

Ben Alexander Morrow - July 21, 2015
Direct Examination (Continued) by Mr. Batarse

1 **(In Open Court, Defendant Present)**

2 **(Jury enters the courtroom)**

3 **THE COURT:** Thank you. Please have a
4 seat.

5 Jurors, good morning. Welcome back.

6 **THE JURY:** Morning.

7 **THE COURT:** And, Mr. Batarse, I
8 believe you were on direct examination with Officer
9 Morrow.

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

11 **THE COURT:** Thank you.

12 **BEN ALEXANDER MORROW,**
13 having been previously duly sworn, testified as follows:

14 **DIRECT EXAMINATION (CONTINUED)**

15 **Q.** **(BY MR. BATARSE)** Officer Morrow, yesterday
16 when we left off, we had just listened to the
17 statement given by the defendant, correct?

18 **A.** Yes, sir.

19 **Q.** And we talked about the investigation that
20 you had done regarding Ricardo Lopez' case, correct?

21 **A.** Yes.

22 **Q.** You reviewed the statement that the victim
23 had made to the forensic interviewer, correct?

24 **A.** Yes.

25 **Q.** And you also reviewed the statements that

1 she had made to the SANE nurse?

2 **A.** Yes.

3 **Q.** Okay. You have reviewed those, correct?

4 **A.** Yes.

5 **Q.** Okay. And you completed your
6 investigation, correct?

7 **A.** Yes.

8 **Q.** Did you determine that the disclosures that
9 were made by the victim were clear and consistent
10 disclosures of sexual abuse by the defendant?

11 **A.** Yes.

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

13 **THE COURT:** Thank you.

14 Cross-examination?

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

16 **CROSS-EXAMINATION**

17 **Q.** (BY MR. TABOADA) Officer, we heard a
18 recording, right?

19 **A.** Yes.

20 **Q.** And we heard what you told Mr. Lopez about
21 what Maria told you, right?

22 **A.** Yes.

23 **Q.** In fact, you told him what she had
24 mentioned about the K-Y, correct?

25 **A.** Yes.

1 **Q.** You did not tell him everything that she
2 told you about K-Y, right?

3 **A.** No.

4 **Q.** Okay. Isn't it true that you prepared a
5 report as part of your investigation in this case?

6 **A.** Yes.

7 **Q.** And isn't it true that in the report, you
8 stated the following: "Maria said she remembered" --

9 **MR. BATARSE:** Objection, Your Honor,
10 calls for hearsay.

11 **THE COURT:** You're allowed to ask him
12 if he said something, but you can't read from
13 something not in evidence. So, I will give you a
14 moment to go over it; and then you may ask your
15 question.

16 **Q.** **(BY MR. TABOADA)** Did Maria not tell you --

17 **THE COURT:** Can I ask -- I just
18 learned that questions with "not" in them, the
19 negatives are confusing for everybody. So, if you
20 can ask your questions without a negative in it, then
21 it makes it easier for us to understand the answer.

22 **MR. TABOADA:** Okay.

23 **THE COURT:** Thank you, sir.

24 **Q.** **(BY MR. TABOADA)** Is it true that Maria told
25 you that the K-Y had been used before?

1 **THE COURT:** Oh, I see. And what was
2 your objection? Sorry. Your objection previously?

3 **MR. BATARSE:** Objection was hearsay,
4 Judge.

5 **THE COURT:** Approach, please.

6 **(At the Bench)**

7 **THE COURT:** Are you trying --

8 **MR. BATARSE:** Judge, the only reason I
9 objected at the beginning was because he was reading
10 from the document.

11 **THE COURT:** Okay. I guess the
12 question is before you can go into what Maria said to
13 somebody else, you have to have asked her that
14 question and given her the opportunity to admit or
15 deny if she said that.

16 Did you lay the predicate with Maria?

17 **MR. TABOADA:** I just want to elicit --

18 **THE COURT:** Sorry. Did you -- what is
19 it that you want to ask him?

20 **MR. TABOADA:** What Maria -- I want him
21 to ac --

22 **THE COURT:** Let me make sure. You
23 have no objection to him going into this before I
24 spend time on it?

25 **MR. BATARSE:** Well, to this particular

1 question, probably not; but I do have an objection to
2 him trying to elicit testimony from this officer
3 about Maria said. He had an opportunity to
4 cross-examine her.

5 **THE COURT:** Yeah. You have to ask the
6 witness: Did you say such and such to Officer
7 So-and-so? And if she admits it, then that's it.
8 But if she denies it, then you can bring the officer
9 in to say she said something, whatever it is you're
10 asking her, to show that she said something different
11 prior to her testimony on the witness stand.

12 So, did you ask her if she told the
13 officer about this?

14 **MR. TABOADA:** Well, Maria is a hostile
15 witness. She is not going to acknowledge anything.
16 So, the officer that -- the State opened the door by
17 putting the recording --

18 **THE COURT:** Opened the door about
19 what?

20 **MR. TABOADA:** What Maria said to the
21 officer. Maria, the officer, we all heard the
22 recording. When the offer states what Maria said.

23 **THE COURT:** What is it you're trying
24 to get into?

25 **MR. TABOADA:** The K-Y. Everything

1 that Maria said about the K-Y.

2 **THE COURT:** You're saying he only told
3 the defendant part of what she told him? What's the
4 rest of it?

5 **MR. TABOADA:** Everything that she told
6 him about the K-Y.

7 **THE COURT:** Yeah. What else are you
8 trying to get into? What else did she tell him?
9 Maybe she already testified to it, and maybe it's --
10 I don't know. What are you trying to get to?

11 **MR. TABOADA:** Maria -- Maria
12 acknowledges that my client has relationships with
13 other women and this is going on and she tells him --

14 **THE COURT:** What are you trying to get
15 from him? What are you trying to get?

16 **MR. TABOADA:** Trying to get from him
17 what she told him.

18 **MR. BATARSE:** Judge, I just realized
19 that was the question. I do have an objection
20 because it's improper hearsay. It's improper
21 impeachment.

22 **THE COURT:** Yeah, what she said to
23 him --

24 **MR. TABOADA:** Not impeachment. It's
25 impeachment, yes, but also a full picture.

1 **THE COURT:** Well, that may be; but you
2 still can't go into what one witness told another
3 witness unless they said something different at a
4 previous time. On the witness stand you didn't ask
5 her about that, did you? Did you ask her what she
6 told the officer? I don't remember that. So, I
7 don't think you did.

8 So, State's objection is sustained.

9 **MR. TABOADA:** No, but regardless --

10 **THE COURT:** What?

11 **MR. TABOADA:** -- I'm entitled to show
12 that he was having a relationship with other women.

13 **THE COURT:** Entitled to show what,
14 sir?

15 **MR. TABOADA:** Entitled to show that he
16 was having relationships with other women because he
17 was using K-Y with other women.

18 **THE COURT:** Yeah. State's objection
19 is sustained.

20 **(End of Bench Discussion)**

21 **Q.** **(BY MR. TABOADA)** Officer, did you prepare
22 this report in the normal course of your duties?

23 **A.** Yes.

24 **Q.** Okay. Isn't one of the items in that
25 report -- one of the pages in that report entitled

1 "interview of outcry witness"?

2 **A.** Yes.

3 **MR. TABOADA:** May I approach the
4 witness, Your Honor?

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

6 **Q.** (**BY MR. TABOADA**) I show you a three-page
7 document.

8 **A.** Is there a specific part you want me to
9 focus on?

10 **Q.** Yes, Officer. It would be the second full
11 paragraph -- excuse me. I'm sorry. On page 2.015,
12 the second full paragraph here.

13 Just look at it. I'm not asking you
14 to read it.

15 **A.** Yes, sir.

16 **Q.** Okay. Now, you prepared this in connection
17 with your investigation of the case, right?

18 **A.** Yes, sir.

19 **Q.** And preparing in the normal course of
20 business as you're --

21 **A.** That is a summary of my interview with
22 Maria Ortiz.

23 **Q.** Okay.

24 **MR. TABOADA:** Your Honor, I'd like to
25 have this marked and offered into evidence. This

1 document.

2 **THE COURT:** Thank you. You may mark
3 it, sir. What number would you like?

4 **MR. TABOADA:** Defendant's Exhibit 1.

5 **THE COURT:** Okay.

6 **MR. BATARSE:** The State's going to
7 have to object to the hearsay to the summary of a
8 statement that she -- that the witness gave. That's
9 our objection.

10 **THE COURT:** Sustained as to hearsay.

11 **MR. TABOADA:** Your Honor, the
12 defendant moves to have the entire recording stricken
13 based on hearsay if this is stricken as hearsay. So,
14 it should be the entire recording that we all heard.

15 **THE COURT:** Well, of course, your
16 objection is not timely. But, also, that falls under
17 a different exception. That is an exception to the
18 hearsay rule. And so, if you want to lay the
19 predicate and try and come up with one of the
20 exceptions which might allow this to be admissible,
21 certainly you may call witnesses to do that. But
22 right now there is no exception that applies.

23 So, the State's objection is
24 sustained.

25 **MR. TABOADA:** Exception taken.

1 **THE COURT:** Thank you.

2 **MR. TABOADA:** If I may have a minute,
3 Your Honor?

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

5 **Q.** **(BY MR. TABOADA)** Okay, officer. Let us
6 assume -- you read your own summary, did you not?

7 **A.** Yes.

8 **Q.** Okay. In your discussion with Maria, did
9 you discuss her sexual habits and Mr. Lopez' sexual
10 habits?

11 **A.** Yes.

12 **Q.** And is it true as a result of your
13 discussion that you learned that he was sexually
14 active and she was not?

15 **A.** Her words were that they weren't as
16 sexually active.

17 **Q.** But did you learn that they were --

18 **A.** Yes.

19 **Q.** He had different levels of sexual activity?

20 **A.** Yes.

21 **Q.** Okay. The implication being that Mr. Lopez
22 was having extramarital affairs?

23 **A.** I took the phrasing of what she said as it
24 is just a difference of libido, not what he was doing
25 or wasn't doing.

1 **Q.** The activity -- sexual activity between the
2 two of them, how did she rate it?

3 **MR. BATARSE:** Objection, Your Honor,
4 relevance.

5 **THE COURT:** Thank you. Overruled as
6 to relevance.

7 **MR. BATARSE:** Speculation, hearsay.

8 **THE COURT:** Sustained.

9 **Q.** **(BY MR. TABOADA)** What explanation did she
10 give for why the K-Y bottle was squeezed as much as
11 it was?

12 **A.** She didn't.

13 **Q.** Did she offer --

14 **A.** Sorry, sir. I didn't hear the question. I
15 was distracted.

16 **Q.** Yes, sir.

17 She offered a description of their
18 sexual activity, being -- there being a discrepancy
19 between her sexual activity and his, did she not?

20 **A.** I don't quite understand your question.
21 I'm sorry, sir.

22 **Q.** Did she not tell you that they were -- that
23 she was not a very sexually active person but that he
24 was?

25 **A.** Those were the words she used. Yes, I took

1 it as there was a difference between her sexual
2 libido and his sexual libido.

3 Q. She never used the word "libido," did she?

4 A. No.

5 Q. In fact, she told you that Mr. Lopez was a
6 very sexually active person, right?

7 A. It is possible to be somewhat sexually
8 active without a partner, sir.

9 Q. My question is: She did tell you that he
10 was a very sexually active person, did she not?

11 A. By the way the interview went, I came to
12 the conclusion that he was -- he had more sexual
13 libido than she did. That was my impressions of the
14 words that she used.

15 Q. Okay. Aside from your impressions, exact
16 words that she used, she did tell you that he was a
17 very sexually active person, right?

18 A. Yes.

19 Q. And then she also did tell you that she
20 wasn't; isn't that true?

21 A. Yes.

22 Q. Okay.

23 **MR. TABOADA:** I have nothing further,
24 Your Honor.

25 **THE COURT:** Thank you.

1 Any redirect?

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

3 **THE COURT:** Thank you. Is this
4 witness excused for all purposes, or is he on call?

5 **MR. TABOADA:** On call, Your Honor.
6 And is the Court going to rule on the admissibility?

7 **THE COURT:** Sorry?

8 **MR. TABOADA:** Of Defendant's 1?

9 **THE COURT:** Yes?

10 **MR. TABOADA:** It was offered into
11 evidence.

12 **THE COURT:** Yes.

13 **MR. TABOADA:** Is it -- is it admitted
14 or not admitted?

15 **THE COURT:** I have already ruled on
16 that. Thank you.

17 **MR. TABOADA:** Thank you.

18 **THE COURT:** Are you maintaining that
19 now something has changed and it should be
20 admissible?

21 **MR. TABOADA:** No, Your Honor.

22 **THE COURT:** Okay. Then the ruling
23 remains the same.

24 **MR. TABOADA:** Thank you.

25 **THE COURT:** And, officer, that "on

1 call" means don't leave town in case we need you
2 again.

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

4 **THE COURT:** You're free to go today.
5 Thank you, sir.

6 **(Witness released)**

7 **THE COURT:** Any other witness?

8 **MR. BATARSE:** Yes, Your Honor. State
9 calls Sarah Garay to the stand.

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

12 **THE COURT:** Thank you. Come on up,
13 please, ma'am. And I'd like the jurors to see the
14 witness take the oath. So, if you don't mind facing
15 them and raising your right hand.

16 **(Witness Duly Sworn)**

17 **THE COURT:** Thank you. Please have a
18 seat.

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

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

22 **SARAH GARAY,**
23 having been first duly sworn, testified as follows:

24 **DIRECT EXAMINATION**

25 **Q. (BY MR. BATARSE)** Ms. Garay, could you