IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL ERIC CAFFEJIAN, Appellant, vs. THE STATE OF NEVADA, Respondent.	Electronically Filed Apr 12 2023 07:48 AM Elizabeth A. Brown Clerk of Supreme Court Supreme Court Case No. 84329 District Court Case No. CR20-0119

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FIFTH JUDICIAL DISTRICT

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PAHRUMP JUSTICE COURT
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CASE NO. 18-CR-02029

IN THE JUSTICE COURT OF PAHRUMP

IN THE COUNTY OF NYE, STATE OF NEVADA

BEFORE LISA CHAMLEE, JUSTICE OF THE PEACE, PRESIDING

THE STATE OF NEVADA,

Plaintiff,

v

DANIEL ERIC CAFFEJIAN,

Defendant.

/

CD TRANSCRIPT OF PROCEEDINGS

PRELIMINARY EXAMINATION

OCTOBER 1, 2020

PAHRUMP, NEVADA

Transcribed By: Kathy Jackson CSR

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OCTOBER 1, 2020, PAHRUMP, NEVADA

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THE COURT: All right. So this is the time set for preliminary hearing of Daniel Caffejian, 18CR02029.

Good morning, Mr. Caffejian.

THE DEFENDANT: Good morning.

THE COURT: I don't know if you heard me tell everyone earlier so I'm going to tell you. You have a Fifth Amendment right to remain silent. If you choose to waive that right anything you say can and will be used against you.

So this is the time set for prelim. Is the State prepared to proceed?

MR. ALLMON: We are, Your Honor.

THE COURT: Okay. And we don't have any witnesses in the audience. How many witnesses do you intend to call?

MR. ALLMON: Four witnesses, Your Honor.

THE COURT: Four total?

MR. ALLMON: Yes, Your Honor.

THE COURT: Okay. Okay. You do understand the burden of proof at a preliminary hearing is slight or marginal evidence. So I suppose, you know, if we're going to be introducing duplicative or accumulative testimony then, you know, that's not something that the Court is going to

allow. So we'll listen to the testimony, but when I think there's enough there I'll let you know.

MR. ALLMON: Thank you, Your Honor.

THE COURT: Okay. All right. So we don't need to invoke the exclusionary rule because we don't have anybody here.

MR. EARNEST: I always say just invoke but it doesn't matter.

Also the State filed an amended criminal complaint today, October 1st.

THE COURT: Yes.

MR. EARNEST: It's still seven counts, some of the sex assault counts were changed to open gross lewdness.

THE COURT: I did see that.

MR. EARNEST: I reviewed it with my client, judge, so.

THE COURT: So you don't have any objection. Actually it looks like it was used in a number of counts. The original complaint had eight and this now only has seven counts.

MR. EARNEST: It changes some counts. So he was facing 35 to life on multiple counts. Now he's only facing 35 to life on one, ten to life on the others.

THE COURT: Okay. All right. So did you

review -- we don't need to arraign him?

MR. EARNEST: No. We'll waive formal arraignment. I reviewed it with him today.

THE COURT: Okay.

MR. EARNEST: And the State has lead to do it until the jury gets it.

THE COURT: Yes.

MR. EARNEST: So it is what it is.

THE COURT: All right. Go ahead, Mr. Allmon.

MR. ALLMON: Thank you, Your Honor.

Your Honor, the State calls Kristine Hammock. She's going to be outside, the child.

KRISTINE HAMMOCK,

called as a witness on behalf of the State having been first duly sworn, was examined and testified as follows:

THE COURT: Thank you.

THE BAILIFF: Have a seat. Speak clearly into that microphone, okay.

THE WITNESS: Okay.

THE COURT: Okay. So is this your first time testifying?

THE WITNESS: Yes.

THE COURT: Okay. So just a couple of things I want to tell you. You see that black box right there with the red light. That is the microphone. That needs to pick up everything that you do say. So when you speak try to speak into the microphone. Speak clearly and slowly. I'm going to direct you to take off your mask if you're okay with that. Are you okay with that?

THE WITNESS: Yeah.

THE COURT: Okay. And while you're testifying just leave the mask down so that the microphone captures everything. If the attorneys ask you a question that requires a yes or no answer I need you to say yes or no. Don't nod or shake your head because the microphone won't pick that up, okay?

THE WITNESS: Okay.

THE COURT: Okay. Do you have any questions?

THE WITNESS: No.

THE COURT: All right. And if you need a break or you need anything while you're testifying feel free to let me know and I'll make sure we got you comfortable, okay. Thank you.

You may proceed, Mr. Allmon.

MR. ALLMON: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ALLMON:

Q. Hi, Kristine.

A. Hi.

Q. Kristine, how old are you?

A. I'm 12 years old.

THE COURT: Do you want to have her state and spell her name for the record.

MR. ALLMON: Sorry. I get mixed up in --

THE COURT: You can take off your mask too, if you want to.

MR. ALLMON: If the Court can hear me I'll keep it on. It doesn't bother me.

THE COURT: Okay. I just want to make sure that because sometimes we have to have transcripts prepared.

MR. ALLMON: Okay. I'll take it off.

THE COURT: After it's bound over. So the Court reporter needs to hear everything clearly.

MR. ALLMON: Understood, Your Honor.

THE COURT: Yeah, just try to maintain six feet of distance with those guys.

MR. CHAIREZ: I tested negative yesterday so I feel good.

Q. (BY MR. EARNEST:) Kristine, how -- can you state

and spell your name for the record.

A. My name is Kristine Hammock, K-r-i-s-t-i-n-e H-a-m-m-o-c-k.

Q. Okay. And, Kristine, how old are you?

A. I'm 12 years old.

Q. You're 12 years old. Do you -- what grade are you in now?

A. I'm in seventh grade.

Q. You're in seventh grade. And when did you start seventh grade?

A. This August.

Q. Okay. So do you remember back in April of 2018?

A. Yes.

Q. Okay. What grade were you in then?

A. Fourth grade.

Q. Fourth grade. And how old were you?

A. I was nine years old.

Q. Okay. Now, it's seventh grade, but you're saying back then it was fourth grade even though it's two years, right?

A. Yes.

Q. And why is that?

A. Because our school year started in August, and my birthday is in the middle of summer, so.

Q. Okay. Now, in April of 2018 did your mom have a boyfriend or fiance?

A. Yes.

Q. Do you remember his name?

A. Daniel Caffejian.

Q. Do you see him here today?

A. Yes.

Q. Can you point him out for the Court. And what color shirt is he wearing?

A. Gray.

MR. ALLMON: Your Honor, may the record reflect the in court identification.

THE COURT: The record will so reflect.

MR. ALLMON: Thank you, Your Honor.

Q. Now, do you remember -- I should say when did you first meet the defendant, the person you just pointed out?

A. I met him around six months before April, around December.

Q. So that would be December of 2017 then. Okay. And when you met him was he dating your mom at that time?

A. Yes.

Q. Okay. What's your mom's name?

A. Kimberly Dilger.

Q. Okay. Now, where were you living in April of

2018?

A. I was living with my grandparents.

Q. And where do your grandparents live, what town?

A. They live here in Pahrump.

Q. Okay. Would you sometimes spend nights at your mom's?

A. Yes.

Q. And where did your mom live?

A. She lived here in Pahrump too.

Q. Do you remember the street name?

A. Pawnee.

Q. Do you remember the address? But back when you were nine years old you remember it was Pawnee and that's in Pahrump?

A. Yes.

Q. And would you -- when you would stay the night with her did you have any kind of schedule?

A. No.

Q. Okay. So kind of just describe the living arrangement between your grandparents and your mom's?

A. So I mostly lived in my grandparent's house and occasionally I would spend the night over at my mom's house with him, and it would just be like kind of every once or twice a week.

Q. So once or twice a week and you said him. Is that the defendant? Okay. On some of these nights would you -- would your mom be out of the house?

A. Yes. She would go to work.

Q. So she would be working some nights and then who would be in the house with you?

A. The defendant.

Q. And who else?

A. My little sister.

Q. And how old was your little sister at the time?

A. Six or seven.

Q. Now, in your house with your mom what was the sleeping arrangement?

A. I did have my own room and I had to sleep in there, and a cat got in there and it couldn't get out so it desecrated in the bed. So I had to sleep in their bed.

Q. You would sleep in their bed. Who is they? Is that your mom and the defendant?

A. Yeah.

Q. Is that a yes?

A. Yeah.

Q. So some days you would sleep in the same bed with your or around this time you were sleeping in the same bed with your mom and the defendant?

A. Yes.

Q. Did -- did something happen that caused you to call the cops or to tell someone about something I should say? Did something happen? Was there an event that caused you to tell your mom something?

A. Yes.

Q. What event was that? Let's backtrack a little bit, okay. Let's talk about your body, okay. You're 12 years old. That's a horrible time to be talking about it, right? All right. But what are -- what are your private areas to you?

A. I pee, butt and boobs.

Q. Okay. And is your pee, would that include your vagina? Is that what you mean by that?

A. Yeah.

Q. Okay. So we can say a private area of a front and a back. Would that make sense?

A. Yes.

Q. And would the front be your vagina?

A. Yes.

Q. And would the back be your butt?

A. Yes.

Q. And then your boobs, are you comfortable saying that or your chest?

A. Yes.

Q. Is that the same, okay. Now, tell me about the -- tell me what triggered you to tell your mom something that was important to you?

A. Well, it happened a few times and I couldn't handle it anymore so I told my mom.

Q. What happened a few times?

A. Him molesting me.

Q. Him what?

A. Molesting me.

Q. Him molesting you, okay. How did he molest you?

A. He stuck his private area up my back end.

THE COURT: I apologize for interrupting, but when I heard the testimony about her mother's name the name sounded very familiar to me and I just checked my conflicts list. I didn't see her name anywhere in the file. So I just wanted to disclose to the parties I did represent Kimberly Dilger as a public defender in completely unrelated matters.

MR. ALLMON: Thank you.

THE COURT: Let me just tell you the case numbers and the types. So they were -- does counsel want to come up and I can show you the case.

MR. ALLMON: That sounds good.

THE COURT: All right. So I just wanted to -- I

showed counsel at sidebar the cases that I represented Ms. Dilger in and as her public defender. It looks like all of those cases had been bound over or closed in this courtroom. And to be honest, the name sounded very familiar that's why I asked the bailiff to get my conflict list. I do not have independent recollection of the work that I did on these cases. So I believe I can be fair and impartial. It's my understanding that the State does intend to call Ms. Dilger, but --

MR. EARNEST: Does or doesn't?

MR. ALLMON: Does.

THE COURT: Does.

MR. EARNEST: Today?

THE COURT: Yeah.

MR. ALLMON: No. No. I intend to call her. I intend to call Ms. Dilger.

THE COURT: So I just wanted to put on the record that I did represent the alleged victim's mother, who is probably going to be a witness here today. It does not affect my ability to be fair and impartial in any way. I don't have any independent recollection of my representation but, of course, I wanted to give counsel the opportunity to object. If either of you object to my presiding I will immediately recuse.

Mr. Allmon, do you have any objection?

MR. ALLMON: No objection, Your Honor.

THE COURT: Okay. Mr. Earnest, if you want to take a brief recess to talk to your client outside of the Court's view I'm totally okay with that. In fact, I think that the rule strongly recommends that you do.

MR. EARNEST: I'm going to do that. I'll take a deep breath. I do want to approach the bench as well.

THE COURT: Sure.

MR. EARNEST: Can I instruct you to step outside. I'll be there shortly. I need a quick meeting.

THE COURT: All right. So Mr. Earnest has left the courtroom to confer with his client outside of the Court's view regarding the Court's -- the Court's disclosure of prior representation of the alleged victim's mother. We will wait for Mr. Earnest to come back into the courtroom to let us know if he has an objection to the Court presiding.

And -- and counsel will discuss potentially if that is a problem calling Ms. Dilger that, you know, counsel can discuss with Mr. Earnest. So we'll just take it from there. So we'll wait for Mr. Earnest to come back in. We can go ahead and briefly go off the record.

MR. ALLMON: Thank you, Your Honor.

THE COURT: Okay. So we're going to have side

bar with counsel.

All right. So we're just waiting for Mr. Chairez to come back in. Mr. Allmon is going to get him.

Okay. We have Mr. Chairez back in the courtroom. So, counsel, you've had an opportunity to confer with your client regarding the Court's disclosure. Does your client have any objection?

MR. EARNEST: He does.

THE COURT: Okay.

MR. EARNEST: He does object. And for what it's worth, I spoke very highly of you and your ethics and everything else. Who else would admit this thing this late in the game and he understands that. His concern is, well, just one who is facing multiple life sentences, you know, he's just really concerned.

And while a preliminary hearing is a, some could argue borderline ministerial check on the State's palate, it's almost a rubber hammer. Boom, done. It's an important one. It's an important one, and he's facing multiple life sentences, judge.

And I didn't fight him on it too much, to be honest with you. I said I understand. Coupled with all of this stuff that I have to deal with now with, you know, the microscope that us defense attorneys are under here in

Nevada, you know, okay, let's just keep it clean. But we're -- so we are going to object, judge. I understand these things happen. We're not upset. My client is at liberty. So it's not prejudicial to him.

We defer to, if you order our, you grant our objection or grant our motion to be recused today. We would defer to the State and Judge Jasperson's calendar or Sullivan or Klapper, whoever would come in and do this. I don't know who it would be.

THE COURT: Okay.

MR. EARNEST: Frankly, we're clearly not forum shopping. I want to be very clear about that. Is while you think it can be a ministerial thing my client thinks it could be very big, and coupled with some of the other reasons from a lawyer's standpoint I didn't feel obligated to really try to push him and let's just get this thing done today because let's just keep it clean, you know. So we're going to object and we're going to ask that you recuse yourself, and we can reset it with another judge we hope.

THE COURT: Okay. Mr. Allmon?

MR. ALLMON: If the State could offer a remedy then that would avoid the conflict that defense would object to. The State would not call Ms. Dilger in this case. I think that's appropriate. She was listed in the discovery as

the mother of this child. So I think that that would seem to alleviate defense's objection. Calling her specifically seems to be what this is hinging on to me.

MR. EARNEST: That is -- that is far. The State makes a valid argument. I mean, that's the concern that we have, you know, if he wants a clean thing. Now, obviously, it's a little bit deeper than that though, isn't it? Your client is the mother of this wonderful young lady.

THE COURT: Uh-huh.

MR. EARNEST: And the fear would be that some bias towards the mother because you're an advocate for her, you fought for her, you defended her would go on to her brood, judge, to this young lady here before us. So that's -- to go a little bit deeper that's kind of a problem here, judge.

THE COURT: Okay. So even if the State were not to call Ms. Dilger defense would still be objecting on the basis that I may have some bias in favor of Ms. Dilger and that would be passed on to the minor.

MR. EARNEST: To her family, her parent's potentially biased of her.

THE COURT: Okay.

MR. EARNEST: Not to say propriety. I'm not going to say that but that would be the argument.

THE COURT: Okay. So --

MR. ALLMON: Your Honor, if I may just make a record.

THE COURT: Sure.

MR. ALLMON: If the Court would also consider the burden on the State, the burden on this young victim who is only 12 years old, who is here ready to testify in what must be an extremely difficult situation for her. I would just ask the Court weigh the two burdens. That's all.

THE COURT: Okay.

MR. EARNEST: Fair. However, let's be real. Let's be honest. This man is facing life in prison. This man stands before you innocent. There's been no proof of anything. He has all of the protection of -- of being deemed innocent until proven guilty.

This young lady, wonderful, who speaks, who has used some words that I have never heard any girl, any child this age use wonderful vocabulary, I'm impressed, is a potential victim. It has not been deemed by a jury or judge that she is a victim.

The rights of my client trump anybody in this room period, period. So I understand it takes a lot of courage. I understand this stuff, but we are here to make sure that we go after the guilty and clearly enable the

innocent, and that's what -- that's not where we're at right now. You have to presume.

I mean, there's so much law already where hearsay testimony can be let into a preliminary hearing because our legislature has no backbone and has forgot what this country is built upon, right, judge? We did that big three-person case a month ago. Remember that one and all of the hearsay -- all of the testimony that came in pursuant to statute.

THE COURT: Yes.

MR. EARNEST: Potentially the State doesn't even have to call this witness.

THE COURT: Yeah.

MR. EARNEST: They can just submit a bunch of hearsay statements. Of course I object. I'm actually working literally on the writ on that case right now as we speak.

THE COURT: Okay.

MR. EARNEST: Or this week. So I understand what Mr. Allmon is saying. I'm not disparaging this young woman at all. In fact, I gave her praise for her vocabulary, better than any child in this county I've seen in 20 years. I'm impressed. But it doesn't change the fact that the number one thing we should be worried about in this process

is not having the appearance of impropriety, not having any bias, keeping it clean and doing this right, and my client has some concerns and we have objected.

THE COURT: Okay. So here's what I think I'm going to do because I -- you know, if this were at any other juncture in the case prior to prelim I would probably grant the defense's objection. Unfortunately until I heard the name I didn't realize that there was this potential for conflict.

But that being said I will say I did not even know that Ms. Dilger in my previous representation of her, and I will note the representation occurred it looked like in 2014 and '15, closed in 2016. So we're looking at four years ago. In the course of my representation on those cases I -- I'm not even aware as I sit here today that she had a minor child.

I mean, my recollection again was to the name. I looked at the conflict list. I don't have any independent recollection of the cases that I represented her in. Obviously those cases have absolutely nothing to do with the case here today.

But that being said I don't want to make anybody feel uncomfortable and I certainly understand your client's unease with the situation, and that's why I always disclose

these things. But I think it would be fair if we could take a short recess I would like to consult with a senior judge to get some guidance on how to address this issue. I believe that I can be completely fair and impartial and especially if the State is not calling Ms. Dilger I think I can.

There's -- any bias that might have been there, look, a previous client I'm not going to have any feelings either way, would certainly not be imputed to any blood, relative or family, but that being said I don't want to make a decision that creates problems for the case. So if you could give me about 15 minutes to make a quick phone call.

MR. ALLMON: That's fine.

THE COURT: I will be back in about 15 minutes and I'll make a ruling on the objection, okay.

MR. CHAIREZ: Can I ask one additional question of Mr. Earnest. Prior to prelim, well, two days ago and even as late as yesterday he had stipulated to the DNA results, the chain of custody. I just wanted to -- are we still going to have that? I mean, he's been very fair to the State.

MR. EARNEST: I don't back out on my word.

MR. CHAIREZ: Okay.

MR. EARNEST: If she came back -- if the judge came back and said based on talking with the senior judge I think just out of an abundance of caution I'm going to recuse

myself I don't change any agreements I've made with the State at this point.

MR. CHAIREZ: Okay.

THE COURT: Okay.

MR. EARNEST: So that's not -- I kept my word. I have my faults but I keep my word.

THE COURT: Okay.

MR. CHAIREZ: He does, Your Honor.

THE COURT: All right.

MR. CHAIREZ: But I just want to remind him that he keeps his word.

THE COURT: Okay.

MR. EARNEST: Thank you.

THE COURT: Give me 15 minutes. We'll be back ten to noon.

(Whereupon, a brief recess was taken.)

THE COURT: Back on the record. Okay. So we're back on the record. The Court took a brief recess. This is 18CR02029. And I did consult with a senior, more experienced judge on the defense's objection and the issue of the potential conflict here today and the Court is going to overrule the defense's objection.

MR. EARNEST: Okay.

THE COURT: And I'm going to explain my reasons

why. Mr. Caffejian, I understand that, you know, given my prior representation of Ms. Dilger, who is the minor alleged victim's mother, that it may make you uncomfortable. But let me tell you my representation of Ms. Dilger ended it looks like in 2016. Definitely I had -- I had stopped being a public defender in 2017. So I know I did not have any contact with her.

I'm looking at the complaint and the specific allegations in your case. It looks like everything arose from April of 2018 is about the time. So that would have been long after I had any contact with Ms. Dilger. And -- and I'm telling you, I mean I disclosed my representation of Ms. Dilger. I do not have any idea or any understanding of the facts pertaining to this case. I've never had any exposure. I didn't even know she had a child until we were here today and then she referenced Ms. Dilger's name.

So the fact that my representation ceased long before the alleged acts occurred in this case is one factor weighing in favor of my remaining on the case, and I do believe that I can be fair and impartial. I honestly don't remember what Ms. Dilger looks like. I just know the name, okay.

The other thing, the other part of my analysis and my discussion with the other judge that I went to for

advice is the fact that this is a preliminary hearing. If it were a trial I would absolutely recuse myself because I do believe then that, you know, as a fact-finder any perception of bias, you know, may, obviously would be more important, but the burden of proof at a preliminary hearing is so low, slight or marginal evidence. Really all I'm doing is making findings that, you know, the elements are being satisfied in this case. Credibility hardly ever comes into, you know, the determination of probable cause at a preliminary hearing.

And, lastly, the State is not going to call Ms. Dilger so that further removes the potential for any bias to be injected. But, again, I'm not going to have any bias. I do not recall any specifics of my representation of Ms. Dilger. So I just wanted to make that disclosure. We will be moving forward with the preliminary hearing.

And another thing that -- another factor in my analysis and my decision to remain on the case which I do have an ethical obligation to remain if I don't believe I have a conflict is the fact that we do have, you know, a minor alleged victim and I understand that, you know, she's just an alleged victim at this point, but it is traumatic for children in general to testify, and so that was another reason that I decided to remain on the case today.

So that's the record. Obviously, if there are

any issues you can take that up on a writ but that is the Court's reasoning, okay. So you can proceed with your questioning, and I am very sorry for interrupting your testimony.

MR. ALLMON: Thank you.

Q. All right. Kristine, let's both remove our masks now so the microphone can pick us up. All right. Kristine, what we talked about right before we left was, you can correct me if I'm wrong, but you had said that the defendant molested you which is why you're here today.

A. Yes.

Q. Okay. How many times in your memory did he do that?

A. Four times.

Q. Okay. Four times in total. When did those all take place?

A. Around --

MR. EARNEST: Objection. Leading. The question presumes they all took place at one, the same place. It's leading.

THE COURT: Sustained.

MR. ALLMON: Okay.

Q. Of those -- of four did they take place in different places or all in one place?

A. Same place.

Q. Same place, and where was that?

A. That was in Daniel Caffejian's bed.

Q. And was that in the house on Pawnee place?

A. Yes.

Q. And that was in Pahrump, correct?

A. Yes.

Q. So four instances took place on the bed. How about an incident with a gaming controller?

A. We were playing on the PS4 and the controller vibrated. He put it on my front area and asked me if it felt good.

Q. And is that your front private area?

A. Yes.

Q. Did that take place on the bed? Is that one of the four or is this a different incident?

A. This is a different incident.

Q. Okay. So the incident with the game controller did not happen on the bed?

A. No.

Q. So there are four incidents that took place on a bed?

A. Yes.

Q. Plus there's the incident with the game

controller?

A. Yes.

Q. Okay. Now, when did that occur with the game controller?

A. That was late at night before we went to bed, somewhere in the two weeks around spring break.

Q. Somewhere in the weeks around spring break, okay. Do you remember talking to the cops?

A. Yes.

Q. And from the time you talked to the cops how far back approximately do you think that this was?

A. About two to five days.

Q. Two to five days past, okay. So if I said that you talked to the cops on April 20th, would you agree that that's April 15th to 18th?

A. Yes.

Q. Okay. So that's -- that's a separate incident away from the bed. Was there a second separate event away from the bed?

A. Yes.

Q. What was that?

A. We were in the closet that I was cleaning out in my room and he started smoking a pipe and touching me inappropriately.

Q. How did he touch you inappropriately?

A. He touched my private areas, my breasts and my front and back private areas.

Q. Were you wearing any clothes at the time?

A. No.

Q. You were naked at the time?

A. Not completely naked.

Q. What do you mean?

A. Just underwear.

Q. You were wearing underwear, okay. So you were wearing underwear. Were you wearing a top underwear or was that included or not?

A. Just underwear.

Q. Just bottom underwear. And so you're standing in your closet. What were you doing in your closet?

A. We were looking at it because he wanted to show me how much he got it cleaned out.

Q. He wanted to show you how much he got it cleaned out. What were you doing to where you were in your underwear at that time?

A. Well, in some parts of the house it was very hot and some parts of the house it was very cold and I didn't have any tank tops.

Q. Okay. And you were nine years old at this time?

A. Yes.

Q. Did you think that it was unusual to be walking around the house in your underwear at that age?

MR. EARNEST: Objection. I'll retract it. Relevance. Objection. Relevance. Hot is cold. What does it matter if it's unusual?

THE COURT: Do you have a response?

MR. ALLMON: Withdrawn.

THE COURT: Okay.

MR. ALLMON: Actually, I'll let the Court rule.

THE COURT: Sustained.

MR. ALLMON: Thank you, Your Honor.

Q. So when he -- when he touched you where were you standing?

A. We were right in the middle of the closet.

Q. And where was he standing?

A. About two to three feet away from me.

Q. And did he touch you from two to three feet away or did he move?

A. He came up to me and touched me.

Q. Okay. And were you facing towards him or facing away from him?

A. I can't remember.

Q. Okay. But he -- where else did he touch you at

that time?

A. My neck and my stomach, and he also kissed me all over.

Q. Did he say anything?

A. He was grunting.

Q. And you say he was grunting. Is it a sound -- is it a sound you had heard him do any other time?

A. Yes.

Q. When else did you hear him do it?

A. When he was molesting me.

Q. Was that on the bed that he was molesting you or some other incident or is that the same?

A. Just on the bed.

Q. Okay. So when he was molesting you on the bed he would make the same sound that he made in the closet?

A. Yes.

Q. Okay. And was that -- when was that approximately in comparison to when the cops showed up?

A. The night before one time happened, and the other three times were two weeks we were staying with him.

Q. Just the closet incident, when was that?

A. About five days before the cops came.

Q. About five days before the cops came. So if that was April 20th then April 15th sounds correct?

Okay. And you were wearing underwear. Did he put his hands in your underwear or was it over the top of your underwear?

A. In my underwear.

Q. In your underwear. And did he -- he touched both the front and private and back private areas?

A. Yes.

Q. Okay. So that's the two incidents that took place outside the bed?

A. Uh-huh.

Q. All right. So I would like to move to the four times on the bed.

A. Okay.

Q. Okay. Now, what would he do or I should say how would he -- how were you laying when this would happen?

A. I would be on my side facing that way.

Q. Facing that way?

A. Like --

Q. So would you be on your left side or your right side, which one do you think or was it both?

A. Right side.

Q. Okay. And then where would he be?

A. He was on the left side of me.

Q. Is that front or back?

A. Back.

Q. Back, okay. And what would he do?

A. He would stick his private area up my butt.

Q. And when you say he would stick it up your butt, is that -- is that inside of you or is that between your butt cheeks?

A. Between my butt cheeks.

Q. So what would he do while he was doing this?

A. He would grunt and he also rubbed my breast and said I can't wait until you have boobs.

Q. And those grunting noises, aside from the time of the closet and aside from these four incidents, are they -- they are not -- are they a sound he would normally make?

A. No.

Q. Okay. What did you understand those noises to be? What did you think those noise were for?

MR. EARNEST: Now or at the time? Objection. Lack of foundation. Relevance.

THE COURT: Repeat the question again.

Q. (BY MR. ALLMON:) I said what did you think those noises were for?

MR. EARNEST: Objection. Lack of foundation. Overly broad and relevance.

THE COURT: Can you rephrase.

MR. ALLMON: Yes, Your Honor.

THE COURT: Okay.

Q. (BY MR. ALLMON:) Right now what did you think those noises were for? What did they mean to you?

MR. EARNEST: Objection. Relevance. What does it mean to her right now. All that matters is what she thought at the time.

THE COURT: Well, I think it --

MR. EARNEST: I don't understand why we're going down this line.

MR. ALLMON: I'm trying to clarify what the sounds were.

MR. EARNEST: They were grunting.

THE COURT: I think it goes to the intent element of the witness.

MR. EARNEST: You can interpret what you think the grunting was for, judge. I mean you're asking somebody two years after the fact what do you think the grunting was for.

THE COURT: That's sustained.

Q. (BY MR. ALLMON:) Now, there were four times. How far back did those go from the time that you talked to the cops?

A. About two weeks in spring break and right before

spring break.

Q. Okay. And do you remember -- so you remember the timeline. Is it fair to say that's because of spring break?

A. Yes.

Q. Does that help?

A. Yeah.

Q. Okay. So spring break you knew that that was around at that time in April, and you knew that some of these events took place during spring break and before?

A. Yes.

Q. Okay. When did you report this to your mom?

A. We were driving back to school after spring break and I told her in the car.

Q. And was this the first week back from spring break?

A. Yes.

Q. And what did you tell her in the car?

A. I told her that he stuck his private area up my butt.

Q. Did you tell anyone else?

A. I told my friends, and my best friend Kate told her mom and her mom called CPS who called the cops.

Q. Now, of those four times did -- did he touch your private area every time?

A. Yes.

Q. Okay. And every one of those was on the bed?

A. Yes.

Q. And those are separate from the game controller and closet incident?

A. Yes.

Q. Was one of them specifically the night before you told your mom?

A. Yes.

Q. What happened the night before you told your mom that was different?

A. Well, he still stuck his private area up my butt and that was the night he said I can't wait until you have boobs.

Q. How about the hole between your butt and your pee, did he do anything then?

A. Yes.

Q. What did he do?

A. He stuck his private area in my middle area.

Q. Okay.

THE COURT: I'm sorry. Can you repeat that.

THE WITNESS: He stuck his private area in my middle area.

THE COURT: Okay.

Q. (BY MR. ALLMON:) And that being between the two?

MR. EARNEST: Can we use words. I mean this is important. I don't see why we can't ask. She's clearly articulate and smart. If I could voir dire a real quick --

THE COURT: Sure.

MR. EARNEST: -- the question.

VOIR DIRE EXAMINATION

BY MR. EARNEST:

Q. Was that your vagina?

A. Yes.

Q. Are you saying that he stuck his penis inside your vagina?

A. Yes.

MR. EARNEST: Thank you, judge.

THE COURT: Thank you.

CONTINUED DIRECT EXAMINATION

BY MR. ALLMON:

Q. When he would rub his private area, what would he do with his private area and your buttocks?

A. He would hump me.

Q. Okay. And what would happen when he would finish?

A. He would pull up my underwear.

Q. Did you feel anything different? Did you feel

anything change from before or at the end of it? It's okay.

A. My butt was wet.

Q. And was that from him?

A. Yes.

Q. Now, do you remember the cops coming and talking to you?

A. Yes.

Q. Do you remember them asking for any items of your clothing?

A. Yes. They asked for my underwear. So I went into the bathroom with my mom and we got my underwear and then they took it and put it in a bag.

Q. Okay. And who is they?

A. The cops.

Q. Was it a female cop or a male cop?

A. It was a female cop.

Q. And when -- when did you put that underwear on first at that time?

A. I had previously took a shower before he molested me. So I had the same underwear on throughout the school day and the play date I had with my best friend Kate that day.

Q. So they were your -- since your last shower they were the pair you put on?

A. Yes.

Q. Okay. And in-between that shower and the cops showing up is one of the times that he molested you. And did you feel a wetness that time?

A. Yes.

MR. ALLMON: Court's indulgence.

THE COURT: Sure.

THE BAILIFF: Judge, do you need a water?

THE COURT: Sure. That would be great. Thank you.

Do you want a water?

THE WITNESS: Yes, please.

Q. (BY MR. ALLMON:) All right. Kristine, we're going to clarify a few things, okay. So when these incidents happened with you on the bed each, well, I should say where was your mom?

A. She was at work.

Q. All four times?

A. Yes. She worked during the nighttime.

Q. And when you said that you -- you said that you knew that he was humping you. Which way was he facing? Towards you? Was he facing towards you or away?

A. He was facing my back.

Q. Okay. And each of those times that he would do that would he also touch you in your front area?

A. Yes.

Q. In your front private areas?

A. Yes.

Q. And your chest?

A. Yes.

MR. ALLMON: Nothing further.

THE COURT: Mr. Earnest?

MR. EARNEST: Thank you, judge. Can I take my mask off?

THE COURT: Sure. Yeah.

CROSS-EXAMINATION

BY MR. EARNEST:

Q. Take your mask off, okay. I need to hear you. Is it Kristine?

A. Yes.

Q. Is there a name? Is that what you want me to call you?

A. Yeah, you can call me Kristine.

Q. All right. My name is Jason, okay. And I'm going to ask you some questions. I'm going to sit right here. I'm just going to ask questions. If you don't understand me just say, Jason, I don't understand you. I talk real fast sometimes, okay?

A. Okay.

Q. If I ask too many questions say, Jason, which one do you want me to answer. It's okay. There is literally no wrong answer, okay. It's real important that you tell the truth today though, okay, kiddo?

A. Okay.

Q. Do you understand?

A. Yes.

Q. Okay. Let's start about the living arrangements. I'm a little confused. So you were living with grandma and grandpa most of the time, correct? That's a yes or no because we're picking it up on the microphone, okay.

A. Yes.

Q. Remember, the judge told you. It's her rules not mine, okay. So the judge -- how long you live with grandma and grandpa?

A. I was living with my grandparents since I was about three or four.

Q. Okay. I'm going to take notes sometimes so there's some awkward pauses, okay. Since about three or four. And was your dad in the picture or is he in the picture?

A. No.

Q. No. So you've never really dealt with your dad, okay. So I don't really need to ask any questions about dad.

Is that true?

A. Yeah, you don't have to ask any questions.

Q. When's the last time you saw dad?

A. When I was about six.

Q. I'm not even going to worry about it. No questions about dad, okay.

Why were you living with grandma and grandpa since three or four?

A. Because my mom was in jail.

Q. She was in and out of jail, huh. Okay. So going back to 2018 that we're talking about here.

A. Yes.

Q. You stated that your mom was dating Dan, right? This is Dan over here to my left?

A. Yeah.

Q. Okay. And was your mom out of jail in 2017?

A. Yeah, she was.

Q. Okay. Before Dan was in the picture were you still staying at grandma and grandpa's and sometimes doing overnights with mom or just always grandma and grandpa? When did the overnights -- when did you start staying with mom once in a while? When did that start happening if you remember?

A. She was with him when she was in jail.

Q. Okay.

A. So I stayed with her like every once in a while before spring break.

Q. Okay. Well, you stated that they started dating about December of 2017; is that right? Yes?

A. When she got out of jail they --

Q. Oh, she got out of jail in December of 2017?

A. Uh-huh.

Q. Oh, I gotcha. I understand now. Thank you. I'm a little slow, okay. So she's living with Dan?

A. Yes.

Q. And she's out of jail, right?

A. Yes.

Q. And she wants to start getting you and your -- and you have a sister, don't you?

A. Yes.

Q. What's your sister's name?

A. Natalie.

Q. And she wants to get you and Natalie kind of in the routine of starting to get used to live with mom again; is that right?

A. Yeah.

Q. Okay, perfect. Got it. Besides your sister any other siblings, any brothers or other sisters?

A. I have a little brother.

Q. Was he on the planet when this was going on?

A. Yeah.

Q. Where was he at?

A. He lives with his dad.

Q. Oh, okay. Is his dad different than your dad?

A. Yeah.

Q. Okay. So he was never at this house?

A. No.

Q. Okay. And this house I'm talking about, Dan's house, the house on Pawnee, right?

A. Yes.

Q. Okay. So you your mom would make arrangements for you to come over and sleep over so she could, you could kind of start getting the swing of things of being back with mom again, right?

A. Yes.

Q. And this started happening in December, right?

A. Yes.

Q. And this -- and you tell me it would be a couple of days a week, once a month, how often would you do this?

A. About a couple of days a week.

Q. From December on?

A. Yeah.

Q. So if we could say for January, if there's four weeks in January we can say you spent maybe eight overnights roughly, give or take, right? Is that fair?

A. Right.

Q. Now, we get to April, spring break, no school. So it's a perfect time, right?

A. Yes.

Q. Okay. What -- what I don't understand is why would your -- if you're there to start getting used to living with mom, right, why would you go over to Dan's house where mom was working that night? Was it all of the time or just some of the time?

A. It was most of the time because my mom had the weekends off.

Q. Uh-huh.

A. And she worked weekday nights.

Q. Weekday nights. When would you usually go over to mom's house?

A. Sometimes Friday, like around the end of the week.

Q. Uh-huh. That makes sense. You don't have school so you could stay with mom, right?

A. Yeah.

Q. Kind of like spring break. You don't have school

so I can stay with mom, right?

A. Yeah.

Q. Okay. So where was your mom working, do you remember?

A. She worked at Mom's Diner.

Q. Mom's Diner. And she -- what was her schedule? When would she come home at night?

A. Around 10:00 o'clock.

Q. Mom's Diner is open until 10:00 o'clock. Would you usually be asleep by then?

A. Yes.

Q. Your bedtime is about 9:00, wasn't it?

A. Yes.

Q. Okay. Besides Natalie and you and Dan and your mom who else was in the house, if anybody?

A. Nobody else but there was about 40 cats.

Q. 40 cats, oh, God. Did you like them?

A. It smelled of pneumonia in there.

Q. Gross.

A. And there was poop and pee everywhere.

Q. Wow. In fact, those cats -- you had your own bedroom for a while, didn't you? Is that a yes?

A. Yes.

Q. When did that rascally cat pee on your bed and

make you sleep with your mom and Dan? When did that happen?

A. That was around April.

Q. So you had your own room for January, right?

A. Yes.

Q. You had your own room for overnights in February, right?

A. Yes.

Q. You had your own room in March; is that correct?

A. Yes.

Q. And then in April one of those cats or multiple cats had a cat party and whizzed on your bed; is that right?

A. Yes.

Q. And nobody wants to sleep on that. That's gross.

A. Yes.

Q. You would agree with me. So that's when you started sleeping in your mom and Dan's bed, right?

A. Yes.

Q. Would you sleep between your mom and Dan or would you sleep next to your mom or sleep in the middle or?

A. I would sleep right in the middle.

Q. Right in the middle. So Dan's on one side. You're in the middle, and mom is on the other side.

A. Yeah.

Q. Right. So you're like the meat in the mom and

Dan sandwich, right?

A. Yes.

Q. Okay. And how many times do you think you slept in that situation?

A. I slept there every night for, until like since the cat pooped and peed on the bed.

Q. I believe you, but I don't know what every night is. How many every nights? How many nights did you sleep in that situation?

A. Like, every time we go over there and spend the night which is about a couple of days a week.

Q. Okay. Again, I'm just trying to understand everything that you're saying, and you're doing a really good job. But let me give you an example of what I'm looking for, all right. If I asked you to tell me how long this table is but you can't come measure, you just have to estimate you could tell me because you could guess. It might be right. It might be wrong but you could get close, right? Do you understand?

A. Yeah.

Q. I'm trying to get you to tell me how many nights in April because that's the only time, correct, that you slept in that bed, right?

A. Yes.

Q. How many nights in April, one, two, three, four, five, six, how many nights did you sleep on that bed between Dan and your mom? I'm looking for a number after this. It could be a little bit more. It could be a little bit less, just as close as you think you can get it. I won't hold it to you. I just want to get an idea about what we're talking about?

A. About 15 to 20 because spring break was there, was in April, and we spent the entire spring break there.

Q. Great. How long is spring break for you guys?

A. The entire weekdays and the weekends so seven days.

Q. Well, it would be more. It would be nine days, right, because you got two weekends of bookends. So you got two Saturday and Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday, right? So you said 15 to 20 times. So nine days that's, you spent the whole spring break with mom and Dan, right?

A. Yes.

Q. So that still leaves us a balance of six to 11 days for the rest of the month. You said other times you were sleeping like on the weekends when you would come over and visit with mom and that's when you would do it, right? Yes?

A. Yes.

Q. And you would go over like on a Friday or a Saturday. You wouldn't go over on a school night, would you?

A. Sometimes we would because we lived close to the school we went to so --

Q. Oh.

A. -- my mom dropped me there.

Q. Okay. How did you guys set this up? Did your mom tell you, hey, you're coming over or did your grandparents say, hey, you gotta come over to your mom's house or how did that work out? How did you plan this?

A. My mom usually called and asked if -- if we wanted to come over.

Q. Yeah. And did you want to come over or did you not want to come over?

A. I did not want to go over.

Q. In January or February or March?

A. I didn't want to go over because it smelled like pneumonia. It was very cold in there.

Q. It was disgusting?

A. Yes.

Q. 40 cats, smelled like pneumonia. It was just filthy, right?

A. Yes.

Q. Okay. I think I understand. Thank you. Let's go on to some other things, okay.

A. Okay.

Q. I got all of these documents from the Court, right, from the district attorney. I get these little summaries like every, like you talked to a police officer, didn't you?

A. Yes.

Q. Do you remember her name? You've talked to more than one I think, but do you remember any of the police officers names that you talked to?

A. No.

Q. Well, you talked to one named Fernandes, right? Do you remember that?

A. Not really.

Q. Red hair?

A. I remember talking to a girl with black hair.

Q. Okay. Girl with black hair. How many police officers did you think you really talked about this with, not just, not just say hi to a cop but when they actually asked you questions about this? Was it just one police officer?

A. There was two or three.

Q. So two or three officers you talked to. And didn't you go to like a special place where this person, like

a trained interviewer, not a cop but she would talk to you about everything that happened. They call it a forensic interviewer. Do you remember doing that?

A. Yes.

Q. Okay. Is that in addition to the two or three officers you talked to?

A. Yeah.

Q. All right. And besides the forensic interviewer, the two or three cops was there anybody else that you talked to about this, like law enforcement wise or officially about this?

A. No, I don't think so.

Q. Do you remember going to the doctor?

A. Yeah.

Q. They did an exam on you, remember? You probably talked about it with that nurse or that doctor too, didn't you?

A. Maybe. I can't remember.

Q. They made a report. They said they did. So doctors usually make good reports, right?

A. Yeah.

Q. Okay. So you would agree with me that you did talk to a doctor or a nurse, right, and did a physical exam. Do you remember that? They looked at your body?

A. Yeah.

Q. You do?

A. Yeah.

Q. Okay. And you talked to -- did you talk to one of these guys recently?

A. Yes.

Q. Get ready for everything?

A. Yeah.

Q. Right? Not to be scared. You're going to be fine. Just tell the truth, that kind of stuff. Okay. I went through all of the notes that I have from all of the people that talked to you, the two or three officers, the nurse and the doctor, the forensic interviewer, right. I don't remember ever ever seeing anything about a Play Station controller. Did you tell them about the Play Station controller two years ago or did you just remember that now?

A. I just remember that now.

Q. Okay. What did you -- when did you first remember it? Like, when is the first time you told these guys or somebody official about it?

A. I remembered it like right after the interview.

Q. Which interview because you probably did a bunch.

A. The first interview I did.

Q. Back two years ago?

A. Yeah.

MR. ALLMON: What was the answer to the first what?

MR. EARNEST: She remembers it after the first interview.

Q. Why didn't you tell anybody after that?

A. Well, nobody really like came to me except for Kat and I haven't seen her in a really long time.

Q. Which person are you referring to?

A. The cops that came to my house.

Q. Okay. But you talked to a lot of people around that time. You talked to the cops. You had the forensic interviewer. You talked to the -- you talked to the nurse or the doctor. You didn't bring it up at all until just recently, right?

A. I didn't think anything of it.

Q. Okay. Because it was different, right?

A. Yeah.

Q. I mean, it wasn't the feeling his penis in your butt and the grunting. It wasn't in bed, right? It was more like you're saying he put the controller on your -- you were wearing clothes when this happened, right?

A. Yes.

Q. You weren't naked, right?

A. No.

Q. You were playing a game?

A. Yeah.

Q. And your testimony is that he put the controller on you and said how does that feel, right?

A. It was vibrating.

Q. Yeah, I understand that. And he asked you the question how does that feel, right?

A. Yes.

Q. And whatever -- did you answer the question or did you just ignore it?

A. I ignored the question.

Q. All right. How many times -- how long does that controller vibrate for?

A. About two or three seconds.

Q. All right. Did he just leave it on you or was he holding it on or did he just leave it on you?

A. He was holding it.

Q. Holding on it for two or three seconds, and it happened one time, two times, 100 times?

A. Just once.

Q. Just once. And then you don't say anything and that's the end of that, right?

A. Yes.

Q. So I get it. It's a lot different than what you expressed before, right?

A. Yeah.

Q. It really wasn't a big deal, was it?

A. Not really.

Q. Okay. And there was another one, and I might have missed it because I'm not the smartest guy, definitely in this room. I don't remember you talking about the closet incident at all in any of the reports that I have. Did you talk to somebody about this and I just missed it?

A. Yeah, I did.

Q. Who did you talk to about it?

A. I talked to the investigators about it.

Q. Which investigator?

A. The cops.

Q. Two years ago?

A. Yeah.

Q. Okay. So you -- you brought that up two years ago? Is that a yes?

A. Yes.

Q. Okay. So I'll find it somewhere where you brought up this whole closet situation, right?

A. Yes.

Q. All right. Now, let's talk about, and we're

going to do it four times. I know it's brutal. It sucks, but we gotta do it, okay, because I got to understand, all right. We have four things that happened in the bed four times. So just generally is it fair to say while there were four separate times is basically the same routine?

A. Yes.

Q. Your back is facing Dan, right?

A. Yes.

Q. You feel his penis between your butt cheeks, correct?

A. Yes.

Q. He starts, using your terminology which is correct, humping you, right?

A. Yes.

Q. You hear some grunting, right? And then it ends, correct?

A. Yes.

Q. The only major difference really is the fourth time, the last time is you felt something wet on your butt cheeks, correct?

A. Yes.

Q. You told the cops and your mom about it, correct?

A. Yes.

Q. And they made you go disrobe and take your

underwear off and give it to the cops, right?

A. Yes.

Q. Okay. So you heard the State ask you, you know, made you clarify did he put it into your anus or did he put it into your butt cheeks, okay. And you said, no, he put it between my butt cheeks, right? You understand?

A. Yeah.

Q. He's asking that because that's a really important question so we understand what's going on, okay. Because there's -- so the law has some differences with that, okay?

A. Okay.

Q. So I'm going to ask you point blank, just point blank because this is adult stuff and you're tough and you got it. The first time in bed when he humps you did his penis go inside your anus, like literally inside your anus or your vagina?

A. No.

Q. Okay. That's consistent with what you told the cops back then too, right?

A. Yes.

Q. It is. The second time that he humped you and, again, you're in Dan's bed, right?

A. Yes.

Q. Did his penis go inside your anus or your vagina, like literally inside you?

A. No.

Q. Okay. The third time, we're going to do this two more times, okay?

A. Okay.

Q. In the bed your back is facing him, did Dan's penis go inside your anus or your vagina?

A. No.

Q. Okay. And the fourth time, which is a little bit different, because you felt something wet but still before the wetness, did his penis ever go into your vagina or your anus?

A. Yes.

Q. His penis did go in your vagina?

A. Yes.

Q. Okay. Didn't go into your anus, correct?

A. It did not go in there. It went in my vagina.

Q. Into your vagina. This is a rough question. It's tough to answer because it was two years ago. But just like the table, we estimated how long the example I gave you, did -- do you have any idea how much went in or did it feel like a lot or just a little bit or did it just kind of peek to the doorway and kind of push against it. Can you give me

some description of how -- do you understand the question?

A. Yes.

Q. Okay. How far did the penis go into your vagina?

A. About halfway and I said ouch.

Q. You said ouch?

A. And he pulled it out.

Q. You pulled it out now. Let's go back to the living situation in April, right. Cat whizzes on your bed. You have got to sleep with mom and Dan, right?

A. Yes.

Q. You did so 15 or 20 times in that month?

A. Yes.

Q. A lot of it was during spring break?

A. Yes.

Q. And you always slept between Dan and your mom, right?

A. Yes.

Q. The first time that we're -- we're not talking about the closet. We're not talking about the gaming controller. We're not talking about those anymore, okay?

A. Okay.

Q. The first time you're sleeping between your mom and Dan when it first happened?

A. Yes.

Q. Okay. And so his -- his, Dan was facing your back, right; is that correct?

A. Yes.

Q. And you were on your side facing your mom?

A. She wasn't there.

Q. Okay. So she wasn't there. What time was this, do you recall?

A. It was around 9:00 to 9:30.

Q. Okay. So did mom eventually come home that night?

A. Yes.

Q. Do you remember her coming home or were you asleep?

A. I was asleep.

Q. Okay. So you don't know what time she came home when she came home?

A. She comes home around 10:00 o'clock but I didn't know.

Q. So is it fair to say the next day you woke up and your mom is on one side of you?

A. Yes.

Q. Okay. What about the second time, was your mom there?

A. No.

Q. Same situation, working?

A. Neither of the times she was there. She was at work every time.

Q. I'm going to ask you four times anyway though, okay. So kind of respect the process. I'm sorry, Kristine. So your mom wasn't there, correct?

A. No.

Q. She was working that night as well?

A. Yes.

Q. And the next morning you woke up and she's on one side of you?

A. Yes.

Q. Okay. Third time?

A. She was not there.

Q. Next morning though you wake up and she's there, right?

A. Yes.

Q. And the fourth time is your mom there?

A. No.

Q. But the next day you wake up she -- everybody is in the bed together, right?

A. Yes.

Q. And that's the only four times, the humping, correct?

A. Yes.

Q. Okay. Okay. We talked about when you told the police officers. When did you first tell your mom about, hey, something -- something is happening here about Dan?

A. I told her when we were driving to school and when we got to the school I was --

Q. You didn't tell her after the first time?

A. I told her after that too.

Q. Oh, you did. See, I don't know. I want you to tell me. What did you tell her?

A. Well, I told her something weird was going on.

Q. Oh, okay. Well, weird could mean a lot of things. Did your mom say, well, what do you mean by weird?

A. I just brushed it off and then walked away.

Q. You just said something weird is happening and you just left it at that?

A. Yeah.

Q. Did your mom pursue to try, when I say pursue did she try to get you to explain? What are you talking about?

A. No, she didn't.

Q. Okay. Something weird is having 40 cats living in a house with you, right? Right?

A. Yes.

Q. So she didn't even -- she didn't pursue it and

you just left it at weird, right?

A. Yeah.

Q. How about the second time, did she say anything after the second time?

A. No.

Q. How about the third time?

A. No.

Q. And then the fourth time, that was the next day you were going to school when you finally said something, right?

A. Yes.

Q. Did the game controller incident, did that happen before these four times or did it happen during the four times or did it happen after the four times?

A. It happened -- it happened like during the four times, somewhere in the middle.

Q. So somewhere between the first time you stated that Mr. Caffejian humped you and the last time there's a game controller incident as well, right?

A. Yes.

Q. And what about the closet, was that before the humping or is that within the same four humping periods?

A. It was within the same.

Q. Okay. Is it fair to say, I'm not trying to put

words into you, but I'm trying to figure out when these things happened, and you've been really good about telling us it's in April, all right. And I don't want to put words in your mouth so is it fair -- but correct me. Is it fair to say that these four humping incidents happened during spring break or is it before spring break or after spring break. It would have have to be before spring break, right?

A. It was during spring break.

Q. Okay. So if I got a school calendar from 2018 where were you going to school then?

A. Lloyd Elementary.

Q. I could find out what your spring break was. I could look at those dates. I could pinpoint the week when this happened, right? Is that a yes?

A. Yeah.

Q. Where was your mom working, Mom's Cafeteria or Mom's Diner?

A. Mom's Diner.

Q. Does she still work there?

A. No.

Q. Okay. But she was working there at the time, right?

A. Yes.

Q. Okay.

Court's indulgence please, judge.

THE COURT: Sure.

MR. EARNEST: Pull back a little bit, Dan. Grab your notes.

Q. Back to the closet we talked about. You can take your mask off. I'm going to ask you some more questions. This process is awful, you know. Where was the closet that he was showing you that he cleaned out?

A. My room.

Q. Was in your room. Well, the room that you don't sleep in anymore because the cat whizzed on your bed but before that it was your room, right?

A. Yes.

Q. Okay. How many bedrooms were in the house?

A. Three.

Q. Okay. And your room, how would I know it's your room. What was it by?

A. It was back by the dining room and the back bathroom.

Q. So if I looked at like a floor plan of the house, if I saw the dining room and the back bathroom I would know the bedroom closest to those was yours, correct? Yes?

A. Yes.

Q. Okay.

Court's indulgence again, please.

THE COURT: Sure.

MR. EARNEST: Pass the witness, judge.

THE COURT: Sure. Redirect, Mr. Allmon?

REDIRECT EXAMINATION

BY MR. ALLMON:

Q. The defense asked you where your mom was working. You said Mom's Diner. Do you know if she was working anywhere else?

A. She was just working at Mom's Diner.

Q. Okay. Sometimes you would -- you testified that sometimes you would sleep over there on school nights?

A. Yes.

Q. The night before the cop showed up, was that a school night?

A. That was a school night I believe.

Q. Where were you -- were you -- where were you heading when you told your mom about this?

A. I was heading back to school. I think it was either a Monday or a Tuesday.

Q. Defense -- defense said that -- defense said that only the fourth time it was wet. Can you clarify in your own words.

MR. EARNEST: Objection. Lack of foundation.

Need clarification. I don't understand.

MR. ALLMON: I think it does.

MR. EARNEST: He asked the question so it clarifies whether he needs to clarify. He's presuming this witness needs to clarify something.

THE COURT: Can you -- so I'm going to allow you to ask the question, but I need you to be a little more specific and clarify what exactly you want her to clarify.

Q. (BY MR. ALLMON:) When you felt the wetness was it only the fourth time?

A. Yes.

Q. So the previous three times you didn't feel any wetness?

A. No.

Q. Okay. Why did you not tell your mom sooner?

A. I didn't want --

MR. EARNEST: Objection. Misstates the testimony. She told her mom after the first time, said it was weird. The mom didn't pursue it. So leading and misstates the prior testimony. She did tell her mom.

THE COURT: Sustained.

Q. (BY MR. ALLMON:) Why did you not push the issue more?

A. She was happy and going to get married and it was

the first time in her life she was going to get married, and I didn't want to like ruin that.

Q. Was the last time different?

A. Yes.

Q. Was it too hard to continue to take?

A. Yes.

Q. Nothing further.

THE COURT: Okay. Any recross-examination?

MR. EARNEST: Just real briefly.

RECROSS-EXAMINATION

BY MR. EARNEST:

Q. Where did Natalie sleep?

A. There was a little mattress on the side of the bed, a toy mattress that she slept on.

Q. So she didn't have her own room?

A. No. We were trying to clear out her room.

Q. Okay. So basically only two bedrooms you could sleep in, one was yours by the back bathroom, dining room?

A. Yes.

Q. The other was your, Dan and mom's room, right?

A. Yes.

Q. The third room was just full of storage?

A. It had a bunch of cats in it and a couch.

Q. Okay. Thank you. That's all I have.

THE COURT: Okay. Anything further, Mr. Allmon?

MR. ALLMON: No, Your Honor.

THE COURT: Is the witness excused?

MR. ALLMON: Yes, Your Honor.

THE COURT: Okay. Thank you for coming in to testify. You're free to go.

THE WITNESS: Thank you.

THE COURT: Take care.

(Witness excused.)

THE CLERK: Do you want to walk her back to your office.

MR. CHAIREZ: I think the mom is out there.

THE COURT: Do we -- we are going to stipulate to admitting some --

MR. EARNEST: It's the DNA for preliminary purposes. They have already had it marked I believe. They must make a motion now. I'm not going to oppose it.

THE COURT: Okay.

MR. CHAIREZ: I'm thinking, considering it's 12:42, if he is stipulating to the chain of custody and the DNA I don't know that we would really need to call anymore witnesses. We'll just admit that, but.

MR. ALLMON: I have one more.

MR. CHAIREZ: Okay. Mr. Allmon has one more

witness.

MR. ALLMON: It's very brief.

THE COURT: Okay. Because I think I've heard enough, but.

MR. ALLMON: If you've heard enough then, Your Honor, then that's fine. It's Detective Fernandes. But if you heard enough then --

THE COURT: Can you make an offer of proof. Tell me why you need to call Ms. Fernandes.

MR. ALLMON: A post arrest interview, Your Honor.

THE COURT: Okay. I'll allow it if you think.

MR. ALLMON: It's very brief.

THE COURT: Did you want to admit the report?

MR. ALLMON: We'll move to admit.

MR. EARNEST: Yeah, for purposes of preliminary purposes I stipulated to this. Clearly at trial they would need an expert and there's additional testing potentially to be on it.

THE COURT: Okay. For purposes of preliminary hearing.

MR. EARNEST: Yeah.

THE COURT: No objection.

MR. EARNEST: Frankly, I didn't think they would need it.

THE COURT: Okay. All right. So it will be admitted.

Is it marked?

MR. ALLMON: It's marked Exhibit 1, Your Honor.

THE COURT: Okay.

MR. ALLMON: And the State would direct your attention at the section at the bottom of page one that says 8.1 and the findings.

MR. EARNEST: I would instruct the Court to read everything.

MR. ALLMON: That's fine.

MR. EARNEST: It also states this is a preliminary test and further testing is required but for purposes of today it is what it is.

MR. ALLMON: Sorry. Of course the Court could read all of it. I just was directing the Court's attention to the relevant areas.

THE COURT: Okay.

THE CLERK: I'm going to ask you to remain standing. Face the clerk and you'll be sworn.

ALEXANDRA FERNANDES,

called as a witness on behalf of the State having been first duly sworn, was examined and testified as follows:

THE COURT: Thank you.

DIRECT EXAMINATION

BY ALLMON:

Q. And, Detective Fernandes, do you have some documents there?

THE COURT: Do want to have her state and spell her name for the record.

MR. ALLMON: I was going to get there. I was just going to before she did. Sorry.

Q. Go ahead and state and spell your name for the record.

A. It's Alexandra Fernandes, A-l-e-x-a-n-d-r-a F-e-r-n-a-n-d-e-s.

Q. And who are you a detective with?

A. Nye County Sheriff's Office.

Q. Okay. Were you employed in that capacity in 2018?

A. Yes, I was.

Q. Okay. How long have you been with Nye County

Sheriff's Office?

A. Over 14 years.

Q. Okay. And are you trained to conduct or do you conduct sexual assault investigations?

A. Yes.

Q. Okay. Do you remember getting a call about a sexual assault on April 20th, 2018?

A. Yes.

Q. And do you remember what defendant you identified at that time?

A. Yes.

Q. Which defendant did you identify?

A. Do you want me to point?

Q. Yeah, you can point.

A. Mr., I'm sorry. I can't say your last name. Daniel.

MR. EARNEST: It's Armenian, Caffejian.

THE WITNESS: Caffejian.

Q. (BY MR. ALLMON:) And what color shirt is he wearing?

A. He's wearing a grayish shirt.

MR. ALLMON: Your Honor, will the record reflect in court identification.

THE COURT: The record will so reflect.

Q. (BY MR. ALLMON:) Did you read this -- did you read this defendant Miranda Rights?

A. Yes, I did.

Q. Okay. Did you record that interview?

A. Yes, I did.

Q. Okay. Did you bring a copy of that interview with you?

A. Yes, I did.

Q. And what was that copy? How was that recorded?

A. It was actually recorded on Deputy Duboi's body worn camera because I don't believe I was issued one in detectives at that time, and my digital camera was or my digital recorder was missing.

Q. And you have that copy with you today?

A. I do.

Q. How do you know it's the same recording?

A. I watched it, and you can see my hands in there and --

Q. Okay. And is the defendant the person being interviewed?

A. Yes.

Q. Okay. Can I see that copy now?

A. Uh-huh.

MR. ALLMON: The defense just stipulated to this.

It's the video that she reviewed of the interview. I'm not going to play it at this time, but I would still like to admit it.

THE COURT: Okay. You can go ahead and have it marked. And defense is stipulating so it will be admitted.

MR. EARNEST: Just for purpose of preliminary hearing.

THE COURT: For purpose of preliminary hearing.

MR. EARNEST: If you want to take it under advisement and watch it at your leisure if you don't rule today.

THE COURT: Okay.

Q. (BY MR. ALLMON:) In that interview did the defendant make any admissions to you?

MR. EARNEST: Objection. Calls for a legal conclusion.

THE COURT: Can you rephrase.

Q. (BY MR. ALLMON:) Did you confront the defendant about sexually assaulting the minor child?

A. Yes, I did.

Q. What did he say to you?

A. He stated that he had thought -- basically he had thought it was his girlfriend at the time, Kim. And when he came to or woke up he realized it was the juvenile.

Q. And did he tell you that he touched her?

A. Yes.

Q. Did he tell you that he touched her vagina or butt?

A. I don't recall. I do know he stated that he -- well, he stated that she had assumed the position. And when I asked him what that meant it meant she would snuggle. So I believe his penis was touching her buttocks area.

Q. And did the defendant offer this to you as an excuse to your accusation to him about sexually molesting the young child?

A. Yes.

Q. Did he -- nothing further.

THE COURT: Okay. Cross-examination?

CROSS-EXAMINATION

BY MR. EARNEST:

Q. Did Mr. Caffejian tell you how many times that happened where he mistook the juvenile for his wife?

A. Mr. Caffejian stated at least twice.

Q. Two times, okay. Did you interview the juvenile as well?

A. Yes, I did.

Q. Did she discuss anything that happened in the closet, not the bed but in the closet?

A. Not to my knowledge, no.

Q. Did she discuss what happened regarding the game controller of a Game Station Four?

A. No.

MR. EARNEST: Pass the witness.

THE COURT: Okay. Any redirect?

MR. ALLMON: No, Your Honor.

THE COURT: The witness is excused?

MR. ALLMON: Yes, Your Honor.

THE COURT: Thank you for coming in today.

(Witness excused.)

MR. ALLMON: The State rests.

THE COURT: Okay. Mr. Earnest?

MR. EARNEST: Judge, I have advised my client that he has a right to testify at the preliminary hearing. However, strategically that is 99 percent of the time dumb, a dumb thing to do. And believe it or not my client is going to take my advice and he's not going to take the stand. Even though the witness (inaudible) we have no case to put on.

THE COURT: Okay. Thank you.

Do we need to make closing argument or?

MR. ALLMON: Not if the Court doesn't believe we do.

THE COURT: I don't think it's necessary.

Mr. Earnest?

MR. EARNEST: Judge, only -- only in regard -- I'll submit on everything. I probably could, will be doing a writ I'm sure at some point in this case. But there was one count that I have a lot of problems with.

And bear with me judge.

THE COURT: Sure.

MR. EARNEST: Count Two, I feel the State, even with small miniscule burden the State has at a preliminary hearing has failed to meet that burden. The witness testified that it was, didn't disclose it ever ever until recently. Described it as not a big deal and also testified that it was on, held on her for two to three seconds.

Now, if that is, two or three seconds on something that was not disclosed two years prior for something that rises to a category felony where somebody could get ten to life on I don't think that was the intention of the legislature, and I don't think that if you even took the witness' testimony to be true rises to the level of lewdness with a child under 14. Consequently I ask that you discharge Count Two.

THE COURT: Okay. Any response from the State?

MR. ALLMON: Yes, Your Honor. It, however slight I think that two to three seconds is sufficient. It only

just has to happen. It doesn't have to have for any reason. It's not an element to that crime. Defense is basically asking you to say it's not fair and to add elements into it which would be inappropriate.

The fact that it was only two or three seconds over her clothes goes to explain why she didn't think that it was something to talk about at the time, and I would say that that's a weight argument for the jury to consider and not a probable cause at preliminary hearing for slight or marginal evidence. Thank you.

THE COURT: With respect to defense's argument on Count Two, I mean, I will -- I do agree with defense that the evidence is weak. However, I do believe that the State has met a slight or marginal burden of proof on Count Two. I do agree with the State that that would with go to the weight and not whether or not probable cause has been established.

So based on the testimony and the evidence presented today, and I want to again make a record that my -- my decision here is based only on what was presented today. In no way did I consider any relationship with Ms. Dilger as I have disclosed. That is completely outside of what we heard today. I've never had any exposure to the facts in this case.

I do find the State has met its burden of proof

on slight or marginal evidence on all seven counts, Counts One through Seven. So I will bind this case over to district court for jury trial.

Let's go ahead and get an arraignment date, please.

MR. EARNEST: Judge, go ahead.

THE CLERK: December 4th at 9:00 a.m. in Department One.

MR. EARNEST: With this new system I will get a case number later, correct?

THE COURT: You will.

MR. EARNEST: Okay. Department One is Judge Walker, correct?

MR. ALLMON: Yes.

THE COURT: It was admitted?

THE CLERK: Yes.

THE COURT: There is some confusion. The video played, Exhibit 2, was admitted.

MR. EARNEST: Solely for today's purpose.

THE COURT: Yeah, solely for today.

MR. EARNEST: Yeah. Okay, whatever.

THE COURT: The State will have to address those issues once we get to district court, but I'm putting in the bind over.

MR. EARNEST: Yeah. Fair enough, judge.

THE COURT: Okay.

MR. EARNEST: Okay.

THE COURT: All right. Thank you very much everyone.

STATE OF NEVADA,)
)
CARSON CITY.)

I, KATHY JACKSON, do hereby certify:

That a preliminary hearing was held in the within-entitled matter in Nye County, Nevada;

That said preliminary hearing was recorded by a recording system, and said recording was delivered to me for transcription;

That the foregoing transcript, consisting of pages 1 through 84 is a full, true and correct transcript of said recording performed to the best of my ability.

Dated at Carson City, Nevada, this 25th day of January, 2021.

KATHY JACKSON, CCR

FILED
FIFTH JUDICIAL DISTRICT
FEB - 5 2021
Nye County Clerk
Deputy

No. CR20-0119

Dept. No. 1

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE KIMBERLY A. WANKER, DISTRICT JUDGE

-oOo-

ORIGINAL

THE STATE OF NEVADA, Plaintiff, vs. DANIEL ERIC CAFFEJIAN, Defendant.	TRANSCRIPT OF PROCEEDINGS ARRAIGNMENT HEARING DECEMBER 4, 2020 9:25 A.M. PAHRUMP, NEVADA

APPEARANCES:

For the State: KIRK D. VITTO, ESQ.
CHIEF DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

For the Defendant: JASON EARNEST, ESQ.
DEPUTY PUBLIC DEFENDER
3340 South Hwy. 160, Suite 202
Pahrump, Nevada 89048

The Defendant: DANIEL ERIC CAFFEJIAN

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

PAHRUMP, NYE COUNTY, NEVADA, FRIDAY, DECEMBER 4, 2020

9:25 A.M.

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P R O C E E D I N G S

THE COURT: All right. Our next case, Case No. CR20-0119, State of Nevada versus Daniel Eric Caffejian.

MR. EARNEST: Judge, he's at liberty. Just to set the table, when you canvass him, he's entering a not guilty plea. He'll be waiving his right to speedy. We'll be asking for a jury trial in the ordinary course.

THE COURT: Okay. Good morning. Help me with your last name.

THE DEFENDANT: Caffejian (pronounces Ka-feej-an.) Caffejian.

THE COURT: Caffejian. I would have never gotten that; so thank you very much.

So this is the time and place set for arraignment in Case No. CR20-0119, State of Nevada versus Daniel Eric Caffejian. He's present with his attorney --

MR. EARNEST: I feel like Jason Earnest today.

THE COURT: -- Jason Earnest. I had a brain freeze. We have Chief Criminal Deputy DA Kirk Vitto on behalf of the State.

Mr. Caffejian, I advise you that the Information -- that's what we call the charges -- it reads State of Nevada versus Daniel Eric Caffejian. Is that your true name?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Mr. Caffejian, how old are you?

THE DEFENDANT: Fifty-eight.

THE COURT: And how far did you go in school?

THE DEFENDANT: High school.

THE COURT: Have you ever been treated for a mental disorder?

THE DEFENDANT: No.

THE COURT: Do you have a copy of the charges, the Information?

MR. EARNEST: Yes.

THE DEFENDANT: Yes.

THE COURT: You've read them?

THE DEFENDANT: Yes.

THE COURT: Okay. Our clerk today is Terri -- I always have to look, just to be sure -- and she'd be happy to formally read the Information, or

you can waive its formal reading. What would you like done?

THE DEFENDANT: Waive it.

THE COURT: Okay. You've been provided a copy of the Information where you've been charged with Count I, Lewdness With a Child Under 14 Years of Age. It's a violation of Nevada Revised Statute 201.230, subsection (2). It's a category 'A' felony. And just so you know, the sentence on that is life with the possibility of parole, with parole eligibility beginning after a minimum of ten years have been served.

Count II, Lewdness With a Child Under 14 Years of Age. It is also a category 'A' felony. It's just a second count.

Count III is also Lewdness With a Child Under 14 Years of Age, a category 'A' felony.

Count IV, Lewdness With a Child Under 14 Years of Age, a category 'A' felony.

Count V, Lewdness With a Child Under 14 Years of Age, a category 'A' felony.

Count VI, Lewdness With a Child Under 14 Years of Age, a category 'A' felony. So Counts I through VI are for the same charge.

Count VII is a different charge, Sexual

Assault on a Child Under 14 Years of Age. It's a violation of Nevada Revised Statute 200.366, subsection (3), subsection (c). It is a category 'A' felony carrying a maximum possible sentence of life with the possibility of parole, with parole eligibility beginning when a minimum of 35 years have been served.

Do you understand the nature of the seven charges for which you're being charged with in this case?

THE DEFENDANT: Yes.

THE COURT: Have you discussed these charges with your attorney?

THE DEFENDANT: Yes.

THE COURT: As to Count I, Lewdness With a Child Under 14 Years of Age, how do you plead?

THE DEFENDANT: Not guilty.

THE COURT: Count II, Lewdness With a Child Under 14 Years of Age, how do you plead?

THE DEFENDANT: Not guilty.

THE COURT: Count III, Lewdness With a Child Under 14 Years of Age, how do you plead?

THE DEFENDANT: Not guilty.

THE COURT: Count IV, Lewdness With a Child Under 14 Years of Age?

THE DEFENDANT: Not guilty.

THE COURT: Count V, Lewdness With a Child Under 14 Years of Age?

THE DEFENDANT: Not guilty.

THE COURT: Count VI, Lewdness With a Child Under 14 Years of Age?

THE DEFENDANT: Not guilty.

THE COURT: Count VII, Sexual Assault Upon a Child Under 14 Years of Age, how do you plead?

THE DEFENDANT: Not guilty. Not guilty.

THE COURT: You are entitled to a speedy trial within 60 days from today's date, the date of arraignment, or as quickly thereafter as I can place the matter on my congested calendar. Do you wish to invoke your 60-day right to a speedy trial, or waive it?

THE DEFENDANT: Waive it.

THE COURT: How much time, Counsel, are we going to need for a trial?

MR. VITTO: Judge, I'm ready to go whenever you set it.

MR. EARNEST: The question is: How many days, Kirk? I know you're ready to go.

MR. VITTO: I'm ready to go in two weeks.

MR. EARNEST: You're the best, buddy.

MR. VITTO: I'm ready to go in two weeks.
THE COURT: How many days?
MR. VITTO: I understand.
THE COURT: How many -- are we looking for two weeks? three weeks?
MR. VITTO: I'll defer to Defense Counsel. It doesn't matter to me.
MR. EARNEST: Not my case. State, how many days do you need to prosecute? That's the question.
THE COURT: Well, guys, let's not be contentious with one another. Come on.
MR. EARNEST: Just it's showmanship, unnecessary showmanship. That's all it is.
THE COURT: Well, all I need is how many days so I can let my secretary know so we --
MR. EARNEST: One victim --
MR. VITTO: Seven.
MR. EARNEST: -- seven counts. I would suspect -- I don't think it's seven days, but if the State wants, seven days is fine.
THE COURT: Okay.
MR. EARNEST: Probably five.
THE COURT: Well, it's probably going to take a day to pick the jury --
MR. EARNEST: A day for jury selection.

THE COURT: -- if not longer, given the fact that Covid makes some additional challenges for us.

MR. EARNEST: Well, we waived our right to speedy; so we may be beyond Covid issues.

THE COURT: Well, here's what I'm doing, because here's what inevitably happens. Much like my calendar today, at the last minute everybody goes, "Oh, my gosh, I have court today, and I can't get there." So I'm doubling and tripling my calendar so that things are going. I'm tired of pushing stuff out and pushing stuff out. We've got to be ready to go.

So seven days. I don't know if Ms. Clifford is on with us today.

THE CLERK: She is. I'm talking to her already.

THE COURT: Is she in the Tonopah office today?

THE CLERK: U-m.

THE COURT: But she's on IM?

THE CLERK: Yes, she is. She's getting a date, Judge.

THE COURT: I mean quite frankly if the case doesn't go that was just in front of this one, I mean, like I said --

MR. VITTO: Fine with me, Judge.

THE COURT: -- I want to use my dates.

MR. EARNEST: Judge, we waived speedy also for a reason. My man's at liberty. It's serious charges. There may be some expert that I would want to denote. If you put me in a January trial, I don't see how we can get things done in a timely manner.

THE COURT: Well, if you aren't going to be ready, now's the time to tell me.

MR. EARNEST: I'm telling you right now. January doesn't work. I'll be ready by March. If you want to set anything in March or thereafter, I will be ready to rock and roll.

THE COURT: Okay.

DRUG COURT COORDINATOR: She's finding them.

THE CLERK: She's listening to you.

MR. EARNEST: Also a review of my calendar, I have five trials going between January and February anyway so...

THE COURT: In 2013, I think I did eight trials or six trials in a row. I remember being gone -- I remember coming home on a Friday night and my bailiff and I leaving back on a Sunday. I mean, it was Tonopah, Goldfield, Pahrump, back to Tonopah, but

we did it. We made it happen. I remember I got shingles; that's the results of it. But I made it happen.

THE CLERK: April 12th through the 16th, with a calendar call of March 12th.

THE COURT: April 12th to the 16th, with a calendar call --

THE CLERK: -- March 12th.

THE COURT: Okay. Cool.

MR. EARNEST: Works for me, Judge.

MR. VITTO: Perfect.

THE COURT: As we all know, it's all, again, subject to change. I'm not the governor, but I think we can -- if we exercise common sense, I think we can get these cases going and moving. I do notice that Mr. Caffejian -- Caffejian -- I wrote it down -- Caffejian (pronounces Kaff-gin); right?

THE DEFENDANT: Caffejian (pronounces Ka-feej-an), yes.

THE COURT: -- Caffejian is out on bail, but I do want to say one thing. I do have some restrictions on that bail, and that is no contact with the alleged victim in this case or the victim's family, and also no contact with minor children who are part of the family.

MR. EARNEST: You also drug tested him. I will object formally, because I don't think it was part of his bail. Additionally, there was no articulation of reasonable suspicion. But if you want to protect yourself, Judge, he did pass; he was clean. If you want to make those conditions, no drugs or alcohol while on an OR, then you can overcome my objection.

THE COURT: No drugs, no alcohol, no recreational or medical marijuana, and also no adverse contact with law enforcement.

MR. EARNEST: Thank you, Judge.

THE COURT: Okay. Thank you. We'll see you back for our calendar call in March.

MR. EARNEST: That's correct, Judge.

THE COURT: Thank you.

(The proceedings concluded at 9:35 a.m.)

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss
COUNTY OF NYE)

I, Cecilia D. Thomas, official reporter of the Fifth Judicial District Court of the State of Nevada, in and for the County of Nye, do hereby certify:

That I reported the taking of the proceedings at the time and place aforesaid;

That I thereafter transcribed my said shorthand notes into typewriting, and that the typewritten transcript of said proceedings is a complete, true, and accurate record of statements provided by the parties at said time, to the best of my ability.

I further certify that I am not a relative, employee, or independent contractor of counsel of any of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Nye, State of Nevada, this 5th day of February 2021.

Cecilia D. Thomas

Cecilia D. Thomas,
RPR, CCR No. 712

FILED
FIFTH JUDICIAL DISTRICT
MAR 22 2021
Nye County Clerk
Deputy

CASE NO. CR20-0119

FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

BEFORE THE HONORABLE DISTRICT COURT JUDGE KIMBERLY WANKER

-oOo-

THE STATE OF NEVADA,

Plaintiff,

-vs-

DANIEL ERIC CAFFEJIAN,

Defendant.

/

STATUS CHECK

ORI

TRANSCRIPT OF PROCEEDINGS

FEBRUARY 26, 2021

PAHRUMP, NEVADA

APPEARANCES:

For the Plaintiff: MICHAEL ALLMON
DISTRICT ATTORNEY
PAHRUMP, NEVADA

For the Defense: JASON EARNEST
ATTORNEY AT LAW
PAHRUMP, NEVADA

REPORTED BY: SUZANNE KUES ROWE
RPR, CCR #127

FRIDAY, FEBRUARY 26, 2021, PAHRUMP, NEVADA, 10:08 A.M.

-oOo-

Okay. Our next case is CR20-0119, State of Nevada versus Daniel Eric Caffejian.

MR. EARNEST: Caffejian.

THE COURT: I waived the appearance of counsel today, so we shouldn't have -- or the defendant. I set this because I want to know whether or not this case is going to trial. Are we ready?

MR. EARNEST: I would like to kick it out. He's at liberty. Um, I did talk to the District Attorney's Office, and I'm willing, I'm just looking for a little more time, Judge.

THE COURT: Why? Why aren't we ready? I have two cases in April. I'm just working on my calendar, because next week I am in a trial all week. Actually, you are stand-by counsel. But I'm leaving Sunday on that to get ready to go.

So, I'm just trying to figure out, you guys aren't ready. If you're not ready, I mean you're not ready. How much more time are you going to need?

MR. EARNEST: I told the state another 60 or 90 days. But, I would work with their calendars just to make sure everybody is happy. Because I know staffing issues and everything else. And, of course, I work with the Court's calendar.

My client's at liberty. He is definitely engaged in

his defense. He's been with me. So, whatever is convenient to the Court and the state. I'm not asking for a lot, but just a little bit of an extension.

THE COURT: These are serious charges.

MR. EARNEST: I know that, Judge.

THE COURT: Lewdness With a Child Under 14 Years of Age, one, two, three, four, five, six, what. Seven. Seven Category A felonies.

So, I see where you might need more time. The next question I have is we have only, the defense needed seven days, and we only set it for five.

So, when we do a resetting on this, how much, realistically, even if COVID weren't an issue, it would take a day to seat a jury, because we know how difficult --

MR. EARNEST: I concur. With a Category A, with eight preemptories, I agree with you. However, one victim, that's one witness that addresses all counts. One alleged victim I should say.

THE COURT: Okay.

MR. EARNEST: And then the state may have obviously some forensics and the officer. And I would invite Mr. Allmon to correct me if I'm wrong, but at the most I see the state would probably, four to six witnesses total. And then, of course, we have the option of calling some witnesses.

If I were to I would estimate my witnesses at two or

three, but I don't even know if I'm going to put a case-in-chief on. I think a trial setting of four to five days is reasonable, given that type of witness stuff. I haven't even tried a case with Mr. Allmon. I've done prelims. He's pretty direct. And doesn't loop things too much.

I agree, one day for your selection that's bumped out, and I think the state can get their case-in-chief done in a day or day-and-a-half.

THE COURT: I just wanted to be sure. Originally we talked about seven days. Because I have another case on for status check that's going behind this, and so I said, well, obviously I'm going to finish with one trial before I start a second trial.

So, I wanted to be sure on these cases. And given the fact that I think some of these cases may have been Mr. Chairez's I'm just making sure that, you know, we're ready to go.

Let me tell you this. There's enough backup at the courts that if this case goes off, I'll fill those days. In fact, I think I have a civil trial maybe set on top of this.

MR. EARNEST: Again, the client's at liberty, it's our first time seeking a continuance of this date, and I'm looking, I'm not asking for a lot. And I will defer to your calendar and the state's calendar. Whatever works for both of you, Judge.

MR. ALLMON: I have a few things to say about this.

THE COURT: Okay.

MR. ALLMON: The state is ready. However the state is not opposing Mr. Earnest's continuance. I think that's more than fair, given the charge and how he's been with our office.

So, the state's not seeking a continuance, but it's not opposing it. The state estimates it's about three and half days for its case-in-chief.

THE COURT: Okay.

MR. EARNEST: Okay.

THE COURT: Should I maybe set this for six days? One thing that we could do, is do a jury selection on a Friday, now it depends on normally during the my Tonopah week, Tuesday Wednesday are always filled. I usually leave Thursday and Friday to hear extended matters up there. But, oftentimes I don't have matters, and I'm back here.

But, it almost make sense to do the jury selection if we could maybe on a Friday and then lockout the rest of the week for the trial.

I am going to leave my law and motions on, I mean if I can go for it, I will. But, I'm thinking I know on these kinds of cases, so many people are, have been victimized as children, or just don't want to sit on these cases. So, I think clearly it's going to be at least a day to get a jury on this case. Maybe longer.

So, I think six days and maybe if we could do the jury selection, you know, on a Friday or a Monday, but expect that we

could possibly bleed into the following week.

MR. EARNEST: I'm fine however you want to do it, Judge.

THE COURT: Okay. So, we're going to check and see, I think what I'm going to need to do, Ms. Clifford is retiring, her retirement party was yesterday in Tonopah. And she is still with us for a couple of weeks. But, she, so it's doing a transition on the calendar.

So, we will need to find six days.

MR. EARNEST: Could I just ask the state? They have more preference to court dates given their staffing, get your staff and just whatever date they give me I'll live with, Judge?

MR. ALLMON: I appreciate that.

THE COURT: Let me ask folks this. What if we did jury selection on Friday October 1st, and then we could do the trial, it would take out our Tonopah calendar, but that's all right, fourth, fifth, six, seventh and eighth of October?

MR. EARNEST: Actually, that was one of the weeks the state was looking for.

No. Sorry, Judge.

MR. ALLMON: Your Honor, we were looking sometime in early July, possibly. I know that you have Bautista set for July 12th. We were looking at possibly doing it then, based on, you know, whether or not that's going to go. That was a possibility.

October is a bit difficult for me.

THE COURT: Let me explain something. I've got the Bautista trial, the 12th through the 16th, and, um, really the only way I could -- the biggest problem that we find in the summer at the start of July for me, is the drug court conference in Idaho, that I paid for last year, that we just applied, they canceled it and applied to this year.

And then really, the only week I would have, and that would assume that Bautista is going to be over, would be to start the 19th through the 26th. That would be on a Monday. So, I would finish one trial, start another trial, which bumps out, has a potential of bumping out all my Pahrump law and motions on civil. So, I don't like to do that, because the statute requires us to have law and motions at least, I mean at least one a month.

So, I'm concerned about doing that.

Is there an issue? You said, Mr. Allmon, what's the issue with October?

MR. ALLMON: I don't anticipate my schedule will accommodate that.

THE COURT: What have you got going on in October?

MR. ALLMON: I just anticipate that I am going to have a conflict.

THE COURT: Well, tell me what it is.

MR. ALLMON: It's a personal matter, Your Honor.

THE COURT: Okay.

MR. ALLMON: And that's all. I just give it to the

Court to consider.

MR. EARNEST: I'm happy with, again, Rene can come over and talk to Christel, Judge, and they can figure it out and let me know what works with the calendar.

THE COURT: Christel has got my calendar right here.

MR. EARNEST: Okay.

THE COURT: The drug court is going to the National Association of Drug Court Professionals. We go every year.

MR. ALLMON: October then if that's what's available, Your Honor.

THE COURT: Let me ask you guys, is this case is going?

MR. EARNEST: Um, can we have a side bar I'll talk to you about it real quick, Judge?

THE COURT: Sure.

(Discussion at the bench off the record.)

THE COURT: All right. This is what I'm going to do. I am going to go ahead and leave the trial date for October 1st through the 8th. So, it will be Friday October 1st, then the week from the fourth through the eighth.

I will leave this trial on. I will set two things. One is calendar call for it, and the calendar call, well, you know what? I think I'll set it for a status check in June. The June status check is going to be on June 25th.

MR. EARNEST: Got it.

THE COURT: You know what? Yeah, that's fine. Because

I'll probably leave on Saturday for the Northwest Drug Court Conference.

So, that would be fine.

And then if we need to, have a calendar call in September.

MR. EARNEST: Want to just set it in June, Judge?

THE COURT: What's that?

MR. EARNEST: We can set the calendar call in June. There's a chance this case will resolves itself in June.

THE COURT: Okay. Did I tell you the 25th? Why don't we get a calendar call for that day. As I told you, by then I have a number of trials set. But, things come off and go on constantly.

So, let's figure out where we are in June.

June 25th at ten o'clock.

Mr. Allmon has indicated he may have something in October, and that may not work for him. But, by then I should have a clearer picture of all the trials set in October, whether they are going, whether they're not. What I might have that would be better than that particular time.

MR. EARNEST: Wonderful, Judge.

MR. ALLMON: And if I put it out, if I did ask for that, would that be available?

THE COURT: You know, right now it is. What I can tell you is every day stuff comes in and goes off. So, it may or may

not be available, the 19th I'm like thinking the week of the 19th through the 26th.

MR. EARNEST: We will keep the June 25th date, but we'll call you and work with you. We can always move it up.

THE COURT: Right. We will adjust what's available, okay?

MR. EARNEST: Fair enough, Judge.

MR. ALLMON: Can you just save those dates, so I can see if those are available for us?

THE COURT: Well, the thing is, it's between tomorrow, Monday, we may have something that comes in that we block those dates out.

So right now, as of today, they are available. Starting the 21st of -- I'm sorry. I'm in June. Right now the week of July 19 through the 23rd is available, and I could bleed over to the 26th.

But, you know, a week from now, that may not be available. I can't answer that question at this point.

MR. ALLMON: I will get an answer today, Your Honor.

THE COURT: Okay.

Chris was telling me we have some civil matters, and that those weeks will probably be gone. But, we can find something. You know, I have had civil cases that are --

MR. EARNEST: Regardless, we have the June 25th date. We can always move up the trial date from October. I'm not

opposed to that. I just need more time to get my ducks in a huddle.

THE COURT: I think June 25th we will see where we are and figure out a trial date. I will go ahead and hold that October date. If that doesn't work, I will release it back to June.

(Whereupon proceedings concluded at 10:24 a.m.)

STATE OF NEVADA)
) Ss.
COUNTY OF DOUGLAS)

I, SUZANNE KUES ROWE, Certified Court Reporter, licensed in the State of Nevada, License #127, and a Notary Public in and for the State of Nevada, County of Douglas, do hereby certify that the foregoing proceeding was reported by me and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceeding and caption named, or in any way interested in the outcome of the cause named in said caption.

Date: March 10, 2021

Suzanne Kues Rowe

SUZANNE KUES ROWE, CCR #127