

No.18-____

**In The
Supreme Court of the United States**

JUAN FRANCISCO MEDINA ORTIZ,
Petitioner,
v.

LORIE DAVIS, Director of the Texas Department of
Criminal Justice, Correctional Institutions Division,
Respondent.

**On Petition For A Writ Of Certiorari To The
United States Court of Appeals for the Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a claim made in the habeus corpus petition that is substantially the same and invokes the same constitutional protections, but labeled differently, is exhausted when it has been raised and decided upon by the state courts.
2. Whether the exclusion of the recorded interview violated the Petitioner's due process rights to a fair trial and opportunity to present a defense under the Fifth, Sixth, and Fourteenth Amendments.
3. Whether the State's failure to prove indispensable elements of the charged crimes charged violated the Petitioner's right to due process under the Fifth and Fourteenth Amendments.
4. Whether the arbitrary application of the Rule of Completeness by the Texas Court violated the Petitioner's right to Due Process under the Fifth and Fourteenth Amendments.

PARTIES TO THE PROCEEDING

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Fifth Circuit.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Juan Francisco Medina Ortiz, respectfully prays that a writ of certiorari be issued to review the judgments of United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on May 3, 2018 and the United States District Court for the Western District of Texas entered in the above-entitled case on September 2, 2017.

OPINIONS BELOW

The May 3, 2018 and September 2, 2017 opinions of the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Western District of Texas whose judgments are herein sought to be reviewed, are reprinted in the separate Appendix to this Petition, pages App. ____.

JURISDICTION

This Petition is filed within 90 days of the May 3, 2018 decision of the United States Court of Appeals for the Fifth Circuit and one extension granted by this Court. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(A).

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. Const. Amend. V

U.S. Const. Amend. VI

U.S. Const. Amend. XIV

28 U.S.C. § 2254(b)(1)(A)

STATEMENT OF THE CASE

On August 28, 2012, Juan Francisco Medina Ortiz and Taylor Garcia brought their infant son M to the hospital when M's arm appeared swollen and he was unable to move it, Ortiz and Taylor Garcia brought him to a local hospital, reporting that it appeared the baby's arm was injured during a near fall from his car seat. (App. 572). Indeed, the baby had suffered a fractured arm. (App. 110).

Upon examination, Dr. Erica Ward determined that the two-and-one-half-month-old M had suffered a total of seventeen fractures in various stages of healing. (App. 114). One of those fractures, a left clavicle fracture, was documented as having been suffered during birth. (App. 114) The remaining fractures, however, were initially unexplained and were of a nature that, according to Dr. Ward, was highly suspicious as resulting from abuse. (App. 116).

Following a meeting between the parents and the hospital's social worker, Child Protective Services and the West Police Department were notified. (App. 17) M was treated and released into foster care pending further investigation. *Id.* Early in the investigation, it became clear that three people had access to M: Taylor Garcia, Ortiz, and a babysitter. *Id.* In Ortiz's first statement to police, he explained the fractured arm as resulting from his attempt to get Baby M out of the car seat. (App. 18). When Ortiz was getting him out, Baby M nearly slipped away from him and he grabbed him by the arm. *Id.* He said he had no

idea how Baby M suffered the other fractures but offered that he suspected that the babysitter was involved. Id. Initially, the babysitter was developed as a suspect. Id.

The parents were called to return to the police station the following day for further interviews. Id. This time, the parents were separated; Taylor Garcia was administered Miranda warnings, and gave a written statement to the West Police Department on August 30, 2012. (App. 613). The statement, written in her handwriting, was six pages long, and in it she told the police that she believed the babysitter was responsible for the child's injuries. (App. 615).

The next day, police interviewed Taylor Garcia again. This time, her father and her sister pressured her to implicate Petitioner, and she did so. (App. 621). She also implicated Ortiz because she believed she was going to be arrested, and admitted did anything to get her child back. (App. 617).

Police claimed that they also took a statement from Petitioner, which was video recorded, the same day. (App. 420) The police claimed that during this interview, Petitioner made incriminating statements, admitting to harming the baby. Mysteriously, the video of the interview disappeared prior to trial and police could not account for its whereabouts. (App. 421).

Ortiz was arrested and subsequently charged in an Indictment filed on November 28, 2012 in the 19th Judicial District Court in Waco, Texas, with Count #

1, Injury to a Child (Texas Penal Code § 22.04), Count # 2, Aggravated Assault (Texas Penal Code § 22.02), and Count # 3, Aggravated Assault (Texas Penal Code § 22.02). (App. 791). On December 13, 2012, Ortiz waived arraignment and entered a plea of not guilty in writing. (App. 786). Trial commenced in the 19th District Court, McLennan County, Texas, on November 18, 2014 after a jury was selected.

On November 19, 2014, at the start of court proceedings, the District Attorney made an application to the trial court to compel the defense to turn over a recording of a pre-trial investigatory interview between defense counsel and the State's next witness, Taylor Garcia. The basis of the State's application was because Taylor Garcia was visited by defense counsel and a private investigator, they would be entitled to "invoke the rule of optional completeness, and, you know, at least investigate whether or not those statements are being taken out of context." (App. 521). When the defense cited a Texas Court of Criminal Appeals case directly controlling, the trial court agreed that the law did not require the defense to turn over any such recording of prior statements of the prosecution witness. The State further argued that:

MS. LABORDE: And another concern I have, Judge, is if he -- is he does -- if he wants to pretend like there isn't a recording, and he just took really good notes, and he wants to bring this other person in, I'm going to be entitled to argue he's made this huge deal about

how West Police doesn't record anything, and he doesn't record his conversations either. I mean that's just crazy. (App. 525).

In responding to the State's arguments, the following transpired:

MR. MEGARO: Judge, for the sake of expediency, I mean if the District Attorney is not going to prepare her with this now, then I guess the question is what do they need it for right now? What's -- what's the utility in that?

MS. LABORDE: To know when he's cross-examining her if we're going to have to play the whole thing. (App. 527-528).

Taylor Garcia testified as a witness for the prosecution. On direct examination, Taylor Garcia testified that prior to trial she met with defense counsel and an investigator at her former job where she worked as a waitress, and said they "fronted as customers." (App. 592). She claimed she would not have agreed to speak with defense counsel, but she felt as though she had no choice because she "was the only person there, and I couldn't not talk to my table." (App. 593). She also testified on direct that she would not have consented to being recorded if she had been asked. *Id.* At the end of her direct examination, she was asked the following about her conversation with defense counsel:

Q. What -- what was this conversation about?

A. They had mentioned to me that not only women go through postpartum depression, that men can also go through it, as well.

Q. Did you -- had you ever heard that before?

A. No.

Q. How did that come up, or do you know how that came up?

A. I don't -- I don't even recall.

Q. Did that make you feel sorry for the Defendant that he was depressed?

A. No.

Q. Is that some kind of justification if -- if you're depressed that you have a new baby or --

A. That's what -- that's what they were trying to make it seem, that that was a justification.

Q. Did you feel they were trying to encourage you to make a statement that he didn't do anything wrong?

A. Yes. (App. 594-595).

On cross-examination, Taylor Garcia admitted that on December 28, 2013, defense counsel and an investigator named Randi Ray went into the restaurant in Fort Worth where she worked and sat down and were served as customers. (App. 600). At the end of the meal, counsel asked if she would like to sit down and speak with him about the case, and was told she did not have to speak with them. (App. 601). She

claimed she felt pressured to speak with counsel because she thought she would get in trouble with her manager if she did not; however, in the next question she admitted that there came a point in time during the conversation when counsel specifically asked her if he was getting her in trouble by speaking with her, and she answered "No, you're not getting me in trouble." (App. 602). She then admitted that she was the manager on duty that day and time. At no point did she ever cut the conversation short and say she had to get up and go back to work. *Id.* Taylor Garcia also admitted on cross-examination that counsel identified himself as Ortiz' attorney, gave her a business card, and identified Randi Ray as a defense investigator. (App. 604).

On redirect examination, the District Attorney returned to the theme of the claimed deception of Taylor Garcia during the meeting with defense counsel and the defense investigator, and the following transpired:

MR. MEGARO: Well, Judge, why don't we just introduce the CD, and we can -- they just can hear it all for themselves.

THE COURT: Overruled.

Q. (BY MS. LABORDE) Did they present like they cared about you?

A. Yes.

Q. And -- and you read in there where Mr. Megaro talked to you about postpartum depression in men?

A. Yes.

Q. I mean you didn't just make that up.

That's actually in the transcript, isn't it?

A. Yes.

Q. Has this Defense attorney treated you a lot differently than he did at your work?

A. Yes.

Q. Did you know he was setting you up for this?

A. No.

MR. MEGARO: Objection as to "setting up," Your Honor. Your Honor, I'm doing my job as a Defense lawyer.

THE COURT: Sustained. (App. 667).

On re-cross examination, Taylor Garcia admitted that during the meeting, defense counsel specifically told her several times that he could not give her legal advice, and that if she wanted advice, she should seek her own attorney. (App. 669).

Randi Ray, a licensed private investigator was the sole witness called by the defense. When the defense attempted to introduce the CD of the interview he and defense counsel conducted with Taylor Garcia, the following transpired:

THE COURT: All right. We're outside the presence and hearing of the jury now. Mr. Megaro, it's apparent that you're about to try to introduce Ms. Taylor's statement that you all recorded as a -- as an exhibit, and the State was -- asked to approach to object

to that. Under what conceivable grounds is a witness statement admissible when she's been cross-examined about this matter and the statement itself? Why is that admissible?

MR. MEGARO: Several reasons, Judge. First, the witness denied making some statements, at least initially until confronted with them. The witness denied recalling some of the statements that she made. The witness also claimed that some of the statements that she made to me were a lie.

The witness and the District Attorney have insinuated that I misled her and that I acted untoward towards this witness and that I invoked trickery and deceit. A review of the CD will dispel any such notion, and, if the Court recalls, it was brought up before the witness took the stand, and I was very specific that it was not my intention to draw the witness's attention to a recording until the District Attorney brought it out on direct examination. Since they've put it out on direct examination, they have put the credibility of myself and my investigator into play, and the rule of completeness, since they brought it out first, not me, I believe I'm entitled to now introduce the entire recording of that interview to rebut any notion that I acted in any unethical or unprofessional manner or that this witness, not -- not

Mr. Ray but Ms. Garcia, was misled, tricked or otherwise deceived.

I think the jury has to make that credibility determination of Ms. Garcia, and the best way to do it is to give them the full recording of how she acted with Mr. Ray and I. Without that, I think that is deceiving the jury because I cannot testify as a witness.

THE COURT: And it's not your credibility that's at issue here.

MR. MEGARO: Well, it's -- it's been put at issue by questions put to the witness by the District Attorney. "Had you known that the Defense lawyer was tape recording you, would you" --

MS. LABORDE: Your Honor, I'm not the one who told him to record a witness and not tell her. I'm not the one that --

THE COURT: Okay. Let him -- let him finish.

MR. MEGARO: These were questions put to the witness not by me but by the District Attorney on direct examination. They're the ones that have put this -- the credibility of this statement into play, and they're the ones that first introduced that. I'm entitled under the rule of completeness to then introduce the entire recording, especially where the witness has denied certain things that were called to question --

THE COURT: But the State didn't introduce the -- the exhibit --

MR. MEGARO: No, they didn't.

THE COURT: -- or even part of it.

MS. LABORDE: No.

MR. MEGARO: But they -- they -- they introduced the fact that a recording was made and certain things that were said during the conversation, and that was on their direct.

MS. LABORDE: No. Your Honor, we haven't had a opportunity to review this evidence.

THE COURT: Hold on. Hold on, Ms. LaBorde. Calm down. This is not coming in.

MS. LABORDE: And, Your Honor, I would appreciate him stop marking evidence he knows he can't get in just to make me object in front of the jury. It's not admissible under any grounds he said by any stretch of the imagination.

THE COURT: I agree. It's not admissible, and it's not coming in, period.

MR. MEGARO: And, Judge, how am I to argue -- then I -- I'm hoping that the State will not argue to this jury at the close of the case that the Defense engaged in some tricky or deceit on this witness because I have no way to protect myself against such an allegation.

MS. LABORDE: Your Honor, the fact is they recorded her without her knowledge. It's just a fact.

MR. MEGARO: It's one hundred percent (100%) legal --

MS. LABORDE: They can draw from that whatever they want. I -- I introduced that it was legal. I agree to that. It is. I'm not saying that that was illegal. Now whether or not it was a trick, that's not for me to say. You saw Taylor certainly thought it was a trick. She said, "They fronted as customers." That's just simply the facts of the circumstance.

HE COURT: All right. Look, the Court has -- has ruled it's not coming in, and I don't want

you trying to introduce any other exhibits like this that the Court is not going to admit. Do you have anything else you intend to -- any other recordings you attempt to try to -- I mean any other witness statements that you wish to introduce?

MR. MEGARO: Judge, this is the heart of the Defense case. Cutting this out will -- there is nothing left for us to introduce in the way of prior consistent -- inconsistent statements.

THE COURT: Well, just -- just for record purposes, tell me why that's the heart of your case, and what it is that you're wanting to get across that you didn't have the opportunity to ask the witness.

MR. MEGARO: Because this witness, Ms. Garcia, has insinuated through the District Attorney of a Dr. Jekyll and Mr.

Hyde. That impugns the Defense. That makes me look like a liar and a bad guy, and I don't want the State to be able to point the finger in saying that, "This lawyer tricked you into giving a statement," when absolutely that is not correct. The credibility of Taylor Garcia is of paramount importance in this case, and if she got on the witness stand and said, "These people tricked me; these people did this, this, this and that that was unethical, unprofessional," and it just sounds down right dirty without giving the jury the context that it was in, especially since I wasn't the one that opened to door to this --

THE COURT: This is a collateral matter. It has nothing to do with whether or not the witness, Ms. Taylor, is credible or not. (App. 749-755).

On cross-examination, the District Attorney repeatedly cross-examined Ray with the transcript of the recorded interview, and questioned him as to what was said during this interview.

The jury returned a verdict of guilty on all three counts of the Indictment. After evidence was received at the punishment phase of the trial, the jury assessed punishment at forty years imprisonment and a fine of \$9,000.00 on Count # 1, fifteen years imprisonment and a \$5,000.00 fine on Count # 2, and fifteen years imprisonment and a \$5,000.00 fine on Count # 3, all sentences to run concurrently.

Ortiz directly appealed his conviction to the Seventh District of Texas at Amarillo Court of Appeals, which affirmed his conviction on February 29, 2016. (App. 16). Ortiz filed a petition for discretionary review to the Texas Court of Criminal Appeals which denied review on May 25, 2016. (App. 12). Ortiz then sought a writ of certiorari in this Court, which denied the same on November 28, 2016. (Docket # 16-385).

Ortiz then filed a petition for a writ of habeas corpus in the United States District Court for the Western District of Texas (Waco) pursuant to 28 U.S.C. § 2254. (App. 3). The District Court dismissed the petition on September 2, 2017, finding that Ortiz did not exhaust his claims in the Texas state courts. Ortiz then unsuccessfully sought a Certificate of Appealability in the United States Court of Appeals for the Fifth Circuit, which denied the same on May 3, 2018. (App. 1).

This Petition follows.

REASONS FOR GRANTING THE WRIT

I. REVIEW IS NECESSARY TO DETERMINE WHETHER CLAIMS MADE IN A HABEAS CORPUS PETITION THAT ARE SUBSTANTIALLY THE SAME AND INVOKE THE SAME CONSTITUTIONAL PROTECTIONS, BUT ARE LABELED DIFFERENTLY, ARE EXHAUSTED WHEN THEY HAVE BEEN RAISED AND DECIDED UPON BY THE STATE COURTS

In the courts below, Respondent successfully argued that Petitioner's claims were not exhausted, alleging that his claims were not raised in his petition for discretionary review. The Respondent's success rested on the erroneous notion that claims in the habeas corpus petition and those raised in state court must be presented verbatim.

While the wording of Petitioner's claims filed in his petition for discretionary review is slightly different, the claims and substance charged in the argument are essentially the same arguments raised in his § 2254 petition – giving both the Texas Court of Appeals and the Texas Court of Criminal Appeals an opportunity to rule on the issues. The Texas Court of Appeals did rule upon the issues; the Texas Court of Criminal Appeals denied discretionary review.

This Court has ruled on a similar issue in Duncan v. Henry, 513 U.S. 364 (1995). In Duncan, this

Court ruled that the petitioner had failed to properly exhaust his claim that the state trial court's evidentiary ruling denied him Due Process of Law guaranteed by the Fourteenth Amendment. In that case, Petitioner's objection to specific witness testimony at trial was overruled and he later appealed under California law as a "miscarriage of justice." *Id.* at 364. The Court of Appeals for the Ninth Circuit affirmed the decision by the district court granting the petition, ruling: "[r]espondent had exhausted his state remedies even though he had not claimed a violation of any federal constitutional right in the state proceedings." *Id.* at 367. The Ninth Circuit Court held: "...However, to state a federal due process claim it is not necessary to invoke 'the talismanic phrase 'due process of law' or cite 'book and verse on the federal constitution.'" *Id.* (citations omitted)(emphasis added). This ruling by the Ninth Circuit was reversed, which elicited a stinging dissent from Justice Stevens.

Justice Stevens opined that "[t]he Court's opinion is especially distressing because it creates an exacting pleading requirement that serves no legitimate purpose in our habeas corpus jurisprudence." *Id.* (Stevens, J., dissenting). Justice Stevens went on to cite this Court in *Picard v. Connor*, 404 U.S. 270 (1971), where this Court declined to require that a prisoner place the "correct label on his claim, or even cite the Federal Constitution, as long as the substance of the federal claim has been fairly presented." *Id.* (emphasis added). Furthermore, Justice Stevens showed that the Ninth Circuit did not demonstrate an understanding of *Picard*, pointing out that other Circuits have "analyzed the exhaustion

question without rigidly insisting that a prisoner invoke the ‘talismanic’ language of the federal law.” Id. at 889. Justice Stevens concluded his dissent with a warning to the Court:

the new rule that the Court announces today is hyper-technical and unwise. It will prolong litigation without serving any valid purpose. . . [T]he cost of needless litigation is, however, significant both to the judicial system [citation omitted] and to persons like respondent who are imprisoned despite their meritorious federal claims.

Id.

Following the opinion of Justice Stevens in Duncan, Petitioner argues that the Court should not impose such a rigid and strict reading of the argument presented in his petitions for appeal. The lack of the exact same language does not excuse the Texas Court of Criminal Appeals from having the opportunity to decide whether the instructions given to the jury, or the rereading of trial testimony, caused an undue hardship on Petitioner and violated his due process rights under the state and federal constitutions. Any finding that Petitioner claims have not been exhausted, due to the lack of any talismanic phrasing,

would serve no other purpose than merely prolonging litigation.

II. REVIEW IS NECESSARY TO DETERMINE THE MERITS OF PETITIONER'S CLAIMS OF DEPRIVATION OF HIS FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS

A. Petitioner's right to present a defense was violated by the exclusion of the recorded interview.

The right to present a defense arises under the Fifth and Fourteenth Amendments rights to due process and the Sixth Amendment right to compulsory process. Richmond v. Embry, 122 F.3d 866, 871 (10th Cir.1997). It is one of the "minimum essentials of a fair trial." Chambers v. Mississippi, 410 U.S. 284, 294 (1973), citing In re Oliver, 333 U.S. 257, 273 (1948). This Court has repeatedly held that criminal defendants have the right to put before a jury evidence that might influence the determination of guilt, and "to contradict or explain the opponent's case." Pennsylvania v. Ritchie, 480 U.S. 39, 56 (1987); see also Taylor v. Illinois, 484 U.S. 400, 410-11 (1988); United States v. Nixon, 418 U.S. 683, 709 (1974); Chambers at 302, Taylor v. Illinois, 484 U.S. 400 (1988) (stating that "[t]he need to develop all relevant facts in the adversary system is both fundamental and comprehensive").

The lower Federal courts have analyzed whether a defendant was deprived of his right to

present a defense by evaluating whether it was fundamentally unfair for a state trial court to exclude evidence regardless of the fairness of the rules of evidence, including upon Federal habeas review. See United States v. Solomon 399 F.3d 1231 (2005); Maes v. Thomas, 46 F.3d 979, 987 (10th Cir. 1995); Rosario v. Kuhlman, 839 F.2d 918 (2d Cir. 1989). "Whether the exclusion of [witnesses'] testimony violated [defendant's] right to present a defense depends upon whether the omitted evidence [evaluated in the context of the entire record] creates a reasonable doubt that did not otherwise exist." Washington v. Schriver, 255 F.3d 45, 57 (2d Cir. 2001).

The concept of "fundamental fairness" is sometimes an elusive one. Where an erroneous evidentiary ruling is made, and relevant evidence is thereby excluded, the reviewing court's duty is to determine whether the excluded evidence was material to the presentation of the defense:

The proper standard of materiality must reflect our overriding concern with the justice of the finding of guilt. Such a finding is permissible only if supported by evidence establishing guilt beyond a reasonable doubt. It necessarily follows that if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed. This means that the omission must be evaluated in the context of the entire record. If there is no

reasonable doubt about guilt whether or not the additional evidence is considered, there is no justification for a new trial. On the other hand, if the verdict is already of questionable validity, additional evidence of relatively minor importance might be sufficient to create a reasonable doubt.

United States v. Agurs, 427 U.S. 97 (1976)
(footnotes omitted).

The defense theory in this case was as follows: Ortiz was not responsible for the injuries to the child; because he worked two jobs, seven days per week. The child's mother and his babysitter, the two women with the most access to him, were the likely responsible parties. After child protective services removed the child from both parents, panicking them, and police officers began to pressure them to make statements, and played one against the other, and after Taylor Garcia received an immense amount of pressure from family members who clearly had no love for Ortiz, he fell on the sword for the benefit of the child, and Taylor Garcia turned State's evidence. This was a direct response to false promises made to her by police that she would receive the child back immediately if she pointed the finger at Ortiz. According to Taylor Garcia, she did not believe that he was guilty; as she told police in her first statement, and as she told defense counsel, she suspected the babysitter, whose home was frequented by disreputable persons. This theory was substantiated not only by the statements made by both Ortiz and Taylor Garcia to police, but is

set forth very clearly in the recorded interview with defense counsel that the jury never heard.

Here, the defense vigorously impeached the child's mother, the central witness for the State, on several different fronts. First, there were many inconsistencies between prior statements made by Taylor Garcia to police and her trial testimony. There were numerous inconsistencies between statements made by Taylor Garcia to defense counsel and Randi Ray and her trial testimony. Taylor Garcia admitted that she lied to police, lied to defense counsel, lied to her own father by concealing her pregnancy, and lied by using an alias to send Ortiz letters and photographs in the mail. In addition, she was impeached with her motive to lie, which was to do anything to get her child back from CPS custody and stave off termination of her parental rights, not to mention to escape arrest and possible criminal prosecution for child abuse. This impeachment was affected through specific, directed questions for which there was not only a good faith basis, but documentary evidence to substantiate the same. It was relevant to diminish the District Attorney's star witness and material because she was the only fact witness that attempted to tie Ortiz to the crime charged.

Defense counsel was fighting with one hand behind his back when the prosecutor questioned Randi Ray and Taylor Garcia about the interview. The questions posed to Taylor Garcia by the District Attorney, and the answers that were given, were meant to convey to the jury the idea that the defense had done something unethical and sneaky by eating at

her restaurant and recording her without her knowledge. Taylor Garcia went so far as to testify that defense counsel and the investigator pressured her to make statements to them, while “setting her up,” in the District Attorney’s words. Randi Ray answered the District Attorney’s questions but testified that her questions were out of context. When he answered, he told her to look at other sections of the transcript to provide context. She did not follow up on that request. On redirect, defense counsel asked Randi Ray about the questions he asked Taylor Garcia and the trial court repeatedly sustained hearsay objections. It refused to allow the recording into evidence upon defense counsel’s request.

The prosecutor’s inaccurate depiction of a “set up” provided jurors with a false impression of the context of the interview. Having successfully created this false impression, the District Attorney then successfully blocked the defense from introducing the actual recording to dispel any such myth. This was patently unfair. As the defense argued, the District Attorney unfairly and successfully engaged in character assassination of not only Ortiz, but also his attorney, and advanced the prosecution by denigrating the defense.

The prosecutor’s actions forced defense counsel to engage in a battle to establish his own credibility with the jury in addition to discrediting the witness. This was unfair to Ortiz. In Leinweber v. Tilton, 2012 WL No. 09-15593 at 2 (9th Cir. 2012) the Ninth Circuit held, “the prosecutor’s statements referencing defense counsel’s dishonorable character, and the suggestion

that defense counsel persuaded witnesses to change their testimony and acted improperly in failing to record and turn over notes from witness interviews, were highly improper and deserve our condemnation and opprobrium.” See also U.S. v. McDonald 620 F.2d 559, 564 (1980) where the court held “no prosecutor... may impugn the integrity of a particular lawyer or that of lawyers in general, without basis in fact, as a means of imputing guilt to a defendant.”

Recording an interview of Taylor Garcia at work with an investigator present was appropriate, legal, and effective representation. The prosecution acknowledged it was legal when discussing the matter with the trial court but presented the picture of a “set up” in front of the jury.

The exclusion of the recording was a fatal blow to the defense theory. There was no evidence presented at trial of any eyewitness accounts of Ortiz causing any harm to the child. The District Attorney relied heavily on Taylor Garcia’s testimony and because of the lack of other evidence implicating Ortiz, Taylor Garcia’s testimony was pivotal to the trial. Thus, the District Attorney had to establish she was credible.

Ortiz established reasonable doubt by demonstrating Taylor Garcia had lied regarding numerous topics over a large span of time, including during her interview with defense counsel. The District Attorney’s actions converted an established liar into a victim of coercion at the hands of defense counsel which swayed the juror’s opinions about her

and the defense theory. In Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986) this Court held that the defendant's due process rights were violated where "[a] reasonable jury might have received a significantly different impression of [the prosecution witness's] credibility had [the defendant's] counsel been permitted to pursue his proposed line of cross-examination." Where evidence "might reasonably have influenced the jury's assessment of [the complainant's] reliability or credibility, absent sufficient countervailing interests, 'the jurors were entitled to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to place on [the complainant's] testimony which provided a crucial link in the proof.'" Davis v. Alaska, 415 U.S. 308, 317, (1974).

No evidence existed of a specific time where Ortiz supposedly harmed the child. The State's own expert testified she was unsure as to how the injuries occurred, when they occurred, or what had been used to inflict the injuries. Thus, Taylor Garcia's testimony and credibility were vital to this case. The absence of the recording allowed the jurors to believe defense counsel "set up" Taylor Garcia and make her testimony more believable. This was unfair to Ortiz and denied him the right to present a defense.

B. Petitioner's right to a fair trial was violated because the state failed to prove an indispensable element of the crime beyond a reasonable doubt.

The Due Process Clause of the United States Constitution prohibits the criminal conviction of any person except upon sufficient proof of guilt of every element of the charged offense beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307 (1979); see also In re Winship, 397 U.S. 358 (1970). It thus remains axiomatic that, “[i]t would not satisfy the [U.S. Constitution] to have a jury determine that the defendant is probably guilty.” See Sullivan v. Louisiana, 508 U.S. 275, 278 (1993).

Indeed, it is well-settled that habeas relief is mandated if after viewing the evidence adduced at trial, in the light most favorable to the prosecution, it is found that no rational trier of fact could have found proof of guilt beyond a reasonable doubt. See Jackson, 443 U.S. at 324; Henry v. Ricks, 578 F.3d 134 (2d Cir. 2009); Einaugler v. Supreme Court of New York, 109 F.3d 836, 839 (2d Cir. 1997). As Justice Stewart held in Jackson:

[A] federal court must entertain a claim by a state prisoner that he or she is being held in “custody in violation of the Constitution or laws or treaties of the United States.” Under the Winship decision, it is clear that a state prisoner who alleges that the evidence in support of his state conviction cannot be fairly characterized as sufficient to have led a rational trier

of fact to find guilt beyond a reasonable doubt has stated a federal constitutional claim. Thus, assuming that state remedies have been exhausted and that no independent and adequate state ground stands as a bar, it follows that such a claim is cognizable in a federal habeas corpus proceeding.

See Jackson, 443 U.S. at 321 (internal citations omitted) (emphasis added).

Accordingly, in a habeas corpus proceeding such as this, a claim that the Petitioner has been convicted in state court upon insufficient evidence rests on the Due Process guarantee “that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof - defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” See Jackson, 443 U.S. at 319.

In following this guidance, federal courts have consistently held that a defendant’s conviction is constitutionally infirm, and must be vacated if attacked on a federal habeas corpus petition, where no rational trier of fact could have found the defendant guilty beyond a reasonable doubt. See e.g., Gilley v. Collins, 968 F.2d 465 (5th Cir. 1992); Cosby v. Jones, 682 F.2d 1373 (11th Cir. 1982); Bowen v. Kemp, 832

F.2d 546 (11th Cir. 1987); Joseph v. Coyle, 469 F.3d 441 (6th Cir. 2006); United States v. Wright, 835 F.2d 1245 (8th Cir. 1987).

For the reasons that follow, it was objectively unreasonable for the Texas state court to deny Petitioner's motion for a directed verdict. The Indictment charged Petitioner with intentionally and knowingly causing serious bodily injury to a child under Count # 1, Texas Penal Code § 22.04(a)(1), and intentionally or knowingly or recklessly causing bodily injury with a deadly weapon, i.e., his hands "or an object unknown to the Grand Jury." At the close of the State's evidence, the defense moved for a directed verdict on the basis that the State had failed to present sufficient evidence of each element beyond a reasonable doubt, including the deadly weapon requirement. This motion was denied.

The denial of the motion was erroneous. Here, the State never proved that Petitioner used a "deadly weapon," which under the facts of this case, would be defined as "anything that in the manner of its use or intended use is capable of causing death or serious bodily injury." Tex. Penal Code § 1.07(17)(b). The Court of Criminal Appeals has held that hands and feet are not "deadly weapons" per se, but "can become such only in the manner used depending on the evidence shown." Turner v. State, 664 S.W.2d 86, 90 (Tex. 1983).

Here, the State's evidence failed to establish that Petitioner caused the injuries or that he did so with his hands or any other object. The indictment specified that the means and manner was unknown to

the Grand Jury. The State's own expert testified she was unsure as to how the injuries occurred, when they occurred, or what had been used to inflict the injuries. Because the State's theory of prosecution was based upon circumstantial evidence that failed to exclude every reasonable hypothesis of guilt, and the evidence failed to establish the facts and circumstances that would establish that his hands were used to inflict serious bodily injury. Because the State failed to establish prima facie evidence of the elements of the charged crimes, the Court should reverse and dismiss.

C. The Petitioner's right to due process was violated because Texas applies the rule of completeness arbitrarily and in a manner disproportionate to its purpose.

In Texas, the courts have interpreted the rule of completeness in such a way that it creates more confusion of the evidence for jurors, which is contrary to its intended purpose.

'The Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' This right is abridged by evidence rules that 'infringe upon a weighty interest of the accused' and are 'arbitrary' or disproportionate to the purposes they are designed to serve.'

Holmes v. South Carolina, 547 U.S. 319, 324–25 (2006)(citations omitted).

Ortiz argued the recording should be admitted under the Texas' rule of "optional" completeness. Both State and Federal Courts codify a version of the common law rule of completeness. Most State Statutes have language that is similar to Federal Rule 106. (App. E). In Texas, the rule states:

If a party introduces part of an act, declaration, conversation, writing, or recorded statement, an adverse party may inquire into any other part on the same subject. An adverse party may also introduce any other act, declaration, conversation, writing, or recorded statement that is necessary to explain or allow the trier of fact to fully understand the part offered by the opponent.
(App. H).

This Court addressed the applicability of the rule of completeness in Beech Aircraft Corp v. Rainey, 488 U.S. 153 (1988) but decided the case on other grounds:

The common-law "rule of completeness," which underlies Federal Rule of Evidence 106, was designed to prevent exactly the type of prejudice of which Rainey complains. In its aspect relevant to this litigation, the rule of completeness was stated succinctly by Wigmore: "[T]he opponent, against whom a part of an utterance has been put in, may in his turn complement it by

putting in the remainder, in order to secure for the tribunal a complete understanding of the total tenor and effect of the utterance.” 7 J. Wigmore, *Evidence in Trials at Common Law* § 2113, p. 653 (J. Chadbourn rev. 1978)... In proposing Rule 106, the Advisory Committee stressed that it “does not in any way circumscribe the right of the adversary to develop the matter on cross-examination or as part of his own case.” Advisory Committee's Notes on Fed. Rule Evid. 106, 28 U.S.C.App., p. 682. We take this to be a reaffirmation of the obvious: that when one party has made use of a portion of a document, such that misunderstanding or distortion can be averted only through presentation of another portion, the material required for completeness is *ipso facto* relevant and therefore admissible under Rules 401 and 402. See 1 J. Weinstein & M. Berger, *Weinstein's Evidence* ¶ 106[02], p. 106–20 (1986). The District Court's refusal to admit the proffered completion evidence was a clear abuse of discretion.

The Texas Court of Appeals relied on Stewart v. State, 221 S.W.3d 306 (Tex. App.-Fort Worth 2007) when it affirmed the trial court's decision. In Stewart, the Texas Court of Appeals interpreted the Texas rule of completeness to mean that when a portion of a document is read into evidence, the other portions may be read into evidence, but not admitted. Id. at 312

(emphasis added). This rule is unfair because trial courts can exclude (as it did in this case) relevant portions of the document based on hearsay, or other evidentiary grounds.

The Texas rule of completeness is “designed to reduce the possibility of the jury receiving a false impression from hearing only a part of some act, conversation, or writing.” Walters v. State, 247 S.W.3d 204, 217-18 (Tex. Crim. App. 2007). In this case, the District Attorney “opened the door” by asking Taylor Garcia about the interview. She was allowed to cherry-pick statements made during the interview, take them out of context, and impeach the defense witness. On re-direct, the court sustained the State’s hearsay objections when defense counsel asked Randi Ray about questions he asked Taylor Garcia. The only way to provide the jurors with a proper context was to admit the evidence to allow them to hear the entire recording. The rule to not admit the recording only created more false impressions of the testimony and made the trial unfair to Ortiz.

Other Texas courts have permitted the admission of similar evidence where counsel merely mentioned prior conversations existed. See Credille v. State, 925 S.W.2d 112, 116 (Tex. App. (14 Dist.))(1996); Tovar v. State, 221 S.W.3d 185 (Tex. App.)(2006). The holding in this case and Stewart are inconsistent with cases like Credille and Tovar.

Additionally, many other states *require* such evidence to be admitted under the rule of completeness. See Georgia Code of Evidence § 24-3-

38; Ohio Rule 106. Unlike Stewart, these rules further the objective of fully explaining the evidence.

The Federal Circuit Courts have been split over what evidence Federal Rule 106 permits as admissible. The Second and Sixth Circuits have held that the rule of completeness does not permit the introduction of otherwise inadmissible evidence. See United States v. Terry, 702 F.2d 299, 314 (2d Cir.), cert. denied, 461 U.S. 931 (1983). See also United States v. Holden, 557 F.3d 698, 706 (6th Cir. 2009) where the court rejected defendant's Rule 106 argument because "his statements are inadmissible hearsay and were properly excluded".

Other circuits have held that inadmissible evidence can be admissible under Rule 106. See U.S. v. Sutton, 801 F.2d 1346 (D.C. Cir. 1986); U.S. v. Bucci, 525 F.3d 116 (1st Cir. 2008); and U.S. v. Garcia, 530 F.3d 348, 354 (5th Cir. 2008). The Seventh Circuit has interpreted Rule 106 as being capable of rendering otherwise inadmissible evidence admissible, but adopted its own rule. In U.S. v. LeFevour 798 F.2d 977, 981 (7th Cir. 1986) the court held,

If otherwise inadmissible evidence is necessary to correct a misleading impression, then either it is admissible for this limited purpose by force of Rule 106, ... or, if it is inadmissible (maybe because of privilege), the

misleading evidence must be excluded too. The party against whom that evidence is offered can hardly care which route is taken, provided he honestly wanted the otherwise inadmissible evidence admitted only for the purpose of pulling the sting from evidence his opponent wanted to use against him. Rule 106 was not intended to override every privilege and other exclusionary rule of evidence in the legal armamentarium, so there must be cases where if an excerpt is misleading the only cure is to exclude it rather than to put in other excerpts.
Id. at 981.

This Court has held numerous state evidentiary rules unfairly excluded important defense evidence and denied fair trials in accord with fundamental standards of due process. In Crane v. Kentucky 476 U.S. 683 (1986) the Defendant was prevented from attempting to show at trial that his confession was unreliable because of the circumstances it was obtained. Neither the State Supreme Court nor the prosecution “advanced any rational justification for

the wholesale exclusion of this body of potentially exculpatory evidence.” Id. at 691.

In Chambers, the Defendant was denied permission to examine McDonald, an individual who had previously confessed to the murder because of a rule of evidence that barred a party from impeaching its own witness. Chambers, 410 U.S. at 291. There was no alternative source for the information and the defendant was “thus effectively prevented from exploring the circumstances of McDonald's three prior oral confessions and from challenging the renunciation of [McDonald's] written confession.” Id. at 297. The hearsay statements regarding the oral confessions had significant indicia of reliability and McDonald was actually present in court and available for cross-examination, had the evidence been permitted. Id. at 300–301. Recognizing the fundamental right to present witnesses in one's own defense, the court held that “[i]n these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice,” and concluded “that the exclusion of this critical evidence, coupled with the State's refusal to permit Chambers to cross-examine McDonald, denied him a trial in accord with traditional and fundamental standards of due process.” Id. at 302.

In Rock v. Arkansas, 483 U.S. 44, 61 (1987) this Court held that a rule prohibiting hypnotically refreshed testimony was unconstitutional because “[w]holesale inadmissibility of a defendant's

testimony is an arbitrary restriction on the right to testify in the absence of clear evidence by the State repudiating the validity of all post-hypnosis recollections.”

This Court should also find the Texas application of the rule of completeness unconstitutional. Courts have been split on their approach to permitting remainder evidence. While approaches differ, every jurisdiction invokes the rule with the purpose of clarifying evidence for the finder of fact. The rules in Texas do not serve that purpose.

To achieve the purpose of clarifying the evidence, admitting the entire remainder is the best practice. This Court has never ruled on the applicability of evidence sought to be admitted under the rule of completeness, but in dicta stated, “the material required for completeness is *ipso facto* relevant and therefore admissible.” Beech Aircraft Corp. at 172 (emphasis added).

If the entire recording had been admitted in this case, the jurors would have become aware that the evidence admitted at trial was not an accurate depiction of the interview between Taylor Garcia and defense counsel. Similar to Chambers, the exclusion of the evidence denied Ortiz a trial in accord with traditional and fundamental standards of due process. Excluding the evidence was fundamentally unfair and violated Due Process.

CONCLUSION

Relief should be granted because the District Court and the Fifth Circuit conveniently ignored this Court's precedent in requiring a particular "talismanic" phrasing or labeling of Petitioner's Constitutional claims which were fully raised and litigated in the Texas state courts, wrongfully denying him a Certificate of Appealability. The record establishes that the claims in the habeas corpus petition were, in fact, fully exhausted.

Further, the Texas state courts ignored the binding precedent of this Court when making their rulings in this case. Ortiz was deprived of the rights accorded him by the Fifth, Sixth, and Fourteenth Amendments. The trial court's exclusion of the recorded interview infringed on Ortiz's right to conduct an effective re-cross examination of Taylor Garcia. The prosecution was allowed an unopposed opportunity to rehabilitate the credibility of Garcia by framing the recorded interview as a "set up" infringing on Ortiz's right to a fair trial. Petitioner was denied his right to due process because he was convicted despite failure of the prosecution to prove every element of the crime beyond a reasonable doubt. Finally, the purpose of the rule of completeness is to clarify evidence for jurors. The court's ruling in this case only made the evidence more confusing. The application of the Texas rules of evidence was unconstitutional and denied Petitioner the right to a fair trial. For the reasons set forth above, this Court should grant the petition herein in its entirety.

Respectfully submitted on this 19th day of
September, 2018.

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No.

**In The
Supreme Court of the United States**

JUAN FRANCISCO MEDINA ORTIZ,
Petitioner,
v.

LORIE DAVIS, DIRECTOR OF THE TEXAS
DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION
Respondent.

**On Petition For A Writ Of Certiorari To The
United States Court of Appeals for the Fifth
Circuit**

APPENDIX

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APPENDIX

Order Dismissing Motion for Certificate of Appealability from the Fifth Circuit dated 5-3-2018.....	App. 1
Order Dismissing Petition for Habeas Corpus From Western District of Texas dated 9-5-2017.....	App. 3
Judgment Dismissing Petition for Habeas Corpus From Western District of Texas dated 9-5-2017.....	App. 11
Order Denying Petition for Discretionary Review from Texas Court of Criminal Appeals dated 5-25-2016.....	App. 12
Opinion of Texas Court of Appeals 2-29-2016.....	App. 16
Judgment of Conviction Entered in the 19th District Court, McLennan County, Texas dated 11-21-2014.....	App. 39
U.S. Const. Amend. V.....	App. 45
U.S. Const. Amend. VI.....	App. 45
U.S. Const. Amend. XIV.....	App. 45
28 U.S.C. § 2254(b)(1)(A).....	App. 45

Texas Penal Code § 22.02.....	App. 45
Texas Penal Code § 22.04.....	App. 45
Transcripts of Trial Proceedings.....	App. 47

App . 1

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-50850

JUAN FRANCISCO MEDINA ORTIZ,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Western District of Texas

O R D E R:

Juan Francisco Medina Ortiz, Texas prisoner # 2027814, was convicted by a jury of one count of injury to a child and two counts of aggravated assault with a deadly weapon. He now seeks a certificate of appealability (COA) to appeal the district court's dismissal without prejudice of his 28 U.S.C. § 2254 application for failure to exhaust state court remedies. Medina Ortiz also claims that the district court should have stayed the proceedings and placed his § 2254 application in abeyance while he exhausted his state court remedies.

Medina Ortiz did not ask the district court to stay the proceedings. Accordingly, it is an issue raised for the first time in his COA motion, and this court will not consider it. *See Henderson v. Cockrell*, 333 F.3d 592, 605 (5th Cir. 2003).

App . 2

No. 17-50850

In order to obtain a COA to appeal the denial of a § 2254 petition, Medina Ortiz must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327. When the district court denies relief on procedural grounds, “a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Medina Ortiz has not made the requisite showing. *See id.* Consequently, his motion for a COA is DENIED.

/s/ Priscilla R. Owen

PRISCILLA R. OWEN
UNITED STATES CIRCUIT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

JUAN FRANCISCO MEDINA ORTIZ
#2027814

v.

LORIE DAVIS

§
§
§
§
§
§

6:17-CV-101-RP

ORDER

Before the Court is Petitioner's Application for Habeas Corpus under 28 U.S.C. § 2254 (#1), Respondent's Motion to Dismiss (#6), and Petitioner's Response (#8). Petitioner is represented by counsel and has paid the filing fee. For the reasons set forth below, Petitioner's application for writ of habeas corpus is dismissed.

STATEMENT OF THE CASE

A. Petitioner's Criminal History

The Director has custody of Petitioner pursuant to a judgment and sentence of the 19th District Court of McLennan County, Texas. Petitioner was charged with injury to a child and two counts of aggravated assault with a deadly weapon and a jury found Petitioner guilty of all three charges. CR at 257-59, 285-90. On November 21, 2014, the trial court sentenced Petitioner to 40 years of imprisonment and a \$9,000 fine for the injury of a child conviction and 15 years of imprisonment and a \$5,000 fine for each count of aggravated assault. *Id.* at 280, 282-83, 285-90.

The Seventh Court of Appeals affirmed Petitioner's convictions. *Ortiz v. State*, No. 07-15-00007-CR, 2016 WL 784926 (Tex. App. Amarillo Feb. 29, 2016, pet. ref'd) (mem. op., not

designated for publication). The Texas Court of Criminal Appeals refused discretionary review on May 25, 2016. *Ortiz v. State*, No. PD-0339-16. The United States Supreme Court denied certiorari on November 28, 2016. *Ortiz v. Texas*, No. 16-385. Petitioner did not file a state habeas application with the Texas Court of Criminal Appeals. Petitioner's federal petition was filed on April 17, 2017.

B. Factual Background

The Seventh Court of Appeals summarized the facts of the case as follows:

Although [Ortiz] was married and had a family, he began an affair with his teen-aged co-worker, T.G. Baby M was born of this relationship. When Baby M's arm appeared swollen and he was unable to move it, [Ortiz] and T.G. brought him to the hospital, reporting that it appeared the baby's arm was injured during a near fall from his car seat. Indeed, the baby had suffered a fractured arm. Upon further evaluation, however, the two-and-one-half-month-old Baby M had suffered a total of seventeen fractures in various stages of healing. One of those fractures, a left clavicle fracture, was documented as having been suffered during birth. The remaining fractures, however, were initially unexplained and were of a nature that, according to an evaluating physician, Dr. Erica Ward, was highly suspicious as resulting from abuse. The hospital staff ruled out medical conditions that could affect bone strength and structure and that might serve to explain the number of fractures. Following a meeting between the parents and the hospital's social worker, Child Protective Services and the West Police Department were notified. Baby M was treated and released into foster care pending further investigation.

Early in the investigation, it became clear that three people had access to Baby M: T.G., [Ortiz], and a babysitter. In [Ortiz's] first statement to police, he explained the fractured arm as resulting from his attempt to get Baby M out of the car seat. When [Ortiz] was getting him out, Baby M nearly slipped away from him and he grabbed him by the arm. He said he had no idea how Baby M suffered the other multiple fractures but offered that he suspected that the babysitter was involved. He did not think T.G. caused the injuries to the child. Similarly, in T.G.'s first statement to police, she suggested that something must have happened at the babysitter's house.

The police investigated and eliminated the babysitter as a suspect. In fact, the babysitter provided the officer photographs she had taken of a few marks on the baby two marks being located on his arm in an attempt to document her concerns about Baby M and, if need be, ask the parents about a course of treatment, if any. She cooperated with the officers and testified at trial that she did not have anything to do with the several injuries to the baby.

The parents were called to return to the police station the following day for further interviews. At this point, a very nervous and edgy T.G. spoke more candidly with investigating officers and acknowledged that [Ortiz] was rough with the baby. [Ortiz] gave a different statement as well, implicating himself in Baby M's injuries while maintaining that they were accidental and inflicted during his attempts to play with and exercise Baby M.

Ortiz, 2016 WL 784926 at **1-2.

C. Petitioner's Grounds for Relief

Petitioner raises the following grounds for relief:

1. The exclusion of the recorded interview violated Petitioner's due process right to a fair trial because the recording was relevant, material, and created a reasonable doubt which denied Petitioner the right to present a defense.
2. Because the state failed to prove that appellant caused the injuries to the child and failed to prove that appellant did so with a deadly weapon, indispensable elements of the crimes charged, the trial court's denial of the motion for a directed verdict was erroneous.
3. The exclusion of the recording was unconstitutional because the rule of completeness in Texas is applied arbitrarily and is disproportionate to its purpose of fairly explaining evidence "opened up" by an adverse party.

Pet. (#1) at 24, 29, 31.

DISCUSSION AND ANALYSIS

A fundamental prerequisite to federal habeas corpus relief under Title 28 U.S.C. §2254 is the exhaustion of all claims in state court prior to requesting federal collateral relief. *Sterling v. Scott*, 57 F.3d 451, 453 (5th Cir. 1995). Section 2254(b) provides:

- (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that:
 - (A) the applicant has exhausted the remedies available in the courts of the State; or

- (B) (i) there is an absence of available State corrective process; or
(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

28 U.S.C. § 2254. This requirement is designed in the interests of comity and federalism to give state courts the initial opportunity to pass upon and correct errors of federal law in a state prisoner's conviction. *Picard v. Connor*, 404 U.S. 270, 275-76 (1971). The purpose and policy underlying the exhaustion doctrine is to preserve the role of the state courts in the application and enforcement of federal law and prevent disruption of state criminal proceedings. *Rose v. Lundy*, 455 U.S. 509, 518 (1982)(citing *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 490-91 (1973)).

A petition under 28 U.S.C. § 2254 “must be dismissed if state remedies have not been exhausted as to any of the federal claims.” *Castille v. Peoples*, 489 U.S. 346, 349 (1989). The exhaustion doctrine “requires that the Texas Court of Criminal Appeals be given an opportunity to review and rule upon the petitioner's claim before he resorts to the federal courts.” *Richardson v. Procnier*, 762 F.2d 429, 431 (5th Cir. 1985). Moreover, all of the grounds raised in a federal application for writ of habeas corpus must have been “fairly presented” to the state courts prior to being presented to the federal courts. *Picard v. Conner*, 404 U.S. 270, 275 (1971). In other words, in order for a claim to be exhausted, the state court system must have been presented with the same facts and legal theory upon which the petitioner bases his assertions. *Id.* at 275-77. Where a “petitioner advances in federal court an argument based on a legal theory distinct from that relied upon in the state court, he fails to satisfy the exhaustion requirement.” *Wilder v. Cockrell*, 274 F.3d 255, 259 (5th Cir. 2001) (citing *Vela v. Estelle*, 708 F.2d 954, 958 n.5 (5th Cir. 1983)). Once a federal claim has been fairly presented to the Texas Court of Criminal Appeals, either through direct appeal or collateral attack, the exhaustion requirement is satisfied. *See Castille*, 489 U.S. at 351. In order to avoid piecemeal litigation, all grounds raised in a federal application for writ of habeas

corpus must first be presented to the state's highest criminal court prior to being presented in federal court. *Rose*, 455 U.S. at 522. If even one claim is unexhausted, the entire petition must be dismissed for failure to exhaust state remedies. *Id.*

In the present case, Respondent agrees that claim 1, the exclusion of the recorded interview and Petitioner's argument that it violated his right to a fair trial and to present a defense, was raised in the petition for discretionary review and is exhausted. However, Respondent argues that claims 2 and 3 were not raised in the petition for discretionary review and are therefore unexhausted.

Petitioner asserts that "the same issues presented herein were presented to the Texas courts, albeit worded slightly differently." Resp. (#8) at 3. He argues that the substance of the claims is the same, and implies that it is clear that his claims are not state law issues, but were "deliberately couched . . . as violations of his Federal Constitutional Rights, citing the United States Constitution and Federal case law in all claims presented." *Id.* Unfortunately for Petitioner, citing the Constitution and federal case law does not satisfy the exhaustion requirement. In addition, presenting his claims "to the Texas courts" is insufficient. The exhaustion doctrine "requires that the *Texas Court of Criminal Appeals* be given an opportunity to review and rule upon the petitioner's claim before he resorts to the federal courts." *Procunier*, 762 F.2d at 431 (emphasis added).

Petitioner presented the following claims to the Texas Court of Criminal Appeals in his petition for discretionary review:

1. Whether the denial of introduction of two key pieces of defense evidence that substantiated the theory of defense, directly undermined the credibility of the main prosecution witness, and were repeatedly referred to by the prosecutor, deprive Appellant of the right to present a defense?
2. Where, in response to a jury question asking for specific testimony from a specific witness, and where the testimony read back failed to address the specific question and proffered additional testimony harmful to the defense, did the trial court commit reversible error?

3. Whether the trial court's admission of extraneous uncharged instances of alleged domestic violence and the Appellant's alleged use of an alias was proper where the evidence was admitted solely to rehabilitate the credibility of the main prosecution witness, who admitted she had lied to law enforcement and defense investigators and was impeached with prior inconsistent statements unrelated to the alleged prior uncharged crimes?

PDR (#7-25) at 3. Petitioner has not filed a state habeas corpus petition.

Petitioner's petition for discretionary review only clearly raises Claim 1 as presented in his federal petition. Claim 2 in his federal petition, regarding the alleged erroneous denial of a directed verdict based on the state's failure to prove all elements of the crimes charged, is entirely absent in his petition for discretionary review. Claim 3 in his federal petition, regarding the constitutionality of the application of the rule of completeness as applied to the exclusion of the recording in this case, is mentioned in the petition for discretionary review in a conclusory fashion. *Id.* at 13 ("... it also violated the rule of optional completeness."). The two sentences devoted to the argument regarding optional completeness do not suffice to present the Texas Court of Criminal Appeals with the same facts and legal theory upon which Petitioner bases his assertions. *See Picard*, 404 U.S. at 275-77. Therefore, Petitioner has not satisfied the exhaustion requirement of § 2254. The exhaustion requirement can be excused when exceptional circumstances exist. *Deters v. Collins*, 985 F.2d 789 (5th Cir. 1993). However, Petitioner makes no allegations that any exceptional circumstances are present in this case. Thus, the Court finds that Petitioner has failed to exhaust his state court remedies and has failed to allege any circumstances which would allow the Court to excuse the exhaustion requirement.

Accordingly, the Court dismisses Petitioner's Application for Writ of Habeas Corpus without prejudice for failure to exhaust available state court remedies.

CERTIFICATE OF APPEALABILITY

An appeal may not be taken to the court of appeals from a final order in a habeas corpus proceeding “unless a circuit justice or judge issues a certificate of appealability.” 28 U.S.C. § 2253(c)(1)(A). Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, effective December 1, 2009, the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.

A certificate of appealability may issue only if a petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The Supreme Court fully explained the requirement associated with a “substantial showing of the denial of a constitutional right” in *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In cases where a district court rejected a petitioner’s constitutional claims on the merits, “the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* “When a district court denies a habeas petition on procedural grounds without reaching the petitioner’s underlying constitutional claim, a COA should issue when the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.*

In this case, reasonable jurists could not debate the dismissal or denial of the Petitioner’s section 2254 petition on substantive or procedural grounds, nor find that the issues presented are adequate to deserve encouragement to proceed. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack*, 529 U.S. at 484). Accordingly, the Court shall not issue a certificate of appealability.

It is **ORDERED** that Petitioner’s application for writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**.

It is finally **ORDERED** that a certificate of appealability is **DENIED**.

SIGNED on September 5, 2017.

A handwritten signature in blue ink, appearing to read "Robert Pitman", with a long horizontal flourish extending to the right.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

JUAN FRANCISCO MEDINA ORTIZ
#2027814

v.

LORIE DAVIS

§
§
§
§
§
§

6:17-CV-101-RP

FINAL JUDGMENT

Before the Court is the above styled and numbered cause. On this date, the Court dismissed Petitioner Juan Francisco Medina Ortiz's Application for Habeas Corpus Relief and determined that a certificate of appealability shall not be issued. Accordingly, as all issues in the cause have been resolved, the Court renders the following Final Judgment pursuant to Federal Rule of Civil Procedure 58.

It is therefore **ORDERED** that Petitioner Juan Francisco Medina Ortiz's Application for Habeas Corpus Relief is hereby **DISMISSED WITHOUT PREJUDICE** for failure to exhaust available state court remedies.

It is finally **ORDERED** that the above styled and numbered cause is hereby **CLOSED**.

SIGNED on September 5, 2017.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

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P.O. BOX 12308, CALVERT STATION, AUSTIN, TEXAS 78711

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App. 12

5/25/2016

ORTIZ, JUAN FRANCISCO MEDINA Tr. Ct. No. 2012-2235-C1 PD-0339-16

On this day, the Appellant's petition for discretionary review has been refused.

Abel Acosta, Clerk

DISTRICT ATTORNEY MCLENNAN COUNTY
ABELINO 'ABEL' REYNA
219 N. 6TH STREET, SUITE 200
WACO, TX 76701

* DELIVERED VIA E-MAIL *

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App. 13

5/25/2016

ORTIZ, JUAN FRANCISCO MEDINA Tr. Ct. No. 2012-2235-C1 PD-0339-16

On this day, the Appellant's petition for discretionary review has been refused.

Abel Acosta, Clerk

PATRICK MEGARO

33 EAST ROBINSON STREET, SUITE 210
ORLANDO, FL 32801

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App. 14

5/25/2016

ORTIZ, JUAN FRANCISCO MEDINA Tr. Ct. No. 2012-2235-C1 PD-0339-16

On this day, the Appellant's petition for discretionary review has been refused.

Abel Acosta, Clerk

LISA MCMINN
STATE PROSECUTING ATTORNEY
P.O. BOX 13046
AUSTIN, TX 78711
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App. 15

5/25/2016

ORTIZ, JUAN FRANCISCO MEDINA Tr. Ct. No. 2012-2235-C1 PD-0339-16

On this day, the Appellant's petition for discretionary review has been refused.

Abel Acosta, Clerk

7TH COURT OF APPEALS CLERK
VIVIAN LONG
POTTER COUNTY COURTS BUILDING, SUITE 2A
P.O. BOX 9540
AMARILLO, TX 79101
* DELIVERED VIA E-MAIL *



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-15-00007-CR

JUAN FRANCISCO MEDINA ORTIZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 19th District Court
McLennan County, Texas¹
Trial Court No. 2012-2235-C1, Honorable Ralph T. Strother, Presiding

February 29, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

Appellant, Juan Francisco Medina Ortiz, appeals the trial court's judgment by which he was found guilty of injury to a child and two counts of aggravated assault with a deadly weapon² and sentenced to forty, fifteen, and fifteen years, respectively and to be served concurrently. On appeal, he contends the trial court erred by excluding evidence key to the presentation of appellant's defense, by providing testimony beyond

¹ Pursuant to the Texas Supreme Court's docket equalization efforts, this case was transferred to this Court from the Tenth Court of Appeals. See TEX. GOV'T CODE ANN. § 73.001 (West 2013).

² See TEX. PENAL CODE ANN. § 22.02 (West 2011), § 22.04 (West Supp. 2015).

that requested by note from the jury, by permitting evidence of an extraneous offense committed against a witness, and by denying his motion for a directed verdict when the evidence was insufficient to prove that appellant caused the injuries to the child and that he did so with a deadly weapon. We will affirm.

Factual and Procedural History

Although appellant was married and had a family, he began an affair with his teen-aged co-worker, T.G. Baby M was born of this relationship. When Baby M's arm appeared swollen and he was unable to move it, appellant and T.G. brought him to the hospital, reporting that it appeared the baby's arm was injured during a near fall from his car seat. Indeed, the baby had suffered a fractured arm. Upon further evaluation, however, the two-and-one-half-month-old Baby M had suffered a total of seventeen fractures in various stages of healing. One of those fractures, a left clavicle fracture, was documented as having been suffered during birth. The remaining fractures, however, were initially unexplained and were of a nature that, according to an evaluating physician, Dr. Erica Ward, was highly suspicious as resulting from abuse. The hospital staff ruled out medical conditions that could affect bone strength and structure and that might serve to explain the number of fractures. Following a meeting between the parents and the hospital's social worker, Child Protective Services and the West Police Department were notified. Baby M was treated and released into foster care pending further investigation.

Early in the investigation, it became clear that three people had access to Baby M: T.G., appellant, and a babysitter. In appellant's first statement to police, he

explained the fractured arm as resulting from his attempt to get Baby M out of the car seat. When appellant was getting him out, Baby M nearly slipped away from him and he grabbed him by the arm. He said he had no idea how Baby M suffered the other multiple fractures but offered that he suspected that the babysitter was involved. He did not think T.G. caused the injuries to the child. Similarly, in T.G.'s first statement to police, she suggested that something must have happened at the babysitter's house.

The police investigated and eliminated the babysitter as a suspect. In fact, the babysitter provided the officer photographs she had taken of a few marks on the baby—two marks being located on his arm—in an attempt to document her concerns about Baby M and, if need be, ask the parents about a course of treatment, if any. She cooperated with the officers and testified at trial that she did not have anything to do with the several injuries to the baby.

The parents were called to return to the police station the following day for further interviews. At this point, a very nervous and edgy T.G. spoke more candidly with investigating officers and acknowledged that appellant was rough with the baby. Appellant gave a different statement as well, implicating himself in Baby M's injuries while maintaining that they were accidental and inflicted during his attempts to play with and exercise Baby M.

Appellant was arrested and charged with one count of injury to a child and two counts of aggravated assault on Baby M. A McLennan County jury found him guilty of said offenses and assessed punishment at forty, fifteen, and fifteen years, respectively.

Appellant now appeals from that judgment of conviction, bringing to this Court four issues on appeal. We will affirm.

Sufficiency of the Evidence

It is in his fourth point of error that appellant contends the evidence is insufficient to support his conviction for injury to a child and aggravated assault; however, because this point of error would, if sustained, afford the greatest relief to appellant, we will address the sufficiency of the evidence first. See *Chaney v. State*, 314 S.W.3d 561, 565 (Tex. App.—Amarillo 2010, pet. ref'd) (citing TEX. R. APP. P. 43.3 and *Bradleys' Elec., Inc. v. Cigna Lloyds Ins. Co.*, 995 S.W.2d 675, 677 (Tex. 1999) (per curiam)). Appellant contends that the State failed to prove beyond a reasonable doubt that it was he who injured Baby M and, as to the aggravated assault convictions, that he did so with a deadly weapon.

Applicable Law and Standard of Review

A person commits the offense of injury to a child if he “intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission,” causes serious bodily injury to a child. TEX. PENAL CODE ANN. § 22.04(a)(1). “Serious bodily injury” means “bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” *Id.* § 1.07(a)(46) (West Supp. 2015).

A person commits assault if he “intentionally, knowingly, or recklessly causes bodily injury to another.” *Id.* § 22.01(a)(1) (West Supp. 2015). An assault becomes aggravated if the actor commits assault and uses or exhibits a deadly weapon during commission of the assault. See *id.* § 22.02(a)(2). A “deadly weapon” is anything that, in the manner of its use or intended use, is capable of causing death or serious bodily injury. *Id.* § 1.07(a)(17)(B). The word “capable” enables the statute to cover conduct that threatens deadly force, even if the actor has no intention of actually using deadly force. *Quincy v. State*, 304 S.W.3d 489, 499 n.8 (Tex. App.—Amarillo 2009, no pet.) (citing *Tisdale v. State*, 686 S.W.2d 110, 114–15 (Tex. Crim. App. 1984) (en banc) (op. on reh’g)). Indeed, almost anything can be a deadly weapon depending upon the evidence shown. *Id.* at 499 n.9. Body parts, such as hands and knees, may be deadly weapons based on their manner of use or intended use and their capacity to produce death or serious bodily injury. See *Turner v. State*, 664 S.W.2d 86, 90 (Tex. Crim. App. 1983); *Quincy*, 304 S.W.3d at 499; see also *Lane v. State*, 151 S.W.3d 188, 191 (Tex. Crim. App. 2004).

In cases involving injury to a child, there is rarely direct evidence of exactly how the child’s injuries occurred. *Bearnth v. State*, 361 S.W.3d 135, 140 (Tex. App.—Houston [1st Dist.] 2011, pet. ref’d) (quoting *Williams v. State*, 294 S.W.3d 674, 683 (Tex. App.—Houston [1st Dist.] 2009, pet. ref’d)). Instead, we look to rational inferences from circumstantial evidence to determine whether the State met its burden. See *id.* Intent can be inferred from the extent of the injuries to the victim, the method used to produce the injuries, and the relative size and strength of the parties. *Patrick v. State*, 906 S.W.2d 481, 487 (Tex. Crim. App. 1995) (en banc). It can also be inferred

from circumstantial evidence, such as acts, words, and appellant's conduct. See *id.* Further, "[t]he identity of the perpetrator of an offense can be proven by direct or circumstantial evidence." *Martin v. State*, 246 S.W.3d 246, 261 (Tex. App.—Houston [14th Dist.] 2007, no pet.) (citing *Earls v. State*, 707 S.W.2d 82, 85 (Tex. Crim. App. 1986) (en banc)).

In assessing the sufficiency of the evidence, we review all the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). "[O]nly that evidence which is sufficient in character, weight, and amount to justify a factfinder in concluding that every element of the offense has been proven beyond a reasonable doubt is adequate to support a conviction." *Brooks*, 323 S.W.3d at 917 (Cochran, J., concurring). We remain mindful that "[t]here is no higher burden of proof in any trial, criminal or civil, and there is no higher standard of appellate review than the standard mandated by *Jackson*." *Id.* When reviewing all of the evidence under the *Jackson* standard of review, the ultimate question is whether the jury's finding of guilt was a rational finding. See *id.* at 906–07 n.26 (discussing Judge Cochran's dissenting opinion in *Watson v. State*, 204 S.W.3d 404, 448–50 (Tex. Crim. App. 2006), as outlining the proper application of a single evidentiary standard of review). "[T]he reviewing court is required to defer to the jury's credibility and weight determinations because the jury is the sole judge of the witnesses' credibility and the weight to be given their testimony." *Id.* at 899.

Analysis

In his first statement to police, appellant maintained that he did not know how Baby M could have sustained these several broken bones. Appellant's second statement changed course, revealing that he "hurt [his] baby playing with him without intention and without knowing that [he] could accidentally hurt him." Appellant's statement continued as follows:

I would lift him a little and he would laugh. Also at the same time[,] I would take his feet and I would put him on the couch or my knees and I tried to exercise his legs trying not to hurt him and with care but it looks like I was not necessarily careful.

...

Sometimes I would bath him with me in the shower. The water was slow in between hot and cold so that I would not hurt him. It is the only way that I could explain how he could have encountered being hurt.

...

Maybe I made a bad decision but never have I tried to hurt my son.

While appellant's statement, in many ways, attempted to minimize his actions, it is important to note that appellant admits, to some degree, that he caused Baby M's injuries. Further, this second statement is very different than the one he gave a day earlier. When weighing circumstantial evidence, the finder of fact may consider a defendant's untruthful statements, in connection with all the other circumstances of the case, as affirmative evidence of guilt. See *Gear v. State*, 340 S.W.3d 743, 747 (Tex. Crim. App. 2011); *Padilla v. State*, 326 S.W.3d 195, 201 (Tex. Crim. App. 2010).

The record indicates that, at the time of Baby M's injuries, appellant was a very muscular man who worked out regularly. We learn from T.G. and the parents' former

co-workers that appellant would make disparaging remarks about the baby being a “sissy” or being “weak.” Appellant proclaimed that Baby M was “not tough,” that “he needs to toughen up.” He also openly questioned or denied Baby M’s paternity on that basis: the baby was too weak to be his son. One co-worker described an incident in which appellant lifted the baby above his head with one hand on his rib cage and the other supporting his feet. The co-worker intervened and took the baby from him. T.G. described the same incident.

Further, the jury heard Dr. Ward testify that several of Baby M’s fractures were characterized as “corner” or “chip” fractures, fractures that have occurred to the ends of bones that come in contact with other bones and break off corners of the bones. These types of fractures are to be distinguished from the one mid-bone fracture of Baby M’s arm. The jury also heard Ward’s testimony regarding the several “corner” or “chip” fractures as having “a high specificity for abusive-type injuries.” Dr. Ward explained that the particular fractures Baby M sustained were not “usually [seen] in accidental falls or other type of injuries.” She elaborated that these types of fractures generally arise from “some sort of pulling, yanking, twisting or a shaking if you’re holding a baby from the middle and shaking as the extremities are flopping vigorously.” She explained that these fractures are generally caused by a “pulling, twisting type of force.” Similarly, Ward testified to the typical mechanism that would cause the posterior rib fractures Baby M experienced: “It’s—it’s usually thought to be related to a squeezing pressure in the front and back of the chest, and then it gives way in the back or the lateral aspect. In this case[,] it was the back.” This testimony is consistent with T.G.’s testimony of seeing appellant “exercise” the baby by moving Baby M’s arms and legs and bending

them in seemingly awkward or uncomfortable ways and with the admissions from appellant. This evidence suggests that appellant used his hands to injure Baby M.

Further, Ward testified that the force and mechanism necessary to cause the several fractures could also cause additional injury, indicating that the force used posed a substantial risk of death. Ward testified that Baby M was unable to use his arm for some time as it was in a cast. Ward also advised child protective authorities that, due to his extensive injuries and his apparent pain after trips to the hospital, his time riding in a car seat should be limited as much as possible as he healed from the multiple fractures. We add that the jury was free to apply common sense, knowledge, and experience gained in the ordinary affairs of life in drawing reasonable inferences from the evidence presented to it. See *Sizemore v. State*, 387 S.W.3d 824, 830 (Tex. App.—Amarillo 2012, pet. ref'd). And, most certainly, common sense dictates that the force used by a grown, muscular man on a two-and-one-half-month-old infant—force sufficient to cause at least sixteen fractures—posed a substantial risk of killing the infant. Based on the evidence presented, the jury could have rationally concluded that appellant used his hands as a deadly weapon.

It was the fact-finder's responsibility to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson*, 443 U.S. at 319. Viewed in the light most favorable to the verdict, we conclude the evidence, despite the circumstantial nature of some of it, is such that the jury could have reasonably inferred that appellant was the person who injured Baby M. See *Brooks*, 323 S.W.3d at 912; see also *Martin*, 246 S.W.3d at 262–63. It also could have concluded, based on the evidence presented, that he used his hands as a deadly

weapon. See *Brooks*, 323 S.W.3d at 912; *Martin*, 246 S.W.3d at 262–63. We overrule appellant’s contention to the contrary.³

Exclusion of Defense Evidence

In his first issue, appellant maintains that the trial court abused its discretion when it denied his efforts to introduce what he characterizes as “key” defense evidence: a recording of a conversation between T.G., appellant’s counsel, and a defense investigator that occurred at T.G.’s workplace. Appellant sought admission of the recording to impeach T.G.’s trial testimony with prior inconsistent statements made during the recorded conversation. This evidence, he contends, substantiated his defensive theory and directly undermined T.G.’s credibility. Appellant maintains that the State repeatedly referred to this evidence and that the trial court’s exclusion of the evidence deprived appellant of the right to present a defense and violated the rule of optional completeness. We review a trial court’s evidentiary rulings for an abuse of discretion. *Oprean v. State*, 201 S.W.3d 724, 726 (Tex. Crim. App. 2006); *Carrasco v. State*, 154 S.W.3d 127, 129 (Tex. Crim. App. 2005) (en banc).

Deprivation of Right to Present a Defense

Appellant begins his discussion with a recitation of the right to present his defense as one of the “minimum essentials of a fair trial.” See *Chambers v. Mississippi*,

³ In his brief, appellant also contends that “the State’s theory of prosecution was based upon circumstantial evidence that failed to exclude every reasonable hypothesis of guilt.” To the extent that appellant relies on the proposition that the State must exclude every reasonable hypothesis, we note only that such a proposition has been rejected outright as an applicable standard. See *Geesa v. State*, 820 S.W.2d 154, 161 (Tex. Crim. App. 1991) (en banc) (expressly rejecting alternative reasonable hypothesis analytical construct “as a method of appellate review for evidentiary sufficiency in this and other appellate courts of this State”), *overruled on other grounds by Paulson v. State*, 28 S.W.3d 570, 573 (Tex. Crim. App. 2000).

410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). He continues by describing his right to present a defense as “a right which comprehends more than the right to present the direct testimony of live witnesses, and includes the right under certain circumstances, to place before the jury secondary forms of evidence, such as hearsay or, as here, prior testimony.” See *Rosario v. Kuhlman*, 839 F.2d 918, 924 (2d Cir. 1988). Appellant maintains that he was denied the opportunity to present a defense by the trial court’s exclusion of the recorded conversation, intended as a tool to impeach T.G. with her prior inconsistent statements.

The State responds to appellant’s contention with the parameters governing when and how prior inconsistent statements may be admitted. See TEX. R. EVID. 613(a). The State points out that, if the witness unequivocally admits having made such statement, extrinsic evidence of the same shall not be admitted. See *McGary v. State*, 750 S.W.2d 782, 786 (Tex. Crim. App. 1988) (en banc); see also TEX. R. EVID. 613(a)(4).

When confronted with the prior inconsistencies in her statements, particularly in the recorded conversation with defense counsel and defense investigator, T.G. readily admitted having made those inconsistent statements. Indeed, appellant points out that T.G. admitted at trial that she had given prior inconsistent statements both to police, in her first statement, and to defense counsel in the recorded conversation. The issue of her inconsistent statements is revisited and explored numerous times throughout the record. “Where a witness admits making the prior statement and that it is inconsistent with trial testimony, the prior inconsistent statement is not admissible, for under such circumstances the witness has performed the act of impeachment upon himself or

herself.” *Wood v. State*, 511 S.W.2d 37, 43 n.1 (Tex. Crim. App. 1974) (citing *Cherb v. State*, 472 S.W.2d 273, 278 (Tex. Crim. App. 1971); *Kepley v. State*, 320 S.W.2d 143, 145 (Tex. Crim. App. 1959); and *Sloan v. State*, 84 S.W.2d 484, 486 (Tex. Crim. App. 1935)). The exclusion of the recorded conversation did not deprive appellant of the opportunity to impeach T.G. To the contrary, T.G. admitted having given prior inconsistent statements and, effectively, impeached herself. See *id.* On this basis, the trial court did not abuse its discretion by excluding the recording. See *Carrasco*, 154 S.W.3d at 129.

Rule of Optional Completeness

Appellant complains that the State used a copy of the transcript of the conversation to impeach the defense investigator with portions taken out of context. Appellant contends that the rule of optional completeness requires admission of the entirety of the recorded conversation. The rule of optional completeness provides as follows:

If a party introduces part of an act, declaration, conversation, writing, or recorded statement, an adverse party may inquire into any other part on the same subject. An adverse party may also introduce any other act, declaration, conversation, writing, or recorded statement that is necessary to explain or allow the trier of fact to fully understand the part offered by the opponent. “Writing or recorded statement” includes a deposition.

TEX. R. EVID. 107.

Appellant’s application of Rule 107 appears to be overly broad when, as here, the State read a portion of the transcript and appellant sought admission of the entirety

of the audio recording. The Fort Worth court clearly explains the limitations applicable to a similar factual scenario:

A close examination of Rule 107 indicates that when a part of a writing is “given in evidence” the whole writing on the same subject may be “inquired into by the other” party. TEX. R. EVID. 107. The rule does not define the term “inquired into.” The rule does state that any other writing necessary to fully understand or explain the initial offering “may also be given in evidence, as when a letter is read, all letters on the same subject . . . may be given.” *Id.* This language indicates that if a portion of a document is read into evidence, then other portions or other writings may *only* be read into evidence. In other words, if one party simply reads from a document, the party does not open the door for the opposing party to *admit* the document into evidence.

Stewart v. State, 221 S.W.3d 306, 312 (Tex. App.—Fort Worth 2007, no pet.).

Here, appellant was permitted to repeatedly refer to the transcript of the conversation and question T.G. about her prior inconsistent statements therein, which, again, she readily admitted to making. The rule of optional completeness does not require that the entirety of the audio recording be admitted on these circumstances. The trial court did not abuse its discretion in this regard when it excluded the recording. *See Carrasco*, 154 S.W.3d at 129.

Trial Court’s Response to Jury’s Notes

During the course of its deliberations, the jury sent out three notes relating to excerpts from Dr. Ward’s testimony. The trial court provided excerpts to the second and third of its notes on this matter. It is the trial court’s response to the jury’s third note on the topic of which appellant complains on appeal, contending that inclusion of too much of Ward’s testimony placed an undue emphasis on the State’s evidence.

Standard of Review and Applicable Law

When the jury asks that certain disputed testimony be re-read, the trial court must first determine if the jury's inquiry is proper under the Texas Code of Criminal Procedure. See TEX. CODE CRIM. PROC. ANN. art. 36.28 (West 2006); *Brown v. State*, 870 S.W.2d 53, 55 (Tex. Crim. App. 1994) (en banc). If it is proper, the trial court must then interpret the communication, decide what sections of the testimony will best answer the inquiry, then limit the re-reading accordingly. *Brown*, 870 S.W.2d at 55 (citing *Iness v. State*, 606 S.W.2d 306, 314 (Tex. Crim. App. 1980) (en banc)). A reviewing court will not disturb the trial court's decision absent a clear abuse of discretion and a showing of harm. *Id.* The Texas Code of Criminal Procedure provides as follows:

In the trial of a criminal case in a court of record, if the jury disagree as to the statement of any witness they may, upon applying to the court, have read to them from the court reporter's notes that part of such witness testimony or the particular point in dispute, and no other; but if there be no such reporter, or if his notes cannot be read to the jury, the court may cause such witness to be again brought upon the stand and the judge shall direct him to repeat his testimony as to the point in dispute, and no other, as nearly as he can in the language used on the trial.

TEX. CODE CRIM. PROC. ANN. art. 36.28.

When a trial court reads too much or too little testimony in response to the jury note, such a response may serve to bolster the State's case unnecessarily. See *Jones v. State*, 706 S.W. 2d 664, 668 (Tex. Crim. App. 1986) (en banc); *Pugh v. State*, 376 S.W. 2d 760, 762 (Tex. Crim. App. 1964). The trial court does not abuse its discretion, however, when the testimony read to the jury provides the context for the specific testimony in dispute. See *Brown*, 870 S.W.2d at 56 (Tex. Crim. App. 1994) (concluding

that, although the testimony provided in response to jury note did include some testimony not directly addressing the disputed issue, challenged “testimony did provide the context for the testimony which was directly on point”).

Notes from the Jury and the Trial Court’s Responses

In Jury Note #2, the jury indicated as follows:

[T]he jurors would like to hear the testimony in regards to the doctor’s testimony of the force that would have been associated with the break of the scapula, also the testimony in the breaking of the arm, also the medical testimony if the arm breaking was due to the defendant dropping the baby.

The note concluded with a fragment that suggested the jury would also like to hear the “[l]egal definition of reasonable doubt and substantial risk.” The trial court responded to Jury Note #2 as follows: “I have received your note regarding your request. Please refer to the last paragraph of the Court’s Charge.”

In Jury Note #3, the jury requested that “the testimony of Doctor Ward [be] read back to [it].” It further indicated that the jury was “in disagreement of what the doctor said in regards to the cause of the break of the arm.” The trial court responded as follows: “In response to your question about the doctor’s testimony, please find attached the relevant testimony.” The trial court attached two excerpts of Ward’s testimony that consisted of a little over one page of testimony. The excerpted testimony was limited to Ward’s description of the mid-bone fracture to Baby M’s humerus.⁴ Appellant did not object to the trial court’s response.

⁴ To be clear, in her testimony, Ward identified the humerus as the arm bone. The record supports the interpretation that the mid-bone fracture to the humerus is “the break of the arm” specifically

About forty minutes after the trial court's response to Jury Note #3, the jury sent another note, Jury Note #4. In it, the jury informed the trial court that it "would like further testimony read back from Doctor Ward" to resolve its dispute over "whether or not the break in the arm could have been accidental or non-accidental" and "whether Ward's testimony indicated the break in the arm was accidental or non-accidental."

In response, the trial court attached a portion of Ward's testimony, about three pages in total. Said testimony related primarily to a discussion of the different mechanisms that could lead to the types of fractures the baby sustained. It specifically distinguishes the mid-bone fracture of Baby M's humerus from the other type of fractures found elsewhere throughout his body. However, the excerpted testimony also included Ward's testimony regarding the nature and frequency of a fractured scapula, an injury which the doctor characterized as rarely seen and very concerning in terms of potential abuse. Appellant specifically objected to the inclusion of Ward's testimony about the scapula fracture. The court overruled the objection with the explanation that, "for it to have the proper context with the – all of the doctor's testimony, especially considering the trouble the jury is having with it, I think contextually it makes more sense to include that in there so that they can kind of get the general picture of what the doctor was testifying to."

It is this same inclusion in the trial court's response of Ward's testimony concerning the scapula fracture with which appellant takes issue on appeal. Such

mentioned by the jury in its notes. Ward's testimony suggests there were also other "corner" fractures to Baby M's arms, but these are to be distinguished from the particular fracture referenced here.

inclusion amounted to undue emphasis of evidence favorable to the State's theory, he contends. See *Pugh*, 376 S.W.2d at 762.

Analysis

In the excerpted portion of Ward's testimony, there is indeed testimony regarding the other fractures. However, with respect to much of that testimony, it is framed in such a way that the doctor was called upon to draw possible distinctions between the types of fractures Baby M sustained to different parts of his body. For example, the trial court's response included the following portion of the doctor's testimony:

The injuries on his legs are the corner fractures that we were talking about that could happen from a twisting-pulling type episode or from the extremities flopping with shaking. The injury to the humerus is a different kind of injury. It's in the middle of the bone and would be a different type of mechanism.

The excerpt concluded with her opinions as to the possibility that the fractures—including a specific reference to the distinct type of fracture found in the baby's arm—were accidental injuries.

More concerning is the inclusion of the intervening discussion regarding the child's fractured scapula. Following the testimony regarding the mechanism that might have caused the type of fracture seen on Baby M's humerus as contrasted with the mechanism that might cause the type of fractures he experienced elsewhere, Ward's testimony continued as follows:

Q. How often have you seen a fracture to the scapula?

A. I have only seen it one other time, and that was related to an ATV accident.

Q. So is that like a four-wheeler?

A. Yes. It – it takes a high-energy type of injury.

Q. So you've seen kids that have been in car accidents, correct?

A. Yes.

Q. And is it significant at all that the – the shoulder blade is – is a bigger bone that it could be injured? Does that have any significance to you?

A. In general or in this –

Q. Or in –

A. I'm not sure I understand.

Q. In terms of abuse, does that – does that bone in particular have any special concerns to you?

A. It's very uncommon to have a fracture in that bone, really in any situation. When we see it in a young baby, it's a very concerning injury, as those other corner fractures were.

Q. Were there any fractures in this baby that you thought that, "Oh, that could just be an accident?"

A. Like I had said, the humerus fracture in an older child with a history that went along with it, I would say that could be an accident but the other fractures, no.

As can be seen, Ward's testimony returned to her observations regarding the accidental or non-accidental nature of the fractures, including her specific conclusions regarding the mid-bone humerus fracture.

Though it may have been more precise for the trial court to have excised the testimony regarding the scapula fracture, we do see that the jury was having trouble agreeing as to what the doctor's testimony was regarding the possibility that one fracture may have been caused accidentally. Contextually, as the trial court observed, the nature of the several other fractures the baby sustained is relevant to the doctor's

conclusions regarding the accidental or intentional cause of the type of fracture found in his arm bone. Her observations regarding the scapula fracture, much like the testimony that concerned the other fractures that were also of a different type than the humerus fracture, appear to have informed her conclusions regarding the force and cause of the humerus fracture. While the jury expressed its disagreement about the fracture to the baby's arm bone specifically, it also expressed its disagreement concerning the accidental or intentional nature of that fracture—"whether the break in the arm was accidental or non-accidental"—and Ward's conclusions as to the nature of certain fractures were closely related to her observations and conclusions regarding the several others. The distinction to be drawn, here, is that the testimony regarding the scapula fracture *could* have been more easily excised without affecting the clarity or coherence of Ward's remaining testimony. Nonetheless, we cannot say that the trial court's decision to include as context those lines of testimony in its response to the jury's note indicating a dispute over the accidental or intentional nature of the arm fracture was a decision that lies outside the zone of reasonable disagreement. See *Brown*, 870 S.W.2d at 56.

We add that, in the first of its three notes requesting Ward's testimony, the jury had asked the trial court to provide it Ward's testimony regarding, *inter alia*, the scapula fracture specifically, further edifying the position that the testimony regarding other fractures could be properly considered as context for the later requested testimony. The trial court did not provide the jury any testimony in response to this first note, presumably, because the jury had not specifically indicated that there was disagreement among jurors as to the testimony requested and to do so, in the absence of such

disagreement, could have constituted error. See *DeGraff v. State*, 962 S.W.2d 596, 599 (Tex. Crim. App. 1998) (affirming conclusion that trial court abused its discretion by providing the jury the testimony it specifically requested when its request “in no way suggested the existence of a disagreement”); *Moore v. State*, 874 S.W.2d 671, 673 (Tex. Crim. App. 1994) (“A simple request for testimony does not, by itself, reflect disagreement, implicit or express, and is not a proper request under Art[icle] 36.28.”). Additionally, the jury’s next note—Jury Note #3—had requested Ward’s testimony regarding the “cause” of the arm fracture. The trial court provided two short excerpts from Ward’s testimony. The final jury note requested *further* testimony from Ward suggesting that the testimony provided in response to the jury’s preceding note was not sufficient to resolve the dispute among jurors. Under the circumstances presented here, the trial court did not abuse its discretion by providing the excerpted testimony. See *Brown*, 870 S.W.2d at 56.

Extraneous Offense Evidence

Applicable Law and Standard of Review

Generally, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. TEX. R. EVID. 404(b)(1). However, Rule 404(b) also provides that extraneous offense evidence may be admissible for other purposes. See TEX. R. EVID. 404(b)(2); *Johnston v. State*, 145 S.W.3d 215, 219 (Tex. Crim. App. 2004). Subject, of course, to limitations posed by other evidentiary rules, Rule 404(b) permits a party to introduce evidence of other crimes, wrongs, or acts if such evidence logically serves to make more or less probable

an elemental fact, an evidentiary fact that inferentially leads to an elemental fact, or defensive evidence that undermines an elemental fact. See *Montgomery v. State*, 810 S.W.2d 372, 387 (Tex. Crim. App. 1991) (en banc) (op. on reh'g). More specifically, one of the purposes for which extraneous offense evidence is admissible is to rebut a defensive theory that a witness has fabricated his testimony. See *De La Paz v. State*, 279 S.W.3d 336, 346–47 (Tex. Crim. App. 2009); *Bass v. State*, 270 S.W.3d 557, 562–63 (Tex. Crim. App. 2008). We review a trial court's ruling on the admissibility of extraneous offenses under an abuse of discretion standard. *De La Paz*, 279 S.W.3d at 343.

Analysis

In her first statement to police, T.G. suggested the babysitter was to blame for Baby M's injuries. She testified that appellant directed her to do so and that she was scared of him and his presence right next to her as she wrote the statement. T.G. admitted during trial that, during the first interview with police, she did not give a truthful statement. The defense suggested on cross-examination that T.G. gave her subsequent statement the next day in which she implicates appellant because she wanted to regain custody of her son and avoid prosecution for his injuries; it is appellant's theory that her second statement to police is the untruthful, self-serving one. The State then sought to introduce evidence of appellant's prior assault on T.G., an uncharged offense, to undermine appellant's theory and show that T.G. had reason to fear appellant.

After hearing argument regarding admissibility of evidence of that uncharged assault, the trial court ruled that such evidence was admissible on the following basis:

[I]t's admissible for the purposes the State cited to refute the defensive theory that she's lying, that this is a fabrication and that she's doing it simply to – as the means to get her child back, so I'm going to let the assault – extraneous assault come in, and I – I believe the evidentiary effect outweighs the prejudicial value of it.

Following the trial court's ruling, T.G. testified that, when she was about five or six weeks pregnant, appellant choked and shoved her, an assault which resulted in vaginal bleeding and a laceration to her foot that required medical attention.

The record indicates that appellant advanced a defensive theory that T.G. was fabricating her later statement to police in an effort to regain custody of her son, that she "lied to the police because [she] wanted to do anything to get [her] baby back." Defense counsel also suggested that police pressured T.G. into making her later statement implicating appellant. According to T.G., appellant was sitting right next to her as she wrote out her statement in the hallway. The evidence that appellant had assaulted her in the past provided a basis for her having been reticent to reveal her information regarding appellant to police during the first interview and to cast blame on the babysitter as appellant had directed her to do. In that sense, the evidence of appellant's prior assault on T.G. was relevant for a purpose other than character conformity. The trial court did not abuse its discretion by admitting evidence of the prior assault on T.G. for the purpose of rebutting appellant's defensive theory that she fabricated her second statement to police. See *Bass*, 270 S.W.3d at 563.

Conclusion

Having overruled appellant's points of error, we affirm the trial court's judgment of conviction. See TEX. R. APP. P. 43.2(a).

Mackey K. Hancock
Justice

Do not publish.

App. 39



CASE NO. 2012-2235-C1 COUNT I
INCIDENT NO./TRN: 9199041847

THE STATE OF TEXAS

V.

JUAN FRANCISCO MEDINA ORTIZ

STATE ID No.: TX50132378

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IN THE 19TH DISTRICT
COURT
MCLENNAN COUNTY, TEXAS

FILED
31 Day of NOV, 2014
at 5:36 o'clock P M
KAREN C. MATKIN
DISTRICT CLERK
McLennan County, Texas
By *Julia Schaefer*
Deputy

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. RALPH T. STROTHER	Date Judgment Entered:	11/21/2014
Attorney for State:	HILARY LABORDE AND LONDON RAMSAY	Attorney for Defendant:	PATRICK MEGARO
<u>Offense for which Defendant Convicted:</u>			
INJURY TO A CHILD			
<u>Charging Instrument:</u>		<u>Statute for Offense:</u>	
INDICTMENT		22.04 Penal Code	
<u>Date of Offense:</u>			
8/27/2012			
<u>Degree of Offense:</u>		<u>Plea to Offense:</u>	
1ST DEGREE FELONY		NOT GUILTY	
<u>Verdict of Jury:</u>		<u>Findings on Deadly Weapon:</u>	
GUILTY		N/A	
Plea to 1 st Enhancement Paragraph:	N/A	Plea to 2 nd Enhancement/Habitual Paragraph:	N/A
Findings on 1 st Enhancement Paragraph:	N/A	Findings on 2 nd Enhancement/Habitual Paragraph:	N/A
<u>Punishment Assessed by:</u>	<u>Date Sentence Imposed:</u>	<u>Date Sentence to Commence:</u>	
JURY	11/21/2014	11/21/2014	
<u>Punishment and Place of Confinement:</u>	FORTY (40) YEARS INSTITUTIONAL DIVISION, TDCJ		

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

<u>Fine:</u>	<u>Court Costs:</u>	<u>Restitution/Reparation:</u>	<u>Restitution/Reparation Payable to:</u>
\$ 9,000.00	SEE BELOW	\$ N/A	☐ VICTIM (listed in Restitution Exhibit) ☐ AGENCY/AGENT – if reparation, mail to DPS, P. O. BOX 4087, AUSTIN, TX 78773-0130 LAB # CASE #

☐ Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part hereof.

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was **N/A** .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From 8/31/2012 to 11/21/2014	From	to	From	to
Time Credited:	From	to	From	to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: **N/A**

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in McLennan County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

- ☒ Defendant appeared in person with Counsel.
- ☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.
- It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

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The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court FINDS Defendant committed the above offense and ORDERS, ADJUDGES AND DECREES that Defendant is GUILTY of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court ORDERS Defendant punished as indicated above. The Court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court ORDERS the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, Institutional Division, TDCJ. The Court ORDERS Defendant to be confined for the period and in the manner indicated above. The Court ORDERS Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court ORDERS that upon release from confinement, Defendant proceed immediately to the McLennan County District Clerk's Office. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court ORDERS Defendant immediately committed to the custody of the Sheriff of MCLENNAN County, Texas on the date the sentence is to commence. Defendant shall be confined in the MCLENNAN County Jail for the period indicated above. The Court ORDERS that upon release from confinement, Defendant shall proceed immediately to the MCLENNAN COUNTY DISTRICT CLERK. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the Office of the County . Once there, the Court ORDERS Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☒ The Court ORDERS Defendant's sentence EXECUTED.

☐ The Court ORDERS Defendant's sentence of confinement SUSPENDED. The Court ORDERS Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated.

The Court adjudges statutory court costs against the Defendant. The Court orders the Defendant to pay the court costs. The Court orders the clerk to collect the court costs.

Furthermore, the following special findings or orders apply:

- ☐ IF RESTITUTION IS ORDERED, A RESTITUTION EXHIBIT IS INCORPORATED IN THIS JUDGMENT BY REFERENCE.
- ☐ The Court orders the defendant's driver's license suspended for _____ months beginning the date of this order.
- ☐ The Court makes an affirmative finding that the offense involved family violence as defined in §71.004 Texas Family Code.
- ☐ The Court finds that, with the consent of the State's attorney, Defendant admitted guilt as to the unadjudicated offense(s) as set out in the Motion to Consider Unadjudicated Offense(s) in Sentencing, and the Court agreed to take the unadjudicated offense(s) into account in determining the sentence for the offense for which Defendant was adjudged guilty. Accordingly, the Court finds prosecution is barred for those offense(s) pursuant to TEX. PENAL CODE §12.45.

Signed and entered on November 21, 2014

X

RALPH T. STROTHER
JUDGE PRESIDING

RIGHT THUMBPRINT	Defendant's signature
	<i>Juan Francisco Medina</i>
	Officer's signature
	<i>Michael Dorsey</i>
	Date: 11-25-2014

App. 41



CASE No. 2012-2235-C1 COUNT II
INCIDENT No./TRN: 9199043157

THE STATE OF TEXAS

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IN THE 19TH DISTRICT
COURT
MCLENNAN COUNTY, TEXAS

V.

JUAN FRANCISCO MEDINA ORTIZ

STATE ID No.: TX50132378

FILED
31 Day of Nov. 2014
at 5:36 o'clock P.M.
KAREN C. MATKIN
DISTRICT CLERK
McLennan County, Texas
Deputy

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. RALPH T. STROTHER	Date Judgment Entered:	11/21/2014
Attorney for State:	HILARY LABORDE AND LONDON RAMSAY	Attorney for Defendant:	PATRICK MEGARO
<u>Offense for which Defendant Convicted:</u>			
AGGRAVATED ASSAULT			
<u>Charging Instrument:</u>		<u>Statute for Offense:</u>	
INDICTMENT		22.02 Penal Code	
<u>Date of Offense:</u>			
8/22/2012			
<u>Degree of Offense:</u>		<u>Plea to Offense:</u>	
2ND DEGREE FELONY		NOT GUILTY	
<u>Verdict of Jury:</u>		<u>Findings on Deadly Weapon:</u>	
GUILTY		YES, NOT A FIREARM	
Plea to 1 st Enhancement Paragraph:	N/A	Plea to 2 nd Enhancement/Habitual Paragraph:	N/A
Findings on 1 st Enhancement Paragraph:	N/A	Findings on 2 nd Enhancement/Habitual Paragraph:	N/A
<u>Punishment Assessed by:</u>	<u>Date Sentence Imposed:</u>	<u>Date Sentence to Commence:</u>	
JURY	11/21/2014	11/21/2014	
<u>Punishment and Place of Confinement:</u>	FIFTEEN (15) YEARS INSTITUTIONAL DIVISION, TDCJ		

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

<u>Fine:</u>	<u>Court Costs:</u>	<u>Restitution/Reparation:</u>	<u>Restitution/Reparation Payable to:</u>
\$ 5,000.00	SEE BELOW	\$ N/A	☐ VICTIM (listed in Restitution Exhibit) ☐ AGENCY/AGENT - if reparation, mail to DPS, P. O. BOX 4087, AUSTIN, TX 78773-0130 LAB # CASE #

☐ Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part hereof.

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was N/A .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

Time Credited:	From 8/31/2012 to 11/21/2014	From	to	From	to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in McLennan County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

- ☒ Defendant appeared in person with Counsel.
☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

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The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court FINDS Defendant committed the above offense and ORDERS, ADJUDGES AND DECREES that Defendant is GUILTY of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court ORDERS Defendant punished as indicated above. The Court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court ORDERS the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, Institutional Division, TDCJ. The Court ORDERS Defendant to be confined for the period and in the manner indicated above. The Court ORDERS Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court ORDERS that upon release from confinement, Defendant proceed immediately to the McLennan County District Clerk's Office. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court ORDERS Defendant immediately committed to the custody of the Sheriff of MCLENNAN County, Texas on the date the sentence is to commence. Defendant shall be confined in the MCLENNAN County Jail for the period indicated above. The Court ORDERS that upon release from confinement, Defendant shall proceed immediately to the MCLENNAN COUNTY DISTRICT CLERK. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the Office of the County . Once there, the Court ORDERS Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☒ The Court ORDERS Defendant's sentence EXECUTED.

☐ The Court ORDERS Defendant's sentence of confinement SUSPENDED. The Court ORDERS Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated.

The Court adjudges statutory court costs against the Defendant. The Court orders the Defendant to pay the court costs. The Court orders the clerk to collect the court costs.

Furthermore, the following special findings or orders apply:

- ☐ IF RESTITUTION IS ORDERED, A RESTITUTION EXHIBIT IS INCORPORATED IN THIS JUDGMENT BY REFERENCE.
- ☐ The Court orders the defendant's driver's license suspended for _____ months beginning the date of this order.
- ☐ The Court makes an affirmative finding that the offense involved family violence as defined in §71.004 Texas Family Code.
- ☐ The Court finds that, with the consent of the State's attorney, Defendant admitted guilt as to the unadjudicated offense(s) as set out in the Motion to Consider Unadjudicated Offense(s) in Sentencing, and the Court agreed to take the unadjudicated offense(s) into account in determining the sentence for the offense for which Defendant was adjudged guilty. Accordingly, the Court finds prosecution is barred for those offense(s) pursuant to TEX. PENAL CODE §12.45.

Signed and entered on November 21, 2014

X

RALPH T. STROTHER
JUDGE PRESIDING

RIGHT THUMBPRINT	Defendant's signature
	Juan Francisco Medina Ortiz
	Officer's signature
	Michael Dorsey
	Date: 11-25-2014

App. 43



CASE No. 2012-2235-C1 COUNT III
INCIDENT No./TRN: 9199043157

THE STATE OF TEXAS

V.

JUAN FRANCISCO MEDINA ORTIZ

STATE ID No.: TX50132378

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§

IN THE 19TH DISTRICT

COURT

MCLENNAN COUNTY, TEXAS

31 Day of NOV, 2014
at 5:36 o'clock PM
KAREN C. MATKIN
DISTRICT CLERK
McLennan County
Deputy

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. RALPH T. STROTHER	Date Judgment Entered:	11/21/2014
Attorney for State:	HILARY LABORDE AND LONDON RAMSAY	Attorney for Defendant:	PATRICK MEGARO
<u>Offense for which Defendant Convicted:</u>			
AGGRAVATED ASSAULT			
<u>Charging Instrument:</u>		<u>Statute for Offense:</u>	
INDICTMENT		22.02 Penal Code	
<u>Date of Offense:</u>			
8/16/2012			
<u>Degree of Offense:</u>		<u>Plea to Offense:</u>	
2ND DEGREE FELONY		NOT GUILTY	
<u>Verdict of Jury:</u>		<u>Findings on Deadly Weapon:</u>	
GUILTY		YES, NOT A FIREARM	
Plea to 1 st Enhancement Paragraph:	N/A	Plea to 2 nd Enhancement/Habitual Paragraph:	N/A
Findings on 1 st Enhancement Paragraph:	N/A	Findings on 2 nd Enhancement/Habitual Paragraph:	N/A
<u>Punishment Assessed by:</u>	<u>Date Sentence Imposed:</u>	<u>Date Sentence to Commence:</u>	
JURY	11/21/2014	11/21/2014	
<u>Punishment and Place of Confinement:</u>	FIFTEEN (15) YEARS INSTITUTIONAL DIVISION, TDCJ		

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

<u>Fine:</u>	<u>Court Costs:</u>	<u>Restitution/Reparation:</u>	<u>Restitution/Reparation Payable to:</u>
\$ 5,000.00	SEE BELOW	\$ N/A	☐ VICTIM (listed in Restitution Exhibit) ☐ AGENCY/AGENT – if reparation, mail to DPS, P. O. BOX 4087, AUSTIN, TX 78773-0130 LAB # CASE #

☐ Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part hereof.

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was N/A .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

Time Credited:	From 8/31/2012 to 11/21/2014	From	to	From	to	
	From	to	From	to	From	to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in McLennan County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

- ☒ Defendant appeared in person with Counsel.
☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

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The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court FINDS Defendant committed the above offense and ORDERS, ADJUDGES AND DECREES that Defendant is GUILTY of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court ORDERS Defendant punished as indicated above. The Court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court ORDERS the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, Institutional Division, TDCJ. The Court ORDERS Defendant to be confined for the period and in the manner indicated above. The Court ORDERS Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court ORDERS that upon release from confinement, Defendant proceed immediately to the McLennan County District Clerk's Office. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court ORDERS Defendant immediately committed to the custody of the Sheriff of MCLENNAN County, Texas on the date the sentence is to commence. Defendant shall be confined in the MCLENNAN County Jail for the period indicated above. The Court ORDERS that upon release from confinement, Defendant shall proceed immediately to the MCLENNAN COUNTY DISTRICT CLERK. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the Office of the County. Once there, the Court ORDERS Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☒ The Court ORDERS Defendant's sentence EXECUTED.

☐ The Court ORDERS Defendant's sentence of confinement SUSPENDED. The Court ORDERS Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated.

The Court adjudges statutory court costs against the Defendant. The Court orders the Defendant to pay the court costs. The Court orders the clerk to collect the court costs.

Furthermore, the following special findings or orders apply:

- ☐ IF RESTITUTION IS ORDERED, A RESTITUTION EXHIBIT IS INCORPORATED IN THIS JUDGMENT BY REFERENCE.
- ☐ The Court orders the defendant's driver's license suspended for _____ months beginning the date of this order.
- ☐ The Court makes an affirmative finding that the offense involved family violence as defined in §71.004 Texas Family Code.
- ☐ The Court finds that, with the consent of the State's attorney, Defendant admitted guilt as to the unadjudicated offense(s) as set out in the Motion to Consider Unadjudicated Offense(s) in Sentencing, and the Court agreed to take the unadjudicated offense(s) into account in determining the sentence for the offense for which Defendant was adjudged guilty. Accordingly, the Court finds prosecution is barred for those offense(s) pursuant to TEX. PENAL CODE §12.45.

Signed and entered on November 21, 2014

X

RALPH T. STROTHER
JUDGE PRESIDING

RIGHT THUMBPRINT	Defendant's signature
	Juan Francisco Ortiz Medina
	Officer's signature
	Michael S. Sorey
	Date: 11-25-2014

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United States Constitution, Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Constitution, Fourteenth Amendment, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 2254(b)(1)(A)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—
the applicant has exhausted the remedies available in the courts of the State;

Texas Penal Code § 22.02, Aggravated Assault

(a) A person commits an offense if the person commits assault as defined in § 22.01 and the person:

- (1) causes serious bodily injury to another, including the person's spouse; or
- (2) uses or exhibits a deadly weapon during the commission of the assault.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if:

- (1) the actor uses a deadly weapon during the commission of the assault and causes serious bodily injury to a person whose relationship to or association with the defendant is described by Section 71.0021(b) , 71.003 , or 71.005, Family Code ;

Texas Penal Code § 22.04(a), Injury to a Child

App . 4 6

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual:

- (1) serious bodily injury;
- (2) serious mental deficiency, impairment, or injury; or
- (3) bodily injury.

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REPORTER'S RECORD
Volume 1 of 7

COURT OF APPEALS NO. 07-15-00007-CP IN
TRIAL NO. 2012-2235-C1 7th COURT OF APPEALS
AMARILLO, TEXAS

THE STATE OF TEXAS

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IN THE DISTRICT COURT
2/27/2015 2:06:15 PM
VIVIAN LONG
CLERK
19TH JUDICIAL DISTRICT
MCLENNAN COUNTY, TEXAS

VS.

JUAN FRANCISCO
MEDINA ORTIZ

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5 VOLUME 2 OF 7
6 (TRIAL ON THE MERITS
7 GUILT/INNOCENCE PHASE)

8 **APPEARANCES**

9 For the State:

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 Mr. Landon Wade Ramsay
 SBOT #24076836
 Assistant District Attorneys
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20 Interpreter

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VOLUME 2 OF 7
(TRIAL ON THE MERITS
GUILT/INNOCENCE PHASE)

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11	19	Voluntary Statement of Juan Francisco Ortiz Date: 8-31-2012	129	130	3
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13	20	E-Mail: Subject: FW:Garcia Child injury From: Saldana, Alfonso To: detectivechris@yahoo.com Date: Friday, August 31, 2012 4:58 PM	129	130	3
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(TRIAL ON THE MERITS
GUILT/INNOCENCE PHASE)

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20		Custodian of Records			
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2A	Envelope addressed to: Juan Francisco Ortiz CID# 161465 3201 East Highway 6 Waco, TX 76701; Return Address: Nicholasa Galendo 4360 Western Center Blvd #141 Ft Worth TX 76137	140	---	4
2B	Handwritten Note	140	---	4
3A	Envelope	140	---	4
3B	Photograph	140	142	4
3C	Photograph	140	142	4
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4	Voluntary Statement of Taylor N. Garcia Date: 8-31-2012 (Admitted for Record Purposes Only)	236	242	4
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(TRIAL ON THE MERITS
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VOLUME 5 OF 7
(TRIAL ON THE MERITS
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(TRIAL ON THE MERITS
PUNISHMENT PHASE)

APPEARANCES

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(TRIAL ON THE MERITS
PUNISHMENT PHASE)

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1 THE STATE OF TEXAS §
2 COUNTY OF McLENNAN §

3 I, Theresa J. Popejoy, Deputy Court Reporter in and
4 for the 19th Judicial Court of McLennan County, Texas,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of
7 all portions of evidence and other proceedings requested
8 by Defendant to be included in this Reporter's Record,
9 in the above-styled and numbered cause, all of which
10 occurred in open court or in chambers and were reported
11 by me.

12 I further certify that this Reporter's Record of
13 the proceedings truly and correctly reflects the
14 exhibits, if any, admitted by the respective parties.

15 WITNESS MY OFFICIAL HAND this the 26th day of
16 February, 2015.

17
18
19
20
21
22
23
24
25
/s/Theresa J. Popejoy
THERESA J. POPEJOY, Texas CSR 756
Expiration Date: 12/31/15
30102 Carmel Bay Street
Georgetown, TX 78628
(254)744-0282
tpopejoy53@aol.com

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REPORTER'S RECORD

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COURT OF APPEALS NO. 07-15-00007-CP
 TRIAL NO. 2012-2235-C1

FILED IN
 7th COURT OF APPEALS
 AMARILLO, TEXAS

THE STATE OF TEXAS

§
§
§
§
§
§

IN THE DISTRICT COURT

VS.

2/27/2015 2:06:15 PM
 VIVIAN LONG
 CLERK
 19TH JUDICIAL DISTRICT

JUAN FRANCISCO
 MEDINA ORTIZ

McLENNAN COUNTY, TEXAS

TRIAL ON THE MERITS

GUILT/INNOCENCE PHASE

November 18, 2014

On the 18th day of November, 2014, the
 following proceedings came on to be heard in the
 above-entitled and numbered cause before the
 Honorable Ralph T. Strother, Judge presiding, held in
 Waco, McLennan County, Texas:

Proceedings reported by Computerized Machine
 Shorthand Method.

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APPEARANCES

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1	CD labelled			
6	"SCOTT & WHITE			
7	ID: 5767447			
8	Name: M [REDACTED] ORTIZ			
8	September 18, 2012			
8	12:36 PM"	41	42	2
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10	of Infant	41	42	2
11	3 Drawing of Corner Fracture	41	42	2
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17	9 X-ray labelled			
18	"ORTIZ M [REDACTED]			
19	2012 Jun 13 M 5767447			
20	AP Chest			
21	Se: 2/14"	41	42	2
22	10 X-ray labelled			
23	"ORTIZ M [REDACTED]			
24	2012 Jun 13 M 5767447			
25	AP Tibia/Fibula			
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6	"ORTIZ M [REDACTED]			
7	2012 Jun 13 M 5767447			
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ALPHABETIC WITNESS LIST

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Volume</u>
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1 (Open court, Defendant present, no venire.)

2 THE COURT: All right. Let's bring them
3 in. You all sit in the same places you were in. It
4 makes it a whole lot easier. Just sit in the same seats
5 you were in before.

6 (The venire was seated in the courtroom.)

7 THE COURT: All right. The Clerk's Office
8 will seat the jury, please.

9 THE CLERK: As I call your name, if you'll
10 just step through -- step around and step through into
11 the jury box: Phillip Hawkins, Kerry Storer,
12 Drew Crenwelge, Jeffrey Brown, L'Porsha Clark,
13 Carolyn Monroe, Carla Hudson, Cheryl Crenshaw,
14 Catherine Hogwood, Pamela Slaughter, Jeremiah Zimmerman,
15 Everett Thomas, III. Please stand and raise your right
16 hand.

17 (The jury was sworn.)

18 THE COURT: All right. Be seated, Ladies
19 and Gentlemen. Ladies and Gentlemen, those of you
20 remaining on the panel, let me express my appreciation
21 on the part of everyone for your service here today. I
22 know that this is not an easy task. You all have had a
23 long day already. We're going to discharge you now. If
24 you need a timesheet from the Clerk's Office, they'll
25 show you how to get one here. You're free to stay and

1 watch any of the trial you wish to or come back tomorrow
2 if you actually want to see a trial in operation for
3 those of you who have never done it. I hope that you've
4 found this process informative and educational, if not
5 entertaining. We appreciate your service, and our
6 system wouldn't operate without folks like you that were
7 willing to come up and do this. You are free to go.
8 Thank you very much.

9 (The remaining members of the venire
10 retired from the courtroom.)

11 THE COURT: All right. Ladies and
12 Gentlemen, we're going to talk for a few minutes before
13 we get underway formally. I have some other
14 instructions that I have to give you that are -- you
15 have a copy of them, and you're free to read along as I
16 read them to you.

17 Ladies and Gentlemen, by the oath you have
18 taken as jurors, you have become officials of this Court
19 and active participants in the public administration of
20 justice. I now give you further instructions which you
21 must obey throughout this trial. The first three
22 instructions have already been given, and you will
23 continue to abide by them, also. The other instructions
24 beginning with number "4" are as follows.

25 Do not -- do not even discuss this case

1 among yourselves until after you have heard all of the
2 evidence, the Court's Charge, the attorney's arguments
3 and until I have sent you to the jury room to consider
4 your verdict.

5 Do not make any investigation about the
6 facts of this case. Occasionally, we have a juror who
7 privately seeks out information about a case on trial.
8 This is improper. All evidence must be presented in
9 open court so that each side may question the witnesses
10 and make proper objections. This avoids a trial based
11 upon secret evidence.

12 These rules apply to everyone involved in
13 this trial. If you know of or learn anything about this
14 case other than from the evidence admitted during the
15 course of this trial, you should tell me about it at
16 once.

17 You have just taken an oath that you will
18 render a verdict on the evidence submitted to you under
19 my rulings. Do not make personal inspections,
20 observations, investigations or experiments, nor
21 personally view premises, things or articles not
22 produced in court. Do not allow anyone else to do any
23 of these things for you.

24 Do not tell other jurors your own personal
25 experiences nor those of other persons nor relate any

1 special information. A juror may have knowledge of
2 business, technical or professional matters or may have
3 expert knowledge or opinions or believe they know what
4 happened in this or some other case. To tell jurors any
5 of this information would be a violation of these
6 instructions.

7 Do not seek information contained in law
8 books, dictionaries, public or private records or
9 elsewhere which is not admitted in evidence. Do not
10 read, view or listen to any news reports on this case.

11 Do not seek out information about this case
12 through the internet, through any website or social
13 networking site such as Facebook, MySpace, Twitter or
14 Instagram. Do not communicate with anybody about this
15 trial or post anything on any such site or network. Do
16 not post any blogs or view anyone else's blogs about
17 this case. Do not text message anyone anything about
18 this case or read any text messages sent to you about
19 this trial.

20 You are allowed to inform anyone that you
21 have you been called for jury duty and when you expect
22 to be through with the trial. These instructions are
23 given to you to protect the integrity of the judicial
24 process as well as to ensure your safety and provide you
25 some degree of anonymity.

1 At the conclusion of all the evidence, I
2 shall submit to you a written charge. Since you will
3 need to consider all of the evidence admitted by me, it
4 is important that you pay close attention to the
5 evidence as it is presented.

6 Texas law permits proof of any violation of
7 the rules of proper jury conduct. By this I mean that
8 jurors and others may be called upon to testify in open
9 court about alleged acts of jury misconduct. I instruct
10 you, therefore, to follow carefully all instructions
11 I've given you as well as any you later receive during
12 the trial. Any violation of these instructions should
13 be reported to me at once.

14 Following that are some note-taking
15 instructions. I don't cover those in a particular
16 order. You will notice that you have a notepad and a
17 pencil. You're allowed to take notes during the
18 presentation of witnesses' testimony. However, you do
19 not have to take notes if you choose not to. You don't
20 have to write down a single thing if you do not want to,
21 but if you decide to take notes, you have to follow
22 these instructions.

23 The notes you take are not the evidence in
24 the case. The evidence will be the oral testimony of
25 the witnesses and whatever exhibits are admitted into

1 evidence, so do not allow any note-taking you do to
2 interfere with your ability to process and listen to the
3 verbal testimony of the witnesses because that is the
4 evidence, not what you write down.

5 Do not try to write down everything a
6 witness says. The court reporter has the skill and
7 training to do that. You don't. Keep your note-taking
8 brief.

9 You will not be allowed to trade notes with
10 other members of the jury or to view other members of
11 the jury's notes. During recesses leave your notes
12 facedown in your chair and at the end of the day. We're
13 not going to look at them.

14 Once you are retired to deliberate, you're
15 free to take your notes into the jury room for your
16 personal use during deliberation. However, even then
17 you will not be able to compare notes with other jurors
18 or trade notes. Now you'll be able to talk about the
19 testimony of witnesses because that's the evidence in
20 the case, but do not take notes that have nothing to do
21 with the trial. Don't take notes when the attorneys are
22 presenting their arguments or when they're doing their
23 questioning or when I'm giving you instructions or any
24 other time. Simply take notes regarding what witnesses
25 testified to. Don't write shopping lists or "To Do"

1 lists or something like that. I don't think anybody
2 writes letter anymore, but don't write a letter to
3 anybody.

4 In any event, if you want to take notes,
5 just follow these rules. If you don't want to take
6 notes, you don't have to worry about it.

7 All right. Let's talk about scheduling.
8 First of all, you're now a member of the jury. You have
9 a juror badge. Please wear that juror badge at all
10 times that you're here in the courthouse. Our jury room
11 is right off the elevator out here. The deputies will
12 show you where that is before the end of the day.

13 We're going to go ahead and start some
14 testimony and things this afternoon. We'll try to quit
15 as close to five o'clock as possible every day.
16 Sometimes because of witness scheduling that time might
17 run over, but we'll start in the morning at 8:30, so be
18 the in jury room a little before that. We'll try to get
19 you in here on time.

20 Anytime you're not in here according to
21 schedule, it's usually because, you know, somebody is
22 running late. Sometimes a juror or a witness or some
23 other something that you are not allowed to talk -- that
24 we're not allowed to tell you about may be going on, but
25 we'll try to stay as close to schedule as possible.

1 We'll take at least one recess in the
2 middle of the morning, usually around ten o'clock. Then
3 we'll resume, and we'll break for lunch as close to noon
4 as possible. We take an hour-and-a-half for lunch.
5 That gives you time to eat, run any errands you need to
6 accomplish. We'll come back at 1:30, and we'll take
7 another break in the middle of the afternoon, and we'll
8 try to quit as close to five o'clock as possible.

9 You will be allowed to separate in the
10 evenings and at meals. However, I need to alert you to
11 the possibility that once you are retired to deliberate
12 a verdict that you will have to remain together until
13 you reach a verdict. If that happens and it's during a
14 mealtime, we'll provide a meal for you. It's usually
15 something like Schmaltz's or Uncle Dan's or something
16 like that, and that's the schedule we'll try to keep.
17 I think we'll be through with the trial this week
18 regardless of how far it goes. I think. I hope we are,
19 so that's the schedule we'll keep.

20 Now let's talk about what's going to happen
21 next. The attorneys are going to -- the State is going
22 to present the Indictment. They'll read the Indictment
23 to you. The Defendant will enter his plea to that
24 Indictment, to each count of it. There are three,
25 remember?

1 After that is done the attorneys are
2 allowed to present to you what is called an
3 "opening statement." That opening statement is not the
4 evidence either, but in an opening statement they are
5 allowed to tell you what they believe the evidence is
6 going to be for their particular side of the case. The
7 State has the burden of proof, so they get to go first.
8 They get to call witnesses first because they're the
9 ones who have something to prove.

10 Once the State gives their opening
11 statement, the Defense is free to give an opening
12 statement at that time, or they may elect to wait until
13 the State has rested their case and then give an opening
14 statement. It just depends on how the Defense chooses
15 to do it.

16 After the opening statements are done, the
17 State will begin calling their witnesses. When the
18 State is through with their witness, the Defense gets to
19 cross-examine those witnesses, and once the State has
20 called all their witnesses, the Defense gets to call any
21 witnesses they wish. The State gets to have the
22 opportunity to cross-examine them, and that process goes
23 on until everybody has presented all the evidence they
24 want to present. Then the Court reads the charge to
25 you, and the attorneys present their summations, and

1 that's the way we'll proceed. All right. The State may
2 present the Indictment.

3 MS. LABORDE: The State of Texas versus
4 Juan Francisco Medina Ortiz:

5 "TRUE BILL OF INDICTMENT.

6 IN THE NAME AND BY THE AUTHORITY OF THE
7 STATE OF TEXAS: The Grand Jurors of McLennan County,
8 State of Texas, duly organized at the July Term,
9 A.D., 2012, of the 54th Judicial District Court of
10 said county, upon their oaths do present that (sic) on
11 or about the 27th day of August, (sic) 2012 in the state
12 and county aforesaid the Defendant (sic) did then and
13 there intentionally or knowingly cause serious bodily
14 injury to M [REDACTED] ORTIZ, a child fourteen (14) years of
15 age or younger, by (sic) causing M [REDACTED] ORTIZ to strike
16 an unknown object, or by a manner and means unknown to
17 the Gray Jury,

18 COUNT II, And it is further
19 presented in and to said Court that the said
20 JUAN FRANCISCO MEDINA ORTIZ in the County of McLennan
21 and State aforesaid on or about the 22nd day of
22 August, A.D., 2012, did then and there intentionally
23 or knowingly or recklessly cause bodily injury to
24 M [REDACTED] ORTIZ, by causing M [REDACTED] ORTIZ to strike an
25 unknown object, or by a manner and means unknown to the

1 Grand Jury, and the Defendant did then and there use or
2 exhibit a deadly weapon, to-wit: the Defendant's
3 hand(s) or an object unknown to the Grand Jury, during
4 the commission of said assault,

5 Count III, And it is further
6 presented in and to said Court that the said
7 JUAN FRANCISCO MEDINA ORTIZ in the County of McLennan
8 and State aforesaid on or about the 16th day of
9 August, (sic) 2012, did then and there intentionally or
10 knowingly or recklessly cause bodily injury to
11 M[REDACTED] ORTIZ by causing M[REDACTED] ORTIZ to strike an
12 unknown object, or by manner and means unknown to the
13 Grand Jury, and the Defendant did then and there use or
14 exhibit a deadly weapon, to-wit: the Defendant's
15 hand(s) or an object unknown to the Grand Jury, during
16 the commission of said assault,

17 AGAINST THE PEACE AND DIGNITY OF THE
18 STATE," signed by Abelino Reyna, Criminal District
19 Attorney in McLennan County and Foreman of the
20 Grand Jury.

21 THE COURT: Mr. Ortiz, you've heard each
22 count of the Indictment read. How do you plead to
23 Count I of the Indictment, "guilty" or "not guilty"?

24 THE WITNESS: (Through the Interpreter)
25 Not guilty.

1 THE COURT: And to Count II?

2 THE WITNESS: (Through the Interpreter)
3 Not guilty.

4 THE COURT: And to Count III?

5 THE WITNESS: (Through the Interpreter)
6 Not guilty.

7 THE COURT: Thank you. Be seated. The
8 State may open.

9 MR. RAMSAY: Thank you, Your Honor.

10 MR. MEGARO: Your Honor, very quickly,
11 could we approach?

12 THE COURT: You may.

13 (At the Bench, off the record.)

14 THE COURT: All right. Ladies and
15 Gentlemen, you will discover from time to time we have
16 to discuss some legal issues outside your presence, and
17 it didn't take long for that to happen, so if you will
18 go to the -- follow the deputy to the jury room, we'll
19 see you back in just a few minutes.

20 THE BAILIFF: All rise. All rise.

21 (The jury retired from the courtroom.)

22 THE COURT: All right. We're outside the
23 presence and hearing of the jury now. Counsel
24 approached the bench and brought up that the Defense had
25 filed a Motion in Limine back in December, of last year,

1 which we've not yet taken up, and that's what we need to
2 do now. Go ahead, Mr. Megaro.

3 MR. MEGARO: Certainly, Judge. In the
4 discovery the State has provided medical -- voluminous
5 medical records concerning the injuries of the child in
6 the case. Our Motion in Limine would be to limit those
7 portions of the records or to exclude those portions of
8 the records that deal with findings by other medical
9 professionals that are -- that are not being called to
10 testify if the -- there are diagnoses in there by -- and
11 opinions by other doctors that are not being called to
12 testify, and our objection is really based on
13 *Bullcoming v. New Mexico*, and the -- *Bullcoming* --
14 B-U-L-L-C-O-M-I-N-G -- *v. New Mexico*, which is a
15 relatively recent Supreme Court case, and there was a
16 case prior to that. I can't remember the name. It had
17 a hyphenated last name, and I believe it was out of
18 Massachusetts, but, essentially, in that situation the
19 Supreme Court said that under -- even under the business
20 records exception of hearsay the confrontation clause
21 trumps the business records exception if the State is
22 intending to produce scientific opinion related to a --
23 scientific opinion of a witness who is not testifying.

24 MS. LABORDE: Your Honor, if I -- if I
25 might interrupt, I'm not trying to be rude, but we're

1 not planning on offering the ones that we -- we -- the
2 ones that we filed with the Court. We're planning on
3 offering the x-rays, and the doctor is then going to
4 testify as to her opinions regarding the x-rays of the
5 child, and that's all we're planning on introducing.

6 THE COURT: Does that satisfy your concern?

7 MR. MEGARO: That -- I guess that --

8 MS. LABORDE: I mean --

9 MR. MEGARO: -- fixes that.

10 MS. LABORDE: -- I'm not going to say that
11 she's not going to be relying on the opinions of other
12 professionals that she -- but we're not going to be
13 introducing their records, but I think as an expert
14 she's entitled to -- to base her opinion on what the --
15 what her group of physicians have -- have conferred
16 about.

17 THE COURT: I agree with that, but you're
18 not -- she's not going to refer to the testimony of
19 other --

20 MS. LABORDE: No.

21 THE COURT: -- or the comments of other --

22 MS. LABORDE: Now she might --

23 THE COURT: -- medical experts?

24 MS. LABORDE: -- say she consulted with
25 other experts and they all shared the -- you know, her

1 opinion was confirmed by that, or she may talk about
2 some consulting, but she's not going to be repeating
3 hearsay from them.

4 MR. MEGARO: That I might have an issue
5 with. If she -- if she says that other -- she consulted
6 with other experts and they agreed with her, that would
7 be their testimony coming in through her.

8 THE COURT: I agree with that. You all
9 don't go into that area without approaching the bench.

10 MS. LABORDE: Well, Your Honor, she's not a
11 radiologist, so I think she's allowed to say that she
12 had -- she ordered x-rays to be done.

13 THE COURT: I'm not -- I'm not talking
14 about the radiologist. I'm talking about if she
15 conferred with -- I thought you all were talking about
16 two different things. I think the x-rays come in.

17 MS. LABORDE: Right, but she -- but she
18 reads them along with -- with other -- other physicians
19 in her field, and they read them together, and then that
20 forms the basis of her opinion. I mean Your Honor knows
21 how this works. I mean one doctor does one part, and
22 one doctor looks at the eyes, and one doctor looks at
23 the x-rays, and -- and that this --

24 THE COURT: I agree that she -- uneven
25 under *Bullcoming*, she is allowed to rely on -- on the

1 expertise in her field and others.

2 MR. RAMSAY: And, Judge, I think it's
3 possible for her to say what she bases her opinion off
4 of without specifically stating what the opinion of
5 other doctors was.

6 MS. LABORDE: Yeah. We're not attempting
7 to piggyback --

8 MR. RAMSAY: No.

9 MS. LABORDE: -- their opinion onto hers.
10 It's just that this is the process of evaluating a child
11 for abuse is to -- it's to have many different doctors
12 take a look at the same evidence, and that forms her
13 opinion.

14 THE COURT: All right. I'll allow it on
15 that basis, but let's -- let's be careful, and if you
16 see a point, Mr. Megaro, that you think you need to
17 object, just --

18 MR. MEGARO: Certainly.

19 THE COURT: -- let me know, and we'll take
20 it up then.

21 MS. LABORDE: Your Honor, the doctor was in
22 here for that discussion so --

23 THE COURT: Okay.

24 MR. MEGARO: That's -- that's all right. I
25 guess in the future we would seek to invoke the rule for

1 sequestering witnesses, but for this portion I think
2 it's harmless.

3 MS. LABORDE: Well, there's -- there's no
4 witness testifying to compare her testimony to --

5 MR. MEGARO: Right.

6 MS. LABORDE: -- so that wouldn't be a
7 violation of the rule, anyway.

8 THE COURT: You all inform all your
9 witnesses that the rule has been invoked and that they
10 cannot discuss their testimony with anyone except for
11 the attorneys involved. All right. Bring them in.

12 MR. MEGARO: Judge, as to the 40 -- the
13 State's 404(b) --

14 THE COURT: Wait a minute. Never mind.

15 MR. MEGARO: -- sorry -- it was he mailed
16 to me. I think it was yesterday. I don't know if it's
17 in the file yet.

18 MS. LABORDE: No. I don't believe it is,
19 Your Honor, but there is another one that should have
20 made its way in there, and there -- I think I only have
21 two points in there. One is that on a previous occasion
22 nine months before this the Defendant assaulted the
23 victim's mother. We don't believe that would be
24 admissible absent some opening of the door or whatever
25 the defensive theory is, so we would agree to approach

1 before we got into that. Also -- I take that back.
2 There's three things. The Defendant also threatened a
3 guard at the jail, and we believe that would probably
4 come in in punishment.

5 MR. MEGARO: The penis.

6 THE COURT: So you all --

7 MS. LABORDE: Oh, and, Your Honor, this
8 Defendant also like pulled the victim's penis back, and
9 it caused it to bleed. I, again, don't think that would
10 be admissible absent some opening the door or rebutting
11 a defensive theory about the Defendant being peaceful
12 and -- and not ever having harmed his child before or
13 something like that. To -- to give Your Honor some
14 background, the victim is not circumcised, and so the
15 Defendant on one occasion purportedly pulled the
16 foreskin back to the point that it started bleeding and
17 that -- and then -- so it would just be a Class A
18 assault or bodily injury assault on the child, but we
19 are not planning --

20 THE COURT: But you all are not planning on
21 going into that unless the --

22 MS. LABORDE: Absent, "The Defendant would
23 never do anything to hurt him," or something like that.

24 THE COURT: Okay.

25 MR. MEGARO: Okay. Well, I guess -- I

1 guess if that -- if that's not an issue in the State's
2 direct case, unless -- absent opening the door, I'll
3 tread lightly.

4 THE COURT: All right. Now are we ready
5 for the jury?

6 MR. MEGARO: Yes.

7 THE COURT: All right. Bring them in.

8 (The jury was seated in the courtroom.)

9 THE COURT: All right. Ladies and
10 Gentlemen, in case any of you haven't noticed, this is
11 not CSI, the way they do it on TV. All right. The
12 State may open.

13 MR. RAMSAY: Thank you. May it please the
14 Court, opposing counsel. Good afternoon, folks. So far
15 today you've heard a lot. You've heard a lot from the
16 attorneys, a lot about what did not happen in this case.
17 At this point you haven't heard any facts, and that's
18 what you are here now to determine.

19 This Defendant stands charged with three
20 counts. The first one being injury to a child with
21 serious bodily injury and the next two aggravated
22 assault with a deadly weapon, and the dates on those you
23 will notice are random dates in-between the child's
24 birth and when the child was taken to the hospital in an
25 ambulance, and that's where I want to start.

1 I want to start that M █████ Ortiz, who
2 is the victim in this case, was born on June 13th,
3 of 2012. That's 6-13-12. On August 27th, the night
4 of August 27th, early morning of the 28th, so two
5 months, 13, 14 days later, he was brought to the
6 hospital here in Waco. It was shown that he had a bump
7 on his arm. He wasn't moving it quite as well as he was
8 before, and he was admitted.

9 He was x-rayed, and in his x-ray it was
10 found that this arm was broken, and we've heard some
11 stuff earlier today about an instance where you might
12 knock a child over or you might accidental do something.
13 M █████ came into the hospital with 17 broken bones. He
14 had a broken arm. He had a collarbone that was broken.
15 He had a collarbone that was broken unrelated to this
16 case during birth, and then he had broken bones
17 throughout the rest of his body, on his shoulders, on
18 his ribs, on his legs and on his feet, and, Ladies and
19 Gentlemen, that's two-and-a-half months after he was
20 born. In two-and-a-half months, M █████ broke more bones
21 than most people break in their entire life, and M █████
22 did not break his own bones. M █████ at two-and-a-half
23 months was not able to move.

24 After this date, after August 28th, you
25 will hear that he is now two-and-a-half years old.

1 Since he has had no contact with this Defendant, he has
2 not broken a single bone ever again. You'll hear
3 testimony that the bones that he broke are not bones --
4 they're not the type of bones that can just be easily
5 broken, and as we heard during voir dire, so many of the
6 people on the panel have kids. I have kids, and you
7 learn after two-and-a-half months that kids can take
8 some tough handling. Kids are tough, and you'll hear
9 the kinds of injuries he has were not caused by some
10 accidental toughness. They were caused by brute
11 strength.

12 They were caused intentionally, and so
13 we're going to bring you a doctor, and she's going to
14 explain stuff to you. She's going to explain how this
15 could happen. She'll explain where they are, and
16 she'll show you on the body where they are, and then
17 you're going to hear who was in M[REDACTED]'s life at this
18 point.

19 You're going to hear that M[REDACTED]'s mother
20 loved him. She's young. Her and the Defendant worked
21 together at Black Eyed Pea. They were in a relationship
22 together. They were living together, and you're going
23 to hear kind of how they got to know each other, and
24 then you're going to hear where the child was, so those
25 two people had contact with M[REDACTED], and then M[REDACTED] had

1 a babysitter, and you're going to hear from the
2 babysitter, so you're going to hear from all -- the
3 mother and the babysitter who had contact with the child
4 during this two-and-a-half months, and you're going to
5 hear that they did not do this. They don't know why he
6 would do this, and then what I think is most important
7 is you're going to hear testimony from a CPS
8 investigator, Mr. Saldana, and then you're also going to
9 hear testimony from Chief Hudson from West P.D., and
10 you're going to hear about two different conversations
11 he had with the Defendant in this case on August 30th
12 after CPS got involved and then called West P.D., and
13 they asked us -- they asked the Defendant to come to the
14 police station on the 30th, and he gave a statement,
15 and in that statement he said, I don't know what
16 happened; I don't know what could have happened."
17 This whole time he said, "The only thing I know is the
18 night that we took him in I grabbed his arm when he
19 started to fall out of the car seat, and that's what
20 must have broken his" -- "the arm; I didn't know about
21 any of the other stuff."

22 You're going to hear that he said, "Maybe
23 the babysitter did this," but he says, "I didn't" --
24 "I don't think she would have done this," and then the
25 next day he comes back voluntarily, and he's asked to

1 give another statement, and he's presented with the fact
2 that, "Hey, we've heard that this is" -- "he's had this
3 many broken bones; we've heard this is" -- "this is not
4 an accident, and you need to tell us the truth," and
5 he -- I want you to listen to his characterization. He
6 says, "Well, maybe I did do something, but I never tried
7 to hurt him; maybe I moved him in a bad way," and you'll
8 hear the difference in these two statements over just
9 one day. It goes from, "I have no idea" to "Well, maybe
10 what I did was hurting him, but I would never hurt him,"
11 and I think that speaks volumes, so I want you to pay
12 close attention in this trial.

13 The burden of proof never leaves this table
14 right here. It's our burden to prove this case to you
15 beyond a reasonable doubt, to prove that he was injured
16 with serious bodily injury, and you'll hear what that is
17 and what the doctor thinks that is, and then you all get
18 to decide what that is, and you'll hear about the
19 aggravated assault, how hands can be a deadly weapon on
20 a two-and-a-half-month-old baby or how any object that
21 strikes the baby that breaks a bone would be a deadly
22 weapon, and, folks, at the end of this trial I wish that
23 we would be able to sit up here and tell you we know
24 exactly every way he moved the body, every way he hit
25 the body. I wish we had clarity. Not only for us and

1 not only for you all, not only for M[REDACTED], I wish we had
2 the clarity for the mom to know, but we're not going to
3 be able to tell you what caused every broken bone
4 because M[REDACTED] was two-and-a-half months old, and he
5 can't talk, but we do know M[REDACTED] doesn't have any
6 broken bones anymore. He hasn't had one since, and we
7 know that he doesn't have brittle bone syndrome. He --
8 he was tested for it.

9 We know one person, and we believe the
10 evidence will show he's guilty of all three counts. We
11 look forward to presenting this case to you and look
12 forward to your verdict at the end. Thank you.

13 THE COURT: Mr. Megaro.

14 MR. MEGARO: Thank you. I think we've all
15 had the experience of watching a commercial of a movie
16 that's coming up with great coming attractions. The
17 critics give the movie two thumbs up. The coming
18 attraction, the commercial, shows an action-packed,
19 fantastic movie with all very, very, very high-paid
20 actors. You go and pay -- now it's about 15 bucks for a
21 movie ticket, and we go to the movie with all these
22 great expectations, and we find out that this movie is
23 just really terrible. It doesn't match the commercial
24 that you saw. It doesn't match the reviews that you
25 read. It doesn't match the critics, what they say.

1 It's as if you were watching two different things
2 entirely, and I'm here to tell you that today that that
3 is going to be the situation in this case. They've
4 given you these great coming attractions. They've got
5 these technologies set up. They have witnesses lined
6 up.

7 Listen very carefully to the words in
8 that Indictment that was just read to you.

9 "Things unknown" --

10 MS. LABORDE: Your Honor, I'm going to
11 object to that. We're not required to prove what we
12 cannot know and -- and charging something with
13 "manner and means unknown" is perfectly acceptable.

14 THE COURT: Sustained. Don't argue your
15 case. Just tell what you believe the evidence is going
16 to be.

17 MR. MEGARO: Ladies and Gentlemen, you've
18 also been told before to keep an open mind. You all
19 promised to listen to the evidence and the witnesses.
20 Evaluate each witness that takes this stand to see
21 whether they're being credible, whether they're telling
22 you the truth, the whole truth and nothing but the
23 truth, and that is not going to be the case here.

24 At the end of this case I want each one of
25 you to add up the evidence that you've heard, also the

1 evidence that you won't hear. When you add those two
2 things up, you're going to reach the inevitable
3 conclusion the State has not proven this case. You're
4 going to reach the inevitable conclusion that this man
5 did not commit these crimes.

6 At the end of this case you will return the
7 only fair evidence that is justified by the evidence and
8 the lack of evidence, and that is going to be a verdict
9 of not guilty, so throughout this proceeding keep an
10 open mind and listen very carefully to the evidence that
11 comes off this witness stand. Thank you very much.

12 THE COURT: The State, call your first
13 witness.

14 MS. LABORDE: The State calls
15 Dr. Erica Ward, and, Your Honor, the State would like to
16 invoke the rule.

17 THE COURT: I thought we had already done
18 that. The rule is invoked. All witnesses in this case
19 will remain outside the courtroom. No witness may
20 discuss their testimony with any other witness. You may
21 discuss your testimony with the attorneys in the case.
22 You're not able to compare testimony or discuss any fact
23 of this case at all. Are there any other witnesses in
24 the courtroom?

25 MR. MEGARO: No, there isn't.

1 THE COURT: All right. I want the State
2 and the Defense to inform their witnesses that the rule
3 has been invoked and what that means. All right.
4 Ma'am, let me swear you in, if you'll raise your right
5 hand.

6 (The witness was sworn.)

7 THE COURT: If you'll please print your
8 name on the clipboard there.

9 THE WITNESS: (Complies with request.)

10 THE COURT: You may proceed.

11 ERICA WARD, M.D.,

12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. LABORDE:

15 Q. Ma'am, could you please introduce yourself to
16 the jury.

17 A. Yes. My name is Erica Ward.

18 THE REPORTER: Would you pull your --

19 MR. MEGARO: Could I ask you to move --

20 THE WITNESS: (Adjusts microphone.)

21 MR. MEGARO: Thank you.

22 THE WITNESS: Sure.

23 MS. LABORDE: I think it's on now.

24 Q. (BY MS. LABORDE) You're Erica Ward. Is that
25 correct?

1 A. Yes.

2 Q. Can you tell the jury how you're employed?

3 A. I work for McLane Children's Hospital

4 Baylor-Scott & White in Temple.

5 Q. And what do you do there?

6 A. I'm a pediatrician.

7 Q. Can you tell the jury a little bit about your
8 education.

9 A. Yes. I completed a -- I went to medical school
10 and completed residency at Scott & White Children's
11 Hospital, as well, and I worked in the clinic as a
12 clinic physician for two years, and then I was a
13 hospitalist taking care of patients in the hospital for
14 three years, and I practiced -- my practice since then
15 has been evaluating children for child abuse and neglect
16 for the last three-and-a-half years at Scott & White.

17 Q. And where did you go to medical school?

18 A. I went to -- I graduated from Texas A&M.

19 Q. Is that in Galveston?

20 A. No. It's actually in College Station, and the
21 second half was in Temple.

22 Q. And where did you get your undergraduate
23 degree?

24 A. UT in Austin.

25 Q. And what was that subject?

1 A. Biology.

2 Q. And you said you had now been dealing with
3 evaluating children for abuse and neglect for
4 three-and-a-half years as a pediatrician in McLane
5 Children's?

6 A. Yes, but I saw patients prior to this time.
7 The last three-and-a-half years it's just been
8 exclusively that.

9 Q. So prior to that, what was your practice like?

10 A. It was hospital-based, so all the children that
11 were admitted to the hospital with acute illnesses. I
12 evaluated them. That would range from pneumonia to
13 injuries similar to this.

14 Q. So it could be accidental injuries, it could
15 have been abusive, and it could have been illnesses. Is
16 that right?

17 A. Yes.

18 Q. And then in the last two-and-a-half years it's
19 been more of a focus on abuse and neglect?

20 A. Yes.

21 Q. Can you tell the jury how -- like where your
22 office is and how it is you get involved with a
23 particular child's case?

24 A. Sure. My office is in the specialty clinic
25 next-door to the hospital, and other physicians consult

1 me when they have a child that they're concerned is a
2 victim of child abuse or neglect, if there are
3 injuries they're concerned about, and I see the
4 patients either in the ER or when they're hospitalized,
5 and then I run the follow-up clinic out of the specialty
6 clinic next-door and follow them once they're
7 discharged.

8 Q. And is this a recognized field in pediatrics,
9 the -- the evaluation of child abuse or forensic
10 pedia -- what is the word -- pediatrics --

11 A. Yes. There's --

12 Q. -- forensic pediatrics?

13 A. There's a fellowship for child abuse pediatrics
14 beyond residency which I did not do that.

15 Q. Do you consult with other physicians in your
16 field if you have any cases that are questionable?

17 A. Yes.

18 Q. And are you the -- the doctor in Temple and in
19 the Scott & White system in your area that is dealing
20 with all cases of suspected abuse and neglect?

21 A. Yes.

22 Q. Can you tell us why if a child went to the ER
23 here in Waco that they would end up in your hospital?

24 A. If they feel like the evaluation can't be
25 completed here, if they need a higher level of care,

1 evaluation, subspecialty care, then they often are
2 transferred from Hillcrest or Providence in this area or
3 other community hospitals.

4 Q. What other community hospitals would you be
5 getting patients from?

6 A. It's a pretty broad area. College Station,
7 Marble Falls, Lampasas, like surrounding counties is
8 what Scott & White services.

9 Q. So you see a large geographic area --

10 A. Yes.

11 Q. -- of children that we suspect may be abused?

12 A. I think -- I may be incorrect on this, but I
13 think 30 counties is what Scott & White -- the general
14 areas.

15 Q. And are you the only doctor in
16 McLane Children's that's doing this kind of work?

17 A. Yes.

18 Q. So it's fair to say every -- every child that
19 is -- that there's suspected abuse you're seeing --

20 A. Yes.

21 Q. -- at some point when they're there at your
22 facility?

23 A. Yes.

24 Q. Okay. Now can you tell us how you got
25 involved in this case involving M [REDACTED] Ortiz who was

1 born in June, of 2012?

2 A. Yes. He was admitted to our hospital,
3 transferred from a hospital in this area, and I was
4 consulted by the admitting and treating team.

5 Q. And what did that involve?

6 A. The consult, what that involved, when I'm
7 consulted on a patient, I go and discuss the history
8 with both parents. I examine the child. I talk to the
9 treating physicians, all the teams involved. I go
10 through all the medical records, x-rays, labs and
11 discuss that with the relevant physicians that are in
12 charge of that.

13 Q. And did you review those records to refresh
14 your recollection --

15 A. Yes.

16 Q. -- for your testimony today?

17 A. Yes.

18 Q. Can you give the jury an idea of the
19 different doctors that would have been involved in his
20 treatment?

21 A. Sure. From the time they arrived at our
22 hospital, an ER doctor would have evaluated there. We
23 also have residents in all these programs, too, but as
24 far as attending physicians and the ER physician, the
25 pediatric team was consulted, so they were admitted to

1 pediatric service, and so there was a pediatrician or
2 hospitalist as well as a resident team associated with
3 that. When children have multiple injuries such as
4 M [REDACTED], the pediatric surgery or trauma team is also
5 involved, so their staff and residents were involved.
6 Ophthalmology was consulted, which is the eye
7 specialist. We also had radiologists reading x-rays,
8 orthopedics taking care of broken bones. Those are the
9 groups I can think of at the moment.

10 Q. So you would have been consulting with all of
11 them, asking them maybe to do additional work if that
12 was necessary. Is that correct?

13 A. Yes.

14 Q. All while M [REDACTED] has been transferred to your
15 facility. Is that correct?

16 A. Yes.

17 Q. You also said you would have taken a history
18 from the parents or the caregivers. Is that correct?

19 A. Yes.

20 Q. Is that kind of standard operating procedure?

21 A. Yes.

22 Q. And what does that mean? Does that mean a
23 history of M [REDACTED]'s life, or does that mean an
24 explanation as to what he was presenting at the hospital
25 for?

1 A. Both, actually. I try to get a pretty thorough
2 history, the history of that event or what brought them
3 into the hospital as well as, a baby this age, their
4 birth history, medical history, social history, family
5 history and any recent illnesses or anything that might
6 be related.

7 Q. And have you reviewed the photographs taken of
8 him and as well as x-rays taken of him?

9 A. Yes.

10 Q. And did I also show you some diagrams of a
11 child's bone structure, particular kinds of fractures
12 and the numbers of the rib cage? Did I also show you --

13 A. Yes.

14 Q. -- those kinds of pieces of evidence?

15 MS. LABORDE: Your Honor, may I approach
16 the witness?

17 THE COURT: Of course.

18 Q. (BY MS. LABORDE) First, let me show you
19 State's Exhibit No. 1, and does this CD appear to be the
20 same one that you and I reviewed last week --

21 A. Yes.

22 Q. -- containing all the x-rays taken of M [REDACTED]
23 while he was at your facility?

24 A. It does.

25 Q. Okay, and State's Exhibit No. 2, is this a fair

1 and accurate depiction of the -- of the skeleton of an
2 infant?

3 A. Yes.

4 Q. It was from the front?

5 A. Uh-huh.

6 Q. And State's Exhibit No. 3, is this a -- is this
7 an appropriate diagram of a corner fracture?

8 A. Yes.

9 MR. MEGARO: I'm sorry. Of what?

10 MS. LABORDE: A corner fracture.

11 MR. MEGARO: "A corner fracture."

12 Q. (BY MS. LABORDE) And do you believe that
13 State's Exhibit No. 3 would assist in your testimony?

14 A. Yes.

15 Q. State's Exhibit No. 4, are -- all of the ribs
16 of the rib cage, do they have numbers?

17 A. Yes.

18 Q. And is it -- is it your experience that lay
19 people often know what numbers our ribs have?

20 A. Probably not.

21 Q. Okay. Do you think this would be helpful,
22 too --

23 A. Yes.

24 Q. -- in your testimony?

25 A. Yes.

1 Q. And State's 4 -- I'm sorry -- 5, 6, 7, and 8,
2 are these photographs of M[REDACTED] when you would have been
3 looking at him --

4 A. Yes.

5 Q. -- taken in -- in Temple. Is that correct?

6 A. Yes.

7 Q. And that would have been August 28, 2012?

8 A. Correct.

9 Q. And then are the rest, State's 9 through 13,
10 are these fair and accurate --

11 A. Yes.

12 Q. -- x-rays of -- taken on different dates, all
13 of the patient, M[REDACTED] Ortiz, that you saw?

14 A. Yes.

15 MS. LABORDE: Okay. State would offer
16 Exhibits 1 through 13.

17 MR. MEGARO: One moment, Your Honor,
18 please.

19 THE COURT: Any objection, Mr. Megaro?

20 MR. MEGARO: Not to 2 through 13,
21 Your Honor. I'm just double-checking the CD as it's
22 playing on the laptop.

23 THE COURT: Okay.

24 MR. MEGARO: I'll have that in a moment.

25 THE COURT: All right.

1 MR. MEGARO: No objection to State's 1.

2 THE COURT: All right. State's 1
3 through 13 are all admitted. You may publish to the
4 jury when you're ready.

5 MS. LABORDE: Your Honor, could you dim the
6 lights, and, doctor, if you could look behind you.

7 THE COURT: Ladies and gentlemen, if some
8 of you down on this end of the jury box can't see the
9 screen very well, feel free to get up and come around
10 and stand at the other end any time during the trial.

11 Q. (BY MS. LABORDE) Doctor, I'm showing you now
12 what's been marked as State's Exhibit 5, and do you
13 recognize this to be the same child that you treated in
14 August, of 2012?

15 A. Yes.

16 Q. And State's Exhibit No. 6, is that another
17 picture of him?

18 A. Yes.

19 Q. Can you tell the jury what -- what it is he's
20 wearing on his body?

21 A. He has a soft splint placed across his arm
22 where he had a fracture.

23 Q. Would he have been able to move his arm?

24 A. No. It's pretty stabilized there where it
25 wouldn't move very much.

1 Q. Was the point that he not be able to move that
2 arm?

3 A. Correct.

4 Q. Okay, and, again, in State's Exhibit No. 6 do
5 you have a broader picture of how that soft splint would
6 have been --

7 A. Yes.

8 Q. -- on M[REDACTED]? And, again, in State's Exhibit
9 No. 8, does at that go all the way around his rib cage
10 and then all the way around his arm?

11 A. Yes.

12 Q. And was he awake when you saw him?

13 A. When I examined him, yes, he woke up.

14 Q. And had he been given any medicine at that
15 time?

16 A. I'm sure he had, but I can't recall.

17 Q. If a child has -- presents to your facility
18 with broken bones, would they have been given medicine
19 for pain?

20 A. If they're in pain, yes.

21 Q. And why would that be?

22 A. Just like an adult, just to make them more
23 comfortable, especially during procedures, taking
24 x-rays. Being evaluated can be painful sometimes.

25 MS. LABORDE: And I believe that there

1 should be a laser pointer up there. Is there a laser
2 pointer up there?

3 THE COURT: Doctor, there's a laser pointer
4 that -- it's shaped like a big pen, but it's actually a
5 pointer unless --

6 THE REPORTER: Here's one.

7 MS. LABORDE: We have another one here.

8 Q. (BY MS. LABORDE) Okay. Would there have
9 been --

10 THE COURT: There's a button on the side.

11 THE WITNESS: Got it. Thank you.

12 Q. (BY MS. LABORDE) Can you explain to the jury
13 why it is if a child presents with one broken bone that
14 a full survey of their -- of their -- all their bones
15 would be ordered?

16 A. It's uncommon for babies of this age to have
17 fractures because they're not developed enough to do
18 activities that would put them at risk for fractures, so
19 anytime we see a fracture or concerning bruises in a
20 baby at this age and developmental level we look
21 elsewhere to make sure we didn't miss anything.

22 Q. Is that just kind of a matter of routine.

23 A. Yes.

24 Q. And -- and when you say "this age," what
25 significance is it to you that M [REDACTED] was only

1 two-and-a-half months when you were seeing him?

2 A. It gives me an idea of his developmental level.
3 At two-and-a-half months you would not expect that he
4 would be -- certainly not walking or pulling up or
5 crawling or even rolling at this age.

6 Q. You so you wouldn't expect him at
7 two-and-a-half months even be rolling from his back to
8 his front. Is that correct?

9 A. Correct. We usually consider that more around
10 four months.

11 Q. So unable then to -- to -- if he was on the
12 edge of this table -- if I had put him on the edge of
13 this table, he wouldn't even be able to roll off?

14 A. You would expect him not to be able to.

15 Q. And what about holding his head up on his own?

16 A. He'd develop more strength since his birth, but
17 sometimes there can still be a little bit of lag with
18 that.

19 Q. So even his head wouldn't have been able to get
20 him over the table at two-and-a-half months?

21 A. Yes. That's what you would expect.

22 Q. So he can't fall; he can't jump off things?

23 A. Right.

24 Q. He can't do any of the things that we would
25 expect an older child to do that might cause a broken

1 bone. Is that correct?

2 A. Yes.

3 Q. All right. Now let me show you State's Exhibit
4 No. 9. Can you tell us what you see?

5 A. Yes. There's -- I'll show you. This is a
6 broken collarbone on the right. That is a new-looking
7 fracture.

8 Q. Can you tell the jury why you -- why you can
9 see that it's a new fracture?

10 A. I'm sorry. It's a little bit -- so here's --
11 you can see the separation in the bone, and there's no
12 haziness or fuzziness around it which is what we see
13 when bones heal, and, if you look at this side, this
14 right here is a larger area. This is an older fracture,
15 and he had a history of a clavicle fracture on that side
16 from birth. This would be an older-appearing fracture.

17 Q. So we can see that the collarbone on State's
18 Exhibit 9, the one -- his right collarbone is much
19 bigger. There's -- there's -- it appears to be like
20 twice the size on the x-ray of the other one. Is that
21 fair to say?

22 A. On his left side?

23 Q. On his left side.

24 A. Yes. It looks bigger from the healing. The
25 bone forms a scar around it.

1 Q. Can you explain that process to the jury, how
2 you're able to see that in x-ray that a bone is healing
3 itself?

4 A. So when bones separate, when it's called
5 "acute," meaning a recent fracture, there's just a
6 division in the bone which is pretty obvious. You can
7 see that in the humerus -- I'm sorry -- right here you
8 can see this bone separated, too, and you don't see any
9 haziness or new bone growth around it. After seven to
10 ten, up to 14 days, you can have that acute appearance.
11 After that time we see what we call "periosteal new bone
12 formation" which is new bone growth trying to heal it,
13 and it looks different and distinguishes between recent
14 and older.

15 Q. So what else do you see?

16 A. There's also -- I'm pointed out this fracture
17 here. I'm sorry. This is not working anymore. Oh,
18 there. Right here. There's also rib fractures here on
19 the fifth, sixth, seventh and eighth, and there's one on
20 this side, as well. I think -- I have a hard time
21 seeing from here, but there's also a fracture at the top
22 of this bone as well as this one. You can see that it's
23 fuzzy and kind of healing over here, also.

24 Q. Now let me go back to something else. Can you
25 explain with this slide, when -- when you're talking

1 about fractures in the humerus at the top part that you
2 saw on State's Exhibit No. 9, what did you see?

3 A. I'm sorry. Say that --

4 Q. When you -- when you were talking about
5 fractures at the top of the -- of the humerus --

6 A. Humerus, right.

7 Q. -- on M [REDACTED], what exactly did you see?

8 A. So those are called -- there's lots of
9 different names for them. Corner fractures or classic
10 metaphyseal lesion, chip fracture, bucket handle, those
11 are all the same thing, and it's basically the
12 metaphysis or this top part of the bone there, a portion
13 of it has pulled away, and those are uncommon types of
14 fracture that have a high specificity for abusive-type
15 injuries.

16 Q. So am to understand correctly that where your
17 bones come together, like your humerus comes into your
18 shoulder, that those bones can then be chipped off of
19 each other on the edges? Is that right?

20 A. Well, it's the humerus where it's chipped off.
21 That's right.

22 Q. So that -- but that would be the top?

23 A. Right.

24 Q. This is the top of the humerus, the ball that
25 goes into that kind of -- uh-oh. Okay, so this is --

1 this would be like the top of the humerus, the top of
2 the -- of the bone that goes from our shoulder to our
3 elbow. Is that correct?

4 A. Yes.

5 Q. And then if there's some -- some contact
6 between this bone and the bones above it, it can chip
7 off a corner. Is that correct?

8 A. Yes.

9 Q. And you said it can be called a
10 "corner fracture," it can be called a "chip fracture, or
11 it can be called a "buckle handle fracture"?

12 A. Yes.

13 Q. And you said that these kinds of fractures are
14 highly specific for abuse. Why is that?

15 A. We don't see those usually in accidental falls
16 or other type of injuries. It's more of a -- a pulling,
17 twisting type of force.

18 Q. So if -- can you give us kind of some -- some
19 idea of the mechanism involved on M [REDACTED] if he has these
20 injuries on his -- where his humerus is connecting to
21 his shoulder bones?

22 A. In general, for these type of fractures, some
23 sort of pulling, yanking, twisting or a shaking if
24 you're holding a baby from the middle and shaking as the
25 extremities are flopping vigorously.

1 Q. Okay, so do you see these kinds of injuries
2 where a child has an accompanying brain injury like
3 they've been shaken and their limbs are being shaken and
4 their head is being shaken?

5 A. Yes.

6 MR. MEGARO: Objection, Your Honor.

7 MS. LABORDE: To what?

8 THE COURT: What's your objection?

9 MR. MEGARO: To the -- the objection here
10 is going to the brain injury element. I don't believe
11 there's any evidence of that here.

12 MS. LABORDE: Your Honor, I -- I'm asking,
13 "When would we commonly see these kinds of fractures?"

14 THE COURT: You're not implying that there
15 was --

16 MS. LABORDE: No.

17 THE COURT: -- found in this case?

18 MS. LABORDE: No, no.

19 THE COURT: All right, overruled.

20 Q. (BY MS. LABORDE) And there -- and M [REDACTED]
21 didn't have any brain injuries. Is that correct?

22 A. No. He had a CT scan of head, and his brain
23 was normal appearing on that.

24 Q. So it didn't appear that he was shaken to the
25 extent that his head was injured?

1 A. Correct.

2 Q. But we do see these in those kinds of cases.

3 Is that correct?

4 A. It can be, yes.

5 Q. Okay. When we can't have a child this age tell
6 us anything, how are we supposed to know how he was
7 injured exactly?

8 A. Correct.

9 Q. I mean we can't?

10 A. Right.

11 Q. Okay, okay. Back to State's Exhibit No. 9, so
12 you had talked about -- spoken about these kind of bumps
13 on the ribs. Is that correct?

14 A. Yes.

15 Q. And if I were to point out to the jury these
16 uninjured ribs on the bottom, how they're just a smooth
17 line, does that appear to be different than these ribs
18 on the other side with the bumps?

19 A. Yes.

20 Q. And to you -- to the doctor these bumps are
21 significant in that they are healing injuries?

22 A. Yes, they're healing. That's the -- the kind
23 of bulbus area around it is healing bone.

24 Q. Is this something that you immediately
25 recognize as being a sign of possible abuse or abuse?

1 A. These are posterior rib fractures, and, as the
2 other type of fracture we talked about earlier, they
3 also are highly concerning for and have a high
4 specificity for nonaccidental trauma or abusive type of
5 injuries.

6 Q. What does that mean "posterior"?

7 A. In the back.

8 MS. LABORDE: Your Honor, may I approach
9 the witness?

10 THE COURT: You may.

11 Q. (BY MS. LABORDE) Let me show you State's 15
12 and 14, and are these also fair and accurate depictions
13 of a -- of a child's skeleton?

14 A. Yes.

15 Q. Okay, and do you think it would help the jury
16 understand kind of where you see these injuries to
17 identify them on these diagrams?

18 A. Yes.

19 MS. LABORDE: Your Honor, at this time the
20 State would offer State's 14 and 15 for demonstrative
21 purposes?

22 MR. MEGARO: Which is which?

23 MS. LABORDE: This is 15, and this is 14.

24 MR. MEGARO: No objection.

25 THE COURT: State's 14 and 15 are admitted

1 for that purpose.

2 Q. (BY MS. LABORDE) Okay. Doctor, since you were
3 just talking about posterior rib fractures, could you
4 kind of identify with this green marker on State's
5 Exhibit No. 14 where those posterior rib fractures would
6 have been?

7 THE COURT: You may step down, ma'am, to do
8 that.

9 THE WITNESS: Yes, okay, sorry. Let me --
10 okay, so this is the back of the child, and this is the
11 left side, so the fifth, sixth, seventh and eighth ribs
12 had fractures in the back, so five, six, seven and eight
13 had fractures, and then on the right side the sixth rib
14 also had healing fractures.

15 Q. (BY MS. LABORDE) Do you recall anything else
16 on the posterior?

17 A. There was also a -- an acute, a new fracture --

18 Q. Oh, wait, stop. If it's acute, can you use
19 red.

20 A. Yes, a new fracture of the scapula which is
21 this bone of the shoulder here, also on the left.

22 Q. And was that everything that you believe you
23 observed on the posterior side?

24 A. Yes, though a lot of the other fractures you
25 can see there, as well.

1 Q. Both ways?

2 A. Right.

3 Q. And can you mark -- yes -- with green if it's
4 post-acute or chronic and then red if it's acute.

5 A. Okay, so this was a new fracture on the right
6 clavicle or collarbone, an old fracture from birth on
7 this side. There was -- I believe these were both
8 healing on this side and up here a new fracture here,
9 and then we had a new fracture down at the bottom of
10 this bone, the femur. I'm sorry. This should be red.
11 Okay, so a new fracture here and --

12 THE COURT: Doctor, you may have to speak a
13 little louder for the court reporter.

14 THE WITNESS: I'm sorry. Okay, so a new
15 fracture at the base of this bone which is --
16 (microphone feedback) -- am I doing that; I'm sorry --
17 and then the proximal part of -- the top part of this
18 bone which is the left tibia. This little bone here is
19 the fibula. This is a recent fracture of the left
20 fibula, and then there were fractures -- I believe these
21 are older fractures -- of the distal part or the bottom
22 part of both tibia.

23 THE REPORTER: Did you say "both tibia"?

24 THE WITNESS: Yes.

25 THE REPORTER: Okay, thank you.

1 MS. LABORDE: Okay. You may take your seat
2 then.

3 THE WITNESS: (Complies with request.)

4 MS. LABORDE: Your Honor, could you dim the
5 lights again?

6 THE COURT: What?

7 MS. LABORDE: Could you dim the lights?

8 THE COURT: Oh, sure.

9 Q. (BY MS. LABORDE) So let me show you -- this is
10 State's Exhibit No. 10 back behind you. You had
11 identified some -- some of the bones in the leg, as
12 well. Is that correct?

13 A. Yes.

14 Q. And can you use your laser pointer to show the
15 jury what it -- what it is you saw.

16 A. So on the right side, the green fracture there
17 is this -- it's a little difficult to see, but you can
18 see this kind of loop around the bone here, and this is
19 a healing fracture.

20 Q. So that's how you know it's older?

21 A. Yes.

22 Q. It's not --

23 A. Right.

24 Q. -- within the last seven days or so?

25 A. Right. That's correct, and then we took

1 another x-ray two weeks later which was more significant
2 healing.

3 Q. So you're able -- you don't just get one set of
4 x-rays; you do multiple sets?

5 A. Yes.

6 Q. And is that to confirm like the new ones you
7 saw then progress to a healing stage later on?

8 A. Yes, and to identify any fractures that might
9 have been hard to see at the beginning since there might
10 not have been any healing.

11 Q. You were not able to identify any additional,
12 though --

13 A. No.

14 Q. -- beyond these 17?

15 A. There were 17, yes.

16 Q. Now in State's Exhibit No. 11 -- and it's now
17 behind you -- in this is he wearing his identification
18 bracelet on his ankle? Is that what that is?

19 A. Yes. It's a security band.

20 Q. "A security band"?

21 A. Yes, and if you try to -- if the baby were to
22 leave the floor, it would alert the staff, and all
23 the -- all the patients wear these.

24 Q. So we know that -- that this leg has the
25 security band and the other leg does not --

1 A. Right.

2 Q. -- correct?

3 A. Uh-huh.

4 Q. And what -- what injuries do you see on this
5 State's Exhibit No. 11?

6 A. So there's a healing fracture here which is
7 new, here this bone as well, and this you can kind of
8 see underneath it where it separated right there, and
9 there's also the one of this which you can't see as well
10 in this view.

11 Q. Okay, so it's safe to say there are -- there
12 are dozens of x-rays taken, but we just picked some out
13 that you could kind of show all the x-rays on. Is that
14 correct?

15 A. Yes.

16 Q. Now can you tell us -- when you spoke about the
17 humerus injuries at the top of M[REDACTED]'s arms --

18 A. Yes.

19 Q. -- can you tell us what the mechanism might
20 have been for these injuries around his knees like on
21 his -- his femur, his fibula, his tibia? What would
22 those have been like?

23 A. The injuries on his legs are the corner
24 fractures that we were talking about that could happen
25 from a twisting/pulling-type episode or from the

1 extremities flopping with shaking. The injury to the
2 humerus is a different kind of injury. It's in the
3 middle of the bone and would be a different type of
4 mechanism.

5 Q. So that's in this exhibit, the next one,
6 State's Exhibit No. 12. So is this a better picture of
7 that broken arm?

8 A. Yes.

9 Q. So you're saying this is a different kind of
10 mechanism than the injuries we -- all the corner
11 fractures that we see?

12 A. Yes, in a -- in a different location on the
13 bone.

14 Q. So it's not at the top --

15 A. Uh-huh.

16 Q. -- or the bottom? It's not at the point where
17 the bones are coming together. What significance is it
18 that it's in the middle?

19 A. It's in the diaphysis which is the -- the
20 middle part of the bone where those others were in the
21 metaphysis, and, as I said for the other type of
22 fractures, those are high -- have a high -- highly
23 concerning for an intentional type of injury. This type
24 of fracture is not specific, and you can see that in an
25 accidental injury or an intentional injury. The very

1 concerning part was the child's age and developmental
2 level having this kind of fracture.

3 Q. How often have you seen a fracture to the
4 scapula?

5 A. I have only seen it one other time, and that
6 was related to an ATV accident.

7 Q. So is that like a four-wheeler?

8 A. Yes. It -- it takes a high-energy type of
9 injury.

10 Q. So you've seen kids that have been in car
11 accidents, correct?

12 A. Yes.

13 Q. And is it significant at all that the -- the
14 shoulder blade is -- is a bigger bone, that it could be
15 injured? Does that have any significance to you?

16 A. In general or in this --

17 Q. Or in --

18 A. I'm not sure I understand.

19 Q. In terms of abuse, does that -- does that bone
20 in particular have any special concerns to you?

21 A. It's very uncommon to have a fracture in that
22 bone, really in any situation. When we see it in a
23 young baby, it's a very concerning injury, as those
24 other corner fractures were.

25 Q. Were there any fractures in this baby that you

1 thought that, "Oh, that could just be an accident?"

2 A. Like I had said, the humerus fracture in an
3 older child with a history that went along with it, I
4 would say that could be an accident but the other
5 fractures, no.

6 Q. What about the history you got from this
7 Defendant, you said you talked to the parents as part of
8 your -- your treatment and assessment of M[REDACTED]. What
9 did this Defendant tell you had occurred?

10 A. He had said they had gotten home late in the
11 evening, and M[REDACTED]'s mom was in another room, and he
12 was getting the baby from the car seat, and the baby
13 kind of slipped, and he grabbed the baby by the arm to
14 catch him from falling and that that's when he felt an
15 injury occurred.

16 Q. And did that history match the injury to you?

17 A. Well, he gave me a little more history at the
18 time. He said that he -- it didn't seem like that hurt
19 him at the time and then noticed a little later a
20 deformity in that area. You know, a lot of babies slip,
21 and we catch them, and you don't see these type of
22 fractures from that usually. Given that history, I was
23 still concerned.

24 Q. And that would have been only if M[REDACTED] had
25 that one broken arm?

1 A. Right.

2 Q. Did that explanation given by this Defendant
3 that his child is -- is falling out of the car seat and
4 he grabs him by one arm, could that explain any of the
5 other acute fractures that you saw?

6 MR. MEGARO: Objection, Your Honor.

7 THE COURT: What's the objection?

8 MR. MEGARO: Can we approach?

9 THE COURT: You may.

10 (At the Bench, off the record.)

11 THE COURT: The objection is overruled.

12 Q. (BY MS. LABORDE) Did this Defendant's
13 explanation that the child was falling from a car seat
14 and then to prevent him, I -- I guess, from falling all
15 the way to the floor, that he grabbed one arm, would
16 that have explained all the other acute fractures that
17 you saw?

18 A. No.

19 MS. LABORDE: And so, Your Honor may I
20 approach the board?

21 THE COURT: You may.

22 Q. (BY MS. LABORDE) So just to be -- just to be
23 clear, M [REDACTED] had a new injury to his collarbone, his
24 humerus, his left leg around the knee, three bones
25 there, and then he also had this new injury to his

1 shoulder blade, so did that explanation of grabbing his
2 arm explain even just more than one of -- one of these
3 fractures?

4 A. Not in my opinion, no.

5 Q. And did he had any explanation then for the --
6 for the healing fractures, all of his ribs, his ankle
7 injuries on the other -- on both legs?

8 A. I asked if there was any other history of
9 trauma, and they said -- and I was told "no."

10 Q. Would -- would the -- would a person in the
11 room -- when M [REDACTED] broke his arm and broke his
12 collarbone and, you know, chipped off all the bones
13 around his knee and his shoulder blade, would the person
14 in the room know that that baby was in pain?

15 A. Yes.

16 Q. So did that make sense to you this Defendant is
17 saying, "Well, he didn't appear to be in any pain, so it
18 was only later when I noticed his arm was swelling that
19 I thought something was wrong"?

20 MR. MEGARO: Objection as to that,
21 Your Honor. Objection as to that.

22 THE COURT: What's the specific -- specific
23 objection?

24 MR. MEGARO: The phrasing, Your Honor,
25 she's being -- she's being asked to give an opinion --

1 MS. LABORDE: Your Honor, she's an expert.

2 MR. MEGARO: -- on the truthfulness --

3 THE COURT: Overruled.

4 THE WITNESS: He -- he told me that he
5 didn't cry, and I would expect this to be painful. Just
6 as an adult when we break bones, it hurts. It hurts
7 children, too.

8 Q. (BY MS. LABORDE) Do children have more
9 cartilage in their bones than adults do?

10 A. Yes. It takes some time for it to calcify or
11 become firm and hard.

12 Q. Do we see rib injuries during a normal birth?

13 A. No, not -- not commonly.

14 Q. Do we see these kinds of rib injuries in car
15 accidents?

16 A. Again, not common.

17 Q. So even like slamming against something and
18 the -- and the car seat -- you know, we don't see them
19 then either?

20 A. Correct.

21 Q. What about hypothetically if you just,
22 you know, swaddled your baby really tightly, could
23 that cause their ribs to break?

24 A. Normal newborn care should not cause ribs or
25 bones to break, no.

1 Q. Would it have been painful for M [REDACTED] to
2 breathe with all these broken ribs?

3 A. Yes.

4 Q. Painful to be on his stomach or on his back?

5 A. I would think so, yes.

6 Q. Would you have expected him to be a difficult
7 baby, one that's crying and not easily consoled, if he's
8 dealing with all of these injuries?

9 A. I would think that this would be an explanation
10 for being fussy, yes.

11 Q. You're familiar with the legal definition of
12 "serious bodily injury," if I were to give it to you?
13 You want to go over it that way?

14 A. Sure.

15 Q. If a -- if a serious bodily injury is an injury
16 that could cause a substantial risk of death, would it
17 have been possible for these broken ribs to cause any
18 internal organs to be -- to be cut or say -- or internal
19 injuries of some kind.

20 A. I think the fractures themselves, that would be
21 an uncommon occurrence, but the -- the force and the
22 mechanism of causing these could also cause additional
23 injury in my opinion.

24 Q. Okay, so is -- so there is a risk if you're
25 using this kind of force on your child that you're going

1 to cause death. Is that correct?

2 A. Yes.

3 Q. Okay. This is not something that can occur by
4 changing a baby's diaper?

5 A. No.

6 Q. Can this occur by a child falling off a table?

7 A. Not these types of fractures.

8 Q. So we all know don't drop a baby on its head
9 and -- and be careful with them, but you're saying --
10 you have treated children that have fallen off a table,
11 correct?

12 A. Lots.

13 Q. Have you treated children that have fallen out
14 of a building?

15 A. I have treated children that have fallen from
16 heights, yes, maybe not a building but yes.

17 Q. And would a child have -- who had fallen from
18 that length, would they have these kind of fractures on
19 the corners of their bones?

20 A. No. These are different types of fractures
21 than you'd expect from that. I commonly see children
22 that fall off of tables or counters and have skull
23 fractures or other type of fractures but not corner
24 fractures or posterior rib fractures.

25 Q. Can you explain the mechanism for the

1 rib fractures?

2 A. It's -- it's usually thought to be related to a
3 squeezing pressure in the front and the back of the
4 chest, and then it gives way in the back or the lateral
5 aspect. In this case it was the back.

6 Q. So, again, would someone who had been in the
7 room -- if someone was squeezing this child to the point
8 that his ribs break, several of them, would that person
9 doing that squeezing know that they were breaking the
10 child's bones?

11 A. I would expect the baby to cry and be fussy
12 in -- in apparent distress.

13 Q. Just like an adult who broke a bone, is that
14 correct?

15 A. Correct.

16 Q. Now I want to show you this next exhibit. This
17 is State's Exhibit No. 13, and this is taken -- and the
18 date is up here. His birthday is here, June 13th, and
19 then is "September 11, 2012," is that the date of the --
20 of the x-ray?

21 A. Yes.

22 Q. And can you tell us? What is this surrounding
23 his femur and his arm?

24 A. It's his humerus. It's a splint.

25 Q. And so he continued to wear this splint almost

1 two weeks after he was injured. Is that correct?

2 A. Yes.

3 Q. Would he have had the use of his arm?

4 A. It would be severely limited.

5 Q. If he sucked his thumb, would he have been able
6 to suck his thumb?

7 A. I don't believe so, no.

8 Q. Not at least on that arm?

9 A. Right.

10 Q. And when we talked earlier, we talked about
11 that one way to cause serious bodily injury is by
12 substantial risk of death or causing death or
13 disfigurement or protracted loss of the use of a -- of a
14 bodily organ, so -- or function, so is using your arm a
15 bodily function?

16 A. Yes, I would say so.

17 Q. Is sucking your thumb something a baby should
18 be able to do?

19 A. Yes.

20 Q. So if M [REDACTED] is two-and-a-half months old and
21 this happens and he loses the loss of his arm for weeks,
22 would that be protracted more than just a small period
23 of time but a long period of time he can't use his arm?

24 A. I would assume so, yes.

25 Q. Why would you want his arm to be immobilized

1 like this?

2 A. To assist in the healing of the bone.

3 Q. What would have happened had he not been
4 treated?

5 A. Likely, it would have healed well, also.
6 Babies this age, they heal quickly, even bones that are
7 much farther apart than this.

8 Q. Would it have been disfigured in some way
9 inside?

10 A. Probably not.

11 Q. Okay, because -- is that because of his age?

12 A. Yes.

13 Q. So we do not have a case here of permanent
14 disfigurement --

15 A. No.

16 Q. -- even had he been untreated?

17 A. No.

18 Q. And that's the same for adults who break their
19 ribs. Is that correct, that they kind of heal on their
20 own? You can't get a cast around your body. You
21 just -- you -- you put a wrap around it, and you don't
22 move. Is that right?

23 A. Yes.

24 Q. But you can't tell a child not to move, so you
25 have to do the splint. Is that correct?

1 A. Yes, but they're often not participating in
2 activities like we would where ours need to be
3 stabilized more because we're grabbing for things, but,
4 yes, and -- and given the age and how quickly bones
5 heal, that even if you didn't splint it, it -- the bone
6 pieces were in pretty close proximity. It probably
7 would have healed the same. Again, I'm not an
8 orthopedic surgeon, but in my experience that's what
9 I've seen.

10 Q. Were -- are you aware whether you -- you wanted
11 him to be transported by car given his condition?

12 A. I saw him in follow-up. I believe it was on
13 that date when he was placed in foster care, and his
14 foster mom said he was very fussy in the car seat, and
15 I worried about that. He had long trips for visitation,
16 I believe, and I'm sure that was painful with the splint
17 and other fractures.

18 Q. And did you advise against that?

19 A. Well, I just said that if they could limit that
20 as much as they could and just go to, you know,
21 mandatory kind of appointments.

22 Q. And did you mean mandatory appointments at the
23 hospital?

24 A. Yes.

25 Q. So why did you think it was hurting M [REDACTED] to

1 be in a car seat?

2 A. The family -- based on the history foster mom
3 was giving me that the minute that -- she said that when
4 she put him in there he was more fussy and seemed to be
5 in pain.

6 Q. And is that consistent with the kind of
7 injuries that M [REDACTED] had?

8 A. I would assume so with the chest and then his
9 arm.

10 Q. So that being in a car seat might hurt his
11 shoulder blade; it might hurt his healing ribs; it might
12 hurt his arm if he's having to have it squished in
13 somewhere when he's in a car seat, and you did not
14 advise him being taken to Waco for visits with his
15 parents. Is that correct?

16 A. I -- I called CPS, and I just -- I felt like
17 that wasn't up to me, but I told them my thoughts on his
18 injuries and the pain he seemed to be in and that to
19 limit that as much as they could.

20 Q. Again, should -- should we be able to expect a
21 child of this age to be in a car seat from a ride from
22 Temple to Waco without it being painful?

23 A. No. I would think it would be painful.

24 Q. For him?

25 A. Yes.

1 Q. Would that, again, do you think contribute to
2 this being a protracted loss, that for weeks afterwards
3 he can't ride in --

4 A. Yes. It would --

5 Q. -- a car seat?

6 A. -- interfere in his care.

7 Q. Is there anything about any of these injuries
8 that makes -- that makes you think any of this could
9 have been done accidentally or at least not recklessly,
10 that someone knew when they were doing this that they
11 were using such force that there was the risk of causing
12 these kind of injuries?

13 MR. MEGARO: Objection, Your Honor, to the
14 form of the question.

15 THE COURT: Rephrase the question, please.

16 Q. (BY MS. LABORDE) When you look at these
17 injuries, do you think there's any way it could be
18 normal care of the baby that would cause them?

19 A. No, certainly not the posterior fractures and
20 the corner fractures. I think the humerus fracture is a
21 little less specific for that, but, given the child's
22 age, it is still a very worrisome fracture even if it
23 was on its own with no other fractures.

24 Q. So, hypothetically, M [REDACTED] comes into the
25 hospital with only the arm injury, only the broken

1 humerus, and the parents tell you, "You know, he was on
2 the floor, and this heavy brick fell and fell right on
3 his arm," could -- would that be consistent with an
4 accidental injury, and would that possibly explain that
5 one injury?

6 A. I would say a -- a large impact from the
7 outside could cause that injury but would not be
8 consistent with the others.

9 Q. Okay, so that only explains the one arm?

10 A. Correct.

11 Q. But, again, no explanation was provided for
12 anything that was not acute, so anything that you wrote
13 in there that's green, this Defendant nor the mom
14 provided any explanation for that?

15 A. Correct.

16 Q. When you spoke with this Defendant, did he use
17 an interpreter?

18 A. No.

19 Q. Do you have one available?

20 A. Yes.

21 Q. If you had thought that this Defendant didn't
22 understand what you were saying, what would you have
23 done?

24 A. I would have called an interpreter.

25 Q. And do you have them at the hospital?

1 A. Yes.

2 Q. How often do you use them?

3 A. Whenever it's necessary.

4 Q. Is that on a weekly basis?

5 A. Yes.

6 Q. What if they speak something other than
7 Spanish?

8 A. We have a phone system that they can call in
9 and find a translator for us.

10 Q. Any question in your mind that this Defendant
11 understood your questions, understood why you were
12 asking about what had happened to his child when you
13 were questioning him?

14 A. No, not at all.

15 Q. And would M [REDACTED] have been in this state where
16 he's -- he has the soft splint -- I mean he would have
17 known about his injuries when he's giving you his
18 history? Is that correct?

19 A. Yes. He was aware of this fracture when we
20 talked.

21 Q. So let me ask you this. Is there -- is there
22 any way to date any of these fractures?

23 A. Not specifically, broader ranges, usually acute
24 we say less than 10 to 14 days. Subacute or chronic,
25 the older ones, are more than that, so I could go

1 through and say -- you know, "less than 14 days,"
2 "more than 14 days" would probably be as close as I
3 could give you.

4 MS. LABORDE: Your Honor, may I approach
5 the board again?

6 THE COURT: You may. Are we going to be
7 able to finish with this witness today?

8 MS. LABORDE: I'm almost finished.

9 THE COURT: Okay.

10 Q. (BY MS. LABORDE) Okay, so the red would be
11 acute. Is that correct?

12 A. Yes.

13 Q. And that's less than 14 days?

14 A. Yes, so those -- do you want me to just tell
15 you the fractures that were acute?

16 Q. Yes.

17 A. Okay, so the right clavicle, the left humerus,
18 the left scapula, the left distal femur, the left
19 proximal tibia and fibula and then the distal left
20 fibula. I think I didn't mark it. The -- no, the other
21 side.

22 Q. So it's this one that's --

23 A. Yes, the outside -- the tiny outside bone is
24 red and then the -- the other one, yeah.

25 Q. Okay, so there are several fractures that

1 because they don't appear to be in a stage of healing
2 are considered acute?

3 A. Correct, and then based on the x-ray we did two
4 weeks later that showed healing, it further validated
5 that.

6 Q. But, just to be clear, when you mean "acute,"
7 you mean this just happened?

8 A. Less than 14 days, ten to 14 days.

9 Q. And that would be consistent with a parent
10 coming in and saying, "We noticed something sticking
11 out, and he can't use his arm" --

12 A. Yes.

13 Q. -- that it just happened? Okay, and then with
14 respect to the green ones that you marked on State's
15 Exhibits 14 and 15, what would be your terminology for
16 that?

17 A. Those would be subacute or healing fractures.

18 Q. And what would you -- those -- would you say
19 those are 14 days or older?

20 A. Yes. We know the -- the left clavicle is from
21 birth, and we have records that show that he had a
22 fracture at that time.

23 Q. So this -- this other left collarbone, that is
24 a birth injury?

25 A. Yes.

1 Q. And you were able to verify that?

2 A. Yes.

3 Q. And then all the other green injuries that we
4 have marked on these exhibits, all the rib injuries are
5 healing?

6 A. Yes. There were four on one -- on the left,
7 one on the right. Also the distal right tibia was
8 healing. The distal left tibia was healing, and both
9 proximal humeruses (sic) were both healing, as well.

10 Q. Now are you trying to -- I mean you're not
11 trying to say -- am I correct -- that these are all
12 happening in two events?

13 A. No. I -- I can't tell you that. I can just
14 say this is more recent versus older. Some of the
15 healing, they could have been the same day or separated
16 by a week or even a couple of weeks.

17 Q. And it's possible that every one of these ribs
18 was broken on a different day, and every single injury
19 he had was on a different day. Is that right?

20 A. It's possible, but I can't say for sure.

21 Q. Okay, and that's because you don't have a
22 history that --

23 A. Right.

24 Q. -- explains any of this, and the child can't
25 tell you?

1 A. Correct.

2 Q. But M [REDACTED] would have felt pain in every single
3 one of these 17 places. Is --

4 A. Yes.

5 Q. -- that right? And is there something called
6 like "brittle bone disease"?

7 A. Yes.

8 Q. And were you able to eliminate that?

9 A. It's also called "osteogenesis imperfecta," and
10 there are two specific genes that we look for, and we
11 send it off to a center that does the testing, and
12 there's a ninety-seven percent (97%) sensitivity for
13 picking up any kind of mutations, and they were both
14 normal. There's no evidence of him having an underlying
15 bone disorder.

16 Q. And, hypothetically, if M [REDACTED] were to have had
17 no further bone fractures since not being around this
18 Defendant, would that be significant to you?

19 A. Yes.

20 Q. Now that he's --

21 MR. MEGARO: Objection, Your Honor.

22 THE COURT: What's the objection?

23 MR. MEGARO: Judge, we're talking about an
24 absence of corrective measures or absence of remedial
25 measures as -- as a cause.

1 THE COURT: Overruled.

2 Q. (BY MS. LABORDE) So my question was,
3 hypothetically, if this child had suffered no further
4 fractures -- you know, once he is walking and once he
5 can fall and once he can fall off the bed and all that,
6 if he's not having additional fractures, would that
7 confirm then what your -- what that test was, that he
8 didn't have the --

9 A. Yes.

10 Q. -- genetic mutations?

11 A. Yes. If he had a disorder significant enough
12 to have this many fractures by two months, you would
13 expect to see many more by two years, and so, yes,
14 that's significant to me.

15 MS. LABORDE: Your Honor, I'll pass the
16 witness.

17 THE COURT: You all approach.

18 (At the Bench, off the record.)

19 THE COURT: Ladies and Gentlemen, because
20 of scheduling we need to try to finish with this witness
21 today. I'm going to give you all a little break though,
22 about a ten-minute break. Do not discuss this matter or
23 allow anyone to talk to you about it. We'll see you
24 back in about ten minutes, and we'll try to finish up
25 with this witness.

1 (The jury retired from the courtroom.

2 (A recess was taken from 5:08 PM

3 to 5:22 PM.)

4 (Open court, Defendant and jury present.)

5 THE COURT: All right. Ladies and

6 Gentlemen, bear with us just a little longer.

7 Mr. Megaro, your witness.

8 MR. MEGARO: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY THE COURT:

11 Q. Good afternoon, doctor. How many times have
12 you testified as a witness in a criminal case?

13 A. I've testified probably ten to 15 times total.
14 Some of those were CPS cases.

15 Q. And were all the times that you were called to
16 testify as a witness for the prosecution?

17 A. No.

18 Q. You've testified for the Defense?

19 A. Yes.

20 Q. And when you testified for the Defense, you
21 were hired as an expert?

22 A. No. I've never been hired.

23 Q. You've never received anything in consideration
24 for your testimony?

25 A. No.

1 Q. Now you testified earlier that you did not go
2 forward with a fellowship?

3 A. Correct.

4 Q. Okay, and what was that fellowship for?

5 A. I -- I had never planned to do a fellowship.

6 Is that what -- I'm sorry. You're saying which --

7 Q. Is there a fellowship in advanced pediatrics?

8 A. There's lots of fellowships for pediatrics. I
9 did general pediatrics, but there's a lot of different
10 fellowships.

11 Q. And you did not attend any of those?

12 A. No.

13 Q. Why not?

14 A. I just wanted to focus on general pediatrics.
15 There's NICU and endocrinology, and there's a lot of
16 different subspecialties.

17 Q. Is there a fellowship for, I guess, forensic
18 pediatrics?

19 A. Yes. There's a child abuse fellowship for
20 that, as well.

21 Q. Yes, and you did not attend that one?

22 A. No.

23 Q. When a patient is referred to you, most of the
24 time there's already been some sort of preliminary
25 determination of suspected child abuse, correct?

1 A. There hasn't been a determination, but, yes,
2 usually someone is suspicious of something, uh-huh.

3 Q. Okay, and that -- the person who's suspicious
4 can be CPS, Child Protective Services?

5 A. Yes.

6 Q. It could be other doctors, as well?

7 A. Yes.

8 Q. And when a patient -- and we're talking about
9 "patients," we're talking about young children, correct?

10 A. Correct, under 18, yes.

11 Q. And when children are referred to you, it's for
12 the reason that there is suspected abuse, correct?

13 A. Yes, there's concern.

14 Q. Now you said that one of the things that you do
15 when you examine a case is you speak with other
16 physicians, correct?

17 A. Yes, the other treating physicians.

18 Q. And you review medical records that have been
19 obtained up to that point, correct?

20 A. Yes.

21 Q. And you said that you spoke with the caregivers
22 and the parents of the child, correct?

23 A. Yes, the parents, uh-huh.

24 Q. What about primary caregivers?

25 A. Physicians, their primary caregiver?

1 Q. The babysitter, if both parents work during the
2 day and the child is with a -- with a baby sitter during
3 the day, is that a person who you speak with, also?

4 A. No. I -- I speak with whoever is accompanying
5 them in this hospital when I examine them, and if
6 there's not anyone there, I'll try to go back and talk
7 with them, that is, the parents.

8 Q. But in this case you spoke with Mr. Ortiz and
9 the child's mother, Taylor Garcia, on August 28th,
10 of 2012, correct?

11 A. Yes, sir.

12 Q. And that was at the hospital?

13 A. Yes.

14 Q. And when you spoke to Mr. Ortiz and Ms. Garcia,
15 they were together, correct?

16 A. Yes.

17 Q. The child was already in treatment?

18 A. Yes.

19 Q. It was your understanding that Child Protective
20 Services had already been involved in the matter,
21 correct?

22 A. Yes.

23 Q. Had you spoken with Child Protectives Services
24 up until that point?

25 A. Before I spoke with them?

1 Q. Yes.

2 A. No, I don't believe so.

3 Q. Had you reviewed any reports from Child
4 Protective Services before you spoke to Mr. Ortiz?

5 A. No.

6 Q. Did you subsequently review any reports?

7 A. Of their reports? No, I haven't seen any of
8 their reports.

9 Q. And when you took a history from the
10 parents, that's basically, I assume, what happened,
11 correct?

12 A. Yes, and then just a history of their child.

13 Q. One of the things that you learned was that the
14 child had been born with a broken clavicle, correct?

15 A. Yes.

16 Q. And the clavicle is the collarbone?

17 A. Yes.

18 Q. Do you know how that happened?

19 A. I would assume during the birth process. It
20 may have been a difficult delivery.

21 Q. Okay, and that was a potential cause of the
22 child's injury --

23 A. I believe so.

24 Q. -- to the clavicle?

25 A. Yes.

1 Q. And the clavicle injury, the broken bone, is
2 something that you saw on the x-rays on August 28th,
3 of 2012, correct?

4 A. Yes.

5 Q. It was still in the healing process?

6 A. Yes.

7 Q. And at that point the child was approximately
8 two-and-a-half months old?

9 A. Yes.

10 Q. And you said earlier that the other injuries
11 that were old injuries, not the acute injuries, you
12 could not determine which dates -- when those injuries
13 had occurred, correct?

14 A. Correct.

15 Q. And you did say it was possible that all of
16 those injuries could have occurred on the same date?

17 A. All of the healing? Not all of the fractures,
18 but -- but the healing fractures, it's possible. I
19 can't pinpoint the dates for those.

20 Q. Okay, and you couldn't say that all of those
21 healing fractures occurred during the birth either,
22 correct?

23 A. I'm sorry. Say that one more time?

24 Q. Is it possible that all of those healing
25 fractures that you saw on August 28th could have

1 occurred at or near the same time as the clavicle
2 injury?

3 A. I do not believe that they happened at birth,
4 no.

5 Q. Is it possible?

6 A. These aren't the kind of fractures that we see
7 from birth injuries.

8 Q. My question is, "Is it possible?"

9 A. In my opinion, no.

10 Q. Now in this particular case you cannot say how
11 those injuries occurred, correct?

12 A. The exact mechanism, no.

13 Q. And you could not even pinpoint a specific date
14 for each injury that was shown up?

15 A. No, just a time period.

16 Q. And what was that time period?

17 A. The more acute fractures that did not have
18 healing I would say would be less than ten to 14 days.

19 Q. And the healing fractures, what's the time
20 period for that?

21 A. More than 14 days.

22 Q. So anything up until and including the birth of
23 the child, actually?

24 A. Yes, as the left clavicle is.

25 Q. Yes. Is it possible the child could have

1 suffered broken bones in utero in the womb?

2 A. It's possible in children that have bone
3 problems like the brittle bone disease that she was
4 talking about. They can have fractures in utero.

5 Q. Now you said in this case the child was tested
6 for osteogenesis imperfecta, correct?

7 A. Yes, sir.

8 Q. Is it true that that's not the only bone
9 disorder that gives children or people brittle bones,
10 correct?

11 A. Yes. There -- there are other conditions,
12 rickets, those type of things.

13 Q. Okay, and rickets is a vitamin D disorder,
14 correct?

15 A. Yes.

16 Q. That causes bones to become fragile?

17 A. Yes, and they can fracture more easily.

18 Q. Osteoporosis is also another condition that
19 causes bones to become fragile?

20 A. Yes. In older people is when we frequently see
21 that.

22 Q. Also, a condition known as scurvy?

23 A. Yes.

24 Q. It's a vitamin C deficiency?

25 A. Correct.

1 Q. That also causes bones to become fragile?

2 A. It can, yes.

3 Q. Are you familiar with something called Barlow's
4 disease -- B-A-R-L-O-W?

5 A. Yes.

6 Q. That -- that's also -- I have to spell it for
7 the court reporter. Sorry.

8 A. Sure.

9 Q. Is that also a condition that's been known to
10 cause bone fragility?

11 A. I would have to go back and review that
12 condition. I know that I've heard -- am familiar with
13 it, but I don't know all the details, and that may be
14 true.

15 Q. Isn't another term for Barlow's disease
16 "infantile scurvy"?

17 A. It may be.

18 Q. Are you familiar with the condition called
19 "osteopenia of prematurity" -- O-S-T-E-O-P-E-N-I-A?

20 A. Yes.

21 Q. And what is osteopenia of immaturity -- of
22 prematurity? Sorry.

23 A. Sometimes premature babies can have bones that
24 are more likely to fracture, as well.

25 Q. And in this particular case the history that

1 you received from the parents included that the child
2 was born premature?

3 A. Let me -- I'll have to go back and look. I
4 don't recall the baby being premature. I'm sorry. Give
5 me one second.

6 Q. Sure.

7 A. No, not premature, 38-and-two-sevenths weeks
8 which is full-term.

9 Q. Now are there other medical conditions that
10 also increase bone fragility?

11 A. Yes. I'm sure there are, but those are
12 the major ones we think of, especially in this age
13 group. We think of -- osteogenesis imperfecta and
14 rickets are the most common, especially with
15 prematurity.

16 Q. So other conditions that would cause
17 bone fragility would be various liver dysfunctions,
18 correct?

19 A. They could.

20 Q. What about thyroid dysfunctions, have they been
21 known to also increase bone fragility?

22 A. I'm sure they have.

23 Q. Something called "Crohn's disease" --
24 C-R-O-H-N-S?

25 A. Crohn's disease is usually an abnormality of

1 the intestines, but with that you could have a change in
2 the absorption of vitamins and minerals, so I would
3 think, yes, you could potentially have problems with
4 your bones.

5 Q. Are you familiar with something called
6 "Cole-Carpenter syndrome" -- K-O-L-E -- dash --
7 Carpenter?

8 A. No.

9 Q. Are you familiar with something called
10 "Bruck syndrome"?

11 A. No.

12 Q. Are you familiar with cerebral palsy?

13 A. Yes.

14 Q. Okay. That's also a known cause of bone
15 fragility?

16 A. Yes. Those children can have complications
17 related, yes, because they're non-weight-bearing, and
18 that makes them more at risk.

19 Q. Was this child, M [REDACTED], tested for rickets?

20 A. He had multiple x-rays done which I
21 discussed with radiology, and he had no evidence of
22 any sort of -- the mineralization of his bones
23 were normal. He did have vitamine D levels drawn, as
24 well.

25 Q. Was he specifically tested for rickets?

1 A. That's -- that's a clinical diagnosis based on
2 vitamine D levels and the appearance of the bones on
3 x-ray.

4 Q. Was he specifically tested for osteoporosis?

5 A. I've never tested a child for osteoporosis.
6 Again, it would look different on x-ray. His bones
7 would not have this appearance if he had osteoporosis.

8 Q. Was he specifically tested for scurvy?

9 A. I do not believe vitamin C levels were drawn,
10 no, but those children also have other things, bleeding,
11 which he did not have.

12 Q. Was this child also tested for osteopenia of
13 prematurity?

14 A. That would be the same things we do with the
15 vitamin D level, looking at the bones on x-rays, and we
16 did those things.

17 Q. What about liver dysfunction, was he tested for
18 any liver disorders?

19 A. Yes. We did a -- and I'll have to go back
20 and review, but we did a complete metabolic panel
21 initially, and the liver enzymes were within normal
22 limits, yes.

23 Q. And what about thyroid dysfunction?

24 A. Again, I don't believe he was tested for
25 thyroid disorders. Children that have hypothyroidism at

1 birth often have other findings as well, which he did
2 not have.

3 Q. And when you spoke with both parents on
4 August 28, 2012, what time was it?

5 A. I can't recall what time.

6 Q. Was it in the daytime or at night?

7 A. Daytime.

8 Q. Morning or afternoon?

9 A. I can't recall.

10 Q. Do you know if a -- an interpreter was
11 available at the hospital when you spoke to them?

12 A. Yes. We have interpreters during the daytime.

13 Q. And there was one there that day?

14 A. I didn't find a need of it. I didn't have any
15 communication problems.

16 Q. And when you spoke to Mr. Ortiz, he was with
17 Taylor Garcia, correct --

18 A. Yes.

19 Q. -- the mother?

20 A. Yes.

21 Q. And she spoke perfect English?

22 A. I did not feel like there was any communication
23 barrier with them.

24 Q. With her? I'm asking with her.

25 A. Most of the -- to be honest, most of the

1 history I got was from Dad because he was the one in
2 the room.

3 Q. And the history included that he had dropped
4 the child out of a car seat the night before, correct?

5 A. He had said that they had gotten home from a
6 movie, I believe, and M[REDACTED]'s mom was in the bedroom,
7 and he went to pick him up out of the car seat, and he
8 slipped and caught him by his arm and then put him in a
9 pack-and-play, I believe, is what --

10 Q. And the history that Mr. Ortiz also provided
11 was that he got concerned after a while when the child's
12 arm looked abnormal, correct?

13 A. Correct. He had told me the baby did not cry
14 after catching him and then put him in the pack-and-play
15 and then felt like it looked abnormal, and he wasn't
16 using it like he had expected he should.

17 Q. And that's when Mr. Ortiz made the decision to
18 bring the baby to the hospital, correct?

19 A. That was my understanding, yes. I believe he
20 told his -- M[REDACTED]'s mom, and then they came in, too.

21 Q. And they all -- all three of them came in
22 together, correct?

23 A. Yes.

24 Q. And they first went to Hillcrest. Is that
25 correct?

1 A. Yes.

2 Q. From Hillcrest they were referred to you?

3 A. Yes, to the Children's Hospital.

4 Q. And did they go by ambulance or by car to the
5 Children's Hospital?

6 A. I don't know.

7 Q. But is it fair to say that all three of them
8 did arrive at the Children's Hospital, correct?

9 A. Yes.

10 Q. At no point in time did Mr. Ortiz leave the
11 hospital, correct?

12 A. No, not that I'm aware of.

13 Q. And when you spoke to him, he wanted to know
14 how his son was doing, correct?

15 A. Yes.

16 Q. Now at that point in time you asked him how the
17 child's arm had gotten injured?

18 A. Yes.

19 Q. Did you ask him any questions about any other
20 injuries?

21 A. Yes.

22 Q. And his response was?

23 A. They told me that there was an injury at birth
24 of the left shoulder, and I asked if there was any other
25 history of trauma, and they said "no."

1 Q. When you say "they," you're speaking --

2 A. Yes.

3 Q. -- him and Taylor Garcia together, correct?

4 A. Yes.

5 Q. Neither one of them told you that the child
6 had -- that they had abused the child, correct?

7 A. Correct.

8 Q. And did you confront them with the
9 additional injuries, the healing injuries that you
10 described?

11 A. I did tell them there were multiple fractures
12 there, and that we were concerned about those.

13 Q. And what was their response?

14 A. They seemed worried about their child.

15 Q. Okay. Well, both seemed worried about the
16 child?

17 A. Yes.

18 Q. At any point in time did you see Taylor Garcia
19 translating for Mr. Ortiz, speaking to him in Spanish?

20 A. Not that I recall.

21 Q. Did there come a point in time where you told
22 Mr. Ortiz and Ms. Garcia that no abuse had been found on
23 the part of the parents?

24 A. No.

25 Q. Did you ever mention that abuse had been found

1 on the part of the parents?

2 A. I can't remember the exact words I used with
3 them, but as I do in the cases that I see I would
4 tell -- I'm very upfront with the injuries that we see
5 and the concerns that we have.

6 Q. After you told them that, did either one of
7 them get belligerent?

8 A. No, not with me.

9 Q. Did they argue with you?

10 A. No.

11 Q. Did they accuse you of lying or anything like
12 that?

13 A. No.

14 Q. And did either one of them attempt to leave the
15 hospital after you confronted them with the additional
16 injuries?

17 A. Not in my presence.

18 Q. You treated the child for follow-up care. Is
19 that correct?

20 A. Uh-huh.

21 Q. You have to say "yes" or "no" so the court
22 reporter can --

23 A. Yes.

24 Q. And when you treated the child for follow-up
25 here, you mentioned that the foster mother brought the

1 child in?

2 A. Yes.

3 Q. And at that point it was your understanding
4 that the child had been removed from both parents,
5 correct --

6 A. Yes.

7 Q. -- and was with a completely different person?

8 A. Yes.

9 Q. Do you know who the foster mother was?

10 A. Yes. Give me one second, Stacy Taquato.

11 Q. Did she have any blood relation to the mother
12 or father?

13 A. Not that I'm aware of.

14 Q. When was the last time that you saw
15 M [REDACTED] Ortiz?

16 A. I believe it was on September 25, 2012.

17 Q. Okay. You have not seen him since?

18 A. No.

19 Q. Is it fair to say you have no idea what his
20 medical history since September 2012 is?

21 A. Correct.

22 Q. Now, doctor, you've given an opinion to this
23 jury that the injuries that were caused here were caused
24 by child abuse, correct?

25 A. Yes. I feel they were consistent with that.

1 Q. And you would agree with me that your
2 diagnosis is only as good as the information it's
3 based on, correct?

4 A. Correct.

5 Q. Now, hypothetically, for the purpose of
6 this question, assume that all the information that
7 you received was wrong and that your conclusions are
8 wrong. What would you have done differently to
9 arrive at a conclusion knowing that everything was
10 wrong?

11 A. I'm not sure I understand. That there weren't
12 any fractures and that that was wrong?

13 Q. Let's just say that the history that was given
14 to you by CPS, by the parents --

15 MS. LABORDE: Your Honor, I'm going to
16 object. There's been no evidence that there was a
17 history provided by CPS. She didn't say that was
18 something she relied upon.

19 THE COURT: Sustained.

20 Q. (BY MR. MEGARO) Let's just say that the
21 history that was given to you by the parents was
22 incorrect. What would you have done differently to
23 arrive at a conclusion whether or not child abuse has
24 occurred?

25 A. I'm not sure that I would do anything

1 differently. I feel like I get the history and then do
2 the complete workup regardless of what I'm told.

3 MR. MEGARO: Nothing further. Thank you.

4 THE COURT: Redirect?

5 MS. LABORDE: Yes.

6 REDIRECT EXAMINATION

7 BY MS. LABORDE:

8 Q. I mean you did read these x-rays with other
9 physicians. Is that correct --

10 A. Yes --

11 Q. -- and radiology?

12 A. -- multiple times. I spent a lot of time with
13 the pediatric radiology team who are special -- have
14 special training, not just in reading x-rays but in
15 reading children's x-rays.

16 Q. And -- and you would agree with me how my
17 machine can show these x-rays and how the radiologist's
18 computer shows x-rays, there's a lot more detail that
19 they can see down there than we can see. Is that
20 correct?

21 A. Right. I think they're difficult to see on
22 this screen for me.

23 Q. But the resolution that --

24 A. What you all have is -- is completely
25 different.

1 Q. So what you're here to testify to is what you
2 have seen in very high-definition equipment with other
3 experts who are trained in how to find fractures for
4 child abuse victims. Is that correct?

5 A. Correct.

6 Q. And the Defense attorney said, "What if all the
7 history you got was incorrect?" I mean do you believe
8 any of the history you got was correct?

9 A. I haven't heard enough history to explain all
10 the injuries, so no.

11 Q. So I mean assuming that one parent wasn't there
12 when any of the injuries occurred and the Defendant was,
13 would it be your opinion that based on the injuries, his
14 story of what occurred on one time cannot be true
15 because it can't explain all the injuries?

16 A. Correct. It would not explain all the injuries
17 he has.

18 Q. And you don't know what this Defendant told the
19 police later?

20 A. No. I -- I didn't -- I've been told that --
21 that he gave a history --

22 MR. MEGARO: Objection, Your Honor.

23 MS. LABORDE: And let me -- let me
24 rephrase --

25 THE COURT: Sustained.

1 MS. LABORDE: -- my question.

2 Q. (BY MS. LABORDE) I'm not asking you to tell me
3 what I told you or what the police have told you, but
4 you -- you weren't part of that process; you didn't
5 interrogate this Defendant; that's not your role?

6 A. No, and I'm often there long before they are.
7 I -- I see them. Then there's concerns. Then CPS and
8 law enforcement are involved. It's a separate kind of
9 system.

10 Q. If -- if, hypothetically, someone were to have
11 been exercising this child like moving his legs and
12 moving his arms and kind of making sure that everything
13 is working, is that even possible to cause these kinds
14 of injuries?

15 A. I would not see how that would cause that.
16 Normal newborn care should not cause these fractures.

17 Q. And when I say, "You talked to the Defendant,"
18 or "You talked to the dad," can you point out for me the
19 person that you spoke with at McLane Children's Hospital
20 and told you he -- he grabbed his child from one arm?

21 A. Mr. Ortiz.

22 MS. LABORDE: Your Honor, may the record
23 reflect she's identified the Defendant?

24 THE COURT: So noted.

25 MS. LABORDE: I'll pass the witness.

RECROSS-EXAMINATION

1
2 BY MR. MEGARO:

3 Q. Doctor, you just said that Mr. Ortiz's
4 explanations were insufficient to explain the injuries,
5 correct?

6 A. All the injuries, yes.

7 Q. And if he actually didn't cause those injuries,
8 would -- his explanation that, "I don't know how these
9 injuries occurred," would that be consistent?

10 A. I'm not sure I understand. If he -- if he
11 didn't cause them and he didn't know how, I mean, yes.

12 Q. That would be logical?

13 A. Yes.

14 MR. MEGARO: Okay, thank you. Nothing
15 further.

16 MS. LABORDE: I have nothing further.

17 THE COURT: All right. Doctor, you may
18 step down. Free to go? Any objection if she's released
19 from the subpoena?

20 MR. MEGARO: No.

21 MS. LABORDE: We'd ask that she be excused.

22 THE COURT: Okay. You're free to go,
23 doctor, and, Ladies and Gentlemen, so are you, but
24 remember the Court's instructions. Do not discuss this
25 matter at all with anyone or allow anyone to discuss it

1 with you. Avoid all media coverage. There was a
2 newspaper reporter in here for a while and maybe a TV
3 reporter, so if you see anything in any form of the
4 press that looks like it refers to this case, don't
5 listen to it, watch it or allow anyone to talk to you
6 about it. We'll see you in the morning at 8:30. Enjoy
7 your evening.

8 (The proceeding was recessed.)

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1 THE STATE OF TEXAS §

2 COUNTY OF McLENNAN §

3

4 I, Theresa J. Popejoy, Deputy Court Reporter in and
5 for the 19th Judicial Court of McLennan County, Texas,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 by Defendant to be included in this Reporter's Record,
10 in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported
12 by me.

9 I further certify that this Reporter's Record of
10 the proceedings truly and correctly reflects the
11 exhibits, if any, admitted by the respective parties.

11 WITNESS MY OFFICIAL HAND this the 26th day of
12 February, 2015.

13

14 /s/Theresa J. Popejoy
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REPORTER'S RECORD
Volume 3 of 7

COURT OF APPEALS NO. 07-15-00007-CP FILED IN
 TRIAL NO. 2012-2235-C1 7th COURT OF APPEALS
 AMARILLO, TEXAS

THE STATE OF TEXAS

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IN THE DISTRICT COURT
 VIVIAN LONG
 CLERK
 19TH JUDICIAL DISTRICT

JUAN FRANCISCO
 MEDINA ORTIZ

McLENNAN COUNTY, TEXAS

TRIAL ON THE MERITS

GUILT/INNOCENCE PHASE

November 19, 2014

On the 19th day of November, 2014, the
 following proceedings came on to be heard in the
 above-entitled and numbered cause before the
 Honorable Ralph T. Strother, Judge presiding, held in
 Waco, McLennan County, Texas:

Proceedings reported by Computerized Machine
 Shorthand Method.

Volume 3 of 7

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1 (Open court, Defendant present, no jury.)

2 THE COURT: All right. Let's bring in the
3 jury. Are you the next witness, ma'am?

4 THE WITNESS: Yes.

5 THE COURT: Come on up and let me get you
6 sworn in here.

7 (The witness was sworn.)

8 THE COURT: Just print your name on the
9 clipboard there.

10 THE WITNESS: (Complies with request.)

11 (The jury was seated in the jury box.)

12 THE COURT: All right. Good morning,
13 Ladies and Gentlemen. This witness has already been
14 sworn in. The State may proceed.

15 MR. RAMSAY: Thank you, Your Honor.

16 CARMEN GATTIS, LMSW,
17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. RAMSAY:

20 Q. Good morning, Ms. Gattis.

21 A. Good morning.

22 Q. Now we've had a chance to meet, but could you
23 turn and introduce yourself to the jury, please.

24 A. Certainly. My name is Carmen Gattis.

25 Q. Okay. Carmen, what do you do for a living?

1 A. I am a social worker.

2 Q. All right. Let's go back a little bit and talk
3 about your education. Where -- where are you originally
4 from?

5 A. I'm from Kansas.

6 Q. All right, and --

7 THE COURT: Ma'am, if you'll raise that
8 microphone up, and be sure and speak into it.

9 THE WITNESS: Sure.

10 Q. (BY MR. RAMSAY) Where did you go to school?

11 A. University of Kansas.

12 Q. All right, and what did you get a degree in?

13 A. Master's of Social Work.

14 Q. And so you got that from Kansas, as well?

15 A. Uh-huh. Well, my under-grad was Tabor College.

16 Q. Okay, and then when did you come to Texas?

17 THE REPORTER: Wait. What did you say?
18 What college?

19 THE WITNESS: Tabor -- T-O -- T-A-B-O-R.

20 THE REPORTER: Thank you.

21 Q. (BY MR. RAMSAY) And when did you come to
22 Texas?

23 A. In 2010.

24 Q. And what brought you here?

25 A. Employment.

1 Q. And where were you employed?

2 A. Originally, at Lutheran Social Services.

3 Q. And how long were you there?

4 A. Nine months.

5 Q. And after that where were you employed next?

6 A. McLane Children's Hospital.

7 Q. So let's get a little bit of an understanding
8 of what is a -- I guess your initials are LMSW?

9 A. Uh-huh.

10 Q. What does that stand for?

11 A. Licensed Master Social Worker.

12 Q. And what are your job duties?

13 A. I was an inpatient social worker at
14 McLane Children's, and we were there for support
15 services for the patients and families to provide
16 resource referrals in the community, to provide
17 education, to advocate for the patient, to provide
18 assessments for mental health and nonaccidental trauma
19 situations.

20 Q. And "nonaccidental trauma," by that you mean
21 abuse, correct?

22 A. Yes, sir.

23 Q. Now did you have a particular area that you
24 focused on at McLane's.

25 A. I was general med-surg, so I saw all of it, and

1 I didn't have a particular area.

2 Q. And what does that -- "general med-surg," what
3 does that mean?

4 A. It just means that the patients that I see are
5 there for general medical issues and then surgical, as
6 well.

7 Q. McLane's, is that primarily a children's --

8 A. Yes.

9 Q. -- hospital? Now when you -- what is your
10 process? When somebody comes into the hospital, what is
11 the first thing that you do?

12 A. If -- we can see a patient whether we're
13 consulted or not consulted, so if we determine that they
14 might need some sort of resource assistance or support,
15 we might meet with a family, introduce ourselves and
16 sort of get a background on why the patient is there
17 and maybe what sorts of resources could be necessary
18 for that child. If we're consulted -- I mean --
19 sorry. If we're consulted, I mean sort of the same
20 thing, but we would have more of a specific purpose for
21 going in.

22 Q. All right. Can you give an example of like
23 resources, like car seats or -- or what do you mean by
24 that?

25 A. Sure, car seats, WIC, food stamps, insurance.

1 If they have a specific medical condition that might
2 need some sort of durable medical equipment or financial
3 issues, anything that maybe the family is lacking that
4 we can connect them with.

5 Q. Okay, so you have -- you have connections and
6 you kind of know where to go to get these --

7 A. Certainly.

8 Q. -- things for the family?

9 A. Right, and the family may not know, so we can
10 connect them.

11 Q. All right. Now as you go into a consult, what
12 are you -- what are the different parts of the
13 consultation that you're going to -- going to hit on
14 with the family?

15 A. Probably just background information on the
16 family. It probably depends on what we're there for,
17 too, but so it may be as minimal as background
18 information, what the child is there for; are the basic
19 needs met. If we're there for a consult, that may need
20 a little more information. We're going to look at
21 background history on the family of the child, the
22 social history, mental health. We're going to go in
23 more depth, basically.

24 Q. Okay, and so approximately how many consults
25 have you done in your time at McLane's?

1 A. Specific to nonaccidental trauma, child abuse
2 or --

3 Q. Yes.

4 A. Okay. Specific to that, I would say 50 or
5 more.

6 Q. All right. Now what about total?

7 A. A lot.

8 Q. More than you can --

9 A. Two hundred-plus, yeah.

10 Q. And, quickly, are you still at McLane's?

11 A. I am not.

12 Q. Where are you now?

13 A. I'm at the Dell Children's Blood and Cancer
14 Center.

15 Q. And where is that located?

16 A. In Austin.

17 Q. And how long have you been there?

18 A. I've been there for a year.

19 Q. All right, so let's go back. I want to
20 specifically take you to the end of August, in 2012.
21 Were you at McLane's at that point?

22 A. Yes.

23 Q. And did you have a chance to do a
24 psychological -- a psychosocial assessment on the Ortiz
25 family?

1 A. Yes, sir.

2 Q. And so going in, what kind of consult is this?
3 Is this just a general one like you talked about before,
4 or is this more of a -- a focused one?

5 A. No. This would be we were consulted by the
6 medical team for a concern that the injury was
7 nonaccidental.

8 Q. And so going into that you look at it different
9 than you would just a -- a general --

10 A. Right. You look at it differently because
11 you're going to be asking probably a few more questions,
12 more specific questions, yes.

13 Q. All right, so going in what was your first
14 thing that you wanted to address with the parents?

15 A. I mean we always introduce ourselves and why
16 we're there and what our role is, and then we just
17 want to address the -- why the child is in the
18 hospital so regarding the hospitalization, what led up
19 to that.

20 Q. And so to give some framework to the jury, when
21 you're having these conversations, is it one-on-one, or
22 is it with both parents? How does that work?

23 A. No. We prefer to do it separately. We have a
24 consult room that we use on the floor.

25 Q. And did you meet with both Ms. Garcia and the

1 Defendant in this case?

2 A. Right. I would have met with them initially
3 together and then asked to speak with them separately.

4 Q. And do you speak Spanish?

5 A. I do not.

6 Q. Were you able to communicate with Ms. Garcia in
7 English?

8 A. Yes.

9 Q. What about with Mr. Ortiz?

10 A. Yes, and I believe that I asked him if he
11 preferred Spanish or English.

12 Q. And what did he say?

13 A. He said "English."

14 Q. And so is that something you would have
15 documented in your report?

16 A. Yes, sir.

17 Q. And if he would have said "Spanish," do you
18 have resources that allow you to have an
19 interpreter present --

20 A. Yes, we have interpreters via the telephone,
21 but we have interpreters, yes.

22 Q. Is that something you were accustomed to doing
23 on a regular basis?

24 A. All the time.

25 Q. And if you had any concerns whether or not he

1 didn't understand you, would you have insisted on an
2 interpreter?

3 A. Yes.

4 Q. Was his English pretty good?

5 A. As far as I remember, yes.

6 Q. All right, so as you -- to bring it back, what
7 are you -- individually, when you asked him about the
8 history, what does the Defendant say the history is of
9 this child?

10 A. Just that regarding the specific injury that
11 they came to the hospital for that. The baby fell out
12 of the car seat, and when -- when the father went to
13 grab him and grabbed him, I guess, sort of around his
14 elbow but kept him from falling.

15 Q. And that's what presented -- that -- that's
16 what the patient presented with --

17 A. Presented --

18 Q. -- at the hospital?

19 A. Yes.

20 Q. Did he have any explanation for any of the
21 other injuries --

22 A. No.

23 Q. -- and by "he," the Defendant? Now as you're
24 talking to him, what is his demeanor like?

25 A. I believe that it was initially -- I felt that

1 he was nervous, but he settled in as the conversation
2 went on.

3 Q. And I mean in these types of cases is it normal
4 for people to be nervous when they speak to you?

5 A. Yes, initially, sure.

6 Q. And as he settled in, did he act like a normal
7 parent would act?

8 A. Yeah.

9 Q. Now you said you've done approximately 50-plus
10 consults regarding nonaccidental trauma before. Is it
11 common for parents to act as normal as possible during
12 these?

13 A. Yes. Since we're the first person that talks
14 with them, it's -- and we're more of a support role.
15 They haven't had ongoing conversations.

16 Q. So your -- your job is not to come in an
17 interrogate?

18 A. No.

19 Q. Your -- your job is -- is really focusing on
20 the patient?

21 A. Right, and to help find out what happened.

22 Q. In your 50-plus consultations, have you ever
23 had anybody confess to you?

24 A. No.

25 Q. And those are all nonaccidental trauma cases?

1 A. Correct.

2 Q. And so it's -- it's fair to say that a person
3 that meets with you as the first person they meet with
4 probably knows they need to have their game face on. Is
5 that correct?

6 MR. MEGARO: Your Honor, objection.

7 THE WITNESS: Yeah.

8 THE COURT: Specifically what objection?

9 MR. MEGARO: Objection to "game face."
10 She's being asked to give an opinion as to other
11 individuals and having a game face on.

12 MR. RAMSAY: Judge, I believe the
13 "game face" is contextual, and the jury can understand
14 or not. If he wants to question her about that, he can
15 as far as --

16 THE COURT: Overruled.

17 Q. (BY MR. RAMSAY) Okay, so it's fair to say that
18 he -- he acted like a normal parent that you see in
19 these type of situations?

20 A. Yes.

21 Q. But that's not out of the normal?

22 A. Right. No, I try to -- we try to be a
23 supportive role initially, so, like you said, we're not
24 interrogating.

25 Q. Okay. Throughout this time then, did you meet

1 with -- who -- who did you meet with first, the mother
2 or the father?

3 A. I don't know that I specifically put that in my
4 notes. I tend to meet with the mother first, though.

5 Q. And is there any reason for that?

6 A. No.

7 Q. So as you finish up these consultations -- I'm
8 looking at your report here -- do you make these reports
9 soon thereafter?

10 A. Yes, the same day.

11 Q. "The same day," and after you make your report,
12 what is your next step?

13 A. To call CPS if there's the suspect of child
14 abuse.

15 Q. Okay, so are you the initial contact in this
16 case with CPS?

17 A. Yes, in all cases.

18 Q. "In all cases"?

19 A. Uh-huh.

20 Q. So Dr. Ward doesn't necessarily --

21 A. Uh-huh.

22 Q. And you know Dr. Ward?

23 A. Yes.

24 Q. Dr. Ward refers a patient to you or the family
25 to you?

1 A. Uh-huh.

2 Q. And then you would refer the -- then you would
3 call CPS?

4 A. We would make the phone call, yes.

5 Q. And -- and this case, after the consultation,
6 you believed that it was appropriate to call CPS?

7 A. Yes, and it's not just my opinion. It's the
8 opinion of all staff that are involved.

9 Q. Okay, so you consult with everybody --

10 A. Yes.

11 Q. -- who was involved?

12 A. Dr. Ward, the -- the primary team, and any
13 other medical teams involved.

14 Q. Okay, so after you put together this report, do
15 you send it to CPS, as well?

16 A. Yes. When they arrive for their portion, we
17 provide it to them, along with medical records.

18 Q. Okay, so you would have called CPS, and they
19 would have come to the hospital?

20 A. Uh-huh.

21 Q. And they would have then gotten the medical
22 records and your report --

23 A. Yes.

24 Q. -- all at the same time?

25 A. Uh-huh.

1 Q. So you actually -- in your report you document
2 who you gave it to with the CPS worker?

3 A. Uh-huh. It would have been the investigator.

4 Q. In this case it would be Alicia McGowan,
5 correct?

6 A. Uh-huh, yes.

7 Q. And that would have been the following morning
8 of August 29th?

9 A. Right.

10 MR. RAMSAY: Judge, may I approach?

11 THE COURT: Of course.

12 THE WITNESS: I have my report, if you
13 need --

14 Q. (BY MR. RAMSAY) You have your report?

15 A. Yes.

16 Q. Okay. If you'd turn to the last page, right --
17 I believe the last sentence before the "Assessment"
18 paragraph --

19 A. Uh-huh.

20 Q. -- and in that you specifically state that
21 the -- that he -- the Defendant said he preferred
22 English rather than Spanish, correct?

23 A. Correct.

24 Q. And so that's even -- I mean that's --
25 that's something you found significant enough to put

1 in your report?

2 A. Right.

3 Q. So that in the future none of that would have
4 been an issue?

5 A. Right.

6 Q. Okay. Do you see the person that you
7 interviewed as involving this case in the courtroom
8 today?

9 A. Yes.

10 Q. And can you identify him by an article of
11 clothing he's wearing?

12 A. A black shirt.

13 MR. RAMSAY: Your Honor, may the
14 record reflect the Defendant has been identified in
15 open court?

16 THE COURT: It shall do so.

17 MR. RAMSAY: Your Honor, we'll pass the
18 witness.

19 CROSS-EXAMINATION

20 BY MR. MEGARO:

21 Q. Good morning. Ms. Gattis, right?

22 A. Yes.

23 Q. How are you?

24 A. Good.

25 Q. One of the first things that you do is take

1 a psychosocial history of both parents at the hospital,
2 correct?

3 A. Correct.

4 Q. And that includes whether the parties are
5 married to each other?

6 A. Right.

7 Q. Whether they live together?

8 A. Yes.

9 Q. Whether they're employed?

10 A. Yes.

11 Q. And whether -- and what types of job they do?

12 A. Yes.

13 Q. And how many hours a day they work?

14 A. Uh-huh.

15 Q. You have to say "yes" so the court reporter
16 can --

17 A. Yes.

18 Q. And in this case you did do all those things
19 with Mr. Ortiz and Ms. Garcia, correct?

20 A. I did.

21 Q. And you learned during your psychosocial
22 interview that Mr. Ortiz worked two jobs, correct?

23 A. Yes.

24 Q. And he was working approximately 14 to 15 hours
25 per day?

1 A. I'd have to look back at my notes. Do you want
2 me to do that?

3 Q. Please take a look --

4 A. Yes.

5 Q. -- and just let -- let us know what you're
6 referring to.

7 A. I'm referring to my psychosocial assessment,
8 the -- the document that I typed up after the interview.
9 I don't see it in there that I put how many hours he's
10 working.

11 Q. Did you put in -- did you -- well, not what's
12 in your report, but do you remember him telling you that
13 he worked approximately 14 to 15 hours per day?

14 A. I don't remember that.

15 Q. Do you remember him telling you how many days a
16 week he worked?

17 A. No.

18 Q. Did you note that in your report?

19 A. I don't know that -- I did not.

20 Q. Did you ask Taylor Garcia how many days a week
21 she worked?

22 MR. RAMSAY: Judge, I would object to
23 hearsay for any statements made by Taylor Garcia.

24 THE COURT: Sustained.

25 Q. (BY MR. MEGARO) Without you telling us what

1 was said, did you take a work history from
2 Taylor Garcia, as well?

3 A. Yes. I would have asked where she worked.

4 Q. And during the course of your interview with
5 Mr. -- Mr. Ortiz and Ms. Garcia, it came to your
6 attention that Ms. Garcia was with the child a lot more
7 than Mr. Ortiz, correct?

8 A. I didn't -- I didn't put that specifically in
9 my notes, so I don't know that I can state "yes" or "no"
10 to that.

11 Q. Well, I'm asking you from your own memory. Was
12 it your impression that the mother was with the child a
13 lot more than the father because the father was working
14 more?

15 A. Yes. Likely, if he was working two jobs, that
16 would make sense.

17 Q. Okay. Now when you spoke to Ms. Garcia and
18 Mr. Ortiz, they were together?

19 A. No. I spoke with them initially together and
20 then separately.

21 Q. Okay, and when they -- when you spoke with them
22 together, did you notice whether Mr. Ortiz had an
23 accent?

24 A. Yes. He would have had an accent, I'm sure.

25 Q. And did he ever speak with Ms. Garcia in

1 Spanish while they were together?

2 A. Not that I witnessed.

3 Q. Did he ever ask you for clarification on
4 anything you told him?

5 A. Not that I remember.

6 Q. Is it fair to say that as a social worker
7 you've dealt with people whose native language is not
8 English --

9 A. Absolutely.

10 Q. -- on more than one occasion?

11 A. Yes.

12 Q. And when you -- in this particular case you
13 noticed that English was not Mr. Ortiz's native
14 language, correct?

15 A. I probably had a question. That's why I asked
16 what he would prefer.

17 Q. When you speak to a person who -- whose native
18 language is not English, do you use simpler terms or
19 simpler language to speak with them, or do you --

20 A. I --

21 Q. -- use technical terms?

22 A. I would use terms that anybody -- a layman's
23 terms --

24 Q. Okay.

25 A. -- not medical terms that we don't understand.

1 Q. Okay, and did you do that here with Mr. Ortiz?
2 Did you use simple layman's terms?

3 A. Yes.

4 Q. Now during your psychosocial interview with
5 both parents, did you also come to learn that the child
6 was being watched by a babysitter during the day while
7 the parents worked?

8 A. Yes. I remember putting in my note that when
9 their schedules coincided, that's when they used --
10 utilized a babysitter.

11 Q. And that was because -- well, when you say
12 "their schedules coincided," you mean they were at work
13 at the same time?

14 A. Correct, yes.

15 Q. And how many days a week did the child spend
16 with the babysitter?

17 A. Well, they didn't specify, and I don't believe
18 that I asked.

19 Q. Now you said that it's normal for people to be
20 initially nervous during the interview, correct?

21 A. Certainly.

22 Q. And you're one of the first people that they
23 see at the hospital, correct?

24 A. Correct.

25 Q. And is it fair to say that when parents bring a

1 child in with injuries and you're the first person,
2 they're still emotionally distraught?

3 A. Potentially, yes.

4 Q. And in this particular scenario, the child was
5 injured, correct?

6 A. Yes.

7 Q. Both parents appeared to be distraught over the
8 child's injuries?

9 A. Yes.

10 Q. And you said after you started speaking with
11 both parents, Mr. Ortiz settled in, correct?

12 A. Yeah. I said that specifically about him, yes.

13 Q. Okay. Did Ms. Garcia settle in?

14 A. She didn't appear nervous when we first started
15 talking. I didn't document that.

16 Q. And you said that sometimes people put on a
17 game face, correct?

18 A. I didn't say that, but I agreed to it.

19 Q. Okay. Now -- and that would be because some
20 people may be concealing the fact that they've abused
21 the child, correct?

22 A. Yes.

23 Q. But it also might be the fact that somebody
24 didn't abuse their child, correct?

25 A. Certainly.

1 Q. That would be a logical explanation as to why
2 somebody would settle in and appear normal during an
3 interview?

4 A. It could be.

5 MR. MEGARO: Thank you. Nothing further.

6 THE COURT: Redirect?

7 MR. RAMSAY: Not from the State,
8 Your Honor.

9 THE COURT: All right. Miss, you may step
10 down. Thank you very much.

11 MR. RAMSAY: Judge, can she be --

12 THE COURT: She can be released from the
13 subpoena if there are no objections.

14 MR. MEGARO: No, no objection.

15 THE COURT: All right. You're free to go.
16 Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness.

19 MS. LABORDE: The State calls
20 Sharon Matthews.

21 THE COURT: All right. Ms. Matthews, if
22 you'll be sworn, please.

23 (The witness was sworn.)

24 THE COURT: Please sign in.

25 THE WITNESS: (Complies with request.)

1 SHARON MATTHEWS,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. LABORDE:

5 Q. Ma'am, could you please state your name for the
6 jury.

7 A. Sharon McGill Matthews.

8 Q. And how are you -- how are you involved in this
9 case? How do you know the people involved?

10 A. Miguel and Taylor both worked with me at
11 Black Eyed Pea.

12 Q. And can you tell me who -- who is Miguel? Can
13 you see Miguel in the courtroom?

14 A. Yes.

15 Q. Okay, and can you point him out by something
16 he's wearing?

17 A. In the black jacket.

18 Q. He's in a black jacket?

19 A. Yes.

20 MS. LABORDE: Your Honor, may the record
21 reflect this witness has identified the Defendant?

22 THE COURT: So noted.

23 Q. (BY MS. LABORDE) What name did you know this
24 Defendant to go by?

25 A. Miguel Ortiz.

1 Q. Did you ever know him to go by the name
2 Juan Ortiz?

3 A. No, ma'am.

4 Q. Do you know Taylor Garcia?

5 A. Yes, ma'am.

6 Q. Who -- who is that to you?

7 A. Taylor Garcia worked for me as a server at the
8 Black Eyed Pea.

9 Q. And is "server" the -- another word for
10 waitress?

11 A. Yes, ma'am.

12 Q. So that's the correct term, "server." Is --

13 A. Yes, ma'am.

14 Q. -- that right? And did Miguel also work for
15 you?

16 A. Yes, ma'am.

17 Q. In what capacity?

18 A. He was my cook at Black Eyed Pea.

19 Q. Have you ever testified before?

20 A. No, ma'am.

21 Q. Are you nervous?

22 A. Yes.

23 Q. Where do you work now?

24 A. I work at the Cafe in Whitney.

25 Q. Okay, and that's also where you live?

1 A. Yes, ma'am.

2 Q. Can you tell the jury how you worked at the
3 Black Eyed Pea in Hillsboro?

4 A. I worked at the Black Eyed Pea for nine years.

5 Q. And do you have children?

6 A. Yes, ma'am.

7 Q. How many do you have?

8 A. Two.

9 Q. How old are they?

10 A. Fifteen and eleven.

11 Q. And do you -- do you work full-time, and you
12 have to take care of them?

13 A. Yes, ma'am.

14 Q. How long has it been since you've seen this
15 Defendant?

16 A. Since the incident happened, two years ago.

17 Q. So since August, of 2012?

18 A. Yes, ma'am.

19 Q. Have you kept in any contact with Taylor?

20 A. Very little.

21 Q. Did she move away?

22 A. Yes, ma'am.

23 Q. And after this happened you no longer saw them
24 at the Black Eyed Pea. Is that correct?

25 A. No, ma'am.

1 Q. Can you tell us how long did you know Taylor as
2 a -- as a server?

3 A. I knew her for at least a year.

4 Q. Before this happened?

5 A. Yes, ma'am.

6 Q. Were you always her manager?

7 A. Yes, ma'am.

8 Q. And how long did you know the Defendant before
9 August, of 2012?

10 A. About the same.

11 Q. "About the same." Did they both -- the
12 Defendant and Taylor, did they both begin working at the
13 Black Eyed Pea at the same time?

14 A. Right around, give or take a couple of months.

15 Q. Do you speak Spanish?

16 A. No, ma'am.

17 Q. Not any?

18 A. No.

19 Q. How many coworkers and people you were
20 supervising at the Black Eyed Pea would have spoke
21 Spanish?

22 A. Maybe seven, but it's all in the cook area.

23 Q. And is that the kitchen?

24 A. Yes, ma'am.

25 Q. How did you communicate with them?

1 A. We had two people there that can translate, and
2 one of -- one of them was Antonio, and the another one
3 was Miguel.

4 Q. So if you had to tell -- as -- as the manager,
5 are you in charge of both the wait staff and the
6 kitchen?

7 A. Yes, ma'am.

8 Q. And when you would have to communicate with
9 someone in the kitchen that only spoke Spanish, you said
10 you would have Antonio -- and do you know what Antonio's
11 last name was?

12 A. Not right off-hand.

13 Q. So Antonio or this Defendant would be the ones
14 that would translate for you?

15 A. Yes, ma'am.

16 Q. So there were people there that spoke no
17 English?

18 A. (Nods head.)

19 Q. And then there were those that spoke both?

20 A. Yes, ma'am.

21 Q. So when you communicated with this Defendant,
22 what language did you speak in?

23 A. English.

24 Q. Exclusively?

25 A. Yes, ma'am.

1 Q. Did you ever have any concern that this
2 Defendant didn't understand what you were saying?

3 A. No, ma'am.

4 Q. Does Taylor speak Spanish?

5 A. Very little.

6 Q. Okay. When you communicated with her, did you
7 obviously communicate in English?

8 A. Yes, ma'am.

9 Q. What kinds of issues did you have to talk about
10 with this Defendant, you know, that you would have some
11 idea of whether or not he understood what you were
12 talking about?

13 A. Well, we had mostly discussions about
14 whether -- what had to be done for the day that the
15 morning cooks didn't do, or because our morning cooks
16 mainly spoke Spanish and the night cooks had -- we had
17 both there, so he just translated from what the morning
18 cooks didn't do for us to do at night or vice versa.

19 Q. What kind of things would need to be done?

20 A. Like what vegetables needed to be prepped up
21 for that night, if we have any issues that we needed to
22 ask them for for like days off or anything like that, we
23 went to Miguel and Antonio to translate for us.

24 Q. Did you ever have things you had to talk about
25 specifically to this Defendant that you called "Miguel"

1 like, "Hey, you need to make the cornbread now" or --

2 A. Yeah. I mean I was like -- of course, I
3 managed him, so I had a lot -- you know, I talked to
4 him, and he'd teach -- he taught me a lot in the kitchen
5 also, so there was a lot of training going on in this
6 time. I mean there was a lot of conversations we had.
7 I can't like --

8 Q. Did you ever have experience in the kitchen or
9 the cooking yourself?

10 A. Yes, ma'am.

11 Q. And then once you weren't in there anymore and
12 you were a manager, did you have to depend on this
13 Defendant to kind of keep you up-to-date as to what was
14 happening?

15 A. Yes, ma'am.

16 Q. So many conversations?

17 A. Yes, ma'am.

18 Q. Did you notice anything between this Defendant
19 and Taylor that you thought that they were starting a
20 relationship through your own observations?

21 A. Yes, ma'am.

22 Q. Did you ever have any conversations with this
23 Defendant to suggest that was the case?

24 A. Not with him, but with Taylor.

25 Q. Not with the Defendant?

1 A. No, ma'am.

2 Q. When did you become aware that Taylor was
3 pregnant?

4 A. It was a couple of months. Like whenever she
5 went and got checked, if -- I'm not too for sure on the
6 date on it, but I mean I knew right after as soon as she
7 found out.

8 Q. Okay. She told people at work?

9 A. Yes, ma'am.

10 Q. Okay, so you wouldn't have been able to see she
11 was pregnant; she just told you she was?

12 A. Uh-huh.

13 Q. Did the Defendant and the Taylor work at the
14 same time?

15 A. Yes, ma'am.

16 Q. And did you -- did you have an understanding
17 from this Defendant why that was?

18 A. Yes, ma'am.

19 Q. What was that?

20 A. He wanted to work every shift that she worked
21 to keep an eye on her.

22 Q. And through your observations did this
23 Defendant keep an eye on Taylor?

24 A. Yes, ma'am.

25 Q. How so?

1 A. If she would leave to go to the restroom, he
2 would disappear. If she -- you know, he wouldn't be on
3 line no more, or if he -- she -- if he seen her out
4 there talking to somebody -- he could see out through
5 the window. He would be, you know, leaning over and
6 just staring out there. If she went towards the back,
7 it was pretty much a follow. Wherever she went, he
8 went. He had an eye on her the whole time.

9 Q. And when you say "off the line," that means
10 he's no longer doing his job?

11 A. Yes, ma'am.

12 Q. So as the manager would you notice that?

13 A. Yes, ma'am.

14 Q. Does that mean customers wouldn't get their
15 food on time?

16 A. Yes, ma'am.

17 Q. Was that an issue for you?

18 A. Not all of the time but most of the time,
19 because usually she would stay where he could see her.

20 Q. And did -- do you have any opinion of whether
21 or not this Defendant told her to stay --

22 MR. MEGARO: Objection, it's her opinion,
23 Your Honor.

24 THE COURT: Sustained.

25 Q. (BY MS. LABORDE) Did you observe conversations

1 between this Defendant and Taylor?

2 A. Yes, ma'am.

3 Q. Did you overhear this Defendant give her
4 instructions?

5 A. No, ma'am.

6 Q. Okay, but it -- did it become better, or did
7 that maintain the --

8 A. It maintained. You could tell -- there would
9 be some times they would be in the back in the very back
10 kitchen, and you could tell he had an angry look on his
11 face, and she would come out with tears in her eyes.

12 Q. Did that happen on more than one occasion?

13 A. Yes, ma'am.

14 Q. Did you do the scheduling?

15 A. Some of it.

16 Q. Did you ever schedule them to work different
17 shifts?

18 A. No, ma'am.

19 Q. Why not?

20 A. To keep -- she came -- Taylor came to me and
21 asked me to keep them on the same shift so she didn't
22 have to worry when she wasn't at work --

23 MR. MEGARO: Objection as to what Taylor
24 said, Your Honor.

25 THE COURT: Sustained.

1 Q. (BY MS. LABORDE) Did you honor that request?

2 A. Yes, ma'am.

3 Q. Did you do that in an attempt to keep the peace
4 between them?

5 A. Yes, ma'am.

6 Q. Okay.

7 A. They were both very good workers, so I had to
8 run a business so to keep things going.

9 Q. What happened once Taylor had her son?

10 A. Things got worse. She come in crying all the
11 time and would say --

12 Q. And we can't -- we can't get into what she
13 said, but did you notice she seemed to be more tearful
14 after that happened?

15 A. Yes, ma'am.

16 Q. Did she bring the baby to work?

17 A. Yes, ma'am, all the time.

18 Q. Did she not have a maternity leave or --

19 A. She did.

20 Q. So how would you see the baby if she should
21 have been at home recovering?

22 A. She brought the baby up there all the time with
23 us.

24 Q. Did you have any understanding of why that was?

25 A. I just figured it was from he couldn't stay

1 away from her so she was up there --

2 MR. MEGARO: Objection, Your Honor, as to
3 her opinion.

4 MS. LABORDE: Your Honor, I think if she --
5 if she's known them for a year and she's scheduling them
6 to work the same, she has an understanding of what
7 Taylor is doing there when she has a newborn. I think
8 she should be able to testify to that. She knows them.

9 THE COURT: Overruled.

10 Q. (BY MS. LABORDE) Did you have an opinion as to
11 why that was?

12 A. I had a very good feeling that it was because
13 he would -- that she needed to be up there to keep peace
14 at home.

15 Q. Would she be up there for hours?

16 A. Yes, ma'am.

17 Q. After you had your two children, did you go to
18 work after you had your baby a week early?

19 A. No, ma'am.

20 Q. Why not?

21 A. I didn't have my baby out in public after a
22 week -- before the week was up.

23 Q. Would that have been really a healthy decision?

24 A. To bring them out?

25 Q. Or for you.

1 A. No. I wouldn't have brought him out. There's
2 just too many germs, too many people, too many -- babies
3 can get sick.

4 Q. Did you tell Taylor that?

5 A. Yes, ma'am.

6 THE COURT: Pardon me. Can you hear her
7 all right?

8 THE REPORTER: Oh, yes, I can hear her.
9 I'm sorry. I didn't know you were asking me.

10 Q. (BY MS. LABORDE) Where would Taylor be in the
11 restaurant when she had Max when he was a newborn?

12 A. Sometimes she'd be on the side of the dining
13 room where there's -- we had to seat people, or she'd be
14 back in the office.

15 Q. Whose office was that?

16 A. It was the manager's office.

17 Q. So then you were the manager, and you knew that
18 was your office?

19 A. Yes, ma'am.

20 Q. Did you get to see the baby?

21 A. Yes, ma'am.

22 Q. Did you hold the baby?

23 A. Yes, ma'am.

24 Q. Did you ever have any concerns about his
25 health?

1 A. Yes, ma'am. He -- he was a little fussy at
2 times, and he was a little sick, but after -- you know,
3 besides that, we thought everything was okay.

4 Q. Was that more sick or fussy than your children
5 were?

6 A. Yes, ma'am.

7 Q. Would you say the child was difficult? Would
8 you say Max was a difficult baby?

9 A. Not really, I mean he cried quite a bit, but,
10 as far as difficult, all babies cry, so I don't know if
11 it was just a new environment or it just wasn't --

12 Q. Hard to say?

13 A. Yes, ma'am.

14 Q. What would -- what would you do to try to
15 soothe Max?

16 A. I used -- I used to try to get him and walk him
17 around. She was a new mom, you know, and I've had two
18 kids of my own. I would take him and walk him around,
19 try to offer medicines to give him, you know, that she
20 could try to give him.

21 Q. What medicines?

22 A. Gas medicines and Tylenol for him.

23 Q. So he seemed uncomfortable?

24 A. Yes, ma'am.

25 Q. I don't remember what the gas drops are called,

1 but you're talking about the --

2 A. Myli -- Mylicon, I think. Is it Mylicon? I
3 think --

4 Q. Did you tell her what to get --

5 A. Yes, ma'am.

6 Q. -- tell Taylor what to get, and did she get
7 those?

8 A. Yes, ma'am.

9 Q. Did you ever help her administer those?

10 A. Yes, ma'am.

11 Q. How did you do that?

12 A. I had to have her keep Miguel occupied while I
13 gave him her -- gave him medicine for her.

14 Q. Why would you have to keep Miguel, the
15 Defendant, occupied?

16 A. She said --

17 Q. Okay. Without going into what she said, was
18 that something that you all did in secret?

19 A. Yes, ma'am.

20 Q. And that wasn't your idea, was it?

21 A. No, ma'am.

22 Q. Did you put it in the baby's bottle or give it
23 to him --

24 A. No, ma'am, give him one drop.

25 Q. Did that help --

1 A. Yes, ma'am.

2 Q. -- that Max seemed less fussy after that?

3 A. Yes, ma'am.

4 Q. Would you have hoped that Taylor would do that
5 at home, too?

6 A. Yes, ma'am.

7 Q. Did you ever hear the Defendant talk about the
8 baby?

9 A. Yes, ma'am.

10 Q. And what did you hear him say?

11 A. He just always said the baby was weak, that he
12 wasn't tough. He wasn't strong to be his boy and that
13 the baby wasn't his.

14 Q. Did that upset you?

15 A. Yes, ma'am.

16 Q. How often did the Defendant say things like
17 that?

18 A. Every time he would come in there and talk to
19 us when the baby was there.

20 Q. So was that -- was that every day for a little
21 while?

22 A. Probably about every day or every other day.

23 Q. So he said, "The baby is not mine; he's not
24 mine;" the Defendant would say, "He's weak"?

25 A. Yes, ma'am.

1 Q. And how old is Max at that point?

2 A. He's about a month old, two months.

3 Q. Did that -- did that strike you as odd?

4 A. Yeah, because babies are babies. They ain't
5 meant to be tough at this age.

6 Q. "He's not tough." Do you know what that meant?

7 A. He just said he was a crybaby, that he just
8 wasn't tough.

9 Q. Did the Defendant have other children?

10 A. Yes, ma'am.

11 Q. Did you ever see them?

12 A. In and out, like I didn't -- I never met them.
13 I just seen them from a distance.

14 Q. So they may be helping drop off their dad or --

15 A. Yeah.

16 Q. -- whatever? Did it surprise you that someone
17 who had experience with children, if the Defendant had
18 two other children, that he would say things about a
19 newborn like that, "He's weak," or "He's not tough," or
20 "He's a crybaby," at that age?

21 A. Yes, ma'am.

22 MR. MEGARO: Objection, in her opinion
23 again, Your Honor.

24 MS. LABORDE: Your Honor, I mean I think
25 she's allowed to testify as to the context of those --

1 of those statements and that him having experience and
2 what her -- what that meant to her.

3 THE COURT: What was the question again?

4 MS. LABORDE: "Did it strike you as odd
5 that he had other children and then" -- "and was an
6 experienced parent and would make those statements about
7 a newborn?"

8 THE COURT: Overruled.

9 Q. (BY MS. LABORDE) Did that strike you as odd?

10 A. Yes, ma'am.

11 Q. Was it concerning?

12 A. At first it didn't concern me because I figured
13 if he had two other kids that -- and they seemed fine
14 and healthy to me, that, you know, things wouldn't go
15 further but --

16 Q. So once you found out about the injuries, did
17 the -- did that change your opinion?

18 A. It was shocking to hear, but seeing what I saw,
19 I guess I -- I was hoping it didn't go as far as it did
20 but --

21 Q. So you said it was -- the injuries themselves
22 were shocking?

23 A. Yes, ma'am.

24 Q. But --

25 A. I wasn't expecting it, you know, and

1 considering he had two other kids, but seeing the way I
2 seen him around him, I wasn't for sure how far he would
3 go with it.

4 Q. So did it cross your mind that it could be
5 Taylor?

6 A. No, ma'am.

7 MR. MEGARO: Objection, Your Honor.

8 MS. LABORDE: Is there -- I mean what's the
9 objection?

10 THE COURT: What's the objection?

11 MR. MEGARO: She's being asked to give an
12 opinion as to the guilt or non-guilt of another
13 individual. It's --

14 MS. LABORDE: Your Honor, she --

15 MR. MEGARO: -- improper opinion.

16 MS. LABORDE: -- she saw her -- I mean I'm
17 asking about her based on her experience with Taylor,
18 with watching the baby. I mean Taylor is bringing this
19 baby up to work every day. I mean she has --

20 THE COURT: What's the --

21 MS. LABORDE: -- that experience.

22 THE COURT: -- question again?

23 MS. LABORDE: "Did it" -- "Did you consider
24 whether it was Taylor based on your observations?"

25 THE COURT: That it was Taylor who what?

1 MS. LABORDE: Injured the child.

2 THE COURT: Overruled.

3 THE WITNESS: It never crossed --

4 Q. (BY MS. LABORDE) Did you -- did you consider
5 that it could have been Taylor -- once you found out
6 about the injuries, did that cross your mind?

7 A. No, ma'am.

8 Q. Why not?

9 A. Because Taylor was always worried about her
10 baby, always worried about him crying. She came to me
11 many times wanting to know how to help, how to soothe a
12 baby, because she wasn't for sure.

13 Q. And how old was Taylor?

14 A. Eighteen or 19 at this time.

15 Q. So she was maybe 17 or 18 when she met the
16 Defendant?

17 A. Yes, ma'am.

18 Q. And then pregnant --

19 A. Right after.

20 Q. And were you aware of how old the Defendant
21 was?

22 A. Not really, I knew he was like in his 30's but
23 his exact age, no.

24 Q. "Exact age, no." Was there -- so there was a
25 large age gap between them?

1 A. Yes, ma'am.

2 Q. Does the Defendant look the same now as he did
3 when he worked for you?

4 A. Somewhat.

5 Q. What's different?

6 A. He's just a little bit smaller than he was
7 there.

8 Q. And what -- how was he bigger?

9 A. He was real buff. He worked out quite a bit.

10 Q. How did you know that?

11 A. After work he would go work out. He would
12 change up at work and then go to the gym.

13 Q. Okay, and was that something -- I mean you
14 didn't go to the gym with him?

15 A. No, ma'am.

16 Q. So how did you know that?

17 A. The gym was right past our work, and his
18 vehicle would always be there when I would leave to go
19 home.

20 Q. Did you have -- I mean right now the Defendant
21 has a long sleeve sweater or jacket on. Did you ever
22 see the Defendant with short sleeves on?

23 A. Yes, ma'am.

24 Q. And did you -- you said he looked buff, so he
25 looked like someone who worked out or --

1 A. He had muscles. He was really big.

2 Q. Do you think that had -- was there ever a
3 comment based on his strength or how he worked out that
4 he didn't think Max was his baby, or -- or did you not
5 have --

6 A. I didn't have an idea.

7 Q. Is it that the Defendant is noticeably smaller
8 now?

9 A. Yes, ma'am.

10 Q. Would the Defendant go to the gym alone?

11 A. I'm not too for sure.

12 Q. You just know that he did?

13 A. Yes, ma'am.

14 Q. Did you hear the Defendant also talk about his
15 opinions about Taylor as a mother?

16 A. Yes and no, not really as a mother, but, well,
17 he would just say he didn't think she knew how to be a
18 mother, that the baby didn't like her because she didn't
19 know how to be a mother.

20 Q. Was that said in Taylor's presence or just to
21 you?

22 A. Just to me.

23 Q. How often would the Defendant kind of be
24 critical of Taylor like that to you?

25 A. Just every once in a while, wherever it would

1 be brought up.

2 Q. How would that be brought up?

3 A. Just out of general conversation asking how she
4 was and how the baby was.

5 Q. So you're bringing it up?

6 A. Yes, ma'am.

7 Q. You're saying, "How is the baby; how is
8 Taylor?"

9 A. Yes, ma'am.

10 Q. Okay, and then what would the Defendant say in
11 response to that?

12 A. He would just tell me that the baby is a
13 crybaby and that Taylor is not a good mom to her because
14 she couldn't keep him from crying, you know.

15 Q. Did you agree with that?

16 A. No, ma'am.

17 Q. Based on when Taylor's in your office and it's
18 just the three of you and the Defendant is working, did
19 you -- what was your opinion of how she cared for Max?

20 A. She was -- she was -- to be an 18-year-old, she
21 was very caring for the baby. She was still learning,
22 so she was -- in my opinion, she was very loving because
23 all she wanted to do was hold him, and, you know, she
24 always kept him close to her. Every little whimper or
25 whine or movement he did, she was, you know, on top of

1 him trying to figure out what was wrong with him before
2 he even -- he even started crying.

3 Q. Did your office have a couch?

4 A. No, ma'am.

5 Q. So what would Taylor be sitting on?

6 A. Just a chair.

7 Q. Was it like a padded chair?

8 A. Yes, ma'am, a --

9 Q. Did Taylor --

10 A. -- desk chair.

11 Q. -- breastfeed?

12 A. I'm not too for sure.

13 Q. Okay. Would she have been allowed privacy in
14 your office if she needed it?

15 A. Not in the office, no, ma'am.

16 Q. Why not? Is it open all the time?

17 A. Yes, ma'am.

18 Q. Would that seem like a comfortable place to
19 have your baby for a long period of time?

20 A. No, especially not in the kitchen area.

21 Q. How long would Taylor be there?

22 A. The shifts are like four-to-five-hour shifts.
23 She'll be there from three to four hours of it.

24 Q. So even when she was on maternity leave, she
25 was there almost as much as the Defendant was?

1 A. Yes, ma'am.

2 Q. Did you observe ever the Defendant holding Max
3 himself?

4 A. Yes, ma'am.

5 Q. And how -- what did you observe?

6 A. The only time I've actually seen him hold the
7 baby is when the baby was crying, and he told me he
8 wasn't tough, and he picked the baby up over his head
9 and had one hand on his ribs and one hand on his feet
10 while the baby is screaming and crying over his head.

11 Q. Where was that?

12 A. In the office at the Black Eyed Pea.

13 Q. Was Taylor in the room?

14 A. Yes, ma'am.

15 Q. Did you -- so he would have been --

16 A. He was like two months at this time.

17 Q. And you're saying that the Defendant has the
18 baby's ribs on -- in one hand and his feet in the other?

19 A. Yes, ma'am.

20 Q. And the baby was fussy that day or --

21 A. Yes, ma'am.

22 Q. But that's -- he's like, "You need to toughen
23 up" or --

24 A. Yeah.

25 Q. And how did that strike you?

1 A. It shocked me because it's an infant, and I
2 didn't understand why he was doing it. At this point I
3 didn't know what to do because that's scary for a baby,
4 so I asked him to bring the baby down, and I took the
5 baby from him and got the baby to calm down.

6 Q. Did that make the baby more upset?

7 A. With him holding him?

8 Q. (Nods head.)

9 A. Yes, ma'am.

10 Q. And did you calm the baby down?

11 A. Yes, ma'am.

12 Q. Did you ever talk about that incident with the
13 Defendant --

14 A. No, ma'am.

15 Q. -- like, "I hope you don't do that at home"?
16 You didn't do that. Why didn't you do that?

17 A. It was a situation that I was hoping would
18 resolve on its own because I still had to have my
19 job, and -- and, our nationality (sic), I wasn't
20 supposed to be interacting the way I did with them,
21 but given the situation I just couldn't turn my head to
22 it.

23 Q. Now what do you mean? Do you mean like you
24 shouldn't have been allowing the baby there in the first
25 place?

1 A. Yes, ma'am.

2 Q. So if you got on to him about it, it might come
3 back on you?

4 A. Yes, ma'am.

5 Q. So not really optimal at all?

6 A. No.

7 MS. LABORDE: Your Honor, I'll pass the
8 witness.

9 MR. MEGARO: Thank you. One moment,
10 please.

11 CROSS-EXAMINATION

12 BY MR. MEGARO:

13 Q. Ms. Matthews, you were the manager of Black
14 Eyed Pea?

15 A. Yes, sir.

16 Q. And as the manager you had full responsibility
17 for everything that went on in that restaurant?

18 A. Yes, sir.

19 Q. You controlled the schedule?

20 A. Some of it.

21 Q. What parts of the schedule did you not control?

22 A. I did the -- the ones I didn't do is the -- the
23 cook's schedule.

24 Q. Who did that?

25 A. Our -- our -- the manager above me.

1 Q. And -- but you had -- you had the power to
2 schedule the support staff, correct?

3 A. Yes, ma'am. I mean, yes, sir.

4 Q. And when you noticed that Taylor Garcia and
5 Mr. Ortiz were starting a relationship, you spoke to her
6 about it, correct?

7 A. Yes, sir.

8 Q. You didn't speak to him about it, correct?

9 A. Not at first.

10 Q. And you knew that he was a little bit older
11 than Ms. Garcia, correct?

12 A. Yes, sir.

13 Q. He has over ten years on her?

14 A. Yes, sir.

15 Q. You didn't like Mr. Ortiz, correct?

16 A. No, I liked him.

17 Q. Now when you would speak to Mr. Ortiz in the
18 restaurant, one of -- I'm sorry. Let me back up. One
19 of his job duties was food prep, correct?

20 A. Yes, sir.

21 Q. And the food prep area was at the back corner
22 of the kitchen, correct?

23 A. Yes, sir.

24 Q. And that's where he would go to prep the food?

25 A. Yes, sir.

1 Q. That's where he would receive your
2 instructions?

3 A. Yes, sir.

4 Q. And that's where he spent the majority of his
5 time?

6 A. Not the majority of it, he was also our line
7 cook which had to plate the plate -- plate the plates.

8 Q. Before the dinner rush, he would be in the food
9 prep area, correct?

10 A. Yes, sir.

11 Q. And when the dinner rush started, he would come
12 out and cook on line, correct?

13 A. Yes, sir.

14 Q. How days a week did he work on average?

15 A. Five.

16 Q. And it was your understanding that he also
17 worked another job, correct?

18 A. Yes, sir.

19 Q. How many hours a day did he work?

20 A. Our shifts were anywhere between
21 five-to-eight-hour shifts. Depending on what day he
22 came in, it depended on how many hours he would work.

23 Q. It was your understanding that he was working
24 a second job on the two days that he did not work at the
25 Black Eyed Pea, correct?

1 A. Yes, sir.

2 Q. And he was working double shifts at his
3 other job on certain days that he was working at the
4 Black Eyed Pea, correct?

5 MS. LABORDE: Your Honor, I'm going to
6 object to this. These are not facts in evidence unless
7 she knows from her own conversations with the Defendant,
8 which he can't ask that. That's hearsay.

9 THE COURT: Overruled.

10 Q. (BY MR. MEGARO) You can answer.

11 A. No, sir.

12 Q. "No, sir." "No, sir" to what? I'm sorry. I
13 lost the question.

14 A. Yeah. I didn't -- he didn't work doubles at
15 the Black Eyed Pea.

16 Q. Did he work doubles between the Black Eyed Pea
17 and his other job?

18 A. Some days.

19 Q. So he was working about seven days a week,
20 correct?

21 A. For like two months.

22 Q. Two months?

23 A. Yeah, somewhere around there. I didn't
24 have to worry about his schedule until the -- until
25 the end.

1 Q. Until what?

2 A. Until the -- until the time he left, it was
3 like a couple of months before that when we had to start
4 the scheduling.

5 Q. But for two months prior to the time that he
6 left, he was working, and he was --

7 A. Yes, sir.

8 Q. -- working seven days a week, correct?

9 A. As -- as far as I know, I'm not -- I don't know
10 how many days he was working.

11 Q. Okay. Now you said that Taylor Garcia brought
12 in the baby during her maternity leave to the
13 restaurant, correct?

14 A. Yes, sir.

15 Q. And she showed the baby to other employees?

16 A. Yes, sir.

17 Q. Showed the baby to you?

18 A. Yes, sir.

19 Q. That's common for a first-time mother to show
20 her firstborn child around?

21 A. Yes, sir, it's common.

22 Q. And you said that -- by the way, you said that
23 the baby and Taylor Garcia went into your office at
24 times, correct?

25 A. Yes, sir.

1 Q. Did anyone smoke in that office?

2 A. They did. When the baby was there, no, they
3 were supposed to stop at the time. There was supposed
4 to be no smoking, but there was a manager who smoked in
5 there, also.

6 Q. Did Mr. Ortiz say he did not want his child
7 in -- in a room where there was smoking?

8 A. I've never heard him.

9 Q. Now you said that Mr. Ortiz used to tell you
10 that Taylor did not know how to be a mother?

11 A. Yes, sir.

12 Q. And he said this on more than one occasion,
13 correct?

14 A. Yes, sir.

15 Q. Did he tell you what she did wrong as a mother?

16 A. No, sir.

17 Q. He would just say it in general?

18 A. Yes, sir.

19 Q. And how many days a week did Taylor Garcia work
20 at the Black Eyed Pea?

21 A. Four to five.

22 Q. So she worked less than he did, correct?

23 A. Days-wise, yes, hours-wise, no.

24 Q. She worked less days per week?

25 A. Uh-huh.

1 Q. You have to say "yes" or "no" so the court
2 reporter --

3 A. Yes, sir.

4 Q. -- can get that down. And it's your
5 understanding that Taylor Garcia was not working a
6 second job?

7 A. As far as I know, no, sir.

8 Q. So she was not working at his second job with
9 him, correct?

10 A. No, sir.

11 Q. It's fair to say that when he was at work at
12 his second job, she would not be there with him?

13 A. I wasn't with her after I left my work, so I'm
14 not for sure.

15 Q. While she was on maternity leave, she didn't
16 come into the Black Eyed Pea every single day, did she?

17 A. Not every day, but out of the whole week she'd
18 be there four days at least.

19 Q. And you said she would stay a few hours
20 sometimes, correct?

21 A. Yes, sir.

22 Q. Not always, correct?

23 A. It would be three hours every time she got
24 there, showed up.

25 Q. She wouldn't stay for the entire shift though,

1 would she?

2 A. Most of the time, no.

3 Q. You did speak with the police from the
4 West Police Department, correct?

5 A. Yes, sir.

6 Q. And you spoke with a Det. Hudson?

7 A. Yes, sir.

8 Q. And when you spoke with Det. Hudson, do you
9 know which day that was?

10 A. I'm not for sure on what day that was, sir.

11 Q. Was it at the end of August 2012?

12 A. It might have been.

13 Q. It was definitely in 2012, correct?

14 A. Yes, sir.

15 Q. And Det. Hudson asked you questions?

16 A. Yes, sir.

17 Q. You gave answers to those questions?

18 A. Yes, sir.

19 Q. Det. Hudson asked you to be as thorough and
20 complete with him as possible, correct?

21 A. Yes, sir.

22 Q. He asked you to tell you every -- he asked you
23 to tell him everything that you knew about Mr. Ortiz,
24 Ms. Garcia and the baby, correct?

25 A. Yes, sir.

1 Q. And you did tell him every everything you knew,
2 correct?

3 A. Yes, sir.

4 Q. He asked you to put in writing everything that
5 you knew, correct?

6 A. Yes, sir.

7 Q. And when you were speaking with him, was he
8 taking any notes?

9 A. A few, yes, sir.

10 Q. But, ultimately, he gave you a form to fill
11 out, correct?

12 A. Yes, sir.

13 Q. And that form was a voluntary statement?

14 A. Yes, sir.

15 Q. You wrote that statement in your own
16 handwriting?

17 A. Yes, sir.

18 Q. And you signed that statement at the end?

19 A. Yes, sir.

20 Q. And before you signed that statement you had
21 the opportunity to read it all over and make sure that
22 everything in it was true and accurate?

23 A. Yes, sir.

24 Q. You also had an opportunity to make sure that
25 everything was complete, correct?

1 A. Yes, sir.

2 Q. You made sure that you knew that -- you made
3 sure that everything that you knew ended up in that
4 written statement, correct?

5 A. Yes, sir.

6 Q. And after you signed that statement, you gave
7 it to Det. Hudson?

8 A. Yes, sir.

9 MR. MEGARO: Can I have this -- I'm just
10 going to have it marked for identification.

11 MS. LABORDE: Your Honor, may we approach?

12 THE COURT: You may.

13 (At the Bench, off the record.)

14 THE COURT: All right. Ladies and
15 Gentlemen, I was going to give you all a stretch break
16 about now anyway, but we need to go ahead and take a
17 brief recess while I hash out some legal issues, so go
18 to the jury room. Do not discuss this matter or allow
19 anyone to talk to you about it. We'll see you back in a
20 few minutes.

21 THE BAILIFF: All rise.

22 (The jury retired from the courtroom.)

23 THE COURT: All right. We're outside the
24 presence and hearing of the jury now. When you all
25 approached the bench, the State was of the opinion that

1 by asking this Defendant -- this witness about the
2 written statement she gave that it may have opened the
3 door to some extraneous matters, and I don't know what's
4 in the statement, so you all need to enlighten me
5 about --

6 MR. MEGARO: Certainly.

7 THE COURT: -- about all this.

8 MR. MEGARO: Could we possibly discuss this
9 outside the presence of the witness, if that's all right
10 or --

11 THE COURT: Well, let me see the statement
12 that you all are --

13 MR. MEGARO: Sure.

14 THE COURT: -- talking about first. All
15 right, ma'am, if you'll step outside the courtroom.

16 THE WITNESS: Yes, sir.

17 (The witness retired from the courtroom.)

18 THE COURT: All right. Mr. Megaro, you had
19 asked the State to -- to produce a copy of the witness's
20 statement, but you -- I have it in my hand. Is that
21 correct?

22 MR. MEGARO: Yes.

23 THE COURT: All right. What questions did
24 you ask her about the statement thus far?

25 MR. MEGARO: I -- I asked her whether she

1 had related everything that she knew about the case to
2 Det. Hudson and whether she had included everything she
3 knew about the case in her written statement. Now my
4 intention is to cross-examine her now that she's made --
5 she's given that testimony is to cross-examine her
6 concerning omissions from that written statement and
7 differences between her testimony here at trial and the
8 omissions from that written statement. It's not my
9 intention to introduce the written statement into
10 evidence. It's simply to ask her specifics between her
11 testimony here at trial. She said things that occurred,
12 and the fact that she failed to include those in a
13 written statement. I don't plan to ask her anything
14 about the choking incident that she's included in that
15 which I -- which is double hearsay in that. I don't
16 plan to introduce the written statement, and I think the
17 rule of completeness would apply if I chose to introduce
18 the actual statement itself. Here I'm planning to
19 cross-examine her with prior inconsistent statements by
20 omissions.

21 THE COURT: Okay. What -- what incidents
22 of omission are you planning to get into?

23 MR. MEGARO: Certainly, giving the baby
24 medicine and the child's demeanor after -- before and
25 after receipt of the medicine, the alleged stalking

1 which I think she characterized as "stalking," my client
2 working with the -- Ms. Garcia, insisting on working,
3 those things, Ms. Garcia coming in crying after the --
4 after the child was born, staying at the restaurant for
5 hours on end. I don't believe it's in the written
6 statement that the Defendant said that Taylor did not
7 know now to be a mother.

8 THE COURT: Okay, and the State's position
9 is that this has opened the door to this incident that
10 the witness described in her statement regarding this
11 choking incident where he choked her?

12 MS. LABORDE: Well, I mean he said,
13 "You were told to write down everything you knew about
14 this," and she said, "Yes, I did," and so for him to act
15 like what she didn't put in her statement leaves a false
16 impression that she just -- the statement is very short
17 and that she didn't put actually very important matters
18 in there. The problem is there's hearsay from Taylor,
19 you know, that -- you know, that she's not allowed to
20 work opposite shifts from him. She has to be there at
21 the same time that he's there, and that why would --
22 you know, if -- if in her mind the most important thing
23 is he choked her, you know, he's violent towards her.
24 She's seen him be violent towards the baby, and I think
25 the false impression has already been made, and he said,

1 "Can I mark this statement?" You know, I mean the
2 impression is that she was told to write something
3 down, and she just left, you know, all these important
4 chunks out which is not true. She put the most
5 important facts in the -- in her statement which was
6 that she knew he had sent her to the hospital which is
7 true.

8 THE COURT: Okay, all right. Mr. Megaro,
9 as long as you're going to cross-examine the witness
10 regarding the things she didn't put in her statement as
11 a -- as an impeachment or as a -- I'll allow you to do
12 that. I don't think that's opened the door to the
13 extraneous conduct that she -- that the witness puts
14 in her statement about the choking incident. Now,
15 you know, you've got to be careful with -- about that
16 because it could slip over into that pretty quickly
17 so --

18 MS. LABORDE: Your Honor, he's already
19 said, "You were told to put everything in that statement
20 you knew, and you're saying that you did that," and so
21 then we're not allowed to say what she put in there?
22 He's left a false impression already.

23 THE COURT: Well --

24 MR. MEGARO: I think -- I think the State
25 is certainly justified in putting in the things that are

1 consistent with her testimony and say, "Well, you did
2 write down that he held the baby over the head," and
3 things like that. That I would -- I would have no
4 quarrel with, but I -- I'm not -- I don't plan on
5 touching the choking incident. They haven't touched
6 upon it. I don't plan on touching --

7 MS. LABORDE: Well, that's because there's
8 a Motion in Limine is why we haven't touched on it.

9 THE COURT: Well, I'm going to overrule the
10 State's objection at this point. I'll -- I'll allow you
11 to --

12 MS. LABORDE: Your Honor, may I at least be
13 asked (sic) to say, "Are there" -- "Are there things
14 Taylor told you that are in this statement that you're
15 not allowed to testify because of the rules," but for
16 him to act like that's the complete statement, that's
17 not true.

18 THE COURT: No. I'm not going to let you
19 say that in front of the jury.

20 MS. LABORDE: So the false impression is
21 allowed to stay?

22 THE COURT: No. I -- I don't think they've
23 opened the door simply by cross-examining the witness on
24 things that weren't in her statement that she testified
25 to here on the stand. As long as we limit it to that,

1 I think we're okay.

2 MR. MEGARO: Thank you.

3 THE COURT: All right. Bring the jury back
4 in. We'll take a break after this witness. Bring
5 Ms. Matthews back in.

6 MR. MEGARO: Judge, can we get -- as a
7 matter of decorum, do you -- do you want me to have this
8 marked for identification or --

9 THE COURT: No.

10 MR. MEGARO: -- just show it to her?

11 THE COURT: No. You can just show it to
12 her.

13 MR. MEGARO: Okay.

14 THE BAILIFF: All rise.

15 (The jury was seated in the jury box.)

16 THE COURT: All right. Mr. Megaro, you may
17 proceed.

18 MR. MEGARO: May I approach the witness,
19 Your Honor?

20 THE COURT: You may.

21 Q. (BY MR. MEGARO) Ms. Matthews, I'm going to
22 show you this document here. Please take a look
23 through that, and let me know when you're done.
24 Ms. Matthews, have you had a chance to read that
25 document?

1 A. Yes, sir.

2 Q. And that document is the written statement that
3 we were talking about --

4 A. Yes, sir.

5 Q. -- a moment ago? That's the one that you gave
6 to Det. Hudson?

7 A. Yes, sir.

8 Q. Is that the only written statement you ever
9 gave to Det. Hudson?

10 A. Yes, sir.

11 Q. And you've testified here in court that you
12 advised Ms. Garcia to give the baby medicine?

13 A. Yes, sir.

14 Q. Please show me where that's -- that's written
15 in your statement.

16 A. It's not.

17 Q. You the testified here in court that the baby
18 would be fussy, but after he received medicine he would
19 calm down?

20 A. Yes, sir.

21 Q. Please show me where that is in your statement.

22 A. It's not.

23 Q. You also testified here in court that Mr. Ortiz
24 left the cooking line?

25 A. Yes, sir.

1 Q. Please show me where those words appear in your
2 statement.

3 A. It's not.

4 Q. You testified here in court that when Mr. Ortiz
5 held the baby above his head, he squeezed the baby's
6 ribs?

7 MS. LABORDE: Your Honor, I'm going to
8 object. She didn't testify to that.

9 MR. MEGARO: I'll rephrase my question.

10 THE COURT: All right. Rephrase your
11 question.

12 Q. (BY MR. MEGARO) You testified here in court
13 when Mr. Ortiz held the child above his head he had his
14 hand on the baby's ribs?

15 A. Yes, sir.

16 Q. Please show me where the word "ribs" is
17 included in your statement.

18 A. It's "around his chest area."

19 Q. Not "ribs"?

20 A. No, sir.

21 Q. You testified here in court that in your
22 opinion Taylor Garcia did not cause these injuries to
23 the child?

24 A. Yes, sir.

25 Q. Show me where that exists in your statement.

1 A. It's not.

2 Q. Have you ever -- have you ever held your
3 children above your head?

4 A. Not the way and manner he did.

5 Q. You've held them over your head?

6 A. Not at that age either. When they're older,
7 yes, sir, but not when -- not at a young age.

8 Q. Have you ever seen a father hold a child above
9 their head?

10 A. No, sir.

11 Q. Never?

12 A. Not at that age, no, sir.

13 Q. Mr. Ortiz lived with Taylor Garcia, correct?

14 A. I'm not too for sure on that, sir.

15 Q. You don't know whether they lived together?

16 A. No, sir.

17 Q. You don't know whether he lived with the baby?

18 A. I know Taylor had her house, but I didn't know
19 where he stayed, sir.

20 Q. Have you kept in contact with Taylor since she
21 left?

22 A. Not really.

23 Q. A little bit?

24 A. Just very little, yes, sir.

25 Q. It's true you never saw Mr. Ortiz punch the

1 baby, correct?

2 A. No, sir.

3 Q. You never saw him shake the baby, correct?

4 A. No, sir.

5 Q. You never saw him throw the baby, correct?

6 A. No, sir.

7 MR. MEGARO: No further questions for the
8 witness.

9 REDIRECT-EXAMINATION

10 BY MS. LABORDE:

11 Q. Ma'am, what would you have done if you'd seen
12 this Defendant shake the baby?

13 A. At this point if he would have shook the baby,
14 I think I would have took actions then with calling.

15 Q. What if you would have seen him punch the baby?

16 A. It would have -- it would have never went as
17 far as it had when it -- it would -- it would have
18 stopped that day.

19 Q. Okay, so had this Defendant abused Max when you
20 were there, you would have done something about it?

21 A. Yes, ma'am.

22 Q. Do you think this Defendant knew that?

23 A. Yes, ma'am.

24 MR. MEGARO: Objection as to what she
25 thinks my client would have known.

1 MS. LABORDE: Your Honor, if they've had
2 conversations about the baby, I think she should be
3 allowed to state what she believes the Defendant knew
4 about her state of mind about the baby.

5 THE COURT: I'll sustain the objection.

6 Q. (BY MS. LABORDE) When you saw the Defendant
7 holding Max above his head at two months old at a point
8 in his life where his neck didn't even work, right --

9 A. Yes, ma'am.

10 Q. -- you took the baby away from him? Is that
11 right?

12 A. Yes, ma'am.

13 Q. Do you think the Defendant would know that you
14 weren't going to put up with that kind of thing if you
15 didn't put up with it that time?

16 A. I'm pretty sure.

17 Q. Were you supportive of Taylor?

18 A. Yes, ma'am.

19 Q. Did the Defendant know that?

20 A. Yes, ma'am.

21 Q. So probably the last people at the Black Eyed
22 Pea he would abuse the child in front of would be you?

23 A. Yes, ma'am.

24 Q. Now are you -- are you a confrontational
25 person?

1 A. No.

2 Q. Was that hard for you to take Max from the
3 Defendant --

4 A. Yes.

5 Q. -- when he was doing that?

6 A. I don't like confrontation at all. I liked
7 Miguel at the time, so --

8 Q. So was that very awkward?

9 A. -- it was -- yeah. It wasn't something that I
10 wanted to get into. It was his kid, but -- and I liked
11 him, and I didn't, you know --

12 Q. Did you feel like you had to?

13 A. Yes, ma'am.

14 Q. Okay. Now you said you weren't aware of
15 whether or not Taylor and the Defendant lived together.
16 Where did you think the Defendant was living?

17 A. I knew he was staying in Hillsboro and in West,
18 but I wasn't for sure where his main house was.

19 Q. Did you believe he lived in two different
20 places?

21 A. Yes, ma'am.

22 Q. Did the Defendant have a wife that would
23 sometimes --

24 MR. MEGARO: Objection, Your Honor.

25 MS. LABORDE: Your Honor, I believe he's

1 opened the door to this.

2 THE COURT: Overruled.

3 Q. (BY MS. LABORDE) Did the Defendant also have a
4 wife that he would live with sometimes in Hillsboro and
5 then sometimes go to West with Taylor?

6 A. Yes, ma'am.

7 Q. Had children with both of them?

8 A. Yes, ma'am.

9 Q. That wasn't a secret?

10 A. No, ma'am.

11 MS. LABORDE: Your Honor, may I approach
12 the witness?

13 THE COURT: You may.

14 Q. (BY MS. LABORDE) Now in this statement -- oh,
15 you have it up here. I'm sorry. You don't have any
16 opinions in this statement, correct --

17 A. No, ma'am.

18 Q. -- any opinions of the Defendant or Taylor --

19 A. No, ma'am.

20 Q. -- just facts? Is that --

21 A. Yes, ma'am.

22 Q. -- right? And you had said earlier and I just
23 want to -- "I have witnessed Miguel playing rough with
24 the baby by holding him above his head with his left
25 hand around his chest and his legs, right hand," and

1 what does that say?

2 A. I don't remember.

3 Q. "On his" -- okay, so --

4 A. Oh, it says "legs bundled."

5 Q. "His legs bundled"?

6 A. Yes, ma'am.

7 Q. Okay, so was that what you were talking about
8 earlier?

9 A. Yes, ma'am.

10 Q. So would you consider the chest and the ribs to
11 be on a two-month-old pretty close together.

12 A. The hand was -- covers the chest and ribs on a
13 baby.

14 Q. Was Max a small baby?

15 A. Yes, ma'am.

16 Q. And you said, "The baby is kicking and
17 screaming and mad"?

18 A. Yes, ma'am.

19 Q. "Miguel thought it was funny"?

20 A. He laughed about the baby crying by holding him
21 over his head.

22 Q. "On another day I seen him while the baby was
23 fussing come and shake his arm and feet saying, 'He
24 looks like a crybaby, not tough'?"

25 A. Yes, ma'am.

1 Q. "Taylor is not allowed to work opposite shifts
2 from him. She is not allowed to talk to anyone unless
3 she is spoken to, or he would get angry"?

4 A. Yes, ma'am.

5 Q. Did you see that?

6 A. Yes, ma'am.

7 Q. Who would talk to Taylor at work?

8 A. Any of our male coworkers were not allowed to
9 talk to her at all.

10 Q. Did they have to sometimes?

11 A. Yes, ma'am.

12 Q. How?

13 A. Over the tables, if their table needed
14 something, they would have to come tell her, or if they
15 were upset, they would have to come tell her.

16 Q. "I have heard him say, 'The baby doesn't look
17 like me. He's not mine. He's a crybaby, and my other
18 baby is tough'"?

19 A. Yes, ma'am.

20 Q. Okay. Did the Defendant appear controlling to
21 you?

22 A. Yes, ma'am.

23 Q. Now looking back, do you wish you had done
24 more?

25 A. Yes, ma'am.

1 MS. LABORDE: I'll pass the witness.

2 RE CROSS-EXAMINATION

3 BY MR. MEGARO:

4 Q. Mr. Ortiz got a divorce, right?

5 A. He had -- ask me that again.

6 Q. Mr. Ortiz was going through a divorce in 2012,
7 correct?

8 A. I'm not for sure on that.

9 Q. Today are you still supportive of
10 Taylor Garcia?

11 A. Yes, sir.

12 MR. MEGARO: Thank you. Nothing further.

13 REDIRECT EXAMINATION

14 BY MS. LABORDE:

15 Q. Did the Defendant ever talk to you about
16 getting a divorce?

17 A. No, ma'am.

18 Q. Did you know he was still married at the time
19 Taylor was pregnant?

20 A. Yes, ma'am.

21 Q. Did the Defendant ever talk to you about that,
22 that it was tough, the situation or anything like that,
23 or did you all not talk about --

24 A. No.

25 Q. -- things like that at all?

1 A. We just didn't discuss it.

2 MS. LABORDE: I'll pass the witness.

3 MR. MEGARO: Nothing further.

4 THE COURT: You may step down, Ms. Matthew.

5 Thank you.

6 MS. LABORDE: And may this witness be

7 excused?

8 THE COURT: Any objection to her being

9 released from --

10 MR. MEGARO: No.

11 THE COURT: -- the subpoena? You're free
12 to go. Ladies and Gentlemen, let's go ahead and take a
13 recess. I know you had a brief one, but we had to keep
14 working, so we're going to take about a 15-minute
15 recess. Do not discuss the case or allow anyone to
16 talk to you about it. We'll see you back in a few
17 minutes.

18 (The jury retired from the courtroom.)

19 (A recess was taken from 9:53 AM
20 to 10:12 AM.)

21 (Open court, Defendant present, no jury.)

22 THE COURT: All right. Let's go.

23 MR. MEGARO: Judge, just as a matter of
24 scheduling, I know we're moving a little bit faster than
25 I anticipated, but I think the State has eight witnesses

1 today. We've gone through two already?

2 MS. LABORDE: Yes.

3 MR. MEGARO: We might get through all
4 eight, with God's grace maybe, but I've alerted two
5 defense witnesses to be here for later this afternoon,
6 and one of them is -- my other defense witness has been
7 alerted for tomorrow morning because he's from
8 Fort Worth.

9 THE COURT: Okay. That sounds -- that
10 sounds fine.

11 MR. MEGARO: You know, if we finish the
12 Defense case on Thursday morning, if there is one, I'm
13 assuming the case could go to the jury -- I'm assuming
14 there's no rebuttal or even if there would be --
15 Thursday afternoon.

16 THE COURT: I should hope so.

17 (The jury was seated in the jury box.)

18 THE COURT: All right. Call your next
19 witness.

20 MR. RAMSAY: At this time the State calls
21 Shelby McComas.

22 THE COURT: I'll swear you in, ma'am.

23 (The witness was sworn.)

24 THE COURT: Have a seat, please.

25 THE WITNESS: (Complies with request.)

1 THE COURT: There's a clipboard there,
2 ma'am, if you would print your name on it.

3 THE WITNESS: (Complies with request.)

4 THE COURT: Proceed.

5 MR. RAMSAY: Thank you, Your Honor.

6 SHELLBY McCOMAS,

7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. RAMSAY:

10 Q. Ms. McComas, good morning.

11 A. Good morning.

12 Q. And is that how -- is that how you pronounce
13 your last name?

14 A. McComas.

15 Q. Now we've had a chance to meet, but could you
16 introduce yourself to the jury, please?

17 A. My name is Shellby McComas.

18 Q. Ms. McComas, where are you originally from?

19 A. Born in Fort Worth, but I've spent most of my
20 life in Whitney, Texas.

21 Q. All right, and is that where you currently live
22 now?

23 A. Yes.

24 Q. And what do you do for a job?

25 A. I'm a waitress.

1 Q. All right. Have you done that for a number of
2 years?

3 A. Yes, sir.

4 Q. And at any point in time did you work at the
5 Black Eyed Pea in Hillsboro?

6 A. Yes, sir.

7 Q. And when did you work there?

8 A. I worked there for two years, and the ending
9 was in January, of this year.

10 Q. Okay, so January, of 2014, would have been
11 your --

12 A. Yeah, yes, sir.

13 Q. Now how did you know -- did you know
14 Taylor Garcia and Juan Ortiz or -- or Miguel Ortiz?

15 A. I knew Miguel and Taylor.

16 Q. And do you see Miguel -- who you know as Miguel
17 in the courtroom today?

18 A. Yes, sir.

19 Q. And can you identify him by an article of
20 clothing he's wearing?

21 A. A black sweater.

22 MR. RAMSAY: Your Honor, may the record
23 reflect that the witness has identified the Defendant?

24 THE COURT: Noted.

25 Q. (BY MR. RAMSAY) Ms. McComas, how well did you

1 know Taylor and the Defendant?

2 A. Pretty well, Taylor -- Taylor, she used me and
3 Sharon as a confidant. She would -- she would come and
4 express all her fears and --

5 MR. MEGARO: Objection, Your Honor, as to
6 what Taylor said.

7 THE COURT: Sustained.

8 Q. (BY MR. RAMSAY) Without going into what she
9 said, you felt that you all were close?

10 A. Yes, sir.

11 Q. And how long did you work with Taylor?

12 A. She left right after the baby got taken.

13 Q. Okay, and that was right after this whole
14 incident happened?

15 A. Yes, sir.

16 Q. Was that after the police got involved?

17 A. Yes, sir.

18 Q. Now have you kept up with Taylor since?

19 A. Yes, sir, some.

20 Q. And since then she has been with the baby?

21 A. Yes, sir.

22 Q. Okay, so when you said "taken," you meant the
23 initial --

24 A. The initial.

25 Q. -- CPS involvement?

1 A. Yes, yes, sir.

2 Q. Now I want to go back to your time there. What
3 was Taylor and the Defendant's relationship like that
4 you observed?

5 A. That I observed, he was very intimidating and
6 controlling.

7 Q. Okay, and why do you say -- why do you say
8 that?

9 A. Taylor wasn't allowed to be at work without
10 him. We were very, very playful up there. All the girl
11 servers, we always -- we would like slap each other on
12 the butts and, you know, being playful like that, and
13 Taylor was not allowed to be involved in that at all.
14 If anybody touched Taylor in any sort of playful way,
15 she would get in trouble.

16 Q. You mean get in trouble from the Defendant?

17 A. Yes, sir.

18 Q. And did you ever see him angry at her?

19 A. Yes, sir.

20 Q. And you said, "He was intimidating." When you
21 look at the Defendant today in court, does he appear any
22 different than you knew him back then?

23 A. He appears a lot smaller than he was.

24 Q. Okay. Are you talking fat, or are you --

25 A. No. I'm talking he was very, very muscular.

1 Q. All right, and when -- when he came to work, I
2 mean you were able to see this in the clothes that he
3 wore?

4 A. Yes, sir.

5 Q. Do you think he was proud of his physique?

6 A. Yes, sir. He always talked about going and
7 working out. He was -- he was very muscular.

8 Q. Okay, so that was -- one of his hobbies, I
9 guess, would be to -- to work out?

10 A. Yes, sir.

11 Q. Do you think that's -- do you think he used
12 that stature in his relationship with Taylor?

13 A. Yes, sir.

14 MR. MEGARO: Objection.

15 THE COURT: It's asked and answered.

16 Q. (BY MR. RAMSAY) Now I want to go back. You
17 said, "He was very controlling." Did you -- can you
18 think of any examples of times when you -- that raised a
19 red flag that he was -- was controlling?

20 A. Yes, sir. I called Taylor's cell phone from my
21 cell phone one day, and, for whatever reason, Taylor's
22 cell phone was set up to where even if the person wasn't
23 programmed in the phone, it would pop up like a regular
24 caller ID like a -- like a land line would, so it popped
25 up with my step-dad's name.

1 Q. Was that -- was that because your phone was --

2 A. My phone was in my step-dad's name. It was on
3 his account.

4 Q. And what was his name?

5 A. Mike Wiltse.

6 Q. Okay, so Mike Wiltse's name came up on her
7 phone?

8 A. Yes, sir, and later that night while I was
9 cleaning I got a phone call, and I answered it. I
10 didn't know who it was, and it was Miguel. He was
11 calling to see who Mike Wiltse was.

12 Q. So he -- so he had gotten -- checked Taylor's
13 phone, and he called from his phone?

14 A. Yes, sir.

15 Q. And did he identify himself?

16 A. No, sir.

17 Q. How did you know it was him?

18 A. He identified himself after questioning me.

19 Q. Oh, so he found out when you said, "This is" --
20 "This is Shellby"?

21 A. Yeah.

22 Q. And he said, "Oh, I was just seeing who this
23 number was"?

24 A. Well, no. It went on for a few minutes. He --
25 he asked who this was, and I told him, and then he

1 started asking who Mike Wiltse was, and I told him that
2 that was my father, and then -- and I said -- and I kept
3 asking who this was, and after a couple of minutes of
4 him asking me questions, he then told me who he was.

5 Q. So did you find that odd?

6 A. Yes, sir.

7 Q. Did it -- did it appear that he -- that he felt
8 that he really needed to know who that caller was?

9 A. Yes, sir.

10 Q. And that's -- that doesn't go -- I mean that
11 goes along with how you saw him treat Taylor at work,
12 correct?

13 A. Yes, sir.

14 Q. Now did you ever see the Defendant interact
15 with the baby at work?

16 A. Taylor brought the baby up there. The baby
17 was -- the baby would cry all the time like there -- it
18 seemed like the baby had no happiness like -- you know,
19 I mean I know that babies cry, but this -- he cried all
20 the time, and when Miguel would come up and see the
21 baby, he would make comments like, "The baby is a sissy;
22 he needs to toughen up," things like that.

23 Q. And did you think that was kind of odd to call
24 a two-month-old a "sissy"?

25 A. Yes, sir.

1 Q. Do you have any kids?

2 A. Yes, sir.

3 Q. And a two-month-old does cry, correct?

4 A. Yes, sir.

5 Q. Okay. In your opinion, this was a little bit
6 different?

7 A. Yes, sir. We -- we told Tay to-- Taylor to
8 get -- to try some gas drops to do -- to see if the baby
9 was colicky or something like that or gassy, and she
10 said that --

11 Q. Without saying what -- what she said --

12 A. Oh.

13 Q. -- was she able to do that?

14 A. No. She wasn't able to give the baby any
15 medicine.

16 Q. Were you all able to eventually work around
17 that and provide the baby with some medicine?

18 A. Yes, sir.

19 Q. Was that, you know, unbeknownst -- unbeknownst
20 to the Defendant?

21 A. Yes, sir. We had to distract him so that we
22 could get the baby some gas medicine.

23 Q. Was he -- did you ever hear him comment that he
24 didn't want Taylor to take him to the doctor or anything
25 to that matter?

1 A. No, sir.

2 Q. You never heard that?

3 A. No, sir.

4 Q. So just -- just no medicine because you knew he
5 didn't want her -- want him to have any medicine?

6 A. No medicine.

7 Q. Did you find that odd?

8 A. Yes, sir.

9 Q. Now let's talk about your seeing Taylor with
10 Max. How was she around Max?

11 A. Taylor was a great mother.

12 Q. Okay, and so -- so she had Max, I guess, when
13 she was 18?

14 A. Yes, sir.

15 Q. Did she -- did she feel equipped at that point
16 to be a mother?

17 A. She was young, and she was scared but --

18 Q. Like most parents are when they first have a
19 kid?

20 A. I was terrified, but she -- she seemed
21 genuinely concerned about the wellbeing of her
22 child. She just wanted him to be happy and healthy,
23 and she wanted him -- she didn't know what was wrong
24 with him, and she wanted to know what was wrong with
25 him.

1 Q. In your viewing of how Taylor and Max
2 interacted, do you believe Taylor loved Max?

3 A. Yes, sir.

4 Q. When -- I guess after the end of August,
5 of 2012, you learned of the condition of Max, that he
6 had numerous bones broken?

7 A. Yes, sir.

8 Q. At any point did you expect that it was Taylor
9 that had done that?

10 A. No, sir.

11 Q. It never even crossed your mind?

12 A. No, sir. In my mind, I instantly knew.

13 MR. RAMSAY: We'll pass the witness,
14 Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MEGARO:

17 Q. Ms. McComas?

18 A. Yes, sir.

19 Q. Did I say it correctly?

20 A. Yes, sir.

21 Q. Okay. You testified that you live in Whitney?

22 A. Yes, sir.

23 Q. Who do you live with?

24 A. Sharon Matthews.

25 Q. Is she waiting in the hallway for you?

1 A. Yes, sir.

2 Q. You two came together today?

3 A. Yes, sir.

4 Q. What is your relationship with Sharon Matthew?

5 A. She's my partner.

6 Q. You have a romantic relationship. Is it fair
7 to say?

8 A. Yes, sir.

9 Q. Did you ever speak to the police in this
10 matter?

11 A. No, sir.

12 Q. When is the first time you spoke to someone at
13 the District Attorney's Office about this case?

14 A. A couple of weeks ago.

15 Q. A couple of weeks ago they asked you to be a
16 witness in this case?

17 A. Yes, sir.

18 Q. You've discussed this matter with
19 Sharon Matthews prior to testifying here today?

20 A. We went to -- I went with Sharon -- Sharon was
21 subpoenaed, and I went with Sharon to talk to the DA,
22 and while Sharon was talking, we were talking, as well,
23 and they found what I knew, also.

24 Q. Before a couple of weeks ago, have you ever
25 spoken to any law enforcement regarding this case?

1 A. No, sir.

2 Q. And where do you currently work?

3 A. The Cafe in Whitney.

4 Q. The same one that Sharon works at?

5 A. Yes, sir.

6 Q. And is she your boss there?

7 A. No, sir.

8 Q. Now you said that at the Black Eyed Pea the
9 female waitresses would play games on each other,
10 correct?

11 A. Yes, sir.

12 Q. And that -- in your words, you said they would
13 "slap each other on the rear"?

14 A. Yes, sir.

15 Q. Is it fair to say that Mr. Ortiz did not
16 approve of that type of behavior?

17 A. Yes, sir.

18 Q. Did you ever try to slap Taylor Garcia on the
19 rear?

20 A. No, sir. It was made known by everybody very
21 early on that Taylor was not allowed to be a part of the
22 game.

23 Q. You said that the baby was taken away from
24 Taylor?

25 A. It was taken away from Taylor and Miguel.

1 Q. Okay, and you've kept in touch with Taylor?

2 A. Yes, sir, some, on Facebook mostly.

3 Q. By the way, when you were working at the
4 Black Eyed Pea, were you with Sharon Matthews then?

5 A. Not at the time that this happened.

6 Q. When did you and Sharon link up together?

7 MS. LABORDE: Your Honor, I'm going to
8 object to that as irrelevant.

9 THE COURT: Sustained.

10 Q. (BY MR. MEGARO) When did you move in with
11 Sharon Matthews?

12 MS. LABORDE: Your Honor, I'm going to
13 object to that as irrelevant.

14 THE COURT: Sustained.

15 Q. (BY MR. MEGARO) How many times have you spoken
16 with Taylor since August 2012?

17 A. A handful, not very many.

18 Q. Did you ask her what was going on with the
19 baby?

20 A. I see -- I see pictures and posts on Facebook
21 of the baby.

22 Q. To your understanding --

23 A. I -- I mean I ask how he is but --

24 Q. It's your understanding that she eventually got
25 the baby back?

1 A. Yes, sir.

2 Q. How long ago did that happen; do you know?

3 MR. RAMSAY: Judge, I object to this as
4 calling for hearsay. This is -- only can be told to
5 her, and it's not any information that she can --

6 THE COURT: Overruled, if she knows.

7 THE WITNESS: I don't know. It was -- I
8 know the baby lived with Taylor's dad, and then, as far
9 as I know now, the Bailey -- the baby lives with Taylor
10 and his dad (sic), that they have joint custody of the
11 baby.

12 Q. (BY MR. MEGARO) What was your relationship at
13 the Black Eyed Pea with Mr. Ortiz?

14 A. I'm sorry?

15 Q. What was your relationship with Mr. Ortiz at
16 the Black Eyed Pea?

17 A. He was a cook. I was a server. I don't --
18 like our relationship?

19 Q. Were you friends at work?

20 A. I liked Miguel. I mean he was -- to me he was
21 kind of charming and nice, but he was also very
22 intimidating. I mean we got into an argument on the
23 line over white gravy. He just refused to give me white
24 gravy that I needed for my table, and it was like he had
25 to show that he was the boss.

1 Q. That didn't go over well with you?

2 A. Not really.

3 Q. Are you still supportive of Taylor Garcia
4 today?

5 A. Yes, sir.

6 MR. MEGARO: Thank you. I have nothing
7 further for the witness.

8 MR. RAMSAY: Brief redirect, Your Honor.

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MR. RAMSAY:

12 Q. So, Ms. McComas, has anything you've come in
13 here and testified to been influenced by your
14 relationship with Ms. Matthews?

15 A. No, sir.

16 Q. If law enforcement would have asked you to come
17 back in September -- August or September, of 2012, would
18 you have done so?

19 A. Oh, yes, sir.

20 Q. And -- and, real quick, when you said "his" --
21 when you said "Taylor and his dad," did you mean Taylor
22 and her dad?

23 A. Taylor and her dad, yes.

24 Q. So Max's grandfather?

25 A. Yes.

1 MR. RAMSAY: Your Honor, I have nothing
2 further.

3 MR. MEGARO: Just very brief.

4 RECROSS-EXAMINATION

5 BY MR. MEGARO:

6 Q. Ms. McComas, did you ever pick up -- did you
7 ever pick up the telephone and call anyone at the
8 West Police Department and say, "I have information
9 regarding this case"?

10 A. No, sir.

11 Q. Did you ever pick up the phone and call anyone
12 at the District Attorney's Office and say, "I have
13 information regarding this case"?

14 A. No, sir.

15 Q. Did you ever pick up the phone and call anyone
16 at Child Protective Services and say, "I have
17 information regarding this case"?

18 A. No, sir. The baby had already been taken by
19 the time that I knew that there was an issue. The Child
20 Protective Services had already taken the baby.

21 Q. Did you ever try to make yourself as a witness
22 in the Child Protective Services matters?

23 A. No, sir. I was sure that this was a cut and
24 dry case.

25 MR. MEGARO: Thank you. Nothing further

1 for the witness.

2 THE COURT: Any redirect?

3 MR. RAMSAY: Nothing further, Your Honor.

4 THE COURT: You may step down, ma'am.

5 Thank you.

6 MR. RAMSAY: Your Honor, may she be

7 released from subpoena?

8 MR. MEGARO: That's fine.

9 THE COURT: You're released from the
10 subpoena, ma'am. Next witness.

11 MS. LABORDE: Your Honor, the witness is
12 coming from our office, so if --

13 THE COURT: Okay.

14 MS. LABORDE: -- we can just wait a couple
15 of minutes or --

16 THE COURT: You all stand up and stretch a
17 moment.

18 (The jury complies with the request.)

19 THE COURT: All right. I believe your
20 witness has arrived.

21 MR. RAMSAY: Yes. At this time the State
22 calls Alfonso Saldana.

23 (The witness was sworn.)

24 THE COURT: Have a seat, sir.

25 THE WITNESS: (Complies with request.)

1 THE COURT: I think you know the routine.

2 Print your name on that clipboard there.

3 THE WITNESS: (Complies with request.)

4 THE COURT: Go.

5 MR. RAMSAY: May I proceed?

6 THE COURT: You may.

7 ALFONSO SALDANA,

8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. RAMSAY:

11 Q. Good morning, Mr. --

12 THE COURT: That's what "go" means.

13 MR. RAMSAY: I'm having a hard time
14 hearing, Judge.

15 Q. (BY MR. RAMSAY) Good morning, Mr. Saldana.
16 How are you?

17 A. Just fine.

18 Q. Good. Now we've had a chance to meet, but
19 would you introduce yourself to the jury, please.

20 A. Yes. My name is Alfonso Saldana.

21 Q. And how are you currently employed?

22 A. I am currently employed at the Waco ISD as an
23 administrator.

24 Q. And how long have you been in that position?

25 A. Approximately ten months.

1 Q. Now let's go back. Where are you originally
2 from?

3 A. As far as in West Texas?

4 Q. Yes.

5 A. I'm from Tahoka, Texas.

6 Q. All right, and then what brought you to
7 Central Texas?

8 A. Central Texas, I came to school and moved with
9 my parents back in 1984.

10 Q. And did -- where did you go to -- did you go to
11 college?

12 A. Yes, sir.

13 Q. Where did you go?

14 A. University of Texas-Arlington.

15 Q. And then after you graduated from there, what
16 did you do?

17 A. Oh, I didn't -- I graduated while I was in the
18 military and then went -- continued college when I
19 worked for the -- as a -- as a border patrol agent and
20 then later on as an air marshal.

21 Q. Okay, so we went through stuff, so you worked
22 as a border patrol agent, and how long did you do that?

23 A. I did that for approximately six years.

24 Q. And then what was the thing you did after that?

25 A. I was an air marshal after 9-11.

1 Q. So as far as your total time in law
2 enforcement, how -- how long would that be?

3 A. I want to say it was 16 years federal, and
4 then -- then I was in -- I forgot I was eight years in
5 the U.S. Navy and three years doing -- they call it --
6 "shore patrol" but law enforcement.

7 Q. Okay, and at what point did you -- at some
8 point did you work for CPS?

9 A. Yes. After -- when I left the federal air
10 marshal program, I came here to -- back to Waco and
11 started working for the State working as a special
12 investigator with Child Protective Services.

13 Q. And when did you begin that?

14 A. February, of 2011.

15 Q. And were you employed in that position in
16 August, of 2012?

17 A. Yes.

18 Q. Now as far as your -- was there any training
19 you had to go through to be an investigator for CPS?

20 A. Yes. There was three months training up in
21 Austin, but in addition to that they -- they require a
22 law enforcement background in order to conduct that type
23 of investigation position.

24 Q. Now what were your duties as a special
25 investigator for CPS?

1 A. As far as special investigators, we investigate
2 any type of child death or serious injuries to children,
3 unexplained injuries to children, primarily that are
4 involved with the in-hospital for various types of
5 injuries.

6 Q. So to put it to the jury, you would usually --
7 say if somebody presented to the hospital with
8 unexplained nonaccidental injuries, you would be -- you
9 would be called?

10 A. Right.

11 Q. And then you would begin an investigation after
12 that?

13 A. Yes.

14 Q. Now during your investigation, was it common
15 for you to work with local police departments?

16 A. Yes. You have -- normally when CPS would be
17 contacted by either the hospital or -- or whoever did a
18 report, law enforcement also receives these reports by
19 CPS, and we work parallel or along with law enforcement.

20 Q. Okay, so that was -- that was common practice
21 for you and an investigator or a detective for law
22 enforcement to work together?

23 A. Yes.

24 Q. Now I want to take you back to August 2012.
25 Approximately on the 28th, were you contacted in regards

1 to a baby, M █████ Ortiz?

2 A. Yes. I was contacted to assist the current CPS
3 investigator up in Temple, and I met with the social
4 worker and the investigator.

5 Q. Okay. When you go meet with the social worker,
6 are you speaking of Carmen Gattis?

7 A. Yes. I spoke to Carmen Gattis.

8 Q. And then the investigator, is that
9 Alicia McGowan?

10 A. That was Alicia. She was the first one to
11 respond. There's always like a 24-hour response in
12 these type matters, and she was the initial responder,
13 first person that was on call.

14 Q. So going in what did you know as you're
15 beginning your investigation and you show up at the
16 place?

17 A. I knew the preliminary -- the preliminary
18 report that was presented, I believe, by the hospital
19 that day, and I went and spoke to Carmen Gattis to find
20 out what additional information she knew so we could --
21 and then she's the one that made -- or the hospital is
22 the one that made the initial report, I believe, and any
23 information that was provided in that report is what I
24 reviewed.

25 Q. Okay, and what's the next step -- after you

1 talk to the social worker and the initial CPS worker,
2 what's the next step in your investigation?

3 A. Okay. The first portion when speaking with the
4 person from the hospital is to find out had they spoken
5 to the family, who's involved with this child, what kind
6 of information they were able to obtain from either the
7 father or the mother or both or any other family
8 members, as well.

9 Q. Okay, and after this what did you do after you
10 obtained that information?

11 A. After that I did contact a supervisor at that
12 time to inform an update of what had been going on. It
13 was found that they needed someone that could speak
14 Spanish. Apparently, the father could speak English,
15 but there were some things that he could not either
16 understand or articulate in English.

17 Q. Okay, so what was your first involvement with
18 the Defendant in this case, Mr. Ortiz?

19 A. I believe was not at the -- at the hospital I
20 believe was the first time I met with him. I can't
21 remember, though. It was either at the hospital or --

22 Q. Or?

23 A. -- it might have -- it might have been at West.
24 I can't remember exactly when the first time was when I
25 encountered him.

1 Q. Okay. When you first meet him, what do you --
2 what is your goal in that meeting?

3 A. To find out the typical background information
4 as far as how he's involved with this child, if he's
5 involved on a daily basis, if he lives at home, the --
6 how his day-to-day actions are, where he works at,
7 things of that nature.

8 Q. And so in this would you have actually made a
9 report?

10 A. To CPS?

11 Q. A CPS report.

12 A. Yes.

13 Q. Now as you were talking to him, where -- did he
14 tell you where he was -- where he's from?

15 A. He -- he said that he's originally from Mexico.
16 There was no reason to inquire further as to what part
17 of Mexico, but he said he was living currently in West.

18 Q. Okay, and did he speak of any education that he
19 had in Mexico?

20 A. He mentioned that he had -- he was an
21 accountant or he had gone to school to become an
22 accountant in Mexico.

23 Q. Did he -- does he have any family here in the
24 States?

25 A. He has a -- he said he was divorced but has

1 a -- had a current wife that was living in West, along
2 with two children from that wife, but he also had a
3 girlfriend and his current baby.

4 Q. And so I think you -- you said he was divorced.
5 I think he was going through a divorce. Is that
6 correct?

7 A. It might have been that he was going through a
8 divorce. I don't know what the legal -- what -- what
9 legal standing he was, but I know he had a current -- he
10 had a wife or going through a divorce, but he did visit
11 the children at her house.

12 Q. Okay, and then a girlfriend being the mother of
13 M [REDACTED]?

14 A. Yes.

15 Q. And as you're talking to him, do you remember
16 what his demeanor was like?

17 A. At the initial?

18 Q. Yes.

19 A. His demeanor was -- was -- would be calm, but
20 when asking certain questions, there again, he spoke --
21 he spoke in English in lots of our conversation, but
22 just from my experience I could tell that he would --
23 when he would get either frustrated or trying to think
24 of something that he would -- he would revert -- he
25 would talk Spanish. He has a couple of -- of -- I guess

1 he has -- his mouth gets dry a lot when -- when speaking
2 and didn't know how to say certain things, or I don't
3 know if he was either making something up, but he would
4 clear his throat very often, and that's one of the
5 indicators that I saw from the very beginning.

6 Q. Okay. Now are you fluent in Spanish.

7 A. I'm fairly fluent.

8 Q. If he wanted to speak in Spanish, would you
9 have spoke in Spanish?

10 A. If he wanted to speak in Spanish -- I continued
11 to speak English only because I can communicate much
12 better in English, and he would respond in English
13 except for certain words that he didn't know how to say,
14 but, yet, he would -- he would try to say words in
15 English, and then he would further make it understood in
16 Spanish.

17 Q. So are you all confident that during you all's
18 initial meeting that you all were able to fully
19 communicate with one another?

20 A. Yes, sir.

21 Q. And so if he -- if he had trouble with a word
22 in Spanish or with -- in English, you would be able to
23 know what he was talking about in Spanish?

24 A. Yes, and if there were certain -- if there was
25 a certain word or phrase that he was trying to convey to

1 me, he would say it either again in English, or he would
2 find other words to say in Spanish.

3 Q. But, all in all, his English was -- was pretty
4 good?

5 A. Yes.

6 Q. Now did you later -- after this initial meeting
7 where you find out his history and the family history of
8 both himself and his involvement with the child, what do
9 you do after that?

10 A. I wanted to find out more from the other family
11 members, and, well, from -- from his -- from the mother
12 of the baby, and they were together, so I interviewed
13 with both him and her, was in touch eventually with
14 other persons that he worked with, and that was over at
15 the West Police Station.

16 Q. Okay, and let's -- let's go back. So did you
17 talk to Taylor Garcia?

18 A. Yes.

19 Q. And was your conversation basically the same
20 with her that -- just history --

21 A. Same thing, yes.

22 Q. -- her stuff, and at what point in the -- in
23 this process did you try to start narrowing down who was
24 the suspect in the case?

25 A. Probably later on, and when the explanations

1 weren't clear, when Taylor's story and his story weren't
2 matching up about things that had been happening, and
3 they mentioned that -- I was trying to find out who all
4 that had contact with the child, and we found out there
5 was a babysitter, as well. There's the biological
6 father and stepmother -- I'm talking grandfather and
7 step-grandmother, had been -- visited previously to
8 their home -- to their home in West, and then they --
9 she also had a -- the mother of the baby also had a
10 sister in West, so I needed -- I needed to contact all
11 of them.

12 Q. And so were you able to contact all of them?

13 A. Yes.

14 Q. And as your -- as your investigation
15 progressed, was it clear that there were basically three
16 individuals that had primary contact with the baby?

17 A. With three, that would be the -- as far as I
18 knew was the mother and father of the child and the
19 babysitter, primarily.

20 Q. So at that point was -- was your focus pretty
21 much on that group of people?

22 A. Yes.

23 Q. So tell the jury -- I guess let's take it
24 day-by-day. What was your first day -- let me look.
25 The first day you met with the family, was that on

1 the 29th, or would that have been the 30th -- the 30th
2 of August? I think it's the 29th, correct?

3 A. I'll have to go back, and I'm looking at my --
4 at my report with CPS, and I broke it down -- it's
5 broken down on a day-to-day. Is that the same report?

6 Q. Yes --

7 A. Okay.

8 Q. -- I believe. If it says "8-29-12 FTF with
9 Juan Ortiz," would that be --

10 A. That would be "face-to-face with Juan Ortiz."

11 Q. So that would have probably been your first
12 meeting with Mr. Ortiz and Ms. Garcia, correct?

13 A. I'm looking at "8-29 face-to-face with
14 Juan Ortiz," yes.

15 Q. Okay, so on 8-29 that was the -- the meeting
16 you just talked about where you get the history and kind
17 of get a little background, and we just discussed all
18 that. Now let's go forward to August 30th which would
19 have been the next day, a Thursday, I believe. At that
20 point you had kind of narrowed down who had care of the
21 kid -- care of Max most of the time?

22 A. Right.

23 Q. And so did you bring those people into your
24 office or into the West PD? How did you go about that
25 investigation?

1 A. That was going to be at the West PD, knowing
2 that there was some potential crime that was committed
3 here. In -- in my experience in working with these type
4 of situations, I try to not take it upon myself to
5 divulge anything that could be used later in -- in a
6 court of law, so I always involve law enforcement, and
7 that's why I was working alongside of Det. Hudson, so
8 that we -- I would be able to get my investigation
9 conducted properly in accordance with CPS requirements
10 and at the time same time with Det. Hudson with him
11 allowing to get the -- the things he needed at the same
12 time.

13 Q. And so you say you don't want to kind of mess
14 up what's going to happen in court. Is -- is that
15 because you just didn't like this group of people, or
16 was it because you saw a child with 17 broken bones, and
17 you knew that was probably -- that was in your opinion
18 child abuse?

19 A. Exactly, that was -- that was -- I was very
20 familiar with child abuse, and I do that with all -- all
21 my cases that have a potential crime that was involved.

22 Q. Okay, and in this case it was pretty clear
23 there was a crime --

24 A. Yes.

25 Q. -- involved? So on August 30th who all did you

1 call into West Police Department to -- to talk?

2 A. August 30th, the -- the calls were actually
3 made by Det. Hudson, there again, me kind of shadowing
4 what he was doing. I didn't want to step on his
5 investigation whatsoever, so we did call the -- the
6 mother and the father of that child. We attempted to
7 get in contact with the babysitter, and there were some
8 coworkers from the -- from the Black Eyed Pea -- I
9 believe is where they worked at -- and, also, there was
10 the mother's sister who lived downstairs or upstairs
11 from -- from the mother.

12 Q. And that would have been Jennifer Garcia?

13 A. Yes.

14 Q. Now as -- as far as putting you in touch with
15 the people from the Black Eyed Pea, that was the
16 Defendant that put you in touch with Sharon Matthews,
17 correct?

18 A. Yes. He provided -- he provided a couple of
19 names that he worked with as we looked for some type of
20 collaterals that could speak on his behalf, and, at
21 the same time with the -- the mother, she worked at
22 Black Eyed Pea, also, so the same names were mentioned.
23 One of them was the manager or assistant manager, and I
24 don't know if there was another coworker. I can't
25 remember that.

1 Q. So as -- as you are in the middle of this
2 investigation and you're conducting it, I guess, from
3 the West PD, is that in the -- is that -- is that a
4 different building, or is that within the City Hall
5 there in West?

6 A. Oh, it's all one building there in West.

7 Q. So they have the City Hall and several other
8 offices?

9 A. As far as I know, they pay the water bills and
10 utilities and things of that nature in that one little
11 building.

12 Q. Okay, so it's kind of a -- it's kind of a city
13 building?

14 A. Several people are coming and going at that
15 building, uh-huh.

16 Q. Now when you brought in the Defendant and his
17 wife that day, who did you talk to first?

18 A. Well, they -- they came in on their own.

19 Q. Girlfriend, I'm sorry.

20 A. Oh, they came in on their own, but what was
21 your question? Who did I talk to first?

22 Q. Yes.

23 A. They came in and actually spoke together.

24 Q. They came in, and so you all -- you met with
25 them together?

1 A. They came in and spoke together. That was part
2 of the -- when you asked demeanor earlier, was -- he was
3 seemingly shadowing her or just kind of hovering every
4 move that she made, and then later we found out that she
5 was very frightened of him.

6 MR. MEGARO: Objection, Your Honor, as to
7 what they found out later.

8 THE COURT: Sustained.

9 Q. (BY MR. RAMSAY) But you saw that he was
10 hovering around her and --

11 A. Oh, yes.

12 Q. -- seemed to be, say, keeping tabs --

13 A. Yes.

14 Q. -- and making sure she was doing --

15 A. Yes.

16 Q. -- whatever he thought should be done?

17 A. Yes, sir.

18 Q. So that first day -- yeah, and let's go back
19 to you said -- you were able to observe Taylor,
20 correct --

21 A. Yes.

22 Q. -- the mother? And we can't say that -- what
23 she said, but you were able to -- to see her demeanor.
24 Did it appear that she was nervous or fearful in his
25 presence?

1 A. Very much so. She didn't want to speak freely
2 with -- with myself or with Det. Hudson when -- when
3 Mr. Ortiz was around, but when they -- when -- when he
4 was not around, she spoke frankly, and she -- she was
5 seemingly nervous and -- and initially didn't -- didn't
6 say why, and then it was later discovered of what she
7 was --

8 MR. MEGARO: Objection, Your Honor.

9 THE WITNESS: -- nervous about.

10 THE COURT: Sustained.

11 Q. (BY MR. RAMSAY) So, Mr. Saldana, without
12 saying what she said, while you were meeting with her --
13 did you meet with her both on the 30th and the 31st?

14 A. Yes.

15 Q. And on the 30th, did you ever meet with her
16 alone?

17 A. I don't recall. We -- we met with her alone in
18 the -- in the police station when -- when they were --
19 when we were interviewing with her.

20 Q. And so on the -- on the 30th, did you ever meet
21 with the Defendant alone?

22 A. I believe we met with both of them together,
23 and the statements were made right there while they were
24 there together.

25 Q. Okay, so they were both in the office together,

1 both writing statements next to each other?

2 A. From what I recall, I believe so.

3 Q. And that -- that was on the 30th?

4 A. Yes.

5 Q. Now --

6 MR. RAMSAY: Your Honor, may I approach?

7 THE COURT: You may.

8 Q. (BY MR. RAMSAY) Mr. Saldana, I'm showing you
9 what's been marked for identification purposes as
10 State's Exhibits 16 and 17. Can you look over those
11 briefly and tell me if you recognize those.

12 A. One is the Miranda warnings, and I'm not sure
13 whose Miranda warning that is because of the signature,
14 and this one is the statement of Mr. Ortiz.

15 Q. Okay, and if you look here at the signature
16 here on State's Exhibit 16 and States Exhibit 17, the
17 signatures, did those appear to be the same signatures?

18 A. Yes, they do.

19 Q. And does this appear to be a statement of
20 Mr. Ortiz?

21 A. Yes.

22 Q. And so is it fair that these were done at the
23 same time? Is there a date on State's Exhibit 16?

24 A. Yes.

25 Q. And what date is that?

1 A. August 30th.

2 Q. Is there a date on State's Exhibit 17?

3 A. Yes.

4 Q. And is this a statement that you remember
5 watching him give in the police department that day?

6 A. Right, on August 30th.

7 Q. Okay. Would this be a fair and accurate copy
8 of the statement that you saw him write that day?

9 A. Yes.

10 Q. And have you seen this before?

11 A. I've seen it before.

12 MR. RAMSAY: Okay. Your Honor, at this
13 time the State admits -- the State offers State's
14 Exhibits No. 16 and 17, the Miranda warning and the
15 Defendant's August 30th statement, which I believe
16 previous copies have been tendered to the Defense.

17 MR. MEGARO: Yes. On 16 and 17, I have no
18 objection to these documents being entered. Okay, okay,
19 no objection to 16 and 17.

20 THE COURT: Okay. State's 16 and 17 are
21 admitted. You may publish to the jury when you're
22 ready.

23 MR. RAMSAY: Your Honor, may I approach the
24 witness?

25 THE COURT: You may.

1 Q. (BY MR. RAMSAY) Mr. Saldana, I'm handing you
2 State's 16 and 17. All right. Let's first talk about
3 State's Exhibit 16. That is the Miranda warnings.
4 Actually, can I get this? You think it would be helpful
5 for the jury to see what we're talking about?

6 A. Sure.

7 THE COURT: I thought it was already on,
8 but it's not.

9 THE COURT COORDINATOR: Yeah, I turned it
10 on. I guess it went off.

11 MR. RAMSAY: Your Honor, permission to
12 publish when this thing gets fired up?

13 THE COURT: You may. Again, Ladies and
14 Gentlemen, if you need to go down to the other end of
15 the jury box to see this better, feel free to do so.

16 Q. (BY MR. RAMSAY) Mr. Saldana, is that clear?

17 A. Yes.

18 Q. All right. Tell the jury what we're looking at
19 in State's Exhibit 16.

20 A. These are the Miranda warnings as they were
21 read to -- during our -- this interview with Mr. Ortiz
22 and myself and Det. Hudson.

23 Q. Okay, and at this point Miranda warnings are
24 usually given when you're going to question somebody
25 that's a suspect, correct?

1 A. Yes.

2 Q. Was this -- at this point in the case, was --
3 was he under arrest?

4 A. No.

5 Q. Did he voluntarily come into the office that
6 day?

7 A. Yes, he did.

8 Q. Was he ever placed in handcuffs?

9 A. No.

10 Q. Was he ever not free to leave?

11 A. No.

12 Q. But just out of an abundance of caution you all
13 gave him his Miranda warnings?

14 A. Yes, yes, we did.

15 Q. And as you gave him his Miranda warnings -- we
16 see that it's in English --

17 A. Uh-huh.

18 Q. -- how did you go about making sure he
19 understood these warnings?

20 A. After each one was read by Det. Hudson and by
21 myself, I would read it again in English and ask him if
22 he understood, and if he said -- he said that he did
23 understand on most of them, but there were some phrases
24 that he didn't understand, so I did restate it in
25 Spanish in -- in various words so that he did

1 understand, and when he said he understood, then I would
2 have him initial right next to the number.

3 Q. Okay, so by the time he initialled next to each
4 warning, you were confident that he understood?

5 A. Yes, uh-huh.

6 Q. And then even now about half -- halfway down
7 the page on State's Exhibit 16 there is a place that
8 says that he has understood each of these rights. Is
9 that correct?

10 A. Right.

11 Q. And he checked "yes"?

12 A. Yes, sir.

13 Q. And then there's "Signature of Person Warned."
14 Is that his signature as you saw it on his statement, as
15 well?

16 A. Yes, sir.

17 Q. And we also have two more signatures -- two
18 signatures. Is that your signature and then his again?

19 A. Mine on the left, and, yes, that's his.

20 Q. Okay, and this was just done to make sure that
21 he understood that he was being questioned in regard to
22 this case?

23 A. Yes.

24 Q. Now, Mr. Saldana, we're going to --

25 Mr. Saldana, when he was writing this statement on

1 August 30th, did you -- did you all just tell him to
2 write his statement? Did you tell him what to write?

3 A. He wrote his statement as he felt free to do
4 so, and -- but we didn't tell him what to write
5 whatsoever.

6 Q. Okay, so he was just writing, and nothing was
7 provoked by you all?

8 A. Right.

9 Q. Okay. I'm going to --

10 MR. RAMSAY: Your Honor, may I publish
11 State's Exhibit 17?

12 THE COURT: Of course.

13 Q. (BY MR. RAMSAY) All right. We're looking at
14 Page 1 of State's Exhibit 17, and at the top there does
15 it say "August 30th" as the date?

16 A. Yes.

17 Q. And it says his name, his age, his address and
18 then some form language before his statement begins,
19 correct?

20 A. Yes.

21 Q. Now are you able to see that well enough to
22 read it in English?

23 A. Yes.

24 Q. You are?

25 A. Yes.

1 Q. Okay. I'll zoom in just a little bit for you.

2 All right. Mr. Saldana, can you read that --

3 MR. RAMSAY: And, Your Honor, for
4 purposes -- if there's any issues with translation, I'd
5 ask for that to be brought up as he's reading it or by
6 the translator if there's any issues. I don't know how
7 that would be brought up by the Defense other than
8 objecting during the course of this reading. Is that
9 okay?

10 MR. MEGARO: Sure.

11 MR. RAMSAY: Okay.

12 THE COURT: All right.

13 Q. (BY MR. RAMSAY) All right. Mr. Saldana, go
14 ahead and read.

15 A. Okay. You want me to follow along with the
16 pen?

17 Q. Yeah, that would be great.

18 A. It says, "Juan Francisco Ortiz, father of
19 M [REDACTED] Ortiz," and he gives the date of August 27th
20 at 9:00 PM of this date.

21 Q. And what date is that?

22 A. "August 27th," it said, and there are some
23 phrases in here of the words that I did ask, "What do
24 you mean by these words," because there are several
25 slang words versus appropriate Spanish that -- that are

1 common versus non-common. It says that he had returned
2 from the 625 Tokio Road, Apartment 217 in West, Texas.
3 They had returned from Dallas. They said that they
4 were -- and see these things right here. You can't tell
5 what he was doing, but he was taking -- he was carrying
6 something to the apartment at that time and that they
7 entered both -- they both entered the apartment.

8 THE INTERPRETER: Okay, all right.
9 There's -- there's a lot more to that.

10 THE WITNESS: I'm sorry?

11 MR. RAMSAY: Judge, may we approach?

12 THE COURT: You may.

13 (At the Bench, off the record.)

14 (Telephone rings.)

15 THE COURT: I'll use my standard joke. I
16 told them never to call me here. I don't know why that
17 happens sometimes.

18 MR. MEGARO: That's one way to deal with
19 it.

20 (At the Bench, off the record.)

21 THE COURT: All right. Ladies and
22 Gentlemen, I think what we're going to do is is just
23 have this witness kind of summarize what this statement
24 says, and after lunch when Mr. Carroll has had the
25 opportunity to examine the statement more thoroughly and

1 then do a literal translation of it to the jury after
2 lunch to clear up any issues.

3 MR. RAMSAY: So may I proceed, Your Honor?

4 THE COURT: You may.

5 Q. (BY MR. RAMSAY) Mr. -- Mr. Saldana, let's take
6 a moment and have -- and you were there when this
7 initially was written down. Can you read it again and
8 then summarize -- I'm going to ask you some questions
9 off of it --

10 A. Okay.

11 Q. -- and -- and then we can just summarize what
12 the Defendant said, and then we'll get a more literal
13 translation after lunch. Is that all right?

14 A. Okay.

15 Q. So can you read through this for just a
16 moment --

17 A. Sure.

18 Q. -- and refresh your memory?

19 A. The one in front of me is not as clear. That's
20 why I'm using this one.

21 Q. Okay. Would you like -- is that one all right?

22 A. The one I received was not clear.

23 MR. RAMSAY: Okay. Your Honor, may I
24 approach?

25 THE COURT: You may.

1 Q. (BY MR. RAMSAY) I'll give you that briefly.

2 A. And I -- and I just wanted to ask you, if you
3 don't mind. I had translated this one in my report. If
4 it -- I don't know if I should bring that up or not.

5 Q. That would be great.

6 A. Okay. It's -- it's in my -- it's in my CPS
7 report.

8 Q. Now, Mr. Saldana, I know you translated
9 the 31st. Did you translate both statements?

10 A. I'm sorry. Maybe I misspoke. I'm sorry.
11 Yeah, that -- it just seemed really similar to the -- to
12 the other one about --

13 Q. The beginning part?

14 A. Right, yeah, and in general he's stating that
15 while his girlfriend had stepped out to go to the
16 bathroom that -- that he had started to pick the baby up
17 out of the car seat, and when the baby -- he had -- he
18 had his hand underneath one way, underneath the -- the
19 bottom and the right hand on the shoulder and that the
20 baby had slipped, and he tried to grab the baby from
21 falling, and then that process is probably what
22 caused -- caused it, but he put the baby -- laid him --
23 laid him down in his -- he didn't call it a
24 "pack-and-play," but that's the -- the common -- the
25 common term that we use for like a little bed inside of

1 the -- inside of the living room, and he noticed that
2 the baby wasn't sucking on his thumb as normal, and
3 that's when he went to see what was -- why he wasn't
4 doing that, and when the baby started crying when he
5 touched him, that's when Taylor came out.

6 Q. Okay, and then later on in the statement he at
7 this point knows that there are over 14 other fractures
8 in the baby, and did he give any explanation at that
9 point as to how those would have occurred?

10 A. Right. He said he didn't know how any of those
11 fractures would have occurred.

12 Q. Okay, so -- and then I believe later on he said
13 they started to think it might be the babysitter,
14 Alejandra, but they thought she was a good person. Is
15 that correct?

16 A. Right.

17 Q. But he never gave any explanation of anything
18 he had done that could have caused these injuries on
19 the 30th, correct?

20 A. Correct. There were no explanations.

21 Q. Except for the initial grabbing the arm?

22 A. Correct, except for that portion.

23 Q. Okay, and she said -- and at the end of that he
24 said he didn't think that -- that Taylor would have done
25 this to the child either. Is --

1 A. Right.

2 Q. -- that correct, and, "To me she's an excellent
3 person." Is that --

4 A. Yes.

5 Q. And that he -- that she's been good to -- good
6 to him and that they've had a good relationship. Is
7 that correct?

8 A. Yes.

9 Q. So at this point, Mr. Saldana, he's explained
10 possibly one broken bone, being the arm that he grabbed
11 when the baby was supposedly falling out of the car
12 seat, correct?

13 A. Yes, and I -- I believe he verbally mentioned
14 about the clavicle when the baby was born.

15 Q. When the baby was born, so there's still -- so
16 there's -- there's still 16 other fractures --

17 A. Right.

18 Q. -- that he has not explained?

19 A. Yes.

20 Q. Now --

21 MR. RAMSAY: Your Honor, may I approach?

22 THE COURT: You may.

23 Q. (BY MR. RAMSAY) Mr. Saldana, you finished up
24 the interview that day with Mr. Ortiz, and then was he
25 free to leave?

1 A. Yes.

2 Q. And so he left with his wife; however they got
3 there, he left that way, correct?

4 A. With his girlfriend.

5 Q. Sorry, girlfriend, I'm sorry.

6 A. Right, yes.

7 Q. And then after -- after that did you all call
8 him back in the next day?

9 A. Right. Mr. Hudson called him back the next
10 day, also.

11 Q. And were you present for that?

12 A. I was present.

13 Q. Now I hand you what's been marked for
14 identification purposes as State's 18, 19 and 20.
15 Could you look at these three and see if you recognize
16 those.

17 A. Yes.

18 Q. And are those true and correct copies of the
19 Miranda warnings, the statement and your translation of
20 that date?

21 A. Yes, sir.

22 MR. RAMSAY: And, Your Honor, at this time
23 the State offers State's 18 through 20, which, again, I
24 believe have been tendered to Defense counsel
25 previously.

1 MR. MEGARO: No objection to 18 through 20,
2 Your Honor.

3 THE COURT: State's 18, 19 and 20 are
4 admitted.

5 MR. RAMSAY: Permission to publish,
6 Your Honor?

7 THE COURT: Granted.

8 Q. (BY MR. RAMSAY) Now, Mr. Saldana, I'm putting
9 on the board State's Exhibit 18. What does that appear
10 to be?

11 A. These are the Miranda warnings read on
12 the 31st.

13 Q. So this is the next day after State's
14 Exhibit 16 was issued to him, and is it the same form
15 signed on the -- on the next day?

16 A. Yes, sir.

17 Q. And did you explain it to him in the same
18 manner --

19 A. Yes.

20 Q. -- both in English and in Spanish?

21 A. Yes.

22 Q. And did he sign that he understood the rights?

23 A. Yes.

24 Q. And is that your signature, as well?

25 A. On the left, yes, sir.

1 Q. Okay, and then on this date did he provide
2 another statement to you all?

3 A. Yes. He did provide another written statement.

4 Q. All right, and I'm going to -- does this look
5 to be the first page of State's Exhibit 19? Is this the
6 statement he gave on the 31st?

7 A. Yes.

8 Q. And this consists of three pages?

9 A. Yes, sir.

10 Q. Now you've actually translated this one,
11 correct?

12 A. Yes.

13 Q. Would that be what's been admitted as State's
14 Exhibit 20?

15 A. That was the -- yes, sir. That's what I
16 provided.

17 MR. RAMSAY: Your Honor, may I approach?

18 THE COURT: You may.

19 Q. (BY MR. RAMSAY) Mr. Saldana, I'll ask if you
20 could read State's Exhibit 20 and explain. Is this a
21 translation of State's Exhibit 19 that you did around
22 the same time as the statement was given on that same
23 day?

24 A. Yes.

25 Q. And who did you provide this to?

1 A. I provided that to Det. Hudson.

2 Q. Okay, and is it to the best of your knowledge
3 a -- a true translation of what the Defendant said?

4 A. Yes.

5 Q. And did you actually have the Defendant review
6 this?

7 A. Yes, we -- yes, we did go over it.

8 Q. Okay, and --

9 MR. RAMSAY: Actually, Your Honor, may I
10 approach again?

11 THE COURT: You may.

12 Q. (BY MR. RAMSAY) Is State's Exhibit 21 the
13 same -- what's been marked for identification the same
14 translation as you sent to Det. Hudson?

15 A. Right. This one was an e-mail, and that was --
16 he cut-and-pasted it over to the form.

17 Q. Okay, so if Det. Hudson had the Defendant sign
18 it --

19 A. Yes.

20 Q. -- that would be what Det. Hudson did?

21 A. Uh-huh.

22 Q. All right, so I'd ask if you would --
23 Mr. Saldana, could you read the Defendant's statement in
24 State's Exhibit 20?

25 A. Out loud?

1 Q. Yes.

2 A. Okay. "I, the father of M [REDACTED] Ortiz, hurt my
3 baby playing with him without intention and without
4 knowing that I could accidentally hurt him.

5 This entire time, I have tried to help
6 Taylor Garcia take care of my child without
7 understanding that I could have hurt him.

8 Now I understand that when I played with
9 him, I would place him on my knees and I would speak to
10 him while holding his hands. I would lift him a little
11 and he would laugh. Also at the same time I would take
12 his feet and I would put him on the couch or my knees
13 and I tried to exercise his legs trying not to hurt him
14 and with care but it looks like I was not necessarily
15 careful. On one occasion Taylor asked for me to help
16 wrap the baby in the blanket because she couldn't.
17 While being careful, I was adjusting the blanket and I
18 held him so he would not move and so I wrapped him in
19 his blanket and that was the only way he could sleep
20 comfortably. Sometimes I would bath him with me in the
21 shower. The water was slow in between hot and cold so
22 that I would not hurt him. It is the only way that I
23 could explain how he could have encountered being hurt.

24 I would like to explain that all I have
25 worked for has been for my children and never have I

1 thought it would make such a mess.

2 I remember a time Taylor told me about some
3 bruises on his hand that looked like small scratches.
4 When I talked to her we decided it was not that serious
5 because he did not seem to be bothered and he did not
6 cry while acting normal.

7 In one or two days the bruises disappeared
8 and he acted normal and therefore I never worried. This
9 is why he went all" -- "to all his appointments. I went
10 to three of these appointments and asked the doctor if
11 the baby looked good as a concerned parent would.

12 He would respond all was good and in
13 perfect condition. Now it is weird that all of this has
14 happened. I am happy that my son is fine and he can
15 return to his mother but truthfully it was never my
16 intention. Maybe I made a bad decision but never have I
17 tried to hurt my son. I have never been alone with him.
18 I love him and all my work I do for my children. I
19 would like to keep helping them. I love them with all
20 my heart and I think that is all."

21 Q. All right, so, Mr. Saldana, that's the
22 translation of the statement given on the 31st, correct?

23 A. Yes.

24 Q. Is that statement significantly different than
25 the statement on the 30th?

1 A. Yes.

2 Q. Now as we -- as you read through that, he -- do
3 you see a -- a pattern of minimization?

4 MR. MEGARO: Objection as to the
5 characterization, Your Honor.

6 THE COURT: Sustained.

7 Q. (BY MR. RAMSAY) What do you think he's trying
8 to do in explaining these injuries?

9 MR. MEGARO: Objection, same basis,
10 Your Honor.

11 MR. RAMSAY: Judge, I think he can say --

12 THE COURT: Overruled.

13 THE WITNESS: What was your question?

14 Q. (BY MR. RAMSAY) What do you think he's trying
15 to say in these explanations he's giving for the
16 injuries?

17 A. I -- I think he's showing some justification,
18 but he's minimizing at the same time the fact that he --
19 he may have accidentally hurt him, but he continually
20 repeats that throughout the statement.

21 Q. Okay, and are you aware that the explanations
22 that -- in your experience with CPS and seeing injuries
23 in children, are you aware of whether or not -- the
24 explanation he has given to you on the 31st, is that
25 capable of breaking bones?

1 A. After reviewing --

2 MR. MEGARO: Objection, Your Honor. He's
3 being asked to give a medical opinion.

4 MR. RAMSAY: Judge, I'm--

5 THE COURT: Overruled.

6 Q. (BY MR. RAMSAY) In your experience as a CPS
7 investigator, do you believe that a simple exercising of
8 a baby's legs or arms would cause these type of
9 injuries?

10 A. Simple exercising, no.

11 Q. Do you believe that -- do you believe that this
12 is of a violent nature?

13 A. As far as breaking bones, yes.

14 Q. Yes. Now -- so the Defendant placed -- said in
15 there that Max was laughing and not crying when he was
16 doing these things. To you is that another example that
17 led you to believe he's minimizing?

18 A. Right, right.

19 Q. Do you believe that if bones were being broken
20 that Max would be laughing?

21 A. No.

22 Q. So let's take -- with your investigation at
23 this point on the 31st, do -- the differences between
24 the statements given by the Defendant, what does that
25 say to you?

1 A. Well, there were differences in this statement,
2 along with other witnesses that we had questioned, some
3 corroborating the exercising --

4 MR. MEGARO: Objection as to what the other
5 witnesses had known.

6 THE COURT: Sustained.

7 Q. (BY MR. RAMSAY) And without going into what
8 they said but continue on with what -- what led to your
9 eventual decision.

10 A. There was a -- an attempted justification, if
11 you will, in -- in what he was saying for -- for the
12 fractures and for the -- for the injuries that had
13 occurred on his part.

14 Q. In your -- in your training and experience, is
15 it -- is it common for -- for people to attempt to
16 justify their behavior?

17 A. Exactly, justification and -- and minimizing
18 the extent of the injuries and how they may have caused
19 it.

20 Q. Now let's talk -- have you had other cases
21 where people have done that?

22 A. Yes.

23 Q. Now you said that you talked to other people.
24 Did you have a chance on the 31st to speak with
25 Taylor Garcia again?

1 A. Yes.

2 Q. And at that point were you able to do so while
3 Taylor was alone?

4 A. Yes.

5 Q. And explain to the jury how -- what Taylor's
6 demeanor was and how it was different from the previous
7 day.

8 A. Taylor was very frightened that day and visibly
9 so. Apparently, some things had happened the night
10 before.

11 MR. MEGARO: Objection, Your Honor, as to
12 what Taylor told.

13 THE COURT: Sustained.

14 Q. (BY MR. RAMSAY) Without going into what she
15 told you.

16 A. Okay. In -- in her actions, she would
17 constantly look around left and right because the door
18 was open in the office, and she felt like he was
19 listening in on the conversation, so we assured that
20 the -- he closed the door. He -- I say "he."
21 Det. Hudson may have closed the door. It may have been
22 me, but we assured that the door was closed, and then
23 she spoke very, very low so that nothing could be heard
24 outside the walls, and that was her demeanor. She
25 was -- she was frightened.

1 Q. So you said she was constantly looking around
2 to make sure he was listening. Did she have any reason
3 to make believe that he had listened in previously?

4 A. Yes.

5 MR. MEGARO: Objection.

6 THE COURT: Overruled.

7 Q. (BY MR. RAMSAY) Now, Mr. Saldana, as -- as
8 you're speaking with Taylor, did you -- when you're
9 speaking with the Defendant -- I'm sorry -- were --
10 these conversations both on the 30th and the 31st, were
11 these being recorded?

12 A. I don't know if they were being recorded. I'd
13 seen a recorder that Det. Hudson had in his office, but
14 I don't know if he actually pressed "Play" and stuff.
15 That was -- he was on the opposite side of the desk as I
16 was.

17 Q. Okay, so if -- if you would have known that --
18 do you sometimes record these interviews?

19 A. I -- I -- I normally would record my interviews
20 with the suspect for the CPS investigation, yes.

21 Q. Okay, but you believed that was being done by
22 the detective?

23 A. I -- I had thought so.

24 Q. Okay, but you do have the capability to do that
25 if you needed to?

1 A. Yes.

2 Q. If Det. Hudson would have told you his
3 equipment was malfunctioning, would you have then
4 recorded it?

5 A. Definitely.

6 Q. But you believed it was being recorded?

7 A. Yes, yes.

8 Q. Now your testimony here today after -- I'm
9 sorry. I'll withdraw that. After you -- on the 31st
10 after you'd interviewed Mr. Ortiz and Ms. Garcia, did
11 you interview the babysitter during that day, as well?

12 A. Yes.

13 Q. And with -- without going into what she said,
14 did you feel that -- that it was not her that had caused
15 these injuries?

16 MR. MEGARO: Objection.

17 THE COURT: Overruled.

18 THE WITNESS: What was your question?

19 Q. (BY MR. RAMSAY) After interviewing Alejandra,
20 the babysitter, was it your impression that she was not
21 the cause of these injuries?

22 A. Right, she was not the cause.

23 Q. And then you also spoke with, I believe,
24 Sharon Matthews from the Black Eyed Pea, correct?

25 A. I can't recall which one she is, but there

1 was -- there were, I believe, two people from Black Eyed
2 Pea. I'm not sure.

3 Q. Okay, and then perhaps the -- the sister of the
4 mother?

5 A. Yes.

6 Q. And after all this, did you make a
7 determination in your investigation with CPS?

8 A. Yes.

9 Q. And what was that?

10 A. The -- the finding of reason to believe that he
11 was the cause of the injuries.

12 Q. And when you said "reason to believe," is that
13 kind of a designation that CPS gives to -- to cases?

14 A. Yes.

15 Q. And so that would be validating who did it, who
16 did the abuse, and who the perpetrator is?

17 A. Yes.

18 Q. And at that point are you done with -- you're
19 not part of the criminal case?

20 A. Not at all, no.

21 Q. That would be up to Chief Hudson to -- to do
22 whatever criminal investigation is left to do, or
23 seeking a warrant or anything, that's not your job --

24 A. Right.

25 Q. -- correct? On that day, on the 31st, are you

1 aware whether or not the Defendant ever left the police
2 department?

3 A. I don't know if he left or not. I was later
4 told by phone that --

5 Q. Without going into what you were told.

6 A. Oh, okay.

7 Q. But that was -- at this point you were done
8 with --

9 A. Yes.

10 Q. -- your part of the case?

11 A. Yes.

12 MR. RAMSAY: Your Honor, we'll pass the
13 witness.

14 MR. MEGARO: Judge, could we take a
15 two-minute bathroom break?

16 THE COURT: Okay.

17 MR. MEGARO: Thank you.

18 THE COURT: I'll even make it five.

19 All right. Ladies and Gentlemen, don't discuss this
20 matter or allow anyone to talk to you about it, and
21 we'll be back in five minutes.

22 THE JUROR: Your Honor, can I --

23 THE BAILIFF: All rise.

24 THE JUROR: -- say something to you real
25 fast, ask you a question?

1 THE COURT: Outside the presence of
2 everyone else, I'll talk to you in a moment, ma'am.

3 THE JUROR: Okay.

4 (The jury retired from the courtroom.)

5 (A recess was taken from 11:23 AM
6 to 11:25 AM.)

7 (Chambers, Juror Carolyn Hulme Monroe,
8 present.)

9 THE COURT: All right. Now we're outside
10 the presence and hearing of the jury. We're in
11 Court's Chambers with -- with me and the court reporter,
12 Ms. Terri Popejoy, and I believe your name is
13 Ms. Carolyn Monroe. Is that correct?

14 THE JUROR: Yes.

15 THE COURT: You're a member of this jury,
16 and just as we were about to take a brief recess, you
17 indicated you wanted to talk to me about something, so
18 what's this all about?

19 THE JUROR: Well, I -- I think it's
20 nothing, but yesterday I couldn't see the translator,
21 who he was, and I realized today I do know him. He's
22 just an acquaintance, and --

23 THE COURT: Oh, Mr. Dan Carroll?

24 THE JUROR: No. Isn't it Robert Ward?

25 THE COURT: No.

1 THE JUROR: "No." Oh, well, he looks just
2 like Robert Ward.

3 THE COURT: There is a Robert Ward who has
4 some resemblance to --

5 THE JUROR: And I thought somebody had said
6 the name "Ward."

7 THE COURT: The "Ward" was the name of the
8 doctor yesterday. Her name --

9 THE JUROR: Oh, okay.

10 THE COURT: -- was Ward.

11 THE JUROR: Never mind.

12 THE COURT: So -- so you don't --

13 THE JUROR: Everything is good.

14 THE COURT: So we don't have any issues
15 then?

16 THE JUROR: No, no issues at all.

17 THE COURT: All right. Thank you very
18 much.

19 THE JUROR: I just wanted to make sure.

20 THE COURT: Okay, thank you.

21 (A recess was taken from 11:26 AM
22 to 11:27 AM.)

23 (Open court, Defendant present, no jury.)

24 THE COURT: All right. We're outside the
25 presence and hearing of the jury now. As you know,

1 there was one of the jurors, Ms. Carolyn Monroe, who
2 asked to address the Court as we were taking that break.
3 I brought her into chambers with the court reporter, and
4 it turns out it's totally much ado about nothing. For
5 some reason she thought that Mr. Carroll bore -- bears a
6 striking resemblance to a -- somebody named Robert Ward,
7 and she thought that's who it was, and she knows a
8 Robert Ward. Mr. Carroll doesn't look like anybody I've
9 ever seen before, but, apparently --

10 THE INTERPRETER: Are we talking about a
11 juror?

12 MS. LABORDE: She's been looking at you all
13 day.

14 THE COURT: Actually, there is a -- there
15 is a Robert Ward I think I know, and he does bear a
16 similar -- kind of -- kind of the same features, and she
17 got the name "Ward" mixed up with the doctor yesterday.
18 It turned out she doesn't know Mr. Carroll at all, so it
19 really all amounts to nothing. I just wanted to let you
20 know.

21 (Off the record from 11:28 AM
22 to 11:29 AM.)

23 (Open court, Defendant present, no venire.)

24 THE COURT: All right. Let's bring the
25 jury back in.

1 (The jury was seated in the jury box.)

2 THE COURT: All right. Folks, I think
3 we're ready to proceed. Mr. Megaro, your witness.

4 MR. MEGARO: Thank you.

5 CROSS-EXAMINATION

6 BY MR. MEGARO:

7 Q. Good afternoon, Mr. Saldana.

8 A. Yes, sir.

9 Q. When you received --

10 THE COURT: It just seems like afternoon.
11 It's not.

12 MR. MEGARO: Oh, I'm sorry. My watch is
13 set wrong. I still haven't set it back.

14 Q. (BY MR. MEGARO) It's "good morning." Good
15 morning. When you received training on -- prior to
16 becoming a CPS investigator, your training included
17 how -- learning techniques on how to take statements
18 from people, correct?

19 A. Yes, sir.

20 Q. And that included how to take statements from
21 witnesses and people in child abuse cases?

22 A. Yes.

23 Q. It also included training on how to take
24 statements from people who are suspected of child abuse,
25 correct?

1 A. Yes.

2 Q. As you said before, that training included --
3 I'm sorry. I'm going to withdraw that question.

4 A. All right.

5 Q. During the normal course of your investigation,
6 you usually tape record or audio record statements of
7 individuals that you interview, correct?

8 A. Yes, uh-huh.

9 Q. And especially people who are suspected of
10 child abuse, right?

11 A. No, especially children.

12 Q. "Especially children"?

13 A. Right, because we're not -- we're not
14 conducting criminal defenses -- criminal investigations.

15 Q. But you also tape record statements of other
16 witnesses, correct?

17 A. Normally -- normally, just children but yes.

18 Q. You have tape recorded -- I -- I keep saying
19 "tape recorded" -- audio recorded statements made by
20 people who are suspected of child abuse in the past,
21 correct?

22 A. I have, yes.

23 Q. And have you ever used video to record
24 statements of people?

25 A. No.

1 Q. And in this particular case you first met
2 Mr. Ortiz and Ms. Garcia on August 29, 2012, correct?

3 A. If that's the date at the hospital, yes.

4 Q. On that day did you speak with Mr. Ortiz
5 separately or together with Ms. Garcia?

6 A. I believe we were initially together and then
7 separately.

8 Q. When you spoke with Mr. Ortiz and Ms. Garcia
9 together, did you record those statements?

10 A. No.

11 Q. When you spoke with Mr. Ortiz separately, did
12 you record that interview?

13 A. No.

14 Q. Okay. When you spoke with Ms. Garcia, did you
15 record that interview on August 29, 2012?

16 A. No.

17 Q. The next day on August 30, 2012, you met
18 Ms. Ortiz -- Ms. Garcia and Mr. Ortiz at the West Police
19 Department?

20 A. Yes.

21 Q. And at that time that you met Mr. Ortiz and
22 Ms. Garcia, Det. Hudson -- it's Christopher Hudson,
23 right?

24 A. I -- I know -- all I know him as is
25 "Det. Hudson."

1 Q. Det. Hudson was with you at the West Police
2 Department, correct?

3 A. Right.

4 Q. And he was in charge of the criminal
5 investigation; you were in charge of the CPS
6 investigation, correct?

7 A. Yes, sir.

8 Q. But you were working together, correct?

9 A. Yes.

10 Q. Let me go back for just a moment. When you
11 tape record statements of people in suspected child
12 abuse cases, that's to preserve evidence, correct?

13 A. Well, I -- I only -- we're only mandated to
14 tape record children because we weren't conducting
15 criminal investigations.

16 Q. But when you do tape record others, that's for
17 evidence -- evidentiary purposes, correct?

18 A. It would be, yes.

19 Q. And that's because you know that the interviews
20 and the reports that you have may be used in a court of
21 law at a later time, correct?

22 A. Yes.

23 Q. Now it -- not necessarily in the criminal case
24 but in a child custody case, right?

25 A. Right, only if granted permission at the

1 same time.

2 Q. And that would be a case that would -- that CPS
3 would bring to terminate parental rights of a person?

4 A. Right, uh-huh.

5 Q. And those interviews can be used as evidence in
6 the termination of a parental rights case, correct?

7 A. Yes, sir.

8 Q. And that has happened with you in the past,
9 correct?

10 A. As far as the recorded portion, not the
11 recorded portion, because those are only -- they're not
12 required.

13 Q. Okay. Have any of your recordings ever been
14 used in a court of law?

15 A. Not that I know of.

16 Q. Not that you know of?

17 A. No.

18 Q. You give the recordings to the attorney that's
19 handling the case, and what they do with it, you don't
20 know?

21 A. I provide it in the file, and that's the end --
22 the end of the recording.

23 Q. And it's fair to say you have been called to
24 testify as a witness in child abuse cases in the past?

25 A. I have been called and have testified in

1 family hearings, not in -- not in criminal proceedings.

2 Q. This is your first time testifying in a
3 criminal proceeding?

4 A. For child -- for -- in a Child Protective -- in
5 a CPS case, yes.

6 Q. Okay. Now on August 30, 2012, you met with
7 Mr. Ortiz and Ms. Garcia at the West Police Department
8 in order to take a statement from each one of them,
9 correct.

10 A. Yes, sir.

11 Q. And on that date there were three suspects in
12 the abuse of M [REDACTED] Ortiz, correct?

13 A. Yes.

14 Q. The three suspects would have been Mr. Ortiz;
15 that's one?

16 A. Yes.

17 Q. Taylor Garcia is number two?

18 A. Yes.

19 Q. And Alejandra Perez, the babysitter, would be
20 number three, correct?

21 A. Right.

22 Q. When you first spoke with Mr. Ortiz at the
23 West Police Department, was he given Miranda warnings?

24 A. Yes.

25 Q. And the Miranda warnings were introduced as

1 State's 16 in evidence, correct? Do you have a copy up
2 there, or "no"?

3 A. I have -- I believe he took them back with him.

4 Q. I'm going to show you now State's Exhibit 16.
5 Thank you. Now at the top of State's Exhibit 16 it says
6 "Miranda Warnings," and under that in parentheses
7 "English"?

8 A. Yes.

9 Q. Is there a form for Miranda warnings that are
10 typewritten in Spanish?

11 A. These are -- this is Det. Hudson's form, and I
12 don't know if he has one in Spanish.

13 Q. Now the State's Exhibit 16 is a preprinted form
14 written in English, correct?

15 A. Yes.

16 Q. And you were the person that gave Mr. -- you
17 testified earlier that you were the person that gave
18 Mr. Ortiz his warnings, correct?

19 A. Right. Mr. Hudson read them, and then when
20 Mr. Ortiz had a question, I -- I would answer it, but I
21 did -- I did reiterate in the Spanish language for him.

22 Q. So there were points in time throughout your
23 interaction with Mr. Ortiz that he didn't understand
24 everything in English, correct?

25 A. Right, there were a few words.

1 Q. Some technical terms?

2 A. I -- I wouldn't call them "technical," but just
3 words that maybe he has not heard of. I don't know.

4 Q. Some words that might not be used in regular
5 conversation?

6 A. Right.

7 Q. And in this particular case, you signed this
8 Miranda form, State's Exhibit 16?

9 A. Yes, sir.

10 Q. Is there any certificate of translation on
11 there?

12 A. No, that I know of.

13 Q. Is there any separate document that you have
14 that certifies that these were translated by you from
15 English into Spanish?

16 A. No.

17 Q. Thank you. I'll take this off for just a
18 moment. Now you were initially called into this case
19 because somebody told you that there was some language
20 issues?

21 A. That and because it was the -- the type of
22 investigation that a special investigator is used for.

23 Q. And are you one of the only -- are you one of a
24 few people at CPS that speaks Spanish?

25 A. No. There are others that speak Spanish also

1 but not as special investigators.

2 Q. Okay, so you were called in because of your
3 ability to speak Spanish, correct?

4 A. That and because of the -- of the nature of the
5 case. It's the serious injury, the unexplained.

6 Q. Now one of the things that you did in your
7 investigation prior to meeting Mr. Ortiz was conduct
8 background checks, correct?

9 A. I believe that the background check was done
10 already.

11 Q. Okay, but --

12 A. But, yes, in -- but, yes, in general.

13 Q. You reviewed that, correct?

14 A. Yes.

15 Q. And one of the first things that you do as an
16 investigator is see -- one of the first things that you
17 do as an investigator is to check and see whether there
18 is any prior CPS history --

19 A. Prior.

20 Q. -- with an individual?

21 A. I'm sorry. Prior.

22 Q. Prior CPS history with an individual?

23 A. Right.

24 Q. And in this case you found none with Mr. Ortiz,
25 correct?

1 A. Right.

2 MS. LABORDE: Your Honor, may we approach
3 the bench?

4 THE COURT: You may.

5 (At the Bench, off the record.)

6 THE COURT: You think you all can find your
7 way to the jury room? Please go there and don't discuss
8 this matter or allow anyone to talk to you about it.

9 (The jury retired from the courtroom.)

10 THE COURT: All right. We're outside the
11 presence and hearing of the jury now. The State asked
12 to approach the bench, and the State and Defense counsel
13 were up here. Mr. Megaro, you had asked the question
14 whether this -- this witness's investigation -- whether
15 it showed any prior CPS involvement with the Defendant.
16 Is that correct?

17 MR. MEGARO: That's correct, Your Honor.
18 My -- my question was very specific as to whether there
19 was prior CPS, not whether he knew if there were any
20 prior acts, and that's why I limited my question to that
21 specifically, not whether he had any knowledge of any
22 prior acts.

23 THE COURT: The State's position is that
24 this has perhaps opened the door to extraneous conduct?

25 MS. LABORDE: I mean, Your Honor, we're

1 under an Order in Limine not to discuss the Defendant's
2 past, that we are only to discuss this offense. The
3 Defense has now gotten into his past and suggested
4 through this witness that he doesn't have history, that
5 he has never done anything else to harm a child, and the
6 jury knows he has two other children, and I think if
7 he's -- I think he's opened the door. You know, we are
8 at least asked -- allowed to ask this witness, you know,
9 "You can't have a history unless somebody picks up the
10 phone and makes a report; that doesn't mean there isn't
11 one?" I think we're at least entitled to do that but
12 being -- if we're not allowed to talk about bad acts,
13 he's not allowed to talk about like a -- a clean record
14 either, so I'm not -- I'm not really understanding why
15 we're having to abide by this order if the Defense is
16 not.

17 THE COURT: First of all, let me have the
18 witness answer the question whether there's any prior
19 CPS history regarding this Defendant. I take it there's
20 not?

21 THE WITNESS: Under -- under the name that
22 we were given, no.

23 THE COURT: Okay.

24 MS. LABORDE: Your Honor, he already
25 answered the question.

1 THE COURT: Okay, he -- okay, he did?
2 Okay.

3 MR. RAMSAY: Judge, I think just because
4 the question is specific doesn't mean that it can't open
5 the door. If it leaves a false impression with the jury
6 as to the Defendant's good character, then I think we're
7 entitled to come back and say -- correct that false
8 impression by the extraneous act.

9 THE COURT: Okay. What extraneous are you
10 wanting to get into?

11 MR. RAMSAY: When the -- when the mother,
12 Taylor Garcia, was pregnant, this Defendant assaulted
13 her which sent her to the hospital in Hillsboro --

14 MS. LABORDE: By punching her in stomach.

15 MR. RAMSAY: -- by punching her in the
16 stomach, and this would obviously be a CPS case had it
17 been called into CPS, but we do have records from
18 Hillsboro that it did happen, that she was honest with
19 the hospital that it happened, and so I think by
20 asking -- just because you tailor a specific question
21 very narrowly doesn't mean you can't open a door. It
22 just means that's -- I think it just kicked open the
23 door to his prior act.

24 MR. MEGARO: Judge, there is no false
25 impression. There is no CPS history. In other words,

1 there's been -- never been a prior CPS case. If
2 Taylor Garcia had, in fact, been assaulted by Mr. Ortiz,
3 that would be more criminal than CPS. That would be a
4 domestic violence issue.

5 MS. LABORDE: Actually, Your Honor, I think
6 the -- the records from Hillsboro, she said she was
7 pregnant. That's why she went to the emergency room.
8 She was afraid something might have happened to her
9 baby, and they said, "Do you want us to call CPS or the
10 police," and she said, "No," so I mean --

11 THE COURT: Now, look, I -- I agree
12 that -- that they may be knocking on the door, but I
13 don't think they've opened it yet to a -- the question
14 was, "Is there a CPS history regarding this Defendant?"
15 The answer is, "No." I don't think that opens the door
16 to extraneous criminal conduct that -- that occurred
17 later.

18 MS. LABORDE: No, that occurred before.

19 THE COURT: It occurred before?

20 MS. LABORDE: Yeah. I mean Taylor's report
21 to the -- to the ER and her report to us is that when
22 she was pregnant -- when she was five weeks pregnant in
23 November, of 2011, so, you know, while she was carrying
24 M[REDACTED], this Defendant's baby, they got into an
25 argument, and he punched her in the stomach.

1 MR. MEGARO: Well, Judge, that wouldn't
2 even be admissible through this witness because that
3 would be double hearsay.

4 MS. LABORDE: No, I agree. He didn't know
5 anything about it. I agree with that, but what we're --
6 what we're pointing out is that he's made a false
7 impression that the Defendant has never done nothing
8 anything wrong which -- which --

9 MR. MEGARO: And -- and he --

10 MS. LABORDE: -- and let me say this, too.
11 We would like an Order in Limine, too, because this
12 Defendant -- this Defense attorney is not allowed to get
13 into good acts of the Defendant. We're not allowed to
14 get into bad acts, and he's not allowed to get into the
15 good acts. Now if he wants to get into the fact that
16 he's working two jobs and he's supporting his child, I
17 don't have an objection to that, but beyond that, to
18 talk about his past or his parenting or whatever --

19 THE COURT: Well, but to --

20 MS. LABORDE: -- that's not admissible.

21 THE COURT: -- but to say that there's a
22 negative history of CPS, I don't know that that implies
23 that's there's a -- that that's a good act. It's just
24 the absence of a bad act. I realize we may be splitting
25 hairs here.

1 MS. LABORDE: Well, then I guess I can ask
2 every single witness if they have a criminal history,
3 and if they don't, I -- he has to accept the answer?
4 That's not relevant.

5 THE COURT: All right. I think it's a
6 close call, but I think it's -- it's -- I think it's --
7 I don't think it's quite close enough yet, so I'm not
8 going to allow any extraneous matters at this point.
9 All right. Let's bring the jury back in.

10 MS. LABORDE: Is the State's order granted?

11 THE COURT: What?

12 MS. LABORDE: That the Defense not be
13 allowed to seek evidence of a good character.

14 THE COURT: Yeah. You can't -- you're not
15 going to be able to go into evidences of good character,
16 because if you do that is going to open the door --

17 MR. MEGARO: Right.

18 THE COURT: -- to anything else.

19 MR. MEGARO: It was not my intention in
20 eliciting testimony that he worked two jobs to establish
21 good character, necessarily. It was to establish a lack
22 of access to the child, who was with the child more, but
23 I -- I --

24 THE COURT: All right. You've already
25 gotten into that, anyway.

1 MR. MEGARO: I was going to move on from
2 this line of questioning, anyway.

3 THE COURT: All right. Bring them in.
4 Ms. LaBorde, I -- I think you are entitled to ask this
5 witness, you know, in order for there to be a CPS
6 history that a report would have had to be made. I
7 think that's a legitimate --

8 MS. LABORDE: That they're not like
9 watching us all the time with --

10 THE COURT: Right.

11 MS. LABORDE: -- surveillance equipment to
12 know what you're doing, just something like that.

13 MR. MEGARO: That's not yet legal.

14 (The jury retired from the courtroom.)

15 THE COURT: All right. Ladies and
16 Gentlemen, we're going to break for lunch pretty soon.
17 All this going back and forth was just designed to work
18 up your appetite. All right. You may continue.

19 MR. MEGARO: Thank you.

20 Q. (BY MR. MEGARO) Mr. Saldana, let's go back to
21 August 30th, of 2012. Forgive me if I've already asked
22 the question. On August 30, 2012, both Taylor Garcia
23 and Mr. Ortiz were interviewed by you and Det. Hudson at
24 the West Police Department, correct?

25 A. Yes.

1 Q. And prior to them being -- both of them being
2 interviewed, both of them were administered Miranda
3 warnings, correct --

4 A. Yes.

5 Q. -- told that they had the right to remain
6 silent, etcetera, etcetera?

7 A. Right.

8 Q. And both were given sheets of paper to make
9 statements, correct?

10 A. Yes, sir.

11 Q. All right. I believe it is State's 17 that was
12 already in evidence. That's the statement from
13 August 30, 2012, written by Mr. Ortiz, correct?

14 A. Yes, sir.

15 Q. And the -- that's on a preprinted form provided
16 by Det. Hudson?

17 A. Yes.

18 Q. And does he have the original or --

19 A. He gave me the copy.

20 Q. Oh, he has the original, okay. That's okay.
21 You can leave it there. That's five pages, that
22 statement?

23 A. Yes, sir.

24 Q. And that is written in Spanish by Mr. Ortiz,
25 correct?

1 A. Yes.

2 Q. Now you did not provide a translation of this
3 statement to Det. Hudson, correct?

4 A. Right.

5 Q. Why not?

6 A. Most of -- most of the -- most of the details
7 that are in here in Spanish were the -- the issues that
8 we had discussed during the interview, and there was no
9 new information to discuss to inform Mr. Hudson --
10 Det. Hudson.

11 Q. You do have a law enforcement background,
12 correct?

13 A. Yes.

14 Q. And is it fair to say that in your time as a
15 law enforcement officer you've taken statements from
16 suspects in the past?

17 A. Yes.

18 Q. And you know that statements taken by suspects
19 can be used in a court of law, right?

20 A. Right.

21 Q. And that's exactly what's going on here today.
22 The August 30, 2012, statement is being used as evidence
23 here in a court of law, correct?

24 A. Yes, sir.

25 Q. And the language that is used in this court of

1 law is English, correct?

2 A. Yes.

3 Q. Now did you provide a handwritten translation
4 to Det. Hudson of this statement?

5 A. No.

6 Q. You orally translated it to him?

7 A. Well, he was speaking in English to us -- to
8 myself and Det. Hudson, and then when he actually wrote
9 it down, everything that -- well, I say "everything,"
10 but a majority of things that we discussed in English he
11 wrote in Spanish.

12 Q. So there were things that were discussed during
13 the August 30, 2012, interview that did not make it into
14 State's Exhibit No. 17, correct?

15 A. Yes.

16 Q. And you did not provide a translation to
17 Det. Hudson because there was nothing new in that
18 written statement?

19 A. There was nothing -- there was nothing that we
20 discussed that wasn't already in here.

21 Q. To sum up the August 30, 2012, written
22 statement, Mr. Ortiz basically said that he didn't do
23 anything, and he didn't know how the child had gotten
24 hurt, correct?

25 A. He said that he did -- he was the cause of the

1 injury to the arm which is why he ended up at the
2 hospital, but for this -- the rest of the injuries, he
3 said he wasn't the cause of it.

4 Q. And the arm injury is something that he freely
5 admitted and accepted responsibility for, correct?

6 A. Yes.

7 Q. Now you said before that you were fluent in
8 Spanish, correct?

9 A. I speak pretty good Spanish, yes.

10 Q. Have you ever been certified as a -- as an
11 interpreter by any court or any organization?

12 A. Not -- not as -- not as a certified, no, sir.

13 Q. And are you able to translate the
14 August 30, 2012, statement word-for-word?

15 A. Probably not word-for-word, that's why when --
16 when we translated the second one, Mr. Ortiz assisted me
17 in translating it.

18 Q. Did he assist you in translating the
19 August 30, 2012, statement?

20 A. No.

21 Q. You mentioned recordings before?

22 A. Uh-huh, yes.

23 Q. On August 30, 2012, did Det. Hudson have an
24 audio recorder?

25 A. That was the day he showed me the recorder.

1 I don't recall him showing it to me again on the 31st,
2 but it may have been sitting right there on the desk.

3 Q. So the audio recorder was there in
4 Det. Hudson's office on August 30, 2012?

5 A. As far as I can recall, yes.

6 Q. And August 31, 2012?

7 A. Yes, and I also testified previously there was
8 also a video camera.

9 Q. I was going to get to that. You beat me --

10 A. Okay, sorry.

11 Q. -- to the punch. And inside Det. Hudson's
12 office on August 30, 2012, there was a video camera up
13 on the shelf, correct?

14 A. It was actually on the filing cabinet behind --

15 Q. Okay, I'm sorry. On a filing cabinet?

16 A. I believe so, yes.

17 Q. Clearly, a -- a video camera?

18 A. Right. It was a video camera.

19 Q. And the same video camera was there on
20 August 31, 2012?

21 A. I -- as far as I recall, maybe. I -- I can't
22 say definitely.

23 Q. Do you know if a recording exists of
24 August 30, 2012?

25 A. No.

1 Q. If that recording exists, Det. Hudson would
2 have it?

3 A. Yes.

4 Q. Do you know whether a recording exists of
5 August 31, 2012?

6 A. I don't know.

7 Q. And if that recording exists, Det. Hudson would
8 have it?

9 A. Yes.

10 Q. Now is it your understanding that detective --
11 I'm sorry. Let me withdraw that question. The audio
12 recorder that Det. Hudson had, he showed you that prior
13 to interviewing the other witnesses on August 31, 2012,
14 correct?

15 A. Yes.

16 Q. And if that recorder was going on August --
17 I'm sorry. If that recorder was recording on
18 August 31, 2012, it would have recorded other witnesses
19 as well, correct?

20 A. Yes.

21 Q. And one of those witnesses would have been
22 Taylor Garcia?

23 A. If -- if he was using it, yes.

24 Q. And, of course, it would have recorded
25 Mr. Ortiz, as well?

1 A. Right.

2 Q. On August 30, 2012, was Mr. Ortiz and
3 Ms. Garcia the only two people that came to the
4 West Police Station together at that time?

5 A. I know they arrived together, but the -- what
6 does your question mean?

7 Q. Were they the only two people that were there
8 while they were being interviewed, or were there other
9 people there?

10 A. I believe there were other people in the
11 hallway.

12 Q. Okay. Do you know who those other people are?

13 A. It was either her sister -- I believe that that
14 was the only person. I'm not sure.

15 Q. Now the next day, August 31, 2012, additional
16 people came with Mr. Ortiz and Ms. Garcia, correct?

17 A. I don't know if they live arrived there, but
18 they -- they were present, yes.

19 Q. And they were there while Ms. Garcia was giving
20 her statement?

21 A. They were in the hallway when she was giving
22 her statement, yes.

23 Q. And they were in the hallway prior to
24 Ms. Garcia being called in to give a statement?

25 A. They were in and out of the hallway.

1 Q. And those people were her father?

2 A. Her biological father, her biological mother
3 and her stepmother and her sister.

4 Q. Okay, so, basically, her entire immediate
5 family was there, more or less?

6 A. As far as I know, yes.

7 Q. Okay, and on August 31, 2012, you got the
8 impression that the family did not like Mr. Ortiz,
9 correct?

10 A. I got the impression that --

11 MR. RAMSAY: Judge, I'd object. That calls
12 for hearsay.

13 THE COURT: Sustained.

14 Q. (BY MR. MEGARO) Did you see Ms. Garcia's
15 family interact with Mr. Ortiz?

16 A. No. They were all in the hallway, and I was
17 inside Mr. Hudson's office.

18 Q. At any point in time on August 30, 2012, was
19 Mr. Ortiz and Ms. Garcia separate while giving
20 statements?

21 A. That I can't recall, if they were -- they were
22 both in the same room, but I don't recall if they ever
23 gave statements separately. I don't remember.

24 Q. Now on August 30, 2012, before you met with
25 Mr. Ortiz and Ms. Garcia, did you and Det. Hudson have

1 any discussion as to whether somebody would be arrested
2 on that day?

3 A. No.

4 Q. On August 31st, the next day, prior to the
5 arrival of Mr. Ortiz and Ms. Garcia, was there any
6 discussion between you two as to whether anybody would
7 be arrested on that day?

8 MR. RAMSAY: Judge, I -- that calls for
9 hearsay, and I would object.

10 THE COURT: Overruled.

11 THE WITNESS: Oh, I'm sorry. What was the
12 question again?

13 Q. (BY MR. MEGARO) August 31, 2012, was there any
14 discussion between you and Det. Hudson as to whether
15 somebody would be arrested on that date?

16 A. No.

17 Q. So as far as you knew, nobody was going to be
18 arrested on August 31st?

19 A. None that I knew.

20 Q. You didn't even -- while you were at the
21 West Police Department, Mr. Ortiz was not under arrest,
22 correct?

23 A. No, he was not.

24 Q. You learned about the arrest at some later
25 point, correct?

1 A. Right.

2 Q. And I know I'm jumping around a lot. I -- I
3 apologize. Let's go back to August 31, 2012. Was
4 Mr. Ortiz the last person interviewed on that date?

5 A. I can't -- I don't remember if one of the other
6 witnesses came in after him. I'm not sure.

7 Q. And what time did Mr. Ortiz arrive at the
8 West Police Department on August 31, 2012?

9 A. I can't recall the time.

10 Q. Was it in the morning, lunchtime, afternoon?

11 A. I want to say it was -- it may have been closer
12 to lunchtime, 10:00 or 11:00. I'm not sure.

13 Q. And what time was he read his Miranda warnings
14 on August 31, 2012?

15 A. I don't know if we wrote that down. I don't
16 know. I don't remember.

17 Q. Okay. Would -- you did testify in this
18 courtroom just less than two weeks ago, correct --

19 A. Right.

20 Q. -- in a hearing in this matter?

21 A. Right.

22 Q. And in that hearing you were asked questions
23 about this case?

24 A. Right.

25 Q. Actually, I think we all sat in the same

1 exact seats.

2 A. It may have been one o'clock. I don't recall
3 the time.

4 Q. Would reading your prior testimony refresh your
5 recollection as to when Mr. Ortiz was --

6 A. Sure.

7 Q. -- mirandized on August 31, 2012?

8 MR. MEGARO: Your Honor, may I approach the
9 witness?

10 THE COURT: You may. Let's go ahead and
11 finish up with this witness before we go to lunch, and
12 then we'll make it up on the other side of the lunch
13 hour, if we need to.

14 MR. MEGARO: Judge, it could be -- it could
15 be a little while longer. I don't know if we want to
16 break in the middle or --

17 THE COURT: Give me a working definition of
18 "a little while."

19 MR. MEGARO: Don't hold me to it but
20 probably 15 minutes, if that's okay with the jury.

21 THE COURT: The State would have some
22 redirect?

23 MR. RAMSAY: A little bit, Judge.

24 THE COURT: Let's go to lunch. We'll see
25 you all back at 1:30. Don't discuss this matter or

1 allow anyone to discuss it with you.

2 (The jury retired from the courtroom.)

3 (A recess was taken from 12:01 PM
4 to 1:34 PM.)

5 (Open court, Defendant present, no jury.)

6 THE COURT: I'm ready for the jury.

7 THE BAILIFF: All rise, please.

8 (The jury was seated in the jury box.)

9 THE COURT: All right. Mr. Megaro, you may
10 continue your cross-examination.

11 MR. MEGARO: Thank you.

12 Q. (BY MR. MEGARO) Good afternoon now,
13 Mr. Saldana.

14 A. Yes, sir.

15 Q. When we left off, we were talking about
16 August 31, 2012, and I believe you testified that soon
17 after Mr. Ortiz arrived at the West Police Department he
18 was read his Miranda rights?

19 A. When he was interviewed, yes.

20 Q. Okay, and you did not remember what time
21 Mr. Ortiz arrived at the West Police Department. Is
22 that right?

23 A. Right.

24 Q. And you don't remember what time he was read
25 his Miranda rights, correct?

1 A. No.

2 Q. Okay. Now I'm going to ask --

3 MR. MEGARO: Your Honor, may I approach the
4 witness, please?

5 THE COURT: Of course.

6 Q. (BY MR. MEGARO) I'm going to Page 36, Lines 3
7 through 6. I'm going to ask you to take a look at your
8 prior testimony from October 31, 2014, and I'm going to
9 direct your attention to Page 36, Lines 3 through 6.

10 A. Right.

11 Q. Okay. Just take a look at that, and just let
12 me know when you're done.

13 A. Okay.

14 Q. Thank you. I'll take that back. Isn't it true
15 that Mr. Ortiz was read his Miranda warnings early in
16 the morning on August 31, 2012?

17 A. I don't know what time, but it was on that
18 date.

19 Q. It was -- it was early in the morning, correct?

20 A. Okay, sir, yes.

21 Q. I'm sorry?

22 A. I -- I don't remember the -- I really don't
23 know if it was before lunch or after lunch, but I -- I'd
24 be able to determine that if we had had lunch that day,
25 but I don't remember if it was in the morning.

1 Q. Well, at the October 31, 2014, hearing here in
2 this court you were asked this question, and you did
3 give this answer.

4 A. Okay.

5 Q. Question, "What time was Mr. Ortiz read his
6 Miranda warnings on August 31, 2012?" Answer, "That was
7 early in the morning. I don't know what time it was."
8 Were you asked that question, and did you --

9 A. Okay.

10 Q. -- give that answer?

11 A. Yes.

12 Q. Okay, and the Miranda warning -- the written
13 Miranda warnings in English for August 31, 2012, which
14 is in evidence as State's Exhibit 18 --

15 MR. MEGARO: Thank you, Your Honor.

16 Q. (BY MR. MEGARO) -- the time of that waiver
17 that's written on there is 11:50 AM, correct?

18 A. Yes.

19 Q. Okay, so is it fair to say that there was a gap
20 in time between the time that Mr. Ortiz was actually
21 read his Miranda warnings until the time that he signed
22 this waiver at 11:50 AM?

23 A. He signed it immediately after -- after filling
24 out the initials and the signatures.

25 Q. Well, you would agree with me that 11:50 AM is

1 not early in the morning, correct?

2 A. I -- I don't remember the time, but that's not
3 early -- early in the morning, but that's evidently the
4 time that he signed it.

5 Q. Now how much time passed between the time that
6 Mr. Ortiz signed this waiver and the time that he
7 completed his written statement on August 31, 2012?

8 A. The completed statement was after the warning.
9 I would say about two, two-and-a-half hours.

10 Q. Would looking at the actual Voluntary Statement
11 refresh your recollection, also? I'm going to show you
12 now State's Exhibit 19. At the top of that page is --
13 I'll get this right -- the time is 3:03 PM?

14 A. Okay.

15 Q. "Yes"?

16 A. Yes.

17 Q. That's approximately three hours after --

18 A. The Miranda warning.

19 Q. -- Mr. Ortiz had been read his Miranda
20 warnings?

21 A. Right.

22 Q. And it is fair to say it did not take him
23 three hours to write these three pages that is
24 State's 19, correct?

25 A. Correct.

1 Q. And during those three hours, you and
2 Det. Hudson were speaking with him, correct?

3 A. Yes.

4 Q. Now at one point in time you provided a
5 written translation of the statement to Det. Hudson,
6 correct?

7 A. Right.

8 Q. And that e-mail is dated August 31, 2012,
9 at 4:58 PM, correct?

10 A. Right.

11 Q. Can you see it?

12 A. Uh-huh.

13 MR. MEGARO: Can everybody on the jury see
14 that?

15 THE JURORS: (Nod heads.)

16 Q. (BY MR. MEGARO) Thank you, and when you -- on
17 August 31, 2012, when you spoke to Mr. Ortiz, did you
18 have a computer with you?

19 A. Yes, I did.

20 Q. One moment please. What type of computer was
21 that?

22 A. It's a state-issued computer, a laptop that I
23 carry with me.

24 Q. Okay. Did you type anything on that laptop
25 while you were speaking with Mr. Ortiz?

1 A. Yes. That's what I was typing at the same
2 time.

3 Q. You were copying it at the same time? I'm
4 sorry.

5 A. As we discussed his -- his statement, going
6 over it word-for-word, I typed it.

7 Q. You typed it right there in the West Police
8 Department?

9 A. Right, on my laptop.

10 Q. Mr. Saldana, I want to ask you again. You did
11 testify regarding this matter on August -- I'm sorry --
12 October 31, 2012 (sic), right?

13 A. Yes.

14 Q. And you just said that you had a laptop with
15 you, correct?

16 A. Yes, I did.

17 Q. On August -- on October 31, 2014, here in this
18 court were you asked this question, and did you give
19 this answer? Question --

20 MR. RAMSAY: Judge, I'm going to object to
21 this form of impeachment. If he'd like to refresh his
22 memory about a prior statement, he can do so, but to
23 read it out of a prior transcript is improper
24 impeachment.

25 THE COURT: Yeah, if you'll let the witness

1 see his prior statement, and ask him if he gave it or
2 not.

3 MR. MEGARO: Sure.

4 MR. RAMSAY: Can I get a page number?

5 MR. MEGARO: Twenty-six, 5 through 8.

6 Q. (BY MR. MEGARO) Now, Mr. Saldana, you've just
7 told this jury that you had a laptop computer with
8 you --

9 A. Yes.

10 Q. -- on August 31, 2012, correct?

11 A. Yes.

12 Q. I'm going to direct your attention to Page 26
13 of the transcript of the hearing from October 31, 2014,
14 Pages -- Line 5 through 8. Please take a look at that.

15 A. Right.

16 Q. Okay. Now were you asked this question on
17 October 31, 2014, and did you give this answer?
18 Question, "Did you have a computer with you at the
19 West Police Department" --

20 MR. RAMSAY: Judge, I'm going to object,
21 again, to improper impeachment. He can -- he can re-ask
22 the question and say, "Is your memory refreshed," then
23 re-ask the question, "Is it then not refreshed?" Then
24 he can proceed to read the document. He has to be given
25 an opportunity to explain the statement first. I think

1 he's trying to impeach him improperly.

2 THE COURT: That's true. Let him see the
3 statement and ask him if he made it.

4 Q. (BY MR. MEGARO) Did you make that statement
5 that's on that page --

6 A. Yes.

7 Q. -- in this court?

8 A. Yes, I did.

9 Q. Okay. Now -- now I'll ask again. Were you
10 asked this question, and did you give this answer?
11 "Did you have a computer with you at the West Police
12 Department on August 31, 2012?" Answer, "No, I actually
13 hand-wrote it as I discussed it with him going over the
14 Spanish version." Were you asked that question, and did
15 you give that answer --

16 A. Yes.

17 Q. -- two weeks ago?

18 A. Yes.

19 Q. Thank you. You say here now that you were
20 typing out the statement right there at the West Police
21 Department on August 31, 2012?

22 A. Yes. I couldn't remember, but, yes, I was.

23 Q. Did you ever take any handwritten notes?

24 A. I did take handwritten notes, also.

25 Q. And where are those handwritten notes now?

1 A. They would be with the CPS investigation file.

2 Q. Did you ever give those to Det. Hudson?

3 A. No.

4 Q. When you were at the West Police Department on
5 August 31, 2012, typing up Mr. Ortiz's statement, did
6 you e-mail it to him directly from the West Police
7 Department?

8 A. Yes. He didn't have a printer that would
9 hook up to my computer, and that's why I e-mailed it to
10 him.

11 Q. So you were at the West Police Department
12 at 4:58 PM when you sent that e-mail to Det. Hudson?

13 A. Yes.

14 Q. So is it fair to say you were at the
15 West Police Department from early in the morning till
16 five o'clock at night that day?

17 A. Yes, sir.

18 Q. When you -- on August 31, 2012, when you were
19 speaking with Mr. Ortiz, this was in the office that
20 Det. Hudson had, correct?

21 A. Right.

22 Q. The door was closed?

23 A. The door was closed the majority of the time.
24 I believe it was open initially.

25 Q. But it was just the three of you in there?

1 A. Yes.

2 Q. And at this point there was no warrant for
3 Mr. Ortiz's arrest, correct?

4 A. Right.

5 Q. And when he was speaking with you and
6 Det. Hudson -- my client -- he was speaking both English
7 and Spanish, correct?

8 A. Yes.

9 Q. Some things he would answer in English?

10 A. Everything he would answer in English, and then
11 he would ask me if it was -- he didn't know how to say
12 certain words, and he would ask me, and I would
13 pronounce the words for him, things of that nature.

14 Q. Certain things he would answer in Spanish,
15 correct?

16 A. Right.

17 Q. Now during this interview you and Det. Hudson
18 told Mr. Ortiz that Taylor Garcia was also a suspect in
19 the child abuse case, correct?

20 A. Yes.

21 Q. And you also told Mr. Ortiz -- I'm sorry. And
22 at this point the child had already been taken away from
23 both parents and had been placed in foster care,
24 correct?

25 A. I don't know if he had been placed actually

1 in foster care. He may have been because that was
2 another CPS investigator or CPS person doing that
3 portion of it.

4 Q. But you did -- you did know that the child had
5 been removed from the parents?

6 A. Yes, the process was ongoing.

7 Q. Mr. Ortiz asked you how the baby was doing,
8 correct --

9 A. Right.

10 Q. -- during this interview?

11 A. I -- I recall -- I think he did ask during the
12 interview.

13 Q. And at the start of the interview, Mr. Ortiz
14 asked you --

15 MR. RAMSAY: Judge, I'm going to object to
16 hearsay of any statement --

17 THE COURT: Sustained.

18 Q. (BY MR. MEGARO) Did Mr. Ortiz ever ask whether
19 he should get an attorney?

20 MR. RAMSAY: Judge, I'm going to object to
21 hearsay again.

22 THE COURT: Sustained.

23 Q. (BY MR. MEGARO) Was there ever a discussion
24 that you had with Mr. Ortiz about an attorney?

25 MR. RAMSAY: Judge, I'm going to object

1 again to hearsay.

2 THE COURT: Sustained.

3 Q. (BY MR. MEGARO) Did you tell Mr. Ortiz that it
4 would be better for him --

5 MR. RAMSAY: Judge, I'm going to object to
6 this statement. An out of court statement by this
7 witness is still hearsay.

8 THE COURT: Overruled.

9 Q. (BY MR. MEGARO) Did you tell Mr. Ortiz that if
10 he spoke with the police and told you the truth it would
11 be better for him?

12 MR. RAMSAY: Judge, I'm going to object.
13 That's calling for an out of court statement by this
14 witness. If he would --

15 THE COURT: All right. I agree now. That
16 is hearsay even from this witness. Sustained.

17 MR. MEGARO: Judge, I -- I think this goes
18 directly to the voluntariness of his statement which is
19 a jury determination which is --

20 THE COURT: We've had a previous hearing on
21 that matter, so I sustain the objection.

22 Q. (BY MR. MEGARO) Did Det. Hudson ever leave you
23 alone with Mr. Ortiz for a period of time while he was
24 writing out the written statement --

25 A. Yes.

1 Q. -- on August -- I'm talking about
2 August 31, 2012. How long did he leave you alone with
3 Mr. Ortiz?

4 A. I can't recall the time because he was in and
5 out of the office, as was I. I would leave the office,
6 also, as he was writing the statement.

7 Q. When you say, you know "a period of time," are
8 we talking about minutes, seconds?

9 A. Minutes.

10 Q. "Minutes," it was not seconds?

11 A. No.

12 MR. MEGARO: Your Honor, may I approach the
13 witness again?

14 THE COURT: You may.

15 MR. MEGARO: I'm on Page 36, Lines 11
16 through 18.

17 Q. (BY MR. MEGARO) I'm going to ask you to take a
18 look at Page 36 of your hearing testimony, Lines 11
19 through 18.

20 A. Okay.

21 Q. Okay. Does that now refresh your recollection
22 as to --

23 A. Right, but he left on more than one occasion.

24 Q. Okay, and were you asked this question on
25 October 31, 2012 -- I'm sorry -- October 31, 2014?

1 Question, "On August 31, 2012, when Det. Hudson left you
2 alone with Mr. Ortiz in the office, how long was
3 Det. Hudson gone for?" Answer, "He walked out briefly
4 one time to see who was in the hallway and things of
5 that nature but a matter of seconds." Question, "Did he
6 ever leave you in the room with Mr. Ortiz for anything
7 more than that one brief period of time?" Answer, "No,
8 not that I can recall." Two weeks ago were you asked
9 those questions by me, and did you give those answers?

10 A. Yes.

11 Q. By the way, on October 31, 2014, when you were
12 in this court, you took an oath to tell the truth, the
13 whole truth and nothing but the truth just --

14 A. Yes.

15 Q. -- like you did here today, correct? And you
16 testified earlier on direct examination that you spoke
17 with the babysitter in this matter, correct?

18 A. Yes.

19 Q. And her name was Alejandra Perez?

20 A. Yes, sir.

21 Q. Okay, and it was you and Det. Hudson that spoke
22 with Alejandro Perez, right?

23 A. Yes, sir.

24 Q. Before you spoke with Ms. Alejandro Perez -- by
25 the way, you were with Det. Hudson the entire time that

1 he spoke with Ms. Perez?

2 A. As far as I can recall, yes.

3 Q. And it's fair to say she did not speak English;
4 that's why you were -- you were there?

5 A. Right.

6 Q. And so when you spoke with her, it was through
7 you as an interpreter, correct?

8 A. And she can understand some English. She just
9 can't respond in English.

10 Q. Okay. You and Det. Hudson spoke with
11 Alejandra Pena (sic) on August 30, 2012?

12 A. I believe it was the day before it, yes,
13 the 30th.

14 Q. And when you spoke with Ms. Pena (sic), you
15 administered Miranda warnings to her, correct?

16 MS. LABORDE: Your Honor, just for
17 clarification, he means "Perez," not "Pena."

18 MR. MEGARO: Sorry, "Perez." I'm getting
19 that wrong.

20 Q. (BY MR. MEGARO) When you spoke with Ms. Perez,
21 you administered Miranda warnings to her, correct?

22 A. Yes.

23 Q. At any point during your interview with
24 Mr. Ortiz on either August 30, 2012, or August 31, 2012,
25 did Mr. Ortiz ever ask for a lie detector test?

1 A. Not that I remember.

2 MS. LABORDE: I'm going to object to that
3 being inadmissible, and it's hearsay from his client.

4 THE COURT: Sustained.

5 Q. (BY MR. MEGARO) At any point in time during
6 your interview with Mr. Ortiz on August 30, 2012, and
7 August 31, 2012, did he ever request another --

8 MR. RAMSAY: Judge, I'm going to object to
9 hearsay --

10 THE COURT: Sustained.

11 MR. RAMSAY: -- and to ask him to stop
12 asking any questions regarding any statements --

13 THE COURT: Mr. Megaro, any statements your
14 client made that you're trying to introduce are hearsay,
15 so just stop doing that.

16 MR. MEGARO: One last thing, may I have
17 this document shown to the witness?

18 THE COURT: Yes.

19 MR. MEGARO: And I'm using numbers, right?
20 We're using numbers for Defense exhibits, right?

21 THE COURT: Yes.

22 MR. MEGARO: Okay. Could I ask the court
23 reporter to mark this as Defense Exhibit 1 for
24 identification purposes. Sorry.

25 (Defendant's Exhibit No. 1 was marked.)

1 MR. MEGARO: Can I have this shown to the
2 witness?

3 THE COURT: Of course. This is Defense
4 Exhibit what?

5 MR. MEGARO: No. 1, Your Honor.

6 THE COURT: No. 1.

7 Q. (BY MR. MEGARO) Mr. Saldana, I'm going to ask
8 you to take a look at Defense Exhibit No. 1 for
9 identification purposes.

10 A. Yes, sir.

11 Q. Do you recognize Defense Exhibit 1?

12 A. Yes.

13 Q. You have seen that document before?

14 A. Yes.

15 Q. And how many pages is it?

16 A. Six.

17 Q. And is Defense Exhibit 1 the handwritten
18 statement provided to you and Det. Hudson by
19 Taylor Garcia on August 30, 2012?

20 A. It was handed to Det. Hudson.

21 Q. Did you see her hand that to Det. Hudson?

22 A. I was present, yes, because, yeah, she was --
23 yes.

24 Q. Did you see Taylor Garcia sign that document?

25 A. I can't recall seeing her visually actually

1 signing it, but she was there when she handed it to him.

2 Q. And you saw her writing that document?

3 A. Yes.

4 Q. Was she alone when she wrote that document,
5 or was she in the room with somebody else on
6 August 30, 2012?

7 A. This one was when she was alone. She was
8 alone.

9 Q. I'm sorry. Say that again.

10 A. I'm sorry. This is the 30th. I can't recall
11 if they were both in the office or not when she actually
12 wrote this.

13 Q. Okay. Now -- thank you. We don't have to go
14 through that. After you completed your investigation,
15 do you know what became of that investigation with CPS?

16 A. Yes.

17 Q. Was there a case filed in this courthouse
18 against both Taylor Garcia and Juan Ortiz for
19 termination of parental rights?

20 A. Not in this courthouse.

21 MR. RAMSAY: Judge, I'm going to object
22 to -- any CPS after this investigation is irrelevant.

23 THE COURT: Yeah, overruled.

24 Q. (BY MR. MEGARO) Not in this courtroom but in a
25 different courtroom in this courthouse?

1 A. I believe so, but after this portion the
2 other -- another caseworker took over.

3 Q. Okay, and that was in a civil action to
4 terminate the parental rights of both Mr. Ortiz and
5 Taylor Garcia, correct?

6 A. That I'm not sure of.

7 MR. MEGARO: One moment. Nothing further,
8 Your Honor, I'll pass the witness.

9 REDIRECT EXAMINATION

10 BY MR. RAMSAY:

11 Q. Mr. Saldana, are you aware that Mr. Ortiz
12 subsequently relinquished his rights to the child?

13 A. No, not that I know of.

14 Q. So you're not -- you're not aware of that?

15 A. No.

16 Q. Did you drop the case at that point?

17 A. It -- it hands -- it hands over to someone
18 in -- for the next process.

19 Q. Okay. Now let's talk about the reason you were
20 called in. Is it fair to say that you were called in on
21 cases with serious bodily injury --

22 A. Yes, sir.

23 Q. -- and more serious cases?

24 A. More serious injuries to children that are
25 unexplained, child deaths and things of that nature.

1 Q. Okay, and -- and in this case it also helped
2 that you were a Spanish speaker, as well?

3 A. Right.

4 Q. And now we talked a lot about when you came in
5 or when the Defendant came in on cross-examination --

6 MR. RAMSAY: Your Honor, may I approach?

7 THE COURT: You may.

8 Q. (BY MR. RAMSAY) And you're going off of your
9 memory on a lot of this?

10 A. Yes. That was two years ago, more than two
11 years ago.

12 Q. And that's -- and you had two days that were
13 pretty much very similar, the 30th and the 31st,
14 correct?

15 A. Right.

16 Q. So when you said you came in early and the
17 Defendant signed papers -- the Miranda warning early,
18 I'm showing you what's been identified or been marked
19 and admitted as State's 17. What time did he sign this
20 statement on the 30th? What time does it say up there
21 at the top?

22 A. Eight, thirty-nine (8:39) AM.

23 Q. Okay, so that's pretty early?

24 A. Yes, sir.

25 Q. So is it possible that the two days are running

1 together, and one day was early, and one day was a
2 little later?

3 A. And the -- the following days after that.

4 Q. Yes, and you're going off memory?

5 A. Yes, sir.

6 Q. You don't have it minute-by-minute put down in
7 your notes --

8 A. Not at all.

9 Q. -- everything you did?

10 A. No. Our burden of proof is a lot less than for
11 criminal investigations.

12 Q. So you -- so you -- it could have been one day
13 you were early, and one day you weren't?

14 A. Yes.

15 Q. Now what about the computer, is -- when you're
16 typing notes, is it customary for your investigations
17 that you also handwrite sometimes when it's handy and
18 type when it's handy to type?

19 A. Our -- our state computers allow us to write on
20 the tablet. It's a tablet computer, so we write notes
21 and type at the same time.

22 Q. Okay, so when you say "handwriting," you mean
23 handwriting on the --

24 A. Right, and I do both for -- for my cases
25 because sometimes I have a -- when I have a document

1 open, I write away and then when I make notes on my case
2 file to know where to go back and ask different
3 questions.

4 Q. Okay. Now the question was asked earlier about
5 whether there had ever been any CPS history with the
6 Defendant in this case, and I believe the answer was
7 "no." Is that correct?

8 A. Right, with the name that we were given.

9 Q. Okay, and so isn't it true that for a CPS
10 case to start there has to be a phone call with a
11 referral?

12 A. Yes, sir.

13 Q. And so just because there's no history doesn't
14 mean that nothing has ever happened, correct?

15 A. Right. That's only CPS history.

16 Q. You don't follow around families and watch for
17 them to make a mistake?

18 A. Correct.

19 Q. Now I think at one point during the
20 cross-examination the -- the Defense attorney asked
21 whether he gave an explanation and -- and took
22 responsibility for one of the breaks which was the arm.
23 Do you remember that --

24 A. Right.

25 Q. -- line of questioning? Now tell me this.

1 In your opinion, if that explanation has been said by a
2 doctor to not be a reasonable explanation for that
3 humerus break, would that actually be him taking
4 responsibility if he's not telling you the truth?

5 MR. MEGARO: Objection. That's a legal
6 conclusion, Your Honor.

7 MR. RAMSAY: That's not a legal conclusion.

8 THE COURT: Overruled.

9 Q. (BY MR. RAMSAY) Did you follow my line of --

10 A. What was your question again? He -- he threw
11 me off.

12 Q. Let me see if I can even remember it.

13 All right, so if he gave an explanation to you and that
14 was that he grabbed the child's arm, and a doctor, an
15 expert, has said that is not capable of breaking the
16 humerus in that manner, isn't it true that that is not
17 him taking responsibility; that's also him telling a lie
18 to you?

19 A. I -- I call it trying to justify but, yes,
20 exactly.

21 Q. So not taking responsibility?

22 A. Right.

23 Q. And as far as the statements go, you say
24 the Defendant actually helped you translate his
25 statement?

1 A. Yes, he did.

2 Q. And then did you all go over it after you
3 translated it?

4 A. Yes, sir.

5 Q. And he was pleased with the result?

6 A. Yes.

7 Q. So were you aware the Defendant also spoke
8 English to the doctor, Dr. Ward, in this case and to
9 Ms. Gattis, the social worker in this case? Are you
10 aware of that?

11 A. Ms. Gattis told me that he spoke --

12 MR. MEGARO: Objection as to what
13 Ms. Gattis told him.

14 THE COURT: Overruled.

15 Q. (BY MR. RAMSAY) So were you aware that he
16 spoke English to these individuals?

17 A. Yes.

18 Q. And that he spoke English to Chief Hudson, as
19 well?

20 A. Yes.

21 Q. And he spoke English to you --

22 A. Yes, sir.

23 Q. -- even though you can communicate in Spanish
24 with him?

25 A. Yes.

1 MR. RAMSAY: I'll pass the witness,
2 Your Honor.

3 MR. MEGARO: I have nothing further.

4 THE COURT: All right. You may step down,
5 sir.

6 THE WITNESS: Yes, sir.

7 THE COURT: You're released from the
8 subpoena, if there are no objections.

9 MR. MEGARO: No objection, Your Honor. If
10 you could hand that over.

11 THE WITNESS: (Complies with request.)

12 MS. LABORDE: Was this witness excused?

13 MR. MEGARO: Yes.

14 THE COURT: He said "yes."

15 MS. LABORDE: Okay.

16 THE COURT: Next witness.

17 MR. RAMSAY: Judge, at this time the State
18 calls Alejandra Perez.

19 MS. LABORDE: Your Honor, the State calls
20 Det. Hudson.

21 MR. RAMSAY: Det. Hudson.

22 THE COURT: Okay. That did not sound
23 anything like "Alejandra Perez" but --

24 (The witness was sworn.)

25 THE COURT: You may proceed.

1 CHRISTOPHER HUDSON,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. LABORDE:

5 Q. Sir, could you please introduce yourself to the
6 jury.

7 A. My name is Christopher Lynn Hudson.

8 Q. And your current position at the West Police
9 Department is what?

10 A. Chief of Police.

11 Q. And can you tell the jury -- you -- you've
12 had -- you have experience with other departments. Is
13 that correct?

14 A. Yes, ma'am.

15 Q. Can you tell the jury how long you've been a
16 certified peace officer?

17 A. I've been a certified peace officer
18 over 20 years.

19 Q. Okay, and what level certification do you
20 currently hold?

21 A. Master peace officer.

22 Q. Okay, and how long have you been at the
23 West Police Department?

24 A. Going on four years.

25 Q. And where did you work prior to that, and can

1 you just tell the jury the different departments that
2 you've worked with?

3 A. I started in 1994 with the City of McGregor,
4 went to the City of Hewitt, made detective over there.
5 At the time my wife wanted me to go to Waco ISD Police
6 Department to make more money, so I went over there
7 for a little bit. I ended up going back into the
8 Hewitt Police Department where I made rank again. I
9 went to the Lorena Police Department. I worked over
10 there as a canine handler, also a U.S. Marshal assigned
11 to a particular task force. After my dog was resigned
12 as a -- you know, a working dog, I decided to go to West
13 to work.

14 Q. And you said that's been about four years now?

15 A. Yes.

16 Q. So you're currently Chief. When did that
17 happen?

18 A. I'm sorry?

19 Q. You're currently the Chief of Police there.
20 When did that happen?

21 A. November the 1st.

22 Q. So we're on day 18. Is that right?

23 A. That's correct.

24 Q. It is the 18th, isn't it? Prior to that, what
25 was your job there?

1 A. I was detective sergeant.

2 Q. Can you tell the jury how many police officers
3 there are in the West Police Department?

4 A. Right now there's about ten of us.

5 Q. And how many would be -- how many sergeants are
6 there?

7 A. I was the only sergeant.

8 Q. You were the only sergeant?

9 A. Yes.

10 Q. So there's one chief, one sergeant and then
11 nine patrol officers?

12 A. There was a chief, a lieutenant, a detective
13 sergeant, one corporal, and the rest are just patrol
14 officers.

15 Q. Okay. Now were you -- you were then the
16 detective in the department in August, of 2012?

17 A. Yes, ma'am.

18 Q. And can you tell the jury how you became
19 familiar with the injuries that M [REDACTED] Ortiz suffered?

20 A. I received a Child Protective Service file that
21 was sent over to our agency.

22 Q. And is that pretty common that police officers
23 get referrals from CPS?

24 A. Yes, ma'am.

25 Q. So a doctor can send it to CPS; CPS sends it to

1 law enforcement. Is that right?

2 A. Yes, ma'am.

3 Q. Now why did they go to West PD?

4 A. The alleged altercation that took place
5 according to the report happened in our city limits.

6 Q. What did you do first?

7 A. First I read over the report that I received,
8 and I received some calls from a Child Protective
9 Service investigator.

10 Q. Okay, and who was that?

11 A. Last name is Saldana, I believe is his name.

12 Q. Is that --

13 A. He had testified prior.

14 Q. Okay, so guy that just left is the guy that you
15 talked to?

16 A. He just walked out, yes.

17 Q. Okay. What did you guys decide to do next?

18 A. I talked to him on the phone briefly, and
19 he said that the -- the mother and the father of the
20 child were in his office, and they were fixing to
21 talk, and I told him, if he would, try to talk to
22 them and see if I could get a time to talk to both of
23 them.

24 Q. So he was about to make an appointment. Is
25 that right?

1 A. That's correct.

2 Q. And you said, "Make it to where I can go, too"?

3 A. I told him when he gets done talking to them,
4 I'd like to talk to them.

5 Q. And then he ended up then accompanying them to
6 talk with you. Is that right?

7 A. Yes, ma'am.

8 Q. Why was that?

9 A. Oh, a possibility of a language barrier.

10 Q. And that was told to you by Mr. Saldana. Is
11 that correct?

12 A. That's correct.

13 Q. How many times did you personally end up
14 speaking with Taylor Garcia and the Defendant?

15 A. I believe I spoke to both of them two different
16 occasions.

17 Q. Three different occasions?

18 A. Two.

19 Q. "Two." Would that be August 30th and then
20 again August 31st, of 2012?

21 A. Yes, ma'am.

22 Q. So if the child sustained some of the injuries
23 around August 27th and then is taken to the hospital,
24 their investigation begins the 28th. You're talking to
25 them just a couple of days after that?

1 A. Just right after, yes, ma'am.

2 Q. Where did you speak with them?

3 A. At my office.

4 Q. And where is your -- where was your office at
5 that time? Where was it located?

6 A. West Police Department, 110 North Reagan Street
7 in West.

8 Q. What else is housed in that building?

9 A. There's the City Hall side where they handle
10 all of the city functions.

11 Q. Is it an old building?

12 A. Yes.

13 MS. LABORDE: Your Honor, may I approach
14 the witness?

15 THE COURT: Yes.

16 Q. (BY MS. LABORDE) Let me show you what's been
17 marked as State's 22, 23, 24 and 25. Are these fair and
18 accurate depictions of the police department and 25 in
19 particular the office that you would have been talking
20 to Taylor and the Defendant in?

21 A. Yes, ma'am.

22 MS. LABORDE: The State would offer
23 State's 22 through 24. I'm sorry, 22, 23, 24 and 25.

24 MR. MEGARO: No objection to these four
25 photographs, Your Honor.

1 THE COURT: State's 22 through 25 are
2 admitted. You may publish.

3 Q. (BY MS. LABORDE) Sir, if you could please look
4 behind you. Twenty-three, is this the entrance to your
5 building or --

6 A. Yes, it is.

7 Q. -- one of them, I guess?

8 A. One of the entrances to our building.

9 Q. So City Hall is on the outside. Is that
10 correct?

11 A. Yes.

12 Q. And then 22, this is not -- this is not the
13 same door that the jury just saw. This is the door on
14 the other side of the building, the north side. Is that
15 correct?

16 A. That would be on the west side of the building
17 which is opened up to the street of Reagan.

18 Q. Can you come in through that door, as well?

19 A. Yes, ma'am.

20 Q. So there are multiple ways to get into this
21 building and multiple ways to get out?

22 A. Three actual entrances that stay unlocked.

23 Q. And State's Exhibit No. 24, is this State's 22
24 just turned completely around to the -- and the third
25 door?

1 A. That would be your third door, and the second
2 door that you showed me would be around that corner
3 there.

4 Q. And, Chief, if this jury has already heard
5 testimony about your having some conversations with
6 Taylor while the Defendant was in the hallway and her
7 wanting the door closed, would this be a hallway that
8 we're talking -- that you all were talking about?

9 A. This would be where the -- where the people
10 would be sitting while we were conducting an interview,
11 yes, ma'am.

12 Q. Okay, so just kind of right outside the door?

13 A. Yeah. The detective's office is right behind
14 these chairs here on this wall.

15 Q. And people were then kind of waiting their
16 turn? Like the day, for example, that Taylor's parents
17 were there, and her stepmother were there and her -- her
18 sister, they would have all been out here --

19 A. Yes, ma'am. That --

20 Q. -- while she was in talking in --

21 A. That's where they would be sitting out in the
22 chairs or standing.

23 Q. Now let me show you State's 25. So this is
24 what used to be your office. Is that correct?

25 A. Yes, ma'am.

1 Q. Is that your hand? I think it might be --

2 A. I believe that is my hand here. This is

3 Det. --

4 Q. And so you're explaining to me in this picture,

5 "That is where I" --

6 A. That's where I was sitting when I conducted

7 interviews with all the parties.

8 Q. So Taylor and the Defendant would been sitting

9 in these chairs?

10 A. They'd have been sitting in front of my desk,

11 yes.

12 Q. Do you recall where Mr. Saldana would have been

13 sitting?

14 A. He would be sitting just on the other side of

15 that wooden chair. He had a chair pulled up right there

16 where he was in the proximity of the person I was

17 talking to.

18 Q. While the Defendant was speaking with you on

19 the 30th and the 31st, did you ever have him placed in

20 handcuffs?

21 A. No.

22 Q. Were any of these doors ever locked?

23 A. No.

24 Q. He always would have been closer to the door

25 than you or Mr. Saldana. Is that correct?

1 A. The Defendant and the baby's mother also sit by
2 the door the whole time when they were in there
3 individually.

4 Q. So at any time --

5 A. I made it to where they were by the door so
6 they could leave any time they wanted to.

7 Q. And are any of -- you said already those --
8 none of those doors are locked --

9 A. No.

10 Q. -- even the exits?

11 A. Open.

12 Q. So at any time could that interview have been
13 terminated?

14 A. At any time they could walk out into the
15 street.

16 Q. And do people sometimes do that to you?

17 A. I've had people do that before.

18 Q. Now can you tell the jury why -- if the
19 Defendant was never in custody until you got warrants on
20 the 31st and arrested him, if he was never in custody,
21 if he had never been formally arrested or his liberty
22 restrained in any way, why you would still give him the
23 Miranda warnings on both days?

24 A. After I received the report from Child
25 Protective Services, I didn't know who would be a

1 suspect, who would not be a suspect. To cover all
2 bases, I just mirandized everybody.

3 Q. So you mirandized Alejandra Perez, the
4 babysitter?

5 A. Yes, I did.

6 Q. You mirandized Taylor?

7 A. Yes.

8 Q. And you mirandized the Defendant?

9 A. Yes.

10 Q. You didn't mirandize the people at Black Eyed
11 Pea, did you?

12 A. No, because they didn't have actual direct
13 contact alone with the child.

14 Q. So they -- they weren't even possible suspects.
15 Is --

16 A. No.

17 Q. -- that correct? Do you always make it a habit
18 to -- even if someone is not in custody, to mirandize
19 them?

20 A. If I feel like they could give me some
21 information that could be incriminating, yes, I do
22 before I start.

23 Q. So just above and beyond?

24 A. I always do that.

25 Q. Have you always done that before you were

1 in West?

2 A. Yes.

3 Q. Now can you tell this jury? When you spoke
4 with the Defendant, did you only speak through
5 Mr. Saldana, or did you sometimes have a conversation
6 just you and him in English?

7 A. Sometimes we spoke in English. If I asked him
8 a direct question that pertained to something that could
9 cause him to incriminate himself, he would look down at
10 the ground, and at that point then he spoke Spanish, and
11 at that point I went to the CPS investigator and told
12 him my question, and he asked him to interpret it to
13 him.

14 Q. And do you see -- when I say the "Defendant"
15 and I ask you did -- when you're talking to the
16 Defendant, do you see him in the courtroom today?

17 A. Yes.

18 Q. Can you identify him by something he's wearing?

19 A. He's wearing the dark-colored shirt with a
20 dark-colored tie.

21 MS. LABORDE: Your Honor, may the record
22 reflect he's identified the Defendant?

23 THE COURT: Granted.

24 Q. (BY MS. LABORDE) What kind of subjects could
25 this Defendant speak to you about in English?

1 A. At first everything was pretty open in English.
2 You know, I introduced myself to him. He introduced
3 himself in -- in English to me, and we talked briefly
4 and --

5 Q. What name did he give you?

6 A. Juan Francisco Ortiz.

7 Q. Okay, and did he ever tell you he went by the
8 name "Miguel"?

9 A. I can't recall, but I think we -- we spoke, had
10 that name before somewhere in the conversation.

11 Q. So not maybe by this Defendant, but in the
12 investigation you found out he used that name?

13 A. I've heard that through some other
14 investigation through Child Protective Services that
15 somewhere in their reports that they had marked "Miguel"
16 in the middle of it.

17 Q. That was not a name he provided to you?

18 A. No.

19 Q. Were you aware that -- when this
20 Defendant spoke to Dr. Erica Ward, a pediatrician in
21 Scott & White-Temple, or when he spoke to Carmen Gattis,
22 the social worker, were -- were you aware he didn't need
23 a translator then?

24 A. No, I did not.

25 Q. Were you aware that when he worked at

1 Black Eyed Pea that he spoke English to his coworkers?

2 A. I found that out after I'd talked to his
3 manager that made his work schedule.

4 Q. And are you aware that Taylor Garcia doesn't
5 speak Spanish, the child's mother?

6 A. I don't recall if I ever asked her if she spoke
7 Spanish. She spoke English, as well.

8 Q. Did you ever see Ms. Garcia and the Defendant
9 speaking in Spanish together?

10 A. No.

11 Q. Did Ms. Garcia ever translate for this
12 Defendant when you had a group conversation with them?

13 A. No.

14 Q. And are you saying then -- did I understand you
15 correctly that it was only when you asked about Max's
16 injuries that the Defendant would start speaking in
17 Spanish?

18 A. Yeah. When I started asking about what could
19 have caused these injuries, then everything turned to
20 Spanish.

21 Q. So let's talk about August 30th, the first day
22 that you're talking with the Defendant. Was there
23 anything significant to you in his first statement?

24 A. His first statement he wrote in Spanish which I
25 could not read, so I had it translated, and he basically

1 talked about who he was and that kind of stuff, and just
2 through general conversation talking to him before he
3 actually wrote his statement, he told me he didn't know
4 anything about his injuries, and he would do anything he
5 could to try to help find out what happened.

6 Q. And did the Defendant provide the same story
7 about the one injury to the humerus bone about grabbing
8 him, getting him out of the car seat?

9 A. Yeah. He said he had taken the child home and
10 had him in a car seat, and he was picking the child
11 up -- picking his child up, and he slipped out of his
12 hands, and out of reaction he had grabbed his arm.

13 Q. And have you worked cases like this where
14 children have had their elbows dislocated from being
15 yanked like that?

16 A. I had never worked one like that.

17 Q. Or -- or -- but does it make sense to you that
18 if the child was being, you know, pulled by the arm,
19 that the bone breaks in-half?

20 A. That would make logical sense, yes.

21 Q. Okay. It does make sense to you?

22 A. Sure.

23 Q. Would it surprise you to know the doctor says
24 that that mechanism doesn't explain a break in the
25 middle of the arm like that? Of course, that would be

1 why we have doctors. Is that right?

2 A. Sure.

3 Q. Okay, but that seems logical to you that he had
4 at least one explanation for one injury?

5 A. Yes.

6 Q. He had none for any of the others?

7 A. No.

8 Q. So what did you make of that?

9 A. At that point, I just continued my
10 investigation talking to other people and just -- just
11 carried on with what I needed to find out who caused
12 injury to the child.

13 Q. Was it after you spoke with Taylor and the
14 Defendant that you spoke with Ms. Perez, or do you
15 remember the sequence?

16 A. I met with Ms. Taylor (sic) and the Defendant
17 on the 30th. I also met with Taylor, which is the
18 mother of the child's father (sic), who was also
19 concerned. I spoke to Taylor's sister who lived below
20 her in the apartment complex that same day, and the CPS
21 worker and myself left to go to Hillsboro to find
22 Ms. Perez, I believe it was.

23 Q. Okay.

24 A. She was the babysitter.

25 Q. So could you have really even made a decision

1 about who you believed was responsible if you hadn't
2 talked to Ms. Perez yet?

3 A. Not at that point.

4 Q. So after you do that, do you then contact
5 Ms. Garcia and the Defendant again and ask them to
6 return the next day?

7 A. Yes.

8 Q. On both days did the Defendant drive his own
9 car to the West Police Department?

10 A. I'm not sure what car they drove up there.
11 They were -- they drove up there on their own free will
12 and arrived together.

13 Q. So you didn't go pick them up at their
14 apartments and bring them --

15 A. No.

16 Q. -- down there?

17 A. No.

18 Q. They got there on their own somehow?

19 A. Yes, ma'am.

20 Q. Why did you want to talk to the Defendant and
21 Taylor again?

22 A. Well, after talking to the babysitter, I
23 kind of ruled the babysitter out of any -- any
24 wrongdoing. In fact, she had some pictures that she had
25 taken in concern of what she saw when the child was

1 dropped off with her, and, you know, then I received
2 the medical reports, and I learned that there was
3 around 14 fractures, so I wanted to try to gather up
4 some more information because I don't feel like the
5 first time I talked to Taylor, which was the mother, she
6 was telling me a hundred percent the truth, so I wanted
7 to talk to her again.

8 Q. So let me ask you about that. Without going
9 into what Taylor said because that would be hearsay,
10 what about Taylor's demeanor or her mannerisms on that
11 first day, August 30th, made you think that she wasn't
12 telling you everything?

13 A. When I talked to her, she would look down at
14 the ground a lot. She appeared to be looking at the
15 door a lot like she was worried about something, and she
16 was somewhat soft-spoken to me.

17 Q. Just a hunch?

18 A. Something just wasn't right. Something wasn't
19 right.

20 Q. So you wanted them both to come in?

21 A. Yes.

22 Q. And you're aware that those apartments --
23 have you had other cases out at the -- at the
24 Tokio Apartments?

25 A. We've handled all kinds of cases there. As far

1 as injury to a child, not to my knowledge.

2 Q. But you are familiar with that apartment
3 complex. Is that right?

4 A. Oh, yes.

5 MS. LABORDE: May I approach the witness?

6 THE COURT: Of course.

7 Q. (BY MS. LABORDE) I'm going to show you what's
8 been marked as State's 26, 27 and 28, and does this
9 appear to be the apartment complex that --

10 A. Yes.

11 Q. -- M [REDACTED] would have sustained his injuries in?

12 A. Yes.

13 Q. State's 26, 27 and then 28 being the view when
14 you look outside that apartment?

15 A. Yes, ma'am.

16 Q. Okay, and are these fair and accurate
17 depictions of the particular apartment that --

18 A. Yes, ma'am.

19 Q. -- the child would have been residing in? And
20 are these --

21 A. That's the Tokio Apartments.

22 Q. And are they in McLennan County?

23 A. Yes.

24 MS. LABORDE: The State would offer
25 State's 26 through 28.

1 MR. MEGARO: No objections to 26, 27
2 and 28, Your Honor.

3 THE COURT: They are admitted, 26, 27
4 and 28. You may publish.

5 Q. (BY MS. LABORDE) And, detective, you're aware
6 that their unit was 118. Is that correct--

7 A. I believe it was --

8 Q. -- or is it 218?

9 A. I think it was 217, I believe.

10 Q. Okay, and does the "2" mean that it's upstairs?

11 A. That's correct.

12 Q. So looking at this apartment complex, then they
13 would have been the -- the siding apartment on top?

14 A. They would have been upstairs, yes.

15 Q. And so they don't share a wall with any other
16 unit. Is that correct? They share a floor?

17 A. I believe there's two upstairs on each side, I
18 believe, so they would share -- they would share a wall
19 with another apartment.

20 Q. And let me now show you State's Exhibit No. 27.
21 If this is the staircase up to the second floor, and
22 then these are --

23 A. Okay. Yeah, this particular -- there's some
24 that do and some that don't. This one here doesn't, I
25 guess.

1 Q. Okay, so if this is the door to their
2 apartment, that's the only apartment on that floor?

3 A. Yes, ma'am. There's one on this side and
4 another apartment on that side.

5 Q. So they don't share a wall with anyone else?

6 A. That's correct. The ones further back in the
7 complex do.

8 Q. Probably the one-bedrooms --

9 A. Yes.

10 Q. -- but not these?

11 A. Yes, ma'am.

12 Q. Okay, so if there were any noises being made in
13 this apartment you'd have to hear it either through the
14 ceiling or through the door?

15 A. From somebody outside or, you know, through the
16 ceiling from the bottom of it.

17 Q. And then there aren't -- if this is the walkway
18 leading right out from that breezeway, there aren't any
19 really other apartment buildings close to that building?

20 A. No, ma'am. It's kind of off to the side by
21 itself.

22 Q. It's the only apartment complex near this
23 playground that we see in State's 28. Is that right?

24 A. Yes, ma'am.

25 Q. And there are no parking places very close to

1 this unit either?

2 A. No, ma'am.

3 Q. So even if you were in your car, you wouldn't
4 hear anything coming out of that apartment complex?

5 A. No.

6 Q. So when you bring -- or when Taylor and the
7 Defendant come on the 31st, do you talk to them again
8 together, or do you separate them?

9 A. I talked to them separate.

10 Q. And why was that?

11 A. I just wanted to hear her side of the story
12 again before I talked to the Defendant again.

13 Q. And what do you remember about her demeanor
14 that second day?

15 A. The second day I called her in. She came in.
16 She was very quiet. She closed the door to my office,
17 sat down. Again I told her she was free to leave. I
18 read her Miranda warnings again to her just in case she
19 told me anything that needed to be handled criminally.
20 As she sat down, she kind of leaned forward and said,
21 "I'm going to have to whisper everything to you," and I
22 said, "Why would you have to do that?" She said --

23 Q. And let me stop you. We can't get into what
24 she said, but --

25 A. Okay.

1 Q. -- you can get into the volume.

2 A. Okay. She talked --

3 Q. Did she speak to you in a normal --

4 A. She talked very quiet as if she didn't want
5 anybody to hear what she told me.

6 Q. And where was the Defendant?

7 A. He was in the hallway.

8 Q. So he was physically within five or six feet of
9 her?

10 A. If he put his ear to the door, he probably --
11 or to the wall, he probably could have heard what she
12 was saying if she was talking as we are now.

13 Q. So she was talking much more quietly than this?

14 A. Very quiet, yes, ma'am.

15 Q. And anything else that you remember about her
16 demeanor?

17 A. Yeah. Even in an old building, if somebody was
18 to come in one of the doors to pay a water bill or
19 whatnot, the walls sometimes move, and every time that
20 the doors moved, you could kind of hear it, and my door
21 to the office kind of rattled a little bit, and she
22 would just jump like that like she was scared to death
23 that somebody was coming in.

24 Q. Did she seem on edge to you?

25 A. Very on edge.

1 Q. How long did you speak with her?

2 A. As far as the actual time, I don't know. It
3 was -- it was kind of lengthy.

4 Q. And you spoke with then this Defendant after
5 that. Is that correct?

6 A. Yes, ma'am.

7 Q. And was -- that second time you spoke with the
8 Defendant, did you get different information?

9 A. Very different information.

10 MS. LABORDE: Okay, and may I approach
11 again?

12 THE COURT: You may.

13 Q. (BY MS. LABORDE) I want to show you State's
14 Exhibit No. 21. What is that?

15 A. This was the translated copy that the CPS
16 worker had typed on his computer, given to me after the
17 second interview with the Defendant.

18 Q. Do you recall how you got it printed?

19 A. I left the Defendant some statement forms,
20 and I'd leave -- I'd leave the room, and every now and
21 then I'd come in and check on him and make sure he
22 didn't need additional forms to continue his written
23 statement that he voluntarily gave me. After it was
24 done, the Defendant and the CPS investigator sit down.
25 The CPS investigator had his laptop which was not

1 connected to my printer, so he had to send it to me
2 by e-mail so I could print it out, and after it was
3 printed out, they went over it word-for-word, the CPS
4 investigator and the Defendant. They translated back
5 and forth how they did everything. The Defendant
6 agreed to it and signed his name to it, and I witnessed
7 it.

8 MS. LABORDE: May I approach again, Judge?

9 THE COURT: You may.

10 Q. (BY MS. LABORDE) I'll show you State's Exhibit
11 No. 20 that's already been admitted. Is this the e-mail
12 that you got?

13 A. Yes.

14 Q. And then -- and then you just like pasted that
15 into its own document?

16 A. I put it on a Word document, if I remember
17 correctly, to print it out like that. It came to me in
18 an e-mail in this form, and I --

19 Q. And then you changed it?

20 A. -- I copied it and pasted it into a Word
21 document, and then added the lines on there so we could
22 sign it.

23 Q. And your signature appears below the
24 Defendant's. Is that correct?

25 A. Yes, that's my signature.

1 MS. LABORDE: At this time, the State would
2 offer State's 21.

3 MR. MEGARO: No objection to 21,
4 Your Honor.

5 THE COURT: Twenty-one?

6 MS. LABORDE: Yes, 21.

7 MR. MEGARO: Twenty-one, yes.

8 THE COURT: Twenty-one is admitted. You
9 may publish.

10 Q. (BY MS. LABORDE) Now at that time you would
11 have -- it would have been Det. Chris Hudson. Is that
12 correct?

13 A. Yes, ma'am.

14 Q. So that's this second --

15 A. No. I -- I signed it "Chris" and the "L" and
16 (inaudible) --

17 THE REPORTER: I'm sorry. I couldn't hear
18 what you said.

19 THE WITNESS: Oh, I'm sorry. My first name
20 is Chris, and I use the middle initial "L" and then
21 Hudson.

22 Q. (BY MS. LABORDE) And then above that, is that
23 the Defendant's signature?

24 A. Yes, ma'am.

25 Q. Okay, and you were present when he signed this?

1 A. I watched him sign it.

2 Q. Okay. Now did you make the Defendant any
3 promises in order to get him to sign this statement?

4 A. No, ma'am.

5 Q. Did you tell him that, "We won't take your kid
6 away," or --

7 A. No, ma'am.

8 Q. -- "We'll go easy on you," or anything like
9 that?

10 A. No, ma'am.

11 Q. Do you believe that he had ample time to go
12 over this word-by-word?

13 A. Oh, yes, ma'am. He sat down with the CPS
14 investigator, and they went over it word-for-word.

15 Q. Now can you tell the jury -- normally, that
16 would be you because --

17 A. Normally, I would -- I would go over the
18 statement with someone before they sign it and give it
19 to me. That's correct.

20 Q. But because it was being translated from
21 Spanish to English --

22 A. Spanish to English, I wanted to make sure he
23 knew what he was signing.

24 Q. So the first part of this, if you could follow
25 along with me --

1 A. Okay.

2 Q. -- "I, the father of M █████ Ortiz, hurt my baby
3 playing with him without intention and without knowing
4 that I could accidentally hurt him." So is he, in your
5 opinion, I mean is he really taking responsibility for
6 any of these injuries if these saying it's an accident?

7 MR. MEGARO: Objection, Your Honor, legal
8 conclusion.

9 THE COURT: Overruled.

10 THE WITNESS: Yes.

11 Q. (BY MS. LABORDE) Okay. You believe he's
12 taking responsibility?

13 A. Yes.

14 Q. He's admitting he did the injuries, but is he
15 saying he meant --

16 A. He accidentally did them, but, yes, he did do
17 it --

18 Q. Okay. He's saying --

19 A. -- is what I believe on that one.

20 Q. Okay. "This entire time, I have tried to help
21 Taylor Garcia take care of my child without
22 understanding that I could have hurt him. Now I
23 understand that when I played with him, I would place
24 him on my knees and I would speak to him while holding
25 his hands. I would lift him a little and he would

1 laugh." Are you understanding kind of how -- how he's
2 playing with a two-month-old by having him on his knees
3 and holding the child's hands?

4 A. Yes.

5 Q. You're understanding like that's on his lap,
6 I guess?

7 A. I understand that he was holding the baby on
8 his -- on his lap, placing him, and he was holding him
9 with his hands.

10 Q. Okay, so the baby is not standing; he's laying
11 down?

12 A. He's laying down is how I interpreted it.

13 Q. Okay. Did the Defendant like use gestures to
14 help you understand this?

15 A. I can't recall if he did. I know we -- at some
16 point during our talking he understood enough where he
17 was telling me, "I was bouncing my baby around," and
18 that kind of stuff.

19 Q. Because you would agree with me a
20 two-and-a-half-month-old can't bear weight on their --
21 on their legs, like they can't stand and jump?

22 A. Oh, no.

23 Q. Their legs don't even really work. Is --

24 A. That's correct.

25 Q. -- that fair to say? Okay. "Now I understand

1 that when I played with him, I would place him on my
2 knees and I would speak to him"... "and he would laugh
3 a little (sic)." Do you believe a child would be
4 laughing when their bones are being broken?

5 A. No.

6 Q. So is that consistent with the injuries, that
7 he makes this statement? You think the child was
8 laughing.

9 A. Oh, I don't think the child was laughing at
10 all. If anything, he would be in pain, I would imagine.

11 Q. Okay, so you didn't necessarily believe any of
12 this was the truth?

13 A. Not at this point, no.

14 Q. Okay. "Also at the same time I would take his
15 feet and I would put him on the couch or my knees and I
16 tried to exercise his legs trying not to hurt him and
17 with care but it looks like I was not necessarily
18 careful." Now if you're just taking your -- a baby and
19 you're -- I mean you have children, right?

20 A. Yes.

21 Q. Okay. If you're taking a baby and you're kind
22 of moving them around, I guess, for some reason, I mean
23 you can't break a child's legs by doing that?

24 A. At that point that's when he demonstrated that
25 he was doing like that with the arms and legs playing

1 with him.

2 Q. Okay, and you're not aware of any normal play
3 that would involve the injuries we see in this child?

4 A. (Shakes head.)

5 Q. Okay. Now had that play been violent, had he
6 been taking those legs and really jerking him around and
7 jerking him back and forth, he could have been breaking
8 all the bones around the knees, correct?

9 A. Very much so.

10 Q. So this is consistent a little bit with how we
11 know these must have occurred, correct?

12 A. Yes, ma'am.

13 Q. "On one occasion Taylor asked for me to help
14 wrap the baby in the blanket because she couldn't.
15 While being careful, I was adjusting the blanket and I
16 held him so he would not move and so I wrapped him in
17 his blanket and that was the only way he could sleep
18 comfortably." Does that seem to have anything to do
19 with any of the injuries?

20 A. Could have been.

21 Q. Is he -- do you think this is attempting to
22 talk about the rib injuries?

23 A. That was my -- my thoughts, that he was holding
24 him down and wrapping him up tightly.

25 Q. And how many cases have you worked where

1 swaddling breaks ribs?

2 A. I never actually worked one that I know of, but
3 I know it could.

4 Q. Okay, if -- if it was a squeezing --

5 A. If you're -- if you're squeezing a child, sure,
6 very much so.

7 Q. "I would like to explain that I have worked" --
8 "all I have worked for has been for my children and I
9 have never" -- "never have I thought it would make such
10 a mess. Sometimes I" -- oh, I skipped one part.
11 "Sometimes I would bath him with me in the shower. The
12 water was slow to being (sic) hot and cold so that I
13 would not hurt him. It is the only way that I could
14 explain how he could have encountered being hurt." Did
15 you understand what he was talking about with the shower
16 or --

17 A. Yes, I do. The babysitter had a friend that
18 provided me with some photographs of the child. It was
19 red, and during our verbal conversation before he wrote
20 this statement, I talked to him about, "How did that
21 baby get so red," and I showed him the pictures, and he
22 said that's because the water could have been too hot
23 while he was taking a shower holding the baby.

24 Q. Okay, so did those injuries on the child's arm
25 appear to be burns to you?

1 A. It was hard to tell.

2 Q. But that was --

3 A. It wasn't a normal skin color for a baby.

4 Q. Okay, so the jury needs to understand that that
5 comment comes from your showing him a picture --

6 A. The pictures, yes, ma'am.

7 Q. -- that Alejandra had of the baby?

8 A. Yes.

9 Q. Okay. "I remember a time Taylor told me about
10 some bruises on his hand that looked like small
11 scratches. When I talked to her we decided it was not
12 that serious because it didn't seem to be" -- "he did
13 not seem to be bothered and he did not cry while acting
14 normal." So he doesn't seem to admit to seeing the
15 bruises himself. Is that fair?

16 A. Yes.

17 Q. "In one or two days the bruises disappeared and
18 he acted normal and therefore I never worried. This is
19 why he went to all his appointments." "This is why he
20 went to all of (sic) his appointments. I went to three
21 of these appointments and asked the doctor if the baby
22 looked good as a concerned parent would." So he's --
23 does he continue to present himself to you as a
24 concerned parent?

25 A. At that point he was. It was inconsistent with

1 what the baby's mother was telling me prior to him
2 coming in.

3 Q. "He would respond all was good and in perfect
4 condition. Now it is weird" -- "Now it is weird that
5 all of this has happened. I am happy that my son is
6 fine and he can return to his mother but truthfully it
7 was never my intention. Maybe I made a bad decision but
8 have never" -- "never have I tried to hurt my son. I
9 have never been alone with him." Does that make sense
10 to you that he's never been alone with him?

11 A. No.

12 Q. I mean if -- if Taylor has to take a shower or
13 she has to go to the bathroom or she has to change her
14 clothes --

15 A. It's also inconsistent with what the baby's
16 mother told me.

17 MR. MEGARO: Objection to what the baby's
18 mother said, Your Honor.

19 MS. LABORDE: I'll rephrase.

20 THE COURT: Sustained as to that.

21 Q. (BY MS. LABORDE) So without respect even to
22 what Taylor told you, I mean does it make sense that --

23 A. No, it does not make sense.

24 Q. -- he'd never been alone with his child, even
25 though earlier he told you he'd taken a shower with him?

1 A. Yes.

2 Q. So in his own statement he's saying, "Well, I
3 took a shower with him; oh, but I was never alone with
4 him either"?

5 MR. MEGARO: Objection, Your Honor, this is
6 argument.

7 THE COURT: Sustained.

8 Q. (BY MS. LABORDE) Does it -- does it make sense
9 to you that if in one part of the statement he says he
10 took a shower with his child, that but he must have been
11 alone --

12 A. Yes.

13 Q. -- and that later on in his statement he kind
14 of just adds at the end, "Well, I've never been alone
15 with him either"?

16 A. Yes.

17 Q. That appears to be inconsistent to you?

18 A. Yes.

19 Q. "I love him and all my work I do is (sic) for
20 my children. I would like to keep helping them. I love
21 them." So he kind of ends with that. Is that fair to
22 say?

23 A. Yes.

24 Q. So all of these statements about his handling
25 of the child, those are in response to your questioning

1 about, "Here are the injuries; help me understand" --

2 A. "How they happened"?

3 Q. -- "how they happened"?

4 A. Yes.

5 Q. So on four days after the child's injuries he
6 finally provides a little bit more information?

7 A. Yes.

8 Q. Do you believe this -- this version that he
9 could have done all these -- all these -- breaking all
10 these bones and it be not -- not intentional?

11 MR. MEGARO: Your Honor, I have to object
12 to --

13 MS. LABORDE: Your Honor, he's --

14 MR. MEGARO: -- what the witness believes.

15 MS. LABORDE: -- the one that sought the
16 arrest warrant, so --

17 THE COURT: Overruled.

18 MS. LABORDE: -- I'm asking why he did
19 that.

20 Q. (BY MS. LABORDE) But did -- did you buy the
21 story that -- that he says over and over, "It's not
22 intentional;" "I mean it was accidental; I didn't mean
23 to"? Did you believe this?

24 A. I didn't believe all of it. I do believe that
25 he -- if he caused injury to his child that he did feel

1 sorry for what he did, but it still happened.

2 Q. Okay. Did he cry?

3 A. No, not that I remember.

4 Q. So he -- he made -- he may feel sorry for
5 something, and he did tell you he loved him?

6 A. Yes.

7 Q. And without admitting that it was intentional
8 or that he was being violent or rough, he does admit to
9 you kind of how it happened, correct --

10 A. Yes.

11 Q. -- like swaddling and squeezing, you know,
12 playing with the legs and exercising him?

13 A. Yes.

14 Q. He does admit something to you consistent with
15 how they could have occurred?

16 A. What he had told me in that statement, I
17 corroborated with talking to the witnesses that they'd
18 seen him doing similar --

19 MR. MEGARO: Objection as to what the
20 witnesses said, Your Honor.

21 THE COURT: Overruled.

22 Q. (BY MS. LABORDE) So you were able to
23 corroborate kind of this handling, what he told other
24 people. Is that correct?

25 A. That other people saw.

1 Q. "Other people saw"?

2 A. Yes, sir.

3 Q. And -- and did this also confirm kind of what
4 the doctors had told you about how these injuries could
5 have been done?

6 A. Yes.

7 Q. And you didn't tell him what the doctors said,
8 correct?

9 A. No.

10 Q. You just knew that from your own interviews
11 of them?

12 A. That's correct.

13 Q. Now at what point in this process because
14 you -- you didn't have arrest warrants ready, correct?

15 A. Oh, no.

16 Q. You didn't really know at this point what he
17 was going to say?

18 A. No.

19 Q. So once he -- once he sees this, and once the
20 Defendant signs it that it -- it's what he's saying
21 occurred, what do you do next?

22 A. At that point I had enough to obtain a warrant.

23 Q. What did you do?

24 A. While he was in my office, he was talking to
25 the CPS investigator. I believe he made some phone

1 calls, or I was told he made some phone calls. I went
2 across the street and took a complaint over there and
3 obtained a warrant.

4 Q. And when you say "across the street," is the --
5 is the JP for West --

6 A. The JP is directly across the four-way
7 intersection from the police department.

8 Q. So --

9 A. It's in walking distance.

10 Q. -- you just walked -- you typed it, you walked
11 across the street, and you walked back?

12 A. Yes.

13 Q. Did you tell the Defendant you were getting an
14 arrest warrant?

15 A. No.

16 Q. Did he have any idea why he was still there?

17 A. I came back, and he was still in the hallway.
18 He was free to leave. I told him I was done.

19 Q. So he was still there?

20 A. He was still there.

21 Q. Was Taylor still there?

22 A. I believe they were on the way out the door or
23 making arrangements to leave, and he was still there
24 talking to the CPS guy.

25 Q. And did you place this Defendant under arrest?

1 A. At that point, yes.

2 Q. And you transported him to jail?

3 A. Yes, ma'am.

4 Q. At any point when you were there, did you hear
5 Investigator Saldana making any promises to this
6 Defendant like, "If you confess, then we'll go easy on
7 you," or --

8 A. Oh, no, ma'am.

9 Q. -- anything like that?

10 A. No, ma'am. He was there merely for an
11 interpreter. That was it.

12 Q. There were times, though, that you were across
13 the street, and you weren't there, correct?

14 A. Yes.

15 Q. But by the time you were going across the
16 street, this is -- this has already been signed, and he
17 has given another version, correct?

18 A. Yes. I -- I based my complaint warrant off of
19 that statement that he gave me.

20 Q. Okay, and the injuries that he --

21 A. And the injuries that I saw in the medical
22 papers.

23 Q. Now it's my understanding that you believed
24 that you were recording this -- these interviews. Is
25 that correct?

1 A. Yes, ma'am.

2 Q. Do you know what happened to those recordings?

3 A. I have no idea where they went to.

4 Q. Can you tell us where you've looked?

5 A. I looked in my computer. Usually, I take any
6 audio recordings, and I put them in a little yellow tab
7 folder on -- on my computer. I looked through the
8 folder. I looked through blank recordings, and I looked
9 through all that. I through all the chips that I have
10 in my desk, any thumb drives I had. I looked through
11 everything trying to find them. I just can't. I don't
12 know where they went to.

13 Q. Is that the case file I see sitting in front of
14 you?

15 A. This is my original case folder.

16 Q. So you have a -- a three-ring binder in front
17 of you that's --

18 A. Yes.

19 Q. -- burgundy? Would you sometimes have
20 recordings in there?

21 A. Sometimes we do put them in there. In this one
22 here I have the -- a disk of the photographs.

23 Q. But you didn't find the recordings?

24 A. No, ma'am.

25 Q. Did you also look for like the cases around the

1 this -- like if this binder is here, did you look at the
2 case that --

3 A. I took all the cases out between this case, you
4 know, ten to 15 each side hoping to find it, hoping
5 maybe it had fallen through or something. I have no
6 idea where it is.

7 Q. And you've testified in a case prior -- in a
8 hearing prior to this trial, and so you've known for a
9 long time that everyone wanted these -- these
10 recordings, but --

11 A. Exactly.

12 Q. -- you just have not been able to find them?

13 A. Yes, ma'am.

14 Q. This is not something you just started looking
15 for a couple of weeks ago?

16 A. Oh, no, ma'am.

17 Q. Okay. That being said, you know, you're not
18 saying that anything in this statement is something you
19 told the Defendant to say?

20 A. I never told him anything to say.

21 Q. Really, what good is it for this Defendant to
22 say everything was an accident? I mean if we're going
23 to tell this Defendant what to say, it would be -- we
24 want to know exactly what happened, right?

25 A. Oh, sure.

1 Q. We still don't really know what happened?

2 A. No.

3 Q. Never in this statement does it say, "And he
4 cried; when I broke his ribs he cried, and when I
5 broke" --

6 MR. MEGARO: Objection, Your Honor.

7 MS. LABORDE: -- "his legs he cried."

8 MR. MEGARO: She's arguing with the
9 witness.

10 THE COURT: Sustained.

11 Q. (BY MS. LABORDE) I mean these do not explain
12 the violent nature of these injuries. Is that correct?

13 A. That's correct.

14 Q. So if you were going to tell this Defendant
15 what to say, it is not this statement?

16 A. That's correct.

17 Q. Is that fair to say?

18 A. Sure.

19 MS. LABORDE: Your Honor, I'll pass the
20 witness.

21 MR. MEGARO: Your Honor, before I start the
22 cross-examination, could I -- could we have a sidebar on
23 the record?

24 THE COURT: Sure. Let's -- let's go ahead
25 and take our afternoon. Ladies and Gentlemen, don't

1 discuss this matter or allow anyone else to discuss it
2 with you. We'll see you back after the break.

3 (The jury retired from the courtroom.)

4 THE COURT: All right. We're outside the
5 presence and hearing of the jury now.

6 MR. MEGARO: Could I make my application
7 outside the presence of the witness because this does
8 concern his potential testimony?

9 THE COURT: Sure.

10 THE WITNESS: May I step down?

11 THE COURT: You may step down.

12 (The witness retired from the courtroom.)

13 MR. MEGARO: Judge, during my questioning
14 of Investigator Saldana, I noticed the State objected a
15 lot when I was asking about certain circumstances during
16 the questioning. It's my understanding that the jury
17 makes the ultimate determination as to whether the
18 statement made by a defendant is free and voluntary --
19 freely and voluntarily given and whether that has been
20 proven beyond a reasonable doubt and whether -- what
21 weight, if any, they should give that statement. I -- I
22 want and it's my intention to cross-examine this witness
23 about the circumstances and the conversations and
24 promises or lack thereof concerning my client's
25 statement, but the State has elicited some information

1 about that already. Before we even get into that, I
2 don't want to be in a situation where I'm being -- there
3 are objections made to the attendant circumstances of
4 how the State was giving on the grounds of hearsay.

5 I believe, number one, it's not hearsay,
6 but number -- because I'm not necessarily offering it
7 for the truth. I mean I'm just asking whether the
8 witness made a statement, but, second, I think that all
9 that information would be in play because that would,
10 number one, undermine the witness's credibility, and,
11 number two, undermine the reliability of the statement
12 itself depending on the answer. If he answers "no,"
13 then I'm stuck with the answer, but if he were to say
14 "yes" to any of those answers, that would be something
15 that certainly a defense lawyer could argue to a jury
16 down the line.

17 MS. LABORDE: May I respond?

18 THE COURT: You may.

19 MS. LABORDE: Your Honor, we didn't object
20 to the circumstances surrounding the interviews. We
21 objected to him trying to get into what his client said
22 during the interviews. That's hearsay. He can't
23 testify for his client. Now if the Defendant wants to
24 testify that, "This is what I said," and these are the
25 questions I asked to go to voluntariness, you know,

1 okay, but he's absolutely offering these statements for
2 the truth.

3 THE COURT: I mean that's true as to what
4 his client said to him, not what his client said to the
5 investigator or the police. Are you wanting to get in
6 the -- are you wanting to ask Investigator Saldana
7 whether he made that statement where he offered this
8 Defendant something to testify?

9 MR. MEGARO: Yes. Well, that -- that was
10 what I had been -- those objections were sustained when
11 I'd asked whether he said it would be better for him to
12 simply speak to the police and tell the truth and
13 whether --

14 THE COURT: And you're worried this will go
15 to the voluntariness of the statement?

16 MR. MEGARO: This goes to the -- this goes
17 to the voluntariness of the statement as well as the
18 credibility of the witness.

19 THE COURT: All right. What else are you
20 wanting to get into?

21 MS. LABORDE: But, Your Honor, how -- I
22 mean unless the Defendant is the one that's going to
23 testify to that, I mean that -- those are fact not in
24 evidence. It contains hearsay, and the only source is
25 the Defendant. I mean it's just a way for this Defense

1 attorney to testify for this is client without being
2 subject to cross-examination.

3 THE COURT: Yeah, but he is entitled --

4 MS. LABORDE: I mean, "Did you make any
5 promises; you know, did you" -- "did you" -- I mean I
6 think he can ask those questions.

7 THE COURT: That's what I'm talking about.
8 I mean --

9 MS. LABORDE: Yeah.

10 THE COURT: -- I'll allow him to ask
11 because I think the voluntariness of the statement
12 could -- could be submitted to the jury.

13 MR. MEGARO: Yes.

14 MS. LABORDE: But I mean, "Did my client
15 ask for a lawyer?" I mean that is hearsay.

16 THE COURT: Yeah, that is true. If you
17 want to ask Investigator Saldana whether he made any
18 promises to solicit this Defendant's statement or
19 anything like that, I'll let you do that.

20 MR. MEGARO: But you --

21 THE COURT: I'm not going to allow you to
22 say, "Did my client say this," or "Did my client say
23 that?" You understand what I'm saying? Because that is
24 hearsay.

25 MR. MEGARO: Well, Investigator Saldana is

1 off the stand, but I -- I did ask him those questions,
2 and the objections were sustained. I want to ask --

3 THE COURT: I know, and that's the reason
4 I'm reconsidering.

5 MR. MEGARO: Okay.

6 MS. LABORDE: I mean to say, "Did you tell
7 my client that he should cooperate, and that would be
8 what's best for him," I mean that's -- that -- that
9 is -- where is that coming from? He's not allowed to
10 just make up facts, so he must have --

11 THE COURT: I know.

12 MS. LABORDE: -- a good faith basis, so it
13 has to be from the Defendant, so it's just a way of --
14 of getting around us being able to cross-examine him.

15 THE COURT: Well, I -- I understand what
16 you're saying, but I -- I think he's entitled to ask the
17 investigator whether anything was offered or promised to
18 the Defendant in order to solicit the statements.

19 MR. MEGARO: My problem is that at the
20 hearing Investigator Saldana started to give me some
21 answers to those specific questions, including the
22 question about counsel. Those objections were sustained
23 here at trial, and Investigator Saldana has now been
24 released. I don't know --

25 THE COURT: Well, I'll allow you to recall

1 him if --

2 MR. MEGARO: Okay.

3 THE COURT: -- in order to answer those --
4 ask those specific questions.

5 MS. LABORDE: Well, I would ask that that
6 be done outside the presence --

7 THE COURT: Oh, well, we'll do it outside
8 the presence of the jury. We'd make sure we're not
9 getting into something the client asked -- I mean, the
10 Defendant asked.

11 MR. MEGARO: Okay, but as -- as far as --
12 as far as for Chief Hudson -- now Chief Hudson, it is
13 permissible for me -- I just want to make sure -- it is
14 permissible for me to ask him whether he made any
15 promises --

16 THE COURT: Right.

17 MR. MEGARO: -- to Mr. Ortiz in order to
18 get him to --

19 THE COURT: Yes.

20 MR. MEGARO: -- make the statements? Okay.

21 THE COURT: You may do that.

22 MS. LABORDE: But we would object to
23 something specific like, "Did you promise him he
24 wouldn't be deported," or "Did you promise him that he
25 would get his baby back?" I mean --

1 THE COURT: What specifically do you want
2 to ask him?

3 MR. MEGARO: It -- it's going to be about
4 return of the child, because it is actually -- it's
5 right up on the screen in front of the Court where it
6 says, "Now it is weird that all of this has happened. I
7 am happy that my son is fine and he can return to his
8 mother" --

9 THE COURT: Okay.

10 MR. MEGARO: -- so, obviously, that he can
11 return to his mother, the child at that point is in
12 foster care, and it's my understanding that there was a
13 discussion about making a statement in -- in exchange
14 for return of the child to the mother, and here we have
15 a -- my client's written statement where he's talking
16 about returning the child to the mother. I -- I don't
17 think that that just came out of thin air.

18 MR. RAMSAY: Judge, if he wants to put his
19 client on the stand to stay, "I was promised this, and
20 that's why I said this," he can do so. This -- to -- to
21 do this and imply that -- because one statement says the
22 return of the child to the mother, to imply that that's
23 in return for a promise is letting his client testify
24 without us being able to ask questions in return. I
25 think he can ask if he's been -- if he promised

1 anything, and he if he says, "No," then it's "no."

2 MR. MEGARO: It's a -- it's a right to
3 confront the witness with --

4 MR. RAMSAY: It's our right to confront the
5 witness, and we're not getting it.

6 MS. LABORDE: Right.

7 THE COURT: Well, I -- I think you'll be
8 allowed to say, "Did you promise the Defendant that if
9 he gave a statement the child would be returned to the
10 mother." I'll let you ask that but not -- not say,
11 "Didn't" -- "Didn't my client ask you if you would
12 return the child if I gave a statement?" You won't --
13 I'm not -- I'm not going to let you say that.

14 MR. MEGARO: Okay, okay.

15 THE COURT: Okay.

16 MR. MEGARO: With that, we can -- I guess
17 we can resume.

18 THE COURT: Okay. Let's take a break.

19 (A recess was taken from 2:51 PM
20 to 3:21 PM.)

21 (Open court, Defendant present, no jury.)

22 (The jury was seated in the jury box.)

23 THE COURT: All right, proceed. Let's get
24 back to it.

25 MR. MEGARO: Thank you.

CROSS-EXAMINATION

1
2 BY MR. MEGARO:

3 Q. Good afternoon, Chief Hudson. It's "Chief"
4 now, right?

5 A. That's correct, sir.

6 Q. Forgive me if I refer to you as "detective."

7 A. That's fine.

8 Q. You believe you recorded the interview of
9 Mr. Juan Garcia -- I'm sorry -- Juan Ortiz on
10 August 31, 2012?

11 A. I believe I did, but I don't have the video or
12 audio.

13 Q. Would it be fair to say that before
14 August 31, 2012, you have recorded other people in the
15 course of your career as a law enforcement officer?

16 A. Yes.

17 Q. And you know that a recording of a person's
18 statement can be used as evidence in court?

19 A. Yes.

20 Q. And, in fact, recordings that you have made of
21 other suspects have been used as evidence in court,
22 correct?

23 A. I suppose so.

24 Q. Well, do you know?

25 A. Yes.

1 Q. And on August 31, 2012, you had an audio
2 recorder in your office?

3 A. Yes.

4 Q. You also had a video camera in your office?

5 A. Audio-video camera.

6 Q. Did you use the video camera?

7 A. I believe I did. Again, I don't know where the
8 video is.

9 Q. So I want to make sure I understand correctly.
10 You had a handheld audio recorder going as well as a
11 video camera --

12 A. Yes.

13 Q. -- recording, and you can't find either one of
14 those?

15 A. Either one of those, I cannot find them.

16 Q. You'd agree with me that if we had an audio
17 recording or video recording there would be no arguing
18 as to what was said during that interview, correct?

19 A. Sure. It would be nice to have it.

20 Q. I'm sorry?

21 A. It would be nice to have it.

22 Q. What efforts did you make to locate the video
23 and the audio?

24 A. Again, I've checked my computer, checked
25 around the case folders where we keep everything in the

1 filing cabinets. I've checked in my case, looked all
2 around.

3 Q. You have secured evidence before as a police
4 officer, correct?

5 A. Yes.

6 Q. And there is a procedure to securing evidence
7 when you recover evidence as a law enforcement officer,
8 correct?

9 A. Yes.

10 Q. There's different procedures for different
11 types of evidence, right?

12 A. Most evidence is handled the same way. It
13 depends on what it is.

14 Q. But say, for example, you have recovered drugs
15 in the past?

16 A. I've had some submitted, yes.

17 Q. And when you recovered those drugs, you put
18 them in an evidence bag or box?

19 A. Yes.

20 Q. Okay, and is a seal placed over it?

21 A. Yes.

22 Q. The same thing with a weapon that may have been
23 used in a crime?

24 A. Yes.

25 Q. The same thing that was -- a statement that was

1 given by a defendant, correct?

2 A. You could, yes. Most of time you do. How I
3 misplaced it, again, I don't know. I have no idea where
4 it's at.

5 Q. Does the West Police Department have procedures
6 for securing video and audio recordings?

7 A. Yes.

8 Q. What are those procedures?

9 A. If it's secured for evidence purposes, we log
10 it into the evidence log, but at the time I took those
11 statements that wasn't considered evidence at that point
12 and there are --

13 Q. I'm sorry. Say that last part again.

14 A. -- several -- there are several times
15 throughout investigations we record people, and we don't
16 log what we record because it may not be necessarily
17 pertaining to the case of what we need.

18 Q. But in this case you knew that the statements
19 that Mr. Ortiz gave were evidence in a criminal
20 investigation the minute he gave them, correct?

21 A. Towards the end of the investigation period,
22 yes. I went back and tried to find everything, and I
23 can't -- I don't know where they're at. I don't know
24 where they're at.

25 Q. Isn't it true that on August 31, 2012, after

1 Mr. Ortiz gave his statement you immediately went and
2 got an arrest warrant for him, correct?

3 A. Yes.

4 Q. So when he gave that statement, you knew you
5 were going to get a warrant for his arrest?

6 A. Yes.

7 Q. You knew that you would be making an arrest?

8 A. Yes.

9 Q. And you knew that he would be prosecuted in a
10 court of law after your arrest?

11 A. As far as prosecution, that would be up to the
12 judge.

13 Q. Okay. You did go to a judge to get a warrant
14 signed --

15 A. Yes.

16 Q. -- for his arrest?

17 A. Yes.

18 Q. So after you arrested him, you processed his
19 arrest just like you did every other arrest, correct?

20 A. Yes.

21 Q. And at that point wouldn't that have been the
22 time to secure the audio and video recordings and place
23 them in evidence?

24 A. Sure.

25 Q. Did you do that?

1 A. Apparently, I haven't, because I don't know
2 where they're at.

3 Q. Does Mr. -- I'm sorry. Was anybody else
4 recorded on August 31, 2012?

5 A. Just the CPS investigator that was in the room.

6 Q. And you're talking about the interview with
7 Mr. Ortiz, right?

8 A. Yes.

9 Q. Was Taylor Garcia recorded on August 31, 2012?

10 A. I can't recall if I recorded her or not.

11 Q. It's possible you did?

12 A. Possible.

13 Q. Now go back to August 30, 2012. Did you have
14 that same audio recorder on August 30, 2012, in your
15 office?

16 A. I can't recall if I did or not.

17 Q. Did you have that same video camera in your
18 office on August 30, 2012?

19 A. It could have been in there. The one that I
20 use I have to take out of my patrol vehicle and put in
21 there. We didn't have a designated camera in -- in
22 our -- in my office at the time, so I don't remember if
23 I took it out of my car or not. It's a little Sony
24 hand camcorder that we have to take off the dash that
25 we take in our vehicles, so I don't know if it was in

1 there or not that day. I -- I don't recall.

2 Q. Now did you record Taylor Garcia on
3 August 30, 2012?

4 A. I don't believe I did. I may have. I don't
5 know. I'd have to look back through my report. As far
6 as audio and video for any of this on this case, I don't
7 have any from anybody.

8 Q. On August 30, 2012, Mr. Ortiz gave you a
9 statement, correct?

10 A. On which date?

11 Q. On August 30, 2012, he gave you a statement?

12 A. Yes, sir.

13 Q. And not only was it an oral statement, but it
14 was also a handwritten statement, correct?

15 A. Yes. He did write a statement out in Spanish.

16 Q. Now the oral statement that he gave you,
17 what -- that was in response to questions that you were
18 asking him, correct?

19 A. On the 30th I was just trying to inquire about
20 what might have happened to his child.

21 Q. But you did ask him questions about the child,
22 correct?

23 A. Yes.

24 Q. And he gave you answers to those questions,
25 correct?

1 A. Yes.

2 Q. And at some point in time he wrote a written
3 statement at your office, correct?

4 A. Yes, sir.

5 Q. When he wrote his written statement, he was
6 given Miranda warnings prior?

7 A. Yes, sir.

8 Q. And those Miranda warnings were read to him in
9 Spanish?

10 A. I read them to him in English, and then they
11 were interpreted to him in Spanish.

12 Q. And that was through Mr. Saldana?

13 A. Yes, sir, the CPS investigator.

14 Q. Now when Mr. Ortiz gave you his written
15 statement on August 30, 2012, where was he?

16 A. Where was he at? He was in my office.

17 Q. Was -- and who else was in the office besides
18 you, he and Investigator Saldana?

19 A. That would be the only people that were in
20 there.

21 Q. Taylor Garcia was not in the room with him on
22 August 30th when he --

23 A. No.

24 Q. -- gave that statement, correct?

25 A. She was out in the hallway. I'd already talked

1 to her.

2 Q. And is it true that Taylor Garcia also gave a
3 written statement on August 30th?

4 A. Yes.

5 Q. When she gave that written statement, you --
6 she gave that written statement to you, right?

7 A. Yes.

8 Q. When she gave that written statement to you,
9 who was in the room with her?

10 A. The same CPS investigator and myself and her.

11 Q. Okay. Mr. Ortiz was not in the room with her
12 on August 30th?

13 A. No. He was in the hallway.

14 Q. The statement that Mr. Ortiz --

15 MR. MEGARO: I'm sorry. Can I have the
16 witness -- Your Honor, can I approach the witness?

17 THE COURT: You may.

18 Q. (BY MR. MEGARO) Chief Hudson, I'm going to ask
19 you to take a look at Defense 1 for identification.
20 Just take a look at that, and just look up when you're
21 done.

22 A. Okay.

23 Q. Okay, thank you. Do you recognize that
24 document?

25 A. Yes.

1 Q. And is that the written statement that
2 Taylor Garcia gave you on August 30, 2012?

3 A. Yes, sir.

4 Q. That's her signature at the end of that?

5 A. Yes, sir.

6 Q. And your signature is on that, as well --

7 A. Yes, sir.

8 Q. -- as a witness, right?

9 A. Yes, sir.

10 Q. And she signed that in your presence?

11 A. Yes.

12 Q. And Mr. Ortiz gave you a five-page written
13 statement on August 30, 2012, correct?

14 A. I'd have to look and see how many pages his
15 was. I don't remember the exact amount, but, yes, he
16 did give me a statement.

17 Q. And I'm sorry. I -- I forgot to ask you a
18 couple of things about Defense Exhibit 1 for
19 identification. You had a chance to look at that
20 written statement by Taylor Garcia?

21 A. Yes, sir.

22 Q. Is that a true and accurate copy of the -- of
23 the statement that she gave you --

24 A. Yes.

25 Q. -- on August 30, 2012?

1 A. Yes, sir.

2 Q. Any deletions, any additions between --

3 A. I didn't make anything to any of them.

4 Q. Okay, so what I have here is the same thing
5 that you have, correct?

6 A. It's word-for-word exactly what I have here
7 from her original statement, yes.

8 Q. Okay, thank you. Mr. Ortiz's statement on
9 August 30, 2012, the written statement, was that ever
10 translated for you?

11 A. At that point, I don't know if -- I can't
12 recall if the CPS investigator translated that or not.
13 I remember him just kind of briefly telling me about it.

14 Q. I'm sorry. I couldn't hear the last part.

15 A. He just briefly told me about it. There wasn't
16 nothing in there that was incriminating.

17 Q. Okay, so in five pages of his written statement
18 on August 30th, there wasn't nothing in it that was
19 incriminating, correct?

20 A. Not that I can recall.

21 Q. By the way, on August 30th Mr. Ortiz was
22 mirandized? I did ask you that already, right?

23 A. Yes, sir.

24 Q. Ms. Garcia was also mirandized prior to her
25 writing Defense Exhibit -- Defense 1 for --

1 A. I've already answered it. Yes, sir, she was.

2 Q. I know. I'm sorry. It's late in the day. On
3 August 30, 2012, Mr. Ortiz denied that he hurt his son,
4 correct?

5 A. Yes.

6 Q. On August 30, 2012, he denied orally that he
7 had hurt his son, right?

8 A. Yes.

9 Q. And he also denied that in his written
10 statement on August 30, 2012, correct?

11 A. What he exactly wrote in his statement, again,
12 I don't know. I don't -- I can't read Spanish. I just
13 talked to the CPS investigator, and he told me there was
14 nothing incriminating in there and that we needed to go
15 find the babysitter and talk to her.

16 Q. And how did Mr. Ortiz arrive at the West Police
17 Department on August 30, 2012?

18 A. Either he walked or got a ride or drove
19 himself. I don't know. I never asked him how he got
20 there. He just came up voluntarily on his own.

21 Q. When you say "voluntarily," did you tell him
22 whether he had the choice to come to the West Police
23 Department on August 30th?

24 A. I tell everybody that I need to talk to them
25 about a case, and I'd like for them to come up and talk

1 to me.

2 Q. Did you say, "The choice is yours; you don't
3 have to come if you don't want to"?

4 A. I didn't probably tell him that.

5 Q. Mr. Ortiz also came back on August 31, 2012,
6 correct?

7 A. Yes.

8 Q. Now at this point in time it's your
9 understanding that the child had been taken away from
10 the father and the mother?

11 A. I believe Child Protective Services had stepped
12 in somewhere in that timeframe.

13 Q. When you saw him and Ms. Garcia -- when I say
14 "him," I mean my client. When you saw my client on
15 August 30, 2012, and Ms. Garcia, they were together,
16 right?

17 A. I believe they arrived up there together. They
18 were in the hallway together.

19 Q. They didn't have a baby with them, right?

20 A. No.

21 Q. And the same thing on August 31, 2012, they
22 didn't have a baby with them then?

23 A. No, sir.

24 Q. Now on August 31, 2012, before you spoke to
25 Mr. Ortiz you spoke with several other people at the

1 West Police Department as well, correct? I'm talking
2 about that day, the 31st.

3 A. The 31st, I talked to his -- the baby's mother
4 first.

5 Q. And that would be Taylor Garcia?

6 A. Yes.

7 Q. In addition to Taylor Garcia, there were other
8 people at the -- in that hallway --

9 MR. MEGARO: Do you have that photograph of
10 the hallway? Thank you.

11 Q. (BY MR. MEGARO) Okay. I'm going to show you
12 now State's Exhibit 24. When you first met
13 Taylor Garcia and Mr. Ortiz, they were in this hallway
14 that's depicted in State's 24, correct?

15 A. It was on the 30th, yes, sir.

16 Q. Okay, on the 30th, and again on the 31st, that
17 same hallway?

18 A. The same hallway.

19 Q. And in addition to Mr. Ortiz and Ms. Garcia,
20 there were various members of her family there as well,
21 correct, on the 31st of August?

22 A. I remember on the 30th, I think, her father was
23 up there, her sister was up there, the Defendant was up
24 there, and Ms. Taylor (sic) was up there.

25 Q. And who?

1 A. Ms. Taylor (sic).

2 Q. Okay, and who was there on the 31st?

3 A. I talked to Ms. Taylor (sic) and the Defendant,
4 and I don't remember if there was anyone else out --
5 there may have been some other people out there in the
6 hallway. I think her sister may have been there.

7 Q. What about her parents, Taylor Garcia's
8 parents, were they there?

9 A. I don't -- I can't recall if they were there
10 the second day or not. I didn't speak to them if they
11 were.

12 Q. Was there Mr. Ortiz the last person you spoke
13 to on August 31, 2012?

14 A. Yes.

15 Q. Now on August 31, 2012, Taylor Garcia was still
16 considered a suspect in this case, correct?

17 A. When she arrived, I had some additional
18 questioning for her, yes.

19 Q. And you mirandized her again on August 31 --

20 A. Sure.

21 Q. -- 2012, correct? And at that time you told
22 Taylor Garcia that she was still a suspect, correct?

23 A. No. I just told her that I found out that
24 her -- her child had 14 fractures on it, and I needed to
25 try to figure out what was going on.

1 Q. And did you tell Mr. Ortiz that Taylor Garcia
2 was also a suspect?

3 A. I can't recall if I told him that or not.

4 Q. And on August 31, 2012, Taylor Garcia
5 was 18 years old, maybe 19?

6 A. I'd have to look up her age. I have no idea
7 how old she was. On the 31st, neither one of them were
8 technically a suspect. I was still trying to get
9 information on what was going on. Until I -- when we
10 had his written statement from him, at that point I knew
11 what had happened.

12 Q. If you had not received this -- Mr. Ortiz's
13 written statement on August 31, 2012, you would not have
14 made an arrest of him, correct?

15 A. I wouldn't had anything to base the arrest on
16 other than the verbal statements.

17 Q. Now when Mr. Ortiz first arrived on
18 August 31, 2012, what time was that?

19 A. It was in the morning hours.

20 Q. Before noon, before lunchtime?

21 A. Yeah, I believe it was.

22 Q. How long was Mr. Ortiz there at the West Police
23 Department before he was mirandized?

24 A. I probably talked to the baby's mom maybe an
25 hour or so, just estimating it. As far as exact

1 timeframe, I couldn't tell you.

2 Q. Now after you started speaking with Mr. Ortiz,
3 he completed a written statement, correct?

4 A. Yes.

5 Q. How much time passed between the time you first
6 gave him Miranda warnings to the time that he started
7 writing his statement?

8 A. It was a length -- quite a bit of length of
9 time because having to translate and make sure he
10 understood everything, and then when he was writing his
11 statement, it took him a long time to write his
12 statement, and then it had to be translated, and then it
13 was e-mailed, and then I had to print it out, and then
14 we had to go back over it again, so it was -- it was
15 several hours.

16 Q. More than three hours?

17 A. Probably around that time, I don't know. I
18 know I was there quite some time talking to him, getting
19 everything lined up so we made sure he understood
20 everything.

21 Q. He was there for the majority of the day?

22 A. I wouldn't say the majority of the day, but he
23 was there for a while, just the time it took to complete
24 the statement and do it the right way.

25 Q. While you were speaking with Mr. Ortiz orally

1 before he started writing his statement --

2 A. Uh-huh.

3 Q. -- you confronted him with the number of
4 injuries that the child had sustained, correct?

5 A. I read off a list of stuff of -- of injuries of
6 his child that was given to me.

7 Q. You told him you wanted him to make a
8 statement, correct?

9 A. No. I didn't tell him I wanted him to. I
10 asked him if he wanted to.

11 Q. And at that point in time, did he --
12 without telling us what he said, did he ask you any
13 questions?

14 A. He asked just basic, general questions a father
15 would ask. "What's -- "What's wrong with my child," and
16 "Who did what," and that kind of stuff.

17 Q. And at one point in time did you discuss with
18 him the return of his child to the child's mother?

19 A. I'm not understanding.

20 Q. Did you ever tell Mr. Ortiz that if he spoke to
21 you and told you the truth that the child would be
22 returned to the mother?

23 A. I never told him that. I didn't even know who
24 had his child other than I thought maybe CPS would.

25 Q. I'm sorry. Say that again.

1 A. I'm sorry. Maybe CPS may have had his child.
2 I don't know. At that point I didn't tell him anything
3 of a such.

4 Q. But you knew that the -- the child was not with
5 the mother?

6 A. She wasn't there when she was talking to me.
7 Where the child was, I had no idea.

8 Q. Did you ever bring up the issue to him about
9 bringing the child back to the mother?

10 MS. LABORDE: Your Honor, I'm going to
11 object. This question has been asked three times, and
12 he's said "no."

13 THE COURT: Overruled, but this is getting
14 repetitious.

15 THE WITNESS: No. I never discussed how he
16 was going to get his child back or who had his child. I
17 didn't know.

18 Q. (BY MR. MEGARO) Did the written statement he
19 made on August 31, 2012, essentially memorialize
20 everything you discussed orally?

21 A. He -- he -- he basically said that he was sorry
22 for what he did and hurt his child.

23 Q. My question is, "Did everything that he wrote
24 in his statement, was that" -- "were those things that
25 he'd also discussed with you orally?"

1 A. I asked -- I asked him certain questions, and
2 he answered certain questions verbally to me, and then
3 he wrote his statement out to me.

4 Q. So everything in his written statement is the
5 same as his oral statements to you, correct?

6 A. No, word-for-word, probably not, because I mean
7 you're -- we're talking now. If you asked me to repeat
8 word-for-word what we're talking, I couldn't write it
9 exact either. That was his own statement. What he put
10 on this statement, I had nothing to do with what he
11 wrote. In fact, I wasn't even in the room half the time
12 when he was writing it.

13 Q. Okay. Now did -- when you were -- you say
14 you were not in the room. Did you leave
15 Investigator Saldana in the room with him?

16 A. In case he needed some help, yes.

17 Q. And that was to write the written statement or
18 to take oral questions from him?

19 A. I asked him to stay in there in case the
20 Defendant had a question about anything in the statement
21 form. The investigator, he left out several times with
22 me and went out in the break room -- the patrol room.
23 We stood out there for a while. Every now and then I'd
24 go in and ask the Defendant if he needed any additional
25 forms or if he was doing okay, did he need anything, and

1 when he'd say "no," I'd go back out.

2 Q. The -- the office door on August 31, 2012, was
3 that open or closed when Mr. Ortiz was in there?

4 A. It was probably about eighty percent (80%)
5 closed. It was still partially open. In case he
6 hollered, I could hear him.

7 Q. How long did you leave Investigator Saldana
8 alone with Mr. Ortiz?

9 A. A few minutes here, and then he would come out
10 and go in maybe a few minutes just to make sure he was
11 doing okay, and then he'd come back out. As far as
12 exact time, I -- I have no idea.

13 Q. Definitely more than a few seconds?

14 A. More than a few seconds, sure.

15 Q. And it was more than one time?

16 A. Well, he was going in and out just to make sure
17 your defendant wasn't needing something because he was
18 interpreting for him.

19 Q. And what I'm -- what I'm asking is you left
20 Mr. -- Investigator Saldana alone with Mr. Ortiz more
21 than once on August 31, 2012?

22 A. Yeah. He would go in there several times.
23 He'd just check on him like I would.

24 Q. I want to show you State's Exhibit 21. Can you
25 see it?

1 A. Yes.

2 Q. And I'm going to try to do this. This is a
3 low-tech laser pointer. If you can read the sentence
4 starting with "Now it is weird."

5 A. "Now it is weird that all of" -- "all of this
6 has happened. I am happy that my son is fine and he can
7 return to his mother but truthfully it was never my
8 intention."

9 Q. Okay. When he says "he can return to his
10 mother," is that something you discussed with him,
11 returning the child to his mother?

12 A. No.

13 Q. Do you know where that came from?

14 A. I have no idea where that came from.

15 Q. After he wrote this statement, did you follow
16 up and ask him any questions about what he meant?

17 A. No.

18 Q. Did you ask him what he meant about returning
19 the child to the mother?

20 A. No.

21 Q. Now you said eventually the statement from
22 August 31, 2012, was e-mailed to you, correct?

23 A. Yes.

24 Q. And the e-mail came through to you after
25 Investigator Saldana had already left?

1 A. No. The Defendant wrote out his written
2 statement. It was translated in English to the
3 Child Protective Service investigator who was sitting in
4 the office with his laptop on his lap. After he typed
5 it up word-for-word and went over it, he typed it up.
6 He e-mailed it to me while I was sitting at my desk.
7 I pulled up my e-mail, copied and pasted it into a
8 Word document and printed it out, handed it back to the
9 investigator for Child Protective Services, and then
10 that investigator and the Defendant went over that
11 statement, and the Defendant signed it, and I witnessed
12 it, and it was given back to me.

13 Q. And we're talking about State's Exhibit 21, the
14 written translation?

15 A. Yes.

16 Q. Can you show me where Investigator Saldana's
17 signature appears on that document?

18 A. It doesn't appear on that document. I've got a
19 copy of the e-mail he sent me from my office --

20 MR. MEGARO: Your Honor, may I --

21 THE WITNESS: -- that's word-for-word.

22 MR. MEGARO: -- approach?

23 THE COURT: Yes.

24 MR. MEGARO: I'm on 61, Lines 1 through 5.

25 Q. (BY MR. MEGARO) Now you just testified to

1 this jury that Investigator Saldana was still at
2 your office when he e-mailed you on August 31, 2012,
3 correct?

4 A. Yes. He was in my office on his laptop, and he
5 had sent it to me in an e-mail.

6 Q. Can you please read Page 61, Lines 1 through 5,
7 just read them to yourself for a second.

8 A. Okay.

9 Q. May I have that back?

10 A. (Complies with request.)

11 Q. Now you recall testifying here in this
12 courtroom back on January 13, 2014, regarding this case,
13 right?

14 A. I don't remember what day it was. That sounds
15 familiar.

16 Q. It was back in January that you testified in
17 this case. Does that sound fair enough?

18 A. Yeah.

19 Q. And the same lawyers were here sitting in the
20 same seats?

21 A. Uh-huh.

22 Q. You took an oath to tell the truth, the whole
23 truth and nothing but the truth?

24 A. Uh-huh.

25 Q. And that was now eleven months ago --

1 A. Okay.

2 Q. -- give or take?

3 A. To my knowledge, he was sitting in my
4 office. As far as I -- my best recollection --
5 recollection is he was in my office when he sent me the
6 e-mail. Now he could have been out in the patrol room
7 office or wherever, but he was there in the office when
8 I got the e-mail as far as -- to the best of my
9 knowledge.

10 Q. Chief, do you remember giving testimony in
11 this matter regarding the e-mail back in January,
12 of 2014?

13 A. I remember it was brought up.

14 Q. And you just read the transcript?

15 A. Yes.

16 Q. Back on January 13, 2014, were you asked this
17 question by myself, and did you give this answer?
18 Question, "How long was he there for?" Answer, "Like I
19 said, I don't know exactly minute-for-minute, but this
20 was e-mailed to me after the investigator left. I've
21 already answered that question." Were you asked that
22 question, and did you give that answer?

23 A. I don't remember exact questions I was asked.
24 I have no idea.

25 MR. MEGARO: Okay. I'll show it to you

1 again. May I approach the witness again, Your Honor?

2 THE COURT: Mr. Megaro, this is getting
3 pretty repetitious. Let's --

4 MR. MEGARO: Would the State concede that I
5 read from the transcript correctly?

6 MS. LABORDE: Yes.

7 THE COURT: All right.

8 Q. (BY MR. MEGARO) Did you make any promises to
9 this Defendant about bail if he gave you a statement?

10 MS. LABORDE: Your Honor, I'm going to
11 object. The question about promises has been asked and
12 answered about five times.

13 THE COURT: Overruled.

14 THE WITNESS: No.

15 Q. (BY MR. MEGARO) Did you make my promises to
16 Mr. Ortiz as to whether you would notify the courts or
17 the District Attorney's Office that he had cooperated if
18 he made a statement?

19 MS. LABORDE: Your Honor --

20 THE COURT: Overruled, but let's --

21 MS. LABORDE: So we're going to have any
22 number of statements made by the Defendant coming
23 through this Defense attorney that the State is not
24 allowed to address in any way? The State objects to
25 this whole line of questioning.

1 THE COURT: Don't go into anything your
2 client said.

3 MR. MEGARO: I'm just asking whether
4 this -- whether the Chief made these statements to him.

5 THE COURT: All right.

6 Q. (BY MR. MEGARO) Did you make any of these
7 statements to my client?

8 A. Not to my knowledge, I did not. I don't
9 promise anybody anything to come in my office.

10 MR. MEGARO: I have nothing further for the
11 witness at this time.

12 THE COURT: Redirect.

13 REDIRECT-EXAMINATION

14 BY MS. LABORDE:

15 Q. Chief, did you notice this Defense attorney's
16 phone went off a couple of times while you were
17 testifying?

18 A. I wasn't paying much attention to it if it
19 did.

20 Q. Did there ever become a time where he appeared
21 distracted to you and looked at his phone and wasn't
22 looking at you anymore?

23 A. I figured he was looking at his notes. I
24 wasn't paying much attention. I was just trying to
25 answer his questions the best that I can.

1 Q. You would agree with me that when you come into
2 court you turn your phone off?

3 A. I believe it's posted on the door.

4 Q. Okay, so if that were to happen, it's just an
5 honest mistake --

6 A. Yes.

7 Q. -- right, and that honest mistakes happen by
8 everybody?

9 A. Sure.

10 Q. Have there been other times that you've --
11 you've misplaced evidence in -- in a case?

12 A. In 20 years, probably so.

13 Q. Okay. Do you remember when I first told you
14 that I didn't have the audios that you said, "I probably
15 lost it" --

16 A. Sometimes it --

17 Q. -- because I have been known --

18 A. -- does happen.

19 Q. -- to lose things?

20 A. The DA has been known to lose stuff a few
21 times, and it -- it happens.

22 Q. Sometimes you give us evidence, and we don't --

23 A. Sure.

24 Q. -- know where it is?

25 A. Sure.

1 Q. Okay, that happens?

2 A. Sure.

3 Q. Okay, even on very serious matters?

4 A. As far as my copy, it could have been sent to
5 the DA and then lost. I don't know. I just know I
6 don't have it --

7 Q. And we couldn't find a receipt --

8 A. -- and I sure do wish I had it.

9 Q. -- and you couldn't find it either --

10 A. Yes, ma'am.

11 Q. -- but we sure wish we had it --

12 A. Yes, ma'am.

13 Q. -- for your sake? Okay. Now did you -- you
14 actually put together these notebooks for us. Is that
15 right?

16 A. Yes, ma'am.

17 Q. It has all your police reports; it has all the
18 statements; it has all the subpoenas, the medical
19 records and the CPS records. Is that right?

20 A. Yes, ma'am.

21 Q. These -- I guess these -- these tabs, is this
22 your handwriting that you --

23 A. I didn't have time to type them up, but I did
24 handwrite them.

25 Q. So you handwrote -- you handwrote that, too.

1 Is that right?

2 A. Yes, ma'am.

3 Q. And you actually copy and paste some of the
4 medical records in here in your report. Is that
5 right --

6 A. Yes.

7 Q. -- all the fractures that he --

8 A. All of the medical records I have that's in
9 there, they were sent to me.

10 Q. Now you said a couple of times that there
11 were 14 fractures?

12 A. I believe that's what it showed in the --

13 Q. And were you aware that if one rib is cracked
14 or five ribs are cracked, they -- they call it just
15 one because it's part of the rib? Were you aware of
16 that?

17 A. I was not aware of that. I have no idea on
18 medical stuff.

19 Q. So -- so -- so your testimony would be that the
20 jury should take into consideration what the doctor told
21 them about how many bones were broken?

22 A. I would take into consideration what the doctor
23 said versus what I say on the medical stuff because I'm
24 not a doctor.

25 Q. Okay. All right, and do you remember, for

1 example, writing in your report that the second time
2 Taylor Garcia came in to see you she brought her
3 biological mother -- so not her stepmother -- and her
4 sister, but you'd already spoken with them, so they
5 stayed in the hall?

6 A. Yeah. I had no reason to talk to them.

7 MS. LABORDE: Okay. Your Honor, may I
8 approach the witness?

9 THE COURT: You may.

10 THE WITNESS: Okay. Yeah, that's mine.

11 Q. (BY MS. LABORDE) Okay. That's your report,
12 correct?

13 A. Yes.

14 Q. So you wrote this on or about August 31st. Is
15 that right?

16 A. Yes, ma'am.

17 Q. In here you said -- you said that Taylor came
18 with her sister and her mom, and they stayed in the
19 hallway. Is that right?

20 A. Yes.

21 Q. Is it -- is it possible for you to commit
22 all of this to memory, this like two inches of
23 information?

24 A. It would be quite -- quite hard to do?

25 Q. And so this is --

1 A. Yeah.

2 Q. Were you -- were you aware that in the -- in
3 the hearing that you -- you talked about in January,
4 of 2014, were you aware that there were 90 pages of
5 transcripts from that hearing?

6 A. You just told me right before I came up here
7 the second time today.

8 Q. Were you aware the State didn't get a copy of
9 this?

10 A. No.

11 Q. You didn't get a copy of it?

12 A. I've not seen it.

13 Q. Do you -- were you -- do you remember that you
14 testified for two hours on that day?

15 A. I knew it was quite a length of time.

16 Q. Have you ever -- have you ever testified for
17 two hours before?

18 A. Not in the 20 years that --

19 THE COURT: Not until today, anyway.

20 Q. (BY MS. LABORDE) So this is the second time?

21 A. Yes.

22 Q. Okay. You know, would it be possible for you
23 to memorize all this information?

24 A. There's no way I could.

25 MS. LABORDE: I'll pass the witness.

RECROSS-EXAMINATION

1
2 BY MR. MEGARO:

3 Q. Is your cell phone turned off?

4 A. Yes, it is.

5 Q. Okay, I am to blame. Did I hear this right?

6 You blamed losing the audio and the video on the

7 District Attorney at first?

8 A. I didn't actually blame it on them. I called
9 and said, "Hey, I must have lost it because I don't
10 have it," and there's times that we do take video to
11 the DA's Office, and like right now the video goes to
12 one person and the case goes to one, and it gets
13 distributed out with a separate piece of paper for a
14 video, so it's very likely it could have got lost
15 somewhere. It happens, and it's just part of working
16 cases, I guess. It happens. It's not a good thing, but
17 it does.

18 Q. The case file that you have with you up there
19 on -- on the witness stand, is it -- are those your
20 originals?

21 A. They should all be originals, yes.

22 Q. Because you -- you're responsible for your case
23 file, correct?

24 A. That's correct.

25 Q. You keep all the originals; you give copies to

1 the District Attorney, correct?

2 A. Yes.

3 Q. That's in case they lose their copies, you have
4 your originals as a backup, correct?

5 A. Most of the time. There -- there are times
6 where I have an original disk, and we're maybe out of a
7 disk or something, so I'll just send my original to
8 the DA. I've done that before.

9 Q. But you'll keep a copy, too, right?

10 A. If I have disks to put them on, I will. A lot
11 of times sometimes we send the originals to the DA.
12 It depends on if it's photographs, or I mean there's
13 all kinds of scenarios of how to get stuff up here
14 so --

15 Q. And there's an audio recording -- by the way,
16 the audio recording is digital, correct?

17 A. It was an a little digital that I had --

18 Q. So --

19 A. -- and I even went back on it and looked and
20 tried to listen to see if it was on there. It wasn't on
21 there.

22 Q. And the video camera is also digital?

23 A. It's a Sony -- it's about a 1990 model Sony
24 camcorder like you used to have. You take -- it has a
25 little flip-out screen on it. Well, that's what we

1 have. It's embarrassing, but that's what we have.

2 Q. It records, right?

3 A. Yes.

4 Q. And it works, and it records the digital
5 format, not tape, not CD?

6 A. It puts in the little memory chip thing that
7 you push in, and it pulls out --

8 Q. Okay.

9 A. -- and you stick it in a computer.

10 Q. And you take the memory chip out, and you put
11 it in a computer, right?

12 A. Yes. You have to burn -- open up a file folder
13 on the desk top, put that in there, open it up, click on
14 it to open it all the way up, take it, transfer it into
15 the file folder, take it from that, put it on a CD, burn
16 it on a CD, and it's a lengthy process.

17 Q. And when you do all that, there's still a
18 digital backup on the hard drive of the computer,
19 correct?

20 A. If it's saved properly, yeah, I guess it could
21 be.

22 Q. Somebody would have to -- somebody would have
23 to go delete it to make -- to take it off that hard
24 drive, correct?

25 A. I've put stuff on there before and gone

1 back and looked, and it's not even there, and I'm
2 the only one with access to the computer. It's
3 password-protected so -- it's a Gateway computer. They
4 don't even make them anymore. It's outdated. It's
5 embarrassing, but that's what he have. I am working to
6 get some new ones for the detectives.

7 MR. MEGARO: Okay. I have no further
8 questions for the witness.

9 MS. LABORDE: I don't have anything
10 further.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you, Your Honor.

13 MS. LABORDE: May he be excused?

14 THE COURT: Any objection to --

15 MR. MEGARO: That's fine.

16 THE COURT: -- him being released? All
17 right, Chief, thank you.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: The next witness.

20 MS. LABORDE: The State calls
21 Alejandra Perez. She's on the way.

22 THE COURT: I'm going to stand up and
23 stretch. You all can do whatever you want to.

24 (The witness was sworn.)

25 THE COURT: All right. Ma'am, it sounds to

1 me like you might have some English, but be sure and --
2 be sure and speak in Spanish so the -- and then the
3 translator can interpret it. You may proceed.

4 MR. RAMSAY: Thank you, Your Honor.

5 ALEJANDRA PEREZ,

6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. RAMSAY:

9 Q. Good afternoon, Ms. Perez.

10 A. (Through the Interpreter) Good afternoon.

11 Q. You've been waiting for a while, haven't you?

12 A. (Through the Interpreter) Yes.

13 Q. And you -- you needed to get out of here
14 earlier, correct?

15 A. (Through the Interpreter) Yes.

16 Q. And you have a baby?

17 A. (Through the Interpreter) Yes.

18 Q. How old?

19 A. (Through the Interpreter) Five months.

20 Q. "Five months." What's the -- what's the baby's
21 name?

22 A. (Through the Interpreter) Jose Ignacio.

23 THE COURT: I don't know if we got her name
24 for the record completely.

25 MR. RAMSAY: Oh, I'm sorry.

1 Q. (BY MR. RAMSAY) Ms. Perez, can you state your
2 name for the record?

3 A. (Through the Interpreter) Alejandra Albenero
4 Perez.

5 Q. Ms. Perez, are you married?

6 A. (Through the Interpreter) Uh-huh, yes.

7 Q. And how long have you lived in the
8 Hillsboro-West area?

9 A. (Through the Interpreter) Two years, eight
10 months.

11 Q. And during that time have you gotten to know or
12 did you know a Juan Ortiz?

13 A. (Through the Interpreter) Yes.

14 Q. Did you know him by Juan Ortiz?

15 A. (Through the Interpreter) No.

16 Q. What did you know him by?

17 A. (Through the Interpreter) Miguel.

18 Q. And what was the last name?

19 A. (Through the Interpreter) I didn't know.

20 Q. So you just knew him by Miguel?

21 A. (Through the Interpreter) Yes.

22 Q. And what was your connection with the person
23 you called Miguel?

24 A. (Through the Interpreter) Just when he would
25 bring his baby over for me to take care of it.

1 Q. But how did you originally meet him?

2 A. (Through the Interpreter) Through a
3 sister-in-law.

4 Q. Through a sister-in-law of you?

5 A. (Through the Interpreter) Yes, mine.

6 Q. Okay. Now do you see the person that you
7 called Miguel in the courtroom today?

8 A. (Through the Interpreter) Yes.

9 Q. And can you identify him by an article of
10 clothing he's wearing?

11 A. (Through the Interpreter) A black sweater.

12 MR. RAMSAY: Your Honor, may the record
13 reflect the Defendant has been identified?

14 THE COURT: So noted.

15 Q. (BY MR. RAMSAY) All right. Ms. Perez --

16 MR. RAMSAY: Your Honor, may I approach the
17 witness?

18 THE COURT: Of course.

19 Q. (BY MR. RAMSAY) I'm showing you what's been
20 marked as Exhibits 29 and 30. Can you look at these?

21 A. (Complies with request.)

22 Q. And do you recognize these picture?

23 A. (Through the Interpreter).

24 Q. And who is this in the pictures?

25 A. (Through the Interpreter) M [REDACTED].

1 Q. And are these fair and accurate depictions of
2 M [REDACTED]?

3 A. (Through the Interpreter) Yes.

4 MR. RAMSAY: Your Honor, at this time the
5 State offers State's 29 and 30.

6 MR. MEGARO: A brief voir dire on the
7 photos?

8 THE COURT: What?

9 MR. MEGARO: A brief voir dire -- voir
10 dire?

11 THE COURT: All right. Go ahead.

12 VOIR DIRE EXAMINATION

13 BY MR. MEGARO:

14 Q. Ms. Perez, when were those photos taken?

15 A. (Through the Interpreter) It was on a
16 Wednesday. I don't remember the exact date, but it was
17 during the second week that I took care of him.

18 Q. Do you know which year?

19 A. (Through the Interpreter) Two thousand, twelve
20 (2012).

21 Q. The second week that you took care of him?

22 A. (Through the Interpreter) Uh-huh, yes.

23 Q. Do you know which month that was in?

24 A. (Through the Interpreter) August.

25 Q. And that's both photos?

1 A. (Through the Interpreter) I don't recall.

2 Q. Which photo was taken in -- in the second week
3 of August 2012?

4 A. (Through the Interpreter) The ones that have a
5 mark right here.

6 Q. And the other photo that was taken of the
7 baby's face, do you know when that was -- that photo was
8 taken?

9 A. (Through the Interpreter) No.

10 MR. MEGARO: Okay. Your Honor, I would
11 object to these photos. I don't believe that a
12 foundation has been laid to tie these to the charged
13 crimes in this case.

14 THE COURT: Let me take a look at them
15 first.

16 MR. MEGARO: Can we step up?

17 THE COURT: You may.

18 (At the Bench, off the record.)

19 THE COURT: All right. Folks, follow the
20 path to the jury room, please. Don't discuss this
21 matter or allow anyone to talk to you about it.

22 (The jury retired from the courtroom.)

23 THE COURT: All right. We're outside the
24 presence and hearing of the jury now. State's 29 and 30
25 that show a photograph of the child, what's your

1 objection, Mr. Megaro?

2 MR. MEGARO: I'll start with State's 29,
3 and it depicts a left arm with what appears to be a red
4 mark, I guess, between the wrist and the elbow on a --
5 on a baby's arm. My objection would be that this is not
6 relevant to prove any of the crimes charged in the
7 Indictment. This is not a photograph of a broken bone.
8 It's not an x-ray of a broken bone. It's a -- it's a
9 photograph of an injury that is not charged against
10 Mr. Ortiz, so I -- so I would -- I would object on that
11 basis of relevance and unfair prejudice.

12 As to the second photo, I don't think the
13 foundation has been laid yet, but if she testifies that
14 it depicts how the baby appeared in August, of 2012, or
15 I would say at the end of August, of 2012, I would not
16 have an objection to that, but I don't think I heard
17 that testimony. I could be wrong. It's late in the
18 day, and I'm starting to get --

19 MR. RAMSAY: Judge, may I respond?

20 THE COURT: You may.

21 MR. RAMSAY: In the statement by the
22 Defendant there is talk of a -- a burn from possibly a
23 shower that was too hot, and I believe that could easily
24 be what we're seeing in this. However, Your Honor, I
25 believe that one of the arguments made -- that will be

1 made by the Defense is that Ms. Perez is partially
2 responsible for these actions, and this goes to show
3 that she was -- saw an injury and took a picture of it
4 in order to ask what to do with these injuries that she
5 sees, and I believe that the foundation has been laid.
6 She -- she even gave the day. We don't have to prove
7 what day something was taken. We don't have to prove
8 what month. We have to say it fairly depicts the child
9 when the child was under her care, and it is relevant
10 because it shows an injury that she saw, having been
11 dropped off by the Defendant.

12 THE COURT: All right. It has been a long
13 day. Earlier in the day, wasn't there some reference to
14 all of this by testimony of somebody?

15 MS. LABORDE: Correct, Your Honor. If
16 you -- if you notice what's been admitted to without
17 objection, State's 21 is up there, and there's this
18 explanation about, "I took the baby in the shower, but I
19 made sure the water wasn't too hot," and I asked the
20 detective, "Why are you having this conversation about
21 the shower," and he said, "Because I had shown him
22 pictures taken by the babysitter that I had already
23 gotten," and he was explaining the red mark, you know,
24 so -- so this is just relevant to explain what that
25 statement is about. This is already in evidence. The

1 fact that she took pictures is already in evidence. The
2 fact that she -- that the detective collected those and
3 showed them to the Defendant on the 31st is already in
4 evidence, so I mean I think they're obviously relevant.
5 I don't -- you know, and this really just goes to
6 access, you know, that she's the babysitter for four
7 weeks. You've already heard testimony from the
8 Black Eyes Pea folks that while they -- they always
9 worked together, and while they did they took the baby
10 to a babysitter in Hillsboro. That -- that's who's on
11 the stand right now.

12 THE COURT: All right. Then I'm going to
13 overrule the objection. State's 29 and 30 will be
14 admitted. Bring in the jury.

15 (Off the record from 4:08 PM
16 to 4:10 PM.)

17 (The jury was seated in the jury box.)

18 THE COURT: All right. I overruled the
19 objection of State's 29 and 30. They are admitted. You
20 may publish.

21 MR. RAMSAY: Thank you, Your Honor.

22 CONTINUATION OF DIRECT EXAMINATION

23 BY MR. RAMSAY:

24 Q. Ms. Perez, first I'm going to show you State's
25 Exhibit 30.

1 THE COURT: Mr. Carroll, you may have to --
2 have to move somewhere else.

3 THE INTERPRETER: I've been told that a
4 lot. All right.

5 Q. (BY MR. RAMSAY) Ms. Perez, do you recognize
6 this -- the photograph in State's Exhibit 30?

7 A. (Through the Interpreter) Yes.

8 Q. And who is that?

9 A. (Through the Interpreter) M[REDACTED].

10 Q. Is that M[REDACTED] Ortiz, the -- the child that
11 we're here about this week?

12 A. (Through the Interpreter) Yes.

13 Q. And did you take that when you were babysitting
14 him?

15 A. (Through the Interpreter) Yes.

16 Q. Now I want to talk to you about how long and
17 kind of how your baby-sitting went. Did you take care
18 of M[REDACTED] for about a month?

19 A. (Through the Interpreter) Yes.

20 Q. And so that would have put you starting to care
21 for him when he was about a month-and-a-half?

22 A. (Through the Interpreter) Yes.

23 Q. Now that first week that you had him, did you
24 notice anything about M[REDACTED]?

25 A. (Through the Interpreter) Yes.

1 Q. And what did you notice?

2 A. (Through the Interpreter) The first week I had
3 him he had had his vaccinations, and I noticed a little
4 mark on him, but it was small.

5 Q. His -- would that be the six-week vaccinations
6 that you're talking about probably?

7 A. (Through the Interpreter) Yes.

8 Q. So continue.

9 A. (Through the Interpreter) After that during
10 the second week I noticed another little mark on his
11 left arm. It was a little bit bigger than the first
12 one.

13 Q. And so what did you think at that point?

14 A. (Through the Interpreter) Actually, I didn't
15 think a whole lot about it at that time. I didn't
16 suspect anything.

17 Q. Okay. Ms. Perez, I'm going to show you what's
18 been admitted as State's Exhibit 29. Do you remember --
19 do you -- do you see that?

20 A. (Through the Interpreter) Yes.

21 Q. And is that the mark that you're talking about?

22 A. (Through the Interpreter) That's the first
23 one.

24 Q. Okay, and then did you -- so why did you take a
25 picture of it?

1 A. (Through the Interpreter) My sister-in-law
2 told me I should, and then -- and then I noticed the
3 second one which was a little bit bigger which was the
4 first photo that I looked -- that I saw. It was the
5 first photo of what I had seen first.

6 Q. So does that mean the other photograph that you
7 took -- question mark? Does that mean the first
8 photograph you took?

9 A. (Through the Interpreter) Okay. This was the
10 first mark I saw on him. The second one was when he was
11 in a green outfit.

12 Q. And you took a photograph of that, as well?

13 A. (Through the Interpreter) Yes.

14 Q. So let's talk about the -- M■■■■'s mood from
15 when you first started keeping him until the last week
16 that you kept him, okay?

17 A. (Through the Interpreter) All right.

18 Q. Was he a little colicky when you first started
19 keeping him?

20 A. (Through the Interpreter) Yes.

21 Q. And after that kind of describe to the jury
22 what he was like the first couple of weeks.

23 A. (Through the Interpreter) He was calm. He
24 would cry only when he was hungry. He would sleep well.

25 Q. And after the first couple of weeks, did that

1 change towards the end?

2 A. (Through the Interpreter) No.

3 Q. So it --

4 A. (Through the Interpreter) He would -- he would
5 just cry when I would change -- he would cry a little
6 when I would change his diaper.

7 Q. Okay, so the whole time that you had him did --
8 did you notice anything that you thought was a broken
9 bone or anything of that nature?

10 A. (Through the Interpreter) No.

11 Q. And if you would have thought a broken -- a
12 bone was broken, would you have told somebody?

13 A. (Through the Interpreter) Yes.

14 Q. Now did the -- did -- the Miguel or -- or Juan,
15 did he ever tell you not to -- to stop carrying the
16 baby?

17 A. (Through the Interpreter) Yes.

18 Q. And was he upset when he told you this?

19 A. (Through the Interpreter) A little.

20 Q. Did he say, "Because the baby wants to be held
21 all the time"?

22 A. (Through the Interpreter) Yes.

23 Q. Now in this first picture that we're looking
24 at -- and you -- you can turn around. Can you see that
25 picture good?

1 A. (Through the Interpreter) I can see the baby,
2 yes.

3 Q. Is his head shaved in that picture?

4 A. (Through the Interpreter) I know -- I -- I
5 knew that they had cut his hair.

6 Q. Is that -- is that common?

7 A. (Through the Interpreter) No.

8 Q. Because I mean it looks pretty bald. Is that
9 correct?

10 A. (Through the Interpreter) Yes.

11 Q. Now, Ms. Perez, you would agree that besides
12 the Defendant and Max's mom you had the baby the most.
13 Is that correct?

14 A. (Through the Interpreter) Yes.

15 Q. Ms. Perez, did you ever hurt this baby?

16 A. (Through the Interpreter) No.

17 Q. And can you tell the jury that?

18 A. (Through the Interpreter) No.

19 Q. Did -- Ms. Perez, did -- did the Defendant ever
20 tell you that all the baby would do is just cry?

21 A. (Through the Interpreter) Yes.

22 Q. Did he seem to -- did he seem annoyed by this?

23 A. (Through the Interpreter) A little.

24 Q. And then did you ever notice a bruise on the
25 baby's foot?

1 A. (Through the Interpreter) Just a little ant
2 bite.

3 Q. And that's what -- that's what the Defendant
4 told you, correct?

5 A. (Through the Interpreter) The mother did.

6 MR. RAMSAY: "The mother did." Your Honor,
7 we'll pass the witness.

8 MR. MEGARO: I'll be very brief.

9 CROSS-EXAMINATION

10 BY MR. MEGARO:

11 Q. Mr. Ortiz said, "Don't hold the baby all the
12 time because, otherwise, he'll just want to be held, and
13 he'll never be quiet if you lay him down to sleep"?

14 A. (Through the Interpreter) Yes.

15 Q. When the police came to speak with you, did
16 they read you your rights?

17 A. (Through the Interpreter) No.

18 Q. They never told you you had the right to remain
19 silent?

20 A. (Through the Interpreter) No.

21 Q. When the police came to see you were you
22 scared?

23 A. (Through the Interpreter) No.

24 MR. MEGARO: Nothing further for the
25 witness.

1 THE COURT: Redirect?

2 MR. RAMSAY: Briefly, yes. May I approach
3 the witness, Your Honor?

4 THE COURT: Yes.

5 REDIRECT EXAMINATION

6 BY MR. RAMSAY:

7 Q. Ms. Perez, I'm showing you what's been marked
8 for identification purposes as State's exhibit 31. Is
9 that your signature?

10 A. Yes.

11 Q. And if somebody -- do you remember talking to
12 Alfonso Saldana?

13 A. (Through the Interpreter) Yes.

14 Q. And if he -- is that -- are those your
15 initials?

16 A. (Through the Interpreter) Yes.

17 Q. And would you ever initial something if it
18 hadn't have been read to you?

19 A. (Through the Interpreter) No.

20 Q. And so if you signed here and Mr. Saldana
21 signed here and you initialled here, it's fair to say
22 that these were read to you, correct?

23 A. (Through the Interpreter) Yes.

24 Q. Okay, so you just might not remember what
25 Mr. Saldana told you, correct?

1 A. (Through the Interpreter) Yes.

2 Q. It's been -- it's been over two years?

3 A. (Through the Interpreter) Yes.

4 MR. RAMSAY: Okay. Your Honor, State
5 offers State's 31.

6 MR. MEGARO: No objection.

7 THE COURT: State's 31 is admitted.

8 Q. (BY MR. RAMSAY) Now, Ms. -- Ms. Perez, just so
9 the jury knows what we're looking at, we were -- we were
10 looking at your signature right here, correct?

11 A. (Through the Interpreter) Yes.

12 Q. And your initials over here by your rights,
13 correct?

14 A. (Through the Interpreter) Yes.

15 Q. Okay, and, Ms. Perez, when you did talk to
16 the police, you also gave a three-page statement,
17 correct?

18 A. (Through the Interpreter) Yes.

19 Q. And that's, basically, the stuff that we've
20 talked about here with the jury today. Is that right?

21 A. (Through the Interpreter) Yes.

22 MR. RAMSAY: No further questions,
23 Your Honor.

24 MR. MEGARO: Can I have 31 up on the board
25 one more time, please?

1 RECROSS-EXAMINATION

2 BY MR. MEGARO:

3 Q. Ms. Perez, you don't remember two police
4 officers coming to you and reading to you your right
5 to remain silent, anything you say can be used
6 against you in a court of law; you have the right to
7 talk to --

8 MR. MEGARO: I'm sorry. Sorry, Dan.

9 THE INTERPRETER: That's okay. It's all
10 written.

11 MR. MEGARO: I'll start over.

12 Q. (BY MR. MEGARO) Ms. Perez, you don't remember
13 two police officers coming to talk to you and reading
14 you your -- your rights, telling you that you have the
15 right to remain silent, anything you say can and will be
16 used against you in a court of law; you have the right
17 to talk to a lawyer and have a lawyer present with you
18 while you're being questioned, and if you cannot afford
19 to hire a lawyer, one will be appointed to represent you
20 before any questioning, and you can decide at any time
21 to exercise these rights and not answer questions or
22 make a statement?

23 A. (Through the Interpreter) No.

24 Q. Did it ever happen to you before?

25 A. (Through the Interpreter) What, that I don't

1 remember something?

2 Q. Did it ever happen to you before that police
3 came to you and read you your rights?

4 A. (Through the Interpreter) No.

5 Q. Has that happened since?

6 A. (Through the Interpreter) No.

7 MR. MEGARO: Okay. I have nothing further
8 for the witness.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. RAMSAY:

11 Q. Ms. Perez, when you were -- you came to the
12 police station, correct?

13 A. (Through the Interpreter) Of West?

14 Q. Yes.

15 A. (Through the Interpreter) Yes.

16 Q. And you didn't have anything to be nervous
17 about, did you?

18 A. (Through the Interpreter) No.

19 Q. I mean you just wanted to help the police catch
20 whoever broke 17 bones in a baby's body, correct?

21 A. (Through the Interpreter) Yes.

22 Q. And you've told this jury that that person was
23 not you?

24 A. (Through the Interpreter) Yes.

25 MR. RAMSAY: Nothing further, Your Honor.

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1 RICHARD ANTHONY GARCIA,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. LABORDE:

5 Q. Sir, could you please state your name for the
6 jury. What's your name?

7 A. It's Richard Garcia.

8 Q. And do you go by "Anthony"?

9 A. Yes, I do.

10 Q. Is that your middle name?

11 A. Well, it is, but growing up they called me
12 "Tony," and then later on it was "Anthony."

13 Q. Okay, so your legal name is Richard Garcia?

14 A. Richard Anthony Garcia.

15 Q. And then earlier when I said, "Is Richard
16 here," you didn't answer because that's not the name you
17 go by, right?

18 A. Yeah.

19 Q. Okay, okay. How are you related to
20 M █████ Ortiz?

21 A. I'm his grandfather, Taylor's father.

22 Q. Taylor's dad?

23 A. Yes, ma'am.

24 Q. How many children do you have?

25 A. I have two daughters from my first marriage and

1 a -- step-daughter and a step-son from my marriage now.

2 Q. And how old are your children, your biological
3 children?

4 A. Taylor is 22, and my oldest daughter, Jennifer,
5 is 32, ten years apart.

6 Q. So ten years apart?

7 A. Yes.

8 Q. How old are your step-kids?

9 A. My step-son is 25, and my youngest -- my
10 youngest daughter, which is my step-daughter, she's 17,
11 will be 18 this month.

12 Q. Where do you live?

13 A. I live in Fort Worth, Texas.

14 Q. How long have you lived there?

15 A. I've lived at that -- well, I've lived there
16 for most of life. I've lived at that property I'm at
17 for 25 years.

18 Q. Now your daughter -- in 2012 Taylor, your
19 youngest daughter, she was living in West. Is that
20 correct?

21 A. Yes, she was.

22 Q. And how is it at 18 she ends up in West?

23 A. Well, my -- you know, I was married
24 for 18 years to my first wife, and before we separated
25 they lived on the south side of Fort Worth for several

1 years, and then they decided that they wanted to move
2 further out, and they picked Milford, to live there,
3 and --

4 Q. So is Milford in Ellis County or Hill County?

5 A. I'm not sure on that.

6 Q. How far away is Milford from Hillsboro?

7 A. Approximately about 15 minutes, the way I --
8 you know, I would go out there to visit her and pick her
9 up every other weekend in, you know, visitation.

10 THE COURT: They have a speed trap in
11 Milford.

12 MS. LABORDE: I know.

13 Q. (BY MS. LABORDE) Did you ever get caught in
14 Milford?

15 A. No, ma'am, thanks to God.

16 Q. Okay, so were -- there were times you picked
17 Taylor up for visitation from Milford or from Hillsboro
18 or both?

19 A. From -- from Milford I would pick her up.

20 Q. And would you guys sometimes go eat in
21 Hillsboro if you were --

22 A. Usually, when I would pick her up, I would --
23 at that time she would come to spend the weekend with us
24 and -- yeah.

25 Q. So the opposite direction?

1 A. Yeah. We'd go back to Fort Worth.

2 Q. When did she start working at the Black Eyed
3 Pea in Hillsboro?

4 A. Towards the end of her senior year or
5 towards -- into her senior year because at that time she
6 was -- she would work the weekends, and we weren't able
7 to pick her up and, you know, bring her to Fort Worth to
8 spend the weekend with us or holidays or stuff like that
9 because she was actually working at the Black Eyed Pea.

10 Q. So that would be have been the spring, of 2011,
11 that she's in her final year of school?

12 A. Yes, ma'am.

13 Q. She would be a 2011 graduate from high school.
14 Is that right?

15 A. Yes, she was.

16 Q. And then going that period of time, if she'd
17 worked at the Black Eyed Pea for about a year or so,
18 when did you come to know that she was involved with the
19 Defendant in this case and that they were romantically
20 involved?

21 A. Well, actually, I received a call from my
22 ex-wife and -- to -- to inform me that -- that Taylor
23 was --

24 MR. MEGARO: Objection, Your Honor, as to
25 what his ex-wife told him.

1 THE COURT: Sustained.

2 MS. LABORDE: Your Honor, I'll rephrase the
3 question.

4 Q. (BY MS. LABORDE) Did Taylor tell you she was
5 pregnant?

6 A. She didn't tell me.

7 Q. Did you find out through someone else?

8 A. My ex-wife.

9 Q. And prior to that time -- or let me ask you
10 this. When -- do you now looking back realize you saw
11 Taylor when she was pregnant; you just didn't know she
12 was -- ?

13 A. That's true.

14 Q. --- pregnant at the time?

15 A. Yes, ma'am.

16 Q. What time would that have been, what timeframe?

17 A. During the holidays, Christmas.

18 Q. So that Christmas 2011 Taylor would have been
19 pregnant, but you didn't know?

20 A. That's correct.

21 Q. She -- she didn't look pregnant to you?

22 A. No, ma'am.

23 Q. And you're aware that Max was born in June,
24 of 2012. Is that correct?

25 A. Yes, ma'am.

1 Q. How close to the -- his birth did you find out
2 that Taylor was pregnant?

3 A. She was -- it was approximately probably into
4 the seventh month of the pregnancy.

5 Q. So then when you see her again in March or
6 April after having seen her at Christmas, you know, did
7 she look pregnant at that time?

8 A. Yes, yeah. I mean after -- after Christmas,
9 I mean, you know, once, you know, I found out that she
10 was pregnant, and I got to see her more often, and,
11 you know, you could definitely tell she was pregnant.

12 Q. When was the first time that you met the
13 Defendant?

14 A. Shortly after that they came down to
15 Fort Worth, and we met at a restaurant in Fort Worth.

16 Q. And when you say "they," you mean Taylor and
17 the Defendant?

18 A. Both of them, yes, ma'am.

19 Q. How many -- I mean how many times do you think
20 you sat down with this Defendant and had dinner all
21 together?

22 A. Well, that one time, and then there was --
23 there was two times after that that we were together.

24 Q. So only a total of three times that you ever
25 really spent time with this Defendant?

1 A. Yes, ma'am.

2 Q. Do you see the man in the courtroom that was
3 your --

4 A. Yes, ma'am, I do.

5 Q. -- daughter's boyfriend? And can you point him
6 out by something he's wearing?

7 A. He's sitting right there with the dark sweater
8 and black tie.

9 MS. LABORDE: Your Honor, may the record
10 reflect this witness has identified the Defendant?

11 THE COURT: Granted.

12 Q. (BY MS. LABORDE) Did -- you said you met at a
13 restaurant in Fort Worth?

14 A. Yes. It was a Golden Corral. It was actually
15 in the Mid-Cities area.

16 Q. The Defendant did not come to your house?

17 A. No, ma'am. We went to the restaurant, and we
18 had dinner or kind of a -- you know, in-between dinner
19 and lunch because it was probably around three o'clock
20 or so, and afterwards I asked them if they would like to
21 come to the house to -- you know, to be able to visit
22 and spend some more time, but he -- you know, I kind of
23 felt like he really didn't want to, you know, go to the
24 house.

25 Q. And he did not go to the house?

1 A. No, he didn't.

2 Q. After that time and when you knew Taylor was
3 pregnant, did you make efforts to go see her in -- in
4 West --

5 A. Yes, ma'am. She --

6 Q. -- or Hillsboro?

7 A. She was still working at that time, and she was
8 off on Wednesdays, and we would -- we started going out
9 there to -- you know, to help her, you know, with what
10 we could. You know, we'd go out there to visit her,
11 and, you know, the first time -- excuse me. The first
12 time I went out there to her apartment there was very
13 little groceries -- excuse me; I'm sorry -- there was
14 very little groceries and stuff, and I just -- it was
15 hard to believe that she was living under those
16 conditions, but we -- we -- my wife and I, we took her
17 to the grocery store, and, you know, we bought the
18 groceries for her, and, you know, it just -- it just
19 tore my heart out to see my daughter in those
20 situations.

21 Q. Were you concerned that she didn't have enough
22 food for her and her baby?

23 A. Yeah. I was just worried, you know, being
24 pregnant and not having but water in the refrigerator
25 and a few other little items and just -- so we carried

1 her to the store, and after that we'd come -- we'd try
2 to make our way out there on Saturdays, and -- and
3 Wednesdays, I would try to do my best to take that day
4 off on Wednesdays to be out there, and we would go out
5 there and buy groceries and, you know, take her and get
6 what she needed, and we -- you know, seeing the
7 situations, and, you know, she had -- there was nothing
8 there for a new baby to come -- you know, for a new baby
9 to be coming into a home like that, and so we --

10 Q. Sir, let me stop you. You said "we." Is that
11 you and your -- your current wife --

12 A. Yes, ma'am.

13 Q. -- her stepmother, Norma?

14 A. Yes, Norma and I, so we just -- you know, it
15 was -- there was nothing there, and, you know, I asked
16 Taylor, "You know, there's nothing for the baby," and
17 she said --

18 Q. And you can't go into what she said.

19 A. Okay.

20 Q. When you were at her apartment, did you look
21 around and see anything like a crib or a highchair or
22 a --

23 A. No. There was nothing --

24 Q. -- or a bouncy chair?

25 A. There was nothing there for, you know, a baby

1 to come.

2 Q. And how -- and she was pretty far along at that
3 point?

4 A. Yes, ma'am.

5 Q. Whenever you would go on these Wednesdays and
6 Saturdays to see Taylor and you're going over to her
7 apartment, would the Defendant ever be there?

8 A. Only one time when we went to dinner, or it
9 might have been the middle part of the day, because we
10 would try to get out there towards noon, so we could
11 make it back before it was too late in the evening since
12 it such a long drive. We went to eat at CiCi's Pizza,
13 and he went with us at that time --

14 Q. Okay, and was that after --

15 A. -- or he went --

16 Q. -- M [REDACTED] was born?

17 A. -- in his own vehicle.

18 Q. Was that after the baby was born or before?

19 A. That was after the baby was born.

20 Q. "That was after." Okay, so this whole time
21 then before June from, you know, March, April, to June
22 and you're going and visiting her and you're buying her
23 groceries and you notice there's nothing in the home for
24 the baby, are you -- you're not seeing the Defendant --

25 A. No, ma'am.

1 Q. -- during that period of time? He's not --
2 he's not -- you're just not seeing him?

3 A. I'm not seeing him, but he would call
4 continuous while we were visiting throughout that whole
5 timeframe. We -- she would get calls and have to go in
6 the other room, and it was just like we would have very
7 little time to visit with her, and she would spend a lot
8 of time on the phone talking to him, and it just kind of
9 seemed a little awkward.

10 Q. And without going into what she said, did you
11 ever see Taylor upset or crying --

12 A. Yes, ma'am.

13 Q. -- during those phone calls?

14 A. We, actually, went out there on a Wednesday and
15 took her out to the Burlington Coat Factory because they
16 have, you know, clothes for children and stuff, and --
17 you know, and we were out there, and, you know, it was a
18 happy moment when you have a new grand-baby on the way,
19 but we took her out there, and she was happy because
20 we -- you know, my wife and I, we were getting stuff
21 that we thought she would need for the -- my newborn
22 grandson-to-be, and, you know, she was really happy, and
23 we had baskets of clothes and stuff for the baby, and
24 then all of a sudden she got a call, and she had to go.
25 She was trying to talk on the phone, but then she had to

1 go. I don't know if she went completely out of the
2 building but towards the front of the building, and --
3 and it was -- she was gone for, I would say, 20 minutes
4 to 30 minutes, and she was on the phone. When she came
5 back, you could tell she was crying, and, you know, it
6 just tore my heart out that -- you know, that she's
7 having to go through something like that. You know,
8 it's a happy time of life to have a newborn coming,
9 and -- and we had to actually leave shortly after that
10 and load everything up and -- and take everything to her
11 apartment, and, you know, it was just -- it was -- I
12 don't know. It just seemed very sad to me that it had
13 to be under those -- you know, like that.

14 Q. Were you present when he was born?

15 A. Yes, ma'am. We were there. My wife and I were
16 both there, and my step-daughter and my oldest daughter
17 were all there, and my ex-wife was there.

18 Q. And he was not born premature. Is that
19 correct? He was born at the end of --

20 A. No, he wasn't.

21 Q. -- the 38th week?

22 A. Yes, ma'am.

23 Q. And did -- was -- did Taylor go take the baby
24 straight from there to her own apartment?

25 A. Well, when she was in the hospital, we --

1 you know, after the baby was born, we were there the
2 following day to -- to visit, you know, with her and the
3 baby, and my wife and I had talked to her. We were
4 wanting her to come and stay with us for a week or a
5 week-and-a-half or two weeks maybe so -- so she could
6 get back on her feet and have some help, and, you know,
7 we tried to talk to her, but, you know, I just -- she --
8 she wouldn't go, you know. It seemed like, you know,
9 the way it -- you know, the situation was she was afraid
10 to go, or, you know, I don't know. It just seemed
11 awkward that she, you know, wouldn't be able to go and
12 have some help and --

13 Q. She didn't have any help at that time, right?

14 A. No, ma'am. My -- my oldest daughter lived in
15 those same apartments, and she was there, but she has
16 two other children, and -- you know, and she has her
17 life, too, and -- you know, but we were -- my wife was
18 willing to take off, you know, a week or two from work
19 to help Taylor through that time, you know, being so
20 young and having a baby and, you know, not, you know,
21 knowing, you know, --

22 Q. And being so young herself?

23 A. -- it's all new, yeah.

24 Q. Now I want to talk to you about that second
25 time that you said you went out with the Defendant.

1 You went to CiCi's Pizza. Is that right?

2 A. Yes, ma'am.

3 Q. M [REDACTED] was with you all that time?

4 A. Yes.

5 Q. And he wouldn't have been able to sit up at a
6 table. Was he in like his car seat carrier?

7 A. Yeah. He was in his car seat, and, you know,
8 we had arrived at the restaurant, and we were all,
9 you know, getting seated, and I -- my grandson --
10 you know, when I would go out there, I'd try and spend
11 time with all my grandsons and everything. They were
12 with us, and my oldest daughter and everybody was happy
13 because they very seldom got, you know, to go out to eat
14 or anything or be together, and we were just enjoying
15 the company. Well, we just -- you know, we got there,
16 and we sat down or about to sit down, and my wife was
17 making a comment that she just, you know, wished that we
18 could spend more time with them and have that time
19 together, and Francisco -- he started talking to us, and
20 he was asking us if we wanted the baby. "You know,
21 would you all like to have him," and he just said,
22 "Well, why don't you all just take him." It just
23 shocked me. You know, how could someone give up their
24 own baby or say such a thing, and then he reaches over
25 there and pinches his nose, which it -- at that moment

1 it just tore my heart out to see my grandson, and my
2 wife -- my wife told me, "Just don't say nothing; don't
3 say nothing, you know," and I just had to hold that in,
4 and it just tore me up, and I just -- it just was
5 something so hard to see.

6 Q. Was your grandson sleeping?

7 A. He was sleeping, but he pinched his nose, and
8 he started crying, you know, and it was just -- I don't
9 know. I just -- it just hurts me to even think that,
10 you know, something like that could have happened. I
11 wish I'd have done something at that moment.

12 Q. And you -- you recall this -- you said you
13 called the Defendant "Francisco"?

14 A. Yes, that's --

15 Q. And he said, "If you want him, you can" -- "you
16 can take him; you can have him"?

17 A. Yeah. He -- he said, "If you all want him, you
18 all can take him," and I was just -- I just -- that was
19 just so hard to -- to understand how somebody can say
20 that. I mean their newborn son, and, you know, how
21 could you give up or say such a thing even joking? I
22 just -- I don't know. I just couldn't understand why he
23 would say such a thing.

24 Q. Do you speak Spanish?

25 A. Yes, ma'am.

1 Q. Did the Defendant ever speak to you in Spanish?

2 A. Every time we talked it was in English. He
3 would talk to us in English.

4 Q. Did you think the Defendant knew you spoke
5 Spanish?

6 A. I'm sorry?

7 Q. Do you think the Defendant knew you spoke
8 Spanish?

9 A. Yeah. I -- I mean I'm sure he did, you know.

10 Q. But that's not what you ever spoke in?

11 A. No. We spoke, you know, in English. We'd go
12 sit down, and he spoke to my daughter in English and --

13 Q. Does Taylor speak Spanish?

14 A. No. My daughter doesn't speak any Spanish.

15 Q. Did you ever hear the Defendant and Taylor when
16 they were on the phone together speaking Spanish?

17 A. Well, I heard Taylor talk to him in English.

18 Q. Okay, so she's not even capable of speaking to
19 him in Spanish?

20 A. Yes. Do you mind if I --

21 Q. No.

22 A. Excuse me.

23 Q. Okay. Now you were not -- you were not there
24 when the child was taken to the emergency room?

25 A. No, ma'am.

1 Q. Did you find out by the time M [REDACTED] was in
2 Temple that -- what had happened? Did --

3 A. Well --

4 Q. -- someone call you, and you can't go into what
5 was said, but did you ever yourself go to Temple?

6 A. Yes, ma'am. We -- once we found out, we went
7 out to Temple.

8 Q. How long was it before you had M [REDACTED] with you?

9 A. It was -- well, we were trying to get him
10 from -- directly from the hospital, and CPS requires --
11 you've got to go through a process, and we completed the
12 process, and we were actually told to come out to pick
13 him up, and when we arrived they had notified us that he
14 had been put in a foster home a day before, you know,
15 that what they had -- I guess it was supposed to be we
16 had three days to -- to get him before he would go into
17 a foster home. Well, when we got out there, they said
18 he had already been placed in a foster home, and it was
19 on that third day, and we had already completed all the
20 requirements. They came out and inspected our home and
21 did a criminal background and -- for my wife and I and
22 my -- my step-daughter and anyone that was living in
23 that house and --

24 Q. So was it a period of weeks that you had to
25 wait?

1 A. Yeah. We had to wait -- he was at that time --
2 by the time we were able to actually pick him up and
3 get -- or to get him to our home, he was already in
4 his -- he was four months of age, so yeah.

5 Q. So that ended up taking six weeks?

6 A. Yes, ma'am.

7 Q. Okay. Now when you got him at six weeks, can
8 you tell the jury what you noticed about his crying?

9 A. Well, when we got him at six weeks?

10 Q. I mean six -- I'm sorry. Four months, six
11 weeks later after he's injured, what did you notice
12 about his behavior?

13 A. Well, he -- his -- his -- I mean he -- it was
14 sad to see my -- my grandson. He was in pain, or he
15 would wake up every hour of the night. You know, my
16 wife had taken a three-month leave of absence to take
17 care of him, and it was -- one day we actually had to
18 take him to the emergency room because he had, you know,
19 flu-like symptoms and running eye fever, but there for
20 weeks, months, I mean it was like he would wake up every
21 hour or every other hour, and he was -- at times he
22 would wake up almost screaming, you know, and it was
23 just so hard to see the little baby like that that
24 had -- you know, that has suffered so much and been
25 through so much.

1 Q. What would you do when he would wake up like
2 that?

3 A. We would try to comfort him and carry him and
4 walk around with him and -- you know, and just do our
5 best to do whatever we could and, you know, to --
6 through that time and -- you know, it was just -- it was
7 unbelievable, you know.

8 Q. And you've had -- you've had babies in your
9 house before?

10 A. Yes, ma'am.

11 Q. Was this abnormal?

12 A. Yes, ma'am, it was. I had never experienced
13 anything like this in my -- you know, through both of my
14 daughters being born.

15 Q. How long did it take for that to stop, for him
16 to start sleeping through the night without screaming?

17 A. It seemed like it -- it took -- I mean it -- I
18 would say probably six months or so. I mean he -- it
19 got better to where he was probably waking up once or
20 twice, which that's probably more normal, but, you know,
21 it -- he never really slept completely through the
22 night, you know, probably almost up to a year or so --

23 Q. And he's now --

24 A. -- or a year since we've -- you know, he came
25 to live with us.

1 Q. So it took a long while for that to kind of
2 work its way out. Is that fair to say?

3 A. Yes, ma'am.

4 Q. Now you have joint custody with your -- with
5 Taylor. Is that right?

6 A. That's correct.

7 Q. So M [REDACTED] spends some nights of the week with
8 you and some nights of the week with her. Is that
9 correct?

10 A. That's correct.

11 Q. Now during that -- this period of time --
12 you've had him since he four months old. Now he's about
13 two-and-a-half. Is that right?

14 A. That's correct.

15 Q. How many broken bones has he had since he's
16 been in your care?

17 A. He hasn't had any broken bones.

18 Q. So when he falls, he doesn't break his bones?

19 A. No, ma'am. He's -- he's a healthy -- thanks to
20 God, he's a healthy -- a healthy child, and I just thank
21 God for that.

22 Q. But he has had some -- needed some
23 intervention?

24 A. He's had -- he -- I mean from the time he came
25 to live with us he -- it was -- I mean it seemed like

1 every other day or every day that we were having to take
2 him to have therapy and having to go through all these
3 different, you know -- you know, to be -- he had so much
4 scheduled to be done. I mean he -- doctors' visits and
5 all these things combined.

6 Q. Did he end up being a little bit speech-delayed
7 and a little delayed with walking?

8 A. Yes, ma'am. We -- we were concerned, and we
9 took him, and they -- we took him to Cook's Hospital,
10 and they did -- they ran -- I mean they did x-rays, and
11 they checked, and -- you know, and he -- we were
12 concerned that he was delayed because of, you know,
13 what he had been through, and it -- you know, we -- I
14 mean it was going in -- I think it was like 17 months
15 and he hadn't started walking. You know, it was
16 just -- seemed awkward. You know, there was other
17 children at his daycare that were twelve months old
18 walking, and he was crawling, and they would crawl --
19 they would walk right over him. It was just very hard
20 to see.

21 Q. How is he doing now?

22 A. By the grace of God, he's doing -- he's doing
23 great.

24 MS. LABORDE: May I approach the witness?

25 THE COURT: You may.

1 Q. (BY MS. LABORDE) Let me show you State's 32
2 and 33. Are these fair and accurate depictions of -- of
3 when you get M [REDACTED] about?

4 A. Yes, ma'am. This is when we first got M [REDACTED].

5 Q. Okay, and then in State's 33 is this how he
6 looks?

7 A. This is M [REDACTED] today.

8 Q. Okay, now that he's a toddler?

9 A. Now that he's a toddler and into everything
10 and --

11 Q. And during this period of time from 2012 to
12 now 2014, he hasn't had any broken bones since he's been
13 with you?

14 A. No, ma'am. He's -- he's doing great.

15 MS. LABORDE: The State would offer
16 State's 32 and 33.

17 MR. MEGARO: No objection.

18 THE COURT: State's 32 and 33 are admitted.
19 You may show them to the jury.

20 Q. (BY MS. LABORDE) So behind you is State's 32.
21 This is going to be M [REDACTED] at about four months?

22 A. Yes, ma'am. That's when we -- about the time
23 we picked him up.

24 Q. Did he often have one of his hands in his mouth
25 or sucking his thumb?

1 A. He -- he did, but it -- it seemed like -- I
2 mean he would always put his other hand, but after he
3 had that cast on there, he never put it in his mouth.

4 Q. So he would use the other arm after that?

5 A. Yes, ma'am.

6 Q. And is this how he looks now?

7 A. Yes, ma'am. He's a happy. He's a happy little
8 guy. He's just full of life, and we are just so blessed
9 to have him in our lives.

10 Q. What does he call you?

11 A. Popo.

12 MS. LABORDE: I'll pass the witness.

13 CROSS-EXAMINATION

14 BY MR. MEGARO:

15 Q. Good afternoon, Mr. Garcia.

16 A. Good afternoon, sir.

17 Q. How long after your daughter Taylor graduated
18 high school did she move out of your house?

19 A. Well, I -- I had mentioned that she lived with
20 her mom at that time.

21 Q. With her mother?

22 A. Yes, ma'am. Yes, sir. I'm sorry.

23 Q. Okay. After she graduated high school, did you
24 want her to come live with you?

25 A. I -- I would have wanted her to, but she --

1 you know, being that she went to high school there, she
2 had her -- her life there, and, you know, she wanted --
3 I was wanting her to -- to come out to live with us so
4 she could go to school and do some things and, you know,
5 further manage -- I mean, advance her life, you know,
6 but she wanted to stay in Hillsboro --

7 Q. Did Taylor --

8 A. -- or -- or --

9 Q. I'm sorry. Go ahead.

10 A. -- stay in Milford.

11 Q. Did Taylor have a relationship with your
12 current wife?

13 A. Yes.

14 Q. What is that relationship? Is it good?

15 A. It's really good, yes, sir.

16 Q. They always got along?

17 A. They always got along.

18 Q. Your other daughter, that's your older
19 daughter?

20 A. Yes, sir.

21 Q. Now she lived downstairs from Taylor in these
22 apartments back in 2012, correct?

23 A. She ended up moving out there to -- to kind of
24 help Taylor through -- you know, through that time. She
25 didn't always live there.

1 Q. But she lived below her, in an apartment below
2 her?

3 A. Yeah. She probably lived there for --
4 you know, I'm not sure exactly how long, but she lived
5 there for a few months or so.

6 Q. And your older daughter also has children?

7 A. Yes.

8 Q. Is it fair to say that you're a protective
9 father of two daughters?

10 A. I -- I love my daughters, you know.

11 Q. And as a father you would want to protect them?

12 A. I -- I would do -- I mean I would -- I'm a
13 father. I -- you know, they're my daughters. I'm here
14 for them.

15 Q. Now when you first found out your daughter
16 was -- Taylor was pregnant, she was already seven months
17 along, correct?

18 A. Yes, sir.

19 Q. She never came to you for help with her
20 pregnancy?

21 A. She -- she -- I didn't know she was pregnant,
22 but she never -- you know, never came to me.

23 Q. And you didn't see her for several months?

24 A. I didn't see her. She would -- you know,
25 before with the visitations, you know, they were -- they

1 allow, we, you know, would see her every other weekend,
2 but once she started working, she was working, you know,
3 over the weekends, so we weren't really able to see her
4 like we did other than like holidays and stuff.

5 Q. So between Christmas and, say, April, of 2012,
6 you didn't see her during that four-month period?

7 A. No, sir. I mean I would talk to her. I'd call
8 her several times, you know, a week and talk to her.

9 Q. She never once said, "Dad, I'm pregnant; you're
10 going to be a grandfather"?

11 A. She -- she didn't tell me.

12 Q. Eventually, you found out that she was
13 pregnant, right?

14 A. Yes, sir.

15 Q. And, eventually, you found out who the baby's
16 father was, correct?

17 A. Yes, sir.

18 Q. When you first met Mr. Ortiz, you realized that
19 he was a bit older than she was, correct?

20 A. Yeah. I mean it -- it came out.

21 Q. And how much older was he or is he?

22 A. I -- I -- from what I understand, like ten,
23 eleven years or so.

24 Q. Has Taylor ever dated anyone that much older
25 than her before?

1 A. Not that I'm aware of, sir.

2 Q. And is it fair to say that you weren't
3 particularly thrilled with the fact that she was
4 pregnant at age 18?

5 A. Well, I mean, you know, it was a shock.

6 Q. Is it fair to say you weren't happy with the
7 fact that she was pregnant by a much older man?

8 A. I -- I -- you know, it -- it just -- it just --
9 it was a shock, but I mean that's my daughter, and I
10 love her, and, you know, I'm there for her, you know.

11 Q. Were you worried about the care of this child?

12 A. I -- I mean I -- I know that Taylor is a good
13 person, and she would do a great job, but, you know,
14 being young, I -- you know, I was willing to help her
15 through this situation.

16 Q. Did you have concerns as to whether Mr. Ortiz
17 would take care of her and take care of the child?

18 A. I didn't -- you know, I didn't really know him
19 that well to -- you know, we have very seldom seen each
20 other or had that time to -- you know, to talk other
21 than when the times we met, you know, for dinner or --
22 or our, you know, midday lunch or --

23 Q. You testified earlier about several times that
24 Taylor spoke on the telephone with you believed to be
25 him, correct?

1 A. That's correct.

2 Q. And she was upset after she spoke on the phone
3 with him?

4 A. Well, I mean she would have to pretty much
5 leave and go to another room or to another area to talk
6 to him, and when she'd come back, she -- you could tell
7 she'd been crying and stuff.

8 Q. That didn't do anything to help your -- your
9 impression of him, correct?

10 A. Well, I just -- you know, I didn't -- I didn't
11 understand the situation, what was causing that.

12 Q. My question is, "It didn't leave you with a
13 good impression of him if your daughter would be
14 crying," correct?

15 A. Well, I'd, you know, wonder why -- what was
16 going on to -- you know, to cause -- or what was going
17 on in her life, you know.

18 Q. When you went to their apartment and you saw
19 that there was little food in the house, this also
20 caused you some concern?

21 A. Well, being that she was pregnant and there was
22 very little food, it did. You know, being a father and
23 having a new grand-baby on the way, you know, she should
24 be eating better, so it did concern me.

25 Q. When you went and saw the -- that the cupboard

1 was bare, that didn't help your impression of Mr. Ortiz
2 either?

3 A. Well, I -- I wasn't focused on him. I was
4 focused on my daughter's wellbeing.

5 Q. After the baby was born, you told Taylor to
6 come and stay with you and your wife for a couple of
7 weeks?

8 A. For a week or a week-and-a-half or maybe two
9 weeks.

10 Q. And that was just to let her get acclimated?

11 A. Yes, sir.

12 Q. And she didn't come to stay with you, correct?

13 A. She didn't, sir.

14 Q. And when the baby was born, was your oldest
15 daughter living downstairs?

16 A. Yes, sir.

17 Q. Did your oldest daughter also have a problem
18 with her ex?

19 A. I'm sorry?

20 Q. Does your oldest daughter also have a problem
21 with the father of her children?

22 A. Yes, sir.

23 Q. What was that problem?

24 A. Well, it -- I mean her -- he's actually locked
25 up right now.

1 Q. For what?

2 A. Because he attempted to take her life.

3 Q. Tried to kill your older daughter?

4 A. That's correct.

5 Q. It's fair to say that didn't help your
6 relationship with that man either?

7 A. Well, I'm a -- I'm a Christian person, and I'm
8 not to judge others, you know, and I -- and that's the
9 way I live.

10 Q. And that -- that incident with your older
11 daughter happened before Taylor and Mr. Ortiz got
12 together?

13 A. That's -- that's correct, sir.

14 Q. You definitely didn't want to see that happen
15 again to your younger daughter, correct?

16 A. Happen -- when you say "happen," what -- I'm
17 not --

18 Q. I'll elaborate. You definitely didn't want to
19 see your younger daughter get into the same types of
20 situations as your older daughter did, correct?

21 A. I didn't -- I didn't look at it as comparing
22 one to the other.

23 Q. Did there ever come a point in time -- did
24 there ever come a point in time where you asked Taylor
25 and Mr. Ortiz to sign over their parental rights to you?

1 A. No, sir.

2 Q. Did you ever suggest --

3 A. No, sir.

4 Q. -- that Mr. Ortiz sign over his parental rights
5 to you?

6 A. No, sir. Well, I mean when all this occurred,
7 we -- you know, they came to -- I mean my grandson came
8 to live with us, we were concerned that -- I mean we
9 didn't want him to get hurt, you know, or anything
10 happen to him. We were wanting to go, you know, have
11 some form of -- you know, have him live with us or,
12 you know, be able to take care of him --

13 Q. Okay.

14 A. -- but this was all after all of this.

15 Q. Eventually, you did get custody of your
16 grandson, correct?

17 A. We got joint custody, yes.

18 Q. When you say "joint custody," it was joint
19 custody between you and Taylor. Is that correct?

20 A. That's correct.

21 Q. And that was through the courts --

22 A. Yes.

23 Q. -- here in Waco?

24 A. Yes, it was.

25 Q. And, as a matter of fact, that was right down

1 the hallway, correct?

2 A. Well, I mean I didn't -- it was -- it was at
3 another building where we were located or we were at
4 when -- through CPS, yes.

5 Q. Okay, and you were awarded legal -- joint legal
6 custody through the courts with your daughter, right?

7 A. That's -- that's correct.

8 Q. And how long did you -- do you still have joint
9 custody with your daughter?

10 A. We do, sir.

11 Q. And one of the stipulations of that custody
12 order is that your daughter live with you?

13 A. That she lives with us? She -- she doesn't
14 live with us.

15 Q. Is there a stipulation in that custody order
16 that your daughter remain within a certain area of where
17 you live?

18 A. No, sir.

19 Q. Where does your daughter live currently?

20 A. She --

21 Q. You don't have to give us the exact address
22 but --

23 A. She lives about a mile from us.

24 Q. Okay, and you said that after you took custody
25 of the baby -- when you took custody of the baby, he was

1 four months old, correct?

2 A. That's correct, sir, or in -- in that age
3 range.

4 Q. For weeks and months after that he would wake
5 up crying in the middle of the night --

6 A. Yes, sir.

7 Q. -- and actually required you to take him to the
8 emergency room on at least one occasion?

9 A. Well, not because of -- he was -- he was
10 running a high fever when we -- it may have been
11 flu-type symptoms or something, you know.

12 Q. I want to go back to the foster custody --
13 foster care. When you were awarded custody of your
14 grandson through the courts, this was in connection with
15 a petition filed to terminate Taylor's parental rights
16 as a mother, correct?

17 A. I never asked for her to lose her rights.
18 That's the mother. I -- I want her to have -- that's
19 her son.

20 Q. I don't mean you. I mean CPS had filed a
21 petition in court to terminate her parental rights,
22 right?

23 A. I -- I don't --

24 MS. LABORDE: Your Honor, I'm going to
25 object to this line of questioning. I mean --

1 THE COURT: I realize it was --

2 MS. LABORDE: Every time CPS --

3 THE COURT: -- part of the process, but
4 it's really not relevant to any issue here.

5 Q. (BY MR. MEGARO) As a foster parent, did you
6 have to attend counselling sessions with the child?

7 MS. LABORDE: Your Honor, I'm going to
8 object to this as being irrelevant.

9 THE COURT: Sustained.

10 Q. (BY MR. MEGARO) As a foster parent, did you
11 have any obligations to the court with this child?

12 MS. LABORDE: Your Honor, it's the same
13 question. I object to this line of questioning.

14 THE COURT: What's the point of this,
15 Mr. Megaro?

16 MR. MEGARO: Could we approach?

17 THE COURT: I said what's the point?

18 MR. MEGARO: Oh, could we approach?

19 THE COURT: Okay.

20 (At the Bench, off the record.)

21 THE COURT: I sustain the objection.

22 Q. (BY MR. MEGARO) Mr. Garcia, when you first got
23 involved with this matter that we're here about today,
24 was this at the end of August 2012?

25 A. At the end of August was what?

1 Q. Was when you first got involved with this
2 matter with the police.

3 A. As far as with my grandson coming to live with
4 us?

5 Q. Yes.

6 A. That was -- yeah, that was about the timeframe.

7 Q. Did you ever accompany your daughter Taylor to
8 the West Police Department station?

9 A. She was actually with Mr. Francisco.

10 Q. Did you ever go to the West Police Department?

11 A. I -- I went out there, yes, sir.

12 Q. Was that on August 31, 2012?

13 A. I'm not sure of the date at this time.

14 Q. Did you speak with the West Police?

15 A. I -- I did speak with one of the officers
16 there.

17 Q. This was after the child has already been taken
18 from your daughter, correct?

19 A. That's -- that's correct, sir.

20 Q. You knew your daughter was in possible legal
21 trouble?

22 A. I didn't know if she was in legal trouble or
23 anything at that time.

24 Q. But you knew that the police were involved?

25 A. Well, yes, I mean we were there.

1 Q. And you knew that the police wanted to speak to
2 her?

3 A. Well, I mean she was there at the police
4 station.

5 Q. And you were there to support her, right?

6 A. I was there to -- because she's my daughter,
7 you know, and --

8 Q. And it's fair to say you'd do anything to look
9 out for your daughter?

10 A. I -- I mean I'm her father. I -- I would --
11 you know, if she needs my help, I'm there as her father.

12 MR. MEGARO: Nothing further of the
13 witness, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. LABORDE:

16 Q. Mr. -- Mr. Garcia, if the West Police records
17 indicate you actually went on the 30th of August and not
18 the 31st, do you have any reason to think that's not
19 right?

20 A. I -- I think it was -- I'm not -- I don't
21 recall that actual date, you know.

22 Q. Okay, so if it were documented that that was
23 the case, you would have no reason to -- you weren't
24 making reports that day. Is that fair?

25 A. I wasn't making any reports.

1 Q. And no one actually took a statement from you?

2 A. No, ma'am. I just -- they -- you know, we just
3 talked briefly.

4 Q. Because you weren't there when the injuries
5 occurred?

6 A. No, ma'am.

7 Q. And you didn't take the baby to the emergency
8 room?

9 A. No, ma'am.

10 MS. LABORDE: I'll pass the witness.

11 RE CROSS-EXAMINATION

12 BY MR. MEGARO:

13 Q. Did you go to the West Police Department on
14 more than one day in August, 2012?

15 A. It was -- it was just one day.

16 MR. MEGARO: Just one day, okay. Nothing
17 further.

18 MS. LABORDE: Nothing further, Your Honor.

19 THE COURT: All right, sir. You may step
20 down.

21 MS. LABORDE: May he be excused?

22 THE COURT: Any objection to him being
23 released?

24 MR. MEGARO: No.

25 THE COURT: All right, sir, you're free

1 to go.

2 THE WITNESS: Thank you, sir.

3 THE COURT: So are the rest of you. It's
4 been a long day. You all enjoy your evening. Do not
5 discuss this case or allow anyone to talk to you about
6 it. Stay away from any and all forms of media coverage.
7 We'll see you all in the morning at 8:30.

8 (The jury retired from the courtroom.)

9 THE COURT: All right. We'll see you all
10 tomorrow.

11 (The proceeding was recessed.)
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1 THE STATE OF TEXAS §

2 COUNTY OF McLENNAN §

3

4 I, Theresa J. Popejoy, Deputy Court Reporter in and
5 for the 19th Judicial Court of McLennan County, Texas,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 by Defendant to be included in this Reporter's Record,
10 in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported
12 by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.

16 WITNESS MY OFFICIAL HAND this the 26th day of
17 February, 2015.

18

19

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21

22

23

24

25

/s/Theresa J. Popejoy
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REPORTER'S RECORD
Volume 4 of 7

COURT OF APPEALS NO. 07-15-00007-EP IN
 TRIAL NO. 2012-2235-C1 7th COURT OF APPEALS
 AMARILLO, TEXAS

THE STATE OF TEXAS

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IN THE DISTRICT COURT
 VIVIAN LONG
 CLERK
 19TH JUDICIAL DISTRICT

JUAN FRANCISCO
 MEDINA ORTIZ

McLENNAN COUNTY, TEXAS

TRIAL ON THE MERITS

GUILT/INNOCENCE PHASE

November 20, 2014

On the 20th day of November, 2014, the
 following proceedings came on to be heard in the
 above-entitled and numbered cause before the
 Honorable Ralph T. Strother, Judge presiding, held in
 Waco, McLennan County, Texas:

Proceedings reported by Computerized Machine
 Shorthand Method.

Volume 4 of 7

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1	Voluntary Statement			
6	of Taylor N. Garcia			
7	Date: 8-30-2012	140	---	4
2A	Envelope addressed to:			
8	Juan Francisco Ortiz			
9	CID# 161465			
10	3201 East Highway 6			
11	Waco, TX 76701;			
12	Return Address:			
13	Nicholasa Galendo			
14	4360 Western Center			
15	Bldv #141			
16	Ft Worth TX 76137	140	---	4
2B	Handwritten Note	140	---	4
3A	Envelope	140	---	4
3B	Photograph	140	142	4
3C	Photograph	140	142	4
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4	Voluntary Statement			
19	of Taylor N. Garcia			
20	Date: 8-31-2012			
21	(Admitted for Record			
22	Purposes Only)	236	242	4
5	CD labelled			
22	"Interview of			
23	Taylor Garcia			
24	12/28/2013 - 2:11 PM			
25	Fort Worth, Texas"			
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1 (Open court, Defendant present, no jury.)

2 THE COURT: All right. We're outside the
3 presence and hearing of the jury now. Ms. LaBorde, what
4 did you need to get on the record?

5 MS. LABORDE: Your Honor, the State has
6 been aware for some time that the Defense attorney
7 visited with Ms. Garcia at her job.

8 MR. MEGARO: Wait. We don't have
9 Dan Carroll.

10 THE COURT: Oh, sorry.

11 (A recess was taken from 8:32 AM
12 to 8:37 AM.)

13 THE COURT: All right. Now what -- what do
14 we need to get on the record?

15 MR. MEGARO: Judge, before we begin, I
16 believe the witness is in the courtroom.

17 MS. LABORDE: That doesn't matter.

18 THE COURT: Okay. Now are we -- I don't
19 know what we're going to talk about, so what are we
20 going to be talking about?

21 MR. MEGARO: We're going to be talking
22 about her.

23 MS. LABORDE: Well, we're going to be
24 talking about the rule of optional completeness.

25 THE COURT: Ma'am, if you'll just step

1 outside for just a minute.

2 (The witness complies with the request.)

3 THE COURT: Okay. What is it?

4 MS. LABORDE: Okay. Your Honor, the
5 Defense attorney visited with Ms. Garcia who is our next
6 witness. We believe they recorded the conversation
7 unbeknownst to her, which I understand is illegal. I
8 believe they intend to impeach her with statements she
9 made to the Defense attorney at her work. We will be
10 allowed, I believe, to invoke the rule of optional
11 completeness, and, you know, at least investigation
12 whether or not those statements are being taken out of
13 context. I think for considerations of time if I could
14 get this recording now, I could have someone at the
15 office listen to it now as opposed to needing, you know,
16 a 45-minute break. I don't even know how long the
17 recording is but --

18 THE COURT: All right. Mr. Megaro, what
19 are we talking about here?

20 MR. MEGARO: Well, I think this exact
21 scenario has been covered by the Texas Court of Criminal
22 Appeals, and I will hand up that case to the Court now
23 and a copy to counsel. The case is *Washington v. State*.
24 The citation is 856 S.W.2d 184, and the central holding
25 of that case is that a taped interview between a witness

1 for the State and an investigator for the Defense was a
2 protected work product which the State had no right to
3 discover, and the Defendant did not waive the work
4 product privilege protecting the interview by
5 questioning the witnesses in a conversation with the
6 investigator, and it goes through the rule of optional
7 completeness and how it applies and does not apply to
8 this exact same scenario.

9 Actually, this case came right out of
10 the 54th District Court, albeit 21 years ago, but I
11 have not questioned the witness about any prior
12 inconsistent statements yet. She's not made any prior
13 inconsistent statements yet, and I intend to abide by
14 the mandates of this case, at least on the State's
15 direct case, so I don't believe that I'm required as per
16 the Court of Criminal Appeals to turn anything over at
17 this time.

18 There may come a point in time, if the
19 witness makes prior -- makes inconsistent statements in
20 her trial testimony of what she told me, that I may
21 impeach her with those prior inconsistent statements,
22 but unless I intend to introduce the CD through this
23 particular witness, I don't believe it's mandatory that
24 I turn anything over at this point.

25 MS. LABORDE: Your Honor, I think even if

1 he says, "Do you remember having a conversation with me
2 and saying this," even if he doesn't offer the tape, but
3 he offers the statements, I think I'm still entitled to
4 hear the whole conversation, so I guess we're just going
5 to have to agree that I'm going to need a break to
6 listen to the recording.

7 MR. MEGARO: Judge, that's the -- if you
8 read the case and the appendix which has a
9 questioning -- the actual questions and answers that
10 were asked at that trial, that's exactly the scenario
11 that the Court of Criminal Appeals says does not entitle
12 the State to any discovery.

13 THE COURT: Look, I agree that you're
14 not -- you're not required to turn it over at this time,
15 but -- but if we get into the substance of what she told
16 you during this interview, then I think the State is
17 going to be entitled to -- you know, to this
18 information.

19 MR. RAMSAY: Judge, I think the difference
20 in this one is that there is no mention of the taped
21 conversation during the cross-examination. I think
22 that's the distinguishing feature of this case is that
23 they didn't mention the taped conversation. If the
24 Defense counsel in this case intends to impeach her and
25 mention a previous conversation that wasn't taped --

1 that was taped, at that point -- we agree we are not
2 entitled at this moment to this information. We are
3 saying for the sake of time and what we believe the
4 Defense attorney will do, to expedite this process that
5 we get it now, because it's inevitable that he's going
6 to impeach her, I assume, with this tape.

7 THE COURT: Well, and the only way you'll
8 be able to impeach her, Mr. Megaro, is to let her know,
9 "Did you not say on such-and-such an occasion," and --

10 MR. MEGARO: Right. Well, we can -- even
11 if there was no recording, I would not have to -- let's
12 just say there is a recording or there isn't a
13 recording. It's immaterial because it doesn't matter
14 whether there's a recording or not. If she makes a
15 prior inconsistent statement, I can impeach her with
16 that and use a witness to prove up the prior
17 inconsistent statement with or without a -- a recording,
18 so it's material, but -- but from a tactical standpoint
19 I -- the law doesn't require me to turn anything over,
20 and I think, certainly, this witness must be allowed to
21 testify without being prepared from my point of view.

22 MS. LABORDE: Your Honor, she can't be
23 prepared because we're not going to be able to listen to
24 it while she's in here. I mean I'm just talking about
25 saving time. That's fine, but we are going to ask for

1 an hour, however long we need, and it can't be the lunch
2 break because I'm entitled to a lunch break to -- to
3 figure out what this is. I mean this Defense attorney
4 promised a juror who said he had to be in San Antonio,
5 No. 2, at five o'clock, which means he has to leave
6 tomorrow at 2:30, that we would be done. That was not
7 my promise. That was this Defense attorney's promise.
8 I'm attempting to make that promise come true.

9 THE COURT: Mr. Megaro, how -- how long is
10 this interview?

11 MR. MEGARO: Approximately an hour.

12 MS. LABORDE: So I'll need an
13 hour-and-a-half to listen to it.

14 THE COURT: It was done when?

15 MR. MEGARO: I'm sorry?

16 THE COURT: It was done when?

17 MR. MEGARO: The interview was
18 either 12-27-13 or 12-28. It was one of those two
19 dates.

20 MS. LABORDE: And another concern I have,
21 Judge, is if he -- is he does -- if he wants to pretend
22 like there isn't a recording, and he just took really
23 good notes, and he wants to bring this other person in,
24 I'm going to be entitled to argue he's made this huge
25 deal about how West Police doesn't record anything, and

1 he doesn't record his conversations either. I mean
2 that's just crazy.

3 THE COURT: Do you have -- Mr. Megaro, is
4 there a -- a transcript of this tape --

5 MR. MEGARO: Yes.

6 THE COURT: -- a written --

7 MR. MEGARO: Yes, I have a transcript.

8 THE COURT: All right. Look, as to the
9 legal points that you're making, I mean I think the
10 State is even agreeing to that, and I do, too, but as a
11 practical matter I mean you know whether or not you're
12 going to use this material for impeachment, and I don't
13 know that you're waiving anything if -- if you were to
14 agree to -- to give them time to -- to at least look at
15 the -- you do have a -- you do have a transcribed,
16 written version of this?

17 MR. MEGARO: I do, and -- and, Judge,
18 it's -- it's not necessarily that I'm waiving a
19 particular right as much as it is achieving a tactical
20 advantage in giving this jury the opportunity to view
21 the -- to view the demeanor of the witness when
22 confronted with a prior inconsistent statement that she
23 doesn't know the exact nature of.

24 THE COURT: I -- I -- we're not arguing
25 about that. They're not -- they're not entitled to it

1 in order to prepare --

2 MS. LABORDE: Yeah. As an officer --

3 THE COURT: -- whatever witness that --

4 MS. LABORDE: -- of the Court, I'm telling
5 you I'm calling her next. She's in the hallway. I
6 cannot prepare her --

7 THE COURT: Yeah.

8 MS. LABORDE: -- with this transcript.
9 It's not possible.

10 THE COURT: So the -- the time factor is
11 concerning me. I can see this getting into next week
12 which none of us need to have happen --

13 MR. MEGARO: No, sir.

14 THE COURT: -- if we can avoid it --

15 MR. MEGARO: Nobody wants that to happen.
16 I know.

17 THE COURT: You think about this,
18 Mr. Megaro, how you want to handle this, and I -- I
19 agree with you legally that they're not entitled to it
20 at this point. Let's go ahead and get -- get her in
21 here and get her testimony, and we'll just have to see
22 where we are with --

23 MR. MEGARO: Judge, for the sake of
24 expediency, I mean if the District Attorney is not going
25 to prepare her with this now, then I guess the question

1 is what do they need it for right now? What's -- what's
2 the utility in that?

3 MS. LABORDE: To know when he's
4 cross-examining her if we're going to have to play the
5 whole thing.

6 MR. MEGARO: I -- I -- I can tell you I
7 probably will not have any problem with playing the
8 entire thing if that's what the District Attorney wants
9 to do. I -- I can give them another copy of the
10 transcript to follow along with during the testimony,
11 but from a tactical standpoint what I don't want is a
12 break in the action where they can prepare her with the
13 transcript and ask her to explain away a prior
14 inconsistent statement --

15 THE COURT: All right.

16 MR. MEGARO: -- on their -- on direct -- on
17 her direct testimony that would impact my --

18 THE COURT: I understand that, too, but
19 they're going to be entitled to see this information at
20 some point after she testifies, and -- and I -- I don't
21 know that you can prevent them for asking for some time
22 to -- to look over something they haven't seen before.

23 MR. MEGARO: No. I wouldn't -- I wouldn't
24 suggest that, but what my -- my point is I don't want
25 her -- her direct testimony being influenced by the fact

1 that she has been prepared with or even her
2 cross-examination being impaired or influenced by the
3 fact that she has had -- she, the witness, has had the
4 opportunity to review her prior statements to me, and at
5 that point in time --

6 MS. LABORDE: Your Honor, it's not
7 physically possible for her to testimony and review a
8 transcript at the same time. It's not possible for us
9 to give her a transcript while he's cross-examining her.
10 I'm talking about giving this transcript to someone in
11 my office to read it.

12 THE COURT: All right. Let's do like I
13 suggested. Get her in here, and let's get the jury in
14 here and get her testimony, and we'll see where we are
15 as we go through this. Bring in the jury, and bring in
16 the witness, and let me get her sworn in.

17 MS. LABORDE: And for the record, I told
18 this Defense attorney I had a prepaid vacation on
19 Sunday. You know, I told him that in an e-mail, and he
20 assured me that I would be able to do that. It wouldn't
21 be a problem, and now we have an hour-and-a-half thing,
22 and I'm going to need an hour-and-a-half to review it.
23 I mean I -- I can't be here if this case goes to Monday.

24 MR. MEGARO: Judge, I live over a thousand
25 miles away in Florida. I don't want to be here over the

1 weekend either. I've been away from my wife and
2 children for a week, and I know -- I'm very much aware
3 of the holiday next week, and I have absolutely no
4 intention of putting myself through the horror of
5 travelling through the airport the week of Thanksgiving.

6 MS. LABORDE: I mean I guess then we're
7 going to have to work on Saturday.

8 THE COURT: All right. The quicker we get
9 started, the quicker we're through. Young lady, come on
10 up here. I want to go ahead and swear you in, if you'll
11 raise your right hand.

12 (The witness was sworn.)

13 THE COURT: Okay, and then print your name
14 right there.

15 THE WITNESS: (Complies with request.)

16 (The jury was seated in the jury box.)

17 THE COURT: All right. Good morning,
18 Ladies and Gentlemen. This witness has been sworn in.
19 You may proceed.

20 TAYLOR GARCIA,
21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LABORDE:

24 Q. Ma'am, could you please state your name.

25 A. Taylor Garcia.

1 MR. MEGARO: Could you speak into the
2 microphone. I can't hear.

3 THE COURT: Yeah. Young lady, you're going
4 to have to get close to the microphone, and speak into
5 it, please.

6 THE WITNESS: Taylor Garcia.

7 Q. (BY MS. LABORDE) And how old are?

8 A. Twenty-two.

9 Q. And where did you graduate from high school?

10 A. Milford ISD.

11 Q. Okay, and is that -- is that up near
12 Hillsboro --

13 A. Yes, ma'am.

14 Q. -- kind of?

15 A. Yes.

16 Q. Where were you born?

17 A. In Fort Worth, Texas.

18 Q. And who are your parents?

19 A. Crystal Bruce and Anthony Garcia.

20 Q. And are both your parents remarried now?

21 A. No.

22 Q. But that's your mom's maiden name?

23 A. Yes.

24 Q. How long have your parents been divorced?

25 A. Since I was five.

1 Q. Okay, so a long time?

2 A. Uh-huh.

3 Q. When did your dad get remarried?

4 A. When I was twelve, so ten years ago.

5 Q. "Ten years ago." Okay, so from five to twelve,
6 you -- did you visit between the two houses like
7 weekends with your dad and Wednesdays with your dad and
8 weekdays with your mom?

9 A. Yes.

10 Q. Okay, and did that continue once your dad
11 remarried?

12 A. Not as often as before.

13 Q. Okay, and do you have step-siblings?

14 A. Yes.

15 Q. Just briefly, can you tell the jury? Was that
16 a hard -- was that a hard situation for you?

17 A. Yes.

18 Q. Why?

19 A. It was hard because I moved far from my dad,
20 and I was a little jealous that my step-mom and my
21 step-sister had a relationship with my dad and got to
22 live with him when I never did, and I was too far to be
23 close to them.

24 Q. Okay. Do you -- do you feel like you kind of
25 grew up then without having a close dad?

1 A. Yes.

2 Q. Okay. How do you feel about your relationship
3 with your father now?

4 A. We've grown more together than apart since I've
5 had my son.

6 Q. And what about you and your stepmother?

7 A. She's helped me a lot, so -- since I've had my
8 son, so we've grown a lot together, and I have -- we
9 have a very good relationship now.

10 Q. Was there a time in your life when you would
11 not have said that --

12 A. Yes.

13 Q. -- that you were not close with either of them?

14 A. Yes.

15 Q. Have you always been close with your mom?

16 A. Yes.

17 Q. Where does she live now?

18 A. In Houston.

19 Q. And when did she move to Houston?

20 A. About when I was 16 years old, 17.

21 Q. So that last year of high school, who did you
22 live with?

23 A. My sister.

24 Q. Okay, and how old is your sister compared to
25 you?

1 A. An eleven-year difference.

2 Q. And she's older?

3 A. Yes.

4 Q. Okay, so is it fair to say then that you don't
5 have sibling rivalry with someone eleven years older
6 than you? Is she more like a second mom or an aunt
7 figure --

8 A. Yes.

9 Q. -- than a sister?

10 A. Yes.

11 Q. So, just to be clear, your last year of high
12 school, that's 2010 and 2011. You're not living with
13 your mom anymore; she's moved away, and you're living
14 with your sister?

15 A. Yes.

16 Q. And did she have kids?

17 A. Yes.

18 Q. And how many kids does she have?

19 A. She has three but only two live with her.

20 Q. Okay. What happened to the other one?

21 A. She lives with her great-grandparents.

22 Q. And how old are the two that she has?

23 A. Right now, ten and eleven.

24 Q. And they're both boys?

25 A. Yes, ma'am.

1 Q. So can you tell us then? When did you start
2 working at the Black Eyed Pea compared to when your mom
3 left and went to Houston?

4 A. It was, I think, a year after she --

5 Q. Left?

6 A. --- moved. Yes.

7 Q. Were you still in high school when you started
8 working at the Black Eyed Pea?

9 A. Yes.

10 Q. And that's how many miles away from where you
11 were living in Milford with your sister?

12 A. About 20, 25.

13 Q. Minutes?

14 A. Or miles.

15 Q. "Miles." Okay, so a fair distance away?

16 A. Yes.

17 Q. Were you working full-time when you were in
18 high school or part-time?

19 A. I was -- I was hired as part-time, but I had
20 full-time hours.

21 Q. Okay. What are full-time hours?

22 A. I had about more than 35 hours.

23 Q. So you were going to school, and you were
24 working 35 hours a week?

25 A. Yes.

1 Q. Is that mostly on the weekend?

2 A. No.

3 Q. "No." That's after school?

4 A. Yes.

5 Q. Can you tell the jury during this period of
6 time how your visits were with your dad and your
7 stepmother?

8 A. Once I started working, I had no visits with
9 them.

10 Q. Now when did you meet the Defendant in this
11 case, Juan Ortiz, or Miguel? When did you meet him once
12 you started working at the Black Eyed Pea?

13 A. When I first started.

14 Q. So that would have been when you were still in
15 high school?

16 A. Yes.

17 Q. What did you call him?

18 A. "Miguel."

19 Q. How long did you call the Defendant "Miguel"?

20 A. Until I got pregnant.

21 Q. And when did you get pregnant?

22 A. About right after I graduated high school so
23 September 2011.

24 Q. Okay. Did you graduate in June or --

25 A. In June.

1 Q. Okay, so you have the summer, and then you're
2 pregnant kind of pretty quickly after that?

3 A. Yes.

4 Q. Can you tell us? How was your relationship
5 with the Defendant in the beginning?

6 A. It was good.

7 Q. Okay. What did you like about him?

8 A. I liked that -- I felt that he was the only one
9 taking care of me because my parents were not there.

10 Q. Because your mom and your dad weren't there at
11 that point?

12 A. Yes.

13 Q. How did the Defendant take care of you?

14 A. He would make me CD's or fix my car or just
15 talk to me about everything that was going on.

16 Q. Was the Defendant married?

17 A. Yes.

18 Q. How were you -- how were you seeing him?

19 A. At work.

20 Q. Did you ever see him outside of work?

21 A. Yes.

22 Q. Where was the Defendant living?

23 A. In Hillsboro.

24 Q. With whom?

25 A. With his wife.

1 Q. And do they have children?

2 A. Yes.

3 Q. How many?

4 A. Two.

5 Q. And how old are they?

6 A. I'm not sure.

7 Q. Are they under five, or are they older?

8 A. At the time, yes.

9 Q. At the time they were toddlers themselves.

10 Is --

11 A. Yes.

12 Q. -- that right? Do you see the person that you
13 initially called "Miguel" in the courtroom today?

14 A. Yes.

15 Q. And did you -- can you remember something that
16 he was wearing when you looked at him when you were
17 walking in?

18 A. No.

19 Q. Could you look at him now and tell me something
20 he's wearing?

21 A. A gray sweater.

22 MS. LABORDE: May the record reflect she's
23 identified the Defendant?

24 THE COURT: So reflected.

25 Q. (BY MS. LABORDE) So this is the same person

1 that you saw when you started working at the Black Eyed
2 Pea, and, eventually, you guys were kind of in a
3 romantic relationship?

4 A. Yes.

5 Q. Does the Defendant today look any different
6 than he did when you were dating him?

7 A. Yes.

8 Q. How so?

9 A. When I was dating him, he had no flaws, and
10 he -- he was --

11 MR. MEGARO: I'm sorry. I couldn't hear
12 you. "He had no" --

13 THE WITNESS: He has no flaws to me, but
14 now he's different. I see him for who he really is.

15 MR. MEGARO: Objection, Your Honor.

16 THE COURT: Sustained.

17 MS. LABORDE: What's the objection to?

18 THE COURT: What?

19 MS. LABORDE: What was the objection to?

20 THE COURT: What's your objection?

21 MR. MEGARO: "For flaws and seeing him for
22 who he is today," she's giving an opinion on character.
23 She's not qualified to do that. We haven't put
24 character at issue yet.

25 THE COURT: Overruled. Let's clarify the

1 question and what you meant.

2 Q. (BY MS. LABORDE) I actually meant physically
3 does he look the same?

4 A. No.

5 Q. Okay. Now you're saying you saw him as a
6 different person than you see him now?

7 A. Yes.

8 Q. Okay. What physical differences do you see, if
9 any?

10 A. Now he's more skinny. I don't -- I don't know.

11 Q. Did the Defendant work out?

12 A. Yes.

13 Q. Did his body look different --

14 A. Yes.

15 Q. -- at the time? How did it look to you?

16 A. At the time he looked very muscular.

17 Q. Did that make him attractive to you, or --

18 A. Yes.

19 Q. -- or his face looks the same either way? Is
20 that right?

21 A. Yes.

22 Q. When you look at your son now, do you see the
23 Defendant in him?

24 A. Sometimes.

25 Q. How does that make you feel?

1 A. Hurt.

2 Q. Okay, why?

3 A. Because I never thought he would do what he
4 did, and I see my son, and I just wanted for us to all
5 be a family, and when I see him, I know sometimes he
6 wants a dad.

7 Q. Does your son ask you for where his dad is?

8 A. Yes.

9 Q. He sees other children that have dads, and he
10 doesn't have one?

11 A. He goes to daycare and learns about families.

12 Q. So he knows that that's missing?

13 A. Yes.

14 Q. Is that hard for you?

15 A. Yes.

16 Q. Where are you working now?

17 A. At Pisano's Cafe.

18 Q. So are you still a server?

19 A. Yes.

20 Q. Now I want to -- I want to take you back to
21 when you found out you were pregnant. How did you find
22 out?

23 A. I took a test at the Black Eyed Pea.

24 Q. And did you tell the Defendant?

25 A. He was the one who gave me money for a test.

1 Q. And was your relationship a secret --

2 A. Yes.

3 Q. -- from anyone at the Black Eyed Pea or from
4 his wife or --

5 A. From the Black Eyed Pea and his wife.

6 Q. Can you tell us -- did the Defendant ever tell
7 you he was getting divorced or separated?

8 A. Yes.

9 Q. Okay, and why was that?

10 A. Because they'd grown apart, and he wanted to be
11 with me.

12 Q. So was -- did you think that you -- you all
13 would end up together even if you hadn't been pregnant?

14 A. Yes.

15 Q. So what was the Defendant's reaction once you
16 knew that the test was positive?

17 A. He -- shocked, he was shocked.

18 Q. Were you shocked?

19 A. I was shocked.

20 Q. Were you -- were you trying to prevent a
21 pregnancy?

22 A. We were careful sometimes.

23 Q. But not all the time?

24 A. But not all the time.

25 Q. Where would you two be together?

1 A. Different places.

2 Q. And where were those places?

3 A. At my house, in the car and in Black Eyed Pea.

4 Q. How did you feel about the Defendant at that
5 time?

6 A. I was in love with him.

7 Q. Had you been in love before?

8 A. No.

9 Q. Had you had boyfriends before?

10 A. Yes, but only that I would see in school and
11 not out of school --

12 Q. Okay.

13 A. -- the kind that I would pass notes to.

14 Q. Was this your first adult relationship?

15 A. Yes.

16 Q. Had you had any sexual relationships with
17 anyone before this Defendant?

18 A. Yes.

19 Q. Was this different?

20 A. Yes.

21 Q. Why?

22 A. I thought this was my first adult relationship
23 with someone older than me and more mature.

24 Q. Do you speak Spanish?

25 A. No.

1 Q. Did you ever have to translate for the
2 Defendant if he didn't understand things?

3 A. Sometimes.

4 Q. Okay. What language did you all speak?

5 A. A broken Spanish when I would translate.

6 Q. Did you speak in English with him?

7 A. Yes.

8 Q. And sometimes you would speak in Spanish; you
9 would try to?

10 A. Try to.

11 Q. Did you take Spanish in school?

12 A. Yes.

13 Q. Your dad speaks Spanish. Is that right?

14 A. Yes.

15 Q. Do you -- did you ever speak Spanish as a kid?

16 A. No.

17 Q. "No." What about your sister, does she speak
18 Spanish?

19 A. Not at all.

20 Q. So if the Defendant were talking to your sister
21 or -- and he would have known your sister?

22 A. Yes.

23 Q. Did they speak in English or Spanish?

24 A. In English.

25 Q. When the Defendant spoke with Sharon Matthews,

1 his manager at the Black Eyed Pea, or any of his
2 coworkers who only spoke English, what language did the
3 Defendant speak?

4 A. English.

5 Q. Do you -- do you think the Defendant is easily
6 intimidated? Is he easy to push around?

7 A. No.

8 Q. Did you think the Defendant was intelligent?

9 A. Yes.

10 Q. Why?

11 A. He -- to me he had his life together, and he
12 was more mature than me, and he has graduated college.

13 Q. And what college or what education did the
14 Defendant have? Did he tell you?

15 A. Accounting.

16 Q. "Accounting." If the Defendant were an
17 accountant, did you know why he was a cook?

18 A. Because it didn't transfer to the
19 United States.

20 Q. Would he need more schooling here? Was that
21 your understanding?

22 A. He would need a visa.

23 Q. Okay, so he -- he didn't have the ability to
24 have that kind of professional job here?

25 A. No.

1 Q. When did you come to find out that his name
2 wasn't Miguel?

3 A. About eight months into the relationship.

4 Q. So is that at Christmastime, or is that after
5 you're pregnant?

6 A. Yes.

7 Q. How did -- and how did that come about?

8 A. I do not remember.

9 Q. But, eventually, you find out?

10 A. Yes.

11 Q. Did you stop calling him "Miguel" at some
12 point?

13 A. Yes.

14 Q. What did you start calling him?

15 A. "Ortiz."

16 Q. Why didn't you call him by a first name?

17 A. Because he called me "Garcia."

18 Q. So was that like a joke between you or just a
19 habit?

20 A. He didn't like my first name.

21 Q. What did the Defendant tell you about your
22 first name?

23 A. That it was not a girl name.

24 Q. So did the Defendant ever call you "Taylor"?

25 A. Sometimes at work, rarely. Everyone started to

1 call me "Garcia" at Black Eyed Pea.

2 Q. Because of the Defendant?

3 A. Yes.

4 Q. You never asked anyone to call you that?

5 A. No.

6 Q. Once you're -- once you're pregnant, do things
7 change at your -- in your relationship with respect to
8 who you are allowed to talk to?

9 MR. MEGARO: Your Honor, I'm going to
10 object to this entire line of questioning. This is
11 evidence of character.

12 THE COURT: Overruled.

13 Q. (BY MS. LABORDE) How was -- did the
14 relationship change, or was it always like that?

15 A. It was different, because when I was pregnant,
16 I actually lived with the Defendant.

17 Q. Okay, and where did you all live together?

18 A. Until we got an apartment in West, we lived in
19 Hillsboro.

20 Q. And so that changed, your living together?

21 A. Yes.

22 Q. The jury has heard from some folks that worked
23 at the Black Eyed Pea. You all always worked together
24 the same shift?

25 A. Yes.

1 Q. Why was that?

2 A. So we would know what each other was doing.

3 Q. Is that something that you -- you felt was
4 necessary?

5 A. Yes.

6 Q. Why?

7 A. I didn't want to be accused of anything.

8 Q. Okay. What would the Defendant accuse you of?

9 A. He would overreact with anything.

10 Q. Like what?

11 A. He -- like he would think that I was talking to
12 other guys or just anyone in general.

13 Q. Are you saying he was jealous of men?

14 A. Jealous of everyone, it seemed.

15 Q. So any contact with you?

16 A. Yes.

17 Q. So if he were able to watch everything, you had
18 less problems?

19 A. Yes.

20 Q. Could he -- could he always watch you if he
21 were cooking?

22 A. Yes.

23 Q. How?

24 A. The expo area, the server's area and the cook's
25 area, there's a window in-between.

1 Q. All right, so he can just look out and see --

2 A. Yes.

3 Q. -- what you're doing? Okay. What if he went
4 to the bathroom, he couldn't see you then, right?

5 A. Yeah.

6 Q. Was that ever a problem, or, no, he knew where
7 you were?

8 A. Uh-huh.

9 Q. Okay, so were you able to buy stuff for the
10 baby as you're expecting and getting ready to have him?

11 A. Not until late in the pregnancy.

12 Q. And when did you tell your parents about the
13 pregnancy?

14 A. I told my mother that lives in Houston
15 whenever I found out about eight weeks in, and I didn't
16 tell my father and my stepmother until I was about
17 seven-and-a-half months.

18 Q. Why was that?

19 A. Because I didn't want to disappoint my dad.

20 Q. Okay. Why did you think that would disappoint
21 him?

22 A. He wanted me to go to school.

23 Q. What about the Defendant, do you think -- did
24 you have any concern about him being mad about that?

25 A. About?

1 Q. That he was married, that you all weren't
2 married or --

3 A. Yes.

4 Q. -- anything like that? When did they first
5 meet?

6 A. My parents and --

7 Q. Yes.

8 A. About when I was seven-and-a-half months
9 pregnant.

10 Q. How did that go?

11 A. It -- it went well.

12 Q. How much time would your parents, Norma and
13 Anthony, spend with the Defendant?

14 A. Not often.

15 Q. "Not often." Why is that?

16 A. Every time they came, he was at work.

17 Q. Did you ever want the Defendant to spend more
18 time with them?

19 A. Yes.

20 Q. Did you tell the Defendant that?

21 A. Yes.

22 Q. What would he say back?

23 A. He didn't want to.

24 Q. How did that make you feel?

25 A. Upset.

1 Q. Why?

2 A. Because I wanted a relationship with all of
3 my family.

4 Q. Were you -- have you -- were you ever able to
5 have that?

6 A. No.

7 Q. And your mom stays in Houston this whole period
8 of time?

9 A. (Nods head.)

10 Q. Is she helping you?

11 A. (Nods head.)

12 Q. You're nodding "yes." Is that right?

13 A. Oh, yes.

14 Q. And your -- your sister, she's in Milford for a
15 period of time while you're living in Hillsboro and then
16 in West?

17 A. Yes.

18 Q. At some point your sister moved closer to you?

19 A. Yes.

20 Q. Why was that?

21 A. To help me take care of my baby.

22 Q. Okay, and -- but she wasn't the babysitter?

23 A. No.

24 Q. Why was that?

25 A. Because that is not what the Defendant wanted.

1 Q. What did the Defendant want?

2 A. For my sister not to watch him, someone else.

3 Q. Did -- did you all talk about that, you and the
4 Defendant, that you could probably have your sister
5 watch him for free, or you could pay someone else, so
6 why would you do that?

7 A. We talked about it, but the final decision
8 wasn't mine.

9 Q. Even though it was your baby?

10 A. Yes.

11 Q. Was that common that decisions like that
12 weren't yours?

13 A. Yes.

14 Q. What about how you spent your money?

15 A. We had a joint bank account.

16 Q. Could you go out and buy stuff if you wanted?

17 A. Sometimes.

18 Q. And sometimes not?

19 A. Not often.

20 Q. Not often that you could go out and buy
21 something without the Defendant there or --

22 A. Well, I could, but most of the things I bought
23 either was for my baby or the Defendant. I never bought
24 anything for myself.

25 Q. Why not?

1 A. I would feel guilty.

2 Q. Was that how you always were? When you
3 were 16, did you feel that way?

4 A. No.

5 Q. When you were 17 and before you met the
6 Defendant, did you feel that way?

7 A. No.

8 Q. So what changed?

9 A. I felt -- I felt I needed to satisfy other
10 needs first before my own.

11 Q. Do you still feel that way?

12 A. About my son, yes.

13 Q. That he comes first?

14 A. Yes, always.

15 Q. Did you feel when you were in this relationship
16 with the Defendant that he came first?

17 A. Who --

18 Q. Before you, the Defendant, that he came first?

19 A. Always.

20 Q. And was that just how you felt?

21 A. Yes.

22 Q. All right. Would you ever get in trouble by
23 the Defendant?

24 A. He would get mad at me often, yes.

25 Q. What about?

1 A. Everything.

2 Q. Can you give us an example?

3 A. There was one time when we lived in West and
4 that our power went out, and so I unplugged his phone
5 off the charger, so when the power came on it wouldn't
6 short out the phone, and so he had woken up late for
7 work, and so later whenever I went to Black Eyed Pea, he
8 had gotten mad to -- at me, and I had gotten -- he
9 yelled at me in front of everybody.

10 Q. Did you often cry when you were in this
11 relationship?

12 A. Yes.

13 Q. Did you ever cry on other occasions in front of
14 your coworkers?

15 A. Yes.

16 Q. In front of your parents?

17 A. No.

18 Q. Do you remember going to the Burlington Coat
19 Factory and getting some calls?

20 A. Yes.

21 Q. So you didn't cry in front of your parents?

22 A. I made them think everything was okay.

23 Q. You think you did, right?

24 A. I tried to.

25 Q. You tried to?

1 A. Uh-huh.

2 Q. Did you cry outside?

3 A. Yes.

4 Q. And then you came back in and said everything
5 was fine?

6 A. Yes.

7 Q. Did you ever cry in front of your sister?

8 A. All the time.

9 Q. Was she the one that knew the most what was
10 going on?

11 A. Yes.

12 Q. Now can you tell us if -- if you're in a
13 relationship with someone and they're making you cry and
14 you don't come first -- at this point you don't come
15 first with anyone, right, not yourself?

16 A. No.

17 Q. You're away from your parents. Can you tell us
18 why you stay in this relationship?

19 A. Because I was pregnant and I wanted to have a
20 family, and I thought I was in love.

21 Q. And those were all good reasons --

22 A. Yes.

23 Q. -- in your mind? Is that right?

24 A. Yes.

25 Q. So let's talk about when you have M [REDACTED]. You

1 call him "Max." Is that right?

2 A. Max.

3 Q. You -- he was not premature?

4 A. No.

5 Q. Where did you have him?

6 A. At the hospital in Waco.

7 Q. "In Waco." Okay, so you had him in Waco; you
8 didn't have him in Hillsboro --

9 A. No.

10 Q. -- because you're living in West?

11 A. Yes.

12 Q. Okay, any problems?

13 A. In the delivery?

14 Q. In delivery.

15 A. Yes. He -- whenever he was being taken out of
16 the birth canal, he had a broken clavicle.

17 Q. So that's one of his two collar bones?

18 A. Yes.

19 Q. And what did you all have to do to take care of
20 him when he had that?

21 A. Just be a little bit more careful, and that was
22 it.

23 Q. Did you notice him to be fussy or
24 uncomfortable?

25 A. During that time, no.

1 Q. Did you have to give him pain medicine?

2 A. No.

3 Q. Did you breastfeed, or did you bottle-feed or
4 both?

5 A. Both.

6 Q. And how did that go over with the Defendant?

7 A. Sometimes not good.

8 Q. Why not?

9 A. Because there was times the baby would not want
10 to eat and just suckle and -- for comfort, and the
11 Defendant told me to take him off.

12 Q. And did that up upset you?

13 A. Sometimes, yes.

14 Q. Would that make you cry or "no"?

15 A. No.

16 Q. Did Max suck his thumb?

17 A. Yes.

18 Q. When did that start?

19 A. Since I brought him home.

20 Q. So immediately he's doing that?

21 A. Yes.

22 Q. Did you ever give him a pacifier, or he always
23 preferred his thumb?

24 A. I gave him a pacifier sometimes, but he -- he
25 preferred his thumb.

1 Q. Was that a way he soothed himself from the
2 beginning?

3 A. Yes.

4 Q. Now how would the Defendant talk about Max once
5 he was here?

6 A. He really wouldn't talk about him. It was just
7 "the baby."

8 Q. Did he talk about how -- okay, so he didn't say
9 "Max;" he said "the baby"?

10 A. Uh-huh.

11 Q. Did you -- but did you say "the baby," too,
12 sometimes?

13 A. I would say "my baby."

14 Q. So instead of "my son," it would be "the baby"?

15 A. "The baby."

16 Q. And did that -- did that upset you, or did that
17 seem odd or "no"?

18 A. Sometimes.

19 Q. What about Max's appearance, did the Defendant
20 ever comment on his appearance, how he looked?

21 A. We had a little joke. To me, I thought he was
22 a little funny-looking, but all babies when you first
23 bring them home, they're a little crazy-looking, so I
24 would call him "Monkey Moe," so it was saying he was a
25 little monkey.

1 Q. And so once he gets a little older, does he
2 start looking more like a baby?

3 A. Yeah.

4 Q. Okay. How was he -- how was he as -- as his
5 behavior? How was Max as a little baby?

6 A. In the beginning he was fine, and then he
7 became a little fussy at night.

8 Q. And how would you attempt to deal with that?

9 A. I secretly put colic drops in his bottle so the
10 Defendant wouldn't know.

11 Q. Okay. Why did you have to do that as a secret?

12 A. Because I didn't want him to be upset with me.

13 Q. Why would he -- why would the Defendant be
14 upset with you for trying to keep the baby, Max, from
15 crying?

16 A. Because sometimes my decisions were not the
17 kind of decisions he liked.

18 Q. How did you know that?

19 A. He would tell me. He would get onto me a lot.

20 Q. How so?

21 A. He would tell me, "Oh, Garcia, you mess up
22 everything."

23 Q. What would you be doing when he said that?

24 A. Anything.

25 Q. What about taking care of the baby?

1 A. Sometimes, I don't --

2 Q. Did you feel confident as a mom?

3 A. Not really, this is my first baby.

4 Q. And did the Defendant help you feel more
5 confident or less confident or something else?

6 A. I would ask him for advice because I didn't
7 know what to do.

8 Q. And he already had two kids. Is that right?

9 A. Yeah.

10 Q. Okay, so can you help us understand -- help the
11 jury understand why -- if it's a fairly normal thing to
12 get gas drops if your baby is colicky, why you had to
13 hide that or why you felt like you had to hide that?

14 A. Because it wasn't his decision. It was mine.

15 Q. So it's not that the Defendant told you,
16 "I don't approve of gas drops;" you just didn't even
17 want to have that conversation with him?

18 A. No, I didn't want to.

19 Q. Why not? Why not, "Hey, I'm going to give him
20 these gas drops"? They're over-the-counter. You just
21 go in the store and buy them, right? You didn't need a
22 prescription?

23 A. They were all natural.

24 Q. Right, so why would you have to hide that?

25 A. Just because I didn't want him to call the baby

1 being too delicate, the way he would call me the same.

2 Q. So "delicate"?

3 A. Yeah.

4 Q. Is that a bad thing?

5 A. To him, yeah.

6 Q. What other words would the Defendant use?

7 A. For a baby?

8 Q. Uh-huh.

9 A. I don't remember.

10 Q. Did he say "whiney" --

11 A. Yes.

12 Q. -- or "sissy" or "not tough" or "weak"?

13 A. Yes.

14 Q. And he's just -- he's just a little baby?

15 A. He's just a little baby.

16 Q. Okay. Did you understand that?

17 A. No.

18 Q. Did anyone else that you knew, the -- the
19 people that you brought the baby to see at work or your
20 dad or your step-mom or your sister or your mom, did
21 anyone else say that the baby was weak or a sissy or
22 crybaby? Did one say that?

23 A. No.

24 Q. How did -- did you try and hold him a lot? Did
25 that help?

1 A. I held him a lot, yeah.

2 Q. You held him all the --

3 A. I would hold him a lot or rock him a lot or --

4 Q. And did the Defendant appreciate that?

5 A. Sometimes he would have me put him down because
6 he didn't want me to hold him too much.

7 Q. So would you put the baby down then?

8 A. Yes, because he told me to.

9 Q. You didn't argue --

10 A. No.

11 Q. -- and say, "I'm not" -- "I'm not putting my
12 baby down"?

13 A. I didn't argue.

14 Q. Did you ever say that?

15 A. No.

16 Q. You just put the baby down. What would happen
17 when you put the baby down?

18 A. I would have to leave him in the crib or the
19 playpen, and just if he was crying, let him cry or, if
20 not, just lay him there.

21 Q. So how did that make you feel to hear your baby
22 cry and not be able to pick him up?

23 A. Sad.

24 Q. How often did that happen?

25 A. Often.

1 Q. Did you feel the Defendant was in control of
2 how you behaved as a mom?

3 A. The Defendant was always in control of the way
4 I was, everything. Everything I did, he was in control
5 of.

6 Q. And had you had a relationship other than this
7 one to know that --

8 A. This was my --

9 Q. -- maybe that's not how all of them work?

10 A. No, my first real adult relationship, I
11 thought.

12 Q. You thought?

13 A. Yes.

14 Q. So now let's -- let's fast-forward to when you
15 have to take the baby to the emergency room, and before
16 you did that -- so we're talking about two-and-a-half
17 months now, August 27th. Before that had you ever had
18 to take the baby to the emergency room?

19 A. No.

20 Q. But you thought he was colicky, and you -- you
21 thought he was fussy?

22 A. Yes.

23 Q. Did you think anything else was wrong with him
24 in that two-and-a-half-month period before the emergency
25 room visit?

1 A. I thought he wasn't hitting his milestones.

2 Q. Okay, and -- and how did -- how did you -- how
3 did you know what the milestones were?

4 A. I would use BabyCenter as my reference to
5 everything on Google.

6 Q. So that's *babycenter.com*?

7 A. Yes, ma'am.

8 Q. And that tells you what the milestones are for
9 the average month-old baby, the average two-month-old
10 baby. Is that right?

11 A. Yes, ma'am.

12 Q. And you had concerns?

13 A. Yes.

14 Q. What milestones did you not think Max was
15 meeting?

16 A. I thought he wasn't laughing or making facial
17 movements or just meeting a lot of the milestones it was
18 saying.

19 Q. So you believed that at a month or two months
20 when you looked at Max, he should be looking back at you
21 and smiling and laughing, that he should be making
22 those -- those kind of developmental milestones?

23 A. Yeah. He wasn't meeting them at that time.

24 Q. So what did you do about it?

25 A. I told the doctor at the -- the health clinic

1 that he would go to.

2 Q. So you did well-baby checks. Is --

3 A. Yes, ma'am.

4 Q. -- that right? And you told the doctor there
5 what?

6 A. That I didn't think he was meeting the
7 milestones even on the checklist that we would have to
8 do in the beginning.

9 Q. So at the beginning of those appointments,
10 there's a checklist?

11 A. That I would have to fill out, and he wasn't
12 meeting them.

13 Q. So what happened next?

14 A. They referred him to a specialist.

15 Q. And where was that specialist?

16 A. In Waco.

17 Q. Did you go? Did you take the baby to the
18 appointment?

19 A. Yes.

20 Q. Who went with you?

21 A. Francisco.

22 Q. Was that normal that he would go?

23 A. He would usually drive -- when I first had my
24 son, the first two appointments, he drove me to the
25 appointments, but after that, no, he didn't go.

1 Q. And how was your relationship about this time
2 with the Defendant?

3 A. That day that I took my son to the -- the day
4 that he got referred to the specialist, we were not on
5 good terms.

6 Q. Okay, and so were you -- you and the Defendant
7 were fighting.

8 A. Yes.

9 Q. Why was that?

10 A. Because he was talking to other girls on
11 Facebook trying to go visit them in Mexico.

12 Q. And did you -- you noticed that on your home
13 computer --

14 A. Yes, ma'am.

15 Q. -- or on his phone or --

16 A. Or he left the computer open on the messages.

17 Q. So you read the messages?

18 A. Yes.

19 Q. Were they in Spanish?

20 A. They were in Spanish. I used Google Translate.

21 Q. And were you upset?

22 A. I was very upset. I was hurt.

23 Q. So what did you do?

24 A. I was too scared to tell him, but I did.

25 Q. But you did. How did you tell him?

1 A. Through text message.

2 Q. And did you get a response?

3 A. Yes.

4 Q. And did -- was that by text?

5 A. Yes.

6 Q. Did you text in English?

7 A. In English.

8 Q. And you said you were fighting. Did that
9 eventually resolve itself or --

10 A. No. After that I was in the -- the doctor's
11 room with the baby, and we were trying -- we were
12 arguing because my baby was getting his shots, and we
13 were arguing at the time, and then after that he didn't
14 answer my phone calls, and then I left a voicemail
15 saying, "I know you don't care about me or the baby, but
16 I just want to let you know that they think that there's
17 something wrong with the baby, and maybe he's behind
18 developmentally, or there's something else wrong with
19 him, and I just wanted to let you know that."

20 Q. And that was a voicemail?

21 A. Yes, ma'am.

22 Q. So in your voicemail you said, "The doctors
23 think there's something developmentally wrong with him
24 or something else wrong with him"?

25 A. Yes.

1 Q. And how many weeks before you go to the
2 doctor with the emergency room was this specialist
3 meeting, a few weeks?

4 A. I do not remember.

5 Q. But it wasn't right after birth?

6 A. No. It wasn't right after birth.

7 Q. Did the Defendant end up going to you -- going
8 to that specialty doctor meeting with you?

9 A. Yes.

10 Q. And was his behavior different than it normally
11 was?

12 A. He held the baby the whole time.

13 Q. Was that normal?

14 A. No.

15 Q. So did you hold the baby at all?

16 A. No.

17 Q. What did you make of that?

18 A. It felt awkward.

19 Q. What did you think -- how did the Defendant
20 present himself to the doctor?

21 A. That he was always this way with the baby, that
22 he always held the baby, and that's not how it was.

23 Q. Would the Defendant hold the baby at home?

24 A. Not often.

25 Q. I want to talk for a second about Max's hair.

1 Did you want to shave Max's head?

2 A. No.

3 Q. So who did that?

4 A. Francisco.

5 Q. And do you know why?

6 A. He said because the baby's hair was uneven and
7 ugly.

8 Q. So what happened?

9 A. So I told him to please wait until three
10 months. I said, "Please just wait until the baby's soft
11 spot gets a little harder, until he's three months," and
12 we even talked to my manager about it at Black Eyed Pea,
13 and she said, "Please wait," and then two days later we
14 went home, and he shaved it.

15 Q. Were you in the room when the Defendant
16 shaved --

17 A. No.

18 Q. Was that with an electric razor or a straight
19 razor?

20 A. At first it was with just a regular razor, like
21 plastic.

22 Q. And then did he use a different kind of razor
23 after that?

24 A. I don't remember, but he started in the middle,
25 so he had to finish.

1 Q. How did that make you feel?

2 A. I was upset. I had to hide it, like I put the
3 baby in a hat all the time. I didn't want anyone to
4 know he shaved his head.

5 Q. Did he look funny after that to you?

6 A. Yes. He looked a little sad, like it was sad
7 to look at.

8 Q. So why did you take the baby to the Black Eyed
9 Pea when you were on maternity leave?

10 A. To be with Francisco so I wouldn't be home
11 alone.

12 Q. Did you not want to be home alone?

13 A. I didn't want to be home alone.

14 Q. Why not?

15 A. Because it was lonely.

16 Q. And you were happier if you had someone to be
17 around with the baby?

18 A. I was happier just to be around Francisco at
19 the time.

20 Q. Do you remember Francisco holding -- the
21 Defendant holding Max above his head one time? Were you
22 there when that happened in front of Sharon Matthews?

23 A. Yes.

24 Q. And what happened?

25 A. And she said, "Don't drop him." He's like,

1 "No, I got this; I got this."

2 Q. Were you upset at all by that?

3 A. I was scared. I would never hold my baby that
4 way because I'm -- I don't want to drop him.

5 Q. So you were scared. Did you say anything to
6 the Defendant about, "Don't do that again"?

7 A. I would not tell him -- I never told the
8 Defendant anything.

9 Q. So -- so Sharon intervened?

10 A. Yes.

11 Q. But you did not?

12 A. No.

13 Q. Did that mean that you approved of that?

14 A. No.

15 Q. How -- how did you think Max reacted to that?

16 A. Probably scared.

17 Q. Did he seem scared?

18 A. He had no reaction at all.

19 Q. He had no reaction at all?

20 A. No.

21 Q. Who held him after that?

22 A. I don't remember.

23 Q. Just not the Defendant?

24 A. Huh-uh.

25 Q. Was there ever any talk that he didn't think --

1 the Defendant didn't think the baby was his?

2 A. Yes.

3 Q. How often did that happen?

4 A. Often.

5 Q. Was there any reason for the Defendant to think
6 that --

7 A. No.

8 Q. -- that the baby wasn't his? "No." How did
9 that make you feel?

10 A. Upset.

11 Q. How often would that been said?

12 A. All the time.

13 Q. Did you think the Defendant was bonded to
14 his -- to Max --

15 A. (Shakes head.)

16 Q. -- like, "My son," proud of him, happy --

17 A. No.

18 Q. -- he was here, anything like that?

19 A. (Shakes head.)

20 Q. "No." So let's talk about why you guys end up
21 going to the emergency room, okay? What -- what made
22 you think you needed to go?

23 A. Because he wasn't sucking his thumb.

24 Q. What did you notice about his arm?

25 A. It was swollen.

1 Q. What part of Max's arm was swollen?

2 A. Like -- like all of this.

3 Q. Okay, his -- his upper arm, so between his
4 elbow and his shoulder?

5 A. Yes.

6 Q. Were you in the room when he was injured?

7 A. No. I went to go change my pants because my
8 pants still didn't fit. I just had a baby.

9 Q. Okay, so they were too tight, or they were too
10 big?

11 A. They were too tight, so I went to go put on
12 some pajama pants and come back into the room and look
13 at the mail.

14 Q. "Look at the mail." Where had you all been
15 that day?

16 A. In Dallas.

17 Q. For what?

18 A. To go get the title to his car.

19 Q. So then after you got the title, what did you
20 do next?

21 A. We went -- when we were in Dallas, we went to
22 Subway and to the movies.

23 Q. What movie -- do you remember what movie you
24 saw?

25 A. "The Avengers," I think. No, I don't remember

1 what it was called.

2 Q. A summer movie?

3 A. Yeah, it was like "Part Two."

4 Q. Okay, so you get home, and you don't see
5 anything that happens; you just get back in the room,
6 and the arm is swollen?

7 A. Well, when I left the baby in the living room
8 with Francisco, he was still in the car seat, and so I
9 came out, and he was out of the car seat. I came back
10 into the room, and he was out of the car seat.

11 Q. Where was he?

12 A. In the playpen.

13 Q. And you -- you immediately noticed the arm
14 seemed big?

15 A. Well, he told me -- he's like, "Garcia,
16 something seems weird with the baby," and I didn't think
17 anything of anything of it, and I was like -- I said,
18 "Okay," and then went -- I sat on the floor to look at
19 the rest of mail, and then I went to look at him again,
20 and he wasn't sucking his thumb.

21 Q. So why did you want to take him to the doctor?

22 A. Because it was red and swollen.

23 Q. And he couldn't use it?

24 A. He couldn't move his arm up.

25 Q. So where did you all go?

1 A. To the same hospital where he was born.

2 Q. So is that Hillcrest?

3 A. In Waco, yes.

4 Q. By the interstate?

5 A. Yes.

6 Q. And how long are you all there before you end
7 up going to Temple?

8 A. Not that long.

9 Q. Do they do some x-rays at Hillcrest, or do you
10 know?

11 A. I don't remember. I was in a -- like it was
12 all at one time. I remember they gave him morphine, and
13 he was allergic to it, so I was just trying to find
14 someone to -- to help him like with the reaction to the
15 morphine, so that's the only thing I was really --

16 Q. Did you understand --

17 A. -- focused on.

18 Q. -- why you were having to go from Waco to
19 Temple?

20 A. No.

21 Q. And who transported him? Did you all?

22 A. No, the ambulance.

23 Q. Okay, so he went by ambulance. Who went in the
24 ambulance?

25 A. Only him.

1 Q. Okay, so you all had to follow?

2 A. Yes.

3 Q. At what point do you find out that Max has more
4 injuries than just his arm?

5 A. In the CPS office.

6 Q. Okay. They have an office they use in -- at
7 CPS at the hospital?

8 A. No.

9 Q. Okay, so when you talked to the social worker
10 in Temple, she didn't tell you how many injuries there
11 were?

12 A. No.

13 Q. Did you give her any explanation for the arm
14 being injured?

15 A. I told her what Francisco told me.

16 Q. Okay, which was what?

17 A. Which was when he was trying to get the baby
18 out of the car seat, he slipped, and he grabbed him by
19 his arms. I wasn't in the room.

20 Q. Had you ever seen the Defendant be rough with
21 the baby -- with Max before you ended up going to the
22 hospital?

23 A. He was rough with the baby.

24 Q. But you didn't tell anyone that, right, not at
25 first?

1 A. No.

2 Q. Why not?

3 A. Because I was scared.

4 Q. What were you scared of?

5 A. The Defendant.

6 Q. Can you help us understand if your baby is in
7 the hospital and he has a broken bone how you don't tell
8 the truth right then?

9 A. (Shakes head.)

10 Q. Can you help us understand that? Do you
11 understand that?

12 A. No.

13 Q. So why is it after several conversations -- you
14 have conversations with Alicia McGowan, a -- a really --
15 a big lady, right --

16 A. Yeah.

17 Q. -- at CPS? You have conversations with
18 Mr. Saldana. Is that right, the Hispanic
19 Spanish-speaking CPS investigator?

20 A. Yes.

21 Q. You have conversations with the Det. Hudson at
22 West PD; you have lot of conversations?

23 A. Yes.

24 Q. And you would agree with me that your last
25 conversation is much different, the information you give

1 the last time than you gave all the other times. Is
2 that right?

3 A. Because each time I would talk to anyone of
4 them Francisco was right next to me. We did
5 everything -- all of our interviews or talking to each
6 of the CPS people, we were side-by-side.

7 Q. Okay, so the social worker, do you remember
8 Carmen Gattis --

9 A. No.

10 Q. -- at Temple? She said -- she testified that
11 she spoke with you --

12 A. Yeah.

13 Q. -- alone?

14 A. I -- I remember -- I remember talking to
15 someone, but I don't even remember what we talked about.

16 Q. Did you understand when you were in Temple the
17 seriousness of Max's injuries?

18 A. No.

19 Q. When do you think that really hit you?

20 A. In the CPS office when they told me and
21 explained to me that he had all those broken bones.

22 Q. Did you have an understanding that all those
23 broken bones didn't happen at once?

24 A. No.

25 Q. Okay. That some of them were older, and some

1 of them were newer, did you understand that?

2 A. I didn't know that until then.

3 Q. "Until then"?

4 A. Yes.

5 Q. Now looking back, knowing that some of those
6 injuries were -- were new and some of those injuries
7 were healing, since you're the only one that was around
8 the baby the most, you know, can you explain to us how
9 injuries could have happened on different days?

10 A. The roughness with the baby.

11 Q. Were you ever rough with the baby?

12 A. Never.

13 Q. Do you think Alejandra Perez was rough with the
14 baby?

15 A. No.

16 Q. Do you believe now looking back that you
17 actually saw some of these injuries happen, or do you
18 think that you weren't around when these injuries
19 happened?

20 A. I don't think I was around when the injuries
21 happened.

22 Q. Do you ever remember seeing the Defendant like
23 crunch Max's ribcage to the point that his bones would
24 be broken?

25 A. Not crunch the baby's ribcage, I remember like

1 sometimes he would say he would exercise the baby when
2 he would move the baby's arms or move the baby's legs,
3 but that -- I never witnessed him crunch the baby.

4 Q. So it's not possible if -- if -- if you're
5 changing a baby and you're like moving his leg --

6 A. No.

7 Q. -- it's not possible to break bones doing that?

8 A. Not -- that's not how he would move the baby's
9 legs.

10 Q. Okay. How would the Defendant move the baby's
11 legs?

12 A. He would bend them. He would like try to make
13 the baby's legs touch his -- like try to bend the baby
14 like this.

15 Q. Okay, so -- but babies are pliable, right? I
16 mean they're -- I mean you probably could easily take a
17 baby's little legs and like push them up, and nothing
18 would happen, but do you think you saw any of these
19 injuries happen?

20 A. No.

21 Q. Did you ever see when the Defendant is
22 exercising the baby or whatever that suddenly Max starts
23 crying like something has happened?

24 A. Sometimes he would cry when he put his legs to
25 to the -- his -- when he would bend his legs, but the

1 way he did it was not the way anyone else would bend the
2 legs. I would never bend the baby's legs the way he did
3 it.

4 Q. Did you ever see anything happen with Max's
5 arms?

6 A. No.

7 Q. Did you ever see any -- anything happen to his
8 other collarbone?

9 A. I never witnessed any -- him doing anything.

10 Q. How is that possible? Would -- would the baby
11 be alone sometimes with Francisco?

12 A. Yes.

13 Q. How?

14 A. When he would come home from work, I would give
15 him the baby to -- so I could take a shower, so I could
16 wash the dishes, and -- but when the time came that I
17 was done with whatever I was doing, the baby would
18 either already be wrapped up in the blanket and in the
19 bed or just wrapped up in the blanket next to Francisco.

20 Q. Okay, so do you think it's possible then that
21 some of these injuries occurred while you were at home
22 and not in the room?

23 A. While I was at home, yes, but not in my --

24 Q. Viewing?

25 A. Yes.

1 Q. Okay. Did it ever seem that M [REDACTED] was
2 uncomfortable when you were holding him or breastfeeding
3 him or feeding him a bottle?

4 A. Some -- in the end right before we -- right
5 before I took him to the emergency room for what
6 happened, he was very -- he seemed in discomfort and
7 would whimper instead of like a major cry.

8 Q. Had you ever heard him whimper before?

9 A. No, not like that --

10 Q. Okay.

11 A. -- and that is when I gave him the colic drops.

12 Q. So that's just a couple of weeks leading up to
13 the emergency room visit?

14 A. Yes. That's when I -- that's when I thought he
15 had stomach problems.

16 Q. So did you feel intimidated when you were at
17 the West Police Department and you were writing out your
18 statements?

19 A. I felt intimidated whenever Francisco was next
20 to me, yes.

21 Q. Were there things in there you said that
22 weren't true, because the -- the second statement you
23 say, "I did see bruises sometimes"?

24 MR. MEGARO: Objection, Your Honor, as to
25 the -- as to what she said in the second statement.

1 There hasn't been an issue with the second statement,
2 and that's hearsay.

3 MS. LABORDE: I'll rephrase, Your Honor.

4 THE COURT: All right.

5 Q. (BY MS. LABORDE) Can you explain the
6 differences?

7 A. The differences was the -- the last statement I
8 gave and the statement that I had did on my own, I was
9 not intimidated by Francisco, and I was not scared that
10 he would see everything that I wrote.

11 Q. Who went with you the second time?

12 A. We went together.

13 Q. Did your mom and your sister go the second
14 time?

15 A. My mom and my sister were there, as well.

16 Q. And where were they?

17 A. They were in the waiting room.

18 Q. So Francisco and your mom and your sister are
19 in the hallway, and you're in the room by yourself?

20 A. Yes.

21 Q. Was that different than what happened the first
22 time?

23 A. Yes.

24 Q. Did that make you feel less intimidated the
25 second time?

1 A. Yes. Well, the whole time I was in there by
2 myself I whispered everything to -- to the police
3 officer because I -- I was scared anyone would hear me.

4 Q. Did you have -- what did you do after the
5 first -- on the 30th, the first time you go to the
6 West Police Department, you and Francisco, you're given
7 pages, and you do your statements at the same time. You
8 talked to them separately, but those are written
9 together or near each other. Where did you guys go
10 after that?

11 A. I don't remember if that was the day we went
12 back to work or if -- because there was once when we
13 went back to work, and then there was another time that
14 he went to go visit his kids afterwards.

15 Q. Well, the second time he's arrested?

16 A. Oh, well, then, yeah, we went back to work.

17 Q. Okay, so after you go to the West Police
18 Department, you give the first statement; then you guys
19 go to work?

20 A. Yes.

21 Q. Okay. Did anything unusual happen --

22 A. Yes.

23 Q. -- while you all were at work the second time?
24 What -- that -- that -- in-between the 30th and
25 the 31st, what happened?

1 A. He gave all of his information and keys -- his
2 car keys to Antonio, another coworker.

3 Q. Was that the other coworker that would
4 translate between English and Spanish?

5 A. Yes.

6 Q. So the Defendant didn't give you his car keys?

7 A. No.

8 Q. What information are you talking about?

9 A. He gave him like his parents' -- he gave him
10 addresses to people in Mexico and phone numbers and the
11 keys and the information for his ex-wife.

12 Q. Did that happen in front of you?

13 A. Yes.

14 Q. Did you ask him, "Why aren't you giving that
15 stuff to me; I'll call your parents," or -- or did you
16 say anything?

17 A. I didn't say anything. I was confused at the
18 time.

19 Q. Did the Defendant ever admit anything to you
20 personally to say that he had done these -- these things
21 to Max?

22 A. At the time he was more worried about his other
23 kids than telling me anything else.

24 Q. How did you know the Defendant was worried
25 about his other kids?

1 A. Because he was crying because he was never --
2 he said if anything happened he was never going to see
3 them again.

4 Q. Was he worried about never seeing Max again?

5 A. I -- I was, and he was not.

6 Q. So when you're called to go in the second day,
7 were you nervous --

8 A. No.

9 Q. -- to go back to the police department? You
10 just -- you just went, and now you're having to go back
11 again.

12 A. I wasn't nervous at all for anything. I was
13 more just determined to get everything done and to get
14 my baby back.

15 Q. Were you nervous about being around the
16 Defendant, like you guys road together, right?

17 A. Yes.

18 Q. Did that make you nervous?

19 A. Yes.

20 Q. Did you -- did you take steps while you were at
21 the police department to keep him from hearing what you
22 were saying?

23 A. Yes.

24 Q. How?

25 A. I whispered to -- I whispered everything. They

1 made us go to a second room, and I made sure to shut the
2 door, and I whisper everything to the officer.

3 Q. And why?

4 A. Because I didn't want him to hear what I was
5 saying.

6 Q. So you're still nervous?

7 A. I -- I will be -- I was nervous of the
8 Defendant, but I wasn't nervous for myself.

9 Q. Okay. Now I want to ask you about something
10 else you and I have talked about about a conversation
11 you had with the Defendant between the first interview
12 and the second interview. You said just a moment ago
13 that the Defendant was worried about his other kids; you
14 were worried about Max?

15 A. Yes.

16 Q. Was Max already -- had CPS already said,
17 "You can't take him from the hospital"?

18 A. Yes.

19 Q. So he was -- he was legally removed from your
20 custody. Is that right?

21 A. Yes.

22 Q. He was still in the hospital, but you weren't
23 allowed to go get him?

24 A. Yes.

25 Q. And you knew he was going to go into foster

1 care at that point, or did you not know that?

2 A. I didn't know that.

3 Q. You just knew that they were saying, "You can't
4 go get him"?

5 A. I can't go back to the hospital, yes.

6 Q. And did you understand that was because of the
7 injuries and how serious they were?

8 A. Yes.

9 Q. And you -- you said -- did you have a
10 conversation about that feeling that you felt like you
11 were worried about your son but he was only worried
12 about his other kids?

13 A. Yes.

14 Q. What did you say?

15 A. I told him that --

16 THE COURT: Ms. LaBorde, I -- I'm not
17 understanding this. I'm not sure the jury is. Tell
18 them who --

19 Q. (BY MS. LABORDE) Did you tell -- did you have
20 a conversation with the Defendant about why he didn't
21 seem to be concerned about Max?

22 A. Now I'm confused.

23 Q. Okay.

24 A. Sorry.

25 Q. Maybe I should --

1 THE COURT: That makes all of us.

2 Q. (BY MS. LABORDE) Were you concerned about
3 whether you were going to get Max back?

4 A. Yes.

5 Q. Did you think you might not ever get back him
6 back?

7 A. Yes.

8 Q. What did you want for him?

9 A. I wanted to make sure that M [REDACTED] would never
10 go to foster care and either be with me or Francisco.

11 Q. Did you tell Francisco, the Defendant, that?

12 A. Yes.

13 Q. And what was he reaction?

14 A. He said he would choose me over the baby.

15 Q. Is that how you felt?

16 A. No.

17 Q. How did you feel?

18 A. I would choose the baby over him.

19 Q. Did you tell the Defendant that?

20 A. Yes.

21 Q. And did he seem to understand where you were
22 coming from?

23 A. (Shakes head.)

24 Q. You're nodding your head "no"?

25 A. No, he didn't understand.

1 Q. So how did that make you feel?

2 A. Upset--

3 Q. You felt he --

4 A. -- I was confused.

5 Q. -- should take the baby first?

6 A. Yes.

7 Q. Now did you have that conversation with him
8 because you felt like maybe you did some of these
9 injuries?

10 A. No.

11 Q. Did you have that conversation because you
12 thought maybe the Defendant did some of these injuries
13 or all of them?

14 A. Yes.

15 Q. And what were you trying to get out of the
16 Defendant?

17 A. I was trying to get something out saying
18 either, "You need to take the baby and take care of the
19 baby, because I did something to him," or just to hear
20 him say, "I know you didn't do anything to the baby,"
21 because we were both aware that I didn't do anything to
22 the baby.

23 Q. Did you ever tell the Defendant that, "You must
24 have done it"?

25 A. I never told that to him.

1 Q. Did you ever tell it to anyone?

2 A. I told -- I told the police officer that all
3 the signs pointed to him.

4 Q. Now I want to ask you about a conversation you
5 told me you had with the Defense attorney.

6 A. Uh-huh.

7 Q. Okay, and where did that conversation happen?

8 A. At my job.

9 Q. Okay, and was that -- you said it was --

10 A. At Casa Rita's.

11 Q. "Casa Rita's," so not the job you have now but
12 a previous job?

13 A. Yes.

14 Q. So what -- Casa Rita's, is that what you said?

15 A. Yes, ma'am.

16 Q. And what was your job there?

17 A. I was a server. I was a waitress.

18 Q. And how did that conversation with the Defense
19 attorney happen?

20 A. I was the only waitress on and the only manager
21 there till 4:00. I had all these tables. I had a
22 little rush, and they waited until -- they acted as a
23 table and --

24 Q. Who is "they"?

25 A. The -- his attorney.

1 Q. Okay, but you said "they," so were there
2 two people?

3 A. Yes.

4 Q. Who were they?

5 A. I don't remember the other person. I think it
6 was his investigator.

7 Q. Was that a man or a woman?

8 A. It was a man.

9 Q. It was a man?

10 A. Yes.

11 Q. So this Defense attorney and another man?

12 A. Yes.

13 Q. Do you see the other man here?

14 A. No.

15 Q. Okay, and what -- they -- they were customers?

16 A. They -- they fronted as customers, yes.

17 Q. And did you serve them?

18 A. I served them, and I served my other tables, as
19 well.

20 Q. And did -- had anyone called you previous to
21 this saying they wanted to speak with you about this
22 case?

23 A. No.

24 Q. Would you have preferred to meet with someone
25 at your work or at your house or somewhere else?

1 A. Somewhere else.

2 Q. Would you have agreed to speak with this
3 Defense attorney no matter where he wanted to meet?

4 A. Probably not.

5 Q. "Probably not"?

6 A. I would have not.

7 Q. But you did talk with him?

8 A. Because there was no one -- I was the only
9 person there, and I couldn't not talk to my table.

10 Q. So did you end up having a conversation about
11 this case with him?

12 A. Yes.

13 Q. Did anyone tell you they were recording that?

14 A. No.

15 Q. Would you have consented to being recorded if
16 you'd been asked?

17 A. No.

18 Q. Were you aware in Texas that if one party
19 consents to the recording that they don't have to tell
20 the other person they're recording them? Are you aware
21 of that?

22 A. No, I was not aware.

23 Q. Did you think -- has that ever occurred to you
24 before that someone could record you without you
25 knowing?

1 A. No, I -- it has never.

2 Q. In that conversation, did you tell them that
3 you had really done this --

4 A. No.

5 Q. -- or that you thought your dad did this --

6 A. No.

7 Q. -- or your mom or your sister or Alejandra?

8 A. No.

9 Q. What -- what was this conversation about?

10 A. They had mentioned to me that not only women go
11 through postpartum depression, that men can also go
12 through it, as well.

13 Q. Did you -- had you ever heard that before?

14 A. No.

15 Q. How did that come up, or do you know how that
16 came up?

17 A. I don't -- I don't even recall.

18 Q. Did that make you feel sorry for the Defendant
19 that he was depressed?

20 A. No.

21 Q. Is that some kind of justification if -- if
22 you're depressed that you have a new baby or --

23 A. That's what -- that's what they were trying to
24 make it seem, that that was a justification.

25 Q. Did you feel they were trying to encourage you

1 to make a statement that he didn't do anything wrong?

2 A. Yes.

3 Q. Did you do that?

4 A. No.

5 Q. Did you write anything out and sign it?

6 A. No, not that I remember.

7 Q. Would you have to make them leave?

8 A. To --

9 Q. Like were you at all concerned with how long
10 that conversation was and wanting them to get out?

11 A. It was a very long conversation while I was at
12 work, and it affected my job, and I did get in trouble
13 for it.

14 Q. You did get in trouble for it?

15 A. Yes.

16 Q. How did you get in trouble?

17 A. I had gotten -- I'd gotten written up because I
18 wasn't paying attention -- I had another table complain
19 that I was not greeting them or serving them at all.

20 Q. Did you sit down with this Defense attorney?

21 A. Yes.

22 Q. And he did identify himself as representing the
23 Defendant, correct?

24 A. After they had ate, yes.

25 Q. So while you're serving them, you don't know,

1 but later on --

2 A. I thought they were just customers like
3 everyone else.

4 Q. Is there any possibility that anyone besides
5 this Defendant caused these injuries to your baby?

6 A. No.

7 Q. Do you think that you would have agreed with
8 the Defense attorney that, "Yes, maybe it's possible it
9 was my dad; maybe it's possible it was me; maybe it's
10 possible it was Alejandra; I don't really know; I wasn't
11 there"? Is it possible you may have said those things
12 to make him leave?

13 A. Not that I remember.

14 Q. Did you tell your parents about that
15 conversation with the Defense attorney?

16 A. I didn't want to, but I did.

17 Q. Did you tell your sister?

18 A. Yes.

19 Q. And how would -- how did your sister feel about
20 that?

21 A. They were very upset.

22 MS. LABORDE: Your Honor, I'll pass the
23 witness.

24 THE COURT: Ladies and Gentlemen, let's go
25 ahead and take our morning recess. Do not discuss this

1 case or allow anyone to address you about it, and we'll
2 see you back after the break.

3 THE BAILIFF: All rise.

4 (The jury retired from the courtroom.)

5 THE COURT: All right. We'll be back after
6 the break.

7 (A recess was taken from 9:55 AM
8 to 10:14 AM.)

9 (Open court, Defendant present, no jury.)

10 THE COURT: All right. Let's go.

11 (At the Bench, off the record.)

12 THE COURT: All right. We're outside the
13 presence and hearing of the jury now. I came out and
14 had a discussion with counsel and the parties off the
15 record a moment ago. I think I need to put that on
16 the record, and that -- that dealt with where we are in
17 this trial. This is Thursday at 10:15. There's a real
18 possibility we are not going to get through by the end
19 of the week, and that means because of a holiday
20 schedule coming up and everybody's else schedule and
21 Ms. LaBorde has a vacation bought and paid for that
22 she's leaving for on Sunday. Is that right,
23 Ms. LaBorde?

24 MS. LABORDE: Yes, and, actually,
25 we're leaving Sunday at 7:00 AM, so we were going to go

1 up to Dallas the night before but not -- we could go
2 late.

3 THE COURT: The point I'm making is there's
4 a real possibility that we will actually have to have
5 court on Saturday, and we're probably going to be
6 working late today. One of the jurors has a commitment
7 in San Antonio Friday at five o'clock which means --
8 unless we just tell him he can't do that, and I think
9 we'd already promised him that he would be able to make
10 that commitment -- we would have to stop tomorrow
11 shortly after lunch in order for that -- that juror to
12 be able to make it to San Antonio, so we need to move
13 along here, and I want everyone to be aware that we may
14 have to work on Saturday. All right. Bring in the
15 jury.

16 MR. MEGARO: I'm cautiously optimistic that
17 we won't have to do that.

18 THE COURT: I'm more cautious than I am
19 optimistic.

20 (The jury was seated in the jury box.)

21 THE COURT: All right. Mr. Megaro, you may
22 proceed.

23 MR. MEGARO: Thank you. Your Honor, may
24 I -- I approach the witness?

25 THE COURT: You may.

1 CROSS-EXAMINATION

2 Q. Ms. Garcia, I'm going to show you what's been
3 previously marked as Defense 1 for identification.
4 Please take a look at that, and I'm throwing everything
5 at you all at once. Please take a look at what's been
6 marked Defense 2A and 2B for identification also, and
7 just look up when you're done.

8 MS. LABORDE: Judge, just -- just for
9 purposes of what's happening here, I mean the witness
10 needs to be confronted with an inconsistency. There
11 needs to be some attempt to explain or deny what's
12 occurred. He hasn't approached her to refresh her
13 recollections. I'm not really sure why she's reading
14 something. There's been no question.

15 MR. MEGARO: I haven't gotten to that part
16 yet.

17 THE COURT: All right.

18 Q. (BY MR. MEGARO) Ms. Garcia, have you reviewed
19 Defense 1 for identification, Defense 2A and Defense 2B
20 for identification?

21 A. Yes.

22 Q. Do you know what those documents are?

23 A. Yes.

24 THE COURT: Ma'am, you're going to have to
25 speak a little louder --

1 THE WITNESS: Yes.

2 THE COURT: -- into the microphone.

3 Q. (BY MR. MEGARO) This is not the first we've
4 spoken, correct?

5 A. No.

6 Q. As you've testified before, back on
7 December 28th, of 2013, I came into the restaurant where
8 you used to work?

9 A. Yes.

10 Q. And that was in Fort Worth?

11 A. Fort Worth, yeah.

12 Q. And I also came in with an individual named
13 Randi Ray?

14 A. Yes.

15 Q. You told this jury that we "fronted as
16 customers"?

17 A. Yes, you did.

18 Q. We did sit down, right?

19 A. And you all were served as customers, you all
20 ate, and I served you all.

21 Q. Please just answer the question --

22 A. Yes.

23 Q. -- I ask. We ordered a meal, right?

24 A. Yes.

25 Q. We paid for that meal?

1 A. Yes.

2 Q. And then I asked you at one point if you'd like
3 to sit down and speak with me, correct?

4 A. Yes.

5 Q. And I showed you Defense 2A and 2B for
6 identification, correct?

7 A. Yes.

8 Q. And you agreed to sit down with us, right?

9 A. Uh-huh, yes.

10 Q. You were at your job?

11 A. Yes.

12 Q. You didn't have to speak with us, did you?

13 A. No.

14 Q. As a matter of fact, both Mr. Ray and I told
15 you, "You don't have to talk to us if you don't want
16 to," correct?

17 A. I do not remember.

18 Q. Now you said before that you would not have
19 agreed to speak with the Defense lawyer if you were
20 given the choice?

21 A. Yes.

22 Q. But you were given the choice, right?

23 A. I was given the choice under pressure.

24 Q. I want to make sure I understand you correctly.
25 So you're saying -- you're telling this jury that

1 Mr. Ray and I pressured you to speak with us?

2 A. Because -- yes.

3 Q. How did we pressure you to speak with us?

4 A. Because you all came into my job as customers.

5 Q. And that's pressure to speak with you? I'm

6 trying to understand what you're saying to this jury.

7 Because we came in as customers and ordered a meal, that
8 was pressuring you to speak to us?

9 A. Well, afterwards, yes. I would have gotten in
10 trouble if the manager would have came or walked by and
11 heard me say, "No, I would like" -- "not like to speak
12 to you."

13 Q. Didn't there come a point in time during our
14 conversation that I specifically asked you whether we
15 were getting you in trouble by having you sit down and
16 speak with us?

17 A. Yes.

18 Q. And you said, "No, you're not getting me in
19 trouble"?

20 A. I was the manager that was there.

21 Q. There was another waitress working there,
22 correct?

23 A. There was another waitress, yes, but she was
24 already clocked off and did her cash out, so she could
25 not accept tables.

1 Q. And this was at about three o'clock in the
2 afternoon --

3 A. Yes.

4 Q. -- between lunch and dinner, right?

5 A. Dinner does not start until 5:00.

6 Q. So this was between lunch and dinner, correct?

7 A. Yes.

8 Q. So there weren't that many tables there,
9 correct?

10 A. But I was the only server on, correct.

11 Q. You did sit with us, correct?

12 A. Yes.

13 Q. You could have gotten up at any time and said,
14 "Listen, I have to get back to work," right?

15 A. (Nods head.)

16 Q. You have to answer so the court reporter --

17 A. Yes.

18 Q. -- can take it down. You didn't do that, did
19 you?

20 A. No.

21 Q. I never hid who I was, correct?

22 A. You didn't tell me who you were until after,
23 correct.

24 Q. I gave you a business card, right?

25 A. After you ate, yes.

1 Q. I told you that I was representing Mr. Ortiz?

2 A. After you ate, yes.

3 Q. Mr. Ray also gave you a business card, right?

4 A. After he ate, yes.

5 Q. He also told you that he was an investigator
6 hired by the Defense?

7 A. After you all ate, yes.

8 Q. Would you have not spoken with us before we had
9 eaten? Is that what you're telling this jury?

10 A. If you all would have came in and told me who
11 you all were before you all had eaten, no, I would have
12 not. I would have refused service.

13 Q. You would have refused service to us?

14 A. Yes, sir.

15 Q. Did you refuse to speak to us?

16 A. No. After the fact you all ate, no, I did not.

17 Q. At that point the meal is over. You could just
18 say, "No, I don't want to speak with you; pay your bill,
19 and please leave," right? You could have said that?

20 A. Yes.

21 Q. Did you say that?

22 A. No.

23 Q. When you sat down with us -- and -- and the
24 District Attorney said you were being recorded. Did you
25 know you were being recorded?

1 A. No, sir, I did not.

2 Q. Would it have made any difference if you'd
3 known you were being recorded?

4 A. Yes.

5 Q. You wouldn't have said the same things to me
6 that you did had you known you were being recorded?

7 A. I would have not talked to you if I knew I was
8 being recorded.

9 Q. So you would not talk to -- you would not
10 have -- you would not have talked to us if we had told
11 you that we were from the Defense team before we had
12 eaten, and you would not have spoken to us if you knew
13 that you were being recorded. Is that what you're
14 telling this jury?

15 A. Yes, sir.

16 Q. Would you have told us anything different?

17 A. No.

18 Q. When you sat down and spoke with us, were you
19 lying to us?

20 A. No.

21 Q. You were being completely truthful, correct?

22 A. I was put on the spot for many things, and I --
23 some of my answers might not be the same answers if I
24 knew who you all were I would give to you.

25 Q. So if you'd known -- wait a second. You just

1 told this jury that if you'd known who we were you would
2 have given us different answers?

3 A. It was put on the spot at the time.

4 Q. So were you being truthful, or were you being
5 dishonest with us?

6 A. I was not being dishonest. I was put on the
7 spot, and I gave you the first thing that came to my
8 mind.

9 Q. Was the first thing that came to your mind the
10 truth? The answer is not on the District Attorney's
11 forehead.

12 A. I know.

13 MS. LABORDE: Your Honor, I'm going to
14 object. If he wants to just ask her some questions that
15 have something to do with this case --

16 THE COURT: Sustained. Keep it -- keep the
17 side-bar comments out of this.

18 MR. MEGARO: What was my last question?
19 I'm sorry.

20 THE REPORTER: "Was the first thing that
21 came to your mind the truth?"

22 Q. (BY MR. MEGARO) Was the first thing that came
23 to your mind when we spoke to you the truth?

24 MS. LABORDE: I'm going to object to that
25 as argumentative.

1 THE COURT: Sustained.

2 Q. (BY MR. MEGARO) Ms. Garcia, we spoke to you
3 about this case, correct?

4 A. Yes.

5 Q. And at the beginning of the conversation I
6 showed you Defense 2A and 2B --

7 A. Yes.

8 Q. -- correct? Actually --

9 MR. MEGARO: Can I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 MS. LABORDE: Your Honor, I don't even know
13 what 2A and 2B are.

14 THE COURT: Yeah. Let's identify what they
15 are for the record.

16 MS. LABORDE: You marked -- you marked
17 these separately?

18 MR. MEGARO: Yeah, A and B, and I did the
19 same for these, A, B, C and D -- D. Sorry.

20 Q. (BY MR. MEGARO) Ms. Garcia, please take a look
21 at Defense 3A, 3B, 3C and 3D for identification.

22 THE COURT: Now wait a minute. We're going
23 to identify what all these other exhibits are first.

24 MR. MEGARO: Okay.

25 THE COURT: Defense 1 and Defense 2 and 2A,

1 is that what it was?

2 MR. MEGARO: Yes.

3 THE COURT: What's -- what are those for
4 the record?

5 THE REPORTER: I think it's -- I think he
6 has it "2A" and "2B."

7 THE COURT: Okay, 2A and 2B. What are
8 they?

9 MR. MEGARO: Okay.

10 Q. (BY MR. MEGARO) Do you recognize Defense 1 for
11 identification?

12 A. Yes.

13 Q. That's a statement that you gave to the
14 West Police on August 30, 2012, correct?

15 A. The statement that I gave that Francisco was
16 right next to me and told me to give, yes.

17 MR. MEGARO: I'm going to move to strike
18 the last answer as nonresponsive, Your Honor?

19 THE COURT: Sustained.

20 Q. (BY MR. MEGARO) Ms. Garcia, "yes" or "no" --

21 A. Yes.

22 Q. -- Defense 1 for identification is the
23 statement that you gave to the West Police Department on
24 August 30, 2012, "yes" or "no"?

25 A. Yes.

1 Q. Defense 2A is an envelope that you sent
2 containing a letter to Mr. Ortiz, "yes"?

3 A. Yes.

4 Q. That's your handwriting on the front of that
5 envelope?

6 A. Yes.

7 Q. And it's -- and it's postmarked for what date?

8 A. I don't know -- the 5th of December, 2013, oh,
9 yes.

10 Q. And the letter that came with that envelope,
11 Defense 2B, that's a letter that you sent to Mr. Ortiz?

12 A. Yes.

13 Q. Is that an original?

14 A. Yes.

15 Q. That's your handwriting?

16 A. Yes.

17 Q. It's your signature at the bottom?

18 A. Yes.

19 Q. Is there anything on that letter or that
20 envelope, 2A and 2B, that is not your handwriting?

21 A. No.

22 Q. And that is exactly the same as you sent it to
23 him?

24 A. Yes.

25 Q. Defense 3A, 3B, 3C, and 3D, is it --

1 A. Yes.

2 Q. -- true that Defense 3A is also another
3 envelope that bears your handwriting on the front?

4 A. Yes.

5 Q. It's an envelope that you sent to Mr. Ortiz?

6 A. Yes.

7 Q. And inside that envelope was three photographs,
8 correct --

9 A. Yes.

10 Q. -- 3B, 3C and 3D?

11 A. Yes.

12 Q. And Defense 3B, what is that a photograph of?

13 MS. LABORDE: Your Honor, I going to
14 object. There should be no testimony of something
15 that's not been offered into evidence. Is he going to
16 offer these things? This is not relevant.

17 MR. MEGARO: Judge, I'm merely laying the
18 groundwork for the foundation now.

19 THE COURT: All right, overruled.

20 Q. (BY MR. MEGARO) Three-B, what is that a
21 photograph of?

22 A. I was told to say "yes" or "no."

23 Q. No. I'm asking you. Three-B, what is that a
24 photograph of? Okay, so --

25 A. My son and I.

1 Q. -- just -- just tell us what that is.

2 A. My son and I.

3 Q. A picture of you and your son, correct?

4 A. Yes, sir.

5 Q. And that's a picture of you and your son taken
6 in 2013?

7 A. Yes.

8 Q. Three-C, what is that a photograph of?

9 A. My son and I.

10 Q. Also taken in 2013?

11 A. Yes.

12 Q. Three-D, the same thing as the other two
13 photos?

14 A. No, it's just my son.

15 Q. Just your son. Any of those photographs have
16 handwriting on the back?

17 A. Two.

18 Q. And is that handwriting yours?

19 A. Yes.

20 Q. Do you recognize that handwriting to be yours?

21 A. Yes.

22 Q. Are those photographs in the same condition as
23 when you sent them to Mr. Ortiz?

24 A. Yes.

25 Q. There's nothing different about those

1 photographs from when you took them to when you sent
2 them to him, correct?

3 A. No.

4 Q. And those are fair and accurate representations
5 of how you and your son appeared in 2013?

6 A. Yes.

7 Q. Thank you. Now, Ms. Garcia, you testified a
8 minute ago that Defense 1 for identification is a
9 statement that you gave to the police at the West Police
10 Department on August 30, 2012, that Mr. Ortiz told you
11 to write?

12 A. Yes.

13 Q. You were alone when you wrote that statement
14 with the police, correct?

15 A. No. We were in the hallway together, sitting
16 together.

17 Q. So if one of the detectives came in here and
18 testified --

19 MS. LABORDE: Your Honor, it's improper to
20 have her compare her testimony to someone else's, and
21 there is no testimony to that, so that statement
22 contains facts not in evidence.

23 THE COURT: Sustained.

24 Q. (BY MR. MEGARO) So your testimony to this jury
25 is that you were not separated from Mr. Ortiz when you

1 wrote that statement on August 30, 2012?

2 A. No.

3 Q. You were in his presence?

4 A. Yes.

5 Q. And when you gave that statement -- before

6 you gave that statement, the police read you your

7 Miranda rights, correct?

8 A. I don't remember.

9 Q. Did the police tell you that you had the right
10 to remain silent?

11 A. I don't remember.

12 Q. Could you look on the form at the top. Take a
13 look at that, and let me know when you're done.

14 A. Okay.

15 Q. The police told you you had the right to remain
16 silent, right?

17 A. The paper told me, yes.

18 Q. The police told you that, also?

19 A. I don't remember.

20 Q. The paper also says you have the right to have
21 an attorney?

22 A. Yeah.

23 Q. The paper --

24 MS. LABORDE: Your Honor, I'm -- I'm going
25 to object. He's now reading from a document that's not

1 been admitted into evidence.

2 THE COURT: I sustain that.

3 Q. (BY MR. MEGARO) You met with two law
4 enforcement officers on August 30, 2012?

5 A. Yes.

6 Q. And when you met with them, your child had
7 already been taken away from you, correct?

8 A. Yes.

9 Q. The police were asking you questions about what
10 had happened to the child?

11 A. Yes.

12 Q. You gave them answers to your -- to their
13 questions, correct?

14 A. Yes.

15 Q. And you asked -- they asked you to write out
16 that statement, correct?

17 A. Uh-huh, yes.

18 Q. You have to say "yes." You did write out that
19 statement?

20 A. Yes.

21 Q. At the end of that statement -- and, by the
22 way, that statement is six pages long, correct?

23 A. Yes.

24 Q. At the end of that you signed each page on that
25 statement?

1 A. Yes.

2 Q. And when you signed each page you -- you were
3 telling the police that everything in that statement was
4 true and accurate, right?

5 A. Yes.

6 Q. You also -- when you gave that statement, you
7 also told the police --

8 MS. LABORDE: Your Honor, I'm going to
9 object. I mean there has to be some inconsistency.

10 MR. MEGARO: I'm laying the foundation,
11 Your Honor.

12 THE COURT: Well, get it laid, because
13 we're not going to have time to build a whole house
14 here.

15 Q. (BY MR. MEGARO) You told this jury before that
16 Mr. Ortiz is the only person that could have caused
17 these injuries, right?

18 A. Yes.

19 Q. That's not what you told the police on
20 August 30, 2012, is it?

21 A. No.

22 Q. You told the police on August 30, 2012, that it
23 was the babysitter?

24 A. Because that's what Francisco told me to write,
25 yes. I was scared because he was there the whole time

1 when I was doing this, yes.

2 MR. MEGARO: Your Honor, I'm going to again
3 move to strike the last answer as non-responsive?

4 MS. LABORDE: Your Honor, she's allowed to
5 explain her answer.

6 THE COURT: Overruled.

7 Q. (BY MR. MEGARO) "Yes" or "no," you lied to
8 police on August 30, 2012?

9 A. Yes.

10 Q. And you lied to the police because you wanted
11 to do anything to get your baby back. Is that correct?

12 A. Yes.

13 Q. You wrote that actually in your statement;
14 "I'll do anything to get my baby back," right?

15 A. Yes.

16 Q. And that's why you're here today testifying;
17 you don't want to lose your child, correct?

18 A. No.

19 Q. That's what you also told me on
20 December 28, 2013, when we were sitting down at your
21 table, correct?

22 A. Yes.

23 Q. You would do anything --

24 MS. LABORDE: Your Honor, again, I mean
25 what she told him is not inconsistent with what she's

1 testifying to. This is improper impeachment.

2 THE COURT: Overruled.

3 Q. (BY MR. MEGARO) When we sat at your table on
4 August -- I'm sorry -- December 28, 2013, you told me
5 and Mr. Ray you would do and say anything to get your
6 baby back, right?

7 A. I don't remember.

8 Q. Would reading a transcript of your interview
9 with me refresh your recollection?

10 A. Maybe.

11 MR. MEGARO: One moment, Your Honor. I'll
12 come back to that in a moment.

13 Q. (BY MR. MEGARO) Were you lying to me on
14 December 28, 2013, when you said you would do any -- do
15 or say anything to get your baby back?

16 A. No, I lied on this paper.

17 Q. When you lied on August 30, 2012, that's
18 because you believed you were going to get the baby back
19 if you told the police these things, correct?

20 A. That's what CPS told me.

21 Q. CPS told you to lie to the police?

22 A. CPS told me that -- we'll go back to "yes" or
23 "no" questions -- answers.

24 Q. CPS told you to lie to the police, "yes" or
25 "no"?

1 A. They didn't tell me until like -- no.

2 Q. CPS told you to blame somebody else, and that's
3 how you'd get the baby back?

4 A. No.

5 Q. CPS told you to blame the babysitter, and
6 that's how you would get the baby back?

7 A. Not CPS, Francisco did.

8 Q. He told you to lie to the police so you could
9 get the baby back. Is that what you're telling this
10 jury?

11 A. He told me to tell them that it was the
12 babysitter and not him.

13 Q. Didn't Mr. Ortiz tell you that -- repeatedly
14 that he never --

15 MS. LABORDE: Your Honor --

16 MR. MEGARO: -- harmed the child?

17 MS. LABORDE: -- I'm going to object to
18 that as being hearsay.

19 THE COURT: Sustained.

20 Q. (BY MR. MEGARO) But you did lie to the police,
21 correct?

22 MS. LABORDE: Your Honor, I'm going to
23 object to that as repetitious.

24 THE COURT: Overruled, but it is
25 repetitious. Let's -- the ground has been plowed.

1 THE WITNESS: For the fear of myself.

2 Q. (BY MR. MEGARO) Ma'am, when you spoke -- you
3 said that Mr. Ortiz put fear into you --

4 A. Yes.

5 Q. -- to make these statements to the police,
6 correct?

7 A. Yes.

8 Q. That's what you told this jury?

9 A. Yes.

10 Q. That not what you told me on December 28, 2013,
11 is it?

12 A. No.

13 Q. I asked you, "Who pressured you" --

14 MS. LABORDE: Your Honor, I'm going to
15 object. She just said "no," so she admits that she
16 didn't say that to him, so what is -- what is the
17 hearsay relevant to prove?

18 THE COURT: Young lady, don't answer the
19 question. I want to -- I want to hear the question.
20 What was it -- the question going to be, Mr. Megaro?

21 Q. (BY MR. MEGARO) I asked you on
22 December 28, 2013, "Who pressured you to make statements
23 to the police." Didn't I ask you that question?

24 THE COURT: And the objection?

25 MS. LABORDE: Well, Your Honor, this is

1 just -- this is just an out of court statement. It's
2 not inconsistent with her trial testimony. She said she
3 felt pressured when she was at the West Police
4 Department.

5 THE COURT: This is cross-examination.
6 I'll overrule the objection.

7 Q. (BY MR. MEGARO) I asked you who pressured you,
8 correct?

9 A. Yes.

10 Q. And you told me on -- and Mr. Ray on
11 December 28, 2013, that it was the police that put
12 pressure on you, correct?

13 A. Yes.

14 Q. Was that the truth?

15 A. Everyone had pressured me, so, yes, that is the
16 truth.

17 Q. The police told you that they were going to
18 take your child away if you didn't give them a
19 statement, correct?

20 A. CPS has already took my child away.

21 Q. They told you they were going to keep the child
22 away from you, correct?

23 A. CPS already told me they were going to keep the
24 child away from me.

25 THE COURT: Ma'am, you need to speak a

1 little louder.

2 Q. (BY MR. MEGARO) And the police also told you
3 that, too, right?

4 A. Yes.

5 Q. Your father also put pressure on you, correct?

6 A. Everyone put pressure on me.

7 Q. When you say "everyone," you're talking about
8 your father?

9 A. I'm talking about everyone, Francisco, my
10 parents, my sister, the police, everyone, yes.

11 Q. By the way, did you stay here in Waco last
12 night?

13 A. Yes.

14 Q. And you stayed at a hotel just about a block or
15 two away?

16 MS. LABORDE: Your Honor, is that relevant?

17 THE COURT: Sustained.

18 Q. (BY MR. MEGARO) Were you with your parents
19 last night?

20 MS. LABORDE: Your Honor, I'm going to that
21 as being irrelevant.

22 THE COURT: Sustained.

23 THE WITNESS: They're in the same hotel.

24 Q. (BY MR. MEGARO) Are you here under subpoena or
25 on your own free will?

1 A. Subpoena.

2 Q. You don't want to be here, do you?

3 A. I want to find justice for my son.

4 Q. So you want to be here?

5 A. Yes.

6 Q. How did you get subpoenaed?

7 MS. LABORDE: Your Honor, what's the
8 relevance of this?

9 THE COURT: Sustained.

10 Q. (BY MR. MEGARO) You said you want to be
11 here to get justice for your son. Is that what you
12 said?

13 MS. LABORDE: Objection, repetitious.

14 THE COURT: Overruled.

15 Q. (BY MR. MEGARO) Right?

16 A. Yes.

17 Q. Isn't it true that you wrote Mr. Ortiz a letter
18 back in December, of 2013, where you said you did not
19 want to be in the court?

20 MS. LABORDE: Your Honor, I'm going to
21 object. The letter is not in evidence. He hasn't --

22 THE WITNESS: No, sir.

23 MS. LABORDE: Hold on. He hasn't
24 confronted her with that. It doesn't -- it's not
25 inconsistent with her trial testimony. It's hearsay.

1 THE COURT: Sustained.

2 Q. (BY MR. MEGARO) Did you want to come to court
3 last year in 2013?

4 A. No.

5 Q. You've changed your mind since then?

6 A. Well, I wanted justice for my son, but no one
7 wants to go through the court.

8 Q. So my question is you've told this jury that
9 you want to be here. Did you previously say that you
10 did not want to come to court?

11 A. I want to come to court.

12 Q. You've always wanted to come to court?

13 A. Yes.

14 Q. Okay. I'm going to ask you to take a look at
15 Defense 2B.

16 MR. MEGARO: Your Honor, may I approach the
17 witness?

18 THE COURT: You may.

19 Q. (BY MR. MEGARO) Please take a look at
20 Defense 2B --

21 A. Yes, sir.

22 Q. -- for identification.

23 A. Uh-huh.

24 Q. Do you now remember what you wrote to Mr. Ortiz
25 in December, of 2013?

1 MS. LABORDE: Before you answer that,
2 Your Honor, may we approach?

3 THE COURT: You may.

4 (At the Bench, off the record.)

5 THE COURT: I sustain the objection.

6 MS. LABORDE: And, just for the record
7 because that was at the bench, the State objected to any
8 mention of 2A as being inconsistent.

9 MR. MEGARO: Well, I -- I think it's a
10 specific part of 2A, but I haven't gotten into the rest
11 of it yet.

12 THE COURT: All right. Well, let's get to
13 it.

14 Q. (BY MR. MEGARO) In December 2013 did you want
15 to go and visit Mr. Ortiz at the jail?

16 A. Yes.

17 Q. And that's seeking justice for your son by
18 going to visit him?

19 A. Yes.

20 Q. In October, of 2013, you did mail Mr. Ortiz
21 photographs of you and your son, correct?

22 A. Yes.

23 Q. Because you thought he might like to know how
24 his son was doing, right?

25 A. Yeah.

1 Q. Is that seeking justice for your son?

2 A. Yes.

3 Q. You testified to this jury before that
4 Mr. Ortiz used to say that the son -- your son was not
5 his?

6 A. Yes.

7 Q. Whose name appears on his birth certificate?

8 A. Juan Francisco Ortiz.

9 Q. He signed it willingly?

10 A. Yes, sir.

11 Q. He acknowledged that that was his son?

12 A. Yes, sir.

13 Q. He lived with you and the baby?

14 A. Yes, sir.

15 Q. Now you've told this jury that Mr. Ortiz used
16 to play rough with the baby, correct?

17 A. Yes, sir.

18 Q. It's true you didn't think it was rough at the
19 time, right?

20 A. No.

21 Q. You believed it was normal, right?

22 A. No.

23 Q. You didn't believe it was normal?

24 A. No. I believed it was rough.

25 Q. During our interview on August -- I'm sorry --

1 December 28, 2013, didn't I ask you if you'd ever seen
2 Mr. Ortiz hurt or mistreat the baby? I asked you that
3 specific question?

4 A. I don't remember.

5 Q. Would reading a transcript of your interview,
6 perhaps, assist?

7 A. Perhaps.

8 MR. MEGARO: Page 41, the bottom third.
9 Your Honor, I'm sorry. May I approach the witness?

10 THE COURT: You may.

11 Q. (BY MR. MEGARO) Please take a look at Page 41,
12 the highlighted portion, and read it to yourself, and
13 just look up when you're done.

14 A. (Complies with request.)

15 Q. May I have that back?

16 A. Uh-huh.

17 Q. So back on December 28, 2013, I asked you,
18 "Did you ever see him play rough" -- I'm sorry --

19 "Did you ever see him hurt the baby or mistreat the
20 baby," right?

21 A. Uh-huh.

22 Q. And you said --

23 MS. LABORDE: Your Honor, I'm going
24 to object. That's actually not what the transcript
25 says.

1 THE COURT: You all have it. I don't.

2 MS. LABORDE: It's not what the transcript
3 says.

4 MR. MEGARO: I'll read it word-for-word
5 then.

6 MS. LABORDE: Well --

7 Q. (BY MR. MEGARO) Did I ask you --

8 MS. LABORDE: Your Honor, he has to ask her
9 if it refreshes her recollection, if she -- if she
10 remembers --

11 THE COURT: I thought I'd -- I thought I'd
12 asked that.

13 MS. LABORDE: No, he's just reading it.

14 Q. (BY MR. MEGARO) Do you -- is your -- is your
15 recollection now refreshed as to what we spoke about on
16 December 28, 2013, after reading that?

17 A. Yes.

18 Q. Didn't I specifically ask you, "During your
19 relationship with Francisco, did you ever see him hurt
20 the baby or mistreat the baby"? I asked you that
21 question?

22 A. Yes.

23 Q. And you told me, "I saw him play rough with the
24 baby, but I didn't think it was rough at the time,"
25 right?

1 A. Uh-huh.

2 Q. And Mr. Ray asked --

3 THE COURT: Say "yes" or "no," ma'am.

4 THE WITNESS: Yes.

5 Q. (BY MR. MEGARO) Mr. Ray asked you, "What would
6 you consider rough? Can you explain to me what you
7 saw?" He asked you that question, right?

8 A. Yes.

9 Q. And you said to us, "Just the way he lifted
10 him, he's just a little baby. You know, what I mean,"
11 right?

12 A. Yes.

13 Q. That's what you told us about playing rough on
14 December 28, 2013, right?

15 A. Yes.

16 Q. You did not tell us like you told this jury
17 that he would flip the baby's legs over onto his head,
18 did you?

19 A. No, but I did tell the -- the police officers
20 about that.

21 Q. My question to you, ma'am, is --

22 A. No, I did not say that.

23 Q. -- "You didn't tell us," right?

24 A. No.

25 Q. When you told us -- when you told us on

1 December 28, 2013, were you lying to us, or were you
2 being truthful?

3 MS. LABORDE: Your Honor, I'm going to
4 object to this whole line of questions. Her answer was,
5 "It was rough. I didn't think it was rough at the
6 time." It's not inconsistent with what she's saying.
7 She did tell this Defense attorney it was rough. It's
8 exactly consistent with what she said. She didn't think
9 it would cause the injuries that it did.

10 MR. MEGARO: I think that's something for
11 the jury to determine, Your Honor.

12 THE COURT: Yeah, overruled.

13 Q. (BY MR. MEGARO) Were you being truthful with
14 us, or were you lying to us?

15 A. Yes.

16 Q. "Yes" to which, truthful or lying?

17 A. Truthful.

18 Q. Now you told this jury before on your direct
19 examination that the baby was always crying in pain. Is
20 that what you said?

21 A. No, sir.

22 MS. LABORDE: Your Honor, I'm going to
23 object that that's not what she testified to. She said
24 in the beginning he was fine, and then later on he cried
25 more.

1 THE COURT: What's your question again?

2 MR. MEGARO: I believe my question was,
3 "Did you tell the jury the baby was crying and in pain
4 all the time?"

5 MS. LABORDE: Okay, so that's not what she
6 said.

7 THE COURT: Sustained.

8 Q. (BY MR. MEGARO) Ms. Garcia, when you picked up
9 the baby from the babysitter, would he cry?

10 A. Not when he would see me.

11 Q. When -- when the baby was with the babysitter,
12 he would cry?

13 A. I wasn't sure. I wasn't there.

14 Q. When you gave your statement on August 30th --
15 I'm sorry. Let me back up. Now there came a point in
16 time where you picked up the baby from the babysitter
17 and you noticed a bruise on his arm, right?

18 A. Yes.

19 Q. And that bruise that you saw on the baby's arm
20 that one time you picked him up, it wasn't there before
21 you dropped the baby off, correct?

22 A. I don't remember.

23 Q. Didn't you write -- didn't tell the police that
24 you picked up the baby and you noticed the bruise on his
25 arm?

1 A. In the statement that I was forced to write,
2 yes.

3 Q. And that was a lie, you're saying to -- you're
4 telling this jury that was a lie?

5 A. It was not a lie that I saw the bruise.

6 Q. You told the police that the babysitter had
7 probably caused the bruise, right?

8 A. Yes, that's what I said.

9 Q. You also blamed the babysitter's husband on the
10 child's injuries, correct?

11 A. I do not recall.

12 Q. When you brought the baby to the hospital on
13 August 27, 2012, Mr. Ortiz went with you, correct?

14 A. Yes.

15 Q. He is the one who brought it to your attention
16 that the baby's arm was hurt, correct?

17 A. Yes.

18 Q. He's the one that told you that he had dropped
19 the baby and grabbed him by the arm to prevent him from
20 hitting the floor, correct?

21 A. Yes.

22 Q. When you went to Hillcrest, they put an IV in
23 the baby's arm, correct?

24 A. Of morphine, yes.

25 Q. Okay, and that caused the baby more discomfort?

1 A. It caused him an allergic reaction.

2 Q. You ran around trying to tell the doctors that
3 this was causing the baby pain?

4 A. I tried to find a nurse to show the hives that
5 he was breaking out in, yes.

6 Q. From Hillcrest you went to Temple?

7 A. Yes.

8 Q. And Mr. Ortiz drove with you?

9 A. Mr. Ortiz drove me, yes.

10 Q. He drove you there, correct?

11 A. Yes.

12 Q. When you went to the hospital, you spoke with
13 the social worker?

14 A. Yes.

15 Q. The social worker told you that this child had
16 a number of injuries?

17 A. No.

18 Q. On December 27th they never told you that this
19 baby had more than just an arm fracture?

20 A. Not --

21 MS. LABORDE: He means -- he means
22 August 28th.

23 Q. (BY MR. MEGARO) I'm sorry, August --
24 August 27, 2012, you never --

25 A. Not until -- not until I got into the CPS

1 office, no.

2 Q. Was that the same day or the following day?

3 A. I don't remember.

4 Q. Did you ever speak to Dr. Ward?

5 A. I -- I was not in the room whenever he spoke to
6 Francisco.

7 Q. "He" who?

8 A. Dr. Ward.

9 Q. Dr. Ward is a male?

10 A. I don't remember. I don't know.

11 Q. So when Mr. Ortiz spoke with the doctor, you
12 two were separated, correct?

13 A. I went to -- I was with the baby, yes.

14 Q. And when Mr. Ortiz spoke with the social
15 worker, were you together or separate?

16 A. Separate.

17 Q. Did you ever speak to either the doctor or the
18 social worker together?

19 A. I -- I did not speak to the doctor.

20 Q. You never spoke to the doctor at all?

21 A. I don't remember.

22 Q. On August -- let me go back to August 28, 2012.
23 That was the day the baby was taken away from you,
24 correct?

25 A. Yes.

1 Q. CPS got involved, correct?

2 A. Yes.

3 Q. They actually ended up filing a petition
4 against you in court, correct?

5 A. Yes.

6 Q. And that was to terminate your parental rights,
7 right?

8 A. Yes.

9 Q. Because you were suspected of child abuse,
10 correct?

11 MS. LABORDE: Your Honor, I'm going to
12 object. CPS always files to terminate when they remove.
13 It's a misstatement of how the process works.

14 THE COURT: Overruled.

15 THE WITNESS: What was the question again?

16 Q. (BY MR. MEGARO) You were accused of abusing
17 your child by CPS, right?

18 A. No, sir.

19 Q. They did file a petition against you, right, to
20 take the baby away from you?

21 A. Yes.

22 Q. And is it fair to say you had to do a lot of
23 things to get the baby back, right?

24 A. I had to go through the regular process, yes.

25 Q. And the regular process included psychological

1 counseling, right?

2 A. Yes.

3 Q. You had to go to parenting classes, right?

4 A. Yes.

5 Q. That's when you learned that a lot of things
6 that you'd been doing as a mother had been wrong?

7 A. No, sir.

8 MS. LABORDE: I'm going to object to that
9 as being irrelevant.

10 THE COURT: Sustained.

11 Q. (BY MR. MEGARO) You did go through parenting
12 classes, though, correct?

13 MS. LABORDE: Objection, relevance.

14 THE COURT: Overruled.

15 Q. (BY MR. MEGARO) Ultimately, the father --

16 A. Yes.

17 Q. -- your father got foster care of the child,
18 correct?

19 A. Yes.

20 Q. Even today you share joint custody with your
21 father, correct?

22 A. Yes.

23 Q. You did everything you had to do to get the
24 baby back, correct?

25 A. Yes.

1 Q. And you continue to do everything you have to
2 do to keep your baby, correct?

3 A. Yes.

4 Q. You told this jury before when you were with
5 Mr. Ortiz at the West Police Department on
6 August 31, 2012, that he was only worried about his
7 other children --

8 A. Yes.

9 Q. -- was not worried about M [REDACTED] or you?

10 A. Yes.

11 Q. And that's what you said on direct examination,
12 right?

13 A. Yes.

14 Q. Now let's go back to our discussion on
15 December 28, 2013.

16 MR. MEGARO: And I'm on 34 and 35.

17 Q. (BY MR. MEGARO) Didn't you tell me when we
18 were talking about that day you knew someone was going
19 to jail that day on August 31, 2012, right?

20 A. Yes.

21 Q. It might have been you, or it could have been
22 him?

23 A. No, sir.

24 Q. You told me you knew someone was going to jail,
25 right?

1 A. Yes.

2 Q. And you told me that you said to Mr. Ortiz,
3 "If anything happens to me, please take care of my
4 baby," right?

5 A. Yes.

6 Q. "If I go to jail, please take care of my baby,"
7 right?

8 A. Yes.

9 Q. And on December 28, 2013, you told me and
10 Randi Ray that he said the same thing to you, "If
11 anything happens to me, please take care of our son"?

12 A. I wanted him to say the same thing to me, and
13 he did not.

14 MR. MEGARO: Okay. Your Honor, may I
15 approach the witness?

16 THE COURT: You may.

17 Q. (BY MR. MEGARO) Miss, please take a look at
18 Page 35 in the highlighted portion.

19 THE REPORTER: "Page 25"?

20 MR. MEGARO: Thirty-five.

21 THE REPORTER: Thank you.

22 Q. (BY MR. MEGARO) Okay. Are you done reading
23 that?

24 A. Yes.

25 Q. May I have that back?

1 A. (Complies with request.)

2 Q. Didn't you tell me, "If anything happens to me
3 and I go to jail, please take care of my baby, and he
4 told me the same"? Didn't you tell me that?

5 A. I don't see that in there.

6 Q. Please read the highlighted portion again.
7 Take as long as you need.

8 A. Oh, yes, that is what I said.

9 Q. Were you lying to me when you said that?

10 A. Yes.

11 Q. You were lying to me. May I have that back?

12 A. (Complies with request.)

13 MR. MEGARO: I'm going to go to Page 57,
14 right in the middle where it starts with Mr. Ray.

15 Q. (BY MR. MEGARO) You've told this jury that on
16 August 31, 2012, you had nothing to fear, correct? Is
17 that what you said before?

18 MS. LABORDE: Your Honor, I'm going to
19 object. She didn't say she had nothing to fear. She
20 said she feared the Defendant.

21 MR. MEGARO: I'll rephrase my question.

22 THE COURT: All right. Please do that.

23 Q. (BY MR. MEGARO) You told this jury on
24 August 31, 2012, that you were not worried about getting
25 arrested because you knew you had done nothing wrong?

1 A. Yes.

2 Q. Please take a look at Page 57 where it starts
3 with Mr. Ray, and read a few line down, the highlighted
4 portion.

5 A. (Complies with request.)

6 Q. Okay. Have you read that?

7 A. Yes.

8 Q. On December 28, 2013, Mr. Ray asked you,
9 "Did you feel like you were pressured on your second
10 statement more so than the first one," right?

11 A. Yes.

12 Q. And you answered us, "I was scared. I didn't
13 want to lose my baby, and I didn't want to go to jail."
14 That's what you told us, right?

15 A. Yes.

16 Q. Were you being truthful or dishonest when you
17 told us that?

18 A. Truthful.

19 Q. So that time you were being truthful, but the
20 time before you were being dishonest with me?

21 A. This time I'm being truthful, yes.

22 Q. You've told this jury that Mr. Ortiz pressured
23 you to make the first statement on August 30, 2012,
24 which is right up there as Defense 1 for identification?

25 A. Yes, he did.

1 Q. Go back to 12-28-2013 at your restaurant.
2 Didn't Mr. Ray ask you, "Understand, so was the -- was
3 the first statement easiest for you to give, or was the
4 second one the easiest?" He asked you that question,
5 right?

6 A. Uh-huh.

7 Q. And your response was, "The first one," right?

8 A. Yes.

9 Q. The "first one" meaning the one that's right
10 there in front of you, Defense 1 for identification,
11 right?

12 A. Yes.

13 Q. And then Mr. Ray immediately asked you,
14 "The first one was the easiest, okay. Did you feel --
15 did you feel more pressure by the law enforcement and
16 CPS for the second statement? Were they coming down on
17 you a lot harder," right?

18 A. Yes.

19 Q. And you said, "Yeah," right?

20 A. Yes.

21 Q. And then I asked you --

22 MS. LABORDE: Your Honor, I'm going to
23 object. I've been reading ahead, you know, and what
24 she's saying is her dad pressured her, the police
25 pressured her, everyone pressured her. That's

1 consistent with what she's saying. I object to him
2 reading into evidence something that's consistent with
3 her testimony. This is not proper impeachment.

4 MR. MEGARO: Your Honor, she's testified
5 that it was the Defendant that pressured her to make the
6 statement on August 30th. I'm impeaching her with prior
7 statements that indicate otherwise.

8 MS. LABORDE: Your Honor, her trial
9 testimony is that she felt pressure from everyone.
10 That's what she's testified to, and she said that in
11 this interview, too. There's nothing inconsistent
12 between what she's said now and what she said to them in
13 a restaurant.

14 THE COURT: Sustained.

15 Q. (BY MR. MEGARO) On 12-28-2013 you never told
16 me or Mr. Ray that this man had pressured you to make
17 any statements, did you?

18 A. I do not remember.

19 Q. And here at trial you've said that he was the
20 one who applied the most pressure, correct?

21 A. On the first statement, yes.

22 Q. And did he apply pressure to you on
23 August 31st?

24 A. No, because we were separated.

25 Q. Now who scared you more, the police or

1 Mr. Ortiz?

2 A. Both the same.

3 Q. "Both the same." The police put a lot of fear
4 into you, right?

5 A. Yes.

6 Q. They made you think you were going to go to
7 jail?

8 A. Yes.

9 Q. And the police even told you that he had
10 accused you of doing everything, correct?

11 A. Yes.

12 Q. You now know that's not true?

13 MS. LABORDE: Your Honor, I'm going to
14 object. That's asking her to speculate as to what
15 the --

16 THE COURT: Sustained.

17 MS. LABORDE: -- police officers were
18 thinking.

19 Q. (BY MR. MEGARO) You said earlier that you took
20 your baby to wellbeing -- or well visits to the doctor
21 prior to August 27, 2012?

22 A. Yes.

23 Q. How many times did you take him to the doctor?

24 A. To all his visits until he gotten taken (sic)
25 from me.

1 Q. How many times?

2 A. I don't --

3 Q. More than three?

4 A. Yes.

5 Q. So in August, of 2012, you took the baby to the
6 doctor at least four times?

7 A. To the date or that --

8 Q. In August, of 2012, in that month, from
9 August 1st to August 27th, how many times did you take
10 the baby to the doctor?

11 A. I don't remember.

12 Q. Was it more than two?

13 A. Yeah.

14 Q. You actually took the baby to the doctor
15 approximately one week before this incident on
16 August 27, 2012, right?

17 A. For the well checkup?

18 Q. Or any checkup?

19 A. I don't remember.

20 Q. Okay. How long before August 27, 2012, did you
21 take the baby to the doctor?

22 A. I don't remember dates, but I took him to all
23 his regular checkups.

24 Q. Give us an approximation. Would it be more
25 than 10 to 14 days?

1 MS. LABORDE: Your Honor, she's already
2 testified that she doesn't remember.

3 THE COURT: Sustained.

4 Q. (BY MR. MEGARO) But I just want to make sure
5 we're clear. You did take him to the doctor more than
6 once in August 2012, right?

7 A. Yes.

8 Q. And that included a specialist, correct?

9 A. Yes.

10 Q. And during any of those doctor visits -- when
11 you went to the doctor's office, you checked off the
12 boxes on the questionnaire before going in to see the
13 doctor in the examination room, right?

14 A. Yes.

15 Q. You told them what was going on with your baby,
16 right?

17 A. Yes.

18 Q. And one of the things you checked off was that
19 the baby was a little fussy, right?

20 A. I don't remember.

21 Q. One of the things that you wrote on the
22 questionnaire was that the baby was not hitting the
23 milestones that you found on that website, correct?

24 A. Yes.

25 Q. And you had some concerns about the baby's

1 wellbeing, correct?

2 A. For not hitting those milestones, correct.

3 Q. When you brought the baby into the doctor, they
4 did a full examination of the child, correct?

5 A. Yes.

6 Q. And at no point in time prior to
7 August 27, 2012, did any doctor tell you that this child
8 had broken bones?

9 A. No.

10 Q. At no point during any of those doctor visits
11 in August 2012 did any doctor tell you that this child
12 might have been suspected of abuse?

13 A. No.

14 Q. And we're talking about medical doctors --
15 licensed medical doctors examining the baby, right --

16 A. Yes.

17 Q. -- as well as nurses?

18 A. Yes.

19 Q. So is it fair to say that on these
20 multiple visits there's more than one person examining
21 the baby?

22 A. Yes.

23 Q. And none of them found anything wrong with him,
24 right?

25 A. No.

1 MR. MEGARO: I'll pass the witness,
2 Your Honor.

3 MS. LABORDE: Your Honor, may we approach
4 the bench?

5 THE COURT: You may.

6 (At the Bench, off the record.)

7 THE COURT: All right. Ladies and
8 Gentlemen, if you all will go to the jury room for a few
9 moments while I clear up something here. Do not discuss
10 the case or allow anyone to talk to you about it.

11 (The jury retired from the courtroom.)

12 THE COURT: All right. We're outside the
13 presence and hearing of the jury now. When counsel for
14 the State and Defense approached the bench, Ms. LaBorde,
15 you raised the -- the issue that you feel like the
16 Defense has opened the door now to the extraneous
17 assault on this witness by the Defendant. Is that
18 correct?

19 MS. LABORDE: Correct.

20 THE COURT: All right. Tell me why.

21 MS. LABORDE: Your Honor, there was a lot
22 of cross-examination about, "You lied in that first
23 statement; you know, the first statement you're saying
24 he's right next to you, and that's why you write it,"
25 and she says repeatedly --

1 THE COURT: You all be seated.

2 MS. LABORDE: -- "I'm afraid; you know, I
3 was afraid of him; I just felt pressured by him," and
4 then we hear all this on cross about how, "No, the
5 police were really the ones that were pressuring you."
6 I mean so the defensive theory is that she's -- she's
7 just -- she's just made this up to try to get herself
8 out of trouble, and she's lying about really being
9 afraid of him. I mean -- and I think if there's
10 evidence to rebut that theory, the evidence that she has
11 every reason to be afraid of him, she knows he can be
12 violent. You know, I mean what is going on when these
13 two people are --

14 MR. MEGARO: I -- I don't mean to -- I
15 don't mean to interrupt, but the witness is in the
16 courtroom, and we're kind of discussing what her
17 proposed testimony might be. I would just ask that
18 she --

19 THE COURT: All right. Overruled. I
20 don't --

21 MR. MEGARO: Okay.

22 MS. LABORDE: And so their theory is that
23 she is not afraid at all on the 30th when she's writing
24 her statement right next to him. What she is afraid of,
25 the Defense's theory is, is that when she is in there on

1 the 31st and the police are telling her, "You're going
2 to go to jail; we know who did that; he's saying it was
3 you," that that's the lie, so that is the theory here.
4 Their theory is that the 30th statement is the truth,
5 and the 31st statement is the lie. We should be allowed
6 to rebut that with the fact that she was assaulted by
7 him. She was assaulted by him after she was pregnant,
8 and she knew to be afraid of him. She knew they were
9 leaving -- they left that night together. They rode
10 there together, and they left there together, and they
11 wrote those statements together. You know, she said
12 they're in the hallway, and he told her what to write,
13 and she did, and that's the statement where she says
14 exactly what he says which is, "The babysitter had this
15 bruise, and we didn't know what happened." She said --
16 she testified, "That is why I said that; he told me to."
17 We should be able to bring in the fact that she had
18 every reason to be afraid of him, and that's why she did
19 that. He -- he said many times, "You lied; you lied;
20 you lied," that she's lying when she said she was
21 afraid, and that's just not the truth.

22 MR. MEGARO: Judge, if I can respond?

23 THE COURT: You may.

24 MR. MEGARO: I didn't come anywhere
25 close to assaultive behavior whatsoever. It was the

1 District Attorney that elicited on direct examination
2 that she felt intimidated both by the West Police
3 Department and the Defendant, and I questioned her about
4 feeling intimidation on specific dates. I did not go
5 into prior acts. I specifically asked about the
6 circumstances under which she gave the statements on
7 August 30, 2012, and August 31, 2012. We're comparing
8 apples and oranges. Prior inconsistent statements do
9 not necessarily equal prior assaultive conduct, prior
10 extraneous bad acts. Those are two different things
11 entirely, and if the Court will recall my questioning, I
12 confined myself to a specific area that did not even
13 come close to touching on any assaultive conduct in the
14 past.

15 MS. LABORDE: Your Honor, I mean I'm not
16 saying that because he gets into impeachment evidence
17 I'm allowed to get into extraneous evidence. I'm saying
18 if he opens the door by his questioning as to what his
19 theory is, which that she is lying about being afraid of
20 him, and the reason she made the statement on the 31st
21 is because she didn't want to lose her baby, and he has
22 said, "You still don't want to lose your baby; you're
23 still afraid of losing him; you're still, you know,
24 having to share custody with them." I mean there was a
25 great deal of time spent on developing that theory. I

1 mean we should be able to explain the entire picture of
2 why she is afraid, why she would just write a statement
3 he told her to write instead of being -- you know, being
4 free. I mean there has been no evidence in this trial
5 that she was alone when she wrote that first statement.
6 All of the evidence has been that they were right
7 together. He was right over her shoulder telling her
8 what to say. We should be allowed to show the jury why
9 it is she would have done exactly what she was told to
10 do.

11 MR. MEGARO: Judge, my recollection of --
12 of Chief Hudson's testimony is that he said that they
13 were separate when they wrote the statements on
14 August 30, 2012.

15 MS. LABORDE: No one said that, Your Honor.

16 MR. MEGARO: I -- I -- the record will
17 reflect it, but I'm just going by my notes because I do
18 remember cross-examining him about it.

19 MS. LABORDE: I mean they didn't like share
20 a pen and write it, but they were right next to each
21 other. No one ever said they he were separated when
22 they wrote the statements. They were given the
23 statements, and they were sent to write them.

24 MR. MEGARO: But, again, we're really only
25 talking about August 30, 2012, and August 31, 2012.

1 We're not talking about prior to those dates.

2 MS. LABORDE: But my point is how she felt
3 on August 30th when they're together and they are
4 writing those statements together. They rode there
5 together. She knew they would be leaving there
6 together. How she felt at that moment is very important
7 to rebut their theory that that's when she's telling the
8 truth and that on the 31st is when she lies. His theory
9 is that she's lying on the 31st and saying it was the
10 Defendant because she wanted to keep her baby. Our
11 theory is she's lying on the 30th because he's right
12 over her shoulder, and she knows what he's capable of
13 doing to her.

14 MR. MEGARO: We haven't -- we haven't even
15 really gotten into any of it as to what she said to the
16 police on the 31st.

17 MS. LABORDE: They already know --

18 MR. MEGARO: We're -- we're talking
19 about --

20 MS. LABORDE: -- what she said on the 31st.

21 MR. MEGARO: We're talking about trial
22 testimony.

23 MS. LABORDE: She has testified that on
24 the 31st she told them the truth. She whispered because
25 she didn't want him to hear. The police testified,

1 "Every time that the door would move that she would" --
2 "she would make a movement because she was afraid."
3 You know, now he's saying that that is all a lie. He
4 directly called her a liar about being afraid of the
5 Defendant.

6 MR. RAMSAY: Judge, I think if they're
7 saying that on the 30th, making her say that she is a
8 liar and that she lied in her statement, she should be
9 able to fully explain what her state of mind was with
10 the Defendant sitting there by her. By them putting
11 that she's a liar and not letting her explain, "Well, I
12 lied because the Defendant was next to me," that creates
13 a false impression in the mind of the jury that she
14 simply lied that day. Whereas, it would be more
15 appropriate and the context would be correct if she
16 could explain, "I lied that day, yes; I lied that day
17 because of what has happened in the past and what I knew
18 he was capable of." At this point the jury thinks she
19 just lied.

20 MR. MEGARO: Judge, at this point the jury
21 has prior inconsistent statements that impeach her trial
22 testimony.

23 MR. RAMSAY: Judge, he's called her a liar.
24 I mean he said, "You lied on the 30th." That's what he
25 said. That was his question.

1 MR. MEGARO: She -- she said she lied on
2 the 30th.

3 MR. RAMSAY: And then she couldn't explain
4 why she lied, and she's entitled -- if he asks the
5 question, "You lied," she's entitled to explain why.

6 THE COURT: All right, I agree. I believe
7 the jury has -- I believe it's admissible for the
8 purposes the State cited to refute the defensive theory
9 that she's lying, that this is a fabrication and that
10 she's doing it simply to -- as the means to get her
11 child back, so I'm going to let the assault --
12 extraneous assault come in, and I -- I believe the
13 evidentiary effect outweighs the prejudicial value of
14 it.

15 MR. MEGARO: I would just have to have a
16 standing objection to this to preserve the record for
17 purposes of appeal.

18 THE COURT: Granted.

19 MR. MEGARO: And, Judge, I guess -- should
20 I wait until the jury comes back? I was going to offer
21 the Defense exhibits that have been marked for
22 identification into evidence at this time.

23 THE COURT: Offer --

24 MS. LABORDE: He passed the witness at this
25 point.

1 MR. MEGARO: Well, I don't have -- I
2 don't -- I think I can wait even until the witness is
3 done before offering them. I mean the foundation --

4 THE COURT: I don't mind you offering them.
5 I've heard the --

6 MS. LABORDE: I mean I think we discussed
7 the letter is not inconsistent with her testimony, so
8 that -- we object to the 2 because it's hearsay and it's
9 not inconsistent with her testimony. That's what I
10 approached the bench and showed you. "I am not involved
11 with the Court you are in." It's not, "I don't want to
12 go to court," which is what the questions was, so we
13 object to 2. I don't suppose we object to the pictures
14 which I think are -- are just 3B, C and D, but we object
15 to the envelope. It's just hearsay. It's not
16 inconsistent with anything.

17 THE COURT: All right. I'll sustain that.
18 I'll admit the pictures. Now the statement that she
19 gave on the 30th, that's -- that's not admissible.

20 MR. MEGARO: Judge, I believe it's a prior
21 inconsistent statement that the whole thrust of that
22 statement is to force the blame onto the baby-sitter
23 which is inconsistent with her trial testimony. That's
24 a statement that appears to be under -- not necessarily
25 under -- well, it might actually be under oath, but --

1 but, nevertheless, it's inconsistent with her trial
2 testimony here. She has authenticated the -- the
3 document as hers.

4 THE COURT: She's -- but she's also
5 admitted the conduct, and that makes the extrinsic --
6 extrinsic statement itself not admissible.

7 MS. LABORDE: Your Honor, she -- she's
8 admitted she made the statement, so no extrinsic
9 evidence is admissible at that point.

10 THE COURT: That -- that's correct.

11 MR. RAMSAY: And even if it -- she had, I
12 mean -- never mind.

13 THE COURT: So I'm going to admit the
14 photographs.

15 MS. LABORDE: And they're right here.
16 It's 3B, C and D. The State has no objections to those.

17 THE COURT: All. They're admitted, and I
18 sustain the State's objections to the --

19 MS. LABORDE: 1, 2A and 2B and then 3A.

20 THE COURT: I forgot --

21 MR. RAMSAY: Which is the envelope.

22 THE COURT: -- what 3A was.

23 MS. LABORDE: Three-A is the envelope those
24 pictures go in.

25 THE COURT: All right, sustained.

1 All right. Bring in the jury.

2 (The jury was seated in the jury box.)

3 THE COURT: All right. You may proceed.

4 MS. LABORDE: Just for purpose of the
5 record, outside the presence without objections the
6 Defense's Exhibits 3B, 3C and 3D, the photos that were
7 talked about, Your Honor --

8 THE COURT: They are admitted.

9 MR. MEGARO: Well, not necessarily without
10 objection, Your Honor.

11 MS. LABORDE: I didn't object to those.

12 THE COURT: They're admitted.

13 REDIRECT EXAMINATION

14 BY MS. LABORDE:

15 Q. Okay. Now, Taylor, I want to -- I want to talk
16 to you for a second about what's going through your mind
17 on August 30th. That's the day you write the first
18 statement, and I think it's still in front of you.

19 A. Yes.

20 Q. Is that right?

21 A. Yes.

22 Q. You were asked on cross-examination, you know,
23 that you admit that that's not true. Is that right?

24 A. Yes.

25 Q. And, again, why did you say that you had

1 done that?

2 A. Because we were sitting next to each other.

3 Q. And how -- did you -- how did you feel?

4 A. I was scared.

5 Q. Why?

6 A. Because if I was to testify against this man or
7 to say the truth, I was still going to go home with him.

8 Q. Had you driven there together?

9 A. Yes.

10 Q. And had -- did you have every expectation if he
11 wasn't going to say who did it and you didn't know --
12 you knew you didn't do it, did you have any reason to
13 believe you weren't riding home with him?

14 A. No.

15 Q. Now had there been violence in your
16 relationship before?

17 A. Yes.

18 MR. MEGARO: Your Honor, I have a standing
19 objection to this.

20 THE COURT: You do. It's overruled.

21 Q. (BY MS. LABORDE) And can you tell us when that
22 occurred?

23 A. When I was about five, six weeks pregnant.

24 Q. So -- and how did that -- how did that come
25 about?

1 A. We were fighting over Facebook.

2 Q. Is that a similar fight to the one you had when
3 you go to the specialist about Facebook or a different
4 one?

5 A. No. He was trying to get my -- my iPod from
6 me.

7 Q. All right, and why?

8 A. Because he wanted to go through my messages
9 from people from school.

10 Q. And is that school like the friends you had
11 from high school?

12 A. Well, I was still in -- well, yeah, right after
13 I graduated, yeah.

14 Q. So you still had a group of friends from
15 school?

16 A. Yeah.

17 Q. Okay, and how -- how did -- this argument
18 about, "Let me see your iPod," and you say, "No," how
19 did that become physical?

20 A. Because I was holding it like this, and he
21 wanted to get it from me, so he kept like trying to grab
22 it, and then I got up, and he kept trying to get it from
23 me, and so he would push me to get it, and I finally --
24 we went around the room once. I broke -- we broke my
25 black light, and there was glass everywhere, so I

1 stepped on it. I had glass on my foot, and then he was
2 pushing me, and I fell into the wall, and I hit my
3 stomach on the dresser, and I fell to the floor, and he
4 was -- he was on top of me, and he had his hand here,
5 and my sister had walked in to him on top of me with his
6 hand here.

7 Q. Where did that happen?

8 A. In my room in Milford.

9 Q. And did you -- were you afraid for your baby?

10 A. I started bleeding really bad after it, so I
11 had to go to the hospital.

12 Q. And did you go to the hospital?

13 A. I went to the hospital in Hillsboro, and I -- I
14 didn't go home after that. I was too scared to go home.

15 Q. Where did you go?

16 A. I went to my friend's house in Whitney.

17 Q. Did the Defendant go with you to the hospital?

18 A. No, he left. He was drinking that night.

19 Q. So just to kind of back up, you -- you cut --
20 you hurt your foot?

21 A. Well, I -- yeah, my foot was bleeding, and so I
22 was trying to walk away, and then he pushed me, and I
23 fell into the wall, and I hit my stomach on my dresser.
24 It's a metal dresser, and the handles are kind of like a
25 little square, and my stomach got hit on the square of

1 the corner of the handle, and I fell, and then --

2 Q. You just said you were bleeding earlier?

3 A. Well, I was bleeding like vaginally, and I was
4 pregnant, so I thought it was from maybe him being on my
5 stomach hitting my stomach or from him choking me.

6 Q. Okay, so you were afraid that you had had some
7 kind of injury that may have -- you maybe had --

8 A. Lost the baby.

9 Q. At this point you'd had a home pregnancy test.
10 Had you gone to the doctor yet?

11 A. No. I only had a home pregnancy test.

12 Q. Were you afraid you were losing the baby?

13 A. Yes.

14 Q. Did you tell the Defendant you were afraid you
15 were losing the baby, or had he left?

16 A. I didn't talk to him after that. He had left
17 already.

18 Q. So he was -- the Defendant was also on top of
19 you choking you?

20 A. Yeah. He was on top of me, and he had his hand
21 like this, and he was having the iPod in his hand above
22 me.

23 Q. So -- so choking you or just really kind of
24 keeping you from getting up.

25 A. Well, it was choking, like I couldn't -- I had

1 like a little handprint and everything whenever I went
2 to the hospital.

3 Q. And your sister walked in at that moment?

4 A. My sister walked in at that moment.

5 Q. And what did he -- did the Defendant leave
6 then?

7 A. Yes.

8 Q. Now after that you didn't -- you didn't break
9 up with him, correct?

10 A. I --

11 Q. Or did you?

12 A. I just didn't talk to him, but then I finally
13 went -- like my -- everyone was trying to keep us apart.
14 I -- I didn't go back to work for a little while, and
15 then once I finally went back to work, I saw him, and
16 it -- kind of he was trying to get back with me, and so
17 I did get back with him.

18 Q. And did you tell people at the work that you'd
19 had to go to the hospital?

20 A. Well, I had to have a doctor's note.

21 Q. Because you missed work?

22 A. Yeah, so it's a small town, a small restaurant.
23 It got around.

24 Q. But you got back with him?

25 A. Yes.

1 Q. Was there ever any physical abuse of you again?

2 A. No, just mental.

3 Q. What does that mean?

4 A. Like he like would -- after I was scared of
5 him, like he would make me feel degraded, or I was -- I
6 was just already scared of him after that.

7 Q. And so again -- and I think I asked you this
8 before, but why not just -- why not just leave him?

9 A. He would find me.

10 Q. You thought he would find you. Did you still
11 love him even though this had happened?

12 A. I loved him.

13 Q. And you've been in counseling. Is that right?

14 A. After.

15 Q. After -- after this, after --

16 A. Yes.

17 Q. -- you -- you're trying to get M [REDACTED] back?

18 A. Yes, and I learned what was -- like I went --
19 took counseling for to learn about strong relationships
20 and what is mental and physical abuse.

21 Q. Did you know any of that before?

22 A. No.

23 Q. So all the -- now I'm jumping subjects. Sorry.
24 All the times that you're taking M [REDACTED] to these well
25 check appointments, the doctors, too, aren't telling you

1 that there's anything wrong with him. Is that right?

2 A. They're not telling me anything is wrong with
3 him.

4 Q. They're handling him at least a little bit,
5 correct?

6 A. Yeah. They have to take off his diaper,
7 uh-huh.

8 Q. And so they're holding him, and he -- did he
9 ever seem fussy at the doctor?

10 A. No.

11 Q. And they don't tell you anything to make you
12 think he's being abused?

13 A. No.

14 Q. Did he ever have any x-rays while he had well
15 check appointments?

16 A. No, because it was only at the Health Clinic.

17 Q. So it's just is he meeting his milestones?

18 A. Yeah.

19 Q. He gets his shots?

20 A. His shots, yeah.

21 Q. Not -- they're not doing full bone scans or
22 anything like that?

23 A. No, because I couldn't find him an actual
24 doctor until he was two months in the city of Waco.

25 Q. So you were just going to the clinic?

1 A. Yes.

2 Q. And he's on Medicaid. Is that right?

3 A. Yes.

4 Q. So that being said, I mean you're not -- you're
5 not coming in here saying that, you know, when in
6 Temple when the child abuse people find all these --
7 can you see? This has already been admitted. It's
8 State's Exhibit No. 14, this -- this picture of Max and
9 all his broken bones. I mean you're not saying that
10 that's not true, are you?

11 A. I've never seen the x-rays.

12 Q. Okay. You've never seen the x-rays?

13 A. (Shakes head.)

14 Q. People have told you, but they didn't show you
15 the x-rays. Is that right?

16 A. (Shakes head.)

17 Q. So if this jury has seen the x-rays, they
18 actually know more about it than you do. Is that fair
19 to say?

20 A. (Nods head.)

21 Q. I'm sorry. I didn't mean to do that to upset
22 you, but if there's been any suggestion that he's just
23 not hurt, that's not true, right? He was hurt?

24 A. He was hurt.

25 Q. Do you wish that you would have noticed?

1 A. I wish I would have known.

2 Q. But even the doctors didn't notice?

3 A. And that's why I got my baby returned to me
4 because I took him to the doctor, and I have statements
5 saying that I took him to the Health Clinic.

6 Q. And the Defense attorney had made a big deal
7 about they filed a petition to terminate your parental
8 rights. Is that right?

9 A. Yes.

10 Q. And they filed a petition to terminate the
11 Defendant's parental rights, too, didn't they?

12 A. And he gave his rights away.

13 Q. Yes. There was no trial in CPS court, was
14 there?

15 A. No, there was not.

16 Q. You did everything you had to do on your plan
17 to get M [REDACTED] back, and now you share him with your --
18 your dad and your step-mom, correct?

19 A. Well, I have him. I have custody. They just
20 get to determine like -- yes, I share him.

21 Q. Okay. Do they determine primary domicile, like
22 where he lives most of the time? Do they get to decide
23 that, or is it joint?

24 A. It's -- it's just they get to decide where
25 he -- if my living environment is good for him or not.

1 That's it.

2 Q. So -- so failing to understand what this
3 Defendant was doing, failing to see injuries that even
4 doctors couldn't see has cost you the ability to be a
5 single parent on your own, hasn't it?

6 A. Yeah.

7 Q. I mean at least for now. Do you remember
8 talking about this with the criminal defense attorney at
9 your job and them giving you advice --

10 A. Yes.

11 MR. MEGARO: Objection.

12 MS. LABORDE: -- about what you should do?

13 MR. MEGARO: We did not give her advice.

14 THE COURT: Sustained.

15 Q. (BY MS. LABORDE) Do you recall Mr. Ray telling
16 you you should wait to try and get primary custody until
17 this criminal case was over?

18 A. Yes.

19 Q. Do you remember reading that in there?

20 A. Yes.

21 Q. Did they present like they were -- had your
22 best interests in mind?

23 A. Yes.

24 MR. MEGARO: Objection.

25 MS. LABORDE: Your Honor, I think I'm

1 allowed to ask that question.

2 THE COURT: Overruled.

3 MR. MEGARO: Well, Judge, why don't we just
4 introduce the CD, and we can -- they just can hear it
5 all for themselves.

6 THE COURT: Overruled.

7 Q. (BY MS. LABORDE) Did they present like they
8 cared about you?

9 A. Yes.

10 Q. And -- and you read in there where Mr. Megaro
11 talked to you about postpartum depression in men?

12 A. Yes.

13 Q. I mean you didn't just make that up. That's
14 actually in the transcript, isn't it?

15 A. Yes.

16 Q. Has this Defense attorney treated you a lot
17 differently than he did at your work?

18 A. Yes.

19 Q. Did you know he was setting you up for this?

20 A. No.

21 MR. MEGARO: Objection as to "setting up,"
22 Your Honor. Your Honor, I'm doing my job as a Defense
23 lawyer.

24 THE COURT: Sustained.

25 Q. (BY MS. LABORDE) But you wouldn't have been

1 submitted to being recorded?

2 A. No.

3 Q. And you thought you were having a conversation.

4 Is --

5 A. Yes.

6 Q. -- that right? And you -- you -- you recall in
7 there saying, "I was afraid of everybody"?

8 A. Yes.

9 Q. "Everybody was pressuring me"?

10 A. Yes.

11 Q. You were afraid of going to jail?

12 A. Yes.

13 Q. Now I want to ask you something. Don't you
14 think someone should go to jail?

15 A. Yes.

16 Q. He was hurt really bad?

17 A. Yes.

18 Q. And you should have been scared, right, because
19 the police didn't know who did it?

20 A. I had to visit my baby, and he had a cast, and
21 like it was the most horriblemest (sic) thing to see.

22 Q. He couldn't move his arm?

23 A. He -- he doesn't suck his thumb anymore just
24 because of that.

25 Q. That broke him of that. Okay, so his childhood

1 was changed because of that?

2 A. And I want to put him in sports, but I have to
3 be careful and like always this is always going to be
4 something that I have to -- I'm going to have to tell my
5 son about this when he gets older.

6 MS. LABORDE: I'll pass the witness.

7 CROSS-EXAMINATION

8 BY MR. MEGARO:

9 Q. Ms. Garcia, during our interview I specifically
10 told you several times that I could not give you legal
11 advice, didn't I?

12 A. Yes.

13 Q. And I specifically told you if you wanted legal
14 advice you should talk to your own attorney, right?

15 A. Yes.

16 Q. Every time you asked me for advice I said,
17 "I'm sorry; I represent this man, and I cannot advise
18 both of you," right?

19 A. I don't remember.

20 Q. Please turn to Page 68 of your transcript and
21 read the last several lines at the bottom, starting
22 with -- we're in the middle of the page where it says
23 "Ms. Garcia," right after "Mr. Ray." Do you see that?

24 A. You said "68"?

25 Q. Page 68.

1 A. Yeah.

2 Q. You asked me, "Is there anything I should do
3 like take precautions or anything," right?

4 A. Uh-huh.

5 Q. And my response to you was, "I can't. I can't
6 advise you. I'm so -- I'm very sorry. I'd love to, but
7 I can't advise you as to what you can or shouldn't do
8 with that. It's improper for me to say anything. What
9 I can tell you is I know it's an expense, but if you
10 have any worries, you should seek your own attorney,"
11 right?

12 A. Yes.

13 Q. And that wasn't the only time during that
14 interview I told you that, right?

15 A. Yes.

16 Q. I'm going to ask you to take a look at
17 Defense 2A and 2B again for identification that's up
18 there, the envelope?

19 A. I don't have it.

20 MR. MEGARO: They were up there. Oh, may I
21 approach the witness, Your Honor?

22 THE COURT: You may.

23 MR. MEGARO: And do you have 2A -- 2B,
24 rather? Okay. It's actually in there.

25 Q. (BY MR. MEGARO) By the way, when you sent

1 Mr. Ortiz those two letters in 2013, did you use your
2 own name?

3 MS. LABORDE: Your Honor, I'm going to
4 object. This is hearsay. I mean we've already --

5 THE COURT: Sustained.

6 MS. LABORDE: -- discussed this several
7 times.

8 Q. (BY MR. MEGARO) Have you ever used --

9 MS. LABORDE: You Honor --

10 MR. MEGARO: -- a name other than --

11 MS. LABORDE: -- I'm going to object to
12 this as being irrelevant, and I would ask him to stop
13 testifying.

14 THE COURT: I'll overrule as to the
15 question I think you're asking, "Has she ever used
16 another name?"

17 Q. (BY MR. MEGARO) Have you ever used another
18 name?

19 MS. LABORDE: Objection, relevance.

20 THE COURT: Overruled.

21 THE WITNESS: Garcia.

22 Q. (BY MR. MEGARO) No. Have you ever used
23 another name other than Taylor Garcia?

24 A. Yes.

25 Q. What other name have you used?

1 A. The one on the letter.

2 Q. And what name is that?

3 MS. LABORDE: Your Honor, I'm going to
4 object. This is hearsay.

5 MR. MEGARO: I'm not asking her to read --

6 MS. LABORDE: What is it relevant to prove?

7 THE COURT: Overruled.

8 Q. (BY MR. MEGARO) I'm not asking you to read
9 from the letter, but what -- what other name have you
10 used?

11 A. Just this one.

12 Q. And that's the name "Nicholasa Galendo"?

13 A. No.

14 Q. Did I say that wrong?

15 A. It's "Nicholasa," and that's my middle name.

16 Q. Okay. Your middle name is Nicole?

17 A. Yes, for Nicholasa.

18 Q. Okay, and what other last name have you used?

19 A. Galendo, my grandma's.

20 Q. That's not your true name, right?

21 A. Not Galendo, no.

22 Q. Nicholasa Galendo is not your true name?

23 A. No, sir, and this is not my true address
24 either.

25 Q. So you used a fake name and a fake address?

1 A. Yes.

2 Q. You testified to this jury that this man choked
3 you and hit you while you were pregnant with this child,
4 right?

5 A. Uh-huh.

6 Q. You have to say "yes" or "no."

7 A. Yes.

8 Q. So this man that had choked you and hit you
9 while you were pregnant, you wanted to go visit him
10 while he was in jail last year, correct?

11 A. Yes.

12 Q. At that point you haven't seen him for over a
13 year, correct? He's out of your life?

14 A. Two years.

15 Q. Okay. Well, I'm not talking about today. I'm
16 talking about in 2013. He's been out of your life for
17 over a year, right?

18 A. Yes.

19 Q. And he's not coming back into your life, right?

20 A. No, sir.

21 Q. Now the District Attorney asked you about him
22 terminating his parental rights or giving up his
23 parental rights, right? Right? She asked you that on
24 redirect examination?

25 A. Yeah, yes.

1 Q. Didn't I explain to you why --

2 MS. LABORDE: Your Honor, I'm going to
3 object to that. Whatever this Defense attorney said out
4 of court is a hearsay statement.

5 THE COURT: Sustained.

6 Q. (BY MR. MEGARO) You testified --

7 MR. MEGARO: Actually, can I have this
8 marked as -- actually, I'll mark it. It's going to be
9 the 8-31-2012 statement. Your Honor, may I approach the
10 witness?

11 THE COURT: You may.

12 Q. (BY MR. MEGARO) I'm going to show you what's
13 been marked as Defense 4 for identification. Please
14 take a look at that, and look up when you're done?

15 THE COURT: While she's looking that over,
16 for -- Mr. Megaro, for the record just tell us what
17 Defense Exhibit 4 is.

18 MR. MEGARO: August 31, 2012, statement by
19 Taylor Garcia.

20 THE COURT: Ladies and Gentlemen, go ahead
21 and stand up and stretch a moment. We're going to go to
22 lunch pretty soon.

23 (The jury complies.)

24 THE COURT: Proceed.

25 Q. (BY MR. MEGARO) Have you read through that?

1 A. Yes.

2 Q. And you told this jury that this man punched
3 and -- I'm sorry -- choked you and hit you, right? You
4 said that this -- you told this jury that this man had
5 hit you and choked you while you were pregnant, right?

6 A. I didn't say "hit," but I said "choke," yes.

7 Q. Okay. You didn't call the police?

8 A. No.

9 Q. You didn't call your mom?

10 A. My mom is in Houston.

11 Q. You didn't call her, right?

12 A. No.

13 Q. You didn't call your dad?

14 A. No.

15 Q. You didn't tell the police that on
16 August 30, 2012, right, that this man had hit you --

17 A. No.

18 Q. -- or choked you, rather?

19 A. No.

20 Q. You did give a statement on August 31, 2012?

21 A. Yes.

22 Q. Show me where in that statement it says that
23 this man choked you?

24 THE COURT: Mr. Megaro, she just testified
25 it's not in there.

1 MR. MEGARO: No. I -- I said
2 "August 30th." I'm asking her about August 31st now.

3 THE WITNESS: It's not in there.

4 Q. (BY MR. MEGARO) It's not in there, right? You
5 didn't stay with your sister after that incident?

6 A. No.

7 Q. Your sister didn't call your parents?

8 A. No.

9 Q. Your sister didn't call the police?

10 A. No.

11 Q. The friend that you went to stay with, she
12 didn't call your parents?

13 A. No.

14 Q. She didn't call the police either?

15 A. No.

16 MR. MEGARO: I have no further questions
17 for the witness, Your Honor.

18 THE COURT: Redirect?

19 MS. LABORDE: Yes.

20 FURTHER REDIRECT EXAMINATION

21 BY MS. LABORDE:

22 Q. Taylor, were you aware of all the names that
23 the Defendant goes -- went by?

24 MR. MEGARO: I couldn't hear the question.

25 Q. (BY MS. LABORDE) Were you aware of all the

1 names the Defendant went by at various times?

2 MR. MEGARO: Objection, Your Honor, that's
3 beyond the scope.

4 MS. LABORDE: There is no beyond the scope
5 objection in Texas.

6 THE COURT: Overruled.

7 Q. (BY MS. LABORDE) Are you aware of the
8 Defendant going by Alfredo Alejandro Ortiz Medina --

9 A. No.

10 Q. -- date of birth 5-18-85?

11 MR. MEGARO: Your Honor, I'm going to
12 object to this entire line of questioning.

13 MS. LABORDE: Your Honor, he attempted to
14 impeach her for using a false name to write this
15 Defendant. I think I should be able to ask her about
16 his false names.

17 MR. MEGARO: Objection, Your Honor. Then
18 they should not be -- can we approach?

19 THE COURT: Yeah, all right.

20 MR. MEGARO: Can we approach on the record?

21 THE COURT: Ladies and Gentlemen, let's go
22 ahead and recess for lunch. You all don't talk about
23 this or allow anyone to talk about it to you. Stay away
24 from all media coverage. We'll see you back at 1:30.

25 THE BAILIFF: All rise.

1 (The jury retired from the courtroom.)

2 THE COURT: All right. We're outside the
3 presence and hearing of the --

4 MR. MEGARO: Judge --

5 THE COURT: -- jury. Go ahead, Mr. Megaro.

6 MR. MEGARO: -- the Court's ruling after
7 cross-examination was confined to prior assaultive
8 conduct.

9 THE COURT: Yeah, I agree with you,
10 Mr. Megaro. I'm -- I'm going to sustain the objection.

11 MR. MEGARO: I'm constrained to move for a
12 mistrial on the basis that the jury has now heard
13 evidence of other uncharged criminal activity. If I
14 don't move for a mistrial, I will be found ineffective.
15 I could be found ineffective, but I'm --

16 THE COURT: I deny -- I deny the motion for
17 a mistrial.

18 MS. LABORDE: So the fact that this
19 Defendant uses false names is not admissible, but the
20 fact that she did is. He didn't develop that testimony
21 to say that she didn't want him to know his (sic)
22 identify. She just -- he just wanted to prove she was a
23 liar. By presenting all of these different names to the
24 public, he was a liar just as much as she was. His
25 statements are in evidence. We should be allowed to

1 show that he is also a liar on the same subject.

2 MR. MEGARO: My client has not taken the
3 witness stand, Your Honor. It's a one-way street at
4 this point because the witness is in the witness stand.

5 THE COURT: Yeah. I'm going to sustain the
6 objection. We're not going into that.

7 MR. MEGARO: Can I ask that a curative
8 instruction be given to the jury after lunch as to
9 disregarding everything that they've heard regarding any
10 other names --

11 THE COURT: Yeah. I'll --

12 MR. MEGARO: -- other than "Miguel,"
13 of course.

14 THE COURT: Yeah. I'll -- I'll give such
15 an instruction. All right. See you all at 1:30.

16 (A recess was taken from 11:50 AM
17 to 1:51 AM.)

18 (Open court, Defendant present, no jury.)

19 THE COURT: All right. You all be seated.
20 We have some things to talk about. You all give me an
21 idea of how many more witness you all have today.

22 MS. LABORDE: I think we're going to call
23 one more after this, but I think we have a couple for
24 rebuttal.

25 THE COURT: How many do you anticipate,

1 Mr. Megaro?

2 MR. MEGARO: Judge, I think probably only
3 my investigator to lay the foundation and to testify
4 briefly about the actions that were taken on the date of
5 the interview, but other than that I have two other
6 witnesses that are -- they're in the hallway. If I
7 decide to call them, I believe it would be very quick,
8 and the big question is my client, which I have prepared
9 him to testify, but we haven't arrived at that
10 conclusion yet since we're waiting for --

11 THE COURT: I understand that.

12 MR. MEGARO: -- the rest of evidence.

13 THE COURT: In the event you're unable to
14 finish tomorrow, I had broached the possibility of
15 working on Saturday. Deputy Hutyra was in contact with
16 his superiors who informed him there's no way the
17 Sheriff's Office can accommodate that. Now what they
18 would do if I issued a direct order and told them we
19 were going to be there, that's a different story, but I
20 don't want to have to do that if I don't have to.
21 Ms. LaBorde, you said you were going on vacation
22 starting Sunday?

23 MS. LABORDE: (Nods head.)

24 THE COURT: How long is your vacation?

25 MS. LABORDE: It's -- we get back on

1 Saturday.

2 THE COURT: The following week.

3 MS. LABORDE: (Nods head.)

4 THE COURT: If we do not finish and
5 Saturday is out of the question, the only thing to do
6 would be to continue this matter for all of next week
7 and resume the following week.

8 MS. LABORDE: We have a trial starting on
9 December 1st.

10 THE COURT: What?

11 MS. LABORDE: We have a trial starting
12 December 1st in the 54th.

13 THE COURT: Well, then it just wouldn't
14 start, would it? And there's no -- there's no absolute
15 assurances that even if we worked on Saturday that we'd
16 get through, and that would face us with still the issue
17 of not being true -- not being through, and as I was
18 leaving for lunch one of the jurors, a young man on the
19 front row there, was asking me -- he said, "I have a
20 question about scheduling," and I told him we would
21 address that after -- after lunch, so it appears to me
22 the best course of action is to -- I hate to do it --
23 but to recess -- when we get through this week, wherever
24 we get to that, we simply recess the jury until --

25 MS. LABORDE: Well, Your Honor, what about

1 if we -- if we had a verdict on guilt and it would be
2 just the punishment phase starting on Monday, I think
3 Mr. Ramsay could do that without me.

4 THE COURT: On when?

5 MS. LABORDE: On Monday.

6 THE COURT: Oh, on Monday.

7 MS. LABORDE: I just don't think it's --

8 THE COURT: But I don't know what -- see, I
9 don't know what the jurors' schedules are either.

10 MS. LABORDE: For Monday?

11 THE COURT: For Monday.

12 MR. RAMSAY: That's true with a holiday.

13 THE COURT: Would you all like me to
14 inquire of them what their status is?

15 MR. MEGARO: That probably would be the
16 best course of action, just to see.

17 MS. LABORDE: Also about working late.

18 THE COURT: What?

19 MS. LABORDE: Also about working late, like
20 working late tonight, working late tomorrow.

21 THE COURT: Yeah.

22 MS. LABORDE: Your Honor, also, like can
23 that juror make arrangements for someone else to
24 officiate that game if it meant he could be finished
25 this week as opposed to coming back?

1 THE COURT: Do you recall him saying what
2 it was he was having to go --

3 MS. LABORDE: A football game.

4 THE COURT: A football game?

5 MS. LABORDE: A high school football game
6 playoff.

7 THE COURT: All right. Let's bring the
8 jury in and see if we can sort through some of this
9 mess.

10 (Off the record from 1:55 PM to 1:56 PM.)

11 (The jury was seated in the jury box.)

12 THE COURT: All right. Ladies and
13 Gentlemen, good afternoon. Outside your presence we
14 have been having some discussions about scheduling. One
15 of the members asked me a question about that on the way
16 to lunch, and I said we would address that matter after
17 lunch. I'm afraid no matter how you cut it the news is
18 not good. I anticipated when this trial started and I
19 think everyone did in good faith that we would be able
20 to be through this week, and that issue is now seriously
21 in question, so there's some -- I need to discuss some
22 possibilities with you about what we might do if we
23 don't finish this week, and it just doesn't look like
24 we're going to.

25 We can work late -- late into the evening

1 if all of you are available to do that, but even so I --
2 I know that tomorrow some of you had out-of-town plans
3 and that we might have to break early tomorrow in order
4 to accommodate that unless those plans are -- are
5 flexible to be changed. If we worked late tonight and
6 most of the day tomorrow, there's a possibility we could
7 get through on Friday, but even that might be
8 questionable. If we do not get through on Friday, we
9 had talked about having a rare session of court on
10 Saturday, but that's very difficult for the
11 Sheriff's Office to be able to accommodate. This is all
12 complicated by the fact that we have a holiday
13 approaching, Thanksgiving next week, which is going to
14 be a short week.

15 I guess I need to ask of you how many of
16 you are available on Monday and Tuesday of next week.
17 Can all of you be here if we had to have court on Monday
18 and/or Tuesday next week? Is there anybody on the jury
19 who absolutely just simply cannot do that? All right.
20 It looks like all of you can.

21 About tonight, how many of you have
22 childcare or people -- I mean how many of you cannot
23 stay past five or six o'clock tonight, anybody, if
24 you're given a little notice now? I wish everybody was
25 as easy to deal with as you all are.

1 THE JUROR: Sir, I will tell you that I can
2 make a phone call to make sure I can be here tonight,
3 but I -- I do have a child, but I think I can get it
4 addressed is what I'm telling you.

5 THE COURT: How soon would you need to make
6 that phone call?

7 THE JUROR: The next break will be fine.

8 THE COURT: Okay, all right. Counsel, now
9 I think we'll try to work as long as we can this
10 afternoon and tonight and try to get as much done
11 tomorrow. If we can't, we will come back on Monday.
12 That means I would have to reschedule all of my normal
13 plea docket, but I can deal with that --

14 MS. LABORDE: But then we also had a
15 potential problem tomorrow, as I understood.

16 THE COURT: Oh, I completely forget.
17 Ms. LaBorde, you're going on vacation --

18 MS. LABORDE: No, no, no, no, no, not that.
19 About tomorrow I thought a juror had an obligation
20 tomorrow.

21 THE COURT: Yes. Sir, on the front row,
22 you'd indicated you had to be out of town.

23 THE JUROR: I cancelled that.

24 THE COURT: You what?

25 THE JUROR: I cancelled it.

1 THE COURT: Oh, you did?

2 THE JUROR: Yes, sir.

3 THE COURT: You were ahead of us, weren't
4 you?

5 THE JUROR: Yeah. I figured, you know, I
6 better.

7 THE COURT: Well, I appreciate that, sir.
8 I -- I -- my apologies to you because --

9 THE JUROR: That's okay.

10 THE COURT: -- none of us anticipated --

11 THE JUROR: I didn't feel like getting
12 yelled at, anyway.

13 THE COURT: Oh, yeah, all right. Let me
14 inquire of my coordinator. I have -- I have pretrial
15 matters scheduled for in the morning. How much do we
16 have that we can't get through by nine o'clock or --

17 THE COURT ADMINISTRATOR: It will be at
18 least 9:30. We have quite a bit.

19 THE BAILIFF: Judge, may I approach?

20 THE COURT: You may.

21 (At the Bench, off the record.)

22 THE COURT: All right. Ladies and
23 Gentlemen, we'll get back to the trial. Right before
24 lunch there was an objection raised by the Defense
25 regarding the Defendant having used other names in the

1 past. I am sustaining that objection and instructing
2 the jury they're to disregard the comment or the answer
3 of the witness to that particular question. You may
4 proceed.

5 Q. (BY MS. LABORDE) Taylor, I just have one more
6 question. What we can't see from the transcript is what
7 the tone of this Defense attorney was when he was at
8 your -- your work and talking to you. Can you tell us?
9 Was it different? Was how this Defense attorney spoke
10 you in December when he was at -- a customer of yours
11 and at your restaurant, was he different than he was
12 today?

13 A. Yes. At the time I thought maybe he was on my
14 side trying to help me.

15 MS. LABORDE: Okay. I'll pass the witness.

16 FURTHER CROSS-EXAMINATION

17 BY MR. MEGARO:

18 Q. I did tell you I was on his side, though,
19 right? Right? You have to answer out loud.

20 A. Yes.

21 Q. I made that abundantly clear --

22 A. Yes.

23 Q. -- correct? And would you expect his lawyer to
24 fight for him just like you would expect your lawyer to
25 fight for you?

1 A. Yes.

2 MR. MEGARO: Nothing further for the
3 witness.

4 FURTHER REDIRECT EXAMINATION

5 Q. But you didn't have a lawyer there?

6 A. No.

7 MS. LABORDE: No further questions.

8 MR. MEGARO: Nothing more, Your Honor.

9 THE COURT: All right. You may step down,
10 ma'am. Thank you. Call your next witness.

11 MS. LABORDE: The State calls
12 Jennifer Garcia.

13 THE COURT: Ma'am, I need to swear you in,
14 please. Raise your right hand.

15 (The witness was sworn.)

16 THE COURT: Have a seat, please.

17 THE WITNESS: (Complies with request.)

18 THE COURT: Sign in, please.

19 THE WITNESS: (Complies with request.)

20 THE COURT: Proceed.

21 JENNIFER GARCIA,

22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. LABORDE:

25 Q. Ma'am, could you please state your full name

1 for the jury.

2 A. My name is Jennifer Michelle Garcia.

3 Q. And how are you related to the young lady that
4 just left?

5 A. Taylor Garcia is my younger sister.

6 Q. And there are ten or eleven years that separate
7 you all?

8 A. Yes.

9 Q. Okay, so you had -- all of your young childhood
10 you were an only child. Is --

11 A. Correct.

12 Q. -- that right? And then you had a little
13 sister?

14 A. Yes.

15 Q. Can you tell us what growing up your
16 relationship was like with Taylor?

17 A. We've always been very close. We've kind of
18 gone between sister and then mom and daughter because I
19 am ten years older than her.

20 Q. Was there a period in time when Taylor was in
21 her last year of high school that you all's mom left
22 Milford, Texas, and went to Houston?

23 A. Yes.

24 Q. And then at that time did you and Taylor stay
25 together and live together?

1 A. Yes. She lived in my home with me and my two
2 sons.

3 Q. Okay, so were you kind of her guardian at that
4 point?

5 A. Yes.

6 Q. If she had to be signed out of school, would
7 that have had to be you?

8 A. Yes.

9 Q. Do you remember when she got her job at the
10 Black Eyed Pea?

11 A. It was while she was in high school.

12 Q. When was the first time you ever met the
13 Defendant in this case?

14 A. I want to say during her senior year of high
15 school. Months, I don't know.

16 Q. Okay, before she became pregnant?

17 A. Yes.

18 Q. Did you ever have the Defendant over to your
19 house when you all lived in Milford?

20 A. Yes.

21 Q. Can you tell us at that time were you aware of
22 the Defendant being married?

23 A. No, not at the time, no.

24 Q. Or his age?

25 A. No. His age, I was not aware. He slowly got

1 older as time went on.

2 Q. And before I continue to ask you questions, do
3 you see the person that we refer to as the "Defendant"
4 or "Taylor's boyfriend" in the courtroom today?

5 A. Yes, right there.

6 Q. Can you identify him by something he's wearing?

7 A. A gray sweater.

8 MS. LABORDE: Your Honor, may the record
9 reflect she's identified the Defendant?

10 THE COURT: So reflected.

11 Q. (BY MS. LABORDE) Well, what do you mean,
12 "He slowly got older"?

13 A. As their relationship progressed, his age
14 went from around 19 to 20, and then I was told he was
15 maybe 22, and then I found out the truth that he is
16 only -- he was exactly one year younger than I am. He
17 shares the same birthday as I do.

18 Q. And what birthday is that?

19 A. February 21st, his is '83; mine is '82.

20 Q. And, in all fairness, was that the Defendant
21 telling you he was 19, 20, 23, 29, or was that Taylor?

22 A. That was my sister --

23 Q. Okay.

24 A. -- and when I asked why it just kept growing,
25 she said as time went on, he kept telling her --

1 MR. MEGARO: Objection, Your Honor. This
2 is double hearsay.

3 THE COURT: Sustained.

4 Q. (BY MS. LABORDE) Now without getting into what
5 she said --

6 A. Okay.

7 Q. -- did you ever have any conversations with the
8 Defendant about his age?

9 A. No. Other than knowing his birth month and
10 day, I didn't know the year at the time.

11 Q. So you knew from fairly early on you all shared
12 a birthday?

13 A. Correct.

14 Q. When did you find out the Defendant had
15 children?

16 A. That was later on after my sister became
17 pregnant, I want to say.

18 Q. So several months --

19 A. Yes.

20 Q. -- into their relationship? Had your sister
21 had serious romantic relationships prior to the one she
22 had with this Defendant?

23 A. No, not that I remember.

24 Q. Any other boys that are coming over?

25 A. No.

1 Q. Serious boyfriends?

2 A. No.

3 Q. Once you knew what the age difference was, was
4 that a concern?

5 A. Yes, very much so.

6 Q. Why?

7 A. She's a young girl, very impressionable, 17.
8 I mean it is against the law. I mean that --
9 especially, I just -- I thought it was too much of
10 an age difference for a 17-year-old girl to be dating
11 a 27-year-old man.

12 Q. Okay. Were you aware that in Texas once
13 you're 17 you actually can consent? It's under 17 that
14 you can't. Was there ever a time she was dating him
15 when she was 16?

16 A. No.

17 Q. "No," but that being said, that -- that was
18 still upsetting to you?

19 A. Yes. It was just too much of a gap.

20 Q. What about -- did you think there was a gap in
21 the way they behaved around each other? Did you have a
22 chance to observe them together?

23 A. Here and there, but it was -- it was brief.

24 Q. "It was brief"?

25 A. Yeah.

1 Q. So the idea is what really bothered you?

2 A. In the beginning, yes, it really did, and then,
3 like I said, it took awhile before I found out what his
4 true age was.

5 Q. How did you find out that Taylor was pregnant?
6 Did she tell you?

7 A. Yes.

8 Q. Was -- do you have an idea of whether or not --
9 considering that Max was born in June, of 2012, do you
10 know how early on in the pregnancy you found out?

11 A. It was pretty early on. I want to say I was
12 one of the first people that she told, even before she
13 told our parents.

14 Q. Now I want to draw your attention specifically
15 to a day that you observed an assault --

16 A. Correct.

17 Q. -- between the Defendant and your sister.
18 Where did that occur?

19 A. In my home.

20 Q. And what were you doing when you noticed
21 something was going on?

22 A. I was lying in my bed which is right across the
23 hall from her bedroom. My bedroom was right across the
24 hall, and I heard yelling. I heard items crashing down
25 to the ground, so I got up, and I heard them screaming.

1 I told my children who I was afraid of them waking up to
2 go into my room, close the door, and I would be right
3 back, and then I did go to Taylor's room, and I
4 witnessed it.

5 Q. Okay, so your children woke up?

6 A. Yeah.

7 Q. And you have two boys. Is that right?

8 A. Correct.

9 Q. How old were they at the time? That would
10 be 2011.

11 A. So seven and eight -- eight, nine, they were
12 still --

13 Q. So pretty young?

14 A. Yes.

15 Q. So what did you see when you went into Taylor's
16 room?

17 A. I saw Taylor laying on the floor close to her
18 closet.

19 Q. Did you see the Defendant?

20 A. Yes.

21 Q. What did you see?

22 A. He was kind of hovering over her. His -- his
23 hands were not on her, but he was kind of hovering over.
24 They were surprised when the door opened.

25 Q. What happened next?

1 A. I told him he needed to leave our home
2 immediately.

3 Q. Did Taylor appear upset?

4 A. Yes.

5 Q. How so?

6 A. She was crying. She was clutching her stomach.
7 She was -- she was -- she looked hurt, like physically
8 hurt.

9 Q. Where did she look hurt?

10 A. Stomach, and she was complaining that her
11 throat, her neck -- she was saying, you know, "My neck,
12 my neck."

13 Q. And did she make those statements to you when
14 she was still upset about what happened?

15 A. Yes.

16 Q. She's crying, and she's hurt, and she's
17 explaining what happened?

18 A. Yes.

19 Q. What else did Taylor say occurred?

20 A. That he became jealous and he started a fight,
21 and he threw a black light -- a long black light, and I
22 remember her feet being cut because she didn't have
23 shoes, and she had stepped on the glass.

24 Q. Did she complain of any other injuries?

25 A. Not that I can remember, the two major were the

1 neck and the stomach.

2 Q. Were you aware at that time that she was
3 already pregnant?

4 A. Yes.

5 Q. Now were you able to go to the hospital with
6 her because of your boys?

7 A. No.

8 Q. Did -- did a friend go with her?

9 A. Yes. Her best friend and her best friend's
10 grandfather, they drove her.

11 Q. And they went to the Hill County, or do you
12 know where they went?

13 A. To the hospital in Hillsboro, there's only one.
14 It's the Hill County Regional.

15 Q. Is that the closest to Milford?

16 A. Yes.

17 Q. Now did she come home?

18 A. I don't believe she came home that night. It
19 was early the next morning before she came home.

20 Q. And did you have an understanding that she
21 stayed with her friend?

22 A. Yeah. She told me she stayed with Angela
23 because she was worried about coming home, because if
24 she went to the hospital, she figured he would be real
25 upset.

1 Q. Now you're aware that -- you eventually moved
2 to -- to West to the same apartment complex that she's
3 living at with the Defendant, so you're aware that
4 they -- they don't break up --

5 A. Correct.

6 Q. -- after this assault? She told you her neck
7 hurt, and she told you her stomach was injured?

8 A. Yes.

9 Q. So this was a -- this was a pretty big deal for
10 a pregnant girl, wasn't it?

11 A. Yes, very much so.

12 Q. How did you feel about her not ending her
13 relationship with the Defendant?

14 A. I was upset. I did understand. I am a
15 survivor of domestic violence, so I've been there
16 before. I've been scared to leave my abuser for further
17 abuse, so there were instances where we saw Mr. Ortiz
18 driving around her house, and he would call and ask
19 questions about who was -- you know, there at her home
20 was possibly there, so I know she was afraid, and so,
21 like I said, being a young girl -- I was a 19-year-old
22 girl in a similar circumstance with an abuser, so I know
23 she was afraid.

24 Q. Did you see her afraid?

25 A. Yes.

1 Q. Did you see her talk on the phone with the
2 Defendant?

3 A. Yes.

4 Q. And without going into what she said, did some
5 of those conversations scare her?

6 A. Yes.

7 Q. Did they scare you?

8 A. Yes, very much so.

9 Q. Now that's not every conversation?

10 A. No.

11 Q. Why do you end up moving to where they're at?

12 A. She's young. She's pregnant. She is --
13 you know, it's her first child. I at the time was not
14 working, so I figured if I move close by I could be able
15 to help with the aftercare because she -- my sister told
16 me that she was told immediately after as soon as the
17 doctors release her she would have to go back to work.

18 Q. And in your experience is that actually not
19 possible?

20 A. Yeah. With a newborn, that's a little
21 difficult, but she was told by the father, "Six weeks
22 you need to go back to work; we have bills to pay."

23 Q. So were you interested in keeping the baby
24 after six weeks?

25 A. Yes. I would have loved to have been able to

1 care for my nephew.

2 Q. What -- what apartment did you have in that
3 Tokio Road apartment complex in West?

4 A. We had two -- there's two buildings
5 side-by-side. In the middle there's a stairwell. My
6 sister lived right up here, and I lived right at the
7 bottom, so every time they left their apartment to go
8 anywhere, they passed right in front of my front door.

9 MS. LABORDE: Your Honor, may I approach
10 the witness?

11 THE COURT: You may.

12 Q. (BY MS. LABORDE) Okay, so if I'm showing you
13 State's Exhibit No. 27, that building that --

14 A. Uh-huh.

15 Q. -- you're talking about, and you're saying that
16 this breezeway --

17 A. Correct.

18 Q. -- connects two different, separate buildings?

19 A. Yes.

20 Q. So if Taylor is up top, yours is down here?

21 A. Exactly.

22 Q. So you don't have a common wall?

23 A. No.

24 Q. But you would notice if she was walking out to
25 leave? Is --

1 A. Yes.

2 Q. -- that right?

3 A. You could hear the steps coming down the
4 stairwell.

5 Q. So down this stairs, it would like shake your
6 door as they came down?

7 A. Yeah.

8 Q. Okay. Did you ever get to keep Max?

9 A. No.

10 Q. Not once?

11 A. (Shakes head.)

12 Q. And you're shaking your head "no"?

13 A. No.

14 Q. Do you know where he went?

15 A. I was just told that he went to a baby-sitter
16 that Francisco knew.

17 Q. So would you have been able to watch M [REDACTED] for
18 free?

19 A. Yes.

20 Q. And did you personally tell the Defendant that?

21 A. Yes.

22 Q. But that was not allowed?

23 A. No. I just figured I'm family. My location
24 couldn't be more convenient for them. You know,
25 especially in a rush, you bring him right downstairs.

1 If anything is needed, I can walk upstairs and whatever
2 he needs if it's not in my home, or I could take him to
3 their apartment and put him down for his naps there. It
4 was convenient, or that's what I thought was convenient,
5 but I always told them I would have been free of charge.
6 It would have been family. I could have watched him any
7 hours.

8 Q. Did you -- and you didn't know Alejandra Perez?

9 A. No. I've never met her.

10 Q. Do you speak Spanish?

11 A. No.

12 Q. Did you ever speak Spanish with this Defendant?

13 A. No.

14 Q. What language did you speak in?

15 A. English.

16 Q. And does Taylor speak any Spanish or a little
17 bit or --

18 A. A little bit.

19 Q. Does Max speak any Spanish?

20 A. No, only what -- only what he's learned on
21 "Dora the Explorer," and, you know, that's it.

22 Q. Not something at home?

23 A. No, no, no.

24 Q. Okay.

25 A. Our primary language is English.

1 Q. How many times did you and Taylor and the
2 Defendant kind of go out to eat together with your kids
3 and Max or even when she was pregnant? Did that happen?

4 A. Out to eat, zero times.

5 Q. No times?

6 A. I don't remember going out to eat with them.

7 Q. What about having them come over to your
8 apartment?

9 A. My apartment after having Max, no.

10 Q. Or before, are you going to theirs?

11 A. A few times I went to theirs, and it was only
12 when my dad and step-mom were over to visit.

13 Q. So not on your own?

14 A. No. Maybe once or twice my kids would go up
15 there if she put trash on the balcony, and they would
16 run the trash for her, but that was the extent of it.
17 It wasn't -- my sister and I are very close. We were
18 used to seeing each other every day, so that was a
19 little difficult. I moved there in what I thought was a
20 good thing to help her, and we weren't allowed to go in
21 her apartment.

22 Q. Did the Defendant ever tell you you weren't
23 allowed?

24 A. No.

25 Q. So that was something -- that was information

1 you had from Taylor but not from the Defendant
2 specifically?

3 A. Correct.

4 Q. And you didn't just go anyways?

5 A. We tried to sneak up there, and she would call
6 to find out his whereabouts, and if he was on his way,
7 we'd run right back home. I didn't want to get her in
8 trouble. She was -- she was worried that she would get
9 in trouble if we were found there, so if her phone rang,
10 my sons and myself would be very quiet. We wouldn't
11 speak, and, typically, we would just go back to our
12 apartment.

13 Q. Were you at the hospital when Max was born?

14 A. Yes.

15 Q. Did you spend any time with her when she was on
16 her maternity leave when the Defendant would be at work?

17 A. Once, maybe twice.

18 Q. In that whole six weeks?

19 A. Yeah.

20 Q. Did you have any opinion based on your
21 observations of whether this Defendant controlled what
22 Taylor did?

23 A. Yes.

24 MR. MEGARO: Objection to her opinion,
25 Your Honor.

1 MS. LABORDE: Your Honor, I'm just asking
2 based on her personal observations.

3 THE COURT: As long as it's limited to
4 that.

5 THE WITNESS: I have witnessed when she's
6 been on the phone, and he makes her put it on speaker so
7 he could hear what the other person was saying. My
8 sister has told me prior to --

9 Q. (BY MS. LABORDE) Now without going into
10 what --

11 A. Uh-huh.

12 Q. -- what she said, did she -- was she able to
13 speak freely with other people --

14 A. No.

15 Q. -- when the Defendant was home?

16 A. No.

17 Q. What about use of her car, could she drive
18 wherever she wanted?

19 A. No. I don't remember her going anywhere other
20 than the doctor, grocery store, work.

21 Q. And they worked the same shift?

22 A. Yes.

23 Q. Did you have any idea why that was?

24 A. So he could see who she was talking to, who
25 she surrounded herself with and what was going on while

1 she worked.

2 Q. And the Defendant worked another job --

3 A. Correct.

4 Q. -- a couple of days. Is that right? So she
5 had some time away from him when he was at that other
6 job?

7 A. Yes.

8 Q. But even then you're saying you couldn't really
9 go and see her?

10 A. No.

11 Q. Did you ever hear the Defendant make any
12 comments about Max?

13 A. "He was ugly."

14 Q. That -- that Max was ugly?

15 A. Yes.

16 Q. How many times did you hear the Defendant say
17 that?

18 A. Less than a handful.

19 Q. So not that many times?

20 A. No, but I wasn't around them very much.

21 Q. How many times have you said your boys were
22 ugly?

23 A. Oh, they're the cutest things ever. I would
24 never say such a thing.

25 Q. Is Max the cutest thing, too?

1 A. Oh, yes.

2 Q. So did that make sense to you that he would say
3 that?

4 A. None whatsoever.

5 Q. Did you ever hear anything else that sticks out
6 to you?

7 A. No. He seemed pretty guarded.

8 Q. When you were around?

9 A. Yeah.

10 Q. Did you ever notice anything about Max's
11 behavior, like did he -- was he a fussy baby? Was he --

12 A. Very fussy.

13 Q. Compared to yours?

14 A. Yes.

15 Q. How so?

16 A. He whimpered a lot. He cried a lot. I figured
17 colic. My children had never had colic, but they did
18 have severe ear infections while they were young, and
19 they cried quite a bit, but he -- Max seemed to cry a
20 little more.

21 Q. Did your sons have ear infections before they
22 could talk about it?

23 A. Yes.

24 Q. How could you tell that your sons were
25 uncomfortable?

1 A. The crying, I mean just -- they just looked in
2 pain but the constant crying --

3 Q. And you're saying --

4 A. -- and tugging at their ears.

5 Q. Tugging at their ears, crying --

6 A. Yes.

7 Q. -- seeing them uncomfortable?

8 A. Yes.

9 Q. When you compare that to what Max did --

10 A. Uh-huh.

11 Q. -- how would you compare that?

12 A. There was no tugging at the ear. For my boys
13 there was fever accompanied with the crying, and that's
14 how I usually knew, if their cheeks were flushed or they
15 ran fever, another ear infection, you know. He didn't
16 show other symptoms. You know, there wasn't a fever
17 associated with his constant crying.

18 Q. He didn't --

19 A. No. He did not tug at his ear, and my
20 children, they did that early on. They both had severe
21 ear infections from two and three months old.

22 Q. So was Max similarly uncomfortable, upset --

23 A. Yes.

24 Q. -- with the crying?

25 A. Yes.

1 Q. You just didn't know why?

2 A. No.

3 Q. Did you -- did you get to hold him a lot?

4 A. When I was up there, I made it a point to hold
5 him, you know. I -- we would sit on the sofa, and we
6 kind of would pass him around, you know, and -- and put
7 pillows -- like my dad would put a pillow under him
8 because, you know, he's a little nervous, you know, but
9 we would all hold him, and after a while his -- he would
10 quiet.

11 Q. You mean he would start off crying, but after
12 being held for a while --

13 A. Yes.

14 Q. -- he would stop?

15 A. After, yeah, he would stop, and sometimes it
16 took quite a while, and then sometimes we would have to
17 stand up with him and, you know, rock him. I mean it
18 wasn't an easy, instant consoling him.

19 Q. So it wasn't he cries, you pick him up, and
20 he's fine?

21 A. No. Sometimes it seemed like if we picked him
22 up, after we -- I mean he would kind of flinch, like it
23 hurt.

24 Q. Now looking back?

25 A. Yes.

1 Q. At the time did you know what that was?

2 A. No.

3 Q. So I want to talk about when you found out
4 about Max's injuries.

5 A. Uh-huh.

6 Q. Did you go to the Temple Hospital, or did you
7 go to the emergency room in Waco, or --

8 A. No.

9 Q. -- how did you find out?

10 A. My sister called me.

11 Q. And did you ever accompany her to the
12 West Police Department?

13 A. Yes.

14 Q. Did you go both times or just one time?

15 A. I was there two days, and I believe I had to
16 make a third trip after -- two days while the two of
17 them were there, I made a third trip after everything
18 was said and done to drop off a bunch of Social Security
19 cards, passports and everything we had found packing at
20 my sister's apartment.

21 Q. Okay, so let me ask you this. When you went
22 the first time -- so you went three trips, and I'm
23 talking about the first one when --

24 A. Okay.

25 Q. -- you said both the Defendant and Taylor

1 were there.

2 A. Uh-huh.

3 Q. Can you tell the jury what you remember about
4 how that interview process went?

5 A. We were all sitting out in the hallway the
6 majority of the time, and I remember at one point they
7 took them back, and then my sister came out with a piece
8 of paper. I asked, "What is that?" She said, "This is
9 my statement that I need to write," and that seemed very
10 strange to me why she was being sent out into the
11 hallway to sign a statement. That's private. That's,
12 you know, what happened, and while writing that
13 statement she was sitting next to Mr. Ortiz the entire
14 time while he watched over her shoulder. I know at some
15 points he asked her, you know, "What are you writing,"
16 or he would tell her, "No, don't write that."

17 MS. LABORDE: Your Honor, may I approach
18 the witness again?

19 THE COURT: You may.

20 Q. (BY MS. LABORDE) So let me show you what's
21 been marked as State's Exhibit No. 24.

22 A. Uh-huh.

23 Q. Does that look like the West Police Department,
24 the hallway?

25 A. Yes, because there's an entrance -- there's an

1 entrance here, and there's an entrance here, yeah.

2 Q. Okay, and did you ever have to go into the
3 office to speak to the detective?

4 A. I don't remember if I went back there or not.

5 Q. But you mainly spent time in this hallway?

6 A. In the hallway.

7 Q. Okay, so is it in this hallway then that Taylor
8 and the Defendant are kind of side-by-side writing their
9 statements.

10 A. Uh-huh.

11 Q. And you said you have been the victim of
12 domestic violence yourself?

13 A. Survivor of domestic violence.

14 Q. "Survivor," sorry, and did you write your
15 statement with your abuser watching you?

16 A. No.

17 Q. Knowing what you knew about having caught him
18 assaulting Taylor, you know, did that concern you?

19 A. Yes.

20 Q. Were you able to say anything?

21 A. Yes. I expressed my worries from my personal
22 experience.

23 Q. To whom?

24 A. Just my personal experience with myself.

25 Q. Oh, no. I mean you said you were concerned.

1 A. Yes, and I expressed that to my sister, and I
2 told my sister, "If it happens once, it will happen
3 again; it's not a one-time thing."

4 Q. What about how the police kind of handled this
5 investigation --

6 A. I thought --

7 Q. -- not separating them and questioning them
8 separately and having them --

9 A. Yeah.

10 Q. -- write statements without the influence of
11 one another?

12 A. I thought that was incorrect. I was confused
13 as to why it was done that way.

14 Q. Were you present the next day?

15 A. Yes.

16 Q. And did -- was that different the second time?

17 A. Very much so.

18 Q. What happened on the 31st, the second time that
19 you went?

20 A. They were separated to give their statements
21 or --

22 Q. Did you even see your sister writing her
23 statement out?

24 A. No. I -- I had to sit in the hallway with him.

25 Q. How did the Defendant behave while Taylor was

1 in a room with the door closed being interviewed?

2 MR. MEGARO: Objection as to how Taylor
3 behaved in a room that she was not in.

4 MS. LABORDE: My question was, "How did the
5 Defendant behave?" She's saying she was in the hallway
6 with the Defendant.

7 THE COURT: Overruled.

8 THE WITNESS: Nervous, finicky, jittery.

9 Q. (BY MS. LABORDE) Did he remain seated?

10 A. I want to say he sat down quite a bit, just
11 kind of sat there.

12 Q. Do you have any idea how long Taylor was in
13 there with the door closed in the detective's office?

14 A. No. It seemed a while. I would say it was
15 over an hour.

16 Q. And then the Defendant went after her?

17 A. Yes.

18 Q. Did you remain in the hallway for that, too?

19 A. Yes.

20 Q. Did all of you drive together?

21 A. No.

22 Q. Who drove with who?

23 A. I drove myself. They drove together.

24 Q. What about the first day, do you recall on that
25 day how many cars went or who drove with who?

1 A. I want to say two. I don't remember, but,
2 typically, I like to drive myself places.

3 Q. You didn't want to ride in the car with them?

4 A. No.

5 Q. Did Taylor ride with you, or did she ride
6 with Mr. Ortiz.

7 A. She rode with him.

8 Q. Do you now also live in Fort Worth?

9 A. Correct.

10 Q. How close to -- to your parents and to Taylor
11 do you live?

12 A. Less than two miles.

13 Q. From both?

14 A. Yes.

15 Q. "Yes," okay. Have you had a chance to see Max
16 once he was returned to your family?

17 A. At that point in time, no. I didn't live close
18 by. I lived out near Houston.

19 Q. And when did you move from Houston, which is
20 where your mom is?

21 A. Uh-huh.

22 Q. When did you move from there back to
23 Fort Worth?

24 A. I've been back in Fort Worth since March, of
25 this year.

1 Q. So not too long, but you've seen Max I, guess,
2 this past -- this past six or seven months or so?

3 A. I've seen him every day other than yesterday
4 while he was here in Waco.

5 Q. Because you came -- you came after they did.
6 Is that right?

7 A. Yes, the day after.

8 Q. Now have you seen Max fall ever while he's
9 walking?

10 A. He's a little clumsy.

11 Q. "He's a little clumsy." Have you seen him run?

12 A. Yes.

13 Q. And he walked late --

14 A. Yes.

15 Q. -- correct? But he does walk now, and he
16 toddles and falls. Is that right?

17 A. Yes.

18 Q. Have you ever had to take him to the emergency
19 room because he broke something while he was walking
20 around or running?

21 A. Oh, no, no, no.

22 Q. Are you aware of any broken bones he's had
23 since he has not been around this Defendant?

24 A. None whatsoever.

25 Q. Have you ever seen Taylor do anything to make

1 you think that she would abuse her son --

2 A. Oh, no.

3 Q. -- or -- or mishandle him?

4 A. No.

5 Q. Did you ever see anything on the other end?

6 Did you ever see this Defendant do anything to Max that
7 made you think he would hurt him?

8 A. No, I did not.

9 MS. LABORDE: I'll pass the witness,
10 Your Honor.

11 CROSS-EXAMINATION

12 Q. (BY MR. MEGARO) Ms. Garcia, you testified that
13 Taylor and the baby were not supposed to come down to
14 your apartment, correct?

15 A. Correct.

16 Q. And were you a smoker?

17 A. Yes.

18 Q. Do you still smoke?

19 A. Yes.

20 Q. You smoke in the house?

21 A. No.

22 Q. And Mr. Ortiz was not a smoker, correct?

23 A. Correct.

24 Q. Taylor did not smoke?

25 A. No.

1 Q. When you lived at the Tokio apartments, you
2 also had a boyfriend living with you?

3 A. No. He lived in Houston.

4 Q. Did you have anybody living with you other than
5 your two children in the Tokio apartment?

6 A. In the very beginning, yes, my mother and her
7 boyfriend stayed in the midst of them moving.

8 Q. Your mother and her boyfriend stayed -- I
9 couldn't hear the last part.

10 A. Like in the process of moving, they stayed with
11 me for about two weeks.

12 Q. Okay, but you did have a boyfriend --

13 A. Correct.

14 Q. -- when you lived at Tokio, right?

15 A. Yes, I did.

16 Q. What is your boyfriend's last name?

17 A. His name is Ballard, and he is no longer my
18 boyfriend.

19 Q. I'm sorry. I couldn't hear you. I'm sorry.

20 A. His name is Ballard, and he is no longer my
21 boyfriend.

22 Q. His last name is Ballard?

23 A. Yes.

24 Q. B-A-L-L-A-R-D?

25 A. Correct.

1 Q. And what's his first name?

2 A. Beau.

3 Q. B-O?

4 A. B-E-A-U.

5 Q. "B-E-A-U." Where is he now?

6 A. Now he is incarcerated.

7 Q. He's in the Texas Department of Corrections?

8 A. That's correct.

9 Q. And what is his sentence?

10 A. He received a ten-year sentence for drug
11 charges.

12 Q. And this was the man that was your boyfriend
13 while you were living at Tokio?

14 A. Correct.

15 Q. Now Mr. Ortiz, when he lived at the Tokio
16 Apartments, he worked two jobs, correct?

17 A. Yes.

18 Q. He worked seven days a week?

19 A. I'm not sure.

20 Q. He worked a lot, though, right?

21 A. He worked quite a bit.

22 Q. He was not home all that much?

23 A. Not that I seen.

24 Q. Now you testified earlier that you have
25 a -- almost a maternal relationship with your younger

1 sister, right?

2 A. Yes.

3 Q. You're not just an older sister, but you were
4 actually her caregiver while she was finishing high
5 school, correct?

6 A. Correct.

7 Q. So you've taken some responsibility for her
8 since she was young?

9 A. Yes.

10 Q. You still do today, right?

11 A. Yes. That's my little sister.

12 Q. You still look out for your little sister,
13 right, and, as you said, you're a victim of domestic
14 violence yourself, right?

15 A. Survivor, yes.

16 Q. "Survivor"?

17 A. Correct.

18 Q. Someone actually tried to take your life?

19 A. They did.

20 Q. So when you saw your sister with what you've
21 described as an abusive boyfriend --

22 A. Uh-huh.

23 Q. -- did you call the police?

24 A. No.

25 Q. The night that you say that your sister was

1 assaulted by this man while she was pregnant, did you
2 call the police?

3 A. No.

4 Q. Did you notify a social worker?

5 A. No.

6 Q. Did you call your mother?

7 A. Yes. My mother was down the street when it all
8 took place.

9 Q. Did you call your father?

10 A. My father, no.

11 Q. Did you ask them to call the police?

12 A. No.

13 Q. You didn't go with your sister to the hospital,
14 right?

15 A. I did not.

16 Q. When you were living at the Tokio Apartments,
17 you said you were not working?

18 A. Correct.

19 Q. How did you support yourself?

20 A. Disability.

21 MS. LABORDE: Your Honor, I'm going to
22 object to that as being irrelevant.

23 THE COURT: Sustained.

24 Q. (BY MR. MEGARO) Now at one point in time at
25 the end of August 2012, you knew that the child had been

1 brought to the hospital, right?

2 A. Yes.

3 Q. And we're talking about M [REDACTED]?

4 A. Correct.

5 Q. And you knew that M [REDACTED] had some injuries,
6 correct?

7 A. I was told, yes.

8 Q. And there was suspected child abuse, correct?

9 A. Yes.

10 Q. And you knew on August 30, 2012, that your
11 sister was supposed to report down to the West Police
12 Department to be interviewed, correct?

13 A. Yes. I don't know the specific date but the
14 end of August, yes.

15 Q. But there were two days in a row right at the
16 tail end of August, in 2012, right?

17 A. Yes.

18 Q. Does August 30th, of 2012, sound correct to you
19 about?

20 A. Yes, the month of August, yes.

21 Q. Okay, so on the first day you went with your
22 sister, right?

23 A. Yes.

24 Q. Your father also went that day?

25 A. I don't remember.

1 Q. Did your father go one of the days?

2 A. I don't remember.

3 Q. Your mother went one of the days, right?

4 A. I don't remember.

5 Q. And on August 30, 2012, you testified that

6 Taylor wrote a statement in the hallway, correct?

7 A. Yes.

8 Q. Before she wrote that statement she had been

9 interviewed by the detectives?

10 A. I believe she had been in there. I didn't ask
11 too many questions because we were sitting in the
12 hallway. I figured it's not something we should discuss
13 in public, so I didn't ask many questions. I knew she
14 went back there. What happened back there, I didn't
15 know.

16 Q. Was she back there alone, or was she back there
17 with Mr. Ortiz?

18 A. I don't remember.

19 Q. You don't remember if Mr. Ortiz was in the
20 hallway while she was in speaking with the detectives?

21 A. They were back and forth. There was times that
22 both of them were in the hallway. I believe there was
23 times that neither one was in the hallway, but I was
24 always left with at least one if not both at the same
25 time in the hallway.

1 Q. So there were points of time where they were
2 separated, though. That's my point, right?

3 A. I believe so, yes.

4 Q. And this is the first day, right?

5 A. I don't know if it's the first or second.

6 Q. Now on the first day you believed your sister
7 might be in trouble, right?

8 A. My sister, no.

9 Q. You knew your sister had been given a statement
10 to write, right?

11 A. Yes.

12 Q. Did you look at that statement?

13 A. No.

14 Q. Did you watch her write it, or had it already
15 been written?

16 A. I watched her write it from across the hallway.
17 I wasn't sitting next to her.

18 Q. You knew also at this point that CPS had been
19 involved, right --

20 A. Yes.

21 Q. -- and that the child had been taken away from
22 your sister --

23 A. Yes.

24 Q. -- and Mr. Ortiz? And you knew that they were
25 about to start going through the process with CPS?

1 A. Yes.

2 Q. And you're familiar with that process yourself?

3 A. To a certain extent, yes, I am.

4 Q. You're been through CPS yourself?

5 A. Yes. My ex-husband called CPS on myself. CPS
6 came and paid one visit to my home, and at the end of
7 said visit, they told me the case would be closed
8 immediately, false allegations.

9 Q. Is that what happened?

10 A. Yes.

11 Q. What were the allegations?

12 MS. LABORDE: Your Honor, I mean --

13 THE COURT: Sustained.

14 MS. LABORDE: -- to some extent it would be
15 okay, but at this point I'm going to object to it being
16 relevant.

17 THE COURT: Sustained, it's not relevant.

18 Q. (BY MR. MEGARO) So on the first day that
19 you're there you testified that this man told Taylor
20 what to write in her statement, correct?

21 A. Yes. Like I said, he did witness her writing
22 it, but if he told her, I -- I don't know. I just know
23 he witnessed her writing the statement.

24 Q. Did he write his own statement?

25 A. I believe so.

1 Q. Did you approach the police and say, "This man
2 is watching her write her statement"?

3 A. I don't remember doing that. I didn't want to
4 overstep my boundaries.

5 Q. So you just, basically, stayed in that hallway
6 and said nothing?

7 A. Yes.

8 Q. Now on the -- on the first day, did you tell
9 Taylor to give a statement to the police?

10 A. No. The police told her to give a statement.
11 I did not.

12 Q. And what was their attitude towards her?

13 A. They just seemed very quiet, regular going
14 about their business doing their job.

15 Q. Was she scared on August 30th, the first day,
16 that she went to the --

17 A. I believe they were both scared. I was scared
18 for the whole situation. It's just a bad situation to
19 be in.

20 Q. On the second day that you went with her --

21 A. Uh-huh.

22 Q. -- was anybody else there other than you and
23 Taylor and Mr. Ortiz?

24 A. I don't remember.

25 Q. What was the police officer's attitude that

1 day?

2 A. The same as the day before.

3 Q. Just quiet?

4 A. Doing their job, I don't know their attitude.
5 I don't know them personally to be able to judge their
6 attitude.

7 Q. Did the police ever ask you or any other family
8 members to talk to Taylor on the second day and tell her
9 to give a statement?

10 A. Yes, I believe so.

11 Q. Was Taylor scared on August 31, 2012, the
12 second day?

13 A. I think she was worried both days. Her infant
14 son was in the hospital hurt. She was scared for her
15 son. She was worried about her son, so scared, worried,
16 I don't know which of the two it was, but she was
17 clearly upset both days.

18 Q. Was she worried about what was going on with
19 the police?

20 A. I think she was more worried about the welfare
21 of her child.

22 Q. My question is, "Was she worried about what the
23 police might do to her"?

24 A. I don't think so.

25 MR. MEGARO: No further questions for the

1 witness, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. LABORDE:

4 Q. Ma'am, I -- I asked -- my last question I asked
5 you was, "Did you ever see anything to make you think
6 this Defendant would hurt M [REDACTED]," and you said "No."

7 A. No. He wasn't very close with the child, so I
8 didn't see him holding him, once, maybe twice. I didn't
9 see him interact with the child.

10 Q. But, to be fair, you didn't have much
11 opportunity to see them interact?

12 A. No, ma'am.

13 Q. And when you did you're saying you saw him hold
14 Max a couple of times?

15 A. Once, maybe twice.

16 Q. What I failed to ask you before is it didn't --
17 it didn't seem to be a concern that if you knew the
18 Defendant had assaulted Taylor that he may, in turn,
19 then abuse his son?

20 A. I could never imagine someone putting their
21 hands on a child, so that never crossed my mind.
22 That's -- that's not something that a mom thinks
23 about, so I would -- it's just not something I thought
24 about.

25 Q. So there was -- in your mind, there was no

1 connection between the two?

2 A. No, no connection whatsoever.

3 Q. You're aware that -- assault-family violence by
4 occlusion, by obstructing someone's airway, that's a
5 third-degree felony. Are you aware of that?

6 A. I know it's severe, and the severity I don't
7 know.

8 Q. A third-degree is a two to ten offense.

9 A. Okay.

10 Q. So had Taylor reported that, this Defendant
11 could have been facing that?

12 MR. MEGARO: Objection, Your Honor.

13 Q. (BY MS. LABORDE) Were you aware of that?

14 THE COURT: What's your objection?

15 THE WITNESS: I know --

16 MR. MEGARO: She -- she's being asked to
17 give an opinion on the law, whether -- whether he could
18 be arrested and convicted of it.

19 MS. LABORDE: Your Honor, I'm telling her
20 what the law is. We all know what the law is. I'm
21 asking her if she was aware of that.

22 THE COURT: I'll sustain the objection.

23 Q. (BY MS. LABORDE) Should a man put his hands on
24 a woman when she's pregnant and try to stop her from
25 breathing?

1 A. Never, a man should never put his hands on a
2 woman for any reason.

3 MS. LABORDE: I'll pass the witness.

4 MR. MEGARO: Nothing further of the
5 witness.

6 THE COURT: You may step down, ma'am.
7 Thank you.

8 MS. LABORDE: Your Honor, the State would
9 ask the Court to take judicial notice of the date of the
10 Indictment.

11 THE COURT: The Court does take judicial
12 notice of it. It was returned November the 28th,
13 of 2012.

14 MS. LABORDE: And with that, the State of
15 Texas rests.

16 THE COURT: Mr. Megaro, it's going to be
17 your case, and I think we might as well go ahead and
18 take our afternoon break, and, ma'am, if any of you need
19 to make a phone call to let your family or whatever know
20 that we're going to be here late tonight, go ahead and
21 make that call now, and enjoy your break. We'll see you
22 back. Don't discuss the case or allow anyone to talk to
23 you about it.

24 THE BAILIFF: All rise.

25 (The jury retired from the courtroom.)

1 (A recess was taken from 2:43 PM
2 to 3:05 PM.)

3 (Open court, Defendant present, no jury.)

4 THE COURT: All right. We're outside the
5 presence and hearing of the jury now. The State has
6 rested. Mr. Megaro.

7 MR. MEGARO: I would move for a directed
8 verdict at the end of the States's case. I believe the
9 State has not presented prima facie evidence.
10 Specifically with respect to Count I, the first-degree
11 felony, I don't believe that the State has proven that
12 this Defendant caused the injuries. I think the -- some
13 of the evidence that the State presented was that --
14 even by their own expert and their other witnesses was
15 that they're not sure exactly how the injuries occurred.

16 Apart from that, I'm also moving to
17 dismiss -- I believe it's -- Count II of the Indictment
18 which is the assault with a deadly weapon charge. I
19 don't believe that the State has presented prima facie
20 evidence of the use of a deadly weapon. I don't think
21 that hands -- and if that's the State's theory, that
22 hands are a deadly weapon. If that is the law, then the
23 law should be changed, but I'm just looking through the
24 jury instructions, and a deadly weapon is any thing
25 manifestly designed, made or adapted for the purpose of

1 inflicting death or serious bodily injury or anything in
2 the manner of its use or intended use is capable of
3 causing death or serious bodily injury. I look at "any
4 thing" as something separate from a person's body, and
5 we're not talking about teeth here or -- or something
6 like that. The State has to prove that some object or
7 some thing was used to cause these injuries, and I don't
8 believe there's been evidence of that.

9 MS. LABORDE: Your Honor, the -- the law in
10 Texas is settled that a -- a hand can be a deadly
11 weapon. There's *Turner v. State*, 664 S.W.2d 86, 90,
12 Texas Criminal Court of Appeals (1983),
13 *McCallum v. State* 311 S.W.3d 9, the San Antonio Court of
14 Appeals (2010).

15 THE COURT: All right. The Motion for
16 Directed Verdict is denied as to Count I and Count II.
17 Bring in the jury.

18 (The jury was seated in the jury box.)

19 THE COURT: All right. Mr. Megaro, call
20 your first witness.

21 MR. MEGARO: Defense calls Randi Ray.

22 THE BAILIFF: Is that "Ray"?

23 MR. MEGARO: Yes.

24 THE COURT: Raise your right hand, sir.

25 (The witness was sworn.)

1 THE COURT: Have a seat.

2 THE WITNESS: (Complies with request.)

3 THE COURT: Put your name on the clipboard,
4 please.

5 THE WITNESS: (Complies with request.)

6 THE COURT: Proceed.

7 RANDI RAY,

8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MEGARO:

11 Q. Mr. Ray, what do you do for a living?

12 A. I'm a private investigator.

13 Q. And who do you work for?

14 A. Myself, I'm self-employed by RG Ray
15 Investigations.

16 Q. And where are you based at? I'm sorry.

17 A. McKinney, Texas.

18 Q. Is that where you're based out of?

19 A. Yes.

20 Q. And are you licensed by the State of Texas?

21 A. I am.

22 Q. How long have you been so licensed?

23 A. I've been licensed under my own company
24 since 2011. I've been a private investigator
25 for 28 years.

1 Q. Before becoming a private investigator, what
2 did you do?

3 A. I was in the United States Marine Corps
4 from '76 to '82, and following the marine corps I was
5 intelligence as far as some other temporary additional
6 duties. After I got out, I did some trucking for a
7 little while and went to work as an environmental
8 investigator in 1986.

9 Q. Who did you work for from '86 forward?

10 A. Verification Incorporated from '86 to '89, and
11 from there I went to work for Kroll Associates and
12 Harrison Environmental out of LA, and from there it was
13 Beacon Professional Services, Southwest Investigations,
14 Inc., Hewitt and Cowan Investigation, Inc., and myself.

15 Q. What is your day-to-day job description? What
16 are your duties day-to-day?

17 A. I primarily do criminal defense and very active
18 in capital murder defense.

19 Q. And do you work for defense lawyers?

20 A. I do.

21 Q. And is that in the Dallas -- Greater Dallas
22 area?

23 A. All over the state of Texas.

24 Q. Okay, wherever a case may take you?

25 A. Yes.

1 Q. Now have you ever taken statements from
2 witnesses before as a private investigator?

3 A. I have.

4 Q. When you speak to a witness, what are the
5 procedures that you use?

6 A. Depending on the situation and the type of case
7 it is, I will either wear a wire to record the
8 conversation, or I'll simply ask if they mind being
9 recorded. It depends on the situation.

10 Q. Why do you wear -- when you say "wear a wire,"
11 is that a recording device?

12 A. It is.

13 Q. Why would you wear a recording device when you
14 speak with a witness?

15 A. To, number one, get an accurate interview and
16 on occasion protect myself, the investigator.

17 Q. Protect yourself from what?

18 A. Well, anything that might be said or left
19 unsaid later on should any litigation come around.

20 Q. Is it fair to say that when you wear this
21 recording device it's to preserve the entire
22 conversation to make sure there's no question about what
23 was said and by whom?

24 A. That's correct.

25 Q. And do you do that every time you speak with

1 a witness?

2 A. Not always, no.

3 Q. More often than not?

4 A. More often than not, yes.

5 Q. And do you also record telephone calls with
6 witnesses?

7 A. I do.

8 Q. Is that for the same reason?

9 A. For the same reason.

10 Q. After you make a recording of a witness, what
11 do you do with the recording? I -- I'm sorry. Let me
12 withdraw that question. What type of device do you use
13 to make a recording?

14 A. I use a digital recorder.

15 Q. Is that the small pocket --

16 A. Yes.

17 Q. -- handheld one? And it records to a digital
18 format?

19 A. It does.

20 Q. After you make a recording of the witness, what
21 do you do with that recording?

22 A. I take it, and I download it to a hard drive,
23 and I immediately copy it to a CD to preserve it.

24 Q. So you have one copy on hard drive, and one
25 backup on a CD?

1 A. That's correct.

2 Q. And what do you do with that CD?

3 A. I put it in my file. I have made copies and
4 sent them to the attorneys.

5 Q. And do you always keep a backup?

6 A. Yes.

7 Q. Do you have any technology that assists you in
8 backing up the digital file on the hard drive?

9 A. Well, the type of computer that I have, it's
10 custom-built. I run two hard drives simultaneously.
11 One backs up the other.

12 Q. So there's always at least three copies of your
13 recordings, correct?

14 A. Correct.

15 Q. Have you ever lost a recording?

16 A. I have, yes.

17 Q. When was the last time you lost a recording?

18 A. Probably a year ago when I inadvertently
19 deleted it off the recorder itself.

20 Q. That was before you had a chance to take it off
21 the -- to take it off the recorder onto the hard drive?

22 A. Yes.

23 Q. Do you take steps now to make sure that that
24 doesn't happen?

25 A. I do.

1 Q. Now in this particular case, how did you become
2 involved?

3 A. To my knowledge, you had made contact with
4 somebody who knew somebody, an attorney here in Texas,
5 who referred you to me, and that was in approximately
6 late December, early November, of 2013.

7 Q. And did there come a point in time when you and
8 I met up?

9 A. There did.

10 Q. And did there come a point in December,
11 of 2013, where you and I travelled to Fort Worth, Texas?

12 A. It did. You and I travelled and met in
13 Fort Worth, Texas, on December 27, 2013, at
14 about 2:11 PM.

15 Q. Where did we go?

16 A. We went to a Mexican restaurant called
17 Casa Rita's at the 6600 block of North Freeway in
18 Fort Worth.

19 Q. Now before we went there, had I briefed you on
20 the case?

21 A. You had. There wasn't a lot of detail, and the
22 objective was to interview one witness known as
23 Taylor Garcia.

24 Q. Now when you and I entered the restaurant in
25 Fort Worth, where did we sit?

1 A. We were seated by a, for lack of a better word,
2 receptionist, and our waitress became Taylor Garcia
3 without asking.

4 Q. Is it fair so say that we sat and ordered a
5 meal?

6 A. We did.

7 Q. Do you remember what I had?

8 A. I don't. I remember what I had.

9 Q. Okay. Now while we were eating the meal, did
10 we disclose to Taylor who we were?

11 A. We did. You and I talked for
12 approximately 53 to 55 minutes prior to our interview
13 with Taylor at which time we identified ourselves and
14 told her who we represented.

15 Q. And was that at the conclusion of the meal?

16 A. That was at the conclusion of the meal.

17 Q. Did I tell you why I wanted to wait until after
18 we had eaten to speak with her?

19 A. Yes.

20 Q. What was the reason why we waited?

21 MS. LABORDE: Your Honor, I'm going to
22 object to that as being hearsay.

23 THE COURT: Sustained.

24 Q. (BY MR. MEGARO) Now while we were eating
25 our meal, it was lunchtime or between lunch and

1 dinner, right?

2 A. It was about 2:11 PM, correct.

3 Q. While we were eating, did we -- was the tape
4 recorder going?

5 A. It was.

6 Q. I say "tape recorder." It's a digital
7 recorder. I'm sorry, and did -- at the conclusion of
8 our meal, how did we make contact with Taylor?

9 A. She came to the table at the end of our meal,
10 asked us if everything was okay, I believe, and you
11 asked her if we could talk to her when -- at which time
12 you said you identified (sic) Francisco.

13 Q. And you were talking about Mr. Ortiz?

14 A. Yes.

15 Q. By the way, have you ever met this man before
16 today?

17 A. I've not. Today is the first -- the first time
18 I've laid eyes on him.

19 Q. So before today it was just you and I working
20 together on this --

21 A. That's correct.

22 Q. -- case, right? Now, Mr. Ray, how did I
23 introduce myself to Taylor Garcia?

24 A. May I look at the transcript?

25 Q. Sure.

1 MS. LABORDE: Your Honor, I'm going to
2 object to this. This is hearsay. She didn't deny that
3 he told her that he was his Defense attorney. She
4 admits the statement. Extrinsic evidence as a statement
5 is not -- it's actually not even her statement. It's
6 the Defense attorney's statement. It's just an out of
7 court statement. It's hearsay.

8 THE COURT: I sustain it as to the
9 transcript. Now he can testify as to what he told her.

10 MS. LABORDE: He can testify as to what he
11 told Taylor? That's hearsay.

12 THE COURT: What was the question again?

13 MR. MEGARO: The question was, "How did I
14 introduce myself to Taylor Garcia?" Well, how about I
15 rephrase the question?

16 THE COURT: Yeah, do that because that --
17 what you said is --

18 Q. (BY MR. MEGARO) Did you introduce yourself to
19 Taylor Garcia?

20 A. I did.

21 Q. Okay, and did you identify yourself?

22 A. Yes. I told her my name was Randi, and I was
23 an investigator working with you.

24 Q. Okay. Did you give her a business card?

25 A. I did.

1 Q. And did you specifically tell her that you were
2 working for the Defense?

3 A. Yes, we both did.

4 Q. Okay. Did Ms. Garcia sit down?

5 A. She did. When she did, she -- when she was
6 advised that we represented Francisco, she immediately
7 teared up and began to cry a little bit. It was
8 obviously upsetting to her, but she did sit down, and
9 she began to talk to us.

10 Q. Now how long did she sit with us at that table?

11 A. A little over an hour.

12 Q. During that hour or that hour-plus, did you
13 have the opportunity to observe her demeanor?

14 A. I did.

15 Q. Okay, and during that hour, was she asked
16 questions about this case?

17 A. She was.

18 Q. Did she give answers to those questions?

19 A. She did.

20 Q. Was anybody forcing her or threatening her?

21 A. Not at all.

22 Q. Did anyone promise her anything before
23 questioning her about this case?

24 A. No.

25 Q. After we identified ourselves, did she freely

1 speak with us?

2 A. She did, and, as I said before, she was a
3 little upset in the beginning, and then she relaxed and
4 continued to talk to us.

5 Q. The tone of conversation, was it a normal
6 conversational tone?

7 A. It was.

8 Q. And you've interviewed many people in your
9 career, correct?

10 A. Hundreds, yes.

11 Q. You've interviewed people that were telling the
12 truth, right?

13 A. Sure.

14 Q. You have interviewed people who have been
15 telling you something less than the truth, right?

16 A. Yes.

17 Q. Did Taylor Garcia appear to you to be telling
18 the truth?

19 MS. LABORDE: Your Honor --

20 THE COURT: Sustained.

21 MS. LABORDE: -- that's an improper
22 question.

23 THE COURT: It is, Mr. Megaro. Sustain the
24 objection.

25 Q. (BY MR. MEGARO) In your opinion, was

1 Taylor Garcia telling you the truth?

2 MS. LABORDE: Your Honor, this whole line
3 of questioning is improper.

4 THE COURT: Sustained.

5 MS. LABORDE: We would ask the Court to
6 instruct this Defense attorney to stop asking this --

7 THE COURT: Don't ask those kind of
8 questions. You know they're not proper and not
9 admissible, Mr. Megaro.

10 MR. MEGARO: Judge, they asked the same
11 questions of the police officers regarding my client,
12 and I believe I have the right to ask whether this
13 witness was telling the truth.

14 THE COURT: Well, actually that's not the
15 way it works under the rules so --

16 MS. LABORDE: Your Honor, I would like
17 the -- the -- I mean the record will reflect I did not
18 ask anyone if they thought someone was telling the
19 truth.

20 THE COURT: And that's not --

21 MS. LABORDE: That's not a proper question.

22 THE COURT: That's not a proper question at
23 all, so stay off of that. It's for the jury to
24 determine the credibility of the witnesses.

25 Q. (BY MR. MEGARO) At any point during that

1 hour-plus interview, did Taylor Garcia stop and say,
2 "I don't want to speak to you any further"?

3 A. She did not.

4 Q. At any point during that interview did I give
5 her legal advice?

6 A. No, you didn't.

7 Q. Did you give her legal advice?

8 A. I did not.

9 Q. Was anything told to her about hiring her own
10 attorney?

11 A. Would you repeat the question, please?

12 Q. Was she ever told anything about hiring her own
13 attorney, to seek her own legal advice?

14 A. No. She was advised -- she asked if she needed
15 an attorney present to talk to us, and without listening
16 to the recording, I believe she said --

17 MS. LABORDE: Your Honor, I'm going to
18 object to what Taylor said as hearsay.

19 THE COURT: Overruled.

20 Q. (BY MR. MEGARO) Go ahead. I'm sorry.

21 A. We advised her that she could have one present
22 if she wanted one.

23 Q. Did she stop and say, "I want an attorney
24 present"?

25 A. She did not.

1 Q. At the conclusion of this interview, did you
2 preserve that recording?

3 A. I did.

4 Q. How so?

5 A. I copied it from my digital recorder to my hard
6 drive and into a CD.

7 Q. Do you still have an original version on your
8 hard drive on your computer?

9 A. I do.

10 Q. And is that backed up?

11 A. It is.

12 Q. In addition to those -- and that's the double
13 hard drive that you have?

14 A. Yes.

15 Q. In addition to those two versions, do you
16 have -- did you burn a copy onto a CD?

17 A. I did.

18 Q. Did you download that CD -- did you download
19 that file onto a CD that you have with you today?

20 A. I did.

21 Q. Before coming to court today, did you have an
22 opportunity to review that CD?

23 A. I did.

24 Q. And in addition to that CD, was a transcript of
25 that interview made?

1 A. Yes, it was.

2 Q. Did you have an opportunity to compare the
3 transcript to the CD?

4 A. I did. There -- there are some areas where the
5 transcriptionist couldn't identify what was being said.
6 I can't say in each area that I can, but there are some
7 areas where I can.

8 Q. There are some things that are inaudible?

9 A. Yes.

10 Q. And why is that?

11 A. It depends on the speaker system that you're
12 using and how you set your equalizer.

13 Q. Was there background noise during this?

14 A. There was background noise throughout.

15 Q. Because this was in the middle of a restaurant?

16 A. Correct.

17 Q. At any point in time during the interview did
18 you -- did you ask Ms. Garcia if she was going to be in
19 trouble for sitting with us at the table for so long?

20 A. We both did.

21 Q. And what was her answer?

22 A. I don't believe she did answer.

23 MR. MEGARO: Your Honor, may I approach the
24 witness?

25 MS. LABORDE: Your Honor, he cannot impeach

1 her with someone -- with what someone else said.

2 MR. MEGARO: I'm asking to approach the
3 witness.

4 THE COURT: To do what?

5 MR. MEGARO: I would like to have something
6 marked as -- for identification.

7 THE COURT: All right.

8 Q. (BY MR. MEGARO) Do you have that CD with you
9 today?

10 A. I do.

11 MR. MEGARO: Thank you. May I have this
12 marked as -- do you want me to mark it -- as Defense 4.

13 (Defendant's Exhibit No. 4 was marked.)

14 Q. (BY MR. MEGARO) Here you go. Mr. Ray, I'm
15 going to ask you --

16 THE REPORTER: Oh, wait, wait.

17 MR. MEGARO: I'm sorry. I'm sorry.

18 THE REPORTER: We've already marked 4,
19 haven't we? I think we've already marked Defendant's 4,
20 haven't we?

21 THE COURT: Yeah, I think there is --

22 THE REPORTER: I have it marked as --

23 MR. MEGARO: I did. I'm sorry. That would
24 be 5.

25 THE REPORTER: Let me just put another --

1 (Defendant's Exhibit No. 5 was marked.)

2 MR. MEGARO: I stand corrected.

3 MS. LABORDE: Your Honor, may we approach
4 the bench?

5 THE COURT: You may.

6 (At the Bench, off the record.)

7 THE COURT: Ladies and Gentlemen, go to
8 jury room. Don't discuss this matter or allow anyone to
9 discuss it with you.

10 (The jury retired from the courtroom.)

11 THE COURT: All right. We're outside the
12 presence and hearing of the jury now. Mr. Megaro, it's
13 apparent that you're about to try to introduce
14 Ms. Taylor's statement that you all recorded as a -- as
15 an exhibit, and the State was -- asked to approach to
16 object to that. Under what conceivable grounds is a
17 witness statement admissible when she's been
18 cross-examined about this matter and the statement
19 itself? Why is that admissible?

20 MR. MEGARO: Several reasons, Judge.
21 First, the witness denied making some statements, at
22 least initially until confronted with them. The witness
23 denied recalling some of the statements that she made.
24 The witness also claimed that some of the statements
25 that she made to me were a lie.

1 The witness and the District Attorney have
2 insinuated that I misled her and that I acted untoward
3 towards this witness and that I invoked trickery and
4 deceit. A review of the CD will dispel any such notion,
5 and, if the Court recalls, it was brought up before the
6 witness took the stand, and I was very specific that it
7 was not my intention to draw the witness's attention to
8 a recording until the District Attorney brought it out
9 on direct examination. Since they've put it out on
10 direct examination, they have put the credibility of
11 myself and my investigator into play, and the rule of
12 completeness, since they brought it out first, not me, I
13 believe I'm entitled to now introduce the entire
14 recording of that interview to rebut any notion that I
15 acted in any unethical or unprofessional manner or that
16 this witness, not -- not Mr. Ray but Ms. Garcia, was
17 misled, tricked or otherwise deceived.

18 I think the jury has to make that
19 credibility determination of Ms. Garcia, and the best
20 way to do it is to give them the full recording of how
21 she acted with Mr. Ray and I. Without that, I think
22 that is deceiving the jury because I cannot testify as a
23 witness.

24 THE COURT: And it's not your credibility
25 that's at issue here.

1 MR. MEGARO: Well, it's -- it's been put
2 at issue by questions put to the witness by the
3 District Attorney. "Had you known that the Defense
4 lawyer was tape recording you, would you" --

5 MS. LABORDE: Your Honor, I'm not the one
6 who told him to record a witness and not tell her. I'm
7 not the one that --

8 THE COURT: Okay. Let him -- let him
9 finish.

10 MR. MEGARO: These were questions put to
11 the witness not by me but by the District Attorney on
12 direct examination. They're the ones that have put
13 this -- the credibility of this statement into play, and
14 they're the ones that first introduced that. I'm
15 entitled under the rule of completeness to then
16 introduce the entire recording, especially where the
17 witness has denied certain things that were called to
18 question --

19 THE COURT: But the State didn't introduce
20 the -- the exhibit --

21 MR. MEGARO: No, they didn't.

22 THE COURT: -- or even part of it.

23 MS. LABORDE: No.

24 MR. MEGARO: But they -- they -- they
25 introduced the fact that a recording was made and

1 certain things that were said during the conversation,
2 and that was on their direct.

3 MS. LABORDE: No. Your Honor, I did -- I
4 did not do that. I asked her did she know she was being
5 recorded. I didn't know there was a recording from her.
6 We only knew that from the Defense which, by the way, we
7 have been given a five-minute excerpt from this
8 recording. We still have not been given the entire
9 recording to review.

10 MR. MEGARO: I -- I have -- there was a
11 problem with the file before lunch. I saw that. I gave
12 them a new file -- entire file after lunch which --

13 MS. LABORDE: Which at what time was that?

14 THE COURT: Well, it doesn't -- it doesn't
15 matter.

16 MS. LABORDE: No. Your Honor, we haven't
17 had a opportunity to review this evidence.

18 THE COURT: Hold on. Hold on, Ms. LaBorde.
19 Calm down. This is not coming in.

20 MS. LABORDE: And, Your Honor, I would
21 appreciate him stop marking evidence he knows he can't
22 get in just to make me object in front of the jury.
23 It's not admissible under any grounds he said by any
24 stretch of the imagination.

25 THE COURT: I agree. It's not admissible,

1 and it's not coming in, period.

2 MR. MEGARO: And, Judge, how am I to
3 argue -- then I -- I'm hoping that the State will not
4 argue to this jury at the close of the case that the
5 Defense engaged in some tricky or deceit on this witness
6 because I have no way to protect myself against such an
7 allegation.

8 MS. LABORDE: Your Honor, the fact is they
9 recorded her without her knowledge. It's just a fact.

10 MR. MEGARO: It's one hundred percent
11 (100%) legal --

12 MS. LABORDE: They can draw from that
13 whatever they want. I -- I introduced that it was
14 legal. I agree to that. It is. I'm not saying that
15 that was illegal. Now whether or not it was a trick,
16 that's not for me to say. You saw Taylor certainly
17 thought it was a trick. She said, "They fronted as
18 customers." That's just simply the facts of the
19 circumstance.

20 THE COURT: All right. Look, the Court
21 has -- has ruled it's not coming in, and I don't want
22 you trying to introduce any other exhibits like this
23 that the Court is not going to admit. Do you have
24 anything else you intend to -- any other recordings you
25 attempt to try to -- I mean any other witness statements

1 that you wish to introduce?

2 MR. MEGARO: Judge, this is the heart of
3 the Defense case. Cutting this out will -- there is
4 nothing left for us to introduce in the way of prior
5 consistent -- inconsistent statements.

6 THE COURT: Well, just -- just for record
7 purposes, tell me why that's the heart of your case, and
8 what it is that you're wanting to get across that you
9 didn't have the opportunity to ask the witness.

10 MR. MEGARO: Because this witness,
11 Ms. Garcia, has insinuated through the District Attorney
12 of a Dr. Jekyll and Mr. Hyde. That impugns the Defense.
13 That makes me look like a liar and a bad guy, and I
14 don't want the State to be able to point the finger in
15 saying that, "This lawyer tricked you into giving a
16 statement," when absolutely that is not correct. The
17 credibility of Taylor Garcia is of paramount importance
18 in this case, and if she got on the witness stand and
19 said, "These people tricked me; these people did this,
20 this, this and that that was unethical, unprofessional,"
21 and it just sounds down right dirty without giving the
22 jury the context that it was in, especially since I
23 wasn't the one that opened to door to this --

24 THE COURT: This is a collateral matter.
25 It has nothing to do with whether or not the witness,

1 Ms. Taylor, is credible or not. You know, you're trying
2 to make it like you're the witness, and it's your
3 credibility that's at issue, and it's not. It's her
4 credibility, and you had the opportunity to impeach her
5 and to examine her and ask her any question you wanted
6 to that -- about the statement that we're talking about
7 here, and I -- and I believe you did.

8 MS. LABORDE: Your Honor, just for the
9 record, she was on the witness stand for three hours.
10 Over three hours, I think.

11 THE COURT: So this matter is closed.
12 We're not getting into this. Bring the jury in.

13 MR. RAMSAY: Judge, if he wanted to
14 introduce it for record purposes for the appeal --

15 THE COURT: Yeah. If you want to do that,
16 Mr. Megaro --

17 MR. MEGARO: I would, so I would offer it
18 for record purposes for appeal, both --

19 THE COURT: Defense Exhibit No. 5 is
20 admitted for purposes of the record and the -- and
21 appeal.

22 MR. MEGARO: Could I offer the actual
23 transcript, as well, because that's -- I don't know how
24 a CD gets transmitted to the Court.

25 MR. RAMSAY: Judge, we would object to that

1 because the transcript is incomplete. It has
2 inaudible --

3 THE COURT: Yeah, I agree. We're not going
4 to put in the transcript itself. The CD will -- is it a
5 CD or DVD?

6 THE WITNESS: CD.

7 THE COURT: CD, it's admitted for purposes
8 of the record.

9 (The jury was seated in the jury box.)

10 THE COURT: All right. You may proceed.

11 Q. (BY MR. MEGARO) Mr. Ray, during this interview
12 of Taylor Garcia, at any time did either one of us lie
13 to her?

14 A. No, sir.

15 Q. At any time did either one of us deceive her or
16 trick her?

17 A. We did not.

18 Q. Did both of us leave her with business cards?

19 A. We did.

20 Q. Did she provide her telephone number and e-mail
21 address to both of us?

22 A. She did.

23 Q. And did we provide our contact information to
24 her?

25 A. We did. Mine is on my card, both cell number,

1 e-mail, etcetera.

2 Q. Did she ever contact you?

3 A. She did not.

4 MR. MEGARO: Pass the witness, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. LABORDE:

7 Q. Sir, my understanding is you've never been a
8 police officer. Is that correct?

9 A. Never.

10 Q. So you've never investigated a crime except for
11 a Defense attorney?

12 A. That's not true. That's not true.

13 Q. That's what I'm asking.

14 A. Throughout the 20 years I have not always been
15 a defense investigator.

16 Q. Okay. What other kinds of investigations?

17 A. I've done environmental investigations,
18 abandoned hazardous waste sites, PRP searches. I've
19 done insurance fraud investigations, wrongful death
20 investigations.

21 Q. Okay, but you have never investigated a crime
22 with the intent of proving a crime did occur?

23 A. Insurance fraud.

24 Q. "Insurance fraud"?

25 A. Insurance fraud, correct, wrongful death.

1 Q. "Wrongful death"?

2 THE REPORTER: Wait. Sir, you're going to
3 have to get up closer to the microphone.

4 Q. (BY MS. LABORDE) But you've never worked for a
5 District Attorney's Office, correct? You've never --

6 A. I have not.

7 Q. -- worked for the police?

8 A. I have not.

9 Q. You've never been on patrol?

10 A. I have not.

11 Q. Have you ever encountered a victim of domestic
12 violence when she was making a report?

13 A. I have.

14 Q. And how did they -- how did that person appear
15 to you? How many times has that occurred?

16 A. I come across them every now and then in --

17 Q. How so?

18 A. -- in my daily work when I -- I interview a lot
19 of witnesses in my work --

20 Q. And so you're talking about --

21 A. -- and I come across victims of -- of domestic
22 violence in my work.

23 Q. That have just been assaulted?

24 A. Yeah, and I have to report it.

25 Q. How does that come about?

1 A. How does what come about?

2 Q. That you're encountering -- I mean I don't
3 encounter victims of assault that have just been
4 assaulted. I'm wondering how you do.

5 A. Are you saying immediately or --

6 Q. Immediately --

7 A. No.

8 Q. -- like when they have injuries --

9 A. No.

10 Q. -- like when they need help?

11 A. No.

12 Q. "No," so you're talking to them after the fact?

13 A. Correct.

14 Q. And are you talking to them in hopes that they
15 will recant what occurred?

16 A. No.

17 Q. "No"?

18 A. That it is my not job to twist anything. It's
19 black and white. Facts are facts. It's not my job to
20 twist them.

21 Q. "Facts are facts"?

22 A. Facts are what the witness has said.

23 Q. Okay, and are there other kinds of facts
24 besides what somebody says --

25 A. Sure.

1 Q. -- like circumstantial evidence?

2 A. Circumstantial evidence.

3 Q. Okay. Did you review the x-rays of M[REDACTED]'s
4 injuries?

5 A. I have not reviewed any files in this case.

6 Q. So you --

7 A. I was hired simply to interview Taylor Garcia.

8 Q. So you don't know any facts in this case --

9 A. I do not --

10 Q. -- not --

11 A. -- other than what I've heard.

12 Q. And that's what the Defense attorney has told
13 you?

14 A. Other than what I've heard is all.

15 Q. Well, who else have you heard it from?

16 A. Just the Defense attorney.

17 Q. Okay, so all -- every single thing you know
18 about this case you learned from one conversation with
19 this Defense attorney before you went and spoke with
20 Ms. Garcia?

21 A. Yes, ma'am.

22 Q. So have you -- have you seen this Defense
23 attorney since that day?

24 A. I have not.

25 Q. You have not, okay. You were asked about

1 conversations with Taylor, about whether or not she ever
2 asked for an attorney. Is that correct?

3 A. Whether or not she needed one.

4 Q. Okay. Do you recall that she said, "Should I
5 have an attorney here?"

6 A. She asked whether or not she needed an
7 attorney.

8 Q. Okay, and did you answer that question?

9 A. I -- I believe I did. I'll have to look at the
10 transcript.

11 Q. Can you look at Page 32?

12 A. Sure. What line?

13 Q. Line 11.

14 A. Okay.

15 Q. Actually, at Line 9 you ask, "Would you be
16 willing to talk with us?" Her first response is,
17 "Should I have an attorney here," correct?

18 A. My transcript, Line 9 is Mr. Megaro. "My name
19 is Patrick. I'm Juan's attorney."

20 Q. Page 32?

21 A. I'm sorry, Page 30. I asked her, "Would you be
22 willing to talk to us a little bit?"

23 Q. And her response?

24 A. "Should I have an attorney here?"

25 Q. And you say?

1 A. "That's" -- "That's your call, if you" --

2 Q. And she says, "Because I don't want to be in
3 court at all"?

4 A. Right.

5 Q. Okay, and Mr. Megaro says, "I understand," and
6 he says, Mr. Megaro, "I'm not going to ask you about
7 your CPS case." Okay, so -- so you never really
8 answered the question about whether or not she needed an
9 attorney or not, right?

10 A. No.

11 Q. You just started talking to her? Fair to say?

12 A. She was given the option when I answered,
13 "That's your call."

14 Q. Okay, "That's your call," all right. What
15 experience do you have with CPS?

16 A. I come across CPS cases in my work.

17 Q. Okay, and have you -- have you -- have you ever
18 been involved in a trial where someone's rights are
19 terminated?

20 A. I have.

21 Q. And do you feel like you're in a position to
22 give someone advice about how they should proceed to get
23 custody of their child?

24 A. No.

25 Q. Can you look at Page 58, please.

1 A. (Complies with request.)

2 Q. Okay. On Page -- Line 24, "My experience with
3 these kinds of cases, it's my recommendation to you is
4 wait, wait for a little while. Yeah, Taylor, you,
5 before you try to do that." Ms. Garcia, "I want to get
6 my own everything. I don't want to" -- Mr. Megaro,
7 "You want to be independent?" "Yeah." This is you.
8 "I wouldn't -- I wouldn't try to do that right now
9 because I think you'd be throwing your money away
10 because there's still things going on." You -- you gave
11 her advice on not proceeding to get custody of her son
12 until this criminal case was over.

13 A. You've taken it out of context. If you'll back
14 up to Line 20, Page 58.

15 Q. Okay. Is that advice, "It is my recommendation
16 to you to wait for a little while"?

17 A. May I read Line 20?

18 Q. That's what she's saying. She's saying --

19 A. Ms. Garcia, "Unless I really want to go to
20 court and because I -- I pay everything. I do
21 everything for my son, so I really want to go to court
22 and try to get full custody."

23 Q. Okay, so what does this have to do with who
24 injured Max? Whether or not Taylor gets full custody of
25 her son and doesn't share it with her father, what does

1 that have to do with who injured this Defendant's son?

2 A. I think that -- without going through the
3 entire transcript, I think you're taking things out of
4 context.

5 Q. Okay. Will you agree with me that you said,
6 "My experience with these kinds of cases, it's my
7 recommendation to you to wait a little while. I
8 wouldn't try to do that right now because I think you'd
9 be throwing your money away because there are still
10 things going on"? You gave her advice. You made a
11 recommendation to her, and you told her to wait. Now
12 whether I'm taking that out of context is your -- is
13 your attorney's decision to make, but you'd agree with
14 me those words came out of your mouth, right?

15 A. Right, in my -- okay.

16 Q. I want to refer you now to Page 106, okay? Did
17 you -- do you recall telling Taylor that she needed to
18 rely on her gut, that that's what you do?

19 A. Where do you see that?

20 Q. Page 106.

21 A. What line, please?

22 Q. Well, Line 18, "It sounds like a lot of people
23 have put a lot of crap in your head, you know. Facts
24 are what they are, and, you know, you only have one
25 thing to hold on to, and that's your heart, you know.

1 You've already said you didn't feel it in your heart
2 that he do it" -- "he did it, you know," and then
3 Mr. Megaro said, "You can trust your gut instinct a lot
4 more." This is what you say now, top of 107, "And that
5 might be hard to do at 19 years old, but it's true.
6 It's true." Mr. Megaro, "I always want to get to my
7 gut." You, "I'm 54, so I've learned to trust my gut a
8 long time ago," so even though you didn't know any facts
9 about this case, not one, you're telling her to go with
10 her gut?

11 A. Ma'am, those are out of context because you
12 haven't read the entire transcript.

13 Q. Well, I have read the entire transcript, sir.

14 A. Okay, and that's -- that's out of context --

15 Q. Okay. What --

16 A. -- because she had -- she had an opinion early
17 on.

18 Q. And her -- her opinion was that everything
19 pointed to this Defendant. Isn't that correct?

20 A. She didn't want to believe it.

21 Q. "She didn't want to believe it"?

22 A. And she felt like she was -- well, okay.

23 Q. I'm agreeing with you, sir. She didn't want to
24 believe it. You're aware that child abuse occurs,
25 correct?

1 A. Absolutely occurs.

2 Q. And who had access to this child? Oh, wait.
3 You don't know anything about it, do you?

4 A. That's correct.

5 MS. LABORDE: I'll pass the witness.

6 REDIRECT EXAMINATION

7 BY MR. MEGARO:

8 Q. Mr. Ray, I'm going to ask you to take a look at
9 Page 40 of the transcript. I'll get there. You were
10 just asked some questions about this conversation with
11 Taylor Garcia about an attorney, right?

12 A. Correct.

13 Q. And did there come a point in time during the
14 conversation where she said, "I don't have an attorney"?

15 A. She did.

16 Q. And I had told her --

17 MS. LABORDE: I'm going to object to
18 anything this Defense attorney told her. That's
19 hearsay.

20 THE COURT: Sustained.

21 Q. (BY MR. MEGARO) During this conversation, was
22 she told she could get her own attorney?

23 MS. LABORDE: Your Honor, I'm going to
24 object. This is repetitious. We've already gone --

25 THE COURT: Hold on. Let me hear -- let me

1 hear the question. Don't answer it yet until I hear the
2 question.

3 Q. (BY MR. MEGARO) During this conversation, was
4 Taylor Garcia told she could get her own attorney?

5 THE COURT: Say that again.

6 Q. (BY MR. MEGARO) During this conversation was
7 Taylor Garcia told she could get her own attorney?

8 THE COURT: I'll allow you to answer the
9 question. We've already gone over that two or three
10 times. You can answer that question.

11 Q. (BY MR. MEGARO) I'll direct your attention to
12 Page 68. Sorry.

13 A. Okay.

14 Q. Was she told she could get her own attorney?

15 A. Where are you reading from?

16 Q. Right at the bottom, I'm sorry, Lines 20 -- 21
17 through 25. Sixty-eight.

18 A. Sixty-eight.

19 Q. Sorry.

20 A. Yes.

21 Q. When the District Attorney asked you whether
22 you advised this young lady -- you gave legal advice to
23 this young lady, right?

24 A. Yes.

25 Q. I'm going to direct your attention forward to

1 Page 70 -- I'm sorry; forgive me -- 71, Lines 11
2 through 15. When it came down to dispensing legal
3 advice, you told this young lady to ask for the Court to
4 appoint her an attorney if she didn't have money to hire
5 one, right?

6 A. Right. May I read this?

7 MS. LABORDE: Your Honor, no, it's not --

8 THE COURT: No, you may not.

9 MS. LABORDE: -- inconsistent with his
10 testimony. It's just hearsay.

11 Q. (BY MR. MEGARO) Were you being deceitful when
12 you told her to ask for the Court to appoint her -- to
13 ask the Court to appoint her an attorney?

14 A. No.

15 Q. Were you lying to her?

16 A. No.

17 Q. Now there's been this discussion about
18 "going with her gut," right?

19 A. Yes.

20 Q. Did there come a point in time where you asked
21 Taylor Garcia what did her heart tell her as to whether
22 Mr. Ortiz committed this crime?

23 MS. LABORDE: Your Honor, this is
24 hearsay, okay? They didn't confront her with this
25 when she testified, so extrinsic evidence of it is

1 not admissible.

2 THE COURT: Sustained.

3 Q. (BY MR. MEGARO) Do you go with your gut
4 instinct?

5 A. I do.

6 Q. Does it steer you wrong, or is it usually
7 right?

8 A. It's usually right.

9 Q. And that's what you told Taylor Garcia to do is
10 go with her gut instinct?

11 A. Go with her heart and her gut, yes.

12 THE COURT: Thank you. Nothing further for
13 the witness.

14 RECROSS-EXAMINATION

15 BY MS. LABORDE:

16 Q. Mr. Ray, should she ignore facts?

17 A. Absolutely not.

18 Q. So if the facts tell her her child was abused
19 and there are a relatively small number of people who
20 could have done it, including herself, is it possible
21 her heart doesn't want to believe what her mind knows?

22 A. It's possible.

23 Q. Okay.

24 A. There's no doubt in my mind that she loves this
25 child. I saw that immediately when she was interviewed.

1 Q. Was there any doubt in your mind that she loved
2 this Defendant?

3 A. I think she loved the Defendant at the time we
4 talked to her, yes.

5 Q. "Yes."

6 A. I don't know about today. It's been almost a
7 year.

8 Q. So can that cloud your judgment?

9 A. It can on occasion.

10 Q. Can that -- can that make your gut instincts
11 wrong?

12 A. Yes.

13 Q. Have you met women who have been abused who
14 believe that they're loved and that they should stay and
15 they shouldn't leave because it's just a mistake, and he
16 won't do it again?

17 A. Yes. There's --

18 Q. And --

19 A. -- and there's other studies with regard to
20 that, yes.

21 Q. And you wouldn't tell a woman like that to
22 follow her gut, would you?

23 A. I would not. I would tell her to get away.

24 Q. So if you saw this Defendant sitting on top of
25 a pregnant 18-year-old girl strangling her, would you

1 tell her to go with her gut, that he loves her --

2 A. Absolutely not.

3 Q. -- or to get away?

4 A. If I saw something like that, absolutely not.

5 MS. LABORDE: I'll pass the witness.

6 MR. MEGARO: Nothing further from Mr. Ray.

7 THE COURT: You may step down. Call your
8 next witness.

9 MR. MEGARO: Judge, may we approach very
10 briefly?

11 THE COURT: You may.

12 (At the Bench, off the record.)

13 THE COURT: Ten-minute recess, Ladies and
14 Gentlemen. I'm going to take up matters outside the
15 presence of you. Don't talk about the case. Don't
16 allow anyone to talk to you about it.

17 (The jury retired from the courtroom.)

18 THE COURT: We're outside the presence and
19 hearing of the jury. What's our -- what's our status,
20 Mr. Megaro?

21 MR. MEGARO: The situation is normal.

22 THE COURT: I know the next part of it,
23 too.

24 MR. MEGARO: Yes. Your Honor, I have
25 discussed with my client testifying. I did -- I've been

1 preparing him for the possibility of testifying for
2 months, and the way that the trial has gone, he and I
3 are in agreement that at this time the Defense will -- I
4 guess when the jury comes back in, we'll formally rest
5 without presenting any further evidence including his
6 testimony.

7 THE COURT: All right. Mr. Ortiz, is that
8 correct, sir?

9 THE DEFENDANT: (Through the Interpreter)
10 Yes, and I'm in agreement.

11 THE COURT: And you understand you have the
12 right to testify if you wish to?

13 THE DEFENDANT: (Through the Interpreter)
14 Yes.

15 THE COURT: And if you choose not to
16 testify, the jury will be instructed that they cannot
17 hold that against you as far as any evidence of your
18 guilt or hold it against you in my manner whatsoever?

19 THE DEFENDANT: (Through the Interpreter)
20 Yes, I understand.

21 THE COURT: And you've had the opportunity
22 to confer with your attorney at length about whether or
23 not you wish to testify. Is that correct?

24 THE DEFENDANT: (Through the Interpreter)
25 Of course, I have.

1 THE COURT: All right. Let's bring in the
2 jury.

3 MS. LABORDE: Your Honor, I just want to
4 tell the Court that I did not anticipate that we would
5 have rebuttal right now, and I had my people coming
6 at 9:00, but I can tell them to come at 8:30.

7 THE COURT: I'm sorry?

8 MS. LABORDE: I didn't anticipate that we
9 have would have the opportunity to do rebuttal today, so
10 I have people coming at 9:00.

11 THE COURT: Oh, so you don't want it to go
12 to the jury today?

13 MS. LABORDE: Well, I mean the one thing I
14 had was -- was medical records of when Taylor went to
15 the hospital, so if the Defendant wanted to stipulate to
16 those, the only person I was calling was the medical
17 records custodian.

18 THE COURT: The jury is prepared to work
19 late. I would --

20 MS. LABORDE: Well, Your Honor, I mean he
21 told me he had two witnesses, and they're still here. I
22 mean I -- I didn't anticipate he wouldn't call them.

23 MR. MEGARO: These are always game time
24 decisions. I --

25 THE COURT: I understand that.

1 MR. MEGARO: I would have -- I would have
2 an objection to the records being admitted. The witness
3 has testified. Anything further at this point I think
4 is overkill and would probably contain hearsay but --

5 MS. LABORDE: Your Honor, once a -- once an
6 extraneous offense comes in, we have to prove it beyond
7 a reasonable doubt. She had said she went to the
8 hospital. I think we should be able to prove that
9 extraneous offense beyond a reasonable doubt. That is
10 our burden of proof.

11 THE COURT: Well, I -- I agree, and it's
12 going to come in as -- as long -- if we have to -- if
13 you have to get a sponsoring witness here to prove it
14 up, that's what we'll have to do but --

15 MR. MEGARO: Well, do -- do you have the
16 packet?

17 MR. RAMSAY: Yes. What if you said
18 something on the record (inaudible) -- and then we just
19 admit it?

20 MR. MEGARO: I -- I would agree, Judge,
21 and, basically, I've made my objection on the record,
22 and I guess the record is preserved for those
23 purposes. If the Court is going to rule that they're
24 admissible, anyway, then it would only make sense at
25 this point, instead of having a live witness to come in

1 to waste 15 -- ten minutes laying a foundation, I'm sure
2 that we can go through it, and, perhaps, we can even
3 agree on any necessary redactions, if any.

4 MS. LABORDE: Your Honor, I must have --
5 can we work on the charge maybe right now, and I'll do
6 that at the same time, if that's okay.

7 THE COURT: Okay. I do think, Mr. Megaro,
8 the medical records are going to be admissible, so I'll
9 overrule your objection, and you all are working on how
10 much of them --

11 MR. MEGARO: And -- and --

12 THE COURT: -- exactly how we're going to
13 do it.

14 MR. MEGARO: And being also I'm the
15 appellate lawyer, I just want the record to be clear
16 that even though I'm stipulating to the admission of the
17 records, I have an objection to the overall -- I'm
18 preserving the objection that they should be admitted.

19 THE COURT: You -- you are, and you're not
20 waiving any --

21 MR. MEGARO: Thank you.

22 THE COURT: -- any rights. The objection
23 is noted and overruled.

24 MR. MEGARO: And -- and, Judge, at the
25 close of the -- well, I'm sorry. We're actually not at

1 the close of all the evidence then, are we?

2 MS. LABORDE: No.

3 MR. MEGARO: Do you have another second
4 rebuttal --

5 MS. LABORDE: I will just do the records.

6 MR. MEGARO: And that will be it?

7 MS. LABORDE: And that will be it.

8 MR. MEGARO: Oh, okay.

9 MS. LABORDE: Your Honor, may I be excused
10 to go look. Landon went, but --

11 THE COURT: Yeah. We'll go off the record
12 for a minute.

13 (A recess was taken from 4:07 PM
14 to 4:25 PM.)

15 (Open court, Defendant present, no jury.)

16 THE COURT: Here's the problem with a
17 limiting instruction when one wasn't requested when the
18 evidence came in. Because it was admitted to the jury
19 for all purposes at that time and now to tell them that
20 they can't consider it, it -- it really causes some --
21 it's a bigger problem than -- it creates a big problem,
22 because they've been hearing all this evidence. It came
23 in for the general purposes, and now to tell them -- to
24 un-ring the bell, it's just --

25 MR. MEGARO: I had -- I had an objection to

1 the -- and that's exactly one of the reasons why I
2 objected to the evidence coming in at that time.

3 THE COURT: Well, you did -- you did object
4 to it, but you did not request a limiting instruction,
5 and that's when it needs to be given. At the time it
6 comes in, the jury needs to be instructed that they're
7 only to consider it for a limited purpose, and then it's
8 put in the charge, too.

9 MR. MEGARO: Okay.

10 THE COURT: Now as to the voluntariness
11 thing, I -- I considered that but -- because when we had
12 the suppression hearing and all that stuff, but before
13 the jury the voluntariness of his statement has not been
14 put in issue at all.

15 MR. MEGARO: There has been a suggestion by
16 the Defense that the statements were not the product of
17 voluntariness through cross-examination and through
18 Taylor Garcia about pressure put on her.

19 MS. LABORDE: Well, Your Honor, the issue
20 would be whether or not the Defendant said it was
21 voluntary. She has said her statement was voluntary,
22 that she felt pressure from everybody but that she
23 knowingly and voluntarily waived her -- her rights, and
24 she wasn't in custody, so he -- he's asking for a -- a
25 limited -- a special issue on Taylor's voluntariness of

1 her statement. I don't -- is that what he's asking for?

2 MR. MEGARO: I'm not asking for Taylor's.

3 I'm asking for -- I believe it's the State's burden to
4 prove that this Defendant's statement was freely and
5 voluntarily given beyond a reasonable doubt.

6 MS. LABORDE: Your Honor, we -- we proved
7 beyond a reasonable doubt that he was not in custody.
8 There -- there were actually no Miranda warnings
9 required. They all said they just gave their Miranda
10 just out of an abundance of caution. He was always free
11 to leave. He was never restrained. There's been no
12 contest. Now it's been suggested by the Defense that it
13 was not voluntary, but there was no evidence from the
14 witness stand that that was, in fact, true.

15 MR. RAMSAY: And, Judge, I -- I mean this
16 is what the hearing was for. Now if there was, say, a
17 contested issue of fact that came from the witness
18 stand, not simply from a suggestion on cross-examination
19 by the Defense counsel, that would entitle him to the
20 special issue. There has been no evidence from the
21 witness stand that it's contested, so this hearing --
22 the hearing we had two weeks ago continued from eleven
23 months ago is -- has settled this issue because there is
24 no contested issue --

25 THE COURT: Yeah, I agree. We'll -- we'll

1 put this on the record for you. Oh, it was on the
2 record. Okay.

3 (Off the record from 4:28 PM to 4:29 PM.)

4 THE COURT: All right. Let's get on the
5 record now again. All right. You all listen up. We're
6 on the record now. Outside the presence and hearing of
7 the jury we discussed the Court's Charge off the record,
8 some on the record, but we're now on the record. Having
9 incorporated the change in the language that you all
10 heard, does the State have any objections or requests --

11 MS. LABORDE: Your Honor, I would request a
12 unanimity instruction. Oh, it's in there, but I don't
13 think it should say a specific act of abuse. I think it
14 should just be "which specific acts, if any, were
15 committed by the Defendant, and the jury is not required
16 to agree unanimously on the exact dates of those acts,
17 if any, were committed." Because it's not sexual abuse,
18 I -- I don't think it should say "abuse."

19 THE COURT: Yeah, "any specific acts, if
20 any, were committed." All right. We'll take out
21 "abuse." Does the State have any other requests or
22 objections?

23 MR. RAMSAY: Did we take out the number --
24 the language --

25 MS. LABORDE: Manner and means.

1 THE COURT COORDINATOR: Yes. We took all
2 those out.

3 MR. RAMSAY: Okay.

4 THE COURT: Ms. Smith, go ahead and read
5 for me exactly the way it reads now so that we're all on
6 the same page.

7 THE COURT COORDINATOR: Which part?

8 MS. LABORDE: The "Elements."

9 THE COURT COORDINATOR: The "Elements"?

10 THE COURT: The "Elements," yeah.

11 THE COURT COORDINATOR: Okay. On
12 "Element-Count I," number "5," "by causing M [REDACTED] ORTIZ
13 to strike an unknown object, or by a manner and means
14 unknown to the Grand Jury." On "Count II," number --

15 THE COURT: Wait a minute. Wait a minute.
16 That doesn't make sense. Read it again.

17 MS. LABORDE: Well, remember "4" says
18 "did then and there intentionally cause serious bodily
19 injury to M [REDACTED] ORTIZ, a child fourteen (14) years of
20 age or younger, by causing M [REDACTED] (sic) to strike an
21 unknown object or by manner and means unknown."

22 THE COURT: Okay. Is that what it -- is
23 that the way you've got it?

24 THE COURT COORDINATOR: Yes.

25 THE COURT: Okay, all right.

1 MS. LABORDE: Count II, number "4," "did
2 then and there intentionally or knowing or recklessly
3 cause bodily injury to M [REDACTED] ORTIZ by causing
4 M [REDACTED] ORTIZ to strike an unknown object or by a manner
5 and means unknown to the Grand Jury," and Count II,
6 number "4" is the same thing.

7 THE COURT: Okay, all right. Other than
8 the requests and objections the Defense has made, I
9 think we -- we were on the record regarding the
10 voluntariness of the statement and the limiting
11 instruction. Do you have any further objections or
12 requests, Mr. Megaro?

13 MR. MEGARO: None other than what I've
14 voiced already, Your Honor, and I guess -- I know this
15 is premature since I haven't formally rested in front of
16 the jury yet, but to save time would the Court permit me
17 to reiterate my Motion for Directed Verdict at the close
18 of all evidence.

19 THE COURT: Yes, I would.

20 MR. RAMSAY: And rest for purpose of the
21 record.

22 MR. MEGARO: What's that?

23 MR. RAMSAY: Rest for purpose of the
24 record.

25 MR. MEGARO: Okay. I would -- I would rest

1 for purposes of the record. The State, I believe, is
2 introducing medical records which I have reviewed. Even
3 though I have an objection to the admission, I'm
4 stipulating to the business records certification so
5 that they can come in as evidence. I guess at the close
6 of all the evidence, I would repeat my Motion for
7 Directed Verdict as for the same reasons that I set
8 forth for the record earlier.

9 THE COURT: Okay.

10 MR. RAMSAY: And, Judge, we can close for
11 purposes of the record after we introduce this --

12 THE COURT: Correct.

13 MR. RAMSAY: -- and he can make that
14 motion.

15 THE COURT: Okay.

16 THE COURT COORDINATOR: Do you want me to
17 go ahead and run those?

18 THE COURT: Yeah. Go ahead and run copies
19 of the charge, and let's get them all ready and
20 distributed.

21 THE COURT COORDINATOR: Okay.

22 THE COURT: Let's talk about how much time
23 we want to argue.

24 MS. LABORDE: We'd request 25 minutes.

25 MR. MEGARO: The same, Your Honor.

1 THE COURT: All right. What kind of
2 warnings do you all want?

3 MS. LABORDE: Can -- Mr. Ramsay wants a
4 warning when he's used eight.

5 THE COURT: Used eight. Mr. Megaro?

6 MR. MEGARO: A two-minute warning, please.

7 THE COURT: Ms. LaBorde?

8 MS. LABORDE: Two minutes left.

9 THE COURT: Two left.

10 (A recess was taken from 4:40 PM
11 to 4:56 PM.)

12 (Open court, Defendant present, no jury.)

13 THE COURT: All right. Let's bring in the
14 jury.

15 (The jury was seated in the jury box.)

16 THE COURT: All right. Ladies and
17 Gentlemen, we appreciate your indulgence. I know that
18 was the longest 10-minute break you ever had in your
19 life, but we were able to get a lot of things done while
20 we were outside your presence here. The State may
21 proceed.

22 MS. LABORDE: The Defense --

23 MR. MEGARO: Judge, actually, I have to --

24 THE COURT: Oh, yes.

25 MR. MEGARO: -- I have to formally rest,

1 Your Honor.

2 THE COURT: All right.

3 MR. MEGARO: The Defense rests at this
4 time.

5 MS. LABORDE: Your Honor, at this time the
6 State would offer State's Exhibit No. 34.

7 THE COURT: State's 34 is admitted. Well,
8 you -- you wanted to make an objection to the record.

9 MR. MEGARO: I did. I had an objection to
10 State's 34 for the reasons set forth earlier, but that's
11 preserved.

12 THE COURT: And for the reasons set forth
13 earlier, the Court is admitting it. The objection is
14 overruled. You may publish.

15 MS. LABORDE: May we publish, Your Honor?
16 Ladies and Gentlemen, State's Exhibit No. 34 are
17 certified copies of medical records from the
18 Hill Regional Hospital. They are in regard to
19 Taylor Garcia who was treated there, and the records
20 contain her statements as to what had occurred.
21 "Alleged Assault," "States that person had been
22 drinking and started to beat on her and throw her
23 around. States that she is 5 weeks pregnant and has
24 abdominal pain (sic)." The rest of the records are that
25 she was asked to come back for follow-up, and so with

1 State's Exhibit No. 34, the State rests. State closes.

2 THE COURT: Defense close?

3 MR. MEGARO: Yes, Your Honor, and I would
4 make the same application -- the same application that I
5 made earlier which I understand is probably the same
6 ruling as earlier.

7 THE COURT: All right, denied. All right,
8 Ladies and Gentlemen, that concludes all the evidence
9 you're going to be hearing in this matter, and you'll
10 notice that you've been provided a copy of the Court's
11 Charge, and you're free to read along and -- as I read
12 it to you which I'm required to do. You may take that
13 copy of the charge to the jury room during
14 deliberations, but this one is brightly colored to
15 distinguish it from the official one from your copy.
16 This is the one to which you will affix your verdict.
17 The State and the Defense ready for the charge to be
18 read?

19 MS. LABORDE: The State is ready.

20 MR. MEGARO: Yes, Your Honor.

21 THE COURT: "LADIES AND GENTLEMEN OF THE
22 JURY:

23 The Defendant, JUAN FRANCISCO MEDINA ORTIZ,
24 stands charged by Indictment in Count I with the offense
25 of Injury to a Child, alleged to have been committed on

1 or about the 27th day of August, 2012, and in Counts II
2 and III with the offense of Aggravated Assault, alleged
3 to have been committed on or about the 22nd day of
4 August, 2012, and 16th day of August, 2012,
5 respectively, all in McLennan County, Texas. To these
6 charges the Defendant has pleaded not guilty.

7 Our law provides that a person commits the
8 offense of Injury to a Child if he intentionally or
9 knowingly causes serious bodily injury to a child
10 fourteen (14) years of age or younger.

11 Our law provides (sic) that a person
12 commits an assault if the person intentionally,
13 knowingly, or recklessly causes bodily injury to
14 another, including the person's spouse.

15 A person commits aggravated assault if the
16 person commits an assault, as defined above, and uses or
17 exhibits a deadly weapon during the commission of the
18 assault.

19 'Child' means a person 14 years of age or
20 younger.

21 'Actor' means a person whose criminal
22 responsibility is in issue in a criminal action.

23 'Bodily injury; means physical pain,
24 illness, or any impairment of physical condition.

25 'Serious bodily injury' means bodily injury

1 that creates a substantial risk of death or that causes
2 death, serious permanent disfigurement, or protracted
3 loss or impairment of the function of any bodily member
4 or organ.

5 'Deadly weapon' means a firearm or anything
6 manifestly designed, made, or adapted for the purpose of
7 inflicting death or serious bodily injury; OR anything
8 that in the manner of its use or intended use is capable
9 of causing death or serious bodily injury.

10 'Conduct; means an act or omission and its
11 accompanying mental state.

12 A person acts intentionally, or with
13 intent, with respect to a result of his conduct when it
14 is his conscious objective or desire to engage in the
15 conduct or cause the result.

16 A person acts knowingly or with knowledge,
17 with respect to a result of his conduct when he is aware
18 that his conduct is reasonably certain to cause the
19 result.

20 A person acts recklessly, or is reckless,
21 with respect to the result of his conduct when he is
22 aware of but consciously disregards a substantial and
23 unjustifiable risk that the result will occur. The risk
24 must be of such a nature and degree that its disregard
25 constitutes a gross deviation from the standard of care

1 that an ordinary person would exercise under all the
2 circumstances, as viewed from the actor's standpoint.

3 The Defendant is presumed innocent of the
4 charges. All persons are presumed to be innocent, and
5 no person may be convicted of an offense unless each
6 element of the offense is proved beyond a reasonable
7 doubt. The fact that he has been arrested, confined, or
8 indicted for, or otherwise charged with offenses gives
9 rise to no interference of guilt at his trial.

10 BURDEN AND STANDARD OF PROOF. As to Injury
11 to a Child by Contact" -- and actually that should be --
12 "Contact" should not be in there. Strike that, Ladies
13 and Gentlemen. "As to Injury to a Child as alleged in
14 Count I and Aggravated Assault as alleged in Counts II
15 and III of the Indictment, the State has the burden of
16 proof. The State must prove each of the elements of
17 each Count in the charged offense beyond a reasonable
18 doubt. The elements are set out below for each Count.
19 If each of you believes the State has proved each and
20 every element beyond a reasonable doubt, you are
21 required to return a verdict of guilty.

22 If you believe the State has failed to
23 prove any element of any Count of the Indictment, you
24 are required to return a verdict of not guilty as to
25 that Count.

1 You are instructed that members of the jury
2 are required to agree unanimously on which specific
3 acts, if any, were committed by the defendant. The jury
4 is not required to agree unanimously on the exact dates
5 when those acts, if any, were committed.

6 ELEMENTS-COUNT I. On or about the 27th day
7 of August, 2012; in McLennan County, Texas; the
8 Defendant, JUAN FRANCISCO MEDINA ORTIZ; did then and
9 there, intentionally or knowingly cause serious bodily
10 injury to M [REDACTED] ORTIZ, a child fourteen (14) years of
11 age or younger; by causing M [REDACTED] ORTIZ to strike an
12 unknown object, or by a manner and means unknown to the
13 Grand Jury.

14 COUNT II. On or about the 22nd day of
15 August, 2012; in McLennan County, Texas; the Defendant,
16 JUAN FRANCISCO MEDINO ORTIZ; did then and there
17 intentionally or knowingly or recklessly cause bodily
18 injury to M [REDACTED] ORTIZ by causing M [REDACTED] ORTIZ to strike
19 an unknown object, or by a manner and means unknown to
20 the Grand Jury; and the Defendant did then and there use
21 or exhibit a deadly weapon, to-wit: the Defendant's
22 hand or hands or an object unknown to the Grand Jury,
23 during the commission of said assault.

24 COUNT III. On or about the 16th day of
25 August, 2012; in McLennan County, Texas; the Defendant,

1 JUAN FRANCISCO MEDINA ORTIZ; did then and there
2 intentionally or knowingly or recklessly cause bodily
3 injury to M [REDACTED] ORTIZ by causing M [REDACTED] ORTIZ to strike
4 an unknown object, or by manner and means unknown to the
5 Grand Jury; and the Defendant did then and there use or
6 exhibit a deadly weapon, to-wit: the Defendant's hand
7 or hands or an object unknown to the Grand Jury, during
8 the commission of said assault.

9 You are further charged that it is the law
10 in this case that the State is not bound to prove the
11 exact date alleged in the Indictment but may prove the
12 offense, if any, to have been committed at any time
13 prior to the filing of the Indictment so long as said
14 offense, if any, occurred prior to the expiration of the
15 statute of limitations.

16 Our law provides that a Defendant may
17 testify in his own behalf if he elects to do so. In the
18 event he elects not to testify, that fact cannot be
19 taken as a circumstance against him. In this case the
20 Defendant has elected not to testify, and you are
21 instructed that you cannot and must not refer or allude
22 to that fact throughout your deliberations or take it
23 into consideration for any purpose whatsoever as a
24 circumstance against the Defendant.

25 Our law provides that a person is entitled

1 to the assistance of an Interpreter and you are
2 instructed that you cannot and must not refer or allude
3 to that fact throughout your deliberations or take it
4 into consideration for any purpose whatsoever as a
5 circumstance against the Defendant.

6 Our law provides that you're not to
7 consider a person's race or national origin and you are
8 instructed that you cannot and must not refer or allude
9 to the race or national origin of the Defendant
10 throughout your deliberations or take it into
11 consideration for any purpose whatsoever as a
12 circumstance against the Defendant.

13 The jury is instructed that the Court has
14 taken judicial notice that the date of the Indictment in
15 this case was presented was November 28, 2012, and
16 that the statute of limitations for the offense of
17 Injury to a Child is ten (10) years after the child's
18 eighteenth (18th) birthday and the statute of
19 limitations for the offense of Aggravated Assault is
20 two (2) years from the date of the offense.

21 The jury is further instructed that it may,
22 but is not required to accept as conclusive the fact
23 judicially noticed.

24 After you retire to your jury room you will
25 select one of your members as your Presiding Juror. If

1 you agree upon a verdict it must be by unanimous vote.

2 Until you have finished your deliberations
3 you shall not communicate to anyone outside the jury
4 room how the jury may stand numerically in its voting
5 nor how the jury may stand numerically on any issue
6 before you unless you are first called upon by the Court
7 to do so.

8 Turn off all phones and other electronic
9 devices. While you are deliberating do not communicate
10 with anyone through any electronic device. For example,
11 do not communicate by phone, text message, email
12 message, chat room, blog, or social networking websites
13 such as Facebook, Twitter, or MySpace. Do not post
14 information about the case on the Internet before these
15 Court proceedings end and you are released from jury
16 duty. Do not record or photograph any part of these
17 Court proceedings.

18 Any communications from the jury to the
19 Court must be written, prepared by the Presiding Juror,
20 signed by the Presiding Juror, and submitted to the
21 Court through the Bailiff. If you wish to communicate
22 with the Court about any matter, your Presiding Juror
23 shall prepare your communication in writing, sign it,
24 deliver it to the Bailiff, and the Bailiff will deliver
25 it to the Court.

1 Do not let personal bias, prejudice,
2 sympathy or resentment on your part or any such personal
3 emotion on your part enter into your deliberations or
4 affect your verdict in this case.

5 In your deliberations you must not relate
6 to your fellow jurors any personal experience of your
7 own or relate or speculate on any occurrence, happening
8 or event known to you not shown by the evidence in this
9 case. In all of your deliberations you will confine
10 yourselves strictly to the evidence introduced before
11 you in this trial under the rulings of the Court and the
12 definitions and instructions given by the Court. If any
13 juror attempts a violation of these instructions the
14 other jurors shall stop him at once. If the violation
15 continues, immediately report it to the Court.

16 You are the exclusive judges of the facts
17 proved, of the credibility of the witnesses, and the
18 weight to be given their testimony, but in matters of
19 law you must be governed by the instructions,
20 definitions and the rulings of the Court.

21 During trial it was permissible to take
22 notes. You may carry these notes to the jury room for
23 your personal use during deliberation on the Court's
24 charge. You may not share these notes with other
25 jurors; however, you may discuss the contents of your

1 notes. Your personal recollection of the evidence takes
2 precedence over any notes you have taken. A juror may
3 not rely on the notes of another juror.

4 Certain testimony will be read back to you
5 by the Court reporter if you request. To request that
6 testimony be read back to you, you must follow these
7 rules. The Court will allow testimony to be read back
8 to the jury only if the jury, in a writing signed by the
9 presiding juror, states that it is requesting that
10 testimony be read back, states that it has a
11 disagreement about a specific statement of a witness or
12 a particular point in dispute, and identifies the name
13 of the witness who made the statement. The Court will
14 then have the Court reporter read back only that part of
15 the statement that is in disagreement.

16 You shall have this written charge with you
17 when you go to the jury room."

18 Following that, Ladies and Gentlemen, is a
19 verdict form for each count of the Indictment. One is
20 to be signed if you unanimously find the Defendant
21 guilty of any counts, one to be signed if you find the
22 Defendant not guilty of any count.

23 A couple of words about the charge here.
24 First of all, we will send in with you all the
25 exhibits that were admitted during this trial so that

1 you don't have to send out and ask for them. You will
2 notice that throughout this trial there were many
3 references made to certain statements that were written
4 down on paper. For the most part, such written
5 statements are not admissible. The testimony about
6 those statements, of course, is the evidence, but do not
7 send out a note asking to see the testimony of a
8 certain -- a statement of a certain witness because
9 those are not admissible and will not be provided to
10 you.

11 Feel free to ask any question you have.
12 However, I'm limited by the law in what kind of
13 responses I can give you and what questions I can
14 respond to, so if you ask a question and you get a note
15 back from me that says, "Don't consider these matters;
16 don't worry about them; continue your deliberations," I
17 need you to understand that I'm not upset that you asked
18 the question. It's just that I'm limited in what I can
19 say. At the end of the trial I'll meet with you and
20 answer any question you have about any part of this
21 trial.

22 I call your attention to the last paragraph
23 of the Court's Charge there about having testimony read
24 back to you. The only way that any of the witnesses'
25 testimony can be read back to you is if you follow those

1 instructions. If you have a specific disagreement about
2 something a witness said and you tell me what point it
3 is that you have a disagreement on, that portion of the
4 statement can be read back to you and only that portion,
5 so don't send out a note asking to have the testimony --
6 a transcript of any particular witness's testimony
7 because that cannot be done.

8 I've allocated 25 minutes for the attorneys
9 to complete their summations to you. Because the State
10 has the burden of proof, they get to do what we call
11 "open the argument," and then the Defense gives their
12 complete closing argument, and then the State gets to
13 conclude. I'll be giving them warnings when they've
14 used a certain amount of time so that they'll understand
15 how much time they've used and how much they have left.
16 All right, Ladies and Gentlemen, the State may proceed.
17 You all needs the lights down?

18 MR. RAMSAY: No, not yet, Your Honor.
19 Thank you, Judge. May it please the Court, opposing
20 counsel. Ladies and Gentlemen, it's been a long three
21 days, and your work hasn't really even started yet.

22 Now we told you from the very beginning
23 that the burden in this case was on the State. It was
24 on the State to prove this to each and every one of you
25 beyond a reasonable doubt, and that's for you to decide

1 and for nobody else, and so, first off, I want to talk
2 to you about the charge.

3 This is the law. The evidence came from in
4 here. You'll get the exhibits back. You'll recall the
5 testimony, but this is law. This is what the Judge has
6 said is the law, and this is what we have to follow, so
7 I want to talk just about a couple of things quickly.

8 You'll see on the first page that it
9 talks about an injury to a child and what that
10 requires. It requires intentionally or knowingly
11 causing serious bodily injury to a child under the age
12 of 14 years -- 14 years or younger, and that's the first
13 thing, and the next two counts are aggravated assault
14 with a deadly weapon, and that is if a person commits a
15 assault, as defined, and uses or exhibits a deadly
16 weapon during the commission of -- of the assault, and
17 those are specifically set out, I believe, beginning on
18 Page 4 where you see the dates, the jurisdiction, the
19 Defendant and the manner and means, and I want to talk
20 to you about that a little bit.

21 At the very beginning of this trial, I
22 stood up here and told you all that the law does not
23 require us to prove a specific manner and means, and I
24 think we've seen why that is. We've seen that Max can't
25 tell us what happened. Max can't tell us exactly how

1 his bones were broken, but we do know they are broken,
2 and it's not fair to deprive him of justice simply
3 because he cannot tell us what happened, and so that's
4 why the law is what it is, and why we indict it as
5 "manner and means unknown," and so with those -- for
6 that count, the manner and means is unknown, but we do
7 know serious bodily injury occurred.

8 We know that for several reasons. We know
9 that from testimony from both the grandfather and the
10 mother that his arm had protracted loss of use which
11 means he was unable to do a normal function, which for a
12 two-and-a-half-month-old, a normal function is sucking
13 his thumb. That is -- fits the definition of
14 "protracted loss of use" for the law.

15 You also heard that serious bodily injury
16 can be something that can cause serious -- or can cause
17 death, capable of causing death. You heard Dr. Ward
18 talk about an injury where somebody has their ribs
19 broken in the places that he did. The force that would
20 cause that injury is capable of causing serious injury,
21 capable of causing death because of the organs that that
22 could affect. The mere grasp of an adult's hands around
23 a two-and-a-half-year-old (sic) chest and the injuries
24 that it causes is serious bodily injury according to a
25 medical doctor, the doctor who came in here and

1 testified who was an expert in child abuse, in
2 nonaccidental trauma, and, folks, I told you the burden
3 is ours, and that hasn't shifted, and the last thing I
4 want to talk about is the dates. The date is the first
5 element -- the date is the first element in each of
6 these causes of action, so I want to address that.

7 Again, Max can't talk. Max can't tell us
8 this one happened on the 27th. This one happened on
9 the 22nd, and this one happened on the 16th or 17th, but
10 we're not required to prove that. We can -- we can --
11 you can think it's any date during the time of his life
12 up to two-and-a-half months, up to that August 17th, and
13 that's fine, and you don't have to agree on that, but
14 that -- we're not required to provide a specific date or
15 prove a specific date beyond a reasonable doubt.

16 Now when I got up here and provided the
17 opening statement, I told you I think everything that I
18 anticipated that you would hear in this case. I told
19 you the witnesses that you would hear from. I told you
20 what the injuries you would see. I told you about who
21 the parties were and what I expected the evidence to be.

22 Now after I got finished, the Defense
23 counsel got up and compared it to a coming attractions
24 of movies, like a movie trailer, that a bunch of good
25 actors were lined up. It looked like a good movie, but

1 that when you go see it, it's just not what you
2 expected, and, folks I disagree with that for several
3 reasons.

4 First off, I think we proved everything
5 that we got up here and said we were going to prove the
6 entire time, and, second, I really wish that this was a
7 movie. I really wish that Max Ortiz didn't have the
8 father that he has. I really wish the first
9 two-and-a-half months of his life were not the first
10 two-and-a-half months of his life. I really wish this
11 was a movie. I wish it didn't happen, but it did, and
12 that's where you all come in. You all have to step up
13 and say -- and look at the evidence, and I'm going to go
14 through that in just a moment.

15 First off, I want to look at this
16 logically. We had Dr. Ward start everything off, and
17 she said that this is nonaccidental trauma,
18 nonaccidental abuse, that, first off, when the first
19 bone was seen at Hillcrest in Waco and was sent to
20 Temple because they thought this broken bone was
21 suspicion for nonaccidental trauma, they thought this
22 one right here alone was enough, and then they get down,
23 and they see 16 other broken bones and some that are on
24 the other chart.

25 Nobody in this cases that testified has

1 said anything other than this is child abuse, that this
2 is nonaccidental trauma, that this was intentionally or
3 knowingly caused, that these types of injuries cannot be
4 inflicted without knowing that you were doing it.
5 There's absolutely no evidence other than that in this
6 case, so we know starting out that it's child abuse. We
7 know it was an intentional act and that it was not an
8 accident and that it can't be caused by normal playing
9 with the child. We know that because Dr. Ward testified
10 to it, and there's absolutely no evidence to the
11 contrary. There's a dispute from cross-examination but
12 no evidence to the contrary.

13 Next, we know that three people had contact
14 with this child the most. We know there's the mother
15 and the father and Alejandra, and I want to talk about
16 those. First off, Alejandro Perez came in here, and I
17 think you can see that she's not the person that did
18 this. She's not, and I -- and it's not just me and the
19 State that agrees on that. Don't you think that the
20 Defense, had they really considered her a viable option,
21 would have gone to her house and recorded her and tried
22 to catch her if they really thought she was the one to
23 blame, but they didn't. Nobody believes that. Nobody
24 thinks the babysitter did it.

25 Next we have Taylor Garcia. You saw

1 Taylor. Taylor got pregnant when she was 18 years old.
2 She had a child. She was not ready for that child. I
3 think she even admitted that. She didn't know, and I
4 think you can also see that Taylor is genuinely in love
5 with that child. She loves Max, and don't take her word
6 for it. The defense investigator, about the only thing
7 he said, was that it was obvious that she loved her
8 baby. He said that. The Defense's own witness said
9 that.

10 What have you not heard? You have not
11 heard any evidence whatsoever that takes the blame
12 squarely off of this man's shoulders. There has been
13 nothing to suggest that he did not do this. What do we
14 know about him? We know very little. What we do
15 know --

16 THE COURT: You've used eight minutes.

17 MR. RAMSAY: Thank you, Your Honor. What
18 we do know is that he was controlling of Taylor. We
19 know that, and we know that he was physical with Taylor.
20 You can take it back and look. We know that those type
21 of actions, that he beat on her, and what stops him from
22 doing the same to his son? Don't be fooled just because
23 she's an adult. That is not true.

24 Folks, I think it's clear. The man sitting
25 over there, which I use that term very loosely, is the

1 man who committed this crime. This is not some big
2 conspiracy where Alfonso Saldana got together with
3 Chief Hudson who got together with Sharon Matthews who
4 got together with Shellby McComas who got together with
5 Dr. Ward who got together with Ms. Gattis who got
6 together with the family and said, "You know what? We
7 just don't like him. We just don't like this guy, so
8 let's pin it on him. We don't care about Max. Let's
9 just pin it on him. We know there's child abuse. We
10 know somebody did it. We know it's not an accident, so
11 let's just all just gang up and pin it on him now."
12 This isn't a conspiracy theory. This is the facts.
13 This is the evidence. This man committed this crime,
14 and we proved that to you beyond a reasonable doubt in
15 each count.

16 Now, folks, I hope that this week you went
17 home and hugged your kid for a little bit, and I hope
18 that you thought, "Man, what kind of person can take a
19 child that's two-and-a-half months old and squeeze with
20 such force to crack bones, to move arms in such ways to
21 break; what kind of monster can do that," and I hope you
22 hugged your kids, and this hits even more close to home
23 for me because on August 28th when they were in the
24 hospital at Hillcrest, I was in the hospital. I was in
25 the hospital having my firstborn on August 28th, and it

1 just shows you the two extremes of human life, that
2 somebody can be so destroying of such a beautiful thing.

3 Folks, the evidence is clear. It has not
4 been disputed by one witness. The only just verdict in
5 this case is a guilty verdict on all three counts. I
6 ask that you turn to the last three pages of this
7 verdict form when you get back there, and you write
8 "guilty," and you come back and tell this man what he's
9 guilty of because he already knows it. It won't be a
10 surprise to him.

11 I thank you for your time. I thank you for
12 your attention. I know it's been difficult. I look
13 forward to your verdict. Thank you.

14 THE COURT: Mr. Megaro.

15 MR. MEGARO: I apologize. I can't even
16 read my own handwriting anymore. A parent takes their
17 child to the emergency room because an accident
18 happened. He dropped the child in the baby carrier. He
19 takes the child and the mother to the emergency room and
20 tells the doctors what happened. He doesn't hide
21 anything. Immediately social workers and doctors come
22 down and say, "We don't believe you." The father tries
23 to explain, and the mother tries to explain, "Listen,
24 this was an accident; I know I hurt the child; I feel
25 bad about it; please give my child some help." The

1 doctor says, "I don't believe you." Before they can
2 blink, there's a team of people from this hospital all
3 standing around saying, "We don't believe you," and no
4 matter what they say --

5 MS. LABORDE: Your Honor, I'm going to
6 object. There's no evidence of any of this.

7 THE COURT: The jury will recall the
8 evidence as they heard it.

9 MR. MEGARO: No matter what they tell these
10 people at the hospital, they've got it in their heads
11 that this child was abused, and nothing would dissuade
12 them from that idea. He did what any parent would do.
13 The child was hurt. He brings the child to the doctor.
14 It was a mistake. It was unintentional.

15 Now, listen. Nobody here condones child
16 abuse. I don't think anybody in this room could ever
17 say it's okay to intentionally hurt an infant, and I'm
18 not saying that it never happens. I'm saying it didn't
19 happen in this case. It was not proven to you beyond a
20 reasonable doubt.

21 There's two types of evidence. There's
22 evidence you can trust, and there's evidence called
23 "trust me evidence," and I think instead of getting
24 evidence you can trust, you got trust me evidence. All
25 of these witnesses that took the stand for the State,

1 they just said, "Trust me; trust me; I know; I thought
2 this man was lying; trust me; trust me."

3 Ladies and Gentlemen, we all knew there'd
4 come a point in time where I was going to say this, and
5 I think the evidence bears this out. Det. Hudson --
6 Chief Hudson came in here and took an oath to tell the
7 truth, the whole truth and nothing but the truth.
8 That's not what he did. That's not what he gave you.
9 Investigator Saldana did not tell the truth, the whole
10 truth and nothing but the truth, and all they gave you
11 was trust me evidence.

12 Now you all know -- we've all had the
13 experience of how hard it is to regain trust in somebody
14 that has lied to you. Just think about somebody you
15 know very well that lied to you in your life. How do
16 you ever regain trust in that person again, someone
17 you know well. These are perfect strangers. How can
18 you regain trust in a perfect stranger that would lie
19 to your faces, and the proof is right there in the
20 pudding.

21 We know those interviews were recorded, not
22 once but twice on the audio and video. He had a video
23 camera going and an audio recorder going. This is a
24 detective who is now the Chief of Police. He knows how
25 important it is to preserve evidence. He knows what the

1 procedures are to preserve evidence. He knows how
2 important it is to tape and preserve a suspect's
3 statement which is the linchpin in the State's case
4 here, and he flat out admitted that without Mr. Ortiz's
5 statement on August 31, 2012, he could not have made an
6 arrest. He did not even have enough evidence to make
7 an arrest, and we have a statement that is over five
8 hours in the making, and I can tell you it didn't take
9 more than five hours to write those two pages on
10 August 31, 2012, and as Chief Hudson admitted to you
11 there were a lot of things discussed during that
12 interview process over the course of five hours that did
13 not make it into that statement.

14 If we had that video recording, there'd be
15 absolutely no argument about what went on in that room.
16 If we had that audio recording, there would be no
17 argument as to what went on in that room, but do you
18 have that? No. That would be evidence that you could
19 trust, because the police made certain sure that you,
20 the jury, would not see that evidence, and the way that
21 Chief Hudson explained it is actually a little
22 unsettling, very, very, very lackadaisical about it.
23 "Oh, whoops, my bad; I must have deleted them both; I
24 lost a crucial piece of evidence." First he blames the
25 District Attorney's Office. "No, that won't work."

1 Then he's, "You know, I have a Gateway computer that
2 just magically deletes computer files off the hard
3 drive; that's what I'm going to tell this jury; that's
4 what I want them to buy," from a hard drive that nobody
5 has access to except him, his testimony, not mine.

6 Now I think that by now most people have
7 the experience of transferring files from a phone, from
8 a camera, from a video camera, from an audio recording,
9 iTunes, whatever. We all know how to burn CD's. We all
10 know that files don't magically delete themselves off of
11 computers. It takes an intentional act to delete a file
12 off of a computer, and even when you do, where does it
13 go? The trash bin, and you can resurrect that file.

14 My point is if he actually transferred the
15 file to the hard drive that only he had access to,
16 losing a CD wouldn't matter, and to think that somebody
17 would not back up something like this of this
18 importance, that's not worthy of belief. That's not
19 evidence that you can trust.

20 Now I walked through that same door to get
21 into this courtroom as everyone did. I did see the sign
22 that said "Turn Off Your Cell Phone." The sign that
23 said "Please Leave Your Common Sense in the Hallway," I
24 didn't see that sign. I don't think any of you did
25 either because that sign doesn't exist. You're not

1 required to leave your common sense outside this door.
2 This is the place for common sense, and what does common
3 sense dictate? What is the logical, reasonable
4 explanation? That these officers trashed those audio
5 and video files to deprive you of the opportunity to see
6 what really happened during those two days. Is that
7 evidence you can trust? Is someone who would do
8 something like that someone that you can trust?

9 Now the District Attorney's own witnesses
10 say, "We don't know exactly how this happened; we don't
11 know exactly when it happened; we don't know in what
12 manner this occurred." If their own witnesses aren't
13 sure, how can each one of you be sure beyond a
14 reasonable doubt?

15 What this case is about is about character
16 assassination, and that's really all that they have.
17 They want you to dislike him. They want you to convict
18 on emotion. They want you to take your reason and
19 logic, put it all aside, ignore the evidence and ignore
20 the lack of convincing evidence. Ignore the holes.
21 That's not proof beyond a reasonable doubt, and I think
22 the best example of that is the testimony of
23 Shellby McComas who magically appears as a witness out
24 of nowhere, for two years never speaks to the police,
25 and just like everybody else jumps on the band wagon.

1 Let's all pile on this guy. Everyone jump on the
2 Juan Ortiz band wagon. Let's trash him. We don't have
3 any real evidence here, but maybe just maybe if we smear
4 this man enough, we can distract these twelve folks from
5 the lack of evidence. Maybe just maybe if we smear him
6 enough, the more sympathy we get this jury to feel, that
7 sympathy will cloud their judgment. They'll put reason
8 and logic out in the hallway. Sympathy will make it in,
9 and that's what they'll base this verdict on. That's
10 why we'll put all these photos up of this cute little
11 kid clouding everybody's judgment.

12 Let's even smear the Defense lawyer who is
13 doing his job in investigating the case, and everybody
14 would agree that you would expect your lawyer to
15 investigate and speak to witnesses and to get to the
16 heart of the matter, who speaks to the witness who
17 flat out says, "I would have said something different if
18 I knew I was being recorded."

19 MS. LABORDE: Your Honor, I'm going to
20 object. She did not say that. She said, "I wouldn't
21 have spoken to them at all if I knew I was being
22 recorded."

23 THE COURT: Overruled. The jury will
24 recall the testimony as they heard it.

25 MR. MEGARO: What difference does it make

1 whether you're being recorded or not? What difference
2 does it make? Is the truth the truth whether I tape you
3 or whether I tape you or whether I tape you? The truth
4 should be the truth all the time to everybody, not lying
5 to me, not lying to the detective, not lying to this
6 one, not lying to that one, trust me evidence, not
7 evidence you can trust. Even Dr. Ward had no
8 explanation as to how and when and exactly how these
9 injuries occurred.

10 MS. LABORDE: Your Honor, I'm going to
11 object. We are not required to prove an exact date or
12 an exact manner and means. There is nothing improper
13 about that, and to suggest that is to argue contrary to
14 what the law actually requires us to prove.

15 THE COURT: Sustained.

16 MR. MEGARO: We do know that the baby was
17 born with a broken collarbone, and there was already
18 medical documentation of that from the birth itself.
19 Otherwise, you can bet dollars to donuts that that would
20 have been fracture number 18 that my client is charged
21 with, and Dr. Ward testified that the x-rays that you
22 saw here, these fuzzy images, "Well, you know, the
23 hospital has high-resolution images. They don't look
24 like that at the hospital. This is what we're going to
25 present to the jury." You weren't shown those

1 high-resolution images, again trust me evidence, not
2 evidence you can are trust.

3 Dr. Ward did go on and on about how
4 these -- these injuries from this baby, this child would
5 be in constant pain. It would be readily apparent to
6 anybody that had this child with these broken ribs,
7 broken legs that this child was in significant pain.
8 Painfully obviously, anyone within an earshot would know
9 this, yet the one person who spent the most time with
10 the child got up here and testified she saw nothing of
11 the kind.

12 Alejandra Perez was one of the only people
13 that didn't have to lie. She didn't have to lie to keep
14 the baby. It's not her baby. She said she wasn't
15 worried about the police. "I knew I didn't do anything
16 wrong." She was so unconcerned that it completely and
17 totally slipped her mind that she had been taken to a
18 police station or that she'd went to a police station
19 and had been given Miranda rights by a police officer.
20 That had never happened to her before, and it had never
21 happened to her since. For most people that would be
22 something very, very scary. That would be something
23 that you would probably never forget. She forgot about
24 it, and the person who spent the most time with the
25 baby, what did she say? "The baby didn't cry."

1 MS. LABORDE: I'm going to object. She did
2 not say the baby didn't cry. She said the first two
3 weeks the baby didn't cry, and then he became more
4 difficult.

5 THE COURT: Overruled. The jury will
6 recall the testimony and the evidence.

7 MR. MEGARO: She said, "I watched this baby
8 four days a week. I never saw any injuries on him
9 except a small bump that his mother told me was an
10 insect bite." The other injury was a red mark that she
11 believed was the result of a vaccination, colic,
12 "maybe," broken legs, "no," broken ribs, "no," broken
13 shoulder, "nothing of the kind."

14 Oddly enough, her testimony is consistent
15 with the testimony given by Taylor Garcia, that she and
16 Mr. Ortiz brought the baby to the doctor's office
17 several times during the month of August 2012, and these
18 are trained medical professionals, Ladies and Gentlemen,
19 nurses, doctors, pediatricians. All of these doctors
20 examined this child and found nothing. They would be
21 under a duty under the law to report suspected abuse
22 just like Dr. Ward told you, and all the times that they
23 brought this baby right around the time that they allege
24 that these crimes occurred, all of these people saw
25 nothing.

1 Ladies and Gentlemen, the State's star
2 witness, Taylor Garcia, she's told so many lies we can't
3 even keep track. By her own admissions, she lied to
4 the police. She lied to social workers. She lied to
5 the Defense lawyer and the Defense investigator. She
6 lied about her identity. In the State's 34, she even
7 lied to the hospital on 2011 where she checked off these
8 boxes and filled out this questionnaire at the hospital.

9 "Do you believe you're the victim of a crime?"

10 No answer. "Give a description of what happened."

11 "Fell and need to be checked," signed "Taylor Garcia."

12 Is this the truth and her testimony a lie, or is this a
13 lie and her testimony the truth. Is this evidence you
14 can trust? Is her testimony evidence you can trust?
15 That's the truth. That's the lie.

16 Why did she lie? Her words, not mine,
17 "I would do anything to keep my baby; I would lie to
18 keep my baby; I would do anything to get my baby back."
19 Do I fault her? No, I don't. You know why? So would
20 I. I would do it, too. I would do anything for my
21 children, and I would expect any parent to do the same.
22 Does that make it right? No. Does that make it okay?
23 Well, it depends on your point of view. Is that proof
24 beyond a reasonable doubt? Absolutely not.

25 If this was such a bad person, why would

1 she want to go visit him? Why would she send him a
2 picture of her and the baby. Was she taunting him? I
3 don't think so, because she doubted that he did it.
4 That's what she initially told the police, that it was
5 the babysitter or the baby-sitter's husband. She was
6 scared. She said what she had to do to get out of
7 trouble.

8 For two days the police terrorized her.
9 This is an 18-year-old girl. The police are terrorizing
10 her. They're putting enormous pressure on her, and just
11 like the people at the hospital, nobody wants to hear
12 that we don't know what happened. Nobody wants to hear
13 we don't know how this baby ended up in this condition.
14 The police don't want to hear it. They want to blame
15 somebody. They get her parents. They get her family to
16 terrorize her. They take the baby away. What would
17 any 18-year-old girl do in that scenario? She folded.
18 She's still folding today, but she did what she had to
19 do to make sure she doesn't lose her son. Again, this
20 is not proof beyond a reasonable doubt.

21 We don't know happened in this case. The
22 State's witnesses don't know what happened. They don't
23 know when it happened. We don't know if this is some
24 medical condition or if this is accidental --

25 MS. LABORDE: I going to object.

1 MR. MEGARO: -- or intentional --

2 MS. LABORDE: There's no evidence that
3 there's some medical condition. There's no evidence of
4 that.

5 THE COURT: Overruled. The jury will
6 recall all the testimony and all the evidence as they
7 heard it.

8 MR. MEGARO: If this was an intentional
9 act, we don't know if it was committed by Taylor Garcia.
10 We don't know if it was committed by Alejandro Perez.
11 We don't know if it was committed by her husband or by
12 someone else. We do know that this man was working all
13 the time. He worked two jobs, and out of the three who
14 are suspects, he had the least access to the child. He
15 was alone with the child for the least amount of time,
16 the least opportunity to intentionally inflict injuries.
17 My client didn't ask to be put on trial.

18 He didn't ask to be indicted. He didn't ask to be
19 arrested, named a defendant in a criminal case. It's
20 the State that charged him, and if they're going to
21 charge somebody with a crime as serious as this, they
22 have to prove it beyond a reasonable doubt. They have
23 to present evidence that leaves you so firmly convinced
24 that a crime was committed and that this man committed
25 the crime that there is no reason to doubt that. That's

1 what they failed to do here.

2 What is a "reasonable doubt"? It sounds
3 just like it sounds, a reason to doubt that a reasonable
4 person would have based upon the evidence --

5 MS. LABORDE: Your Honor, I'm going to
6 object to any attempt to define "reasonable doubt."
7 That's for the jurors to decide for themselves.

8 THE COURT: Sustained.

9 MR. MEGARO: You are all reasonable people
10 here. In this case there is a serious lack of
11 convincing evidence. There are significant holes in
12 this case. There are inconsistencies between evidence,
13 major inconsistencies between witnesses' testimony,
14 prior inconsistent statements of witnesses, outright
15 lies. There are so many reasons to doubt here.

16 I now ask each and every one of you to
17 fulfill your oath as a juror. Go back to that jury room
18 and do what the law requires you to do, the same thing
19 that each one of you promised this man you would do if
20 and when the State failed to prove this beyond a
21 reasonable doubt, and that is to return a verdict of
22 not guilty on all counts. Thank you.

23 THE COURT: Ms. LaBorde.

24 MS. LABORDE: Your Honor, Defense counsel
25 and Ladies and Gentlemen, I have to tell you I'm just

1 really baffled. I don't even really know what the
2 defense is, do you? Is it that this child wasn't
3 abused? Is it that pediatricians in Temple are coming
4 in here and lying to you, and there really weren't any
5 broken bones? Is it that Taylor did it? Is it that
6 Alejandra -- I don't -- I don't really know what's going
7 on, so I think you just need to go back and go over the
8 witnesses that you heard, look at your notes, and decide
9 what you think happened here.

10 I think what the Defense is trying to do
11 is play upon the logic that just kind of goes out the
12 window when we're talking about a woman who continues to
13 stay with her abuser. I mean do any of you really
14 understand why a woman would do that? I mean we all
15 know it happens. We all know it happens. I think it's
16 just so sad, you know, listening to Jennifer talk about,
17 "Yeah, I saw him choking my sister, but it just never
18 occurred to me that he would hurt a child." Honestly,
19 Ladies and Gentlemen, what is the difference?

20 Taylor is pregnant. She's alone. She's
21 defenseless, and he won't let her go through her phone.
22 He wants to know who she's talking to. She won't give
23 up her phone. She's going to stand up for herself, and
24 what does he do? He shoves her against the wall.
25 You know, he -- she hits her stomach. She thinks she

1 might be having a miscarriage, and he -- as soon she's
2 down, is that enough? No. He gets on top of her, and
3 he holds her throat. He is in charge of her. He is in
4 control. That is exactly what all those -- what
5 everyone told you that he does.

6 His -- her parents take her to Burlington
7 Coat Factory which should be a nice event. They're
8 buying her stuff for the baby. Richard told you --
9 Anthony told you he had a cart full of stuff, and they
10 were going to check out, and this Defendant from far
11 away has to ruin that event for her. She has to go
12 outside and cry outside and hide from her parents the
13 really crappy existence that she has decided she is --
14 all she deserves, and that's because of this man and his
15 control over her.

16 He was already married. He already had his
17 own kids, and he saw a 17-year-old high school girl, and
18 he took advantage of her. She couldn't work when he
19 wasn't working. She couldn't talk to anybody. If
20 somebody called her phone that he didn't know, he would
21 call that number. What does that tell you about him?
22 He was in charge of every single part of her life.

23 Now I want you to do something else. We
24 did not introduce evidence of this baby -- could you
25 turn the lights off --

1 THE COURT: Sure.

2 MS. LABORDE: -- to try and play on your
3 emotions. He cannot speak for himself. He cannot tell
4 you what happened, and this Defendant was given an
5 opportunity to tell you how this baby got those
6 injuries, and he lied, and I ask you to think about what
7 this baby went through. I know it's hard, and I know
8 you don't want to, but you have to.

9 He held that baby and crunched his ribs.
10 He held him, and he crunched them. Do you understand
11 what that means? He looked at his dad, and he thought
12 that love would be looking back at him, and that's not
13 what happened. He felt all of those bones crunching.

14 I could have charged him with 17 different
15 counts because he felt 17 different bones crack, but I
16 didn't, okay? I made it easy. I'm just asking for
17 three counts. That's it, but all -- all four of those
18 ribs were broken, and when he did that he heard a
19 crunch, and that did not make him stop.

20 Those bones were healing. They were at
21 least 14 days old. For 14 days, whenever Max was on his
22 back, it hurt. Whenever anyone picked him up, it hurt,
23 and everyone thought he was colicky, but he wasn't. You
24 can see. Are these -- these are bumps. This is a
25 normal rib right here, a clean line.

1 This is a -- well, that's interesting,
2 another mistake, but I would also like to point out
3 before I forget it. His own investigator said that he
4 has lost a recording within the last year, okay? It
5 just happens, folks. People make mistakes, and I'm
6 sorry that Max wasn't smart enough to get abused in a
7 place better than West. I'm sorry. He deserved a
8 better investigation, but that is not his fault. That's
9 just a fact. I wish they had kept those recordings, and
10 they didn't because human beings make mistakes, but when
11 you sign this verdict you are not saying that anyone did
12 a good job, and if that insults you and you think that
13 someone should get in trouble for losing those
14 recordings, please write a letter. Please tell them not
15 to do that. Please tell them to get an interrogation
16 room or come down and use a better one, but that's not
17 what a guilty verdict means, okay? You're not punishing
18 West Police Department by finding this child abuser not
19 guilty. That's a completely separate issue.

20 Are these fuzzy right here? Do you really
21 need to be an expert to know the reason this baby
22 couldn't move his arm and the reason that his arm was
23 swollen was because his arm was broken? How many babies
24 have you heard about that when you grab them when
25 they're falling on the ground that their arms just

1 break? It doesn't happen. Look at that. He can't move
2 his arm. He doesn't suck his thumb anymore.

3 This is him three weeks later. It's still
4 splinted. He can't move his arm. I mean how confusing
5 could that have been? I mean he has an arm and just
6 can't move it. I mean that's protracted loss, folks.
7 That is Count I right there, serious bodily injury. He
8 should be able to use his arm, but somebody got mad.
9 Taylor went to the bathroom to change her pants. He was
10 alone with this baby. He cried, and he snapped. That
11 is what happened.

12 Now I want to talk about these corner
13 fractures. They're all along here. You can see. She
14 told you it's like a hazy circle when bones are healing,
15 okay? The body heals itself, thank God. This baby is
16 walking, and nothing is wrong with him because how
17 miraculous our bodies are, but this is what happened.
18 His bones were chipped all along his knee and his ankle,
19 and they were -- some of them were new, and some of them
20 were old.

21 Now he wasn't walking, you know, so he
22 didn't have to feel the pressure on those, but you guys
23 know that when -- when this Defendant, when any human
24 being is -- is violently shaking limbs like that that
25 the corners are chipping. The person who did that knows

1 it, period. He cried immediately when that happened.
2 You can see even the bone here has completely come off,
3 okay? I mean no one was around to hear this. It was
4 all on Taylor to figure this out, and all she thought
5 was that she had a fussy baby, and she made a mistake.

6 Now I think what's so important in this
7 case is to really think about what Dr. Ward told you.
8 Think about what the charges are, and then think about
9 what the Defendant told you, okay? If you think about
10 all those things together, there is only one explanation
11 because this really is not a complicated case. We have
12 a baby who's seriously injured. We have three people
13 with access, and we have one person saying, "Yes, I did
14 it; I didn't mean to do it." He's going to lie and
15 minimize, but he's telling you he did it. Why do you
16 think the investigator for the Defense did no
17 investigation? Did he get medical records?

18 MR. MEGARO: Objection, Your Honor. That's
19 burden-shifting.

20 MS. LABORDE: Your Honor, they put up the
21 investigator.

22 THE COURT: Overruled.

23 MS. LABORDE: All he did was talk to
24 Taylor. That is all he did, no medical records. He
25 didn't even know any facts. He admitted that. He

1 didn't know any of the injuries. He didn't see any of
2 the x-rays. He never thought about what the facts were,
3 but he goes and tells Taylor, "Go with your gut; go with
4 your gut," because he knows that she's a battered woman
5 who doesn't want to believe she could be with someone
6 who would do something like this, but she was, and we
7 know that because he told us that. They're just trying
8 to undo this.

9 This is why no one is seriously considering
10 Alejandro as a suspect, because the Defendant tells us
11 what happened, and I think -- I think what is so
12 interesting and what I hope you guys really will go back
13 and read the statement and think about is about these --
14 is about these corner fractures. The doctor told you
15 there's really only two ways that she sees those. One
16 way is when babies are shaken. When baby's are shaken,
17 we normally see some brain bleed, and I know you've all
18 seen those billboards "Don't Shake Your Baby." When you
19 do that, all the limbs flail. Okay, so if the head is
20 shaking and the arms are shaking and the legs are
21 shaking, and that mechanism is what causes those bone to
22 chip.

23 Now we don't have any head injuries, right?
24 And so what did she tell you the other way she sees
25 these injuries are? People grabbing limbs and jerking

1 them, and that's what we see in this baby. His knees,
2 his ankles and his upper shoulders, those are the
3 arms -- the limbs that are chipped. That's exactly what
4 he's saying he did. He's exercising the baby, okay?

5 He didn't even talk to Dr. Ward about the
6 mechanism. He didn't know what we know. He didn't see
7 the x-rays, you know, and that's what he says he did,
8 okay? He -- he doesn't know that. What he's doing is
9 just minimizing what he actually did. What are the odds
10 of that? This isn't a false confession.

11 Everyone told you he spoke English. I mean
12 I'm sure you probably got tired of me asking that
13 question, but he speaks English, okay? He wrote in
14 Spanish himself, and then it's translated. He helps
15 Saldana translate this back into English, and then he
16 signed it, okay? There's no evidence in this case this
17 was coerced. Do I wish we had the recordings? Sure, I
18 do, but you have his words, and, frankly, I mean if --
19 if we really were going to try to tell someone what to
20 say, would we tell them to say, "Well, I never meant to
21 do it; I didn't mean to hurt him"? No. This is what a
22 guilty man does, and that's what he is.

23 THE COURT: You have two minutes remaining.

24 MS. LABORDE: I think also on top of
25 that -- on top of that you have, you know, what you

1 heard this Defendant say about this baby, so you have --
2 there's no question this child was abused. I don't know
3 really what the Defense is talking about. If there was
4 an expert in this country that would come in here and
5 say that none of these injuries are actually intentional
6 abuse, and it's not serious bodily injury, and his hands
7 aren't deadly weapons, you would have heard it, okay?
8 There is no such of evidence. Dr. Ward's testimony was
9 uncontroverted. It just is what it is.

10 You have three suspects, and you have one
11 person that tells us he did it, but you have more than
12 that actually. You have what he says about this baby,
13 about Max, about a human being. "He's not mine; he's
14 ugly." He shaves his head because his hair is ugly.
15 "He's a sissy; he's a whinny baby." He doesn't love
16 him. He doesn't love him. This child is a problem.
17 This child meant he was going to have to get a divorce
18 and leave, okay?

19 You have motive. That's what you have.
20 You should have no doubt the only person who had a
21 motive to do this was this Defendant, and that's why
22 that investigator did no investigation. Every single
23 fact points to him, and that's why the facts aren't
24 important to the Defense. I ask you to return a guilty
25 verdict on all three counts.

1 THE COURT: Ladies and Gentlemen, we will
2 retire you to the jury room to consider and deliberate
3 your verdict. Feel free to take a break if you need to,
4 but remember this. You cannot discuss this case outside
5 the jury room with anyone, and do not deliberate your
6 verdict until all twelve of you are together in the
7 room. If somebody has to take a break during your
8 deliberations, cease your deliberations and wait until
9 all twelve of you are together. We will send in the
10 charge and the exhibits with you. By the way, an
11 Uncle Dan's Barbecue plate is on the way.

12 THE BAILIFF: It's there.

13 (The jury retired to the jury room.)

14 (The proceeding was recessed.)
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1 THE STATE OF TEXAS §

2 COUNTY OF McLENNAN §

3

4 I, Theresa J. Popejoy, Deputy Court Reporter in and
5 for the 19th Judicial Court of McLennan County, Texas,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 by Defendant to be included in this Reporter's Record,
10 in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported
12 by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.

16 WITNESS MY OFFICIAL HAND this the 26th day of
17 February, 2015.

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19

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21

22

23

24

25

/s/Theresa J. Popejoy
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REPORTER'S RECORD
Volume 5 of 7

COURT OF APPEALS NO. 07-15-00007-CP FILED IN
 TRIAL NO. 2012-2235-C1 7th COURT OF APPEALS
 AMARILLO, TEXAS

THE STATE OF TEXAS

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IN THE DISTRICT COURT
 VIVIAN LONG
 CLERK
 19TH JUDICIAL DISTRICT

JUAN FRANCISCO
 MEDINA ORTIZ

McLENNAN COUNTY, TEXAS

TRIAL ON THE MERITS

GUILT/INNOCENCE PHASE

November 21, 2014

On the 21st day of November, 2014, the
 following proceedings came on to be heard in the
 above-entitled and numbered cause before the
 Honorable Ralph T. Strother, Judge presiding, held in
 Waco, McLennan County, Texas:

Proceedings reported by Computerized Machine
 Shorthand Method.

Volume 5 of 7

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1 (Open court, Defendant present, no jury.)
2 THE COURT: All right. We're outside the
3 presence of the jury now. For those of you that did not
4 know what's going on, we have a jury out on a case, and
5 we have a note from the jury that we need to address.
6 The note reads as follows: "Judge Strother, we, the
7 jury, would like to hear the testimony in regards to the
8 doctor's testimony of the force that would have been
9 associated with the break of the scapula, also the
10 testimony in the breaking of the arm, also the medical
11 testimony if the arm breaking was due to the Defendant
12 dropping the baby, legal definition of 'reasonable
13 doubt' and 'substantial risk,'" this in spite of the
14 fact that the last paragraph of the charge talks about
15 how they get testimony repeated to them, and I -- the
16 last thing I told them was to pay attention to that
17 paragraph, and, obviously, they didn't, so I propose
18 to instruct the jury that I've received their note,
19 that to please refer to the last paragraph of the
20 Court's Charge, and that's about all I think I can say
21 about it. Does the State have any objection to that?

22 MR. PARKER: No, Your Honor.

23 THE COURT: The Defense?

24 MR. MEGARO: Your Honor, I'm sorry. I
25 couldn't hear the last part of that.

1 THE BAILIFF: You guys, quiet. The Judge
2 is on the bench talking.

3 THE COURT: Mr. Megaro.

4 MR. MEGARO: I'm sorry. I couldn't hear
5 you. I heard, "I propose to."

6 THE COURT: What I propose to say to the
7 jury is that, "I have received your note regarding your
8 request. Please refer to the last paragraph of the
9 Court's Charge," and that's all I intend to say.

10 MR. MEGARO: And with the note right after
11 that, that's fine.

12 THE COURT: Now we can either have the jury
13 brought into open court and I can give them that reply,
14 or I can, as we normally do, Mr. Megaro, prepare a note
15 and send it in through the bailiff, but it's up to you
16 all to determine how you want to do that.

17 MR. MEGARO: I -- I think a note is
18 sufficient, right?

19 MR. RAMSAY: That's what we would want to
20 do.

21 MR. MEGARO: That's fine.

22 THE COURT: All right. You got what I
23 said, Ms. Smith?

24 THE COURT COORDINATOR: I have, "I have
25 received your note regarding the request. Please refer

1 to the last paragraph of the charge."

2 THE COURT: "Of the Court's Charge."

3 THE COURT COORDINATOR: "Of the Court's
4 Charge."

5 (A recess was taken from 8:37 AM
6 to 8:39 AM.)

7 (Open court, Defendant present, no jury.)

8 THE COURT: All right. We have another
9 note from the jury. It reads as follows:

10 "Judge Strother, we, the jury, would like for the
11 testimony of Dr. Ward read back to us. We are in
12 disagreement on what the doctor said in regards to the
13 cause of the break of the arm." I think they are
14 referring to the break of the arm that -- the
15 explanation of the break of the arm that got the child
16 sent to the hospital in the first place, but, actually,
17 both arms were broken, weren't they?

18 MR. MEGARO: No.

19 MS. LABORDE: Well, at the top, but I think
20 they're talking about --

21 THE COURT: They're talking about the one
22 where the Defendant says that he dropped the child, the
23 break of the humerus?

24 MS. LABORDE: But I think they're talking
25 about what Dr. Ward says the cause is, not --

1 THE COURT: Right, right. All right. I
2 think they've narrowed it down enough that we can -- can
3 see if we can find whatever reference the doctor made to
4 that, and I'll have the court reporter go back and see
5 if she can find that particular piece of testimony and
6 transcribe it, and we'll go from there. All right.
7 Mr. Megaro, we will -- we'll try to find that, and we'll
8 recess this until we can see what the court reporter can
9 find and get back on the record.

10 MR. MEGARO: There may be -- I -- I know
11 there was some on direct, and there may be some on
12 cross-examination, too. It feels like a year ago
13 already but --

14 THE COURT: I know.

15 MS. LABORDE: I think there was some on
16 cross --

17 MR. MEGARO: Yeah.

18 MS. LABORDE: -- and redirect. I mean I
19 think there's probably a lot.

20 THE COURT: All right. Well, there may be
21 a couple of places.

22 MS. LABORDE: You may -- I mean it may
23 really need to be more like a search for cause or not
24 just harm.

25 THE COURT: We're all agreeing, I assume,

1 that they're referring to Dr. Ward's testimony.

2 MR. MEGARO: Yes, and I think it's specific
3 to the arm.

4 THE COURT: Okay, thank you all.

5 (A recess was taken from 9:01 AM
6 to 10:30 AM.)

7 (Open court, Defendant present, no jury.)

8 THE COURT: We're back on the Ortiz matter
9 now outside the presence and hearing of the jury. The
10 court reporter has searched her notes regarding the
11 request from the jury with testimony of the doctor
12 relative to the cause of the break of the arm. She has
13 searched her notes, and you've been provided an excerpt
14 from the only place in the transcript that appears to be
15 relevant to that specific issue. A copy has been
16 provided to the State and the Defense. What says the
17 State?

18 MR. RAMSAY: Judge, we have no objections.

19 MR. MEGARO: We have reviewed it together,
20 Your Honor, and we're okay with it. The testimony is
21 what it is.

22 THE COURT: All right. Again, Mr. Ortiz,
23 the jury can be brought into the courtroom, and I can
24 read this to them. It would be more efficient if we
25 simply provided the jurors with a copy of the court

1 reporter's transcript here. How do you all wish to do
2 that?

3 THE DEFENDANT: (Through the Interpreter) I
4 want you to send it back.

5 THE COURT: All right. We'll send it in to
6 it the jury. Oh, I guess, Ms. Smith, we need probably
7 the cover note that says, "In response to your question
8 regarding the doctor's testimony, please find attached
9 the relevant testimony."

10 THE COURT COORDINATOR: "In response to
11 your question regarding the doctor's testimony, please
12 find attached the relevant testimony."

13 THE COURT: Yes.

14 (A recess was taken from 10:32 AM
15 to 11:19 AM.)

16 (Open court, Defendant present, no jury.)

17 THE COURT: THE COURT: All right. We're
18 outside the presence of the jury now in the Ortiz
19 matter. We got another note from the jury. This one
20 reads: "Judge Strother, we, the jury, would like
21 further testimony read back from Dr. Ward. We are
22 disputing the fact of whether or not the break in the
23 arm could have been accidental or nonaccidental. We are
24 disputing Dr. Ward's testimony, whether the break in the
25 arm was accidental or nonaccidental," signed by the

1 Presiding Juror. I just conferred with Ms. Popejoy off
2 the record, and she said that she thinks there may be a
3 statement from the doctor in the testimony that says
4 this was not an accident, so I'm going to ask her to go
5 review her notes and see whether there's anything
6 relevant to that or not, so you all stand by. Keep the
7 Defendant in here for the time being until we can --
8 maybe this will be a little bit faster than the last one
9 was.

10 (A recess was taken from 11:20 AM
11 to 12:23 PM.)

12 (Open court, Defendant present, no jury.)

13 THE COURT: All right. We're still
14 outside the presence and hearing of the jury dealing
15 with these testimonies that the jury wants in response
16 to their last note, number "4." Again, the court
17 reporter has searched her notes and provided a
18 transcript of the testimony that refers to the question.
19 I made copies. Again, does the State have any
20 objection?

21 MR. RAMSAY: No objections from the State.

22 MR. MEGARO: The Defense does, Your Honor.
23 Are the excerpts being made part of the Court file?

24 THE COURT: Of course.

25 MR. MEGARO: Okay, just making sure. I

1 would have an objection on Page 2 from Lines 15 down
2 to 25 and continuing on Page 3.

3 THE COURT: Wait a minute. I'm sorry. Let
4 me get to my -- I've got so many pages of that up here.
5 I'm sorry. What page?

6 MR. MEGARO: Page 2 of this particular
7 excerpt, Line 15, where the question starts, "How often
8 have you seen a fracture to the scapula," continuing to
9 the bottom of that page and continuing onto Page 3 from
10 Line 1 to Line 11, because I believe that testimony is
11 dealing specifically with a fracture to the scapula, not
12 a fracture to the arm or the humerus, which I -- I've
13 reviewed the last -- the fourth jury note that deals
14 with the dispute about the arm injury. This testimony I
15 believe is focused entirely on the scapula injury where
16 the doctor testified about how an injury to the scapula
17 would occur in a four-wheeler-type accident, and I would
18 have no objection to the other testimony on Page 1 and 2
19 or the last question and answer on Page 3 because that's
20 the one that deals -- where the doctor comes back to the
21 humerus fracture, but I think if we give them testimony
22 about a scapula injury versus an arm or humerus injury,
23 that could, one, leave a different -- a wrong kind of
24 impression on the jury and, two, potentially even
25 confuse them further.

1 MS. LABORDE: Your Honor, I would just say
2 that part of reason the doctor determined that this
3 injury was -- the humerus injury was not an accident was
4 because of the other injuries. That scapula injury was
5 another acute injury that has no signs of healing, but I
6 think that also gives context to when we're talking
7 about an accident. She could have come back and said,
8 you know, "Well, the arm could break in a fall like
9 the ATV we were just talking about," but she didn't say
10 that. She -- she had -- when we talk about all the
11 other breaks, she said, "This is the only one that
12 could be an accident," but that has to be in some
13 context, I think.

14 MR. MEGARO: I actually noticed -- I -- I
15 have a question for the court reporter. This is on
16 Page 2. On Line 10 it says "highly concerning for
17 intention type of injury." Sorry. I'm sorry. I'm
18 sorry. I'm wondering if "intentional type of injury,"
19 or did we -- did we forget a preposition or something?

20 THE COURT: I -- I probably just -- I was
21 just rushing.

22 MR. MEGARO: Okay.

23 MS. LABORDE: What line was that?

24 THE COURT: Ten on Page 2.

25 MS. LABORDE: "Intentional type of injury"?

1 THE COURT: Oh, wait a minute. We're not
2 sure yet.

3 THE REPORTER: I'm trying to find it.
4 (Off the record discussion from 12:56
5 to 12:31 PM.)

6 THE COURT: Okay. What -- what are we
7 doing?

8 MR. MEGARO: I found a potential error on
9 Page 2, Line 10.

10 THE COURT: That should be "intentional."

11 THE REPORTER: Okay. Yeah, that's what it
12 is. It should be "intentional."

13 THE COURT: It should be "intentional"
14 there?

15 MR. MEGARO: "An intentional"?

16 THE REPORTER: Yeah.

17 THE COURT: All right. While we're at
18 it -- Ms. Smith found another typo on Line 17 on Page 2.
19 "I have only seen it." "I have on seen it." It should
20 be "I have only."

21 (Off the record from 12:32 PM
22 to 12:33 PM.)

23 THE COURT: All right. Regarding the
24 Defendant's objection about the -- including in the
25 transcript the testimony about the scapula, I see

1 both points, but I think that -- for it to have the
2 proper context with the -- all of the doctor's
3 testimony, especially considering the trouble the jury
4 is having with it, I think contextually it makes more
5 sense to include that in there so that they can kind of
6 get the general picture of what the doctor was
7 testifying to, so I'm going to overrule the Defense's
8 objection and include that in the Court's response --
9 response to the jury. Other than that, any other
10 objections, Mr. Megaro?

11 MR. MEGARO: No, Your Honor.

12 THE COURT: And, again, is it permissible
13 to simply send in the written transcript rather than
14 have them brought into open court?

15 MR. MEGARO: Yes.

16 THE COURT: Okay.

17 MR. MEGARO: My -- my client adheres to his
18 prior permission to that, as well.

19 (A recess was taken from 12:34 PM
20 to 2:39 PM.)

21 (Open court, Defendant present, no jury.)

22 THE COURT: All right. Ladies and
23 Gentlemen, as you're aware, we have a note from the jury
24 that they have reached a verdict. Before we bring the
25 jury in, let's talk about a couple of things.

1 I have no idea what the verdict is, and
2 if it turns out that it's not guilty, we don't have
3 any kind of issue at all, but should the Defendant be
4 found guilty of any of the counts that he's been
5 charged with, we'll, of course, go into the punishment
6 phase.

7 This is Friday night and the weekend before
8 an upcoming holiday. It is 2:40 PM. I don't want to
9 put anybody through having to spend a late night up here
10 on Friday if -- if it's possible, but I know everybody
11 has holiday plans and things they need to do, and,
12 personally, I've got a -- my wife is on the way back
13 from the Dallas area with a sick grandchild that she
14 needs some help on.

15 Does anybody have any suggestions about --
16 my -- my idea right now is if the Defendant is guilty of
17 something that we put as much punishment evidence on as
18 possible and then come back on Monday. How does that
19 sit with everybody?

20 MS. LABORDE: Your Honor, the State
21 would request to go today. The family would have to
22 come back from Fort Worth. The -- we've had M [REDACTED]
23 in our office this whole week. Him having to come
24 back on Monday with the family would be really
25 putting them out. I'm unable to argue on Monday. I

1 could only argue today.

2 THE COURT: But you had indicated earlier
3 yesterday, though, that somebody else could put -- stand
4 in for you on the punishment if we got to that point.

5 MS. LABORDE: Yes.

6 THE COURT: How much punishment evidence
7 does the State have?

8 MS. LABORDE: Probably 20 minutes or less.

9 MR. MEGARO: Judge, I -- I anticipate the
10 same on the Defense side. I have two witnesses that are
11 here just in case. They're already here. I anticipate
12 they would be relatively quick.

13 THE COURT: Well, in that case we might be
14 able to do it today then. I just --

15 MR. MEGARO: I -- I would personally rather
16 try to finish today, if possible.

17 THE COURT: Let's see what the verdict is.
18 Like I say, it might not be an issue, but -- and if it
19 is guilty on any of these counts, let's see how far we
20 get on punishment, and then I'll make the final call.
21 I -- if you all are giving me a fairly accurate picture
22 of what you think is going to happen, I could see
23 getting it done today. The quicker we get them in here,
24 the quicker we know. Bring them in. All right. When
25 the verdict is announced, I don't want any undo reaction

1 from the people in the audience. Just maintain your
2 silence and composure.

3 THE INTERPRETER: Why don't I go back and
4 tell them --

5 MR. MEGARO: I have -- I have spoken to the
6 family already yesterday.

7 THE INTERPRETER: Oh, you've told them --

8 MR. MEGARO: -- yes.

9 THE INTERPRETER: -- about that? Okay.

10 (The jury was seated in the jury box.)

11 THE COURT: Good afternoon, Ladies and
12 Gentlemen. Ms. Hogwood, I understand you are the
13 Presiding Juror and that you all have reached an
14 unanimous verdict. Is that correct?

15 THE PRESIDING JUROR: Yes, sir.

16 THE COURT: If you'll pass it to the
17 bailiff, please.

18 THE PRESIDING JUROR: (Complies with
19 request.)

20 THE COURT: "JURY VERDICT COUNT I. We, the
21 jury, find the Defendant, JUAN FRANCISCO MEDINA ORTIZ,
22 *guilty* of the offense of Injury to a Child as alleged in
23 Count I of the Indictment."

24 "COUNT II. We, the jury, find the
25 Defendant, JUAN FRANCISCO MEDINA ORTIZ, *guilty* of the

1 offense of Aggravated Assault as alleged in Count II of
2 the Indictment."

3 "COUNT III. We, the jury, find the
4 Defendant, JUAN FRANCISCO MEDINA ORTIZ, *guilty* of the
5 offense of Aggravated Assault as alleged in Count III of
6 the Indictment," as signed by the Presiding Juror.
7 Anything else to take up with the jury at this stage of
8 the trial from the State?

9 MS. LABORDE: Not from the State,
10 Your Honor.

11 THE COURT: From the Defense?

12 MR. MEGARO: Application to poll the jury,
13 Your Honor.

14 THE COURT: Okay, all right. Ms. Hogwood,
15 you've heard the verdict of the jury announced. Is that
16 your verdict, ma'am?

17 THE PRESIDING JUROR: Yes, sir.

18 THE COURT: Mr. Phillip Hawkins, you've
19 heard the verdict of the jury. Is that your verdict,
20 sir?

21 THE JUROR: Yes, sir.

22 THE COURT: Kerry Lee Storer, is that your
23 verdict?

24 THE JUROR: Yes, sir.

25 THE COURT: Drew Crenwelge -- Crenwelge, is

1 that your verdict, sir?

2 THE JUROR: Yes, sir.

3 THE COURT: Mr. Jeffrey Brown, is that your
4 verdict?

5 THE JUROR: Yes, sir.

6 THE COURT: Ms. L'Porsha Clark, is that
7 your verdict, ma'am?

8 THE JUROR: Yes, sir.

9 THE COURT: Ms. Carolyn Monroe, is that
10 your verdict?

11 THE JUROR: Yes.

12 THE COURT: Ms. Carla Hudson, is that your
13 verdict?

14 THE JUROR: Yes, sir.

15 THE COURT: Ms. Cheryl Crenshaw, is that
16 your verdict?

17 THE JUROR: Yes, sir.

18 THE COURT: Ms. Pamela Slaughter, is that
19 your verdict, ma'am?

20 THE JUROR: Yes, sir.

21 THE COURT: Mr. Jeremiah Zimmerman, is that
22 your verdict?

23 THE JUROR: Yes, Your Honor.

24 THE COURT: Everett Thomas, III, is that
25 your verdict?

1 THE JUROR: Yes, sir.

2 THE COURT: All right. Ladies and
3 Gentlemen, the Court accepts and receives the verdict of
4 the jury.

5 (The proceeding was recessed.)

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1 THE STATE OF TEXAS §

2 COUNTY OF McLENNAN §

3

4 I, Theresa J. Popejoy, Deputy Court Reporter in and
5 for the 19th Judicial Court of McLennan County, Texas,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 by Defendant to be included in this Reporter's Record,
10 in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported
12 by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.

16 WITNESS MY OFFICIAL HAND this the 27th day of
17 February, 2015.

18

19

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21

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23

24

25

/s/Theresa J. Popejoy
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REPORTER'S RECORD
Volume 6 of 7

COURT OF APPEALS NO. 07-15-00007-CP FILED IN
 TRIAL NO. 2012-2235-C1 7th COURT OF APPEALS
 AMARILLO, TEXAS

THE STATE OF TEXAS

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§

IN THE DISTRICT COURT
 VIVIAN LONG
 CLERK
 19TH JUDICIAL DISTRICT

JUAN FRANCISCO
 MEDINA ORTIZ

McLENNAN COUNTY, TEXAS

TRIAL ON THE MERITS

PUNISHMENT PHASE

November 21, 2014

On the 21st day of November, 2014, the
 following proceedings came on to be heard in the
 above-entitled and numbered cause before the
 Honorable Ralph T. Strother, Judge presiding, held in
 Waco, McLennan County, Texas:

Proceedings reported by Computerized Machine
 Shorthand Method.

Volume 6 of 7

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1 (Open court, Defendant and jury present.)

2 THE COURT: We'll proceed into the
3 punishment phase of the trial. The State may proceed.

4 MS. LABORDE: The State calls Norma Garcia.

5 THE COURT: Raise your right hand, ma'am.
6 I don't think I've sworn you in before.

7 (The witness was sworn.)

8 THE COURT: Have a seat, sign your name,
9 and please speak into the microphone.

10 THE WITNESS: Norma Torres Garcia.

11 MS. LABORDE: Oh, I think you have the
12 laser pointer.

13 THE WITNESS: Oh, I'm sorry.

14 NORMA GARCIA,

15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. LABORDE:

18 Q. Ma'am, could you please introduce yourself to
19 the jury.

20 A. Hello. My name is Norma --

21 THE COURT: Ma'am, please speak into
22 microphone.

23 THE WITNESS: Sorry. My name is
24 Norma Garcia. I am M [REDACTED] Garcia -- sorry --

25 M [REDACTED] Ortiz's grandmother.

1 Q. (BY MS. LABORDE) And have you known him since
2 he was born?

3 A. Yes.

4 Q. Did you go to the hospital that day?

5 A. Yes.

6 Q. Now I want to talk about kind of when you guys
7 had him back in your home. Do you remember how old --

8 A. Yes.

9 Q. -- Max was when he came out of foster care and
10 came to live with you all?

11 A. He was four months.

12 Q. Can you tell the jury? What was his physical
13 condition then?

14 A. He was -- he was so -- he was so tiny. He --
15 he was still in some pain because his fractures had just
16 healed. He was in foster care for about six weeks.
17 He -- we couldn't move him from Temple until he was
18 almost completely healed. He was very scared. He did
19 bond with his foster mom, so for the first
20 week-and-a-half or so he cried a whole lot, almost all
21 day and all night. He had night frights and just
22 cried --

23 Q. Now what do you mean by -- what do you mean by
24 "night frights"?

25 A. He would wake up screaming in the middle of the

1 night. He was crying uncontrollably, so my husband and
2 I would -- would -- of course, he was in our room, so we
3 held him most -- almost all night and just comfort him
4 and just talk with him and just told him that, you know,
5 we were there and we loved him, and, you know, even
6 though he was only four months old, I think he sensed a
7 fear or he sensed that -- you know, he was scared of --
8 of something. I'm not -- I just -- we just felt so --
9 so heartbroken because of all that he had been through
10 and -- and all that he was continuing to go through.

11 Q. Did you -- where -- where -- when he first
12 came, where did Max sleep in your house?

13 A. He was in a crib in our -- in our room.

14 Q. Did you want to keep his living arrangements as
15 similar as possible to what his foster mom was doing?

16 A. Yes. He -- he slept also in his -- in a
17 bassinet or a small crib near his foster mother, and she
18 also held him for the six weeks that he was there. At
19 night he would wake up screaming and crying
20 uncontrollably and just shaking, and she did that also,
21 and she told us that he might experience similar fears
22 and, you know, just crying spells when we took him home,
23 and she said, "Just when he" -- "when he wakes up
24 screaming like that, just grab him, hold him, put him on
25 your chest and just pat his back and just, you know,

1 talk to him through it," and that is what we continued
2 to do, and we did that until he was ten months, or even
3 almost a year old he was still waking up with that, and
4 the doctor told us that -- that --

5 Q. And let me stop you without --

6 A. Sorry.

7 Q. -- going into what the doctor said but --

8 A. Okay.

9 Q. -- has that -- has that improved now that he's
10 two?

11 A. He's still waking up in the middle of the night
12 at least twice.

13 Q. And does he -- does he just wake up, or does
14 he --

15 A. He wakes up screaming for me, or we have him
16 every other weekend or every other Saturday, I should
17 say. He just spends the night with us, and he wakes up
18 screaming for -- you know, for me, and then when he's
19 home, he wakes up screaming for his mom.

20 Q. So it's become something that is a part of him?

21 A. He needs that encouragement like that, just a
22 sense that someone is there with him, that --

23 Q. Now can you tell --

24 A. -- reassurance.

25 Q. Can you tell the jury briefly if you had -- if

1 you had concerns about his speech?

2 A. We did. He -- when he was about six months
3 old -- I took three months -- a three-month leave of
4 absence when we got him, and we noticed that because of
5 all the injuries and also the time that he spent in the
6 hospital and then the time in foster care that his
7 arm -- left arm was immobile and he was not able to move
8 it to the full range of motion that, you know, a typical
9 six-month -- four-to-six-month-old would -- you know,
10 should be moving it. We contacted Early Childhood
11 Intervention, and they came in, and they worked with
12 him, and they -- they examined him, and they assessed
13 him, and they felt that he needed physical therapy, and
14 then after a month of physical therapy he also --

15 THE COURT: Ms. Garcia -- Ms. Garcia, if
16 you could slow down a little bit, and --

17 THE WITNESS: Okay.

18 THE COURT: -- let's do questions and
19 answers.

20 THE WITNESS: Okay, physical therapy.

21 Q. (BY MS. LABORDE) He needed physical therapy.
22 Did he need any other kind of therapy?

23 A. Yes, developmental therapy.

24 Q. Did they come to your house?

25 A. They did, twice a week.

1 Q. What kinds of things did they do with Max?

2 A. They would move his arms up and down. They
3 would side-to-side, up and down, and his arm was
4 still -- like I said, it wasn't moving. He didn't have
5 full motion to it. They would also -- it was very
6 painful for him. He had gotten to a point where he was
7 almost -- it was almost like a protective -- just the --
8 that he felt like he needed it to be next to him like a
9 sense that he -- just that arm belonged there or just
10 that that was part of him. That was the way it should
11 be, so when they would move his arm, he would cry, and
12 he would scream that he -- you know, he didn't want his
13 arm moved, so it was very painful to watch him just,
14 you know, cry because they -- they said that it didn't
15 hurt, but it -- I don't know if it was because he
16 remembered. He was having flashbacks that he was -- it
17 was very traumatic for him to go through the exercises.

18 Q. Does he move it now?

19 A. Thank God, yes. After almost two years of
20 physical therapy, he's able to have almost full range of
21 motion to his arm.

22 Q. So are you not having anyone now come to
23 Taylor's house to do it?

24 A. No. He -- the last three months he's graduated
25 from physical therapy. He just -- he worked so hard,

1 and he -- he -- he caught up to a full level of a
2 two-and-a-half-year-old, where a two-and-a-half year old
3 should be.

4 Q. Has he met all of his milestones now for a
5 two-and-a-half-year-old?

6 A. Yes, he has.

7 Q. Now I want to -- I want to switch subjects, and
8 I want to talk to you about any concerns you might have
9 if the Defendant were to be free any time soon. Do you
10 have any concerns about whether Taylor would be strong
11 enough to resist any kind of relationship with him?

12 A. I would hope that she would, but he had such
13 control over her. He made her feel that she could not
14 move forward without him, and she would not be anything.
15 He had reduced her to the point where she relied on him
16 so much that just I have a fear that maybe she wouldn't
17 be able to, you know, just say "no" to him because he --
18 he has a way of being very charming and just cocky and
19 get his way with a lot of people.

20 Q. Did you observe the Defendant behave that way
21 towards Taylor?

22 A. Yes.

23 Q. Charming?

24 A. With us, yeah, he -- he told us that he wasn't
25 married. He told us that he was -- that his wife -- he

1 had divorced his wife because he -- she was very jealous
2 and controlling, and he had two children, but they were
3 in Mexico and that he did love Taylor and just he -- he
4 just made us -- tried to make us believe that he was a
5 good person, but we didn't know everything that was
6 going on. She was -- she just -- she held onto a lot of
7 things.

8 Q. Did you know that Taylor had written the
9 Defendant since he's been in jail?

10 A. No, I didn't know.

11 Q. Does that -- does that surprise you?

12 A. Yeah, it hurts me. It hurts me so much,
13 because I just -- I don't understand it. After all he
14 did to him, it makes me -- it makes me so mad.

15 Q. Now you had seen all of the x-rays of Max's
16 injuries. Is that right?

17 A. (Nods head.)

18 Q. And you're nodding your head "yes"?

19 A. Yes.

20 Q. Did you think you needed to do that to care for
21 him, to know what his injuries were?

22 A. We did because we -- when he was with us, we
23 had to continue to take him to his specialist -- see the
24 specialist, and we had to go see a chiropractor -- I'm
25 sorry, not a chiropractor -- orthopedic specialist

1 through Cook Children's network, and when we were at the
2 orthopedist, he read the report of all his injuries, and
3 I saw he had tears in his eyes, and he said, "I've never
4 seen this many breaks; I have never read this many
5 breaks on a child and see this, a child seen." By then
6 he was seen. We had to wait until he was seven months
7 old because he didn't -- couldn't sit -- to be able to
8 sit up till about seven months old, so he was about four
9 months behind in his developmental stages, and so he --
10 he -- he showed -- he wanted to have the x-rays to
11 show -- to show us where his growth plates were, and
12 that's one of the things that on his lower limbs
13 where the -- his growth plates were where the fractures
14 were.

15 Q. Okay, so did your -- did everyone you dealt
16 with at Cook Children's, did they have to rule out any
17 undiagnosed brain trauma from --

18 A. Yes.

19 Q. And they did that. Is that right?

20 A. They did because my grandson when he -- when he
21 was seven -- no, about nine months old, he started to
22 have minor seizures, and they thought that it was
23 possibly a delayed -- just a misdiagnosed brain trauma
24 that just happened later, and so they -- they had to do
25 an MRI and -- of the brain and also an EEG, I think it's

1 called, just an electrical brain test that checks for
2 brain waves, and we spent two nights at Cook Children's
3 so they could monitor him 24 hours and 48 hours, and so
4 it was -- it was very traumatic because they had to
5 shave his head, and they had to -- you know, in certain
6 parts where they connected the electrodes to his head
7 and --

8 THE COURT: Ms. Garcia -- Ms. Garcia, I
9 know this is traumatic. Try to take a couple of deep
10 breaths and compose yourself. I'm afraid the court
11 reporter and maybe even the jury can't --

12 THE WITNESS: Yes, sir. Yes, sir.

13 THE COURT: -- can't keep up with
14 everything you're saying.

15 Q. (BY MS. LABORDE) So let me make -- let me make
16 sure I understand. It has never turned out that Max has
17 had any brain injuries from when he was two-and-a-half
18 months old. Is that right?

19 A. Yes.

20 Q. But when he started having trouble walking and
21 trouble with his arm and trouble with his speech, they
22 had to kind of revisit the idea of whether or not he had
23 been hurt in his head --

24 A. Yes.

25 Q. -- before they really knew what the problem

1 was. Is that right?

2 A. Correct.

3 Q. And it is your understanding now that he was
4 delayed --

5 A. Yes.

6 Q. -- because of emotional trauma, because of not
7 having range of motion --

8 A. Yes.

9 Q. -- with his arm and various other reasons
10 connected to what occurred, but his brain is fine.
11 Is --

12 A. Yes.

13 Q. -- that right?

14 A. Correct.

15 Q. That doesn't mean that anyone enjoyed spending
16 two days in the hospital wondering if something had been
17 missed. Is that right?

18 A. Correct, correct.

19 Q. Who do you think is responsible for that?

20 A. I hold Francisco responsible for all that has
21 happened to my grandson, and he -- he can't speak up for
22 himself. He was not able to speak up for himself then,
23 and now my grandson, when he looks -- he looks at me, he
24 sees -- all he sees is someone that -- you know, that
25 loves him and is here to protect him, and when he looks

1 back at me in his eyes I see the love and the trust that
2 he has in me, and that is what his life should have been
3 like from the beginning.

4 Q. So has that changed? When he first got to your
5 house he didn't know if he could trust you or not, did
6 he?

7 A. No.

8 Q. So are you -- are you proud of him and proud of
9 everybody?

10 A. I'm very proud of him. He is a fighter. He
11 is a fighter, and I thank God that he doesn't have
12 brain damage and that he is walking and he is talking,
13 and he has survived this, because now he will tell
14 you -- like when he's upset, he'll say, "No, stop,"
15 you know, and just he sticks up for himself if any
16 other little kids pick on him at daycare and stuff
17 like that. He's -- he's a little -- he's a little
18 character.

19 Q. So he's kind of small, but you see he's --

20 A. Yes, he's -- he is. He's small. Yes, he's a
21 small, little guy. He's a little short, but he has a --
22 a big mouth.

23 MS. LABORDE: I'll pass the witness,
24 Your Honor.

25 THE COURT: Mr. Megaro.

CROSS-EXAMINATION

BY MR. MEGARO:

Q. Ms. Garcia, is M [REDACTED] doing well today?

A. He is.

Q. Can he walk?

A. He can walk.

Q. Can he run?

A. He can run.

Q. Can he play with other --

A. He can play.

Q. -- kids?

A. He can play --

Q. And there's no damage --

A. -- as other kids should be doing at his age.

Q. There's no damage to his brain, right?

A. By the grace of God, no.

MR. MEGARO: Okay. I have no further questions for the witness, Your Honor.

MS. LABORDE: I have nothing further.

THE COURT: All right. You may step down, ma'am. Next witness.

MR. RAMSAY: Judge, may we step in the hall just briefly to make sure our --

MS. LABORDE: Your Honor, maybe we should just -- we could rest at this time and call our

1 other witness in our rebuttal case. I don't believe
2 he's here --

3 THE COURT: All right.

4 MS. LABORDE: -- so we would do that.

5 THE COURT: All right. The State rests.

6 Mr. Megaro.

7 MR. MEGARO: Yes. The Defense would call
8 Alma Judith Contreras Espinosa. She's going to need an
9 interpreter, I believe, Your Honor.

10 THE COURT: All right.

11 THE BAILIFF: Alma Espinosa?

12 MR. MEGARO: Yes, I'm sorry.

13 THE COURT: Ms. Espinosa, if you'll raise
14 your right hand, please.

15 (The witness was sworn.)

16 THE COURT: Please have a seat.

17 THE WITNESS: (Complies with request.)

18 THE COURT: You may proceed.

19 MR. MEGARO: Thank you.

20 ALMA ESPINOSA,

21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MEGARO:

24 Q. Ms. Espinosa, what is your relationship to
25 Mr. Ortiz?

1 A. (Through the Interpreter) I was married for
2 seven years with him, and we have two children, a girl
3 who's about to turn seven, a four-year-old boy, and
4 really he's a good person.

5 Q. I -- I'll get to that. Are you currently
6 working?

7 A. (Through the Interpreter) Yes.

8 Q. And your children, do they live with you?

9 A. (Through the Interpreter) Yes.

10 Q. How long have you known Mr. Oritz for?

11 A. (Through the Interpreter) For eight years.

12 Q. And where did you meet him?

13 A. (Through the Interpreter) In Zacatecas when we
14 were staying down there.

15 THE INTERPRETER: Z-A-C-A-T-E-C-A-S.

16 Q. (BY MR. MEGARO) Thank you. Did he receive a
17 degree from college?

18 A. (Through the Interpreter) Yes.

19 Q. In what?

20 A. (Through the Interpreter) He's an accountant.

21 Q. Okay. Were your children born in the
22 United States or Mexico?

23 A. (Through the Interpreter) Here.

24 Q. When you were -- while you were married to
25 Mr. Oritz, was he working?

1 A. (Through the Interpreter) Yes.

2 Q. What did he do for a living?

3 A. (Through the Interpreter) He worked at a
4 restaurant.

5 Q. While you were married with him, did you have
6 the opportunity to observe him as a father?

7 A. (Through the Interpreter) Yes.

8 Q. When the children -- when your children were
9 born, how did he act with them?

10 A. (Through the Interpreter) Very happy.

11 Q. What type of father was he?

12 A. (Through the Interpreter) Very good one,
13 excellent.

14 Q. Did you ever see him abuse your children?

15 A. (Through the Interpreter) No.

16 Q. Would he discipline the children?

17 A. (Through the Interpreter) No. He's been an
18 excellent father.

19 Q. Even after you two split up, did he continue to
20 visit with his children?

21 A. (Through the Interpreter) Excellent, yes.

22 Q. Did he have -- did he see them regularly after
23 you two broke up?

24 A. (Through the Interpreter) Yes.

25 Q. And where would those visits take place, at

1 your house or in his house?

2 A. (Through the Interpreter) At my house.

3 Q. Did his -- did your children ever go to stay
4 with him?

5 A. (Through the Interpreter) Yes.

6 Q. Did you ever see him -- even after you split
7 up, did you ever see him abuse your children?

8 A. (Through the Interpreter) No.

9 Q. Why did you split up?

10 A. (Through the Interpreter) Problems that came
11 in-between us in our marriage.

12 Q. And, eventually, you found out that he'd been
13 seeing another woman?

14 A. (Through the Interpreter) Yes.

15 Q. Was this after the problems arose?

16 A. (Through the Interpreter) Yes.

17 Q. And did you come to learn that he had another
18 child with another woman?

19 A. (Through the Interpreter) Yes.

20 Q. Even after he had this other child, did he
21 continue to visit with your two children?

22 A. (Through the Interpreter) Yes.

23 Q. And did your children know his son from his --
24 that he had with this other woman?

25 A. (Through the Interpreter) Yes.

1 Q. Okay. Did he try to keep the three of them
2 together?

3 A. (Through the Interpreter) Yes.

4 Q. And while he was -- even after you split up,
5 did he pay child support?

6 A. (Through the Interpreter) Yes.

7 Q. I've asked you to come here to testify today
8 and give evidence to this jury about sentencing,
9 correct?

10 A. (Through the Interpreter) Yes.

11 Q. Okay. I -- I forgot to ask you. Has he ever
12 been convicted of a crime?

13 A. (Through the Interpreter) No.

14 Q. Has he ever abused you?

15 A. (Through the Interpreter) No.

16 Q. One second. Was he a drinker when you were
17 with him?

18 A. (Through the Interpreter) No.

19 Q. Did you ever see him get drunk and violent?

20 A. (Through the Interpreter) No.

21 Q. And did you ever see him get violent with the
22 children?

23 A. (Through the Interpreter) No.

24 Q. Did you ever see him get violent with anyone?

25 A. (Through the Interpreter) No.

1 Q. Do you see any of his family members here
2 today?

3 A. (Through the Interpreter) Yes.

4 Q. Are they in this courtroom now?

5 A. (Through the Interpreter) Yes.

6 Q. Who is here for Mr. Oritz?

7 A. (Through the Interpreter) Isidro Ortiz --

8 THE INTERPRETER: -- I-S-I-D-R-O --

9 THE WITNESS: (Through the
10 Interpreter) -- Latisha Medina, Bana Ortiz.

11 Q. (BY MR. MEGARO) Is that his mother, father and
12 sister?

13 A. (Through the Interpreter) Yes, mother, father
14 and sister.

15 Q. And are they here in the courtroom right behind
16 me?

17 A. (Through the Interpreter) Yes.

18 Q. Where do they live?

19 A. (Through the Interpreter) In Zacatecas,
20 Mexico.

21 Q. Have they been here all week?

22 A. (Through the Interpreter) Yes.

23 Q. Have you also been here most of the week?

24 A. (Through the Interpreter) Yes.

25 Q. Is there anything you'd like to tell this jury

1 about with -- is there anything you'd like to tell this
2 jury about Mr. Oritz?

3 A. (Through the Interpreter) Be just and fair
4 with him and just know that -- and listen to my
5 testimony. I lived with him for seven years. My
6 children -- my -- my daughter, the older one, misses him
7 very much. She cries a lot for him, and she'll say,
8 "Daddy, when are you coming back?" My boy remembers him
9 and says, "I wonder how he's doing," so I ask you to pay
10 attention to him and see him how he really is. He's a
11 good person, an excellent father. He's always helped me
12 all the time with my children. To me he's an excellent
13 father. Thank you.

14 MR. MEGARO: I have nothing further for the
15 witness, Your Honor.

16 THE COURT: Cross?

17 MR. RAMSAY: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. RAMSAY:

20 Q. What's your last name again?

21 A. (Through the Interpreter) My complete name is
22 Alma Judith Contreras Espinosa.

23 Q. So can I call you Ms. Espinosa?

24 A. (Through the Interpreter) Yes.

25 Q. Ms. Espinosa, my name is Landon Ramsay, and I'm

1 a prosecutor here for the State of Texas, and I'm going
2 to ask you some questions, okay?

3 A. (Through the Interpreter) Yes.

4 Q. Now you've been here all week, correct?

5 A. (Through the Interpreter) Since Wednesday.

6 Q. "Since Wednesday," but you've been outside,
7 correct?

8 A. (Through the Interpreter) Yes.

9 Q. So everything you're here testifying about is
10 from your relationship that ended with this Defendant
11 over three years ago, correct?

12 A. (Through the Interpreter) Yes.

13 Q. So you haven't heard any of the testimony that
14 these Ladies and Gentlemen have heard over here this
15 week?

16 A. (Through the Interpreter) No.

17 Q. Do you know how many bones the Defendant broke
18 in the child's body?

19 A. (Through the Interpreter) I don't remember
20 that.

21 Q. Do you know how old the child was when he
22 sustained these injuries?

23 A. (Through the Interpreter) Two months.

24 Q. But you're saying to this jury that he's a good
25 person?

1 A. (Through the Interpreter) I don't think he
2 would have done that.

3 Q. But, again, to be -- to be fair, you haven't
4 heard the testimony in this -- in this trial, correct?

5 A. (Through the Interpreter) Yes.

6 Q. And so you would agree that somebody that
7 could -- could do this to a child is not a good person,
8 correct?

9 A. (Through the Interpreter) Could you -- could
10 you ask that again?

11 Q. You would agree that a person who could do this
12 to a child, break 17 bones in their body, is not a good
13 person, correct?

14 A. (Through the Interpreter) No.

15 Q. So "no," that person would not be a good
16 person?

17 A. (Through the Interpreter) If he broke them?

18 Q. Yes, and -- and you understand that on one day
19 this Defendant told the police a complete lie when he
20 gave a statement. Did you know that?

21 A. (Through the Interpreter) No.

22 Q. And you'd agree that's not good?

23 A. (Through the Interpreter) No.

24 Q. And on the next day when he gave a statement he
25 actually described movements that are capable of causing

1 these injuries to a child. Did you know that?

2 A. (Through the Interpreter) Yes.

3 Q. And that he even admitted to causing these
4 injuries, but he said that were unintentional. Did you
5 know that?

6 A. (Through the Interpreter) Yes.

7 Q. And -- but there was also testimony that these
8 injuries are unable to be caused accidentally, and that
9 was by a doctor. Did you know that?

10 A. (Through the Interpreter) Yes.

11 Q. So you would agree that -- that somebody
12 that -- that did these is not the person that should be
13 around kids, correct? Should -- I'll rephrase my
14 question. Should somebody that has done this to a child
15 ever be around kids again?

16 A. (Through the Interpreter) Yes.

17 Q. So you think he -- he's okay to be around --
18 somebody that did this is okay to be around children?

19 A. (Through the Interpreter) Could you say it
20 again?

21 Q. Okay, so you're saying that somebody who is --
22 who's done this to a child should be around other
23 children in the future. Is that what you're saying?

24 A. (Through the Interpreter) No.

25 Q. Okay. Now what -- what's your son's birthday?

1 A. (Through the Interpreter) My boy?

2 Q. Yes.

3 A. (Through the Interpreter) August 7th, of 2010.

4 Q. And what about your daughter's birthday?

5 A. (Through the Interpreter) Eleven, 26 (11-26),
6 of 2007.

7 Q. And what's -- what was you all's original --
8 what day were you all married originally?

9 A. (Through the Interpreter) December 16th,
10 of 2005.

11 Q. And then when were you all divorced?

12 A. (Through the Interpreter) December 3rd,
13 of 2012.

14 Q. So you all actually got divorced after he was
15 arrested in this case, correct?

16 A. (Through the Interpreter) Yes.

17 Q. And I mean you can agree that -- I mean a lot
18 of -- a lot of marriages do end in divorce, correct?

19 A. (Through the Interpreter) Yes.

20 Q. And who filed for divorce?

21 A. (Through the Interpreter) Ortiz.

22 Q. He did?

23 A. (Through the Interpreter) The divorce?

24 Q. Yes, so he filed for divorce against you?

25 A. (Through the Interpreter) Yes.

1 Q. So -- and you would -- you would admit that any
2 time a divorce happens, I mean he's -- he -- he wasn't
3 even perfect in the marriage, correct?

4 A. (Through the Interpreter) He was a good -- he
5 was a good man as a father and a husband. The only
6 thing is another person came in-between us in this
7 marriage, and that's what ruptured it.

8 Q. So you would agree he -- he did make mistakes?

9 A. (Through the Interpreter) Yes.

10 Q. Now how did -- how did he come to be in
11 the United States? Did he come -- did he come here
12 legally?

13 A. (Through the Interpreter) Yes.

14 Q. He did? So he had like a -- how did he come?

15 A. (Through the Interpreter) Visa.

16 Q. A visa to work?

17 A. (Through the Interpreter) Tourist.

18 Q. "Tourist," and those at some point -- those
19 expire at some point, correct?

20 A. (Through the Interpreter) Yes.

21 Q. So he stayed over his -- his expiration of that
22 visa, correct?

23 A. (Through the Interpreter) Yes, but it just
24 recently expired.

25 Q. So he was -- but he was here legally when this

1 occurred, correct?

2 A. (Through the Interpreter) When what occurred?

3 Q. When -- when he -- when he was arrested, was
4 here legally or illegally?

5 A. (Through the Interpreter) Legally.

6 Q. And that expired while he's been in jail,
7 correct?

8 A. (Through the Interpreter) I think it was in
9 June.

10 Q. So -- so he was a tourist from 2007 till 2012?

11 A. (Through the Interpreter) No, until -- it's --
12 you get them -- you get them for ten years.

13 Q. "You get them for ten years," okay, so a
14 tourist visa allows you to be a tourist for ten years?

15 A. (Through the Interpreter) Yes, and you can
16 leave and come back.

17 Q. Okay, and just to -- I'm almost done. Do
18 you -- did your husband ever shave your -- any of your
19 kids' heads when they were born?

20 A. (Through the Interpreter) No.

21 Q. Did he ever call them -- tell them that they
22 were ugly?

23 A. (Through the Interpreter) No.

24 Q. Did he ever seem to not care when they were
25 crying?

1 A. (Through the Interpreter) No.

2 Q. And, Ms. Espinosa, if he would have hurt either
3 your boy or your girl by breaking 17 bones in their
4 bodies when they were months old, that would make you
5 very angry, correct?

6 A. (Through the Interpreter) Yes.

7 MR. RAMSAY: I have nothing further,
8 Your Honor.

9 MR. MEGARO: Nothing further for the
10 witness.

11 THE COURT: You may step down, ma'am.
12 Thank you. Next witness.

13 MR. MEGARO: The Defense calls
14 Disnet Aguilar.

15 THE COURT: Ma'am, if you'll be sworn in,
16 please. Do you speak English?

17 THE WITNESS: Yes, I do.

18 THE COURT: Okay. Raise your right hand.
19 (The witness was sworn.)

20 THE COURT: Have a seat.

21 THE WITNESS: (Complies with request.)

22 THE COURT: If you'll --

23 THE WITNESS: Sign in?

24 THE COURT: There you go. You may proceed.

25 MR. MEGARO: Thank you.

1 DISNET AGUILAR,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MEGARO:

5 Q. It's Ms. Aguilar, right?

6 A. Yes.

7 Q. Okay. Ms. Aguilar, what's your relationship to
8 Mr. Oritz?

9 A. He was previously married to my cousin, so I
10 always considered him like a brother-in-law.

11 Q. Are you close with your cousin?

12 A. Yes.

13 Q. And that's Alma that just left the courtroom?

14 A. Yes.

15 Q. Okay. Have you been here since Wednesday with
16 Alma?

17 A. Yes, every day.

18 Q. Did you take time from work to be here?

19 A. Yes.

20 Q. And did you -- did I leave you waiting in the
21 hallway all week?

22 A. Yes.

23 Q. Thank you for coming. Did you used to work
24 with Mr. Oritz?

25 A. I did.

1 Q. And where did you two work together?

2 A. At Black Eyed Pea.

3 Q. And what did you do there?

4 A. I was a waitress.

5 Q. And this was -- this was while he was still
6 married to your cousin?

7 A. Yes.

8 Q. What was your relationship at Black Eyed Pea
9 with him?

10 A. In Black Eyed Pea with him?

11 Q. Yes.

12 A. Well, we were a normal family. We worked
13 together. We got along for the most part.

14 Q. Did you -- as a family member, did you hang out
15 with him outside of work?

16 A. Yes.

17 Q. Okay. Did you see him interact with your
18 cousin and his children?

19 A. Yes.

20 Q. And those are the two children that he has with
21 Alma?

22 A. Yes.

23 Q. Did you know them before they got married?

24 A. No.

25 Q. You knew them after they got married?

1 A. After they got married, yes.

2 Q. And after they got married and you started
3 associating with them, did you see what type of husband
4 and father he was?

5 A. Yes.

6 Q. Would you tell the members of the jury what
7 type of husband and father he was?

8 A. Yes. He was a loving father. He loved
9 those kids. I actually think that it was a better deal
10 seeing him like -- I'm sorry. He was a good father.
11 He loved those kids. Once again, I repeat myself
12 because it's -- it's sad to know that he's missed out
13 on -- on seeing those kids. They love his -- they
14 love their dad. He was never but loving to them. He
15 loved them. He actually would go out of his way to do
16 everything for them. He was actually the one that
17 always -- that never get them in trouble. Like his
18 little girl, I mean that's Daddy's little girl, and
19 she would run up to him, and -- and, you know, tell
20 him that -- that she loved him. At this point they
21 don't -- they don't realize where he's at because
22 his -- his -- my -- my cousin doesn't know what to tell
23 his little girl, you know, but he -- he loved those
24 kids, and those kids love him to death. I mean
25 they're -- that little girl is waiting for her dad,

1 and I mean, even as a husband, he was a great husband.
2 He -- he -- he was nothing but loving and caring,
3 funny, goofy. He would joke around with everybody
4 and --

5 Q. Let me ask you. Was he ever controlling or
6 abusive towards your cousin?

7 A. Not at all.

8 Q. Did you ever see him be abusive towards those
9 children?

10 A. No.

11 Q. Did you see the son that he had with Taylor?

12 A. No, no. I -- I mean I may have seen him maybe
13 once maybe, I mean, but I don't ever recall actually
14 seeing the baby.

15 Q. Even after he broke up with your cousin, did he
16 still continue to visit with -- with the children?

17 A. Yes.

18 Q. And did you still see him?

19 A. Yes. On -- on previous times whenever I would
20 leave my cousin's house, I did see that he would go and
21 visit them, yes.

22 Q. And even after he split up with -- with Alma,
23 was he still the same type of father?

24 A. He was. From what I remember, he would
25 actually still help my cousin take them to the dentist.

1 He would -- you know, if she needed help taking them
2 to the doctor's appointment and dentist appointments,
3 you know, he would always help her and -- and take the
4 kids, you know.

5 Q. It's fair to say he visited with them
6 regularly --

7 A. Yes.

8 Q. -- even though he wasn't living with them
9 regularly?

10 A. Yes.

11 Q. And did he visit with all three children
12 together?

13 A. I'm not quite sure, but I think he may have.

14 Q. Did the -- did Alma's children ever go to his
15 place?

16 A. I think so. I think so.

17 Q. And that would have been the apartment that he
18 shared with Taylor Garcia and the other baby?

19 A. Uh-huh.

20 Q. And you also see Mr. Ortiz's family here?

21 A. Yes.

22 Q. Have you kept a positive relationship with
23 them, as well?

24 A. For the most part.

25 Q. Not related to you, though, right?

1 A. I'm sorry?

2 Q. They're not related to you, right?

3 A. Who?

4 Q. His family, correct?

5 A. Oh, no, they're not.

6 Q. Was your husband here earlier this week?

7 A. He was.

8 Q. And why was your husband here?

9 A. To show him support, to show him that we stand
10 by his side no matter what and that -- you know, that
11 we're here for him.

12 Q. The jury is going to decide sentencing in a
13 short time. Is there anything else you want to tell
14 this jury about sentencing?

15 A. To be lenient with his punishment because he --
16 he doesn't deserve to be here, and his kids are waiting
17 for him, so just -- just think of the kids, and -- and
18 even though they're having to face it, just keep his
19 kids in mind, and I beg for you all to be very lenient
20 with his punishment.

21 MR. MEGARO: Thank you, Ms. Aguilar.
22 Nothing further, Your Honor.

23 MR. RAMSAY: A brief cross, Your Honor.

24 THE COURT: Cross?

25 MR. RAMSAY: Yes, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. RAMSAY:

3 Q. Ms. Aguilar, my name is Landon Ramsay, and I'm
4 a prosecutor here. I've got a few question for you,
5 okay?

6 A. Okay.

7 Q. It's fair to say that you are on the
8 Defendant's side in this, correct?

9 A. Yes.

10 Q. But you're here testifying today in the
11 punishment phase, correct?

12 A. Okay.

13 Q. That's correct?

14 A. I think so. I think so, yeah.

15 Q. Because he's been found guilty --

16 A. Okay.

17 Q. -- now we're in the sentencing, and that's
18 because you don't know anything about the facts of this
19 case?

20 A. No.

21 Q. You're not a witness as to what happened with
22 the child that was the victim in this case, correct?

23 A. Yeah.

24 Q. Do you know the -- do you know his name?

25 A. No. The -- the baby's name?

1 Q. Yes.

2 A. No, I don't.

3 Q. Okay, M [REDACTED], so you're just here because you
4 don't want him to get in too much trouble because you
5 know him from before, correct?

6 A. Correct.

7 Q. Now you would agree that -- do you know how
8 many bones were broken in Max's body?

9 A. I'm not quite sure.

10 Q. Have you heard the number "17" --

11 A. I don't --

12 Q. -- 17 bones were broken?

13 A. Okay.

14 Q. And those were nonaccidental, did you know
15 that?

16 A. That they were not accidental?

17 Q. Yes.

18 A. Well, I had heard that there were bones broken,
19 but I didn't know how many, and I didn't -- like I --
20 right.

21 Q. You didn't know that they were actually
22 intentionally done, did you?

23 A. No.

24 Q. So if a doctor -- so if testimony in this case
25 was that a -- from a doctor, an expert, was that these

1 were intentional acts that caused these broken bones,
2 you didn't know that?

3 A. No.

4 Q. And now this jury has found this Defendant
5 guilty of committing those acts. You knew that,
6 correct?

7 A. Well, as of now, yes.

8 Q. "As of now," and you would agree that somebody
9 that does those things is not a good person, correct?

10 A. Yes, I would agree.

11 Q. Because good people don't hurt babies?

12 A. Yes, they do not.

13 Q. And so everything you're here testifying about
14 is simply because you care for his family and his
15 ex-wife and him?

16 A. And him, yes.

17 Q. And you said, "Be" -- I think you said, "Be
18 lenient on him," correct?

19 A. Yes.

20 Q. Do you think he was being lenient on Max when
21 he broke 17 bones?

22 A. No, but I also don't believe he did it.

23 Q. Okay, but that's -- that's your opinion. You
24 have --

25 A. Okay.

1 Q. You haven't sat through the testimony, correct?

2 A. Yes.

3 Q. And you don't know anything about the case?

4 A. No.

5 Q. Not even the child's name?

6 A. Well, like I don't know the child's name. I
7 never met -- like I said, I -- I saw him maybe once
8 maybe whenever they bought him in and took him, but,
9 otherwise, I don't know.

10 Q. So that's a "no"?

11 A. No.

12 Q. Now as far as the family in here, you do
13 recognize them, correct?

14 A. Yes, I do.

15 Q. And it's -- I've been watching as the week has
16 gone on kind of the interaction. It's fair to say you
17 all haven't been together this week?

18 A. No, huh-uh.

19 Q. In fact, I haven't even seen you all speak to
20 one another.

21 A. No, we don't.

22 Q. So I mean there is some tension there?

23 A. With them, no.

24 Q. They're not --

25 A. No. I just haven't been -- I mean I just

1 figured I would take my -- my space just because I
2 didn't want to -- you know what I mean? Like I'm here
3 to do what I need to do and --

4 Q. And testify for --

5 A. Yes, and --

6 Q. -- Mr. Ortiz?

7 A. Uh-huh.

8 MR. RAMSAY: Okay. Well, Ms. Aguilar, I
9 appreciate it. I have no further questions for you.

10 THE WITNESS: Okay, thank you.

11 MR. MEGARO: Nothing further.

12 THE COURT: You may step down, ma'am.

13 Thank you. Next witness.

14 MR. MEGARO: I'm sorry.

15 THE COURT: Call your next witness.

16 MR. MEGARO: Oh, Defense rests, Your Honor.

17 THE COURT: The State.

18 MS. LABORDE: Your Honor, the State closes.

19 Oh, Your Honor, may we approach?

20 THE COURT: You may.

21 (At the Bench, off the record.)

22 THE COURT: Ms. LaBorde.

23 MS. LABORDE: Your Honor, at this time I
24 would ask for two pages to be marked.

25 (State's Exhibit No. 35 was marked.)

1 MS. LABORDE: The State offers
2 State's Exhibit No. 35, and I'm tendering it to Defense
3 counsel.

4 THE COURT: You all need the projector on?

5 MS. LABORDE: No, sir.

6 THE COURT: Any objection to State's 35?

7 MR. MEGARO: No, Your Honor. Based on our
8 bench conference, I just -- I need to show you the --
9 all right. Judge, Defense will stipulate to State's
10 Exhibit No. 35, and I believe as an additional
11 stipulation that on September 17, 2014, Mr. Oritz filed
12 a federal civil rights lawsuit in the United States
13 District Court for the Western District of Texas,
14 Waco Division, against LaSalle Corrections and
15 Officer Pfleiderer -- did I say that right --
16 Correction Pfleiderer.

17 THE COURT: All right. State's 35 is
18 admitted.

19 MS. LABORDE: Permission to publish,
20 Your Honor?

21 THE COURT: You may.

22 MS. LABORDE: Ladies and Gentlemen,
23 State's 35 is a Disciplinary Report Record from
24 LaSalle Corrections which runs a private jail for
25 the Jack Harwell facility, and on this document the

1 jailer involved wrote that, "On Tuesday November 12,
2 2012, while I (sic) Pfleiderer was feeding L123" --
3 the tank -- "Offender Ortiz, Juan (sic) did state to
4 me (sic), 'I'm going to kick your ass!'"

5 On the front it tells us that there was a
6 disciplinary hearing held on 11-13-13 at 9:05 PM and
7 that it was held until 9:10. Above that it states that
8 no translator was requested and that 30 days in
9 administrative segregation was the sentence, and it's
10 signed by various folks that -- that work out there,
11 and, as you heard, a -- a federal action was filed about
12 this matter, not until many months later. The State
13 would close.

14 THE COURT: The Defense closes?

15 MR. MEGARO: Yes, Your Honor.

16 THE COURT: All right. Ladies and
17 Gentlemen, that concludes all the evidence you'll hear
18 at this stage of the trial. As I did before, I'll need
19 to prepare the Court's Charge on punishment, and we'll
20 go through the same procedure that we did before. The
21 attorneys will argue to you, and then you'll be retired
22 to deliberate. I almost have the punishment charge
23 ready. There may be a few cosmetic changes we have to
24 make, so go to the jury room. Do not discuss the case
25 or allow anyone to address you about it. When you come

1 back, we'll be toward the end. Thank you.

2 (The jury retired from the courtroom.)

3 (Off the record from 3:39 PM to 3:40 PM.)

4 THE COURT: I want to make sure that I've
5 got the parole instruction on Count II and III right. I
6 know that Count I is one-half of 30 years, whichever is
7 less without any good conduct time. Counts II and III,
8 it's still one-half, right, but there's not a minimum?

9 MS. LABORDE: No. It's just the one-half.

10 THE COURT: It's just one -- it's just
11 straight one-half, okay. All right. I just wanted to
12 make sure.

13 (A recess was taken from 3:41 PM.
14 to 3:54 PM.)

15 (Open court, Defendant present, no jury.)

16 THE COURT: All right. We're outside the
17 presence and hearing of the jury now. You all have been
18 provided a copy of the punishment charge. Does the
19 State have any objections or requests?

20 MS. LABORDE: No, Your Honor.

21 THE COURT: The Defense?

22 MR. MEGARO: None, Your Honor.

23 THE COURT: All right. Have you made
24 copies yet?

25 THE COURT COORDINATOR: No. I was waiting

1 for this.

2 THE COURT: Give me a form, ma'am, and I'll
3 file it. Twelve minutes to a side, and what kind of
4 warnings?

5 MR. RAMSAY: Judge, I'll take one after
6 I've used four minutes.

7 MR. MEGARO: Likewise, but I don't think
8 I'll use it all but --

9 THE COURT: When you've used four?

10 MR. MEGARO: Let me know when I've used
11 eight, please, if I get that far.

12 THE COURT: Ms. LaBorde?

13 MS. LABORDE: Yes.

14 THE COURT: Ms. LaBorde, do you want your
15 usual two?

16 MS. LABORDE: Yes.

17 (A recess was taken from 3:55 PM
18 to 4:04 PM.)

19 (Open court, Defendant present, no jury.)

20 THE COURT: All right. Bring in the jury.
21 (The jury was seated in the jury box.)

22 THE COURT: All right, Ladies and
23 Gentlemen. Are the State and Defense ready for the
24 punishment charge to be read?

25 MS. LABORDE: The State is ready.

1 THE COURT: Is the Defense ready?

2 MR. MEGARO: Yes, Your Honor.

3 THE COURT: All right, Ladies and
4 Gentlemen. Again, you have a copy of the Court's
5 Charge. Some of the same language is repeated in this
6 charge, but there's some different, so we have to -- we
7 just have to repeat some of it, and I've allocated
8 twelve minutes for these attorneys to argue this time.

9 "LADIES AND GENTLEMEN OF THE JURY: By your
10 verdict returned in this case you have found the
11 Defendant, JUAN FRANCISCO MEDINA ORTIZ, guilty of the
12 offense of Injury to a Child as alleged in Count I, and
13 the offense of Aggravated Assault as alleged in
14 Counts II and III (sic) of the Indictment.

15 It is necessary that the jury assess the
16 punishment for these offenses.

17 You are instructed that the punishment for
18 the offense of Injury to a Child is by confinement in
19 the Texas Department of Criminal Justice,
20 Institutional Division for any term of years not less
21 than five (5) years nor more than ninety-nine (99) years
22 or life, and in addition thereto the Defendant may be
23 assessed a fine in any amount not to exceed ten thousand
24 dollars (\$10,000.00).

25 You are instructed that the punishment for

1 the offense of Aggravated Assault is by confinement in
2 the Texas Department of Criminal Justice, Institutional
3 Division for any term of years not less than two (2)
4 years nor more than twenty (20), and in addition thereto
5 the Defendant may be assessed a fine in any amount not
6 to exceed ten thousand dollars (\$10,000.00).

7 You are instructed that you may consider
8 all of the evidence introduced in both phases of the
9 case in arriving at your verdict.

10 You are instructed that the Defendant may
11 be assessed punishment only for the offenses for which
12 you have found him guilty.

13 The State has introduced evidence of
14 extraneous crimes or bad acts other than the one charged
15 in the Indictment in this case. This evidence was
16 admitted only for the purpose of assisting you, if it
17 does, in determining the proper punishment for the
18 offenses for which you have found the defendant guilty.
19 You may not consider such testimony for any purpose
20 unless you, as an individual juror, believe beyond a
21 reasonable doubt that the defendant committed such other
22 crimes or bad acts, if any were committed. It is not
23 necessary that all of you agree that the Defendant
24 committed these other crimes or acts, but unless you, as
25 an individual juror, believe beyond a reasonable doubt

1 that the Defendant committed such acts, you may not
2 consider this evidence for any purpose. Even if you do
3 believe beyond a reasonable doubt that the Defendant
4 committed such acts, you may not consider them to show
5 that he is predisposed to commit such acts but only
6 to assist you in assessing the proper punishment in
7 this case.

8 Under the law applicable in this case, the
9 Defendant, if sentenced to a term of imprisonment, may
10 earn time off the period of incarceration imposed
11 through the award of good conduct time. Prison
12 authorities may award good conduct time to a prisoner
13 who exhibits good behavior, diligence in carrying out
14 prison work assignments, and attempts at rehabilitation.
15 If a prisoner engages in misconduct, prison authorities
16 may also take away all or part of any good conduct time
17 earned by the prisoner.

18 It is also possible that the length of time
19 for which the Defendant will be imprisoned might be
20 reduced by the award of parole.

21 Under the law applicable in this case as to
22 Count I, if the Defendant is sentenced to a term of
23 imprisonment, he will not become eligible for parole
24 until the actual time served equals one-half (1/2) of
25 the sentence imposed or thirty (30) years, whichever is

1 less, without consideration of any good conduct time he
2 may earn. Eligibility for parole does not guarantee
3 that parole will be granted.

4 Under the law applicable in this case as
5 to Counts II and III, if the Defendant is sentenced to
6 a term of imprisonment, he will not become eligible
7 for parole until the actual time served equals
8 one-half (1/2) of the sentence imposed, without
9 consideration of any good conduct time he may earn.
10 Eligibility for parole does not guarantee that parole
11 will be granted.

12 It cannot accurately be predicted how the
13 parole law and good conduct time might be applied to
14 this Defendant if he is sentenced to a term of
15 imprisonment, because the application of these laws will
16 depend on decisions made by prison and parole
17 authorities.

18 You may consider the existence of the
19 parole law and good conduct time. However, you are not
20 to consider the extent to which good conduct time may be
21 awarded to or forfeited by this particular Defendant.
22 You are not to consider the manner in which the parole
23 law may be applied to this particular Defendant.

24 Our law provides that a Defendant may
25 testify in his own behalf if he elects to do so. In the

1 event he elects not to testify, that fact cannot be
2 taken as a circumstance against him. In this case the
3 Defendant has elected not to testify in the punishment
4 phase, and you are instructed that you cannot and must
5 not refer or allude to that fact throughout your
6 deliberations or take it into consideration for any
7 purpose whatsoever as a circumstance against the
8 Defendant.

9 Our law provides that a person is entitled
10 to the assistance of an Interpreter and you are
11 instructed that you cannot and must not refer or allude
12 to that fact throughout your deliberations or take it
13 into consideration for any purpose whatsoever as a
14 circumstance against the Defendant.

15 Our law provides that you are not to
16 consider a person's race or national origin and you
17 are instructed that you cannot and must not refer or
18 allude to the race or national origin of the Defendant
19 throughout your deliberations or take it into
20 consideration for any purpose whatsoever as a
21 circumstance against the Defendant.

22 You must not arrive at the punishment to be
23 assessed by any lot or chance, or in any manner than a
24 fair consideration of the law and evidence in this case.

25 Your Presiding Juror will certify to your

1 verdict by using the form attached hereto, and signing
2 the same as Presiding Juror. If you agree upon a
3 verdict, it must be by unanimous vote.

4 Until you have finished your deliberations,
5 you shall not communicate to anyone outside the jury
6 room how the jury may stand numerically in its voting
7 unless you are first called upon by the Court to do so.

8 Turn off all phones and other electronic
9 devices. While you are deliberating, do not communicate
10 with anyone through any electronic device. For example,
11 do not communicate by phone, text message, email
12 message, chat room, blog, or social networking websites
13 such as Facebook, Twitter, or MySpace. Do not post
14 information about the case on the Internet before these
15 court proceedings end and you are released from jury
16 duty. Do not record or photograph any part of these
17 court proceedings.

18 Any communication from the jury to the
19 Court must be written, prepared by the Presiding Juror,
20 signed by the Presiding Juror, and submitted to the
21 Court through the Bailiff. Therefore, if you wish to
22 notify the Court that you have agreed upon a verdict, or
23 if you wish to communicate with the Court about any
24 other matter your Presiding Juror shall prepare your
25 communication in writing, sign it, and deliver it to the

1 Bailiff, and the Bailiff will deliver it to the Court.

2 Do not let personal bias, prejudice,
3 sympathy or resentment on your part, or any such
4 personal emotion on your part, enter into your
5 deliberations or affect your verdict in this case.

6 In your deliberations you must not relate
7 to your fellow jurors any personal experience of your
8 own, nor shall you relate any occurrence, happening, or
9 event, known to you and not shown by the evidence in
10 this case. And you shall not speculate on matters about
11 which you are not called upon to make any decision. In
12 all of your deliberations you will confine yourselves
13 strictly to the evidence introduced under the rulings of
14 the Court. If any member of the jury attempts a
15 violation of these instructions, the other members shall
16 stop them at once. If the violation continues, it
17 should be immediately reported to the Court.

18 You are the exclusive judges of the facts
19 proved, of the credibility of the witnesses, and the
20 weight to be given their testimony, but in matters of
21 law you must be governed by the instructions,
22 definitions, and rulings of the Court.

23 During trial it was permissible for you to
24 take notes. You may carry those notes to the jury room
25 for your personal use during deliberation on a court's

1 charge. You may not share these notes with other
2 jurors; however, you may discuss the contents of your
3 notes.

4 Your personal recollection of the evidence
5 takes precedence over any notes you have taken. A juror
6 may not rely on the notes of another juror.

7 Certain testimony will be read back to
8 you by the Court reporter if you request. To request
9 that testimony be read back to you, you must follow
10 these rules. The Court will allow testimony to be
11 read back to the jury only if the jury, in a writing
12 signed by the presiding juror, states that it is
13 requesting that testimony be read back, states that it
14 has a disagreement about a specific statement of a
15 witness or a particular point in dispute, and
16 identifies the name of the witness who made the
17 statement. The Court will then have the court reporter
18 read back only that part of the statement that is in
19 disagreement.

20 You shall have this written charge with you
21 when you go to the jury room," my signature. Following
22 that is a verdict form on Count I for a -- if you
23 give the Defendant a term of years. On the next page,
24 on Page 9, is a verdict form you give the Defendant a
25 life sentence on Count I, and on Pages 10 and 11 is if

1 you -- it will be not less than two years nor more
2 than 20 years as to the aggravated assault charges.

3 At this time we're not going to send any
4 exhibits in with you. If there's anything you want to
5 see that was admitted during the course of the trial,
6 send out a note through the bailiff, and we'll send it
7 in to you. The State may proceed.

8 MR. RAMSAY: Thank you, Your Honor. May it
9 please the Court, opposing counsel. Ladies and
10 Gentlemen, first, I want to say "thank you." Thank you
11 for your verdict and thank you for the time and
12 consideration that you took reaching this. I know that
13 you all, each and every one of you, did your very best.
14 That means a lot to everybody in this room, and nobody
15 will fault you for that, but what I want to encourage
16 you to do now is to know that the job is only half
17 completed.

18 It's been a long week. You're tired.
19 You've been back there forever waiting, talking,
20 deliberating, being careful, and now is not the time to
21 let down because sometimes justice is hard. Sometimes
22 doing the right thing is difficult, and you all have
23 done the right thing so far. You all have done the
24 right thing because you told this man over there, that
25 Defendant, that he can't hurt this kid. You told him

1 what he already knew. While you all were deliberating,
2 he knew the truth. While you all were back there being
3 careful, he remembers what he did.

4 I guess we can thank the Lord that Max is
5 okay today. Thank the Lord that he's going to have a
6 normal childhood. Thank the Lord for people like the
7 Garcias who can step in and say, "Now we are going to
8 raise and help raise Max." Thank the Lord for Taylor
9 who is stepping up to the plate and doing the right
10 thing, and, folks, it's time for you all to step up and
11 do the right thing.

12 You all found this man guilty, and you know
13 in your hearts that he is guilty. It was difficult, but
14 you know that he did this. You know he broke these
15 bones, not on accident but intentionally. You know that
16 at some point in this child's life in the first
17 two-and-a-half months that he had his hands wrapped so
18 tightly around Max's chest that it crushed ribs. You
19 know that he moved his body in such ways that it caused
20 each and every joint to fracture.

21 You know he did this, and I don't fault
22 these folks over here for coming up and talking about
23 the person they knew, but, folks, don't be fooled.
24 Don't be fooled and think that somebody just because
25 they act one way in front of one person is that way in

1 front of everybody. If that was the case, then nobody
2 would be sexually abused. Nobody would be abused at
3 home. Nobody -- that's just not how the real world
4 works.

5 What really scares me about this case is
6 that he looks handsome. He's well-dressed, and you
7 heard from the people at Black Eyed Pea that he's
8 charming. They enjoyed him. Now they saw some stuff
9 that didn't seem right with Taylor, but for the most
10 part he was a nice guy, and it's -- I kind of think of
11 it as if you were walking down the street, and you saw a
12 tiger on the other side of the street. You probably
13 wouldn't go over there and try to pet the tiger because
14 tigers are dangerous. Tigers are obviously dangerous.
15 Tigers, you don't need a sign that says, "Hey, I'm
16 dangerous."

17 What scares me about this man is that he
18 doesn't look like a tiger. He can be charming and
19 persuasive, and then he can go home, and he can take
20 life that almost all of you all have seen brought into
21 this world, and he can do what he did, so right now is
22 not the time to run away. Right now is not the time
23 to say, "Well, we did half the job; let's just" --
24 "let's throw in the towel for the rest of the time."
25 That's not right because what we have to do is tell Max,

1 "Max, you're worth this; Max, while you were a kid, you
2 didn't deserve this; Max, you couldn't stand up for
3 yourself, so we're going to stand up for you." That is
4 your job now, and the State of Texas has given you
5 punishment ranges.

6 On Count I the punishment range is for five
7 years to 99 years or life, and, folks, I -- who knows
8 what would have happened if they hadn't have gone to the
9 hospital that night? How much more abuse can a
10 two-and-a-half-year-old take? Who knows what would have
11 happened?

12 I am so thankful that we are not in this
13 courtroom today and showing you autopsy photos. I am so
14 thankful that Max went in and came out and went through
15 a lot of pain, a lot of therapy and a lot of rehab but
16 that Max is okay now, but I honestly don't know what it
17 would have been had Max continued to living in that
18 world, and so I -- I'm -- Max is alive. Max is doing
19 well --

20 THE COURT: You've used four minutes.

21 MR. RAMSAY: -- thank you, Your Honor -- so
22 I'm not asking you to give him life. I'm not asking to
23 throw the whole -- the whole punishment at him, but I am
24 asking you to think. Think back, and think what you
25 would have done if you walked in and you saw somebody

1 doing that to your kid. Think if you walked in, and you
2 saw somebody, however he made those limbs go, failing or
3 shaking or grabbing and squeezing the daylights, would
4 we -- would we even be here today? Would there even be
5 a person to sit in that chair over there? Probably not,
6 because that's human nature. People don't do that.
7 Monsters do that, and that is a monster sitting over
8 there because he can do that to a kid, not just to a
9 kid, to an infant, and so, folks, you have to ask
10 yourself the question.

11 We can't determine how parole works. You
12 know that the charge says that he'll be eligible for
13 parole at half the time or 30 years. Now -- and that's
14 on Count I, so you have to ask yourself what is -- and
15 you can't know what parole is going to do or what --
16 what they're going to do. How long do we want him on
17 the hook? How long do we want to make sure he's on the
18 hook, and I say that to you, not -- not life.

19 Max is doing great. Max is healthy,
20 but when you think about what he did, when you
21 think, "Was that something that, oh, that only
22 deserves 20 years when he grabbed and broke 17 bones?"
23 "No, that only deserves 30 years." If you saw him
24 committing these acts on multiple occasions, one that is
25 so powerful that she only -- Dr. Ward has only seen it

1 one other time, and that's when a kid fell out of a car.

2 Now think about that. If you saw that,
3 would you think, "Well, that's" -- "that's on the lower
4 end of the range; that's not" -- "that's not that bad,"
5 or would you think that, "You know what; he needs to go
6 down," and guess what? That man needs to go down, so
7 I'm asking you not to give him life. Give him some
8 benefit that he didn't end up killing Max, but don't
9 give him much.

10 I know that you're tired, but I know
11 because of what I've seen so far that you will do the
12 right thing, so I'm asking you to go back there, and I
13 ask you humbly, because I know it's hard, and it's
14 nothing that I take pleasure in. I wish none of this
15 had ever happened, but do the right thing, and tell Max
16 that he's worth more than just the minimum, just a
17 little bit. Tell Max that he never has to worry about
18 this again and that when people do bad things -- and
19 when he grows up and learns what happened, when people
20 do bad things, those people are punished.

21 You have that authority right now, and I
22 thank you for your time. I thank you for your verdict,
23 and the family thanks you for your verdict -- this
24 verdict, and I look forward to your verdict and the
25 justice that you will send to Max and to the State of

1 Texas. Thank you.

2 THE COURT: Mr. Megaro.

3 MR. MEGARO: Thank you. Ladies and
4 Gentlemen, justice can be swift. Justice can be harsh,
5 but justice can also be merciful. A lot has been said
6 about my client, about what a monster he is, and I want
7 you all to look at him. He's a human being. He has
8 children. He has family that loves him. These are
9 people that have travelled from Mexico to be here and
10 stand by him, and people that he's not even married to
11 anymore came to testify on his behalf.

12 You're here to sit in judgment now of
13 another human being, and this is not giving detention.
14 This is not sending someone to their room. This is not
15 taking away a video game. Your actions will have very
16 real, tangible consequences, not just on his life but on
17 their lives, on his children's lives and the lives of
18 other people around them, and that's the burden that you
19 all have to take home.

20 You have to look these people in the eye
21 and say, "This person has no value as a human being. We
22 must remove him from society for so long. We must
23 deprive you parents of your son," and one of the things
24 that you should consider is the character of this man.
25 People who know him very well love him, know him to be a

1 great father.

2 I don't know if there's a lot of people who
3 would come in here and have their ex-wife come in and
4 testify that they're such a great person. Not everybody
5 has that luxury. Things didn't work out, but,
6 obviously, she still thinks enough of the man to come in
7 and take the witness stand when she doesn't speak
8 English. Even her cousin came in here, not even related
9 to him anymore. Even her husband came in here to show
10 support, not even related to him anymore. You can judge
11 a person by the company that they keep, and these are
12 obviously decent people. The two ladies that took the
13 stand are obviously decent people.

14 With the type of education he's had, he's
15 an accountant. He's worked his entire life. He
16 supported his children. He did the right thing. If
17 he's such a danger to the community, he would have had a
18 history of doing this type of thing in the past, but he
19 doesn't. He's never been convicted of anything. He's
20 never been in trouble with the law before.

21 I know an issue has been made about a
22 threat that he allegedly made to a correction officer in
23 a jail, and that's jail. Things happen in jail. People
24 are not the same in jail. You can't be the same person
25 in jail that you are on the outside, and I hate to say

1 it, but sometimes the jailers are no better than the
2 inmates that they watch, so don't even put that factor
3 into your deliberations.

4 You have to also look at whether he's had
5 some lasting harm. The child is fine today. The
6 evidence supports that. He did not kill somebody. He
7 did not cause lasting physical harm. He did not cause
8 lifelong debilitation.

9 What purpose does sending a man to prison
10 for 50, 60, 40 years do? You take a person who was a
11 hard worker out of society. You take a father away from
12 their children. You take a brother away from their
13 sister and send them away from their parents. What
14 purpose does that serve? Fatherless children, that's
15 no -- that's no way to live. Nobody would wish that on
16 anybody.

17 You all have to go home and look yourselves
18 in the mirror and think whether you did the right thing,
19 and I'm telling you that sending this man to prison for
20 a long time is not the right thing to do. He does not
21 need to be removed from society for this long. When you
22 look at punishment, you need to look and see whether the
23 punishment fits the crime, not just the crime but also
24 the individual, and I think a minimum sentence here is
25 more than enough for this particular individual.

1 I know it's late in the day, and it
2 could be very easy just to say, "You know what; let's
3 just give him 50 years and be done with it." It would
4 be very easy to do that. The hard part is knowing
5 the right thing to do, and I'm going to ask you to do
6 the right thing and give him the minimum sentence.
7 Thank you.

8 THE COURT: Ms. LaBorde.

9 MS. LABORDE: May it please the Court.
10 Ladies and Gentlemen, the Defense has asked you to
11 consider this Defendant's children which I guess he
12 means his children by Alma and not Max. They don't
13 even -- they don't even know who Max is. He asked you
14 to consider his children and his parents when you decide
15 what his sentence should be, and I ask you to consider
16 whether or not this Defendant had any consideration of
17 them on the many, many times that he abused Max. When
18 he chose to take his rage out on an innocent,
19 defenseless child, he could have thought of his other
20 children. He knew when he did those things not only
21 that he was staring at a helpless human being and
22 squeezing him and breaking him and terrifying him. He
23 knew that that was all that mattered in the moment.
24 I mean could there really be anything more
25 selfish? I mean his other children are just more

1 victims. The rest of their lives they will have to say
2 when someone says, "Well, where is your dad" -- they
3 were born here. You know, they know you have dads,
4 and dads are here, and they support you. I mean they
5 watch TV. "Where is your dad?" You know, "Well, he's
6 in prison." They're going to have to grow up their
7 whole lives, "Why is your dad in prison?" I mean,
8 "He assaulted our brother that we don't know." That's
9 the life sentence he's given his -- his real children.
10 You know, what kind of sentence has he
11 given Max, and, you know, I'm really -- I'm really
12 sorry. I would like to stand up here and be really
13 optimistic, you know, but have you heard evidence
14 that Max is just fine? I mean have you? I don't
15 think you have because it's not just those moments that
16 he's looking up at his dad and he's not being helped.
17 It's not just those moments that he's being cracked
18 and crunched. It's those moments in the dark when
19 he's alone, and he cries out. How many
20 two-and-a-half-year-olds do you all know that in the
21 middle of the night in their crib they just cry, and
22 they have to be picked up because they're so alone.
23 He's -- he's emotionally scarred from this, and just
24 because you can't see it on the outside, it doesn't mean
25 it's not there. It's real.

1 He has to be held in the middle of the
2 night because he knows the world is not a good place
3 sometimes, and I want you to remember what -- what you
4 saw of this grandfather. He told you about the time
5 when they went to pizza, and they were saying they
6 really wish they could see Max more but they live so far
7 away, and this Defendant pinched his nose and made the
8 baby cry, and now when Anthony looks back he knows that
9 he should have done something because maybe all of this
10 wouldn't have happened, but he didn't want to intervene,
11 and he didn't want to make anyone angry, and he didn't
12 know what was coming, but I think you all can see that
13 he really feels guilty because he didn't say anything,
14 and all this happened, and I'm bringing that up to you
15 all because I don't want you all to feel that way, too.

16 We've been out for so long, hours and hours
17 of thinking about this, and I appreciate that. I really
18 do, and I'm glad you came up with the verdict that you
19 did, but do you want to open the papers one day and find
20 out this guy got out and he did something like this
21 again, because, unlike -- unlike Anthony who didn't know
22 this was going to happen, but you all know what he's
23 capable of. He was 29 years old when he did this. He
24 was not an 18-year-old boy. This was not his first
25 baby.

1 Do you remember what Ms. Espinosa just --
2 that look she had on her face when Mr. Ramsay asked her,
3 "Well, did he shave your kids' heads, too?" Did you --
4 did you see her look? Her look was, "No." He knows how
5 to behave. He knows how to be a father. He just never
6 felt that way about Max.

7 Max was a problem. Max was a kid that
8 cried, and, unfortunately, what we know about child
9 abuse is the minute you start crunching them, they just
10 cry more because they're in pain and that just makes
11 them even more susceptible to more victimization, so
12 once the ribs are cracked, once the leg is cracked, once
13 he's crying all the time, he just wants to hurt him
14 more.

15 That's who you're dealing with, someone
16 that would hold life in his hands and just want to break
17 it. That is what you know, so when is it that you want
18 to know that he is out and that he's just off parole,
19 and no one is watching him anymore and he finds --

20 THE COURT: You have two minutes remaining.

21 MS. LABORDE: -- another Taylor, because
22 the world is full of Taylors. Taylor and Jennifer have
23 had exactly the same experience, right? And don't you
24 know people like that can see Taylor a hundred miles
25 away and can just take advantage and produce life and

1 then want to -- want to hurt it, and you have the power
2 to stop that, and you can't lock him up for the rest of
3 life. That's really not even an option for you all.

4 What you can do is you can make sure for as
5 long as you can that someone is watching him, that
6 whoever he's with knows he's on parole. That means
7 something. It does. It protects people. It lets him
8 know that he can't just give all these fake names and
9 get all these jobs, and if you think that we're going to
10 deport him and he's never going to come back, like
11 really pull your heads out of the sand because that's
12 not what's going to happen. He was a tourist from 2007
13 until now. He's going to get on parole, and he's going
14 to be here. He's our responsibility. Max is our
15 responsibility, so I ask you to do everything that you
16 can knowing what you know to protect the rest of us,
17 to protect the Taylors of the world from what he is.
18 Thank you.

19 THE COURT: All right. Ladies and
20 Gentlemen, go to the jury room to deliberate your
21 verdict as before. If you need to take a break, cease
22 your deliberations. Don't talk to anyone outside the
23 jury room about the case or let anyone talk to you.
24 We'll await your verdict.

25 (The jury retired to the jury room.)

1 (A recess was taken from 4:38 PM
2 to 5:35 PM.)

3 (Open court, Defendant present, no jury.)

4 THE COURT: All right. We have a note from
5 the jury that they reached a verdict. As before, I
6 don't want any outbursts. Everyone maintain their
7 composure. Bring in the jury.

8 (The jury was seated in the jury box.)

9 THE COURT: Ladies and Gentlemen,
10 Ms. Hogwood, I understand the jury has reached a
11 unanimous verdict on punishment. Is that correct?

12 THE PRESIDING JUROR: Yes, sir.

13 THE COURT: If you'll pass it to the
14 bailiff, please.

15 THE PRESIDING JUROR: (Complies with
16 request.)

17 THE COURT: The verdict of the jury on
18 punishment as to Count I, "We, the Jury having found the
19 Defendant, JUAN FRANCISCO MEDINA ORTIZ, *guilty* of the
20 offense of Injury to a Child, as alleged in Count I of
21 the Indictment, assess his punishment therefor at
22 confinement in the Texas Department of Criminal Justice,
23 Institutional Division for a term of forty (40) years,
24 and in addition thereto, we assess a fine in the amount
25 of \$9,000."

1 Count II, "We, the Jury, having found the
2 Defendant, JUAN FRANCISCO MEDINA ORTIZ, *guilty* of the
3 offense of Aggravated Assault, as alleged in Count II of
4 the indictment, assess his punishment therefor at
5 confinement in the Texas Department of Criminal Justice,
6 Institutional Division for a term of fifteen (15) years,
7 and in addition thereto, we assess a fine in the amount
8 of \$5,000."

9 Count III, "We, the Jury, having found the
10 Defendant, JUAN FRANCISCO MEDINA ORTIZ, *guilty* of the
11 offense of Aggravated Assault, as alleged in Count III
12 of the Indictment, assess his punishment therefor at
13 confinement in the Texas Department of Criminal Justice,
14 Institutional Division for a term of fifteen (15) years,
15 and in addition thereto, we assess a fine in the amount
16 of \$50,000 (sic)." Each verdict form --

17 THE REPORTER: Wait. Did -- did you say --

18 THE COURT: Did I say "50"? "Five thousand
19 dollars," it's been a long week. Each verdict form is
20 signed by the Presiding Juror. Anything to take up with
21 the jury from the State?

22 MR. RAMSAY: Nothing from the State,
23 Your Honor.

24 THE COURT: From the Defense?

25 MR. MEGARO: Application to poll the jury

1 again, Your Honor.

2 THE COURT: What?

3 MR. MEGARO: To poll the jury.

4 THE COURT: Okay. Mr. Phillip Todd

5 Hawkins, you heard the verdict of the jury on

6 punishment. Is that your verdict, sir?

7 THE JUROR: Yes, sir.

8 THE COURT: Mr. Kerry Lee Storer, is that

9 your verdict?

10 THE JUROR: Yes, sir.

11 THE COURT: Mr. Drew Crenwelge, is that

12 your verdict?

13 THE JUROR: Yes, sir.

14 THE COURT: Mr. Jeffrey Brown, is that your

15 verdict?

16 THE JUROR: Yes, sir.

17 THE COURT: Ms. L'Porsha Clark, is your

18 verdict, ma'am?

19 THE JUROR: Yes, sir.

20 THE COURT: Ms. Carolyn Monroe, your

21 verdict?

22 THE JUROR: Yes, sir.

23 THE COURT: Ms. Carla Ann Hudson, your

24 verdict?

25 THE JUROR: Yes, sir.

1 THE COURT: Ms. Cheryl Crenshaw, is that
2 your verdict?

3 THE JUROR: Yes, sir.

4 THE COURT: Ms. Catherine Hogwood, is that
5 your verdict?

6 THE PRESIDING JUROR: Yes, sir.

7 THE COURT: Ms. Pamela Slaughter, is that
8 your verdict, ma'am?

9 THE JUROR: Yes, sir.

10 THE COURT: Jeremiah Zimmerman, is that
11 your verdict?

12 THE JUROR: Yes, sir.

13 THE COURT: Everett William Thomas, is that
14 your verdict?

15 THE JUROR: Yes, sir.

16 THE COURT: The Court accepts and receives
17 the verdict of the jury. Juan Francisco Ortiz (sic),
18 the Court having -- the jury having found you guilty and
19 assessed your punishment, is there any reason under the
20 law why you should not be sentenced?

21 THE DEFENDANT: (Through the Interpreter)
22 No.

23 THE COURT: On Count I, it's the
24 sentence of the Court that you ben confined in the
25 Institutional Division of the Texas Department of

1 Criminal Justice for a term of 40 years, and you're
2 assessed a nine thousand dollar (\$9,000) fine. On
3 Counts II and III, it's the sentence of the Court that
4 you be confined in the Institutional Division of the
5 Texas Department of Criminal Justice for a term
6 of 15 years, and on each count you're assessed a five
7 thousand dollar (\$5,000) fine.

8 These sentences will run concurrently. You
9 will be given credit for time served awaiting trial.
10 You will be assessed normal statutory court costs. If
11 you cannot pay those personally, your inmate trust fund
12 will be garnished to do so.

13 You have a right to appeal this verdict,
14 both at the guilt-innocence phase of your trial and at
15 the punishment phase of your trial. You have a right to
16 have a lawyer represent you on that appeal. If you
17 cannot afford one, one would be appointed to represent
18 you. You have basically 30 days to file a Notice of
19 Appeal or a Motion for New Trial. Mr. Megaro will
20 confer with you about those timelines. You are remanded
21 into the custody of the Sheriff's Department.

22 MR. MEGARO: Your Honor, I'm sorry. Just
23 let the record reflect that I have provided Mr. Ortiz
24 with his right to appeal, and I will take the steps to
25 preserve that right.

1 THE COURT: Okay, all right. Ladies and
2 Gentlemen, I think you understand by now that service on
3 a jury like this in this type of case is not an easy
4 duty. You have discharged your obligations to the
5 citizens of this county and the State. I can't tell you
6 how much we appreciate that. I do realize how hard this
7 is. We've been here a long time.

8 Up till now I told you that you could not
9 discuss the case or allow anyone to discuss it with you.
10 I'm going to discharge you from that obligation. You're
11 free to discuss it with anyone you wish. You're equally
12 free not to discuss it.

13 Sometimes after a trial you're asked to
14 give a statement or an affidavit as to whether all the
15 rules of jury conduct have been properly followed.
16 You're free to give such an affidavit if you wish.
17 You're equally free not to give one.

18 I'm going to return you to the jury room
19 and come visit with you for a few moments and answer any
20 questions you might have about things that went on here
21 during the trial that we couldn't discuss at that time,
22 but, again, I appreciate your service. I'll be with you
23 in just a few moments.

24 (The jury retired from the courtroom.)

25 (The proceedings were adjourned.)

1 THE STATE OF TEXAS §

2 COUNTY OF McLENNAN §

3

4 I, Theresa J. Popejoy, Deputy Court Reporter in and
5 for the 19th Judicial Court of McLennan County, Texas,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 by Defendant to be included in this Reporter's Record,
10 in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were reported
12 by me.

9 I further certify that this Reporter's Record of
10 the proceedings truly and correctly reflects the
11 exhibits, if any, admitted by the respective parties.

11 I further certify that the total cost for
12 the preparation of this Reporter's Record is \$5,936.50
13 and was paid for by **Counsel for Defendant,**
14 **Patrick Megaro.**

13 WITNESS MY OFFICIAL HAND this the 26th day of
14 February, 2015.

15

16 /s/Theresa J. Popejoy
17 THERESA J. POPEJOY, Texas CSR 756
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