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Respondent.

Docket 74071 Document 2018-13801

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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

**THURSDAY, MAY 4, 2017**

**TRANSCRIPT OF PROCEEDINGS RE:  
JURY TRIAL - DAY 8**

\*\*\*\*\*

**APPEARANCES:**

For the Plaintiff:

STACEY L. KOLLINS, ESQ.  
Chief Deputy District Attorney  
CHRISTOPHER S. HAMNER, ESQ.  
Deputy District Attorney

For the Defendant:

P. DAVID WESTBROOK, ESQ.  
Deputy Public Defender  
CARLI L. KIERNY, ESQ.  
Deputy Public Defender

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, THURSDAY, MAY 4, 2017

2 [Proceedings commenced at 1:35 p.m.]

3  
4 [Outside the presence of the jury.]

5 THE COURT: *State vs. Azucena*, C-231044. What have we got  
6 planned for today, guys?

7 MS. KOLLINS: Your Honor, we have Mr. John Pacult, who is going to  
8 discuss the topic of grooming.

9 THE COURT: Oh. Okay. Right.

10 MS. KOLLINS: And I printed out a copy of the statute. I'm going to  
11 have to locate it. Just so the court knows, it's a new statute.

12 THE COURT: I'm -- you know what, I'm familiar with it.

13 MS. KOLLINS: Okay. Great.

14 MR. WESTBROOK: Which statute?

15 MS. KOLLINS: Grooming.

16 MR. WESTBROOK: Okay.

17 MS. KOLLINS: And then we have Ms. Elizabeth Espinoza, the forensic  
18 interviewer, and then we have Detective Matt Campbell.

19 THE COURT: Oh.

20 MR. WESTBROOK: That's it.

21 MR. HAMNER: That's it.

22 MS. KOLLINS: After that the State anticipates we will rest.

23 THE COURT: You think we'll get through -- well, we're not going to get  
24 through all that today. No.

25 MR. HAMNER: It depends on the cross --



1 MS. KOLLINS: We have them lined up.

2 MR. HAMNER: Yeah, we have them all lined up ready to go. Worst  
3 case scenario, Mr. -- Detective Campbell will come back on Friday to finish up, but  
4 we're done after that.

5 MS. KIERNY: We have --

6 THE COURT: You've had a chance now to get through your -- all that  
7 material that was late, so.

8 MR. WESTBROOK: I've --

9 THE COURT: I know you -- I'm not asking for purposes of getting --  
10 trying to trick you to waive your objection or something. But -- your objection's  
11 noted. But, I mean, you have -- you probably have some cross based on that.

12 MR. WESTBROOK: I don't have any cross based on the new stuff. I  
13 do have some cross --

14 THE COURT: Oh.

15 MR. WESTBROOK: -- based on some other notes.

16 THE COURT: All right. It's your choice.

17 MS. KIERNEY: You asked me to try to line up at least one witness.  
18 We have two witnesses for tomorrow.

19 THE COURT: Yay.

20 MS. KIERNEY: And maybe three. So we're trying -- our investigator's  
21 still working on that --

22 MR. HAMNER: We're -- we're in --

23 MS. KIERNY: -- and -- and we anticipate -- with this point, we have  
24 Professor Kagan and Litzi lined up for the morning.

25 MR. WESTBROOK: Yeah. We scheduled Mr. Kagan for 10:00 in

1 anticipation of maybe Detective Campbell going a little bit long. He's scheduled  
2 pretty tight tomorrow, but he can get in in the morning, as long as he's out of here  
3 by 1:30, he's okay.

4 MS. KIERNY: That's not that tight compared to --

5 MR. WESTBROOK: Well, yeah, I know.

6 MS. KIERNY: Yeah.

7 MR. WESTBROOK: But --

8 THE COURT: All right, cool. Well, thanks for the update. Appreciate  
9 it. Let's -- so can I bring the jury in now? Let's bring them in. Let's get going.

10 [Jury reconvened at 1:38 p.m.]

11 THE COURT: All jurors accounted for?

12 THE MARSHAL: Yes, sir.

13 THE COURT: All right, please be seated.

14 Ms. Hudson, I like your shirt. Is it Friday yet? It's a good one. All  
15 right.

16 Are we ready to get going? All right. I think we're ready to call  
17 our next witness. So the State may call its next witness.

18 MS. KOLLINS: Mr. John Pacult, please.

19 THE COURT: We think we have three witnesses to get through today.  
20 Two are going to -- the first two are probably going to be a little bit faster than the  
21 third one. The third witness, we -- if -- you know, if we stick to that order, we may or  
22 may not finish with that witness today. We'll see. We're planning to go till 5:00,  
23 guys; is that the plan?

24 MR. HAMNER: Yes, Your Honor.

25 THE COURT: Okay.

1                                   **JOHN SEBASTIAN PACULT**

2           [having been called as a witness and being first duly sworn, testified as follows.]

3                   THE CLERK: Please be seated. Please state and spell your first and  
4 last name for the record.

5                   THE WITNESS: John Sebastian Pacult. J-O-H-N S-E-B-A-S-T-I-A-N  
6 P-A-C-U-L-T.

7                   THE COURT: All right. You may proceed.

8                   MS. KOLLINS: Thank you, Your Honor.

9                                   **DIRECT EXAMINATION**

10 BY MS. KOLLINS:

11           Q     Good afternoon, Mr. Pacult. How are you?

12           A     Good afternoon. I'm well. How are you?

13           Q     I'm well, thank you, sir.

14                   Could you tell the ladies and gentlemen of the jury how you're  
15 employed?

16           A     Certainly. I'm in private practice here in Las Vegas. I have my own  
17 outpatient counseling center, if you will.

18           Q     And what is the focus of your patient base?

19           A     My primary focus is assessing and treating adult and juvenile sex  
20 offenders.

21           Q     And how long have you been doing that?

22           A     Private practice, this is my 20th year, and then started in 1991 in other  
23 capacities.

24           Q     Do you also do psychosexual evaluations for the Eighth Judicial District  
25 Court for sentencing purposes for offenders?

1           A     I do. I was the first contracted evaluator here in southern Nevada to  
2 conduct psychosexual evaluations.

3           Q     How many sex offenders, both juvenile and adult, do you imagine  
4 you've treated over the course of your career?

5           A     Treated, assessed, or both?

6           Q     Both.

7           A     Probably over 6,000.

8           Q     Okay. In terms of the psychosexual evaluations that are submitted to  
9 the courts here for purposes of sentencing, how many of those have you done?

10          A     Thousands. It's within that -- within that general range. Yeah.

11          Q     Have you testified for both prosecutors and defense attorneys in this  
12 jurisdiction?

13          A     I have.

14          Q     Okay. On what topics?

15          A     I have testified primarily as an expert in victim dynamics and  
16 perpetrator grooming dynamics, high-risk behaviors, things of that nature.

17          Q     Okay. What education qualifies you to perform your job?

18          A     I have a bachelor's and master's degree from UNLV. I completed  
19 a 3,000-hour internship, State examination, and then going into private practice.  
20 Because of the area of specialization that I started in in 1991, once I opened my  
21 practice in 1998, I was basically one of two providers here in southern Nevada who  
22 were conducting this type of work.

23                         And as I've continued in this course of working with adult and  
24 juvenile sex offenders, various trainings over the years, I've been a chairperson for  
25 juvenile sex offender task forces, adult sex offender task forces, participated in all

1 different types of committees and trainings and all different things of that nature.  
2 And I've provided various trainings over the last 20 years to juvenile parole and  
3 probation, adult parole and probation, professional conferences, provided trainings  
4 half day, full day, hour. Just kind of depends on what the -- what the focus of the  
5 training is.

6 Q Okay. Perfect. We're here today to talk about the topic of grooming.  
7 Could you give the ladies and gentlemen just a brief definition of what grooming is  
8 in the sex offender world?

9 A Certainly. So grooming --

10 MR. WESTBROOK: Your Honor, I have an objection. May we  
11 approach?

12 THE COURT: Yes, you may.

13 [Bench conference transcribed as follows:]

14 THE COURT: Let me try to cover up a little bit of -- block a little bit of  
15 noise.

16 Okay. Yes, sir?

17 MR. WESTBROOK: I just wanting to object on this topic as more  
18 prejudicial than probative. And the idea that he's testifying about, you know, as to  
19 the sex offender world and what grooming is.

20 My second objection --

21 THE COURT: Nood.

22 MR. WESTBROOK: -- and this is more to preface that I don't think  
23 Ms. Kollins is going to go here, but just in case she does, I want to avoid an  
24 argument. You upheld an objection when we're talking about this many people,  
25 particularly in this case, and making any analysis what conclusions as to the

1 ultimate issues in this case. Like, I believe he's just [indiscernible]. I believe that  
2 these kids were victims of grooming, I believe the defendant was grooming.

3 He can talk about what it is, but he can't draw an outline to the  
4 ultimate question in the case.

5 MS. KOLLINS: Well, what the grooming -- grooming is not an ultimate  
6 issue. Grooming is not a legal issue in the case. So it's circumstantial evidence,  
7 first of all. And he's an expert in that realm. And he can analyze a case file and  
8 render an opinion about what conduct is grooming. What conduct construes  
9 grooming.

10 THE COURT: So did he -- did he analyze these pursuant facts in this  
11 case?

12 MS. KOLLINS: Yes, he did.

13 THE COURT: All right. So I think what we need is --

14 MS. KOLLINS: And he was noticed as an expert long ago.

15 THE COURT: I think he was properly noticed. He -- he certainly has  
16 the qualifications under *Hallmark* to testify. Grooming is a recognized behavioral  
17 science. And I think that I have to hear from what his methodology and stuff was  
18 and what he actually reviewed. But if he actually studied the facts in this case and  
19 has the qualifications, I think it would be of some assistance to the jury.

20 MR. WESTBROOK: Well, I can --

21 THE COURT: Which -- which --

22 MR. WESTBROOK: -- here's the issue.

23 THE COURT: -- prong of *Hallmark* do you think fails?

24 MR. WESTBROOK: He says that grooming exists within the --  
25 [indiscernible] or the sex offender realm. Okay.

1 THE COURT: Yeah.

2 MR. WESTBROOK: And in order to say the defendant is not  
3 [indiscernible] --

4 THE COURT: I'm sorry.

5 MR. WESTBROOK: I was going to say that the defendant in this case,  
6 he's [indiscernible], he would have to say that the defendant fits within the sex  
7 offender realm.

8 MS. KOLLINS: I can rephrase that question. I was just trying to point  
9 him to -- I mean just to see what his --

10 THE COURT: Yeah.

11 MS. KOLLINS: -- grooming. Grooming could be grooming your dog.  
12 And wanted -- grooming in -- within this venue --

13 MR. WESTBROOK: But, if he --

14 MS. KOLLINS: -- this subject matter.

15 MR. WESTBROOK: She's not incorrect. Grooming in this capacity  
16 only exists when a sex offender [indiscernible] testify that my client's [indiscernible].

17 MS. KOLLINS: No, that's not true.

18 MR. WESTBROOK: He can't cross that line.

19 MS. KOLLINS: He will not say that.

20 THE COURT: Well, let's see if there's enough foundation. I, you  
21 know, I -- I mean, I need to hear more about his methodology and the specific facts  
22 in this case to see if he's qualified to reach an opinion.

23 MS. KOLLINS: Well, and -- and I can tell the court it's going to be  
24 anything empirical, if that's what you're looking for. I mean --

25 THE COURT: It doesn't have to be empirical.

1 MS. KOLLINS: Okay.

2 THE COURT: It can be based upon his educational experience and  
3 study.

4 MS. KOLLINS: Okay.

5 THE COURT: And in the treatises that he's reviewed, read, and other  
6 peer reviewed articles on the topic. I mean, I just need to know a little bit more  
7 about --

8 MS. KOLLINS: Sure.

9 THE COURT: -- his particular experience and applying facts to --

10 MS. KOLLINS: Sure.

11 THE COURT: -- this behavior to reach a conclusion that this behavior  
12 is consistent with --

13 MS. KOLLINS: Sure.

14 THE COURT: -- the conclusion of grooming.

15 MS. KOLLINS: Okay.

16 MR. WESTBROOK: And this creates --

17 THE COURT: But we just got started. I haven't heard any or very little  
18 out of this guy yet. So -- but grooming is recognized behavioral science. I am  
19 going to allow him to testify as a --

20 MR. WESTBROOK: Okay.

21 THE COURT: Now, I'm not going to tell the jury [indiscernible] and  
22 expert, because --

23 MR. WESTBROOK: Of course.

24 THE COURT: -- I don't -- I don't qualify people --

25 MS. KOLLINS: We don't do that.



1 THE COURT: -- as expert in front of the jury. But I will allow him to  
2 continue.

3 MR. WESTBROOK: Your last question just reminded me of this, too.  
4 He said that he's analyzed this case. But he didn't write a report?

5 MS. KOLLINS: No.

6 THE COURT: That's what she said.

7 MS. KOLLINS: No.

8 THE COURT: I'm sorry?

9 MR. WESTBROOK: I said if he generated a report?

10 MS. KOLLINS: No.

11 THE COURT: Okay. Yeah, if there was a report, we'd have to --

12 MS. KOLLINS: No.

13 THE COURT: Okay. Okay. Okay.

14 MS. KOLLINS: I would have -- we would have given that to you.

15 THE COURT: Thank you.

16 MR. WESTBROOK: So no notes on a report?

17 THE COURT: That's what she said. Yeah.

18 MS. KOLLINS: No. None -- other than my phone conversation notes,  
19 my pretrial notes.

20 MR. WESTBROOK: Okay.

21 THE COURT: All right. Thank you.

22 [End bench conference.]

23 THE COURT: Counsel. All right. Very good. Let's -- we're going to...  
24 BY MS. KOLLINS:

25 Q Mr. Pacult, let me repeat my question.

1 THE COURT: Law gets so complicated sometimes. All right. Let's  
2 take --

3 MS. KOLLINS: You'd think -- think we got paid by the word, wouldn't  
4 you?

5 BY MS. KOLLINS:

6 Q Sir, I asked you to give the ladies and the gentlemen of the jury a brief  
7 definition of grooming as it applies to sex offenders.

8 A Certainly. So grooming is the -- the preparation of a child to engage in  
9 sexual activity. So, essentially, grooming are -- can fall under a lot of different  
10 behaviors, but it can be gift giving, attention, compliments, things of that nature.  
11 The individual is trying to establish a relationship with that child, a bond with that  
12 child. It can be done through positive means. I just gave you some examples of  
13 gift giving, attention, affection, hugs, handholds, things of that nature. It's testing  
14 boundaries, breaking down boundaries.

15 The individual ultimately is hoping to engage in sexual behavior  
16 with that child. And also because of the -- the bond that's created with that child,  
17 they're hoping to reduce the likelihood of disclosure. They're hoping for no  
18 disclosure, at least a delayed disclosure, and/or they're also hoping that because  
19 the child now has this relationship, whether it be positive or negative, that the child  
20 feels responsible for the behavior as well, so they're not going to report. And they  
21 feel guilty, and that's, of course, again, that's the -- the grooming process.

22 And, generally, I talk about positive or nice grooming, and then  
23 there can be negative or mean grooming. So I've given you some examples of  
24 the -- the positive, nice grooming. Mean grooming can be lowering of a child's  
25 self-esteem, putting them down. They can threaten them. They can threaten to

1 harm their animal, their sibling, their parent. Threaten to kill them, take them away,  
2 do all kinds of -- of, essentially, bad things. So when the -- when the child is  
3 vulnerable like that, it's a -- it's kind of a double vulnerability. They're either  
4 vulnerable to the good, because then they're going to get gifts, attention, affection,  
5 et cetera, or to negative; They're in fear, they want attention, they need attention,  
6 their self-esteem is lowered, they're vulnerable, They feel like, if I don't do this, I'm  
7 going to be harmed, somebody else is going to be harmed, et cetera.

8               So grooming is a -- it's a really huge aspect of -- of sexual abuse  
9 dynamics, unless it's a very high-risk type of a case. Because the -- the individual  
10 is trying to establish this relationship. And it's not only done of the child, it's also  
11 done with the parents or the -- the guardian. It's also done of the environment,  
12 because, obviously, sexual abuse usually doesn't occur out in a public setting, so to  
13 speak. It's done in private, it's done in secrecy. So how can I get that child alone?  
14 What are the dynamics that I can do to gain access to that child?

15               And, obviously, when you're talking children, you're -- you're  
16 involving the -- the parent or the guardian. How can I gain access to that child? Be  
17 alone with that child? Et cetera.

18               The treatment component of grooming, also, when -- when we  
19 do treatment is really critical, because, obviously, with somebody convicted of a sex  
20 offense, we want them to understand how they groomed their victim, because those  
21 are all early signs, the red flags, the warning behaviors that they're -- they've  
22 identified a victim and are engaging in behavior.

23               So grooming's been a focus -- obviously, I've been doing  
24 treatment for 20-plus years. So that's -- that's one of the first things that -- that I  
25 look for and that's one of the first things that's just established in sex offender

1 treatment, helping that individual understand how they groomed their victim or  
2 victims.

3 Q So part of your treatment component, if you will, is having an offender  
4 identify their grooming behaviors, because those may be some kind of trigger for  
5 them to offend; is that kind of what you're saying?

6 A Yes. Absolutely.

7 Q Okay. And the term grooming, and the kind of -- I'll say science behind  
8 it, is that something that permeates your type of practice?

9 A Absolutely.

10 Q Okay. And is that something that you review in articles and journals  
11 and treatment journals and things of that nature?

12 A I -- I do, but clearly my -- my job almost every day is reading victim  
13 statements. So, I'm -- I'm dealing with sexual abuse cases, child abuse/neglect  
14 cases, things of that nature. So, again, juvenile and adult. So I'm -- I'm reading  
15 victim statements literally almost every day in preparation for doing these  
16 evaluations.

17 So that's -- that's really my -- my focus is very -- it's very clinical.  
18 I'm -- I -- I work with people every single day in -- in some capacity, whether it's  
19 doing this type of work or general therapy as well. But, obviously, this doesn't  
20 involve grooming, but -- so that's -- that's my primary focus. I'm -- I'm a clinician  
21 and that's -- that's what I do.

22 Q Okay. So the vast majority of your experience with grooming, then, is  
23 based on your clinical observations, as well as your treatment of offenders?

24 A Absolutely. And then, obviously, again, participation over the years in --  
25 in various conferences, talking with colleagues, just -- this is -- I mean, this concept

1 is -- it's -- it's rather in stone, so it's -- it's hard to -- there -- if you will, there's not  
2 much else to -- to learn about it or do with it or read about it. It's -- we know what  
3 grooming is.

4 We know why it's done and then it's our job in this arena to  
5 identify it, if I'm working -- if I'm doing treatment, help the offender understand what  
6 their grooming behaviors are. If I'm doing a risk assessment it's to identify what  
7 those behaviors were in the assessment, so that the -- the court, all the involved  
8 parties understand how this individual gained access and it -- it helps us to really  
9 take a look at what type of risk factors this individual presents. How we use the  
10 terms low, moderate, or high risk when we're doing these types of evaluations.

11 So the type of grooming will also help determine whether it's a  
12 low, moderate, or high risk, how much grooming was involved, how extensive was  
13 it, that sort of thing.

14 Q Okay. You were requested by the State in this case to review some  
15 documents; is that correct?

16 A Yes.

17 Q And those documents consisted of some police reports and some  
18 statements of the alleged victims in this case?

19 A That is correct.

20 Q Okay. I had you -- and we paid you to do that, right, because you don't  
21 work in my office, correct?

22 A That is correct.

23 Q Okay. I want to talk to you about some of the behaviors that you  
24 reviewed in this case and what your professional opinion is of those behaviors.  
25 You mentioned --

1 MR. WESTBROOK: Your Honor, I would object, based on what we  
2 talked about at the bench.

3 THE COURT: Yeah. Your objection is -- is noted and preserved, but  
4 overruled.

5 MR. WESTBROOK: Thank you.

6 BY MS. KOLLINS:

7 Q One of the things that you said that grooming, whether by design or just  
8 because the offender figures out that that's a way to get to the kid, that they're  
9 trying to do is test the barriers with that child, right? Test that kid's kind of safety  
10 zone, if you will?

11 A Correct.

12 Q Is that accurate?

13 A That -- that's a piece of it. That's a piece of it, absolutely.

14 Q One of the things that I asked you to look at in this case was the  
15 showing of pornography; do you recall that?

16 A Absolutely.

17 Q Okay. What do you recall about what you reviewed regarding the  
18 showing of pornography in this case?

19 A So what was in the -- in the documentation was that four of the -- four of  
20 the children expressed that the defendant had showed pornography to them on  
21 their phone, consisting of naked I think they used the terms boys and girls of either  
22 essentially what would have been fellatio, oral sex to a man, cunnilingus, oral sex to  
23 a woman. And that -- that was the -- the primary -- the primary gist of the  
24 pornographic material that was reportedly shown.

25 Q In your experience, is pornography or the use of pornography a

1 grooming technique that you've seen before?

2 A Absolutely.

3 Q And why is that?

4 A So when you're dealing with -- with children, and especially this day and  
5 age with technology and cameras and television and movies, what the individual is  
6 essentially trying to do is -- is normalize this behavior. There -- oftentimes you can  
7 probably understand and appreciate a child has never seen fellatio. So how do you  
8 get that child to possibly want to engage in that behavior? Well, here it is on a  
9 phone with -- they're seeing it, so it's normalizing it. It's -- it's starting to expose  
10 them to adult information that they've never had access to before.

11 So the normal hope for the offender is that that child will then  
12 engage in that behavior, become curious. Children are curious, so they want to  
13 understand what -- what is that? Oh. And then maybe the opportunity is there to  
14 engage in that behavior. But now they've been exposed to it, they've seen it, so  
15 now it's -- it's real. It's something that the offender doesn't have to, so to speak, do  
16 themselves. And often it can be adult pornography, it can be child pornography,  
17 because they want that child to be exposed to it.

18 And then again, obviously, a crime has been committed if an  
19 adult shows a child pornography, but they haven't committed a hands-on crime yet.  
20 And again, they're testing that boundary. They're testing that barrier. What's that  
21 child's reaction? Does that child show interest or do they -- oh, that's gross, or I'm  
22 going to tell my mom. You know, if they say something like that, now the offender  
23 knows this is maybe not a child I'm able to engage in this behavior in. But if the  
24 child expresses maybe some interest, potentially, then, obviously, they're -- they're  
25 able to move forward in whatever they are planning to do.

1 But pornography is -- I've seen that in numerous, numerous  
2 cases over the years where a child will report that's how I was a part of the  
3 grooming process.

4 Q So it -- it visually normalizes sex acts, basically?

5 A Yes.

6 Q Desensitizes them to a certain degree?

7 A Yes.

8 Q Okay. I also asked you to look at the component of handing out candy.

9 A Yes.

10 Q Do you recall that?

11 A Absolutely.

12 Q And you mentioned, in your explanation of grooming, that gift giving,  
13 you know, giving of items and such, that that was a pretty typical grooming  
14 behavior. Explain, kind of, the affect of -- of the gift-giving grooming behavior on a  
15 kid. Not necessarily in this case because I'm not asking you to speak in specifics,  
16 but the gift giving on a kid; how is that groom them for some type of sexual  
17 conduct?

18 A Sure. So it's -- it's -- when that child is -- they're -- they're being  
19 rewarded for -- for sexual behavior or for -- for contact. They're going to want to be  
20 around that person more. They're going to expect certain things. They're going  
21 to -- again, this is developing that -- that bond, that relationship, that special -- we --  
22 we have something special. And that child is looking forward to receiving that gift.

23 And again, based on the age of the child, I've seen as simplistic  
24 as candy, which, obviously, with younger children, and then, obviously, with older  
25 children there's -- there's -- I've seen cell phones and trips and money, cars. All



1 kinds of different things that are given to this child.

2                   And that -- and then it kind of goes back to the -- the grooming of  
3 the parent. How -- how is that child able to receive these things? Well, the parent  
4 thinks, wow, what a great -- what a great person. They're super friendly, they're  
5 nice, they're, you know, handing out candy. They're -- they're -- you know, they  
6 really have an interest in my child. They're taking them to California. They're --  
7 they're buying them these certain things, they're paying for their -- for their soccer  
8 season for the year, registration, all kinds of different things.

9                   And, again, on -- on surface it looks fairly innocent, innocuous.  
10 But, you know, the individual oftentimes will have ulterior motives.

11           Q     Can the impact of that grooming have a different effect based on the  
12 socioeconomic status of the kid that's receiving it?

13           A     Oh, most -- most definitely.

14           Q     There was some other gift-giving things in this case I asked you to look  
15 at; do you recall what those were?

16           A     There was -- there was -- well, there was fruit, I believe, those other  
17 things that were given to the children reportedly at the defendant's apartment.  
18 There were promises to take them to Chuck E. Cheese.

19           Q     And just kind of consistent with behaviors that you recognize as positive  
20 grooming, if you will?

21           A     Yes.

22           Q     Okay. And I probably should've asked you this question when I asked  
23 you about the pornography, but you know, you said the pornography essentially  
24 desensitizes these kids; what about exposure of body parts without touching? Just  
25 exposure of body parts without touching; is that a grooming behavior or can it be?

1           A     It -- it can be. But, obviously, we -- we generally use the term grooming  
2 for more of the -- the behaviors that haven't clearly crossed a -- a sexual line.  
3 Obviously, exposing oneself is indecent exposure, open and gross lewdness, et  
4 cetera. So -- but again, a hands-off behavior to test boundaries, to determine if,  
5 can -- can I go further? Does that child have an interest in touching my penis?  
6 Does that child want to do -- does that child -- if they've seen oral sex, would you  
7 like to try this? So definitely a hands-off behavior that could lead to hands on.

8                         But more so typical grooming, again, the hand holding. There's  
9 a -- a term called furtage, which is purposeful, made to seem accidental, touching.  
10 In other words, a -- a brush up against of a breast or a buttocks or a penis and, you  
11 know, guiding -- gauging that child's reaction through tickling or roughhousing or  
12 wrestling or things along those lines to test boundaries. And that -- that would be a  
13 little bit more along the lines of a physical type. That's non -- it's sexual but it's  
14 nonsexual.

15                         And I've read statements where children will say, the first time I  
16 thought it was an accident, but when he did it again I knew it was on purpose.  
17 Again, children know their -- essentially -- their private parts to, you know, a degree  
18 and -- and have some element of -- of boundaries and they know when that space  
19 is being invaded.

20           Q     What about the act of placing candy at or near a private part and having  
21 the child retrieve it; would that be kind of the furtage thing that you spoke about?  
22 So it's kind of --

23           A     It's close --

24           Q     -- not overtly sexual?

25           A     Yeah. It's -- it's -- I mean it's clearly in -- in my estimation, if -- if an

1 individual is placing candy, whether it be back pockets or front pockets, the -- the  
2 opportunity for possible genital contact or contact of the buttocks is -- is obviously  
3 there. And you're now having that child go into that space. Again, if that child's not  
4 willing to do that, then that's telling the offender something. That child's got better  
5 boundaries than I thought. That child's not going to be willing to do that. Or if the  
6 child dives right in, is excited, and gets that -- that piece of candy, they've just been  
7 rewarded, again, for quasi sexual behavior. They don't -- they have probably little  
8 to no idea, based on the child's age, that that's a sexual act or for sexual  
9 gratification for -- for the offender.

10 Q So is that kind of a -- a quasi grooming behavior then? My word, I don't  
11 know that that's a term of art.

12 A Yeah. Yeah. I -- I -- yeah, absolutely.

13 Q You mentioned that there was grooming of parents, as well; what did  
14 you mean by that?

15 A In general or to this case?

16 Q In general.

17 A Okay.

18 Q Just very briefly.

19 A So -- so again, grooming is -- to be able to take somebody's child,  
20 have -- into a car, take them somewhere, into your residence, be alone with them,  
21 that -- that parent has to be groomed for that parent to trust that individual. So it's  
22 about developing this -- this trusting relationship. I trust you with my child. I don't  
23 believe you're going to harm my child. You've done these nice things. You seem  
24 innocent. You seem genuine. You seem whatever, you know, that parent's  
25 perceptions are.

1                   And clearly if the parents don't have -- if -- if they're -- if -- if they  
2 don't know, so to speak, maybe the things that I know or that they haven't learned  
3 in -- in some other way, shape, or form, or have that level of intuition and/or -- I  
4 think you had mentioned earlier, if I can bring in kind of socioeconomic elements to  
5 that, when -- when parents have lesser than they are going to be potentially more  
6 receptive to somebody doing something for their child, because it's something that  
7 they can't do. So the -- so the offender's almost playing off of their own parental  
8 guilt. The parent's parental guilt, that they can't offer these certain things. They  
9 can't do these certain things for the child.

10                   So, I'm kind of that knight and shining armor. I'm going to come  
11 in and really help out and help you and help your child and we -- I see these  
12 dynamics. Oftentimes single-parent households, things of that nature, or where  
13 both parents are working, where that child is more vulnerable, more access to that  
14 child. So that's a -- that's a critical component in the grooming process, as well.

15           Q       And I had you review the case file in this case. What evidence, if any,  
16 did you see of grooming the parents in this case?

17           A       So the -- I believe it was Maria, who is the -- the mother of the -- the  
18 twins and the older sister. The --

19                   MR. WESTBROOK: Your Honor, I object to this line of questioning.

20                   THE COURT: Well, is -- on -- based upon what you -- what we  
21 discussed on the stand or is this lack of foundation, do you want more foundation?

22                   MR. WESTBROOK: It's foundation, qualifications, and also what we  
23 discussed at the stand.

24                   THE COURT: Okay. Well, all right. So --

25                   MS. KOLLINS: Well, so may we --

1 THE COURT: -- let's just add -- we already covered what was on the  
2 stand or -- I mean, what was up here at the bench. Can you see if there's more  
3 foundation for any opinions with respect to grooming of the parents? I want to  
4 know -- I'd like to hear what he reviewed before he reached an opinion. Was it just  
5 the statements of the children or was it something else?

6 BY MS. KOLLINS:

7 Q Mr. Pacult, could you articulate for the court, please, what items you  
8 were given to review for this case?

9 A Certainly.

10 Q And what you reviewed.

11 A So it was the -- the grand jury testimony, a police report that included  
12 statements from four of the alleged victims, their parents, a neighbor, an adult  
13 female neighbor, and very brief comments from the defendant and his wife, and  
14 there was a secondary statement from another alleged victim and her parents.

15 Q So, essentially, everything that we have except for the statements  
16 verbatim. I did not give you a copy of each individual statement. You read the  
17 synopses; is that correct?

18 A I -- I would -- obviously, can only attest to what you gave me. So  
19 that's -- if that's what you gave -- if that's all you -- that's what you gave me. Yes.

20 THE COURT: So I'll overrule the objection and allow the question to be  
21 asked, but leave it up to -- to the jury to decide what weight to give to this  
22 testimony.

23 MS. KOLLINS: Okay.

24 THE COURT: All right.

25 BY MS. KOLLINS:

1 Q You spoke about the woman with the three children, I believe you  
2 called her Maria; is it a possibility that you have those names transposed?

3 A I -- I may. It was either Amanda, I believe, or Maria were the mothers'  
4 names.

5 Q Okay. And we're just focusing on the parents right now so it doesn't  
6 really matter --

7 A Okay.

8 Q -- which mother of which kid they are. But in terms of things that spoke  
9 to you as being parental grooming, what did you see in this case?

10 A So, again, more specific, though, to the -- the two twin girls, Maradel,  
11 Mirabel, and their older sister, they referred to the defendant as Grandfather. So  
12 that's a -- and he lived in the apartment complex and I believe he'd known them  
13 essentially since -- at least the twins, potentially, from -- from birth or very close,  
14 around seven to eight years, and I believe the girls were approximately seven, eight  
15 during this -- this time, and this was just last year.

16 So I'm -- I'm not exactly sure how that individual garnered that  
17 title. That I don't know. That wasn't clearly stated. But he was clearly referenced  
18 as that. The girls referenced him as that. And there was reference to the mother  
19 indicating that she saw him giving candy, saw the girls going in and out of the -- the  
20 apartment to get candy and/or I believe fruit. So those were the -- those were the  
21 primary elements.

22 The statements weren't terribly detailed from -- from the -- the  
23 mother and -- of those children the other child, Yezline, and her younger sister.  
24 Their -- I believe their relationship was much shorter, so I -- I didn't indicate -- I  
25 couldn't establish any parental grooming in that sense. All I know is that they

1 were -- they were all friends in that complex and they all kind of ran together. And  
2 so I -- I don't know what that other mother's belief system was or if -- if she was or  
3 was not groomed.

4 But I genuinely have a belief system that to be in this position  
5 of -- of a grandfather and to be able to have these children come in and out freely of  
6 somebody's home, that would involve some -- in some, way, shape, or form  
7 grooming.

8 Q Of the parents?

9 A Of -- of the parents, correct.

10 Q Okay. Great. Now we spoke about nice grooming a little bit and we  
11 talked, kind of, infiltration into the parent's lives, if you will. I want to talk about I  
12 think what you expressed to be earlier as bad grooming or negative grooming.

13 Just very briefly, what is that again? Because you gave that  
14 explanation at the beginning.

15 A Certainly. So again, the negative grooming, the mean grooming is  
16 threats, lowering of self-esteem, isolating that child. Essentially, just being mean to  
17 them, breaking down their -- their barriers and their boundaries, lowering their  
18 self-esteem. Can be direct threats to them, family members, pets. That -- that's  
19 the short, general version of what mean or negative grooming would look like.

20 Q Would that include, and correct me if I'm wrong, instilling fear into  
21 them?

22 A Absolutely.

23 Q Okay. Based on the documents that you reviewed that you just  
24 expressed, did you see any evidence in this case of negative grooming?

25 A Yes.

1 Q What did you see, sir?

2 A So when the defendant reportedly told the children that he would take  
3 them far away, never see their mothers again, that allegedly stated that he would  
4 have somebody go to I believe it was Yezline's father's work and have him killed.  
5 Threatening to kill the mothers. The children indicated that, obviously, they were in  
6 fear for their parent's lives. Potentially had a belief system, I believe, one child, I  
7 think it was Yezline at the end said she didn't believe that the defendant was  
8 capable of that, but the other children reported definite fear that this could occur  
9 and -- and that was one of the -- one of the reasons that they were -- that they  
10 didn't disclose or report these alleged behaviors.

11 Q Is that delay in disclosure a frequent consequence of negative  
12 grooming?

13 A Absolutely.

14 MS. KOLLINS: Court's indulgence.

15 Your Honor, I'm going to pass the witness.

16 THE COURT: Okay. Cross-examination.

17 **CROSS-EXAMINATION**

18 BY MR. WESTBROOK:

19 Q Sounds like we can't trust anybody, right?

20 MS. KOLLINS: Objection. Argumentative.

21 THE COURT: Well, he's -- he can answer. Overruled.

22 THE WITNESS: Well, it's -- it's a challenge based on the statistics of  
23 who can potentially harm a child.

24 BY MR. WESTBROOK:

25 Q Who can potentially harm a child; that's anybody, right?



1           A     That is anybody, correct.

2           Q     So if anybody can do it, then we can't trust anybody; is that what you're  
3 saying?

4           A     Not necessarily saying that.

5           Q     Okay. Let me be more specific. If you're a parent, you can't trust  
6 someone being nice to your child, because they might be grooming them for some  
7 kind of sexual assault, right?

8           A     One of the -- one of the things that I encourage parents to do in -- in  
9 general is to -- you have to educate your children. You have to have good  
10 communication with your children, you have to know your children, you have to  
11 explain to them literally what some of these concepts are and -- and do your very,  
12 very, very best to have as much communication, contact, oversight. But at the end  
13 of the day we have to leave our children with professionals, with adults, with  
14 coaches, with teachers, with family members, with babysitters. So it's a -- it -- it is a  
15 challenge.

16          Q     Coaches, teachers, babysitters; I mean they could all be committing  
17 sexual acts with children, right?

18          A     I've had the misfortune of evaluating everybody in that category.

19          Q     Okay. So if you're a parent, you can't trust them, right?

20          A     I -- I would say you should have tempered trust.

21          Q     All right. Well, let's talk about kids. If you're a kid, you can't trust if an  
22 adult's being nice to you, because they might be grooming you, right?

23          A     Children are naturally trusting. So I believe that that's where, I think --  
24 unfortunately, there was a special last night on -- on Fox 5 about stranger danger  
25 and children, you know, being told by the parent this. And then an individual comes

1 up and I believe the example is actually offering candy to a young lady, a little girl  
2 probably about four or five years old. Mom just ran to the house, the park, and she  
3 watched her little girl walk off with -- with this stranger.

4 Q Sure. Stranger danger. But you're not talking about stranger danger  
5 necessarily. You're talking about neighbor next door, uncle, grandfather, maybe  
6 even stepfather, mother or father. I mean it's -- any adult can be the danger, right?

7 A Including strangers, certainly.

8 Q Okay. So if you're a kid and an adult's giving you a candy bar or says,  
9 you know, here's a Matchbox car, that could be grooming.

10 A Could be.

11 Q Okay. Now if you're just a -- a regular adult, not a parent or a kid, you  
12 can't do something nice for a kid, because it might be misconstrued as grooming,  
13 right?

14 A I think it all depends on that individual's comfort and safety level of how  
15 their behaviors could be perceived. But, obviously, there are still well-intentioned  
16 individuals in the community. There's philanthropic individuals and, you know, the  
17 not -- I -- I -- not everybody's intention is to molest a child because they've given  
18 them something.

19 Q Okay. I mean not -- it's not just not everybody, it's almost nobody,  
20 right?

21 A Well, the -- the statistics are essentially about one in four children  
22 experience some form of abuse in their lifetime. So that's a pretty large number.

23 Q So your statistic is that 25 percent of adults are sexually molesting kids?

24 A That's the -- that's the national average, certainly.

25 Q Okay.

1 THE COURT: What?

2 MS. KOLLINS: I'm going to object. He mischaracterized the  
3 testimony.

4 MR. WESTBROOK: He just agreed that 25 percent --

5 THE COURT: Well, he's --

6 MR. WESTBROOK: -- of adults are molesting kids. He said that.

7 MS. KOLLINS: He said one out of four children and he said 25 percent  
8 of adults. Those are two different numbers.

9 THE COURT: He was trying to clarify an answer that -- that was  
10 somewhat ambiguous. And -- and he's asking it in a -- in a way that was trying to  
11 elicit further information --

12 MS. KOLLINS: Sure.

13 THE COURT: -- to help the jury. So overruled.

14 BY MR. WESTBROOK:

15 Q All right. What you're talking about here and what you reviewed in this  
16 case are allegations, right?

17 A Correct.

18 Q And the behaviors you're reviewing and you're classifying as grooming  
19 are grooming because of those allegations, right?

20 A Again, it's difficult to establish at this moment in time, but it certainly  
21 appears to be grooming for sexual gratification.

22 Q If the accusations are true, right?

23 A Correct.

24 Q Okay. If they're false accusations, then it wasn't grooming?

25 A If they are false accusations then, correct, it would not be grooming.

1 Q Okay. You said that what we know about grooming is pretty much set  
2 in stone. There are no surprises as to what grooming is; is that fair to say?

3 A For the most part, yes.

4 Q Okay. And you mentioned that there was good or positive grooming  
5 and bad or negative grooming, right?

6 A Yes.

7 Q And you said that either the kids are vulnerable to the good or the bad  
8 grooming, right?

9 A Obviously, it can be both, certainly.

10 Q But, generally, either -- I mean, what you said was that either  
11 vulnerable to the good or the bad grooming, right?

12 A That would be a mischaracterization of the description of -- I was  
13 providing an explanation to the jury of what the two different kinds are --

14 Q Okay.

15 A -- but I -- obviously, an individual can engage in both and a child can be  
16 receptive or susceptible to both.

17 Q Okay. The purpose of both the good and the bad grooming, in your  
18 professional opinion, is to maintain secrecy, right?

19 A One of the motivating factors.

20 Q Okay. You try and make sure the kids don't report you, right?

21 A Correct.

22 Q You want your actions to be kept secret, right?

23 A Correct.

24 Q You want the actions to continue, right?

25 A Correct.

1 Q And secrecy allows that to happen.

2 A Correct.

3 Q Once adults find out about it, it's all going to stop and you're going to be

4 in trouble, right?

5 A Correct.

6 Q Okay. The sex offenders want to avoid getting caught, right?

7 A Correct.

8 Q So they're grooming in order to keep their secret.

9 A In one of the -- one of the motivating factors.

10 Q In part.

11 A Yes.

12 Q In part. And that's why you said they don't do this in public, right?

13 A I was referring to most crimes aren't going to happen in generally broad

14 daylight. Those are a -- more of a risky offender. And I think I testified to the fact

15 that that's a part of -- of my job, when I'm doing a psychosexual, to identify the risk

16 behaviors. And if they fall into a high-risk category of grooming -- so clearly, we do

17 know that on rarer occasions, assaults will occur in daylight. Exhibitionism occurs

18 very often in the public and community, and those are higher-risk behaviors. A lot

19 of behaviors occur, obviously, again, in a home, in a car, in a bedroom, et cetera.

20 Q Exhibitionism sounds like the opposite of wanting to keep a secret,

21 right? I mean, the word exhibit means to show, right?

22 A Absolutely.

23 Q Okay. Secret means not to show, right?

24 A Well, if -- if we want to start to break down exhibitionists, I mean, we

25 can -- we can do that, if you want -- if you want.

1 Q Well, I haven't ask you that.

2 A Okay.

3 Q I just asked you the definition of the word exhibit --

4 A Okay.

5 Q -- or exhibitionist. To show, right?

6 A Certainly.

7 Q You want to be in public. You want to be seen if you're an exhibitionist,

8 right?

9 A Correct.

10 Q Okay. If you're trying to keep a secret through grooming or any other

11 technique, that's the opposite impulse of an exhibitionist; wouldn't you agree?

12 A Again, depending upon each case dynamic. And that's where -- that's

13 where, again, I'll kind of refer back to my job doing psychosexual evaluations, is to

14 really break down all the different moving parts. It's not as simplistic as, well, if the

15 individual is exposing themselves, they don't want to -- they don't want to get

16 caught.

17 I mean, obviously, again, there -- there's -- there's a lot of

18 different reasons why people do certain things, but they usually are still at the end

19 of the day trying to not get caught.

20 Q Okay. They're trying not to get caught. So doing these things outside

21 in a busy apartment complex, does that sound like a good way to get caught --

22 THE COURT: So --

23 BY MR. WESTBROOK:

24 Q -- or a good way to keep a secret?

25 THE COURT: So are you -- you're -- are you trying to get my attention

1 or were you --

2 MS. KOLLINS: Well, I was going to object, but then you pointed at me,  
3 so I decided not to.

4 THE COURT: No, I thought you were -- I -- I wasn't trying to inhibit. I  
5 just -- I was pointing that way so he would know that there is something going on  
6 behind him. That's all I was trying to do.

7 MS. KOLLINS: Well, he's asking him to speculate.

8 MR. WESTBROOK: Right.

9 MS. KOLLINS: That's what I'm saying.

10 MR. WESTBROOK: I am.

11 THE COURT: Well, I -- I think that the question does cause -- call for  
12 speculation, because of the way you phrased it. You said, these things. And I'm  
13 trying to understand -- I want my jury to understand, when you say these things, are  
14 you talking about the non-illegal grooming activities or were you talking about the --  
15 the improper -- alleged improper sexual conduct? When you say these things, if  
16 you want to get a clear answer from him, you've got to be precise as to what you  
17 mean.

18 MR. WESTBROOK: Okay. Well --

19 THE COURT: All right. So sustained.

20 MR. WESTBROOK: I will -- I'll be more precise.

21 THE COURT: Thank you.

22 MR. WESTBROOK: Okay.

23 BY MR. WESTBROOK:

24 Q Doing these things, and I'll be very specific, showing your penis to a  
25 group of children, not just one child, but four or five or six or maybe seven children

1 at the same time, is that a good way to maintain a secret?

2 A I would have to answer no.

3 Q And doing something outside, whether it's night or day, doing it outside  
4 in an apartment complex where other people live, is that a good way to maintain a  
5 secret?

6 A I would have to answer no again.

7 Q You said children are naturally curious, right?

8 A Yes.

9 Q Being naturally curious, sometimes they're drawn to adult things, right?

10 A Absolutely.

11 Q Okay. They don't need an adult to draw them to these things; they  
12 could draw into them on their own, right?

13 MS. KOLLINS: Well, objection. Vague and calls for speculation. I  
14 think that's probably child-specific.

15 THE COURT: Yes. That's sustained.

16 You need to rephrase that.

17 MR. WESTBROOK: Okay.

18 THE COURT: It's -- it's too unclear what you're asking.

19 MR. WESTBROOK: All right.

20 BY MR. WESTBROOK:

21 Q Can children develop curiosity about adult things on their own?

22 A I believe so.

23 Q Is that fairly common?

24 A In terms of looking at child development and interest, depending upon  
25 the age, certainly.



1 Q Okay. Their friends can draw them to adult things, right?

2 A Most definitely.

3 Q Playing doctor is an example of kids being drawn to adult things or  
4 being curious about bodies and that sort of thing that we would consider adult.

5 A Again, that -- that's still more in the lines of children, child normal sexual  
6 behavior. It's not necessarily adult behaviors. Fellatio, cunnilingus, sexual  
7 intercourse, now you're moving into a different category --

8 Q Okay.

9 A -- but show me yours, show you mine, you know, some touching,  
10 things like that, that falls still into a child play -- playing doctor level.

11 Q And that's why Google has Safe Search, for example, is because  
12 children are drawn to adult things and we don't want them to see the adult things; is  
13 that fair to say?

14 A I would agree with that.

15 Q Okay. You pointed out that in your research of the case, and correct  
16 me if I'm wrong, but you said a friendship between Don David and his wife Elena  
17 with the parents predated their children, right?

18 A I said it was very close to around the time I was -- from what I read, I  
19 believe it was about seven to eight years.

20 Q Okay. So they knew them before they had the kids, right?

21 A I -- I don't know.

22 Q You're not sure?

23 A Not -- not 100 percent sure.

24 Q Okay. When you were reading the case file, did you take notes on it?

25 A I did.

1 Q Do you have the notes with you today?

2 A On my computer.

3 Q On your computer; do you have your computer with you today?

4 A I do.

5 Q Okay. I was just checking with that.

6 MR. WESTBROOK: Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. WESTBROOK: Pass the witness. Thank you.

9 THE COURT: Thank you, Mr. Westbrook.

10 MS. KOLLINS: Court's indulgence, please. Just one moment, Your  
11 Honor.

12 THE COURT: Yes.

13 **REDIRECT EXAMINATION**

14 BY MS. KOLLINS:

15 Q Just a few more questions, Mr. Pacult. Thank you.

16 A You're very welcome.

17 Q Do you think, sir, that the level of negative grooming could affect the  
18 venue an offender might choose, *i.e.*, inside/outside?

19 A I believe so.

20 Q And how might that happen?

21 A I think when you're looking at -- from a -- a child's perspective, when  
22 you're looking at a positive reward of a hug or an attaboy or a -- a piece of candy or  
23 buying something on iTunes versus I'm going to kill your dog, I'm going to kill your  
24 parents, I'm going to kill your brother, I'm going to take you far away and you're  
25 never going to see your family again, probably on that scale of impact, okay, if I

1 don't get any more iTunes or any more candy, not a big deal. I'll never see my  
2 mother or father again or I'll be killed or my brother or sister will be killed or my pet,  
3 my -- my favorite pet will be killed, I think that would certainly outweigh and have a  
4 much more potential impact as to, then, what that child would or wouldn't be  
5 receptive to.

6 Q Okay. So if I understand what you're saying, and please correct me if  
7 I'm wrong, would that mean the offender had more control over that child with  
8 negative grooming, maybe, than positive grooming?

9 A Yes.

10 Q Would -- could that contribute to an offender's higher level of risk  
11 behavior, if you will?

12 A I think what -- what I've seen over the years is that as abuse continues,  
13 offenders get more brazen. They continue to take more risks, because they believe  
14 I'm going to get away with this, I'm not going to get caught, these children haven't  
15 reported, there really is nothing that's happening. And oftentimes we'll see an  
16 escalation in the behavior, because again, it starts off rather innocuous, rather  
17 innocent, and then it progresses to the hands-off variety.

18 We've talked about the showing of pornography to sexual  
19 comments to you're cute, this, that, the other thing, to again, exhibitionism. And  
20 then it can certainly lead to hands-on behaviors, sexual -- full sexual intercourse,  
21 and -- and, obviously, we -- we know across this -- this country that children are  
22 raped and murdered and --

23 MR. WESTBROOK: Objection, Your Honor.

24 THE COURT: Yeah, well --

25 MR. WESTBROOK: He's gone way beyond the scope of the question

1 and -- and that's improper testimony.

2 THE COURT: It is. It's -- let's try to refocus. I'm going to ask the jurors  
3 to strike his answer.

4 Please -- please have him refocus to your specific question, all  
5 right.

6 MS. KOLLINS: His answer in its entirety or just the last portion?

7 THE COURT: The last portion of his answer, please.

8 MS. KOLLINS: Thank you, sir.

9 THE COURT: Thank you.

10 BY MS. KOLLINS:

11 Q And -- and my question was, sir, as an offender feels more control over  
12 a kid by saying negative grooming, could he be willing to engage in more risky  
13 behaviors, *i.e.*, doing things outside, where he knows the kids aren't going to tell,  
14 but he's not really worried; does it, you know -- kind of just focused on that venue.

15 A Yes. I -- again, there -- there's -- I -- I would have to maybe get into  
16 more offender thinking and offender dynamics to explain that, because it's not  
17 just -- it's not just the grooming. There's a -- a concept called thinking errors and  
18 how an offender rationalizes, minimizes, justifies, excuse, excuses, denies --

19 THE COURT: Did you do any -- any work in that area in this particular  
20 case?

21 THE WITNESS: In this --

22 THE COURT: Analyzing -- analyze thinking errors in this case?

23 THE WITNESS: No. I --

24 THE COURT: Was that part of your research here? Okay.

25 THE WITNESS: No.

1 THE COURT: I think we should avoid that topic.

2 MS. KOLLINS: Okay.

3 THE WITNESS: Okay.

4 THE COURT: All right.

5 BY MS. KOLLINS:

6 Q Mr. Westbrook started out with a really broad statement, you can't trust  
7 anybody; do you remember that?

8 A I do.

9 Q Okay. And he narrated a whole a group of individuals, can't trust  
10 coaches, teachers, doctors, nurses. I don't know if he said nurses, I'm sorry.  
11 Babysitters, stepfathers I think he said. Have you, in fact, had offenders in all those  
12 categories?

13 A I have.

14 Q Okay.

15 MS. KOLLINS: Nothing further, Judge.

16 THE COURT: All right. Any recross? Anything?

17 MR. WESTBROOK: Just briefly.

18 THE COURT: Okay.

19 **RECROSS-EXAMINATION**

20 BY MR. WESTBROOK:

21 Q You were talking about negative grooming; do parents use negative  
22 grooming on their own kids?

23 A Well, grooming can have a -- a broad definition. Obviously, for the  
24 purposes of my testimony, I'm talking about grooming for the -- the plan to  
25 victimize, to sexually victimize a child.

1 Q Okay. Just for sexual victimization. If a parent threatens their kids with  
2 violence or spanks them to control their behavior, would you consider that  
3 grooming?

4 A No. That's -- that's

5 Q Maybe not grooming for sexual purposes, but for other behavior?

6 A Well, it's -- it's discipline. From a parental standpoint, I -- I would put it  
7 into a different category. I think parents -- if we want to talk about parenting and  
8 how we groom our children for success, then we would put them in the best  
9 schools, make them study X, Y, and Z in hopes that they get to the best colleges.  
10 So that's -- that's grooming in that sense, certainly.

11 Q Well, it sounds like the idea of grooming is to get the kid to do what you  
12 want, right?

13 A In -- in a sense, correct.

14 Q And negative grooming is using fear to get the kid to do what you want,  
15 right?

16 A Correct.

17 Q So you could spank somebody or make them fearful of physical abuse  
18 to get them to do what you want, right?

19 A Potentially.

20 MR. WESTBROOK: Nothing further.

21 MS. KOLLINS: Nothing else.

22 THE COURT: Is that it?

23 MR. WESTBROOK: Good for me.

24 THE COURT: I have a question, but I don't...

25 MS. KOLLINS: May we approach?

1 MR. WESTBROOK: If we could approach?

2 THE COURT: Yeah.

3 [Bench conference transcribed as follows.]

4 THE COURT: I'll check with you guys before I ask it.

5 MS. KOLLINS: Okay.

6 THE COURT: So. If -- my question, I was wondering, I think it has  
7 some application to this case. Should -- should society encourage adults not to  
8 engage in grooming behavior or -- or behavior that could be construed or  
9 misconstrued as grooming behavior?

10 MR. WESTBROOK: I think and I agree that's a little philosophical for  
11 this.

12 THE COURT: Well, I think it's -- well, okay. I --

13 MS. KOLLINS: I mean I -- I think there's all --

14 THE COURT: If you want me -- if anyone doesn't want me to ask it, I  
15 won't as it.

16 MS. KOLLINS: I don't.

17 THE COURT: Okay.

18 MS. KOLLINS: And -- and John would probably love to talk your ear off  
19 about it later.

20 THE COURT: I would love to hear that.

21 MR. WESTBROOK: Actually, I was going to say that. Yeah.

22 THE COURT: Okay. Thank you.

23 MS. KOLLINS: Okay.

24 THE COURT: Appreciate it.

25 MS. KOLLINS: Thank you.

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THE COURT: All right.

[End of bench conference.]

THE COURT: The judge doesn't have any questions.

Does the -- the jury have any questions? All right. Thank you.

MR. WESTBROOK: Okay. A question.

THE COURT: That's okay, we'll -- yeah, well, I always give the parties  
a chance to follow up.

[Bench conference transcribed as follows.]

MS. KOLLINS: Are you writing all this down?

MR. WESTBROOK: I'm not. I should've been doing it the whole time.

THE COURT: Okay. There you go.

MS. KOLLINS: That's -- I think that's fair.

MS. KIERNY: That's fine.

MS. KOLLINS: [Indiscernible.]

MR. WESTBROOK: It's -- it's fine if he has a specific foundation basis  
for it.

MS. KIERNY: I think it's fine.

THE COURT: We'll let --

MR. WESTBROOK: Yeah.

THE COURT: -- let him know.

MR. WESTBROOK: Yeah. Absolutely.

THE COURT: Okay. Thank you.

MS. KIERNY: Oh, so sorry.

[End of bench conference.]

THE COURT: All right. So I'm going to ask you this question --



1 THE WITNESS: Certainly, Your Honor.

2 THE COURT: -- and you can respond to the jurors --

3 THE WITNESS: Absolutely.

4 THE COURT: -- to the extent -- to extent you can, to extent you have  
5 proper foundation to answer.

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. In your line of work, how many times have you  
8 come across a person who would groom more than one child with other children  
9 around watching, or all children in a group?

10 THE WITNESS: Certainly. Just recently. I had a -- a case that was  
11 rather similar, where an individual had brought children into his apartment with  
12 the -- the --

13 MR. WESTBROOK: Your Honor, I have an objection. Can we  
14 approach?

15 THE COURT: Well...

16 MR. WESTBROOK: I'll -- you'll -- I think you'll agree. If I could  
17 approach before this gets --

18 THE COURT: Hold on. Let me look at the question again. Just --

19 MR. WESTBROOK: All right.

20 THE COURT: -- maybe I could figure this out.

21 So let me just stop you and -- and before you give an anecdote of  
22 what -- what happened recently --

23 THE WITNESS: Certainly.

24 THE COURT: -- the question was, in your line of work, how many  
25 times have you come across. And then I'm not going to read the rest of it, all right.

1 THE WITNESS: Okay.

2 THE COURT: So focus on that part of the question. How many times?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: All right. And then I'll let the parties see if they want to

5 ask any follow up, okay?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: Thank you. Go ahead.

8 THE WITNESS: Okay. You're welcome.

9 THE COURT: Does that allay your question -- your --

10 MR. WESTBROOK: That's right.

11 THE COURT: Okay.

12 THE WITNESS: Okay. I need to ponder for a second, if I may,

13 because the -- the most recent case just came to mind with that question. There --

14 there have been -- there have been a few cases, definitely, over the years that have

15 involved multiple victims in -- in dynamics of -- if -- if I -- may I, Your Honor,

16 elaborate?

17 THE COURT: To some extent, yes.

18 THE WITNESS: Okay. So a case for somebody that fell into the

19 category of a boy-lover pedophile who would -- was engaging groups of young men

20 in -- at -- at their home at the same time, paying them to do different things, yard

21 work and exposing them to pornography in the residence, taking them -- doing all

22 kinds of different things along those lines, that was -- that was a group. The most

23 recent case, again --

24 THE COURT: So why don't you not -- not discuss the specifics of any

25 one case.

1 THE WITNESS: Okay.

2 THE COURT: Just --

3 THE WITNESS: So -- so --

4 THE COURT: I just wanted you to define the --

5 THE WITNESS: Certainly.

6 THE COURT: -- parameters of your answer that fit within quantifying  
7 the number of times.

8 THE WITNESS: Certainly, Your Honor. I -- I wish I could give an exact  
9 number of -- like I said, I -- it's -- I've conducted thousands of adult risk  
10 assessments. So there -- there's a few that -- that come to mind. And then,  
11 obviously, just understanding some -- based on each individual case and that  
12 dynamic and that type of offender, then there's -- there can be all kinds of different  
13 variables that -- that kind of come into play.

14 And that's kind of what I was explaining a little bit earlier, about  
15 each case kind of has its own merit, but because each offender is -- is different.  
16 There's no -- we have that -- that label, sex offender is a -- is a large label. And  
17 underneath it, there's categories, and underneath -- underneath each category,  
18 there's sub-categories. And -- and that's, if you will, that's my job to help break that  
19 down for the court, for the DA's office, for parole and probation. And ultimately for  
20 the community as a -- doing contracted work with the -- with the Department of  
21 Public Safety. That's -- that's my -- my primary focus and job is community safety.

22 THE COURT: Thank you. I appreciate you responding to the juror's  
23 question.

24 THE WITNESS: You're welcome, Your Honor.

25 THE COURT: Anything further from the parties?

1 MS. KOLLINS: Not -- not from the State, Your Honor.  
2 THE COURT: All right.  
3 MS. KOLLINS: Thank you.  
4 MR. WESTBROOK: I've got a few things, Your Honor.  
5 THE COURT: All right. Can you limit it? You're -- you're limiting your  
6 follow up --  
7 MR. WESTBROOK: Just wait a second.  
8 THE COURT: -- to -- to the question or his remarks.  
9 MR. WESTBROOK: Exactly, Your Honor. Just questioning his  
10 remarks.

11 **FURTHER RECROSS-EXAMINATION**

12 BY MR. WESTBROOK:

13 Q You said you've worked thousands of cases, correct?  
14 A That's correct.  
15 Q Over how many years?  
16 A 20-plus.  
17 Q 20-plus years, thousands of cases. And your response is a few cases  
18 out of all those thousands of cases involved public acts with groups of children?  
19 A That -- that came to mind off the top. Yes, sir.  
20 Q Okay. So if it was a hundred cases and there was one, that would be  
21 one percent, right?  
22 A I believe so.  
23 Q But it's thousands of cases, and you could think of two off the top of  
24 your head, right?

25 MS. KOLLINS: Objection. Mischaracterizes the testimony.

1 THE COURT: Well, want him -- you want him to ask directly again how  
2 many -- because I know it was a -- you said a few. Not -- he said a few, not two,  
3 right?

4 MS. KOLLINS: Correct.

5 MR. WESTBROOK: He mentioned a specific --

6 THE COURT: Okay, thanks. So that's sustained.

7 MR. WESTBROOK: Okay.

8 BY MR. WESTBROOK:

9 Q You mentioned a specific memory of two. Describe --

10 THE COURT: Well, he started to talk about two specifics and then I cut  
11 him off.

12 MR. WESTBROOK: Exactly, yeah. Described one, didn't describe the  
13 other.

14 BY MR. WESTBROOK:

15 Q Can you think of any more specific ones in your head right now?

16 A None -- none that are coming to mind.

17 Q Okay. So out of thousands, is thousands, like, closer to 10,000 or is it  
18 closer to 1,000?

19 A Probably 6,000 by now.

20 Q So Out of 6,000, if you can think of two cases -- or is that .03 percent of  
21 cases would follow that -- into that mould, right?

22 A If your math is correct.

23 Q Okay. I don't know if it is, I'm a lawyer.

24 But you would agree that it would be extremely rare, given your  
25 experience in your thousands of cases, to have somebody do this with groups of

1 kids in an open setting without secrecy and without being secluded, right?

2 A Obviously, my experience is limited to -- to my experience. I can't  
3 speak for the other --

4 Q I'm only asking for your experience.

5 A Yeah -- evaluators in -- in this community. But it -- it, again, it would --  
6 would fall into a rarer category, Certainly.

7 Q Okay. And even rarer when you consider categories such as boy-lover  
8 pedophile. Boy-lover pedophile is, I'm assuming from the statement, a pedophile  
9 who loves boys?

10 A That would be correct.

11 Q Okay. I figured that was it. They exclusively target boys, right?

12 A Very specific age -- age -- age ranges, yes.

13 Q And this is because real sex offenders have a proclivity for something  
14 specific; is that right?

15 MS. KOLLINS: I'm going to object, Your Honor.

16 THE COURT: I'm sorry. Yes, ma'am?

17 MS. KOLLINS: This is --

18 THE COURT: Object?

19 MS. KOLLINS: This is far beyond the scope of the question. You didn't  
20 allow Mr. Pacult to elaborate --

21 THE COURT: Yeah. I think this has gone beyond the scope of --

22 MR. WESTBROOK: If I may, Your Honor. He mentioned not only a  
23 specific category called boy-lover pedophile --

24 THE COURT: Yeah.

25 MR. WESTBROOK: -- but he mentioned sub-categories and

1 sub-categories of sub-categories.

2 THE COURT: Well, I know. But --

3 MR. WESTBROOK: I have about two questions.

4 THE COURT: -- but we -- but the only purpose for the follow-up is just  
5 to try and clarify the response to the jury question.

6 MR. WESTBROOK: Okay.

7 THE COURT: And I think we -- we have thoroughly covered, you know,  
8 the answer that the jury was looking for.

9 MR. WESTBROOK: Okay.

10 THE COURT: All right.

11 MR. WESTBROOK: In that case --

12 THE COURT: And now you're trying to -- now you're trying to get into,  
13 you know, new topics that could've been covered on cross or recross.

14 MR. WESTBROOK: Well, I -- I certainly don't want to get into a new  
15 topics. So my only question is --

16 THE COURT: Well, let's hear it before he answers.

17 MR. WESTBROOK: -- does the -- would the inclusion of both boys and  
18 girls in a very public setting all at the same time make this even more rare?

19 THE COURT: Well, I'll go ahead and allow that, because, yeah, we're  
20 still trying -- we're trying to quantify how many times this type of, like, sexual  
21 predator-type behavior following grooming has taken place. And that -- that was  
22 the point of the question.

23 MS. KOLLINS: Absolutely, Your Honor. I would just ask that you --

24 THE COURT: Yeah.

25 MS. KOLLINS: -- strike the boy-lover pedophile questions from the

1 record. Because if you recall, Mr. Pacult wasn't allowed to finish his story about  
2 that. So Mr. Westbrook --

3 THE COURT: Yeah.

4 MS. KOLLINS: -- took that phraseology and threw it into a question.  
5 And we stopped him from giving that factual scenario.

6 MR. WESTBROOK: To be fair, Your Honor --

7 MS. KOLLINS: So I just ask that that be stricken.

8 THE COURT: Yeah, I think that's -- I think that's fair. Because --

9 MR. WESTBROOK: The entire boy-lover pedophile story actually was  
10 told here in court. I think we all heard it. But if you want to strike everything about  
11 that story --

12 MS. KOLLINS: Oh, jeez.

13 MR. WESTBROOK: -- then I'm fine with that.

14 THE COURT: I -- I think -- I think we've covered this. And so I'm going  
15 to say that we've -- we've answered the jury question, all right?

16 MR. WESTBROOK: All right. Thank you, Your Honor.

17 THE COURT: So -- no, thank you. I appreciate that.

18 Did I see any other -- any other hands? No? All right. So I'm  
19 going to let you leave. You're excused. Thank you for your time.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: All right. Watch your step.

22 THE WITNESS: Absolutely.

23 THE COURT: All right. Can we call the next witness?

24 MS. KOLLINS: Could we take a minute before we call Ms. Ochoa?

25 THE COURT: A minute? Or do you need, like, just to go look outside



1 or you want, like, a break?

2 MS. KOLLINS: I -- I would like to look outside and see if she's here.

3 THE COURT: Yeah. Go ahead.

4 MS. KOLLINS: She's going to be a long witness. That's why I said --

5 THE COURT: Okay. Let's -- let's find the person and then maybe get  
6 started for about 15 minutes or so.

7 [Pause in proceedings.]

8 MS. KOLLINS: Okay. The State would call Elizabeth Espinoza.

9 THE COURT: Elizabeth Espinoza. All right. That's the next person.  
10 And if my math is correct, is that witness 19? I'm trying to keep --

11 MS. KOLLINS: Your Honor, I --

12 MR. WESTBROOK: Don't ask me about math, I clearly can't do it.

13 MS. KOLLINS: -- if you'd give me a moment I will count for you. I'm  
14 not -- I --

15 THE COURT: That's okay.

16 MS. KOLLINS: Sounds about right.

17 THE COURT: I don't know. You guys might --

18 UNIDENTIFIED SPEAKER: I have 18. She would be 18 according to  
19 my notes.

20 THE COURT: Okay. We have one person that came back twice, so I  
21 counted -- I gave that person an -- an extra number. So remember we -- they --  
22 they finished and then they recalled, so. So maybe that's why I'm up to --

23 Hi. The court clerk will administer your oath.

24 **ELIZABETH ESPINOZA,**

25 [having been called as a witness and being first duly sworn, testified as follows.]

1 THE CLERK: Please be seated. Please state and spell your first and  
2 last name for the record.

3 THE WITNESS: Elizabeth Espinoza. E-L-I-Z-A-B-E-T-H  
4 E-S-P-I-N-O-Z-A.

5 **DIRECT EXAMINATION**

6 BY MS. KOLLINS:

7 Q Good afternoon, Ms. Espinoza. Thank you for your patience. How are  
8 you today?

9 A I'm good, thank you.

10 Q Good. Ma'am, what is your occupation?

11 A I work as a forensic interview specialist for the Department of Family  
12 Services.

13 Q And how long have you been employed in that capacity?

14 A Approximately two years, with the agency about 12 years.

15 Q What education qualifies you to perform as a forensic interviewer?  
16 Forensic interview specialist, excuse me.

17 A I have a bachelor's degree. You have to have experience working with  
18 children or populations at risk. You have to have training for forensic interviewing.  
19 I have a approximately 160 hours of training I received prior to doing interviews.

20 Q How many -- and you are one of the Spanish-speaking forensic  
21 interviewers, correct?

22 A Yes.

23 Q Here at the Child Assessment Center. How many interviews have you  
24 conducted of children since you've been employed or in your career?

25 A Close to 1,000.

1 Q Okay. Now -- excuse me. I apologize.

2 When children are forensically interviewed, it's common for  
3 these kind of one-stop shop advocacy centers to have a protocol that they use to  
4 interview those kids?

5 A Correct.

6 Q Does the Southern Nevada Child Assessment Center have a protocol  
7 that it employs to interview children?

8 A Yes. It is the National Children's Advocacy Center protocol.

9 Q Okay. Just very briefly for the ladies and gentlemen of the jury, just  
10 kind of tell them what the stages of that are and how that works.

11 A Okay. There are two stages. The initial, the first stage, is for rapport  
12 building with the child. You allow them to talk to you about their likes and dislikes.  
13 It's a manner in which we try to get the child to feel comfortable. We break the ice,  
14 so to speak. We talk about family and we gauge where they're at with their  
15 cognitive abilities. We ask them to give us a narrative episodic memory.

16 And then we transition to the second phase which is the  
17 substantive phase. And that's where we transition to tell me why you're here. And  
18 use open-ended questions, non-leading, so that they can give us information in  
19 their own words.

20 Q Now, you do these interviews for all types of purposes, correct?

21 A Yes.

22 Q Okay. So if a kid is a witness to a crime, you might forensically  
23 interview them?

24 A Yes.

25 Q If they are alleged to be the victim of either physical or sexual abuse, it

1 might be your job to interview them, correct?

2 A Yes.

3 Q And those kids come to you a bunch of different ways, right?

4 A Yes.

5 Q They can come to you from all the law enforcement in this county,  
6 North Las Vegas, Henderson, Metro, right?

7 A Yes.

8 Q Also Child Protective Services?

9 A Yes.

10 Q Sometimes at the request of the district attorney's office, you may  
11 interview a child, correct?

12 A Yes.

13 Q So all different ways. I want to talk to you about a set of interviews  
14 back on -- let's talk about November 2nd, first of all, of four little girls. Really similar  
15 in age. Do you recall that set of interviews?

16 A I do. It was five little girls.

17 Q Okay. Almost look like paper dolls if you lined them all up, right? They  
18 all look a lot alike?

19 A Right.

20 Q Which child did you interview first?

21 A Maradel.

22 Q Maradel. Okay. And I don't know -- I know we just kind of did a hearing  
23 on this, I'm forgetting which questions I asked when. Tell me the environment of  
24 the forensic interview room at the Child Assessment Center.

25 A We interview them in a private room. It's only myself and the child in

1 there. There's cameras, there's a recorder. The observer is in another room  
2 observing us through cameras, as well. There's a round table in the center of the  
3 room with some chairs and two small couches. We usually let the child pick where  
4 they want to sit. We sat at the round table. And there's colors and paper for them  
5 to use.

6 Q Okay. So there's nobody in the room but you and the child?

7 A Correct.

8 Q You said there is an observer; is that generally someone from law  
9 enforcement?

10 A Law enforcement or CPS or any other case worker who's referred the  
11 case.

12 Q Okay. And they are not part of that interview and they don't  
13 communicate in that interview, correct?

14 A Correct.

15 Q Okay. So with Maradel, do you remember how old she was back in  
16 November of 2016?

17 A She was seven years old.

18 Q Okay. And as to Maradel, did you go through the rapport-building  
19 phase with her?

20 A Yes, we did.

21 Q Do you recall a little bit about what you talked about?

22 A Generally, she spoke about some family members and what she likes  
23 to do.

24 Q And this interview with Maradel, did you do that in Spanish?

25 A Yes.

1 Q And was it your understanding at that time that that was Maradel's first  
2 language?

3 A Yes.

4 Q Okay. Was Maradel able to communicate with you and understand  
5 you?

6 A Yes.

7 Q Was she contextually appropriate? And by that I mean if you asked her  
8 what day it was, she didn't say something like cotton candy?

9 A Correct.

10 Q Okay. So she was able to be contextually appropriate?

11 A Yes.

12 Q What did she tell you? You said part of the protocol is to ask the child,  
13 Do you know why you're here?

14 A Yes.

15 Q Do you remember what Maradel told you?

16 A Yes, she did. During the transition period, she stated that there was a  
17 person by the name of *abuelo*, Don David, who was touching her on her body.

18 Q Okay. And she said -- she called him *abuelo*?

19 A Yes.

20 Q And what is the English translation for *abuelo*?

21 A Grandfather.

22 Q Okay. And she said he was touching their bodies?

23 A Yes.

24 Q Okay. Did she use -- was she plural or her body or?

25 A She said [speaking in Spanish]. He's touching us.

1 Q Okay.

2 A And then she gave me information about how he was touching her.

3 Q What information did she give you about how she was being touched?

4 A She stated *abuelo* was touching her *kola*, which can be translated to

5 butt or tail. But she was describing a vagina.

6 Q Okay.

7 A She said that he touched her over her pants with his hand. She said it

8 happened more than one time, but she could only talk about one instance where

9 she said she was playing outside and he touched her *kola*.

10 Q So *kola* was the word that she used and then in Spanish the -- or the

11 translation of that is tail?

12 A Or butt.

13 Q Or butt. Did she tell you what she used the butt for?

14 A Yes.

15 Q What did she tell you?

16 A She said it's from [speaking in Spanish], which translates to urinate.

17 Q So you said that she called the man Don David?

18 A At -- at one point she referred to him as Don David.

19 Q Okay. And you said that she indicated that the man used his hands?

20 A Yes.

21 Q Okay. Did she tell you who would be around when this would happen

22 sometimes?

23 A She did. She named a friend, Yezline, her sister Jatziri, and her sister

24 Mirabel.

25 Q And the Mirabel, Maradel they're twins and their names are really

1 similar and they look almost identical, right?

2 A Yes.

3 Q Okay. And, in fact, just so -- I think we shared this with everyone, but  
4 there was some misspellings of names in this case, right?

5 A Correct.

6 Q Okay. Did she tell you where Don David or *abuelo* lived?

7 A Yes. She told me he lived -- she said she and her sister lived in the  
8 front and *abuelo* lived in the back near her friend Litzi, which is where they would  
9 see him.

10 Q Okay. Did she tell you anything about candy?

11 A She did. She stated that he would give them KitKat or chocolates to  
12 get them to come over.

13 Q Now I -- I asked you how old she was and I think you indicated she was  
14 seven. Do you recall whether or not -- and just if you recall -- that she said she was  
15 eight but these things happened when she was seven?

16 A Yes, she did.

17 Q Okay. Did she talk to you about seeing a telephone?

18 A She talked about her sister seeing a telephone or telling her about a  
19 telephone.

20 Q Okay. Did she say -- and maybe I have it incorrect -- he shows us  
21 videos?

22 A Yes, she did.

23 Q Did she say where the videos were?

24 A She stated they were on his phone. And she clarified at some point  
25 that it was her sister who saw them.



1 Q Okay. Did she say whether or not there were other people there when  
2 she was touched?

3 A Yes, she did. She said it was Jatziri, Yezline, and Mirabel.

4 Q Okay. Does she give you an activity that she is doing when the video  
5 is showing?

6 A She said she was playing outside with her friends, but I don't recall  
7 specifically what she was doing, just playing outside.

8 Q Does coloring ring a bell?

9 A Yes.

10 Q Okay. All right. How -- do you know how long that -- that interview  
11 lasted with Maradel -- Maribel -- Maradel?

12 A Approximately 50 minutes to an hour or more, I believe.

13 Q And because you speak Spanish, you don't need a translator in the  
14 room to assist you with talking to her?

15 A Correct.

16 Q Okay. Who was the second child that you interviewed that day?

17 A The second child I interviewed was Mirabel.

18 Q And she's a twin, so also eight years old?

19 A Correct.

20 Q Okay. Same room, same protocol, same setup?

21 A Yes.

22 Q Okay. And as to Mirabel, was she contextually appropriate with you?  
23 In other words, able to understand what you were asking and form an appropriate  
24 answer?

25 A Yes, she was.

1 Q What did she -- did you go through the rapport building phase with her?

2 A Yes, I did.

3 Q Okay. Did she tell you about all the things she did that day and what  
4 she liked to do and things like that?

5 A Yes, she did.

6 Q Okay. Did you ask her why she was here?

7 A Yes.

8 Q And what did she tell you?

9 A She told me because *abuelo*, or Don David, was showing her and them  
10 his *kosa*, which translates to thing, and she referenced it as -- well, I referenced it  
11 as penis. She also stated that he touched her thing with his thing over the pants.  
12 And she stated that he also showed them videos of people that were naked and  
13 that were -- she used the word [speaking in Spanish], she said, kiss. On the video  
14 there was a man who was kissing a woman on her vagina, is what she described.

15 Q Did she -- I'm just going to stop you for just one second -- did she use  
16 the word vagina or is that your interpretation of what she was saying?

17 A She used *kosa*, which is thing.

18 Q So she indicated to you that she was being touched, correct?

19 A Correct.

20 Q And she indicated to you that David used his thing, which you  
21 interpreted to be penis, to touch her on her thing over her clothes --

22 A Yes.

23 Q -- is that what she said? Okay. And she said that he pulls out his  
24 thing?

25 A Yes.

1 Q Okay. Somewhere in the translation when she's identifying the person  
2 that is touching them, she says, Grandfather, right?

3 A Correct.

4 Q And the -- the translation is, because a man is molesting us? Did --

5 A Yes.

6 Q -- did you read that?

7 A Yes.

8 Q Okay.

9 A She also stated that.

10 Q I just -- I just want to talk to you that word because that sounds like a  
11 real big grownup word. Okay. Is -- what's -- can you give us the Spanish word for  
12 that and kind of explain the translation for me?

13 A *Molestando* is a very general term that I've heard children of her age  
14 say in Spanish. And it's, basically, somebody who is bothering me. And it's --  
15 comes -- it's translated as *molestando*.

16 Q Okay. So then its English translation is molesting, not bothering?

17 A Correct.

18 Q Okay. But not -- not an unusual word for an eight-year-old to use, in  
19 your experience with the Spanish language?

20 A Correct.

21 Q Okay. Does she indicate to you whether there -- or not there are  
22 people around when he shows his thing?

23 A Yes.

24 Q What did she say about that?

25 A She stated that on one occasion, it was her -- or on several occasions, I

1 believe, it was sister Jatziri, Yezline, and Mirabel. And when she talked about the  
2 showing of the phone with naked people, she stated three little boys observed that.  
3 And she identified them as Juanito, Orlando, and Leo.

4 Q These -- these are tough interviews, because there's a lot of common  
5 information, correct?

6 A Correct.

7 Q Okay. Does he indicate -- does she -- sorry. Let me start over. I'm  
8 tangled on my own jewelry here.

9 Does she indicate to you where Grandfather is when he shows  
10 his thing?

11 A She stated he's either outside or inside, and that it's in the manner in  
12 which he pulls his thing out while his door is open and they're outside.

13 Q Okay. Does she talk to you about telling moms or anything like that?

14 A She did. And she stated that *abuelo* told them something to the effect  
15 of, If you tell I'm going to take you far away. And the word killing was referenced.

16 Q Okay. So, basically, she told you that Grandfather David had told them  
17 don't tell --

18 A Correct.

19 Q -- or I'm going to kill somebody, your mom? Okay.

20 Did she describe at all what David would do with his thing when  
21 he showed it?

22 A She stated he would pull it out and move it up and down.

23 Q At one point is she demonstrative with you regarding that statement?  
24 Because I -- I notice in there there's a translation, Like this; is she showing you  
25 something at that point in the interview?

1           A     I remember she gestured something, but I don't remember exactly what  
2 and I don't have access to the actual video.

3           Q     Did she talk to you about Grandfather David offering candy?

4           A     Yes, she did. She stated that he would offer KitKats or chocolate.

5           Q     Okay. Did she talk to you about Yezline being on the couch and David  
6 closing the door?

7           A     Yes. She stated that she was outside, is what she's describing, and  
8 she -- the door was open, and she observed *abuelo* grabbing Yezline and then  
9 closing the door.

10          Q     And she gives you a couple -- she tells that that was in the daytime?  
11 Looks like she says daytime; no, it was dark; no, it was daytime; is that correct?

12          A     I -- I don't recall. I want to say she said it would happen at nighttime.

13          Q     And did Maradel, the second interview, did she tell you where she was  
14 when this happened?

15          A     She stated she was outside of *abuelo's* house.

16          Q     Okay. Did she say whether she was with someone?

17          A     I don't recall who she was with at the time.

18          Q     Would it refresh your recollection to look at a copy of the statement?

19          A     Yes, please.

20                MS. KOLLINS: The court's indulgence.

21          Q     Do you have copies with you, ma'am?

22                THE COURT: Why don't we take our break. She can maybe take a  
23 peek at it during the break.

24                MS. KOLLINS: Okay.

25                THE COURT: Will that work? Good time? All right.

1 Ladies and gentlemen, we're going to take a 15-minute recess.  
2 Don't communicate among yourselves or with anybody else about this trial or the  
3 subject matter of this trial; do not communicate with parties, attorneys, or witnesses  
4 involved in the case; don't seek or obtain any information or comments about the  
5 case from any source; do not read, watch, or listen to any report or commentary  
6 about the case; do not form or express any opinion; and don't do any research or  
7 investigations. All right. See you back here in 15 minutes. That would be 3:25.  
8 Thank you.

9 You can just stand right here, ma'am, Ms. Espinoza. Thank you.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you.

12 [Jury recessed at 3:10 p.m.]

13 THE COURT: All right, Ms. Espinoza, you're still under oath when you  
14 come back. Please do not discuss your testimony with anybody while you're off the  
15 stand, but you're free to look at the -- the statement there you were going to look at  
16 to refresh your recollection.

17 THE WITNESS: Thank you.

18 THE COURT: All right. Thank you. And -- and counsel can direct you  
19 to what portion to look at. All right. Off the record.

20 [Court recessed at 3:10 p.m., until 3:30 p.m.]

21 [Outside the presence of the jury.]

22 THE COURT: You ready to bring the jury back?

23 MR. WESTBROOK: We're ready.

24 THE COURT: Ready for the jury? All right.

25 Go ahead, marshal.

1 MR. WESTBROOK: I think we all just started fading for a second.

2 THE COURT: That's okay.

3 MR. WESTBROOK: But we're back.

4 [Pause in proceedings.]

5 THE COURT: By the way, tomorrow 9:00 or 9:30? What did we  
6 decide? Is it 9:00?

7 MR. WESTBROOK: 9:00. That's it.

8 MS. KIERNY: Let's -- do you --

9 THE COURT: Or 10:00?

10 MS. KIERNY: Let's see how --

11 THE COURT: Was there -- there was something about a witness.

12 MR. WESTBROOK: It depends on who we -- on who we get through.

13 MS. KIERNY: If we get through Campbell, then 10:00 would be fine. If  
14 we don't, then probably 9:00.

15 THE COURT: Okay.

16 MR. WESTBROOK: Our first witness is scheduled for 10:00.

17 THE COURT: I got it, yeah.

18 MS. KIERNY: And I don't know that we'll get through that, but having it  
19 close, at least, is better than --

20 MR. WESTBROOK: Yeah.

21 MS. KOLLINS: I probably have another half hour.

22 MR. WESTBROOK: And that, by the way, is our -- is our expert,  
23 Professor Kagan.

24 MS. KOLLINS: Great. Yeah. I'm looking forward to that.

25 [Jury reconvened at 3:31 p.m.]

1 THE COURT: All right. Please be seated.

2 Ms. Espinoza, you're still under oath. You're still required to  
3 testify truthfully; do you understand?

4 THE WITNESS: I do, Your Honor.

5 THE COURT: All right, thank you.

6 Ms. Kollins, you may continue.

7 MS. KOLLINS: Thank you, sir.

8 **DIRECT EXAMINATION (CONT.)**

9 BY MS. KOLLINS:

10 Q Ms. Espinoza, when we left off, I had asked you a question about what  
11 Maradel remembered about friends being present; do you -- do you recall that?

12 A I -- I do. I believe we were talking about Mirabel, the second one.

13 Q I'm sorry. You're correct. In any event, I was refreshing your  
14 recollection with page 19 of her statement, and I asked you to review that to  
15 yourself. And I believe you did so as everybody left. And the -- did the review of  
16 that help remind you who was outside?

17 A Yes, it did. She stated it was her siblings and a friend who were -- who  
18 observed what happened.

19 Q Okay. Did she name the friend?

20 A Yezline.

21 Q Okay. Did she also mention Elexi?

22 A She did.

23 Q Okay. And that was who was outside when Yezline was grabbed,  
24 correct?

25 A Correct.



1 MS. KIERNY: Your Honor, may we approach just really quickly?

2 [Bench conference transcribed as follows.]

3 THE COURT: Okay.

4 MS. KIERNY: It's more a comment to Stacey.

5 There is a -- when we were going through, you know, there's the  
6 transcription error with Lexi and Litzi. To avoid confusion, do -- do we want to just  
7 say Litzi?

8 MS. KOLLINS: I don't know -- well, I don't -- she did the interviews of  
9 those kids, so I don't want to talk about those interviews with her --

10 MS. KIERNY: Okay.

11 MS. KOLLINS: -- right now. I don't want --

12 MS. KIERNY: No. I'm -- I'm just saying you're using the name, but  
13 Lexi, then we're going to -- just from Campbell --

14 MR. WESTBROOK: Please do not [indiscernible] the jury.

15 MS. KIERNY: -- get that it's the wrong name?

16 MS. KOLLINS: Sure.

17 MS. KIERNY: Okay. But you want to continue using Lexi?

18 MS. KOLLINS: Well, that's the only time --

19 MS. KIERNY: I think it would be less confusion.

20 MS. KOLLINS: -- that's the only time I'm going to use it.

21 MS. KIERNY: Oh, okay. Okay.

22 THE COURT: Okay. I'm going to let her call --

23 MS. KOLLINS: Because at the time it came out --

24 THE COURT: -- whatever she wants to call them.

25 MS. KOLLINS: -- in the interview and the way she reread it, I don't

1 know that she's got the proper foundation to testify about that, that she knew that  
2 that --

3 MS. KIERNY: I understand.

4 MS. KOLLINS: -- was a transcription error when she reheard it or read  
5 it.

6 MS. KIERNY: Okay.

7 MS. KOLLINS: Does that make sense?

8 MR. WESTBROOK: [Indiscernible.]

9 MS. KIERNY: I can clarify it, too.

10 THE COURT: Okay. I'll leave you guys --

11 MS. KIERNY: I just didn't know if --

12 THE COURT: -- to handle that. Thank you.

13 MS. KIERNY: Okay. Sorry.

14 [End bench conference.]

15 BY MS. KOLLINS:

16 Q Okay. And I don't know if I asked you this, Ms. Espinoza, I apologize. I  
17 kind of lost my place while we were on our break. So if I repeat myself, apologies.

18 Did she talk to you about Don David or Grandpa showing his  
19 thing?

20 A Yes, she did.

21 Q Okay. Did she say what he did with it?

22 A She said that he moved it up and down. She described it as being big  
23 and brown.

24 Q Okay. Did I -- and did she describe anything being on the phone?

25 A She stated that there were naked people on the phone and that they

1 were kissing each other's thing.

2 Q Okay. Now you also interviewed the older sibling of these two girls,  
3 correct?

4 A I did. It was Jatziri.

5 Q And -- and this was also on November 2nd of 2016?

6 A Correct.

7 Q And same place, same environment that we spoke about before, at the  
8 Assessment Center, right?

9 A Yes.

10 Q Okay. And Jatziri was nine years old when you interviewed her; does  
11 that sound right?

12 A Correct.

13 Q Okay. Did you go through the same rapport-building stages and those  
14 things that we talked about earlier that are part of your protocol?

15 A Yes, I did. And she started her disclosure during the rapport phase.

16 Q Did -- did Jatziri seem to you to be contextually appropriate? In other  
17 words -- same question again -- understood your questions and was able to  
18 respond to them appropriately?

19 A Yes, she did.

20 Q Okay. What did Jatziri tell you about why she was there to speak with  
21 you?

22 A She stated because a man was touching their bodies. And then she  
23 elaborated that he was also showing them videos of people that were *vici*  
24 [phonetic]. I did not understand that term, and then she later explained it as being  
25 naked. And they were eating their thing. The thing, referring to his -- their -- their

1 private areas.

2 And she also talked about how he touched her *kola*, which is  
3 translated to butt, and she was referring to her vagina. And that he used his hands,  
4 specifically, his fingers, over and under her clothes. She described that the fingers  
5 would move in a circular motion on her *kola*.

6 Q Okay. I'm going to back you up just a little bit, because that's a lot of  
7 information.

8 You said that her usage of the word *kola* meant her vagina.  
9 How do you know that that's what she meant? What did she say to you?

10 A Because she provided, I believe, the function of it.

11 Q Which would be to urinate or pee?

12 A Yes.

13 Q Okay. And she -- you said that the -- the man would use his hand or  
14 his fingers?

15 A His -- she said it was his fingers.

16 Q Okay. And you said in a circular motion; did she use any other word to  
17 describe how he would move his fingers when he would touch her *kola*?

18 A That he would move them desperately.

19 Q I want to back you up a little bit earlier in the interview. Did she give  
20 this person a name?

21 A She did. She called him *abuelo* Don -- Don David.

22 Q *Abuelo* being grandfather in Spanish, right?

23 A Yes.

24 Q And Don David?

25 A Yes.

1 Q Okay. Did she tell you any nickname that David had given herself and  
2 the girls?

3 A Yes. He stated that he called them -- they are queens, they're  
4 princesses.

5 Q And did she tell you at all why she hadn't told about this for a while?

6 A She did. She stated that there was a mention of if you tell, we're going  
7 to kill your moms.

8 Q When -- and I don't think I asked you this -- you did describe her saying  
9 that David would touch her over and under the clothes?

10 A Correct.

11 Q Did she also give you any -- any indication of whether or not his fingers  
12 or hands went under her underwear?

13 A Yes. She described that it was under her underwear.

14 Q Was she able to tell you a statement by David about why grandfathers  
15 do this or something in that regard?

16 A Yes. She stated that he said something to the effect it's okay for this to  
17 happen, because this is what grandfathers do.

18 Q Did she tell you about things that David gave her or bought for her?

19 A She stated that, I believe, some of the items were coloring, a  
20 trampoline, paid for parties.

21 Q And did she -- when she was telling you about the things that David  
22 bought or provided for them, did she tell you what David had to say about that?

23 A She stated that because he bought them things, that he could touch  
24 them.

25 Q And did she indicate to you who he was buying the things for in that

1 part of the conversation?

2 A I understood it to be herself and the girls.

3 Q Okay. The girls being the twins?

4 A Correct.

5 Q Okay. Was Yezline in that group, do you know?

6 A She mentioned Yezline, but I don't remember if she referenced her  
7 during the giving of the items.

8 Q Would it refresh your recollection to review a transcript of the translated  
9 interview?

10 A Yes, please.

11 Q Do you have a copy of that in front of you?

12 A I -- yes, I do.

13 Q Okay. I would refer you to page 40. And see if her reference there is  
14 to --

15 A I don't have page 40.

16 Q Oh, that's right. You don't have the answers. I apologize.

17 MS. KOLLINS: Court's indulgence.

18 Q Of course you don't, because I do. And maybe this would be a good  
19 time to clarify this.

20 Two of these girls' statements appear in one transcript; is that  
21 correct?

22 A Correct. That's Mirabel and Jatziri.

23 Q But they were never in the same room at the same time?

24 A Correct.

25 Q Okay. The transcriptionist just to put them all in one big long thing?

1           A     The recorder was not stopped and restarted at the time of the next child  
2 being interviewed, which was Jatziri.

3           Q     Okay. So it just -- it all appears in one transcript?

4           A     Yes.

5           Q     Okay. I'm showing -- I apologize. I'm showing you Jatziri's portion. If  
6 you could look at page 40.

7                     Did I miss a page -- does that help you out, or...?

8           A     Can you repeat the question, please?

9           Q     Sure. We were talking about who David was buying things for. And  
10 you expressed that Jatziri said it was for myself and the twins. And my question  
11 was, was Yezline included in that group that things were bought for, based on what  
12 Jatziri said?

13          A     I'm sorry. It's not stated in this page.

14          Q     I mispaginated.

15          A     Oh, I'm sorry.

16          Q     Page 40. Okay. Were you reviewing the incorrect page before?

17          A     I was.

18          Q     Okay.

19          A     My apologies.

20          Q     No. It's okay. There's a lot of very similar information, so it all kind of  
21 comes together. I understand.

22                     So do you want me to repeat my question?

23          A     No. The answer was that the items were for herself, Yezline, and the  
24 twins.

25          Q     Okay. Great. Does she talk about coloring with a girl named Lexi and

1 him paying for colors, what I assume are crayons?

2 A Yes, she did.

3 Q Okay. And does she also talk about at that same time David showed  
4 his thing or Grandpa showed his thing?

5 A Yes, she did.

6 Q Okay. Now Lexi is the name in translation as it was transcribed by the  
7 transcriptionist, right?

8 A Yes.

9 Q Okay. Is it your belief that that's actually a different name than Lexi?

10 A Yes. It's Litzi Paredes.

11 Q Okay. Did she use a word to describe what his thing looked like?

12 A She did. She stated it looked like a weenie and that it was brown.

13 Q Did she tell you how old she was when these things happened?

14 A She stated she was eight and that the last time was around when she  
15 was nine years old.

16 Q Okay. Did she talk to you about candy?

17 A Repeat the question, please?

18 Q Did Jatziri talk to you about chocolate or candy?

19 A Yes, she did. She --

20 Q What did she tell you about that?

21 A She stated that he would offer or give them chocolate.

22 Q Did she indicate to you whether or not she was also touched inside  
23 David's apartment?

24 A Yes. She -- she stated the touching happened inside the house, in the  
25 kitchen.



1 Q And she was referring to David's kitchen; was that your understanding?

2 A Yes.

3 Q Okay. Did she tell you whether or not she saw him touch any of the  
4 other kids?

5 A She described that at one point David was touching Mirabel and  
6 Maradel at the same time. One hand in one child and his other hand in the other  
7 child.

8 Q And she told you he didn't touch Litzi, right?

9 A Correct.

10 Q Okay. Did she tell you whether or not these things would happen  
11 daytime or nighttime or both?

12 A I -- I can't recall. I'm inclined to say nighttime.

13 Q Okay. If you can't recall, would it refresh your recollection to review  
14 page 51?

15 A Yes, please.

16 MS. KOLLINS: We're on the same statement, counsel.

17 MR. WESTBROOK: And, Your Honor, the pacing matter. I'm okay if  
18 we don't do the pro forma, would it refresh your recollection, and just go back and  
19 forth to transcripts. If that's the State's preference, it's fine with us.

20 THE COURT: Oh, thank you. I appreciate that.

21 MR. WESTBROOK: I know it's a big record.

22 THE COURT: Thank you, sir. All right.

23 THE WITNESS: She stated sometimes at night and sometimes during  
24 the day.

25 BY MS. KOLLINS:

1 Q So both.

2 MS. KOLLINS: Court's indulgence.

3 Q Did she talk about a specific kind of candy that David would give?

4 A She stated it was KitKat chocolate.

5 Q And did she speak to you at all about kissing?

6 A Yes. She stated that he kissed her on the mouth.

7 Q Did she talk about what David would do with the chocolate?

8 A Yes. She described an incident where she said Yezline told her that  
9 Don David had placed a chocolate inside what I understood to be the vagina,  
10 Yezline's vagina, and that it smelled.

11 Q Did she tell you where David was when he showed the phone?

12 A She stated the touching happened inside in the kitchen. I can't recall  
13 what she stated about the exact location.

14 Q And -- and what I'm asking you is, did she tell you where David was  
15 when he showed the videos on the phone?

16 A In his house.

17 Q In his house. Okay. Did Jatziri tell you what David relayed to her about  
18 telling Grandmother; do you remember that?

19 A I -- I don't recall.

20 Q Would it refresh your recollection to review page 63?

21 A Yes, please.

22 She stated that he told them to not tell Grandmother, because  
23 he would go to jail, to not tell the grandmother or their moms.

24 Q So you concluded your interviews with those four girls on that day,  
25 correct?

1 A Yes.

2 Q And then you interviewed a child by the name of Scarlett Rangel?

3 A Yes.

4 Q And that would have been on November 22nd of 2016?

5 A Yes.

6 Q Okay. And same questions, you know, I don't want to beat a dead  
7 horse, but same environment, same protocol, same stages of the interview  
8 process?

9 A Yes.

10 Q Okay. And was Scarlett contextually appropriate with you?

11 A Yes, she was.

12 Q Okay. She understood your questions and was able to accurately -- or  
13 not accurately, but at least understood enough to respond?

14 A Yes.

15 Q And did Scarlett also speak to you in Spanish?

16 A Yes. At times she would use some words in -- in English, I believe.

17 Q And Scarlett was seven years old when you interviewed her back in  
18 November of '16?

19 A Yes.

20 Q Okay. What did Scarlett tell you when you asked her if she knew why  
21 she was there?

22 A She stated that a [speaking in Spanish], referring to a little old man, had  
23 been showing her his thing and that he showed -- that he touched her in various  
24 parts. Her hair, her back, her cheek, and her shoulder.

25 Q But not any of her private parts, right?

1 A Correct. She stated that he did not touch her in her private -- or her  
2 [speaking in Spanish], vagina.

3 Q Now before Scarlett tells you she knows why she's there, what does  
4 she tell you about talking?

5 A She's afraid. And I explained to her that it's a safe room. That -- and  
6 then she proceeds to -- to tell me why she's there.

7 Q Okay. Did she tell you whether or not she got candy from the -- how do  
8 you say it, [speaking in Spanish]?

9 A [Speaking in Spanish.] She --

10 Q [Speaking in Spanish.]

11 A Yes. She said he did, that he offered them candy.

12 Q And again the translation of that is little old man?

13 A Yes.

14 Q Did she have a name for him besides little old man in Spanish?

15 A She -- she did not know his name or couldn't give me a name.

16 Q Did she say what she would do after she got the candy?

17 A Yes. She would go inside and then he would touch her on her hair, her  
18 back, her shoulder.

19 Q Okay. Did she -- did she ever say to you, he gives us candy and I just  
20 wanted to leave quickly?

21 A Yes, she did.

22 Q Okay. And she, in fact, told you that she did not know his name, right?

23 A Correct.

24 Q Okay. Did she tell you whether or not, after she saw the man's part -- is  
25 that the word you used?

1 A She used [speaking in Spanish], which translates to part in English.  
2 Q And did you take that to mean penis?  
3 A Yes.  
4 Q Okay. Did she say whether or not the little old man said anything to her  
5 after he showed his part?  
6 A I -- I don't recall.  
7 Q Would it refresh your recollection to review Scarlett's statement at  
8 page 14?  
9 A Yes, please.  
10 Q I'm going to show you a copy of Scarlett's statement. Please ignore  
11 any Post-it notes that in there from me. They don't mean anything.  
12 A Which page?  
13 Q I'm sorry. Page 14. And just let me know if that helps you remember  
14 and then I'll ask you some questions.  
15 A I don't see where I could -- where I can refresh my memory.  
16 Q Okay.  
17 A It looks like it's the conclusion of an interview. Page 14? Scarlett.  
18 Q Oh. This is actually a different Scarlett interview and I gave you the  
19 whole packet. There we go.  
20 A Thank you.  
21 Q Page 14.  
22 A I remember.  
23 Q Does that refresh your recollection as to what the little old man said to  
24 her after he showed his part?  
25 A Yes.

1 Q What did he say to her?

2 A He told her -- or he motioned with his finger to go there and to be quiet.

3 Q Okay. Did he also tell her not to tell anybody? I don't know that it's

4 right in that grouping, but...

5 A I don't recall him telling her that.

6 Q Would it refresh your recollection to review page 16?

7 A Yes. He just told her not to tell anybody.

8 Q Okay. The last child I want to talk about is Yezline. Did you also

9 interview a child by the name of Yezline?

10 A Yes, I did.

11 Q And when did you interview Yezline?

12 A I believe I interviewed her the same day I interviewed Maradel, Mirabel,

13 and Jatziri.

14 Q Okay. And she had been the last in line after the three girls?

15 A Yes.

16 Q And just to make -- just for -- in interest of completeness, same place at

17 the CAC, same room, same protocol?

18 A Yes.

19 Q Okay. And how old was Yezline when you interviewed her?

20 A She was seven.

21 Q Okay. What did Yezline tell you when you asked her if she knew why

22 she was there?

23 A She stated that when David had touched her -- she called it a *kosa* and

24 a *kola*, a thing, and a butt. She was referring to her vagina.

25 Q Okay.

1           A     And that he would show them videos, and that he would show them his  
2 thing, referring to his penis.

3           Q     Okay. Did she tell you where Don David lived?

4           A     Yes.

5           Q     What did she tell you about that?

6           A     She stated that he lived in the back. Or -- no, I'm sorry. She stated he  
7 lived in the corner.

8           Q     Okay. And did she use the name Don David?

9           A     Yes.

10          Q     Okay. Did she indicate to you that he gave them candy?

11          A     Yes, she did.

12          Q     Okay. Now, did she talk about kissing at all?

13          A     Yes, she did.

14          Q     What did she say about kissing?

15          A     I don't recall where he would kiss her.

16          Q     Would it refresh your recollection to look at Yezline's statement?

17          A     Yes, please.

18          Q     I think I have some not-marked-up copies for you here, ma'am. Give  
19 me just a moment.

20                     I'm sorry. I apologize. I lost my place.

21                     If you could review page 4 to yourself and see if that helps you  
22 recall where Yezline said she was kissed?

23          A     Yes. She stated that he kissed her on the mouth.

24          Q     Okay. Now, you talked about her indicating that she was touched in the  
25 *kola* or *kosa*? Which word did you use?

1           A     She used *kola* and then -- no, she used the word *kosa*, thing, and then  
2 later on she used *kola*, which is butt and also referring to her vagina.

3           Q     Now, did Yezline tell you about a particular incident where she was  
4 touched?

5           A     Yes, she did.

6           Q     Okay. Where did that happen?

7           A     She stated it happened in his house, in his bedroom. And she  
8 described that he grabbed her from outside and pushed her in his room, took off  
9 her pants, took off her underwear, threw them on the ground, and that he placed  
10 tape on her mouth, on her hands, and on her feet. And that he lifted her shirt up a  
11 little bit and touched her -- she called them *chi-chis*, referring to breast, over her  
12 clothes. And she stated that he touched her *kola* with his hand and that when he  
13 touched it, it was outside of where she pees.

14                     She stated he also -- what she described was hitting of her  
15 buttocks and then placing his hand in her buttocks and that she felt it warm. When  
16 he used it on her *kola*, her vagina, she described that she felt tickles.

17          Q     Okay. Did she say how he was moving his hand?

18          A     I believe she used the word circular.

19          Q     She told you the tape went on her hands and her feet; anywhere else?

20          A     Her mouth.

21          Q     Okay. Did she tell you how she got inside David's bedroom?

22          A     She stated that he grabbed her and pushed her in the room.

23          Q     Now, she described -- she was able to describe to you some physical  
24 sensations about what it felt like when David was touching her; is that right?

25          A     Correct.



1 Q Okay. You used the word tickles; did she also tell you that it felt a little  
2 bit hot?

3 A Yes.

4 Q Okay. Did she also tell you she felt it inside?

5 A Initially, she stated she felt it out -- the hand outside of where she pees.  
6 And later on she stated it was inside.

7 Q Okay. And did she -- you know, you said she talked about her clothes  
8 coming off; did she say where her clothes went when they came off?

9 A They were on the floor in his room.

10 Q You indicated that she was seven when you interviewed her. Could it  
11 be more accurate that she was eight when you interviewed her and seven when  
12 this happened?

13 A Correct.

14 Q Okay. Did she give you a color of tape?

15 A She said the tape was white.

16 Q Okay. Did she talk to you about David putting on an ugly movie?

17 A Yes. She stated that during that incident, he had showed her a video,  
18 and that the people were naked and they were eating -- I believe she used the word  
19 eating their thing.

20 Q She used the word eating; was she referring to the people in the video?

21 A Yes.

22 Q What did she say the people in the video or the person in the video was  
23 eating?

24 A She said that they were touching their thing and they were eating their  
25 thing, their *kosa*, what she described as private parts.

1 Q Okay. And did she tell you whether or not the people in the video had  
2 clothes or clothes off?

3 A She described that there were no clothes.

4 Q Did she talk about David having a car?

5 A Yes. She said it was a brown car.

6 Q Did she lend any context to any event by describing his car? Did she  
7 attach an event that happened to -- near the car, by the car?

8 A Yes. She stated that happened when he showed his thing to her and  
9 others.

10 Q Did she indicate to you he went behind the car when he did that?

11 A Yes.

12 Q Okay.

13 A And she described the thing as being brown with a little bit of red, his  
14 thing.

15 Q And I don't think I asked you this before, my apologies.

16 Did Yezline tell you what happened with the tape after David  
17 was through with her?

18 A She stated it came off and I don't recall her telling me how it came off.  
19 Wait. Yes. She took it off.

20 Q Okay.

21 A So you do --

22 A Yes.

23 Q You do remember it now?

24 A Yes. Yeah.

25 Q So she said that she herself took it off?

1 A Yes.  
2 Q Okay.  
3 MS. KOLLINS: Court's indulgence.  
4 THE COURT: Uh-huh.  
5 MS. KOLLINS: All right. At this time I'm going to pass the witness.  
6 May I approach Ms. Espinoza, and I'll [indiscernible].  
7 THE COURT: You may.  
8 MS. KOLLINS: Do you need those statements up there or?  
9 MS. KIERNY: Do you -- does she have all of them?  
10 MS. KOLLINS: No.  
11 MS. KIERNY: Okay. I can just provide her with mine if I need.  
12 MS. KOLLINS: Okay.  
13 THE COURT: All right, Ms. Kierny, it's your witness.  
14 MS. KIERNY: Thank you.

15 **CROSS-EXAMINATION**

16 BY MS. KIERNY:

17 Q Good afternoon, Elizabeth.  
18 A Good afternoon.  
19 Q I wanted to ask you some questions about forensic interviews in  
20 general; is that okay?  
21 A Yes.  
22 Q All right. Forensic interviews are designed to discover information from  
23 kids; is that an accurate way of putting it?  
24 A It's to gather factual information --  
25 Q Okay.

1 A -- whether or not things did happen or did not happen.

2 Q Okay. Thank you. And you follow certain guidelines that you testified  
3 to earlier, right?

4 A Yes.

5 Q Children can be more difficult to interview than adults; is that fair to  
6 say?

7 A I work mainly with children, so I -- I really can't give you...

8 Q Okay. There's -- these guidelines exist because of possible difficulties  
9 in interviewing children, right?

10 A No, not necessarily.

11 Q Okay. Well, it's safe to say that a forensic interview is more than just  
12 listening to what a child says, right?

13 A Yes.

14 Q So there's steps that you explained to Ms. Kollins?

15 A Yes.

16 Q Okay. Kind of like the open-ended questions and not being suggestive,  
17 right?

18 A Correct.

19 Q Sure. If you need more information about a topic, will you follow you  
20 with them?

21 A If I need more information on a topic. If they introduce information, then  
22 I follow up with questions.

23 Q Okay.

24 A Uh-huh.

25 Q And if you notice any inconsistencies in a child's story, you generally

1 don't confront with -- them with that during a forensic interview?

2 A Correct.

3 Q An improperly done interview of a child could fail to elicit a disclosure  
4 from a kid that was actually abused, right?

5 A Rephrase, please.

6 Q Sure. If you don't do an interview right, you could perhaps fail to elicit a  
7 disclosure from a kid who might have actually been abused?

8 MS. KOLLINS: I'm going to object. That calls for speculation, because  
9 there's a whole gamut of ways you could inappropriately conduct an interview. So  
10 it's --

11 THE COURT: I -- do you understand the question?

12 THE WITNESS: I -- I don't understand.

13 THE COURT: You don't understand?

14 THE WITNESS: No. If she could just repeat it again.

15 THE COURT: All right. Why don't you repeat it one more time. We'll  
16 see if she understands it and then -- then I want to know if --

17 MS. KIERNY: Let me think about a way to do this better, then.

18 THE COURT: All right.

19 MS. KIERNY: Okay.

20 BY MS. KIERNY:

21 Q If you don't do -- if you don't interview a child properly, that child might  
22 not disclose something that actually happened to them, right?

23 A Correct.

24 Q Okay. That would be kind of a false negative, right?

25 A Correct.

1 Q Okay. If you interview a -- if you don't interview a child properly, you  
2 could possibly -- if you -- sorry. Let me rephrase.

3 If you don't interview a child properly, you could possibly plant  
4 false allegations of abuse in that child's mind that didn't happen, correct?

5 A Rephrase, please.

6 Q Okay. If you don't interview a child properly, that child could say that  
7 abuse happened when it really didn't.

8 A Correct.

9 Q Okay. That would be a false positive.

10 A Correct.

11 Q So that -- those are undesirable outcomes, obviously, right, those two  
12 things that I mentioned?

13 A Correct.

14 Q So that's why you do the forensic interviews, right?

15 A Yes.

16 Q Okay. Often a child has made a disclosure to someone else before  
17 they come to you, correct?

18 A In some cases, yes.

19 Q A lot of times those disclosures are to parents, teachers, friends, things  
20 like that?

21 A Correct.

22 Q Okay. They could've been to all of those people that I mentioned, it  
23 could be multiple disclosures, right?

24 A It could be.

25 Q And questioning that those people would do of the child wouldn't

1 necessarily be forensic interviewing, right?

2 A Repeat, please.

3 MS. KOLLINS: I'm going to object. That calls for speculation as to  
4 what other questions were asked --

5 THE COURT: Well, this is the forensic interview specialist. I mean,  
6 let's leave it up to her to tell us if she can't answer the question. And if it's  
7 speculative, tell us. We don't want you to speculate. We just want, you know, in  
8 your line of work, based on your background and experience, and if you can  
9 answer the question, we want to hear your -- your answer. Okay. If you can't, let  
10 us know.

11 THE WITNESS: I will.

12 THE COURT: All right. Thank you.

13 THE WITNESS: Repeat the question, please.

14 BY MS. KIERNY:

15 Q Sure. Questioning from parents, friends, teachers isn't usually forensic  
16 interviewing, correct?

17 A Correct.

18 Q All right. And unless the parent has some special training, they usually  
19 don't follow the same protocols that you would?

20 A Correct.

21 Q And when you interview a child, you don't know -- you generally don't  
22 know if a prior interviewer has engaged in any sort of suggestive interviewing  
23 techniques?

24 A Correct.

25 Q Okay. On this case in general -- actually, are you briefed on cases

1 before you get them?

2 A In some cases, yes. They provide us with some general information.  
3 Sometimes there's -- they don't have time to provide us information, depending on  
4 the emergency of the case.

5 Q Got it. Do you know if you were briefed by Detective Campbell in this  
6 case?

7 A Yes, I was.

8 Q And he was present for the -- for some of these interviews or all of  
9 these interviews?

10 A He was present for all of the interviews in -- in the observation room,  
11 separate from where I was with the child.

12 Q So there would be, like, a -- a glass divider or something, so the child  
13 couldn't see Detective Campbell?

14 A No. It was monitors, computers.

15 Q I see.

16 A There is no glass windows in that room.

17 Q All right. So it's through, like, closed -- or closed-circuit TV?

18 A Yes.

19 Q Got it. You testified you interviewed five children in conjunction with  
20 this case, right?

21 A Yes.

22 Q And you also interviewed a child named Leo De Santiago, right?

23 A Yes.

24 Q He was a boy who lived in the same apartment complex?

25 A Yes.



1 Q And that was at the request of Detective Campbell?

2 A Yes.

3 Q You also interviewed a girl -- a girl named Litzi Paredes?

4 A Yes.

5 Q And she lived in the same apartment complex as where this was  
6 alleged to happen, right?

7 A Yes.

8 Q And that was also at the request of Detective Campbell?

9 A Yes.

10 Q I kind of did my notes in a different order. Is it okay if we start with  
11 Jatziri or is there a specific order that's easier for you?

12 A I would prefer, if you could, to put it in the order of the interview, so...

13 Q Okay. And so your first interview, then, would've been with Maradel?

14 A Maradel.

15 Q Del?

16 A Maradel.

17 Q Sorry. Okay. So before Maradel talks to you, she had spoken to a  
18 neighbor about her alleged abuse, correct?

19 A She said she spoke to her mother and that there was another person  
20 there when she told her mother.

21 Q Okay. Do you know if that would've been Yezline's mother or you just  
22 don't know?

23 A I don't remember who specifically, but she did name -- having told her  
24 mother and somebody else who was there when she told her mom.

25 Q Okay. She told you that Don David touched her private part, correct?

1 A Yes, in her own terms.

2 Q In her own terms, which would've been *kola*?

3 A *Kola*. Uh-huh.

4 Q All right. And generally *kola* refers to butt in your experience?

5 A Butt or tail.

6 Q But in this context all the children were using it to refer to the front, the

7 vaginal -- vagina?

8 A Yes. Yes.

9 Q Okay. Now, Maradel told you that when this happened Mirabel, Jatziri,

10 and Yezline were there, correct?

11 A Yes.

12 Q And also Litzi?

13 A I can't remember about Litzi being there.

14 Q Okay. Would reviewing -- who are we on -- Maradel's statement

15 refresh your recollection?

16 A Yes, please.

17 Q Okay. Let me find that.

18 MS. KIERNY: May I approach?

19 THE WITNESS: Yes, I -- I remember.

20 BY MS. KIERNY:

21 Q Oh, sure.

22 A Yes, Litzi was there.

23 Q Okay. Litzi did not tell you she ever witnessed Don David touch

24 Maradel?

25 MS. KOLLINS: Objection. Hearsay.

1 MS. KIERNY: Your Honor, it's --  
2 THE COURT: Well --  
3 MS. KIERNY: -- impeachment. It contradicts the kids' other statement.  
4 It's not to prove or it could be offered not to prove the truth. It could be for  
5 completeness of investigation, state of mind of interviewer.  
6 THE COURT: I think it comes in on several grounds, so overruled.  
7 MS. KIERNY: Thank you.  
8 MS. KOLLINS: It's an out-of-court statement from somebody that's not  
9 testifying here.  
10 THE COURT: Well --  
11 MS. KOLLINS: Not another child that was interviewed.  
12 THE COURT: But it's -- why don't you approach.  
13 [Bench conference transcribed as follows.]  
14 THE COURT: So this is an out-of-court statement by another child --  
15 MS. KIERNY: Uh-huh.  
16 THE COURT: -- that you're offering to rebut what one of the other  
17 children told her?  
18 MS. KIERNY: Yes.  
19 THE COURT: What she says one of the other children told her.  
20 MS. KIERNY: Correct.  
21 MR. WESTBROOK: It's -- it's grounds.  
22 MS. KOLLINS: So it's not -- it's not a prior consistent. It's not a prior  
23 inconsistent. It's an out-of-court -- they're going to -- if they want to call this child to  
24 say David didn't do this, then they can call that child to testify. This -- this child has  
25 not testified here.

1 THE COURT: Well, I know, but let's -- let's break it down. So it would  
2 come in -- or it could -- you're offering it as a prior inconsistent statement. So it  
3 would have to be inconsistent, then, with what another witness in court has testified  
4 to.

5 MS. KIERNY: Correct.

6 THE COURT: It doesn't have to be the present witness on the stand.

7 MS. KIERNY: Right. So --

8 THE COURT: So what --

9 MS. KIERNY: -- what Litzi says is inconsistent.

10 THE COURT: So who -- so this is inconsistent with whose statement?

11 MS. KIERNY: Maradel's statement --

12 THE COURT: Okay.

13 MS. KIERNY: -- that she just testified to.

14 THE COURT: And -- and Maradel made a statement that --

15 MS. KIERNY: Litzi was present when Maradel was touched on her  
16 front part.

17 THE COURT: Okay. This is inconsistent with Maradel's statement.

18 MS. KIERNY: It is.

19 THE COURT: So it seems to be -- come squarely in the rule.

20 MS. KOLLINS: My understanding of prior inconsistent statement is a  
21 statement of the testifying witness. Not a statement of the third party that's not  
22 here.

23 THE COURT: No. I had this [indiscernible] -- it's a -- it's a prior  
24 inconsistent statement of anybody who has testified who's subject to  
25 cross-examination -- or examination.

1 MS. KOLLINS: They haven't testified. This person hasn't testified,  
2 though.

3 THE COURT: No. That is coming in to -- as a -- or hold on. Oh, I see  
4 what you're saying. It's inconsistent with what Mirabel said --

5 MS. KOLLINS: Correct.

6 THE COURT: -- but this person didn't testify.

7 MS. KOLLINS: Correct.

8 MS. KIERNY: It's inconsistent --

9 MS. KOLLINS: It's not --

10 THE COURT: Hold on. I'm still trying to break it down.

11 MS. KOLLINS: It's not crossable. You can't cross it.

12 THE COURT: Yeah. How would you get it in there? How do you get  
13 in? You have to put --

14 MS. KOLLINS: You have to put that --

15 THE COURT: -- child on the stand or somebody --

16 MS. KOLLINS: Or a 51.385 --

17 THE COURT: -- who testified to what --

18 MS. KOLLINS: -- that kid.

19 THE COURT: Wait. If someone testified to what the child said, this is  
20 inconsistent with that.

21 MS. KOLLINS: I -- I agree. It takes an opposite position. But it's not  
22 inconsistent with the testifying -- it's an inconsistent statement of the testifying  
23 witness.

24 THE COURT: Let me just double check. Okay. This is an important  
25 issue.

1 MS. KOLLINS: I have my cheat sheet in my --  
2 THE COURT: 58 or 50.  
3 MS. KOLLINS: Hold on.  
4 THE COURT: It's an important issue.  
5 MS. KIERNY: I think he's got a -- he's got his bench book.  
6 MS. KOLLINS: And, Your Honor, I believe it's --  
7 THE COURT: I don't know where my hearsay is, but I'll find it.  
8 MS. KOLLINS: Oh, okay.  
9 THE COURT: Hearsay is -- it's 50-something, right?  
10 MS. KOLLINS: 51.  
11 THE COURT: Oh, the presence is -- all right.  
12 Okay. So -- so you can't bring in subpart 2, let me see about  
13 subpart 3. Because subpart 2 would be inconsistent with the declarant's statement.  
14 MS. KIERNY: Okay.  
15 THE COURT: Now --  
16 MS. KIERNY: Well, it is inconsistent --  
17 THE COURT: -- the declarant would be --  
18 MS. KIERNY: -- Elizbeth is currently the declarant. It's inconsistent --  
19 THE COURT: It would be --  
20 MS. KIERNY: -- with what she said Maradel said.  
21 THE COURT: I get it.  
22 MS. KOLLINS: She's not the declarant, though, Your Honor, she's --  
23 MS. KIERNY: She --  
24 THE COURT: But Maradel was a declarant.  
25 MS. KOLLINS: Correct. But she's saying Elizabeth is the declarant,

1 the person who's on the stand right now.

2 THE COURT: Okay. Give me a second here.

3 So this is reversed. It's talking about -- the statement has to be  
4 made by a witness, too. That -- she's not a witness.

5 MS. KIERNY: She is a witness. She's a named witness.

6 MS. KOLLINS: She has to testify, though, first before you can get it in  
7 a prior --

8 THE COURT: Does she have to testify first? Now, what -- did you  
9 want to see? Come -- come over here a little bit closer. Come a little bit closer.

10 MR. HAMNER: Come closer. Just with respect to if you have a -- the  
11 way it works is this. If a witness like Maradel makes a statement, we can bring on  
12 another witness and cross examine them about something Maradel told them. So,  
13 for example, if Maradel told this witness something inconsistent, it would come in.  
14 What they want to bring on a witness that hasn't yet testified. And that's improper.  
15 And the method to touch on the subject is we would ask Maradel, number one, did  
16 you ever say to Lexi X, and then we call --

17 MS. KIERNY: She didn't say it to Litzi. Litzi said percipient witness to  
18 it.

19 MR. HAMNER: Right.

20 MS. KIERNY: Now --

21 MR. HAMNER: And that's not a prior inconsistency. But if they want to  
22 just bring out the fact Litzi says X indeed occurred, that's not a prior inconsistent  
23 statement. It's two witnesses saying two different things.

24 MS. KIERNY: They did.

25 THE COURT: See what this is here. This isn't prior inconsistent

1 statement. It's -- it's good cross-examination material. It's material that tends to  
2 offer alternative --

3 MS. KIERNY: Uh-huh.

4 THE COURT: -- point of view. It -- it goes to the credibility, but it's  
5 technically not -- this isn't a prior inconsistent statement of --

6 MS. KIERNY: That was my first ground.

7 THE COURT: This witness is my prior inconsistent statement of  
8 Mirabel's statement, all right?

9 MS. KIERNY: Okay.

10 THE COURT: So it doesn't come in as a prior inconsistency.

11 MS. KIERNY: Okay.

12 THE COURT: I -- you're going to disagree with that.

13 MS. KIERNY: Now, I believe it does come in under, as you indicated,  
14 credibility. As you indicated to the completeness of the investigation, state of mind  
15 of interviewer, [indiscernible] interviewer, bias and motive, it also contradicts the  
16 kids' stories.

17 THE COURT: Well, we can keep --

18 MS. KIERNY: I'm sorry.

19 THE COURT: -- we've got to deal with those one at a time.

20 MS. KIERNY: Okay. Sure.

21 THE COURT: Okay. So --

22 MS. KIERNY: So credibility is your first one.

23 THE COURT: -- the state of mind of this witness is not an issue.

24 MS. KIERNY: Okay.

25 THE COURT: Because she was purely collecting the information. So



1 take that one out. What was the next one?

2 MS. KIERNY: Okay. Credibility.

3 THE COURT: Well, credibility of this witness she doesn't get --

4 MS. KIERNY: Credibility of the witness. She's testifying to  
5 through 51.385. Because she's offering these as substantive evidence under  
6 the 51.385 standard.

7 THE COURT: Okay. How does -- how does that statement tend to  
8 impeachment her credibility here?

9 MS. KIERNY: Elizabeth's or Maradel's?

10 THE COURT: Pardon.

11 MS. KIERNY: Elizabeth's or Maradel's? I'm not trying to impeach  
12 Elizabeth's. She's just reciting what Maradel told her.

13 MR. WESTBROOK: She was going to impeach her.

14 MS. KIERNY: It impeaches what Maradel said. She's already reciting  
15 hearsay.

16 MS. KOLLINS: None of this cures the hearsay problem, though.

17 THE COURT: So, well, I think --

18 MS. KIERNY: This child is interviewed by her under the same --

19 THE COURT: The fact it goes to credibility is -- is explained in  
20 relevance of the information. It doesn't -- it doesn't solve the infirmity of the fact that  
21 it's hearsay. So there is no credibility of hearsay exceptions. You've got to come  
22 up with another hearsay exception.

23 MS. KIERNY: All right.

24 THE COURT: What else do you have?

25 MS. KIERNY: Not offered for the truth. Offered to show --

1 THE COURT: Well, you weren't offering it for the truth, right?

2 MS. KIERNY: No. Completeness of investigation, that they  
3 investigated the --

4 THE COURT: Completeness.

5 MS. KIERNY: -- of the investigation that was done in this case.

6 MR. WESTBROOK: They've gotten [indiscernible] in a correct --

7 THE COURT: Well, completeness is -- is -- shows relevance. Is that a  
8 hearsay exception?

9 MS. KIERNY: Yes.

10 THE COURT: I don't think that's a hearsay exception. It's a relevance  
11 argument.

12 MR. WESTBROOK: And we -- we -- [indiscernible] completeness  
13 [indiscernible] liability of the investigation and possible bias on behalf of the  
14 investigators. They have information given to them by Maradel that she says Litzi  
15 was there. And they also have information [indiscernible] where she said to that  
16 investigator that she was not there and Maradel saying it's not true. The fact that  
17 they rely on the [indiscernible] shows that they are biased. And it's nothing to  
18 complete investigation [indiscernible] that exception? No.

19 In fact, what complicates this from an intellectual standpoint is  
20 the fact that everything she has testified to is hearsay. There's also an exception  
21 [indiscernible] none of the statements of Litzi taken by Elizabeth [indiscernible]  
22 have -- - are any -- are inherently reliable. That's the [indiscernible]. You've  
23 already found that all the statements she took [indiscernible] were sufficiently  
24 [indiscernible].

25 You could also find that [indiscernible]. And there's no way

1 [indiscernible].

2 MS. KOLLINS: But there's been no hearing.

3 MR. WESTBROOK: So it's reliable.

4 MS. KOLLINS: You need the hearing and you need notice.

5 That 51.385 hearing is just as available --

6 MR. WESTBROOK: I've got the catch-all exception [indiscernible].

7 MS. KOLLINS: It's not inherently reliable.

8 THE COURT: So we've got kind of a -- I don't know, a fairness issue.

9 MR. WESTBROOK: Of course.

10 THE COURT: We let in -- we let her testify to some of the children's  
11 statements; why can't she testify with other children said?

12 MR. HAMNER: Because the procedure is 51.385.

13 THE COURT: So because they didn't have a 51.385 hearing?

14 MR. HAMNER: Because they -- because they didn't file a notice that  
15 they wanted to have this witness talk about this hearsay.

16 MS. KOLLINS: You didn't ask for that.

17 MR. HAMNER: You [indiscernible] a hearsay.

18 THE COURT: The witness has already been qualified [indiscernible] so  
19 I can incorporate everything she said [indiscernible].

20 MR. HAMNER: But the part of -- but as you mentioned the factors, the  
21 factors are you evaluate the spontaneity of when Litzi talked to Ms. Espinoza.

22 MS. KOLLINS: It's a child, not a parent.

23 THE COURT: It's the exact same credibility. I mean, you could have  
24 a 51.385 hearing right now and -- and come out with the spontaneous  
25 [indiscernible].

1 MR. HAMNER: I think if they want to hold a 51.385 hearing for their  
2 witnesses and they want to do it, then I think that's -- that's a perfect way to solve it.

3 MS. KIERNY: No. No.

4 THE COURT: What?

5 MR. WESTBROOK: She testified to the things that Litzi said, and  
6 [indiscernible].

7 MS. KOLLINS: No, she didn't.

8 MS. KOLLINS: Because --

9 MS. KIERNY: She did. I've questioned her about it.

10 THE COURT: So --

11 MS. KOLLINS: Well, I object to -- that's true. I objected to that --

12 THE COURT: You know what? Guys.

13 MS. KIERNY: But then he sustained it. Or he overruled that and  
14 allowed me to do it.

15 THE COURT: Guys.

16 MS. KOLLINS: He did. He told me I wasn't allowed to object to that.

17 THE COURT: I don't see how it's prejudicial to the State, actually,  
18 [indiscernible] because it's --

19 MS. KOLLINS: It's not cross-examinable. It's not -- it's simply not  
20 cross-examinable, because you don't have the declarant --

21 THE COURT: I believe there was only stuff that you got her to say  
22 about all the things.

23 MS. KOLLINS: Those people have already testified, however.

24 THE COURT: They're having her testify.

25 MS. KOLLINS: They're not obligated to do that.

1 THE COURT: So you're worried that she may -- they may not call her.

2 MS. KOLLINS: It's not cross-examinable as it stands.

3 THE COURT: The jurors came in before --

4 MS. KIERNY: But it still would be under fundamental fairness  
5 standpoint.

6 THE COURT: And when you had Mr. Rangel come in and testify  
7 before the kids testified.

8 MS. KOLLINS: And all the kids were here subject to cross and all the  
9 parents were subject to cross about what they said. This child -- this -- this  
10 imputed --

11 THE COURT: So how about I let you get into it as long as you call the  
12 witness so she'll be subject to cross-examination.

13 MS. KIERNY: Ultimately, they're -- I mean, I'm planning on calling her.  
14 I think, ultimately, there is a fundamental fairness issue that we know that these  
15 statements were said -- were said to her. And I think I should be able to cross her  
16 about that, because she knows of it, and there's the same indicia of the liability as  
17 for their hearsay statements.

18 MS. KOLLINS: This is error. I don't want to -- this is --

19 THE COURT: I'm going to split the baby on this one. All right. I'm  
20 going to let you get into this topic if -- if you're -- if you're representing you're going  
21 to call her as a witness --

22 MS. KIERNY: I'm representing that she is noticed --

23 THE COURT: -- and so she can be subject to cross-examination by the  
24 State.

25 MS. KIERNY: Our investigator --

1 MR. HAMNER: Is she coming?  
2 MS. KIERNY: Our investigator --  
3 MS. KOLLINS: Is she coming?  
4 MS. KIERNY: -- talked to her and he's bringing her here at 10:00.  
5 That's all I know. I can't tell you that if -- she doesn't show up.  
6 THE COURT: Do you have her under subpoena or?  
7 MS. KIERNY: Yes. She's under subpoena.  
8 MR. HAMNER: Oh. Okay.  
9 MS. KIERNY: And we're going to be asking her --  
10 THE COURT: You have the right to call her and cross-examine her on  
11 this statement. I'm going to let them question her.  
12 MS. KOLLINS: Well, here's --  
13 MS. KIERNY: Okay.  
14 MS. KOLLINS: They've represented to you that they're having her here  
15 tomorrow. We're going to ask that it's stricken if they don't have her here.  
16 THE COURT: I --  
17 MS. KOLLINS: Because, I mean it's still our position with all --  
18 THE COURT: I may or may not do that, but raise the question or raise  
19 the issue tomorrow.  
20 MS. KOLLINS: With all due respect, I just think it's --  
21 MS. KIERNY: I'm making every effort I can to get her here. I have --  
22 THE COURT: And I may very well grant it. I just don't want to get a --  
23 MS. KIERNY: I have her under subpoena.  
24 MS. KOLLINS: So how much of this Litzi statement are we going to get  
25 into in the middle of her cross-examination? Are we going through the whole thing?

1 THE COURT: Anything that's inconsistent with anything Mirabel said or  
2 you think is inconsistent with what she said comes in.

3 MS. KIERNY: Any of the children said it, so that would include Jatziri.

4 THE COURT: Any of the children, if it's inconsistent. --

5 MS. KOLLINS: And it's admissible under hearsay pursuant to the prior  
6 inconsistent --

7 THE COURT: Pursuant to 51.035, subpart 2.

8 MS. KOLLINS: Okay.

9 THE COURT: Okay. Thank you.

10 MS. KIERNY: Thank you.

11 [End of bench conference.]

12 THE COURT: All right.

13 MS. KIERNY: All right, Elizabeth, where were we?

14 THE COURT: Sorry that was so long. We're just going to continue  
15 right now for the moment.

16 BY MS. KIERNY:

17 Q We're on Maradel. Okay.

18 Maradel told you that Litzi was there --

19 THE COURT: Oh, and 51.385, Ms. Kollins, is also the basis of -- for my  
20 ruling. Okay.

21 BY MS. KIERNY:

22 Q Maradel told you that Litzi was present when she was touched on her  
23 private part, correct?

24 A Yes.

25 Q When you interviewed Litzi she did not tell you that she ever witnessed

1 Don David touch Maradel?

2 A Correct.

3 Q Maradel said she was standing while Don David was sitting in a chair  
4 by a plant when this happened?

5 A Are we on Maradel or Mirabel?

6 Q We are on Maradel.

7 A Mirabel. M-I-R-A-B-E-L?

8 Q M-A-R-I -- del. Maradel.

9 A Okay.

10 Q Sure.

11 A I remember she stated she was playing outside.

12 Q Okay. So you remember it was outside. Would looking at her  
13 statement refresh your recollection as to whether she said she was standing and  
14 Don David was sitting near a plant?

15 A Yes, please.

16 Q Okay.

17 MS. KIERNY: May I approach?

18 THE COURT: Yes.

19 BY MS. KIERNY:

20 Q Did you finish reading?

21 A Yes.

22 Q Okay. Did that refresh your recollection?

23 A Yes, it did.

24 Q And so did Maradel tell you she was standing and Don David was  
25 sitting in a chair by a plant outside?



1 A Yes.

2 Q And this was over her clothes?

3 A Yes.

4 Q And she told you he only touched her over the clothes?

5 A Yes.

6 Q She also told you she only goes in Don David's house with Grandma,

7 correct?

8 A I don't recall who she goes with individually or as a group.

9 Q Okay. Would -- well, did she ever say she -- she did not say she -- did

10 she -- would -- sorry. I'm out of words today. All right.

11 Did she tell you that there was a time that she went to the

12 bathroom with Grandma and her, Mirabel, and Litzi were all there?

13 A Yes.

14 Q Okay. And that Don David pulled the door open on them?

15 A I don't recall that part.

16 Q Would looking at page 26 of your -- of the statement refresh your

17 recollection?

18 A Yes, please.

19 Q Did that refresh your recollection?

20 A Yes, it did.

21 Q There was a time when -- when Mirabel, Maradel, and Litzi used the

22 bathroom in Don David's house and Don David pulled the door open on them?

23 A Yes.

24 Q Okay.

25 A To the bathroom.

1 Q To the bathroom. Litzi did not tell you about that incident in her  
2 statement?

3 A Correct.

4 Q Litzi indicated that she was never in Don David's house in her  
5 statement.

6 A She indicated she was never -- I did not review that transcript in  
7 preparation for this hearing, but I remember her saying that she would not go to that  
8 house alone. That it would only be when the grandmother was there, I believe.

9 Q All right. Maradel also told you about an incident involving Don David's  
10 phone, right?

11 A Yes.

12 Q And that was where Jatziri told her about something that -- that Jatziri  
13 had seen.

14 A Yes.

15 Q And Maradel, herself, did not see anything on the phone.

16 A That part is a little bit confusing, because at one point she said  
17 [speaking in Spanish], meaning he showed us videos, but then later on she stated  
18 that it was her sister Jatziri who told her about the videos.

19 Q Okay. She did not tell you, I did not see it that -- she did not tell you, I  
20 didn't see anything on the phone?

21 A I believe she did say what you're saying.

22 Q Okay. At no point in her interview did Maradel mention to you going to  
23 McDonald's with Don David?

24 A I don't recall.

25 Q Would looking at your -- I know you made a chart. Would -- would

1 looking at anything that you have with you refresh your recollection?

2 A No, not on here specific to McDonald's.

3 Q Okay. So there's nothing in your notes specific to McDonald's?

4 A No.

5 Q All right. Maradel did not mention ever being in Don David's car to you?

6 A No.

7 Q Okay. Maradel didn't mention to you anything about Don David taking  
8 them to Chuck E. Cheese?

9 A Somebody mentioned Chuck E. Cheese out of the girls. I can't  
10 remember who --

11 Q Okay.

12 A -- out of the five.

13 Q Okay. And you don't remember if it was Maradel or someone else?

14 A Somebody mentioned Chuck E. Cheese, but I can't remember which  
15 one of the five.

16 Q Okay. Did Maradel ever -- Maradel mentioned that Don David gave  
17 them candy, right?

18 A Yes.

19 Q Did she -- she didn't mention to you that he ever put it on his parts or  
20 penis before giving it to them?

21 A Correct.

22 Q Maradel didn't mention that he ever put fruit on his penis and then gave  
23 it to them?

24 A Correct.

25 Q And Maradel didn't say to you that Don David kissed her on the mouth?

1 A Correct.

2 Q And then next -- the next one interviewed was Mirabel, correct?

3 A Yes.

4 Q Okay. Trying to stay in your order here.

5 A Thank you.

6 Q Okay. Mirabel told you that Don David touched her one time, right?

7 A I can't recall how many times she stated it happened.

8 Q Would reviewing your -- or the transcript at page 28 refresh your  
9 recollection?

10 A Yes, please. I don't see where she --

11 MS. KIERNY: Court's indulgence. Or could I approach really quick? I  
12 want to see her reference. [Indiscernible] wrong location. I apologize.

13 THE WITNESS: Okay.

14 BY MS. KIERNY:

15 Q I can't find it at this minute. I apologize.

16 Maradel did say that he touched her thing with his thing?

17 A Yes.

18 Q And you took his thing to mean his penis?

19 A Yes.

20 Q And this was when Don David's clothes were on, correct?

21 A Yes.

22 Q Okay. And she said -- she told you that she told her mom what  
23 happened right away?

24 A I can't remember the sequence of when she told.

25 Q Okay. I'm sorry, I gave you the wrong transcript earlier. Because of the

1 error with the Mirabel and Maradel, I was having you review Maradel's statement  
2 when we are on Mirabel. I am so sorry. Okay.

3 THE COURT: Does that change any of your testimony?

4 THE WITNESS: No, Your Honor.

5 THE COURT: Okay.

6 THE WITNESS: I thought we had just done Maradel and now we were  
7 moving on to Mirabel.

8 BY MS. KIERNY:

9 Q Okay. And I was asking you about Mirabel, but I gave you Maradel's  
10 transcript to review. Okay. So that was where the error happened. So my  
11 question earlier.

12 A Maradel stated he touched her other times.

13 Q Okay. We're on Mirabel or Maradel?

14 A Maradel.

15 Q Okay.

16 A And as far as Mirabel, it only happened one time.

17 A Okay. So Mirabel only had -- touched one -- one time?

18 A One time.

19 Q And Don David -- she said that Don David would also showed her his  
20 thing?

21 A Yes.

22 Q And her sisters and Yezline were here for that?

23 A Yes.

24 Q Were around for that. She mentioned boys being around when Don  
25 David would pull out his thing, correct?

1 A Yes.

2 Q Those boys were Leo, Orlando, and Juan?

3 A Yes.

4 Q When you interviewed Leo, he did not say that there was ever a time he  
5 saw Don David's thing?

6 A Correct.

7 Q She said it looked very big?

8 A She said big and brown.

9 Q And brown. Okay. You asked her what else did she see when she saw  
10 the thing?

11 A I can't remember if I asked her for more specific details.

12 Q Would looking at your statement refresh your recollection?

13 A Yes, please.

14 MS. KIERNY: May I approach?

15 Q We are on page eight at the top.

16 A Thank you. She stated that that was all she saw. That it was big and  
17 brown.

18 Q Okay. So she didn't mention seeing a catheter or any tubes or anything  
19 like that?

20 A Correct.

21 Q Okay. During Mirabel's interview she didn't mention anything about  
22 Don David taking her to McDonald's?

23 A I -- I don't recall that part.

24 Q She didn't say anything about Don David taking her to Chuck E.  
25 Cheese; do you recall?

1 A There was a mention of Chuck E. Cheese but, again, I can't remember  
2 which of the five.

3 Q Okay. And so one of the children said Chuck E. Cheese?

4 A I believe it was one.

5 Q One of the five. But then there were four others who did not?

6 A Yes.

7 Q Okay. And Mirabel also said that Don David gave them candy, right?

8 A Yes.

9 Q He didn't tell her -- she didn't tell you that he would rub the candy on his  
10 penis before giving it to them?

11 A Correct.

12 Q Or didn't mention that he -- that would give them watermelon and  
13 strawberries that he'd rubbed on his penis, either?

14 A Correct.

15 Q Okay. Mirabel told you that she saw Don David grab Yezline?

16 A Yes.

17 Q When this happened Mirabel was outside with her sisters and Litzi,  
18 correct?

19 A Yes.

20 Q Yezline tried to scream but couldn't, because Don David put tape on  
21 her mouth?

22 A Yes.

23 Q And the tape was gray?

24 A Yes.

25 Q At some point Don David's wife -- Grandma -- Don David's wife came

1 home and saw Yezline taped up --

2 A Yes.

3 Q -- according to Mirabel?

4 A Yes.

5 Q And then Mirabel told Yezline's mom what she saw and Yezline's mom  
6 was crying?

7 A Yes.

8 Q Okay. When you interviewed Litzi, she did not tell you about a time that  
9 she saw Yezline be pulled into Don David's apartment?

10 A Correct.

11 Q When you interviewed Jatziri, she did not tell you about a time that she  
12 saw Mirabel -- Yezline dragged into Don David's apartment?

13 A I don't remember about Jatziri mentioning it. I don't recall.

14 Q Okay. Would reviewing your notes -- or is there anything that would  
15 possibly refresh your recollection short of reading through the entire transcript?

16 A If you just give me a second, I'll look through my notes and see if I find  
17 it.

18 Q Sure.

19 A She stated that Don David touched Yezline.

20 Q Okay. But she didn't say that she saw Don David drag Yezline into his  
21 apartment or tape up her mouth? Didn't personally witness it?

22 A According to my notes, no.

23 Q Okay. And Maradel, similarly, did not say anything about seeing  
24 Yezline dragged into the apartment and taped up?

25 A Maradel? The first one?



1 Q Maradel, the first one. Yes.

2 A Correct.

3 Q Okay. When Mirabel was telling you that she saw Don David grab

4 Yezline -- Yezline, sorry, she said that happened this Friday, right?

5 A Yes.

6 Q Okay. And you were interviewing her on November 2nd?

7 A Correct.

8 Q And so last Friday would've been on October 28th, if you know?

9 A Approximately.

10 Q I think we went through the dates at a previous hearing.

11 A Yes. Uh-huh.

12 Q Okay. And you did -- you also mentioned that you interviewed

13 Yezline -- Yezline?

14 A Yes.

15 Q And she did mention a tape incident?

16 A Yes.

17 Q But she said that it was in Don David's bedroom?

18 A Yes.

19 Q And she said the tape was white?

20 A Yes.

21 Q And she did not say that Jatziri, Maradel, Mirabel, or Litzi were around

22 when she went into Don David's apartment?

23 A Correct?

24 Q In fact, she said she was alone when Don David pulled her in?

25 A Yes.

1 Q And Yezline did not say that Don David's wife showed up and saw her  
2 taped up?

3 A Correct.

4 Q Okay. All right. The next one in your order was Jatziri, correct?

5 A Yes.

6 Q Okay. Let me get to that one.

7 And you testified earlier that Jatziri said Don David was touching  
8 her on her front part, but that's not the term she used, right?

9 A She used *kola*.

10 Q Okay.

11 A Uh-huh.

12 Q And a lot of the other girls used that word too?

13 A Some used *kola*, some used *kosa*. Scarlett was the only one who  
14 identified it as [speaking in Spanish], vagina.

15 Q Okay. She never used the word, *paparucha*, with you did she?

16 A Who are we talking?

17 Q I'm -- Jatziri.

18 A Did she ever word, papa --

19 Q *Paparucha*? I'm butchering it, but.

20 A I don't know.

21 Q Okay. Would reviewing your notes refresh your recollection?

22 A Yes, please.

23 Q Okay. Go ahead.

24 A The only term she used that I recall was [speaking in Spanish], and she  
25 explained that was naked people.

1 Q Okay. And that was referring to what she saw on the phone, correct?

2 A Yes. Uh-huh.

3 Q Jatziri told you about two incidents when Don David touched her in his  
4 house, right?

5 A Yes.

6 Q And she told you the touchings only happened in his house?

7 A In the house, in the kitchen.

8 Q Always in the kitchen?

9 A Yes.

10 Q Okay. She did not tell you that Don David touched her at someone  
11 named Esther's house?

12 A No.

13 Q Okay. And she indicated -- the first incident in the kitchen started when  
14 she was playing at Litzi's house?

15 A Yes.

16 Q And then they went outside and Don David offered chocolate?

17 A Yes.

18 Q They went in the house to get the chocolate?

19 A Yes.

20 Q When I'm saying they, that would refer to Yezline, Maradel, Mirabel,  
21 and Litzi, correct?

22 A Yes.

23 Q And Litzi did not corroborate that she ever went into the house with --  
24 without Grandma being there?

25 A Correct.

1 Q Okay. And she told you, in fact, that she never went in Don David's  
2 house?

3 A Unless it was with Grandma --

4 Q Okay.

5 A -- is what I recall.

6 Q All right. Jatziri told you that Don David then touched her on her part  
7 over her clothes and on her belly, right?

8 A Yes. Over and under her clothes.

9 Q Okay.

10 MS. KIERNY: Court's brief indulgence.

11 THE COURT: Uh-huh.

12 BY MS. KIERNY:

13 Q Now, are you certain that she said it was over and under her clothes  
14 or -- are you -- are you certain about that?

15 A Let me review my notes; is that okay?

16 Q Okay.

17 A According to my notes she said [speaking in Spanish], and that's  
18 translated to on top and under my clothing.

19 Q Okay. On page -- and I guess I'm asking, do you know what he  
20 touched her belly with? And that was over her clothes, right?

21 A I don't recall. And I just -- I made a note but it was just the stomach.

22 Q Would refresh -- would reviewing your voluntary statement on page 48  
23 refresh your recollection?

24 A Yes, please.

25 Q Okay. Let me trade out transcribes --

1 THE COURT: Can you show Ms. Kollins first?  
2 MS. KIERNY: Oh, page 48.  
3 THE COURT: I think she wants to see it.  
4 MS. KOLLINS: I have that.  
5 THE COURT: Oh.  
6 MS. KOLLINS: If we could just have some clarification what the  
7 question is. Is the question, was she touched over her -- or under her clothes, on  
8 her belly?  
9 MS. KIERNY: Yes.  
10 MS. KOLLINS: Is that what we're trying to get to? Okay.  
11 THE COURT: Over the clothes, but on the belly area?  
12 MS. KIERNY: Yes.  
13 THE COURT: Okay. Thank you.  
14 THE WITNESS: She stated that he touched her over the clothes, on  
15 the belly.  
16 BY MS. KIERNY:  
17 Q Okay. And while he was touching her, his other hand was in the trash  
18 can?  
19 A Yes.  
20 Q Okay. And you testified earlier that he -- she also told you that he  
21 touched Mirabel and Maradel that day at the same time?  
22 A Yes.  
23 Q You interviewed Maradel -- Mirabel and she did not disclose to you a  
24 time when she was touched at the -- in Don David's kitchen, correct?  
25 A Correct.

1 Q Nor did she disclose to you a time when Don David touched her at the  
2 same time he was touching her twin?

3 A Correct.

4 Q You also interviewed Maradel.

5 A Mira -- Maradel?

6 Q Maradel.

7 A Yes.

8 Q Okay. Maradel.

9 A Maradel with a D, del.

10 Q Maradel.

11 A Okay.

12 Q We were referring Mirabel first and now we're talking about Maradel?

13 A Yes.

14 Q Okay. You also interviewed Maradel.

15 A Yes.

16 Q And she didn't disclose to you a time that Don David touched her in the  
17 kitchen?

18 A Along with her sister, no.

19 Q Okay. Jatziri also told you about another time when she was in Don  
20 David's kitchen.

21 A Yes.

22 Q And Litzi was present for that, as well?

23 A Yes.

24 Q And when you interviewed Litzi, again, she didn't disclose anything  
25 about that time being in the kitchen and seeing Don David? Let me back up.

1 And at that -- on that second time, Jatziri told you that Don David  
2 touched her?

3 A Yes.

4 Q And Litzi was present?

5 A Yes.

6 Q When you interviewed Litzi, she did not disclose at that time -- she did  
7 not disclose to you that she saw Jatziri be touched in the kitchen at that time?

8 A Correct.

9 Q Jatziri did not mention to you that Don David took her to McDonald's?

10 A There was a mention of McDonald's, like Chuck E. Cheese, but again, I  
11 don't remember which child.

12 Q Okay. Do you have my Jatziri statement?

13 A Yes, I do.

14 MS. KIERNY: May I approach, Judge? May I approach?

15 THE COURT: Yes.

16 MS. KIERNY: Okay.

17 BY MS. KIERNY:

18 Q I believe the reference that Jatziri did refer to McDonald's, she said that,  
19 When we get out of here, we are going to McDonald's to eat.

20 A Getting out of where?

21 Q The interview.

22 A Yes, I believe she said that.

23 Q So that is the reference to McDonald's?

24 A Yes.

25 Q Okay. Jatziri did not mention Don David taking them to Chuck E.

1 Cheese?

2 A I don't recall which child spoke --

3 Q Would reviewing your notes --

4 A Yes, please.

5 Q -- refresh your recollection?

6 A I don't have it in my notes.

7 Q Okay.

8 A But I remember somebody somewhere saying something about

9 Chuck E. Cheese.

10 Q Okay. And like you said, one of the four girls -- one of the five girls said  
11 that, correct?

12 A I believe it was one, yeah.

13 Q Jatziri told you Don David would show her videos on a phone.

14 A Yes.

15 Q And that was when she said something about being -- the people were  
16 [speaking in Spanish]?

17 A Yes.

18 Q And you don't know what that word means?

19 A She explained it that it was people were not wearing clothes.

20 Q Okay. But you're -- that's not, like, a word you're familiar with?

21 A No. No.

22 Q Okay. And she said that it was on a pink phone that she saw these  
23 videos?

24 A Yes.

25 Q And it was Grandmother's phone?

123



1 A Yes.

2 Q And her sisters, Yezline and Litzi, were there when this happened?

3 A Correct.

4 Q When Maradel spoke to you about a phone, she said the phone was

5 black, correct?

6 A Yes.

7 Q And when Yezline talked to you about a phone, she said the phone was

8 black, correct?

9 A Yes.

10 Q And Litzi did not say that she ever saw a video on Don David's phone?

11 A Correct.

12 Q Okay. Jatziri said that the man showed her his part?

13 A Yes. His *kosa* I believe is how she --

14 Q His *kosa* is how she referred to it?

15 A Yeah.

16 Q Okay. So his was a *kosa*, hers was a *kola*?

17 A *Kola*. Uh-huh.

18 Q Okay. Thank you. And Litzi was there?

19 A Yes.

20 Q Litzi did not tell you she ever saw the man's part?

21 A Correct.

22 Q Don David was in his house when this happened?

23 A Yes.

24 Q And Jatziri described it as brown.

25 A She described it as looking like a weenie and she said it was brown.

1 Q Okay. She didn't say she saw a catheter or tubes or anything like that?

2 A No?

3 Q Okay. Jatziri said that Don David gave them candy, but she didn't tell  
4 you that he would rub the candy on his penis before giving it to them?

5 A Correct.

6 Q And she didn't mention anything about strawberries or watermelon like  
7 that?

8 A Correct.

9 Q Okay. But she did mention a time where Don David -- she said Don  
10 David put candy in Yezline's part?

11 A She stated that Yezline mentioned it or said it to her.

12 Q Okay. So she mentioned that there was a time that Jatziri's dad picked  
13 up the girls, right?

14 A Yes.

15 Q Okay. Sorry. I'm all out of order here. I lost a page. Hang on. Sorry  
16 about that.

17 And then the girls got in a car with Jatziri's dad, right?

18 A Yes.

19 Q And in the car Yezline pulled the chocolate out and said that it smelled  
20 bad?

21 A Yes.

22 Q Okay. And according to Jatziri, Maradel -- Mirabel asked how --  
23 Mirabel, is that right?

24 A I can't remember which one of them.

25 Q I'm not saying Mirabel, right, I'm sorry.

1 A Mirabel, yes.

2 Q Mirabel. Mirabel, according to Jatziri, asked how the chocolate  
3 smelled?

4 A One of the girls asked, but I don't remember who.

5 Q Okay. Would reviewing Jatziri's statement on page 56 refresh your  
6 recollection?

7 A Yes, please.

8 Q Okay.

9 A Thank you. The transcript says Mirabel is the one who asked how it  
10 smelled.

11 Q Okay. You also interviewed Yezline about it and Yezline did not tell you  
12 a time -- about a time that Don David put chocolate in her -- in her private part?

13 A Correct.

14 Q And when you interviewed Mirabel, she did not mention a time that Don  
15 David put chocolate in Yezline's private?

16 A Correct.

17 Q The next one interviewed was Scarlett in your order?

18 A I believe was Yezline.

19 Q Okay. There was something that you -- you talked to about regarding,  
20 like, a tape incident, so I'm trying to orient to that.

21 Yezline said that Don David grabbed her -- actually, strike that  
22 entire intro about the tape incident.

23 Yezline told you that one time Don David grabbed her, pulled her  
24 into his apartment, and showed her a movie on his phone?

25 A Yes.

1 Q And she said that he only showed her a movie one time?  
2 A I can't remember how many times he showed her a video.  
3 Q Would reviewing Yezline's statement on page 22 assist your memory?  
4 A Yes, please. She stated he showed her a video one time.  
5 Q Okay. Now her friends were -- were with her, she said her friends -- the  
6 friends were with her when this happened, right?  
7 Q Yezline?  
8 A Yezline said the friends were with her.  
9 Q I don't remember.  
10 MS. KOLLINS: Well, I'm going to object as to foundation. Were with  
11 her --  
12 MS. KIERNY: When she saw the movie on his phone.  
13 MS. KOLLINS: Okay.  
14 THE COURT: Thank you for clarifying.  
15 MS. KIERNY: Thank you. Sorry.  
16 THE WITNESS: I -- I believe during the instance that she was talking  
17 about, she was here by herself.  
18 MS. KIERNY: Could I approach, Your Honor?  
19 THE COURT: Approach. How much longer do you got?  
20 MS. KIERNY: Probably about 20 minutes.  
21 THE COURT: What do you guys want to do about that?  
22 MS. KOLLINS: Well, Your Honor --  
23 THE COURT: Want to approach or?  
24 MS. KOLLINS: If we could, please.  
25 THE COURT: Yes.

1 MS. KIERNY: Maybe 10?

2 [Bench conference transcribed as follows:]

3 THE COURT: I want to hear what Ms. Kollins wants to do.

4 MS. KOLLINS: Ms. Espinoza is leaving the jurisdiction tomorrow, so  
5 they have to finish her. And they opened the door for quite a bit of material, so I'm  
6 going to have about 15 minutes, too.

7 THE COURT: [Indiscernible.]

8 ]MS. KOLLINS: Okay.

9 THE COURT: [Indiscernible] So I'll give you 10 more minutes and  
10 then -- and then you get 10 and you get five.

11 MS. KIERNY: All right.

12 THE COURT: Well, we'll see. I --

13 MS. KIERNY: I'll see what I can do.

14 THE COURT: See what you can do

15 MS. KIERNY: All right.

16 [End bench conference.]

17 BY MS. KIERNY:

18 Q What were we on? I'm sorry.

19 A Yezline and the children that were either present or not.

20 Q Okay. Thank you. I don't know, would reviewing your voluntary  
21 statement on -- Yezline's -- Yezline's voluntary statement on page 19 refresh your  
22 recollection?

23 A Please.

24 MS. KIERNY: May I approach. Good thing I wore comfy shoes today.

25 THE WITNESS: Yes. She used the word, the friends who are there.

1 BY MS. KIERNY:

2 Q Okay. From the context of her interview, you -- her friends would  
3 include Jatziri, Maradel, and Mirabel?

4 A Yes.

5 Q All right. You don't know if Litzzi was included in that from that  
6 statement?

7 A With Yezline, no, I don't recall.

8 Q And Yezline told you that Don David would pull her into his apartment  
9 and put tape on her mouth, hands, and legs?

10 A She described the one incident of that, yes.

11 Q One incident?

12 A Uh-huh.

13 Q Okay. And the tape was white.

14 A Yes.

15 Q And he got the tape from his wife's purse.

16 A Yes.

17 Q And this was in his room.

18 A Yes.

19 Q After he taped her legs, he would take off her pants.

20 A Yes.

21 Q Okay. She indicated, He takes off all of our clothes, but he just took off  
22 my underwear and pants.

23 A Yes.

24 Q And he then threw the pants on the floor.

25 A Yes.

1 Q And he then kissed her on the mouth.  
2 A Yes.  
3 Q And she said something about her pants being dirty from being on the  
4 ground?  
5 A Yes.  
6 Q Okay. And then after that, she later put on the pants herself.  
7 A Yes.  
8 Q And took off the tape by herself.  
9 A Yes.  
10 Q And Yezline did not tell you that she told her mom what happened that  
11 day.  
12 A Correct.  
13 Q Okay. Yezline did not tell you about a time when Don David touched  
14 her in his car.  
15 A Correct.  
16 Q Okay. He described a time where Don David showed her his thing  
17 behind his car, right?  
18 A Yes.  
19 Q Okay. And said the thing looked brown and a little bit black and a little  
20 bit darker brown.  
21 A Yes.  
22 Q Didn't describe a catheter.  
23 A No.  
24 Q I think at some point you asked her to draw it?  
25 A Yes.

1 Q Did she draw it?

2 A No, I believe she said she couldn't draw or couldn't draw it. Something  
3 to that effect.

4 Q Okay. And she said, that he had showed it to the four of us.

5 A Yes.

6 Q And based on the context of that conversation, you assume that the  
7 four of us would include Yezline, Jatziri, Maradel, and Mirabel?

8 A Yes.

9 Q Okay. When you interviewed Jatziri, she did not mention a time that  
10 Don David showed her his thing behind his car.

11 A Correct.

12 Q When you interviewed Maradel -- or Mirabel, she did not mention a time  
13 Don David showed his thing behind his car.

14 A Correct.

15 Q And when you interviewed Maradel, she did not mention a time Don  
16 David showed his thing behind his car.

17 A Correct.

18 Q Yezline did not mention a time that she saw Don David holding her  
19 sister Nicole to you.

20 A Repeat, please.

21 Q Yezline did not mention a time that she saw Don David holding her  
22 sister, Nicole, when she was talking to you?

23 A Holding her sister Nicole?

24 Q Does that sound familiar?

25 A No, it doesn't sound familiar.



1 Q Did she mention her sister Nicole at all to you?  
2 A I can't remember a Nicole.  
3 Q Would reviewing your notes refresh your recollection?  
4 A No. I know that's not in my notes.  
5 Q Nothing about Nicole is in your notes?  
6 A No.  
7 Q Okay. And Yezline didn't mention that Don David would put candy on  
8 his penis and then give it to her.  
9 A Correct.  
10 Q You also interviewed Scarlett Rangel?  
11 A Yes.  
12 Q And before speaking to you, Scarlett had talked to her mom, dad, and  
13 maybe the other girls, correct?  
14 A I can't remember who she spoke to or who she talked to.  
15 Q Okay. That's fine. And like -- you said she called him the old little --  
16 little old man?  
17 A [Speaking in Spanish.] Yes.  
18 Q Didn't know the name.  
19 A No.  
20 Q Didn't refer to him as *abuelo*.  
21 A No. She just described what she remembers he looked like.  
22 Q Sure. And she said that the man showed her his part.  
23 A Yes.  
24 Q She described it as black and a circle.  
25 A Yes.

1 Q And she told you the man showed her his part one time.  
2 A Yes.  
3 Q She told you that she saw Don David show his part to Yezline.  
4 A Yes.  
5 Q And that Yezline was with her when Don David showed her his part.  
6 A Yes.  
7 Q Okay. Yezline did not mention Scarlett's name at all during your  
8 interview with her.

9 A Correct.  
10 MS. KIERNY: Court's brief indulgence.  
11 I'll pass the witness.  
12 THE COURT: Ms. Kollins?

13 **REDIRECT EXAMINATION**

14 BY MS. KOLLINS:

15 Q Ms. Espinoza, when you speak to children that you may or may not  
16 have information are involved in the same incident, you don't introduce information  
17 from one interview with one child to the interview with the next child, do you?

18 A Correct.

19 Q Because that would be inappropriate questioning, right?

20 A Correct. That would be introducing information that the child I'm talking  
21 to at the time hasn't mentioned.

22 Q Okay. And -- and that would not be consistent with protocol?

23 A Correct.

24 Q And that could potentially contaminate the information you're getting,  
25 correct?

1 A Correct.

2 Q Okay. So if one kid tells you one thing happened and certain people  
3 were there, you don't go into the next interview and say, well, person A told me B,  
4 C, D.

5 A Correct.

6 Q You don't ever do that with a kid, right?

7 A Correct. Because that would be confronting the child.

8 Q Okay. We had some extended conversation about a interview you did  
9 with a Litzi Paredes; do you remember that?

10 A Yes.

11 Q Where and when did you do that interview?

12 A At the same location where I interviewed all the other children.

13 Q And when was that interview conducted?

14 A I don't recall the date. And, again, I didn't review the transcript,  
15 because I wasn't aware that she would be brought up.

16 Q Okay.

17 MS. KOLLINS: I am going to -- since she didn't review for today and  
18 we're trying to move this along, I'm going to give her a copy of the transcription, so  
19 she can give me some answers. Do you have any problem?

20 MS. KIERNY: If she says it will refresh her --

21 THE COURT: Well, if it needs to refresh her recollection --

22 MS. KOLLINS: Well --

23 THE COURT: -- you can show it to her.

24 MS. KOLLINS: -- she -- she didn't review for today, so I'd assumed  
25 she's not --

1 MR. WESTBROOK: Right. That's fine.

2 MS. KOLLINS: -- going to have any memory of it.

3 THE COURT: Yeah, so show it to her. I've given you permission to  
4 show it to her.

5 BY MS. KOLLINS:

6 Q I'm showing you a -- it has not been marked, so it's not anything that's  
7 going to be admitted, but it is a translation transcription of an interview with Litzi  
8 Paredes. Could you read a couple paragraphs just at the inception of that and see  
9 if that refreshes your memory?

10 MS. KIERNY: I'm sorry. What page are we on?

11 MS. KOLLINS: First page.

12 MS. KIERNY: First page.

13 MS. KOLLINS: Just seeing if she recognizes the interview.

14 MS. KIERNY: Sure.

15 THE WITNESS: Yes, I do -- I do recognize it.

16 BY MS. KOLLINS:

17 Q Okay. Ms. Espinoza, for now, I'm just going to leave that up there since  
18 you didn't review that for today so we can just try to move through this.

19 How old was Litzi when you interviewed her; do you know?

20 A I don't recall.

21 Q Okay. Did you go through the same protocol we talked about before?

22 A Yes.

23 Q Okay. Did she tell you who her mom and dad were, things like that?

24 A Yes.

25 Q Okay. Was there a point in the interview when she started speaking to

1 you and she told you she was scared and she started crying?

2 A Yes.

3 Q Okay. Were you able to get out of her what she was scared of?

4 A She said she didn't want to be in trouble, something to that effect.

5 Q And you went through a little more exchange with her and she did a  
6 drawing for you of a rose; do you recall that?

7 A I don't recall that.

8 Q Okay. Do you recall her saying to you:

9 There is a man over there where we live that -- and always there  
10 were three girls that went in with him and they would tell me that, that he called  
11 them, but I never went out with them. I just went out just once.

12 Do you remember her saying that?

13 A Yes, I do.

14 Q Do you remember her emotional state when she said that?

15 A She was upset and I believe -- I believe she was tearful.

16 Q That she would say -- or that she said to you, he never called them,  
17 they went in; do you recall that?

18 A Yes.

19 Q And -- just a moment. I'm not really geared up for this. Just a second.

20 She spoke to you about candy?

21 A Yes.

22 Q She said he would give them candy; he, being the man?

23 A Yes.

24 Q And he said to me to take it, being the candy?

25 A Yes.

1 Q Okay. And he said to Litzi, don't you want candy?  
2 A Yes.  
3 Q Okay. And she refused the candy. She said she had candy at home?  
4 A Yes.  
5 Q Do you recall that?  
6 A Yes, I remember.  
7 Q Okay. And then she said the man that offered me candy, his name is  
8 David?  
9 A Yes.  
10 Q And I saw that he would give them candy; she also said that?  
11 A Yes.  
12 Q And she named the children that were getting candy, Jatziri, Mirabel,  
13 and Yezline, and that she didn't know the names of the other two?  
14 A Yes.  
15 Q And she commented that she would go -- that those kids would go in  
16 his house?  
17 A Yes.  
18 Q Okay. She was with them outside coloring when he would offer candy  
19 on at least one occasion?  
20 A Yes.  
21 Q Okay. And she let you know that her mom had warned her not to go  
22 into the man's house, right?  
23 A Yes.  
24 Q And that she could only go in there if Grandma was there?  
25 A Yes.

1 Q And my mom said, Don't go in there when the guy is there without your  
2 grandmother?

3 A Yes.

4 Q Okay. And she said Donna Elena is the grandmother?

5 A Yes.

6 Q When he is alone in there, I cannot go inside; that's what her mom told  
7 her, right?

8 A Correct.

9 Q Okay. And that Elena would leave him alone in there; do you  
10 remember that?

11 A And that Elena would leave him alone in there. I believe it's Lorena, the  
12 babysitter.

13 Q Elena, the grandmother, would leave David alone in there?

14 A Yes.

15 Q That she had learned from the girls that he called them into the  
16 apartment?

17 A Yes.

18 Q That she learned from the girls that they were grabbed by him by his  
19 hands?

20 A Yes.

21 Q She saw the girls go in the man's house more than one time?

22 A Yes.

23 Q And told by Mirabel that Mirabel was --

24 MS. KIERNY: I'm going to object as to what Mirabel told Litzi -- told  
25 Elizabeth as triple hearsay.

1 MS. KOLLINS: Well, we've opened the door to the statement of Litzi.

2 THE COURT: I'll -- I'll overrule it. I'll allow it.

3 BY MS. KOLLINS:

4 Q Mirabel told Litzi she was grabbed inside the house?

5 A Yes.

6 Q That David would always have his door open and offer the kids candy?

7 A Yes.

8 Q Told you she was scared of Don David because he asked her for candy  
9 and she -- because he never asked me for candy; do you remember that?

10 A I don't.

11 Q Okay. Did she tell you that Don David lived right next door to her?

12 A Yes.

13 Q Okay. She told you he's about 50 and he has black and white hair?

14 A I don't remember what description she gave.

15 Q And at the end she reiterated to you that she was not allowed to go in  
16 his house?

17 A Correct.

18 Q She said that sometimes he gave her watermelon?

19 A Yes.

20 Q All right. You had some questions about your interview with Leo, Leo  
21 De Santiago Garcia?

22 A Yes.

23 Q Do you recall how old Leo is?

24 A I don't.

25 Q Does he live in the same Charleston Garden Apartments that we've



1 been talking about?

2 A Yes.

3 Q Okay. Did -- you interviewed him in the Child Advocacy Center, same  
4 protocol, same parameters we discussed earlier?

5 A Yes.

6 Q Okay. And in his statement did Leo tell you that the guy gives him  
7 candy and he did that to the three girls, gave them candy; do you recall?

8 A I did not review this -- the transcript, because I did not know this would  
9 be a part of the --

10 Q [Indiscernible] I apologize.

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

12 THE COURT: Yes.

13 BY MS. KOLLINS:

14 Q Showing you a copy of what purports to be the interview of Leonardo  
15 De Santiago Garcia. It looks like it was taken on March 7th. If you could just read  
16 the first few lines of that and see if that refreshes your recollection as to Leo's  
17 statement -- or taking Leo's statement?

18 A Yes, it does.

19 Q Okay. The question I had asked you is whether Leo told you -- and  
20 these questions were first posed by Ms. Kierny, but just in the interest of  
21 completeness as to what's in that statement, Leo did tell you that the guy gives us  
22 candy and he did that to the three girls?

23 A Yes.

24 Q If it would refresh your recollection to review page 13 of that, because I  
25 know you said you didn't prepare that statement for today.

1           A     Yes. He stated that the guy gives him candy and also gives them to the  
2 three girls.

3           Q     And he told you he doesn't know the guy's name, right?

4           A     He forgot his name is what the transcript says.

5           Q     Okay. He only heard about the touching stuff, right?

6           A     I don't recall.

7           MS. KIERNY: I'm going to object as to where he heard it.

8           MS. KOLLINS: I didn't say -- I didn't say where he heard it, I just --

9           THE COURT: I don't think that was her question.

10          MS. KIERNY: Okay.

11          THE COURT: Or you want to know where he heard it? I --

12          MS. KOLLINS: No. I said, he only indicated --

13          THE COURT: Okay.

14          MS. KOLLINS: -- he heard about the touching stuff.

15          THE COURT: Okay.

16          THE WITNESS: I don't remember.

17 BY MS. KOLLINS:

18          Q     If you would review page 14.

19          A     Correct. They told him that there was touching.

20          Q     Okay. And he told you that the man lives at the -- at the bottom of the  
21 apartments?

22          A     Yes.

23          Q     Apartment 15? He tells you that he remembers that the man used to  
24 give us candy, right?

25          A     Yes.

1 Q And that he gave candy to Leo?

2 A Yes.

3 Q He gave candy to the three girls and he forgot who else?

4 A Yes.

5 Q Is Leo pretty tiny or is he about the same age?

6 A I -- I can't remember what he looks like. I'm sorry.

7 Q That's okay.

8 A There's so many that...

9 Q Right. And he knew about Mirabel, Maradel, and Jatziri?

10 A Yes.

11 Q And he specifically told you that the man would give him KitKats?

12 A Yes.

13 MR. WESTBROOK: I'm sorry. I have an objection maybe as to  
14 clarification. He knew about Maradel, Mirabel, and Jatziri. He just knew who they  
15 were? That was the question?

16 MS. KOLLINS: Well, I -- I can clarify from the transcript. He knew the  
17 girls that were touched were Maradel, Mirabel, and Jatziri.

18 MR. WESTBROOK: Objection.

19 MS. KIERNY: Assumes they were touched.

20 MS. KOLLINS: Well, these -- these are the statement that they opened  
21 on cross-examination.

22 MR. WESTBROOK: Yeah, but the --

23 THE COURT: I --

24 MS. KOLLINS: These statements were deemed admissible pursuant  
25 to 51.385 and the prior consistent statement or inconsistent statement. So.

1 MR. WESTBROOK: My objection's not hearsay.

2 MS. KOLLINS: May I finish, please?

3 MR. WESTBROOK: My objection is it misstates the testimony. The  
4 testimony is that Leo was told that they were touched, not that he knew that they  
5 were touched. That's extremely different. That's all.

6 THE COURT: I -- I don't know what kind of objection that is.

7 MR. WESTBROOK: It misstates the evidence. That's the objection.

8 THE COURT: All right. Well, the jury is listening to the evidence,  
9 they'll figure it out. All right. So overruled.

10 Go ahead.

11 And that's -- all right.

12 MS. KOLLINS: And I --

13 THE COURT: Keep going.

14 MS. KOLLINS: Go on.

15 THE COURT: You -- you only have two more minutes and then I need  
16 to --

17 MS. KOLLINS: I --

18 THE COURT: -- the court needs to --

19 MS. KOLLINS: Understood.

20 THE COURT: -- break for the evening.

21 MS. KOLLINS: Understood.

22 THE COURT: All right.

23 BY MS. KOLLINS:

24 Q And he said that the candy that he was giving was KitKats and that was  
25 more than one time, correct?

1 A Yes.

2 Q And that was given by the man at his house near his door, correct?

3 A Yes.

4 MS. KOLLINS: I have no more questions for Ms. Espinoza.

5 THE COURT: All right. You can have a few minutes.

6 MS. KIERNY: I have, like, two minutes.

7 THE COURT: All right. Go ahead. Take --

8 MS. KIERNY: You gave me five, so I'll see if I can do that.

9 THE COURT: All right. I'll give you five.

10 **RECROSS-EXAMINATION**

11 BY MS. KIERNY:

12 Q You said -- you told Ms. Kollins you didn't review these transcripts of  
13 Litzi and Leo, right?

14 A Correct.

15 Q You actually don't have transcripts of these?

16 A I don't believe I do.

17 Q Your office never -- didn't transcribe these statements?

18 A I don't know who, if any, transcribed --

19 Q Okay. And these --

20 A -- those specific kids.

21 Q -- look like a different format than what are transcribed from your office.

22 A What I'm looking at, yes. It's a different format.

23 Q Okay. When I had asked you earlier about the times that Jatzi said  
24 Litzi, Maradel, Mirabel, and Yezline were in Don David's kitchen, no one mentioned  
25 that Grandma was present at that time, correct?

1 MS. KOLLINS: This is beyond the scope of my redirect.

2 MS. KIERNY: It goes into what she was talking about with Leo.

3 THE COURT: Well, I don't remember if you got into that. So what do  
4 you want to do about that?

5 MS. KOLLINS: Well, I'm -- I'm telling you -- my objection was beyond  
6 the scope, so I'm making that in good faith. I don't remember asking any questions  
7 about anybody being in the kitchen.

8 THE COURT: The kitchen, did anybody ask any questions about what  
9 happened in the kitchen?

10 MS. KOLLINS: My only question to her for all of Ms. Kierny's  
11 questions were, would you ever introduce a topic from what one kid told you into  
12 the next interview? I didn't talk about any of these specifics, except for Leo and  
13 Litzi.

14 THE COURT: Yeah, Leo and Litzi. Yeah, I don't think she discussed  
15 Mirabel, Maradel --

16 MS. KIERNY: Okay.

17 THE COURT: -- in the kitchen and whether Grandma was there. I  
18 don't remember that topic coming up.

19 MS. KIERNY: Okay. I will move on.

20 THE COURT: All right. So I'm going to sustain that objection.

21 MS. KIERNY: Sure.

22 BY MS. KIERNY:

23 Q Now, Ms. Kollins was asking you about things that Litzi told you about  
24 Don David doing to the girls, right?

25 A Yes.

1 Q Litzi didn't witness any of these things, correct?  
2 A Litzi -- repeat, please.  
3 Q Litzi did not witness Don David touching the girls?  
4 A Correct.  
5 Q She just heard it from the girls?  
6 A Correct.  
7 Q Ms. Kollins also asked you about things that Leo had heard about the  
8 girls?  
9 A Correct.  
10 Q And Leo, himself, did not witness touching of the girls?  
11 A Correct.  
12 Q He did not witness Don David showing them -- showing the girls videos  
13 on his phone?  
14 A Correct.  
15 Q He did not witness Don David exposing himself to the girls?  
16 A Correct.  
17 Q Anything that he might have said about that was something that he was  
18 told by the girls?  
19 A Correct.  
20 Q Okay.  
21 MS. KIERNY: No further questions.  
22 THE COURT: All right. Anything from the jurors? Questions from the  
23 jurors? Everybody's thinking right now. All right.  
24 Ms. Espinoza, you are excused. Thank you very much for your  
25 time.

1 THE WITNESS: Thank you.

2 THE COURT: You can go ahead and step down.

3 THE WITNESS: Thank you.

4 THE COURT: Go ahead and grab all your things. You can give the --  
5 you can leave that there.

6 THE WITNESS: I'll leave those there.

7 THE COURT: You can go ahead and step down. Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: Watch your step. Careful.

10 THE WITNESS: I will.

11 THE COURT: So ladies and gentlemen of the jury, I'm going to excuse  
12 you. We're going to need you at 9:00 tomorrow. And the admonishment that I  
13 gave you before still applies. I'm going to go ahead and read it now.

14 During this overnight recess you're admonished to not  
15 communicate among yourselves or with anybody else about the trial or the subject  
16 matter of the trial; do not communicate at all with any of the parties, attorneys, or  
17 witnesses involved in the trial; do not seek or obtain any information or comments  
18 about the case from any source, including, without limitation, newspapers,  
19 television, radio, internet, cell phones, or any other electronic device; do not read,  
20 watch, or listen to any report or commentary about the case; and do not form or  
21 express any opinion on any subject connected with the trial until the case is finally  
22 submitted to you for deliberations. Finally, do not perform any research or  
23 investigations.

24 Please leave your notes here and have a safe drive home, and  
25 we'll see you all back here at 9:00 a.m., okay. Thank you. Thank you very much.



1 [Jury recessed at 5:26 p.m.]

2 THE COURT: Let's have a seat, everybody.

3 I just wanted the record to be clear on something. When -- you  
4 know, I allowed a few minutes of hearsay testimony from -- of statements of Litzi  
5 and Leo that came in on the cross here of Ms. Espinoza. And I wanted to make  
6 sure -- I think I said on the record here at the bench that I agreed with Mr. Hamner  
7 that this was not an instance of a -- a prior inconsistent statement. I think he was  
8 right on that and I agreed with him here at the bench. And then -- and then when --  
9 when Ms. --

10 MR. WESTBROOK: Kierny? I'm still unnamed today, too.

11 THE COURT: No.

12 MS. KIERNY: Kollins.

13 MR. WESTBROOK: Oh, Ms. Kollins.

14 THE COURT: Ms. Kollins. Ms Kollins. Then when you asked what's  
15 the -- what's the statue I'm relying on, and I -- I think I told you 51.035. That's -- I  
16 mean that's -- that's obviously a mistake, because that's the prior inconsistent  
17 statement. And then I corrected it to say -- I meant, you know, 51.385, which is the  
18 one dealing with hearsay of children.

19 And then also it kind of comes in under 51.075, which is the  
20 general exception that Mr. Westbrook said. And then there's this other one, which  
21 kind of applies, I just -- to just credibility of declarant 51.069. But that -- that really  
22 only applies when -- when the person who's providing the hearsay is testifying to  
23 information that came from someone else who is the declarant of the hearsay  
24 statement and -- and if that hearsay declarant, in this case it would've been Mirabel,  
25 Maradel, were on the stand, then the hearsay comes in under 51.069 only to the

1 extent that it would have been able to come in with Mirabel or Maradel on the  
2 stand. Obviously, it would only come in with them on the stand if it's admissible  
3 under 51.385.

4                   So I think it all ties back to 51.385 and as -- let me finish -- and as  
5 you know when you were all here at the bench, what I said was I -- it should only  
6 come in if -- if the declarant's testifying.

7                   MR. WESTBROOK: And we said --

8                   THE COURT: Right?

9                   MR. WESTBROOK: -- that in good faith we expect to bring them --

10                  THE COURT: And you said that in good faith that you're bringing them  
11 in.

12                  MR. WESTBROOK: Yeah.

13                  THE COURT: And then Ms. Kollins said that, well, she's going to move  
14 to strike if they don't testify. And I said, well, we'll cross that bridge when we get  
15 there. I just want to reiterate I think Ms. Kollins is right on there that they have to  
16 testify. If they don't, it's probably subject to a Motion to Strike, because 51.385  
17 contemplates that they're -- they testify unless you give 10-days' notice that they  
18 wouldn't testify. That's how I understand the rule.

19                  MR. WESTBROOK: I have some arguments about that rule, but they're  
20 not important right now because we're not at that point.

21                  THE COURT: Okay.

22                  MR. WESTBROOK: I will say this, though, and it's kind of interesting if  
23 you think about it.

24                  THE COURT: Okay.

25                  MR. WESTBROOK: Ms. Kierny didn't actually -- it wasn't any hearsay

1 statements. She simply confirmed that the other people she testified, Litz and Leo,  
2 did not agree with what Mirabel and Maradel said. My co-counsel didn't actually  
3 get any hearsay out. The State did. They actually read from the transcripts, which  
4 we never did.

5 THE COURT: Okay.

6 MR. WESTBROOK: Both transcripts.

7 THE COURT: Interesting point.

8 MR. WESTBROOK: So when thinking about whether to strike  
9 something, the fact that we never actually elicited hearsay --

10 THE COURT: Yeah.

11 MR. WESTBROOK: -- should be kind of important.

12 THE COURT: And -- and you know what, that is very important. But  
13 that's kind of why I said I don't want to address that now. I'm just letting you know  
14 that that's an issue, that I think Ms. Kollins makes a good point there that -- that it  
15 may be some -- a ripe Motion to Strike. But I'll consider it when we have to.

16 MS. KOLLINS: And if I could just make a brief --

17 MS. KIERNY: I anticipate they're going to be here at 10:00.

18 THE COURT: Okay.

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

20 THE COURT: Ms. Kollins, yeah.

21 MS. KOLLINS: Just a very brief record.

22 The State understands the court's analysis. I respectfully  
23 disagree. They did use hearsay statements, otherwise I wouldn't have jumped up.

24 THE COURT: Right.

25 MS. KOLLINS: That testimony as it came in is not cross examinable if

1 those people don't arrive. The State was in a position where we had to go through  
2 Leo's statement, because this witness that was on today leaves the jurisdiction and  
3 will not be available for the remainder of this trial.

4 THE COURT: Right. Right.

5 MS. KOLLINS: So, the court ruled it was admissible pursuant  
6 to 51.385. I assume the court's making a ruling that those factors under 51.385  
7 have been met.

8 THE COURT: That's kind of what I did at the bench. I -- I think this --  
9 it's the same -- all the same factors that -- that all this -- you know, everything that  
10 she said in your hearing kind of applies. So it's kind of like a mini hearing we did at  
11 the bench.

12 MS. KOLLINS: I -- I don't disagree that the factors would be something  
13 the court would have to find, but that's usually done pursuant to a hearing, and at  
14 least reviewing the statements to discern whether, you know, the -- the statements  
15 were spontaneous, whether they were subject to repeated questioning, all those  
16 kinds of things, the factors that we went through when we held our hearing. So we  
17 probably, in an abundance of caution --

18 THE COURT: Well, you kind of -- kind of qualified her, because you  
19 got her to admit that's how she does all of her -- all of her examinations.

20 MS. KOLLINS: No. And I understand that. But the 51.385  
21 admissibility is speaker specific. It's not the interviewer, it's the speaker. So each  
22 kid has to be in that particular setting if those findings have to be made. So I  
23 guess --

24 THE COURT: I understand your point.

25 MS. KOLLINS: To cure that, perhaps, the defense wants to give you

1 copies of those statements, so that the court can at least have something in the  
2 record --

3 MR. WESTBROOK: Oh, I've --

4 MS. KOLLINS: -- that they've made --

5 THE COURT: That's a good point. I'll take a look at that and -- and if --  
6 I'll look at the statement and if there's anything in there that would cause me to  
7 believe there's lack of reliability then we can strike the testimony.

8 MR. WESTBROOK: And, Your Honor, obviously, I had about five other  
9 exceptions it would come under and a complete explanation, so that wouldn't close  
10 the argument --

11 THE COURT: Yeah. But I've got to -- I got to leave now --

12 MR. WESTBROOK: Yeah.

13 THE COURT: -- because it's 5:35. Can you guys let me go, please?

14 MS. KIERNY: All right. Bye.

15 MR. WESTBROOK: Yes.

16 MS. KIERNY: I will give those to your clerk.

17 MR. WESTBROOK: Run. Save yourself.

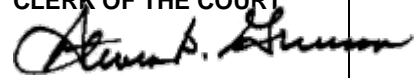
18 THE COURT: Yeah, please. Thank you.

19 [Court recessed at 5:32 p.m., until the following day, May 5, 2017, at 9:07 a.m.]  
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1 ATTEST: I do hereby certify that the foregoing is a true and correct transcript, to the  
2 best of my ability, from the audio/visual recording of the proceedings in the above-  
3 entitled case.

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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

**FRIDAY, MAY 5, 2017**

**TRANSCRIPT OF PROCEEDINGS RE:  
JURY TRIAL - DAY 9**

\*\*\*\*\*

**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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No exhibits offered.



1 **LAS VEGAS, NEVADA, FRIDAY, MAY 5, 2017**

2 [Proceeding commenced at 9:07 a.m.]

3  
4 [Outside the presence of the jury.]

5 THE COURT: So we are on the record now. I had a couple of things.

6 MR. HAMNER: Okay. And I -- I just want to make a brief record just  
7 on the ruling yesterday, if I could, on one matter. But I can wait until the court's  
8 ready or --

9 THE COURT: Why don't you --

10 MR. HAMNER: Okay.

11 THE COURT: I'll make my record, then you can make your record.  
12 Okay. Well, I'll make my record first.

13 MR. HAMNER: Okay.

14 THE COURT: Okay. So yesterday, you guys gave me the transcripts  
15 at the end of the day of Litzi and -- that's Litzi Paredes and it was Leo Garcia. As  
16 we all know, earlier in the day we had the sidebar up here and defense counsel  
17 made a request to use hearsay statements from Leo and Litzi pursuant to 51.385.

18 We are obviously very short on time. I couldn't stop everything to  
19 hold a 51.385 hearing, although I think the State did say that that was the proper  
20 protocol. So I deviated from proper protocol there and conditionally permitted the  
21 use of the hearsay, subject to a Motion to Strike. I would have preferred to handle  
22 it the very same that I allowed the State to handle it, which was in the middle of  
23 trial, to wit, after the jury had been sworn. The State asked for a 51.385 hearing  
24 and to get in statements of children, I just didn't, you know, in the middle of  
25 cross-examination, we -- we really didn't have the time to do that. We all know the

1 time constraints we were in with the witness, anyway.

2                   So what I did under the circumstances, I gave defense  
3 permission to use hearsay. At the end of the day, the parties then gave me these  
4 transcripts. So thank you. I have reviewed the transcripts of Litzi and Leo. And I --  
5 I can see what anyone else reading these transcripts can see, that Ms. Espinoza  
6 conducted the interviews in the exact same manner and used the same protocols  
7 as the other persons that -- that she interviewed.

8                   As far as the actual substance, Ms. Kollins is correct, that you've  
9 got to actually look at the substance in what was said, not just the matter of the  
10 interview. It seems that these children had less relevant information, obviously, and  
11 maybe -- maybe because they witnessed less. In any event, I didn't see any motive  
12 to fabricate here.

13                   They use the exact type of terminology -- they use the same  
14 exact terminology as the other witness -- the other children. They, you know,  
15 appropriate terminology. Their -- their statements were just as spontaneous as the  
16 other children. There are no contamination errors.

17                   I checked for all the different types of contamination errors.

18                   They mentioned some of the same details that the other children  
19 mentioned, such as -- such as the defendant, you know, kind of being around these  
20 children and giving them candy and specifically mentioned KitKats and -- and some  
21 of the other details.

22                   So -- so even though their memories are more vague, I still think  
23 there is sufficient corroboration to -- to give trustworthiness to what he said.

24                   So -- so I think, you know, I don't, you know, I'm not -- I'm not  
25 inclined to change what I said yesterday, allowing the testimony in. Still subject to a

1 Motion to Strike, because the rule -- I think -- my view is the rule requires the actual  
2 children witnesses to just show up in court. Hopefully, they'll show up in court. I  
3 know that defense counsel takes a different view that maybe they don't have to  
4 show up. But, hopefully, we don't have to cross that bridge. And so it's still subject  
5 to a potential Motion to Strike. I'm still granting that right to the State.

6 And the only other thing I need to say is I guess, I think -- I think  
7 when defense was making a statement -- an argument yesterday that technically  
8 Ms. Kierny didn't use any hearsay, and I -- I think the argument -- part of your  
9 argument was, you know, having a witness say what someone didn't say out of  
10 court is -- is not hearsay. I don't think I need to reach that issue, so I'm not making  
11 any ruling on that.

12 MR. WESTBROOK: Sure.

13 THE COURT: So --

14 MR. WESTBROOK: And to be -- clear, I wanted to get --

15 THE COURT: So maybe it was hearsay. I don't need to rule on that.

16 MR. WESTBROOK: Right.

17 THE COURT: So -- but what I do need to know, basically, why I'm  
18 prefacing all this, I need to know from the defense if you're planning to introduce  
19 any other hearsay statements from these transcripts, the -- the State is entitled to  
20 better notice than what you gave. And -- and we would need to -- to actually do a  
21 more searching analysis of that.

22 MR. WESTBROOK: If I could be very clear.

23 THE COURT: Yeah.

24 MR. WESTBROOK: We did not submit --

25 THE COURT: Well, I think he was next. Let's --

1 MR. WESTBROOK: All right.

2 THE COURT: Let's -- he wanted to make a statement, and he actually

3 said it first. So.

4 MR. WESTBROOK: As long as I also get a chance to talk --

5 THE COURT: Okay.

6 MR. WESTBROOK: -- uninterrupted, like Mr. Hamner does --

7 THE COURT: All right.

8 MR. WESTBROOK: -- then I'm fine with that.

9 THE COURT: Because I don't want to -- I don't like this last-minute

10 stuff when we don't have enough time to do exactly what we're supposed to do.

11 MR. WESTBROOK: Right. Fortunately, we're waiting for a juror, so we

12 got a little time.

13 THE COURT: Okay.

14 MS. KIERNY: Which juror are we waiting for?

15 MR. WESTBROOK: 6.

16 MS. KIERNY: She's here.

17 MR. HAMNER: I want -- I want to preface this with a couple of things.

18 THE COURT: Okay.

19 MR. HAMNER: Just to make the record abundantly clear, we were

20 very pressed for time yesterday. And so I know from the State's --

21 THE COURT: So who -- who gets these?

22 MR. HAMNER: -- perspective, some of the things we wanted to put on

23 the record, we didn't really get a full opportunity to do so.

24 THE COURT: Of course.

25 MR. HAMNER: First of all, I just want to just touch first briefly on the

1 threshold issue of what the statute actually says. 51.385 states expressly as  
2 follows:

3 (1) In addition to any other provision for the admissibility made by  
4 statute or rule of a court. A statement made by a child under the age of 10  
5 years describing any act of sexual conduct performed with or on the child, the  
6 child --

7 And the rest talks about physical abuse.

8 -- where any act of physical abuse of the child is admissible in a  
9 criminal proceeding regarding the act of sexual conduct or physical abuse  
10 if --

11 And they talk about the provisions in the hearing.

12 Neither Litzi nor Leo ever described sexual conduct performed on  
13 themselves. This hearsay statute was carved out for the legislature for alleged  
14 child victims of sexual or physical abuse. And neither Litzi or Leo have ever been a  
15 victim of child sexual abuse.

16 This statute does not allow you to bring in hearsay statements  
17 from lay child witnesses that observed things in relation to a child sexual assault  
18 case.

19 Now, we didn't get a chance to bring that --

20 THE COURT: That's a good point.

21 MR. HAMNER: Yeah.

22 THE COURT: That's a very good point.

23 MR. HAMNER: And I -- and -- and it --

24 MR. WESTBROOK: I have two that I want to go to.

25 MR. HAMNER: Well, I -- I need an opportunity to fully make my record.

1 Okay.

2 THE COURT: Yeah, please. Yeah, make your record.

3 MR. HAMNER: So number one, as a threshold matter, this -- that  
4 testimony should have never have come in. And it's --

5 THE COURT: Which -- which testimony are you referring specifically --  
6 anything specific?

7 MR. HAMNER: Any question that they asked Elizabeth Espinoza about  
8 statements or observations that Litzi or Leo made to Elizabeth Espinoza during  
9 their forensic interview. And that's precisely what those questions are.

10 And -- and when they get into these statements of we didn't offer  
11 any hearsay, yes, they did. They asked Ms. Espinoza, Isn't it true that Litzi didn't  
12 see X? Isn't it true Leo didn't X? And they went through a couple of things. And  
13 they were comparing it and contrasting it to things that the alleged victims told  
14 Elizabeth Espinoza. Those are hearsay statements.

15 When you are having a conversation and a child denies to a  
16 forensic interview that they did not observe some particular event, they are offering  
17 that for the truth of the matter asserted.

18 THE COURT: Yeah.

19 MR. HAMNER: But --

20 THE COURT: And this is regarding what -- what they saw with respect  
21 to sexual acts of others, not themselves. So the statute doesn't apply?

22 MR. HAMNER: It doesn't apply to them. It only applies to alleged  
23 victims, but -- but I --

24 THE COURT: I -- yeah.

25 MR. HAMNER: -- I want to just touch on a couple other things.

1 THE COURT: It's a very good point.

2 MR. HAMNER: I want to talk about the notice issue. I brought that up.  
3 And I -- and I say it for this reason. Prior to us starting this trial, we had turned over  
4 the statements of Leo and Litzi and we talked about it at the discovery hearing  
5 about we have these two people and they intended to call them as witnesses.

6 THE COURT: Uh-huh.

7 MR. HAMNER: The defense noticed Leo and Litzi as witnesses. What  
8 did they not do? They never filed a notice of 51.385.

9 That is a very telling sort of thing, because they knew about  
10 them. They knew what they wanted to use Litzi and Leo for and they don't file a  
11 notice.

12 Now, here's the other interesting --

13 THE COURT: I don't -- the statute doesn't require pretrial notice.

14 MR. HAMNER: And I --

15 THE COURT: And sometimes the defense doesn't know who they're  
16 going to call until they see the State's case.

17 MR. HAMNER: But they -- but they do when they actually told you at a  
18 discovery hearing, We intend to call them potentially as witnesses. And they told  
19 this court by filing a Notice of Witness that they're going to call Leo and Litzi.

20 But let's just flash --

21 THE COURT: Yeah, they did tell us that.

22 MR. HAMNER: And then let's flash forward to the 51.380 hearing that  
23 we actually held.

24 THE COURT: Yeah.

25 MR. HAMNER: At that point, neither the State nor -- the defense did

1 not get up here and, And, Your Honor, we'd like to ask Ms. Espinoza about some  
2 additional questions regarding Litzi or Leo. We had a full day hearing with that very  
3 witness and they --

4 THE COURT: Yeah. So -- so you're kind of suggesting they waived  
5 their right under 51.385 for not raising it then?

6 MR. HAMNER: I -- I just think that -- the bottom line is, listen, I think it  
7 was improper for them to try to jump past the hearing, because I think if we had  
8 held --

9 THE COURT: Certainly it was last minute in -- in the middle of a rush.  
10 And it wasn't -- and it -- and it -- I could see how the State would be very frustrated  
11 by that.

12 MR. HAMNER: And -- and here's the thing.

13 THE COURT: Yeah.

14 MR. HAMNER: In our rush, we didn't even touch about the most basic  
15 threshold issue, which is neither one of those children are alleging sexual abuse.  
16 And, therefore, they can't even qualify under 51.385.

17 THE COURT: That -- that argument might have affected my ruling  
18 yesterday.

19 MR. HAMNER: Right.

20 THE COURT: And I wish I would have been alerted to that specific  
21 aspect. I should have seen it, even though no one mentioned it.

22 MR. HAMNER: And I -- and I -- listen, we apologize for not bring this  
23 sooner.

24 THE COURT: No, no, no, no.

25 MR. HAMNER: And -- look --



1 THE COURT: What should we do about that going forward?

2 MR. HAMNER: I -- I think at this point -- listen, this bell has been rung.  
3 I mean -- and here's the thing. What I want to be --

4 THE COURT: All they said is they didn't see something. That's --

5 MR. HAMNER: No, I understand that. And I -- I think what -- what  
6 needs to be at least clear for the record, that it was the defense that absolutely  
7 wanted Elizabeth Espinoza to testify about hearsay statements from these two  
8 witnesses. They wanted that.

9 THE COURT: Right.

10 MR. HAMNER: So they don't come up on appeal, if this goes up on  
11 appeal claiming it was improper for us to address hearsay statements from these  
12 same witnesses.

13 THE COURT: No. You got that record. You made that record very  
14 clear.

15 MR. HAMNER: I just want that to be clear. I just wanted to lay those  
16 things out. So just in the future, you know, maybe not this case -- maybe not -- that  
17 we don't have this, kind of, again. Because when I walked out of the courtroom and  
18 I went, they're not even -- they're not even child victims, and I --

19 THE COURT: No, you're --

20 MR. HAMNER: -- and I apologize to the court --

21 THE COURT: You're exactly right.

22 MR. HAMNER: -- for not bringing it to the court's statement.

23 THE COURT: You're exactly right.

24 MR. HAMNER: But -- but I just want to make my record.

25 THE COURT: And then something -- I -- I was kind of rushing you

1 guys, too. We had -- you know we had limited time.

2 MR. HAMNER: I -- no, and I understand. And I preface everything with  
3 that at the beginning of my statement. So I just want to make a record on those  
4 three things.

5 THE COURT: All right.

6 MR. HAMNER: And we understand. And Litz's here today and I'll get  
7 an opportunity to cross-examine her. Sounds like Leo will be coming. I'm going to  
8 get an opportunity to cross-examine him. So.

9 THE COURT: Okay. You made a good record.

10 MR. HAMNER: Thank you, Your Honor.

11 THE COURT: Let's -- let's -- they get to make their record now.

12 MR. WESTBROOK: First of all and --

13 THE COURT: I think he's kind of right -- I think he's right about the --

14 MR. WESTBROOK: Okay.

15 THE COURT: -- the statute not -- not applying in this particular case.  
16 So.

17 MR. WESTBROOK: I understand his entire argument, Your Honor.

18 THE COURT: Yeah.

19 MR. WESTBROOK: And what's happening is he's using 51.385 as a  
20 sword and shield, but I don't even care, Your Honor, because --

21 THE COURT: Okay.

22 MR. WESTBROOK: -- we didn't submit this under 51.385.

23 THE COURT: Well, you did. You stood right there and said --

24 MR. WESTBROOK: Your Honor, please don't interrupt me. I heard  
25 him talk for five direct minutes without being interrupted once --

1 THE COURT: Yes, sir. Go ahead.

2 MR. WESTBROOK: That's never happened with me in this courtroom.

3 THE COURT: All right.

4 MR. WESTBROOK: Never.

5 THE COURT: All right.

6 MR. WESTBROOK: I'd like to not be interrupted. Thank you.

7 51.385 --

8 THE COURT: Well, I -- I -- okay.

9 MR. WESTBROOK: -- is not what we submitted it under. What we  
10 pointed out at the bench was six different exceptions that we submitted the -- we  
11 intended to submit hearsay under. And remember, we didn't actually submit  
12 hearsay.

13 What Mr. Hamner is saying is incorrect. If we say, Did the  
14 witness confirm this and they say, No, that is not hearsay. It goes to a lot of other  
15 things; It is not hearsay. We have not solicited the hearsay statement. We did not  
16 say, Isn't it true that Litzi said none of this ever happened to you? That would be  
17 soliciting hearsay. Did Litzi confirm what Maradel said? That is not soliciting  
18 hearsay. That is not hearsay at all and it's admissible. That's number one.

19 Number two, the 51.385 was brought up because every single  
20 question that was asked by my co-counsel was part of the 51.385 hearing that the  
21 State brought on in order to get hearsay. There was never a specific ruling, which I  
22 asked for, as to what specific statements from the 51.385 hearing were going to be  
23 admitted at trial and what was not. I asked for it. There was nothing specific.

24 We also asked for a transcript from the 51.385 hearing before  
25 certain witnesses were presented. We were told the State can present their case

1 any way they want, they don't have to change the order of their witnesses, so we  
2 didn't get that either.

3 Please recall that these witnesses themselves, Litzi and Leo,  
4 weren't even turned over to us until April 7th, 2016. We didn't know their  
5 addresses. We didn't know that they were interviewed. We didn't have the  
6 interviews. We didn't even know their last names.

7 Mr. Hamner according to the 41-page record turned over by  
8 Detective Campbell a few days ago in the middle of this trial had this information --  
9 not the interviews because that wasn't until March 1st and March 7th,  
10 respectively -- had this information back in January and it wasn't given to us. That  
11 has been a subject of other arguments.

12 51.385, however, is irrelevant to this conversation for two  
13 reasons. Number one, we have five other reasons why we could have asked for  
14 hearsay and gotten it. And Ms. Kierny didn't actually elicit any hearsay.

15 The State not only elicited hearsay, but triple hearsay. What they  
16 did was they actually had her answer a question about what one witness said  
17 another witness said. We objected, it was overruled. They got hearsay, we didn't.

18 All we asked about what was not said and what was not  
19 confirmed. That is vital not just to show the truth of the matter asserted, but it goes  
20 to the investigation in this case.

21 One of our arguments, and this is definitely going to be  
22 something you'll see when I talk to Detective Campbell today, is that the State got  
23 all the interview transcripts of all the witnesses that helped their case and they  
24 buried the stuff that didn't help their case. Litzi and Leo directly contradict  
25 witnesses in this case, and yet that stuff wasn't even transcribed or translated,

1 much less turned over in a timely fashion.

2 That goes to the investigation that the police officers and the  
3 CAC investigators put together. They were sloppy and they were biased. We are  
4 always allowed to talk about bias and credibility. We are always allowed to  
5 impeach. *Davis v. Alaska* is the case, the Sixth Amendment, the Fourteenth and  
6 Fifth Amendments are the amendments. We get to do that. Nothing that came out  
7 on the stand, nothing that we asked was inadmissible ever.

8 There are five different ways it's come in. And, Your Honor, you  
9 already said that it also comes in under 51.075, you said that yesterday. And you  
10 said it arguably comes in under 51.069, that we had a little argument about  
11 declarants and you said it was still arguable. But it definitely comes under 51.075.

12 The State cannot sit here and say that there is not an indicia of  
13 reliability from the interview that the CAC witness, the forensic interview specialist  
14 did who is their witness in their case and who they spent an entire day in a 51.385  
15 hearing arguing to the court is incredibly reliable and is following the process so  
16 that the statement she gets are reliable. Now they're going to turn around and say  
17 she's not reliable? If she's reliable, then she comes in under 51 -- 75, the general  
18 exception, because it's -- it got indicia of truth and therefore it can be admitted.

19 If she's not reliable, then this is a mistrial, because every single  
20 thing that she said shouldn't have come in. That's the only way to go in this.

21 But if the State --

22 THE COURT: So --

23 MR. WESTBROOK: -- wants to describe how this doesn't go to the  
24 investigation, because every time they have an officer and they want to get a  
25 hearsay statement on, they say, Well, in your training and experience, and then

1 they get their hearsay on. Okay. That's how it works.

2 If -- if it goes to the investigation, it is not by definition hearsay,  
3 it's an exception, and it comes in. That is vital to this case. That is our argument.

4 THE COURT: Did I give you a full chance to make your record now?

5 MR. WESTBROOK: Yes, you did. Thank you, Your Honor.

6 THE COURT: Okay. Sorry for interrupting you too much before. I'm --  
7 so I don't know that there's anything more that I need to say. I -- I just wanted to  
8 make sure that both sides had a chance to make their record now. Because, again,  
9 we were pretty rushed yesterday. And -- and so you both made your record now  
10 for -- in case there's an appeal and -- and to help you remind yourselves of what we  
11 did here on this day.

12 Is there anything more that anyone needs to say? I don't -- I  
13 don't -- no one's asking me to -- to make any kind of ruling right now, right, on  
14 anything?

15 MR. WESTBROOK: I just have one thing.

16 THE COURT: Okay. Okay.

17 MR. WESTBROOK: We said in good faith for preventing --  
18 representing Litzi and Leo.

19 THE COURT: Yes, sir.

20 MR. WESTBROOK: We -- Ms. Kierny just talked to Litzi for the very  
21 first time in this case.

22 THE COURT: Okay.

23 MR. WESTBROOK: Because when discovery is turned over as late as  
24 the State turned theirs over --

25 THE COURT: Well --

1 MR. WESTBROOK: -- we didn't get a chance to pretrial this witness.  
2 We will make a decision, Your Honor, after, you know, before we present her as to  
3 whether or not we think it's in our state -- our case's best interest or our defendant's  
4 best interest to present her.

5 Our intention, I believe, is to present her. However, having never  
6 talked to the witness personally, we can't truly make that decision and still protect  
7 my client's Sixth Amendment rights without actually talking to her. We think we're  
8 going to. Just like yesterday. Nothing has changed.

9 THE COURT: Okay.

10 MR. WESTBROOK: However, we never pretrialed them.

11 THE COURT: Okay.

12 MR. WESTBROOK: But let me -- but let me say this --

13 THE COURT: I'm letting you speak.

14 MR. WESTBROOK: Even if we don't bring them, if we -- if we decide  
15 not to bring them as a trial decision, nothing in this case changes. Ms. Kierny never  
16 got any hearsay out. There's nothing to suppress. The only thing that should be  
17 suppressed is the hearsay the State got out. And we can't be restricted to making  
18 a trial strategy decision the next day that might be different than the former day by a  
19 decision on 51.385, which was not the true basis of our motion.

20 THE COURT: Wow. You -- you have -- you started off very jovial and  
21 then you have all this -- this frustration and -- and emotion. But, okay. Is there  
22 anything else we need to put on the record?

23 MR. HAMNER: I -- I unfortunately need to make a couple brief  
24 comments about --

25 THE COURT: Okay.

1 MR. HAMNER: -- defense counsel's representations.

2 THE COURT: Okay. You can.

3 MR. HAMNER: The -- the claim that defense did not offer hearsay  
4 testimony from a forensic interviewer about her interactions with the child defies  
5 logic. When you ask a question of a forensic interviewer, Did Litzi or Leo confirm  
6 this? The only possible way the forensic interviewer could give an answer about  
7 whether the person they are interviewing confirms or denies something is through  
8 hearsay. Why? Because the interviewer had to have a conversation with the  
9 person to find out the answer to the question.

10 The idea that he can sit here and say, Well, because we phrased  
11 the question in a particular way, we somehow avoided hearsay is -- is nonsensical.

12 THE COURT: Yeah.

13 MR. HAMNER: That -- that's -- it's an illogical argument and he's trying  
14 to circumvent it. Let's just be clear. He thought it came in through hearsay. He  
15 threw up 51.385. And he did bring up the 51.075. But I want to touch on that just  
16 briefly. I never touched on that --

17 THE COURT: Do you mind if I interrupt you for --

18 MR. HAMNER: Sure.

19 THE COURT: -- a very quick second?

20 MR. HAMNER: Sure.

21 THE COURT: Remember, I prefaced -- when I referenced those three  
22 different provisions, I prefaced it by saying in fairness to the State, they needed to  
23 have the witnesses here subject to cross-examination. And I also prefaced it by  
24 saying, you know, even though I think it comes in under 075 and I think it was 069,  
25 it -- it was all tied back to admissibility under 51.385. I think it ties back that one.



1 MR. HAMNER: No. And I -- and I get that.

2 THE COURT: And so -- so I wish I'd had that other argument  
3 on 51.385. But go ahead.

4 MR. HAMNER: And -- I just -- the 075 argument, what Mr. -- what  
5 defense counsel did was conflate what happens under 51.385 and the general  
6 reliability statute. He gets up here and says he can't -- the State can't get up here  
7 and say, Oh, these children, when they talked to the forensic interviewer, were so  
8 reliable. That's when an alleged victim is speaking to a forensic interviewer and  
9 whether it meets the criteria under 51.385. That is a different analysis  
10 under 51.075.

11 THE COURT: I understand that.

12 MR. HAMNER: And -- and I just want to be -- because when he throws  
13 a barb to the State saying, We take a position on -- under that exception, that's not  
14 accurate and -- and, you know, the State respects the court's ruling. It disagrees  
15 that it would be under general liability. I think we need a witness to testify.

16 But I do want to note one thing, and this was the real reason why  
17 I stood up.

18 THE COURT: Okay.

19 MR. HAMNER: Defense counsel got up at the very end and now has  
20 intimated to some extent that they reserve the right not to call these people for  
21 strategic reasons.

22 THE COURT: Didn't give notice --

23 MS. KIERNY: All right.

24 THE COURT: -- get notice or not.

25 MS. KIERNY: I'm going to cut that short right now.

1 Do you mind if I interrupt you with that?  
2 MR. HAMNER: Okay.  
3 MS. KIERNY: On that matter?  
4 MR. HAMNER: Okay.  
5 THE COURT: Okay.  
6 MS. KIERNY: I have here her. I intend to call her.  
7 THE COURT: Okay.  
8 MR. HAMNER: Okay.  
9 MS. KIERNY: She's waiting in the hallway.  
10 MR. WESTBROOK: If we'd like to call her --  
11 MS. KIERNY: What I was going to ask is --  
12 THE COURT: Do you need a few more minutes to talk to her?  
13 MS. KIERNY: I'm ready to talk -- I'm ready to call her.  
14 THE COURT: Okay.  
15 MS. KIERNY: She's here with her parents --  
16 THE COURT: Well, that's good. That simplifies everything.  
17 MS. KIERNY: Yes.  
18 THE COURT: Thank you.  
19 MS. KIERNY: So I was trying to help. And that's why --  
20 THE COURT: No, well, that's a big help. That's a big --  
21 MS. KIERNY: And that's why I cut you off.  
22 THE COURT: Because we don't need to --  
23 MS. KIERNY: Is that --  
24 THE COURT: I mean, we don't need to --  
25 MR. HAMNER: That's fine.

1 THE COURT: If you need to make a record, you can. But I think --  
2 MR. HAMNER: I just -- it'll be a very -- it'll just be a very brief record.  
3 THE COURT: Okay.  
4 MR. HAMNER: And I respect that they're going to call her.  
5 THE COURT: Okay.  
6 MR. HAMNER: And I anticipate when I spoke to Ms. Kierny they were  
7 going to do so.  
8 THE COURT: Okay.  
9 MR. HAMNER: I'm just saying it is -- it is problematic for the -- not Ms.  
10 Kierny, but Mr. Westbrook to get up and say, You know what, we reserve the right  
11 to not call this person, when they purported to this court yesterday, at the very kind  
12 of late hours yesterday, We're gonna call them, don't worry, we're going to do it.  
13 And then kind of walk back from that statement.  
14 THE COURT: I -- I think --  
15 MR. HAMNER: And that's trouble.  
16 THE COURT: It was a little walking back. But I think Mr. Westbrook  
17 was just -- he hadn't yet had a chance yet to talk to Ms. Kierny about her talks with  
18 the witness and they hadn't talked to the witness before.  
19 MR. HAMNER: That's fine. And I anticipate --  
20 THE COURT: And so he's just --  
21 MR. HAMNER: No problem.  
22 THE COURT: -- being a --  
23 MS. KIERNY: He's just protecting me.  
24 THE COURT: -- very advocate, protecting his record.  
25 MS. KIERNY: Yeah.

1 THE COURT: I think they're going to call her, so I think we're -- we're  
2 good.

3 MR. HAMNER: Thank you, Your Honor.

4 THE COURT: Let's hope they call her.

5 MS. KIERNY: With that being --

6 THE COURT: But thank you guys for both making a record. I -- look, I  
7 wish we'd had handled -- I wish we had had more time to have a -- to handle things  
8 a little bit differently yesterday. But you both made your record and --

9 MR. HAMNER: Thank you very much.

10 THE COURT: -- let's -- I hope no one's been prejudiced. But we don't  
11 need to decide that now.

12 MS. KIERNY: I have one request. And, obviously, the State can say  
13 no. That's fine.

14 THE COURT: Yeah.

15 MS. KIERNY: Litzi is here. She's missing school.

16 THE COURT: Oh, shoot.

17 MS. KIERNY: I said we'd try to get her on and off. Do you mind if we  
18 call her -- do you mind if we call her --

19 THE COURT: I never mind --

20 MS. KIERNY: --- and then I'll ask the State.

21 THE COURT: -- if the parties agree. So.

22 MS. KIERNY: Okay. It's up to you.

23 MR. HAMNER: If you want to call --

24 MS. KIERNY: If you want to do Campbell first --

25 MR. HAMNER: No.

1 MS. KIERNY: -- I know that's a lengthy witness.  
2 MR. HAMNER: No. No, no, no. We can call -- if you -- if the defense  
3 wants to get her in and out of here --  
4 THE COURT: Is this your witness, Ms. Kollins?  
5 MS. KOLLINS: No.  
6 MR. WESTBROOK: It's mine.  
7 THE COURT: No? Okay.  
8 MS. KIERNY: Is that okay with you?  
9 MR. HAMNER: I don't have a problem with the defense calling this  
10 witness if they'd like to, to get her on and off the stand.  
11 MS. KIERNY: Okay. And then I anticipate one issue with her --  
12 THE COURT: Uh-oh.  
13 MS. KIERNY: -- being up there.  
14 THE COURT: Okay.  
15 MS. KIERNY: And I -- I'm pretty sure Mr. Hamner's going to agree with  
16 this.  
17 THE COURT: Yeah.  
18 MS. KIERNY: It -- obviously, it is not -- it's not -- Litzi has not been  
19 subject to a 51.385 hearing, so any statements that the girls might have told her  
20 would not be fair game.  
21 THE COURT: We're -- true. I --  
22 MS. KIERNY: Because that would be double hearsay on a witness --  
23 THE COURT: I -- I --  
24 MS. KIERNY: -- that has not been 51.385 called --  
25 THE COURT: -- agree with that. That would be my ruling.

1 MS. KIERNY: Unless --  
2 MR. HAMNER: Unless it's a prior consistent statement.  
3 THE COURT: Well, if it's prior --  
4 MS. KIERNY: Well --  
5 MR. HAMNER: No.  
6 THE COURT: -- then we need to discuss --  
7 MR. WESTBROOK: Prior consistent does not come in.  
8 THE COURT: -- when the statement was made. Was it before a  
9 motive to fabricate? You guys would briefly mention that to me and I make a ruling  
10 on that. So yeah.  
11 MS. KIERNY: Okay.  
12 THE COURT: If it is a prior consistent statement, there's -- that's a  
13 valid exception to the hearsay rule.  
14 MR. WESTBROOK: And -- and, Your Honor, that's an easy one. U  
15 visas were known by Amanda, according to her testimony, prior to 10/16. Nothing  
16 happened prior to 10/16. Therefore, there can be --  
17 THE COURT: Do you guys want to argue that now?  
18 MR. WESTBROOK: -- no prior consistent statement.  
19 THE COURT: What's the statement that's going to be inconsistent  
20 with -- or what's the statement that's going to trigger the --  
21 MS. KIERNY: I think --  
22 THE COURT: -- hearsay objection from Mr. Hamner.  
23 MS. KIERNY: -- the -- the State might --  
24 MR. WESTBROOK: We -- I mean, we can cross that bridge when we  
25 come to it, but that's our argument, and it's infallible.

1 THE COURT: Yeah. Well, but I think --

2 MR. WESTBROOK: It can't be beat.

3 THE COURT: I -- I don't know that --

4 MR. HAMNER: It's funny he mentioned --

5 THE COURT: -- it's infallible. I think there was disputed evidence as to  
6 when and how much she knew about the U visas.

7 MR. HAMNER: And -- and not only that, because it is not -- it's -- it is a  
8 fallible argument and here's the reason why. Because the prior consistent  
9 statement wouldn't be coming from Amanda, it would be coming from a completely  
10 different declarant. So the defense has not established from any one of these  
11 children on cross-examination that they know what a U visa is or that their mom  
12 talked to them about a U visa. So for him to project the knowledge of a mother onto  
13 the children I think is improper.

14 THE COURT: The question is when did the child have the motive to  
15 fabricate.

16 MS. KIERNY: So it's --

17 MR. HAMNER: That would be correct.

18 THE COURT: So you need to prove --

19 MR. WESTBROOK: She's got it.

20 THE COURT: -- that there was some influence by the mother --

21 MR. WESTBROOK: We have, but she's got it. The -- the kids say the  
22 mom spans them and they're scared of her. I mean, there's -- and they've  
23 changed their stories a million times and it's time it's gotten more sophisticated.  
24 There's a million reasons that's --

25 MR. HAMNER: I see.

1 MR. WESTBROOK: -- that's obvious that the parents have been  
2 manipulating.

3 THE COURT: When -- when was the -- this purported consistent  
4 statement that's --

5 MS. KIERNY: All right.

6 THE COURT: -- going to come up?

7 MS. KIERNY: So what the consistent statement is, my issue with it is --

8 THE COURT: The September 16 --

9 MS. KIERNY: -- that it's not directly --

10 THE COURT: -- that's pretty early, you know.

11 MS. KIERNY: It would have been made March -- in March.

12 THE COURT: Are you talking about the --

13 MS. KIERNY: Oh.

14 THE COURT: -- interview?

15 MS. KIERNY: It's -- first of all, it's unclear as to when the girls might  
16 have told Litzi anything that happened.

17 THE COURT: Oh.

18 MS. KIERNY: Also, it's very unclear as to where Litzi really got the  
19 knowledge from. She said they sometimes, sometimes she says she heard it from  
20 her mother. So I think that would be just a quagmire of hearsay.

21 MR. WESTBROOK: And it's the State's burden to prove that it came  
22 from before bias. It's not our burden to prove that it didn't.

23 THE COURT: All right. What -- can you guys hold on one second?

24 MS. KIERNY: Sure.

25 THE COURT: Let me just pull out the rule. All right. We have a lot



1 going on this morning. I expected a calm Friday.

2 MR. WESTBROOK: And this is fair in the case that I sent to you, Your  
3 Honor. I'm not sure if I --

4 THE COURT: Well, give me a moment. Give me a moment. Give me  
5 a moment, please.

6 [Pause in proceedings.]

7 MR. HAMNER: And, Your Honor, I can turn to a particular subsection,  
8 if you're looking.

9 THE COURT: Well, no. I'm -- I'm looking at the head notes of 51.035.  
10 Looking at the -- the case annotations on prior consistent statements right now.  
11 Just trying to refresh my memory.

12 MS. KIERNY: Okay.

13 THE COURT: This issue comes up a lot. And it's always, you know,  
14 the court has to make a determination the spur of the moment whether there's a --  
15 when -- when there a motive to fabricate and put everything in the timeline.

16 MR. HAMNER: Yeah. I -- and, Your Honor, if you look at 51.035(2)(B).

17 THE COURT: Yeah, sure.

18 MR. HAMNER: It's saying:

19 The declarant testifies at trial or hears -- or hearing and is subject  
20 to cross-examination concerning the statement, and the statement is (B)  
21 consistent with the declarant's testimony and offered to rebut an express or  
22 implied charge against the declarant of recent fabrication or improper  
23 influence or motive.

24 And -- and I bring that up, because in the plain expressed  
25 language of that subsection, the entire purpose of bringing up a prior consistent

1 statement is to rebut the very defense that they have. You're lying because your  
2 mom beat you. You're lying because of a U visa. You're lying -- I mean, that's --  
3 this is why you bring in prior consistent --

4 THE COURT: And so -- and so you've got to show here's what she  
5 said before that influenced the --

6 MR. HAMNER: There's --

7 THE COURT: -- gave her the motive to lie.

8 MR. HAMNER: There no before in this language. There is no before.  
9 It is -- there is no before. And I would also say that in this trial --

10 THE COURT: Well, no, but that's -- I mean, you know that. That's  
11 what all the cases say, look, to be admissible, prior consistent hearsay statements  
12 must have been made before the witness had motive to lie. *Pierson vs. State*, 87.

13 MR. HAMNER: Right. And --

14 THE COURT: I think that's the seminal case that I'm familiar with.

15 MR. HAMNER: And there's no --

16 THE COURT: So -- so you have --

17 MR. HAMNER: There's no testimony right now that establishes that  
18 these children had a motive to fabricate. Nothing in their questioning came out to  
19 establish that. And I -- I'm not -- I'm not seeing it.

20 MS. KIERNY: I think that would been established by the fact that when  
21 they gave these statements they were so inconsistent with each other, so  
22 inconsistent within their own statements they later gave. And then the hearsay that  
23 they told to Litzi in this example was after they had given those statements to police  
24 or to their mothers, all of these statements that contradict and go every different  
25 way.

1 THE COURT: So I think --  
2 MS. KIERNY: The statements are both --  
3 THE COURT: I think the evidence --  
4 MS. KIERNY: -- consistent -- oh.  
5 THE COURT: Your evidence is -- tend to -- to ask the jury to draw an  
6 inference that when the police got involved, then somehow there was collusion and  
7 there was a motive to fabricate.  
8 MS. KIERNY: Sure.  
9 THE COURT: And -- and maybe your theory is that the motive began  
10 sometime before then.  
11 MS. KIERNY: Right.  
12 THE COURT: But you haven't actually introduced evidence to -- to  
13 pinpoint the date.  
14 MS. KIERNY: There is no way to do that, Your Honor.  
15 THE COURT: So I think at this point, if -- at this point, if -- if  
16 Mr. Hamner were to offer evidence to try to rebut your charge of motive to fabricate,  
17 and his evidence shows a prior consistent statement going back in -- early in time --  
18 early enough in time, then I -- I'm probably would be inclined to let that in. Because  
19 he's got to have a chance to -- to say these children -- well, he's going to have a  
20 chance to rebut your theory that -- that they were influenced to lie. He's got to have  
21 a fair opportunity to rebut that.  
22 MS. KIERNY: Well, I guess let's see what the questions come out,  
23 then. I think --  
24 THE COURT: All right. All right.  
25 MS. KIERNY: -- we'll see how that's asked.

1 THE COURT: All right.

2 MS. KIERNY: I don't know that there's enough in here to really  
3 establish a --

4 MR. WESTBROOK: Because it's important to note --

5 MS. KIERNY: -- consistent statement.

6 MR. WESTBROOK: -- the State has never presented any evidence as  
7 to when any of this was said. That's a huge weakness in their case. They admit it.

8 THE COURT: Okay. And you really haven't introduced a date as to  
9 when this motivation to lie began.

10 MS. KIERNY: And I would state, Your Honor, in the history of my  
11 cases, I've never actually had real proof.

12 THE COURT: Yeah.

13 MS. KIERNY: It's always intimations that there is some collaboration or  
14 fabrication. You very rarely have people tell you, Yes, I made this up on  
15 January 1st in order to get a U visa.

16 THE COURT: Well, sure.

17 MS. KIERNY: So I mean --

18 MR. WESTBROOK: But we do know she knew about it.

19 MS. KIERNY: -- asking you to prove that is almost impossible.

20 MS. WESTBROOK: I do know from her testimony that she knew about  
21 U visas prior to October 16th. That's her testimony. There was no direct by the  
22 State as to how much she knew. It's their burden of proof, this is their case. We  
23 know she knew about it October 16th.

24 THE COURT: All right. Well, I'm going to have to see how this plays  
25 out, but you guys kind of know --

1 MR. HAMNER: Understood, Your Honor.  
2 THE COURT: -- that I -- look --  
3 MS. KIERNY: Okay.  
4 THE COURT: -- I would certainly like her to come in, give everyone a  
5 fair chance to present their theory of case to the jury at closing argument.  
6 MS. KIERNY: Okay.  
7 THE COURT: So.  
8 MS. KIERNY: So I will then present Litzi out of order once we get the  
9 jury in here.  
10 THE COURT: Yeah. Let's bring the --  
11 MS. KIERNY: Perfect. Let's do that and see what happens.  
12 MR. HAMNER: That's fine and I'll let the --  
13 THE COURT: Anything else? Boy, we've had a lot to say this morning.  
14 MR. HAMNER: No, no. No, Your Honor. We're ready to go and I'll let  
15 the --  
16 THE COURT: Thanks for -- I appreciate getting the heads up on -- on  
17 several of these issues.  
18 MR. HAMNER: Thank you, Your Honor. I apologize to take your time  
19 on that, but I wanted to make the record.  
20 I'm going to let Detective Campbell know we're going to call  
21 someone else out of order.  
22 THE COURT: Great.  
23 MR. HAMNER: Thank you.  
24 THE COURT: Okay. And where's my marshal?  
25 THE CLERK: He just stepped out.

1 THE COURT: Okay.

2 MS. KIERNY: And I -- it should be fairly short. That's why I'm asking to  
3 do it out of order.

4 MS. KOLLINS: And the court will instruct the jury that this is out of  
5 order, defense witness?

6 THE COURT: I will.

7 MS. KOLLINS: Thank you.

8 [Pause in proceedings.]

9 [Jury reconvened at 9:41 a.m.]

10 THE COURT: All right. Thanks. Welcome back everybody. Good  
11 morning.

12 We had hopefully -- we had -- we had some issues to discuss, so  
13 hopefully, some things will move a little bit faster. Glad you're here. Hope you  
14 enjoyed your morning so far. Please be seated, everybody.

15 We're -- we're still in the State's case in chief. I think they have  
16 one more witness. But we're actually going to call a witness out of order due to  
17 scheduling issues. I'm now going to allow the defense to call one of their witnesses  
18 out of order. Okay.

19 Ms. Kierny, you may call your first witness.

20 MS. KIERNY: Okay. The defense would call Litzi Paredes.

21 THE COURT: Litzi Paredes, please.

22 Hello, Ms. Interpreter. Welcome back.

23 THE COURT INTERPRETER: Thank you.

24 THE COURT: Why don't you sit on the left side.

25 THE COURT INTERPRETER: I was going to ask, because normally, I

1 do it on the other side so the jury can see the witness. But if the witness is going to  
2 turn to me, then yes. It makes more sense.

3 THE COURT: I would prefer you to be on that side, closest to the jury  
4 side, yeah. Thank you.

5 THE COURT INTERPRETER: You're welcome.

6 THE COURT: Scoot that over to -- to be closer. Thank you. All right.

7 How old is Litzi? Anybody? Okay.

8 MR. HAMNER: I -- I think she's around eight, Your Honor.

9 THE COURT: Okay.

10 MR. HAMNER: I'm not sure.

11 THE COURT: All right. Very good. Okay.

12 MS. KIERNY: Your Honor, may I approach?

13 THE COURT: Yes, you may.

14 [Bench conference transcribed as follows.]

15 THE COURT: Did she go on break?

16 MS. KIERNY: I think so. Mr. Hamner said he saw her by the  
17 elevators.

18 MR. HAMNER: I heard your investigator talking with someone and  
19 maybe I didn't see that.

20 MS. KIERNY: And maybe our investigator took them to, like, for  
21 parking. They had parking issue.

22 THE COURT: Oh.

23 MS. KIERNY: So I guess we'll just do Campbell. I'm sorry for that.

24 THE COURT: No, no. That's okay.

25 MS. KIERNY: I thought maybe --

1 THE COURT: Because she's one [indiscernible].

2 MR. HAMNER: No. He's here.

3 THE COURT: Do you want to start Campbell and then we can go to --  
4 go to her when she's available? Or -- or what -- do you want to finish Campbell?  
5 What -- what --

6 MS. KIERNY: We'll just go with their --

7 MR. HAMNER: I guess, how -- how long do you think it'll be?

8 MS. KIERNY: I would -- my cross of her -- oh, of Campbell or of --

9 MR. HAMNER: No, no. I'm saying how long do you think she might be  
10 gone, Litzi? I mean my preference would be let the kid go, because Campbell's  
11 going to be far longer.

12 MS. KIERNY: Absolutely.

13 MR. HAMNER: If you wanted to him out of here.

14 MS. KIERNY: Let me -- do you want me to call my investigator and  
15 see --

16 THE COURT: Yeah. Why don't you call? We'll just sit here and see.

17 [End bench conference.]

18 THE COURT: Okay. All right.

19 MS. KIERNY: Sorry.

20 THE COURT: Yeah. We're -- we're just waiting. Just give us a few --  
21 couple of minutes, I think, to see what's -- what's up.

22 You can have a seat if you want.

23 THE COURT INTERPRETER: I'm -- I'm okay, Thank you.

24 THE COURT: Yeah, Juror No. 2 has a question.

25 Mr. Mergener. Did I say that right?



1 JUROR NO. 2: Yes.

2 THE COURT: Yeah. What's up, sir?

3 JUROR NO. 2: Just curiosity. Is this trial open to the public?

4 THE COURT: Trials are open to the public. These are -- you know,  
5 this is the public's courtroom. So.

6 JUROR NO. 2: And who is not allowed, in general, to be in the  
7 courtroom?

8 THE COURT: It's -- witnesses are not allowed to -- witnesses that  
9 haven't been called. Sometimes if they've already been called and the parties  
10 know they're not going to be recalled, I'll let them stay. It's up to me to decide. But  
11 generally -- generally people that are going to provide testimony are not allowed to  
12 be in here. Anyone else, you could have family members come. You know, if you  
13 want to have somebody come and watch closing arguments, you can have them -- I  
14 think. Well, wait a minute. I should check with the party, but I -- but it's open to the  
15 public.

16 So just my admonishment would still apply. You can't talk to  
17 anybody that you invite to come watch. You can't tell them what they're going to  
18 see. You can't talk about the case. You can say, Hey, I'm a juror in this case. You  
19 can come watch. You know, that's -- that's harmless enough, right? You can't talk  
20 about the case or any substance. But -- but it's open to the public. This is the  
21 public's courtroom. All right. Did that answer your question?

22 JUROR NO. 2: Yes.

23 THE COURT: All right.

24 JUROR NO. 2: Thank you.

25 [Pause in proceedings.]

1 THE COURT: We have another question. It's Ms. Hudson.  
2 JUROR NO. 6: Yeah, hi. Today is Friday.  
3 THE COURT: Yes. Happy Friday.  
4 JUROR NO. 6: Happy Friday. But just for my work schedule  
5 purpose --  
6 THE COURT: We'll be here all day Monday and then Tuesday, I think  
7 we start at 1:00. All right.  
8 JUROR NO. 6: Okay. Thank you.  
9 THE COURT: I'm hoping we're done Tuesday.  
10 JUROR NO. 6: We should be able to wrap -- okay.  
11 THE COURT: Allowing -- that depends on, you know, once you guys  
12 start deliberating, It's up to you to take as long as you think is appropriate.  
13 JUROR NO. 6: Oh, okay.  
14 THE COURT: All right?  
15 JUROR NO. 8: And today is till 5:00?  
16 THE COURT: Today's -- I think we have a total of four witnesses. A  
17 couple are going to be pretty quick. I'm hoping we finish a little early. But We'll  
18 see. We don't know. You never know. We never know.  
19 JUROR NO. 8: You said that yesterday.  
20 THE COURT: Yeah, I know. All right.  
21 [Pause in proceedings.]  
22 THE COURT: Hi, Ms. Kierny.  
23 MS. KIERNY: Hi.  
24 THE COURT: Is this Litzi?  
25 MS. KIERNY: It is.

1 THE COURT: Hi, Litzi.

2 MS. KIERNY: We're going to go up to that stand.

3 THE COURT: This is your -- your place to sit right up here. Okay? Do  
4 you speak a little English?

5 THE WITNESS: Yes.

6 THE COURT: Yeah? But would you feel more comfortable speaking  
7 in Spanish today?

8 THE WITNESS: Yes.

9 THE COURT: Great. We'll speak in Spanish -- in Spanish. All right.  
10 So you can have a seat. So I'm the judge and these are people  
11 that are here watching, because they -- they're going to help us decide some  
12 things. Okay? Say hi to the people.

13 THE WITNESS: Hi.

14 THE COURT: Okay. Ms. Kierny, before we get started, while you were  
15 out, just -- just to let you know, the jurors had a couple questions. They wanted to  
16 know how long we were going to go today, and I said, Well, you know, we got, like,  
17 a total of four witnesses, a couple might be quick.

18 MS. KIERNY: Sure.

19 THE COURT: We're hoping maybe we end a little sooner, but I can't  
20 say for sure.

21 And then wanted to know -- someone wanted to know the  
22 schedule for next week, and I said, Well, I know we're going to be here all day  
23 Monday and then Tuesday start at 1:00, and then, hopefully, we can get the case  
24 submitted to the jury Tuesday is what I said is my hope.

25 MS. KIERNY: Yes. I think that's --

1 THE COURT: And that's just up to them on how long we take. And --  
2 and another juror wanted to know who's allowed in the courtroom and I -- and who's  
3 not allowed. And I said, Well, witnesses testifying aren't allowed. And I -- I  
4 surmised that maybe they wanted to invite somebody. And I said, You can -- it's a  
5 public courtroom.

6 MS. KIERNY: Sure.

7 THE COURT: Anybody's welcome. You could invite someone to come  
8 watch, as long as you -- in inviting someone, you don't talk about the case.

9 MS. KIERNY: Right.

10 THE COURT: And just wanted you to know I had those conversations  
11 with the jurors while you were out.

12 MS. KIERNY: I thought maybe you'd do some stand-up or something.  
13 So. All right.

14 THE COURT: All right. Anyway, you can qualify the witness and -- and  
15 begin. Thank you.

16 **LITZI PAREDES-GARCIA,**

17 [having first been qualified by the judge, testified through the interpreter as follows.]

18 **DIRECT EXAMINATION**

19 BY MS. KIERNY:

20 Q Hi, Litzi. How are you doing?

21 A Good.

22 Q Do you know the difference between a truth and a lie?

23 A Yes.

24 Q Okay. Well, If I told you that I was wearing a purple shirt today, would  
25 that be the truth or a lie?

1 A A lie.

2 Q Okay. If I said that it's raining in this courtroom right now, fat drops of  
3 water falling on our heads, is that the truth or a lie?

4 A A lie.

5 Q What if I said you were wearing a Hello Kitty shirt; is that the truth or a  
6 lie?

7 A It's truth.

8 Q Okay. You promise to only tell the truth in here?

9 THE COURT: She has to answer out loud.

10 BY MS. KIERNY:

11 Q And that microphone is picking up everything you say and creating a  
12 record, so I know you're nodding your head to me, but you have to say yes or no  
13 out loud.

14 A Okay.

15 Q So you promise to only tell the truth in here, correct?

16 A Yes.

17 MS. KIERNY: Are you satisfied, Judge?

18 THE COURT: Did she state her full name?

19 MS. KIERNY: Oh, I apologize.

20 BY MS. KIERNY:

21 Q Could you please state your full name for the record.

22 A Litzi Paredes-Garcia.

23 THE COURT: All right. That is fine. We need her spell -- why don't  
24 you spell it and ask her if that's correct.

25 MS. KIERNY: Okay.

1 BY MS. KIERNY:

2 Q Okay. Is your first name spelled L-I-T-Z-I?

3 A Yes.

4 Q And your last name, Paredes, is that spelled P-A-R-E-D-E-S?

5 A Yes.

6 Q All right.

7 THE COURT: All right. The court is satisfied. You may continue.

8 MS. KIERNY: Thank you.

9 BY MS. KIERNY:

10 Q How old are you, Litzi?

11 A Nine.

12 Q Okay. And where do you live?

13 A [No audible response.]

14 Q Is it an apartment complex?

15 A Yes.

16 Q Do you know if it's called Charleston Gardens?

17 A Yes.

18 Q And do you live in the front of the complex or the back of the apartment  
19 complex?

20 A In the front.

21 Q Okay. And who do you live with?

22 A My mommy, my daddy, and my brother.

23 Q Okay. And your mommy and daddy brought you to court today, right?

24 A Yes.

25 Q Okay. Do you know three girls named Maradel, Mirabel, and Jatziri?

1 A Yes.

2 Q Did they live in the same apartment complex as you do?

3 A No.

4 Q They live in the same are as you live in?

5 A Yes.

6 Q But a different building, right?

7 A Yes.

8 Q Okay. Do you also know a girl named Yezline?

9 A Yes.

10 Q And did she used to live in the same area as you live?

11 A Yes.

12 Q And did she live in your same building?

13 A Yes.

14 Q Okay. Would you sometimes play with these four girls in your

15 apartment?

16 A No.

17 Q You did not play with them?

18 A No.

19 Q Do you have -- do -- did you have a neighbor named David?

20 A Yes.

21 Q Do you see David in court today?

22 A No.

23 Q Okay. If I direct you over to that table, do you recognize the man in the

24 blue shirt?

25 A Yes.

1 Q Was that your neighbor?  
2 A Yes.  
3 Q You didn't know -- did you know him that well?  
4 A [No audible response.]  
5 Q Is that a no?  
6 A No.  
7 Q When he lived next door to you, did you see him every day?  
8 A No.  
9 Q Was he at work a lot?  
10 A Yes.  
11 Q Okay. Did you know his wife Elena?  
12 A Yes.  
13 Q And you saw her more than you saw David, right?  
14 A Yes.  
15 Q Did you call Elena Grandma?  
16 A Yes.  
17 Q Would you ever go into Grandma's apartment with her?  
18 A Only one time.  
19 Q Okay. And that was with Grandma, right?  
20 A Yes.  
21 Q Okay. Was there ever a time that you went in that apartment without  
22 Grandma?  
23 A No.  
24 Q Okay. Was there ever a time that you went in that apartment with  
25 Maradel, Mirabel, Jatziri, and Yezline?



1 A No.

2 Q Did David ever offer you candy?

3 A No. Only one time.

4 Q So he offered you one time; did you take the candy?

5 A No.

6 Q Did you have candy at home? Is that why you didn't take it?

7 A Yes.

8 Q Okay. Do you ever remember a time that David showed you something

9 on his phone?

10 A No.

11 Q Was there ever a time that you saw David pull his pants down?

12 A No.

13 Q Was there ever a time that you saw Jatziri, Maradel, Mirabel, and

14 Yezline go into David's apartment?

15 A Yes.

16 Q But you did not go in?

17 A No.

18 Q Okay. Now, did you see David call those four girls into his apartment or

19 did they go in there on their own?

20 A They went in.

21 Q On their own?

22 A Yes.

23 MS. KIERNY: Court's brief indulgence.

24 THE COURT: Sure.

25 MS. KIERNY: One second.

1 We will pass the witness.

2 THE COURT: All right. Cross-examine.

3 MR. HAMNER: Thank you very much.

4 **CROSS-EXAMINATION**

5 BY MR. HAMNER:

6 Q Hi there, Litz.

7 A Hi.

8 Q My name's Chris and I'm just going to ask you a couple questions.

9 Okay? All right.

10 A Okay.

11 Q Let me -- before we get started, what -- what grade are you in?

12 A Third.

13 Q Do you have a favorite subject?

14 A Yes.

15 Q What is it?

16 A Math.

17 Q Math. Why do you like math so much?

18 A Because it's easy for me.

19 Q It's a good reason. It's a real good reason.

20 Let me ask you a couple questions about -- about David. Okay?

21 A Yes.

22 Q Now, you said that David offered you candy before; isn't that right?

23 A Yes.

24 Q And -- and you told us today that he only offered you candy one time; is

25 that right?

1 A Yes.

2 Q Do you remember a couple weeks back meeting with a lady named  
3 Elizabeth?

4 A No.

5 Q No? Do -- do you remember going to a room and sitting with a lady and  
6 she asked you, kind of, questions similar to stuff about David; do you remember  
7 that?

8 A Oh, yes.

9 Q I think you were a little scared at the beginning of the interview; do you  
10 remember that?

11 A Yes.

12 Q Do you remember telling Elizabeth that he actually -- do you remember  
13 telling Elizabeth that David actually offered you candy twice?

14 A Oh, yes.

15 Q Okay. But you didn't take the candy, did you?

16 A No.

17 Q And I think they want you to wait. I know you know English, but I think  
18 you need to wait till she says it in Spanish, and then just answer it in Spanish.  
19 Okay?

20 A Okay.

21 Q Cool. So you remember seeing David give Jatziri candy, right?

22 A Yes.

23 Q And you remember seeing him give the twins candy, right?

24 A Yes.

25 Q And you remember seeing David give Yezline candy, right?

1           A     Yes.

2           Q     And do you remember at the beginning of the interview with Elizabeth,  
3 her asking you what you were scared of, because you had said you were scared;  
4 do you remember telling her that?

5           A     Yes.

6           Q     And you were crying at that time, weren't you?

7           A     Yes.

8           Q     And you -- and isn't it true you said that there was a man over that that  
9 we live at that -- and that there's always three girls that went --

10           THE COURT INTERPRETER: Not so fast --

11           MR. HAMNER: I'm sorry.

12           THE COURT INTERPRETER: -- counsel. I didn't hear --

13           MR. HAMNER: I know.

14           THE COURT INTERPRETER: -- part of your --

15 BY MR. HAMNER:

16           Q     Do you remember telling them when asked -- when Elizabeth asked  
17 you why you were scared, the first thing you said is that there was a man over  
18 where you lived at, right?

19           A     Yes.

20           Q     And that the three girls went in with him, right?

21           A     Yes.

22           Q     And they would tell you that they did that, right?

23           A     Yes.

24           Q     But that you never went in that house, right?

25           A     Yes.

1 Q Okay. And you remember David would ask you, Do you want to take  
2 some candy, right? He would say that to you, Don't you want some candy? He  
3 would say something like that to you?

4 A Yes.

5 Q So I want to show you a picture, if we could, and that TV screen, do you  
6 see that TV screen right there? When I put something here, it's going to pop up  
7 there. Okay?

8 Do you -- I'm showing State's 25; do you recognize what we're  
9 looking at there?

10 A No.

11 Q No. Okay. Well, let me show you another photo, State's 24; do you  
12 see -- do you see David and Elena's house in that picture?

13 A Yes.

14 Q Why don't you -- I'll tell you what, Take my pen for a second. Take the  
15 end of that. If you touch that screen, it's going to make a mark. Go make a circle  
16 around David's house.

17 MR. HAMNER: Okay. So let the record reflect the witness has circled  
18 the first white door, a power box, the base of the apartment in the center of the  
19 screen.

20 Q That's David's house; is that right?

21 A Yes.

22 Q And isn't it true you live right next door?

23 A Yes.

24 MR. HAMNER: This is not clear. Oh, clear.

25 Oh, did you clear that, Your Honor? Thank you.

1 Q So let me show you this picture again; is that David's door?

2 A Yes.

3 Q Is that your door?

4 A Yes.

5 Q Is that around Christmastime or something?

6 A Yes.

7 Q Looks good.

8 MR. HAMNER: This is State's 25. And let the record reflect the  
9 witness has indicated that the white door in the center of the picture is David's  
10 house, and the door just to the left with Christmas decorations is her house.

11 Publishing 24 for a second.

12 Q Now, isn't it true when -- when David would -- would offer you candy,  
13 you'd be outside coloring sometimes?

14 A Yes.

15 Q And he would say to you, Do you want candy? To come here. Would  
16 he say things like that to you?

17 THE COURT INTERPRETER: Can you repeat the question, counsel?

18 BY MR. HAMNER:

19 Q He would say --

20 THE COURT INTERPRETER: Louder, please.

21 MR. HAMNER: Yes.

22 BY MR. HAMNER:

23 Q Isn't it true David would say to you, Do you want candy, come here?

24 MS. KIERNY: I'm going to object. It is unclear as to what time he's  
25 referring to. He's -- she said there were two times.

1 MR. HAMNER: I can --

2 THE COURT: Well, yeah. If -- if she recalls. It's...

3 BY MR. HAMNER:

4 Q Do you recall during one of those times that he offered you candy, one  
5 of those two times, that he asked you to come here to get the candy; do you  
6 remember saying that before?

7 A No.

8 Q Okay. Do you remember telling Elizabeth that he told us, Do you want  
9 candy and to come here; do you remember telling Elizabeth that?

10 MS. KIERNY: I'm sorry, what page are you on, Chris?

11 THE WITNESS: No.

12 MR. HAMNER: Page 12.

13 MS. KIERNY: Thought so.

14 BY MR. HAMNER:

15 Q I'm sorry.

16 A No.

17 Q You don't remember that? And that's okay.

18 Do you see in this picture places where you might have been  
19 when he was asking if you wanted candy? Where were you? Do you see that here  
20 in the picture somewhere? Okay.

21 MR. HAMNER: We'll take a different pen.

22 Q Why don't you circle an area where you remember being when he  
23 asked you if you wanted candy.

24 Okay. And when you were -- when you were there, were you by  
25 yourself or were there other people standing there, too?

1 A I was with other people around.

2 Q Okay. Was that people like Jatziri?

3 A Yes.

4 Q The twins?

5 A Yes.

6 Q And Yezline? How about Yezline?

7 A Yes.

8 Q Now, you told us that you did not go into that house; isn't that right?

9 MS. KIERNY: Objection. Mischaracterizes her testimony. She said  
10 she went in once with Grandma.

11 BY MR. HAMNER:

12 Q Oh. You never went in with the group?

13 THE COURT: Sustained.

14 BY MR. HAMNER:

15 Q Okay. You never went in -- let me rephrase.

16 You never in with the girls, did you?

17 A No.

18 Q Okay. And I want to talk about that reason why.

19 Isn't it true the reason why you didn't go alone in the house with  
20 the girls is because your mother told you not to go?

21 A Yes.

22 Q And isn't it true the reason why you didn't go in alone was your mom  
23 said you're not allowed to go in when David is there by himself; isn't that correct?

24 THE COURT: So --

25 MS. KIERNY: What her mom told her is hearsay.



1 MR. HAMNER: It's -- it's not being offered the truth. It's being offered  
2 for the effect on the listener.

3 THE COURT: That's all right. I'll -- I'll accept that. I was going to say  
4 something else. For an eight-year-old, the phrase isn't it true might be kind of hard  
5 to understand, don't you think?

6 MR. HAMNER: I mean, I was trying to lead on cross, but --

7 THE COURT: But you've been saying isn't it true.

8 MR. HAMNER: -- I can rephrase it. Okay. Sure.

9 THE COURT: Isn't it true, I mean, might be a little bit --

10 MR. HAMNER: Sure.

11 THE COURT: I think it just adds a little bit of complexity. I want to  
12 make sure that --

13 MR. HAMNER: I can rephrase. Let me rephrase.

14 THE COURT: -- the child really understands what you're asking. Okay.

15 BY MR. HAMNER:

16 Q You didn't go inside that house alone --

17 THE COURT: Didn't. Okay.

18 BY MR. HAMNER:

19 Q -- because your mom said you cannot be in there when David's by  
20 himself, right?

21 A Yes.

22 Q And you listened to your mother's rule; is that right?

23 A Yes.

24 Q Isn't it true that the girls, meaning Jatziri and the twins, and Yezline, told  
25 you that David grabbed them?

1 A Yes.

2 Q And that David grabbed them by their hands; is that right?

3 A Yes.

4 MS. KIERNY: I'm going to object as to hearsay.

5 MR. HAMNER: It's -- it's -- what we talked about before. It's a prior

6 consistent statement.

7 MR. WESTBROOK: It's also cumulative, Your Honor.

8 MR. HAMNER: It's certainly not in this case.

9 THE COURT: I don't think it's cumulative and --

10 MS. KIERNY: It's --

11 THE COURT: -- wait -- what -- you said --

12 MS. KIERNY: It's also not a prior consistent statement --

13 MR. HAMNER: Why don't we --

14 MS. KIERNY: -- because they never --

15 MR. HAMNER: -- approach. Why don't we approach. Let's approach.

16 [Bench conference transcribed as follows:]

17 THE COURT: I just -- go ahead and say all your grounds at once. You

18 say everything is cumulative. But okay. What else did you just say?

19 MS. KIERNY: Okay. It is not a prior consistent statement because of

20 his witness. Because the girls never said that he grabbed them by their hands.

21 MR. HAMNER: I can refer to the [indiscernible].

22 THE COURT: Well, is --

23 MS. KIERNY: Well, there wouldn't be a page. It would be in court.

24 MR. HAMNER: All right.

25 THE COURT: You said prior --

1 MS. KIERNY: They did not say in court --

2 THE COURT: -- inconsistent or consistent --

3 MS. KIERNY: -- that he grabbed them by the hand.

4 THE COURT: -- what did you say?

5 MR. HAMNER: This is a prior consistent statement being offered to  
6 rebut a claim of fabrication. We are -- they are challenging the fact that Yezline  
7 was grabbed or any of these children were grabbed. Jatziri said that she was  
8 grabbed.

9 THE COURT: Right.

10 MR. HAMNER: And they're challenging that, saying that they are not  
11 credible, that they're lying, that they're making this up, and this is --

12 THE COURT: When did she make the consistent statement  
13 [indiscernible].

14 MR. HAMNER: When she spoke with this child.

15 THE COURT: Okay. That was with --

16 MR. HAMNER: When she spoke -- when these girls spoke to Litzi.

17 THE COURT: Which was when?

18 MR. HAMNER: I would imagine it would be prior to him disappearing  
19 from the apartment complex.

20 THE COURT: Yeah.

21 MR. HAMNER: I mean, I could try to establish that with an  
22 eight-year-old, but I'm imagining that -- I can ask, Did they tell you this after Don  
23 David left the property? After that?

24 MS. KIERNY: I think it would be better to ask after, thought before -- I  
25 mean, obviously, it's before -- after -- happened before Jatziri left, or Yezline left.

1 THE COURT: What are you trying to say? Say it again.

2 MS. KIERNY: I don't think it's proper to try to intimate with this witness  
3 that Don David left at some point. I don't think [indiscernible] should know.

4 MR. HAMNER: Well, I didn't -- I didn't --

5 THE COURT: No. I just -- look, guys, all I want is you need to make an  
6 offer of proof or get from -- something from this witness as to when -- what period of  
7 time this consistent statement happened.

8 MR. HAMNER: Well, I'll -- I'll ask.

9 MS. KIERNY: I don't --

10 THE COURT: For it to be a prior consistent statement.

11 MR. WESTBROOK: And, Your Honor --

12 THE COURT: It's prior to today, I know that.

13 MS. KOLLINS: Well, it's -- it's --

14 MS. KIERNY: What child is he asking about?

15 THE COURT: I can't hear you, I'm sorry.

16 MS. KOLLINS: It's a statement that was made prior to the time they  
17 testified after a charge of fabrication. The charge of fabrication is the entire  
18 defense cross-examination and implication that the children are lying.

19 THE COURT: Yeah.

20 MR. HAMNER: That's true.

21 MS. KOLLINS: So that's, I mean, but --

22 THE COURT: But the -- the point here is -- is did the consistent  
23 statement get made or alleged motive to fabricate? Is there a theory that you have  
24 that it was before?

25 MS. KOLLINS: Well, the -- the motive -- the implied motive to fabricate

1 is their cross-examination. There's been no testimony that these children absorbed  
2 the purported Mom's U visa motive. There's been no testimony or evidence of that.

3 THE COURT: Well, first of all --

4 MS. KIERNY: Okay.

5 THE COURT: -- I guess we're -- we're all -- we're all not on the same  
6 page here. And a consistent statement only comes -- don't say anything yet. I'm  
7 just --

8 MS. KIERNY: I'm not.

9 THE COURT: Okay. The consistent statement can only come in if  
10 you're rebutting motive to fabricate. So it's part of your burden to prove that they're  
11 asking the jury to draw an inference of a motive to fabricate. They argued it. Right.  
12 Now -- now, the next question is timing. Right? So you're not going to be  
13 finishing --

14 MS. KOLLINS: No.

15 THE COURT: -- I can see you're starting to speak.

16 MS. KOLLINS: No. I've not -- I'm -- I wasn't speaking.

17 THE COURT: So it's your burden to prove, right, that a consistent  
18 statement was made before the date that they -- that -- the date that you're saying  
19 is what they say was the motivation to fabricate. So I'm looking to you to just offer  
20 something that this consistent statement was before what everyone had. You  
21 understand there are [indiscernible] motive to fabricate.

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

23 THE COURT: You do that, you get it in.

24 MS. KOLLINS: I -- I understand. I just don't think their motive -- they're  
25 suggesting the child's motive to fabricate, all of these children, are their parents

1 that -- that's what they're saying, that the U visa is the child's motive to fabricate.

2 THE COURT: That's their theory, right.

3 MS. KOLLINS: That's their theory. As we sit right now, they have not  
4 attached that motive to fabricate to these kids.

5 MR. HAMNER: That's correct.

6 THE COURT: Then you can't -- then there's -- then you can't introduce  
7 it -- a prior consistent statement.

8 MS. KOLLINS: But --

9 THE COURT: It only comes in if it's --

10 MS. KOLLINS: But what they --

11 THE COURT: -- to rebut a motive to fabricate, there's no motive to  
12 fabricate in this case.

13 MS. KOLLINS: That's -- that's not the only relevant reason to admit a  
14 prior consistent statement.

15 THE COURT: It is.

16 MS. KOLLINS: No, it also comes in for an implied charge of fabrication,  
17 which is what we have here. We get -- it's -- it -- there -- a motive to fabricate is one  
18 avenue, and I would agree with that if that motive were attached to these kids.

19 THE COURT: If there's no charge that the kids are fabricating, then the  
20 prior consistent statement goes in -- doesn't come in, because that's inappropriate  
21 bolstering.

22 MS. KOLLINS: There has been -- there has been nothing but  
23 suggestion that these children are lying. Okay. There's been no tying the mother's  
24 motivation to the children. They still say the kids are lying, however, but they have  
25 not attached that motive.

1 But what they have done is cross-examined and cross-examined  
2 to elicit what they believe to be -- to evidence that makes them incredible. So that  
3 charge here in court, causing them to make them look incredible, permits us to go  
4 back and admit a prior consistent statement.

5 THE COURT: I -- I understand that part. I understand that part. But --  
6 but doesn't the rule say it has to be before like they had a motive to -- to fabricate?  
7 And I -- I'm having trouble finding the before.

8 MR. HAMNER: And I think -- and I think what Ms. Kollins is saying, and  
9 I agree with her, there's two avenues here.

10 THE COURT: Okay.

11 MR. HAMNER: One avenue is there's [indiscernible] to clear up their  
12 lying through the U visa. That's one theory. The other one is exploiting. I get that  
13 these witnesses are not credible, that they been inconsistent in what they've said  
14 [indiscernible] cross these children [indiscernible]. I said X to this person and Y at  
15 another -- another -- Z at another point in time.

16 Pursuant to the prior statements [indiscernible] admissible to  
17 rebut that. That is in there. And that's very clearly attached to these declarants.

18 THE COURT: How come I -- I just read two of -- two of the cases  
19 and -- and all the cases --

20 MR. HAMNER: Look, I'll do my best to elicit it. If you want me to, I'll try  
21 to lay some foundation as to timing of [indiscernible], I'll do my best. I'll do my best.

22 THE COURT: All of the cases I've looked at say the judge has to make  
23 a decision -- has to decide if it's a prior consistent statement at the floor. So  
24 [indiscernible].

25 MS. KOLLINS: Okay.

1 THE COURT: And so -- and how do I -- I don't know how I can find the  
2 one [indiscernible].

3 MR. HAMNER: Let me -- let me just ask --

4 THE COURT: Because it's, like, there's -- this is reversible error.

5 MR. HAMNER: Well, let me just try to lay some foundation on timing.

6 MR. WESTBROOK: [Indiscernible] lay a foundation [indiscernible]  
7 should not be happening [indiscernible] Don David [indiscernible].

8 MS. KOLLINS: I can't hear you, David.

9 MR. WESTBROOK: In laying his foundation, he shouldn't be asking  
10 questions about what is before or after --

11 THE COURT: Why can't he ask that?

12 MR. WESTBROOK: -- Don David left. [Indiscernible.]

13 MR. HAMNER: Well, we don't know.

14 THE COURT: We don't know. He can -- he can ask her. I mean,  
15 you're saying don't ask a question because --

16 MS. KOLLINS: We don't say that she was she left.

17 THE COURT: -- she may not know the answer?

18 MS. KOLLINS: We don't say she left. We --

19 THE COURT: We don't know if she --

20 MR. WESTBROOK: [Indiscernible.]

21 THE COURT: Well, he was gone for a while, right?

22 MS. KIERNY: According to Amanda.

23 THE COURT: What?

24 MS. KIERNY: According to Amanda and Maria, but not according to --

25 THE COURT: He can ask if --



1 MS. KIERNY: Okay.

2 THE COURT: -- if he disappeared for a while.

3 MS. KIERNY: You're -- I am not -- I don't believe that this is a prior  
4 consistent statement. Her statement is they told me he grabbed their hands.  
5 They --

6 THE COURT: Yeah. But I think --

7 MS. KIERNY: -- would all include all four kids -- hang on.

8 THE COURT: Yeah.

9 MS. KIERNY: All four kids did not say that. Yezline or Yezline is  
10 maybe the only one who said he might have grabbed her hands. So that is not a  
11 prior consistent statement to those girls. So that is my main objection. I don't even  
12 think we get to the analysis of whether it's a consistent -- prior consistent statement,  
13 because it's not consistent.

14 THE COURT: Caught me on that. That's my trick.

15 MS. KOLLINS: I think, well, I think all of these children have been  
16 impeached as to what they said to different parties. I concur with Mr. Hamner. So I  
17 think this is not bolstering, I think it's a prior consistent statement and should come  
18 in.

19 MR. HAMNER: I'll lay some foundation on the time, Your Honor.

20 THE COURT: I think it's a prior consistent statement provided we get a  
21 foundation on timing. Let me hear -- let me hear where he goes with that.

22 MS. KIERNY: Okay.

23 THE COURT: Thank you. All right.

24 [End bench conference.]

25 THE COURT: We're going to -- we're going to see where this goes.

1 MR. HAMNER: Okay.

2 THE COURT: All right. Thanks -- thanks for your patience.

3 BY MR. HAMNER:

4 Q I want to talk to you about -- do you remember Christmas last year?

5 A Yes.

6 Q And do you remember Halloween from last year?

7 A Yes.

8 Q When the girls were talking to you about David touching their hands,  
9 was that before Halloween?

10 A No.

11 Q Okay. Do you remember when it was?

12 A No.

13 Q Okay. Was it -- was it earlier than Halloween? Was it later than  
14 Halloween?

15 MS. KIERNY: Asked and answered.

16 MR. HAMNER: I'm just trying to get some clarification.

17 THE COURT: Overruled.

18 THE WITNESS: It was before Halloween.

19 BY MR. HAMNER:

20 Q It was before Halloween? Okay.

21 A Okay.

22 MR. HAMNER: Your Honor, may we proceed?

23 THE COURT: *Antes* means before?

24 THE COURT INTERPRETER: *Antes* means before, Your Honor.

25 THE COURT: Okay.

1 MR. HAMNER: May I proceed at this point, Your Honor?  
2 MR. WESTBROOK: Your Honor, Halloween is not the correct date.  
3 THE COURT: Well --  
4 MR. HAMNER: I can ask some more questions.  
5 THE COURT: Wait, Halloween is October 31st? That's close enough  
6 for the court's purposes. I'm -- I'm going to allow it.  
7 MR. WESTBROOK: Two --  
8 THE COURT: -- I --  
9 MR. WESTBROOK: Two solid weeks, Your Honor.  
10 THE COURT: I know.  
11 MR. HAMNER: I can ask --  
12 THE COURT: Well, go ahead, if you want to --  
13 MR. HAMNER: Let me ask a couple more questions. Okay?  
14 BY MR. HAMNER:  
15 Q Do you remember them talking about that during the summer?  
16 A No.  
17 Q Okay. So was it sometime between the summer and Halloween?  
18 A Yes.  
19 Q Were you in school at the time? Had school started yet or was it before  
20 school started?  
21 A Before school started.  
22 Q Okay.  
23 THE COURT: Before school started. When does school start?  
24 BY MR. HAMNER:  
25 Q Does school -- school start in August?

1           A     Yes.

2           MR. WESTBROOK: Now, Your Honor, may we approach?

3           THE COURT: No. I think we've -- we've talked this to death.

4           MR. WESTBROOK: What's happened is four -- she doesn't -- she said

5 she didn't know, then she was questioned in a leading manner --

6           MR. HAMNER: Need to approach. We can't --

7           THE COURT: You know, I -- I --

8           MS. KIERNY: He just said we couldn't.

9           MR. WESTBROOK: -- and, of course, she's still -- and it's still clear she

10 doesn't know.

11           THE COURT: I think he just want -- need to move on. Okay? You

12 can -- the jury will have to decide whether she's credible and what weight to give to

13 her testimony. All right.

14           MR. HAMNER: All right. So let me --

15           THE COURT: So objection overruled.

16           MR. HAMNER: Thank you, Your Honor.

17 BY MR. HAMNER:

18           Q     So the girls told you that he grabbed by their hands, right?

19           MS. KIERNY: Objection as to girls.

20 BY MR. HAMNER:

21           Q     Okay. Jatziri told you --

22           THE COURT: Sustained.

23 BY MR. HAMNER:

24           Q     -- the girl --

25           THE COURT: Please be specific.

1 BY MR. HAMNER:

2 Q Jatziri told you the girls grabbed their hands, right?

3 THE COURT INTERPRETER: Could you repeat the question?

4 BY MR. HAMNER:

5 Q Jatziri told you -- I'm sorry. That was a terrible question.

6 Jatziri told you that David grabbed their hands, right?

7 A Yes.

8 Q Did Mirabel tell you that David grabbed their hands?

9 A No.

10 Q Okay. Did Yezline say that?

11 A No.

12 Q Okay. So just Jatziri?

13 A Yes.

14 Q And there were times when the girls would go into the apartment and  
15 then the door would be locked, right?

16 A Yes.

17 Q You saw the girls go into David's house more than one time, right?

18 A No.

19 Q Okay. Do you remember telling Elizabeth that you saw them go into --  
20 into the hand's house more than one time?

21 A Yes, a couple of times.

22 Q And David would have his door open always, right?

23 MS. KIERNY: Objection as to the word always.

24 MR. HAMNER: It's her word.

25 THE COURT: Well.

1 MR. HAMNER: It's not -- it's -- it's a leading question and I'm entitled --  
2 it's --

3 THE COURT: All right. Overruled.

4 BY MR. HAMNER:

5 Q David would always have his door open, right?

6 A Yes.

7 Q And when that door would be open, he would offer candy from that  
8 open door, right?

9 MS. KIERNY: Objection. That implies it's like a open-all-the-time  
10 candy shop. It doesn't have any timing attached to it.

11 MR. HAMNER: Referring to page --

12 THE COURT: Let's -- but -- but he's allowed to lead in a  
13 cross-examination and -- and the witness can explain it. No. So overruled.

14 BY MR. HAMNER:

15 Q And you -- I want to just re-ask again.

16 You remember always having his door open, right?

17 A Yes.

18 Q And you remember when he'd be -- when David would be at that door,  
19 he would offer kids candy from that open door, right?

20 A No.

21 Q No? Okay. Where would he offer you the candy if not from the open --  
22 well, let me -- let's stop.

23 Who would he offer the candy to at the open door?

24 A To the girls, to the twins.

25 Q Okay. So you can remember those girls being near that open door and

1 him offering them candy, right?

2 A Yes.

3 Q And he would offer you candy here, right? I think that's what you told  
4 us before; is that right?

5 A Yes.

6 Q Okay. And he'd offer you Tootsie Rolls, right?

7 A Yes.

8 Q Skittles?

9 A Yes.

10 Q And his candies would be in his room, right?

11 A Yes.

12 Q And Elena -- Elena sometimes would give out candy and melon; is that  
13 right?

14 THE COURT INTERPRETER: I'm sorry, candy and?

15 BY MR. HAMNER:

16 Q Elena would offer candy and melon, too, right?

17 A Yes, to me and my brother.

18 Q Okay. And you had said before that you got scared when David asked  
19 you if you wanted candy. You told us that before; is that right?

20 MS. KIERNY: Misstates her testimony. She never said scared.

21 MR. HAMNER: Well, then I'll -- I don't think it misstates, but I can  
22 rephrase.

23 THE COURT: All right. Well, rephrase, then.

24 BY MR. HAMNER:

25 Q You were scared when David asked if you wanted candy, right?

1 A Yes.

2 Q And it was scary to you, because he had never done it before.

3 A Yes.

4 Q You'd seen him give it to the girls, right?

5 A Yes.

6 Q Now he was asking you.

7 A Yes.

8 Q But you said no.

9 A Yes.

10 MR. HAMNER: No further questions.

11 THE COURT: All right. Redirect.

12 Ms. Kierny has some questions for you now.

13 MS. KIERNY: I have three questions for you.

14 THE COURT: More -- more questions. Okay.

15 **REDIRECT EXAMINATION**

16 BY MS. KIERNY:

17 Q You never saw David grab the girls, right?

18 A No.

19 Q You only know what the girls told you.

20 A Yes.

21 Q And Chris asked you about the girls going into the apartment and the

22 door would be locked; do you remember that question?

23 A Yes.

24 Q Was it the girls who locked the door?

25 MR. HAMNER: Objection. Calls for speculation.



1 MS. KIERNY: It's in her statement.

2 THE COURT: Well, it's -- it's --

3 BY MS. KIERNY:

4 Q If you know.

5 MR. HAMNER: The witness is not inside the apartment. How would  
6 they be able to see how it's locked?

7 THE COURT: There's -- there's no way she could possibly know that.  
8 Right?

9 MS. KIERNY: It's in her statement.

10 THE COURT: Just -- there's no way she could know. It lacks  
11 foundation. So I will sustain.

12 MS. KIERNY: All right.

13 BY MS. KIERNY:

14 Q Did -- did you see who locked the door?

15 MR. HAMNER: Objection. Calls for speculation.

16 MS. KIERNY: I'm asking her --

17 THE COURT: Who locked the door when she's outside and the door's  
18 being locked from people inside, Is that what you're saying?

19 MS. KIERNY: I'll follow up.

20 THE COURT: Well, there's -- no. There's no way -- there's no way she  
21 could -- the court takes judicial notice -- is it a glass door?

22 MS. KIERNY: There's a window right next door.

23 THE COURT: Show me the picture. Show me the picture. I -- I --  
24 you --

25 MS. KIERNY: What picture do you want?

1 THE COURT: Well, picture that shows the door with the window, how  
2 close the window was to the door. Please. Thank you.

3 MR. HAMNER: Can I at least approach to see what she --

4 THE COURT: All right. I -- let me see that. Could I -- can I hold it?

5 MR. HAMNER: That's the -- that's --

6 [Bench conference transcribed as follows:]

7 MR. HAMNER: That's not the right door.

8 THE COURT: That's not the right -- that's -- that's her door.

9 MS. KIERNY: They're all --

10 MR. HAMNER: That's Moreno.

11 THE COURT: That's -- or, I mean, that's --

12 MS. KIERNY: So this is the end?

13 MR. HAMNER: No, no, no, no.

14 THE COURT: One moment.

15 Okay. Let me see here, which we're talking about.

16 MS. KIERNY: It is basically the same.

17 THE COURT: No. I'm not going to allow that question.

18 MS. KIERNY: Okay.

19 [End bench conference.]

20 THE COURT: All right.

21 BY MS. KIERNY:

22 Q Litzi, did the girls tell you they locked the door?

23 MR. HAMNER: Objection. Calls for hearsay.

24 THE COURT: So -- hold on. What exception to the hearsay rule would  
25 you say applies here?

1 MR. WESTBROOK: Present sense impression.  
2 THE COURT: Overruled. Please move on. All right.  
3 MS. KIERNY: Overruled?  
4 THE COURT. Yes. Overruled.  
5 MS. KIERNY: Okay. So I can ask?  
6 MR. WESTBROOK: Yes.  
7 THE COURT: Oh, wait --  
8 MR. WESTBROOK: It was their objection. It's overruled.  
9 MR. HAMNER: Are you overruling the objection or are you sustaining  
10 it?  
11 THE COURT: Wait a minute. No. I'm overruling your exception.  
12 MR. HAMNER: Sustain -- you're sustaining my objection.  
13 THE COURT: I'm sustaining the objection. Well, see, here's the thing.  
14 MS. KIERNY: I can --  
15 THE COURT: Why don't you approach.  
16 MS. KIERNY: I can move on. I won't ask it.  
17 THE COURT: Okay. That's fine. I'm -- I'm just -- because you haven't  
18 explained what the relevance of her impression was, you know. I mean, are you  
19 leaning towards what she did next? Why would that be relevant?  
20 MR. WESTBROOK: Your Honor, we could approach on that.  
21 THE COURT: All right.  
22 MR. HAMNER: If we want to do it, we can...  
23 THE COURT: All right. If you want to move on, that's fine.  
24 MS. KIERNY: That's okay.

25 [Bench conference transcribed as follows:]

1 THE COURT: See, what -- you have to explain why her present sense  
2 was relevant, and that's the part you didn't get at.

3 MR. WESTBROOK: What's happened here is the State has been  
4 allowed to ask a whole bunch of hearsay about what Jatziri [indiscernible].

5 THE COURT: Yeah.

6 MR. WESTBROOK: They -- they also said that. Okay. So asking  
7 whether or not they told her that is important, because it's a response to what the  
8 State --

9 THE COURT: What does it go to? What issue -- issue does it go to?

10 MR. WESTBROOK: How about a prior [indiscernible] statement.

11 MS. KIERNY: Chris is --

12 MR. WESTBROOK: Or a prior inconsistent stmt.

13 MS. KIERNY: This is -- the State was adding that, you know, she had  
14 been in the apartment and then the -- the girls were in the apartment and then the  
15 door was locked to bolster or add credibility to when they said that the door was  
16 locked. Now, she can say that it wasn't Don David --

17 THE COURT: It proves --

18 MS. KIERNY: -- like they said that locked the door, it was actually the  
19 girls.

20 MR. WESTBROOK: Because how would she -- how would she know  
21 the door was locked --

22 MS. KIERNY: Unless the girls told her.

23 MR. WESTBROOK: -- unless -- when Chris asked that question and  
24 you allowed it.

25 THE COURT: She wouldn't know other than --

1 MS. KIERNY: How would she know the door is locked?

2 THE COURT: -- inventing it or the girls telling her that.

3 MS. KIERNY: How would she know if the door is locked? Chris asked  
4 that and she got that question out.

5 MR. WESTBROOK: [Indiscernible.]

6 MR. HAMNER: I'd like to address. There's a great way you can figure  
7 out a door is locked, you can try and open it.

8 THE COURT: Of course. So the girl's innocent or --

9 MR. HAMNER: Right. You wouldn't know who did it, but you'd know  
10 the door, in fact, was locked.

11 But I want to address the present tense impression response,  
12 because that was their exception to hearsay. And they --

13 THE COURT: And they haven't tied up why the present tense would be  
14 relevant, too.

15 MR. HAMNER: Right. And it -- and it's not the present tense  
16 impression of the witness, it's the present tense impression of the child who said,  
17 Yes, the door is locked. And there's no event that would cause one of those  
18 children to spontaneously --

19 MS. KIERNY: Then why did --

20 MR. HAMNER: -- turn around --

21 MS. KIERNY: Why did the State --

22 MR. HAMNER: -- the door was locked.

23 MS. KIERNY: Ask if the door was locked?

24 MR. HAMNER: That's not -- that's not a response to hearsay.

25 THE COURT: So this would have been sometime --

1 MS. KIERNY: Because that would be --

2 THE COURT: -- long after, I mean, this isn't present tense, because  
3 it's, like, after -- it's after the fact of discussion of hearsay.

4 MS. KIERNY: Okay.

5 THE COURT: I just -- you know what, I just don't see you leading  
6 your -- your --

7 MS. KIERNY: Well, I think that it's a prior inconsistent statement of -- of  
8 the children.

9 THE COURT: What?

10 MS. KIERNY: Because of -- he's saying that they're -- what the girls  
11 said was that he would take them into the room, or into the apartment, and lock the  
12 door. I'm saying that the girls actually told her they would lock the door. So that's a  
13 prior inconsistent statement of the girls.

14 THE COURT: It's creative.

15 MR. WESTBROOK: So [indiscernible].

16 THE COURT: Hold on. Hold on. We can't have 10 million people  
17 talking.

18 Mr. Hamner, she's saying that the girls -- the girls suggested or  
19 stated that -- that Mr. Azucena locked the door and now she's saying that, you  
20 know, the girls admitted that they locked the door. Is that inconsistent?

21 MR. HAMNER: A couple of things.

22 THE COURT: Okay.

23 MR. HAMNER: You had this [indiscernible] indicated that a door was  
24 locked and one person indicated the door was locked. And now we have -- and  
25 who's the declarant? Do we have a declarant?

1 THE COURT: Well, that's important, because the same -- it has to be  
2 the same person --

3 MR. HAMNER: Correct.

4 THE COURT: -- to be inconsistent.

5 MR. HAMNER: I don't --

6 THE COURT: So if she doesn't know who told her, you know, then we  
7 can't -- I can't let hearsay in under an exception when I don't know who the  
8 declarant is.

9 MR. HAMNER: Right.

10 THE COURT: All right.

11 MR. HAMNER: Well, they can't be leading and --

12 THE COURT: You can't lead. You've got to ask --

13 MS. KIERNY: Okay.

14 THE COURT: You can't suggest to her --

15 MS. KIERNY: I'll say, Did one of the girls --

16 THE COURT: -- it was Yezline. You've got to ask --

17 MS. KIERNY: -- did one of the girls ask you --

18 THE COURT: You've got to ask which one.

19 MS. KIERNY: Did one of the girls ask -- tell you the door was locked?  
20 And then which one?

21 THE COURT: If she can say Yezline --

22 MS. KIERNY: Because, otherwise, it's leading.

23 THE COURT: Right. You can't lead.

24 MS. KIERNY: Right. And I won't.

25 MR. HAMNER: Well --

1 MS. KOLLINS: It's to the foundation problem. [Indiscernible.]

2 MR. HAMNER: We do. We have a foundation problem. What they're  
3 going to have to do is as a series of questions where they're going to --

4 MS. KIERNY: I just told you the two questions.

5 MR. HAMNER: I need to be please be able to just put something on  
6 the record.

7 What they're asking to do is an opportunity to elicit suggestion  
8 that one of these child said -- they were hearsay statements -- that the door was  
9 locked in front of this jury, and if they can't get the answer, we're supposed to move  
10 on.

11 MS. KIERNY: Strike it.

12 MR. HAMNER: So basically -- well --

13 THE COURT: Please be [indiscernible].

14 MS. KIERNY: Yes.

15 MR. HAMNER: We're asking to ring a bell and then potentially we have  
16 to try to go back and unring it. The problem that --

17 MS. KIERNY: All right. How about if I ask, Did Yezline tell you? How  
18 about that?

19 MR. HAMNER: That's --

20 THE COURT: No. Because then there's -- it's leading.

21 MS. KIERNY: I don't know how to do it, then.

22 THE COURT: Please let him finish.

23 MS. KIERNY: He doesn't have a suggestion.

24 THE COURT: Oh, my God.

25 MR. HAMNER: That's the inherent problem with the statement. You



1 can't get into the hearsay statement when there's not foundation about who the  
2 declarant is for you to rely on an exception.

3 MS. KIERNY: I tried --

4 MR. HAMNER: That's the problem we have right now.

5 THE COURT: Mr. Hamner, I agreed with you already on that point. I  
6 understand your point. We need to know -- but if it was Yezline who said it, that  
7 would be important.

8 MR. HAMNER: Right.

9 THE COURT: For the cross-examination.

10 MS. KOLLINS: How about, Did you have a conversation with Yezline  
11 about the door? Yes, I did. No, I didn't. Then it stops right there.

12 MS. KIERNY: Okay. I can do that.

13 MR. HAMNER: That's a good one.

14 THE COURT: Of course, you're allowing her to -- to use the word  
15 Yezline. Well, okay. I'm okay with that.

16 MR. HAMNER: Well, it's not specific about the lock. Just maybe --

17 THE COURT: Right. So either don't -- don't be specific about the lock.  
18 She has to volunteer it.

19 MS. KIERNY: I will ask this --

20 THE COURT: I don't want you to go there unless she has to do it. If  
21 she mentions it, you know.

22 MS. KIERNY: So you want her to spontaneously say, Yes, Yezline said  
23 she locked the door?

24 THE COURT: Ask the question the way Ms. Kollins suggested.

25 MS. KIERNY: Can I follow up with it?

1 THE COURT: If she gives the right answer.

2 MS. KOLLINS: Did you have a conversation with Yezline about the  
3 door.

4 MS. KIERNY: Okay.

5 MS. KOLLINS: If she says yes, what did Yezline tell you about the  
6 door?

7 THE COURT: What did Yezline say? All right. That's how I'll allow you  
8 to do it. Thank you.

9 [End bench conference.]

10 THE COURT: All right.

11 BY MS. KIERNY:

12 Q Did you have a conversation with Yezline about the door?

13 A No.

14 Q Chris asked you about David keeping candy in his room; do you  
15 remember that?

16 A Yes.

17 Q Did you know that the candy was in Grandpa -- was in the -- Don -- in  
18 David's room, where Grandma showed you?

19 A Yes.

20 MS. KIERNY: Okay. No further questions.

21 THE COURT: All right. And recross?

22 MR. HAMNER: No, Your Honor. State's got no questions. Thank you.  
23 We're good.

24 Thank you, Litzi.

25 MS. KIERNY: You're excused, Litzi.

1 THE COURT: All right. So -- well, we've got to see if the jurors have  
2 any questions.

3 MS. KIERNY: Oh, I'm sorry.

4 MR. HAMNER: Oh, sorry about that.

5 THE COURT: The jurors might have some questions. They had a lot  
6 of time to think. Okay. All right. Very good. No questions.

7 Thank you very much for coming here today.

8 Oh, wait, was that a hand? Oh, okay.

9 THE MARSHAL: Yeah, she wanted to -- one question.

10 THE COURT: Okay.

11 [Pause in proceedings.]

12 THE COURT: Make sure your name and your number is on there,  
13 please. All right. Let's take a look.

14 Thank you, marshal.

15 All right. Let me take a look.

16 [Bench conference transcribed as follows:]

17 MS. KOLLINS: It says -- it says, Who's Amanda? If she knows.

18 MS. KIERNY: [Indiscernible] is for the bad act of the -- it might  
19 [indiscernible] bad act.

20 THE COURT: Oh, jeez. Yeah.

21 MS. KOLLINS: Well, the mom's here. Call the mom.

22 MS. KIERNY: Un witness notice, just call her that -- after she's already  
23 testified.

24 THE COURT: Taking notice --

25 MS. KOLLINS: Did you not notice the guardian of the child?

77

1 MS. KIERNY: I would object to being asked by --  
2 MR. HAMNER: I think it's -- [indiscernible].  
3 MS. KOLLINS: All right. That's fine.  
4 THE COURT: What did he say?  
5 MR. HAMNER: I wouldn't -- I wouldn't ask.  
6 MS. KOLLINS: Yeah, we don't know what she's going to say.  
7 MR. HAMNER: We don't know [indiscernible] jury at this point.  
8 THE COURT: I -- I don't think she will.  
9 MR. HAMNER: I think it's not important.  
10 MS. KOLLINS: And who knows what --  
11 THE COURT: Causing a problem. All right.  
12 MS. KIERNY: Thank you.  
13 [End bench conference.]  
14 THE COURT: Thank you very much for the question. But I am not  
15 going to ask that. Okay. But thank you.  
16 And I'm going to have the court clerk mark that as a court  
17 exhibit.  
18 Litzi, we're all done with you. You can go home now or go to  
19 school. Do you have school now? Yep? Have a nice day.  
20 THE WITNESS: Yes. I'm not going to go to school today.  
21 THE COURT: Okay. Well, have a nice -- well, maybe you should. But  
22 have a nice day, okay?  
23 THE WITNESS: Okay.  
24 THE COURT: You still have time.  
25 Next witness, please.

1 MR. HAMNER: State's going to call Detective Campbell to the stand.

2 THE COURT: Detective Campbell.

3 Yeah, you can approach. They need -- they need to approach.

4 [Bench conference transcribed as follows:]

5 THE COURT: Yeah, what's up?

6 MR. WESTBROOK: Please make it clear that that was the defense  
7 case, just so the jury's not confused.

8 THE COURT: Oh, yeah, yeah, yeah. That's --

9 MR. WESTBROOK: Thanks. We want to make it clear that we're  
10 defense.

11 THE COURT: All right.

12 [End bench conference.]

13 THE COURT: So just to remind you, that was part of the defense case  
14 and now we're back to the State's case. The State's first -- or the State's last  
15 witness probably.

16 MR. HAMNER: Probably.

17 THE COURT: All right. We're waiting for Detective Campbell.

18 [Pause in proceedings.]

19 THE COURT: You must be Detective Campbell?

20 MR. CAMPBELL: Yes, sir.

21 THE COURT: All right. Welcome. Remain standing. The court clerk  
22 will administer your oath.

23 **MATT CAMPBELL,**

24 [having been called as a witness and being first duly sworn, testified as follows.]

25 THE CLERK: Please be seated. State and spell your first and last

1 name.

2 THE WITNESS: Matt Campbell, M-A-T-T C-A-M-P-B-E-L-L.

3 MR. HAMNER: May I proceed, Your Honor?

4 THE COURT: Yes.

5 MR. HAMNER: Thank you very much.

6 **DIRECT EXAMINATION**

7 BY MR. HAMNER:

8 Q Sir, why don't you tell the ladies and gentleman of the jury what you do  
9 for a living?

10 A I'm a detective with Las Vegas Metropolitan Police Department.

11 Q How long have you been with Metro, sir?

12 A 16-1/2 years.

13 Q And what detail are you currently assigned to?

14 A Sexual Assault Detail.

15 Q And how long have you been in this particular detail?

16 A Almost five years.

17 Q Before you were on sexual assault, where were you?

18 A I worked in the Child Abuse Section.

19 Q For how many years?

20 A Four.

21 Q And before that?

22 A Patrol for eight.

23 Q Okay. Tell us about your responsibilities as a sexual assault detective;  
24 what are -- what are your job responsibilities?

25 A I get calls that once patrol responds to either a sexual assault or a sex

1 abuse call, they contact the -- us, and then we come out and we follow up,  
2 investigate, and we interview suspects, witnesses, and potentially -- or victims,  
3 witnesses, and potentially suspects.

4 Q And were you assigned to investigate the case involving a man by the  
5 name of Jose Azucena?

6 A Yes.

7 Q Okay. Do you see him here in the courtroom today?

8 A Yes, I do.

9 Q Okay. Could you please point him out, where he is, and describe an  
10 article that he's wearing.

11 A He's over there with the blue shirt.

12 MR. HAMNER: Okay. Let the record reflect the --

13 Q Well, tie or no tie?

14 A No tie.

15 Q All right.

16 A Oh, sorry.

17 Q Tie or no tie?

18 A No tie.

19 THE COURT: No tie.

20 MR. HAMNER: Thank you very much. Let the record reflect the  
21 witness has identified the defendant.

22 THE COURT: He has.

23 BY MR. HAMNER:

24 Q All right. I want to turn your attention to October 17, 2016. Did you  
25 become aware that day that Amanda Moiza and a Maria Estrella Barajas come into

1 file a report regarding Mr. Azucena?

2 A Yes, I did.

3 Q Okay. When are you assigned to the case?

4 A That day.

5 Q All right. So based on kind of some of the basic details, did this sound  
6 like an acute disclosure or a delayed disclosure?

7 A Delayed.

8 Q Okay. Can you explain to the jury what's the difference between acute  
9 versus delayed?

10 A Acute is normally within -- happens within 72 hours.

11 Q Okay.

12 A Delayed is anything beyond that.

13 Q All right. Now, does that -- the -- the timing, acute disclosure versus  
14 delayed disclosure, does that have an effect on how you kind of proceed with an  
15 investigation?

16 A Yes, it does.

17 Q How -- how does it affect that?

18 A If it's an acute disclosure, within 72 hours, we normally would respond  
19 to the scene or scenes, if there is any, process it any way we can. Whatever the  
20 details of the call is. If it's beyond that, we do not normally proceed to process the  
21 scene, because we've already lost some type of evidence due to time delay.

22 Q Can you explain to the jury what you mean you say process?

23 A Depending on what we are told from the victims and from any  
24 witnesses, it may be involved with a crime scene coming out, photographs,  
25 collection of any kind of DNA, any evidence that might be told to us at the scene.



1 Q So it's -- does it include things like dusting for fingerprints?  
2 A Yes.  
3 Q Taking samples for DNA collection?  
4 A Yes.  
5 Q Maybe retrieving physical objects --  
6 A Yes, sometimes.  
7 Q -- that might be of relevance.  
8 A Uh-huh.  
9 Q And then you also said taking photos, things of that nature?  
10 A Yes.  
11 Q Okay. So you mentioned that this was a delayed response.  
12 A Yes.  
13 Q In this case, did you actually send a CSA out to dust for fingerprints?  
14 A No, we did not.  
15 Q Why not?  
16 A Because the time was beyond the 72 hours.  
17 Q Okay. And when does that -- what does that mean? Why is it not  
18 useful to do it with a delayed disclosure?  
19 A Well, the scene would have been contaminated multiple times and we  
20 may have -- may or may not have been the -- their fingerprints there at that time.  
21 Q Could --  
22 A Things could have been -- they could have been dusted, could have  
23 been cleaned a hundred times between then.  
24 Q Let me ask you this, Detective. Can -- can fingerprints, you know,  
25 getting a fingerprint, can that tell you the time in which it's left?

1 A No.

2 Q How about if you get a DNA hit or a DNA sample; is that going to tell

3 you the time in which it's left?

4 A No.

5 Q Okay. So you don't process for fingerprints or DNA?

6 A No, sir.

7 Q Okay. If it had been acute, would you have done those things?

8 A Definitely.

9 Q Okay. Would you have potentially looked inside the defendant's home?

10 Got a warrant in process for that area?

11 A Definitely.

12 Q How about the children's residences?

13 A Yes.

14 Q How about any other locations, cars, I don't know, buildings, areas;

15 Would you have done it in that situation?

16 A Anything that the victims would have said, we would have processed.

17 Q All right. I want to turn your attention to October 20, 2016. At that time,

18 do -- let me just say, the -- are the children, Jatziri, Mirabel, and Maradel Moreno at

19 this point, Are those some of the children that are tied to this initial report?

20 A Yes.

21 Q And is Yezline Estrella Barajas, is that the fourth child?

22 A Yes.

23 Q Okay. Do those four kids, on October 20th, go in to get a -- a medical

24 exam by a Dr. Sandra Cetl?

25 A Yes.

1 Q Are you present for that?

2 A No, I'm not.

3 Q Okay. Are you typically present for those things?

4 A No, I'm not.

5 Q All right. On November 2nd, 2016, do those four children come in for

6 forensic interviews at the CAC with Elizabeth Espinoza?

7 A Yes, they do.

8 Q All right. When those interviews take place, are you sitting physically

9 inside the room with the child and Ms. Espinoza?

10 A No, I'm not.

11 Q Okay. Where -- are you present, though, to listen to the interview?

12 A Yes, I am.

13 Q Okay. Where are you?

14 A I'm in a viewing room where -- through the cameras. You see it on TV.

15 Q Okay. So you sat and you listened to these kids as they talked to

16 Elizabeth?

17 A Yes.

18 Q All right. And why is that important for your investigation to just sit back

19 and kind of sit in another room and listen?

20 A It's important for me to hear what the children are saying. Also, I watch

21 their demeanor to see if there's anything that I see.

22 Q Four days later, do you conduct a series of interviews yourself?

23 A I do.

24 Q Who do you interview?

25 A The mothers of the children.

1 Q Okay. So that's Amanda Moiza and Maria Estrella Barajas?  
2 A Yes.  
3 Q Do you also interview an individual by the name of Yusnay Rodriguez?  
4 A Yes.  
5 Q And who is she?  
6 A She was a friend of one of the mothers.  
7 Q Okay. Is that one of the neighbors?  
8 A Yes. Uh-huh.  
9 Q All right.  
10 A She lived in the complex.  
11 Q And you conducted those interviews?  
12 A I did.  
13 Q Did you conduct those interviews -- and let me just jump back.  
14 Was the interviews that you observed conducted in Spanish with  
15 the kids?  
16 A Yes.  
17 Q And did you have an interpreting sitting with you interpreting in that kind  
18 of back room?  
19 A Yes, I did.  
20 Q All right. When you did the interviews with the parents and -- and Ms.  
21 Rodriguez, were you doing those interviews with an interpreter?  
22 A Yes, I was.  
23 Q And why did you -- why is it important to kind of talk to these people for  
24 the purposes of an investigation?  
25 A Because the information was relayed to them first and I needed to get

1 their side of the story, what they were told.

2 Q And at any point in time during your interview, do Amanda or Maria  
3 indicate an unwillingness to talk unless they get some assurances about a U visa?

4 A No.

5 Q Does the term U visa even come up?

6 A No.

7 Q Do you know what a U visa was as of November 6th, 2016?

8 A No, I did not.

9 Q Okay. When did you kind of learn about it then?

10 A From talking with you.

11 Q Okay. All right. So they're not -- they're not piping up, how about  
12 Ms. Rodriguez? She -- she chattering about a U visa?

13 A No.

14 Q Okay. I want to turn your attention to two days later, on November 8th.  
15 What happened on that day; do you remember?

16 A I was notified by patrol that another victim had come forth.

17 Q And what do you do the next day?

18 A Contact her father and ask him to come in for an interview.

19 Q Okay. You interview Ricardo Rangel?

20 A I do.

21 Q I'm sorry. That predisposes --

22 MR. WESTBROOK: Your Honor, could we approach for just a second?

23 THE COURT: Yeah, sure.

24 [Bench conference transcribed as follows.]

25 THE COURT: Going to try to keep this one brief, right?

1 MR. WESTBROOK: It will be very brief.  
2 THE COURT: Just for a second. All right. What's up?  
3 MR. WESTBROOK: [Indiscernible.]  
4 MR. HAMNER: I apologize. It was a slip of the tongue. I will rephrase.  
5 THE COURT: Thank you. All right.  
6 [End of bench conference.]  
7 BY MR. HAMNER:  
8 Q And I -- and I misspoke. I meant -- I meant alleged victim. And I'll --  
9 and I'll -- sorry. It's been a long couple of weeks.  
10 What was the child's name in relation to the November 8th, 2016  
11 report that was taken?  
12 A Scarlett Rangel.  
13 Q Okay. What was her father's name?  
14 A Ricardo.  
15 Q Okay. When Mr. Rangel came in, was that interview in English or  
16 Spanish?  
17 A Spanish.  
18 Q All right. And at that time, does Mr. Rangel give -- have any talk -- just  
19 start talking about U visas to you?  
20 A No, sir.  
21 Q Okay. Did that come up at any point in the interview?  
22 A No, sir.  
23 Q All right. What's his mood like?  
24 A He was very upset.  
25 Q Okay.

1           A     Emotional, yeah.

2           Q     And let's just jump back to a couple days. What's Amanda's mood like

3 when you spoke with her?

4           A     Distraught. Very emotional.

5           Q     What about Maria's mood when you spoke to her?

6           A     The same. Very emotional.

7           Q     What was Yusnay's mood like; do you remember?

8           A     Yusnay's had a little bit of mix of shock and anger, also, that this -- the

9 kids reported this to her.

10          Q     Okay. I want to turn your attention to three days later,

11 November 12th, 2016. What happens on that day?

12          A     I was contacted by my lieutenant and he stated that Henderson --

13               MR. WESTBROOK: Objection. Calls -- it's hearsay.

14               MR. HAMNER: That's being offered for the truth of the effect on the

15 listener. And I can --

16               THE COURT: He's not going to get into any substance of what --

17               MR. HAMNER: I mean, I can --

18               THE COURT: -- of the allegations, is he?

19               MR. HAMNER: I mean, I can rephrase, it if you want.

20               THE COURT: I -- I don't know that the effect on the listener's that --

21               MR. WESTBROOK: I will say, Your Honor, if it goes to the

22 investigation, then it can come in.

23               MR. HAMNER: I mean, it -- I can -- let me.

24               THE COURT: All right.

25               MR. HAMNER: I'll just rephrase. How about that?

1 THE COURT: Yeah, well, he just -- he's just said you can -- it can  
2 come in if it goes to these extent, scope of the investigation. So overruled. Go  
3 ahead.

4 MR. HAMNER: Okay.

5 BY MR. HAMNER:

6 Q So you get a call and what do you -- what do you learn at that point?

7 A I learned that the person we were looking for, Jose Azucena, had been  
8 taken into custody by Henderson Police Department.

9 Q On that day is he kind of transported from Henderson to Metro's  
10 jurisdiction?

11 A Yes, he is.

12 Q Okay. Do you conduct an interview with Mr. -- with the defendant on  
13 that day?

14 A Yes, I do.

15 Q Okay. We'll touch on that in a minute, but I want to keep going.

16 Let me ask you this. You mentioned that on November 12th,  
17 you have your potential suspect in custody and you interviewed him on that day.  
18 Does that necessarily mean that you stopped maybe conducting interviews or  
19 investigations?

20 A No.

21 Q Okay. And is possible that there may be other leads or other  
22 information that comes up subsequent to having a suspect in custody?

23 A Yes.

24 Q Okay. The next day, do you conduct an interview with Scarlett's  
25 mother?



1 A Yes.

2 Q Okay. And what's her name? Do you remember?

3 A Maria --

4 Q Is it Marta Garcia-Sanchez?

5 A Marta -- yes. Yes. I'm sorry. Yes.

6 Q Does that sound about right?

7 A Yes.

8 Q Okay. Three days later, on November 16th, is Scarlett interviewed by

9 Elizabeth Espinoza?

10 A Yes.

11 Q Are you present at that time for that interview?

12 A I am not in the room.

13 Q Okay. Are you present in the building?

14 A Yes, I am.

15 Q Are you present inside that room?

16 A No, I'm not.

17 Q Are you in the side room?

18 A Yes, sir.

19 Q Okay. On November 22, six days after Scarlett is interviewed, what

20 happens; do you remember?

21 A We -- my squad put together a photo lineup. And I'm not allowed to

22 present the photo lineup, so I had my partner, Detective Katowich, present it for me.

23 Q Okay.

24 MR. HAMNER: Court's indulgence.

25 May I approach the witness?

1 THE COURT: Yes.

2 MR. HAMNER: Thank you very much.

3 I'm showing -- and counsel, I'm just referring to State's 49  
4 and 49A.

5 MR. WESTBROOK: Sounds good.

6 BY MR. HAMNER:

7 Q Okay. Showing the witness State's 49 and 49A; what are we looking at  
8 here? Why don't you flip through it and tell me what we're looking at.

9 A This is the photo lineup, witness instructions, and the six individual  
10 photos.

11 Q Okay. And what are looking at in 49A.

12 A This is basically called the six pack.

13 Q So it's the key that relates to the photos --

14 A Yes.

15 Q -- that's in there?

16 A Uh-huh.

17 Q Okay. And -- and Mr. Azucena appears to be the No. 2 position; is that  
18 right?

19 A Yes. Yes, sir.

20 Q Okay. The publishing 49A, which is the key, Mr. Azucena is in the 2  
21 position. I'm publishing 49; is that Katowich's signature?

22 A It is. Yes.

23 Q So that's the first picture. And the second picture, that's -- that's the  
24 signature of Scarlett?

25 A Yes.

1 Q Okay. And did he provide these to you on the 22nd?

2 A He did. He came right upstairs.

3 Q And by he, I mean Detective Katowich.

4 A Yes, sir.

5 Q Okay. And when did you get it?

6 A Direct afterward. He came right -- that was conducted on our first floor.

7 We're on the second floor. He came right up and gave me the package.

8 Q Okay. After that, are you -- are you advised that there may be other

9 potential children that may have a connection to the case?

10 A Later on, yes.

11 Q Okay. Is that sometime after the new year? Would it help refresh your

12 recollection to see your notes?

13 A It would. I apologize.

14 Q Okay.

15 MR. HAMNER: I'm just referring to case notes.

16 MR. WESTBROOK: This is the case notes -- yeah, I -- from Tuesday,

17 May 2nd?

18 MR. HAMNER: A clean copy that I gave mine to the court. Do you

19 have an issue? It's just matching up --

20 MR. WESTBROOK: Oh, you can show him mine.

21 MS. KIERNY: Oh, no. Yours are highlighted.

22 MR. WESTBROOK: Oh, I guess -- that's right. I thought I had a clean

23 copy. That's fine. Go ahead.

24 MR. HAMNER: Okay.

25 MR. WESTBROOK: That's fine. It's not being introduced, obviously.

1 MR. HAMNER: No, it's not.

2 MR. WESTBROOK: That's fine.

3 MR. HAMNER: All right.

4 BY MR. HAMNER:

5 Q All right. I want you to look at page -- do you -- I'm showing you some  
6 case notes of yours. Okay?

7 A Uh-huh.

8 Q And I'm showing you an entry at this date, but I'm also showing you  
9 here.

10 A Yes.

11 Q Can you let me know approximate -- does this help refresh your  
12 memory around what time you may have been advised of possibly maybe some  
13 other kids that might know something in relation to this?

14 A Yes, it does.

15 Q Okay. What's that date?

16 A January.

17 Q January what?

18 A 24th, I'm sorry. I didn't look --

19 Q Of 2017?

20 A Yes.

21 Q Okay. And -- and were you advised of a child by the name of Lexi?

22 A Yes.

23 Q And were you also advised of -- of a name that was Leo?

24 A Yes.

25 Q Okay. Do -- do -- are you able to immediately secure interviews with

1 those families and those kids?

2 A I was not.

3 Q Why not?

4 A We have quite an exhaustive and extensive caseload. There's four of  
5 us. We were just -- number one, we couldn't find them particular in making  
6 contacts -- attempting to make contacts with them, Weren't able to locate them,  
7 either by phone or by visits at the time.

8 Q Okay. But you were provided potential phone numbers and addresses;  
9 is that right?

10 A Yes, we were.

11 Q Okay. But you were having trouble getting them on the phone? Is  
12 that --

13 A Yes.

14 Q -- what you're saying?

15 A Yes.

16 Q Okay. So does it take -- how long does it take to actually get an  
17 interview down?

18 A This one almost took almost a couple months.

19 Q Okay. Do -- do you actually conduct interviews with the person who  
20 you initially knew as Lexi in March of 2017?

21 A Yeah. At the CAC.

22 Q Okay. Is the same day that Leo is interviewed or a different day?

23 A I'm sorry. I -- I don't remember, to be honest.

24 Q You don't remember?

25 A No.

1 Q Okay.

2 MR. HAMNER: Court's indulgence.

3 MR. WESTBROOK: Your Honor, we can stipulate that it's a different  
4 day.

5 MR. HAMNER: Okay. Can we make it a stipulation?

6 MR. WESTBROOK: Absolutely.

7 MS. KIERNY: The parties would stipulate that Litzi was interviewed on  
8 March 1st and Leo was interviewed on March 7th of 2017.

9 THE COURT: All right. Litzi March 1st, Leo March --

10 MS. KIERNY: 7th.

11 THE COURT: -- 7th of 2017 were the dates by stipulation of parties.  
12 All right. Proceed.

13 MR. HAMNER: Okay. Thank you.

14 BY MR. HAMNER:

15 Q So and when those interviews are conducted, are you in the side room  
16 again?

17 A Yes, I am.

18 Q And you're taking notes?

19 A Yes.

20 Q And, ultimately, those interviews are conducted; is that correct?

21 A Correct.

22 Q Okay. And -- well, we'll just -- we'll just go back. I want to go back to --  
23 well, let me ask you this.

24 Why do -- even if you had -- you mentioned you had your -- what  
25 you believe to be the suspect in custody, but you still went forward and followed

1 through to conduct these interviews even after; is that right?

2 A Yes.

3 Q All right. Now, let's talk about the defendant. Okay.

4 A Yes.

5 Q As a -- as a -- as kind of a precursor to this, what, you know, as far as  
6 background information for your interview, from what you could recall, what was the  
7 first name that the children referred to the defendant as?

8 A Don David.

9 Q Okay. What was the name Amanda referred to him as?

10 A Don David.

11 Q How about Maria?

12 A Don David.

13 Q How about Ricardo?

14 A Don David.

15 Q And it sounded like Scarlett may not have known the name at the time.

16 A Correct.

17 Q Okay. And everybody knows him as Don David?

18 A Yes.

19 Q Okay. But, ultimately, you determine his name -- first name is Jose; is  
20 that right?

21 A Correct.

22 Q Okay. Let's talk about this interview. It's on November 12, 2016.

23 When you do this interview, do you read his Miranda rights?

24 A Yes, I do.

25 Q Now, when you conducted this interview, is in English or Spanish?

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JOSE AZUCENA ) No. 74071  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF NEVADA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

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## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 10 day of April, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JOSE AZUCENA, #1183653  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

BY /s/ Carrie M. Connolly  
Employee, Clark County Public Defender's Office