

1 when she returns home, there are subsequent
2 conversations with Lenore, so are you saying
3 you're stopping when she gets home or are you
4 going into the conversation?

5 MR. McCALL: I wasn't going into
6 those conversations. What conversations are you
7 referring to?

8 MR. EDELIN: That she told Lenore
9 or that Lenore told her I got to call social
10 services and see if I can get the kids. Lenore
11 was very upset and short of breath and acting
12 like someone would expect that just heard there
13 was a traumatic event with the relative.

14 THE COURT: That would be up to
15 you whether you bring that out on cross.

16 MR. EDELIN: I just want to make
17 sure, he said he was stopping.

18 THE COURT: I'm not precluding the
19 defense, I am concerned at the moment where we
20 stand. First of all, the motion for a mistrial
21 is going to be denied, Mr. Bostic. I don't
22 believe the prejudice --

23 MR. IBRAHIM: We're joining the
24 objection.

1 THE COURT: Everybody is joining
2 the motion for a mistrial. I don't believe the
3 prejudice is that extreme. We'll deal with it
4 with a repeat cautionary instruction along the
5 lines of ladies and gentlemen, an individual
6 person's opinion on the events has no bearing
7 upon your deliberations in the case. You are
8 the judges of the evidence in this case.

9 Mr. McCall, what I would ask you
10 to do is just say when you heard that your guest
11 may have been involved in some way, did you go
12 home and leave it at that.

13 MR. McCALL: That's fine.

14 THE COURT: The defense has the
15 leeway to conduct whatever cross-examination
16 they would like to conduct.

17 MR. McANDREW: Your Honor, I think
18 for purposes of the record I would add with
19 regard to prejudice, it's very clear based on
20 the record that David Matusiewicz did not shoot
21 Christine Belford.

22 MS. CHAVAR: That's not the point.

23 THE COURT: The concern --

24 MR. McANDREW: I'm not sure I

*But
it's
also very
clear that
they charged
h.m. +
sentenced h.m.
as if he
did.*

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understand the point.

THE COURT: I understand the point. The point is that the supposition of the witness connects Mr. Matusiewicz to the action of his father, so that would be --

MR. McANDREW: Which he's charged with.

THE COURT: That would be the prejudice. The reason I don't believe it's a mistrial is because I think we have got a very intelligent, attentive jury and they are not going to be unduly influenced when we put it down as quickly as we did.

Let's finish with the witness and I will give that instruction when you're done, Mr. McCall.

(End of side-bar.)

MR. McCALL: May I proceed?

THE COURT: You may.

MR. McCALL: Thank you, sir.

BY MR. McCALL:

Q. Ms. Mitchell, you indicated that you learned that the people that were staying at your house may be involved in something at the

1 courthouse; correct?

2 A. That is correct.

3 Q. After that, at some point did you
4 go home?

5 A. I did go home.

6 MR. McCALL: Thank you. Judge,
7 that's all I have.

8 THE COURT: All right. And then
9 I'll give lead to the defense to cross-examine.
10 Before I do that, members of the jury, I'm sure
11 you know from the repeated instructions that I
12 have given you that nobody's interpretation of
13 events or opinions matters except yours based on
14 all the evidence you hear and the instructions I
15 give you at the end of the case.

16 All right. So, defense. Whomever
17 would like to proceed.

18 MR. EDELIN: Your Honor, with the
19 Court's permission.

20 THE COURT: By all means.

21 BY MR. EDELIN:

22 Q. Ma'am, good afternoon.

23 A. Good afternoon.

24 Q. How are you?

1 A. I'm good, thank you.

2 Q. Good. My understanding, ma'am, of
3 your testimony is that you had a social
4 relationship with the Matusiewicz's?

5 A. That's right.

6 Q. And when you said Lee, you're
7 referring to Ms. Lenore?

8 A. I'm sorry?

9 Q. When you would say Lee, when you
10 make a reference to Lee, that would be
11 Ms. Lenore?

12 A. Lenore, that's right.

13 Q. My understanding, ma'am, of your
14 testimony is that sometime in the summer of
15 2006, your child would go over and visit with
16 Ms. Lenore and her grandchildren?

17 A. That's correct.

18 Q. Particularly the older child?

19 A. My youngest child would go over
20 there, Jessica.

21 Q. And visit with Ms. Lenore's oldest
22 granddaughter, Laura?

23 A. That's correct, Laura.

24 Q. Ma'am, my understanding is back in

1 the summer of 2006 was when you first heard
2 Ms. Lenore talk about her concerns about
3 possible sexual abuse of Laura?

4 A. That's correct.

5 Q. And your understanding based on
6 that conversation was that the sexual abuse was
7 coming from the mother?

8 A. That is correct.

9 Q. And again, just so make sure I
10 have the time in my mind correct, this is the
11 summer of 2006?

12 A. That's correct.

13 Q. Which is my understanding would be
14 about a year before the kidnapping occurred?

15 A. Okay.

16 Q. So if I told you the kidnapping
17 occurred around August of 2007, would it be fair
18 to say that you had this conversation about a
19 year before that?

20 A. That's a fair statement.

21 Q. So if the government has been
22 putting before this jury for the past four weeks
23 that the sexual allegation story was not made
24 until after they were arrested for the

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kidnapping, that would be incorrect because you heard about it a year prior? *

A. Absolutely.

Q. Thank you, ma'am.

MR. EDELIN: Your Honor, if I may have a moment.

BY MR. EDELIN:

Q. And I believe you have been interviewed by the government and/or federal law enforcement on more than one occasion? *

A. That's right.

Q. And you told them that when they interviewed you sometime in February of 2013? *

A. Correct.

Q. You told them about the conversation you had with Ms. Lenore that occurred back in 2006? *

A. That's correct.

Q. At some point, ma'am, the Honda Civic that was left at your house, you testified you didn't get a good look at it, you didn't pay much attention it to?

A. I did not.

Q. I believe you also told me, ma'am,

1 the request was made to leave it there because
2 it was having some type of mechanical problems?

3 A. You know, that may have been.

4 Yes, I think that is right.

5 Q. Is that starting to ring a bell?

6 A. That is starting to ring a bell.

7 But I also thought there was also a statement
8 that they want to take one car to go visit
9 family in New Jersey.

10 Q. Do you remember seeing or speaking
11 with your husband about the fact that they had
12 to tie the bumper back on with wire?

13 A. I don't know anything about that.

14 Q. Okay. At some point after you
15 start hearing everything on the radio, you're in
16 phone contact with your home; correct?

17 A. I am, yes.

18 Q. And at some point, you say I got
19 to go home?

20 A. That's right.

21 Q. And you go home?

22 A. Right.

23 Q. Ma'am, my understanding from your
24 -- from the government's report of your

1 interview is that are you the -- well, let me
2 ask you this question. Are you the one who is
3 recounting, and I don't want you to get into the
4 event, I don't want you to recount the event,
5 but are you the one who is recounting what you
6 are hearing on the radio to Ms. Lenore or is
7 that your husband, are you talking to your
8 husband and he's telling her?

9 A. The latter, what you just said.

10 Q. So you're on the phone with your
11 husband saying this is what I'm hearing and he's
12 relaying it?

13 A. That's correct.

14 Q. But, ma'am, it is my understanding
15 that when you get home, you find Ms. Lenore
16 still at your home?

17 A. That's right.

18 Q. And, in fact, she is on the phone
19 when you get there?

20 A. She is.

21 Q. And, in fact, she is on the phone
22 with children services asking them to go get the
23 children?

24 A. That's correct.

1 Q. Right?

2 A. She was.

3 Q. And this is by the time you get
4 from your job back to the home?

5 A. That's correct.

6 MR. EDELIN: Thank you, ma'am.
7 Thank you, Your Honor.

8 THE COURT: Any other
9 cross-examination by the defense?

10 MR. IBRAHIM: I have no questions,
11 Your Honor.

12 THE COURT: Mr. Bostic,
13 Ms. Chavar.

14 MS. CHAVAR: Nothing, Your Honor.

15 THE COURT: Any redirect

16 REDIRECT EXAMINATION

17 BY MR. McCALL:

18 Q. Ma'am, did you know why Lenore
19 Matusiewicz was calling social services for the
20 children?

21 A. She said her concern was she felt,
22 she was worried that the girls would be getting
23 off the bus and their mother was not there.

24 Q. And at the time, how did she know

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1 that anything had happened to her mother, if you
2 know?

3 A. I heard on the radio, and I told
4 my husband David who told Lenore.

5 Q. Now, when you heard the allegation
6 in the summer of 2006, you didn't call the
7 police; right?

8 A. I did not.

9 Q. You didn't call?

10 MR. BOSTIC: Objection. Asked and
11 answered.

12 THE COURT: Overruled.

13 BY MR. McCALL:

14 Q. You didn't call the Division of
15 Family Services in Delaware; correct?

16 A. No, I did not.

17 Q. You did nothing?

18 A. I did nothing.

19 THE COURT: I believe the witness
20 may step down.

21 MR. BOSTIC: Yes, Your Honor.

22 THE COURT: Government, I assume
23 you have another witness ready?

24 MR. McANDREW: Yes, Your Honor.

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Q. All right. And my last question for you, Mr. Sulner, is should we need to hire you in the future, can we reach you at this address?

A. Yes, sir.

MR. McANDREW: Thank you. Thank you, Your Honor.

THE COURT: All right. Any cross from any other defense counsel?

MR. EDELIN: No, Your Honor.

Thank you.

THE COURT: Mr. Ibrahim?

MR. IBRAHIM: No questions.

THE COURT: Any redirect, Mr. Bostic?

MR. BOSTIC: No. Thank you.

THE COURT: Thank you very much. The witness is excused, but first why don't we recess for our mid-morning break. Ladies and gentlemen, all rise in honor of our jury.

(Mid-morning recess at 10:33 a.m.)

THE COURT: We've been having a preliminary discussion at sidebar. Counsel for the Defendant, David Matusiewicz, is about to

The govt didn't want to let in any testimony/prior statements of abuse by our family friends. They also didn't want Christine being promiscuous with other men to be heard by the jury either.

1 call a friend of the Defendant who was
2 previously interviewed by the FBI. I'm advised
3 by counsel that in the notes of the 302 summary
4 of interview she makes reference to the fact
5 that back in 2006, I believe is the appropriate
6 date, Mr. Matusiewicz expressed concern to her
7 about sexual abuse of one or more of his
8 children and counsel for Mr. Matusiewicz would
9 like to call the witness and inquire of them as
10 to that statement to the FBI. The Government
11 has lodged an objection on the basis that this
12 is hearsay and has drawn the distinction that
13 while the Government may admit against Mr.
14 Matusiewicz his out of court statements because
15 it is not defined as hearsay under the rules of
16 evidence as an admission by a party opponent
17 that a party cannot put into the record their
18 own prior out of court statements. Have I
19 summarized the issue, counsel?

20 MR. McCALL: Yes, Your Honor

21 THE COURT: All right. So let me
22 hear back from the defense as to the basis for
23 overcoming the hearsay objection.

24 MR. CHAVAR: The Government has

1 put at issue in this case that because David
 2 Matusiewicz never said anything to authorities
 3 about the abuse until he was returned from
 4 Nicaragua, it was false, that it was made up and
 5 it was not stated until 2009. This directly
 6 rebuts that and it also calls into play David's
 7 state of mind in 2006, because they have
 8 implicitly been making the allegation throughout
 9 the entire trial that he was not aware of it in
 10 2006, it wasn't in his mind in 2006 and it was
 11 something that was created only upon his return
 12 in 2009. So it's a state of mind exception.



13 THE COURT: All right. Let me see
 14 if I recall correctly. There are currently two
 15 witnesses that have testified that have made
 16 reference to David expressing concerns earlier
 17 than the kidnapping.

18 MS. CHAVAR: Yes.

19 MR. McCALL: That's correct.

20 THE COURT: One is Mitchell.

21 MR. McCALL: That was Lenore.

22 Lenore made that statement.

23 MR. McCALL: Yes, Your Honor.

24 Linda Morris is the second one.

1 MR. McANDREW: That was a second
2 concern not related to the sexual abuse concern.

3 THE COURT: I think I need to see
4 the 302. Thank you. For the record, the
5 Government has provided me with the 302.

6 MR. McCALL: March 2006.

7 MR. EDELIN: Part of what the
8 Court may be recollecting that some testimony
9 started that David Mitchell would testify to the
10 same thing.

11 MS. CHAVAR: And Carl Stubbins.
12 I'm sorry, I just want to advise the judge,
13 because he's asking about other witnesses.

14 MR. EDELIN: Because I think that
15 may be where the Court is thinking about you've
16 heard it from two different people because there
17 was some testimony that David Mitchell would say
18 the same thing. I think that got cut off unless
19 we brought him in, but Peggy Mitchell definitely
20 said it and the other made general allegations.

21 THE COURT: Help me out about how
22 this is state of mind.

23 MS. CHAVAR: Because he was
24 sharing with her what his thoughts were at that

1 time.

2 MR. McCALL: That's --

3 MR. BOSTIC: The Government has
4 said, Your Honor -- if I may, the Government has
5 said that in their theory the kidnapping was the
6 first leg of keeping the kids -- to getting and
7 keeping the kids and then after he was picked up
8 and arrested and sentenced and that he and his
9 family went on a campaign to again secure these
10 children. And as part of their case in chief,
11 they have said consistently that David
12 Matusiewicz never told anyone about these
13 allegations prior to leaving for Nicaragua. In
14 fact, they brought in Marshal David to state
15 specifically he took a statement from David
16 Matusiewicz upon his arrest and he did not say
17 that.

18 THE COURT: I think the Government
19 has tried to imply that the allegations of child
20 abuse are post kidnapping justification for
21 certain behavior. So I think that is part of
22 the Government theory of the case, would that be
23 correct?

24 MR. McCALL: We've been very

1 careful in the opening statement and how we've
2 presented the evidence, including Peggy
3 Mitchell. Our theory has been, because we've
4 known about the Peggy Mitchell statement, for
5 example, I don't know if that one quite
6 qualifies, but he didn't tell the authorities,
7 he didn't tell his lawyers, he didn't tell
8 anybody that had the ability to do anything
9 about it.

10 THE COURT: Right, right, right.
11 Let me tell you what my concern is, Government.
12 My concern is that you have one of these
13 fundamental issues of truth, if you will, where,
14 in fact, the Government knows of a witness that
15 Matusiewicz apparently said these things to.
16 David Matusiewicz has a fifth amendment right
17 not to testify and we're balancing those two
18 considerations. I'm going to resolve this is as
19 follows. I don't think this is state of mind,
20 but I will allow you to elicit the statement
21 that he said it, but I'm giving you a cautionary
22 instruction to members of the jury, this is
23 hearsay and you may not consider it for the
24 truth of the statement, you may only consider it

1 as evidence that the statement was made. That's
2 how I'm going to resolve the issue.

3 MR. McCALL: Okay. And so, so
4 we're totally clear, the statement before talks
5 about an allegation of sexual impropriety on the
6 part of Christine Belford. We're not going to
7 do that, right?

8 MR. McANDREW: That's squarely in
9 412 land.

10 MS. CHAVAR: Well, I think what
11 the statement is -- I think the statement is, is
12 that he's talking to her about what's going on.
13 He said I don't know what's going on. She's
14 dressing promiscuously when she's going to work,
15 she made a pass at a coworker that we discussed
16 three weeks ago that she did not tell Tim
17 Hitchings. It's the same incident. This goes
18 to her credibility. It's her credibility that
19 we can't cross.

20 THE COURT: If I recall, I recall
21 Hitchings say he did not know something about an
22 incident involving that in the office.

23 MR. McCALL: That has nothing to
24 do with the issue we're talking about.

The entire
issue is
Christine's
credibility.
They can
question our
credibility,
but not
hers. That
is a
double
standard.

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THE COURT: I have very grave concerns about that, Ms. Chavar.

MS. CHAVAR: Okay.

THE COURT: But I am going to allow you to elicit from the witness that David said that and then I'll give my cautionary instruction saying that it's offered only as evidence that that was stated and not for the content of the statement which rendered it non-hearsay.

MR. McANDREW: One other issue, the separation is in the beginning of 2006. Your Honor has been very careful to avoid or limit our ability to get into the reasons for the separation at that time. To the extent that we're starting to get into why did he take the kids in 2007 and what was going on in 2006, we're winding our way back to a time period where we may need to put things in context if they are brought out on direct.

MR. McCALL: Right, this statement apparently happens in March 2006, a month after the separation. I mean, even under the most generous of timelines to the Matusiewicz family,

there's --

1 MR. IBRAHIM: All of them?

2 MR. McCALL: All of them. I'm not

3 even sure she had seen the kids but maybe more
4 than once or twice in March of '06.

5 THE COURT: That would be
6 appropriate examination.

7 MR. McCALL: Absolutely.

8 THE COURT: To bring out, but for
9 now, I think -- I think we have done a
10 reasonably good job of trying to keep away from
11 collateral matters. Let's try to remain on that
12 course. Note my ruling is with respect to this,
13 but I'm going to direct Ms. Chavar not to get
14 into the provocative dress or reported
15 promiscuous sexual conduct on the part of
16 Christine Belford.

17 MR. BOSTIC: Your Honor, would Ms.
18 Chavar have an opportunity to talk to the
19 witness?

20 MS. CHAVAR: Yes, she's very, very
21 nervous. Never testified before.

22 THE COURT: Let's keep that clean.

23 MR. IBRAHIM: Judge, the only
24

1 question I have is if this is going to wind into
2 the discord during the separation or leading up
3 to the separation, I still don't understand how
4 that effects Amy Gonzalez and how Amy was in the
5 middle of that.

6 THE COURT: I don't take it we are
7 going there. I take it we are just eliciting a
8 fact. And I actually don't think it's hearsay,
9 Government, if I define it. If I define it,
10 we're only offering it for the fact, timing of
11 the statement and they may not consider it's
12 true or that's the case, only that David,
13 reportedly that David said that in that time
14 frame, all right?

15 MR. McANDREW: Okay.

16 THE COURT: Don't you love
17 evidence?

18 MS. CHAVAR: No.

19 (Jury enters.)

20 THE COURT: We took a longer break
21 than usual, but I assure you we were here
22 working on evidentiary rulings that will
23 hopefully facilitate the testimony, so I believe
24 the defense has another witness. Ms. Chavar,

his
and

1 are you ready?

2 MR. BOSTIC: Your Honor, I'll take
3 the witness. Thank you. Your Honor, on behalf
4 of Defendant, David Matusiewicz, we will call
5 Christine Evans to the stand.

6 THE COURT: All right.

7 CHRISTINE EVANS,

8 the deponent herein, having first
9 been duly sworn on oath, was
10 examined and testified as follows:

11 BY MR. BOSTIC:

12 Q. Good morning, Ms. Evans.

13 A. Good morning.

14 Q. How are you?

15 A. I'm doing good. Thank you.

16 Q. I understand you are a little bit
17 nervous?

18 A. I am.

19 Q. Let's start --

20 THE COURT: Could you pull the
21 microphone a little closer to you? Thank you.

22 BY MR. BOSTIC:

23 Q. Let's start by you introducing
24 yourself to the jury, please.

This is
Dave's
friend also
testifying
being told
about abuse
in 2006.

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A. I am Christine Evans.

Q. And Ms. Evans, you and I met the first time this morning?

A. First time.

Q. Now, Ms. Evans, you currently reside in Arizona; is that right?

A. Yes, I do.

Q. Okay. Ma'am, do you know David Matusiewicz?

A. Yes, I do know David Matusiewicz.

Q. Do you see him in the courtroom today?

A. I do see him.

Q. And how long have you known David Matusiewicz?

A. I've known David 30 years.

Q. Okay. Now, did you know at some point in time leading up -- let me go back and do it this way. Did you know at some point in time that he was married to Christine Belford?

A. Yes.

Q. Okay. Now, ma'am, by the way, when was the last time you saw David Matusiewicz?

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1 A. Early 2000.

2 Q. Okay. Did there come a point in
3 time around 2006 that you had occasion to have
4 extended conversations with David Matusiewicz?

5 A. Yes.

6 Q. And would it be fair to say those
7 conversations centered around you?

8 A. Yes.

9 Q. Now, what were the nature of the
10 conversations that was centered around you?

11 A. What was centered around me was I
12 was going to have eye surgery and David being an
13 optometrist I called David to consult.

14 Q. And most of those calls took place
15 to his office or to his home?

16 A. I called his house.

17 Q. Okay. And those were what time of
18 the day?

19 A. Time of day was usually either on
20 the weekends or at night.

21 Q. And do you recall from your
22 conversation who was present with him most of
23 the time when you called?

24 A. His children.

1 Q. Okay.

2 A. Because I could hear them in the
3 background.

4 Q. Okay. Now, did there come a point
5 in time when the conversation or conversations
6 may have shifted from about you, to David and
7 his children?

8 A. Yes. He had told me he was
9 concerned that they were being abused.

10 Q. And did he tell you who he was
11 concerned was abusing them?

12 A. Christine Belford.

13 Q. Okay. Did he tell you what type
14 of abuse he was concerned with?

15 A. At that time he did not.

16 Q. Okay. Now, ma'am, are you able to
17 pinpoint for us the time frame specifically as
18 to when you were talking to David Matusiewicz
19 and he told you about being concerned that his
20 children were being abused by his ex-wife?

21 A. It was like the end of February,
22 beginning of March, around -- of 2006.

23 Q. Now, how do you know it was around
24 the end of February, beginning of March of 2006?

1 A. Because my eye surgery was
2 scheduled for beginning of March, like the
3 first, second week of March. And I had
4 started -- I had called him a couple weeks prior
5 to that to talk to him about the studies and all
6 the risks that were involved in the surgery.

7 Q. Okay. Now, we talked about you
8 knowing me -- meeting me today?

9 A. Uh-huh.

10 Q. Would it be fair to say that you
11 are here testifying today under subpoena from my
12 office, you got subpoenaed?

13 A. Yes, I got subpoenaed by your
14 office.

15 Q. So we came searching for you, is
16 that right, as opposed to you coming searching
17 for me?

18 A. That is correct.

19 Q. And ma'am, prior to being
20 subpoenaed by my office and talking to my office
21 about what you just told the ladies and
22 gentlemen of the jury, would it be fair to say
23 that you had an occasion --

24 MR. McCALL: Objection. Leading.

1 THE COURT: I'll overrule it.

2 BY MR. BOSTIC:

3 Q. Would it be fair to say that you
4 had a conversation with an FBI agent regarding
5 the content of your statement to the jury here
6 today?

7 A. Yes.

8 Q. Okay. And did you tell the FBI
9 agent the same thing that you're telling the
10 jury here today?

11 MR. McCALL: Objection.

12 THE COURT: I'll sustain that
13 objection.

14 BY MR. BOSTIC:

15 Q. Okay. Ma'am, with respect to your
16 contact with the FBI, that was from the FBI
17 coming to you; is that right?

18 A. That is correct.

19 Q. Did you have occasion to follow
20 up, of your own accord, with respect to the
21 initial contact with the FBI?

22 A. I did.

23 Q. And what was that follow up that
24 you did?

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A. I initially told the FBI agent that I had had this conversation with David in 2005. I was incorrect when I went -- after I got off the phone with the agent, I checked my medical records and it was actually in 2006. So what I did was I e-mailed him and corrected the error that I had made.

MR. BOSTIC: Thank you. I have nothing else, ma'am.

THE COURT: Ladies and gentlemen of the jury, we've heard testimony from the witness about an out of court statement made by David Matusiewicz and you've heard me more than once say that statements from out of court are hearsay which ordinarily may not be considered by a jury. I'm allowing you to hear this testimony not for the truth of the statement that was made but rather for focusing at a time frame, namely that at some point in time according to how you credit the witness's statement a statement was made by David Matusiewicz. So it's for that purpose that you've heard this testimony.

MR. McCALL: Your Honor, may I

1 proceed?

2 THE COURT: You may.

3 BY MR. McCALL:

4 Q. Ms. Evans, good morning. How are
5 you?

6 A. Good morning. Good.

7 Q. I want to turn to the conversation
8 that you just mentioned that you had with David
9 Matusiewicz, okay?

10 A. Uh-huh.

11 Q. It was over the telephone; is that
12 correct?

13 A. That's correct.

14 Q. Okay. And it was in around March
15 2006; is that correct?

16 A. That is correct.

17 Q. And the reason you know that was
18 because you had to go back and look at your,
19 your medical records to see when the surgery
20 was?

21 A. Right. Because the FBI agent
22 called me many years later.

23 Q. Sure.

24 A. So I wanted to get the year right.

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1 Q. Absolutely. Do you remember when
2 in March, early March?

3 A. The first conversation, it had to
4 be the end of February, beginning of March. I
5 don't have my record in front of me, but I
6 believe my first eye procedure was like March
7 8th.

8 Q. Okay. So it would have been the
9 time frame before your first --

10 A. Yes.

11 Q. Okay.

12 A. It was before that.

13 Q. So either end of February
14 beginning of March; is that fair?

15 A. Yeah, I had several conversations
16 with him.

17 Q. Okay. And did you know that at
18 the time that you had this conversation David
19 Matusiewicz and his wife Christine Belford had
20 separated at the beginning of January 2006?

21 A. Yes.

22 Q. All right. And did you know or
23 were you aware at the time that Christine
24 Belford had moved out of the house?

1 A. Yes.

2 Q. And that David was living in the
3 house with the children?

4 A. Yes.

5 Q. Okay. And when you had the
6 conversation with David that you mentioned
7 earlier, he didn't tell you what kind of abuse,
8 correct?

9 A. No.

10 Q. And you didn't ask, correct?

11 A. I don't think he knew.

12 Q. You don't think he knew?

13 A. I don't think -- I think he was
14 wondering, but only Dave knows for sure.

15 Q. Okay. Did you know or were you
16 aware that in March, on March 30th, 2010, and
17 I'm referring to Government Exhibit 523 --

18 MR. BOSTIC: Your Honor,
19 objection.

20 THE COURT: Basis?

21 MR. BOSTIC: Your Honor, he's
22 asking her whether she knew about certain
23 communications with other individuals and that's
24 beyond the scope of her testimony.

1 THE COURT: Mr. McCall.

2 MR. McCALL: I'm asking her did
3 you know, were you aware questions testing the
4 foundation of the witness's acknowledge, Your
5 Honor.

6 THE COURT: I'll allow some
7 limited scope and then we'll see where it goes.
8 And Mr. Bostic, you may renew the objection.
9 The time frame in 2010, Mr. McCall, how do you
10 link that up?

11 MR. McCALL: I'm sorry?

12 THE COURT: You're showing a 2010
13 letter.

14 MR. McCALL: I'm going to show the
15 first --

16 THE COURT: Something in the
17 letter?

18 MR. McCALL: The first line.

19 THE COURT: You may proceed.

20 MR. McCALL: Thank you, sir.

21 BY MR. McCALL:

22 Q. Ms. Evans, let me ask the question
23 again. I've showed you Government Exhibit 523,
24 okay?

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A. I got it.

Q. And my question is, did you know or were you aware that in this letter, let me flip to the end, signed by David Matusiewicz, to a Doctor Bocanegra, that it says, in July of 2007, my daughter, Laura Emily, told me and members of my family that her mother was forcing her to play certain sex games with her and that if Laura told anyone about these games that her mommy would go to jail. Did you know or were you ever aware of that statement?

A. Not aware.

MR. BOSTIC: I'm going to have a similar objection, but I ask that before he puts up he asks the witness -- Your Honor, may I see the court at sidebar?

THE COURT: I'm prepared to overrule the objection if the time frame that is being focused upon is is not the date of the letter, but rather the body of the letter what was said purportedly by Mr. Matusiewicz. You may proceed, Mr. McCall.

BY MR. McCALL:

Q. Showing you Government Exhibit

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1 115, okay? Mrs. Evans or Ms. Evans, I'm sorry.

2 A. Yes.

3 Q. And again, this is an e-mail from
4 David Matusiewicz to an account, rnaim@aol.com.
5 The subject is letter to Crowell. And here's my
6 question: Did you know or were you aware that
7 David Matusiewicz wrote in this e-mail, in July
8 of 2007, my daughter, Laura Emily told members
9 of my family and me that her mother, Christine
10 Belford, was forcing her to play certain sex
11 games with her and that if Laura ever told
12 anyone about these games that her mother would
13 go to jail. Did you know or were you aware of
14 that statement?

15 A. I was not aware of that.

16 Q. My last statement on this topic,
17 did you know or were you aware that David
18 Matusiewicz testified before Judge Crowell at a
19 termination of parental rights hearing that
20 involved his parental rights as it related to
21 Laura Matusiewicz, Lee Matusiewicz and Karen
22 Matusiewicz? Did you know that?

23 A. I didn't know that, no.

24 Q. Okay. And did you know that

1 during that hearing David Matusiewicz provided
2 sworn testimony, under oath, that indicated he
3 first learned of the allegations that his ex
4 wife had sexually abused Laura and it was
5 between July and August of 2007. Did you know
6 that?

7 A. No.

8 MR. McCALL: Judge, may I have one
9 moment, please?

10 THE COURT: All right.

11 MR. McCALL: Judge, I'm sorry, may
12 I have one more moment, please?

13 THE COURT: Second moment.

14 MR. McCALL: Thank you. Thank you
15 for your patience, Your Honor.

16 BY MR. McCALL:

17 Q. After the conversation with David
18 Matusiewicz back in late February, early March
19 2006, you didn't report any allegations of abuse
20 as it related to Christine Belford to any
authorities in Delaware, correct?

A. No, I did not.

MR. McCALL: Okay. Thank you very
much, ma'am.

on page A4930
Her previous testimony
was that "He told me
he was concerned that
they were being abused
by Christine Belford."
Did he tell you what
type of abuse he was
concerned with?
"At that time he
did not." (300b)
Pg A4934 -
"I don't think he
knew" what kind
of abuse

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THE WITNESS: Okay.

MR. BOSTIC: Your Honor, I don't know if counsel has any questions before I do a brief --

THE COURT: May I ask co defense counsel, any questions on behalf of your clients?

MR. IBRAHIM: I have no questions.

MR. EDELIN: I have some, if I may.

THE COURT: You may of course.

BY MR. EDELIN:

Q. Good morning.

A. Good morning.

Q. How are you? Little calmer or still nervous?

A. Still a little nervous.

Q. All right.

A. Until I go back to Phoenix. I'll be fine when I get back home.

Q. And it will be soon, I promise.

MR. EDELIN: Your Honor, may I approach?

THE COURT: You may. And

1 Government know what you're about to --

2 MR. EDELIN: I will certainly
3 alert them.

4 BY MR. EDELIN:

5 Q. Ma'am, I am handing you what has
6 bates numbers and I've think -- bates number
7 FD-8, FD-9, FD-10, FD-11, FD-12, 13 and 14. All
8 right. Can I ask you to just take a look at
9 these and just let me know when you're finished
10 looking at all of them.

11 THE COURT: You ready, ma'am?

12 THE WITNESS: I'm ready.

13 BY MR. EDELIN:

14 Q. You've had a chance to take a look
15 at all of them?

16 A. I know what they are. Do you want
17 me to read cover to cover?

18 Q. No, ma'am. I just wanted to make
19 sure that you recognized what they were?

20 A. Yes.

21 Q. And if I'm correct, you see the FD
22 numbers at the bottom right corner, right?

23 A. I do.

24 Q. Okay. So if I'm correct, FD-8,

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FD-9 and FD-10 have the heading Federal Bureau of Investigation?

A. That's correct.

Q. And in the top left corner says FD-302?

A. Correct.

Q. Okay. And if you look towards the bottom it has a date drafted of June 11th, 2013?

A. Correct.

Q. And if you look on the bottom left, it has a by line and it says Conrad, Michael J?

A. Correct.

Q. And so ma'am, you will agree with me that this is a report taken or drafted by Agent Conrad Michael or Michael Conrad based on his conversation with you?

A. Yes.

Q. Okay. And this was prepared back in June 11th of 2013?

A. Yes.

Q. As far as we can tell based on what's on the paperwork, right?

A. Right.

1 Q. And ma'am, I believe you told us
2 at some point you had given him information,
3 went back and checked, discovered that the
4 information you gave was wrong and so you
5 reached out to correct that?

6 A. That is correct.

7 Q. Okay. And ma'am, if we look at
8 the bottom right-hand corner, we see FD-11?

9 A. Yes.

10 Q. And this appears to me to be an
11 e-mail from you to Michael J. Conrad?

12 A. Yes.

13 Q. And is this the e-mail that you
14 were referring to where you corrected the
15 earlier misstatement?

16 A. Yes.

17 Q. And not to go through the whole
18 e-mail, but my understanding is you originally
19 told Agent Conrad that the conversation occurred
20 in 2005. You looked at your medical records,
21 you realized it was 2006?

22 A. That is correct.

23 Q. Right. That's a fair --

24 A. Uh-huh.

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Q. Okay. If we look at FD-12, 13, and 14, that appears to me to be a letter that was written to you and I believe 14 is the actual, a photocopy of the envelope --

A. Right.

Q. -- that that letter came in?

A. Correct.

Q. Now, just so we're also on the same page, it appears that FD-12 is actually the seconds page of the letter, FD-13 is the first page of the letter?

A. That's correct.

Q. Right?

A. Uh-huh.

Q. Okay. And I guess furthermore, if we go back to FD-9 --

A. Yes.

Q. -- we will see that Agent Conrad actually transcribed and typed in that letter into his report?

A. Yes.

Q. Right?

A. That is correct.

Q. Okay.

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MR. EDELIN: Your Honor, if I may approach?

THE COURT: You may.

MR. EDELIN: I don't want to go to the wrong portion. Okay. Your Honor, if I may have five seconds with the Government?

THE COURT: You may. Overruled, sustained. I feel like I should be doing something. We are now commencing redaction procedures. We'll call this a front bar.

MR. EDELIN: Your Honor, I tried to avoid objection, which has probably taken more time than the objection.

THE COURT: I understand. I'm just feeling superfluous, that's all. I appreciate your attempt to work out the issues.

MR. EDELIN: Can we agree that we've been at this too long if Mr. McCall and I are starting to dress alike? Albeit I certainly don't look as good?

Your Honor, why don't we come to sidebar?

MR. EDELIN: I am trying to focus the testimony, certainly don't want to get into

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1 anything that we shouldn't. So the underlined
2 portion -- and I will give it to the Court -- is
3 what Mr. McCall and I were able to agree to. I
4 believe counsel for David may have an objection.

5 ed
6 ed me.
MR. IBRAHIM: Sounds reasonable to

7 THE COURT: So this is something
8 from Dave?

9 MR. McCALL: This is the letter.

10 THE COURT: That's the letter.

11 Oh, I see.

12 MR. McCALL: This is the letter to
13 the witness.

14 THE COURT: I was confused
15 about -- is this the letter to this witness?

16 MR. McCALL: Yes, Your Honor.

17 MR. EDELIN: And I don't believe
18 his objection is the admittance of it. I think
19 there may be an objection as to these two
20 people.

21 THE COURT: Mr. Bostic or Ms.
22 Chavar?

23 MR. BOSTIC: Your Honor -- go
24 ahead.

1 MS. CHAVAR: I don't even know.
2 Do you have an objection to taking out that
3 sentence?

4 MR. McCALL: Yes. If that
5 sentence isn't read, then none of it should be
6 read. This goes to the credibility of what the
7 Defendant is saying. Do you believe in demon
8 affliction? Yep, it was kind of like the
9 exorcism. You want to cut that part out, which
10 makes it -- that gives complete context as we're
11 talking about repeatedly throughout the trial to
12 this statement.

13 THE COURT: I mean, I think that
14 by virtue of the other e-mails we've seen from
15 Mr. Matusiewicz that had a scripture base to
16 them, that the Government makes a point that
17 excising this would in some way take it out of
18 context. So had I not seen those other
19 communications, I would not be concerned with
20 excising that sentence, but since I have seen
21 those communications that refer to things in
22 biblical and/or apocalyptic ways, I think that
23 the Government makes a reasonable point in
24 saying it's part of the context.

*Funny how the
govt suggests
reading
something
in its
entirety but
doesn't take
its own
advice*

the ans

1 MR. EDELIN: And Your Honor, how
2 far do you want me to go? Do you want me to do
3 the signature lines and all of that or just the
4 body of the paper?

5 THE COURT: I mean, I don't know
6 about the P.S.

7 MR. McCALL: We don't need the
8 P.S. I don't need the P.S.

9 THE COURT: Especially in the wake
10 of the Clinton jail break. I do not think we
11 ought to have, think you could smuggle me in a
12 nail file. So please let us leave that out. So
13 my ruling would be that if the defense attorney
14 wishes to use it on cross, they may do so if
15 they include the line that begins, do you
16 believe in demon affliction. If they don't I
17 think the Government would be entitled to read
18 that back in, which I'd rather have it all done
19 in one fell swoop, but absent that --

20 MR. EDELIN: So I will cross out
21 the P.S. We're starting from do you, through --

22 THE COURT: I will permit that
23 unless I hear an objection. I hear no
24 objection. I hear no objection and so we will

"PS think you could smuggle me in a nail file" was a joke... not a conspiracy for a jail break

1 proceed. Turns out we did need to go to the
2 sidebar.

3 THE COURT: And counsel, you may
4 proceed in accordance with our legal argument at
5 sidebar and my ruling.

6 MR. EDELIN: Thank you, Your
7 Honor.

8 BY MR. EDELIN:

9 Q. So ma'am, if I could ask you to
10 again look at FD-9 and FD-10.

11 A. I'm looking at 9 and 10.

12 Q. Okay. Will you agree with me that
13 this is a typewritten version of the handwritten
14 letter that was sent to you from David
15 Matusiewicz?

16 A. Yes. It is the typed version.

17 Q. Okay. And you -- and I will
18 presume that it was typed by the agent because
19 it is in his form, it is in his summary of the
20 conversation that he had with you?

21 A. Yeah, it was to him and he typed
22 it up.

23 Q. You sent him a copy of the
24 handwritten letter?

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1 A. Yes.

2 Q. Okay. And I believe, if you look

3 on FD-9, the date of the letter from David to

4 you was March 17th, 2010?

5 A. Yes.

6 Q. That sound right?

7 A. It is, that is right.

8 Q. And ma'am, we can confirm that by

9 looking at the actual photocopy of the

10 handwritten letter that was sent to you, which

11 is on FD-13?

12 A. Photocopy of the handwritten.

13 Starting -- on 13, yes.

14 Q. And we see the date up at the top

15 right corner?

16 A. At the top, March 17th, 2010, yes.

17 Q. Thank you, ma'am. So now if I can

18 ask you to go to FD-10?

19 A. Okay. All right.

20 Q. And you will agree with me that at

21 the top right corner it says page 3 of 3?

22 A. 3 of 3.

23 Q. This is again the summary that the

24 FBI took from you?

1 A. It is a summary, yes.

2 Q. And the paragraph that is
3 contained on that page is again a typewritten
4 version of the handwritten letter that David
5 sent to you?

6 A. Yes.

7 Q. I am going to read the last couple
8 lines and I just want you to confirm that I'm
9 reading it correctly.

10 A. Okay.

11 Q. Do you see?

12 A. Are you on 10?

13 Q. I am on 10, yes, ma'am.

14 A. Okay.

15 Q. Half way through, do you see the
16 parenthesis and do?

17 A. Yes.

18 Q. Okay. So I'm going to start from
19 there. Do you believe in demon affliction?
20 Yep, it was kind of like the exorcist. When she
21 started molesting my oldest daughter Laura and I
22 had seen how the Courts in the US treat fathers,
23 I had had enough. So we packed up the camper
24 and moved to Beverly, parenthesis, Nicaragua,

1 that is, closed parenthesis. Come visit when
2 you get a chance. I'd love to catch up with you
3 and meet my new brother-in-law, signed love and
4 laughs, Doctor Dave. Did I read that
5 accurately?

6 A. Yes, you did.

7 Q. Okay. So ma'am, would it be fair
8 to say at the time you were having this
9 conversation, or had the conversation with
10 David, he was talking about Laura being molested
11 by her mother?

12 A. Possibly, yes.

13 Q. Okay.

14 MR. EDELIN: Thank you, Your

15 Honor.

16 THE COURT: Mr. Ibrahim.

17 MR. IBRAHIM: I have no questions,

18 Your Honor.

19 THE COURT: All right. Anything
20 further for the witness from counsel?

21 MR. BOSTIC: One moment, Your

22 Honor.

23 THE COURT: All right.

24 BY MR. BOSTIC:

1 Q. Ms. Evans, just briefly, you
2 indicated that you had the conversations with
3 David in 2006?

4 A. Yes.

5 Q. Right. And those conversations
6 happened?

7 A. Yes.

8 Q. Right? About the child abuse?

9 A. Yes.

10 Q. Okay. And would it be fair to say
11 that after those conversations, again, there was
12 another hiatus in your communications with David
13 until the letter that Mr. Edelin read part of it
14 to you?

15 A. That is correct.

16 Q. So, the documents that the
17 Government showed you, Doctor Bocanegra and so
18 on and so forth, right, you know nothing about
19 that, would that be fair to say?

20 A. No.

21 Q. The documents the Government
22 showed you?

23 A. No, I didn't.

24 Q. And the fact that the Government

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the
ans.

1 showed you those documents --

2 MR. McCALL: Objection. Leading.

3 This is redirect, judge.

4 MR. BOSTIC: I'll ask it this way,

5 Your Honor, if I may.

6 BY MR. BOSTIC:

7 Q. Ma'am, to the extent that you were
8 showed those documents, do they change in any
9 way or impact the conversation that you had with
10 David in 2006? *

11 A. The letter that David wrote me
12 confirmed his suspicions were what he thought
13 could be occurring with his children. *

14 Q. Okay.

15 MR. BOSTIC: If I may have a
16 moment, Your Honor. I have nothing else. Thank
17 you, ma'am.

18 THE WITNESS: Okay.

19 THE COURT: Mr. McCall may have
20 something else for you.

21 BY MR. McCALL:

22 Q. So just so we're clear, the
23 conversation that you had about abuse, it's
24 early March, late February 2006, correct?

1 A. That is correct.

2 Q. And he doesn't say what kind of
3 abuse, correct?

4 A. He did not specify.

5 Q. Right. This letter that Mr.
6 Bostic or excuse me, Mr. Edelin read you from
7 David, from prison to you, which talks about
8 demon affliction and, you know, the exorcist
9 being in his wife and the molestation of his
10 child by the wife is in 2010, correct?

11 A. That is correct.

12 Q. Okay. So between the time that
13 you spoke to David in March 2006, are you aware
14 or did you know that there was a family court
15 hearing over the termination of parental rights
16 with respect to Laura Matusiewicz?

17 A. I did not know.

18 Q. And are you aware that even before
19 the termination of parental rights hearing there
20 was a custody proceeding involving Laura
21 Matusiewicz and her sisters, did you know that?

22 A. I did not know.

23 Q. And that was custody proceeding
24 that happened in February 2007, a year after,

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give or take, your conversation with David Matusiewicz. Did you know that?

A. I didn't know that, no.

Q. Did you know that at that custody hearing that occurred in February 2007 that David Matusiewicz through his attorney did not raise any claim during the hearing related to --

MR. BOSTIC: Your Honor, I'm going to object.

THE COURT: Overruled.

MR. BOSTIC: Okay.

BY MR. McCALL:

Q. -- did not raise any claim during the hearing through his attorney regarding sexual abuse of Laura Matusiewicz? Did you know that?

A. I did not know.

Q. And at the conclusion of that hearing, did you know that the family court here in the State of Delaware awarded joint custody to both David Matusiewicz and Christine Belford regarding Laura Matusiewicz. Did you know that?

A. I didn't know that.

Q. Okay. Did you know that after the

1 custody hearing in February of 2007, in August
2 of that same year, David Matusiewicz and his
3 mother, Lenore Matusiewicz, kidnapped Laura
4 Matusiewicz, Lee Matusiewicz and Karen
5 Matusiewicz? Did you know that?

6 A. I knew that afterwards.

7 Q. Okay. Did you know that before
8 the kidnapping occurred in August of 2007, David
9 Matusiewicz did not report to the police any
10 allegation of sexual abuse on the part of
11 Christine Belford as it related to Laura
12 Matusiewicz? Did you know that?

13 A. I didn't know that.

14 Q. Did you know that in the time
15 frame before the kidnapping occurred in August
16 of 2007 David Matusiewicz did not report to the
17 Division of Family Services any sexual abuse
18 allegation as it related to Christine Belford
19 and Laura Matusiewicz? Did you know that?

20 A. I did not know that.

21 Q. Okay. And did you know that --
22 when David Matusiewicz was arrested for the
23 kidnapping in March of 2009, three years after
24 your conversation with him, did you know that he

L.L.
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ans

1 sat down and spoke with deputy, Deputy United
2 States Marshal William David, did you know that
3 that he had a conversation?

4 A. No.

5 Q. Do you know that in that
6 conversation which was the first time he spoke
7 to law enforcement after his arrest for the
8 kidnapping, he did not tell Deputy US Marshal
9 Bill David that Christine Belford had sexually
10 abused Laura Matusiewicz? Did you know that?

11 A. Didn't know.

12 Q. Okay. And then, you know, we've
13 talked a couple times, I've asked you a couple
14 questions about the termination of parental
15 rights hearing that occurred here in the State
16 of Delaware. You didn't know about that,
17 correct?

18 A. No, I didn't.

19 THE COURT: I think you've covered
20 the waterfront, Mr. McCall.

21 MR. BOSTIC: Your Honor, I just
22 need two questions.

23 BY MR. BOSTIC:

24 Q. Ms. Evans, you heard a lot of what

1 you didn't know; is that correct?

2 A. That is correct.

3 Q. But you do know that in 2006,
4 around March, David Matusiewicz talked to you
5 about his suspicions of child abuse by his
6 ex-wife on his children?

7 A. That is correct.

8 MR. BOSTIC: Thank you.

9 THE COURT: I see Mr. Edelin rise.

10 BY MR. EDELIN:

11 Q. Ma'am, my understanding is that it
12 is also correct that you told the FBI that in
13 2013, right?

14 A. I did, that's when I told them.

15 Q. When you spoke to Conrad?

16 A. Yes.

17 Q. And ma'am, I believe it is also
18 correct that you were not arrested for making
19 false statements to law enforcement?

20 A. No, I wasn't.

21 MR. EDELIN: Thank you, Your
22 Honor.

23 BY MR. McCALL:

24 Q. You did not tell the FBI that

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1 David Matusiewicz, in that conversation in
2 March, mentioned sexual abuse, correct?

3 A. That is correct.

4 Q. You just told him, the FBI, that
5 is, that he had talked about some allegation of
6 abuse, correct?

7 A. That is correct.

8 Q. Thank you, ma'am.

9 THE COURT: I think there's a
10 Glenn Campbell song about Phoenix, but I can't
11 remember it. I think the witness is excused.

12 THE COURT: Defense?

13 MR. BOSTIC: Your Honor, we have
14 Doctor Gillian Blair that we'll need to present,
15 but I'll ask the Court to take an early lunch.
16 I believe Doctor Blair is here, but I just have
17 to meet with her a short period.

18 THE COURT: I understand that's
19 another expert witness, is that right?

20 THE COURT: Yes, Your Honor.
21 Lunch has not arrived, I'm told, but that does
22 not mean that we can't recess anyway, members of
23 the jury. You saw earlier an expert witness
24 presented and there's a lot of complexity and a