

1 Q Understanding--you've identified the defendant here in court today?
2 A Right.
3 Q There's been other court proceedings that you've identified him, correct?
4 A Right.
5 Q How sure are you of your identification as you testify today,
6 understanding the seriousness of your identification?

7 A I'm a 100 percent sure.

8 MR. GUYMON: I have no other questions, Judge.

9 THE COURT: Any recross, Mr. Christiansen?

10 MR. CHRISTIANSEN: No, sir.

11 THE COURT: Thank you, ma'am, for coming back; you're excused.

12 Call your next witness, please.

13 MR. GUYMON: Dr. Fisher, please.

14 JAY FISHER

15 Was called as a witness, duly sworn, and testified as follows:

16 THE CLERK: Please state your name and spell your last name for the record.

17 THE WITNESS: Jay, J-A-Y, Fisher, F-I-S-H-E-R.

18 DIRECT EXAMINATION

19 BY MR. GUYMON:

20 Q And, Dr. Fisher, where are you employed?

21 A University Medical Center.

22 Q Are you practicing in the medical profession?

23 A Yes.

24 Q What is it that you do?

25 A I'm an attending physican at the Pediatric Emergency Services at UMC.

26 Q How long have you been an attending physician at UMC?

27 A Five of the last six years.

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1 Q Are you licensed to practice medicine in the State of Nevada?

2 A Yes.

3 Q And, very briefly, where did you do your medical schooling?

4 A Brown University in Rhode Island.

5 Q For the past six years, have you always been employed with UMC?

6 A No, for a year I was assistant director of pediatrics at a hospital south
7 of Boston.

8 Q Outside of that, your professional experience?

9 A Well, I did all my residency and fellowship at Boston City Hospital in
10 Boston, Massachusetts.

11 Q Were you employed at the University Medical Center on January 18th,
12 1993?

13 A Yes.

14 Q How about in the evening hours--or the morning hours of the 19th?

15 A Yes.

16 Q All right. And showing you what's been marked as State's proposed
17 exhibit 19, I'll ask you if you can look at that briefly and familiarize yourself with that
18 document, first of all?

19 A Um-hum.

20 Q What is contained in that package of papers?

21 A Most familiar to me is the laboratory tests that I ordered on that night.

22 Q Okay. Are those a certified copy of the medical records associated with
23 an examination you did involving a Tami Zold?

24 A Yes, correct.

25 MR. GUYMON: I move for the admission of State's proposed exhibit 19, I
26 believe it is.

27 MR. CHRISTIANSEN: No objection, Judge.

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1 THE COURT: Received.

2 Q (by Mr. Guymon) Now, Doctor, tell me: are you familiar with the term
3 "sexual assault examination"?

4 A Yes.

5 Q And how is it you're familiar with that term?

6 A It's part of my practice and part of my training.

7 Q On this particular evening, how was it you got involved in this particular
8 sexual assault exam?

9 A A patient was brought to our facility for evaluation of alleged sexual
10 assault.

11 Q Are you familiar with a Nurse Perry--

12 A Yes.

13 Q --now Nurse Spear?

14 A Yes.

15 Q And how is it that you're familiar with her?

16 A She works at the same facility in the same capacity as a nurse.

17 Q Now, is a sexual assault examination of a female, is that something that
18 you do in conjunction with a nurse?

19 A Yes.

20 Q And why?

21 A Primarily because it's a labor-intensive process and they do most of the
22 interview process and documentation process because it takes hours. And I'm
23 expected to see three or four patients per hour, so.

24 Q I understand. And is both your findings documented in State's exhibit
25 19, the document you have in front of you?

26 A Yes.

27 Q And you indicated it's a fairly labor-intensive process?

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A Yes.

Q What part of the process is your focus, if you will?

A The physical examination.

Q Okay. Did you conduct a physical examination of this patient, Tami Zold?

A Yes.

Q Are you findings accurately contained within those documents?

A Yes.

Q Can you tell the jury what physical observations you noted of Tami Zold, first of all, externally, if you made any external observations?

A Yes. Based on the information gathered by the nurse, I examined her skin carefully and she had red linear marks circumferentially on both wrists and three small red marks over the left shoulder blade. I examined her genitalia and found her genitalia to have erythema, that is, redness of the entrance of the vaginal canal and of the walls of the vaginal canal and a thin, white discharge.

Q Okay. Let me talk about the linear markings on the wrist.

A Um-hum.

Q Had you seen those type of markings on wrists before?

A Yes.

Q Could you tell the jury what they were consistent with, what kind of marks were common?

A Well, given the history that was presented to us by the woman, I thought it was consistent with her being restrained.

Q And you also indicated what your internal examination was. Was this a pelvic examination?

A Yes.

Q Did you collect any specimens, or samples from this pelvic examination?

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A Yes.

Q Can you tell the jury how it is those specimens are collected?

A Yes. We insert into the vagina a device called a speculum which opens the vagina wide enough for us to obtain specimens of secretions deep inside the vagina and at the cervix, that is the opening of the uterus.

Q Showing you what has been marked as State's proposed exhibit 20, are you familiar with this container itself?

A Yes.

Q How is that you're familiar with a container such as that?

A This is the standard container that we use to collect the specimens that we've been talking about.

Q All right. When you collect the specimen, the vaginal sample--

A Um-hum.

Q --for instance, what is it that you do with the vaginal sample?

A Well, some of the specimens are taken by the nurse involved in the assessment and put into the State collection kit, it's my understanding. And, then I'm not certain about the laboratory assessment for gonococcus and chlamydia, but those are either processed by the hospital laboratory or the State laboratory, I'm not sure which at that time in 1993.

Q Okay. Let me ask you: you took a vaginal swab of--

A Yes.

Q --of Tami Zold. Is that correct?

A Yes.

Q The actual swab itself--

A Um-hum.

Q --where did that come from before you inserted it into Tami?

A A sterile, sealed package.

1 Q And where does the package come from? Is it packaged within the
2 sexual assault kit itself?

3 A That's my understanding, yes.

4 Q Okay. Once you insert it in vaginal area--

5 A Um-hum.

6 Q --what is it that you do with it when it's there?

7 A I hand it to the nurse.

8 Q Take it out?

9 A Um-hum.

10 Q Give it to the nurse?

11 A Yes.

12 Q Did you see what the nurse did with it?

13 A Yes. She--you know, as per protocol, obtains cultures and--for
14 gonococcus, chlamydia, and also State evidence.

15 Q After that, does that conclude your portion of the examination?

16 A Examination, yes. I do counsel the patient on the risks involved with her
17 exposure.

18 Q Okay. Before I get to the risks involved and what drugs, if any, you
19 might have treated, describe your findings from the internal examination. Did you not
20 earlier?

21 A Yes.

22 Q Tell me again what it was you observed?

23 A Redness of the mucus membrane tissues inside the vagina and of the
24 tissue much like your skin on the outside of the vagina and labia.

25 Q And how was it that you make these observations? Are you doing it
26 with a looking glass or--

27 A Yeah, just the bright lights and my eyes and based on experience of
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1 examining hundreds of people of similar age.

2 Q Okay. Now, can you tell me, Doctor, what these findings where
3 consistent with?

4 A At this juncture, I thought it was consistent with the history given by
5 the young lady.

6 Q Was your findings consistent with penetration--some type of
7 penetration, vaginal penetration?

8 A Consistent with, I thought, yes.

9 Q You indicated that--well, let me ask you: when you make these type of
10 observations--

11 A Um-hum.

12 Q --is there anything medically that you are able to observe that can tell
13 you whether the penetration is consistent with consensual penetration, or non-
14 consensual penetration?

15 A No.

16 Q Explain that answer, if you can.

17 A The tissue known as the hymen which is the tissue that most lay people
18 refer to as a thin piece of tissue overlying the vagina and is traditionally thought,
19 culturally and by lay persons to be indicative of whether the patient is virginal or not,
20 or has never been penetrated in the past. That's a misunderstanding. That tissue
21 can be gone as early as 12 or 13 in people who have not had penetration. So, that's
22 not--you cannot use that examination to refute or confirm whether the patient has
23 been penetrated or not. Similarly, redness in that area can be caused by other things
24 than penetration by another person, or a male. And, similarly, if there is redness
25 there it can be reasonably considered to be penetration that was either consensual
26 or non-consensual.

27 Q Was the redness you observed consistent with digital penetration,
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1 meaning fingers being placed in the vagina of Tami Zold?

2 A Yes.

3 Q Could it also be consistent with penile/vagin-

4 A Yes.

5 Q You indicated that you counseled the patient
6 examination?

7 A Yes.

8 Q Was the patient treated with any shots or ar-

9 A Yes.

10 Q Tell us about that, if you would?

11 A We traditionally treat them with antibiotics for
12 which are the two most common and concerning bacteri-
13 acquired by sexual contact in this age group, in any age gr-
14 give doses of estrogen to limit the possibility that she would
15 that she would implant that in the uterus and have a child

16 Q And I might ask: at the time of doing your in-
17 are you--do you have the ability to detect whether or not
18 the vaginal cavity of Tami Zold?

19 A No.

20 Q And why is that?

21 A Because mucus secretions from the cervix,
22 natural occurring secretions can appear very similar to spu-
23 basically a mucus secretion also.

24 MR. GUYMON: I have no other questions on direc-

25 THE COURT: Any cross?

26 MR. CHRISTIANSEN: Just briefly.

27 CROSS EXAMINATION

1 BY MR. CHRISTIANSEN:

2 Q Dr. Fisher, my name is Pete Christiansen. I just have a couple follow-up
3 questions for you. This was--the notes you're looking at are five-plus years old?

4 A Yes.

5 Q Is that correct?

6 A Yes.

7 Q You testified that you see--or are required to see about three to four
8 patients an hour and you've done these exams on hundreds of patients?

9 A Yes.

10 Q And I think you even called it "protocol" describing what you go through
11 with the assembly of this sexual assault kit?

12 A Yes.

13 Q And that's what you've described today, isn't it, the protocol you go
14 through with every patient?

15 A Yes.

16 Q You have no independent recollection of Tami Zold five years ago and
17 that you exactly did every little thing identical, do you?

18 A I don't understand the question.

19 Q Okay. Do you remember Tami Zold from five years ago?

20 A No, I couldn't pick her out of a line-up, no.

21 Q And, similarity, then you would have no independent recollection as to
22 whether you actually got--

23 A I think what you're saying the appearance--could I--can I visualize in my
24 mind the appearance of those red marks on her wrists or of her genitalia, no, and
25 specifically say that those are hers in my mind, no. But I recognize the record and
26 I do remember the story because it was quite impressive.

27 Q Okay.

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1 A That's an individual memory in my mind, that story that she gave.

2 Q That's an honest answer about the markings. That's not what I was
3 getting at, though. If you can't remember the person, then it doesn't seem to me
4 that you're able to remember that you got for sure that sterile swab and did the tests
5 with what you specifically remember to be a sterile swab that came from a package
6 on that night five years, plus ago. Isn't that accurate?

7 A No. You're questioning the process that we obtain samples, not my
8 recollections.

9 Q Okay. You recall the process, right?

10 A Absolutely.

11 Q But you don't recall that specific night what you did specifically to Tami
12 Zold?

13 A No.

14 Q And in terms of filling out the vast majority of that report, that's the job
15 of the nurse, correct?

16 A Correct.

17 Q Because you're busy, you've got lots of stuff going on?

18 A Right.

19 Q And, so, if there is any parts of that report that aren't completed, or
20 aren't checked off, such as the consensual sex boxes, that would be something that
21 the nurse either overlooked or--it's not something you have responsibility to do?

22 A Correct.

23 Q You conducted an intensive evaluation of this young lady five years ago
24 and concluded that the physical findings were consistent with penetration. Is that
25 fair to say?

26 A Yes.

27 Q And you don't know what kind of penetration, you just knew it was
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1 consistent with penetration?

2 A Correct.

3 Q And you can't--I think you answered honestly about telling whether
4 those swabs that you took, the samples, whether that mucus was natural mucus or
5 mucus from an infection versus sperm or anything of that nature?

6 A Correct.

7 Q And you don't have any idea about DNA or any of that stuff, do you?

8 A No.

9 MR. CHRISTIANSEN: Thank you.

10 I have nothing further.

11 THE COURT: Anything further, Gary?

12 MR. GUYMON: Very briefly.

13 REDIRECT EXAMINATION

14 BY MR. GUYMON:

15 Q Doctor, the swab that you used for this particular pelvic examination you
16 said was placed in an envelope by the nurse?

17 A That's my recollection.

18 Q Do you sign that swab, or the tube that it came from, or the envelope
19 it goes in?

20 A No. As I recall, no.

21 Q That would be, I take it, the nurse's responsibility?

22 A Yes.

23 MR. GUYMON: Nothing else.

24 THE COURT: Anything further?

25 MR. CHRISTIANSEN: No, Your Honor.

26 THE COURT: Thank you, Doctor for coming in; you're excused.

27 Call your next witness, please.

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