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**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Fairfield County

Honorable Brian M. Gibbons, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CARLOS ALEJANDRO CESMAS-GOMEZ,

APPELLANT

APPELLATE CASE NO. 2023-001192

---

RECORD ON APPEAL

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DAVID ALEXANDER  
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

MARK FARTHING  
Senior Assistant Deputy Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201  
(803)734-4117

ATTORNEY FOR APPELLANT

RANDY E. NEWMAN, JR.  
Solicitor, Sixth Judicial Circuit  
101 S. Congress Street  
Winnsboro, SC 29180  
(803)712-1735

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA - COUNTY OF FAIRFIELD  
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA )  
 ) Docket No.  
 Plaintiff, ) 2022-GS-20-00412  
 )  
 )  
 V. )  
 )  
 ) **Jury Trial**  
 CARLOS ALEJANDRO CESMAS-GOMEZ )  
 )  
 Defendant. )

July 17 - July 19, 2023

Fairfield, South Carolina

B-E-F-O-R-E:

**THE HONORABLE BRIAN M. GIBBONS**

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

Julie Hall, Esq.  
Attorney for the State of South Carolina

Kay Boulware, Esq.  
Attorney for the Plaintiff

Maria DiScioscia, RPR  
Official Court Reporter

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(P R O C E E D I N G S)

Monday, July 23, 2023

\* \* \*

THE BAILIFF: All rise.

THE COURT: Good afternoon, everybody.

Thank you. Be seated.

Good afternoon, ladies and gentleman. I know y'all are excited to be here on a beautiful Monday. I say that in just, I know a lot of you are frustrated or don't know what to expect being on jury duty and it's a big deal. It's the greatest civic duty, civic responsibility we all have as Americans here is the ability to judge each other pursuant to our United States Constitution.

My name is Brian Gibbons. I'm your resident circuit court judge. I don't live in Fairfield County. I actually live in Chester County but I'm over all court in Chester County, Fairfield County and Lancaster County which is what's called the Sixth Judicial Circuit.

I travel around -- just like all circuit judges do -- all across the State of South Carolina holding court in different counties. But I can tell you, it's always a pleasure to be home. I consider Fairfield County obviously my home even though I live in Chester. I love being home to hold court. And we have a great staff here and hopefully we will make this an enjoyable and hopefully an educational

1 experience for you, unlike what you may be expecting.

2 I promise you, ladies and gentleman, we understand.  
3 When I say "we," I'm talking I as well as the clerk's office  
4 and the lawyers who have business before the Court. We all  
5 understand the inconvenience that jury service can cause to  
6 you and your personal lives. I promise you that we will do  
7 our best to minimize that inconvenience and hopefully make  
8 this as enjoyable a week as it can be under the  
9 circumstances.

10 You've already met or if you haven't met, you're  
11 fixin' to meet your elected clerk of court, Ms. Judy Bonds.  
12 She's seated right here below me.

13 Do we have any other elected officials?

14 Solicitor? Yep. Solicitor Randy Newman, he is the  
15 chief prosecutor for the Sixth Judicial Circuit, which again  
16 is Chester, Fairfield, Lancaster Counties as well as,  
17 Mr. William Frick. He is the elected public defender for  
18 the Sixth Judicial Circuit. Okay? So those are the various  
19 elected officials here in the courtroom.

20 So ladies and gentlemen, the first thing we have to  
21 do is we have to get you qualified to be able to be a juror  
22 in this court. And the first thing that's going to happen  
23 is the clerk of court is going to call the roll of everybody  
24 who's been summoned to appear as jurors. When your name is  
25 called, you're going to give us the following information:

1           Number one -- and I'll get you all -- in fact, let  
2 me go ahead and do it, let me have all of you stand and all  
3 of you please raise your right hand. If you're able to  
4 stand.

5           Do each of you swear or affirm that the testimony  
6 that you give the court will be the truth, the whole truth,  
7 and nothing but the truth so help you God?

8           (All prospective jurors were in favor.)

9           THE COURT: Thank you. You can be seated.  
10 Everybody has been sworn.

11           Just like you did there, if you're able to stand  
12 when the clerk calls your name, if you're able to stand,  
13 stand where you are and give us the following information:

14           Number 1: What you do for a living? If you're  
15 employed, where do you work or what you do? If you're  
16 unemployed or if you are retired or disabled or whatever the  
17 case may be, let us know what you used to do before you  
18 became that way.

19           The second piece of information we need to know  
20 from you is, if you're married, we need to know what your  
21 spouse does for a living. Okay? Now, if you're not married  
22 because you're single or divorce or separated or widowed,  
23 that's fine. You can simply say whatever that is. Okay?  
24 But that's all the information we need from you at this  
25 point in time as we move forward to get us qualified.

1                   Everybody understand that?

2                   All right. So at this time I'm going to have the  
3 clerk of court call the roll.

4                   Madam clerk?

5                   (Whereupon, the roll was called by the Clerk of  
6 Court.)

7                   THE COURT: Thank you, Madam clerk.

8                   Ladies and gentlemen, the State law requires that I  
9 ask a series of questions to determine your qualifications  
10 to serve as jurors. Some of the questions can be personal  
11 in nature and may cause you to be embarrassed by your  
12 response and we don't want you to feel that way.

13                   So if there's a question that you think your  
14 response may make you feel embarrassed, just hold onto your  
15 answer. I'll give you an opportunity to come confer more  
16 privately up here with me at the end of the process.

17                   But otherwise, if you want to respond to the  
18 questions right then and there, do just like you did. Just  
19 stand where you are and we'll deal with your answer. Okay?

20                   So here are the questions concerning qualifications  
21 to serve:

22                   Number 1: Is there any member of the jury panel  
23 who is not a citizen of the United States? If so, please  
24 stand.

25                   No response.

1                   Number 2: Is there any member of the jury panel  
2                   who is not a resident of Fairfield County, South Carolina?  
3                   If so, please stand.

4                   No response.

5                   Number 3: Is there any member of the jury panel  
6                   who is unable to read, write, speak or understand the  
7                   English language? If so, please stand.

8                   No response.

9                   Next one: Is there any member of the jury panel  
10                  have less than a 6th grade education or it's equivalent? If  
11                  so, please stand.

12                  No response.

13                  Next one: Is there any member of the jury panel  
14                  who is unable because of a mental or physical infirmity to  
15                  render efficient jury service? For example, does anybody  
16                  have a medical condition that would prevent you from serving  
17                  on a jury this week? If so, please stand. Or you can hold  
18                  onto your answer if you're not comfortable answering that in  
19                  front of everybody.

20                  Nobody stands at this time.

21                  Next one: Has any member of the jury panel been  
22                  convicted either by a guilty plea or by a trial in a state  
23                  or federal court of record?

24                  Has anybody been convicted of a crime punishable by  
25                  imprisonment for more than one year and your civil rights

1 have not be restored either by pardon or amnesty?

2 Now, "punishable by more than one year" means  
3 that's what you could have got, not what you actually got.

4 If you've been on probation before, typically, this  
5 would apply to you. So if this applies to you, please  
6 stand.

7 Anybody need to know about, Solicitor or  
8 Ms. Boulware?

9 MR. HALL: No, sir.

10 THE COURT: Okay. All right. Perfect.

11 All right. Next question: Is there any member of  
12 the jury panel who is a clerk or deputy clerk of court,  
13 constable, sheriff or other commissioned law enforcement  
14 officer, a probate judge, county commissioner, magistrate or  
15 other county officer or is anybody employed within the walls  
16 of any courthouse? If so, please stand.

17 No response.

18 Y'all are doing great.

19 Next question: Is there any member of the jury  
20 panel who has presently served on jury duty up here in  
21 circuit court this calendar year? If so, please stand.

22 No response.

23 Anybody been a member of Fairfield County Grand  
24 Jury in the last several years? If so, please stand.

25 Grand jury meets throughout the year, not just one

1 week.

2 No response.

3 All right. That's it for qualifications.

4 We're now going to exemptions. State law provides  
5 for several exemptions for jury service. An exemption  
6 doesn't mean you're not qualified to serve; it simply means  
7 you have a choice of whether you want to serve or not.  
8 Okay?

9 The first exemption deals with those of you who are  
10 65 years of age or older. You can be exempt from jury  
11 service if you want to be because of your life experiences  
12 and your maturity and age. Now, because of those  
13 experiences you would make an excellent juror but I cannot  
14 force you to serve if you're not willing to do so.

15 So if you're 65 years of age or older and you  
16 choose not to serve, please stand.

17 No response.

18 Next exemption concerns prior jury service. I  
19 already asked you about this year so I'm talking about 2022  
20 and 2021. You could be exempt if you want to be. So if  
21 you've been called up here for jury duty in this courthouse,  
22 circuit court jury, and whether you were picked or not and  
23 you wish to be exempt, please stand.

24 No response.

25 There's all different types of grand juries.

1       There's federal grand jury. Each county in South Carolina  
2       has a grand jury. It may be that you just recently moved to  
3       Fairfield County. If you've been on any type of grand jury  
4       in the last five calendar years, you could be exempt if you  
5       want to be.

6               Does this apply to anybody?

7               All right. No response.

8               The next exemption deals with those of you who have  
9       legal custody of young children. Please listen carefully.  
10       It has four parts, all of which have to be complied with for  
11       you to claim this exemption.

12               You could be exempt from jury duty if, number one,  
13       you have a child under the age of 7.

14               Number two, you have legal custody of that child.

15               Number three, you're the primary caretaker.

16               Number four, you're unable to make alternative  
17       care, i.e., daycare or babysitter arrangements while you're  
18       up here doing jury duty.

19               If all four of those apply to you and you wish to  
20       be exempt, please stand.

21               No response.

22               Once again, Madam Clerk, make a note of how great  
23       they're doing so far.

24               Next question: Similarly, if you're the primary  
25       caretaker of a severely disabled or elderly person who is

1       unable to take care of himself or herself, cannot be left  
2       unattended and you're unable to provide suitable, substitute  
3       or adequate care of that person while on jury duty, you  
4       could be exempt.

5               If this applies to you and you want to be exempt,  
6       please stand.

7               No response.

8               Next exemption deals with those of you who may be  
9       attending school at this time. Even though we're in the  
10      summer months, some schools run year round or you may be  
11      working in some capacity with the school.

12              If this exemption applies to you and you wish to be  
13      exempt, I'll be glad to transfer you to another term of  
14      court which would not conflict with your school  
15      responsibilities.

16              Again, unfortunately, typically that means  
17      transferring you to the summer months and I don't want to  
18      mess up any vacations you may have. So if you are a  
19      full-time student, school teacher, crossing guard, bus  
20      driver or any other school-related function and you wish to  
21      be transferred -- this is only for people who haven't been  
22      transferred before, please stand.

23              No response.

24              Next one: Does anybody work for the department of  
25      corrections or the state penitentiary?

1                   Nope.

2                   And lastly, is there any juror who performs  
3                   services for a business, commercial or agricultural  
4                   enterprise whose services are so essential to the operation  
5                   of that business, that if you were required to perform jury  
6                   duty, your business would have to close or stop functioning?

7                   If so and you wish to be exempt on that basis,  
8                   please stand.

9                   No response.

10                  Ladies and gentlemen, it may be that none of those  
11                  qualifications apply to your particular situation and jury  
12                  duty this week would constitute an undue hardship on you for  
13                  a particular reason.

14                  Now please understand that inconvenience is not an  
15                  undue hardship. You must have an extreme and compelling  
16                  circumstance and I'm the one who determines whether or not  
17                  your circumstances are extremely compelling to justify  
18                  transferring you to another term of court or allowing you to  
19                  be exempt from serving as juror.

20                  So if you didn't answer a previous question because  
21                  you thought you may be embarrassed or if you believe you  
22                  have that undue headship and you need to speak to me more  
23                  privately, now is your opportunity to do so.

24                  If you wish to speak to me, be careful when you  
25                  step down from where those seats are. Just come to the

1 middle and I'll see you up here.

2 What's your juror number?

3 THE PROSPECTIVE JUROR: 33.

4 THE COURT: 33. Yes, ma'am?

5 THE PROSPECTIVE JUROR: I just don't want to serve.

6 THE COURT: What's that?

7 THE PROSPECTIVE JUROR: I just don't want to.

8 THE COURT: That's not good enough.

9 THE PROSPECTIVE JUROR: Why is that not good  
10 enough?

11 THE COURT: You may not get picked. There's only  
12 one case up for trial. Chances of you getting picked are  
13 slim.

14 Juror No. 33 will remain with us.

15 THE PROSPECTIVE JUROR: Juror 174.

16 THE COURT: Juror No. 174, come on up.

17 THE PROSPECTIVE JUROR: I just got a question. All  
18 this week is fine but next Wednesday --

19 THE COURT: We will be done by Thursday.

20 THE PROSPECTIVE JUROR: I'm good.

21 THE COURT: Number 174 will remain with us.

22 THE PROSPECTIVE JUROR: Number 38.

23 THE COURT: Juror No. 38. Yes, sir.

24 THE PROSPECTIVE JUROR: I've been convicted of a  
25 crime.

1 THE COURT: How long ago?

2 THE PROSPECTIVE JUROR: 30-plus years ago.

3 THE COURT: Do you remember what it was for?

4 THE PROSPECTIVE JUROR: Assault.

5 THE COURT: What? Did you get a ticket or  
6 something?

7 THE PROSPECTIVE JUROR: No. It was a situation  
8 with some time in jail. A couple of months.

9 THE COURT: You're free to leave then.

10 This juror is free to leave. Thank you, sir.

11 THE PROSPECTIVE JUROR: Number 57.

12 THE COURT: Yes, ma'am.

13 THE PROSPECTIVE JUROR: I don't think it's really a  
14 hardship but I just wanted to double-check because it says  
15 for the week of July 14th. So it will not extend beyond  
16 Friday?

17 THE COURT: No. In fact, we'll be done probably by  
18 Thursday.

19 THE PROSPECTIVE JUROR: Then I'm good.

20 THE COURT: Thank you. That juror will remain with  
21 us.

22 THE PROSPECTIVE JUROR: Number 181.

23 THE COURT: 181, yes, sir?

24 THE PROSPECTIVE JUROR: I was on the grand jury but  
25 I don't know if it was five years or so.

1 THE COURT: Was it Fairfield County Grand Jury?  
2 Can you all check?

3 I'm going to have you go over there so they can  
4 check and find out what it is.

5 THE PROSPECTIVE JUROR: Number 72.

6 THE COURT: Juror No. 72.

7 THE PROSPECTIVE JUROR: I have health issues.

8 THE COURT: Okay.

9 THE PROSPECTIVE JUROR: I'm on a pump.

10 THE COURT: You're on an insulin pump that and  
11 think it may interfere with your abilities?

12 THE PROSPECTIVE JUROR: My sugar drops like that.

13 THE COURT: Okay. You're free to leave.

14 THE PROSPECTIVE JUROR: I've got bad allergies.

15 THE COURT: You're free to leave.

16 She's free to leave. That's Juror 81 -- change  
17 that to 72.

18 THE PROSPECTIVE JUROR: Number 104.

19 THE COURT: Juror 104?

20 THE PROSPECTIVE JUROR: I was diagnosed with PTSD  
21 in the Navy. I have an exam on Thursday.

22 THE COURT: Okay. You want me to protect you for  
23 Thursday?

24 THE PROSPECTIVE JUROR: Okay.

25 THE COURT: This juror is protected on Thursday.

1 104 is protected on Thursday.

2 THE PROSPECTIVE JUROR: Number 40.

3 THE COURT: Juror No. 40. Yes, ma'am?

4 THE PROSPECTIVE JUROR: I did this two or three  
5 times, but I don't get chosen.

6 THE COURT: Did you come up here?

7 THE PROSPECTIVE JUROR: Yes. I knew the people on  
8 trial.

9 THE COURT: You would be exempt. Do you want to be  
10 exempt?

11 THE PROSPECTIVE JUROR: Uh-huh.

12 THE COURT: I will have you step over there and  
13 they're going to check.

14 Thank you. 40 is exempted.

15 Ladies and gentlemen, the jury is now qualified.

16 Is the State ready to proceed?

17 MS. HALL: Yes, sir.

18 THE COURT: The defense ready to proceed?

19 MS. BOULWARE: Yes, sir.

20 THE COURT: Ladies and gentlemen, we're going to go  
21 ahead and proceed with having the State call the first case  
22 to trial this week.

23 Let me tell you a little bit about the type of  
24 court going on. I'm a circuit court judge. There's two  
25 different types of court. You have what's called a civil

1 court which is what we call common pleas court. That's  
2 where people sue each other. You know, like car wrecks or  
3 contract disputes or government disputes, stuff like that.

4 And then the other type of court that I preside  
5 over mostly is general sessions court. That's criminal  
6 court. That's where people have been accused of committing  
7 crimes. Now, of course, it goes without saying -- and  
8 hopefully y'all understand that just because you're accused  
9 of something, doesn't mean you're guilty. You're presumed  
10 innocent until you're proven guilty. And that's the type of  
11 court I'm presiding over this week here in Fairfield County  
12 and that's the type of court that you may be selected to  
13 serve on a trial jury for, general sessions or criminal  
14 court.

15 At this time the State's represented by lawyers who  
16 we call "solicitors" in South Carolina. They call it  
17 district attorneys or state attorneys, otherwise. They're  
18 prosecutors. The defense is represented by defense  
19 attorneys. Okay?

20 So Madam Solicitor, if you'll call the case for  
21 trial.

22 MS. HALL: Thank you, your Honor.

23 This is Docket No. 2022-GS-20-0412, the State of  
24 South Carolina vs. Carlos Cesmas-Gomez indicted for criminal  
25 sexual conduct with a minor in the second degree.

1 THE COURT: Somebody have the indictment?

2 Ladies and gentlemen, you just heard the State has  
3 called the case called the State of South Carolina vs.  
4 Carlos Alejandro Cesmas-Gomez.

5 Is the defendant present?

6 MS. BOULWARE: He is, Judge.

7 THE COURT: If you'll have him stand and face the  
8 Panel? Thank you.

9 THE DEFENDANT: (Complies.)

10 THE COURT: This is Mr. Gomez.

11 Thank you, sir. You can be seated.

12 The State has alleged that Carlos Alejandro  
13 Cesmas-Gomez did, in Fairfield County, on or about April  
14 16th, 2019 engage in sexual battery with a person with the  
15 initials [REDACTED] date of birth [REDACTED], a minor at the time  
16 who was 14 years of age or less, but at least 11 years of  
17 age, and in violation of South Carolina law.

18 That's the allegation. That's the criminal charge  
19 that's been made against this defendant who is presumed  
20 innocent until proven guilty. And I read from this piece of  
21 paper called an indictment, which is nothing more than a  
22 piece of paper with a written description of the charge made  
23 against the defendant. Okay? So that's what the case is  
24 about.

25 All right. I'll remind you, ladies and gentlemen,

1       you are still under oath. I'm going to have both the State  
2       and the defense introduce themselves to you because I'm  
3       going to have some questions here about this case,  
4       specifically before we begin impaneling the jury.

5               Madam Solicitor, if you'll introduce your table and  
6       who is going to be participating.

7               MS. HALL: Thank you, your Honor.

8               My name is Julie Hall, I am the Solicitor who will  
9       be prosecuting this. This is Deputy Solicitor Riley and the  
10      officer we will be calling is Karen Castles from the  
11      Fairfield County Sheriff Department and she's the lead  
12      investigator in this case.

13              THE COURT: Thank you, Madam Solicitor.

14              Ms. Boulware?

15              MS. BOULWARE: Thank you, your Honor.

16              My name is Kay Boulware. I'm the criminal defense  
17      attorney here in Fairfield. And you've meet Mr. Carlos  
18      Gomez. And this is Mr. Frick, whom you all meet. And this  
19      is Bob FitzSimons. They will be assisting me in this case.

20              THE COURT: Thank you.

21              So the first question I have for you, ladies and  
22      gentlemen: Is any member of the jury panel ever been  
23      represented by or have any close, personal or social  
24      relationship with any of the attorneys involved in this  
25      case? If so, please stand.

1 We've got two.

2 Yes, sir. What's your juror number?

3 THE PROSPECTIVE JUROR: 73.

4 THE COURT: How do you answer that?

5 THE PROSPECTIVE JUROR: You mean --

6 THE COURT: How do you know the attorneys in this  
7 case?

8 THE PROSPECTIVE JUROR: I briefly dated  
9 Ms. Boulware.

10 THE COURT: How long ago was that?

11 THE PROSPECTIVE JUROR: A few years.

12 THE COURT: Ms. Boulware, did you know that?

13 MS. BOULWARE: I was aware, Judge.

14 THE COURT: Well, we're getting older and stuff.

15 MS. BOULWARE: Small town.

16 THE COURT: Would that affect your ability to be a  
17 fair and impartial juror in the trial of this case?

18 THE PROSPECTIVE JUROR: No, sir.

19 THE COURT: Ms. Boulware, do you feel comfortable  
20 with this juror potentially being on the jury of this case?

21 MS. BOULWARE: Yes, that's fine.

22 THE COURT: All right. Thank you.

23 Yes, ma'am. Juror number?

24 THE PROSPECTIVE JUROR: Number 67.

25 THE COURT: How do you answer that question?

1           THE PROSPECTIVE JUROR: I was close friends with  
2 Mr. Frick and went to prom with him.

3           THE COURT: Okay. This a first. Madam, this is a  
4 special jury.

5           Would that affect your ability to be fair and  
6 impartial to the trial in this case?

7           THE PROSPECTIVE JUROR: No, it would not.

8           THE COURT: Mr. Frick?

9           MR. FRICK: Fantastic, Judge.

10          THE COURT: All right. Thank you very much.

11          Ladies and gentlemen, we laugh from time to time  
12 and that's good. We're human beings. But this is a very  
13 serious and solemn proceeding as you all know and, of  
14 course, as the defendant may know as well, but a little  
15 levity never hurts, correct, so we'll move on.

16          The next question applies to anybody who may be  
17 testifying in this case as a witness. I'm going to read out  
18 some names to you and the question is going to be:

19          Do you have any close, personal or social  
20 relationship with any of these people or are you related by  
21 blood or marriage with any of these people?

22          And so these are potential witness. Just because  
23 you hear me call their name, doesn't mean they're actually  
24 going to testify. All right?

25          So the first set of names: Karen Castles with

1 Fairfield Sheriff's Department. You've already been  
2 introduced to her.

3 Chris Childers with the Fairfield Sheriff's Office.

4 And Rachel Nguyen with SLED, or which is referred  
5 to as the South Carolina Law Enforcement Division.

6 Sara Zapata with the South Carolina Law Enforcement  
7 Division.

8 Does anybody recognize those names as I've  
9 described? Either close, personal or social relationship or  
10 related by blood or marriage?

11 All right. No response.

12 Yes, ma'am?

13 THE PROSPECTIVE JUROR: My husband is actually  
14 cousins with Chris Childers.

15 THE COURT: Okay. What's your juror number, ma'am?

16 THE PROSPECTIVE JUROR: 55.

17 THE COURT: So your husband is Chris Childers'  
18 cousin?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: Would that affect your ability to be  
21 fair and impartial if you're chosen to serve as a juror?

22 THE PROSPECTIVE JUROR: It will not.

23 THE COURT: Thank you.

24 And that's always the follow-up question, if a  
25 question applies to you, is, can you be fair and impartial?

1 The next set of names are: Minor

2 Eva Suarez.

3 Y'all help me with this next name, Xochitl Islas.

4 MS. HALL: Xochitl Islas.

5 THE COURT: X-o-c-h-i-t-l is the first name; last  
6 name is Islas, I-s-l-a-s.

7 Jose Gaeta, G-A-E-T-A.

8 And Brigitte DeGuzman, who is an RN.

9 Does anybody recognize those names as I've  
10 described them?

11 No response.

12 Is there any member of the jury panel who has a  
13 bias or ill-will against the Solicitor's Office, the  
14 Fairfield Sheriff's office or criminal defendants or defense  
15 attorneys that you believe would prevent you from being a  
16 fair and impartial juror? If so, please stand.

17 No response.

18 Is any member of the jury panel or a member of your  
19 immediate family ever been the victim of a sexual assault?  
20 If so, please stand.

21 If it is operable, I'll speak to you up here.

22 No response.

23 Next question: Has any member of the jury panel or  
24 a member of your immediate family ever been accused of a  
25 sexual assault? If so, please stand.

1 Yes, ma'am. Your juror number?

2 THE PROSPECTIVE JUROR: Number 55. May I speak to  
3 you?

4 THE COURT: Sure. Come on up. Yes, ma'am.  
5 My brother is in prison for sexual assault.

6 THE COURT: Is he still in prison?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Was he prosecuted by this office?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Here in Fairfield?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: And can you be fair and impartial?

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: Thank you.

15 Come on up. Yes, ma'am. What's your juror number?

16 THE PROSPECTIVE JUROR: 174.

17 THE COURT: 174. Yes, ma'am?

18 THE PROSPECTIVE JUROR: My husband and I are  
19 separated. He had charges. He was accused.

20 THE COURT: Was law enforcement involved with your  
21 husband?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: Here in Fairfield?

24 THE PROSPECTIVE JUROR: Uh-huh (affirmative  
25 response.).

1 THE COURT: And so y'all had to separate?

2 THE PROSPECTIVE JUROR: Yes, I chose to leave.

3 THE COURT: How long have you been separated?

4 THE PROSPECTIVE JUROR: November 2021.

5 THE COURT: Is he awaiting to be prosecuted?

6 THE PROSPECTIVE JUROR: I think it's over.

7 THE COURT: That caused the breakup of your  
8 marriage?

9 THE PROSPECTIVE JUROR: Uh-huh (affirmative  
10 response.)

11 THE COURT: Allegations of sexual assault caused  
12 the breakup of your marriage.

13 Do you think you can be a fair and impartial juror  
14 being what you've been through?

15 THE PROSPECTIVE JUROR: I can.

16 THE COURT: Thank you very much. You can have a  
17 seat.

18 This is Juror No. 110. Yes, sir. Come on up.

19 How do you answer the previous question?

20 THE PROSPECTIVE JUROR: I was sexually assaulted  
21 when I was younger.

22 THE COURT: Would that affect your ability to be  
23 fair and impartial?

24 THE PROSPECTIVE JUROR: I believe so.

25 THE COURT: Juror No. 110. Thank you, sir.

1 Thank you, ladies and gentleman.

2 If in the performance of your duties as a trial  
3 juror, you're required to look at and/or consider material  
4 that may be sexual in nature, would you be unable to do  
5 that?

6 If you're unable to look at something that may be  
7 sexual in nature in your task or in your deliberations as a  
8 juror, please stand.

9 No response.

10 Is any member of the jury panel a member of or  
11 contributor to any organization which advocates for victim  
12 rights or for strengthening criminal penalties or which  
13 supports law enforcement such as the South Carolina Victims  
14 Assistance Network, Mothers Against Drunk Driving, South  
15 Carolina Law Enforcement Associations, Eternal Order of  
16 Police or for social justice organizations such as Blue  
17 Lives Matter or Black Lives Matter?

18 If you are a member of or contributor to any  
19 organization like that, please stand.

20 Yes, sir. What's your jury number?

21 THE PROSPECTIVE JUROR: 73.

22 THE COURT: How do you answer that?

23 THE PROSPECTIVE JUROR: I contribute to the South  
24 Carolina Sheriffs' Association.

25 THE COURT: Would that affect your ability to be

1 fair and impartial?

2 THE PROSPECTIVE JUROR: No, sir.

3 THE COURT: Yes, sir. Juror number?

4 THE PROSPECTIVE JUROR: 91.

5 THE COURT: You contribute to the South Carolina  
6 Sheriffs' Office?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: Would it affect your ability to be fair  
9 and impartial?

10 THE PROSPECTIVE JUROR: No, sir.

11 THE COURT: Thank you, sir.

12 Anybody else?

13 Has any member of the jury panel worked for or  
14 served as a volunteer for or otherwise been associated with  
15 PCASA, which stands for Palmetto Citizens Against Sexual  
16 Assault or a similar organization who serves victims of  
17 sexual abuse or assault?

18 Yes. Juror number?

19 THE PROSPECTIVE JUROR: 174.

20 THE COURT: You've volunteered with PCASA before?

21 THE PROSPECTIVE JUROR: Years ago. Yes, sir.

22 THE COURT: Would that affect your ability to be  
23 fair and impartial?

24 THE PROSPECTIVE JUROR: It will not.

25 THE COURT: Thank you. That's Juror 174.

1           Has any member of the jury panel ever served on a  
2 jury before, on a trial jury? If so, please stand.

3           In the front, 173, what type of jury was it?

4           THE PROSPECTIVE JUROR: It was town court.

5           THE COURT: Would that affect your ability to be  
6 fair and impartial?

7           THE PROSPECTIVE JUROR: No, sir.

8           THE COURT: Yes, ma'am?

9           THE PROSPECTIVE JUROR: Assault case in California.

10          THE COURT: Would that affect your ability to be  
11 fair and impartial?

12          THE PROSPECTIVE JUROR: No, sir.

13          THE COURT: Yes, ma'am. What's your juror number?

14          THE PROSPECTIVE JUROR: 172.

15          THE COURT: 172. Yes, ma'am?

16          THE PROSPECTIVE JUROR: Federal court, I served on  
17 several cases.

18          THE COURT: Would that affect your ability to be  
19 fair and impartial here?

20          THE PROSPECTIVE JUROR: No.

21          THE COURT: She's good.

22          In the back, 85?

23          THE PROSPECTIVE JUROR: Yes, sir. It was here but  
24 I can't remember the year. I was an alternate.

25          THE COURT: Can you be fair and impartial?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Thank you.

3 Any members of the jury panel ever been a witness  
4 in a criminal case regardless of whether or not it went to  
5 trial?

6 No response.

7 Has any member of the jury panel ever worked for --

8 MADAM CLERK: Judge?

9 THE COURT: I'll get to them in a second.

10 Has any member of the jury panel ever worked for or  
11 sought employment with a lawyers office, either a  
12 prosecuting attorney or a criminal defense attorney or been  
13 a witness in a criminal case? If so, please stand.

14 THE PROSPECTIVE JUROR: Or a witness in a criminal  
15 case?

16 THE COURT: Yes, ma'am.

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: What's your juror number.

19 THE PROSPECTIVE JUROR: Number 33.

20 THE COURT: What type of criminal case was it?

21 THE PROSPECTIVE JUROR: Murder.

22 THE COURT: Would that affect your ability to be  
23 fair and impartial?

24 THE PROSPECTIVE JUROR: No.

25 THE COURT: Thank you.

1                   What's your jury number again?

2                   THE PROSPECTIVE JUROR: 33.

3                   THE COURT: Everybody got that?

4                   Yes, ma'am.

5                   THE PROSPECTIVE JUROR: Juror No. 96 and I worked  
6 for an attorney 20 years ago.

7                   THE COURT: Can you be fair and impartial?

8                   THE PROSPECTIVE JUROR: Yes.

9                   THE COURT: Or a civil attorney?

10                  Do you work for a civil attorney?

11                  THE PROSPECTIVE JUROR: I worked for a civil  
12 attorney.

13                  THE COURT: What's your juror number?

14                  THE PROSPECTIVE JUROR: 37.

15                  THE COURT: Can you be fair and impartial?

16                  THE PROSPECTIVE JUROR: Yes.

17                  THE COURT: Has any member of the jury panel read  
18 or posted anything about this case on social media or read  
19 anything about this case in any type of news outlet or  
20 knowing anything about it from talking around the water --  
21 or thinking there's something about it from talking around  
22 the water cooler or hearing about it in the community? If  
23 so, please stand.

24                  No response.

25                  Any further voir dire from the State?

1 MS. HALL: Nothing from the State.

2 THE COURT: Any further from the defense?

3 MS. BOULWARE: None, your Honor.

4 THE COURT: All right. Thank you.

5 All right. So ladies and gentlemen -- let me get  
6 back up here. All right. What's going to happen now is  
7 we're going to impanel a jury. The jury is going to consist  
8 of 14 people. We're going to have 12 jurors and two  
9 alternates. So you can kind of figure out your odds right  
10 now.

11 The clerk's office has software, they're generating  
12 a randomly collated list right now of your names, not  
13 alphabetical; not numerical. And then the lawyers will have  
14 an opportunity -- I'm going to give them about ten minutes  
15 or so to look over that list and figure out who they don't  
16 want on the jury, is the best way to say it. And that's  
17 fine, both sides have an equal say in that.

18 The State gets five challenges. The defense gets  
19 ten challenges. Again, these are all constitutional  
20 safeguards to make sure people's constitutional rights are  
21 protected.

22 What we're going to do now is take a ten-minute  
23 recess. What's that? A three? We're going to round it off  
24 to 3:10. I want you back in your seats at 3:20. You can  
25 walk outside, smoke a cigarette, do whatever you got to do.

1 Run to the restroom. Be back in your seats at 3:20 and  
2 don't talk to anybody about this case. You know nothing  
3 about it other than what I just told you.

4 Thank you. See you at 3:20.

5 (Whereupon, a brief recess was taken.)

6 THE BAILIFF: All rise.

7 THE COURT: Be seated.

8 Is the State ready to proceed?

9 MS. HALL: Yes, sir.

10 THE COURT: Is the defense ready to proceed?

11 MS. BOULWARE: Yes, sir.

12 THE COURT: Madam Clerk, let's impanel the jury.

13 MADAM CLERK: When I call your name, if you'll  
14 please stand and just stay standing where you are.

15 Juror 91, Lamar Lubojacky.

16 MS. HALL: Please present this juror.

17 MADAM CLERK: What says the defense?

18 MS. BOULWARE: Please excuse the juror from this  
19 case.

20 MADAM CLERK: You're excused, Mr. Lubojacky.

21 Number 33, Jerlean Cook.

22 MS. HALL: Please excuse this juror.

23 MADAM CLERK: You're excused from this case,  
24 Ms. Cook.

25 Number 18, Jordan Boyd. What says the State?

1 MS. HALL: Please present this juror.

2 MADAM CLERK: What says the defense?

3 MS. BOULWARE: Please seat this juror.

4 MADAM CLERK: You'll be one of our jurors,  
5 Mr. Boyd.

6 Number 162, John Swearingen.

7 MS. BOULWARE: Judge, may we approach?

8 THE COURT: Sure.

9 (Whereupon, a brief discussion was held at the  
10 bench, not reported.).

11 MS. HALL: Please present this juror.

12 MADAM CLERK: What says the defense?

13 MS. BOULWARE: Please excuse this juror from this  
14 case.

15 MADAM CLERK: You're excused from this case,  
16 Mr. Swearingen.

17 Number 159, Terry Stover. What says the State?

18 MS. HALL: Please present this juror.

19 MADAM CLERK: What says the defense?

20 MS. BOULWARE: Please seat this juror.

21 MADAM CLERK: You'll be one of our jurors,  
22 Mr. Stover.

23 Number 67, Nannette Hawkins. What says the State?

24 MS. HALL: Please present this juror.

25 MADAM CLERK: What says the defense?

1 MS. BOULWARE: Please seat this juror.

2 MADAM CLERK: You'll be one of our jurors,

3 Ms. Hawkins.

4 Number 96, Sandy Martin. What says the State?

5 MS. HALL: Please present this juror.

6 MADAM CLERK: What says the defense?

7 MS. BOULWARE: Please excuse this juror.

8 MADAM CLERK: You're excused from this case,

9 Ms. Martin.

10 Number 100, Marcus McDuffie. What says the State?

11 MS. HALL: Please excuse this juror.

12 MADAM CLERK: You're excuse from this case

13 Mr. McDuffie.

14 Number 131, Jacobe Reid. What says the State?

15 MS. HALL: Please present this juror.

16 MADAM CLERK: What says the defense?

17 MS. BOULWARE: Please seat this juror.

18 MADAM CLERK: You'll be one of our jurors,

19 Mr. Reid.

20 Number 15, Destiny Black. What says the State?

21 MS. HALL: Please present this juror.

22 MADAM CLERK: What says the defense?

23 MS. BOULWARE: Please seat this juror.

24 MADAM CLERK: You'll be one of our jurors,

25 Ms. Black.

1                   Number 51, Valeria Foster. What says the State?

2                   MS. HALL: Please present this juror.

3                   MADAM CLERK: What says the defense?

4                   MS. BOULWARE: Please seat this juror.

5                   MADAM CLERK: You'll be one of our jurors,

6                   Ms. Foster.

7                   Number 25, Sabrina Caldwell. What says the State?

8                   MS. HALL: Please present this juror.

9                   MADAM CLERK: What says the defense?

10                  MS. BOULWARE: Please seat this juror.

11                  MADAM CLERK: You'll be one of our jurors,

12                  Ms. Caldwell.

13                  Number 36, Kevi Cunningham. What says the State?

14                  MS. HALL: Please present this juror.

15                  MADAM CLERK: What says the defense?

16                  MS. BOULWARE: Please seat this juror.

17                  MADAM CLERK: You'll be one of our jurors,

18                  Mr. Cunningham.

19                  Number 140, Bryant Ruff. What says the State?

20                  MS. HALL: Please present this juror.

21                  MADAM CLERK: What says the defense?

22                  MS. BOULWARE: Please seat this juror.

23                  MADAM CLERK: You'll be one of our jurors, Mr.

24                  Ruff.

25                  Number 151, Justin Simpson. What says the State?

1 MS. HALL: Please present this juror.

2 MADAM CLERK: What says the defense?

3 MS. BOULWARE: Please excuse this juror.

4 MADAM CLERK: You're excused from this case,  
5 Mr. Simpson.

6 Number 137, Johnnie Robertson. What says the  
7 State?

8 MS. HALL: Please excuse this juror.

9 MADAM CLERK: You're excuse from this case,  
10 Mr. Robertson.

11 Number 47, Gene Driggers. What says the State?

12 MS. HALL: Please present this juror.

13 MADAM CLERK: What says the defense?

14 MS. BOULWARE: Please excuse this juror.

15 MADAM CLERK: You're excused from this case,  
16 Mr. Driggers. you can have a seat.

17 Number 174, Myrtis White. What says the State?

18 MS. HALL: Please present this juror.

19 MADAM CLERK: What says the defense?

20 MS. BOULWARE: Judge, may we approach?

21 THE COURT: Yes.

22 (Whereupon, a brief discussion was held at the  
23 bench, not reported.).

24 THE COURT: Ma'am, you're excused from the trial in  
25 this case. Thank you.

1                   MADAM CLERK: Number 173, Robert West. What says  
2 the State?

3                   MS. HALL: Please present this juror.

4                   MADAM CLERK: What says the defense?

5                   MS. BOULWARE: Please excuse this juror.

6                   MADAM CLERK: You're excused from this case,  
7 Mr. West.

8                   Number 11, Hope Bass. What says the State?

9                   MS. HALL: Please present this juror.

10                  MADAM CLERK: What says the defense?

11                  MS. BOULWARE: Please excuse this juror.

12                  MADAM CLERK: You're excused from this case,  
13 Ms. Bass.

14                  Number 168, Tia Walker. What says the State?

15                  MS. HALL: Please present this juror.

16                  MADAM CLERK: What says the defense?

17                  MS. BOULWARE: Please seat this juror.

18                  MADAM CLERK: You'll be one of our jurors,  
19 Ms. Walker.

20                  Number 73, Timothy Hornosky. What says the State?

21                  MS. HALL: Please present this juror.

22                  MADAM CLERK: What says the defense?

23                  MS. BOULWARE: Please excuse this juror.

24                  MADAM CLERK: You're excused from this case,  
25 Mr. Hornosky.

1                   Number 132, James Reid. What says the State?

2                   MS. HALL: Please present this juror.

3                   MADAM CLERK: What says the defense?

4                   MS. BOULWARE: Please seat this juror.

5                   MADAM CLERK: You'll be one of our jurors,

6                   Mr. Reid.

7                   Number 3, Sonja Anderson. What says the State?

8                   MS. HALL: Please present this juror.

9                   MADAM CLERK: What says the defense?

10                  MS. BOULWARE: Please seat this juror.

11                  MADAM CLERK: You'll be one of our jurors,

12                  Ms. Anderson.

13                  This will be for our first alternate.

14                  Number 158, Diane Stover.

15                  THE COURT: One and two on the alternates.

16                  MADAM CLERK: What says the State?

17                  MS. HALL: Your Honor, can we approach?

18                  THE COURT: Yes.

19                  (Whereupon, a brief discussion was held at the  
20 bench, not reported.).

21                  THE COURT: Ms. Stover, you're married to  
22 Mr. Stover; right?

23                  THE PROSPECTIVE JUROR: Uh-huh (affirmative  
24 response.).

25                  THE COURT: We can't have that. You're excused

1 from the trial in the case.

2 MADAM CLERK: Number 84, Talakia Kincade. What  
3 says the State?

4 MS. HALL: Please excuse this juror.

5 MADAM CLERK: You're excused, Ms. Kincade.

6 Number 127, Emanuel Prioleau. Any challenge for  
7 cause?

8 MS. HALL: No, ma'am.

9 MADAM CLERK: What says the defense?

10 MS. BOULWARE: Please seat this juror.

11 MADAM CLERK: You'll be our alternate,  
12 Mr. Prioleau.

13 This will be for our second alternate.

14 Number 55, Jennifer Gambrell. What says the State?

15 MS. HALL: Please present this juror.

16 MADAM CLERK: What says the defense?

17 MS. BOULWARE: Please excuse this juror.

18 MADAM CLERK: You're excused from this case,  
19 Ms. Gambrell.

20 Number 16, Justin Blackwelder. What says the  
21 State?

22 MS. HALL: Please present this juror.

23 MADAM CLERK: What says the defense?

24 MS. BOULWARE: Please excuse this juror.

25 MADAM CLERK: You're excused from this case,

1 Mr. Blackwelder.

2 Number 57, Kathy Ms. Goldbach. What says the  
3 State?

4 MS. HALL: Please present this juror.

5 MADAM CLERK: What says the defense?

6 MS. BOULWARE: No challenge for cause.

7 MADAM CLERK: You'll be our second alternate,  
8 Ms. Goldbach.

9 THE COURT: Any matters of law regarding jury  
10 selection from the State?

11 MS. HALL: No, sir.

12 THE COURT: From the defense?

13 MS. BOULWARE: No, sir.

14 THE COURT: Thank you.

15 Madam clerk, if you'll publish the names of the  
16 trial jury and have them come down here and be seated in the  
17 jury box.

18 MADAM CLERK: Number 18, Jordan Boyd; Number 159,  
19 Terry Stover; Number 6, Nannette Hawkins; Number 9, Jacobe  
20 Reid; Number 15, Destiny Black; Number 51, Valeria Foster;  
21 Number 25, Sabrina Caldwell; Number 36, Kevi Cunningham;  
22 Number 140, Bryant Ruff; Number 168, Tia Walker; Number 132,  
23 James Reid.

24 Our first alternate, 127, Emanuel Prioleau and our  
25 second alternate, Kathy Goldbach; Number 3, Sonja Anderson.

1           THE COURT: Ladies and gentlemen of the trial jury,  
2 I'm going to have -- the bailiff will show you where your  
3 jury room will be and we're not going to do anything today.  
4 We just selected the jury. That's where you're going to be  
5 tomorrow morning at 9:30 when we start the trial of the  
6 case.

7           Madam alternate, you can turn around, you're fixin'  
8 to leave. I'm going to have them show you where your jury  
9 room is and listen to them, they'll instruct you on what to  
10 do.

11           But let me go ahead and tell you again. All you  
12 know about this case is the name of the case and what I said  
13 the general allegations are. Okay? So you're going to be  
14 judging this case from the evidence presented in this  
15 courtroom. That means you can't go out and investigate it  
16 yourself. You can't go on Facebook and type in people's  
17 names or Google information because, see, that would be  
18 violating your oath as a juror which you'll take tomorrow  
19 morning. Okay? You can only go by the evidence in this  
20 courtroom.

21           And if anybody wants to talk to you about the case,  
22 you don't talk to them. Okay? I'm not naive. If your  
23 spouse or significant other says, "Well, did you get picked  
24 for jury duty?" "Yeah." "Well, what kind of case it is?"  
25 You can tell them what kind of case it is and just say,

1 "Well, the judge said I can't talk about it anymore."

2 Leave it at that. Okay? It's as simple as that.

3 Does everybody understand?

4 ALL JURORS: Yes, sir.

5 THE COURT: All right. Go see where you're going  
6 to be and we'll see you all tomorrow 9:30.

7 (Jurors dismissed.)

8 THE COURT: As to the remaining members of the jury  
9 panel, y'all are still on call. This term of court in South  
10 Carolina lasts for one week, that means, Monday through  
11 Friday. Y'all are good to go for today and, of course, for  
12 tomorrow.

13 Tomorrow after six, that call-in number you have,  
14 that (800) number, that toll-free, or whatever it is -- is  
15 it still a toll-free number?

16 THE CLERK: Yes.

17 THE COURT: Call that number after six tomorrow and  
18 you'll find out what you're supposed to do on Wednesday.

19 Y'all take care.

20 (Whereupon, the remaining prospective jurors were  
21 dismissed.)

22 THE COURT: Anything further on the trial of this  
23 case today? We'll do whatever pretrial there is tomorrow  
24 morning?

25 MS. HALL: That's fine.

1 THE COURT: Is there any pretrial?

2 MS. BOULWARE: A little bit.

3 THE COURT: Should I have told them 10 o'clock  
4 tomorrow morning instead? .

5 MS. HALL: Probably.

6 THE COURT: Go tell them 10 o'clock tomorrow  
7 morning instead of 9:30.

8 MS. BOULWARE: It's fine. It's not a whole lot.

9 THE COURT: Good to go then until tomorrow?

10 MS. BOULWARE: Yes, sir.

11 THE COURT: We'll see you all in the morning with  
12 this case then.

13 (Whereupon, Court was adjourned, this 17th day of  
14 July 2023.)

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( P R O C E E D I N G S )

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THE BAILIFF: All rise.

THE COURT: Good morning, everybody.

Please be seated.

First matter of business this morning is we had a juror come up to me -- I forget the jurors number.

THE CLERK: 168.

THE COURT: Juror No. 168 came up to me, why she didn't come at first, I don't know, because she essentially told me at the close of business yesterday that she just started a new job, it would be a significant hardship for her to be here everyday and so I excused her.

We need to move an alternate up. I have in this cup the two alternates and Ms. Boulware, I'm going to ask that you come and do a blind draw for which alternate moves up.

(Whereupon, a blind draw was conducted.)

THE CLERK: The alternate will be Number 57, Kathy Goldbach.

THE COURT: All right. Ms. Goldbach, then, will be on the principal -- or will be a principal juror and the remaining alternate will be that other person.

Let's move to pretrial issues. And I have a list of them up here. Ms. Boulware, I'd be glad to hear from

1       you.

2               MS. BOULWARE: Thank you, your Honor. We have  
3 dismissed 1, 2, 3, 4, and 5. And I think we are in  
4 agreement, none of those are an issue. .

5               THE COURT: Is that correct, Madam Solicitor?

6               MS. HALL: Yes.

7               THE COURT: So defendant's motion in limine Numbers  
8 1, 2, 3, 4, 5, are not in issue.

9               MS. HALL: And 6 is not an issue either.

10              THE COURT: And 6 is not an issue.

11              MS. BOULWARE: I would like to put that on the  
12 record and clock that in however you'd like me to do it.

13              Apparently, in the incident report, there were some  
14 indications by the alleged victim's mother that my client's  
15 mother was threatening her over this situation at some  
16 point. Solicitor has agreed that will not come up in  
17 testimony because it's irrelevant and of course,  
18 prejudicial.

19              THE COURT: Have you talked to your witness about  
20 that?

21              MS. HALL: I have. I've instructed her not to say  
22 anything. And our victim's advocate again has instructed  
23 her not to say anything.

24              THE COURT: Sounds good.

25              Number 7?

1 MS. BOULWARE: Number 7 is a written questionnaire  
2 and medical report that the nurse took when she was taken  
3 for a rape kit at Palmetto Richland. I know she's going to  
4 discuss it and that's fine. But like the incident report, I  
5 would not want it to be to entered as evidence. And I just  
6 want to go ahead and agree on that now so we're not  
7 interrupting during the trial.

8 MS. HALL: I don't really agree on that. But I  
9 would submit to the Court that it's a document that's kept  
10 in the normal course of business. It's a medical record and  
11 she will authenticate it as such.

12 THE COURT: But it's not offered to bolster the  
13 testimony --

14 MS. HALL: It's not offered to bolster the  
15 testimony. It's offered for purposes of medical treatment  
16 and diagnoses and as such, it's integral to her testimony  
17 and I will seek to introduce it.

18 THE COURT: And your argument is that it's  
19 irrelevant, it's more prejudicial?

20 MS. BOULWARE: Well, my problem with that is, there  
21 is an entire statement from the victim reiterating what she  
22 told law enforcement. So one thing, it's cumulative. For  
23 another, it has his identity in it. And I understand he's  
24 here in front of the jury, but none of that -- there has  
25 been a case where it's been let in and redacted. The

1 attorney agreed with the entire thing being let in. I don't  
2 agree with that, because Court of Appeals with -- that's  
3 *State v. Lowery*, Court of Appeals would not go further on  
4 the issues because he consented to the medical report being  
5 let in and I don't want to consent to that.

6 I think it has a lot of information that's  
7 irrelevant, prejudicial and cumulative.

8 THE COURT: All right. What's the State's  
9 response?

10 MS. HALL: Judge, just whatever I've already said.  
11 She had to give a statement and tell what happened. I would  
12 submit to the Court that it's not cumulative. They will  
13 hear from her. You know, she said basically the same thing,  
14 that she had to tell what happened to her in order for the  
15 lady to do the exam and treat her at the hospital.

16 THE COURT: My gut is to let it in, but we'll deal  
17 with that by way of a contemporaneous objection. And it  
18 would be helpful if I have a copy of the statement at issue  
19 that way I can -- I don't see the necessity to proffer it.  
20 But I can look at it and compare that to the -- are you  
21 calling the victim prior to that?

22 MS. HALL: Yes, and she won't be called until like  
23 2 o'clock this afternoon is my plan.

24 THE COURT: So the nurse is going to be called  
25 first?

1 MS. HALL: No. At 2 o'clock this afternoon the  
2 nurse will be called. The victim will be called first.

3 THE COURT: Okay. That's what I'm asking.

4 MS. HALL: Oh, sorry.

5 THE COURT: That way I'll already have the victim's  
6 testimony and then I can compare it and contrast it with  
7 what you're saying is already in there and determine whether  
8 or not it is unfairly and prejudicially cumulative.

9 MS. BOULWARE: Judge, I don't mind just a short  
10 version -- I know that comes in under diagnosis under the  
11 hearsay rules but there's a lot of other information in that  
12 report that is not necessary for the jury to have the whole  
13 report to read through.

14 THE COURT: Okay. Let's go ahead and mark that  
15 then, just for the purposes of pretrial, as Court's 1.

16 (Court's Exhibit 1, Forensic Exam marked for  
17 Identification.)

18 THE COURT: Item Number 8.

19 MS. BOULWARE: Judge, this is -- I'm moving to  
20 exclude any reference to Nurse Guzman as, or Ms. Guzman or  
21 DeGuzman, excuse me, as the sexual assault nurse examiner.  
22 "SANE" Nurse, I believe is how it's commonly referred to.

23 Again, when I checked cases trying to find a case  
24 on this point to see if a nurse has been admitted as an  
25 expert. Back to *State v. Lowery*, which is a Chester case.

1 And I believe the Solicitor here is familiar with this case  
2 and I believe helped with it.

3 The attorney in that case, the only reason he did  
4 not want her qualified as an expert was because she did not  
5 have a SANE certification which is not my issue. There's  
6 also an unpublished opinion so I'm not using it as  
7 precedence.

8 What I'm distinguishing in it is that the whole  
9 term "sexual assault nurse examiner" in and of itself is  
10 bolstering. You're already telling the jury that she went  
11 to see this nurse because she had been sexually assaulted  
12 so, therefore, they're already jumping to the conclusion  
13 that this has happened, which it may or may not. They have  
14 to decide that.

15 But I think, just like when you have a forensic  
16 examiner, and a blind expert for that matter, you're already  
17 telling the jury, well -- and I understand that blind  
18 experts get let in a good bit. But the problem with that is  
19 it implies that the crime has taken place just by virtue of  
20 this nurse's title.

21 Now, if she wants to qualify her as a nurse, she  
22 can do these kinds of exams and things like that, whatever  
23 the Court feels comfortable with on that. But I do not want  
24 the word SANE or the title --

25 THE COURT: What about nurse examiner?

1 MS. BOULWARE: Nurse examiner would probably be  
2 okay because that's what she is. She's a nurse. She exams.

3 THE COURT: Okay. What's the State's position?

4 MS. HALL: Sexual assault nurse examiner, I've used  
5 actually with this nurse before. And she's been qualified  
6 as a sexual assault nurse examiner and an expert in sexual  
7 assault technician over -- well, at least once with me and  
8 I'm sure many other times with other people. It is a higher  
9 level of training and there's credentials that have to be  
10 attained in order to be able to present yourself as a sexual  
11 assault nurse examiner.

12 So I understand Ms. Boulware and what she's saying  
13 about -- you've got to call it something. Just because you  
14 call it sexual assault nurse examiner, doesn't mean that  
15 she's giving an opinion about whether it involved sexual  
16 assault or not. She's just giving medical opinions about  
17 injuries and things that happened to her and how she went  
18 about performing this exam, which is basically an evidence  
19 collection exam. Just like any other physical exam by a  
20 doctor, through an assault or autopsy or anything else.

21 THE COURT: What if I give a qualified instruction  
22 saying: Ladies and gentlemen, just because this witness is  
23 called a sexual assault nurse examiner, doesn't mean her  
24 title doesn't mean that a sexual assault actually occurred.  
25 That's up for you, the jury, to decided base upon the

1 testimony and evidence presented?

2 MS. BOULWARE: Judge, if you want to do that,  
3 that's fine. I will object to that.

4 THE COURT: Okay.

5 MS. BOULWARE: I would prefer.

6 THE COURT: I think that's what I'm going to do.  
7 I'll overrule your objection. But I think, you know, to  
8 make it as fair as possible, I understand your objection, I  
9 overrule it. I think a title is just that, a title. And  
10 again, just by emphasizing to the jury that they are the  
11 ones who have to determine whether or not a sexual assault  
12 under the law happened, and that can be cleaned up that way.  
13 So that's what I'll do.

14 Okay. What else?

15 MS. BOULWARE: I think Mr. Carlos, I call him  
16 "Carlos" because I stumble over his last name for some  
17 reason, but Carlos is now in shackles. My concern is  
18 because of the way we are setup over here, can the jury see  
19 that?

20 THE COURT: That was my concern as well and they  
21 assured me he cannot be seen, the shackles cannot be seen by  
22 them.

23 MS. BOULWARE: Okay.

24 THE COURT: Okay.

25 MS. BOULWARE: That's all I have, Judge.

1 THE COURT: Anything from the State?

2 MS. HALL: No.

3 THE COURT: And we have a qualified interpreter  
4 here.

5 MS. HALL: She'll be here at 11:00 a.m.

6 THE COURT: So anything we need to do before then  
7 doesn't need to be interpreted?

8 MS. HALL: Correct.

9 THE COURT: Sounds good. And I'll make my ruling  
10 on this after I have an opportunity to review it and weigh  
11 it against the testimony of the victim.

12 Okay.

13 MS. HALL: And I need a minute to rearrange people.

14 THE COURT: Sounds good. We'll start when y'all  
15 are ready.

16 (Whereupon, a brief recess was taken.)

17 THE COURT: We're back on the record. Let's bring  
18 the jury in.

19 (Jurors entered.)

20 THE COURT: Good morning, ladies and gentlemen. I  
21 hope you had a restful evening.

22 Let me speak to you real quick just about some  
23 administrative stuff and then we'll go ahead and I'll get  
24 you sworn in as the trial jury and then we'll get started  
25 with the trial.

1           You'll notice, I'm sure you already notice, but one  
2           of your fellow jurors is not here this morning. She came up  
3           to me after the proceedings yesterday and indicated that she  
4           had some personal hardships going on which we all do from  
5           time to time but it rose to the level where I thought she  
6           needed to be excused from serving on the jury.

7           That means the alternates, my two alternates, one  
8           of you will be placed on the 12-person trial jury. Prior to  
9           y'all coming out here, we had a blind draw to determine who  
10          that's going to be. And Juror No. 57, Ms. Goldbach, that's  
11          you. You are now one of the 12.

12          Okay. So our alternate, Mr. Prioleau, Juror No.  
13          127, you will continue to be the alternate and you will  
14          participate in everything except for deliberations and we'll  
15          get into that as everything moves forward.

16          So without further ado, Madam clerk, if you'll  
17          swear in the trial jury.

18          THE CLERK: If you'll please stand and raise your  
19          right hand:

20                 *Do you swear that you will and truly try a true*  
21                 *deliverance made between the State of South Carolina and the*  
22                 *Defendant and give a true verdict according to the evidence*  
23                 *so help you God?*

24                 THE JURY: "I do."

25          THE CLERK: Thank you. You may be seated.

1                   THE COURT: Thank you, Madam clerk. Thank you  
2 again, ladies and gentlemen.

3                   Before we begin the trial, let me speak briefly to  
4 you and tell you that this trial will probably be different  
5 from what you might expect.

6                   Many people don't have the chance to attend actual  
7 court as such much less participate in them like you're  
8 doing right now. And most people tend to think that court  
9 is like what they see on TV or in the movies or what they  
10 read in the books and therefore, the trials are always full  
11 of intense action and riveting circumstances.

12                  While that may be true from time to time, this  
13 trial is not for entertainment. It's a fundamental part of  
14 our democracy to make sure that justice is done between the  
15 parties before the Court. Making sure that justice is done  
16 can sometimes be a slow, deliberate and repetitive process.  
17 The opposite of what you may be expecting.

18                  This courtroom, this beautiful courtroom is a place  
19 of honor dedicated to the preservation of citizen rights  
20 through what many have called, what I believe, is the  
21 greatest justice system ever created. The attorneys who are  
22 appearing before you are advocates for the parties they  
23 represent.

24                  Solicitors, they represent the State of South  
25 Carolina, prosecuting this alleged crime; the defense

1 attorneys, they're advocates for their clients who is  
2 presumed innocent until proven guilty.

3 But first and foremost, ladies and gentleman,  
4 they're officers of this court sworn to uphold the integrity  
5 and fairness of our system and help you reach a verdict.  
6 You should expect them, of course, to be professional,  
7 competent and ethical in their appearance and representation  
8 before you.

9 Remember that you just took an oath to try this  
10 case and to reach a verdict; so you're also expected to act  
11 accordingly. Thank you again for accepting this important  
12 responsibility and participating with this great civic duty.

13 Now, let me tell you how a trial proceeds so you  
14 can have a good roadmap of what to expect. The State will  
15 make an opening statement to you first. An opening  
16 statement is not a -- it's just simply a lawyers way of  
17 giving you an outline, i.e., a roadmap of what the lawyer  
18 believes or the State believes the evidence will show.

19 The defense can make an opening statement if they  
20 want to, but they don't have to. Remember, they don't have  
21 to prove anything. If the defense wants to make an opening  
22 statement, they can do that as well.

23 Following opening statements, that's when you will  
24 hear from various witnesses in this case and receive various  
25 evidence in this case.

1           Testimony will come from this witness stand and  
2 evidence, which is received into the trial of this case,  
3 will be placed right there for your consideration later on  
4 in whatever your deliberations are.

5           After the testimony and evidence phase of the  
6 trial, that's when the lawyers will speak again directly to  
7 you by way of what's called closing arguments, where the  
8 lawyers will try to persuade you through argument as to what  
9 your verdict should be.

10           And again, just like opening statements, closing  
11 arguments are not evidence. Evidence is what witnesses say  
12 and what comes into evidence; not what lawyers say. What  
13 lawyers say is opening statements and closing arguments.

14           After all that is over with, that's when I'll,  
15 again, speak directly to you by instructing you on the law  
16 that you must follow in an effort to reach whatever verdict,  
17 whatever your verdict's going to be. It is your duty,  
18 ladies and gentlemen, to decide from the facts -- excuse me,  
19 decide from the evidence what the facts are.

20           You and you alone are judges of the facts. I'm the  
21 judge of the law. I tell you the law, what the law is. You  
22 tell us what you find the facts to be. You find the fact as  
23 you find them to be, apply it to the law as I give you and  
24 that's how you reach your verdict. Okay?

25           In doing so, ladies and gentlemen, you must follow

1 the law whether or not you agree with it. Please don't take  
2 anything I say or I may say or do during the trial as  
3 indicating what you think I think of the evidence because  
4 that doesn't matter. You are the sole judges of the facts.

5 As you know, ladies and gentlemen, this is a  
6 criminal case that's been brought by the State of South  
7 Carolina who has charged the Defendant, Mr. Carlos Alejandro  
8 Cesmas-Gomez -- and I hope I'm saying his name correctly and  
9 I apologize if not -- they've charged him with criminal  
10 sexual conduct with a minor in the second degree.

11 And the charge against the defendant is contained  
12 in this piece of paper called an indictment. Again, like I  
13 said yesterday, this indictment is not evidence of anything.  
14 It's the way cases come to court. It's a description of the  
15 alleged crime which the defendant allegedly committed.

16 Now, the defendant has pled not guilty and is  
17 presumed innocent unless and until proven guilty beyond a  
18 reasonable doubt. I will give you a long definition of what  
19 beyond a reasonable doubt means when I instruct you on the  
20 law. Just so you can have an idea as you hear testimony, "a  
21 reasonable doubt is the kind of doubt that would cause a  
22 reasonable person to hesitate to act."

23 A defendant has a right not to testify and a  
24 defendant never has to prove innocence or present any  
25 evidence. The burden of proof is always on the State of

1 South Carolina.

2 Now, just like rules which govern sports and other  
3 activities, we have rules of evidence for court, which  
4 determines what kinds of questions can be answered and what  
5 kinds of things can come into evidence. I'm the referee,  
6 that's my job as the judge of the law, I'm in charge of the  
7 evidentiary rules of law.

8 So if a question is asked of a witness and a lawyer  
9 on the other side thinks that that question violates the  
10 rules of evidence, that lawyer will stand up and say,  
11 "Objection."

12 Y'all have seen it on TV, you know what an  
13 objection is. That's when I have to make a decision whether  
14 to overrule the objection or sustain the objection. If I  
15 overrule the objection, that means the question can be  
16 answered or the thing can come into evidence. If I sustain  
17 an objection, that means the question cannot be answered or  
18 the thing that's being offered cannot come into evidence.

19 And so if sustain an objection, you can't speculate  
20 about what the answer would have been if I had let the  
21 witness answer or what the thing would have shown if I'd let  
22 the thing come into evidence.

23 See, that would be violating your job as a juror.  
24 You can only go by the evidence submitted in this courtroom.  
25 So don't speculate. That's also why you can't do any

1 independent research. You have to go by what the evidence  
2 is received in this courtroom.

3 In deciding the facts of this case, you may have to  
4 decide the believability or the credibility of witnesses.  
5 You can believe everything a witness says, some of it or  
6 none of it. That is your power as a fact finder, as the  
7 judge of the facts.

8 Ladies and gentlemen, until I advise you to begin  
9 your deliberations, you must not and cannot discuss this  
10 case with anyone, even yourselves. Certainly, you can get  
11 to know each other back in the jury room and have small talk  
12 but you can't talk about the case. Don't talk about it with  
13 friends, family members or anybody else not involved in this  
14 case.

15 Again, don't do any independent research or look up  
16 information about this case. You have to go with what is  
17 given to you in this courtroom.

18 If anybody attempts to discuss the case with you in  
19 violation of these rules, please let me know and I'll assure  
20 you, I'll take care of it.

21 It's important, lastly, ladies and gentleman, to  
22 keep an open mind and not decide anything in this case until  
23 everything has been presented to you. Until you've heard  
24 the closing arguments from the attorneys and until I've  
25 instructed you on the law in this case. It is your solemn

1 responsibility to determine the guilt or innocence of this  
2 defendant and your verdict must be based solely on the  
3 evidence presented during this trial and on the law which I  
4 instruct you at the close of the trial.

5 Thank you again, for undertaking this important  
6 responsibility. Lastly, let me say this before I forget.  
7 You'll notice you don't have pieces of paper and pens to  
8 take notes and stuff. Well, you're not supposed to have  
9 that. So I'm going to have the bailiff take that from you.  
10 The reason I do that, ladies and gentlemen is because if  
11 you're like me, you're going to doodle and draw all kinds of  
12 maizes and triangles and circles and you may not be paying  
13 attention real good.

14 I want you to pay attention. Certainly, you can  
15 use that in your deliberations but while you're out here, I  
16 don't want you to have that.

17 Yes, sir?

18 JUROR NO. 159: I have a pen and writing --

19 THE COURT: I saw that, sir. I will get the  
20 bailiff to take that from you before we start and  
21 everything. And that's why I say that. Okay? And I looked  
22 up and I noticed that. That's fine. You didn't know. Now  
23 you do.

24 The other things is, listen carefully while the  
25 trial is going on because my court reporter right there,

1 she's been with me for years, she's wonderful. But it's  
2 very costly and time consuming for her to printout a  
3 transcript for you to consult back in your jury room. So  
4 you're not going to have a written transcript to consult, so  
5 you've got to be able to recall this stuff.

6 Certainly, if you have a question about something,  
7 we can bring you out here and deal with it again. But you  
8 need to be able to have a good memory about things, so pay  
9 attention to everything as it happens. Okay?

10 That's all I have to say to you at this point in  
11 time. What's going to happen now is, I want you to listen  
12 carefully to the lawyers as they make their openings  
13 statements to you.

14 Thank you again, ladies and gentleman.

15 Madam Solicitor?

16 MS. HALL: Thank you.

17 Good morning. As you guys know, because we talked  
18 to you and we announced the case yesterday, the defendant in  
19 this case, Carlos Cesmas-Gomez, was charged with criminal  
20 sexual conduct with a minor in the second degree and we'll  
21 talk about that in a minute.

22 Every time I read an indictment in this courtroom,  
23 before we picked a jury, I watch the jury cringe and it's  
24 cringe-worthy and I appreciate that. And I heard what the  
25 Judge was telling you about, it's so important in this case,

1 it's so important that you pay attention and listen. You  
2 are going to hear things that are so hard to hear from a  
3 child who is going to have to tell what happened to her.

4 I need for you to pay close attention. You will  
5 hear from her. You will hear from her grandmother who was  
6 in the other room while this was going on. You're going to  
7 hear from the mom who they called. She spent a night with  
8 the grandmother who called mom and went to the mom's and  
9 went afterwards to report it to law enforcement to take her  
10 to the hospital to get examined and you'll hear from the  
11 nurse who did the examination.

12 All this is very detailed to the child. Actually,  
13 this is going to the second degree part. That's based on  
14 the age of the child at the time, which is between 11 and  
15 14. At the time this occurred she was 12. 12 years old.  
16 And if you can go back -- I have a hard time doing that but  
17 if you can go back and think about yourself at 12 years old.  
18 Those of you that have children know that that's a child.  
19 And now she's 16.

20 She's going to come in here in a little while and  
21 tell you what happened to her. It's going to be hard to  
22 listen to that but I need you pay very close attention while  
23 she's talking.

24 The defendant in this case, Carlos Cesmas-Gomez,  
25 had known -- her name is Minor, that's what they call

1 her. He had known her her whole life because he was related  
2 to her. He was 20-years-old at the time this happened.  
3 He's basically twice her age. He knew how old she was. He  
4 knew that they were cousins, uncle, relatives somehow and  
5 she'll explain more of that to you. He knew her all of her  
6 life.

7 On April 16, 2019, he was staying with the  
8 grandmother, I'll tell you, [REDACTED]  
9 [REDACTED]. She's going to testify through an interpreter. She  
10 speaks Spanish. She's going to talk about the fact that she  
11 took him in and allowed him to live in her house with her.

12 The grandchild came over to spend the night, had  
13 her own room in the house, had dinner over and the defendant  
14 made a calculated decision to go into her bedroom and try to  
15 have sex with her.

16 Criminal sexual conduct, the definition -- and I  
17 think it's important -- the Judge is going to give you all  
18 the law but it's important for you guys to know the  
19 definition of what that crime is as you go forward so you  
20 know what you're looking for.

21 It is a sexual battery which is defined as any  
22 intrusion, however slight, into the orifice of another  
23 person basically. And it can happen through sexual vaginal  
24 intercourse, anal intercourse. It can happen in oral  
25 sexual, which is not alleged in this situation.

1           Digital penetration, which is a finger or some  
2           other object, anything that goes into the cavity of another  
3           person and you're going to hear, "and however slight."

4           Okay. "However slight," it doesn't have to go all  
5           the way in. If it penetrates at all, that's a sexual  
6           battery. And you will hear her talk about that too. And I  
7           mentioned she was 12 and a half at the time this happened.  
8           The defendant went into her room, betraying the trust of  
9           this woman who had taken him in.

10           In the middle of the night, her grandmother hears  
11           her call out and goes to see what's going on and walks in  
12           and thankfully, thankfully because she was able to stop him  
13           before it went any further.

14           This is a short case. I know it's important to the  
15           defendant and I'll tell you it's extremely important to the  
16           victim in this case to get her to tell you what happened to  
17           her. You guys are the judges of the facts and you heard --  
18           the facts and obviously, Judge Gibbons will tell you the law  
19           that you apply to those facts when we get to the end of this  
20           case.

21           We talked about presumption of innocence and that  
22           is something we take very seriously, as well as the burden  
23           of proof, we take very seriously.

24           Yes, the defendant is presumed, as he sits there  
25           right know, innocent. And as you hear testimony that will

1 strip away his innocence and prove to you, I submit, beyond  
2 a reasonable doubt, that he did this.

3 And reasonable doubt is a very high standard and it  
4 should be because it's people, you're coming -- we're asking  
5 you to find him guilty of something. So it should be beyond  
6 a reasonable doubt and that is a burden we take very  
7 seriously and welcome it.

8 You guys were selected because you have common  
9 sense. You have life experience. And that is what you're  
10 doing here today. Don't leave that at the door when you  
11 walk in. Listen to the testimony and at the end of the  
12 case, you're going to have to render a verdict. And we ask  
13 for the truth, that's what burden means, "to speak the  
14 truth." And that's what we're asking you to do.

15 And I submit to you, once you've heard all the  
16 testimony in this case, the truth is, this defendant  
17 committed sexual battery when he was 20-years-old, committed  
18 it on a 12 year old and he's guilty as charged.

19 Thank you.

20 THE COURT: Thank you, Madam Solicitor.

21 Ms. Boulware?

22 MS. BOULWARE: Thank you, your Honor.

23 Good morning. You met me yesterday, I'm  
24 Ms. Boulware. I represent Carlos. I call him Carlos. I  
25 know him as Carlos and I stumble over his last name a

1 little, I don't know why. But he's Carlos to me. And of  
2 course, listening to the Solicitor, this sounds  
3 straightforward. Of course, it does.

4 But she's right about one thing. As he sits there,  
5 he's innocent. It sounds straightforward, but as the trial  
6 goes on, there's more to it. There's a few issues. One of  
7 which is there were no issues ever with Carlos is what I  
8 believe the victim will say. There were some delays of  
9 things that were discovered maybe a month or so later or  
10 things that weren't found that they were told would be  
11 there. All of this stuff, along with inconsistencies that  
12 it will create, creates reasonable doubt.

13 Reasonable doubt is when there's no other  
14 explanation for what could have happened except for what the  
15 State is saying happened. But I believe as we go along, you  
16 will see it will not strip Carlos of his innocence. I think  
17 it will actually make you think a little bit, think about  
18 that reasonable doubt because these inconsistencies and the  
19 delays and the things that weren't said to begin with are  
20 going to create that in your head.

21 I would ask that you find my client, Carlos, not  
22 guilty at the end of this trial. I'm keeping this short  
23 because we all do want to go ahead and get through the day.  
24 But I will be back to talk at the end of all the testimony  
25 and at the end of all of the evidence and we'll talk about

1 the inconsistencies, the delays and the other things that I  
2 think will lead you into concluding that there is enough  
3 reasonable doubt that what the victim is alleging happened,  
4 actually happened.

5 Thank you.

6 THE COURT: Thank you, Ms. Boulware.

7 State call your first witness.

8 MS. HALL: Minor .

9 THE COURT: Minor .

10 Do you need the interpreter for this witness?

11 MS. HALL: No.

12

13 Minor the Witness herein, having been sworn by the  
14 Clerk of Court, was examined and testified as follows:

15 THE COURT: Thank you, ma'am. Just have a seat  
16 there. Make sure you speak loudly into that mic as best you  
17 can. Thank you.

18

19 DIRECT EXAMINATION

20 BY MS. HALL:

21 Q Can you state your full name for the record.

22 A Minor .

23 Q And do you go by Min sometimes?

24 A Sometimes. Yes, ma'am.

25 Q What town do you live in now?

1 A Ridgeway.

2 Q And who lives there with you?

3 A My mom and my grandma.

4 Q What's your mom's name?

5 A Xochitl.

6 Q What's your grandmother's name?

7 A Eva.

8 Q Back in April 2019, where were you living?

9 A In Fairfield, Columbia.

10 Q Is that Fairfield Road in Columbia?

11 A Yes, ma'am.

12 Q Not Fairfield County but Fairfield Road, Columbia?

13 A Yes, ma'am.

14 Q Who was living there with you at that time?

15 A Me, my mom and my dad.

16 Q What's your dad's name?

17 A José.

18 Q Tell me when your birthday is.

19 A [REDACTED].

20 Q I want to talk about your relationship with your  
21 grandmother a little bit. Can you talk about that and tell the  
22 jury about your relationship with your grandma.

23 A Me and my grandma get along. We have a good  
24 relationship.

25 Q I need to get you a little bit closer. I know you're

1 nervous. Take a deep breath and we'll get through this.

2 Tell me, were you close with your grandmother?

3 A Yes, ma'am.

4 Q Were you close with her back in 2019?

5 A Yes, ma'am.

6 Q Did you stay with her some?

7 A Yes.

8 Q Where you live now in Ridgeway, is that where your  
9 grandmother was living at the time of 2019?

10 A Yes, ma'am.

11 Q Did you have your own room in that house?

12 A Yes, ma'am.

13 Q Where were you going to school in 2019?

14 A I was going to middle school.

15 Q Do you know what grade you were in?

16 A 6th.

17 Q How do you know the defendant in this case, Carlos?

18 A Family member.

19 Q Have you known him your whole life or did you meet him  
20 later on as you got a little old?

21 A When I got a little older. I was still young. I was  
22 little.

23 Q And do you remember about how little or what age you  
24 were?

25 A No.

1 Q Do you know how many years ago it was when you met him?

2 A About, I'd probably say like six or seven years ago.

3 Q And what do you call him or what did you call him?

4 A I would just say his name or uncle.

5 Q You called him uncle?

6 A Yes, ma'am.

7 Q Do you know how he is related to you?

8 A No.

9 Q Would you see him fairly often?

10 A Yes.

11 Q Tell us about that.

12 A We would just see each other like at each family

13 meetings.

14 Q At family meetings?

15 A Uh-huh (affirmative response.).

16 Q Did you hang out with him at these family meetings?

17 A Not really.

18 Q Why not?

19 A I would just be around his younger siblings.

20 Q Are you the age of his younger siblings?

21 A Yes, ma'am.

22 Q If you know, where did he normally live, Carlos?

23 A North Carolina.

24 Q Did you keep in touch with him regularly or anything?

25 A No.

1 Q Did y'all exchange text messages or communicate  
2 regularly?

3 A No.

4 Q I'm going to talk to you about the evening of April 16,  
5 2019 or the 15th and 16th, early morning of April 16th.

6 Were you at your grandmother's house that night?

7 A Yes, ma'am.

8 Q Who all was there with you?

9 A Just me and my mom.

10 Q You and your mom or was your grandmother there?

11 A Oh, yes. Yes, ma'am. My grandmother was there.

12 Q And at some point did your mom leave?

13 A I can't remember.

14 Q You can't remember?

15 A Uh-huh (affirmative response.).

16 Q Where were you that night?

17 A With my grandmother.

18 Q Was this at the house in Ridgeway?

19 A Yes, ma'am.

20 Q Who all was in the house?

21 A Just me and my grandmother and my mom.

22 Q Where in the house were you, like, throughout the  
23 course of the night? Just tell us about -- and start around 10  
24 o'clock that night. Did Carlos come into the house at some  
25 point?

1 A Yes, I think.

2 Q Was he living there with your grandmother?

3 A Yes, ma'am.

4 Q So at some point that night did you see him?

5 A Yes.

6 Q Do you remember where you were in the house when you  
7 saw him?

8 A Yes.

9 Q Where?

10 A In the kitchen.

11 Q Did you talk to him or anything?

12 A Yes.

13 Q Tell me about that.

14 A He just had came from North Carolina and he had offered  
15 me a coffee. I don't know what -- it was coffee and I drank it.

16 Q And you drank the coffee?

17 A Yes, ma'am.

18 Q Do you remember, were you ready for bed at that time?  
19 Do you know what you were wearing?

20 A Yes.

21 Q What?

22 A I was wearing PJs.

23 Q Is that pajamas?

24 A Pajamas.

25 Q Did anything out of the ordinary happen that night?

1           A     Yes.

2           Q     Did you have any issues or problems with Carlos before  
3 this incident of April 16, 2019?

4           A     No.           .

5           Q     Did you have a problem with him that night?

6           A     Yes.

7           Q     Where were you when that happened?

8           A     In my room.

9           Q     Had you gone to bed or anything? Tell me what  
10 happened, about how you got from coffee to the bed and what  
11 happened after that.

12          A     I was sleepy so I was just going to the room. I was  
13 just on my phone.

14          Q     What room? When you say "going to the room," what  
15 room?

16          A     My room at that time at my grandmother's house.

17          Q     That was your bedroom?

18          A     Yes, ma'am.

19          Q     Okay. So you said you were sleepy and you went into  
20 your bedroom. Tell me what happened after that.

21          A     I was watching -- I was on my phone and I was ready to  
22 go to bed.

23          Q     Was it dark outside? Do you know what time it was?

24          A     No, but it was dark. It was night.

25          Q     Go ahead. You said you were watching your -- you were

1 on the phone in your bedroom; is that right?

2 A Yes, ma'am.

3 Q What happened after that?

4 A After, like, I was on my phone?

5 Q After you were on your phone in your bedroom, did  
6 anything unusual happen at that point?

7 A Yes.

8 Q Tell me what it was.

9 A I was in my room, I was watching a show and then --

10 Q Was your bedroom door open or closed?

11 A It was a little cracked -- it was closed.

12 Q Say again?

13 A It was closed.

14 Q If you could talk into that loud for the rest of the  
15 time, that would be awesome. Okay?

16 A Okay.

17 Q You said the bedroom door was a little bit cracked and  
18 mostly closed.

19 Okay. Then what happened?

20 A Carlos had came in.

21 Q Carlos came into your room?

22 A Uh-huh (affirmative response.).

23 Q Do you remember what he was wearing?

24 A He was wearing shorts, like basketball shorts and  
25 shirt.

1           Q     He came into your room. Was that unusual? Did he come  
2 into your room a lot?

3           A     No.

4           Q     What happened when he came into your room?

5           A     He was just asking me what was I watching. At first he  
6 had came in and asked me what was I watching. Then I was just  
7 telling him I was watching Netflix on my phone.

8           Q     Okay. Did he stay in your room or did he leave?

9           A     He stayed.

10          Q     Then did he do anything?

11          A     Yes.

12          Q     Tell me about that.

13          A     I was just in my room and he had like grabbed me.

14          Q     Speak into the microphone. I know this hard. Like I  
15 said, just tell me what happened. Okay? Speak into the  
16 microphone a little more. Scoot up a little closer.

17                Now repeat what you said because I didn't hear you.

18          A     Like, he had just came -- so when he had came in the  
19 room, he just walked in front like of the bed on the right side,  
20 on the wall. So he just came in straight and then he stood in  
21 front of the bed.

22          Q     Okay. What did you do?

23          A     I was nervous. I was scared.

24          Q     Did you stay on the bed or did you stand up?

25          A     I stayed on the bed.

1 Q What did he do?

2 A He had grabbed me.

3 Q Grabbed you where?

4 A Not that -- I can't remember.

5 Q Do you remember what part of your body he grabbed you  
6 on? If you don't remember, it's okay to say.

7 A I don't remember.

8 Q But you remember him grabbing you?

9 A Uh-huh (affirmative response.).

10 Q Did you stay on the bed at that point or did you move?

11 A I moved.

12 Q Tell me about that.

13 A He was there. He was in the room when -- he grabbed me  
14 and I had like felt nervous and didn't know what to do. I was  
15 just confused in the moment.

16 Q What happened?

17 A He, at the time of -- that day, he just didn't really  
18 know. He had grabbed me. He asked me if I had sexual  
19 intercourse before. I had said no. And I was confused why he's  
20 asking.

21 From there, it started getting weird. And at that time  
22 when I was coming up, like when I knew I felt something -- also,  
23 he had -- I was nervous, he grabbed me and asked me that  
24 question and then I had felt nervous from there, you know?

25 Q Go ahead. I know it's hard. Go ahead and tell me what

1 happened.

2 A From there, he just -- he had, you know, put it in me.

3 Q Were you still on the bed at this point?

4 A Uh-uh (affirmative response.).

5 Q Okay. So tell me --

6 A I was on the floor.

7 Q How did you get to the floor?

8 A He had grabbed me and put me there.

9 Q He put you on the floor?

10 A Yes, ma'am.

11 Q Were you on your back or stomach or how were you on the  
12 floor?

13 A On my back.

14 Q And then was he saying anything to you at that point?

15 A Not that I can remember.

16 Q What, if anything, did he do to you at that point?

17 A He was holding me.

18 Q Holding you how? You can show us. It's okay.

19 A Holding my arms like that (indicating) when I was on  
20 the floor. He had put it in there and me. He had put it in me  
21 when I was on the floor.

22 Q You said he was holding your arms. Can you show with  
23 your body right now how he was holding your arms?

24 A From the wrist.

25 Q Were your clothes on or off at this point?

1           A     My shirt was on. He took my pants off.

2           Q     Did he take them all the way off or did he just pull  
3 them down?

4           A     No, he just slide them down.

5           Q     Do you remember when this happened or you just know  
6 your pants were down at that point?

7           A     Pants were down at that point.

8           Q     He had taken them down like you just said; is that  
9 right?

10          A     Uh-huh (affirmative response.).

11          Q     And you said it a couple of times. But I'm going to  
12 ask you some questions about this.

13                You said, "he put it in me." Let me ask you a couple  
14 of other things because we need to go through it a little more.

15                At that point in time, were you a virgin?

16          A     Yes, ma'am.

17          Q     And so at that point in time, do you know if he -- did  
18 he use any contraception, was a condom involved or do you know  
19 anything about any of that?

20          A     Yes.

21          Q     Tell me about that.

22          A     When I was standing there, when he had came in I didn't  
23 know what he was doing, I think he was putting on the condom.

24          Q     Why do you think that?

25          A     Because he was like facing the closet door.

1 Q He was over by the closet door?

2 A Yes, ma'am.

3 Q Did you hear anything or did you see anything? Just  
4 tell me about what things you heard or just tell me about what  
5 things you heard or saw.

6 A I think I thought I saw him opening something.

7 Q At the age of 12-years-old, at that point in time, did  
8 you know what a condom was? Had you ever seen one?

9 A No.

10 Q At age of 16 now, do you know what a condom is and had  
11 you ever seen one?

12 A Yes.

13 Q And do you believe -- so you stated that you thought at  
14 that point in time, knowing what you know now, he was putting on  
15 a condom?

16 A Yes.

17 Q Now he's over at the closet door. Are you still on the  
18 bed at this point?

19 A Yes.

20 Q This is before he grabbed you?

21 A Uh-huh (affirmative response.).

22 Q Now, I'm going to go back to where you say now you're  
23 on the floor and you're on your back and your pants are down.

24 Do you remember where his pants were?

25 A Down.

1 Q Had he pulled his pants down or did you pull them down?

2 A He had.

3 Q And you said "he put it in me."

4 A Uh-huh (affirmative response.).

5 Q When you say "it," what do you mean by "it"?

6 A His penis.

7 Q At the time, did you know if it was his penis or did  
8 you know what it was?

9 A No.

10 Q What did it feel like?

11 A It hurt.

12 Q It hurt?

13 A Uh-huh. Yes, ma'am.

14 Q Did he put it in you once or was he trying -- just tell  
15 me a little bit more about that.

16 A I think when I was on the floor, it -- since -- I think  
17 he had tried to put it in the first time but it didn't go. So  
18 he tried to shove it in the second time and it went in.

19 Q So what happened at that point?

20 A While that was happening -- I was there, I was telling  
21 him to stop.

22 Q Was it dark in the room or light?

23 A It was dark.

24 Q You said you were telling him to stop?

25 A Yes.

1 Q What happened after that?

2 A He didn't get off. And I was in my room and I was just  
3 nervous, I didn't know what to do. So I had started making  
4 noise so my grandma could hear me.

5 Q Was he lying on top of you at this point in time?

6 A Yes.

7 Q Was he still holding your arms?

8 A Yes.

9 Q Go ahead. You said you were making noise so your  
10 grandma can hear you. Then what happened?

11 A It was like -- it was happening, I think it felt like  
12 about a good minute. It felt about a good minute when I had  
13 heard my grandma come in.

14 Q You heard her coming?

15 A Uh-huh (affirmative response.).

16 Q Did you hear her footsteps or did you hear her some  
17 other way?

18 A I think I heard the door open from her room.

19 Q From her room? So you heard her coming. Do you know  
20 or could you tell if Carlos heard her coming?

21 A No.

22 Q You couldn't tell or you don't know?

23 A I don't know.

24 Q Was he still on top of you?

25 A Yes.

1 Q Go ahead.

2 A From there, my grandma had walked in.

3 Q Your grandma came in the room?

4 A Yes, ma'am.

5 Q Where's Carlos at this point?

6 A Behind the door.

7 Q Tell me about that: How did Carlos get from on top of  
8 you to behind the door?

9 A I think he had -- whenever my grandma had came in, he  
10 stood behind the door and told me not to say anything.

11 Q He told you not to say anything?

12 A Uh-huh (affirmative response.).

13 Q Okay.

14 A And I had pointed at the door to show my grandma.

15 Q So you pointed to the door to show grandma he was  
16 hiding behind the door?

17 A Yes.

18 Q And were you standing up at this point or were you  
19 still on the floor?

20 A I was standing up and I had rushed -- my grandma asked  
21 me to go to her room.

22 Q Was this after -- when you pointed to the door, what  
23 did your grandma do?

24 A She started --

25 Q Did he see Carlos?

1           A     Yes. She was mad at Carlos at the time. When she was  
2 asking him what he was doing, she had told me to go to her room.

3           Q     Did you go to her room?

4           A     Yes. Then from there, I went straight to the bathroom.

5           Q     You went to the bathroom?

6           A     Yes, ma'am.

7           Q     Was there anything -- what did you do while you in the  
8 bathroom?

9           A     I was checking myself because it was hurting from down  
10 there. And I needed to figure out if I was bleeding.

11          Q     At this point in time -- we're just going to talk about  
12 it. Had you already gotten your period as a young woman?

13          A     Yes.

14          Q     What age were you when you got your period?

15          A     Nine.

16          Q     So you'd been dealing with that for a while; right?

17          A     Yes.

18          Q     This bleeding that was going on, was that your period?

19          A     No.

20          Q     You said you were in the bathroom and you noticed that  
21 you were bleeding. Is your grandmother still in the room with  
22 Carlos or is she gone somewhere else at this point?

23          A     I'm pretty sure that she went in the room and took  
24 Carlos from the room and had talked to him.

25          Q     Did Carlos have his own room in the house too?

1 A Yes.

2 Q So you don't know where she was because you were in the  
3 bathroom. Could you hear them talking?

4 A No.

5 Q Where you stay -- did you stay in your grandmother's  
6 room?

7 A Yes.

8 Q Until when?

9 A Until my grandma told me to come out.

10 Q She came back in there and got you?

11 A Yes.

12 Q Where was Carlos at that point?

13 A Outside.

14 Q You said earlier that she had told him to leave?

15 A Yes.

16 Q After that night up, until today, had you seen Carlos  
17 again?

18 A No.

19 Q That night after you say -- did Carlos leave the house  
20 and the property that night?

21 A Yes.

22 Q What did you and your grandmother do?

23 A We had rushed to my mom's house.

24 Q You went to your mom's house?

25 A Yes.

1 Q Was your mom with you during any course of this?

2 A No.

3 Q When you got to your mom's house, was your mom at her  
4 house?

5 A Yes.

6 Q Did you drive there -- was it just the two of you, you  
7 and your grandmother?

8 A Yes.

9 Q When you got to the house, where was your mom, if you  
10 remember?

11 A My mom was, she opened the door for us. She was home.

12 Q And you said that your dad, José, lives with your mom,  
13 was he there too?

14 A Yes.

15 Q Was anybody else there?

16 A Me and my grandma, that's it.

17 Q Did y'all tell your mom what had happened?

18 A Yes.

19 Q Did you spend the night with your mom that night?

20 A Yes.

21 Q At some point did you go to Fairfield sheriff's office  
22 and meet with an investigator there?

23 A Yes.

24 Q And that was Investigator Castles?

25 A Yes, ma'am.

1 Q Did you give a statement to Investigator Castles  
2 telling her what had happened?

3 A Yes, ma'am.

4 Q And after you met with her, did you go to the hospital?

5 A Yes, ma'am.

6 Q Who told you to go to the hospital?

7 A The officer.

8 Q While you were there, did you -- were you examined by a  
9 nurse?

10 A Yes.

11 Q When you gave that statement to Investigator Castles,  
12 was your grandmother -- when y'all first went to the -- I want  
13 to talk about going to the sheriff's department.

14 When you went there, who all went to the sheriff's  
15 department?

16 A It was me, my mom, my grandma, my dad and Vanessa, my  
17 aunt.

18 Q Vanessa, your aunt?

19 A Yes, ma'am.

20 Q And your mom and grandma, I want to talk about their  
21 language, as far as you know.

22 Are they pretty fluent in English?

23 A No.

24 Q Are Vanessa and your dad fluent in English?

25 A Yes.

1 Q Better than your mom and your grandma?

2 A Yes, ma'am.

3 Q So they had gone to the sheriff's department with you;  
4 right?

5 A Yes, ma'am.

6 Q And were they acting as translators for your mom and  
7 your grandmother?

8 A Yes, ma'am.

9 Q At some point did you give Investigator Castles a  
10 statement about what had happened to you?

11 A Yes, ma'am.

12 Q Did you tell her everything or just parts of it?

13 A No. I didn't tell her everything.

14 Q When you went to -- where are your grandmother and your  
15 mom while you were giving that statement? If you remember, I  
16 know it's four years go but --

17 A Pretty much, they were in the lobby.

18 Q So they were right outside the door?

19 A Yes, ma'am.

20 Q Did you go to the hospital after that? You said, you  
21 did.

22 A Yes, ma'am.

23 Q Did you talk to the nurse while you were at the  
24 hospital?

25 A Yes, ma'am.

1           Q     Did you tell her the whole story and the things that  
2 you didn't feel comfortable saying in front of your mom and your  
3 grandma?

4           A     I told her some parts.

5           Q     The nurse?

6           A     Yes, ma'am.

7           Q     Some things that you hadn't told -- the things that you  
8 hadn't told Investigator Castles; is that right?

9           A     Yes, ma'am.

10          Q     The house in Ridgeway was where this happened; right,  
11 at your grandmother's house on Autumn Drive?

12          A     Yes, ma'am.

13          Q     Had Carlos ever asked you about sex or anything like  
14 that before or that day?

15          A     No.

16          Q     Had he ever mentioned any sexual things to you or said  
17 anything to you that made you feel uncomfortable?

18          A     No.

19          Q     And you said you hadn't seen Carlos. Up until now, you  
20 hadn't seen him since that day; is that right?

21          A     No, ma'am.

22          Q     I'm going to have to ask you this. Can you please  
23 point to the man who did this to you? Is he seated in this  
24 courtroom today?

25          A     Yes, ma'am.

1 Q Can you point to him just to identify him?

2 A (Indicating.)

3 MS. HALL: Thank you. Nothing further. Please  
4 answer any questions Ms. Boulware will have.

5 THE COURT: Let's take a brief recess.

6 Ladies and gentlemen, head on back to your jury  
7 room. Do not discuss the case.

8 (Jurors exited.)

9 THE COURT: We'll be in a brief recess.

10 Young lady, do you need something to drink or  
11 anything? Some water or a snack?

12 THE WITNESS: Yes, sir.

13 THE COURT: You can come down from there if you  
14 want to but you can't talk to anybody about your testimony.  
15 Okay?

16 THE WITNESS: Yes, sir.

17 THE COURT: We'll be down for about five, ten  
18 minutes.

19 (Whereupon, a brief recess was taken.)

20 THE BAILIFF: All rise.

21 THE COURT: Thank you very much.

22 We're back on the record. An issue came up during  
23 recess, Ms. Boulware?

24 MS. BOULWARE: Thank you, Judge.

25 My understanding is that one of the jurors actually

1 is fluent in Spanish and her teaching job at Richard Winn is  
2 teaching Spanish. So my concern is, I know we have a  
3 translator, I do not speak Spanish myself so I will not  
4 understand what the witnesses is saying until the translator  
5 translates. But I have a juror who will understand that  
6 before I do. And we did have some issues earlier of some  
7 topics or things that came up during the investigation that  
8 were not to be mentioned. So I just wanted to put on the  
9 record and to be sure that the witness understands that  
10 through the translator and that the translator understands  
11 that.

12 THE COURT: And this is, I believe, the juror who  
13 was the prom date of Cocounsel William Frick that we're  
14 talking about; correct?

15 MS. BOULWARE: That is correct, Judge.

16 THE COURT: The record needs to reflect that  
17 because I have to make that decision. So what's the State's  
18 position on this issue?

19 MS. HALL: As we discussed in chambers, you came up  
20 with a good resolution. The next two witnesses, the  
21 grandmother and mother, that's when testimony will come  
22 through a translator. The advocate is bilingual and she  
23 told them again just a minute ago, "Nothing about the  
24 threats, nothing about the trouble in North Carolina."

25 THE COURT: Can't mention threats. Can't mention

1 stuff about North Carolina?

2 MS. HALL: Correct.

3 THE COURT: All she can testify about is what she  
4 saw, heard, smelled, et cetera, that day.

5 MS. HALL: Right. And I believe your Honor's  
6 suggestion, which I'm amenable too and I think Ms. Boulware  
7 was as well and she can tell you that, is to bring the  
8 translator in with the two people who will be testifying  
9 through the translator and tell them exactly what -- and put  
10 that on the record --

11 THE COURT: Okay.

12 MS. HALL: -- through the translator. If that makes  
13 everybody feel more comfortable.

14 THE COURT: Ms. Boulware, are you fine with that?

15 MS. BOULWARE: Judge, I'm fine with that. I think  
16 the translator is considered an officer of the court.

17 THE COURT: Sure.

18 MS. BOULWARE: They're supposed to be honest in  
19 what they're translating or interpreting. As long as the  
20 witness is instructed not to mention these things, I think  
21 that would solve that.

22 THE COURT: Let's go ahead and deal with it now.  
23 Or do you want to finish this testimony?

24 MS. HALL: I'd like for her to finish.

25 THE COURT: Let's finish this testimony. She's

1       been up on that witness stand. She needs to get her  
2       testimony done. And after that, we can take a little  
3       recess.

4               Is the State's next witness the grand mom?

5       MS. HALL: Yes.

6       THE COURT: Then we'll deal with it in between.

7       Okay. Let's bring the jury in.

8       (Jurors entered.)

9       THE COURT: Thank you, ladies and gentlemen.

10       Ms. Boulware, your witness.

11

12

CROSS-EXAMINATION

13 BY MS. BOULWARE:

14       Q     Good morning, Minor.

15       A     Morning.

16       Q     Is it okay if I call you Minor?

17       A     Yes.

18       Q     Is it Minor or Minor?

19       A     Minor.

20       Q     Minor? Okay. I just have a few more questions to follow  
21 up on to what you told the Solicitor. They're going to be  
22 uncomfortable like they were with her probably.

23               You mentioned to the Solicitor that you now realized  
24 that Carlos might have had a condom; is that correct?

25       A     Yes, ma'am.

1 Q What grade were you in again at the time?

2 A 6th.

3 Q 6th grade. Okay. Did you ever have a health class in  
4 school or anything like that?

5 A They didn't have health class. We could have chosen  
6 it. I didn't sign up for it.

7 Q Sexual education? Anything?

8 A No.

9 Q I know you said you and Carlos did not text back and  
10 forth. Did you Facebook message with him at all?

11 A Yes.

12 Q Was that prior to this?

13 A No.

14 Q So you never sent Facebook messages to Carlos prior to  
15 this incident?

16 A No, not that I can remember.

17 Q Was Carlos always nice to you?

18 A He was.

19 Q Did you like him? Did you talk with him? Were y'all  
20 friends or how would you describe that?

21 A We're just family members. We just talk.

22 Q How often did you see Carlos?

23 A Before he moved in with us, it was just when I had to  
24 see him with family stuff.

25 Q And now that you mentioned that. I am a little

1 confused about something. Did you live with your grandmother  
2 and not your parents or were you staying with her for the summer  
3 and Carlos lived with your grandmother?

4 A It was spring break and I was staying with her for the  
5 week.

6 Q But Carlos lived there?

7 A Yes.

8 Q How often did you go to your grandmother's?

9 A Very often.

10 Q How long was Carlos there before that week you were on  
11 spring break?

12 A I can't remember.

13 Q A couple weeks? A month or so?

14 A It was some months.

15 Q So he had been there a while?

16 A Yes, ma'am.

17 Q You got along fine. You testified he never made you  
18 feel uncomfortable?

19 A No.

20 Q Did he ever bring you coffees?

21 A Yes.

22 Q If he went to Starbucks and grabbed a coffee, he'd  
23 bring you back one too?

24 A Yes, ma'am.

25 Q How often did he do that?

1 A Just that one time.

2 Q Just once?

3 A Twice.

4 Q Or twice?

5 A Twice.

6 Q Okay. You did give a lot more details today than you  
7 did before?

8 A Yes, ma'am.

9 Q It's a lot of things that happened in a small period of  
10 time it sounds like.

11 Can you tell me how long you think it took?

12 A It was about -- it lasted ten minutes or probably less.

13 Q From the time he walked in the room?

14 A From the time -- from starting, yes.

15 Q Do you know if he had pockets in his shorts?

16 A Yes.

17 Q He did?

18 A Not that I can remember.

19 Q So you can't remember if he had pockets?

20 A No, ma'am.

21 THE COURT: Hang on.

22 Yes, sir?

23 JUROR NO. 159: I can't hear her talk.

24 THE COURT: You have to speak up for me, madam  
25 witness. Thank you.

1                   Thank you, sir.

2           Q       (By Ms. Boulware) Here's where we're going to get a  
3 little uncomfortable because a lot of people don't like talking  
4 about this. But you did say you did get your period when you  
5 were nine?

6           A       Yes, ma'am.

7           Q       You ever use tampons?

8           A       No.

9           Q       What did you use?

10          A       Pads.

11          Q       How long do you think it was between the time you're  
12 saying this happened and -- you went to the sheriff's office or  
13 did someone call law enforcement?

14          A       We went to the sheriff's office.

15          Q       Do you know how long after this happened?

16          A       Yes. It was a whole day.

17          Q       Okay. Then after that you went to the hospital for an  
18 exam?

19          A       Yes, ma'am.

20          Q       Do you remember what time the next day that you went to  
21 the sheriff's office?

22          A       No, ma'am. It was in the afternoon though.

23          Q       Okay. What time do you think this happened again?

24          A       The situation?

25          Q       Right. The night before.

1           A     It was pretty late at night. It was dark.

2           Q     Were you supposed to be in bed asleep?

3           A     Yes.

4           Q     Were you supposed to have your phone out?

5           A     Yes. Well, I was just watching Netflix trying to fall  
6 asleep.

7                   MS. BOULWARE: Beg the Court's indulgence?

8                   THE COURT: Okay.

9           Q     (By Ms. Boulware) One more quick question.

10                   So you mentioned -- this time you did mention that you  
11 recall a condom since you now are familiar with what that is;  
12 right?

13           A     Yes, ma'am.

14           Q     At the time you didn't know if it was, I believe in --  
15 your prior statement said, "finger" or "penis" or you weren't  
16 able to tell the nurse exactly?

17           A     Yes, ma'am. I had -- when I went to go put the  
18 statement from the Court, I didn't put anything. I was just  
19 scared. I just put that he had molested me with his fingers.

20           Q     I believe you also mentioned that there was something  
21 wet. Do you recall what that was or what was wet?

22           A     No, ma'am.

23                   MS. BOULWARE: No further questions, Judge.

24                   THE COURT: Thank you.

25                   Redirect?

1

2

## REDIRECT EXAMINATION

3

BY MS. HALL:

4

Q Before this had happened, had you ever been to like a  
gynecologist or a lady doctor?

6

A No.

7

Q So that hospital exam was the first time you had really  
been examined; is that correct?

9

A Yes, ma'am.

10

Q And the only other thing I wanted to ask you was, you  
told Ms. Boulware a second ago when she was asking you about  
time and how long it took and you said, "maybe ten minutes."

13

Were you watching the clock?

14

A No.

15

Q How did it make you feel when Carlos did this to you?

16

A At the moment it felt -- it just happened fast.

17

Q Emotionally, how did it make feel while this was  
happening?

19

A Sad. Scared.

20

Q Did it feel like forever?

21

A Yes, ma'am.

22

THE COURT: Anything further?

23

MS. BOULWARE: No, sir.

24

THE COURT: Thank you, ma'am. You can step down.

25

Ladies and gentleman of the jury, there's a matter

1 I need to take up outside of your presence concerning the  
2 next couple of witnesses. It shouldn't take very long. I'm  
3 going to ask that you head on back to your jury room. My  
4 plan is to get through those witnesses and then we're going  
5 to take a lunch recess. So that's what I'm planning on  
6 doing. So don't talk about the case. Head on back to your  
7 jury room.

8 Thank you.

9 (Jurors exited.)

10 THE COURT: Before we deal with the witness issue  
11 and the translator issue, I'm going to go ahead and rule  
12 on -- now that I've heard the victim witness testify, I'm  
13 going to respectfully deny the defense's motion to exclude  
14 the report of the nurse examiner. I find it's both relevant  
15 as well as more probative than prejudicial.

16 MS. BOULWARE: Thank you, Judge. I'll object.

17 THE COURT: You can make your contemporaneous  
18 objection to preserve the record. That's my in limine  
19 ruling.

20 Madam translator, where are you? Let them know  
21 they're not in trouble. I just want to make sure they  
22 understand what's going on.

23 *For the purpose of this discussion, Madam*  
24 *Translator, do you swear to accurately interpret all the*  
25 *language used in this courtroom without adding anything to*

1       it or taking anything away from it?

2               THE INTERPRETER: I do.

3               THE COURT: Thank you. The reason I brought them  
4 out here is an issue has come up concerning one of the  
5 jurors being fluent in Spanish.

6               Tell them that.

7               There are certain things they may want to say that  
8 the Solicitor has told them they can't say.

9               Did you want to say anything?

10              MS. HALL: And those two things are --

11              THE COURT: Tell the translator. The translator is  
12 going to tell them.

13              MS. HALL: And those two things are: No mention of  
14 any threats made by him or his family towards your family.

15              The second thing is no mention of him being in any  
16 trouble at all in North Carolina. You can talk about living  
17 in North Carolina but nothing about the trouble he was in up  
18 there.

19              One more thing. Nothing about him being on the run  
20 when he came to live with Ms. Islas. I want to make sure  
21 that we're clear.

22              THE COURT: One at a time. Go ahead.

23              Who is that person that said that to you?

24              THE INTERPRETER: She did.

25              THE COURT: What's her name?

1 THE INTERPRETER: Eva Suarez.

2 THE COURT: That is grand momma.

3 What did she say to you just then?

4 THE INTERPRETER: What does she mean "on the run"?

5 MS. HALL: When his mom dropped him off to stay  
6 with her, there was a mention because he was in trouble in  
7 North Carolina and was kind of on the run from North  
8 Carolina. We can mention his mom dropped him off to stay  
9 with her but not why.

10 THE COURT: Okay. All right. Do you all  
11 understand?

12 THE INTERPRETER: Yes.

13 THE COURT: Both said yes?

14 THE INTERPRETER: Both said yes.

15 THE COURT: A lot of this can be tempered and cured  
16 with the way you ask your questions.

17 MS. HALL: And I'm going to be very careful.

18 THE COURT: "What did you see?"

19 "Did you hear anything?"

20 "What did you hear?"

21 You know, that kind of thing.

22 MS. HALL: We got it. Can she tell them what you  
23 just said?

24 THE COURT: Yes.

25 And also, lastly, speak loud into that microphone.

1 MS. BOULWARE: Hang on, your Honor. I do have one  
2 more thing.

3 THE COURT: Yeah.

4 MS. BOULWARE: Under 801(d)(1) or (1)(d) where  
5 their testimony is going to be limited to time and place as  
6 well, I just want to make sure that --

7 THE COURT: Yes. Yes.

8 MS. BOULWARE: Okay.

9 MS. HALL: Well, except for the fact that Eva  
10 Suarez saw what she saw.

11 THE COURT: Correct.

12 MR. FRICK: No. She can't say that under 801. She  
13 can only talk about time and place.

14 THE COURT: Y'all are losing me here. What are you  
15 talking about? Hang on.

16 MS. HALL: I know what he's talking about.

17 THE COURT: What are you saying?

18 MS. HALL: Time and place with regard to a sexual  
19 assault. In a sexual assault case, the only thing they can  
20 talk about is time and place where the victim said it  
21 happened and the time they say it happened. They can't talk  
22 about what happened. And I understand that.

23 You don't normally have a witness to any kind of  
24 sexual assault or somebody coming in on the back end of it.  
25 Eva Suarez saw. She walked in, saw the defendant -- the

1 girl pulling up her pants. She saw the guy behind the door.  
2 And she's going to testify that he had an erection. She can  
3 testify to that stuff. She observed it herself.

4 But in terms of time and place, yes, they can't  
5 say, "Minor told me that he put his penis in me on  
6 this day." I'm going to make sure on the record that they  
7 understand that. Okay?

8 THE COURT: Correct.

9 MS. BOULWARE: The grandmother, I guess. But just  
10 so the mother understands.

11 THE COURT: They can't testify as to what the  
12 daughter told them happened. They can testify to what they  
13 saw, what they heard, what they smelled.

14 MS. HALL: Can I phrase it the way I phrased it  
15 before?

16 THE COURT: Correct.

17 MS. HALL: Because of our Rules of Evidence, you  
18 can say in terms of what happened to Minor. You, Xochitl  
19 cannot say the act that happened that she told you about.  
20 You can't repeat that in here. The Rules of Evidence allows  
21 you to say when and where, but not what.

22 Eva Suarez, you can testify to what you observed  
23 but not what Minor told you about the sex act.

24 THE COURT: Minor has already told the jury what  
25 happened. You can only testify about what you saw, not what

1 she told you.

2 We begin.

3 MS. HALL: Good job.

4 THE COURT: Any other thing that needs to be put on  
5 the record?

6 MS. BOULWARE: Not at this time, Judge.

7 THE COURT: Let's bring the jury in.

8 Hold the jury just for a second.

9 (Whereupon, a brief recess was taken.)

10 THE COURT: We've got a note from the jury. Two  
11 jurors want a smoke break. They're going to have to wait.  
12 This is the notebook that the elderly gentleman had. He had  
13 "defense" and he spelled it wrong. Then he has "State."

14 MS. HALL: I don't think we should call him  
15 elderly.

16 THE COURT: Well, I can because I'm his age,  
17 probably and he had some writings on here like, "What is  
18 criminal sexual conduct with a minor?" "Intercourse." He  
19 just wrote a few things.

20 But, again, this is the reason why I don't allow  
21 there to be notes because the jury may give that undue  
22 consideration back there when each one of them has their own  
23 vote.

24 "Not happy."

25 "Greater than mad."

1 "Greater than still."

2 "Facts greater than law equals verdict."

3 I don't know what that means. This is why this was  
4 taken from him and it has no bearing, that's why I have it  
5 up here. I just want to make sure the record understands.  
6 And now you all understand why I don't allow notes to be  
7 taken.

8 But, anyway, that's it.

9 When grand momma gets back from the bathroom,  
10 that's the signal to bring the jury back in.

11 (Jurors entered.)

12 THE COURT: Thank you, ladies and gentlemen of the  
13 jury.

14 Ladies and gentlemen, I got your note about a smoke  
15 break, whoever did that. My plan is to be out of here for  
16 lunch pretty quickly. Okay? That's relative in relative  
17 terms. So we can do all that then. I'll take an extended  
18 lunch so if you need to go -- if you live far from the  
19 courthouse, you'll have plenty of time to go home and do  
20 what you need to.

21 Call your next witness.

22 MS. HALL: State calls Ms. Suarez.

23 THE COURT: All right. Eva Suarez.

24 Ladies and gentlemen, at this point while  
25 Ms. Suarez is coming up, you may have heard the Solicitor

1 tell you in opening statements -- I believe you said this,  
2 Madam Solicitor, that we do have some testimony being  
3 presented by way of a translator. Okay.

4 THE CLERK: Please raise your right hand.  
5

6 E-V-A S-U-A-R-E-Z, the Witness herein, having been sworn by  
7 the Clerk of Court, was examined and testified as follows:

8 THE COURT: Thank you, ma'am. Standing beside this  
9 witness is a court certified translator.

10 And Madam Translator, if you'll raise your right  
11 hand and identify yourself for the record.

12 THE INTERPRETER: Rosa Diaz-Grant.

13 THE COURT: Ma'am, do you swear to accurately  
14 interpret all the language used in this courtroom, without  
15 adding anything to it or taking anything away from it?

16 THE INTERPRETER: I do.

17 THE COURT: Thank you.

18

19 DIRECT EXAMINATION

20 BY MS. HALL:

21 Q Is your name Eva Suarez?

22 A Yes.

23 Q Where do you live?

24 A [REDACTED] Autumn Drive.

25 Q What town is that in?

1 A Ridgeway.

2 Q Is that in Fairfield County?

3 A Yes.

4 Q Is this the same place where you lived in 2019?

5 A 101?

6 Q In April of the year 2019, did you live in that same  
7 house?

8 A Yes.

9 Q What is your relationship to Minor [REDACTED] ?

10 A She's my granddaughter.

11 Q And she's named after you, isn't she?

12 A Yes.

13 Q Did she come to stay with you in your house on Autumn  
14 Drive?

15 A Yes.

16 Q Did she have a special room in that house?

17 A Yes.

18 Q Was it a room that she kept by herself or did she share  
19 with other people?

20 A Just for her.

21 Q How would you describe your relationship with your  
22 granddaughter.

23 A As she would be my daughter.

24 Q And do you know the defendant in this case, Carlos  
25 Cesmas-Gomez?

1 A Huh?

2 Q Do you know the defendant in this case, Carlos  
3 Cesmas-Gomez?

4 A Yes.

5 Q How do you know him?

6 A He is a relative.

7 Q How is he related to you?

8 A He is my nephew.

9 Q And back in April of 2019, did Carlos live with you?

10 A Yes.

11 Q How long had he been living there?

12 A Max of six weeks. Month and a half. I don't remember.

13 Q How had he come to live with you?

14 A My cousin, his mom, brought him to me.

15 Q Did he have a special room in the house?

16 A Yes.

17 Q Did he share that room with anybody else?

18 A No.

19 Q At the time he was living with you, did Carlos have a  
20 job?

21 A Yes.

22 Q Do you know where he was working?

23 A Where we were working.

24 Q Where was that?

25 A In Lugoff.

1 Q What kind of work were y'all doing?

2 A Cabinets.

3 Q When you say, "we were working there," who all was  
4 working there? .

5 A My daughter, him and me, in the same factory.

6 Q I'm going to take you back to April 15th, 16th of 2019.

7 A Uh-huh (affirmative response.).

8 Q Do you remember this day?

9 A Yes.

10 Q I'm going to talk about that night. Okay?

11 A Uh-huh (affirmative response.).

12 Q At some point that night, had Carlos, had he been out?

13 A Yes.

14 Q Who was at the house with you that night?

15 A Just Minor and myself.

16 Q And at some point did Carlos come home?

17 A Yes.

18 Q Do you remember about what time it was?

19 A 10:00 p.m., around 10:00 to 10:30 p.m. when he arrived.

20 Q And that's at night?

21 A Yes.

22 Q Can you tell us about what happened when he got home.

23 A He got home. He brought my granddaughter some coffee  
24 and he started to wash his clothes.

25 Q Were you up with them that night?

1           A     I went to my bedroom and they were drinking coffee in  
2 the dining room and talking.

3           Q     When you went to your bedroom, were you intending to go  
4 to bed?

5           A     They were in the dining room.

6           Q     When you went to your bedroom, were you going to go to  
7 sleep?

8           A     No, because he was washing his clothes.

9           Q     Did you stay in your bedroom?

10          A     Yes.

11          Q     At some point did you come out of your bedroom?

12          A     Yes, I came out when I didn't hear any kind of noise.

13          Q     Kind of noise? Do you mean the conversation between  
14 them or some other kind of noise?

15          A     Yes, the talking. Yes, the washing machine.

16          Q     And what did you come out to do?

17          A     Because I didn't hear any noise, I came out to see what  
18 was going on.

19          Q     What did you see?

20          A     When I came out of my room, I walked towards the living  
21 room. My bedroom, it's across the living room and then I saw  
22 his bedroom door was open.

23          Q     When you say, "his bedroom door" are you talking about  
24 Carlos'?

25          A     Yes.

1 Q Did you go towards his room or did you go somewhere  
2 else?

3 A No, so I went into his room and then I went -- I was  
4 going to see where he was in the laundry room and then that's  
5 when I heard my granddaughter say no.

6 Q What did you do when you heard her say that?

7 A I opened my granddaughter's bedroom door.

8 Q What did you see?

9 A I saw her grabbing her pants.

10 Q When you say "her," do you mean -- are you talking  
11 about Minor?

12 A Yes, my granddaughter.

13 Q Please continue.

14 A And I asked her, "What's going on?" And then she  
15 pointed to where Carlos was.

16 Q Where was Carlos?

17 A Behind the door.

18 Q Did you go towards Carlos?

19 A No, because when I opened the door, he was behind the  
20 door and my granddaughter was in front of me.

21 Q Did you observe anything about Carlos?

22 A When my granddaughter pointed out to him, I went  
23 towards the door, then saw him standing there with his penis  
24 erected.

25 Q Do you remember what he was wearing?

1 A A pair of shorts.

2 Q Were they loose shorts or tight-fitting?

3 A The ones that have elastic, they are kind of loose.

4 Q So what did you do after that?

5 A I took my granddaughter out of the room and put her in  
6 my bedroom. And then I went back to talk to him. And he was  
7 already sitting in his room on the bed. And I asked him, "Why?"

8 Q Did he answer that question?

9 A No, he did not respond.

10 Q What did you do?

11 A I just told him to get out of my house.

12 Q Did he say anything in response to that?

13 A Yes.

14 Q What did he say?

15 A He said, "right now, aunt?" And I said, "Yes."

16 Q And did he leave?

17 A The car wouldn't start.

18 Q Did you help him get it started?

19 A Yes, I gave him a battery charger.

20 Q And what did you do after that?

21 A I called -- I can't remember really who I called first,  
22 my daughter or his mom, but I called them over the phone.

23 Q Did either of them answer the phone?

24 A My daughter.

25 Q Did his mom answer the phone?

1 A No.

2 Q But your daughter did answer the phone?

3 A Yes, my daughter told me to go over where she was  
4 staying, where she lived. .

5 Q Did you tell your daughter what had happened?

6 A I did tell her. And then she told me to get my  
7 granddaughter and go over to where she was.

8 Q Was she at her house?

9 A Yes.

10 Q Who else was there with her?

11 A Her partner that she had.

12 Q What is his name?

13 A José Gaeta.

14 Q Did you take [Minor] and go over to her mom's house?

15 A Yes.

16 Q What is your daughter's first name?

17 A Xochitl.

18 Q Did you spend the night there that night or did you go  
19 back home?

20 A We spent the night there because we were calling  
21 Carlos' mom.

22 Q What happened the next day?

23 A She didn't answer until about noon.

24 Q The mom of Carlos?

25 A Uh-huh. Yes.

1 Q I want to back up for just a second and ask one thing.

2 When you went into the bedroom and saw [Minor] in

3 there, what was her demeanor?

4 A She was crying. She was crying, holding her pants, her  
5 pajama pants and I screamed at her and got her out of the room.

6 Q Now you spent the night at Xochitl's?

7 A Yes.

8 Q And when you woke up the next morning, did you go to  
9 work?

10 A No. My daughter went to work.

11 Q Did you stay with [Minor] the whole day?

12 A Yes.

13 Q Was anybody else in the house with you that day?

14 A Only my daughter's partner and -- my daughter, my  
15 daughter's partner, my granddaughter and me.

16 Q Your daughter went to work that day?

17 A Yes.

18 Q Did José go to work that day?

19 A Yes.

20 Q Did you stay at home with [Minor] the whole day?

21 A Yes.

22 Q At some point during the course of that day, did  
23 Xochitl call you?

24 A She always calls me during her break and to find out  
25 how her daughter's doing.

1 Q Without saying what she said, because that's hearsay,  
2 did he give you any direction or instructions with regard to [REDACTED]  
3 [REDACTED] Minor ?

4 A Yes.

5 Q Did you instruct [REDACTED] Minor about anything at that  
6 point?

7 A Yes.

8 Q What did you tell [REDACTED] Minor?

9 A Not to take a shower.

10 Q Did y'all have a plan of how you were going to handle  
11 what had happened the night before?

12 A Yes, my daughter did.

13 Q What was the plan?

14 A The first thing was to go and do a report.

15 Q Does that mean a police report?

16 A Yes.

17 Q And at some point that day did you actually call the  
18 police?

19 A No, not until my daughter came back from work.

20 Q That afternoon?

21 A Yes.

22 Q When you called them, what happened?

23 A My daughter talked to the police and they told her that  
24 we were not supposed to do the report there because what had  
25 happened had happened here in this county.

1 Q You had just called the wrong police to report it. Did  
2 they refer you to the correct agency?

3 A Yes.

4 Q Did you call that police -- was that the Fairfield  
5 County Sheriff's Department that they told you to call?

6 A My daughter was the one that did all of that.

7 Q At some point did you go to the Fairfield County  
8 Sheriff's Office?

9 A Yes. I went with her to file the report.

10 Q When did you do that? If you remember.

11 A I can't remember. Maybe the second day.

12 Q Did you give a statement to law enforcement?

13 A Yes.

14 Q Was that telling them what you saw and what you've told  
15 the Court here today?

16 A Yes.

17 Q Did you meet with Investigator Castles to give that  
18 report, this lady over here (indicating)?

19 A Yes.

20 Q Once you had finished up at the sheriff's department,  
21 did you go anywhere else that day?

22 A They told us we had to take my granddaughter to the  
23 doctor.

24 Q I want to make it clear, when I say, Minor that  
25 is the same person that is your granddaughter; is that right?

1 A Yes.

2 Q At any point in time did you observe any injuries to  
3 Minor ?

4 A When I went into the bedroom and got her out of the  
5 bedroom, she went to the bathroom and I saw a blood spot in the  
6 toilet.

7 Q And that was when you were still at your house in  
8 Fairfield County. Is that right?

9 A Yes, when we were at my house. It had just happened  
10 and I had got her out of the room.

11 MS. HALL: Thank you. I don't have anymore questions.  
12 Please answer any questions Ms. Boulware might have.

13 THE COURT: Ms. Boulware, your witness.

14 MS. BOULWARE: Thank you, your Honor.

15

16 CROSS-EXAMINATION

17 BY MS. BOULWARE:

18 Q Good afternoon, Ms. Suarez.

19 A Yes.

20 Q I just have a few questions for you.

21 You mentioned Minor pants. What kind of pants was she  
22 wearing?

23 A Pajamas.

24 Q Were they shorts or long pants?

25 A Long.

1 THE INTERPRETER: Let me emphasize, she needs to wait  
2 for me.

3 MS. BOULWARE: Okay.

4 THE COURT: What's happening? What did you say?

5 THE INTERPRETER: She answered before I was able to  
6 interpret that because she understood the question.

7 THE COURT: Okay.

8 THE INTERPRETER: I just want to clarify that she  
9 can't do that.

10 THE COURT: Good. Thank you.

11 Q (By Ms. Boulware) Is your family, do you guys hug each  
12 other? Are you close like that, like, a loving close family?

13 A I don't understand your question.

14 Q Okay. I'll rephrase that. Do you ever hug each other  
15 when you haven't seen anyone in a while or just during the day  
16 when you see each other, like parents hug their children?

17 A The problem is that they would come to visit me once in  
18 a while.

19 Q So you did not see your granddaughter very often or who  
20 did you not see very often?

21 A Carlos. Carlos' family.

22 Q Okay. Okay. You testified Carlos was with you at that  
23 time about six weeks or so?

24 A Yes.

25 Q Okay. When you left with Minor that night, do you recall

1 what time that was?

2 A About 12 to 1 o'clock in the morning.

3 Q What time did you arrive at your daughter's house?

4 A Around 1 o'clock. Yes. That's what I'm saying,  
5 between 12 and 1 o'clock.

6 Q And that would be midnight and 1:00 a.m.?

7 A Yes.

8 Q What time did your daughter leave for work?

9 A She leaves at 5:30 in the morning.

10 Q How long does she work or how long is her day?

11 A From 6 o'clock in the morning to 3 or 4 o'clock in the  
12 afternoon.

13 Q I believe your daughter said that she told **Minor** not to  
14 take a shower.

15 A Yes.

16 Q Are you aware if she took a shower, **Minor**?

17 A No.

18 Q Are you just not aware or you know for sure she did  
19 not?

20 A She didn't shower.

21 Q What time does your daughter take a break usually when  
22 she calls you?

23 A She has a break around 9 or 9:30, I can't remember  
24 exactly when in there and then at 12 o'clock.

25 Q Which time did she call you? Which break?

1 A At noon.

2 Q You testified that you did see a blood spot in the  
3 bathroom.

4 A Yes.

5 Q That wasn't in your statement to law enforcement?

6 A No.

7 MS. BOULWARE: Beg the Court's indulgence?

8 THE COURT: Sure.

9 Q (By Ms. Boulware) A couple more quick questions.  
10 Were there any lights on in the bedroom at the time  
11 when you entered when Carlos and Minor were in there?

12 A No. Not the lights in the bedroom but the lights in  
13 the hallway, they were on and illuminated the bedroom.

14 Q Could you estimate for me how far away Minor bed was  
15 from the door.

16 A The bedrooms are small. So you open the door, the  
17 door, it's on this side and the bed is on this side  
18 (indicating.).

19 Q Okay. About how big do you think the bedroom is?

20 A I don't know. It's as big as -- you can just put a bed  
21 in there. You open the door and a bookcase and that's it.

22 MS. BOULWARE: Okay. Thank you. I don't have any  
23 further questions.

24 MS. HALL: Nothing further from this witness.

25 THE COURT: All right, gracias. You can step down.

1 Call your next witness.

2 MS. HALL: We call Ms. Xochitl Islas.

3 THE COURT: This will be the last witness before  
4 our lunch break.

5 THE CLERK: Raise your right hand, please.

6

7 X-O-C-H-I-T-L I-S-L-A-S, the Witness herein, having been  
8 sworn by the Clerk of Court, was examined and testified as  
9 follows:

10

11 DIRECT EXAMINATION

12 BY MS. HALL:

13 Q Is your name Xochitl Islas?

14 A Huh?

15 Q Sorry. Can you state your name for the record.

16 A Xochitl Islas-Suarez.

17 Q And your relationship to the victim is what to Minor

18 Minor ? What is your relationship to Minor ?

19 A She's my daughter.

20 Q What is your relationship to Eva Suarez?

21 A It's my mom.

22 Q Are you close with your mom?

23 A Yes.

24 Q Do you actually live with her now?

25 A Yes.

1 Q Does [Minor] live there with you?

2 A Yes.

3 Q In 2019, where did you live?

4 A [Redacted] Fairfield Road, Columbia.

5 Q Is that in Richland County?

6 A Yes.

7 Q Who did you live there with?

8 A José Gaeta, my partner, and my daughter.

9 Q How long had you and José been together?

10 A We were together for 13 years.

11 Q As far as you know, did [Minor] consider him to be her  
12 dad or stepfather?

13 A Yes, because when I got together with him, [Minor] was  
14 about three-years-old.

15 Q When you lived on Fairfield Road, how far was that  
16 house away from your mom's house?

17 A About 30 minutes approximately.

18 Q Did your daughter often stay with your grandmother --  
19 with her grandmother?

20 A A week or breaks, whenever she wanted to go.

21 Q Was it every weekend or just some weekends?

22 A Some weekends.

23 Q At that time -- you heard your mom's testimony. At the  
24 time, were you working in Lugoff?

25 A Yes.

1 Q Were you working from 6 o'clock in the morning until  
2 around 3 or 4 o'clock in the afternoon?

3 A Yes.

4 Q Did you and José work the same job, same hours?

5 A No. He worked in shipping.

6 Q About how long did it take you to get to work from your  
7 house on Fairfield Road?

8 A About 30 minutes.

9 Q How do you know the defendant in this case? Do you  
10 know him? Carlos?

11 A He's a relative.

12 Q Have you been in contact with him over the course of  
13 your life?

14 A No, not very much.

15 Q Would you see him from time to time at family  
16 gatherings?

17 A Very little. No.

18 Q Did he live close by or was he far away?

19 A Far.

20 Q Let's go to April 15th, 16th of 2019.

21 Was Minor spending the night with your mom that night?

22 A Yes.

23 Q Do you remember getting a call from your mom late that  
24 night?

25 A Yes.

1 Q What did you say to your mom during that phone call?

2 A To go quick to my house.

3 Q Did they go to your house?

4 A Yes.

5 Q You were there when they got there?

6 A Yes.

7 Q When they got there, how were they acting?

8 A Crying. Nervous.

9 Q Did you take them in and welcome them into your home?

10 A Yes.

11 Q Without saying what they said, did y'all talk about  
12 what had happened that night?

13 A Yes.

14 Q Did you make a plan about what to do about it?

15 A My mom and I were talking about it, if we should go and  
16 file a police report because we couldn't get in touch with his  
17 mom. So at that point, we didn't know what to do.

18 Q Did your mom and Minor spend the night with you  
19 that night?

20 A Yes.

21 Q Did you go to work the next day?

22 A Yes.

23 Q Did you do anything to make a decision about how to go  
24 forward while you were at work?

25 A Yes, I started to research several things.

1 Q What, if anything, did you decide?

2 A I researched what we had to do. Call the police, file  
3 the report and that the police will give us the option of what  
4 we needed to do.

5 Q Did you call the police?

6 A After I got home. Yes.

7 Q When you called the police, what happened?

8 A He went over to my house and he told me that we  
9 couldn't do anything there about filing a report, I had to go to  
10 Fairfield County.

11 Q When you're talking about "he," are you talking about a  
12 Richland officer?

13 A Yes.

14 Q Did you go to Fairfield County and file a report?

15 A Yes.

16 Q When did you do that?

17 A The following day.

18 Q Why did you not go that day?

19 A Because it was too late.

20 Q When you went to Fairfield County to file the report,  
21 do you remember who went with you from your family?

22 A Yes. My mom, José Gaeta and my cousin Vanessa.

23 Q And did Minor go with you to?

24 A Yes, of course. Yes.

25 Q I want to talk about language for just a second.

1           You're here with a translator.

2           A     Uh-huh (affirmative response.).

3           Q     Tell me about Vanessa. Is she related to you?

4           A     It's my cousin.

5           Q     How is her English?

6           A     Perfect. She was born here.

7           Q     What about José?

8           A     He speaks some English. Not as perfect.

9           Q     Did Vanessa go with you and act -- did she help you  
10 translate while she was with you?

11          A     Yes.

12          Q     When you went to the sheriff's department, did you meet  
13 with Investigator Karen Castles?

14          A     Yes.

15          Q     Did you have a chance to talk with her and ask  
16 questions about what to do next?

17          A     Yes.

18          Q     And based on that advice, what did you do next?

19          A     She told me to take her to the hospital.

20          Q     When you say "her," you mean take Minor to the  
21 hospital?

22          A     Yes, of course.

23          Q     Where did you have to go to take her to the hospital?

24          A     In Columbia.

25                MS. HALL: Beg the Court's indulgence?

1                   Nothing further. Please answer any questions Ms.  
2                   Boulware has.

3                   THE COURT: Ms. Boulware?

4                   MS. BOULWARE: Beg the Court's indulgence? One  
5                   moment.

6

7                   CROSS-EXAMINATION

8                   BY MS. BOULWARE:

9                   Q     Good afternoon, Ms. Islas-Suarez.

10                  A     Good afternoon.

11                  Q     Very quickly, you were not in Ridgeway the night this  
12                  incident allegedly happened?

13                  A     In Ridgeway?

14                  Q     Yes.

15                  A     That's where I live. [REDACTED] Fairfield Road. It's  
16                  Richland County.

17                  Q     Right. You were at your home that night, not at your  
18                  mother's home?

19                  A     Yes.

20                  Q     And your house is in Richland County?

21                  A     Yes.

22                         MS. BOULWARE: No further questions, Judge.

23                         MS. HALL: I don't have anything further.

24                         THE COURT: Thank you.

25                         MS. HALL: Your Honor, we'd ask that the translator

1 be excused.

2 THE COURT: Thank you very much. Thank you very  
3 much, Madam Translator. I'll sign your stuff here in a  
4 moment.

5 Ladies and gentlemen, let's go ahead and take a  
6 lunch recess. It's a quarter till 1:00 now.

7 Hang on. Let's be back at 2:00. Have a good  
8 lunch.

9 Don't talk to anybody about the case, don't seek  
10 any independent research, and those who wanted a smoke  
11 break, y'all smoke a bunch during the break. See you at  
12 2:00.

13 (Jurors exited.)

14 THE COURT: If nothing else before the break, were  
15 done. See y'all at 2:00.

16 (Whereupon, Court recessed for lunch.).

17

18 \* \* \*

19 THE BAILIFF: All rise.

20 THE COURT: Come back to order.

21 You can be seated.

22 Before we get started, State says they have four  
23 witnesses left.

24 MS. HALL: Potentially, yes.

25 THE COURT: Potentially?

1 MS. HALL: Mm-hmm.

2 THE COURT: And, Ms. Boulware, do you anticipate  
3 the defense putting up evidence?

4 MS. BOULWARE: Not at this time.

5 THE COURT: Okay. You know, my gut is to run, run.

6 MS. BOULWARE: Run.

7 THE COURT: Go with it. Instead waiting for  
8 tomorrow for arguments and charge, that's my gut. But I'll  
9 defer to what y'all want to do. I just -- strike while the  
10 iron is hot. Okay?

11 Any objection to doing that? Any viable objection  
12 to doing that?

13 MS. BOULWARE: Probably not that. It would be nice  
14 to work on closings overnight.

15 THE COURT: Well, let's see where we are.

16 How many witnesses do you have ready?

17 MS. HALL: I have Investigator Castles.

18 THE COURT: Right.

19 MS. HALL: And I have my SANE nurse to be here at  
20 2:30. And then I have text to other people after she  
21 testifies to get them --

22 THE COURT: Tell them to come up.

23 (Pause in proceedings.)

24 THE COURT: Bring the jury down.

25 (Jurors entered.)

1 THE COURT: The jury is back. Thank you, ladies  
2 and gentlemen.

3 State, call us your next witness.

4 MS. HALL: I call Karen Castle.

5

6 K-A-R-E-N C-A-S-T-L-E-S, the Witness herein, having been sworn  
7 by the Clerk of Court, was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 BY MS. HALL:

11 Q You are Karen Castles; correct?

12 A Yes.

13 Q You're employed with the Fairfield County Sheriff's  
14 Office?

15 A Yes.

16 Q And back in April of 2019, were you employed with the  
17 Fairfield County Sheriff's Office?

18 A Yes.

19 Q How long have you been in law enforcement?

20 A Thirteen years.

21 Q And in April of 2019, in what capacity were you  
22 working?

23 A I was a criminal investigator.

24 Q Were you on-call on the 17th of April of 2019?

25 A Yes. I was the on-call day investigator.

1 Q And when you're working investigations or when you were  
2 working investigations, what are your responsibilities?

3 A Typically, we get referred cases from the road  
4 deputies. As the call would come in, they would go to their  
5 house, do a report and call me out. But I'm going to cover  
6 anything from a larceny to murder.

7 Q On April 17th of 2019, did you become involved with  
8 this case?

9 A Yes.

10 Q Tell the jury how that came about.

11 A I was at my desk, it was around 9:30 in the morning and  
12 I was notified by the receptionist that there was someone in the  
13 lobby to do a report. So I went out and greeted them, brought  
14 them to the back into our interview room and spoke with the  
15 victim, Ms. Minor her mother, Xochitl -- forgive me, all  
16 these names.

17 Q If you have your report or you need to refer to  
18 something, you can do that.

19 THE WITNESS: May I refer to it?

20 THE COURT: Sure.

21 Q (By Ms. Hall) But let me ask you: They just showed up  
22 at the sheriff's department, there was no like -- you talked  
23 about a road deputy referral kind of thing. There was not a  
24 referral --

25 A Correct. They brought themselves to the sheriff's

1 office.

2 Q Who was the actual person who was listed as the  
3 complainant on the report?

4 A José -- I'm sorry, forgive me one more moment --  
5 Guzman, I believe. Gaeta.

6 Q José Gaeta. And you've been in the courtroom today and  
7 you've heard testimony about José Gaeta; is that right?

8 A Yes.

9 Q And he was with them on the day that they came to do  
10 the report?

11 A Yes.

12 Q Or put the complaint in? Who else was with them now?

13 A The victim, Minor and her mother, Xochitl Islas,  
14 her mother, the victim's grandmother, Eva Suarez. And Vanessa  
15 Suarez, a family member.

16 Q So when you met them, you said you brought them to the  
17 back. Go ahead and tell the jury what you did.

18 A So I went ahead and got through the initial talking to  
19 them and finding out their names and who they were and just  
20 asking clarifying questions, like why they were there.

21 So they explained the incident, why they were there.  
22 And so at that time I went ahead and kept the victim with me and  
23 let everyone else go back to the waiting room, just to talk to  
24 her alone and to get more information to determine what type of  
25 crime had been committed.

1 Q And I want to talk about the timeline real quick and on  
2 your incident report.

3 Timelines, are those noted on the incident report?

4 A Yes, ma'am.

5 Q You said earlier that they came in to the sheriff's  
6 department at 9:30 a.m. on the 17th; is that correct?

7 A Yes.

8 Q What time did they tell you that the incident had  
9 occurred?

10 A It had occurred the -- not that night prior but the  
11 night before around -- between 11:30 and midnight, 12:30.

12 Q On the incident report, when you put it on there, what  
13 did you list as the incident date and time?

14 A The 16th and at 12:25.

15 Q Okay. So that's April 16th right after midnight;  
16 right?

17 A Correct.

18 Q So that's as early on the 16th as you can get; is that  
19 correct?

20 A Yes, ma'am.

21 Q Okay. And I just want to make sure that we understand  
22 this. So then the whole day of the 16th goes by.

23 A Yes.

24 Q And then the next morning, on the 17th, at 9:30 a.m.,  
25 is when you first met with them?

1 A Correct.

2 Q Is that right?

3 Okay. So you said that you had Minor back in the  
4 room with you and her mom and grandma and Vanessa and José are  
5 waiting in the lobby. Is that what you told?

6 A Yes.

7 Q And how far is the place -- the room where you were  
8 meeting with Minor from that lobby area?

9 A About 20 feet.

10 Q Okay. And did you meet with her and take all the  
11 information that you needed? And you interviewed her and you  
12 said you were trying to figure out what, if anything, had  
13 happened and if a crime had occurred?

14 A Correct.

15 Q All right. And so did you conclude that process with  
16 Minor ?

17 A Yes.

18 Q And did you talk with anybody else after that?

19 A I spoke with her grandmother, Ms. Eva Suarez as well.

20 Q All right. And she gave you a written statement?

21 A Correct.

22 Q And was that in Spanish?

23 A Yes.

24 Q Okay. And then did you meet with anybody else after  
25 that and talk to them?

1           A     I spoke with her mother, but I did not get a written  
2 statement.

3           Q     Okay. And did you give them any instructions about how  
4 to proceed from there?

5           A     Based on what they told me, I referred them to Prisma  
6 Richland to go and get an exam done.

7           Q     Okay.

8                     And on Minor; correct?

9           A     Right.

10          Q     All right. So did you go with them to the hospital to  
11 do the exam?

12          A     I did not.

13          Q     Okay. At some point in time, did you go to the  
14 hospital and pick up what's referred to as a "sexual assault  
15 kit"?

16          A     Yes.

17          Q     And that was performed by a nurse and then given to you  
18 after that is over?

19          A     Correct.

20          Q     Did you take that kit or was it taken to South Carolina  
21 Law Enforcement Division and given to the DNA department for  
22 analysis?

23          A     It was taken and given to the DNA department.

24          Q     Okay. And did you get a report once the kit was  
25 analyzed for DNA?

1 A Yes.

2 Q Was the victim's DNA the only DNA found on the evidence  
3 submitted?

4 A Yes.

5 Q All right. And -- sorry. So then on or about May the  
6 1st of 2019, did you have another meeting with [Minor] and  
7 her mom, Ms. Islas?

8 A Yes.

9 Q And where did that meeting occur?

10 A At the sheriff's office.

11 Q Okay. Who was present for that besides the two of them  
12 and you?

13 A We had a translator.

14 Q Okay. And at that time did you take anything into  
15 evidence?

16 A I took the victim's cell phone.

17 Q All right. And did you take that to the South Carolina  
18 Law Enforcement Division or was it taken there later?

19 A It was taken later.

20 Q And did you request it to be dumped?

21 A Correct. Yes.

22 Q Can you explain what that means real quick.

23 A To get a cell phone dumped is a -- they extract all the  
24 data off of the cell phone. And that's data that can be present  
25 right there or under other layers. But anything that's on a

1 cell phone and they'll put it on a disc for me.

2 Q Okay. And did you get that disc with that information?

3 A Yes.

4 Q And why do you do that? Like, why do you dump cell  
5 phones?

6 A Looking for any information that may be pertinent to  
7 the case.

8 Q And on this cell phone dump, when you got the disc  
9 back, have you had a chance to review that?

10 A I did review it.

11 Q And did you find any evidence that you deemed to be  
12 pertinent to this case?

13 A No, ma'am.

14 Q When you met with [Minor] and her mom and  
15 grandmother, did you get a birth date for her?

16 A Yes.

17 Q What's her birthday?

18 A Her birth date is [REDACTED].

19 Q Did you get a birth date for the defendant, Carlos  
20 Cesmas-Gomez?

21 A His is January 9th, 1999.

22 Q And so if you do the math, I guess from the day -- on  
23 April the 16th of 2019, how old was he?

24 A He was 20-years-old.

25 Q Okay. And how old was she?

1 A Twelve.

2 Q And did you determine where this incident occurred?

3 A It occurred at [REDACTED] Autumn Drive in Ridgeway, South  
4 Carolina.

5 Q Is that in Fairfield County?

6 A Yes, it is.

7 Q Okay. So based on your investigation and everything  
8 we've just talked about, did you ultimately ask the magistrate  
9 to issue an arrest warrant for Carlos Cesmas-Gomez?

10 A Yes.

11 Q And what was the charge for that?

12 A Criminal sexual conduct with a minor in the second  
13 degree.

14 Q Was there a delay in arresting him or serving that  
15 warrant on him?

16 A Yes.

17 Q When was it actually served?

18 A It believe it was served July 15th, 2022.

19 Q Was that because he was in North Carolina?

20 A Correct.

21 Q And what is the paperwork procedure to get somebody  
22 from North Carolina back to South Carolina? Briefly, you don't  
23 have to go into detail about it.

24 A Right.

25 Q Does it take a long time?

1           A     There's a lot of paperwork, a lot of paperwork that you  
2 accumulate in a governors warrant and extradition warrant, send  
3 that to North Carolina and then it's just a formal agreement for  
4 them to release him back to South Carolina.

5           Q     So did you go and pick him up in North Carolina and  
6 bring him back to South Carolina?

7           A     Yes.

8           Q     And did that occur on July the 22nd of 2022?

9           A     Yes.

10          Q     Okay. Let's go back to the phone dump real quick.  
11 Is it common not to find things in phone dumps?

12          A     Yes.

13          Q     But you have to look?

14          A     Yes.

15          Q     Okay.

16          A     Yes.

17                MS. HALL: Thank you. I have no further questions.  
18 Please answer anything for Ms. Boulware.

19                THE COURT: Ms. Boulware?

20                MS. BOULWARE: Thank you, Judge.

21

22                               CROSS-EXAMINATION

23 BY MS. BOULWARE:

24          Q     Good afternoon, Investigator Castles. Just a few  
25 questions regarding when you happen to meet with Minor and her

1 family.

2 Did you happen to ask them why it took almost two days  
3 to report this?

4 A Yes.

5 Q Okay. And no DNA was found, as far as you know?

6 A No.

7 Q Okay. Were you informed at any time that there were  
8 Facebook messages between Carlos and Minor prior to this incident?

9 A Yes.

10 Q Who informed you of that?

11 A I don't know if it was the victim or her mother. I'm  
12 not -- I can refer back if -- it's in my notes.

13 Q I do have it in the work product sheet.

14 A Okay.

15 Q It would be page 3.

16 A The victim.

17 Q Okay. Okay. It wasn't too clear on that. So thank  
18 you for clarifying that.

19 Did she also indicate there might be a picture on that  
20 phone?

21 A Yes.

22 Q Okay. But the cell phone dump found nothing on the  
23 phone at all?

24 A No.

25 Q Okay. You heard the victim earlier this morning

1     testify -- you were in here in the courtroom when she testified?

2           A     Yes.

3           Q     You heard her testify to several details that she did  
4     not share that day; isn't that correct?

5           A     Yes.

6           Q     Or at least wasn't documented that -- that she shared  
7     that day?

8           A     Uh-huh (affirmative response.).

9           Q     And I believe her grandmother may have shared a couple  
10    of details as well.

11                   MS. BOULWARE:  Beg the Court's indulgence?  One  
12    moment.

13                   THE COURT:  Sure.

14           Q     (By Ms. Boulware) Just a couple of more questions.  
15    These Facebook messages, the reason why you took the phone is  
16    because you assumed that's where these messages would be; is  
17    that correct?

18           A     Yes.

19           Q     They usually are?

20           A     Yes.

21           Q     Okay.  And pictures as well?

22           A     Yes.

23           Q     Did the victim indicate to you that that's where they  
24    were?

25           A     Yes.

1 Q Okay.

2 MS. BOULWARE: All right. No further questions,  
3 Judge.

4 THE COURT: All right. Any redirect?

5 MS. HALL: No.

6 THE COURT: Thank you, ma'am. You can step down.

7 Ladies and gentlemen of the jury, before we have  
8 our next witness, I need to take care of stuff outside of  
9 your presence so I'm going to send you back there.

10 While you're back there, I want you to talk amongst  
11 yourselves and decide who is going to be your foreperson.  
12 Okay? It just can't be the alternate. Okay? It has to be  
13 one of the 12 that will serve as foreman or forelady of the  
14 trial jury. You'll be the official spokesperson for the  
15 jury here in court. You'll also be the one who is kind of  
16 moderating the deliberations. And whoever the foreperson is  
17 will be the one who signs the verdict form which I'll go  
18 over later.

19 So y'all figure that out and then write it on a  
20 piece of paper -- they have any other paper back there,  
21 Madam Bailiff? All right. Yeah. Just write on a piece of  
22 paper who it's going to be and give it to her when you come  
23 back out and then the foreperson will be sitting right where  
24 that juror is. Okay?

25 Thank you very much. Y'all head on back to your

1 juror room. Don't talk about the case. Just talk about who  
2 is going to be the foreperson.

3 (Jurors exited.)

4 THE COURT: Let's proffer the witnesses  
5 qualifications.

6 I'll ask her: Do you happen to have your CV or  
7 résumé?

8 Can you hand that to Ms. Boulware? Thank you.

9 That was the whole reason why we were going to have  
10 you testify, so she can look at your qualifications. You're  
11 going to offer her as an expert in the field of?

12 MS. HALL: Sexual assault nurse examination.

13 THE COURT: Okay. And what's the opinion going to  
14 ask of her?

15 MS. HALL: It's more the conclusions of what -- if  
16 the injuries that she found are consistent with sexual  
17 assault.

18 THE COURT: Okay. Okay, I understand.

19 So you want to cross-examine her on the  
20 qualifications?

21 MS. BOULWARE: I'm sorry?

22 THE COURT: Do you want to cross-examine her on her  
23 qualifications?

24 MS. BOULWARE: Well, I probably need to.

25 THE COURT: Well, just look at it.

1 (Whereupon, a brief recess was taken.)

2 THE COURT: Madam, you can come on up here and just  
3 have a seat. We're going to proffer your testimony.

4 Madam Solicitor, we're going to proffer your  
5 witness. And you can go ahead and call the witness.

6 MS. HALL: She's here. Brigitte DeGuzman.

7 THE COURT: What's the name?

8 MS. HALL: Brigitte DeGuzman.

9 THE COURT: All right. Ms. DeGuzman, do you swear  
10 or affirm the testimony you give will be the truth, the  
11 whole truth and nothing but the truth so help you God?

12 THE WITNESS: Yes.

13 THE COURT: You can kind of get to the heart of the  
14 issue. What's the objection?

15 MS. BOULWARE: The objection is that her testimony,  
16 the expert testimony may have been baited or to be referred  
17 to as sexual assault, because I think that's what the jury  
18 is going to infer from that. And I would rather her  
19 testimony be limited under 803(4), which is just for  
20 purposes of a medical diagnosis, just to testify as far as  
21 what she needed to know to make a diagnoses but not render  
22 an opinion that it was a result of a sexual assault.

23 THE COURT: All right. So the defense has no  
24 objection to her qualifications?

25 MS. BOULWARE: Judge, I now have her CV, I didn't

1 have that earlier. So no, in reviewing her CV, I do see  
2 that she has certifications that would speak to an expertise  
3 in that. But I think as far as for this trial, I don't  
4 think it's necessary past just what she needed to know for a  
5 diagnosis as to the injuries themselves.

6 THE COURT: I got it.

7 MS. BOULWARE: Not the cause.

8 THE COURT: So you don't object to her being  
9 qualified as an expert. You object to her testifying as an  
10 expert. And the substance of what she's testifying about,  
11 you believe it doesn't meet expert testimony?

12 MS. BOULWARE: Yes, sir. And any reference to a  
13 sexual assault nurse examiner at all.

14 THE COURT: Okay. Got it.

15 What's the State's position as to that?

16 MS. HALL: I think you've already ruled on that but  
17 I mean, my position is the same, that she is a sexual  
18 assault nurse examiner and the purpose of that is to collect  
19 evidence when there's an allegation of a sexual assault.  
20 And her expertise is in examining people who say they've  
21 been sexually assaulted. So that's just the wording as to  
22 what it is. So with regard to that portion of it, that's  
23 where I stand on that.

24 THE COURT: I told you I agree with the State on  
25 that. I will give a qualifying instruction that, just

1 because her title is sexual assault nurse examiner, doesn't  
2 mean that a sexual assault actually occurred. That's up to  
3 you, the jury, to determine based on your view of the facts  
4 and circumstances of the case.

5 MS. BOULWARE: And I will object to that,  
6 contemporaneous to that --

7 THE COURT: Sure. Of course. I want you to.  
8 And that goes back to the first question I had,  
9 what is she being offered as an expert for?

10 MS. HALL: To testify -- okay, at the end --

11 THE COURT: She's not going to testify as to the  
12 ultimate issue?

13 MS. HALL: She's going to testify about injuries  
14 that she observed.

15 THE COURT: In her expertise?

16 MS. HALL: In her expertise, and that they were  
17 consistent with a sexual assault.

18 THE COURT: Okay.

19 MS. HALL: Or somebody being sexually assaulted.  
20 These injuries, are they consistent with a sexual assault?  
21 And that's it.

22 THE COURT: She's not going to be bolstering the  
23 creditability of the victim?

24 MS. HALL: We're going to go through the whole  
25 sexual assault because we have to to get there.

1 THE COURT: Sure.

2 MS. HALL: And then the only thing in terms of her  
3 expertise that I'm asking her at the end is, the injuries  
4 that you observed, are they consistent with sexual assault?  
5 Not, do you believe she was sexually assault or anything  
6 like that, that's bolstering?

7 MS. BOULWARE: What's the difference? That's still  
8 the veracity to the truth telling of the victim.

9 THE COURT: Okay. Go ahead and ask the question  
10 and I'll make a decision.

11 MS. HALL: You want me to do the whole thing or you  
12 want me to ask the ultimate question at the end?

13 THE COURT: I don't think we need to listen to the  
14 entire series of questions. I ruled previously; and if it  
15 wasn't on the record, it's in the record now, that I'm going  
16 to allow in Court's Exhibit 1, which I believe is going to  
17 be State's Exhibit Number 1 now, which is the report of this  
18 witness because I looked at it and I find it's not  
19 cumulative.

20 I find it's more probative than prejudicial under  
21 403 analysis as well as 803(4) and 803(6). So the defense's  
22 objection to that report coming in is overruled. That  
23 report is coming in.

24 Now, I guess, my question is, do we need to proffer  
25 this witness's testimony based upon what the State said

1       they're going to ask her her opinions of which is, are these  
2       your findings in your examining of this victim? Are they  
3       consistent with a sexual assault, that a sexual assault  
4       occurred, are they consistent with such?

5               MS. BOULWARE: Judge, I agree with you. We don't  
6       need to hear the entire testimony of the witness, but I  
7       believe it's akin to *Cromer*. It's putting somebody up there  
8       to say, yes, this person, the story they told is true.

9               THE COURT: Okay.

10              MS. BOULWARE: And I'm fine if we don't proffer the  
11       testimony because if that's all she's going to ask her in  
12       the end, is it consistent, I object to that. And I object  
13       to the whole SANE cert- -- or that whole expert title. Like  
14       I said, she's an expert in what she's an expert in. And  
15       she's a nurse, she can examine both and say what the  
16       injuries are, but I think it's going to far and into *Cromer*  
17       to actually say, this is consistent with this.

18              THE COURT: If I qualify her as an expert and if I  
19       find it's a relevant question, I may allow her to answer  
20       that question subject to your contemporaneous objection.  
21       Okay? But I'll overrule you and you're protected in the  
22       record of her being able to testify as an expert. You're  
23       protected in the record of her being referred to as a SANE  
24       and you're protected in the record of her offering an  
25       opinion on that issue, if I allow her to at that time. It

1 depends on where the question goes.

2 But, of course, the Solicitor is very well aware of  
3 *Cromer* and all its progeny about bolstering the credibility  
4 of a victim witness. So just be careful what you ask about.  
5 Okay?

6 MS. HALL: That's all I'm going to ask, is at the  
7 very end --

8 THE COURT: Right. I mean, we all know. I mean,  
9 the record is being created. So we're all good. Let's  
10 bring the jury out.

11 The jury has elected Juror No. 57, the one who has  
12 been sitting in that same seat, anyway, as the foreperson of  
13 the jury.

14 All right. Bring the jury out.

15 I'll have you call her and then I'll have the clerk  
16 swear her in. We didn't need to proffer testimony.

17 (Jurors entered.)

18 THE COURT: All the members of the jury are  
19 present. Thank you, Madam forelady.

20 State can call its next witness.

21 MS. HALL: The State calls Brigitte DeGuzman.

22 (State's Exhibit 1, Forensic exam, was marked for  
23 Identification.)

24 THE COURT: Madam clerk, if you'll swear the  
25 witness.

1 THE CLERK: If you'll raise your right hand,  
2 please.

3  
4 B-R-I-G-I-T-T-E D-E-G-U-Z-M-A-N, the Witness herein, having been  
5 sworn by the Clerk of Court, was examined and testified as  
6 follows:

7  
8 DIRECT EXAMINATION

9 BY MS. HALL:

10 Q Your name is Brigitte. Is it DeGuzman?

11 A Yes, ma'am. It is.

12 Q What is your occupation?

13 A I am a registered nurse.

14 Q I want to talk about your education and how you became  
15 to be a registered nurse and then we'll keep going after that.

16 A I have a nursing degree from the University of South  
17 Carolina. I got that in '96. I've been a nurse for 24 years.  
18 I started out as an ER nurse at Richland, there maybe 11, 12  
19 years. Then I transitioned into a sexual assault nurse examiner  
20 position and I had that position for about ten or 11 years. And  
21 I'm currently a registered nurse at Lexington Urgent Care.

22 Q With regard to your training and nursing and more  
23 specifically with becoming a sexual assault nurse examiner, what  
24 did you have to do to attain those credentials?

25 A For sexual assault nurse examiner, there's both adult

1 and pediatric certifications that I have. I had 40 hours  
2 diagnostic course with each, for the adult and another 40 hours  
3 with peds.

4 In addition to the course, I also have clinicals that I  
5 need to complete, like shadow another person who is doing a  
6 pelvic exam, Shadow law enforcement, also witnesses, court  
7 testimony, that sort of thing.

8 Q Did you complete those certifications, one or both?

9 A Both of them. And I maintained them during and while I  
10 was a sexual assault examiner.

11 Q You did an adult one and a pediatric one?

12 A Correct.

13 Q And did you -- I'm sorry, did you tell me when you got  
14 those?

15 A I started as a sexual assault nurse examiner in 2011.  
16 So I got my adult certification in 2011, probably at the end of  
17 year. And then the pediatric in 2012.

18 Q Okay. And you've worked as a sexual assault nurse  
19 examiner at Richland, Prisma Health Richland; is that correct?

20 A That's correct.

21 Q And how long did you work in that specific capacity?

22 A From January of 2011 until October of 2021.

23 Q Okay. So for about 10 years?

24 A Uh-huh (affirmative response.).

25 Q And during the course of that ten years, how many

1 sexual assault exams would you say that you've done?

2 A Conservatively, at least 1,000 but it's probably closer  
3 to 1400, 1500. The last time I actually counted it was about a  
4 little over 1,000.

5 Q And during that 10 years, did you have to do continuing  
6 education in that specific certification?

7 A Yes. To maintain my certifications, I have to maintain  
8 so many hours of continuing education.

9 Q Every year?

10 A Every year.

11 Q And so you did that continuously for those entire 10  
12 years?

13 A Correct.

14 Q And have you testified in court before as an expert in  
15 sexual assault examination?

16 A I have, at least a few times.

17 MS. HALL: Your Honor, at this time the State would  
18 move that she be qualified as an expert in sexual assault  
19 nurse examination.

20 THE COURT: Any voir dire or questioning on the  
21 credentials?

22 MS. BOULWARE: No, sir, but objection to the  
23 qualifications.

24 THE COURT: Absolutely.

25 Ladies and gentlemen, two things: First of all,

1 let me give you an instruction concerning the term sexual  
2 assault nurse examiner.

3 Just because that is this witness's title, doesn't  
4 mean that a sexual assault actually occurred in this case.  
5 That's up for you to decide as the fact finders and as I've  
6 told you at the outset of the case. So don't let this  
7 witness's title confuse you as to that.

8 Secondly, over the objection of the defense, I do  
9 qualify this witness as expert in the field of sexual  
10 assault nurse examination. Meaning -- this is what that  
11 means.

12 When someone is qualified as an expert because of  
13 their training, their skill, their knowledge, they can  
14 testify in the form of an opinion. That doesn't mean you  
15 have to accept the opinion. It's simply something for you  
16 to consider when you start talking about everything you've  
17 heard. And you can give it the importance or the  
18 credibility or believability or the weight you want it to  
19 have. It's just something for you to consider when you  
20 start to deliberate in the case to find out what your  
21 verdict is going to be. Okay?

22 So typically when a lay witness testifies, they  
23 only testify to what they saw, heard, smelled, et cetera,  
24 like that. An expert witness can actually give or offer an  
25 opinion. Again, you don't have to accept that opinion if

1       you don't want to. Okay?

2               Thank you.

3       Q     (By Ms. Hall) I'm going to show you what has been  
4 marked as State Exhibit 1. Do you recognize that document?

5       A     Yes.

6       Q     What is it?

7       A     This is the record of my sexual assault examination of  
8 the patient.

9       Q     Do you keep these in the normal course of business as  
10 you are doing these exams?

11      A     We keep the reports in secured databases at the  
12 hospital.

13      Q     And you do these every time you do an exam? This is  
14 like that normal way that you do it?

15      A     Yes.

16      Q     Is this report on an exam that you did on Minor ?

17      A     It is.

18      Q     And what date did you do the exam?

19      A     I did the exam on April 17th, 2019.

20      Q     At what time?

21      A     She arrived at 12:15.

22      Q     Is that like around noon or is that in the morning?

23      A     At noon.

24      Q     Okay. All right. We're going to just run through the  
25 report and talk about -- you know, the first part, I guess on

1 page 1, that mainly -- just information about her address and  
2 things like that?

3 A Correct.

4 Q Okay. Who came with her?

5 A Her mother, aunt and maternal grandmother.

6 Q Okay.

7 And unless you have something else that you want to  
8 talk about with regards to page 1, I'm going to move on to page  
9 2.

10 And let me ask you this real quick: How do you get  
11 what is called "the kit," because we're going to go through --  
12 does this paperwork come with the kit?

13 A The paperwork is separate from the kit. Our program  
14 has its own database with the questions that are similar to the  
15 form that comes with the kit itself. The kit is separate. We  
16 get that from law enforcement. They deliver it to the hospital.

17 Q And is the purpose of this to collect evidence or  
18 any -- the purpose of the kit, I mean, anyway, in and of itself  
19 is to collect evidence?

20 A The kit, yes, is just to collect evidence.

21 Q Okay. And we'll come back to that in just a minute.

22 Let's go to page 2. And what is this, what is page 2,  
23 what is the purpose of that and did you go through this with  
24 her?

25 A So page 2 is for her medical history, just to determine

1 if she has any medical conditions. Who her primary care  
2 physician is. You know, if this were a younger child, we ask  
3 about bedwetting. Medical history, basically.

4 Q Okay. And going back to page 1 real quick, I'm sorry.  
5 How old was she on the day that she came to you?

6 A She was 12-years-old.

7 Q So did you do that as a -- this is a pediatric exam or  
8 did you do it as an adult exam?

9 A This is a pediatric exam.

10 Q All right. Moving on to page 3, if you'll continue.

11 Okay. And page 3, the choices are diapers or underwear  
12 and she's wearing underwear.

13 Did you determine or ask her about her menstrual  
14 period?

15 A Yes.

16 Q And was that noted on page 3?

17 A March 21st, 2019.

18 Q Was the last time she had a menstrual period?

19 A Correct.

20 Q Did you ask her when she started her period?

21 A She started at the age of 18 -- I'm sorry, 10.

22 Q And was she having regular cycles?

23 A Yes.

24 Q Okay. What is the next portion of page 3 that you go  
25 through? And tell the jury how you go through it.

1           A     So the next portion is what we call post-assault  
2 hygiene or activity. And there's separate things that we ask,  
3 such as, how many times -- or have you urinated; and if so, how  
4 many times? Have you defecated? Did you use any type of wipes  
5 to wipe yourself, vomited, brushed teeth, mouthwash, bathed and  
6 showered, washed away, ate or drank and changed clothing?

7           Q     If you'll just go through. Had she urinated?

8           A     Yes, multiple times. Under the description, it says,  
9 "multiple times."

10          Q     Okay. And defecated?

11          A     No.

12          Q     Had she used genital or body wipes?

13          A     She used both toilet paper and baby wipes."

14          Q     Okay. Vomited?

15          A     No.

16          Q     Brushed teeth?

17          A     Yes.

18          Q     Mouthwash?

19          A     No.

20          Q     Had she bathed, showered or washed?

21          A     No.

22          Q     Had she had anything to eat or drink?

23          A     Yes.

24          Q     And had she changed her clothes?

25          A     Yes.

1           Q     All right. Moving on to page 4, what is this portion  
2 of the document?

3           A     Page 4 is getting to the assault history of what  
4 actually happened, the location of it. And some other  
5 questions, like who was in the home with the child? Who's the  
6 perpetrator?

7           Q     Okay. So on that, you're asking her the date of the  
8 assault. And what date did she give you?

9           A     She gave me 4/15/29 (sic). Approximately, 12:59 p.m.  
10 or almost midnight.

11          Q     Okay. So midnight on that date?

12          A     Uh-huh (affirmative response.).

13          Q     Okay. And she gives you some details about what  
14 occurred, you know, where it happened, and things like that; is  
15 that correct?

16          A     Correct.

17          Q     Okay. So when you're asking her about, had she  
18 showered or wiped or anything like that, what is the purpose of  
19 those questions?

20          A     It's just to give an idea as to where we may or may not  
21 be able to collect DNA evidence.

22          Q     What affect would showering or wiping or washing have  
23 on that?

24          A     It could degrade any evidence that is available or wash  
25 it away, wipe it away.

1 Q Okay. And then going back to page 4, again, she gave  
2 you a narrative about what had actually occurred?

3 A Correct.

4 Q And where it had happened; is that correct?

5 A Correct.

6 Q Okay. And was she able to tell you who had done this  
7 to her?

8 A Yes.

9 Q And moving on to page 5, these are questions you're  
10 asking with regard to what her medical complaints were; is that  
11 correct?

12 A Yes. And also other questions like, did any other part  
13 of his body touch you? And that sort of thing.

14 Q Okay. And so why were you asking her these questions?

15 A So these questions -- so typically, for a pediatric  
16 record, sometimes we see children as young as three, four or  
17 even younger than that. So we normally, if they're not able to  
18 narrate the history, we ask the parent what happened. And then  
19 we ask the children specifically these questions at the end so  
20 we can kind of -- I'm not a forensic interviewer. We're sort of  
21 limited with pediatric patients for specific questions. That's  
22 why that's separate.

23 She was able to narrate everything. I didn't even ask  
24 all of these questions as I typically would with a four year  
25 old.

1           Q     But based on that narrative that she give you on page  
2 4, you didn't feel like it was necessary to ask all of these; is  
3 that correct?

4           A     Correct.

5           Q     Okay. And just for one part of it, when you ask her  
6 where was she touched, can you tell us what the response to that  
7 question was?

8           A     She said, "in back," and then I stated, "Confirm, she  
9 means her butt/anus." And then she stated, "I started crying  
10 because it hurt so bad, bad."

11          Q     Okay. Was she able to tell you -- you said that there  
12 was something about, did any other part of his body touch you?  
13 What was her answer to that?

14          A     No.

15          Q     Was she able to tell you what part of his body did  
16 touch her?

17          A     On the next page, I do go into -- I specifically ask --  
18 or page 7, I believe, like, I specifically asked about  
19 penetration.

20          Q     Okay. And before we get to page 7, we'll come back to  
21 that and that will follow up to what I just asked you.

22                 But then on page 6, was there anything that was  
23 significant on that page?

24          A     So on page 6, we talk about methods employed during the  
25 assault. And I asked about weapons and like physical -- being

1 hit, grabbed or holding. So on the grabbing or holding part,  
2 she did describe how he held her down.

3 Q All right. And then moving on to page 7, you stated  
4 that you start asking questions further about the assault and  
5 about penetration or anything that might have occurred with  
6 regard to that.

7 Was she able to give you any details about what had  
8 happened to her with regard to which parts of his body may or  
9 may not have touched her?

10 A Yes.

11 Q What did she say?

12 A So this area is about contact described by patients.  
13 So I specifically ask about penetration of the anus. And so I  
14 ask about penis, finger and other. And so her answer to  
15 penetration of anus by penis, she said, "she was unsure if the  
16 assailant used his penis, fingers or both."

17 And again, when I asked about the finger, she said,  
18 "she was unsure if he used his penis, fingers or both."

19 Q Okay. And is anything else on page 7 that you feel is  
20 significant?

21 A For nongenital act, she did state that he did try to  
22 kiss her. He was trying to -- she stated, "He was trying to  
23 kiss on my neck." And then she also, as to "fondling," she said  
24 she tried to protect herself. And she demonstrated to me how  
25 she crossed her arms to prevent him from grabbing her breasts.

1           Then for ejaculation, when asked if she felt anything  
2 wet during or after the sexual assault, the patient nods her  
3 head and states, "She felt something wet in her private part and  
4 points to her backside."

5           Q     On page 8, what are the questions on page 8?

6           A     Page 8 is whether contraceptive or lubricant was used?  
7 And she answered no.

8           Q     Then on page 9, those are just vital signs and general  
9 physical examination; is that correct?

10          A     Correct.

11          Q     How much did she weigh or did you weigh her?

12          A     No. I didn't weigh her.

13          Q     Then, "Tanner stage breast," what is that?

14          A     So Tanner stage, there is different stages of  
15 development. So, of course, it goes from 1 to 5. And "1" is  
16 prepubescent, basically up to four years old and it goes up to 5  
17 for an adult.

18                So 3, she has -- she's a 3. Her breasts are fully  
19 developed. And her genitalia, basically, pubic hair goes from 1  
20 to 5. She was a 3. 5 is full pubic hair.

21          Q     When you talk about the 3 on the breast, would a 5 be  
22 fully developed breast and 3 are partially developed?

23          A     Yes. It depends on the areolae, that sort of thing.

24          Q     The areolae. So 3, she was in the middle, she was not  
25 fully developed yet?

1 A Correct.

2 Q Was she cooperative with you?

3 A Yes.

4 Q Was she articulate?

5 A Yes.

6 Q On pages 10, 11 and 12, tell us what those are and if  
7 you made any notes about anything on those pages.

8 A So on page 10, the general physical examination, so  
9 just basically your body and that sort of thing.

10 Head, neck, and oral examination on the next page and  
11 there was no findings.

12 And her hands, there were no findings.

13 Q I want you to tell me what page 13 is. And I want to  
14 ask you some stuff about it before we go into the details.

15 A Page 13 is the actual genital examination.

16 Q How long does it take to do this type of sexual assault  
17 exam?

18 A From start to finish, like from meeting them and  
19 explaining everything, it takes about two hours. The physical  
20 exam, depending on the injuries and how long it takes to get the  
21 assault history, the exam itself can take anywhere from 30  
22 minutes to an hour.

23 Q And did you collect like through -- we'll come back to  
24 that.

25 So how long did you say the last part was?

1 A The physical exam?

2 Q Uh-huh.

3 A Probably 30 minutes to an hour.

4 Q Okay. And during the time that you're doing that  
5 physical exam, in what position is the patient? What's their  
6 level of dress? What does that look like?

7 A So the patient is in a hospital gown and she has no  
8 clothing on under that. She's put in a lithotomy position where  
9 basically she's flat on back. She's flat on her back, her knees  
10 up, kind of like a pelvic examination. Sometimes we put them on  
11 their side, lateral side to examine their anus and to make it so  
12 I can see those parts easier.

13 Q And when you're talking about lithotomy and talking  
14 about a pelvic exam, that's like with feet in stirrups?

15 A Yes.

16 (State's Exhibit 2, Anatomy Diagram, marked for  
17 identification.)

18 Q (By Ms. Hall) Okay. All right. I'm going to show you  
19 what's been marked as State's 2.

20 Do you recognize what that is?

21 A Yes.

22 Q What is it?

23 A It's just a diagram of the vulva and the female  
24 genitalia.

25 Q Does it have any markings on it at all?

1 A It just has labels as to what's what.

2 Q Okay. So you're markings are not on it or anything?

3 A No.

4 Q It's just like a blank form?

5 A Correct.

6 MS. HALL: Your Honor, I would ask that we be able  
7 to put that -- I would like to introduce that into evidence  
8 and have her use it as a tool.

9 THE COURT: Any objection to that coming in as  
10 evidence?

11 MS. BOULWARE: No objection to that drawing.

12 MS. HALL: And I'd like -- sorry, go ahead. Sorry.  
13 I'd like to publish that on the television.

14 THE COURT: Permission to publish granted.

15 (State's Exhibit 2, Anatomy Diagram, entered into  
16 evidence.)

17 Q (By Ms. Hall) Okay. Is this what that piece of paper  
18 shows?

19 MS. HALL: Judge, can I move in --

20 THE COURT: Yes, of course.

21 MS. HALL: Thank you.

22 THE WITNESS: You just have to lower it down for  
23 the anus.

24 Q (By Ms. Hall) Okay. When you did this genital  
25 examination, did you -- just yes or no, were there findings that

1 you made or injuries that you observed?

2 A Yes.

3 MS. HALL: Okay. I'm going to ask that she be able to  
4 come down --

5 THE COURT: Sure. Come on down.

6 MS. HALL: -- and point with the stick. And I'm  
7 also going to ask that you mark --

8 THE COURT: Just keep talking loud. Okay?

9 MS. HALL: And I'll ask that you mark it on this  
10 piece of paper, too, as we go through it. Sorry to have you  
11 multitask.

12 Q (By Ms. Hall) If you would please describe what you  
13 observed on [Minor] 's exam or maybe just go over the diagram  
14 first and then go through that.

15 A Well, this is just the anatomy of the female genitalia.  
16 And the outer part is the labia majora. And then the inner part  
17 is the labia minora, vaginal opening. This is the urethra for  
18 which you urinate from. The clitoris and the anus (indicating.)

19 Q Now, when you did the exam on [Minor], can you talk  
20 about the findings that you -- or whatever you saw in relation  
21 to that diagram?

22 A So what's not listed on here is the hymen. So the  
23 hymen is like a band of tissue, typically circular that is at  
24 the vagina opening. It would be here (indicating.)

25 And at the hymen, I did see some focal redness/bruise

1 observed at 6 o'clock to the hymen. So it would be around here  
2 (indicating.)

3 So we usually use the face of the clock just to easily  
4 identify where the injury would be. And so the 6 o'clock would  
5 be around right here (indicating.)

6 The anal fold -- there's the anus and then there's anal  
7 folds all the way round the anus and that stretches, of course.  
8 But within the anal folds itself, I observed a bruise, dark red  
9 bruise observed from 5 to 7 o'clock at the anal folds. And she  
10 associated with tenderness.

11 So when I palpated that area, she said it was tender or  
12 sore. So 5 o'clock, you know, would be around here  
13 (indicating.)

14 She also did say that she had -- well, I noticed  
15 multiple abrasions around her anus as well but it was more to  
16 the butt. And different stages of healing. So, you know, it  
17 could have been scabbed over or a fresh, but she indicated that  
18 she had been scratching due to an allergy to a soap that she was  
19 using. So that was not -- that's what she told me that was  
20 from.

21 And then there was also, to the labia majora, which is  
22 the outer lips, nonspecific redness. There was nonspecific  
23 redness observed at the bilateral labia majora.

24 Q What is bilateral labia majora?

25 A So this is the outer labial lip of the vagina

1 (indicating.)

2 Q And "bilateral" just means it's on both side?

3 A Yes.

4 Q Okay. Let's go back and talk about the hymen.

5 How far inside a woman's vagina is a hymen?

6 A It's right at the vaginal opening, so it's not on the  
7 outside. You couldn't visualize it just looking at someone  
8 standing naked. It's right at the vaginal opening.

9 Q Okay. And you said you saw focal redness and bruising  
10 at 6 o'clock on the hymen. What is focal redness?

11 A So that means there is a concentrated area. It was  
12 darker than the rest of her hymen. So it was obvious that there  
13 was some different coloring.

14 Q And in your opinion as a sexual assault nurse examiner,  
15 is that consistent with a sexual assault with penetration?

16 A Yes.

17 Q Let's go back a couple. Stop. You said you saw dark  
18 red bruising observed from 5 to 7 o'clock at the anal fold and  
19 said she had tenderness to that area; is that correct?

20 A Correct.

21 Q Okay. And would that be consistent with sexual  
22 assault?

23 A Yes.

24 Q And would it be consistent with penetration?

25 A Yes.

1 Q And you said you palpated something, what does  
2 "palpate" mean?

3 A Just touching it.

4 Q Okay.

5 A Just during examination.

6 Q Was her hymen intact? Or is -- can you explain,  
7 because people hear about hymens being intact or not intact.  
8 And I just want to make sure that we have a clear understanding  
9 of what that looks like or means.

10 A So there's a myth about the hymen that it's closed and  
11 when someone loses virginity, it creates an opening and that's a  
12 myth. It's always open. 99.9 percent of the hymen is --  
13 there's an opening. So when you say "intact," the bruising is  
14 what I found.

15 Q Okay. But the fact that it was there or not there, is,  
16 like you said, it's a myth and it doesn't mean anything with  
17 regard to -- to virginity?

18 A Correct. Like I said, 99.9 percent, it's open. It's  
19 not something that is sealed off.

20 Q Okay. All right. And then I'm going to get you, if  
21 you can, on State's 2 that has been entered into evidence.

22 If would just take a second --

23 MS. HALL: If the Court can indulge her and let her  
24 mark on this diagram where she saw injury.

25 THE COURT: Sure.

1           Q       (By Ms. Hall) And if you would put the numbers --  
2 there are numbers associated with your findings on this sheet of  
3 paper, if you'll put the numbers with it, please.

4                   THE COURT: Is State's Number 1 in?

5                   MS. HALL: Not yet.

6           Q       (By Ms. Hall) Okay. All right. And on page 14, we  
7 talk about why -- let's just talk about that real briefly.

8                   What is that form?

9           A       This is the actual evidence that I collected,  
10 indicating I didn't collect any clothing. There's trace  
11 evidence that I can collect. I did comb her pubic hairs. And  
12 then there's miscellaneous materials. I collected a light day  
13 menstrual pad for DNA evidence. Collected -- it lists, you  
14 know, multiple things, but the things that I collected, it just  
15 depends on the assault history.

16                   So, for example, fingernail scrapings is listed but I  
17 didn't collect any because she didn't scratch him. What I did  
18 collect was bite marks/swabs/kissing.

19                   So she indicated that he was trying to kiss on her, so  
20 I collected it from her left lateral neck or side of her neck  
21 for saliva. I also did a vaginal swab, collected a rectal swab,  
22 and collected a buccal swab which is the inside of her cheek,  
23 inside of her mouth for her DNA.

24           Q       Okay. And were digital pictures taken in this case?

25           A       I did take pictures.

1 Q Okay. And are those available -- how long do those  
2 remain available on the Prisma system?

3 A Well, they're on a -- in a database. They switched  
4 databases so it's difficult to get those pictures, but they're  
5 somewhere.

6 Q But you don't have access to them?

7 A I don't have access to them.

8 Q Okay. What do you take pictures of while you're doing  
9 it?

10 A Anything from her -- depending on -- well, I take a  
11 full body pictures first and then of her face. If she has  
12 physical injuries on her body, I would take pictures of that.  
13 But I can take pictures of the genital and anything on clothing  
14 if she said it was torn during the time, that sort of thing.

15 Q Okay. But she didn't report any of that on the  
16 clothing?

17 A Correct.

18 Q And actually was wearing different clothing when she  
19 came to you; right? She said she changed clothes?

20 A Yes.

21 Q Okay. And you talked about collecting, like fingernail  
22 scrapings. She didn't say she scratched him or anything. But,  
23 in fact, she was able to tell you who she was alleging assaulted  
24 her; is that correct?

25 A Correct.

1 Q And did she state that was the defendant in this case,  
2 Carlos Cesmas-Gomez?

3 MS. BOULWARE: Objection, your Honor.

4 MS. HALL: I'll withdraw the question.

5 Q (By Ms. Hall) But she was able to identify the person  
6 so she didn't -- you didn't have to -- like, the scrapings and  
7 all that kind of stuff?

8 A Correct.

9 Q And then you said that -- okay, then, that's page 15  
10 and page 16 is where you -- that's your name and you signed off  
11 on it on that; right?

12 A Yes.

13 Q Okay. And, again, this is something that's a normal  
14 record that you keep with every exam that you do; is that  
15 correct?

16 A Correct.

17 MS. HALL: Your Honor, at this time, the State  
18 moves Exhibit 1 into evidence.

19 MS. BOULWARE: Objection.

20 THE COURT: Objection noted. Objection overruled.  
21 It's admitted.

22 (State's Exhibit 1, Nurse Report, entered into  
23 evidence.)

24 Q (By Ms. Hall) I don't have any further questions. Is  
25 there anything else that you feel like you need to -- that I

1 didn't cover?

2 A Uh-uh.

3 MS. HALL: Thank you.

4 MS. HALL: Please answer any questions Ms. Boulware  
5 might have.

6 THE COURT: Ms. Boulware, your witness.  
7

8 CROSS-EXAMINATION

9 BY MS. BOULWARE:

10 Q Ms. DeGuzman?

11 A Yes.

12 Q Got that name right.

13 Okay. I'm going to go back through this medical report  
14 with you briefly.

15 A Okay.

16 Q So she did indicate to you that she was or she did  
17 already have her period at that time or had gotten it a while  
18 back -- or at age 9 or 10?

19 A 10.

20 Q 10, okay. Maybe there was some confusion with that.

21 And she reported that had her last period had been on  
22 March 21, 2019?

23 A Correct.

24 Q And just to reiterate, on page 6, you documented that  
25 she told you she was standing by the bed?

1 A Yes.

2 Q Okay. And you observed no other injuries on her, such  
3 as, any arms, legs, bruising, anything like that?

4 A Correct.

5 Q Okay. No other ones?

6 A No other ones.

7 Q Just to be clear?

8 Okay. And then when we get to what you were showing us  
9 in the diagram, which I believe is 13 -- so you document some  
10 redness but no tearing?

11 A Are you talking about Number 4?

12 Q Actually, I'm just talking about any of it.

13 A Oh.

14 Q Yeah.

15 A No. I did not document any tearing.

16 Q Okay. But on her buttocks, she had multiple abrasions  
17 that she indicated may be an allergy to soap?

18 A Correct.

19 Q Okay. Allergies cause redness too, don't they?

20 A Yes.

21 Q Okay. And you said there were pictures that you guys  
22 take of this?

23 A Yes.

24 Q Okay. And you have no access to them?

25 A I have access. Typically, if we need them for

1 testimony, then either a subpoena would need to --

2 Q Okay.

3 A But they're able to retrieve it. It's just --

4 Q Okay. But you don't have them with you today --

5 A No.

6 Q -- for this trial?

7 Okay. Have you ever examined anybody with redness and  
8 any sort of injuries that did not indicate sexual assault?

9 MS. HALL: Your Honor, this is causing the witness  
10 to speculate. I'm going to object.

11 MS. BOULWARE: I'm asking if she's ever --

12 THE COURT: Hang on. Objection overruled.

13 MS. BOULWARE: Thank you, Judge.

14 THE WITNESS: So typically, as a registered nurse,  
15 outside of sexual assault nurse examiner role, I don't  
16 examine that, the physician does.

17 But based on my role as a SANE nurse, I do look at  
18 them based on a report of sexual assault. I can't determine  
19 if the redness that I see at that time -- you know, I can  
20 determine if it's consistent or not, but I can't -- I'm not  
21 sure what you're asking.

22 Q (By Ms. Boulware) Well, how do you determine what  
23 consistent is then?

24 A Based on the assault history and what the injuries --  
25 or what I see. So if -- based on her assault history that she

1 told me, it's consistent with a sexual assault.

2 Q So anybody that comes to you with an allegation of  
3 sexual assault, if you see this type of injury, then you're  
4 going to say, it's sexual assault?

5 A No. Based on my report here, like on Number 3, I'm not  
6 basing that -- I'm not saying that is consistent with sexual  
7 assault.

8 And also Number 4, the "nonspecific redness," I'm not  
9 saying that's consistent with a sexual assault.

10 Q Okay. But she told you what Number 3 was?

11 A Right.

12 Q Okay. But pretty much, everything else, you're saying,  
13 well, it's has to be?

14 A Correct.

15 Q Okay. Don't know of a time when you never said it  
16 wasn't?

17 A Well, if someone were to ask me specifically during my  
18 testimony, if this specific -- is this consistent with sexual  
19 assault? Like, for example, if she said, are those scratches  
20 consistent with a sexual assault? I would say, no, based on the  
21 assault history and what she told me.

22 So if she has asked me Number 4, if that was consistent  
23 with a sexual assault, I would have to say, no, because redness  
24 is a more -- it's just a generalized redness.

25 Q Okay. So it sounds like whatever the patient tells you

1 is what your conclusions are going to be?

2 A No.

3 MS. BOULWARE: No further questions, Judge.

4 THE COURT: Redirect?

5

6 REDIRECT EXAMINATION

7 BY MS. HALL:

8 Q Are Number 1 and 2 consistent with sexual assault?

9 A Yes.

10 Q And, again, you base that conclusion that it is  
11 consistent on what?

12 A It's consistent with the assault history that she told  
13 me and the injuries that I see. The focal redness is different.  
14 On that hymen, there was only redness in that certain area at 6  
15 o'clock, that -- consistent with an assault, typically, it's  
16 around that 6 o'clock area.

17 And then the bruising, her whole circumferential, her  
18 anus was not bruised. There was only a certain area of that.  
19 Bruising is typically from blunt force trauma, which is  
20 consistent with a sexual assault.

21 Q And do you base this on your training and expertise in  
22 sexual assault nurse examination?

23 A Correct.

24 THE COURT: All right. Thank you, ma'am.

25 You may --

1 MS. BOULWARE: I have quick recross.

2 THE COURT: Oh, okay. Go ahead. Sorry.

3

4 RECROSS-EXAMINATION

5 BY MS. BOULWARE:

6 Q So you can say it was consistent, but you can't say for  
7 sure that's where it came from?

8 A Correct.

9 MS. BOULWARE: Thank you.

10 THE COURT: All right. Thank you, ma'am. You may  
11 step down.

12 MS. HALL: We'd ask that this witness be excused.

13 THE COURT: Okay. You're free to leave. Thank  
14 you. Watch your step.

15 All right. Ladies and gentleman of the jury, I  
16 think the State has two more witnesses, but there en route  
17 right now. They're coming from SLED. So we're going to  
18 take a brief recess. Don't talk about the case. So go on  
19 back to your jury room and get refreshments or whatever.  
20 Okay?

21 (Jurors exited.)

22 THE COURT: All right. Before we take a break,  
23 what is the State's plans? You got any more witnesses or  
24 not?

25 MS. HALL: Not at this time.

1 THE COURT: State's about to rest.

2 MS. BOULWARE: As far as I know, if you want to  
3 talk with my client, I don't think -- he did not indicate to  
4 me that he wanted to testify.

5 THE COURT: Okay.

6 MS. BOULWARE: Did the State just rest?

7 THE COURT: Well, they have to rest in the presence  
8 of the jury. I didn't know what was happening.

9 MS. BOULWARE: I got you.

10 THE COURT: I sent them out there before she was  
11 saying that she's not going to call anybody else. We can  
12 bring them back out here, it's not a problem and then I can  
13 send them right back. It is what is it.

14 This gives us a little bit of time during the break  
15 for you to speak to your client about his decision to  
16 testify.

17 Is there any other evidence that the defense  
18 intends to introduce?

19 MS. BOULWARE: Not at this time, Judge.

20 THE COURT: All right. Assuming, then, that the  
21 State rests and assuming, then, the defense does not put up  
22 a case, a defense, what do y'all wish to do regarding  
23 argument and charge?

24 MS. BOULWARE: Judge, I would not mind at all doing  
25 jury charge arguments today, but I would rather we start

1 tomorrow with closing. That is just my personal preference.  
2 I need to go through all the testimony and put that  
3 together. I would just ask the Court to consider that. I  
4 don't know what --

5 MS. HALL: I'm fine with that.

6 THE COURT: Okay. All right. Why don't we do  
7 this, then. Why don't we -- we'll just argue and charge in  
8 the morning. Okay. We'll just start fresh. No more  
9 evidence will be presented today except maybe from the  
10 defense.

11 MS. BOULWARE: Right.

12 THE COURT: And we can end the testimony/evidence  
13 phase and then I'll recess for the day, come back in the  
14 morning. We can do closing arguments in the morning?

15 MS. BOULWARE: If they want to rest, I can go  
16 ahead and do a directed --

17 THE COURT: Well, we can do all of that today. We  
18 got to do that on the record in the presence of the jury.

19 MS. HALL: If you want to me rest now and then rest  
20 again, that's up to you.

21 THE COURT: Well, it's got to be in the presence of  
22 the jury.

23 MS. HALL: Okay. All right.

24 THE COURT: We'll do that and then what will happen  
25 is, when the State rests, I'll send the jury back. Talk to

1       your client about his decision to testify. Then we'll come  
2       back and I'll say, the State has rested. The defense call  
3       your witness. And then the defense will say, "the defense  
4       rests." That's when I'll say, "Ladies and gentlemen, we're  
5       going to go ahead and break for the day. It's been a long  
6       day. We'll see you back in the morning."

7               MS. BOULWARE: I appreciate it, Judge.

8               THE COURT: Everybody good with that?

9               All right. So take your time. Listen to your  
10       lawyers. Okay? We'll be out shortly.

11              (Whereupon, a brief recess was taken.)

12              THE BAILIFF: Come to order.

13              THE COURT: Okay. Be seated.

14              Is the State resting?

15              MS. HALL: Yes.

16              THE COURT: Okay. Good.

17              All right. Bring the jury in then.

18              (Jurors entered.)

19              THE COURT: All members of the jury are present.

20              Madam solicitor, you can call your next witness.

21              MS. HALL: Your Honor, the State is going to rest.

22              THE COURT: All right. The State rests.

23              All right. Ladies and gentlemen, you ain't going  
24       to like me telling you this, but the rules of court require  
25       that y'all leave the courtroom after the State rests, okay?

1 If the State rests, then they have to do that in your  
2 presence so that's why I got to get you to get back up and  
3 go back to your darn jury room.

4 Don't get mad at them. Get mad at me.

5 If they want a cigarette break, let them have a  
6 cigarette break. If somebody wants to go smoke a cigarette,  
7 let them go outside and smoke a cigarette, okay?

8 (Jurors exited.)

9 THE COURT: Ms. Boulware?

10 MS. BOULWARE: Your Honor, at this time the defense  
11 would like to bring a motion for a directed verdict.

12 The evidence that's been presented in the light  
13 most favorable to the State is that we have a witness who  
14 has been inconsistent with a lot of her details of the  
15 alleged assault. And then we have other witnesses who never  
16 directly witnessed the assault. And it's circumstantial, at  
17 best, and it's not substantial circumstantial evidence.

18 We would just move for a directed verdict at this  
19 time.

20 THE COURT: All right. Thank you.

21 The State's response?

22 MS. HALL: Your Honor, the State presented evidence  
23 of sexual battery, presented evidence of jurisdiction,  
24 presented evidence of the age of the victim and the  
25 defendant at the time of the assault. And in terms of a

1 directed verdict, all that evidence, taken in the light most  
2 favorable to the State, I presented substantial evidence to  
3 send to the jury.

4 THE COURT: I do find that there is sufficient  
5 evidence or information presented to allow this to go to the  
6 jury. I, respectfully, deny your motion for a directed  
7 verdict.

8 As to the circumstantial evidence issue, I will,  
9 when I instruct the jury on the different types of evidence,  
10 I will use the *Logan* charge which talks about substantial  
11 circumstantial evidence. And, of course, you can argue that  
12 in your closings but I do find that there has been enough  
13 evidence to submit to survive a directed verdict. So I,  
14 respectfully, deny your motion.

15 Let me talk to your client.

16 Mr. Carlos, if you'll please stand for me, sir, and  
17 raise your right hand:

18 Do you swear or affirm that the testimony you're  
19 about to give will be the truth, the whole truth, and  
20 nothing but the truth so help you God?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Great. You can be seated right there.  
23 Keep talking loud so my court reporter can pick up what you  
24 say. All right?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: All right. At this time I'm going to  
2 explain certain rights you have. And I want to make sure  
3 you understand what's going on and what your rights are.

4           At any time, if you have anymore questions, let me  
5 know and I'll stop and I'll either answer your question or  
6 I'll refer you to your lawyers. But we've now reached the  
7 stage of the trial where you get to present your defense.

8           Now, in deciding to present your defense, you have  
9 the right to claim what's called your Fifth Amendment  
10 protection which is named after the Fifth Amendment to the  
11 Constitution of the United States, which says that, "No  
12 person shall be compelled in any criminal case to be a  
13 witness against himself."

14           That means nobody can make you testify if you don't  
15 want to. That's your personal decision. Your personal  
16 right to not testify, if you don't want to. And the  
17 exercise of your Fifth Amendment right cannot be used  
18 against you in a court of law.

19           Do you understand that?

20           THE DEFENDANT: Yes, sir.

21           THE COURT: Now, if you do decide to testify, the  
22 State can cross-examine you and try to make you look not  
23 believable or not credible or look bad in front of the jury,  
24 just like your lawyer has done with the witnesses who have  
25 testified.

1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: All right. Is there any prior record I  
4 need to be aware of that the State would seek to impeach his  
5 credibility?

6 MS. HALL: No.

7 THE COURT: Okay. Now, if you decide to testify,  
8 you must do so freely, voluntary, intelligently,  
9 understanding your Fifth Amendment rights.

10 Now, if you decide not to testify, I will instruct  
11 the jury that they can't even bring that up in the jury room  
12 when they're deliberating and that they cannot hold that  
13 against you because you don't have to prove anything.  
14 You're presumed innocent until proven guilty.

15 Do you understand what I've explained to you?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And do you have any questions about  
18 what I've explained to you?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Have you discussed with your lawyer --  
21 lawyers about whether you should or should not testify?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you want to talk to them anymore  
24 about it?

25 THE DEFENDANT: No, your Honor.

1 THE COURT: Do you wish to testify?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Thank you.

4 Now, is that your understanding as well,  
5 Ms. Boulware?

6 MS. BOULWARE: Yes, your Honor.

7 THE COURT: All right. Thank you.

8 And I believe at this time, then, the defense has  
9 not introduced anything in the trial?

10 MS. BOULWARE: No, sir.

11 THE COURT: All right. So as to closing arguments,  
12 the defense will have the right to close last. Correct?

13 MS. BOULWARE: That's correct.

14 THE COURT: Correct, Madam Solicitor?

15 MS. HALL: Yes, sir.

16 THE COURT: All right. So what we're going to do  
17 then is, I'll bring the jury back out and I'll say the State  
18 has rested and I'll say, Ms. Boulware, you can call your  
19 first witness or the defense can call its first witness.  
20 You'll say the defense rests. And that's when I'll recess  
21 for the day, we'll come back tomorrow morning. What time  
22 y'all want to start?

23 MS. HALL: 10:00?

24 THE COURT: Is 10:00 good?

25 MS. HALL: I guess.

1           THE COURT: I mean, 10:00 is fine with me. I just  
2 want to make sure y'all have enough time to prepare  
3 accordingly.

4           MS. HALL: We'll have all night.

5           THE COURT: Okay. Sounds good.

6           All right. So we'll bring them back at 10:00 a.m.  
7 We'll start promptly at 10:00 with closings and then we'll  
8 do instructions and we'll go from there. Depending on how  
9 long it lasts, we may call in lunch for everybody.

10          MS. HALL: Can I ask a question?

11          THE COURT: What's that?

12          MS. HALL: Charges, can we have a charge  
13 conference?

14          THE COURT: We're about to do that. I was just  
15 looking at it. We got the proposed jury charge right here.

16          As to the crime, it's right out of the charge book:  
17 "The defendant is charged with second degree criminal sexual  
18 conduct with a minor. The State must prove beyond a  
19 reasonable doubt that the defendant engaged in a sexual  
20 battery with the victim.

21          A sexual battery is sexual intercourse, anal  
22 intercourse or any intrusion, however slight, of any part of  
23 a person's body or of any object into the genital or anal  
24 openings of another person's body except when the intrusion  
25 is accomplished for medically-recognized treatment or

1 diagnostic purposes."

2 All right. I know it says some kind of lingo, it  
3 says, "fellatio," but that's not an issue here, so I decided  
4 not to put that in there.

5 "The State must further prove beyond a reasonable  
6 doubt that the victim was at least 11, but not more than 14  
7 at the time of the sexual battery."

8 Any objection to that definition?

9 MS. BOULWARE: No objection, Judge.

10 MS. HALL: No.

11 THE COURT: Okay. All right. Let's go to other  
12 stuff.

13 Credibility. Direct and circumstantial, the long  
14 one. The *Logan* charge for circumstantial. I'll talk about  
15 an expert witness. Presumption of innocence, the typical  
16 thing. Robe of righteousness. Reasonable doubt, if y'all  
17 do the long one, y'all have tried enough cases in front of  
18 me to know which one I do, the firmly convinced language.  
19 Failure of defendant to testify. Intent. CSC with a minor  
20 second, deliberation and conclusion.

21 Anything else you need me to --

22 MS. BOULWARE: Your Honor, actually, I do have two  
23 other charges I would like the Court to consider.

24 THE COURT: Okay.

25 MS. BOULWARE: I will preface this though, but I do

1 know that the most current case law where assault and  
2 battery has come up as a lessor included to CSC, first or  
3 second. The Supreme Court has found that assault and  
4 battery first, .I believe -- yes, ABHAN -- excuse me, ABHAN  
5 and second are not lessor include of CSC.

6 However, the last case I read did not differentiate  
7 between the law that was codified back when ABHAN became  
8 codified, where they included extra language and changed --  
9 first of all, they changed "adult" in the original language  
10 to "person" indicating that it could also include a minor.

11 And they also added language to A&B first and A&B  
12 second. A&B first language now says, "or" in addition to  
13 the other elements of assault. This is an "or" not an  
14 "and" -- "that a person who commits the offense of A&B  
15 first, if the person unlawfully injures another person and  
16 the act involves nonconsensual touching of private parts,  
17 either under or above the clothing with lewd and lascivious  
18 intent."

19 And carries 10 years just like regular A&B first.

20 Second includes, "touching private parts of a  
21 person either under or above the clothing."

22 And that is the same penalty as the regular A&B  
23 second but three years.

24 Judge, the reason why I asked for this is mostly  
25 because of the inconsistencies of the victim's testimony as

1 to exactly what happened.

2 And then we've got an expert who indicates there's  
3 this redness and no tearing and no other injuries involved.  
4 So I think there is a jury question as to whether this  
5 actually did include penetration, which is why I would ask  
6 for these lessor included along with the CSC second.

7 THE COURT: Okay. What's the State's position on  
8 that?

9 MS. HALL: First of all, the State's position  
10 is -- or the assault and battery is not the lessor included  
11 offense to criminal sexual conduct with a minor. And that's  
12 *State vs. Hernandez*.

13 And just regarding what Ms. Boulware said in terms  
14 of facts and the reasons that she's asking for them, the  
15 inconsistencies -- there are many consistencies and there's  
16 also evidence that, "it hurt." That she said she bled. She  
17 said he entered her. She said there was penetration.

18 The SANE nurse testified that although the redness  
19 is not consistent, that was Item 4 on her report, and that  
20 the three was not consistent because it was a soap allergy,  
21 but that one and two were consistent with -- that was the  
22 injuries to the hymen and the anal fold. Those are  
23 consistent with penetration and those are consistent with  
24 sexual assault.

25 And she actually said that in response to my

1 consistent with penetration even -- you know, so she  
2 wouldn't have to define the sexual assault, a part of it  
3 herself, it was the penetration part.

4 And so I would submit to you that there was  
5 evidence of the criminal sexual conduct with a minor second  
6 degree and there's really, in my opinion, no -- it either is  
7 or it isn't and the A&Bs are not lessor included to criminal  
8 sexual conduct.

9 THE COURT: Many times I have -- before I rule on  
10 it, many times in plea negotiations, I'll have somebody, or  
11 y'all have somebody charged with CSC or CSC with a minor,  
12 whatever degree it is, but the State will allow him to plead  
13 to A&B first on a waiver indictment.

14 MS. HALL: Right.

15 THE COURT: It's a direct indictment. Not as a  
16 lessor offense of the main offense charged. Am I thinking  
17 of that correctly?

18 MS. HALL: That's the way I do it. Any time they  
19 want to plea to an assault charge, my understanding is, due  
20 to the fact that the elements are completely different, that  
21 the indictment has to be redone and it is done on a waiver  
22 rather than a lessor include.

23 THE COURT: Yes, ma'am.

24 MS. BOULWARE: Judge, and *Hernandez* includes  
25 assault and battery as they were or as they are codified

1 without the language of the lewd and lascivious.

2 THE COURT: The sexual component?

3 MS. BOULWARE: And as far as the lessor included, I  
4 think the legislative intent by including that language and  
5 changing "adult" to "person," does intend for that to be  
6 lessor included CSC.

7 So I would just ask the Court to consider that and  
8 consider those jury charges as well just behind the CSC and  
9 in addition to CSC.

10 THE COURT: Based on the testimony and evidence  
11 presented and my understanding of the law, I'm not going to  
12 charge any lessor offenses. I find that any assault and  
13 battery offense is not -- specifically not a lessor included  
14 offense of CSC with a minor second degree.

15 Now, perhaps this case, depending on what happens,  
16 could be the roadmap for that to happen. And if my friends  
17 at 1015 Sumpter Street find that, well, then there you go.  
18 And when they read this transcript, if they do, then I  
19 welcome that change if they so wish to do that. But I don't  
20 know.

21 Okay. But that's my understanding of the law as it  
22 is now so I, respectfully, deny your request.

23 All right. Any other request as to the charge?

24 MS. HALL: Nothing from the State.

25 THE COURT: All right. Anything further?

1 MS. BOULWARE: Nothing from defense.

2 THE COURT: All right. Let's bring the jury back  
3 out then.

4 (Jurors entered.)

5 THE COURT: All members of the jury are present.  
6 The State has rested. Now it's the defense's turn.

7 The defense can call its first witness.

8 MS. BOULWARE: Thank you, Judge. The defense  
9 rests.

10 THE COURT: The defense rests.

11 Ladies and gentleman of the jury, we have completed  
12 the testimony and evidence phase of the trial. Okay?

13 Having said that, I know what time it is. Okay?  
14 It's kind of late in the day and I don't want to keep you  
15 here because I don't know how long y'all may want to  
16 deliberate this case.

17 So we're going to recess for the day and I'm going  
18 to remind you of your oath, to only go by the evidence  
19 received in this case, in this courtroom. Do not do any  
20 independent research. Okay?

21 We'll see you tomorrow morning at 10:00 a.m. in  
22 your jury room. Okay? Thank you very much. Have a restful  
23 evening.

24 (Jurors exited.)

25 THE COURT: Anything else?

1 MS. BOULWARE: Nothing from the defense.

2 THE COURT: We're in recess until tomorrow morning.

3 See y'all then.

4 (Whereupon, Court was adjourned, this 18th day of  
5 July 2023.)

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

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3 THE BAILIFF: All rise.

4 THE COURT: Come to order, please.

5 All right. Anything I need to know about before we  
6 bring the jury in to start the closings?

7 MS. HALL: Nothing from the State.

8 MS. BOULWARE: No, sir.

9 THE COURT: All right. Thank you.

10 Let's bring the jury down.

11 (Jurors entered.)

12 THE COURT: Good morning, ladies and gentlemen. As  
13 I indicated yesterday, both the State and the defense have  
14 rested. We will now proceed into closing arguments.

15 If you'll remember what I told you yesterday  
16 morning when we started the trial. Closing arguments, just  
17 like opening statements, aren't evidence. The evidence is  
18 in the record already. It's simply the lawyers argument to  
19 you as to what your verdict should be. So please listen  
20 carefully.

21 At the conclusion of the attorney's remarks, I will  
22 instruct you on the law of South Carolina as it pertains to  
23 the issues which have arisen in this case. All right?  
24 Thank you.

25 Madam Solicitor?

1 MS. HALL: Thank you.

2 Good morning.

3 THE JURY: Good morning.

4 MS. HALL: You guys have been very attentive. I  
5 know this has been a difficult subject matter and I commend  
6 you for your detail to attention -- what appears to be your  
7 detail to attention.

8 I want to talk to you about presumption of  
9 innocence before we talk about anything else. And  
10 Ms. Boulware had touched on this or discussed this to some  
11 degree in her opening statement and I did too.

12 Robe of righteousness, I believe, is the way the  
13 Judge will instruct you about it, it's one of the terms  
14 that's often used, that the defendant comes in with a cloak  
15 on him, like a cloak of innocence. And I would submit that  
16 as the State presents evidence, that cloak is stripped away.  
17 And once the cloak is stripped away from him with the  
18 evidence is presented, he is not innocent any longer.

19 And I'm going to come back and talk about the  
20 burden of being fair which is the reasonable doubt burden a  
21 little bit later on.

22 Like I said, as the evidence is presented and the  
23 cloak is stripped away, the evidence is coming from the  
24 witness stand. It comes from these items that are entered  
25 into evidence throughout certain testimony.

1           This is where the common sense life experience part  
2 comes in too. You guys have to judge credibility of the  
3 witnesses and you do that by looking at their demeanor,  
4 seeing how they act and that's a good way to judge people's  
5 credibility.

6           So let's go through the witnesses. I'm going to  
7 try and not take too terribly long, but I want to make sure  
8 I cover everything.

9           And I call her Minor because I'm trying to  
10 differentiate between Eva Suarez, so I just think that  
11 that's an easier way to talk about her.

12           The victim in this case, she had a hard time  
13 getting started. Came up, very nervous, very embarrassed by  
14 the subject matter that she was going to have to talk to  
15 you. If you think about it, she's 16-years-old. As a  
16 16-year-old child -- a young lady, but young lady, has to  
17 come in here, talk to a bunch of strangers about her body.  
18 She has to talk about her menstrual period. She has to talk  
19 about the loss of her virginity. She has to tell you in  
20 detail what happened to her.

21           And her dad's sitting in the audience. She hadn't  
22 seen the defendant who did this to her in four years.  
23 Hasn't seen him since the night this happened. So if you're  
24 nervous and you're trying to get it out, it's a little bit  
25 understandable about how that would be a difficult thing to

1 do. She took a deep breath and she was able to give the  
2 information.

3 And I want to talk about the law real quick.  
4 Again, I went over this before we started because I think  
5 that it helps. And I'm very visual so I've got all these  
6 visual aids. I'm sorry about that. But criminal sexual  
7 conduct with a minor, and it's with a minor -- in the State  
8 of South Carolina, a person cannot consent to sexual  
9 intercourse or any kind of sexual act until they're 16 years  
10 of age. That's where "with the minor" part comes in. The  
11 degree part is where -- the degree part is because she's  
12 14 -- less than 14 but more than 11, so that's where the  
13 degree comes in. So that's what he's charged with.

14 And we talk about sexual battery and the Judge will  
15 define those for you as well. There's a lot of things in  
16 here that don't apply: "Any intrusion, however slight, of  
17 any part of a person's body or any object into the genital  
18 or anal opening of another person's body," which is exactly  
19 what happened here.

20 And so this young lady is coming in and she's going  
21 to have to come in and tell you guys about this and that's  
22 exactly what she did. And she's 12, y'all, when this  
23 happens, she's maybe 12 and a half. She doesn't know about  
24 sex. She hasn't had a sex ed class. Maybe her mom has told  
25 her some stuff but that didn't come out. She hasn't had,

1       you know, really, as far as we can tell, any detailed  
2       information about any of this. She's confirmed that she's  
3       never had sex before. She said she didn't even know what a  
4       condom is. She knows now and she remembers that that's,  
5       probably knowing what she knows now, that's what he was  
6       doing, was putting on a condom.

7               Then she has to talk to you, telling you about  
8       how -- well, maybe -- she said, "It hurt, hurt, really bad."  
9       That's evidence right there of entry into another person's  
10      body. That's intrusion. Pain. Bleeding, which she had to  
11      talk about too.

12             And so she told law enforcement that, "It hurt  
13      bad." She told the SANE Nurse that "It hurt" real, real,  
14      bad," and she told you guys that. Evidence of penetration.

15             And when you go back, you're going to have the SANE  
16      report which is very detailed in terms of what the findings  
17      were. You're going to have a diagram, which we went over on  
18      the screen but -- you know, I had the nurse, I asked her to  
19      mark Number 2 which refers back to her findings that -- she  
20      put them on there Number 2: "Anal folds, dark red bruise  
21      observed from 5 to 7 o'clock anal folds, patient associates  
22      tenderness to that region," and she's marked this here.  
23      "Intrusion," and she told you, I said, "Is that consistent  
24      with penetration, sexual assault?"

25             "Yes."

1                   Number 1 she also marks. "Hymen, focal redness,  
2                   bruise observed at 6 o'clock in the hymen."

3                   "Is that consistent with penetration or sexual  
4                   assault?"

5                   "Yes."

6                   And I would submit to you, from what the victim  
7                   says about "hurt, hurt, bleeding" and the testimony from the  
8                   SANE Nurse, there's absolutely evidence of penetration.

9                   And this child, she came in here and I would submit  
10                  to you, she's brave. I mean, to come in here and to be able  
11                  to tell you guys that in front of all these people with her  
12                  dad in here and the defendant sitting over there, nothing  
13                  but grace.

14                  Like I said, when this happened to her, as you  
15                  know, she was 12 and a half. And if you think about that in  
16                  terms of the course of her life, she's 16 and a half now.  
17                  That's four years ago. That's 25 percent of this child's  
18                  life ago. And her body was not fully matured at the time.  
19                  And again, that's in the SANE report. And you heard the  
20                  nurse testify about it, "She was a 3 out of 5 on the Tanner  
21                  scale, which means her body was not even fully developed.  
22                  And she's still a very young women.

23                  And Ms. Boulware, in her opening, I don't know if  
24                  she'll talk about it again, but she talked delays. She  
25                  talked about delays of, you know, how it's taken so long to

1 get to this point and how too much time has passed. And she  
2 talks about having to get a governors warrant to bring the  
3 defendant from North Carolina and how hard that was and how  
4 much paperwork that was. And even though the warrant was  
5 issued in May of 2019, he was not served with it until July  
6 2022. And now it's July 2023. So a year after he was  
7 arrested on this charge and since he's been brought to  
8 court. It took a lot of time. It took a lot paperwork to  
9 get him from North Carolina and back. And that's the reason  
10 for the delay.

11 She described her bedroom but the grandmother also  
12 describes the bedroom. A tiny little bedroom. Maybe room  
13 for a bed and a bookcase and then there's the door that  
14 opens to get in the room -- there's still room to open. She  
15 was in her own room, her safe space, on her bed, watching a  
16 movie on her phone. She's got her PJs and her shirt on.  
17 And the defendant comes into her door. He comes into her  
18 room, into her safe space.

19 And she describes, like, "I was nervous."

20 "This was odd."

21 "I didn't know what was going on."

22 "I didn't know why he was in there."

23 "He never really came in there."

24 And I want to talk about the defendant real quick.

25 And Ms. Boulware said, I'm going call him "Carlos." Well,

1 she called him Carlos and she also called him uncle because  
2 he was so much older than she was and he's so much, you  
3 know, like, a family figure, a family member. He was  
4 20-years-old. She was 12. And I touched on this in  
5 opening, almost twice her age when this happened. She meet  
6 him about six years prior to the event. She was ten, he was  
7 18. I'm trying -- the age difference. And again, it  
8 doesn't matter, she's 12, she can't consent.

9 And his Honor is going to charge you about the  
10 criminal intent. And I would submit to you, the defendant  
11 had just that when he went into that bedroom that night. He  
12 knew he was going do. He had a condom with him that. He  
13 walked into this child's bedroom, asked her, "Are you a  
14 virgin?" And she was, like, confused by this and she told  
15 you that. She said, "I was sad. I was scared."

16 And Ms. Boulware's over there like, you know, they  
17 never had any issues with him. They never had any issues  
18 before. They got issues now. He's coming in her bedroom in  
19 the middle of the night asking her if she's a virgin, then  
20 puts on a condom, pulls her onto the floor and then proceeds  
21 to sexually assault her. Now you've got issues. Just  
22 because you didn't have them before, doesn't mean you don't  
23 have them now.

24 And she says, "He put it in me."

25 And I had to press her to get her to answer. And

1 at the time, Ms. Boulware's going to talk about that, too, I  
2 would assume, that she's talking about, "Was it a finger, a  
3 penis," doesn't matter. Any intrusion, however slight, with  
4 any object to any body part is a sexual battery. .

5 And she told you the first time he tried but it  
6 doesn't go in. Second time, he shoves it and it does. And  
7 I'd submit to you that, again, is consistent with all of  
8 this. He's shoving and poking and trying to get it in  
9 somewhere. She's got anal injuries. She's got vaginal  
10 injury and she said, "It hurt," and she bled.

11 This child has never even used a tampon. Never  
12 been to a gynecologist. This was her first experience with  
13 anything being put inside of her. And the fact that she  
14 doesn't exactly know what it is, I don't think we can really  
15 hold that against her at this point. She's 12.

16 This is, again, when we have to bring -- she said  
17 she was bleeding. The grandmother said she saw blood in the  
18 toilet. And this child, again, we had to go into detail  
19 with her about her menstrual cycle and she said -- and the  
20 nurse said her last menstrual period was on March 21st.

21 Again, bring some common sense and some life  
22 experience to this. If that lasts about five days, and  
23 that's a conservative estimate. Now, you're at March 26th.  
24 And if you're on a regular cycle, which the nurse said she  
25 reported being on the regular cycle, 28 days from that would

1 be April the 22nd. This happened on night of the 15th,  
2 early morning of the 16th. And she knew, she had her period  
3 for three years -- two to three years before this occurred,  
4 she knew this was not her period.

5 Now that she's found out that she's got issues with  
6 this guy, so she starts calling out, "Help. No, no, stop."  
7 She's trying -- she said, "I'm trying to get my  
8 grandmother's attention." And that's exactly what happened.  
9 And this is the interesting part to this. You've got a  
10 witness to a sexual assault.

11 Grandmother does hear her. She has coming into the  
12 room to come to her aid. And that's exactly what the victim  
13 was hoping would happen. She needed help. She said the guy  
14 had her pinned down, holding her arms, she couldn't get up.  
15 He's on top of her. And if you look at him now physically  
16 and look at her now, and take four years off of that, she's  
17 small. And she's underneath him and she can't get up.  
18 Scared. Sad. And crying. Thank goodness the grandmother  
19 came in.

20 When the grandmother finally gets to the door, the  
21 defendant jumps up and hides behind the door and says,  
22 "Don't tell." And she doesn't. She points. Grandmother  
23 sees her pulling up her pajama pants, says she's crying and  
24 she doesn't tell but she points. And the grandmother goes  
25 behind the door, pulls it up and sees the defendant back

1       there with basketball shorts, unclear if they're up or down,  
2       but in basketball shorts and an erection. A witness to the  
3       sexual assault.

4               And I want to talk about this timeline real quick.  
5       And it is a little bit confusing and, again, I'm visual so  
6       we're going to have to do it this way. The SANE nurse says  
7       on 4/15/19 -- and I want to get the exact time off of her  
8       report because she reports -- they report that this  
9       happened. And this is what they tell her.

10              It was right before -- it's going take me a minute  
11       to find. But I'm going tell you, it was right before  
12       midnight. There it is. 2359, which is 11:59 p.m. That is  
13       basically 4/16. On the police report, she says it happened  
14       4/16 around 30, which is 12:30 a.m.

15              Now, momma -- yeah, and I want to talk about this,  
16       too. There's a language barrier here. These people -- and  
17       if you're extremely lucky, you'll never have to deal with  
18       this kind of stuff in your life. Never. And these people  
19       are way late with this. They're, you know, freaking out.  
20       They've got a kid who they've taken in -- Carlos, who  
21       they've taken in, the grandmother's taken him in, trusted  
22       him, got him a job -- helped him find a job and gave him a  
23       place to live. And so this is a bit slap in the face to  
24       her. She's got this young granddaughter who -- and they  
25       don't know what do to. Momma goes to work the next morning.

1 She's got -- I submit, probably up all night. She gets up  
2 at 5:30 in the morning, drives to work and she's still  
3 trying to figure out what to do and she tells you, "I did  
4 some research and I made a plan." And that plan was made  
5 quickly. Okay?

6 She goes to work at 5:30. This is when they're at  
7 the -- this is incident and that's what she tells the nurse.  
8 And this is incident report. Then 4/16/19, 5:30 a.m., five  
9 hours after it happens, mom goes to work. And when she gets  
10 off -- and while she's there, she makes a plan, noon, this  
11 same day. She calls and she says, "I figured some stuff  
12 out. Don't let her shower."

13 No shower. Grandma's with her all day long. Tells  
14 her not to shower. Knows she doesn't shower because she's  
15 with her the entire day. Mom gets home from work around  
16 4:00 and they call Richland County because that's where  
17 their house is. I don't know if they dialed 911 or if they  
18 just called them up and said, hey, we need a police officer.

19 A police officer goes out to their house. I don't  
20 know how long it takes. The police officer comes and says,  
21 "Oh, gosh. You're in the wrong county because this didn't  
22 happen here so now you're going to have to report it again."

23 And by then, mom says, "It's too late to go to the  
24 sheriff's department in Fairfield County." So we wait. On  
25 4/17, at 9:30 in the morning -- remember, they're in

1 Richland County so they have to drive to Fairfield County.  
2 By 9:30, they're there and they make contact with law  
3 enforcement.

4 On that SANE report, it showed that at 12:15,  
5 they're at the hospital. I would submit to you, that's not  
6 a delay. And the grandmother did everything right.

7 And, again, demeanor. When she was testifying, she  
8 was obviously upset. She took this guy in. She trusted  
9 him. She gave him a house. She helped him find a job. And  
10 he'd been living there for about six weeks and she did  
11 everything right. But I would also submit to you that she  
12 also -- as a parent or a grandparent probably put yourself  
13 in a position of maybe feeling a little responsible for  
14 what happened to this child, that she wasn't able to protect  
15 her anymore than she did.

16 She's very upset. She testified to you. She's  
17 telling you that she heard her. She went and she did  
18 everything right. She immediately confronted the defendant.  
19 She even helped him get his car started so he could get the  
20 heck out of there. Kicked him out immediately. Pulls the  
21 granddaughter out of the room. Puts her in her own bedroom  
22 so she is safe and doesn't have to be around him anymore.  
23 And immediately calls momma and says, "something terrible  
24 has happened," and momma says, "come here as fast as you  
25 can," and that's what they did. And they piled up, like a

1 family does, and they took care of business.

2 And what the grandmother saw -- and his Honor is  
3 going to charge you about circumstantial evidence -- and  
4 what the grandmother saw, yes, you have to draw some  
5 conclusions from that basically. I mean, there's things  
6 that you see and things that you hear and that's direct  
7 evidence and you know that absolutely. Like, the victim,  
8 she knows what happened. She saw it. She heard it. She  
9 felt it. She was there.

10 The grandmother, you connect the dots with  
11 circumstantial evidence a little bit. She walked in the  
12 room and sees her granddaughter crying, pulling up her pants  
13 after she screamed no, and sees the defendant behind the  
14 door with an erection. You can draw conclusions about what  
15 happened and that's what she did. So that's what  
16 circumstantial evidence is.

17 They meet with Karen Castles, an investigator at  
18 the sheriff's department. She interviews the witness.  
19 Takes the statements. Sends them to the hospital. She gets  
20 the victim's phone to see if there's any evidence on it.  
21 And she says there's no evidence on it. Ms. Boulware asked  
22 some questions about Facebook or pictures or something  
23 and -- I'm going to come back to that in a minute, too. But  
24 she gets the warrant. She does the paperwork. I'm talking  
25 about Investigator Castles now and she gets him served, the

1       defendant served in North Carolina and goes and brings him  
2       back.

3               She goes back to the hospital and she picks up the  
4       evidence kit. And again, you got the report and then all  
5       the evidence collection that was done. And I would submit  
6       to you that this is no fun. This takes two hours from  
7       intake, 30 minutes worth of physical exam, when you're  
8       12-years-old, you've never been to a gynecologist. You've  
9       never had sex before. You're naked in a gown with your feet  
10      up in stirrups for 30 minutes having your pubic hairs  
11      combed, having been swabbed all over your body. This is no  
12      fun.

13             And, again, that goes to demeanor. This goes to  
14      credibility of a witness. Who would do this if something  
15      didn't happen to you? And there's findings from it, which  
16      is the point of it, the evidence collection.

17             But you heard Karen Castles say, I went back. I  
18      got the kit, went to SLED, to South Carolina Law Enforcement  
19      Division. And if would have told you yesterday, we're going  
20      to wait for these two witnesses from SLED -- Investigator  
21      Castles said, she told you, there was no -- other than the  
22      victim's DNA, there was no DNA found in that evidence  
23      collection kit. So the necessity of bringing SLED witnesses  
24      to tell you that was eliminated at that point. She told  
25      you, there's no need to waste time doing that. There's no

1 DNA in there except for the victim's. I would submit that  
2 there are reasons for that.

3 Everybody wants DNA. Everybody wants CSI. But  
4 when you wear a condom and you wipe yourself off with a  
5 towel but mainly when you wear a condom, DNA may be hard to  
6 find from the defendant.

7 And also, again, common sense, life experience.  
8 Grandma got there before he had time to ejaculate. He still  
9 had an erection standing behind the door.

10 Again, the SANE nurse, we'll talk about her real  
11 briefly because you've got, again, all this stuff back there  
12 that you can take with you to look at. She's qualified as  
13 an expert. So she can give opinions for you to consider as  
14 you deliberate.

15 And again, in this thing, the defendant held the  
16 victim down. The child was unsure if it was a penis or  
17 finger, anus or vagina. Again, I submit to you it doesn't  
18 matter. It's intrusion, however slight, into any of those  
19 places. And she's got injuries to prove it.

20 And I'm going to go with a little levity for just a  
21 minute. And some of you guys are probably at least my age  
22 or old enough to remember that there was a time in the world  
23 where you couldn't like pull up stuff on a VCR or on Netflix  
24 or whatever. We actually had to wait for these films to  
25 come around. And when I was little, my favorite movie of

1 all time was the Wizard of Oz, still kind of is. But I used  
2 to wait. It was around my birthday. It would always come  
3 on around my birthday. And movies would come on in cycles  
4 during certain times of the year, so you'd know when to look  
5 out for them.

6 In that film, one of the things that I remember  
7 most is the Wizard of Oz himself and if any of you have ever  
8 seen it, there's the Great and Powerful Oz and everybody's  
9 going to see him and they're going to ask for favors and  
10 things and they want a heart, and they want courage, and  
11 they want to go home, and whatever it is they want. And  
12 they've got this big smoking mirror man that's like a head.  
13 And it's very scary. They go in there and they're asking  
14 for this stuff and basically this guys yelling at them.

15 And there's one day, they go in there to ask for  
16 something and there's a little dog that's in there, Toto,  
17 and he pulls the curtain back and you know at that moment  
18 that there's a person behind there who is doing all the  
19 controls, making the smoking mirrors happen and basically  
20 calls in a ruse to take attention away from reality.

21 And I would submit to you, anything that's said  
22 about delay, anus, vagina, penis, finger, how long things  
23 take -- time loses all meaning when you're 12-years-old and  
24 being sexually assaulted. Facebook messages. Photos, does  
25 the child even know what "prior" means? I don't know. That

1 was part of the questions, "prior to." I don't know if she  
2 even knows what the word prior means.

3 Wetness. Now, whether she reported wetness, that  
4 can come from any place. Again, he, obviously, didn't -- he  
5 was still erect, he didn't ejaculate. So I don't know what  
6 that was about either.

7 These are things that, again, smoking mirrors  
8 distracting from reality. Reality is that she was in her  
9 bedroom. She was pulled off her bed. She was sexually  
10 assaulted. She was 12-years-old and he violated this law  
11 when he did it.

12 I want to talk about our burden of proof briefly.  
13 Again, it's beyond a reasonable doubt. Something that we  
14 take very seriously. And his Honor is going to instruct you  
15 about what that means because there's not anything in this  
16 world we can know beyond any doubt whatsoever. It's  
17 something -- reasonable doubt is something that leaves you  
18 firmly convinced.

19 And Ms. Boulware says, in her opening, "this sounds  
20 straightforward." And I would submit to you, because it is  
21 straightforward.

22 Deliberate, talk it over, review the evidence. And  
23 I submit, when you do so, you will leave that jury room and  
24 you will come to a conclusion while in there that leaves you  
25 firmly convinced that the defendant is guilty as charged,

1 with criminal sexual conduct with a minor second degree.

2 Thank you.

3 THE COURT: All right.

4 Thank you, Madam Solicitor.

5 Ms. Boulware?

6 MS. BOULWARE: Judge, we're going to switch --

7 THE COURT: That's fine.

8 (Pause in proceedings.)

9 MS. BOULWARE: Good morning. We talked the other  
10 day and yesterday was a very long day for everybody but I  
11 really want to say, on behalf of myself, particularly on  
12 behalf of my client, Carlos, we appreciate your attention,  
13 the very close attention, I can tell, you all have paid to  
14 each witness who has gotten up there and testified in what I  
15 will agree with the Solicitor on, is a horrible case.

16 All of these cases like this are horrible. They're  
17 horrible for the family. They're horrible for the victims  
18 or the alleged victims. They're horrible for the folks who  
19 are accused. So what I'm going to do is I'm going to take  
20 you through each witness. I usually like to do this in the  
21 order they appear so you all can kind of follow along and  
22 remember. And the good thing is, it was just yesterday. We  
23 haven't been sitting here a week. So hopefully a lot of  
24 this is still fresh.

25 But what I want to do is take some of the things

1 the Solicitor said and again tell you why it's not  
2 straightforward, I do not agree it is and how there are  
3 different interpretations of what was said from the witness  
4 stand which will ultimately be your interpretation which is  
5 the most important.

6 But it's my job to come up and point out to you  
7 that all of the stuff that she said, oh, well, yeah, I know,  
8 this stuff is different or she messed up on this, but that  
9 doesn't matter. It does matter. It matters a lot. That is  
10 exactly where reasonable doubt sows a seed.

11 Let's look at a couple of things. What we ended up  
12 with basically from the victim were three statements. And I  
13 submit, three conflicting statements. Let's take a look at  
14 a couple of them.

15 First statement she actually made that we are aware  
16 of in this case is to Investigator Karen Castles. The  
17 second statement we're aware of that she made was to Nurse  
18 DeGuzman. Each of these statement being almost two days  
19 later. There's no evidence and nobody testified that she  
20 ever actually told her grandmother or mother what actually  
21 happened. All that we know from this is that grandmother  
22 came in the room, did not actually see an assault take place  
23 and things just went from there. But nobody explained what  
24 happened in the middle of all of that. What did she tell  
25 her mother? What did she tell her grandmother? We don't

1 know. And it was almost two days. Almost two days that she  
2 had to say, well, yeah, it was this, but not this or really,  
3 all this happened. We don't know. And that's a problem.  
4 That's a problem that we do not know about and we'll never  
5 know.

6 MS. HALL: Your Honor, I hate to object to  
7 somebody's -- this is -- because of the Rules of Evidence,  
8 this witness cannot testify to that information.

9 THE COURT: Just state what's in the record.  
10 Thank you.

11 MS. BOULWARE: I understand what the Solicitor is  
12 saying about that. Let's address that for a minute. They  
13 cannot say what anybody said to them. They can at least  
14 say, we talked about it. I understand what she's saying,  
15 but I want y'all to understand that we don't have any  
16 evidence of anybody talking about it at all.

17 Her third conflicting statement is right here,  
18 testimony to y'all. I want to talk about those messages for  
19 a second. The Facebook messages. She has a smartphone.  
20 She has access to a smartphone. She knows how to use a  
21 smartphone, she's 12. Everybody probably, gosh, now, I  
22 don't know, I don't have any small children anymore but  
23 four, five, probably knows how to use a smartphone. So  
24 people know how to do that. Kids know how to do that.

25 So she testified to the Solicitor on direct that

1 she never texted or sent any messages to Carlos and that she  
2 had not had any further contact with Carlos after this  
3 alleged incident. During cross, when I questioned her, she  
4 did admit to messaging with Carlos but only after the  
5 assault occurred. But then she told Investigator Castles,  
6 which Investigator Castles testified to, that she shared  
7 Facebook messages with Carlos prior to the alleged assault.

8 Now, she's 12. She has a phone. I don't think  
9 she's in any way not capable of knowing what the word  
10 "prior" means. I don't recall not ever knowing what that  
11 word means. I'm sure I didn't at some point, but I don't  
12 think it's such an unusual word that a 12 year old wouldn't  
13 know what it means.

14 So Investigator Castles did what most investigators  
15 do in these cases, and said, "I will need to get the phone  
16 and we're going to need to look at it." So they did. And  
17 there was no evidence of any pictures or messages or  
18 anything between Carlos and Minor found on the phone. That's  
19 just curious right there.

20 We're going to talk about the logistics of how this  
21 assault occurred but we're going to do that in just a little  
22 bit, though. I'll get to that in just a minute. So in what  
23 we talked about so far and what've heard the Solicitor in  
24 her closing say, let's talk about what is consistent in all  
25 that.

1 Carlos is always nice to her. Nobody's disputing  
2 that. Bought her some Starbucks when he would come home, at  
3 least a couple of times. Nobody said this was a regular  
4 thing but it sounds like every so often Carlos would come  
5 home with a Starbucks. Carlos never made her feel  
6 uncomfortable. Carlos lived with [Minor] grandmother and  
7 worked with her mother, why would that happen -- why would  
8 this happen now? What is Carlos' motivation for this?

9 So from the witness stand between 2019 and now, we  
10 did have some new revelations. She testified that Carlos  
11 made statements to her that were never reported with either  
12 Investigator Castles or Nurse DeGuzman. So she had two  
13 people she could have told this to and did not.

14 She said Carlos asked if she's ever had -- I think  
15 she tried to say the words "sexual experience, virgin," is  
16 how the Solicitor put it, however you want to interpret what  
17 she said on that, she said Carlos asked her about that.  
18 That was never disclosed before.

19 And let's talk about this condom for a second and  
20 that she might have heard a wrapper or heard the opening of  
21 something. And I'm not trying to say what kids at 12 know  
22 and don't know. But I do know that kids at 12 now know a  
23 lot more than they did a long time ago. She has a phone.  
24 She watches Netflix. Apparently watches a lot of things  
25 that she's allowed to watch and everybody knows what you can

1 watch on all these streaming sites. And they're not all  
2 exactly what would be PG or on TV when we were all kids.  
3 They're really not censored all that much.

4 She attended public school but never attended a  
5 health class or a sex ed class as of the year 2019. Did she  
6 ever have any friends that she was talking back and forth  
7 too? I don't know.

8 Now, one of the new revelations is that she  
9 testified that Carlos somehow grabbed her out of bed, pinned  
10 her on the floor and assaulted her while lying on top of  
11 her. Keep that in mind for a minute and we'll come back to  
12 that.

13 Then we get to Ms. Suarez, her grandmother and  
14 Carlos' aunt. I was a little confused for how a lot of the  
15 case has to do with relationships but I finally got it  
16 straight. This person is Carlos' mother's sister, okay,  
17 which is [Minor], I think a lot of folks refer to her as  
18 her grandmother. So she walks in and sees Carlos in [Minor]  
19 room.

20 Now, the Solicitor touched on circumstantial  
21 evidence, direct evidence. And I would like to submit to  
22 you that while she is offered to you as a direct witness by  
23 the State, did testify to some things that she thinks she  
24 saw and she says she saw them, so that's her testimony. She  
25 never testified that she actually witnessed an assault. So

1       when the Solicitor tells you, "I have a direct witness on  
2       this," that's not necessarily accurate.

3               And Ms. Suarez, she testified that Carlos was in  
4       her home for about six weeks or so. [Minor] said he was there  
5       for possibly months. I'm not sure how long Carlos was  
6       actually there. Again, the Solicitor touched on this, did  
7       not testify to any other issues with Carlos during his stay  
8       with her.

9               Ms. Suarez did testify that she asked Carlos why,  
10       and he did not respond but never did indicate that [Minor] ever  
11       told her anything. Again, not what, anything about it.

12              She did testify that she observed no injuries on  
13       [Minor] except she did observe blood in the bathroom. We all  
14       know that now but we'll get back to that, too.

15              So here is the question I've been struggling with  
16       throughout this whole case: If she knew her granddaughter  
17       was just assaulted, why not call law enforcement  
18       immediately?

19              I believe the order of this went: She contacted  
20       Carlos' mother and then [Minor] mother. I understand [Minor]  
21       mother, okay, I get this. I'm not sure what Carlos' --  
22       Carlos is a 20-year-old man at this point. His mamma ain't  
23       got much to do with this, if this happened. So I'm not sure  
24       what that was about.

25              This is Ms. Islas, that's her mother. She's not a

1 direct witness to any assault. And her grandmother  
2 testified that she did contact Xochitl once she ordered  
3 Carlos to leave. And [Minor] mother said, yes, bring her back  
4 home to Fairfield Road in Richland County, her family, so I  
5 get that, too, get her out the house. I got you.

6 So [Minor] grandmother did testify that she returned  
7 [Minor] to her mother's house sometime between 12:00 and 1:00  
8 a.m. on April 16th. And then her mother goes to work at  
9 5:00. I am not trying to say people don't need to go to  
10 work and things like that but this was a brutal assault they  
11 are accusing Carlos of. If it is something that was  
12 described, "this is terrible," why aren't you dealing with  
13 this immediately? What are we doing here?

14 She calls her or [Minor] mother calls her mother,  
15 Ms. Suarez, on her break with instructions for [Minor] not to  
16 shower. Okay. She said she had to research what to do in  
17 this situation because she couldn't get in touch with  
18 Carlos' mother. And again, not sure what contacting Carlos'  
19 mother would resolve anyway. Then decided to involve law  
20 enforcement later because it was too late to go when they  
21 did finally figure out where they needed to go.

22 I understand they contacted Richland but they knew  
23 how to do that and get a Richland cop to the house. You do  
24 the same thing for Fairfield. 911 was down here yesterday,  
25 I do know that but they did give you an alternate number to

1 call. So there's a way to get an officer to your house any  
2 time of day here in Fairfield.

3 We had Investigator Castles testify, who was on  
4 call the day, which was almost two days later, when [Minor] was  
5 finally taken to the sheriff's department. And Investigator  
6 Castles testified to you that she's the one who said -- who  
7 told y'all there was no DNA. Despite an allegation in the  
8 medical report that you all heard about, that Carlos  
9 allegedly licked her neck and kissed her and when you review  
10 that report, you'll see that she said there was no condom.

11 Investigator Castles did retrieve her phone and,  
12 again, we just went over this but despite [Minor] initial  
13 statement that there were messages between them, there were  
14 none on that phone. So in this investigation, what could  
15 have been different? What could we have done differently  
16 here?

17 [Minor] did not go the back to her grandmother's house.  
18 So what does that mean? That means there's a crime scene  
19 you can go look at. Now, it's two days later. And [Minor]  
20 bedroom is allegedly the crime scene. So at that point we  
21 could have possibly found evidence of a condom, a wrapper,  
22 the condom itself, maybe. I don't know. Nobody looked.  
23 Retrieved her clothes that she was wearing. I believe she  
24 testified she changed her clothes or the nurse possibly did.  
25 And this could be, though, not all on the investigator, it

1       could be because a lot of the information we heard this week  
2       was left out of these initial reports. So what was she  
3       going to follow-up on?

4               Or the other explanation is, could be because  
5       there's no additional evidence or could be there was no  
6       additional evidence because no sexual battery took place.

7               Then we finally had Nurse DeGuzman, who was at  
8       Palmetto Richland when they did what they did do, what  
9       Investigator Castles said, need to go get a rape kit done  
10      and all these good stuff. So they did. She questioned and  
11      examined [Minor]. You've got, I believe, a 16-page report to  
12      look at and go through. It's got statements [Minor] made to her  
13      in that.

14              Let's talk about those for a minute. So [Minor]  
15      reported on -- what's documented on the medical report is  
16      that Carlos, "held her down and held her arms back behind  
17      her," and, "made her stand by the bed and she bent over by  
18      him standing." What happened to this assault on the floor?

19              [Minor] also testified that she did not recall feeling  
20      anything wet. She testified to that here again today. Yet,  
21      the report documents and the Solicitor pointed this out too,  
22      but also said, "Don't worry about that part." Said she felt  
23      something wet in her private part and points to her  
24      backside. And keep in mind, Investigator Castles, I think  
25      y'all have heard this enough by now, reported no DNA was

1 found after those results came back from SLED.

2 Now, four years later, there might have been a  
3 condom involved. If you look at that report, it actually  
4 has a lot of details in it on what parts the patient thinks  
5 might have been injured. She did not report any injuries or  
6 penetration to her vagina. In fact, if you read that  
7 report, she's somewhat unsure of what was penetrated and  
8 with what at all.

9 She reports that Carlos was strong. He was holding  
10 her down. Okay. Recall that yesterday? She said Carlos  
11 had her pinned on the floor. But according to the nurse,  
12 they were standing and she was bent over on the bed. A  
13 little confusing.

14 Also reported that Carlos was at her grandmother's  
15 home for a couple of weeks. On that report, you'll see  
16 that. I'm not trying to differentiate. Y'all understand  
17 that one is on the report and one is what she said  
18 yesterday. But she testified yesterday, "I don't know,  
19 months." I tried to ask her, "Weeks? Months?" Wasn't  
20 clear.

21 The injuries reported by the nurse were redness and  
22 bruising as well as stretches to her buttocks in various  
23 stages of healing. No tearing. And I understand what the  
24 nurse said about well, you know, "the hymen can stay  
25 intact." But with how brutal this assault and the more

1       brutal it seems to have gotten since the time it allegedly  
2       happened, that seemed surprising; and other than that,  
3       there's no other concrete evidence of any penetration or  
4       sexual battery except for what she told Investigator Castles  
5       and Nurse DeGuzman and from up here on this witness stand.  
6       None of it's the same.

7               Keep in mind that she did tell the nurse, "Yeah, I  
8       have a soap allergy and it's been bothering me and that's  
9       what those scratches are from."

10              It took me a minute with Nurse DeGuzman but we got  
11       around some of this eventually, that, yes, the redness could  
12       be due to allergies. And your common sense would tell you  
13       that enough scratching, scratching hard enough, you might  
14       get a bruise from that or something. I don't know what --  
15       you know, she's irritated down there. So there could be  
16       anything going on.

17              And the Solicitor talked with you about beginning  
18       her period and her regular cycles. And I tell you what, I  
19       do not like to cross a child about that. I don't want to  
20       talk about that, let alone, make a child talk about that but  
21       it's important here because she reported she was having  
22       regular cycles. And the report says March 21, 2019.

23              Remember back to the blood that the grandmother  
24       observed in the bathroom. Now, cycles can be pretty regular  
25       but as a female, I think I can tell you, if it's pretty

1 regular, that's also -- that's pretty close to this date.  
2 So that would be about the right time for that.

3 So Nurse DeGuzman did what she does and swabbed for  
4 DNA, sent it to SLED. And SLED, yeah, they were listed on  
5 the State's witness list but they weren't called. Why?  
6 There was no DNA to report. They'd rather not emphasize  
7 that point. She pointed it out but she's not going to get  
8 more than one person up here to say it. Trust me.

9 And Nurse DeGuzman reported no other injuries,  
10 bruising apparent on **Minor**. Even almost two days later when  
11 she actually did examine her, this is interesting, after she  
12 was forced on the floor -- or that was yesterday's  
13 testimony -- no bruise to her knees, had her arms pinned  
14 down, not able to move them. Carlos is strong. Don't  
15 forget that. No bruising on her arms. Nothing else. No  
16 sign of a struggle or anything.

17 And Nurse DeGuzman really didn't like this, but  
18 despite her certification and her title -- and she was  
19 qualified as an expert by this Court. I didn't disagree  
20 with the qualifications. She does have certifications in  
21 what she has certifications in. She grudgingly, though,  
22 acknowledged that she cannot say for sure that the assault  
23 injuries reported and noted by her could just as well not be  
24 the result of a sexual assault because people come to her  
25 having alleged this. That's why I have an issue with that

1 title at all. It's already implied. So is she deciding  
2 that it's a sexual assault because that's the title of my  
3 job? Or is she really saying, well, yes, I've seen  
4 different things but this is this?

5 She's an expert. Judge will tell you, when he  
6 talks about witness credibility, that experts are no  
7 different from any other witness you hear up there. You can  
8 give them as much credibility or as little credibility as  
9 you'd like.

10 Reasonable doubt. We talked about this at the  
11 beginning and I didn't go too much into anything because  
12 with openings, I tend not to do that because I don't have a  
13 whole lot to talk about yet. I kind of want to see how  
14 y'all are going to sort of interpret things or how I feel  
15 like you might have. And I told you that reasonable doubt,  
16 the best way I've ever heard it explained to me or in a  
17 trial -- and I might even give credit to Mr. Frick for this  
18 because I think he's the one to said one it time. There's  
19 no other reasonable explanation. You've got to get back  
20 there and say, there's nothing else that could have happened  
21 here.

22 But let's unpack that for a second. Well, Nurse  
23 DeGuzman finally did tell you another reasonable  
24 explanation. Well, she was irritated down there from some  
25 soap that she was allergic to. She did not indicate that

1 she was penetrated in the vagina, yet there were some  
2 redness and issues there as well.

3 We have the no issues with Carlos, to which Minor  
4 reported to Nurse .DeGuzman that Carlos had always been nice  
5 to her and she was surprised. Let's think about that for a  
6 minute. Use your common sense to think about this for a  
7 minute.

8 So all of a sudden we have Carlos, who has been  
9 there for, I can't tell you a time because nobody seems to  
10 agree on how long he's been there -- from a nice, pleasant  
11 housemate, to a brutal assault of his own family, in the  
12 home of his aunt and who was also Minor grandmother, in that  
13 home she has provided for him.

14 Again, common sense, that don't make any sense.  
15 And again, I'd point out to y'all one more time, her  
16 grandmother did not actually witness the assault that she  
17 claimed happened. The most we can get out of all this is,  
18 Carlos was in her room. I mean, that's all you can get from  
19 her on that. And Minor mother, who was called to testify  
20 didn't witness anything. But they both -- here's the delay.  
21 And this, I think, is a very important delay. Whatever the  
22 State says, these things are important. These things are  
23 the reasonable doubt. This is it. But that's why they  
24 don't want you -- oh, forget that part, don't worry about  
25 that.

1                   So [Minor] grandmother and mother delayed contacting  
2                   law enforcement about this brutal assault. It sounds awful.  
3                   About this brutal assault allegedly suffered by [Minor] because  
4                   they couldn't reach Carlos' mother, a 20-year-old man's  
5                   mother. Again, not sure what that was about.

6                   And research was needed on what to do. I'll leave  
7                   that one to y'all. The reasonable question to ask yourself  
8                   is: Why would [Minor] say this? We don't know. But it could  
9                   be many different reasons.

10                  Kids -- again, this is why these cases are hard.  
11                  You don't want to say somebody made this up but kids do make  
12                  this up sometimes. Was she in trouble for being up that  
13                  late and talking to Carlos? Was it easier to say Carlos did  
14                  something to her then to have the wrath of whatever the  
15                  rules were in that house? Or did Carlos upset her in some  
16                  other way? Maybe he tried to discipline her one time and  
17                  tell her she had to do something she didn't want to do as  
18                  far as maybe go clean up her room or something.

19                  But here's the thing. We can only speculate that  
20                  because she didn't offer and no one else asked any details  
21                  that we know of other than the report she gave Investigator  
22                  Castles and Nurse DeGuzman. And those statements were  
23                  inconsistent with the testimony she sat up here and gave  
24                  yesterday.

25                  So the bottom line of all of that, again, all this

1 stuff the State wants you to go, don't worry about that,  
2 just won't worry about that, that doesn't help my case, so  
3 don't worry about that.

4 Well, that is the case. That's the case we've got.

5 So with the other explanations and inconsistencies,  
6 we've got other explanations of what the injuries could be.  
7 We've got inconsistencies throughout her statements, things  
8 that drastically changed from that night until, well,  
9 yesterday, I guess. That's nothing other than reasonable  
10 doubt.

11 I would ask y'all when you go back there, think  
12 hard about that. This is a serious charge. That's a  
13 serious allegations. This was his own family. They have  
14 given him a home. The Solicitor's right, a home. He worked  
15 with them. None of that makes any sense. I think when you  
16 go back there and you consider the things the Solicitor  
17 doesn't want you to think about, I think you should come  
18 back with a not guilty for Carlos Cesmas-Gomez.

19 Thank y'all again for all your attention. I hope  
20 that didn't take up too much time but I felt like it was  
21 important in some things you really needed to go think  
22 about. Thank you.

23 THE COURT: Thank you, Ms. Boulware.

24 Ladies and gentlemen of the jury, my parts going  
25 take about 20, 25 minutes or so, so let's take a brief

1       comfort recess. Run to the restroom. Get you a little  
2       snack or a bottle of water or something. I'll get you back  
3       out her and tell you the law, and then finally, y'all can  
4       start talking about it. Okay? Thank you.

5               Don't talk about the case yet.

6               (Jurors exited.)

7               (Whereupon, a brief recess was taken.)

8       THE COURT: Come to order.

9       Let's bring the jury out.

10              (Jurors entered.)

11       THE COURT: Thank you, ladies and gentlemen.

12       You've heard the closing arguments of both the attorneys.

13       Madam forelady and members, I will now explain to you the  
14       law that applies to this case considering the testimony, the  
15       evidence, and arguments you've just heard.

16              Now under the constitution and laws of South  
17       Carolina, you are the finders of fact in this case. I do  
18       not have the right to pass upon the facts or even express  
19       any opinion I may have as to what I think the facts are  
20       because that's solely your job as jurors to determine.

21              It is your duty to determine the effect, the value,  
22       the weight and the credibility of the evidence that's been  
23       presented during this trial.

24              Let's talk about the credibility, that's called the  
25       believability of witnesses who have testified and of the

1 evidence which has been presented during this trial. In  
2 passing upon credibility, you can take into consideration  
3 many things such as the demeanor or the manner in which a  
4 witness has testified, whether or not a witness had reason  
5 to be bias or prejudice, whether or not the testimony was  
6 contradicted on the one hand or supported and corroborated  
7 on the other hand. All of these things you'll consider  
8 bearing in mind that you should give the defendant the  
9 benefit of any reasonable doubt.

10 It becomes your duty as jurors to analyze and  
11 evaluate the evidence and determine that evidence which  
12 convinces you of its credibility.

13 Let's talk about the evidence, generally. There's  
14 two types of evidence which are offered during a trial:  
15 Direct evidence and circumstantial evidence. I'm going to  
16 give you some law school definition and explain them so you  
17 can understand what we're talking about.

18 Direct evidence is that type of evidence which  
19 directly proves the existence of a fact and does not require  
20 any further deduction. Eyewitness testimony, all right,  
21 that's direct evidence, okay, that's an example.

22 Now, circumstantial evidence is a proof of a chain  
23 of facts and circumstances which, together, indicate the  
24 existence of a fact. What does that mean?

25 Well, you want to think about it, if on an winter

1 night, which we all need a break from this hot weather,  
2 assuming your grass turns dormant, you know, turns tan or  
3 brown or whatever, you go to bed and then you wake up the  
4 next morning and you see snow on your front lawn and  
5 footprints through that snow.

6 Well, first, you can infer that it snowed. The  
7 second thing you can infer is that somebody had been walking  
8 in your yard. So these are things you can infer even though  
9 you didn't actually see that happen, okay? That's an  
10 example of circumstantial evidence. And crimes may be  
11 proven by circumstantial evidence and the law makes no  
12 distinction between the weight or value to be given to  
13 either direct or circumstantial evidence.

14 To the extent the State relies on circumstantial  
15 evidence, all the circumstances must be consistent with each  
16 other and when taken together, point conclusively to the  
17 guilt of the accused beyond a reasonable doubt. Now, if  
18 these circumstances merely portray the defendant's behavior  
19 as suspicious, then the proof has failed.

20 Now, the State has the burden of proving the  
21 defendant guilty beyond a reasonable doubt. This burden  
22 rests with the State regardless of whether the State is  
23 relying on direct evidence, circumstantial evidence, or some  
24 combination of the two.

25 As I told you about expert witnesses, normally our

1 Rules of Evidence don't permit witnesses to testify as to  
2 opinions they may have or as to conclusion they may have.  
3 Normally, when a witness testifies, they have to testify  
4 about what they saw, heard, smell, or something like that;  
5 however, there is an exception for somebody who is qualified  
6 by training or education or experience. That person, if  
7 qualified in a particular field, may give testimony in a  
8 form of an opinion. That's what we call an expert witness,  
9 okay?

10 Now, to give an opinion testimony in a certain  
11 area, does not mean that you have to accept that opinion.  
12 It's simply evidence for you to use in any way you see fit  
13 and you give it the weight and the credibility you believe  
14 it deserves when considering all the evidence together.

15 An expert witness's testimony is to be given no  
16 greater weight than that of other witnesses simply because  
17 that witness is an expert and you're not required to accept  
18 an expert's opinion even though it may not be contradicted.

19 Let's talk about presumption of innocence, the  
20 lawyers talked about that briefly to you. As you know, the  
21 defendant has pled not guilty to this charge and that plea  
22 has placed the burden on the State to prove guilt. A person  
23 charged with committing a criminal offense is never required  
24 to prove his innocence. I charge you, ladies and gentlemen,  
25 it is an important rule of law that a defendant in a

1 criminal trial, no matter what the seriousness of the charge  
2 may be, will always be presumed to be not guilty of that  
3 crime for which the indictment was issued unless guilt has  
4 been proven by evidence satisfying you, all 12 of you,  
5 unanimously of that guilt beyond a reasonable doubt.

6 Now, this presumption of innocence doesn't end when  
7 you start your deliberations but it accompanies the  
8 defendant throughout your deliberations and until you've  
9 reached a verdict. This presumption of innocence, just  
10 imagine, if you will, just like I'm wearing a robe, it's  
11 like a robe of -- this is a great metaphor. It's like a  
12 robe of righteousness placed about the shoulders of the  
13 defendant which remains with that defendant until its been  
14 stripped away by evidence satisfying you of his guilt beyond  
15 a reasonable doubt.

16 Presumption of innocence is not at mere legal  
17 theory; it's not just a legal phrase, it's a substantial  
18 right to which every defendant is entitled unless you  
19 believe from the evidence submitted that the defendant is  
20 guilty beyond a reasonable doubt.

21 Let's talk about a reasonable doubt. I told you,  
22 at the outset, I would define that more succinct for you.

23 A reasonable doubt is a doubt which makes an  
24 honest, sincere, conscientious juror in search of a verdict  
25 to hesitate to act.

1                   Now, proof beyond a reasonable doubt must therefore  
2                   be proof of such a convincing character, that a reasonable  
3                   person wouldn't hesitate to rely or act upon it in the most  
4                   important of his or her own affairs.           .

5                   Now, proof beyond a reasonable doubt can also be  
6                   described as proof that leaves you firmly convinced of a  
7                   defendant's guilt.

8                   Now, ladies and gentlemen, there's very few things  
9                   that we know in this world with absolute certainty and in  
10                  criminal cases the law does not require proof that overcomes  
11                  every possible doubt. And if, based upon your consideration  
12                  of the evidence, you're firmly convinced that the defendant  
13                  is guilty, then you must find him guilty; on the other hand,  
14                  if you think there's a real possibility he's not guilty, you  
15                  must give him that benefit of the doubt and find him not  
16                  guilty.

17                  Ladies and gentlemen, I instruct and emphasize to  
18                  you that the fact that the defendant did not testify in this  
19                  case is not a factor to be considered by you in any way in  
20                  your deliberations and in your consideration on the question  
21                  of guilt or innocence. It must not be considered by you in  
22                  any manner whatsoever. A defendant has the constitutional  
23                  right to remain silent and the assertion of this right must  
24                  not be considered by you in your deliberations.

25                  So I'll repeat that, under your oath, and Madam

1 forelady, you make sure that the discussions go forward  
2 accordingly. Under your oath, you are to draw no conclusion  
3 whatsoever from the fact that the defendant in this case did  
4 not testify. The fact that he didn't testify should not  
5 even be discussed in the jury room.

6 The burden of proof, as I stated to you, is always  
7 on the State of South Carolina. The defendant is not  
8 required to prove evidence -- excuse me, innocence. The  
9 burden of proof always remains on the State to prove that  
10 guilt beyond a reasonable doubt.

11 Let's talk about criminal intent for a little bit.  
12 In order to establish criminal liability, criminal intent  
13 may be required. For example, the mental state required to  
14 be proven by the State for a particular crime may be  
15 purpose, intent, knowledge, recklessness or criminal  
16 negligent.

17 Criminal intent must be proven beyond a reasonable  
18 doubt. Criminal intent is always a matter that must be  
19 determined by you, the jury, from circumstantial evidence,  
20 from the circumstances surrounding a situation. There's no  
21 way you can prove intent to a mathematical certainty.  
22 There's no way that medical science can dissect a person's  
23 brain and determine what that person had in mind when that  
24 person was doing something.

25 So the law says that criminal intent may be

1       inferred from the circumstances which have been shown to  
2       have existed. That's how you make the determination of  
3       whether or not the element requiring intent was present.  
4       It's not necessary to establish intent by direct or positive  
5       evidence but intent may be establish by inference in the  
6       same way as any other fact by taking into consideration all  
7       the facts and circumstances in the case.

8               Criminal intent is a mental state, a conscious  
9       wrongdoing. It's up to you to determine what the defendant  
10      intended to do based on the circumstances shown to have  
11      existed.

12             Let's talk about what the defendant is charged with  
13      which is criminal sexual conduct with a minor second degree.  
14      This is the definition of that crime: "The State must prove  
15      beyond a reasonable doubt that the defendant engaged in a  
16      sexual battery with the victim. A sexual battery is  
17      described as sexual intercourse, anal intercourse or any  
18      intrusion, however slight, of any part of a person's body or  
19      of any object into the genital or anal openings of another  
20      person's body, except when that intrusion is accomplished  
21      for medically-recognized treatment or diagnostic purposes."

22             That's what sexual battery is. "The State must,  
23      then, also prove beyond a reasonable doubt that the victim  
24      was at least 11-years-old, but not more than 14-years-old at  
25      the time of the sexual battery." That is the definition of

1 the crime for which the defendant's been charged.

2 Let me say something about your deliberation,  
3 ladies and gentlemen. The word "deliberation" is defined  
4 as, "the careful consideration weighing up with a view to a  
5 decision." The genius of our jury system, as you look  
6 around, is that it allows 12 good people, both men and women  
7 from different backgrounds and life experiences and  
8 perspectives to consider the evidence, talk about it, and  
9 ultimately reach a verdict.

10 The task of a juror is called deliberations for a  
11 reason. You, the jurors, are to consider the evidence in  
12 this case deliberately, carefully, discuss it calmly,  
13 thoroughly and courteously. Remember, you're not partisans  
14 or advocates for one side over the other. You're judges of  
15 the facts. Your sole duty is to sort through the  
16 information that you've received in this trial and come  
17 forward with a verdict based upon what you believe the  
18 evidence has shown.

19 The supreme law of our land, our United States  
20 Constitution, affords everyone a day in court and a fair  
21 trial. This case is very important to both sides, both the  
22 State of South Carolina and both the defendant because it's  
23 their day in court. I charge you to listen to the views of  
24 your fellow jurors, carefully consider their view points,  
25 courteously discuss the evidence. Remember, you're not

1       doing -- you're doing something deliberately. You're not in  
2       a big hurry and you are tasked with a duty of utmost  
3       importance.

4               Further, your verdict cannot be based on sympathy,  
5       passion, prejudice, emotion or any other consideration which  
6       is not in evidence in this case.

7               In conclusion, ladies and gentlemen, you have been  
8       selected by both sides to be fair and impartial jurors. It  
9       is your duty, then, in your deliberations, to determine your  
10      verdict in this case giving the defendant the benefit of  
11      every reasonable doubt. And from the facts that you  
12      determine to be credible, you take and apply the law to  
13      which I've just given you and thus, arrive at a verdict  
14      which speaks to your findings.

15              Now, I told you the standards you have to apply to  
16      the charge in this case. You've heard the evidence and now  
17      you've heard the law. Whatever your verdict is as to this  
18      indictment, guilty or not guilty, Madam forelady, you will  
19      then indicate it by marking the jury's decision on the  
20      verdict form.

21              Here's the verdict form. It says, "The State of  
22      South Carolina versus Carlos Cesmas-Gomez," and it has the  
23      indictment number on it. And it says, "As to Indictment  
24      Number 22-GS-20-412, on the charge of criminal sexual  
25      conduct with a minor second degree, we, the jury,

1       unanimously find the defendant, Carlos Cesmas-Gomez," and  
2       you'll check either "not guilty" or check "guilty" and then  
3       you'll sign, okay? That's all you got to do.

4               But you can't write on the verdict form until all  
5       of you unanimously have agreed on whatever the verdict's  
6       gonna be. That means all 12 of you unanimously have to  
7       agree on the verdict, okay?

8               So ladies and gentlemen, now I'm going to send you  
9       to your jury room, everybody except for my alternate. But  
10      do not begin to discuss this case until you get the exhibits  
11      which have been entered and this verdict form. When you get  
12      that, that's your signal to finally start talking about this  
13      case with each other.

14              I have been advised by the clerk of court, we do  
15      have lunch coming for you. So, again, you can be as  
16      deliberate as you want to, okay?

17              Thank you very much again for your patience and  
18      just wait until you get that stuff to start discussing it.  
19      And, Mr. Alternate, you stay here with me, okay? Y'all can  
20      head on back to your jury room.

21              (Jurors exited.)

22              THE COURT: Any exceptions to the charge from the  
23      State?

24              Hearing none.

25              Any exceptions from the defense.

1 MS. BOULWARE: None, your Honor.

2 THE COURT: Thank you.

3 Do you have any personal items in the jury room?

4 Judy, the clerk, told me lunch will be here in 20 minutes. .

5 So you're more than welcome to stick around. You just can't

6 go back in the jury room. All right. If y'all want to

7 leave, you can leave. And I've also been advised that we

8 don't need any jury members for the rest of the week as

9 well, so you are good to go, you're good for three years.

10 If you want to stick around, have a seat out there. Thank

11 you, sir.

12 All right. Y'all can come and check everything, I

13 have a new verdict form being printed out.

14 (Whereupon, deliberations began 11:43 a.m.)

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( D E L I B E R A T I O N S )

\* \* \*

THE BAILIFF: All rise.

THE COURT: All right. Thank you. You can be seated.

All right. The jury has reached a verdict. Bring them out and we can publish the verdict.

Go ahead and bring them out.

(Jurors entered.)

THE COURT: All right. The jury is back in the courtroom. Madam forelady, it's my understanding that the jury has reached a verdict?

MADAM FORELADY: Yes.

THE COURT: All right. And was the verdict unanimous?

MADAM FORELADY: It was. Yes, sir.

THE COURT: All right. Thank you very much.

All right. Madam clerk, you may -- I've looked at the verdict form and it's in order. Madam clerk, you may publish the verdict.

THE CLERK: The State of South Carolina vs. Carlos Cesmas-Gomez, as to Indictment Number 2022-GS-20-412, on the charge of criminal sexual conduct with a minor, second degree, we, the jury, find the Defendant, Carlos Cesmas-Gomez, guilty. Signed by the foreperson, July 19th,

1 2023.

2 THE COURT: All right. Ladies and gentlemen of the  
3 jury, thank you very much for your jury service. I'm going  
4 to ask that you return to your jury room and then some  
5 moment in time, I'll give you further instructions here  
6 momentarily, okay? Thank you very much.

7 (Jurors exited.)

8 THE COURT: Ms. Boulware?

9 MS. BOULWARE: Thank you, your Honor. At this time  
10 I would like to make a motion to set aside a verdict for a  
11 new trial. As I said in my directed verdict motion, I think  
12 the stories of the individual statements given by the victim  
13 or alleged victim were inconsistent. And I do believe that  
14 the injuries alleged that were describe by the SANE nurse, I  
15 believe that they could have been attributed to anything  
16 else, like the allergies to the soap. And she actually said  
17 it could be contributed to anything else.

18 But Judge, based on that, I would ask that you set  
19 aside the verdict and I make a motion for a new trial.

20 THE COURT: All right. Thank you. I'm  
21 respectfully denying your motion for a new trial. I do  
22 find, Ms. Boulware, that you did an excellent job defending  
23 your client in bringing all those inconsistencies to light  
24 for the issue of reasonable doubt with this jury. But this  
25 jury concluded, based upon their weight and view of the

1 evidence, that that didn't suffice and they found him  
2 guilty, but you are protected in the record.

3 MS. BOULWARE: Thank you, Judge. I also renew all  
4 my objections.

5 THE COURT: And all the previous rulings on the  
6 objections are the same.

7 Anything further from the State?

8 MS. HALL: No, sir.

9 THE COURT: We'll proceed to sentencing  
10 momentarily. Do you have the sentencing sheet prepared?

11 MS. HALL: Yes. Ms. McMahon went to get it.

12 THE COURT: Fine, I'll be back. We'll be in recess  
13 for about ten minutes or so while you get prepared for  
14 sentencing, okay?

15 Thank you very much.

16 (Whereupon, a brief recess was taken.)

17 THE COURT: Come to order. Let me have the  
18 defendant, Ms. Boulware, if y'all approach the bench and  
19 Madam Solicitor, we'll proceed for sentencing.

20 Madam Solicitor, let me hear from you in regards to  
21 sentencing. Any recommendations or concerns or prior  
22 record, anything you think I need to know?

23 MS. HALL: Your Honor, I'm asking for the full 20  
24 years. He took this child's virginity. He took her -- he  
25 destroyed -- I don't want to stay "destroyed" because

1       they're a very lovely family. He took a massive toll on  
2       this family. And the victim's going to speak in a minute,  
3       if the Court will indulge her.

4               When he was arrested on this charge, the reason he  
5       was held in North Carolina, he had been arrested on an  
6       attempted murder charge. I was in touch with the district  
7       attorney up there and ultimately that charge had to be  
8       dismissed because they could no longer get in touch with the  
9       victim at some point.

10              While he was incarcerated up there, he has two  
11       convictions for assault on a government official employee.  
12       I believe these were alternations that he was involved with  
13       while he was at the jail and he also communicated threats.  
14       I don't know to whom but that he was convicted of those  
15       three things. The attempted murder had to be dismissed and  
16       that's when we got him down here.

17              Like I said, from what he did, the State is very,  
18       very adamantly seeking the 20-year mandatory sentence. I  
19       mean, the mandatory -- the most he can get, the maximum  
20       sentence is what I'm trying to say.

21              And I would actually request that he not get credit  
22       for the time he served while he was in North Carolina since  
23       he was serving it on that and not this.

24              THE COURT: All right. I'll be glad to hear from  
25       the anybody, from the victim or the victim's family or their

1 representative prior to hearing from Ms. Boulware.

2 MS. HALL: And she's got some things she wrote on  
3 her phone.

4 THE COURT: Sure. You can stay right there. You  
5 can just look at me, okay? Yes, ma'am?

6 Minor: Your Honor, he has caused a big  
7 impact on my life. I feel certifiable and rejected and  
8 disappointed to this day. I have therapy. This is such a  
9 traumatizing event and I would never wish for something like  
10 this to happen to no one. This just did not affect me but  
11 also my family as well. Thank you.

12 THE COURT: Thank you, young lady.

13 MS. HALL: Your Honor, he knew how old she was. I  
14 mean, quite frankly, I believe he's a predator and this was  
15 calculated.

16 THE COURT: Thank you for your bravery.

17 Minor: Thank you, your Honor.

18 THE COURT: Yes, ma'am.

19 Anything else from anybody on behalf of the  
20 victim's family?

21 MS. HALL: I think they're good.

22 THE COURT: Ms. Boulware?

23 MS. BOULWARE: Your Honor, Carlos, he still  
24 maintains his innocence on this. Judge, he has two  
25 daughters who are with their mothers in North Carolina right

1        now. He has not seen one of those daughters since she was a  
2        very, very small infant. Your Honor, I am asking for  
3        credit. He has 1,421 days total including the time in North  
4        Carolina and I'm asking for that because South Carolina knew  
5        where he was, they could have served this warrant whenever  
6        they wanted to. They did serve the governors warrant in  
7        2019 which is what got the hold on him for him to be  
8        transferred here. Those charges were dismissed against him  
9        there, Judge.

10                So I would ask that he would be granted credit for  
11        that time, that's the time he's had away and has not been  
12        able to watch his children grow up on something that  
13        eventually got dismissed anyway; and again, Fairfield knew  
14        where he was and had a hold on him. So I would ask that you  
15        grant him that credit.

16                As I stated, he does maintain his innocence on  
17        this. He plans on filing an appeal, of course. Your Honor,  
18        I would just ask not for 20 years. I believe he's already  
19        been incarcerated this long. He knows he's going to be  
20        incarcerated for some time longer. Judge, I would just ask  
21        you to grant him some sort of mercy on that and at the very  
22        least, grant him that North Carolina credit.

23                THE COURT: Anything else on behalf of your client?

24                MS. BOULWARE: Nothing, your Honor.

25                THE COURT: All right. And have you instructed

1 your client not to say anything since he does maintain his  
2 innocence?

3 MS. BOULWARE: Yes, sir. We did have that talk.

4 THE COURT: All right. Thank you.

5 I'm going to call you Carlos. I don't want to get  
6 your last name wrong. You're 24-years-old, man. You've got  
7 a whole life ahead of you to live. What the jury found you  
8 guilty of is one of the most horrible things I've ever heard  
9 or could imagine against another person. I have to  
10 recognize that in the sentence that I hand down.

11 I understand you maintain your innocence but I will  
12 tell you, I was moved by the victim's testimony. I find  
13 that she was a credible witness as well and I wish you luck  
14 on your appeal. I think you got a very fair trial by a jury  
15 of your peers.

16 I am going to exercise my discretion to give you  
17 credit for 1,421 days that you've been in custody; however,  
18 based upon the severity of what I've heard and the fact that  
19 his jury found you guilty, I'm going sentence you to 20  
20 years in prison. Good luck to you.

21 MS. BOULWARE: Thank you, Judge.

22 THE COURT: All right. This case is adjourned.  
23 Ladies and gentlemen, again, thank you very much for your  
24 service as jurors. Y'all are free to leave. You don't have  
25 to worry about it for the rest of the week.

1                   Thank you very much.

2                   (Whereupon, the above-captioned trial has been

3 concluded.)

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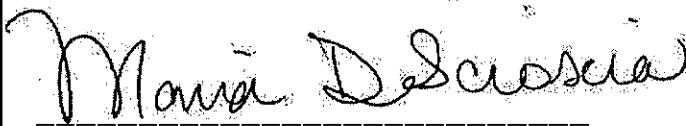
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C E R T I F I C A T E

I, the undersigned Maria DiScioscia, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Fairfield, South Carolina, on the 21st day of November, 2023.

I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script that reads "Maria DiScioscia". The signature is written in dark ink and is positioned above a horizontal line.

Maria DiScioscia  
Official Court Reporter

252

WITNESSES

CASTLES-FCSO

/White

ARREST WARRANT NUMBER/DOA

2019A2010100153 (DOA-07/15/2022)

ACTION OF GRAND JURY

TRUE BILL

Foreperson of

Jury

Date:

10/18/2022

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2022-GS-20-412

The State of South Carolina

County of Fairfield

COURT OF GENERAL SESSIONS

OCTOBER TERM 2022

THE STATE

vs.

CARLOS ALEJANDRO CESMAS-  
GOMEZ

Indictment for

Criminal Sexual Conduct with a Minor  
Second Degree

SC Code: § 16-3-655(B)(1), (C)(3)

CDR Code: 0396

Class: Felony C

2022 OCT 18 AM 03  
FAIRFIELD COUNTY  
CLERK OF COURT  
JUDY M. BOWEN

STATE OF SOUTH CAROLINA     )  
                                              )  
COUNTY OF FAIRFIELD         )

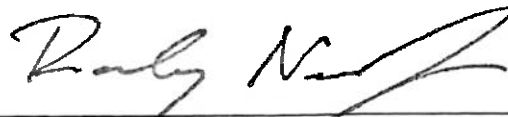
## INDICTMENT

At a Court of General Sessions, convened on October 18, 2022, the Grand Jurors of Fairfield County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE**

That Carlos Alejandro Cesmas-Gomez did in Fairfield County, on or about April 16, 2019, engage in sexual battery with EE (DOB 9/25/2006), a minor 14 years of age or less but at least 11 years of age, in violation of Section 16-3-655(B)(1), (C)(3) of the Code of Laws of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Randy E. Newman, Jr., SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF Fairfield

STATE

VS.

Carlos Alejandro Cesmas-Gomez

AKA:

Race: Sex: F Age: 24DOB: 01-09-1999 SS#: 245-89-2104Address: 536 Ramseur Julian RoadCity, State, Zip: Ramseur, NC 27316-8834DL#: 000023498360 SID#:

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022GS2000412A/W#: 2019A2010100153Date of Offense: 4/16/2019S.C. Code §: 16-03-0655(2)CDR Code #: 0396

## SENTENCE SHEET

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.in violation of § 16-03-0655(2) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45  
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.  
ATTEST:

Hall, Julie Gamburg SC Bar # \_\_\_\_\_ Defendant

Boulware, Kay  
Attorney for Defendant

100816

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 20 days/months/years/Time Served ☐ Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years/Time Served and or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.  
142 (days/months)

☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## Regional Forensic Nurse Examiner Program

Pediatric Forensic Record

Unit Record: 19870933

## Intake Information

## Patient Information:

• Name Minor Soc Security 000.00.0000  
 • Age 12 DOB                      Gender F Ethnicity Hispanic  
 • Date of Arrival 04/17/2019 Time of Arrival 12:15 Entry Date 04/17/2019  
 • Parent/Guardian: Xochitl Escobar (mother)  
 • Home address                      Fairfield Road #15 Columbia SC 29203 Richland  
 • Contact information H#                      (cell) C#                       
 • Examining facility: Palmetto Health Richland

## Law Enforcement:

• Agency: Fairfield County Sheriff's Department  
 • Reporting Officer: Inv. Castles  
 • Case Number 19-002511

## Advocacy:

|                    | NA                                  | Agency                             | Comments |
|--------------------|-------------------------------------|------------------------------------|----------|
| • Advocate:        | <input type="checkbox"/>            | Sexual Trauma Services of Midlands | Meghan   |
| • Dom. Violence:   | <input checked="" type="checkbox"/> |                                    |          |
| • Social Services: | <input checked="" type="checkbox"/> |                                    |          |
| • Interpreter:     | <input type="checkbox"/>            | H                                  | Dennis   |

## Persons present during collection of history:

☐ Advocate ☐ Family/Friend  
☐ Law Enforcement ☒ Only SANE ☐ Other

## Persons present during medical exam:

☒ Advocate ☒ Family/Friend Mother, aunt and maternal grandmother, Eva  
☐ Only SANE ☐ Other



**Regional Forensic Nurse Examiner Program**

Pediatric Forensic Record

Unit Record: 19870933

**Pertinent Medical History:**

- |                                                |                                                  |                                                    |                                          |
|------------------------------------------------|--------------------------------------------------|----------------------------------------------------|------------------------------------------|
| <input type="checkbox"/> Anemia                | <input type="checkbox"/> Diabetes                | <input type="checkbox"/> Nasal allergies/sinusitis | <input checked="" type="checkbox"/> None |
| <input type="checkbox"/> Asthma                | <input type="checkbox"/> Frequent ear infections | <input type="checkbox"/> Reflux                    |                                          |
| <input type="checkbox"/> ADHD                  | <input type="checkbox"/> Head injury             | <input type="checkbox"/> Seizures                  |                                          |
| <input type="checkbox"/> Chronic Diarrhea      | <input type="checkbox"/> Heart murmur            | <input type="checkbox"/> Urine/bladder infection   |                                          |
| <input type="checkbox"/> Other (specify) _____ |                                                  |                                                    |                                          |

**Accidents (check all that apply and describe)**

- |                                         |           |            |
|-----------------------------------------|-----------|------------|
| <input type="checkbox"/> Broken bone(s) | Age _____ | How? _____ |
| <input type="checkbox"/> Burns          | Age _____ | How? _____ |
| <input type="checkbox"/> Stiches        | Age _____ | How? _____ |

Current medications: ☒ NoneAllergies: ☒ NoneImmunizations up to date ☒ Yes ☐ Unk ☐ No**Current or past illnesses or medical conditions? (check all that apply)**

Which are pending? \_\_\_\_\_

Primary Care Provider: ? Five Points Pediatrics

Location of practice: Mother states office is across from "where you pay taxes"

Telephone: \_\_\_\_\_

Any procedures, surgery or treatment done on child's genitals or anus? ☐ Yes ☒ No

If yes, what was the procedure for \_\_\_\_\_

How old was the child? \_\_\_\_\_

Name of hospital and city: \_\_\_\_\_

Any injury to child's genitals or anus before the incident ☐ Yes ☒ No

If yes, How old was the child? \_\_\_\_\_

How did it happen \_\_\_\_\_

Any previous history of sexual abuse? ☐ Yes ☒ No

If yes, How old was the child? \_\_\_\_\_

Describe what happened? \_\_\_\_\_

**Anogenital review of systems (check all that apply)**

- |                                                                                                   |                                                 |
|---------------------------------------------------------------------------------------------------|-------------------------------------------------|
| <input type="checkbox"/> Bed Wetting: <input type="checkbox"/> Day <input type="checkbox"/> Night | <input type="checkbox"/> Anal bleeding          |
| <input type="checkbox"/> Dysuria                                                                  | <input type="checkbox"/> Anal itching           |
| <input type="checkbox"/> Genital itching                                                          | <input type="checkbox"/> Anal pain              |
| <input type="checkbox"/> Genital bleeding                                                         | <input type="checkbox"/> Vaginal discharge      |
| <input type="checkbox"/> Genital pain                                                             | <input type="checkbox"/> Constipation           |
| <input type="checkbox"/> Penile discharge                                                         | <input type="checkbox"/> Change in appetite     |
| <input type="checkbox"/> STD                                                                      | <input type="checkbox"/> Frequent stomach aches |
| <input type="checkbox"/> Soiling of underpants                                                    |                                                 |
| <input type="checkbox"/> UTI                                                                      | How frequent? _____                             |
|                                                                                                   | Last episode? _____                             |

# Regional Forensic Nurse Examiner Program

## Pediatric Forensic Record

Unit Record: 19870933

Potty training status (comments)

☐ Wears diapers☒ Wears underwearLMP: 03/21/2019 - ☐ NA

Age of Menarche: 10

Regular Cycles? ☒ Yes ☐ No

## Post assault hygiene/activity:

|                         | No                                  | Yes                                 | Describe:               |
|-------------------------|-------------------------------------|-------------------------------------|-------------------------|
| ● Urinated              | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Multiple times          |
| ● Defecated             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |                         |
| ● Genital or body wipes | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Toilet Paper/Baby wipes |
| ● Vomited               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |                         |
| ● Brushed teeth         | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |                         |
| ● Mouthwash             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |                         |
| ● Bath/shower/wash      | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |                         |
| ● Ate or drank          | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |                         |
| ● Changed clothing      | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |                         |

**Regional Forensic Nurse Examiner Program**

Pediatric Forensic Record

Unit Record: 19870933

**Assault History**

Date of Assault: 04/15/2019

~Time of Assault: 23:59:00

☐ Unsure

Location: Maternal grandmother's house - "in my room"

City: Ridgeway

State: SC

Any Witnesses see the assault? ☒ Yes ☐ No If yes, Identify: Eva, maternal grandmother**History of assault per parent/caregiver:**

History by:

Patient (No history was obtained from the mother as patient was able to narrate the assault history).  
In patient's own words:

"So I was in my room. I was watching Netflix and YouTube, and he came to the room and then I thought he was going to give me Starbucks because he gave me Starbucks before. I did give him a hug, like thank you. So that's when he left. He went to go wash his clothes. But I was still on my phone ... and then after a while he came into my room. And he like came to me without me noticing because he's not supposed to be in my room. And then he grabbed me. It was dark. Everything was turned off because I was trying to fall asleep. That's when he tried to grab me and pull my pants down, and I couldn't do anything because he was strong. I don't know what he did to me but it hurt bad. And then, like, I kept on saying 'no' and so my grandma heard me and so she came inside my room and he went running behind my door. And he was like don't say anything (she was demonstrating how he was crossing his arms implying to not tell on him) cuz my grandmother was at the door. He was like, 'Don't snitch.' And I was like (pointing finger) I pointed behind the door. And he was like, he called me a snitch. And that's when my grandma kicked him out of the house and told him to not come back. I went to my grandma's room and told her I was scared and didn't want to stay. So we left and went to my mom's house."

Assailant has been at the home for a couple of weeks "to work and get something done" per the patient.

When did you first learn of allegation?

n/a

To whom did your child make the disclosure?

n/a

What circumstances prompted your child's statement?

n/a

What did you child say happend? (Ask for exact words)

n/a

What words does your child use to refer to his/her genitals (front and back)?

n/a

What follow up questions did you ask?

n/a

What was your reaction to such statement? What was the other parent or parental figure's reaction?

n/a

Who lives in the home with the child? (Name primary caregivers)

Grandma's - Patient states her grandmother usually lives by herself.  
Patient's home - Father (Jose) and mother

Who is the alleged perpetrator?

See assailant history

**Regional Forensic Nurse Examiner Program****Pediatric Forensic Record**

Unit Record: 19870933

What is their relationship to your child?

n/a

Any noted behavioral changes?

n/a

Other comments?

n/a

**History of assault per patient (exact words):**

Why did you come to the hospital today?

Did not ask.

Did something happen to you?

See assault history.

Where were you touched?

"In back." Confirmed she means her buttocks/anus. "I started crying because it hurt, bad, bad."

Was touching over or under your clothes?

Did not ask.

How did your private part (use child's name for genitals) feel?

Did not ask.

Did any other part of his/her body touch you?

"No."

Did you touch any other part of his/her body?

"No. He just grabbed me."

Patient denied that she has been touched by the assailant before this episode. Patient states that she was "surprised" that he assaulted her. States he was always "nice and funny."

Who did it?

Did not ask

Other comments:

# Regional Forensic Nurse Examiner Program

Pediatric Forensic Record

Unit Record: 19870933

## Assault History Continued:

| Nbr | Assailant's Name              | Age | Ethnicity | Gender | Relationship  |
|-----|-------------------------------|-----|-----------|--------|---------------|
| 1   | Carlos Sesmas-Suarez          | 20  | Hispanic  | M      | Family member |
|     | Maternal grandmother's nephew |     |           |        |               |

### Methods employed this assault:

☐ No history provided by patient

#### Weapons

No

Yes

If yes, describe:

Threatened

☐

☐

Injuries inflicted

☐

☐

Types of weapons

☐

☐

Physical Blows

☒

☐

Grabbing/holding/pinching

☐

☒

"He had my head like that and my arm like that and I was trying to move. He was stronger than me. I couldn't do anything." Patient demonstrates how the assailant held her head down and held her arms back behind her. She states that he made her stand by the bed and she was bent over by him holding her head down.

Physical restraints

☒

☐

Strangulation

☒

☐

Burns (chemical/thermal)

☒

☐

Verbal threats of harm

☒

☐

Other methods

☒

☐

☒ No history provided by patient

Alcohol/drugs use by assailant: ☐ No ☐ Yes ☐ Unsure

• If yes, ☐ Alcohol ☐ Drugs Describe: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Were any injuries inflicted upon the assailant during the assault? ☐ No ☐ Yes

• If yes, describe: \_\_\_\_\_

Is assailant known:

• To have an STD: ☐ Yes ☐ No ☐ Unsure Describe: \_\_\_\_\_

• Had a vasectomy: ☐ Yes ☐ No ☐ Unsure

• Was sterile: ☐ Yes ☐ No ☐ Unsure

# Regional Forensic Nurse Examiner Program

Pediatric Forensic Record

Unit Record: 19870933

## Assault History Continued:

Contacts Described By Patient: Assailant number 1

Penetration of vagina by: ☐ No history provided by patient

|        | No                                  | Yes                      | Attempted                | Unsure                   | Describe: |
|--------|-------------------------------------|--------------------------|--------------------------|--------------------------|-----------|
| Penis  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |           |
| Finger | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |           |
| Other  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |           |

| Penetration of anus by: | No                                  | Yes                      | Attempted                | Unsure                              | Describe:                                                        |
|-------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|------------------------------------------------------------------|
| Penis                   | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Patient unsure if the assailant used his penis, fingers or both. |
| Finger                  | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Patient unsure if the assailant used his penis, fingers or both. |
| Other                   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |                                                                  |

| Oral Copulation of genitals: | No                                  | Yes                      | Attempted                | Unsure                   | Describe: |
|------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|-----------|
| Of patient                   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |           |
| Of assailant                 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |           |

| Non-genital acts: | No                                  | Yes                      | Attempted                           | Unsure                   | Describe:                                                                                                                                |
|-------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Licking           | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |                                                                                                                                          |
| Kissing           | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | "He was trying to kiss on my neck." Patient demonstrates how she kept moving her head to keep him from kissing her neck.                 |
| Suction injury    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |                                                                                                                                          |
| Biting            | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |                                                                                                                                          |
| Fondle            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | "I was trying to protect myself" and demonstrates how she was crossing her arms over her chest to prevent him from grabbing her breasts. |

| Other acts:  | No                                  | Yes                      | Attempted                | Unsure                   | Describe: |
|--------------|-------------------------------------|--------------------------|--------------------------|--------------------------|-----------|
| Other        | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |           |
| Masturbation | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |           |

Did ejaculation occur: ☐ No history provided by patient

|          | No                                  | Yes                      | Unsure                              | Describe:                                                                                                                                                                |
|----------|-------------------------------------|--------------------------|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mouth    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |                                                                                                                                                                          |
| Vagina   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |                                                                                                                                                                          |
| Anus     | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | When asked if she felt anything wet during or after the sexual assault, patient nods head and states she felt something wet in "my private part" and points to backside. |
| Body     | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |                                                                                                                                                                          |
| Clothing | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |                                                                                                                                                                          |
| Bedding  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |                                                                                                                                                                          |
| Other    | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |                                                                                                                                                                          |

| Contraceptive or lubricant used: | No                                  | Yes                      | Unsure                   | Describe type/brand if known: |
|----------------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------|
| Foam used                        | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                               |
| Jelly used                       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                               |

# Regional Forensic Nurse Examiner Program

Pediatric Forensic Record

Unit Record: 19870933

Contraceptive or  
lubricant used:

|             | No                                  | Yes                      | Unsure                   | Describe type/brand if known: |
|-------------|-------------------------------------|--------------------------|--------------------------|-------------------------------|
| Lubricant   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____                         |
| Condom used | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | _____                         |

## Strangulation Assessment\*:

☐ NA

\* Note patient history

● Object used on neck: ☐ one hand ☐ two hands ☐ forearm ☐ other \_\_\_\_\_

● How long was the patient strangled? \_\_\_\_\_

● How many times? \_\_\_\_\_

● Any loss of consciousness? ☐ Yes ☐ No

● Throat hoarseness? ☐ Yes ☐ No

● Voice at time of exam: \_\_\_\_\_

● Any incontinence during? ☐ Yes ☐ No

# Regional Forensic Nurse Examiner Program

Pediatric Forensic Record

Unit Record: 19870933

## General Physical Examination

Medical Clearance by: Dr. Tidwell

Time: 12:40:00 ☐ NA

Exam Start Time: 14:55:00 Exam Completed: 15:30:00

- Vital signs: BP: 124/73 Pulse: 101 Resp: 16 Temp: 98.2 Weight: \_\_\_\_\_
- Tanner Stage Breasts: ☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 Genitalia: ☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5
- Describe general physical appearance: Well nourished hispanic female dressed in red t-shirt, jeans and red tennis shoes. Hair pulled up in loose, high bun.

Describe general demeanor: ☐ Quiet ☐ Tearful ☐ Trembling ☐ Anxious  
☒ Controlled ☐ Angry ☐ Sobbing ☐ Tense

● Response to questions: ☐ Briefly ☐ Reluctantly ☒ Readily

● Eye contact: ☒ Good ☐ Poor

● Describe: Easily engages with FNE. Tolerated exam well.

Drug Facilitated Sexual Assault Assessment\*: ☒ NA

\* Note patient history:

- Orientation: ☐ Oriented x 3 ☐ Disoriented; describe \_\_\_\_\_
- Ability to recall events: ☐ Well ☐ No memory ☐ Lapses of memory loss
- Patient's speech: ☐ Clear ☐ Garbled
- Patient's gait: ☐ Steady ☐ Unsteady, describe \_\_\_\_\_
- History of nausea: ☐ Yes ☐ No Vomiting: ☐ Yes ☐ No How many times? \_\_\_\_\_
- Other concerning symptoms or assessment: \_\_\_\_\_

## Regional Forensic Nurse Examiner Program

## Pediatric Forensic Record

Unit Record: 19870933

### General Physical Examination

Physical Examination: ☐ Findings (see below) ☒ No Findings

[illegible]

**Regional Forensic Nurse Examiner Program**

Pediatric Forensic Record

Unit Record: 19870933

**Head, Neck and Oral Examination**☐ Findings (see below) ☒ No findings

| Locator | Body Part | Type | Description |
|---------|-----------|------|-------------|
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**Regional Forensic Nurse Examiner Program**

Pediatric Forensic Record

Unit Record: 19870933

**Hands**☐ Findings (see below) ☒ No findings

| Locator | Body Part | Type | Description |
|---------|-----------|------|-------------|
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## Regional Forensic Nurse Examiner Program

## Pediatric Forensic Record

Unit Record: 19870933

### Genital Examination - Females

**Exam position used:**

☐ Supine    ☒ Lithotomy    ☒ Lateral    ☐ Other

If other:

**Exam methods:**

☐ Water lubricated speculum    ☐ Foley catheter

☐ Toluidine blue dye      ☐ Coloscope      ☐ UV light[illegible]

**Regional Forensic Nurse Examiner Program**

Pediatric Forensic Record

Unit Record: 19870933

**Evidence Collected**Clothing Collected: describe clothing ☐ NA ☐ Bathed ☐ Changed Clothes☐ Shirt☐ Pants☐ Underwear☐ Bra☐ Jacket☐ Belt☐ Shoes☐ Debris Sheet☐ Other

Trace Evidence Collected: No Yes Not Indicated Describe:

Combed pubic hairs

☐☒☐

Miscellaneous materials

☐☒☐

Light day menstrual pad collected. Placed in a specimen container without lid and placed in Underwear Bag. Relabeled as (light day) menstrual pad.

Other

☒☐☐

DNA Evidence Collected: No Yes Not Indicated Describe:

Fingernail scraping/cuttings

☒☐☐

Oral swab and smear

☒☐☐

Bite mark/suck/kissing

☐☒☐

Swabs collected from left lateral neck for saliva.

Suspected Body Fluid

☒☐☐

Vaginal swab and smear

☐☒☐

Rectal swab and smear

☐☒☐

Buccal swab

☐☒☐

Other

☒☐☐

Other

☒☐☐

Other

☒☐☐

Other

☒☐☐

Toxicology Evidence Collected:

☒

NA

No Yes Not Indicated Describe:

Blood/grey top

☐☐☐

Urine

☐☐☐

Vomit

☐☐☐

Other

☐☐☐

Photography: No Yes Not Indicated Describe:

Digital pictures

☐☒☐

# of pictures

39

# Regional Forensic Nurse Examiner Program

Pediatric Forensic Record

Unit Record: 19870933

## Post Examination

| Lab Tests Performed*:    | Result   | Comments | *Test results may not be immediately available |
|--------------------------|----------|----------|------------------------------------------------|
| Chlamydia-APTIMA-Urine   | Negative |          |                                                |
| Gonorrhea-APTIMA-Urine   | Negative |          |                                                |
| Trichomonas-APTIMA-Urine | Negative |          |                                                |
| HIV                      | Negative |          |                                                |
| RPR                      | Negative |          |                                                |
| Urine Pregnancy Test     | Negative |          |                                                |

## Hospital Tests\*:

Post Exam: ☐ Showered ☐ New clothing given ☒ Ate or drank prior to medications

Medications Given: ☐ Medication discharge instructions given

4 - Flagyl 500 Mg PO  
 Ella 1 tab PO  
 Rocephin 250 mg IM Other  
 4 - Zithromax 250 Mg PO

## Discharge Information:

• Time: 16:15:00

• Discharged to: Home

• Accompanied by: Parents

• Discharge Instructions given to: ☐ patient ☒ family ☐ other

Admitted to Hospital: ☐ No ☐ Yes Room Number: Admitting MD:

Consults: ☒ NA ☐ Yes

## Medical Follow Up:

PMD

Met CAC Referral sent via secure e-mail. Follow-up requested ASAP due to anal/vaginal injuries.

## Counselor Follow Up:

Sexual Trauma Services as needed

\*lab results and photo review pending (may alter assessment)

**Regional Forensic Nurse Examiner Program**

Pediatric Forensic Record

Unit Record: 19870933

Printed name and signature of FNE completing Forensic Exam

Brigitte Deguzman

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## 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****Jun 07 2024****SC Court of Appeals**

Respectfully Submitted,

  
\_\_\_\_\_  
David Alexander  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 7th day of June, 2024.

**RECEIVED**

**Jun 07 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Fairfield County

Honorable Brian M. Gibbons, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

CARLOS ALEJANDRO CESMAS-GOMEZ,

APPELLANT

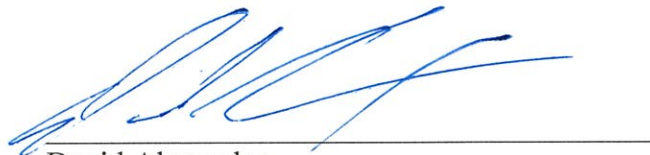
APPELLATE CASE NO. 2023-001192

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CERTIFICATE OF SERVICE

---

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of June, 2024.



David Alexander  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

**From:** [Pollard, Shelby](#)  
**To:** [Mark Farthing](#); [Caroline Collins](#)  
**Cc:** [Alexander, David](#)  
**Subject:** 2023-001192 The State v. Carlos Cesmas-Gomez - Record on Appeal  
**Date:** Friday, June 7, 2024 4:27:00 PM  
**Attachments:** [2023-001192 The State v. Carlos Alejandro Cesmas-Gomez - Record on Appeal.pdf](#)

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Good Afternoon,

Please find attached for service in the above-referenced case the Record on Appeal. This will be filed today, June 7, 2024, with the Court of Appeals via email filing.

Thank you,  
Shelby

**Shelby Pollard**

Administrative Assistant  
South Carolina Commission on Indigent Defense  
Appellate Division  
1330 Lady Street, Suite 401  
PO Box 11589  
Columbia, SC 29201-1589  
(803) 734-1330 – Telephone  
(803) 734-1397 - Fax