

Jose Lopez Garcia
 Name #58710
 Prison Number
N.N.C.C
 Place of Confinement

FILED _____
 ENTERED _____
 RECEIVED ✓
 SERVED ON _____
 COUNSEL/PARTIES OF RECORD

MAR 11 2010

CLERK US DISTRICT COURT
 DISTRICT OF NEVADA

BY: [Signature] DEPUTY

No Copy

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

Jose Lopez Garcia, Petitioner,)
 (Full Name))
 vs.)
The State of Nevada, Respondent,)
 (Name of Warden, Superintendent, jailor or)
 authorized person having custody of petitioner))
 and)
The Attorney General of the State of Nevada)

CASE NO. 3:10-CV-00140
 (T)

PETITION FOR A
 WRIT OF HABEAS CORPUS
 PURSUANT TO 28 U.S.C. § 2254
 BY A PERSON IN STATE CUSTODY
 (NOT SENTENCED TO DEATH)

- Name and location of court, and name of judge, that entered the judgment of conviction you are challenging: Eighth Judicial District Court, Clark County, Lee A. Gates
- Full date judgment of conviction was entered: 8 15 198. (month/day/year)
- Did you appeal the conviction? Yes ___ No. Date appeal decided: Unknown
- Did you file a petition for post-conviction relief or petition for habeas corpus in the state court? Yes ___ No. If yes, name the court and date the petition was filed: 8th Judicial District Court 10 14 108. Did you appeal from the denial of the petition for post-conviction relief or petition for writ of habeas corpus? Yes ___ No. Date the appeal was decided: 2 14 110. Have all of the grounds stated in this petition been presented to the state supreme court? Yes ___ No. If no, which grounds have not? _____
- Date you are mailing (or handing to correctional officer) this petition to this court: 3 19 110

Attach to this petition a copy of all state court written decisions regarding this conviction. See 8th Judicial's order findings Ex. 1, Nevada Supreme Court's order Ex. 2, and remittitur Ex. 3, attached hereto.

6. Is this the first federal petition for writ of habeas corpus challenging this conviction? Yes
 No. If no, what was the prior case number? _____ And in what court was
the prior action filed? _____

Was the prior action denied on the merits or dismissed for procedural reasons (check
one). Date of decision: ____/____/____. Are any of the issues in this petition raised in the
prior petition? Yes No. If the prior case was denied on the merits, has the Ninth
Circuit Court of Appeals given you permission to file this successive petition? Yes No.

7. Do you have any petition, application, motion or appeal (or by any other means) now pending in
any court regarding the conviction that you are challenging in this action? Yes No.
If yes, state the name of the court and the nature of the proceedings: _____

8. Case number of the judgment of conviction being challenged: C142741

9. Length and terms of sentence(s): 2 (20) years, 2 (48) months, and 1 (1) year.

10. Start date and projected release date: Unknown

11. What was (were) the offense(s) for which you were convicted: (2) counts of sexual
Assault, (2) counts of Lewdness, and (1) count of Child Abuse.

12. What was your plea? Guilty Not Guilty Nolo Contendere. If you pleaded guilty
or nolo contendere pursuant to a plea bargain, state the terms and conditions of the agreement:
Not applicable

13. Who was the attorney that represented you in the proceedings in state court? Identify whether
the attorney was appointed, retained, or whether you represented yourself *pro se* (without counsel).

	Name of Attorney	Appointed	Retained	<i>Pro se</i>
arraignment and plea	<u>Linda Bell, Public Defender</u>	<u>XX</u>	_____	_____
trial/guilty plea	<u>Linda Bell and Jose Pallares</u>	<u>XX</u>	_____	_____
sentencing	<u>Linda Bell and Jose Pallares</u>	<u>XX</u>	_____	_____
direct appeal	<u>Jose C. Pallares</u>	<u>XX</u>	_____	_____
1st post-conviction petition	<u>Pro se</u>	_____	_____	<u>XX</u>
appeal from post conviction	<u>Pro se</u>	_____	_____	<u>XX</u>
2nd post-conviction petition	<u>Not applicable</u>	_____	_____	_____
appeal from 2nd post-conviction	<u>-11-</u>	_____	_____	_____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Amendment right to

based on these facts:

PETITIONER IS INNOCENT OF SEXUAL ASSAULT, LEWDNESS, CHILD ABUSE AND NEGLECT CONVICTIONS RESULTING IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE IN VIOLATION OF THE 5th, 8th AND 14th AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

In 1995, Petitioner moved to an apartment at the address of 2725 Ellis Street, North Las Vegas, Nevada, where Maria Ingram and her children were living. Petitioner met Maria just outside of that apartment. Maria and Petitioner's roommate, Enuncio Gamos, wife, Campos, were friends and Maria came to visit with them in Petitioner's apartment daily. Petitioner's children and Maria's children played together and thereafter Maria and Petitioner became good friends. One morning in 1996, Maria came to Petitioner and initiated sexual intercourse with him. From that encounter Petitioner realized they were not compatible. Petitioner refused to have any further sexual relations with her and told her it was only a one time thing. Since Petitioner refused to have.

(see continuation pp. 3A-3D)

Exhaustion of state court remedies regarding Ground 1:

yes.

a sexual relationship with her, she asked him to marry her many times. She continually stalked him every-time he went outside of the apartment. She even went on to tell Petitioner's girl friend Germina Castrone that Jose Garcia is no longer with her. Petitioner asserts that his convictions were predicated upon Maria's jealousy. The accusations were intended to destroy Petitioner's relationship with his girl friends hoping that she would be able to convince him to have a relationship with her if his girl friends ended her relationship with Petitioner. See state petition marked as Ex. 4, pp. 5-10, attached hereto.

Maria testified that she learned "Mario" had exposed himself to a little boy who lived in that apartment. See Ex. 5, Trial Transcript Volume II. (T.T. Vol. II), pp. 51-53, attached hereto. Maria testified that her daughter, Crystal Ingram, told her that in fact the man named "Mario" had laid on top of her when Mario and Crystal Ingram were watching TV. See Ex. 5, T.T. Vol. II, p. 54. Maria testified that at the time Crystal told her of the sexual assault Maria explained to her daughter that "Mario" had left Las Vegas and that he cannot do anything to hurt her any more. See T.T. Vol. II, p. 54, Ex. 5. Maria testified that she did not know when the sexual assault occurred to her daughter. See Ex. 5, T.T. Vol. II, p. 60. Maria testified that she allowed her child, i.e., oldest daughter "Carla," to be married at the age of fourteen (14) years and she had a baby while she was 15-16 years old. See Ex. 5, T.T. Vol. II, p. 68. Maria testified that during the relationship with Petitioner, he gave and loaned money to her for food for her children and she was romantically invol-

ved with the Petitioner at one time. See Ex. 5, T.T. Vol. II, pp. 69-70. Maria further testified that she learned, after being romantically involved with Petitioner, that he had a couple of girl friends and made a mistake having a relationship with him and it should never have happened. See Ex. 5, T.T. Vol. II, p. 70.

Crystal Ingram testified that after the sexual assault sperm came from the genitalia and went on to her clothing. See Ex. 6, T.T. Vol. II, p. 154. She further testified that "Mario" made her lay on top of him. See Ex. 6, T.T. Vol. II, p. 161. She claimed throughout the trial proceedings, which was contrary to the allegations, that Petitioner told Crystal not to tell her mother, he used his hands to cover her mouth and she was unable to scream, she also testified she was on her knees with no mouth covering and not screaming or yelling. She testified contrary to the accusations she made against him during the entire trial. See Ex. 6, T.T. Vol. II, pp. 160-191.

Petitioner testified that in 1996, he brought women to his apartment and Maria Ingram became jealous and started pressuring him as to why he did not want a relationship with her and marry her. See Ex. 7, T.T. Vol. III, p. 41. He testified throughout the trial proceeding maintaining that he never touched any of Crystal Ingram's genital areas, body nor having sexual intercourse of any kind or ever exposing his genitalia to Crystal Ingram. See Ex. 7, T.T. Vol. III, pp. 46-70. Petitioner further testified that "Mario" lived with his roommate, Gamos, in Petitioner's apartment for approximately three (3) months. This was during the time Crystal claimed she was sexually

assaulted. See Ex. 7, T.T. Vol. III, pp. 62-63. He testified that he loaned money to Maria for food for her children everytime she needed and additionally he bought meals for Maria's children and his children. See Ex. 7, T.T. Vol. III, p. 40.

Petitioner declares that Maria Ingram's jealousy over the relationships he had with his girl friends was her motive for having Crystal Ingram and her brother Roberto Garcia go to Petitioner's apartment and stay only one night with his children in order to give substance to the accusations of sexual assault. Maria intended to report the crime of sexual assault against Crystal by the Petitioner after Mario left Nevada. This is a set up for law enforcement to believe that a crime of sexual assault with Crystal had occurred that night. The Prosecutor obtained an expert's testimony to mislead the jury in that some 9 year old females do not bleed when having sexual intercourse with an adult male, either vaginally or anally. He also testified that Crystal Ingram was no longer a virgin without providing any physical evidence or sperm, as Crystal claimed, on her clothes. Nor was this sperm collected and preserved to show that Petitioner's guilt in committing the crime of sexual assault. See Ex. 8, T.T. Vol. II, pp. 192-226. Therefore, Petitioner's convictions and punishment were unconstitutional by the State of Nevada. The State was given false accusations against him and law enforcement accused him of a crime committed by another person without D.N.A. or physical evidence of Petitioner's guilt. Petitioner demands this Court to order a D.N.A. test of the sperm Crystal Ingram claimed was on her

cloths to prove that Petitioner is innocent of the alleged sexual assault, otherwise he must be release from custody where he is illegally incarcerated. Petitioner asserts that if the DNA evidence had been tested and presented at his trial it would show he never sexually assaulted Crystal Ingram. Thus, there would be no reason the jury would have found Petitioner guilty of the crime of sexual assault beyond a reasonable doubt.

► **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: Counsel on direct appeal was ineffective by failing to raise this issue on appeal.

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: 8th Judicial District Court date petition filed 10 / 14 / 08

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a second petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is

unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 2

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Amendment right to _____
based on these facts:

PETITIONER'S CONVICTIONS AND SENTENCES VIOLATED THE DOUBLE JEOPARDY CLAUSES ART. 1, SECTION 8 OF THE NEVADA CONSTITUTION AND THE 5th AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

The information charges against the petitioner alleged; That Jose Lopez Garcia, the defendant above named, having committed the crimes of sexual assault with a minor under 16 years of age, felony, NRS 200.364 and 200.366, lewdness with a child under the age of 14, felony, NRS 201.230, and child abuse and neglect, gross misdemeanor, NRS 200.508. See Ex. 9, T.T. Vol. II, pp. 9-11.

All charges were allowed to be presented to the jury and Petitioner was found guilty of the crimes of sexual assault, lewdness with a child and child abuse and neglect. He was sentenced by the trial court as follows: Count I Twenty (20) years in the Nevada Department of Prisons with parole eligibility after (5) years by violating NRS 200.564; Count II Twenty (20) years in NDP with parole eligibility after (See continuation pp. 5A-5B).

Exhaustion of state court remedies regarding Ground 2: **yes.**

▶ Direct Appeal:

Five (5) years by violating NRS 200.564 and to run consecutive to Count I; Count III a Minimum of Forty-Eight (48) months with a Maximum term of One Hundred Twenty (120) months in the NDP by violating NRS 200.366; Count IV a Minimum of Forty-Eight (48) months a Maximum Hundred Twenty (120) month in the NDP by violating NRS 201.230 and Count V one (1) year in the Clark County Detention Center with Counts III-V to run concurrent to Count II. See Ex. 10, Criminal Court Minutes.

Applying the Blockburger test, we conclude that Troy's conviction for both sexual assault and child abuse by sexual abuse/sexual assault was improper. As charged in this case, child abuse by sexual abuse requires a sexual assault pursuant to NRS 200.366, plus resultant physical pain or mental suffering; sexual assault requires only those elements present in NRS 200.366. Therefore, a conviction for sexual assault does not require proof of a fact other than or additional to any facts necessary to prove child abuse by sexual abuse/sexual assault cannot occur without the sexual assault, and therefore, the sexual assault becomes an element of child abuse by sexual assault. Given this analysis, Blockburger mandates that Troy cannot be convicted of both child abuse by sexual abuse/sexual assault and sexual assault. See also *Meador v. State*, 101 Nev. 765, 771, 711 P.2d 852, 856 (1985) (applying Blockburger and concluding that double jeopardy barred appellant's convictions for both lewd acts with a child and sexual assault because proof of a lewd act did not require proof of a fact distinct from the elements of sexual assault since a lewd act neces-

sarily occurred during the sexual assault). Brown v. State, 934 P.2d at 242-243.

In the Petitioner's case, the convictions of lewdness with a child and child abuse and neglect were barred by the double jeopardy clauses and, therefore, this Court must vacate the convictions for lewdness and child abuse and neglect pursuant to Brown v. State and Meador v. State. The underlying crime at issue was the sexual assault and while the lewdness and child abuse and neglect counts required proof of an extra element, i.e., that the sexual assault caused physical pain and mental suffering, the extra element did not transform lewdness with a child and child abuse and neglect charges into the greater crime at issue. Thus, Petitioner's convictions and sentences were the result of the same act or transaction which the accuser claimed against him during one night by violating three distinct statutory provisions. See state petition, Ex. 4, pp. 10-12.

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: Counsel on direct appeal was ineffective by failing to raise this issue on appeal.

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: 8th Judicial District Court date petition filed 10/14/08

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed / /

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

~~State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two~~

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND # 3

I allege that my state court conviction and/or sentence are unconstitutional in violation of my Amendment right to _____
based on these facts:

PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DURING TRIAL AND ON DIRECT APPEAL IN VIOLATION OF THE 6th AND 14th AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

Before trial Petitioner informed Counsel Jose C. Pallares that the charges against him were committed by Mario, who also committed another crime of exposure against a little boy at Petitioner's apartment. That the charges of sexual assault against Petitioner were false and that Maria Ingram accused him of Mario's crimes out of jealous rage toward Petitioner for having girl friends while she had a romantically relationship with him. Trial Counsel refused to investigate and locate Mario, the sexual assault suspect, to testify and vindicate Petitioner's claims. See Ex. 5, T.T. Vol. II, pp. 51-54, and Ex. 6, T.T. Vol. II, p. 161.

Counsel failed to submit a witness list within the time limitation causing Petitioner's witnesses to be stricken from the list, thereby, not allowing his witnesses to testify on his behalf. see Ex. 11, T.T. Vol. II, pp. 3-6. Counsel failed to make an objection to the admission of Dr. Jay Johnson's testimony which misled
(See continuation pp. 7A-7C)

the jury in that the victim was not a virgin and, therefore, no bleeding occurred during the sexual assault. see Ex. 8, T.T. vol. II, pp. 192-226. Counsel failed to obtain an expert to testify countering Dr. Jay Johnson's testimony regarding vaginal and/or anal bleeding of a 9 year old girl after having intercourse with an adult male. see Brown v. State, supra. Counsel failed to file a motion to dismiss the Information based on double jeopardy by charging Petitioner with three distinct statutory provisions with the same act or transaction. Counsel failed to file a motion that would have preserve his double jeopardy claim, clearly prejudicing Petitioner. In addition, Counsel failed to raise issues one and two on direct appeal or provide the Petitioner with any of the documents regarding his case on appeal and failed to inform the Petitioner the direct appeal was denied by the Nevada Supreme Court. see Ex. 12, a Memo from Gary E. Gowen. see state petition, Ex. 4, pp. 12-16.

Counsel, Jose C. Pallares, knew he was unable to provided the Petitioner with effective assistance due to Counsel suffered from anxiety, depression and alcoholism by filing a motion to withdraw as Counsel before the trial and the Court denied that motion forcing Jose Pallares to provided Petitioner with ineffective assistance of counsel during the trial and on direct appeal. see Ex. 13, Motion to withdraw as attorney. Later complaints were filed against counsel for misconduct and he was found guilty. The Board hearing panel recommended that Jose Pallares be suspended for

one-year without practicing law in the State of Nevada. The Nevada Supreme Court held that the one-year suspension was too lenient and imposed a two-year suspension against Jose Pallares. See Ex. 14, an order suspension of Jose Pallares' license to practice law in Nevada.

Appellate Counsel, Jose Pallares, who suffered from anxiety, depression and alcoholism, failed to inform the Petitioner regarding the outcome of the Nevada Supreme Court affirming his direct appeal and refused to provide the Petitioner with the trial transcripts and the case files. Petitioner learned from Mr. Gary E. Gowen, in 2001, that his direct appeal has been dismissed in 1999. He wrote letters to terminate Jose Pallares as attorney of record and demanded that all papers, documents, pleadings and other tangible property, which belong to Petitioner, be immediately delivery to him. Petitioner wrote Mr. Pallares severnal letters expressing his concerns of the delay in complying with the Court's rules and procedures of filing a habeas corpus petition if counsel continued to fail to provide him with the trial transcripts and records, all of which were ignored by counsel. On December 28, 2004, Petitioner's motion for transcripts was filed in the District Court and on January 19, 2005, the Court granted his motion for transcripts. Petitioner did not receive the transcripts until May, 2007, when he filed his motion to vacate conviction for actual innocence, it was filed with the Court on May 17, 2007. see Ex. 4, pp. 4-5, state petition.

In the Petitioner's case, there is no doubt that his Counsel's

conduct falls within the wide range of reasonable unprofessional assistance, and that Petitioner has overcome the presumption that, under the circumstances, the challenged action should be considered not sound trial strategy. Thus, within the context of this strong presumption, Petitioner demonstrated that his Counsel's performance was deficient, failing below an objective standard of reasonableness, and that Counsel's deficient performance prejudiced his defense. To establish prejudice based on Counsel's deficient performance, Petitioner asserted that there is a reasonable probability that, but for his Counsel's unprofessional errors, the result of his trial proceeding would have been different.

Exhaustion of state court remedies regarding Ground **3**: *yes*

Direct Appeal:

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: Counsel on direct appeal was ineffective by failing to raise this issue on appeal.

First Post Conviction:

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: 8th Judicial District Court date petition filed 10 11 21 108

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court?

Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

Second Post Conviction:

Did you raise this issue in a second petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court?

Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

Other Proceedings:

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)?

Yes No. If yes, explain: _____

extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 4

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Amendment right to _____ based on these facts:

THE DISTRICT COURT DEPRIVED APPELLANT'S RIGHT TO DUE PROCESS BY HOLDING A HEARING TO DENY HIS PETITION AS TIME BARRED WITHOUT ENTERTAINING HIS OPPOSITION TO THE STATE'S RESPONSE WHICH CONSTITUTED UNFAIRNESS AND INJUSTICE IN VIOLATION OF THE 5th AND 14th AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

1. Petitioner's petition for writ of habeas corpus was filed in the District Court on October 14, 2008. See Index Docket Sheet marked as Ex. 15, attached hereto. The State of Nevada was ordered to answer or otherwise respond to the petition and filed a return within 45 days after the date of the District Court's order. See Ex. 16.

2. On November 20, 2008, the State's response and motion to dismiss Petitioner's petition was filed. See Ex. 17. Petitioner received the State's response on November 25, 2008, and his opposition to the State's response was mailed on December 4, 2008, which was not filed until December 12, 2008. See Ex. 18.

(see continuation pp. 9A-9D)

Exhaustion of state court remedies regarding Ground **yes**

Direct Appeal:

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

3. The District Court issued an order dismissing Petitioner's petition as time barred on December 11, 2008, one day before his opposition was filed. See Ex. 1, District Court's order. As a result, Petitioner's opposition was actually filed on December 12, 2008, one day after that Court already had a hearing and denied his petition. See Ex. 18.

4. The District Court findings of fact, conclusions of law and order was without the benefit of petitioner's claims of the equitable tolling and his petition was not time barred. See Ex. 19.

5. From the outset Petitioner was never informed of the denial of his direct appeal by counsel, Jose C. Pallares. On July 10, 2001, Mr. Gary E. Gowen wrote to Petitioner regarding the outcome of the Nevada Supreme Court denial of his direct appeal, and Mr. Gary sent a copy of the application forms of petition for post-conviction to Petitioner. See Ex. 20.

6. On July 15, 2001, Petitioner wrote a letter to trial and appellate counsel, Jose Pallares and demanded all records on appeal, and the appeal brief counsel filed in the Nevada Supreme Court on his behalf in order to pursue his petition for writ of habeas corpus. See Ex. 21.

7. There was no response by Jose Pallares, and on January 1, 2002, Petitioner wrote a letter to counsel demanding all the documents in counsel's possession to be forwarded to him without delay. Otherwise, Petitioner would be precluded from litigating his convictions. See Ex. 22.

8. Once again, there was no response from counsel Jose,

13. In addition, the State refused to provide Petitioner with the transcripts, and on May 24, 2005, Petitioner wrote a letter to the district attorney's office requesting the trial records as ordered by the Court and has been ignored with no response. see Ex. 29. On August 10, 2005, and on September 23, 2005, Petitioner submitted a motion to show cause and a notice to the Clark County District Attorney's office requesting the transcripts pursuant to court's order. see Ex. 30. On August 16, 2005, the District Attorney filed an opposition to Petitioner's motion to show cause claiming their refusal to provided Petitioner with the records. see Ex. 31.

14. The State did not provide Petitioner with the trial transcripts of his criminal case until 2007. After receiving the trial records, Petitioner filed his motion to vacate conviction for actual innocence and motion for appointment of counsel which were filed with the court on May 17, 2007. see Ex. 32. On May 30, 2007, the State filed an opposition to Petitioner's motion to vacate conviction and his motion for appointment of counsel. see Ex. 33. In June, 2007, Petitioner submitted an additional notice to the Court by requesting counsel to be appointed to assist in supplementing Petitioner's motion and to represent him in his motion to vacate conviction for actual innocence. see Ex. 34.

15. Petitioner's motion for appointment of counsel and motion to vacate conviction for actual innocence were denied on May 31, 2007, without finding of facts or conclusions of law and no order denying was issued and no notice of denial was served upon the Petitioner. On January 22, 2008, Petitioner submitted a request

and on May 13, 2002, Petitioner wrote a letter to terminate Jose Pallares as counsel and requesting the files to be delivered to Petitioner pursuant to NRS 7.055. See Ex. 23.

9. There was no response, no records or files were delivered to the Petitioner. On January 20, 2003, Petitioner wrote a third letter to counsel, by requesting that counsel provide him with the trial transcripts, the files, and the direct appeal brief without further delay. Otherwise, Petitioner would be precluded from filing a timely writ of habeas corpus petition. See Ex. 24.

10. As a result, there was no response by counsel. On January 6, 2004, Petitioner wrote another letter to counsel regarding his refusal in responding to Petitioner's letters which violated the Nevada Supreme Court rules of professional conduct, and Petitioner would be forced to take action with the court by counsel failing to provide Petitioner with his criminal case files and the trial transcripts. See Ex. 25.

11. Jose Pallares refused to respond to Petitioner's letters. On November 1, 2004, Petitioner submitted an additional termination of this counsel and requested all the records and case files to be delivered to Petitioner pursuant to NRS 7.055, with no action being taken by counsel. See Ex. 26.

12. Finally, Petitioner was forced to submit a motion for trial transcripts and affidavit in support for withdrawal of attorney Jose Pallares from the record and transfer of records to Petitioner. See Ex. 27. On January 19, 2005, the District Court granted Petitioner's motion for transcripts. See Ex. 28.

for status check and the Court conducted a hearing in denying both motions with no order issued or no notice of denial were served upon Petitioner as required by Nevada rules of appellate procedure. See Ex. 35.

16. Petitioner is unable to appeal because no final judgment has been rendered by the District Court. For this reason, Petitioner is being made to choose either by serving his unconstitutional conviction or by seeking further relief by way of petition for writ of habeas corpus (post-conviction). Therefore, on September 23, 2008, Petitioner submitted his petition for writ of habeas corpus and a motion to proceed in forma pauperis which were filed with the District Court on October 14, 2008. See Ex. 4.

The actions of counsel and the State as alleged in the above paragraphs 1-16, showing undisputedly that counsel, Jose Palares refused to inform Petitioner regarding the outcome of the denial of his direct appeal and counsel further refused to provide Petitioner with his legal files, trial records, including that the State delayed in providing him with the trial transcripts for filing his petition in complying with the statute limitation. Thus, Petitioner has demonstrated to the satisfaction of the court pursuant to NRS 34.726, which good cause exists due to the State and counsel's actions or inactions by causing the delay in filing of untimely petition. These are extraordinary circumstances beyond Petitioner's control and this Court must presume circumstances exist. See authorities in Ex. 19, pp. 6-9, in support this issue.

Yes No. If no, explain why not: ~~_____~~

► **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: Because it was erred by the trial Court.

If yes, name of court: Nevada Supreme Court date petition filed 3/20/09

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed / /

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

► **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

WHEREFORE, petitioner prays that the court will grant him such relief to which he is entitled in this federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by a person in state custody.

(Name of person who wrote this
complaint if not Plaintiff)

Josie Yocum
(Signature of Plaintiff)

March 9, 2010
(Date)

None
(Signature of attorney, if any)

(Attorney's address & telephone number)

DECLARATION UNDER PENALTY OF PERJURY

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.**
See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at N. M. C. C. on 9/9/2010
(Location) (Date)

Josie Yocum
(Signature)

58710
(Inmate prison number)

CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5 (b), I hereby certify that I am the petitioner/Defendant named herein and that on this 9th day of March 20~~05~~¹⁰, I mailed a true a correct copy of the foregoing document to the following:

Jorie Moniz

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29

FILED

JAN 5 1 37 PM '09

E. J. [Signature]
CLERK OF THE COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDR
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
JOHN FATTIG
Chief Deputy District Attorney
Nevada Bar #006639
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)
)
) Plaintiff,)
)
) -vs-)
)
) JOSE GARCIA,)
) #0857283)
)
) Defendant.)

CASE NO: C142741
DEPT NO: V

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: DECEMBER 11, 2008
TIME OF HEARING: 8:30 A.M.

THIS CAUSE having come on for hearing before the Honorable Judge Jackie Glass, District Judge, on the 11th day of December, 2008, the Petitioner not being present, Proceeding In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through JOHN FATTIG, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

//
//

~~11~~ **EX. 1**

FINDINGS OF FACT

- 1
2 1. On May 12, 1997, Defendant was charged by way of Information with TWO (2)
3 COUNTS of SEXUAL ASSAULT ON VICTIM UNDER AGE 16, TWO (2) COUNTS
4 of LEWDNESS WITH A CHILD UNDER 14 and ONE (1) COUNT of ABUSE,
5 NEGLECT or ENDANGERMENT OF CHILD.
- 6 2. On June 18, 1998, a jury found Defendant guilty of all counts. On August 5, 1998,
7 Defendant was sentenced as follows: As to Count I – TWENTY (20) YEARS in the
8 Nevada Department of Prisons with parole eligibility after FIVE (5) YEARS; As to
9 Count II – TWENTY (20) YEARS in the Nevada Department of Prisons with parole
10 eligibility after FIVE (5) YEARS, Count II to run concurrent with Count I; As to Count
11 III – LIFE in the Nevada Department of Prisons; Count III to run concurrent with Counts
12 I and II; As to Count IV – LIFE in the Nevada Department of Prisons, Count IV to run
13 concurrent with Counts I-III; As to Count V – TWELVE (12) MONTHS in the Clark
14 County Detention Center to run concurrent with counts I-IV. The Judgment of
15 Conviction was filed on August 24, 1998.
- 16 3. On August 18, 1998, Defendant filed a Notice of Appeal. On December 27, 1999, the
17 Nevada Supreme Court filed an Order Dismissing Appeal. Remittitur issued on January
18 25, 2000.
- 19 4. On May 17, 2007, Defendant filed a Motion to Vacate Conviction for Actual Innocence.
20 The State filed its Opposition on May 30, 2007. The district court denied Defendant's
21 Motion on May 31, 2007. The Order denying Defendant's Motion to Vacate Conviction
22 was filed on June 14, 2007.
- 23 5. Defendant filed the instant petition on October 14, 2008. The State filed its Response
24 and Motion to Dismiss on November 20, 2008.
- 25 6. Defendant's petition is time barred.
- 26 7. Defendant has not established good cause for the delay in filing his post conviction
27 petition.
- 28 8. Defendant's actual innocence claim is insufficient.

1 9. The State has pled laches and the Defendant has not overcome the presumption that his
2 delay in filing the instant petition has prejudiced the State.

3 **CONCLUSIONS OF LAW**

4 1. The mandatory provisions of NRS 34.726 state:

5 1. Unless there is good cause shown for delay, a petition that challenges the
6 validity of a judgment or sentence must be filed within 1 year after entry of the
7 judgment of conviction or, if an appeal has been taken from the judgment,
8 within 1 year after the supreme court issues its remittitur. For the purposes of
9 this subsection, good cause for delay exists if the petitioner demonstrates to the
10 satisfaction of the court:

- 11 (a) That the delay is not the fault of the petitioner; and
12 (b) That dismissal of the petition as untimely will unduly prejudice the
13 petitioner.

14 2. Once the State raises procedural grounds for dismissal, the burden then falls on defendant
15 “to show that good cause exists for his failure to raise any grounds in an earlier petition
16 and that he will suffer actual prejudice if the grounds are not considered.” Phelps v. Dir.
17 of Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988).

18 3. To establish good cause, a defendant must demonstrate that some impediment external to
19 the defense prevented compliance with the mandated statutory default rules. Lozada v.
20 State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); see also Hathaway 119 Nev. at 252,
21 71 P.3d at 506, (citing Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537
22 (2001)); Passanisi v. Dir. of Prisons, 105 Nev. 63, 769 P.2d 72 (1989); Crump v. Warden,
23 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps, 104 Nev. at 659, 764 P.2d at 1305.

24 4. Valid impediments external to the defense giving rise to “good cause” could be “that the
25 factual or legal basis for a claim was not reasonably available to counsel, or that ‘some
26 interference by officials’ made compliance impracticable.” Hathaway, 119 Nev. at 252,
27 71 P.3d at 506, (quoting Murray v. Carrier, 477 U.S. 478, 488 (1986)); see also
28 Gonzalez, 118 Nev. at 595, 53 P.3d at 904, (citing Harris v. Warden, 114 Nev. 956, 959-
60, 964 P.2d 785, 787 n.4 (1998)).

5. In Calderon v. Thompson, 523 U.S. 538, 560, 118 S.Ct. 1489, 1503 (1998), the U.S.
Supreme Court held that in order for a defendant to obtain a reversal of his conviction
based on a claim of actual innocence, he must prove that “it is more likely than not that

1 no reasonable juror would have convicted him in light of the new evidence' presented in
2 habeas proceedings." quoting Schlup v. Delo, 513 U.S. 298, 327, 115 S.Ct. 851, 867
3 (1995).

4 6. NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
5 exceeding five years between the filing of a judgment of conviction, an order imposing a
6 sentence of imprisonment or a decision on direct appeal of a judgment of conviction and
7 the filing of a petition challenging the validity of a judgment of conviction..." The statute
8 also requires that the State plead laches in its motion to dismiss the petition. NRS 34.800.

9 **ORDER**

10 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction
11 Relief shall be and is DENIED.

12 DATED this 31 day of December, 2008.

JACKIE GLASS

13 _____
14 DISTRICT JUDGE

15
16 DAVID ROGER
17 DISTRICT ATTORNEY
18 Nevada Bar #002781

19 BY  for

20 JOHN FATTIG
21 Chief Deputy District Attorney
22 Nevada Bar #006639

23
24
25
26
27
28 hjc/SVU

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE LOPEZ GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53154

FILED

FEB 04 2010

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant filed his petition on October 14, 2008, more than seven years after the remittitur from his direct appeal on January 25, 2000.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

To excuse the procedural defects, appellant claimed that he was unable to file a timely petition because he did not receive the trial

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²Garcia v. State, Docket No. 32879 (Order Dismissing Appeal, December 27, 1999).

EX. 2

transcripts in a timely manner and because he could not raise ineffective assistance of counsel claims on direct appeal. Counsel's failure to send appellant transcripts did not excuse the procedural defects. See Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995). Further, appellant failed to demonstrate that any impediment external to the defense explained or excused the more than seven-year delay since the remittitur from his direct appeal. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). In addition, appellant failed to overcome the presumption of prejudice to the State. See NRS 34.800(2).

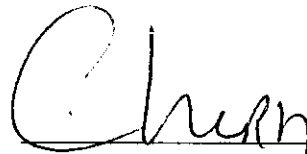
Next, appellant claimed that he was actually innocent. In support of his actual innocence claim, appellant argued that the victim and the victim's mother fabricated their testimony and that a DNA test on semen found on the victim's clothes would show that he was not the person who sexually assaulted the victim.


We conclude that appellant failed to demonstrate a fundamental miscarriage of justice should allow consideration of procedurally defaulted claims because he failed to demonstrate that "it is more likely than not that no reasonable juror would have convicted [appellant]." See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Appellant testified at trial that the victim's story was not accurate. It was for the jury to determine the weight and credibility to give conflicting testimony. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). In addition, appellant failed to demonstrate that there was a DNA sample that was available for testing. Even assuming there was a sample available; the victim knew appellant well and specifically identified him as

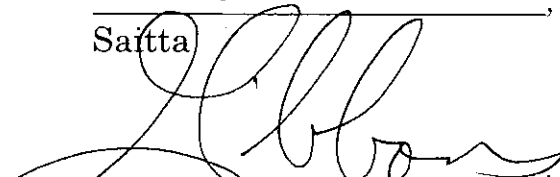
the person who sexually assaulted her. Thus, appellant failed to demonstrate that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt had he had access to DNA evidence. Schlup v. Delo, 513 U.S. 298, 327 (1995). Therefore, appellant failed to demonstrate that this claim should excuse the procedural defects, and the district court did not err in applying the procedural bars in this case.

Having considered appellant's contentions and concluding that they are without merit, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Jackie Glass, District Judge
Jose Lopez Garcia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE LOPEZ GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 53154

District Court Case No. C142741

REMITTITUR

TO: Steven D. Grierson, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: March 2, 2010

Tracie Lindeman, Clerk of Court

By: 
Deputy Clerk

cc (without enclosures):
Hon. Jackie Glass, District Judge
Attorney General/Carson City
Clark County District Attorney
Jose Lopez Garcia

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on _____.

District Court Clerk

EX. 3

10-04232

JOSE LOPEZ GARCIA, #58710
N.N.C.C.
P. O. BOX 7000
CARSON CITY, NV 89702-7000

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

JOSE L. GARCIA,)	
)	Case No.: C142741
Petitioner,)	Dept. No.: VIII
)	
vs.)	PETITION FOR WRIT
)	OF HABEAS CORPUS
THE STATE OF NEVADA BY AND THROUGH JIM)	(POST-CONVICTION)
BENEDITTI, WARDEN OF NNCC,)	NRS 34.360
)	
Respondents)	
)	

Petitioner is unlawfully confined and restrained against his life and liberty at Northern Nevada Correctional Center (NNCC). Pursuant to NRS 34.360, this Court retains jurisdiction and has authority to issue a writ of habeas corpus and order directing the State of Nevada (Respondents) to release him from custody; if the imprisonment and restraint is unlawful in violation of the Nevada Constitution, Art. 1, section §8, the 5th, 6th, 8th and 14th Amendment rights to the United States Constitution.

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty:
Carson City, Northern Nevada Correctional Center.
2. Named and location of court which entered the judgment of conviction under attack:
Eighth Judicial District Court, County of Clark, Las Vegas, Nevada.
3. Date of judgment of conviction: **August 5, 1998 and Court ordered to correct-sentences on August 12, 1998.**
4. Case Number: **C142741.**
5. (a) Length of sentencing:
 1. **Count I: Twenty (20) years with parole eligibility after Five (5) years.**

2. **Count II: Twenty (20) years with parole eligibility after Five (5) year and to run consecutive to Count I.**
3. **Count III: A Minimum of Forty-Eight (48) months with a Maximum term of One Hundred Twenty (120) months.**
4. **Count IV: A Minimum of Forty-Eight (48) months with a Maximum One Hundred Twenty (120) months.**
5. **Count V: One (1) year in the Clark County Detention Center with Counts III-V to run concurrent to Count II.**
6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion: **No.**

If "Yes" list crimes, case number and sentence being served at this time:

Not applicable.

7. Nature of offense involved in conviction being challenged:

Count I-Sexual Assault with a Minor under Sixteen years of Age (F).

Count II-Sexual Assault with a Minor under Sixteen years of Age (F).

Count III-Lewdness with a Child under the Age of Fourteen (F).

Count IV-Lewdness with a Child under the Age of Fourteen (F).

Count V-Child Abuse and Neglect (GM).

8. What was your plea?

(a) **Not guilty to all Counts.**

9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea to another count of an indictment or information, or if a guilty plea was negotiated, give details:

Not applicable.

10. If you were found guilty after a plea of not guilty, was the finding made by:

(a) **Jury.**

11. Did you testify at the trial?

Yes.

12. Did you appeal from the judgment of conviction?

Yes.

13. If you did appeal, answer the following:

- (a) Name of court: **Supreme Court of the State of Nevada.**
- (b) Case number or citation: **Unknown, because Counsel did not provide.**
- (c) Result: **Denied.**
- (d) Date of result: **Unknown, because Counsel did not provide.**
14. If you did not appeal, explain briefly why you did not:
Not applicable.
15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?
Yes.
16. If your answer to No. 15 was "yes," give the following information:
- (a) (1) Name of Court: **Eighth Judicial District Court.**
- (2) Nature of proceeding: **Motion to Vacate Conviction.**
- (3) Grounds raised: **Actual innocence.**
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
No.
- (5) Result: **Deny without a final order was entered.**
- (6) Date of result: **N/A**
- (7) If known, citations of any written opinion or date of orders entered pursuant to such result: **N/A**
- (b) As to any second petition, application or motion, give the same information: **No.**
- (c) As to any third or subsequent additional applications or motions, give the same information: **No.**
- (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?
- (1) First petition, application or motion: **No. Because there was no final order entered and unable to appeal.**
- Citation or date of decision: **N/A**
- (2) Second petition, application or motion? **N/A**

- (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

There was no final order issued and unable to proceed on appeal further.

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify: **No.**
18. If any of the grounds listed in Nos. 23(a),(b),(c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for presenting them.

Issue One: PETITIONER IS INNOCENT OF SEXUAL ASSAULT, LEWDNESS, CHILD ABUSE AND NEGLECT CONVICTIONS RESULTING IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE IN VIOLATION OF THE 5th, 8th AND 14th AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

Counsel on appeal was ineffective by failing to raise this issue on direct appeal.

Issue Two: PETITIONER'S CONVICTIONS AND SENTENCES VIOLATED THE DOUBLE JEOPARDY CLAUSES ART. 1, SECTION §8 OF THE NEVADA CONSTITUTION AND THE 5th AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

Counsel on appeal was ineffective by failing to raise this issue on direct appeal.

Issue Three: PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DURING THE TRIAL AND ON DIRECT APPEAL IN VIOLATION OF THE 6th AND 14th AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

Ineffective assistance of Counsel issue is precluded from litigation on direct appeal by Nevada law.

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.

Appellate Counsel, Jose C. Pallares, who suffered from anxiety, depression and alcoholism, failed to inform the Petitioner regarding the outcome of the Nevada Supreme Court affirming his direct appeal and refused to provide the Petitioner with the trial transcripts and the case files. Petitioner learned from Mr. Gary E. Gowen, in 2001, that his direct appeal had been dismissed in 1999. He wrote letters to terminate Jose Pallares as attorney of record and demanded that all papers, docu-

ments, pleadings and other tangible property, which belong to Petitioner, be immediately delivery to him. Petitioner wrote Mr. Pallares serveral letters expres-
sing his concerns of the delay in complying with the Court's rules and procedures
of filing a habeas corpus petition if Counsel continued to fail to provide him with
the trial transcripts and records, all of which were ignored by Counsel. On Decem-
ber 28, 2004, Petitioner's motion for transcripts was filed in the District Court
and on January 19, 2005, the Court granted his motion for transcripts. Petitioner
did not receive the transcripts until May, 2007, when he filed his motion to vacate
conviction for actual innocence, it was filed with the Court on May 17, 2007.

20. Do you have any petition or appeal now pending in any court, either state
or federal, as to the judgment under attack? **Yes.**

If yes, state what court and the case number: **Eighth Judicial District
Court, Case No.: C142741, Motion to Vacate Conviction for Actual Innocence.**

21. Give the name of each attorney who represented you in the proceeding resul-
ting in your conviction and on direct appeal:

(a) At arraignment and plea: **Linda Bell, Public Defender.**

(b) At the preliminary hearing, trial and sentencing: **Linda Bell,
and Jose C. Pallares.**

(c) On direct appeal: **Jose C. Pallares.**

(d) Federal habeas petition: **N/A**

22. Do you have any future sentences to serve after you complete the sentence
imposed by the judgment under attack? **No.**

23. State concisely every ground on which you claim that you are being held
unlawfully. Summarize briefly the facts supporting each ground. If neces-
sary, you may attach pages stating additional grounds and facts supporting
same.

Issue One: PETITIONER IS INNOCENT OF SEXUAL ASSAULT, LEWDNESS, CHILD ABUSE AND
NEGLECT CONVICTIONS RESULTING IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE IN VIOLATION
OF THE 5th, 8th AND 14th AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

In 1995, Petitioner moved to an apartment at the address of 2725 Ellis Street,
North Las Vegas, Nevada, where Maria Ingram and her children were living. Petitioner
met Maria just outside of that apartment. Maria and Petitioner's roommate, Enuncio

Gamos', wife, Campos, were friends and Maria came to visit with them in Petitioner's apartment daily. Petitioner's and Maria's children played together and thereafter Maria and Petitioner became good friends. One morning in 1996, Maria came to Petitioner and initiated sexual intercourse with him. From that encounter Petitioner realized they were not compatible. Petitioner refused to have any further sexual relations with her and told her it was only a one time thing. Since Petitioner refused to have a sexual relationship with her, she asked him to marry her many times. She continually stalked him every-time he went outside of the apartment. She even went on to tell Petitioner's girl friend Germina Castrone that Jose Garcia is no longer with her.

Petitioner asserts his convictions were predicated upon Maria's jealousy. The accusations were intended to destroy Petitioner's relationship with his girl friends hoping that she would be able to convince him to have a relationship with her if his girl friends ended her relationship with the Petitioner.

Maria testified that she learned "Mario" had exposed himself to a little boy who lived in that apartment. See Exhibit "1," Trial Transcript Volume II. (T.T. Vol. II), pp. 51-53, attached hereto. Maria testified that her daughter, Crystal Ingram, told her that in fact the man named "Mario" had laid on top of her when Mario and herself were watching TV. See Ex. "1," T.T. Vol. II, p. 54. Maria testified that at the time Crystal told her of the sexual assault Maria explained to her daughter that "Mario" had left Las Vegas and that he cannot do anything to heard her any more. See Ex. "1," T.T. Vol. II, p. 54. Maria testified that she did not know when the sexual assault occurred to her daughter. See Ex. "1," T.T. Vol. II, p. 60. Maria testified that she allowed her child, i.e., oldest daughter "Carla," to be married at the age of fourteen (14) years and she had a baby while she was 15-16 years old. See Ex. "1," T.T. Vol. II, p. 68. Maria testified that during the relationship with Petitioner, he gave and loaned money to her for food for her children and she was

romantically involved with the Petitioner at one time. See Ex. "1," T.T. Vol. II, pp. 69-70. Maria further testified that she learned, after being romantically involved with Petitioner, that he had a couple of girl friends and made a mistake having a relationship with him and it should never have happened. See Ex. "1," T.T. Vol. II, p. 70.

Crystal Ingram testified that after the sexual assault sperm came from the genitalia and went on to her clothing. See Ex. "2," T.T. Vol. II, P. 154. She further testified that "Mario" made her lay on top of him. See Ex. "2," T.T. Vol. II, P. 161. She claimed throughout the trial proceedings, which was contrary to the allegations, that Petitioner told Crystal not to tell her mother, he used his hands to cover her mouth and she was unable to scream, she also testified she was on her knees with no mouth covering and not screaming or yelling. She testified contrary to the accusations she made against him during the entire trial. See Ex. "2," T.T. Vol. II, pp. 160-191.

Petitioner testified that in 1996, he brought women to his apartment and Maria Ingram became jealous and started pressuring him as to why he did not want a relationship with her and marry her. See Ex. "3," T.T. Vol. III, p 41. He testified throughout the trial proceedings maintaining that he never touched any of Crystal Ingram's genital areas, body nor having sexual intercourse of any kind or ever exposing his genitalia to Crystal Ingram. See Ex. "3," T.T. Vol. III, pp. 46-70. Petitioner further testified that "Mario" lived with his roommate, Gamos, in Petitioner's apartment for approximately three (3) months. This was during the time Crystal claimed she was sexually assaulted. See Ex. "3," T.T. Vol. III, pp. 62-63. He testified that he loaned money to Maria for food for her children everytime she needed and additionally he bought meals for Maria's children and his children. See Ex. "3," T.T. Vol. p. 40.

Petitioner declares that Maria Ingram's jealousy over the relationships he had with his girl friends was her motive for having Crystal Ingram and her brother Ro-

berto Garcia go to Petitioner's apartment and stay only one night with his children in order to give substance to the accusations of sexual assault. Maria intended to report the crime of sexual assault against Crystal by the Petitioner after Mario left Nevada. This is a set up for law enforcement to believe that a crime of sexual assault with Crystal had occurred that night. The Prosecutor obtained an expert's testimony to mislead the jury in that some 9 year old females do not bleed when having sexual intercourse with an adult male, either vaginally or anally. He also testified that Crystal Ingram was no longer a virgin without providing any physical evidence or sperm, as Crystal claimed, on her clothes. Nor was this sperm collected and preserved to show that Petitioner's guilt in committing the crime of sexual assault. See Ex. "4," T.T. Vol. II, pp. 192-226. Therefore, Petitioner's convictions and punishment were unconstitutional by the State of Nevada. The State was given false accusations gainst him and law enforcement accused him of a crime committed by another person without D.N.A. or physical evidence of Petitioner's guilt. Petitioner demands this Court to order a D.N.A. test of the sperm Crystal Ingram claimed was on her cloths to prove that Petitioner is innocent of the alleged sexual assault, otherwise he must be release from custody where he is illegally incarcerated.

The United States "Supreme Court defined the responsibility of federal trial courts to ensure that proffered scientific evidence is in fact scientific, and will be of use to the trier of fact in deciding an issue to be trier." See Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 592, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). "In order to do so, trial courts must assess whether a proffered scientific theory can be and has been tested, whether it has been subjected to peer review and publication, and whether it has achieved general acceptance, see *id.* at 593-94, 113 S.Ct. 2786." See U. S. v. Cuff, 37 F. Supp.2d 279, 282 (S.D.N.Y. 1999).

"This Court has repeatedly assessed that admissibility of scientific evidence in terms of trustworthiness and reliability. Santillanes v. State, 104 Nev. 699, 704, 764 P.2d 1147, 1150 (1988). Because the overwhelming weigh of authority has

established that DNA analysis utilizing the PCR technique is reliable and trustworthy for use within the forensic context." See Bolin v. State, 960 P.2d 784, 800 (Nev. 1998)(quoting United States v. Hicks, 203 F.3d 837, 844-47 (9th Cir. 1996), cert. denied, _____ U.S. _____, 117 S.Ct. 1483, 137 L.Ed.2d 694 (1997)). The district court did not err in admitting DNA evidence. Brown v. State, 934 P.2d 235, 241 (Nev. 1997)(the DNA evidence indicated that semen collected from Jane Doe's underwear matched Troy's and that 1 in 3,000,000 other people had matching DNA (the second DNA test indicated that 1 in 10,000 people had matching DNA)). Id. 242. "We conclude ..., that the DNA evidence was properly admitted at trial, and that sufficient evidence existed to support Troy's conviction." Id. 237. In Brown's case the victim was also a nine-year-old as in the Petitioner's accuser when Pam the mother found Jane Doe covered in blood from the waist down. Id. 237. Jane Doe was taken to the hospital where it was confirmed that she had been penetrated both vaginally and anally. She had lost fifteen percent of her blood. ... A "sexual assault kit" was taken at the hospital, which included a vaginal smear (because sperm was present) and a blood sample. Id. 238.

"A petitioner need not show that he is 'actually innocent' of the crime he was convicted of committing, instead, he must show that "'a court cannot have confidence in the outcome of the trial.'"" Majoy v. Roe, 296 F.3d 770, 776 (9th Cir. 2002). "In summary, we conclude on this record that Majoy might fall within the narrow of cases implicating a fundamental miscarriage of justice." Majoy, 296 F.3d at 776 (quoting Schlup v. Delo, 513 U.S. 298, 315, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995)). "To foreclose a claim of constitutional violation where there has been a colorable showing of factual innocence would likely constitute a due process violation or an improper suspension of habeas corpus relief." Id. at 777.

"Fundamental miscarriage of justice exception as a safeguard against compelling an innocent man to suffer an unconstitutional loss of liberty." Sawyer v. Whitley, 505 U.S. 333, 359, 112 S.Ct. 2514, 2529, 120 L.Ed.2d 269 (1992)(quoting McCleskey v.

Zant, 499 U.S., at 495, 111 S.Ct., at 1471). "We retain authority to issue the writ if the petition 'implicat[es] a fundamental miscarriage of justice.'" Deutscher v. Whitley, 946 F.2d 1443, 1444 (9th Cir. 1991)(quoting McCleskey, 499 U.S., at _____, 111 S.Ct., at 1470). "We remain confident that, for the most part, 'victims of a fundamental miscarriage of justice will meet the cause-and-prejudice standard'... Accordingly, we think that in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a ... habeas court may grant the writ even in the absence of a showing of cause ..." Murray v. Carrier, 477 U.S. 478, 495-96, 106 S.Ct. 2639, 2649, 91 L.Ed.2d 397 (19-86). "... a petitioner must show that it is more likely than not that no reasonably juror would have found petitioner guilty beyond a reasonable doubt." See Schlup, 513 U.S. at 327, 115 S.Ct. at 867. Petitioner asserts that if the DNA evidence had been tested and presented at his trial it would show he never sexually assaulted Crystal Ingram. Thus, there would be no reason the jury would have found Petitioner guilty of the crime of sexual assault beyond a reasonable doubt.

Issue Two: PETITIONER'S CONVICTIONS AND SENTENCES VIOLATED THE DOUBLE JEOPARDY CLAUSES ART. 1, SECTION §8 OF THE NEVADA CONSTITUTION AND THE 5th AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

The Information charges against the Petitioner allege; "That Jose Lopez Garcia, the defendant above named, having committed the crimes of sexual assault with a minor under 16 years of age, felony, NRS 200.364 and 200.366, lewdness with a child under the age of 14, felony, NRS 201.230, and child abuse and neglect, gross misdemeanor, NRS 200.508. See Ex. "5," T.T. Vol. II, pp. 9-11.

All charges were allowed to be presented to the jury and petitioner was found guilty of the crimes of sexual assault, lewdness with a child and child abuse and neglect. He was sentenced by the trial Court as follows: COUNT I TWENTY (20) YEARS in the Nevada Department of Prisons with parole eligibility AFTER (5) YEARS by violating NRS 200.564; COUNT II TWENTY (20) YEARS in NDP with parole eligibility after

FIVE (5) YEARS by violating NRS 200.564 and to run CONSECUTIVE to COUNT I; COUNT III a MINIMUM of FORTY-EIGHT (48) MONTHS with a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS in the NDP by violating NRS 200.366; COUNT IV a MINIMUM of FORTY-EIGHT (48) MONTHS a MAXIMUM HUNDRED TWENTY (120) MONTHS in the NDP by violating NRS 201.230 and COUNT V ONE (1) YEAR in the Clark County Detention Center with COUNTS III-V to run CONCURRENT to COUNT II. See Ex. "6," Criminal Court Minutes.

The Nevada Supreme Court held in *Brown* that "To determine whether Troy's convictions for sexual assault and child abuse by sexual abuse/sexual assault are barred by the double jeopardy provisions of the state and federal constitutions, this Court must apply the test from Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed. 306 (1932), which states: '[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.'"

"Applying the Blockburger test, we conclude that Troy's conviction for both sexual assault and child abuse by sexual abuse/sexual assault was improper. As charged in this case, child abuse by sexual abuse requires a sexual assault pursuant to NRS 200.366, plus resultant physical pain or mental suffering; sexual assault requires only those elements present in NRS 200.366. Therefore, a conviction for sexual assault does not require proof of a fact other than or additional to any facts necessary to prove child abuse by sexual abuse/sexual assault cannot occur without the sexual assault, and therefore, the sexual assault becomes an element of child abuse by sexual assault. Given this analysis, Blockburger mandates that Troy cannot be convicted of both child abuse by sexual abuse/sexual assault and sexual assault. See also Meador v. State, 101 Nev. 765, 771, 711 P.2d 852, 856 (1985)(applying Blockburger and concluding that double jeopardy barred appellant's convictions for both lewd acts with a child and sexual assault because proof of a lewd act did not require proof of a fact distinct from the elements of sexual assault since a lewd

act necessarily occurred during the sexual assault). Brown v. State, 934 P.2d at 242-243.

"Under Blockburger, 'where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.'" Kansas v. Hendricks, 117 S.Ct. 2072, 2086 (1997) (quoting Blockburger v. United States, 284 U.S. at 304, 52 S.Ct. at 182).

In the Petitioner's case, the convictions of lewdness with a child and child abuse and neglect were barred by the double jeopardy clauses and, therefore, this Court must vacate the convictions for lewdness and child abuse and neglect pursuant to Brown v. State and Meador v. State. The underlying crime at issue was the sexual assault and while the lewdness and child abuse and neglect counts required proof of an extra element, i.e., that the sexual assault caused physical pain and mental suffering, the extra element did not transform lewdness with a child and child abuse and neglect charges into the greater crime at issue. Thus, Petitioner's convictions and sentences were the result of the same act or transaction which the accuser claimed against him during one night by violating three distinct statutory provisions. "Double jeopardy may be implicated when multiple convictions arise out of the same act, even if the court has imposed concurrent sentences." State v. Meas, 75 P.3d 998, 1001 (Wash. App. Div. 2 2003). "Under Blockburger, it is impermissible for a defendant to suffer conviction for both greater-and lesser-included offenses. To determine the existence of a lesser-included offense, this Court looks to 'whether the offense in question 'cannot be committed without committing the lesser offense'" Donald Estes v. State, 146 P.3d 1114, 1127 (Nev. 2006).

Issue Three: PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL DURING TRIAL AND ON DIRECT APPEAL IN VIOLATION OF THE 6th AND 14th AMENDMENT RIGHTS TO THE UNITED STATES CONSTITUTION.

Before trial Petitioner informed Counsel Jose C. Pallares that the charges

against him were committed by Mario, who also committed another crime of exposure against a little boy at Petitioner's apartment. That the charges of sexual assault against Petitioner were false and that Maria Ingram accused him of Mario's crimes out of jealous rage toward Petitioner for having girl friends while she had a romantically relationship with him. Trial Counsel refused to investigate and locate Mario, the sexual assault suspect, to testify and vindicate Petitioner's claims. See Ex. "1," T.T. Vol. II, pp. 51-54, and Ex. "2," T.T. Vol. II, P. 161.

Counsel failed to submit a witness list within the time limitation causing Petitioner's witnesses to be stricken from the list, thereby, not allowing his witnesses to testify on his behalf. See Ex. "7," T.T. Vol. II, pp. 3-6. Counsel failed to make an objection to the admission of Dr. Jay Johnson's testimony which misled the jury in that the victim was not a virgin and, therefore, no bleeding occurred during the sexual assault. See Ex. "4," T.T. Vol. II, pp. 192-226. Counsel failed to obtain an expert to testify countering Dr. Jay Johnson's testimony regarding vaginal and/or anal bleeding of a 9 year old girl after having intercourse with an adult male. See Brown v. State, supra. Counsel failed to file a motion to dismiss the Information based on double jeopardy by charging Petitioner with three distinct statutory provisions with the same act or transaction. Counsel failed to file a motion that would have preserve his double jeopardy claim, clearly prejudicing Petitioner. In addition, Counsel failed to raise issues one and two on direct appeal or provide the Petitioner with any of the documents regarding his case on appeal and failed to inform the Petitioner the direct appeal was denied by the Nevada Supreme court. See Ex. "8," a Memo from Counsel Gary E. Gowen.

For claims alleging ineffective assistance of counsel, the standards set forth in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984) apply. In Strickland, the Supreme Court held that "A convicted defendant's claim that counsel's assistance was so defective as to require a reversal of his conviction has two components. First the defendant must show that counsel's performance was deficient. This

requires showing that counsel made errors so serious that counsel was not functioning as the counsel's guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudice the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Strickland, 466 U.S. at 687, 104 S.Ct. at 2064. "From counsel's function as assistance to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." Strickland, 466 U.S. at 688, 104 S.Ct. at 2065. The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. In making this determination, the reviewing court must consider the totality of the evidence placed before the original finder of fact. Strickland, supra.

A state court decision is contrary to clearly established precedent if the state court applies a rule that contradicts the governing law set forth in our cases, or if the state court confronts a set of facts that are materially indistinguishable from a decision of the Supreme Court yet nevertheless arrives at a result different from the precedent. Williams v. Taylor, 529 U.S. 362, 405-06, 120 S.Ct. 1495 (2000). Bell v. Cone, 535 U.S. 685, 694, 122 S.Ct. 1843 (2000). "Attorney offered for his omission betray a startling ignorance of the law-- or a weak attempt to shift blame for inadequate preparation. '[C]ounsel has a duty to make reasonable investigation or to make a reasonable decision that makes particular investigations unnecessary.'" See Kimmelman v. Morrison, 477 U.S. 365, 385, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986). "Respondent's lawyer neither investigated, nor made a reasonable decision not to investigate, the State's case through discovery. Such a complete lack of pretrial

preparation puts at risk both defendant's right to an 'ample opportunity to meet the case of the prosecution.'" Id. 477 U.S. at 385; Dixon v. Snyder, 266 F.3d 693, 703 (7th Cir. 2001).

"The decision not to pursue his objection to the admission of Dr. Pile's testimony fell well within the 'wide range of professionally competent assistance' required under the Sixth Amendment to the Federal Constitution." Smith v. Murray, 477 U.S. 527, 536, 106 S.Ct. 2661, 2667, 91 L.Ed. 434 (1986)(quoting Strickland, 466 U.S. at 690, 104 S.Ct. at 2066). "Counsel failed to move for dismissal of the second indictment ... We can think of no strategic reason for this omission, and that the state has offered none; it was simply a mistake. And, of course, failure to file a motion that would have preserved Wilcox's double jeopardy claim, clearly prejudiced Wilcox. Counsel was therefore constitutionally ineffective for failing to move to dismiss the indictment ... Wilcox v. McGee, 241 F.3d 1242, 1246 (9th Cir. 2001) (quoting Strickland, 468 U.S. at 687, 104 S.Ct. 2052). "The state court's contrary conclusion was an unreasonable application of clearly established federal law, as announced by the United States Supreme Court." Wilcox, 241 F.3d at 1246. "Counsel's failure to raise the issue amounted to ineffective assistance, and Wilcox was clearly prejudiced thereby" Id. 1246.

In the Petitioner's case, there is no doubt that his Counsel's conduct falls within the wide range of reasonable professional assistance, and that Petitioner has overcome the presumption that, under the circumstances, the challenged action should be considered not sound trial strategy. Thus, within the context of this strong presumption, Petitioner demonstrated that his Counsel's performance was deficient, failing below an objective standard of reasonableness, and that Counsel's deficient performance prejudiced his defense. To establish prejudice based on Counsel's deficient performance, Petitioner asserted that there is a reasonable probability that, but for his Counsel's unprofessional errors, the result of his trial proceeding would have been different. "A court may evaluate the questions of deficient per-


formance and prejudice in either order and need not consider both issues if the defendant fails to make a deficient showing on one." Means v. State, 103 P.3d 25, 32 (Nev. 2004). The Nevada Supreme Court held that "This result would not punish the criminal defendant for the errors of his attorney. Our system already provides for reversal of criminal sentences that result from attorney error." Butler v. State, 102 P.3d 71, 90 (Nev. 2004).

The Court is hereby reminded of the fact that Counsel, Jose C. Pallares, knew he was unable to provided the Petitioner with effective assistance due to Counsel suffered from anxiety, depression and alcoholism by filing a motion to withdraw as Counsel before the trial and the Court denied that motion forcing Jose Pallares to provided Petitioner with ineffective assistance of Counsel during the trial and on direct appeal. See Ex. "9," motion to withdraw as attorney of record. Later complaints were filed against Counsel for misconduct and he was found guilty. The Board hearing panel recommended that Jose Pallares be suspended for one-year without practicing law in the State of Nevada. The Nevada Supreme Court held that the one-year suspension was too lenient and imposed a two-year suspension against Jose Pallares. See Ex. "10," an Order Suspension of a License to Practice law in Nevada.

REQUEST FOR RELIEF

Based upon the foregoing reasons, Petitioner, Jose Garcia, respectfully requests that this Court order the Prosecutor of the State of Nevada to conduct "DNA" testing to clear his convictions or otherwise order the Respondents to release him from custody where he is presently imprisoned in violation of the State and Federal Constitutions.

DATED this 23rd day of September, 2008.



Jose Garcia, #58710
NNCC
P. O. Box 7000
Carson City, NV 89702-7000

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof, that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

DATED this 23rd day of Septemeber, 2008.

Jose Garcia L.
Jose Garcia, #58710
NNCC
P. O. Box 7000
Carson City, NV 89702-7000

CERTIFICATE OF SERVICE BY MAIL

I, JOSE GARCIA, hereby certify pursuant to N.R.C.P. 5(b), that on this 23rd day of September, 2008, I mailed/handed to a correction officer for mailing a true and correct original and copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Charles Short
Clerk of the District Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

Mr. David Rogger
District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89101

Jose Garcia L.
Jose Garcia, #58710
NNCC
P. O. Box 7000
Carson City, NV 89702-7000

DISTRICT COURT
FILED
CLARK COUNTY, NEVADA

DEC 2 11 27 AM '98

Luetta L...

STATE OF NEVADA,

Plaintiff,

vs.

JOSE LOPEZ GARCIA,

Defendant.

CASE NO. C142741
DEPT. NO. VIII
DOCKET NO. M

VOLUME II

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE LEE A. GATES, DISTRICT COURT JUDGE
Taken on Tuesday, June 16, 1998
At 10:15 o'clock a.m.

APPEARANCES:

For the State:

TERESA LOWRY, ESQ.
JENNIFER TOGLIATTI, ESQ.
Deputies District Attorney

For the Defendant:

JOSE PALLARES, ESQ.
Attorney at Law

REPORTED BY: YVONNE M. VALENTIN, CCR 342

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

Ex. 5

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESSES ON BEHALF OF THE STATE:

PAGE

INGRAM, Maria

Direct Examination by Ms. Togliatti	37
Cross-Examination by Mr. Pallares	67
Redirect Examination by Ms. Togliatti	101
Recross-Examination by Mr. Pallares	107
Further Redirect Examination by Ms. Togliatti	108

ESTANES, Alejandra

Direct Examination by Ms. Lowry	109
Cross-Examination by Mr. Pallares	119
Redirect Examination by Ms. Lowry	125
Recross-Examination by Mr. Pallares	127

GARCIA, Roberto

Direct Examination by Ms. Lowry	132
Cross-Examination by Mr. Pallares	138

INGRAM, Crystal

Direct Examination by Ms. Lowry	140
Cross-Examination by Mr. Pallares	162
Redirect Examination by Ms. Lowry	186
Recross-Examination by Mr. Pallares	188
Further Redirect Examination by Ms. Lowry	190

JOHNSON, Jay

Direct Examination by Ms. Lowry	192
Cross-Examination by Mr. Pallares	216
Redirect Examination by Ms. Lowry	221
Recross-Examination by Mr. Pallares	224

EXHIBITS ON BEHALF OF THE STATE:

ADM

1	Photograph	130
2	Photograph	130
3	Photograph	130
4	Photograph	130
5	Photograph	130
6	Photograph	130
7	Photograph	130
8	Photograph	130
9	Photograph	130
10	Photograph	130
11	Photograph	130
12	Video Tape	206

1 to the evidence that's actually presented. Two years have
2 gone by since this alleged incident. That's something I think
3 you need to keep in mind.

4 Memories fade and it's going to be a little
5 difficult for you, I think, to decide what weight to attach to
6 various statements that you're going to hear.

7 In the end, I'm going to ask you to find Mr.
8 Garcia not guilty. I'm going to suggest to you, at the end of
9 this case, that the evidence presented just doesn't hold
10 water. It does not -- her story just does not jive with
11 reality.

12 Thank you.

13 THE COURT: All right. State, call your first
14 witness.

15 MS. TOGLIATTI: Your Honor, the State would call
16 Maria Ingram.

17
18 MARIA INGRAM,
19 called as a witness herein, having been first duly sworn, was
20 examined and testified as follows:

21
22 THE CLERK: Please state your name and spell your
23 last name for the record.

24 THE WITNESS: Maria Ingram; I-n-g-r-a-m.
25

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MS. TOGLIATTI:

Q Ma'am, you are fluent in Spanish?

A. Uh-huh; yes.

Q. Okay. You have say yes or no when I ask you a question.

And you also speak English?

A. Yes.

Q. Okay.

And you're comfortable with me asking you questions in English; is that right?

A. Yes.

Q. Ma'am, how old are you?

A. Thirty-nine.

Q. And do you have any children?

A. Yes.

Q. How many children do you have?

A. Four.

Q. And what are their names and how old are they?

A. One is 19 years old. Her name is Alejandra Ingram; she's 19 years old. And another one is Carla Celeste Ingram; she's 16 years old. And then there is Crystal Ingram; she's 11. And then is Roberto Garcia; he's going to be seven.

Q. Now, would it be safe to say that Crystal, Alex and -- Carla, is that your other daughter's name?

1 A. (Nods head affirmatively.)

2 Q. -- all have the same father?

3 A. Yes.

4 Q. And where is their father today?

5 A. He's deceased.

6 Q. I want to draw your attention to the summer of
7 1996.

8 Where did you live at that time?

9 A. It's on Ellis Street. I can't even remember the
10 address at this moment.

11 Q. Are you a little bit nervous?

12 A. Yes.

13 Q. I'm showing you what's been shown to defense
14 counsel and marked State's proposed Exhibit Number 1.

15 Does that appear to be a photograph of the
16 apartment that you resided in in 1996, September?

17 A. Yes, it is.

18 Q. And is that from the parking lot?

19 A. Yes.

20 Q. Showing you State's proposed Exhibit Number 2, is
21 that also a photograph from the same angle?

22 A. Yes.

23 Q. Now, showing you State's proposed Exhibits Number
24 3 and 4.

25 What are those photographs of?

1 A. They're on -- from the front entrance of the
2 apartments, of each apartment, and mine was upstairs.

3 Q. Okay.

4 And is State's Exhibit Number 5 also another
5 photograph of that?

6 A. This is the one for the same building, you know.
7 They're the same place, all of them.

8 Q. Showing you State's Exhibits Number 6 and 7.

9 Is that -- what does that photograph depict?

10 A. The little yard where the kids can play, you
11 know, which doesn't have no grass, no nothing.

12 Q. And showing you State's proposed Exhibits Numbers
13 8, 9 and 10.

14 Do those just appear to be different angle
15 photographs of the apartment?

16 A. Yes, from the parking lot.

17 Q. And showing you State's proposed Exhibit Number
18 11.

19 What area of the apartment building is that?

20 A. The back where the laundry room is and where they
21 can hang clothes; and also the kids play there.

22 Q. Now, how long had you lived in this apartment
23 prior to September of 1996?

24 A. I'll say about a year and a half; close to two
25 years, in there.

1 Q. Now, do you know an individual by the name of
2 Jose Lopez Garcia?

3 A. Yes.

4 Q. Do you see him in the courtroom today?

5 A. Yes.

6 Q. Could you point to him and identify something
7 he's wearing for the record.

8 A. It looks to me like black and white shirt.

9 MS. TOGLIATTI: Your Honor, may the record
10 reflect that the witness has identified the defendant?

11 THE COURT: Yes, it shall so reflect.

12 MS. TOGLIATTI: Thank you.

13 BY MS. TOGLIATTI:

14 Q. Where did Mr. Garcia live in relation to you in
15 September of 1996?

16 A. He rented the apartment below from us.

17 Q. Directly below in the house -- excuse me -- in
18 the apartment building on Ellis?

19 A. Yes.

20 Q. And that is in North Las Vegas, Clark County,
21 Nevada?

22 A. Yes.

23 Q. Now, can you tell the members of the jury who was
24 living with you in September of -- excuse me -- in the summer
25 of 1996?

1 A. I had my daughter Carla Celeste, and she had a
2 baby, so they were staying also with me; and Crystal and
3 Roberto and myself.

4 Q. And do you recall if anyone was living with the
5 defendant at that time?

6 A. Her boyfriend -- I'm sorry?

7 Q. With Mr. Garcia?

8 A. No. I was talking about my daughter. Her
9 boyfriend was also staying with her, yes.

10 Q. Do you recall who was living with the defendant
11 in the summer -- spring-summer of 1996?

12 A. There were like himself and I'll say three more
13 males in there.

14 Q. Could you describe for the jury what -- was your
15 apartment the same on the inside as the defendant's, same
16 floor plan?

17 A. Uh-huh.

18 Q. Is that a yes?

19 A. Exactly.

20 Q. Could you describe for the jury what the
21 apartments were like on the inside, how many bedrooms?

22 A. There is two bedrooms, one bathroom, and then
23 there is what you call a bar, you know, where you can eat or
24 whatever in there; and then on the other side is the kitchen,
25 you know; and you have where you can put your dining room and

1 then there is the living room.

2 Q. So would it be accurate to say there is four
3 rooms in this apartment and a bathroom?

4 A. No, no, because the living room is very big, you
5 know, but the part where you put your dining room table is not
6 that big, you know. It's very close to the kitchen.

7 Q. Could you describe your relationship with the
8 defendant, at least in the spring and summer of 1996.

9 A. We were friends, you know.

10 Q. How is it that you came to become friends?

11 A. I think -- I was interested in the apartment, so
12 I had talked to the manager when he was talking to rent it,
13 but they rent it to him.

14 Q. And so did you have occasion to talk to him at
15 that time?

16 A. Most of the afternoons, sometimes he would be
17 outside and we'll say hi, bye, stuff like that, but socialize,
18 sit down and talk.

19 Q. Okay. Did you ever go anywhere with the
20 defendant?

21 A. Well, no, not really; get hamburgers. Sometimes
22 he used to give me a ride to the clinic, stuff like that.

23 Q. Now, were you ever romantically involved with the
24 defendant?

25 A. At one time, but it didn't work.

1 Q. And when you say "it didn't work," why is that?

2 A. Well, because we were more friends than anything
3 else, so we just decided friends is best.

4 Q. So after you decided friends is best, did you
5 continue to have a friendship?

6 A. Yeah.

7 Q. And did you speak to him on a regular basis?

8 A. Uh-huh.

9 Q. Is that a yes?

10 A. Yes.

11 Q. Okay. This lady is reporting what you say, so
12 you need to use words when you answer.

13 A. Yeah.

14 Q. Okay.

15 How about -- you indicated that the defendant
16 took you to the clinic on a couple of occasions.

17 Would you ever use his car or his vehicle? Would
18 your family ever use his vehicle?

19 A. Just I borrowed it a few times to either go to
20 the store or -- sometimes he himself will take me to the
21 clinic, and sometimes I'll call him to pick me up, you know,
22 to take me home.

23 Q. From the clinic?

24 A. Yes.

25 Q. If you didn't have a ride?

1 A. No.

2 Q. Would you ever eat at each other's houses?

3 A. No. He's not as much as eat at my house, but he
4 will ask like what do you have, you know; what did you cook
5 today and stuff like that; or sometimes, I'll just bring him a
6 plate and say here, this is what I cook, you know.

7 Q. Did you -- prior to when you called the police or
8 when the police were called in this case, did you ever have
9 any disagreements with the defendant about anything?

10 A. Myself?

11 Q. Yes. Did you get along?

12 A. Before that, we were good friends, yeah.

13 Q. Now, you mentioned earlier that the defendant was
14 living with some other people?

15 A. Uh-huh.

16 Q. Is that a yes?

17 A. Yes. I'm sorry.

18 Q. That's okay.

19 Do you know if he had any children, the
20 defendant?

21 A. Yes. He has two boys and a little girl.

22 Q. Do you know if they lived with him at the
23 apartment on Ellis in the spring-summer of 1996?

24 A. Not live with him, but they used to come
25 sometimes on the weekend.

- 1 Q. Okay. Would they come every weekend?
- 2 A. No, not -- not necessarily in that order, but
3 maybe sometimes, yes. Sometimes, they won't come and
4 sometimes she'll bring them, you know.
- 5 Q. When you say "she," who are you referring to?
- 6 A. His ex-wife.
- 7 Q. Okay. Through your friendship with the
8 defendant, did you know he had an ex-wife or the mother of his
9 children?
- 10 A. Yeah, but I never really met like -- we didn't
11 speak to each other.
- 12 Q. When you would have your conversations with the
13 defendant, would you speak primarily in Spanish or English?
- 14 A. I will say mainly in Spanish.
- 15 Q. Did you ever speak English with the defendant?
- 16 A. No, because he used to make fun of my English all
17 the time.
- 18 Q. And why is that?
- 19 A. He said I don't pronounce things right; that I
20 shouldn't speak English; that I should be ashamed of it,
21 because I don't have the knowledge to speak well English, you
22 know.
- 23 Q. And was that a joke between you two?
- 24 A. I don't think he was --
- 25 Q. Was he teasing you?

1 A. I always took it as a joke.

2 Q. Now, you mentioned earlier that the clinic -- do
3 you have a medical condition which requires continuous
4 treatment?

5 A. Yes. I have renal failure and both my kidneys
6 are not working, so I have to go three times a week to
7 dialysis and spend four hours and 15 minutes each time.

8 Q. Where is that clinic in relation to where you
9 live?

10 A. It's 2300 McDaniel Street. It's close to Carl's,
11 Jr. and Lake Mead.

12 Q. You indicated that the defendant was aware that
13 you have renal failure?

14 A. Yes.

15 Q. And why is that?

16 A. How did he come to know?

17 Well, because I needed rides, so I always have to
18 tell him where to take me and where to pick me up.

19 Q. How does your illness affect you? Do you work?

20 A. No. I can't.

21 Q. Financially, how does it affect you?

22 A. Oh, big time. I have no medical, so I have to
23 pay for a lot of the pills that they give me for medication,
24 which they're not cheap. They're very expensive.

25 Q. You indicated that you have constant dialysis?

1 A. I have to.

2 Q. Is there a surgery that is possible that could
3 cure you?

4 A. In time --

5 MR. PALLARES: Objection, your Honor.

6 This is not relevant to anything.

7 THE COURT: Counsel, what's the relevance of
8 this?

9 MS. TOGLIATTI: Your Honor, it's my
10 understanding, from listening to the opening statement, that
11 the defense wants to perhaps challenge this child's living and
12 family and how her structure is and her discipline.

13 So, for the jury to hear what her home life is
14 like, in light of the mother's serious physical conditions, I
15 think is relevant.

16 THE COURT: Well, I don't know if we have to go
17 into what kind of treatment she's going to get in the future.

18 Sustained. We've already covered that.

19 MS. TOGLIATTI: Thank you, your Honor.

20 BY MS. TOGLIATTI:

21 Q. How long have you had that medical condition?

22 A. For years now.

23 Q. Could you describe for the jury -- you indicated
24 that Jose had three kids that came over once in a while on the
25 weekends.

1 A. Uh-huh.

2 Q. Could you describe the relationship between your
3 kids and his kids?

4 A. They used to play together. He will rent movie
5 for his children, so he invited mine always to come and watch
6 the movies with his children, which they did on a regular
7 basis whenever they come to visit him.

8 Q. Could you -- were there other children in the
9 neighborhood?

10 A. There were a couple living with them, you know,
11 that they have a little boy, but, for some reason, they not
12 really got together.

13 Q. Okay. Now, what about the houses and apartments
14 around you on Ellis Street; did those people have children?

15 A. They have children, but they didn't get together
16 with his kids.

17 Q. Where would your kids play with his kids?

18 A. Sometimes outside, they'll be playing; sometimes
19 they'd be in the house, his apartment.

20 Q. You indicated a dirt area in the photographs
21 that -- where you said that the kids would play.

22 Was that primarily where they would play when
23 they were outside?

24 A. Yeah. On the parking lot, too.

25 Q. Could you tell us about Crystal? How does she

1 like school?

2 A. She doesn't.

3 Q. Why doesn't she like school?

4 A. Well, she insists that people make fun of her
5 because she happens to be taller than the rest of her class,
6 and that she is fat, or they call her names, you know.

7 Q. How does she do in school?

8 A. Not good.

9 Q. Has she always been a below average student?

10 A. Yes.

11 Q. And has it been your experience that she
12 struggles in school?

13 A. Yes.

14 Q. What about her size? Has she always been taller
15 than the other kids?

16 A. She's the tallest in her class.

17 Q. Every year?

18 A. Pretty much.

19 Q. Now, you indicated that -- the school that she
20 was attending in the spring and summer of 1996, was that a
21 year-round school, the track breaks?

22 A. Yeah, they had track breaks, too.

23 Q. You indicated that Jose's children -- excuse
24 me -- the defendant's children would play with your children;
25 is that right?

1 A. Uh-huh.

2 Q. Is that a yes?

3 A. Yes.

4 Q. Okay. How did the defendant treat Crystal prior
5 to --

6 A. I never -- I never seen any wrongdoing, you know.
7 I mean, he was nice to her. He made fun of her curly hair.

8 Q. How did he make fun of her curly hair?

9 A. Like saying china, which means curly hair, but
10 not in a mean way. And I never noticed him treating them any
11 different than his kids.

12 Q. Was there sometime in the spring or summer of
13 1996 that you noticed a difference in the way the defendant
14 acted towards Crystal or Crystal acted towards the defendant?

15 A. Yes.

16 Q. What did you notice?

17 A. He just stopped coming over or calling, when I
18 had a phone, and it was like -- I don't know, like we, all of
19 a sudden, lost the friendship or something, you know. He just
20 went his own way.

21 Q. What about Crystal? Did you notice anything that
22 changed in the way --

23 A. She didn't want to go whenever the kids came
24 over. I said, "Do you want to go play?" And she just said
25 no, but I never really questioned her.

1 Q. When you say "when the kids came over," are you
2 referring to the defendant's kids?

3 A. Yeah. When his kids come over to my house, I
4 would tell -- "Oh, his kids are over there. Do you guys want
5 to go play?" And she just said no.

6 Q. Now, did there come a time in the spring or
7 summer of 1996 when you learned some information about an
8 individual in the complex named Mario?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes.

12 I don't remember his last name, though.

13 Q. What did you know about where Mario lived in the
14 complex?

15 A. He was staying in his apartment also.

16 Q. Now, at the time that you heard what was said
17 about Mario -- or before that, you were aware that Mario lived
18 there previously?

19 A. No. That was the time when I find out about him
20 exposing himself.

21 Q. And did you have a conversation with anyone in
22 your household about that?

23 A. Yes, my daughters.

24 Q. Could you tell the jury how that came about?

25 A. Well, the men -- excuse me. The man exposed

1 himself to the little boy that used to live in his apartment.

2 Q. When you say "his," you mean the defendant's?

3 A. Yes.

4 Q. Could you -- just because it sounds like there
5 are numerous people living in -- at least to your
6 recollection -- in the defendant's apartment?

7 A. Uh-huh.

8 Q. At the time that you heard this about Mario, do
9 you recall, and could you tell the jury, about the little boy
10 and his family if they were living there?

11 A. I didn't get that.

12 Q. I didn't either.

13 You indicated that Mario lived downstairs at one
14 point?

15 A. Uh-huh.

16 Q. And then you indicated there was a five year old
17 little boy that also lived with the defendant?

18 A. Right.

19 Q. Who was the five year old boy living with?

20 A. That belonged to -- they call -- his name is
21 Enuncio Campos, and his wife or girlfriend -- I'm not sure if
22 they're married or not -- her name is Marvaya, and their son,
23 they call him Eduardo, but I can't recall his name right this
24 minute. They are the ones that they were living there when
25 that man did that.

1 Q. When Mario --

2 A. Show -- uh-huh, exposed himself to the little
3 boy.

4 And when they told me about it, I wanted to tell
5 my daughter. I said, oh, do you know this nut, you know, and
6 that's when my daughter asked me to ask Crystal.

7 Q. Okay. When you -- you were talking to which
8 daughter first?

9 A. Alejandra.

10 Q. She is 19?

11 A. Uh-huh.

12 Q. So she was 17 at the time?

13 A. Uh-huh.

14 Q. Is that a yes?

15 A. Yes.

16 Q. And what did Alejandra say during this
17 conversation?

18 A. Well, I was telling her about that -- you know,
19 like something happened, you know.

20 And she questioned me, "Did you ask Crystal about
21 that?"

22 And I said, well, no, not really because that did
23 not involve Crystal. But then she said maybe we should ask
24 her, you know. So then we decided to ask Crystal and she got
25 very upset.

1 Q. What did you ask Crystal?

2 A. I asked Crystal if that man ever exposed himself
3 to her.

4 Q. And you were referring to Mario?

5 A. Mario, uh-huh.

6 Q. And what did Crystal do?

7 A. She say that he had laid on top of her one time
8 when they were watching TV or something and that that was it,
9 you know.

10 Q. Now, you indicated that she got upset?

11 A. Yes. She started crying, and when I questioned
12 her why -- why are you crying; you know, it's okay; he's gone;
13 he didn't do nothing, and then she said, "But it wasn't him."

14 And that's when I started panic, like "What do
15 you mean, it wasn't him?"

16 Q. And what did she say?

17 A. She said -- she said, "I can't tell you."

18 First of all, she said, "I can't tell you. I'm
19 sorry."

20 And so she was crying; and by then, we were all
21 crying because we knew something had happened. And my
22 daughter told me to get out of the room, which is the hallway.

23 Q. Which daughter?

24 A. The oldest, Alejandra.

25 A. And I just got to the hallway and I was

1 listening --

2 THE COURT: Excuse me. Approach the bench.

3

4 (Whereupon, a bench conference ensued.)

5

6 BY MS. TOGLIATTI:

7 Q. You indicated that Crystal didn't want to tell
8 you; is that right?

9 A. Right. She didn't tell me.

10 Q. So why did you leave the room?

11 A. Because my oldest daughter told me maybe she'd
12 feel more comfortable telling us than telling you.

13 Q. When you left the room, what happened?

14 A. I was still listening, and I heard her when she
15 said that Jose had done something to her. That's the
16 beginning.

17 And by then, I opened the door, and I said, "What
18 do you mean? What did he do?"

19 And she couldn't come up with the right words,
20 you know, at first. She said, well, you know his thing, you
21 know, and I wanted her to like explain.

22 THE COURT: Wait a minute. I didn't understand
23 what you said.

24 THE WITNESS: She was referring to his privates.

25 THE COURT: I know, but what did she say? I

1 didn't hear that part.

2 THE WITNESS: That he stick his thing in her.

3 THE COURT: His thing?

4 THE WITNESS: His thing in her.

5 THE COURT: Oh, okay.

6 BY MS. TOGLIATTI:

7 Q. How did she appear to you while you were having
8 this conversation?

9 A. She was totally crying and shaking real bad. And
10 we tried to hug her and she just -- we took a long time to try
11 to calm her down and then she insists that: "Are you sure
12 you're okay?" She wanted -- hmm, I don't know. I guess she
13 wanted to reassure that I was okay.

14 Q. When you talked with Crystal about what the
15 defendant had done to her, did she tell you when it had
16 happened?

17 A. No. All she said was that, "I'm sorry I didn't
18 tell you sooner. I was scared." She did not remember. All
19 she kept saying that night was that she had went to spend that
20 night over.

21 Q. So she indicated it happened on a night that she
22 had spent the night at the defendant's apartment?

23 A. Yes.

24 Q. Now, was Crystal -- looking back from that night,
25 do you think there was a time that Crystal may have told

1 you --

2 MR. PALLARES: I'm going to object. The State
3 would clarify what night they're taking about.

4 THE COURT: Rephrase the question.

5 MS. TOGLIATTI: I can do that, your Honor.

6 BY MS. TOGLIATTI:

7 Q. Looking back from the time that Crystal told you
8 that the defendant had put his thing inside of her, do you
9 think there was a time she might have tried to tell you
10 before?

11 A. I think so, but --

12 MR. PALLARES: I'm going to object. That calls
13 for speculation.

14 THE COURT: Sustained.

15 BY MS. TOGLIATTI:

16 Q. Did Crystal ever make any comments to you about
17 her private area?

18 A. Yes.

19 Q. Okay. And was that prior to the night that she
20 told you the defendant put his thing in her private or in her?

21 A. It was a couple days, you know, that she told me
22 that her private hurt, but I thought you know that, perhaps,
23 she was like a rash. Kids don't always necessarily clean
24 themselves right, so I thought that that's what it was.

25 Q. Did she say anything else to you?

1 A. No.

2 Q. After she told you what the defendant had done
3 and you had calmed her down or attempted to, did she make any
4 statements as to what else happened that night?

5 A. She explained that when the kids had went to
6 sleep over the apartment, that she was not asleep and he asked
7 her if she wanted to continue to watch movies.

8 MR. PALLARES: Objection, your Honor. This is
9 hearsay. This is Crystal's statement.

10 THE COURT: Counsel?

11 MS. TOGLIATTI: Your Honor, the defendant -- the
12 defendant's opened the door in the opening statement as to --
13 at least that's the State's position.

14 THE COURT: Counsel, what is the exception to the
15 hearsay rule that you pose this under?

16 MS. TOGLIATTI: Well, your Honor, I think that
17 the foundation has been laid for an excited utterance in this
18 case, that the victim is crying, shaking, and it takes the
19 family two hours to calm her down.

20 That's the reliability aspect and the exception
21 to the hearsay rule, that she was under the stress of the
22 event and disclosure.

23 MR. PALLARES: Your Honor, I think that that
24 foundation might have been laid prior for some statements
25 made, but I didn't hear that that foundation laid as to when.

1 In fact, I'm not even sure when Crystal made this statement to
2 the mother.

3 THE COURT: Yes, that's true.

4 Not only that, though, the problem with an
5 excited utterance is that it usually comes in after the person
6 has witnessed a startling event; and also, there is a time
7 differential too that's important. It has to be within a
8 reasonable time after the incident.

9 We don't know when this was or how much time
10 afterwards; and it has to be while the person is under the
11 stress of the excitement that was caused by the event.

12 So the problem we have is how long after the
13 incident: did this happen?

14 MS. TOGLIATTI: Well, your Honor, I'll lay some
15 foundation.

16 THE COURT: All right.

17 MS. TOGLIATTI: And then offer it in as an
18 exception.

19 BY MS. TOGLIATTI:

20 Q. Miss Ingram, you indicated that when you talked
21 to Crystal that night, she was crying; is that right?

22 A. Uh-huh.

23 Q. Is that a yes?

24 A. Yes.

25 Q. And you indicated she was very upset?

1 A. She was very, very upset.

2 Q. After talking to her and her indicating it was on
3 the night that she spent the night at the defendant's house,
4 were you able to determine if she -- if it had occurred
5 recently or maybe some time had passed?

6 A. I'm not so sure I got where you're talking in
7 there.

8 Q. Okay. Did you have any idea from talking to
9 Crystal when it had happened?

10 A. No. That -- that's the problem, that we don't
11 know when exactly that happened.

12 Q. But you know it was on the night that she spent
13 the night at the defendant's house?

14 A. That's what she told us.

15 Q. And you indicated that in spring and summer of
16 1996, sometime in there, that she started behaving differently
17 towards the defendant?

18 A. Uh-huh; yes.

19 Q. And she didn't want to play with his kids
20 anymore?

21 A. She didn't even want to pass in there to go
22 upstairs.

23 Q. What would she do instead?

24 A. Well, she have to because there is no other way.
25 There is only one stairs to go to the apartment. But she act

*don't know when
it happened*

1 shaky. If she see, for example, the van coming, you know,
2 towards the parking lot, she'll run upstairs.

3 Q. The van?

4 A. His van.

5 Q. His van?

6 A. Yes.

7 Q. And she indicated to you that night that she was
8 crying and upset --

9 A. It was the morning time. It wasn't at night.

10 Q. Okay. It was in the morning. I'm sorry.

11 A. Uh-huh.

12 Q. -- and that she was sorry she hadn't told you
13 earlier?

14 MR. PALLARES: Objection again; hearsay.

15 THE WITNESS: Yes.

16 MS. TOGLIATTI: Well, I'm laying the foundation
17 for the excited utterance.

18 MR. PALLARES: Your Honor, I --

19 THE COURT: Excuse me. You confused me.

20 Which statement are you trying to get in, the one
21 when she talked to the mother and Alejandra, after they asked
22 her about whether Mario had exposed himself, when she told
23 them everything, or are you talking about the night after she
24 spent the night down there?

25 MS. TOGLIATTI: Judge, my understanding from the

1 she's still under the stress of the event, in fact, for the
2 first time telling, but I'll move on.

3 BY MS. TOGLIATTI:

4 Q. After Crystal told you what had occurred, how did
5 you feel?

6 A. I was angry. I couldn't believe it. At first, I
7 thought maybe it couldn't be true, you know. But I went
8 downstairs, after I calmed down somewhat, and then I went in
9 there. All I was asking him was why, you know.

10 Q. What did you do when you went downstairs? Who
11 went with you?

12 A. My daughter. They went behind me, but I had run
13 before them, you know. I was the one down there first.

14 Q. Are you talking about Alej --

15 A. Alejandra.

16 Q. And Alejandra followed you downstairs?

17 A. Yes.

18 Q. And what happened when you went into his
19 apartment?

20 A. I remember pushing him and saying, "How could you
21 do this," you know.

22 Q. And did -- was the police called?

23 A. While I was talking to him, my daughter used his
24 own phone to call the police.

25 Q. After you called the police, did an officer

1 arrive?

2 A. After a while, yes.

3 Q. And was it a lady officer?

4 A. To be truthful, there were more than one.

5 Q. After the police were called that night --

6 A. That day.

7 Q. Excuse me. Later that day --

8 A. Uh-huh.

9 Q. -- was there another time when you and Crystal
10 spoke to a detective that you gave a statement to?

11 A. You mean like before they took her for the exam?

12 Q. After the police were called and the police came
13 out -- were they patrol officers? Did they have uniforms and
14 badges?

15 A. Yeah; uh-huh.

16 Q. And after that day, was there another time when
17 you and Crystal spoke to a detective who maybe wasn't in
18 uniform?

19 A. Yes, we did. We came -- I don't know the address
20 though.

21 Q. That's okay.

22 A. We went to give a statement about what we recall
23 of that when it happened.

24 Q. Did you bring Crystal to get a medical
25 examination?

1 A. They pick us up. I didn't -- they send a taxi or
2 I think it was one of those detectives that came to the house
3 and took us over there.

4 Q. Okay. At this time, when you were making
5 arrangements to give a statement and to get a medical exam,
6 did you have a phone or a car?

7 A. No, I did not.

8 Q. After the day that the patrol officers came out
9 in their uniforms --

10 A. Uh-huh.

11 Q. -- were you ever contacted at your house by
12 anyone about this case?

13 A. I got to sneeze and it won't come out.

14 What did you say?

15 Q. Were you ever contacted by anyone, after the
16 patrol officers came out about this case at your house,
17 besides police officers?

18 A. Yes, some of his nephews.

19 Q. Anyone else?

20 A. I gather it must be their friends. I don't know.
21 There were more than two kids in there and they were --

22 Q. Not about the nephews.

23 Was there anyone else besides them?

24 A. His wife.

25 Q. When you say his wife --

1 A. Not the mother of the kids.

2 Q. Did you recognize this person as someone you had
3 seen around the defendant before?

4 A. No.

5 Q. But that person represented themselves as his
6 wife?

7 A. Yes.

8 Q. And what happened when she came to your house?

9 A. She was crying and she told me that I have to not
10 let Crystal be in court because Crystal doesn't know what
11 she's talking about.

12 MR. PALLARES: Objection, your Honor.

13 This again is hearsay. And, also, I don't know
14 about the relevance of it.

15 THE WITNESS: That's all I know.

16 THE COURT: Counsel?

17 MS. TOGLIATTI: Well, your Honor, with regards to
18 the hearsay objection, the relevance is obvious: Someone on
19 the defendant's behalf coming to her house and telling her not
20 to testify in court.

21 THE COURT: Well, how do you know it's on the
22 defendant's behalf?

23 MS. TOGLIATTI: Pardon me?

24 THE COURT: What do you mean on the defendant's
25 behalf?

1 MS. TOGLIATTI: Well, the person stated she was
2 his wife.

3 THE COURT: I know, but it doesn't mean that the
4 defendant sent her; not to mention: What's the exception?

5 I'm going to sustain the objection.

6 MS. TOGLIATTI: Thank you.

7 MR. PALLARES: Your Honor, I'd also ask to have
8 that part of the record stricken, her testimony.

9 THE COURT: It will be stricken. Ordered
10 stricken.

11 MR. PALLARES: Thank you.

12 MS. TOGLIATTI: I have nothing further.

13 THE COURT: Cross-examination.

14 MR. PALLARES: Thank you.

15

16 CROSS-EXAMINATION

17 BY MR. PALLARES:

18 Q. Good morning.

19 A. Hi.

20 Q. Maria, I'm Jose Pallares. I'm Mr. Garcia's
21 attorney. Okay?

22 Your youngest child, what is his name?

23 A. Roberto Garcia.

24 Q. Roberto. Okay.

25 A. Yeah.

1 Q. Roberto Garcia.

2 And -- I'm sorry. What's his father's name?

3 A. His name? Gregorio Garcia.

4 Q. Gregorio? Gregorio is dead?

5 A. No. That's my daughters' father. He is a
6 different father.

7 Q. Oh, okay. So your youngest son has a different
8 father?

9 A. Right.

10 Q. Okay. Now, you have one or two daughters living
11 with you in 1996?

12 A. Yes.

13 Q. Is it one or two; which one; just one daughter or
14 two?

15 A. Two daughters, Carla and her boyfriend and their
16 baby, and then Crystal and Berto and myself.

17 Q. And how old was Carla at the time?

18 A. She's 16 right now. She was more like 14.

19 Q. She was 14?

20 A. Yes.

21 Q. And her baby and her boyfriend?

22 A. Uh-huh.

23 Q. And what's the name of Carla's boyfriend?

24 A. Nicholas Rosas.

25 Q. Nicholas Rosas?

- 1 A. Uh-huh.
- 2 Q. How old was Alejandra in 1996?
- 3 A. About 17.
- 4 Q. Seventeen?
- 5 A. Yeah.
- 6 Q. Was she living at the house alone or did she also
7 have someone else?
- 8 A. Well, she was in the process of moving to their
9 apartment, so she was not really -- they used to live very
10 close by.
- 11 Q. When you say "they," you mean Alejandra and her
12 boyfriend?
- 13 A. Right.
- 14 Q. Okay. Now, you've testified that you and Mr.
15 Garcia were very close friends, correct, and that you never
16 had any problems with him, correct?
- 17 A. No.
- 18 Q. That he loaned you money, would bring food
19 sometimes for the kids?
- 20 A. Sometimes, yes.
- 21 Q. Give you rides, correct?
- 22 A. Yeah.
- 23 Q. You were asked if you and him were romantically
24 involved.
- 25 A. At one time.

1 Q. At one time.

2 So you actually had some kind of a romantic
3 relationship?

4 A. One time.

5 Q. One time?

6 A. Uh-huh.

7 Q. Okay. Now, you said that your testimony was that
8 the relationship didn't work because you thought it better to
9 be friends; is that correct?

10 A. Yeah.

11 Q. Do you know who Germina Castrone is?

12 A. No.

13 Q. Isn't it true that when you had this romantic
14 relationship with Mr. Garcia that he had a girlfriend, a
15 regular girlfriend?

16 A. I know that he had a couple ladies, but I'm not
17 sure which one was the true girlfriend.

18 Q. Were you ever angry that maybe this relationship
19 stopped because he was interested in one of his other
20 girlfriends?

21 A. No, because it was a mistake. It should never
22 have happened. We were good friends.

23 Q. So you were never jealous over his relationships
24 with other women?

25 A. No.

1 Q. Now, you say that prior to the summer of 1996,
2 your kids used to play a lot with Mr. Garcia's kids, correct?

3 A. Uh-huh.

4 Q. Do you know the names of Mr. Garcia's kids?

5 A. No, I don't.

6 Q. And when you were interviewed by the police back
7 in 1996, you couldn't remember their names then, could you?
8 Correct?

9 A. Not really, because I was not the one involved
10 with them, you know.

11 Q. You let your kids spend the night over there, but
12 that was --

13 A. That was only the first time.

14 Q. I'm sorry. That was the first --

15 A. Yeah, the only time.

16 Q. So it's your recollection that your kids only
17 spent the night once at Mr. Garcia's house --

18 A. Right.

19 Q. -- correct?

20 A. (Nods head affirmatively.)

21 Q. Do you remember what month that was?

22 A. Truly, I do not.

23 Q. No? Okay.

24 And at that time, you didn't know the names of
25 Mr. Garcia's kids, correct?

1 A. No, not really.

2 Q. Okay. I want to turn your attention also to part
3 of your testimony wherein you said that there was another
4 couple living with Mr. Garcia; is that correct?

5 A. Uh-huh.

6 Q. I believe you mentioned the name Marvaya Campos?

7 A. Well, I'm not sure the last name is Campos, but I
8 know his name is Enuncio Campos.

9 Q. Could it be Gamos perhaps?

10 A. Gamos, uh-huh.

11 Q. Miss Gamos and Mr. Campos were living with Mr.
12 Garcia?

13 A. Yes.

14 Q. Was their son Chris Chang also living there?

15 A. Christian, yes.

16 Q. How old was Christian?

17 A. I think, at the time, he was more like three,
18 going on four, somewhere around there.

19 Q. So he was a little boy?

20 A. Yeah, he was little.

21 Q. Now, I'm talking about 1996. Okay?

22 A. Uh-huh.

23 Q. I want to talk about the first half of 1996 --
24 okay -- like January through June.

25 Was Mario living with Mr. Garcia at that time, do

1 you remember?

2 A. He didn't really stay long, you know, in his
3 place. I don't even remember how he left or anything, you
4 know, that much.

5 Q. I'm sorry. I don't mean to cut you off. I'm a
6 little nervous myself.

7 A. Me too.

8 Q. Do you remember when Mario left?

9 A. No. I know that it wasn't nighttime when they
10 left, because they throw him out pretty much.

11 Q. So he left once it was reported that he had
12 exposed himself to Christian?

13 A. He wasn't ever reported.

14 Q. Okay. I'm sorry. I misspoke. I'm not saying
15 reported to the police. I'm saying once it became known --

16 A. Right.

17 Q. -- that he had exposed himself.

18 A. He deny it, but they threw him out so he couldn't
19 stay there no more.

20 Q. And he just disappeared after that?

21 A. Uh-huh.

22 Q. So that was in September of 1996, wasn't it?

23 A. No. That wasn't this September. I think it was
24 before that, you know.

25 Q. Okay. Well, what month did Crystal allegedly

1 tell you about this -- about this incident?

2 A. In September. That's the first time I heard
3 about it.

4 Q. So Crystal supposedly brings this up in
5 September?

6 A. Right.

7 Q. And according to your testimony, you questioned
8 her about this because of something Mario did?

9 A. Uh-huh.

10 Q. Mario exposed himself, correct?

11 A. Uh-huh.

12 Q. And that's what got the whole topic going?

13 A. Right.

14 Q. How long before you talked to Crystal did Mario
15 expose himself?

16 A. I don't think that it must have been that far
17 back either, you know. It was somewhere in between then, but
18 I don't think Mario was there when that happened to Crystal.

19 Q. So you don't recall when Mario actually moved in?

20 A. No, I don't.

21 Q. But to the best that you can figure, Mario wasn't
22 there when Crystal spent the night at Mr. Garcia's house?

23 A. I don't think so.

24 Q. Okay. You've testified that you noticed a change
25 in Crystal's behavior, correct?

1 A. Yes.

2 Q. And you said that the change in the -- actually,
3 there was a change in the relationship between Mr. Garcia and
4 Crystal; is that correct? That's what you remember?

5 A. Yes.

6 Q. And I believe you said that it occurred all of a
7 sudden?

8 A. Yeah. She didn't want to like play with his
9 kids. She didn't want to even talk about Jose in any way.

10 Q. Right.

11 And you also say that Jose stopped talking to
12 Crystal, correct?

13 A. And myself.

14 Q. And to you?

15 A. Uh-huh.

16 Q. And isn't it true that this relationship changed
17 the day after you reported this to the police?

18 A. Well, it had changed before that, but on that
19 date, it really changed. He didn't speak to us at all.

20 Q. What part of the -- what part of the relationship
21 had changed before that?

22 A. We were not talking, you know, like before,
23 like -- or like say once, why don't you come on over or -- I
24 cannot say come and eat or something. I didn't feel
25 comfortable anymore, you know.

- 1 Q. You didn't feel comfortable?
- 2 A. No, because he didn't speak to us, so I didn't
3 feel like -- I feel like I was barging in, you know, butt in.
- 4 Q. Barging in?
- 5 A. Yes.
- 6 Q. Now, when Jose stopped talking to you, this was
7 after you reported this to the police?
- 8 A. Uh-huh.
- 9 Q. Okay. Before coming to court today, did you
10 review any documents? Did you have a chance to sit down with
11 the DA and talk about your testimony?
- 12 A. The DA?
- 13 Q. I'm sorry. The District Attorney's Office.
- 14 A. You confused me.
- 15 Q. I'm sorry. I don't mean to.
- 16 A. Yes. Yes, I -- it's the same thing that we had
17 stated before.
- 18 Q. I'm going to ask you about that, but when did you
19 meet with anybody from the DA's Office -- I'm sorry -- the
20 District Attorney's Office about this case?
- 21 A. When did I meet?
- 22 Q. Yes.
- 23 A. For the pretrial or before that?
- 24 Q. Well, how many times have you met with the
25 District Attorney's Office regarding this case?

- 1 A. Well, I think -- what is it? Two times.
- 2 Q. Two times?
- 3 A. Yes.
- 4 Q. Do you remember when the first time was?
- 5 A. I think the first time was when they took the
6 report and then the pretrial and then now this.
- 7 Q. So you met in the last few days with the District
8 Attorney's Office?
- 9 A. (Nods head affirmatively.)
- 10 Q. And you didn't review any documents while you
11 were talking to them?
- 12 A. What we had stated before; nothing had changed.
- 13 Q. Let me ask you this: Do you recall giving a
14 recorded statement to the North Las Vegas Police Department?
- 15 A. Uh-huh.
- 16 Q. And was that given to a Debra Anderson?
- 17 A. Debra, uh-huh.
- 18 Q. Deb Anderson?
- 19 A. Uh-huh.
- 20 Q. And as far as you can recall, did that occur
21 October 3rd, 1996?
- 22 A. I'm not so sure if that's the accurate date, you
23 know.
- 24 Q. But is that about right?
- 25 A. I would say, yes.

1 THE COURT: Excuse me. Let me interrupt you
2 there.

3 Approach the bench.

4
5 (Whereupon, a bench conference ensued.)

6
7 THE COURT: We're going to take our lunch break
8 here.

9 You're admonished during this break that you're
10 not to converse among yourselves or with anyone else on any
11 subject connected with this trial;

12 Read, watch or listen to any report of or
13 commentary on the trial or any person connected with this
14 trial by any medium of information, including, without
15 limitations, newspapers, television or radio;

16 And you're not to form or express any opinion on
17 any subject connected with this case.

18 So I'll see you back here about 1:15.

19
20 (Proceedings recessed.)

21
22
23
24
25

1 LAS VEGAS, NEVADA, TUESDAY, JUNE 16, 1998, 1:50 P.M.

2
3 -o0o-

4
5 THE COURT: Let the record reflect the presence
6 of all the parties and all the jury members.

7 You may continue with the witness. Continue.

8 MR. PALLARES: Thank you, your Honor.

9 BY MR. PALLARES:

10 Q. Maria, I believe that when we broke for lunch, we
11 were talking about the day that you called the police or, I
12 guess, Alejandra called the police?

13 A. Uh-huh.

14 Q. Is that correct?

15 A. Yeah.

16 Q. Is that what you recall?

17 All right. I believe you stated that that was
18 the day that you first heard about this incident, correct?

19 A. Uh-huh.

20 Q. You went immediately to Mr. Garcia's apartment,
21 correct?

22 A. Uh-huh.

23 Q. Just say yes or no, please.

24 A. Oh, I'm sorry. Yes.

25 Q. Thank you.

1 And you were angry, correct?

2 A. Yes, I was; uh-huh.

3 Q. All right. Now, you stated that you confronted
4 Mr. Garcia in his apartment?

5 A. Uh-huh.

6 Q. He denied this event took place?

7 MS. LOWRY: Objection; that's adoptive hearsay.

8 MS. TOGLIATTI: Objection, your Honor.

9 THE COURT: Counsel.

10 MR. PALLARES: Again, excited utterances, your
11 Honor. It is -- I'll rephrase my question.

12 THE COURT: It's not an excited utterance.

13 MR. PALLARES: It's not an excited utterance.

14 It's a present sense exception.

15 MS. LOWRY: Statement made by his own client; he
16 can't get client's statement, statement of party opponent.
17 It's clearly hearsay.

18 THE COURT: Overruled. Go on.

19 MR. PALLARES: Excuse me?

20 THE COURT: You can ask it. She can answer it.

21 BY MR. PALLARES:

22 Q. Did he deny it or did he admit it to you?

23 A. He denied it.

24 Q. Okay. Did he try to stop you from using the
25 phone?

- 1 A. No.
- 2 Q. Or try to stop Alejandra from using the phone?
- 3 A. No.
- 4 Q. A lot of police arrived; is that correct?
- 5 A. Yes.
- 6 Q. The police interviewed you at the scene; is that
7 correct?
- 8 A. Not really. They were talking to him.
- 9 Q. Okay. So the police were more interested in Mr.
10 Garcia?
- 11 A. Yeah. They were asking like his ID and all that
12 stuff.
- 13 Q. So you saw them talking to Mr. Garcia?
- 14 A. (Nods head affirmatively.) Yes.
- 15 Q. They didn't arrest Mr. Garcia though?
- 16 A. No.
- 17 Q. In fact, did you see Mr. Garcia leave the scene?
18 Did you see him go --
- 19 A. I think he was going to work.
- 20 Q. But he left -- he didn't leave with the police?
21 He left on his own?
- 22 A. No, he left on his own. Yes.
- 23 Q. Okay. When did you -- how much later did you
24 give this statement to Deb Anderson?
- 25 A. I think it was since September, you know, but --

1 Q. I think I asked you before -- that my records
2 show it was October 3rd.

3 Do you agree that that could be right?

4 A. I frankly don't remember.

5 Q. Okay. Did you also give a handwritten statement
6 the day that the police came out to the scene?

7 A. The same day?

8 Q. Yeah.

9 A. I don't remember.

10 MR. PALLARES: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes.

13 MR. PALLARES: In fact, I'm showing the State a
14 copy of a victim's witness statement dated 9/11/96.

15 THE COURT: Right.

16 MR. PALLARES: Let the record reflect I'm having
17 a copy marked as Defense Exhibit A.

18 THE COURT: All right.

19 BY MR. PALLARES:

20 Q. Maria, I'm handing you a copy of a piece of paper
21 that's been marked as Defense proposed Exhibit A.

22 Would you take a look at that for me?

23 A. Uh-huh.

24 Q. Do you recognize that?

25 A. Yes.

1 Q. Okay. What is it?

2 A. It's my own writing.

3 Q. On the top, it says: "Victim Witness Statement,
4 North Las Vegas Police Department;" is that correct?

5 A. This is my daughter's.

6 MR. PALLARES: Now, I'm going to ask you about
7 that.

8 THE COURT: Excuse me. Wait a minute.

9 This is your daughter's what?

10 THE WITNESS: This is my daughter writing in
11 here. This is not my writing.

12 THE COURT: That's not your statement?

13 THE WITNESS: No.

14 MR. PALLARES: I'm going to ask her about that in
15 just a second, your Honor, if the Court will allow me.

16 THE COURT: Go on.

17 BY MR. PALLARES:

18 Q. On the top, it says, "Maria E. Ingram," correct?

19 A. Uh-huh.

20 Q. At the bottom, it says, "Victim Witness
21 Signature;" it says "Maria E. Ingram," correct?

22 A. Yeah, because she's under age, so I have to sign
23 on the bottom of her.

24 Q. So this statement is actually your daughter's
25 statement?

- 1 A. Right.
- 2 Q. This is Alejandra's?
- 3 A. Uh-huh.
- 4 Q. But you signed it as Maria, as the mother?
- 5 A. Right.
- 6 Q. This isn't your handwriting on it?
- 7 A. No, it's not.
- 8 Q. Okay. Thank you.
- 9 I'll go ahead and take that back from you and
- 10 we'll ask your daughter about that. Sorry about the
- 11 confusion.
- 12 A. That's okay.
- 13 Q. So you didn't give a statement right at the
- 14 scene, though, did you?
- 15 A. Well, her English is a bit better than mine.
- 16 Q. You didn't give a written statement?
- 17 A. Not that I remember. I know -- well, no, truly,
- 18 I don't.
- 19 Q. At the time when the police arrived, I take it
- 20 you were still angry --
- 21 A. Uh-huh.
- 22 Q. -- and upset?
- 23 A. Yes.
- 24 Q. Did you tell them that Mr. Garcia had placed his
- 25 hand over your daughter's mouth while doing these acts?

1 A. I don't think they knew that right then.

2 Q. Okay. Did you ever tell the police this?

3 A. When I write -- when all this was taking place,
4 we didn't know that.

5 MR. PALLARES: Okay. You didn't know it.

6 Let me -- just so we can get more of your time
7 frame, I'm going to have another document marked. Okay?

8 I'm going to hand you what's been marked as
9 Defense proposed Exhibit B. Go ahead and take your time and
10 take a look at that.

11 Oh, geez. Excuse me. I gave you the wrong one.

12 Sorry, your Honor. I got them confused. I gave
13 you your daughter's again.

14 Just go ahead and mark it C, please.

15 I'm getting a little ahead of myself. That's the
16 one.

17 BY MR. PALLARES:

18 Q. Do you recognize that?

19 A. Yes.

20 Q. Now, do you recall giving a statement to Deb
21 Anderson of the North Las Vegas Police Department?

22 A. Yes.

23 Q. And that statement was recorded?

24 A. I don't know whether it was.

25 What do you mean recorded?

1 Q. Was there a court reporter there typing it down?

2 A. Yes.

3 Q. Oh, there was?

4 A. Uh-huh.

5 Q. Okay. You've had a chance to look at Defense
6 proposed Exhibit C, the paper in your hand.

7 Okay. To the best of your knowledge and from
8 looking at it, is that a true and accurate copy of the
9 statement you gave on October 3rd, 1996?

10 A. Pretty much of what I know.

11 Q. Okay. There are some initials on the bottom of
12 each page of Exhibit C.

13 Do you see those?

14 A. Uh-huh.

15 Q. Are those your initials?

16 A. Must have been, because this is what I told.

17 Q. Okay. Now, looking over your statement given
18 October 3rd, 1996, could you show me in there where you
19 mentioned that Crystal had told you that Mr. Garcia had placed
20 his hand over her mouth while she tried to scream?

21 A. You mean by touching her?

22 Q. Well, did you tell the police in your statement
23 that Mr. Garcia tried to muffle her screams or her cries? You
24 didn't, did you? It's not there.

25 A. Not on this, no, because we didn't know that

1 then.

2 Q. Oh, so she didn't tell you that on --

3 A. On that day.

4 Q. She didn't tell you that day?

5 A. Right.

6 Q. She didn't tell you that before that date either?

7 A. Right.

8 Q. When did she tell you this?

9 A. We had another trial before, a small court
10 somewhere, and that's when she told me.

11 Q. Okay. By another trial, are you talking about
12 perhaps a preliminary hearing?

13 A. I don't know how you call it.

14 Q. Did you go to a court in North Las Vegas with
15 your daughter?

16 A. I think that's what it was.

17 Q. The Justice Court?

18 A. Uh-huh.

19 Q. Okay. And did you say there in the Justice Court
20 you --

21 A. Not there. When we left, then that's when she
22 told us because I wanted to know -- like they asked her why
23 she didn't scream, you know.

24 Q. And so when -- you were in court when she
25 testified?

1 A. Not with her. I was listening, but I was not
2 allowed to talk when they were interrogating her.

3 Q. You were in the same room?

4 A. Yes.

5 Q. And that hearing was held May 2nd, 1997, right?

6 A. I'm not good at --

7 Q. Approximately?

8 A. -- remembering things, but yes, somewhere there.

9 Q. Somewhere in 1997?

10 A. (Nods head affirmatively.)

11 Q. And so before that date, Crystal never mentioned
12 to you that Jose had covered her mouth to keep her from crying
13 or screaming?

14 A. Not -- no. Before that, no.

15 Q. Also, if you look at your statement again, you
16 don't mention in your statement to the police that Crystal had
17 told you that Jose said that you would get sick if she told
18 anybody; is that correct?

19 A. She didn't -- well, she mentioned it, but I
20 didn't -- I'm not so sure how to explain this. I didn't know
21 whether to put it down or -- but she did bring it up.

22 Q. When she first told you?

23 A. Yes.

24 Q. What exactly did she say, do you recall?

25 A. That she was sorry she didn't tell me right away;

1 and when we was crying, you know, she told me, "Are you sure
2 you gonna be okay?" I think she was more worried about me
3 than herself.

4 Q. So did she tell you that she was afraid you would
5 get sick --

6 A. Yes.

7 Q. -- if she told?

8 A. Yes, she did.

9 Q. Okay. Did she tell you that Jose had told her
10 that you would get sick?

11 A. Yes.

12 Q. Or did she just say I was afraid you'd get sick
13 if I told?

14 A. No. She said that he told her that if I get sick
15 and if something happened to me, that it would be all her
16 fault.

17 Q. But you didn't tell the police that?

18 A. I don't even recall.

19 Q. It's not in your statement?

20 A. Huh-uh.

21 Q. Correct?

22 A. (Shakes head negatively.)

23 Q. I want to turn your attention now -- if you look
24 at your statement --

25 A. Uh-huh.

1 Q. -- to page four?

2 A. Four?

3 Q. Actually, let me -- yeah, that's fine. Just look
4 at the top of page four.

5 A. Uh-huh.

6 Q. The question from the detective --

7 MS. TOGLIATTI: Objection, your Honor.

8 The proper way to do this is to pose a question
9 to the witness. If she doesn't recall the question, then he
10 can impeach her with the document.

11 THE COURT: Excuse me. Hold on a minute.

12 What was the question?

13 MR. PALLARES: I didn't get a chance to ask it.

14 I was going to ask her -- at the top of page four, she was
15 asked whether or not Crystal had been over to Jose's house
16 since then.

17 THE COURT: Go on.

18 BY MR. PALLARES:

19 Q. Do you recall being asked: Has Crystal been over
20 to Jose's house since then?

21 A. Yes.

22 Q. Okay. What -- do you recall what you answered?

23 A. They really didn't talk, either one.

24 Q. Hold, hold, hold, hold. No, no, no.

25 I'm asking about your interview with the police

1 on October 3rd. Okay?

2 A. Oh.

3 Q. In your statement -- and you have it there in
4 front of you -- okay? -- you were asked: Has Crystal been
5 over to Jose's house since then, correct?

6 A. Uh-huh.

7 Q. Do you recall your answer by what it says here
8 or --

9 A. If I remember?

10 Q. Do you recall -- first of all, do you have any
11 recollection of it, independent of that document?

12 A. No, not really.

13 Q. Okay. If you read that -- if you read that
14 document, would it help you recall what your answer was?

15 A. Her answer?

16 Q. Your answer, yeah.

17 A. Is: "Not by herself. He told me he was not
18 going to talk to her anymore and he will not talk to her."

19 Q. Now, what did you understand when the detective
20 asked you: Has Crystal been over to Jose's house since then?
21 What event was the "then"?

22 Is he talking -- was the detective talking or --
23 I'm asking about your understanding.

24 Did you understand that the detective was asking
25 has Crystal's house been -- has Crystal been over to Jose's

1 house since this incident?

2 A. Uh-huh.

3 Q. Or did you understand the detective to mean has
4 Crystal been over to Jose's house since you reported the
5 incident?

6 A. I thought they mean since then.

7 Q. Which is then though? That's what I want to
8 know, since then.

9 A. Since that incident.

10 Q. Since the incident. Okay.

11 A. Uh-huh.

12 Q. And you said, "Not by herself"?

13 A. No, because, sometimes, I go to use the phone or
14 something, but she won't go by herself or anything.

15 Q. And you also say in your statement, "He told me."
16 That "he," is that Jose?

17 A. Uh-huh.

18 Q. When did Jose tell you that he was not going to
19 talk to her anymore?

20 A. I don't recall, but he did tell me that he was
21 not talking to Crystal.

22 Q. And did he make that statement after this
23 incident was reported to the police?

24 A. We didn't even -- before -- before the police. I
25 don't remember how did it happen exactly, but he just told me

1 that -- I asked him how come he wasn't talking to Crystal no
2 more, and he said he was not talking to Crystal.

3 Q. Well, Crystal did go over to Jose's house again
4 after the incident?

5 A. Unless I was there.

6 Q. You don't know -- but do you know if she went
7 over with other children?

8 A. With the couple that used to live there, before
9 they move, yes, she used to go, go with her.

10 Q. So she did visit the other kid, Christian, I
11 believe?

12 A. I would say maybe once or twice.

13 Q. Okay.

14 A. But that was during the daytime, too.

15 Q. You also testified that Crystal had complained to
16 you twice that her coochie hurt?

17 A. Right.

18 Q. The two times that she complained about that, how
19 much space was between -- how much time, I should say,
20 occurred between the two complaints?

21 A. I think that was like on the first week, she told
22 me that her coochie hurt, because that's what she calls it.

23 Q. First week of what?

24 A. On that month, on September.

25 Q. The first week of September?

1 A. Yeah. That's when -- well, no.

2 See, when she told me that her coochie hurt,
3 which it wasn't the first time, you know, because they get
4 rash -- and so she told me her coochie hurts, and that was, I
5 would say, like September -- July -- I would say like in
6 August, somewhere there.

7 Q. In August?

8 A. Uh-huh.

9 Q. Okay. Has she -- did she often complain about --
10 or did she often complain about her coochie hurting?

11 A. Sometimes, yeah.

12 Q. Before 1996, she had complained about that to
13 you?

14 A. Well, one time when she was little; and I took
15 her to the doctor, you know, and they said it was just a
16 normal rash because kids don't clean themselves properly.

17 Q. Going back to 1996, when was the second time that
18 she complained about her coochie hurting?

19 A. She was taking a shower and she told me that her
20 coochie was hurting, and so I asked her to put on some A & D
21 ointment, which is usually what they put on a rash on kids.

22 Q. Yeah, but when did this take place?

23 A. I don't remember. That must have happened like
24 around October, November, somewhere there.

25 Q. So August and October or November of 1996?

1 A. Yeah.

2 Q. And you didn't take her to the doctor for either
3 one of those treatments?

4 A. No. I figure that -- that time when she was
5 little, I figure she just doesn't know how to take care of it
6 herself and it's probably just a rash.

7 MR. PALLARES: Your Honor, I don't think I moved
8 to admit Defense Exhibit C, so I'll go ahead and move at this
9 time.

10 MS. TOGLIATTI: What is Defense Exhibit C?

11 MR. PALLARES: That is the statement that she
12 read.

13 THE COURT: What do you have in your hand?

14 THE WITNESS: C.

15 THE COURT: Let me see that.

16 Any objections?

17 MS. LOWRY: Can we approach?

18 THE COURT: Yes.

19

20 (Whereupon, a bench conference ensued.)

21

22 MR. PALLARES: Your Honor, the defense would
23 retract its motion.

24 THE COURT: For C?

25 MR. PALLARES: For C.

1 THE COURT: All right.
2 State, you may cross-examine.
3 MR. PALLARES: I'm not done yet. I'm sorry.
4 I'm not done yet. I just didn't want to get
5 confused. Okay.

6 BY MR. PALLARES:

7 Q. Maria, could you tell me how -- did Crystal get
8 along with the other kids on the block?

9 A. Where we used to live or where I live now?

10 Q. I'm sorry. Where you used to live, in 1996, yes.

11 A. There was two little boys across from us, you
12 know, in the different building; and no, they didn't get
13 along. They used to fight. They called my kids niggers, you
14 know, so I didn't let them play much with them.

15 Q. Did they have other kids in the neighborhood they
16 played with?

17 A. That lady on the house that she's going to be in
18 his defense, I guess.

19 Q. I'm sorry. What was that?

20 A. Some lady that lived on the same street, on
21 Ellis, has a house and they used to go play on her house, too.

22 Q. Do you know that lady's name?

23 A. Reyna.

24 Q. Reyna? Reyna Balboa?

25 A. I think it's Balboa.

1 Q. Does that sound right?

2 A. (Nods head affirmatively.)

3 Q. So Crystal used to be friends with Reyna Balboa's
4 children?

5 A. Yeah.

6 Q. How often did Crystal play at Reyna Balboa's
7 house?

8 A. Very often. They would watch movies with the
9 kids because they put them by themselves. Her kids, they
10 just go and get a movie and put it on.

11 Q. Now, you testified that Crystal had a lot of
12 problems at school?

13 A. Yes.

14 Q. Was she absent a lot?

15 A. Yes.

16 Q. Did they ever call you in to the school to
17 discuss why she was absent so much?

18 A. Yes, they did.

19 Q. Do you recall when you went to school?

20 A. No. I went at a meeting one time, and --

21 MS. TOGLIATTI: Objection, your Honor.

22 I understand the defense -- I don't know what the
23 relevance is. If he wants to establish she didn't go to
24 school, that's great. I think it's in the record, but now to
25 get into extrinsic evidence of a meeting with the school

1 teacher, I don't see the relevance of it.

2 MR. PALLARES: Your Honor, she's going to
3 acknowledge the fact that the child had a horrible attendance
4 record. I want to ask her about establishing the record.

5 THE COURT: You are asking about what?

6 MR. PALLARES: Your Honor, the record says that
7 Crystal had problems with attendance at school, but we don't
8 have any record of the severity of that, how many times
9 absent, if she had been called in to discuss truancy problems,
10 if it was affecting her studies, none of that.

11 THE COURT: I think she's already admitted that
12 she had terrible grades; she said she didn't go to school.

13 Sustained.

14 MR. PALLARES: Okay.

15 MS. TOGLIATTI: Thank you, Your Honor.

16 BY MR. PALLARES:

17 Q. You were going to dialysis three times a week?

18 A. Uh-huh, yes.

19 Q. Four and a half hours per time?

20 A. Four -- no. Four hours, 15 minutes.

21 Q. Four hours, 15 minutes each time?

22 A. Uh-huh.

23 Q. During 1996, did you have a regular schedule?

24 A. It's always been a regular schedule.

25 Q. I'm sorry. What hours did you go?

1 A. Well, what hours?

2 Q. Yeah. What time of the day would you go?

3 A. Well, first of all, right now is different days
4 than what I used to go before.

5 Q. I'm talking 1996.

6 A. I used to go on Monday, Wednesday and Friday
7 for -- it started three hours; then it went three and a half;
8 now it's four and 15 minutes.

9 Q. In 1996, what time of the day would you go to
10 your dialysis?

11 A. Sometimes, they would put me early if they have
12 an open space, you know, because -- there is so many people,
13 you have to be there in time; otherwise, they will cut your
14 time short, you know.

15 Q. Were you -- during 1996, were you hospitalized
16 ever because of kidney problems?

17 A. Yes.

18 Q. How many times were you hospitalized?

19 A. I would say about two or three times. I had to
20 stay over a month in the hospital sometimes at a time.

21 Q. And Crystal knew that you were in the hospital
22 because of kidney problems?

23 A. Yes.

24 Q. Were you hospitalized before she reported this
25 incident?

1 A. Before?

2 Q. Yeah.

3 A. Yes.

4 Q. How many times in 1996?

5 A. That's when I said it's about two, three times.

6 Q. Okay.

7 A. I had surgery on my arms which they both messed
8 up.

9 Q. And did you have a regular baby-sitter? Who took
10 care of Crystal while you were hospitalized?

11 A. They would stay with my daughter or I would send
12 them to my son's godparents, you know. There was always
13 somebody that was taking care of them.

14 Q. Was that daughter Alejandra or Carla?

15 A. Both.

16 Q. Both?

17 A. Uh-huh.

18 Q. Okay. One last question: Would you describe
19 Crystal as being shy or quiet?

20 A. Well, she's reserved. That's what I would call
21 it.

22 Q. Reserved?

23 A. Yeah.

24 MR. PALLARES: Pass the witness.

25 THE COURT: State.

REDIRECT EXAMINATION

1
2 BY MS. MOGLIATTI:

3 Q. Would you agree that the defendant, at least from
4 the time that you knew him, has a rather large family?

5 A. Large family?

6 Q. Well, were you aware that he has sisters?

7 A. I know of one sister, but I don't know her name.

8 Q. Okay. Do you know of any of the others?

9 A. No. I remember I seen a couple of his nephews
10 come into his apartment.

11 Q. So those would be his nephews of his sisters or
12 his brother?

13 A. I do not know.

14 Q. Okay. During the time period, in spring and
15 summer of 1996, there was another couple living there that you
16 described, Marvaya and her husband?

17 A. Enuncio.

18 Q. Christian, Mario.

19 Would his family members come over to visit the
20 defendant?

21 A. Yeah. They -- they all drop in.

22 Q. As often as his kids, back and forth?

23 A. Not as frequent.

24 Q. Okay. Now, do you remember patrol or the
25 uniformed officers coming out and speaking to you or speaking

1 to somebody the day that Crystal told you?

2 A. To be truthful, my mind was not into what they
3 was wearing. I do not remember.

4 Q. But do you remember police coming?

5 A. Yes.

6 Q. Do you remember having any significant or any
7 large time talking to any officer about anything?

8 A. They talked to me. They talked to Alejandra.

9 Q. But did they sit you down and take a tape
10 recorded statement?

11 A. Well, like I said, there was so many things that
12 I don't even remember.

13 Q. Do you remember defense counsel asking you about
14 the recorded statement that you gave, the statement you gave
15 the detective, that he showed you?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes.

19 Q. Okay.

20 A. Sorry.

21 Q. Do you remember defense counsel, on
22 cross-examination, asking you did -- where in your
23 statement -- or it doesn't mention in your statement where the
24 defendant put his hand over Crystal's mouth? Do you remember
25 he asked you that statement?

1 A. Yes.

2 Q. And it wasn't in your statement?

3 A. It wasn't on my statement because we didn't know
4 that day.

5 Q. Do you remember telling the detective during that
6 same statement: Every time we tried to talk to her, she said
7 she don't want to talk about it?

8 A. Yes.

9 Q. Now, this time period that you talked to Crystal
10 about what happened to her, you described, first, Alex was
11 talking to her and then you.

12 How long of a time period, when you were all
13 upset and trying to calm her down, are we -- how long was she
14 upset?

15 A. Well, we were all upset, but we was trying to
16 calm her down so we can kind of get more of the whatever
17 happened to her, but it took us a while. I would say about an
18 hour and a half.

19 Q. Now, the statement that defense counsel showed
20 you, is that about three and a half typed pages of questions
21 and answers?

22 A. Yeah.

23 Q. And in that statement, you basically told what
24 happened?

25 A. What we knew.

1 Q. Okay. You didn't tell every single detail from
2 that day? You don't talk about patrol coming out. You don't
3 talk about -- basically, you talk about what she disclosed to
4 you when she told you what happened?

5 A. Right.

6 Q. Also in that statement, defense counsel asked you
7 about, do you recall an officer asking you: When Crystal told
8 you what happened to her, did you believe it?

9 A. Yes.

10 Q. And did you tell -- do you recall what you told
11 the officer?

12 A. I told him that I believe her, but that I was
13 hoping that it wasn't necessarily that bad, you know.

14 Q. And when you say "that bad," you're talking about
15 the fact that she didn't want to talk to you about exactly
16 what happened?

17 A. Right. So I was hoping that it wasn't that
18 serious.

19 Q. Defense counsel also asked you about, on the last
20 page of the statement, where you talk about Crystal not going
21 back to the apartment that the defendant lived in by herself.

22 When you would go and visit the other family that
23 lived there, was that during the daytime?

24 A. Yes.

25 Q. Where normally was the defendant during the

1 daytime?

2 A. He goes -- he used to go to work, you know, so
3 sometimes he'll leave about three or four. I'm not so sure.

4 Q. A.m.?

5 A. Well, I think that that day wasn't in the morning
6 when the police arrived and he was going to work and it wasn't
7 in the morning.

8 Q. But did he normally work during the daytime as
9 opposed to night?

10 A. I think that he used to go early in the morning.

11 Q. Now, you indicated on cross-examination that
12 there were at least two times when Crystal told you that her
13 coochie hurt.

14 Just so that we're clear, although I'm sure
15 people have an idea, what do you understand she's referring to
16 when she uses the word "coochie"?

17 A. Her privates.

18 Q. Her vaginal area?

19 A. Yes.

20 Q. Was there ever a time when she told you her
21 coochie hurt that you felt, looking back, like she was trying
22 to tell you something more?

23 MR. PALLARES: Objection; speculation.

24 THE COURT: Sustained.

25

1 BY MS. TOGLIATTI:

2 Q. Was there ever a time when -- during those two
3 time periods, when Crystal told you her coochie hurt, that she
4 said anything else, any other words?

5 A. One time, she kind of was in the bathroom, you
6 know, and she just finished taking her shower. She calls me,
7 "Mom," you know, "come here."

8 And then when I went in there, she kind of looked
9 kind of very quiet and then she said, "Never mind," and then
10 just closed the door. So those are the things that I remember
11 that didn't make sense, you know, but I'm not so sure.

12 Q. Now, you indicated that Crystal didn't get along
13 with at least the two boys across the way; is that right?

14 A. Right.

15 Q. And you indicated that they called her names?

16 A. Yes. They called Berto too, my son.

17 Q. Is that because she's a bi-racial child, because
18 she's half --

19 A. I'm not so sure, but she always call my kids --
20 well, to be truthful, there was no other black kids in there,
21 just mine, you know.

22 Q. Now, do you ever remember the defendant
23 complaining about Crystal to you?

24 A. Him?

25 Q. Uh-huh.

1 A. No.

2 Q. Ever remember him saying she can't come over
3 because she's a bad kid or she's mean to my kids?

4 A. No, not that I know of.

5 Q. As a matter of fact, he used to tease her and be
6 friendly to her and buy hamburgers for her and be friendly to
7 her?

8 A. No.

9 Q. And he never, in the time period that you knew,
10 complained that your child was some kind of discipline
11 problem?

12 A. No.

13 MS. TOGLIATTI: I have nothing further.

14 THE COURT: Recross?

15 MR. PALLARES: Yes.

16

17

RECCROSS-EXAMINATION

18 BY MR. PALLARES:

19 Q. The defendant -- not the defendant. I'm sorry.

20 Did Mr. Garcia ever express concern to you over
21 Crystal's welfare or that she was hungry or dirty?

22 A. No.

23 Q. Do you know if Mr. Garcia ever talked about those
24 things with any of the neighbors?

25 A. I'll not know.

1 Q. You don't know?

2 A. No.

3 MR. PALLARES: Nothing further.

4 THE COURT: Anything else?

5 MS. TOGLIATTI: Just briefly, Judge, one
6 question.

7

8 FURTHER REDIRECT EXAMINATION

9 BY MS. TOGLIATTI:

10 Q. Did the defendant ever talk to you about other
11 kids, other neighbor kids, being dirty and hungry or did you
12 ever talk to him about it?

13 A. No, not really.

14 MS. TOGLIATTI: Nothing further.

15 THE COURT: All right. You're excused, ma'am.
16 Thank you.

17 MS. LOWRY: Alejandra.

18

19 ALEJANDRA ESTANES,

20 called as a witness herein, having been first duly sworn, was
21 examined and testified as follows:

22

23 THE CLERK: Please state your name and spell your
24 last name for the record.

25 THE WITNESS: Alejandra Estanes; it's

1 THE COURT: Thank you very much. You're excused.

2 THE WITNESS: Bye.

3

4 CRYSTAL G. INGRAM,

5 called as a witness herein, having been first duly sworn, was
6 examined and testified as follows:

7

8 THE CLERK: Please state your name and spell your
9 last name for the record.

10 THE WITNESS: My name is Crystal Gale Ingram. My
11 last name is Ingram; I-n-g-r-a-m.

12 MS. LOWRY: Crystal, why don't you go ahead and
13 spell your first name for us too.

14 THE WITNESS: My first name is Crystal;
15 C-r-y-s-t-a-l.

16

17 DIRECT EXAMINATION

18 BY MS. LOWRY:

19 Q. Crystal, how old are you?

20 A. I'm 11.

21 Q. And when is your birthday?

22 A. April 3rd, 1988 -- '87.

23 Q. And so you just turned 11 two months ago?

24 A. Yeah.

25 Q. Do you go to school?

- 1 A. Yes. I go to Mountain View.
- 2 Q. And what grade are you in?
- 3 A. I'm in fourth.
- 4 Q. And how long have you gone to Mountain View?
- 5 A. Like one week now.
- 6 Q. Where did you used to go to school?
- 7 A. Fay Herron.
- 8 Q. And what grades were you in when you went to Fay
9 Herron?
- 10 A. I was in third grade.
- 11 Q. Who do you live with, Crystal?
- 12 A. I live with my mom.
- 13 Q. And what's your mom's name?
- 14 A. Maria Ingram.
- 15 Q. And do you have any brothers or sisters?
- 16 A. Yes. My sister's Alejandra and my brother is
17 Roberto.
- 18 Q. Do you have another sister?
- 19 A. Yeah. Her name is Carla.
- 20 Q. Okay. Crystal, when you're in here and you're
21 talking to us today, do you understand that you promise to
22 tell the truth?
- 23 A. Yes.
- 24 Q. Crystal, if you tell a lie, is that a good thing
25 or a bad thing?

- 1 A. That's a bad thing.
- 2 Q. What happens if you tell a lie?
- 3 A. You get punished.
- 4 Q. And you promise today to only talk about things
5 that really happened?
- 6 A. Yes.
- 7 Q. Who is your teacher that you have now at school?
- 8 A. My teacher's name is Michelle.
- 9 Q. And what do you like to do when you're not in
10 school? What kinds of things do you like to do?
- 11 A. I sometimes play Barbies' with my friends.
- 12 Q. And do you have a best friend?
- 13 A. I have two best friends.
- 14 Q. Okay. What are the names of your two best
15 friends?
- 16 A. Goodwin Lizarsa (ph) and the other one is
17 Charisma.
- 18 Q. Charisma?
- 19 A. Yeah.
- 20 Q. Okay. When you were in the third grade at Fay
21 Herron, what street did you live on?
- 22 A. Ellis.
- 23 Q. And what -- do you remember the address on Ellis
24 where you lived?
- 25 A. No.

1 Q. Okay. What kind of place was it that you lived
2 on Ellis?

3 A. Place?

4 Q. What did your home on Ellis look like?

5 A. The street was kind of dirty.

6 Q. Did you live in a trailer, a house, what kind of
7 place?

8 A. I lived in an apartment.

9 Q. Okay. And the apartment building, how many
10 stories or floors did it have?

11 A. It had two floors.

12 Q. And did you live on the first floor or the second
13 floor?

14 A. The first one.

15 Q. You lived downstairs or upstairs?

16 A. No, upstairs.

17 Q. And who did you live with upstairs on Ellis?

18 A. My mom, my brother.

19 Q. Anybody else?

20 A. My sister.

21 Q. Which sister?

22 A. Alex, I think it was.

23 Q. Okay. How do you get along with your brother?

24 A. Okay.

25 Q. And how do you get along with your sister?

1 A. Fine. We used to fight a little.

2 Q. When you lived on Ellis, who lived downstairs
3 from you, right underneath your apartment?

4 A. It was a man named Jose.

5 Q. And the man named Jose, do you see him here in
6 the courtroom today?

7 A. Yes.

8 Q. I need you to point to him, and I need you to
9 tell the judge what kind of clothes he has on or what color
10 clothes he has on.

11 A. He's over there. He has a white shirt on and a
12 black stripe too.

13 MS. LOWRY: May the record reflect the
14 identification of the defendant?

15 THE COURT: It shall so reflect.

16 BY MS. LOWRY:

17 Q. Did you ever -- did you ever used to go to Jose's
18 house when you lived on Ellis?

19 A. Yes.

20 Q. And what kinds of things would you do over at his
21 house?

22 A. I would play with his kids, watch movies.

23 Q. How many kids does he have?

24 A. Three.

25 Q. And do you know their names?

- 1 A. No.
- 2 Q. Were they boys or girls?
- 3 A. There were two boys and one girl.
- 4 Q. And how old were his kids?
- 5 A. I think the big one is like six, and I think the
6 other little boy is like four, and the girl is about seven, I
7 think.
- 8 Q. Did Jose's kids live with him in that apartment?
- 9 A. No. He lived -- his kids lived with his mom.
- 10 Q. And so how often would his kids come to visit?
- 11 A. I don't know.
- 12 Q. Did Jose ever do nice things for you?
- 13 A. Yeah.
- 14 Q. What kind of nice things would he do?
- 15 A. He would like -- if the ice cream man came by, he
16 would bring me an icecream.
- 17 Q. Would he ever do nice things for your mom?
- 18 A. Yeah.
- 19 Q. What kind of nice things would he do for your
20 mom?
- 21 A. I don't remember the nice things that he used to
22 do.
- 23 Q. Were he and your mom friends?
- 24 A. Yeah.
- 25 Q. Was he nice to your little brother Berto?

- 1 A. Yes.
- 2 Q. Did Berto ever go play at his house?
- 3 A. Yeah.
- 4 Q. The summer that you were nine years old and you
5 lived on Ellis, did you ever sleep over, stay overnight, at
6 Jose's apartment?
- 7 A. Yes.
- 8 Q. And why is it that you stayed overnight?
- 9 A. Because his little girl asked my mom if I can
10 stay over. And they were watching scary movies, and I like
11 scary movies.
- 12 Q. You like scary movies?
- 13 A. Yeah.
- 14 Q. Do you remember what the scary movie was about?
- 15 A. No.
- 16 Q. So Jose's little girl asked your mom if you could
17 stay over?
- 18 A. Yeah.
- 19 Q. Did you want to stay over?
- 20 A. Yeah.
- 21 Q. And what did your mom say?
- 22 A. My mom said yes.
- 23 Q. And do you know what day of the week it was?
- 24 A. No.
- 25 Q. Do you know what month it was?

- 1 A. No.
- 2 Q. Do you know what day it was?
- 3 A. I think it was Friday.
- 4 Q. Okay. Did any other -- did you stay the night at
5 Jose's?
- 6 A. Yeah.
- 7 Q. How many different times did you stay overnight
8 at his house?
- 9 A. I don't remember.
- 10 Q. Was it one time or more than one time?
- 11 A. It was one time.
- 12 Q. So after you stayed the night at his house, did
13 you ever go back and stay the night there again?
- 14 A. No.
- 15 Q. The night that you stayed the night, did Jose get
16 some movies?
- 17 A. Yeah.
- 18 Q. And how many different movies did he have?
- 19 A. I think it was four.
- 20 Q. What were the movies about?
- 21 A. They were about scary movies, some of action.
- 22 Q. And did you watch the movies?
- 23 A. Yeah.
- 24 Q. Now, was Jose's daughter there?
- 25 A. Yeah.

- 1 Q. Were there any other kids there?
- 2 A. No.
- 3 Q. What about any other of Jose's kids?
- 4 A. No.
- 5 Q. What about your little brother Berto, was he
6 there?
- 7 A. No.
- 8 Q. What room of Jose's apartment were you in when
9 you watched the movies?
- 10 A. I was in his room.
- 11 Q. And when you say "his room," what room are we
12 talking about?
- 13 A. Jose's.
- 14 Q. Are we talking about a kitchen? Are we talking
15 about a bathroom, a bedroom, a living room?
- 16 A. A bedroom.
- 17 Q. What was in Jose's bedroom? What kind of stuff?
- 18 A. It was his bed and your furniture, where you put
19 your clothes in, and then his TV, his VCR.
- 20 Q. And did you stay up late watching the movies?
- 21 A. No.
- 22 Q. Not too late?
- 23 A. (Shakes head negatively.)
- 24 Q. What time do you think everybody went to bed?
- 25 A. I don't know.

- 1 Q. What were you wearing the night that you stayed
2 over his house?
- 3 A. I was wearing a shirt and shorts.
- 4 Q. Okay. Did you have underpants on?
- 5 A. No.
- 6 Q. So shorts, but no panties or underpants?
- 7 A. Oh, yeah.
- 8 Q. Okay. What do you call what you wear under your
9 shorts?
- 10 A. Underwear.
- 11 Q. Okay. So you had on shorts and underwear.
12 Did you wear shoes?
- 13 A. Yes.
- 14 Q. And you said you had on a shirt?
- 15 A. Yeah.
- 16 Q. Okay. Is that what you wear to go to sleep when
17 you stayed over at his house?
- 18 A. Yeah.
- 19 Q. Did something happen at Jose's, in Jose's
20 bedroom, when you stayed over that night?
- 21 A. Yes.
- 22 Q. And what's the first thing that happened?
- 23 A. He had sex with me.
- 24 Q. When you say he had sex with you, where in the
25 room did this happen?

- 1 A. In his room.
- 2 Q. Where in his room?
- 3 A. On the bed.
- 4 Q. Where -- you said his daughter was also there.
- 5 Where was his daughter?
- 6 A. She was on the floor sleeping.
- 7 Q. And where were you on the bed?
- 8 A. I was on the side.
- 9 Q. And when you say "sex," what do you mean when you
- 10 say sex? What does that word mean? What did he do?
- 11 A. He put his private into my private.
- 12 Q. Okay. And where on his body is his private?
- 13 A. In the middle where you go pee.
- 14 Q. Okay. And where on your body is your private?
- 15 A. In the middle.
- 16 Q. And is it where you go pee too?
- 17 A. Yeah.
- 18 Q. Did he do anything with your clothes before he
- 19 had sex with you?
- 20 A. Yes. He pulled down my shorts and my underwear.
- 21 Q. How far did he pull them down?
- 22 A. All the way to my legs.
- 23 Q. And how were you on the bed?
- 24 A. I was on my knees.
- 25 Q. And what about your shirt? Did he do anything

1 with your shirt?

2 A. All he did was touch my boobs.

3 Q. Okay. Did he touch your boobs -- did you have
4 your shirt on?

5 A. Yes.

6 Q. Did he touch your boobs on top of your shirt or
7 under your shirt?

8 A. I don't remember.

9 Q. What did he touch your boobs with?

10 A. His hand.

11 Q. And how did he touch them when he did that?

12 A. He like rubbed there.

13 Q. He like what?

14 A. Rubbed it.

15 Q. Okay. And were you -- how were you on the bed
16 when he was doing that?

17 A. I was, I think, laying down.

18 Q. On your stomach or on your back?

19 A. On my back.

20 Q. What did Jose do with his clothes when he was
21 gonna have sex with you?

22 A. He took his pants off.

23 Q. And what did he do with his pants?

24 A. I think he put it on the floor.

25 Q. Did he have any clothes on at all when he did the

1 sex?

2 A. I think just his shirt.

3 Q. When he put his private in your private, how did
4 that feel?

5 A. It hurted a lot.

6 Q. What did you do when he did that?

7 A. I tried to yell, but he put his hand on my mouth.

8 Q. Show me how he did that.

9 A. He went like this.

10 Q. Did you cry?

11 A. Yes.

12 Q. Why did you cry?

13 A. Because it hurted a lot.

14 Q. Did he move when he put his private in your
15 private?

16 A. Yes. He moved up and down.

17 Q. Did he say anything to you while he was doing
18 that?

19 A. No.

20 Q. What was the next thing that he did?

21 A. He just said -- he put his clothes on and he just
22 told me to get dressed.

23 Q. Let me back you up a little bit.

24 Did he put his private any place else?

25 A. Yeah. He put it on my butt -- in my butt.

- 1 Q. When he put it in your butt, did he put it in the
2 hole in your butt?
- 3 A. Yes.
- 4 Q. And how did that feel?
- 5 A. It hurted a lot, too.
- 6 Q. And what did he do when he did that; did he move?
- 7 A. Yes.
- 8 Q. How did he move?
- 9 A. He moved the same way, up and down.
- 10 Q. And what did you do while he had his private in
11 your butt?
- 12 A. I was crying.
- 13 Q. Did you cry loud, out loud?
- 14 A. I don't remember.
- 15 Q. Did it hurt when he put his private in your butt?
- 16 A. Yes.
- 17 Q. You said he touched your boobs --
- 18 A. Uh-huh.
- 19 Q. -- with his hand.
20 Did he touch any other part of your body with his
21 hand?
- 22 A. He touched my private.
- 23 Q. And what did he do?
- 24 A. He rubbed it.
- 25 Q. And how did he rub it?

- 1 A. He got his finger and he was rubbing it.
- 2 Q. If you hold your hands up so I can see.
- 3 He got his finger and he was doing what?
- 4 A. He got his finger and he was rubbing it.
- 5 Q. Was he rubbing on the inside of your private or
- 6 the outside?
- 7 A. On the outside.
- 8 Q. What did his private look like?
- 9 A. It was kind of gray.
- 10 Q. And did his private do anything?
- 11 A. No.
- 12 Q. During the time or after the time that he put his
- 13 private in your private and in your butt, did you see anything
- 14 happen to his private?
- 15 A. Yeah. When he took it out, some stuff came out.
- 16 Q. What did the stuff look like?
- 17 A. It was kind of gray and white.
- 18 Q. And where did it go?
- 19 A. It went on my clothes and on the bed.
- 20 Q. What -- which part of your clothes did it go on?
- 21 A. It went on my shorts.
- 22 Q. Where were your shorts?
- 23 A. They were pulled down.
- 24 Q. When Jose was doing this to you, did you ever
- 25 scream?

- 1 A. Yeah. I tried to, but he covered my mouth.
- 2 Q. Did you try to get away?
- 3 A. Yes.
- 4 Q. How did you try to get away?
- 5 A. I tried to push him off me, but he didn't get
6 off.
- 7 Q. Did Jose show you any different kind of movies
8 that night?
- 9 A. Yes. He showed me grown up movies.
- 10 Q. And when you say "grown up movie," what's a grown
11 up movie? What do you mean?
- 12 A. When a woman and a grown up man was having sex.
- 13 Q. And where were you when he showed you this movie?
- 14 A. I was in his room.
- 15 Q. And when you -- the woman in the movie, did she
16 have clothes on?
- 17 A. No.
- 18 Q. The man in the movie, did he have clothes on?
- 19 A. No.
- 20 Q. And when you say they were having sex, tell us
21 what you mean. What were they doing?
- 22 A. The man was putting his private into her private.
- 23 Q. And Jose's daughter, where was she when this
24 movie was on?
- 25 A. They were in the living room.

- 1 Q. When you say "they," who else are you talking
2 about?
- 3 A. The two boys, too.
- 4 Q. Jose's two boys?
- 5 A. Uh-huh.
- 6 Q. Is that a yes?
- 7 A. Yes.
- 8 Q. So his two boys were there also?
- 9 A. Yes.
- 10 Q. Did his two boys sleep over?
- 11 A. Yes.
- 12 Q. Did they sleep in his bedroom?
- 13 A. Yes.
- 14 Q. Where did they sleep?
- 15 A. They slept on the floor with the little girl.
- 16 Q. Did Jose say anything to you when he showed you
17 that movie?
- 18 A. No.
- 19 Q. Was there anyone else in the room when he showed
20 it to you?
- 21 A. No.
- 22 Q. Had you ever seen a movie like that before?
- 23 A. No.
- 24 Q. Did he show you the movie before or after he did
25 the sex things?

1 A. It was after he did that.

2 Q. After the things happened in his bedroom, after
3 the sex things happened, what did you do?

4 A. I went into the bathroom, and then I went to go
5 and do potty, go potty. And then after that, when I came
6 out --

7 Q. Let me stop you. Okay? When you went to the
8 bathroom, when you went potty, how did it feel?

9 A. It hurted.

10 Q. And which part of your body hurted?

11 A. My private.

12 Q. And after you went to the bathroom, then what did
13 you do?

14 A. I went into the other room.

15 Q. And what was the other room?

16 A. The other room with the people named Marvaya.

17 Q. And what were the people in the other room doing?

18 A. They were watching TV.

19 Q. And what did you do in that room?

20 A. I slept with them.

21 Q. And where did you sleep?

22 A. On the floor with them.

23 Q. Did you tell them what had happened in Jose's
24 bedroom?

25 A. No.

- 1 Q. How come?
- 2 A. Because I was scared.
- 3 Q. What were you scared of?
- 4 A. I don't know.
- 5 Q. Had Jose said anything to you?
- 6 A. Yes.
- 7 Q. What did he say?
- 8 A. He said, "Don't tell anybody and don't tell your
9 mom because she might get sick."
- 10 Q. Did you worry about your mom getting sick?
- 11 A. Yes.
- 12 Q. How come?
- 13 A. I don't know.
- 14 Q. Did you sleep all night in Marvaya's room?
- 15 A. Yes.
- 16 Q. And the next morning, what did you do?
- 17 A. I went home.
- 18 Q. And did you tell Mom when you got home the next
19 morning?
- 20 A. No. I waited for a little while.
- 21 Q. Was Mom sick a lot?
- 22 A. Yes.
- 23 Q. What's wrong with mom?
- 24 A. She goes to dialysis.
- 25 Q. Do you know what dialysis is?

- 1 A. It's when they clean her blood.
- 2 Q. Now, you said you waited a little while to tell
3 Mom what happened.
- 4 A. Yeah.
- 5 Q. How long do you think you waited?
- 6 A. I don't know.
- 7 Q. And why did you finally tell Mom?
- 8 A. Because I didn't want that to happen to me.
- 9 Q. Who was the very first person that you told?
- 10 A. I think it was my sister.
- 11 Q. Which one?
- 12 A. Alex.
- 13 Q. And how did you feel when you told Alex?
- 14 A. I feel kind of good now inside.
- 15 Q. Where were you when you told Alex?
- 16 A. I was in my bedroom.
- 17 Q. After the stuff had happened with Jose, did you
18 want to be around Jose?
- 19 A. No.
- 20 Q. How did you feel towards Jose?
- 21 A. I felt scared.
- 22 Q. Let me back up a little bit, back into the
23 bedroom and back when this sex stuff happened.
- 24 After Jose did the sex stuff, did he do anything
25 to his private?

- 1 A. Yeah. He cleaned it.
- 2 Q. And how did he clean it?
- 3 A. He was rubbing it.
- 4 Q. What was he rubbing it with?
- 5 A. I don't remember if it was a tissue.
- 6 Q. Show me how -- show me what he was doing.
- 7 A. He was rubbing it like this.
- 8 Q. When you told what happened, did somebody call
- 9 the police?
- 10 A. Yeah, my sister went downstairs and call the
- 11 police.
- 12 Q. And did the police come?
- 13 A. Yes.
- 14 Q. And did you talk to them?
- 15 A. Yeah.
- 16 Q. And did you tell her what happened?
- 17 A. Yes.
- 18 Q. Had anyone else ever done to you the things that
- 19 Jose did to you?
- 20 A. No.
- 21 Q. Now, did you talk to Alex and Mom about somebody
- 22 named Mario?
- 23 A. Yes.
- 24 Q. Now, who was Mario?
- 25 A. He was, I think, a good friend of Jose's.

- 1 Q. And where did Mario live?
- 2 A. He lived in there with him.
- 3 Q. With who?
- 4 A. With Jose.
- 5 Q. Had Mario ever done something to you?
- 6 A. Yes.
- 7 Q. What had he done?
- 8 A. He tried to have sex with me, too.
- 9 Q. How did he do that? What did he do?
- 10 A. He made me lay on top of him.
- 11 Q. Did you have your clothes on?
- 12 A. Yes.
- 13 Q. Did Mario -- did Mario have his clothes on?
- 14 A. Yes.
- 15 Q. And did Mario say anything to you when he was
- 16 doing that?
- 17 A. No.
- 18 MS. LOWRY: Court's indulgence.
- 19 Crystal, I'm finished asking you questions for
- 20 right now, so now Mr. Pallares is going to ask you some
- 21 questions. Okay?
- 22 THE WITNESS: Okay.
- 23 MS. LOWRY: Okay.
- 24 THE COURT: Counsel.
- 25

CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. PALLARES:

Q. Are you okay, Crystal? Do you want to answer some questions for me?

A. Yeah.

Q. Do you want a drink of water or anything?

A. No.

Q. Are you okay?

A. (Nods head affirmatively.)

Q. Before this night that you spent the night at Jose's, had you ever gone over to his house and seen movies?

A. I don't remember.

Q. You used to play with his kids though, right?

A. Yes.

Q. And you'd go over to Jose's house and eat sometimes?

A. Sometimes.

Q. And your little brother would come along too?

A. Yes.

Q. Now, did you ever go over there alone?

A. I think I did.

Q. You think you did? You might have?

A. Uh-huh.

Q. Was there ever a time when you went over to Jose's alone and walked into his bedroom --

- 1 A. No.
- 2 Q. -- and saw him watching a movie?
- 3 A. No.
- 4 Q. Okay. So before that night, the night you spent
5 the night, you never saw Jose watching a grown up movie?
- 6 A. No.
- 7 Q. Never?
- 8 A. No.
- 9 Q. Okay. Now, the night that you went over there to
10 spend the night --
- 11 A. Uh-huh.
- 12 Q. -- your little brother was there, right?
- 13 A. No. He went upstairs with my mom.
- 14 Q. He went upstairs?
- 15 A. Yeah.
- 16 Q. He was there for a little while?
- 17 A. Yeah.
- 18 Q. Do you remember what time he went upstairs?
- 19 A. No.
- 20 Q. Were you asleep when he went upstairs or did you
21 see him?
- 22 A. I saw him.
- 23 Q. You saw him go upstairs?
- 24 A. Uh-huh.
- 25 Q. Was Jose asleep when your little brother went

1 upstairs?

2 A. No.

3 Q. He was awake too?

4 A. Yes.

5 Q. Was the TV on when Berto -- that's your little
6 brother, right?

7 A. Yes.

8 Q. Was the TV on when Berto went upstairs?

9 A. Yes.

10 Q. How about the other kids, were they asleep or
11 were they awake?

12 A. They were awake.

13 Q. Everyone was awake?

14 A. Yes.

15 Q. Do you remember what movie you guys were watching
16 when Berto went upstairs?

17 A. No.

18 Q. You don't remember?

19 Do you remember if Jose rented you a cartoon that
20 night, too?

21 A. No, I don't remember.

22 Q. Just a scary movie?

23 A. Yes.

24 Q. Do you remember the TV in Jose's apartment is in
25 his bedroom, right?

- 1 A. Yes.
- 2 Q. And there is another TV in the other bedroom,
3 right?
- 4 A. Yes.
- 5 Q. Marvaya's room?
- 6 A. Yes.
- 7 Q. Do you remember what Jose was wearing that night?
- 8 A. No.
- 9 Q. Now, you say that Jose touched you before he put
10 the movie in, the adult movie; is that correct?
- 11 A. Touched me on my body?
- 12 Q. Right. When he touched your privates.
- 13 A. No, I don't think so.
- 14 Q. You don't remember if the movie was on before or
15 after he touched you?
- 16 A. No.
- 17 Q. You don't remember?
- 18 A. (Shakes head negatively.)
- 19 Q. Okay. Do you remember if the sound was on the TV
20 when he put that movie in?
- 21 A. Yes, it was.
- 22 Q. The sound was on? Okay.
23 Before he put that tape -- I'm talking about the
24 grown up tape.
- 25 A. Uh-huh.

1 Q. -- did he turn the TV on or was it already on?

2 A. It was already on I think.

3 Q. And the other kids were asleep on the floor?

4 A. Yes.

5 Q. In the same room?

6 A. Yes.

7 Q. Were they snoring?

8 A. No.

9 Q. No?

10 Do you remember how long they -- how long they
11 had been asleep when Jose put the other movie on?

12 A. No.

13 Q. You don't remember? Okay.

14 If you don't remember anything, please, just tell
15 us that you don't remember. Okay?

16 A. Okay.

17 Q. Thanks. That's a fine answer.

18 Was one of the other tapes playing when Jose put
19 the grown up movie in?

20 A. I don't remember.

21 Q. You don't remember? So you don't remember if he
22 had to take a tape out and put another one in?

23 A. I think he had to put it in.

24 Q. Okay. While you were in the room with Jose, in
25 his room, could you hear the other people, Marvaya and her

- 1 husband? Did you hear them in their room?
- 2 A. No.
- 3 Q. Was the door to Jose's room open or closed?
- 4 A. It was closed.
- 5 Q. Was it closed while all the kids were watching
6 the movie?
- 7 A. Yes.
- 8 Q. So it was closed the whole night?
- 9 A. Uh-huh.
- 10 Q. You say that Jose put his private in your
11 private, right?
- 12 A. Yes.
- 13 Q. He had sex with you, I think you said?
- 14 A. Yes.
- 15 Q. Before that night, had you ever seen people
16 having sex --
- 17 A. No.
- 18 Q. -- like in your house or something?
- 19 A. No.
- 20 Q. And when he did this, you were on your back?
21 Were you laying down?
- 22 A. Yes.
- 23 Q. Is there a time when you were on your knees?
- 24 A. Yeah.
- 25 Q. When was that?

- 1 A. That was when I think he would put it in my butt.
- 2 Q. So to put it in your butt, you got on your knees?
- 3 A. No. He pushed me on my knees.
- 4 Q. So was he behind you when that happened?
- 5 A. Yes.
- 6 Q. So he was behind you when he put it in your butt?
- 7 A. Uh-huh.
- 8 Q. Were you on the bed when that happened?
- 9 A. Yes.
- 10 Q. Was he standing on the floor or on the bed?
- 11 A. On the bed.
- 12 Q. He was on the bed?
- 13 A. Yes.
- 14 Q. And was he on his knees; was he standing? What
15 position was he in?
- 16 A. I don't remember.
- 17 Q. You don't remember?
- 18 A. No.
- 19 Q. You couldn't see him?
- 20 A. No.
- 21 Q. You are facing the opposite way?
- 22 A. Uh-huh.
- 23 Q. While he was putting his private in your butt, it
24 hurt, right?
- 25 A. Yes.

1 Q. A lot?

2 A. Yes.

3 Q. Okay. Were you crying?

4 A. Yes.

5 Q. Okay. Did you scream?

6 A. I tried.

7 Q. You tried? All right.

8 Did any -- were any of the kids awake when this
9 was happening?

10 A. No.

11 Q. Do you remember what movie was on the TV when
12 this was happening?

13 A. No.

14 Q. Did Jose put his hand over your mouth while he
15 was putting his private in your butt?

16 A. Yes, because I tried to scream.

17 Q. While he was putting it in your butt?

18 A. No.

19 Q. Did you try to scream when he put his private in
20 your private?

21 A. Yes.

22 Q. And at that time, you were laying on your back,
23 right?

24 A. Yes.

25 Q. And you tried to scream then?

1 A. Yes.

2 Q. And it hurt?

3 A. Yes.

4 Q. And when you tried to scream, he put his hand
5 over your mouth, correct?

6 A. Yes.

7 Q. Then when he pushed you on your knees,
8 remember --

9 A. Yes.

10 Q. -- did he let go of your mouth?

11 A. No. Then I don't remember.

12 Q. He kept his hand on your mouth the whole time?

13 A. I think so.

14 Q. You think so? Okay.

15 Do you remember if he had his hand over your
16 mouth while he was putting his private in your butt?

17 A. No, I don't remember.

18 Q. You don't remember?

19 A. (Shakes head negatively.)

20 Q. Okay. While he was rubbing you -- do you
21 remember you said he was rubbing your private?

22 A. Yes.

23 Q. Was that before he put his private in?

24 A. Yes.

25 Q. That was before?

- 1 A. Yes.
- 2 Q. So the first thing he did was touch your --
- 3 A. Yes.
- 4 Q. -- touch your private?
- 5 A. (Nods head affirmatively.)
- 6 Q. Okay. Did he have -- did you try to scream then?
- 7 A. I was moving his hand.
- 8 Q. But you didn't say anything?
- 9 A. I said stop, but he didn't stop.
- 10 Q. And he didn't try to stop? He didn't try to
- 11 cover your mouth or anything then, did he?
- 12 A. No.
- 13 Q. None of the kids were awake then, right?
- 14 A. None were awake.
- 15 Q. None were? Okay.
- 16 How about when he tried to rub your boobs? Did
- 17 you try to scream?
- 18 A. Yes.
- 19 Q. And was this before or after he touched your
- 20 private?
- 21 A. This was, I think, after.
- 22 Q. It was after? Okay. Did you try to scream? You
- 23 said you tried to scream then?
- 24 A. Yes.
- 25 Q. Were you crying then?

- 1 A. When he touched my boobs?
- 2 Q. Yes.
- 3 A. No.
- 4 Q. Did he try to stop you when you went to scream?
- 5 A. Yes.
- 6 Q. But how did he do that?
- 7 A. He covers my mouth.
- 8 Q. Which hand did he use to cover your mouth?
- 9 A. I don't remember that.
- 10 Q. You don't remember? Okay.
- 11 Did you guys fight at all? Was there any
- 12 wrestling or fighting?
- 13 A. I don't remember.
- 14 Q. You don't remember?
- 15 Okay. Now, I want you to think hard about this
- 16 next one. Okay? Take your time.
- 17 How long did all this sex stuff take? How long
- 18 was he doing this? Do you understand what I'm asking you?
- 19 A. Yes.
- 20 Q. Okay.
- 21 A. I don't remember.
- 22 Q. You don't remember? Okay.
- 23 You say that afterwards, after Jose was done, you
- 24 went to the bathroom, right?
- 25 A. Yes.

- 1 Q. You went potty?
- 2 A. Yes.
- 3 Q. Were you crying when you went potty?
- 4 A. No.
- 5 Q. No? Okay. Did you go to the bathroom right away
6 after this all happened?
- 7 A. Yes.
- 8 Q. You didn't try to sleep first on the ground or on
9 the bed?
- 10 A. No.
- 11 Q. Did Jose try to stop you? He didn't try to stop
12 you, did he, from going to the potty?
- 13 A. Yes.
- 14 Q. He did try to stop you?
- 15 A. Yes.
- 16 Q. How did he try to stop you?
- 17 A. He was grabbing me by the arm.
- 18 Q. Okay. But he wasn't covering your mouth then?
- 19 A. No.
- 20 Q. And you didn't scream then or yell?
- 21 A. No. I was just pushing his arm.
- 22 Q. And were you standing on the floor then?
- 23 A. Yes.
- 24 Q. Did you kick any of his kids?
- 25 A. No.

1 Q. No? Okay.

2 Can you remember how far away the kids were from
3 you guys when all this happened?

4 A. No.

5 Q. Was it a big room?

6 A. No. It was kind of little.

7 Q. A little room?

8 A. Yes.

9 Q. Okay. Now, Jose told you not to tell your mom,
10 right?

11 A. Yes.

12 Q. And you say today that he also told you not to
13 tell your Mom or else she'd get sick?

14 A. Yes.

15 Q. Is that correct? Okay.

16 Had you told your mom bad things before that had
17 happened to you?

18 A. No.

19 Q. Okay. How about did you ever tell your mom
20 anything bad, like the kids were teasing you or you got into a
21 fight?

22 A. Yes.

23 Q. So that kind of bad thing you've told your mom?

24 A. Yes.

25 Q. And she never got sick when you told her any bad

1 things, right?

2 A. No.

3 Q. She had been to the hospital a lot of times
4 before this happened, right?

5 A. Yes.

6 Q. Why did you think that your mom might get sick
7 now if you told her a bad thing?

8 A. I don't know.

9 Q. You don't know?

10 A. (Shakes head negatively.)

11 Q. Okay. Now, do you remember coming to court back
12 in May of last year, 1997?

13 A. No.

14 Q. You don't remember?

15 A. No.

16 Q. Do you remember going to a different courtroom
17 and being sworn in and talking about this?

18 A. No.

19 Q. You don't remember?

20 A. (Shakes head negatively.)

21 Q. Okay. So as far as you remember, this is the
22 only time you've had to come to court and talk about these bad
23 things?

24 A. Yes.

25 Q. Now, before today, did you ever tell anyone that

- 1 Jose covered your mouth?
- 2 A. Yes. I told my mom.
- 3 Q. You told your mom?
- 4 A. Yes.
- 5 Q. Do you remember when you told your mom?
- 6 A. No.
- 7 Q. Okay. You don't remember testifying in court
- 8 about this?
- 9 A. No.
- 10 Q. No? Okay.
- 11 Before today, did you ever tell anyone about Jose
- 12 grabbing you when you tried to go to the bathroom --
- 13 A. I don't remember.
- 14 Q. -- when you went to go potty?
- 15 A. Yes.
- 16 Q. You said it hurt?
- 17 A. Yes.
- 18 Q. Were you bleeding? Were you cut at all?
- 19 A. No.
- 20 Q. No?
- 21 A. (Shakes head negatively.)
- 22 Q. Okay. The stuff that came out of Jose's
- 23 privates --
- 24 A. Yes.
- 25 Q. -- was any of that on you?

- 1 A. Yes, on my shorts. That's all.
- 2 Q. It was on your shorts. Okay. Did you later on
3 give those shorts to your mom and tell her they were dirty?
- 4 A. No.
- 5 Q. After you went potty -- okay? -- you didn't try
6 to leave the apartment, right? You didn't try to go upstairs
7 where your mom was?
- 8 A. No.
- 9 Q. Did you try to go back to Jose's room?
- 10 A. No.
- 11 Q. You went right to Marvaya's room?
- 12 A. Yes.
- 13 Q. And they were awake, right?
- 14 A. Yes.
- 15 Q. And they were watching TV?
- 16 A. Yes.
- 17 Q. And they didn't ask you why you were crying?
- 18 A. By that time, I wasn't crying.
- 19 Q. You stopped crying?
- 20 A. Yes.
- 21 Q. They didn't ask you what was wrong or anything?
- 22 A. No.
- 23 Q. And you didn't say anything to them about what
24 had happened?
- 25 A. No.

1 Q. How long were you in Marvaya's room before you
2 fell asleep?

3 A. I don't remember how long.

4 Q. The other people, Marvaya and her husband, did
5 they fall asleep first?

6 A. No.

7 Q. You fell asleep first?

8 A. Yes.

9 Q. And where was Christian? Do you know who
10 Christian is?

11 A. Yes.

12 Q. That's Marvaya's son, right?

13 A. Yes.

14 Q. Was he there?

15 A. Yes.

16 Q. Was he in Jose's room?

17 A. No.

18 Q. Where was he?

19 A. He was in with his mom and dad.

20 Q. Okay. Was he asleep?

21 A. Yes.

22 MR. PALLARES: Court's indulgence.

23 BY MR. PALLARES:

24 Q Was your mom home that night?

25 A. No.

- 1 Q. Do you remember?
- 2 A. I don't remember.
- 3 Q. You don't remember if she was home or not?
- 4 A. I don't remember.
- 5 Q. Did your mom pick you up the next day?
- 6 A. No. I went upstairs.
- 7 Q. You just went up the stairs?
- 8 A. Yes.
- 9 Q. Now, Crystal, if I showed you some papers, would
10 it help you to remember ever coming to court and testifying
11 before, if you took a look at them? Would that help your
12 memory or not?
- 13 A. Yes.
- 14 Q. You think it would?
- 15 A. Yes, I think so.
- 16 Q. Okay. I'm going to have you look at one paper.
17 Can you read? Can you read okay?
- 18 A. Yeah.
- 19 Q. I don't know.
20 Can you look at that? Will you read to yourself
21 what it says on the front?
- 22 A. Yes.
- 23 MR. PALLARES: Okay. Just tell me when you're
24 done.
- 25 MS. LOWRY: Counsel, what page do you have?

1 MR. PALLARES: It's just the front page.

2 MS. LOWRY: Page four?

3 MR. PALLARES: Caption.

4 BY MR. PALLARES:

5 Q. Crystal, do you remember going to court before?

6 A. Yes.

7 Q. You do remember?

8 A. (Nods head affirmatively.)

9 Q. Do you remember what you said in court that day?

10 A. No.

11 Q. Do you remember if you took an oath that day, if
12 you promised to tell the truth?

13 A. Yes.

14 Q. You did?

15 A. (Nods head affirmatively.)

16 Q. You do remember doing that?

17 A. Yes.

18 Q. If I showed you a part of what you said that day,
19 would it help you to remember or no?

20 A. I don't know.

21 Q. You don't know?

22 A. No.

23 MR. PALLARES: Okay. Excuse me a moment. Let me
24 go get my notes.

25

1 BY MR. PALLARES:

2 Q. Do you remember that day when you went to court?
3 Do you remember when it was, if it was May or June or -- do
4 you remember?

5 A. No.

6 Q. No? Could you tell by the front of this paper
7 what day it was, if I showed it to you?

8 A. I don't know.

9 Q. Would you try and see if --

10 THE COURT: Counsel, can't you just state what
11 day it was?

12 MR. PALLARES: It was May 2nd of 1997.

13 THE COURT: Well, what is it that you have that
14 you're referring to, first of all?

15 MR. PALLARES: Your Honor, I'm referring to the
16 reporter's transcript of the preliminary hearing.

17 THE COURT: What date was it held on?

18 MR. PALLARES: May 2nd, 1997, Justice Court,
19 North Las Vegas.

20 THE COURT: Go on.

21 BY MR. PALLARES:

22 Q. So you went to Justice Court, North Las Vegas,
23 back on May 2nd of '97, right?

24 A. Yes.

25 Q. Okay. And another lawyer -- Teresa was there and

1 asked you some questions?

2 A. Yes.

3 Q. And another lawyer, a girl, was there, and she
4 asked you some questions, too?

5 A. Yes.

6 Q. I wasn't there?

7 A. No.

8 Q. Okay. Do you remember being asked whether or not
9 Jose said anything to you while he was having sex with you?

10 A. I don't remember.

11 Q. If I showed you a page from that and you read it,
12 would it help you to remember?

13 A. A little, I guess.

14 THE COURT: What did you say?

15 THE WITNESS: A little, I guess.

16 THE COURT: A little, you guess?

17 MR. PALLARES: Would you try? Page 11, line two
18 through four.

19 I'm going to show you page 11. Okay?

20 BY MR. PALLARES:

21 Q. Do you remember the question on line two? Do you
22 remember being asked:

23 "Did Jose say anything to you while he was doing
24 this stuff?"

25 A. Yes.

1 Q. Do you remember what you said?

2 A. I said, "He said, 'Don't tell your mom.'"

3 Q. So you told the court then that Jose said don't
4 tell your mom, right?

5 A. Yeah.

6 Q. But you didn't tell the court that Jose said that
7 your mom would get sick, right?

8 A. Yes.

9 Q. On the same page, do you remember being asked
10 if -- before the touching happened, if Jose showed you
11 anything? Do you remember that?

12 A. Yeah.

13 Q. And did you say that he showed you a movie about
14 sex?

15 A. Yes.

16 Q. And so then, back then, you said it happened --
17 the movie was before all this bad stuff happened, correct?

18 A. Yes.

19 Q. And today, you said the movie was after the bad
20 stuff happened?

21 THE COURT: I thought she said she couldn't
22 remember.

23 MR. PALLARES: Or you can't remember?

24 THE WITNESS: (Shakes head negatively.)

25 MR. PALLARES: Okay. That's fine. If you can't

1 remember, that's fine.

2 BY MR. PALLARES:

3 Q. Now, on May 2nd, when you were in Justice Court,
4 you promised to tell the truth then, right?

5 A. (Nods head affirmatively.)

6 Q. Do you remember that was the same oath there as
7 you took here?

8 A. Yes.

9 Q. Okay. Did you ever go to Jose's house after this
10 stuff happened?

11 A. No.

12 Q. No?

13 A. (Shakes head negatively.)

14 Q. Did you ever go with your mom?

15 A. Yeah.

16 Q. Okay. Now, when you were in court on May 2nd,
17 you didn't tell the --

18 THE COURT: Excuse me, counsel. May 2nd could
19 have been last month or it could have been a year ago, so
20 which May 2nd are you talking about?

21 MR. PALLARES: When you were in the other court
22 May 2nd. last year, do you remember --

23 THE COURT: May 2nd of 1997?

24 MR. PALLARES: 1997. I'm sorry.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. FALLARES:

Q. You didn't tell the court that day about Jose covering your mouth that day, did you?

A. No.

Q. And you didn't tell the court either that Jose said your mom would get sick, right?

A. No.

Q. Do you know Reyna Balboa? Do you know a lady named Reyna Balboa?

A. Reyna?

Q. Yeah, Reyna.

A. Yes.

Q. Does she live across from your old house on Nellis?

A. Yes.

Q. She does? Okay. Did you used to play with her kids a lot?

A. Most of the time.

Q. Thank you for testifying.

A. You're welcome.

THE COURT: Counsel.

MS. LOWRY: Couple, quick.

REDIRECT EXAMINATION1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MS. LOWRY:

Q. Crystal, what does "testify" mean, do you know?

Do you know what that word means?

A. No.

MS. LOWRY: It's okay if you don't.

Crystal -- page 12, counsel, preliminary hearing transcript, line 13.

BY MS. LOWRY:

Q. Crystal, can you read to yourself that question right there and that answer? Did you get asked how come you didn't tell your mom?

A. I don't think so.

THE COURT: You have to speak up loud. We can't hear you.

BY MS. LOWRY:

Q. Crystal, is there a question that says:

"How come you didn't tell your mom?"

A. Yes.

Q. And what did you say?

A. "Because I was scared" --

THE COURT: Excuse me.

MS. LOWRY: Crystal, I need you to talk into the microphone.

THE COURT: Turn around and let her read it right

1 there.

2 THE WITNESS: "Because I was scared that she was
3 going to get sick."

4 BY MS. LOWRY:

5 Q. Okay. Crystal, were you -- Marvaya, the lady
6 that stayed at the defendant's apartment, were you friends
7 with her and her family?

8 A. I don't remember. I was friends with Marvaya,
9 but I don't --

10 THE COURT: You were friends with who?

11 THE WITNESS: Marvaya.

12 THE COURT: Speak into the microphone. Your
13 voice kind of dropped off.

14 BY MS. LOWRY:

15 Q. Were you friends with Marvaya?

16 A. Yes.

17 Q. Was your mom friends with Marvaya?

18 A. Yes.

19 Q. Did you go to visit Marvaya sometimes?

20 A. Yes.

21 Q. Okay. Crystal, when Jose would talk to you, did
22 he talk to you in English or Spanish?

23 A. In Spanish.

24 Q. And when you talked to him, did you talk to him
25 in English or Spanish?

1 A. In Spanish.

2 Q. Which do you talk better, English or Spanish?

3 A. Spanish.

4 Q. And when Jose told you not to tell, after he did
5 the sex things, tell us exactly what he said and how he said
6 it in Spanish, what he said to you.

7 A. He said, "Don't tell your mom or she might get
8 sick."

9 Q. Tell us how he said it in Spanish.

10 MR. PALLARES: Tell us -- your Honor, I'm going
11 to object. There is no showing that anybody in the court can
12 understand what she says. We don't know what her answer is
13 going to be except the interpreter.

14 THE COURT: Excuse me. Mr. Interpreter.

15 BY MS. LOWRY:

16 Q. Crystal, tell us in Spanish what Jose said to
17 you.

18 A. He said that, "Don't tell your mother because
19 she's going to get sick."

20 MS. LOWRY: I don't have anything further.

21

22 REXCROSS-EXAMINATION

23 BY MR. PALLARES:

24 Q. Crystal, I have one more thing to show you --
25 okay? -- and I'm going to be done.

1 Page 19, line 14. We're almost done.

2 A. Uh-huh.

3 Q. I'm going to ask you again about the court in May
4 of 1997 in North Las Vegas when you testified under oath.

5 A. Yes.

6 THE COURT: I don't think she's going to need
7 that.

8 MR. PALLARES: This is going to be in English.

9 BY MR. PALLARES:

10 Q. I'm going to show you that same transcript.
11 Okay? Will you look on page 19 for me over here on line 14.
12 Do you remember being asked:
13 "Did Jose tell you anything except don't tell
14 your mother?"

15 Do you remember that? Do you remember what you
16 said?

17 A. No.

18 Q. If you read that, do you remember what you said?

19 THE COURT: What is that you're reading?

20 MR. PALLARES: The preliminary hearing transcript
21 of May 2nd, 1997, page 19, lines 14 through 16.

22 BY MR. PALLARES:

23 Q. Do you remember saying:
24 "No. That was all he said"?

25 A. Yes.

1 Q. Do you remember -- further down the line, 19 and
2 20, being asked:

3 "How did you think she was going to get sick?"

4 Do you remember what you said?

5 A. Yes.

6 Q. And you said, "I don't know."

7 A. Yes.

8 MR. PALLARES: I want to thank you for answering
9 all my questions. Okay?

10 THE WITNESS: You're welcome.

11 MR. PALLARES: I think I'm done.

12 THE COURT: State?

13 MS. LOWRY: Line 17 and 18.

14 THE COURT: Just have her read all the way --
15 from 14 all the way down.

16 MS. LOWRY: Yes.

17

18 FURTHER REDIRECT EXAMINATION

19 BY MS. LOWRY:

20 Q, Crystal, why don't you go ahead and read starting
21 right here.

22 A. Out loud?

23 Q. Uh-huh.

24 A. "Did Jose tell you anything except don't tell
25 your mom?"

1 "No. That was all he said.

2 "What made you scared then?

3 "Because I had thought my mom was going to
4 get sick.

5 "How did you know -- how did you think she
6 was going to get sick?

7 "Hmm, I don't know.

8 "Had she gotten sick when you told her something
9 bad before?

10 "(Shakes head negatively.)"

11 MS. LOWRY: Okay. That's all. Thanks.

12 That's all.

13 MR. PALLARES: Nothing further.

14 MS. LOWRY: Thank you, Crystal. You're finished.

15 THE COURT: Thank you very much.

16 THE WITNESS: You're welcome.

17 MS. LOWRY: I'll check for my next witness,

18 Judge.

19 THE COURT: We're going to take a short recess.

20 MS. LOWRY: Okay.

21 THE COURT: You're admonished not to converse
22 among yourselves or with anyone else on any subject connected
23 with this trial;

24 Or to read, watch or listen to any report of or
25 commentary on the trial by any person connected with this case

DISTRICT COURT
CLARK COUNTY, NEVADA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF NEVADA,

Plaintiff

vs.

JOSE LOPEZ GARCIA,

Defendant.

FILED

DEC 8 11 26 AM 1998
Loretta Schuman

CASE NO. C142741
DEPT. NO. VIII
DOCKET NO. M

VOLUME III

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE LEE A. GATES, DISTRICT COURT JUDGE
Taken on Wednesday, June 17, 1998
At 10:40 o'clock a.m.

APPEARANCES:

For the State:

TERESA LOWRY, ESQ.
JENNIFER TOGLIATTI, ESQ.
Deputies District Attorney

For the Defendant:

JOSE PALLARES, ESQ.
Attorney at Law

REPORTED BY: YVONNE M. VALENTIN, CCR 342

YVONNE M. VALENTIN, OFFICIAL COURT REPORTER

EX. 7

1 of all the members of the jury panel.

2 Mr. Garcia.

3

4 JOSE LOPEZ GARCIA,

5 called as a witness herein, having been first duly sworn, was
6 examined and testified as follows:

7

8 THE CLERK: Please state your name and spell your
9 last name for the record.

10 THE WITNESS: Jose Garcia Lopez; J-o-s-e,
11 G-a-r-c-i-a, L-o-p-e-z.

12

13 DIRECT EXAMINATION

14 BY MR. PALLARES:

15 Q. Mr. Garcia, how old are you?

16 A. I'm 33 years old. I'll be 34 in December.

17 Q. Did you used to live on Ellis Street?

18 A. Yes.

19 Q. Okay. Do you remember the address where you used
20 to live?

21 A. 2725 Ellis Street -- 27 or 25. It's one of
22 those; that's the numbers. Apartment Number 1.

23 Q. And that's in North Las Vegas?

24 A. Yes.

25 Q. When did you first move to that address?

- 1 A. Well, I told them not to fight with anybody.
- 2 Q. Did you get along with Crystal Ingram?
- 3 A. I got along with all my neighbors. They never
4 complained about me.
- 5 Q. Did you ever have any problems with Berto Ingram?
- 6 A. Not as far as I know.
- 7 Q. Did you get along with Maria Ingram?
- 8 A. I think that I got along pretty well.
- 9 Q. Did you ever go over to her house for dinner?
- 10 A. Never.
- 11 Q. Did she ever come down to your apartment for
12 dinner?
- 13 A. She and all her daughters.
- 14 Q. Was Maria a frequent visitor to your apartment?
- 15 A. With all her family. You could almost say that
16 she lived in my apartment.
- 17 Q. Did you ever loan money to Maria Ingram?
- 18 A. Every time she needed money to buy food for her
19 children.
- 20 Q. Did you ever buy any meals for Crystal Ingram?
- 21 A. Not especially for her; for her brother, her and
22 for my children.
- 23 Q. Were you ever romantically involved with Maria
24 Ingram?
- 25 A. Yes, I did.

- 1 Q. How long did that last?
- 2 A. About three minutes.
- 3 Q. During 1996, did you have a girlfriend?
- 4 A. I had several that wanted to be with me and they
5 would come to my apartment.
- 6 Q. You mentioned that, today, you have a girlfriend.
- 7 A. Yes.
- 8 Q. What is her name?
- 9 A. Germina Castrone.
- 10 Q. Were you going home with Germina Castrone in
11 1996?
- 12 A. No.
- 13 Q. When did you start dating Germina Castrone?
- 14 A. In '97.
- 15 Q. Do you remember what month?
- 16 A. It was before September. It was between
17 September and October.
- 18 Q. Of 1997?
- 19 A. Yes.
- 20 Q. Now, during 1996, did Crystal Ingram ever spend
21 the night at your house?
- 22 A. Two nights, she slept with my children in my
23 apartment in my bedroom. Sometimes she stayed with the couple
24 in the other bedroom.
- 25 Q. During 1996, how many times did Crystal Ingram

1 spend the night in your apartment, either with you or with the
2 other couple?

3 A. Never; none.

4 Q. I thought you said that Crystal Ingram had spent
5 the night twice with you?

6 A. Yes, in '97.

7 Q. In '97?

8 A. Yes.

9 Q. So during 1996, did Crystal Ingram ever spend the
10 night at your apartment?

11 A. No, because I didn't speak to them. I wasn't --
12 I was not on good terms with anybody.

13 Q. Are you sure you're talking about the right year?

14 A. About '96, I am sure.

15 Q. I thought you -- what year was it that Crystal
16 Ingram would come over and eat with your kids?

17 A. In '97.

18 Q. What year did you go to Mexico?

19 A. I'm sorry?

20 MR. PALLARES: Can we approach the bench?

21

22 (Whereupon, a bench conference ensued.)

23

24 MR. PALLARES: Go ahead and translate.

25 THE WITNESS: I'm sorry. I'm confused. I've

1 been locked up for two years -- 15 months and all of that
2 confuses me.

3 MS. LOWRY: You know, there is not a question
4 before the witness so --

5 THE COURT: Sustained.

6 BY MR. PALLARES:

7 Q So now that -- do you understand I'm talking
8 about the year 1996?

9 A. Yes, I do.

10 Q. All right. That's the same year that you're
11 accused of committing a crime.

12 Do you understand that?

13 A. I was just confused about the date.

14 Q. How many times did Crystal Ingram spend the night
15 at your house in 1996?

16 A. Twice, two.

17 Q. When was the first time?

18 A. April '96.

19 Q. And was it just her or was any of her other
20 brothers or sisters spending the night?

21 A. Her brother.

22 Q. Berto?

23 A. Berto.

24 Q. When was the second time that Crystal spent the
25 night in 1996?

1 A. It wasn't later than June.

2 Q. When Crystal and Berto spent the night in April
3 of 1996, did anything unusual happen?

4 A. No, nothing.

5 Q. Do you remember that night in April?

6 A. Yes, I remember it.

7 Q. Were your kids there in April?

8 A. That day, yes.

9 Q. How about the time in June 1996 when Crystal
10 spent the night? Do you remember that night?

11 THE INTERPRETER: What was the question, counsel?

12 BY MR. PALLARES:

13 Q. Do you remember that night?

14 A. Also.

15 Q. Were your children present in June of 1996?

16 A. Yes.

17 Q. What did you do that night in June with your
18 kids?

19 A. I took Christian and my children and Crystal and
20 Berto -- I went and bought them hamburgers at McDonald's and I
21 went to rent some cartoon movies for the kids.

22 Q. Do you remember what time Berto and Crystal came
23 over in June -- what night in June of 1996?

24 A. My kids were there around eight that night.
25 That's when we started.

- 1 Q. Do you remember what movies you rented?
- 2 A. Not exactly. I don't remember the titles of the
3 movies. I know they were new. They had just come out.
- 4 Q. Where were you watching movies that night?
- 5 A. In my bedroom.
- 6 Q. Where were your children while you were watching
7 the movies?
- 8 A. In my bedroom.
- 9 Q. Were they on the floor? Were they on the floor?
10 Where were they in your bedroom?
- 11 A. They were all on the bed.
- 12 Q. Where was Crystal and Berto that night?
- 13 A. They were all in the bed -- on the bed.
- 14 Q. And where were you?
- 15 A. I was on the edge of the bed.
- 16 Q. Did anything unusual happen that night?
- 17 A. Not so far as I know.
- 18 Q. Did you play an adult movie on the VCR that
19 night?
- 20 A. It would be very bad for my children to show that
21 movie.
- 22 Q. Did you play an adult movie that night?
- 23 A. No.
- 24 Q. Do you recall if Berto was there the whole night?
- 25 A. Yes.

1 Q. How about April of 1996: Did Crystal and Berto
2 both spend the night that night?

3 A. Yes.

4 Q. Did you ever show Crystal an adult movie that
5 night, April of 1996?

6 A. No.

7 Q. After June of 1996, did you continue to be
8 friends with the Ingram family?

9 A. Yes.

10 Q. Did there come a time when you broke off that
11 friendship?

12 A. I was starting to feel pressured.

13 Q. From who?

14 A. By Maria.

15 Q. What kind of pressure?

16 A. She was starting to get jealous. She didn't want
17 me to bring over women, and she was asking me why didn't I get
18 together with her.

19 Q. And when did this happen? When did this
20 jealousy --

21 A. You could say since '96.

22 Q. Do you recall what month though that your
23 relationship with the Ingrams fell apart?

24 A. Yes.

25 Q. Now, Jose, do you speak any English at all?

1 A. Yes, I do speak a little English.

2 Q. Can you understand some English, too?

3 A. Also.

4 Q. Do you speak as much English as Spanish?

5 A. No.

6 Q. During 1996, was there ever a time that Crystal
7 came over to your house alone while you were watching a movie?

8 A. She came continually, like I said, like it was
9 her own apartment. She came and went.

10 Q. Would Crystal customarily knock before coming in?

11 A. No, because Marvaya lived there. The other
12 couple lived there.

13 Q. So Crystal was friends with this other couple as
14 well?

15 A. Yes.

16 Q. Did Crystal ever come to your apartment while you
17 were watching an adult movie?

18 A. One afternoon when I came home from work, I came
19 home tired. I went to my bedroom. I put on my shorts and
20 T-shirt. I was in shorts and a T-shirt. I always lock my
21 door. I think that we're all entitled to our privacy.

22 MS. LOWRY: Objection. This is nonresponsive.

23 THE COURT: Sustained.

24 MR. PALLARES: I'll just ask him another
25 question.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. PALLARES:

Q. Did Crystal come into your room while you were watching that movie?

A. She came in running. She threw the door open.

Q. Did you ask her to stay and watch the movie with you?

A. No, I got up to close the door.

Q. Did Crystal stay in the room with you?

A. No.

Q. Did you touch Crystal that day at all?

A. No.

Q. Do you recall what month that occurred?

A. This happened between April and June.

Q. Of what year?

A. '96.

Q. Jose, have you ever had sex with Crystal Ingram?

A. No.

Q. Have you ever exposed yourself to Crystal Ingram, exposed your genitals?

A. No.

Q. Have you ever touched any of Crystal Ingram's genital areas with your hand?

A. No.

Q. When did you return from your vacation in Mexico?

1 A. I returned -- I don't remember the exact date,
2 but I came back 15 days after I left on vacation.

3 MR. PALLARES: Pass the witness.

4 THE COURT: All right. What we're going to do is
5 take our recess for lunch.

6 During this recess, the jury is admonished not to
7 converse among themselves or with anyone else on any subject
8 connected with this trial;

9 Or to read, watch or listen to any report of or
10 commentary on the trial by any person connected with this case
11 or by any medium of information, including, without
12 limitation, newspapers, television or radio.

13 We'll start up at one o'clock.

14

15 (Whereupon, a lunch recess ensued.)

16

17

18

19

20

21

22

23

24

25

1 LAS VEGAS, NEVADA, WEDNESDAY, JUNE 17, 1998, 1:20 P.M.

2

3

-o0o-

4

5

THE COURT: Let the record reflect the presence
6 of the parties, the attorneys and all the members of the jury
7 panel.

8

Where is the witness?

9

Take the stand.

10

Were you done?

11

MR. PALLARES: Yes, your Honor.

12

THE COURT: Cross-examination.

13

MS. LOWRY: Thank you, Judge.

14

15

CROSS-EXAMINATION

16

BY MS. LOWRY:

17

Q. Mr. Garcia, you were called back in November of

18

1996 when Detective Anderson investigated this case?

19

A. Yes.

20

Q. And she met with you to talk to you about this

21

case?

22

A. I met with her.

23

Q. And when she met with you, she had another police

24

officer there who spoke Spanish?

25

A. Yes.

1 Q. And so your conversation was interpreted so that
2 you could understand everything that she talked to you about?

3 A. Yes.

4 Q. And at that time, on November 18th of 1996, she
5 told you what the allegations were in this case, didn't she?

6 A. Yes.

7 Q. And she told you what Crystal was saying?

8 A. Everything Crystal said, yes.

9 Q. And she gave you an opportunity to tell your side
10 of the story, didn't she?

11 A. Yes.

12 THE COURT: Excuse me. Approach the bench.

13

14 (Whereupon, a bench conference ensued.)

15

16 BY MS. LOWRY:

17 Q. So you had an opportunity to tell Detective
18 Anderson your side of the story?

19 A. Yes.

20 Q. And you had an opportunity to tell her about your
21 relationship with Crystal?

22 A. What relationship are you referring to?

23 Q. The relationship that you described as getting
24 along very well with Crystal.

25 A. I didn't say that I got along very well with

1 Crystal. I said that I got along very well with the family.

2 Q. Did you say that Crystal got along very well with
3 you?

4 A. Yes.

5 Q. So did you and Crystal get along very well?

6 A. I don't know where you are leading with this.

7 Q. I'm asking you questions, and you answer the
8 questions.

9 You got along very well with Crystal?

10 A. Yes.

11 Q. And that's what you told Detective Anderson?

12 A. Yes.

13 Q. Never, in your conversation with Detective
14 Anderson, did you say that Maria Ingram was upset or was
15 pressuring you or was jealous of your girlfriends.

16 A. Because she never asked me about that.

17 Q. And you didn't think that that was important to
18 tell her about that?

19 A. I was only answering the questions she was asking
20 me.

21 Q. And she asked you how you had gotten along with
22 Maria Ingram and her children, correct?

23 A. Yes.

24 Q. And you never thought that it was important to
25 mention to her at that time during the investigation that you

1 had cut off your friendship with this family because of the
2 pressures and jealousy you felt by Maria Ingram?

3 A. As I told you, she never asked me anything
4 personal.

5 Q. She never asked you anything personal?

6 A. No.

7 Q. She didn't ask you about your family?

8 A. About my family? No.

9 Q. She didn't ask you about your children?

10 A. Whether I had children.

11 Q. She didn't ask you how you spent your time or who
12 you lived with, things like that?

13 A. Yes, she asked that.

14 Q. When you talked to Detective Anderson, you never
15 told her that Crystal had spent the night twice, once in April
16 and once in June?

17 A. I told her. If she didn't write it down, it's
18 not my fault.

19 Q. When she spoke to you, she had someone typing
20 everything that you said, didn't she?

21 A. Yes.

22 Q. And, in fact, she had you initial every one of
23 your answers during the interview, didn't she?

24 A. Yes.

25 Q. And what you told her during the interview was:

1 You thought Crystal had stayed the night one time, and you
2 weren't sure if she had stayed the night with you a second
3 time.

4 A. I didn't tell her -- I told her that she spent
5 the whole night.

6 Q. What I'm asking you is, is you never told her the
7 specific months?

8 A. No, because I did not remember.

9 Q. But you remembered on direct examination.

10 A. He didn't ask me anything about that.

11 Q. Do you recall testifying just about an hour and a
12 half ago that Crystal spent the night, you were sure, in April
13 and then again in June?

14 A. The first night -- the first time was in April
15 and the second one was no later than June.

16 Q. But when you talked to Detective Anderson in
17 November of 1996, the same year that these things happened,
18 you couldn't recall how many times Crystal had stayed the
19 night, and you couldn't recall the months that she had stayed
20 the night, correct?

21 A. I told her it had happened between April and
22 July.

23 Q. Now, you testified that there was a time that
24 Crystal walked into your bedroom while you were watching a
25 pornographic movie?

1 A. I didn't say she came in. I said she pushed the
2 door.

3 Q. After Crystal pushed the door, did she come into
4 your room?

5 A. No.

6 Q. Where were you watching the pornographic movie?

7 A. In my bedroom.

8 Q. And is there a TV in your bedroom?

9 A. I had two.

10 Q. Two TVs in your bedroom?

11 A. Yes.

12 Q. And you also had a VCR in there?

13 A. I have two.

14 Q. And so it would be in your bedroom on your TV in
15 your VCR that you would play the movies for the children?

16 A. Yes.

17 Q. And it would be on this TV and VCR in your
18 bedroom that you would play a pornography tape?

19 A. Not at the time that I was showing the children's
20 movies.

21 Q. That's not my question.

22 My question is: If you were to watch a
23 pornography tape, it would be on the TV and played on the VCR
24 in your bedroom.

25 A. Yes.

1 Q. And that's where you would be if you were to
2 watch it, in your bedroom.

3 A. Yes.

4 Q. So are you telling us that the day that Crystal
5 pushed your door, that she didn't come in your room?

6 A. No.

7 Q. So she couldn't have seen if you were watching a
8 pornography tape?

9 A. She saw part of it, because I did not lock the
10 door.

11 Q. How did she see part of it?

12 A. Part of the pornographic movie because -- she was
13 able to see before I closed the door.

14 Q. So she put her head around the door to look --

15 THE INTERPRETER: Counsel, could you repeat the
16 question?

17 BY MS. LOWRY:

18 Q. So she put her head around the door to look?

19 A. No. As I said, she pushed the door and it opened
20 completely.

21 Q. So the door opened all the way up?

22 A. Yes.

23 Q. And she didn't come into the room.

24 A. No.

25 Q. She just stood at the door.

- 1 A. She was surprised by the movie I was watching.
- 2 Q. Where was she standing when she saw the movie you
3 were watching?
- 4 A. When she pushed the door open.
- 5 Q. Where was she standing when she saw the movie
6 that you were watching?
- 7 A. She didn't stay there watching the movie because
8 I pushed the door closed.
- 9 Q. Mr. Garcia, I'm going to ask you for the third
10 time: Where was she standing when she saw the movie?
- 11 A. As I said, when she pushed the door open, she
12 stayed there right before the door.
- 13 Q. Where is your TV set in your room?
- 14 A. It was in front of the door.
- 15 Q. The screen faces the door?
- 16 A. Yes.
- 17 Q. Where is the bed?
- 18 A. The bed is in the middle.
- 19 Q. Does the bed face the TV and the VCR?
- 20 A. No.
- 21 Q. What were you doing while you were watching the
22 pornographic movie?
- 23 A. Resting.
- 24 Q. Now, the movie that you had on, what were the
25 people in the movie doing?