

1 court reporter. And if you will turn and face the  
2 jury and raise your right hand, I will give you the  
3 oath.

4 *(Witness Duly Sworn)*

5 **THE COURT:** May I see counsel at the  
6 bench?

7 *(At the Bench)*

8 **THE COURT:** Did I fail to swear him  
9 before he testified this morning? Did I forget to  
10 swear him before he testified this morning?

11 Was all your testimony true and  
12 correct?

13 **THE WITNESS:** Yes.

14 **THE COURT:** Okay. Then I consider his  
15 sworn testimony based on this statement. Thank you.

16 **MR. BATARSE:** Yes, Your Honor.

17 *(End of Bench Discussion)*

18 **MR. BATARSE:** May I proceed, Your  
19 Honor?

20 **THE COURT:** Yes, sir.

21 **BEN ALEXANDER MORROW,**  
22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 **Q. (BY MR. BATARSE)** Would you please introduce  
25 yourself to the jury?

1 the statement was freely and voluntarily given. The  
2 Motion to Suppress is denied.

3 Thank you so much.

4 **MR. TABOADA:** Exception taken, Your  
5 Honor.

6 **THE COURT:** Thank you. Ready for the  
7 jury.

8 Do you have another witness?

9 **MR. BATARSE:** Yes, Your Honor.  
10 Officer Ben Morrow. We're going to recall him to the  
11 stand.

12 **THE COURT:** Thank you.

13 *(Jury enters the courtroom)*

14 **THE COURT:** Thank you. Please be  
15 seated.

16 You may ask your witness to come up.

17 **THE BAILIFF:** Your Honor, this witness  
18 has previously been sworn.

19 **THE COURT:** Thank you. Wait.

20 **THE WITNESS:** I haven't been sworn  
21 yet.

22 **THE BAILIFF:** Your Honor, he has not  
23 been sworn.

24 **THE COURT:** Thank you. Come on up  
25 sir. If you don't mind standing on that side of the

1     38.22 were met, and none of those were objected to by  
2     Defense counsel. So, we ask that the statement be  
3     admitted.

4                   **THE COURT:** Thank you. Do you want  
5     the last word, sir?

6                   **MR. TABOADA:** No, Your Honor. Your  
7     Honor, we just stand by what we said.

8                   **THE COURT:** Thank you. Specifically,  
9     I find that the investigator who took the statement  
10    was a credible witness. I find that the warnings  
11    were given, that the defendant understood them, and  
12    that he went forward with the statement freely and  
13    voluntarily. I did not find that there is any real  
14    evidence to support that the defendant was ill. And  
15    listening to his voice, and although you can't see  
16    the demeanor, we usually see the demeanor as being  
17    something you can see. Based on his voice, there is  
18    nothing about that that would indicate that he was  
19    ill.

20                   I find that the officer was credible  
21    with regard to the fact that the battery went out on  
22    the tape recorder and that there was only a shorter  
23    portion of the interview remaining after the battery  
24    went out.

25                   Therefore, I find in its entirety that

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

**CLOSING STATEMENTS**

**MR. TABOADA:** Yes, Your Honor. Just wish to refer the Court to, let's see, Rule 107 and also the facts surrounding the interview, the facts showing that he was -- he had diminished physical conditions when he was being interviewed.

**THE COURT:** Sorry, why do you say that?

**MR. TABOADA:** He had just had his blood drawn and he was not feeling very well. He was hungry, even joked about -- the officer joked about the fact that -- fact that he was very hungry, and he had been up since real early. So, I mean -- and then also the fact that the officer had just discussed with him an incident where he was a victim and that had him distraught. But primarily the fact that there was the Rule 107 requires the complete recording to be -- to be heard.

**THE COURT:** Thank you very much.

**MR. TABOADA:** Thank you.

**THE COURT:** Yes, sir?

**MR. BATARSE:** Judge, Rule 107 is a rule of optional completeness. I don't think that's relevant to the motion. And the State put it on in testimony from the officer that the requirements of

1           **Q.**     And everything came back negative as far as  
2 diseases, correct?

3           **A.**     Of a sexual nature, yes.

4           **Q.**     Yes.

5                   **MR. TABOADA:** I have no further  
6 questions, Your Honor.

7                   **THE COURT:** Thank you.

8                   Any redirect?

9                   **MR. BATARSE:** No, Your Honor.

10                   **THE COURT:** Thank you. May Dr. Isaac  
11 be excused?

12                   **MR. BATARSE:** Yes, Your Honor.

13                   **MR. TABOADA:** Yes, Your Honor.

14                   **THE COURT:** Thank you so much, Doctor.

15                   **THE WITNESS:** Thank you.

16                   *(Witness released)*

17                   **THE COURT:** Thank you. We will take  
18 the afternoon recess. If you want to walk around the  
19 courthouse, if you would get back in the jury room at  
20 4:00.

21                   All rise, please, for the jury.

22                   *(Jury released)*

23                   *(Recess taken)*

24                   **THE COURT:** Mr. Taboada, on your  
25 Motion to Suppress, do you wish to argue?

1 conducted, correct?

2 **A.** Yes.

3 **Q.** And everything in it was shown to be within  
4 normal limits?

5 **A.** Yes.

6 **Q.** Okay. And the anus is also subject to  
7 lacerations, correct?

8 **A.** It can be, yes.

9 **Q.** Okay. And have you had cases -- have you  
10 examined children with sexual assault through the  
11 anus?

12 **A.** Yes.

13 **Q.** Okay. And have you had cases where you  
14 have found bruises, lesions, lacerations?

15 **A.** Yes.

16 **Q.** Okay. But in this case there was none?

17 **A.** No.

18 **Q.** Okay. There was also a laboratory exam  
19 conducted, correct?

20 **A.** Yes.

21 **Q.** And you reviewed those?

22 **A.** Yes.

23 **Q.** And it was a pretty extensive exam,  
24 correct? The laboratory exam?

25 **A.** Yes.

1 child is different. The age is different. The  
2 estrogenization or hormone level in the patients are  
3 different at different ages.

4 So, I couldn't tell you a time line of  
5 how and when if they -- and if they heal. Some  
6 people heal completely in a couple of weeks. Some do  
7 not.

8 Q. Okay. And abdominal pain or pelvic pain of  
9 the type that is caused by sexual assault, is that  
10 something that a school nurse could depict?

11 A. Abdominal pain is just something that the  
12 patient feels and would report. If she goes to a  
13 nurse and says she has abdominal pain, there is only  
14 so much a nurse can do.

15 Q. It's easy, then, to determine that child  
16 has pelvic pain?

17 A. Well, a nurse wouldn't be doing a pelvic  
18 exam on a patient. The child would tell her that she  
19 has abdominal pain -- or tummy pain really is how she  
20 would probably describe it.

21 Q. Okay.

22 A. But, again, that could mean -- abdominal  
23 pain is a nonspecific complaint. It could mean  
24 anything.

25 Q. Okay. There was also an anal examination

1 that is.

2 Q. Okay. And there was a note here that there  
3 was no hyperemia vascular changes or scarring again.  
4 You keep looking for scarring, correct, in those  
5 exams?

6 A. Yeah. We look for any signs of trauma.

7 Q. Okay.

8 A. In this case, no, there was none.

9 Q. Okay. And this trauma can show two weeks  
10 or one month after the incident, correct?

11 A. Maybe, but most likely not.

12 Q. Okay. And what is the indication of trauma  
13 that can show farthest out from the incident?

14 A. Again, you're supposing that there was  
15 trauma in the first place.

16 Q. Yes.

17 A. There is an injury that is easily seen.  
18 You know, again, maybe the reason we look is to make  
19 sure there isn't any signs of injury or trauma.  
20 Possibly you would see what's called a transection  
21 that would last for the longest, meaning there is an  
22 actual indentation or rip in the hymen in a certain  
23 area. Again, that itself is also very rare. But  
24 we -- you know, sometimes it's there; and it can last  
25 long. I couldn't give you a time frame because each



1           **A.**     It depends. It depends. But it can.

2           **Q.**     In two months?

3           **A.**     Possibly.

4           **Q.**     Possibly? How about two weeks after the  
5 sexual assault?

6           **A.**     Yes. Again, you do start to see pretty  
7 good healing starting pretty much right away; but it  
8 depends on the case.

9           **Q.**     Okay. And if there have been five  
10 instances of sexual assault, day after day, that  
11 would tend to cause more transections than one  
12 incident, right?

13          **A.**     I couldn't tell you. I have had children  
14 who have been sexually assaulted by multiple people  
15 over multiple years and have completely normal exams.  
16 We have had pregnant patients -- and we know that  
17 through studies, as well, where you would be pregnant  
18 and have a completely normal exam. So --

19          **Q.**     Uh-huh (affirmative.)

20          **A.**     Again, that is why we say a medical exam is  
21 not -- we don't have a medical virginity test for  
22 those cases.

23          **Q.**     Tell us about the perihymenal tissue.

24          **A.**     Okay. So, the perihymenal tissue is  
25 essentially the tissue around the hymen. That's all

1     anatomic variations. A transection essentially means  
2     a through-and-through indentation through the hymen  
3     itself. The hymen itself is a ring of tissue that  
4     sits on the outside of the vagina, which is the  
5     actual canal of the anogenital area. So, the hymen  
6     itself, as I said, is a ring of tissue that sits on  
7     the outside.

8           **Q.**     Okay. But there is notches or  
9     transections?

10          **A.**     Notches, not so much. But transections, it  
11     can be a sign of penetrating trauma.

12          **Q.**     Okay. And what are the vascular changes  
13     that you're looking for? I mean, when you examine  
14     the hymen?

15          **A.**     Bruising; as I said, petechiae, which can  
16     be like small bruising. Essentially, it's bruising.

17          **Q.**     Okay. And there are cases where you find  
18     vascular changes and transections, and that to you  
19     indicates in that particular case if there has been  
20     sexual assault?

21          **A.**     Yeah. Most usually when it is within 24  
22     hours or a very short period after the contact.  
23     Again, not six months later.

24          **Q.**     Could that transection show one month after  
25     the sexual assault?

1           **A.**     Again, it's a medical finding.  If there is  
2 any -- any abnormality, such as a prolapse or  
3 discharge, it's something we can see and treat.

4           **Q.**     And isn't it true that if you had found  
5 bleeding, prolapse, or if you had found discharge,  
6 you would be telling the jury today that that is an  
7 indication of sexual assault?

8           **A.**     No.  The urethral meatus is essentially  
9 where urine comes out of the body.  It essentially  
10 means that there is an infection from the urinary  
11 tract.

12          **Q.**     And is it possible that sexual assault can  
13 cause that?

14          **A.**     You might have bruising if it affected that  
15 area, but that's not typically an area that we see in  
16 sexual abuse.

17          **Q.**     Okay.  Okay.  There is mention of hymen  
18 WNL, within normal limits.  It says without  
19 hyperemia, vascular changes, without notches or  
20 transections.  Okay.

21          **A.**     Yes.

22          **Q.**     Why do you try to determine if there are  
23 notches or not in the hymen?

24          **A.**     Again, notches can be a normal variation of  
25 the hymen, essentially just looking at different

1 Q. Within normal limits?

2 A. Yes.

3 Q. Okay. Clitoris WNL. It says no  
4 clitoromegaly noted?

5 A. Yes.

6 Q. Am I pronouncing that right?

7 A. It's close.

8 Q. Okay. Why would that be significant if it  
9 had been positive?

10 A. It could be, again, many things that could  
11 relate to it. It could be, again, a sign of  
12 infection, an abscess, irritation, trauma, or injury.  
13 But, again, in this case it's completely normal.

14 Q. Okay. Okay. Then there is a mention of  
15 uri -- urethral meatus?

16 A. Yes.

17 Q. Okay. It says WNL. Patent without  
18 bleeding, prolapse, or discharge.

19 A. Yes.

20 Q. What does that show?

21 A. So, urethral meatus -- U-R-E-T-H-R-A-L,  
22 M --

23 Q. Two words?

24 A. Right. M-E-A-T-U-S. It's normal.

25 Q. And why -- why do you look into that?

1 range -- normal range, how would that show there was  
2 a sexual assault?

3 **A.** It wouldn't. It just -- as I said, it just  
4 means that there may be an infection, viral infection  
5 at that time.

6 **Q.** Viral infection?

7 **A.** Yes.

8 **Q.** Viral infection that could be acquired  
9 sexually?

10 **A.** Not necessarily.

11 **Q.** But possibly?

12 **A.** Not necessarily. It could be.

13 **Q.** It could be?

14 **A.** Or it could be just a cold.

15 **Q.** Okay. There is mention of labia majora.  
16 It states no swelling, excoriation, bruising, or  
17 lacerations or scarring. And same as to labia  
18 minora.

19 If there was swelling, bruising,  
20 lacerations, what would that be indicative of? Would  
21 that support a finding of sexual assault?

22 **A.** Yes, it can be.

23 **Q.** Okay. Clitoris, within normal. WNL means  
24 what?

25 **A.** Within normal limits.

1 Q. Very many, right?

2 A. No, not many. There are some. All I can  
3 say is some. Wouldn't be all of the cases. There  
4 are some cases where a parent notices blood on a  
5 child's panties or bed sheets.

6 Q. Okay. Talking now about the lymph. What  
7 is the lymph?

8 A. I'm sorry?

9 Q. The lymph, L-Y-M-P-H-A.

10 A. P-H-A?

11 Q. L-Y-M-P-H-A.

12 A. I don't know what that is.

13 Q. Is it the lymph nodes?

14 A. Well, if I can understand my reading, it  
15 says lymph WNL, within normal -- oh, yes.

16 Q. Non-tender without significant adenopathy.

17 A. I would have to see the area you're looking  
18 at. Lymph is usually just lymph nodes. And for the  
19 most part, I understand that she had normal lymph  
20 nodes without significant adenopathy.

21 Q. And what does that -- what is that  
22 indicative of?

23 A. It could be a sign of infection, if they  
24 were inflamed or if they were very palpable.

25 Q. Okay. And if they were not within normal

1 they have, that might be a -- might be a sign of  
2 sexual abuse. But it might also mean other -- other  
3 possibilities, other medical possibilities in a child  
4 or psychological possibilities.

5 Q. Okay. Then why in the exam would you ask  
6 if the child ever bled?

7 A. In their private area? Is that --

8 Q. Yeah, in the sexual assault exam, why would  
9 you ask that question?

10 A. Again, it's reporting any sort of trauma  
11 that the child has -- has -- could be related to  
12 trauma, it could be related to anything that causes  
13 bleeding down there. Tumors, other medical lesions  
14 might produce bleeding. So, there is a whole range  
15 of possibilities that we have to think of when we ask  
16 these questions.

17 Q. Okay. But there are children that do bleed  
18 when they are sexually assaulted?

19 A. Some of them do, some of them don't.

20 Q. Okay. Have you had cases where the parents  
21 discovered the sexual assault as a result of finding  
22 the children's underwear with blood in it? Correct?

23 A. Yes, I have.

24 Q. Okay. How many cases like that?

25 A. I wouldn't -- couldn't tell you.

1           **Q.**     Okay. Please tell us all what is enu --  
2 enuresis?

3           **A.**     Enuresis?

4           **Q.**     Enuresis.

5           **A.**     It is essentially bedwetting or lack of  
6 control of the bladder.

7           **Q.**     Okay. And why would that be significant or  
8 relevant in a medical examination for sexual assault?

9           **A.**     Again, when we are asking these questions,  
10 we are asking a broad brush of questions because we  
11 don't just -- as physicians, we don't just look at  
12 just at one particular thing. We look at the global  
13 sense of the child. So, there are many different  
14 signs that may certainly be indicative of sexual  
15 abuse or suggestive of sexual abuse; but it might  
16 also be suggestive of a lot of other things. So, if  
17 we're able to address it -- sometimes we have a  
18 population that don't have proper healthcare needs  
19 that are met. So, we -- again, we ask all questions  
20 related to a child's health.

21                         Enuresis, when it comes to bed-wetting  
22 or lack of control of the bladder, might be an  
23 indication -- might be an indication of sexual abuse.  
24 Some children do have that symptom, especially if  
25 they had not yet disclosed. But sometimes even if



1 pelvic pain in the child? Would that be a trauma  
2 that could cause pelvic pain?

3 **A.** It can, certainly.

4 **Q.** Okay. It has been seen to cause pelvic  
5 pain, correct?

6 **A.** It's not usually a symptom that patients  
7 report, though; but it's possible.

8 **Q.** But you have seen cases where children 11  
9 years old, stating that they were sexually abused,  
10 they complained of pelvic pain, correct?

11 **A.** Not necessarily. They don't describe it as  
12 that. No.

13 **Q.** What do they describe it as?

14 **A.** Pain in that particular area sometimes,  
15 meaning the anus.

16 **Q.** Well, they wouldn't describe it as pelvic  
17 pain; but the description they give you know to be  
18 pelvic pain?

19 **A.** No. That really means the lower abdomen,  
20 is really what we mean by pelvic and abdominal pain.

21 **Q.** Okay.

22 **A.** So, the front end.

23 **Q.** All right. So, you noted here that there  
24 was no reported abdominal or pelvic pain?

25 **A.** Correct.

1           **A.**     Okay.

2           **Q.**     Okay.

3           **A.**     So, yes. So, that was a response. I don't  
4 recall exact detail of each one. She reported that  
5 she had burning on urination for the last three to  
6 four months, but not currently.

7           **Q.**     Okay. But there is no mention of dysuria?

8           **A.**     If it's checked off, that means yes.

9           Dysuria.

10          **Q.**     But it says "no frequency"?

11          **A.**     Right. That's a different symptom.

12          **Q.**     Okay. Also, there was mention that there  
13 was no abdominal or pelvic pain. Why would that be  
14 significant?

15          **A.**     There could be many reasons for having  
16 abdominal pain. Again, we're asking just general  
17 questions. So, it could be related to constipation.  
18 It could be if there is an infection. Sexually  
19 transmitted infections, that could be a complication  
20 that might lead -- that might suggest what's called  
21 pelvic inflammatory disease. Again, there was  
22 many -- again, it's a broad question; and abdominal  
23 pain can suggest a lot of different diagnoses.

24          **Q.**     Is it possible that an erect penis driven  
25 through the anus of a 11-year-old child can cause

1           **A.**     No. Dr. Isaac, but that's okay.

2           **Q.**     Please tell us what is dysuria. Am I  
3 pronouncing it right?

4           **A.**     Dysuria.

5           **Q.**     Dysuria?

6           **A.**     Yes. That is burning on urination.

7           **Q.**     Excuse me?

8           **A.**     Burning on urination. When you --

9           **Q.**     Okay.

10          **A.**     When you urinate, you feel a sensation of  
11 burning.

12          **Q.**     And why would that be significant in an  
13 examination of the sort that you conducted on  
14 Ms. Chacon?

15          **A.**     The typical question we ask all patients  
16 that come into the clinic. It can be a sign of  
17 infection. So, yes, that's one of the reasons we ask  
18 that question.

19          **Q.**     Okay. And why would you look back four  
20 months to see if there was dysuria?

21          **A.**     I wouldn't look back four months. It's --  
22 as I said, it's a typical question we ask all  
23 patients.

24          **Q.**     Okay. The medical exam indicates dysuria  
25 over the past three to four months, no frequency.

1           **Q.**     Okay.  And are these records that are  
2 generally kept in the ordinary course of business and  
3 course of work that you do at the CAC?

4           **A.**     Yes.

5           **Q.**     Okay.  And were these records made at or  
6 near the time that you conducted these examinations?

7           **A.**     Yes.

8           **Q.**     All right.  And are these, in fact, the  
9 records that you created for this case?

10          **A.**     Yes.

11                   **MR. BATARSE:**  Your Honor, State offers  
12 State's Exhibit No. 12, to opposing counsel for any  
13 objections.

14                   **MR. TABOADA:**  No objection, Your  
15 Honor.

16                   **THE COURT:**  Admitted.

17                   **MR. TABOADA:**  No objection.

18                   **THE COURT:**  Thank you.  Admitted.

19                   **MR. BATARSE:**  Pass the witness, Judge.

20                   **THE COURT:**  Thank you.

21                   **MR. TABOADA:**  Thank you, Judge.

22                   **CROSS-EXAMINATION**

23           **Q.**     **(BY MR. TABOADA)** Ms. Reena?

24           **A.**     It's Dr. Isaac.

25           **Q.**     Dr. Reena.  Sorry.

1 cases to find, you know, the smoking gun or marks or  
2 things of that nature?

3 **A.** No, not usually. But, again, you have to  
4 take into account maybe even the time that the  
5 examiner or physician is seeing the child. If -- if  
6 the child is examined right away, within 24 hours,  
7 we're more likely certainly to see maybe something,  
8 such as bruising; what's called petechiae, which is a  
9 little bit of bruising; or tears.

10 So, again, you're more likely to see  
11 it in the first several hours after the exchange or  
12 the contact; but certainly -- we certainly understand  
13 that healing -- proper healing takes place,  
14 especially in that particular region where it can  
15 heal completely. So, six months later, you're really  
16 not likely to see an injury.

17 **Q.** Dr. Isaac, I'm showing you what's been  
18 marked as State's Exhibit No. 12. And would you tell  
19 the jury what this is?

20 First, can you please tell us if you  
21 recognize what this is?

22 **A.** Yes, sir.

23 **Q.** Okay. And what are we looking at there?

24 **A.** That is an electronic medical record from  
25 the CAC.

1 time line from that end to the actual time of  
2 contact. So, there is many variables that are in  
3 play.

4 **Q.** How can the use of -- you mentioned  
5 lubricants. How can the use of condoms and/or  
6 lubricants affect the appearance of injuries or the  
7 type of injuries that you might see?

8 **A.** The condoms not so much, but lubricant is  
9 essentially used to -- to reduce the friction and  
10 resistance. So, that's certainly less likely to  
11 produce an injury if a lubricant is used. Condoms  
12 may also be lubricated, in a sense. Again, that  
13 might also reduce the friction and resistance and the  
14 potential for injury.

15 **Q.** And just to be clear, I mean, when we're  
16 talking about this, I mean, does that even apply to a  
17 10-year-old girl or 11-year-old girl who has been --  
18 had sex with a man, a full-grown man?

19 **A.** Yes.

20 **Q.** Is it always the case that a young child  
21 who has sex with a full-grown man is going to have  
22 injuries that you're going to be able to see?

23 **A.** I'm sorry. Your question again?

24 **Q.** I mean, I guess the question that I'm  
25 asking is: Is it your expectation in these types of

1           **A.**     Yes.  Again, the majority of our cases of  
2 child sexual abuse cases will be completely normal.  
3 And as I said, over 90 percent of those cases will be  
4 completely normal.  So, it's not new that I have had  
5 a child who reports an episode or episodes of sexual  
6 abuse, and then certainly six months later to have a  
7 completely normal exam.

8           **Q.**     Okay.  I also wanted to ask you -- let's  
9 say that an individual had sexual intercourse with  
10 somebody who had a sexually transmitted disease in  
11 the past.  Does -- I mean, does every time someone  
12 has sexual intercourse with somebody who's had a  
13 disease mean that they are going to contract it, as  
14 well?

15          **A.**     That the patient -- that the next person  
16 will, no.

17          **Q.**     Okay.  Why is that?

18          **A.**     Again, it's not 100 percent.  Depends on  
19 how much of the bacterial or infectious load is  
20 within the secretion at the time of the exchange; the  
21 type of exchange; if there is a barrier, such as  
22 condoms, maybe even lubricants.  Things can act as a  
23 barrier.  So, that transmission from one to the other  
24 may not occur.  It depends on when that person was  
25 diagnosed, if they -- that person was treated, the

1 mean, were the observations of the anogenital region  
2 within normal limits?

3 **A.** Yes. It was a normal physical examination.

4 **Q.** Okay. And then what does that indicate to  
5 you?

6 **A.** Essentially a normal exam. I couldn't say  
7 based simply just on the examination whether this was  
8 a child who had suffered sexual abuse or not.

9 **Q.** Okay. And did you learn during the patient  
10 history portion of the exam that the abuse had  
11 occurred some time before?

12 **A.** Yes.

13 **Q.** And how much longer before?

14 **A.** I had -- I had seen her in May. She  
15 reported that it happened around the Thanksgiving  
16 weekend that past year. So, it would have been about  
17 six months prior.

18 **Q.** Okay. And so, given six months of time,  
19 what type of -- I mean, what types of things would  
20 you expect to see, if anything?

21 **A.** Possibly I could have seen missing hymenal  
22 tissue. Very rarely do -- would we see a scar. But  
23 again, those are very, very rare situations.

24 **Q.** So, were your findings that you made  
25 consistent with a disclosure that the child had made?



1 doctor can tell whether someone has had sex; and  
2 that's essentially not true. What are some of the  
3 other things, that is, I think, the most important  
4 one.

5 Q. Okay. I also want to talk to you about  
6 this case. Did you perform an examination in this  
7 case on Jasmine Chacon?

8 A. Yes.

9 Q. Okay. And do you know when that occurred?

10 A. My recollection is May 13th. Am I right?  
11 2013?

12 Q. Yes. Okay. So, I kind of want to ask you,  
13 when you're performing this examination, is this a  
14 comfortable setting, uncomfortable thing for the  
15 patient? I mean, how is it --

16 A. Well, each patient might react differently;  
17 but for the most part -- and, again, I don't  
18 specifically remember this patient in particular,  
19 only what is documented within my records. But for  
20 the most part they are pretty cooperative and  
21 compliant with the evaluations.

22 Q. Okay. And in this case -- what were your  
23 determinations in this case?

24 A. As far as? Can you be more specific?

25 Q. Were the observations that you made -- I

1           **Q.**     One of the questions that comes up, I'd  
2 like for you to address is: Is there any way to  
3 medically determine if someone definitively has had  
4 sex or has not had sex?

5           **A.**     Medically speaking, no.

6           **Q.**     So, what I mean -- so, I mean, there is a  
7 lot of things, you know, about the hymen and things  
8 of that nature. Can you explain that to the jury?

9           **A.**     Yes. What we have realized from the  
10 medical standpoint over decades of studies looking at  
11 children of various ages and even a lot of our  
12 adolescent patients -- again, this is across the  
13 nation, through various studies looking at overall  
14 thousands of children.

15                   What we have found is that with the  
16 studies we found that over 90 percent of cases will  
17 be completely normal examinations. And, again, there  
18 are many reasons for this. But, again, bringing up  
19 the hymen, there is really no such thing as what's  
20 called a virginity test.

21           **Q.**     And when you are dealing with patients even  
22 or, you know, patients -- family of patients, are  
23 there certain myths that you have to debunk when  
24 you're going through this process?

25           **A.**     Yes. Number one, people think that a

1           **Q.**     Okay.  So, within the CAC there is multiple  
2 disciplines, multiple people working on suspected  
3 child abuse cases, correct?

4           **A.**     Yes.

5           **Q.**     Okay.  So, then what is the goal of having  
6 all those places under one roof?

7           **A.**     For better communication and coordination  
8 of cases.  In the past, decades ago, children were  
9 oftentimes interviewed multiple different times.  A  
10 lot of cases may have fallen through the cracks,  
11 again, because of very fractured and fragmented  
12 investigations from the different various agencies.  
13 And a lot of times, especially from the medical  
14 standpoint, a lot of medical examinations were not  
15 conducted because of the -- for those reasons.

16          **Q.**     Let's talk about, you know, medical  
17 examinations of these children.  What is the  
18 procedure that you go through to do this?

19          **A.**     As I stated before, it's just like any  
20 other consultation or medical evaluation.  It begins  
21 with a history.  Then follows the physical  
22 examination of the child, which includes an  
23 anogenital examination of the child.  And depending  
24 on what I understand is both history and examination,  
25 likely or possibly laboratory evaluations.

1           **A.**       So, again, I am a physician in our medical  
2 clinic at the CAC. And it's not unlike any other  
3 consultation service, medical service, where we do  
4 evaluations of cases. And in this particular line  
5 it's suspected child sexual abuse. So, what that  
6 means is I begin with a detailed medical history,  
7 understanding the medical background and information  
8 of the patient. I also talk with the patient to find  
9 out what is the reason that the patient is there for  
10 an evaluation. So, again, that's a medical history.

11                       Second would be the physical  
12 examination of the patient, which is essentially a  
13 full head-to-toe exam, looking at the patient's eyes,  
14 ears, tummy, and everything. And it culminates to  
15 the very end, which is called the anogenital  
16 examination, which is a direct inspection and  
17 evaluation of the patient's anogenital area.

18                       After that, depending on what I  
19 understand is both the history and the physical  
20 examination results, the next part is possibly also  
21 testing or checking for other laboratory  
22 investigations, which might include looking for  
23 possible infections or pregnancies or any other risks  
24 that might underlie a suspected case of sexual abuse  
25 in a child.

1 physician at the Children's Assessment Center's  
2 medical clinic.

3 Q. Okay. The Children's Assessment Center  
4 clinic, is short for that the CAC?

5 A. Yes.

6 Q. All right. Tell us a little bit about what  
7 the CAC is.

8 A. So, the CAC is a beautiful building in the  
9 middle of Rice Village. It houses many different  
10 agencies such as a medical clinic; of course,  
11 forensic interview; psychological services; and law  
12 enforcement -- various law enforcement agencies; and  
13 CPS, all for the better communication and  
14 coordination of cases of suspected child sexual  
15 abuse.

16 Q. Okay. So, how long, I guess, have you been  
17 doing this then? How long have you been --

18 A. Here in Houston, since 2005.

19 Q. 2005. Okay. Do you see a lot of these  
20 cases? Few? Many? I mean, how many have you seen?

21 A. Many.

22 Q. Many? Okay.

23 And you said, you know, you meet with  
24 patients. Kind of explain to the jury, I mean, what  
25 it is you do, like what your job actually is there.

1 introduce yourself to the jury.

2 **A.** My name is Reena Isaac; R-E-E-N-A,  
3 I-S-A-A-C.

4 **Q.** And, Doctor, what do you do for a living?

5 **A.** I am a pediatrician, specifically what is  
6 called a child abuse pediatrician. So, after  
7 pediatric residency, I did a formalized training in  
8 diagnosing and treating and managing cases of  
9 suspected child abuse.

10 **Q.** Explain to the jury what type of training  
11 qualifications you have to go through in order to  
12 become this type of doctor?

13 **A.** So, again, after medical school I completed  
14 a pediatric residency at Albert Einstein College of  
15 Medicine, Jacobi Medical Center in New York City.  
16 So, I am a pediatrician.

17 After that I did a subspecialty  
18 training or fellowship in -- at the time what was  
19 called forensic pediatrics or child abuse pediatrics  
20 at Brown Medical Center in Providence, Rhode Island.

21 After that, in 2005, I was recruited  
22 by Baylor College of Medicine and Texas Children's  
23 Hospital to help develop and foster their child  
24 protection medical program at the hospital.

25 In addition, I am also a staff

1                   **THE WITNESS:** Thank you, ma'am.

2                   **THE COURT:** You're released as a  
3 witness.

4                   **(Witness released)**

5                   **MR. BATARSE:** Your Honor, I was going  
6 to make sure and check to see if we have the doctor  
7 here, Judge.

8                   **THE COURT:** Okay.

9                   **(Brief pause)**

10                  **THE BAILIFF:** Your Honor, this witness  
11 has not been sworn.

12                  **THE COURT:** Good afternoon.

13                  **THE WITNESS:** Hi.

14                  **THE COURT:** Would you mind facing the  
15 jury, and raise your right hand.

16                  **(Witness Duly Sworn)**

17                  **THE COURT:** Thank you.

18                  **MR. BATARSE:** May I proceed, Your  
19 Honor?

20                  **THE COURT:** Yes, sir.

21                  **(Witness Duly Sworn)**

22                                 **REENA ISAAC,**  
23 having been first duly sworn, testified as follows:

24   **DIRECT EXAMINATION**

25                   **Q.        (BY MR. BATARSE)** Ms. Isaac, please

1           **A.**     Yes, sir, it would.

2           **Q.**     Okay.  And was the case -- well, did you  
3 document when this occurred?

4           **A.**     Yes, sir, I did.

5           **Q.**     Okay.  And was the case then transferred to  
6 the relevant division?

7           **A.**     Yes, sir.

8           **Q.**     And what division was that?

9           **A.**     I believe it was juvenile sex crimes.

10          **Q.**     Okay.  And do you know which officer ended  
11 up investigating the case?

12          **A.**     (No response.)

13          **Q.**     It's okay if you don't.

14          **A.**     I don't, no, sir.

15          **Q.**     Okay.

16                   **MR. BATARSE:**  Pass the witness.

17                   **THE COURT:**  Thank you.

18                   Mr. Taboada?

19                   **MR. TABOADA:**  No questions, Your  
20 Honor.

21                   **THE COURT:**  No questions?  Is this  
22 officer excused?

23                   **MR. TABOADA:**  Yes, Your Honor.

24                   **MR. BATARSE:**  Yes, Your Honor.

25                   **THE COURT:**  Thank you so much, sir.



1           **A.**     At this point I take the collective  
2 statements; and I call the district attorney's office  
3 to determine if I have established probable cause for  
4 an arrest.

5           **Q.**     Okay. Now, were you ultimately -- you said  
6 that you're a patrol officer, correct?

7           **A.**     Yes, sir.

8           **Q.**     All right. Were you ultimately the officer  
9 who completed, you know, any subsequent  
10 investigations?

11          **A.**     No, sir, I was not.

12          **Q.**     Is that part of your job description to  
13 also, you know, follow up and be the investigator on  
14 these cases?

15          **A.**     No, sir.

16          **Q.**     Does HPD have a system for follow-up and  
17 investigating cases?

18          **A.**     Yes, sir.

19          **Q.**     Who -- how did that happen? Does it get  
20 referred to somebody?

21          **A.**     It gets referred to the concerned division.  
22 I'm -- for violent crimes, usually homicide division.  
23 For crimes involving juveniles, there is juvenile  
24 investigators. There is --

25          **Q.**     Would that describe this situation?

1 the fact that he was telling you this?

2 **A.** Yes, sir.

3 **Q.** Yeah. Is it normal for -- you know, is it  
4 normal for defendants to just admit stuff like this  
5 to you?

6 **A.** In my experience, no.

7 **Q.** Okay. So, what else did he say?

8 **A.** He said on the morning that he was woken up  
9 by Jasmine, he felt a warm body and he just reacted.  
10 He grabbed her breasts. He said then he realized who  
11 it was. We continued conversating. We went back to  
12 it, and then it changed to he grabbed her breast and  
13 her buttocks before he realized who it was.

14 And then the third and final time that  
15 we spoke about the incident, he went as far as to say  
16 he grabbed her breasts, buttocks and got on top of  
17 her before he realized who it was. But at no time  
18 did he admit to any intercourse or anything along  
19 those lines.

20 **Q.** So, each time he would disclose to you,  
21 there was more information that he would disclose to  
22 you, correct?

23 **A.** Yes, sir.

24 **Q.** Okay. So, at this point, after he has told  
25 you this, what do you do?

1 there was any intimidation factor that could have  
2 taken place, I didn't want that. I didn't want  
3 people's statements to be overheard and, therefore,  
4 intertwined. I wanted everybody's statements to be  
5 their own statement.

6 **Q.** Okay. And what was your -- tell us about  
7 your discussion with the defendant.

8 **A.** I just asked him what had happened, why I  
9 was called to the location. He replied, Whatever  
10 they tell you is accurate.

11 I gave him kind of a brief synopsis of  
12 what they had told me and that I do not think he  
13 wanted to just agree with it. He told me that it was  
14 a misunderstanding, that that's not exactly what had  
15 happened. And we went into further detail.

16 He said that while the mother was away  
17 in Mexico, he was taking care of Jasmine and her  
18 sisters and that one morning Jasmine had woke him up.  
19 In his words verbatim, he said -- he said, "I'm a  
20 horny motherfucker and I felt a warm body wake me up  
21 and I just reacted."

22 We went into more detail, and he said  
23 that he --

24 **Q.** I just want to interrupt you here. Just so  
25 that we're clear with the jury, were you surprised by

1 Chacon, did you observe injuries on her?

2 A. Yes, sir, I did.

3 Q. Okay. And an officer spoke to Jasmine, the  
4 victim, and also -- and you spoke to Ms. Ortiz. Did  
5 you and the officer discuss what y'all learned from  
6 the victim and her mother?

7 A. Yes, sir. The female officer relayed the  
8 information to me, as I was the primary and  
9 investigating officer on the scene.

10 Q. And were they spoken to separately at that  
11 point?

12 A. Yes, sir.

13 Q. And were stories consistent as to what  
14 occurred?

15 A. Yes, sir.

16 Q. Okay. Now, you spoke to the defendant,  
17 correct?

18 A. Yes, sir, I did.

19 Q. All right. Now, at the time you spoke to  
20 the defendant, was he formally under arrest?

21 A. At that time, no.

22 Q. Okay. Why did you separate him from  
23 everyone else?

24 A. I didn't want -- while Jasmine was giving a  
25 statement to the female officer, I didn't want -- if

1 the scene?

2 **A.** Yes, sir, I did.

3 **Q.** Okay. You spoke to mom?

4 **A.** Yes, sir.

5 **Q.** Female officer spoke to the child?

6 **A.** Yes, sir.

7 **Q.** Did you also speak to anyone else at the  
8 scene?

9 **A.** Yes, sir. I -- I brought the defendant  
10 away from the other parties and spoke to him.

11 **Q.** Okay. And why did you do that?

12 **A.** I didn't want him to interfere -- or  
13 anybody for that matter -- interfere with any  
14 statement. I didn't want an intimidation factor for  
15 anybody to overhear any conversation taking place.

16 **Q.** Okay. So, you separated the parties?

17 **A.** Yes, sir.

18 **Q.** Okay. Before we get into the discussion  
19 with the defendant, did the mom -- did the --  
20 Ms. Ortiz, did she explain the reason for the call?

21 **A.** Yes, sir.

22 **Q.** Okay. And did you -- did you observe any  
23 injuries on the child?

24 **A.** I did.

25 **Q.** Jasmine -- pardon me. The child, Jasmine

*James Huckabee - July 20, 2015  
Direct Examination by Mr. Batarse*

1           **Q.**     And who was she?

2           **A.**     The mother of the complainant.

3           **Q.**     Okay.  And when you say "the complainant,"  
4 who are you referring to?

5           **A.**     The juvenile daughter.

6           **Q.**     Okay.  Are you referring to Jasmine?

7           **A.**     Yes.

8           **Q.**     Okay.  Now, did you actually speak to the  
9 child; or did somebody else speak to the child?

10          **A.**     I elected, due to the nature of the call  
11 and what I had been told by the mother, to have a  
12 female officer speak to Jasmine.

13          **Q.**     And Jasmine, did she appear to be young?  
14 Old?

15          **A.**     She appeared to be young.

16          **Q.**     How old?

17          **A.**     She appeared to be 10 to 12 years old.

18          **Q.**     Okay.  What was her demeanor when you got  
19 there?

20          **A.**     She was -- she was very upset, crying, not  
21 a lot of communication while I was speaking to her  
22 mother.  That's why I determined that if she was  
23 going to open up to anybody, it would probably be a  
24 female officer.

25          **Q.**     Okay.  So, you had a female officer come to

*James Huckabee - July 20, 2015  
Direct Examination by Mr. Batarse*

1 Q. So, circle that for us.

2 A. Yes, sir. (Witness complies.)

3 Q. Okay. And what did you do?

4 A. I exited my patrol vehicle, spoke to both  
5 parents, got the nature of the call.

6 Q. Who -- who all was there? I mean, was it a  
7 lot of people? A few people?

8 A. There was -- there was quite a few people.  
9 There was two defined groups. The mother and the  
10 complainant were standing in the driveway separated  
11 by a very large gap between the -- between the man I  
12 have been calling the suspect and the people that  
13 lived at the actual residence that I was flagged down  
14 at.

15 Q. Okay. So, there is two groups; and they  
16 are close to each other, right?

17 A. Yes, sir.

18 Q. All right. And did you -- you said you got  
19 out and spoke to them?

20 A. Yes, sir.

21 Q. Is that normal procedure?

22 A. Yes, sir.

23 Q. Okay. All right. And so, did you talk to  
24 someone by the name of Maria Ortiz?

25 A. Yes, sir, I did.

James Huckabee - July 20, 2015  
Direct Examination by Mr. Batarse

1           **Q.**     Okay.  So, May 5, 2013, you were working  
2 patrol that night.  At about what time were you  
3 dispatched to the location that you have got circled  
4 there?

5           **A.**     I believe it was 2:00 a.m.

6           **Q.**     Okay.  I'm going to show you a little close  
7 up.  If you don't mind clearing the screen.  Press  
8 the lower left-hand corner of the screen.

9           **A.**     (Witness complies.)

10          **Q.**     Thanks.

11                                 Showing you State's Exhibit No. 2.  
12 And what address is that showing it?

13          **A.**     7414 Glass Street.

14          **Q.**     Okay.  And why were you dispatched to 7414  
15 Glass Street?

16          **A.**     That was the residence of the complainant  
17 and the witness.

18          **Q.**     And what was the purpose?  What was the  
19 reason for the call?

20          **A.**     It was an injury to a child.

21          **Q.**     Okay.  So, describe what happened when you  
22 arrived.

23          **A.**     Before I could even arrive at the location,  
24 we were flagged down at the corner of the  
25 intersecting street of Denmark and Glass Street.



*James Huckabee - July 20, 2015  
Direct Examination by Mr. Batarse*

1 threat of violence, it's code 2, which means we  
2 cannot observe any other calls other than a felony.  
3 We have to proceed to that call. And then lessers in  
4 degree from there.

5 Q. Okay. So, there is a priority list, right?

6 A. Yes, sir, there is.

7 Q. So, you get sent out to a call; and when  
8 you get out there, what's your job?

9 A. Depending on nature of the call, find the  
10 facts, pursue the criminal justice system, separate  
11 parties. It depends on the nature of the call.

12 Q. Kind of whole gambit anytime someone calls  
13 911, right?

14 A. Yes, sir.

15 Q. What is the indication that you have -- or  
16 did you get an indication of what kind of call you're  
17 going to? Do you receive any information like that?

18 A. There is a short description in our  
19 dispatched call that dispatch advises us when the  
20 person calls 911, what they describe to the 911 call  
21 taker.

22 Q. Okay. So, someone speaks to the 911  
23 operator; and then they send you some -- a little  
24 blurb of the information, right?

25 A. Yes, sir.

1 patrol and that you were a field training officer.

2 What does it mean to be an FTO?

3 **A.** As new police officers come out of the  
4 academy, we teach them how to be basic police  
5 officers and ensure that their training is up to date  
6 and they meet the requirements of the job.

7 **Q.** Let's talk about May of 2013. Were you  
8 working patrol then?

9 **A.** Yes, sir, I was.

10 **Q.** All right. And that circle there on  
11 State's Exhibit No. 1, that is the patrol you were  
12 working?

13 **A.** Yes, sir.

14 **Q.** All right. What shift were you working?

15 **A.** Night shift.

16 **Q.** And what are the times for that shift?

17 **A.** 11:00 p.m. to 7:00 a.m.

18 **Q.** All right. Describe to the jury -- you  
19 know, when you get a normal call for service or 911  
20 call, what is your procedure? What do you do?

21 **A.** Based on the priority of the call dictates  
22 how quickly we move to the call. If it's an  
23 in-progress call where somebody's life is in  
24 jeopardy, it's lights and sirens. If it is a call  
25 where there is a suspect still on the scene or a

1           **A.**       Yes, sir, it is.

2                   **MR. BATARSE:** State moves to enter  
3 State's Exhibit No. 1. Tender to opposing counsel  
4 for objection.

5                   **MR. TABOADA:** No objection.

6                   **THE COURT:** Admitted.

7                   **MR. BATARSE:** May I publish, Your  
8 Honor?

9                   **THE COURT:** Yes, sir.

10           **Q.**       **(BY MR. BATARSE)** So, we're looking at  
11 State's Exhibit No. 1. And this is -- is this in  
12 Harris County, Texas?

13           **A.**       Yes, sir.

14           **Q.**       All right. And this little area right  
15 here, can you point to the spot where you were  
16 dispatched back in May of 2013?

17           **A.**       Yes, sir.

18           **Q.**       Okay. And what area were you patrolling at  
19 that time?

20           **A.**       Residential area, northeast Houston.

21           **Q.**       Okay. So, could you like circle the  
22 general area? Do you see it on that map?

23           **A.**       Absolutely. (Indicating.) Roughly about  
24 that, sir.

25           **Q.**       All right. And you mentioned that you did

1 citizens in locations, and provide proactive  
2 policing.

3 Q. Okay. So, calls for service. So,  
4 basically, if someone calls the police, they want an  
5 officer at the scene, you're the guy who shows up?

6 A. Yes, sir.

7 Q. All right. I'm showing you what's been  
8 marked as State's Exhibit No. 1. Actually, you know  
9 what? I apologize.

10 Before I do that, officer, do you  
11 recognize State's Exhibit No. 1?

12 A. Yes, sir.

13 Q. Okay. And what is it?

14 A. It's a map of the city of Houston.

15 Q. Okay. And is that a map of a portion of  
16 Harris County?

17 A. Yes, sir.

18 Q. Okay. And this red dot here, do you  
19 recognize where that is?

20 A. Yes, sir.

21 Q. Okay. And where is that?

22 A. It's the original dispatched location, a  
23 residence in my jurisdiction.

24 Q. Okay. Is this a fair and accurate  
25 depiction of a map of this area of Houston?

1           **A.**       Houston Police Department.

2           **Q.**       And how long have you been employed with  
3       HPD?

4           **A.**       Seven years in December.

5           **Q.**       Okay.  What kind of training do you have to  
6       have -- or do you have to receive before you can  
7       become a police officer?

8           **A.**       There is a six-month academy time where  
9       we're studying laws, and then six months on-the-job  
10       training with a field training officer.

11          **Q.**       And when did that occur?  2000 what?

12          **A.**       2008.

13          **Q.**       2008.  And you have been with the police  
14       department since then?

15          **A.**       Yes, sir.

16          **Q.**       Okay.  Tell the jury what kind of jobs you  
17       have had while you have been a peace officer?

18          **A.**       In the department?

19          **Q.**       Yes.

20          **A.**       I have been patrol my entire eight years,  
21       as a field training officer the last five.

22          **Q.**       All right.  So, we'll talk about these.

23                    Patrol.  What does that mean to be a  
24       patrol officer?

25          **A.**       Respond to calls for service, 911 calls for

1 witness?

2 **MR. BATARSE:** Officer James Huckabee.

3 **THE COURT:** Thank you.

4 **THE BAILIFF:** Your Honor, this witness  
5 has not been sworn.

6 **THE COURT:** Thank you. Come on up,  
7 please, sir. And if you don't mind, would you turn  
8 and face the jury and raise your right hand to take  
9 the oath.

10 **(Witness Duly Sworn)**

11 **THE COURT:** Thank you, sir. Please  
12 have a seat there.

13 **MR. BATARSE:** May I proceed, Your  
14 Honor?

15 **THE COURT:** Yes, sir.

16 **JAMES HUCKABEE,**  
17 having been first duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 **Q.** **(BY MR. BATARSE)** Officer, would you please  
20 introduce yourself to the jury?

21 **A.** Yes ma'am. Excuse me. My name is Officer  
22 James Huckabee with the Houston Police Department.

23 **Q.** And, officer, do you mind just pulling that  
24 microphone up a little bit?

25 You're with which police department?



1                   **THE COURT:** Okay. Thank you. You  
2 pass the witness?

3                   **MR. TABOADA:** Yes, Your Honor. Pass  
4 the witness.

5                   **THE COURT:** Thank you.  
6 Any redirect?

7                   **MR. BATARSE:** Very briefly, Judge.

8                   **REDIRECT EXAMINATION**

9                   **Q.**        **(BY MR. BATARSE)** Clear up any confusion,  
10 Ms. Ortiz. The sexually transmitted disease that you  
11 were aware of in 2007, did the defendant still have  
12 it after 2007?

13                   **A.**        No, sir.

14                   **Q.**        Okay. So, he didn't have a sexually  
15 transmitted disease after that, did he?

16                   **A.**        No.

17                   **MR. BATARSE:** Pass the witness, Judge.

18                   **THE COURT:** Thank you.

19                   Any recross?

20                   **MR. TABOADA:** Yes, Your Honor.

21                   **RECROSS-EXAMINATION**

22                   **Q.**        **(BY MR. TABOADA)** How would you know that he  
23 did not have a sexually transmitted disease after  
24 2007?

25                   **A.**        Because I would follow up with my doctor.



1                   **MR. TABOADA:** No.

2                   **(Jury enters the courtroom)**

3                   **THE COURT:** Thank you. Please be  
4 seated. Thank you.

5                   You may continue, Mr. Taboada.

6                   **MR. TABOADA:** Thank you, Your Honor.

7                   **CROSS-EXAMINATION (CONTINUED)**

8                   **Q.**       **(BY MR. TABOADA)** Ms. Ortiz, just two  
9 questions. The first, are you aware of Mr. Lopez  
10 having sexual encounters, affairs, with other women  
11 other than yourself?

12                  **A.**       No.

13                  **Q.**       Okay. In 2007, did he have --

14                  **THE COURT:** Sir, I agreed you may ask  
15 two questions. Ask those two questions only.

16                  **MR. TABOADA:** Okay.

17                  **Q.**       **(BY MR. TABOADA)** And are you aware of  
18 Mr. Lopez acquiring a sexually transmitted disease?

19                  **A.**       In 2007, yes.

20                  **MR. TABOADA:** Nothing further, Your  
21 Honor.

22                  **THE COURT:** And what about the other  
23 question? You feel that you asked that?

24                  **MR. TABOADA:** I have no further  
25 questions.

1 had a STD and why the child didn't get it. So, I  
2 think we're -- everybody is better off just to let it  
3 be played out.

4 **MR. BATARSE:** Yes, Judge.

5 **THE COURT:** Do you know what I mean?

6 **MR. BATARSE:** Yes, Your Honor.

7 **THE COURT:** So, it's going to be a big  
8 mess down the road; and it looks to me like this is  
9 the easiest way to handle it. I will listen to  
10 whatever else you have to say.

11 **MR. BATARSE:** That's fine, Judge.

12 **THE COURT:** Right. Because he could  
13 have the condoms and an STD and seems to me it's just  
14 better if everybody gets this straight, and it only  
15 takes two questions and saves us a big hassle down  
16 the road.

17 **MR. BATARSE:** Yes, Judge.

18 **THE COURT:** All right. Then we're  
19 ready for the jury, right?

20 So, you're asking her two questions,  
21 right?

22 **MR. TABOADA:** Whether he had it and  
23 whether he had an affair.

24 **THE COURT:** I don't want to hear who  
25 it was with or any of that.

1 asking her: Are you aware that he has had affairs,  
2 sexual encounters, with other women other than  
3 yourself?

4 **THE COURT:** She just said she is not  
5 aware of any since '07.

6 **MR. TABOADA:** Yeah, but in '07.

7 **THE COURT:** Well, you may ask her:  
8 Are you aware that your husband was having an affair?  
9 And she may answer in -- yes, in 2007.

10 **MR. TABOADA:** Yeah.

11 **THE COURT:** If you want to, you may  
12 ask: Did he have a sexually transmitted disease?  
13 And then I presume she is going to say in '07.

14 **THE WITNESS:** Yes, ma'am.

15 **THE COURT:** Right? Only in '07. So,  
16 then that's cleared up for everybody. Is that all  
17 right?

18 Now, you still object?

19 **MR. BATARSE:** I object, Judge. I'll  
20 do whatever the Court wants to do. I just don't  
21 understand the relevancy of him having a sexually  
22 transmitted disease in 2007 to an incident that  
23 occurred in 2012.

24 **THE COURT:** Well, it's not relevant;  
25 but I think the jury is going to be wondering if he

1 Julie?

2 **A.** I never saw her again since 2007.

3 **Q.** Still around, I know. But in 2012, 2013,  
4 she was still coming around. She was still visiting  
5 with y'all?

6 **A.** I haven't seen the girl since 2007.

7 **Q.** All right.

8 **THE COURT:** So, what you're trying to  
9 get in is that he had -- was having affairs at that  
10 time and that he had condoms --

11 **MR. TABOADA:** Correct.

12 **THE COURT:** Really?

13 **MR. TABOADA:** That is the whole bottom  
14 line. That's it.

15 **THE COURT:** And, I'm sorry, I've  
16 forgotten. Your husband did or did not have a STD?

17 **THE WITNESS:** In '07.

18 **THE COURT:** And when was that cleared  
19 up? Does he still have a STD '08, '09, '10 -- '09,  
20 '10 -- '10?

21 **THE WITNESS:** No.

22 **THE COURT:** Only in '07?

23 **THE WITNESS:** Yes, ma'am.

24 **MR. TABOADA:** Then, Your Honor, if I  
25 may, I would then rephrase the question by stating --

1 Honor. I disagree. If she can say that he has  
2 picked up sexually transmitted disease, that should  
3 suffice.

4 **THE COURT:** So, you're not trying to  
5 claim he was using condoms to keep from transmitting  
6 a sexually transmitted disease to her in 2012?

7 **MR. TABOADA:** No. I'm claiming that  
8 he was using condoms in 2013 with other women.

9 **THE COURT:** And --

10 **MR. TABOADA:** That's why they were  
11 found in the truck.

12 **THE COURT:** Okay. Well, she --  
13 establish when it was that she knew he was having an  
14 affair, if there was any time other than 2007.

15 **Q. (BY MR. TABOADA)** Did you know whether he  
16 had affairs?

17 **A.** In 2007.

18 **Q.** Okay. With Julie?

19 **A.** Yes.

20 **Q.** And Julie was still visiting --

21 **THE COURT:** We don't need to know who  
22 it is, do we? Okay. Let me let you finish your  
23 questioning.

24 **Q. (BY MR. TABOADA)** Julie was still visiting  
25 in 2012, 2013, still visiting at your house, correct?

1 may ask her was she aware that he was having an  
2 affair with other women, and her answer will be no.  
3 And --

4 **MR. TABOADA:** And is it true or not  
5 true she got STDs from him, from my client.

6 **THE COURT:** Okay. Why don't you  
7 establish whether or not she knew he had a STD.

8 **Q. (BY MR. TABOADA)** Did he have sexually  
9 transmitted diseases?

10 **A.** In 2007, while I was pregnant with his  
11 daughter. I was four months pregnant.

12 **THE COURT:** Ma'am, that's not the  
13 question. Answer just the question asked, please.

14 **Q. (BY MR. TABOADA)** He did?

15 **A.** It's because I don't understand. If you're  
16 talking about if I knew that he had STDs when this  
17 happened, 2012? No.

18 **Q.** At any time.

19 **A.** In 2007, yes.

20 **Q.** Okay. And at that time he -- and at some  
21 time -- I don't know what dates are, but at some time  
22 he transmitted a disease to you?

23 **THE COURT:** That's irrelevant if he  
24 transmitted it to her, isn't it? Are you trying --

25 **MR. TABOADA:** Okay. I disagree, Your



1                   **THE COURT:** The problem -- it seems to  
2 me you can simply ask: Were you aware he was having  
3 sex with other women? That would be one way to ask  
4 it.

5                   **MR. TABOADA:** What if she denies it?

6                   **THE COURT:** Well, I don't --

7                   **MR. TABOADA:** Sexually transmitted  
8 diseases are evidence that he was cheating on her.

9                   **THE COURT:** Well, let's start with the  
10 first question first. Do you want to just ask her  
11 outside the presence of the jury on that?

12                   **MR. TABOADA:** Okay, Your Honor.

13                   **THE COURT:** Okay. Just -- can you do  
14 it from up here?

15                   **MR. TABOADA:** Yes, ma'am, Your Honor.

16                   **THE COURT:** So we don't have to take  
17 time to go back and forth. Can you see the witness?

18                   **MR. TABOADA:** Yes, Your Honor.

19                   **THE COURT:** Okay.

20                   **CROSS-EXAMINATION**

21                   **Q.**       **(BY MR. TABOADA)** Ms. Ortiz, I know this is  
22 very embarrassing; but I need to ask you. You're  
23 aware that Mr. Lopez was cheating on you, right?

24                   **A.**       No.

25                   **THE COURT:** Okay. Then there you go.



1 he --

2 **MR. TABOADA:** No, because he slept  
3 with other women. But the fact that she got STDs  
4 from him supports -- shows that he was cheating on  
5 her. If he was cheating on her, he needed to use  
6 condoms. Condoms were not for the child. The  
7 condoms were for the women he was cheating on her  
8 with.

9 **THE COURT:** Okay.

10 **MR. TABOADA:** Your Honor, right now  
11 the jury is thinking that the condoms --

12 **THE COURT:** I know what they are  
13 thinking. I got that down.

14 So, do you know anything about this?

15 **MR. BATARSE:** Judge, no. I have  
16 never -- number one, I don't know anything about the  
17 nature of this witness' sexually transmitted  
18 diseases. I think it's completely inappropriate to  
19 ask her about this. I think she has had to share --

20 **THE COURT:** Well, the condoms have  
21 become a key --

22 **MR. BATARSE:** Yes, Your Honor.

23 **THE COURT:** -- point of evidence.

24 **MR. BATARSE:** I'm not understanding  
25 how it's making it relevant, though.

1 relevant as to how he got it and that's  
2 necessarily -- and whether or not she ever had it.  
3 So, is your point that he had condoms because he  
4 either did not want to give or receive a sexually  
5 transmitted disease? Is that your point?

6 **MR. TABOADA:** No. The condoms were to  
7 use with other women. He was cheating on her.

8 **THE COURT:** Well, how would she know  
9 that? Did he tell her he was cheating? Was she  
10 there? That's hearsay.

11 **MR. TABOADA:** Well, she -- if she  
12 testifies that she got a sexually transmitted disease  
13 from him, obviously, he was sleeping around. He was  
14 sleeping around with other women.

15 **THE COURT:** So, you're just trying to  
16 get into the fact he was having sex with other women?

17 **MR. TABOADA:** Yes. And that's the  
18 condoms. That is the reason for the condoms.

19 **THE COURT:** Before you ask any witness  
20 if they have had a sexually transmitted disease, you  
21 need to approach the bench because that's just not  
22 allowed. You just don't ask. She is not a victim in  
23 this case.

24 So, are you saying he had condoms  
25 because he had a sexually transmitted disease and

1 they were for other women or not. So, are you trying  
2 to get into the fact that he had sex with other  
3 women; or are you trying to get into the fact that he  
4 had condoms because he had sexually transmitted this  
5 disease? What are you trying to get into?

6 **MR. TABOADA:** Both condoms and --

7 **THE COURT:** I have to send the jury  
8 out.

9 *(End of Bench Discussion)*

10 **THE COURT:** Please retire the jury.  
11 All rise, please, for the jury.

12 *(Jury released)*

13 **THE COURT:** Thank you. You may have a  
14 seat -- not you. No. Just the people standing in  
15 the audience.

16 Okay. Who do you believe had a  
17 sexually transmitted disease?

18 **MR. TABOADA:** Okay. Your Honor,  
19 obviously, the jury is getting the impression that  
20 the condoms were for the child. I want to show the  
21 jury, through the testimony of the witness and also  
22 through other testimony, testimony of my own client,  
23 that she got sexually transmitted diseases from him  
24 because he cheated on her.

25 **THE COURT:** Well, none of that is

1                   **THE COURT:** You can ask did your  
2 client have a sexually transmitted disease, right?

3                   **MR. TABOADA:** I was going to get to  
4 that.

5                   **THE COURT:** Huh?

6                   **MR. TABOADA:** I was going to get to  
7 that.

8                   **THE COURT:** Are you saying this  
9 witness got a sexually transmitted disease from the  
10 defendant?

11                   **MR. TABOADA:** Yes.

12                   **THE COURT:** Oh, well, it really  
13 doesn't matter, does it, if she had a sexually  
14 transmitted disease? It only matters if he had one  
15 because he could have infected the child, right? And  
16 that could have caused him to use condoms with her,  
17 right? Are you claiming that he was using condoms so  
18 he wouldn't get it from her?

19                   **MR. TABOADA:** The condoms were for  
20 other women.

21                   **THE COURT:** I can't hear you. I can't  
22 hear you.

23                   **MR. TABOADA:** The condoms were to use  
24 with other women, not with her, not with the child.

25                   **THE COURT:** Oh, she doesn't know if

1                   **MR. BATARSE:** How would you get a  
2 sexually transmitted disease --

3                   **THE COURT:** Yeah, I can't keep sending  
4 the jury out. Clearly the implication is that he had  
5 condoms to use with the child because he didn't use  
6 them with her. And you want to go into the fact that  
7 he did use them with other -- because one of them  
8 would have had a sexually transmitted disease?

9                   **MR. TABOADA:** He used condoms.

10                  **THE COURT:** Sir, talk -- yes? What  
11 are you trying to do?

12                  **MR. TABOADA:** Trying to show that the  
13 condoms were not for the child but for other women.

14                  **THE COURT:** Okay. Then why did you  
15 ask this witness if she had a sexually transmitted  
16 disease?

17                  **MR. TABOADA:** She picked them up from  
18 my client.

19                  **THE COURT:** Because what?

20                  **MR. TABOADA:** Because she picked them  
21 up from my client. My client transmitted those  
22 diseases.

23                  **THE COURT:** What?

24                  **MR. TABOADA:** Because he has always  
25 been unfaithful.

1 the child was going to get him in trouble?

2 **A.** No.

3 **Q.** No? Okay.

4 Now, isn't it true that you contracted  
5 three sexually transmitted diseases --

6 **MR. BATARSE:** Objection, Your Honor.

7 **THE COURT:** You have got to be  
8 kidding. Approach.

9 **MR. TABOADA:** Your Honor --

10 **THE COURT:** Approach. Come on up.

11 **(At the Bench)**

12 **THE COURT:** Yes, sir?

13 **MR. TABOADA:** Regarding the condoms  
14 that the State has brought up, the reason for the  
15 condoms --

16 **MR. BATARSE:** Judge --

17 **THE COURT:** Excuse me?

18 **MR. BATARSE:** I didn't mean to  
19 interrupt, Judge; but he is speaking very loudly.

20 **THE COURT:** Sorry. There is no point  
21 in having a bench conference if you don't whisper.

22 So, are you indicating that she -- that condoms  
23 needed to be used because one of --

24 **MR. TABOADA:** He was using the condoms  
25 with other ladies.

1           **A.**     With their dad at the time.

2           **Q.**     With their dad?

3           **A.**     Yes.

4           **Q.**     Okay. Before November of 2012, was there  
5 any conduct on the part of Jasmine with respect to  
6 Mr. Lopez that you would object to?

7           **A.**     Can you explain to me what do you mean by  
8 that?

9           **Q.**     Did you -- did you at times feel the child  
10 acted inappropriately with respect to Mr. Lopez?

11          **A.**     No.

12          **Q.**     No? Did the child ever jump in bed with  
13 the two of you when the two of you were in bed? Jump  
14 between the two of you?

15          **A.**     All of them would. The four girls, yes.

16          **Q.**     All of them would? Okay.

17                   Did you ever have an argument with the  
18 child because of the way she would behave with  
19 Mr. Lopez?

20          **A.**     Not an argument. I just told her that she  
21 was getting older, and it wasn't the same thing as  
22 him carrying our 2-year-old or for her to jump on him  
23 because she was already older.

24          **Q.**     Okay. Isn't it true you told Mr. Lopez  
25 that he should stop playing with the child because

1 narratives do not match, you chose to -- to go live  
2 in Mexico with Mr. Lopez?

3 **A.** Yes.

4 **Q.** Okay. And you stayed there for nine  
5 months, correct?

6 **A.** Yes.

7 **Q.** Okay. Did you feel comfortable staying  
8 there for nine months with him?

9 **A.** No.

10 **Q.** No? Why didn't you?

11 **A.** Why did I what?

12 **Q.** Why did you stay nine months there with  
13 him?

14 **A.** Because I loved him at the time.

15 **Q.** Okay.

16 **A.** I thought I was doing the right thing. I  
17 don't know. I was confused.

18 **Q.** And what was the reason why you returned to  
19 the States?

20 **A.** Because I wanted to be with my two  
21 daughters, Jasmine and Natalie.

22 **Q.** Okay. And who were your two daughters with  
23 then?

24 **A.** Which ones?

25 **Q.** Jasmine and Natalie.



1           **Q.**       **(BY MR. TABOADA)** Okay. Ms. Ortiz, you have  
2 heard from both your child Jasmine and Mr. Lopez.  
3 Each of them gave you a narrative about what  
4 transpired; is that correct?

5           **A.**       Yes.

6           **Q.**       Okay. And these two narratives do not  
7 match; is that correct?

8           **A.**       Yes.

9           **Q.**       Okay. And even though these two narratives  
10 do not match, you still chose to go to live in Mexico  
11 with Mr. Lopez, correct?

12          **A.**       Yes.

13          **Q.**       Okay.

14                   **THE REPORTER:** Judge, one of the  
15 jurors is indicating she is having a problem hearing.

16                   **THE COURT:** Is it the witness or the  
17 lawyer?

18                   **A JUROR:** The lawyer. And always the  
19 second part. I'm sorry.

20                   **MR. TABOADA:** So sorry.

21                   **THE COURT:** Thank you. Please keep  
22 your voice up, sir.

23                   **MR. TABOADA:** Yes.

24                   **THE COURT:** Okay.

25          **Q.**       **(BY MR. TABOADA)** Despite the fact that the

1 And then what he said about I didn't take her  
2 virginity might be admissible because it was in the  
3 same conversation later. So, I sustained it. Okay.  
4 Thank you.

5 So, having listened to the testimony,  
6 the objection is sustained. You may ask her if she  
7 at times found the child to be not credible. That's  
8 all you're allowed to ask. Don't go into any  
9 specific instances. And at this time the information  
10 about the virginity is not admissible. It's not an  
11 admission against interest when you offer it.

12 Okay. Then we're ready for the jury.  
13 And I will try to take better notes. Thank you.  
14 Because I can see there is going to be a lot of this.

15 **THE COURT:** And, sir, if I sustain the  
16 objection, don't ask the same question again.

17 **MR. TABOADA:** Okay, Your Honor.

18 **THE COURT:** Okay.

19 *(Brief pause)*

20 *(Jury enters the courtroom)*

21 **THE COURT:** Thank you, you may have a  
22 seat.

23 And, Mr. Taboada, I believe you were  
24 on cross-examination.

25 **MR. TABOADA:** Thank you, Your Honor.

1                   **MR. BATARSE:** That's correct, Judge.

2                   **THE COURT:** That's where we stopped?

3                   **MR. BATARSE:** I think there is more on  
4 that, Judge.

5                   **THE COURT:** Okay. Let me hear the  
6 rest.

7                                   *(The following testimony continued to*  
8                                   *be read back to the Court.)*

9                   **QUESTION:** You received a call from Mr.  
10 Lopez on May 6th, did you not? Of 2013, did you  
11 not?

12                   **ANSWER:** I received several. I don't know  
13 what -- what those dates were.

14                   **QUESTION:** Okay. Correct. You have no  
15 recollection about when he -- he told you that he  
16 did not take away the child's virginity?

17                   **MR. BATARSE:** Objection, Your Honor, calls  
18 for hearsay.

19                   **THE COURT:** Sustained.

20                                   That completes the readback of the  
21 cross-examination, Judge.

22                                   *(End of Read back)*

23                   **THE COURT:** On the record, Cynthia has  
24 been reading. I thought that you were going to cover  
25 this at some point as an admission against interest.

1           about who was telling the truth, your daughter or  
2           Mr. Lopez, at the time that you decided to leave  
3           with Mr. Lopez?

4                    ANSWER:  No, because I was so confused.  I  
5           didn't know what to think.

6                    QUESTION:  Okay.  Did you doubt his word  
7           when you decided to leave with him?

8                    ANSWER:  I don't know.

9                    QUESTION:  He had admitted to you to some  
10          conduct with your daughter, correct?

11                   ANSWER:  Yes.

12                   QUESTION:  Okay.  But he had specifically  
13          told you that he had -- that your daughter had  
14          not lost her virginity, correct?

15                   MR. BATARSE:  Objection, Your Honor,  
16          hearsay.

17                   THE COURT:  Sustained.  At this point in  
18          time, sustained.

19                   MR. TABOADA:  Okay.

20                   THE COURT:  Since I don't know about the  
21          rest of the conversation.

22                                **(Pause from reading back testimony)**

23                   **THE COURT:**  There is nothing in the  
24          record about virginity, because you objected to  
25          hearsay.

1                   **THE COURT:** Cynthia, would you read  
2 back his cross, all of his cross-examination? I can  
3 see I'm going to have to write down everything on my  
4 outline, not just juror points.

5                   *(The following testimony was read to*  
6                   *the Court as requested.)*

7                   **THE REPORTER:** This is  
8 cross-examination of Ms. Ortiz by Mr. Taboada.

9                   **QUESTION:** Ms. Ortiz, so, how long did you  
10 live in Mexico with Mr. Lopez?

11                   **ANSWER:** I think it was about nine months.

12  
13                   **QUESTION:** Ms. Ortiz, so, how long did you  
14 live in Mexico with Mr. Lopez?

15                   **ANSWER:** I think it was about nine months.

16                   **QUESTION:** Nine months. And the two of you  
17 managed to enroll two of your children in school  
18 in Mexico?

19                   **ANSWER:** Yes.

20                   **QUESTION:** Okay. At the time that you  
21 decided -- at the time you decided to leave there  
22 for Mexico with him, you had concluded that --  
23 that he was being truthful with you, correct?

24                   **ANSWER:** I don't recall.

25                   **QUESTION:** Okay. Had you made a decision

1 question that called for hearsay.

2 **MR. BATARSE:** No, Your Honor, did not.

3 **THE COURT:** He did?

4 **MR. TABOADA:** I did.

5 **THE COURT:** But you didn't object.

6 So, that came in without objection.

7 **MR. BATARSE:** I --

8 **THE COURT:** I'm trying to figure out  
9 how we got in this place.

10 **MR. BATARSE:** No. The reason we  
11 approached is I did object.

12 **THE COURT:** Not to this part about  
13 playing the tape. But when he asked --

14 **MR. BATARSE:** When he asked --

15 **THE COURT:** I believe I'm going to  
16 have to take very detailed notes to get through this  
17 trial.

18 **MR. BATARSE:** Your Honor, when he  
19 asked the question of whether or not she -- he first  
20 asked the question of whether or not the daughter had  
21 lied about the mother to CPS, whether Jasmine had  
22 lied to CPS. That's the reason we wanted -- ended up  
23 approaching. Because I had no idea what he was  
24 talking about with regards to CPS. Before that we  
25 had objected to his question about whether or not --

1                   **MR. BATARSE:** He says, "I didn't take  
2 her virginity away."

3                   **THE COURT:** He doesn't say somebody  
4 else did, did he? I didn't hear that.

5                   **MR. BATARSE:** That is the implication,  
6 Judge. I'm saying that's the way --

7                   **THE COURT:** She said you had no reason  
8 to take it away.

9                   **MR. BATARSE:** No reason to do that.  
10 You had no reason ever to do that. And his response  
11 is, I didn't take her virginity away. I didn't have  
12 sex with her. I didn't do anal.

13                   I didn't do none -- not a denial. He  
14 is just saying, I didn't take her virginity, meaning  
15 it was someone else.

16                   **THE COURT:** That's not how I take  
17 that.

18                   **MR. BATARSE:** Yes, Your Honor.

19                   **THE COURT:** And I'm trying to remember  
20 now how this came up again. You didn't go into that  
21 at all?

22                   **MR. BATARSE:** No, Judge.

23                   **THE COURT:** Okay.

24                   **MR. BATARSE:** I did not.

25                   **THE COURT:** And so, you requested a

1                   **THE COURT:** Just -- just play that,  
2 and ask her if now that -- do you remember this now  
3 that you -- your memory is refreshed.

4                   **MR. TABOADA:** Okay.

5                   **THE COURT:** Blah, blah, blah.

6                   **MR. TABOADA:** Thank you, Judge.

7                   **THE COURT:** Okay.

8                   *(The recording was played for the*  
9                   *witness.)*

10                  **THE COURT:** So, you want to ask her  
11 now that she has heard the tape, if she recalls such  
12 and such so we don't have to go through all of this,  
13 playing it before the jury?

14                  **MR. BATARSE:** Judge, and the State  
15 would also object on the basis, obviously, of hearsay  
16 but, obviously, rape shield. He is saying, I didn't  
17 take her virginity. That doesn't mean he didn't  
18 sexually assault her. It just means that someone  
19 else took her virginity. So, I don't think that  
20 that's admissible as a matter of law.

21                  **THE COURT:** Oh, you think it has to do  
22 with the rape shield law?

23                  **MR. BATARSE:** Yes, Judge.

24                  **THE COURT:** And what was his exact  
25 response?



1 made him do it, loved her and the girls. It seems to  
2 me if she denies it on the tape, she needs to play  
3 that.

4 **MR. BATARSE:** My understanding is she  
5 didn't deny it. She doesn't remember.

6 **THE COURT:** That's the same as denial  
7 for purpose of impeachment.

8 **MR. BATARSE:** Yes, Your Honor. I  
9 guess at that point, outside the presence, he could  
10 refresh her memory, Judge.

11 **THE COURT:** Well, do you have it? Do  
12 you have the tape?

13 **MR. TABOADA:** I don't have a usable  
14 copy.

15 **MR. BATARSE:** We have a usable copy.

16 **MR. TABOADA:** The one I got is not.

17 **THE COURT:** Okay.

18 **MR. TABOADA:** Is not good.

19 **THE COURT:** Then while the jury is  
20 out, let's see if we can find that. Do you have a  
21 usable copy to listen to, you know, about where it  
22 is? You have an outline or something?

23 **MR. BATARSE:** Yes, Judge.

24 **MR. TABOADA:** If the Court wishes, in  
25 my case I can present it and --

1                   **THE COURT:** I'm sorry. I just have a  
2 lot of cases.

3                   **MR. TABOADA:** Yes.

4                   **THE COURT:** Only recording I'm up to  
5 speed on is the defendant's recording because I just  
6 listened to it.

7                   **MR. BATARSE:** May --

8                   **THE COURT:** Are these the calls from  
9 the jails?

10                  **MR. TABOADA:** Yes, jail call  
11 recordings, Your Honor. And I know which one  
12 specifically is it, where -- where my client tells  
13 the witness that he did not take her virginity.

14                  **THE COURT:** He said he did or did not?

15                  **MR. TABOADA:** Did not.

16                  **THE COURT:** Did not take her virginity  
17 away. And she said she did not recall. Is that how  
18 you remember it? I took notes.

19                  **MR. TABOADA:** She just testified she  
20 cannot recall.

21                  **MR. BATARSE:** I believe that's what  
22 she testified. She couldn't remember, Judge.

23                  **THE COURT:** Okay. And, of course,  
24 that's hearsay from the defendant, what he told her;  
25 but it came in -- let me look. He said the devil

1                   **MR. TABOADA:** Can I address specific  
2 criminal -- which type of instances I cannot address?

3                   **THE COURT:** Are you saying whether you  
4 have not found her to be credible? After the child  
5 testifies, then I will look at it again, you know,  
6 because I don't know how the child's testimony is  
7 going to go. Apparently, you know, it could be --  
8 who knows. So, based on the state of the record at  
9 this time, you may ask if she has always found the  
10 child to be credible --

11                   **MR. TABOADA:** Okay.

12                   **THE COURT:** -- without going into any  
13 specific instances.

14                   **MR. TABOADA:** Okay. Then another  
15 matter, since the jury is already out there, I'd like  
16 to -- I'd like to -- since she already stated that  
17 she does not recall the -- Mr. Lopez telling her  
18 about not taking away the child's virginity, I'd like  
19 to play the recording; but I don't have a recording  
20 that is use -- I mean, the recording that I got is  
21 not good. Has an error.

22                   **THE COURT:** Error in it?

23                   **MR. TABOADA:** Yes, it's a recording  
24 that, as the Court will recall, I couldn't listen to  
25 the recording. I tried. And then eventually --

1 impeach the witness' credibility. I'm trying to  
2 demonstrate that the child has lied to the mother,  
3 has lied to other individuals in the past. I'm  
4 entitled to show --

5 **THE COURT:** Isn't that hearsay to this  
6 witness?

7 **MR. TABOADA:** It would go to the  
8 child's reputation for -- for veracity.

9 **THE COURT:** Oh, well, you may ask if  
10 she knows the child's reputation for truthfulness  
11 after she testifies. Right now it's not an issue.  
12 But once the child testifies, then her veracity is at  
13 issue; and you may ask that then.

14 **MR. BATARSE:** I have no problem with  
15 that, Judge. We have a problem with specific  
16 instances of conduct.

17 **MR. TABOADA:** It has been made an  
18 issue.

19 **THE COURT:** Okay. You may ask her if  
20 she always finds -- has always found the child to be  
21 credible without going into any specific instances of  
22 conduct. I suggest you be careful about opening the  
23 door because that's how we get in these messes.

24 **MR. BATARSE:** Yes, Your Honor.

25 **THE COURT:** Okay.

1                   **THE COURT:** Okay. Well, did you  
2 subpoena him to court?

3                   **MR. TABOADA:** No. I subpoenaed the  
4 records. I wanted the records.

5                   **THE COURT:** So, really, you have not  
6 seen any records that establishes that the child  
7 accused the mother of misconduct?

8                   **MR. TABOADA:** No, but she has -- she  
9 has indicated to other individuals that, you know,  
10 children were taken from her as a result of a false  
11 accusation from the child.

12                   **THE COURT:** The same child?

13                   **MR. TABOADA:** Jasmine, yes, Your  
14 Honor.

15                   **THE COURT:** Okay. Well, at this time,  
16 you know, after the child testifies, it may become  
17 admissible; but, you know, saying a witness smokes  
18 weed and what --

19                   **MR. TABOADA:** I'm not --

20                   **THE COURT:** -- abandons them, at this  
21 time that's pretty prejudicial and not very  
22 probative. But you may ask her if she has always  
23 found the child to be credible. I can live with  
24 that.

25                   **MR. TABOADA:** I'm not trying to

1 So, how do you plan to phrase the question? I mean,  
2 if you asked about the credibility and established  
3 that she believes she is credible, then does that not  
4 open the door to him asking about her credibility, as  
5 well.

6 **MR. BATARSE:** Yes. If he wants to ask  
7 her credibility, generally, do you believe she is  
8 truthful or not truthful, I think he can ask. If he  
9 wants to go into specific instances of conduct, I  
10 think that's specifically excluded by 404. And I  
11 think that -- and I don't -- I'm not even aware of  
12 the CPS findings that he is mentioning. I don't know  
13 if it's truthful or not. I have no --

14 **THE COURT:** So, what makes you think  
15 the child made that allegation?

16 **MR. TABOADA:** Well, that's one of the  
17 things I requested on a subpoena which was never  
18 complied with and I complained about it and  
19 nothing -- I got no documents when I -- if the Court  
20 will recall, I subpoenaed those records from  
21 Mr. Chacon and --

22 **THE COURT:** Well, Mr. Chacon would not  
23 have the CPS records.

24 **MR. TABOADA:** Well, he was a party in  
25 that action.