

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

2 **MR. BATARSE:** State calls Officer
3 Morrow to the stand, Judge.

4 **THE COURT:** Thank you.

5 **MR. BATARSE:** May I proceed, Your
6 Honor?

7 **THE COURT:** You may.

8 **BEN MORROW,**
9 having been first duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 **Q.** **(BY MR. BATARSE)** Officer, would you please
12 introduce yourself for the record?

13 **A.** Ben Morrow.

14 **Q.** And how are you currently employed?

15 **A.** I'm a Houston police officer.

16 **Q.** And how long have you been a Houston police
17 officer?

18 **A.** I have completed 19 years of service.

19 **Q.** Have you been a certified peace officer for
20 19 years?

21 **A.** Yes, sir.

22 **Q.** And what agencies have you worked for?

23 **A.** Only Houston Police Department.

24 **Q.** In what capacity have you worked as a
25 police officer?

1 **A.** Patrol officer for five years, worked
2 juvenile intake for three, been working juvenile sex
3 crimes since December of 2000.

4 **Q.** And how long were you working juvenile sex
5 crimes?

6 **A.** Up until July of last year.

7 **Q.** July of last year. So, about 10 years?

8 **A.** Yes, sir.

9 **Q.** Okay. And actually all of 2013 you were
10 still working juvenile sex crimes?

11 **A.** Yes.

12 **Q.** Now, relative to case number 055086613,
13 were you the investigator for that case?

14 **A.** I was assigned the investigation.

15 **Q.** Okay. And was -- who was the defendant in
16 that case?

17 **A.** Mr. Lopez.

18 **Q.** And what is the first name?

19 **A.** Ricardo.

20 **Q.** Okay. And when were you assigned the case?

21 **A.** May the 14th.

22 **Q.** Okay. As part of your duties in
23 investigating the case, did you perform an
24 interview -- or did you interview Ricardo Lopez?

25 **A.** I did.

1 Q. And before we continue, do you see Ricardo
2 Lopez sitting in court today?

3 A. Sitting right there (indicating.)

4 Q. Could you please identify --

5 A. Shaved head, goatee.

6 Q. And shirt?

7 A. Striped shirt.

8 Q. Okay.

9 **MR. BATARSE:** May the record reflect
10 the officer has accurately identified the defendant?

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

12 **(Defendant Identified)**

13 Q. **(BY MR. BATARSE)** And what day did you
14 perform the interview of the defendant?

15 A. I think it was May the 14th.

16 My dates are off. May the 10th was
17 the day I was assigned the case. May 14th was the
18 day I interviewed him.

19 Q. Okay. And when you interviewed him, where
20 was he?

21 A. In the Harris County Jail.

22 Q. And what charge was he in the Harris County
23 Jail for?

24 A. Injury to a child.

25 Q. And had you filed the aggravated sexual

1 assault of a child charge yet?

2 **A.** No.

3 **Q.** And just to be clear for the Court, you
4 eventually did file a charge, correct?

5 **A.** Yes.

6 **Q.** But at that time it wasn't filed yet,
7 correct?

8 **A.** Correct.

9 **Q.** All right. So, when you met with him in
10 the jail, what was the procedure that you followed?

11 **A.** He began talking right off the bat, and I
12 asked him to slow down for a second and let me read
13 him his Miranda warnings.

14 **Q.** Okay. So, did you -- did you advise him of
15 his constitutional rights in connection with his
16 privilege against self-incrimination?

17 **A.** Yes. Yes.

18 **Q.** Okay. Did you advise the defendant of his
19 right to an attorney?

20 **A.** Yes.

21 **Q.** His right to remain silent?

22 **A.** Yes.

23 **Q.** And anything he said could be used against
24 him?

25 **A.** Yes.

1 **Q.** His right to have an attorney present prior
2 to and during any questioning?

3 **A.** Yes.

4 **Q.** His right to have an attorney appointed to
5 advise him prior to and during any questioning?

6 **A.** Yes.

7 **Q.** His right to terminate the interview at any
8 time?

9 **A.** Yes.

10 **Q.** And did you advise him of all these rights
11 before you proceeded with the interview?

12 **A.** Yes.

13 **Q.** Okay. Did you record this interview?

14 **A.** Yes.

15 **Q.** What kind of device did you use to record
16 it?

17 **A.** An Olympus digital recorder.

18 **Q.** Is that audio or video?

19 **A.** Audio only.

20 **Q.** Audio only. Okay.

21 Now, after you advised the defendant
22 of his rights, did he indicate to you that he
23 understood each of his rights?

24 **A.** Yes. I asked him after each right whether
25 or not he understood them, and he said he did.

1 Q. Okay. Did you ask him if he would agree to
2 give you a statement?

3 A. I asked him if he would like to continue
4 talking to me.

5 Q. And did he?

6 A. He did.

7 Q. Did he give you any indication at that
8 point that he didn't want to speak to you?

9 A. None.

10 Q. That he wanted to end the discussion at
11 that point?

12 A. No.

13 Q. Okay. At any time during the statement,
14 did he request an attorney?

15 A. No.

16 Q. Okay. Did he -- did you coerce or threaten
17 the defendant into giving you a statement?

18 A. No.

19 Q. Okay. Did you at any time promise,
20 indirectly or directly, the defendant anything if he
21 gave you the statement?

22 A. No.

23 Q. Did you deny the defendant any basic
24 necessities such as restroom, water, things of that
25 nature?

1 **A.** I believe the situation was such that he
2 didn't have a chance to eat breakfast that morning.

3 **Q.** Okay. Did he indicate that he was going to
4 eat breakfast afterwards?

5 **A.** I think we joked about it a little bit.

6 **Q.** Okay. Was the defendant under the
7 influence of any narcotics or alcohol at the time
8 that you interviewed him, to your knowledge?

9 **A.** Not that I could tell.

10 **Q.** And what offense were you investigating
11 when you were interviewing him?

12 **A.** Aggravated sexual assault of a child.

13 **Q.** Roughly how long -- do you recall how long
14 the interview was?

15 **A.** I don't think it was no more than around
16 27, 28 minutes.

17 **Q.** Okay. Now, the Olympus device that you
18 used to record, did that record the entire interview?

19 **A.** No.

20 **Q.** And why not?

21 **A.** The battery power went out toward the end
22 of the interview.

23 **Q.** Did you intend for the battery power to go
24 out?

25 **A.** No.

1 **Q.** Do you have the -- did you provide this --
2 a copy of the part that was recorded?

3 **A.** Yes.

4 **Q.** Okay.

5 **MR. BATARSE:** May I approach, Your
6 Honor?

7 **THE COURT:** Granted.

8 **MR. BATARSE:** Your Honor, does the
9 Court have the disk?

10 **THE COURT:** It's on my computer.

11 **MR. BATARSE:** That's okay.

12 **THE COURT:** Do you want me to go get
13 it?

14 **MR. BATARSE:** That's okay, Judge. I
15 can take care of it from here.

16 **Q.** **(BY MR. BATARSE)** Officer, on the disk, do
17 you recall about what time it finishes?

18 **A.** I want to say 27 and change, but I'm not
19 positive.

20 **Q.** And about how much longer did you interview
21 him after the battery went out?

22 **A.** It didn't last long after that. I think we
23 were less than five minutes.

24 **Q.** Okay. So, the majority of the statement is
25 recorded on the device, correct?

1 **A.** Yes, sir.

2 **Q.** Okay. Was that intentional on your part to
3 not record the last part?

4 **A.** No.

5 **Q.** Okay. Is the recording that you provided
6 to the State, which we provided to Defense counsel,
7 is that an accurate copy of everything that was
8 recorded?

9 **A.** I believe it is.

10 **Q.** And is that the most complete copy that we
11 have available to us?

12 **A.** Yes.

13 **Q.** Okay. Was there any other recording device
14 that was recording the defendant in your -- in your
15 statement at the time?

16 **A.** No.

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

18 **THE COURT:** Thank you.

19 On cross-examination, Mr. Taboada?

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

21 **CROSS-EXAMINATION**

22 **Q.** **(BY MR. TABOADA)** Officer, you obviously
23 heard what Mr. Lopez said during the unrecorded
24 portion of the conversation?

25 **A.** Yes, sir.

1 **Q.** Okay. And in the unrecorded portion, he
2 qualified statements he had made during the recording
3 portion; is that correct?

4 **A.** Qualified? I don't understand what your
5 question is. Can you rephrase it?

6 **Q.** He -- he explained what he had said -- or
7 he attempted to explain what he had said during the
8 recorded portion?

9 **A.** My entire impression was he left -- gave me
10 very little details.

11 **Q.** During the unrecorded portion?

12 **A.** Correct.

13 **Q.** During his statement, in the unrecorded
14 portion of the conversation, he stated things that
15 may have been inconsistent with what he had already
16 stated?

17 **A.** No. I think he was somewhat consistent.
18 He just provided very little detail.

19 **Q.** Do you recall what were his last words
20 before the recording went off?

21 **A.** Something to the effect of laying down in a
22 bed and the stepdaughter coming and joined him and I
23 guess nuzzling up next to him.

24 **Q.** Okay. Would you -- would you like to
25 listen to the recording to refresh your memory?

1 **A.** No.

2 **Q.** The last part?

3 **A.** I heard it this morning before I came to
4 court to refresh my memory.

5 **Q.** Okay. So, you don't recall the exact words
6 that he stated, right?

7 **THE COURT:** Excuse me. Excuse me.
8 This is Mrs. Lee, the court reporter. And her job is
9 very difficult if the witness and lawyer talk at the
10 same time.

11 So, sir, ask your question again; and
12 let him finish all the way through before you answer.
13 Thank you.

14 **Q.** **(BY MR. TABOADA)** You don't recall word for
15 word the last words he said before the recording went
16 off?

17 **A.** Not word for word.

18 **Q.** Okay. You prepared a report about this
19 conversation, correct?

20 **A.** I did.

21 **Q.** And in this report you have described an
22 admission on his part for what would be indecency
23 with a child, correct?

24 **A.** His words that I remember were "We messed
25 around."

1 **Q.** Correct.

2 **THE COURT:** When you answer, can you
3 distinguish for me whether that's something on the
4 tape or something after the tape recorder stopped so
5 when you answer a question, I will know what --

6 **THE WITNESS:** Okay. That was
7 something after the recording stopped.

8 **THE COURT:** Okay. So I know which
9 section you're talking about. Thank you.

10 Okay. So, after it stopped, he said
11 what?

12 **THE WITNESS:** "We messed around."

13 **THE COURT:** Okay. Thank you.

14 **Q.** **(BY MR. TABOADA)** During the recorded
15 portion, he described what would constitute indecency
16 with a child; is that correct?

17 **A.** Not with the complainant. He described
18 that regarding another individual.

19 **Q.** The two of you were discussing the
20 allegations by Jasmine Chacon, correct?

21 **A.** It was a section on the recording when he
22 is discussing something that happened to him when he
23 was a child, and that would be consistent with
24 indecency with a child.

25 **Q.** Okay. In your report did you not state:

1 "'I felt a warm body get into my bed. So, I acted.'
2 The suspect at first stated that all he did was grab
3 the complainant's breast. Then he stopped when he
4 realized who it was. The suspect then stated that he
5 grabbed the complainant's breasts and buttocks. The
6 suspect stated later that he grabbed the
7 complainant's breast, buttocks, and got on top of her
8 before he realized who it was. The suspect stated he
9 never had intercourse with the complainant but
10 admitted to the assault, although he could not state
11 a reason why he assaulted her."

12 You stated that in your report, did
13 you not?

14 **THE COURT:** Sorry. I didn't catch
15 your last phrase. Can you talk just a little louder
16 for me?

17 **Q. (BY MR. TABOADA)** "The suspect stated he
18 never had intercourse with the complainant but
19 admitted to the assault although he could not state a
20 reason why he assaulted her."

21 You stated that in your report, did
22 you not?

23 **A.** Can you tell me what page of the report
24 you're referring to, sir, of the suspect's statement?
25 Is that 12?

1 **Q.** I'm looking at page 2.006.

2 **A.** And which paragraph?

3 **Q.** It's just -- there is just one paragraph on
4 this page.

5 **A.** Okay.

6 **Q.** And my -- and my -- I'm looking at a
7 different report, officer. Or is that your --

8 **A.** I'm looking at the summary of his
9 statement, and I'm just trying to find the section
10 where you're referring to.

11 **THE COURT:** I think the confusion
12 is -- I believe Defense counsel is referring to the
13 beginning of the report that was written by a
14 different officer. I think that's the statement that
15 we're discussing at this point.

16 Is that correct, Mr. Taboada?

17 **MR. TABOADA:** I suppose, Your Honor.

18 **THE WITNESS:** May I see his report so
19 I can see what he is referring to?

20 **MR. TABOADA:** May I approach the
21 witness?

22 **THE COURT:** Sure. Was there another
23 officer present when the statement was taken?

24 **MR. BATARSE:** No, Your Honor. This is
25 a different -- there is a statement at the scene, and

1 there is a statement that is recorded. I think he is
2 referring to the statement at the scene.

3 **THE COURT:** I see.

4 **MR. BATARSE:** On page 3 of the report,
5 I believe.

6 **THE COURT:** Okay.

7 **A.** I did not write this, sir.

8 **Q.** (BY MR. TABOADA) Okay. Officer, what you
9 wrote, do you have that with you?

10 **A.** Yes, sir.

11 **Q.** Okay. Have you reviewed it?

12 **A.** Yes, sir.

13 **Q.** In what you wrote -- in what you -- in what
14 you wrote, is there an admission of indecency with a
15 child; or is there an admission of aggravated
16 assault?

17 **A.** Neither. He gave me no details. He only
18 stated that she was not lying and we messed around.

19 **Q.** But do you recall in the unrecorded portion
20 of the conversation, he did give an indication that
21 what the child was alleging was not correct?

22 **A.** No.

23 **Q.** Okay.

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

1 **THE COURT:** Thank you.

2 Any redirect?

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

4 **REDIRECT EXAMINATION**

5 **Q.** **(BY MR. BATARSE)** Just to clarify for the
6 Court and for the record, the statement "We messed
7 around," that was stated to you by the defendant
8 after the recording stopped; is that correct?

9 **A.** Correct.

10 **Q.** Otherwise, everything that we have
11 discussed and the questions that I have been asking
12 you about, all that's on the recording, correct?

13 **A.** Correct.

14 **Q.** So, the majority of the statement is on
15 there, correct?

16 **A.** Correct.

17 **Q.** The statements that Defense counsel was
18 referring to, those are at the beginning of the
19 report. Was that another officer who had written
20 those statements?

21 **A.** Yes.

22 **Q.** What officer was that? Do you know?

23 **A.** I believe Officer Huckabee, but I have to
24 look at the report in its entirety and trace it back.

25 **Q.** Okay. So, the defendant didn't tell you