopping.

1 Q So they would spend the weekend with their aunt.

2 A Yeah, they would spend the weekend with their aunt.

3 Q And they were -- were they ever there during the week or just  
4 the weekend?

5 A I cannot say for sure.

6 Q Okay. Now did Janie have dogs?

7 A Yes.

8 Q Okay. Were these dogs barking dogs, quiet dogs, what were  
9 they like?

10 A They are Chihuahuas and they barked at everything. They  
11 barked if I got up and moved. Like if I even was sitting  
12 in the chair and got up to go to the bathroom, they would  
13 bark at me, every time.

14 Q Day and night?

15 A Day and night.

16 Q Now during this time, you testified that when you slept there  
17 you weren't a deep sleeper.

18 A Yes.

19 Q Am I understanding that correctly?

20 A Yep.

21 Q Do you recall often or ever waking up when you were sleeping  
22 at the base of Brooke's bed, to Daniel getting out of bed  
23 in the night for any reason?

24 A No.

25 Q Do you recall if he or Brooke generally got up and went

1 to the bathroom or -- yes or no?

2 A No.

3 Q Okay. Sorry, they are recording, so. Do you recall them  
4 ever having to get up and take care of their son, Weston?

5 A I remember a couple times when Weston would be crying and  
6 Brooke would get up to take care of Weston.

7 Q Do you remember -- do you remember what time you got up in  
8 the morning?

9 A Brooke's dad got up really early. So he would be up by like  
10 6 or 7 a.m. It was like way earlier than I wanted to be  
11 awake.

12 Q Sure. Did he go to bed before everybody?

13 A Yep. He would be to bed by at least 9 o'clock, 9, 10  
14 o'clock.

15 Q Was he getting up for work, do you know?

16 A Yep. He would get up. He was a painter and he would get up  
17 and go to whatever job site he had to go to.

18 Q Okay. Now when you stayed the night, think of the times when  
19 the girls were there as well.

20 A Okay.

21 Q Do you recall on those nights noises in the middle of the  
22 night?

23 A No. I do not.

24 Q Do you recall them talking in the middle of the night?

25 A Not necessarily, no.

1 Q Do you know what time they went to bed?

2 A Usually they would be like falling asleep on the couch by  
3 like 10 or 11 o'clock at night. And then we would all kind  
4 of go to bed, too, because we couldn't really stay up and  
5 watch T.V. or anything.

6 Q Was there a T.V. in Brooke's bedroom?

7 A There was, yeah. So we would go in there.

8 Q Would you hang out with everybody, all of you guys together?

9 A Yes.

10 Q And did you ever notice Daniel acting unusually around Jenna?

11 A No.

12 Q Did she ever, as far as you could observe, seem uncomfortable  
13 around him?

14 A Not that I noticed at all. No.

15 Q And you never heard anybody talking or anything inappropriate,  
16 correct?

17 A No. I have not.

18 MR. MAESEN: I have nothing else, your Honor.

19 Thank you.

20 CROSS-EXAMINATION

21 BY MS. JIPP:

22 Q Lindsey?

23 A Yes.

24 Q Okay. You've been friends with Brooke since 3<sup>rd</sup> grade.

25 A Yes.

- 1 Q Okay. And she has a child with Dan, correct?
- 2 A Yes. She does.
- 3 Q And she is expecting another child with Dan, correct?
- 4 A Yes.
- 5 Q You -- can you give me an exact number of times that you've  
6 stayed over at Janie's house or we will call it Brooke's  
7 house?
- 8 A I cannot give an exact number.
- 9 Q Okay.
- 10 A But it's a lot.
- 11 Q I'm sorry, I didn't mean to cut you off.
- 12 A I said, but, it's a lot.
- 13 Q Okay. Okay. And you can't -- you can't specify whether  
14 it was always on the weekends or always during the weeks.  
15 It was kind of both.
- 16 A Yeah.
- 17 Q Okay. And you don't remember ever hearing like a toilet  
18 flush or anything while you were sleeping.
- 19 A Not -- no.
- 20 Q Okay. Okay. And you don't remember -- well, I believe your  
21 testimony was that the dogs, like, barked all the time --
- 22 A Yes.
- 23 Q -- if you moved. But you don't remember a time ever waking  
24 up because they were barking in the night.
- 25 A I can maybe remember a time, but it was always because we --

1           there was an animal outside.

2   Q    Okay.  Okay.

3   A    Like we would literally go outside with flashlights to check  
4       to see what was going on.

5   Q    Okay.  So maybe not -- not in the dead of night.  That would  
6       have been in the evening hours when they could still see out.

7   A    No.  They would literally hear like raccoons like climbing  
8       up on the roof and they would start barking.

9   Q    Okay.  Okay.  You walk from the living room into Brooke's  
10       room, they don't bark at you, having seen you in the home,  
11       though, correct?

12  A    Yes.  They barked at me every single time I moved from a spot  
13       that I was at.

14  Q    Okay.  I mean, had you ever disciplined the dogs -- I -- did  
15       you ever hit one of the dogs?

16  A    No.

17  Q    Okay.  They just really didn't like you.

18  A    Yeah.  They are Chihuahuas.

19  Q    Okay.

20                   MS. JIPP:  I have no further questions.

21                   MR. MAESEN:  No redirect, your Honor.

22                   THE COURT:  You may step down.  May this witness  
23       be excused?

24                   MR. MAESEN:  Yes.

25                   THE COURT:  I'm sorry.  Any questions from the

1 jury? Thank you.

2 MR. MAESEN: I will be calling Scott Heppe next.

3 THE COURT: Thank you.

4 THE COURT: Mr. Heppe, if you would come forward  
5 and raise your right hand, Ms. Lange will swear you in.

6 MS. LANGE: Do you solemnly swear or affirm that  
7 the testimony you are about to give in this matter will be  
8 the truth, the whole truth, and nothing but the truth, so  
9 help you God?

10 MR. HEPPE: I do.

11 MS. LANGE: Thank you.

12 THE COURT: Have a seat up in the witness chair.

13 Thank you.

14 SCOTT HEPPE

15 (at 2:01 p.m., sworn as a witness, testified as  
16 follows)

17 DIRECT EXAMINATION

18 BY MR. MAESEN:

19 Q Good afternoon. Can you please give us your name?

20 A Scott Heppe.

21 Q And where do you reside?

22 A 3817 32<sup>nd</sup> Street.

23 Q Okay. And are familiar with what this case is about?

24 A Yes. I am.

25 Q Okay. And you -- you know the people involved.

1 A Yes. I do.

2 Q So I will get right to it then.

3 A All right.

4 Q Back during the time when the girls would stay the night to  
5 visit their father, they would stay overnight, correct?

6 A Correct.

7 Q At that time, who else -- who all was living at that time --

8 A Me --

9 Q -- not --

10 A Me, my wife, Brooke, Dan, and Weston.

11 Q When Weston was born.

12 A Yep. When he was born.

13 Q And the girls would stay there.

14 A Yeah. A lot of weekends.

15 Q And do you know why they were staying there?

16 A Well, a lot of times it was to go visit their dad.

17 Q Fair enough. And during this time, did you have any dogs?

18 A Yeah.

19 Q And you still have dogs.

20 A Yeah, all three.

21 Q The same three?

22 A The same three.

23 Q Are these dogs dogs you would classify as they bark a lot,  
24 they bark a little, how?

25 A They -- one barks a lot, the other one barks a little, and

1 the other one, it barks when it -- when something - something  
2 happens, you know. If she hears a noise, she will bark.

3 Otherwise just barking at nothing, it don't do, you know.

4 Q Right. Do at least one of the dogs bark if they hear noises,  
5 typically?

6 A Oh, yeah. Well, two of them will bark if they hear noises.

7 Q Sure.

8 A The other one it barks when it thinks it hears noises. It  
9 don't see so well anymore.

10 Q Okay. So when all of these people would stay the night,  
11 when did you go to bed?

12 A I typically go to be earlier than everybody else because I am  
13 so used to getting up early. So I would -- you know, 9, 10  
14 o'clock on the weekends, I was still going to bed because I  
15 am just used to it.

16 Q Your body is on that clock.

17 A Yeah.

18 Q And so you went to bed. Do you know who went to bed next or  
19 no?

20 A Sometimes it was my wife. She would be, you know, if the  
21 girls weren't there, she goes to bed around 10, 10:30,  
22 right after the news.

23 Q Okay.

24 A Weekends if the girls were there, she would stay up and watch  
25 movies with them and this and that, you know, because she

1 didn't have to work on the weekends.

2 Q Right. Did you work weekends?

3 A I worked some weekends. I -- but I typically get up early.

4 Q Okay. Some people do, not me, but. So during this time,  
5 do you -- do you recall eventually hearing about the  
6 allegations?

7 A Yeah.

8 Q And you were not there when he initially said them, correct?

9 A No. Because they were off visiting --

10 Q Right.

11 A -- her dad.

12 Q Her father.

13 A Yeah, I found out that evening.

14 Q Yeah, you found out that evening.

15 A Yes.

16 Q From your wife?

17 A Yes.

18 Q And what were your -- what was your reaction at that time?

19 A I didn't believe it.

20 Q Why?

21 A Because I know Dan. And I just -- like, I don't know how any  
22 of this could happen with nobody hearing nothing, you know,  
23 especially in the house, how nobody would hear nothing. The  
24 bedrooms are pretty close, you know.

25 Q Mmmhmm.

1 A That -- and I was just like, I didn't think so, just by  
2 knowing Dan.

3 Q And it was based more on knowing Dan than just a general  
4 disbelief of like, wow, how could that happen.

5 A Yeah.

6 Q Did you, when you were and the kids were there and Dan was  
7 there, did you watch them interact? Like when they did  
8 bonfires and watched movies, were you hanging out with them  
9 or were you off somewhere else?

10 A I was -- I was there. You know, I watched some of when they -  
11 you know like I say, I go to bed early. That's when they  
12 would usually light up a fire. It was kinda getting time for  
13 me to go eat something and time to lay down, you know.

14 Q Did you ever see Dan and Jenna interact?

15 A Yeah, at different times.

16 Q Did they seem to get along or -- ?

17 A They talked, you know.

18 Q They didn't seem real close.

19 A No, not really.

20 Q Did you observe any strange behavior between the two of them?

21 A No.

22 Q Nothing. And Daniel no longer lives with you, correct?

23 A No. No.

24 Q They moved out when this all came to --

25 A Yep.

1 Q -- came out. Has Jenna been at your house since then?

2 A I am trying to think. Maybe a couple of times, but --

3 Q Does she still stay the night liberally?

4 A No. You know, not really.

5 MR. MAESEN: That's all I have for this witness.

6 CROSS-EXAMINATION

7 BY MS. JIPP:

8 Q When did Dan start living with you and your wife?

9 A Right after -- yeah, right before Weston was born.

10 Q Okay. So a little bit before June of 2015.

11 A Yeah.

12 Q Okay.

13 A I am trying to think, he's four, yeah.

14 Q Okay.

15 THE COURT: I am having trouble hearing you, sir,  
16 I'm sorry.

17 THE WITNESS: Oh.

18 THE COURT: Could you move a little closer to --

19 THE WITNESS: Sure.

20 THE COURT: -- the microphone. Thank you.

21 BY MS. JIPP:

22 Q Okay. So a little bit before June of 2015.

23 A Mmmhmm.

24 Q Okay. And would Jenna ever come to the home during 2015 to --  
25 to visit you or your wife or to see her cousin?

1 A Yeah.

2 Q Okay. And the interactions between Jenna and Dan, how would  
3 you characterize those, you know, kind of in the early months  
4 of 2015, when Dan was living there?

5 A Just -- I mean, they talked. They didn't --

6 Q Okay.

7 A Yeah.

8 Q Can you detail really a difference in their interactions from  
9 early 2015 to 2018, before this all kind of blew up?

10 A Didn't seem to be any different.

11 Q It just seemed normal.

12 A Yeah.

13 Q Okay.

14 A Just seemed to be the same.

15 Q Okay. Okay. How many times did you hear Dan and your  
16 daughter having sex?

17 A We didn't.

18 Q You didn't ever hear them have sex.

19 A No.

20 Q Okay. And -- and they have a child and another one on the  
21 way.

22 A Mmmhmm.

23 Q Okay. Okay.

24 MS. JIPP: No further questions.

25 MR. MAESEN: Nothing else, your Honor.

1 THE COURT: Any questions from the jury? You  
2 may step down. Thank you.

3 Next witness.

4 MR. MAESEN: Brooke Heppe, your Honor.

5 THE COURT: Ms. Heppe, if you would come forward  
6 and raise your right hand, Ms. Lange will swear you in.

7 MS. LANGE: Do you solemnly swear or affirm that  
8 the testimony you are about to give in this matter will be  
9 the truth, the whole truth, and nothing but the truth, so  
10 help you God?

11 MS. HEPPE: Yes.

12 MS. LANGE: Thank you.

13 THE COURT: Have a seat up in the witness chair,  
14 please. Thank you.

15 BROOKE HEPPE

16 (at 2:10 p.m., sworn as a witness, testified as  
17 follows)

18 DIRECT EXAMINATION

19 BY MR. MAESEN:

20 Q Good afternoon, Brooke. How are you doing today?

21 A Good.

22 Q What is your full name?

23 A Brooke Marie Loew.

24 Q And your address?

25 A 4492 32<sup>nd</sup> Street, Dorr, Michigan 49323.

1 Q And how do you know Mr. Loew?

2 A He is my husband.

3 Q And you've been recently married.

4 A Yes.

5 Q How long have you guys been training?

6 A Since 2014.

7 Q Were you dating at first?

8 A Yes.

9 Q Did you know him prior to that?

10 A We first started off as like, kind of like friends and  
11 everything, hung out a few times and stuff. Then progressed  
12 to dating, which then progressed to the fact that we got  
13 engaged, and now we are married.

14 Q Okay. And congratulations. And you have one child together.

15 A One child currently and one on the way.

16 Q Yep. You are aware of what this case is about, correct?

17 A Yes.

18 Q And you are of where it took place.

19 A Yes.

20 Q So back to your -- your mother's house, you were living there  
21 in 2015.

22 A Yes.

23 Q How long had you been living there for?

24 A My entire life.

25 Q Okay. So you were still living with her.

- 1 A Yes.
- 2 Q And do you remember when she got that place, the Hamilton  
3 address?
- 4 A The Hamilton address she --
- 5 Q Well, the place she is living now, when she had that made or  
6 built that house.
- 7 A That house was built, gosh it was like 16.
- 8 Q Did she have another house on the property?
- 9 A There was a trailer there first and then they -- my dad's  
10 parents had died. So they got an inheritance. So then that  
11 bought the house that they had put there now.
- 12 Q Okay. And you think they put that there when?
- 13 A I would say since probably like 15 years ago.
- 14 Q Okay. I thought you meant in 2015.
- 15 A Oh, no.
- 16 Q Okay. That would have changed everything. All right. A lot  
17 more witnesses all of a sudden. All right. So that's been  
18 there a while.
- 19 A Yeah.
- 20 Q And you've that whole time -- I mean until -- you lived there  
21 at the time this case was --
- 22 A Yes.
- 23 Q Okay. Now I am going to start with this angle. There has  
24 been discussion about a particular bathroom known as Brooke's  
25 bathroom. What bathroom is that?

1 A It is the bathroom located off from the living room in the  
2 middle of our -- my parents bedroom and my bedroom and the  
3 hallway.

4 Q Is there a third bedroom there?

5 A And our son's bedroom was also in the hallway.

6 Q Is that a smaller room?

7 A A little smaller, because my parents had the master, mine was  
8 the next biggest and then his was a little smaller.

9 Q Okay. So obviously you slept in your bedroom.

10 A Yes.

11 Q When did Dan move in?

12 A It would have been roughly October of 2014.

13 Q Okay. Were you pregnant at that time?

14 A Because I was pregnant still, yes.

15 Q And had it been a recent, like, had you just become pregnant  
16 or -- ?

17 A We found out we were pregnant at the very, very beginning  
18 of September.

19 Q Okay. Is that why he moved in?

20 A Kind of. He basically moved in a, because we were going to  
21 have a baby together, everything. He was at that time  
22 living with his grandma and stuff. And she was talking of  
23 moving to Texas and everything like that. So he just wanted  
24 a permanent place to --

25 Q Sure.

1 A -- be with me and our child on the way.

2 Q Gotcha. Was that your first child?

3 A Yes.

4 Q Okay. Back to this bathroom. What does this bathroom  
5 currently look like, as far -- I know you don't live there  
6 anymore, but what is -- like the color scheme, the car --  
7 whatever -- whatever -- how would you describe it to  
8 somebody?

9 A So the theme of the bathroom is peacock. So the walls were  
10 painted like a teal-y blue, like peacock blue. And then I  
11 had two rugs in there, one in front of the sink, one in  
12 front of the toilet/where the toilet sits and where the  
13 bathtub sits, the next rug was basically was for both of them,  
14 like the toilet and the shower. And then those were blue,  
15 green, and white, which then matched the shower curtain that  
16 I bought with them because they were a set, it was the blue,  
17 green, and white.

18 Q Does the shower curtain have a peacock on it?

19 A Now it currently has a peacock on it. When I first bought  
20 the set, it was like an oblong shape with the colors and  
21 everything because I couldn't find a peacock precisely.

22 Q Mmmhmm.

23 A And then now I found a peacock for it. So the peacock is  
24 what's in there right now. But now the rugs are different  
25 because those are --

- 1 Q Do you still live there?
- 2 A I do not live there anymore.
- 3 Q When did you move out?
- 4 A January of '18.
- 5 Q So around the time this case started.
- 6 A Yeah.
- 7 Q And were you asked to leave?
- 8 A No.
- 9 Q And you moved out with Dan.
- 10 A Yes.
- 11 Q Now prior to that peacock theme of the bathroom, did it ever  
12 look different than that?
- 13 A Before that, it was crayola orange walls and I had been in a  
14 wedding a couple of years before that, so I had mementos  
15 from the wedding that were flower pots. The wedding's colors  
16 were yellow, orange, and hot pink.
- 17 Q Mmmhmm.
- 18 A So I had those sitting on my counter and that was the then  
19 theme for that bathroom. So the orange wall, a hot pink rug,  
20 a yellow rug, and then a shower curtain that had the hot  
21 pink, the orange, and the yellow flowers on it.
- 22 Q And that was preceding the peacock theme?
- 23 A Yes.
- 24 Q Do you recall when you change the theme to redo the bathroom  
25 or how you wanted it to look?

1 A It would have been 2013 that I remodeled, revamped, whatever  
2 you want to the peacock, from the crayola orange to the  
3 peacock.

4 Q Why did you do that?

5 A An ex from beforehand was the one who actually picked out the  
6 crayola orange. And then that's when I put the flower pots  
7 that I had and everything to it to give it a theme. But he  
8 had actually picked out the crayola orange and I never really  
9 liked it. So then I decided, you know, we were over and  
10 everything and I wanted my bathroom to be the way that I  
11 wanted it to be.

12 Q Mmmhmm. And then that's how you --

13 A So then that's when I made it into the peacock bathroom.

14 Q Now who used this bathroom?

15 A It was my bathroom, so I, number one used my bathroom.

16 Q Of course.

17 A When Dan lived there, he used the bathroom. It was also  
18 our son's bathroom where like, his bathtub and everything  
19 was and his little toys. The girls, Jenna, Anna, Taylor,  
20 had occasionally used my bathroom. But were instructed that  
21 they weren't technically allowed to use my bathroom --

22 Q Mmmhmm.

23 A -- because they would either take stuff from my bathroom or  
24 mess stuff up in my bathroom. So they were instructed to  
25 use the laundry room bathroom and not my bathroom.

1 Q And where was the laundry room bathroom relative to your  
2 bathroom?

3 A On -- if my bathroom was towards like the middle of the house,  
4 the laundry room bathroom would have been on the far end  
5 towards the side door in which you entered the house.

6 Q Okay. The house has a garage.

7 A Not attached.

8 Q Okay. Detached, is it a lot like a pole barn?

9 A Yes.

10 Q And you said people enter through the side door, typically.

11 A Yes.

12 Q Was there a front door also?

13 A There is a front door, just we don't technically use that one  
14 because the driveway is on the side of the side door. So in  
15 order to get to the front door, you would have to walk across  
16 like the whole front yard to get to it. So now my mom and  
17 dad had put a dog cage there, so when they have to crate  
18 their three little dogs and everything, that that's where  
19 they put them.

20 Q Right. And you said there was a -- maybe you didn't say it.  
21 Was there a bathroom attached to the garage?

22 A Yes.

23 Q Was that heated or air conditioned?

24 A No. It was insulated, just not heated or air conditioned.

25 Q So it is probably kind of cold in the winter.

1 A Chilly.

2 Q It could be. Now did anybody -- did you ever have any guests  
3 stay you overnight, you and Dan, I guess, of the two of you?

4 A Yeah, I had my best friend, Lindsey, would stay the night and  
5 some of the times that she stayed the night, she would stay  
6 in our room on the floor.

7 Q Mmmhmm. Other times, where did she sleep?

8 A If Jenna or Anna weren't there and Dan was home, she would  
9 sleep in the living room on the couch or on the chair. If  
10 the girls weren't there and Dan wasn't there, she would just  
11 sleep in my room, like on the bed.

12 Q Okay.

13 A And everything.

14 Q And if the girls and Dan were there, then where would she  
15 sleep?

16 A Then she would sleep on a futon mattress on the floor in my  
17 room.

18 Q Where was the mattress located in the room?

19 A At the foot of my bed.

20 Q Do you recall how far away that would have been from the  
21 door?

22 A Not even a foot. You could, when you opened my bedroom door,  
23 it would almost brush the futon mattress.

24 Q Okay. Now your mom has, I believe, still three dogs, correct?

25 A Yes.

1 Q And these are the same three dogs that she's for a while.

2 A Yes.

3 Q Are these dogs hyper, or yippy, or barky, or are they calm?

4 A They are definitely barky dogs.

5 Q Okay. Explain what you mean by that.

6 A Easily excitable about anything. Like a joke that we have  
7 about the oldest one is like she barks at her own farts,  
8 basically.

9 Q Mmmhmm.

10 A She will wake herself up out of her sleep and everything and  
11 bark because she farted.

12 Q Okay.

13 A And the other ones are two Chihuahuas and those ones just  
14 bark at everything, basically. Anything that would move out  
15 of character or like any noise they bark at.

16 Q How long do they bark for?

17 A If it was something like a simple knock on the door, then  
18 they would bark until you discovered what was on the other  
19 side of the door, to then if it was like a person and they  
20 were coming in the house, then they would bark at them for  
21 quite a few minutes.

22 Q Sure.

23 A And everything, until they either settled down or we had to  
24 go put them in their crate or something to get them to calm  
25 down.

1 Q Was it annoying to listen to them all of the time?

2 A Yes.

3 Q Did you get used to it?

4 A Yes.

5 Q Was your mom and dad, did they have a lot of people coming  
6 and going from the house?

7 A Not really. It was more or less of like if Lindsey were  
8 to come over or if my dad came home, even they barked at him  
9 before coming in the door until all of a sudden they realized  
10 it was him, so then they would stop barking. Basically  
11 anybody who came in the door, initially was greeted with the  
12 barking until they realized who you were. And they would  
13 either, if you lived there kind of thing, they would stop  
14 barking.

15 Q Did they bite at people or snap at them ever?

16 A They are a bit of ankle biters, the Chihuahuas mainly. It's  
17 not really the minpin, the older one.

18 Q Mmmhmm.

19 A But the Chihuahuas are definitely like, they won't directly  
20 run right up to the front of you and bite your ankles, but  
21 if you like try to walk away or you turn your back or  
22 anything, then they are definitely ankle biters.

23 Q Okay. Do you think your dogs, do they seem -- they seem to  
24 take to Dan pretty good?

25 A They all liked Dan. It was an incident with Cayenne going to

1 the bathroom in my room.

2 Q Who is Cayenne?

3 A That's the smallest of the Chihuahuas, the youngest one.

4 Q Okay.

5 A That she went to the bathroom in my room. Dan had rubbed her  
6 nose in it and everything. And then after that she was really  
7 pissy with Dan. Not like end of the world, I actually hate  
8 you, but I really don't like you anymore. I am mad at you  
9 kind of thing.

10 Q Now you are aware of the allegations in this case, correct?

11 A Yes.

12 Q When did you first learn of them?

13 A It was January -- January of '18. I don't remember the  
14 exact number.

15 Q I don't need the exact date. I am just trying to -- and did  
16 you hear this directly from Jenna?

17 A No.

18 Q Did you hear it from your mom?

19 A She had told me that Jenna made these allegations and then  
20 had wanted to have a meeting with me about it, but then --

21 Q That's fine.

22 A -- she left.

23 Q Did you ever talk to the police about this?

24 A No.

25 Q Did they try to talk to you about this?

1 A No.

2 Q At no time?

3 A No.

4 Q Now Jenna and Anna, the sisters, stayed with your -- overnight  
5 at your mom's house, correct?

6 A Yes.

7 Q And why were they staying the night? During -- during the  
8 time period from 2000 -- after, I guess, it's your uncle's  
9 wedding --

10 A Yes.

11 Q -- why would they be staying the night then typically?

12 A After that point, it was to go visit their dad, mainly.

13 Q Did they stay with your mom, I guess their aunt, before that?

14 A Yeah.

15 Q Were they ever overnight --

16 A They --

17 Q -- like throughout their growing up, were they overnight  
18 guests with their Aunt Janie?

19 A Yes. Yes. They've stayed overnight at their house  
20 periodically throughout their entire lives. And then after  
21 the wedding point, when their father got incarcerated, then  
22 it was basically for that.

23 Q Your mom's house was like the weigh station on the way out  
24 there or something.

25 A Basically.

1 Q And they would go up there, correct?

2 A Yes.

3 Q Did they ever bring friends with them to stay the night?

4 A Yes.

5 Q Was this common?

6 A Quite common.

7 Q Did you guys have other family members stay the night during  
8 this time?

9 A No. If they were there, if Jenna and Anna were there, then  
10 Jenna and Anna were there. And they would either have a  
11 friend with them or not.

12 Q Sure. Now when Dan was there -- first, let me back up. Was  
13 Dan there every weekend?

14 A Not every single weekend.

15 Q Where would he have been otherwise?

16 A Working.

17 Q Would he work weekends?

18 A Sometimes.

19 Q And this was the truck driving job?

20 A Yes.

21 Q He would be going out of state?

22 A Yes.

23 Q Overnight?

24 A Yes.

25 Q And this -- this wasn't a regular schedule, though.

1 A Not particularly. Like at one point, he could be taking a  
2 trencher to Virginia Beach, to then a couple weeks later, end  
3 up bring a trencher back from Minnesota, you know, something  
4 along those lines. Just where they needed them is where he  
5 was. And he was there for the duration of the job to get  
6 done --

7 Q Sure.

8 A -- kind of thing.

9 Q Was he at your mom's house more weekends than not or like,  
10 what -- do you have an idea of what percentage he was there  
11 and what percentage he wasn't? During this time. I just  
12 want this narrow, two year.

13 A Yeah.

14 Q And if you don't know that's fine.

15 A Not 100%. He would -- I guess it would really depend on where  
16 he went, kind of a thing, or what the job was.

17 Q Mmmhmm.

18 A Because if it was something like a quick, easy job, then sure,  
19 he would be gone all week and then he would get to come home  
20 for the weekend. But then he would have to go back to work  
21 for the week. But then if it was something like a Minnesota  
22 job that was like a really big deal, and they had like a whole  
23 bunch of work to do and everything like that, he might have  
24 been gone for two weeks and then got to come home for a few  
25 days. And then have to go back to work, kind of a thing.

1 It wasn't like he was home every weekend or only half of the  
2 weekends. It was just -- depended on the job.

3 Q Okay. Now when he was home on a Friday night, what would you  
4 guys be doing? Like -- like walk me through your -- your  
5 evening, once he got home from work at like five or six or  
6 whatever it was, just kind of.

7 A Generally, as soon -- after he got home, it would be kind of  
8 like the -- if it was really dirty work clothes, you know,  
9 change your clothes kind of thing. To then we would eat  
10 dinner and --

11 Q Would you all eat dinner together or just you and Dan?

12 A Usually we would all eat together. We usually just made like  
13 one dinner --

14 Q Okay. Sure.

15 A -- kind of a thing. Then we would either, depending on  
16 weather, we would play outside with our son or play in the  
17 house with our son for awhile, until it was ready for like  
18 his bedtime. Then we would put him in bed and we would either  
19 go out to the garage and like watch a movie or just hang out,  
20 have like a fire together, just me and Dan or something along  
21 those lines. Just me and him hang out and unwind from the  
22 whole work week. And then we just get to like be together and  
23 just relax, basically.

24 Q Did you guys ever go anywhere else, like out to dinner or  
25 anything?

1 A We've gone out to dinner, but it wasn't like a make sure we  
2 do that every Friday thing.

3 Q Okay.

4 A It would be like more or less like special occasion sort of  
5 thing or something.

6 Q So you mostly ate at home.

7 A Mostly, yeah.

8 Q So you said you guys hung out in the garage.

9 A Yes.

10 Q Was it just the two of you in the garage?

11 A Generally it would be the two of us in the garage, just  
12 relaxing. Sometimes one of the girls, Anna or Jenna, would  
13 come out there for a little bit and hang out. And they would  
14 end up going back inside, either go to bed or something. And  
15 we would be hanging out still.

16 Q And when you say, "hanging out and relaxing", what would you  
17 be doing in the garage?

18 A Cross between either just watching a movie, because there was  
19 these office chairs kind of thing that were like scooped with  
20 like the backrest part. So they were like, you could just  
21 sit in them comfortably. They weren't like a hard, fold-up  
22 chair kind of thing so they were a comfortable chair without  
23 being a recliner sort of chair.

24 Q Mmmhmm.

25 A We could sit there and we would either be talking about the

1 work week or talking about stuff that we should do or projects  
2 or something along those lines, watch movies. Or else then  
3 the only other thing would be having a fire, but we would  
4 still be doing the same thing of just talking.

5 Q Where was the fire at?

6 A We would usually have it either right in front of the garage,  
7 like in the driveway or else would have it just over from  
8 that is like a little turn-around area of the driveway. So  
9 we would have it over there. It was really the only two --

10 Q Was this an actual fire pit thing or you just put firewood on  
11 the ground or -- ?

12 A No, it was a portable fire pit.

13 Q Okay. Fair enough. And that's allowed in Hamilton.

14 A As far as I know.

15 Q I live in Grand Rapids and it's a -- in can be real messy,  
16 anyway, if you've got the wrong neighbor. So anyway, so you  
17 would do this, you would hang out in the garage.

18 A Yes.

19 Q And you said eventually, would the girls usually then go to  
20 bed before you?

21 A Generally they would get bored with us and end up going inside  
22 and going to bed or something.

23 Q Okay. Do you remember what time that would be about?

24 A It kind of varied a little bit. Some nights if it was like a  
25 movie we were watching or something, they would hold out for

1 the movie and then go inside after the movie. So then like  
2 the movie got done at two, then they would probably go back in  
3 by like 2:30, kind of a thing. But then if it was just the  
4 fact that we were watching a western and talking or coming  
5 up with projects to do or something, then they would be like,  
6 you guys are boring, sort of a thing. And go inside by like  
7 midnight-ish.

8 Q Okay. Did they sometimes not hang out with you guys?

9 A Yeah. Sometimes they would just stay inside and do their own  
10 thing of watching a movie. Like if my mom was in there, then  
11 they would have me set up a movie on Netflix or something  
12 like that for them. And then they would all just stay in  
13 there and watch a movie and we would be outside.

14 Q So what time do you think you would normally go to bed?

15 A Maybe on average it would be like a 3 o'clock sort of a thing.

16 Q So pretty late.

17 A Kind of.

18 Q Would you stay up that late during the week?

19 A No.

20 Q Just Friday nights?

21 A It would just be like a Friday night, Saturday night thing,  
22 because Sunday night you have to go to bed for work.

23 Q Yeah. So when you and Dan would come in the house, would  
24 everybody else, would they be asleep?

25 A Most usually, yes.

1 Q What did you guys do when you came in the house?

2 A It would be, you take your shoes off, get your glass of water  
3 out of the kitchen, make your way through the living room,  
4 sometimes you would have to have one of us wait in the kitchen  
5 at the light so that the other one wouldn't trip over people,  
6 to then get to the hallway to turn on like the bathroom light,  
7 so that that person could see. So then they would turn off  
8 the kitchen light so that they could get over people to get  
9 to the hallway. Then it would be like, you know, one of us  
10 would say, go to the bathroom, while the other one goes in the  
11 room and puts the glass of water down or something. And then  
12 like a swap out where the other one would be going to the  
13 bathroom. And the other one would be getting their pajamas  
14 on. And we would get into bed and either turn the T.V. on  
15 and basically let the T.V. play while we fall asleep.

16 Q Did you wake up in the night and turn it off?

17 A I had a -- generally I would set a timer.

18 Q Mmmhmm.

19 A Sometimes I wouldn't set the timer or something like that,  
20 so I would wake up because the lights and everything, after  
21 I fell asleep for a little while. Just the flashing of the  
22 T.V. or the noise of the T.V. would be annoying.

23 Q Mmmhmm.

24 A So I would wake up to shut it off.

25 Q Do you remember when that would be, about what time?

1 A Approximately it would be something like -- I would only  
2 last like, if I fell asleep at say, 2, I would get irritated  
3 with it after like an hour or so of it being on, kind of thing  
4 and then it would generally wake me up for me to shut it off.  
5 So it would be about -- if it was -- if I went to bed at 2,  
6 it would be something around 3 I would shut it off. Vice-  
7 versa, if it was 3, it would be something around 4 that I  
8 would shut it off, because it was pretty routinely of it  
9 would only last like about an hour before it woke me back up.

10 Q Right. Do you know if that woke anybody else up?

11 A I do know that my parents would complain sometimes when our  
12 T.V. was on.

13 Q Yeah.

14 A When our T.V. was on and everything, because sometimes they  
15 could hear our T.V.

16 Q Now they would be -- was it your wall, then the bathroom and  
17 their bedroom?

18 A Yes.

19 Q And they could still hear it?

20 A Yes.

21 Q Did you have it on terribly loud or -- ?

22 A No. It was just -- like if it was a movie and say we had it  
23 on like 10 for volume, they could totally hear it. So we  
24 would have to have volume on like five. To the point where  
25 like, if you are laying in bed you can just hear it,

1 kind of thing. Then they wouldn't be able to hear it. But  
2 if you had it up to where you were sitting there and you --  
3 the T.V. was decent sound level, then they could hear it in  
4 their room.

5 Q Okay. Now was your routine any different when Lindsey stayed  
6 the night?

7 A We generally wouldn't have the T.V. on when we got into bed  
8 and everything like that. We would still hang out, still  
9 possibly have a bonfire or something along those lines.

10 Q Did she go to bed before you guys or stay out with you guys?

11 A Lindsey generally stayed out with us and then like she would  
12 go -- Dan would go in the room to go to bed first, so that  
13 he could actually like get in bed before like me and Lindsey  
14 would come in the room kind of a thing. Just because Dan  
15 didn't particularly wear like pajama pants. So he wanted  
16 to be like in bed, then Lindsey could come to get in bed and  
17 everything like that.

18 Q Sure. Now did Dan have to get up in the middle of the night  
19 ever?

20 A Normally he was just a very hard sleeper. When he was asleep,  
21 he was asleep, wouldn't be up numerous times through the  
22 night.

23 Q Who would fall asleep first, usually, you or Dan?

24 A I want to say I have a little better tolerance for staying  
25 awake. So Dan more often would fall asleep first.

1 Q On these nights in the pole barn, were you guys drinking  
2 alcohol, typically?

3 A Sometimes we would have a couple of drinks.

4 Q Do you think you had enough to like pass out or --

5 A No. I didn't stay out there long enough to get belligerently  
6 wasted or anything. It was enough to have a couple drinks,  
7 watch a show or something. And then we would go inside. It  
8 wasn't drink until you were drunk or wasted.

9 Q Right. Now you had your son Weston, when?

10 A 2015.

11 Q When? What is his birth date.

12 A June 3<sup>rd</sup>.

13 Q Okay. So he just turned four. Were you breastfeeding him  
14 when he was a baby?

15 A Yes.

16 Q For how long?

17 A Approximately a year.

18 Q Did you have -- do you remember why you stopped breastfeeding?

19 A I was given a medication by my doctor for a uterine  
20 infection that they had found and that ended up drying me up.

21 Q Okay.

22 A And also it was approximately about the time that I figured it  
23 was time to start weaning --

24 Q It was a year, yeah. No, I get it. Been there. Did he --  
25 did you have to wake up in the night to ever feed him or to

1 change him or anything?

2 A Yes.

3 Q How -- and like, let's, on a normal night, say he is under a  
4 year, was there a set time you put him to bed?

5 A He would go to bed by 10 o'clock.

6 Q Okay. Did he nap during the day?

7 A Yes.

8 Q Did he typically wake up after 10 o'clock or sleep through  
9 the night?

10 A He would have a feeding in the middle of the night.

11 Q Typically was it around the same time always?

12 A Somewhere between three and four. Generally always within  
13 that timeframe.

14 Q And would you be the one to get up with him?

15 A Yes.

16 Q Would anybody else get up and like give a bottle or anything  
17 or -- ?

18 A No.

19 Q Did Dan get up with him?

20 A Not in the middle of the night, no.

21 Q Did -- when they were there, did Jenna or Anna or anybody  
22 get up with him?

23 A No. Basically I was the only one that got up with him because  
24 I was the only one that had the means to feed him.

25 Q Yeah. I thought maybe you had some in a bottle. Anyway, we

1 did that. But anyway, so you get up in the middle of the  
2 night and then you would feed him and he would presumably  
3 go back to sleep.

4 A Yep. It would be feed him, rock him a little bit, and then he  
5 would fall asleep.

6 Q Did you have to change him then?

7 A Yes.

8 Q All right. And so then you would put him back to bed, then  
9 you would go back to bed.

10 A Yes.

11 Q What time would you get up on these -- these weekend days  
12 when you were staying up late? Like what time did you get  
13 up then, say, Saturday morning, when did you have to get up?

14 A I usually tried to sleep as long as possible. It would be,  
15 I would more or less let Weston wake me up for the day at  
16 that point. If we had a feeding in the night, then I would  
17 let him wake me up if it was 10 or 9 or anything like that,  
18 then I would just let him wake me up for the day. Because  
19 then I would get up with him and be up for the day.

20 Q Anybody else ever get up with him before that? Like say if,  
21 say if your parents woke up by 8, would they go in there --

22 A No.

23 Q -- and change him or anything?

24 A If he didn't wake up, we didn't. Leave the sleeping baby lie.

25 Q Sure.

1 A Kind of thing.

2 Q Did -- were your parents close with your son?

3 A Yes.

4 Q Like hold him a lot and stuff.

5 A Yes.

6 Q Did he ever -- and did the girls ever interact with him, like  
7 holding the baby and all of that stuff?

8 A Yeah.

9 Q Now when you would get up at, you said 10, on these Saturday  
10 mornings.

11 A Roughly yes.

12 Q I know it wasn't a set time. Were -- if -- on the weekends  
13 when they were going to visit their dad, would they already  
14 be gone?

15 A Yes.

16 Q They would be out of the house.

17 A Yeah.

18 Q So who would be home then still?

19 A Then it would be my father, Daniel and I and our son.

20 Q Now back to Jenna and she has two sisters, Taylor and Anna.

21 A Yes.

22 Q You've known them their whole life.

23 A Yes.

24 Q Are you older than all three of them?

25 A Yes.

1 Q And they are your mom's brother's biological daughters,  
2 correct?

3 A Yes.

4 Q And they all have the same mother, correct?

5 A Yes.

6 Q And her name is Angela.

7 A Yes.

8 Q Are you close to her?

9 A Angela?

10 Q Yeah.

11 A Not particularly.

12 Q Have you ever been? I am not talking in the context of this  
13 case. Prior to this, were you close to her or?

14 A Not really.

15 Q Not really.

16 A She wasn't like -- even though she like would date my uncle  
17 on and off and stuff --

18 Q Is this your Uncle Robert?

19 A -- it wasn't like she was my -- Yes. My Uncle Robert. It  
20 wasn't like she was my Aunt Angie or anything.

21 Q Were you close to her daughters?

22 A Those -- the daughters, yes.

23 Q And you knew them since they were real little.

24 A Yes.

25 Q Had they visited your mom's house since they were real little?

- 1 A Yes.
- 2 Q And they had stayed the night since they were little.
- 3 A Yes.
- 4 Q Was there one that you were closest to?
- 5 A For a long time I was extremely close with Taylor, like,  
6 sisters, kind of --
- 7 Q She is close to your age, isn't she?
- 8 A She is closer to my age yes. And then the closer she  
9 approached adulthood and everything, we kind of drifted our  
10 separate ways a little bit. Which then me and Anna were  
11 closer sort of a thing. We had more things we like to do in  
12 common. It's not that I played favorites, but we just -- if  
13 Jenna went to bed on the couch or just wanted to lay on the  
14 couch or something along those lines, but me and Anna were  
15 bored, we would play Guitar Hero together or something.
- 16 Q Mmmhmm. And this is at your mom's house.
- 17 A Yes.
- 18 Q Did you ever stay at their house?
- 19 A No.
- 20 Q What -- do you remember who they were living with at this  
21 time? If you know; if you don't know, that's fine.
- 22 A It was either their grandma's house, I believe.
- 23 Q Okay. Is that near your mom's house?
- 24 A Approximately a ten minute drive.
- 25 Q In the vicinity, I guess. When you -- when you first brought

1 Dan in front of the girls, do you remember when that was?  
2 When they would have first met him? I mean, it probably a  
3 big ceremony you set up. Do you recall?

4 A I do not.

5 Q That's fine. I would rather you say you don't know than make  
6 something up. You know what I mean?

7 A Yeah. I don't --

8 Q We are just trying to get to the truth here.

9 A -- recall a --

10 Q Now you do --

11 A -- an absolute instance.

12 Q -- recall your Uncle Robert when he got married, correct?  
13 In 2015.

14 A I'm sorry, I didn't hear the first part.

15 Q Your Uncle Robert had a wedding in late 2015, is that true?

16 A Yes.

17 Q And that was at your parent's house, the reception.

18 A The reception, yes.

19 Q And he married some woman, correct?

20 A Yes.

21 Q He didn't have any kids with her, did he?

22 A No.

23 Q Okay. So he got married even though he was impending  
24 incarceration.

25 A Yes.

1 Q And there was a wedding. Were you present?

2 A Yes.

3 Q Was Daniel there?

4 A Yes.

5 Q Was Weston there?

6 A Yes.

7 Q Were your parents there?

8 A Yes.

9 Q Were Anna and Taylor and Jenna there?

10 A Yes.

11 Q Did you guys all interact with each other at that time at  
12 the wedding?

13 A They got ready as in had their hair curled. I curled their  
14 hair and everything for the wedding. So then we all left  
15 at approximately the same time for the church. And then at  
16 the church, they helped Lisa get dressed and ev --

17 Q Who is Lisa.

18 A That's the -- the wife.

19 Q The bride? Okay.

20 A Yep. And then after the ceremony portion, we all had to  
21 interact together to get together to take family photos and  
22 different things. And then after that was the reception.

23 Q And that was at your mom's house.

24 A Yes.

25 Q how far away was that from the church?

1 A Maybe like ten minutes.

2 Q Okay. Was that garage heated?

3 A Yes.

4 Q Okay. Do you recall at that time, your mom wanting you to  
5 stay in the garage or go in the house or how was that supposed  
6 to be as far as the wedding guests go? In other words, what  
7 was their access to the house?

8 A Guests did not have access to the house. The house was  
9 locked. Either my mother or my father had a key for the  
10 house that if you needed into the house, you would have had  
11 to have gotten the key from them to get in the house.

12 Q And you lived -- but you lived there at that time.

13 A Yes.

14 Q Did you have your own key then?

15 A I did have my own key, I just didn't --

16 Q Didn't go in?

17 A I didn't know where it was. And it - the thing, it was a  
18 cross between in my car or in my room and I didn't feel the  
19 need to have my key in my pocket. Especially when I started  
20 off wearing like a dress and everything. And then later on,  
21 I put on jeans. So I just got the key from my parents to go  
22 inside --

23 Q To go inside.

24 A -- to put on my jeans.

25 Q Okay. When you went in to put jeans on, was anybody else in

1 the house?

2 A No.

3 Q You went in -- did you -- did you leave right after you put  
4 them on?

5 A Yes.

6 Q And you went in by yourself?

7 A Yes.

8 Q Did you at any time during this reception, were you asked to  
9 or did you leave to get more food and drinks and things like  
10 that?

11 A No. We had everything ready to go before the reception  
12 started.

13 Q Okay. So you -- your memory is you didn't run out.

14 A No.

15 Q Your memory is you didn't leave to -- to go get food.

16 A No.

17 Q Do you recall if Daniel left to get food?

18 A No. Because the food was called "pork butt", they had  
19 boughten (sic) a whole bunch of it. And the best man had  
20 actually been the one cooking it. So he had a giant cooker  
21 that he had at my grandma's house cooking all the meat for  
22 the past, like, over a day. And then during the wedding,  
23 since the best man was in the wedding, my Uncle Ron, which  
24 is Robert's brother, had made sure temperature stayed up and  
25 everything while they were having the wedding.

1 Q So he didn't go to the wedding.

2 A Ron did not go to the wedding.

3 Q Did -- Do you recall and I understand you weren't probably  
4 at the time thinking you would be asked this in a courtroom  
5 years later, Do you recall Daniel and Jenna interacting much  
6 at the wedding reception?

7 A I do not.

8 Q Do you recall if you were dance -- if you yourself were  
9 dancing at that reception?

10 A I'm sorry.

11 Q Were -- do you remember dancing at the reception?

12 A I had danced a couple of times. I was teaching the bride how  
13 to do like the cha-cha slide.

14 Q Mmmhmm.

15 A And then I managed to get through the whole evening, Dan to  
16 dance with me twice.

17 Q Okay.

18 A And one of the times was mainly because we had already picked  
19 out like a wedding song. And our song happened to come on.  
20 So then he danced with me to it.

21 Q Were you engaged at this time?

22 A Yes.

23 Q Like formally engaged with a ring and everything?

24 A Or -- we were talking of getting engaged.

25 Q Okay.

1 A And I had a hunch that he had already bought the ring, kind of  
2 a thing. So we, like, already had like picked out a song  
3 sorta stuff, without like iron cladding everything. Because  
4 it was actually the Christmas -- so five days later that we  
5 were actually officially were engaged.

6 Q That's when he proposed.

7 A Yes.

8 Q So and I might have asked this, I apologize, Do you recall  
9 anybody entering the house during the wedding reception  
10 besides yourself to change your jeans?

11 A No.

12 Q Were you consciously at the time paying attention to that or  
13 were you focusing on the wedding?

14 A I was helping my mom with the reception part and everything.  
15 So it would be one of those -- if the ice was getting low  
16 or something like that, either she would send me inside to  
17 say, get ice out of the frigerator (sic) or just to make sure  
18 like, oh, one of these people, guest had gone outside, they  
19 had been gone for 15 minutes. Like, can you go see if they  
20 are sleeping in the yard or something.

21 Q Sure.

22 A Kind of thing.

23 Q Were people sleeping in the yard?

24 A No.

25 Q Okay.

1 A It was just they were gone for more than enough time to go  
2 to the bathroom.

3 Q Was any of those people Daniel?

4 A No.

5 Q Okay. Any of those people Jenna?

6 A No.

7 Q And the bathroom in use was the one in the garage; is that  
8 correct?

9 A Yes.

10 Q So you never left the wedding reception. Do you remember  
11 what time the reception ended that night?

12 A No. It was later, but it wasn't like a 5 o'clock in the  
13 morning kind of thing. It would have been somewhere like  
14 maybe 2, 3, maybe.

15 Q Got. Do you remember if anybody stayed the night that night,  
16 other than the people that lived there?

17 A They did not.

18 Q Okay. So it would have been in that house, that night,  
19 who would have been there?

20 A It would have been Scott and Janie, my mother and father,  
21 Daniel, and I.

22 Q Okay. Now we have you here testifying today about this  
23 case, correct?

24 A Yeah.

25 Q And you are under oath --

1 A Yes.

2 Q -- you know that. You are not going to come in here today  
3 and lie to --

4 MS. JIPP: Objection, your Honor.

5 MR. MAESEN: -- to protect your husband. I am  
6 asking what she is about to ask, I don't see any difference.

7 MS. JIPP: May we approach?

8 (at 2:53 p.m., attorneys approached the bench for  
9 a brief conference)

10 (at 2:54 p.m., bench conference complete)

11 BY MR. MAESEN:

12 Q And when did you guys get married, you and Daniel?

13 A It was June, this year.

14 Q Just this past June.

15 A Yeah.

16 Q So two months ago.

17 A Yes.

18 Q Thank you.

19 MR. MAESEN: I have nothing else.

20 CROSS-EXAMINATION

21 BY MS. JIPP:

22 Q I am going to start and ask you a couple of questions kind of  
23 on the back end of what Mr. Maesen was just talking with you  
24 about. And that's kind of focusing on this -- this wedding  
25 night in December of 2015. You were dancing, correct?

- 1 A I had danced a couple of times, yes.
- 2 Q You -- you said you were -- were trying to have -- teach the  
3 bride something. What was that you -- you mentioned?
- 4 A The cha-cha slide.
- 5 Q Okay. So you are even trying to teach her kind of a line  
6 dance. And you were running errands for your mom, correct?
- 7 A Not particularly running errands. It was more or less I  
8 would go get ice and come back out or go look out the garage  
9 door to see if somebody was outside or not.
- 10 Q So you weren't with Dan that whole evening.
- 11 A It's not like he was entirely out of sight, unless I went  
12 inside to get ice and that was a matter of five minutes.
- 13 Q Okay. So think at least one point he was out of sight five  
14 minutes. How many people would you say were there?
- 15 A At least 30.
- 16 Q Okay. You think about 30. Family member and friends of  
17 yours?
- 18 A Not of mine, they were the bride and groom's.
- 19 Q Okay.
- 20 A Family and friends and our -- well, like the groom's mother,  
21 my grandma, would have been like a family member in common  
22 type thing.
- 23 Q Okay. And -- and you are eating food and visiting, correct?
- 24 A Yes.
- 25 Q Okay. So you are not actively keeping tabs on Dan this whole

1 night, correct?

2 A I did eat dinner with Dan and our son when --

3 Q So you --

4 A -- we had dinner.

5 Q -- you didn't actively keep tabs on Dan that whole night,  
6 correct?

7 A I don't know how to phrase the answer in which I am trying  
8 to -- I did not sit there and write notes to keep tabs of  
9 every step that he made. But it wasn't the fact that --

10 Q Okay. But --

11 A -- he was just gone.

12 Q -- so you didn't -- you didn't keep active tabs on him all  
13 night, right? Did you kind of document or remember when and  
14 where Jenna was doing what all night?

15 A For the most part, she hung out with the bride's grandson,  
16 her and Anna both hung out with the bride's grandson. We  
17 had a head table sat up (sic) and there was a smaller card  
18 table set up next up to the head table that we called  
19 the kid's table. So the kids were basically hanging out at  
20 the table or showing off with each other like their silly  
21 dance moves of a sort.

22 Q Okay. So for a period of time, you kind of do know that she  
23 hung out with him. But you didn't keep tabs on her the  
24 while night either, did you?

25 A Not every movement of every second.

1 Q Okay. Okay. And you said you didn't know where your key was  
2 that night to the house.

3 A Thought I didn't know where my key was. It was either in my  
4 wallet or in my room. My wallet was in my room. So it was  
5 either in my wallet, in my room, or in my room.

6 Q And Dan was living there at this time.

7 A Yes.

8 Q Okay. He also had a key to his own home.

9 A He did not have a key at that time.

10 Q He didn't have a key to his own home.

11 A It wasn't his house. It was my parent's house in which he  
12 stayed.

13 Q Okay. Okay. You said that you breastfed for about a year.  
14 I think your mom's testimony was that it was a couple months.  
15 But you think, I mean you would know, you breastfed for a  
16 year.

17 A Approximately a year.

18 Q Approximately. And he was born in June of 2015. So you  
19 think by June of 2016, you were -- you were done, around  
20 that timeframe, done nursing, correct?

21 A Roughly.

22 Q Okay. Okay. And so you said that he would sometimes get up  
23 in the middle of the night. That was probably in the first  
24 six months of his life, correct, when he was younger and  
25 needing to nurse more often.

- 1 A Yeah, usually woke up more when he was younger.
- 2 Q Yeah. Okay. You also testified that sometimes you would go  
3 to bed at 2, maybe even as late at 3, correct?
- 4 A Yes.
- 5 Q Okay. And sometimes turn on the T.V. --
- 6 A Yes.
- 7 Q -- correct? Okay. And you said you would fall asleep, and it  
8 might be an hour before you would wake up to turn of the  
9 T.V. Like it would -- it would start to kind of annoy you,  
10 correct?
- 11 A Approximately, yes.
- 12 Q So you slept pretty heavily for that first hour you went to  
13 bed.
- 14 A I am not going to say I went into like sleep coma, I just  
15 basically fell asleep.
- 16 Q Okay. Can you remember waking up every time that Dan got up  
17 to use the bathroom?
- 18 A Generally I would wake up if he got up, because we only had a  
19 queen sized bed. And we touch the whole time we sleep. So we  
20 would know if somebody all of a sudden had to super roll over,  
21 you know, to jar the bed or if your arm was on them and they  
22 would pull away, that your arm would fall. So then you would  
23 wake up to like a jar. But generally yes, I would know if  
24 Dan was getting up.
- 25 Q Okay. So -- so the T.V. and the noise and stuff, it would

1 take an hour for it to bother you. But Dan just moving or  
2 the absence of his touch would wake you up in the middle of  
3 the night.

4 A I am closer to Daniel than I would be the T.V. So a T.V. is  
5 just a background noise versus the warmth of another body  
6 touching you is entirely different than a T.V.

7 Q Okay. So there is never a time that he got out of bed that  
8 you didn't sleep through that.

9 A There may have been. I mean that's really a question I can't  
10 answer, because if I am asleep, I can't answer a question if  
11 I am sleeping.

12 Q Okay. Okay. On the times that you -- you do remember waking  
13 up, was that regularly or would that be kind of a rare  
14 occasion?

15 A It wouldn't be like an every night thing or something. It  
16 would be a once in a great while kind of a thing.

17 Q Okay. Okay. And on those instances where you would notice  
18 him get up, you didn't kind of time how long he was gone.

19 A I did not sit there with a stopwatch and --

20 Q Okay.

21 A -- basically count how long it took him to go pee.

22 Q Okay. You just assume, he is going to the restroom, nothing  
23 wrong here, I can roll back over, right?

24 A I would be -- it's not that I would just roll back over, go  
25 back to sleep. It's not like I sat there with a timer. It

1 was one of those waiting for him to come back sort of a  
2 thing after, because I could hear him go in the bathroom. I  
3 could hear the door shut. Most generally, if it was quiet in  
4 the house, the girls didn't have the T.V. on or anything like  
5 that, you can literally hear somebody pee. So I could hear  
6 him peeing, the toilet flush, and two seconds later he would  
7 be back in the bed. We would snuggle back up and go back to  
8 sleep.

9 Q Okay. You and Dan have had sex in the home.

10 A Yes.

11 Q Okay. You mentioned that you've -- you've had this -- this  
12 peacock bathroom.

13 A Yes.

14 Q You've had blue bath mats in -- in that bathroom as well,  
15 correct?

16 A I've only had the blue, entirely blue bath mats in the  
17 bathroom since the rugs that were in my bathroom were taken  
18 as evidence.

19 Q Okay. Now I am confused there, because you told me you moved  
20 out in 2018.

21 A Yes.

22 Q When this all came to light.

23 A Yes.

24 Q Okay. So how did you then -- how did you have blue bath mats  
25 in this bathroom if this isn't your bathroom at that point?

1 A I am the only child that my parents have, so I still  
2 technically have my bedroom.

3 Q Okay.

4 A My son still has his bedroom. I still have my bathroom. So -

5 Q So you don't live there, but it's still your home.

6 A Right.

7 Q Okay. Okay. You said you slept with the T.V. Ever sleep  
8 with a fan on?

9 A Not regularly. The setup of my room kind of made having a  
10 fan a pain in the butt.

11 Q Okay. You, you know, Weston, when he was a baby, you kept  
12 a baby monitor --

13 A Yes.

14 Q -- in your room. Okay. You talked about Dan starting this  
15 job as a truck driver. Now in 2015 and 2016, he wasn't doing  
16 that work as a truck driver. When did he get that -- that  
17 position?

18 A I can't remember the exact month/year portion. But I know  
19 he did concrete for a while when our son was first born. And  
20 then from that went to the wind to watering, which you do  
21 like trenching and well digging sort of thing. And they are  
22 the ones that hooked him up with getting his CDL and  
23 everything like that. So it was at some point while he was  
24 working for them.

25 Q So prior to that, he -- he didn't travel a lot during the

1 week or weekends, correct?

2 A Not generally.

3 Q It was kind of the truck driving thing that got him away from  
4 the house more often.

5 A The truck driving definitely made it more of the out of town  
6 work versus when he did concrete and before he had the CDL  
7 there would still be times that he would work on the weekends,  
8 but it wouldn't be, like, in Virginia --

9 Q Okay.

10 A -- to do concreted kind of thing.

11 Q Okay. You -- you walk from one room to the next, the dogs  
12 don't bark at you I assume.

13 A Not at me, personally.

14 Q Okay. So really, they are yappy dogs, but if they know you,  
15 and -- and your family, they don't bark at you every time you  
16 move, correct?

17 A Me personally?

18 Q No. I am asking about your family, the other people in the  
19 home regularly around these dogs.

20 A Anyone who when they first get there and go to come in the  
21 door, the dogs bark at. So they have their period of time  
22 for that. They have if per se Sasha was in the living room,  
23 and I was in my bedroom, and say I dropped a drawer full of  
24 stuff and made a whole bunch of noise, Sasha would still bark  
25 at the fact that I did that. But --

1 Q Okay. So if you were being, like there was a loud or sudden  
2 noise, they might bark, or if you first came to the front door  
3 or the side entry door, they would bark until they recognized  
4 you, correct?

5 A Yes.

6 Q Okay. When you and Dan would have sex in your bedroom, would  
7 the dogs all bark?

8 A The dogs wouldn't be in the bed with me while I would be  
9 having sex.

10 Q Okay. So there wasn't anything about the noises that would  
11 be made in that situation that would make these dogs kind of  
12 bark and alert the family.

13 A Not in my bed.

14 Q Okay. Okay. I am just going, if I can, refer you to some  
15 pictures. I am going to refer you to what was previously  
16 marked as People's Exhibit Number 12, if I can get this to  
17 work. Maybe. Is it because I unplug it and then plug it  
18 back in or something? I didn't have it pushed in all the  
19 way so that's just me being dumb. Here we go. So when you  
20 look at this picture, what's this a picture of?

21 A My bedroom.

22 Q Your bedroom. And just for orientation purposes, it looks  
23 like you are maybe standing in the doorway taking the  
24 photograph.

25 A I am standing just in the doorway to take -- to try to get

1 a picture of the whole bedroom.

2 Q Did you take these photographs?

3 A It looks like one that I may have taken.

4 Q Okay. Okay. It's a defense exhibit, so I wasn't sure who  
5 took the photographs. This wall on the left, is that the  
6 wall that shares the -- the bathroom?

7 A The one that would be like right here, that you just can't  
8 see?

9 Q Yes, ma'am.

10 A That is the one that shares with the bathroom.

11 Q Okay. And then it's the bath tub right on the other side of  
12 the -- the wall.

13 A Yes.

14 Q Okay. And then the toilet and then the vanity, right?

15 A Yes.

16 Q Okay. And then where is the T.V. set up?

17 A The black and pink, right here that you just can kind of see  
18 the corner of, the T.V. is on top of that.

19 Q Okay. What side of the bed was yours?

20 A Before Weston it was this side, I guess I don't know which  
21 way you would want me to call it.

22 Q Closest to the bathroom?

23 A Closest to the bathroom.

24 Q We will call it "left" and "right", how about that?

25 A Okay. So mine was left. We realized that our baby swing

1 didn't fit on that side of the bed. So then I took the  
2 right side.

3 Q Okay. So you are on the right side, closer to the fan there  
4 in the picture.

5 A Right.

6 Q Okay. Okay.

7 MS. JIPP: I have no further questions.

8 MR. MAESEN: I have no redirect.

9 THE COURT: There are some questions, Bart. There  
10 is another one, I think someone might be writing one in the  
11 back. Ms. Henrickson. No? Just writing notes. Okay.  
12 Thank you.

13 MS. JIPP: Do you want us to approach, your Honor?

14 THE COURT: Yes.

15 (at 3:10 p.m., attorneys approached the bench  
16 for brief conference to view the jury questions)

17 THE COURT: When you went to get ice, did your  
18 mother have to let you in the house to get the ice?

19 THE WITNESS: She gave me the key to run inside  
20 to grab the ice really fast. And then I would lock the door  
21 behind me as I came outside and return the key back to her.

22 THE COURT: Did Dan have access to your house key  
23 on the night of the wedding?

24 THE WITNESS: He never had gone in the house. So  
25 he would to have to have gotten the key from my mom or dad

1 to go inside to get the key.

2 THE COURT: You had testified that you weren't  
3 sure if your keys were in your room or in your vehicle. Could  
4 he have had access to your vehicle?

5 THE WITNESS: Not vehicle. It was in my wallet,  
6 which was in my room, because I put my purse and everything in  
7 my room for the night of the reception, just because of the  
8 guests that were there. So I wanted my purse locked in my  
9 room in the house. So it would either be in my purse in my  
10 room or else setting on possibly my bookshelf. Generally  
11 it was always in my wallet, in my purse.

12 THE COURT: Is it possible that you or your mother  
13 left the house unlocked at any time?

14 THE WITNESS: No.

15 THE COURT: Anything further from the jury?  
16 Anything further?

17 MR. MAESEN: I have nothing further.

18 THE COURT: All right. Thank you. You may step  
19 down.

20 I think we -- it's time for a break. So we will  
21 take 15. Thank you.

22 MR. MAESEN: Thanks.

23 (at 3:13 p.m., Court recessed for afternoon break)

24 (at 3:36 p.m., Court reconvened)

25 THE COURT: Please remain standing for the jury.



1 Trooper, you've seen all the stuff, okay.

2 A Yes.

3 Q So I am not probably go through a lot of redundant stuff --

4 A Okay.

5 Q -- just to move things along here. Just answer the question  
6 asked truthfully, it will be all right. You obviously know  
7 what's been stated here today, correct?

8 A Yes.

9 Q And you are aware that you have a constitutional right to not  
10 testify, correct?

11 A Yes.

12 Q And testify.

13 A Yes.

14 Q Okay. And you are exercising your right to testify. You  
15 are exercising your right to testify --

16 A Yes.

17 Q -- today. Okay. And it's your free choice?

18 A Yes.

19 Q Okay. Now, tell me, when did you first meet Jenna Bluhm?

20 A I knew her dad.

21 Q Robert?

22 A Robert. I want to say I met him 2012, roughly -- guessing.

23 Q How did you meet him?

24 A Kind of he had friends with someone else who lived in Burnips  
25 and I was friends with and we kind of met through that friend.

- 1 So I hung out with Bob for awhile. I seen Jenna a couple of  
2 times with her dad, Robert.
- 3 Q Like at his house or -- ?
- 4 A Yeah, there was one time he was there. She was going to stay  
5 the night. And I believe I left, I don't know 2 o'clock  
6 in the morning, because I was hanging out with Robert. And  
7 then she was there and Anna was there.
- 8 Q And this was before you met Brooke.
- 9 A Yes. I met Jenna before I met Brooke.
- 10 Q Okay. Did you know Angela?
- 11 A Not really. I never seen her until after I met Brooke. Then  
12 I was introduced to Angie.
- 13 Q Okay. Was she still married to Robert at the time you met  
14 Robert; do you know?
- 15 A I don't think they ever got married, as far as I am aware.
- 16 Q Were they together.
- 17 A They were together. They had kids together. But I don't  
18 think they ever married.
- 19 Q But she wasn't around.
- 20 A Not really, no.
- 21 Q All right. And so you saw Jenna kind of in the periphery  
22 at that point, correct?
- 23 A Yes.
- 24 Q And then how did you me Brooke?
- 25 A Through Robert. When I was over there hanging out with

1 Robert and --

2 Q Over where hanging out?

3 A At his house, that trailer.

4 Q Okay.

5 A And he needed to go to the gas station for something or  
6 needed something from the gas station, so he asked Brooke  
7 to go get it. And then she went to go drop it off and that's  
8 when I met her.

9 Q Okay. You met her at --

10 A At his house.

11 Q Okay. And you started talking to her.

12 A Yeah. She kind of walked past me and unlike the normal way,  
13 I give her -- or I ask for her number, she kind of gave me  
14 a piece of paper.

15 Q Okay.

16 A With her number on it.

17 Q Got it.

18 A And then I lost it. And then somehow I got it back and we  
19 started talking.

20 Q Fair enough. Do you remember when that was?

21 A I'd say January of 2014.

22 Q Okay. That's a best guess.

23 A It was like early year, really early spring, maybe roughly.

24 Q Okay. And at that time, what were you doing for a living?

25 What was your type of work -- when you met Brooke?

1 A I am trying to think. I had so many jobs then.

2 Q Did you have one particular profession or just different types  
3 of jobs?

4 A Different types. I can't remember if I was working with my  
5 dad on the farm. I did concrete, but I think I started that  
6 after I met her.

7 Q Okay. Was concrete something where you had to drive a truck  
8 with it or -- ?

9 A No. We went to job sites in pickups. He had other people who  
10 drove --

11 Q Okay.

12 A -- the truck. I laid down the concrete.

13 Q Got it.

14 A Yeah.

15 Q Sounds dangerous, but. So you started dating Brooke, you  
16 believe it was early January 2014. Did you --

17 A Yes. Well we -- we weren't dating at the time, but.

18 Q Okay.

19 A Yeah.

20 Q So you started dating later.

21 A June or July.

22 Q Of '14?

23 A Yeah.

24 Q And did you start going to her parent's house around that  
25 time?

1 A Yes.

2 Q Did you start staying the night around that time?

3 A Not all of the time, but kind of like started like one night  
4 this week and then next week, two nights, you know,  
5 progressively got more.

6 Q Sure. But you had another place to stay at that time?

7 A Yeah. I stayed at my grandma's --

8 Q Okay.

9 A -- at the time.

10 Q And she is still around here.

11 A Yes.

12 Q Okay. So when do you recall moving in with Brooke?

13 A What's that?

14 Q When did you move in with Brooke? Like stay more permanent.

15 A Like full on, 100% moved in. Fall time, I would guess, of  
16 2014.

17 Q Is that when you were preg -- when you guys were pregnant?

18 A Yeah, she got pregnant. And then I kind of just -- we -- I  
19 moved in.

20 Q Okay. Because of the pregnancy.

21 A That, it was -- my grandma was, you know, she was talking  
22 about moving to Texas. She never got the funds or the  
23 chance to really move. And recently, she broke her hip, so  
24 I don't think she is moving at all.

25 Q Recently now she broke it or recently then?

1 A Recently now.

2 Q Okay.

3 A Because she still was talking about moving and she never ended  
4 up moving.

5 Q Well, you get to a certain point, you probably -- all right.  
6 Let's speed this up a little bit here, to the -- the wedding  
7 of Robert. You were obviously invited.

8 A Yep.

9 Q You were obviously there.

10 A Yes.

11 Q Did you have a key to the house at that time?

12 A No.

13 Q Did you have a key to the house in general at that time or  
14 just --

15 A Not at that time. That was more like 2015, early summer,  
16 I ended up finally getting a key.

17 Q Okay. The wedding would have been in late 2015.

18 A 2016, then, I got a key.

19 Q Was it after your son was born?

20 A Yes.

21 Q Okay. So after --

22 A I'm sorry if I get my years wrong.

23 Q If you don't know, ask, and I will happily clarify for you.

24 A Yes.

25 Q It's a lot of information. I know it's quite terrifying to

1 be up there. So at the wedding of Robert, you at that time,  
2 did not have in your possession a key to the -- to get in  
3 the side of the house of your now mother and father-in-law.

4 A Right. I did not have a key.

5 Q Did you go in the house during the wedding?

6 A What's that?

7 Q Were you ever let into the house during the reception?

8 A No. I never went in the house.

9 Q During the reception.

10 A During the reception.

11 Q Obviously you did after.

12 A After the wedding, I did go in to change. And after that, I  
13 never went back in the house until after everybody left.

14 Q Do you remember if you had to use the restroom during that  
15 time?

16 A I went outside.

17 Q The garage one?

18 A Yeah.

19 Q Yeah. Maybe cold in the winter. But anyway, so you went in  
20 the garage once. So did you -- during that time did you --  
21 do you recall ever leaving to get more groceries or run  
22 errands or anything?

23 A No.

24 Q You stayed the whole time?

1 A Yes.

2 Q Were you drinking the whole time?

3 A I had a few. I did not get drunk-drunk. I had a few with --  
4 with Robert, I had a couple. And maybe total five beers.

5 Q Okay. And Robert knew that he was probably going to be  
6 incarcerated coming up, correct?

7 A Yes.

8 Q Which is why you did the wedding at an odd time of year.

9 A Right.

10 Q Did you -- who did you spend most of your time with at that  
11 reception?

12 A I didn't really know a whole lot of people. So I mainly  
13 stayed by Jessica. You know, she would get up periodically,  
14 take pictures. I would basically just sit there. And my  
15 parents were there for a little bit. So I would talk to  
16 them. But that's basically what I did. I danced with Brooke  
17 a couple times. But yeah, other than that, I kind of just  
18 sat there and didn't really socialize too much.

19 Q Sure. Did you watch over your son during that time?

20 A Well, my parents were there for him, they were kind of  
21 watching over him.

22 Q Yeah.

23 A So I was -- I was by him --

24 Q Right.

25 A -- until they left.

1 Q Did he go with them?

2 A Yeah.

3 Q Okay. So they watched him for that night.

4 A Yeah.

5 Q Okay.

6 A Because we didn't know how late it was going to go.

7 Q Sure. Sure. And he was pretty little.

8 A Yeah.

9 Q Do you recall at that wedding interacting with Jenna at all?

10 A Not really. She more stayed around Robert and his wife.

11 Q Sure. Lisa, I believe.

12 A Yeah. Yeah. But I never really interacted with her.

13 Q You at no time went in the house with her.

14 A What's that?

15 Q You didn't go in the house with her.

16 A No.

17 Q You didn't ask to show her something.

18 A No.

19 Q And she eventually left that night, correct?

20 A Yes.

21 Q Now at some point, did you become friends with Jenna on any

22 kind of social media?

23 A Yes.

24 Q Do you know what those would be?

25 A What time?

- 1 Q Which -- no. Which social media, like you have LinkedIn --
- 2 A No, on Facebook.
- 3 Q Just Facebook?
- 4 A Yeah, just Facebook. I don't do twitter.
- 5 Q Yeah, I don't either. I can't barely even use Snapchat. But
- 6 anyway, so just Facebook. You guys were -- did you guys talk
- 7 on there?
- 8 A Not really. She would -- you know, sometimes I would see
- 9 something she shared and I would like it.
- 10 Q Okay.
- 11 A You know, put a little like button.
- 12 Q Yeah. I get it.
- 13 A That was it.
- 14 Q Did you guys have each other's phone numbers?
- 15 A Yes.
- 16 Q Did you ever talk to her on the phone?
- 17 A If I had -- if Janie wanted me to pick her up for any reason,
- 18 I would text her ahead of time to let her know, be ready
- 19 when I get there, because I didn't want to wait.
- 20 Q So you would text her.
- 21 A Yes.
- 22 Q And this was to pick her up.
- 23 A Yes.
- 24 Q At the --
- 25 A Either her, or Jenna, her friend.

1 Q Right. And Janie was asking you to do this.

2 A There were only a couple of times -- Brooke wanted me to run  
3 to the gas station and they are kind of on the way to the  
4 gas station, kinda.

5 Q Mmmhmm.

6 A So like, Janie would ask me, can you just run over there and  
7 get them real quick?

8 Q And then did she want you to bring them back --

9 A Yeah. Bring them back to Janie's house.

10 Q So they could whatever.

11 A Yeah.

12 Q Earlier it was stated that there was an -- I don't remember  
13 the incident, you were taking her home, I think, from a  
14 bonfire. Do you recall that night?

15 A I can't remember if I took her home. I thought Taylor took  
16 her home. But I know Brooke wanted me to go to the gas  
17 station, I had to pick her up to bring her back.

18 Q Okay. Do you recall bringing her back?

19 A Yes.

20 Q Okay. Do you recall if anything strange happened on the way  
21 back?

22 A No.

23 Q You just brought her straight home.

24 A I brought her straight home.

25 Q How long do you think it would have taken to -- to pick her

1 up and bring her back? Like how many minutes?

2 A Oh, I would say five minutes to the gas station. I mean, they  
3 are literally, if you want to get technical, like three  
4 minutes from the gas station, and then like another five  
5 minutes back.

6 Q And was this bonfire around your son's birthday?

7 A I really can't remember if that was for his birthday or if  
8 it was just a random time.

9 Q Okay. If you don't remember that's --

10 A Yeah. I don't quite remember if it was his birthday or not.

11 Q Now, you are not a professional witness, correct?

12 A What's that?

13 Q You are not used to testifying in Court, correct?

14 A No. I never been to Court.

15 Q Never had to do this before.

16 A No.

17 Q Have you ever been in trouble before?

18 A Yes.

19 Q When?

20 A I am trying to think of the actual year. 2013.

21 Q Okay.

22 A No. No. Sorry. It was after I met Brooke, I got in trouble.  
23 I gotta say, in late 2014, early 2015.

24 Q Okay. And that matter is resolved now.

25 A Somewhere in there.

1 Q Is that case over?

2 A Yes.

3 Q Has it been over for a while?

4 A Yes.

5 Q Do you remember what the charge was?

6 A It was a home invasion, second.

7 Q Okay. That's all I want to know about that. So you had  
8 that. So other than that, you've never been in trouble?

9 A I got charged years ago, I can't remember the exact date.  
10 But me and one of my friends were angry at each other. He  
11 kind of stole some stuff from me and I called the cops and  
12 they didn't do anything and I was mad. It wasn't really --

13 Q That's -- that's fine --

14 A Yeah. I got a -- I can't even remember what the charge was.

15 Q Well, it was a while ago.

16 A Yeah.

17 Q I just want to make sure that, just to get your experience  
18 level of testifying today. So back at the Heppe's house,  
19 during the weekends that the girls would stay, you've  
20 already heard a ton of testimony, which I am not going to  
21 reiterate that. Okay. Because you were sitting right there.  
22 But you were sleeping with Brooke.

23 A Yes.

24 Q Did you get up in the night, typically?

25 A Very rarely would I get up to use the restroom. I would get

1 my drink, my water -- glass of water ahead of time.

2 Q Did you each have one, you and Brooke, or did you share one?

3 A Sometimes we shared, sometimes we had our own.

4 Q It just wasn't clear. So go on. So you would get up in the  
5 night sometimes.

6 A Right. Some -- rarely I would get up to use the bathroom.  
7 But that was very rare.

8 Q Okay. Would it be Brooke's bathroom that you would use?

9 A Yes.

10 Q Did you generally hear a lot of people getting up in the night  
11 in the house?

12 A What's that?

13 Q Generally speaking, were a lot of people getting up in the  
14 night in the house?

15 A Not really, no.

16 Q Did you hear the dogs bark in the night very often?

17 A Sometimes they would. Obviously, say if it was storming and  
18 a branch brushed the house, they would freak out, bark like  
19 crazy.

20 Q Sure.

21 A And I remember sometimes Brooke and Janie would go outside  
22 with flashlights, trying to figure out what's going on.

23 Q Meaning in response to the dogs' barking?

24 A Yeah.

25 Q Did they ever find out what it was or no?

1 A Sometimes it was a cat.

2 Q Okay.

3 A Sometimes it was -- it was just a branch fell and broke off  
4 the tree or --

5 Q Now what -- what time on these -- these nights when the girls  
6 stayed, do you remember when you went to bed?

7 A When -- when they were --

8 Q On these Friday nights. No, when you went to -- when the  
9 girl -- all right, when the girls would stay the night, to  
10 visit their dad --

11 A Right.

12 Q -- the next day, we've heard prior testimony you were there.

13 A Right.

14 Q Do you remember when you went to bed those nights?

15 A The same time as Brooke did. You know, it varied. Sometimes  
16 it could be midnight. Sometimes it could be 3 o'clock in the  
17 morning.

18 Q Do you normally stay up until 3 in the morning?

19 A It hasn't as much as going to bed at midnight.

20 Q When you went to bed, would everybody else be in bed already?

21 A Yeah. Sometimes you would see maybe Anna or Jenna would be  
22 up on their phone.

23 Q Mmmhmm.

24 A And then I would basically just walk past them and go straight  
25 to bed. They didn't have the T.V. on or anything. Just --

1 Q Did you talk to them at all?

2 A No.

3 Q You wouldn't say goodnight?

4 A No.

5 A They -- they were kind of face in the phone.

6 Q Was there ever a time where Jenna did something to bother you  
7 or disturb you or -- ?

8 A Yeah, there was I believe two times I felt uncomfortable.

9 Q When was that?

10 A One time it was at J.T.'s party.

11 Q Who is J.T.

12 A Is Brooke's mom's -- it would be Janie's sister's son.

13 Q Okay. That's fine, whatever. Okay.

14 A I think that's how it is.

15 Q A cousin of Brooke, kind of. All right.

16 A And I don't know, Jenna was kind of leading me on to try to  
17 play badminton with her. And I didn't want to. I didn't  
18 feel comfortable with it.

19 Q Why didn't you feel comfortable playing badminton? Was it  
20 her or was it the game?

21 A It was mainly her. She would -- I don't want to say, hit  
22 on me, but she would -- I don't know how to describe it.  
23 I really don't.

24 Q Would you say it might have been flirtatious?

25 A Yeah.

1 Q Was she like this sometimes or all of the time?

2 A It wasn't all of the time. It was mainly sometimes. There  
3 were some times where she like, tried to get me to go in the  
4 pool and it's just her and Anna. And I --

5 Q Where was the pool at? Like, whose house was it at?

6 A I don't know how to describe it. You've got the house --

7 Q Whose house?

8 A Janie's house.

9 Q Okay. So it's at Janie's house.

10 A Yeah.

11 Q Okay.

12 A Kind of in the back yard, I guess.

13 Q Okay. Would that bathroom off the garage be for the pool,  
14 then?

15 A Yeah.

16 Q Okay. That explains why there is a bathroom in the garage.

17 Okay. So were there any other incidents where she made you  
18 feel uncomfortable?

19 A I mean there was off and on, some, you know, I tried to keep  
20 my distance because there is times where she made me feel  
21 uncomfortable, trying to hit on me or --

22 Q Well, why did that make you feel uncomfortable. You are  
23 obviously a lot older, she's not --

24 A I am -- yeah, I am a lot older. She is Brooke's cousin. And  
25 I don't know if I am allowed to say --

1 Q I don't know what you are going to say.

2 A -- because I know her history.

3 Q Probably not.

4 A And I don't think I am allowed to say that.

5 Q That's fine. We will just -- I didn't ask you about anybody's  
6 history.

7 A Okay.

8 Q I am talking about specific incidences. And frankly I don't  
9 know her history. But anyway, so what I -- what I am getting  
10 at is, you said it made you feel uncomfortable. That's fine.  
11 Did you think that she like was just flirting with you  
12 harmlessly or was she -- I mean, because she was quite young.  
13 I mean --

14 A Yeah.

15 Q -- it wasn't like she -- you were 22 and she was 19. You know  
16 what I mean? I mean is there a reason why that -- because  
17 it -- one could argue -- one -- you know, it's -- it's how  
18 you felt. I mean --

19 A Yeah.

20 Q -- was it like creepy flirt or was she just like -- because  
21 kids can be silly flirt -- you know what I mean?

22 A I don't know if it was harmlessly or not. I am trying to --  
23 how to answer this.

24 Q What I am saying is, what about it specifically creeped you  
25 out?

1 A Well, she is so young --

2 Q Anything in particular.

3 A -- and I didn't want to -- now -- I don't think I am allowed  
4 to say it.

5 Q Just -- just -- why, from your own perception what creeped you  
6 about it?

7 A It would be her --

8 Q We don't have to talk about her at all, just --

9 MS. JIPP: Your Honor, at this point I want to say  
10 asked and answered. He said she was young, it was creepy.  
11 I don't know what more Mr. Maesen expects to get out of  
12 here.

13 THE WITNESS: I mean, she was giving me a bad  
14 vibe.

15 THE COURT: Sir. If there is an objection raised,  
16 you have to wait until I make a decision as to whether or  
17 not the question can be answered. Response, Mr. Maesen?

18 MR. MAESEN: Well he obviously, there is reasons  
19 that he is -- he is trying to articulate besides just her  
20 age and besides just those. I am trying to get like what,  
21 specifically, saying it was creepy doesn't really give me a  
22 lot of information. Like what is so creepy about it? That's  
23 what I am trying to get him to --

24 THE COURT: I would like to take a break with the  
25 jury and have this discussion outside the presence of the

1 jury.

2 MR. MAESEN: Okay.

3 THE COURT: Please rise for the jury. Thank you.

4 (at 3:57 p.m., jury excused)

5 You may be seated. First of all, the answer that  
6 I believe, "I know her history" needs to be stricken from  
7 the record.

8 MR. MAESEN: That was not asked.

9 THE COURT: I -- I understand that. The answer  
10 is there. I want it stricken from the record. So -- and I  
11 also want to make it very clear that any reference to her  
12 history, whatever that is, is inappropriate and should not  
13 be explored. I am afraid that trying to explain why it made  
14 him creepy is that's where we are going to go. So that's  
15 why I would like an offer of proof of what it is that you  
16 believe the testimony is going to provide the Court at this  
17 time.

18 MR. MAESEN: I would like him to articulate why he  
19 was so uncomfortable with a 13 year old being flirtatious  
20 with him. I don't -- I am not aware of any history with her.  
21 I am really not. I don't know if that was something brought  
22 up before I got on this case. I --

23 THE COURT: I have not heard this. First time  
24 I have heard any reference to it.

25 MR. MAESEN: So I am not aware of a history. I

1 don't want to get into that with this. That would be unfair  
2 sur -- you know what I mean?

3 THE COURT: I do know what you mean.

4 MR. MAESEN: I just want a -- a kind of a -- what  
5 I am thinking is that if a 13 year old was flirting with me,  
6 it might seem weird. I don't think I would find it creepy,  
7 you know what I mean? That's what I am trying -- I didn't  
8 know if there was something articulate that she said or did  
9 specific to him besides just being kind of flirty. Like  
10 I don't know if she made some -- some overt remark. That's  
11 what I am trying to get at. Like beyond -- to me, creepy is  
12 just not a very helpful. I am not in any way trying to -- to  
13 explore something I don't know is there as far as something --  
14 I don't know what her history is to even -- to even know how  
15 that would relate.

16 THE COURT: Well --

17 MS. JIPP: Your Honor, can I just address the  
18 issue? I know in speaking to previous counsel, Mr. Loew  
19 knows he is not supposed to mention this in any way. And I  
20 think this is exceptionally inappropriate. And I don't know  
21 how we handle this with the jury and I tried not to object  
22 when he said that because I think it calls further attention  
23 to fact he is getting into stuff that he knows he is not  
24 supposed to be saying, based on the very fact that he said,  
25 "I don't know if I can say this". So -- so how does the

1 Court -- I understand striking it from the record. How  
2 do we approach this with the jury? It's damned if we do --

3 THE COURT: How do you want me to --

4 MS. JIPP: -- damned if we don't.

5 THE COURT: -- approach it with the jury?

6 MS. JIPP: I think at this point, this ambiguous  
7 bomb has been dropped. Can -- I mean, at the very least, we  
8 need to just be instructed to move on from this line of  
9 questioning. It's clear that Mr. Loew is not going to be able  
10 to give an answer that falls within the Rules of Evidence.

11 THE COURT: Mr. Loew, you understand that you  
12 cannot reference anything about the victim's history. Do you  
13 understand that?

14 THE WITNESS: Yes.

15 THE COURT: Did you understand that before?

16 THE WITNESS: Yes. I was trying to avoid that.

17 THE COURT: Well, then why did you say it?

18 THE WITNESS: I -- I just didn't know how to  
19 answer the question. I am nervous up here. I don't know what  
20 I am doing, I guess. And I said, I didn't know if I could  
21 answer the question. I didn't realize saying what I did say  
22 was bad.

23 THE COURT: Well, if you say anything further,  
24 anything remotely close to that, you are going to be in  
25 contempt of Court and that could land you in jail.

1 Understood?

2 THE WITNESS: Yes.

3 THE COURT: All right. Let's move on. Please  
4 rise for the jury. One more time you can ask the question and  
5 then we are done.

6 MR. MAESEN: I am going to just move past it,  
7 your Honor. I just think it's safer to not even get into  
8 it.

9 THE COURT: You may be seated.

10 BY MR. MAESEN:

11 Q So back when Jenna and Anna would stay at Janie's house, did  
12 you hang out with them?

13 A Not really. Sometimes, you know, if me and Brooke had a fire  
14 on that weekend they would, either Anna or Jenna or both  
15 would come out, kind of hang out for a little bit, and  
16 then they would go back inside. But other than that, didn't  
17 really hang out with them.

18 Q Did you guys go places together, all of you, off the property?

19 A No.

20 Q You guys didn't go like to Chuckie Cheese or something?

21 A No.

22 Q And did you know -- do you know if Brooke hung out with them  
23 without you, when you weren't there?

24 A What do you mean?

25 Q Like was she close to them, Brooke?

1 A Yeah. I mean, yeah, Brooke and Anna would play Guitar Hero,  
2 they would watch movies together. And say I am out of town  
3 working, you know, she would hang out with them.

4 Q Be a cousin.

5 A Yeah.

6 Q And do you know if they were close before she met you?

7 A Yeah.

8 MR. MAESEN: And I have nothing further, your  
9 Honor.

10 THE COURT: Thank you.

11 Cross?

12 CROSS-EXAMINATION

13 BY MS. JIPP:

14 Q You testified you were charged with home invasion, second  
15 degree --

16 A Yes.

17 Q -- is that correct? And you were convicted of such on  
18 January 26<sup>th</sup> of 2015, correct?

19 A Yes.

20 MS. JIPP: Your Honor, at this point, we would  
21 move to admit Exhibit -- People's Exhibit Number 18,  
22 certified record of Defendant's conviction.

23 MR. MAESEN: No objection.

24 THE COURT: It's admitted.

25 (at 4:03 p.m., People's Exhibit Number 18 identified

1 and received)

2 MS. JIPP: Permission to publish to the jury? Not  
3 at this moment?

4 THE COURT: Not at this moment.

5 BY MS. JIPP:

6 Q You stated you met Jenna in 2014.

7 A Roughly, yes.

8 Q Roughly. A memorable meeting that you remember kind of --

9 A Yes.

10 Q -- meeting her. Okay. You testified that in about fall of  
11 2014 you moved in with Janie and Scott and Brooke, correct?

12 A Yes.

13 Q Okay. And then -- and then you testified that you were given  
14 a key in the spring of 2015, is what you testified, until  
15 I believe Mr. Maesen corrected you, correct?

16 A I did not have a key for the wedding. I got my key -- when  
17 was the wedding 2015, I got my key after that wedding.

18 Q Okay.

19 A I don't remember exactly when I actually got my own key.  
20 But it was -- it was after the wedding, I know that.

21 Q Okay. So over a year past you living exclusively at this  
22 residence before you got a key.

23 A Yes.

24 Q Okay. So in the meantime, you would have needed to use  
25 Brooke's key to get in.

1 A Yes.

2 Q Okay.

3 MS. JIPP: I have no further questions.

4 MR. MAESEN: I have no redirect, your Honor.

5 THE COURT: You may step down. Any questions from  
6 the jury? Any other witnesses?

7 MR. MAESEN: No, your Honor, the defense rests.

8 THE COURT: Rebuttal?

9 MS. JIPP: No, your Honor.

10 THE COURT: Thank you. Members of the jury, we  
11 have completed the testimony. The next thing that has to  
12 happen is the attorneys and I have review what final  
13 instructions are going to be provided to you. And we will  
14 have closing arguments and then the final instructions. And  
15 then deliberations. Just getting the final instructions  
16 together takes about an hour. So I am going to let you go  
17 home, that's what that means.

18 And I would like you to be back here at 9 o'clock  
19 tomorrow. Please rise for the jury. And that caution, still  
20 not talking to anybody, right? No social media postings,  
21 right? Okay.

22 Can you just close the door for a minute? I want  
23 to have some quick questions before the Defendant leaves.  
24 Just a minute and we will let you go. Just a minute and  
25 we will let you go.

1 I don't believe you admitted the rugs, the bath  
2 mats --

3 MS. JIPP: Yes. We did as People's Exhibit --

4 THE COURT: I know it was a proposed exhibit,  
5 I don't remember request for admission. I didn't write it  
6 down that you admitted -- that you requested admission and  
7 that we admitted it. I don't have a problem doing it at  
8 this time, I just didn't have that recorded.

9 MS. JIPP: I -- I apologize if I didn't. I would  
10 request that that be admitted unless there is --

11 MR. MAESEN: There is no objection. No, no.

12 THE COURT: Okay. That's fine. I just wanted  
13 to clarify that one issue.

14 I have, then -- I just have -- I have Exhibits 1,  
15 8 through 17, no, I'm sorry, 8 through 21. So I do not  
16 have 2, 3, 4, 5, 6, or 7.

17 MS. JIPP: All of those are the same series of  
18 photographs that I simultaneously approached the witness and  
19 then requested to admit.

20 THE COURT: Are you talking about when you  
21 approached with Exhibit 1?

22 MS. JIPP: I -- I said, "I am handing -- I am  
23 handing you People's Exhibit" -- and I said 1 through --  
24 because they are all the -- the same series of photos and  
25 it was 7 photographs.

1 THE COURT: Okay. When I -- when I heard you,  
2 you just said Exhibit 1, but your intention was that all 7  
3 be admitted.

4 MS. JIPP: Yes, your Honor. I apologize.

5 THE COURT: And I --

6 MR. MAESEN: We have no other exhibits.

7 THE COURT: Pardon me?

8 MR. MAESEN: We don't have any exhibits other than  
9 the ones being admitted.

10 THE COURT: Do you have any --

11 MR. MAESEN: Objection?

12 THE COURT: My understanding is that it was just  
13 Exhibit 1. Do you have any objection if it's Exhibits 1  
14 through 7, as Ms. Jipp recalls she requested.

15 MR. MAESEN: I have not objection.

16 THE COURT: All right. So we have 21 exhibits,  
17 correct?

18 MS. JIPP: That's -- that's correct.

19 THE COURT: All right. And if you would please  
20 leave the exhibits here for tonight.

21 MS. JIPP: Yes, your Honor.

22 THE COURT: And we will keep them locked up in  
23 the back. And if I could have counsel, so we can start  
24 going over instructions. Return to chambers, we will meet  
25 in the conference room.



**IN THE SUPREME COURT FOR THE STATE OF MICHIGAN**  
**Appeal from the Michigan Court of Appeals**

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People of the State of Michigan,  
Plaintiff-Appellee,

v.

Daniel Albert Loew,  
Defendant-Appellant and Cross-Appellee.

---

On Appeal from the Michigan Court of Appeals  
Docket No. 352056

On Appeal from the 48<sup>th</sup> Circuit Court for  
County of Allegan  
Case No. 18-021709-FC

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**DEFENDANT-APPELLANT'S APPENDIX**

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STATE OF MICHIGAN

48<sup>TH</sup> JUDICIAL CIRCUIT COURT (ALLEGAN COUNTY)

THE PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 18-21709-FC

DANIEL ALBERT LOEW,

Defendant.

JURY TRIAL - DAY THREE

BEFORE THE HONORABLE MARGARET ZUZICH BAKKER, CIRCUIT JUDGE

Allegan, Michigan - Thursday, August 29, 2019

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1 Allegan, Michigan

2 Thursday, August 29, 2019 - 8:57 a.m.

3 THE COURT: You may be seated. Do you need the  
4 exhibits for your closing?

5 MS. JIPP: I have the --

6 THE COURT: On the powerpoint. Okay.

7 MS. JIPP: I might want the rugs. That's it  
8 though.

9 THE COURT: Okay. We will bring those in in a  
10 minute. We will have the -- do you want to come forward?  
11 Just walk in. Thank you.

12 We will have the -- a set of the final instructions  
13 for you in just a few minutes. We were just finishing them  
14 up.

15 I did review the request by -- come on in -- I did  
16 review the request by the prosecution. I am choosing not to  
17 add those to the final jury instructions. And if you want to  
18 put some argument on the record in regards to that, you may  
19 do so.

20 MS. JIPP: Yes, your Honor. I would just argue that  
21 that is quite established case law in People v. Estevez.  
22 I think that that is kind of a logical conclusion to draw  
23 there. Clearly, under the statute it talks about personal --  
24 or injury and it can include the bodily injury or it can  
25 include mental anguish. It doesn't say "either or". There is

1 no case law that would dictate that says that has to be a  
2 unanimous decision as to what it is. So I guess I am just  
3 requesting clarification from the Court as to what it found  
4 persuasive in terms of --

5 THE COURT: Because it says, in the jury  
6 instruction, "physical injury or mental anguish". I mean,  
7 I think it's inherent in the jury instruction already.

8 MS. JIPP: Okay.

9 THE COURT: Anything further that we need to  
10 discuss before we move forward?

11 MR. MAESEN: We are ready, your Honor.

12 THE COURT: Do you antici -- can you give me an  
13 idea about how long your closings are or not?

14 MR. MAESEN: I can tell you I will probably be ten  
15 to fifteen minutes, give or take.

16 MS. JIPP: I would guesstimate around that ballpark  
17 as well.

18 THE COURT: All right. Well, I don't think we  
19 will take a break, then, after your closings. We will move  
20 right to the instructions.

21 MS. JIPP: Are all the jurors here or can I take  
22 two seconds to run to the restroom?

23 THE COURT: Well, I don't have the instructions  
24 yet. So I want to get those copied off and to you before we  
25 move forward. So you have time, absolutely.

1 MS. LANGE: All rise. Court will stand in recess.

2 (at 8:59 a.m., Court recessed)

3 (at 9:11 a.m., Court reconvened)

4 THE COURT: Can you see if the jurors are ready?

5 I presume they are.

6 You may be seated. Good morning. We are ready to  
7 proceed with the closing arguments. Ms. Jipp?

8 MS. JIPP: Thank you, your Honor. Okay. We are  
9 going to see if we can do this the first time.

10 Thank you for being here again, on the third day.  
11 What I am going to attempt to do is kind of give you a recap,  
12 I guess I would say the newsreel, the highlights, what I feel  
13 was important that we heard from the 16, some odd, witnesses  
14 here.

15 So just to kind of start and get the generics out  
16 of the way. We heard from Jenna, the victim. We heard from  
17 her mother, Angela. We heard from her older sister, Taylor,  
18 her younger sister, Anna, her grade school friend, Audrey.  
19 We heard from Trooper Desch. We heard from Trooper Workman.  
20 And we heard three experts, we heard two forensic scientists,  
21 Lisa Oravetz, who just did the initial preparation of -- of  
22 the bloodstains that she saw on the rug, as well as Michelle  
23 Schmitt, who kind of gave us a breakdown of what is D.N.A.  
24 and what ended up happening there.

25 And then we heard from Tom Cottrell, who kind of

1 helped understand some of Jenna's behaviors. Obviously then  
2 there were additional witnesses called by the defense. We  
3 heard from, first and foremost, Aunt Janie. We heard from  
4 Uncle Scott. We heard from a photographer, I believe her  
5 name was Jessica. We heard from Brooke's friend Lindsey.  
6 We heard from Brooke, the Defendant's girlfriend. And then  
7 finally we heard from the Defendant.

8 In this case, what the People are hoping to  
9 accomplish is for you to find the Defendant guilty of  
10 criminal sexual conduct, first degree. Now that -- that  
11 breaks down into three components here. We've got entry  
12 into Jenna Bluhm's genital opening by the Defendant's penis.  
13 The Defendant caused personal injury to Jenna Bluhm. And  
14 the Defendant used force or coercion to commit the sexual  
15 act.

16 On its face, it seems pretty simple here. But  
17 obviously we are talking about the law, so we have to  
18 complicate everything. So we have definitions of what's  
19 personal injury, what's force or coercion, what's sufficient  
20 force to qualify for a CSC first. So force or coercion means  
21 the Defendant either used physical force or did something  
22 to make Jenna reasonably afraid of present or future danger.

23 Penetration, first and foremost. I think that's  
24 pretty self explanatory based on the testimony that you heard  
25 from Jenna. In this case, it doesn't even matter because the

1 testimony was in terms of how far is far enough. She detailed  
2 penetration and ejaculation.

3 Personal injury, we had a couple of things we heard  
4 over the last couple of days. For the first incident, in  
5 December 2015, there was pain and there was blood. That's  
6 physical injury. For the incident that we heard in November  
7 of 2017, there was pain, there was swelling of the brow line,  
8 as well as the eyes. That's physical injury.

9 Okay. For the additional testimony, we also heard  
10 that there was mental anguish. Extreme pain and suffering  
11 and that was detailed throughout the testimony and I will  
12 get into that in a minute.

13 I want to take a minute though and talk about  
14 sufficient force. I found one of the jury's questions kind of  
15 interesting. What was the pressure used on her hand? So I  
16 kind of want to unpack this idea of sufficient force. It's  
17 enough force if the Defendant overcame Jenna by physical  
18 force. Or if the Defendant threatened to use physical force  
19 on Jenna and she believe the Defendant had the ability to  
20 carry out those threats. Or it's enough force if the  
21 Defendant, through concealment or by the element of surprise,  
22 was able to overcome Jenna. And I think that's important,  
23 especially when you consider the fact that in 2015, this --  
24 this 13 year old girl is just called into a bathroom. You  
25 know, oh, what's going on.

1 I think the element of surprise is there. But I  
2 think additionally, when she details the fact that she was  
3 pushed to the ground. I think you have the actual physical  
4 force used by the Defendant. In regards to the November 17<sup>th</sup>  
5 incident, where she ended up with eye swelling, she says she  
6 pretends to try to be asleep, and he grabs her and squeezes  
7 and it hurts. And he takes her into the bathroom, I guess  
8 angry it took her longer to get up than usual. He pushes  
9 her to the floor and then continues to hold her head down.

10 Here is something exceptionally important. The  
11 victim need not resist, you know. Bobby on the street might  
12 have fought, you know, Susie might have cowered and cried.  
13 Everybody reacts differently. The law does not require the  
14 victim to resist. Because that -- that's just in  
15 recognition that everyone is different and there might be  
16 elements of fear going on there. You can't require somebody  
17 to fight back when something like this happens, especially  
18 not a 13 year old.

19 Then we have a couple counts of criminal sexual  
20 conduct third degree. The first one is entry into Jenna  
21 Bluhm's genital opening by Defendant's penis. Jenna  
22 distinctly details an incident where she went into her  
23 father's trailer. There was penis/vagina contact. Jenna  
24 was 13 -- 14, I believe at that time. The law requires that  
25 she just be 13, 14, or 15 at the time the act occurred. We

1 don't need force. We don't need personal injury. We get  
2 penetration and age, that's a CSC 3<sup>rd</sup>.

3 She details a second incident. She is in the  
4 Defendant's vehicle. He inserts his penis into her mouth.  
5 She is 14. That's a CSC 3<sup>rd</sup>.

6 Finally we have a CSC 2<sup>nd</sup>. Defendant touched Jenna's  
7 genital area, groin, inner thigh, buttock, or breast. That  
8 can be over or under the clothes. So she is wearing a night -  
9 nightshirt on the couch when he comes up and grabs her  
10 breasts and squeezes so hard it causes her pain. It causes  
11 her so much fear and anxiety that she goes into the bathroom  
12 with him. That is done for a sexual purpose or could have  
13 been reasonably construed to have been done for a sexual  
14 purpose and caused personal injury to Jenna. He used force  
15 to do that as well.

16 So I am going to kind of back up a little bit now.  
17 And I want to kind of clean up the timeline here. And we  
18 heard Tom Cottrell talk about the fact that, for victims,  
19 it's difficult to remember number of sexual assaults, maybe  
20 exact dates, especially if they are younger victims. So I  
21 am hoping to be able to kind of paint a little bit clearer  
22 picture for you guys.

23 So we start -- we start in December of 2015. Jenna  
24 had turned 13, the end of November of 2002 (sic). She is  
25 involved in her father's wedding. She is, by everyone's

1 account, at that stage in her life, despite the fact that her  
2 father is going to be incarcerated soon, she is a happy girl.  
3 You know, they are kind of saying their farewells with their  
4 father as well as kind of celebrating this marriage.

5 So she goes to the wedding ceremony. She comes  
6 back to the house. She goes into the house later in the  
7 evening. She was described as an introvert, so maybe she  
8 just kind of needed a minute to herself. She is called by  
9 Dan to help him bring in, I think she said soda and drinks  
10 and stuff into the house, he had gone on a grocery run.

11 Helps him unload that. Then is called into the  
12 bathroom by the Defendant. Hey, can you come in here, let me  
13 show you something. Okay. I mean, at this point, she just  
14 kind of knows this guy is her cousin's boyfriend, doesn't  
15 perceive him as a threat. He is at family events. And she  
16 walks into this bathroom. He closes, he locks the door,  
17 starts Fabio-esque kind of actions, kissing her all up and  
18 down her neck and shoulder, takes off her clothing, she is  
19 shocked. She is scared. She doesn't fight back.  
20 He turns her around, he pushes her to the ground, and he  
21 penetrates her. This doesn't take long. He -- he is not  
22 there to -- to make love to her. You know, he wants to get  
23 satisfied and get back out to the party.

24 She describes the fact that it took several times  
25 of him jabbing to be able to enter her. She describes the

1 fact that her hands and knees were on -- on the bare wooden  
2 floor. She describes an -- an orange bathroom with flower  
3 shower curtain and I think she said flowers in a vase. A  
4 pretty distinct memory for a 13 year old to have of an old  
5 bathroom décor. She remembers him ejaculating on the floor,  
6 wiping it up, and throwing it away. And she remembers seeing  
7 several of her own drops of blood on the floor.

8 She described kind of an intense, internal cramping  
9 pain. She doesn't hear anybody else in the house. She  
10 doesn't see anybody come and go. He finishes, he leave.  
11 She cries, she collects herself. She later goes and changes  
12 her clothing and doesn't say anything.

13 Maybe not how we would react, but how this scared  
14 13 year old reacted.

15 After that, it was several months before the  
16 Defendant had access to hear again. She would go over to  
17 her Aunt Janie's house to Skype a little bit, but never really  
18 stayed the night or -- or be alone. He didn't have that  
19 access or opportunity during that time period. It wasn't  
20 until the father was incarcerated in the spring of 2016, that  
21 she started to go over there every other weekend, so that  
22 she could get up the next morning and go and visit her father.

23 So Jenna couldn't detail for you a second or the  
24 third or the fourth or the sixth or the 20<sup>th</sup> specific  
25 instance. Because for her this became an everyday thing. You

1 get up, you have breakfast. You might not be able to tell  
2 me what you had for breakfast a week ago. But if something  
3 always happens and it always follows a general pattern, you  
4 are going to be able to detail that general pattern.

5 And for Jenna, she detailed falling asleep on the  
6 couch in her aunt's living room. She would go to be before  
7 the Defendant and his girlfriend. She would then wake up  
8 to him grabbing her breast or her thigh or her buttocks. He  
9 would grab her by the hand. She was scared. She went into  
10 the bathroom. He would either push her down on all fours or  
11 have her situated so that her back was on the floor and her  
12 legs would be up in the air. He would be kneeling and he  
13 would penetrate her. She said these would take two or three  
14 minutes, start to finish. Like I said, he wasn't being Romeo  
15 here. He was after -- after number one. He was getting  
16 satisfied and he was moving on.

17 The lights would be off, it would be two, three  
18 in the morning. Everyone would be asleep. She was able to  
19 detail for you some specific instances and probably because  
20 they were different. She details in June of 2017, Weston's  
21 birthday. The Defendant's son's second birthday. She goes  
22 to this party. Something happens, she ends up leaving, but  
23 decides she wants to come back and she calls her Aunt Janie.  
24 Hey, Aunt Janie, can you come and pick me up, I want to come  
25 back and hang out.

1            Instead of Aunt Janie coming, Janie sends the  
2 Defendant, not knowing their history, not knowing her fear  
3 of him. And he picks her up, he drives a different route, a  
4 longer route, down a rural road. He takes her head and pushes  
5 it towards his groin. She describes his penis at the back of  
6 her throat. It's this kind of choking sensation. And she  
7 describes the disgusting smell and taste of his semen in her  
8 mouth.

9            Now this was June of 2017, the first incident  
10 having been December of 2015. At this point, the Defendant is  
11 engaged. And Jenna has the audacity, the nerve to say, well,  
12 is this going to keep happening once you are married. Like,  
13 please, God, when is this going to end. And his only response  
14 is, "You don't want to know what will happen if people find  
15 it out."

16            So that's the count of CSC 3<sup>rd</sup>, the penis to mouth  
17 contact. She is 14, the sexual contact occurs. The CSC 1,  
18 obviously the incident from December 2015.

19            Now she details the incident at her father's  
20 trailer. They go to take pictures, her dad is kind of on  
21 her. He likes to kind of keep abreast of kind of what's  
22 going on with his property. He pushes her down on her  
23 childhood bed on her stomach. She turns over, he penetrates  
24 her vagina, he ejaculates, it's done. But it stood out  
25 because it happened in her childhood bedroom.

1           She details an incident in November where she goes  
2 to her aunt's house. So this is November of 2017, before  
3 January 2018 disclosure. She goes to her aunt's house. He  
4 gropes her. She thinks maybe if I just don't comply, maybe  
5 if I play possum here and keep sleeping, he is going to leave  
6 me alone. He will give up. Maybe make enough little noise  
7 that somebody might stir. Unfortunately, he chose to  
8 escalate the pressure that he used on her body. And when  
9 he squeezed her hard enough that it made her feel so afraid  
10 of what he could do, she preferred just going into the  
11 bathroom with him.

12           So he grabs her by the hand and takes her in there.  
13 And maybe he's -- maybe he is pissed off because it took her  
14 longer to get up. You know, he is on a tight timeline and he  
15 doesn't want anyone to wake up. So he pushes her down on the  
16 floor, hold her by the back of the head. For once, instead  
17 of the pinching, the dry pain in her vagina, the cramping,  
18 instead of that being at the forefront of her mind, she is  
19 just thinking about the severe pressure and pain on her face  
20 as it's pushed to the ground.

21           What does she hear? The slapping of his body  
22 against hers. He ejaculates on the floor, wipes it up,  
23 cleans it off, goes about his business. She goes back and  
24 lays on the couch and thinks, oh my God, something is not  
25 right. At this point, she is 15 -- I think so. I am not

1 great at math, 14 -- 15. She is scared. She is like, oh,  
2 what if something is going on here. She is laying on the  
3 couch, she takes a selfie of herself. You can see in the  
4 picture, it's black in the background, it's middle of the  
5 night. And you can see that her eyes are already swelling.  
6 You can see that there is puffiness right here along her  
7 brow line.

8 She goes and she gets her aunt and says, I don't --  
9 I don't know what's going on, but my eyes are really sore.  
10 I think they are swollen, can you help me? And her aunt  
11 remembers and testified that yeah, she got her and ice pack  
12 in the middle of the night. She puts ice on it.

13 The next morning, about 8:30, when she thinks her  
14 sister might be up, she sends these pictures to her sister  
15 and says, oh, I don't really know what's going on. I feel  
16 really terrible. I am not going to go visit Dad. Can you --  
17 can somebody pick me up? And she goes back home to her  
18 grandma's house. Her sister, her mom, her -- her younger  
19 sister all testified that they remember seeing this swelling.  
20 Well, I apologize, let me take that back. Mom was at work,  
21 hears and advises to give her Benadryl and doesn't see her  
22 until the next day when this swelling, instead of swelling  
23 becomes redness, almost like bruising, tenderness underneath  
24 her eyes. I don't know if anybody has ever had an eye injury,  
25 you get the blood up here and it can feel so tender and then

1 it can kind of move down. It's exactly what they described.  
2 Benadryl didn't help. Ice helped a little bit.

3 She was so angry, snippy. I think they described  
4 her as grumpy and to herself. Something was so wrong, that  
5 her sister even said, in noting how she walked, why are  
6 walking like that? Are you constipated? Are you having  
7 issues? And when she snipped at -- oh, it's not that. Did  
8 somebody hurt you? What's going on here?

9 She just wasn't at a point mentally where she was  
10 ready to talk about what was going on with her.

11 So after that incident in November, she is scared,  
12 she knows she wants this to stop. Dan tries to grab her  
13 again on the couch, and -- and -- and that gets disrupted  
14 for whatever reason. I think the testimony might have been  
15 that somebody came out or it was before everybody was asleep.  
16 Jenna wakes her younger sister, Anna, up and makes her sleep  
17 on the couch with her. And Anna says, oh, yeah, she had kind  
18 of started having these nightmares. That was really kind of  
19 weird. But she was so persistent about wanting me on the  
20 couch with her that -- that yeah, like, I am going to sleep  
21 with my 15 year old sister on this one couch. Anna testified  
22 to that and Jenna testified to that.

23 Now Jenna didn't say, he's been molesting me and  
24 having sex with me for two years and I -- I want this to  
25 stop. Please sleep with me on the couch. She wasn't ready

1 to disclose yet.

2 She finally got there mentally January 6, of 2018.

3 THE COURT: Apologies.

4 MS. JIPP: That's okay.

5 She goes to visit her dad in prison, she is with  
6 her younger sister, Anna, her Aunt Janie, and her grandma.  
7 Kind of a bizarre way to do it, she starts to cry and kind  
8 of spells out his name on I think it was a Powerade bottle.  
9 Her dad doesn't comfort her. He doesn't say, Jenna, leave  
10 right now and call the police. Janie, take her out and let's  
11 call the police. We are going to get this guy. Instead he  
12 says, your word is not enough. We got to formulate this  
13 sneaky plan and we are going to catch him. We are going to  
14 put up trail cameras or we are -- we are going to photograph  
15 him. And they try to enlist Anna in this.

16 Now before they get to all of the nitty gritty  
17 planning, Aunt was disturbed enough by this allegation that  
18 she even took Anna out and asked her if she had been  
19 molested.

20 So then they make this plan and Anna is supposed to  
21 be on this loveseat and snap photos as Dan comes in. This  
22 14 year old had enough sense to say, this is -- this is a  
23 terrible idea. I don't want any part of this. And when she  
24 gets back from prison, she just disappears. She's like, no,  
25 no, I am not in on this.

1           So then at this point, this plan has to evolve. And  
2 now we only have two players, Janie and Jenna. And Jenna  
3 is on board, because she has been told, this terrible thing  
4 has happened to you and no one really believes you. So we  
5 have to catch him on video.

6           So that night, Janie testified that she sat on a  
7 stool behind her bedroom door, not with a camera, not with  
8 her cell phone, and she listened all night. Because if she  
9 heard Dan going into the bathroom, here was her plan, she  
10 was going to kick in that door and she was going to catch him.

11           Now Jenna's word that this was happening wasn't  
12 enough. But Aunt's word was going to be enough. I don't know  
13 if you all observed Aunt walk into the courtroom. But she  
14 has a limp. She is not the most mobile of people. But she  
15 was going to sit on a stool all night and then kick in a  
16 bathroom door. And you know what, Jenna is going to rely on  
17 this aunt to keep her safe.

18           And while this is an abstract plan, Jenna was on  
19 board. But the next weekend, when she thinks Dan is not  
20 going to be there, when her mom says, well, you can go there,  
21 but only if Dan's not there. Dan suddenly comes home early  
22 from a work trip. This abstract plan has become a harsh  
23 reality. They are going to play, To Catch a Predator, and  
24 she gets to be the bait. She finally discloses and he still  
25 gets to grab all over her and take her into the bathroom.

1 Taylor catches wind of this ridiculous plan and  
2 immediately contacts Jenna. She goes and she extracts Jenna  
3 and Jenna unloads. This is what's been happening to me. This  
4 is the plan, Dad said my word wasn't enough. Screw that,  
5 your voice is enough. And they call Trooper Desch. Trooper  
6 Desch goes to the house. He gets the minimal facts. He finds  
7 out the alleged perpetrator, finds out the general venue to  
8 make sure he is the appropriate agency to be there. He sets  
9 up a forensic interview so that she can give a full disclosure  
10 later and he leaves.

11 About 20 minutes later, he gets a phone call and  
12 it's from Taylor. And somehow she knows that now the  
13 Defendant knows about the allegations and that police are  
14 involved. Okay. About an hour later, Trooper Desch gets  
15 another call from dispatch. Call Aunt Janie. Call Jane  
16 Heppe, I believe, is what the testimony said. So he thinks,  
17 oh, okay, I will call Jane Heppe.

18 He calls Jane. What's -- what's Jane doing?  
19 Driving around at 1 in the morning. What's Jane got with her?  
20 A plastic garbage bag full of bath mats. Okay. Hey, Trooper  
21 Desch, yeah, it's one in the morning. I am driving around  
22 with two bath mats. They are -- they are evidence. My  
23 niece told me that -- that there may be ejaculate on one of  
24 these rugs. So I just -- I wanted to be helpful. I wanted to  
25 bring them to you.

1           So she meets them at the Dorr Exxon at 1:30 in the  
2 morning and hands over this trash bag of bath mats. Do we  
3 know where these bath mats came from? Probably a bathroom, I  
4 mean they are bath mats. Do we know, did they come from  
5 Brooke's bathroom? Are they the light blue bath mats  
6 described to Trooper Desch the night that he first went to  
7 their home? No. Should Trooper Desch have opened this bag  
8 and looked at these bath mats and investigated it? Yes.  
9 Should Trooper Desch have -- have -- have taken these bath  
10 mats, these blue, white, and green bath mats to Jenna and  
11 said, "Are these the bath mats you remember being sexually  
12 assaulted on?" Yes.

13           If he didn't do that, should he have taken a  
14 photograph of these bath mats and sent that to Jenna and said,  
15 "Are these green, white, light blue, dark blue bath mats the  
16 blue bath mats you described?" Yes. But we didn't do that.  
17 Did he go that night to Aunt Janie's home where the Defendant  
18 resides and take photographs of the inside of the home? You  
19 know, at this point, the Defendant knows. So let's just go  
20 ahead and deal with it. Should he have gone and done that?  
21 Yes. He could have gone in and he could have seen the  
22 bathroom that these -- these mats had been taken from. He  
23 could have seen a box in storage that these -- these old  
24 mats had come from. But it didn't happen. He trusted the  
25 fact that this aunt was on Jenna's side. This aunt who has

1 a daughter who is now married to the Defendant. This aunt  
2 who has a grandchild, the father of which is the Defendant.  
3 This aunt that has another grandchild on the way, the father  
4 of which is the Defendant. Stacked the cards in the  
5 Defendant's favor. And we don't have any way to verify where  
6 these rugs come from.

7 All we've got is some lab reports that say that  
8 there are some blood stains and one of those blood stains the  
9 Defendant is a major contributor of. I am not saying they  
10 weren't in the house. I am just saying these aren't the  
11 rugs that the victim described.

12 Now, her family describes Jenna in a couple of ways,  
13 the before Dan and the after Dan. Happy, kind of liked  
14 affection from her family, maybe a little introverted. After  
15 these assaults, her family describes her as quick to anger,  
16 grumpy, snappish. Her mom details the fact that she had to  
17 go to therapy because she started to cut herself. Her grades  
18 start to fall. She -- she is falling apart. She -- she needs  
19 an outlet for this, right?

20 So in the summer of 2017, there is like a little  
21 hole in this water balloon, a little spray of water coming  
22 out here. And she starts to reach out. She tells her friend,  
23 Audrey. Dan is trying stuff with me, he is kind of  
24 experienced. Audrey feels totally uncomfortable with this  
25 conversation, thinks it's weird. Doesn't really do anything

1 with this conversation. And then, several days later, she  
2 borrows Jenna's phone. And that uncomfortable, strange  
3 feeling is intensified because she sees all of these texts  
4 from the Defendant to the victim. And -- and not the, I am  
5 one my way, quick texts that he would like you to believe.  
6 We've got some bubbles. Anybody ever has an iphone, or  
7 I guess any new phone now, you've got the big text bubbles  
8 and the little text bubbles. The big text bubbles, that's  
9 more than, I am on my way. So we have her corroboration. We  
10 have Taylor, Anna, and mom's corroboration that all of this is  
11 going on.

12 I don't want to harp too much on this. But I think  
13 Tom Cottrell's testimony was exceptionally helpful. You know,  
14 he described delayed disclosures. That the length in when you  
15 decide to disclose based on when the abuse starts is different  
16 for every single person, okay. And what are some of the  
17 reasons they wait to tell? And this is what he testified to.  
18 They think no one will believe them. Maybe there is fear  
19 or threats. "You don't want to know what will happen if  
20 somebody finds out." Anxiety, embarrassment, maybe the  
21 perpetrator is a family member or a close friend.

22 Jenna was spending every other weekend with her  
23 aunt. He -- he -- she was her access to visit her father.  
24 Of course she is afraid of pulling the pin and throwing the  
25 bomb in that dynamic.

1           Is it a -- is it common for a victim to remember  
2 some things about the abuse and not others or for disclosures  
3 to come out in bits and pieces? Absolutely. And he talked  
4 quite a bit about trauma memories and how your brain encodes  
5 them. He uses what I thought was a pretty good analogy. You  
6 go to a happy picnic and you have a memory that's kind of  
7 like a video. You know, kind of start to finish and  
8 chronological.

9           You experience this traumatic incident and it's  
10 like a bunch of snapshots in a photo album all jumbled up.  
11 So maybe one second, if something triggers it, you will think  
12 of A, B, and C, and another time it can be P, Q, and X.  
13 You just -- you just don't know.

14           In a situation where abuse occurs repeatedly over  
15 the course of several years, it's normal for kids to not be  
16 able to differentiate each time and the dates. That's --  
17 that's just the reality of it.

18           Do victims exhibit behaviors or demeanor that seem  
19 out of place? Like spending time with their abuser after the  
20 abuse. Yes. They want to maintain normalcy and that's  
21 exactly what happened in this situation.

22           I -- I know defense counsel, in his questioning of  
23 Mr. Cottrell, he likened, well, you know, could this be from  
24 a traumatic upbringing or the death of a parent? There was  
25 no testimony that Jenna had this terrible, traumatic

1           upbringing. Her parent didn't die. He is incarcerated. She  
2           was getting to see him every other weekend. You can't pretend  
3           that her father and only getting to see him for six hours  
4           every other weekend is the reason she is cutting herself, is  
5           the reason she is waking up in the middle of the night, crying  
6           with nightmares.

7                         Now, I want to talk a little bit about what we  
8           heard from the defense witnesses. First, we had the  
9           photographer. What could she remember for us? Not what Jenna  
10          was wearing, not what the Defendant wore. She was at a  
11          wedding and then a reception all evening and she said she  
12          never went to the bathroom. She -- she admitted she was  
13          working. And somehow, that testimony from December of 2015,  
14          she is supposed to distinctly remember whether or not the  
15          Defendant slipped away for five minutes or whether Jenna  
16          slipped away for five minutes. Or whether they were both  
17          kind of not in sight four or five minutes at the same time.  
18          Couldn't remember what they wore, but would remember out of  
19          20 people, these two people being missing. That's ridiculous.  
20          She didn't know at the time it was important to keep tabs  
21          on that.

22                         Then we have Lindsey, the friend that would stay  
23          the night. Sometimes on a futon, sometimes in the bed. The  
24          bulk of her testimony seemed to be the fact that if -- if  
25          you so much as moved, these little, yappy dogs were -- were

1 on your ankles and barking and boy, nobody could ever sleep.  
2 That was the takeaway from that testimony.

3 The thing is, Aunt Janie got up there and testified  
4 about her own dogs. Well, yeah, they will bark if you come  
5 in the front door. No, they don't bark at you when you walk  
6 from one room to the next. I mean, if you've ever had a dog,  
7 that's unrealistic. You would get rid of that dog if it  
8 barked every time you walked from one room to the next.

9 Then we heard from Brooke. Obviously Brooke is now  
10 married to the Defendant, has one child, one on the way.  
11 So I submit to you, immediately I question her bias and her  
12 credibility.

13 She testified, I think first we discussed kind of  
14 her nursing habits. That well, maybe is she was getting up  
15 in the middle of night and nursing this child, that her being  
16 up in the middle of the night meant that there is no way  
17 that this could happen. So okay. Let's unpack that a little  
18 bit. The child was born in June of 2015. Wasn't there the  
19 night -- he was there for the wedding dinner, but wasn't there  
20 the night of the wedding. He went and stayed somewhere else.  
21 Brooke testified that it was just her and Dan and her mom and  
22 dad in the house that night.

23 The sexual assaults after that wedding night didn't  
24 start again until spring of 2016. In June of 2016, he was  
25 one. She had to take a medication and couldn't nurse anymore.

1 So what, you maybe have an overlap when -- when this child is  
2 like 10, 11, 12 months old where she would be nursing,  
3 probably not nursing in the middle of the night.

4 Then Brooke talked about the fact that well, usually  
5 Dan would go to bed before her and you know, it would be  
6 anywhere between 2 or 3 in the morning. And she would have  
7 known if his body wasn't touching her or she would have felt  
8 him move. But she also testified that she kept a T.V. on  
9 in the room. Testified that when that T.V. would go on,  
10 she -- she testified that when that T.V. would go on, she --  
11 she'd sleep pretty hard for about an hour and then kind of --  
12 something would wake her up, so she -- she would get up  
13 and turn off the T.V. or maybe she would turn the sleeper  
14 on or something.

15 So we know for at least an hour, she was sound  
16 asleep when the Defendant was there. And when I kind of  
17 pressed her a little bit on that, her answer was, well, how  
18 would I know if he got up, I was sleeping. Exactly. You  
19 were sleeping and he took that opportunity to go and molest  
20 your little cousin.

21 There was also quite a bit of talk -- oh, real fast,  
22 just in terms of the noise, also found it interesting that --  
23 that Brooke slept on the side of the bed farthest away from  
24 the bathroom. And I don't know if anybody else noticed in  
25 that photograph the nice fan sitting right there. So we got

1 a T.V. on, we've got a fan on. You've got a little baby  
2 that you've still got to monitor on, so you must be worried  
3 that you are not going to hear him in the next room over.

4 She testified about this orange bathroom. And she  
5 and Janie had a really good reason why they would know  
6 exactly the time that they had changed the wall colors and  
7 the décor of this bathroom, right? Oh, Brooke had a boyfriend  
8 and yeah, he helped her pick out this bathroom color. And  
9 then they broke up and that happened in 2013. So we know this  
10 bathroom changed in 2013.

11 So what do you think is more believable? That  
12 in 2013, Jenna would have been 11, depending on what -- what  
13 time of year, 10 or 11. And that décor changes and she  
14 somehow remembers that and accidentally puts that into this -  
15 this fake memory that she makes up of this like, this  
16 traumatic rape. Okay. Or is it more believable that on the  
17 night you lose your virginity, that you are sexually  
18 assaulted, that you remember what the room looked like that  
19 this happened in?

20 Then we have this issue of Uncle Scott testifying.  
21 Well, I just -- I just -- I just don't think he did it.  
22 That was essentially what Uncle Scott contributed. When I  
23 said, "Well, do you remember hearing the Defendant and your  
24 daughter having sex?" "Well, no." So you don't hear your  
25 daughter and the Defendant having sex. What makes you think

1 in the middle of the night you are going to hear someone who  
2 is trying to be quiet? Who is tiptoeing in, groping, sneaking  
3 back, why do you think you are going to hear that if you  
4 don't hear them having sex when they are probably not trying  
5 to be quiet?

6 And then we've got this issue of a key. December  
7 2015, was this house under lock and key or wasn't it?  
8 When Janie found out the extent of Jenna's allegations, she  
9 didn't go to Trooper Desch and say, "Well, how could this  
10 have happened, I kept that door locked." So -- so let's  
11 pretend like -- like that's how this happened, despite Anna,  
12 Taylor and Jenna saying, well, people kind of knew not to go  
13 in. But yeah, somebody that was familiar might pop in and  
14 use that restroom right out there. But there wasn't really  
15 traffic. People respected that. What's more believable,  
16 that or the fact that the house was under lock and key and  
17 the only people that had -- the only people that had these  
18 keys were Aunt Janie and Uncle Scott?

19 Now, why is that? Well, Brooke had a key and we  
20 will talk about that in a second, but the Defendant didn't  
21 have a key. Aunt Janie remembers -- remembers that this was  
22 under lock and key this night because her mom had had a hip  
23 surgery and she took her into the bathroom. And she -- she  
24 took Brooke in to get a diaper bag. Now it's interesting,  
25 everybody seems to have these really clear memories of very

1 minor details that happened back in 2015. Brooke only  
2 remembers going in to put jeans on or -- or maybe at one  
3 point to go get ice. All right.

4 But where is Brooke's key? What did Brooke testify  
5 about this key? Well, it was in my car or in my bedroom.  
6 That was -- that was the first response. And then it was,  
7 well, no, it was in my bedroom in my purse or in my wallet.  
8 And then it was, no, no, no, it was in my wallet, in my  
9 purse, maybe on the bookshelf.

10 Okay. So if we are to believe that this house is  
11 under lock and key and that's why the Defendant could not  
12 have raped her, then we have to account for where this key  
13 is, right? That's an unknown.

14 And then the Defendant testified, oh, I didn't have  
15 a key. Yeah, I moved in in fall of 2014. I didn't have a  
16 key until the following spring. Well, do you mean the spring  
17 after the 2015 event? Yes. Yes. That's right. I lived there  
18 from fall of 2014 and didn't get a key until spring of 2016.  
19 Shenanigans. That's ridiculous. So you are going to make  
20 sure that any time you leave on an over-the-road truck drive  
21 or you are at a like construction job, you have to coordinate  
22 that someone is going to be there to let you into where you  
23 live? Or that there is no hide-a-key for the people that  
24 live there?

25 So maybe they don't trust the Defendant enough to

1 give him his own key for over a year. You are not going to  
2 hide a key in case everybody is busy doing something and  
3 he wants to go in and change his clothes? It's ridiculous.

4 When you look at all of this evidence together,  
5 there is only one explanation. The Defendant raped this  
6 little girl. He did it in December of 2015, he used force  
7 or coercion. He caused injury. He did it again in November  
8 of 2017. He used force or coercion and he caused injury.  
9 Hundreds of times in between that, he did it again, and again,  
10 and again. Hundreds is probably hyperbole, I take that back.  
11 This was only two years and she said about every other  
12 weekend, so I take that back. But regularly, regularly  
13 enough.

14 He forced her to give him a blowjob in the truck,  
15 your CSC 3<sup>rd</sup>. He pushed her on the bed in the trailer, had  
16 penis to vagina contact, your CSC 3<sup>rd</sup>. He squeezed her  
17 breast so hard that she was so scared she went in with him,  
18 used force or coercion, caused personal injury. That's  
19 your CSC 2<sup>nd</sup>.

20 I hope today when you go back and you just use your  
21 common sense, your everyday thinking cap, you go into that  
22 room, you reach one conclusion here. That the Defendant is  
23 guilty of all charges.

24 Thank you.

25 THE COURT: Go ahead. Mr. Maeson. I apologize

1 for the interruption.

2 MR. MAESEN: Sure. Do you mind if I turn this  
3 a little bit?

4 THE COURT: No. Go ahead.

5 MR. MAESEN: Thank you.

6 Good morning, ladies and gentlemen, on behalf of  
7 the Defendant, Daniel Loew, I would like to give you all a  
8 big thank you for being here for three days, taking time out  
9 of your jobs, your families, whatever else you might have  
10 going on, to sit here and hopefully assist him in this case.

11 The decision you are going to make today, if you  
12 make it today, is probably going to be one of the most  
13 important decisions regarding the outcome of his life. It's  
14 a very serious decision; it's a very important decision. And  
15 we trust that you are going to take your time and make the  
16 right decision.

17 Now, you just heard the prosecutor get up and make  
18 an opening statement -- or closing argument, excuse me. She  
19 will get a chance to come up once again, if she wants to  
20 exercise it, after I talk. This is my last shot to say  
21 anything to you at all. Okay. So I don't think I am going  
22 to be terribly long-winded, but I want to make sure that  
23 I take my time and get through everything and make this one  
24 shot count.

25 You know, and every time I get up here at the end

1 of a trial, there is always this -- this anxiety of, am I  
2 going to forget something? Did I ask the right questions and  
3 then leave something out? And I am hoping that as I go  
4 through this, that you guys don't hold that against Daniel,  
5 if I forget something. I think you will have plenty of  
6 information when you go back there to deliberate.

7 Now, in a criminal case, as you were told in the  
8 beginning, the state, in this case, represented by Allegan  
9 County, has the burden to prove everything, the elements of  
10 every offense beyond a reasonable doubt. My job, as best I  
11 can do it, fairly, and with the limits of law, is to raise  
12 as many doubts about the evidence as possible. It's then  
13 their job to somehow overcome and extinguish all of those  
14 doubts in order to earn the right to have a conviction.

15 And it's every doubt, not just one or two or some  
16 of them, all of them have to disappear. Daniel is literally  
17 entitled to the benefit of the doubt. They can't put the  
18 burden back on him to -- to explain something that seems  
19 confusing. That's on them.

20 Now this case turns, virtually, entirely on the  
21 credibility of Jenna Bluhm. We talked in the beginning,  
22 this is kind of a he-said/she-said. And it's mostly what  
23 she said. Now they had her testify and we will get to that  
24 in a little bit. But they brought in a lot of witnesses  
25 in an attempt to kind of corroborate her testimony, to kind

1 of build her credibility. They brought an expert to kind  
2 of say, you know, everything -- you know, to hypothetically  
3 say everything she says is consistent. Well, there is a  
4 reason they had to bring those people in. There is a reason  
5 they need a lot of those witnesses and it's because there are  
6 problems with her statements. There are things that simply  
7 don't add up when you take them with all of the other  
8 witnesses.

9 Some of the details, we can't verify. We can't  
10 verify what happened when the two of them were alone. It's --  
11 it's two different stories. There is no third, independent  
12 evidence of that. There is not third person, the pickup  
13 truck or the trailer, supposedly. But we can fact check  
14 some other things through a number of witnesses.

15 And before we get into that, just -- just think  
16 for a minute here. If Daniel were to do this, I mean, just  
17 think for a minute, the statistical improbability of  
18 getting away with it so many times with so many people in  
19 the house, with the dogs there. I mean, you -- you would  
20 have to get up every time, and God forbid you make a mistake  
21 that somebody only appears to be sleeping and they are  
22 really awake. You would have to assume that nobody is  
23 going to get up at that moment and go into a bathroom, that  
24 a baby is not going to cry, that a dog is not going to bark,  
25 that Jenna might be sleeping somewhere else that night

1           And they want you to believe that every, single  
2 time he was not only that precise, and that perfect, but that  
3 lucky. And that statistically is so unlikely.

4           There has never been any testimony in this case  
5 that he went out of his way to have contact with her or that  
6 he tried to isolate her or that he tried to -- to groom her  
7 in the traditional sense. He wasn't trying to charm her or  
8 befriend her or anything like that. The testimony from  
9 everybody seems to be that they generally left each other  
10 alone.

11           There is the friend of hers that said there was  
12 some texts, but conveniently, she doesn't remember what they  
13 said. He said that it was -- it was at the request of  
14 his Aunt Janie. I don't know we didn't see those. We have  
15 no way of knowing what those were.

16           Now, if we go back to the first incident in this  
17 case, the wedding of her dad. Her dad's wedding. He is  
18 getting married, getting ready to presumably be incarcerated,  
19 which he was. Jenna is the only person that testified that  
20 they left, the he and -- I think it was him and Brooke left  
21 to get food. Everybody else was very clear that they didn't  
22 run out of food. And I think it's fair to say, if you were  
23 at a wedding, you would by remember if it ran out of food.  
24 But nobody remembers that except her. She comes up with a  
25 story that they went and got groceries and then they asked

1 for her, for some reason, of all people, to help her put them  
2 away. And then, apparently, he and her were alone in the  
3 house. And then he says, come to the bathroom, I want to  
4 show you something. It's just a really bizarre story. Nobody  
5 else remembers that.

6 You hear a lot of people say that everybody was  
7 consistent that Janie, who owned the home, didn't want anybody  
8 in the house during the wedding. She presumably didn't want  
9 people traipsing through. It's December. It might be wet.  
10 I mean, think about it. And so she said it was locked and  
11 they had a bathroom outside, but I think it was attached  
12 to the garage. So there is really no reason for anybody  
13 to be in the house unless they got there early and changed  
14 clothes, which we heard about that.

15 But nobody ever seems to remember the two of them  
16 being alone at the wedding. Nobody ever seems to remember  
17 him paying any attention to her there. And there is no  
18 explanation as to how he would have got in the house. He said  
19 he didn't have a key. Everybody said he wouldn't have had a  
20 way to get into the house that time unless Janie or Scott  
21 had let him in.

22 And as if they are implying that if he was somehow  
23 in the mood to go get his fill sexually, why not grab his  
24 fiancé, who has a key or has access to a key, at least,  
25 through her mother and go inside and do that if you are so

1 enamored at the wedding. He said his son was being watched  
2 by his parents. Why not do that?

3 There is another incident she talks about where  
4 he -- he took her home from a gas station or something like  
5 that. And yet she gets in the car with him, she is not  
6 coerced to. She claims in these three to five minutes or  
7 whatever it is, they are driving down the road, he is able  
8 to, somehow while driving, pull down his pants completely,  
9 make her, you know, give him a blowjob, and somehow how pulled  
10 it off and safely get back and everybody acts like nothing  
11 happens. And again, there is nobody there to witness this.  
12 It's her word against his.

13 There is this incident where she says he went to  
14 her dad's trailer to take pictures for some reason. But  
15 nobody else seemed to really remember that. I mean she  
16 says that somehow he was sent over there. They asked a child  
17 to take pictures because of their drug -- it's just a weird  
18 story and nobody else can verify that.

19 Now they talked at length about her swollen face,  
20 I think it was around November 4<sup>th</sup> of 2017. You will have the  
21 pictures with you. And you can use your own common sense and  
22 life experience to ask yourself what you think those  
23 injuries are consistent with. You may decide it's from being  
24 pushed on a bathroom floor. But there is no bruising, there  
25 is no cuts. I don't recall her saying that he slammed her

1 in multiple different directions but there was puffiness  
2 everywhere. And nobody in her family took her to get  
3 medical treatment at that time. They didn't seem to think it  
4 was that serious. It started to go down on its own. And  
5 why wouldn't it have swollen all of the other times that  
6 he was wrestling, you know, roughing her up in the bathroom,  
7 why that one time is there some massive injury there.

8 And I don't know if you found it odd, but when she  
9 told her dad in the prison with everybody around, it was  
10 interesting that nobody believed her initially. I mean her  
11 dad is in prison for a CSC. We don't know the facts or  
12 the victim or anything about that, so we are not going to  
13 speculate. But of all of the people that should know about  
14 these cases, it should be him. And he wanted her to get more  
15 evidence. Not because he had a vendetta against Dan, because  
16 I think he had doubts. I think that is a reasonable  
17 inference from the facts.

18 And then we have this -- this situation here, we  
19 talked at length about bathroom rugs. I never thought in my  
20 career I would have a case that talked about bathroom rugs  
21 so much. Now you guys can assess, when you go back there,  
22 if these rugs look brand new, if these rugs look like they  
23 might be from back to 2013. That's on you. We have one  
24 person who says they were light blue with some kind of a  
25 white -- Jenna -- with like a white kind of knitting. I

1 don't know if that's something that sticks out or a border.  
2 I don't know. It wasn't clear, because those were never  
3 produced. Law enforcement never produced them. She never  
4 produced them. They have known about this for a while.  
5 They have had time to go back and look for those. They  
6 didn't because they don't exist.

7           What we do see is rugs that are white, green, and  
8 two shades of blue. Now maybe she could have thought of the  
9 light blue part when she was talking about it, but then she  
10 has to get the whole white trim of it. And they are -- they  
11 make a big deal out of the fact that Janie, at 1:15, she is  
12 not driving around with bathroom rugs like some kind of a  
13 nutcase that's obsessed with rugs. She was told that the  
14 Trooper wanted these rugs. Remember he said he went off his  
15 shift at 2 a.m.? She wanted to get them to him before he  
16 went off work. So he meets her at the Exxon. It's not  
17 like she was just there wandering around and he shows up.

18           She said that she was requested to bring them, so  
19 she puts them right in there. And if they are not the rugs  
20 from her bathroom, the only bathroom that's -- that Daniel  
21 was allowed to use in the house, how did his blood get on  
22 them? They are not alleging it's from any of these assaults.  
23 But if he is not using the other bathrooms, how would his  
24 blood get on a rug? It's not unreasonable to submit that at  
25 some point he might have cut himself shaving or stubbed his

1 toe and walked in there or something.

2 So naturally it was his blood. And it's  
3 interesting, her blood, despite all of these injuries, never  
4 is on there, not one time, out of the dozens of incidents,  
5 not one drop gets on it.

6 You heard Aunt Janie say that initially told her  
7 these occurred at 6 or 7 in the morning. There is some  
8 dispute whether it's 2 or 3. I think the testimony was  
9 uncontributed (sic) that by 2 or 3 everybody is in bed.  
10 Daniel and his - his now wife are probably the last ones to  
11 go to bed. We heard some testimony that the baby might  
12 wake up at 6 or 7 a.m. We had Scott, who has no earthly  
13 reason to lie about it, get up there and say he gets up at  
14 6 a.m. So you guys can decide who is moving around, this and  
15 that. That's not -- that's for you guys to figure out,  
16 based on all of the evidence you are seeing. But there is  
17 some -- some contradictions there.

18 And then we had this big thing about the dogs. This  
19 whole -- you know, one of these, did the dog bark kind of  
20 cases. Jenna was the only one that seemed to recall that  
21 there was one dog in particular that didn't like Dan and  
22 would constantly nip him. Yet it never happened when he was  
23 getting up and assaulting her. There was some confusion  
24 about whether or not the dogs slept with Anna or not. That's  
25 probably a minor detail that -- that maybe you want to put

1 weight into, maybe you don't.

2 But, I mean, other -- everybody else in the house  
3 said that the dogs were barking. At least enough to where  
4 you got to think at one time -- at one point there would have  
5 been something or they would have barked at the same time for  
6 some other reason, maybe a deer was outside or something.  
7 And that never happened. Nobody remembers anything odd. I  
8 mean, he's got to tiptoe around this little, tiny house with  
9 six or eight people in it and do this perfectly every time  
10 with somebody he is not going to see for two weeks, so then  
11 has two weeks then to tell everybody about it. And somehow,  
12 this just goes on and on and on.

13 Well, ladies and gentlemen there is a reason why  
14 she can't remember some of these details correctly and that's  
15 because this is a fabricated story. We don't know why that  
16 would be. I don't know what the whole background with all  
17 these people is. But I think there is so much that has to  
18 give you pause. So many things in her story that could be  
19 verified that you just simply can't match. But he is entitled  
20 to a verdict of not guilty.

21 Thank you.

22 MS. JIPP: Just different styles there. All right.  
23 Mr. Maesen talked about probability. Why did no one hear  
24 anything; why did no one see anything? I have three  
25 explanations for that.

1           The Defendant looked for a victim who was quiet.  
2           The Defendant had access and opportunity with a victim who  
3           was submissive. He -- he knew she wasn't going to talk. He  
4           targeted her.

5           Secondly, he didn't want to get caught. He  
6           tiptoed around. He waited until everyone was asleep. He  
7           didn't even shake her on the couch, he just groped. And he  
8           takes her in there, wham, bam, thank you, ma'am, all done  
9           two or three minutes.

10           And the third reason why no one saw or heard or  
11           suspected anything, they didn't want to. Who wants to think  
12           a sexual predator is living under their roof?

13           I want to talk about a couple other things here  
14           real fast. I think Mr. Maesen misquoted Jenna's testimony  
15           in regards to these rugs. Jenna took the stand and said  
16           that they were light blue color. She described, like,  
17           individual kind of yarn fibers. There was no white border.  
18           They were described as blue with these thicker, these thicker  
19           fibers. And I am going to refer you back to an exhibit,  
20           because I thought that this was very curious.

21           Let me see if I can get it to work. There we go.  
22           Not -- not these blue rugs, these kind of thin, nylon fibers.  
23           Oh, that's kind of interesting. Those rugs look pretty darn  
24           similar to what Jenna was describing, those rugs that were  
25           in the house later when we took photos.

1 I am not going to waste another minute of your time  
2 on the dogs. That's absolutely ridiculous.

3 I do want to take a little bit of time and discuss  
4 her motivation to lie. They put on six different witnesses,  
5 not once did I hear a reason that this 15 year old is going  
6 to destroy her relationship with the very close aunt, a  
7 cousin that she looked up to. Why is she lying? She wants  
8 this sick, negative attention? She wants the stigma of  
9 being a victim of sexual abuse?

10 Even more important than the fact that we didn't  
11 hear a motivation for the victim to lie, not once did the  
12 Defendant say, "I did not rape that little girl." Listen  
13 to his testimony again. On the stand for 20, 30 minutes.  
14 Not once did he say, "I would never do that." Oh, well I  
15 was at the wedding and I didn't -- I didn't really have a  
16 key to the house. And yeah, I picked her up in my car to go  
17 to this bonfire and nothing happened. "I did not rape her."

18 MR. MAESEN: Your Honor, I would object. He was  
19 never asked that question for a very specific reason.

20 THE COURT: It's closing argument. She is making  
21 a closing argument. I don't believe it's inappropriate. But  
22 you can move on. Thank you.

23 MS. JIPP: He did say, well, she was leading me  
24 on. She was flirtatious. "I didn't do it. I didn't rape  
25 that little girl. This is crazy. She is lying because x,

1 y, and z. No.

2 He raped that little girl lots of times over a two  
3 year span. And finally when the cutting wasn't enough and  
4 the nightmares became too much, she told.

5 I ask that you find the Defendant guilty of all  
6 counts.

7 Thank you.

8 THE COURT: I am going to read you the final  
9 instructions.

10 Members of the jury: Members of the jury, the  
11 evidence and arguments in this case are finished. I will now  
12 instruct you on the law. You will get a copy of these  
13 instructions in - in deliberations.

14 You have taken an oath, remember, to return a true  
15 and just verdict, based only on the evidence and my  
16 instructions on the law. You must not let sympathy or  
17 prejudice influence your decision.

18 As jurors, you must decide what the facts of this  
19 case are. This is your job, and nobody else's. You must think  
20 about all the evidence and then decide what each piece of  
21 evidence means and how important you think it is. This  
22 includes whether you believe what each of the witnesses said.  
23 What you decide about any fact in this case is final.

1           It is my duty to instruct you on the law. You must  
2 take the law as I give it to you. If a lawyer says something  
3 different about the law, follow what I say. At various times,  
4 I have already given you some instructions about the law. You  
5 must take all my instructions together as the law you are to  
6 follow. You should not pay attention to some instructions and  
7 ignore the others.

8           To sum up, it is your job to decide what the facts  
9 of the case are, to apply the law as I give it to you, and, in  
10 that way, to decide the case.

11           Once again, principles that you must keep in mind.  
12 A person accused of a crime is presumed to be innocent. That  
13 means you must start with the presumption that the Defendant  
14 is innocent. This presumption continues throughout the trial  
15 and entitles the Defendant to a verdict of not guilty unless  
16 your are satisfied beyond a reasonable doubt that he is  
17 guilty.

18           Every crime is made up of parts called elements.  
19 The prosecutor must prove each element of the crime beyond  
20 a reasonable doubt. The Defendant is not required to prove  
21 his innocence or to do anything. If you find the prosecutor

1 has not proven every element beyond a reasonable doubt, then  
2 you must find the Defendant not guilty. A reasonable doubt  
3 is a fair, honest doubt growing out of the evidence or lack  
4 of evidence. It is not merely and imaginary or possible  
5 doubt, but a doubt based on reason and common sense. A  
6 reasonable doubt is just that, a doubt that is reasonable  
7 after careful and considered examination of the facts and  
8 circumstances of this case.

9 When you discuss the case and decide on your  
10 verdict, you may only consider the evidence that has been  
11 properly admitted in this case. Therefore, it is important for  
12 you to understand what is evidence and what is not evidence.

13 Evidence includes only the sworn testimony of  
14 witnesses and exhibits admitted into evidence, and anything  
15 else I told you to consider as evidence.

16 Many things are not evidence, and you must be  
17 careful not to consider them as such. I will now describe some  
18 of the things that are not evidence.

19 The lawyers' statements and arguments and any  
20 commentary are not evidence. They are only meant to help you  
21 understand the evidence and each side's legal theories. You  
22 should only accept things the lawyers say that are supported  
23 by the evidence or by your own common sense and general  
24 knowledge. The lawyers' questions to the witnesses, your

1 questions to the witnesses, and my questions to the witnesses  
2 are also not evidence. You should consider these questions  
3 only as they give meaning to the witnesses' answers.

4 My comments I make, rulings, questions, and  
5 instructions also not evidence.

6 It is my duty to see that the trial is  
7 conducted according to the law and to tell you the law that  
8 applies to this case. However, when I make a comment or give  
9 an instruction, I am not trying to influence your vote or  
10 express a personal opinion about the case. If you believe that  
11 I have an opinion about how you should decide this case, you  
12 must pay no attention to that opinion. You are the only judges  
13 of the facts, and you should decide this case from the  
14 evidence.

15 At times during the trial, I have excluded evidence  
16 that was offered or stricken testimony that was heard. Do not  
17 consider these things in deciding the case. Make your decision  
18 only on the evidence that I let in, and nothing else.

19 Your decision should be based on all the evidence,  
20 regardless of which party produced it.

21 You should use your own common sense and general  
22 knowledge in weighing and judging the evidence, but you should  
23 not use any personal knowledge you may have about a place,  
24 person, or event. To repeat once more, you must decide this  
25 case based only on the evidence admitted during this trial.

26 It is your job to decide what the facts of the case

1 are. You must decide what witnesses you believe and how  
2 important you think their testimony is. You do not have to  
3 accept or reject everything a witness said. You are free to  
4 believe all, none, or part of any person's testimony.

5 You should rely on your own common sense and  
6 everyday experience. However, in deciding whether you believe  
7 a witness's testimony, you must set aside any bias or  
8 prejudice you may have based on the race, gender, or national  
9 origin of the witness.

10 There is no fixed set of rules for judging whether  
11 you believe a witness, but it may help you to think about  
12 these questions:

13 Was the witness able to see or hear clearly? How long  
14 was the witness watching or listening? Was anything else going  
15 on that might have distracted the witness?

16 Did the witness seem to have a good memory?

17 How did the witness look and act while testifying?  
18 Did the witness seem to be making an honest effort to tell the  
19 truth, or did the witness seem to evade the questions or argue  
20 with the lawyers?

21 Does the witness's age and maturity affect how you  
22 judge his or her testimony?

23 Does the witness have any bias, prejudice, or  
24 personal interest in how this case is decided?

25 Have there been any promises, threats, suggestions,

1 or other influences that affected how the witness testified?

2 In general, does the witness have any special reason  
3 to tell the truth, or any special reason to lie?

4 All in all, how reasonable does the witness's  
5 testimony seem when you think about all the other evidence in  
6 the case?

7 Sometimes the testimony of different witnesses will  
8 not agree, and you must decide which testimony you accept. You  
9 should think about whether the disagreement involves something  
10 important or not, and whether you think someone is lying or is  
11 simply mistaken. People see and hear things differently, and  
12 witnesses may testify honestly but simply be wrong about what  
13 they thought they saw or remembered. It is also a good idea to  
14 think about which testimony agrees best with the other  
15 evidence in the case.

16 You may conclude that a witness deliberately lied  
17 about something that is important to how you decide the case.  
18 If so, you may choose not to accept anything that witness  
19 said.

20 On the other hand, if you think the witness  
21 lied about some things but told the truth about others, you  
22 may simply accept the part you think is true and ignore the  
23 rest.

24 Facts can be proven by direct evidence from a  
25 witness or an exhibit. Direct evidence is evidence about what  
26 we actually see or hear. For example, if you look outside and

1 see rain falling, that is direct evidence that it is raining.

2 Facts can also be proved by indirect, or  
3 circumstantial, evidence. Circumstantial evidence is evidence  
4 that normally or reasonably leads to other facts. So, for  
5 example, if you see a person come in from outside wearing a  
6 raincoat covered with small drops of water that should be -  
7 or that could be circumstantial evidence that it is raining,

8 You may consider circumstantial evidence.  
9 Circumstantial evidence by itself, or a combination of  
10 circumstantial evidence and direct evidence, can be used to  
11 prove the elements of a crime. In other words, you should  
12 consider all the evidence that you believe.

13 The Defendant is charged with multiple counts,  
14 that is, with crimes of two counts of criminal sexual conduct  
15 in the first degree, two counts of criminal sexual conduct  
16 in the 3<sup>rd</sup> degree, and one count of criminal sexual conduct  
17 in the second degree.

18 These are separate crimes and the prosecutor is  
19 charging that the Defendant committed all of them. You must  
20 consider each crime separately in light of all of the evidence  
21 you hear in the case or you've heard in the case.

22 You may find the Defendant guilty of all, or any  
23 combination of these crimes or not guilty.

24 To prove criminal sexual conduct in the first  
25 degree, and that is in regards to counts one and four, the  
26 prosecutor must prove each of the following elements beyond

1 a reasonable doubt.

2 First that the Defendant engaged in a sexual act  
3 that involved entry into Jenna Bluhm's genital opening by  
4 the Defendant's penis. Any entry, no matter how slight, is  
5 enough. It does not matter whether the sexual act was  
6 completed or whether semen was ejaculated.

7 Second, that the Defendant caused personal injury to  
8 Jenna Bluhm. Personal injury means bodily injury or mental  
9 anguish. Mental anguish means extreme pain, extreme distress,  
10 or extreme suffering. Either at the time of the event or  
11 later as a result of it. Some of the things you may think  
12 about in deciding what Jenna Bluhm suffered, if she  
13 suffered mental anguish are the following.

14 Was Jenna Bluhm upset, crying, or hysterical during  
15 or after the event? Did she need psychological treatment?  
16 Did the incident interfere with Jenna Bluhm's ability to  
17 work or lead a normal life. Was Jenna Bluhm afraid that she  
18 or someone else would be hurt or killed? Did she feel  
19 angry or humiliated? Did Jenna Bluhm need medication for  
20 anxiety, insomnia, or other symptoms? Did the emotional  
21 effects of the incident last a long time? Did Jenna Bluhm  
22 feel scared afterwards about the possibility of being  
23 attacked again. These are not the only things you should  
24 think about. No single factor is necessary.

25 You must think about all of the facts and  
26 circumstances to decide whether Jenna Bluhm suffered mental

1           anguish.

2                       Third, the prosecutor must prove that the Defendant  
3 used force or coercion to commit the sexual act. Force or  
4 coercion means that the Defendant used physical force or did  
5 something to make Jenna Bluhm reasonably afraid of present  
6 or future danger.

7                       It is enough force if the Defendant overcame  
8 Jenna Bluhm by physical force. It is enough force if the  
9 Defendant threatened to use physical force on Jenna Bluhm  
10 and Jenna Bluhm believed the Defendant had the ability to  
11 carry out those threats.

12                      It is enough force if the Defendant threatened to  
13 get even with Jenna Bluhm in the future or Jenna Bluhm  
14 believed that the Defendant had the ability to carry out those  
15 threats.

16                      It is enough force if the Defendant was giving  
17 Jenna Bluhm a medical examination or treatment or did so  
18 in a way that is not recognized and medically acceptable.

19                      It is enough force if the Defendant, through  
20 concealment, or by the element of surprise was able to  
21 overcome Jenna Bluhm.

22                      It is enough force if the Defendant used force to  
23 induce the victim to submit to the sexual act or seized  
24 control of the victim in a manner facilitating commission  
25 of the sexual act without regards to the victim's wishes.

26                      The Defendant is charged in counts two and five

1 with the crime of criminal sexual conduct in the third degree.  
2 To prove this charge, the prosecutor must prove each of the  
3 following elements beyond a reasonable doubt.

4 First, that the Defendant engaged in a sexual act  
5 that involved entry into Jenna Bluhm's genital opening by  
6 the Defendant's penis. Any entry, no matter how slight,  
7 is enough. It does not matter whether the sexual act was  
8 completed or whether semen was ejaculated.

9 Second, that Jenna Bluhm was 13, 14, or 15 years  
10 old at the time of the alleged act.

11 The Defendant is also charged in count three with  
12 the crime of criminal sexual conduct in the second degree.  
13 To prove this charge, the prosecutor must prove each of the  
14 following elements beyond a reasonable doubt.

15 First, that the Defendant intentionally touched  
16 Jenna Bluhm's breast or the clothing covering that area.  
17 Second, that this was done for sexual purposes or could  
18 reasonably be construed as having been done for sexual  
19 purposes.

20 And third, that the Defendant caused personal injury  
21 to Jenna Bluhm. Personal injury, once again, means bodily  
22 injury or mental anguish. The same statements I made about  
23 bodily injury or mental anguish for criminal sexual conduct  
24 in the first degree apply to criminal sexual conduct in the  
25 second degree.

26 MS. JIPP: May we approach for a moment, your

1 Honor?

2 THE COURT: Yes.

3 (at 10:21 A.M., attorneys approached the bench)

4 (at 10:21 a.m., bench conference completed)

5 THE COURT: Just to clarify in regards to -- there  
6 are two counts of criminal sexual conduct in the third degree.  
7 There is essentially two elements. And one is, in one of the  
8 counts, the prosecutor is alleging that the Defendant engaged  
9 in a sexual act that involved into Jenna Bluhm's genital  
10 opening by the Defendant's penis.

11 That's in regards to one count of criminal sexual  
12 conduct in the third degree.

13 The other count of criminal sexual conduct in the  
14 third degree, the prosecutor is alleging that the contact  
15 was when the Defendant placed his penis in her mouth. So  
16 there is two different acts that are being described for that  
17 particular crime or those two particular crimes.

18 The second element is still that Jenna Bluhm was  
19 13, 14, or 15 years old at the time of the alleged act.  
20 So there is two counts, two different acts, but there is  
21 just the proof of penetration in regards to either one of  
22 those acts. And the proof that Jenna Bluhm was 13, 14, or  
23 15 at the time of the act.

24 In regards to criminal sexual conduct in the  
25 second degree, as I've indicated, the Defendant -- the  
26 prosecution must prove beyond a reasonable doubt that the

1 Defendant intentionally touched Jenna Bluhm's breast or the  
2 clothing covering that area, that it was done for a sexual  
3 purpose or could reasonably be construed as having been done  
4 for a sexual purpose and that the Defendant caused  
5 personal injury to Jenna Bluhm.

6 Personal injury means bodily injury or mental  
7 anguish. Mental anguish means extreme pain, extreme distress,  
8 or extreme suffering. Either at the time of the event or  
9 later as a result of it. Once again, the things that you  
10 may consider in regards to mental anguish are:

11 Was Jenna Bluhm upset, crying, or hysterical during  
12 or after the event? Did she need psychological treatment?  
13 Did the incident interfere with Jenna Bluhm's ability to  
14 work or lead a normal life. Was Jenna Bluhm afraid that she  
15 or someone else would be hurt or killed? Did she feel  
16 angry or humiliated? Did Jenna Bluhm need medication for  
17 anxiety, insomnia, or other symptoms? Did the emotional  
18 effects of the incident last a long time? Did Jenna Bluhm  
19 feel scared afterwards about the possibility of being  
20 attacked again. These are not the only things you should  
21 think about. No single factor is necessary.

22 You must think about all of the facts and  
23 circumstances to decide whether Jenna Bluhm suffered mental  
24 anguish.

25 Fourth, the prosecutor must prove that the Defendant  
26 used force or coercion to commit the sexual act. Force or

1 coercion means the Defendant either used physical force or  
2 did something to make Jenna Bluhm reasonably afraid of present  
3 or future danger.

4 The definition of sufficient force this count is  
5 the same as the one that I read for criminal sexual conduct  
6 in the first degree.

7 It is enough force if the Defendant overcame Jenna  
8 Bluhm by physical force. It is enough force if the  
9 Defendant threatened to use physical force on Jenna Bluhm  
10 and Jenna Bluhm believed the Defendant had the ability to  
11 carry out these threats.

12 It is enough force if the Defendant threatened to  
13 get even with Jenna Bluhm in the future and she  
14 believed that the Defendant had the ability to carry out those  
15 threats.

16 It is enough force if the Defendant was giving  
17 Jenna Bluhm a medical examination or treatment or did so  
18 in a way that is not recognized and medically acceptable.

19 It is enough force if the Defendant, through  
20 concealment, or by the element of surprise was able to  
21 overcome Jenna Bluhm.

22 It is enough force if the Defendant used force to  
23 induce the victim to submit to the sexual act or seized  
24 control of the victim in a manner facilitating commission  
25 of the sexual act without regards to the victim's wishes.

26 The prosecutor must also prove beyond a reasonable

1 doubt that the crime occurred within Allegan County. Time,  
2 however, is not an element of the crime of criminal sexual  
3 conduct. The prosecutor does not have to prove the date or  
4 time of the offense beyond a reasonable doubt.

5 To prove this charge, the prosecutor does not have  
6 to show that Jenna Bluhm resisted the Defendant. To prove  
7 this charge it is not necessary that there be evidence, other  
8 than the testimony of Jenna Bluhm, if that testimony proves  
9 guilt beyond a reasonable doubt.

10 You may consider whether the Defendant had a reason  
11 to commit the alleged crime, but a reason, by itself, is  
12 not enough to find a person guilty of a crime.

13 The prosecutor does not have to prove that the  
14 Defendant had a reason to commit the alleged crime. She only  
15 has to show that the Defendant actually committed the crime  
16 and that he meant to do so.

17 The Defendant's intent may be proved by what he  
18 said, what he did, how he did it, or by any other facts  
19 and circumstances in the case.

20 You have heard that witness Daniel Loew has been  
21 convicted of a crime in the past. You should judge this  
22 witness's testimony the same way you judge the testimony of  
23 other witnesses. You may consider his past criminal  
24 convictions along with the other evidence, when you decide  
25 whether you believe his testimony and how important you think  
26 it is.

1           You've also heard testimony from Thomas Cottrell  
2 who gave his opinion as an expert in the field of sexual  
3 abuse.

4           You heard testimony from witness Lisa Oravetz, who  
5 gave her opinions as an expert in forensic science. You heard  
6 from witness, Michelle Schmitt, who gave her opinion as an  
7 expert in the field of forensic science and D.N.A. analysis.

8           Experts are allowed to give opinions in Court about  
9 matters they are experts on.

10          However, you do not have to believe an expert's  
11 opinion. Instead, you should decide whether you believe it  
12 and how important you think it is.

13          When you decide whether you believe an expert's  
14 opinion, think carefully about the reasons and facts they  
15 gave for their opinion and whether those facts are true.

16          You should also think about the experts  
17 qualifications and whether their opinion makes sense when  
18 you think about all of the other evidence in the case.

19          You have also heard testimony from police officers.  
20 That testimony is to be judged by the same standards you use  
21 to evaluate the testimony of other witnesses.

22          You have heard evidence that was introduced to show  
23 that the Defendant has engaged in improper sexual conduct  
24 for which the Defendant is not on trial. If you believe this  
25 evidence, you must be very careful to consider it for only  
26 one, limited purpose. That is, to help you judge the

1 believability of the testimony of Jenna Bluhm regarding the  
2 acts for which the Defendant is now on trial. You must  
3 not consider this evidence for any other purpose. For  
4 example, you must not decide that it shows the Defendant is  
5 a bad person or the Defendant is likely to commit crimes.

6 You must not convict the Defendant here because you  
7 think he is guilty of other bad conduct.

8 As I indicated, you heard from Thomas Cottrell in  
9 regards to his opinion about the behavior of sexually abused  
10 children. You should consider that evidence only for the  
11 limited purpose of deciding whether Jenna Bluhm's acts and  
12 words, after the alleged crime, were consistent with those  
13 of sexually abused children.

14 That evidence cannot be used to show the crime  
15 charged here was committed or that the Defendant committed  
16 it. Nor can it be considered by Mr. Cottrell that Jenna  
17 Bluhm is telling the truth.

18 Possible penalty should not influence your decision.  
19 It is the duty of the judge to fix the penalty within the  
20 limits provided by the law.

21 When you go to the jury room, you will be provided  
22 with a written copy of these instructions.

23 You should first choose a foreperson. The  
24 foreperson should see to it that your discussions are carried  
25 on in a businesslike way and that everyone has a fair chance  
26 to be heard.

1           During your deliberations, we will ask you to  
2 provide your cell phones to the bailiff while you are in  
3 deliberations.

4           A verdict in a criminal case  
5 must be unanimous. In order to return a verdict, it is  
6 necessary that each of you agrees on that verdict. In the jury  
7 room you will discuss the case among yourselves, but  
8 ultimately each of you will have to make up your own mind. A  
9 verdict must represent the individual, considered judgment of  
10 each juror.

11           It is your duty as jurors to talk to each other and  
12 make every reasonable effort to reach agreement. Express your  
13 opinions and the reasons for them, but keep an open mind as  
14 you listen to your fellow jurors. Rethink your opinions and do  
15 not hesitate to change your mind if you decide you were wrong.  
16 Try your best to work out your differences.

17           However, although you should try to reach agreement,  
18 none of you should give up your honest opinion about the case  
19 just because other jurors disagree with you or just for the  
20 sake of reaching a verdict. In the end, your vote must be your  
21 own, and you must vote honestly and in good conscience.

22           If you do have any questions about instructions,  
23 please submit them in writing to the bailiff.

24           You will be able to take in your notes to the jury  
25 room when you go to deliberate and the instructions.

26           We will provide you with the exhibits that are

1 written documents, but we will not be providing you with the  
2 rugs.

3 You should think about all of my instructions  
4 together as the law you are to follow.

5 If you want to communicate with me while you are  
6 in the jury room, please have your foreperson write a note  
7 and give it to the bailiff. It's not proper for you to talk  
8 directly with the judge, lawyers, court officers, or other  
9 people involved in the case.

10 As you discuss the case, you must not let anyone,  
11 even me, know how your voting stands. Therefore, until  
12 you return with a unanimous verdict, do not reveal this to  
13 anyone outside the jury room.

14 If you would swear in the bailiff?

15 MS. FUHRMAN: Please stand and raise your right  
16 hand. You do solemnly swear that you will to the utmost of  
17 your ability, keep the persons sworn as jurors on this trial  
18 from separating from each other, that you will not suffer any  
19 communication to be made to them or any of them orally or  
20 otherwise. That you will not communicate with them or any of  
21 them orally or otherwise. Except by the order of this Court  
22 or to ask if they have agreed on their verdict until they  
23 shall be discharged.

24 And that you will not, before they render their  
25 verdict, communicate to any person state of their  
26 deliberations or the verdict they have agreed upon so help

1 you God?

2 MR. BUXTON: I do.

3 THE COURT: We need to remove two people from the  
4 panel.

5 MS. FUHRMAN: Yes.

6 THE COURT: So if you are removed from  
7 deliberations today, I ask you to stay in the back until we  
8 can get your phone numbers, because you need to remain able  
9 to return to deliberations, if for some reason, another juror  
10 is not able to complete deliberations. We will call you and  
11 let you know the status of the case as soon as we know the  
12 status, as far as a final conclusion.

13 MS. FUHRMAN: In seat 13, Carla Yancy.

14 THE COURT: Ms. Yancy, you are excused. If you  
15 would just have a seat in the back. And if you have anything  
16 in the jury room, why don't you go get it right now? Thank  
17 you.

18 MS. FUHRMAN: And seat 14, Kenneth Vanord.

19 THE COURT: Mr. Vanord, you are excused. If you  
20 have anything in there, if you could get it now and then just  
21 have a seat in the back until we get your phone number.

22 I would ask you not to start deliberations until  
23 the bailiff tells you you are -- we are ready to proceed.

24 (at 10:33 a.m., jury sent to deliberations)

25 Thank you.

26 Anything further before I release the jury to

1 deliberations?

2 MS. JIPP: No, your Honor.

3 MR. MAESEN: Nothing, your Honor.

4 THE COURT: All right. Please rise for the jury.  
5 Don't take the instructions in there, there needs to be  
6 some modifications. Thank you.

7 We will get your instructions to you in just a  
8 few minutes. There is a couple of things that needed to be  
9 modified.

10 And you need collect cell phones. Thank you.

11 So in regards to the definition of sufficient force,  
12 we kept in paragraph five, which is about medical exam and  
13 treatment. I just want to delete that.

14 MS. JIPP: Yes.

15 THE COURT: Because it's unnecessary. So I am  
16 going to delete that and I think there are two different  
17 places that it needs to be deleted.

18 Then the other -- it's just a misspelling of Mr.  
19 Loew's name in 5.1 and also it says, "You may consider his  
20 past criminal convictions", there really was one criminal  
21 conviction listed, so I want to correct that.

22 And then expert witness, we just have it as D.N.A.,  
23 it's D.N.A. analysis. It's not a big thing, but I want that  
24 corrected.

25 And then also in regards to the limiting instruction  
26 it just -- on expert testimony it just -- we didn't insert

1 the name of Mr. Cottrell at that point. And there was --  
2 I think that's it.

3 Did anyone else have any objections to the  
4 instructions?

5 MS. JIPP: No, your Honor.

6 MR. MAESEN: Nothing from us.

7 THE COURT: Other than the changes that the Court  
8 is going to make at this time. All right.

9 So we need to make some changes before you give the  
10 copies to the jury.

11 All right. So we will be adjourned.

12 (at 10:37 a.m., Court recessed for deliberations)

13 (at 12:16 p.m., Court to release for lunch, but  
14 the jury indicated they were done)

15 THE COURT: I would ask that everyone go into a  
16 room when we are -- just so the jury can leave and come  
17 back and leave without any interference.

18 MR. MAESEN: So you want them to go out into the  
19 hallway in a room.

20 THE COURT: In a room, not in the hallway.

21 MR. MAESEN: Conference room. Okay.

22 THE COURT: Thank you. And they will probably want  
23 their phones.

24 Thank you.

25 Just knock on the door and tell them we are  
26 releasing them for lunch, we need them to come in.

1 MR. BUXTON: Yep. They are ready to give their --

2 THE COURT: All right. They will need to let us  
3 ring the bell when they are done.

4 MS. JIPP: I have to get -- can I just have a  
5 couple of minutes, too, to coordinate --

6 THE COURT: Yeah, definitely. Okay. So your folks  
7 can come in.

8 MR. MAESEN: Okay. Thanks. We will let them  
9 know.

10 THE COURT: You may be seated. If the clerk of  
11 the Court would please inquire of the jury.

12 MS. FUHRMAN: Members of the jury, have you reached  
13 a verdict, and if so, will the foreperson now rise.

14 Mr. Foreperson, what is your verdict as to count  
15 one, criminal sexual conduct in the first degree?

16 FOREPERSON: We the jury find the Defendant guilty.

17 MS. FUHRMAN: As to count two, criminal sexual  
18 conduct in the third degree?

19 FOREPERSON: We the jury find the Defendant  
20 guilty.

21 MS. FUHRMAN: As to count three, criminal sexual  
22 conduct in the summary disposition?

23 FOREPERSON: We the jury find the Defendant guilty.

24 MS. FUHRMAN: As to count four, criminal sexual  
25 conduct in the first degree?

26 FOREPERSON: We the jury find the Defendant

1 guilty.

2 MS. FUHRMAN: As to count five, criminal sexual  
3 conduct in the third degree?

4 FOREPERSON: We the jury find the Defendant guilty.

5 MS. FUHRMAN: Thank you. You may be seated.

6 THE COURT: Would counsel request a poll?

7 MR. MAESEN: No.

8 MS. JIPP: No, your Honor.

9 THE COURT: All right. Thank you. Members of  
10 the jury, we appreciate your service. I do need you to go  
11 back into the jury room at this time. It will be a few  
12 minutes before we can ask you leave. All right. So if  
13 you would please rise for the jury. We will also get your  
14 phones back to you now.

15 You may be seated.

16 The Defendant's bond is revoked. He will have to  
17 be remanded to the Allegan County jail. What is the --  
18 pursuant to the statute, it's mandatory.

19 Sentence date? November 4<sup>th</sup> is our sentence date  
20 at 8:30 a.m.

21 We are adjourned.

22 MS. JIPP: Thank you, your Honor.

23 (at 12:30 p.m., trial concluded)

24

25

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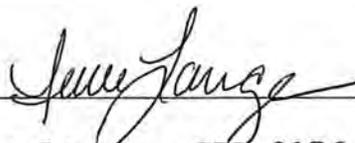
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STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF ALLEGAN )

I certify that this transcript, consisting of 66 pages, is a complete, true and correct transcript of the proceedings and testimony taken in this case on August 29, 2019.

April 6, 2020



\_\_\_\_\_  
Anne Lange - CER 8176  
Allegan County Circuit Court  
113 Chestnut Street  
Allegan, Michigan 49010  
Notary public in the county of  
Allegan until January 6, 2021.

STATE OF MICHIGAN

FIFTY SEVENTH JUDICIAL DISTRICT COURT (ALLEGAN, MICHIGAN)

THE PEOPLE OF THE STATE OF MICHIGAN,

v

18-021709-FC

DANIEL ALBERT LOEW

Defendant.

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MOTION HEARING

BEFORE THE HONORABLE WILLIAM BAILLARGEON, DISTRICT JUDGE

Allegan, Michigan - Thursday, October 29, 2020

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NONE	
<u>EXHIBITS :</u>	
NONE	

1 Allegan, Michigan

2 Thursday, October 29, 2020 - 2:01 p.m.

3 THE COURT: All right, let's go on the record here.  
4 It appears we have all the parties here. Let's go on the record in  
5 the matter of the People of the State of Michigan versus Daniel  
6 Albert Loew. Can I get appearances, please?

7 MS. SCHIKORA: Thank you. Molly Schikora, Assistant  
8 Prosecuting Attorney.

9 MR. LYNCH: Good afternoon, your Honor. Heath Lynch,  
10 on behalf of Mr. Loew.

11 THE COURT: And are you going to be, I presume by  
12 virtue of the fact that you identified yourself, you're going to be  
13 the one presenting arguments here today?

14 MR. LYNCH: I am, your Honor.

15 THE COURT: All right, very good. And now I need,  
16 also, to have the identification of the gentleman that appears in  
17 that SRF Hearing Room. Could you state your name, please?

18 MR. LOEW: Daniel Loew, sir.

19 THE COURT: Very good.

20 MR. LOEW: Daniel Loew, sir. Good afternoon.

21 THE COURT: Very good. All right, so let's proceed.

22 MR. LYNCH: Your Honor, I presume you would like to  
23 hear from us first as the moving party?

24 THE COURT: Well, yes.

25 MR. LYNCH: Your Honor, we set forth in our motion

1 and brief the grounds we think that justify the granting of a new  
2 trial in this instance. The Court, as I'm sure you're familiar with  
3 the procedural history of the case. Judge Bakker recused herself,  
4 it was -- it was then turned over to Judge Kengis, who then granted  
5 our motion for disqualification, and then it found its way to you.  
6 Your Honor, I don't want to re-hash what we've already covered in  
7 the motion and the brief itself, but I think in summary the grounds  
8 that we've set forth, particularly the matter regarding the ex  
9 parte communications -- the confirmed ex parte communications -- on  
10 the record, on County email, between the trial judge, Judge Bakker  
11 during the course of this trial, to the titular head of the  
12 Prosecuting Attorney's Office, Ms. Koch, that were about the  
13 substance of the trial that actually had to do with the testimony  
14 of the prosecution witnesses who was testifying at the time she hit  
15 send on that email opened the door to then an exchange of ex part  
16 substantive communications that indicated, at the very least, an  
17 interest in this trial that was inappropriate under the  
18 circumstances, and perhaps an intent to influence the direction of  
19 the trial through Ms. Koch to the line prosecuting attorney who was  
20 actually prosecuting the trial. We obviously have three emails.  
21 Those emails came to the attention of my office with a Freedom of  
22 Information Act request that was originally not served by my  
23 office. And they came to our attention from a different attorney's  
24 Freedom of Information Act request. We then looked at them and  
25 looked at the context, compared them to the transcripts of the

1 trial, and decided that we had no choice but to bring them to the  
2 attention of the Court, given the stakes that were in play in Mr.  
3 Loew's trial, the eventual outcome of the trial, and other issues  
4 that we had already identified with what we believe is  
5 Constitutionally ineffective assistance of his trial counsel. So,  
6 when we learned about these ex part communications, we were  
7 stumped. Your Honor, I worked at the United States Attorney's  
8 Office in Grand Rapids for nine years as an Assistant U.S. Attorney  
9 before I joined my current firm and I tried many cases in that  
10 office in front of Federal District judges. I also had a United  
11 States Attorney -- a Presidential appointee who worked above me as  
12 a line Assistant U.S. Attorney -- it is incomprehensible to me to  
13 imagine any of the Federal trial judges in the Western District of  
14 Michigan, not only engaging in, but initiating substantive  
15 conversation with the head of the Office of the U.S. Attorney or  
16 with the Criminal Chief who had supervisory role in my office over  
17 line Assistant U.S. Attorney's, particularly when the trial was  
18 happening. We don't know at this point, your Honor, whether there  
19 were any other communications. They -- the context of these  
20 particular emails indicates that they required no explanation on  
21 the part of Judge Bakker to Ms. Koch. She simply titles the email  
22 "The Trial," so it was clear that Ms. Koch would have known exactly  
23 -- or at least Judge Bakker believed Ms. Koch knew exactly what she  
24 was talking about -- and then she went on to talk about this  
25 witness, this investigator, this matter. It showed the sort of --

1 the sort of collegiality -- not just collegiality, but almost  
2 comradery that maybe it exists in reality, and I can't stop a judge  
3 and a prosecutor from being friends or social acquaintances, but  
4 certainly the people of the state and men such as Daniel Loew,  
5 whose lives are on the line during the course of these trials, have  
6 a due process right to expect that their trial should be free of  
7 any undue influence on the part of the trial judge in this matter.  
8 And we have seen evidence that that is not what happened here. We  
9 see evidence to the contrary. But it's also possible -- we have no  
10 way of knowing of course -- we made a FOIA request, your Honor, a  
11 follow up request -- regarding text messages. We don't know whether  
12 there are text messages, we never got a response back, we didn't  
13 get anything back regarding that. We don't know whether there were  
14 any conversations in the offices of the courthouse, whether there  
15 were others who might have witnessed the judge having any other  
16 conversations with a Prosecuting Attorney -- or the elected  
17 Prosecuting Attorney in this instance. All we know is that where  
18 there are ex part substantive conversations of this sort, the  
19 process has been corrupted. And it's our position, aside from what  
20 we believe are examples of ineffective assistance on the part of  
21 trial counsel, we think that there were gross improprieties here,  
22 and we believe at the very least that we should be granted a  
23 hearing under Ginter to supplement the record, if not supplement  
24 the record in this motion for a new trial proceeding, your Honor,  
25 to determine whether there was any other communication that was

1 going on behind the scenes that could have influenced Mr. Loew's  
2 trial to his detriment. So, your Honor, I'm happy to answer any of  
3 your questions, I understand that the Prosecutor's Office needs to  
4 respond as well, but I appreciate the opportunity to present this  
5 on the part of Mr. Loew and I'm happy to explore any other issues  
6 the Court wishes to get into.

7 THE COURT: Thank you. Ms. Schikora?

8 MS. SCHIKORA: Thank you, your Honor. I do apologize  
9 for filing the supplement to my brief -- the original response was  
10 filed with the expectation that Judge Bakker, who had had the  
11 opportunity to hear the trial and know the facts by having  
12 experienced the trial firsthand, was going to be the recipient of  
13 the motion, and so I supplemented when I felt like I really wanted  
14 to emphasize some additional -- some additional facts from the case  
15 that I believe are critical.

16 THE COURT: Well, the file's been on my desk for  
17 quite some time though, correct?

18 MS. SCHIKORA: Absolutely, it has and there's no  
19 excuse for it coming to you seven days before, so I do apologize.

20 THE COURT: I did not receive any sort of objections  
21 to it from the defense counsel in that regard, but please proceed.

22 MR. LYNCH: Neither, your Honor, did I claim that  
23 there was any prejudice to us or our client. This is fine, we can  
24 move on.

25 MS. SCHIKORA: So, thank you very much. So, just

1 generally speaking factually at the time of the first assault, the  
2 defendant was 21 and Jenna, victim, was 13. The two had no real  
3 relationship. They had met through Jenna's dad; his name is Robert

4 THE COURT: Okay, but -- but -- but doesn't that --  
5 that's going to the underlying issues of the trial itself. They  
6 don't really go to the point of why they're asking for another  
7 trial. And I understand the general idea of what was being tried at  
8 the time. But I think that it's -- I think it's important for us,  
9 and I certainly don't want to take up your time, I mean, you can  
10 take as much time as you like in regard to -- to develop the  
11 argument that you'd like, but I would like us to focus on the --  
12 there's a tri parte motion here for a new trial and I'd kind of  
13 like to focus on those -- those three theories that they put forth.

14 MS. SCHIKORA: Correct, and your Honor, the reason I  
15 was mentioning the facts in the case is because I believe that  
16 they're relevant specifically to the claim of ineffectual  
17 assistance of counsel.

18 THE COURT: Okay, all right.

19 MS. SCHIKORA: But in any event, I can move on.

20 THE COURT: You know what, I apologize. Let me just  
21 apologize to you. I interrupted you and I probably interrupted your  
22 train of thought, so I want you to take a moment and just, you  
23 know, re-orient as to where you want to be and if you want to go  
24 through those facts, I'll let you. I -- I was just trying to make  
25 sure that we focus in on the issues, so don't let my interruption

1 sidetrack you from where you want to go with your arguments.

2 MS. SCHIKORA: Thank you, your Honor, I appreciate  
3 that. So, the bottom line is that the night of January 13th,  
4 Trooper Desch came and took a report from Taylor Bluhm on Jenna,  
5 the victim in this case's older sister, and there was an indication  
6 that there could be DNA on bathroom rugs. Approximately an hour  
7 later, Aunt Jane, who is the defendant's mother-in-law and also  
8 Jenna's paternal aunt, called the State Police and said, hey, I  
9 collected the rugs myself and I'll turn them over to you. She was  
10 driving around in her car with these -- these rugs that she had  
11 taken liberty of collecting, and she met the trooper at a gas  
12 station in Dorr and handed them over to him. So, the gist of the  
13 emails as Mr. Lynch indicated, pertain to a couple of different  
14 aspects of the trial. So, first of all, the first email from Judge  
15 Bakker was along the lines of the officer in this case didn't do a  
16 good job, don't they have real detectives any more, and that the  
17 victim had not been sent for medical exam and she was curious why  
18 that had been; essentially, who dropped the ball on that piece. Ms.  
19 Koch had responded that there are detectives that sometimes --  
20 detectives aren't assigned in cases like CSC cases, and that this  
21 particular trooper had to undergo some additional training, and  
22 that in terms of the information of medical examination, the ball  
23 was dropped by our office, by MSP, and by Safe Harbor. And so, I  
24 would submit to the Court that there is no tactical advantage, no  
25 practical advantage. Both topics had already been testified to by

1 the time the emails were sent. A jury was the finder of fact, and  
2 there was no evidence of bias either in the substance of the emails  
3 to Ms. Koch, or in any decision that was subsequently made at trial  
4 and not as alleged to have been made. So, the first email was sent  
5 by Judge Bakker at 3:41 in the afternoon on the first day of trial  
6 Before lunch on the first day of trial, so this is -- I believe  
7 they broke at, like, approximately noon or 12:30 -- in Ms. Jipp's  
8 opening statement she referenced the missteps by MSP that Judge  
9 Bakker herself identifies. At 3:11 on the first day of trial, and  
10 again, this is like half an hour before the email was sent, Ms.  
11 Jipp had called Trooper Desch to testify and elicited that he was  
12 the one that took the report on January 13th, that he knew that  
13 there was, practically speaking, potential evidence on the bathroom  
14 floor of this house, specifically blue bathmats is what Jenna  
15 referenced, that he is -- that it's late at night, and he is -- his  
16 shift was almost over so he did not pursue collecting that  
17 evidence. When he went to the home the next day, he did not take  
18 any photographs, although he testified that would've been standard  
19 practice. He did not interview Brooke Loew, the defendant's fiancé  
20 at that time, who also was a member of the household. He did talk  
21 to Aunt Jane and Uncle Scott. He didn't come back and take  
22 photographs until approximately six months after that initial  
23 discussion. He never asked Jenna to id the bathmats, et cetera. So,  
24 that whole entire line of questioning was developed and exhausted  
25 between 3:11 in the afternoon and 3:29 in the afternoon, about 15

1 minutes before the email that Judge Bakker sent to Ms. Koch. So, as  
2 I say, the first email was at 3:41, and that was, "This trooper  
3 didn't do a very good investigation, don't they have detectives at  
4 MSP anymore?" By that time, Trooper Workman, who subsequently was  
5 identified through testimony as being a detective sergeant, had  
6 already been announced as being the next witness. Ms. Koch didn't  
7 reply until 8:47 the following morning, "They do, but typically not  
8 for CSC's. This trooper," -- being Trooper Desch -- "has been given  
9 additional personal training since this investigation." So, clearly  
10 Ms. Koch was so unconnected with the details of this case at that  
11 time, that she didn't even realize the detective had been assigned.  
12 And that detective, by that point in time, had already testified.  
13 Ms. Bakker -- or, Judge Bakker, excuse me -- followed up with,  
14 "There wasn't a medical, do you know why?" and then that was well,  
15 because the prosecutor screwed up and MSP screwed up and Safe  
16 Harbor screwed up; essentially, there should have been. But at that  
17 point, Detective Workman had already testified there wasn't a  
18 medical exam, it concluded his testimony the day before, and that  
19 there should have been based on the allegations in the case. And  
20 that was the extent of the conversation. So, whether or not the  
21 communications may or not be actionable by the Judicial Tenure  
22 Commission or the Attorney Grievance Commission, I would submit to  
23 you it's a separate issue.

24 THE COURT: What -- why is that?

25 MS. SCHIKORA: Because I'm going to cite a series of

1 cases that I suspect will answer your question.

2 THE COURT: Okay.

3 MS. SCHIKORA: So, for instance, technical rule  
4 violations and, you know, for the sake of argument, this was a  
5 technical rule violation, that there should have been a disclosure  
6 not only to the defense, but arguably to Ms. Jipp as well, of these  
7 communication. And that -- that that doesn't make the proceedings  
8 invalid. And I'm citing in support of that proposition, People  
9 versus Henderson, which is also cited in my -- one of my briefs.  
10 There is a heavy presumption of judicial -- and I apologize, your  
11 Honor, I can provide you the cite if --

12 THE COURT: That's fine, just -- please proceed,  
13 that's fine.

14 MS. SCHIKORA: Sure. There's the presumption of  
15 judicial impartiality that the defendant has the burden of  
16 overcoming, and that's Cain versus MDOC. People versus Johnson,  
17 People versus Jackson, "Judge's opinions formed over the course of  
18 the trial process are not grounds for alleging bias unless there is  
19 a deep seeded favoritism or antagonism," -- excuse me -- "such that  
20 the exercise of fair judgement is impossible." I would submit that  
21 Stevens, which is cited by the defendant, is not quite the relevant  
22 line of cases, specifically the holding by Justice Bernstein is,  
23 "This case requires us to address the appropriate standard for  
24 determining when a trial judge's conduct in front of the jury has  
25 deprived a defendant of a fair and impartial trial and whether that

1 standard has been met," and he set forth the totality circumstances  
2 test with a number of factors. He also, in support of that, cited a  
3 Federal case, McMillan versus Castro and in that case that, like  
4 the Stevens case, involved judicial conduct that telegraphed to a  
5 jury favoritism or displeasure with a particular side. In this  
6 case, as I say, the jury was the finder of fact obviously, but  
7 there has been nothing in the record to suggest any sort of breach  
8 of judgement on the part of Ms. Bakker, and ruling on evidence, she  
9 didn't question witnesses, and there's been no allegation that  
10 there was any sort of misconduct in terms of the instructions that  
11 she provided to the jury. The other thing that I thought was  
12 interesting as I read through this specifically in light of the  
13 objections was there was pre-trial motion where Mr. Antkoviak, who  
14 had represented the defendant at that time, there was a question of  
15 whether or not prior conviction would be admitted as evidence  
16 against him under MRE 609 against Mr. Loew under that court rule,  
17 and the Judge ruled that it would be admissible. In the course of  
18 the trial, she sua sponte reconsidered that issue, took further  
19 argument from counsel, ultimately decided that would come in, but I  
20 think the fact that she was doing a continual self-check, even  
21 suggests that she wasn't biased. So, if there is bias shown, or  
22 hostility shown, it appears to me that it's directed toward the  
23 prosecutor and -- who didn't follow up on medical exam, as well as  
24 the State Police, who dropped the ball in a case that merited an  
25 appropriate investigation. So, in terms of the argument of

1 ineffective assistance of counsel, first of all there's a --

2 THE COURT: What -- but -- but the --

3 MS. SCHIKORA: Pardon?

4 THE COURT: The -- before we leave that circumstance  
5 my question to you, that you said you were going to be getting to,  
6 and maybe -- maybe I just didn't quite hear it -- you indicated  
7 that it might be something that's actionable by the Judicial Tenure  
8 Commission, but that wouldn't have an impact on the status of the  
9 trial in which that conduct occurred; why would that -- why does  
10 that follow?

11 MS. SCHIKORA: Right, so, because there's been no  
12 showing that it had any impact whatsoever on any decision making in  
13 the course of the trial. So, even under the People versus Stevens  
14 standard, there's a totality of the circumstances that the Court  
15 considers under -- so, I guess what I'm suggesting to you, your  
16 Honor, is that it was a technical rule violation, but it didn't  
17 effect anyone's right.

18 THE COURT: Well, was it a technical though? I mean,  
19 it was pretty -- wasn't it a discussion of substantive issues going  
20 on at the trial at the time the trial was actually still  
21 proceeding?

22 MS. SCHIKORA: I would say this, the substantive  
23 issue was a springboard for separate issues. So, your trooper  
24 screwed up, don't they have detectives at MSP? So, it went from  
25 specific case comment to a general question about process at MSP.

1 And then in terms of the medical, she commented on something she  
2 heard from the testimony, there wasn't a medical, that the ball got  
3 dropped, and she just questioned how did that happen?

4 THE COURT: Okay, so what you're saying the --if I'm  
5 not mistaken -- what you're saying is, because there's nothing that  
6 the defendant can point to on the record showing, beyond these  
7 initial questions and ex parte communications, you're saying that  
8 since there's nothing that demonstrates that there was some sort of  
9 action taken by the trial judge in this matter thereafter, that  
10 even though that could be followed up with the Judicial Tenure  
11 Commission, it wouldn't be a grounds for a second trial; is that  
12 what you're saying?

13 MS. SCHIKORA: That's half of what I'm saying. The  
14 other part is that in terms of the substance of the communications  
15 themselves, even standing alone, they don't indicate bias. If that  
16 answers your question.

17 THE COURT: Okay, and that's -- I guess that's  
18 subject to interpretation, but okay. But you can move on. You were  
19 going to -- again, let me apologize for interrupting you. You were  
20 moving on to the second theory that was brought -- posited.

21 MS. SCHIKORA: Yes. Regarding -- one additional thing  
22 regarding the previous argument -- Mr. Lynch had indicated he  
23 didn't get a response to a FOIA request on texts. I don't know  
24 about texts. It was my understanding there were FOIA requests  
25 outstanding that were ultimately fulfilled and it's my information

1 that this was the extent of the communication FOIA requests  
2 apparently were directed toward; emails from Ms. Jipp, et cetera.  
3 So, regarding the ineffective assistance of counsel claim, first of  
4 all there's a very strong presumption of effective assistance of  
5 counsel; you'd have to show that the attorney's conduct fell below  
6 objection standard of reasonable -- objective standard of  
7 reasonableness. It's not enough to merely show that the conduct was  
8 deficient. And you also have to show that but for the deficient  
9 conduct, the fact finder would have acquitted the defendant. So, in  
10 terms of the failure to investigate the case, the person who I  
11 referred to as JS, and I know that you have the police report  
12 pertaining to JS attached, first of all, this case was originally  
13 filed in March of 2018. In February of 2018, Mr. Lynch, who was  
14 (inaudible) represent Mr. Loew at that point, contacted the State  
15 Police to indicate that, gosh, this victim goes around and points  
16 the finger at all kinds of people who were subsequently exonerated.

17 THE COURT: Can I -- can I ask one thing momentarily  
18 here? And again, is that your phone buzzing that's on the -- if it  
19 is, could you take it off the table because it's kind of --  
20 there's, like, there was no --

21 MR. LOEW: May I just? I believe that is them opening  
22 and closing the doors in another room.

23 THE COURT: It sounds like a vibrate notification on  
24 a phone. Okay, I apologize. I just thought --

25 MR. LOEW: Sorry about that.

1 THE COURT: Okay. Please proceed.

2 MR. LOEW: If you want me, I can mute my mic because  
3 I'm not really talking. If you want, I can mute it so you won't  
4 hear it.

5 THE COURT: Oh, I see. This is coming from the  
6 facility there?

7 MR. LOEW: From the facility, yeah.

8 THE COURT: Yeah, okay. If you don't mind, but you  
9 need to be able to unmute it if Mr. Loew wants to have a  
10 communication with his attorney.

11 MR. LOEW: I can unmute it.

12 THE COURT: All right, thank you. All right, Ms.  
13 Schikora, please proceed.

14 MS. SCHIKORA: Thank you. So, JS is a juvenile -- or  
15 was a juvenile -- back in 2014, or whenever his case -- I think it  
16 was 2014. He plead responsible in Juvenile Court here to CSC 2 on  
17 Jenna. The CSC's occurred when she was approximately 11 1/2, he was  
18 about four years older than she, and they -- the events concluded  
19 more than a year before the first assault. So, I cited in my brief  
20 to rape shield law, which I know you're familiar with, and defense  
21 counsel has acknowledged that it is likely the case the rape shield  
22 would be an impediment to the evidence coming in. Rape shield,  
23 under section two, says that the defense has to file a motion and  
24 an offer of proof within 10 days of arraignment on the information  
25 in order to be able to present evidence that would otherwise be

1 barred through rape shield, and Mr. Maesen did not represent Mr.  
2 Loew during that period of time. Mr. Antkoviak represented Mr. Loew  
3 until the week before the original trial. Mr. Maesen substituted in  
4 and the trial was then adjourned to a few weeks after that. So,  
5 again, the claim was against Mr. Maesen and that was -- that would  
6 have been Mr. Antkoviak at that time. Mr. Antkoviak had secured the  
7 police report, as I say, he represented defendant for more than a  
8 year, did not seek to admit that evidence. Regardless, the case of  
9 JS is alleged to show that the victim was not a virgin and that is  
10 untrue so, for instance, number one he was convicted CSC 2 for  
11 contact. There was indication in police reports about him rubbing  
12 her vagina, her rubbing his penis against her crotch, he did not  
13 penetrate her, and he indicated that the contact had been through  
14 spandex shorts. Medical report that was done at that time indicated  
15 that there had been no bleeding. Jenna, at trial in Mr. Loew's  
16 case, did not testify that was a virgin. She did testify to being  
17 bent over, penetrated from behind. Obviously, defendant at that  
18 time was an adult male. She testified to having bad cramps and some  
19 bleeding. So, arguably, that's attributable to trauma as opposed to  
20 losing her virginity. But I do believe that's a rational inference  
21 from the evidence and so would not support a claim either against  
22 Mr. Maesen or against Ms. Jipp for prosecutorial misconduct in  
23 making that argument. The indication was that the victim had  
24 previously been traumatized before the assault. JS was a companion  
25 of sorts to Jenna and to her sisters. They were friends, he was

1 also a kid. It was clear she considered him a contemporary the  
2 whole tenor of the circumstance with JS, not brutal by nature. And  
3 they also weren't occurring behind the back of Jenna's first  
4 cousin, who she obviously had considered something like a sister  
5 before all of this transpired. In addition, Jenna did not disclose  
6 the information with JS, she actually wrote in a little journal of  
7 sorts that she hidden under her bed. Her mother found it, and it  
8 was based on that that the police were contacted. So, nor was there  
9 anything in medical report that indicated that Jenna was  
10 experiencing the kind of trauma that she was reportedly  
11 experiencing -- or the testimony established that she was  
12 experiencing -- in approximately 2016 and 2017 when she went to  
13 counseling just prior to disclosing the assaults by Mr. Loew. Dr.  
14 Simms also indicated that Jenna was not in counseling, so to the  
15 extent that that was alleged in defendant's brief, I did not see  
16 anything in my review of the police report in that case that showed  
17 that Jenna had had counseling prior to the counseling that was  
18 testified to in Mr. Loew's case. In terms of the ineffective  
19 assistance of counsel for failure to admit the pictures regarding  
20 the wall colors, I think that it's easy to conflate that issue with  
21 the issue of the bathmats, which was (inaudible). Jenna had  
22 testified several years after the (inaudible) that the wall colors  
23 were orange at the time of the first assault and subsequent  
24 assaults which were several months later, she testified that they  
25 were blue and a few different witnesses came in and said, no, they

1 were actually orange. So, there was testimony on the record. Again  
2 there was a lot about bathmats, but the color of the walls was a  
3 insignificant issue I would submit in the grand scheme of things.  
4 So, regarding the claim of prosecutorial misconduct, there was no  
5 objection, so this was an unconserved issue. Prosecutors,  
6 obviously, are free to argue the evidence and inferences that are  
7 reasonable that can be drawn from the evidence. Ms. Jipp's  
8 arguments, including the argument that the victim lost her  
9 virginity as a result of the initial contact with Mr. Loew, was  
10 based on an inference from the evidence in the record. The other  
11 thing is, regarding the claim about the prosecutor having suborn  
12 perjury by making reference to things that she knew based on the  
13 police report were not true. I would say the claim of ineffective  
14 assistance of counsel, and there's a line of cases including the  
15 case of People versus Callon, is based on an assessment of the  
16 evidence that's solicited on the record and inferences made through  
17 that. So, police reports aren't evidence. Evidence is what's  
18 adjudicated at trial or by virtue of a plea. And so, based on that,  
19 I would respectfully request that you deny the motion for a new  
20 trial. Thank you.

21 THE COURT: Mr. Lynch, would you like to respond? You  
22 need to unmute yourself before you do that, though.

23 MR. LYNCH: Thank you very much. I would like to  
24 respond briefly, your Honor. Regarding the issue of the ex parte  
25 communications -- back to the original issue -- I don't envy Ms.

1 Schikora that she's been called to defend the indefensible. Where  
2 we have record of an email being sent in the middle of trial  
3 testimony, but the trial judge, to the prosecuting attorney. Just  
4 because we don't have any email record of any sort of response or  
5 additional communications until the following morning at 8:47 or 49  
6 a.m., doesn't mean that it didn't happen; doesn't mean that there  
7 weren't text messages sent. We were denied access to text messages  
8 because of "privacy concerns" by the County's outside counsel, and  
9 so, I don't know if the text messages exist. We do know that within  
10 three minutes of Ms. Koch sending that email back to Judge Bakker,  
11 Judge Bakker's right back on her email again, back to Ms. Koch  
12 within a matter of three minutes on the second day of trial. So,  
13 what we're seeing is a pattern. And again, this may be -- we simply  
14 don't know, and can't know without some sort of taking of  
15 testimony, whether there were any additional conversations or what  
16 Judge Bakker's intention was when it comes to this. Ms. Schikora's  
17 fond of pointing out that this didn't work, right? That this - that  
18 this effort to (inaudible) herself into the prosecution of this  
19 trial by Judge Bakker, didn't necessarily work because we can't  
20 find specific instances in the record where Ms. Jipp took the  
21 advice that the Judge was giving. But the fact that the Judge was  
22 giving the advice is the problem, your Honor. It's not the fact  
23 that it wasn't -- that we can't show right now that it was heeded.  
24 But we might be able to show it, and we have the right to determine  
25 whether we can show it given what happened here by taking testimony

1 from the individuals who were directly involved in this. From those  
2 -- the only ones who will ever know what they were talking about,  
3 what the intention was in sending these, and how anybody thought  
4 that it was okay to engaging in this sort of behavior on county  
5 email. If this is going on on county email, what -- where everybody  
6 knows that it's tracked, it's archived -- we don't know what's  
7 happening by text message, we don't know what's happening with  
8 other conversations in the office. We don't know at any point  
9 whether Ms. Koch or Ms. Jipp had any conversations about this. Just  
10 because there's no email between the two of them doesn't mean there  
11 wasn't any contact. Why else would the Judge be making comments as  
12 she was? There's simply no reason for it. This is not -- this is  
13 not a -- a -- a harmless springboard conversation into other  
14 issues. This isn't a harmless issue or a harmless exchange about  
15 the general conduct of the trial. This goes into specific issues,  
16 specific matters of testimony, the way that the investigation was  
17 conducted. We cannot know, from the record, whether any strategic  
18 decisions were made in the course of the conduct of this trial by  
19 the prosecutor's office. All we know is that there was a whole lot  
20 of talk about it. And so, at this point, your Honor, we felt no  
21 choice but to -- we had no choice but to bring this to the  
22 attention of the Court given the consequences to Mr. Loew here. In  
23 terms of the ineffective assistance claims, just to respond  
24 briefly, in terms of the matters involving the complainant in Mr.  
25 Loew's trial and the issue of her virginity or whether she was a

1 virgin or anything of that sort, we understand what the eventual  
2 plea was by JS. But we also had a good faith basis for raising this  
3 issue as well. Count Three of the juvenile delinquency petition  
4 against JS involved -- the first matter involving the complainant  
5 in Mr. Loew's trial. Count Three alleged penis/vagina penetration.  
6 We -- we -- they're in the record it indicates that she was given a  
7 pregnancy test, there were STD tests. So, in this type of  
8 situation, clearly there was -- someone believed that there could  
9 have been penetration there and we had to proceed as if -- we had  
10 to proceed as if this matter should have been investigated by his  
11 trial counsel to determine whether there were any issues concerning  
12 her claims of virginity. So, we went forward as we believed we had  
13 a good faith basis for doing and we also know, as we pointed out in  
14 our brief, your Honor, that there was -- the individuals involved  
15 in investigating this prior matter with the same complainant, were  
16 involved in Mr. Loew's trial. There's no question. We don't need to  
17 impute knowledge in members of the law enforcement agency that was  
18 investigating these two matters with the same people. And so, we  
19 think there's a great deal more that should have been in front of  
20 the jury in this instance, it should have been explored by Mr.  
21 Loew's prior trial counsel. While I think the gravity of the issues  
22 here certainly has to do with the ex parte substantive  
23 communications and what they appear to indicate, that they appear  
24 to indicate bias here or at the very least a desire to influence  
25 this trial in a way that was grossly inappropriate, we also think

1 the other two grounds that we raised, in terms ineffective  
2 assistance of counsel, are sufficient to warrant a new trial. We  
3 appreciate the Court's consideration, and we ask that,  
4 respectively, that you grant the motion and allow Mr. Loew to have  
5 an opportunity for a fair trial in this case, in front of a fair  
6 and impartial tribunal. Thank you.

7 THE COURT: You referenced an evidentiary hearing a  
8 couple of times, what do you envision that looking like?

9 MR. LYNCH: Well, your Honor, we have two separate  
10 issues -- three separate issues, but two in a sense. In terms of  
11 the ex parte substantive communications, we have to hear from those  
12 who were participants of that conversations. We need context  
13 because it's entirely absent here. We have an email exchange over a  
14 couple of days on county email that has to do with the trial of Mr.  
15 Loew. And it has to do with specific witnesses, it has to do with  
16 the conduct of the investigation, it has to do with what clearly --  
17 I don't think it's any stretch at all to interpret Judge Bakker's  
18 comments as some sort of dissatisfaction with the way that  
19 something was carried out. Don't you do this anymore, don't you do  
20 that anymore, don't you use detectives on these cases instead of  
21 officers now? So, the -- the -- the reading between the lines, the  
22 recipient of that email might have a sense of, hey, I'm not in that  
23 trial, I'm not sure -- I don't know whether she's directly involved  
24 in the prosecution or advising Ms. Jipp or not; I don't know that.  
25 There's no way for us to be able to tell that. But we do know that

1 the Judge is sending those emails for a reason, for a purpose. We  
2 don't know what Ms. Koch did with that information. We don't know  
3 what the Judge intended for her to do. We don't know whether Ms.  
4 Koch and Ms. Jipp exchanged in any kind of other communications to  
5 which we're not -- we don't have access at this point. So, we need  
6 to hear from these people to supply context about whether -- about  
7 whether this was all the communicating that was happening. In terms  
8 of the ineffective assistance of counsel, your Honor, a Ginther  
9 Hearing is commonly granted by the Court of Appeals in Michigan in  
10 situations where ineffective assistance of counsel was raised. It  
11 permits us, on direct appeal, to flesh out the record regarding  
12 what Mr. Loew's former counsel did or didn't do when it comes to  
13 preparing for trial and actually conducting the trial.  
14 Investigating -- we think we've identified specific examples of  
15 counsel's failure to do that. And so, I can imagine also that we  
16 would need to hear from Mr. Loew's former trial counsel to know  
17 whether there was any -- because whether he or they had any idea  
18 that the elected prosecutor and the trial judge were communicating  
19 about substantive trial issues during the trial, literally while  
20 witnesses are on the witness stand testifying. So, it would be  
21 helpful for us to know whether there was any attempt made on the  
22 part of the trial judge to level the playing field. I can't imagine  
23 that there was, but it would be nice for us to be able to confirm  
24 that in the form of evidence, your Honor, of testimony. So, that's  
25 what we're asking for.

1 THE COURT: Ms. Schikora, anything?

2 MS. SCHIKORA: Your Honor, I -- defendant has a  
3 burden of proving that the judge was biased in this case. So, I  
4 would suggest to you that the fact that we're even having this  
5 discussion shows that he has not met that burden of proof. In terms  
6 of --

7 THE COURT: Well, I think that's a bit of a leap,  
8 isn't it? That's not the case. The reason that we're having this  
9 conversation based on the same supposition that you wrote your  
10 initial brief, you indicated that you thought that Judge Bakker  
11 would be hearing this, and she herself indicated that she, on the  
12 appearance of impropriety, thought that it best not to -- not to  
13 hear the case; is that right?

14 MS. SCHIKORA: I -- it is, yes, your Honor.

15 THE COURT: Okay, and so, I mean, so it's more than  
16 just -- at the very least, there's an appearance, isn't there?

17 MS. SCHIKORA: At the -- Judge Bakker thought that  
18 there was an appearance if she continued to preside over it.

19 THE COURT: Please proceed, go ahead.

20 MS. SCHIKORA: Yes, so in terms of the -- is your  
21 question about the parameters of the evidentiary hearing or what I  
22 would --

23 THE COURT: I just wondered if you wanted to respond  
24 to what Mr. Lynch was arguing.

25 MS. SCHIKORA: Thank you. I guess the question I have

1 is, even if -- so, there's caselaw that says that judges can have  
2 whatever perception they have about a particular issue or a  
3 particular category of, you know, so, for instance, about  
4 defendants or the case I read was about fathers and paternity  
5 actions or adoption proceedings, putative fathers. So, you can have  
6 biases against categories of people, but unless that has an impact  
7 on your -- on the things that happened, it's not going to be  
8 relevant. And in this case, whatever Judge Bakker thought when she  
9 was sending emails, even if, you know, God forbid she was just  
10 killing time during a boring part of testimony, it's -- it was of  
11 no consequence because nothing did come of it regardless of  
12 (inaudible). So, I'm just suggesting to you that that is -- that  
13 that is irrelevant when there is no actual tangible effect on the  
14 trial. Even if Ms. Jipp knew, and there's no indication that Ms.  
15 Jipp knew anything. I mean, these were communications between Ms.  
16 Koch and Ms. Bakker. Ms. Koch didn't even know there was a  
17 detective assigned to the case. And there's no indication --

18 THE COURT: Well, again, Ms. Koch is the Prosecuting  
19 Attorney.

20 MS. SCHIKORA: Sure.

21 THE COURT: And Ms. Jipp is an Associate Prosecutor  
22 working in the office of the Prosecuting Attorney, correct?

23 MS. SCHIKORA: True. And I'll also say so Ms. Koch is  
24 a party to every criminal proceeding in this case, which would  
25 effectively mean that she couldn't discuss anything related to law

1 enforcement whatsoever with you or Judge Bakker or Judge Kengis --

2 THE COURT: Well, we're talking about actually during  
3 a trial, where testimony --

4 MS. SCHIKORA: I agree --

5 THE COURT: -- is actually taking place at the time,  
6 and there's actual commentary about the substance and merit of the  
7 actual testimony provided and the investigation conducted, correct?

8 MS. SCHIKORA: Absolutely.

9 THE COURT: Okay, so that's a little bit different  
10 than just having a prosecutor able to discuss things with any of  
11 the judges, in particular, in a general matter, right?

12 MS. SCHIKORA: Right. So, and you know, your Honor,  
13 what if it was a week after? Would that have made a difference?

14 THE COURT: I don't know. I don't know. That's not  
15 what happened though. That's the problem, that's my concern, at  
16 least. And I admit, I find this very difficult. I find this to be a  
17 very difficult motion to hear, quite frankly, because I happen to  
18 know the trial judge in this matter, that you've referred to  
19 repeatedly. I would like to try to restrict the identification to  
20 trial judge, but you know, I know that that individual is a very  
21 honorable person, I have a great deal of respect. We disagree on  
22 some things, but I have a great deal of respect for the Judge and I  
23 also believe her to have a high degree of honor. But that's not the  
24 point. I don't -- at least to my mind. And again, I may -- I may  
25 well be wrong on this, and I'm gonna preface this by indicating

1 that. You may well substantively disagree and even wish to have  
2 someone else review this, but my concern on this is more than just  
3 the idea of what happened here with that one email. It's this whole  
4 perception of an objective and impartial judiciary. And here we  
5 have a situation where we have a trial judge making a statement  
6 that may well have been from her point of view innocuous, but it  
7 may well have, from defendant's point of view, or the public point  
8 of view, been a flag saying you need to change your trial strategy  
9 or alter your trial strategy. Perception -- perception -- maybe it  
10 wasn't the case, but it creates the appearance of coaching or at  
11 least flagging this is something you're going to need to address,  
12 and that's my worry. I don't think, from my knowledge -- my  
13 personal interactions with and knowledge of the trial judge -- I  
14 don't believe that that would be in any way, shape, or form the  
15 intention. I don't think that -- well, I don't believe that to be  
16 the type of person that she is. However, we live in a day right  
17 now, at this very -- just looking around in our community, all of  
18 these conspiracy theory issues going from -- from wild fantasy to  
19 just utter horror or grotesqueries, and the public has an enormous  
20 sense of distrust. And I think it's really incumbent upon the  
21 judiciary to hold ourselves to a much -- a much higher standard.  
22 And the judicial canon of ethics demand that we avoid even the  
23 appearance of impropriety. So, let me -- let me discuss briefly the  
24 theory two and three in this. Both of which I kind of put together,  
25 and I agree with you, Ms. Schikora, that by and large, both

1 theories two and three, I think can be rather -- rather easily  
2 viewed as second guessing, you know, trial strategy of going over,  
3 you know, if you make a determination that you're not going to ask  
4 questions about certain aspects or a certain photograph, I don't  
5 know. I don't know the entire record, but was there, you know, were  
6 there questions as to foundation, as to whether or not that that  
7 photo would be admissible or not or any number of reasons why a  
8 defense attorney might not want to raise a particular issue or a  
9 particular line of questioning that he might think, even if the  
10 defendant himself wanted to pursue that, he might have thought that  
11 it might have been detrimental to the -- to the interests of the  
12 defendant. And I think we all see that all the time. So, on both  
13 theories two and three, I -- I do think that it is not warranted to  
14 award or grant the motion for a second trial in this matter. But I  
15 have grave concerns in regard to that first theory. Again, come  
16 back to the point of that appearance and I think that that's an  
17 appearance that knowing the individual involved, I think may well  
18 be unwarranted, but I know that person; the public doesn't -- or  
19 many in the public don't. But it just creates that appearance that  
20 you have this coaching situation or, at the very least, flagging as  
21 to boy, you better address this. I -- I think that the whole reason  
22 that the Judicial Tenure Commission would be interested in  
23 something like this would be because it's a matter of the public  
24 perception of the ethical obligations entailed with the judicial  
25 office and I worry that as unintentional as this may be, it could

1 do damage to that. And I think it's incumbent on us to really err  
2 on the side of making sure that all people understand themselves to  
3 be given that opportunity to a full and fair hearing before an  
4 impartial judiciary. It's -- it's concerning that one of the  
5 aspects of this whole -- this whole line of motion practice could  
6 really easily have been avoided -- or at least addressed by an  
7 immediate motion in trial, if it were adequately disclosed or  
8 immediately disclosed, but it wasn't. Just looking over my notes  
9 from my review of the briefs here for a moment. One of the things  
10 that I think that goes -- that ties into the whole idea and that --  
11 this whole current atmosphere of conspiratorial theories is exactly  
12 what the -- what defense counsel brought up in saying he doesn't  
13 know were these other conversations. The office is just down the  
14 hall from the courthouse. He doesn't know if there were text  
15 messages that explore different lines of questioning or aspects of  
16 the case that have not been discussed or disclosed here. And we  
17 know that text messages -- you know, you gave me a timeline of  
18 timeframes of emails coming in and the testimony that's  
19 contemporaneously taking place in the courtroom, but we don't know  
20 what, if any, of that immediacy of the text messages, which we all  
21 know are in court now on a ubiquitous basis. We see people  
22 communicating with their offices, prosecutor's with the  
23 Prosecutor's Office, and defense counsel with their home offices,  
24 or whoever, perhaps witnesses that they need to call to make sure  
25 that they're ready, but there's that ability that was not here

1 several years ago that we now have that ability to have that  
2 immediacy of communication that could well create, again, this  
3 adding to this thought process of what do we not know. It's a --  
4 it's with very much a heavy heart that I indicate pursuant to this  
5 appearance -- the breach of the appearance -- that I am going to  
6 grant the motion for a second trial in this matter based on the  
7 first theory. Now, I think that reason we may need to set the  
8 matter for ongoing proceedings, but I also want to make sure,  
9 because I freely admit, I, you know, this is, as I said, a  
10 difficult issue and I do not have a -- I don't have any sense of  
11 animosity if -- or displeasure, let's say, if you wish to question  
12 this. I -- I understand that. If you believe that this is something  
13 that you need to have visited by a court to review it, I invite you  
14 to do so. Either, you know, Mr. Lynch, in regard to your second and  
15 third theories; and Ms. Schikora, in regard to the first theory. I  
16 -- otherwise, I think that it's appropriate for me to set this  
17 matter for hearings consistent with setting the matter for a trial.  
18 The Court will so order.

19 MR. LYNCH: Thank you, your Honor.

20 MS. SCHIKORA: Thank you, your Honor.

21 THE COURT: Mr. Lynch, do you wish to prepare a  
22 motion -- I mean an order? I apologize; an order?

23 MR. LYNCH: We will do that, your Honor.

24 THE COURT: Very good.

25 MR. LYNCH: Thank you.

1  
2  
3  
4  
5

MR. LOEW: Thank you.

(At 2:59 p.m., proceedings adjourned)

I certify that this transcript, consisting of 34 pages, is a complete, true and correct transcript of the Motion Hearing and testimony taken in this case on Thursday, October 29, 2020.

Date \_\_\_\_\_

\_\_\_\_\_  
Jennifer Callaway, CER 8730  
804 S. Wilmott Street  
Otsego, MI 49078

STATE OF MICHIGAN  
IN THE 48TH CIRCUIT COURT FOR THE COUNTY OF ALLEGAN

ORDER ON DEFENDANT'S MOTION FOR NEW TRIAL

PEOPLE OF THE STATE OF MICHIGAN,

v

FILE NO.: 18-021709-FC

DANIEL ALBERT LOEW,

Defendants

MYRENE K. KOCH (P62570)  
Allegan County Prosecutor  
113 Chestnut Street  
Allegan MI 49010  
(269) 673-0280

KATHRYN M. SPRINGSTEAD (P74925)  
HEATH M. LYNCH (P81483)  
Springstead Bartish Borgula & Lynch, PLLC  
60 Monroe Center NW, Suite 500  
Grand Rapids MI 49503  
(616) 458-5500

At a session of said Court, held in the  
City and County of Allegan, MI, on the  
2nd day of November, 2020.

**PRESENT: HONORABLE WILLIAM A. BAILLARGEON P38047**

For the reasons stated on the record at a session of this Court held on Thursday, October 29, 2020, following oral argument and after review of the briefs filed by the parties, Defendant's Motion for New Trial based on Defendant's first theory of the motion is GRANTED. Pertaining to Defendant's second and third theories, the motion is DENIED.

STATE OF MICHIGAN  
William A. Baillargeon  
Allegan MI 49010

Accordingly, Defendant's conviction is vacated and he is to be released from the custody of the Michigan Department of Corrections to the Allegan County Jail pending a hearing on the issue of bond. This matter is to be set for further proceedings consistent with this Order.



William A. Baillargeon (P38047)

STATE OF MICHIGAN  
William A. Baillargeon  
Allegan MI 49010

STATE OF MICHIGAN  
48TH JUDICIAL CIRCUIT  
ALLEGAN COUNTY

JUDGMENT OF SENTENCE  
COMMITMENT TO  
DEPARTMENT OF CORRECTIONS

CASE NO.  
18-021709-FC-Z

ORI  
MI-030015J

Court Address 113 CHESTNUT STREET  
ALLEGAN, MI 49010

Court Telephone no.  
269-673-0300

Police Report No. 52335-18

THE PEOPLE OF THE STATE OF MICHIGAN

V

Defendant's name, address, and telephone no.

DANIEL ALBERT LOEW  
4488 32ND ST  
DORR, MI 49323

CTN/TCN	SID	DOB
031800075101	4495451M	8/16/94
Defendant attorney's name		Bar no.
MAESEN, RYAN ANTHONY,		70246

Prosecuting attorney's name	Bar no.
KOCH, MYRENE KAY,	62570

THE COURT FINDS:

1. The defendant was found guilty on 8/29/19 of the crime(s) stated below.

Count	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC code
	Plea*	Court	Jury			
1			X		CSC 1ST DEGREE INJURY	750.520B1F
2			X		CSC 3RD DEGR FORCE	750.520D1B
3			X		CSC 2ND DEG PERS INJURY	750.520C1F
4			X		CSC 1ST DEGREE INJURY	750.520B1F
5			X		CSC 3RD DEG PERSON 13-15	750.520D1A
		X			HABITUAL OFFENDER 3RD CON	769.11

\*Insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill, "D" for dismissed by court, or "NP" for dismissed by prosecutor/plaintiff.

2. The conviction is reportable to the Secretary of State under MCL 257.625(21)(b).

Defendant's driver's license number

- 3. HIV testing and sex offender registration are completed.
- 4. The defendant has been fingerprinted according to MCL 28.243.
- 5. A DNA sample is already on file with the Michigan State Police from a previous case. No assessment is required.

IT IS ORDERED:

- 6. Probation is revoked.
- 7. Participating in a special alternative incarceration unit is  prohibited.  permitted.
- 8. The defendant is sentenced to custody of the Michigan Department of Corrections. This sentence shall be executed immediately.

Count	SENTENCE DATE	MINIMUM			MAXIMUM			DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.	Days		Mos.	Days	
1	11/04/19		240			480	11/04/19		69		
2	11/04/19		240			360	11/04/19		69		
3	11/04/19		240			360	11/04/19		69		
4	11/04/19		240			480	11/04/19		69		



CC 219b (3/16) JUDGMENT OF SENTENCE, COMMITMENT TO DEPARTMENT OF CORRECTIONS  
 MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766, MCR 6.427

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STATE OF MICHIGAN 48TH JUDICIAL CIRCUIT ALLEGAN COUNTY	JUDGMENT OF SENTENCE COMMITMENT TO DEPARTMENT OF CORRECTIONS	CASE NO. 18-021709-FC-Z
--	--	----------------------------

Count	SENTENCE DATE	MINIMUM			MAXIMUM			DATE SENTENCE BEGINS	JAIL CREDIT		OTHER INFORMATION
		Years	Mos.	Days	Years	Mos.	Days		Mos.	Days	
5	11/04/19		240			360		11/04/19		69	

9. Sentence(s) to be served consecutively to (If this item is not checked, the sentence is concurrent.)  
 each other.  case numbers \_\_\_\_\_.

10. The defendant shall pay: \$130.00 CRIME VICTIM RIGHTS \$340.00 STATE MINIMUM COSTS  
 \$470.00 TOTAL \$470.00 BALANCE

The due date for payment is 11/04/19. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed.

11. The defendant is subject to lifetime monitoring under MCL 750.520n.

12. Court recommendation:  
 ALL COUNTS CONCURRENT TO EACH OTHER. NO RESTITUTION ORDERED.

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT IN THIS OFFICE.

January 6<sup>th</sup> 20 20  
 BOB GENETSKI, Clerk/Register  
 Allegan County, Michigan

By [Signature]  
 Deputy Register

Date 11/5/19 Judge [Signature] MARGARET ZUZICH BAKKER 31035 Bar no.

I certify that this is a correct and complete abstract from the original court records. The sheriff shall, without needless delay, deliver the defendant to the Michigan Department of Corrections at a place designated by the department.

(SEAL)

[Signature]  
 Deputy court clerk

LAST PAGE

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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee/Cross-Appellant,

v

DANIEL ALBERT LOEW,  
Defendant-Appellant/Cross-Appellee.

---

FOR PUBLICATION  
January 13, 2022  
9:15 a.m.

No. 352056  
Allegan Circuit Court  
LC No. 18-021709-FC

Before: MURRAY, C.J., and MARKEY and RIORDAN, JJ.

MURRAY, C.J.

Following a jury trial, defendant was found guilty of two counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(f) (defendant causes personal injury to the victim and uses force or coercion), one count of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(f) (personal injury to victim and force or coercion), one count of third-degree criminal sexual conduct (CSC-III), MCL 750.520d(1)(a) (sexual penetration involving victim at least 13 years of age and under 16 years of age), and one count of CSC-III, MCL 750.520d(1)(b) (penetration by force or coercion). Defendant was sentenced as a third-offense habitual offender, MCL 769.11, to 240 to 480 months’ imprisonment for the CSC-I convictions and to 240 to 360 months’ imprisonment for the CSC-II and CSC-III convictions. Defendant appealed his convictions and sentences to this Court. He also moved for a new trial in the trial court on the basis of judicial misconduct, ineffective assistance of counsel, and prosecutorial misconduct. The prosecution filed a cross-appeal after the trial court granted defendant a new trial on the basis of judicial misconduct. For the reasons set forth in this opinion, we reverse the trial court’s order granting defendant a new trial.

I. BASIC FACTS

The relevant events began in December 2015, when the victim was 13 years old. At the time, defendant and the victim’s cousin, Brouke Loew, were dating. Defendant, Brouke, and their infant son lived with Brouke’s parents, Jane and Scott Heppes, at the Heppes’ rural Allegan County home. Near the end of December 2015, Brouke’s parents hosted a wedding reception for the

victim's father and his new wife. The reception was held in a detached garage, and wedding guests did not have access to the Heppes' house.

Sometime during the evening, Brouke asked the victim to go to the house to help defendant unload groceries. The victim was in the kitchen when defendant called the victim to the bathroom so he could "show [her] something." The victim went to the bathroom where defendant closed and locked the door. According to the victim, defendant undressed her and forced her to engage in penile-vaginal sex on the bathroom floor. Defendant ejaculated on the floor before exiting the bathroom. The victim remained in the bathroom where she felt cramping in her stomach and had vaginal bleeding.

After the victim's father became incarcerated in early 2016, Jane volunteered to take the victim and her sisters to see their father on the weekends. The victim and her sisters would usually stay Friday evenings at the Heppes' house and would get up early Saturday mornings to travel to the prison for the visits. On those weekends, the victim and her younger sister would sleep on the living room couches. After everyone was asleep, the victim would wake up to defendant "touching me, my thighs, my boobs, my butt, everywhere, all over my body." Defendant would walk the victim to the bathroom where he would make her engage in penile-vaginal sex. The victim described that defendant would ejaculate on the floor or on the bathroom rugs. During one encounter, the victim stated defendant grabbed her by the hair and "pushed [her] head to the ground with his hand." As a result, the victim's eyes became swollen and irritated.

These incidents mostly occurred in the bathroom at the Heppes' house; however, the victim also recounted one episode of penile-vaginal sex at the home she once shared with her father and another incident where defendant forced the victim to perform fellatio in his pickup truck. After completing the fellatio, the victim asked defendant when he would stop forcing himself on her, to which defendant replied: "If you tell anyone, you don't want to know what happens." Nevertheless, the victim disclosed the abuse to her father during a prison visit in January 2018. The victim's older sister learned of the disclosure and reported it to the Michigan State Police (MSP).

After the MSP investigated the circumstances of the crimes, defendant was subsequently charged, convicted and sentenced as noted. This appeal followed. Before this Court could consider defendant's appeal, however, defendant learned of e-mails between the trial judge and the Allegan County elected prosecutor, who was not the trial prosecutor. The dates and times of the e-mail exchanges indicated the e-mails were sent and received while defendant's trial was ongoing. Consequently, defendant moved the trial court for a new trial alleging judicial misconduct arising from the e-mail exchanges. Defendant alternatively argued a new trial was warranted because defense counsel was ineffective and because the prosecutor committed misconduct by eliciting perjured testimony. The trial court<sup>1</sup> granted defendant a new trial on the basis that the e-mail communications created the appearance of impropriety, but denied the motion

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<sup>1</sup> On defendant's motion, the case was reassigned to a different trial court judge. For purposes of this opinion, we will refer to the judge who presided over the trial as the "trial judge" and the judge who decided the motion for new trial as the "trial court."

on the basis of ineffective assistance of counsel and prosecutorial misconduct.<sup>2</sup> The prosecution filed a cross-appeal to this Court contesting the trial court's grant of a new trial. We now turn to a review of that challenge.

## II. ANALYSIS

### A. JUDICIAL MISCONDUCT

The prosecution contends the trial court abused its discretion in granting defendant a new trial because the e-mails between the trial judge and the elected prosecutor did not violate the Code of Judicial Conduct, Canons 2 and 3(A)(4), did not cause defendant any prejudice, and therefore did not violate his right to due process of law.

Under MCR 6.431(B), a trial court “may order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice.” We review a trial court's decision to grant a new trial for an abuse of discretion. *People v Jones*, 236 Mich App 396, 404; 600 NW2d 652 (1999). Our review “examine[s] the reasons given by the trial court for granting a new trial. This Court will find an abuse of discretion if the reasons given by the trial court do not provide a legally recognized basis for relief.” *Id.* (citations omitted). “The question whether judicial misconduct denied defendant a fair trial is a question of constitutional law that this Court reviews de novo.” *People v Stevens*, 498 Mich 162, 168; 869 NW2d 233 (2015).

Before addressing the legal merits of this argument, we set out below the factual underpinnings for the argument. As noted, this issue arises from e-mail exchanges between the trial judge and the elected prosecutor (who, again, was not handling the trial), which took place during two of the three days of defendant's trial. Before the first e-mail exchange took place, the assistant prosecutor made her opening statement, and put the jury on notice that the investigation by the MSP trooper was somewhat flawed:

And we will hear, unfortunately, that there is no D.N.A. evidence. [The victim] will testify that she made her aunt aware, she made law enforcement aware of blue bath mats that she last remembered the Defendant ejaculating on. And you will hear from Trooper Desch that aunt met him in the middle of the night at a gas station with a garbage bag full- of bath mats that were green, white, and blue. Those bath mats were never taken and shown to the victim. Those bath mats were not seized personally by law enforcement. But Aunt Jane turned those over and those obviously didn't have any DNA on them.

Then, during the direct exam of the MSP trooper, which commenced at 3:11 p.m., the trial prosecutor questioned the trooper about the investigation, and how he did not ideally handle the

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<sup>2</sup> This was defendant's second motion for a new trial. Defendant's first motion was denied by the trial judge.

collection of the mats, and what he would have done differently had the investigation gone correctly. The trooper's trial testimony, after cross-examination, concluded just prior to 3:47 p.m.

The first e-mail from the trial judge to the elected prosecutor occurred at 3:41, and stated:

This [MSP] trooper didn't do a very good investigation. Don't they have detectives with MSP anymore?

The elected prosecutor did not immediately respond, as her responding e-mail was sent at 8:47 a.m. the next day, and stated:

They do but not typically for CSC's [sic]. This trooper has been given additional personal training since this investigation.<sup>[3]</sup>

At 8:50 a.m. that same day, the trial judge responded with another question on a different subject:

One more question . . . this victim was not referred for a medical, do you know why?

Twelve minutes later the elected prosecutor responded, and the following exchange occurred:

Yes, because the prior [assistant prosecuting attorney] to the case did not catch that it was missed nor did anyone else who touched the file. As a result, there will now be a checklist for CSC's [sic] in files.

Trial Judge: I thought Safe Harbor would catch it.

[*Elected Prosecutor*]: Unfortunately, no. The forensic interviewer is supposed to check that before case review but the list often is given to interns. I noticed it after the fact at case review but by then not clear on if the victim had much support.

According to defendant and the trial court, defendant's due process right to a fair trial was violated because the trial judge's e-mail questions to the elected prosecutor were ex parte communications that exhibited at least the appearance of impropriety, contrary to the Code of Judicial Conduct, and caused him prejudice.

The Fourteenth Amendment to the United States Constitution provides that states may not "deprive any person of life, liberty, or property, without due process of law[.]" US Const, Am

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<sup>3</sup> The judge's questions apparently arose from a concern regarding the investigation by MSP Trooper Eric Desch. Trooper Desch reported he collected the bathroom rugs where the sexual assaults occurred during a 1 a.m. meeting with Jane at a gas station. The trooper admitted during questioning that he never confirmed with the victim that these were the rugs from the subject bathroom. Trooper Desch also stated he never took pictures of the subject bathroom until several months after the victim first disclosed the abuse, nor did he attempt to interview defendant or Brouke.

XIV; see also Const 1963, art 1, § 17 (“No person shall . . . be deprived of life, liberty or property, without due process of law.”). A person is entitled to due process of law prior to being deprived of one’s liberty, which “in a criminal trial [includes]. . . a neutral and detached magistrate.” *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). “ ‘Due process requires that an unbiased and impartial decision-maker hear and decide a case.’ ” *TT v KL*, 334 Mich App 413, 431; 965 NW2d 101 (2020) (quotation marks and citation omitted). Consequently, a judge should act neither as an advocate nor an adversary in any criminal proceeding, as the hallmark of the judiciary is impartiality. See e.g., *Stevens*, 498 Mich at 178 (quotation marks and citation omitted) (“The right to an impartial judge is so fundamental that without this basic protection, a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair.”). A judge is presumed unbiased, and “[a] defendant claiming judicial bias must overcome a heavy presumption of judicial impartiality.” *People v Jackson*, 292 Mich App 583, 598; 808 NW2d 541 (2011).

We first turn to the two canons raised by the parties, Code of Judicial Conduct Canons 2 and 3(A)(4), and consider whether the communications violated either canon. Because a violation of the judicial canons alone cannot constitute a constitutional violation, if we conclude a violation of either canon occurred, we will then turn to whether defendant was prejudiced by those communications. See *People v Aceval*, 282 Mich App 379, 390; 764 NW2d 285 (2009), and *Estate of Trentadue ex rel Aguilar v United States*, 397 F3d 840, 865 (CA 10, 2005) (citing *Simer v Rios*, 661 F2d 655, 679 (CA 7, 1981)) (“not all ex parte proceedings violate due process or even raise a serious constitutional issue”), and *Alexander Shokai, Inc v Comm’r*, 34 F3d 1480, 1484-85 (CA 9, 1994) (no due process violation where ex parte communications did not unfairly prejudice party).

## 1. EX PARTE COMMUNICATIONS

Ex parte communications by judges are specifically addressed by the Code of Judicial Conduct, which states:

(4) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows:

(a) A judge may allow ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits, provided:

(i) the judge reasonably believes that no party or counsel for a party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties and counsel for parties of the substance of the ex parte communication and allows an opportunity to respond.<sup>[4]</sup> [Code of Judicial Conduct, Canon 3(A)(4) (footnote added).]

Here, it is undisputed that the trial judge initiated ex parte communications with the elected prosecutor during defendant’s trial. We conclude that the e-mail questions from the judge to the elected prosecutor were clearly ex parte because they did not include defense counsel (nor, for that matter, the trial prosecutor). However, under Canon 3(A)(4)(a), ex parte communications that relate to administrative matters are not prohibited. Here, we hold that the e-mails relate to administrative matters because neither related to nor bore on substantive matters in defendant’s trial. Rather, they involved matters of administrative process that did not concern defendant’s trial. This is clear from the context of the e-mails, as the judge sought clarification of the MSP’s *process* for investigating allegations of sexual assault—specifically, whether the MSP continued to utilize detectives for this type of investigation. The prosecutor’s response the following day reveals that she too considered the inquiry to be process orientated, as she explained that the MSP did not use detectives on these types of cases, and the trooper had received follow-up training. The same holds true for the second inquiry regarding the *process* of referring victims of sexual assault for medical examinations. Again, the prosecutor’s response explained both why no referral occurred for this victim, and the process put in place to ensure no missed referrals occur in the future. These communications did not relate to or bear on any substantive issue in defendant’s proceeding, but instead related to larger issues of process. Admittedly, the concerns were tangential to defendant’s trial because the general concerns arose during the MSP trooper’s testimony, yet the nature of the questions focused more globally on investigatory processes and not on issues specific to the trial itself. Therefore, the communications were not prohibited ex parte communications violative of Canon 3(A)(4).

This conclusion is consistent with decisions from our sister states that have concluded ex parte communications between a sitting judge and a prosecutor do not warrant a new trial so long as the communications focus on administrative or procedural (i.e., non-substantive) matters. For example, the North Carolina Supreme Court rejected a defendant’s argument that he was entitled to a new trial, in part, because the trial court judge impermissibly communicated with the prosecutor regarding the oath taken by jurors. *State v McNeill*, 349 NC 634, 642, 653; 509 SE2d 415 (1998). The court determined the defendant was not entitled to a new trial on this basis because the communication “relate[d] only to the administrative functioning of the judicial system.” *Id.* at 653. See also *Rodriguez v State*, 919 So 2d 1252, 1275 (Fla, 2005) (The Court held that ex parte communications regarding the subject of the defendant’s upcoming hearing did not violate the defendant’s due process rights because the communications were purely administrative in nature).

We recognize the danger that ex parte communications can have on a pending case, and/or on the integrity of the judiciary:

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<sup>4</sup> Likewise, the Michigan Rules of Professional Conduct restrict a lawyer’s ability to communicate with others, stating: “A lawyer shall not . . . (b) communicate ex parte with such a person concerning a pending matter, unless authorized to do so by law or court order.” MRPC 3.5.

Ex parte communications deprive the absent party of the right to respond and be heard. They suggest bias or partiality on the part of the judge. Ex parte conversations or correspondence can be misleading; the information given to the judge ‘may be incomplete or inaccurate, the problem can be incorrectly stated.’ At the very least, participation in ex parte communications will expose the judge to one-sided argumentation, which carries the attendant risk of an erroneous ruling on the law or facts. At worst, ex parte communication is an invitation to improper influence if not outright corruption. [*Grievance Adm’r v Lopatin*, 462 Mich 235, 262-263; 612 NW2d 120 (2000) (quoting *Shaman, Lubet & Alfini*, *Judicial Conduct and Ethics* (3d ed), § 501, pp 159–160).]

None of these concerns are present here. The communications did not relate to a substantive matter that was to be resolved in defendant’s trial, as the communications related exclusively to how investigations are conducted and when and how victims are referred for medical treatment. We likewise reject the notion that the communications can be read as an attempt by the trial judge to “tip-off” the prosecutor about deficiencies in the case, as the e-mails reflect three direct questions about processes, with the answers revealing that the prosecutor perceived the questions as solely relating to processes.<sup>5</sup> That these e-mails do not fit squarely into scheduling or other such administrative matters does not take these e-mails out of that category, as they did not relate to substantive matters in defendant’s trial.

Even though the ex parte communications were not related to the merits of defendant’s case, the trial judge was still required to comply with subsections (a)(i) and (ii) of Canon 3(A)(4). The record supports the inference that the trial judge did not consider the e-mails to be advantageous to either party, but the record also supports the conclusion that the trial court did not disclose the e-mails to the parties, as required by subsection (a)(ii). Thus, the trial judge did not comply with the disclosure requirements of Canon 3(A)(4)(a)(ii).

## 2. THE APPEARANCE OF IMPROPRIETY

This leaves us with the question of whether, as the trial court found, the trial judge’s communications created the appearance of impropriety. The Code of Judicial Conduct, Canon 2, provides that “[a] judge must avoid all impropriety and appearance of impropriety.” There can be no doubt that “there may be situations in which the appearance of impropriety on the part of a judge . . . is so strong as to rise to the level of a due process violation,” *Cain v Dep’t of Corrections*, 451 Mich 470, 512-513 n 48; 548 NW2d 210 (1996), and that a showing of actual bias is not necessary where “ ‘experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.’ ” *Crampton v Dep’t of State*, 395 Mich 347, 351; 235 NW2d 352 (1975), quoting *Withrow v Larkin*, 421 US 35, 47; 95 SCt 1456;

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<sup>5</sup> Had the trial judge asked these questions to the prosecutor in the hallway at the end of the first day of trial, rather than asking them in an e-mail from the bench, there would be little to discuss. After all, there is no prohibition in a judge asking questions to the elected prosecutor about processes used in criminal investigations, and the most common arena for questions like this to arise are from what occurs during trials.

43 L Ed2d 712 (1975). We hold that even if there was an appearance of impropriety in the e-mail exchange from the bench, defendant has not established prejudice.

We first question whether Canon 2 can even be considered, as the Supreme Court has repeatedly held that the “appearance of impropriety” standard does not govern when specific court rules or canons pertain to a subject. *In re Haley*, 476 Mich 180, 194-95; 720 NW2d 246 (2006) (“We decline to allow general allegations of impropriety that might overlap specifically authorized or prohibited behavior and conduct to supersede canons that specifically apply to the conduct in question.”). See also *Adair v State, Dept of Ed*, 474 Mich 1027, 1039, 1051, 1053; 709 NW2d 567 (2006) (“The ‘appearance of impropriety’ standard is relevant not where there are specific court rules or canons that pertain to a subject, such as judicial disqualification, but where there are no specific court rules or canons that pertain to a subject and that delineate what is permitted and prohibited judicial conduct.”). Under *In re Haley* and *Adair*, the “appearance of impropriety” standard does not govern because the specific prohibition in Canon 3(A)(4) controls. The challenged actions relate exclusively to the ex parte communications between the trial judge and elected prosecutor, and Canon 3(A)(4) specifically covers that topic. Nevertheless, we will resolve the issue because it was the sole basis for the trial court’s decision, and it is a large part of the dissent’s focus.

We accept for purposes of discussion that the trial judge’s e-mail communications created an appearance of impropriety, contrary to Canon 2, because the e-mail communications occurred during the trial and did not include defense counsel. As the trial court noted, members of the public may perceive some gamesmanship when a trial judge communicates with the head prosecutor while a criminal trial is underway, and the communications spawned from testimony in the trial. That perception is legally questionable, but is one that we accept for purposes of resolving this matter.

Even accepting that the trial judge’s communications created the appearance of impropriety, defendant was still not entitled to a new trial because the trial judge’s conduct did not “influence[] the jury” in any way. *Stevens*, 498 Mich at 171. A defendant must overcome a significant hurdle to show judicial bias when the alleged misconduct occurred outside the presence of a jury. *United States v Morrow*, 977 F2d 222, 225 (CA 6, 1992) (The Court found that the threat of prejudice is diminished when an otherwise inappropriate judicial act or remark is made outside of the jury’s presence); *United States v Smith*, 706 Fed Appx 241, 254 (CA 6, 2017).

Because the judge’s questions to the elected prosecutor did not relate to or bear on any substantive matter at trial, nor was the jury ever aware of the e-mails, we conclude the judge’s e-mail questions to the elected prosecutor did not influence the jury in any way. Moreover, defendant’s arguments in the motion for new trial, which were premised on conjecture that the prosecuting attorney received an unfair tactical advantage from these e-mails, provided no specific instance or actual evidence showing defendant was prejudiced by the judge’s conduct. While defendant argues that the prosecution received an unfair tactical advantage because the communications could have altered the prosecution’s theory of the case, that argument is difficult to accept because the prosecuting attorney raised the problems with the MSP investigation during opening statements, which occurred before the first e-mail was sent. So too did the trooper’s testimony concerning some of the problems with the investigation. The prosecution’s opening statement is consistent with its closing arguments, in which the prosecuting attorney again

acknowledged the inadequacies of the investigation. The record does not support even an inference that the e-mails provided any advantage or altered any tactics by the prosecution. It cannot be said that the communications evidenced anything more than inquiries regarding the investigation process, and there is nothing beyond rank speculation that the communications caused defendant any prejudice. Consequently, the trial judge's e-mail exchange with the elected prosecutor did not violate defendant's due process rights, and the trial court abused its discretion in granting the motion for new trial.

Our divergence with the dissent comes down to several disagreements. First, we simply do not read into these short e-mails an intent by the judge to assist the prosecution in presenting its case, and nor did the trial court. To read these e-mails in such a way is unreasonable given the actual words of the e-mails and the responses from the prosecutor, which reveal an understanding that the questions related to administrative processes in general, not about how the case itself was proceeding. Additionally, to read these e-mails in the way the dissent does gives no credence to the presumption of impartiality, as the dissent places the worst possible gloss into the meaning of the e-mails. Second, the dissent overlooks the fact that the trial prosecutor already raised the issue of the trooper's partially deficient investigation, as well as the trooper's testimony, both of which occurred before the first email was sent. Indeed, the dissent concedes that it is merely speculating about whether the trial prosecutor altered her strategy in light of the e-mails, yet the record unequivocally shows that this was not the case. Third, we see no possibility of prejudice to defendant when neither trial attorney nor the jury knew of the e-mails.

We cannot accept the legal conclusion that questions sent from a trial court to an elected prosecutor about how certain aspects of a criminal investigation are handled—questions that neither the trial attorney, defense attorney, nor jury were aware of—necessitate a new trial because the e-mails were sent during trial. We agree that the timing was poor, but other than the timing, nothing within the e-mails or what actually occurred at trial warrants the conclusion that a new trial was warranted.

Because judicial misconduct was not a proper basis on which to grant defendant a new trial, we must address defendant's remaining arguments that he was entitled to a new trial on the basis of ineffective assistance of counsel and prosecutorial misconduct.

## B. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues he was denied the effective assistance of counsel because his trial attorney failed to adequately investigate and challenge the case against him.

The question of whether a defendant is denied effective assistance of counsel is a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). Questions of fact are reviewed for clear error and questions of constitutional law are reviewed de novo. *Id.* To the extent we must engage in statutory interpretation, our review is de novo. *People v Cannon*, 206 Mich App 653, 654-655; 522 NW2d 716 (1994).

A fundamental rule of statutory interpretation is to determine the purpose and intent of the Legislature in enacting a provision. The Legislature is presumed to have intended the meaning it plainly expressed. Where the language of a statute

is clear, there is no need for interpretation and the statute must be applied as written. [*Id.* at 655 (citations omitted).]

Trial counsel is presumed effective and defendant must overcome a strong presumption that a trial counsel's performance was sound trial strategy. *Id.* at 278. To succeed on an ineffective assistance of counsel argument, a defendant must show (1) "that counsel's representation fell below an objective standard of reasonableness," and (2) "that he was prejudiced by counsel's performance." *People v Cooper*, 309 Mich App 74, 80; 867 NW2d 452 (2015) (quotation marks and citations omitted). This second prong requires defendant to show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* This Court will not "substitute [its] judgment for that of counsel on matters of trial strategy, nor will we use the benefit of hindsight when assessing counsel's competence." *People v Unger*, 278 Mich App 210, 242-243; 749 NW2d 272 (2008).

"Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim." *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). A trial counsel's failure to conduct a reasonable investigation may constitute ineffective assistance of counsel. *People v Trakhtenberg*, 493 Mich 38, 51-55; 826 NW2d 136 (2012). "Counsel always retains the duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* at 52 (quotation marks and citation omitted). "The failure to make an adequate investigation is ineffective assistance of counsel if it undermines confidence in the trial's outcome." *People v Grant*, 470 Mich 477, 493; 684 NW2d 686 (2004).

Defendant's motion for new trial argued there were two reasons he was denied effective assistance of counsel—first, because defense counsel failed to investigate the victim's assertions of fact regarding the color scheme of the bathroom where the sexual assaults occurred, and second, because counsel failed to investigate and present evidence of the victim's prior allegation of sexual assault by another individual. According to defendant, information about the victim's prior sexual assault allegation was essential to impeach the victim's credibility. We address each argument in turn.

## 1. COLOR SCHEME OF THE BATHROOM

Defendant's first argument arises from the victim's testimony regarding the color scheme of the bathroom where the sexual assaults took place. During trial, the victim testified defendant first sexually assaulted her on the evening of her father's wedding in December 2015. In describing the bathroom on that day, the victim said, "the walls were orange. And there was an orange shower curtain. And there was flowers, it was a flower[-]themed bathroom . . . . There was . . . an orange rug in front of . . . the toilet." As discussed, the sexual assaults resumed when the victim began her Friday night ritual of sleeping over at the Heppes' home, some months after the first sexual assault. By this time, the victim reported the bathroom décor had changed to "a peacock theme, it was . . . blue." The victim described the new bathroom rugs as "[l]ight blue . . . with . . . yarn on top."

Defense counsel made several challenges to the victim's description of the bathroom. For instance, on cross-examination, defense counsel asked the victim to confirm the bathroom rugs

given to Trooper Desch by Jane “were absolutely never in [the] bathroom.” Defense counsel also called witnesses whose descriptions of the bathroom differed from the victim’s. For example, Jane testified the décor was changed from orange-to blue-themed in “like 2012, 2013, somewhere in there,” before the December 2015 sexual assault. Brouke also testified the color scheme changed from orange to “teal-y blue” in about 2013.

According to defendant, his counsel should have more vigorously investigated the victim’s report that the bathroom was orange-themed in December 2015 when the first sexual assault took place. Specifically, defendant pointed out that Brouke had pictures on her laptop “complete with electronic date and time stamp” showing the bathroom was blue-themed in December 2015, and his counsel dismissed the importance of the photographs and refused to offer them into evidence. Counsel proceeded in this manner even though, defendant argues, the photographs were essential to his case because counsel could have impeached the victim’s testimony with these photographs, resulting in a “domino effect” to her credibility. The trial court disagreed with defendant’s position, noting there were a number of issues with these photographs, including admissibility and foundation.

We conclude that defense counsel’s actions neither fell below an objective standard of reasonableness, nor prejudiced defendant as a result of counsel’s actions. As noted, defense counsel recognized the discrepancies regarding the color scheme of the bathroom, as defense counsel not only challenged the victim regarding her description of the bathroom, but also called two witnesses who testified the bathroom redecoration predated the December 2015 sexual assault. Because defense counsel attempted to counter the victim’s description of the bathroom, defendant’s argument that defense counsel should have *also* sought to introduce photographic evidence of the bathroom décor, impermissibly asks us to apply the “benefit of hindsight” and second-guess trial strategy—something this Court will not do. *Unger*, 278 Mich App at 242-243.

In furtherance of this conclusion, we note that while defendant’s arguments focus heavily on the discrepancies in witness testimony, they do not account for the consistencies amongst the witnesses. While the victim testified that the *first* sexual assault took place when the bathroom was orange, she also testified many other assaults took place when the bathroom was blue. The victim’s description that the bathroom was eventually changed to “a peacock theme, it was blue,” is largely consistent with the testimony from Jane and Brouke, each of whom testified the bathroom had a blue, peacock theme. Though there were discrepancies in the testimony, counsel was not ineffective because he in fact highlighted the discrepancies. “[I]t is the role of the jury, not this Court, to determine the weight of the evidence or the credibility of witnesses.” *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012). On this record, it appears the jury either concluded that the discrepancies about the bathroom décor did not exist or did not detract from the other evidence indicating defendant’s guilt. Therefore, the trial court correctly rejected this argument.

## 2. PRIOR SEXUAL ASSAULT ALLEGATIONS

We next address defendant’s argument that he was denied effective assistance of counsel because of defense counsel’s failure to investigate and enter into evidence a prior allegation by the victim of a sexual assault by another individual. According to defendant, evidence of this prior allegation was critical because it showed the victim was not a virgin before the alleged sexual

assaults and because it was evidence the victim suffered from anxiety and depression before the alleged assaults by defendant. By failing to admit this evidence, defendant argues, his counsel was unable to effectively impeach several prosecution witnesses. The trial court disagreed, concluding that the evidence was inadmissible because “[defense counsel] might have thought that it might have been detrimental to the . . . interests of the defendant.”

Defendant’s argument on this point holds no merit. Michigan’s rape-shield law states:

(1) Evidence of specific instances of the victim’s sexual conduct, opinion evidence of the victim’s sexual conduct, and reputation evidence of the victim’s sexual conduct shall not be admitted under sections 520b to 520g unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) Evidence of the victim’s past sexual conduct with the actor.

(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease. [MCL 750.520j.]

The evidence at issue—the victim’s allegation of sexual assault by another individual—does not fall under either of the statutory exceptions to the statute. By the statute’s plain language, evidence of the victim’s prior allegations of sexual assault was inadmissible at trial. “Ineffective assistance of counsel cannot be predicated on the failure to make a frivolous or meritless motion.” *People v Riley*, 468 Mich 135, 142; 659 NW2d 611 (2003). Consequently, defense counsel was not ineffective for failing to offer into evidence the victim’s prior allegation of sexual assault.

### C. PROSECUTORIAL MISCONDUCT

Defendant also argues the prosecutor committed misconduct<sup>6</sup> when the prosecutor elicited “false and misleading” testimony from witnesses. “We review de novo claims of prosecutorial misconduct to determine whether [a] defendant was denied a fair and impartial trial.” *People v Cox*, 268 Mich App 440, 450-451; 709 NW2d 152 (2005).

When reviewing a claim of prosecutorial misconduct, we examine the pertinent portion of the record and evaluate a prosecutor’s remarks in context. Further, the propriety of a prosecutor’s remarks depends on the particular facts of

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<sup>6</sup> While “we recognize that the phrase ‘prosecutorial misconduct’ has become a term of art in criminal appeals, we agree that the term ‘misconduct’ is more appropriately applied to those extreme—and thankfully rare—instances where a prosecutor’s conduct violates the rules of professional conduct or constitutes illegal conduct.” *Cooper*, 309 Mich App at 87-88. The arguments here, which allege that the prosecutor garnered false testimony, would under *Cooper* be an argument for a finding of prosecutorial misconduct (as opposed to error) for if true, the prosecutor would be acting contrary to ethical rules. See Michigan Rules of Professional Conduct, Rule 3.3(a)(3).

each case. Prosecutors are free to argue the evidence and any reasonable inferences arising from the evidence, and need not confine argument to the blandest of all possible terms. [*Id.* at 451 (quotation marks and citations omitted).]

“It is well settled that a conviction obtained through the knowing use of perjured testimony offends a defendant’s due process protections guaranteed under the Fourteenth Amendment.” *Aceval*, 282 Mich App at 389. The focus of this inquiry looks to whether the testimony affected the outcome of the trial, and not to the “blameworthiness of the prosecutor.” *Id.* at 390.

Defendant’s arguments are premised on the same set of facts as his second argument alleging ineffective assistance of counsel. That is, defendant contends (1) the prosecutor knew about the prior allegations of sexual assault by the victim and proceeded to garner false testimony that the victim was a virgin at the time of the first sexual assault, and (2) the prosecutor sought false testimony that the victim suffered mental health conditions resulting from the sexual assaults by defendant. According to defendant, the victim’s mental health conditions arose after the other sexual assault and not from any sexual assault by defendant. We reject these arguments.

First, defendant erroneously alleges prosecutorial misconduct because the prosecutor told the jury the victim lost her virginity on the night of the first sexual assault. This is a meritless argument because the victim’s virginity is not a critical element of the charged offenses.<sup>7</sup> Accordingly, it does not matter whether jury members believed whether the victim was a virgin

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<sup>7</sup> Again, defendant was convicted of one count of CSC-I, MCL 750.520b(1)(f), which states, “an actor may be found guilty under MCL 750.520b(1)(f) if the actor (1) causes personal injury to the victim, (2) engages in sexual penetration with the victim, and (3) uses force or coercion to accomplish the sexual penetration.” *People v Nickens*, 470 Mich 622, 629; 685 NW2d 657 (2004). Defendant was also convicted of one count of CSC-II under MCL 750.520c(1)(f), which provides:

(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

\* \* \*

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v). [*People v Alter*, 255 Mich App 194, 202; 659 NW2d 667 (2003), citing MCL 750.520c(1)(f).]

Defendant also received two convictions of CSC-III under MCL 750.520d(1)(a) and (b). Under MCL 750.520d(1)(a), “[a] person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist: (a) That other person is at least 13 years of age and under 16 years of age.” *In re Tiemann*, 297 Mich App 250, 262; 823 NW2d 440 (2012) (emphasis omitted). “The required elements [of MCL 750.520d(1)(b)] are: (1) defendant engaged in sexual penetration with the victim, and (2) force or coercion is used to accomplish the sexual penetration.” *Eisen*, 296 Mich App at 333.

because that question was not outcome determinative. See *Aceval*, 282 Mich App at 389. Further, there was no testimony or evidence presented that the victim was a virgin before the alleged assault. Indeed, the only time the jury heard a report that the victim was a virgin was during the prosecution's opening and closing arguments, but, as stated, the trial court instructed the jury that the lawyers' statements and arguments are not evidence. Again, juries are presumed to follow instructions, and we discern no error on this basis. *Graves*, 458 Mich at 486.

We also reject defendant's argument that the prosecutor committed misconduct by eliciting perjured testimony about the victim's mental health. Specifically, defendant alleges the prosecutor sought false testimony from several witnesses who testified the victim suffered from mental health conditions for a period of time after the sexual assaults by defendant ended. Perjury has been defined as "a willfully false statement regarding any matter or thing, if an oath is authorized or required." *People v Lively*, 470 Mich 248, 253; 680 NW2d 878 (2004). As noted, a prosecutor's "knowing use of perjured testimony offends a defendant's due process protections guaranteed under the Fourteenth Amendment." *Aceval*, 282 Mich App at 389. Thus, to prove prosecutorial misconduct on the basis of perjury, a defendant must show two things—first that a witness knowingly made a false statement, and second, that the prosecutor knowingly elicited the false statement. Defendant's argument fails on each of these requirements. Indeed, defendant makes no assertion the witnesses themselves made "willfully false statement[s]" to the trial court. *Lively*, 470 Mich at 253. Moreover, defendant does not present any evidence the prosecutor knowingly sought false testimony. *Aceval*, 282 Mich App at 389. While defendant surmises "the prosecutor's office possessed information . . . that directly contradicted the testimony of its most important witness," defendant presents no evidence to this effect. There is simply nothing on this record from which we could conclude the prosecutor suborned perjury amounting to prosecutorial misconduct. Thus, we reject defendant's argument on this basis.

### III. CONCLUSION

The trial court's order granting defendant a new trial is reversed.

/s/ Christopher M. Murray  
/s/ Jane E. Markey

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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee/Cross-Appellant,

v

DANIEL ALBERT LOEW,

Defendant-Appellant/Cross-Appellee.

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FOR PUBLICATION  
January 13, 2022

No. 352056  
Allegan Circuit Court  
LC No. 18-021709-FC

Before: MURRAY, C.J., and MARKEY and RIORDAN, JJ.

RIORDAN, J. (*dissenting*).

I respectfully dissent.

“A fair trial in a fair tribunal is a basic requirement of due process.” *In re Murchison*, 349 US 133, 136; 75 S Ct 623; 99 L Ed 942 (1955). Thus, “the Due Process Clause clearly requires . . . a judge with no actual bias against the defendant or interest in the outcome of his particular case.” *Bracy v Gramley*, 520 US 899, 904-905; 117 S Ct 1793; 138 L Ed 2d 97 (1997). The Due Process Clause is therefore violated when the judge is actually biased against the defendant. See *id.* The Due Process Clause is also violated when “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” *Caperton v AT Massey Coal Co, Inc.*, 556 US 868, 872; 129 S Ct 2252; 173 L Ed 2d 1208 (2009) (quotation marks and citation omitted).

Relatedly, MCR 2.003(C)(1) provides, in relevant part, as follows:

Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:

(a) The judge is biased or prejudiced for or against a party or attorney.

(b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, [556 US 868]; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or

(ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

Additionally, Canon 2 of the Michigan Code of Judicial Conduct provides, in relevant part, that “[a] judge must avoid all impropriety and appearance of impropriety.”

An appearance of impropriety by a presiding trial judge, i.e., a violation of Canon 2, does not necessarily result in a violation of due process. See *Cain v Dep’t of Corrections*, 451 Mich 470, 512 n 48; 548 NW2d 210 (1996) (“We acknowledge there may be situations in which the appearance of impropriety on the part of a judge or decisionmaker is so strong as to rise to the level of a due process violation. However, this case does not present such a situation.”).<sup>1</sup> Consequently, while a defendant is automatically entitled to relief regardless of prejudice when the judge was actually biased, see *Arizona v Fulminante*, 499 US 279, 309; 111 S Ct 1246; 113 L Ed 2d 302 (1991), or when the circumstances suggested “the probability of actual bias [rising] to an unconstitutional level,” see *Caperton*, 556 US at 887, a defendant is not automatically entitled to relief for the mere appearance of impropriety, see *Cain*, 451 Mich at 512 n 48. See also *In re Bergeron*, 636 F3d 882, 883 (CA 7, 2011) (“Actual bias would entitle the losing party to a new trial, but the mere appearance of bias would not . . .”).<sup>2</sup>

In this case, the trial court apparently granted defendant a new trial on the basis that the original trial judge violated the Canon 2 prohibition against an appearance of impropriety.<sup>3</sup> I agree with the trial court that the original trial judge’s e-mail communications created an appearance of impropriety. “An appearance of impropriety may arise when the conduct of a judge would create in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.” *TT v KL*, 334 Mich App 413, 433; 965 NW2d 101 (2020) (quotation marks and citation omitted). The e-mail communications occurred between the trial judge and the county prosecutor (the official in charge of the prosecutor’s office), after the second witness in the trial testified, and were critical of certain weaknesses in the investigation

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<sup>1</sup> Of course, those trial judges having an appearance of impropriety are required to disqualify themselves before or during trial. See MCR 2.003(C)(1)(b). But that is a separate question from whether a defendant is entitled to relief following a conviction before a trial judge with an appearance of impropriety, which is the issue before us now.

<sup>2</sup> In *People v Stevens*, 498 Mich 162; 869 NW2d 233 (2015), our Supreme Court created an intermediate principle under which the appearance of bias *before the jury* is tantamount to an “actual bias” structural error under cases such as *Fulminante*. See *Stevens*, 498 Mich at 190. *Stevens* does not govern here because the e-mail communications were not presented to the jury.

<sup>3</sup> In its opinion from the bench, the trial court did not make a finding regarding bias—and in fact implied that the original trial judge was not consciously biased—but stated that it would grant a new trial “pursuant to this appearance -- the breach [sic] of the appearance.” Given that the trial court moments before referenced “the judicial canon of ethics” prohibiting “even the appearance of impropriety,” the most reasonable conclusion is that the trial court ordered a new trial because the original trial judge violated the Canon 2 prohibition against an appearance of impropriety.

that could conceivably lead to an acquittal.<sup>4</sup> While the prosecutor may argue that this was not the trial judge's intent, a reasonable mind, upon reviewing the e-mails, may conclude that the trial judge was partial in favor of the prosecution, did not want to see weaknesses in its case exploited, and was actively attempting to assist the prosecution's case. Moreover, because the e-mail communications occurred during the trial, a reasonable mind could conclude that the trial judge would not, and could not, otherwise set aside her partiality until the proceedings were concluded. Thus, these facts show that the e-mail communications created an appearance of impropriety by the trial judge, contrary to Canon 2.

Having concluded that the trial judge violated the Canon 2 prohibition against an appearance of impropriety, and by logical extension violated MCR 2.003(C)(1)(b) because she failed to disqualify herself for that reason, the next question is whether defendant is entitled to a new trial on this basis. In this regard, I am guided by the decision of the United States Supreme Court in *Liljeberg v Health Servs Acquisition Corp*, 486 US 847; 108 S Ct 2194; 100 L Ed 2d 855 (1988). In that case, a trial judge presided over a matter in which it was subsequently discovered that he possessed an indirect property interest in the outcome. *Id.* at 850. The issue before the Court was whether the trial judge violated 28 USC 455(a), which provides that “[a]ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned,” and if so, whether the original judgment must be vacated.<sup>5</sup> *Id.* The Court first concluded that the trial judge did violate 28 USC 455(a), *id.* at 861, and then explained that the decision whether to vacate the original judgment should be determined by application of the following test:

We conclude that in determining whether a judgment should be vacated for a violation of § 455(a), it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other

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<sup>4</sup> I acknowledge that the recipient of the e-mails was the county prosecutor, not the assistant prosecutor who was actually trying the case. However, I find this distinction to be largely irrelevant because “assistant prosecutors act on behalf of the elected county prosecutor and are supervised by him [or her].” *People v Doyle*, 159 Mich App 632, 644; 406 NW2d 893 (1987). See also MCL 49.42 (“Any such assistant prosecuting attorney shall hold his office during the pleasure of the prosecuting attorney appointing him, perform any and all duties pertaining to the office of prosecuting attorney at such time or times as he may be required so to do by the prosecuting attorney . . .”). Indeed, the county prosecutor signed her name to the felony information against defendant. Further, the elected county prosecutor is listed as the prosecuting attorney of record on the Register of Actions in this matter.

<sup>5</sup> Although 28 USC 455(a) does not expressly use the language “appearance of impropriety,” the Court implied that the statute is essentially an “appearance of impropriety” statute. See *id.* at 858 (“We must first determine whether § 455(a) can be violated based on an appearance of partiality, even though the judge was not conscious of the circumstances creating *the appearance of impropriety* . . .”) (emphasis added).

cases, and the risk of undermining the public's confidence in the judicial process. [*Id.* at 864.]<sup>6</sup>

Particularly relevant to the case at hand, in *United States v Orr*, 969 F3d 732 (CA 7, 2020), the defendant argued that he was “entitled to a new trial because the trial judge’s ex parte communications with the prosecuting U.S. Attorney’s Office violated 28 U.S.C. § 455(a), the judicial recusal statute.” *Id.* at 738. In response, the prosecution conceded that the trial judge violated 28 USC 455(a) but nonetheless argued that any error was harmless. *Id.* The United States Court of Appeals for the Seventh Circuit set forth the following principles governing the case:

Not every violation of § 455(a) warrants a drastic remedy, like a new trial. Mere appearance of impropriety is not enough for reversal and remand—a party must show a risk of harm. To determine whether Judge Bruce’s violation is harmless, we consider the three factors announced in [*Liljeberg*]: (1) the risk of injustice to the parties in the particular case, (2) the risk that the denial of relief will produce injustice in other cases, and (3) the risk of undermining the public’s confidence in the judicial process. [*Id.* (quotation marks and citations omitted).]<sup>7</sup>

This Court may use federal caselaw interpreting federal statutes as persuasive authority when interpreting state-law analogues. See *Garg v Macomb Co Comm’y Mental Health Servs*, 472 Mich 263, 283; 696 NW2d 646 (2005). Because 28 USC 455(a) is a federal analog to MCR 2.003(C)(1)(b), and because Michigan apparently does not have any state caselaw bearing on the issue at hand, I believe that the *Liljeberg* framework is appropriate to apply here.

With regard to the first *Liljeberg* factor, there is some risk of injustice to defendant if a new trial is not ordered. The trial judge’s improper communications with the county prosecutor concerned the procedures used by law enforcement, in particular the Michigan State Police, for investigating allegations of sexual assault. The communications also were relevant to the credibility of the officer who investigated the allegations at issue. In particular, after the second prosecution witness testified, the trial judge questioned why the victim was not medically examined and expressed her displeasure at certain stages of the State Police investigation. Conceivably, this may have led to the trial prosecutor addressing these weaknesses later in trial or during closing argument when she would not otherwise have done so. These facts tend to show injustice to defendant if a new trial is not ordered. On the other hand, I acknowledge that there is some prejudice to the prosecution if a new trial is ordered, namely, the fact that the victim and other witnesses would be required to testify again and the fact that prosecution would have to

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<sup>6</sup> The Court ultimately concluded that the original judgment should be vacated and a new trial conducted. *Id.* at 862, 869.

<sup>7</sup> The court ultimately concluded that the first and third *Liljeberg* factors weighed in favor of a new trial and thus vacated the defendant’s conviction. *Id.* at 742. See also *United States v Williams*, 949 F3d 1056, 1058 (CA 7, 2020) (conducting a similar *Liljeberg* analysis when the defendant argued that he was entitled to a new trial because the trial judge “had engaged in ex parte communications with members of the United States Attorney’s Office for the Central District of Illinois”).

undergo the expenses of a presumably multiday trial. On balance, I believe that the first *Liljeberg* factor is neutral.

With regard to the second *Liljeberg* factor, a denial of relief to defendant would tend to produce injustice in future cases. If defendant does not obtain a new trial in this case, other trial judges in future cases would not be deterred from engaging in ex parte communications with the prosecution during trial concerning the strengths and witnesses of the prosecution's case. The general prohibition against ex parte communications is intended to discourage such favoritism. See *Grievance Adm'r v Lopatin*, 462 Mich 235, 262; 612 NW2d 120 (2000) (“Ex parte communications deprive the absent party of the right to respond and be heard. They suggest bias or partiality on the part of the judge.”) (citation omitted). In other words, awarding defendant relief may prevent injustice in future cases. See *United States v Atwood*, 941 F3d 883, 885 (CA 7, 2019) (“As in *Liljeberg*, we think that enforcing § 455(a) in this case may prevent a substantive injustice in some future case—here, by encouraging judges to exercise caution in their communications.”) (quotation marks and citation omitted).

With regard to the third *Liljeberg* factor, there is a risk that the public's confidence in the judicial process will be undermined if defendant does not obtain relief. Although there is no question that judges may have personal relationships with some of the attorneys who appear before them, and may have judicial or legal interpretative philosophies which make certain outcomes seem more or less likely to those appearing before them, a trial judge unilaterally identifying the strengths and weaknesses of a case to one party, but not the other, creates a perception that the judge is not neutral and impartial. By awarding defendant relief in this case, the judiciary communicates to the public that such conduct by a judge is not acceptable. As the trial court explained when awarding defendant a new trial in the matter before us:

[I]t's a matter of the public perception of the ethical obligations entailed with the judicial office and I worry that as unintentional as this may be, it could do damage to that. And I think it's incumbent on us to really err on the side of making sure that all people understand themselves to be given that opportunity to a full and fair hearing before an impartial judiciary. . . .

Accordingly, because the second and third *Liljeberg* factors weigh in favor of awarding defendant relief, I would affirm the trial court's grant of a new trial on the basis that the trial judge had an appearance of impropriety, in violation of Canon 2 and MCR 2.003(C)(1)(b), and that the error was not harmless.<sup>8</sup>

The parties and the majority place significant emphasis upon Canon 3 of the Code of Judicial Conduct, which generally prohibits ex parte communications that concern “substantive matters” but does not prohibit ex parte communications with “administrative purposes.” I question

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<sup>8</sup> I acknowledge that defendant did not argue in the trial court, and does not argue on appeal, that he is entitled to relief under MCR 2.003(C)(1)(b). However, given that the trial court awarded him a new trial because the trial judge violated the Canon 2 prohibition against an appearance of impropriety, I believe that consideration of the court-rule analogue is appropriate and necessary for resolution of this appeal.

whether the majority is correct to conclude that the e-mail communications were “administrative” in nature because they addressed the internal investigatory procedures of the Michigan State Police. In my view, an ordinary understanding of the word “administrative” in this context contemplates simple procedural matters concerning the judicial process itself, such as the orderly handling of motions. See, e.g., *Adesanya v Novartis Pharmaceuticals Corp*, 755 Fed App’x 154, 158 (CA 3, 2018) (explaining that ex parte communications did not violate Code of Conduct for US Judges Canon 3 because “[t]he Magistrate Judge and Appellee’s counsel were simply seeking a way to manage the numerous pro se discovery requests Appellants had filed”); *Gerber v Veltri*, 702 Fed App’x 423, 432-433 (CA 6, 2017) (explaining that ex parte communications did not violate Code of Conduct for US Judges Canon 3 because “[t]heir discussion concerned when, and how, the court should reschedule the appearance of witnesses slated to testify that day, particularly defendant’s expert Dr. Anderson”). The trial judge’s commentary to the county prosecutor regarding the internal investigatory procedures of the State Police, a law enforcement agency independent of the judicial branch of government, addressed the substance of the trial itself as the comments directly implicated the plausibility of the victim’s allegations. In other words, the weaknesses of the investigation might tend to weigh against a guilty verdict. This, I believe, means that the e-mail communications involved “substantive matters” and were therefore prohibited by Canon 3.

In any event, I find the discussion of Canon 3 to be largely irrelevant to the case at hand. Contrary to the majority, I do not read *People v Aceval*, 282 Mich App 379; 764 NW2d 285 (2009), as standing for the proposition that a defendant may be entitled to relief if he or she shows any violation of the Code of Judicial Conduct and prejudice therefrom. Rather, *Aceval* stated that “[a]ssuming that the acts of the trial judge and the prosecutor in this case violated Michigan’s Rules of Professional Conduct, MRPC 3.4, and Code of Judicial Conduct, Canon 3, and were clearly opprobrious, the remedy for their wrongs is accomplished in other forums, such as the Attorney Discipline Board and the Judicial Tenure Commission.” *Id.* at 392. “These codes . . . do not confer upon a defendant any type of constitutional right or remedy.” *Id.* In other words, while a violation of the Code of Judicial Conduct might tend to show a violation of due process, a defendant cannot be entitled to relief solely for a violation of the Code of Judicial Conduct. Compare *Treadaway v State*, 308 Ga 882, 888-889; 843 SE2d 784 (2020) (explaining that even if the trial judge violated the Code of Judicial Conduct by an ex parte contact, the defendant was still not entitled to relief because he did not show that the process was “fundamentally unfair”). That is, a defendant cannot maintain a freestanding claim that the trial judge violated the Code of Judicial Conduct but instead must show that a substantive law was violated as well.<sup>9</sup> Here,

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<sup>9</sup> The majority reasons that defendant cannot show prejudice for the alleged violation of Canon 3 because the trial prosecutor’s opening statement acknowledged deficiencies in the police investigation, thus showing that the trial judge did not signal anything new to the prosecutor’s office through the e-mails. I agree with the majority that the trial prosecutor noted the lack of DNA evidence and the questionable handling of the bathroom rugs by the detective in her opening statement. However, the majority’s focus on this type of “prejudice” misses the mark. As explained herein, the proper “prejudice” analysis includes the prejudice not only to defendant, but other parties in future cases and the judiciary as a whole. See *Orr*, 969 F3d at 738 (“To determine

defendant's entitlement to relief does not specifically arise under the Code of Judicial Conduct, but under MCR 2.003(C)(1)(b).<sup>10</sup>

Accordingly, I respectfully dissent and would affirm the trial court's grant of a new trial.<sup>11</sup>

/s/ Michael J. Riordan

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whether Judge Bruce's violation is harmless, we consider the three factors announced in [*Liljeberg*] . . . .").

<sup>10</sup> The majority questions whether the general Canon 2 "appearance of impropriety" standard is even relevant here because the Canon 3 prohibition against certain ex parte communications is more specific to the case at hand. I respectfully disagree. While it is certainly true that, for example, a judge who violates the Canon 3 prohibition against certain ex parte communications may only be sanctioned for a violation of Canon 3 and not Canon 2 as well, see *In re Haley*, 476 Mich 180, 194-195; 720 NW2d 246 (2006), that is not the question before us. Rather, the question before us is whether the trial judge violated MCR 2.003(C)(1)(b), and if so, whether defendant is entitled to relief. Indeed, Canon 3 provides that "[a] judge should raise the issue of disqualification whenever the judge has cause to believe that grounds for disqualification may exist under MCR 2.003(C)."

In other words, if the general Canon 2 "appearance of impropriety" standard is not relevant here, then even a judge who violates the Canon 3 prohibition against certain ex parte communications would not be required to recuse himself or herself unless that violation rises to the level of a due-process violation as otherwise outlined in MCR 2.003(C)(1)(a)-(b).

<sup>11</sup> Having concluded that defendant is entitled to a new trial because of the appearance of impropriety by the trial judge, I need not address his alternate arguments in favor of a new trial.

October 5, 2022

164133

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 164133  
COA: 352056  
Allegan CC: 18-021709-FC

DANIEL ALBERT LOEW,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the January 13, 2022 judgment of the Court of Appeals is considered, and it is GRANTED, limited to the issues of judicial misconduct alleged in Issue II of the defendant's application for leave to appeal. The parties shall include among the issues to be briefed: (1) whether the Court of Appeals correctly concluded that the *ex parte* communications in this case did not violate Canon 3(A)(4)(a)(i) of the Code of Judicial Conduct because they were merely administrative in nature; (2) whether a trial court may properly grant a new trial in a criminal case based on an appearance of impropriety where Canon 3(A)(4) governs the conduct at issue, see *In re Haley*, 476 Mich 180, 194-195 (2006); (3) if the *ex parte* communications here give rise to legal error for either a violation of Canon 3(A)(4)(a) or an appearance of impropriety, whether the standard for ascertaining reversible prejudice requires a showing of actual harm to the defense, or is instead determined by weighing other factors as well, see, e.g., *Liljeberg v Health Servs Acquisition Corp*, 486 US 847 (1988); and (4) whether the defendant is entitled to a new trial under MCR 2.003 or constitutional guarantees of due process of law. The time allowed for oral argument shall be 20 minutes for each side. MCR 7.314(B)(1).

Amici who appeared at the application stage are invited to file supplemental briefs amicus curiae. The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.