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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PEDRO CERVANTES RODRIGUEZ,

APPELLANT

APPELLATE CASE NO. 2022-001511

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3372

ATTORNEY FOR APPELLANT

JOHN WILLIAM WEEKS
Solicitor, Second Judicial Circuit
109 Park Avenue SE
Aiken, SC 29801
(803) 642-1557

ATTORNEYS FOR RESPONDENT

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4 -----x
5 STATE OF SOUTH CAROLINA,)
6)
7 Plaintiff,)
8)
9 vs.) Case No. 2018-GS-02-01622
10) 2018-GS-02-01623
11 PEDRO CERVANTES RODRIGUEZ,)
12)
13 Defendant.)
14 -----x

October 17-18, 2022

15 B E F O R E:

16 The Honorable Diane Schafer Goodstein, Presiding Judge

17 A P P E A R A N C E S:

18 Ashley Hammack, Esq.
19 Attorney for the Plaintiff/State

20 Will McKellar, Esq.
21 Attorney for the Defendant

22
23 Recorded by: Court Monitor/DCRP

24 Transcribed by: Bobbi Fisher
25 SC Official Court Reporter III

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E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

State's Exhibit

No.	Description	ID.	REC'D
1	Photograph	106	106
2	Photograph of Pedro and Fran's Room	111	111
3	Interview DVD	151	151

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

1 P R O C E E D I N G S

2 (Whereupon, the following proceedings started at 9:55 a.m.):

3 THE COURT: Now, first things first. I need to be sure
4 that the -- that Mr. Rodriguez, that his attorneys have looked
5 at the indictment or indictments. I think there is a motion
6 involving one of the indictments, and I'll hear that now, that
7 motion.

8 MR. McKELLAR: Yes, Your Honor. Thank you.

9 THE COURT: But -- but -- if the motion -- my
10 understanding is there's a motion to quash. If that
11 indictment is not quashed, I will read it exactly as it is
12 written, unless y'all tell me otherwise. So I'm putting that
13 out there. And, also -- also, we need to swear in our
14 interpreters, which we actually need to do first. And then,
15 of course, I need your voir dire, and we need to deal with
16 that as well.

17 So first things first, we have our wonderful
18 interpreters, who I hate to -- introduce folks and say hello
19 and take -- and start with an apology; I did not realize that
20 you-all were doing interpretation during the general
21 qualification, but I can and I will -- if you'll come forward,
22 please and be sworn.

23 THE CLERK: Please step forward and raise your right
24 hand.

25 (The interpreters were duly sworn.)

1 THE COURT: And would you state your names, please, for
2 our record?

3 INTERPRETER AIDAR-McDERMOTT: Yes. Sandra
4 Aidar-McDermott.

5 INTERPRETER CRIMINGER: Kyle Criminger.

6 THE COURT: And would you spell your last names for our
7 esteemed court reporter?

8 INTERPRETER AIDAR-McDERMOTT: A-i-d-a-r dash
9 M-c-D-e-r-m-o-t-t.

10 INTERPRETER CRIMINGER: And Criminger is spelled
11 C-r-i- -- as in "Mike" - i-n as in "November" g-e-r.

12 THE COURT: Now, I need you-all to tell me how you best
13 do your interpretation. Do we need to stop and let you do
14 your translation? Do we need to -- can you do it as we speak
15 and just try to be slow? What works best for you guys?

16 INTERPRETER AIDAR-McDERMOTT: Your Honor, we can do
17 simultaneous interpretation, which means that we will
18 interpret while you speak. I would appreciate it if you could
19 move the mics closer to you, because sometimes -- I know --
20 sometimes it's hard to hear if you speak down to yourself,
21 especially for me.

22 THE COURT: That is absolutely not a problem. I'm happy
23 to do that.

24 And that will work you too, Mr. Criminger?

25 INTERPRETER CRIMINGER: Yes, Your Honor. Absolutely.

1 Thank you.

2 THE COURT: Wonderful. Now, tell me this, in terms of
3 breaks, because I also know that you're going to get
4 exhausted. So how do we work that? Do y'all swap out?

5 INTERPRETER AIDAR-McDERMOTT: Yeah, we are working as a
6 team, so we take breaks every 20 to 30 minutes, depending on
7 how exhausted we are and how intense the interpretation was.
8 So we switch. So you don't have to take a break for us. You
9 just -- as you take your normal breaks and we adjust to that.

10 THE COURT: Now, if the matters that are going on in the
11 courtroom are going too quickly or there's any other issue,
12 what's going to be the thing? Y'all stand? You're going to
13 wave your arms? Throw something at me?

14 INTERPRETER AIDAR-McDERMOTT: Yes, Your Honor, we
15 normally [laughter] --

16 INTERPRETER CRIMINGER: Not the latter.

17 INTERPRETER AIDAR-McDERMOTT: We are trained not to
18 interrupt unless there's something substantial to the case
19 that we do not understand and cannot convey and there is some
20 kind of evidence being presented that the witness needs to
21 hear and be clear. So the interpreter will raise her hand and
22 will say, "May the interpreter request a repetition?" And
23 then it will be up to Your Honor to request the repetition.

24 THE COURT: Sure. Is that -- and if there's any other
25 problem, let me know.

1 INTERPRETER CRIMINGER: That's good, Your Honor. The
2 only thing I would ask, just, if you don't mind, I like your
3 idea of us just standing. If someone is speaking too quickly,
4 we could just stand and just make a motion with our hand to
5 indicate folks go slower, if you don't mind.

6 THE COURT: That sounds perfect. Yeah, that absolutely
7 sounds perfect. Wonderful.

8 And I know these attorneys. They are all experienced
9 with working with interpreters also. No?

10 MR. McKELLAR: Not much, Your Honor.

11 THE COURT: Well, there's a time and place for
12 everything. Congratulations. You're going to have a learning
13 experience, and they will help you.

14 So, if our interpreters stand, that means slow down and
15 speak out.

16 THE CLERK: Your Honor, also, as I understand the
17 interpreters, during the time that a witness is on the stand
18 testifying, they may move to where they can see because they
19 can use (indiscernible) to help them with the interpretation.
20 Is that correct?

21 INTERPRETER AIDAR-McDERMOTT: Yes.

22 THE CLERK: So they would be standing up to move over
23 somewhere where they can see the witness better.

24 THE COURT: Perfect. And, also, if we have an equipment
25 glitch, which can happen, the lawyers, I know -- be sure that

1 you have told Mr. Rodriguez that if there -- if he's having an
2 equipment problem to let his attorneys know immediately, and
3 they will let me know.

4 MS. HAMMACK: And, Judge, I have to let them know that
5 the State does intend on admitting a video in this case
6 wherein a child gives a statement in English. So, at any
7 point we do need to pause that video, we can do that. But,
8 they do know it's coming.

9 THE COURT: Okay. Great. Okay. All right.

10 Now, y'all -- are you guys set? Perfect. All right.
11 What we're going to now do is I'm going to hear the defense's
12 motion to quash one of the indictments. So we're off.

13 MR. McKELLAR: Thank you, Your Honor.

14 THE COURT: Okay. Motion?

15 MR. McKELLAR: Thank you, Your Honor.

16 THE COURT: Yes.

17 MOTION TO QUASH

18 MR. McKELLAR: The defense moves to quash Indictment No.
19 2018-GS-02-01623 for the charge of criminal sexual conduct
20 with the minor in the first degree. And I have -- would you
21 like a paper copy of the --

22 THE COURT: Sure.

23 MR. McKELLAR: It's not in detail, but...

24 THE COURT: Yeah, got it. All right.

25 MR. McKELLAR: Your Honor, the basis for our motion to

1 quash is that the indictment does not list all the elements of
2 the crime -- does not allege all the elements of the crime of
3 criminal sexual conduct in the first degree. Criminal sexual
4 conduct in the first degree is defined as -- by the statute.

5 Beg the Court's indulgence, Your Honor.

6 THE COURT: All right.

7 MR. McKELLAR: It's defined as when an individual engages
8 on sexual battery with a victim who is less than 11 years of
9 age. And they allege everything -- and well -- excuse me --
10 sexual battery is defined in the definition section as -- it's
11 defined in 16-3-651, sexual battery is defined as sexual
12 intercourse, cunnilingus, fellatio, anal intercourse, or any
13 intrusion, however slight, of any part of a person's body or
14 of any object into the genital or anal openings of another
15 person's body except when such intrusion is accomplished for
16 medically recognized treatment or diagnostic purposes.

17 Your Honor, it is our position that the -- when the
18 statute of 655 -- the term "sexual battery" in and of itself
19 is not an element of the crime. It's an umbrella term for
20 other elements, such as what is defined in 16-3-651.

21 In doing our research, Your Honor, we could not find any
22 case where -- we don't have anything exactly on point, Your
23 Honor, because all the case law we've researched on CSC with a
24 minor and the indictments, all the indictments state that
25 defendant committed sexual battery, to wit. And they -- and

1 the indictment alleges whether it's intercourse, cunnilingus,
2 fellatio, etc. We do not have that in this.

3 So it's our position that those definitions are part --
4 are elements. One of those has to be met in order for a
5 sexual battery to be committed. It wasn't alleged and,
6 therefore, the indictment does not put my client on proper
7 notice as to what he's to defend against.

8 THE COURT: Okay. Thank you.

9 Yes, Ms. Hammack?

10 MS. HAMMACK: Your Honor, the State disagrees with the
11 defense's contention that sexual battery is not an element.
12 It absolutely is an element of the crime as prohibited by
13 statute. The case that Mr. McKellar cites in his motion,
14 *State v. Tumbleston*, quotes a long history of case law that
15 says an indictment passes legal muster when it charges the
16 crime substantially in the language of the statute prohibiting
17 the crime. The indictment mirrors the language of the CSC
18 with a minor first statute in the elements of that crime by
19 alleging a sexual battery of a child through the age of 11.

20 Your Honor is going to define "sexual battery" for the
21 jury, and I would assume that Mr. McKellar has told his client
22 what sexual battery is. But all of the different examples of
23 sexual battery under the law are exactly that. They're
24 examples. But the element that has to be proven is sexual
25 battery. And so by mirroring the language of the statute, the

1 indictment in and of itself is sufficient under *Tumbleston* and
2 the long history of case law here in South Carolina about
3 indictments.

4 THE COURT: All right. And do you believe that the
5 indictment alleges with sufficient particularity to allow for
6 the defendant to know the matter to which he must defend and
7 the Court, if convicted, has sufficient information to know
8 the sentence?

9 MS. HAMMACK: Yes, Your Honor. The indictment puts the
10 defendant on sufficient notice for what he's alleged to have
11 done.

12 THE COURT: All right. Any response?

13 MR. McKELLAR: No response, Your Honor.

14 THE COURT: I would respectfully deny the motion, noting
15 your exception thereto.

16 Now, do you understand that I will read the indictment as
17 it is written?

18 MR. McKELLAR: Yes, Your Honor.

19 THE COURT: All right. Very well.

20 Now, do you-all need to take a two-minute break before
21 the jury comes back in?

22 MR. McKELLAR: Yes, Your Honor.

23 MS. HAMMACK: Yes, Your Honor.

24 MR. McKELLAR: Your Honor, would you like our proposed
25 voir dire?

1 THE COURT: I do. And do you have any objection to each
2 other's voir dire?

3 MS. HAMMACK: We did talk to defense about one of their
4 questions, and I think Mr. McKellar added a couple of words
5 that would satisfy the State on that one question.

6 THE COURT: Okay.

7 MS. HAMMACK: The only other thing is I believe his
8 Questions 5 and 6 will be covered by your standard voir dire.
9 So, I think those are duplicative, but nothing else
10 objectionable.

11 THE COURT: Okay.

12 MR. MCKELLAR: Thank you, Your Honor.

13 MS. HAMMACK: And the State has no proposed voir dire.

14 THE COURT: Thanks.

15 MR. MCKELLAR: And these are very -- they're very prying
16 questions, Your Honor. Just a heads-up. I don't know how you
17 want to -- you may want to -- it might be a good idea to have
18 the jurors come up individually if they need to.

19 THE COURT: Yeah. And, Mr. McKellar, I know that,
20 obviously, you are either recovering from surgery or from that
21 Hail Mary pass that came at you. So, if you begin to have
22 some discomfort and you need to take a break, will you let me
23 know?

24 MR. MCKELLAR: I will. Thank you.

25 THE COURT: All right. We'll take about two minutes.

1 (A brief recess was taken from 11:24 a.m. to 11:30 a.m.)

2 THE COURT: Thank you so much, everybody, and please be
3 seated. Okay. We have no one at this table.

4 MS. HALL: I'm trying to get a hold of them, Your Honor.

5 THE COURT: That sounds like a plan.

6 (Pause in the proceedings.)

7 THE COURT: All right. Now, so here's the way we're
8 going to proceed. When the jury is back and seated, I'm going
9 to call on the solicitor. After I explain to the solicitor
10 who you are, I'm going to call on you to please call our first
11 case for trial, and then you will do your thing.

12 And, Mr. McKellar, are you one of the PDs?

13 MR. MCKELLAR: Yes, Your Honor.

14 THE COURT: All right, well, as to both of you, I'm going
15 to ask you to please -- when I introduce you, I'm going to ask
16 you to introduce yourself to the jury and the folks in your
17 office and who's going to be assisting you with the trial
18 attorney-wise. And that would just set up the question: Are
19 you related by blood or marriage or acquainted with anybody in
20 the office? Okay? Cool? Got it. Wonderful. All right.

21 MS. HAMMACK: Your Honor, if I may have just a second to
22 make sure we comply with Ms. Davis's request.

23 THE COURT: Absolutely. She might leave us otherwise,
24 and boy, we'd be --

25 MS. HAMMACK: She is amazing, so we can't lose her.

1 (Pause in the proceedings.)

2 MS. HAMMACK: Thank you, Your Honor.

3 THE COURT: All right. Yeah.

4 (The jury entered the courtroom at 11:37 a.m.)

5 THE COURT: All right. All the jurors are back. Are you
6 all back? All right. Ladies and gentlemen, in just a moment,
7 I'm going to call on the solicitor to call our first case for
8 trial, but before I do that, there are two things that I want
9 to go over with you.

10 The first thing is, is that I want to tell you that we in
11 South Carolina are unique in the United States. We call our
12 prosecuting attorneys, our district attorney or State's
13 attorney, we call them solicitors, and it literally is a
14 holdover from English jurisprudence, which is kind of neat.
15 And so I wanted to explain that to you.

16 A lot of folks, for whatever reason, are aware that
17 prosecuting attorneys oftentimes are called district
18 attorneys, or the State's attorney or terms such as that, but
19 I did want to share with you that, in South Carolina, we call
20 our prosecuting attorneys, we call them solicitors.

21 And in just a moment, I'm going to call on the
22 solicitor's office and Solicitor Hammack, who is here, I'm
23 going to call on her and ask her to please call our first case
24 for trial, and she's going to read -- and she's going to call
25 to my attention something called an indictment, but I'll tell

1 you about that in just a moment.

2 Solicitor?

3 MS. HAMMACK: Thank you, Your Honor.

4 THE COURT: Call our first case for trial, please.

5 CALL OF THE CASE

6 S. HAMMACK: State of South Carolina versus Pedro
7 Cervantes Rodriguez, charged in Indictments 2018-GS-02-01622
8 with criminal sexual conduct with a minor in the third degree
9 and Indictment 2018-GS-02-01623 with criminal sexual conduct
10 with a minor in the first degree.

11 THE COURT: All right. Now, what has occurred is that
12 the State has called to my attention two indictments. And in
13 just a moment, I want to tell you what an indictment is and
14 what it is not.

15 But before I do that, I want to hasten to tell you that,
16 to these indictments, the defendant in this case,
17 Mr. Rodriguez, has pled not guilty. Not guilty. And what
18 that means is, is that the burden of proof to prove each and
19 every allegations of each of these two indictments -- the
20 burden of proof is on the State to prove each and every
21 allegation beyond a reasonable doubt, and it will be the
22 jury's duty to decide whether the State has met its burden of
23 proof.

24 Now, let me tell you what an indictment is and what it is
25 not. What an indictment is, it's a piece of paper. In this

1 instance, there are two indictments, so there are two pieces
2 of paper. An indictment is the means by which the State of
3 South Carolina notifies a citizen that the State is alleging
4 that the citizen has violated one or more of the criminal laws
5 of the state of South Carolina.

6 And, in this instance, there are two pieces of paper, and
7 there's one indictment on each piece of paper, so there are
8 two indictments.

9 Now, let me tell you what an indictment is not. An
10 indictment is not evidence of any of the allegations that it
11 contains. It's a notice document. It's a document that says,
12 Mr. Citizen, the State is alleging that you violated one of
13 the criminal laws of the state of South Carolina.

14 Now, in a moment, I'm going to be reading to you some of
15 the allegations of these indictments, and the reason that I'm
16 going to be doing that is because I need to find out whether
17 or not any of you know or think you may know, or I need to
18 find out if you have heard or think you may have heard
19 anything about these allegations, and that is the reason that
20 I'm going to be reading to you some of the allegations of
21 these indictments.

22 Again, I want to hasten to tell you that, to each and
23 every allegation of these indictments, the defendant,
24 Mr. Rodriguez, has pled not guilty.

25 Now, after I have gone over the indictments with you and

1 ask you those questions, I'm going to introduce you to some
2 folks, and then I'm going to ask you some additional
3 questions.

4 Now, as an overview, you're going to hear me ask you this
5 question: Are you related by blood or marriage or acquainted
6 with so-and-so, someone? I need to define what I mean when I
7 say "acquainted with," because I intend a very, very general
8 definition of "acquainted with," because I'm trying to find
9 out if you have any connection with the folks that I'm going
10 to be asking you about.

11 Let me give you a couple of examples. I may ask you,
12 "Are you related by blood or marriage or acquainted with
13 Mr. Smith?" You may have gone to school with Mr. Smith
14 20 years ago. You have not thought about or seen Mr. Smith in
15 20 years, but you know that you went to school with Mr. Smith
16 20 years ago. Well, believe it or not, you would stand and
17 you would say, "Yes, I know Mr. Smith." And then I'll ask
18 some follow-up questions, and you'll say, "I went to school
19 with Mr. Smith 20 years ago. Hadn't seen him in 20 years."
20 I'll walk you through those questions. But you would stand
21 and disclose it, yes, you went to school with Mr. Smith
22 20 years ago. Even if you hadn't seen or thought of Mr. Smith
23 in 20 years, you do have that connection.

24 It may be that you simply work at the same location with
25 someone that I'll ask you about. Maybe you've waved at each

1 other across the parking lot. Believe it or not, that
2 relationship, as limited as it is, would be encompassed within
3 my definition of "acquainted with." So I wanted to mention
4 that to you. I wanted you to keep that in mind.

5 Now, as we go through this process, there are going to be
6 some times when folks need to respond and I'll ask them to
7 approach. When I do that, I'm going to ask, if you need to
8 respond to a question and if you approach, I need enough
9 volume -- I need enough volume for our court reporter to hear
10 you, but I do not -- intentionally, I do not want your fellow
11 jurors to hear your responses. So I need you just to be
12 mindful of that volume. I'll help you in that regard, but I
13 do want to mention that to you.

14 And, finally, ladies and gentlemen, in this particular
15 case, we are -- we have the able assistance of a couple of
16 folks who are interpreters, and they are seated here, and they
17 are doing an interpretation. So if you see them -- if you're
18 responding and you see them stand and go like this
19 (indicating), that means -- what do the young people say?
20 More cowbell. We need you to speak a little louder. And if
21 you'd do that to help us. Again, I'm not going anywhere.
22 I'll be right here to assist, but I did want you to understand
23 that we have a -- we have all kinds of help here this morning.

24 Now, ladies and gentlemen, at this time, I'm going to be
25 reading to you some of the allegations of these indictments,

1 and there are two. I'm going to read you the allegations of
2 the first and then the second. My question on the other side
3 of reading you these allegations is: Do any of you know or
4 think you may know or have you heard or think you may have
5 heard anything about these allegations? That's going to be
6 the question.

7 And, Counsel, it just appears to me, I do not have your
8 witness lists. So if y'all could just be working on that and
9 forward it, that'd be excellent.

10 MS. HAMMACK: For both sides, Your Honor?

11 THE COURT: No, just the State.

12 But you know what? I always like it when both sides look
13 at it, because I know that you always say, "Didn't you forget
14 about Mr. Smith? She's already talked about Mr. Smith." So,
15 all right.

16 Ladies and gentlemen, with regards to Indictment
17 2018-GS-02-01623, the State alleges in its indictment for
18 criminal sexual conduct with a minor, first degree, it alleges
19 in part as follows: That Pedro Cervantes Rodriguez did, in
20 Aiken County, at diverse times on or between January the 20th,
21 2017, and January the 20th, 2018, commit the crime of criminal
22 sexual conduct with a minor in the first degree in that the
23 defendant did commit a sexual battery upon Blyse --

24 MS. HAMMACK: Blyse.

25 THE COURT: Say again.

1 MS. HAMMACK: Blysse.

2 THE COURT: -- Blysse C [REDACTED], a minor, who was under
3 11 years of age at the time of the incidents -- of the
4 incident, all in violation, and there's a code section given.

5 Do any of you know or think you may know or have you
6 heard or think you may have heard anything about these
7 allegations? If so, please stand at this time.

8 And I find no is standing. Again, I hastened to tell you
9 that, to each and every allegation in this indictment,
10 Mr. Rodriguez has pled not guilty.

11 Now, with regards to Indictment No. 2018-GS-02-01622,
12 which is an indictment -- an indictment for criminal sexual
13 conduct with the minor in the third degree, the State alleges
14 that Pedro Cervantes Rodriguez, being over the age of 14
15 years, did, in Aiken County, at diverse times on or between
16 January the 20th, 2017, and January the 20th, 2018, willfully
17 and lewdly commit or attempt to commit a lewd or lascivious
18 act upon and with the body of Blysse C [REDACTED], a child under
19 16 years of age with the intent of arousing, appealing to, or
20 gratifying the lust, passions, and sexual desires of himself
21 or such child, all in violation -- the code section is given.

22 Ladies and gentlemen, again, to these allegations,
23 Mr. Rodriguez has pled not guilty. Do any of you know or
24 think you know or have you heard or think you may have heard
25 anything about these allegations? If so, please stand at this

1 time.

2 And I find no one is standing.

3 Now, ladies and gentlemen, please allow me to introduce
4 you to Ms. Ashley Hammack. She is an assistant solicitor here
5 in Aiken County. She is going to introduce to you the folks
6 in her office. I am sure she will begin with the elected
7 solicitor, Solicitor Thurman, and then she will introduce you
8 to the folks in her office and then tell you who, from her
9 office, will be assisting her with this trial.

10 Ms. Hammack?

11 MS. HAMMACK: Thank you, Your Honor.

12 Good morning, y'all.

13 JURORS: Good morning.

14 MS. HAMMACK: For at least a few more minutes.

15 As the judge said, my name is Ashley Hammack. I work
16 here in Aiken County for the solicitor's office. And like the
17 judge told you, we are the prosecuting agency here in Aiken.
18 I work for Solicitor Bill Weeks. He was here this morning --

19 THE COURT: And I said Thurmond. I know better than
20 that. Sorry about that, Mr. Weeks.

21 Blast from the past, ladies and gentlemen. The last time
22 I was here, Mr. Thurmond was a solicitor, and I know better.
23 Mr. Weeks. Solicitor Weeks. I'm so sorry. Where's Bill?

24 MS. HAMMACK: He was here.

25 THE COURT: I'm so delighted he's not here.

1 MS. HAMMACK: We won't tell him, Judge.

2 I'll be representing the State of South Carolina before
3 you today. Trying this case with me is Morgan Monroe of the
4 solicitor's office, and our chief investigator, Chris Walker.

5 THE COURT: Thank you.

6 Ladies and gentlemen, are you related by blood or
7 marriage or acquainted with Ms. Hammack or any of the folks in
8 the Second Circuit Solicitor's Office, to include Solicitor
9 Weeks? If so, please stand at this time.

10 And I find no one standing.

11 Now, ladies and gentlemen, please allow me to introduce
12 you to Mr. Pedro Cervantes Rodriguez. This is Mr. Rodriguez.

13 And thank you, sir. You may be seated.

14 Ladies and gentlemen, are you related by blood or
15 marriage or acquainted with Mr. Pedro Cervantes Rodriguez? If
16 so, please stand at this time.

17 And I find no one standing.

18 Now, ladies and gentlemen, Mr. Rodriguez is represented
19 by Mr. William McKellar. This is Mr. McKellar. And he's
20 going to likewise, just as we heard from Ms. Hammack, he's
21 going to stand and introduce the folks in his office and
22 introduce you to the folks who may be assisting him in this
23 trial.

24 And thank you, Mr. McKellar.

25 MR. MCKELLAR: Thank you, Your Honor.

1 My name is Will McKellar. I'm a lawyer at the public
2 defender's office. Sitting second chair with me is Barry
3 Thompson. He'll also be defending Mr. Rodriguez.

4 We are also joined today by Erin Malesy (ph), who is a
5 paralegal in our -- who is translating for me when I speak
6 with Mr. Rodriguez. And, also, a recent law school graduate,
7 Alan Ponder, who is waiting for his bar results, who is also
8 helping me.

9 THE COURT: Ladies and gentlemen, are you related by
10 blood or marriage or acquainted with, or have you or any
11 member of your immediate family, to your knowledge, ever been
12 represented by Mr. McKellar or any of the folks that he's just
13 mentioned? If so, please stand at this time.

14 Yes, ma'am. Your number, please?

15 JUROR NO. 112: 112.

16 THE COURT: All right. Now, let me tell you what I need
17 you to do for me. I need -- I have a reason for asking the
18 questions -- the follow-up questions just as I'm going to ask
19 them, so please bear with me. Okay?

20 Now, how do you know --

21 JUROR NO. 112: Mr. McKellar.

22 THE COURT: Mr. McKellar? All right. And is that
23 relationship one that is -- would you describe it as one that
24 is personal or professional?

25 JUROR NO. 112: Professional.

1 THE COURT: Professional? And is it one that is ongoing
2 in the past?

3 JUROR NO. 112: In the past. Just recent.

4 THE COURT: Just recently in the past. Now, as a result
5 of that relationship, might that -- [cellphone ringing] ooh,
6 party foul. All right. Who has the phone?

7 UNIDENTIFIED SPEAKER: That's mine.

8 THE COURT: All right.

9 UNIDENTIFIED SPEAKER: I'm sorry.

10 THE COURT: There you go. Let me begin anew.

11 As a result of that relationship, might that -- could
12 that interfere with your ability to be completely fair and
13 impartial both to the State as well as to Mr. Rodriguez? Your
14 answer must be yes or no.

15 JUROR NO. 112: Yes.

16 THE COURT: It would? Well, I am going to ask you to
17 please sit this one out. And, yes, we will -- I'm trying to
18 think, because we need to tell how we're going to stay in
19 contact with each other the balance of the week.

20 THE CLERK: She has a phone number --

21 THE COURT: You've got a phone number.

22 THE CLERK: -- that she can call after 5:00.

23 THE COURT: Tomorrow night.

24 THE CLERK: Tomorrow night. Call that number after 5:00
25 tomorrow night. It will explain to you what you need to do.

1 THE COURT: Thank you so much.

2 JUROR NO. 112: Thank you.

3 THE COURT: Yes. Thank you so much.

4 Now, ladies and gentlemen, in just a moment, I'm going to
5 be reading to you a list of potential witnesses. Potential
6 witnesses. My question with regards to each and every one of
7 these folks is: Are you related by blood or marriage or
8 acquainted with any of these individuals?

9 And, by the way, once I've gone through this list, if you
10 need me to repeat one or more of the names on the list, I am
11 so happy to do that. I am going to ask, if you happen to be
12 in the courtroom as your name is called, please stand, because
13 it is so much easier to put a face with the name than just the
14 name. And I would like to introduce those folks to you
15 because it's simply so much -- so much easier.

16 Now, the -- Richard Bonnette or Bonnette. I guess
17 Richard Bonnette, probably. Kim Caso. All right. And this
18 is Kim Caso. Thank you. Diego Nova. Kim Sawyer. Derrick
19 Cardenas. Rain Cardenas. Blyse C [REDACTED]. Francesca Acosta
20 Cervantes. Mayera Acosta. This is Ms. Acosta. Thank you.
21 Or is that Ms. Cervantes?

22 MR. McKELLAR: Ms. Cervantes.

23 THE COURT: That was Ms. Cervantes. Thank you.

24 All right. And Mayera Acosta. Pedro Cervantes, Jr.
25 Alondra Rodriguez. Andrea Rodriguez. Nancy Barbosa.

1 Patricia -- oh, thank you. And you are Ms. Barbosa?

2 MS. BARBOSA: Yes.

3 THE COURT: Thank you. Thank you.

4 Patricia Pena. Laticia de Leon.

5 Are you related by blood or marriage or acquainted with
6 any of those individuals? If so, please stand at this time.

7 And I find no one is standing.

8 Now, ladies and gentlemen, are you or any member of your
9 immediate family a current or former law enforcement employee?
10 If so, please stand. Are you currently -- well, you wouldn't
11 be currently -- well, formally or a member of your immediate
12 family, currently or formerly, a law enforcement employee? If
13 so, please stand.

14 All right. Here's what I'm going to ask: I'm going to
15 ask for your number. And is it you or a member of your
16 family? And that's -- and what law enforcement agencies?
17 Right here.

18 First of all, your number?

19 JUROR NO. 1: Number 1. And it's Arthur (indiscernible).
20 And, also, I had a question. How long --

21 THE COURT: Woah, woah, woah. Hold up. Hold that
22 question and I'll answer that question, but I'll have you come
23 back, if that's okay.

24 Now, is it about -- well, come on up now, because you
25 might forget and I might forget. And I'm coming down there,

1 so just hang tight. Okay? And, remember, just to speak up
2 for the court reporter.

3 JUROR NO. 1: I have my brother-in-law is retired SLED
4 (inaudible).

5 THE COURT: (Inaudible). That's it? And give me the
6 question.

7 JUROR NO. 1: That was my question. My brother-in-law
8 was -- whether he qualified.

9 THE COURT: And your (indiscernible).

10 JUROR NO. 1: That's right.

11 THE COURT: Thank you so much.

12 All right. Yes, ma'am, your number?

13 JUROR NO. 188: 188.

14 THE COURT: And you or a member of your family?

15 JUROR NO. 188: My daughter dates a city police officer
16 for the last four years.

17 THE COURT: Where?

18 JUROR NO. 188: For Aiken.

19 THE COURT: Okay. Is it city or county?

20 JUROR NO. 188: City.

21 THE COURT: City?

22 MS. HAMMACK: This is a county case.

23 THE COURT: Got it. Thank you so much.

24 JUROR NO. 188: Well, my sister-in-law --

25 THE COURT: Oh, all right. Is that, "Well...

1 Hi. Just remember, just keep up the volume for my court
2 reporter.

3 JUROR NO. 188: Okay. My sister-in-law's stepdaughter is
4 a county officer. I don't know if that counts, but I just
5 wanted to make sure.

6 THE COURT: It's always good to --

7 JUROR NO. 188: Okay. Yeah.

8 THE COURT: Sister-in-law's --

9 JUROR NO. 188: Stepdaughter --

10 THE COURT: Stepdaughter.

11 JUROR NO. 188: Her name is Ashley.

12 THE COURT: Ashley.

13 JUROR NO. 188: She's a county officer.

14 THE COURT: County. She's with the sheriff's department?

15 JUROR NO. 188: She is.

16 THE COURT: Okay. Now, can y'all hear me if I stand down
17 here?

18 All right. Ladies and gentlemen, I'm going to talk about
19 this person called a close personal friend, but I got to tell
20 you who this person is. This person, known as the close
21 personal friend, is so close to you that you probably like
22 this person better than one or more of your siblings. That's
23 how close this person is. This is not an acquaintance. This
24 isn't even a friend. This is someone who is so close to you
25 that they could have an effect on the way you feel or think

1 about things.

2 So when I talk about close personal friend, that's who
3 we're talking about, somebody that's so close to you -- yeah,
4 that person that just popped up in your head. That person
5 that you like better than you -- again, like some of your
6 siblings. Maybe all of your siblings. Or they're like a
7 sibling that you like. So that's who I'm talking about when I
8 used the term "close personal friend."

9 Now, are you related by blood or marriage or close
10 personal friend to anyone employed by the Aiken County
11 Sheriff's Department or the Aiken Department of Public Safety?
12 This is for anybody that hadn't already mentioned it.
13 Somebody mentioned a relation, but anyone who isn't already
14 disclosed. If you'll please stand.

15 Hi. Your number?

16 JUROR NO. 169: 169.

17 THE COURT: And who?

18 JUROR NO. 169: A couple of ex-sheriff --

19 THE COURT: The former sheriff's department folks? How
20 long since they retired? More than two years ago?

21 JUROR NO. 169: Maybe two.

22 THE COURT: Maybe two years ago? Okay.

23 JUROR NO. 169: And (indiscernible).

24 THE COURT: Got it. Thank you.

25 All right. Are you or any member of your immediate

1 family, to your knowledge, members of organizations such as
2 Darkness to Light; Citizens Against Violent Crime, which is
3 CAVE; People Against Rape, which is PAR; Mothers Against Drunk
4 Driving, which is MADD; Persons Empowered to Save Teens, PEST;
5 or any community organization of the nature of the ones I just
6 mentioned? If so, please stand.

7 I find no one is standing.

8 All right. I'm going to ask you two questions together,
9 and you need to respond or I'll have you approach. And I
10 don't want you to respond to either one of these questions
11 until I've asked them both.

12 First question: Have you or any member of your immediate
13 family, to your knowledge, been the victim of or charged with
14 a crime in the last five years? That's Question No. 1.

15 Question No. 2: Does any member of our jury panel
16 regularly post comments to news articles?

17 If you need to respond to either one of those questions,
18 I'm going to ask you to please come forward.

19 I find no one is standing.

20 Now, ladies and gentlemen, I'm going to -- again, I'm
21 going to ask you two questions. Actually, I'm going to ask
22 you three questions. And I don't want you to respond to any
23 of them until I've asked all three.

24 Ladies and gentlemen, have you or any member of your
25 immediate family ever been the victim of sexual assault?

1 That's Question No. 2 -- Question No. 1.

2 And Question No. 2: Have you or any member of your
3 immediate family, to your knowledge, ever been charged with
4 sexual assault? That's Question No. 2.

5 And Question No. 3 is: Do you make regular postings on
6 social media regarding any kind of crime?

7 If you need to respond to any of those questions, I'm
8 going to ask you to please approach.

9 And, again, please remember: I just need enough volume
10 for my court reporter to hear.

11 Okay. All right.

12 JUROR NO. 199: (Indiscernible).

13 THE COURT: And your number is?

14 JUROR NO. 199: 199.

15 THE COURT: (Indiscernible). I'm going to transfer you
16 to (indiscernible).

17 Yes?

18 THE BAILIFF: 170.

19 THE COURT: Yes.

20 JUROR NO. 170: (Indiscernible).

21 THE COURT: As a result of that experience
22 (indiscernible)?

23 JUROR NO. 170: Correct.

24 THE COURT: I'm going to ask you to sit this one out.

25 (Indiscernible). I'm going to ask you to call the juror

1 (indiscernible) tomorrow.

2 THE BAILIFF: 86.

3 THE COURT: Yes.

4 (Indiscernible.)

5 THE BAILIFF: 74.

6 (Indiscernible.)

7 THE COURT: Hold on, hold on. (Indiscernible.)

8 THE BAILIFF: 115.

9 THE COURT: 115.

10 (Indiscernible.)

11 THE COURT: He has (indiscernible)?

12 JUROR NO. 115: That's the (indiscernible.)

13 THE COURT: He hasn't?

14 (Indiscernible).

15 THE COURT: Has he (indiscernible)?

16 JUROR NO. 115: Yeah.

17 THE COURT: Okay. Do you (indiscernible)?

18 JUROR NO. 115: (Indiscernible.)

19 THE COURT: Would that have an effect on (indiscernible)?

20 JUROR NO. 115: (Indiscernible.)

21 THE COURT: Both to the State as well as to

22 Mr. Rodriguez?

23 JUROR NO. 115: (Indiscernible.)

24 THE COURT: (Indiscernible) make up your mind based upon

25 what you hear in the courtroom (indiscernible)?

1 JUROR NO. 115: I'll be fine.

2 THE COURT: You'll be fine? It wouldn't have an effect?

3 JUROR NO. 115: (Indiscernible).

4 THE COURT: All right. Please stay with us. And your
5 juror number is?

6 JUROR NO. 115: 115.

7 THE COURT: 115. Thank you.

8 Now, this is my concluding question and it's very
9 general. Just for your informational purposes, I mean it to
10 be just as general as it is. Do you know any reason why you
11 ought not, should not, could not be a juror in this case being
12 ready, willing, and able to listen to the evidence and make up
13 your mind based solely on what you hear in court while court
14 is in session, being completely unaffected by the matters --
15 the case law says extraneous -- by matters outside of the
16 court? In other words, can you make up your mind based solely
17 on what you are hearing in court while court is in session,
18 being completely fair and impartial both to the State as well
19 as to Mr. Rodriguez?

20 Now, if you have any concerns about your ability to do
21 that, I'm going to ask you to please stand and approach. If
22 you are -- as you sit there, you're thinking, "Oh, I should
23 have told her this. Oh, what do I do? How do I tell her that
24 I'm supposed to go to (indiscernible) at 3:00? I can't
25 believe I forgot I was supposed to go to (indiscernible)."

1 Just come forward and tell me.

2 If there's anything that you need to tell me about any of
3 the questions that I've asked you, anything that has come to
4 your mind, any concerns that you have about these particular
5 allegations, or any matter, I'm going to ask you to please
6 come forward at this time.

7 I find that no one is standing.

8 I find that our panel is now qualified.

9 All right. Now, let me tell you how this process works.
10 And let me just tell you, this process has been going on for a
11 long time.

12 Do you know your strikes, counsel?

13 MS. HAMMACK: It's five and ten.

14 MR. McKELLAR: Yes, Your Honor.

15 THE COURT: All right. Yep.

16 MS. HAMMACK: How many alternates would you prefer?

17 THE COURT: We're going to have two.

18 If your name is called -- I got to tell you, before I
19 became a judge, I actually was a juror, and I got called out.
20 So I can tell you, I've done this, and what comes to mind
21 when -- my name is called and I did what I'm about to show
22 you, all I could think was, "Gosh, I wish I could have left my
23 hands at my seat because I didn't know what to do with them
24 when I walked up here." I didn't know what to do with them.

25 So your name is called, right, your number. You're going

1 to get out of your seat and come this way. You're going to
2 come up here. I'm going to stand with the first person.
3 You're go to stand right here. And you're not going to know
4 what to do with your hands. You can just clasp them. Stand
5 here.

6 And let me tell you, this is ancient. We've been doing
7 this for over 200 years. This has been the process in General
8 Sessions. And you're going to stand here, and you're first
9 going to hear from the attorney -- one of the attorneys from
10 the State; probably Ms. Hammack. She's going to say one of
11 two things. She's going to say, "Present the juror," which
12 means you just stand here, or she's going to say, "Excuse the
13 juror." If she says, "Excuse the juror," you're going to have
14 your -- take your seat back in -- where you are.

15 Now, if you hear "present the juror," then you're going
16 to stand here, and then you're going to hear from counsel for
17 Mr. Rodriguez, Mr. McKellar, and you're going to hear one of
18 two things: Either "Seat the juror," at which point you're
19 going to go that way and have a seat, or you will hear,
20 "Excuse the juror," which means you'll take your seat back
21 down in the audience.

22 Now, I want to tell you something -- and I mean this in
23 all sincerity. There are probably hundreds of considerations
24 that will go through these attorneys' minds as they select the
25 jury. Let me tell you one that will not go through their mind

1 and that is any intention whatsoever to embarrass you.

2 So if you are either seated or if you are excused,
3 please, please know that, that there absolutely is no
4 intention to embarrass you if you are excused. I know that
5 because I was excused when I was selected.

6 All right. And I'm going to stand here because it's
7 always fun to be the first person. And I got you and I'm
8 going to stand here with you.

9 All right. I'm hearing Jeopardy music in the background.

10 And what ends up happening -- it's really kind of cool.
11 The tape is going on. You know, everything is done by
12 computer, and so what's happening is, is that the computer is
13 taking all of your juror numbers and doing this (indicating),
14 and then it's randomizing them. And so it's actually
15 selecting the numbers randomly.

16 When I started practicing law, like a thousand years ago,
17 we used to have a hopper --

18 Do y'all still have the hopper? Yeah, nobody is throwing
19 the hoppers away.

20 -- which was this drum. And, at this point, everybody
21 had to take a break because the jurors' names were on these
22 sheets of paper, and they had to cut out and then fold it up
23 and then put these little capsules that went in the drum. And
24 these young lawyers are, like, riveted because they weren't
25 even alive when this happened.

1 And so it went in the drum, and then the drum was turned.
2 And, in Charleston County, they -- this has not happened
3 because the lawyers would let -- would waive and let somebody
4 from the clerk's office do it. In Charleston County, they
5 literally either had a gentleman who was blind who came in to
6 do the jury selection or a small child who got to miss school.
7 And that was tradition for hundreds of years.

8 Now, with the advent of computers, we can do it all by
9 computer. Right? No? Yes?

10 THE CLERK: That's right. And our computer is acting up
11 this morning.

12 THE COURT: Well, we got (indiscernible) so we'll be in
13 good shape. These young people are going to see something
14 happen that they have not seen.

15 THE CLERK: (Indiscernible).

16 THE COURT: Really? Oh, good. Well, that's good that
17 you can pick up on that. That's super. Computers voting for
18 the hopper.

19 THE CLERK: When we had our computers shut down
20 (indiscernible).

21 THE COURT: And do that. Oh, yeah. That's happened a
22 lot lately.

23 THE CLERK: I think it happened in Edgefield County, and
24 they actually had to (indiscernible).

25 THE COURT: Oh, yeah.

1 COURT MONITOR: Don't forget you've got to say sidebar on
2 the record or off the record.

3 MR. McKELLAR: Judge, I wanted to do a sidebar on the
4 record.

5 BENCH CONFERENCE

6 (Bench conference indiscernible.)

7 (Pause in the proceedings for technical difficulties.)

8 (Open court resumes:)

9 THE CLERK: If any of you need to use the restroom, just go
10 this way. The bailiffs will show you, because it's going to
11 take us a minute.

12 THE COURT: Yeah, our computers won't let us -- I should
13 have never mentioned the hopper, y'all.

14 (Pause in the proceedings for technical difficulties.)

15 THE COURT: (Indiscernible) this has happened. It's my
16 fault; I shouldn't have talked about it. I think -- I'm so
17 sorry.

18 So, ladies and gentlemen, I'm going to tell you, be at
19 ease for about 10 minutes. If you need to go the ladies' room
20 or you can walk around. If you chat with each other, though,
21 I'll give you this instruction: Do not discuss this matter or
22 allow anyone to discuss it with you. And I know that you have
23 very, very, very, very little amount of information about this
24 matter, but we do have (indiscernible). So it is appropriate
25 that I give the instructions: Do not discuss this matter or

1 allow anyone to discuss it with you.

2 And while we're killing time, I want to tell you why,
3 because I was doing it for those jurors that are seated, but
4 it is, I think, very fascinating. What we have learned -- and
5 it's anecdotal. But what we have learned over 200-plus years
6 of trying cases in the United States, we have learned that the
7 way we are put together, the way we are wired, the way we are
8 made is that we begin to discuss something, we begin to form
9 opinions about it. And the jurors that serve on this trial
10 will be told that it is essential to the service on the jury
11 that a juror make up their mind about nothing until they have
12 heard everything. And that goes to the heart of serving as a
13 juror.

14 So the instruction, "Do not discuss this matter or allow
15 anyone to discuss it with you" is to support -- is to support
16 that process. We don't want you to talk even with fellow
17 jurors until the time for deliberation has come. And the
18 reason for that is to support your ability to listen
19 open-mindedly to everything and make up your mind about
20 nothing until you've heard everything. That's the reason for
21 the instruction.

22 So please feel free for about ten minutes.

23 (Indiscernible) let me run a capsule (indiscernible), but be
24 at ease for about ten minutes. Do not discuss this matter or
25 allow anybody to discuss it with you.

1 (A brief recess was taken from 12:37 p.m. to 12:43 p.m.)

2 THE COURT: As you are both now well aware, the
3 computer -- we have a computer glitch. The names -- I want
4 y'all to come and look. The names have been cut, and all the
5 names are in there. In fact -- you did them; right?

6 MS. LANGLEY: I did them.

7 THE COURT: All right. So we're going to make a record
8 about that, and we'll ask you to raise your right hand.
9 You've been waiting for this.

10 SHERRY LANGLEY,
11 after having been duly sworn, was examined and testified
12 to as follows:

13 THE COURT: And you'll state your full name for the
14 record.

15 MS. LANGLEY: Sherry Langley. L-a-n-g-l-e-y.

16 THE COURT: And, Ms. Langley, did you have occasion to
17 cut and fold the names of all of our jurors and place them in
18 this box?

19 MS. LANGLEY: They are cut, but they are not folded, Your
20 Honor.

21 THE COURT: Okay. They are cut but they are not folded.
22 All right. And they're in this box?

23 MS. LANGLEY: They're in that box.

24 THE COURT: And have you shaken the box?

25 MS. LANGLEY: The box has been shaken up, and I will be

1 drawing out the names and handing them over to the clerk.

2 THE COURT: Okay, great. You will not be looking at
3 them?

4 MS. LANGLEY: No, I will not.

5 THE COURT: All right. Is that acceptable to the State?

6 MS. HAMMACK: It is, Your Honor.

7 THE COURT: And to the defense?

8 MR. McKELLAR: It is, Your Honor.

9 THE COURT: All right. Very well. All right. Shake it
10 again.

11 All right. Now, if your number is called: Same process.
12 Just come forward and stand. All right.

13 JURY SELECTION

14 THE CLERK: Juror No. 74, Brittany Hammonds Parker.

15 (Juror No. 74, a black female, presented.)

16 THE CLERK: What says the State?

17 MS. HAMMACK: Please excuse this juror from this case.

18 THE CLERK: You can maintain your seat.

19 And I failed to mention: Bring up any belongings you
20 have, because, unlike Ms. Hammonds Parker, you may end up
21 going this way. So just bring anything you got with you.

22 Juror No. 155, Scott Snead.

23 (Juror No. 155, a white male, presented.)

24 THE CLERK: What says the State?

25 MS. HAMMACK: Please present Mr. Snead.

1 THE CLERK: What says the defense?

2 MR. McKELLAR: Please excuse Mr. Snead.

3 THE CLERK: Please return to your seat.

4 Juror No. 69, Michael Hadley.

5 (Juror No. 69, a white male, presented.)

6 THE CLERK: What says the State?

7 MS. HAMMACK: Please present Mr. Hadley.

8 THE CLERK: What says the defense?

9 MR. McKELLAR: Please excuse Mr. Hadley.

10 THE CLERK: Please return to your seat.

11 Juror No. 185, Brittany Williams. Juror 185?

12 THE CLERK: She was excused.

13 THE CLERK: She was excused. Okay.

14 I may end up calling several of those.

15 THE COURT: That's okay.

16 THE CLERK: Because they might have been included in
17 there.

18 THE COURT: That's all right.

19 THE CLERK: Juror No. 46, Dan Currens.

20 (Juror No. 46, a white male, presents.)

21 THE COURT: What says the State?

22 MS. HAMMACK: Please present Mr. Currens.

23 THE CLERK: What says the defense?

24 MR. McKELLAR: Please seat Mr. Currens.

25 THE CLERK: Please have a seat in the jury box.

1 Juror No. 200, Nicole Young.
2 (Juror No. 200, a black female, presents.)
3 THE CLERK: What says the State?
4 MS. HAMMACK: Please present Ms. Young.
5 THE CLERK: What says the defense?
6 MR. MCKELLAR: Please seat Ms. Young.
7 THE CLERK: Please have a seat in the jury box.
8 Juror No. 43, Janine Cropper.
9 (Juror No. 43, a black female, presents.)
10 THE CLERK: What says the State?
11 MS. HAMMACK: Please present Ms. Cropper.
12 THE CLERK: What says the defense?
13 MR. MCKELLAR: Please excuse Ms. Cropper.
14 THE CLERK: Please return to your seat.
15 No. 138, D'aarion Roberson.
16 (Juror No. 138, a black male, presents.)
17 THE CLERK: What says the State?
18 MS. HAMMACK: Please excuse Mr. Roberson from this case.
19 THE CLERK: Please return to your seat.
20 No. 146, Scott Saylor.
21 (Juror No. 146, a white male, presents.)
22 THE CLERK: What says the State?
23 MS. HAMMACK: Please present Mr. Saylor.
24 THE CLERK: What says the defense?
25 MR. MCKELLAR: Please seat Mr. Saylor.

1 THE CLERK: Please have a seat in the jury box.

2 No. 120, Carla Odom.

3 (Juror No. 120, a black female, presents.)

4 THE CLERK: What says the State?

5 MS. HAMMACK: Please present Ms. Odom.

6 THE CLERK: What says the defense?

7 MR. MCKELLAR: Please excuse Ms. Odom.

8 THE CLERK: Please return to your seat.

9 Juror No. 29, Kyshara Childs.

10 (Juror No. 29, a black female, presents.)

11 THE CLERK: What says the State?

12 MS. HAMMACK: Please present Ms. Childs.

13 THE CLERK: What says the defense?

14 MR. MCKELLAR: Please excuse Ms. Childs.

15 THE CLERK: Now, the State has used two strikes, and the
16 defense, five.

17 Juror No. 16, Donna Brantley.

18 (Juror No. 16, a white female, presents.)

19 THE CLERK: What says the State?

20 MS. HAMMACK: Please present Ms. Brantley.

21 THE CLERK: What says the defense?

22 MR. MCKELLAR: Please excuse Ms. Brantley.

23 THE CLERK: Please return to your seat.

24 Juror No. 169, Bryan Valdetero.

25 (Juror No. 169, a white male, presents.)

1 THE CLERK: What says the State?

2 MS. HAMMACK: Please present Mr. Valdetero.

3 THE CLERK: What says the defense?

4 MR. McKELLAR: Please excuse Mr. Valdetero.

5 THE CLERK: Please return to your seat.

6 Juror No. 113, Shea Mitchell.

7 (Juror No. 113, a white female, presents.)

8 THE CLERK: What says the State?

9 MS. HAMMACK: Please present Ms. Mitchell.

10 THE CLERK: What says the defense?

11 MR. McKELLAR: Please excuse Ms. Mitchell.

12 THE CLERK: Please return to your seat.

13 Juror No. 172, Emmitt Wakefield.

14 (Juror No. 172, a white male, presents.)

15 THE CLERK: What says the State?

16 MS. HAMMACK: Please present Mr. Wakefield.

17 THE CLERK: What says the defense?

18 MR. McKELLAR: Please seat Mr. Wakefield.

19 THE CLERK: Just have a seat in the jury box.

20 Juror No. 68, Jonathan Gullette.

21 (Juror No. 68, a white male, presents.)

22 THE CLERK: What says the State?

23 MS. HAMMACK: Please present -- or, excuse me; please
24 excuse this juror for this case.

25 THE CLERK: Please return to your seat.

1 Juror No. 59, Laini Frye Rowe.
2 (Juror No. 59, a white female, presents.)
3 THE CLERK: What says the State?
4 MS. HAMMACK: Please present Ms. Rowe.
5 THE CLERK: What says the defense?
6 MR. McKELLAR: I'm sorry, Mr. Harte. What juror is this?
7 THE CLERK: 59.
8 MR. McKELLAR: 59? 159. I'm sorry.
9 THE CLERK: No, 59.
10 MR. McKELLAR: I may have your last name incorrectly.
11 Ms. Frye?
12 JUROR NO. 59: Frye Rowe.
13 THE CLERK: Frye Rowe.
14 JUROR NO. 59: It's Rowe. It was Frye.
15 MR. McKELLAR: Okay. Thank you.
16 THE CLERK: What did you say?
17 MR. McKELLAR: Frye.
18 THE CLERK: Did you say seat the juror?
19 MR. McKELLAR: Seat. Please seat.
20 THE CLERK: Juror 131, Terry Poole.
21 (Juror No. 131, a white male, presents.)
22 THE CLERK: What says the State?
23 MS. HAMMACK: Please present Mr. Poole.
24 THE CLERK: What says the defense?
25 MR. McKELLAR: Please seat Mr. Poole.

1 THE CLERK: Please have a seat in the jury box.
2 Juror No. 177, Darrin Walls.
3 (Juror No. 177, a white male, presents.)
4 THE CLERK: What says the State?
5 MS. HAMMACK: Please present Mr. Walls.
6 THE CLERK: What says the defense?
7 MR. McKELLAR: Please excuse Mr. Walls.
8 THE CLERK: Please return to your seat.
9 I have to -- State has used three challenges and the
10 defense, nine.
11 Juror No. 188, Ken Williamson -- Keri Williamson. I'm
12 sorry.
13 (Juror No. 188, a white female, presents.)
14 THE CLERK: What says the State?
15 MS. HAMMACK: Please present Ms. Williamson.
16 THE CLERK: What says the defense?
17 MR. McKELLAR: Please excuse Ms. Williamson.
18 THE CLERK: Please return to your seat.
19 Juror No. 139, Gail Roberson.
20 (Juror No. 139, a black female, presents.)
21 THE CLERK: What says the State?
22 MS. HAMMACK: Please present Ms. Roberson.
23 THE CLERK: What says the defense?
24 MR. McKELLAR: Please seat Ms. Roberson.
25 THE CLERK: Have a seat in the jury box.

1 Juror No. 1, Arthur Amick.

2 (Juror No. 1, a white male, presents.)

3 THE CLERK: What says the State?

4 MS. HAMMACK: Please present Mr. Amick.

5 THE CLERK: What says the defense?

6 MR. MCKELLAR: Please seat Mr. Amick.

7 THE CLERK: Please have a seat in the jury box.

8 Juror No. 20, Anthony Brooks.

9 (Juror No. 20, a black male, presents.)

10 THE CLERK: What says the State?

11 MS. HAMMACK: Please present Mr. Brooks.

12 THE CLERK: What says the defense?

13 MR. MCKELLAR: Please seat Mr. Brooks.

14 THE CLERK: Please have a seat in the jury box.

15 Juror No. 182, Ashley Weisert.

16 (Juror No. 182, a white female, presents.)

17 THE CLERK: What says the State?

18 MS. HAMMACK: Please present Ms. Weisert.

19 THE CLERK: What says the defense?

20 MR. MCKELLAR: Please seat Ms. Weisert.

21 THE CLERK: Please have a seat in the jury box.

22 Juror No. 197, Tammy Wright.

23 (Juror No. 197, a black female, presents.)

24 THE CLERK: What says the State?

25 MS. HAMMACK: Please present Ms. Wright.

1 THE CLERK: What says the defense?

2 MR. McKELLAR: Please seat Ms. Wright.

3 THE CLERK: Please have a seat in the jury box.

4 No. 58, Richard Freyermuth.

5 (Juror No. 58, a white male, presents.)

6 THE CLERK: What says the State?

7 MS. HAMMACK: Please present Mr. Freyermuth.

8 THE CLERK: What says the defense?

9 MR. McKELLAR: Please seat Mr. Freyermuth.

10 THE CLERK: Please have a seat in the jury box.

11 That's all, Your Honor.

12 THE COURT: Yes.

13 THE CLERK: All defense strikes are two and one.

14 THE COURT: Or one and two.

15 THE CLERK: I'm sorry?

16 THE COURT: Or one and two.

17 THE CLERK: One and two. I'm sorry. One and two. Thank
18 you.

19 Juror No. 72, James Hallman.

20 (Juror No. 72, a white male, presents.)

21 THE CLERK: What says the State?

22 MS. HAMMACK: Please present Mr. Hallman.

23 THE CLERK: What says the defense?

24 MR. McKELLAR: Please seat Mr. Hallman.

25 THE CLERK: No. 23, Amy Bryant.

1 (Juror No. 23, a white female, presents.)

2 THE CLERK: What says the State?

3 MS. HAMMACK: Please present Ms. Bryant.

4 THE CLERK: What says the defense?

5 MR. McKELLAR: Please excuse Mr. Bryant.

6 THE CLERK: Please return to your seat.

7 No. 71, Ronald Hall.

8 (Juror No. 71, a white male, presents.)

9 THE CLERK: What says the State?

10 MS. HAMMACK: Please present Mr. Hall.

11 THE CLERK: What says the defense?

12 MR. McKELLAR: Please excuse Mr. Hall.

13 THE CLERK: Please return to your seat.

14 No. 115, Nadine Morency.

15 (Juror No. 115, a black female, presents.)

16 THE CLERK: What says the State?

17 MS. HAMMACK: Please excuse Ms. Morency from this case.

18 THE CLERK: Please return to your seat.

19 No. 77, William Harris.

20 (Juror No. 77, a white male, presents.)

21 THE CLERK: What says the State?

22 MS. HAMMACK: Please present Mr. Harris.

23 THE CLERK: What says the defense?

24 MR. McKELLAR: Please seat Mr. Harris.

25 THE CLERK: Please have a seat in the jury box.

1 Your Honor, we have a jury.

2 THE COURT: Are there any matters regarding the
3 qualification of the selection of the jury from the State?

4 MS. HAMMACK: Not from the State, Your Honor.

5 THE COURT: From the defense?

6 MR. McKELLAR: Nothing from the defense, Your Honor.

7 THE COURT: Thank you very much.

8 Ladies and gentlemen, you are now known as our remaining
9 jurors. I'm going to ask you to please call the juror
10 information line after 5:00 tomorrow evening -- at 5:00
11 tomorrow evening and follow whatever the recording says. That
12 number is in the materials that you have. If you are unsure
13 if you have that number, let one of our bailiffs know, and
14 they will absolutely be certain that you have that
15 information.

16 Now, those of you who are dashing off to work and your
17 employer is going to require that you have something so that
18 your employer will know where you have been and what you have
19 been up to, our esteemed clerk is going to give you an
20 instruction.

21 THE CLERK: If you want a work excuse, will you please go
22 to the jury assembly room, and Ashley will come in there and
23 give you an excuse.

24 THE COURT: Thank you so much.

25 Now, ladies and gentlemen, again, thank you for each and

1 every tick of the clock that you have been with us this
2 morning. I am so truly grateful to you, and I can't wait to
3 see you later in the week. If you will do so quietly, you are
4 free to go, those of you in the audience.

5 (The remaining jurors exited the courtroom at 1:02 p.m.)

6 THE COURT: All right. Ladies and gentlemen, we are
7 going to be beginning this case tomorrow morning at 9:30.
8 Tomorrow morning at 9:30. Tuesday morning at 9:30. I'm going
9 to ask you, when you arrive tomorrow morning, to go to the
10 jury assembly room, and they will bring you into your jury
11 room in the morning and then you'll come into the courtroom
12 from your jury room. Right?

13 But I do need to give you some instruction because we are
14 going to be leaving each other. First of all, seating
15 assignments. Seating assignments. You are our alternates.
16 Alternate No. 1 and Alternate No. 2. I'm going to ask you to
17 keep those two seats during the course of the trial simply so
18 I can keep up with you as our alternates. Now, if you-all
19 want to swap out those two seats, that's perfectly fine, but I
20 do need for you guys to keep those two seats just so I can
21 keep up with you.

22 With regard the rest of you, at some point during one of
23 the breaks, I'm going to ask you to please select your
24 presiding juror. And when the presiding juror is selected,
25 that person will take the seat closest to the door on the

1 front row.

2 And the presiding juror has three additional tasks, along
3 with the other task of a juror, which we'll talk a little bit
4 about in the morning. They are as follows:

5 No. 1. There will come a time at the conclusion of this
6 case when the verdict of the jury will be indicated on a
7 verdict form, and the presiding juror will do that, will
8 actually write the verdict on the verdict form.

9 The presiding juror presides in the jury room, is the
10 term. What that means is you just make sure everybody during
11 the deliberations -- during the deliberations -- you just make
12 sure everybody has a chance to talk. The presiding juror does
13 not in any way control those deliberations, indicate what this
14 verdict of the jury ought to be one way or the other. That
15 would be highly inappropriate, doesn't control those
16 deliberations in any respect whatsoever. It's just somebody
17 just to be sure everybody gets a chance to talk.

18 And then, finally, the presiding juror is the jury
19 spokesperson here in court, and what that means is, in the
20 event that the jury needs to communicate with me for whatever
21 reason, for example, "Gosh, it's hot. Gosh, it's cold. Sure
22 would like some Diet Coke in the jury room," or anything like
23 that, the presiding juror just writes that down, gives it to
24 one of the bailiffs who will, in turn, give that to me.

25 So three tasks: Write the verdict when that time has

1 come -- and there'll be no question in your mind when that
2 time has come, because I will tell you that the time to
3 deliberate has come and we'll talk about it when we give you
4 the concluding instructions on how that will be.

5 And, secondly, preside in the jury room just be sure that
6 during deliberations, everybody has a chance to talk.

7 And then, finally, the jury spokesperson here in court
8 meaning, if the jury needs to communicate with me, to put that
9 down in writing and give it to one of the bailiffs who will,
10 in turn, give that to me.

11 Now, when the presiding juror has been selected, I will
12 need to know, and you can let me know one of the three ways:
13 You can write down on the piece of paper that you, Juror No.
14 Blah-blah has been -- you've been selected to serve on -- as
15 the presiding juror. You can tell me when you return to the
16 jury room. Or you can just see if I figure it out because you
17 kept that seat. Any one of those three methods is perfectly
18 fine. I just need to know before you begin your deliberations
19 who the presiding juror -- what person that is.

20 All right. Now, some instruction, because we're going to
21 be leaving one another. First of all, do not discuss this
22 matter or allow anyone to discuss it with you. And I think I
23 gave you -- I did give you the basis for that. What that
24 means is you must not discuss this case with family or friends
25 or co-workers or your fellow jurors. You must not discuss

1 this matter with anyone.

2 Now, you're going to be going perhaps to work this
3 afternoon, you'll be going home. No doubt there'll be
4 somebody curious about what you have been up to. It is
5 perfectly fine to say, "Yes, I reported to my jury assignment,
6 and it was General Sessions, and I've been selected to serve
7 on the jury." But, beyond that, you must not discuss this
8 matter or allow anyone to discuss it with you for the reasons
9 that we talked about earlier.

10 But I don't want anybody upset with you. Put it on the
11 judge. Tell them that you are under a direct order by the
12 judge not to discuss this matter with anyone. Let them be
13 upset with me, not you. So please keep that in mind. That's
14 critical.

15 No. 2: We live in a world where information is available
16 24/7 at your fingertips, but not during the course of this
17 trial. It is absolutely critical that you receive all of the
18 information from which you will make up your minds here in
19 court, while court is in session. So no "Columbo," those of
20 you who remember that TV show. No investigation. You must
21 not go to the internet. You must not go to the internet to do
22 anything as innocent as look up a term or look up someone that
23 has something to do with this case. You must not access the
24 internet with regards to anything that has anything to do with
25 this case: The individuals involved, the issues involved,

1 even to look up the definition of a word. That will cause a
2 mistrial in this case, so please keep that in your mind. You
3 must receive all of the information from which you will make
4 up your minds here in court while court is in session.

5 Now, that segues into communication devices like your
6 cell phones, your smart devices. You must leave them
7 somewhere other than the courtroom. I would like you to leave
8 your cell phones away from the courthouse. I'd like to leave
9 them at home. I'd like you to leave them in your car. I'd
10 like you not to bring them into the courtroom with you.
11 Oftentimes it's unrealistic, so this would be the instruction.
12 If your cell phone comes with you into the courtroom tomorrow,
13 you must turn it over to one of our bailiffs. They will take
14 great care of it. You must not use it while you're serving on
15 the jury.

16 There was -- and let me tell you, there was a case in
17 Charleston about ten years ago, and the jury was deliberating.
18 They just reached a moment where they needed to talk and
19 remember the evidence that was presented and talk. During the
20 deliberations, one of the jurors says, I got a friend who will
21 have this information. So they phoned a friend. The entire
22 trial had to be scrapped. And that was the end of jurors
23 being able to have their cell phones with them while they're
24 serving on the jury, because there was information inserted
25 into the jury deliberation that was not received in court

1 while court is in session. That's the reason that we now
2 restrict jurors having their cell phones or other
3 communication devices with them. So please be mindful of
4 that.

5 Now, if you think you could turn that thing off and put
6 it in your pocket, you know, the gremlins will turn it on it
7 will ring. You know it will, which will present a problem.
8 So please be mindful. Do not -- not only do not discuss this
9 matter and do not do any investigation, but do not have your
10 cell phone or other communication devices with you while
11 you're serving on a jury, but you can turn it over to one of
12 our bailiffs. Charlie will take great care of it.

13 You don't have any friends in Europe right now that you
14 need to call; right?

15 THE BAILIFF: I don't have any friends.

16 THE COURT: You're in great shape. You are in great
17 shape.

18 Now, when this trial is over and you have been discharged
19 from your service on this trial by me, Charlie needs a friend.

20 Now, ladies and gentlemen, anybody work at night?
21 Anybody work at night? There's always somebody. Not tonight.
22 It is so unfair -- you probably feel a little wonky right now.

23 JUROR: I didn't work last night.

24 THE COURT: Oh, I'm so glad.

25 Now, it's not fair to you or these litigants for you to

1 try to work all night and then try to stay --

2 JUROR: I'm not.

3 THE COURT: Wonderful. But, listen, put it on the judge.

4 JUROR: I will.

5 THE COURT: And if anybody expresses any concern, just
6 say, "Oh, my goodness, well, let me have your name and phone
7 number, because Judge Goodstein wants to talk to you." Let
8 them be upset with me and not you. Wonderful.

9 Now, ladies and gentlemen, again, there is going to be
10 some degree of curiosity. It is really important that you
11 tell whoever is curious that, when this trial is over and you
12 have been discharged from your service on this jury by me --
13 and there'll be no question in your minds when that time has
14 come because we will talk about it. You will be at liberty to
15 talk about the case if you want to, but not until then. So
16 please, please keep that in mind. That's actually quite
17 important.

18 We are going to begin this matter in the morning at 9:30.
19 And I want to give you a preview of what's going to happen.
20 When you come in in the morning, you'll be sworn in as a jury
21 in this case. I am then going to make preliminary remarks to
22 you, only to give you a road map so that you will know how
23 we're going to be proceeding and to talk about a few matters
24 with you, and then we're going to get right into the trial of
25 this case. So I wanted you to be aware that that's what's

1 going to be happening in the morning.

2 Ladies and gentlemen, those of you who need something for
3 your employer because you're dashing off to work -- is there
4 anybody that needs something to give their employer this
5 afternoon? All right. Not a problem. We'll get that for
6 you.

7 And do you want to maybe -- maybe go look at your jury
8 rooms and say, "Hi, jury room," so that they can -- you got
9 it? You'll take that to them?

10 THE CLERK: Charlie will make sure they're --

11 THE COURT: Charlie -- and y'all will take them a work
12 excuse?

13 THE CLERK: And then they can use these hallways when
14 they exit.

15 THE COURT: And before he leaves, you'll give them the
16 work excuses, gentlemen?

17 THE CLERK: Yes.

18 THE COURT: Wonderful.

19 THE CLERK: I asked them and we just need one work
20 excuse.

21 THE COURT: One. Okay. Might want to take two in case
22 somebody changes their mind. All right. Wonderful.

23 Ladies and gentlemen, really, thank you for every single
24 solitary tick of the clock. Can't wait to see you in the
25 morning at 9:30. Anybody have any questions? 9:30 in the

1 morning. Wonderful.

2 Oh, sorry. Messed up.

3 THE CLERK: Sausage biscuits or doughnuts?

4 THE COURT: Or what?

5 THE CLERK: Or doughnuts.

6 THE COURT: Sausage biscuits or doughnuts?

7 THE CLERK: Sausage biscuits.

8 THE COURT: Sausage biscuits. Votes for sausage
9 biscuits. Votes for donuts.

10 THE CLERK: We'll get you later in the week.

11 THE COURT: Awesome. Who is doing them?

12 THE CLERK: If you want them, we'll have them here a
13 little early. Come a little early so you can enjoy them and
14 won't be rushed to get back out here.

15 THE COURT: So, sausage? What kind -- who are you
16 getting them from?

17 THE CLERK: Oh, you're going to get one.

18 THE COURT: Going home weighing a lot more than I
19 arrived. Wonderful.

20 Thank you-all so much. If you will go with your
21 bailiffs. I'll see you in the morning. Thank you so much.

22 (The jury exited the courtroom at 1:15 p.m.)

23 THE COURT: All right. Probation is -- I understand we
24 have probation this afternoon, and the folks are noticed to be
25 here at -- fill in the blanks, please. What time? 2:00?

1 2:00. Okay, great. Wonderful.

2 So we'll take a break and I'll see everybody at 2:15.
3 We'll do probation. We'll do -- we can do pleas, but we'll
4 end up the day with a motion. We've got one more motion in
5 limine, yes?

6 MS. HAMMACK: One more motion. The parties for one of
7 the trial -- those cases are returning, so I'll have to do
8 that plea this afternoon as well. And then the
9 (indiscernible) probation violations are afterwards whenever.

10 THE COURT: Okay. That sounds good.

11 MS. HAMMACK: One last motion will be here before
12 (indiscernible).

13 THE COURT: Okay. That sounds -- okay. All right.
14 Well, I will see everybody at 2:15. And, Mr. Rodriguez, we'll
15 be back at 2:15 so that we can dispose of that motion whenever
16 we get a chance.

17 Yes?

18 INTERPRETER: We reconvene at 2:15?

19 THE COURT: Huh?

20 INTERPRETER: We reconvene at 2:15?

21 THE COURT: Reconvene. No, the court people need an
22 hour. Reconvene at 2:15. Reconvene at 2:15. It rhymes.
23 Wonderful. See, y'all.

24 (A lunch recess was taken from 1:17 p.m. to 2:29 p.m.)
25

1 MOTION/MATTERS OF LAW

2 THE COURT: Yes, ma'am.

3 MS. HAMMACK: So, Your Honor, going back on the record on
4 State vs. Pedro Cervantes, the State intends, during the
5 course of the trial, to admit a video of the forensic
6 interview of the child victim in this case.

7 Statute 17-23-175 lays out the criteria for admitting
8 that video, and there are certain parts of that statute that
9 we have to fulfill once the trial begins. However, one of
10 those subparts is that the Court has to find in a hearing
11 outside the presence of the jury that the totality of the
12 circumstances surrounding the making of the statement
13 provides, quote, "particularized guarantees of
14 trustworthiness."

15 And so it would be the State's intention at this time to
16 proffer some testimony that would go towards that and then
17 leave the forensic interview with Your Honor to review before
18 we move to admit it, and then, when we move to admit it at
19 trial, at that point, Your Honor can make a finding as to
20 whether or not we've satisfied the statute. But we just
21 wanted to conduct that outside the presence hearing at this
22 point.

23 THE COURT: Okay. Call your first witness.

24 MS. HAMMACK: The State calls Kim Sawyer.

25

1 KIMBERLY SAWYER (PROFFERED)

2 after having been duly sworn, was examined and testified
3 to as follows:

4 THE CLERK: Please have a seat in the witness box. State
5 your full name for the Court, spelling your last.

6 THE WITNESS: Kimberly Sawyer. S-a-w-y-e-r.

7 THE COURT: Your witness.

8 MS. HAMMACK: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. HAMMACK:

11 Q Ms. Sawyer, did you have a chance to conduct a forensic
12 interview on Blysse O [REDACTED] in February of 2018?

13 A I did.

14 Q And where did you conduct that interview?

15 A At the Child Advocacy Center of Aiken County.

16 Q And did you conduct that interview on February 19th,
17 2018?

18 A Yes.

19 Q When you conducted that interview, what were you doing
20 for a living?

21 A I was the lead forensic interview specialist and the
22 multidisciplinary team coordinator.

23 Q At the Child Advocacy Center?

24 A Yes.

25 Q And how long had you been doing that?

1 THE COURT: You need to speak a little bit louder for our
2 interpreter, please. I can hear you.

3 THE INTERPRETER: And, Your Honor, would Your Honor be so
4 kind as to tell the witness just to speak a little bit more
5 slowly than that for the interpreter.

6 THE COURT: You got it. More cowbell, but slower.

7 A Ms. Hammack, what was your last question?

8 THE COURT: Just pick one.

9 BY MS. HAMMACK:

10 Q I think I asked you what you were doing at the time
11 professionally.

12 A I was the forensic interview specialist and
13 multidisciplinary team coordinator at the Child Advocacy
14 Center in Aiken.

15 Q And as a forensic interview specialist, did you have to
16 undergo training in order to be able to interview children?

17 A I did. I completed a 40-hour classroom and practical
18 training in 2009, and then, from there, completed more
19 advanced training and continuing hours and peer review
20 quarterly with the region, a yearly state peer review, and
21 bi-monthly peer review with the Augusta Child Advocacy Center.

22 Q And, in February of 2018, do you have any idea of
23 approximately how many forensic interviews you had conducted?

24 A Probably between 1500 and 2000.

25 Q And when you interviewed Blysse O [REDACTED] as part of this

1 case, was that at the request of law enforcement?

2 **A** It was.

3 **Q** And, when you interviewed her, did you do anything in
4 order to memorialize the interview?

5 **A** All interviews are audio- and video-recorded.

6 **Q** Well, I'm not going to have you go through all of your
7 training and what is entailed in your training, but,
8 specifically, are you trained on how to ask children
9 questions?

10 **A** The Child First training includes training on child
11 development, question composition, dynamics of abuse,
12 developmentally appropriate questions, suggestibility, and
13 cultural competency, among other things.

14 **Q** And when you say "suggestibility," does the training
15 teach you anything about asking leading questions?

16 **A** It talks about forming questions, starting with a
17 top-down approach, beginning with open-ended, working your way
18 down to more closed-ended questions.

19 **Q** So do you give a child the opportunity to answer
20 questions in his or her own words instead of suggesting an
21 answer to them?

22 **A** Correct.

23 **Q** And at the time that you interviewed Blysse, was she
24 under the age of 12?

25 **A** She was. She was six, I believe.

1 MS. HAMMACK: Your Honor, at this time, I don't have any
2 more questions for this witness for purposes of this hearing.

3 THE COURT: Okay. Cross-examination?

4 MR. McKELLAR: No questions, Your Honor.

5 THE COURT: Okay. Can I -- may I be candid? She has not
6 identified any particular video. As I understand it, you want
7 me to look at one?

8 MS. HAMMACK: Your Honor, I do have one for you. I can
9 enter it through her as a Court's exhibit for purposes of this
10 hearing. What she has reviewed was on a disk, and it's my
11 understanding that you need it on a thumb drive. Because
12 we've been in court, she hasn't had a chance to view the thumb
13 drive, but she has viewed the disk. So I can enter that
14 through her or I can proffer it for Your Honor's review. I
15 don't know if you actually want it as a Court's exhibit.

16 THE COURT: Oh, yes, it's got to be a Court's exhibit,
17 particularly if there are two different platforms.

18 Here's what I'm going to ask you to do. How many of the
19 thumb drives do you have?

20 MS. HAMMACK: I have one.

21 THE COURT: And do you have the ability to duplicate that
22 one?

23 MS. HAMMACK: I do.

24 THE COURT: Wonderful. This is what I would like to do
25 is I'd like you to provide the thumb drive that -- a duplicate

1 of the thumb drive that I'm going to be looking at. If you
2 could provide that, please, to Mr. McKellar.

3 Mr. McKellar, I'm confident you are familiar with the
4 disk?

5 MR. MCKELLAR: I am familiar with the video, yes, Your
6 Honor.

7 THE COURT: The video. And I just -- if you have it --
8 you obviously did it, and if you have it that you can do a
9 comparison, and if there's not -- if it isn't identical, let
10 me know, then I think that we've covered the bases that need
11 to be covered, and our record will be clear that what I'm
12 reviewing is what I'm supposed to be reviewing.

13 And I'll ask -- obviously, this is a representation of
14 council that you've actually done that work, and she will
15 identify either the disk or the thumb drive at trial.

16 MS. HAMMACK: I can hand her the disk to her now that
17 she's reviewed, and then have Mr. McKellar review the thumb
18 drive to make sure that it is a duplicate of that disk.

19 THE COURT: Yeah.

20 MS. HAMMACK: I just put this on here since y'all
21 couldn't play this.

22 THE COURT: I know you did, and I think that our record
23 should absolutely reflect that, prior to our new laptops
24 provided by the State, that we had the ability to review
25 disks, but we don't any longer. Hence -- the problem is me,

1 not y'all but me.

2 And so what I'm struggling with is how to get the
3 appropriate record for a situation that is created by me.

4 MS. HAMMACK: Well, what I can do, Your Honor, is I can
5 enter the disk and provide a player to the Court, and then we
6 don't have to deal with the duplication of the thumb drive.

7 THE COURT: You best give it to me, and then, tomorrow, I
8 will review -- I will tell you that I will have reviewed all
9 that I can. The only reason that I say that is that sometimes
10 our laptops are happy in some things and not in others. We
11 are getting provided new ones, and I just don't have a new
12 one, and I'm not -- I don't want to slow you guys down, so
13 just let me have both. Let's enter the disk. Let's let
14 Mr. McKellar have the thumb drive. He knows the video. He
15 can do the comparison, and, that way, our record should be
16 clean.

17 MS. HAMMACK: Absolutely, Your Honor.

18 It's all good. Well, let me have those.

19 THE COURT: And y'all, the two of you -- three of you
20 need to walk this way.

21 UNIDENTIFIED SPEAKER: May I go on the record, Your
22 Honor?

23 THE COURT: Very -- are you ready to go? No.

24 UNIDENTIFIED SPEAKER: Oh, I'm sorry. I thought we were
25 on pause over there.

1 THE COURT: No. Ms. Davis is going to throw something at
2 me. Hold on.

3 BY MS. HAMMACK:

4 Q Ms. Sawyer, I'm showing you what's been premarked as
5 Court's Exhibit 1 for purposes of this hearing. Do you
6 recognize it?

7 A Yes.

8 Q What is it?

9 A It is the DVD of the interview I did with Blysse.

10 Q And how do you recognize it?

11 A Because I put my initials on it.

12 Q And did you put your initials on that disk after having a
13 chance to view its contents?

14 A I did.

15 Q And it is a recording that you made of the forensic
16 interview of Blysse that you conducted?

17 A Correct.

18 MS. HAMMACK: Your Honor, at this time, we would move
19 Court's Exhibit 1 into evidence for this hearing.

20 MR. McKELLAR: No objections.

21 THE COURT: Very well. Now, that's what -- I'm going to
22 take the thumb drive. And if you have a copy of the disk, let
23 me have both.

24 MS. HAMMACK: Yes.

25 THE COURT: Okay, great.

1 MS. HAMMACK: We're duplicating the thumb drive. At this
2 time, we'll provide one for the Court and one to defense
3 counsel, and that should include the testimony elicited for
4 this hearing, and we'll do the rest during the trial, unless
5 Your Honor needs anything else at this time.

6 THE COURT: Thank you. Sounds great. Thank you. All
7 right.

8 MR. McKELLAR: Thank you.

9 THE COURT: Thank you.

10 Now, with regards to -- yes, with regard to
11 Mr. Rodriguez, have you been able to reach out to the bonds
12 person?

13 MR. McKELLAR: I have not yet.

14 THE COURT: Okay. Well, I'm -- I'm not -- we will
15 consider -- we'll have an issue tomorrow --

16 MR. McKELLEAR: Yes, Your Honor.

17 THE COURT: -- once the jury is sworn that Mr. Rodriguez,
18 as I understand it, you're on an ankle monitor. If you do not
19 appear tomorrow, we will go forward. Do you understand?

20 INTERPRETER CRIMINGER: Your Honor, may the interpreter
21 ask the repetition of the last sentence?

22 THE COURT: We will be going forward.

23 THE DEFENDANT: I'm going to be here tomorrow.

24 THE COURT: All right.

25 MR. McKELLAR: Thank you, Your Honor.

1 THE COURT: Okay. We'll deal with that issue tomorrow.

2 MS. HAMMACK: Thank you, Judge.

3 THE COURT: Thank you, and thank you. And I will see
4 you-all -- I'm going to be here about 9:15 because I need to
5 put this a preliminary ruling probably on the record or let
6 you-all know that there is or isn't a problem with what I've
7 reviewed tonight. Fair enough?

8 MS. HAMMACK: Yes, Your Honor.

9 MR. MCKELLAR: Thank you.

10 THE COURT: All right. We'll see you about 9:15.

11 MR. MCKELLAR: Thank you.

12 (At 4:47 p.m., the above hearing concluded until
13 October 18, 2022, at 9:30 a.m.)

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OCTOBER 18, 2022 - TRIAL DAY 2

THE COURT: Good morning. Good morning, everyone.
Please be seated. And I sure hope everybody had a pleasant evening.

Now, good morning, good morning. Now, I did have an opportunity to review the tape actually several times last evening, and I wanted to go through the statute and just put my determination on the record, because I've had an opportunity to review it.

Now, let me say that my determination is made pursuant to the rule of evidence for conditional admissibility, because, obviously, the alleged victim would have to testify, and there would have to be a continuing determination, for example, that the statement was given in response to questioning conducted through an investigative interview of the child. Obviously, there's an audio and visual recording of the statements. It is preserved. That, obviously, is conditional because the child must testify and be subject to cross-examination.

And No. 4 is really what I'm addressing. The Court finds, in a hearing conducted outside the presence of the jury, that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness. In determining whether a statement possesses particularized guarantees of trustworthiness, the Court may consider, but is not limited to, whether the statement was

1 elicited by leading questions; whether the interviewer has
2 been trained in conducting the investigative interview -- she
3 testified about that yesterday; whether that -- meaning her
4 qualifications and her training, whether the statement
5 represents a detailed account of the alleged offense; whether
6 the statement has internal coherence; and it says sworn
7 testimony of any participant which may be determined as
8 necessary by the Court. I don't find that at this point -- at
9 this time necessary.

10 Now, the alleged victim certainly was coherent. She was
11 six years old at the time of the interview, and I found her to
12 be quite articulate.

13 I had some concern because of two things, really. First
14 thing is the interviewer, in asking her questions -- at one
15 point said, in asking her about something else said, "Now,
16 when the defendant pulled your pants down." She did not say
17 that, and she was very clear that he did not pull her pants
18 down; that he, allegedly, told her to pull her pants down.
19 And she was consistent with that. And so she was very clear
20 about what she said occurred to her.

21 She -- in terms of time and place, she was quite clear.
22 She was clear that she was five years old. One of the matters
23 that I think gave the particularized guarantee of
24 trustworthiness, she wasn't going to vary, even though the --
25 as the questions were asked, the investigative questions were

1 clearly trying to get the parameters of what had occurred.
2 And she would, if you will, bump up a little bit on what she
3 had said to make sure that was the extent of what had
4 occurred. And she was real clear.

5 She -- for example, she said that the events that
6 occurred were multiple and they always happened in the bed --
7 a particular bedroom; that no one else was present. And she
8 was consistent about what had occurred. At one point, she is
9 describing some touching on her back, and the interviewer
10 asked did the defendant stroke her beyond her back, obviously
11 asking her whether or not his hands had touched her buttocks.
12 And she was real clear: No.

13 And she was very clear at how she had been touched. She
14 was very consistent about what she said had occurred to her.
15 So the concern -- the first concern that I had was that the
16 interviewer made the comment that he had pulled her pants
17 down, and that is not what she said. She didn't vary. She
18 did not change. She was very consistent with her statement
19 that he had told her to pull her pants down.

20 And the other -- it is interesting. It's just
21 interesting. She had a -- she talked about -- and I forgot
22 what the term was. As we all know, children oftentimes will
23 have names that are not anatomically correct names. And she
24 had a name that she called her vaginal area, but she also knew
25 that that area was called her vagina. I found that

1 interesting for a six-year-old. But when asked -- the
2 investigator asked, "What do you want to call that area?" And
3 she said, "I want to call it vaginal -- vagina." And she was
4 consistent in calling it that throughout the interview.

5 So I really did find that there were particularized
6 guarantees of trustworthiness. Her body language, I thought,
7 was consistent with what I have observed, in having been lucky
8 enough to have this position for 25 years, with children who
9 are talking about sexual contact, just the level of
10 embarrassment and depictions of what I would call to be a lack
11 of comfort. And that could it be something else? Of course.
12 I am a J.D., not an M.D. or a Ph.D. But just based on that
13 observation, I did find this young lady, this child, this
14 six-year-old, to be very articulate for a six-year-old.

15 And so I'm -- I share that with you based on my
16 investigation pursuant to the statute. Assuming that the
17 other parts of the statute are met, I would have no objection
18 to the admissibility at this point. It would certainly be
19 conditionally made.

20 And just for our purposes, the statute that I am
21 referring to, of course, is 17-23-175.

22 All right. And anything further and are we ready to
23 bring in the jury?

24 THE CLERK: The interpreter, do I need to swear her in?

25 THE COURT: You sure do.

1 We have a new interpreter.

2 THE INTERPRETER: Good morning.

3 THE COURT: If you'll come forward, please, be sworn.

4 (The interpreter was duly sworn.)

5 THE COURT: Thank you so much. And if you would state
6 your full name for our record and spell your last name.

7 INTERPRETER HUNT: Yes. Britt, B-r-i-t-t. Last name,
8 Hunt, H-u-n-t.

9 THE COURT: Thank you so much for being with us,
10 Mr. Hunt. And we have we have some signals.

11 Have you been over with Mr. Hunt our signals?

12 THE CLERK: I have not had a chance to do that, Your
13 Honor, but I'll be happy to do that now, if you'd like.

14 THE COURT: That'd be great.

15 INTERPRETER HUNT: Thank you, Your Honor.

16 THE COURT: And we'll just review -- wait a minute now.

17 THE CLERK: If anyone's going too fast, we'd like you to
18 stand up, and lower your hand like this so that Your Honor
19 will gratefully and kindly instruct them speak more slowly for
20 the benefit of the interpreter.

21 THE COURT: And if you're having trouble hearing, same
22 thing. Just stand up. And if you need something to be
23 repeated, don't be shy. Stand up and say -- we have a phrase.
24 You have a phrase.

25 THE CLERK: "Do you mind repeating, Your Honor?" or

1 "Would Your Honor be so kind as to ask the witness to repeat
2 for the benefit of the interpreter?"

3 THE COURT: In other words, we try to limit the audience
4 participation, but you are not considered to be in the
5 audience. You have to make an accurate interpretation,
6 because we must have an accurate record. So don't be shy.
7 Don't you struggle. You let us help make sure our record is
8 complete.

9 INTERPRETER HUNT: Thank you, Your Honor.

10 THE COURT: Thank you for being here. Thank you.

11 All right. Anything further before you bring the jury
12 out?

13 MS. HAMMACK: Nothing from the State, Your Honor.

14 MR. McKELLAR: Nothing from the defense.

15 THE COURT: Now, one of the things we talked about
16 yesterday, we talked about -- and I know you haven't had a
17 chance probably to contact Mr. Rodriguez, his bonds person,
18 but I am going to ask -- I will try to remind you guys to do
19 that today so we can make a determination about whether he can
20 remain out on bond during these proceedings.

21 MR. McKELLAR: I have, Your Honor, last night. The
22 bondsman informed me they are not willing to stay on the bond.

23 THE COURT: Okay. All right. Very well.

24 All right. We need to -- all right. Very well. Without
25 that, he's going to have to be taken into custody unless you

1 can find another bonds person over the course of the day. But
2 I'll certainly give you that opportunity.

3 All right. Ready? Ready? Wonderful.

4 (The jury entered the courtroom at 10:01 a.m.)

5 THE COURT: Good morning, ladies and gentlemen. We got
6 one more -- you know how I can tell? Because we've got a
7 chair left. No problem. No problem at all. I almost felt
8 like we needed to have music: Ta-da.

9 Good morning, ladies and gentlemen. And I apologize for
10 keeping you in your jury room this morning for a little bit.
11 There were some matters that we needed to attend to, so I
12 thank you so much for your patience.

13 At this time, I am going to ask that you please stand and
14 raise your right hand and be sworn in as the jury in this
15 case.

16 (The jury was duly sworn.)

17 JURY VOIR DIRE

18 THE COURT: And was there anyone who did not take the
19 oath? If so, please stand.

20 And I find no one is standing.

21 Now, ladies and gentlemen, I have some preliminary
22 remarks that I want to make to you, and I want to be 100
23 percent candid and tell you that the reason that I'm making
24 these remarks to you -- and my goal is to give you a roadmap
25 to the proceedings and to talk to you a little bit about some

1 of the things that will be occurring. Why is it that I'm
2 doing that? Because, in my experience, jurors, if you know
3 what's going to be happening, if you sort of have a framework,
4 a roadmap, a framework of the trial, it's almost like your
5 mind can sort of rest a little bit, and it makes it easier to
6 focus on what you are hearing. So that's the reason that I'm
7 going to be going over with you what's called the preliminary
8 charge or the preliminary instructions. And then I want to
9 talk to you a little bit about some other procedural matters,
10 so you'll know what's going on.

11 Now, ladies and gentlemen, you know, at this point, that
12 the case that we are about to try is the case of the State of
13 South Carolina versus Mr. Pedro Cervantes Rodriguez. And
14 there are two indictments, as we talked yesterday. One
15 indictment is for criminal sexual conduct with a minor in the
16 third degree, and the other indictment is criminal sexual
17 conduct with a minor in the first degree.

18 Ladies and gentlemen, I want to tell you and hasten to
19 say that two of these indictments and the allegations
20 contained in these indictments, Mr. Rodriguez has pled not
21 guilty, and that places the burden of proof on the State to
22 prove each and every allegation of each of these indictments
23 beyond a reasonable doubt, and it will be your duty to
24 determine whether the State has met its burden of proof.

25 Now, ladies and gentlemen, the elements of these charges,

1 I will explain to you later. What my instruction is intended
2 to do to is to really lay that framework for you. When I give
3 you the concluding charge on the law, I will explain to you
4 these charges and set out for you the elements of each of
5 these charges.

6 And, now, one of the things that the jurors ponder is the
7 taking of notes. The taking of notes. And I want to talk to
8 you about that, because there is a debate that is ongoing, and
9 it has been ongoing for my entire tenure on the bench. And
10 here's the debate. The concern about the taking of notes is
11 that a juror can miss something as they're taking a note. The
12 other concern about note-taking is that, during deliberations,
13 if one juror has a note and another juror doesn't have a note,
14 there can be an undue amount of influence placed upon the
15 note. And, obviously, the argument, as this debate rages, the
16 argument towards the taking of notes is that it allows a juror
17 to refresh his or her memory, to allow that memory to be
18 refreshed prior to deliberations.

19 I'm going to be absolutely candid and tell you I think
20 that both sides of this debate are so strong and that it is a
21 difficult -- it's a difficult decision for me to make. And,
22 in this case, given what I contemplate through the duration of
23 this matter, I am going to ask that you not take notes.

24 When cases are going to extend beyond a week, I'm a big
25 advocate for jurors being able to take notes, but when they're

1 expected to be a week or shortly less than that, then I'm
2 typically an advocate for jurors not taking notes.

3 Now, I made a comment about the anticipated duration of
4 this trial, and it's very important to understand that I, in
5 no way, demean this matter. It is of the utmost importance
6 for these parties and to our system. I just want you to
7 understand my instruction to pay attention, to not let your
8 thoughts wander, but to give the strictest attention to these
9 matters and not take notes. I want you to understand the why
10 part of that.

11 Now, ladies and gentlemen, just to really come full
12 circle about the indictment, as we talked yesterday, an
13 indictment is simply a piece of paper. It's a notice
14 document, and it isn't evidence of any of the allegations that
15 it contains.

16 Mr. Rodriguez has pled not guilty to each -- to both of
17 these indictments, and the State, of course, has the burden of
18 proof to prove each allegation of each of these indictments
19 beyond a reasonable doubt, and it is your duty to determine if
20 the State has met that burden.

21 Now, in order to determine whether the State has met its
22 burden of proof, you necessarily will determine the facts in
23 this case. You're the judges of the facts. You are the sole,
24 the only determiner of the facts in this case. I'm going to
25 ask you right now, if I say or do anything throughout the

1 course of this trial that you think is some sort of indication
2 or comment regarding the facts, I'm going to ask you right now
3 to please disregard that, because I don't have an opinion
4 regarding these facts. The law doesn't allow me to have an
5 opinion regarding the facts. That is a matter solely, only,
6 totally, completely within your purview, and it will be your
7 duty to determine the facts.

8 A trial judge cannot intimate, comment on, or make any
9 indication to a trial jury regarding the facts. I don't have
10 an opinion regarding these facts. And, so, if I do or say
11 anything that you think might be an indication regarding the
12 facts, I'm going to ask you to right now please disregard
13 that, because I don't have an opinion regarding these facts.
14 That is solely for you to determine.

15 Now, how are you to do that? How are you to determine
16 the facts? Well, you will determine the facts from the
17 testimony that you hear and from the other evidence which is
18 introduced into court. It is up to you to determine what, if
19 any, inferences you feel may be properly drawn from the
20 evidence. It is especially important that you perform your
21 duty of determining the facts conscientiously, because under
22 our system of justice, ordinarily, there is no way to correct
23 an erroneous determination of the facts by a trial jury. The
24 facts as determined by you will be the facts for all time.

25 On the other hand, and with equal emphasis, the same law

1 that makes you the judges of the facts makes me the judge of
2 the law. The law, as given by the Court, by me, is the only
3 law that you may consider. You must accept and follow the law
4 exactly as I state it to you. I cannot tell you what the
5 facts are, and you cannot disagree with me about what the law
6 is or what it ought to be. Your job is to take the law as I
7 give it to you. You apply that law to the facts as you find
8 them to be. And, after doing that, you will render your
9 verdict, a decision unanimously determining whether the State
10 has met its burden of proof under the solemn oath that you
11 just took as jurors.

12 Now, what I tell jurors is that you must follow the law
13 as I give it to you even if you disagree with it, and what I
14 tell them, to, hopefully, anyone that disagrees, to give you
15 peace, after this trial is over, you might want to talk to
16 your legislator. But for our system to work correctly, you
17 must accept and apply the law as I state it to you.

18 Now, until I advise you to begin your deliberations, you
19 must not discuss this case with anyone, including your fellow
20 jurors, your friends, your family, or anyone involved in the
21 case. This includes discussions face-to-face and those values
22 by telephone, email, text, blogs, or any other methods of
23 communication. You must not use a computer, cellular phone,
24 or other electronic device with communication capabilities at
25 any time while in the courtroom or during deliberations.

1 During your breaks for meals or overnight, if necessary,
2 you may use these devices; however, you may not at any time
3 use these devices to get or send information about the case.
4 This includes information about a party, a witness, an
5 attorney, a court officer, news accounts that may be about the
6 case, research on any topics raised, any topics you may think
7 would be helpful in deciding the case. We need testimony
8 presented by any witness. In other words, you must receive
9 all of the information from which you will make up your case
10 here in court while court is in session.

11 During the trial, do not read, listen to, or watch any
12 news reports about this case. This includes anything that may
13 be in newspaper, radio, television, or the internet. You must
14 not consider anything that you may have read or heard about
15 the case outside the courtroom.

16 Now, after the case is submitted to you, meaning, at the
17 conclusion of the trial when you have retired to consider your
18 verdict, you must discuss it only in the jury room with your
19 fellow jurors. Now, there will be no question in your mind
20 when that time has come, because I'm going to specifically
21 tell you, "Now is the time for you to begin your
22 deliberations." And do not worry about having to figure that
23 out. I'm going to tell you when that time has come.

24 I want to also mention to you that, because you will be
25 coming and going from the courthouse and, obviously, these

1 folks are going to come and go from the courthouse, if you
2 happen to see anyone who has anything to do with this case --
3 the attorneys or the witnesses or the parties -- and you see
4 them and they seem to shirk away from you, I want you to
5 understand that they are not being rude. They just are
6 following my instruction, because these folks know that they
7 are not to interact with you at all. In fact, over the course
8 of this trial, should anyone try to contact you or talk to you
9 about this case, I'm going to ask you to please get their
10 name. If you can't get their name, get a description. Please
11 report that to me upon your return, because I'll certainly
12 deal with that individual, because that would be highly
13 inappropriate.

14 Now, it is so important -- I will tell you that it is
15 critical that you keep an open mind and that you not make up
16 your mind about anything until you have heard everything.

17 Now, ladies and gentlemen, it is your solemn
18 responsibility to determine whether the State has met its
19 burden of proof and so indicate by finding the defendant
20 either guilty or not guilty. Your verdict must be based
21 solely on the evidence as it is presented to you in this trial
22 and on the law as I instruct during and at the close of the
23 trial.

24 Now, I want to talk about how we're going to be
25 proceeding. In just a moment, one of the solicitors involved

1 in this case is going to make what is called an opening
2 statement, which will be followed by one of the attorneys for
3 Mr. Rodriguez, who will also have an opportunity to make an
4 opening statement to you.

5 What are opening statements? Well, I want to tell you
6 what they are and what they are not. It is an opportunity for
7 the attorneys to discuss with you what they believe the issues
8 are in this case. What an opening statement is not are true
9 arguments. Those true arguments will come at the conclusion
10 of the case.

11 Once the opening statements have been given, then each
12 side will then have an opportunity to present evidence to you,
13 which will be sworn testimony. It could be documents and the
14 like. It is so important that you pay the closest attention
15 to the evidence that is presented in this case.

16 The State will go first, and then the defendant certainly
17 does not have to present any evidence to you because the
18 burden is and remains on the State to prove guilt beyond a
19 reasonable doubt. But should the defendant wish, this
20 defendant will have an opportunity to present evidence but is
21 not obligated in any way to do that. The burden remains on
22 the State to prove guilt beyond a reasonable doubt.

23 Now, there is another part of this process I want to talk
24 to you about, because I think it's important that you
25 understand it. These attorneys have an obligation under what

1 is called the rules of evidence to call a possible violation
2 of these rules to my attention. And that is their duty. The
3 rules of evidence govern the manner in which evidence is
4 presented. Whether evidence is admissible at all or not, that
5 is a matter of law. Once evidence is admitted, the weight you
6 give to it, whether you find that evidence to be credible, any
7 inferences you draw from it, those are matters solely for you
8 to determine, but the method in which evidence is presented is
9 governed by what are called the rules of evidence.

10 These lawyers have that obligation to call possible
11 violation of these rules to my attention. How are they going
12 to do that? Well, they will stand and say, "Objection." And
13 that indicates to me that they believe that there is a
14 possible violation of the rules of evidence, and that's going
15 to be dealt with in one of three ways. They will stand and,
16 in a word or two only, tell me the basis for the objection.
17 For example, "Objection. Hearsay." And then I'll rule on the
18 objection.

19 If I sustain the objection, what that means is that bit
20 of evidence cannot be presented and cannot be received as it's
21 being presented and that that evidence presented in that
22 fashion is inadmissible, cannot be received. If I overrule
23 the objection, that means I don't believe that there's a
24 violation of the rules of evidence, and that bit of evidence
25 can be presented in the method in which it is being offered.

1 Now, it may be that I need to have the lawyers approach.
2 Do we have the white noise? No? That's okay. And what will
3 happen is that I will ask the lawyers to approach, and I
4 absolutely don't want you to hear what we're talking about.
5 And the reason that I'll do that is because I can't make a
6 comment on the rules on what you're hearing and on the facts.
7 I might need to have a word or two with the attorneys in
8 ruling on the admissibility of evidence, and I don't want
9 anything that I might say to be interpreted by you as being a
10 comment on the facts, which is why I'll ask them to approach.

11 Sometimes I may need to ask you to step briefly to your
12 jury room, and that's just so that I can hear and have a
13 little more discussion with the attorneys to help me rule on
14 the admissibility of the evidence, and, again, it's to let me
15 do what I must do without being perceived as making a comment
16 on the facts. That's what's happening when that occurs.

17 Now, once the evidence has been presented to you, then,
18 the attorneys will have an opportunity to make their closing
19 arguments to you. And those are true arguments, which means
20 that both sides, no doubt, will emphasize certain portions of
21 the evidence and try to convince you to agree with their
22 version of the facts.

23 Now, I want to tell you this. I want you to understand
24 that what these attorneys say is so important. Please give
25 them your undivided attention, but please understand that what

1 the attorneys say is not evidence. The evidence will come
2 from sworn testimony and from exhibits which are admitted into
3 evidence. But I do want you to give them your undivided
4 attention, because what they say is so important.

5 Now, once the closing arguments are finished, then I'll
6 explain to you the law which is applicable to this case.
7 After that, you will retire to your jury room for
8 deliberations. I will instruct you when that time has come,
9 and you will make the findings of fact based upon the evidence
10 presented and you will then take the law as I give it to you
11 and apply it to those facts, and that is how you will reach
12 your verdict.

13 Now, ladies and gentlemen, in order to preserve
14 everyone's rights, it is necessary that I ask these attorneys
15 if they have any additions or exceptions to my preliminary
16 remarks to you.

17 From the State?

18 MS. HAMMACK: Not from State, Your Honor.

19 THE COURT: From the defense?

20 MR. McKELLAR: Nothing from the defense, Your Honor.

21 THE COURT: Ladies and gentlemen, at this time, I'm going
22 to ask that you please draw close as we listen to the opening
23 statements.

24 MS. MONROE: May it please the Court?

25 THE COURT: Yes.

1 OPENING STATEMENT ON BEHALF OF THE STATE

2 BY MS. MONROE: Members of the jury, this case is between
3 family. Their family. That is one of the biggest reasons
4 that Derrick and Rain Cardenas trusted the defendant and his
5 wife with the very thing that matters most to them: Their
6 child.

7 Between her fifth birthday and her sixth birthday, Blysse
8 C [REDACTED] was sexually assaulted by that man. He took her into
9 the back bedroom of his house, told her to pull down her
10 pants, performed oral sex on her, and it didn't happen just
11 once.

12 Members of the jury, you're going to learn today that the
13 defendant's wife, Ms. Fran, was Blysse's babysitter. From
14 about the time that she was a baby up until she went to
15 kindergarten, she spent every day at the defendant's house,
16 five days a week. By the time she started kindergarten, it
17 became more so an after school care. She was still there
18 every day, five days a week.

19 So she was around the defendant a lot. She was around
20 the defendant a lot.

21 Fast forward to 2017. She was in kindergarten at the
22 time, and one night, she's at home with her mom and dad, just
23 sitting on the couch, you know, watching a movie, and she
24 tells her dad -- she asked her dad to pinch her back. What
25 you're going to learn is something that is pretty typical for

1 Blysse. That's something that she's loved ever since she was
2 a baby. It's something that would put her to sleep.

3 So he didn't think anything of it. He started to pinch
4 her back outside of her shirt, and she looks at him and she
5 says, "No, Dad, do it under my shirt. Do it like Pedro does."

6 That stopped him in his tracks. He starts to question
7 her and tries, you know, to figure out what the heck that
8 means. And that's when she comes clean. That's when she
9 tells him everything that happened to her and who did it. And
10 that's how we get to where we are standing today.

11 Now, in South Carolina, we call sexual assault criminal
12 sexual conduct. It means the same thing. But when it
13 involves a child, it becomes criminal sexual conduct with a
14 minor. There are multiple degrees of it, but in this case,
15 the defendant is charged with criminal sexual conduct with a
16 minor in the first degree and criminal sexual conduct with a
17 minor in the third degree. And the judge is going to give you
18 a really detailed instruction. She's just going to give you
19 way more detail than I am about what that means, but I do want
20 to break it down just briefly and try to simplify it for you
21 so you have an understanding of what you need to be looking
22 for as you're listening to the testimony.

23 Criminal sexual contact with a minor in the first degree
24 requires sexual battery in a child under the age of 11, and,
25 in this case, when we talk about sexual battery, we're talking

1 about oral sex. Criminal sexual contact with a minor in the
2 third degree is a little bit more complicated -- just bear
3 with me for a second -- but the law says that it requires an
4 actor to make a lewd or lascivious act upon the body part of a
5 child under the age of 16 with the intent of arousing,
6 appealing to, or ratifying the sexual desire of either the
7 actor or the child. And, basically, that's lawyer talk for
8 fondling. So, really, the biggest difference between first
9 degree and third degree is that, when we talk about the first
10 degree in this case, we're talking about oral sex. When we
11 talk about the third degree in this case, we're talking about
12 fondling.

13 Now, in the State of South Carolina, we have a burden
14 that we have to meet. We can't just convict somebody of a
15 crime because we think they did it. We can't convict somebody
16 of a crime because there's suspicious evidence that they did
17 it. The law says that we have to prove every element of every
18 crime charged beyond a reasonable doubt.

19 Members of the jury, that does not mean that you cannot
20 have any doubt. It simply means that you have to be firmly
21 convinced that these crimes were committed and that they were
22 committed by that defendant.

23 And we're going to prove it to you. You're going to get
24 to hear from Blyse's dad, Derrick. He's sitting right over
25 there. Derrick is going to give you some context as to the

1 relationship between his family and the defendant's family.
2 You're actually going to hear that the defendant was a part of
3 this family from way before Derrick was even born. He's going
4 to explain to you that that's one of the big reasons that they
5 trusted the defendant and his wife with their children, but
6 he's also going to tell you, there was one ground rule and
7 that was that Blysse was never to be alone with anybody other
8 than the defendant's wife, Fran, and her daughter, Myra, and
9 he's going to tell you that that rule was broken.

10 You're also going to get to hear from the investigator in
11 this case as well as somebody that we call a forensic
12 interviewer. And you'll actually learn that, in South
13 Carolina, children are normally not interviewed by the police.
14 They're interviewed by a forensic interviewer, which is just a
15 fancy word for the job child interviewer. It's somebody
16 trained to interview children. And so she'll get to talk to
17 you, and she's going to tell you that she was the one that
18 interviewed Blysse.

19 Then you'll get to meet Blysse, and you'll see Blysse
20 isn't five anymore. She's ten. She's in fifth grade. She
21 loves school. She's a dancer. She loves to dance. And one
22 thing we've learned about her throughout this process is that
23 that girl loves the blue Takis. And that's just not something
24 I can get behind. I don't know if y'all know what Takis is.
25 It's like a rolled up, crispy tortilla chip, and they're

1 spicy. And you open the bag, and it just about knocks you off
2 your feet. I don't get it. I don't get it. She'll probably
3 (indiscernible) blues fingers. She loves them.

4 But she is going to testify, and when she does, I want
5 you to pay really close attention. She's here to tell you her
6 story. She's really the only person that can do that. After
7 you've heard all the testimony, after Blysse has testified,
8 after you've seen all the evidence that we're going to present
9 to you in this case, we are going to come back before you at
10 the end of this trial, and we're going to ask that you find
11 the defendant guilty. Thank you.

12 THE COURT: And thank you.

13 Yes?

14 MR. McKELLAR: Thank you, Your Honor. May it please the
15 Court?

16 THE COURT: Yes, sir.

17 Thank you, Mr. McKellar.

18 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

19 MR. McKELLAR: I'm going to be slow. I apologize. About
20 two months ago, I was jumping over a little fence in my
21 backyard, and I (indiscernible) boogie board.

22 THE INTERPRETER: Would Your Honor be so nice as to ask
23 counsel to speak a little louder?

24 THE COURT: And I know he will. Thank you so much. And
25 if you'll just please start anew.

1 MR. McKELLAR: I will.

2 I broke my ankle a couple months ago. I was jumping over
3 a little fence in the backyard. I landed on the boogie board.
4 It rolled, dislocated. I had surgery. Getting better. I was
5 on two crutches last week. Now, this week, I'm on one crutch.
6 Hopefully, next week I'll be off of them, but I will have to
7 ask for your patience, but it's going to take me a long time
8 to move around the courtroom and to get back and forth to my
9 table. And I appreciate if you'll (indiscernible) -- or
10 indulge. Excuse me.

11 My client today -- my client, the most important person
12 in this room is Pedro Cervantes. He is joined by his wife,
13 Fran. He's joined by his son, Pete; his daughter, Nancy; his
14 daughter, Patricia; his niece, Alondra; and his niece, Andrea.

15 Mr. Cervantes sits here an innocent man. Not only is he
16 presumed to be innocent in the law, it's like this presumption
17 of innocence, it's almost like a cloak of righteousness, but
18 he is innocent. To defend himself, he doesn't have to do
19 anything because he is presumed to be innocent. He doesn't
20 have to get on the stand and testify. He doesn't have to call
21 any witnesses. He cannot lift a finger. And why is that?
22 Because he's presumed innocent. The State has to prove he is
23 guilty beyond a reasonable doubt, which is the highest
24 (indiscernible) burden in the land.

25 They have to call witnesses to come and take the stand

1 and to convince you beyond a reasonable doubt that
2 Mr. Cervantes committed the act he's accused of doing. There
3 will only be a handful of witnesses that the State calls.
4 You're going to hear primarily from the alleged victim,
5 Blysse. She's going to get on the stand, and she'll tell you
6 her version of events.

7 You will also get to see a video of her talking to the
8 child advocacy forensic interviewer. I want you to pay very,
9 very close attention to each statement. She's going to
10 testify first, I anticipate, and then you'll be able to watch
11 the video. Now, I want you to look. What did she say on the
12 stand that she didn't say on the video? What did she say on
13 the video that she didn't say on the stand? This is all going
14 to be very important. And it's all very important because
15 you're not going to hear any evidence regarding things like
16 DNA. You're not going to hear any evidence regarding bodily
17 fluids. You're not going to hear any evidence regarding
18 physical injury to genitalia. You're not going to hear any
19 evidence about sex toys. Sex toys that was alleged to be used
20 and was recovered out of -- at the defendant's house
21 afterwards, or Mr. Cervantes's house. There are no
22 allegations like this.

23 You're not going to hear any evidence of sexually
24 transmitted diseases. The only evidence you're going to hear
25 is one child's tale, and that's it.

1 I want to tell you a little bit about how these two
2 families know each other. They're not blood related, but they
3 are related through marriage, and they have known each other
4 for a very long time. My client's son, Pete Cervantes, was
5 Derrick Cardenas's best friend growing up. They went to high
6 school together and even their fathers went to construction
7 sites together and worked together back in the 1980s and '90s.
8 They worked together.

9 One afternoon or one very early morning, Mr. Cervantes
10 was driving to work with Derrick's dad and was in a car
11 accident. Derrick's dad was killed. I'm not sure exactly how
12 old Derrick was, but he was young, just three, four, or five
13 years old. I'm not sure. He'll have to testify to that.

14 And my client was at fault. It was his fault. He passed
15 a man -- I believe he passed a car in the passing lane and
16 traffic -- and ran into oncoming traffic. And he survived;
17 Derrick's dad died, unfortunately. And Derrick has been
18 without a dad all his life.

19 So, in sum, you're only going to hear from one witness
20 who says anything happened, and you're not going to hear any
21 corroborating evidence. None. And because of that, the State
22 won't have enough to convict, and I'll be asking you to return
23 back a not guilty verdict. Thank you.

24 THE COURT: Thank you.

25 All right. Call your first witness, please.

1 MS. MONROE: The State calls Derrick Cardenas.

2 THE CLERK: Come forward and place your left hand on the
3 Bible and raise your right hand.

4 DERRICK CARDENAS,
5 after having been duly sworn, was examined and testified
6 to as follows:

7 THE CLERK: Have a seat in the witness chair. Watch your
8 step. When you are seated, please state your full name,
9 spelling your last name.

10 THE WITNESS: My name is Derrick Cardenas.
11 C-a-r-d-e-n-a-s.

12 THE COURT: And I'm going to ask you, keep breathing and
13 please give us plenty of volume because our interpreters need
14 to be able to hear you, if you'll be so kind to keep that in
15 your mind.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: And if you are talking all the way to
18 counsel, then I think you'll have plenty of volume. And I
19 thank you.

20 Do you have any water there? I can get you one.

21 THE WITNESS: I'm fine.

22 THE COURT: Thank you so much.

23 All right. Your witness.

24 MS. MONROE: Thank you, Your Honor.
25

1 DIRECT EXAMINATION

2 BY MS. MONROE:

3 Q Derrick, why don't you go ahead and tell the jury where
4 you work.

5 A I'm currently at Plant Mobil (ph) 3 and 4.

6 Q What do you do at Plant Mobil (ph)?

7 A I'm a forklift operator for a warehouse.

8 Q How long have you worked there?

9 A Four years.

10 Q Are you married?

11 A I am.

12 Q What is your wife's name?

13 A Rain Cardenas.

14 Q And how long have y'all been married?

15 A Nine years. Going on ten in November.

16 Q Does she work?

17 A Yes.

18 Q Where does she work?

19 A I'm not quite sure what the name is, but she works for a
20 vein doctor in Augusta.

21 Q A what doctor?

22 A A vein doctor.

23 Q Do you have any kids?

24 A I do.

25 Q How many kids?

- 1 **A** Two.
- 2 **Q** Derrick, do you know Pedro Cervantes?
- 3 **A** I do.
- 4 **Q** How do you know him?
- 5 **A** He's married -- his son is married to my aunt.
- 6 **Q** When did you meet him?
- 7 **A** He was in the family before I was born, so...
- 8 **Q** What is his son's name?
- 9 **A** Pete Cervantes.
- 10 **Q** So that makes this son -- what's your relationship to his
11 son?
- 12 **A** He is my uncle.
- 13 **Q** And that makes the defendant what in relation to you?
- 14 **A** Second uncle.
- 15 **Q** Is the defendant married?
- 16 **A** Yes.
- 17 **Q** Who is he married to?
- 18 **A** Fran.
- 19 **Q** Are you related to Fran?
- 20 **A** Just by marriage.
- 21 **Q** Tell the jury where you grew up.
- 22 **A** My father and mother met in Florida. I was born in
23 Bartow, Florida. I lived there for nine years.
- 24 **Q** Did you live near the defendant and his wife, growing up?
- 25 **A** No, not growing up. I would meet them in the summertimes

1 when I came to visit.

2 Q Did they ever live in Florida?

3 A They did whenever I was born. I'm going to say '80s and
4 '90s.

5 Q You said you lived in Florida for nine years. Where did
6 you go after Florida?

7 A I moved to Indiana with my mother after my dad passed.

8 Q Do you know where the defendant lived while you were in
9 Indiana?

10 A At the time, I believe in Florida.

11 Q And then did you maintain a relationship with the
12 defendant's family after you moved out of Florida?

13 A I would come in the summertimes and visit my dad's side
14 of the family, so they were always around.

15 Q And what point in time would you go and visit? You said
16 during the summer. About how old were you?

17 A All the way through growing up.

18 Q Where do you live now?

19 A I live in North Augusta, South Carolina.

20 Q When did you move to South Carolina?

21 A In 2008, after I graduated high school.

22 Q Where did you live when you first moved here?

23 A I lived with my Uncle Pete in North Augusta.

24 Q When you moved here in 2009, do you know where the
25 defendant and his wife lived?

1 **A** They lived in the same house where the event happened.

2 **Q** What state did they live in?

3 **A** Here in North Augusta.

4 **Q** Have they been in North Augusta ever since, to your
5 knowledge?

6 **A** Yes, ma'am.

7 **Q** Derrick, do you see Pedro Cervantes in the courtroom
8 today?

9 **A** I do.

10 **Q** Do you mind pointing them out by an article of clothing?

11 **A** With the headphones.

12 MS. MONROE: Your Honor, let the record reflect that the
13 witnesses has identified the defendant.

14 THE COURT: Very well.

15 BY MS. MONROE:

16 **Q** Derrick, do you know, Blyse O [REDACTED] ?

17 **A** I do.

18 **Q** And who is she?

19 **A** My daughter.

20 **Q** How old is she today?

21 **A** She's ten.

22 **Q** Tell the jury, where was Blyse born?

23 **A** She was born at University here in Augusta.

24 **Q** Is that Augusta, Georgia?

25 **A** Augusta, Georgia, yes.

1 Q And what is her birthday?

2 A 1 [REDACTED]/12. January [REDACTED], 2020 -- '12.

3 Q 2012?

4 A Yeah. 2012.

5 Q Okay. Where did you live when Blysse was born?

6 A At the time, me and my wife lived in Aiken, South
7 Carolina.

8 Q Did you work full time when Blysse was a baby?

9 A I did.

10 Q Did your wife work full time when Blysse was a baby?

11 A She did.

12 Q What did y'all do about childcare?

13 A At the beginning, we had found a lady in Augusta on the
14 way to my wife's work, and she stayed there for a good eight
15 months.

16 Q What did y'all do after that?

17 A It was recommended by one of my aunts that Fran was a
18 babysitter, and I thought it was a good idea. You know, we
19 knew them, and we decided to take her there.

20 Q How old was Blysse when Fran started babysitting her?

21 A I want to say nine months to a year old.

22 Q Tell the jury why you trusted Fran to watch Blysse.

23 A I mean, I've always known them through, you know, just
24 coming in the summertimes and having family get-togethers.
25 There were, you know, always there. So she was a very sweet

1 lady. And I had just not trusted them -- I trusted them.

2 Both of them.

3 Q I'm sorry?

4 A I trusted Fran and Pedro.

5 Q Derrick, when was the last time that Fran babysat Blysse?

6 A 2017, I believe, in that time.

7 Q How old was Blysse?

8 A Blysse was five. I think she was just about to be six.

9 Q Is Blysse your only child?

10 A No.

11 Q How many other children do you have?

12 A I have a son.

13 Q And how old is he?

14 A He's six.

15 Q Did Fran watch your second child?

16 A She did.

17 Q Where did she babysit them?

18 A At her home. I don't quite know the address, but it's

19 off road of Edgefield Road in North Augusta.

20 Q Is that within Aiken County?

21 A Yes, Aiken County.

22 MS. MONROE: Your Honor, may I approach the witness?

23 THE COURT: Yes.

24 BY MS. MONROE:

25 Q Derrick, I'm handing you what has been previously marked

1 for identification purposes as State's Exhibit 1. Do you
2 recognize that?

3 **A** I do.

4 **Q** Can you tell the jury what it is?

5 **A** It's a picture of the home.

6 **Q** How do you know that?

7 **A** I usually picked Blysse up every day.

8 **Q** Well, let me ask you this: Whose home is it?

9 **A** That is Fran and Pedro's home.

10 **Q** And you know that because you picked them up?

11 **A** Every day.

12 **Q** Has this picture has been altered or changed in any way?

13 **A** No, ma'am.

14 **Q** Is it about the same that -- it looks the same that it
15 did the last time you went there?

16 **A** It does.

17 MS. MONROE: Your Honor, the State moves to enter
18 Exhibit 1 into evidence as State's Exhibit 1.

19 THE COURT: Okay.

20 MR. McKELLAR: No objection, Your Honor.

21 THE COURT: Very well. So entered as State's Exhibit 1
22 in evidence without objection. It is a photograph.

23 (State's Exhibit No. 1, a photograph, was marked for
24 identification and received into evidence.)

25 MS. MONROE: Your Honor, may I publish this to the jury?

1 THE COURT: You certainly may.

2 Now, ladies and gentlemen, let me share with you that if
3 the photograph is handed to you, that's fine to look at.
4 You're going to have it in your jury room for deliberations.
5 The only reason that I'm -- that I want to instruct you is
6 that I do not want you to allow the viewing of the photograph
7 to keep you from being able to listen to the testimony.

8 BY MS. MONROE:

9 Q Now, Derrick, where did you say this home was?

10 A It's off of Edgefield Road in North Augusta.

11 Q And whose house is this?

12 A That is Pedro and Fran Cervantes' home.

13 Q Now, the Pedro that lives at this house, is that the same
14 Pedro that you identified in the courtroom today?

15 A Yes.

16 Q Were your kids the only kids that Fran babysat?

17 A No.

18 Q How many other kids were there?

19 A I believe it was one more little girl and their grandson,
20 I believe. He was the age of -- around the age of Ezra's age.

21 Q Did Fran have any help babysitting Blysse and Ezra?

22 A Most of the time, her daughter, Myra, was there, and her
23 sister was there as well sometimes.

24 Q When did Blysse start kindergarten?

25 A 2017.

1 Q Now, before she started kindergarten, how often would she
2 go to the defendant -- the defendant's house?

3 A Every day.

4 Q Including the weekends?

5 A If it were the weekends, it was with us. Fran usually
6 cooked, and we were invited.

7 Q And who would drop her off in the morning?

8 A Her mother.

9 Q Who would pick her up?

10 A I would.

11 Q And, then, after Blysse started kindergarten, how often
12 did she go to the defendant's house?

13 A She would go after school every day.

14 Q Who would pick her up from school?

15 A Usually Fran would pick her up. I know there's been
16 several times that Pedro has picked her up.

17 Q Would she go before school?

18 A Ask the question again.

19 Q Would she go to Fran and the defendant's house before
20 school?

21 A They would drop my son off first and then go drop her
22 off.

23 Q How long after school does she stay?

24 A A few hours. Sometimes I'd get off a little earlier.

25 So, you know, two to three hours sometimes.

1 Q During the four or five years that Blysse was babysat by
2 Fran, do you know if the defendant worked?

3 A He did.

4 Q Where did he work?

5 A He worked for my Uncle Pete, which is his son, doing
6 masonry work.

7 Q Did he do that for the entire five years?

8 A He did it for a good solid four, and then work started to
9 slow down, and that's when he started being home more.

10 Q How often was he around Blysse?

11 A The last year, I mean, when things started slowing down
12 for my uncle's work, maybe a year to six months more at the
13 house, I believe.

14 Q Did you have any rules with the defendant and Fran?

15 A Yes.

16 Q What were those rules?

17 A The rules were to -- I didn't want her left alone with
18 anyone else besides Fran and her daughter, Myra, or with
19 anybody. I didn't want her to be with anyone besides them two
20 at all times.

21 Q Why not?

22 A You know, you hear about it all the time, that it
23 happens, and that was just something I think every parent
24 would, you know, want for a babysitter to understand.

25 Q Did they break those rules?

1 **A** They did.

2 **Q** Tell the jury about that.

3 **A** I can remember coming home or coming to Fran's house and
4 walking into the living room, and she wouldn't be in there.
5 So, you know, I would ask Fran where she's at, and she would
6 say she's in the back bedroom with Pete watching TV. So I
7 would hurry up back there just to, you know, shorten the time,
8 you know, just to hurry up and kind of get back there. It kind
9 of -- well, it made me upset, and I had confronted Fran about
10 it.

11 MS. MONROE: Your Honor, may I approach the witness?

12 THE COURT: You may.

13 BY MS. MONROE:

14 **Q** I'm handing you what's been previously marked for
15 identification purposes as State's Exhibit 2. What is that?

16 **A** That's Pedro and Fran's room.

17 **Q** And how do you know that?

18 **A** I've walked in and I've known that and I've been
19 throughout the house.

20 **Q** Has it been altered or changed in any way in that photo?

21 **A** No, ma'am.

22 **Q** Is it substantially the same that it was the last time
23 you saw it?

24 **A** Yes.

25 MS. MONROE: Your Honor, the State moves to offer as

1 Exhibit 2 into evidence State's Exhibit 2.

2 THE COURT: Any objection?

3 MR. McKELLAR: No objection, Your Honor.

4 THE COURT: State's Exhibit 2 is admitted into evidence.
5 It is a photograph.

6 (State's Exhibit No. 2, Photograph of Pedro and Fran's
7 Room, was marked for identification and received into
8 evidence.)

9 MS. MONROE: May I publish to the jury, Your Honor?

10 THE COURT: You may.

11 BY MS. MONROE:

12 Q Derrick, whose bedroom is this?

13 A Pedro and Fran Cervantes.

14 Q And how many times did you see Blyse in this back
15 bedroom?

16 A Two occasions, that I can remember.

17 Q And who did you find her with in that back bedroom?

18 A Once with Pedro Cervantes, and once, I came in and she
19 was with their son, Carlos Cervantes.

20 Q Do you know what she was doing back there?

21 A I believe they were, from what I remember, just watching
22 TV at the time.

23 Q And who was she with when she was watching TV?

24 A Pedro Cervantes.

25 Q Were they doing anything else?

1 **A** No, ma'am.

2 **Q** Do you know how long she had been back there?

3 **A** I don't.

4 **Q** Can you give an approximate date of the occasion that you
5 found her back there with the defendant?

6 **A** Maybe 2017 -- in 2017, maybe three or four months before
7 the event.

8 **Q** Do you know if he gave her anything in that back bedroom?

9 **A** They usually were eating fruit. He would feed them fruit
10 or candy.

11 MR. McKELLAR: Objection. Hearsay.

12 THE COURT: If you can lay a proper foundation.
13 Sustained as it is.

14 BY MS. MONROE:

15 **Q** Did you see her eating food in that back bedroom?

16 **A** I don't remember.

17 **Q** Derrick, you can't tell the jury what happened. You
18 can't tell the jury who did it, but did Blysse tell you that
19 somebody touched her inappropriately?

20 **A** She did.

21 **Q** Tell us how this came up.

22 **A** We were sitting in the living room, watching TV, and she
23 was laying across -- she was laying across my lap, and she had
24 told me what happened.

25 **Q** What were you-all doing at the time?

1 **A** We were just watching TV. She wanted me to pinch her
2 back.

3 **Q** Did she say anything to you? Without telling us what it
4 was, did she say anything to you?

5 **A** She did.

6 **Q** What did you do when she told you?

7 **A** I tried to get more information.

8 **Q** Were you able to get more information?

9 **A** I was able to.

10 **Q** What did you do with that information?

11 **A** I told her mother.

12 **Q** And after you told her mother -- are you talking about
13 Rain?

14 **A** Yes, Rain.

15 **Q** After you told Rain, what did y'all do?

16 **A** I had called Fran because I wanted to see exactly what --
17 you know, to let her know that something had happened, and I
18 wanted to find out how.

19 **Q** And what did you do after you called Fran?

20 **A** I met with Fran and Myra at their house to confront 'em.

21 **Q** How long after she told you did you meet with Fran?

22 **A** Repeat the question.

23 **Q** How long after Blysse told you what happened did you meet
24 with Fran?

25 **A** I want to say within an hour and a half.

1 Q And where did you meet with Fran?

2 A I think they were staying with Myra's boyfriend. I think
3 they went and stayed over there. I'm not sure. I know it
4 wasn't the same house.

5 Q What did you do after y'all met with Fran?

6 A We did mention, like, we were going to go to the police,
7 and the next day, we called and made a report.

8 Q How old was Blysse when she told you what happened?

9 A She was five.

10 Q When did she tell you that this happened?

11 A I can't remember the exact date, but maybe a few weeks
12 after it happened. I'm not quite sure.

13 Q She would still have been five at the time?

14 A Yes.

15 Q Where did she tell you this happened?

16 A At my mother-in-law's house.

17 Q And who is your mother?

18 A April Atkins.

19 Q She said this happened at your mother-in-law's house?

20 A Yes.

21 Q And in what room did she say this happened?

22 A She told me when we were in the living room at my
23 mother-in-law's house on the couch while we were watching TV.

24 Q In what room did she tell you the incident occurred?

25 A Oh, I'm sorry. That it happened in Pedro's bedroom.

1 MS. MONROE: I don't have any further questions for you
2 at this time. Please answer any questions that the defense
3 may have.

4 THE COURT: Cross-examination?

5 MR. MCKELLAR: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. MCKELLAR:

9 Q Good morning.

10 A Good morning.

11 Q Were you able to hear my opening to the jury?

12 A I did.

13 Q Did you hear me discuss the car accident?

14 A I did.

15 Q And was I correct in that Mr. Cervantes was driving?

16 A Yes, sir. You were correct.

17 Q Was I correct that your dad died in that accident?

18 A He did die.

19 Q And how old were you at the time?

20 A I was two years old.

21 Q Do you have any memories of your father?

22 A No, sir, I don't.

23 Q Your father and Pete were good friends; right?

24 A Yes, sir.

25 Q You mentioned in your testimony that you didn't want

1 Blysse around any men in the house; is that correct?

2 **A** Yes. Alone.

3 **Q** Alone. And that included Mr. Cervantes?

4 **A** Yes.

5 **Q** And Carlos?

6 **A** Yes.

7 **Q** And Carlos is Mr. Cervantes's son?

8 **A** Youngest son.

9 **Q** But you sent Blysse there anyway?

10 **A** I did.

11 **Q** Even though there are men in the house?

12 **A** At the time, they -- yes.

13 **Q** And you were afraid of Blysse being around any men; is
14 that correct?

15 **A** Of course.

16 **Q** And you were afraid of Blysse being around any men
17 because you learned, leading up to this incident, that your
18 sister was molested; is that right?

19 **A** She was molested.

20 MS. MONROE: Objection. Your Honor, we need to take up
21 the matter outside the presence of the jury.

22 THE COURT: All right. Ladies and -- it's a good time
23 for our morning break. Ladies and gentlemen, please step to
24 your jury room. Do not discuss this matter or allow anyone to
25 discuss it with you. We're going to also use this as our

1 morning break, so we'll probably be about, I don't know, 15
2 minutes.

3 So enjoy your break. Do y'all still have donuts back
4 there? Somebody eat one for me.

5 (The jury exited the courtroom at 11:09 a.m.)

6 THE COURT: Okay.

7 MS. MONROE: Your Honor, we're objecting to the relevance
8 in this testimony. It's not relevant to the case at hand.
9 It's also extremely confusing and inflammatory to go into
10 sexual assault of anybody other than the victim in this case.
11 I think it would confuse the jury as to who -- what sexual
12 assault is at issue. We're talking about the sexual assault
13 of Blysse C [REDACTED]. She's the only victim in this case.

14 And so I would argue that, any testimony outside of that,
15 needs to be excluded under both 401 and 403.

16 THE COURT: And so your objection is relevance; is that
17 correct?

18 MS. MONROE: It is, Your Honor.

19 THE COURT: All right. What matter is of -- that is an
20 issue of does this testimony make it more probable or less
21 probable, Mr. McKellar?

22 MR. MCKELLAR: Well, Your Honor, I'm not sure exactly
23 what he's going to testify to, but I had a line of questioning
24 developed.

25 THE COURT: Okay.

1 MR. MCKELLAR: First off, I believe they opened the door
2 when they asked whether he feared her child being around men.
3 There is an explanation for that, and they didn't ask it, but
4 they did ask the ultimate conclusion. So I think it's
5 relevant to explain why they -- why he has this fear.

6 We also think -- we're not sure, but we believe that he
7 may say he had conversations about the sister's molestation in
8 the house with Rain, and Blysse could have overheard that.
9 This could give Blysse a foundation of knowledge regarding
10 molestation.

11 The jury's going to want to know, "Well, how does this
12 child know all this stuff?" Right? She six years old. She
13 has no business knowing about kissing vaginas. Well, we don't
14 know. Was there conversations at the house about this leading
15 up to the disclosure?

16 These are all questions that we -- I would be asking,
17 Mr. Cardenas.

18 THE COURT: All right. Response?

19 MS. MONROE: Your Honor, the witness did testify that
20 they didn't allow Blysse around any of the men in the house
21 alone, and he did explain why that was to the jury. It had
22 nothing to do with a prior sexual assault of any other member
23 of their family.

24 In addition, he has no knowledge whether Blysse does or
25 does not know that this occurred. I mean, we have no

1 testimony that Blysse has heard any conversations in the house
2 about a prior sexual assault, given her -- you know, a
3 found- -- we don't know that she has that foundation of
4 knowledge, and it's still not relevant to the case.

5 THE COURT: All right. The door was open with regard to
6 why this gentleman would have been fearful for his daughter to
7 have been around men without a supervisor, if you will. So it
8 certainly is relevant with regards to that.

9 And then, once that is answered, then you may -- then my
10 understanding is that you want to go into, "Did you ever have
11 conversations about the events occurring to your sister?
12 Would that have occurred within earshot of your daughter?"
13 Correct?

14 MR. MCKELLAR: Yes, Your Honor.

15 THE COURT: Okay. All right. I'm going to allow it. I
16 think it's legitimate. I think it's relevant, and I will
17 allow that.

18 Now, we're going to take our morning break, and -- yes,
19 sir? You can talk about, like, the Yankees and how they're
20 doing, and you could talk -- you certainly can talk about
21 other matters, but while you're on the witness stand, it's
22 very important that you not discuss your testimony.

23 But you don't have to sit there either. You can take a
24 right and get some water and go -- if you need to take a
25 little comfort break, please feel free to do that as well.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: We're going to take about 10 minutes.

3 MR. McKELLAR: Thank you, Your Honor.

4 MS. MONROE: Thank you, Your Honor.

5 (A brief recess was taken from 11:14 a.m. to 11:37 a.m.)

6 THE COURT: All right. Anything before we bring the jury
7 out? From the State?

8 MS. MONROE: Not from the State, Your Honor.

9 THE COURT: From the defense?

10 MR. McKELLAR: Nothing, Your Honor.

11 THE COURT: And here he comes. Thank you.

12 Let's have the jury, please.

13 THE INTERPRETER: We're having technical difficulties.

14 THE COURT: Oh, hold on. We're having technical
15 difficulties.

16 THE INTERPRETER: Your Honor, we're just adjusting the
17 volume. One second, Your Honor.

18 THE COURT: Sure.

19 (Pause in the proceedings for technical difficulties.)

20 THE COURT: We're ready.

21 (The jury entered the courtroom at 11:42 a.m.)

22 THE COURT: All right, ladies and gentlemen. I hope you
23 enjoyed your morning break. And, at this time, we will
24 continue with the State's case and the cross-examination by
25 the defense.

1 Yes, sir.

2 MR. McKELLAR: Thank you, Your Honor.

3 BY MR. McKELLAR:

4 Q I believe my last question to you was leading up to this
5 disclosure to you by Blysse, did you learn that your sister
6 was molested?

7 A I learned that she was molested.

8 Q And did you ever discuss this with your wife, Rain?

9 A I did.

10 Q Did you discuss it in the house?

11 A Yes. Just with the Rain.

12 Q Blysse was not present?

13 A No.

14 Q Was Blysse ever in the house when you discussed it?

15 A No.

16 Q Does Blysse, to this day, have any knowledge of your
17 sister's molestation?

18 A No.

19 Q This is the reason why you didn't want Blysse around men?

20 A No.

21 Q Please explain?

22 A After Blysse was molested, then my sister came to me
23 saying what had happened to her. I want to say it was about
24 three Thanksgivings ago where my sister confronted me alone to
25 tell me what happened to her. I don't know if she felt that

1 telling me about what happened to her would bring comfort to
2 the family, but I was aware after this happened with Blysse,
3 not before.

4 Q Tell me, when was the last time you spoke to Myra
5 Cervantes?

6 A The last night I spoke to her was whenever we confronted
7 both Fran and Myra about the situation.

8 Q Do you deny telling Myra Cervantes that your sister was
9 molested?

10 A I've never told Myra that my sister was molested.

11 Q Was Blysse ever exposed to pornography or anything
12 sexually inappropriate before her disclosure to you?

13 A Not in our house, but I do have a -- remember one time
14 something came up on maybe an iPad or some kind of pad at
15 Fran's house that maybe it popped up. I know that. And
16 that's the only thing.

17 Q And what popped up?

18 A I do believe it was some kind of pornography.

19 MR. McKELLAR: I beg the Court's indulgence.

20 THE COURT: All right.

21 BY MR. McKELLAR:

22 Q You testified that you believe this exposure was at
23 Fran's house; is that correct?

24 A Yes.

25 Q Did you discuss this with any of Fran's family?

1 **A** About what happened to Blysse?

2 **Q** About the exposure to pornography.

3 **A** I do believe me and Fran discussed it, from what I can
4 remember.

5 **Q** And you continued sending Blysse to the house after this?

6 **A** Well, this was just one time. It may have been -- I
7 don't know if it was the son's, you know, iPad or whatever it
8 was, but I didn't see it as an issue. Maybe she talked to him
9 about maybe not having that or even putting the iPad back out
10 for them to grab.

11 MR. McKELLAR: No further questions, Your Honor.

12 THE COURT: All right. Redirect?

13 MS. MONROE: No redirect, Your Honor.

14 THE COURT: Very well. You can come back down, sir.

15 Call your next witness, please.

16 MS. HAMMACK: Your Honor, may we approach very briefly?

17 THE COURT: Sure.

18 BENCH CONFERENCE

19 (The bench conference was held off the record.)

20 (Open court resumes as follows:)

21 MS. HAMMACK: Your Honor, the State calls Blysse

22 C [REDACTED].

23 THE COURT: All right.

24 MS. HAMMACK: And she'll be up in just a second.

25 THE COURT: Sure.

1 (Pause in the proceedings.)

2 BLYSSE C [REDACTED],

3 after having been duly sworn, was examined and testified
4 to as follows:

5 THE CLERK: Have a seat up here in the witness box.

6 State your name for the Court, please, and spell your last.

7 State your name for the Court and spell your last.

8 THE WITNESS: I'm Blysse. And wait, what?

9 DIRECT EXAMINATION

10 BY MS. HAMMACK:

11 Q Can you spell your last name for us?

12 A C-[REDACTED].

13 Q Good morning, Blysse.

14 A Good morning.

15 Q Can you tell me, how old are you?

16 A I'm ten.

17 Q And what grade are you in?

18 A Fifth.

19 Q And, Blysse, tell me, what is your favorite thing about
20 the fifth grade.

21 A That I get to learn new things.

22 Q What's your favorite thing to learn about?

23 A Math.

24 Q And do you have a least favorite thing that you have to
25 learn about?

1 **A** Reading.

2 **Q** Tell me this, Blysse, who do you live with?

3 **A** My mom, my dad, and my brother.

4 **Q** And do you have any pets?

5 **A** Yes.

6 **Q** How many pets do you have?

7 **A** Five.

8 **Q** What kind of pets do you have?

9 **A** I have a cat, a bunny, a Frenchie, a Corso, and a French

10 bulldog, I think. Yes.

11 **Q** So you've got -- you live with your mom, your dad, your

12 brother, and five pets. What is your dad's name?

13 **A** Derrick.

14 **Q** And what is your mom's name?

15 **A** Rain.

16 **Q** What's your brother's name?

17 **A** Ezra.

18 **Q** And what grade is Ezra in?

19 **A** First.

20 **Q** Tell me this, Blysse: Are there places on your body that

21 are not okay to touch?

22 **A** Yes.

23 **Q** Can you tell me what those places are?

24 **A** My behind and my private part and my boobies.

25 **Q** And do you have a name for your private part or any girl

1 private part?

2 **A** Vagina, yes.

3 **Q** Okay. And that's -- that's the part you're talking about
4 that's not okay to touch?

5 **A** Yes.

6 **Q** Okay. Blysse, can you tell me, has anybody touched you
7 in a place that's not okay to touch?

8 **A** Yes.

9 **Q** Can you tell me who that was?

10 **A** Do I point or do I say?

11 **Q** You can say it.

12 **A** Pedro.

13 **Q** And tell me, Blysse, who is Pedro?

14 **A** He is -- I don't know. Like...

15 **Q** So, tell me this, is Pedro a kid or a grownup?

16 **A** A grownup.

17 **Q** And is Pedro a girl or a boy?

18 **A** A boy.

19 **Q** Would it help you to point to Pedro?

20 **A** Mm-hmm.

21 **Q** Do you see Pedro?

22 **A** (Pointing.)

23 MS. HAMMACK: Your Honor, let the record reflect the
24 witnesses has identified the defendant.

25 THE COURT: Very well.

1 BY MS. HAMMACK:

2 Q That's a little bit easier than having to describe
3 somebody, isn't it?

4 Okay. So tell me this: You live with your mom and your
5 dad and your brother and your pets. Do you know where Pedro
6 lives?

7 A Not now, but I know where he used to live.

8 Q Okay. And how did you know where he used to live?

9 A Because I remember what the house looks like.

10 Q Did you go to the house?

11 A Yes.

12 Q And why would you go to his house?

13 A Because my mom and dad had to work and I had to get
14 babysitted.

15 Q And who would babysit you at Pedro's house?

16 A I don't remember her name.

17 Q Was -- okay. You said "her," so it was a girl?

18 A Yes.

19 Q Was it a kid or a grownup?

20 A A grownup.

21 Q Was it a young grownup or an old grownup?

22 A Old grownup.

23 Q And do you know if she was related to Pedro?

24 A Yes. No, no. Sorry.

25 Q Okay. You don't know?

1 Okay. Did she live at Pedro's house?

2 **A** Yes.

3 **Q** And when she would babysit you, what would y'all do?

4 **A** I used to help her clean. That's all.

5 **Q** Okay. And when she babysat you at Pedro's house, was
6 that while you were in school or before you went to school?
7 When would that be?

8 **A** Before I went to school.

9 **Q** And when we say before you went to school, are we talking
10 about when you were too little to go to school?

11 **A** Yes.

12 **Q** Okay. So when she would babysit you at Pedro's house,
13 who else would be at the house?

14 **A** Pedro and her daughter.

15 **Q** Do you remember her daughter's name?

16 **A** No.

17 **Q** That's okay. Her daughter -- was her daughter a kid or a
18 grownup?

19 **A** A grownup.

20 **Q** Okay. Were there ever any other kids there when you
21 would be babysat?

22 **A** A lady that used to drop off her baby.

23 **Q** And was that baby older or younger than you?

24 **A** She was younger.

25 **Q** So when you would be babysat at Pedro's house, you said

1 the Pedro would be there, the lady that babysat you, and her
2 daughter. Tell me where -- you said that Pedro touched you in
3 place that was not okay?

4 **A** Yes.

5 **Q** Where did that happen at?

6 **A** In a bedroom.

7 **Q** Okay. And what house was that bedroom in?

8 **A** The house that I remember.

9 **Q** Okay. The house that you got babysat in?

10 **A** Yes.

11 **Q** Okay. And tell me about that bedroom. Do you know whose
12 bedroom it was?

13 **A** His and I guess her wife. His wife. Sorry.

14 **Q** His wife. Okay.

15 And what was in that bedroom?

16 **A** A dresser, a bathroom, a bed, and a TV.

17 **Q** Okay. And did you ever go in that bedroom for any other
18 reason?

19 **A** No.

20 **Q** And whose idea would it be for you to go in that bedroom?

21 **A** The lady that took care of me, because --

22 **Q** Would she tell you to go to the bedroom?

23 **A** Yes.

24 **Q** Okay. Perfect. I was just about to tell you, when we
25 talk in here, we have to talk out loud so she can write

1 everything down. You did a really good job of answering out
2 loud for me.

3 So, tell me, you said that when Pedro touched you in a
4 place that was not okay, it was in that bedroom. Who would be
5 in that bedroom with you?

6 **A** No one else. Just him.

7 **Q** Okay. And when he touched in a place that was not okay,
8 where in that bedroom did that happen?

9 **A** The bed.

10 **Q** Okay. And were you on the bed?

11 **A** Yes.

12 **Q** How were you on the bed? Were you sitting? Standing?
13 Laying down?

14 **A** Laying down.

15 **Q** And where was Pedro when this was happening?

16 **A** Standing up.

17 **Q** Okay. Was he standing up by the bed?

18 **A** By the bed.

19 **Q** And did he say anything to you?

20 **A** No.

21 **Q** Okay. And when you were laying on the bed and Pedro was
22 standing by the bed, what did he do?

23 **A** He touched me where I did not want to be touched.

24 **Q** Okay. Can you tell me where on your body he touched?

25 And I know it's weird, but you've got to answer out loud.

1 **A** My vagina.

2 **Q** Okay. What part of his body touched your vagina?

3 **A** His hands and his mouth.

4 **Q** Okay. And when his -- let's do this one at a time.

5 Okay? So when his hand touched your vagina, did it touch your
6 clothes or did it touch your skin?

7 **A** Both.

8 **Q** Okay. And when his mouth touched your vagina, did it
9 touch your clothes or your skin?

10 **A** My skin.

11 **Q** Okay. And, Blysse, did this happen one time or more than
12 one time?

13 **A** More than one time.

14 **Q** And when this would happen, do you remember, was there a
15 door to the bedroom?

16 **A** Yes.

17 **Q** Do you remember if the door would be open or closed?

18 **A** Closed.

19 **Q** Do you remember who would close the door?

20 **A** Pedro.

21 **Q** Okay. And I don't want to ask you the same question more
22 than once; I'm trying to go over what I've already asked you.

23 Those were the two -- you said his hand and his mouth
24 were the two parts of his body that touched your vagina. Did
25 he ever touch any other part of your body?

1 **A** No.

2 **Q** Did he ever ask you to touch any part of his body?

3 **A** No.

4 **Q** And this is kind of a hard question: When his hand would
5 touch your vagina, do you know about how long his hand would
6 touch your vagina, in time?

7 **A** I don't remember.

8 **Q** Okay. And I'm going to ask you the same question: when
9 his mouth would touch your vagina, do you remember about how
10 long his mouth would touch your vagina?

11 **A** I don't remember.

12 **Q** And you said that this happened when you would go over to
13 be babysat.

14 So was this -- not yesterday?

15 **A** No.

16 **Q** It was a long time ago?

17 **A** Yes.

18 **Q** Okay. Do you remember how old you were when it happened?

19 **A** Five.

20 **Q** Okay. Tell me this: After Pedro's hand would touch your
21 vagina or after his mouth would touch your vagina, would he
22 say anything to you?

23 **A** No.

24 **Q** Okay. Do you remember how his clothes were when this
25 would happen?

1 **A** On.

2 **Q** Okay. And tell me, Blysse, you said it happened more
3 than one time?

4 **A** Yes.

5 **Q** Do you remember how many times it happened?

6 **A** I don't remember.

7 **Q** Okay. And, ultimately, did you talk to anybody about
8 what happened?

9 **A** Yes.

10 **Q** Who did you talk to?

11 **A** My dad.

12 **Q** And after you talked to your dad, did you end up having
13 to talk to some other people about what happened?

14 **A** Yes.

15 **Q** Blysse, give me just a second, and I'll be back. Okay?

16 **A** Yes, ma'am.

17 (Pause in the proceedings.)

18 BY MS. HAMMACK:

19 **Q** Just a couple more questions for you. Okay? So when you
20 and Pedro would be back in this bedroom, did you ever ask you
21 to do anything?

22 **A** No.

23 **Q** Okay. And I asked you if he ever said anything to you.
24 When he would touch your vagina, did he ever say anything to
25 him?

1 **A** Yes.

2 **Q** What did you say to him?

3 **A** "No. Don't touch me."

4 **Q** And when you said, "No, don't touch me," what would Pedro
5 do?

6 **A** I don't remember.

7 **Q** Did he touch you anyway?

8 **A** Yes.

9 **Q** Blysse, I don't have any other questions for you. Please
10 answer any questions that Mr. McKellar or Mr. Thompson has.
11 Okay?

12 THE COURT: Yes, sir, Mr. McKellar?

13 MR. McKELLAR: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. McKELLAR:

16 **Q** Hey, Blysse. I only have one question for you.

17 Do you speak Spanish?

18 **A** A little bit.

19 **Q** Did you speak Spanish when you were in kindergarten when
20 you were about five or six?

21 **A** Yes, sometimes.

22 **Q** Could you speak more Spanish then than you speak today?

23 **A** A little bit.

24 MR. McKELLAR: Judge, that's all I have.

25 THE COURT: All right. Thank you.

1 Any redirect?

2 MS. HAMMACK: No, Your Honor.

3 THE COURT: And you can come down. You can come down.

4 And call your next witness, please.

5 MS. MONROE: The State calls Investigator Caso.

6 THE CLERK: Please raise your right hand and put your
7 left hand on the Bible.

8 INVESTIGATOR KIMBERLY CASO,
9 after having been duly sworn, was examined and testified
10 to as follows:

11 THE CLERK: Please have a seat in the witness box. State
12 your full name for the Court and spell your last.

13 THE WITNESS: Investigator Kimberly Caso. C-a-s-o.

14 THE COURT: Your witness.

15 MS. MONROE: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. MONROE:

18 Q Investigator Caso, what do you do for a living?

19 A I'm an investigator with the Aiken County Sheriff's
20 Office.

21 Q How long have you been there?

22 A A little over 23 years.

23 Q And what is your title?

24 A Juvenile investigator.

25 Q How long have you been in the juvenile division?

1 **A** Probably a little over 16 years.

2 **Q** What does your day-to-day job look like?

3 **A** I investigate crimes committed against juveniles, I
4 investigate crimes that juveniles have committed, and those
5 type of situations.

6 **Q** How many cases have you investigated over your career
7 approximately?

8 **A** Probably -- definitely, in the last 16, I would say a
9 couple thousand. At least a hundred a year.

10 **Q** When you first get a case, what do you do?

11 **A** Depends on what type of case.

12 **Q** When you first get a case involving a juvenile, what do
13 you do?

14 **A** If the juvenile was a victim, a lot of times, we will
15 refer the victim to the Child Advocacy Center for a forensic
16 interview to kind of get the details of the case.

17 **Q** Do you do anything else to familiarize yourself before
18 that?

19 **A** Well, typically, we get assigned a case. The report
20 comes in to the sheriff's office. If it falls within our
21 category, it'll get assigned. I'll make contact with the
22 parties involved to try to get a little bit of background
23 information. If they were a juvenile, and they were a victim
24 of something, then we typically refer them to the Child
25 Advocacy Center.

1 Q What is the Child Advocacy Center?

2 A It is an agency that we use. They are a child-friendly
3 place there. They know how to interview children. They're
4 trained to interview children in a non-leading manner.

5 Q And tell us this: Why do you refer a child to the Child
6 Advocacy Center as opposed to you interviewing them yourself?

7 A The Child Advocacy Center is a wonderful resource. They
8 offer so many different things, such as counseling. They're
9 trained to interview children. A lot of times, for court
10 purposes, some investigators don't have the training to
11 interview children, so it's just become common practice that
12 we refer all children to the Child Advocacy Center typically,
13 as long as it's not something we have to know at 3:00 in the
14 morning. As long as we can refer them to that, we typically
15 do because it's a great resource.

16 Q Did you investigate the case against Pedro Cervantes?

17 A Yes, I did.

18 Q Tell the jury how you got involved in that case.

19 A Rain and Derrick Cardenas made a report to the sheriff's
20 office. Deputy completed the report. And then, at that
21 point, it got forwarded to me.

22 Q And then what did you do with it?

23 A I made contact with, I believe, Derrick first. I spoke
24 with him in reference to the case. He gave me a little bit of
25 background information. I think I also spoke with Rain prior

1 to referring Blysse to the Child Advocacy Center.

2 Q So you did refer her to the Child Advocacy Center?

3 A Yes.

4 Q Did you ever interview Blysse yourself?

5 A I did not.

6 Q Did you go to the forensic interview?

7 A Yes, I did.

8 Q Do you have a copy of the interview?

9 A Yes.

10 Q Is it in evidence?

11 A It is.

12 Q Did you talk to anybody else in this case?

13 A I did. I talked with Mr. Cervantes -- Pedro. I talked
14 with his wife, Fran. I spoke with, I believe, the daughter,
15 Maria [verbatim]. And I believe that's all.

16 Q Do you remember how old the defendant was at the time
17 that you talked to him?

18 A I can refer back.

19 Q Let me just ask you this question: Was he over the age
20 of 14?

21 A Yes. I believe he was in his seventies.

22 Q After speaking to the people that you mentioned, did you
23 collect any evidence in this case?

24 A I did collect photographs of the residence.

25 Q When did you go out to the residence?

1 **A** I met with Ms. Fran and her daughter at the sheriff's
2 office, and I asked them at that point if I would be able to
3 come and take photos of the house, and they agreed. So I
4 think that was two days after that. So I believe that was on
5 February 28th was when I took the photographs.

6 **Q** And how long after the report was made did you take those
7 photographs?

8 **A** The report was made on February the 1st. I first became
9 involved on -- I received a report on February 7th. So once I
10 interviewed everybody, I went to Pedro and Fran's residence to
11 secure the photographs.

12 **Q** What did you take the photographs of?

13 **A** I'm sorry?

14 **Q** What did you take photographs of?

15 **A** I went to their residence, [REDACTED] Johnson Road, located in
16 Aiken County. That was where the alleged offense had
17 happened. So I went there to take the photographs.

18 **Q** And, specifically, what part of the house did you
19 photograph?

20 **A** I photographed the interior of the residence, the
21 bedroom. I photographed the outside of the residence.

22 **Q** Are those pictures in evidence?

23 **A** Yes, they are.

24 **Q** Did you collect any evidence other than those photographs
25 from the residence?

1 **A** No, ma'am.

2 **Q** Did you attempt to collect any DNA?

3 **A** No, ma'am. That wouldn't have been appropriate, due to
4 the time frame.

5 **Q** Explain that.

6 **A** Typically, there is not DNA after several days, and when
7 you're dealing with a situation like this, I think it was
8 reported several months after the fact, so there would be no
9 DNA.

10 **Q** Did you collect any sex toys from the house?

11 **A** No. There would be no reason to. There was no -- there
12 was nothing disclosed about a sex toy.

13 **Q** Did you, otherwise, search the home?

14 **A** I did not.

15 **Q** And why not?

16 **A** There was nothing -- there was nothing for me to collect.
17 There was nothing that was disclosed that would be of
18 evidentiary value.

19 **Q** Now, you said that the report was made a few months after
20 the alleged incident. Do you know why that is?

21 **A** It's not unusual for a victim --

22 MR. McKELLAR: Objection. Hearsay and asking for an
23 opinion.

24 MS. MONROE: Your Honor, I'm just asking her if she has
25 personal knowledge as to why there was a delay.

1 MR McKELLAR: Judge, that's still hearsay.

2 THE COURT: Counsel, let me see you.

3 BENCH CONFERENCE

4 (The bench conference was held off the record.)

5 (Open court resumes as follows:)

6 THE COURT: Sustained. And you may proceed.

7 BY MS. MONROE:

8 Q Can you give us the date that the incident was reported?

9 A The incident was reported on February the 1st.

10 Q Of what year?

11 A Of -- sorry -- of 2018.

12 Q And what year was this alleged to have happened?

13 A I know that Blysse was five. So this would have been
14 between the dates of January the 20th, 2017, and January the
15 20th, 2018, which would have made Blysse five at that time.

16 Q Did you charge the defendant in this case?

17 A Yes, I did.

18 Q What did you charge him with?

19 A Criminal sexual conduct with a minor in the first degree
20 and criminal sexual conduct with a minor in the third degree.

21 Q I don't have any further questions for you at this time.
22 Please answer any that the defense may have.

23 THE COURT: Cross-examination?

24 MR. McKELLAR: Thank you, Your Honor.

25

1 CROSS-EXAMINATION

2 BY MR. MCKELLAR:

3 Q Good morning, Investigator Caso. How are you?

4 A Good. Thank you.

5 Q Good to see you.

6 I only have a few questions for you. If there is
7 physical evidence, you retrieve it; correct?

8 A Yes.

9 Q If there is DNA, you will try to get it; correct?

10 A Yes.

11 Q If sex toys are alleged to have been used, you will
12 collect the sex toy, if possible; correct?

13 A Yes.

14 Q If there is an allegation -- if you have reason to
15 believe that there may be semen or saliva on a body part and
16 you're able to get it, you try to get it; right?

17 A Yes.

18 Q And test it; right?

19 A Mm-hmm.

20 Q And see whose DNA it is?

21 A Yes.

22 Q But none of that happened here?

23 A It wasn't relevant. It wasn't applicable because of the
24 delay in the --

25 Q But it didn't happen here.

1 **A** It did not.

2 **Q** Thank you.

3 THE COURT: Redirect?

4 MS. MONROE: No redirect, Your Honor.

5 THE COURT: Very well. And is this witness free to
6 leave? And is there any objection?

7 MR. MCKELLAR: No objection, Your Honor.

8 THE COURT: All right. Thank you. You are free to go.
9 Please call your next witness.

10 MS. HAMMACK: Your Honor, I apologize, but, again, for
11 scheduling, if we can just run up there real fast.

12 THE COURT: Sure.

13 BENCH CONFERENCE

14 (The bench conference was held off the record.)

15 (Open court resumes as follows:)

16 THE COURT: Ladies and gentlemen, we need to take a short
17 break -- a less-than-lengthy break, and so I'm going to ask
18 you to step to your jury room. Do not discuss this matter or
19 allow anyone to discuss it with you.

20 We're not going to be long. We're talking maybe 12ish
21 minutes. So just step to your jury room. Remember: Do not
22 discuss this matter or allow anyone to discuss it with you.

23 (The jury exits the courtroom at 12:21 p.m.)

24 THE COURT: All right. Somebody's calling?

25 MS. HAMMACK: Your Honor, I've reached out to her, and

1 she is with a patient but said the second she finishes up,
2 she's going to reach out to us. She knows why.

3 THE COURT: Okay, good. So we don't know when she's
4 going to finish with the patient.

5 MS. HAMMACK: I can try and find out just in the next
6 seven minutes or --

7 THE COURT: Ish.

8 MS. HAMMACK: Or it's --- I mean, I can find out if we
9 need to ask her (indiscernible) or if she's almost finished.

10 (Pause in the proceedings.)

11 MR. THOMPSON: Your Honor, permission to move around the
12 courtroom.

13 THE COURT: Sure. I'm sorry. I just figured you guys --
14 I'm sorry.

15 MS. HAMMACK: And, Your Honor, she's telling me that
16 she's got 30 more minutes with her client or with this
17 patient.

18 THE COURT: Well, rut-ro.

19 Okay, then -- well --

20 MR. THOMPSON: I apologize.

21 THE COURT: No. You're fine. You're fine. You can go
22 right ahead.

23 MR. THOMPSON: I was just informing --

24 THE COURT: No, no, no. Listen, listen, lawyers -- stop.
25 Y'all got to work. Lawyers got to work. I got no problem

1 with lawyers working. That is so not a problem.

2 I'm just -- I'm having timing musings. So I think what
3 probably makes sense is that Charlie puts on his apron and
4 materializes lunch. I'm glad he's not in here for that.

5 MS. HAMMACK: He's hiding in the back.

6 THE COURT: Where is he? Oh, busted.

7 So that would be really good. Charlie would like for me
8 to know that his suggestion was 12:30, and I said, "Oh, no,
9 1:00." So he's really loving this moment. You know? He
10 really is.

11 So I think -- "Hey, Charlie, any chance we could, like,
12 speed it up?" No? Okay. So unkind. Okay.

13 Well, let me see the two of you, because there is an
14 issue that I wanted -- Mr. McKellar, I'm so sorry. Just chalk
15 it up to physical therapy.

16 BENCH CONFERENCE

17 (The bench conference was held off the record.)

18 (Open court resumes as follows:)

19 THE COURT: All right. Let me have the jury back,
20 please.

21 (The jury entered the courtroom at 12:37 p.m.)

22 THE COURT: Ladies and gentlemen, we're going to break
23 for lunch a little bit early. Charlie is still working on
24 your lunch.

25 Where's your apron? I'm glad he's that far away.

1 Ladies and gentlemen, I do anticipate lunch will be here
2 around 1:00. So I don't know what you want to do. I don't
3 know if you want to take a break, walk around, you know, go
4 find your cell phone and not talk about this case if you need
5 to make the phone call. But lunch is going to be here around
6 1:00, and we're going to break till about 1:45, is when we're
7 going to start back. 1:45.

8 So I did want to just update you and let you know that
9 that is what our plan is right now. If lunch is here around
10 1:00, I think you can dine in 45 minutes, actually. Don't you
11 guys think you can do that? Yes? Anybody worried about that?
12 Anybody a real slow chewer? Okay. Wonderful.

13 So be at east. We're going to break for lunch. And,
14 again, lunch will be here around 1:00, and we'll start back
15 around 1:45. Around 1:45.

16 Enjoy your lunch. Remember: Do not discuss this matter.
17 Don't allow -- please don't allow anyone to discuss it with
18 you. If you access your cell phone or other communication
19 devices during the lunch, just please relinquish it because
20 you must not have a cell phone or other communication device
21 with you while you're serving on the jury. And I'll see you
22 around 1:45. Thank you so much.

23 (The jury exited the courtroom at 12:38 p.m.)

24 THE COURT: And just for our record, Mr. Rodriguez, I
25 talked to Mr. McKellar, and he can accommodate you for lunch.

1 And you do not have to go into custody for lunch. You can
2 have lunch. Mr. McKellar has got a spot where you can have
3 your lunch.

4 I just --

5 MR. THOMPSON: Your Honor, I apologize; this is my fault.
6 I thought we were about to break, and I asked him to take the
7 translator's headset off. Do you mind if he put it back on so
8 we can --

9 THE COURT: Oh, my gosh, sure.

10 MR. THOMPSON: I apologize, Your Honor.

11 THE COURT: He's okay.

12 All right. Okay. Okay. Mr. Rodriguez, Mr. McKellar is
13 making accommodation so that you can have lunch here in the
14 courthouse, and you do not have to go into custody. And he's
15 working on some other things that we don't know if it'll be
16 successful or not for the evening, but for lunch, he's got a
17 conference room where you can have your lunch.

18 You cannot leave the courthouse, but you certainly can
19 have lunch with whoever Mr. McKellar can accommodate --
20 family, if that space will accommodate those folks. But do
21 not leave the courthouse. All right? Very well.

22 All right. And then we will -- we're going to break
23 until 1:45, but y'all need to keep me posted.

24 MS. HAMMACK: Yes. Absolutely.

25 THE COURT: Cool. Wonderful.

1 (A lunch recess was taken from 12:42 p.m. to 1:55 p.m.)

2 THE COURT: Please be seated and thank you so much.

3 All right. Anything from the State before we bring the
4 jury out?

5 MS. HAMMACK: No, Your Honor.

6 THE COURT: From the defense?

7 MR. McKELLAR: Nothing, Your Honor.

8 THE COURT: Terrific. Let's have the jury.

9 THE INTERPRETER: Your Honor, is it okay if the
10 interpreters move about the courtroom?

11 THE COURT: If you need to. I know that security was a
12 little bit concerned. So just -- if you can just have a
13 conversation with them so everybody's happy and well
14 positioned. Sounds good with me.

15 THE INTERPRETER: Thank you, Your Honor.

16 (The jury entered the courtroom at 1:56 p.m.)

17 THE COURT: All right, ladies and gentlemen. I hope you
18 enjoyed your lunch. At this time, we will continue with the
19 State's case.

20 If you'll please call your next witness.

21 MS. HAMMACK: Thank you, Your Honor. The State calls Kim
22 Sawyer.

23 KIMBERLY SAWYER,

24 having been duly sworn, was examined and testified to as
25 follows:

1 THE CLERK: Please have a seat in our witness box. State
2 your name for the Court and spell your last name.

3 THE WITNESS: Kimberly Sawyer. S-a-w-y-e-r.

4 DIRECT EXAMINATION

5 BY MS. HAMMACK:

6 Q Good afternoon, Ms. Sawyer.

7 A Good afternoon.

8 Q Can you tell the jury, what do you do for a living?

9 A Currently, I am a licensed professional counselor in
10 private practice.

11 Q And before that, what did you do?

12 A I worked at the Child Advocacy Center of Aiken County.

13 Q And at the Child Advocacy Center, what were your main
14 duties?

15 A My main role was as the -- my title was the forensic
16 interview specialist.

17 Q And as a forensic interview specialist, what does that
18 mean you did?

19 A That means I interviewed children who were referred there
20 for allegations of abuse or exposure to violence.

21 Q And did you have to go through any kind of training in
22 order to interview children forensically?

23 A For interviews, I went through a 40-hour classroom and
24 practical training that included content such as child
25 development, question, preparation, dynamics of abuse,

1 cultural competency. And following that, there was advanced
2 training, continuing education, and peer review with
3 statewide, regional, and also with our sister Child Advocacy
4 Center in Augusta.

5 **Q** And in your career, approximately how many forensic
6 interviews have you done with children?

7 **A** Right at 2500.

8 **Q** And when you interview children, do you allow children to
9 tell you about their experiences in their words?

10 **A** Yes.

11 **Q** Now, Ms. Sawyer, did you have a chance to interview
12 Blysse O [REDACTED]?

13 **A** I did.

14 **Q** And you remember when you interviewed her?

15 **A** I interviewed Blysse on February 19th, 2018.

16 **Q** And who asked you to interview Blysse?

17 **A** She was referred to us by the Aiken County Sheriff's
18 Office.

19 **Q** And is that typical of interviews that you did at the
20 Child Advocacy Center?

21 **A** We received requests from either law enforcement or
22 Department of Social Services.

23 **Q** So when the Aiken County Sheriff's Office requested that
24 you interview Blysse, tell us about where you conducted that
25 interview.

1 **A** The interview was conducted in one of our two interview
2 rooms, which just contained a couple chairs and myself and the
3 child.

4 **Q** And, as an interviewer, do you do anything to memorialize
5 the interview?

6 **A** All of our interviews were audio- and video-recorded.

7 **Q** And did I ask you what day you interviewed Blysse?

8 **A** You did. February 19th, 2018.

9 **Q** Ms. Sawyer, I'm showing you what's been premarked as
10 State's Exhibit 3. Do you recognize that?

11 **A** This is the DVD of the interview I did with Blysse.

12 **Q** And how do you know that that's what that is?

13 **A** Because I initialed it after viewing it.

14 MS. HAMMACK: Your Honor, at this time, we move State's
15 Exhibit 3 into evidence.

16 THE COURT: Any objection?

17 MR. McKELLAR: No objection, Your Honor.

18 THE COURT: Very well.

19 (State's Exhibit No. 3, Interview DVD, was marked for
20 identification and received into evidence.)

21 MS. HAMMACK: Your Honor, at this time, we would publish
22 State's 3.

23 THE COURT: All right.

24 MS. HAMMACK: And, Your Honor, as this is being prepared,
25 this is a video, so, if our translators either need to move or

1 need us to pause, whatever we need to do.

2 THE INTERPRETER: Your Honor, if I may? It's okay if the
3 interpreters move closer to the video so they can hear?

4 THE COURT: Sure.

5 THE INTERPRETER: Thank you, Your Honor.

6 (DVD video plays.)

7 MR. McKELLAR: Your Honor, Mr. Cervantes no longer can
8 hear his equipment.

9 THE INTERPRETER: May the interpreter correct that, Your
10 Honor, the equipment? May the interpreter make an adjustment
11 to the equipment?

12 THE COURT: Of course.

13 THE INTERPRETER: Thank you.

14 (Pause in the proceedings.)

15 THE INTERPRETER: It was the batteries. Thank you, Your
16 Honor.

17 THE COURT: Oh, good. Are you ready?

18 THE INTERPRETER: Yes, Your Honor.

19 THE COURT: Excellent.

20 THE INTERPRETER: The interpreters are ready.

21 THE COURT: Great.

22 (The DVD video continues to play.)

23 BY MS. HAMMACK:

24 Q Thank you, Ms. Sawyer. I don't have any further
25 questions. Please answer any questions that Mr. McKellar has

1 for you.

2 THE COURT: Cross-examination?

3 MR. McKELLAR: No questions, Your Honor.

4 THE COURT: Is this witness free to leave and is there
5 any objection?

6 MR. McKELLAR: No objection.

7 THE COURT: Very well. Thank you. You are free to go.
8 All right. Call your next witness, please.

9 MS. HAMMACK: Your Honor, at this time, the State rests.

10 THE COURT: All right. Ladies and gentlemen, you have
11 now heard the witnesses and received the evidence, which you
12 will, from the State in the State's case in chief. That
13 signifies to me that there are matters that I must take up
14 outside of your presence; therefore, I'm going to ask you to
15 please step to your jury room.

16 Do not discuss this matter or allow anyone to discuss it
17 with you. We will be about 10 minutes.

18 (The jury exited the courtroom at 2:41 p.m.)

19 THE COURT: All right. Motions?

20 MR. McKELLAR: Your Honor, the defense moves for a
21 directed verdict pursuant to Rule 19, the State's failure to
22 introduce any competent evidence as to all of the elements of
23 each offense.

24 THE COURT: Thank you so much, Mr. McKellar. As you
25 know, it is not for the Court to weigh the evidence but to

1 ascertain whether or not there is evidence on each element of
2 each of the indictments from which the jury could find guilt.
3 There is the existence of evidence on each element of each of
4 these indictments, and, therefore, I would respectfully deny
5 your motion of the exception, noting your exception thereto.

6 Are you ready to proceed on behalf of the defense?

7 MR. McKELLAR: Your Honor, we request a few more minutes
8 to discuss whether Mr. Cervantes will testify.

9 THE COURT: That sounds fine. We'll take about -- I'm
10 sure you've been having those discussions. Another five
11 minutes or so would be fine. If you need longer, let me know.
12 We do have the jury waiting.

13 MR. McKELLAR: Yes, Your Honor.

14 THE COURT: Thank you. We'll be in recess for about five
15 minutes. Y'all be at ease. I'm not going to go anywhere.

16 (A brief recess was taken from 2:42 p.m. to 3:04 p.m.)

17 THE COURT: All right. We're back on the record, and if
18 you'd be so kind as to please place Mr. Rodriguez under oath
19 for me.

20 THE CLERK: Please raise your right hand and place your
21 left hand on the Bible.

22 PEDRO CERVANTES RODRIGUEZ,

23 after having been duly sworn, was examined and testified
24 to as follows:
25

1 DEFENDANT'S RIGHTS

2 THE COURT: Mr. Rodriguez, at this time, I am going to
3 explain to you certain of your rights. If you do not
4 understand anything I say, please let me know. If you want me
5 to explain anything in more detail, please let me know. Do
6 you understand?

7 THE DEFENDANT: I do.

8 THE COURT: We have now reached the stage of the trial
9 where you may present your defense. You have the right to
10 claim the protections given to you by the Fifth Amendment to
11 the Constitution and the United States. This amendment states
12 in part no person shall be compelled in any criminal case to
13 be a witness against himself. This means that you cannot be
14 required to testify in this case. You have the right to
15 testify on your own behalf; however, no one can make you
16 testify. This is a personal right, and no one can waive this
17 right except you.

18 If you decide to testify, you will be subject to the same
19 rules that govern other witnesses, and you may be examined and
20 cross-examined on any relevant issue in this case.

21 In addition, if you have any convictions involving
22 dishonesty or false statement or for crimes punishable by
23 imprisonment for more than one year and this Court determines
24 that the probative value of admitting this evidence outweighs
25 its prejudicial effect to you, the solicitor will be able to

1 introduce your record to attack your credibility.

2 If you decide to testify, this decision on your part must
3 be freely, voluntarily, and intelligently made, with knowledge
4 of the protections given to you by the Fifth Amendment and the
5 consequences of your decision to testify.

6 If you decide not to testify, I will instruct the jurors
7 that they cannot give the fact that you did not testify any
8 consideration whatsoever and that there is to be absolutely no
9 prejudice to you because you did not testify. It is left
10 entirely up to you whether or not you testify.

11 You may talk with your attorney, your family, friends, or
12 anyone else, but the final decision will be left entirely up
13 to you.

14 Do you understand what I have explained to you?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you have any questions about what I have
17 explained to you?

18 THE DEFENDANT: No. No questions.

19 THE COURT: Have you discussed with your lawyer whether
20 you should or should not testify?

21 THE DEFENDANT: I have.

22 THE COURT: Do you wish to talk to your lawyer any more
23 at this time?

24 THE DEFENDANT: No, I'm okay.

25 THE COURT: Do you wish to testify?

1 THE DEFENDANT: No.

2 THE COURT: All right.

3 MR. McKELLAR: Thank you, Your Honor.

4 THE COURT: You can go back to your seats.

5 When we bring the jury back in, you will rest on the
6 record, and then I'll send them back out, and you'll make your
7 motions. And then you can have -- obviously, both sides can
8 have some time to prepare for closings, if you wish. And as
9 long as somebody on the trial team can meet with me informally
10 regarding the charge, and we can take about 15 minutes to do
11 that. Okay. Great.

12 All right. We can have the jury.

13 (The jury entered the courtroom at 3:14 p.m.)

14 THE COURT: All right. Ladies and gentlemen, before we
15 took a break, you had received the evidence from the State.
16 We will now turn to the defense.

17 MR. McKELLAR: Thank you, Your Honor. The defense rests.

18 THE COURT: Very well.

19 Ladies and gentlemen, you have now heard the witnesses
20 and received the evidence, which you will have in this case.
21 What remains for us are the arguments of counsel and then my
22 charge or instruction on the law, and then you will receive
23 this case for your deliberations.

24 Ladies and gentlemen, now that all of the evidence is in,
25 there are matters that I need to take up outside your

1 presence. It will take us about 15 minutes. When you return
2 from this next break -- and I know you probably feel like
3 you're doing calisthenics, but when you return from this next
4 break, you will hear the arguments of counsel and then my
5 charge or instruction on the law.

6 So you will please retire to your jury room and we'll be
7 with you right at 15 minutes.

8 (The jury exited the courtroom at 3:16 p.m.)

9 THE COURT: All right. I don't have copies of the
10 charge, and we're going to reprint it, but just to add the
11 indictments in. So whoever's going to go over the charge with
12 me, come on, and let us retire to chambers real quick to go
13 over it.

14 MS. HAMMACK: Judge, are we at ease otherwise?

15 THE COURT: Oh, yeah, yeah, yeah. About 15 minutes.
16 Yep.

17 (A brief recess was taken from 3:17 p.m. to 3:44 p.m.)

18 THE COURT: Thank you so much and please be seated.

19 All right. State ready to proceed with the closings?

20 MS. HAMMACK: Yes, Your Honor.

21 THE COURT: Defense is ready?

22 MR. McKELLAR: Defense is ready.

23 THE COURT: All right. What I'm going to do is I'm going
24 to tell the jury you're going to make your closing and then
25 you'll be making your closing, and then this will be a short

1 break, and then I'm going to charge them, and then they're
2 going to get it. So that's what -- I'm going to give them the
3 preview and then you're up. Okay? Cool?

4 MS. HAMMACK: Thank you.

5 THE COURT: Yes. Let's have the jury.

6 And Amy is going to be coming in.

7 MR. McKELLAR: Your Honor, I apologize.

8 THE COURT: No, no, it's okay.

9 MR. McKELLAR: I renew my motion for a directed verdict.

10 THE COURT: Thank you. Yes. Respectfully denied.

11 (The jury entered the courtroom at 3:47 p.m.)

12 THE COURT: You left somebody.

13 THE BAILIFF: He's in the restroom.

14 THE COURT: Someone's got to go back and throw him over
15 your shoulder. Can't leave him behind -- you can't leave any
16 of the jurors behind.

17 I was going to send someone back in there and throw you
18 over their shoulder. I guess you are the presiding juror.

19 JUROR: I was in -- yes.

20 THE COURT: That'll teach you to keep your seat; right?

21 JUROR: That's right.

22 THE COURT: Do you remember your juror number?

23 JUROR: One (ph).

24 THE COURT: And your mama is so proud.

25 All right. I want to tell you how we're going to be

1 proceeding. You're first going to hear from Ms. Hammack in
2 her closing argument on behalf of the State of South Carolina.
3 You're then going to hear from Mr. McKellar and his closing
4 argument on behalf of Mr. Rodriguez. That will then conclude
5 closing arguments.

6 After the closing arguments are finished, there's going
7 to be a very short break, which is going to be
8 self-explanatory, and then I am going to deliver to you the
9 instruction or the charge on the law. Once I have done that,
10 then there'll be another very short break, and then I'm going
11 to explain to you at that point -- and once -- and then once
12 we've had that break and I've delivered the charge to you,
13 then, ladies and gentlemen, you're going to receive this case
14 for your deliberations.

15 At this time, I'm going to ask you to please draw, again,
16 close as we listen to closing arguments.

17 CLOSING ARGUMENTS ON BEHALF OF THE STATE

18 MS. HAMMACK: Members of the jury, this is a case about
19 rules. The defendant broke the rules set up by Derrick and
20 Rain, and he broke the law. Because of that, he's before you,
21 charged with criminal sexual conduct with a minor, first, and
22 criminal sexual contact with a minor, third.

23 You heard how Derrick and Rain Cardenas trusted the
24 defendant, trusted his wife with what mattered most to them:
25 Their baby girl.

1 They're family. These aren't strangers. This isn't
2 daycare. This isn't the public school system. These are the
3 people that, when the rubber meets the road, the people you
4 can count on, the people that you can give up what matters
5 most to you, and know longer that she's safe there, know that
6 it's okay.

7 That man betrayed that trust, he broke those rules, he
8 broke the law, and he took the innocence of little Blysse.

9 Now, you've heard the testimony over the course of today.
10 You've watched videos and seen pictures, and you have an idea
11 about what happened during the course of Blysse's fifth year
12 of life.

13 You heard that she turned five on January 20th, 2017.
14 She wasn't in school yet. She was staying with Fran and the
15 defendant every day while her mom and daddy worked. They got
16 up every morning. Rain took her daughter to the defendant's
17 house, and then she worked all day long. And while she was
18 working, her husband, Derrick, was working too.

19 When he got off work, the first thing he did was go pick
20 up his little girl. And you heard that, when she was five,
21 she had cats and dogs and horses, and she liked to read books
22 and play toys in her room, even when it was raining, because
23 that's what five-year-olds should be talking about, should be
24 thinking about. When a five-year-old has to go talk to
25 somebody, those are the things that we expect five-year-olds

1 to talk about.

2 What daddies don't expect to hear, what people from the
3 community don't expect to have to hear from a child are words
4 like "vagina," her accounts of sexual abuse, things that we
5 don't talk about in mixed company, and, yet, a little girl has
6 to sit in front of you guys and talk about that. That was
7 Blysse's fifth year of life.

8 Now, members of the jury, I stated that, as a result of
9 this, the defendant is charged with criminal sexual conduct
10 with a minor in the first and third, and Morgan spoke to you
11 this morning generally about what those are, and the judge is
12 going to define them for you. Like she told you in the
13 beginning, that's her job. She's the judge of the law. She's
14 going to give you that law, but I just want to go over it with
15 you and talk about the law and what you heard today in the
16 testimony, the evidence in this case.

17 First is criminal sexual conduct with a minor, first
18 degree. Like Morgan told you, like the judge is going to tell
19 you, that's a sexual battery of a child under 11. Y'all,
20 Blysse still isn't 11. There's no question about that.

21 From January 20th, 2017, to January 20th, 2018, the date
22 that's on the indictment, Blysse was five. And sexual
23 battery, as the judge is going to tell you, includes a number
24 of things, but it includes oral sex. And she's going to
25 use -- I think it's Latin, I don't know -- a lot fancier words

1 that we ever use, but one of those words is "cunnilingus."

2 And what that means is oral sex involving the mouth.

3 Blysse told you that, when she was in the defendant's
4 room alone with him, no one else, door shut, after he's
5 checked to make sure no one was looking, her words, when she
6 was five, was, "He kissed my vagina. I think his mouth was
7 open."

8 Her words today as a 10-year-old to y'all was that "that
9 man put his mouth on my vagina." Sexual battery of a child
10 under 11. Criminal sexual conduct with a minor, first degree.

11 The second charge is criminal sexual contact with a
12 minor, third degree. And it's a longer definition, a lot more
13 words, probably a lawyer wrote it. If we complicate
14 something, we will. But the general basis behind a criminal
15 sexual conduct with a minor in the third degree is the
16 touching of a child or sexual desire or (indiscernible) acts.
17 And this can be any number of things, but that's the basis of
18 this, is the touching of a child with the intent to arouse and
19 for sexual desire.

20 Members of the jury, it's kind of a common-sense thing.
21 You don't have to have someone say it's for sexual reasons.
22 You can kind of do that -- the math. Telling a little girl to
23 pull her pants down, making sure the door is closed, and that
24 no one is coming so nobody sees, telling her not to tell
25 anybody, and then putting your mouth on their most private

1 part? He ain't a doctor. He ain't checking on her. And it
2 ain't for fun. It's for sexual purposes.

3 And so I want to talk to you a little bit about the
4 testimony you've heard about both of those crimes and then
5 some of the things that you heard from the defense. This is
6 the last chance I get to talk to you guys, and so I want to
7 make sure that I cover everything. I promise you I'm going to
8 sit down and think of 12 other things I would like to say, but
9 I'm going to try to be bereft and make sure that I cover
10 everything that I think needs to be explained or clarified or
11 addressed, because there are some things.

12 In opening statements, the defense told you several
13 times -- and I want to make sure I use his words -- he said
14 the only evidence is one child's statement. There's only one
15 witness who says something happened, and there's no
16 corroborating evidence.

17 Yes and no. And let's talk about that. Blysse is the
18 only one -- the only witness who can tell you what happened,
19 and there's a reason for that. She was the only one in that
20 room besides the defendant. And that's on purpose.

21 Members of the jury, when someone commits a crime, we
22 hear it on TV about certain crimes that haven't been covered,
23 like driving (ph) crimes. Sometimes you get a shoplifting,
24 and those things happen in public where there are cameras,
25 where there are witnesses, people that can say what happened.

1 Crimes on sexual abuse on a child don't happen in the
2 middle of downtown. They don't happen in Walmart where
3 there's 200 people who can say, "Hey, that's not right. I see
4 that." They don't happen where there are video cameras and
5 other ways to catch the bad guy, so to speak.

6 Sexual assault on children are crimes of secrecy.
7 They're crimes of isolation. The reason Blyse is the only
8 witness who can tell you what happened is because he made sure
9 that she was the only one in the room. As you listen to her
10 video from five years ago, she said he checked to make sure no
11 one was coming. He closed the door. He told me not to tell
12 Fran. He made sure there were no other witnesses.

13 But, members of the jury, that doesn't mean that there's
14 not corroborating evidence. When you listen to what was said,
15 what are some things that we know are true? We know she went
16 to the defendant's house every day for years; that she was
17 around the defendant. There was testimony that he picked her
18 up from school sometimes. Derrick stated he came in the house
19 to pick her up and found her back in the bedroom with the
20 defendant.

21 So we know not only that she was (indiscernible), she
22 said it happened, she was with the person who she said did it
23 and that there were times when he was alone with her, verified
24 alone with her. You don't have to trust her by herself to say
25 that. You get that from other witnesses.

1 One of the other things that Mr. McKellar stated was that
2 we don't have DNA and physical evidence. And he's right.
3 Again, this didn't happen in the middle of Walmart where we've
4 got cameras around every corner or with people standing around
5 as witnesses to see, but that doesn't mean that the State
6 hasn't met their burden.

7 The burden of proof is proof beyond a reasonable doubt.
8 And as Morgan said, that doesn't mean you can't have any
9 doubt, but it doesn't mean proof beyond all doubt, but you
10 have to have a reason to doubt it.

11 In these cases, he mentioned DNA and looking for DNA.
12 And he asked Investigator Caso, "Did you try to get DNA?" And
13 she said no. She said DNA is destroyed in a couple of days.

14 She stated that this report was made on February 1st,
15 2018, and Blysse stated in her interview that these events
16 happened when she was five. Well, she turned six on January
17 20th, 2018. So, if my math is correct, that's at least 12
18 days. If the very last time that he sexually assaulted her
19 was the day before her fifth or before her sixth birthday,
20 that's at least 13 days before the police found out what
21 happened.

22 How many times did Blysse take a bath in 13 days? How
23 many times did Blysse go potty in 13 days? The reason that
24 Investigator Caso didn't attempt to get DNA evidence is
25 because that DNA evidence couldn't exist that much later.

1 But, again, that doesn't mean this didn't happen.

2 On the wall behind me are four pictures of judges, all of
3 whom are a lot older than I am, all of whom practiced law and
4 were judges probably when I was about Blysse's age. I may not
5 even have been born when some of them were judges. And people
6 were charged with criminal sexual conduct back then. DNA
7 didn't exist yet. *Law & Order* and *SVU* didn't exist yet, and
8 people were still convicted of the crime of criminal sexual
9 conduct. Because when the judge reads you the law, what
10 you're not going to hear is that DNA evidence is a requirement
11 for convicting somebody because sometimes it's just not there.

12 What she'll also tell you is that eyewitness testimony is
13 direct evidence of a crime. So, members of the jury, if you
14 believe what Blysse tells you, that's proof beyond a
15 reasonable doubt. You don't need some scientists to come in
16 here and talk about all the tests they ran to try to find
17 evidence that disintegrated or was destroyed over time that
18 didn't exist.

19 Use your common sense. Listen to what you heard.

20 Another thing that I want to talk about are some of the
21 things that the defense brought up besides DNA. They asked
22 Investigator Caso, "Did you look for sex toys? Did you check
23 about STDs?" In Scooby Doo (ph), that's called a red herring.
24 The reason you haven't heard anything about sex toys or STDs
25 is because that has nothing to do with this case. Nobody's

1 ever claimed that there was any sex toy involved in any of
2 this. Nobody has ever claimed that anybody has an STD. I'm
3 still not sure why we're even talking about it. Why look for
4 something if that's not what's been alleged?

5 You heard Blysse in her account of those things -- he's
6 not charged with any of that. So why look for something that
7 doesn't have to do with this case?

8 The defense also wanted to talk about a few different
9 things, and I guess we never really found out what they were
10 about, so I'm not going to spend a whole lot of time, but one
11 of the things that they talked about was that the defendant
12 was at fault in a car wreck back in the '80s or '90s that
13 killed Derrick's dad. And Derrick said, "Yep, that happened.
14 I was two. I don't even have any memories of my father, I was
15 so young." And I'm still not sure what that had to do with
16 anything, but the thing that the defense asked was, "Well, you
17 sent Blysse to Pedro anyway?" Yeah. He's family.

18 Derrick spent his whole life with his father's family.
19 Just because his father died, the rest of that family didn't
20 die. He talked about spending summers with his dad's family,
21 with the defendant. When he moved to -- when he moved in
22 Aiken, he lived with the defendant's son. They're family.

23 If this is someone that has so much ill will towards the
24 defendant, why did he keep visiting? Why did he live with the
25 defendant's son? And why would he send his child every day

1 for years to the defendant's house? Because what happened to
2 Derrick's dad doesn't have anything to do with why you're here
3 today.

4 The other thing that the defense brought up was that
5 Derrick's sister has been molested. "Would y'all have talked
6 about that around Blysse?" Derrick said, "No. I didn't even
7 know about that until after all this happened, until after
8 Blysse told me what the defendant did to her, after we
9 reported this to police."

10 So what happened to his sister would have had no effect
11 on what was said back then or what was said today. Again,
12 it's one more thing that has nothing to do with why we're
13 here.

14 And then, lastly, the defense talked about maybe some
15 porn on an iPad. And Derrick said, "Yeah, I think maybe there
16 was something on that iPad. I'm not really sure. I don't
17 even know whose iPad it was." When he talked about it, it was
18 one time and it was over.

19 Well, don't forget, when you watch Blysse's interview
20 from when she was five, Kim Sawyer specifically asked her,
21 "Has anybody ever shown you any videos or pictures of wee-wees
22 or vaginas?" And Blysse said, "No." Never seen any videos or
23 pictures."

24 So this conversation about porn on an iPad, again, has
25 nothing to do with why we're here today. It has nothing to do

1 with what that man did to Blysse.

2 A couple more things that I want to talk to you about --
3 and I'm not going to keep you long. Y'all don't need me to
4 rehash everything. This hasn't been a long trial like you see
5 on TV. It's essentially been one day.

6 But one of the things that Mr. McKellar mentioned was
7 credibility of witnesses and making sure that you listen very
8 closely to what Blysse has to say in the courtroom versus what
9 she said on a video almost five years ago, February of 2018,
10 and after all, we are almost in November 2022. And I'm sure
11 he's going to get up here, and he's probably going to say,
12 "Well, she said this sentence this way back then, and she said
13 this sentence differently today. So that means that she's
14 making this up or that she's lying." Or maybe it's because
15 it's been five years between these two statements.

16 Members of the jury, if Blysse got up in front of y'all
17 today and said word for word exactly what she said on that
18 video from almost five years ago, the first thing out of his
19 mouth is going to be, "She was coached. She practiced.
20 Someone told her what to say. There's no way you can remember
21 word for word over five years' time." And so because she
22 didn't say exactly the same, that means she's lying. No
23 matter what Blysse said, they're going to say that she's lying
24 or that she made this up.

25 So common sense tells you that, any time you tell a story

1 more than once -- if I tell a story to Rain and then I turn
2 around 10 minutes later and tell the story to Morgan, I
3 promise you, I'm not going to use the same exact words. But
4 that doesn't mean that what I've said isn't true.

5 And so what's important is that you're looking at the
6 words of a five-year-old, and then, today, the words of a
7 ten-year-old. The big things, the things that matter were
8 exactly the same.

9 Think like in an elementary school, it's like who, what,
10 where, when, and why. The who: When she was five, was that
11 Pedro touched me in a place I didn't want to be touched. She
12 didn't say anybody else. And she was even asked, "Has anybody
13 else ever touched this way?" And she said, "No."

14 Today, almost five years later, who? Pedro. Nobody
15 else.

16 The what: "Pedro put his mouth on my vagina." She said
17 that when she was five. She said it when she was ten today.
18 She didn't change her story and say, "Oh, actually, he put his
19 penis in my vagina" or "actually, he did all of these other
20 terrible things." No. She told you the same thing.

21 The where: When she was five, she said it happened in
22 Pedro's bedroom at his house where she was babysat. She's
23 ten. She says it happened in Pedro's house where she was
24 babysat, in his bedroom.

25 The when: Back when she was five. She said, "I was five

1 years old the last time it happened. It happened more than
2 one time. I was five the first time it happened, and I was
3 five the last time it happened." Today, as a ten-year-old,
4 she told you, "I was five when it happened, and it happened
5 more than one time, but I was five."

6 Members of the jury, that consistency tells you that
7 Blysse is telling the truth. She didn't make up some story
8 then and have to remember some detailed lie some years later.
9 She's telling you what she went through.

10 The judge is going to talk to you about the credibility
11 of witnesses, who you can believe and who you can't believe,
12 things you can take into account, and why somebody would have
13 a reason to lie.

14 Why would Blysse (indiscernible)? Of all things in the
15 world, why would she lie about something that five-year-olds
16 don't even know about? How could know to talk about kissing
17 of vaginas?

18 Do y'all think this was fun for her to sit in front of
19 you guys and talk about this? Do you think she got something
20 out of this? Do you think this family has gotten anything
21 good from this? What reason would anybody have to create this
22 experience to have to live through?

23 The judge is going to define "reasonable doubt" for you.
24 And, as I stated, it's not proof beyond all doubt. It's doubt
25 that's legit, that you've got a reason to think, "Ooh, that's

1 a real problem."

2 You came here today and you've been sitting here all day,
3 and it's time to leave at the end of the day and you see out
4 the window and the sky is dark and people are coming in off
5 the street and they're carrying umbrellas, and the umbrellas
6 are dripping on the ground. Some people are wearing jackets
7 and hoods and the jackets are wet. They've got rain boots on.
8 Each of you has common sense. Y'all know it's been raining.
9 You don't need a scientist to come in and swab the drops of
10 water and look for water DNA to tell you that it's been
11 raining. If people come in with their rain jackets and their
12 umbrellas, and they say, "Hey, y'all, it's been raining," I
13 know because I saw it. I have experience. I'm an eyewitness
14 to it.

15 You don't need physical evidence. You don't need a lab
16 team to come in and tell you it's been raining. You know it's
17 been raining. Just as in this case, you know from the
18 testimony both back when this happened and then today, that,
19 when Blysse O [REDACTED] was five years old, staying at that man's
20 house, he took her into a closed room, put his mouth on her
21 vagina, and he told her not to tell anyone.

22 She told you that she said no, but that he wouldn't
23 listen. No is no in English and in Spanish. The defendant
24 broke the rules, the rules in place to prevent this very thing
25 from happening, the rules that Derrick and Rain asked to be

1 respected, to keep their little girl out of the very situation
2 that causes things like this. They asked for Blysse to be
3 kept away from men alone so there wouldn't be an opportunity
4 for this to happen. He broke those rules, and he broke those
5 rules on purpose so that he could do what he wanted to do.

6 And in breaking those rules, he broke the law. Find him
7 guilty.

8 THE COURT: Thank you, Ms. Hammack.

9 Mr. McKellar?

10 MR. McKELLAR: Thank you, Your Honor.

11 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

12 MR. McKELLAR: Good afternoon. We are fortunate to live
13 in a society where an individual does not have to prove his
14 innocence. Here, the State has to prove that a person
15 committed a crime beyond a reasonable doubt. That is the
16 highest evidentiary standard in the land. There are different
17 evidentiary standards in the law, and if you've ever been part
18 of a civil suit, the evidentiary standard of the plaintiff
19 must meet -- it's called preponderance of the evidence. One
20 litigant, the plaintiff, has to have a little bit more
21 evidence in his favor than the defendant in his. Just a
22 little bit more, but he wins the case.

23 There's also a standard of proof called probable cause.
24 That's the standard of proof that grand juries use, the police
25 use, and magistrates use in determining whether or not a

1 person should be arrested. Probable cause. What does that
2 sound like it means? Well, it sounds like it means what's
3 probably more likely than not.

4 So it's more likely than not that police think that
5 somebody's committed a crime, and they can go get an arrest
6 warrant. They can tell the magistrate that this is the
7 evidence we have, we think it's more likely than not that a
8 person has been -- that a person has committed a crime.

9 There's another burden of proof that, I think, is used in
10 libel and slander cases where a person says something about
11 another person that's derogatory, and the other person says,
12 "That's not true. I'm going to sue you."

13 The evidence in that -- the burden in that case is clear
14 and convincing. The evidence has to be clear and convincing
15 that the plaintiff -- or, excuse me, that the defendant
16 libeled or slandered the defendant. So it's higher than
17 preponderance of the evidence. In preponderance of the
18 evidence, if the scales tip just a little bit to favor the
19 plaintiff, they win.

20 Clear and convincing, you've got to put some more weight
21 on that. You've got to prove your case in order to win clear
22 and convincing evidence.

23 And the highest burden in the land -- and this is a
24 constitutional right that's afforded to us all -- is that,
25 when a person is charged with any crime, the State has to

1 prove their case beyond a reasonable doubt. And why is that?
2 Why do we have such a high standard in criminal cases and such
3 lower standards in civil cases? Well, you're not just losing
4 your money if you lose in a criminal case. Somebody slips and
5 falls and injures themselves in your 7-Eleven and you get sued
6 and you lose, well, you're out a little bit of money or maybe
7 a lot of money, but you're just out of money. Here, you're
8 out of liberty. You lose your liberty, and that is why the
9 State -- the burdens are so high on the United States
10 Government and the State when they make charges against you.

11 So how do you -- in cases like this, how do prosecutors
12 or how does the State prove their case? Well, they put up the
13 alleged victim on the stand to testify. You got to do that,
14 right; otherwise (indiscernible). But what else do they do?
15 What else can they do? Well, they'd like to have
16 corroborating evidence; right? They need something else to
17 hang their hat on. They need DNA. Sometimes they don't have
18 it.

19 They need any drugs in the house to show that the person
20 was drugged, but that sometimes they don't have it. They
21 need -- so what else? They need semen. They need something.
22 Right? If you have saliva on a vagina, you know -- and the
23 saliva is not the victim's and the DNA doesn't match, well,
24 that's a pretty good case, isn't it? Right? Why would saliva
25 be there?

1 If there's semen on a vagina or inside a vagina, then you
2 give them a rape kit. That's pretty strong evidence that a
3 crime was committed. If you don't have any of that, what do
4 you have? What are you left with? Well, you're left with
5 just the statement of one person that something happened. And
6 that's it.

7 So you are being asked by the State to convict a person
8 based upon one person's statement. And let's talk about that
9 statement. Those statements -- well, first, you heard her
10 testify here, but you also saw her testify at the Child
11 Advocacy Center. The Child Advocacy Center is a -- I think
12 she said it's a center where children come to attest to -- to
13 say whether or not something bad has happened to them that
14 shouldn't have happened, like child molestation or whether
15 they've been (indiscernible). So that's the purpose of it.

16 It's supposed to be neutral. It's supposed to be
17 objective. They're not supposed to have a dog in the fight.
18 Right? They're not supposed to be for the child or against
19 the child. They're not supposed to be for the defendant or
20 against the defendant. But you do see where the Child
21 Advocacy interviewer is sitting; right? She's sitting with
22 the prosecution.

23 At the interview itself, there are substantial problems
24 with the interview. Nobody says, either on the stand today or
25 in the interview, who pulled down her pants. She said, "Pedro

1 said pull down my pants." Right? She didn't say Pedro
2 pulled -- she didn't say, "I did pull down my pants." She
3 didn't say, "Pedro pulled down my pants." The interviewer is
4 the first one to say, "Pedro pulled down your pants." Right?
5 They're not supposed to do that. They're not -- the
6 interviewers are not supposed to tell the child what happened.
7 Right? That plants thoughts in their head, and that is
8 exactly what you do not want to see in these types of
9 interviews, the interviewer telling the person what actually
10 happened.

11 Go back -- don't take my word for it. Go back and watch
12 it in the room, and you will see she never established who
13 pulled down the pants until the interviewer says who pulled
14 down the pants.

15 In her testimony -- and this may be the most glaring
16 discrepancy among the testimony in the Child Advocacy Center
17 interview. In her testimony, she said she was laying down.
18 All right? That's probably pretty vivid in her mind that she
19 was laying down. And I wouldn't know whether I'm a victim of
20 crime -- was I on my back when I was getting beaten up or was
21 I standing on my feet? I wouldn't remember that. She says
22 she was laying down, on the stand. In the interview, she said
23 she was standing up. That's a pretty large discrepancy.

24 In the CAC interview, she never really said where she was
25 standing up, just that she was standing up. They never asked,

1 "Were you standing up on the floor? Were you standing up on
2 the bed? Where were you?" It was never asked.

3 In an interview, she said -- or, excuse me, in the
4 testimony, she said, "He touched my hands with his vagina
5 [verbatim]." Skin to skin. Go back and look for that in the
6 interview -- in the CAC interview. That's a pretty big
7 allegation; right? That's a crime in and of itself. Where
8 does she say that in the CAC interview? She doesn't.
9 Anywhere. 30 minutes of interview, not mentioned once.

10 And she uses the word "vagina." I'm sorry. How many
11 five- and six-year-olds do you know that use the word
12 "vagina"? I mean, I personally don't know, but it seems
13 weird. I know, when I was a kid, the last thing I wanted to
14 hear somebody say or to come out of my mouth was the word
15 "penis." I hated it. I hated to hear it. I don't know. I
16 think it's just something guys don't like saying or hearing as
17 kids. But she's comfortable saying the word "vagina," which
18 is odd in and of itself.

19 Now, why is she there to begin with? Well, she's there
20 to be babysat. She's there to be babysat by Fran Acosta, my
21 client's wife. Fran Acosta is married to a man, has many --
22 or at least two male children, one of whom lives in the house.
23 Yet, Derrick is afraid of men, but he sends the child there
24 anyway. If you're afraid of men -- if you're genuinely afraid
25 of men and all men are evil or all men have this weird

1 predisposition to molest kids, you don't send them to a house
2 where there are men. It doesn't make sense.

3 And then to be concerned about that -- and if you're
4 concerned about all men are predisposed to molesting kids, to
5 not be disturbed about being exposed to porn, right? He said,
6 "I wasn't really concerned about that." Talked about it. Not
7 a big deal.

8 And that exposure to porn could very well be her basis of
9 knowledge. You might be wondering, "Well, how the hell does
10 she know about" -- excuse my language -- "kissing vaginas
11 from?" Or -- that's a good start; right?

12 And I believe Derrick said he came over to his house --
13 he came over to the house twice, and Derrick and Rain or
14 Blysse -- excuse me, Blysse was not supposed to be around the
15 dad, even though she's been babysat by these people for five
16 years and men are in the house, and she's supposed to somehow
17 magically stay away from them. And twice -- I think he said
18 twice he saw, over the course of five years, twice he saw that
19 child coming out of the room (indiscernible).

20 I mean, how is a five-year-old supposed to avoid a person
21 in a house if they're there all the time for five years? It
22 cannot happen. It's a bizarre rule to begin with; right?
23 It's a bizarre role to send somebody, tell your babysitter,
24 "Your husband can't be around my child because I'm afraid of
25 him, but I'm going to send them anyway."

1 And then are you really angry about it when the man is
2 around the child? I mean, how is he supposed to avoid the
3 child? Five years of being babysat by this family. It can't
4 happen.

5 But don't take my word for it. What I'm saying is not
6 evidence. What she's saying is not evidence. We have -- she
7 advocates for the State. She advocates for a conviction. I
8 advocate for not guilty. We both put our own little -- both
9 supposed to put our own little spin on little things.

10 Go back there and listen for yourselves. Go back and
11 listen to the child advocacy interview a second time. Listen
12 to her testimony a second time, and you will see there are
13 substantial differences, and you will realize that you cannot
14 convict a person for this offense when all you've got is one
15 statement -- well, two statements, and they are almost --
16 almost diametrically opposed.

17 That's the reason why there's only one verdict that
18 (indiscernible) justice, and that verdict is not guilty.

19 Thank you.

20 THE COURT: And thank you, Mr. McKellar.

21 Ladies and gentlemen, that first break I talked about,
22 just stand up right where you are. Literally, just stand up.
23 It's going to take me probably 15 minutes to deliver the
24 charge to you, and I need you to be able to pay attention. So
25 I wanted you to move, and let's get some oxygen going. And

1 when you -- and just move a minute, refocus. When you're
2 ready to be seated, be seated.

3 (Pause in the proceedings.)

4 JURY CHARGE

5 THE COURT: Ladies and gentlemen, you have heard the
6 evidence and the arguments of both sides. It is now my duty
7 to deliver the charge or the instruction on the law to you.

8 Ladies and gentlemen, in this case, there are two
9 indictments against the defendant, Mr. Rodriguez. As we
10 discussed yesterday and today, the two indictments in this
11 case are not evidence. The first indictment charges the
12 defendant with criminal sexual conduct with a minor in the
13 first degree, and the other indictment charges the defendant
14 with criminal sexual conduct with a minor in the third degree.

15 I remind you that the fact that the defendant was
16 arrested, charged, and indicted is not evidence and cannot be
17 considered by you as evidence of guilt, nor does it create any
18 presumption or inference of guilt. These documents are simply
19 the formal written instruments which contain the charges made
20 against the defendant. They are the formal documents by which
21 this case is brought into this court.

22 Now, each of these indictments charge a separate and
23 distinct offense. You must decide each indictment separately
24 on the evidence and law applicable to it uninfluenced -- not
25 influenced by your decision as to the other indictment. The

1 defendant may be convicted or acquitted on either or both of
2 the offenses charged on both or either of the indictments.

3 You will be asked to write a separate verdict of guilty
4 or not guilty for each indictment. The defendant,
5 Mr. Rodriguez, has pled not guilty to these indictments, and
6 that plea places the burden on the State to prove the
7 defendant guilty. A person charged with committing a criminal
8 offense in South Carolina is never required to prove himself
9 or herself not guilty. I charge you that it is an important
10 rule of law that the defendant, in a criminal trial, no matter
11 what the seriousness of the charge, will always be presumed
12 innocent of the crime for which the indictment was issued
13 unless guilt has been proven by evidence satisfying you of
14 that guilt beyond a reasonable doubt.

15 This presumption of innocence does not end when you begin
16 your deliberations, but it accompanies the defendant
17 throughout the trial until you reach a verdict of guilt based
18 on evidence satisfying you of that guilt beyond a reasonable
19 doubt, and you will do this analysis separately and
20 independently for each of these indictments.

21 The presumption of innocence is like a robe of
22 righteousness placed about the shoulders of the defendant,
23 which remains with the defendant until it has been stripped
24 from the defendant by evidence satisfying you of the
25 defendant's guilt beyond a reasonable doubt.

1 The presumption of innocence is not a mere legal theory.
2 It is not just a legal phrase. It is a substantial right to
3 which every defendant is entitled unless you, the jury, are
4 satisfied from the evidence of the defendant's guilt beyond a
5 reasonable doubt. Again, this analysis applies independently
6 and separately to each indictment.

7 What, then, is reasonable doubt in the law? Well, a
8 reasonable doubt is the kind of doubt that would cause a
9 reasonable person to hesitate to act. The State has the
10 burden of proving the defendant guilty beyond a reasonable
11 doubt. Some of you may have served as jurors in civil cases
12 where you are told that it is only necessary to prove that a
13 fact is more likely true than not true, such as by the greater
14 weight of the preponderance of the evidence.

15 In criminal cases, the State's proof must be more
16 powerful than that. It must be beyond a reasonable doubt.
17 Proof beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the defendant's guilt. There are very few
19 things in this world that we know with absolute certainty, and
20 in criminal cases, the law does not require proof that
21 overcomes every possible doubt.

22 If, based on your consideration of the evidence, you are
23 firmly convinced that the defendant is guilty of the
24 indictment that you are considering, you must find the
25 defendant guilty. If, on the other hand, you think there is a

1 real possibility that the defendant is not guilty regarding
2 the indictment that you are considering, you must give the
3 defendant the benefit of the doubt and find him not guilty.
4 You would do this analysis independently and separately
5 regarding each of these indictments.

6 I remind you that, during this trial, you and I have had
7 certain duties to perform. As the trial judge, it is my
8 responsibility to preside over the trial, and I also have the
9 duty to rule on the admissibility of the evidence. You are to
10 consider the competent evidence before you. You are to
11 consider only the testimony which has been presented from this
12 witness stand and any exhibits which have been made a part of
13 the record and any inferences which you draw from the evidence
14 presented.

15 I have the additional duty to charge you regarding the
16 law. As the presiding judge, I am the sole judge of the law,
17 and it is your duty as jurors to accept and to apply the law
18 as I now tell you the law is. If you already have any idea as
19 to what the law is or what it ought to be, and it does not
20 agree with what I now tell you the law is, you must abandon
21 your preconceived idea because you are sworn to accept the law
22 and to apply the law exactly as I state it to you.

23 Now, after this matter has ended and your duty on this
24 jury has ended, if you are compelled, contact your legislator.
25 But for our system to work correctly this day, you must accept

1 and apply the law exactly as I state it to you.

2 Ladies and gentlemen, in every case tried before a jury,
3 the jury becomes the sole and exclusive judge of the facts. A
4 trial judge cannot intimate, state, comment on, or make any
5 statement to a trial jury about the facts. Since you, the
6 jury, are the sole judges of the facts, you are not to infer
7 from what I have said during the progress of this trial in
8 ruling on the admissibility of evidence or otherwise or
9 anything that I say now during the course of this instruction
10 to you that I have any opinion regarding the facts. The law
11 doesn't allow me to have an opinion about the facts. That is
12 a matter solely for you, the jury, to determine. As jurors,
13 it is your duty to determine the effect, the value, the
14 weight, and the truth of the evidence.

15 Now, ladies and gentlemen, there are two types of
16 evidence which are generally presented during a trial. One is
17 called direct evidence -- I'm going to define that for you in
18 a moment -- and the other is called circumstantial evidence.
19 I'm going to define that for you as well. I'm then going to
20 give you a short example of each.

21 Direct evidence is the testimony of a person who claims
22 to have actual knowledge of a fact, such as an eyewitness.
23 Circumstantial evidence is proof of a chain of facts and
24 circumstances indicating the existence of a fact. The law
25 makes absolutely no distinction between the weight or value to

1 be given to either direct or circumstantial evidence, nor is a
2 greater degree of certainty required of circumstantial
3 evidence than of direct evidence. You should consider all of
4 the evidence in the case. And after weighing all the
5 evidence, if you're not convinced of the guilt of the
6 defendant beyond a reasonable doubt, you must find the
7 defendant not guilty. And, again, you do this analysis
8 separately and independently for each of the indictments.

9 I now want to share with you an example of what is meant
10 by direct evidence and circumstantial evidence. You know,
11 it's supposed to frost tonight, so I suppose winter is on the
12 way. But go with me to February, where it is cold. And in my
13 example, snow is forecast. You go outside and you look up and
14 you actually get hit in the eye with snow. You go back inside
15 and you say, "It's snowing outside." You know it just about
16 every way you can. You saw it. You felt it. You experienced
17 it. That is direct evidence. When you come in and tell
18 folks, "It's snowing outside," you are telling what you know
19 with your actual experience and your knowledge.

20 Circumstantial evidence. It's February. It's cold.
21 Snow is forecast. You look out on your lawn just before you
22 turn in for the night and all you see is your brown, crunchy
23 grass; however, when you awaken the morning, it's a snow day
24 because snow is covering everything. But the sun is shining,
25 but the snow is covering everything. Turn on the TV and all

1 the closures are being announced.

2 Well, here's what you know. You know, it's February.
3 You know, snow is forecast. And you know that, when you went
4 to bed, all you saw was your brown, crunchy grass, and in the
5 morning, all the sun is bright and snow is covering
6 everything. All of the facts that you know point conclusively
7 to one fact; that is, it snowed overnight. And you know that,
8 although you did not experience it.

9 Well, you know that by circumstantial evidence.
10 Circumstantial evidence is a proof of a chain of facts which
11 point to the existence of a fact, and that is circumstantial
12 evidence.

13 Now, I'm going to talk about credibility of witnesses.
14 Necessarily, you must determine the credibility of the
15 witnesses who have testified. Credibility simply means
16 believability. It becomes your duty as jurors to analyze and
17 to evaluate the evidence and determine which evidence
18 convinces you of its truth. In determining the believability
19 of witnesses who have testified, you may believe one witness
20 over several witnesses or several witnesses over one witness.
21 You may believe a part of the testimony of a witness and
22 reject the remaining part of the testimony of that same
23 witness. You may believe the testimony of a witness in its
24 entirety, or you may reject the testimony of a witness in its
25 entirety. You may consider whether any witness has exhibited

1 to you any interest, bias, prejudice, or motive. You may also
2 consider the appearance and manner of a witness while on the
3 witness stand.

4 During this trial, you have heard testimony from a child.
5 Where a witness is a child, you must determine, as with any
6 witness, whether that testimony is believable. In deciding
7 believability, you may consider not only matters that I've
8 already discussed with you, but you may also consider the age
9 of the child, the child's ability to observe and remember
10 facts, and the child's ability to understand and answer
11 questions. Because young children may not fully understand
12 what is happening and happening here, it is up to you to
13 decide whether the child understood the seriousness of
14 appearing as a witness at this criminal trial, whether the
15 child understood the questions, whether the child has good
16 memory, and whether the child understands the difference
17 between lying and telling the truth.

18 In addition, young children may be influenced by the way
19 the questions are asked. It is up to you to decide whether
20 the child understood the questions asked.

21 I instruct you and I emphasize that the fact that the
22 defendant did not testify is not a factor to be considered by
23 you in any way in your deliberation and in your consideration
24 of the question of whether the defendant is guilty or not
25 guilty. The fact that the defendant did not testify must

1 not -- must not be considered by you in any manner whatsoever.
2 A defendant has the constitutional right to remain silent, and
3 the assertion of this right must not be considered by you in
4 your deliberations; i.e., under your oath you are to draw no
5 conclusion whatsoever from the fact that the defendant in this
6 case did not testify. The fact that this defendant did not
7 testify should not even be discussed in the jury room.

8 The burden of proof, as I have stated to you, is and
9 remains on the State. The defendant is not required to prove
10 himself not guilty. The burden of proof remains on the State
11 to prove guilt beyond a reasonable doubt.

12 Now, in order to establish criminal liability, criminal
13 intent is required. For example, the mental state required to
14 be proven by the State for a particular crime might be
15 purpose, intent, knowledge, and the like. Criminal intent
16 must be proven by the State beyond a reasonable doubt.
17 Criminal intent is always a matter that must be determined by
18 the jury from the circumstances surrounding the situation.
19 There is no way to prove intent to a mathematical certainty.
20 There is no way medical science can dissect a person's brain
21 and determine what the person had in mind. So the law says
22 that criminal intent may be inferred from the circumstances
23 shown to have existed. This is how you make a determination
24 of whether or not the element requiring intent was present.

25 It is not necessary to establish intent by direct and

1 positive evidence, but intent may be established by inference
2 in the same way as any other fact: By taking into
3 consideration the acts of the parties and all the facts and
4 circumstances in the case.

5 Criminal intent is a mental state, a conscious
6 wrongdoing. It is up to you to determine what the defendant
7 intended to do based on the circumstances shown to have
8 existed.

9 Ladies and gentlemen, in a moment, I'm going to instruct
10 you regarding the elements of each of these offenses. I'm
11 first going to talk to you about criminal sexual conduct with
12 a minor in the first degree, and then I'm going to talk to you
13 about criminal sexual conduct with a minor in the third
14 degree.

15 Mr. Rodriguez, the defendant, is charged with criminal
16 sexual conduct with a minor in the first degree. The State
17 must prove two elements beyond a reasonable doubt. The first
18 element, which the State must prove beyond a reasonable doubt,
19 is that the defendant engaged in a sexual battery with the
20 victim.

21 What is a sexual battery? A sexual battery is sexual
22 intercourse, cunnilingus, fellatio, anal intercourse, or any
23 intrusion, however slight, of any part of a person's body or
24 of any object into the genital or anal openings of another
25 person's body, except when the intrusion is accomplished from

1 medically recognized treatment or diagnostic purposes.

2 If you find that the State has not shown and not proven
3 beyond a reasonable doubt that a sexual battery occurred, you
4 would stop deliberation on the indictment for criminal sexual
5 conduct with a minor in the first degree, and your verdict on
6 this indictment would have to be not guilty.

7 If you find that a sexual battery did occur, you must
8 then decide whether the State has proven beyond a reasonable
9 doubt the second element, which is that the alleged victim was
10 younger than 11 years old.

11 That concludes my instruction on criminal sexual conduct
12 with a minor in the first degree. I'm now going to instruct
13 you regarding criminal sexual conduct with a minor in the
14 third degree.

15 A person is guilty of criminal sexual conduct with a
16 minor in the third degree if the actor -- if the defendant is
17 over 14 years of age and the actor, the defendant, willfully
18 and lewdly commits or attempts to commit a lewd or lascivious
19 act upon or with the body or its part of a child under 16
20 years of age with the intent of arousing, appealing to, or
21 gratifying the lust, passions, or sexual desires of the actor,
22 the defendant, or the child.

23 I'm going to define for you the terms "lewd and
24 lascivious." "Lewd" means obscene, lustful, indecent, or
25 lecherous. "Lascivious" means tending to incite lust, lewd,

1 indecent, obscene, or tending to deprave the morals in respect
2 to sexual relations.

3 The State has the burden of proof to prove these elements
4 beyond a reasonable doubt.

5 And that concludes, ladies and gentlemen, the charge on
6 criminal sexual conduct with a minor in the third degree.

7 Now, ladies and gentlemen, in just a moment, I'm going to
8 go over with you the verdict forms, but, first of all, before
9 I even go over them, I want to tell you two things about them.
10 First of all, I want to emphasize that your verdict must be
11 unanimous. Your verdict is not the verdict of the majority of
12 you. Your verdict must not be the verdict of any one of you.
13 Your verdict must be unanimous. And this, of course, applies
14 independently and separately to each of these indictments.
15 That's why there are two verdict forms.

16 So please be mindful that your verdict must be unanimous.
17 This must be the verdict of each and every one of you -- of
18 the 12 of you, which should be a hint that, when the jury
19 leaves me on this next occasion, Mr. Hallman and Mr. Harris,
20 our alternates, please stay with me when they leave.

21 Now, the second matter that I want to emphasize before I
22 go over the verdict forms with you is this: There are two
23 possible verdicts. These two possible verdicts have been put
24 on a piece of paper, and one is first and one is second. I
25 want to emphasize and tell you there's no hidden meaning in

1 the order in which these possible verdicts have been put on
2 this piece of paper. Please do not take the order in which
3 these possible verdicts have been placed on paper is some
4 hidden meaning. Just know it's reality, when two things are
5 going to be put on a piece of paper, one's got to be first,
6 and one's got to be second. There is no hidden meaning,
7 comment, intimation with regards to the order in which these
8 possible verdicts have been placed on the paper. They could
9 have just as legitimately been reversed.

10 And with those admonitions in mind, ladies and gentlemen,
11 I want to go over the verdict forms with you. Come down there
12 so you can see a little bit better.

13 All right. The top part is called the caption. It just
14 says we are in the State of South Carolina, in the County of
15 Aiken, and that this case is the State of South Carolina
16 versus Pedro Cervantes Rodriguez. That's the way that this
17 case is captioned.

18 This number, under where it says "indictment number" is
19 just that. It is the indictment number. And this form is the
20 verdict form. It describes what this document is. It is the
21 verdict form on this indictment.

22 And it reads as follows: As to the indictment for
23 criminal sexual conduct with a minor, first degree, we the
24 jury, unanimously -- (indiscernible) -- unanimously find the
25 defendant -- and there are two possible verdicts.

1 When you have reached your verdict on each of these
2 indictments, I'm going to ask you to circle whatever is the
3 unanimous verdict of this jury. The first possible verdict is
4 guilty; the second, not guilty.

5 The second verdict form has the same caption with a
6 different indictment number, and it reads as follows: As to
7 the indictment for criminal sexual contact with a minor, third
8 degree, we, the jury, unanimously find the defendant -- two
9 possible verdicts. Whichever is the unanimous verdict of the
10 jury, I'd ask you to circle that. It could be either not
11 guilty or guilty.

12 When you have completed your deliberations and you have
13 indicated the unanimous verdict of the jury on each of these
14 two verdict forms, then you will sign, Mr. Presiding Juror --
15 and you know who you are -- and you will date it. Just for
16 your reference purposes, today is the 18th of October. And I
17 have to (indiscernible).

18 Now, when you have completed your deliberations, you'll
19 knock on the door and you'll return to the courtroom and
20 you'll hand the verdict forms to one of our bailiffs, who will
21 hand that to me. We do not publish the verdict forms; it's
22 passed to me.

23 Now, I need to give you additional instructions. First,
24 please be mindful that all 12 of you must be present for you
25 to deliberate. If anybody needs to take a comfort break,

1 that's fine. Just stop your deliberations, take your comfort
2 break, and then just reconvene when all 12 of you are together
3 again.

4 Why? The reason for that is just common sense. If
5 somebody is out of the room, it may be that that one statement
6 by that juror that's just so important will have been missed.
7 So it's important that all 12 of you are together during your
8 deliberations, so that's the reason for the instruction.

9 And if, for whatever reason, you need to take a comfort
10 break or somebody needs to make a phone -- whatever may occur,
11 stop your deliberations, and then reconvene when all 12 of you
12 are together again.

13 Now, in just a moment, I'm going to ask you to step back
14 to your jury room with this instruction: Do not discuss this
15 matter or allow anyone to discuss it with you. And you ought
16 to have that expression on your face. You've been telling us
17 that this is the point when we will begin our deliberations,
18 so I'm going to hasten to tell you exactly what's going to
19 happen. When you step back to your jury room on this next
20 occasion, I am going to turn to these lawyers, and I'm going
21 to ask them two questions: Have I given this jury all of the
22 law that they may need for their deliberations, and have I
23 stated it for them correctly?

24 Now, it may be that I have failed to give you a part of
25 the law that you may need, and I will invite you back out for

1 the purpose of giving you that additional instruction, and I'm
2 going to ask you now, if I need to bring you back out for that
3 reason, please don't consider that instruction with any
4 emphasis. Just know it's my one chance to get this right.

5 In the event that I need to bring you back out because I
6 have said something incorrectly -- and goodness knows that
7 would be unintended -- I'm going to ask you in advance to
8 please allow me to correct my error in your minds because this
9 is my one chance to get this right, to give you all of the law
10 that you may need for your deliberations, and to state it for
11 you correctly.

12 Now, in the event that I do not need to bring you back
13 out, you will be brought the verdict forms, the exhibits, and
14 an instruction to begin your deliberations. And I've been
15 having the pleasure of being in Aiken for a long time, and I
16 am confident that our bailiffs would bring you the verdict
17 form and the exhibits, will give you that instruction, but
18 trust me, you will not have the verdict forms and the exhibits
19 unless it is time for you to begin your deliberations.

20 Ladies and gentlemen, with the exception of our
21 alternates, I'm going to ask you to please step to your jury
22 room. Do not discuss this matter with anyone who tries to
23 discuss it with you. We will be with you shortly.

24 (The jury exited the courtroom at 5:08 p.m.)

25 THE COURT: Gentlemen, I'm going to ask you to do this

1 for me. You have given us so much of your time; I want to ask
2 for a little bit more. What I'm going to ask you to do is --
3 our bailiff, in a moment, is going to take you to another
4 location -- and believe it or not, I've actually had this
5 happen. I have had -- I've lost a juror at the beginning of
6 the deliberations, and I was so excited and so happy that I've
7 held on to my alternates for 15 minutes. I get concerned that
8 beyond, 15 minutes of deliberations, it's difficult to stop
9 those deliberations and start them anew.

10 So I'm going to ask that, when the deliberations have
11 begun -- give us 15 minutes -- and you are welcome to time it
12 on your own. So if you'll do that for me, I'd be so grateful.
13 And our bailiff will take you in another location, not with
14 our jurors. Okay? Thank you. Thank you.

15 (The alternate jurors exit the courtroom at 5:08 p.m.)

16 THE COURT: All right. Exceptions, additions from the
17 State?

18 MS. HAMMACK: No, Your Honor.

19 THE COURT: From the defense?

20 MR. McKELLAR: None, Your Honor.

21 THE COURT: Very well.

22 Now, if you-all will please look at the verdict forms for
23 me and the exhibits and be sure that what is going to this
24 jury is what's supposed to be going to this jury, I would
25 appreciate it, because I'm the judge that had the case that

1 sent the britches to the jury with the confession in the back
2 pocket that nobody knew about. I'd like not to happen.

3 MR. THOMPSON: Your Honor, we do have a courtroom
4 housekeeping motion.

5 THE COURT: Okay.

6 MR. THOMPSON: Mr. Cervantes Rodriguez has been
7 everywhere he's supposed to go and has done everything -- he
8 has been everywhere he is supposed to be. He is
9 electronically monitored, and that monitor is, at this point
10 in time, going off because he has been here and has not been
11 able to charge it during the day.

12 If the jury were to come back, I think it would
13 potentially be distracting to the verdict for them to hear the
14 monitor go off, especially if they know anything about
15 monitoring or whatever. And I would ask that the monitor be
16 removed or charged before he's required to be back in the
17 presence of the jury.

18 THE COURT: I'm with you. And it seems to me that --
19 well, let me just ask this question. What is fast -- what is
20 the faster remedy?

21 MR. GIBBONS: I think they have to be in the jail to do
22 anything with it.

23 MR. THOMPSON: Can he take it off here?

24 UNIDENTIFIED FEMALE: Supposed to take it home and
25 replace it at home. You do not disconnect it. You do not

1 bring it here.

2 MR. THOMPSON: They have very faithfully tried to obey
3 the instructions they've been given for the monitor. I just
4 know that the frequency during which it's going to start going
5 off is likely to increase.

6 THE COURT: Well, let me just say this to you. Whatever
7 can -- just let me know which you can do, because I just heard
8 we cannot take it off. We don't have the ability to take it
9 off at this moment, is my understanding. And we don't have a
10 charger. Someone's going to have to come to the rescue, which
11 I would think it would be whoever the monitoring company is --
12 they need to come on down -- and the system, one way or the
13 other.

14 So -- but let me share this with you. I was -- I gave to
15 Mr. McKellar today to see if he could find a bonds person who
16 would monitor the electronic monitoring and stay on
17 Mr. Rodriguez's bond so that I could entertain his remaining
18 out while the jury is deliberating, but if you-all can't find
19 anyone to do that, then I'm going to have to take him into
20 custody, so it doesn't really -- the monitor can come off.

21 So, with all of that, I'll look to you to tell the
22 monitoring company to come on. Come get it off or charge it.
23 And you can tell them I said so.

24 Okay. So that's ready to go. How about the exhibits?

25 MS. HAMMACK: Now, the Court's exhibits do not go back.

1 THE COURT: Oh, no, no. Now, that -- you said that
2 that -- you send that back, we can't play it.

3 MS. HAMMACK: We have a clean computer specifically for
4 the jury. They cannot access the internet.

5 THE COURT: And, Mr. McKellar, do you need to look at it?

6 MR. MCKELLAR: No, ma'am.

7 THE COURT: Okay. You're satisfied with it?
8 And has it got a (indiscernible)?

9 MS. HAMMACK: It's the same number.

10 THE COURT: Well, that could be bad if you haven't had it
11 blowed up.

12 MS. HAMMACK: Oh, no, it's -- yeah, we've got it powered
13 up.

14 THE COURT: Thank you all.

15 And, Charlie, begin your deliberations.

16 (At 5:14 p.m., jury deliberations began.)

17 THE COURT: All right. And at this time, is there
18 anything further from the State in this matter?

19 MS. HAMMACK: No, Your Honor.

20 THE COURT: All right.

21 MR. MCKELLAR: Nothing, Your honor.

22 THE COURT: Dang, why do I always think I'm going to be
23 faster -- it's going to be faster at night? We're not
24 going -- I'm not going to go beyond -- much beyond 6:00 unless
25 they are close. So we're going to just monitor it, and we'll

1 be in recess until we hear from our jury.

2 MR. McKELLAR: Your Honor, may Mr. Cervantes remain in
3 the courtroom?

4 THE COURT: Sure.

5 MR. McKELLAR: Sure.

6 (A recess was taken, awaiting the jury verdict.)

7 THE COURT: Okay. All right. It is my understanding
8 that the jury has reached its verdict. Anything from the
9 State before we bring them out?

10 MS. HAMMACK: No, Your Honor.

11 THE COURT: From the defense?

12 MR. McKELLAR: Nothing, Your Honor.

13 THE COURT: All right. Let's have our jury, please.

14 (The jury entered the courtroom at 6:33 p.m.)

15 THE COURT: All right. It is my understanding that the
16 jury has reached its verdict; is that correct?

17 JURY FOREMAN: Correct.

18 THE COURT: If you'll pass it to -- the verdict form to
19 the bailiff, and he'll pass it to me.

20 Thank you, sir.

21 I find that the verdict is in due form.

22 Mr. Clerk, if you would please publish the verdicts.

23 VERDICT

24 THE CLERK: Your Honor, with regards to the State of
25 South Carolina, Count of Aiken, Indictment

1 No. 2018-GS-02-01622, State of South Carolina versus Pedro
2 Cervantes Rodriguez, as to the indictment for criminal sexual
3 conduct with a minor in the third degree, we, the jury,
4 unanimously find the defendant guilty.

5 With regards to Indictment 2018-GS-02-01623, the State of
6 South Carolina versus Pedros Cervantes Rodriguez, as to the
7 indictment for criminal sexual conduct with a minor, first
8 degree, we, the jury, unanimously find the defendant guilty.

9 Ladies and gentlemen of the jury, with regards to
10 indictment for criminal sexual conduct in the third degree, if
11 this is your verdict, please raise your right hand.

12 THE COURT: I will observe --

13 THE CLERK: All hands are raised, Your Honor.

14 THE COURT: Yes.

15 THE CLERK: With regards to indictment for criminal
16 sexual conduct with a minor in the first degree, if this is
17 your verdict, please, again, raise your right hand.

18 All hands are raised, Your Honor.

19 THE COURT: Thank you.

20 Anything from the State before we dismiss our jury?

21 MS. HAMMACK: No, Your Honor.

22 THE COURT: From the defense?

23 MR. McKELLAR: Nothing, Your Honor.

24 THE COURT: Very well.

25 Ladies and gentlemen, I want to thank you for your

1 service on this jury and on this jury panel this week, which
2 should be a hint to you that I'm about to excuse you for the
3 balance of the week.

4 But before I do that, I want to share with you that,
5 because you were here, there were 51 cases on this trial
6 roster, and they have all resolved maybe with the exception of
7 one, maybe two at the most. But I believe that they will
8 resolve, and I'll certainly be working towards that end
9 tomorrow.

10 That is an awful lot of work that was accomplished by the
11 fact that you answered your juror summons and you were here.
12 So I want to thank you not only for your service on this
13 particular jury, but I want to thank you for being here,
14 because what that has enabled is it has enabled an awful lot
15 of -- a number -- a large number of cases to be resolved.

16 You know, when people are gathered, and they're going to
17 listen to the evidence and they're going to make up their
18 minds about the evidence, what they hear, the law, I have no
19 dog in the fight. They're here to do their civic duty. You'd
20 be amazed how it shifts the world for folks, which is why
21 we've been able to resolve matters.

22 So not only have you given us your time, your energy with
23 regards to this particular case, the fact that you
24 participated on this jury has been very important to allow
25 folks to perhaps see the world a little bit differently and

1 been able to work to resolutions to which both sides had a
2 role. And that's important. And so I want to thank you for
3 that.

4 I do need to give you some instruction, as I promised
5 you, which now seems so long ago. You are now at liberty to
6 talk about this case. So when you go home this evening, you
7 are at liberty to discuss this case if you wish. If you do
8 not want to talk about it, that's perfectly fine as well.
9 Just tell whomever is curious you don't want to talk about it.

10 I will share with you that the practice of law is an art.
11 It is not a science. And sometimes the lawyers want to call
12 jurors and say, "All right, I want to get better at what I'm
13 doing. What was helpful? What wasn't helpful? Can you help
14 me?"

15 If you're comfortable having a conversation, that's fine,
16 but if you don't want to have a conversation, just tell them.
17 They're not going to press.

18 And should anyone press you and try to have you speak
19 about this matter and you don't want to talk about it, call
20 the clerk. He'll call me, and I'll intercede on your behalf.

21 Now, for my juror who works at night, you've got to be
22 tired.

23 JUROR: I know. I'm tired.

24 THE COURT: You ought to be. So, you know, it is
25 appropriate for you to rest this evening. It really is.

1 You've been working so very hard.

2 Now, let me share with you that you are now not eligible
3 to serve on a jury in a court of record -- Common Pleas,
4 General Sessions -- for the balance of 2022. I know; I hear
5 the anxiety. I can feel it. But there's hope for you in
6 magistrate's court and municipal court. You have to remember
7 that you have an exemption for your jury service in a court of
8 record for 2023 and 2024 should you wish to exercise those, so
9 please keep that in mind.

10 Also, with regards to your jury check. It's not a check,
11 it's a card.

12 THE CLERK: The card will be funded no later than 5:00
13 tomorrow.

14 THE COURT: A trip to Tahiti? It will get you maybe to
15 Williston. It is a very small token of all that you did.

16 THE CLERK: It won't get you to Williston.

17 THE COURT: It won't get you to Williston?

18 THE CLERK: Might get you to Augusta.

19 THE COURT: Augusta? Augusta.

20 It is a very small token of all that you have given to
21 our system, and that is for your precious time for each and
22 every tick of a clock. We are all very grateful.

23 Ladies and gentlemen, I know the hour is late, and I know
24 you are tired and, at this time, you are free to stay and you
25 are free to go. I want to thank you so much.

1 THE CLERK: If you want to leave now or if you want a
2 work excuse, please wait in the jury box. (Indiscernible) so
3 I can give them their work excuse. As the judge said, if you
4 want to stay, you (indiscernible).

5 THE COURT: All right. Are you filling out the
6 sentencing sheet?

7 MS. HAMMACK: I am, Your Honor. I didn't want to cramp
8 while Your Honor was --

9 THE COURT: I understand.

10 (Pause in the proceedings while sentencing sheets are
11 prepared.)

12 SENTENCING

13 THE COURT: All right. With regards to sentencing, I'll
14 turn to the State. Obviously, I've heard the testimony, and
15 I'm happy to hear from anyone that wants to speak on behalf of
16 the victim and to include the victim. And, obviously, I need
17 to know whether or not Mr. Rodriguez has a record.

18 MS. HAMMACK: Yes, Your Honor. He has no prior criminal
19 history.

20 THE COURT: Okay.

21 MS. HAMMACK: There is nothing that I could say more than
22 what Your Honor's heard from testimony. I know that Blyse's
23 parents were considering whether to address Your Honor, if you
24 would allow me to ask them.

25 THE COURT: Of course. Absolutely.

1 MR. CARDENAS: Can you translate this, please?

2 Growing up, we were always seeing each other in the
3 summertimes. We ate together. You've always been a part of
4 my family. Pedro, I want to tell you that I've never had
5 any -- any heartburn over the past of something I was not
6 aware of. I've always wanted you to tell you that your son
7 (indiscernible). I promise you, I (indiscernible).

8 I can't speak for my wife or my father, but I forgive
9 you. (Indiscernible) you have to live with. It's something
10 that I've had to think about back and forth to work. And it
11 took some time. I'm safe and I'm doing what my father wants
12 me to (indiscernible). I would never use anything in the past
13 to be in this situation because this is not what I wanted.
14 (Indiscernible) and I can't change that. So I pray for you
15 and the family. And I thank everyone (indiscernible).

16 That's all I have.

17 THE COURT: Thank you so much. Thank you, sir.

18 MS. HAMMACK: The State has nothing further.

19 THE COURT: Yes, sir, Mr. McKellar?

20 MR. MCKELLAR: Thank you, Your Honor. Mr. Cervantes is
21 75 years old. He's originally from Mexico. He finished his
22 sixth grade in Mexico, but I think he has a higher equivalent
23 of education than that.

24 He came here at the age of 14 years old. He never
25 established citizenship, but he has always been a legal

1 resident. All of the -- I believe -- I'm pretty sure all of
2 his children were born here and are U.S. citizens.

3 He's worked construction all of his life. He's 75 years
4 old, and he stayed out of trouble for 70 years, Your Honor.
5 Unfortunately, since his age of 75, the mandatory minimum of
6 25 is a life sentence, and he understands that.

7 He has six children. He's married to Fran Acosta.
8 Acosta. I don't know if you know which one Ms. Acosta is,
9 but she's right there. His daughter, Nancy; daughter, Ticia;
10 and his daughter, Keisha on the front row. His daughter,
11 Myra, and Myra is the one who, unfortunately, had the flu, and
12 she's (indiscernible). And his two nieces, Alondra and
13 Andrea. He has 16 grandchildren, and he has eight
14 great-grandchildren, and I think two are on the way.

15 Judge, there's really no mitigating (indiscernible).
16 It's a mandatory for 25 years, so it doesn't really matter
17 what I think what the sentence is. It's a life sentence.

18 Mr. Cervantes, is there anything you want to say?

19 THE DEFENDANT: No.

20 MR. McKELLAR: That is all, Your Honor. Thank you.

21 (Pause in the proceedings while the Court reviews
22 documents.)

23 THE COURT: Counsel, let me see you-all for a second.

24 BENCH CONFERENCE

25 (The bench conference was held off the record.)

1 (Open court resumes as follows:)

2 THE COURT: All right. I am prepared to pass sentence at
3 this time.

4 All right. With regards to 2018-GS-02-01623, which is
5 the indictment for criminal sexual conduct with a minor in the
6 first degree, Mr. Rodriguez, I'm going to commit you to the
7 State Department of Corrections for a period of 25 years as
8 required by the statute. The issue that was submitted to this
9 jury as the sexual battery was one of cunnilingus and not
10 vaginal or anal battery -- intercourse, I should say -- but it
11 certainly was sexual battery.

12 With regards to 2018-GS-02-01622, which is criminal
13 sexual conduct with a minor in the third degree, I'm going to
14 commit you to the State Department of Corrections for a period
15 of 15 years.

16 These sentences will run concurrent, and you are to be
17 given credit for the time that you have served.

18 All right. I understand that there is a motion.

19 MR. McKELLAR: Yes, Your Honor.

20 THE COURT: And while we have the interpreters here, if
21 you'd certainly please proceed, and then we'll conclude.

22 MR. McKELLAR: Thank you, Your Honor. We'd move for a
23 new trial, and we also renew all of our motions and
24 objections.

25 THE COURT: Very well. As you know, under the case law,

1 when there is evidence to support the jury finding, as it was
2 found, it would be error to grant a new trial. And there
3 certainly was testimony to -- for this jury to find as it
4 found. And that, of course, was the testimony of the victim.
5 And I would respectfully deny your motion, noting your
6 exception thereto.

7 Now, if you wanted to talk to security about the family
8 saying a couple of words, and I would like to speak to the
9 parents -- you can be present or not be present, but I just
10 wanted to speak to them very briefly.

11 (At 7:10 p.m., the above trial concluded.)
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25

1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: State v. Pedro Cervantes Rodriguez

3 2018-DR-02-01622, 23

4 DATE OF HEARING: 10/17-18/2022

5 COURT REPORTER/MONITOR: DCRP/L. Raves

6
7 I, Bobbi Fisher, do hereby certify that the foregoing
8 transcript is a true and correct record of the recorded
9 proceedings; that said proceedings were transcribed to the
10 best of my ability from the audio recording and supporting
11 information, and that I am neither counsel for, related to,
12 nor employed by any of the parties to this case, and I have no
13 interest, financial or otherwise, in its outcome.
14

15 17 /s/ Bobbi Fisher

18 Bobbi Fisher, Certified Transcriber

19 Date Prepared: January 18, 2023
20

21 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER
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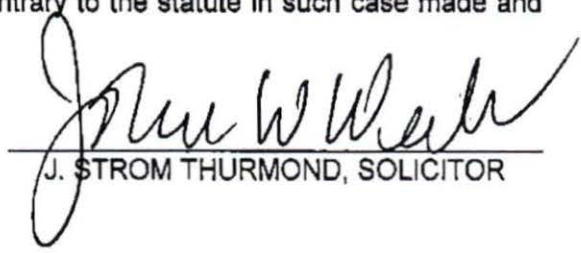
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR-THIRD DEGREE

§ 16-03-0655(C)

At a Court of General Sessions, convened on July 9, 2018, the Grand Jurors of Aiken County present upon their oath:

That **PEDRO CERVANTES RODRIGUEZ**, being over the age of fourteen (14) years, did in Aiken County, at divers times, on or between January 20, 2017, and January 20, 2018, wilfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of Blyse Cardenas, a child under the sixteen (16) years of age, with the intent of arousing, appealing to, or gratifying the lust, passions and sexual desires of himself or such child. All in violation of §16-03-655 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Kimberly A Sievers

Law Enforcement Case #: 18-005678

DOCKET NO. 2018GS0201622

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2018

ARREST WARRANT NUMBER

2018A0210200315

FILED June 28 2018

Robert J. Burt
CCJR & G.S.

Ann Sanders
Deputy Clerk

THE STATE
vs.

PEDRO CERVANTES RODRIGUEZ

ACTION OF GRAND JURY

True Bill

CDR #: 3661

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR-THIRD DEGREE

§ 16-03-0655(C)

VERDICT

Foreperson of Grand Jury
Date: June 28, 2018

Foreperson of Petit Jury

Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

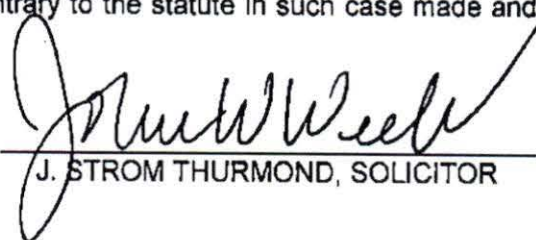
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A
MINOR-FIRST DEGREE

§ 16-03-0655(A)(1)

At a Court of General Sessions, convened on July 9, 2018, the Grand Jurors of Aiken County present upon their oath:

That **PEDRO CERVANTES RODRIGUEZ** did in Aiken County, at divers times, on or between January 20, 2017, and January 20, 2018, commit the crime of Criminal Sexual Conduct With A Minor In The First Degree, in that the Defendant did commit a sexual battery upon Blyse Cardenas, a minor who was under eleven (11) years of age at the time of the incident. All in violation of §16-3-655, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aliken County Sheriff

Kimberly A Sievers

Law Enforcement Case #: 18-005678

DOCKET NO. 2018GS0201623

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JULY TERM 2018

ARREST WARRANT NUMBER

AAH

2018A0210200316

FILED June 28 2018

Robert J. White
C.C.P. & G.S.

THE STATE

VS.

Pedro Cervantes Rodriguez
Deputy Clerk

PEDRO CERVANTES RODRIGUEZ

ACTION OF GRAND JURY

True Bill

CDR #: 0385

Indictment for

Kimberly A Sievers
Foreperson of Grand Jury
Date: June 28, 2018

VERDICT

CRIMINAL SEXUAL CONDUCT WITH A

MINOR-FIRST DEGREE

§ 16-03-0655(A)(1)

J. STROM THURMOND, SOLICITOR

Foreperson of Petit Jury

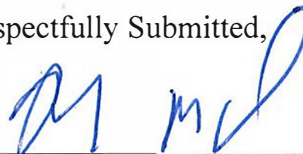
Date:

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED**Jul 19 2023****SC Court of Appeals**

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of July, 2023.

RECEIVED

Jul 19 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

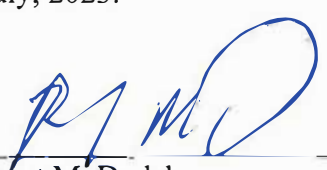
PEDRO CERVANTES RODRIGUEZ,

APPELLANT

APPELLATE CASE NO. 2022-001511

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of July, 2023.



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT