A Yes, ma'am.
Q Significant information you say?
A Yes, ma'am.
MS. OLVERA: Pass the witness, Judge.
THE COURT: State?
MS. LARSEN: Nothing further, Your Honor.
THE COURT: May this witness be excused?
MS. OLVERA: Yes, Your Honor.
THE COURT: You may step down. Thank you, sir.
(End of Requested Testimony from 10/14/14.)
(Requested testimony from 10/15/14:)
(Defendant and Jury present.)
THE COURT: You may be seated.
State, call your next witness.
MS. LARSEN: Judge, the State calls Dr. Donna Mendez.
(Witness sworn.)

DR. DONNA MENDEZ,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. LARSEN:
Q Dr. Mendez, good morning.
A Good morning.

Q Dr. Mendez, you and I know each other; but could you please introduce yourself to the ladies and gentlemen of the jury.

A My name's Donna Mendez, and I'm a pediatric emergency medicine physician.

Q Dr. Mendez, can you tell us a little bit about your educational background?

A So, I went to college and then I went to medical school for four years, then I went to residency. I did a year of internal medicine. I did three years of pediatrics and then I went on to do a three-year fellowship in pediatric emergency medicine.

Q And can you tell us briefly kind of where you were for your education? Were you here in Texas for all of that?

A I was here in Texas for all of that.

Q Okay. And when you were doing your fellowship, was that here in Houston?

A That was in Dallas.

Q Was there a time, Dr. Mendez, where you did work in pediatric medicine here in Houston, Texas?

A Yes. After I finished my fellowship I went to work for Baylor College of Medicine. I was there for 14 years, and I worked at the C.A.C. and I worked in the emergency room. I'm currently employed by Hermann

Memorial.

Q And how long have you been working for Hermann Memorial?

A It's been a year, this last July.

Q And prior to working at Hermann Memorial, what hospital were you affiliated with?

A I was with Texas Children's Hospital, which is Baylor College of Medicine, for 14 years.

Q And you said that during those 14 years, you also had an opportunity to work at the Children's Assessment Center?

A Yes.

Q How long did you work at the Children's Assessment Center?

A I worked there intermittently throughout the 14 years.

Q And, Dr. Mendez, just so we're clear, as a doctor who works as Texas Children's Hospital and the Children's Assessment Center, who are you employed by?

A By Baylor College of Medicine.

Q So your time that you spent at the Children's Assessment Center, is that in addition to your primary duties at Texas Children's Hospital?

A It was, basically, included in my duties because we do all the child abuse, sexual abuse exams in

the emergency rooms, so we're trained for that. So, when I worked at the Children's Assessment Center, it was included in my duties.

Q Okay. So, as someone who's an expert in the sexual assault examinations of children, it was part of your duties at Texas Children's Hospital to also perform those functions at the Children's Assessment Center?

A Correct.

Q And so, I want to talk to you a little bit, Dr. Mendez, about your training to perform sexual assault examinations. First, can you just tell us what you mean by "sexual assault examination" when we're talking about a child, and let's say specifically a female?

A So, basically, you get some history about why they were there; then, you go ahead and do the normal physical exam that you would do for any normal person that you're -- basically, you have your clothes on or either hospital gown on, you do a head-to-toe exam, and then after that, then you have to do the genital exam, which we use a colposcope. We have nurse assistance with that; and we take pictures and, basically, examine for any type of trauma.

Q Now, Dr. Mendez, is that the same procedure that you would use whether you're working at the

emergency room at Texas Children's or during your business at the Children's Assessment Center?

A Correct.

MS. LARSEN: Judge, may I approach the witness?

THE COURT: You may.

Q (BY MS. LARSEN) Dr. Mendez, I'm showing you what's been marked for identification purposes as State's Exhibit No. 5. Do you recognize this?

A Yes.

Q And is this a fair and accurate depiction of what an examination room might look like at the Children's Assessment Center?

A Yes.

MS. LARSEN: I'm tendering to opposing counsel, Judge; and State offers State's 5.

MS. OLVERA: No objection to State's 5.

THE COURT: State's 5 is admitted.

MS. LARSEN: Permission to publish, Judge?

THE COURT: You may.

Q (BY MS. LARSEN) Dr. Mendez, so, if we look at this examination room in State's Exhibit 5, is this where you might conduct a sexual assault examination on a child at the Children's Assessment Center?

A Yes.

Q Now, Dr. Mendez, I want to focus your attention on your work at the Children's Assessment Center. First, can you briefly tell us about the facilities at the Children's Assessment Center. What all takes place there?

A For our part, we do the history and the physical; but they also have -- also have other facilities for interviewing, forensic interviewing, and also therapy that are on the other floors of that building.

Q Dr. Mendez, do you participate in the forensic interviews?

A No.

Q Do you participate in the interviews that are conducted by law enforcement?

A No.

Q Or the interviews that are conducted by the Children's Protective Services?

A No.

Q So your sole function at the Children's Assessment Center when you were working there was just to perform sexual assault examinations?

A Yes.

Q Dr. Mendez, can you tell us how these children

would become referred to you. How would you receive a patient?

A They would set up appointments, usually they were follow-up appointments or they were cases that were referred by C.P.S.; follow-up cases from the emergency room or from C.P.S.

Q Was it a busy day for y'all when you would work at the Children's Assessment Center? Did you have many or few patients?

A It depended, but usually they would not let us see more than ten patients a day.

Q Okay.

A So it was limited.

Q And were there multiple doctors working at the Children's Assessment Center?

A Not at one time, but there were different doctors at different times. There was one physician during a shift.

Q When somebody were to set up an appointment to see a doctor at the Children's Assessment Center, could they always get in the same day?

A No, they couldn't.

Q So sometimes those appointments would have to be made later on?

A Correct.

Q Even though maybe a forensic interview had already been done on that day, sometimes the medical examination couldn't be done the same day?

A Correct.

Q Dr. Mendez, when you would receive a patient from a referral, how much would you know about that patient when you first met them?

A It depended. Sometimes we would get a report from C.P.S., sometimes you would just get what was from the hospital, it just depended.

Q Okay. Is that something that you're just reading from a document that someone's provided to you?

A Yes.

Q So when you meet the patient, tell us a little bit about the procedure from the time you first meet the patient during the medical examination at the Children's Assessment Center to the end.

A Okay. So, we'll first ask them certain questions about their past medical history. You know, like, if they had any surgeries; have any medical problems; and then ask them about their family history; social history, meaning what grade are they in school; then go on to the questions that would involve the event, meaning, Do you know why you're here today? You know, sometimes they would tell you, To get an exam

because someone touched me. If they didn't go ahead and reveal any information, that would be the end of the questioning of that part of the interview.

So, it would be, basically, Do you know why you're here; and if they mention what happened, then you'd say, With who? Where? When? Anything else happen? And then that would be the end of the interview; and we would go on to the physical exam, which was the head-to-toe with the hospital gown on or the clothes on. And then they would change into a gown and then we would do the, basically, the genitalia exam. And then, we, basically, have them dress and then talk to the family, if they're there, of our findings if we did find anything or if we didn't find anything and just have them follow up.

Q So, Dr. Mendez, I want to walk through each one of those steps with you, if you don't mind. When you were first telling us about the interview process with the patient, first, when you talk about "patient," what age range are we talking about here?

A It's from infancy all the way to 18.

Q So, we're talking about babies all the way up to 18 when they're no longer a child?

A Correct.

Q So, Dr. Mendez, when you're meeting with a

child patient, are you meeting with them alone or in the presence of a parent or guardian?

A If they're verbal, we go ahead and, basically, have the parent step outside when we're getting the information about the alleged, you know, sexual event and we talk to them alone. But when they're nonverbal and at the beginning when we're trying to find out their past medical history, family history, we're going to have a family member in there.

Q So, when you're asking a verbal child -- and let's say this child is age 6. If you are asking them questions about the sexual abuse itself, you would ask those questions alone?

A Correct.

Q What is the purpose of that?

A So that they're able to tell us their side of the story; and sometimes if the parent is present, they may feel pressured to say more or less.

Q So, it's just a standard practice to only speak with a child about that particular topic?

A Correct.

Q Now, Dr. Mendez, what's the purpose of you as a medical professional in collecting that information at the beginning of your examination?

A It's to know, basically, the areas that we need

to swab for infection. We look at all the areas, you know, thoroughly; but it's more or less to know if it was a fondling versus pen -- you know, penile/vaginal versus penile/anus so we would know where to collect the specimens from.

Q Now, Dr. Mendez, I want to talk about the actual physical examination. I believe you told us that you start with the head-to-toe?

A We start with the interview, and then we do the head-to-toe.

Q Tell us what it means to do a head-to-toe examination.

A I, basically, look at the eyes, the ears, the nose, the throat. Then we go on to the heart exam, the lung exam, the neuro exam, the skin exam. Basically, it's what you would get in your normal physical exam when you go to the physician, just for a routine exam.

Q So, you check the kid out just generally, their physical appearance and their body head-to-toe; but then talk to us about specifically the genital examination and, again, specifically with regards to a female patient.

A So, we, basically, have the child lay on her back. We have stirrups; but usually if they're less than 10 or 12, we don't need to use the stirrups. We

can go ahead and have them lay flat on their back and then raise their knees up and then spread them so that we're able to see the genitalia.

We use a lot of distraction. A lot of times, if they're nervous -- we don't use any sedation, no medications to sedate them. Then we, basically, look at the vaginal area, the hymen, the labia, and then we also do look at the anus. And this is all used with a colposcope. A colposcope is, basically, like a microscope that's attached with a camera so we're able to see things larger than they are and make sure there's no tears or bleeding, discharge. And we do that colposcope exam for both the vaginal area and also for the anal exam.

Q Now, Dr. Mendez, you described that when you're dealing with a child, a female, under the age of 10, that you're not going to necessarily use the stirrups but instead you have them in a -- is there a name that we call that position?

A It's a lithotome --

Q You kind of described what it looked like.

A Right. I mean, a lot of us refer to it just as, you know, having them in the position of, like, a butterfly, basically; but mostly, it's just, you know, with their thighs extended.

Q So their legs are spread, their feet are touching?

A Correct.

Q But their knees are spread out?

A Correct.

Q So their little knees are out, kind of like butterfly wings?

A Yes.

Q Now, Dr. Mendez, can you tell us, in a child patient, in your experience, a child, a female, under the age of 10, have they ever had a genital exam before commonly at that age?

A Not usually.

Q Is it your experience that that is an uncomfortable examination for a child under the age of 10?

A It can be.

Q And are you equipped to deal with an uncooperative patient?

A Yes. I mean, that's -- basically, we assume that they are going to be uncooperative just because it's something they've never had before, that type of exam.

Q And does their age factor into that at all?

A Yes.

Q If you're dealing with, say, a 6-year-old, how do 6-year-olds in your experience respond to that type of examination?

A Well, they've been told that they're never supposed to show their genitalia to anybody; so, we have to ensure them that this is all, we're physicians, that, you know, that it's necessary we do this type of exam. We talk them through it. We tell them what we're going to do before we start the exam and then we have the nurse also there to help distract them with a book or some type of toy, but usually they're pretty cooperative.

Q And when you are performing these examinations -- and how many would you say you've performed over 14 years?

A Oh, many.

Q Hundreds?

A Hundreds.

Q Thousands?

A Thousands.

Q And all age ranges, you've told us?

A Correct.

Q When you are performing these examinations at the Children's Assessment Center or at Texas Children's Hospital, are you keeping a record of the examination?

A Yes.

Q And why is that important as a medical professional?

A It's important for any type of physical exam we do just to have a record so that it's documented so that if you need to review it later, you can remember everything that was done.

Q For medical purposes?

A Correct, for medical purposes.

Q Is it sometimes the case that these children will need follow-up appointments?

A Yes.

Q And are these records able to be referenced by another medical professional if they were to seek a follow-up with a different professional?

A Yes.

MS. LARSEN: Judge, may I approach the witness?

THE COURT: You may.

Q (BY MS. LARSEN) Dr. Mendez, I'm now showing you what's marked for identification purposes as State's Exhibit No. 6. Have you seen this document before, and you can flip through it?

A Yes.

Q And can you tell us what we're looking at here.

A It's the documentation of the physical exam done at the Children's Assessment Center.

Q Okay. And is this a fair and accurate copy of the record that you made on -- if you look at the front, I believe this is for a patient named Nileeya Edmondson on August the 25th, 2010?

A Yes.

Q And is this the type of record that you would keep in the normal course of your business?

A Yes.

Q Is it the type of record that you make at the time that you're examining the patient?

A Yes.

MS. LARSEN: And Judge, I'm going to tender to opposing counsel State's Exhibit 6; and State offers State's 6 pursuant to the business records affidavit that's been on file with this Court no less than 14 days prior to trial.

MS. OLVERA: May I have a moment?

THE COURT: Yes.

MS. OLVERA: No objection to State's 6.

THE COURT: State's 6 is admitted.

MS. LARSEN: Thank you, Judge. And may I publish?

THE COURT: You may.

Q (BY MS. LARSEN) Dr. Mendez, do you have a copy of your report that you brought to court with you today?

A Yes.

Q Dr. Mendez, I'd now like to go over the report that you made in this case for patient Nileeya Edmondson back in August, 2010. So, Dr. Mendez, if we look at the first page of State's Exhibit 6, can you tell us the significance of this first page?

A Basically, it has a demographics on the patient, meaning the age and -- it has my name on there as examiner. It states that photographs were taken. It also has the case number.

Q And Dr. Mendez, can you tell us the age of this patient at the time you were examining her?

A She was 6 years old.

Q Dr. Mendez, if we look at the next page in State's Exhibit 6, can you tell us what we're looking at here on the page marked "history"?

A It asks for the historian; it asks, you know, if she has any history of major illnesses, hospitalizations, family medical problems, immunizations, and then, basically, if she's had any symptoms such as, like, headaches or diarrhea.

Q And Dr. Mendez, is this the history that you told us you receive from a parent or a caregiver?

A Yes, it's usually from a caregiver.

Q And when you received that history from the parent or caregiver in this case, was there anything of note in her history?

A No.

Q So, seemed like a healthy kid?

A Correct.

Q And Dr. Mendez, if we look at the third page, when it talks about the behavioral questions, did you note anything of significance?

A I can't tell from my copy, but I don't know if "frequent nightmares" was marked?

Q Does it appear to be marked on your copy?

A Yes.

Q And mine as well, in State's Exhibit 6. Now, when we look at the fourth page and we look at these questions to the child, can you tell us about these questions that you asked of this patient. Are these the same types of questions that you would ask of any patient?

A Correct.

Q And I see at the top of State's Exhibit 6 it talks about your observations of her behavior. Can you tell us a little bit about Nileeya Edmondson when you examined her?

A From the record it shows that she was cooperative and she had good eye contact; but there was no sobbing, tearfulness --

Q So, she was able to cooperate with you during the examination based on your record?

A Correct.

Q Now, Dr. Mendez, can you tell us about the questions that you asked Nileeya Edmondson. Looking at your record, can you tell us what questions you asked her?

A I asked her, you start out with, Can you tell me why you're here today?

And she responded, A man touched all over me.

And then I asked her, Who?

And she said, Corin, my mama's boyfriend.

And then I asked, What did he do?

And she said, Touched my private parts, my front and back.

And then I asked, With what?

And she stated, His fingers and body part, his man part.

Q And would you have asked any follow-up questions to those basic questions that you asked during the medical examination?

A I asked, How many times did this occur?

She responded, I don't know.

When was the first time?

Don't know.

When was the last time?

A long time ago.

Q Now, Dr. Mendez, we have heard that children do undergo forensic interviews while they are at the Children's Assessment Center. Is your function to interview this child in detail with regard to what actually transpired?

A No.

Q Tell us what your function is when you're asking these questions.

A Basically, to know what type of exam -- we do the thorough exam but more or less for collection.

Q When you say "collection," what type of collection are you talking about?

A We do collection, basically, we use Q-tips that we call swabs to touch the areas such as the, basically, vaginal area and also the anus to look for sexually transmitted diseases.

Q Now, Dr. Mendez, do you know if y'all collected any swabs in this case?

A We collected -- well, the nurse collected

blood. Just looking at the results, it says, basically, that hepatitis, H.I.V., and also syphilis and then, it doesn't look like there was any swabs done.

Q Can you tell us why you might not do swabs on a child when you're doing a forensic examination. Is there a reason why you wouldn't swab every child?

A There's discharge or evidence of an infection, we would; but majority of times, children don't have any findings of sexually transmitted disease.

Q And when we talk about swabs, Dr. Mendez, you've told us that we are looking for sexually transmitted diseases as potentially an issue for medical follow-up; but what is another purpose for swabbing the genital or anal area of a child who is a victim of sexual assault?

A There's always DNA collection, but we didn't do any of that in this case because it was over 96 hours from the event.

Q Tell us the significance of this 96-hour mark. Why is that significant?

A Because if it's been a long time ago, the DNA is going to get washed off, basically. You know, it's -- basically, over 96 hours, you're not going to find any DNA, it's all going to be washed off during, like, when you take a shower, bath, it's not going to

stay on the surface. So, it's going to, basically, all be washed off even just wiping.

Q Now, Dr. Mendez, this examination was performed at the end of August, 2010?

A Correct.

Q And so, if a child made outcry in June of 2010, so roughly two months prior, would that be consistent with your determination that DNA is not something we're going to be able to swab for?

A Correct.

Q Now, Dr. Mendez, I do want to ask you about your findings with regard to trauma as well. First of all, can you tell us whether or not you found any trauma?

A Looking at the record, there were no findings of trauma.

Q And Dr. Mendez, if we could actually go to page 2 of your questions of the child -- I think that's going to be page 5. I'm going to ask you, you checked some boxes with regard to the alleged sexual contact. Can you tell us what all of the allegations of sexual contact were for Nileeya Edmondson.

A It was fondling, genital/genital, and also genital/oral. And genital/anal.

Q And where are you getting that information,

from the child, the caregiver, the forensic interview, or all of those things?

A All of those things.

Q And so, do you have an opportunity to receive the information that the child has already given to other folks when you are doing your examination?

A Yes.

Q And specifically with regard to that 96-hour rule, are you basing that decision just off of when the kid said the last time was?

A Also the contact. Like, even if the child said nothing happened the day before but they were in contact with that person, which is the alleged perpetrator, we will base it on usually the contact.

Q So you as a medical professional when you're performing these sexual assault examinations are considering all of the information you've received in making your determinations of what procedures to do?

A Correct.

Q Now, Dr. Mendez, I do want to talk about what findings you found when doing the examination of Nileeya Edmondson. First of all, can you tell us on the first page of your physical examination -- that's going to be the next page in your medical records -- did you find anything of note when you did your head-to-toe of this

child?

A No.

Q Did she appear to be healthy to you?

A Correct.

Q And if we go to the next page, is there anything of significance with regard to her physical person?

A No.

Q Now, when we look at the female examination, the first page of the female examination, is this what you were describing when you told us about the genital examination that you perform on females specifically under the age of 10?

A Correct.

Q And you've checked at the top that this was a frog leg examination. Can you tell us what that means?

A It's, basically, when you have your ankles together, your feet together, and your thighs and your lower leg in the extended position.

Q So, is that that same kind of butterfly position you were describing?

A Correct.

Q And so, if we look at your observations of Nileeya Edmondson, did you note any trauma in this case?

A No.

Q And if you look at the next page, did you note any trauma?

A No.

Q Now, when you looked at the anal examination, did you note any trauma?

A No.

Q So, Dr. Mendez, if I turn to the last page for your instructions and plans for this child, you've checked this was a normal examination.

A Right.

Q Is that correct?

A Yes.

Q Dr. Mendez, can you tell us what it says under "normal examination"?

A A normal exam neither rules out nor confirms the possibility of sexual abuse or prior penetration.

Q Now, I want to talk about that, Dr. Mendez. Tell us why -- as a medical professional who examines children, thousands of children, who have been victims of sexual assault, tell us why when you observe a normal examination that you as a medical professional feel that you cannot rule out sexual assault.

A Any injury that occurs in the genital area can heal over very quickly. It's the same tissue like the inside of your mouth. So, if you bite the inside of

your mouth now, the next day it's healed up and it's disappeared; it's the same thing that happens. So -- and also, the vagina and the anus is very distensible so it can stretch. So, if there was any, you know, penetration, you don't necessarily have injury because it can stretch. So, over 96 hours, majority of the time even if something did happen, it's going to heal over or not be evident.

Q And Dr. Mendez, you've just described that the tissue of the female genitalia is a lot like the inside of your mouth. In a situation where oral penetration may have been alleged by a child, would you say the same about a normal finding of the mouth? Does that rule out that sexual assault has happened to the oral area of a child?

A No, it doesn't rule it out.

Q And can you tell us why.

A It's because of the tissues, because, basically, it can heal over so quickly.

Q And Dr. Mendez, you said that you do test for sexually transmitted diseases in children who have said that they've been sexually abused. Do you always find sexually transmitted diseases?

A No.

Q Is it common to find them?

A It's not.

Q If you do not find a sexually transmitted disease in a small child, does that mean they haven't been sexually abused?

A It does not mean that.

Q Why not?

A It's, basically -- it's the transmission rate is low; so, you know, if we do find it, then it's evidence. But if we don't find it, there's no evidence showing that it didn't occur.

Q So Dr. Mendez, if a child patient has told you about the specific incidents of conduct that somebody has perpetrated against them, when they tell you that somebody has sexually assaulted them and you find no evidence physically that there's anything wrong with the child, does that mean the child is lying?

A No.

MS. OLVERA: I object to that question, the form of the question as to somebody's credibility of someone, Judge.

THE COURT: Sustained.

MS. OLVERA: There's a motion in limine --

THE COURT: Sustained.

MS. OLVERA: -- prohibiting the State

from asking that kind of question.

THE COURT: Your objection is sustained.

MS. OLVERA: We would ask the jury be instructed to disregard that last question and answer.

THE COURT: The jury is instructed to disregard the question and answer.

MS. LARSEN: Judge, the State will pass the witness.

THE COURT: Defense.

MS. OLVERA: Thank you, Judge.

CROSS-EXAMINATION

BY MS. OLVERA:

Q Dr. Mendez, so you saw Nileeya on August 25th of 2010?

A Correct.

Q Correct? And you knew that the allegations were based from an outcry of June 10th of 2010.

A Yes.

Q So, you already knew that more than 96 hours had passed since the child outcried, correct?

A Correct.

Q And even though you were aware of that and a forensic interview had been scheduled and the medical exam had been scheduled, correct?

A Correct.

Q So, when you see the child two months after the alleged allegation, you're concentrating on what the child tells you in person and what the caregiver tells you in person, correct?

A It's not a lengthy questioning; but yes, we do take into account what they say.

Q Right, because you said that your office or your medical room is located in the Children's Assessment Center, correct?

A Correct.

Q And sometimes, I believe you said that the medical exams are used to collect evidence, correct?

A Correct.

Q It would be real important if the medical exam is scheduled as soon as possible after an outcry to try and collect that evidence for proof, right?

A Correct.

Q And I believe you said that you used to work in the medical emergency room treating children; is that true?

A Yes.

Q And so, you have seen incidents of child sexual abuse in an emergency room format?

A Yes.

Q And in that kind of a format, you can observe

and you can collect and you can photograph any alleged abuse in an emergency room, correct?

A Correct.

Q So, there can be some really severe -- there can be some physical trauma and you can collect some evidence if you were to get emergency care for a child abuse victim, correct?

A Emergency care?

Q If you see a child in an emergency room that you suspect has been sexually abused, you would treat it, correct?

A If it needs treating; but the majority of the times, they don't need any suturing or any other type of intervention.

Q Right. But that's why it's important, wouldn't you say, Doctor, for caregivers or parents to take their children to an emergency room or to a doctor as soon as possible after they outcry?

A Correct.

Q And so, in this case, unfortunately you didn't see the child until August 25th, which is about two months later?

A Correct.

Q So, when you're -- when you're taking a medical history, is the medical history, basically, the child

answering your questions about her -- how she's feeling and doing and things like that?

A Right, we do ask those few questions.

Q I mean, just like when any of us go to a doctor, right, the doctor's going to ask you, especially if you're a new patient and you've never seven that patient before, you're going to start out by, you know, why are you here and what's the problem, what's hurting you, correct?

A Right.

Q So, when you say "the history," that's what you're taking about, right?

A Right, but we don't really ask them, like, if they have any pain or injury because usually, it's kind of a leading question. So we ask them if they have any nausea, vomiting, abdominal pain, anything else.

Q Again, in all of the examination that you -- the physical examination, after you collected the history and you conducted a physical examination, you didn't find any physical -- any indication of any physical trauma on Nileeya, correct?

A Right.

Q Did you ever receive any information or concern for any follow-up care for Nileeya?

A Medical care or for social work or?

Q No, medical care.
A Not that I noted.
Q And so, your conclusions that there was no trauma is indicative also that there's no proof of any physical trauma to the child?
A Not necessarily. The majority of the time we don't find any evidence, so it's not indicative of if it occurred or didn't occur.
Q Right. So, your medical examination, really, you're not determining whether or not a sexual assault occurred based on what you did?
A Sometimes you do find evidence of --
Q But in this case?
A In this case, we didn't find anything.
Q So you don't have any proof that any sexual assault occurred based upon your examination?
A Right, but there's still a possibility it could have.
Q Right. But, Doctor, but to be specific for the jury, your conclusion was that you found no physical indication of any physical sexual assault of this child, based on your examination?
A Correct.
Q And so, after you saw her on August 25th, you never had any contact with her again?

A Not that I see from the records.

Q And is it possible, Doctor, that if the child needed some aftercare, some follow-up care, that you might have been contacted to further help the child or not?

A It would seem that they would have contacted me, but I don't have any record that they contacted me.

Q You have no records that they contacted you after August 25th?

A Not from this record.

Q And according to your report, is the State's Exhibit No. 6, this report, you entered -- this is all the information that you entered and received from the examination you conducted on that date, the 25th of August?

A This is what I recorded. This isn't all the information I had received because it's usually in the chart. Like, C.P.S., forensic interview, all of that is not in this record. It's in another record.

Q No. What I'm talking about, your own actual participation in this case --

A Correct.

Q -- is what's reflected primarily in this report, correct?

A Correct, uh-huh.

Q You never filed any addendums or supplements or anything to this?

A Not that I know of, unless it's somewhere else. I'm not aware of it.

Q And do you still do work or volunteer work at the C.A.C. center?

A No, I don't.

MS. OLVERA: Pass the witness, Judge.

THE COURT: State.

MS. LARSEN: Judge, briefly.

REDIRECT EXAMINATION

BY MS. LARSEN:

Q Dr. Mendez, I just want to clear one thing up. The defense was asking you questions about emergency care. Have you worked in an emergency room setting before?

A Yes, for a long time.

Q Okay. In your experience interviewing children who have been victims of sexual abuse, when you're meeting with these children, do they always tell right away?

A No.

Q Does that make a difference with regard to what you might find on a child?

A Does what they say make a difference in what I

find?

Q No. My question, Dr. Mendez, is when we're talking about a kid that doesn't tell right away and you've told us about --

MS. OLVERA: Judge, I object again we're going toward the credibility or the information other than what's in this examination on 8/25.

MS. LARSEN: Judge, I think if I can finish my question, it would be clear. That's not what I'm asking.

THE COURT: The objection is overruled.

Q (BY MS. LARSEN) Dr. Mendez, what I'm trying to ask about is the healing. You've told us now that the female genitalia can heal very quickly.

A Correct.

Q The defense was asking you questions about if a parent were to get a child quickly to the emergency room, maybe we could have collected some evidence, maybe we would have found something. Based on your experience and training for 14 years handling these types of cases, is it a frequent occurrence that a child tells immediately after it happens to them?

A No. They usually don't.

Q Even if a child were to immediately outcry, let's say it happened in the morning and that afternoon

she tells mom and we rush the kid to the hospital, are you always going to find signs of physical trauma?

A No.

Q Why not?

A It just heals -- it heals so quickly and a lot of times there's not necessarily -- if it stretches, you know, so easily, you're not going to see trauma.

Q So when we talk about that stretching, Dr. Mendez, even in a younger female, is it possible that a female could be touched and there be no signs of trauma?

A Correct.

Q Is it possible they could be penetrated and because of that stretching, there be no signs of trauma?

A Correct. It's, like, 95 percent of the time you don't see anything within the first 96 hours.

Q Specifically, Dr. Mendez, when we're talking about oral penetration, even if we immediately brought that child to your facility for medical attention, would you necessarily see signs of trauma?

A No.

MS. LARSEN: Pass the witness, Judge.

THE COURT: Defense.

RECROSS-EXAMINATION

BY MS. OLVERA:

Q Dr. Mendez, so, you know, not always or not necessarily you would see trauma?

A Correct.

Q But you might see trauma if you get a child in an emergency room setting who's alleging a sexual assault, you might see some trauma, correct?

A You might.

Q You might see some signs of trauma on a touching of a sexual abuse child, correct? If seen in time?

A Possibly.

Q You might see signs of trauma of a child sexually abused orally?

A Possibly.

Q You might see trauma of a child sexually abused in any other way? It's possible, isn't it?

A Yes.

Q And unless you are there and evaluating and examining a child, you can't say for sure that it is or is not sexual abuse, correct?

A Correct.

MS. OLVERA: Pass the witness.

THE COURT: State?

MS. LARSEN: Nothing further, Judge.

THE COURT: May this witness be excused?

MS. LARSEN: Yes, Judge.

THE COURT: You may step down, Doctor. Thank you.

Ladies and gentlemen, this is a good, natural break for our morning stretch break. So 10, 15 minutes. We'll come get you, I'll send a deputy back. Don't discuss the case when you're back there.

(Jury out.)

(Recess taken.)

THE COURT: Hearing outside the presence of the jury. We are currently discussing, and have been doing so off the record, so we'll get the record up to speed. The State anticipates the next witness being the alleged victim from the indictment. She will testify to the allegations contained in the indictment; but then also pursuant to 38.37, the State anticipates she will testify about other acts. The defense has asked for a limiting instruction. We have agreed, have we not, on the language that the Court is going to give at the time of the request regarding those extraneous offenses committed allegedly by the defendant against the indicted child whose name appears in the indictment?

The defense has asked for that limiting instruction to be read at each extraneous -- the

detailing of each extraneous offense. Is that a correct rendition of your request?

MS. MEADOR: Yes, ma'am.

THE COURT: The State has objected, as it's superfluous. I will -- the language of the limiting instruction that has been hashed out includes the phrase "any evidence before you regarding the defendant's committing other crimes, wrongs, or acts," so I will make the judicial determination that that will cover any and all instances that the child may testify to. So your request for absolute -- your request for repetitive limiting instructions is denied, but you have made that request.

Anything else? So that we're all clear and the record is clear, I will not be reading these limiting instructions unless and until you approach and ask for them when we get there, if it's --

MS. OLVERA: Well, timeline, I was wanting to know when --

MS. LARSEN: Yeah, Judge, without an objection, it would be a comment on the weight of the evidence by the Court.

THE COURT: Agreed. And so, I will allow you some leeway to do what might otherwise be a premature objection if it looks like you're heading that

way; but obviously, feel free to interrupt. We will bring up when she testifies to an extraneous offense -- she has to testify first before I give the limiting instruction.

MS. OLVERA: Right. And if there's going to be, like, six; so, is it going to be one after the other? I mean, it has to be given after the extraneous comes in. So, we're not going to know when and which one and what time.

MS. LARSEN: In which case, Judge, perhaps the best course here is after the child has testified to what will be extraneous offenses, that the jury be given a limiting instruction after the incidents have all been testified to that those extraneous incidents are to be considered for the purposes in the limiting instruction charge. And it will be all encompassing of all the extraneous acts that have been dictated by the witness.

THE COURT: You can do it one of two ways. You can have it when she testifies to extraneous one, and I will say "any evidence that comes before you" or -- or I can do it when she's done testifying which will encompass all of them.

MS. MEADOR: I think case law dictates, in order to not waive, I think I have to ask for it

after the first one.

THE COURT: Right, I agree with you.

MS. MEADOR: So, when it looks like we're coming into episode one territory, I'm just going to approach at that time.

THE COURT: But she's got to get it out before I limit them.

MS. MEADOR: Okay. That's fine.

THE COURT: Okay. Let's bring in the jury and get Mr. Branch.

(Defendant and Jury present.)

THE COURT: Ladies and gentlemen, you may be seated.

State, you may call your next witness.

MS. LARSEN: State calls Nileeya Edmondson.

THE BAILIFF: This witness has not been sworn in, Judge.

(Witness sworn.)

THE COURT: You may have a seat. You have a very soft voice, so you need to make sure that you speak loudly so that lady at the very end of the jury box can hear everything you say. Okay?

THE WITNESS: Okay.

THE COURT: State, you may proceed.

MS. LARSEN: Thank you, Judge.

NILEEYA EDMONDSON,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. LARSEN:

Q Hi, Nileeya.

A Hi.

Q How are you doing?

A Good.

Q Good. Nileeya, you and I know each other, right?

A Yes, ma'am.

Q We've met before, right?

A Yes, ma'am.

Q Can you please introduce yourself, use your full name and your nice big voice for the ladies and gentlemen of the jury?

A Yes, ma'am.

Q What's your name?

A My name is Nileeya Edmondson.

Q Nileeya, how old are you?

A 10 years old.

Q When's your birthday?

A July 28th.

Q Do you know what year you were born?