IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

MD. AKTAR HOSSAIN,
Defendant-Appellant.

SUPREME COURT NO. CR-06-0024-GA
SUPERIOR COURT NO. 03-0398

Cite as: 2010 MP 21

Decided December 31, 2010

Richard C. Miller, Saipan, Northern Mariana Islands, for Appellant.
Brian D. Gallagher, Assistant Attorney General, Saipan, Northern Mariana Islands, for Appellee.
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice.

DEMAPAN, C.J.:

¶ 1 Defendant MD. Aktar Hossain ("Hossain") appeals his convictions for sexual assault in the second degree, sexual assault of a minor in the second degree, and disturbing the peace on grounds that (i) the trial court applied the wrong legal standard in denying his motion for in camera review of the victim's school records; (ii) the trial court abused its discretion by refusing to admit Abu Munshi's ("Munshi") rebuttal testimony; (iii) the trial court admitted hearsay testimony to establish Hossain's date of birth; and (iv) the Commonwealth committed prosecutorial misconduct in failing to correct alleged perjured testimony. For the reasons set forth herein, we hold that Hossain failed to make the minimum showing required to obtain in camera review of Public School System ("school") records; the trial court properly excluded Munshi's rebuttal testimony; a reasonable jury could have found that Hossain's age was established beyond a reasonable doubt through Hossain's own testimony; and the record does not support Hossain's claims of prosecutorial misconduct. Accordingly, Hossain's criminal convictions are AFFIRMED.

I

¶ 2 Hossain met Khandokar Rahman ("Rahman") after Hossain moved from Bangladesh to Saipan in 1996. In June 2000, Hossain began living with Rahman, Rahman's wife Julia Kosam ("Kosam"), Kosam's ten-year-old biological daughter ("victim"), and Kosam's younger sister Joanne.[1] In late 2001 Hossain began working for a security company called All Around Security, and in August of the following year, he transferred to N.I.S, another security company. Thereafter, Hossain's and Rahman's version of events diverge. Hossain testified that in October 2002, he began working at Rahman's company China Enterprises. Hossain also testified that he gave Rahman a $1900 loan in return for Rahman's promise to expedite his immigration paperwork and that Rahman never repaid the loan. Hossain stated that when he began working for Rahman, Rahman accompanied him to the Marianas Medical Center so that he could get a health clearance. Rahman testified that while he did accompany Hossain to the Marianas Medical Center, he did so under a mistaken belief that Hossain needed a health clearance in order to get married. Rahman also testified that Hossain never worked for China Enterprises.

¶ 3 In June of 2003, before the victim reported that Hossain had sexually abused her, she told her mother that she had been molested by a family friend named Minto. The next day, Rahman sent Joanne to Guam because Kosam suspected that she was involved with Minto. In August 2003, Missy Aldan ("Aldan"), an investigator for the Division of Youth Services ("DYS"), and Detective Patrick Maanao ("Detective Maanao") interviewed the victim. She told Aldan and Detective Maanao that Minto had sexually abused her, but she did not mention Hossain. Minto was never prosecuted.

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[1] The victim was twelve at the time of the alleged abuse.

¶ 4 After the incident with Minto, Kosam felt that she was failing to protect her daughter. In September 2003, Kosam asked her daughter whether anyone other than Minto had touched her. At first, the victim maintained that only Minto had touched her, but when Kosam asked her a second time, the victim began to cry and said that Hossain had also touched her. A few days later, Rahman forced Hossain to leave the house. Rahman claimed that when he confronted Hossain about the abuse, Hossain broke down and asked for forgiveness. Rahman also claimed that Hossain offered to drop a labor complaint that Hossain had later filed against his company, China Enterprises, if Rahman would drop the criminal charges. At trial, Hossain denied touching the victim, asking Rahman for forgiveness, and offering to drop the labor complaint.

¶ 5 In December 2003, Hossain was charged with eight counts, including sexual assault in the second degree (Counts I and II), sexual abuse of a minor in the second degree (Counts III and IV), assault and battery (Counts V and VI), and disturbing the peace (Counts VII and VIII). Before trial, Hossain sought in camera review of the victim's DYS case file and her school records. The trial court granted Hossain's motion regarding the DYS file, but denied the motion insofar as it sought school records. The trial court also denied Hossain's second motion for in camera review of the victim's school records.

¶ 6 During the trial, several witnesses testified for the prosecution, including Rahman, Kosam, the victim, and Detective Maanao. During Rahman's cross-examination, the trial court allowed the defense to question Rahman about a marriage to a Bangladeshi woman named Afroza Aktar, ("Afroza") which allegedly occurred in 1994. The defense argued that Rahman had not divorced Afroza prior to his marriage to Kosam in 2000, and that Rahman's resulting marriage to Kosam was bigamous. Rahman denied being married to Afroza or even knowing her.

¶ 7 The defense subsequently attempted to rebut Rahman's testimony by introducing testimony from Afroza's brother Munshi. The prosecutor objected to Munshi's testimony that he had attended Rahman and Afroza's 1994 wedding in Bangladesh. The trial court sustained the prosecutor's objection and struck Munshi's testimony from the record. Hossain later took the witness stand and testified, among other things, that he was twenty-eight years old.

¶ 8 The jury returned guilty verdicts on two counts of sexual assault in the second degree (Counts I and II) and two counts of sexual abuse of a minor in the second degree (Counts III and IV); the trial court found Hossain guilty on one count of disturbing the peace (Count VIII). On May 9, 2006, the trial court granted Hossain's post-trial Motion for a Judgment of Acquittal with respect to one count of sexual assault in the second degree (Count I) and one count of sexual abuse of a minor in the second degree (Count III). Hossain timely appeals the three remaining convictions. We have jurisdiction over this appeal pursuant to 1 CMC § 3102(a).

II

A. In camera Review of School Records

¶ 9 Hossain argues that the trial court applied the wrong legal standard in determining whether he had a right to in camera review of the victim's school records, thereby resulting in a denial of access to evidence which violated his rights under the Sixth and Fourteenth Amendments of the CNMI and U.S. Constitutions.[2] In the CNMI, "constitutional issues are subject to de novo review on appeal." *Office of the Att'y Gen. v. Estel*, 2004 MP 20 ¶ 10. This de novo review entails three parts, according to the dictates that the U.S. Supreme Court laid out in *Pennsylvania v. Ritchie*, 480 U.S. 39, 55-61 (1987). First, we determine whether school records in the CNMI are protected by a qualified privilege or a legal equivalent. Second, if we ascertain qualified privilege, we address which legal standard the trial court should use when determining whether to grant in camera review of school records. Finally, we decide whether the trial court applied the correct legal standard. If we conclude that the trial court properly complied with CNMI and U.S. Constitutional mandates, then we will review the trial court's denial of Hossain's request for in camera review of the victim's school records for an abuse of discretion. *United States v. Alvarez*, 358 F.3d 1194, 1208 (9th Cir. 2004); *State v. Gregory*, 147 P.3d 1201, 1219 (Wash. 2006). If the trial court applied the wrong legal standard, then we will examine the trial court's ruling for harmless error. *In re Estate of Dela Cruz*, 2 NMI 1, 16 n.10 (1991).

1. School Records Are Subject to a Qualified Privilege

¶ 10 We begin our analysis by examining the nature of the privacy protection, if any, afforded to the victim's school records. The U.S. Supreme Court in *Pennsylvania v. Ritchie* provides guidance.[3] In *Ritchie*, the defendant was charged with rape, involuntary deviate sexual intercourse, incest, and corruption of a minor. 480 U.S. at 43. The victim, defendant's thirteen year old daughter, reported the incidents to the police who referred her to Children and Youth Services ("CYS"). *Id.* The defendant

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[2] The Covenant, at section 501, incorporates the Sixth and Fourteenth Amendments: "To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: . . . Amendments 1 through 9, inclusive; . . . Amendment 14, Section 1; . . . ." Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801 note; *Malite v. Superior Court*, 2007 MP 3 ¶ 31; *Office of the Att'y Gen. v. Honrado*, 1996 MP 15 ¶ 15.

[3] This is not a case involving absolute privilege, which the U.S. Supreme Court addressed in a footnote in *Ritchie* and expressly declined to consider. The Supreme Court stated that "[w]e express no opinion on whether the result in this case would have been different if the statute had protected the Children and Youth Services files from disclosure to *anyone*, including law-enforcement and judicial personnel." *Ritchie*, 480 U.S. at 58 n.14. This uncertainty has created a split among state courts. When there is an absolute privilege, courts are more reluctant to allow disclosure. *See, e.g.*, *People v. Foggy*, 521 N.E.2d 86, 92 (Ill. 1988) (upholding statutory absolute privilege for the victim's rape crisis counseling records where the defendant had "offered no reason to believe that the victim's counseling records would provide a source of impeaching material unavailable from other sources"). At least one state court has upheld an absolute statutory privilege. *See, e.g.*, *State v. Gomez*, 63 P.3d 72, 76-79 (Utah 2002) (distinguishing *Ritchie* and upholding the trial court's refusal to conduct an in camera review on grounds that a Utah statute made communications between a victim and a sexual assault counselor absolutely privileged).

sought in camera review of the victim's CYS records claiming they "might contain the names of favorable witnesses, as well as other unspecified exculpatory evidence." *Id.* at 44. CYS opposed the defendant's request and refused to release the records on grounds that they were privileged under Pennsylvania law. *Id.* The trial court agreed with CYS and refused to order CYS to disclose the records or to conduct in camera review of the CYS records. *Id.* The United States Supreme Court analyzed the case under the Due Process Clause, noting that the prosecution is required to disclose evidence in its possession that is both favorable to the accused and material to guilt or punishment. *Id.* at 56-57 (citing *United States v. Bagley*, 473 U.S. 667, 682 (1985)). The Supreme Court found that the CYS records had a qualified privilege because although Pennsylvania statutes exempted CYS records from most types of disclosure, the CYS statute allowed disclosure of CYS records to "courts of competent jurisdiction." *Id.* at 57-58. Inasmuch as the Pennsylvania state legislature had contemplated the use of the records in judicial proceedings, the Supreme Court held that there was no Pennsylvania state policy against disclosing them in criminal prosecutions. *Id.* at 58.

¶ 11 Like the Pennsylvania law in *Ritchie* allowing disclosure of CYS records, CNMI law restricts disclosure of school records subject to certain exceptions. School records are exempt from general disclosure pursuant to the CNMI Open Government Act ("OGA"), codified at 1 CMC § 9918.[4] The trial court found that the OGA prohibited in camera review of the victim's school records because 1 CMC § 9918(a) exempts "files maintained for students in public schools." from "public inspection and copying." The trial court did not consider 1 CMC § 9918(c) which states that the "inspection [of] specific records exempt under the provisions of this section may be permitted if the Commonwealth Superior Court finds . . . , after a hearing with notice thereof . . . , that exemption of such records is clearly unnecessary to promote a vital government interest." By implication, trial court judges *must* have the authority to conduct in camera review of records exempt under 1 CMC § 9918(a) in order to ascertain whether such records should be disclosed pursuant to 1 CMC § 9918(c).

¶ 12 We find additional support for this interpretation at 1 CMC § 9918(a) which only prohibits *public* inspection and copying. Because 1 CMC § 9902 does not define the term "public," we turn to a basic canon of statutory construction that statutory language should be given its plain meaning. *Commonwealth v. Peter*, 2010 MP 15 ¶ 12 ("[W]e generally construe provisions of the Commonwealth Code according to

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[4] There is an administrative regulation in the CNMI which also potentially controls disclosure of school records, located at Northern Mariana Islands Administrative Code § 60-20-428. While there are no explicit indications that NMIAC § 60-20-428 is based on Family Educational Rights and Privacy Act ("FERPA"), codified at 20 U.S.C. § 1232g, a substantial amount of language in NMIAC § 60-20-428 tracks with language from FERPA. There are also FERPA compliance notices beneath NMIAC § 60-20-428. Together, these facts create a strong inference that this Administrative Code was derived, at least in part, from FERPA. See *Zaal v. State*, 602 A.2d 1247 (Md. 1992) for a thorough treatment of disclosure of school records under FERPA. The administrative regulation and FERPA compliance were not raised on this appeal.

the reasonable construction of their terms with a view to effect the plain meaning of their object.") (quotation omitted). The plain meaning of "public" in its adjectival sense is "of, relating to, or affecting the people as an organized community." *United States v. Technic Servs.*, 314 F.3d 1031, 1056 (9th Cir. 2002) (quoting Webster's Third New International Dictionary 1836 (1993)) (overruled on other grounds). Thus, a record exempt from "public inspection" is exempt from access by the "organized community." In camera review is "[b]y definition . . . conducted out of the hearing of the public." *Daily News, L.P. v. Teresi*, 706 N.Y.S.2d 527, 530-31 (N.Y. App. Div. 2000) (quotation and citation omitted). We hold that while 1 CMC § 9918(a) places limits on public disclosure of school records, it does not prohibit in camera review by a trial court.

2. The Ritchie Standard Applies in the CNMI

¶ 13 In *Pennsylvania v. Ritchie,* the U.S. Supreme Court articulated the rule we will apply: a defendant seeking in camera review of privileged documents "must at least make some plausible showing" that the records sought are "both material and favorable to his defense." *Ritchie,* 480 U.S. at 58 n.15 (citing *United States v. Valenzuela Bernal*, 458 U.S. 858, 867 (1982)). The trial court distinguished this case from *Ritchie* because Article I, § 10 of the CNMI Constitution states that privacy is a "compelling interest," whereas the U.S. Constitution does not explicitly mention privacy.[5] The trial court reasoned that the specific mention of privacy in the CNMI Constitution meant that CNMI residents had heightened privacy protection compared to those afforded to mainland U.S. citizens. Therefore, criminal defendants were required to show a "compelling interest" in order to obtain in camera review of school records. We reject this conclusion. In *Ritchie,* the Supreme Court considered that Pennsylvania had a compelling interest in protecting its citizens' privacy, noting that "full disclosure [of qualified privileged documents] . . . would sacrifice the Commonwealth[] [of Pennsylvania's] *compelling interest* in protecting its child abuse information." *Ritchie*, 480 U.S. at 60 (emphasis added). Under section 501 of the Covenant and Article I, section 5 of our constitution, CNMI residents are afforded the same Fourteenth Amendment Due Process protections as mainland U.S. citizens. As stated by the Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands:

> [Article I, § 5 of the CNMI Constitution] is taken directly from section 1 of the Fourteenth Amendment to the United States Constitution which is made applicable in the Northern Mariana Islands by section 501 of the Covenant. *No substantive change from section 1 of the Fourteenth Amendment or the interpretation of that section by the United States Supreme Court is intended*.

[5] "The right of individual privacy shall not be infringed except upon a showing of compelling interest." NMI Const. art I, § 10.

Analysis at 20 (Dec. 6, 1976) (emphasis added). Thus, CNMI residents have the same compelling privacy interest and the same fundamental interest in Due Process as the parties did in *Ritchie*. [6] The two states, Hawai'i and Montana, which have constitutional provisions nearly identical to ours, have accepted the *Ritchie* balancing test when allowing in camera review of qualified privileged information.[7] *See State v. Peseti*, 65 P.3d 119, 131-34 (Haw. 2003) (holding that it was proper for the trial court to conduct in camera review of the victim's privileged Child Protective Services records); *State v. Thiel*, 768 P.2d. 343, 345 (Mont. 1989) (holding that the defendant's rights were fully protected when the trial court conducted in camera review a social worker's file that was protected by qualified privilege).

¶ 14 Furthermore, appellate courts have applied the *Ritchie* standard in at least four of the other eight U.S. states that have express privacy provisions in their constitutions.[8] *See Cockerham v. State*, 933 P.2d 537, 541-42 (Alaska 1997) (approving of *Ritchie*, but ultimately denying defendant's request for disclosure of the victim's juvenile records after in camera review); *Katlein v. State*, 731 So. 2d 87, 90 (Fla. Dist. Ct. App. 1999) (holding that *Ritchie* is the lower boundary in an inquiry into whether defendant could obtain in camera review of the victim's mental health records); *People v. Bean*, 560 N.E.2d 258, 272-73 (Ill. 1990) (upholding the trial court's use of in camera review using the *Ritchie* standard to determine whether defendant should have access to the victim's psychiatric records); *Gregory*, 147 P.3d at 1218-19 (upholding the trial court's denial of in camera review for the victim's counseling records but reversing the trial court's decision not to conduct an in camera review of the victim's dependency records). Finally, while not always applying *Ritchie* analysis, other courts have conducted in camera review of school records in criminal cases. *See People v. Bachofer*, 192 P.3d 454, 460-62 (Colo. App. 2008) (holding that Colorado and federal law did not prevent in camera review and subsequent disclosure of school records in a criminal case); *Zaal v. State*, 602 A.2d 1247, 1258-64 (Md. 1992) (holding that school records are admissible under *Ritchie* and other federal laws and remanding to the trial court to

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[6] As Hossain has pointed out, the defendant has a fundamental right to a fair trial: "There is no right more sacred than the right to a fair trial." *Stone v. United States*, 113 F.2d 70, 77 (4th Cir. 1940); *accord Baker v. Hudspeth*, 129 F.2d 779, 781 (10th Cir. 1942).

[7] The CNMI Constitution states: "The right of individual privacy shall not be infringed except upon a showing of compelling interest." Art I, § 10.

Hawai'i's Constitution states: "The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest." Art. I, § 6.

Montana's Constitution states: "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." Art. II, § 10.

[8] These states are Alaska, Florida, Illinois and Washington. The remaining four states, Arizona, California, Louisiana and South Carolina, have privacy provisions in their constitutions, but do not have appellate cases that address *Ritchie* in the context of a qualified privilege. Of the ten states with express privacy provisions in their state constitutions, Illinois, Louisiana, and South Carolina have privacy provisions that only address illegal searches and do not create a general right to privacy.

conduct in camera review of the victim's school records); *May v. State*, 139 S.W.3d 93, 102 (Tex. App. 2004) (holding that the in camera review of the victim's school records was sufficient to "protect the defendant's rights and ability to fairly present his or her case").

¶ 15 In acknowledging that *Ritchie* controls in criminal cases, we recognize that *Fitial v. Sablan*, 2009 MP 11 ¶ 11 sets forth a different standard for disclosure of OGA exempt records in civil cases. In *Sablan*, the Governor sued the federal government in order "to block the impending federalization of the Commonwealth immigration system." *Sablan*, 2009 MP 11 ¶ 2. To facilitate the lawsuit, the Governor hired outside counsel that the CNMI government was obligated to pay. *Id.* A concerned citizen requested records of payments made to the outside counsel pursuant to the OGA. *Id.* The Governor, and later, the Secretary of Finance, declined to produce any of the records sought. *Id.* The trial court found that while 1 CMC § 9918(a)(8) would otherwise exempt the records from disclosure that 1 CMC § 9918(c) allowed disclosure of the records "if the Superior Court finds, after a hearing with notice thereof to every person in interest, and the agency that exemption of the records is *clearly unnecessary* to protect any individual's right of privacy or any vital government function." *Id.* at ¶ 4 (citing 1 CMC § 9918(c)) (emphasis added). This is a higher standard than the "plausible materiality" test from *Ritchie.*

¶ 16 In distinguishing *Sablan*, we turn to the purpose of the OGA as stated in that case. We said that the United States recognized the public interest in allowing widespread access to government records and meetings when Congress passed the Freedom of Information Act ("FOIA") in 1966. *Id.* ¶ 6-7. In the spirit of FOIA, we enacted the OGA in 1994. *Id.* In passing the OGA, the CNMI Legislature declared that "[t]he people insist on remaining informed so that they may retain control over the instruments they have created." *Id.* at ¶ 7 (citing 1 CMC § 9901). We see no intimation that the OGA was designed to prevent disclosure of information vital to a criminal defendant's case; rather it is plain that the OGA was enacted to keep the CNMI government honest. This civic purpose must be contrasted with the defendant's fundamental interest in Due Process. The U.S. Supreme Court acknowledges that "the Due Process Clause of the Fourteenth Amendment[] imposes on States certain duties consistent with their sovereign obligation to ensure that justice shall be done in all criminal prosecutions." *United States v. Agurs*, 427 U.S. 97, 111 (1976) (citation and quotation omitted). In pursuit of this obligation, if a State suppresses evidence that is favorable to a defendant and is material to the defendant's guilt or punishment, "the State violates the defendant's right to due process, 'irrespective of the good faith or bad faith of the prosecution.'" *Cone v. Bell*, 129 S. Ct. 1769, 1772 (2009) (quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). These considerations convince us that obtaining in camera review of school records should be less cumbersome in criminal cases.[9] We confine the scope of this decision to school records in criminal

[9] Parties in a criminal case should still comply with 1 CMC § 9918(b)-(d) if the trial court determines that disclosure of school records is necessary after in camera review. We leave it to our statutes and the discretion of the

cases. Our holdings should not be construed to modify disclosure requirements for any other records exempt under 1 CMC § 9918(a).

3. The Trial Court Applied an Incorrect Legal Standard

¶ 17 In its denial of Hossain's second request for in camera review of the victim's school records, the trial court stated that "the Commonwealth Constitution provides specifically for an individual's right to privacy. The court will only intrude in circumstances where there is a *compelling interest*, not a plausible showing." ER at 16. The trial court concluded by saying "[t]he compelling interest standard has definitely not been met." *Id.* As stated above, Hossain's right to a fair trial is a fundamental right which must be weighed against the Commonwealth's compelling interest in protecting the privacy of its citizens. The *Ritchie* "plausible materiality" test, which we now adopt, balances these interests and requires a lower evidentiary burden in order to obtain in camera review. It was therefore error for the trial court to apply a "compelling interest" standard when determining whether to grant in camera review of the victim's school records.

4. Failure to Conduct In Camera Review Was Harmless Error

¶ 18 We now review the trial court's denial of Hossain's in camera review of school records under the harmless error rule. *In re Estate of Dela Cruz*, 2 NMI 1, 16 n.10 (1991). In defining harmless error, the Commonwealth Rules of Criminal Procedure state that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Com. R. Crim. P. 52(a). The purpose of the harmless error rule is to "embody and implement the truism that no litigant is assured a perfect trial, only a fair one." *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 41 (citing *Commonwealth v. Lucas*, 2003 MP 9 ¶ 13 n.10). This doctrine "serve[s] a very useful purpose insofar as [it] block[s] setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial." *Chapman v. California*, 386 U.S. 18, 22 (1967). The test for harmless error is "whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Commonwealth v. Demapan*, 2008 MP 16 ¶ 45 (quotation omitted).

¶ 19 Hossain's theory that he was entitled to in camera review of the victim's school records is twofold. First, if the victim's school records remained unchanged or improved during the times that he allegedly abused the victim, this would tend to show that he had not molested her. Second, if the victim's performance in school had declined before Hossain allegedly abused her, this would be exculpatory because it would tend to show that someone else and not Hossain had abused her. On this basis, Hossain asked the trial court to search "records [of the victim's] academic performance, behavior, and disciplinary actions, including . . . grades and teacher evaluations [that] might support the defense's position that [the

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trial court to determine who should receive notice of disclosure of school records, when such notices should be given, and whether it is the court, the government, or the defendant who should give notice.

victim] was falsely accusing Hossain." Appellant's Opening Br. at 39. The trial court found that Hossain's request was "vague" and "extremely attenuated." ER at 14; *see e.g.*, *State v. Blackwell*, 845 P.2d 1017, 1021 (Wash. 1993) (holding that "a broad unsupported claim" that a police officer's personnel file would lead to evidence was not enough to justify in camera review of the file); *see also Foggy*, 521 N.E.2d at 91-92 (holding that "a vague assertion that the victim may have made statements to her therapist that might possibly differ from the victim's anticipated trial testimony does not provide a sufficient basis to justify ignoring the victim's right to rely upon her qualified privilege."). The trial court reasoned that a decline in the victim's performance at school could be attributable to myriad causes, including "problems at home, adjustments to different teachers or classmates at school, the onset of puberty, the loss of a friend . . . , latent psychological issues . . . etc. etc." ER at 14.

¶ 20 We conclude that the trial court's decision to deny in camera review of the victim's school records was harmless error because Hossain failed to show that the records were probative of his guilt or innocence. The "mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish materiality." *Agurs*, 427 U.S. at 109-10. First, the trial court granted in camera review of the victim's DYS records. Although the record does not reveal whether the trial judge ordered disclosure of anything in the victim's DYS file, Hossain makes no suggestion that in camera review of the victim's DYS records implicated her school records. Moreover, the trial court noted that if the victim had reported any sexual abuse problems at school, it "would have triggered PSS's duty to report . . . , a point [Hossain] recognized." ER at 14. Second, Hossain does not assert that the prosecutor relied on the victim's school records at trial. If that were the case, we would certainly order the trial court to conduct an in camera review of the records. *See People v. Wittrein*, 221 P.3d 1076, 1085 (Colo. 2009). Third, Hossain's argument for access to the victim's school records is overly broad. Hossain argues that he should have access to the records regardless of whether the victim's performance stayed the same, rose, or fell. If we accepted Hossain's logic, he, and every other criminal defendant seeking in camera review of school records would have a de facto claim that those records were relevant. We decline to hold that a victim's school records are relevant under every conceivable circumstance. Our courts and state agencies are "under no obligation to accommodate a defendant's desire to flail about in a fishing expedition to try to find a basis for discrediting a victim." *Sonner v. State*, 930 P.2d 707, 715 (Nev. 1996) (denying defendant's right to search through a patient's records because the defendant advanced a broad, unfocused desire to search the victim's personnel file); *see also Gregory*, 147 P.3d at 1219-20 (denying defendant's request for in camera review because it was based on "mere speculation"). If in good faith, Hossain had alleged that the victim's school records contained specific information, whether it be names of witness, existence of records relevant to the victim's credibility, or

evidence that was unlikely to be in the victim's DYS records, then the trial court would have been obligated to conduct in camera review.

¶ 21 Finally, the trial court correctly noted that there were numerous intervening causes that might cause a victim's school records to fluctuate, and Hossain provided no case citations or scientific studies suggesting otherwise. *See* Fed. R. Evid. 401 Advisory Committee's Note ("Does the item of evidence tend to prove the matter sought to be proved? Whether the relationship exists depends upon principles evolved by experience or science, applied logically to the situation at hand.").[10] If the trial court were to review the victim's school records, we cannot imagine how a trier of fact might determine which grade or performance hiccup corresponded to a particular incident of alleged abuse. The trial court did not err when it found that regardless of whether the victim's school records improved, worsened, or stayed the same, such changes were not probative of Hossain's guilt or innocence.[11] Though the trial court did only a cursory analysis of *Ritchie*, Hossain failed to show that the school records would have been material to his defense in a way that would satisfy *Ritchie's* low threshold. *See Davis v. Litscher*, 290 F.3d 943, 947 (7th Cir. 2002) (holding that defendant failed to satisfy the *Ritchie* standard because although defendant had offered numerous facts in support of his request for the victim's health records, those facts showed that the victim's mental health records would not be probative for any of the purposes that defendant sought in camera review of those records). The trial court's application of a wrong standard to Hossain's request for in camera review amounted to harmless error.

B. Hossain's Evidentiary Objections

¶ 22 Hossain next argues that the trial court abused its discretion by excluding Munshi's testimony that his sister, Afroza, had married Rahman in 1994. At trial, the defense asserted that Rahman gave false testimony during direct examination and sought to impeach Rahman with Munshi's testimony. The Commonwealth objected, arguing that Rule 608(b) of the Commonwealth Rules of Evidence prohibits admission of extrinsic evidence to contradict statements elicited from a witness on cross-examination. The defense countered that Munshi's testimony was not being offered under Rule 608(b), but under Rule

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[10] Com. R. Evid. 401 is worded exactly the same as Fed. R. Evid. 401. When there is no local law, "we turn to federal counterpart law for guidance." *Lucas*, 2003 MP 9 ¶ 9 (citing *Tudela v. Marianas Pub. Land. Corp.*, 1 NMI 179, 184 (1990) (interpreting Com. R. Evid. 801 using case law interpreting Fed. R. Evid. 801). *See, e.g.*, *In re Estate of Yong Kyun Kim*, 2001 MP 22 ¶ 12 (interpreting Com. R. Evid. 301 using case law interpreting Fed. R. Evid. 301); *Norita v. Norita*, 4 NMI 381, 386 (1996) (interpreting Com. R. Evid. 201 using case law interpreting Fed. R. Evid. 201).

[11] Our holding does not prevent defendants from attempting to make a broad request such as the one Hossain makes here, but such a request should be accompanied by case law, or by psychological or scientific evidence to show that the defendant's request for *in camera* review of school records is more than a "fishing expedition." This showing is not required where the defendant has a more concrete basis for seeking in camera review.

607 to contradict statements Rahman had made about his marriage to Kosam.[12] Hossain also argues that Munshi's testimony should have been allowed under Rule 404(b) as evidence of a plan, motive, or bias. We use an abuse of discretion standard to review trial court decisions to exclude or admit evidence. *Commonwealth v. Camacho*, 2009 MP 1 ¶ 26.

1. Exclusion of Evidence Under Rule 607 and Rule 403

¶ 23 Hossain argues that Munshi's testimony should have been admitted under Commonwealth Rule of Evidence 607.[13] Hossain cites *United States v. Castillo*, 181 F.3d 1129 (9th Cir. 1999), in which the Ninth Circuit Court of Appeals admitted extrinsic evidence under Rule 607 of the Federal Rules of Evidence to contradict false testimony offered by the defendant. The *Castillo* court reasoned that a "witness should not be permitted to engage in perjury, mislead the trier of fact, and then shield himself from impeachment by asserting the collateral-fact doctrine." 181 F.3d at 1133 (citation omitted). The trial court distinguished *Castillo* on grounds that the extrinsic evidence was offered against the defendant in *Castillo*, and in this case, the defense was seeking to offer extrinsic evidence against a witness not a party to the case. We find that Rule 607 makes no distinction between impeachment of criminal defendants or third-party witnesses. *United States v. Kozinski*, 16 F.3d 795, 805-06 (7th Cir. 1994) (holding that the extrinsic evidence could be offered to impeach third party witnesses but that the trial court did not abuse its discretion in determining that the proffered evidence was collateral). When impeaching by contradiction, the fact to be contradicted must be material. *United States v. Kincaid-Chauncey*, 556 F.3d 923, 932 (9th Cir. 2009) (citation omitted). This is, of course, subject to the trial court's discretion to exclude confusing or cumulative evidence under Rule 403. *Id.*

¶ 24 The trial court was unconvinced that Rahman made false statements on the witness stand. Nevertheless, the trial court exercised its discretion under Commonwealth Rule of Evidence 608(b) and permitted the defense to cross-examine Rahman despite finding that the alleged bigamy was collateral to Hossain's sexual assault charges.[14] After defense counsel unsuccessfully cross-examined Rahman, Hossain attempted to contradict Rahman's statement that he was married to Kosam using Munshi's

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[12] We do not analyze the admissibility of Munshi's testimony under Com. R. Evid. 608(b) because neither party raised this issue.

[13] Com. R. Evid 607 states that "[t]he credibility of a witness may be attacked by any party, including the party calling the witness."

[14] Whether a matter is collateral is within the trial judge's discretion. *United States v. DeCologero*, 530 F.3d 36, 60 (1st Cir. 2008). A collateral matter is one that generally has no relationship to the case at trial. *Herzog v. United States*, 226 F.2d 561, 565 (9th Cir. 1955). A matter is not considered collateral "if the fact could be proved *independently* for some other purpose recognized as proper, either because of its relation to the case, or because it tends to discredit the witness, by showing bias, interest, or other matters affecting his credibility." *People v. Clark*, 407 P.2d 294, 295 n.2 (Cal. 1965) (citation omitted). The trial court made findings during trial that bigamy was unrelated to the charges in the case and unrelated to Rule 404(b) matters.

testimony.[15] The trial court excluded Munshi's testimony under Rule 403 because it concluded that Munshi's testimony was collateral and that admitting it would be a "waste of time." ER at 58. Because Rahman had already been cross-examined on his marriage to Kosam, it was reasonable for the lower court refuse further inquiries. Abuse of discretion review is deferential. *Deicher v. City of Evansville*, 545 F.3d 537, 542 (7th Cir. 2008). While *Castillo* teaches that Munshi's testimony could have been allowed in under Rule 607, we defer to the trial court's decision to exclude it under Rule 403. *See Kincaid-Chauncey*, 556 F.3d at 932-34 (holding that the trial court had discretion to include or exclude the testimony of several witnesses whose testimony might have been admissible under Rule 607). The trial court did not abuse its discretion when it excluded Munshi's testimony.

2. Exclusion of Evidence under Rule 404(b)

¶ 25 We now address Hossain's claim that Munshi's testimony should have been admitted under Commonwealth Rule of Evidence 404(b).[16] Although Hossain properly preserved his Rule 404(b) objection, his brief contains a mere two sentence declaration that "[Munshi's testimony] would have shown that Rahman lied under oath . . . and that he committed fraud and a crime, bigamy . . . . [I]t would have been evidence of a prior bad act, . . . admissible to show motive, plan, and scheme to defraud to achieve any end." Appellant's Opening Br. at 31. A short declarative statement, without a single supporting reference, is insufficient to convince us that Hossain's argument has merit. *United States v. Morley*, 199 F.3d 129, 133 (3d Cir. 1999) ("[A] proponent's incantation of the proper uses of such evidence under Rule 404(b) does not magically transform inadmissible evidence into admissible evidence."). Although Hossain apparently briefed the trial court on the admissibility of Munshi's testimony under Rule 404(b), that document is not present in the record. There is no basis for us to consider the trial court's decision to exclude Munshi's testimony.

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[15] The defense's attempts to impeach Rahman arose from statements that Rahman made on direct examination:

PROSECUTOR: And what is your wife's name?
RAHMAN: Julia Somorang [sic] Raman
PROSECUTOR: And how long have you been married?
RAHMAN: Mmm, 5 years

The defense's theory was that Rahman was still married to Afroza at the time he married Kosam and Rahman's subsequent marriage to Kosam was void. While 6 CMC § 3103 makes bigamy a crime in the Commonwealth, it does not state the effects of a bigamous marriage. In the absence of statutory language7 CMC § 3401 provides that we seek guidance from the Restatement and then from the common law. As the Restatement is silent on marital issues, we turn to the common law. Bigamous relationships, in which one partner marries another before the end of the prior marital relationship, are "absolutely void." *Day v. Day*, 58 S.E.2d 83, 85 (S.C. 1950).

[16] Com. R. Evid. 404(b) reads: "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. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident . . . ."

C. Hearsay and Best Evidence

¶ 26 Hossain next argues that the trial court improperly admitted the only evidence of his age over defense counsel's hearsay and best evidence objections. Without this evidence, argues Hossain, his conviction for sexual assault of a minor in the second degree should be overturned because there was insufficient evidence to establish his age as required by 6 CMC § 1307(a)(2).[17] This argument is meritless because the defense established that Hossain's current age was twenty-eight at the beginning of Hossain's direct examination.[18] Having heard Hossain's testimony as to his present age, the "jurors [were] at liberty to use their senses of observation to draw inferences as to his age" at the time of the alleged offenses. *Barnett v. State*, 488 So. 2d 24, 25 (Ala. Crim. App. 1986). The jury had ample evidence to infer that if Hossain was twenty-eight years old during his 2005 trial, then he was older than sixteen in 2002 and 2003 when the abuse allegedly occurred.[19] Hossain's testimony coupled with the jury's permissible inference was sufficient to establish that Hossain was older than age sixteen beyond a reasonable doubt. Thus, we do not address Hossain's hearsay and best evidence objections.

D. Prosecutorial Misconduct

¶ 27 Finally, Hossain argues that he was denied Due Process by virtue of prosecutorial misconduct during his trial. As a general rule, issues of prosecutorial conduct must be contemporaneously objected to during trial, and failure to do so generally precludes appellate review. *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 22 (citing *Commonwealth v. Saimon*, 3 NMI 365, 380 (1992)); *Commonwealth v. Brel*, 4 NMI 200, 202 (1994). Moreover, "[a]ttorneys have a duty to their clients to raise objections during trial,

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[17] Title 6 CMC § 1307(a)(2) reads "(a) An offender commits the crime of sexual abuse of a minor in the second degree if . . . (2) being 16 years of age or older . . . ."

[18] DEFENSE: All right Mr. Hossain, could you please tell the jury who you are?
HOSSAIN: My name is MD. Aktar Hossain.
DEFENSE: Uhm, how old are you?
HOSSAIN: Twenty-eight.

ER at 26. Neither Hossain nor the Commonwealth brought this testimony to our attention.

[19] In obvious cases, for example, where the defendant is elderly, courts have allowed the fact finder to infer the defendant's age based solely on the defendant's physical appearance. *Jewell v. Commonwealth*, 382 S.E.2d 259, 261 (Va. App. 1989). Where the defendant's age is less obvious or indeterminate, most courts require that the fact-finder visually inspect the defendant and that there be additional circumstantial evidence of the defendant's age. *See, e.g.*, *Torres v. State*, 521 P.2d 386, 388 & nn.5-6. (Alaska 1974) (holding when the age of the accused was at issue, the jury may instead rely on defendant's appearance at trial and other circumstantial evidence); *State v. Zeringue*, 862 So. 2d 186, 193 (La. App. 2003) (holding that defendant's appearance in front of the judge coupled with circumstantial evidence elicited on cross-examination was sufficient proof of defendant's age). Accepted forms of circumstantial evidence include testimony that the defendant was intoxicated, *Flynn v. Alaska*, 847 P.2d 1073, 1077 (Ala. Ct. App. 1993); the defendant purchased beer and cigarettes and had a professional vocation, *State v. Thompson*, 365 N.W.2d 40, 43 (Iowa App. 1985); an witnesses referred to the defendant as a "man" and the defendant testified that defendant frequented a tavern, *State v. Lauritsen*, 261 N.W.2d 755, 757 (Neb. 1978).

so that the harm may be cured when it occurs." *Rabauliman*, 2004 MP 12 ¶ 23. The record indicates that Hossain failed to make any objections to prosecutorial misconduct during his trial.

¶ 28 When a party fails to preserve its objections for appeal, we are left with the option of exercising our discretion to review for plain error. Com. R. Crim. P. 52(b) ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); *see also United States v. Alli*, 344 F.3d 1002, 1007 (9th Cir. 2003) (reviewing a Due Process claim for plain error because the defendant never objected to the Commonwealth's failure to correct the witnesses' testimony at trial); *United States v. Brennan*, 326 F.3d 176, 182 (3d Cir. 2003) ("The decision to correct the forfeited error is within the sound discretion of the court of appeals . . . .") (quotations omitted). As the U.S. Supreme Court stated, "[t]he plain-error exception to the contemporaneous objection rule is to be used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result." *United States v. Young*, 470 U.S. 1, 15 (1985).

¶ 29 Under the plain error standard, an appellant must show that: (1) there was error; (2) the error was "plain" or "obvious"; (3) the error affected the appellant's "substantial rights," or put differently, affected the outcome of the proceeding. *United States v. Olano*, 507 U.S. 725, 732-34 (1993). Reversal is proper only if it is "necessary to safeguard the integrity and reputation of the judicial process or to forestall a miscarriage of justice." *Commonwealth v. Zhen*, 2002 MP 4 ¶ 49. When we do review for plain error, we consider the entire record so as not to "extract from episodes in isolation abstract questions of evidence and procedure." *Commonwealth v. Saimon*, 3 NMI 365, 381 (1992) (quoting *Young*, 470 U.S. at 16).

¶ 30 Hossain urges this Court overturn his convictions if there was any reasonable likelihood that the alleged perjured testimonies affected the jury verdict, citing *United States v. Agurs*, 427 U.S. 97, 103 (1976) (holding that "a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury."). This restatement of the harmless error rule would be the proper standard if Hossain had properly preserved his trial court objections for our review. *Saimon*, 3 NMI at 379-80. Hossain did not, and thus, we review for plain error.[20]

1. Hossain's Claims of Prosecutorial Misconduct During Rahman's Testimony

¶ 31 First, Hossain argues the Commonwealth engaged in prosecutorial misconduct by allowing Rahman to lie about his marital status on direct examination. Hossain alleges that perjury occurred when

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[20] The record before us provides little information despite Hossain's several allegations of prosecutorial misconduct. We have repeatedly stated that appellants in the CNMI must "submit the relevant evidentiary record before this Court and to identify the parts of the record which support the appeal." *Guerrero v. Tinian Dynasty Hotel*, 2006 MP 26 ¶ 28 (citation omitted); *see also Commonwealth v. Camacho*, 2009 MP 1 ¶ 15; *Commonwealth v. Lucas* 2003 MP 9 ¶ 27; *Commonwealth v. Repeki*, 2003 MP 1 ¶¶ 18-21. If the record is insufficient to allow satisfactory review of the trial court's findings, this Court may not reach the merits of the claim. *Repeki*, 2003 MP 1 ¶ 21.

the prosecutor questioned Rahman about his relationship with Hossain, and Rahman implied that "in 2000 he [Rahman] was single and unemployed before he met Julia [Kosam]."[21] Appellant's Opening Br. at 18. Hossain argues that this was perjury because Rahman had married Afroza in 1994, and that Rahman was not single in 2000 when he met Hossain. Hossain's argument fails because the record does not corroborate this claim. Although Hossain points to a marriage certificate and a divorce certificate purportedly showing evidence of Rahman's prior marriage to Afroza, neither of those documents are properly before this Court.[22] Moreover, the trial court allowed the defense great latitude in inquiring into this issue during cross-examination, and Rahman's testimony withstood the attack. The record does not support any inference of prosecutorial misconduct.

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[21] PROSECUTOR: How is it that Aktar Hossain started to live with you and your family?
RAHMAN: Ahh, here?
PROSECUTOR: Here in Saipan?
RAHMAN: Uhm, like in 2000 ahh when ahh actually I want to go home. He even want to go home Bangladesh. So both of ahh [us?], like we are very close that thime. [sic] So, that time I also jobless . . . My wife only working that time and I looking job . . . .
PROSECUTOR: You said something about going home or looking (ph.) home. What did you mean by that?
RAHMAN: No, like we are that time, like, before we got married – I mean not – before married, like ahh we went to go Bangladesh that time.
PROSECUTOR: Who wanted to go to Bangladesh before you got married?
RAHMAN: Like both of us.

ER at 66.

[22] Northern Mariana Islands Supreme Court Rule 10(a) provides a clear statement of what becomes part of the appellate record. It reads: "The following items constitute the record on appeal: (1) the original papers and exhibits filed in the Superior Court; (2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the Superior Court clerk." There are at least five documents in the record that do not comply with Rule 10(a), four of which we address here.

Document one is a confidential memorandum from the Office of the Public Defender "FOR THE PURPOSES OF PLEA NEGOTIATIONS ONLY." ER at 74. Plea negotiations are virtually never admissible at trial. Document two purports to be an excerpt from a handwritten DYS record pertaining to an interview with the victim. Documents one and two do not have exhibit stamps or other indicia showing that they were filed in the Superior Court. As such, they are not part of the trial record and are not properly before us.

The third document is a "marriage certificate" purporting that Rahman married Afroza in Bangladesh in 1994. The fourth document is "divorce certificate" purporting that Afroza had divorced Rahman in Bangladesh in 2001. These documents have no stamp showing that they were filed with the Superior Court or that they were ever admitted as evidence during trial. Neither the fact that the Commonwealth admitted to receiving copies of these documents nor evidence of a "received" stamp bearing the imprimatur of the public defender's office changes this determination.

We caution attorneys that, especially in criminal cases, legal arguments may be based *only* on documents that are properly included in the record. The four improperly included documents represent a particularly egregious lapse because many of appellant's arguments are based on documents that, as a matter of course, would never have been admitted during trial.

¶ 32 Second, Hossain claims that the Commonwealth engaged in prosecutorial misconduct by failing to correct Rahman's lies about his marriage to Afroza during cross-examination.[23] Hossain asserts that the Commonwealth had "substantial evidence" that Rahman married Afroza in 1994, relying on the same marriage and divorce certificate stated above. We repeat that those documents are not properly part of the record. Hossain also claims that the Commonwealth had "substantial evidence" of Rahman's perjury because Munshi would have testified that Afroza married Rahman in 1994. Although the trial court reasonably excluded Munshi's testimony, even if Munshi had testified, it would have been up to the trier of fact to determine whether it was Munshi or Rahman who was telling the truth and we would have no power to review the trier's determination.[24] Again, the record does not support an inference of prosecutorial misconduct.

¶ 33 Finally, Hossain argues that that the Commonwealth allowed Rahman to commit perjury when Rahman testified that his company, China Enterprises, had never employed Hossain. Hossain asserts that the Commonwealth knew or should have known that Hossain was employed by China Enterprises from October 2002 to September 2003. In support, Hossain offers a health clearance certificate dated October 2002 listing China Enterprises as Hossain's employer. Rahman explained the inconsistency testifying that as a favor to Hossain, he accompanied Hossain to the Marianas Medical Center and had China Enterprises listed as Hossain's employer because he believed that Hossain needed a health certificate in order to get

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[23] DEFENSE: Before you are married to Julia Kosam, you are married to a woman from Bangladesh?
RAHMAN: It's not right.
DEFENSE: Is that yes or not?
RAHMAN: No.
DEFENSE: Okay. The woman's name was Afroza Aktar?
RAHMAN: No, I don't have any wife in Bangladesh.
. . .
DEFENSE: Now, before you married Julia Kosam, you did not divorce Afroza Aktar in Bangladesh?
RAHMAN: If I'm not married, how I divorce.
. . .
DEFENSE: You never got a divorce from Afroza Aktar and your reason for it is because your . . . (unintelligible), you say you never married. You never married to her right?
RAHMAN: Yes.
. . .
DEFENSE: Okay. Now, Afroza Aktar, the woman in Bangladesh filed for divorce in 2001 in Bangladesh?
RAHMAN: What's that? 2001?
INTERPRETER: (interpreting in Bengali).
RAHMAN: I found out – it's – she's not my wife you're talking about, I don't know it.

ER at 48.

[24] Hossain's brief also contains a "Declaration of MD. Abu B. S. Munshi." ER at 23. This is the fifth document not properly before us. *See infra* note 22. Even if this declaration was properly before this Court, we would still not consider it because the trial court struck Munshi's oral testimony which, in substance, was identical to this written declaration.

married. Though Rahman's testimony is somewhat inconsistent with the notation on Hossain's health certificate, mere inconsistency between a document and a witness's testimony does not amount to perjury. Hossain also contends that the Commonwealth possessed a copy of statements made by the victim during an interview with DYS in August 2003 in which the victim stated that Hossain worked for her father. Hossain argues that this should also have put the Commonwealth on notice that Rahman was lying.[25] This claim is lacking because the DYS report is not properly part of the record, and the choice to believe Rahman's testimony over the victim's testimony was incumbent upon the jury.[26] *United States v. Gordon*, 844 F.2d 1397, 1405 (9th Cir. 1988). We find no error in the record before us.

2. Hossain's Claim of Prosecutorial Misconduct During Closing Argument

¶ 34 Hossain makes a separate claim that the Commonwealth engaged in prosecutorial misconduct when it mischaracterized the law with respect to marriage license requirements in its rebuttal during closing argument. Hossain maintains that the Commonwealth improperly invited the jurors to speculate that a noncitizen needed a health clearance to marry in the Commonwealth, but that for some reason this detail was kept from them.[27] Hossain cites page fifty-five of the record in support of his contention that the Commonwealth made improper remarks. Upon inspection of the record, we can neither determine the identity of the speaker purportedly making the improper remarks, nor the context for the remarks being made, notwithstanding Hossain's representation that they were made by the Commonwealth during closing argument. As the record is bereft of basic facts, we cannot reach Hossain's final claim of prosecutorial misconduct. *Camacho*, 2009 MP 1 ¶ 15.

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[25] ALDEN: Is Akter [sic] [Hossain] working?
VICTIM: Yes.
ALDEN: Where does he work?
VICTIM: Family Building in Garapan and sometimes in As Lito.
ALDEN: What kind of work does he do?
VICTIM: He works for my dad [Rahman].

ER at 75. Page seventy-five of the record is a handwritten record containing the above exchange. There are no indications as to the nature of the exchange, when the exchange occurred, the identities of the parties, or whether the record was admitted into evidence at Hossain's trial. The names of the parties to the exchange were supplied in Appellant's Opening Brief.

[26] Under our case law, the victim's testimony alone would have been enough to support Hossain's jury conviction. *Commonwealth v. Camacho*, 2009 MP 1 ¶ 23.

[27] UNKNOWN: Khandakar Rahaman [sic] says that he went with Hossain to Pacific Medical to get his health certificate so they could get married. The statute does not require, doesn't give you a copy of it, a copy of the statute. The statute only gives you the basic requirement. Age requirement and things like that.
DEFENSE: Objection, Your Honor. That's not in evidence . . . .

ER at 55. Appellant's brief stated that the prosecutor made these remarks, but page fifty-five of the record does not name the speaker.

III

¶ 35 In conclusion, we uphold Hossain's convictions for sexual assault in the second degree, sexual assault of a minor in the second degree, and disturbing the peace. Although the trial court applied the wrong legal standard to Hossain's request for in camera review of the victim's school records, he failed to make the required showing under the lower "plausible materiality" standard. The trial court did not abuse its discretion by excluding Munshi's rebuttal testimony because the exclusion was in accordance with the rules of evidence. There was also sufficient evidence for a reasonable jury to establish Hossain's age beyond a reasonable doubt because Hossain testified to his age at trial. Finally, the record does not support Hossain's claims of prosecutorial misconduct. The judgment of the trial court is AFFIRMED.

SO ORDERED this 31st day of December, 2010.

_/s/_____
MIGUEL S. DEMAPAN
Chief Justice

_/s/_____
ALEXANDRO C. CASTRO
Associate Justice

_/s/_____
JOHN A. MANGLONA
Associate Justice