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IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE AZUCENA )  
 )  
Appellant, )  
 )  
v. )  
 )  
THE STATE OF NEVADA, )  
 )  
Respondent. )  
\_\_\_\_\_)

No. 74071

Electronically Filed  
Apr 10 2018 04:43 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT’S APPENDIX VOLUME X PAGES 1701-1931**

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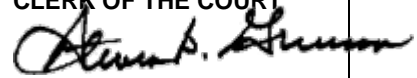
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**RTRAN**

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JOSE AZUCENA,

Defendant.

CASE NO. C-17-321044-1

DEPT. NO. II

BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE

**MONDAY, MAY 1, 2017**

**TRANSCRIPT OF PROCEEDINGS RE:  
JURY TRIAL - DAY 5**

\*\*\*\*\*

**APPEARANCES:**

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For the Defendant:

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RECORDED BY: DALYNE EASLEY, COURT RECORDER

TRANSCRIBED BY: SHAWNA ORTEGA, CET-562

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EXHIBITS

DESCRIPTION

ADMITTED

No exhibits offered.

1 **LAS VEGAS, NEVADA, MONDAY, MAY 1, 2017**

2 [Proceedings commenced at 9:37 a.m.]

3  
4 [Outside the presence of the jury.]

5 THE COURT: C-321044. What -- where did we leave off? I think we  
6 ready -- the State's ready to call its next witness, right?

7 MR. HAMNER: That's correct, Your Honor.

8 MS. KOLLINS: Yes, Your Honor.

9 THE COURT: All right. Anything preliminary?

10 MR. HAMNER: Oh, Your Honor, just a housekeeping matter. We were  
11 kind of, I think, notified by your staff. There was a couple typos in the headings of a  
12 few counts.

13 THE COURT: Oh.

14 MR. HAMNER: So instead of it saying, for example, lewdness with a  
15 minor, it said lewdness with a child. And so we filed a second amendment, just  
16 changing the titles so it's all consistent.

17 THE COURT: All consistent.

18 MR. HAMNER: We've let the defense know that, and I think there's  
19 copies up here, if I can refer you to those.

20 THE COURT: Yeah.

21 MR. HAMNER: Thank you very much.

22 THE COURT: So this is the --

23 MR. HAMNER: Second amended.

24 THE COURT: -- second amended. Now, we don't need to reread that  
25 to the jury, do we, right?



1 MR. HAMNER: We don't need to reread it to the jury.  
2 THE COURT: Okay. Good. All right, good. Then we'll go ahead  
3 and --  
4 MS. KIERNY: If I could just have a moment to go over it really quick?  
5 THE COURT: Sure. Go ahead. Yep, take --  
6 MS. KIERNY: I -- to see if I -- I'm sure if it's just clerical, I don't have  
7 any issues. I just want to make sure.  
8 THE COURT: Be sure they didn't add any more -- they didn't sneak  
9 anymore counts in there.  
10 MS. KOLLINS: Right? Because that's what we want to do --  
11 THE COURT: There are already a lot.  
12 MS. KOLLINS: -- is argue more counts.  
13 [Pause in proceedings.]  
14 THE COURT: All right. Just give a moment, marshal, they're checking.  
15 [Pause in proceedings.]  
16 THE COURT: All right. Thank you, marshal. You can bring them in.  
17 Do they have their notepads?  
18 THE MARSHAL: Yes. They're on the chairs.  
19 THE COURT: All right. Thank you. Go ahead.  
20 [Pause in proceedings.]  
21 MS. KIERNY: Your Honor, if the jury asks or if anyone asks, are we  
22 going to be 1:00 to 5:00 the next three days, and then 9:00 to 5:00 again on Friday?  
23 THE COURT: I -- I think so. But let me -- I haven't checked on my  
24 busy-ness of my calendars this week.  
25 How busy are we?

1 THE CLERK: Like, low 20s on Tuesday, Thursday.  
2 THE COURT: Low 20s?  
3 THE CLERK: And...  
4 THE COURT: We could start at 11:00, right? Maybe?  
5 THE CLERK: And Wednesday --  
6 THE COURT: Which -- which day is the least busy? Tuesday,  
7 Wednesday, or Thursday?  
8 THE CLERK: Probably Wednesday. It looks less.  
9 THE COURT: Give me a second.  
10 MS. KIERNY: Of course.  
11 [Jury reconvened at 9:42 a.m.]  
12 THE COURT: Go ahead and be seated, everybody.  
13 So I -- I'm thinking for this week, we'll go till 5:00 today. And  
14 then -- and then probably Tuesdays and Thursdays I have my criminal calendar.  
15 We'll start at 1:00, go 1:00 to 5:00. Wednesday I'm looking at -- Wednesday  
16 doesn't look as busy as it did last week. Some things got resolved. So I'm thinking  
17 maybe we could start at 11:00 on Wednesday.  
18 Keep that in mind and we can talk about and after you guys  
19 check --  
20 MS. KIERNY: Okay.  
21 THE COURT: -- check your schedules. Okay.  
22 MS. KIERNY: Of course.  
23 MR. HAMNER: That would be great.  
24 MR. WESTBROOK: Thank you, Your Honor.  
25 MS. KIERNY: Thank you, Your Honor.

1 THE COURT: Because -- because then we get that other hour right  
2 before lunch and that -- that helps.

3 MR. HAMNER: Yes, Your Honor.

4 MS. KIERNY: Okay.

5 MR. WESTBROOK: Sounds good.

6 THE COURT: All right. Great.

7 The State may call its next witness.

8 MS. KOLLINS: Your Honor, the State calls Maria Estrella Barajas.

9 THE COURT: I didn't say hi to the jurors.

10 Hi. Welcome back. Glad you're all here safe and sound.  
11 Anything that you need to bring up, let me know at the next break, if there's  
12 anything, you know, scheduling-wise or ability to serve, stuff like that. Okay. Great.

13 Hello, Ms. Barajas.

14 THE WITNESS: Good morning.

15 THE COURT: Please come forward and stand. The court clerk will  
16 administer your oath.

17 **MARIA ESTHER BARAJAS,**

18 [having been called as a witness and being first duly sworn, testified through the  
19 interpreter as follows.]

20 THE CLERK: Thank you. Please be seated. Will you please state and  
21 spell your first and last name for the record.

22 THE WITNESS: Maria Esther Barajas, M-A-R-I-A E-S-T-H-E-R  
23 B-A-R-A-J-A-S.

24 THE COURT: Thank you.

25 Ms. Kollins, you may proceed.

1 MS. KOLLINS: Thank you, Your Honor.

2 **DIRECT EXAMINATION**

3 BY MS. KOLLINS:

4 Q Good morning, Ms. Barajas. May I call you Maria?

5 A Yes.

6 Q Where did you live in October of 2016?

7 A At 4820 East Charleston, Apartment 5.

8 Q And did you move out of that complex in February of 2017?

9 A Yes, yes.

10 Q Prior to moving out, how long did you live at 4820 East Charleston,  
11 Apartment 5?

12 A I honestly don't remember, but I was there for a long time in those  
13 buildings.

14 Q Okay.

15 A A long time.

16 Q So multiple years?

17 A Yes.

18 Q Okay. Were you friends with Amanda Moiza?

19 A Yes.

20 Q And did she also live in that apartment complex when you lived there?

21 A Yes.

22 Q Who did you live with?

23 A With Nicholas and the child, Yezline.

24 Q And how old is Yezline?

25 A Eight years old.

1 Q And what is her date of birth?

2 A May 9th, 23 -- in '08.

3 MS. KOLLINS: Court's indulgence.

4 Q And what is Nicole's birthday?

5 A Nicole's is May 30th.

6 Q And May 30th of what year?

7 A 2015.

8 MS. KOLLINS: Could someone help me turn on the ELMO, please?

9 THE COURT: Yeah. Marshal, could you -- do you know how to do  
10 that?

11 MS. KOLLINS: Now it's on.

12 THE COURT: Okay. Okay.

13 MS. KOLLINS: The screen is not on. Oh, there we go.

14 THE COURT: There's a -- is that working? I can't see over there.

15 MS. KOLLINS: It's on now. Thank you, Your Honor.

16 THE COURT: Oh, great. You can -- do you need that book pushed  
17 closer to the jurors? We can move that a little bit closer, I think, if they --

18 MS. KOLLINS: Can everybody see or do you need me to turn it  
19 around?

20 THE COURT: Marshal can turn try to do it. They -- there's a cord that  
21 allows you a few more feet closer.

22 Thank you, marshal.

23 MS. KOLLINS: May I approach the witness, Your Honor?

24 THE COURT: Yes.

25 MS. KOLLINS: Not going to stay up there.

1 BY MS. KOLLINS:

2 Q Maria, I would like to show you State's admitted 35, 36, 24, 25, 22,  
3 and 23. I would like for you to look at those photographs to yourself, and tell me if  
4 you recognize them, And then I will ask you some questions about them. And  
5 you're free to flip through them.

6 Do you recognize all of those photographs?

7 A Yes.

8 Q How is it that you recognize those?

9 A Well, where he lived, where I lived, and then next to him, the neighbors.

10 Q Okay. So they fairly and accurately depict your apartment complex and  
11 some of the surrounding areas and where some people lived?

12 A Yes.

13 Q Thank you, Maria.

14 MS. KOLLINS: Permission to publish, please, Your Honor.

15 THE COURT: Yes, you may.

16 MS. KOLLINS: There's tape on there. Okay. All right. It's on and --  
17 could somebody click through the television monitor? Because the monitor says  
18 freeze.

19 THE COURT: Uh-oh. I let them handle all the technical stuff.

20 MS. KOLLINS: And, you know, as long as I've been working with  
21 these, they are, like, my nemesis. I don't want to touch them, so --

22 THE COURT: That's okay.

23 MS. KOLLINS: Yeah, the input says freeze on the screen.

24 THE COURT: We'll try again. Sorry, Ms. Kollins.

25 I don't know how to fix it.

1 IT is in here three or four times a week.

2 MS. KOLLINS: I wish IT would have been at my house this weekend  
3 for my wireless network.

4 THE COURT: We'll go off -- off the record, so the court clerk can help  
5 us out.

6 [Off the record at 9:51 a.m., until 9:52 a.m.]

7 THE COURT: Back on the record.

8 BY MS. KOLLINS:

9 Q I'm showing you 23; if you touch the screen that's in front of you, could  
10 you just show me which building you lived in?

11 A I don't know if it's the one in the front or the one in the back. I think it  
12 might be this one.

13 Q Can you indicate on the screen by circling which one you're referring  
14 to? If you touch the screen, it'll make a line.

15 A There's a -- a mark already, right?

16 Q Do you live in the building at the bottom of the photograph?

17 A There's one like this and another one like that. I'm not sure.

18 Q Okay.

19 A I don't know.

20 Q You said you lived in Apartment No. 5, correct?

21 Showing you --

22 A Yes.

23 Q Showing you State's 36; is that your Apartment No. 5 at the bottom?

24 A Yes.

25 Q And is this a photograph, in 35, of the back part of where your

1 apartment is -- was?

2 A Yes.

3 Q Okay. And Apartment No. 5 is over in this area to the left of the  
4 photograph?

5 A Yes. Down below, here.

6 Q Okay. I'm going to show you a different photograph of the apartment  
7 complex. Maybe this will give you some perspective.

8 Showing you 22; do you see your building in that photograph?

9 A Yes. It's this one.

10 MS. KOLLINS: If the record could reflect she's indicated the building to  
11 the far left in the photograph.

12 THE WITNESS: They never, you know, asked to do it like this. I never  
13 saw it like this.

14 BY MS. KOLLINS:

15 Q Okay. Well, that's fair.

16 Now, we were talking about Yezline; how old is she now?

17 A She's about to turn 9.

18 Q Next September?

19 A Yes.

20 MS. KOLLINS: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MS. KOLLINS:

23 Q Showing you what have been marked and admitted as State's 1, 3, 4,  
24 and 55; can you look at those to yourself for a moment, I'm going to ask you some  
25 questions.



1 A Yes.

2 Q I'd like for you to look at Number 55 just for a moment. Yezline's  
3 birthday is September 23rd of 2008?

4 A Yes.

5 Q And in September 23rd of 2016, she turned eight years old, correct?

6 A Yes.

7 Q And this past -- this school year that we're in, she's in the third grade,  
8 correct?

9 THE COURT INTERPRETER: I'm sorry. In third grade, did you ask?

10 MS. KOLLINS: Yes.

11 THE WITNESS: She's going to go to third grade, because she didn't  
12 pass one year.

13 BY MS. KOLLINS:

14 Q Okay. So is she repeating second grade this year?

15 A Well, no. She's going to go on to the third grade.

16 Q Okay. What -- what is she in right now?

17 A Yes, in second grade.

18 Q Okay. This is her second time going to second grade?

19 A Yes.

20 MS. KOLLINS: Court's permission to correct this by interlineation.

21 THE COURT: Yes, you may.

22 MS. KOLLINS: Thank you.

23 MR. WESTBROOK: And Your Honor, is she just correcting the date?

24 MS. KOLLINS: I'm -- it wasn't clear that she had repeated second  
25 grade this year. So there'll be two second grades, instead of a third grade for last

1 school year.

2 MR. WESTBROOK: Okay.

3 THE COURT: So the current grade is just one less than --

4 MS. KOLLINS: You guys can't talk back and forth. Okay?

5 THE COURT INTERPRETER: Okay. The interpreter didn't have a  
6 chance to interpret what she -- the comment that she made. And she said, I'm not  
7 sure if -- if she repeated the second grade or the first grade.

8 THE WITNESS: I think it was first grade, because she was going to go  
9 to the second grade. It was too much for her, and she couldn't handle it.

10 BY MS. KOLLINS:

11 Q Okay. She's in second grade now, though, correct?

12 A Yes.

13 Q Okay. So last year you don't know if she did the second grade once or  
14 the first grade the second time?

15 A What happened was that she didn't pass the first grade. And she didn't  
16 pass the first grade, because she couldn't do math very well and -- or -- and  
17 reading.

18 Q Okay. So she was in first grade twice and then second grade this  
19 year?

20 A Yes.

21 Q Okay. Now, does State's 55 look correct as to her ages and years?  
22 Because she went to first grade twice when she was six and seven. And then  
23 when she's eight now, she's in second grade. Does that look more correct?

24 A Yes.

25 Q Okay. All right.

1 A Sorry.

2 Q That's okay. I don't think that was clear before.

3 THE COURT: Just show Ms. Kierny what you did, if you don't mind,  
4 please.

5 THE WITNESS: It was first grade.

6 MS. KIERNY: Okay. Thank you.

7 MS. KOLLINS: I'm showing the ladies and gentlemen with my  
8 unfortunate hot pink pen on there.

9 BY MS. KOLLINS:

10 Q Again, she turned eight last fall and is now in the second grade?

11 A Yes.

12 Q Okay. Great. Now, this is Yezline and that's how she looks now, in  
13 State's 1?

14 A Yes.

15 Q Little bit closer up.

16 A Yes.

17 Q Okay. And is that Yezline in State's 4 with your daughter, Nicole?

18 A Yes.

19 Q Now, when you lived in the Charleston Garden Apartments, were you  
20 and Amanda friends with a couple you knew as David and Elena?

21 A Yes.

22 Q Do you see David in court today?

23 A Yes.

24 Q Where is he seated and what is he wearing in court today?

25 A He is on the right side and he has -- he's wearing a blue shirt.

1 Q No tie?

2 A Yeah.

3 MS. KOLLINS: May the record reflect identification of the defendant.

4 THE COURT: It does.

5 MS. KOLLINS: Thank you.

6 BY MS. KOLLINS:

7 Q When you lived in the Charleston Garden Apartments, did you socialize  
8 with David and Elena?

9 A Yes. We would spend time together.

10 Q What kinds of things would you do either with them as a couple or with  
11 them in a group?

12 A Well, we would get together or I would -- and when I was going to the  
13 laundry or something, I would stop and talk to them, and, you know, just chatting.  
14 From that time forward is when we started socializing, and we said let's do this and  
15 that. And that's when we started doing more of a socialization.

16 Q Would socializing include sharing food, sharing drinks?

17 A Yes.

18 Q Would you get together at one person's house or another?

19 A Yes.

20 Q Whose house would you get together at?

21 A More than anything, in my house.

22 Q When you would have those get-togethers, what was David's  
23 relationship like with your children?

24 A He would talk to them a lot. He would give them candy and he would  
25 buy them things.

1 Q What kind of things would he buy them?

2 A He would buy them candy, pizzas, hamburgers, chicken nuggets.

3 Q Was there ever a time there was a party with a trampoline?

4 A Yes. Even last year, he had put there the -- the jumper for my  
5 daughter. Well, he did that because I wasn't with my husband. He was working in  
6 Denver. And I told him that the childs wanted a jumper. And -- and he said, no, no,  
7 because the children fight a lot, and no, no, don't -- don't get that. And he said,  
8 Well, yes, yes, my princess is -- is going to have her jumper.

9 Q Okay. And when you say he, are you referring to David?

10 A Yes.

11 Q Okay. Did you consider David a friend?

12 A Yes.

13 MS. KOLLINS: May I approach the witness, Your Honor?

14 THE COURT: Yes.

15 BY MS. KOLLINS:

16 Q Showing you State's admitted 20 and 21; do you recognize State's  
17 admitted 20 and 21?

18 A Yes.

19 Q And how is it that you recognize State's 20 and 21?

20 A Because here it was Ms. Elena's birthday.

21 MS. KOLLINS: The record could reflect she's pointing to State's  
22 admitted 20.

23 BY MS. KOLLINS:

24 Q And what about 21?

25 A I don't remember whose party that was. I don't remember --

1 Q Okay. You don't --

2 A -- whose party that was.

3 Q You -- you don't remember the party in State's 21?

4 A No, I don't know which one it is.

5 MS. KOLLINS: Permission to publish 20, Your Honor.

6 THE COURT: Yes.

7 MS. KOLLINS: Okay.

8 BY MS. KOLLINS:

9 Q Now, you indicated while I was speaking with you that what was  
10 depicted in 20 was Elena's that's birthday; and Elena, is that David's wife?

11 A Yes.

12 Q Okay. And who, if anyone, do you recognize in that photograph?

13 A Don David and Doña Elena?

14 Q And where is Doña Elena?

15 A Right here.

16 Q Okay. The dot that I'm seeing is on a child's head.

17 A Yes.

18 Q Okay. Is Doña Elena the lady sitting at the table on the left?

19 A Yes.

20 Q Okay. And who is that standing behind her?

21 A That child is Scarlett.

22 Q And who is the lady seated at the end of the table?

23 A It's Vero [phonetic].

24 Q Okay. Do you remember when this birthday party was?

25 A No. I don't remember their dates. They're the ones who always

1 remember their dates, but I don't.

2 Q Okay. I asked you earlier if you knew a woman by the name of  
3 Amanda Moiza, and you indicated that you did; do you recall that?

4 A Yes.

5 Q I'm showing you 21; is Amanda in that photograph?

6 A Yes.

7 Q And where is she standing of the grouping of three ladies?

8 A This one.

9 Q The farthest to the right?

10 A Yes.

11 Q Okay. I think the screen is off a little bit up there.

12 Now, when you were friends with Don David, did -- did you ever  
13 go to his apartment?

14 A Yes.

15 Q Okay.

16 MS. KOLLINS: May I approach the witness, Your Honor?

17 THE COURT: Yes, you may.

18 BY MS. KOLLINS:

19 Q Showing you State's admitted 24 and 25; do you recognize what is  
20 shown in those photos?

21 A Yes.

22 Q How is it that you recognize those?

23 A Because he lived here.

24 Q Okay.

25 A And here.

1 Q Okay.

2 MS. KOLLINS: If the record could reflect she's indicated that he lived in  
3 what is depicted in 24 and then she said and 25.

4 BY MS. KOLLINS:

5 Q When you say he, are you referring to Don David?

6 A Don David, yes.

7 MS. KOLLINS: Permission to publish please, Your Honor.

8 THE COURT: Yes, you may.

9 BY MS. KOLLINS:

10 Q This is the first photograph I showed you. You said he lived here. I  
11 don't know that that screen is working well. Did -- what you indicated to me is the  
12 first door under the, I guess it is balcony; is that correct?

13 A Yes. The first one, yes.

14 Q The first apartment?

15 A Yes.

16 Q Okay. And showing you 25; is that another view of that same first  
17 apartment door there on the first floor?

18 A Yes.

19 Q I want to turn your attention to October 15th and 16th of 2016; do you  
20 recall those days?

21 A Yes. The 16th, yes.

22 Q Did it come to your attention on October 16th that some of the kids  
23 were having a problem with Don David?

24 A Yes.

25 Q I want you to tell me how you first learned about that?



1 MR. WESTBROOK: Your Honor, I'm going to repeat my objection  
2 under 51.385 and hearsay.

3 THE COURT: Understood. Your objection is noted for the record and  
4 incorporated by reference.

5 You may continue.

6 MR. WESTBROOK: Thank you.

7 BY MS. KOLLINS:

8 Q Can you tell me how you first learned about what was going on, from  
9 the very beginning of the day?

10 A Yes. That day we're -- we were having a get-together outside my  
11 house.

12 Q Okay. When you say we, who are you talking about?

13 A Elena and Amanda Moiza's husband, Tara.

14 Q Okay. Anybody else?

15 A The other people had already left, because it was kind of late already.  
16 It was 9:00 -- 9:30 or 10:00 in the evening. So at that point, the girls, the four of  
17 them came running from that area, the side of where Don David lived. And I looked  
18 at them, and I -- what I did was I got up, and I said, Amanda, I'll be right back.

19 And so I run there, and when I'm on my way there and I went in and the  
20 four girls were sitting around my table, my dining room table, and they were talking.

21 Q Okay. Can you tell us the four girls by name?

22 A Yezline, Jatziri, and Mirabel, or Maradel; I really don't know their -- their  
23 name -- their names very well, because I -- they're kind of difficult, so I know them  
24 as the twins.

25 MS. KOLLINS: May I approach the witness, Your Honor?

1 THE COURT: Yes, you may.

2 BY MS. KOLLINS:

3 Q Showing you State's admitted 6, 9, and 15; do you recognize the kids  
4 depicted in 6, 9, and 15? Who is in No. 6?

5 A Jatziri.

6 Q And who is in No. 9?

7 A Well, I know them as the twins. But not by their names. I just know  
8 them by the skinny one and the heavier one.

9 Q Okay. So is the skinny one in No. 9?

10 A Yes.

11 Q And the heavier one is in No. 15?

12 A Yes. The heavier one.

13 MS. KOLLINS: Permission to publish, Your Honor.

14 THE COURT: Yes, you may.

15 BY MS. KOLLINS:

16 Q So in No. 6, that is Jatziri?

17 A Yes.

18 Q Okay. And in State's 9, is that the one that you referred to as the  
19 thinner one of the twins?

20 A Yes, the thinner one.

21 Q And you confused the Mirabel and Maradel names?

22 A Yes. Because I never hear them call them by their names, just twins,  
23 twins, the twins.

24 Q And showing you admitted State's 15; is that the heavier child of the  
25 two?

1 A The heavier one.

2 Q Either Maradel or Maradel -- Maradel or Mirabel?

3 A Yes.

4 Q So you said you went to your apartment and all four girls were there?

5 A Yes. Yes. The four of them, they were talking among themselves.

6 And I went in and the four of them got up. They came to me like this, and they said,  
7 Esther, Esther, Esther, we want to tell you something, we want to tell you  
8 something.

9 Q Okay. Which one said we want to tell you something?

10 A Jatziri and the twins.

11 Q Okay. And did Jatziri speak to you first?

12 A Yes. Yes. Among -- between all of them, among all of them there.

13 Q Okay. So the -- yes, Jatziri spoke first? I'm sorry.

14 A Yes.

15 Q Okay. And it was the twins and Jatziri and Yezline -- Yezline?

16 A And Yezline just went like this, and a tear came -- rolled down.

17 MS. KOLLINS: And if the record could reflect --

18 BY MS. KOLLINS:

19 Q When you said went like this, do you mean she tilted her head and  
20 showed a tear on her face, is that what you're indicating?

21 A Yes.

22 Q Because when we say this or that, when someone reads it later, they  
23 don't know what we're talking about.

24 A Okay. And then they told me, you know, My grandpa wants to take us  
25 to Chuck E. Cheese.

1                   And I said, oh, yeah, yeah. And said, But remember that you said that  
2 you and my mom were going to come with us?

3           Q     Wait. I didn't understand the translation. I'm sorry.

4           A     That you and my mom --

5           Q     Okay.

6           A     -- said that you were going to come with us?

7                   And -- and I said yes.

8                   And she said, Yeah, but he doesn't want you guys to come with  
9 us.

10          Q     So when you say she -- can we use the people by names, instead of  
11 saying she, so we know who you're talking about? Is that Jatziri that was  
12 speaking?

13          A     Yes. And she said, And I don't want to go. We -- we don't want to go,  
14 because my grandpa is touching us.

15                   And -- and that's when I went, What?

16                   Because -- and she said, I don't want to go, no.

17                   And I said, But why?

18                   She's touching us.

19                   How?

20                   And said, No, we don't want to go to Chuck E. Cheese.

21                   And then the -- the Cuban lady, and she said, If you don't talk,  
22 because and said, don't -- we don't want to go there. We don't want to go.

23 BY MS. KOLLINS:

24          Q     So when -- again, when you're referring to she, you're referring to Jatziri  
25 is speaking?

1 A Yes, Jatziri, the one who -- who was telling me.

2 Q Okay. And what's Yezline doing when Jatziri is telling you this?

3 A She was just standing there, listening. And then she said that he was  
4 going to take them to Chuck E. Cheese and he didn't want us to go with him,  
5 because from there, he was going to take them to a very -- very far away place,  
6 very beautiful place.

7 Q And did Jatziri tell you whether she wanted to go?

8 A No. She -- she said she didn't want to go. None of them wanted --  
9 none of the four wanted to go. And at that point, I turned my head and I told  
10 Amanda to come in.

11 Q Okay. Before you told -- I just want to ask you one more question  
12 about that conversation. Did Jatziri tell you whether or not David wanted the  
13 parents to go on the Chuck E. Cheese trip?

14 THE COURT INTERPRETER: I'm very sorry, counsel, could you  
15 repeat that question, please.

16 BY MS. KOLLINS:

17 Q Did Jatziri tell you whether or not David wanted the parents to go on the  
18 Chuck E. Cheese trip?

19 A Yes. He told them -- Don David told them that he didn't want Amanda  
20 or I to go with them.

21 MR. WESTBROOK: Your Honor, we object to that and move to strike.  
22 It's triple hearsay.

23 MS. KOLLINS: Well, it's their client's statement --

24 THE COURT: Well --

25 MS. KOLLINS: -- that's who we have --

1 THE COURT: This is the statement from Jatziri about what Mr. Don  
2 David had said or -- to her?

3 MS. KOLLINS: Correct. And any statements by Defendant at this  
4 point --

5 THE COURT: So I will overrule that.

6 All right. Go ahead.

7 BY MS. KOLLINS:

8 Q You said you had to get Amanda; where did you go to get Amanda?

9 A No. I turned my head towards outside, and Amanda was turning her  
10 head towards inside. So I motioned her to come in.

11 Q Okay. So she was just a short distance away?

12 A Yes.

13 Q Just outside the door of your apartment?

14 A Yes.

15 Q Okay. And did -- what happened after Amanda came inside?

16 A Well, when Amanda came in, she took them towards the inside when I  
17 told her what happened, what was going on. So she said, Come with me girls. And  
18 she took them towards the bathroom.

19 Q And when she took the girls towards the bathroom, which girls are we  
20 talking about?

21 A Jatziri, the twins, and Yezline.

22 Q So she -- did you go with her in towards the bathroom or did you let  
23 Amanda speak to them alone?

24 A No. She instructed me to stay out there so Mrs. Elena would not hear  
25 what was going on.

1 Q Now, had David ever taken them to Chuck E. Cheese before?

2 A No.

3 Q Did he take them to a couple other places that you gave permission  
4 for?

5 A Yes. He would take them to the 99 Store and McDonald's. He would  
6 take all the children in his car.

7 Q After you learned about this, did you take an opportunity to speak to  
8 Yezline alone?

9 A Yes.

10 Q Where did that conversation take place?

11 A In the bathroom.

12 Q And who was there?

13 A Nobody. Just she and I.

14 Q Was it the same day that you first learned about all of this?

15 A Yes.

16 Q Okay. What was Yezline's demeanor?

17 A She was crying and I -- and I said no, speak, tell me; you have to tell  
18 me everything that happened. And -- and that's when she told me how the man  
19 would grab her.

20 And I said, Why didn't you tell me or your dad?

21 And she said, No. I couldn't speak, because if we did, he  
22 would -- he would kill you.

23 Q So Yezline said the reason she hadn't told you is because David would  
24 kill you, being her mom?

25 A Yes. And her dad.

1 Q Now, you used the word grab when you said Yezline said, He would  
2 grab me.

3 A Her private parts.

4 Q Okay. And that's what I want to talk to you about is what did she tell  
5 you about how she was being touched by David?

6 A I asked her, How does he grab you? And -- and how -- does he grab  
7 you down there?

8 And she said, well, he puts his fingers in there. He pulls down  
9 my underwear.

10 And he would kiss her on the mouth.

11 Q So just to make sure I'm clear on the translation, she said he would put  
12 his fingers in there?

13 A Yes. No, he -- he would just touch her and hurt her.

14 Q Okay. That wasn't my question.

15 My question was -- because you said put his fingers in there.

16 A On her part.

17 Q In her part?

18 A On top of it, he would put his fingers there.

19 Q Did she tell you where this happened?

20 A Yes.

21 Q What did she tell you?

22 A Well, I would ask her where did he do all of this?

23 And she said, Right there, in his house, when we go there to get  
24 the candy.

25 And I said, Why would you go there if he did all these things to



1 you?

2 And he said, No, we have to go. We had to go forcibly.

3 Q Okay. In his house where we go to get the candy, we had to go  
4 forcibly; did she explain that to you?

5 A Yes.

6 Q Okay. Can you relay to me what she said?

7 A Yes. How he would grab her -- her private part?

8 Q You -- you said that she would have to go get candy forcibly; what do  
9 you mean by that or what did Yezline tell you about that?

10 A And she said, Mom, when we went to get the candy, he would put the  
11 candy through -- rub it through his part.

12 And I -- and then I said, And you would eat it?

13 And I said, no. We would just throw it out.

14 Q Would -- and when she said --

15 A That's why I didn't see that she would eat it. Because she said they  
16 would throw them out.

17 Q I'm sorry. I didn't hear?

18 THE COURT INTERPRETER: Because she said they would throw  
19 them out.

20 MS. KOLLINS: Okay. I'm sorry. I couldn't hear you.

21 BY MS. KOLLINS:

22 Q When she said that they -- he would rub it through his part, what part of  
23 his body did you take that to mean?

24 MR. WESTBROOK: Objection. Speculation.

25 THE COURT: It's sustained.

1                   We want to know if the child described what she meant, not what  
2 the witness meant.

3                   MS. KOLLINS: Rephrase. Rephrase.

4                   THE COURT: Okay.

5 BY MS. KOLLINS:

6           Q     When Yezline said his part, what she was describing?

7           A     That he would give them the candy, but before them he would pass  
8 them over his part, you know, and that -- but I can't say it, because it sounds so  
9 bad, so horrible, it's his penis, I think.

10          Q     Well -- penis?

11          MR. WESTBROOK: Objection. Leading.

12          THE WITNESS: Yes, his penis.

13          MS. KOLLINS: Actually she used the word penis and I was clarifying.

14          THE COURT: The interpreter used the word first. And besides, we  
15 need to -- we have an interpreter, we need to have a little bit of flexibility in leading  
16 questions to make sure that the proper answers are -- or that the answers are gone  
17 out.

18          THE COURT INTERPRETER: I'm sorry, Your Honor. Just for the  
19 record, no. The -- the witness said penis before the interpreter said it.

20          THE COURT: The witness said it.

21          THE COURT INTERPRETER: And then -- and then she was asked  
22 again, and she repeated it. But the -- the witness had said the word penis.

23          THE COURT: Yeah. That's -- that's what I --

24          THE COURT INTERPRETER: And that's when the interpreter said  
25 penis.

1 THE COURT: That's what I -- I understand. Thank you.

2 THE COURT INTERPRETER: Okay. You're welcome.

3 THE COURT: All right. Let's continue.

4 BY MS. KOLLINS:

5 Q And I apologize, ma'am. I know what you're talking about, but the word  
6 part doesn't translate on the record.

7 A Okay.

8 Q Thank you.

9 She told you that he would touch her private part and that would  
10 happen at his house?

11 A Yes.

12 Q What word did Yezline use for her private part or her vagina?

13 A No. She would just say down here and she would point it out -- point  
14 that out with her hand.

15 Q Does she have a name for it now?

16 A No. She just says it's her part down below.

17 Q Okay. Now, did Yezline tell you about a time with tape?

18 A Yes.

19 Q Okay. What did she tell you?

20 A Well, yes, and then she said there was another time, Mom, you know,  
21 remember, then you told me to go and tell my grandma to come over to eat.

22 And I said yes.

23 And I said, well, and I -- and I went. And she wasn't there, but  
24 my grandpa was there and he pulled me inside. And first he took me to the room  
25 and he taped my hands, yes. And her -- her feet -- my feet.

1 Q Okay.

2 MS. KOLLINS: For the record, the -- the witness had indicated  
3 something up near her mouth, but I didn't hear that in the translation.

4 Q Was that part of the translation or no? Part of the testimony or no?

5 A No. She just told me that he put tape on her mouth and in her hands  
6 and her feet in the room.

7 And then I said, What did he do to you that day that he did all  
8 that and put you like that?

9 And she said, He took my private part.

10 And I said, Did he pull down your underwear?

11 And she said, A little bit.

12 Q Okay.

13 A And after he touched everything, he said, get out.

14 Q Okay. I want her --

15 A Your grandma's not here.

16 Q I want to back up for a minute. Okay.

17 Did Yezline describe to you how he touched her on her private  
18 part?

19 A Yes.

20 Q Can you tell me what she said?

21 A Well, she said, Yes, when he did that, he pulled down my underwear  
22 and then he touched me, and then after that he said -- he -- he told her to get out.

23 Q Okay. Did Yezline tell you that the way he touched her vaginal area  
24 reminded her of something?

25 MR. WESTBROOK: Objection. Leading.

1 THE COURT: Well --

2 MS. KOLLINS: I want to have some latitude, please. I've asked it  
3 open-ended, I'm not --

4 MR. WESTBROOK: It's a fill-in-the-blank question.

5 THE COURT: It's -- it's -- well, it's suggesting the topic, but not the  
6 substance. So I'll -- I'll go ahead and -- and overrule. Let's see where it goes.

7 THE COURT INTERPRETER: The interpreter has not had the chance  
8 to interpret it, so.

9 MS. KOLLINS: The question?

10 THE COURT INTERPRETER: The question.

11 BY MS. KOLLINS:

12 Q Did Yezline tell you that the way David touched her genital area, her  
13 vaginal area, reminded her of something?

14 A Well, she just told me that. And she said she didn't want to talk about  
15 that anymore that night. It was the next morning when we were going to go to  
16 school is when I got her again.

17 Q Okay. Do you recall talking about cream?

18 A Well, what happens is that the child is prone to infections and it gets red  
19 in there. So I put some cream in it, on her. And one day when I was doing that  
20 with my finger, she said, That's how Grandpa touches me.

21 Q Okay. You also said that she said David kissed her on the mouth?

22 A Yes.

23 Q Did she say where that would happen?

24 A At -- at his house.

25 Q Did she talk to you during that conversation about David showing things

1 on his phone?

2 A Yes. Videos.

3 Q Did she describe what kind of videos those were?

4 A Well, things like naked women, naked men having sex.

5 Q Is that your word, sex, or her word, sex?

6 A Yezline, sex.

7 Q Did she talk -- speak to you during that conversation about whether or  
8 not she saw David's penis or private part?

9 A Yes.

10 Q What did she tell you about that?

11 A She said, Also, Mom, he pulls down his pants and he shows us his part,  
12 you know, his -- and -- and he moves it like this. Even two days ago we went to the  
13 store and she -- I was looking for some things. And she even grabbed a chorizo, a  
14 sausage. And she said, Mommy, come here. You see this chorizo? This is how  
15 Don David has his -- his thing. That's the way it is.

16 Q Okay. I want to move back to something you said. You repeated that  
17 Yezline said he moves it like this.

18 A Yes.

19 Q Explain for us what she showed you or what she did.

20 A She stood up and she said -- can I stand?

21 Q Sure.

22 A May I stand now?

23 Q Certainly. If it will help you describe for us.

24 A She said --

25 MR. WESTBROOK: Your Honor.

1 THE COURT: Yes?

2 MR. WESTBROOK: We have an objection. May we approach?

3 MS. KOLLINS: Okay. Hold on. One moment.

4 [Bench conference transcribed as follows.]

5 MR. WESTBROOK: Now we're getting on tested, 51.385 testimony  
6 from two days ago. This has never been approved. We can't do a blanket  
7 determination of credibility. All it is is proof that she's apparently been talking to her  
8 daughter about this case continuously up until at least two days ago, and this is all  
9 brand new.

10 THE COURT: My -- this event, she's going to be able to talk about.

11 MS. KOLLINS: My understanding is it's in the same conversation. If  
12 you don't think it is, then I can move on.

13 MR. WESTBROOK: She said two days ago.

14 MS. KOLLINS: Well, that was the chorizo thing, but I didn't -- I didn't  
15 know what she was saying until it's --

16 THE COURT: Can you clarify [indiscernible] what we had already  
17 covered at the 51.385 hearing.

18 MR. WESTBROOK: Your Honor --

19 THE COURT: That it's appropriate wasn't covered at that hearing, and  
20 [indiscernible].

21 MS. KOLLINS: Okay. Obviously, she's a little difficult to control and  
22 very nonresponsive, so I'm doing the best I can.

23 THE COURT: You are.

24 MR. WESTBROOK: Well --

25 MS. KOLLINS: I -- well, I just want to make a record, too. You know,

1 the -- the chorizo thing I've never heard about. I -- I understand that needs to be  
2 stricken. I didn't want to ask any more questions about it. But I didn't understand it  
3 until it was already translated. Okay. And this new -- this thing that she --

4 THE COURT: It's -- it's not prejudicial.

5 MS. KOLLINS: Okay.

6 THE COURT: It's not coming in, it's not prejudicial.

7 MS. KOLLINS: This thing that she's about to do right now, my  
8 understanding it was all in the same conversation. But I don't have any way to test  
9 that in their presence.

10 THE COURT: I know you don't. I know you don't.

11 MS. KOLLINS: Okay. I'll ask her if --

12 THE COURT: All right. So we --

13 MS. KOLLINS: I'll have --

14 THE COURT: -- the rest of your objection is --

15 MR. WESTBROOK: Actually, I have two things. Number one, I think  
16 allowing her to clarify when this happened in front of the jury is prejudicial,  
17 particularly if it didn't happen.

18 THE COURT: When what happened?

19 MR. WESTBROOK: When whatever she's describing right now.

20 THE COURT: Well, how could it be prejudicial if we don't know what  
21 happened to her?

22 MR. WESTBROOK: Well, she's never mentioned it before, which  
23 means to me --

24 THE COURT: Mentioned what?

25 MR. WESTBROOK: This -- this description she's doing right now,



1 where she's pointing down --

2 THE COURT: We don't know what she's going to describe.

3 MR. WESTBROOK: The question, how did he move his penis has  
4 never been asked before and it's never been answered before. I don't think -- it's  
5 subject to 51.385, Your Honor. The evidence suggests that she is now going to say  
6 something she's never said before. It will be in front of the jury. It shouldn't be.  
7 That's prejudicial, number one.

8 THE COURT: And I'm not going to -- I already told you -- you've got to  
9 listen to what I'm saying. Okay. I already told you it's not coming in until we find  
10 out when.

11 MR. WESTBROOK: I understand, Your Honor.

12 THE COURT: Okay. So -- so --

13 MR. WESTBROOK: But it should be voir dired outside the presence,  
14 that's what I'm saying.

15 THE COURT: No. We don't need to do that.

16 MR. WESTBROOK: Okay.

17 THE COURT: Step back.

18 MR. WESTBROOK: One -- one more thing.

19 THE COURT: No, no more. You can put it on the record later. You've  
20 taken too much time.

21 MR. WESTBROOK: All right.

22 [End of bench conference.]

23 THE COURT: All right. We're going to continue.

24 BY MS. KOLLINS:

25 Q Before you stand up, I just want to clarify, is this still all in the same

1 conversation with Yezline in the bathroom?

2 A No. That was another day that she talked to me.

3 Q Okay.

4 MR. WESTBROOK: Objection. Hearsay. Move to strike.

5 THE COURT: All right. So I'll grant that.

6 The jury will just disregard that the witness was getting ready to  
7 talk about something which she wanted to stand up and show you. Disregard all  
8 that. All right.

9 Let's just move on.

10 BY MS. KOLLINS:

11 Q Did Yezline call David Grandfather?

12 A Yes.

13 Q Okay. She and all the girls, right?

14 A Yes.

15 Q When you learned about this, did you know where David was working?

16 A Yes.

17 Q Where was he working?

18 A Well, he would do upholstery for a living.

19 Q Okay. Did Amanda work with him sometimes?

20 A Sometimes she would go there to help.

21 Q Did you -- without telling us what you said, did you and Amanda come  
22 to a decision to call the police?

23 A We did not call. We went, but we were sent to one place and then  
24 another, until we got Bonanza and Pecos.

25 Q And did you speak to police officers or detectives there?

1 A Detectives.

2 Q And did you take Yezline to be interviewed to that same building on  
3 Bonanza and Pecos?

4 A Yes.

5 Q Did she also have to get a medical examination?

6 A Yes. Over there, too, it was done to her.

7 Q Okay. Did she get those things done the same day, if you remember?

8 A All of that was done. But for the doctor's examination, they gave us,  
9 like, a month or two weeks or something.

10 Q Okay. Before all of this came out, did you have any problems with  
11 David?

12 A No.

13 Q Did you have any problems with Elena before this?

14 A No.

15 Q Have you noticed a change in your daughter?

16 A Well, now I see her that she's more calm. But that's why we moved out  
17 of there, because everything reminded her of that. But now she is more calm.

18 Q I want to back up just really quick.

19 Did you ever give David permission to have your daughter in his  
20 apartment alone?

21 A No.

22 Q You went to the Rape Crisis Center; is that correct?

23 THE COURT INTERPRETER: I'm sorry. What center?

24 MS. KOLLINS: Rape Crisis Center.

25 THE WITNESS: The crisis place? Yes, uh-huh.

1 BY MS. KOLLINS:

2 Q You met with Wendy Losada?

3 A Yes.

4 Q And Wendy gave you a referral to Hermandad Mexicana?

5 A Yes.

6 Q Okay. Yezline and Nicole born in the United States?

7 A Yes.

8 Q And you are not documented right now, correct?

9 A No, I'm not documented. You know, I don't have papers.

10 Q When -- when you were referred to Hermandad Mexicana, did they help  
11 you fill out an application for a U visa?

12 A Yes.

13 Q And who helped you fill that out?

14 A At the Hermandad Mexicana, it was Janet.

15 Q Okay. And is that application currently pending?

16 A Yes.

17 MS. KOLLINS: May I approach the witness, Your Honor?

18 THE COURT: Yes.

19 BY MS. KOLLINS:

20 Q Showing you admitted State's 21; does that look like a copy of your  
21 U visa application?

22 A No.

23 Q Is that your name at the top?

24 A Yeah. But this paper was not given to me.

25 Q Did you look at the whole application or did you just have to submit

1 some of the paperwork to Hermandad Mexicana?

2 A No. Only certain papers.

3 Q Okay. Did you -- did you get a chance to look at the application before  
4 it was forwarded to any other agency?

5 A No. They just showed me the -- the pages, but no.

6 Q Okay. Is it your understanding that you have any protection from  
7 deportation as you sit there today?

8 A I didn't understand.

9 Q Was it explained to you or do you know, could you be deported right  
10 now, even though that U visa is hanging out there?

11 A Oh, yes. I know I can be deported.

12 Q Okay. So if you know, does that U visa take a long time to get  
13 approved?

14 A Yes. I know. The woman told me, you know. I didn't know, but she  
15 told me it would take two to three years.

16 Q Did you have any removal proceedings pending in October of 2016?

17 A No.

18 Q Do you have any removal proceedings pending now?

19 A No.

20 Q Have you ever been in the middle of a removal proceeding from the  
21 United States?

22 A No.

23 MS. KOLLINS: Court's indulgence, please.

24 State's going to pass the witness, Your Honor.

25 THE COURT: All right. We're going to take our recess. So ladies and

1 gentlemen, 15-minute recess.

2           You are admonished not to communicate among yourselves or  
3 with anybody else about the trial; don't talk to the parties, attorneys, or witnesses;  
4 don't seek any information about the case from my source; don't read anything  
5 about the case; don't form or express any opinions connected with the trial; don't do  
6 any research or investigations.

7           You are instructed to return outside this courtroom at -- at 11:12.  
8 All right. See you back then. Thank you.

9           Yes, sir?

10           JUROR NO. 14: Our schedule for this week, if I -- because I might  
11 have to go to work, well, could we come in later? It's -- what's -- what's our  
12 schedule this week?

13           THE COURT: Our schedule for this week?

14           JUROR NO. 14: Yes.

15           THE COURT: Well, today until 5:00, and then tomorrow, 1:00 to 5:00.  
16 Wednesday, probably starting at 11:00 to 5:00. And then Thursday 1:00 to 5:00.  
17 And then Friday 9:00 to 5:00. Okay. Probably. And I'll let you know day-to-day.  
18 But that's the most likely schedule.

19           Thank you. One moment.

20                           [Jury recessed at 10:56 a.m.]

21           THE COURT: Okay. We're outside the presence of the jury.

22           Ms. Barajas, you may step down. I need you back here  
23 in 15 minutes. You'll wait right outside the door until you're called. Please do not  
24 discuss your testimony with anybody while on break. Thank you.

25           THE WITNESS: That's fine. Thank you.

1 THE COURT: Mr. Westbrook, what did you need to put on the record  
2 about the testimony that I struck?

3 MR. WESTBROOK: The other thing I needed to put on the record is  
4 there's not a separate standard in the law for translators and the use of translators.  
5 They've been getting a ton of leading and a ton of latitude. They've been  
6 completely nonresponsive to certain questions. I mean, she was orating up there.

7 But whenever I try to object, the translation finishes, and I -- I find  
8 that prejudicial, because stuff is getting in front of the jury that shouldn't be getting  
9 in front of the jury, and you can't unring the bell.

10 This chorizo should never have come in front of the jury. The  
11 second -- the thing that happened after that shouldn't have come in front of the jury.  
12 And I was correct, it was not something that was said prior to the 51.385. I think it's  
13 prejudicial.

14 And also there's been just too much latitude given to the -- the  
15 State because of the fact that we have translators. There's not a separate  
16 standard. They still have to be clear and -- and they have to be on point with their  
17 answers.

18 THE COURT: Well, actually, I have done some research in this area,  
19 and -- and there are supreme court -- there are cases throughout all the  
20 jurisdictions that discuss the need for latitude when necessary in order to draw out  
21 the testimony. You have to balance the need to draw out the testimony with the  
22 importance of providing protection to the defendant.

23 But there are cases dealing with people that are incompetent,  
24 people that are -- with minors, with people that are afraid to testify. There's --  
25 there's various contexts in which the court has allowed the -- the appellate courts

1 have allowed district court judges latitude in order to facilitate the testimony coming  
2 out in -- in the least offensive way possible while still trying to balance the parties'  
3 rights.

4 That's what I'm trying to do.

5 That -- the comment about chorizo, I don't know what you want to  
6 do with it. I don't think that that's prejudicial. It -- you know, the context in which it  
7 came out, if you want me to say something to the jury to disregard that, I will.

8 MR. WESTBROOK: Well --

9 THE COURT: But that -- that just would tend to emphasize the -- the  
10 testimony, so I don't -- I don't --

11 MR. WESTBROOK: Correct.

12 THE COURT: -- I wouldn't recommend that.

13 MR. WESTBROOK: Right.

14 THE COURT: You know, I -- once -- once the witness has spoken, I  
15 think I have to allow the translation to complete, and then -- and then you're left with  
16 moving to strike. I would employ that remedy some more, if you want to.

17 MS. KOLLINS: May I be heard, just very briefly?

18 THE COURT: Yes, you may. Yes.

19 MS. KOLLINS: In terms of the chorizo comment and the other  
20 movement --

21 THE COURT: Yeah.

22 MS. KOLLINS: -- of the penis comment, I had never heard the chorizo  
23 before.

24 THE COURT: Okay.

25 MS. KOLLINS: And the -- the movement of the penis I just thought was



1 more descriptive and internal to that conversation that was subject to 51.385.

2 I just want the court to know that she was pretried and told that  
3 we were only going to talk about that -- this one specific conversation that we had  
4 the hearing on.

5 THE COURT: All right.

6 MS. KOLLINS: I don't want anybody to assume that any of this was  
7 done in any bad faith in making that record. I -- I tried to control her as best as I  
8 could.

9 THE COURT: I -- I think you're doing fine in that way -- in that regard. I  
10 really do. And, you know, it certainly didn't come out as -- as any kind of intentional  
11 attempt to bring something out beyond the 51.385 hearing.

12 I can't see how that would be prejudicial, her starting -- she was  
13 at the just the very beginning, I guess, to talk about how the defendant was going to  
14 show that he was -- that -- how he would move his hand. But we've heard that  
15 already in -- in other contexts. So I --

16 Well, what do you want? I mean, what could I possibly do to  
17 mitigate any prejudice that you perceive at this point as to that? I already struck it.  
18 I told you I struck that testimony.

19 MR. WESTBROOK: I understand, Your Honor.

20 THE COURT: What more could I do, without drawing attention to it?

21 MR. WESTBROOK: My movement would be for a mistrial, because I  
22 don't think there is anything that we can do to unring the bell.

23 THE COURT: Yeah. And I don't -- you know, I don't blame you for  
24 making that motion. You've got to do that to protect your client. I just don't think  
25 that it was so prejudicial that it would warrant a mistrial here on -- on that -- that

1 point.

2 MR. WESTBROOK: And the second thing is the 51.385 -- is my  
3 understanding -- was in regards to October 16th, 2016, I've heard a lot of testimony  
4 today about conversations that took place the next morning, on October 17th, which  
5 also should never have been allowed in. I mean, I had a continuing objection  
6 on 51.385 that covers that.

7 THE COURT: You do.

8 MR. WESTBROOK: But the vast majority of what she just testified to  
9 happened after that initial conversation.

10 THE COURT: Do you want to respond to that, Ms. Kollins?

11 MS. KOLLINS: Your Honor, I pointed her to October 16th and the  
12 morning she learned about this, and pointed her to that conversation. I -- you  
13 know, these kind of, you know, vague and vast objections, the conversations I've  
14 heard over the course of testimony, you know, there was no contemporaneous  
15 objection to the timeframe. There was no contemporaneous objection to the  
16 inception of what was already admitted by this court as 51.385.

17 So when he says conversations, you know, we've discussed this  
18 chorizo thing and the hand movement. You know, that could be the same hand  
19 movement that take -- that he needs to get his penis out of his pants. I mean, she  
20 never got to a, you know, a masturbation motion up there.

21 THE COURT: No. She didn't -- she didn't do that.

22 MS. KOLLINS: So I don't think --

23 THE COURT: So --

24 MS. KOLLINS: I don't think that's prejudicial. But...

25 THE COURT: And I -- I don't -- specifically, look -- thinking back over

1 what she said on the stand, I -- I haven't heard anything that -- although there --  
2 there -- are you listening?

3 MR. WESTBROOK: We are.

4 MS. KIERNY: Yes.

5 THE COURT: There are some differences, obviously, between what  
6 she said now and what she said at the 51.385. But I don't think she was describing  
7 any events that she didn't already describe at the 51.385. I'll leave that up to cross.  
8 I'm not ready to, you know, to grant any motion for a mistrial based upon her  
9 testimony here in court.

10 MR. WESTBROOK: Two responses.

11 THE COURT: You may.

12 MR. WESTBROOK: Number -- number one --

13 THE COURT: All right.

14 MR. WESTBROOK: My objections are contemporaneous.

15 The court instructed me that I shouldn't object to every single  
16 thing that she says, that my 51.385 objections would be preserved. I've been doing  
17 it per witness and putting it out there, so I'm not interrupting the flow and I'm not,  
18 you know, seen to be challenging the court's original order.

19 THE COURT: Well, I still want you to -- to make a specific objection if  
20 you believe she's gone beyond -- like you did at the bench.

21 MR. WESTBROOK: Right.

22 THE COURT: If you believe that she's gone beyond the scope of  
23 51.385 --

24 MR. WESTBROOK: Okay.

25 THE COURT: -- then you should -- you should object.

1 MR. WESTBROOK: And the second thing, by way of example --

2 THE COURT: Yes.

3 MR. WESTBROOK: -- she has a problem with rashes in her private  
4 part, and I put cream on it to take -- deal with that problem and that's when she told  
5 me X, Y, and Z? That has never been a subject of the 51.385 hearing. That's the  
6 first time I've ever heard anything about her having rashes in her private parts.

7 THE COURT: Well --

8 MR. WESTBROOK: The jury's going to assume that it's because of  
9 that event and --

10 THE COURT: But that's not -- for the -- for Ms. Barajas to testify as to  
11 what she did, all right, that doesn't require a 51.385. That would only require  
12 a 51.385 if her daughter told her something. The hearsay has to be subject, but her  
13 act of putting the cream, which prompted the statement by the minor about he used  
14 to touch me there, you know, that's not something that requires a 51.385. Do you  
15 see the distinction?

16 MR. WESTBROOK: The quote is, Yezline said that's how Don David  
17 touched me.

18 THE COURT: That's how he touched me. Yeah. That's how he  
19 touched me.

20 MR. WESTBROOK: That is a quote from -- that is a hearsay quote  
21 from her daughter that was not subject to 51.385.

22 MS. KOLLINS: Actually, I think --

23 MR. WESTBROOK: And it was a direct question to a State's question.

24 MS. KOLLINS: I did ask her that question during the 51.385.

25 MR. WESTBROOK: And she said nothing.

1 MS. KOLLINS: Well, I -- I asked her. And I understand --

2 MR. WESTBROOK: And she said nothing. Now she's saying  
3 something new.

4 THE COURT: Let -- let her finish her sentence.

5 What -- what were you going to say?

6 MS. KOLLINS: I asked her --

7 THE COURT: I'm just going to take a break.

8 MS. KOLLINS: I asked her the question during the 51.385, but I  
9 couldn't get her pointed to the right spot in the conversation, and -- and I think we  
10 moved on. I don't know that she gave the full response. But I know I asked her the  
11 question, because I have it in my notes, and I went over it.

12 THE COURT: Well, I know that she said, at the 51.385, that she was  
13 touched by his fingers, you know, down there. I don't know what prompted that  
14 response.

15 It is new to hear today that what prompted it is the putting the  
16 cream. But the fact of putting the cream is not something that needed the 51.385.  
17 That's how I see it. I know you disagree. We'll just have to disagree on that point.

18 MR. WESTBROOK: Because the question was asked and answered  
19 differently, completely differently --

20 THE COURT: Okay.

21 MR. WESTBROOK: -- at the 51.385 hearing, and because we don't  
22 have a transcript ready --

23 THE COURT: No.

24 MR. WESTBROOK: -- while we're on recess, I would like, if it was  
25 possible for your staff to forward to -- her testimony?

1 THE COURT: I'm not -- my staff needs a recess --

2 MR. WESTBROOK: After, yeah.

3 THE COURT: -- for themselves. They're not going to do any work  
4 during the recess.

5 MR. WESTBROOK: Okay.

6 THE COURT: All right.

7 MR. WESTBROOK: I mean, when everyone is back from whatever  
8 break they need. I need a break, too.

9 THE COURT: All right. Well --

10 MR. WESTBROOK: So I understand.

11 THE COURT: Well, with all due respect, you know, I don't want to be  
12 rude to you. I wish you were, like, especially the bench conferences, a little more  
13 succinct. I know you've got to make your record. But it's really tough in this case  
14 where you have interpreters and it gets frustrating how long this trial is going to be.  
15 I just wish we all could be a little more succinct.

16 As to asking my staff to do work when they're entitled to a break,  
17 they're going to go take their break.

18 MR. WESTBROOK: Sure.

19 THE COURT: Then we're going to move on with the testimony.

20 If you want her to -- you can put in a request for her to -- to get  
21 the 51.385 testimony regarding the touching of -- of Yezline when Ms. Barajas was  
22 describing that on the stand, she could burn you a CD of that, all right. You're  
23 going to have to find specific references to what you want, and then if you want to  
24 make a separate Motion to Dismiss at another time, we could do that.

25 We're going to move on. We've got to -- I've got to keep this

1 going --

2 MR. WESTBROOK: Okay.

3 THE COURT: -- Mr. Westbrook.

4 MR. WESTBROOK: I -- I understand, Your Honor. But we need to be  
5 able to do a contemporaneous cross-examination of her --

6 THE COURT: You -- you made your -- oh.

7 MR. WESTBROOK: -- with what happened at the hearing. I mean,  
8 I'm -- the court is telling me that I'm stuck now with what she testified to, even  
9 though it was outside the 51.385 responses. I need to be able to cross her with  
10 what she actually said at the 51.385 hearing, which is different. It's very difficult to  
11 do that without playing the tape.

12 THE COURT: Which -- I didn't say you're stuck with anything.

13 MR. WESTBROOK: Okay.

14 THE COURT: You can have the DVD. I thought I mentioned --

15 MR. WESTBROOK: We have it.

16 THE COURT: -- at the start of the trial that you have the right to get the  
17 DVD of the 51.385 -- entire 51.385 hearing, so I thought you already had it.

18 MR. WESTBROOK: We do, Your Honor.

19 THE COURT: Well --

20 MR. WESTBROOK: I just need to find the correct spot so I can play it  
21 for her, that's all.

22 THE COURT: All right.

23 MR. WESTBROOK: It just will take a little time. That's all I was asking  
24 about.

25 THE COURT: Well, do that on your break. We're down to less than

1 10 minutes. That'll, you know, give us -- let's take it until 11:15.

2 MR. WESTBROOK: Thank you, Your Honor.

3 THE COURT: And --

4 MR. WESTBROOK: I'll run across the street.

5 THE COURT: Or call somebody.

6 MR. WESTBROOK: I wish there was someone to call, but there's not.

7 MS. KIERNY: We don't have a lot of staff.

8 MS. KOLLINS: And I'll respond to that when we return, so everybody  
9 can have a minute. I just had a couple responses.

10 THE COURT: Why don't you respond really quick now, because I don't  
11 want to get into more dialogue before we start up again. So whatever you've got to  
12 say, say now.

13 MS. KOLLINS: That's also admissible as circumstantial state of mind  
14 and effect on the hearer, effect on the mom. Not only in 51.385.

15 Secondly, during my pretrial conference with that mother, it was  
16 indicated to me that that was part of the 51.385 conversation, the same  
17 conversation. There wasn't the further descriptors that we were given today.

18 So I just want that -- I want that clear for the record. That was  
19 not elicited, certainly, to get outside this court's ruling. Okay. I just want to make  
20 sure the record's clear.

21 THE COURT: Okay. No. I -- I believe you.

22 MS. KOLLINS: I know. I just want to make a record.

23 THE COURT: And he's doing his job. I understand that. But go take  
24 your break so you can find whatever you need to find, all right.

25 MR. WESTBROOK: We'll go.



1 THE COURT INTERPRETER: Your Honor.

2 THE COURT: Yes, ma'am, what?

3 THE COURT INTERPRETER: I'm sorry if I interrupt for a minute,  
4 because there was a comment made by the defense counsel --

5 THE COURT: Yes.

6 THE COURT INTERPRETER: -- about the translation being allowed  
7 after an objection.

8 THE COURT: Yes, ma'am.

9 THE COURT INTERPRETER: And I have to say as myself, the  
10 interpreter, this interpreter, every time there was an objection, this interpreter  
11 stopped the witness from speaking.

12 THE COURT: Yes.

13 THE COURT INTERPRETER: So -- and -- and on my part --

14 THE COURT: Yes.

15 THE COURT INTERPRETER: -- there wasn't --

16 THE COURT: No. You did. You did.

17 THE COURT INTERPRETER: Yes.

18 THE COURT: You're doing the right things.

19 THE COURT INTERPRETER: Okay.

20 THE COURT: And I think it's --

21 THE COURT INTERPRETER: I just wanted to put it on the record.

22 THE COURT: -- just a matter of how counsel wants me to proceed  
23 during the interpretation. So thank you. You're doing the right thing.

24 THE COURT INTERPRETER: Thank you.

25 THE COURT: We appreciate you being here.

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THE COURT INTERPRETER: Thank you, Your Honor.

THE COURT: All right. All right.

[Court recessed at 11:09 a.m., until 11:24 a.m.]

[Outside the presence of the jury.]

THE COURT: Back on the record. *State vs. Azucena*, C-321044.

Just for the record -- we all like to make our records -- so just to put it on the record and then I'll put these up here if you guys want to look at them, four cases that provide that it was not an abuse of discretion for the district court judge to allow some limited leading questions on direct when necessary to -- to properly draw out the testimony of a witness who has communication difficulties and -- because they're using an interpreter.

These cases are as follow: *Malm vs. Commonwealth*, 2008 Westlaw 3890077, Supreme Court of Kentucky, 2008.

And you can have all of these.

*People vs. McNeal*, 123 Cal. App. 2d 2229 1954; *State vs. Gerhardt*, 549 P.2d 262 Supreme Court Idaho 1976; and *In Re Estate of Malyte* [phonetic], Supreme Court of the Mariana Islands, 2011 Westlaw 1316909, March 31, 2011. So.

And if you can just leave those up there.

There are others. I just had a sampling to make sure that I had proper discretion, because I knew that issue was going to come up.

Your objection is noted and -- and I'll continue to be vigilant regarding the extent to which leading questions are used.

Let's bring the jurors in.

MR. WESTBROOK: Oh, one more thing.

1 THE COURT: Yes, go ahead.

2 MR. WESTBROOK: One more thing before we do.

3 As I understand it, the recordings of the JAVS involving Maria  
4 Estrella Barajas were not produced to us.

5 THE COURT: Because you didn't ask for them.

6 MR. WESTBROOK: Well, I just -- I thought we had all of the 51.385,  
7 Your Honor. But apparently the recordings were just of the afternoon session and  
8 not of the morning session. That's what I've just been told.

9 MS. KIERNY: She was in the afternoon.

10 MR. WESTBROOK: She was in the afternoon?

11 MS. KIERNY: Uh-huh.

12 MR. WESTBROOK: Well, then we should have them.

13 MS. KIERNY: Yes.

14 MR. WESTBROOK: Okay.

15 MS. KIERNY: And I -- I was the one who worked on getting this so that  
16 I could get the transcript. I asked for only the afternoon, which would include Maria  
17 Barajas and would have included Amanda.

18 THE COURT: Okay. Maybe I misunderstood from my court recorder  
19 then.

20 MR. WESTBROOK: Okay.

21 THE COURT: I -- I might have misunderstood.

22 So, well, then, what would you like us to do about that?

23 MR. WESTBROOK: Well, I'd still like to be able to forward to a certain  
24 part of the recording and actually play it for Ms. Barajas.

25 THE COURT: See, yeah, I wish you had brought this up, like, Friday so

1 we could have dealt with it over the weekend.

2 MR. WESTBROOK: Honestly, Your Honor, I didn't know that the State  
3 would ask a question about lotion, considering that when they asked that question  
4 at the 51.385, there was no substantive answer.

5 THE COURT: Well, fair enough.

6 MR. WESTBROOK: It was a leading question. I objected to it. And  
7 the answer is completely and utterly different, which is why we wanted to wait for  
8 the transcript before crossing these witnesses in the first place.

9 THE COURT: Okay. You don't have the transcript yet, because you  
10 don't have the tape. So you --

11 MR. WESTBROOK: Well, apparently we did have the tape and we did  
12 order it. I was just relating to you what I was told by -- by --

13 THE COURT: I'm confused. Just tell me what you need, please.

14 MR. WESTBROOK: What I need is to be able to play the recording  
15 from the 51.385 hearing, where Maria, the witness on the stand, was asked that  
16 exact same question about lotion and had a completely different response.

17 THE COURT: Okay. Are you able to queue that up for him? Or  
18 what --

19 THE COURT RECORDER: I can look for it.

20 THE COURT: Can you find it? Do you want to take a couple minutes?  
21 I could -- I -- I didn't want you to have to do it during the break. And given that they  
22 did ask for this portion of the testimony and didn't get it, I want to try to help them a  
23 little bit.

24 MR. WESTBROOK: Thank you, Your Honor.

25 THE COURT: Do you want to look for it now? Or do you want to wait

1 until --

2 THE COURT RECORDER: Whatever you prefer me to do.

3 THE COURT: You can look for it now. We'll go off the record, if you  
4 don't mind searching for a moment.

5 MR. WESTBROOK: Thank you, Your Honor.

6 MS. KOLLINS: If I could just make a very --

7 THE COURT: Do we need to be on the record?

8 THE COURT RECORDER: We're still on the record.

9 THE COURT: We're still on the record.

10 MS. KOLLINS: Very briefly. Because of the difficulty in controlling the  
11 witness, I spoke to Mr. Westbrook, and I told him I would speak to Ms. Estrella  
12 Barajas again and let her know what the parameters of her testimony were  
13 pursuant to 51.385. Of course, those -- those are my court words, not my words to  
14 her.

15 I told her to isolate the conversation that was in the bathroom and  
16 that's what we were speaking of today. And she said she understood. So I don't  
17 know how successful he's going to be with his cream question now. But I just  
18 wanted to make that part of the record.

19 Additionally, today when we came back, defense counsel just  
20 handed me a disc of discovery for this case of photographs, I guess. We're pulling  
21 them up right now.

22 THE COURT: Okay.

23 MS. KOLLINS: But we'll --

24 THE COURT: Well, obviously, they --

25 MS. KOLLINS: We'll work with it.

1 THE COURT: -- they can't use anything that wasn't timely disclosed.  
2 The rule requires them to turn it over what, five days before trial? Or we'll take a  
3 look at the local rule on that. Is that what the rule is?

4 MR. WESTBROOK: These are in response to the question -- to the --  
5 the pictures that the State turned over.

6 THE COURT: Pardon me?

7 MR. WESTBROOK: These are offered in response to -- essentially, to  
8 the pictures that the State turned over, greater than five days prior to trial. All it is  
9 shots, external shots of the -- of the apartment building. So I don't think there'll be  
10 an objection.

11 THE COURT: Well, so it sounds like there shouldn't be a problem.  
12 So --

13 MS. KOLLINS: I'm look --

14 THE COURT: What's fair to one side is fair to the other side.

15 MS. KOLLINS: We're looking at them. I just wanted to make a record.

16 THE COURT: Well, if you guys want to -- you know, do you want to  
17 just get started with the cross and then -- and then have my court recorder find  
18 what you're looking for during lunch?

19 MR. WESTBROOK: Sure.

20 THE COURT: Because you're not going to finish cross in half an hour,  
21 are you, or 45 minutes? Or -- maybe?

22 MR. WESTBROOK: We'll see. Well, I'll get -- I'll get close. But we can  
23 certainly break for lunch when I'm to the point where I would ask her about that, if  
24 you like. I don't want to take her -- her whole lunch, but it should be pretty quick to  
25 find it.

1 THE COURT: Well, because I don't mind going to 12:30, since the jury  
2 already had a very long break.

3 MR. WESTBROOK: Right.

4 THE COURT: So the question I have for my court recorder is can she  
5 get this done in five minutes? Or will it take longer than five minutes?

6 THE COURT INTERPRETER: It takes at least five minutes for the  
7 publisher to come up, for me to find that section. But I will do -- I can find it for you  
8 at lunch, if you want me to do that.

9 THE COURT: All right. We'll have to do it that way, then.

10 Let's bring the jury in. Thank you.

11 [Pause in proceedings.]

12 [Jury reconvened at 11:32 p.m.]

13 THE COURT: All right. Welcome back. We had some -- some things  
14 we had to discuss outside your presence, so it took a little bit longer. But thank you  
15 for your patience.

16 We're going to go probably about 45-minutes and take a lunch  
17 break. All right. Then we're going to have to find something during the lunch break  
18 and then -- before we can have the defense counsel wrap up his cross. All right.

19 So, but with that, we're going to start with the cross-examination  
20 of Ms. Barajas.

21 Marshal, would you please bring her back into the courtroom?  
22 Thank you.

23 Please be seated, everybody.

24 Ms. Barajas, you are still under oath. Do you understand?

25 THE WITNESS: Yes.

1 THE COURT: All right. All right.

2 Mr. Westbrook, you may cross-examine.

3 MR. WESTBROOK: Thank you, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MR. WESTBROOK:

6 Q Good morning, Ms. Barajas.

7 A Good morning.

8 MR. HAMNER: Your notes are on the overhead, dude. Your notes are  
9 on the overhead.

10 MR. WESTBROOK: Let's turn that off. I don't want my notes on the  
11 overhead. There we go.

12 Thank you. Still on.

13 MR. HAMNER: David --

14 MR. WESTBROOK: Thanks. There we go.

15 THE COURT: Go ahead. I'm sorry. You weren't waiting for me, were  
16 you?

17 MR. WESTBROOK: No, I wasn't, Your Honor.

18 THE COURT: Okay.

19 MR. WESTBROOK: I was pouring through my notes, unfortunately  
20 also on the TV screen, which I apologize for.

21 THE COURT: We're just having technical issues with my monitor  
22 again. But that's okay. I have a smaller version here.

23 MR. WESTBROOK: Right, right.

24 BY MR. WESTBROOK:

25 Q I want to start by talking to you a little bit about your relationship with



1 Doña Elena.

2 A Okay.

3 Q Doña Elena is the nice lady that lived next door, right?

4 A Can you repeat the question, please?

5 Q Sure. Doña Elena is the nice lady next door. Your kids called her

6 Grandmother, right?

7 A Yes.

8 Q And you felt bad for her, right?

9 A With her?

10 Q Yeah. Like, because she was alone all the time, you felt bad for her.

11 A No. Because she had never been alone. She was always with him.

12 Q She was always with him? Wouldn't -- wouldn't you invite her over to

13 eat, though, because she was alone?

14 A She used to come to my house, and just be courteous, I invited her to

15 eat at my house.

16 Q All right. And she was by herself a lot, right?

17 A The lady?

18 Q Yes. Doña Elena, she was by herself a lot?

19 THE COURT INTERPRETER: I told the witness that she needs to wait

20 for me to interpret the question.

21 THE COURT: Yes.

22 THE COURT INTERPRETER: And please repeat the question.

23 BY MR. WESTBROOK:

24 Q Yeah. Doña Elena was by herself a lot, right?

25 A Sometimes, yes.

1 Q Okay. And because she was by herself, you would invite her over to  
2 eat, right?

3 A Yes.

4 Q Okay. She was by herself because Don David was always at work,  
5 right?

6 A He worked sometimes, sometimes he didn't.

7 Q Okay. He had two jobs that you knew of, right?

8 A I only knew that he had one -- I'm sorry -- upholstery. And then after  
9 that, I learned that he was selling cars.

10 Q Okay. So he had two jobs that you know of, the upholstery job and also  
11 selling cars, right?

12 THE COURT INTERPRETER: May I interrupt to get this away from the  
13 interpreter?

14 THE COURT: Yes.

15 THE COURT INTERPRETER: It's distracting to me.

16 THE WITNESS: Yes.

17 BY MR. WESTBROOK:

18 Q Okay. I want to take you back to October 16th.

19 A Yes.

20 Q You said that there had been a get-together, earlier in the evening,  
21 right?

22 A Yes.

23 Q Okay. Now, the get-together included quite a few people, didn't it?

24 A There were five with Yaneli [phonetic], and with me, six.

25 Q Okay. But earlier in the evening, weren't there more adults around?

1 A Before it got dark, there were two adults more. But at that point, they  
2 had left already.

3 Q Okay. And is it true that the adults were hanging out near the  
4 apartment and eating, and having a get-together, and the kids were playing  
5 together with themselves, for the most part?

6 A They were outside. You know, these girls run a lot. They were running  
7 around there.

8 Q Sure. So they were running around the apartment; they do that quite a  
9 bit?

10 A Yes. They play and sometimes he told them that they had -- they must  
11 go there --

12 Q Hang on a second.

13 MR. WESTBROOK: I move -- move to strike that.

14 THE WITNESS: That they had to go there with you.

15 MR. WESTBROOK: It's nonresponsive.

16 BY MR. WESTBROOK:

17 Q All I was asking you is that it's common for the girls, and I -- I'm talking  
18 about Yezline, Jatziri, and the twins, to play outside together?

19 A Yes.

20 Q When they're playing outside together, they run around the apartment  
21 complex?

22 A Yes.

23 Q And the adults aren't with them when they do this?

24 A We are there. We're in a circle and we're keeping an eye on them in a  
25 way.

1 Q So you're always watching the kids when they run around the  
2 apartment complex?

3 A Yes. That's when -- what -- that's why I saw them when they came in.

4 Q Okay. So when they came in, and again, this is on October 16th,  
5 Amanda's three girls and your daughter were all together at your table; is that right?

6 A What do you mean?

7 Q You said that on October 16th, you came in. The four girls were at your  
8 table and that's when they talked to you?

9 A Yes. Yes.

10 Q The main person who was talking was Jatziri, right?

11 A Yes.

12 Q Okay. That's who you heard the story from first?

13 A Yes.

14 Q And Amanda was not there when Jatziri first told the story, was she?

15 A No, until later, when I told her to come over.

16 Q Okay. So you heard the story from Jatziri, you told Amanda to come  
17 over, right?

18 A Yes.

19 Q Now, when all the girls were together, your daughter Yezline, was not  
20 doing the talking, was she?

21 THE COURT INTERPRETER: Would you please repeat the question  
22 for the interpreter?

23 MR. WESTBROOK: Sure.

24 BY MR. WESTBROOK:

25 Q When all the girls were together at the table, your daughter, Yezline,

1 was not talking, was she?

2 A No. She -- a few tears came up, and she was looking -- facing down.

3 Q Okay. So she didn't tell you any stories about tape at that table, did  
4 she?

5 A No, not there.

6 Q She didn't tell you any stories about candy at that table?

7 A She told me alone, when I was alone.

8 Q All right. And she didn't even tell you any stories that night, did she?

9 A She only told me that he used to touch them or he was touching them.

10 And that's all she told me. And then the morning after, she told me everything.

11 Q Okay.

12 A And also about the tape, she told me everything that night.

13 Q So that was -- wait. You say she told you about the tape that night?

14 A Yes. She told me that night.

15 Q Okay. Do you remember testifying before a grand jury in this case?

16 A Yes.

17 Q Okay.

18 MR. WESTBROOK: Court's indulgence.

19 BY MR. WESTBROOK:

20 Q Didn't you tell the grand jury that your daughter said, Let me go to bed;  
21 tomorrow morning, early morning, I'm going to tell you everything that really  
22 happened?

23 A No. The day after she told me again, the same thing. Twice she told  
24 me. Twice she told me that. That night and then the morning after.

25 Q Okay. And is that what you say you told the grand jury?

1 A Yes.

2 Q And you're saying that when she said all that, all the other girls were  
3 present?

4 A No.

5 Q Okay. She told you that on her own?

6 A Yes.

7 Q And then she talked to you the next morning, which was at 6:30 in the  
8 morning, before school, right?

9 A Yes. Yes.

10 Q Okay. Your daughter told you if -- that Don David told you, if I say  
11 anything he's going to harm you and my dad, right?

12 A Yes.

13 Q Okay. Let's talk about the tape day.

14 A Okay.

15 MR. WESTBROOK: Court's indulgence.

16 Q Did Mirabel ever tell you anything about the tape day before  
17 October 16th?

18 A Mirabel?

19 Q One of the twins, yeah.

20 A No.

21 Q Did either of the twins -- I know they're hard to keep separate -- did  
22 either of the twins ever tell you about the tape before October 16th?

23 A No.

24 Q Okay. Did either of the twins tell you that they saw Don David pulling  
25 Yezline into the house prior to October 16th?

1 THE COURT INTERPRETER: Will you please repeat the question.

2 BY MR. WESTBROOK:

3 Q Did either of the twins ever tell you that they saw Don David pulling  
4 Yezline into his house prior to October 16th?

5 A No.

6 Q Okay. Did either of them say that Yezline was screaming?

7 A No.

8 Q Did either of them tell you that they saw Don David tape her hands and  
9 feet?

10 A No.

11 Q If you had been told that, you would have done something, right?

12 A Yes.

13 Q So you never heard that from either of the twins or from Jatziri?

14 A No.

15 Q Okay. Do you remember telling the grand jury that you saw your  
16 daughter with glue on her mouth?

17 THE COURT INTERPRETER: That you saw your daughter what?

18 BY MR. WESTBROOK:

19 Q With glue on her mouth.

20 A I just saw the mouth. It was grayish.

21 Q My question is, though, did you actually tell the grand jury that you saw  
22 glue on her mouth?

23 A No. All I said that she had -- she -- she -- her mouth was grayish and  
24 she was scared.

25 Q Okay.

1 MR. WESTBROOK: May I approach, actually, the interpreter to give  
2 her something to read to the witness?

3 THE COURT: Yes.

4 MR. WESTBROOK: It's going to be page 46.

5 THE COURT INTERPRETER: The highlighted part?

6 MR. WESTBROOK: Yeah. So the interpreter is going to actually read  
7 the whole bracketed section with the red. Thank you.

8 THE COURT INTERPRETER: Okay.

9 BY MR. WESTBROOK:

10 Q The interpreter is going to read you a transcript from the grand jury and  
11 then I'm going to ask you a question about it.

12 THE COURT: Will you read it in English, please?

13 THE COURT INTERPRETER: And what she did, when my daughter  
14 went over, she was no longer there, and when she returned, she had glue on her  
15 mouth.

16 BY MR. WESTBROOK:

17 Q Do you remember saying that?

18 A The only thing I remember is that I saw about the tape, I saw her lips.  
19 They were grayish and she was scared.

20 Q Did you tell the grand jury under oath that you saw glue on your  
21 daughter's mouth?

22 A No. Not that I remember, no. No.

23 Q Do you have any reason to doubt this transcript of what you said?

24 A I don't remember saying that. All I remember is that I said about that I  
25 saw her lips grayish -- gray color, and she was scared. That's all I remember.

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1 Q You -- you did say that, too. You did say her lips were pale and that  
2 she was very scared, right?

3 A Yes. Yes.

4 Q But you didn't ask her any questions about it, did you?

5 MS. KOLLINS: Objection. Vague.

6 THE COURT: Well, you didn't ask your daughter any questions about  
7 the gray that you saw on her lips, correct?

8 THE WITNESS: The day that it happened? No.

9 BY MR. WESTBROOK:

10 Q Okay. You didn't say, Why are you scared?

11 A No. She just went to the couch and she sat down.

12 Q Okay. I want to talk to you about the -- the incident with Nicole that you  
13 testified about.

14 A Yes.

15 Q You didn't tell the police about this, did you?

16 A I told the detective at my house. When he went to take the pictures of  
17 the girls, I told him.

18 Q Okay. So when you were being interviewed by Detective Matt  
19 Campbell on November 6th, you didn't mention this incident, did you? On  
20 November 6th, 2016.

21 A No. Just about the girl, about Yezline.

22 Q Okay. When you were interviewed by Detective Campbell, he told you  
23 how important this was, didn't he?

24 A Yes.

25 Q Okay. And he told you that he wanted to find out what happened and

1 what you knew, right?

2 A Yes.

3 Q Okay. But you didn't tell him about this, Nicole's situation, did you?

4 A No. Until later at my house.

5 Q Okay. And you didn't tell the grand jury about Nicole, either, did you?

6 A I don't remember, to be honest.

7 Q Okay.

8 MR. WESTBROOK: The easy way would be for the State to stipulate  
9 that she didn't mention Nicole to the grand jury. Are they willing to do that?

10 MS. KOLLINS: No. Page 42, counsel.

11 BY MR. WESTBROOK:

12 Q I'm sorry. Let me rephrase the question.

13 You did mention Nicole -- or you were questioned about Nicole,  
14 correct?

15 A That day in court?

16 Q Yeah. That day in court at the grand jury.

17 A To be honest, I don't remember.

18 Q Okay.

19 A I don't remember, to be honest.

20 Q All right. And when I say you didn't mention Nicole, what I'm saying is  
21 you didn't mention anything about anything bad happening to Nicole, right?

22 A Correct.

23 Q Okay.

24 MR. WESTBROOK: So I'm going to have you just read the highlighted  
25 sections of page 42, 3 to 12.

1 THE COURT INTERPRETER: Okay. 3 to 12?

2 MS. KOLLINS: Your Honor, at this point, what's the point of  
3 impeachment? Because she acknowledged what he said and now we're just  
4 having something read to her. I mean, she's --

5 THE COURT: I thought she said she didn't know, right? I -- I thought  
6 that's what she said.

7 MR. WESTBROOK: Well, the State's correct. She said she didn't  
8 know. And then when I rephrased and made it specific that she didn't -- there was  
9 nothing -- she didn't tell the grand jury anything bad happened --

10 THE COURT: She didn't tell the grand -- yeah.

11 MR. WESTBROOK: -- she agreed. But the specifics of what she told  
12 the grand jury are important. So since she doesn't remember, I'm just having this  
13 refresh her recollection.

14 THE COURT: Well, I don't know that she doesn't remember. You --  
15 she -- she said initially she didn't remember. And then you asked her a follow up.  
16 And she said -- are we listening?

17 MR. WESTBROOK: I am, Your Honor. I'm doing two things at once.

18 THE COURT: Okay. I thought she said she didn't remember telling  
19 Detective Campbell during the interview on November 6th, that she didn't  
20 remember telling him that anything bad had happened to Nicole. I thought she --  
21 she admitted that part, right?

22 And so if that's what the grand jury's statement shows, it's a prior  
23 consistent statement and would not be admissible, based on the hearsay rule.

24 MR. WESTBROOK: Okay.

25 THE COURT: All right?

1 MR. WESTBROOK: Sounds good, Your Honor. Thank you.

2 THE COURT: So we need to move on. There you go.

3 MR. WESTBROOK: Thank you.

4 BY MR. WESTBROOK:

5 Q Now, the girls who actually took Nicole out were the twins and Jatziri,  
6 right?

7 A That they called her out for what?

8 Q Did -- did Mirabel, Maradel, and Jatziri, the twins and Jatziri, come and  
9 take Nicole outside to play?

10 A Yes.

11 Q Okay. They didn't have permission to take her anywhere except for out  
12 in front of your house, right?

13 A Yezline?

14 Q No. I'm talking about Nicole.

15 A Yes. Just outside.

16 Q Yeah, because Yezline wasn't with them at first, was she?

17 A Yezline was in the bathroom.

18 Q I see. Okay. So it was just the three girls, Amanda's girls and Nicole at  
19 first?

20 A Yes. Uh-huh.

21 Q And then after you hadn't seen Nicole for a while, you sent Yezline to  
22 go look for her, right?

23 A Yes.

24 Q Okay. You didn't go yourself. You sent Yezline?

25 A No, I sent Yezline.

1 Q Okay. When they came back and Nicole is back in the house, they  
2 didn't tell you anything bad happened, did they?

3 A No, no.

4 Q Okay.

5 MS. KOLLINS: Well, my objection is twofold, because I'm trying to wait  
6 for the interpreter.

7 One, hearsay. Two, vague. You can't impute statements to all of  
8 these kids at the same time. I mean, if you want to talk about one child at a time,  
9 but they is certainly collective hearsay or the absence thereof -- the absence of the  
10 statement.

11 THE COURT: Okay. First -- first, I'll -- I'll sustain that objection.

12 MR. WESTBROOK: Okay.

13 THE COURT: So you need to -- so the jurors will disregard.

14 But you can rephrase.

15 MR. WESTBROOK: Okay.

16 BY MR. WESTBROOK:

17 Q When Nicole and Yezline came back, after you sent Yezline to go out  
18 and find Nicole, Yezline didn't tell you anything bad had happened, did she?

19 A No.

20 Q Okay. And none of the other girls, meaning specifically the twins and  
21 Jatziri, they didn't tell you anything bad had happened that day, did they?

22 A No.

23 Q Okay. I want to talk to you a little bit about the U visa.

24 A Uh-huh.

25 Q Ms. Kollins asked you a question about deportation. And she said just

1 applying for a U visa doesn't give you protection from deportation today, right?

2 A I don't want anything of that. No.

3 Q Okay.

4 A All I'm asking for is justice.

5 Q Right. Prior to applying for the U visa, you could have been deported at  
6 any time, right?

7 A Yes.

8 Q Okay. And how long have you been living here without documentation?

9 A Since 2006.

10 Q Okay. So since 2006, you've known that you could be deported any  
11 time, right?

12 A Yes. And I know against -- I mean, that I can still be deported.

13 Q You get deported, you lose your home for starters, right?

14 A I know. I know, yes.

15 Q Your daughters are American, right?

16 A Yes.

17 Q If you get deported, you could be away from your daughters, right?

18 A Yeah. But I would take -- I would take them with me, because they are  
19 mine.

20 Q Okay. So you would either have to go to another country with your  
21 daughters that's not your home or you would have to be apart from them, right?

22 A I know that in a case like that, yes.

23 Q Okay. And while it's true that just applying for a U visa doesn't give you  
24 any protection, if you get the U visa, you know that you get to stay here, right?

25 A I was told about it before, but I don't want anything like that. All I'm

1 interested in is in justice.

2 Q Okay. You're interested in justice, but you do want to stay in this  
3 country with your daughters, right?

4 A Yes, because of my children.

5 Q And you've applied for a U visa so you can stay in this country with your  
6 daughters, right?

7 A No. With a situation like this, I'd rather have justice for them than  
8 getting the papers.

9 Q Right. But you have applied for the papers, right?

10 A Yes. But I can cancel them. I want justice for my daughter.

11 THE COURT: So, Ms. Barajas, just answer his question. Okay.

12 THE WITNESS: Okay. That's fine.

13 BY MR. WESTBROOK:

14 Q Yes. The answer is yes, you applied for the papers?

15 A Yes.

16 Q And you're able to apply for the papers because of this case?

17 A Wendy told me that, that's not what I wanted.

18 Q Okay. Wendy told you that and you applied for the papers?

19 A Yes.

20 Q Okay.

21 A Yeah.

22 Q Your husband also applied, right?

23 A No. He did not do that, because he's in the process of getting papers  
24 through his sister.

25 Q Okay. Through his sister. He's also undocumented?

1 A Yes.

2 Q Okay. But he has to be here because of his paper.

3 MR. WESTBROOK: Okay. Court's indulgence.

4 Q Maria, what is your husband's name?

5 A Nicholas Estrella.

6 Q Okay. Now, when the State showed you this application for U visa,  
7 which is marked as State's Exhibit 51, you said you hadn't seen the whole thing,  
8 right?

9 A Yes.

10 Q Okay. But you did give information so that this application could be  
11 created, right?

12 A Yes.

13 Q And Nicholas is part of this application, isn't he?

14 A Yes.

15 Q Okay. They checked to make sure that you're still cooperating with  
16 police and with the prosecutors in order to process this application, don't they?

17 THE COURT INTERPRETER: With the police and I'm sorry?

18 BY MR. WESTBROOK:

19 Q The police and prosecutors; they make sure you're cooperating?

20 MS. KOLLINS: Your Honor, I'm going to -- objection. Speculation.

21 THE COURT: Sustained. You've got to stick to what she might have  
22 been told, which would relate to her state of mind. We're speculating now without  
23 having a foundation.

24 MR. WESTBROOK: Okay.

25 BY MR. WESTBROOK:



1 Q When you were told about the application, you were told you had to  
2 cooperate with police, weren't you?

3 A Yes.

4 Q Okay. And part of this application is they confirm that you're  
5 cooperating with police?

6 A Yes.

7 Q Okay. And they confirm that your husband has been cooperating with  
8 police, right?

9 A Right now, yes.

10 Q Okay.

11 A Yeah.

12 MR. WESTBROOK: Your Honor, may we approach?

13 THE COURT: Yes.

14 [Bench conference transcribed as follows.]

15 MR. WESTBROOK: I have more for her, but I'd like to queue the video  
16 to do it.

17 THE COURT: What? You need the video?

18 MR. WESTBROOK: Yeah. I do.

19 THE COURT: Are you done with everything else mostly, substantially?

20 MR. WESTBROOK: Substantially, yeah.

21 THE COURT: Okay. I guess we have to take a lunch break, then.

22 MR. WESTBROOK: Okay.

23 MS. KOLLINS: Okay. I'm hungry. So good.

24 THE COURT: All right.

25 MR. WESTBROOK: Thank you.

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[End of bench conference.]

THE COURT: We're going to take a lunch break now. So if you could be back here at 1:15, I would appreciate that.

During this lunch recess, don't communicate among yourselves or with anybody else about the trial; do not talk to the parties, attorneys, or witnesses about the case or any matter; don't talk to the witnesses or the parties about any matter; don't seek or obtain information about the case; don't do any research or investigation about the case; don't read or watch or listen to anything about the case; don't form any opinions about this trial until it's finally submitted to you.

We'll see you back here at 1:15. Enjoy your lunch. Thank you.

[Jury recessed at 12:09 p.m.]

THE COURT: We're outside the presence of the jury.

Ms. Barajas, enjoy your lunch break. Thank you for your patience, but we need you back here at 1:15.

THE WITNESS: Okay.

THE COURT: Do not talk about your testimony with anybody during lunch. Okay. Thank you.

THE WITNESS: Okay. Thank you.

THE COURT: All right. Do you -- tell you what, if you need to give anymore instructions to the court recorder about what you're looking for, feel free to approach her and try to --

MR. WESTBROOK: Thank you, Your Honor.

THE COURT: -- try to assist her with whatever she needs to get it done. All right.

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All right. Court's in recess. Thank you.

[Court recessed at 12:10 p.m., until 1:17 p.m.]

[Outside the presence of the jury.]

THE COURT: All right. Good afternoon.

MR. HAMNER: Good afternoon, Your Honor.

THE COURT: Anything outside the presence, before we begin?

MR. WESTBROOK: Just one thing, Your Honor.

THE COURT: Yep.

MR. WESTBROOK: Thank you for allowing me to review the 51.385 hearing with staff.

THE COURT: Yes. Great.

MR. WESTBROOK: We found a statement and --

THE COURT: Oh, perfect.

MR. WESTBROOK: -- unfortunately the question about the lotion -- specifically, the question about the cream -- was never actually asked in 51.385. What was asked was, Ms. Kollins said, Did Yezline say that Don David rubbed some lotion on her? I'm paraphrasing, but it was clearly Don David rubbing lotion on her. The answer was no. That's it.

THE COURT: But was it about the mom rubbing lotion, was...

MR. WESTBROOK: No. And even the word lotion was used and not cream.

What that means is --

THE COURT: What does that mean?

MR. WESTBROOK: -- we got a hearsay response to a brand new question about cream that wasn't ever asked before, wasn't part of the 51.385, and

1 should never have been asked. We got a hearsay response. It's prejudicial.

2 Renewing my Motion for a Mistrial.

3 THE COURT: Well, how serious is this? I -- not serious? Okay.

4 MR. WESTBROOK: I can explain the seriousness. It's pretty serious.

5 THE COURT: Well, you -- I know. But let me hear their side.

6 MR. WESTBROOK: Oh, that's on them. I thought you were pointing to  
7 me. Sorry.

8 THE COURT: No. I'm asking them now, because I -- I want them to  
9 respond.

10 MS. KOLLINS: Your Honor, the information was relayed from the  
11 witness in my pretrial. And that's why I asked it the way I did at the 51.385 hearing,  
12 because that was my understanding. After clarification, now I understood it to be  
13 she was describing that it's like when mom puts lotion on me, not that Don David  
14 put lotion on her.

15 I think what -- because these -- these pretrial conferences are in  
16 Spanish, as well. And my Spanish isn't that good. And so whatever translation we  
17 get, that's what I was counting on. Certainly wasn't done in bad faith.

18 THE COURT: No. Of course --

19 MS. KOLLINS: I don't think it --

20 THE COURT: No, of course, not.

21 MS. KOLLINS: I think, because all it is doing is describing the  
22 movement of his hand, I don't think it's prejudicial.

23 MR. WESTBROOK: There's a second thing that's prejudicial.

24 THE COURT: Well, do you think we should say anything to the -- to the  
25 jury? I mean, it -- aside from whether it's prejudicial, do you think that it's evidence

1 that shouldn't have come in, and -- and should I do anything about it?

2 MS. KOLLINS: Well, it also goes to the state of the mind of the  
3 declarant, as well. So there's an alternate hearsay exception. Just because it  
4 wasn't --

5 THE COURT: State of mind of the declarant, the minor --

6 MS. KOLLINS: The minor.

7 THE COURT: -- is the declarant here.

8 MS. KOLLINS: Yes. And actually, well, it's probably not --

9 THE COURT: Yeah. But it's coming in -- from just on state of mind,  
10 would I at least have to give a caution or a limiting instruction to the jury, or does it  
11 come in for all purposes? And once it comes in as one exception --

12 MS. KOLLINS: What --

13 THE COURT: -- does it come in for all purposes?

14 MS. KOLLINS: Are you asking me --

15 THE COURT: You know, if you don't do a --

16 MS. KOLLINS: -- if it comes in substantively? It doesn't have to, no.

17 But I don't think --

18 THE COURT: Yeah.

19 MS. KOLLINS: -- I mean, that's up to Mr. Westbrook, if he wants an  
20 admonishment on that.

21 THE COURT: I mean --

22 MS. KOLLINS: You know, I'm --

23 THE COURT: -- we don't want to bring it up again.

24 MS. KOLLINS: -- I'm not trying his case.

25 THE COURT: Yeah.

1 MS. KOLLINS: So I don't think you have to admonish them. We  
2 certainly -- you -- you can, if you like. I think it highlights it. But that's up to  
3 Mr. Westbrook and Ms. Kierny.

4 THE COURT: I mean, again, I don't have any problems with the mom  
5 describing what prompted the declaration from the minor. But the question is -- the  
6 question in my mind is since that's a declaration that wasn't covered by 51.385, the  
7 jury, having heard it, is going to accept that as corroboration of the other statements  
8 that were made at the 51.385 hearing. So I'm wondering is that -- so even if it  
9 comes in as state of mind, should it have been barred because it wasn't covered in  
10 the 51.385 hearing?

11 MS. KOLLINS: Well, I -- I believe there's another exception.

12 THE COURT: Okay.

13 MS. KOLLINS: So I don't think -- the fact that we had a 51.385 hearing  
14 necessarily precludes every other type or form of hearsay coming in.

15 But I'll -- I'll submit it to the court.

16 THE COURT: Okay. Well, anything else that you wanted to ask?

17 MR. WESTBROOK: Two things, Your Honor.

18 THE COURT: And I think you're right about that, Ms. Kollins. I think  
19 you're right. I just -- I have to balance, you know, probative value versus prejudice,  
20 too.

21 MR. WESTBROOK: Your Honor, I know that the -- the court informed  
22 us that we weren't to object to every single piece of hearsay that comes in, because  
23 it was admitted under 51.385. If the State is now going to say, yeah, that's not  
24 really 51.385, but there are alternate grounds, then I have to object to every single  
25 piece of hearsay as hearsay on the off chance they come up with alternate

1 grounds.

2 That is a problem, because I'll be objecting every time.

3 THE COURT: Well, you should object when there's a valid objection.  
4 If -- I mean, you should object, unless it's -- unless it's an objection you've already  
5 put on the record. You've already objected to any of the evidence that came out at  
6 the 51.385 hearing from coming out in this trial.

7 MR. WESTBROOK: Correct.

8 THE COURT: You've clearly preserved that.

9 MR. WESTBROOK: Correct.

10 THE COURT: And if they try to add something new, you have to  
11 preserve your objection.

12 MR. WESTBROOK: Right. And -- but I have been. The problem is all  
13 this new stuff is just that, new. And it's been brought out under the auspices  
14 of 51.385, but it's not 51.385. So it -- I will go back to -- if I need to, in order to  
15 preserve the record because the State is going to change the grounds on which it is  
16 being admitted, then I will object to every piece of hearsay. I mean, it's going to  
17 make for a very slow trial, but what -- what's happening now is it's admitted under  
18 one ground, 51.385, and then when that doesn't work out, they're saying there are  
19 alternate grounds.

20 Okay. In order to preserve my record, I have to go back to  
21 objecting to every single piece of hearsay.

22 THE COURT: Well, you have to do what you have to do. Are you  
23 asking me to do something differently?

24 MR. WESTBROOK: No. I'm just -- I'm just saying that I was trying to  
25 abide by the court's directive, which is not to re-object to everything I've already

1 objected to. I've been doing that.

2 THE COURT: Right.

3 MR. WESTBROOK: Usually I'd be objecting to every single piece of --  
4 of evidence.

5 THE COURT: Yeah.

6 MR. WESTBROOK: But, you know, the court asked me not to, and I  
7 understand why. However --

8 THE COURT: I think -- hasn't this been just a limited instance of new  
9 stuff coming in?

10 MR. WESTBROOK: No. It's happened constantly. And I've tried to  
11 make the objection -- I've tried to make the records at the breaks.

12 THE COURT: All right.

13 MR. WESTBROOK: But if it's happened a lot. There's been a ton of  
14 new stuff. The cream is just one obvious example.

15 THE COURT: Well --

16 MR. WESTBROOK: But there's another issue, too, and that's the fact  
17 that --

18 THE COURT: I'll give you a chance, Ms. Kollins.

19 MS. KOLLINS: I know. That's fine.

20 MR. WESTBROOK: The -- the build-up to that was her talking about  
21 how her daughter is prone to infections.

22 My concern is that the State is going to try to use that as medical  
23 evidence, which has never been disclosed before. It's brand new evidence. I've  
24 never heard that she had some problem with her vagina.

25 THE COURT: Well, yeah, but that's --



1 MR. WESTBROOK: It's never been disclosed. It has to be disclosed.

2 And she -- and -- and --

3 THE COURT: You didn't object to -- to that. And that -- that wasn't --

4 MR. WESTBROOK: Well, I did object.

5 THE COURT: Okay.

6 MR. WESTBROOK: And I'm -- and I'm continuing to object.

7 THE COURT: That has nothing to do with 51.385. That is completely  
8 irrelevant to 51.385.

9 MR. WESTBROOK: Right. That's something that was apparently  
10 disclosed in pretrial that was never told to us before, which means it's brand new  
11 evidence. It's evidence that was brought out before the jury. It's prejudicial. And  
12 it's -- it's discoverable evidence that was never brought to our discovery. So I'm  
13 renewing my Motion to Dismiss based on discovery violations under 51.3 -- or --

14 THE COURT: Well, that's a little bit different than what you said before.  
15 Okay.

16 MR. WESTBROOK: -- under the discovery statute.

17 THE COURT: So that's a new argument he's made.

18 Will you address that argument, Ms. Kollins?

19 MS. KOLLINS: Okay.

20 THE COURT: That -- that it was something -- some information that  
21 you had that you didn't disclose.

22 MS. KOLLINS: I absolutely did not get any information about vaginal  
23 infections during a pretrial. Today was the first day I heard it.

24 But I'd like to step back to the beginning of his argument --

25 THE COURT: All right.

1 MS. KOLLINS: -- if I might, just because of the record.

2 THE COURT: Go ahead.

3 MS. KOLLINS: Mr. Westbrook couches his argument in all this new  
4 stuff. The new stuff is very limited. It's the conversation that she had with her  
5 daughter while she was applying an ointment. And the other one was the chorizo.  
6 So while he's makes this record that there's all this new stuff being thrown at him by  
7 the State, that is not what's going to be depicted in this record should it ever go up.

8 Those conversations -- the chorizo, that wasn't responsive to the  
9 question I asked. I didn't keep asking questions about it. That was no information  
10 that I received in a pretrial conference or anywhere else.

11 What I did receive in the pretrial conference regarding the cream  
12 was, Mom, it's like when you rub cream on me, that's what his hand was doing.  
13 Which prompted the question and which prompted the question the other day. And  
14 if I -- if I said it incorrectly the other day, maybe that's why I didn't get the answer in  
15 the 51.385 hearing.

16 So in any event, I think the record is clear. The State is not trying  
17 to expand the evidence against Mr. Azucena beyond what we have turned over.

18 I'm trying to control this witness the best I could. Certainly there's  
19 nothing -- there's nothing else that should come out of the conversation of the --  
20 with Yezline this court's already ruled admissible pursuant to 51.385.

21 There is an alternate basis for the cream conversation, but I don't  
22 think it's prejudicial.

23 THE COURT: All right.

24 MS. KOLLINS: And as far -- and I think we covered late discovery,  
25 because we didn't know that. We didn't know what she was going to say when she

1 answered the question.

2 THE COURT: All right. Well, I'm not convinced that there's been any --  
3 any prejudice to the defendant at this point from -- from what I believe are two  
4 isolated comments that didn't get addressed in the 51.385 hearing, one being the  
5 comment about the chorizo, and the other the comment about rubbing the hand like  
6 the cream is applied.

7 MR. WESTBROOK: The prone to infections?

8 THE COURT: I -- I think -- well, the -- the -- that's new evidence that  
9 came out for the first time at trial that the State wasn't aware of. So the State didn't  
10 violate any of its discovery obligations.

11 So the extent you're moving for a mistrial based on the discovery  
12 violations, I -- I'm finding that there was no discovery violation by the State.

13 MS. KOLLINS: And -- and just for the record, the State will not argue  
14 that because the child at some point had some kind of vaginal infection, that that is  
15 in some way connected to any victimization by the defendant.

16 We know better than to argue that.

17 THE COURT: If you want --

18 MS. KOLLINS: Mr. Westbrook should know that I would never stand up  
19 here and jump from --

20 THE COURT: Yeah.

21 MS. KOLLINS: --that statement --

22 THE COURT: If you want me maybe a --

23 MS. KOLLINS: -- to medical evidence.

24 THE COURT: Do you want maybe a cautionary instruction? Think of  
25 something that we can give the jury at the time that we give them the instructions,

1 unless you think that you want to tell them something now, you know, about how,  
2 you know, you heard evidence of -- of infections. You are not -- you must not  
3 assume that -- that any infections were caused by contact with the defendant.  
4 Something like that. I think that's what you're getting at.

5 MR. WESTBROOK: Right.

6 MS. KIERNY: Yes.

7 THE COURT: So if you want to propose something, I will -- I'm free to  
8 give it, after you run it by the State. All right?

9 MR. WESTBROOK: We'll work out the wording.

10 THE COURT: I think that will help mitigate some of your concerns.

11 MS. KIERNY: Okay.

12 MR. WESTBROOK: Thank you, Your Honor.

13 THE COURT: Not all of them, I know. But some of them. All right.

14 MR. WESTBROOK: Thank you, Your Honor.

15 MS. KIERNY: So when would you like to give that instruction so we  
16 know the timeline as to when we should be drafting.

17 THE COURT: I'll give it now or I'll give it when we give all the other  
18 instructions at the close of the case. What -- what do you think is best?

19 MS. KIERNY: Let's -- I'd rather it be done now, so we have to draft  
20 something in the next 30 seconds.

21 MR. WESTBROOK: Which we'll do.

22 THE COURT: All right. It's a pretty simple point.

23 MS. KIERNY: Okay.

24 THE COURT: I'll let the State see it before they have to decide whether  
25 to object. Go ahead and draft something.

1 MS. KIERNY: I know it's simple. That's why I said 30 seconds.

2 [Pause in proceedings.]

3 MS. KOLLINS: And while they're drafting that --

4 THE COURT: I'm trying. I'm trying this.

5 MS. KOLLINS: No. Certainly --

6 MR. HAMNER: You're doing great. Your Honor, you're doing fine.

7 MS. KOLLINS: I just let defense counsel know, because we had given  
8 them a witness order --

9 THE COURT: Oh.

10 MS. KOLLINS: -- that was really ambitious. It was really ambitious. It  
11 had us, like, through six witnesses on Friday. So that was kind of --

12 THE COURT: Oh.

13 MS. KOLLINS: I know. So if you --

14 THE COURT: Look, I've got all next week for you guys, if I have to.

15 MR. HAMNER: Thank you, Your Honor.

16 MS. KOLLINS: Don't say that. I'm back in here on the 15th. I need a  
17 minute to get that trial ready.

18 THE COURT: Oh, I know.

19 MS. KOLLINS: But we are going to call one child out of order today,  
20 because of the custody arrangement between her dad and his ex-wife. And so we  
21 had planned on calling her later in the order, but I told them we're probably going to  
22 have to move her up a little bit.

23 THE COURT: Okay. Well, I think that's -- I think you have good cause  
24 to do that.

25 MS. KOLLINS: And just for the record, that's Scarlett Rangel.

1 THE COURT: She doesn't have much to say anyway, right? So.  
2 MS. KOLLINS: But they flipped custody tonight, so --  
3 THE COURT: Oh, wow. Yeah.  
4 MS. KOLLINS: -- so that parent -- the parent that is --  
5 THE COURT: We've got to do that.  
6 MS. KOLLINS: -- here. Well, supposed to be here.  
7 MS. KIERNY: Do you know if the infections predate this case or --  
8 MS. KOLLINS: I don't know anything about it at all beyond from what  
9 she said on the stand. I -- I swear. You can, like, read my notes.  
10 THE COURT: Keep it vague. Just keep it vague.  
11 MR. WESTBROOK: Well, so we don't know when this case even  
12 happens.  
13 MS. KIERNY: All right. You are instructed that these infections are --  
14 THE COURT: Call it alleged infection.  
15 MS. KIERNY: Alleged. Okay.  
16 MR. WESTBROOK: Okay.  
17 MS. KIERNY: That this alleged infection -- these alleged infections are  
18 completely unrelated to this case.  
19 MR. WESTBROOK: Yeah.  
20 THE COURT: This has nothing to do with contact with the defendant  
21 and must not be considered by you for any purpose. All right.  
22 MR. WESTBROOK: Yes.  
23 MS. KIERNY: Alleged contact.  
24 MR. WESTBROOK: Yeah.  
25 MS. KOLLINS: That includes slut shaming her, you two. That includes

1 slut shaming her, you guys. Yeah.

2 MS. KIERNY: Okay.

3 MR. WESTBROOK: What was that?

4 MS. KIERNY: Okay. Oh, I get it. I can't say that that's from another  
5 [indiscernible]. Okay.

6 MS. KOLLINS: Right.

7 MS. KIERNY: All right.

8 [Pause in proceedings.]

9 THE COURT: Did you want to add anything about the chorizo  
10 comment? I don't know that you need to, but --

11 MR. WESTBROOK: No, that one I can't call attention to, unfortunately.

12 THE COURT: You don't want to recall attention to that. I understand.

13 All right.

14 MS. KIERNY: Okay.

15 MR. WESTBROOK: How about that?

16 MR. HAMNER: I don't -- I'm not going to agree with the last sentence,  
17 but I think the first part -- the first two sentences are appropriate.

18 MS. KIERNY: And should not be considered by you in any way, like  
19 the judge suggested?

20 MR. HAMNER: No. I think -- I think -- just for the record, the proposed  
21 instruction reads as follows:

22 You have heard from Maria that Yezline is prone to vaginal  
23 infections. You are instructed that those infections have nothing to do with the  
24 allegations of contact with the defendant.

25 THE COURT: Okay.

1 MR. HAMNER: They are not evidence in this case and must be  
2 disregarded.

3 THE COURT: That sounds good.

4 MR. HAMNER: I would disagree with the last sentence, because I think  
5 her statement --

6 THE COURT: What's the last sentence?

7 MR. HAMNER: They are not evidence in this case and must be  
8 disregarded.

9 To me, that blurs the line of you need to completely ignore that it  
10 was said, which I think it actually does have relevance, because the relevance is  
11 the child was reminded of the manner in which the defendant touched her --

12 THE COURT: Yeah, yeah.

13 MR. HAMNER: -- when her mother applied the cream, so --

14 THE COURT: No, it has relevance. It just has not -- no relevance in --  
15 in finding the defendant liable --

16 MR. HAMNER: Which is --

17 THE COURT: -- or -- or guilty.

18 MR. HAMNER: Which is -- which is why I think if the instruction just  
19 read as follows:

20 You have heard from Maria that Yezline is prone to vaginal  
21 infections, period. You are instructed that these infections have nothing to do with  
22 the allegations of contact with the defendant.

23 I think that says everything that needs to be said, because it  
24 definitively says it has nothing to do with any alleged contact with the defendant.  
25 And it doesn't tell them to essentially disregard the testimony as a whole, because



1 there is a relevant portion, just not --

2 THE COURT: Well, I -- I see some relevance in --

3 MR. HAMNER: Is that --

4 THE COURT: But -- but -- but I just don't want them to rely on it in  
5 finding the defendant -- you know, holding him responsible for her disease. That's  
6 what I don't want, right?

7 MR. WESTBROOK: Exactly.

8 THE COURT: We don't --

9 MS. KIERNY: That's what we --

10 THE COURT: That's what we're all trying to avoid here. We don't want  
11 them to draw an inference that the defendant caused her infection.

12 MS. KIERNY: Yes.

13 MR. WESTBROOK: Exactly, which is why --

14 THE COURT: I mean, I think you covered that in the first two  
15 sentences?

16 MR. WESTBROOK: I don't think we do. I think we need the last one.

17 MR. HAMNER: All right. You are instructed that these infections have  
18 nothing to do with the allegations of contact with the defendant.

19 THE COURT: Oh. Okay. That --

20 MR. HAMNER: I think that covers it.

21 THE COURT: Yeah. That --

22 MR. HAMNER: Respectfully, I think that covers it.

23 THE COURT: That sounds pretty broad.

24 MR. HAMNER: I don't think you need a follow-up statement saying  
25 they are not evidence in this case and must disregard it. Because to me --

1 MR. WESTBROOK: The infections are not evidence in this case and  
2 must be disregarded.

3 MS. KOLLINS: Yeah. But that -- the pronouns make it sound like the  
4 whole thing is not evidence. Because it --

5 MR. WESTBROOK: We -- we can say the infections are not evidence.  
6 That's fine. Then it's -- then it's no pronoun.

7 THE COURT: I think that's what he's objecting to.

8 MR. HAMNER: I -- I --

9 MS. KIERNY: I'm clear with that.

10 THE COURT: Why don't we just add another sentence that you are not  
11 to draw any inference that the defendant caused the infections.

12 MR. WESTBROOK: That's --

13 MR. HAMNER: That's fine. That's fine.

14 THE COURT: I mean, I think it's covered by the first two, but if they  
15 want something else --

16 MS. KOLLINS: And strike the last line.

17 THE COURT: Well, I think it's okay to have, just to make sure.

18 MR. HAMNER: You are not to draw any inference that the defendant  
19 caused these infections.

20 THE COURT: Yeah. Are you sure you want that? I mean, that's -- that  
21 makes them think more about the contact and start supposing things that aren't  
22 even in evidence, so --

23 MR. WESTBROOK: Our record is we want the instruction as we wrote  
24 it.

25 THE COURT: Okay.

1 MR. WESTBROOK: We would object to any changes. We submit it to  
2 the court.

3 THE COURT: Do you want this extra sentence added, yes or no? I --

4 MR. WESTBROOK: If -- if --

5 THE COURT: Without waiving --

6 MR. WESTBROOK: -- the only other alternative is the first two  
7 sentences only, then yes.

8 THE COURT: Okay. All right.

9 MR. WESTBROOK: Just making it clear that we're not giving up the  
10 original instruction as written.

11 THE COURT: Do not give it up, and I'll have it marked as an exhibit.

12 MR. WESTBROOK: Thank you, Your Honor.

13 THE COURT: Yes, sir.

14 MR. HAMNER: All right, so --

15 THE COURT: Thank you, Mr. Hammers. Hamner. I always add the S  
16 on the end and you don't have an S at the end.

17 MS. KIERNY: Thank you.

18 MR. HAMNER: And I put a -- I put a delta there for the defendant, just  
19 for --

20 THE COURT: Great.

21 MR. HAMNER: Sorry. Shorthand.

22 THE COURT: No. Thank you. All right. So.

23 MS. KIERNY: Did you want that -- that into --

24 THE COURT: Yes. Because I need to read it.

25 MS. KIERNY: All right.

1 THE COURT: Thank you, marshal.  
2 Will you bring the jurors in now?  
3 THE MARSHAL: No problem.  
4 THE COURT: If I just call her Maria, you're okay -- or Maria Barajas?  
5 MR. WESTBROOK: Yeah. I couldn't remember if it was Estrella or  
6 Barajas when I was writing there.  
7 THE COURT: I mean, I was assuming you don't have any evidence to  
8 connect the infections to the defendant?  
9 MR. HAMNER: I -- no. We were not going there.  
10 MS. KOLLINS: We've never -- again, haven't heard of that.  
11 THE COURT: All right. That's true, that was my assumption, so. I  
12 mean, on cross, what happens if the mom says, Well, she never had them until she  
13 started being around him?  
14 MR. HAMNER: I hope on cross, they don't open the door by asking  
15 that question to get that answer.  
16 THE COURT: Yeah. Right.  
17 MR. WESTBROOK: We're not talking about it ever again.  
18 THE COURT: Okay.  
19 MR. WESTBROOK: The damage has been done.  
20 THE COURT: All right. All right. I shouldn't laugh. I'm sorry.  
21 MR. WESTBROOK: If you don't laugh sometimes, you go crazy.  
22 THE COURT: Yep.  
23 MR. WESTBROOK: Sometimes you go crazy when you do laugh, at  
24 least in my experience.

25 [Pause in proceedings.]

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[Jury reconvened at 1:38 p.m.]

THE COURT: Okay. All right. Thank you.

We were -- we've been working in here the last half an hour, getting stuff done. So we had address a couple more issues, so thank you.

Please be seated, everybody.

Are we ready to get started? All right.

MR. WESTBROOK: Yes, Your Honor.

THE COURT: All right. So I have an instruction this is called a limiting instruction I need to give you guys. And it reads as follows:

You have heard from Maria Barajas that Yezline is prone to vaginal infections. You are instructed that these infections have nothing to do with the allegations of contact with the defendant. You are not to draw any inference that the defendant caused these infections.

All right. Let's call the witness back to the stand, please.

This is marked as court's exhibit.

[Pause in proceedings.]

THE COURT: Hello, Ms. Barajas. You are still under oath and required to testify truthfully. Understand?

THE WITNESS: Yes.

THE COURT: Thank you. Please have a seat.

Mr. Westbrook, you may continue with your cross-examination.

MR. WESTBROOK: Thank you, Your Honor.

**CROSS-EXAMINATION (CONT.)**

BY MR. WESTBROOK:

Q Ms. Barajas, to be clear, you didn't see any of these touchings happen?

1 A No.

2 Q Okay. You're only telling us what Jatziri told you, the twins told you,  
3 and Yezline told you, right?

4 A Yes.

5 Q Okay. Now, according to Yezline, the touching happened in the  
6 bathroom of Don David's apartment, right?

7 A Yes.

8 Q All right. And when you talked to Detective Campbell on November 6th,  
9 during the interview, you only told him about the tape being on the mouth, right?

10 A To the detective?

11 Q Yeah, yeah.

12 A I don't remember telling him that.

13 Q Okay. You didn't tell him about the tape on the hands and feet, did  
14 you?

15 A I don't remember if I told him or not.

16 Q Okay. Would it help refresh your recollection if you read the statement  
17 or if it was read to you?

18 A Yes.

19 MS. KOLLINS: What page, Mr. Westbrook?

20 MR. WESTBROOK: Page 10.

21 Would you read the highlighted portions of page 10?

22 BY MR. WESTBROOK:

23 Q So she'll read that to you and then I'll ask you questions.

24 [Portion of transcript interpreted from Spanish to English for the witness.]

25 BY MR. WESTBROOK:

1 Q Okay. So you only talk about the -- the mouth being covered there,  
2 right?

3 MS. KOLLINS: I'm going to --

4 MR. WESTBROOK: I can read it.

5 THE COURT: Yes. The proper -- the best way to do this is to either  
6 you or the interpreter to first read it in English and then translate it.

7 MR. WESTBROOK: That makes sense, Your Honor.

8 THE COURT: Thank you.

9 MR. WESTBROOK: So would you like me to have the interpreter read  
10 it now, what she just read?

11 THE COURT: Either you can read it or the interpreter can read it.

12 Interpreter, tell the witness that we're going to read it in English.

13 THE WITNESS: Yes.

14 THE COURT: Go ahead.

15 BY MR. WESTBROOK:

16 Q So it was questioned, and what exactly did she state he did?

17 You answered he covered her mouth, took off her pants, and  
18 would touch him, and would kiss her.

19 Right?

20 A Yes.

21 Q Okay. Now, I'm going to show you page 15 and 16 where we talk about  
22 the tape again.

23 THE COURT INTERPRETER: You are talking about?

24 MR. WESTBROOK: It will be the tape again.

25 THE COURT INTERPRETER: Okay. Tape.

1 MR. WESTBROOK: And if you could read HIS, the Q and the A's.  
2 THE COURT INTERPRETER: The interpreter will read the English  
3 part, and then I'll do the translation.  
4 MR. WESTBROOK: Right down to here.  
5 THE COURT: Well, read it in English first.  
6 THE COURT INTERPRETER: I'm sorry. I just forgot.  
7 Did she where this -- in his house this happened?  
8 Yes.  
9 In his house? In his house, where?  
10 In the bathroom.  
11 Uh-huh.  
12 In the bathroom?  
13 Uh-huh.  
14 Okay. And he would put tape on her mouth? He would tape her  
15 mouth?  
16 Yes.  
17 And he pulled her pants down?  
18 Yes.  
19 Did she say if he pulled her underwear down?  
20 The underwear? Yes.  
21 MR. WESTBROOK: Okay.  
22 THE COURT INTERPRETER: Now I need to do it in Spanish, yes.  
23 MR. WESTBROOK: Okay. You're right. Correct.  
24 [Portion of transcript interpreted from Spanish to English for the witness.]  
25 BY MR. WESTBROOK:



1 Q So you mentioned the tape on the mouth and that he kissed her, right?

2 A Yes. He kissed her. When -- in the bathroom and he was touching the  
3 girls, he was kissing the girls and touching his part. Okay. When the four girls  
4 were together --

5 THE COURT INTERPRETER: Interpreter's correction.

6 THE WITNESS: -- when the four girls were together, he would touch  
7 them, their parts, and he would kiss them in the mouth.

8 BY MR. WESTBROOK:

9 Q Okay.

10 A And about the tape --

11 MR. WESTBROOK: Sorry, this is nonresponsive, Your Honor. Move  
12 to strike.

13 THE COURT: Well.

14 MR. WESTBROOK: Just respond to my questions.

15 THE COURT: I think it's -- you were asking her --

16 MR. WESTBROOK: I simply asked her -- and my question is --

17 THE COURT: What happens?

18 MR. WESTBROOK: No. Actually, I -- I said --

19 BY MR. WESTBROOK:

20 Q When you talked to Detective Campbell, you told him about her mouth  
21 being covered with tape and being kissed. You didn't tell him about the hands and  
22 feet being taped, right?

23 A I don't remember, to be honest.

24 Q In what you just read, there was nothing about the hands and feet,  
25 right?

1 A No. I remember to tell -- that I told him everything she told me.

2 Q Okay. That's good enough.

3 Also, Don David never touched Yezline's butt, right?

4 A No. She didn't tell me that.

5 Q Okay.

6 MR. WESTBROOK: Pass the witness. Thank you.

7 THE COURT: Okay. Okay. So you don't need the -- okay.

8 **REDIRECT EXAMINATION**

9 BY MS. KOLLINS:

10 Q Hi, Maria. I have a few more questions for you.

11 THE COURT: Okay. Good. Then redirect.

12 MR. WESTBROOK: Thank you. Pleasantly surprised?

13 THE COURT INTERPRETER: Can you repeat the question --

14 MS. KOLLINS: I'm sorry?

15 THE COURT INTERPRETER: -- for the interpreter, please?

16 MR. HAMNER: He was talking to the judge.

17 MS. KOLLINS: Oh, okay. I thought he was talking to me.

18 THE COURT: No. I -- I was just talking to the --

19 THE COURT INTERPRETER: No, no, no. I was telling Ms. Kollins.

20 MR. WESTBROOK: Just a technical matter.

21 THE COURT: Okay.

22 THE COURT INTERPRETER: Okay. I did not hear what she said.

23 THE COURT: Okay.

24 THE COURT INTERPRETER: Sorry.

25 BY MR. WESTBROOK:

1 Q Did you have a conversation with Yezline about the day that Yezline  
2 went to get Nicole from playing with the girls?

3 A No. That day she didn't say anything.

4 Q Do you remember that day when Yezline went to gather her little sister  
5 up from being with the twins and Jatziri?

6 A Yes.

7 Q Okay. Now, that day Yezline didn't tell you anything about Nicole being  
8 touched, right?

9 A No. She didn't say anything.

10 Q And neither did the twins or Jatziri?

11 A No. Neither one.

12 Q And they didn't say anything to you that day about the defendant  
13 showing his private part, either, did they?

14 A No.

15 Q And on that day they didn't talk to you about anything that the  
16 defendant had been doing to them?

17 A No. They -- we were told on October 16, when they told us.

18 Q Okay. The point is they didn't disclose anything to you that day, did  
19 they?

20 THE COURT INTERPRETER: I'm sorry. I missed the question.

21 BY MR. WESTBROOK:

22 Q The point is they didn't disclose anything to you that day, did they?

23 A No.

24 Q Now, later, could you have had a conversation with Yezline about what  
25 happened to Nicole that day?

1 A On October 16 she told me that.

2 Q Okay. What did Yezline tell you that she witnessed happening to  
3 Nicole?

4 MR. WESTBROOK: Your Honor, objection. Hearsay.

5 MS. KOLLINS: 51.385, part of the hearing, Your Honor.

6 THE COURT: Sustained -- or I'm sorry. Overruled. Overruled.

7 MS. KOLLINS: Thank you.

8 THE COURT: No, I think -- I think that that was covered by the hearing.  
9 But your objection's noted.

10 MR. WESTBROOK: Thank you, Your Honor.

11 THE COURT: Uh-huh.

12 MS. KOLLINS: Do I need to repeat the question, Ms. Interpreter?

13 THE COURT INTERPRETER: Yes, please.

14 BY MS. KOLLINS:

15 Q What did Yezline tell you she saw happen to Nicole that day?

16 A Yezline told me, said, Mom, also Nicole was touched the day you were  
17 cooking with Amanda with Bero Lorena [phonetic].

18 Q Okay. Did Yezline describe for you how Nicole was touched?

19 A Yes.

20 Q Can you repeat that for the ladies and gentlemen of the jury?

21 THE COURT: And one more -- before she does that, can you -- can  
22 you just lay some foundation as to when this declaration was made, so we are clear  
23 as to the timeframe.

24 MS. KOLLINS: I apologize. Let me back up for just a moment.

25 Strike that question, please, Ms. Interpreter.

1 BY MS. KOLLINS:

2 Q I believe probably about four or five questions ago, you said this was in  
3 the conversation October 16th, 2016?

4 A Yes.

5 Q Okay. The same conversation that you had with Yezline alone in the  
6 bathroom?

7 A Yes.

8 Q Can you describe for the ladies and gentlemen of the jury what Yezline  
9 told you happened to her baby sister, Nicole?

10 A When I was in the kitchen, she went to the bathroom. Jatziri and the  
11 twins told me, Esther, would you let Nicole go outside and play with us?

12 And I said yes, outside, yes.

13 And then I -- later I didn't hear anything, so I started calling  
14 Yezline, Yezline. I told her, get a -- come out of the bathroom, I cannot leave the  
15 stove, and go check where is Nicole, because I don't see them anymore.

16 When she came from the bathroom, running, then she stopped  
17 at the door, looking or facing towards Don David's house, and then she told me --  
18 and then she said, Mom, the three girls have Nicole over there with Grandpa.

19 Q Okay. I'm going to stop you right there.

20 Did you -- did you send Yezline over to Don David's to get  
21 Nicole?

22 A Yes.

23 Q Now, my -- my question -- my last question was, can you tell me what  
24 Yezline has said to you about what she witnessed happening to Nicole?

25 A She said that when she got to his door, the only thing she was able to

1 see was the -- they said that Don David had the girl like this, and brought her  
2 against his part, and -- and then put her down and the girl started walking. The girls  
3 told him -- told her, I'm sorry -- told her --

4 Q I'm going to ask you to stop right there.

5 You said she got to his door. I need you to use people's names.

6 A Okay. Yezline.

7 Q Yezline got to David's door?

8 A Uh-huh. And she saw when Don David had the girl like this and then  
9 rubbed her against his part and then put her down. And then the girl walked and  
10 she --

11 THE COURT INTERPRETER: The interpreter needs to inquire.

12 THE WITNESS: Jatziri -- Jatziri told Yezline, now you're going to go  
13 and gossip with your mom, right.

14 BY MR. WESTBROOK:

15 Q Okay. I -- I don't want to know -- I don't want to know what Jatziri said.

16 We're focusing on the conversation with Yezline about what she  
17 saw with Nicole.

18 A Okay.

19 Q So you said that Don David rubbed the girl -- rubbed the girl against his  
20 part. When you say the girl, are you referring to Nicole?

21 A Nicole.

22 Q And when you refer to part, what part of a man's body are you referring  
23 to?

24 A His private part. His --

25 Q Do you have another word, penis?

1 A Yeah. The penis -- I'm sorry, the penis.

2 Q And Yezline eventually brought Nicole home that day?

3 A Yes.

4 Q All right. I want to move to a different topic. I want to talk about the  
5 tape.

6 A Okay.

7 Q This gentleman over here asked you a lot of questions about what you  
8 said at the grand jury.

9 A Yes.

10 Q I'm going to give you a chance to explain. You said that Yezline's  
11 mouth was gray.

12 A Her lips were ashy color, gray. But she came -- I only saw her that she  
13 was scared. I noticed her lips, and then she run to the couch.

14 Q Okay. I want to talk to you about when you looked at her lips. Did --  
15 did her lips look like they had a substance on them? Or did she just look like she  
16 had no color to her face?

17 A It seems to me had no color in her lip -- on her lips. And she was  
18 scared.

19 Q Okay. And when was that?

20 A She didn't tell me -- she told me that -- that had happened --

21 Q Okay. I'm going to stop you --

22 A But I can't remember --

23 Q I'm going to stop you right there.

24 My question is, do you remember when that was?

25 A No.

1 Q Was it before October 16th of 2016?

2 A Oh, yes.

3 Q Okay. Was it after school started last year?

4 A Yes. They were in school.

5 Q Okay. In this past school year?

6 A Yes. Yes.

7 Q Okay. When you would have these parties, would Don David  
8 participate in the parties or do something different?

9 A A few times he just came for a few minutes and then he left. Uh-huh.

10 Q Do you recall the day that you sent Yezline to go get Elena to eat, and  
11 Yezline did not come back with Elena?

12 A I don't remember the month or the day, but it was something all of a  
13 sudden. I don't remember the date or the -- the date or the date.

14 Q Okay. Was it this school year, last school year, summertime; do you  
15 remember?

16 A No. But they were in school. I don't know.

17 MS. KOLLINS: Court's indulgence, please.

18 Your Honor, I don't have any further questions at this time.

19 Thank you.

20 THE COURT: How about you guys?

21 MR. WESTBROOK: I have some follow-up, Your Honor.

22 THE COURT: All right. You may.

23 **RECROSS-EXAMINATION**

24 BY MR. WESTBROOK:

25 Q You spoke to the grand jury in February of 2017; right?



1 A '17?  
2 Q February of the year 2017.  
3 A The jury on -- I don't know. I don't remember.  
4 Q It was after October 16th, though, right?  
5 A Okay. Yes.  
6 Q All right. And you swore an oath to tell the truth, the whole truth, and  
7 nothing but the truth; do you remember that?  
8 A Yes, yes.  
9 Q You said so help me, God, right?  
10 A Yes.  
11 Q Okay. You told the grand jury, on page 46 of your transcript, When she  
12 returned, she had glue on her mouth?  
13 A I don't remember saying that.  
14 Q Okay. That's been read to you, correct?  
15 A Yes.  
16 Q It's been read to you from the transcript of the hearing you were in,  
17 right?  
18 A I don't remember.  
19 Q Okay. You don't remember going to the hearing?  
20 A The hearing for what? I'm sorry.  
21 Q The hearing in front of the grand jury for this case.  
22 A Oh, yes.  
23 Q Okay. You remember being asked questions about this case, right?  
24 A Yes.  
25 Q So you're saying you don't remember telling the grand jury under oath

1 that your daughter had glue on her mouth?

2 A No, I don't remember saying that.

3 Q Okay. You do admit, though, it's here in writing, in the grand jury  
4 transcript, right?

5 A I don't -- I don't remember saying that. What I remember is that her lips  
6 were an ash color -- no color.

7 Q Okay. And that you didn't ask her any questions about that?

8 A No.

9 Q Okay. On the day that Jatziri and the twins took Nicole outside --

10 THE COURT INTERPRETER: Repeat the question for the interpreter.

11 BY MR. WESTBROOK:

12 Q We're going back to the day that Jatziri and the twins took Nicole  
13 outside.

14 A Yes.

15 Q Are you saying that Yezline told you on that day that the girls had taken  
16 Nicole over to Don David's house?

17 THE COURT INTERPRETER: Well, I need the interpreter -- the  
18 interpreter requests repetition, please.

19 BY MR. WESTBROOK:

20 Q Okay. Are you saying that on that day Yezline told you the other girls  
21 had taken Nicole over to Don David's house?

22 A Yes. But I don't remember the date or anything like that.

23 Q Okay. I want to direct you to your grand jury testimony, on page 41  
24 and 42. I'll have the interpreter read it in English and then read it to you in Spanish  
25 and then I'll ask you some questions.

1 MS. KOLLINS: Well, there's no question pending for her to read that. I  
2 mean, there has to be a -- if he's going to impeach her.

3 THE COURT: Well, she just said she doesn't remember the date and  
4 that conversation with -- is it Yezline?

5 MR. WESTBROOK: Uh-huh.

6 THE COURT: So are you going to try to show something from the  
7 grand jury transcript that establishes the date?

8 MR. WESTBROOK: What I'll be doing, Your Honor, is asking her --

9 THE COURT: Because that --

10 MR. WESTBROOK: -- about what's not there, which, to be fair to her, I  
11 think she would need to --

12 THE COURT: What's not there?

13 MR. WESTBROOK: Yeah. In order to ask her what's not there.  
14 Asking someone what is there, that's different, is way easier than asking somebody  
15 what's not there. So I would just like her to -- it's only, you know --

16 THE COURT: I don't know that that's --

17 MR. WESTBROOK: -- half a page.

18 THE COURT: -- proper impeachment to show that -- that --

19 MR. WESTBROOK: I'm so there.

20 THE COURT: -- I mean, what you've got to do --

21 MR. WESTBROOK: Sure.

22 THE COURT: -- is ask her the same question that was asked at the  
23 grand jury.

24 MR. WESTBROOK: Okay.

25 THE COURT: If she gives a different answer, then you can show her

1 that she gave a different answer and the jury could hear that.

2 MR. WESTBROOK: Absolutely, Your Honor. I'll do that.

3 THE COURT: But -- but if you're asking a different question that was  
4 asked before the grand jury, I don't -- I don't know that it comes in that way.

5 MR. WESTBROOK: Okay. I can set it up [indiscernible] foundation,  
6 Your Honor. Thank you.

7 THE COURT: All right.

8 BY MR. WESTBROOK:

9 Q Ms. Kollins asked you questions at the grand jury, right?

10 A I did not hear the question.

11 Q Ms. Kollins asked you questions before the grand jury, right?

12 A Kollins, who is that?

13 Q The district attorney.

14 A Oh, yeah. Yes.

15 Q You know her better as Stacey?

16 A Yes.

17 Q Makes sense. So Stacey asked you questions in front of the grand  
18 jury?

19 A Yes.

20 Q Okay. She asked you about the day when you were in your apartment  
21 and the twins and Jatziri came over to take Nicole out to play?

22 A Yes.

23 Q Okay. You didn't mention anything about being told that Don David  
24 rubbed Nicole against his part, did you?

25 A I do not understand -- I do not understand the question.

1 Q Okay. When Stacey was asking these questions to the grand jury, you  
2 did not testify that Don David rubbed the girl, Nicole, against his part, did you?

3 A I told her.

4 Q In the grand jury?

5 A I don't remember, to be honest.

6 Q Okay.

7 A I don't remember.

8 Q Would it refurnish your recollection to have that part of the transcript  
9 read to you?

10 A Yes. I told her -- I told her. For sure I told her that the -- I'm sorry, yes,  
11 I told her.

12 Q In the grand jury?

13 A Sorry.

14 Q In the transcript?

15 A I told her. I'm sorry.

16 MR. WESTBROOK: Would you read from here.

17 THE COURT INTERPRETER: From where to where?

18 MR. WESTBROOK: Starting in English from the start.

19 MS. KOLLINS: What? I'm sorry.

20 MR. WESTBROOK: 41 and 42.

21 THE COURT INTERPRETER: Okay.

22 MS. KOLLINS: Pages 41 and 42, and it's in their entirety?

23 MR. WESTBROOK: Yeah. It's not that long.

24 THE COURT INTERPRETER: By Ms. Kollins: Good afternoon,  
25 ma'am.

1 Good afternoon.

2 I'd like to call --

3 THE COURT: Well, hold on. I don't know what's in these two pages.  
4 So you're -- it's kind of unusual to read a whole two pages of a grand jury transcript.

5 I understand what you're trying to do. You're trying to -- to get  
6 affirmation that Ms. Barajas never mentioned during the grand jury proceedings that  
7 Jatziri had mentioned that Nicole had been supposedly rubbed against the  
8 defendant; is that what you're trying to establish?

9 MR. WESTBROOK: That is correct, Your Honor.

10 THE COURT: All right. And so one way of doing that would be to have  
11 the witness look at the testimony to see if that refreshes her recollection.

12 MR. WESTBROOK: That's normally how we would do it.

13 THE COURT: Another way to do it would be to show a specific  
14 reference, not a whole group of two -- multiple pages.

15 MR. WESTBROOK: Sure.

16 THE COURT: Another way to do it was -- would be to seek assent  
17 from the district attorney.

18 MR. WESTBROOK: And that would be the easiest way.

19 THE COURT: And you're -- you're trying to -- you're trying to do it by a  
20 way that seems a little foreign to me, which is having two full pages read. So --

21 MR. WESTBROOK: It -- it's actually just one full page, because it starts  
22 halfway down one and ends halfway down the other.

23 This is, you know, her statement to the grand jury. Normally  
24 what would happen is she would read it and then I would ask her questions about it.

25 Since she can't read it because it's in English, the only way we

1 can really do it is to have the interpreter read it to her, which I'm fine with that just  
2 happening in Spanish.

3 THE COURT: Can look at Ms. Kollins for a second? She's trying to  
4 say something to us.

5 MS. KOLLINS: Your Honor, I can --

6 THE COURT: Go ahead.

7 MR. WESTBROOK: No problem.

8 MS. KOLLINS: Well, I can abbreviate this --

9 THE COURT: Okay.

10 MS. KOLLINS: -- if the court wants. I do not have a problem with him  
11 reading from page 41, line 14, through page 43, line 6. And I think that puts all of  
12 this in context as to what she told the grand jury.

13 THE COURT: Very good. Let's do it.

14 MR. WESTBROOK: Sounds good.

15 MS. KOLLINS: So read it in English, and then if she needs it in  
16 Spanish.

17 THE COURT: Since there's no opposition, let's go ahead and do it.  
18 Read it in English, then Spanish.

19 THE COURT INTERPRETER: From where?

20 THE COURT: 41, line 14, through page 43, line 6.

21 THE COURT INTERPRETER: Okay. 19. Okay. Here.

22 THE COURT: Let's do it.

23 THE COURT INTERPRETER: By Ms. Kollins: Good afternoon,  
24 ma'am.

25 Good afternoon.

1 I want to call your attention to a date when you were residing at  
2 your apartment and Mirabel, Maradel, and Jatziri came over and asked if they could  
3 take Nicole out to play; do you remember that day?

4 Yes.

5 Now, your daughter, Yezline, she did not go with them, correct, at  
6 the first -- at first?

7 No.

8 Eventually, did you send Yezline -- Yezline to go and get Nicole?

9 Yes.

10 Did you later learn that Mirabel, Maradel, and Jatziri had taken  
11 Nicole to Jose Azucena's apartment?

12 No.

13 Did you eventually learn about that?

14 Yezline never said anything. They didn't say anything.

15 When did you first --

16 They just brought the girl back, but they didn't say anything.

17 When did you -- did you first find out that that's where they went?

18 After they disclosed, you know, what happened to them, that's  
19 when they said, you know, this also happened to Nicole.

20 Now, I will read in Spanish.

21 THE COURT: Now, read it in Spanish. Thank you.

22 MS. KOLLINS: What -- I'm sorry. The -- the whole -- the reading is  
23 through the top of 43. That only went through --

24 THE COURT: Oh.

25 MS. KOLLINS: -- line 17 --



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THE COURT: Oh, keep reading.

MS. KOLLINS: -- of page 42.

THE COURT INTERPRETER: Okay. Was that -- that's what was marked.

MR. WESTBROOK: Yes. I'm sorry.

THE COURT INTERPRETER: It's all right.

Okay. Do you know -- do you remember what day it was at least as to the month where they took Nicole to Jose Azucena's home?

No, I don't recall.

Was it this school year --

I'm sorry.

Was this -- was it this school year?

That happened in the afternoon, after school.

Okay. But in this school year that we are --

And that's where it ends.

MR. WESTBROOK: And go to line 6 on the next page.

MS. KOLLINS: Next page.

THE COURT INTERPRETER: I don't have next page. This was the first page.

MS. KOLLINS: Here.

MR. WESTBROOK: Oh, I'm sorry. Line 6. Here you go. There you go.

THE COURT INTERPRETER: Okay.

THE COURT: Do you have the English? English.

THE COURT INTERPRETER: I'm sorry? I'm sorry. Okay.

1 Back when it happened, I believe it was around September. It  
2 was around -- around those dates.

3 September that just passed?

4 Yes. Yes. October 16, that's when we found out about  
5 everything.

6 THE COURT: Great. And thank you so much.

7 And now we need to hear all of that in Spanish for the benefit of  
8 the witness.

9 THE COURT INTERPRETER: Okay.

10 THE COURT: Take your time.

11 THE COURT INTERPRETER: Yes.

12 [Portion of transcript interpreted from Spanish to English.]

13 THE COURT INTERPRETER: Do you want me to go all the way to the  
14 end or stop there?

15 MR. WESTBROOK: Don't do 6.

16 THE COURT INTERPRETER: Okay.

17 MR. WESTBROOK: Right to there.

18 THE COURT INTERPRETER: Yes.

19 BY MR. WESTBROOK:

20 Q Okay. So you said that on October 16th, that's when you found out  
21 about everything, right?

22 A Yes.

23 Q But you didn't tell the grand jury that Yezline told you that Don David  
24 rubbed Nicole against his part, did you?

25 A To be honest, I don't remember.

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1 Q You just read your testimony, right?

2 A Yes.

3 Q That wasn't in there, was it?

4 A About Nicole?

5 Q Correct.

6 A Yeah. It said something about Nicole there.

7 Q Did it say Yezline told me that Don David rubbed Nicole against his  
8 part?

9 A Yezline told me that. I don't know.

10 Q All right. Did you tell the grand jury that?

11 A I don't remember, to be honest. That was a long time ago.

12 Q Do you remember what you just read?

13 A Yes.

14 THE COURT: You've got to move on, Mr. Westbrook. You're being  
15 argumentative here. I --

16 MR. WESTBROOK: Yes. Just one last question, Your Honor.

17 BY MR. WESTBROOK:

18 Q Is -- in what you just read, do you see yourself telling the grand jury that  
19 Yezline told you Don David was rubbing Nicole against his part?

20 MS. KOLLINS: I'm going to object. This has been asked and  
21 answered about six times now.

22 THE COURT: Yeah. It's -- it's really borderline badgering. I -- you --  
23 you did a good job of reading the transcript. The jury heard it. It -- it is what it is.  
24 She disagrees. Her memory is -- her memory is obviously different than what the  
25 transcript says. We should just leave it at that. And you can argue to the jury what

1 all that means.

2 MR. WESTBROOK: Sounds good. Thank you, Your Honor.

3 THE COURT: Thank you.

4 THE COURT INTERPRETER: Your Honor, may I --

5 THE COURT: Yes. What do you need?

6 THE COURT INTERPRETER: May I replace the -- the interpreter?

7 THE COURT: You may. Please come forward.

8 And so we need to ask now if you both had -- you had a chance  
9 to redirect yet? No. You had direct, cross.

10 MS. KOLLINS: I -- I have --

11 MR. WESTBROOK: We've done recross.

12 THE COURT: Redirect, recross. All right. We've got to really leave it  
13 at that.

14 And, I mean, you reserve the right to call her on -- as a rebuttal  
15 witness. But we need to move on. We need to see if the jurors have any  
16 questions.

17 Looks like it -- I'm getting one or two nods, so -- so let them finish  
18 writing whatever they -- down.

19 MS. KOLLINS: May I approach, Your Honor?

20 THE COURT: Yes. Who, me?

21 MS. KIERNY: On the questions or --

22 MS. KOLLINS: Yeah. On the questions.

23 MS. KIERNY: Oh, sure.

24 THE COURT: Oh, yeah, yeah. You may.

25 [Bench conference transcribed as follows.]

1 THE COURT: Thank you. Appreciate that.  
2 MS. KOLLINS: Now I'm really aware of it.  
3 THE COURT: I had no idea until this trial. But that --  
4 MR. WESTBROOK: On the -- oh, the questions?  
5 THE COURT: [Indiscernible. ]  
6 MS. KOLLINS: No, on the mic.  
7 MR. WESTBROOK: On the mic, yeah.  
8 THE COURT: When we have the static. I'm just -- let me look at that.  
9 Oh, marshal, whoever gave us this one needs to have the juror  
10 name and -- and number. Okay.  
11 MS. KOLLINS: When was the grand jury?  
12 THE COURT: And that needs the name of the juror on it, too.  
13 MS. KOLLINS: What does it mean to impeach a witness?  
14 MS. KIERNY: [Indiscernible] going to impeach them, a witness, you  
15 need to do X, Y, Z.  
16 MS. KOLLINS: Well, that's been a part of an objection, too, so.  
17 MS. KIERNY: I mean, yes.  
18 THE COURT: That needs the juror's name on it, too.  
19 MS. KOLLINS: How often were the parties...  
20 THE COURT: And this one needs the juror number. It says Kathleen  
21 Schneider. It needs a juror number on it. We need numbers and names, numbers  
22 and names.  
23 MS. KOLLINS: You said that, like, four times. I don't know, they were  
24 outside in the courtyard area. We don't have an objection to that one, do we?  
25 MR. HAMNER: No.

1 MS. KOLLINS: No objection to that.  
2 THE COURT: Okay. So no objection to -- to No. 11's question?  
3 MS. KOLLINS: Yes.  
4 MS. KIERNY: [Indiscernible] do they need to put their name on it or?  
5 THE COURT: They do.  
6 MS. KIERNY: Okay. And other than that, we're not -- we don't need --  
7 MS. KOLLINS: The question about impeachment, I don't think she  
8 knows and she doesn't know the date of the grand jury. So we can ask her, but  
9 she's not going to know it.  
10 MR. HAMNER: And that was --  
11 THE COURT: And Juror No. 11, we need the name.  
12 MR. HAMNER: Why don't we just stipulate --  
13 MR. WESTBROOK: Why don't we just stipulate when it was done.  
14 THE COURT: And then juror number -- Juror No. 6, we need the -- the  
15 name.  
16 MS. KOLLINS: We're going to stipulate that the date of the grand jury  
17 was February 1st of 2017.  
18 THE COURT: February 1st, 2017. Okay.  
19 [End of bench conference.]  
20 THE COURT: All right. Good. So thank you. Thank you very much.  
21 All right.  
22 All right. The easy one, the parties stipulated. The question --  
23 and this is not a question to the witness. This is a question that I can answer as the  
24 judge, because the parties have stipulated.  
25 When was the grand jury? All right. The grand jury proceedings

1 took place on February 1, 2017. All right.

2 That's a court exhibit.

3 Next question, this is to the witness: How often were the parties  
4 at or around Don David's house? Tell the -- tell the jurors.

5 THE WITNESS: Every time there was a birthday among the neighbors,  
6 he would approach and say, Okay, I will bring this.

7 THE COURT: Okay. Very good.

8 The last question, and this is not a question to the witness, this is  
9 a question to the judge.

10 What -- what does it mean to impeach a witness? I think the --  
11 that question was prompted by the court using the word impeach in -- in explaining  
12 to defense counsel how to use the prior statements at the grand jury proceeding.

13 Impeachment is simply a legal term to describe the process by  
14 which an attorney challenges the credibility of a witness. So if -- if an attorney  
15 believes that a witness -- if an attorney wants to challenge the credibility of a  
16 witness during cross-examination, there are techniques to try to do that. One  
17 technique is called impeachment. One method of attempting impeachment is to  
18 show a prior statement of the witness and read that to them and -- and then to try to  
19 ascertain whether the witness remembers the statement or whether they are taking  
20 a position now that's inconsistent with the statement.

21 You, as the jurors, have to judge everybody's credibility.

22 All these processes merely provide you with the evidence and  
23 the information that you can use when you're deliberating this case to determine if  
24 someone is telling the truth. All right.

25 So again, impeachment is simply one means. You will get further

1 instructions on how to assess the credibility of witnesses. All right. So that's all I  
2 can say on that. I'm trying to be somewhat vague, because I -- I really like to wait  
3 until after all the close of the evidence before I give you the formal legal  
4 instructions. And I conferred with the parties on that too. All right.

5 That's all I wanted to say about that.

6 Do any of the parties want to comment on the court's explanation  
7 of the term impeach?

8 MS. KIERNY: No, thank you, Your Honor.

9 MR. WESTBROOK: No, Your Honor.

10 MS. KOLLINS: No, Your Honor. But I do have follow-up on the party  
11 question.

12 THE COURT: All right. We have follow-ups related to the question  
13 on --

14 MS. KOLLINS: Parties.

15 THE COURT: -- parties --

16 MS. KOLLINS: Thank you, Your Honor.

17 THE COURT: -- and whether Mr. David was around.

18 MS. KOLLINS: May I proceed?

19 **FURTHER REDIRECT EXAMINATION**

20 BY MS. KOLLINS:

21 Q The parties at the Charleston Gardens, would some of those parties be  
22 at your house?

23 A Yes.

24 Q And some of those parties would be at Amanda's house?

25 A Yes, also.



1 Q Were there other people that threw parties that David joined?

2 A No. He would only go to Amanda's and mine. Just like getting together  
3 and cooperating or contributing, that would be only Amanda's and mine.

4 Q Okay. Would those parties happen monthly? Weekly? How often  
5 would they happen?

6 A Towards the end his wife, Elena, she wanted by then to have it every  
7 week. She wanted to get together every week, to be drinking and eating, so it  
8 would be every week.

9 MS. KOLLINS: Okay. Thank you.

10 No -- nothing else, Your Honor.

11 THE COURT: Mr. Westbrook.

12 MR. WESTBROOK: Nothing further, Your Honor.

13 THE COURT: Nothing? All right. Very good.

14 And I didn't see any more hands from the jurors, so thank you  
15 very much for your attentiveness.

16 And Ms. Barajas, you're excused.

17 THE WITNESS: Thank you.

18 THE CLERK: Judge, can we have the questions on the full sheet of  
19 paper, please, in the tablet?

20 THE COURT: Well, I'm not going to have them rewrite it.

21 THE CLERK: No, no, no, not to rewrite it. Just in the future.

22 THE COURT: Yeah. Of course.

23 You're excused. Thank you.

24 All right.

25 Yes, ma'am?

1 THE COURT INTERPRETER: I'll just wait to see the next witness --

2 THE COURT: Yes.

3 THE COURT INTERPRETER: -- and interpreter.

4 THE COURT: The State may call its next witness.

5 MR. HAMNER: The State's going to briefly recall Amanda Moiza back  
6 to the stand.

7 THE COURT INTERPRETER: Okay.

8 MR. HAMNER: On a brief --

9 THE COURT: Okay.

10 MR. HAMNER: It's just a brief matter.

11 THE COURT: Okay. Did you --

12 MR. HAMNER: I just --

13 MS. KIERNY: We have --

14 MR. HAMNER: -- I just let them know.

15 MS. KIERNY: We don't know about --

16 MR. HAMNER: It's just in light of some of the stuff I heard. So just  
17 want to recall her.

18 MR. WESTBROOK: May we approach, Your Honor?

19 THE COURT: Yes. I was just trying to find out if there was any  
20 objection.

21 [Bench conference transcribed as follows.]

22 THE COURT: But let's --

23 MS. KIERNY: Yes. We don't know what she's being recalled for,  
24 besides the vague word of parties.

25 MR. HAMNER: It's about --

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1 THE COURT: Oh.

2 MR. HAMNER: It's about there were questions on cross-examination  
3 about where Don David was at the parties, and I'm recalling Amanda to talk about  
4 where he would be when these parties were held. And it's our burden, we're  
5 entitled to recall a witness if we need to.

6 MR. WESTBROOK: It's a little loud. I'm sure the -- I'm sure the jury  
7 can hear you.

8 MR. HAMNER: Well, there's nothing prejudicial about what I'm saying.

9 But I -- we're entitled to recall a witness. It's our burden. It's  
10 going to be real brief. And that's the subject, Your Honor.

11 MR. WESTBROOK: All right.

12 MS. KIERNY: There --

13 MR. WESTBROOK: He wants to call a witness -- he wants to call a  
14 witness to respond.

15 Sorry. Go ahead. You object.

16 THE COURT: He gave you notice on this.

17 MR. HAMNER: Yeah. I just leaned over.

18 MS. KIERNY: He just leaned over and said we're going to call  
19 [indiscernible] parties. I don't have any additional information regarding a  
20 discovery, any of the planned jury statement, Amanda's [indiscernible] she said in  
21 the e-mail that what Don David was doing [indiscernible] this could be prejudicial  
22 [indiscernible]. I know [indiscernible].

23 MR. HAMNER: Okay. First of all --

24 THE COURT: I'll stop [indiscernible].

25 MR. HAMNER: No, I'm not talking [indiscernible]. I'm just going to ask

1 him whether or not -- when there was a party, whether or not he would stay there  
2 the entire time. I believe the witness is going to say, No, sometimes he would go  
3 back to his own apartment and not stay for the duration of the whole party. Which  
4 is relevant.

5 THE COURT: It's relevant.

6 MR. HAMNER: Because he was --

7 THE COURT: I don't see how it's prejudicial.

8 I'm going to allow it. Let's keep -- let's keep it --

9 MR. HAMNER: It's going to be real brief.

10 THE COURT: Okay.

11 MR. HAMNER: I'll make it real targeted.

12 THE COURT: Okay.

13 [End of bench conference.]

14 THE COURT: There she is. Hello.

15 All right. Since I had previously excused you, and you are back,  
16 you have to take a new oath.

17 THE WITNESS: Okay.

18 **AMANDA MOIZA,**

19 [having been recalled as a witness and being first duly resworn, testified through  
20 the interpreter as follows.]

21 THE CLERK: Please be seated.

22 THE COURT: All right. And just tell us --

23 THE CLERK: Please --

24 THE COURT: Oh, go ahead.

25 THE CLERK: Please state your first and last name and spell for the

1 record.

2 THE WITNESS: Amanda Moiza, A-M-A-N-D-A M-O-I-Z-A.

3 THE COURT: All right. So I am allowing the district attorney to recall  
4 this witness for a very limited purpose.

5 All right. You may proceed.

6 MR. HAMNER: Thank you very much.

7 **FURTHER DIRECT EXAMINATION**

8 BY MR. HAMNER:

9 Q Amanda, yesterday you told us that you and Maria would hold parties at  
10 your house; is that right?

11 A Yes.

12 Q And that David and Elena would attend?

13 A Yes.

14 MS. KIERNY: I'm going to object as to leading. I understand he needs  
15 to get to foundation, but.

16 MR. HAMNER: It's foundational and it was previously testified to.

17 THE COURT: I'll -- I'll allow it.

18 MS. KIERNY: All right.

19 THE COURT INTERPRETER: Your Honor, for the interpreter's -- and  
20 apologize -- it's for not hearing objection.

21 MS. KIERNY: Oh, I just objected to leading.

22 THE COURT INTERPRETER: Yeah. Okay. Yeah. And --

23 MS. KIERNY: And it was overruled.

24 THE COURT INTERPRETER: And therefore, yeah.

25 MS. KIERNY: Thank you.

1 BY MR. HAMNER:

2 Q Amanda, when parties were held at your house, did David spend the  
3 entire time at your parties?

4 A No.

5 Q When parties were held at Maria's house, did David spend the entire  
6 time at the parties?

7 A No.

8 Q You mentioned yesterday that Maria's house was a couple doors down  
9 from David's.

10 A Yes.

11 Q When you saw David leave at Maria's parties, could you see where he  
12 would walk to?

13 A To his house.

14 MR. HAMNER: Thank you.

15 No further questions.

16 THE COURT: All right. Ms. Kierny, this was your witness. Do you  
17 have any cross?

18 MS. KIERNY: No, Your Honor, about --

19 MR. WESTBROOK: The only thing I would say --

20 MS. KIERNY: Actually, Court's brief indulgence.

21 No further questions, Your Honor.

22 THE COURT: All right. Anything from the jurors? Don't see any  
23 hands.

24 All right. Well, thank you. You are excused again.

25 THE WITNESS: Thank you.

1 THE COURT: The State may call its next witness.

2 MS. KOLLINS: The State calls Scarlett Rangel.

3 THE COURT INTERPRETER: Does she require an interpreter,  
4 Scarlett?

5 THE COURT: I don't know if she speaks English.

6 Mr. Hamner, does she speak English?

7 MR. HAMNER: I'm going to go -- Stacey's going to check and I...

8 MS. KOLLINS: She does. But we're going to do it in Spanish today.

9 THE COURT INTERPRETER: Oh, okay.

10 THE COURT: Hello. Are you Scarlett? So nice to meet you. I'm the  
11 judge. Hi. Pleasure to see you today.

12 So we're going to have some -- some people ask you some  
13 questions, okay?

14 All right. Do you know how to tell the truth? Yeah?

15 THE WITNESS: Yes.

16 THE COURT: All right. Do you promise to tell the truth?

17 THE WITNESS: Yes.

18 THE COURT: And how old are you?

19 THE WITNESS: Seven.

20 THE COURT: Seven years old? Okay. And we have an interpreter.  
21 She will translate into Spanish for you. Do you feel more comfortable talking in  
22 Spanish?

23 THE WITNESS: Yes.

24 THE COURT: Great. The court clerk, since you're -- you're seven,  
25 we're going to have the court clerk read you a statement, basically, giving you an

1 oath to promise to tell the truth. Do you understand? Okay.

2 THE WITNESS: Yes.

3 THE COURT: And if you agree with what she says, then say, I do or I  
4 agree. Okay? Okay. Have you ever taken an oath before?

5 MS. KOLLINS: She doesn't know what that means.

6 THE COURT: Oh, you don't know what that means? Oh. Okay.

7 Well --

8 THE WITNESS: I do know.

9 THE COURT: You do know? Do you know -- do you know what to tell  
10 the truth is?

11 THE WITNESS: Yes.

12 THE COURT: Okay. So tell you what, do you -- do you promise to tell  
13 the truth?

14 THE WITNESS: Yes.

15 THE COURT: So just to make sure we understand, so if I told you that  
16 it's raining in the room, is that -- today, is it truth or a lie?

17 THE WITNESS: A lie.

18 THE COURT: Great. And is it wrong to tell a lie?

19 THE WITNESS: Yes.

20 THE COURT: All right. If -- if you were to tell a lie, would you feel --  
21 feel bad?

22 THE WITNESS: I don't know.

23 THE COURT: Oh, okay. You have to tell the truth in court, right?

24 THE WITNESS: Uh-huh.

25 THE COURT: Yes? Is that a yes?



1 THE WITNESS: Yes.

2 THE COURT: Okay. Because this is important. And you see the  
3 people over here on the left, all these people, they're friendly people. They -- they  
4 want to listen to the questions and the answers, and they want to hear the truth.  
5 Okay. Do you understand that?

6 THE WITNESS: Okay.

7 THE COURT: Okay. So you're going to tell the truth, right? In  
8 Spanish. Sure. Yes?

9 THE WITNESS: Yes.

10 THE COURT: Okay. So I think we can bypass the oath. The court is  
11 convinced that this witness will testify truthfully based on her responses and  
12 demeanor. And so I'll allow the questions to be asked.

13 MR. WESTBROOK: Your Honor, may we approach?

14 THE COURT: Yes.

15 MS. KOLLINS: Can I let Mr. Hamner take care of this? Because I'm  
16 going to stay here with Scarlett.

17 THE COURT: Uh-huh.

18 [Bench conference transcribed as follows.]

19 THE COURT: She's too --

20 MR. WESTBROOK: Your Honor, you just endorsed that she would  
21 testify truthfully.

22 THE COURT: What's that?

23 MR. WESTBROOK: You just endorsed that she would testify truthfully.  
24 All you can endorse is that you believe that she agreed to tell the truth.

25 THE COURT: No. That's what I said. She needed to --

1 MR. WESTBROOK: Well, we're saying that what she's saying on the  
2 stand isn't true.

3 THE COURT: Well, we don't know that, because she hasn't said  
4 anything.

5 MR. WESTBROOK: Well, yeah, but you just said that you're convinced  
6 that she'll testify truthfully. That's a problem. Do you see the problem?

7 THE COURT: I don't see any problem.

8 MR. WESTBROOK: Okay. You just told --

9 THE COURT: She just admitted she was going to tell the truth.

10 MR. WESTBROOK: She -- she just -- she just told you she would  
11 promise to tell the truth, kind of. I mean, she -- she said she didn't know if you'd  
12 feel bad if you didn't tell the truth. But that aside --

13 THE COURT: Oh, okay. I see what you're saying. All right. I'll tell the  
14 jurors that, yes.

15 MR. WESTBROOK: Yes. The contents, you can't say that the  
16 contents of what she's saying are true.

17 THE COURT: I understand.

18 MR. WESTBROOK: You can say that you're satisfied that she --

19 MS. KIERNY: Understands.

20 MR. WESTBROOK: -- understands the oath.

21 THE COURT: I -- I understand your distinction.

22 MR. WESTBROOK: Okay.

23 THE COURT: I'm make sure the jurors understand.

24 MR. WESTBROOK: Okay. Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. HAMNER: Thanks, Your Honor.

2 [End of bench conference.]

3 THE COURT: All right. Okay. So let me tell the jurors, normally we  
4 would administer an oath, but given the age of the child, we -- I have authority to  
5 just -- to excuse that. I'm convinced that it -- well, I'm convinced that she  
6 understands the difference between the truth and a lie and she has given our  
7 assurances that she will tell the truth.

8 Now, whether she actually tells the truth or not, that's up to you to  
9 decide, and I don't know if she will. No one in this room knows that she will. But  
10 she will give the -- the answers to the questions and then you decide her credibility.  
11 Okay. That's how the process works.

12 Thank you, Scarlett. Thank you very much. So you're -- you're a  
13 very pretty girl. And thank you for being here in court. Have you ever been in court  
14 before?

15 THE WITNESS: Not here.

16 THE COURT: No? Okay. Are you -- are you nervous?

17 THE WITNESS: A little bit.

18 THE COURT: Okay. No reason to be nervous. We'll all going to be  
19 nice to you. Okay? Okay.

20 Ms. Kollins, you can begin by asking questions.

21 MS. KOLLINS: Okay. Thank you.

22 Can everybody see through me or around me? Okay.

23 THE CLERK: Can we have her say her name, her first and last name,  
24 please, so we all know what her name is.

25 MS. KOLLINS: Okay. I will. Okay. I will do that.

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1 THE COURT: Thank you.

2 **SCARLETT RANGEL,**

3 [having first been qualified by the judge, testified through the interpreter as follows.]

4 **DIRECT EXAMINATION**

5 BY MS. KOLLINS:

6 Q Judge Scotti did most of my job, so -- what's your name?

7 A Can I say it in Spanish?

8 Q Yes.

9 A Scarlett Rangel Garcia.

10 Q Can you spell Scarlett Rangel Garcia?

11 A Not Garcia, though.

12 Q Okay. Can you spell Scarlett?

13 A Yes.

14 Q Can you spell it for me today?

15 A S-C-A-R-L-E-T-T.

16 Q How about the Rangel part, can you spell that?

17 A R-A-N-G-E-L.

18 Q Thank you, ma'am.

19 Ms. Scarlett, can you tell me how old you are today? And we're  
20 going to let the lady ask you in Spanish.

21 A Seven.

22 Q And do you know when your birthday is?

23 A No.

24 Q You don't know your birth date?

25 THE COURT: Ms. Kollins, I just wanted to make sure Juror No. 1 could

1 see. That's all I --

2 MS. KOLLINS: I'm sorry. I just --

3 THE COURT: Okay.

4 MS. KOLLINS: Is the microphone picking me up? Okay. That's all I  
5 was worried about.

6 THE COURT: Okay.

7 BY MS. KOLLINS:

8 Q Scarlett, do you go to school?

9 A Yes.

10 Q What grade are you in in school?

11 A Second.

12 Q Okay. Do you like school or not so much?

13 A No.

14 Q Me either. Who brought you here today?

15 A My dad.

16 Q What's your papa's name?

17 A Ricardo Rangel Serano.

18 Q Okay. Do you have brothers and sisters?

19 A No. Just three brothers. One of them is my stepbrother.

20 Q Okay. Do they live at your house?

21 A No.

22 Q Just sometimes you live with Daddy and sometimes you live with

23 Mommy?

24 A Yes.

25 Q Okay. You stay at Daddy's house over the weekend and then you stay

1 at Mama's house the rest of the week?

2 A Yes.

3 Q Okay. Do you have some friends that you play with at Dad's house?

4 A Jatziri, and the little twins.

5 Q Okay. Do you know the twins' names?

6 A And Leo.

7 Q And Leo?

8 A Uh-huh.

9 Q Is that a yes?

10 A Yes.

11 Q Okay. How about Yezline?

12 A Yes.

13 Q Okay. And those are just friends that live at Dad's -- by Dad's house,  
14 right?

15 A Yes.

16 Q Okay. Do you know what we're here to talk about today?

17 A Not much.

18 Q Not much? Okay. Do you know places on our body that we're not  
19 supposed to show other people?

20 A The part?

21 Q Okay. The part. Is that on a boy or a girl?

22 A Both.

23 Q Both? Okay. What do you call the part on a boy that not supposed to  
24 show?

25 A I don't know.

1 Q Okay. Can I show you a picture of a boy that's going to take a bath?

2 A I don't know.

3 Q Okay. Well, if I do that, do you think you could show me the part that  
4 you're talking about that you're not supposed to show?

5 A Yes. I can point at it.

6 Q Okay. That's fair. Can we do that?

7 MS. KOLLINS: Can Mr. Hamner bring it?

8 MR. HAMNER: It's not there.

9 MS. KOLLINS: That's okay.

10 MR. HAMNER: Sorry about that.

11 MS. KOLLINS: I'm going over here because they have my stuff.

12 Okay?

13 THE WITNESS: Okay.

14 MS. KOLLINS: Showing defense counsel what's been previously  
15 marked as State's 57 for purposes of identification.

16 BY MS. KOLLINS:

17 Q Scarlett, I should have turned this on before you got here, and I did not.  
18 It's working. Okay.

19 Scarlett, I'm going to show you a picture, and I want you to point  
20 the part for me, okay, that we just talked about; can you do that?

21 A Okay.

22 Q And that screen in front of you, if you touch on that screen, it's like  
23 magic and you can see where you touched and you can color on it. Okay?

24 So when you point to the --

25 THE COURT: Just have her try it now. You can draw a circle on the

1 screen. Just try it with your finger.

2 THE WITNESS: I don't want to.

3 BY MS. KOLLINS:

4 Q Just a big circle.

5 A I don't know how to do this.

6 THE COURT: No. You did good. Thank you. That works.

7 BY MS. KOLLINS:

8 Q See, if you see it. Look over there. See, you can see what you drew.

9 Okay. We can erase it. We can try again.

10 MR. HAMNER: It's clear. It's clear.

11 THE WITNESS: It's just that -- but I don't know how to use these  
12 things.

13 BY MS. KOLLINS:

14 Q Okay. Well, that's all you've got to do, is just use your finger. You did  
15 great.

16 A I don't want to.

17 Q Okay. Can you get back to the picture of the boy that's about to take a  
18 bath?

19 A Yes.

20 Q Okay. I'm going to put it up there, just so you can see it on the screen.  
21 Okay.

22 You said a boy has a part that he's not supposed to show; can  
23 you circle it on there for me? Because you said you didn't want to say it.

24 A Okay.

25 Q Okay. Go ahead and circle.



1 A I can't. I don't know how to use these things.

2 Q Okay. Well, why don't we try to do it with the end of a pen. Maybe  
3 that'll work better than your finger, to try to touch it with the end of the pen, and that  
4 might work better than your finger.

5 Thank you, Scarlett.

6 MS. KOLLINS: May the record reflect on State's Proposed 57, that the  
7 child drew a circle around the penis or genitals of the man in the picture.

8 THE COURT: It does.

9 MS. KOLLINS: Thank you.

10 We can make that a court's exhibit if you want. It doesn't really  
11 have a value except for that.

12 BY MS. KOLLINS:

13 Q Now, Scarlett, I will ask you some questions.

14 Did you ever have a problem with seeing somebody's private  
15 part, a man's private part?

16 A Yes.

17 MR. WESTBROOK: Your Honor, I object to leading.

18 THE COURT: Overruled. Go ahead.

19 MS. KOLLINS: The response was yes from the interpreter.

20 BY MS. KOLLINS:

21 Q Okay. Where did that happen?

22 A [In English] In his house.

23 Q Can you tell -- we have to do it in Spanish -- all Spanish or all English,  
24 honey. Okay?

25 A I don't know.

1 Q Where did that happen?  
2 A In the man's house.  
3 Q Okay. Do you -- was the man's house in the same apartments where  
4 your dad lives?  
5 A No.  
6 Q Okay. The same -- close to your dad's apartment?  
7 A No.  
8 Q Okay. Were you with anybody when that happened?  
9 A No.  
10 Q Okay. Were you -- was it a day that you stayed at your dad's house?  
11 A No.  
12 Q No? Okay. Where did -- where did it happen, then? You said the  
13 apartment of the man.  
14 A It was where there was a babysitter close.  
15 Q Okay.  
16 A But it was upstairs.  
17 Q Okay. Does your babysitter babysit you at your dad's apartments  
18 where your dad lives?  
19 A No.  
20 Q What's the babysitter's name?  
21 A Lorena.  
22 Q Lorena, okay. And does Lorena live near Jatziri and Yezline and the  
23 twins?  
24 A Yezline, yes.  
25 Q Okay. She lives near Yezline?

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1 A Yes.

2 Q Okay. In the same apartments as Yezline?

3 A Kind of far.

4 Q Okay. Now, you said this happened inside the man's house; is that  
5 what you said?

6 A Yes.

7 Q Do you think you remember what the man's house looks like?

8 A No.

9 Q Okay. If I show you a picture, you want to try?

10 A Okay.

11 Q Okay. Showing you State's 24; Scarlett, do you recognize what's in  
12 that picture?

13 A Where the man who showed me his part lives.

14 Q Okay. I'm going to put this on the overhead thing, and I want you to tell  
15 me where you say in this picture, State's 24, that the man lives; can you see it on  
16 your screen?

17 A Right here.

18 Q Can you draw a circle like you drew a circle for me before? Do you  
19 need the pen?

20 A Yes. Thank you.

21 Q You're welcome.

22 A Here.

23 Q The door that you just drew the circle around, is that where he lives?

24 A Yes.

25 MS. KOLLINS: The record could reflect she's drawn a circle around the

1 first door on the first floor of the apartment building depicted in State's 24.

2 THE COURT: It does.

3 BY MS. KOLLINS:

4 Q Scarlett, how did you get inside to see that?

5 A I did not go in.

6 Q Okay.

7 A But I was close to his house.

8 Q You were close to his house? Was the door open?

9 A Yes.

10 Q Okay. And was the man inside the door or outside the door when you  
11 saw that?

12 A Inside.

13 Q Okay. And did he have pants on or no pants?

14 A Yes. When he did not show me his part, yes, he had his pants on.

15 Q Okay. When you saw his part -- well, strike -- that was a bad question.  
16 I'm going to ask you a new question. Okay? I know.

17 When you saw his part, was he touching his part or did he just  
18 show it to you? What did he do with his part?

19 A He just showed it to me.

20 Q Okay. Did he say anything to you when he showed it to you?

21 A Only to -- to be quiet and not tell anyone.

22 Q Okay. He told you to be quiet and not tell? Did he say what would  
23 happen if you told somebody?

24 A No.

25 Q Okay. Was that daytime or nighttime when that happened?

1 A Daytime.

2 Q Okay. Do you remember what the man looks like?

3 A Yes.

4 Q Okay. Do you see him today?

5 A Yes.

6 Q Where do you see him today?

7 A I don't want to point at him.

8 Q Okay. Can you tell me what kind of clothes that he's wearing today

9 right now?

10 A A blue shirt -- T-shirt. And I don't know how the pants are.

11 Q Okay. Does he have a tie on with his blue shirt or no tie on with his

12 blue shirt?

13 A No.

14 Q Okay. Is he seated really -- the first person away from the court

15 marshal over there? See the court marshal who's got the police officer clothes on;

16 is he sitting next to him?

17 A No.

18 Q Is he seated next to him at a different table?

19 A Yes.

20 MS. KOLLINS: May the record reflect identification of the defendant.

21 THE COURT: It does.

22 MS. KOLLINS: Thank you.

23 BY MS. KOLLINS:

24 Q Now, did you have to go -- well, let me ask you this.

25 How old were you when this happened?

1 A The same years.

2 Q Same years as you are now, seven?

3 A Yes.

4 Q Okay. Now, did you have to go talk to the police about this?

5 A First with my dad and then with the police.

6 Q Okay. Now, I didn't ask you this question. The day that you saw his  
7 part, did anything else happen?

8 A No.

9 Q Okay. When you went to talk to the police with your dad, did you have  
10 to look at pictures?

11 A No. Only when I was with my mom.

12 Q When you were with your mom? Did you pick out the person that you  
13 thought looked like the man? Did you write your name on that picture?

14 A Yes.

15 Q Okay. I'm going to show you what has been marked for purposes of  
16 identification as State's 49, which means nothing to you.

17 THE COURT INTERPRETER: 39? Or 49?

18 MS. KOLLINS: 49.

19 BY MS. KOLLINS:

20 Q And I'm going to show you a page in that picture with a name on the  
21 bottom of it. Do you remember writing your name?

22 A What was it?

23 Q Do you remember writing your name on the picture?

24 A Yes.

25 Q Is that your name that you wrote on the bottom of that picture that's in

1 No. 49?

2 A Yes.

3 Q Okay. And I want to ask you just a few more questions, ma'am.

4 Who is in that picture, State's 14? Who is that?

5 A Me and my dad.

6 Q Okay.

7 MS. KOLLINS: And, actually, I apologize. That looks like 17, not 14.

8 BY MS. KOLLINS:

9 Q And who is in that picture, No. 6; do you know that person?

10 A Jatziri.

11 Q Okay. Is that your friend Jatziri?

12 A Yes.

13 Q Okay. And I'm going to show you No. 2; do you know who is in No. 2?

14 A Yezline.

15 Q And I'm sorry. Some of these numbers are touching. Number 14, do  
16 you know who that is?

17 A It's the little twin. But I don't know her name, because I know, you  
18 know -- I know that one is Maribel and the other one is -- I don't know. I don't know.

19 Q The other name, does it sound almost the same, the other one, the  
20 other twin's name?

21 A Yes.

22 Q Okay. So that's one of the twins in 14; and is this the other twin  
23 in No. 9?

24 A Yes.

25 Q Okay. And you don't know which one is which?

1 A No.

2 Q Okay. Scarlett, I have to check with my friend, Chris. Give me just a  
3 minute. Okay?

4 Scarlett, I'm done asking you questions right now. Okay?

5 And someone else is going to ask you some questions for a little  
6 bit. Okay?

7 A Okay.

8 Q Do you need some water, or are you okay?

9 A I want some water.

10 MS. KOLLINS: Is there any in there?

11 THE COURT: The marshal put in fresh water this morning.

12 THE COURT INTERPRETER: Oh, okay.

13 MS. KOLLINS: Thank you, Judge.

14 THE COURT: Oh, boy.

15 MS. KOLLINS: Oh, oh. Did you get wet?

16 THE WITNESS: A little bit.

17 THE COURT: No problem. Thank you.

18 THE COURT INTERPRETER: It was stuck.

19 THE COURT: It's a tricky one.

20 THE COURT INTERPRETER: Yes. I'm sorry. Thank you very much.

21 THE COURT: Do you need to take a break, Madam Interpreter?

22 THE COURT INTERPRETER: No. I'm fine. Thank you. I just want to  
23 make sure she's dry. She's --

24 MS. KOLLINS: I've got it. Get your stuff. I'll take care of this.

25 THE COURT INTERPRETER: Don't worry. It's just water.



1 MS. KOLLINS: Okay. Ms. Scarlett, let's try this again. Good thing that  
2 wasn't Kool-Aid.

3 [Pause in proceedings.]

4 MR. WESTBROOK: Are we sufficiently dry?

5 THE COURT INTERPRETER: Yes, we are.

6 THE COURT: Okay. Mr. Westbrook, you may ask questions.

7 **CROSS-EXAMINATION**

8 BY MR. WESTBROOK:

9 Q Hi, Scarlett. How are you?

10 A Good.

11 Q I'm going to try to stand over here a little bit. There's a lot of furniture  
12 here blocking our way.

13 I just wanted to ask you a few questions. Okay? And I'm going  
14 to try to make it really short. Is that okay?

15 A Yes.

16 Q Okay. When you saw the man's part that day, Yezline was there, right?

17 A He first showed it to Yezline and then to me.

18 Q Okay. So you and Yezline were together?

19 A When he showed me his part, Yezline wasn't there. And when he  
20 showed his part to Yezline, I wasn't there, either.

21 Q Okay. Did he show it to Yezline first?

22 A No.

23 Q Oh.

24 A I mean yes.

25 Q Oh, yes. So he did show it to Yezline first?

1 A Yes.

2 Q Okay. And then Yezline told you about that?

3 A Yes.

4 Q Okay. And then he showed it to you?

5 A Yes.

6 Q Okay.

7 MR. WESTBROOK: Court's indulgence just a second.

8 I'm going to go check with Carli. That's my partner, just like  
9 Chris is Stacey's partner. That's why we have partners, so we don't forget stuff. So  
10 I'm going to go ask her a question and I'll be right back.

11 THE WITNESS. Okay.

12 BY MR. WESTBROOK:

13 Q Remember when I said it would be super short?

14 A Yes.

15 Q I was telling the truth, because we're done. Thanks so much for coming  
16 in.

17 THE COURT: Any redirect from the State?

18 MS. KOLLINS: Your Honor, I don't have any more questions for  
19 Scarlett.

20 THE COURT: Okay. Do the jurors have any questions? Anything from  
21 you folks? No? All right.

22 All right. Scarlett, thank you very much. You're a very brave girl  
23 and we're finished. Thank you very much. Have a nice day.

24 All right. And the State can call its next witness.

25 THE COURT INTERPRETER: Ma'am?

1 MR. HAMNER: The state is going to call Jatziri Moreno to the stand.

2 MR. WESTBROOK: Your Honor, could we take a brief recess before  
3 we do that?

4 MR. HAMNER: Sure.

5 THE COURT: Yes. That would be great. About 10 minutes? That all  
6 right?

7 MR. WESTBROOK: That will be fine.

8 MS. KIERNY: Perfect.

9 THE COURT: All right. Ladies and gentlemen, we're going to take a  
10 10-minute recess. So the prior admonishment applies. Don't form any opinions;  
11 don't talk about the case; don't do any research or investigation on your own, and  
12 avoid any contact with the witnesses, the parties, and the attorneys. All right.

13 And thank you very much. Enjoy a 10 -- 10 or 12 minutes. All  
14 right. Thanks.

15 [Jury recessed at 3:06 p.m.]

16 THE COURT: All right. We're outside the presence of the jury and  
17 we'll take a 10- or 12-minute break. All right.

18 MS. KIERNY: Okay.

19 [Court recessed from 3:07 p.m. to 3:16 p.m.]

20 [Outside the presence of the jury.]

21 THE COURT: All right. We're back on the record. Anything -- anything  
22 you guys need to put on the record?

23 MS. KIERNY: Your Honor, I'm going to -- sorry. I -- I totally  
24 understand, you know, we want to make the kids feel comfortable here. But the  
25 jurors really look to you and really look up to you, and when you say things --

1 THE COURT: What did I do wrong now?  
2 MS. KIERNY: No. I'm not trying -- I -- I understand your inclination --  
3 your human inclination to do it. I totally do. But, you know --  
4 THE COURT: I didn't --  
5 MS. KIERNY: -- when you say things like you're very brave or --  
6 THE COURT: Oh.  
7 MS. KIERNY: -- you know, you're pretty, I -- I know why you're saying  
8 them. But to me --  
9 THE COURT: You just got to make them feel comfortable.  
10 MS. KIERNY: -- trying my own case --  
11 THE COURT: Yeah.  
12 MS. KIERNY: -- I see how that could possibly be -- could be prejudicial  
13 to a jury.  
14 THE COURT: All right.  
15 MS. KIERNY: I'm not trying to admonish you in any way. I just wanted  
16 to put that on the record.  
17 THE COURT: I understand.  
18 MS. KIERNY: I get why you do it.  
19 THE COURT: I understand. I'll probably still do it. But.  
20 MS. KIERNY: Well, I think it's prejudicial. So for the record.  
21 THE COURT: Well, I'll tone it down.  
22 MS. KIERNY: All right.  
23 MR. WESTBROOK: We -- we would object to you continuing to do it,  
24 to be very clear.  
25 THE COURT: I understand. No, I understand. I just said, I -- I want

1 them to feel comfortable. But...

2 MS. KIERNY: Yes, I do understand that. But we just don't --

3 THE COURT: Because -- because of, you know, if you -- if you don't  
4 say anything and it's too -- too formalistic for the kids, then it -- it tends to -- their --  
5 because of their fright and fear, then we're not going to get anything out of them.

6 MS. KIERNY: I understand that.

7 THE COURT: And we're trying to get the truth of them, right?

8 MS. KIERNY: Right. But if we say that, you know, we know they're  
9 going to tell the truth, that's a problem. If we say you're brave, that gives that same  
10 impression.

11 THE COURT: All right. Well, I understand. No. I appreciate your  
12 point.

13 MS. KIERNY: My -- it's noted. I --

14 THE COURT: You make a valid point.

15 MS. KIERNY: Thank you.

16 THE COURT: So I will tone it down.

17 MS. KIERNY: Thank you.

18 THE COURT: So what do we have next? We'll bring the jurors in now?

19 MR. HAMNER: Yes, Your Honor.

20 THE COURT: All right. Let's do that, marshal.

21 Ms. Kollins?

22 MS. KOLLINS: Yes, Your Honor.

23 THE COURT: I'll have you do the voir dire of the witness as to the  
24 truthfulness and then submit it to me. Okay. It's your decision.

25 MS. KOLLINS: Sure, Your Honor. Thank you.

1 THE COURT: Or is Mr. Hamner? It's Mr. Hamner.  
2 MR. HAMNER: It'll be me.  
3 THE COURT: You're doing it, Mr. Hamner.  
4 MR. HAMNER: It's okay.  
5 MS. KOLLINS: I have a spiel and so you were, like, halfway through --  
6 and I'm, like, where am I? Where am I in my spiel?  
7 THE COURT: That's okay.  
8 [Pause in proceedings.]  
9 THE COURT: Are we going next week, do you think? Or are we going  
10 to finish?  
11 MR. HAMNER: At this rate, I'm going to next week.  
12 THE COURT: But, like, Tuesday, Wednesday? Tuesday?  
13 MR. HAMNER: Probably early, early third week.  
14 MS. KIERNY: Yeah. Between Monday, Tuesday.  
15 MR. HAMNER: We're going to do our best, Judge.  
16 THE COURT: Okay. I'm just curious.  
17 [Jury reconvened at 3:20 p.m.]  
18 THE COURT: Let's -- let's continue.  
19 The State may call its next witness.  
20 MR. HAMNER: The State's going to call Jatziri Moreno to the stand.  
21 THE COURT: Okay. Jatziri Moreno.  
22 [Pause in proceedings.]  
23 THE COURT: Jatziri, is that your name, Jatziri? Did I say it correctly?  
24 THE WITNESS: Yeah.  
25 THE COURT: Great. My name is Richard Scotti. I'm the judge. Can I

1 say hi to you? Hi. Good afternoon.

2 So I'm glad you're here. The attorneys have some questions for  
3 you. Okay?

4 Do you want to speak in Spanish? That's okay? You want to  
5 speak in Spanish? Great.

6 Then the attorneys, when they ask a question, the interpreter will  
7 interpret it in Spanish for you, and then you can answer in Spanish. Okay?

8 All right. Are you ready to start?

9 THE WITNESS: Yeah.

10 THE COURT: Great. Mr. Hamner here, he'll ask you some questions.  
11 Okay. Thank you.

12 MR. HAMNER: All right. Thank you. Did you need her to say or spell  
13 her name for the record?

14 THE CLERK: Yes.

15 MR. HAMNER: Could you please spell your name for the record,  
16 Jatziri?

17 THE WITNESS: J-A-T-Z-I-R-I.

18 MR. HAMNER: Okay. And can you spell your last name?

19 THE WITNESS: M-O-R-E-N-O.

20 THE COURT: Great. And then Mr. Hamner is going to ask you some  
21 questions. Make sure you know what telling the truth is. Okay?

22 MR. HAMNER: Okay.

23 **JATZIRI MORENO,**

24 [having first been qualified by the judge, testified through the interpreter as follows.]

25 **DIRECT EXAMINATION**

154

1 BY MR. HAMNER:

2 Q Jatziri, I first want to ask you about my tie. Do you see my tie?

3 A Yes.

4 Q What color is it?

5 A Blue.

6 Q If I told you this tie was red with pink polka dots on it, would I be telling  
7 you the truth or telling you a lie?

8 A A lie.

9 Q Okay. Do you see this tissue I'm holding up?

10 A Yes.

11 Q What color is it?

12 A White.

13 Q If I told you it was green with pink stripes, would I be telling you the  
14 truth or would I be lying?

15 A A lie.

16 Q If I told you that it was raining inside this courtroom right now, would I  
17 be telling you the truth or would I be lying?

18 A Lying.

19 Q Okay. Now, do you promise to tell everyone here the truth today?

20 A Yes.

21 Q Okay.

22 MR. HAMNER: Is Your Honor satisfied at this time, or would -- would  
23 you --

24 THE COURT: I'm -- I'm satisfied. We can continue.

25 Did anybody want to put anything on the record or request any



1 further voir dire?

2 MS. KIERNY: No, Your Honor.

3 THE COURT: Okay.

4 BY MR. HAMNER:

5 Q Okay. Jatziri, why don't you tell the ladies and gentlemen of the jury  
6 how old you are?

7 A 10 years old.

8 Q Okay. Do you know your birthday?

9 A December 3rd.

10 Q Okay. What grade are you in?

11 A Fourth grade.

12 Q Do you have a favorite class?

13 A Yes.

14 Q Tell me what your favorite class is.

15 A Math.

16 Q Why do you like math?

17 A Because it helps me a lot.

18 Q Okay. Now, do you live in a house or an apartment?

19 A Apartment.

20 Q And do -- who do you live there with?

21 A My mother, my father, my grandmother, and my sisters.

22 Q Okay. What are your sisters' names?

23 A Mirabel and Maradel.

24 Q Okay. Are they twins?

25 A Yes.

1 Q Is what the people in the neighborhood kind of know them as, the  
2 twins?

3 A Yes.

4 Q All right. I want to show you State's 42; what are we looking at there?

5 A My house.

6 Q All right.

7 MR. HAMNER: I'm going to publish State's 42. Let me turn on the  
8 overhead. Thank you very much.

9 Q Okay. So that's your house, huh?

10 A Yes.

11 Q Okay. Now, who do you -- who did you used to play with in the  
12 neighborhood with, other than your sisters?

13 A Yezline.

14 Q Okay. Let me ask you about Yezline. Did Yezline live in the same  
15 building as you or a different building?

16 A A different one.

17 Q Okay. And does she live there anymore at this point?

18 A No.

19 Q She moved?

20 A Yes.

21 Q Okay. And when you lived in this neighborhood, would your parents  
22 sometimes have parties?

23 A Yes.

24 Q And who -- would you ever have parties with Yezline's family?

25 A Yes.

1 Q Okay. Now, did you guys have parties with another family, as well?  
2 A I don't remember.  
3 Q Okay. Well, let me ask you this; do you know someone by the name of  
4 Elena?  
5 A Yes.  
6 Q And did you know her husband?  
7 A Yes.  
8 Q And what was his name?  
9 A Don David.  
10 Q Okay. Did -- did Elena and Don David live nearby anyone?  
11 A Yes.  
12 Q Who did they live by?  
13 A With Yezline.  
14 Q Okay. Did Don David and -- and Elena live on the first floor or the  
15 second floor?  
16 A First floor.  
17 Q Okay. I want to show you what's already been admitted as State's 24;  
18 what are we looking at there?  
19 A The house.  
20 Q Whose house?  
21 A Where Elena.  
22 Q And where did David live? You said Elena lived there; did David live  
23 there, too?  
24 A Yes.  
25 Q Okay.

1 MR. HAMNER: I'm going to publish State's 24.

2 Q Can you -- take your finger, touch that screen -- it can actually make a  
3 mark -- can you circle for this jury where Don David and Elena's house is?

4 A Right here.

5 Q Okay.

6 MR. HAMNER: Let's clear it for one second.

7 Q Why don't you take this pen, try it again.

8 MR. HAMNER: All right. Let the record reflect in State's 24 -- I'll leave  
9 that here -- State's 24, the witness circled the white -- the white door all the way  
10 down on the first floor.

11 Q Okay. You're telling me that Yezline -- I'm going to show you  
12 State's 36; what -- do you see someone's house in State's 36?

13 A Yes.

14 Q Whose house do you see?

15 A Yezline.

16 MR. HAMNER: Publishing 36.

17 Q Could you take that pen again and circle the door in State's 36?

18 MR. HAMNER: All right. Let the record reflect the witness has circled  
19 in State's 36 the door with the number 5 on it, on the first floor.

20 Q And I want to show you State's 35. I don't know if you can see --  
21 maybe you can, maybe you can't -- but can you see where Yezline's house is in  
22 State's 35? If you can, circle it.

23 THE COURT INTERPRETER: Can you repeat the question, please.

24 MR. HAMNER: Sure.

25 BY MR. HAMNER:

1 Q Can you see where Yezline's house is? Maybe I can show you -- do  
2 you see it?

3 MR. HAMNER: Okay. Let the record reflect that the witness has  
4 circled a white door just above what appears to be some sort of tan sedan all the  
5 way on the left-hand side.

6 Q And can you see the door to Don David's house?

7 A Yes.

8 Q Why don't you put a square where that is.

9 MR. HAMNER: Okay. Let the record reflect the witness has made a  
10 square on a white door all the way on the right-hand side of State's 35, just beyond  
11 what appears to be a Dodge Ram pickup truck.

12 Q Now, you were telling us about there would be parties going on. And  
13 your family and Yezline's family would hang out, and Don David would also hang  
14 out there, too?

15 A Yes.

16 Q Let me ask you about Don David for a second.

17 Do you see him here in the courtroom today?

18 A Yes.

19 Q Could you take a good look around the courtroom, point out where he  
20 is, and maybe describe one of -- the color of some of his clothing; could you do  
21 that?

22 A Right there.

23 Q What color is his shirt?

24 A Blue.

25 Q Is he wearing a tie or does he have no tie?

1 A He doesn't have a tie.

2 MR. HAMNER: Let the record reflect the witness has identified the  
3 defendant, Don David -- or Jose Azucena.

4 THE COURT: Okay. It does.

5 BY MR. HAMNER:

6 Q Now, Jatziri, are there places on your body that people shouldn't touch?

7 A Yes.

8 Q Okay. Why don't you tell the jury what those body parts are. You can  
9 use whatever names you want to use for it.

10 A My breast and -- the first part.

11 Q Okay.

12 A And then the other part.

13 Q So there's a -- are -- are the -- are the first part, are they on the upper  
14 part of your body or the lower part of your body?

15 A Below.

16 Q Okay. And do you use it to go to the bathroom?

17 A Yes.

18 Q What do you -- what type of bathroom use do you use it for?

19 A To pee.

20 Q Okay. And the other part, is that on the upper part of the body or the  
21 lower part of the body?

22 A I don't understand.

23 Q Okay. Do you use the other part to use the bathroom, too?

24 A Yes.

25 Q What do you use it -- what type of -- what do you use it to go to the

1 bathroom for?

2 A To poo.

3 Q Okay. I want to talk a little bit about Don David for a minute.

4 What did you call Don David, other than Don David? Did you  
5 have any other names for him?

6 A Grandpa.

7 Q And was Don David your real grandfather?

8 A No.

9 Q Okay. But you called him Grandfather?

10 A Yes.

11 Q Did Don David do any nice things for you guys?

12 A No.

13 Q Okay. Let's talk a little bit about Don David. You said he didn't do any  
14 nice things for you. Did he -- did he do things that you didn't like?

15 A Yes.

16 Q All right. Now, I want to kind of just be a little specific here. You  
17 mentioned your front part.

18 A Yes.

19 Q The part that you go pee with.

20 A Yes.

21 Q Did Don David do anything with respect to that part?

22 A Yes.

23 Q Can you tell us what happened?

24 A He touched me.

25 Q Okay. And what part of his body would he use to touch you?

1 A With his hand.

2 Q Okay. And when you say he touched me, are you talking about on your  
3 front part?

4 A Yes.

5 Q How often did this happen?

6 MS. KIERNY: Your Honor, may we approach?

7 THE COURT: You may.

8 [Bench conference transcribed as follows.]

9 THE COURT: What's up?

10 MS. KIERNY: I would object to this question.

11 THE COURT: Yes.

12 MS. KIERNY: Obviously, they have charged a couple counts of  
13 touching.

14 THE COURT: Uh-huh.

15 MS. KIERNY: But if we're going to go into unlimited different times of  
16 touching, that would be uncharged bad acts. And I don't think that question is  
17 appropriate.

18 THE COURT: How would you suggest they ask that, then, if they have  
19 multiple counts of touching?

20 MS. KIERNY: Well, they -- was there one time. Well, tell me about the  
21 first time. Tell me about the second time. The same way they did in the grand jury  
22 transcript. They got two different part -- contacts in the grand jury.

23 MR. HAMNER: I did.

24 MS. KIERNY: And those were the ones that were charged.

25 THE COURT: Two contacts that were charged.



1 MR. HAMNER: I -- I don't -- I --

2 THE COURT: How many contacts were charged?

3 MR. HAMNER: Well, the -- the witness testified at the grand jury and,  
4 specifically, she said, You touched me more than once on my vagina. That's how  
5 specific she got.

6 THE COURT: Okay. That's --

7 MR. HAMNER: I'm entitled to say how often. I think it's page 78, I'm  
8 looking at it right now. I'm entitled to ask this question with multiple counts being  
9 charged. And even -- and even if it was a single time, we would still be able to  
10 allege the witness can testify it happened more than once, because sometimes with  
11 young kids, as Ms. Kollins had mentioned yesterday -- or on Friday, we can charge  
12 one count over a period of time to cover a particular type of conduct. So at this  
13 point, there's nothing improper about me asking how often this would happen.

14 MS. KIERNY: But if she says, you know, if she says multiple times or  
15 she says 10 times, I mean, that's uncharged. That's the definition --

16 THE COURT: I --

17 MS. KIERNY: -- of an uncharged bad act.

18 THE COURT: I think they're charged.

19 MS. KIERNY: They're not. There's -- each act is charged within one  
20 count. There's two counts for touching a front part. So if he exceeds two part --  
21 two times touching, then we are exceeding what is charged. So that is an  
22 uncharged bad act by definition. We've not had a *Petrocelli* hearing on this issue.

23 MR. HAMNER: This is not an uncharged bad act.

24 MS. KIERNY: It is. It's the definition.

25 THE COURT: It's -- is it -- have the -- they're charged or that they

1 come in to support the charges. And -- and it's not a bad act or some other --

2 MR. HAMNER: This -- this testimony -- this testimony comes in. If the  
3 witness testifies that she was touched on her vagina, they had two counts. We're  
4 entitled to go into that. I would say that if she said it happened more than once and  
5 we still have one count, but it's over a two-year period of time, we're still entitled to  
6 go into it, no matter how many --

7 THE COURT: So even if there are 10 touchings and you have two  
8 counts and you -- and you think you can get into all of that --

9 MR. HAMNER: Yes. And she will give different locations where this  
10 happened, as well. So at this point, I don't think there's anything improper about it.  
11 They've been on notice about it. It's not uncharged. We even have, technically,  
12 two separate --

13 THE COURT: How is this different from -- is it touching on a different  
14 person [indiscernible] prior bad act? Is it touching --

15 MR. HAMNER: Well --

16 THE COURT: -- a different --

17 MR. HAMNER: -- that's exactly right. But we're not having a different  
18 person.

19 THE COURT: Are you saying --

20 MR. HAMNER: This is all related to Jatziri.

21 THE COURT: So it's not a prior bad act, because it's the same victims  
22 [indiscernible] defendant? Is that what makes it not a prior bad act?

23 MS. KOLLINS: You could -- you could --

24 THE COURT: I'm trying to understand why --

25 MS. KIERNY: I understand.

1 MS. KOLLINS: You could have a bad act on the same victim with the  
2 same defendant.

3 THE COURT: Uh-huh.

4 MS. KOLLINS: In other words, say, we have touching on vagina and  
5 today she came in and said, He made me perform fellatio. That's something we  
6 haven't charged. But everything that we're talking about is within the timeframe and  
7 the charged conduct. So our position, it's not a bad act.

8 MS. KIERNY: I would analogize --

9 MS. KOLLINS: Because it's -- it's -- we have touching, rubbing,  
10 touching, fondling --

11 THE COURT: It's not a prior bad act. If it is -- it is the very thing's  
12 being charged?

13 MR. HAMNER: That is correct.

14 MS. KOLLINS: Yes.

15 THE COURT: And within the same timeframe --

16 MS. KOLLINS: Yes. Yes, sir.

17 THE COURT: -- same people?

18 MS. KOLLINS: Yes, sir.

19 THE COURT: I -- I --

20 MS. KIERNY: And -- and I would --

21 THE COURT: -- kind of tend to agree to that. I understand the  
22 distinction --

23 MS. KIERNY: I would -- I would analogize that, well, let's say, you  
24 know, take it out of this context. With the car burglary case. If you had a witness  
25 up there saying, I know that he -- you're charged with one car burglary. I know that

1 he broke into my car the day before and the day before that, 10 different times;  
2 those are clearly uncharged bad acts.

3 So the same act --

4 THE COURT: Right.

5 MS. KIERNY: -- even if it's the same victim, if it's more than what is  
6 charged, it's by definition uncharged bad act.

7 MS. KOLLINS: So by your analogy, you get to pick and choose which  
8 counts we get to say are the ones that we're charging?

9 MS. KIERNY: You get to charge any counts you want, which you get.

10 MS. KOLLINS: Which is what we've done.

11 THE COURT: I think it's -- it's -- in these type of cases, it's -- it's -- I  
12 think it's got to be different, because the kids -- because -- because the kids aren't  
13 able to define specifically when everything happened and where. And so if I charge  
14 two counts, but -- but --

15 MS. KIERNY: But, for example, *Ledbetter* said --

16 THE COURT: -- the State will have to wait until the evidence comes  
17 out to see, you know, exactly where -- which of these -- where these acts happened  
18 and -- and when they occurred.

19 MS. KIERNY: But, for example, in *Ledbetter*, they say there does need  
20 to be some specificity in the acts charged.

21 THE COURT: Yeah.

22 MS. KIERNY: And so if somebody just nakedly says, Oh, this  
23 happened 10 times, for example, you are getting into some bad acts that are not  
24 charged --

25 THE COURT: I -- I'm going to --

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1 MS. KIERNY: -- and that has no specificity.

2 THE COURT: I'm going to allow it, because I think this is something  
3 that really needs to be covered in a pretrial motion testing the sufficiency of the  
4 indictment or the information. Here in this case, I think it was sufficient to  
5 encompass, you know, any of the touchings that occurred and this limited time  
6 period involving, you know, the same defendant, the same victims --

7 MS. KIERNY: When you say --

8 THE COURT: -- the same types of touching. That was on --

9 MS. KIERNY: Yes, it is.

10 THE COURT: No. No. And they -- they fixed it, so it automatically  
11 goes off.

12 MS. KIERNY: All right. Okay. All right. Cool. So -- I lost my train of  
13 thought. All right.

14 THE COURT: Yeah. I think it's different, so --

15 MS. KIERNY: But it's not a limited period of time. It's there two-year  
16 stretch.

17 THE COURT: But that's what --

18 MS. KOLLINS: So I mean --

19 THE COURT: -- that's the timeframe in the indictment. That's --

20 MS. KIERNY: So they could testify to hundreds of different acts within  
21 that period?

22 THE COURT: I think so.

23 MS. KIERNY: I don't think that's what the case law bears out.

24 THE COURT: Well --

25 MS. KOLLINS: Well, the -- the other option was that we charged your

1 client with, you know, 500 counts of whatever --

2 MS. KIERNY: Right.

3 MS. KOLLINS: -- of touching. But we didn't. We chose --

4 MS. KIERNY: That was your option.

5 MS. KOLLINS: Well, our option was --

6 THE COURT: I don't --

7 MS. KOLLINS: -- to charge it the way we did.

8 THE COURT: I don't think so. This is kind of -- it's not really and  
9 academic question.

10 MS. KIERNY: Okay.

11 THE COURT: But it's a question that, you know, perhaps could warrant  
12 some more clarity in the law. But I'm going to stick with my ruling.

13 MS. KIERNY: All right.

14 THE COURT: I appreciate your argument, though.

15 MS. KIERNY: Thank you, Your Honor.

16 MR. WESTBROOK: Thank you, Your Honor.

17 [End of bench conference.]

18 MR. HAMNER: Where were we? Oh, right.

19 BY MR. HAMNER:

20 Q Let me re-ask that question. How often was Don David touching your  
21 front thing?

22 MS. KIERNY: I would object. That was not the question that was last  
23 questioned.

24 MR. HAMNER: Well, I'm rephrasing at this point.

25 MS. KIERNY: All right.

1 THE WITNESS: I don't know.

2 BY MR. HAMNER:

3 Q Okay. Did it happen one time or more than one times?

4 A More than one time.

5 Q I want to show you -- where -- whereabouts -- where -- where would  
6 this happen?

7 A Some -- sometimes at Esther's house and sometimes at his house.

8 Q Okay. And these are the two houses here and here?

9 A Yes.

10 Q Okay.

11 MR. HAMNER: Publishing State's 24 again.

12 Q So let's talk a little bit about at his house.

13 How would you end up inside his house? What would happen?

14 A Because his wife told us to go and get some chocolate.

15 Q Okay. So you -- you -- did you go inside his house?

16 A Yes. Because his wife was there.

17 Q Okay. And then what happened?

18 A His wife left.

19 Q And then what happened?

20 A He touched me.

21 Q Okay. Would you be alone at that -- in the example you gave us, were  
22 you alone at that time or were other people there?

23 A More people.

24 Q Okay. Were your sisters there?

25 A Yes.

1 Q Was Yezline there?

2 A Yes.

3 Q You mentioned that he -- when he touched you, did he touch you over  
4 the clothes, under the clothes, or both?

5 A On top of the clothes.

6 Q Okay. Do you ever remember telling anyone previously that he also  
7 touched you under your clothing?

8 A Yes.

9 Q Okay. As you sit here today, do you remember him touching you under  
10 your clothing?

11 A No.

12 Q Okay. So you don't remember it today?

13 A Yes.

14 Q Okay. Let's get a clarification.

15 As you sit here today, do you remember times when he touched  
16 you underneath your clothing on your front part?

17 A With his hand.

18 Q Okay.

19 THE COURT: Can you clarify that, counsel? I think we still need  
20 further clarification.

21 BY MR. HAMNER:

22 Q Okay. You said he --

23 THE COURT: I mean, did he -- what did he do with his hand?

24 MR. HAMNER: Okay.

25 BY MR. HAMNER:



1 Q Where -- where did his hands go?  
2 A My part.  
3 Q Underneath your clothing?  
4 A Yes.  
5 Q And over your clothing?  
6 A Yes.  
7 Q Did you ever see Don David touch either one of your sisters on their  
8 front part?  
9 A Yes.  
10 Q Did you ever see Don David touch Yezline on her front part?  
11 A Yes.  
12 Q Was it over the clothes or under the clothes or both?  
13 A Both.  
14 Q Okay. Let's be a little more specific. With -- regarding Mirabel, was it  
15 both over and under the clothing or both or -- or just one or the other?  
16 A Both.  
17 Q Okay. Let's talk about your other twin, Maradel. How about that; was  
18 that over the clothes, under the clothes, or both?  
19 A On top of her clothes.  
20 Q All right. And with respect to Yezline, over the clothes, under the  
21 clothes, or both?  
22 A Both.  
23 Q Okay. How old were you when he touched you on your front part?  
24 A Nine years old.  
25 Q Did you want him to be doing that to you?

1 A No.  
2 Q Okay. Did he have any nicknames for you?  
3 A Yes.  
4 Q Tell -- tell the jury, what were the names he had for you guys?  
5 A Princess.  
6 Q Anything else?  
7 A That I was -- that we were his little girlfriends.  
8 Q Do you ever remember telling anyone he called you his queens?  
9 THE COURT INTERPRETER: That he called you what? I'm sorry.

10 BY MR. HAMNER:

11 Q His queens?

12 A Yes.

13 Q As you sit here today, do you remember that happening, him calling  
14 you his queens?

15 A Yes.

16 Q Did Don David ever kiss you?

17 A Yes.

18 Q How many times do you remember that happening?

19 A One time.

20 Q Okay. Do you remember previously telling someone that it happened  
21 twice?

22 A No.

23 Q Okay. And what part of your body -- well, let me ask you this, let me  
24 just target.

25 Did he kiss you on the mouth?

1 A Yes.

2 Q And we -- we talked a lot about your private parts; did you ever see any  
3 of Don David's private parts?

4 A Yes.

5 Q Tell us about that; what happened?

6 A When his wife told us to go to pick up -- to get some chocolate, she --  
7 she took us to their house.

8 Q Okay. And did she stay or did she go?

9 A She left.

10 Q And when she left, what did Don David do?

11 A He took out his part.

12 Q Okay. And that part, what do you use it to do? Can you use it to go to  
13 the bathroom?

14 A Yes.

15 Q What -- what do you use it for, as far as going to the bathroom?

16 A To go pee.

17 Q Okay. What color was it?

18 A Brown.

19 Q Okay. Was it small or large?

20 A Big.

21 Q Where did he take it from?

22 A From his pants.

23 Q And when he did this, did this happen only one time, him showing you  
24 his part, or did it happen more than one time?

25 A More times.

1 Q Did it happen once or more than once inside his house?

2 A Only one time.

3 Q Okay. Did he ever -- you mentioned it happened more than one time;  
4 do you -- do you remember it happening outside?

5 A Yes.

6 Q Okay. Now, as you look in State's 24, do you see anything in that  
7 picture where -- where it happened, where he showed you his part?

8 A Yes.

9 Q Okay. Show me -- why don't you make a circle where Don David was?

10 MR. HAMNER: Okay. Let the record reflect the witness has circled the  
11 door on Don David's house in State's 24.

12 BY MR. HAMNER:

13 Q And where were you? Can you make a square where you were?

14 MR. HAMNER: Let the record reflect the witness has identified the  
15 power box that's in the center of State's 24.

16 BY MR. HAMNER:

17 Q When you were at that box, were you by yourself or were there other  
18 people with you?

19 A With other people.

20 Q Okay. And -- and was Yezline there?

21 A Yes.

22 Q Were the -- were the twins there?

23 A Yes.

24 Q Okay.

25 MR. HAMNER: Court's indulgence.

1 I'm going to publish State's 33.

2 BY MR. HAMNER:

3 Q Jatziri, take a look at that. What are we looking at there?

4 A The cars.

5 Q The cars; is that nearby Don David's house?

6 A Yes.

7 Q Can you see the box that you put a square around in the last picture in  
8 this picture?

9 A Yes.

10 Q Can you make another square around that box?

11 MR. HAMNER: Let the record reflect the witness has made a -- a  
12 square at the bottom of State's 33, circling a -- a dark power box.

13 BY MR. HAMNER:

14 Q You mentioned that sometimes he would show his private part to you  
15 outside; do you see anywhere in this picture where that sort of thing happened?

16 A Yes.

17 Q Can you make a circle where Don David would be when he would show  
18 you his private part?

19 MR. HAMNER: Okay. And let the record reflect the witness has circled  
20 on the sidewalk right here and a black BMW.

21 Q Can you make an X to show us where you were?

22 MR. HAMNER: Okay. Let the record reflect the witness has made an  
23 X on the power box.

24 Q Jatziri, were you alone when this happened or were there other people  
25 there?

1 A There were other people there with me.

2 Q Was Yezline there?

3 A Yes.

4 Q Were your sisters --

5 MR. WESTBROOK: Your Honor, I just have a brief objection. I think  
6 asking him name by name -- asking her name by name who was there is too much  
7 leading. Just ask her who was there and have her answer the question, that  
8 wouldn't be leading.

9 THE COURT: Well, he can try it the first way and -- and if --

10 MR. HAMNER: I don't think it suggests the answer.

11 THE COURT: Pardon me?

12 MR. HAMNER: I don't think it suggests the answer, the way I was  
13 phrasing my questions, but.

14 MR. WESTBROOK: It potentially closes off the answer. That's the  
15 issue.

16 THE COURT: All right. Why don't you ask it first open-ended and see  
17 if that's sufficient to get the answer.

18 MR. HAMNER: Okay.

19 BY MR. HAMNER:

20 Q Who was there?

21 A Elena, Yezline, and my sisters, the twins, and me.

22 Q Okay. You -- where did he take his thing out from when -- when it was  
23 happening out here?

24 A From his car -- from his pants.

25 Q Okay. Let me ask you about treats or chocolates. Anything happen

1 with Don David and treats and chocolates?

2 A Yes.

3 Q Tell the jury about that.

4 A We went to his house to get some chocolate.

5 Q And?

6 A My mom said to hurry up, because we were going to pick up my -- my  
7 dad. And he put his chocolate on his part.

8 Q Okay. Did -- you said he put his chocolate on his part; did he take his  
9 private part out of his pants?

10 A Yes.

11 Q And what would he do with the chocolates?

12 A He was giving it to Yezline.

13 Q Okay. Was that before -- what is it?

14 A Yezline was taking the chocolate.

15 Q Okay. Did he -- was this before -- okay. So he was taking the  
16 chocolate; did Yezline take the chocolate before or after he put the chocolate on his  
17 part?

18 A Before.

19 Q Okay. So he would take -- she would take the chocolate before he put  
20 it on his part?

21 A Yes.

22 Q Okay. So what would he do after putting some chocolate on his part?

23 A We got it from his hand.

24 Q Okay. But how would you take it from his hand?

25 A With the sleeve of the sweater.

1 Q Okay. Where would you pull the sleeve?

2 A From the sweater.

3 Q Okay. And what would you put it over?

4 A My sleeve, my -- my sweater.

5 Q Okay. Would you take the sleeve and cover your hand?

6 MR. WESTBROOK: Your Honor, objection. Leading.

7 THE COURT: I'll overrule it.

8 THE WITNESS: Yes.

9 BY MR. HAMNER:

10 Q Okay. And why did you want to take your sleeve and cover your hand?

11 A So it won't touch it.

12 Q And by it, you mean the chocolate?

13 A Yes.

14 Q And is that after the chocolate had been touching his private part?

15 A Yes.

16 Q Okay. When you would take -- did you take it with your sleeve?

17 A Yes.

18 Q Did your sisters take it from his -- with -- with the sleeves, as well?

19 A Yes.

20 Q Did you see Yezline do that?

21 A Yes.

22 Q Okay. What type of chocolates?

23 A KitKat.

24 Q Okay. And what other chocolates, if any?

25 A Kisses.



1 Q Okay. Now, I want to talk to you about after you took these chocolates.  
2 Did -- did Don David ever talk to you about whether it was okay  
3 to tell you parents about this?

4 A No.

5 Q He never said it was okay?

6 MR. WESTBROOK: Objection. That misstates her answer.

7 MR. HAMNER: I just -- I misheard. I'm just seeking -- hearing --  
8 seeking some clarification.

9 THE COURT: All right. So overruled.

10 Clarify.

11 BY MR. HAMNER:

12 Q What -- what would -- what would Don David tell you about whether it  
13 was okay to tell your parents?

14 A He told me not to say anything, because something would happen to  
15 my father and my mom, too.

16 Q What did he say would happen?

17 A That he was going to kill them.

18 Q Jatziri, when you heard this, how did that make you feel?

19 A Scared.

20 Q And what were you scared about?

21 A That he didn't do anything.

22 Q I'm sorry?

23 A That he didn't do anything.

24 THE COURT INTERPRETER: I need to ask her to repeat.

25 THE WITNESS: That he won't do anything with my mom and my dad.

1 BY MR. HAMNER:

2 Q That was what you were worried about that he --

3 A Yes.

4 Q Okay. Did you feel like, after this happened, you could tell your mom  
5 and dad about what happened?

6 A Yes.

7 Q Okay. You felt like you could? So after the first time he did the stuff  
8 with the chocolates, did you immediately tell your mom or did you tell her later?

9 A Later.

10 Q Okay. So you didn't tell them right away?

11 A No.

12 Q Can you tell the jury why you didn't tell them right away?

13 A We didn't say anything, because we didn't want anything to happen to  
14 my mom and dad.

15 Q Okay. And when you say we, does that include your sisters?

16 A Yes.

17 Q Does that include Yezline?

18 A Yes.

19 Q I want to talk about -- go back to when he was touching your front part.  
20 Did he tell you -- did he warn you about not telling your parents when he did those  
21 things to you?

22 A Yes.

23 Q What would he tell you after touching your private part?

24 A Not to say anything or something will happen to us.

25 Q What -- what did he say was going to happen?

1 A That he was going to take them far away.  
2 Q Okay. And -- and what else?  
3 A That's all.  
4 Q Okay. How did that make you feel when you heard that from him?  
5 A Badly.  
6 Q When -- did Don David have a phone?  
7 A Yes.  
8 Q Did you ever look at things -- did he ever show you things on his  
9 phone?  
10 A Yes.  
11 Q Tell this jury just what Don David would show you on his phone.  
12 A People kissing -- kissing each other in bed.  
13 Q Did they have clothes on or no clothes or clothes?  
14 A With clothes.  
15 Q Okay. Were any people -- did some people have no clothes on?  
16 A No.  
17 Q Okay. Did you -- do you remember telling other people that some of  
18 the people had no clothes on?  
19 A Yes.  
20 Q And can you tell this jury what places he would show you these things  
21 on his phone. Like, whereabouts in the apartment would you guys be when this  
22 would happen?  
23 A Outside his house.  
24 Q Okay. Would you be alone when that happened?  
25 A No.

1 Q Who was with you?

2 A Yezline and my sisters, and Lexi.

3 Q As this continued to happen with Don David, how were you feeling  
4 about him?

5 A Not good. Bad.

6 Q I want to talk about someone by the name of Yusnay; do you know a  
7 Cuban lady named Yusnay?

8 A Yes.

9 Q Was there a time when you decided to have a conversation with her?

10 A Yes.

11 Q And why did you go talk to Yusnay?

12 A Because he didn't tell me anything that he's going to kill her.

13 Q So you felt like it was okay to talk to Yusnay?

14 A Yes.

15 Q I want you to set the stage a little bit; what time of day is this? Do you  
16 remember if it's daytime or nighttime?

17 A At night.

18 Q Were there any -- I know that you mentioned there were parties that  
19 happened sometime. Were there any parties or get-togethers that were going on  
20 around that time?

21 A I don't understand the question.

22 Q Okay. Do you remember, when you went to talk to Yusnay, where was  
23 your mom at?

24 A She was at Don David's house.

25 Q Were other people at Don David's house that night?

1 A Yes.

2 Q Was Maria, Yezline's mom there?

3 A Yes.

4 Q Okay. When you walked up to Yusnay's door, how were you feeling  
5 inside?

6 A Bad.

7 Q Okay. What did you tell Yusnay?

8 A She said, Why are you coming scared?

9 And I said, Why you scared?

10 Q And what did you tell her -- what were -- what were the things you told  
11 her about that scared you?

12 A Because Don David was touching me.

13 Q Okay. Did you tell her about anything involving Yezline?

14 A Yes.

15 Q What did you tell Yusnay about what he did to Yezline?

16 A Yezline told me that he would take her out with the --

17 MS. KIERNY: I'm going to object as to what Yezline told her.

18 THE COURT: Yeah. Do you have a response to that?

19 MR. HAMNER: Well, I'll rephrase the question, because I think we  
20 got --

21 THE COURT: All right. The question is -- the question is withdrawn, so  
22 the objection is moot.

23 Go ahead. What's your next --

24 BY MR. HAMNER:

25 Q What -- I want you to specifically -- don't worry about Yezline told you.

1 What did you tell Yusnay about Yezline?

2 A That he would tie -- tie up her hands, and her legs.

3 THE COURT: Yes? What --

4 MS. KIERNY: The objection stands. This information is via hearsay.

5 THE COURT: So what -- what are you offering it for?

6 MR. HAMNER: It's not being offered for the truth. It's been offered for  
7 the effect on the listener. And this is information that's already come in pursuant  
8 to 51.385. And I didn't have her relay what another person told her. I'm just  
9 focusing on the things she's told Yusnay.

10 MS. KIERNY: So at that point it's also cumulative.

11 THE COURT: So it's -- I understand.

12 MR. HAMNER: If -- well, if we could approach and we could have a  
13 speaking objection on this. I'd like to approach on this, as to why this is  
14 [indiscernible].

15 THE COURT: All right. Go ahead.

16 [Bench conference transcribed as follows.]

17 THE COURT: So Cuban lady. Which we've got -- Yusnay. So --

18 MR. HAMNER: Thank you, Your Honor.

19 THE COURT: Oh, yeah. Go ahead.

20 MR. HAMNER: My response is I rephrased my -- rephrased my  
21 question to make sure that she's just not eliciting what Yezline told her, which was  
22 fine. The relevant portion is what she told Yusnay. It's relevant because it goes to  
23 the effect on the listener. It's relevant because their entire -- a major part of the  
24 defense is that these children are not credible, they're not telling things. And  
25 they're going to get up here in their closing arguments and say these kids are

1 inconsistent [indiscernible]. And pursuant, to would come in as a hearsay  
2 exception to rebut a charge of fabrication, these kids are making things up. And  
3 they question Yusnay about the things they said or didn't say. And I'm entitled now  
4 to ask this witness.

5                   Because on that cross-examination question on Yusnay, they are  
6 inferring --

7                   THE COURT: Uh-huh.

8                   MR. HAMNER: -- that these children are not credible. And it comes in  
9 as prior consistent statement. Because the allegation of inconsistency is already  
10 made.

11                   THE COURT: Statement made before the motivation to fabricate would  
12 be your theory. Okay.

13                   What's your --

14                   MS. KIERNY: What he is asking is for what she was told by Yezline.  
15 He could get that out from Yezline. He doesn't need to get the layers of hearsay. I  
16 don't -- he's not allowed to just bolster credibility by introducing prior consistent  
17 statements. We've already had that done so many different ways in this case.

18                   THE COURT: Uh-huh.

19                   MS. KIERNY: I don't think it's necessary, and I think it's -- it's improper  
20 to get out what Yezline had told her that she had then told to Yusnay.

21                   THE COURT: You are attacking the credibility of -- of -- well, all of  
22 them -- all of the minors, Jatziri. And so this would be for -- you're talking about this  
23 is what she heard from Jatziri.

24                   MR. WESTBROOK: Right.

25                   THE COURT: This would be a prior consistent statement of Jatziri,

1 which would come in. For the exact purpose of the instrument. Which is allowed  
2 as exception to hearsay when you've attacked the credibility.

3 MR. WESTBROOK: Prior consistent statement, you [indiscernible]. It's  
4 the exact opposite of the law.

5 MR. HAMNER: We cannot -- they've opened the door, they can't --

6 THE COURT: The purpose of prior consistent -- prior consistent  
7 statement is allowed to come in to support --

8 MR. HAMNER: To rebut an allegation.

9 THE COURT: To rebut an allegation of fabrication. Because you -- to  
10 bolster the witness. Which is exactly what you're doing. You're attacking the  
11 credibility, he's coming in and saying, No, they haven't changed their story.

12 MS. KIERNY: We haven't attacked them yet.

13 THE COURT: You have.

14 MS. KIERNY: We haven't even crossed this witness.

15 THE COURT: Your whole theory on the case has been attacking them.  
16 So I -- I disagree.

17 MS. KIERNY: Okay.

18 THE COURT: Let's -- let's -- I'm going to overrule your objection.

19 MS. KIERNY: Okay.

20 THE COURT: Your objection is noted.

21 [End of bench conference.]

22 MR. HAMNER: Where were we?

23 BY MR. HAMNER:

24 Q You were talking about how Don David -- you told her about how Don  
25 David tied up Yezline. You mentioned her hands.



1 MS. KIERNY: Objection as to leading.

2 MR. HAMNER: I'm just --

3 THE COURT: He's setting the stage. Overruled.

4 BY MR. HAMNER:

5 Q Did you tell Yusnay about any other things Don David did to Yezline?

6 A I don't -- I don't remember.

7 Q Okay. Was there ever a time when you spoke to Yusnay when she  
8 asked you why you hadn't told your parents?

9 A Yes.

10 Q And what did you tell Yusnay when she asked you that question?

11 A I told her that we didn't say anything, because Don David said that he  
12 would do something bad.

13 Q I want to ask you about how you're feeling when you're telling Yusnay  
14 this. How are you feeling at that point in time?

15 A Afraid.

16 Q And what are you afraid of at this point in time?

17 A When she asked, How come you didn't tell your parents?

18 Q Okay. Were you crying when you were telling her this?

19 A No.

20 Q All right. Now, after you talked to Yusnay, did you go and get anyone  
21 else to talk to Yusnay?

22 THE COURT INTERPRETER: I'm sorry, counsel. Could you repeat  
23 the question.

24 BY MR. HAMNER:

25 Q After you had talked to Yusnay, did you go off and get anyone else to

1 come and have more conversations with Yusnay?

2 A Yes.

3 Q Who did you bring?

4 A To Yezline and my sisters.

5 Q Okay. And when you brought them back, did you see them talk to  
6 Yusnay about things that were happening?

7 A Yes.

8 Q Okay. And I don't want to get into any of their statements; but could  
9 you see what their mood was like when they were talking to Yusnay?

10 Let's start with Yezline; what was her mood like when she was talking  
11 to Yusnay?

12 A Scared.

13 Q Okay. Let's talk about Mirabel; what is her mood like when she's  
14 talking to Yusnay?

15 A Also scared.

16 Q And I want to talk about Maradel; what is her mood like when she's  
17 talking to Yusnay?

18 A Crying.

19 Q After the four of you talked to Yusnay, does she tell you that you need  
20 to tell your parents?

21 A Yes.

22 Q Does she say that if you don't tell your parents, she is going to tell them  
23 for you?

24 A Yes.

25 Q All right. I want to turn your attention to the next day. Was there talk

1 about going to Chuck E. Cheese the next day?

2 A Yes.

3 Q Tell us about that.

4 A On Sunday Don David said that he could take us to Chuck E. Cheese.

5 Q Okay.

6 A And my mom said, okay, but I'm -- I'm going to take her. And then Don

7 David said, Come here. And he said your mom is not going to take you. That he

8 would take us.

9 Q And did he tell you where he might take you after Chuck E. Cheese?

10 A Far away.

11 Q And when you heard that, how did that make you feel, Jatziri?

12 A Scared.

13 Q And what were you scared of?

14 A That I don't want him to separate me from my father and my mother.

15 Q And when he told you those things, who else was with you when he told

16 you that?

17 A Yezline.

18 Q Okay.

19 A And Mirabel -- Mirabel and Maradel.

20 Q Okay. When he said those things to you, what -- where were you?

21 What place were you at?

22 A At Esther's house, outside by the stairs.

23 Q Okay. So David said that to you outside by the stairs?

24 A Yes.

25 Q Publishing State's 36; do you see that -- do you see that area in the

1 picture here? Or does this not cover it?

2 A Yes.

3 Q Okay. Can you circle where that was?

4 A Here.

5 Q There. So when Don David tells you that there, where is your mom  
6 when Don David tells you this by the stairs? Where is your mom?

7 A Helping Esther to cook.

8 Q Okay. And -- and was that in Esther's house?

9 A Yes.

10 Q And when you say Esther, do you mean Yezline's mom?

11 A Yes.

12 Q Sometimes people call her Esther?

13 A Yes.

14 Q Can you circle where they were cooking at? Put a square -- put a  
15 square where they were cooking at?

16 A Inside the house.

17 Q Okay. Please put a square by the door of that house. Thank you.

18 MR. HAMNER: So let the record reflect that the witness when talking  
19 about Don David saying he was going to take them far away, circles the stairs all  
20 the way to the edge of State's 36. And she indicated that her mother and Yezline's  
21 mother were cooking inside Apartment Number 5 and she made a square around  
22 the door in the center of the screen with the number 5 on it -- the center of the  
23 picture.

24 THE COURT: Okay. The record will reflect the location of the square  
25 and the circle where you --

1 BY MR. HAMNER:

2 Q So when Don David told you by the stairs that he was going to take you  
3 alone to Chuck E. Cheese and take you far away, where do you go?

4 A I went inside Yezline's house.

5 Q Okay. And -- and who do you -- who is the first person you run into?

6 A My mommy.

7 Q And what do you tell your mom?

8 A That Don David had said that he would take us to Chuck E. Cheese.

9 Q And what does your mom say when you tell her that?

10 A She said, well, I'm going to take you or you're not going.

11 Q And what happens next?

12 A I went to tell Don David that my mommy said no, that she would take  
13 us.

14 Q Okay. And is he still by the stairs or is he someplace different?

15 A He went back to his house.

16 Q Okay. So -- so you go all the way to his apartment?

17 A No. He was there and then he went back to his house.

18 Q Okay. So what do you -- what -- what happens -- do you tell Don David  
19 your mom said, no, she's coming with?

20 THE COURT INTERPRETER: I'm sorry, counsel. Could you  
21 [indiscernible].

22 BY MR. HAMNER:

23 Q Did you tell Don David that your mother would be going to Chuck E.  
24 Cheese and he could not take your girls alone?

25 A Yes.

1 Q And what is Don David's response when you tell him that?

2 A He got angry.

3 Q Okay. And so then what happens next?

4 A He went back home.

5 Q And then where did you go?

6 A I went to play with my sisters and Yezline.

7 Q Okay?

8 MR. WESTBROOK: Your Honor, I'm sorry. We need a brief pause.

9 The battery is out in the transceiver.

10 THE COURT: Oh, okay. Thank you for alerting us. One moment. The  
11 battery.

12 How are you doing, Jatziri? Okay?

13 THE WITNESS: Yes.

14 THE COURT: Is that a toy you have at home?

15 THE WITNESS: No. It was given to me.

16 THE COURT: All right. Okay. How are we doing?

17 MS. KIERNY: Okay. I'm very sorry. I just didn't hear that response.

18 THE COURT: Oh, you meant -- oh, I said, does she have a toy that  
19 she has from home.

20 MS. KIERNY: Oh, okay.

21 THE COURT: And then she says it's something that they just gave it to  
22 her.

23 MS. KIERNY: Oh, okay. Sorry. I didn't know if that was --

24 THE COURT: Just making small talk while we wait.

25 MS. KIERNY: Of course.

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THE COURT: [Indiscernible.]

[Pause in proceedings.]

THE COURT: How we doing?

MR. WESTBROOK: We're working on it, Your Honor.

THE COURT: Oh, okay.

MR. WESTBROOK: The royal we. I'm doing nothing.

THE COURT: How you doing on time, Mr. Hamner?

MR. HAMNER: Good.

THE COURT: It's 4:24. It would be nice if you could get this done so she wouldn't have to come back tomorrow.

MR. HAMNER: I -- I understand, Your Honor.

THE DEFENDANT: Yeah, with -- in person, without microphone.

THE COURT: Well, are you sure?

THE DEFENDANT: Well, we still have a problem and we don't know.

We don't have --

THE COURT: Is it the equipment, not the bat -- just the battery?

THE DEFENDANT: The equipment is not working.

THE COURT: Okay. Well, let's see if it -- hopefully it won't be too loud.

MS. KIERNY: Yeah. It's generally hard to hear. That's why they were moving back there.

MR. WESTBROOK: It makes it really hard for us to hear when the translation is going on right next to us.

THE COURT: Well, do you want to put your client in the back? Okay.

MR. WESTBROOK: That's troublesome too, because then we can't communicate.

1 THE COURT: Yeah. Okay. Well, what do you -- what do you  
2 suggest?

3 MR. WESTBROOK: Is the -- is the direct getting close? Or are we -- I  
4 mean, I'd like to get through the direct as well. Then we might break instead of  
5 going with the cross.

6 THE COURT: Let's see how this works. And if it's too -- too noisy for  
7 you, then we'll have to figure out something else.

8 MR. WESTBROOK: Okay.

9 THE COURT: All right. Mr. Hamner, why don't we continue and see if  
10 this is too noisy with the interpreter.

11 MR. HAMNER: Great.

12 THE COURT: And doing it without the microphone.

13 BY MR. HAMNER:

14 Q On that day --

15 THE COURT: And you need to whisper.

16 THE COURT INTERPRETER: Okay.

17 BY MR. HAMNER:

18 Q After -- remember we're talking about Chuck E. Cheese, the Chuck E.  
19 Cheese day. On that day, do you end up telling your mom what Don David was  
20 doing?

21 A Yes.

22 Q Do you end up telling Yezline's mom what Don David had been doing?

23 A Yes.

24 Q Okay. Did you tell them about the things that you've been telling us?

25 A Yes.



1 Q When you started telling your mom about this, what was your mood  
2 like?  
3 A Afraid.  
4 Q And what were you afraid of at this point?  
5 A For telling my mom.  
6 Q Okay. What were you afraid might happen?  
7 A That something may happen to them.  
8 Q Okay. Were you crying when you were telling your mom?  
9 A Yes.  
10 Q Did your twin sisters always talk to them about what was happening to  
11 them -- talk to your mother about what was happening with Don David?  
12 A Yes.  
13 Q I don't want to get anything of what they specifically said. But what did  
14 their mood look like when they were telling mom what was happening to them.  
15 A Bad.  
16 Q Were they crying?  
17 A Yes.  
18 Q I want to talk about Yezline. When she was either talking to her mom  
19 or your mom, what was her mood like?  
20 A Afraid too.  
21 Q Was she crying?  
22 A Yes.  
23 Q I want to go back to your talking about the chocolates.  
24 A Uh-huh.  
25 Q What would he say when he -- the chocolates and the parts, and his

1 private parts, you were telling us about that. What would he -- where would he put  
2 these chocolates?

3 A On the first part.

4 Q Okay. Would he ever put the chocolates in his pocket?

5 A No.

6 Q Okay. Did he ever ask, encourage you guys to reach out for the  
7 chocolates?

8 A No.

9 Q Okay. So how did you know to take the chocolates?

10 A He took them out and we grabbed them with the -- the sleeves.

11 Q Okay. So would he say anything when he took the chocolates out?

12 A Yes. Not to tell anyone.

13 Q Okay. Did he -- but he didn't say anything like would you like any  
14 chocolates, anything like that?

15 A Yes.

16 Q Oh, he would? Can you tell us what that was?

17 A He said, do you want some chocolate, and we said yes.

18 Q Okay. And then what would be the next thing that happened after you  
19 said yes, or the next thing he would do?

20 A He looked at them and he put them on his first part.

21 Q Okay. And then what's the next thing that would happen?

22 A He took them out and we grabbed them.

23 Q Okay. And when you would reach out to take it with your sleeves,  
24 would -- would you end up touching his hands or a part of his body as you reach  
25 over to take the chocolates, with your sleeves?

1 A His hand.

2 Q Okay. So you're -- you would make contact with his hands?

3 THE COURT INTERPRETER: You would or you would not?

4 BY MR. HAMNER:

5 Q You would make contact with his hands?

6 A Yes.

7 MR. HAMNER: Court's indulgence.

8 I have no further questions at this time.

9 THE COURT: All right. Cross.

10 And I think it's working. I can't even hear the interpreter.

11 MR. WESTBROOK: Your Honor, could we have a recess?

12 Or just come to the bench for a quick and discuss some  
13 housekeeping.

14 THE COURT: Okay.

15 [Bench conference transcribed as follows.]

16 MS. KIERNY: Your Honor, I was going to ask for a few minutes to --  
17 or 10 minutes to organize my notes, because I just have them all over. I don't think  
18 I'll finish by 5:00 either way.

19 MR. WESTBROOK: Alternatively, we could just get a start tomorrow.  
20 The interpreter is right in my ear and it's really hard for me to hear.

21 THE COURT: [Indiscernible.]

22 MS. KIERNY: She has a lot more statement and [indiscernible] is a lot  
23 more [indiscernible] or the witness, and this witness had --

24 THE COURT: I -- I'll let you take the break. I want you to start and see  
25 how far we go. Okay? Because we're -- we've got to use up the -- the time

1 efficiently, all right? Because we have a 15-minute break. All right? We can't --  
2 there's nothing we can hurt now [indiscernible] and the time will dissipate, so --

3 MS. KIERNY: There are things that are different. They're going to say  
4 [indiscernible] that's what I meant by organizing my notes.

5 THE COURT: What do you guys think?

6 MS. KOLLINS: I didn't hear the last thing she said.

7 MS. KIERNY: I was going to ask for a short time --

8 THE COURT: She needs -- she needs time to prepare cross because  
9 there's new stuff in there.

10 MS. KIERNY: [Indiscernible.]

11 THE COURT: Some changes.

12 MS. KIERNY: Some changes.

13 MR. WESTBROOK: And also the technical thing is a real problem for  
14 me. I mean, [indiscernible] complain about it.

15 THE COURT: Okay. I want to hear their response first.

16 MS. KOLLINS: Well, I mean --

17 THE COURT: How burdensome is it for her to come back tomorrow?

18 MS. KOLLINS: I know they're not going to be done with cross. I mean,  
19 she's been sitting here a long time today. I don't think it's --

20 THE COURT: Well, can we use up some of this time that we have so it  
21 doesn't get wasted?

22 MS. KOLLINS: I -- I don't have a problem with that. We do have one  
23 more question, actually.

24 THE COURT: For me?

25 MS. KOLLINS: No. For her.

1 MS. KIERNY: [Indiscernible.]

2 MS. KOLLINS: Okay. We'll ask her the question and then pass her.

3 THE COURT: No. What -- what do you want to do about their  
4 request?

5 MS. KIERNY: Oh, I think our position is that they should ask at least  
6 some questions and get us to 5:00 and then they can continue their cross  
7 tomorrow.

8 THE COURT: Yeah. Can you -- I mean, do you got enough  
9 [indiscernible] without going through your notes, whatever?

10 MS. KIERNY: I do, Your Honor.

11 THE COURT: Just try to be efficient and use [indiscernible].

12 MS. KIERNY: I mean, I can get through it. I just was asking for time  
13 [indiscernible] so that I could in my notes and could be more organized.

14 THE COURT: Okay. All right. All right.

15 MS. KIERNY: That's all I need to do. I'm sorry. I understand you're  
16 not [indiscernible].

17 THE COURT: I know. I don't want you to be frustrated, but let's just  
18 take a short break.

19 MS. KIERNY: Okay.

20 THE COURT: Six minutes?

21 MS. KIERNY: I'll just start.

22 THE COURT: 10 minutes?

23 MS. KIERNY: No. That's fine. Don't worry about it. I'll just go. I'll just  
24 start. It's fine. If it's a disaster, you guys will just give me [indiscernible]?

25 THE COURT: 10 minutes?

1 MS. KIERNY: That's fine. I'll just start.

2 THE COURT: Okay.

3 MS. KIERNY: All right.

4 [End of bench conference.]

5 THE COURT: Okay. So the State actually has one more question.

6 MR. HAMNER: Okay. We actually have no more questions, it was  
7 covered.

8 THE COURT: Oh.

9 MR. HAMNER: Thank you.

10 THE COURT: Okay. Then the defense will begin.

11 **CROSS-EXAMINATION**

12 BY MS. KIERNY:

13 Q Hi, Jatziri. How are you doing?

14 A Good.

15 Q I'm Carli. Remember we talked outside for a minute?

16 A Yes.

17 Q Okay. Your mom and dad brought you here today, right?

18 A Yes.

19 Q And you testified that you live with them, as well as your sisters and  
20 your grandma?

21 A Yes.

22 Q Do you do what your parents tell you to do?

23 A Yes.

24 Q So if your mom says clean your room, do you do it?

25 A Yes.

1 Q I notice that you're very good at picking up on English. But I'd ask you  
2 just to wait for the interpreter to interpret, so we make sure we get the right answer.

3 A [No audible response.]

4 Q Thanks. If your mom says -- tells you to get dressed for school, do you  
5 do that?

6 A Yes.

7 Q If you don't do what your mom asks, what happens?

8 A They don't let me go out.

9 Q Okay. Is there anything else that your parents do if you get in trouble  
10 for not listening?

11 A Well, they took away my tablet and my computer.

12 Q I see. You testified earlier that you are friends with Yezline, right?

13 THE COURT INTERPRETER: With?

14 BY MS. KIERNY:

15 Q You are friends with Yezline. I'm sorry.

16 THE COURT INTERPRETER: Oh, Yezline.

17 THE WITNESS: Yes.

18 BY MS. KIERNY:

19 Q Okay. And is it fair to say that you always want to play with Yezline, but  
20 sometimes she doesn't want to play with you guys?

21 A Yes.

22 Q Okay. And Yezline has a younger sister, right?

23 A Yes.

24 Q Her sister's named Nicole?

25 A Yes.

1 Q And Nicole is younger than you guys?  
2 A Yes.  
3 Q And when I say you guys, I mean you and your sisters.  
4 A Okay.  
5 Q Okay. You would play with Nicole when you were at Yezline's house?  
6 A Yes.  
7 Q But you would never take Nicole out of her house without permission,  
8 right?  
9 A No.  
10 Q Because you would get in trouble?  
11 A Yes.  
12 Q Okay. You mentioned earlier something about a girl in the complex  
13 named Lexi; do you remember saying that?  
14 A Yes.  
15 Q Is her name Litzi or Lexi, do you think?  
16 A Litzi.  
17 Q Okay. And Litzi lives in the same apartment area as you do, right?  
18 A Yes.  
19 Q And you play with Litzi?  
20 A Yes.  
21 Q Is Litzi your age or younger or older?  
22 A Younger.  
23 Q Litzi is younger? Is Litzi older than the twins or younger?  
24 A Same age.  
25 Q Okay. Thank you. You said on direct that -- or when -- when Chris was

203



1 talking to you, you said that Don David touched your private part, correct?  
2 A Yes.  
3 Q Do you ever call that part a *paparucha*?  
4 A Yes.  
5 Q Okay. And you said that happened in Don David's apartment?  
6 A Yes.  
7 Q And also in Esther's apartment?  
8 A Yes.  
9 Q And Esther is Yezline's mom?  
10 A Yes.  
11 Q Do you remember back in November, you gave a statement to a lady  
12 named Elizabeth Espinoza?  
13 A Yes.  
14 Q And that was down at the police department?  
15 A Yes.  
16 Q And Elizabeth was nice to you, right?  
17 A Yes.  
18 Q She told you it was important to tell the truth.  
19 A Yes.  
20 Q And to be honest.  
21 A Yes.  
22 Q And you had to tell her everything.  
23 A Yes.  
24 Q You told Elizabeth that Don David only touched -- or touched you inside  
25 his apartment.

1 A Yes.

2 Q You did not tell her that he touched you inside Esther's apartment.

3 A No.

4 Q When you were in Don David's apartment, your sisters, Yezline, and  
5 Litzi were there, too. Litzi.

6 A Yes.

7 Q And that was inside, in Don David's kitchen.

8 A Yes.

9 Q And you also -- you told Elizabeth that while you were in the kitchen,  
10 Don David touched both of your sisters at the same time.

11 A Yes.

12 Q Do you also remember telling Ms. Espinoza about a time Don David put  
13 chocolate in Yezline's part?

14 A Yes.

15 Q And later Yezline pulled the chocolate out of her part and it smelled  
16 bad.

17 A Yes.

18 Q And you and your sister smelled the chocolate.

19 A Yes.

20 Q But no one wanted to eat it.

21 A Yes.

22 Q You did not tell Ms. Espinoza that -- or tell Elizabeth, I'm sorry -- that  
23 Don David put chocolate in his parts when you talked to her, correct?

24 A I forgot.

25 Q Okay. So you also told Elizabeth that one time Don David showed you

1 a video on his phone.

2 A Yes.

3 Q And Yezline and your sisters were there.

4 A Yes.

5 Q Is that what you were talking about when you were talking to Chris  
6 earlier today?

7 A Yes.

8 Q And that was outside of Litzi's house?

9 A Yes.

10 Q So Litzi lives near that power box that you circled.

11 A Yes.

12 Q Okay. Do you remember telling -- or you also told Elizabeth that it was  
13 on your grandmother's phone that you saw this video.

14 A It's what? She's not my grandma.

15 Q Okay. When I say -- did you ever call Don David's wife Grandmother?

16 A Yes.

17 Q Okay. But her real name is Elena; is that what you call her now?

18 A Yes.

19 Q And so you said that you watched that video on Grandmother's phone.

20 A Yes.

21 Q And that was a pink phone.

22 A Yes.

23 Q Okay. You also talked about with Chris -- talked with Chris about a  
24 time that Don David showed you his part; do you remember that?

25 A Yes.

1 Q Besides Yezline and your sisters, were there some boys there, as well,  
2 when that happened?

3 A Yes.

4 Q One of those boys named Leo.

5 A Yes.

6 Q And is Leo older than you or younger than you?

7 A Younger.

8 Q And he lives in -- in that same apartment complex as you do?

9 A Yes.

10 Q You said that -- to Chris that Don David would put chocolates on his  
11 parts, correct?

12 A Yes.

13 Q And you didn't take them out of his -- out of his pants, correct?

14 A Yes.

15 Q And he didn't tell you to take them out of his pants, correct?

16 A Yes.

17 Q You testified earlier that Don David told you if you told anyone, he  
18 would hurt your mom and dad; is that the threat that you testified to?

19 A Yes. Uh-huh.

20 Q But then you told the Cuban lady, because you didn't think he'd hurt  
21 her?

22 A Yes.

23 Q So you did not think that he would hurt your parents if you told the  
24 Cuban lady?

25 MR. HAMNER: Objection. I think that misstates the testimony.

1 THE COURT: I'll allow it. Want to hear the answer.

2 THE WITNESS: Yes.

3 BY MS. KIERNY:

4 Q Okay.

5 MS. KIERNY: Court's brief indulgence.

6 THE COURT: Uh-huh.

7 MS. KIERNY: I would pass the witness at this time.

8 THE COURT: Okay. Redirect.

9 MR. HAMNER: Thank you, Your Honor.

10 **REDIRECT EXAMINATION**

11 BY MR. HAMNER:

12 Q Okay. Jatziri, do you remember at the beginning of Carli's questions  
13 about being asked about doing what your parents say?

14 A Yes.

15 Q Okay. What does your mom tell you about lying?

16 MR. WESTBROOK: Objection. This is bolstering, Your Honor.

17 THE COURT: Well, hold on a second.

18 I -- I'm going to overrule that. All right. I can explain that later.

19 Go ahead.

20 BY MR. HAMNER:

21 Q What -- what did your mom tell you about lying?

22 A Not to lie, because our nose would grow.

23 Q Your nose would what? Oh, your nose would grow?

24 A Yes.

25 Q Okay. Did your mom tell you to make up all this stuff with Don David?

1 MR. WESTBROOK: Objection, Your Honor.

2 THE COURT: Overruled.

3 BY MR. HAMNER:

4 Q Did your mother tell you to make up these things about Don David that  
5 you've told us here today?

6 A No, she didn't tell me anything.

7 Q All right. Now, you were asked on cross-examination -- or Carli asked  
8 you questions about being friends with Yezline; do you remember that?

9 A Yes.

10 Q Okay. And there was a question about, well, sometimes she doesn't  
11 want to play with you anymore.

12 A Yes.

13 Q Did you play with her a lot before --

14 MS. KIERNY: I'm going -- I'm going to object. That actually misstates  
15 what I asked. I didn't say any about anymore.

16 MR. HAMNER: Okay.

17 THE COURT: Well, okay. I don't remember it.

18 MR. HAMNER: I'll rephrase.

19 THE COURT: That's --

20 MS. KIERNY: That's an improper question.

21 MR. HAMNER: I'll -- I'll happily rephrase.

22 THE COURT: Sustained. Rephrase.

23 MS. KIERNY: Sorry. It's just...

24 BY MR. HAMNER:

25 Q Do you remember her asking about sometimes Yezline doesn't want to

1 play?

2 A Yes.

3 Q I want you to think about the Chuck E. Cheese day, for a minute, okay?  
4 Before Chuck E. Cheese, before everything that happened with Chuck E. Cheese,  
5 did you play with Yezline a lot?

6 A Yes.

7 Q After you told your parents about Chuck E. Cheese and everything, did  
8 you play with Yezline more after telling your parents about everything or did you  
9 play with her less?

10 A Less.

11 Q And when you were talking about sometimes she doesn't want to play,  
12 was that after Chuck E. Cheese or before Chuck E. Cheese?

13 A Before.

14 Q Okay. Let me ask you about -- you were asked questions about being  
15 touched on your front part in Maria's apartment and the defendant's -- or Don  
16 David's apartment; do you remember being asked that?

17 A Yes.

18 Q Did he ever -- did Don David ever touch your front part outside in the  
19 apartment complex?

20 MS. KIERNY: Objection. Beyond the scope of direct -- cross.

21 MR. HAMNER: It's not beyond the scope.

22 THE COURT: Repeat the question.

23 MR. HAMNER: I said you were asked on cross about being touched  
24 inside this apartment, Maria's apartment, as well as Don David's apartment; did he  
25 ever touch you outside his --

1 THE COURT: All right. Overruled.

2 Go ahead.

3 BY MR. HAMNER:

4 Q Do you want me to ask you the question again?

5 A Yes.

6 Q Okay. Did he ever touch your front part outside the apartment?

7 A No.

8 Q Okay. You were asked questions about telling Elizabeth -- she asked  
9 you to tell her everything; do you remember that?

10 A Yes.

11 Q Okay. Did you do your best to try to tell as much information as you  
12 could, based on her questions?

13 A Yes.

14 Q Do you ever remember Elizabeth specifically asking you if he rubbed  
15 chocolate on his part?

16 A Yes.

17 Q You remember that?

18 A Yes.

19 Q Okay. And what did you say in response to that question?

20 A That he did it.

21 Q Okay. So you remember -- in your mind, you remember telling  
22 Elizabeth that he rubbed chocolate on your part?

23 A Yes.

24 Q Okay. You were asked questions about the phone, being shown  
25 movies on a phone; is that right?



1 A Yes.

2 Q And was that David's wife's phone?

3 A Yes.

4 Q And who was holding David's wife's phone when the movies were being  
5 shown?

6 A Don David.

7 Q There were questions you were being asked about why you told  
8 Yusnay instead of your mom and dad; do you remember being asked that by Carli?

9 A Yes.

10 Q Why did you want to tell Yusnay first?

11 A Because he didn't say anything about killing her.

12 Q Okay. Did you think that if you told Yusnay, nothing would happen to  
13 Yusnay, because he didn't mention her by name?

14 A Yes.

15 Q Okay. Is that the reason why you told Yusnay first, rather than your  
16 parents?

17 A Yes.

18 Q You mentioned -- there were some questions about Litzi; do you  
19 remember that?

20 A Yes.

21 Q And -- and when you were asked those questions, you said that she  
22 was around for some -- some of -- some stuff, right, with Don David?

23 A Yes.

24 Q Was Litzi always around when Don David did things with you or  
25 sometimes or none?

1 A Sometimes.

2 Q Sometimes. Leo, was he always around, sometimes around, or none?

3 A Sometimes.

4 Q Orlando, was he always around, sometimes, or none?

5 MS. KIERNY: I'm going to object. I never asked about anyone named  
6 Orlando.

7 THE COURT: Well, about whether he was around?

8 MR. HAMNER: It's okay. I can -- I can --

9 MS. KIERNY: I never mentioned that name.

10 MR. HAMNER: I can -- I'll scratch it. I apologize. I had a note here as  
11 a good prevention.

12 THE COURT: All right.

13 MR. HAMNER: Okay.

14 BY MR. HAMNER:

15 Q Was -- was Litzi ever there when he touched your front part?

16 A Never.

17 Q Okay. Was Leo ever there when he touched your front part?

18 A Never.

19 Q Did you ever -- and -- excuse me.

20 MR. HAMNER: Court's indulgence for one second.

21 THE COURT: Uh-huh.

22 BY MR. HAMNER:

23 Q Was -- was Litzi there when he showed you his private part?

24 A Yes.

25 Q Okay. Was she will always, sometimes -- or sometimes?

1 A Sometimes.

2 MR. HAMNER: I have no further questions.

3 THE COURT: Recross?

4 MS. KIERNY: Court's brief indulgence.

5 THE COURT: Sure.

6 MS. KIERNY: I need to find a spot.

7 THE COURT: Go ahead.

8 **RECROSS-EXAMINATION**

9 BY MS. KIERNY:

10 Q You just testified -- Jatziri, you just testified that Litzi was never present  
11 when Don David touched your front part.

12 A Yes.

13 Q Do you recall -- you remember that you gave a statement to Elizabeth,  
14 right?

15 A Yes.

16 Q And you said earlier that you were truthful with her; do you remember  
17 telling Elizabeth that Litzi was present?

18 A I don't remember.

19 Q Okay.

20 MS. KIERNY: Court's brief indulgence.

21 Q Okay. Do you recall being asked this question and giving this answer --  
22 I'm on page 44, the voluntary statement.

23 MR. HAMNER: Is this mine?

24 MS. KIERNY: Yes.

25 MR. HAMNER: Sorry. I'm sorry.

1 MS. KIERNY: Okay.

2 BY MS. KIERNY:

3 Q Where were you when he touched you the first time? Where were you  
4 guys?

5 Answer: In my friend's house.

6 Question: Which friend?

7 Answer: Lexi.

8 Do you remember -- do you remember being asked that?

9 A No.

10 Q Okay.

11 MR. HAMNER: And, counsel, again, what page again? I apologize.

12 MS. KIERNY: 44.

13 MR. HAMNER: Thank you.

14 THE COURT INTERPRETER: Sorry.

15 MS. KIERNY: I might just ask Elizabeth about that. That might be  
16 easier for you, because it's a long phrase.

17 BY MS. KIERNY:

18 Q Now, you also testified, on Chris' last question, that Leo was never  
19 around when you were touched on your front part.

20 A Never.

21 Q Okay. Do you remember testifying before a grand jury? It was in this  
22 building, and there were some people in a room.

23 MS. KIERNY: And Chris, Stacey?

24 Q Chris asked you some questions; do you remember that?

25 A Yes.

1 Q And it was, like, February of this year?

2 A Yes.

3 Q Okay. I'm on page 78 of the grand jury transcript.

4 THE COURT INTERPRETER: Which page? I'm sorry.

5 MS. KIERNY: 78 of the grand jury transcript, for the record.

6 BY MS. KIERNY:

7 Q Okay. You said -- I'm on page -- I'm going to read from line 12 to line 6  
8 of the next page.

9 You said that he was touching you; what parts of his body was  
10 he touching you on?

11 With his hands -- Answer: With his hands.

12 Question: He used his hands, and when he took his hand, what part of  
13 your body did he touch?

14 Answer: On my butt.

15 Question: Was it the front part or the back part?

16 Answer: In front.

17 Question: So it's the front part of your *kola* or your butt; did he do this  
18 one time or more than one time?

19 Answer: More than once.

20 THE COURT INTERPRETER: And counsel, will you please slow down  
21 a little bit.

22 MS. KIERNY: I'm so sorry.

23 THE COURT INTERPRETER: Sorry, Your Honor, first of all.

24 MS. KIERNY: I'm a fast talker.

25 BY MS. KIERNY:

1 Q This is the important question. I just wanted to get some context.

2 Question: Were you alone when this happened or were there  
3 other people around when he was doing this?

4 Answer: It was another person.

5 Question: Who was around when this first happened?

6 Answer: Juanito or Johnny.

7 Question: Who else?

8 Leo, Orlando, Yezline, and another little girl they called Litzi.

9 So do you recall -- so you testified at the grand jury that both  
10 Lexi -- or, sorry -- Litzi and Leo were present when you were touched?

11 A No.

12 Q All right. Did you -- do you agree that that's what I just read to you?

13 A Yes.

14 Q And you're saying that's not true?

15 A Yes.

16 Q Okay.

17 MS. KIERNY: Court's brief indulgence.

18 No further questions.

19 THE COURT: Well, anything from the jurors? Anything that you guys  
20 want to ask to -- to clarify any of the testimony?

21 MR. HAMNER: Can I -- do I have a --

22 THE COURT: Did you get direct and redirect already?

23 MS. KIERNY: Yes.

24 MR. HAMNER: I -- I did.

25 THE COURT: That's usually as much as I allow.

1 MR. HAMNER: Okay.

2 THE COURT: Unless there's some special reason to go further.

3 MR. HAMNER: It -- I mean --

4 THE COURT: Do you want to approach and discuss or?

5 MR. HAMNER: Sure, Your Honor.

6 THE COURT: I mean, is it -- again, counsel, approach.

7 [Bench conference transcribed as follows.]

8 THE COURT: Is there a -- do we need to clarify something? Or is  
9 there a mistake?

10 MR. HAMNER: Well, I -- I don't believe he indicates -- she doesn't -- it's  
11 in reference to chocolate, house reference regarding Litzi. She never expressly  
12 states that Lexi is present when she's being touched. It doesn't say that. The most  
13 she says is to his house to get chocolate. He started touching me and my sisters  
14 and my friend. She doesn't specify the name of the friend. I believe that's Yezline,  
15 it's not Litzi. And --

16 THE COURT: So is he -- is he suggesting you took your part out of  
17 context?

18 MR. HAMNER: She -- she does acknowledge --

19 MS. KIERNY: There's another page that he's not reading.

20 MR. HAMNER: Okay. What's the page?

21 MS. KOLLINS: So sneaky. Sorry.

22 MR. HAMNER: You know me.

23 THE COURT: I know. Hide the Ball Hamer, that's you.

24 MS. KIERNY: Well, in the first place, she does say it at the grand jury.

25 Would you agree with that?

1 MR. HAMNER: I'm not -- I want to focus first on the voluntary  
2 statement --

3 MS. KIERNY: Is -- that's my question.

4 MR. HAMNER: -- because those were your questions.

5 MS. KIERNY: Would you agree with that?

6 MR. HAMNER: No. I'm not answering a question. I want to focus on  
7 the voluntary statement.

8 THE COURT: Here -- wait, wait. We -- we don't need to -- here's the  
9 thing.

10 THE COURT INTERPRETER: Your Honor, I'm sorry.

11 THE COURT: One moment.

12 THE COURT INTERPRETER: The witness needs to go to the  
13 restroom. Jatziri needs to go to the restroom.

14 MR. HAMNER: Oh, that's okay.

15 THE COURT: Yes, sure.

16 Marshal, will you please help the -- show her where the restroom  
17 is.

18 We'll -- I'm not excusing the jurors. Stay here. Don't go  
19 anywhere.

20 Here's the thing, you brought up some --

21 MS. KIERNY: So I'm on page 48.

22 THE COURT: Okay.

23 MS. KIERNY: I'm sorry. On page 48 --

24 THE COURT: It's really simple, you brought up some new -- some --  
25 some new testimony that wasn't in the prior examination, so in fairness, he should



1 get a chance to ask --

2 MS. KIERNY: No. I followed up on what he asked in his --

3 THE COURT: I know, the topic was the same.

4 MS. KIERNY: -- redirect. The topic was the same. He got different  
5 information, so I got the additional information out.

6 On page 48, he does say that --

7 THE COURT: Okay.

8 MS. KIERNY: -- she does say that she touched Yezline and Lexi and  
9 the twins. So, obviously, with that context, Lexi would be there.

10 MR. HAMNER: Well, okay.

11 THE COURT: Yeah. I can see your point.

12 MR. HAMNER: I have an express line here. Well, I'm going to refer to  
13 page 50 in the same statement, where she says, Because he was giving us  
14 chocolate, and he didn't touch Lexi, because -- since they are neighbors.

15 She expressly states he did not touch Lexi [indiscernible].

16 MS. KIERNY: Then I assume Lexi was there, from what you just read,  
17 so got it.

18 MR. HAMNER: Okay. I assumed she walked out the door, because  
19 she had to go home. And I actually would point out that -- hold on one second. I  
20 want a clarification.

21 The defense has a voluntary statement from Litzi, where Litzi  
22 states expressly, I never went inside the house, because I was too afraid to go,  
23 because my parents told me I would get in trouble, and I never went in that house.

24 So for them to now create the suggestion that Litzi is in this  
25 house and this girl's lying when she's saying, no, she wasn't there when I got

1 touched, and to have a statement from the very girl denying that she ever went in  
2 the house is disingenuous. And for me to not be able to bring out --

3 THE COURT: It seems that someone's crying and she doesn't know  
4 who, so she's going to do her job to suggest that they both are lying.

5 MR. HAMNER: And I understand that. But I should be able to clarify  
6 that she expressly --

7 THE COURT: I'm -- I'm going to let you clarify.

8 MR. HAMNER: Thank you very much.

9 THE COURT: You know, I'm -- I already --

10 MR. HAMNER: I'm sorry. I apologize --

11 MS. KIERNY: But then I'm going to have to go back --

12 THE COURT: I'm going to -- look --

13 MS. KIERNY: -- and say that there was --

14 THE COURT: -- he's -- he's contesting the -- the context in which your  
15 statement was read. I generally -- look, when there's some new stuff read and  
16 some claims --

17 MS. KIERNY: All right.

18 THE COURT: -- that is taken out of context, I'll give him another  
19 chance.

20 You get the last word.

21 MS. KIERNY: So that I can recross after that?

22 THE COURT: Of course.

23 MS. KIERNY: Re-recross.

24 THE COURT: Of course.

25 MS. KIERNY: Thank you.

1 THE COURT: You always do. Defense always gets the last word in --  
2 in examination.

3 Okay. Oh, you're back.

4 THE COURT INTERPRETER: Yes.

5 THE COURT: All right. Thank you.

6 Okay. We just have just a few more questions and then we'll be  
7 finished. Thank you.

8 MR. HAMNER: Real brief. Real brief.

9 THE COURT: He's going to ask you some questions first, Mr. Hamner.

10 **FURTHER REDIRECT EXAMINATION**

11 BY MR. HAMNER:

12 Q Do you remember being asked questions about whether Litzi was  
13 present when chocolate was -- when he was doing the things with the chocolate; do  
14 you remember that?

15 A Yes.

16 Q Remember -- and -- and she had -- you had said first it didn't -- it never  
17 happened, she wasn't there. And then she was talking about things you said in a  
18 prior statement with Elizabeth; do you remember that?

19 A I don't remember.

20 Q Okay. Well, let me -- let me at least ask you this. Did you recall telling  
21 Elizabeth, referring to page 50 and 51, because he was giving us chocolate and he  
22 didn't touch Lexi, because since they are neighbors; do you remember telling  
23 Elizabeth that?

24 A Yes.

25 Q Okay. And as you sit here today, do you ever remember Litzi standing

1 near you when he touched your front part?

2 A Yes.

3 Q Okay. You do remember Litzi being there when he touched your front  
4 part?

5 A Yes.

6 Q Okay. Where -- where were you? Which house were you in?

7 A Don David.

8 Q Okay. And do you remember Litzi being there when he would put  
9 chocolate on his front parts?

10 A Yes.

11 Q Okay. And was it always, sometimes, or sometimes?

12 A Sometimes.

13 Q Okay. And with respect to the touching of your front part, was she  
14 always there or sometimes there?

15 A Sometimes.

16 Q Okay. Great. Thank you.

17 THE COURT: Okay. Thank you.

18 Your turn. But do you have -- you have a few more questions,  
19 right?

20 MS. KIERNY: Yeah, thank you.

21 THE COURT: All right. You may proceed. Thank you.

22 **FURTHER RECROSS-EXAMINATION**

23 BY MS. KIERNY:

24 Q Jatziri, to be clear, there was at least one time when you were in the  
25 house -- inside Don David's house, and Lexi was there, too?

1 A Yes.

2 Q Okay. Thank you.

3 THE COURT: Thank you for clarifying.

4 Anything else from anybody? The jurors, anything from the  
5 jurors? I want to make sure you're -- okay.

6 Then we are finished. Thank you very much for appearing today  
7 and providing testimony in our proceeding. You're -- you seem to be a smart girl,  
8 knowing both English and Spanish, and I thank you and wish you good luck  
9 [indiscernible]. You may step down.

10 THE WITNESS: Thank you.

11 THE COURT: Watch your step. There's a step there. Okay. I don't  
12 want you to fall.

13 All right. Did she take all of her stuff?

14 THE COURT INTERPRETER: Yes.

15 THE COURT: Okay. All right. Now, it's 5:00. So 12 -- what?

16 MR. HAMNER: I'm just retrieving this item, Your Honor. Sorry,  
17 Your Honor.

18 THE COURT: So I think we can let the jury go for tonight, right?

19 MR. HAMNER: That's correct.

20 MR. WESTBROOK: Yes.

21 THE COURT: Let's do that.

22 Ladies and gentlemen of the jury, we're going to need you back  
23 here tomorrow at 1:00. All right. And let me go ahead and read you the standard  
24 admonishment.

25 During this overnight recess, do not communicate among

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1 yourselves or with anybody else about the trial or the subject matter of this trial; do  
2 not communicate at all with any of the parties, attorneys, or witnesses involved in  
3 this trial; do not seek or obtain any information or comments about this case from  
4 any source, including without limitation, newspapers, television, radio, Internet,  
5 e-mail, cell phones, or any other electronic device; do not read, watch, or listen to  
6 any report or commentary about the occasion; do not form or express any opinion  
7 on any subject connected with this trial until the case is finally submitted to you for  
8 deliberations; and do not perform any research or investigations.

9           You are directed to return to the hallway outside this courtroom  
10 for further proceedings at 1:00 p.m. tomorrow. And we're planning to go from 1:00  
11 to 5:00. All right.

12           Thank you very much. Leave your notes. Drive safe. You're --  
13 you're being most attentive. I appreciate all your hard work. Thank you, jurors.

14                           [Jury dismissed at 5:14 p.m.]

15           THE COURT: We're outside the presence of the jury. I just wanted to  
16 mention one thing. You had -- at the very beginning, you had some objection,  
17 bolstering, and it was regarding Mr. Hamner was asking questions about, basically,  
18 she wouldn't lie if her parents told her to, and that was the gist of it.

19           I don't remember exact -- your exact question.

20           MR. HAMNER: My -- my question was in reference --

21           THE COURT: Tell us what you're trying to suggest.

22           MR. HAMNER: Well, the -- the questions on cross were, Do you do  
23 everything your parents tell you to do?

24           THE COURT: Yeah.

25           MR. HAMNER: And my response to that was, What is -- what did your

1 parents tell you about lying? And did your -- did your mother tell you to make all of  
2 this stuff about Don David up?

3 THE COURT: Yeah. So I think that was proper, because -- because it  
4 was in response. You -- you called her credibility in question from -- from your  
5 questions, suggesting to the jury that -- I mean, it's clear -- clear you wanted the  
6 jury -- or it was Ms. -- who -- who took her? That was --

7 MR. WESTBROOK: It was Carli.

8 THE COURT: Carli, yeah. Carli, because you were -- you wanted the  
9 jury to -- to at least -- you want to plant the seed in their mind that -- that she would  
10 lie if her parents asked her to. And that -- that put her whole state of mind in  
11 question and her credibility in question. So you -- you opened the door to her  
12 truthfulness and -- or untruthfulness, which allows the State to come back and ask  
13 questions to rehabilitate her as to her truthfulness.

14 So I think you opened the door on that and that's why I allowed it.  
15 But...

16 MR. WESTBROOK: Well, Your Honor, we didn't say, Would you lie if  
17 your parents told you to? Which would have opened the door.

18 THE COURT: No. You didn't say that. But I -- he was --

19 MR. WESTBROOK: That's --

20 THE COURT: -- I mean, I think the questions opened the door. I  
21 mean, you know, they're good questions. I think you did it the right way, and I --  
22 you know, you're asking -- you're -- you're asking her, you know, do you do  
23 everything your parents tell you to? The implication is, you know, you would -- you  
24 would lie.

25 I think you opened the door. Well -- it was close enough.

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1 MS. KIERNY: I would disagree. But, obviously, that's your ruling. And  
2 it sounds good.

3 MR. WESTBROOK: This is -- this is a golden rule issue, though,  
4 Your Honor. And that's why we didn't cross the line. When the State asked their  
5 question, they did cross the line. The -- bolstering a witness --

6 THE COURT: Yeah.

7 MR. WESTBROOK: -- by saying, Well, you would never lie, would  
8 you? is the line -- it's crossing the line.

9 MR. HAMNER: That's not what I said.

10 MR. WESTBROOK: We were on one side of the line. They were on  
11 the other side. That's our point.

12 MR. HAMNER: It's a good thing I didn't actually ask that question,  
13 because that never came out of my mouth.

14 So Mr. Westbrook is once again misrepresenting the factual  
15 record.

16 THE COURT: Well.

17 MR. HAMNER: I would -- I would like to --

18 THE COURT: It is what it is --

19 MR. HAMNER: But --

20 THE COURT: But I -- I think -- yeah.

21 MR. HAMNER: Your Honor, I just want to make a couple notes for the  
22 record.

23 THE COURT: I made a ruling on your side, so.

24 MR. HAMNER: I know. But I would like to say that they opened the  
25 credibility door from as -- as early as opening statements. Not just with their



1 questions. But I want that to be clear, as well.

2 THE COURT: And that's kind of been my feeling on that. And I -- I  
3 don't think -- I don't think you crossed the line. I think it was a proper redirect to  
4 rehabilitate based on what I've heard so far. We can leave it at that.

5 MR. HAMNER: Yes, Your Honor.

6 THE COURT: So. All right. Your -- you made your record. All right.

7 MR. WESTBROOK: Housekeeping on Friday.

8 THE COURT: Yeah. 9:00 to 5:00 is what I'm planning on. Is there  
9 some --

10 MR. WESTBROOK: I do have a motion hearing that, unfortunately, I  
11 have to handle Monday at 9:00. It shouldn't take more than 15 minutes.

12 THE COURT: Who's that in front of?

13 MR. WESTBROOK: It's in front of Judge Ellsworth.

14 MS. KOLLINS: Monday or Friday?

15 MR. WESTBROOK: It's -- I'm sorry. I meant Friday, sorry. Friday  
16 at 9:00. It's in front of Judge Ellsworth. I don't expect to take more  
17 than 15 minutes. I can certainly get there early and make sure I'm in the front of  
18 the line. She starts on time, right?

19 MS. KIERNY: It's a Friday. I don't know what calendar that is.

20 MR. HAMNER: Probably it's a special setting, I would think, right?

21 MR. WESTBROOK: Yeah. It probably is. So I -- I might even be the  
22 only person on.

23 THE COURT: Did she set it for 9:00?

24 MR. WESTBROOK: Yeah. It was supposed to be for the 3rd. But  
25 apparently it was set for the 5th, instead.

1 THE COURT: So you're thinking, can you be here by 9:30?

2 MR. WESTBROOK: That's what I'm thinking, Your Honor.

3 THE COURT: Can you make sure you get there early to request  
4 priority?

5 MR. WESTBROOK: I'll be there before the doors open and I'll --

6 THE COURT: Would it help if I shoot her an e-mail?

7 MR. WESTBROOK: It might.

8 THE COURT: Oh, just -- let's send her an e-mail saying that, you  
9 know, that we have Mr. Westbrook in trial and we would really appreciate if she  
10 could call him first, it would be a great help to us.

11 MR. WESTBROOK: Great. And so 9:30 start should not be a problem.

12 THE COURT: All right. Then -- then 9:30. We'll accommodate you.

13 MR. WESTBROOK: Thank you, Your Honor.

14 THE COURT: Will you remind me to let the jurors know tomorrow.  
15 Anything else?

16 MS. KOLLINS: Your Honor, we do have a doctor testifying on  
17 Wednesday. She testifies for free. She testifies at no expense for the State, so I  
18 usually try to get her at the beginning of a session.

19 I had told her 1:00, because that was what we decided -- we  
20 talked about the other day. I will try to move her up, but I can't make any promises.  
21 She is a pediatric --

22 THE COURT: If we start at 11:00, is there anyone else you can call  
23 from 11:00 that -- anyone just quick?

24 MS. KOLLINS: I'll -- I'll -- I will try. I just --

25 THE COURT: All right.

1 MS. KOLLINS: -- putting it out there.  
2 THE COURT: All right.  
3 MS. KOLLINS: That's all.  
4 THE COURT: Yeah. No, I did say 1:00 originally. But I -- I realized my  
5 Wednesday calendar is a lot lighter than I thought, so I could -- I'd like to use the  
6 time if I can, so long as it --  
7 MR. HAMNER: Or maybe, I mean, just --  
8 THE COURT: We could really --  
9 MS. KOLLINS: We may be still going on the rest of these.  
10 MR. HAMNER: I'm sure there may be some witnesses.  
11 THE COURT: All right. The court's adjourned.  
12 See you guys.  
13 THE CLERK: I need to know about this [indiscernible], is it a court  
14 exhibit or is it just not admitted?  
15 MR. WESTBROOK: They didn't submit it.  
16 THE CLERK: Because it wasn't moved into admission.  
17 MS. KOLLINS: I know I -- I had her lay the foundation and use it  
18 demonstratively. If defense doesn't have any opposition to me admitting it, it  
19 doesn't have to go back to the -- it doesn't have to go back to the jury. I just -- it  
20 needs to either be a court exhibit or [indiscernible] because there's really --  
21 THE CLERK: Court exhibit.  
22 MS. KOLLINS: -- no evidentiary value. It's demonstrative.  
23 MR. WESTBROOK: Right. We'd prefer --  
24 MS. KIERNY: Do it as a court exhibit.  
25 MR. WESTBROOK: Yeah. Court exhibit. That's our preference.

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MS. KOLLINS: Court exhibit. Go ahead. Thank you.

THE COURT: All right. Then it'll be admitted without objection. Thank you, guys.

[Court recessed at 5:19 p.m., until the following day,  
May 2, 2017, at 1:14 p.m.]

ATTEST: I do hereby certify that the foregoing is a true and correct transcript, to the best of my ability, from the audio/visual recording of the proceedings in the above-entitled case.



\_\_\_\_\_  
Shawna Ortega, CET\*562

