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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON JAVIER OTERO,

APPELLANT

APPELLATE CASE NO. 2023-001574

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT #1 (DVD INVESTIGATIVE INTERVIEW), AND STATE’S
EXHIBITS #21, 29, 36, AND 45-58 (PHOTOGRAPHS).**

1 State of South Carolina) Court of General Sessions
2 County of Lexington) Eleventh Judicial Circuit

3

4 State of South Carolina,) Transcript of Record
5)
6 vs.) 2021-GS-32-02078
7) 2021-GS-32-02079
8 Jason Javier Otero,) 2021-GS-32-02080
9) 2021-GS-32-02081
10) 2021-GS-32-02082
11) 2021-GS-32-04138
12 _____ Defendant.____)

13

14 September 18th-22nd, 2023
15 Lexington, South Carolina

16

17 B E F O R E:

18 The Honorable Debra R. McCaslin, Judge; and a Jury

19

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

21

22 Rhonda Patterson, Deputy Solicitor
23 Ashley E. Wellman, Assistant Solicitor
24 On behalf of the State of South Carolina

25

26 James R. Snell, Jr., Esquire
27 Bradley M. Kirkland, Esquire
28 On behalf of the Defendant

29

30 Stacy S. Johnson, RPR
31 Circuit Court Reporter

32

33

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25				

1 (The following proceedings were held September 18,
2 2023, beginning at 10:48 AM.)

3 BAILIFF: Court's back in session. The Honorable
4 Judge Debbie McCaslin presiding.

5 THE COURT: Please be seated.

6 Let me ask the bailiffs. Do we have everybody?

7 BAILIFF: 72.

8 THE COURT: Have you got everybody?

9 BAILIFF: Yes, ma'am.

10 THE COURT: Thank you for returning.

11 All right. We are about to begin the trial of the
12 State of South Carolina versus Jason Javier --

13 MR. KIRKLAND: Otero.

14 THE COURT: -- Otero.

15 Let me ask the Solicitor. Please call your case.

16 MS. WELLMAN: Thank you, Your Honor. May it please
17 the Court?

18 Your Honor, the State will be calling for trial
19 Indictment 2021-GS-32-02078, the State versus Jason Otero,
20 one count of criminal sexual conduct with a minor in the
21 first degree. 2021-GS-32-02079, State versus Jason Otero,
22 criminal sexual conduct with a minor in the third degree.
23 Indictment 2021-GS-32-02080, State versus Jason Otero,
24 one count of criminal sexual conduct with a minor in the
25 third degree. Indictment 2021-GS-32-02081, one count of

1 dissemination of harmful material to a minor. Indictment
2 2021-GS-32-02082, State versus Jason Otero, one count of
3 dissemination of harmful material to a minor. Indictment
4 2021-GS-32-04138, State versus Jason Otero, one count of
5 obstruction of justice.

6 May I approach?

7 THE COURT: You may.

8 Thank you.

9 Mr. Snell, you've heard the State. How does your
10 client plead?

11 MR. SNELL: Not guilty.

12 THE COURT: Ready for trial?

13 MR. SNELL: Ready.

14 THE COURT: All right.

15 Ladies and gentlemen, before we select a jury,
16 there are several questions I must ask you. If you need
17 to answer any of these questions, please stand and I will
18 call on you individually. I don't want you to shout out
19 an answer. Do not shout out an answer. I will ask you
20 the questions.

21 But before we do that, I'm going to let the
22 attorneys for the State introduce themselves and anyone
23 else assisting in the prosecution of this case.

24 MS. WELLMAN: Good morning, ladies and gentlemen.
25 My name is Ashley Wellman. I'm an assistant solicitor

1 here in Lexington County. I work for the Eleventh
2 Judicial Circuit. That covers Lexington County,
3 McCormick, Edgefield and Saluda counties. Here today
4 with me is Deputy Solicitor Rhonda Patterson. She is
5 also a solicitor with our office. We also have chief
6 Investigator James Sullivan, also with the Eleventh
7 Circuit Solicitor's Office, and Madison Dumas. She is
8 a paralegal with our office. Also seated with us is
9 major crimes detective, Sergeant Adam Creech, with the
10 Lexington County Sheriff's Department.

11 THE COURT: Thank you, Ms. Wellman.

12 All right. Now let me ask the defense attorneys to
13 please introduce themselves, their client, and I'm also
14 asking you to tell us the name of the law firms that you
15 are associated with, please.

16 MR. SNELL: Good morning. My name is Jim Snell.
17 I'm associated with the Law Office of James R. Snell,
18 Jr., LLC, with offices in Lexington and a satellite in
19 Columbia. I'm accompanied this morning by Brad Kirkland
20 and --

21 MR. KIRKLAND: I'm with -- I'm a sole practitioner
22 in Columbia. It's Bradley M. Kirkland, LLC.

23 MR. SNELL: And then we represent the defendant,
24 Mr. Jason Otero.

25 THE COURT: Thank you, Mr. Snell.

1 All right. Ladies and gentlemen, the attorneys in
2 this case just introduced themselves to you. Has any
3 member of the jury panel ever been represented by any
4 of the attorneys involved in this case or their law
5 firms? If so, please stand.

6 (Potential juror stands.)

7 THE COURT: Yes, ma'am. Your juror number.

8 POTENTIAL JUROR: 12.

9 THE COURT: Juror Number 12. Ms. Bailey-Robinson,
10 can you tell me which lawyer you were represented by?

11 POTENTIAL JUROR: Kirkland.

12 THE COURT: All right. Ms. Bayley-Robinson, if you
13 were selected as a juror in this case, could you be fair
14 and impartial to both the State and the defense?

15 POTENTIAL JUROR: That's questionable.

16 THE COURT: That's not good enough for me.

17 You are excused from the call of this case.

18 Anybody else?

19 Is any member of the jury panel related by blood
20 or marriage, know personally or have any religious,
21 political, social or business association with any of
22 the attorneys involved in this case or anyone in their
23 law firms? If so, please stand.

24 (Potential juror stands.)

25 THE COURT: Yes, ma'am. Your juror number?

1 POTENTIAL JUROR: 232.

2 THE COURT: Juror Number 232. Ms. Sander.

3 Ms. Sander, which law firm or attorneys?

4 POTENTIAL JUROR: James Snell.

5 THE COURT: Mr. Snell.

6 Let me ask you, Ms. Sander, if you were selected
7 as a juror in this case, could you be fair and impartial
8 to both the State and the defense?

9 POTENTIAL JUROR: A hundred percent. It was a very
10 minor --

11 THE COURT: I don't need to hear all that, but you
12 can be fair and impartial to both sides?

13 POTENTIAL JUROR: Absolutely.

14 THE COURT: I'll keep you. Thank you.

15 Anybody else?

16 Have any of the members of the jury panel or their
17 immediate family members ever been prosecuted by the
18 Eleventh Judicial Circuit Solicitor's Office? You are
19 in the Eleventh Circuit. The Eleventh Circuit is
20 Lexington, Edgefield, Saluda and McCormick. It includes
21 those counties.

22 Have you or anyone you know been investigated by
23 the Department of Social Services or any similar agency?
24 If so, please stand.

25 (Potential jurors stand.)

1 POTENTIAL JUROR: 22.

2 THE COURT: Juror Number 22.

3 POTENTIAL JUROR: I was a --

4 THE COURT: I don't -- I don't want you to speak.

5 I will ask the questions.

6 What I'm gonna do on this question is I think I'm
7 gonna come down and let them talk to me.

8 If you-all will come down, I'll come down and speak
9 with you-all. If you-all will come up.

10 (Proceedings held at the bench out of the hearing
11 of the jury panel.)

12 BAILIFF: Juror 57.

13 THE COURT: All right. Juror number 57, Ms. Dalton?

14 POTENTIAL JUROR: Yes, ma'am.

15 THE COURT: You or a family member have been
16 investigated by DSS?

17 POTENTIAL JUROR: DSS was involved in a misdemeanor
18 that's going on.

19 THE COURT: With you?

20 POTENTIAL JUROR: Yes.

21 THE COURT: Let me ask you, if you were selected as
22 a juror in this case, could you be fair and impartial to
23 both the State and the defense?

24 POTENTIAL JUROR: Yes, ma'am.

25 THE COURT: I'm keeping you.

1 POTENTIAL JUROR: Okay.

2 BAILIFF: Juror Number 22, Your Honor.

3 THE COURT: Ms. Bowen.

4 POTENTIAL JUROR: I was a foster parent, so that's
5 why DSS investigated us. I didn't know if that was --

6 THE COURT: Oh, okay. Well, that's why I figured
7 I better call everybody up.

8 So let me ask you, if you were selected as a juror,
9 could you be fair and impartial to both the State and the
10 defense?

11 POTENTIAL JUROR: Yes, ma'am.

12 THE COURT: I'm keeping you. Thank you.

13 Anybody else?

14 Is any member of the jury panel related by blood or
15 marriage or have a close personal, professional or social
16 relationship to Jason Javier Oterio?

17 MR. KIRKLAND: Otero.

18 THE COURT: Otero. I'm gonna mess that up.

19 MR. KIRKLAND: That's fine.

20 THE COURT: If so, please stand.

21 All right. The following is a list of possible
22 witnesses in this case, and I'm gonna tell you it's
23 rather lengthy. So I'm gonna start with -- the ones
24 that I'm gonna call are all employed with the Lexington
25 County Sheriff's Department.

1 Sandra Black. Adam Creech. Travis Felder. Flavia
2 Gibson, but she is with the Dickerson Child Advocacy
3 Center. Carleisha Gilliam with the Lexington County
4 Sheriff's Department. Akilah Glover with the South
5 Carolina Department of Mental Health. Mackenzie Hall,
6 with the Gilbert Elementary School. Bailey Haynes,
7 Lexington County Sheriff's Department. Beth Holliman,
8 with the Lexington County Sheriff's Department.
9 Michelle Jones with the South Carolina Department of
10 Mental Health. Candy Kyzer with the Lexington County
11 Sheriff's Department. Monsurat -- I don't even now how
12 to pronounce this -- Lawal-Agaro. I am going to spell
13 this last name for you-all. It's hyphenated. L-A-W-A-L
14 dash A-G-A-R-O, with the Lexington County Sheriff's
15 Department. Jeramie Mackinson with the Lexington County
16 Sheriff's Department. Penelope Martin with the Lexington
17 County Sheriff's Department. Jasmine Mills with the
18 Lexington County Sheriff's Department. Donna Money.
19 It's spelled "money", M-O-N-E-Y, but I think it's
20 pronounced Moo-ney. She is with State Law Enforcement
21 Division, also known as SLED. Alex Mountzouros,
22 M-O-U-N-T-Z-O-U-R-O-S, with the Lexington County Sheriff's
23 Department. James Murphy with the Lexington County
24 Sheriff's Department. Rachel -- is it Nu-en?

25 MS. WELLMAN: Your Honor, I actually think she

1 pronounces it "win."

2 THE COURT: "Win", but it's not even close spelled
3 like that. Rachel Nguyen, and I'm gonna spell the last
4 name for you. It's N-G-U-Y-E-N. With the South Carolina
5 Law Enforcement Division.

6 Ray Olszewski, O-L-S-Z-E-W-S-K-I.

7 MS. WELLMAN: Your Honor, it's pronounced O-chin-ski.

8 THE COURT: Olszewski. With the Metropolitan
9 Children's Advocacy Center.

10 Mellixa Otero. MINOR . Colleen Pelley.

11 P-E-L-L-E-Y. Michael Phipps with the Lexington County
12 Sheriff's Department. Kennedy Ring with the R-O-C-I-C.

13 I don't know what that is. Can you tell me what
14 that is?

15 MS. WELLMAN: Your Honor, it's the Regional
16 Operations Information Center. It's based in Nashville.

17 THE COURT: Okay. Kennedy Ring.

18 Nicklaus Roberson with the Lexington County Sheriff's
19 Department. Eric Russell with the Dickerson Child
20 Advocacy Center. Brian Sharpe with the Lexington County
21 Sheriff's Department. Victoria Shepard with the Lexington
22 County Department of Social Services. Cameron Sherban
23 with the Lexington County Sheriff's Department. Katie
24 Shirley with the Dickerson Child Advocacy Center.
25 Chandra Smith with the Dickerson Center. Everette Smith

1 with the Lexington County Sheriff's Department. Brenda
2 Snelgrove with the Lexington County Sheriff's Department.
3 April Sykes, S-Y-K-E-S, with SLED. The South Carolina Law
4 Enforcement Division. Ormica Thomas with the Lexington
5 County Sheriff's Department. Patrick Ward with the
6 Lexington County Sheriff's Department. Cody Weyandt. I'm
7 gonna spell it for you. W-E-Y-A-N-D-T.

8 MS. WELLMAN: I think it's Way-ant.

9 THE COURT: Cody, last named spelled W-E-Y-A-N-D-T.

10 Andrew Williams with the Lexington County Sheriff's
11 Department. Madison Willis with the Lexington County
12 Sheriff's Department. Nicholas Wilson with the Lexington
13 County Sheriff's Department. LaDonna Alex Young with
14 Prisma Health. Scott --

15 MS. WELLMAN: Zylstra.

16 THE COURT: -- Zylstra, Z-Y-L-S-T-R-A, with the
17 Lexington County Sheriff's Department.

18 I'll also have whoever the designated custodian --
19 evidence custodian is with the Lexington County Sheriff's
20 Department.

21 Let me ask the jury panel if any member of the jury
22 panel is related by blood or marriage, know personally
23 or have any religious, political, social or business
24 association with any of the witnesses that I just called
25 in this case? If so, please stand.

1 (Potential jurors stand.)

2 THE COURT: Your juror number, please?

3 POTENTIAL JUROR: 89.

4 THE COURT: Juror Number 89.

5 Mr. Godwin, can you tell me who on the list you know?

6 POTENTIAL JUROR: Eric Russell.

7 THE COURT: Okay. Mr. Godwin, if you were selected
8 as a juror in this case, could you be fair and impartial
9 to both the State and the defense?

10 POTENTIAL JUROR: Yes, Your Honor.

11 THE COURT: Thank you.

12 POTENTIAL JUROR: 24.

13 THE COURT: Juror Number 24. That's Ms. Bradley.
14 Ms. Bradley, can you tell me who you know on the
15 list?

16 POTENTIAL JUROR: Mackenzie Hall.

17 THE COURT: And, Ms. Bradley, if you were selected
18 as a juror, could you be fair and impartial to both the
19 State and the defense in this case?

20 POTENTIAL JUROR: Yes, ma'am.

21 THE COURT: Thank you.

22 Anybody else?

23 Is any juror related by blood or marriage to any
24 law enforcement officer, a state constable or any other
25 person having authority to enforce the laws of this state,

1 county or city? If so, please stand.

2 (Potential jurors stand.)

3 POTENTIAL JUROR: 263.

4 THE COURT: Mr. Taylor.

5 POTENTIAL JUROR: Yes, Your Honor.

6 THE COURT: Mr. Taylor, can you tell me who you're
7 related to?

8 POTENTIAL JUROR: Miles Taylor. He's a deputy
9 sheriff in Kershaw County.

10 THE COURT: And let me ask you, Mr. Taylor, if you
11 were selected as a juror in this case, could you be fair
12 and impartial to both the State and the defense?

13 POTENTIAL JUROR: Yes, Your Honor.

14 THE COURT: Thank you.

15 And 267?

16 POTENTIAL JUROR: 268.

17 THE COURT: 268. Mr. Turner, who are you related to
18 in law enforcement?

19 POTENTIAL JUROR: Lee Barrett from Lexington County.

20 THE COURT: And, Mr. Turner, let me ask you, if you
21 were selected as a juror in this case, could you be fair
22 and impartial to both the State and the defense?

23 POTENTIAL JUROR: Yes, Your Honor.

24 THE COURT: Thank you.

25 Yes, sir. Your juror number?

1 POTENTIAL JUROR: 118.

2 THE COURT: Juror Number 118. And can you --
3 Mr. Huffman, can you tell me who you're related to?

4 POTENTIAL JUROR: Christopher Yarborough, a police
5 officer in West Columbia.

6 THE COURT: And if you were selected as a juror in
7 this case, could you be fair and impartial to both the
8 State and the defense?

9 POTENTIAL JUROR: Yes, Your Honor.

10 THE COURT: Thank you.

11 Anybody else?

12 Have you, a relative or close friend, now or in the
13 past, ever been a member of a law enforcement agency,
14 whether it be Federal, state, county, city or military
15 police? If so, please stand.

16 (Potential jurors stand.)

17 THE COURT: All right. I'm gonna start over here.
18 Your juror number, please?

19 POTENTIAL JUROR: 98.

20 THE COURT: Juror Number 98.

21 Who were you related to or were you part of law
22 enforcement?

23 POTENTIAL JUROR: No, it was my brother. Officer
24 Holbrook, Columbia Police Department.

25 THE COURT: And, Ms. Hagins, if you were selected

1 as a juror, could you be fair and impartial to both the
2 State and the defense?

3 POTENTIAL JUROR: Yes, ma'am.

4 THE COURT: Thank you.

5 Yes, ma'am. Your juror number?

6 POTENTIAL JUROR: 64.

7 THE COURT: Juror Number 64.

8 POTENTIAL JUROR: My husband is retired NYPD and
9 currently works for the Bureau of Protective Services in
10 Columbia.

11 THE COURT: And if you were selected as a juror,
12 could you be fair and impartial to both the State and the
13 defense?

14 POTENTIAL JUROR: Yes, ma'am.

15 THE COURT: Thank you.

16 Yes, ma'am. In the black sweater.

17 POTENTIAL JUROR: 164.

18 THE COURT: Juror Number 164. Ms. Manley, can you
19 tell me who you're related to in law enforcement?

20 POTENTIAL JUROR: Well, my husband was law
21 enforcement and I was a secret service agent in the
22 past.

23 THE COURT: Okay. And if you were selected as a
24 juror in this case, could you be fair and impartial to
25 both the State and the defense?

1 POTENTIAL JUROR: Yes, ma'am.

2 THE COURT: Thank you.

3 Yes, ma'am. Your juror number?

4 POTENTIAL JUROR: 99.

5 THE COURT: Juror Number 99. Ms. Hahn. Ms. Hahn,
6 can you tell me who's been a member of law enforcement?

7 POTENTIAL JUROR: My deceased stepfather was a
8 corrections officer in the state of Florida.

9 THE COURT: Okay. And, Ms. Hahn, if you were
10 selected as a juror, could you be fair and impartial to
11 both the State and the defense?

12 POTENTIAL JUROR: I could.

13 THE COURT: Thank you.

14 Yes, sir. Your juror number?

15 POTENTIAL JUROR: 29.

16 THE COURT: Juror Number 29. Mr. Brewer.

17 Mr. Brewer, can you tell me who in your family or
18 was it you that had been a member of law enforcement?

19 POTENTIAL JUROR: Yes, ma'am. I was a member of the
20 United States Air Force Security Police.

21 THE COURT: Okay. And if you were selected as a
22 juror, could you be fair and impartial to both the State
23 and the defense?

24 POTENTIAL JUROR: Yes, ma'am.

25 THE COURT: Thank you.

1 Yes, ma'am.

2 POTENTIAL JUROR: 107.

3 THE COURT: Juror Number 107. Ms. Herman.

4 Ms. Herman, who in your family or was it you in law
5 enforcement?

6 POTENTIAL JUROR: My cousin is a Chicago police
7 officer.

8 THE COURT: And if you were selected as a juror in
9 this case, could you be fair and impartial to both the
10 State and the defense?

11 POTENTIAL JUROR: Yes, ma'am.

12 THE COURT: Thank you.

13 Yes, sir. Your juror number?

14 POTENTIAL JUROR: 237.

15 THE COURT: Juror Number 237. That's Mr. -- is it
16 Scroggins?

17 POTENTIAL JUROR: Scroggins.

18 THE COURT: Scroggins. Mr. Scroggins, were you in
19 law enforcement or a family member?

20 POTENTIAL JUROR: I've got two brothers that are in
21 law enforcement. One's a detective in Texas over general
22 crimes and the another one is with ICE.

23 THE COURT: All right. And let me ask you, if you
24 were selected as a juror, could you be fair and impartial
25 to both the State and the defense?

1 POTENTIAL JUROR: Yes, ma'am.

2 THE COURT: Thank you.

3 Yes, sir. In the back.

4 POTENTIAL JUROR: Juror Number 200.

5 THE COURT: Jury Number 200. Mr. Peel.

6 POTENTIAL JUROR: Yes, Your Honor. I was a member
7 of the U.S. Navy. I was a Master-at-Arms in the Navy,
8 which is Naval law enforcement, and I also worked in
9 corrections shortly after I got out of the military.

10 THE COURT: Okay. And let me ask you, Mr. Peel,
11 if you were selected as a juror, could you be fair and
12 impartial to both the State and the defense?

13 POTENTIAL JUROR: If I'm honest, in a case like this,
14 I don't think that I can.

15 THE COURT: Thank you. You're excused.

16 Your juror number?

17 POTENTIAL JUROR: 10.

18 THE COURT: Juror Number 10. Ms. Armitage?

19 POTENTIAL JUROR: Armitage.

20 THE COURT: Ms. Armitage, you or a family member in
21 law enforcement?

22 POTENTIAL JUROR: My son was security forces with
23 the Air Force for six years.

24 THE COURT: Thank you. And if you were selected
25 as a juror, could you be fair and impartial to both the

1 State and the defense?

2 POTENTIAL JUROR: Yes, ma'am.

3 THE COURT: Thank you.

4 Yes, sir. Your juror number?

5 POTENTIAL JUROR: 26.

6 THE COURT: Juror Number 26. Mr. Branham.

7 Mr. Branham, who -- were you in law enforcement or
8 a family member?

9 POTENTIAL JUROR: Army National Guard MP and calvary
10 scout.

11 THE COURT: Okay. And if you were selected as a
12 juror, could you be fair and impartial to both --

13 POTENTIAL JUROR: I don't think so in this case.

14 THE COURT: You need to let me finish first, if you
15 don't mind.

16 POTENTIAL JUROR: All right.

17 THE COURT: It's for the record. The court reporter
18 takes down every word that we say.

19 So if you were selected as a juror in this case,
20 could you be fair and impartial to both the State and
21 the defense?

22 THE WITNESS: I don't believe so, Your Honor.

23 THE COURT: Okay. That's all I need to know. You're
24 excused.

25 Yes, sir. Your juror number, please?

1 POTENTIAL JUROR: 105.

2 THE COURT: Juror Number 105. Mr. Hasselden.

3 POTENTIAL JUROR: Yes.

4 THE COURT: I got it right?

5 POTENTIAL JUROR: You did.

6 THE COURT: Good.

7 All right. Were you in law enforcement or a family
8 member?

9 POTENTIAL JUROR: A family member.

10 THE COURT: And can you tell me who it is?

11 POTENTIAL JUROR: Yes. My brother is retired law
12 enforcement and his wife also.

13 THE COURT: Okay. And if you were selected as a
14 juror in this case, could you be fair and impartial to
15 both the State and the defense?

16 POTENTIAL JUROR: Yes.

17 THE COURT: Thank you.

18 Yes, sir. Your juror number?

19 POTENTIAL JUROR: Number 3, Your Honor.

20 THE COURT: Juror number 3. Mr. Albritton.

21 POTENTIAL JUROR: Yes, ma'am.

22 THE COURT: Who in your family or was it you law
23 enforcement?

24 POTENTIAL JUROR: I worked with the Department of
25 Corrections and a couple of state agencies. I worked

1 specifically with mentally disordered sex offenders.

2 THE COURT: Okay. Let me ask you this. If you were
3 selected as a juror in this case, could you be fair and
4 impartial to both the State and the defense?

5 POTENTIAL JUROR: I'm not sure.

6 THE COURT: Okay. That's not good enough for me.
7 You may be excused, please.

8 Yes, ma'am. Your juror number?

9 POTENTIAL JUROR: 54.

10 THE COURT: Juror Number 54. Ms. Corley.

11 Ms. Corley, were you in law enforcement or a family
12 member?

13 POTENTIAL JUROR: A family member. Both of my
14 cousins have been in law enforcement; one was a
15 detective in Richland County and one is Sumter County.

16 THE COURT: All right. And, Ms. Corley, if you were
17 selected as a juror, could you be fair and impartial to
18 both the State and the defense?

19 POTENTIAL JUROR: Yes, ma'am.

20 THE COURT: Thank you.

21 Yes, ma'am. Your juror number?

22 POTENTIAL JUROR: 22.

23 THE COURT: Juror Number 22. That's Ms. Bowen.

24 Ms. Bowen, who -- you're at the Department of
25 Corrections. Anybody else in your family in law

1 enforcement?

2 POTENTIAL JUROR: No, ma'am.

3 THE COURT: And if selected as a juror, could you
4 be fair and impartial to both the State and the defense?

5 POTENTIAL JUROR: Yes, ma'am.

6 THE COURT: Thank you.

7 Yes, ma'am. Your juror number?

8 POTENTIAL JUROR: 139.

9 THE COURT: Juror Number 139. Ms. Kling.

10 Ms. Kling, is it you or a member of your family in
11 law enforcement?

12 POTENTIAL JUROR: My former brother and sister-in-law.
13 I still remain close to them.

14 THE COURT: Okay. Are they law enforcement here?

15 POTENTIAL JUROR: They're in California.

16 THE COURT: In California. Let me ask you,
17 Ms. Kling, if you were selected as juror, could you be
18 fair and impartial to both the State and the defense?

19 POTENTIAL JUROR: I will try my best. Yes, ma'am.

20 THE COURT: That is not good enough for me. You
21 may be excused.

22 Yes, sir. Your juror number?

23 POTENTIAL JUROR: 222.

24 THE COURT: Juror Number 222. Mr. Richman.

25 POTENTIAL JUROR: Yes.

1 THE COURT: Were you in law enforcement or --

2 POTENTIAL JUROR: No, ma'am. My father-in-law and
3 my son-in-law.

4 THE COURT: Here in South Carolina?

5 POTENTIAL JUROR: No, Suffolk County and New York PD.

6 THE COURT: Okay. And, Mr. Richmond, if you were
7 selected, as law enforcement, could you be fair and
8 impartial to both the State and the defense?

9 POTENTIAL JUROR: Because of my father-in-law, no,
10 I don't think so.

11 THE COURT: You know, I don't need anyone to comment.
12 I need a yes or a no. You may be excused.

13 Anybody else?

14 Does any member or spouse of any member of the jury
15 panel work as an emergency medical technician, a volunteer
16 firefighter or in any occupation that can be described
17 as a first responder? If so, please stand.

18 (Potential juror stands.)

19 THE COURT: Yes, sir. Your juror number?

20 POTENTIAL JUROR: 218.

21 THE COURT: Juror Number 218. Mr. Reagan. I got
22 you down as a first responder at Michelin.

23 POTENTIAL JUROR: Yes, ma'am.

24 THE COURT: Anybody else?

25 Let me ask you, if you were selected as a juror in

1 this case, could you be fair and impartial to both the
2 State and the defense?

3 POTENTIAL JUROR: Yes, ma'am.

4 THE COURT: Thank you.

5 Is any member of the jury panel a supporter of a
6 police booster organization, an honorary law enforcement
7 organization or any similar group? These may include the
8 South Carolina Troopers Association, the South Carolina
9 Law Enforcement Officers Association, the Lexington County
10 Sheriff's Office Association or the FOP, the Fraternal
11 Order of Police. Is there any member a supporter of these
12 groups? If so, please stand.

13 Does any member of the jury panel work for or
14 volunteered with any court appointed advocacy program,
15 a social service agency such as CPS or DSS, a guardian
16 ad litem program or a foster care program?

17 If this applies to you, please stand.

18 (Potential jurors stand.)

19 THE COURT: Yes, sir. Your juror number?

20 POTENTIAL JUROR: 71.

21 THE COURT: Juror Number 71. Mr. Dye.

22 Can you tell me what program you're associated with
23 or volunteered for?

24 POTENTIAL JUROR: I was a volunteer. I was made a
25 guardian ad litem in Aiken County. I worked there about

1 ten years.

2 THE COURT: Okay. If you were selected as a juror,
3 could you be fair and impartial to both the State and
4 the defense?

5 POTENTIAL JUROR: Yes.

6 THE COURT: Thank you.

7 Yes, ma'am. Your juror number?

8 POTENTIAL JUROR: 164.

9 THE COURT: Juror Number 164. Ms. Manley.

10 Can you tell me what department you either
11 volunteered or worked for?

12 POTENTIAL JUROR: I worked with DSS through a
13 previous job.

14 THE COURT: Being secret service?

15 POTENTIAL JUROR: Well, with the school district.

16 THE COURT: And school district. Let me ask you,
17 if you were selected as a juror, could you be fair and
18 impartial to both the State and the defense?

19 POTENTIAL JUROR: Yes, I can try.

20 THE COURT: That's not good enough for me. You may
21 be excused.

22 Yes, ma'am. Your juror number?

23 POTENTIAL JUROR: 98.

24 THE COURT: Juror Number 98. Ms. Hagins.

25 POTENTIAL JUROR: I was a juvenile arbitrator for

1 a while for Lexington County.

2 THE COURT: Okay. If you were selected as a juror
3 in this case, could you be fair and impartial to both the
4 State and the defense?

5 POTENTIAL JUROR: Yes, ma'am.

6 THE COURT: Thank you. Anybody else?

7 Does any member of the jury panel volunteer with
8 children such as Boy Scouts, Girl Scouts, youth groups,
9 church groups, schools? If so, please stand. And let
10 me know what group that you volunteer with.

11 (Potential jurors stand.)

12 THE COURT: Yes, ma'am. Your juror number?

13 POTENTIAL JUROR: Number 10.

14 THE COURT: Juror Number 10. Ms. Armitage.

15 POTENTIAL JUROR: I am a volunteer with fundraising
16 at Pilgrim Preschool where my grandchildren attend.

17 THE COURT: If you were selected as a juror, could
18 you be fair and impartial to both the State and defense?

19 POTENTIAL JUROR: Yes, ma'am.

20 THE COURT: Thank you.

21 Yes, ma'am. Your juror number?

22 POTENTIAL JUROR: 21.

23 THE COURT: Juror Number 21. That's Ms. Bost.

24 POTENTIAL JUROR: I work with a community Bible
25 study and I work with the Boy Scouts.

1 THE COURT: Okay. And if you were selected as a
2 juror in this case, could you be fair and impartial to
3 both the State and the defense?

4 POTENTIAL JUROR: Yes.

5 THE COURT: Thank you.

6 Has any member of the jury panel followed any of
7 the following Facebook or social medial pages. They are
8 sexual assault or child abuse, any crime watch page, the
9 Lexington County Sheriff's Office page or the Lexington
10 County Solicitor's Office Page? If you follow those on
11 Facebook, please stand.

12 (Potential jurors stand.)

13 THE COURT: All right. Let me start on this side.
14 Yes, ma'am. Your juror number?

15 POTENTIAL JUROR: 82.

16 THE COURT: Juror Number 82. And what I want to
17 know is what Facebook page you follow that I called,
18 Ms. Gantt.

19 POTENTIAL JUROR: The -- I follow a local crime
20 watch in my area and also Lexington County.

21 THE COURT: All right. So let me ask you, if you
22 were selected as a juror, could you be fair and impartial
23 to both the State and the defense?

24 POTENTIAL JUROR: Yes.

25 THE COURT: Thank you.

1 Yes, ma'am.

2 POTENTIAL JUROR: 178.

3 THE COURT: Juror Number 178. Ms. McNair.

4 Can you tell me what page you follow?

5 POTENTIAL JUROR: Lexington County Sheriff's

6 Department.

7 THE COURT: And if you were selected as a juror,
8 could you be fair and impartial to both the State and the
9 defense?

10 POTENTIAL JUROR: Yes, Your Honor.

11 THE COURT: Thank you.

12 Yes, sir.

13 POTENTIAL JUROR: 163.

14 THE COURT: Juror Number 163. Mr. Malo.

15 Can you tell me what page you follow?

16 POTENTIAL JUROR: Lexington County Sheriff's Office.

17 THE COURT: And if you were selected as a juror,
18 could you be fair and impartial to both the State and
19 the defense?

20 POTENTIAL JUROR: Yes, Your Honor.

21 THE COURT: Yes, sir.

22 POTENTIAL JUROR: 263.

23 THE COURT: Juror Number 263. That would be
24 Mr. Taylor. Mr. Taylor, what page do you follow?

25 POTENTIAL JUROR: Lexington County Sheriff's

1 Department.

2 THE COURT: And if you were selected as a juror,
3 could you be fair and impartial to both the State and
4 the defense?

5 POTENTIAL JUROR: Yes, Your Honor.

6 THE COURT: Thank you.

7 Yes, ma'am. Your juror number?

8 POTENTIAL JUROR: 35.

9 THE COURT: Juror Number 35. That's Ms. Bryan.
10 Ms. Bryan, what page do you follow?

11 POTENTIAL JUROR: The Lexington County Sheriff's
12 Department.

13 THE COURT: And if you were selected as a juror,
14 can you be fair and impartial to both the State and the
15 defense?

16 POTENTIAL JUROR: Yes.

17 THE COURT: Thank you.

18 Yes, ma'am. Your juror number?

19 POTENTIAL JUROR: 269.

20 THE COURT: Juror Number 269. Ms. Unversaw. What
21 page do you follow?

22 POTENTIAL JUROR: In my professional role, all
23 municipalities and emergency, including Lexington County
24 Sheriff's Department.

25 THE COURT: Okay. And if you were selected -- I

1 see Town of Irmo Communications. If you were selected
2 as a juror, could you be fair and impartial to both the
3 State and the defense?

4 POTENTIAL JUROR: Yes, ma'am.

5 THE COURT: Thank you.

6 Yes, sir. In the blue shirt. Your juror number?

7 POTENTIAL JUROR: 296.

8 THE COURT: I've got two blue shirts. I'm sorry.
9 Whoever yells out first gets to go.

10 POTENTIAL JUROR: 296.

11 THE COURT: 296. Mr. Workman. What page are you
12 following?

13 POTENTIAL JUROR: The Lexington County Sheriff's
14 Department.

15 THE COURT: Okay. And if you were selected as a
16 juror, could you be fair and impartial to both the
17 State and the defense?

18 POTENTIAL JUROR: Yes, Your Honor.

19 THE COURT: Thank you.

20 The other blue shirt.

21 POTENTIAL JUROR: 207.

22 THE COURT: Juror Number 207. Mr. Price. What
23 page are you following?

24 POTENTIAL JUROR: Lexington County Sheriff's
25 Department.

1 THE COURT: If selected as a juror, could you be
2 fair and impartial to both the State and the defense?

3 POTENTIAL JUROR: Yes, Your Honor.

4 THE COURT: Thank you.

5 Yes, sir.

6 POTENTIAL JUROR: 185.

7 THE COURT: Juror Number 185. That's Mr. Moore.

8 Glad to have you with us, Mr. Moore.

9 POTENTIAL JUROR: Thank you, Your Honor.

10 THE COURT: What page are you following?

11 POTENTIAL JUROR: Lexington Sheriff's Department.

12 THE COURT: If you were selected as a juror, could
13 you be fair and impartial to both sides?

14 POTENTIAL JUROR: Yes, ma'am.

15 THE COURT: Thank you.

16 Yes, ma'am. Your juror number?

17 POTENTIAL JUROR: 22.

18 THE COURT: Juror Number 22. I'm gonna get to know
19 your name, Ms. Bowen, before it's over with.

20 Ms. Bowen, what page are you following?

21 POTENTIAL JUROR: The Lexington County Sheriff's
22 Office.

23 THE COURT: And if you were selected as a juror in
24 this case, could you be fair and impartial to both the
25 state and the defense?

1 POTENTIAL JUROR: Yes, ma'am.

2 THE COURT: Thank you.

3 Yes, ma'am. Your juror number?

4 POTENTIAL JUROR: 147.

5 THE COURT: Juror Number 147. That's Ms. Lane.

6 Ms. Lane, what page are you following?

7 POTENTIAL JUROR: The Lexington County Sheriff's
8 Department.

9 THE COURT: And if selected as a juror, could you be
10 fair and impartial to both the State and the defense?

11 POTENTIAL JUROR: Yes, ma'am.

12 THE COURT: Thank you.

13 Yes, ma'am. Your juror number.

14 POTENTIAL JUROR: 140.

15 THE COURT: Juror Number 140. Ms. Koelsch.

16 POTENTIAL JUROR: Kel-ch.

17 THE COURT: How did I mess that up?

18 Okay. What page are you following?

19 POTENTIAL JUROR: Lexington County Sheriff's
20 Department.

21 THE COURT: And if you were selected as a juror,
22 could you be fair and impartial to both the State and the
23 defense?

24 POTENTIAL JUROR: Yes, ma'am.

25 THE COURT: Thank you.

1 Your juror number?

2 POTENTIAL JUROR: 99.

3 THE COURT: Juror Number 99. Ms. Hahn, what page
4 are you following?

5 POTENTIAL JUROR: I believe I follow the Lexington
6 County Sheriff.

7 THE COURT: And if you were selected as a juror,
8 could you be fair and impartial to both sides, being the
9 State and the defense?

10 POTENTIAL JUROR: Yes, Your Honor.

11 THE COURT: Thank you.

12 Go ahead. I need your juror number.

13 POTENTIAL JUROR: 98.

14 THE COURT: Juror Number 98. Ms. Hagins, what page
15 are you following?

16 POTENTIAL JUROR: Lexington County Sheriff's
17 Department.

18 THE COURT: And if you were selected as a juror,
19 could you be fair and impartial to both the State and
20 the defense?

21 POTENTIAL JUROR: Yes, ma'am.

22 THE COURT: Thank you.

23 Yes, ma'am.

24 POTENTIAL JUROR: 272.

25 THE COURT: Juror Number 272. Ms. Shealy.

1 Ms. Shealy, what page are you following?

2 POTENTIAL JUROR: Lexington Sheriff's Department.

3 THE COURT: And if you were selected as a juror,
4 could you be fair and impartial to both the State and
5 the defense?

6 POTENTIAL JUROR: No, ma'am.

7 THE COURT: Thank you. You're excused.

8 Is anyone on the jury panel a mandatory reporter or
9 received any special training concerning victims of sexual
10 assault? If so, please stand.

11 (Potential jurors stand.)

12 THE COURT: Juror Number?

13 POTENTIAL JUROR: 80.

14 THE COURT: Juror Number 80.

15 Is it Fro-hipe?

16 POTENTIAL JUROR: Frohriep.

17 THE COURT: Okay. I see that you're a behavior
18 analyst, so I can -- I've got it. Let me ask you this.
19 If you were selected as a juror in this case, could you
20 be fair and impartial to both the State and the defense?

21 POTENTIAL JUROR: Yes, ma'am.

22 THE COURT: Thank you.

23 Your juror number?

24 POTENTIAL JUROR: 174.

25 THE COURT: Juror Number 174. Ms. McAfee.

1 I see that you're a gymnast, a coach. At a school?

2 POTENTIAL JUROR: At a gymnastics gym.

3 THE COURT: And you've had training?

4 POTENTIAL JUROR: Yes, ma'am.

5 THE COURT: Thank you. And if you were selected
6 as a juror, could you be fair and impartial to both the
7 State and the defense?

8 POTENTIAL JUROR: Yes, Your Honor.

9 THE COURT: Thank you.

10 Yes, ma'am.

11 POTENTIAL JUROR: 269.

12 THE COURT: Juror Number 269. Here we go again.

13 I even hate to even try, but Ms. --

14 POTENTIAL JUROR: Unversaw.

15 THE COURT: Unversaw. You knew I was gonna do that.

16 POTENTIAL JUROR: Everybody does.

17 THE COURT: I apologize. You've had training?

18 POTENTIAL JUROR: Yes, ma'am. In my previous role,
19 I was a mandated reporter and had training.

20 THE COURT: Okay. And if you were selected as a
21 juror, could you be fair and impartial to both the State
22 and the defense?

23 POTENTIAL JUROR: Yes, ma'am.

24 THE COURT: Thank you.

25 Yes, ma'am.

1 POTENTIAL JUROR: 250.

2 THE COURT: Juror Number 250. That's Ms. Sorin.

3 I see you're in mental health.

4 POTENTIAL JUROR: (Nods head.)

5 THE COURT: So I'm sure you've had training in both.

6 POTENTIAL JUROR: (Nods head.)

7 THE COURT: Let me ask -- is that correct?

8 POTENTIAL JUROR: Yes, ma'am.

9 THE COURT: All right. If you were selected as a
10 juror, could you be fair and impartial to both the State
11 and the defense?

12 POTENTIAL JUROR: Yes, Your Honor.

13 THE COURT: Thank you.

14 Yes, ma'am. Your juror number?

15 POTENTIAL JUROR: 41.

16 THE COURT: Juror Number 41. Ms. Candillo.

17 Ms. Candillo, you're a teacher. You've had training
18 in both?

19 POTENTIAL JUROR: Yes, ma'am.

20 THE COURT: And if you were selected as a juror,
21 could you be fair and impartial to both the State and the
22 defense?

23 POTENTIAL JUROR: Yes, ma'am.

24 THE COURT: Thank you.

25 Does anyone on the jury panel believe that a

1 person is guilty of a crime simply because he or she
2 was arrested? If so, please stand.

3 Does any member of the jury panel have a child that
4 attends or works at Gilbert Elementary or Gilbert Middle
5 School? If so, please stand.

6 (Potential jurors stand.)

7 THE COURT: Yes, ma'am. Your juror number?

8 POTENTIAL JUROR: 82.

9 THE COURT: Juror Number 82. Ms. Gantt.

10 You have a child that either goes to the elementary
11 school or middle school?

12 POTENTIAL JUROR: I have one in both.

13 THE COURT: One in both. If you were selected as a
14 juror in this case, could you be fair and impartial to
15 both the State and the defense?

16 POTENTIAL JUROR: Yes, ma'am.

17 THE COURT: Thank you.

18 Yes, sir. Your juror number?

19 POTENTIAL JUROR: 207.

20 THE COURT: Juror 207. Mr. Price, you have a child
21 going to the elementary or the middle school?

22 POTENTIAL JUROR: Both.

23 THE COURT: Both. If you were selected as a juror
24 in this case, could you be fair and impartial to both
25 the State and the defense?

1 POTENTIAL JUROR: Yes, Your Honor.

2 THE COURT: Thank you.

3 This case involves allegations of sexual molestation
4 of a child. Does anyone feel so strongly about that
5 subject matter that they will not -- not be able to be
6 fair and impartial? If so, please stand.

7 (Potential jurors stand.)

8 THE COURT: Your juror number?

9 POTENTIAL JUROR: 252.

10 THE COURT: Juror Number 252, you may be excused.
11 Your juror number?

12 POTENTIAL JUROR: Number 11.

13 THE COURT: Number 11. Ms. Armstrong, you may be
14 excused.

15 POTENTIAL JUROR: 89.

16 THE COURT: And Juror Number 89. Mr. Godwin, you
17 may be excused.

18 Has any member of the jury panel, an immediate
19 family member or a close personal friend ever been
20 investigated for or charged with an incident involving
21 a sexual assault? If so, please stand.

22 Has any member of the jury panel, an immediate
23 family member or a close personal friend ever been a
24 victim of a sexual assault or any other serious crime?
25 If so, please stand.

1 (Potential jurors stand.)

2 THE COURT: I'm gonna ask that you come down and
3 speak with me, but before I do that I'm gonna ask one
4 more question because I'm gonna take both of these
5 together.

6 Have you ever given a statement to, been questioned
7 by or made a report to any child protective agency such
8 as DSS, the police, about an incident involving a child?

9 If you have to answer either one of those two
10 questions, I'd ask you to come down and I'll speak to
11 you in private.

12 (Proceedings held at the bench; outside the hearing
13 of the jury panel.)

14 BAILIFF: 140.

15 THE COURT: Are you doing all right?

16 POTENTIAL JUROR: Yes.

17 THE COURT: 140. The name I can't pronounce.

18 POTENTIAL JUROR: Koelsch. The "O" is silent.

19 THE COURT: All right. You're a drug abuse
20 counselor, so let me ask --

21 POTENTIAL JUROR: I'm not a counselor, but I work
22 at LRADAC.

23 THE COURT: Okay. LRADAC.

24 POTENTIAL JUROR: My sister.

25 THE COURT: Your sister was a victim?

1 POTENTIAL JUROR: She was raped. Uh-huh.

2 THE COURT: And let me ask you, if you were picked
3 as a juror in this case, could you be fair and impartial
4 to both the State and the defense?

5 POTENTIAL JUROR: Yes, ma'am.

6 THE COURT: Thank you.

7 BAILIFF: 293, Your Honor.

8 THE COURT: Juror Number 293.

9 Can you tell me who was a --

10 POTENTIAL JUROR: I was car-jacked.

11 THE COURT: Okay. Let me ask, Mr. -- 193?

12 POTENTIAL JUROR: 293. I'm sorry. I have a bad
13 vocal chord.

14 THE COURT: Mr. Williams. That's okay. If you
15 were selected as a juror, could you be fair and impartial
16 to both the State and the defense?

17 POTENTIAL JUROR: I think so.

18 THE COURT: Not good enough for me.

19 POTENTIAL JUROR: I'm sorry.

20 THE COURT: You can be excused.

21 BAILIFF: 118, Your Honor.

22 THE COURT: Mr. Huffman. Can you tell me was it
23 you, a family member, a victim of a crime or sexual
24 assault?

25 POTENTIAL JUROR: A family member.

1 THE COURT: Can you tell me who?

2 POTENTIAL JUROR: My younger brother.

3 THE COURT: Okay. And if you were selected as a
4 juror, could you be fair and impartial to both the State
5 and defense?

6 POTENTIAL JUROR: I could.

7 THE COURT: Thank you. We'll keep you.

8 BAILIFF: 269, Your Honor.

9 THE COURT: Juror Number 269.

10 POTENTIAL JUROR: Unversaw. I know. I'm sorry,
11 you-all.

12 THE COURT: I knew it. Was it you or a family
13 member?

14 POTENTIAL JUROR: It's my husband with that name.
15 Oh, that has a -- that's not what you asked me. Sorry.
16 I'm a former principal, middle school, as well as teacher,
17 so I'm a mandated reporter.

18 THE COURT: So you've seen it all?

19 POTENTIAL JUROR: I have.

20 THE COURT: So let me ask you this. If you were
21 selected as a juror, could you be fair and impartial to
22 both the State and the defense?

23 POTENTIAL JUROR: Yes.

24 THE COURT: Okay. I'll keep you.

25 BAILIFF: Juror 64, Your Honor.

1 THE COURT: Juror Number 64. How do I pronounce
2 your last name?

3 POTENTIAL JUROR: De-pas-quel.

4 THE COURT: Depasquel. All right. Was it you or
5 a family member a victim?

6 POTENTIAL JUROR: It was myself.

7 THE COURT: You. A victim of a sexual assault or a
8 violent crime?

9 POTENTIAL JUROR: Sexual assault.

10 THE COURT: And if you were selected as a juror in
11 this case, could you be fair and impartial?

12 POTENTIAL JUROR: No.

13 THE COURT: You're excused.

14 POTENTIAL JUROR: Thank you.

15 BAILIFF: Jury Number 37.

16 THE COURT: 37. Juror Number 37.

17 Ms. Bush, you or a family member a victim of a sexual
18 assault or a violent crime?

19 POTENTIAL JUROR: It was a very close friend in
20 college.

21 THE COURT: A close friend. Okay. A violent crime
22 or a sexual assault?

23 POTENTIAL JUROR: Sexual assault.

24 THE COURT: And if you were selected as a juror,
25 could you be fair and impartial to both the State and

1 the defense?

2 POTENTIAL JUROR: Yes, I could.

3 THE COURT: I'm keeping you.

4 BAILIFF: Juror 193, Your Honor.

5 THE COURT: Juror Number 193. Ms. Oken, was it you,
6 a family member or a friend?

7 POTENTIAL JUROR: Me.

8 THE COURT: A victim of a sexual assault or a violent
9 crime?

10 POTENTIAL JUROR: Sexual assault.

11 THE COURT: And if you were selected as a juror,
12 could you be fair and impartial to both the State and the
13 defense?

14 POTENTIAL JUROR: Yes.

15 THE COURT: I'll keep you.

16 BAILIFF: Juror 80, Your Honor.

17 THE COURT: Juror Number 80. Well, now you're gonna
18 pronounce your last name for me.

19 POTENTIAL JUROR: Frohriep.

20 THE COURT: Okay. Now is it you or a family member
21 or close friend a victim of a sexual assault or violent
22 crime?

23 POTENTIAL JUROR: I was -- made multiple DSS CPS
24 reports for my clients that I serve.

25 THE COURT: Okay. And let me ask you, if you were

1 selected as a juror, could you be fair and impartial to
2 both the State and the defense?

3 POTENTIAL JUROR: Yes, Your Honor.

4 THE COURT: I'm gonna keep you. Thank you.

5 BAILIFF: Juror 71, Your Honor.

6 THE COURT: Mr. Dye, was it you, a close friend or a
7 relative that was a victim of a violent crime or a sexual
8 assault?

9 POTENTIAL JUROR: No, it was the other one.

10 MR. KIRKLAND: Mandatory reporting.

11 POTENTIAL JUROR: I was a guardian ad litem.

12 THE COURT: You've done plenty of reports.

13 POTENTIAL JUROR: Yes, ma'am.

14 THE COURT: So let me ask you, if you were selected
15 as a juror in this case, could you be fair and impartial
16 to both the State and the defense?

17 POTENTIAL JUROR: I could.

18 THE COURT: I'm keeping you.

19 BAILIFF: Juror Number 35, Your Honor.

20 THE COURT: Ms. Bryan.

21 POTENTIAL JUROR: Yes. So in 2012, I had a home
22 invasion and my daughter was home, so we had to file a
23 police report.

24 THE COURT: So you were a victim of a violent crime?

25 POTENTIAL JUROR: I wasn't there, but she was there.

1 THE COURT: Okay. Well, let me ask you, if you were
2 selected as a juror in this case, could you be fair and
3 impartial to both the State and the defense?

4 POTENTIAL JUROR: I can.

5 THE COURT: Thank you.

6 BAILIFF: Juror 98, Your Honor.

7 THE COURT: Hello, Ms. Hagins. Now let me ask was
8 it you, a --

9 POTENTIAL JUROR: Yes.

10 THE COURT: You?

11 POTENTIAL JUROR: Yes, ma'am.

12 THE COURT: A violent crime or a sexual assault?

13 POTENTIAL JUROR: Sexual assault.

14 THE COURT: If you were selected as a juror, could
15 you be fair and impartial --

16 POTENTIAL JUROR: I could. I've dealt with it.

17 THE COURT: -- to both the State and the defense?

18 POTENTIAL JUROR: Yes, ma'am. I've dealt with it.

19 It was years ago. I'm okay now.

20 THE COURT: Well, I'm glad to hear that.

21 POTENTIAL JUROR: I wasn't for a while, but I am
22 now. I'm old enough I know.

23 THE COURT: Somehow that just happens, doesn't it?

24 POTENTIAL JUROR: It does, girl.

25 THE COURT: Thank you.

1 POTENTIAL JUROR: Thank you.

2 BAILIFF: Juror 107, Your Honor.

3 THE COURT: Ms. Herman, was it you, a friend, a
4 family member?

5 POTENTIAL JUROR: It was my best friend. She was a
6 victim of domestic violence.

7 THE COURT: Okay. And if you were selected as a
8 juror, could you be fair and impartial to both the State
9 and the defense?

10 POTENTIAL JUROR: Yes, ma'am.

11 THE COURT: I'm keeping you.

12 (The following proceedings were held in open court.)

13 THE COURT: Anybody else?

14 Okay. We're almost there.

15 Does any member of the jury panel hold a witness
16 to be more believable simply because he or she is law
17 enforcement? If so, please stand.

18 Has any member of the jury panel heard anything
19 about this case in the news media or the community that
20 would prohibit you from being fair and impartial? If so,
21 please stand.

22 Is there any member of the jury panel who feels
23 that they will not be able to listen carefully to the
24 testimony from witnesses, review and consider various
25 exhibits that get admitted into evidence and follow my

1 instructions on the law in this case? If so, please
2 stand.

3 Has any member of the jury panel formed or expressed
4 an opinion about any issue or matter involved in this
5 case? If so, please stand.

6 Does any member of the jury panel know of any reason
7 whatsoever why he or she should not serve as a juror in
8 this case with particular emphasis being placed on your
9 ability to be fair and impartial to both the State and
10 the defense? If so, please stand.

11 Does the State have any additional questions?

12 MS. WELLMAN: No, Your Honor.

13 THE COURT: Does the defense have any additional
14 questions?

15 MR. SNELL: No, Your Honor.

16 THE COURT: All right. Let's -- we're gonna pick
17 a jury.

18 All right. Let me just address the panel real
19 quick. The way we're going to do this is if your juror
20 number is called, I want you to come out in the aisle,
21 come through those double doors and stand right where the
22 bailiff is in the red jacket. I want you facing the exit
23 sign. When you do, bring everything with you because if
24 you are chosen, you're going straight to the jury box and
25 you get to stay with me. If not, then you need to return

1 back to your seat, but please bring everything that you
2 have with you when your number is called.

3 It's gonna take just a few minutes. They've got
4 to -- they do this by computer and they randomly select
5 numbers and that's how we know how to call people up
6 here.

7 I will tell you this, when we get started I don't
8 want anybody to get upset if you don't get picked.
9 You-all laugh, but it's happened. I mean, people get
10 really upset.

11 We're only picking one jury this week. I will tell
12 you that if you are not chosen, I will excuse you. You
13 will not have to come back. The good news is you get
14 paid for today. The bad news, the check's in the mail.
15 They will not send you any money until this term of court
16 is over with, so that will be -- on Friday is the end of
17 the term. On top of that, don't get real excited. It's
18 not a whole lot of money. Maybe you're gonna be lucky if
19 you can get Chick-fil-A.

20 (Pause in proceedings.)

21 THE COURT: Is the State ready?

22 MS. WELLMAN: Yes, Your Honor.

23 THE COURT: Defense ready?

24 MR. SNELL: Yes, Your Honor.

25 THE COURT: All right. Let's go.

1 THE CLERK: Juror Number 175.

2 (Whereupon, Graham S. McDonald, a white male, was
3 called forward.)

4 THE CLERK: What say you for the State?

5 MS. WELLMAN: Please present the juror.

6 THE CLERK: For the defense?

7 MR. KIRKLAND: Please seat the juror.

8 THE CLERK: Please have a seat in the jury box.
9 Juror Number 22.

10 (Whereupon, Rebecca H. Bowen, a white female, was
11 called forward.)

12 THE COURT: And it's ten and ten?

13 MS. WELLMAN: Your Honor, we have five and they
14 have ten.

15 THE COURT: Five and ten. Just so everybody knows.

16 MR. KIRKLAND: What was the juror number?

17 I'm sorry, Your Honor.

18 THE CLERK: 22.

19 MR. KIRKLAND: Thank you.

20 THE CLERK: What say you for the State?

21 MS. WELLMAN: Please present the jury.

22 THE CLERK: For the defense?

23 MR. KIRKLAND: Please seat the juror.

24 THE CLERK: Please have a seat in the jury box.
25 Juror Number 29.

1 (Whereupon, Leval B. Brewer, a black male, was
2 called forward.)

3 MR. KIRKLAND: I'm sorry, what was that number
4 again?

5 THE COURT: 29. Juror Number 29.

6 MR. KIRKLAND: Thank you.

7 THE CLERK: What say you for the State?

8 MS. WELLMAN: Please present the juror.

9 THE CLERK: For the defense?

10 MR. KIRKLAND: Please seat the juror.

11 THE CLERK: Please have a seat in the jury box.
12 Juror Number 45.

13 (Whereupon, Olivia K. Caughman, a white female,
14 was called forward.)

15 THE CLERK: What say you for the State?

16 MS. WELLMAN: Please present the juror.

17 THE CLERK: For the defense?

18 MR. KIRKLAND: Please excuse this juror.

19 THE CLERK: Please return back to your seat.
20 Juror Number 37.

21 (Whereupon, Kimberley A. Bush, a white female,
22 was called forward.)

23 THE CLERK: What say you for the State?

24 MS. WELLMAN: Please present the juror.

25 THE CLERK: For the defense?

1 MR. KIRKLAND: Please excuse the juror.

2 THE CLERK: Please return back to your seat.

3 Juror Number 147.

4 (Whereupon, Sarah J. Lane, a white female, was
5 called forward.)

6 THE CLERK: What say you for the State?

7 MS. WELLMAN: Please present the juror.

8 THE CLERK: For the defense?

9 MR. KIRKLAND: Please seat the juror.

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

11 Juror Number 140.

12 (Whereupon, Kimberly A. Koelsch, a white female,
13 was called forward.)

14 THE CLERK: What say you for the State?

15 MS. WELLMAN: Please present the juror.

16 THE CLERK: For the defense?

17 MR. KIRKLAND: Please excuse this juror.

18 THE CLERK: Please return back to your seat.

19 Juror Number 193.

20 (Whereupon, Alexandra N. Oken, a white female,
21 was called forward.)

22 THE CLERK: What say you for the State?

23 MS. WELLMAN: Please present the juror.

24 THE CLERK: For the defense?

25 MR. KIRKLAND: Please excuse the juror.

1 THE CLERK: Please return back to your seat.

2 Juror Number 238.

3 (Whereupon, James E. Scurry, a white male, was
4 called forward.

5 THE CLERK: What say you for the State?

6 MS. WELLMAN: Please present the juror.

7 THE CLERK: For the defense?

8 MR. SNELL: What's the juror's number?

9 THE COURT: 238.

10 MR. KIRKLAND: Please seat the juror.

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

12 Juror Number 57.

13 (Whereupon, Jennifer A. Dalton, a white female,
14 was called forward.)

15 THE CLERK: What say you for the State?

16 MS. WELLMAN: Please excuse this juror.

17 THE CLERK: Please return back to your seat.

18 Juror Number 154.

19 (Whereupon, Michael G. Lenhardt, a white male, was
20 called forward.)

21 THE CLERK: What say you for the State?

22 MS. WELLMAN: I beg the Court's indulgence for one
23 second.

24 Please present this juror.

25 THE CLERK: For the defense?

1 MR. KIRKLAND: Please seat the juror.

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

3 Juror Number 6.

4 (Whereupon, Aleksandra N. Anderson, a white female,
5 was called forward.)

6 THE CLERK: What say you for the State?

7 MS. WELLMAN: Please present the juror.

8 THE CLERK: For the defense?

9 MR. KIRKLAND: Please seat the juror.

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

11 Juror Number 228.

12 (Whereupon, Joey L. Ross, a black male, was called
13 forward.)

14 THE CLERK: What say you for the State?

15 MS. WELLMAN: Please present the juror.

16 THE CLERK: For the defense?

17 MR. KIRKLAND: Please seat the juror.

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

19 Juror Number 53.

20 (Whereupon, Sammy D. Cook, a white male, was called
21 forward.)

22 THE CLERK: What say you for the State?

23 MS. WELLMAN: Please present the juror.

24 THE CLERK: For the defense?

25 MR. KIRKLAND: Please excuse this juror.

1 THE CLERK: Please return back to your seat.

2 THE CLERK: Juror Number 163.

3 (Whereupon, Michael J. Malo, Jr., a Hispanic male,
4 was called forward.)

5 THE CLERK: What say you for the State?

6 MS. WELLMAN: Please present this juror.

7 THE CLERK: For the defense?

8 MR. KIRKLAND: Please seat the juror.

9 THE CLERK: Please have a seat in the jury box.
10 Jury number 185.

11 (Whereupon, William J. Moore, Jr., a white male,
12 was called forward.)

13 THE CLERK: What say you for the State?

14 MS. WELLMAN: Please excuse this juror.

15 THE CLERK: Please return to your seat.

16 Juror Number 178.

17 (Whereupon, Deborah J. McNair, a white female,
18 was called forward.)

19 THE CLERK: What say you for the State?

20 MS. WELLMAN: Please present the juror.

21 THE CLERK: For the defense?

22 MR. KIRKLAND: Please excuse this juror.

23 THE CLERK: Please return to your seat.

24 Juror Number 263.

25 (Whereupon, Justin W. Taylor, a white male, was

1 called forward.)

2 THE CLERK: What say you for the State?

3 MS. WELLMAN: Please present this juror.

4 THE CLERK: For the defense?

5 MR. KIRKLAND: Please excuse the juror.

6 THE CLERK: Please return to your seat.

7 Number 167.

8 (Whereupon, Adam L. Martin, a white male, was called
9 forward.)

10 THE CLERK: What say you for the State?

11 MS. WELLMAN: Please present this juror.

12 THE CLERK: For the defense?

13 MR. KIRKLAND: Please seat this juror.

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

15 Jury Number 10.

16 (Whereupon, Paula L. Armitage, a white female, was
17 called forward.)

18 THE CLERK: What say you for the State?

19 MS. WELLMAN: Please present this juror.

20 THE CLERK: For the defense?

21 MR. KIRKLAND: Please excuse this juror.

22 THE CLERK: Please return to your seat.

23 Juror Number 118.

24 (Whereupon, Michael C. Huffman, a white male, was
25 called forward.)

1 THE CLERK: What say you for the State?

2 MS. WELLMAN: Please present this juror.

3 THE CLERK: For the defense?

4 MR. KIRKLAND: Please excuse this juror.

5 THE CLERK: Please return to your seat.

6 Juror Number 249.

7 (Whereupon, Kevin R. Sommerfeldt, a white male,
8 was called forward.)

9 THE CLERK: What say you for the State?

10 MS. WELLMAN: Please excuse this juror.

11 THE CLERK: Please return back to your seat.

12 Juror Number 41.

13 (Whereupon, Rebekka H. Candillo, a white female,
14 was called forward.)

15 THE CLERK: What say you for the State?

16 MS. WELLMAN: Please present this juror.

17 THE CLERK: For the defense?

18 MR. KIRKLAND: Please seat this juror.

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

20 Juror Number 107.

21 (Whereupon, Megan A. Herman, a white female, was
22 called forward.)

23 THE CLERK: What say you for the State?

24 MS. WELLMAN: Please present this juror.

25 THE CLERK: For the defense?

1 MR. KIRKLAND: Please seat this juror.

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

3 THE COURT: All right. I want two alternates.

4 THE CLERK: Juror Number 258.

5 (Whereupon, Robin L. Stodden, a white female, was
6 called forward.)

7 MR. KIRKLAND: What was that juror number?

8 THE COURT: 258.

9 THE CLERK: What say you for the State?

10 MS. WELLMAN: Please present this juror.

11 THE CLERK: For the defense?

12 MR. KIRKLAND: Please seat this juror.

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

14 THE COURT: Alternate one.

15 THE CLERK: Juror Number 237.

16 (Whereupon, Wayvard T. Scroggins, a white male, was
17 called forward.)

18 MR. KIRKLAND: How many strikes do we get for the
19 alternates?

20 THE COURT: One and two.

21 THE CLERK: What say you for the State?

22 MS. WELLMAN: Please present this jury.

23 THE CLERK: For the defense?

24 MR. KIRKLAND: Please excuse the juror. That way
25 he makes his flight.

1 THE COURT: Thank you, Mr. Kirkland.

2 THE CLERK: Juror Number 226.

3 (Whereupon, Buck A. Ross, a white male, was called
4 forward.)

5 THE CLERK: What say you for the State?

6 MS. WELLMAN: Please present this juror.

7 THE CLERK: For the defense?

8 MR. KIRKLAND: Please seat the juror.

9 THE CLERK: Please have a seat in the jury box.
10 That's your two alternates, Your Honor.

11 THE COURT: Thank you.

12 All right. Let me see the lawyers just for a
13 second.

14 (Proceedings held at the bench; not reported.)

15 THE COURT: All right. Ladies and gentlemen in
16 the gallery, again, let me thank you for coming today.
17 I'm gonna excuse you. This is the only case we're trying
18 this week. Usually we have two. The other week we had
19 three cases we tried. We had our jurors here until about
20 3:30, 4:00.

21 So you-all are free to leave. Look for the check
22 in the mail and thank you again.

23 (Whereupon, the jury panel was excused at 12:10 PM.)

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, you are now the jury in this case. You've been

1 given juror badges. Wear them proudly. We need to know
2 who you are. These lawyers -- I've known all of these
3 lawyers for an awfully long time. They're really nice
4 people, but they are under my orders that they will not
5 speak to you. If they see you, they need to run, and
6 they will. So please don't think that they're being
7 rude because they're not. They're just under the Court's
8 orders not to speak with anyone.

9 I am also letting you-all know that you're not
10 allowed to speak to anyone about this case. Period.
11 Don't go home -- it is so attempting to get on the phone
12 and say hey, you're not gonna believe this, but I just
13 got picked as a juror. Don't do it.

14 You are not allowed to watch any TV about this case.
15 You're not allowed to read anything in the newspapers
16 about this case. You're not even allowed to talk about
17 it amongst yourselves in the jury room at all until I
18 tell you to do so. I do not allow note-taking, so you
19 need to pay attention.

20 I'm trying to think of what else I need to tell you.

21 Do not get on a computer and do any research about
22 this case trying to look it up, trying to look up any of
23 the attorneys, any of the court officers. Do not do it.
24 Believe it or not, I always find out about it. It is
25 just the weirdest thing, but I really do find out about

1 it. It's crazy. So please do not do that at all.

2 You're not allowed to talk to -- just to let you
3 know, even if you see a witness in the hall or if
4 somebody tries to talk to you, you're not allowed to
5 talk to them and they're not allowed to talk to you.
6 If that happens, the Court would certainly want to know
7 about it immediately.

8 Ms. Candillo, do the honor of being my forelady?

9 FOREPERSON: Okay. Yes, ma'am.

10 THE COURT: Thank you.

11 All right. I'm gonna tell you we are not starting
12 this case today. There's some matters that I need to
13 take up with the lawyers that's probably gonna take me
14 the rest of the afternoon. We will start promptly in
15 the morning.

16 Now let me tell you. If one of you is late, we're
17 all late. We can't start without you.

18 You-all want to start at 9:30?

19 MR. KIRKLAND: It's up to you, Judge.

20 MS. PATTERSON: Yes, ma'am.

21 THE COURT: Let's start at 9:30. How about
22 everybody be in the jury room at 9:15.

23 You're assigned to the jury this week?

24 BAILIFF: I am, Your Honor.

25 THE COURT: This man right here is our bailiff and

1 he's in charge of you. He's gonna take you and show you
2 where your jury room is, where you need to report in the
3 morning. And, remember, there is no talking about this
4 case. If you've got to call your employers and tell them
5 that you've been selected as a juror in a case, that's
6 fine. You're not to talk about what kind of case this
7 is or anything else, okay?

8 With that, you're excused and I'll see you-all in
9 the morning.

10 BAILIFF: All right, folks. Come with me.

11 (Whereupon, the jury was excused for the day at
12 12:15 PM.)

13 THE COURT: All right. Now you-all want to pick up
14 motions at 2:00?

15 MS. WELLMAN: That's fine, Your Honor.

16 We do need to do that Blair hearing, which we'd like
17 to maybe do first.

18 Dr. Jones is here and it's my understanding that
19 she needs a brief opportunity with Mr. Otero prior to
20 the hearing just to do a quick sort or re-eval.

21 THE COURT: So if we break now, if she's here,
22 she'll have the opportunity, and will we be able to start
23 at 2:00?

24 MS. WELLMAN: I don't see why not, Your Honor.

25 She's -- I think the rules sort of say an hour should

1 be plenty of time, so I think that's fine.

2 THE COURT: Okay. Anything else?

3 MR. KIRKLAND: Nothing else, Your Honor.

4 I think everybody has exchanged motions. I think
5 we all know what we're doing this afternoon.

6 MS. WELLMAN: Uh-huh.

7 MR. KIRKLAND: Okay. Well, then we're ready. We'll
8 be ready, too.

9 THE COURT: Okay. I will --

10 MR. KIRKLAND: Oh, Jim had a question for you.

11 MR. SNELL: Your Honor, I just want to make sure I
12 understood that the indictment for criminal sexual conduct
13 with a minor first degree, I looked back over it and
14 thought about this, it looks like it's an and/or, so it
15 lists two separate theories, and I just want to --

16 THE COURT: Let me get with you.

17 On the face of it, it says criminal sexual conduct
18 with a minor first degree. It's been true billed.

19 Where do you see an and/or?

20 MR. SNELL: It was in the body of the indictment.

21 MS. WELLMAN: Your Honor, I believe it says did
22 engage in oral sex and then in parentheses fellatio
23 and/or.

24 THE COURT: And/or fellatio.

25 MS. WELLMAN: The jury has to find that a sexual

1 battery occurred. I think that's -- and the testimony
2 will cover that.

3 MR. SNELL: Well, I think -- I thought -- if I
4 remember correctly, I think it said fellatio and/or
5 cunnilingus --

6 THE COURT: Yes.

7 MR. SNELL: -- so it's two different theories.
8 It's two completely separate things and so I just wanted
9 to ask is -- we may have a motion about this when we come
10 back at two. My question was are they trying to proceed
11 under those two separate theories as to the battery? Like
12 it might be one or the other or they're a specific --

13 THE COURT: The charge carries both no matter what.

14 MS. WELLMAN: It does.

15 MR. SNELL: Because they're just so completely
16 different things.

17 THE COURT: Are you on planning on both?

18 MS. WELLMAN: Yes, Your Honor.

19 MR. SNELL: Okay. So that's my question. Are they
20 proceeding under both separate theories?

21 THE COURT: Under both.

22 MR. SNELL: Okay.

23 THE COURT: But it only takes one to get convicted
24 under the statute.

25 MS. WELLMAN: Correct, Your Honor.

1 THE COURT: Because I know -- I've charged this
2 enough. I know that it's both listed. They can find
3 either one and find him guilty of a CSC first.

4 MR. SNELL: I just wanted to make sure I understood
5 that because I didn't want to have a motion and surprise
6 them at two.

7 Thank you so much.

8 THE COURT: Absolutely, Mr. Snell. Thank you.

9 All right. We're in recess. I'll see you at 2:00.

10 (Whereupon, a luncheon recess was taken at 12:19 PM.)

11 (Back on the record at 2:07 PM.)

12 (Court's Exhibit Numbers 1 and 2 were marked for
13 identification.)

14 (State's Exhibit Numbers 1 through 11 were marked
15 for identification.)

16 BAILIFF: All rise.

17 THE COURT: All right. We've got a problem with a
18 juror they told me about.

19 MS. WELLMAN: Yes, Your Honor.

20 THE COURT: Let me get my little list out.

21 MS. WELLMAN: Your Honor, it's Juror 22, Rebecca
22 Bowen.

23 THE COURT: All right. Let me get all my little
24 lists and my notes right quick.

25 Okay.

1 MS. WELLMAN: So I was going down to the clerk's
2 office and the elevator stopped on the third floor.
3 Ms. Bowen, I saw her walk into the elevator. I quickly
4 exited the elevator and took a separate one down. I
5 didn't see her downstairs. I didn't know what happened.
6 I came back upstairs. I was -- I got off on the third
7 floor and I saw Ms. Bowen sitting in the lobby of the
8 Solicitor's office talking with our front desk person.

9 I did not make any contact with her. As soon as I
10 saw her there, I turned and went upstairs and tried to
11 figure out what was going on, and I learned that she
12 actually was a victim in an office -- excuse me -- in a
13 case that is currently pending with our office. It's a
14 very new case. I want to say it's like twelve days old
15 or something.

16 THE COURT: Did she disclose that?

17 MS. WELLMAN: She did not, Your Honor. It's domestic
18 violence in the second degree. I know she stood up and
19 mentioned a lot of things to us, but I don't believe she
20 ever mentioned that she was, you know, the victim of a
21 charge that --

22 THE COURT: I remember somebody saying they were --

23 MR. KIRKLAND: What number was she?

24 MS. WELLMAN: 22.

25 THE COURT: 22.

1 MR. KIRKLAND: Let me look at my notes, if you don't
2 mind, Your Honor.

3 MS. WELLMAN: She also spoke -- actually made
4 contact with and spoke with one of the victim advocates
5 in our office and I think -- as I understand it, another
6 investigator with our office sort of escorted her out
7 and she left, but I don't believe there was any further
8 contact.

9 THE COURT: Okay. Well, I've got on our notes up
10 here -- because we write down everybody who says they're
11 a victim of some crime. She is not on my notes.

12 MR. KIRKLAND: She's not on my notes, Judge.

13 MS. PATTERSON: She's not on ours.

14 MS. WELLMAN: Yeah, I've checked ours as well. We
15 don't have anything indicating that she indicated she was
16 any type of victim.

17 I -- I think she needs to be excused.

18 MR. KIRKLAND: Before we do that, I'd want to look
19 at -- what was the final version that we had of asking
20 about?

21 THE COURT: A victim of a crime?

22 MR. KIRKLAND: Yeah, a victim of a crime.

23 MS. WELLMAN: And I do believe the Court asked about
24 like any relationship with the Solicitor's office. I
25 don't know if it was word for word.

1 THE COURT: I definitely asked about the
2 relationship, number one, with the Solicitor's office.
3 Has anybody --

4 MR. KIRKLAND: You did.

5 THE COURT: That was: Any member of the jury panel
6 ever been represented by any of the attorneys involved
7 in this case or -- I said law firms. Let me see what
8 else we've got here. Has any member of the jury panel,
9 a family member, close personal friend, ever been a victim
10 of sexual assault or any other serious crime?

11 I know somebody came up. I can't remember. Somebody
12 had a DV --

13 MR. KIRKLAND: This wasn't her.

14 THE COURT: -- but it was somebody else that came up.

15 MS. WELLMAN: Correct, Your Honor.

16 MR. KIRKLAND: I wrote down everything. That wasn't
17 her.

18 THE COURT: All right. Let me hear from the defense
19 on it. I mean, she's a victim.

20 MR. SNELL: If I may just briefly, Your Honor?

21 THE COURT: Sure.

22 MR. SNELL: I was gonna -- our thought is based on
23 this revelation, and I can understand how, you know,
24 maybe the questions didn't trigger somebody's mind I
25 guess on this occasion, but I would ask that juror -- I

1 would go along with the prosecutor and ask to have her
2 removed. I don't want her to feel like she should be
3 indebted or owes them something to get her own case
4 squared away or whatever that situation is. So I --

5 THE COURT: Well, the other thing that worries me
6 is that she was down there with a juror badge on when I
7 know that she was specifically told not to go speak with
8 anyone and yet she's in the Solicitor's office with her
9 juror badge on.

10 MR. SNELL: Judge, you can't -- well...

11 THE COURT: That's somewhat worrisome.

12 MR. KIRKLAND: Yeah, we're gonna consent.

13 THE COURT: You know, I picked two alternates
14 because -- just because of the type of this case. We'll
15 just replace her in the morning with Alternate Number 1.

16 MS. WELLMAN: Do we want to separate her from the
17 other jurors first thing in the morning?

18 THE COURT: Can you separate her?

19 BAILIFF: I will take her separately when she comes.

20 THE COURT: Thank you.

21 BAILIFF: She will not have no more contact with the
22 jury.

23 THE COURT: Thank you.

24 Okay. That's taken care of.

25 MS. WELLMAN: Thank you, Your Honor.

1 THE COURT: Okay. Perfect.

2 MS. WELLMAN: Another preliminary matter, Your
3 Honor, one thing that we're gonna do this afternoon is
4 have a hearing on the victim's competency, and we would
5 ask if -- for purposes of today if she could come in
6 through this door.

7 THE COURT: Sure. I don't see any problem with
8 that. Is there any objection to that from the defense?

9 MR. SNELL: No objection.

10 BAILIFF: Your Honor, I just have one question.
11 Tomorrow when she comes in, do I just go ahead and take
12 her badge and release her right then? You don't need to
13 talk to her?

14 THE COURT: No, I'm gonna let her know why we're
15 releasing her. If you could just put her -- keep her
16 in the hallway.

17 BAILIFF: All right. Or I can just -- if you'd
18 like, I can just bring her in here and sit her by herself
19 and take the rest of them in there.

20 THE COURT: That will be fine.

21 All right. I was gonna try to make some kind of --
22 figure out how to do these first.

23 All right. Mr. Snell, I've got -- I've got a motion
24 to suppress and it's to suppress several things. The
25 first one is to suppress the defendant's Google search

1 history.

2 You want to tell me about that?

3 MR. SNELL: And, Your Honor, my understanding from
4 -- from just discussions pre-trial, as well as the
5 discovery produced, is the State may intend to offer
6 Google searches that they would attribute to the defendant
7 and we'd just move to suppress those. And that's --
8 that's, again, on grounds of relevancy, prejudicial
9 versus probative value, like authenticating the records,
10 basically the -- assuming how you would authenticate,
11 Sixth Amendment confrontational clause, and finally by
12 reviewing the discovery I understand that the searches
13 come off of the defendant's account, but I don't -- I'm
14 not aware of anything actually connecting them to him
15 being the one who typed them. There's no -- like I
16 didn't see any IP records that would be correlated to
17 his physical location or his IP address connecting to
18 his phone account or his ISP account or anything further,
19 so it's --

20 THE COURT: So you don't know what account they came
21 from?

22 MR. SNELL: I know Google -- my understanding is I
23 think Google says they came from his -- from an account
24 that they believe is his, but then how do you know if
25 he's actually the one that would have typed it and it

1 couldn't have been anybody else, so we have that second
2 issue. I mean, it's just -- even if it's his account,
3 I'm not aware of anything supporting the idea that it's
4 him doing it beyond it would be his account. And, again,
5 I object to it being his account because I don't think
6 they can authenticate the records, again, based on the
7 prior objections.

8 Nothing further.

9 THE COURT: Okay. Let me hear from you. Do you
10 have anything about Google searches?

11 MS. WELLMAN: Yes, Your Honor. And I can go ahead
12 and hand that up now. This is what we have already marked
13 as State's Exhibit 3. This is the Google subscriber
14 information, specifically for the account and that is --
15 that was obtained via a search warrant for this specific
16 defendant's Google account. So this is his Google
17 subscriber records that actually shows each time he logged
18 into his account. That is -- that does match up with a
19 whole lot of these searches, so we did provide notice that
20 we intended to introduce the Goggle records, the affidavit
21 of the business records custodian, so we do have that.

22 Additionally, Your Honor --

23 THE COURT: You do have the affidavit from the
24 custodian?

25 MS. WELLMAN: Yes, Your Honor. And we did previously

1 provide that in discovery, as well as provide that with
2 the notice.

3 THE COURT: Can I look at it, please?

4 MS. WELLMAN: Yes, Your Honor.

5 May I approach?

6 THE COURT: Sure.

7 What are -- all of these are searches that you intend
8 to --

9 MS. WELLMAN: That specifically, Your Honor, is the
10 Google subscriber information for this defendant. That
11 coincides with the times of the Internet searches that
12 were found on the laptop computer. So the officers
13 executed the initial search warrant on May 3rd of 2021.
14 The defendant specifically said these are my devices.
15 Those devices were found. On May 17, 2021, after
16 MINOR [REDACTED]'s forensic interview, there was an expanded
17 disclosure. The officers executed a second search warrant
18 based on that.

19 Additionally, in between the first search warrant
20 and MINOR [REDACTED]'s disclosure, Sergeant Creech learned that
21 the cell phone he seized directly from this defendant
22 that was previously associated with the e-mail addresses
23 that's on the Google information that you have, that was
24 remote factory reset.

25 So Sergeant Creech knew.

1 THE COURT: So it was all erased?

2 MS. WELLMAN: Everything on the phone was erased,
3 but we knew there had to have been some type of device
4 capable of accessing the Internet to remote wipe that
5 phone, so they knew they were looking for another type
6 of Internet capable device. That was included in the
7 May 17th search warrant. When officers went back, they
8 found a laptop computer in a bookbag that was in the
9 defendant's bedroom with his clothes, also with a pair
10 of MINOR's panties and a blood pressure cuff. The
11 defendant was the only person in the home during that
12 time and that -- excuse me -- the laptop was seized. A
13 computer image, I believe it's an E01 image, was taken
14 by Mike Phipps where he found all of the Google searches,
15 the Internet searches. Many of them do coincide exactly
16 with the Google login times that you see there. What we
17 also see are specific searches that started May 3rd, that
18 evening, on this device, specifically about remote erase
19 Android.

20 Then there's lots of searches, and I provided a copy
21 of the summary because we wanted to present something that
22 was easy to see because there were many, many searches
23 here, but they were all about, you know, this type of
24 case, lots of searches about how to remote wipe an
25 Android phone. He downloaded --

1 THE COURT: Is this going to the obstruction of
2 justice charge?

3 MS. WELLMAN: It does. It also is a part of the --
4 the searches that we're talking about now. So all of
5 the searches are relevant to this case, which I think
6 provides additional circumstantial evidence that they can
7 be attributed to the defendant. They're specifically
8 about, you know, can a polygraph stop an investigation.
9 That's a specific search that he did. He searched about
10 bail cost for child molesters, can he have a laptop in
11 prison. There's other searches about pharmacological
12 and physiological countermeasures to polygraphs. Can you
13 make a -- what does a lie look like on a polygraph, make
14 yourself believe a lie for a polygraph.

15 THE COURT: Have you shared with them exactly what
16 it is that you intend to introduce?

17 MS. WELLMAN: Yes, Your Honor.

18 I provided Mr. Snell with a copy of this summary
19 that we created for the Court. I also provided the Court
20 a copy of that just so you can see what we're talking
21 about just for purposes of this motion.

22 And, Your Honor, in terms of, you know, proving
23 that this defendant is the actual one who pushed the
24 keys for the Internet searches, that's something they
25 can argue, but right now there is, you know, substantial

1 circumstantial evidence that the defendant -- these
2 searches can be attributed to him, that attempts to erase
3 the phone remotely can be attributed to him. Sergeant
4 Creech will also testify that he believes he found the
5 wipe command, the last wipe command that the defendant
6 sent to the phone. So all of those, you know, go to this
7 defendant's actions.

8 THE COURT: All right. Well, let me ask you what
9 is the -- I see all of these relating to polygraph, can
10 a child testify, molestation charges, the sentence,
11 insanity plea. Can the police tap your phone? Can the
12 police search your camera history? Do cell phones do a
13 date stamp?

14 Anything else, Mr. Snell?

15 MR. SNELL: Judge, just, again --

16 THE COURT: She's got a certificate of authenticity
17 by Google. These are Google records.

18 MR. SNELL: So, Judge, except, you know, I think
19 there was just the reference before that we could -- you
20 know, if we were challenging or questioning the -- the
21 connection between those records and this defendant, they
22 don't have a witness to do that, so we've got the Sixth
23 Amendment issue, right?

24 So I know -- I understand about the affidavit and
25 the process the Solicitor's followed, but there's still

1 the Sixth Amendment confrontation clause. I don't have a
2 witness that I can question about that or cross. They're
3 just gonna say here are records authenticated by Google.
4 I also heard them say that they found this laptop in the
5 -- in the bedroom, but these aren't searches from the
6 laptop, these are searches from Google. This data comes
7 from the cloud so to speak and there's no witness I can
8 cross on this, so.

9 THE COURT: I understand, Mr. Snell.

10 I'll hear from you, Ms. Wellman.

11 MS. WELLMAN: That's actually not true, Your Honor.
12 Mike Phipps took an image of this computer and that's
13 where he found the Google searches. He didn't do a
14 search of the cloud. This is a search of an image of
15 this actual computer.

16 THE COURT: Okay. Thank you.

17 I'm gonna tell you, I'm gonna allow it. I find it
18 to be relevant. While it might be prejudicial, it's
19 certainly more probative. I'm gonna tell you he's
20 charged with obstruction of justice. I think it goes --
21 it is relevant. I'm going to allow it. And I find that
22 the certificate of authenticity is -- is good for -- it's
23 their business records.

24 MS. WELLMAN: Thank you, Your Honor.

25 THE COURT: All right. Now let me see. The next

1 motion to suppress any reference of the existence of
2 hidden, encrypted or otherwise unknown data on any
3 computer, telephone or other device.

4 Do you intend to offer any of that, Ms. Wellman?

5 MS. WELLMAN: Yes, Your Honor.

6 So going back to the May 3rd search warrant, the
7 initial search warrant, that did include the defendant's
8 cellular telephone. That was seized or -- excuse me --
9 a phone, a OnePlus Android phone was seized by Sergeant
10 Creech directly from this defendant's person. Sergeant
11 Creech had access to the passcode that was provided by
12 this defendant and he was able to do a manual sort of
13 quick search on-scene. What he did find is a small amount
14 of data, smaller than he would have normally expected,
15 within sort of the standard camera; is that correct? I
16 just want to make sure I say that correct? But he ended
17 up -- there was a Photo Vault application on the phone.

18 THE COURT: A Photo Vault?

19 MS. WELLMAN: Photo Vault application. Yes, Your
20 Honor.

21 Sergeant Creech was able to determine that there
22 was 1.5 gigabytes worth of data hidden in Photo Vault.
23 Photo Vault is an application where you can encrypt
24 information and hide information. There was an
25 additional passcode required to access that application.

1 Sergeant Creech did not have access to that passcode.
2 The defendant claimed he didn't have a clue where that
3 came from.

4 So Sergeant Creech did say Mr. Otero, I'm taking
5 your phone, I'm gonna search it and I'm gonna get into
6 that Photo Vault. So then he -- Sergeant Creech took the
7 phone back to his office, it was in his sole custody, but
8 it was in his locked office hooked up to a charger. When
9 he went back to go look at that phone on the morning of
10 May 5th, the phone was off. When he powered it back on,
11 he discovered it had been remote factory reset. Sergeant
12 Creech will obviously testify about that.

13 THE COURT: Well, it's something he saw. He saw it
14 on the phone?

15 MS. WELLMAN: He did.

16 THE COURT: And before he could retrieve it, it had
17 been wiped?

18 MS. WELLMAN: Correct.

19 THE COURT: Is that what you're telling me?

20 MS. WELLMAN: Yes, Your Honor. So then he knows
21 that there has to be that Internet device, the laptop
22 that we talked about earlier, and then when we see the
23 Internet searches and the Internet activity -- because it
24 wasn't just the Internet searches that we were able to
25 recover and image from that computer. We were able to

1 view his Chrome media history, which showed the defendant
2 watched YouTube videos about how to remote reset a phone
3 or how to -- you know, if you lost your phone how to
4 remote reset it. It also shows where on the morning
5 of -- I think it was the morning of May 5th or it was
6 May 4th -- thank you -- May 5th at 7:14 in the morning
7 the defendant downloaded a PDF document called Breaking
8 Into the Vault, Privacy, Security and Forensic Analysis
9 of Android Vault Applications. Sergeant Creech has
10 reviewed that document, and basically what it is, is how
11 to break into that vault and whether law enforcement can
12 break into that vault.

13 The next search that the defendant made was at 11:56
14 that morning about erase my device remotely. The next
15 search at 6:09, can the FBI crack a Photo Vault. And then
16 we're talking about erasing history. The Court noticed --

17 THE COURT: Is all this on this?

18 MS. WELLMAN: Your Honor, this is in the summary of
19 the Internet searches and the computer activity that we
20 created. That's a document that the State created for
21 trial, but all of those things that I'm mentioning to you
22 are on the summary that we'll offer pursuant to Rule 1006,
23 summary of voluminous records.

24 So we have that on May 5th and then we do have times
25 where Sergeant Creech can testify step one for remote

1 factory resetting an Android phone is to log into a Google
2 account associated with that device. Sergeant Creech can
3 testify that when he's searching for remote erase the
4 phone, there is oftentimes a login to a Google account
5 right after that.

6 Another thing that this computer image does is it
7 shows you the last date and time that you entered a
8 specific URL and what we were able to recover from the
9 computer image was at 9:22 AM, Google find my device,
10 can't find my device. He watches a YouTube video. How
11 to use Google to find my device. How to find a lost
12 device. Attempted to remote wipe the phone, remote wipe
13 the phone didn't work, and then at 9:45 in the morning
14 on May 9th, that is the last time the defendant -- he
15 searched for find my iPhone, he logged into the Google
16 account that is the same e-mail address that we believe
17 was associated with the phone, and then a URL was entered
18 that we believe is the wipe commend. Sergeant Creech can
19 testify to that.

20 Understandably, he didn't know if it was a
21 successful wipe because it was not in his possession.
22 It was in law enforcement's possession. There's no way
23 he could have known, so, you know, our argument is that
24 he did it several times because he didn't know if it
25 worked.

1 So that is the evidence that we have. That he knew
2 law enforcement knew that there was the app, they were
3 gonna search it, and he was desperate to erase it.

4 THE COURT: All right. I'll be glad to hear from
5 you, Mr. Snell.

6 MR. SNELL: Thank you, Your Honor.

7 And -- and just -- I'll say this. I did the written
8 motion. I think we're on just Item 2, which is just our
9 objection to the existence or reference to any hidden,
10 encrypted or otherwise unknown data.

11 THE COURT: Right.

12 MR. SNELL: And so, you know, it's my understanding
13 there's the allegation that he had a -- over a gigabyte
14 of phone data that they just don't know what it was and
15 that's what -- specifically that's what we're objecting
16 to. If there's anything else other than that unknown
17 data on the phone --

18 THE COURT: Well, I think all she's gonna introduce
19 is him trying to wipe the phone, isn't it?

20 MS. WELLMAN: We're gonna introduce that Sergeant
21 Creech did observe this application --

22 THE COURT: He saw it.

23 MS. WELLMAN: -- what it is and --

24 THE COURT: The photo lock thing and that he went
25 back to try to get it and the phone had been wiped?

1 MS. WELLMAN: Correct, Your Honor. Because evidence
2 of any act can be admissible to show a guilty mind. It
3 doesn't necessarily have to be conclusive of guilt, but
4 it is relevant to guilt. There is case law to support
5 that.

6 So what -- and I think really Number 2 and Number 4
7 sort of going hand in hand because we're using the
8 evidence -- we're not trying to say just oh, there was
9 an encrypted app on his phone; therefore, he is guilty.
10 We're not saying that at all. We're saying there's an
11 encrypted device on his phone that he frantically tried
12 to erase before law enforcement could view it or search
13 it as part of this investigation.

14 THE COURT: But you can't -- nobody can tell anybody
15 what was in the photo lock?

16 MS. WELLMAN: Correct, and that's because the State
17 would argue the defendant remote factory reset the phone.

18 MR. SNELL: To the extent that they're gonna say
19 that there's hidden data on the phone, that they don't
20 know what it is, right, that's -- the prejudicial value
21 outweighs anything probative. I'll say specifically in
22 this case the child that this case involves although,
23 she gave a -- you know, an interview and I think multiple
24 interviews, was very clear, I thought, when asked if there
25 were any pictures taken she said no, right?

1 THE COURT: No, but she was shown pictures. I
2 watched the interview. I've watched that whole tape. I
3 know that there will be testimony that she saw pictures.
4 She saw pictures of her mom.

5 MS. WELLMAN: And she saw pictures and videos of her
6 mom and other individuals on this phone.

7 THE COURT: Yes, on his phone. I just remember them
8 asking her like -- almost how did you -- how did he get
9 into the phone.

10 MS. WELLMAN: And there was a -- she does say there
11 was a little app that required a code. She said that in
12 the interview.

13 THE COURT: He had to punch something in. I can't
14 remember what it was, but I remember hearing that. But
15 I don't think she's so much saying, and correct me if
16 I'm wrong, you're not saying just the photo app itself
17 is indicative of him showing nude photos?

18 MS. WELLMAN: Absolutely not, Your Honor. I mean,
19 I think that's -- we don't know and we're not trying to
20 say that yes, absolutely there were photos of MINOR ,
21 you know, while she was, you know, suffering abuse.
22 We're not saying that and I don't intend to argue
23 that. I think that is open -- people can draw their
24 own conclusions. The fact of the matter is, that there
25 was a phone, there was an encrypted app, both of which

1 by the defendant's own action, his Internet searches. He
2 made them relevant. He made them relevant that he was
3 desperate --

4 THE COURT: By trying to delete them.

5 MS. WELLMAN: -- by trying to delete it.

6 I would honestly say but for his searches, their
7 argument would be stronger. And please understand I know
8 why they don't want this coming in, but the defendant's
9 actions is what made these particularly relevant.

10 MR. SNELL: And I think -- I want to say I think she
11 said it correctly, that the jury could draw their own
12 conclusion, right? It's so speculative, the existence
13 and what this data might be --

14 THE COURT: You can cross on it.

15 MR. SNELL: Yeah, but nobody knows what it is.

16 THE COURT: Well, you can bring that out.

17 MR. SNELL: I'm just saying it's just -- the only
18 possible inference is that somebody's -- there's only a
19 negative inference. There's nothing neutral or anything
20 else. That there's simply nothing suggesting what it is.
21 It's a -- it's a complete unknown. So it's an unknown
22 like -- and just to suggest that even exists is gonna
23 cause the jury to be speculating and guessing and drawing
24 their own conclusions and none of that has anything to do
25 with whether or not Mr. Otero is guilty or not guilty of

1 these specific offenses he's been indicted for.

2 Nothing further.

3 THE COURT: Anything else?

4 MS. WELLMAN: No, Your Honor.

5 THE COURT: All right. I'm gonna allow it. I mean,
6 she's got a disseminating harmful material to a minor
7 charge. She's got an obstruction of justice charge. I
8 think what she's telling me is this corroborates that
9 there was some kind of photo lock, but she doesn't know
10 what's in the photo lock, and it could go to the
11 obstruction of justice. Also the disseminating. We'll
12 let a jury decide. I find it to be more probative.

13 If there's something specific, Mr. Snell, that she
14 tries to introduce during her case in chief, you're more
15 than welcome to object to it and I'll look at it.

16 All right. And I do think -- let me talk to you,
17 Mr. Snell. That Number 4 kind of goes with all of this
18 because -- moving to suppress any reference to any
19 allegations involving obstruction of justice. I'm not
20 real sure -- I think we've just covered all of that.

21 What is this Tor browser?

22 MR. SNELL: Okay. And just I would like to -- I
23 have a couple of comments on Number 4, additional ones.

24 THE COURT: Okay.

25 MR. SNELL: As far as Number 3, I just -- I know

1 from the discovery materials and the report there was a
2 note that the defendant had a Tor browser and more so that
3 the Tor browser was associated I think by maybe Detective
4 Creech with being something that goes hand in hand with
5 like child abuse or child pornography or child sexual
6 allegations or some general reference to that, right?

7 Tor -- and I can -- basically Tor is a browser.
8 It's built on the Firefox platform. Tor works like a
9 browser, but also can access unlisted, non-indexed
10 websites. That there are about ten thousand give or
11 take in the world at any point. CIA hosts an unlisted
12 site. These sites are accessed using a -- instead of a
13 dot com, it's dot onion, right? So there are -- so the
14 fact there's a Tor browser may be one issue, but saying
15 that Tor is connected with child abuse investigations
16 or child abuse is -- because in addition to -- you know,
17 there's political speech that's on -- you can only access
18 by Tor. There's political commentators that have been
19 kicked off the Internet because just, you know, you have
20 bad thoughts about whatever and you get D-listed, kicked
21 off Facebook, you get your URL banded, those folks go to
22 -- accessed only by Tor and there's all kind of uses for
23 Tor --

24 THE COURT: Other than child pornography --

25 MR. SNELL: -- other than bad things.

1 THE COURT: -- or any kind of pornography.

2 MR. SNELL: Absolutely. So just to simply say --
3 and this is something the jury is probably not gonna
4 have any familiarity with and simply to say because
5 there was a Tor browser that has some connection to child
6 pornography or child sexual abuse, I just would move to
7 suppress that.

8 Nothing further.

9 MS. WELLMAN: The only thing with that, Your Honor,
10 is that it was on the laptop and he did some searches for
11 it. If Your Honor's inclined to suppress that --

12 THE COURT: I'm not gonna allow it. I think if you
13 can -- if it's just a web browser --

14 MS. WELLMAN: It's essentially a browser to access
15 the dark web, which could --

16 THE COURT: Well, that doesn't mean that's the only
17 way to access child pornography.

18 MS. WELLMAN: Correct, Your Honor.

19 THE COURT: So that's just a little, I think, too
20 prejudicial. I'm not gonna allow that.

21 That's granted, Mr. Snell.

22 We're not gonna talk about some T browser if he
23 didn't get anything from it.

24 MS. WELLMAN: Your Honor, I -- the only thing I will
25 say is that I do believe he did one search for the Tor

1 browser that's in the summary. I will take that out.

2 THE COURT: Thank you.

3 MS. WELLMAN: I've just got to find it.

4 THE COURT: All right. Anything else on Number 4?

5 MR. SNELL: Judge, with reference to Number 4,
6 my understanding just, again, generally, that law
7 enforcement has the phone from Mr. Otero. They have it
8 in their office in a secure area. It's not in airplane
9 mode or in any kind of Faraday bag or anything else,
10 it gets wiped. And I know there are allegations that
11 there were searches on how to wipe a phone, but there
12 is zero -- I'm aware of any -- zero other evidence that
13 the defendant was involved in the wiping. If this is
14 something somebody did remotely through the Internet, it
15 could literally be anybody in the world. So we know we
16 have a thing that happens, and it might be him, but it
17 literally could be anybody else.

18 Judge, it reminds me of this. I know we're in
19 General Session, in Common Pleas, you know, I remember
20 there's a doctrine called res ipsa loquitur, the thing
21 speaks for itself, which is not law in South Carolina,
22 we don't follow it. This is kind of the General Sessions
23 equivalent. We have a thing that happened, but without
24 something saying the defendant did it --

25 THE COURT: That's why we have juries, Mr. Snell.

1 We'll let the jury decide.

2 MR. SNELL: Thank you.

3 THE COURT: All right. So now I'm down to the
4 video audio recorded interview of the child. I am
5 assuming this is the forensic interview.

6 MS. WELLMAN: That is correct, Your Honor.

7 With regards to the video, I do know Mr. Kirkland
8 sent me some timeframes that he thought were objectionable
9 to the video. We did agree to some of those. Like, for
10 example, he didn't want -- there's like a five-minute
11 period of time where MINOR is alone in the room, she's
12 coloring cats. They didn't want that in there. I had no
13 problem with that, so I did go ahead and take that part
14 out.

15 There's a few other little clips that I took out of
16 the copy that the Court has based on the request that
17 the Mr. Kirkland made on Friday, so I didn't have the
18 sufficient time to provide the Court with an updated
19 copy, but we are prepared to -- we can do that here and
20 now if you'd like?

21 THE COURT: Yeah, let's go ahead and do that, and
22 then I think -- are there any other motions from the
23 defense other than what we're -- this is the last one?

24 MR. SNELL: That's the last one. And, again, just
25 so I know, we're gonna watch the video?

1 THE COURT: I've watched the video.

2 MR. SNELL: So -- okay. So I know there's the --
3 they've made a lot of the redactions and just, again, we
4 maintain the -- we're gonna maintain the objection to
5 the publication of any portion of the video, right? So,
6 again, based on -- and, again, that's a statute and
7 statutory scheme, and we maintain that scheme is
8 unconstitutional. And also the video itself, you know,
9 is, again, prejudicial, outweighs anything probative,
10 it's bolstering, Sixth Amendment issues, and, again,
11 the whole statutory scheme authorizing -- purporting to
12 authorize the publication we would allege is violating
13 the defendant's rights and we'd move to object on those
14 grounds.

15 THE COURT: Okay.

16 MS. WELLMAN: All of the defendant's objections to
17 this video are -- are at least firmly established case
18 law in this state, goes against every objection that
19 they have.

20 Your Honor, the whole purpose of this statute,
21 17-23-175, is for children under the age of twelve who
22 are either the victim of or a witness to something that
23 would require the defendant to register as a sex offender
24 upon conviction. This statute was designed for this
25 case.

1 Your Honor, I think the case law and the statute --

2 THE COURT: I think the case law is quite clear.

3 MS. WELLMAN: Very clear, Your Honor.

4 THE COURT: I think there's just some hoops you have
5 to go through.

6 MS. WELLMAN: Correct, and we are prepared to do
7 that.

8 THE COURT: Go ahead and proceed.

9 MS. WELLMAN: Your Honor, at this time the State
10 would call April Sykes.

11 (Whereupon, April Sykes, was duly sworn by the
12 Clerk of Court.)

13 THE CLERK: Would you, please, have a seat in the
14 witness box. State your full name and spell your last
15 for the record, please.

16 THE WITNESS: My name is April. My last name is
17 Sykes, spelled S-Y-K-E-S.

18 APRIL SYKES,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION (In-Camera)

21 BY MS. WELLMAN:

22 Q. And where do you work?

23 A. I work for the South Carolina Law Enforcement
24 Division, commonly known as SLED.

25 Q. What is your role there?

1 A. I'm a lieutenant in the special victims unit.

2 Q. And in your role at the South Carolina Law Enforcement
3 Division, are you trained in administering forensic
4 interviews to children?

5 A. I am.

6 Q. Can you, please, tell the Court what a forensic
7 interview is?

8 A. It's basically a fancy term for a child interview
9 or investigative interview. It is developmentally
10 appropriate, it is non-biased, non-leading. It's a
11 factfinding interview that's set in a neutral setting
12 which allows for the child to provide their narrative
13 recall of the events.

14 Q. Okay. And have you -- you said you've been trained
15 in administering these interviews?

16 A. Since 2004, yes, ma'am.

17 Q. Since 2004, approximately how many interviews of this
18 nature have you done?

19 A. So I did not start keeping stats until I started at
20 SLED nine years ago, but in the last nine years I've done
21 182.

22 Q. Okay. And can you briefly describe the training you
23 went through in order to be able to administer these
24 interviews?

25 A. Yes, ma'am. So the initial training is a five-day

1 training. Before the training starts, you're provided
2 with research articles to read, an overview and then the
3 classroom portion is three days, and then the last two
4 days is comprised of a written exam and then there are two
5 actual field interviews that you perform that is critiqued
6 by the class and the instructors. So after that initial
7 five-day program, which is called, you know, Child First,
8 they also offer an Extended Child First and an Advanced
9 Child First. I've had both of those.

10 Additionally, in the State of South Carolina, our
11 forensic interviewers have to be supervised. They have
12 to maintain updated trainings specific to forensic
13 interviews that's approved by the National Childrens
14 Alliance. Additionally, we have to be peer reviewed both
15 in-house and then we also get regionally peer reviewed
16 four times a year and then one state peer review as well.

17 Q. Is your training up to date?

18 A. Yes, ma'am.

19 Q. And are you also responsible for training other
20 individuals on how to administer these interviews?

21 A. Yes, ma'am. SLED now has team, I think, of six or
22 seven.

23 MS. WELLMAN: Your Honor, this is Court's Exhibit 2.
24 This would be a copy of Lieutenant Sykes CV and her
25 certificates.

1 THE COURT: Thank you.

2 Have you seen this?

3 MR. SNELL: Yes, Your Honor.

4 THE COURT: Okay.

5 MS. WELLMAN: That was also released in discovery.

6 BY MS. WELLMAN:

7 Q. Lieutenant Sykes, as you're administering these
8 interviews to children, can you tell the Court the types
9 of questions that you use? Do you use like yes or no
10 questions or are they more open ended?

11 A. So we are trained to use a technique that is
12 non-leading and non-suggestive and the easiest way that
13 I could kind of explain it is more of a funnel, so you
14 start with as wide and as open a question as you can.
15 So oftentimes what you'll hear me saying as an example of
16 that is tell me about that, which is basically lets the
17 child talk. Then as the child begins to speak, if you
18 need more clarifying, you kind of funnel down, so the next
19 level would be like a multiple choice. Was it -- did this
20 happen at your school, did this happen at home or somewhere
21 else, then you would funnel down further if you need more
22 clarification to yes/no questions, so.

23 Q. Are you also trained to, you know, elicit specific
24 details?

25 A. Yes, ma'am.

1 Q. Okay. Are you also trained in detecting signs of
2 outside coaching or influence?

3 A. Yes, ma'am.

4 Q. And drawing your attention to May 14th of 2021, did
5 you have an occasion to conduct a forensic interview on a
6 six-year-old, MINOR [REDACTED] ?

7 A. Yes, ma'am.

8 Q. And was that at the request of Sergeant Creech from
9 the sheriff's department?

10 A. Yes, ma'am.

11 Q. And did you use those same open-ended, non-leading
12 questions that you told us about?

13 A. Yes, ma'am.

14 Q. And was your training up to date on the date that you
15 conducted this interview?

16 A. Yes, ma'am.

17 Q. And did you detect any signs of outside coaching or
18 influence when you were interviewing MINOR [REDACTED] ?

19 A. No, ma'am.

20 Q. Were you able to get a detailed account of the abuse
21 she suffered?

22 A. Yes, ma'am.

23 Q. And did her account make sense?

24 A. Yes.

25 Q. That interview, was it recorded?

1 A. Yes, ma'am.

2 Q. Okay. And was that recorded by the sheriff's
3 department?

4 A. Yes, ma'am.

5 Q. Have you had an opportunity to review that recording?

6 A. I have.

7 MS. WELLMAN: Your Honor, this is what we have
8 marked as State's Exhibit 1. This is the copy of that
9 we've prepared. I provided the defense a copy of this
10 with the additional redactions that they requested before
11 the lunch hour and she has had an opportunity to review
12 it, so that's what we're looking at now.

13 THE COURT: Okay.

14 MS. WELLMAN: May I approach?

15 THE COURT: You may.

16 BY MS. WELLMAN:

17 Q. Lieutenant Sykes, that is what's marked as State's
18 Exhibit 1. Do you recognize that?

19 A. Yes, ma'am.

20 Q. Is that a copy of the forensic interview that you
21 conducted on MINOR on May 14th of 2021?

22 A. Yes, ma'am.

23 Q. Okay. Is it true and accurate copy?

24 A. Yes, ma'am.

25 Q. Have you had an opportunity to review it to confirm

1 that?

2 A. Yes, ma'am.

3 Q. Are those your initials confirming that it is a true
4 and accurate copy?

5 A. Yes, ma'am.

6 Q. Thank you.

7 MS. WELL: This is the interview that we intend --
8 or the copy that we intend to offer at trial, Your Honor.

9 THE COURT: Can we introduce as a Court's exhibit
10 -- the whole interview as a Court's exhibit?

11 MS. WELLMAN: What am I on? Court's Exhibit 2?

12 THE COURT: Wait a minute. Let me see. I've got a
13 Court's Exhibit 2.

14 How about -- do we have a 1?

15 MS. WELLMAN: 1 would be -- I've already marked
16 that as the DMH report for the Blair hearing. I just
17 went ahead and marked that as well.

18 THE COURT: Then let's make it 4.

19 MS. WELLMAN: I think we're on 3.

20 THE COURT: No, I've got 3 is -- oh, that's a
21 State's exhibit.

22 MS. WELLMAN: Sorry.

23 THE COURT: Sure. Number 3 will be perfect.

24 MS. WELLMAN: Okay.

25 MR. SNELL: If I may, just for the record, a

1 question. Is that -- Number 3, is that the copy -- the
2 original recording or is that the original recording with
3 the audio enhancement?

4 MS. WELLMAN: I will confirm.

5 MR. SNELL: Just to make sure.

6 THE COURT: You-all go right ahead.

7 MS. WELLMAN: I know. Well, we've made lots of
8 copies with additional redactions or whatever.

9 Your Honor, I do believe this particular interview
10 that the Court has reviewed does meet the requirements
11 -- oh, wait. I'm sorry. I don't have any additional
12 questions.

13 MR. KIRKLAND: I think one of the issues we can
14 clear up right now is you intend to make Court's
15 Exhibit 3 the -- the original video that has been
16 enhanced? Is that what your intention is?

17 MS. WELLMAN: Yes. The clarified video, yes.

18 MR. KIRKLAND: Okay. So we don't need to worry
19 about you giving that physically to the Court right now --

20 MS. WELLMAN: Sure.

21 MR. KIRKLAND: -- and just give it whenever you get
22 it, so you guys can stop --

23 THE COURT: Yes, it's gonna be a Court's exhibit.
24 It's not going to the jury.

25 MR. KIRKLAND: Right.

1 THE COURT: It just for appellate purposes.

2 MR. KIRKLAND: Yeah, so they can stop digging and
3 we can get on with some hearings.

4 (Court's Exhibit Number 3 was marked for
5 identification.)

6 MS. WELLMAN: So I don't have any further questions
7 for Lieutenant Sykes for the purposes of this hearing.

8 THE COURT: Mr. Snell.

9 MR. SNELL: Thank you.

10 CROSS-EXAMINATION (In-Camera)

11 BY MR. SNELL:

12 Q. Let me -- just a few follow-up questions.

13 A. Yes, sir.

14 Q. And I know -- I think you probably said it, but I
15 think I missed it. How many total child interviews have
16 you done?

17 A. Since I began keeping track of them nine years ago
18 when I started at SLED, I was actually a forensic
19 interviewer prior to that starting in 2004, but since SLED
20 in the nine years it's 182.

21 Q. Okay. So this is something -- so you've done
22 interviews with SLED before this child?

23 A. Yes, correct.

24 Q. Have you done any since?

25 A. Yes.

1 Q. Okay. Did you have any contact with the child in this
2 case before the recorded interview?

3 A. We start the recording when I walk in the room, so
4 other than the two seconds in the lobby walking back
5 through the hallway.

6 Q. Okay. So you never had an opportunity to meet or talk
7 to the child before the interview?

8 A. No.

9 Q. Okay. Did you ever have an opportunity to meet or
10 talk to the child's mother or anyone else that had like a
11 personal or family connection with the child?

12 A. I did not. I had a copy of the incident report
13 provided to me prior to and then I asked the investigator
14 on the case to find out some basic information for me,
15 which I typically do; is the child on medication, are
16 there any special issues, and that's when I found out the
17 child was on the autism spectrum, but other than that...

18 Q. So after the interview was concluded, did you do a --
19 did you happen to have an opportunity to interview the
20 mother or any other family members or anyone else with a
21 personal connection with the child?

22 A. I don't do that. My only -- to maintain neutrality,
23 I'm not an investigator. All I'm there for is to do the
24 interview and that's it.

25 MR. SNELL: Thank you. No other questions.

1 MS. WELLMAN: Nothing further, Your Honor.

2 THE COURT: I'm gonna let you step down.

3 (Witness excused.)

4 THE COURT: And, Ms. Wellman, can you tell me how
5 old the child was when she gave the statement?

6 MS. WELLMAN: She was six, Your Honor.

7 THE COURT: Six?

8 MS. WELLMAN: Six years old.

9 THE COURT: Okay. Anything else?

10 MR. SNELL: Not on that. Not on that matter, Your
11 Honor.

12 THE COURT: All right. I'm gonna allow the video.
13 I've watched it in its entirety. I have not seen your
14 redacted copy, but I did watch the video in it's entirety,
15 the original video, and I find that it's admissible under
16 the code. It was given during an investigative interview,
17 it was recorded.

18 I'm assuming this child is testifying at trial?

19 MS. WELLMAN: Yes, Your Honor.

20 THE COURT: And also as far as trustworthiness goes,
21 you know, I specifically looked for leading questions in
22 the video when I watched it and I didn't -- I didn't note
23 any leading questions. I thought the little girl was
24 coherent. She answered -- as a matter of fact, I think
25 she was a smart little girl to be six years old, and I

1 think it outlines the alleged offense.

2 As far as Ms. Sykes being -- being qualified to give
3 such an examination, I'm sitting here looking at all her
4 stuff. I mean, she's told me there was no coaching or
5 influence. I didn't see that in the video at all. I
6 didn't see any leading questions. She'd been trained in
7 forensic interviews. She's done at least 182 interviews.
8 She's teaching the class. So I find her more than
9 qualified to have conducted this forensic interview.

10 I'll commend the lawyers for going through the tape
11 and taking out and agreeing what you don't want played.
12 Good work on you-all's part, but I'm gonna allow it.

13 MR. KIRKLAND: Let me, just so the record is
14 absolutely clear because it may be confusing to somebody
15 if they are reading this transcript later. So we are
16 maintaining our objection that entire video should stay
17 out, which you ruled on.

18 THE COURT: Right.

19 MR. KIRKLAND: The redactions, I will be completely
20 honest, they really made a tremendous effort to -- to
21 redact the things that we wanted to get out of there.

22 THE COURT: Right. Even over your objection.

23 MR. KIRKLAND: Yeah. And I still would object to,
24 in the first four minutes, there's just a lot of cat talk,
25 but to be fair so you understand this, a huge amount of

1 cat talk was removed from later on in the video.

2 So I'm gonna maintain my objection that they didn't
3 remove all the cat talk from the first two or three
4 minutes, but they did, I will admit, remove a tremendous
5 amount of cat talk later, and I believe the video that
6 we were given today actually took out the -- the truth.

7 That was removed, correct?

8 MS. WELLMAN: Your Honor, I think what happened is
9 the one that you reviewed last week --

10 MR. KIRKLAND: Right.

11 MS. WELLMAN: -- was not the redacted copy, so I
12 think you -- that's why sort of my timeframes and your
13 timeframes didn't match up, but there is -- we did remove
14 the part about do you promise to tell the truth --

15 MR. KIRKLAND: Okay.

16 MS. WELLMAN: -- because we only talk about things
17 that are real and true. That is out of there.

18 With regards to the first four minutes where
19 they're talking sort of about cats, we do argue that is
20 admissible --

21 THE COURT: Right. She was naming her cats' name.
22 I think sixteen of them.

23 MR. KIRKLAND: Nineteen.

24 MS. WELLMAN: Nineteen.

25 THE COURT: Nineteen.

1 MS. WELLMAN: And you will meet some of them during
2 the course of this trial, Your Honor, but that first --
3 you know, the first several minutes of this interview it
4 shows the rapport building between MINOR and the
5 interviewer. It also shows just that despite her age,
6 despite the fact that she is on that autism spectrum,
7 she's smart, she's coherent, she's intelligent, capable
8 of recalling details, and I think what's really important
9 she's detailed. And also when she was having trouble
10 remembering all of the names of those nineteen cats, she
11 admitted it. She didn't start making up names. She was
12 like that's all I can remember and then she --

13 THE COURT: I know. I remember. I agree. I'm gonna
14 allow it.

15 Will you please make sure that the defense has a copy
16 of the redacted?

17 MR. KIRKLAND: We absolutely do if --

18 THE COURT: Okay.

19 MS. WELLMAN: I missed the question. I'm sorry.

20 MR. KIRKLAND: Did you hand us before lunch the final
21 redacted copy?

22 MS. WELLMAN: Yes.

23 MR. KIRKLAND: Then we have it.

24 THE COURT: Okay. I just wanted to make sure. And,
25 like I said, I'm happy to see you-all working together.

1 Not taking away from your objection, Mr. Kirkland.

2 MR. KIRKLAND: Yes, ma'am. I understand.

3 THE COURT: But I'm gonna allow it under 17-23-175
4 under the statute.

5 Okay. I think I've been through all the defense's
6 motions.

7 Anything else?

8 MR. SNELL: Nothing at this time.

9 MS. WELLMAN: We do have -- from the defense side,
10 I think we're done, but we do have one more record that
11 we intend to introduce the affidavit. If you want, we
12 can go ahead and put that on the record now. And then
13 we have the -- we still need to do the Blair hearing.

14 THE COURT: Okay. I'm just trying to get all of
15 the motions out of the way before we do the Blair.

16 MS. WELLMAN: We do still have the Blair, but I
17 think from a motions perspective we're done.

18 THE COURT: Okay. Any motions from the State?

19 MS. WELLMAN: Your Honor, the one that we were
20 really focussing on was the one that you just ruled on
21 regarding the forensic interview and then we just have
22 some hearings that we need to do later in terms of
23 Jackson v. Denno and then the Blair and then MINOR's
24 competency, and then I think that's it for the day.

25 THE COURT: Okay. Which one do you-all want to do

1 first?

2 MS. WELLMAN: We do have Dr. Jones here. If we
3 could do her first and then we can go ahead and get her
4 out of here.

5 THE COURT: Okay. Is this the Blair hearing?

6 MS. WELLMAN: Yes, Your Honor.

7 (Discussion between counsel.)

8 (Court's Exhibit Number 4 was marked for
9 identification.)

10 MR. KIRKLAND: So what we've done, Your Honor, we
11 just decided to do, was we're going to stipulate to the
12 qualifications, that she has the qualifications I think
13 as a forensic expert, so we're not gonna require them
14 to prove that. They may want to for the record state
15 her CV into the record. Just since we're stipulating
16 to something, they may want to cover themselves, but
17 otherwise we're not asking them to prove to the Court
18 she's an expert in forensic evaluations.

19 MS. WELLMAN: We do have Dr. Jones's CV marked as
20 Court's Exhibit 4.

21 THE COURT: Okay. They say they're stipulating to
22 her being an expert.

23 MS. WELLMAN: May I approach?

24 THE COURT: We'll make that Exhibit Number 4.

25 MR. KIRKLAND: Thank you, Your Honor.

1 THE COURT: Thank you.

2 MS. WELLMAN: And just so I can get things off of
3 my little space, this is Court's Exhibit 3, which is that
4 full enhanced one, correct?

5 MS. PATTERSON: (Nods head.)

6 THE COURT: Okay.

7 MS. WELLMAN: So, Your Honor, the State actually was
8 the one that moved to have this defendant evaluated for
9 competency. I believe we moved for that on December 16th
10 of 2021 and he was evaluated by Dr. Michelle Jones from
11 the Department of DMH or -- Department of Mental Health,
12 and we would call her at this time.

13 THE COURT: Okay. This was -- I want to make sure I
14 have this right. On 12 --

15 MS. WELLMAN: I believe it was the 15th.

16 THE COURT: 12-15 of '21 --

17 MS. WELLMAN: 2021, yes.

18 THE COURT: -- Dr. Jones performed --

19 MS. WELLMAN: No, Your Honor. The evaluation
20 occurred over several days; June 26, 2022, May 26th of
21 2022, and 6-21 of 2022.

22 I do have what's marked as Court's Exhibit 1, a copy
23 of her report, which I can provide to the Court at this
24 time.

25 THE COURT: I've got it.

1 MS. WELLMAN: Okay. But, no, on December 15th of
2 2021, that is the date that the State moved to have him
3 evaluated.

4 THE COURT: Okay. Is that the 11-4-22 report?

5 MS. WELLMAN: Yes, Your Honor.

6 THE COURT: All right. Go ahead.

7 MS. WELLMAN: Your Honor, the State would call
8 Dr. Michelle Jones.

9 THE CLERK: Would you, please, raise your right hand
10 and place your left on the Bible.

11 (Whereupon, Michelle Jones was duly sworn by the
12 Clerk of Court.)

13 THE CLERK: Would you, please, have a seat in the
14 witness box. State your full name and spell your last
15 for the record.

16 THE WITNESS: Yes. I am Dr. Michel Jones. My name
17 is spelled M-I-C-H-E-L-L-E. Last name is J-O-N-E-S.

18 MS. WELLMAN: Okay. And, Your Honor, I do believe
19 the defense is stipulating to her status as an expert in
20 the field of forensic psychology --

21 MR. SNELL: Correct.

22 MS. WELLMAN: -- and I did provide her CV as Court's
23 Exhibit 4.

24 THE COURT: 4. I've got it up here.

25 So noted without objection. They agree.

1 MR. SNELL: Correct.

2 MICHELLE JONES,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION (In-Camera)

5 BY MS. WELLMAN:

6 Q. Dr. Jones, did you receive an order from the Court to
7 examine this defendant?

8 A. I did, yes.

9 Q. And did you do so?

10 A. I did.

11 Q. And what were you evaluating the defendant -- or for
12 what reason?

13 A. For a competency to stand trial evaluation.

14 Q. Okay. What information did you use prior to the
15 examination to sort of get ready or prepare for this
16 evaluation?

17 A. Sure. So we typically will request a lot of different
18 kinds of records that we can get our hands on. So in the
19 case of Mr. Otero, we were able to request records from a
20 facility in Florida, Lee Memorial Health System, about some
21 treatment he received at that time. We also received some
22 information from the Lexington Medical Center from a time
23 when he was treated there. We received jail records and we
24 also -- as part of those jail records, they were able to
25 get their hands on some additional records from another

1 facility in Florida as well. So those are some of the
2 information, some of the records we got. We also received
3 information about the alleged crimes, so arrest reports,
4 police reports, things of that nature, as well as a bunch
5 of DVD's containing some audio and photographs and video
6 related to the case.

7 Q. Is that standard procedure when you're conducting a
8 competency evaluation?

9 A. Yes.

10 Q. And on what dates did you evaluate the defendant?

11 A. I saw him on three different dates. The first time
12 was on January 26th of 2022. The next time was on May 26th
13 of 2022 and the last time was on June 21st of 2022.

14 Q. Was anyone present with you when you conducted these
15 examinations?

16 A. Yes. As part of the law, we always have to have a
17 second examiner with us that typically is a licensed social
18 worker in our office and so she was with me present for
19 those and on one occasion we had a medical student with us
20 as well. It's a training facility, so sometimes we have
21 medical students or other, you know, psychology doctors
22 there with us. So on the first time there was a medical
23 student as well.

24 Q. Now you said she. Who was she? Who was with you?

25 A. So our social worker is named Akilah Glover. She's

1 a licensed social worker who works in our office at the
2 forensic evaluation service, and then Rachel Beard is the
3 medical student who was there one time.

4 Q. Okay. And about how much time would you say you spent
5 with the defendant?

6 A. Let's see. Probably -- if we totalled it all up,
7 almost -- four hours or maybe a little bit more than four
8 hours during those -- total for both three occasions.

9 Q. And is that standard for when you're conducting these
10 evaluations?

11 A. That's actually a little bit on the high side for a
12 lot of our evaluations. You know, every case is different.
13 Some require many long visits, some are very quick and
14 easy.

15 Q. Did you also have a chance to examine the defendant
16 today for competency purposes?

17 A. Yes, this morning.

18 Q. And did your examination of the defendant today change
19 your opinion?

20 A. No, it did not.

21 Q. Okay. Are you familiar with the legal standards for
22 competency to stand trial?

23 A. Yes.

24 Q. Okay. And what was done to determine whether or not
25 this defendant actually met those standards?

1 A. So in a typical situation, and this is the same with
2 Mr. Otero, a lot of this is based on our interviews of the
3 defendant, so we typically will ask them questions about
4 the legal system, basic legal facts and knowledge and
5 concepts. We'll also ask them about their lawyers, we'll
6 ask them about their own charges to get a sense of how
7 they're thinking about, you know, the legal system and
8 their case. Sometimes we need to kind of go outside of
9 that and take in other information.

10 So in this case, you know, we would look at like,
11 for example, the mental health medical records to get a
12 sense of their history of mental health issues. Sometimes
13 we'll have to do some additional testing, and that was
14 done in the case of Mr. Otero, to kind of give us -- to
15 help give us some extra clarity if things are a little bit
16 unclear, and sometimes we'll go beyond that and get, you
17 know, information such as, you know, listen to phone calls
18 from when they were in the jail to get a sense of how they
19 are talking about things in a different setting than an
20 evaluation setting, things of that nature. So those are
21 all things that I did in the case of Mr. Otero to come up
22 with an opinion.

23 Q. Okay. Based on your opinion after your evaluation,
24 do you have an expert opinion based -- or I'll asked you
25 whether or not the defendant is capable of understanding

1 the proceedings?

2 A. Yeah, based on everything that was done last year and
3 based on my conversation this morning, it's my position
4 that he has the capacity to understand the proceedings
5 against him and to assist in his defense.

6 Q. Okay. Is there any evidence that there is an
7 intellectual -- that the defendant is intellectually
8 disabled?

9 A. No, I saw no evidence of that.

10 Q. Is there any evidence that the defendant has a mental
11 illness?

12 A. At this point in time, I don't have enough information
13 to say that. I think in his history there's a history of
14 some depressive symptoms. He has over the course of the
15 evaluation process made some odd comments that some might
16 deem delusional or psychotic, but I don't think those
17 impair him. If they are genuine, I don't think they impair
18 his ability to understand the proceedings and to help out
19 in his defense.

20 Q. You said if they are genuine. What do you mean by
21 that?

22 A. So in the course of my evaluation process last year,
23 I felt that he was describing symptoms atypical of people
24 who have a genuine mental illness. His report of symptoms
25 has been very inconsistent from evaluation interview to

1 evaluation interview. He reported things that did not seem
2 to comport with what we know about mental illness, and so I
3 did some extra testing to see -- to kind of gauge a sense
4 of how genuine his mental health symptoms might be. He
5 reported a lot of memory problems, so I did a test to see
6 how genuine the memory issues might be, as well as he was
7 inconsistent at times about how much he knew about the
8 legal system, so I did another test to kind of get a sense
9 of whether he was giving full effort in his interviews with
10 me.

11 And so based on all of that information, I came to
12 the conclusion that he was presenting himself as more
13 impaired than he actually was last year and so then this
14 -- I can talk about my meeting this morning, which was a
15 little bit different, but that was part of -- in answering
16 your question, part of what I was talking about in terms of
17 the genuineness. I think there's perhaps some exaggeration
18 or some feigning of some things he thinks he has.

19 Q. Is that what we call malingering?

20 A. Yes.

21 Q. Dr. Jones, just to be clear, do you have an expert
22 opinion to a reasonable degree of medical certainty if the
23 defendant is capable to stand trial on today's date?

24 A. I do have an opinion.

25 Q. What is that opinion?

1 A. That he currently has the capacity to understand the
2 legal proceedings and to assist in his defense.

3 MS. WELLMAN: Your Honor, the only other thing we
4 have is Court's Exhibit 1, which would be a full copy
5 of Dr. Jones's report, which I would ask to enter into
6 evidence.

7 THE COURT: Okay. Is that in evidence or a
8 Court's --

9 MS. WELLMAN: Just a Court's exhibit.

10 THE COURT: Okay. Go ahead.

11 BY MS. WELLMAN:

12 Q. Dr. Jones, did you also conduct an examination with
13 regards to criminal responsibility and whether the
14 defendant meets those standards?

15 A. I just want to turn to the judge or maybe the defense
16 counsel. Sometimes we're asked to do things that both
17 sides know about and sometime we're asked to do things on
18 an ex parte basis, so I don't know if you wanted me to
19 respond or if the defense wanted to say anything.

20 THE COURT: Let me ask the defense.

21 MS. WELLMAN: This is news, so.

22 MR. SNELL: If we may approach very briefly?

23 THE COURT: Sure.

24 (Proceedings held at the bench; not reported.)

25 THE COURT: For the record, that's fine by me.

1 Okay. Mr. Snell.

2 CROSS-EXAMINATION (In-Camera)

3 BY MR. SNELL:

4 Q. And, doctor, thank you so much. That was a good
5 catch. Just a few questions. Could you tell us more about
6 your contact with Mr. Otero today?

7 A. Yes. So I spoke with him this morning I think for
8 over an hour prior to court and we -- I asked him many of
9 the same questions I've asked him in a normal competency
10 evaluation. Asked him how -- you know, about his mental
11 health, you know, over the last few weeks, asked him how he
12 was doing today. I asked him a number of questions about
13 the court system, about his lawyers, about his charges,
14 and then just tried to get sense of, you know, any mental
15 health symptoms that he's endorsing, you know, today.

16 Q. And did you -- did he indicate anything or did you
17 observe anything that, well, basically was relevant?

18 A. Sure. He was still endorsing some odd beliefs
19 similar to what he had endorsed last year for me, but he
20 was not as fervent, did not talk about them nearly as
21 much as he did last year, and oftentimes he didn't mention
22 things until I specifically asked him about it. So he
23 wasn't spontaneously talking to me about weird, odd,
24 bizarre, delusional beliefs kind of on his own.

25 And then when I asked him stuff about the legal

1 system, he did very well in those questions, so he
2 understood, you know, many aspects of the legal process,
3 we talked about trials. He knew the difference between a
4 bench trial and a jury trial, a hung jury, knew about
5 evidence and witnesses. He knew about his charges, the
6 specific allegations underlying those charges. He was a
7 little bit reluctant to talk about some of the details
8 related to that, which is understandable, but he talked
9 about potential evidence and witnesses logically. I feel
10 that there was some measure of apathy with him in terms
11 of feeling like things are a little bit kind of stacked
12 against him I guess you could say, but it didn't impair
13 his ability to kind of go ahead and work on his case moving
14 forwards. Sometimes there's a concern that someone has
15 just kind of given up and can't do anything with respect
16 to his case. In fact, he was the opposite. He talked
17 about working with you-all, with his attorneys, answering
18 your questions and complying with, for example, the meeting
19 with me. And so, again, all of these things despite that
20 kind of level of maybe perhaps some depression or some
21 apathy. He was able to kind of talk very intelligently
22 and rationally about things that might pop up in the course
23 of this proceeding.

24 Q. Any indication he was having intrusive thoughts today?

25 A. No.

1 Q. Did -- I know previously he had complained of, I
2 think, auditory hallucinations?

3 A. Yes.

4 Q. Did you -- do you have any opinion regarding any basis
5 for auditory hallucinations?

6 A. You know, one of the things he mentioned today was
7 being in the tank, so almost like being in solitary for I
8 think he said about nine months, and we do know that that
9 can bring on, you know, different experiences for people
10 and make kind of mental health issues come more into the
11 forefront, but he said he's been out of there for about a
12 year. He did endorse some things like maybe hearing his
13 name being called, you know, just hearing, you know, his
14 room number, his cell number where he is, so he was
15 endorsing some low level stuff that someone might consider
16 to be an auditory hallucination. It also could just be
17 noise from the jail and things like that. That is kind of
18 what he spontaneously talked to me about when I asked him
19 more specific stuff, he was -- you know, didn't really
20 endorse very much.

21 Q. All right. And during -- and I guess -- so your
22 opinion today is he would be competent to stand trial?

23 A. Yes.

24 Q. Okay. Has he main -- to the best of your knowledge
25 and your opinion, has he maintained that competence for the

1 duration of at least your involvement with him?

2 A. Yeah. And, of course, there's been over a year where
3 I did not see him.

4 Q. Correct.

5 A. But, yeah, from the time that I saw him from the very
6 first meeting or probably the second meeting because I
7 wasn't sure what I was seeing in the first meeting, until
8 today, every time I've seen him I've had that same opinion,
9 that he was competent.

10 MR. SNELL: Nothing further.

11 THE COURT: Anything else?

12 MS. WELLMAN: No, Your Honor.

13 THE COURT: May I let Dr. Jones down?

14 MS. WELLMAN: Yes, Your Honor.

15 THE COURT: Thank you.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 THE COURT: All right. Anything on the -- else on
19 the competency issue?

20 MS. WELLMAN: Your Honor, I think, you know,
21 Dr. Jones's testimony, you know, established that the
22 defendant is competent to stand trial and we're able to
23 move forward.

24 THE COURT: Mr. Snell, anything else?

25 MR. SNELL: Your Honor -- and, again, I know the

1 record's established, we're not obviously willing to
2 stipulate or agree with anything, but we'll follow your
3 decision.

4 THE COURT: Well, you're not alleging he's
5 incompetent, are you?

6 MR. SNELL: No, Your Honor.

7 THE COURT: Okay. Well, this Court's gonna find
8 him competent to stand trial. I've had testimony from
9 Dr. Michelle Jones. In fact, I've read her report.
10 She's -- this is her fourth time she's interviewed the
11 defendant. She's been through numerous documents. I
12 was looking at her report. She went through all his
13 jail records, all his medical records, interviews, even
14 records from Florida and police reports from Florida.
15 She's reviewed the video and the audio in this case.
16 She's also seen him a combined four hours evaluating the
17 defendant and her opinion hasn't changed since her first
18 interview with him on January 26th of 2022, again, on
19 6-21 of 22, 5-26 of 23, although, she noted she didn't
20 see him that year, but she also evaluated him today and
21 she finds that he can and is able to assist in his trial.
22 He understand what's going on. He understands the court
23 proceedings. While he might have some depressive
24 disorders, it's not to the point that he's not competent
25 to stand trial. So this Court's gonna find that he's

1 competent.

2 Anything else that I need to add, Ms. Wellman?

3 MS. WELLMAN: I don't believe so, Your Honor.

4 THE COURT: Mr. Snell?

5 MR. SNELL: Nothing further.

6 THE COURT: Okay.

7 All right. Our next motion.

8 MS. WELLMAN: Your Honor, the next thing we would
9 like to do is do the scom -- excuse me -- MINOR 's
10 competency hearing, but can we take a brief break?

11 THE COURT: You may.

12 Why don't we all take like a ten-minute break.

13 MS. WELLMAN: Thank you, Your Honor.

14 (Recess taken at 3:31 PM.)

15 (Back on the record at 3:44 PM.)

16 BAILIFF: Court is now in session.

17 (Discussion off the record.)

18 THE COURT: All right. Are we ready to proceed?

19 MS. WELLMAN: Yes, Your Honor.

20 At this time we're gonna move for a competency
21 hearing for MINOR , so the State would call MINOR
22 .

23 THE COURT: Okay.

24 THE CLERK: Would you, please, raise your right hand
25 and place your left hand on the Bible, please.

1 (Whereupon, MINOR was duly sworn by the
2 Clerk of Court.)

3 THE WITNESS: Yes.

4 THE CLERK: Thank you. Would you please have a seat
5 in the witness box. State your full name and spell your
6 last for the record.

7 THE WITNESS: MINOR .

8 MINOR ,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION (In-Camera)

11 BY MS. WELLMAN:

12 Q. MINOR , what's your last name?

13 A. .

14 Q. . Did it used to be ?

15 A. Yeah.

16 Q. Okay. Can you spell your last name for our court
17 reporter?

18 A. .

19 Q. Okay. Hey, MINOR , do you remember me?

20 A. Yeah.

21 Q. Okay. And how old are you?

22 A. Nine.

23 Q. Nine. When when's your birthday?

24 A. 2014.

25 Q. 2014?

1 A. (Nods head.)

2 Q. Okay. And where do you go to school?

3 A. [REDACTED].

4 Q. Okay. And what grade are you in?

5 A. Third.

6 Q. Third. And do you have a favorite subject?

7 A. Yeah.

8 Q. What's your favorite subject?

9 A. Math.

10 Q. Math? All right. Sorry. Ms. MINOR [REDACTED], where do you

11 live?

12 A. I live in Lexington.

13 Q. Okay. Ms. MINOR [REDACTED], do you know the difference

14 between a truth and a lie?

15 A. (Nods head.)

16 Q. Okay. So if I told you that I was wearing a blue

17 shirt, would that be the truth or the lie?

18 A. A lie.

19 Q. A lie. Because I'm wearing a green shirt, right?

20 A. (Nods head.)

21 Q. So if I told you I was wearing a green shirt, would

22 that be the truth?

23 A. Yeah.

24 Q. Yeah. Okay. And if you tell a lie, what happens?

25 A. I get in trouble.

1 Q. You get in trouble? Okay. Do you know that in this
2 courtroom you have to tell the truth?

3 A. (Nods head.)

4 Q. Okay. And do you know that you would get in trouble
5 if you told a lie?

6 A. Uh-huh.

7 Q. You've got to speak up.

8 A. Yeah.

9 Q. Yeah. Okay. And do you promise to tell the truth in
10 here?

11 A. Yes.

12 MS. WELLMAN: Nothing further, Your Honor.

13 THE COURT: Anything, Mr. Snell?

14 MR. SNELL: Yes, Your Honor.

15 CROSS-EXAMINATION (In-Camera)

16 BY MR. SNELL:

17 Q. Ms. MINOR --

18 A. Hi.

19 Q. -- I have just a couple of questions.

20 Have you been in this courtroom -- have you been in
21 this room before?

22 A. Yes.

23 Q. How -- when did you come in this room?

24 A. I don't remember.

25 Q. That's okay. Have you sat in that chair before?

1 A. Yes.

2 Q. Okay. And did people ask you -- practice asking
3 questions that you would hear in court today?

4 A. I think so.

5 Q. Okay. That's all right.

6 MR. SNELL: No other questions. Thank you so much.

7 REDIRECT EXAMINATION (In-Camera)

8 BY MS. WELLMAN:

9 Q. Ms. MINOR, did we tell you what to say or did you
10 say what you remember?

11 A. I say what I remember.

12 MS. WELLMAN: Nothing further.

13 THE COURT: Okay. I'm gonna let her step down.
14 Thank you.

15 (Witness excused.)

16 THE COURT: All right. The Court's gonna find her
17 competent. She says she knows right from wrong, what's
18 a lie, what's not a lie. I think she was pretty clear
19 on that. She's nine years old.

20 And she plans to testify in this trial?

21 MS. WELLMAN: Yes, Your Honor.

22 THE COURT: Okay.

23 All right. I'm gonna find her competent. It seems
24 like she answered all the questions you've asked her and
25 she seems to display telling her what -- what she knows

1 all on her own, not coached, so I'm gonna allow it.

2 Anything else?

3 MS. WELLMAN: Your Honor, we would just like to
4 proceed to the Jackson v. Denno hearing.

5 THE COURT: Okay.

6 MS. WELLMAN: So the State would call Ms. Ormica
7 Thomas.

8 THE COURT: All right. Let me ask the State {sic},
9 anything else on the child's competency?

10 MR. KIRKLAND: You're asking the defense?

11 THE COURT: Yes.

12 MR. KIRKLAND: No.

13 THE COURT: Okay.

14 All right. Jackson v. Denno.

15 Call your witness.

16 THE CLERK: Would you, please, raise your right and
17 place your left on the Bible.

18 (Whereupon, Ormica Thomas was duly sworn by the
19 Clerk of Court.)

20 THE CLERK: Would you, please, have a seat in the
21 witness box. State your full name and spell your last
22 for the record.

23 THE WITNESS: My name is Ormica Thomas. Last name
24 T-H-O-M-A-S.

25 ORMICA THOMAS,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION (In-Camera)

3 BY MS. WELLMAN:

4 Q. And where do you work?

5 A. Lexington County Sheriff's Department.

6 Q. What is your role there?

7 A. I'm an administrative sergeant.

8 Q. Okay. So I call you Sergeant Thomas?

9 A. You can call me anything.

10 Q. Okay. Sergeant Thomas, were you working at the
11 Lexington County Sheriff's Department on Friday,
12 September 23rd of 2022?

13 A. Yes.

14 Q. Okay. And you said you were administrative sergeant?

15 A. Yes.

16 Q. What part of the sheriff's department do you work?

17 A. I work in the jail.

18 Q. Okay. Were you working in the jail on September 23rd
19 of 2022?

20 A. I was.

21 Q. Okay. Did you have an occasion to have a conversation
22 with inmate, Jason Otero, that day?

23 A. Yes.

24 Q. For what reason did you come in contact with the
25 defendant?

1 A. I was doing classifications, so, therefore, Mr. Otero
2 was being rehoused to another location, so I went to speak
3 with him about his move.

4 Q. When you went to go speak with him, where were you?

5 A. In booking.

6 Q. Okay. And is that the defendant, Jason Otero, with
7 whom you had contact on that day?

8 A. Yes.

9 Q. Sergeant Thomas, did you know about the allegations in
10 this case?

11 A. No.

12 Q. Okay. Did you know anything about the defendant?

13 A. I just knew that he was housed in our booking area due
14 to behavior, therefore --

15 Q. What was the general nature of your conversation with
16 the defendant on September 23rd of 2022?

17 A. To let him know that we would be rehousing him and
18 that he had to do what he needed to do in order to be able
19 to stay in that area and not be housed in booking.

20 Q. Okay. Did you ask him any questions about this case?

21 A. No.

22 Q. Okay. Would you consider your conversation with the
23 defendant an interrogation?

24 A. No.

25 Q. Okay. Did you ask him any questions about his

1 daughter MINOR ?

2 A. No. I had no idea about that.

3 Q. Okay. Did you ask him any questions about the
4 allegations that he had sexually assaulted anyone?

5 A. No.

6 Q. That he had sexually assaulted MINOR ?

7 A. No.

8 Q. At any time did you solicit any information from the
9 defendant about this case?

10 A. No.

11 Q. Okay. During this conversation, did the defendant
12 make any statements to you?

13 A. He did.

14 Q. Okay. What were those statements?

15 A. He apologized. He said "I didn't mean to hurt her.
16 I'm sorry. She didn't deserve it".

17 MS. WELLMAN: No further questions.

18 THE COURT: Mr. Snell.

19 CROSS-EXAMINATION (In-Camera)

20 BY MR. SNELL:

21 Q. Ma'am, I just want to ask a couple of questions -- or
22 a few questions. I know you did a written statement about
23 the exchange you had with Mr. Otero.

24 A. Yes.

25 Q. Is that correct?

1 A. (Nods head.)

2 Q. Have you had a chance to review that written
3 statement?

4 A. I looked at it briefly.

5 Q. Today?

6 A. No.

7 Q. Okay. When did you last look at your written
8 statement?

9 A. It may have been a week or two ago. About two weeks
10 or so ago.

11 Q. Okay. When you would have prepared your written
12 statement, would you have put down all of the -- I mean,
13 would you have recorded everything that Mr. Otero told you
14 on your written statement?

15 A. Yes.

16 Q. Okay. And I know now you're testifying from memory,
17 right? I mean, you don't have the statement in front of
18 you, right?

19 A. Yes.

20 Q. And at the point you wrote the statement, this event
21 was more fresh in your mind?

22 A. Right.

23 Q. Okay. And so I guess -- I just wasn't sure if there
24 was something -- basically let me ask you this. When
25 Mr. Otero -- can you tell us specifically what statements

1 Mr. Otero made?

2 A. In order to be specific, I would probably need to read
3 my statement to you because I'm going just from memory and
4 it was a while ago.

5 Q. Okay.

6 A. So he did state that he was -- he was apologetic and
7 he stated that he didn't mean to hurt her. He didn't mean
8 -- he was sorry and that it wasn't her fault.

9 Q. All right. I'm gonna show you -- just to help
10 refresh your recollection, I'm gonna show you a copy of
11 your statement, if I may?

12 A. Okay.

13 MR. SNELL: If I may approach?

14 THE COURT: You may.

15 THE WITNESS: (Nods head.)

16 BY MR. SNELL:

17 Q. Okay. And the statement -- I guess when you made
18 that record, that's a little different than what you've
19 testified to?

20 A. Well, like I said, it was a while ago, but these are
21 the things that were said exactly at that time.

22 Q. Okay. So it's -- and if you may, can you read -- I
23 just want to make sure for the record, is it you agree with
24 the information contained in your statement?

25 A. Yes, that he said -- yes.

1 Q. And can you read the statement into the record?

2 A. The entire statement?

3 Q. Please, ma'am.

4 A. On Friday, September 23, 2022, at approximately 12:09,
5 I, Sergeant Ormica Thomas, entered the booking area to
6 speak with inmate Jason Otero in regards to his request to
7 be able to order and receive canteen while being housed
8 in booking. Upon opening door cell to -- to Cell Number 3
9 where inmate Otero was being house due to his many attempts
10 at self-harm, I began explaining to him why I was there and
11 the expectations of the behavior expected of him when he
12 -- when and if he was rehoused. I stated to him that I
13 spoke with Major Singleton and mental health coordinator,
14 Ms. Chestnut, about him being rehoused. I informed him
15 that he will be rehoused in Alpha pod, Cell Number 8,
16 with camera access due to his prior attempts at self-harm.
17 I also informed him that if he attempted to do anything
18 that he would be returned to the cell in booking for the
19 remainder of his incarceration at Lexington County
20 Detention Bureau.

21 Following the conversation, Inmate Otero expressed
22 that he felt terrible for what he did. He stated that the
23 person I did it to is a good person and did not deserve it.
24 He continued with I've had a long time to think about it
25 and ended with I was wrong.

1 At no point did I ever solicit any information from
2 Inmate Otero regarding his charged crime. I proceeded to
3 tell him that he could not continue to try and punish
4 himself for whatever it was. He agreed. I then asked
5 him to promise me that if he felt like he was going to do
6 something to harm himself again, that he would let one of
7 us know how he was feeling before he actually did anything,
8 and he agreed that he would. We exchanged a few more
9 words concerning the rehousing and I departed the cell and
10 secured the door.

11 End of statement. Nothing further to report.

12 Q. Would you agree that your statement was a -- was a
13 -- basically from your perspective was a truthful
14 representation of the exchange between you and Mr. Otero?

15 A. Yes.

16 Q. Okay. And I understand in that statement you
17 referenced that he had an incident involving self-harm?

18 A. Yes.

19 Q. And actually had two incidents; is that right?

20 A. Yes.

21 Q. Okay. And they required medical intervention?

22 A. Yes.

23 Q. And I think he was transported to the hospital, right?

24 A. Yes.

25 Q. And --

1 MR. SNELL: If I may I beg the Court's indulgence.

2 THE COURT: Take your time.

3 MR. SNELL: Thank you. No other questions at this
4 time. And if I can get my --

5 THE COURT: Sure.

6 MR. SNELL: Thank you so much.

7 MS. WELLMAN: Nothing further, Your Honor.

8 THE COURT: Okay. I'm gonna excuse the witness.
9 Sergeant, thank you so much for coming.

10 (Witness excused.)

11 THE COURT: All right. Let me hear from you,
12 Ms. Wellman.

13 MS. WELLMAN: Your Honor, this was not an
14 interrogation. These were statements the defendant made
15 completely freely. He offered these statements. They
16 were voluntary, they were not in response to any type of
17 questioning, so I do believe they would meet the standard
18 for admission here and would ask that they be admitted.

19 THE COURT: Mr. Snell.

20 MR. SNELL: Your Honor, she -- she testified as to
21 what he said and then she agreed that that wasn't what
22 he said. She prepared a written statement about a month
23 later that was different -- substantively different than
24 how she first testified and then she agreed with me that
25 the statement was a truthful account of the interaction.

1 So the statement doesn't reflect anything about I
2 apologize for what I did to her or anything assigning a
3 gender to whoever he feels sorry about. It doesn't relate
4 -- there's nothing in her statement that would indicate
5 this ties back or connects to his charges of what he's
6 indicted for. So, again, she testified to one thing and
7 then when we show her her statement she wrote a month
8 later, she agreed that the statement was correct.

9 So I would agree it would be one thing if she
10 stuck to what she first said, but then she switched to
11 confirming her statement, and the statement is not a
12 statement against interest.

13 THE COURT: Why?

14 MR. SNELL: The way it's written. Again, this is
15 -- again, there's nothing indicating this relates to what
16 he's accused of, so nothing further at this time.

17 MS. WELLMAN: Your Honor, the general nature of
18 everything that she said is consistent. He was
19 apologetic in both. I mean, I would take that -- I feel
20 terrible for what I did. That sounds like an apologetic
21 statement.

22 And with regards to whether it's a statement against
23 interest, that is irrelevant. It is a statement offered
24 -- or, excuse me, it is a statement made by the defendant
25 offered against the defendant. So whether it's against

1 interest or not is irrelevant. The question here is was
2 it a free and voluntary statement made by the defendant
3 and is it being offered against the defendant, and we
4 would say that, yes, it is admissible.

5 THE COURT: It's a statement against interest.

6 MR. SNELL: Well, it's hearsay, number one. I
7 think that's the correct law, but there's nothing in
8 his statement he's -- he's apologizing --

9 THE COURT: Well, a statement against interest
10 is an exception to the hearsay rule.

11 MR. SNELL: Right, and it's also --

12 THE COURT: I've totally lost my mind.

13 MR. SNELL: Again, he's apologizing for what he --
14 so he's got two instances of self-harm, the detention
15 officer is telling him hey, if you don't -- you know,
16 if you keep doing that we're gonna put you in this room
17 by booking, which I understand is the worst room in the
18 jail as far as no inmate wants to go there. That is
19 like punishment for the jail. And they're saying so if
20 you don't -- I'm paraphrasing, but if you don't behave,
21 you're gonna go there.

22 THE COURT: Well, we have the statement. Let me
23 hear the exact wording of it.

24 MR. SNELL: If I may hand up a copy, Your Honor.

25 THE COURT: Uh-huh.

1 MS. WELLMAN: Yes.

2 MR. SNELL: If I may approach?

3 THE COURT: Well, I mean, I'm sitting here looking
4 at it. He expressed he felt -- in quotes, he felt
5 terrible for what did. The person I did it to -- did it
6 to is a good person and did not deserve it. I was wrong.
7 I've had a long time to think about it.

8 I don't think that's talking about some kind of
9 self-infliction to himself. I mean, I'm reading that
10 quote right out of the statement that she read into the
11 record.

12 MR. SNELL: And, again, I know her first testimony
13 was she added the word "her" into the -- the statement
14 of Mr. Otero, but that's not what Mr. Otero said. They
15 were having a discussion about his self-harm efforts.
16 If you continue that sort of behavior, you're gonna be
17 put in this bad place at the jail. He then is --
18 basically at that point he's apologizing saying that he
19 was wrong and then they continue the conversation. So
20 her -- you know, this conversation, which, again, she
21 agreed was memorialized, they then conclude by talking
22 again about self-harm. So it's self-harm and his
23 statements, not specifying this had anything to do with
24 his crime. He didn't say I'm sorry for touching my
25 daughter, I'm sorry for what I did to my daughter, I'm

1 sorry for any of that. This is completely -- it's
2 ambiguous at best, but there's nothing saying this relates
3 to this case or any case and we have before he made the
4 statement and after he made the statement they're talking
5 about self-harm.

6 THE COURT: Okay. Again, I read it into the record.
7 He feels terrible for what he did. The person I did it
8 to is a good person and did not deserve it. I've had a
9 long time to think about it and I was wrong.

10 You know, the ultimate decision is up for the jury
11 to decide whether or not he was talking about this crime.
12 I find that it's not a custodial interrogation. It wasn't
13 in response to any questions. In fact, I do find it to
14 be a statement -- it's hearsay, but I believe that it's
15 admissible as a statement against interest. Whether it's
16 voluntary or not or whether he said it or not, we'll let
17 the jury decide. So I'm going to admit it.

18 I'll give this back to you-all.

19 All right. Any other motions?

20 MR. SNELL: And, Your Honor, can we have that
21 statement be marked as a Court's exhibit?

22 THE COURT: Sure.

23 MR. SNELL: Thank you.

24 THE COURT: We're gonna make that Number 5.

25 Court's Exhibit Number 5 is Sergeant Thomas's written

1 account of what the defendant stated to her.

2 (Court's Exhibit Number 5 was marked for
3 identification.)

4 THE COURT: All right. Anything else?

5 MS. WELLMAN: Your Honor, that's all we have.

6 MR. SNELL: Nothing further at this time.

7 THE COURT: Okay.

8 All right. The defendant --

9 MS. PATTERSON: We have something else.

10 MS. WELLMAN: I'm sorry.

11 Your Honor, this is -- again, the State filed
12 another notice of intent to introduce records pursuant
13 to affidavit of business records custodian. In this
14 particular case, it is the records from Instacart. The
15 allegations are that as to time and place that the
16 defendant was doing -- you know, assaulting MINOR
17 while mother was working at Instacart, so we have the
18 Instacart records that show when she started working,
19 which was May 3rd of 2021, and that she was, in fact,
20 working on May 2nd, 2021, which is the last date -- or
21 last incident date.

22 So we have that pursuant to an affidavit and I did
23 previously provide that with discovery. We have it
24 marked as State's Exhibit 2 at this time.

25 THE COURT: Any objection?

1 MR. SNELL: Your Honor, it would be the same
2 objections. Sixth Amendment, confrontation clause.
3 It's hearsay. Basically I'd contend that that's a
4 scheme to allow introduction of documents without a
5 witness to lay the foundation or subject to questioning
6 is unconstitutional, violative of the defendant's rights,
7 and on all those grounds we would object.

8 MS. WELLMAN: It's admitted -- or it's admissible
9 pursuant to statute when the State provides notice and
10 we do have an affidavit from the custodian of records.

11 THE COURT: To certificate that it's authen -- to
12 the authenticity?

13 MS. WELLMAN: Yes, Your Honor.

14 THE COURT: I can't talk today.

15 MS. WELLMAN: I'm having trouble, too. But
16 Ms. Patterson did tell me that I misspoke. She started
17 work for Instacart on February 3, 2021, and that she
18 did --

19 THE COURT: And these are like her work records?

20 MS. WELLMAN: And it really is just that she started
21 work February 3rd of 2021 and that she did, in fact,
22 render services to Instacart on May 2, 2021, which is the
23 last incident date.

24 THE COURT: It's not like a letter from her employer
25 or anything, is it?

1 MS. WELLMAN: It's actually from Instacart and it's
2 just the record of her services on May 2, 2021, and it
3 does include just the independent contractor agreement
4 that she executed on February 3rd.

5 THE COURT: All right. I'm gonna -- let me see it.
6 Let me see it before I say yes.

7 MS. WELLMAN: I know on that last page it's really,
8 really tiny.

9 THE COURT: I can barely read this.

10 MS. WELLMAN: It is very, very small, Your Honor,
11 but that does say that she provided services on May 2nd.
12 But it's tiny. That was how they gave it to us, so.

13 THE COURT: So are you saying she only worked there
14 on that one day?

15 MS. WELLMAN: No, Your Honor. It's talking about
16 when she started work for -- because the allegations are
17 that the defendant was sexually abusing his daughter while
18 mom was working a second job at Instacart, and that just
19 shows -- that helps establish our timeframe that she
20 started work on May 3rd {sic} of that year and that

21 MINOR [REDACTED] reported to her counselor that the last incident
22 date was May 2nd, so that shows that she was, in fact,
23 working on May 2nd. Excuse me. That Mellixa Otero,
24 MINOR [REDACTED]'s mother, was working on May 2nd.

25 THE COURT: Okay. Did you-all look at this?

1 MR. SNELL: Yes, Your Honor. And we maintain our
2 objection.

3 THE COURT: Okay. I'm gonna allow it. I think
4 it's pretty self-explanatory. It's a business record
5 that they've certified showing that she's working on
6 May 2nd and she been employed since 2021 and her last
7 date of employment and then it just shows that she was
8 at work on May 2nd.

9 MS. WELLMAN: Correct.

10 THE COURT: I'm gonna allow it. Objection noted
11 for the record.

12 Anything else?

13 MS. WELLMAN: Now I'm done.

14 MR. SNELL: Not at this time.

15 THE COURT: All right. Then Court's adjourned.

16 I'll see you-all at 9:30 in the morning. I'm gonna
17 plan to just give my little opening to the jury and we'll
18 proceed with opening arguments.

19 MS. WELLMAN: Thank you, Your Honor.

20 (Whereupon, the proceedings were concluded for
21 September 18, 2023, at 4:16 PM.)

22 (The following proceedings were held September 19,
23 2023, beginning at 9:25 AM.)

24 BAILIFF: Court's now in session. The Honorable
25 Judge Debbie McCaslin presiding.

1 THE COURT: Be seated.

2 All right. Let me -- I don't have all the lawyers.

3 Can I see the lawyers up here for a second?

4 (Proceedings held at the bench; not reported.)

5 THE COURT: All right. Ms. Bowen. Juror Number 22.

6 JUROR NUMBER 22: Yes, ma'am.

7 THE COURT: Yesterday they saw you in the Solicitor's
8 office.

9 JUROR NUMBER 22: Yes, ma'am.

10 THE COURT: And you're a victim in the case where
11 the Solicitor's office is prosecuting. I don't know if
12 it's a relative of yours, and it doesn't matter, but
13 because you are a victim and the Solicitor's office is
14 representing you, and I don't think maybe you understood
15 that yesterday when we asked.

16 JUROR NUMBER 22: I actually dropped the charges.

17 THE COURT: Well, let me explain that to you.

18 JUROR NUMBER 22: Okay.

19 THE COURT: Because that happens all the time. That
20 we have victims that come and try to drop the charges.
21 You -- a victim does not have the right to drop charges.
22 The State has the right to drop charges, and if they
23 choose to go forward regardless of how the victim feels,
24 they may.

25 So, you know, people just can't go to the Solicitor's

1 office and sign a dismissal and the Solicitor's office is
2 gonna dismiss it.

3 JUROR NUMBER 22: Right.

4 THE COURT: That doesn't happen and sometimes people
5 think that's what does, but it just doesn't. So it
6 creates a conflict, so I'm gonna have to take you off of
7 this jury. I talked to the lawyers yesterday and we think
8 that was the best.

9 Not your fault, not anything you did. I just think
10 it was just overlooked that a victim would be represented
11 by the State, but essentially you are, okay?

12 JUROR NUMBER 22: (Nods head.)

13 THE COURT: All right. But thank you for coming.

14 JUROR NUMBER 22: Thank you.

15 THE COURT: Anything else from the State before I
16 let her go?

17 MS. WELLMAN: No, Your Honor.

18 THE COURT: Anything from the defense?

19 MR. SNELL: No, Your Honor.

20 THE COURT: Thank you.

21 JUROR NUMBER 22: Thank you.

22 (Whereupon, Juror Number 22 was excused from the
23 jury.)

24 THE COURT: All right. Is the State ready?

25 MS. WELLMAN: Yes, Your Honor.

1 THE COURT: Defense ready?

2 MR. SNELL: Yes, Your Honor.

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

4 BAILIFF: All right, Your Honor.

5 THE COURT: Is there a motion for -- was there a
6 motion to sequester?

7 MR. KIRKLAND: No, I don't think we'll do that.

8 THE COURT: Okay.

9 (Whereupon, the jury enter the courtroom at
10 9:32 AM.)

11 THE COURT: All right. Madam Forelady, the jury
12 ready?

13 FOREPERSON: Yes, Your Honor.

14 THE COURT: Please be seated.

15 All right. Mr. Ross, you've been moved up to
16 alternate number one.

17 JUROR: Yes, ma'am.

18 THE COURT: All right. Let me get the clerk to
19 swear in the jury, please.

20 THE CLERK: Would you please stand and raise your
21 right hands.

22 (Whereupon, the jury was duly sworn by the Clerk
23 of Court.)

24 THE CLERK: Please respond by saying I do.

25 Is there anyone who was not able to take that oath?

1 Thank you very much. Please be seated.

2 THE COURT: All right. Ladies and gentlemen of
3 the jury, before we begin the actual trial of this case,
4 I thought it might be helpful if I explained to you
5 basically how a trial proceeds.

6 First, the State will make an opening statement.
7 An opening statement is not evidence. It is simply an
8 outline to help you understand what that party expects
9 the evidence will show. The defendant may, if he wishes,
10 present an opening statement, but he does not have to for
11 reasons I will explain.

12 Following the opening statements, you will hear
13 testimony and evidence in the case. This will consist of
14 testimony from State's witnesses, as well as any physical
15 exhibits which will be introduced into evidence.

16 Following the completion of the testimony, the
17 attorneys will, again, have an opportunity to make what
18 is called a closing statement. Again, these arguments
19 are not evidence.

20 Following the closing statements by the attorneys,
21 I will instruct you on the law of South Carolina as
22 it pertains to this case. When I have completed my
23 instructions to you, you will then be permitted to begin
24 your deliberations in order to reach a verdict.

25 I want to take a few minutes to tell you something

1 about your duty as jurors and to give you some
2 instructions. At the end of the trial, I will give you
3 more detailed instructions and those instructions will
4 control your deliberations.

5 It will be your duty to decide from the evidence
6 what the facts are. You and you alone are the judges of
7 the facts. You will hear the evidence, decide what the
8 facts are and then apply those facts to the law, which
9 I will give to you. That is how you will reach your
10 verdict. In doing so, you must follow the law whether
11 you agree with it or not.

12 The evidence will consist of the testimony of
13 witnesses, documents and other things received into
14 evidence as exhibits and any facts on which the lawyers
15 agree or which I may instruct to you accept. You should
16 not take anything I may say or do during the trial as
17 indicating what I think of the evidence or what your
18 verdict should be.

19 This is a criminal case brought by the State of
20 South Carolina. The State charges the defendant with
21 criminal sexual conduct of a minor first degree, two
22 counts of criminal sexual conduct of a minor in the
23 third degree, disseminating obscene materials to a minor,
24 and obstruction of justice. The charges against the
25 defendant is contained in the indictments.

1 This is an indictment. The indictment is not
2 evidence of anything. It is simply the description of
3 the charge made by the State against the defendant.

4 The defendant has pled not guilty to the charges
5 and is presumed innocent unless and until proven guilty
6 beyond a reasonable doubt. Proven beyond a reasonable
7 doubt is proof that leaves you firmly convinced of the
8 defendant's guilt.

9 A defendant has a right not to testify and never
10 has to prove his innocence or present any evidence.
11 The burden of proof is always upon the State of South
12 Carolina.

13 The following things are not evidence and you must
14 not consider them as evidence in deciding the facts of
15 this case. Statements and arguments of the attorneys,
16 questions and objections of the attorneys, and testimony
17 that I instruct you to disregard.

18 Evidence may be direct or circumstantial. Direct
19 evidence is testimony by a witness about what that
20 witness personally saw, heard or did. Circumstantial
21 evidence is indirect evidence. That is, proof of one
22 or more facts from which one can find another fact. You
23 are to consider both direct and circumstantial evidence.
24 The law permits you to give equal weight to both, but
25 it is for you to decide how much weight to give any

1 evidence.

2 There are rules of evidence which control what can
3 be received into evidence. When a lawyer asks a question
4 or offers an exhibit into evidence and the lawyer on the
5 other side thinks that it's not permitted, that lawyer
6 may object. If I overrule the objection, the questions
7 may be answered or the exhibit may be received. If I
8 sustain the objection, the question cannot be answered
9 and the exhibit cannot be received. Whenever I sustain
10 an objection to a question or deny a motion to admit an
11 exhibit into evidence, you must ignore the question or
12 the existence of the exhibit and you must not guess what
13 the answer would have been or what the exhibit would have
14 shown.

15 Sometimes it may be necessary for me to ask that you
16 leave the courtroom while I discuss with the attorneys
17 legal questions that come up during the trial. If this
18 occurs, do not speculate about our discussions or the
19 reasons that you were asked to leave the courtroom.
20 This is simply a procedure that the law requires when
21 certain legal issues arise.

22 I will tell you I will try my best to have the
23 lawyers approach the bench so that you won't be required
24 to leave the jury -- go back to your jury room. But,
25 again, if I ask the lawyers to step up to the bench or

1 if I ask you to leave the courtroom, please don't think
2 that anybody is trying to hide anything from you or keep
3 any evidence from you. Again, this is just a procedure
4 used by all lawyers and in all courts to determine and
5 decide legal questions.

6 In deciding the facts of the case, you may have to
7 decide which witnesses to believe and which witnesses
8 not to believe. You may believe everything a witness
9 says, only part of it or none of it. In deciding what
10 to believe, you may consider a number of factors,
11 including the following. The witness's ability to
12 see, hear or know the things testified to. The quality
13 of the witness's memory, the witness's manner while
14 testifying, whether the witness has an interest in the
15 outcome of the case or any motive, bias or prejudice.
16 Whether the witness was contradicted by anything the
17 witness said or wrote before the trial or by other
18 evidence. How reasonable was the witness's testimony
19 when considered in the light of other evidence which
20 you believe.

21 Until I advise you to begin your deliberations,
22 you must not discuss this case with anyone, including
23 your fellow jurors, friends, family members and anyone
24 involved in the case. This includes discussions face
25 to face, telephone, e-mail, text, blogs, Twitter,

1 Facebook, Google or any other method of communication.

2 You may not use a computer, a cell phone or other
3 electronic device with communication capabilities at any
4 time while in the courtroom or during your deliberations.
5 During your breaks, you may use these devices; however,
6 you may not at any time use these devices to get or send
7 information about the case. This includes information
8 about a party, a witness, an attorney or a court officer,
9 news accounts about the case, research on any topics
10 raised or any topics you think would be helpful in
11 deciding the case or any testimony presented by any
12 witness.

13 During the trial do not read, listen to or watch
14 any news reports about the case. This includes anything
15 that may be in the newspapers, on the Internet, radio or
16 television. You must not consider anything you may have
17 read or heard about the case outside of this courtroom
18 whether before or during the trial. After the case is
19 submitted to you, you must discuss it only in the jury
20 room with your fellow jurors.

21 I told you yesterday I advised the lawyers not
22 to speak to you. Please don't try to talk to them.
23 They're not rude. They're great people. I've known
24 them for an awfully long time, all of them, and they're
25 great lawyers. They're just following my instructions.

1 It is important that you keep an open mind and not
2 decide any issue in the case until all of the evidence
3 has been presented, the parties have made their closing
4 arguments and I have instructed you on the law in this
5 case.

6 It is your sole responsibility to determine the
7 guilt or innocence of the defendant and your verdict
8 must be based solely on the evidence as it is presented
9 to you in this trial and on the law as I instruct you
10 during and at the close of the trial.

11 Madam Forelady, it's your added duty to preside in
12 the jury room and be the jury's spokesperson here in
13 court. It will also be your duty to write the verdict,
14 but I will give you further instructions about that at
15 the conclusion of the case.

16 In order to preserve everyone's rights, I will give
17 the parties an opportunity to object to anything I have
18 said.

19 Any exceptions by the State?

20 MS. WELLMAN: No, Your Honor.

21 THE COURT: Any exceptions by the defense?

22 MR. SNELL: No, Your Honor.

23 THE COURT: We will now begin the trial of this case.

24 Ms. Wellman -- Ms. Patterson.

25 MS. PATTERSON: Yes, ma'am. May it please the Court?

1 THE COURT: Yes, ma'am.

2 MS. PATTERSON: Mr. Snell, Mr. Kirkland.

3 Good morning. To most little girls their daddy is
4 the apple of their eye. Their strong protector, their
5 defender, their knight in shining armor, and that is the
6 way it should be. After all, to most daddy's their little
7 girl is their princess, their angle, their baby girl.

8 In 2021, six-year-old MINOR experienced
9 anything but this type of relationship with her father,
10 the defendant, Jason Otero. To MINOR her father became
11 the one who would hurt her, scare her, destroy her sense
12 of trust and security and he would take away any sense of
13 innocence that most little girls have.

14 You heard Your Honor say that Mr. Otero is charged
15 with one count of criminal sexual conduct with a minor
16 in the first degree, two counts of criminal sexual
17 conduct with a minor in the third degree, two counts of
18 disseminating harmful material to a minor, and obstruction
19 of justice.

20 Now she will instruct you later on about the
21 elements of each offense and I will warn you this is
22 going to be a disturbing case. One with details that a
23 child should never have to talk about yet alone endure.
24 Details that should never be described as being caused
25 by one's father.

1 The judge will also instruct you about the burden
2 of proof and it is the State's burden of proof beyond a
3 reasonable doubt. Now this is a burden that we not only
4 proudly accept, this is a burden that we know that we
5 will prove.

6 And you will also hear later on that what proof
7 beyond a reasonable doubt really means, and it's not
8 proof beyond all doubt because there's very little that we
9 know beyond all doubt, but you must be firmly convinced
10 of the defendant's guilt.

11 And you will get to decide this case based on the
12 evidence you hear and you see. And this evidence, it
13 doesn't come from me and Ms. Wellman. We present it,
14 but it doesn't come from us. It's gonna come from this
15 witness stand. It's gonna come through evidence you see
16 and from this witness stand you will hear how in May of
17 2021 MINOR [REDACTED] accidentally disclosed this. This
18 was done innocently and unintentionally to a classmate.
19 You will hear how when she was confronted by a school
20 counselor she reluctantly gave these details, but she
21 told what her daddy was doing to her.

22 And you will also get to see and hear MINOR [REDACTED]'s
23 forensic interview. She took it days later after she
24 first made her disclosure and you will hear how detailed
25 she was during that interview saying things that a

1 six-year-old has no business knowing, better yet
2 experiencing. And you will also hear from her during
3 this trial. She's a little bit older, but she still
4 remembers. She still remembers what her daddy did to
5 her and she will tell you about it.

6 And you will also hear from law enforcement and
7 about their involvement and you will be able to see and
8 hear about the evidence that they was able to recover
9 that supports MINOR's disclosure and you will hear
10 how Jason Otero tried to cover up and hide what law
11 enforcement would later recover from his electronics.
12 He had no idea law enforcement was about to expose his
13 little secret.

14 You will hear about the multitude of searches,
15 desperate searches I should say, that he conducted once
16 he found out that law enforcement knew about his horrible
17 secret. How he went to great lengths to try to wipe away
18 data and all traces of evidence and how he obstructed
19 justice.

20 You will also hear how children disclose traumatic
21 events. Unlike adults, disclosures of children are more
22 of a process than an event. You will hear how even if
23 bad things is happening to children they don't always
24 tell. They may accidentally tell like MINOR did.
25 After all, children are children. They're not adults.

1 They don't always realize or comprehend what's going on
2 and, again, they don't always tell.

3 Ladies and gentlemen, again, you will hear things
4 that's gonna be hard to hear, but we must present. Again,
5 it's our job as the State. We bear that burden. We bear
6 it proudly. You will see items that are hard to look at
7 knowing they were presented to a six-year-old in such an
8 obscene and harmful way. However, they are necessary.
9 It's necessary for us in helping us to meet our burden.
10 It's necessary to prove that MINOR was sexually
11 assaulted and harmed at the hands of the very person who
12 was supposed to protect her, the defendant, her daddy.

13 We just ask that you listen, pay attention to the
14 details, to the testimony, the evidence that we will
15 present to you, and we're confident that you will find
16 the defendant, Jason Otero, guilty of all counts.

17 Thank you.

18 THE COURT: Thank you, Ms. Patterson.

19 Mr. Snell.

20 MR. SNELL: There are two things that we know are
21 true about child sexual abuse allegations, okay?
22 Sometimes it happens and sometimes it didn't. And that's
23 true even when the allegations are made by young children,
24 even when allegations are made against their fathers or
25 other people important in their lives. Sometimes it's

1 true and sometimes it's not. That's why we're here today.
2 That's what this trial is about.

3 Yesterday you heard that Jason Otero has pled not
4 guilty because that's exactly what he is. He has pled
5 not guilty to all these charges, this criminal sexual
6 conduct with a minor, for abusing his daughter, for
7 doing anything that he's the subject and target of this
8 trial.

9 Now the defense, that's Jason Otero and by extension
10 his attorneys, does not have any burden of proof. Not
11 every case you can come in with -- with evidence or some
12 sort of video or an alibi saying it can't me, I was in
13 Alabama or it wasn't me, it was somebody else. Not every
14 case is like that and because of that the law specifically
15 says the defendant and the defense doesn't have a burden.

16 The prosecutor has the burden and you heard that
17 they say they welcome it. The prosecutor has to prove
18 not only beyond a reasonable doubt that these allegations
19 occurred, but by virtue of that burden they've got to
20 prove beyond a reasonable doubt that these aren't false
21 allegations. That these allegations aren't things that
22 a child would have made up or said for any reason other
23 than they are actual true events occurring in the real
24 world. The prosecutor must rule out beyond a reasonable
25 doubt these are not things that a child was told, a child

1 was coached, a child mixed up, a child imagined, a child
2 had a conversation with others and was led to believe or
3 a child saw or heard or got this information in any other
4 way other than true life events happening to them. A
5 prosecutor must rule that out, must rule out that
6 possibility, beyond a reasonable doubt.

7 During this trial one of your most important jobs
8 is to look and listen to the evidence. Look for how law
9 enforcement or other investigators ruled out or checked
10 against those possibilities, okay? Is the standard simply
11 because someone was accused of something awful, horrible,
12 even by their own child is, the standard that because
13 they were accused they must be guilty? Is that enough to
14 convict somebody?

15 Let's talk about burdens of proof. You heard the
16 judge and I think the prosecutor talk about reasonable
17 doubt. I'll talk about some of the other burdens in the
18 law, okay, because there are a lot of different levels
19 of proof that parties on different sides in different
20 kind of legal cases are required to meet.

21 The first thing I'll talk to you about is in the
22 world of the criminal defense or criminal law, one of the
23 lowest standards is do you have a reasonable articulable
24 suspicion, okay? That's a legal standard and that's what
25 a traffic police officer, for example, right, has to have

1 in order to pull you over and waste ten minutes of your
2 time, right? Okay. You're gonna be inconvenienced. It's
3 actually not enough of a standard to get a ticket, right?
4 Just enough to pull you over. That's one standard, right?

5 There's a standard called probable cause, right?
6 Now probable cause in a lot of situations can be met by
7 someone simply making an accusation, right? I saw him do
8 it, right? It's an accusation, right? That's probable
9 cause.

10 There's something called preponderance of the
11 evidence, right? In this very courtroom, they oftentimes
12 try civil lawsuits. Those are cases about money, okay?
13 It doesn't matter about how much money. It could be a
14 million dollars. Preponderance simply means that at the
15 end of the day, at the end of the trial, the evidence
16 shifts just ever so slightly in favor of one side or the
17 other, right? That's what you need to win, again, a money
18 lawsuit, right?

19 There's a standard called clear and convincing. So
20 in this courtroom on the second floor is family court,
21 okay? And there's situations where the Department of
22 Social Services brings legal actions against parents and
23 says you've done horrible things to your children or you
24 neglected them terribly or whatever it is and says we're
25 gonna take your children from you, you're no longer gonna

1 be legally their parent, you're gonna have no rights to
2 them again, you may never see them ever again, okay? The
3 burden in those situations are called clear and convincing,
4 right, so it's certainly more than a preponderance, okay?

5 All of those burdens are less than beyond a
6 reasonable doubt. So the judge just told you and the
7 judge will tell you again at the end of the trial what
8 that burden is. It leaves you firmly convinced or it
9 also would cause a reasonable person to hesitate to act.
10 It's the highest burden of the law.

11 Now everyone involved in this case would agree they
12 don't want to see anyone wrongfully accused -- wrongfully
13 convicted, okay, and that includes the defendant, Jason
14 Otero.

15 Now my name, again, is Jim Snell. Next to me
16 is Brad Kirkland. So we're the lawyers representing
17 Mr. Otero. Seated behind us is Madelyn Norton from my
18 office and then, finally, the gentleman in blue shirt
19 with the beard, that's Jason Otero.

20 Please remember that Mr. Otero has pled not guilty
21 and that's the most important thing. He has pled not
22 guilty because he denies these allegations. When you
23 are falsely or unfairly accused, you've been wrongfully
24 arrested, that's what you do. You plead not guilty and
25 you demand your trial. That's exactly what Mr. Otero's

1 done and that is exactly why we're all here, including
2 all twelve of you, plus an alternate, today.

3 Thank you-all very much.

4 THE COURT: Thank you, Mr. Snell.

5 The State can call their first witness.

6 MS. PATTERSON: The State calls Mackenzie Hall.

7 (Whereupon, Mackenzie Hall was duly sworn by the
8 Clerk of Court.)

9 THE CLERK: Thank you. Would you please have a seat
10 in the witness box. State your full name and spell your
11 last for the record.

12 THE WITNESS: My name's Mackenzie Hall. You said
13 spell it? M-A-C-K-E-N-Z-I-E. Hall, H-A-L-L.

14 MACKENZIE HALL,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. PATTERSON:

18 Q. Good morning, Ms. Hall. How are you?

19 A. Good. How are you?

20 Q. Ms. Hall, can you tell the jury, where are you
21 employed?

22 A. I'm employed at Gilbert Elementary School.

23 Q. And what is your job title at Gilbert Elementary
24 School?

25 A. I am a school counselor.

1 Q. And how long have you been a school counselor?

2 A. This is my seventh year.

3 Q. Have you always worked at Gilbert Elementary?

4 A. Yes, ma'am.

5 Q. And tell us a little bit about -- where did you go to
6 school?

7 A. Where did I go to school?

8 Q. Yes.

9 A. College?

10 Q. College, yes.

11 A. Clemson.

12 Q. Clemson. And what are some of your duties and
13 responsibilities as a school counselor?

14 A. It's a long list, but my main priority is making sure
15 that children are safe and have safe people to trust and
16 so, you know, we do classroom lessons, we do small groups,
17 we do individual counselling, so just making sure that
18 we're addressing children's social, emotional, personal
19 needs, so. But number one priority is being a safe person
20 that children can come to and walk through lots of hard
21 things with.

22 Q. And back in 2021, how many school counselors were at
23 Gilbert Elementary?

24 A. Three.

25 Q. And what is Erin's Law?

1 A. Erin's Law is a state mandate that all schools --
2 public schools have a sexual abuse prevention curriculum
3 that they teach children so that they, you know, know what
4 signs and things to look for in regards to keeping their
5 bodies safe, being safe in the community and things like
6 that and what to do to get help.

7 Q. And is this something that you as a counselor would
8 teach the children at Gilbert Elementary?

9 A. Yes, ma'am.

10 Q. And what time of the year is this lesson usually
11 taught to the children?

12 A. We usually wait until later in the year so that they
13 at least know of us and have some rapport with us because
14 it is a pretty intense type of lesson, so we did that
15 lesson in February of 2021.

16 Q. And are you responsible for certain groups of
17 children or are you there for all the children of Gilbert
18 Elementary?

19 A. Yes. So like I said, we have three counselors at our
20 school and we each have our own caseloads. At Gilbert
21 Elementary, we have children and we follow them up. So,
22 you know, I was not MINOR's school counselor at the
23 time; however, when children -- when counselors are not
24 there, we're there for all the children. So she wasn't
25 on my direct caseload per se, but she knew of me. I share

1 an office with her counselor, so she knew and identified
2 me as a safe person and -- and knew of me.

3 Q. And so you mentioned MINOR . Are you referring to
4 MINOR ?

5 A. Yes, ma'am.

6 Q. And was she a student at Gilbert Elementary back in
7 May of 2021?

8 A. Yes, ma'am.

9 Q. Do you know what grade she was in?

10 A. She was in kindergarten.

11 Q. And I think you mentioned that she was not a student
12 of yours?

13 A. Right. Not assigned under my caseload.

14 Q. Okay. And would MINOR have taken the class on
15 Erin's Law?

16 A. Yes, ma'am.

17 Q. And in May of 2021, did you receive a phone call from
18 a parent of a classmate of MINOR 's?

19 A. I did.

20 Q. And was she concerned about something concerning what
21 MINOR told her son?

22 A. Yes, she was.

23 Q. And do you know what specific date that was?

24 A. That was May 3, 2021.

25 Q. And do you remember about what time that call came

1 through?

2 A. That was first thing in the morning. I'd say around
3 8:00, 8:30. It had come through the office and then they
4 directed it straight to me.

5 Q. Now without saying what she may have told you, did she
6 tell you what MINOR told her son?

7 A. Yes, she did.

8 Q. Okay. And after you had this conversation with that
9 parent, were you concerned?

10 A. I was very concerned.

11 Q. And what did you do?

12 A. So typically when we receive information like that, we
13 meet with the child just to touch base and, you know, see
14 what's going on.

15 Q. And is that what you did in this case?

16 A. Yes. I went down to her room and she knew of me, so
17 she immediately gave me a hug and happily skipped down the
18 hall with me, and so then we went into my office.

19 Q. Now what is a mandatory reporter?

20 A. Yes. So a mandatory reporter is someone who if they
21 have reason to suspect negligent, physical abuse of any
22 kind, then they're mandated to report that information to
23 law enforcement, DSS and certain professionals.

24 Q. And you as a school counselor, are you, in fact, a
25 mandatory reporter?

1 A. Yes, ma'am.

2 Q. And after you got MINOR out of her class, where did
3 you take her?

4 A. I took her to my office, which is also --

5 Q. And was it --

6 A. I'm sorry. Which is also her assigned counselor's
7 office, so I just want to make sure you guys know that
8 that's a safe place that she was already familiar with.

9 Q. And was anyone else in this meeting that you had with
10 MINOR at this time?

11 A. No. No, it was just me and MINOR.

12 Q. And what conversations did you initially have with
13 MINOR?

14 A. Yes. So, you know, given she's in kindergarten and,
15 you know, I was very concerned with the information, we
16 don't come right out and talk to them about that. So I
17 just had her draw a picture. Right here. She drew a
18 picture. I keep this in my office. That she drew me
19 with a cat. She knew I liked cats. She talked about her
20 nineteen cats. And so, anyway, we were just drawing. She
21 was, you know, trying to, you know, tell me all about her
22 -- her cats and all their names and we're just, you know,
23 bantering back and forth, and that builds rapport with the
24 child, they feel safe, and so after that I brought forward
25 my concerns that the parent had shared with me.

1 Q. And when you initially tell MINOR of your concerns,
2 what was her demeanor?

3 A. She was very reluctant. She kind of stopped her
4 coloring. Her smile went away and her eyes got really big
5 and she just looked at me like --

6 MR. SNELL: I'm gonna object, Your Honor. I think
7 hearsay in how her eyes looked.

8 THE COURT: Do you want to rephrase it, Ms. Patterson?

9 BY MS. PATTERSON:

10 Q. Or just did she do anything?

11 A. She started crying.

12 Q. And were you able to calm her down?

13 A. I did remind her that this is a safe place and that
14 school counselors are here to keep children safe and that,
15 you know, I reminded her, you know, that -- that I'm a safe
16 person that she can talk to given she was very distraught.

17 Q. And did she eventually have a conversation with you?

18 A. She did.

19 Q. And without saying what she may have told you, did she
20 tell you anything about that was going on in her home?

21 A. Yes, she did.

22 Q. And did she tell you anything about when this may have
23 occurred?

24 A. She did. She said the last time was May 2nd, the day
25 before.

1 MR. SNELL: Objection, Your Honor. Hearsay.

2 THE COURT: It is.

3 MS. PATTERSON: Time and place.

4 THE COURT: Let me see the lawyers just for a second.

5 (Proceedings held at the bench; not reported.)

6 THE COURT: Madam Forelady, I'm gonna let -- there's
7 a matter I need to take up with the lawyers, so I'm gonna
8 have you go back to the jury room. I'll have you back as
9 soon as we finish.

10 Thank you.

11 Remember, there's no talking about this case even
12 amongst yourselves. You're gonna hear that from me about
13 twenty times.

14 (Whereupon, the jury retires to the jury room at
15 10:13 AM.)

16 THE COURT: All right. Please be seated.

17 This is -- this is our problem that I -- that we're
18 finding is that in criminal sexual conduct cases when
19 the victim testifies, evidence from other witnesses are
20 admissible, but -- even to time and place, but she hasn't
21 testified yet, and I think that was Mr. Kirkland's
22 objection.

23 MR. KIRKLAND: Yes, ma'am.

24 What was the rule that they stated if you don't mind?

25 THE COURT: 801(d). 801 -- 1(d)1 is --

1 MR. KIRKLAND: (d)1(D).

2 THE COURT: Yes.

3 MR. KIRKLAND: Okay. I'm looking at it.

4 Yeah, I mean, the issue that I have is the plain
5 language of this, Your Honor, is it says consistent with
6 the declarant's testimony in a criminal case.

7 THE COURT: It says -- and I'm gonna tell you it
8 says the scope of the testimony below it. It says in
9 criminal sexual conduct when victim testifies. The
10 victim has not testified in this case yet. Evidence from
11 other witnesses that she complained of sexual assault is
12 admissible in corroboration limited to time and place of
13 assault and excluding the details or particulars. But
14 she hasn't testified yet is the way I read the rule.

15 I'll be glad if you have any case law, Ms. Wellman,
16 and I'll be happy to hear from you.

17 MS. WELLMAN: Your Honor, I would just ask for just
18 a minute to run to my office and print something out, but
19 we could also just recall this witness after MINOR
20 testifies.

21 THE COURT: Right. I think it's clearly that --
22 if I'm reading it correctly, she needs to testify and
23 then anybody can testify to time and place without the
24 particulars of the sexual assault itself.

25 MS. WELLMAN: Okay. If I could --

1 MS. PATTERSON: I'll just recall this witness, Your
2 Honor after MINOR .

3 THE COURT: Okay. Do you have any more questions?
4 Because I'm gonna leave her on the stand.

5 MS. PATTERSON: Yes, I have a few more questions.

6 THE COURT: Then I'm gonna -- let me ask the
7 defense. Do you want me to tell the jury to ignore the
8 time and place? What do you want me to do? Do you have
9 a suggestion?

10 MR. KIRKLAND: I say leave it where it is right now,
11 Your Honor, and just forget about it and move on with our
12 misunderstanding of the rule until we know otherwise. I
13 don't want to bring attention to it.

14 THE COURT: I've got it. You've got your own
15 strategy over there. I'm not gonna interfere with it.
16 I just wanted to make sure.

17 All right. Let's bring the jury back -- wait a
18 minute.

19 MS. WELLMAN: Your Honor, just before the jury comes
20 back, Mr. Kirkland also made a statement regarding --

21 MR. KIRKLAND: Yes.

22 THE COURT: About forensic interview.

23 MS. WELLMAN: Your Honor, normally that is a motion
24 that should have been made pre-trial. I have no problem
25 with, you know, now switching to like investigative

1 interview like what is used in the statute. However,
2 because Ms. Patterson did say you will see her forensic
3 interview, just because we didn't have any notice the
4 defense was objecting to that word, I would just ask
5 that when we call Lieutenant Sykes that we say either a
6 forensic or investigative interview and then go with
7 investigative interview going forward.

8 MR. KIRKLAND: Our position is I think after Kromah
9 the term "forensic interview" should not be used at all
10 in these cases. In fact, Kromah established that it was
11 not, in fact, a forensic interview. The use of the term
12 is a misnomer. It is not, in fact, a forensic interview.
13 I do not think that the jury has paid so much close
14 attention at this point in time that switching to the term
15 "investigative interview" would be something that would
16 completely throw them off. I don't -- I just don't want
17 that word "forensic" used again.

18 THE COURT: I'll be happy to tell the jury this is
19 not a forensic interview when the time comes. It's just
20 an interview, an investigative interview. We can do that
21 when the officer, if you remind me, takes the stand.
22 It's not gonna do any good to tell them now unless you
23 want me to because we're not talking about it.

24 MR. KIRKLAND: No, I do not.

25 THE COURT: Okay. That's what we'll do. If you

1 will remind me, Mr. Kirkland.

2 MR. KIRKLAND: I will, Your Honor.

3 THE COURT: I'll reiterate that to the jury.

4 MS. WELLMAN: I guess I'm little confused as to
5 where we're going. If we don't -- if the jury supposedly
6 didn't pay enough attention during openings to pick up on
7 that word, then I would rather not call attention to the
8 fact that something that the State said in opening was
9 wrong. If we're not allowed to correct it --

10 MR. KIRKLAND: Yeah, I understand the position
11 they're taking. I think the safest way to go from here
12 forward is just to refer to it as an investigative
13 interview. I don't think the jury is going to --

14 THE COURT: Okay. From here on out we're gonna
15 refer to it as an interview or investigative interview
16 and not bring up the word "forensic", okay? And then
17 you-all want me to leave time and date that this witness
18 testified to alone?

19 MR. KIRKLAND: Yes, please.

20 THE COURT: So there's no objection really to either
21 one of these.

22 MR. KIRKLAND: I think we've reached a consensus.

23 THE COURT: A consensus.

24 Okay. Just for the record I wanted to make sure.

25 Everybody clear?

1 MS. PATTERSON: Yes, ma'am.

2 THE COURT: Are you-all clear?

3 MR. SNELL: Yes, Your Honor.

4 THE COURT: All right. Let's bring the jury back
5 in.

6 I'm also gonna tell you there's a bunch of case law
7 on the time and date that's consistent with my ruling.

8 MS. WELLMAN: Yes, ma'am.

9 THE COURT: One of them being Sanchez v. State.

10 (Whereupon, the jury return to the jury room at
11 10:20 AM.)

12 THE COURT: Madam Forelady, the jury ready?

13 FOREPERSON: Yes, ma'am.

14 THE COURT: Please be seated.

15 Ms. Hall, I'm gonna remind you, you're still under
16 oath.

17 Thank you.

18 BY MS. PATTERSON:

19 Q. And, Ms. Hall, after you spoke to MINOR [REDACTED], what did
20 you do next?

21 A. I contacted our school resource officer that was at
22 our school at the time and then I also made a report to
23 DSS.

24 Q. Okay. And did you meet with anyone else regarding the
25 report that had been made -- the disclosure that had been

1 made by MINOR ? Did you have a meeting with anyone else?

2 A. Yes. So we had a meeting with our school resource
3 officer where I shared my concerns and that was it.

4 Q. Okay.

5 A. The first meeting.

6 Q. And after you met -- and would that have been Deputy
7 Creech, Cameron Creech?

8 A. Yes, ma'am.

9 Q. And after you met with him, did you meet with anyone
10 else that day concerning MINOR 's disclosure?

11 A. Yes. So I sat in when DSS arrived and our school
12 resource officer was there as well and then I was also
13 there with the mother.

14 Q. Do you remember the mother's name?

15 A. I do.

16 Q. What's her name?

17 A. Mellixa.

18 Q. And you met with her?

19 A. Yes, ma'am.

20 Q. And who was at the meeting when you met with her?

21 A. Law enforcement, DSS.

22 Q. And were you required to do anything else regarding
23 the information that you obtained from MINOR ?

24 A. I was not.

25 Q. Okay. And did you document any of this?

1 A. Yes.

2 Q. And did you turn that into the school?

3 A. Yes, we keep it in our records.

4 MS. PATTERSON: I beg the Court's indulgence.

5 THE COURT: Take your time.

6 MS. PATTERSON: Thank you, Ms. Hall. Please answer
7 any questions the defense may have.

8 THE COURT: Mr. Snell.

9 CROSS-EXAMINATION

10 BY MR. SNELL:

11 Q. Ms. Hall, just a few questions.

12 A. Uh-huh.

13 Q. So I heard you say you were a mandatory reporter; is
14 that right?

15 A. Uh-huh.

16 Q. And just about everybody that works at the school
17 would be a mandatory reporter; is that right?

18 A. Yes, sir.

19 Q. Okay. As a mandatory reporter, when a child comes
20 in with information that there's been an incident, you're
21 required to report that up; is that correct?

22 A. Uh-huh.

23 Q. And that means to law enforcement or Department of
24 Social Services?

25 A. Yes.

1 Q. And even both?

2 A. Uh-huh.

3 Q. Okay. Your job is not to investigate the allegations,
4 correct?

5 A. Correct.

6 Q. You don't -- you don't take part in determining if
7 what -- if the story that's presented to you is true or not
8 true?

9 A. Correct, that's the job of law enforcement and DSS.

10 Q. So it just -- you hear it and it just goes -- you pass
11 it right on?

12 A. If I have reason to believe, yes.

13 Q. Okay. Well, again, if you're -- if a child comes to
14 you and says something happened, right, like some sort of
15 physical or sexual abuse or neglect or anything like that,
16 you are mandatorily required to report it?

17 A. Yes.

18 Q. Okay. And that's all you do is report it?

19 A. Yes.

20 MR. SNELL: Nothing further.

21 THE COURT: Thank you.

22 Any redirect?

23 MS. PATTERSON: No, ma'am, Your Honor. But this
24 witness is subject to recall.

25 THE COURT: All right. Ms. Hall, they're telling

1 me you're subject to recall. That means I cannot excuse
2 you, okay, but you may step down.

3 THE WITNESS: Okay.

4 THE COURT: Thank you.

5 (Witness excused.)

6 THE COURT: You can call your next witness.

7 MS. PATTERSON: The State calls Detective Cameron
8 Sherban.

9 (Whereupon, Cameron Sherban was duly sworn by the
10 Clerk of Court.)

11 THE CLERK: Would you, please, have a seat in the
12 witness box. State your full name and spell your last
13 for the record.

14 THE WITNESS: My name is Cameron Sherban.
15 S-H-E-R-B-A-N.

16 CAMERON SHERBAN,
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. PATTERSON:

20 Q. Detective Sherban, where are you employed?

21 A. I'm employed with the Lexington County Sheriff's
22 Department.

23 Q. And how long have you been a detective in the
24 Lexington County Sheriff's Department?

25 A. I'm on my sixth year as an investigator with Lexington

1 County.

2 Q. And are you a detective in major crimes?

3 A. Yes. I'm a senior investigator now on the SVU, the
4 special victims unit team. I've been on special victims my
5 entire time there.

6 Q. And what type of offenses do you-all investigate?

7 A. My main role was as the ICAC investigator for about
8 five years. That was all the Internet Crimes Against
9 Children, but then also helped with the special victims as
10 I mentioned. That would be the children and elderly cases.

11 Q. And were you on duty on May 3rd of 2021?

12 A. Yes, I was.

13 Q. And did you respond to Gilbert Elementary School?

14 A. Yes, I did.

15 Q. And for what purposes did you respond to the school?

16 A. Sergeant Creech, he was my sergeant over the SUV team
17 at that time, and still is, but he had called me and said
18 that I needed to head over to the school there to speak
19 with a counselor in reference to a student that had made a
20 disclosure to them.

21 Q. Okay. And did you go to the school alone?

22 A. I brought Detective Gilliam. Carlisha Gilliam. She
23 was fairly new to the team at the time, but she was kind
24 of tagging along on every one of our cases at the time, so
25 she came along.

1 Q. And what did you do once you arrived at the school?

2 A. SRO Creech had given me a little bit of a rundown
3 of what he had heard about from the counselor about a
4 disclosure that had been made by one of the students,
5 MINOR . I also spoke with the counselor very
6 briefly and she kind of filled me in on what the disclosure
7 was, and then we were coming up with a plan of action on
8 how to speak to her about it.

9 Q. And speak with her, do you mean MINOR ?

10 A. Yes, speak with MINOR , the victim.

11 Q. And did you, in fact, speak with MINOR ?

12 A. So when we went in there originally, DSS was there
13 as well. Being that she was a six-year-old girl, I'm a
14 larger man, I just figured it would be easier and better
15 for her, that she would feel more comfortable speaking with
16 a female. DSS has a set amount of questions that they go
17 through with these kids that are just factfinding. We're
18 not trying to get into a lot of details. We just need the
19 simple facts of the case so that we can continue with the
20 investigation, and so I had her actually speak with her.
21 And I was present. We were all present in there at the
22 time.

23 Q. Okay. And after hearing what MINOR -- did she have
24 a conversation and disclose information to you-all in that
25 meeting?

1 A. Yes, she did.

2 Q. And without saying what she may have told you, after
3 you heard what she said what did you decide to do as an
4 investigator?

5 A. I immediately contacted Sergeant Creech to let him
6 know what had been disclosed and go over the next course
7 of action.

8 Q. And while at the school, did you meet with anyone
9 else?

10 A. Yes. So after the disclosure was given to us, we had
11 things in motion to do something at the house. We didn't
12 want to send her home. She was not gonna just get on the
13 bus and go home at that time, speaking of MINOR, so we
14 needed to call her mother, Mellixa. She was working at a
15 school very close by, I think at the primary school, which
16 was walking distance over to where we were, and she needed
17 to come over and we needed to speak with her about what had
18 been disclosed to us.

19 Q. And were you present or did you personally speak with
20 the mom, Mellixa?

21 A. Yes, I did.

22 Q. And where did you meet Mellixa?

23 A. We met in the same room. It was kind of a conference
24 room there at the school, at the elementary school. I
25 brought her in and we discussed what she had disclosed to

1 us.

2 Q. And who was present during this meeting again?

3 A. During that meeting it was me, SRO Creech and I
4 believe the guidance counselor was in there as well. I
5 know somebody from the school was. I think it was the
6 guidance counselor.

7 Q. And did you tell Mellixa what had been disclosed by
8 MINOR ?

9 A. Yes, I did.

10 Q. And what was her reaction? Not saying anything she
11 may have said, what was her reaction?

12 A. She was completely flabbergasted. It just -- it
13 completely threw her off. She did not seem to see this
14 coming. This was a very genuine reaction from her as
15 well. She began crying. She couldn't believe what she
16 was hearing.

17 Q. And after you had that conversation with Mellixa,
18 what, if anything, happened?

19 A. She had requested to call her father and I had no
20 problem with that, of course. As she called him, she
21 couldn't speak at all. She was just so choked up and
22 so overwhelmed with what she had just been told, so.

23 Q. Did you help her with that phone call?

24 A. Yes, I actually spoke to her father for her to make
25 the next arrangements.

1 Q. And when you say her father, are you referring to
2 Mellixa's father?

3 A. Yes, Mellixa's father. I'm sorry.

4 Q. And what was your next involvement, if any, with this
5 case?

6 A. So I had called Mellixa's father. Well, when I was
7 talking with him, the whole reason for that was to make
8 arrangements for where Mellixa and her children could stay
9 during this investigation. So the next steps were to go
10 to the house, but with an escort, of course, to get some
11 belongings. So I went with them to the house and I stood
12 by outside with them until they were able to go in and
13 get some belongings and Mellixa took her, I think, two
14 children with her, got some belongings and they went with
15 her father.

16 MS. PATTERSON: Thank you, Detective Sherban.

17 Please answer any questions the defense may have.

18 THE COURT: Mr. Snell.

19 MR. KIRKLAND: I'm gonna handle this, Your Honor.

20 THE COURT: Mr. Kirkland.

21 MR. KIRKLAND: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MR. KIRKLAND:

24 Q. So you had been working in the past in the ICAC
25 division you said? Internet Crimes Against Children?

1 A. Yes, sir.

2 Q. So how many of these ICAC cases have you worked in the
3 past?

4 A. Hundreds.

5 Q. Yeah. Hundreds of them.

6 Who was the -- you'll have to remind me of the name.
7 Investigator Creech, right? That was --

8 A. Sergeant Creech.

9 Q. Excuse me. Sergeant Creech?

10 A. Yes.

11 Q. Now Sergeant Creech is a resource officer at the
12 school, correct?

13 A. I'm sorry. Let me make sure that this is clear. SRO
14 Creech is a -- was a resource officer at the school. He is
15 brothers with Sergeant Creech who is the sergeant in the
16 investigations up there at the sheriff's department.

17 Q. Okay. So -- I'm glad you said that because I did not
18 understand. So we're talking about a separate Creech that
19 was the resource officer as opposed to Sergeant Creech who
20 is the lead investigator on this case?

21 A. That's correct.

22 Q. Okay. Good. I did not know that.

23 So once you told -- once you spoke to -- once you
24 spoke to MINOR, immediately the number one suspect
25 obviously was her father because she had disclosed

1 something concerning her father, correct?

2 A. Yes.

3 Q. And at that point the -- you and Investigator Creech
4 at that time attempted to obtain search warrants for the
5 Otero house, correct?

6 A. So I contacted Sergeant Creech and I believe that's
7 what he did next. I'm not certain what -- exactly what
8 order he did everything.

9 Q. Were you involved in the search of the house at all?

10 A. I did assist with the search.

11 Q. Okay. So there was clearly a search warrant?

12 A. Yes, there was. I just don't know the order.

13 Q. Now other than talking to MINOR and other than
14 the search of the house, which returned some items and all
15 that was turned over to whoever looks at that stuff, did
16 you ever interview anyone else in connection with any
17 statements made by MINOR ?

18 A. I did not.

19 Q. Okay. Now you mentioned very specifically that you
20 informed -- you talked to the father, correct?

21 A. I talked to Mellixa's father, yes.

22 Q. That's what I meant. I'm sorry. Mellixa's father.
23 Now I assume that whatever was disclosed by MINOR you
24 relayed that information to Mellixa's father?

25 A. Yes, I believe so.

1 Q. And I believe at one point in time because I watched
2 that video because you guys had a camera set up during
3 that, didn't you?

4 A. Yes.

5 Q. And one of the things that was a big concern was where
6 the children were going to be for a period of time and the
7 concern was could they -- can we somehow make arrangements
8 to have the children temporarily placed with the father
9 while the search was going on, correct?

10 A. Temporarily placed with Mellixa's father, yes.

11 Q. Right. When I say father in this context, yeah, I'm
12 sorry, Mellixa's father. So Mellixa's father was well
13 aware of everything that was going on, right?

14 A. He was made aware of the situation that was at hand,
15 yes.

16 Q. Now I just want to reiterate something. When you --
17 when you talked to MINOR's mother, you said that she
18 was absolutely flabbergasted and shocked. There was no
19 indication that she had any clue that this sort of thing
20 had been going on, could have been going on or anything
21 like that based on her reaction, correct?

22 A. Yes. It did not appear -- to make sure I'm answering
23 your question, it did not appear that she knew what was
24 going on, so.

25 Q. Or that she had -- or that she had any -- because I

1 think you said she was shocked, she was flabbergasted,
2 and, therefore, it would be fair to assume that this was
3 a complete surprise, she had seen -- there was nothing in
4 her life that she had seen or heard that would have led her
5 to believe anything like this was going on?

6 A. Yes. Correct.

7 Q. Okay. Hold on one second if you don't mind.

8 MR. KIRKLAND: That's all the questions I have,
9 Your Honor.

10 THE COURT: Thank you, Mr. Kirkland.
11 Any redirect?

12 MS. PATTERSON: No, ma'am, Your Honor. We ask that
13 this witness be excused.

14 THE COURT: All right. You may be excused.
15 (Witness excused.)

16 THE COURT: Madam Forelady, the jury okay?

17 FOREPERSON: Yes, Your Honor.

18 THE COURT: You call your next witness.

19 MS. PATTERSON: Your Honor, may we approach?

20 (Proceedings held at the bench; not reported.)

21 THE COURT: All right. Madam Forelady, I'm gonna
22 ask that you return to the jury room. For the next
23 witness they've got to set up some stuff, so it's gonna
24 take us about fifteen minutes and I'll have you back in,
25 okay? Remember, no talking about this case.

1 (Whereupon, the jury retires to the jury room at
2 10:37 AM.)

3 THE COURT: All right. We'll come back at five till.

4 MS. PATTERSON: Thank you.

5 (Recess taken at 10:38 AM.)

6 (Back on the record at 10:57 AM.)

7 BAILIFF: Remain seated. Court's now in session.

8 THE COURT: Okay. Are we ready?

9 MR. KIRKLAND: They're almost done. They're
10 working on it. I can assure you they've been in and out
11 asking questions of us and they've been working as fast
12 as they can.

13 MS. WELLMAN: We're good.

14 MS. PATTERSON: Thank you, Your Honor.

15 THE COURT: Can I bring the jury in?

16 MS. WELLMAN: Yes, Your Honor.

17 Just one thing with regards the forensic interview,
18 just before they're in here -- sorry, the investigative
19 interview, it was enhanced by Kennedy Ring from ROCIC.
20 We talked about that yesterday. We had to send that
21 off, you know, several months ago. I didn't get any
22 requested redactions from the defense until last week,
23 so I just had a conversation with Mr. Kirkland and
24 Mr. Snell that for purposes of getting, you know, that
25 in, Kennedy Ring would, you know, testify to her process,

1 testify to what she did, and that she reviewed this
2 video, and they're not concerned about her saying it's
3 a true and accurate copy.

4 Is that correct?

5 MR. KIRKLAND: That's correct.

6 And let me give you the background so it makes
7 absolute sense on the record.

8 So Mr. Snell would not -- did not -- he made some
9 form of objection to the video -- enhancement of the
10 video, so he did not agree that the enhanced video should
11 be used, but rather the original video should be used.
12 That was his legal position that he took yesterday if
13 I am not mistaken.

14 THE COURT: On the record?

15 MR. KIRKLAND: I believe so.

16 MS. WELLMAN: I didn't hear that.

17 THE COURT: I didn't hear that.

18 MR. KIRKLAND: No? Well, I'm just making sure
19 because we've had some conversations here and I don't
20 want us to get mixed up. So --

21 THE COURT: As a matter of fact, it's my recollection
22 that we put the enhanced video as a Court exhibit.

23 MR. KIRKLAND: We did.

24 MS. WELLMAN: Yes.

25 THE COURT: That is the entire -- the unredacted

1 enhanced video, but I didn't hear any objection to any
2 enhancement that was done.

3 MS. WELLMAN: My understanding is the defense was
4 not willing to stipulate to the enhancement and that's
5 why we're calling Kennedy Ring from ROCIC, not that there
6 was any legal objection to that.

7 MR. KIRKLAND: So -- I got it. Just to make it
8 clear.

9 THE COURT: All right.

10 MR. KIRKLAND: So we were not going to stipulate to
11 the enhancement itself, which would require them then to
12 bring in the person that did the enhancement --

13 THE COURT: Right.

14 MR. KIRKLAND: -- but so the issue then is they
15 wanted to know how do we legally do this because are we
16 going to ask if it's -- ask her if the redacted enhanced
17 video is a fair and accurate copy of what she enhanced
18 and we said no, she doesn't need to do that, she just
19 needs to say this is the disk, this is what I enhanced,
20 and then that's referring to the redacted version, so we
21 would agree with that. The person that will place it
22 into evidence will be the -- Investigator Sykes, is that
23 her name?

24 MS. WELLMAN: Yes.

25 MR. KIRKLAND: So we agree to that series of events.

1 THE COURT: Okay. As long as you-all are in
2 agreement.

3 MR. KIRKLAND: We are.

4 MS. WELLMAN: We just wanted to make that clear.

5 MR. KIRKLAND: I just -- I may have to remember
6 this one day and so I want to...

7 THE COURT: Okay.

8 All right. Can I bring the jury in?

9 MS. WELLMAN: Yes, Your Honor.

10 THE COURT: Let's bring them in.

11 So are we playing the video now?

12 MR. KIRKLAND: No, she's just going to say that
13 it was -- she enhanced it, right?

14 MS. WELLMAN: And she's gonna explain like what she
15 did --

16 MR. KIRKLAND: The process --

17 MS. WELLMAN: -- the process that she did and she
18 reviewed it and this is the video.

19 THE COURT: Okay.

20 (Whereupon, the jury returns to the courtroom at
21 11:02 AM.)

22 THE COURT: Madam Forelady, the jury ready?

23 FOREPERSON: Yes, Your Honor.

24 THE COURT: Please be seated.

25 The State can call their next witness.

1 MS. WELLMAN: Your Honor, at this time the State
2 would call MINOR [REDACTED].

3 (Whereupon, MINOR [REDACTED] was duly sworn by the
4 Clerk of Court.)

5 THE CLERK: Thank you. Would you, please, have a
6 seat in the witness box. State your full name and spell
7 your last for the record.

8 THE WITNESS: MINOR [REDACTED].

9 THE COURT: Ms. MINOR [REDACTED], can you say your last name
10 and spell it for the Court?

11 THE WITNESS: MINOR [REDACTED].

12 THE COURT: Thank you.

13 MS. WELLMAN: If I could just have one second, Your
14 Honor.

15 [REDACTED] MINOR [REDACTED],

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. WELLMAN:

19 Q. Good morning, MINOR [REDACTED].

20 A. Good morning.

21 Q. Can you tell the jury how old you are?

22 A. Nine years old.

23 Q. You're nine. And how about -- what's your birthday?

24 A. [REDACTED], 2014.

25 Q. So you just turned nine?

- 1 A. (Nods head.)
- 2 Q. Where do you go to school?
- 3 A. I go to [REDACTED].
- 4 Q. Where?
- 5 A. [REDACTED].
- 6 Q. Okay. And what grade are you in?
- 7 A. Third.
- 8 Q. Third. What's your teacher's name?
- 9 A. Her name is Ms. Schuler.
- 10 Q. Okay. And what is your favorite subject in school?
- 11 A. Math.
- 12 Q. Math. Ms. MINOR [REDACTED], do you know where you live?
- 13 A. Yes.
- 14 Q. Okay. Where do you live?
- 15 A. Lexington.
- 16 Q. And right now who lives with you?
- 17 A. My mom and my brother.
- 18 Q. Okay. What's your brother's name?
- 19 A. L.O. [REDACTED].
- 20 Q. How old is L.O. [REDACTED]?
- 21 A. He is six.
- 22 Q. Ms. MINOR [REDACTED], do you know the difference between a
- 23 truth and a lie?
- 24 A. Yes.
- 25 Q. If I told you I was wearing a very big hat, would that

1 be the truth would or would that be a lie?

2 A. A lie.

3 Q. Okay. If I told you I was wearing a white shirt,
4 would that be the truth or a lie?

5 A. Yes, the truth.

6 Q. Okay. And what happens when you tell a lie?

7 A. You get in trouble.

8 Q. Okay. Do you know that you will get in trouble if you
9 tell a lie in this courtroom?

10 A. Yes.

11 Q. Do you promise to tell the jury the truth?

12 A. Yes, ma'am.

13 Q. Thank you. Ms. MINOR, you said you live with your
14 mom and your brother?

15 A. (Nods head.)

16 Q. I want you to think back to when you were six, okay,
17 and did you live with anyone else at that time?

18 A. I did.

19 Q. Who did you live with?

20 A. My dad.

21 Q. Okay. Why don't you live with your dad anymore?

22 A. Because he did something very wrong.

23 Q. Okay.

24 MS. WELLMAN: May I approach the witness?

25 THE COURT: You may.

1 BY MS. WELLMAN:

2 Q. Ms. MINOR, this is State's Exhibit 4. Do you
3 recognize that?

4 A. (Nods head.)

5 Q. Can you tell the jury what's in State's Exhibit 4?

6 A. I don't understand.

7 Q. Is this the house that you lived in when you were six?

8 A. Yes.

9 Q. Okay. And does that look just like it did back then?

10 A. Yes.

11 Q. All right. And will that help you to explain what
12 you're talking about today?

13 A. (Nods head.)

14 MS. WELLMAN: The State would move to introduce
15 State's Exhibit Number 4 into evidence.

16 THE COURT: Any objection?

17 MR. SNELL: No objection.

18 THE COURT: It's admitted.

19 (State's Exhibit Number 4, a photograph, was
20 admitted into evidence.)

21 BY MS. WELLMAN:

22 Q. And, MINOR, you said this was your house?

23 A. (Nods head.)

24 Q. And you said your dad was doing some bad things?

25 A. Yes.

1 Q. What did your dad do to you?

2 A. He forced me to take my clothes off and then he
3 started licking me in an inappropriate spot.

4 Q. Okay. How old were you when he did that?

5 A. Six years old.

6 Q. Six years old. MINOR, when you say inappropriate
7 spot, we're not allowed to guess, okay? So I need you to
8 tell me. What spot do you mean?

9 A. My pee-pee.

10 Q. Your pee-pee. Okay. Ms. MINOR, again, we can't
11 guess here, okay? So I'm gonna show you a picture and I'm
12 gonna circle some parts of a body and you just tell me what
13 you call them, okay?

14 THE COURT: Any objection?

15 MR. SNELL: No objection.

16 THE COURT: All right. Are we making this a Court's
17 exhibit?

18 MS. WELLMAN: This is State's Exhibit 8.

19 THE COURT: State's Exhibit 8. Okay.

20 MR. KIRKLAND: And we're assuming, Your Honor, that
21 she's simply circling and waiting on an answer, correct?

22 MS. WELLMAN: Yes.

23 THE COURT: Thank you, Mr. Kirkland.

24 BY MS. WELLMAN:

25 Q. Ms. MINOR, let's start down here. What do you call

1 that?

2 A. Feet.

3 Q. Feet. How about that? What do you call that?

4 A. Boob.

5 Q. Speak up for me.

6 A. Boob.

7 Q. How about -- what do you call that?

8 A. Pee-pee.

9 Q. Okay. So, Ms. MINOR, you said that your dad made
10 you take off your clothes and he licked your pee-pee. Were
11 you wearing any clothes at all? Like did you have your
12 panties on?

13 A. (Shakes head.)

14 Q. No? Okay.

15 THE COURT: Wait just a second. She needs to
16 answer for the record, please. It has to be a yes or
17 a no, okay?

18 THE WITNESS: (Nods head.)

19 THE COURT: Thank you.

20 BY MS. WELLMAN:

21 Q. So can you answer that question out loud for me?

22 A. Yes.

23 Q. When you say lick, I just want to be clear, do you
24 mean with his tongue?

25 A. Yes, ma'am.

1 Q. Where did that happen?

2 A. My mom's room.

3 Q. Okay.

4 MS. WELLMAN: May I approach the witness?

5 THE COURT: You may.

6 BY MS. WELLMAN:

7 Q. MINOR, this is State's Exhibit 5. Do you recognize
8 this?

9 A. Yes.

10 Q. Can you tell the jury what is depicted in this photo?

11 A. What does depicted mean?

12 Q. Okay. Sometimes I use big words, so if you don't
13 understand something you just tell me and I'll re-ask the
14 question, okay? So you said you recognize what is shown in
15 this photo, correct?

16 A. (Nods head.)

17 Q. Okay. Can you tell the jury -- don't forget you've
18 got to answer out loud for me, okay?

19 A. Okay.

20 Q. So you said you recognized this; is that right?

21 A. Yes.

22 Q. And can you tell the jury what we see in this photo?

23 A. I see a bed and blanket and two or three water bottles
24 and a doll bed and then I see clothes and a hanger on the
25 floor and then I see a bathroom and a hanger and --

1 Q. Do you recognize this room?

2 A. Yes.

3 Q. Okay. And tell the jury whose room this is.

4 A. My mom's room.

5 Q. Okay. And would this help explain to the jury what
6 you're talking about today?

7 A. Yes.

8 Q. Okay.

9 MS. WELLMAN: The State would move to introduce
10 State's Exhibit 5.

11 THE COURT: Any objection?

12 MR. SNELL: No objection.

13 THE COURT: It's admitted.

14 (State's Exhibit Number 5, a photograph, was
15 admitted into evidence.)

16 BY MS. WELLMAN:

17 Q. MINOR, you said that's the room where your dad was
18 licking your pee-pee?

19 A. Yes.

20 Q. Did that happen one time or more than one time?

21 A. More than one time.

22 Q. And while you were in this room, where were you in the
23 room?

24 A. On the bed.

25 Q. On the bed. Okay. Was the door open or closed?

1 A. Closed.

2 Q. Do you know if the door was locked?

3 A. It was locked.

4 Q. Ms. MINOR, where was your mom?

5 A. At the store.

6 Q. Do you know why she was at the store?

7 A. Yes.

8 Q. Can you tell the jury why your mom was at the store?

9 A. Because she was -- she was doing Instacart so she can
10 earn more money.

11 Q. You said you live with your brother?

12 A. Yes.

13 Q. And were you living with your brother at that time?

14 A. Yes.

15 Q. Okay. Do you know where your brother was?

16 A. He was either with my mom or he could have been in the
17 house downstairs.

18 Q. Okay. But he wasn't in the room with you?

19 A. No.

20 Q. Okay. How did that make you feel?

21 A. Very scared.

22 Q. Very scared. Okay. What did your dad say about that?

23 A. I don't remember.

24 Q. Okay. Ms. MINOR, did your dad ever do anything
25 else that made you feel scared?

1 A. Yes.

2 Q. Okay. What did he do?

3 A. He took one of these toys and used it on me.

4 Q. Okay. Let's talk about that, okay? One of these
5 toys. What color was this toy?

6 A. Pink.

7 Q. Pink. Okay. Can you describe it in a little more
8 detail?

9 A. Yes.

10 Q. Okay. Tell the jury what you remember this toy
11 looking like.

12 A. It looked like -- it looked like an oval and it was
13 like -- it had like two buttons on it where it could go
14 fast or slow.

15 Q. The buttons made it go fast or slow, is that what you
16 said?

17 A. Yes.

18 Q. Okay.

19 MS. WELLMAN: May I approach the witness?

20 THE COURT: You may.

21 BY MS. WELLMAN:

22 Q. Ms. MINOR, this is State's Exhibit 7. Do you
23 recognize this item?

24 A. Yes.

25 Q. Please tell the jury what this is.

1 A. It's an organism. It's a -- it's supposed to be used
2 for like I think for your back, but he didn't use it for my
3 back. He used it for my private area.

4 Q. Okay. Your private area, specifically on this photo,
5 what are you talking about your private area?

6 A. Pee-pee.

7 Q. Okay. Did your dad use that on top of your clothes or
8 on your skin or something else?

9 A. On my skin.

10 Q. Okay. Were you wearing clothes at the time?

11 A. No.

12 Q. Okay. Do you remember how that felt on your body?

13 A. It felt like vibration and like ticklish.

14 Q. Ticklish. Do you remember what happened when your dad
15 used your toy on your pee-pee?

16 A. (Nods head.)

17 Q. Can you tell us what happened?

18 A. It made me use the bathroom.

19 Q. Okay. Where were you when your dad used that on your
20 pee-pee?

21 A. In my bed.

22 Q. You were on your bed?

23 A. (Nods head.)

24 MS. WELLMAN: May I approach?

25 THE COURT: You may.

1 BY MS. WELLMAN:

2 Q. MINOR, this is State's Exhibit 6. Do you recognize
3 what's in this photo?

4 A. Yes.

5 Q. Okay. Can you tell the jury what we see here?

6 A. I see a globe, my cat named Tobias, my unicorn, a
7 bed and one of my pictures that I have, and then I see a
8 butterfly on my door, and then I see one of my like signs
9 that says my name, and then I see my closet.

10 Q. Okay. Is this your bedroom?

11 A. Yes.

12 Q. Okay. And can we use this photo to help the jury
13 understand where you were?

14 A. Yes.

15 MS. WELLMAN: The State would move to introduce
16 State's Exhibit 6.

17 THE COURT: Any objection?

18 MR. SNELL: No objection.

19 THE COURT: It's admitted.

20 (State's Exhibit Number 6, a photograph, was
21 admitted into evidence.)

22 BY MS. WELLMAN:

23 Q. Okay. Ms. MINOR, so you said this is your bedroom
24 and you said we see Tobias?

25 A. Yes.

1 Q. Who's Tobias?

2 A. He's my cat.

3 Q. Is that Tobias right here?

4 A. Yes.

5 Q. Where were you exactly in your room when your dad used
6 that toy that we saw in State's Exhibit 7 on your pee-pee?

7 A. On my bed.

8 Q. Okay. And is it your -- you had to go potty?

9 A. (Nods head.)

10 Q. Did you go potty on your bed?

11 A. Yes.

12 Q. Okay. What did your dad say about that?

13 A. I don't remember.

14 Q. When you had to go potty, did your dad use anything?

15 A. No.

16 Q. No? Okay.

17 A. Well, he did.

18 Q. What did he do?

19 A. He used a dog pad to clean it, but it didn't help
20 that --

21 Q. It didn't help that?

22 A. -- and then he hid it under like my dresser.

23 Q. You said he hid it under your dresser?

24 A. He did.

25 Q. And how old were you when that happened?

1 A. I was still six.

2 Q. Okay. And where was your mom?

3 A. She was also -- she was at the store.

4 Q. Okay. Was your brother there?

5 A. No, he was with her.

6 Q. Okay. Do you remember if your bedroom door was open
7 or closed?

8 A. It was closed and locked.

9 Q. Ms. MINOR, do you know what an orgasm is?

10 A. (Nods head.)

11 Q. I need you to answer out loud.

12 A. Yes.

13 Q. How do you know what an orgasm is?

14 A. He showed me.

15 Q. When you say "he", who do you mean?

16 A. Dad.

17 Q. Okay. You're looking over in the courtroom. Do you
18 see your dad here today?

19 A. No. I don't know what he looks like.

20 Q. Okay. How long has it been since you saw your dad?

21 A. Two years.

22 Q. Okay. Ms. MINOR, you said your dad showed you what
23 an orgasm is. How did he show you?

24 A. He showed me like how to use it in like in a video and
25 in a picture.

1 Q. Okay. Say that again for me. I didn't hear you.

2 A. In a video and a picture.

3 Q. Okay. So your dad showed you videos and pictures of
4 orgasms?

5 A. Yes.

6 Q. Okay. Do you recall what he said about that?

7 A. I don't know.

8 Q. That's okay. He showed you videos and pictures.
9 Let's talk about that.

10 A. Okay.

11 Q. Okay. When he showed you these videos and these
12 pictures, was he using a TV, a computer, his phone or
13 something else?

14 A. It was his phone.

15 Q. His phone. Do you remember what that phone looked
16 like?

17 A. Yes.

18 Q. Okay. Can you tell the jury what color the phone was?

19 A. The phone was black.

20 Q. Okay. And do you remember if it had a case?

21 A. Yes.

22 Q. Okay. What did the case look like; do you remember?

23 A. It like -- it looks like -- like it went like a square
24 and like a rectangle at the same time.

25 Q. Okay. When your dad showed you these photos and these

1 videos on his phone --

2 MR. SNELL: Your Honor, may we approach?

3 THE COURT: You may.

4 (Proceedings held at the bench; not reported.)

5 BY MS. WELLMAN:

6 Q. I forgot my last question.

7 All right. I think you -- I may repeat myself, okay,
8 but we were talking about your dad's phone and that it was
9 black and with a case, right?

10 A. Yes.

11 Q. Okay. When he showed you these photos and these
12 videos on his phone, was that in like any kind of like app
13 on his phone or was it just a screen on his phone?

14 A. It was on an app.

15 Q. An app. Okay. Was there some kind of password or
16 passcode to enter to get into that app?

17 A. No.

18 Q. Okay. Now these photos and these videos, can you
19 tell us exactly what was in -- let's talk about the videos
20 first -- exactly what was in the videos?

21 A. It was like -- it was like we were -- like it was with
22 my mom and then he was using it on her.

23 Q. You say he was using "it"?

24 A. (Nods head.)

25 Q. Okay. What is "it"?

- 1 A. The organism.
- 2 Q. Say that -- say it louder for me.
- 3 A. The organism.
- 4 Q. Okay. Is that one of those toys like what you showed
- 5 us?
- 6 A. Yes.
- 7 Q. Was your mom wearing clothes?
- 8 A. No.
- 9 Q. Okay. Did you see any other videos?
- 10 A. No.
- 11 Q. Okay. Did you ever see any -- you talked about
- 12 photos. Did you see anyone else in those photos?
- 13 A. No.
- 14 Q. I know it's been a long time, okay? Did you see one
- 15 video or more than one video?
- 16 A. Just one video.
- 17 Q. Okay. And did you see one photo or more than one
- 18 photo?
- 19 A. One photo.
- 20 Q. Okay. And what was happening in the photo?
- 21 A. I don't remember.
- 22 Q. Okay. Ms. MINOR, do you know what sex is?
- 23 A. (Nods head.)
- 24 Q. I need you to answer for me.
- 25 A. Yes.

1 Q. Okay. And what is sex?

2 A. It's when a boy's pee-pee is going in a girl's butt.

3 Q. Okay. How do you know that?

4 A. He showed me videos.

5 Q. Who is "he"?

6 A. Dad.

7 Q. Dad. Okay. You said he showed you videos?

8 A. Yes.

9 Q. Okay. Was that a separate video from the one with
10 your mom and the toy?

11 A. It's not with her.

12 Q. Okay.

13 A. It's someone else.

14 Q. Someone else. Okay. The people in this video, okay,
15 were they big people like adults or were they little people
16 or like kids or something else?

17 A. They were adults.

18 Q. Adults. Were the adults wearing clothes?

19 A. No.

20 Q. And, again, we can't guess, okay, so you said sex is
21 when a boy's pee-pee goes inside a girl?

22 A. Yes.

23 Q. Okay. I'm gonna show you another picture, okay, but
24 this time it's of a man, all right, and I'm gonna circle
25 some parts and you just tell me what you call them, okay?

1 MS. WELLMAN: This is State's Exhibit 9.

2 THE COURT: Any objection?

3 MR. SNELL: Again, I don't have any objection to
4 using it like for demonstrative I think at this point,
5 so it's not going into evidence.

6 MS. WELLMAN: Just demonstrative at this point.

7 THE COURT: Is that true with the other, Exhibit
8 Number 8?

9 MS. WELLMAN: Uh-huh.

10 MR. KIRKLAND: And we're assuming they're using them
11 in the exact same fashion.

12 THE COURT: Okay. It's admitted.

13 MS. WELLMAN: Thank you.

14 MR. SNELL: Judge, again, I want to make sure I'm
15 not -- I don't object to using them demonstratively. I
16 don't think they moved to admit it, so.

17 MS. WELLMAN: We just have it labeled.

18 THE COURT: I'm not admitting it into evidence. I
19 put down demonstrative.

20 MR. SNELL: Thank you.

21 BY MS. WELLMAN:

22 Q. So, Ms. MINOR, the same thing like we did before,
23 okay? What do you call that?

24 A. A mouth.

25 Q. A mouth. Okay. And inside a mouth -- what's inside

1 your mouth?

2 A. A tongue.

3 Q. Okay. All right. And what would be right there on a
4 boy?

5 A. Pee-pee.

6 Q. So you saw a video of that?

7 A. Yes.

8 Q. Okay. Ms. MINOR, have you ever seen anything come
9 out of a man's pee-pee?

10 A. Yes.

11 Q. Okay. Do you know what that's called?

12 A. Yes.

13 Q. What's it called?

14 A. It called sperm.

15 Q. Sperm. Who taught you that?

16 A. Dad.

17 Q. Do you know what color it is?

18 A. Yeah.

19 Q. What color?

20 A. It's like a gray white.

21 Q. Okay. Ms. MINOR, have you ever seen sperm or
22 anything else come out of your dad's pee-pee?

23 A. Yes.

24 Q. Where were you when you saw that?

25 A. My mom's bedroom.

1 Q. Right there?

2 A. Yes.

3 Q. Okay. When you saw sperm come out of your dad's
4 pee-pee, was the door open or closed?

5 A. It was closed.

6 Q. Do you know if the door was locked?

7 A. It was locked.

8 Q. Okay. Was anyone else in the room?

9 A. No.

10 Q. Okay. Do you remember what your dad said about that?

11 A. No.

12 Q. Okay. Do you remember how sperm came out of your
13 dad's pee-pee?

14 A. Yes.

15 Q. Can you tell us?

16 A. Yes.

17 Q. Go ahead and tell us.

18 A. So you would have to like -- you would have to like do
19 this (demonstrating) for it to be able to have it do that.

20 Q. You would have to do what?

21 A. You would have to do this (demonstrating).

22 Q. Okay. Did your dad make you do that to him?

23 A. No.

24 Q. Ms. MINOR, has your dad ever touched your private
25 parts, your pee-pee?

1 A. Yes.

2 Q. Okay. Did he ever touch your private parts with --
3 or your pee-pee with his pee-pee?

4 A. No.

5 Q. You don't think so?

6 A. I don't think so.

7 Q. Okay. Do you ever remember your dad touching your
8 pee-pee with any other part of his body?

9 A. No.

10 Q. Okay. When your dad showed you those videos and those
11 photos, how did that make you feel?

12 A. Scared.

13 Q. Scared. Okay. Ms. MINOR, all of these times that
14 we've talked about with the videos and the toy, did that
15 happen on one day or was it over several days?

16 A. It was over several days.

17 Q. Okay. Did your dad ever tell you whether you could
18 tell anyone about what he was doing?

19 A. He told me to never tell anyone.

20 Q. Okay. What did you think would happen if you did
21 tell?

22 A. I don't know.

23 Q. Okay. Ms. MINOR, do you remember telling someone
24 at school about what happened?

25 A. Yes.

1 Q. Okay. And do you remember talking to Ms. April?

2 A. Yes.

3 Q. And did you tell them a little bit about what was
4 going on with your dad?

5 A. Yes.

6 Q. Okay. All of those instances that we talked about
7 with your dad, were you still six?

8 A. Yes.

9 Q. Okay.

10 MS. WELLMAN: If I could just have one second, Your
11 Honor.

12 THE COURT: Sure.

13 BY MS. WELLMAN:

14 Q. Ms. MINOR, you said that your dad licked your
15 pee-pee. Did you ever lick his pee-pee?

16 A. Yes.

17 Q. Okay. Did that happen one time or more than one time?

18 A. One time.

19 Q. Okay. Where were you?

20 A. My mom's room.

21 Q. When you say your mom's room, was that also your dad's
22 room?

23 A. Yes.

24 Q. Okay. And that's this room that we're looking at?

25 A. Yes.

1 Q. Okay. Did -- do you remember what your dad said about
2 you licking his pee-pee?

3 A. No.

4 Q. No. Okay. Ms. MINOR, the videos of your mom that
5 you said that your dad showed you, do you remember like --
6 or do you know where your mom was?

7 A. It was like at this house. I don't remember what type
8 of house it was, but it was like in a bed.

9 Q. Okay. Was it this bed?

10 A. No, it was a different house.

11 Q. It was a different house. Okay. Ms. MINOR, after
12 you told your teacher, did you go back home to this house?

13 A. Yes.

14 Q. Okay. When you went back home, was your dad there?

15 A. He was in a police car.

16 Q. Okay. And where did you go next?

17 A. I went to my grandma's house.

18 Q. Okay. And did you stay there for a while?

19 A. Yes.

20 Q. Okay. Was your mom there?

21 A. Yes.

22 Q. Okay. Did she stay with you at your grandma's house?

23 A. Yes.

24 Q. Okay. Did L.O. stay with you?

25 A. Yes.

1 Q. Okay.

2 MS. WELLMAN: If I could just have one second, Your
3 Honor.

4 THE COURT: Take your time.

5 MS. WELLMAN: Nothing further, Your Honor.

6 THE COURT: Thank you.

7 Mr. Snell.

8 CROSS-EXAMINATION

9 BY MR. SNELL:

10 Q. MINOR, and I have some questions for you. And I
11 know you were in court yesterday. You were in this room
12 yesterday; is that right?

13 A. Yes.

14 Q. Okay. And you've had a chance -- I know you've --
15 you've sat in that chair before today, correct?

16 A. Correct.

17 Q. And I know yesterday you said you'd sat in the chair
18 before that day, too?

19 A. Yes.

20 Q. Okay. And -- and I know people talked to you about
21 coming into court and testifying?

22 A. Correct.

23 Q. Okay. And did they practice with you the questions
24 that they would ask and what your answer -- and how you
25 would answer?

1 A. Yes.

2 Q. Okay. And you've -- and I know you've met the
3 prosecutor before, Ashley, here or Ms. Wellman; is that
4 right?

5 A. Yes.

6 Q. Okay. And I know before today you talked to your --
7 was it your teacher?

8 A. Yes.

9 Q. Okay. And you also talked to your mother --

10 A. Yes.

11 Q. -- about -- about coming into court and talking?

12 A. Yeah.

13 Q. Did you talk to your grandma about coming into court
14 and talking?

15 A. No.

16 Q. Did you talk to your grandad?

17 A. No.

18 Q. Okay. But you talked with your mother; is that right?

19 A. Yeah.

20 Q. Okay. And I want to show you this picture, and this
21 is -- this is -- just so the judge knows, this is State's
22 Exhibit 5, but I'll show you that picture and, again, ask
23 -- you said that was your mom's room?

24 A. Yes.

25 Q. Okay. And did your dad also stay in that room?

1 A. Yes.

2 Q. Okay. Have you -- have you been -- have you been
3 inside that room?

4 A. Yes.

5 Q. How many times?

6 A. Maybe like over eighty.

7 Q. Okay. Well, you've been in there a lot?

8 A. (Nods head.)

9 Q. Okay. And -- and just so the judge knows, this is
10 State's Exhibit 4, but is that the house that you were
11 living in?

12 A. Yes.

13 Q. Okay. And is that the house that that bedroom was in?

14 A. Yes.

15 Q. Okay. And going back to this picture of the -- of
16 the bedroom, again. So the judge knows, it's marked as
17 State's Exhibit 5. You said that that bedroom had a door?

18 A. Yes.

19 Q. Okay. And the door had a lock on it?

20 A. Yes.

21 Q. Okay. But now that door wasn't always kept locked,
22 was it?

23 A. No.

24 Q. It was kept open?

25 A. Sometimes.

1 Q. Yeah. Okay. Just like other rooms in the house?

2 A. Yeah.

3 Q. Okay. Now after you -- I think we heard that --
4 that after you moved from this house, which, again, so the
5 judge knows, is State's Exhibit 4, did you stay with your
6 grandparents for a few days?

7 A. Yes.

8 Q. And then did you move out of your grandparents' house?

9 A. Yes.

10 Q. And -- and lived with your mother?

11 A. Yes.

12 Q. And your brother?

13 A. Yes.

14 Q. And -- and that's where you live now?

15 A. Yes.

16 Q. Okay.

17 MR. SNELL: Thank you. No other questions.

18 THE COURT: Any redirect?

19 MS. WELLMAN: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. WELLMAN:

22 Q. Ms. MINOR, Mr. Snell asked you about the people
23 that you talked to about coming to court today.

24 A. (Nods head.)

25 Q. Did anyone tell you to say something that wasn't true?

1 A. No.

2 Q. Okay. Everything you told us today, is that something
3 -- are those things that you remember?

4 A. Yes.

5 Q. Things that you felt on your body?

6 A. Yes.

7 Q. And things that you saw with your own eyes?

8 A. Yes.

9 Q. Okay. Did you want to come here today?

10 A. No.

11 Q. No. Were you scared to come here today?

12 A. Yeah.

13 MS. WELLMAN: Nothing further.

14 THE COURT: Thank you.

15 Can I excuse the witness?

16 MR. SNELL: No objections.

17 THE COURT: You can step down now.

18 (Witness excused.)

19 THE COURT: Madam Forelady, does the jury need a
20 break?

21 FOREPERSON: No.

22 THE COURT: All right. Let me -- let me just talk
23 to the jury just for a second because I know that MINOR
24 kept turning around and looking at me. Please -- I
25 think it was like for approval to go forward or I know

1 court's scary for a child, but let me let the jury know I
2 have no opinion in this case whatsoever. The law does not
3 allow me to have an opinion. That is solely for you to
4 decide, okay?

5 Thank you. You can call your next witness.

6 MS. PATTERSON: The State calls Kennedy Ring.

7 I apologize. We're gonna recall Ms. Hall at the
8 time.

9 THE COURT: Okay.

10 MS. PATTERSON: Mackenzie Hall.

11 THE COURT: If we're gonna recall her, we're gonna
12 re-swear her.

13 (Whereupon, Mackenzie Hall was duly sworn by the
14 Clerk of Court.)

15 THE CLERK: Would you, please, have a seat on the
16 witness stand. State your full name and spell your last
17 for the record.

18 THE WITNESS: My name is Mackenzie Hall. Last name
19 H-A-L-L.

20 MACKENZIE HALL,

21 having been duly sworn, testified as follows:

22 CONTINUED DIRECT EXAMINATION

23 BY MS. PATTERSON:

24 Q. And, Ms. Hall, I know earlier I got into the
25 conversation that you had with MINOR on May 2nd

1 of 2021. Is that what you told us?

2 A. May 3rd.

3 Q. May 3rd. I apologize.

4 And that was the same day that you got the call from
5 the concerned parent?

6 A. Yes, ma'am.

7 Q. And in that conversation with MINOR [REDACTED], without saying
8 what she may have told you, did she tell you when something
9 happened to her?

10 A. Yes.

11 Q. And what did she tell you about when this occurred?

12 A. She said it happened the day before.

13 MR. SNELL: Objection, Your Honor. We're gonna
14 renew our prior objections.

15 THE COURT: On?

16 MR. SNELL: Hearsay.

17 THE COURT: For the date and time?

18 MS. PATTERSON: Yes.

19 THE COURT: I'm gonna allow it.

20 Go ahead. Objection noted.

21 BY MS. PATTERSON:

22 Q. And when did she tell you what happened?

23 A. May 2nd.

24 Q. Did she tell you anything about her mom?

25 A. Yes. She said --

1 MR. SNELL: Objection. Hearsay.

2 THE COURT: I'll be glad to hear from you,
3 Ms. Patterson.

4 MS. PATTERSON: I'll rephrase the question.

5 THE COURT: Thank you.

6 BY MS. PATTERSON:

7 Q. And just to be clear -- and let me just re-ask my
8 question. What, if anything, did she tell you about when
9 this happened to her?

10 MR. SNELL: Objection, Your Honor.

11 THE COURT: Your motion's noted, but I'm allowing
12 the date and time.

13 THE WITNESS: The day before. May 2nd.

14 By MS. PATTERSON:

15 Q. And what, if anything, did she tell you about where
16 this happened?

17 A. She said it happened in her parents' room.

18 MR. SNELL: Objection, Your Honor. Again, this is
19 going beyond date and time.

20 THE COURT: Ms. Patterson, you're limited, my
21 under...

22 Let me see the lawyers for a second.

23 (Proceedings held at the bench; not reported.)

24 THE COURT: I'm gonna allow the place.

25 Go ahead.

1 BY MS. PATTERSON:

2 Q. And where did she tell you it happened?

3 A. In her parents' room.

4 MR. SNELL: Objection.

5 THE COURT: So noted for the record.

6 BY MS. PATTERSON:

7 Q. And you gave that date of May 2nd?

8 A. Yes, ma'am.

9 Q. Without saying, do you know if it was any other dates?

10 A. Yes.

11 Q. Okay. So May 2nd was just one of the dates?

12 A. Yes, ma'am.

13 MS. PATTERSON: I beg the Court's indulgence.

14 THE COURT: Take your time.

15 MS. PATTERSON: I think that's all, Your Honor.

16 THE COURT: Mr. Snell or Mr. Kirkland.

17 MR. SNELL: If I may, Your Honor?

18 THE COURT: You may.

19 MR. SNELL: No other questions. Thank you.

20 THE COURT: Thank you.

21 May I excuse the witness?

22 MS. PATTERSON: Yes, ma'am. Thank you.

23 The State has no objection.

24 THE COURT: You're excused this time.

25 THE WITNESS: Thank you.

1 (Witness excused.)

2 MS. PATTERSON: The State calls Kennedy Ring.

3 (Whereupon, Kennedy Ring was duly sworn by the
4 Clerk of Court.)

5 THE CLERK: Thank you.

6 Would you, please, have a seat in the witness box.
7 State your full name and spell your last name for the
8 record.

9 MR. SNELL: Your Honor, if I may, before the witness
10 starts, what about if I move the notepad?

11 THE COURT: Sure.

12 MR. SNELL: We'll move it.

13 MS. PATTERSON: Thank you.

14 KENNEDY RING,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. PATTERSON:

18 Q. Good afternoon, Ms. Ring. How are you?

19 A. I'm fine. Thank you.

20 Q. And, Ms. Ring, can you tell us a little bit about
21 where you're from and where you're employed?

22 A. Yes. I am employed for ROCIC, which stands for the
23 Regional Organized Crime Information Center, and that's in
24 Nashville, Tennessee.

25 Q. And what specifically is ROCIC?

1 A. So we're an investigative support agency that is
2 funded by a grant through the Department of Justice.

3 Q. And you say you're a regional organized crime
4 information center?

5 A. Yes.

6 Q. About how many states are in your region?

7 A. Fourteen. The fourteen southeastern states, as well
8 as Puerto Rico and the Virgin Islands.

9 Q. And would South Carolina be included in your region?

10 A. Yes, ma'am.

11 Q. And what type of services do you specifically provide
12 for law enforcement?

13 A. So we do investigative support. So the front end
14 of an investigation or the -- kind of like the courtroom
15 end of an investigation. So for audio and video,
16 specifically I am to clarify any kind of audio or video
17 that is submitted to us for investigative or courtroom
18 presentation purposes.

19 Q. And what is your specific job title?

20 A. I'm an audio and video specialist.

21 Q. And what is your educational background?

22 A. I have a master's degree in criminal justice.

23 Q. And how long have you worked at ROCIC?

24 A. I've worked at ROCIC since July of 2021 and as an A/V
25 specialist since October of 2021.

1 Q. And what specific -- what is your specific duties as
2 an audio and video specialist?

3 A. So we get several requests. It really depends on the
4 request. We'll get video -- to clarify or to magnify video
5 or audio to clarify, just depending on what was recorded
6 and what is being needed.

7 Q. And did you undergo any specific training to become an
8 audio video specialist?

9 A. I did.

10 Q. And what type of training was that?

11 A. So for video it's -- I think it's between -- I have
12 between 220 and 230 hours of training altogether for audio
13 video, several different courses for video. Our main
14 courses are primarily for software that we use and then
15 our training -- we have two different level courses in
16 order to obtain a certification in video.

17 Q. And so you are certified in the field of forensic
18 video technology?

19 A. I am.

20 Q. And have you ever testified in court regarding the
21 enhancement of videos and audios?

22 A. I have.

23 Q. And since you began your employment as an audio and
24 video specialist in 2021, how many requests have you
25 received to enhance audio and/or video?

1 A. I think it's around 380 at this point.

2 Q. And how many have you completed?

3 A. Probably over 220.

4 Q. And have you also completed any peer reviews from
5 other audio video specialists at ROCIC?

6 A. Yes, I have.

7 Q. And do you know how many of these peer reviews you've
8 participated in?

9 A. Over 200 peer reviews.

10 MS. PATTERSON: Your Honor, at this time we move
11 that Ms. Ring be qualified as an expert in audio and
12 video enhancements.

13 THE COURT: Any objection?

14 MR. SNELL: No objection.

15 THE COURT: All right. Let me tell the jury.

16 Normally a witness can only testify to what they
17 saw, heard or they did. We have an exception to that
18 rule and it's called the expert witness. Because of
19 education and experience they can give an opinion. You
20 give that opinion the weight you think it's worth. It's
21 up to you.

22 Go ahead, Ms. Patterson.

23 MS. PATTERSON: Thank you, Your Honor.

24 BY MS. PATTERSON:

25 Q. And, Ms. Ring, I know you already briefly went over

1 this, but can you just -- so we can make sure we
2 understand, what is the process that you undertake for
3 clarifying videos and/or audios that's received from law
4 enforcement agencies?

5 A. So we receive a request by the requesting officer and
6 in that request they will usually give information on what
7 is needed, whether it's video or audio or both. So as soon
8 as we receive that media from the requesting officer, we
9 will hash it and make a forensic copy. So what that is,
10 is basically like a digital form of a fingerprint to make
11 sure that no data is lost when a copy is made, and we work
12 strictly from the copy instead of the original, and after
13 that the enhancements are processed just depending on what
14 that request is. It really varies based from case to case.
15 Once it is competed, then we write a forensic report so
16 that it can be replicated by somebody else or it can be
17 repeated by me if necessary and it is hashed again to make
18 sure that when it's transferred to where it's sent from,
19 whether it's a USB drive or a cloud storage that's being
20 shared with the officer, that there's no data loss in that
21 as well, and then that information is sent back to the
22 requesting officer.

23 Q. So I heard you mention several times that you want to
24 ensure that no data is lost. So are these quality controls
25 that's built into your software to help you achieve this?

1 A. So this is -- it's kind of a different part of the
2 software, so it's something that's used before the media is
3 imported into the software that we use and afterwards.
4 It's an algorithm, so it's basically just a math formula,
5 and it can be used -- as long as the same algorithm is
6 used, it will give you the same hash information regardless
7 of what software you use for it.

8 Q. So, again, there's no data that's removed or added to
9 the audio or video?

10 A. Correct.

11 Q. And what is meant by levelling voices?

12 A. So leveling voices is gonna be kind of controlling
13 the volume. So it really depends on the dynamic range.
14 When we speak about the dynamic range, it's gonna be the
15 difference in the loudest point of the audio file and the
16 quietest point of the audio file. If you have a large
17 dynamic range, it's gonna be super quiet in some places and
18 super loud in other places. So the purpose of levelling
19 that is so that it's right all about the same volume, you
20 don't have a lot of quiet spots and a lot of really loud
21 spots.

22 Q. So is it your goal so you will be able to hear the
23 audio better?

24 A. Yes, ma'am. That's correct.

25 Q. And what is meant by -- and do you also take out any

1 background noises if you receive any audio?

2 A. So if there is background interference that's kind of
3 -- depending on what the signal or the purpose of the audio
4 is, if it's interfering with what is needed to be heard,
5 we will reduce that. We don't really like to take it out
6 per se because it's very -- very surgical, we can get lot
7 of artifacts in there, so we really just want to turn it
8 down. So anything would be like the A/C running in the
9 background or an electrical hum from the recording device
10 or birds or any kind of sirens or something. We really
11 just want to turn those down so that we can hear whatever
12 that main signal is.

13 Q. So do you do anything other than level voices and
14 reduce background voices when you receive these audio
15 questions?

16 A. So the other -- kind of a few other things that
17 we deal with is clipping. That's going to be audio
18 distortion. So if something is recorded that is too
19 loud in some kind of moments, it kind of blows out that
20 microphone, and so what it's doing is flattening the top
21 of the sound waves, which are supposed to be curved, so
22 correcting the clipping is going to be reforming the curve
23 of that sound wave, and then you have any kind of clicks,
24 like mouth clicks from somebody talking or any kind of
25 like electrical clicks, those can really cause an issue in

1 the wave form itself, you'll have a lot of peaks, remove
2 those. We have electrical hums, which would be considered
3 a background noise, that can be taken out. And another
4 thing is reverb. So if you are in a really tight room,
5 you'll have audio that will kind of bounce against the
6 walls and it kind of causes an echo, and that can interfere
7 with the clarity of the audio, so we also reduce that as
8 well.

9 Q. And did you receive a request from Investigator James
10 Sullivan regarding this case, the State of South Carolina
11 versus Jason Otero?

12 A. I did.

13 Q. And what was the reason for that request?

14 A. To clarify the audio for courtroom presentation.

15 Q. And when you received the request, did you receive any
16 information regarding the specific facts of the case?

17 A. No, the only information that's received is what is
18 filled out on our request form that we send the officer.

19 Q. So you knew nothing about the facts of this case?

20 A. No, ma'am.

21 Q. Okay. I'm gonna show you what's been marked as
22 State's Exhibit Number 1 and ask you if you recognize this?

23 A. Yes, ma'am.

24 Q. And is that the enhanced -- let me back up a few
25 minutes. So in this request did you receive an audio in

1 order to enhance?

2 A. I received a video that was separated from -- or that
3 had the audio with it and it was separated from the video
4 to be enhanced.

5 Q. Okay. And did you undergo the same process that you
6 just previously described to the jury?

7 A. Yes, I did.

8 Q. And were you able to level any voices?

9 A. I did. I did level out the volume of the individuals
10 speaking in the -- in the video, as well as reduce some of
11 the background noises.

12 Q. Okay. And, again, did you do anything to add or take
13 away from the -- the information that was on the video?

14 A. The only changes that are made are those that are
15 notated in the forensic report provided, which has to do
16 with the background and the leveling of voices. Other than
17 that, there's not any -- anything changed.

18 Q. Okay. And is State's Exhibit 1, is this the clarified
19 video that you turned back over to Investigator Sullivan?

20 A. Yes, ma'am.

21 Q. Okay.

22 THE COURT: Are you admitting the video?

23 MS. PATTERSON: We'll admit it through another
24 witness, Your Honor.

25 THE COURT: Thank you.

1 BY MS. PATTERSON:

2 Q. And, Ms. Ring, did you have any other involvement in
3 this case?

4 A. I did not.

5 MS. PATTERSON: I beg the Court's indulgence.

6 THE COURT: Take your time.

7 MS. PATTERSON: Please answer any questions the
8 defense may have.

9 THE COURT: Mr. Snell.

10 MR. SNELL: Thank you so much.

11 CROSS-EXAMINATION

12 BY MR. SNELL:

13 Q. And, Ms. Ring, just -- I want to just make sure I
14 understand. Can you tell us -- not the technical process,
15 right, but exactly what the difference was in this video
16 before and after you -- you were involved with it?

17 A. Uh-huh. So in the video when it was received, the
18 biggest thing that I noticed was a lot of quiet talking and
19 then -- and then a lot of A/C noise in the background was
20 really the primary thing, and it shuts on and off, so then
21 that causes a difference in the background noise.

22 Q. Okay. So it was like -- what you understood was like
23 a loud air-conditioner?

24 A. Yes.

25 Q. Okay. And that air-conditioner was so loud it made it

1 difficult to hear the speech?

2 A. Yes, I would say so.

3 Q. Okay. And so did you feel it was appropriate to modi
4 -- enhance or kind of fix the video to make it easier to
5 hear? Was that something you think was necessary?

6 A. Yes, sir.

7 Q. Can you just tell us -- you said you worked for --
8 well, what group or agency are you affiliated with that got
9 you involved in this particular project?

10 A. So I work with ROCIC.

11 Q. And what is that?

12 A. The Regional Organized Crime Information Center.

13 Q. Okay. Is that a -- is that a government agency?

14 A. We're funded by the DOJ through a grant, so we're not
15 technically a government agency, but we work with Federal,
16 state and local law enforcement agencies.

17 Q. Okay. So is that -- so that's a private group that
18 you said receives, your understanding, Federal money,
19 correct, to operate, right?

20 A. Yes.

21 Q. Is that like a paid -- first of all, you live in
22 Nashville. Is there like a building in Nashville that's
23 like an office for this -- for that group?

24 A. Yes, we have an office in Nashville.

25 Q. Okay. And is that something that's like full-time

1 employment or this kind of project based?

2 A. I'm employed there full-time.

3 Q. Okay. That was my question. So it's something where
4 full-time -- that is your full-time job?

5 A. Yes, sir.

6 Q. All right. And you had said before this project began
7 with the request form?

8 A. Yes, that's correct.

9 Q. Can you describe that for us?

10 A. So on our request form, we have fields that have to
11 be filled out by the requesting officer, and those will
12 be agency information, the officer's name, contact
13 information, the suspect's name will be on there, and the
14 type of case that it is, which goes into some other part of
15 our system, and then we have the request specifics down at
16 the bottom where the requesting officer will explain what
17 is needed for the case.

18 Q. You don't happen to have a copy of the request form?

19 A. I don't have it on me right now, no.

20 Q. Okay. Who sent it to you?

21 A. Investigator Sullivan did.

22 Q. And what agency does Investigator Sullivan work with
23 to the best of your knowledge?

24 A. I believe he works with the Eleventh -- I'm trying to
25 remember what it is. The Eleventh Judicial Solicitor's

1 Circuit.

2 Q. The prosecutor's office?

3 A. Yeah, the prosecutor's office.

4 Q. Okay. And do you know when you got that request form?

5 A. The request was receive on May 26, 2023.

6 Q. Okay. And I understand, you do -- you do the -- you
7 do the work with the Regional Organized Crime Information
8 Center, correct?

9 A. Yes.

10 Q. I know you do some other -- is there part-time or
11 other employment?

12 A. The previous employment is really just on the weekend
13 kind of employment.

14 Q. Well, that's what I was gonna ask. I know I've got a
15 copy of -- I think I was given a copy of your background,
16 resume, correct?

17 A. Yes.

18 Q. So you -- so I know you do this job. You also have a
19 photography business?

20 A. Uh-huh.

21 Q. Is that private events?

22 A. It's just -- yeah, really pretty much any request that
23 I get. I don't do it so much anymore. It's kind of like a
24 weekend -- a weekend thing.

25 Q. And that's -- I just wanted to make sure I saw the

1 right person. That's like engagement pictures and like
2 children and pets and dogs and just pictures?

3 A. Yes.

4 Q. And, then again, I just -- academically I saw you have
5 the -- you have the criminal justice under grad?

6 A. Yes.

7 Q. You have the master's of science from Liberty,
8 correct?

9 A. Yes, that's correct.

10 Q. And that was about -- okay.

11 MR. SNELL: And if I may?

12 Nothing further. Thank you so much.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you, Mr. Snell.

15 Any redirect?

16 MS. PATTERSON: No, ma'am.

17 Your Honor, we ask that this witness be excused.

18 THE COURT: Okay. Thank you.

19 Ms. Ring, you may be excused. Thank you.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 THE COURT: Madam Forelady, is the jury okay? Are
23 you ready for another witness? If one needs a break, we
24 all take a break. That's the way it goes.

25 FOREPERSON: We're good.

1 THE COURT: Okay. Call your next witness.

2 MS. WELLMAN: Your Honor, at this time the State
3 would call Lieutenant April Sykes.

4 THE COURT: Okay.

5 (Whereupon, April Sykes was duly sworn by the Clerk
6 of Court.)

7 THE CLERK: Thank you. Would you, please, have a
8 seat in the witness box. State your full name and spell
9 your last for the record.

10 THE WITNESS: My name is April. My last name is
11 Sykes. S-Y-K-E-S.

12 APRIL SYKES,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. WELLMAN:

16 Q. Where do you work?

17 A. I'm a lieutenant with the South Carolina Law
18 Enforcement Division, commonly known as SLED.

19 Q. Lieutenant Sykes, if you would bring that a little
20 closer to you.

21 A. (Witness complies.)

22 Q. What is your role at SLED? I mean, I know you said
23 you're a lieutenant, but what do you do? What are your
24 duties and responsibilities?

25 A. I'm a lieutenant in the special victims unit, so I

1 also carry a caseload, which means I respond to child
2 fatalities primarily, child abuse cases, investigate those,
3 I supervise a team of six, and then I also help supervise
4 the forensic interviewers at SLED.

5 Q. Do you also in part of your -- as part of your role at
6 SLED, conduct investigative interviews of children who have
7 been victims of sexual assault?

8 A. Yes, ma'am.

9 Q. Okay. Is that interview different from other types of
10 interviews that you might do?

11 A. Child interviews are very different than my normal
12 interviews with adult witnesses or suspects.

13 Q. How so?

14 A. When you interview children, one, you have to have
15 specialized training. So we have a group of folks that
16 I help supervise at SLED that do those. So when SLED has
17 an interview to be conducted with a child who's a victim
18 or a witness of anything, they are done by that select
19 section. I think there's total of seven of us. And
20 specific training is because children are more easily led
21 and they're open to suggestibility, so you have to be very
22 careful and trained well on how to interview them and you
23 have to interview them in a place that is a little more
24 child friendly than, say, you know, in the back seat of a
25 patrol car somewhere.

1 Q. Lieutenant Sykes, did you have an occasion to conduct
2 an investigation interview of six-year-old MINOR
3 on May 14th of 2021?

4 A. Yes, ma'am.

5 Q. And how did you come to conduct that interview?

6 A. I was contacted by the Lexington County Sheriff's
7 Department. Again, I work for the State of South Carolina,
8 so I have a vehicle and I will travel wherever we get a
9 request. Part of our mission statement is that we assist
10 local law enforcement, so we received a request from
11 Lexington County Sheriff's Department, and I spoke directly
12 with Sergeant Creech and agreed to do an interview that
13 they needed.

14 Q. Okay. And where did that interview take place? You
15 said you have a vehicle and you travel. Where did this
16 vehicle -- or this interview take place?

17 A. At the Lexington County Sheriff's Department.

18 Q. To your knowledge, was that interview recorded?

19 A. Yes, ma'am.

20 Q. Okay. And are you familiar with how the sheriff's
21 department sort of records interviews?

22 A. Yes, ma'am.

23 Q. Okay. Can you tell us a little bit about that?

24 A. So each of their interview rooms has an in-house
25 system, which is audio and video recorded. In order to

1 start the recording, someone has to log in and manually
2 start the recording and then it's stopped. Once the
3 recording is stopped, it's uploaded and you cannot alter
4 it. You can make a copy of it and issue like a CD, but
5 once it starts recording and stopped, you cannot alter it
6 or edit it.

7 Q. Are those recordings once they're stored, are they
8 capable of being sort of downloaded and put on a CD?

9 A. Yes.

10 Q. And to your knowledge, was the recording system at
11 the sheriff's department working properly on May 14th of
12 2021?

13 A. It was.

14 Q. Okay.

15 MS. WELLMAN: May I approach the witness?

16 THE COURT: You may.

17 BY MS. WELLMAN:

18 Q. Lieutenant Sykes, I'm handing you what is marked as
19 State's Exhibit 1. Do you recognize that?

20 A. I do.

21 Q. Can you, please, tell the jury what State's Exhibit 1
22 is?

23 A. It's a CD disk copy of my investigative interview with
24 MINOR .

25 Q. And is this a true and accurate copy of the interview?

1 A. It is.

2 Q. Okay. And did you have a chance to review it?

3 A. I did, and I also initialed and dated the disk so I
4 know which one it was.

5 Q. And to confirm that it was a true and accurate copy?

6 A. Yes, ma'am.

7 Q. Thank you.

8 MS. WELLMAN: Your Honor, the State would move at
9 this time to introduce State's 1 and would ask to publish
10 it to the jury.

11 THE COURT: Any objection?

12 MR. SNELL: Yes, Your Honor. I would renew the
13 objections previously made regarding the introduction
14 including into evidence or publication.

15 THE KIRKLAND: Just contemporaneous, Your Honor,
16 required by law.

17 THE COURT: Thank you, Mr. Kirkland.

18 So noted for the record. You can go ahead and
19 publish it.

20 (State's Exhibit Number 1, a DVD of investigative
21 interview, was admitted into evidence.)

22 (Whereupon, State's Exhibit Number 1 was played.)

23 BY MS. WELLMAN:

24 Q. During that interview we saw you were asking MINOR
25 to explain some body parts. Was that on some diagrams?

1 A. Yes.

2 MS. WELLMAN: May I approach the witness?

3 THE COURT: You may.

4 BY MS. WELLMAN:

5 Q. Lieutenant Sykes, this is State's Exhibit 10 and
6 State's Exhibit 11. If you could look at those and tell
7 me if you recognize them.

8 A. Yes, ma'am.

9 Q. Please tell the jury what State's Exhibit 10 and 11
10 is.

11 A. They're the standard human drawing figures that we use
12 in interviews with children and this is the one MINOR
13 filled out while we were speaking.

14 Q. Are they true and accurate copies?

15 A. Yes, ma'am.

16 MS. WELLMAN: The State would move to introduce
17 State's Exhibit 10 and 11 into evidence.

18 THE COURT: Any objection?

19 MR. SNELL: No objection.

20 THE COURT: They're admitted.

21 (State's Exhibit Number 10 and State's Exhibit
22 Number 11, diagrams, were admitted into evidence.)

23 BY MS. WELLMAN:

24 Q. Lieutenant Sykes, is that your handwriting that we
25 see?

1 A. It is.

2 Q. Okay. And these are the same body parts that MINOR
3 identified during your interview?

4 A. Yes. I would circle them and ask her what her name
5 was for it and then she would tell me and then I would
6 write down what she told me.

7 Q. And specifically we have pee-pee here, correct?

8 A. Yes, ma'am.

9 Q. Okay. And then this is State's Exhibit 11. I just
10 want to make sure -- what does this say right there?

11 A. Pee-pee.

12 Q. All right. And is that pointing to this general area?

13 A. It is.

14 Q. Okay.

15 MS. WELLMAN: If I can just I beg the Court's
16 indulgence for one moment?

17 THE COURT: Take your time.

18 MS. WELLMAN: Nothing further, Your Honor.

19 THE COURT: Mr. Snell.

20 CROSS-EXAMINATION

21 BY MR. SNELL:

22 Q. Investigator Sykes, just -- and I understand this
23 interview was May 12th of 2021?

24 A. I believe it was May 14th.

25 Q. I'm sorry. May 14th.

1 A. Let me make sure, but I think it was May 14, 2021, if
2 I'm not mistaken.

3 Q. No, you're right. And if I remember correctly, you --
4 it was originally scheduled for the 12th and then you were
5 ill and it had to be rescheduled?

6 A. Yes. That's when COVID had just hit.

7 Q. And so at the time of the interview, did you know when
8 she had made the initial disclosure?

9 A. I was given a copy of the incident report. It's
10 standard protocol for us to get a little bit of information
11 before we start an interview. I generally ask for the
12 incident report, I ask for just a little bit of a summary,
13 and then I ask for information, is the child medicated, are
14 there any special needs or disabilities or things I need to
15 know before I start an interview, so I did have a little
16 bit of background information.

17 Q. Sure. And that was -- so that would have been eleven
18 days after the disclosure?

19 A. I'm not really sure of the timeframe.

20 Q. Okay.

21 A. I would have to look at the incident report to be able
22 to tell you.

23 Q. If it -- if I told you the disclosure was May 3rd,
24 would you have any reason to disagree with me?

25 A. I would have to confirm it with the incident report

1 because I wasn't there during that initial portion.

2 Q. All right. I guess you could agree with me that
3 May 14th is eleven days after May 3rd, whatever date
4 May 3rd would have been?

5 A. And, again, that was when COVID hit, so part of -- I
6 do remember part of the reason that SLED was contacted was
7 because when COVID hit the local child advocacy center, who
8 would do normal referrals for child interviews, at the time
9 because COVID hit they could only do one family at a time,
10 so it dramatically shut down the entire center where they
11 could only have one family in at a time so there wasn't
12 cross-contamination, they'd have to clean the rooms before
13 and after, so I think the big issue was because of the
14 delay they contacted SLED to see if we could conduct an
15 interview sooner.

16 Q. And I guess -- and so that was -- was that an unusual
17 -- would that be, if it took eleven days, would that be an
18 unusual amount of time?

19 A. Not necessarily. Right now I think the CAC's are
20 four and six weeks behind, so it's not unusual for a local
21 agency to call us and say hey, we've got a child,
22 particularly with MINOR, she was young and on the
23 autism spectrum, so they said can you get to this sooner
24 because we really want this child interviewed soon rather
25 than later, and that was the reason that they had contacted

1 us.

2 MR. SNELL: If I may -- if I may approach the
3 witness?

4 THE COURT: You may.

5 BY MR. SNELL:

6 Q. I actually want to show you just to fresh your
7 recollection, okay?

8 A. Yes, sir.

9 Q. Okay. Let me show you that and give you a chance to
10 look at that. And, first of all, is that the incident
11 report? That should be the incident report you were
12 provided with.

13 A. I would have to check my files because I don't know
14 if this is a supplemental or the original incident report
15 because sometimes the sheriff's office does just like a
16 two page and then as they continue the investigation they
17 do these supplemental reports that look like the second and
18 third page of the incident report. So to be 100 percent
19 sure, I would have to go into my SLED files to see what was
20 provided with me, but this is part of what appears to be
21 an incident report.

22 Q. Does that document refresh your recollection enough as
23 to when the disclosure was made?

24 A. Oh, it does say May 3, 2021. Yes, sir.

25 Q. And that interview -- I think we saw on the video that

1 room. Was that at the sheriff's department?

2 A. It was.

3 Q. Who -- who put you-all in that room or who picked that
4 room?

5 A. That was one of the rooms that was available. They're
6 limited on the rooms that are available with audio and
7 video recording --

8 Q. Right.

9 A. -- and by law we have to audio and video record our
10 interviews with children, so I think it kind of limited the
11 rooms that they had for recording.

12 Q. And do you recall -- I guess was there a loud
13 air-conditioner in the room?

14 A. I honestly don't remember because I was so tunnel
15 visioned on talking with her that I -- everything else kind
16 of drowns out when I'm in a room with a child.

17 Q. Now if I understand correctly, I know you've done lots
18 of interviews of children.

19 A. I've done 182 in the last nine years, yes.

20 Q. That's a lot, right? You would agree?

21 A. It is absolutely a lot.

22 Q. And I think you indicated before you have received
23 specialized training?

24 A. I have. Yes, sir.

25 Q. Back in -- beginning in 2004; does that sound about

1 right?

2 A. I've been doing interviews since 2004, yes.

3 Q. Okay. And, again, that's because interviewing
4 children are different than interviewing adults, basically
5 people that aren't children? It's different, right?

6 A. Yes, sir.

7 Q. And part of that, again, is because children are
8 subject to the suggestibility?

9 A. Yes, sir.

10 Q. And coaching?

11 A. Yes, sir.

12 Q. Is that just by law enforcement or is that by anybody?

13 A. For investigative interviews with children?

14 Q. Well, I mean, just if -- if a child's memory is
15 subject to suggestibility and influence, is that something
16 that law enforcement would be the only ones capable of
17 suggesting and influencing or that could be from any
18 source?

19 A. Children in general. You know, we're trained in
20 children in general. Some children -- you know, if you
21 have a really young child and sometimes they'll just say
22 yes or no just to please an adult, so children in general
23 are able to be, you know, led sometimes if you're not
24 careful.

25 Q. And, again, that's by anybody?

1 A. Yes.

2 Q. And if I understand correctly, your involvement in
3 this situation was limited to this one interview?

4 A. Correct. Investigative interviews with children are
5 in nature supposed to be non-leading, non-suggestive,
6 developmentally friendly by a trained professional so that
7 it's asked and it's done in a way and a manner that the
8 child is able to give a free open narrative, in other
9 words, in their words and their free recall, so, yes.

10 Q. Okay. And if I understand correctly, that means in
11 following those protocols or that practice you didn't --
12 did not interview anyone else other than MINOR prior
13 to her interview. Like you didn't talk to the guidance
14 counselor, her mother or anyone else who may have been
15 involved in her life?

16 A. No. I talked to the person making the referral, I
17 did the interview, and then that's it. I don't -- I'm not
18 an investigator in that situation.

19 Q. And if I understand correctly, after the interview was
20 done you also did not do any other interviews with anyone
21 else that would know MINOR or be involved in her life?

22 A. No. I just document what happened in the interview
23 and that's my sole role.

24 Q. Okay. And so as far as -- so let me ask this
25 question. I know you prepared -- my understanding is that

1 you prepared a Memorandum of Interview; is that correct?

2 A. Yes, sir.

3 Q. Now I don't know if you -- you don't have a copy with
4 you?

5 A. I didn't bring anything to the stand with me. No,
6 sir.

7 Q. Do you recall the memo you made?

8 A. Yes. I always document my interviews either with a
9 standard report or at SLED we have something inhouse called
10 a Memorandum of Interview, which is just a fancy word for a
11 summary of the interview.

12 Q. Did you have a chance to review your memorandum before
13 your testimony today?

14 A. I think I pulled it up in my SLED file last week. I
15 was not provided with one, but I went into my file to read
16 it.

17 Q. Okay. Well, I'm gonna ask a question and, again, if
18 you need to review it to refresh your recollection, just
19 let me know.

20 A. Okay. Absolutely.

21 Q. So that memo -- okay. So, first of all, can you just
22 describe what a Memorandum of Interview is? Like what is
23 that?

24 A. It's just a typed summary essentially.

25 Q. What's the purpose of that memorandum?

1 A. Just to summarize the interview. The DVD speaks for
2 itself, but we just do a typed summary just to document
3 that a interview took place.

4 Q. Okay. Does that -- what type of information would go
5 in the memorandum?

6 A. You know, how the referral was made, what date the
7 interview took place, where it took place, the child's
8 name, and just some basic highlights of what took place in
9 the interview.

10 Q. And, I guess, is that -- is the purpose of that
11 memorandum not only to help you, but also to help the other
12 investigators or people involved in the situation just to
13 know what happened?

14 A. It's just a summary. The DVD itself is actually the
15 evidence that I refer the investigators to look at with
16 going forward on their investigation, the actual interview.
17 This is just a typed summary of what I put to document.

18 Q. Well, I guess, when I saw your -- your memorandum
19 ended up being about -- I'll call it two and a half pages.
20 Does that sound about right?

21 A. Uh-huh.

22 Q. And I know the whole interview ended up being right
23 over -- I think it was forty minutes?

24 A. I think it was closer to an hour, but it was a long
25 time for a child that age.

1 Q. And I know we just watched -- I know we just watched
2 it up here on the screen and, you know, it was a long
3 interview?

4 A. It was. It was long.

5 Q. And I just want to ask you -- I know a Memorandum of
6 Interview seems -- basically you try to hit the highlights
7 of what was asked and what the child answered and said?

8 A. Yes, sir. Just a summary.

9 Q. And were you -- you were in the courtroom when we just
10 played the video just a few minutes ago?

11 A. Yes, sir.

12 Q. Yeah. I mean, you were on the witness stand the whole
13 time, correct?

14 A. Yes, sir.

15 Q. I note there was kind of an exchange kind of towards
16 the end, but, you know, maybe 75 percent of the way in,
17 talking about a pink toy. Do you recall that?

18 A. Yes, sir.

19 Q. And I think there was a conversation or a question
20 with MINOR where MINOR said that she peed because of
21 the pink toy?

22 A. Yes, sir.

23 Q. And that she had told her mom that?

24 A. Yes, sir.

25 Q. And that her mom knew what the pink toy was?

1 A. Yes, sir.

2 Q. I didn't see that in -- in the memorandum of your --
3 you know, the interview.

4 A. Okay.

5 Q. That's okay. I just want to make sure if that -- if I
6 can --

7 A. If you can show it to me, I'll be happy to verify,
8 but, again, it's a summary, so I don't put everything in
9 there because the DVD speaks for itself, but...

10 Q. If you'd look at that, please.

11 MR. SNELL: And if I may, Judge, I showed her just
12 for the record three pages of her Memorandum of Interview.

13 THE COURT: And the record so reflects.

14 THE WITNESS: Correct. I did not put that in my
15 Memorandum of Interview.

16 BY MR. SNELL:

17 Q. And then I also saw at the tail end kind of the video,
18 there was a disclosure made by MINOR that she told her
19 mother that she had seen a video of her mother having an
20 orgasm.

21 A. I believe so and then I asked her at the very end if
22 that came before or after she told her teacher.

23 Q. And if I remember -- because she said it happened --
24 she told her mother before.

25 A. I think the last part was she told her after she told

1 the teacher, that she told the teacher before. I could be
2 wrong, but...

3 Q. That's okay. And whatever -- and whatever was -- and
4 I know the video would speak for itself.

5 A. Yes, sir.

6 Q. Absolutely.

7 A. Like I told her, I'm old and my memory is not 100
8 percent perfect, so that's why we do the recording.

9 Q. Absolutely. Any -- part of that exchange dealing with
10 the mother and the orgasm video, that was -- also wasn't in
11 the memorandum you prepared?

12 A. Could you ask that one more time? I don't understand
13 what you're saying.

14 Q. Sure. The discussion with MINOR regarding her
15 telling her mother that she had seen the orgasm video --

16 A. Correct, that was not.

17 Q. -- that was also not in the memorandum?

18 A. You are correct. Yes, sir.

19 Q. Okay. And, again, I know that the memorandum is
20 not supposed to be a -- if I understand correctly, it's
21 highlights, not a typed verbatim transcription, right?

22 A. Yes, sir.

23 Q. But her mother knowing about the pink toy and knowing
24 -- that wouldn't have been a highlight?

25 A. Not -- if memory serves, at the end of that interview

1 I asked if that was before or after her teacher and I knew
2 that there was a disclosure made at the school, so if she
3 disclosed that to her mother after she had disclosed to the
4 school, then that was --

5 Q. But obviously if it was before she went to the school,
6 you would agree that would have be significant?

7 A. Yes, sir.

8 Q. Okay. If I may -- I'm gonna get that back so we don't
9 get it mixed up.

10 A. Sure.

11 Q. Thank you.

12 MR. SNELL: Nothing further. Thank you so much.

13 THE COURT: Thank you.

14 Any redirect?

15 MS. WELLMAN: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. WELLMAN:

18 Q. Lieutenant Sykes, Mr. Snell asked you about whether
19 you received training in detecting signs of outside
20 influence or coaching. Do you recall that?

21 A. Yes, ma'am.

22 Q. And did you detect any of those signs in this case?

23 A. No, ma'am.

24 Q. Okay. And going back to that video, I'm gonna replay
25 sort of that last two minutes of the video because I think

1 there was some question about --

2 A. Yes, ma'am.

3 Q. -- what was -- or who was told first.

4 A. I think it was as we were walking out the door if
5 memory serves me correctly when we were wrapping up the
6 interview.

7 (Whereupon, a portion of State's Exhibit Number 1
8 was replayed.)

9 MS. WELLMAN: Nothing further.

10 THE COURT: Thank you. May I excuse this witness?

11 MR. SNELL: No objection.

12 THE COURT: Okay.

13 (Witness excused.)

14 THE COURT: All right. Let me see the lawyers real
15 quick before I send the jury to lunch. I want to kind of
16 keep them informed of what we're gonna be doing.

17 (Proceedings held at the bench; not reported.)

18 THE COURT: All right. Madam Forelady, ladies and
19 gentlemen of the jury, I'm gonna let you go to lunch.

20 Make sure you do not talk about this case. When
21 you come back, we're gonna do two witnesses and then
22 I'm gonna let you go for the day. They ought to be
23 somewhat short. The third witness is really long and
24 we'll pick them up in the morning, okay?

25 Enjoy your lunch. Remember, no talking bout this

1 case. Come back at 2:30, okay? Just be in the jury room
2 at 2:30.

3 THE FOREPERSON: Thank you.

4 THE COURT: Thank you.

5 (Whereupon, the jury was excused for lunch at
6 1:20 PM.)

7 THE COURT: All right. Let's be in recess until
8 2:30.

9 (Whereupon, a luncheon recess was taken at 1:20 PM.)

10 (Back on the record at 2:19 PM.)

11 BAILIFF: Court will come to order.

12 THE COURT: Please be seated.

13 MS. PATTERSON: We do have one expert that we
14 probably need to proffer. We're gonna attempt to qualify
15 Mr. Olszewski as an expert in child abuse dynamics, and I
16 think that needs to be proffered.

17 MR. KIRKLAND: Yeah, that's the position we'd take,
18 Judge.

19 (Off the record discussion.)

20 THE COURT: All right. We're gonna proffer Dr. Who?

21 MS. PATTERSON: He's not actually a doctor. It is
22 Ray Olszewski.

23 THE COURT: And I assume he's not -- what is he
24 going to be testifying about?

25 MR. OLSZEWSKI: He's our blind expert. He'll be

1 testifying in the field of child sexual abuse dynamics.

2 THE COURT: You know it's very limited.

3 MS. PATTERSON: Yeah.

4 THE COURT: I've already been this route once before
5 and it's very limited testimony.

6 MS. PATTERSON: I mean, we'll have him testify to
7 what we feel is the proper areas of his testimony, Your
8 Honor.

9 THE COURT: I'm sure the defense will let me know.

10 MS. PATTERSON: Yeah, they will.

11 THE COURT: So let's go ahead and bring the witness
12 in.

13 MS. PATTERSON: And after that we'd like to put a
14 stipulation on the record concerning the next witness.

15 THE COURT: Okay.

16 MS. PATTERSON: Ray Olszewski.

17 (Whereupon, Raymond Olszewski was sworn by the
18 Clerk of Court.)

19 THE CLERK: Would you, please, have a seat in the
20 witness box. State your full name and spell your last
21 for the record.

22 THE WITNESS: First name is Raymond. Last name's
23 Olszewski. That's O-L-S-Z-E-W-S-K-I.

24 MR. SNELL: Your Honor, before we start, may we
25 approach briefly? Just procedural.

1 THE COURT: Sure.

2 (Proceedings held at the bench; not reported.)

3 THE COURT: Go ahead.

4 MS. PATTERSON: Thank you Your Honor.

5 RAYMOND OLSZEWSKI,

6 having been duly sworn, testified as follows:

7 EXAMINATION (In-Camera)

8 BY MS. PATTERSON:

9 Q. Mr. Olszewski, what is your profession?

10 A. I'm a social worker and a forensic interviewer.

11 Q. And where are you currently employed?

12 A. At the Metropolitan Children's Advocacy Center, which
13 is a program of Columbia Area Mental Health, located in
14 Columbia.

15 Q. And what type of services are provided at the
16 Metropolitan Children's Advocacy Center?

17 A. We do forensic interviews of suspected child abuse
18 victims.

19 MR. SNELL: Object to the use of word "forensic".

20 THE COURT: We are not using the term "forensic
21 interview" during this case, but investigative interview,
22 okay?

23 BY MS. PATTERSON:

24 Q. And how long have you been an investigative
25 interviewer at the Metropolitan Children's Advocacy Center?

1 A. Almost twenty-four years.

2 Q. And how many interviews have you have conducted?

3 A. Between 2- and 3,000. I don't have an exact number.

4 Q. And can you explain your educational background?

5 A. Sure. I have a master's degree in social work from
6 the University of South Carolina in Columbia. I'm a
7 licensed social worker also in the State of South Carolina.

8 Q. And what type of training did you undergo to become an
9 investigative interviewer?

10 A. So when I was hired, it was initially observing other
11 experienced investigative interviewers, and then I attended
12 a week-long -- it's hard not to say that word. I attended
13 a week-long interviewing course, a 40-hour course, where
14 we learned the skills necessary to, you know, conduct the
15 interviews. I also attended advanced trainings in the area
16 of investigative interviewing. I've attended multiple
17 local, state and national conferences and workshops over
18 the years. I'm also faculty for an investigative
19 interviewing class that we teach at the state level that's
20 modeled after the national course. We've been teaching
21 that three to four times a year since 2001. Every two to
22 three years we also teach an advanced course of some sort
23 and I'm a part of the faculty for the preparation and
24 delivery of that course. I also present workshops on
25 various topics at the state level and also present at the

1 national level.

2 Q. And does this training include anything related to the
3 dynamics of child sexual abuse?

4 A. Sure. So the week-long course is -- the first
5 three days involve lecture and workshop material directly
6 related to child sexual abuse dynamics and topics related
7 to that.

8 Q. And is this something that you also teach in your
9 workshops and trainings?

10 A. Correct.

11 Q. And who are the participants at these particular
12 trainings?

13 A. So we are training other investigative interviewers
14 from other children's advocacy centers around South
15 Carolina and even from other states. We're also teaching
16 other frontline child abuse professionals, so law
17 enforcement investigators and detectives who work on
18 these case, child protective services, caseworkers, even
19 assistant solicitors are sometimes in the class. So it's
20 a multidisciplinary class.

21 Q. And in what areas do you -- areas of expertise do
22 you rely on to prepare you for your trainings and in your
23 practice?

24 A. Well, you known, we follow best practice models in
25 our investigative interviewing, so we use a nationally

1 recognized interviewing protocol that's based, again,
2 on the trainings and the workshops that I mentioned
3 previously. Of course, staying current and up to date
4 with relevant research in the field and -- yeah.

5 Q. And you discussed the research in the field. And
6 the research in this field, is this part of reliable
7 research that's recognized in the field of child sexual
8 abuse dynamics?

9 A. By reliable, do you mean --

10 Q. Is this something that's used in training, in teaching
11 others in the field of child sexual abuse dynamics?

12 A. Sure. It's the foundation on which many of the
13 workshops and presentations are built.

14 Q. And how would you describe this research or science
15 that's recognized in the field?

16 A. I would describe it as a soft science in that, you
17 know, a lot of the studies are -- when you're talking
18 about child sexual abuse, you're looking at cases that
19 are somehow externally verifiable with some, you known,
20 confirmation maybe that abuse has occurred. So sometimes
21 you're looking backwards. From the point where you know
22 that something occurred, you're looking backwards to look
23 at different dynamics and characteristics that existed
24 prior to the disclosure coming out so you can make some
25 generalizations about victim behavior, for example, based

1 on previous examples.

2 MR. SNELL: Your Honor, I'd make an objection.

3 I guess I listened to the question and the answer to
4 the question, but we would object to the categorization
5 of any of this as a science in front of the jury and that
6 particular phrase.

7 THE COURT: Let me hear from you, Ms. Patterson.

8 MS. PATTERSON: Well, Your Honor, he is going into
9 the type of training that he not only has done to be an
10 expert in this field, but the type of training that he
11 undergoes in order to teach others in this field. And
12 he's also basing it on part of a reliable -- reliable
13 research recognized in the field of child sexual abuse
14 dynamics, so he's just talking about his training.

15 THE COURT: And he says it a soft science. I wrote
16 it down.

17 MR. SNELL: He said it's a soft science, but, again,
18 I don't think it's -- and I appreciate the qualification
19 on science. I just don't like the word "science". I
20 don't think this is a science. It's not subject to --

21 THE COURT: I'll let you make your argument on that
22 at the end, but if he testifies I don't see anything
23 wrong. He's describing his field of work that he does.
24 He said it's classified as a soft science.

25 Continue on, Ms. Patterson.

1 BY MS. PATTERSON:

2 Q. Have you been previously qualified in court as an
3 expert?

4 A. I have.

5 Q. And how many courts have you been -- how many
6 different courts have you been previously qualified as an
7 expert?

8 A. Criminal courts in South Carolina and also in Georgia,
9 family court in South Carolina. Also military court.

10 Q. About how many times would you say you've been
11 qualified?

12 A. It's -- again, it's more than twenty. I don't have
13 an exact number.

14 Q. And in which areas have you been qualified as an
15 expert?

16 A. It's usually something like child sexual abuse
17 dynamics, dynamics of child sexual abuse. Language to that
18 effect.

19 MS. PATTERSON: So, Your Honor, at this time we
20 move that Mr. Olszewski be qualified as an expert in
21 child abuse dynamics.

22 MR. SNELL: Your Honor, we'd still make an objection
23 to any --

24 THE COURT: Do you want to cross him on just the
25 expert part?

1 MR. SNELL: No cross on that point. Just, again,
2 object to the qualifications as an expert in either one
3 of those proposed areas. And also, just so I'm clear,
4 which area specifically is he proposed as an expert in?

5 THE COURT: Child sexual abuse dynamics.

6 MR. SNELL: And we would -- again, I'd just make an
7 objection to the qualification in that or any kind of
8 related or similar field.

9 THE COURT: Okay.

10 All right. Now let's get onto what you're gonna
11 question him about.

12 BY MS. PATTERSON:

13 Q. Mr. Olszewski, what is delayed disclosure?

14 A. So that references to when a victim of child sexual
15 abuse delays some period of time in telling someone or
16 reporting what's happened.

17 Q. And what are some reasons that children may delay
18 disclosure?

19 A. There are a lot of reasons why children may delay
20 disclosure. It could have to do with age. They may be
21 so young that they don't fully understand what's happening
22 to them. They may not have the words for what's happening
23 to them. When they get older, a lot of it may have to do
24 with fear; fear of the consequences of telling, so what
25 that might mean for the family, fear of not being believed,

1 fear that people won't love them anymore. When it's --
2 especially when it's a situation where the abuser is
3 someone the child cares about or loves, they may fear of
4 losing that relationship, of losing the love and attention
5 and affection that they get from the perpetrator.

6 Q. And -- I'm sorry.

7 A. I can go on. I mean, there are a lot of reasons.
8 Would you like me to continue?

9 Q. Yes, please.

10 A. Okay. You know, they may fear being taken away from
11 the home. They may have even been told things will happen
12 if they tell, like they'll be taken into foster care,
13 they'll have to change schools, they won't get to see their
14 siblings or their pets or their things any longer. They
15 may feel some internal struggle. Like they may feel shame
16 and embarrassment and they may feel guilt over what's
17 happened, especially if it's something that's been going on
18 for a period of time and they haven't told. They may start
19 to feel like they're in some way partially responsible for
20 the abuse continuing or for beginning in the first place.
21 They may have been told they're responsible. They may
22 have made some initial attempts -- very subtle attempts
23 to disclose that were met with apathy or dismissal by a
24 non-offending caregiver or some other person in the home.
25 So it's quite an exhaustive list the reasons -- potential

1 reasons why children would not tell something right away.

2 Q. So how common is it to have a delayed reporting among
3 young victims of sexual abuse?

4 A. It's -- it's fairly common.

5 Q. And --

6 MR. SNELL: I'd object to foundation on that issue.

7 THE COURT: The foundation? Explain it to me.

8 MR. SNELL: How does he know it's common?

9 MS. PATTERSON: Based on his training and
10 experience.

11 THE COURT: Go ahead, Ms. Patterson. I'm gonna
12 allow it.

13 BY MS. PATTERSON:

14 Q. And when a child does disclose abuse, do they
15 typically tell everything all at once or do -- may they
16 have like partial disclosures?

17 A. Yeah. So in our field we think of disclosure as it's
18 more of a process than it is an event, you know, than a
19 singular event, so. And that process usually starts with
20 denial or a failure to disclose and then moving to a
21 more -- where a child makes some tentative or partial
22 disclosures perhaps to test the waters to see what the
23 reaction might be to their disclosure, and in this
24 tentative phase children may only give a portion of what's
25 happened, a part of the story, they may minimize some of

1 the story. So we hear things from children in this stage
2 like maybe they don't remember everything that's happened.
3 Again, they may minimize it. They may say that they think
4 it was an accident. So you can hear some -- some telltale
5 language in that that would usually indicate they're in
6 that maybe tentative or partial stage of disclosure. And
7 then, you know, children move sometimes into a more active
8 stage of disclosure where they're giving a more full
9 account of what's -- what's happened to them.

10 Q. Can age be a determining factor of whether or not a
11 child is able to fully disclose at one time?

12 A. I mean, we have children of all ages that can give a
13 full disclosure. I think to answer your question, you
14 know, our expectations change depending on the age of a
15 child. So, for example, with a younger child we would
16 expect a less robust narrative, less peripheral detail,
17 less context to the disclosure than we would with an older
18 child, let's say, an adolescent. You would expect them
19 to be able to provide more detail, again, a more robust
20 narrative, put more context around the events and the
21 actions that took place.

22 Q. And what is accidental versus intentional disclosure?

23 A. Yes. So we can categorize disclosures into those two
24 areas. An accidental disclosure is one where disclosure
25 is made or discovered by accident or by chance and an

1 intentional or purposeful disclosure is just that. It's
2 one in which a child has intentionally come forward --
3 purposefully come forward to tell someone what's happened.

4 Q. And what is meant by chronic versus acute abuse?

5 A. Chronic abuse would be abuse that has been going on
6 for some period of time. Acute abuse would be an event
7 that's recent in time that's just happened.

8 Q. And in a situation where there is chronic abuse, can
9 a child typically remember everything that has happened to
10 them over this period of time?

11 A. They can remember things. What may be more difficult
12 is for them to remember things from discrete time. So,
13 remember, particular details from particular events,
14 especially if the abuse occurred in about the same way.
15 Like -- I don't know if I'm allowed to give an example,
16 but, for example, if a child said well, it usually happened
17 after my mom went to work at night, and that's -- that's
18 generally how it --

19 MR. SNELL: Object to speculation.

20 THE COURT: I'm gonna let him finish his example.
21 Let me hear it all first.

22 THE WITNESS: In that situation, it may be more
23 difficult for a child to pick out or give details about
24 one particular night over a period of time if the abuse
25 happened in a similar fashion each time. If there was

1 something unusual about one of the events that was
2 different from all the other times, it may be easier for
3 them to remember details about that particular event
4 because it may stand out for some reason. Maybe it
5 happened on a special occasion or it happened at a
6 different location, so there's something about it that
7 may make it stand out for some reason from all the other
8 events if that makes sense.

9 BY MS. PATTERSON:

10 Q. And do you know any particulars about the case that
11 we're trying this week?

12 A. I don't know anything about it.

13 Q. And would it surprise you to hear that a child has
14 kept the abuse from a non-offending parent?

15 A. No. I think that would go back to some of the same
16 reasons they don't disclose or they delay reporting. They
17 may fear -- they may fear they're not gonna be believed,
18 they may fear they're gonna be blamed for what happened,
19 they may worry that they'll be in trouble. Again, lots of
20 times victims in a situation where the offender is someone
21 they care about, someone they love, someone they trust,
22 they often don't want -- they're not looking to get that
23 person in trouble. So that may be a secondary concern as
24 well; that if they tell this person that they care about
25 could get in trouble.

1 MS. PATTERSON: I beg the Court's indulgence.

2 That's all the questions I have, Your Honor.

3 THE COURT: If you want to ask your questions, go
4 ahead.

5 EXAMINATION (In-Camera)

6 BY MR. SNELL:

7 Q. Sir, and just to make sure I understand your
8 background in this particular case correctly, you haven't
9 seen any report or any kind of written documentation about
10 this case at all; is that correct?

11 A. I know -- I literally know nothing. I don't even know
12 the names or anything.

13 Q. That's okay. I just want to make sure. I'm gonna
14 go through it just to make sure I got it. So no written
15 documentation, no written summaries?

16 A. No, sir.

17 Q. Did anybody tell you even what the criminal charge is
18 here?

19 A. I do not know. I don't know what that is.

20 Q. Have you spoken to any law enforcement officers or
21 investigators about -- that were involved in this case?

22 A. I have not.

23 Q. And as far as the actual child that this case is
24 about, have you ever even seen that child?

25 A. I'll say not that I know of because, again, I was

1 never given the names or anything.

2 Q. That's okay. To the best of your knowledge?

3 A. But to my knowledge, no.

4 Q. And as far as -- you don't know the child's name, you
5 don't ever have knowledge that you've even seen the child
6 and never met her or interviewed the child obviously?

7 A. That's correct.

8 Q. And you've never met, interviewed or have any
9 knowledge of the child's parents or their caregivers?

10 A. That's correct.

11 Q. Literally about this particular case you literally
12 know nothing?

13 A. That's correct.

14 MR. SNELL: Thank you so much. Nothing further.

15 THE COURT: All right. Anything else from the
16 State?

17 MS. PATTERSON: That's all from the State, Your
18 Honor.

19 THE COURT: All right. I'll be glad to hear from
20 you Mr. Snell.

21 MR. SNELL: So the only two -- only two other things
22 I want just to -- again, beyond the global objection is I
23 would object to giving this witness any hypo -- first of
24 all, giving him give any examples or any hypotheticals,
25 okay? Anything that he comes up with if it matches any

1 aspect of this case, however slight, it's gonna be
2 bolstering, so I'm just gonna ask for no examples. And I
3 also don't believe it's proper to give him hypotheticals
4 about anything at all, so I just -- specifically those two
5 issues.

6 THE COURT: I got it.

7 All right. Anything, Ms. Patterson?

8 MS. PATTERSON: Your Honor, I think experts are
9 allowed to give hypotheticals, Your Honor. I mean, I
10 didn't plan on giving him some. I just was just asking
11 him if things were common in the field, so I don't intend
12 to go down that road. Any examples that he gives, Your
13 Honor, if they just happen to match any of the fact in
14 this case, Your Honor, that's just highly coincidental.
15 I think to bring attention to it would make it seem like
16 he does know something about this case. And I'll ask him
17 in front of the jury do you know anything about this case.

18 And I think, Your Honor, it's well-settled that this
19 type of testimony in his field is outside the ordinary
20 knowledge of the jury supported by Rule 702 where we can
21 give expert -- an expert witness is able to be utilized
22 in the field of child sexual abuse dynamics, and we have
23 several cases to support that as well.

24 THE COURT: We do.

25 This is what I'm gonna do. It's in the Court's

1 discretion and if it's helpful to the jury, and the
2 testimony that I've heard has been all about delayed
3 disclosure, certainly he is more than qualified. He's
4 got 2- to 3,000 was it -- cases that you've done?

5 THE WITNESS: Interviews.

6 THE COURT: Interviews that he's done. A master's
7 degree. He's a licensed social worker. He has spent
8 numerous hours observing and training and doing workshops
9 and he's even had -- he's teaching it at a state and
10 national level.

11 Though a soft science so to speak, I think a reliable
12 science that he's basing his testimony on. And we do have
13 a lot of cases that allow a blind expert.

14 I'm gonna allow it on the delayed disclosure
15 testimony only. I think that might be beneficial for
16 the jury to understand a delayed disclosure, but other
17 than that, Ms. Patterson, the Court's not willing to go
18 any further. There will be no examples set out for him
19 to guess on. He can state his basis as to why cases
20 sometimes have delayed disclosure. I'll be happy to
21 hear from him on that, okay?

22 MS. PATTERSON: Yes, ma'am.

23 THE COURT: Anything else, Mr. Snell?

24 MR. SNELL: Nothing further. Thank you.

25 MS. PATTERSON: And that does include -- I think I

1 asked him about accidental versus intentional disclosure.

2 THE COURT: You did delayed, partial, accidental and
3 intentional.

4 MS. PATTERSON: Yes, ma'am.

5 THE COURT: There will be no mention of this case
6 whatsoever.

7 MS. PATTERSON: Yes, ma'am.

8 THE COURT: He doesn't know this case. He hasn't
9 interviewed this child. That's not what a blind expert
10 is for. A blind expert is to help the jury understand
11 why there might be delayed disclosure in this case is
12 what I'm allowing.

13 All right. Can I bring the jury in?

14 MS. PATTERSON: Your Honor, in an effort to -- so
15 we can just continue after this witness, I did want to
16 place the stipulation on the record regarding MINOR's
17 medical examination. The defense is going to stipulate
18 that she had a medical exam done on June 1st of 2021 by
19 nurse practitioner Chandra Smith and the finding was a
20 normal finding, normal exam.

21 THE COURT: Do you want me to read that stipulation
22 to the jury?

23 MS. PATTERSON: Yes, ma'am.

24 THE COURT: Okay. Do you-all want to write
25 something up and I'll be more than happy to read it to

1 them.

2 MS. PATTERSON: Yes, ma'am.

3 THE COURT: Please run it by Mr. Snell first and
4 I'll be happy to do that.

5 Okay. I'm gonna ask you to step down because I'm
6 gonna bring the jury in and we'll call you back up.

7 THE WITNESS: Okay.

8 (Whereupon, the witness steps down from the witness
9 stand.)

10 (Whereupon, the jury returns to the courtroom at
11 3:06 PM.)

12 THE COURT: All right. Madam Forelady, is the jury
13 ready?

14 FOREPERSON: Yes, ma'am.

15 THE COURT: Please be seated.

16 All right. You may call your next witness.

17 MS. PATTERSON: The State calls Ray Olszewski.

18 (Whereupon, Raymond Olszewski was duly sworn by
19 the Clerk of Court.)

20 THE CLERK: Would you, please, have a seat in the
21 witness box. State your full name and spell your last
22 for the record.

23 THE WITNESS: First name is Raymond. Last name,
24 Olszewski. O-L-S-Z-E-W-S-K-I.

25 RAYMOND OLSZEWSKI,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. PATTERSON:

4 Q. How are you this afternoon, Mr. Olszewski?

5 A. I'm fine. Thank you.

6 Q. Can you tell the jury what's your profession?

7 A. I'm a social worker and an investigative interviewer.

8 Q. And where are you currently employed?

9 A. At the Metropolitan Children's Advocacy Center, which
10 is a program with Columbia Area Mental Health, and that's
11 in Columbia.

12 Q. And what type of services are provided at the
13 Metropolitan Children's Advocacy Center?

14 A. We provide investigative interviews of children.

15 Q. And how long have you been an investigative
16 interviewer?

17 A. Almost twenty-four years.

18 Q. And about how many investigative interviews have you
19 conducted?

20 A. It would be between 2- and 3,000 at this point.

21 Q. And could you explain your educational background?

22 A. Sure. I have a master's degree in social work from
23 the University of South Carolina here in Columbia and I'm
24 a licensed social worker in the State of South Carolina.

25 Q. And what type of training did you have to participate

1 in to become an investigative interviewer?

2 A. So when I started my job in 1999, I began by observing
3 other experienced interviewers. I attended a week-long
4 national investigative interviewer course, followed up by
5 a week-long advanced interviewing course a couple of years
6 later, and over the course of my career I've attended
7 numerous conferences, workshops and trainings in this area.

8 Q. And does the training that you participated in include
9 anything related to the dynamics of child sexual abuse?

10 A. Yes, that is a core component of the week-long course
11 that I took. The first three days are workshop and lecture
12 material around that very area issue and numerous other
13 workshops and trainings that I've continued to attend and
14 have attended in my career.

15 Q. And in addition to the ones that you actually attend,
16 do you also provide trainings and/or workshops for others
17 in the field?

18 A. Yes. So I'm a faculty member for Child First South
19 Carolina, which is an investigative interviewing course
20 that is modeled on the national course that we teach at
21 the state level. We teach it three to four times a year.
22 We've been doing that since about 2001. Every two to
23 three years we also teach an advanced interviewing course,
24 which I'm also a part of the faculty for those advanced
25 trainings. I've also taught just numerous presentations

1 and workshops at the local, state and national level over
2 the course of my career.

3 Q. And the training that you have had yourself and the
4 training that you provide to others in the field, is it --
5 is it part of a reliable research recognized in the field
6 of child sexual abuse dynamics?

7 A. Yes. All the courses and the workshops are all, you
8 know, based on the research in the field and we continue
9 to stay current on the relevant research as it comes out.

10 Q. And do you have any previous experience testifying in
11 court?

12 A. I do.

13 Q. And have you ever been qualified as an expert in
14 court?

15 A. I have.

16 Q. In which courts was that?

17 A. General sessions courts here in South Carolina, also
18 in Georgia, family court here in South Carolina, and also
19 military court.

20 Q. And how many times would you say you've been qualified
21 as an expert?

22 A. It's more than twenty. I don't have an exact number.

23 Q. And in which areas have you been qualified as an
24 expert?

25 A. It's usually child sexual abuse dynamics, dynamics of

1 child sexual abuse.

2 MS. PATTERSON: Your Honor, at this time we move
3 that Mr. Olszewski be qualified as an expert in child
4 sexual abuse dynamics.

5 THE COURT: Any objection?

6 MR. SNELL: And we'd just make a contemporaneous
7 objection for the record.

8 THE COURT: So noted for the record.

9 I'm gonna tell the jury again. This witness is
10 gonna be deemed an expert in dynamics of child sexual
11 abuse due to his education and experience. You give his
12 testimony the weight you think it deserves.

13 Go ahead, Ms. Patterson.

14 BY MS. PATTERSON:

15 Q. Mr. Olszewski, what is meant by delayed disclosure?

16 A. So that simply means a child will often delay some
17 period time in reporting what's happened to them.

18 Q. And what are some of the reasons that children may
19 delay disclosure?

20 A. There are many reasons. It could be due to age. A
21 child may be so young that they don't full understand
22 what's happened to them or they may not have the words
23 to say it. As children get older, they may fear the
24 consequences of telling. So they may worry that -- what's
25 gonna happen to the family, are they gonna get taken away

1 from the home, are they gonna be in some type of trouble,
2 are they gonna be -- are they not gonna be believed, are
3 they gonna be blamed for what's happened. They may have
4 been told certain things are gonna happen in order to, you
5 know, not tell. For example, they may worry that they
6 are gonna be taken away from the home and placed in foster
7 care, they may worry they won't see their siblings or their
8 pets or friends, they may have to change schools. They
9 may have some internal struggles that prevent them from
10 telling such as shame, embarrassment. They may feel guilt
11 about what's happened, especially if it's something that's
12 happened over a period of time. They may begin to feel
13 partially responsible for what's happened. You know,
14 children sometimes care deeply about the offender or the
15 person that's harmed them and they may worry about getting
16 that person in trouble or about losing the attention and
17 affection of that person if they were to tell.

18 Q. And based on your experience, is it common for
19 children to delay disclosure?

20 A. Yes.

21 Q. And when a child does disclose, do they typically tell
22 everything all at once?

23 A. No. We think of disclosure as more of a process and
24 not an event and that process oftentimes starts with a
25 delay in reporting or even denials when initially asked

1 about what's happened, then they may move into a more
2 partial or tentative phase of disclosure where they're
3 only telling part of it, testing the waters to see what
4 the reaction is gonna be from others around them. In this
5 stage, we may hear things from the child like that they
6 don't remember exactly what happened, but something
7 happened, or they may minimize it by saying it was an
8 accident or things like that. And then -- and then
9 children often will -- you know, many of them move to a
10 more active disclosure where they're giving a more full
11 accounting of what's happened to them.

12 Q. And why might a child not tell every detail of the
13 abuse all at once?

14 A. Again, they -- some of the same reasons I mentioned
15 previously. Just the fear of the consequences of -- of
16 telling. So the partial disclosure is a way to sort of see
17 what the reaction's gonna be. Is it gonna be as bad as I
18 maybe thought it was gonna be? What's the reaction gonna
19 be? You know, oftentimes there's a non-offending caregiver
20 in the home, so the concern may be is that person going
21 to believe me, are they going to support me when I come
22 forward with this if that makes sense.

23 Q. In speaking of -- if there is a non-offending parent
24 who the child lived with, would it surprise you to hear
25 that a child has kept their abuse from them?

1 A. No. Again, as I've said, the child may fear not being
2 believed, they may fear another betrayal, you know, by that
3 person if they're being betrayed by someone else in the
4 home if they're not believed when they tell. If the abuse
5 doesn't stop or continues, they may feel another betrayal
6 there, so they -- you know, they may have been told that
7 they're as much a part of this as the offender or they're
8 equally as responsible or they may worry about consequences
9 for themselves. Is the other caregiver gonna be mad at
10 them or upset with them or blame them at least partially
11 for what's happened. There's lot going on.

12 Q. And what is accidental versus intentional disclosure?

13 A. So we really think of two types of disclosures of
14 abuse. An accidental disclosure is a disclosure that is
15 discovered by accident or by chance, whereas a purposeful
16 disclosure is one in which a child has purposefully or
17 intentionally come forward to report or tell someone what's
18 happened.

19 Q. And what is chronic versus acute abuse?

20 A. Chronic abuse is abuse that's occurred, you know, over
21 a period -- many times over a period of time, whereas an
22 acute event is an event that's recent in time that just
23 occurred or took place recently.

24 Q. And if it's chronic abuse, can a child typically
25 remember everything that's happened throughout that entire

1 period?

2 A. They can remember things that happened. What can be
3 more difficult is to remember discrete details about a
4 particular incident or event. If you have something that's
5 occurred in a similar fashion many times over a period of
6 time, it can be more difficult to remember details from any
7 one particular incident unless maybe there was something
8 unusual about one of the events or the incidents that makes
9 it stand out for some reason in a child's mind.

10 MS. PATTERSON: I beg the Court's indulgence.

11 THE COURT: Take your time.

12 MS. PATTERSON: Thank you, Mr. Olszewski.

13 Please answer any questions the defense may have.

14 THE COURT: Mr. Snell.

15 CROSS-EXAMINATION

16 BY MR. SNELL:

17 Q. And -- and, sir, just, again, to make sure the jury
18 understands, prior to coming today you haven't been
19 given or reviewed any type of incident reports, witness
20 statements, investigative materials or anything else; is
21 that correct?

22 A. That's correct. I have not.

23 Q. Okay. No summaries of the case or any inkling at all
24 what this -- the specifics of this case are about?

25 A. That's correct. I don't know a thing about it.

1 Q. Prior to today and your testimony, have you had an
2 opportunity or did you interview the child involved in this
3 case?

4 A. I did not.

5 Q. Their parent or any of their caregivers or anyone else
6 in the home?

7 A. No.

8 Q. Did you talk about the specifics -- or actually did
9 you talk at all with anybody with law enforcement about
10 this case?

11 A. I have not.

12 Q. And how about the prosecutor prior to you testifying
13 about what -- what the specifics of this case were about?

14 A. Not about the specifics of the case, no.

15 Q. Okay. Is it fair to say about this specific case,
16 this -- the child involved, this defendant and this trial,
17 you know nothing?

18 A. That's correct.

19 Q. Okay.

20 MR. SNELL: No other questions.

21 THE COURT: Thank you.

22 Anything else, Ms. Patterson?

23 MS. PATTERSON: No redirect, Your Honor.

24 We ask that this witness be excused.

25 THE COURT: Thank you.

1 (Witness excused.)

2 THE COURT: You can call your next witness.

3 MS. PATTERSON: I think we wanted to get the
4 stipulation on the record.

5 THE COURT: Sure.

6 MR. KIRKLAND: We're trying to work on that real
7 quick.

8 THE COURT: Okay.

9 MS. WELLMAN: May I approach?

10 THE COURT: You may.

11 Everybody agree?

12 MS. WELLMAN: Yes.

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, I told you earlier when we first started this trial
15 that if there were any stipulations you were to treat them
16 as a true fact. This is a stipulation and you can treat
17 it as a true fact.

18 The State and the defense stipulate that MINOR
19 had a medical exam on June 1, 2021, at the
20 Dickerson Child Advocacy Center and that medical exam
21 was conducted by Nurse Practitioner Chandra Smith. The
22 State and the defense stipulate that MINOR's
23 medical exam was normal and no injuries were observed.

24 That is the stipulation and you are to treat that
25 as a true fact, okay?

1 Thank you.

2 Call your next witness.

3 MS. PATTERSON: The State calls Dr. LaDonna Young.

4 (Whereupon, LaDonna Young was sworn by the Clerk of
5 Court.)

6 THE CLERK: Would you, please, have a seat in the
7 witness box. State your full name and spell your last
8 for the record.

9 THE WITNESS: First name is LaDonna. L-A capital
10 D-O-N-N-A. Last name is Young. Y-O-U-N-G.

11 LADONNA YOUNG,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. PATTERSON:

15 Q. Good afternoon, Dr. Young.

16 A. Good afternoon.

17 Q. And as we stated, you are Dr. Young, but can you tell
18 us what field of medicine do you practice?

19 A. I am a child abuse pediatrician.

20 Q. And how long have you been a pediatrician?

21 A. I have been a pediatrician since 2011.

22 Q. And where do you currently work?

23 A. I'm currently employed by University of South Carolina
24 School of Medicine. I'm also employed by Prisma Health
25 USC Medical Group and I have practicing privileges at

1 Prisma Health Children's Hospital Midlands and I also
2 see children at the Midlands Family Child Advocacy Clinic
3 here in Columbia, I see children at the Metropolitan
4 Children's Advocacy Center here in Columbia, and we also
5 have satellite clinics in Rock Hill, Orangeburg and Aiken
6 County.

7 Q. Can you tell us a little bit about your educational
8 background in and training?

9 A. Yes. I graduated from Howard University in 2007. I
10 went to medical school at the University of Tennessee
11 Health Science Center and graduated from there in 2011. I
12 finished a three-year general pediatrics residency at the
13 University of Tennessee and finished there in 2014, then I
14 completed three additional years in child abuse and neglect
15 treatment, and that was at the Eastern Virginia Medical
16 Center in Norfolk, Virginia, and I graduated from there in
17 2017, and then I was hired by Prisma Health in 2017.
18 Previously Palmetto Health, now Prisma Health.

19 Q. And are you Board-certified?

20 A. I am.

21 Q. And what are some of your duties as a child -- child
22 abuse pediatrician at Prisma Health?

23 A. So my job is to evaluation children in an outpatient
24 setting in our clinic. I'm also consulted to evaluate
25 children in the inpatient setting, often in the ICU at the

1 Children's Hospital. I'm also required to see children at
2 our satellite locations at the other outlying clinics. I'm
3 required to give case review for SLED agents. I'm required
4 to do educational trainings for law enforcement, DSS, other
5 medical providers, and often school officials as well.

6 Q. And do you also -- do you also serve as a supervising
7 attending?

8 A. Yes.

9 Q. And can you explain what that is?

10 A. So in the state of South Carolina, we have a very
11 rigid protocol in that if you have not completed a
12 three-year fellowship in child abuse pediatrics, any
13 medical provider who would like to do child abuse and
14 nontreatment evaluations has to go through a 150 case
15 review process and that all of their cases have to be
16 submitted to myself or one of the other four child abuse
17 pediatricians in the entire state and we have to review
18 150 of their cases before they are able to practice
19 independently in child abuse pediatrics; however, should a
20 nurse practitioner or a physician assistant find abnormal
21 exam findings even outside of their 150, they still have to
22 review those with a child abuse provider such as myself
23 prior to releasing that report to investigative agencies.

24 Q. And about how many child abuse -- child sexual abuse
25 examinations have you performed?

1 A. I don't have an exact number, but it's over 2,000, as
2 I average about 300 cases a year with different types of
3 maltreatment.

4 Q. And have you been previously qualified as an expert
5 in the field of general pediatrics and child abuse and
6 neglect pediatrics?

7 A. Yes, I have.

8 Q. And do you know approximately how many times?

9 A. Over thirty times.

10 MS. PATTERSON: Your Honor, at this time we move that
11 Dr. Young be offered as an expert in the field of general
12 pediatrics and child abuse and neglect pediatrics.

13 MR. KIRKLAND: We have no objection to that, Your
14 Honor. Just for the record, if we could make a Court's
15 exhibit, not a defense exhibit or anything, the CV for
16 this particular doctor.

17 THE COURT: Do you have the CV?

18 MS. PATTERSON: I do have a CV.

19 THE COURT: Would you like to make it a Court's
20 exhibit?

21 MS. PATTERSON: I would like to make it a Court's
22 exhibit.

23 THE COURT: Okay. I think -- I don't know what
24 number that is.

25 THE COURT REPORTER: 6.

1 THE COURT: Number 6.

2 (Court's Exhibit Number 6 was marked for
3 identification.)

4 THE COURT: All right. I'm gonna tell the jury
5 this witness is gonna be an expert witness in general
6 pediatrics and also child abuse and neglect pediatrics.
7 You can give her testimony the weight you see fit.

8 BY MS. PATTERSON:

9 Q. So, Dr. Young, you previously mentioned that part of
10 your duties is that you are a supervising attendee --
11 attending?

12 A. That's correct.

13 Q. And doing this role as a supervising attending, do
14 you know Nurse Practitioner Chandra Smith?

15 A. Yes, I do.

16 Q. Did you, in fact, train her?

17 A. Yes, I did.

18 Q. Do you know where she is now?

19 A. She is currently practicing in Arkansas.

20 Q. And what is meant by a normal examination in a child
21 who is examined after a disclosure of child sexual abuse?

22 A. So when we do our medical evaluations, regardless
23 of what the allegation may be, we do a full head to toe
24 physical exam, and so not only do we assess the genitalia,
25 but we also assess the skin, different organ systems,

1 and if we don't find anything abnormal, they're documented
2 as having a normal physical exam, including a normal
3 anal-genital exam.

4 Q. And would you always expect to find evidence of trauma
5 following sexual abuse in a child?

6 A. No.

7 Q. And why not?

8 A. So nationally the rate of actually finding injuries
9 on the genital exam after a sexual abuse allegation goes
10 from 2 to 5 percent and so in 95 percent of your cases
11 you're not gonna find any genital injuries in sexual
12 assault evaluations.

13 Q. And why might you not find any injuries in the genital
14 area of a child?

15 A. So a few different reasons. The first one is that not
16 all sexual acts result in genital injuries. Another is
17 that should an injury result from a sexual act, the tissue
18 that makes up the genital area heals very quickly and
19 sometimes it can also heal completely so there's no
20 residual scar tissue or injuries that can be found days
21 afterwards, and so there are a lot of different factors
22 that go can go into a normal exam.

23 Q. And would fondling of the external genitalia or oral
24 sex result in any type of trauma?

25 A. We would not expect those types of sexual acts to

1 result in genital injuries.

2 Q. And is it sometimes difficult for children to explain
3 penetration?

4 A. Yes, very much so.

5 Q. And why might that be?

6 MR. KIRKLAND: Objection, Your Honor.

7 I think this is out of her scope of expertise. I
8 think she's talking about what the child reported and
9 not the examination that she did.

10 THE COURT: All right. Let me see the lawyers for
11 a second.

12 (Proceedings held at the bench; not reported.)

13 THE COURT: All right. Go ahead.

14 BY MS. PATTERSON:

15 Q. And during an examination would you always -- would
16 you necessarily expect to see any type of injuries from a
17 penetrating injury?

18 A. In about 5 percent of the cases you can potentially
19 see injuries in a penetrating trauma.

20 Q. And certainly you wouldn't expect to see this in a
21 nonpenetrating injury?

22 A. It would be unlikely.

23 Q. In fact, a normal exam could still be consistent with
24 the victim's -- let me rephrase that. Could a normal exam
25 still be consistent with an instance of sexual abuse?

1 A. Yes.

2 MS. PATTERSON: I beg the Court's indulgence.

3 THE COURT: Take your time.

4 BY MS. PATTERSON:

5 Q. Dr. Young, just one last question. If the exam was
6 done weeks, almost a month later, would you expect to see
7 any injuries if there were, in fact, any injuries that
8 occurred as a result of sexual abuse?

9 A. It's more common that an exam would be normal three
10 weeks after the alleged assault or abuse.

11 MS. PATTERSON: Thank you, Dr. Young. Please answer
12 any questions the defense may have.

13 CROSS-EXAMINATION

14 BY MR. KIRKLAND:

15 Q. So, Doctor, let me make sure I understand your --
16 your testimony. So it appears that they put you up here
17 to testify that the fact that you found a perfectly normal
18 exam is consistent with sexual abuse. That's what you're
19 saying?

20 A. I didn't find an exam. I didn't directly examine the
21 child. I didn't have the child as my patient.

22 Q. But I think you testified that it would be -- it would
23 be normal or it would not be atypical that an exam with no
24 findings at all would be consistent sometimes with sexual
25 abuse.

1 A. That is correct.

2 Q. But it would be 100 percent consistent with no sexual
3 abuse?

4 A. Can you repeat your question?

5 Q. You're saying sometimes when you don't find anything
6 that it's consistent -- sometimes consistent with sexual
7 abuse, right?

8 A. It can be consistent with sexual abuse, yes.

9 Q. But what same I'm saying is 100 percent of the time
10 when you don't find -- when it's a completely normal exam,
11 100 percent of the time that would be an indication that
12 there is no sexual abuse. If there was no sexual abuse,
13 you would never find -- it would never be a normal exam?

14 A. That is not true.

15 Q. So what -- so what injuries would you find on a child
16 that had not been sexually abused?

17 A. I have evaluated multiple cases where there was a
18 directly observed accident in which a child had injured
19 their genitalia.

20 Q. And in this case there was -- there was no such thing.

21 A. There was no accidental genitalia injury reported per
22 the documentation.

23 Q. MINOR 's physical exam -- I'm reading from your
24 report -- revealed patterned bruises on her lateral --

25 MS. PATTERSON: Objection, Your Honor. It's not

1 her report.

2 THE COURT: All right. Let me tell the jury to
3 disregard that. It's not her report.

4 BY MR. KIRKLAND:

5 Q. So -- so it would only be consistent if there had been
6 a report of some kind of injury?

7 A. No, that's not --

8 Q. No, no, no. What I'm saying is -- because what I was
9 asking you is you've been saying that the fact that you
10 don't have any kind of injuries, that could be consistent
11 with sexual abuse?

12 A. Yes.

13 Q. The fact that you have no physical injuries can -- in
14 cases where there is no sexual abuse, absolutely you would
15 find no -- you wouldn't find any physical injuries in
16 situations like that unless there had been a report of an
17 accident or something otherwise?

18 A. If there is an accidental injury that is reported that
19 can cause genital injury outside of sexual abuse.

20 Q. So I guess my point is when you're -- when you're
21 ultimately saying we didn't find anything, but it could be
22 consistent with sexual abuse, you're just saying we just
23 don't -- we have no idea?

24 A. No, what we're saying is that a normal exam does not
25 negate the possibility of sexual abuse having occurred.

1 Q. Excellent. But it doesn't -- it doesn't provide any
2 proof that it occurred either?

3 A. A normal exam does not prove or disprove if a sexual
4 act occurred.

5 Q. Right.

6 A. It just proves that there's no lingering evidence of
7 any type of penetrating injury.

8 Q. But it -- so it's meaningless. It doesn't prove or
9 disprove anything at all.

10 A. I don't believe it is meaningless.

11 Q. Well, I know you don't believe it's meaningless. This
12 is what you do for a living, but think about it logically.
13 It does not -- it neither proves nor disproves anything at
14 issue with a sexual assault?

15 A. Respectfully, that's not how medicine works. For
16 example, if someone comes into me and says that they had a
17 migraine yesterday, but they don't have a migraine today,
18 I'm not then going to say well, I'm not going to diagnosis
19 you with a migraine because you are not having that symptom
20 or sign today, and so medicine does not quite work the way
21 you're asking me to explain it, so I can't agree with your
22 statement.

23 Q. I understand and what I'm talking about is here in
24 court you can't say that this exam was any sort of proof
25 whatsoever one way or the other whether a sexual assault

1 occurred?

2 A. So another part of medicine is you take a physical
3 exam with a history together. It would be it inappropriate
4 of me to make a diagnosis with partial information, so I
5 take a history and I take a physical exam. And so if a
6 child is making a clear disclosure of sexual abuse and yet
7 still she has a normal physical exam, that does not negate
8 her disclosure of sexual abuse. So what I'm saying is
9 with her disclosure and a normal exam, I cannot rule out
10 that sexual abuse did not occur and, in fact, it could be
11 consistent with sexual abuse, especially the type that she
12 disclosed in her interview.

13 Q. You don't know?

14 A. My diagnosis -- my diagnosis would be that her
15 physical exam does not exclude the possibility of sexual
16 abuse, and that's what I know.

17 Q. That it just simply does not exclude?

18 A. Correct.

19 Q. Okay.

20 MR. KIRKLAND: Thank you. Thank you, Doctor.

21 THE WITNESS: You're welcome.

22 THE COURT: Any redirect?

23 MS. PATTERSON: No, ma'am.

24 We ask that this witness be excused.

25 THE COURT: Dr. Young, thank you for coming. You

1 may be excused.

2 (Witness excused.)

3 THE COURT: Okay. That is our two witnesses for
4 the day?

5 MS. PATTERSON: Yes, ma'am.

6 THE COURT: Okay. Madam Forelady, ladies and
7 gentlemen of the jury, I'm gonna let you go. Remember,
8 no talking about this case. The first thing I'm gonna
9 ask you-all in the morning is if you've talked to anybody
10 or has anybody tried to talk to you or if you've done any
11 research on this case. That will be my morning question,
12 so please don't do it.

13 Have a good evening. You-all have done a great job
14 of paying attention today. I think we've been through
15 seven, eight witnesses. It's been a good day. A good
16 court day for us anyway.

17 Thank you-all for hanging in there. I'll see you in
18 the morning. If you'd be in the jury room at 9:15, we'll
19 start promptly at 9:30, okay?

20 We are on schedule to finish this trial on Thursday
21 and I'm trying to keep us on schedule. So that's what
22 I'm anticipating, okay?

23 Thank you again.

24 (Whereupon, the jury was excused for the day at
25 3:40 PM.)

1 THE COURT: All right. Anything from the State?

2 MS. WELLMAN: No, Your Honor.

3 THE COURT: Anything from the defense?

4 MR. SNELL: Nothing, Your Honor.

5 THE COURT: Court's adjourned until 9:30 then.

6 MS. WELLMAN: Thank you.

7 THE COURT: Thank you.

8 (Whereupon, the proceedings were concluded for
9 September 19, 2023, at 3:41 PM.)

10 (The following proceedings were held September 20,
11 2023, beginning at 9:36 AM.)

12 (State's Exhibit Number 12 through 58 were marked
13 for identification.)

14 BAILIFF: All rise. Court's now in session. The
15 Honorable Debbie McCaslin presiding.

16 THE COURT: Please be seated.

17 All right. The State ready?

18 MS. WELLMAN: Yes, Your Honor.

19 I think there was one thing that the defense wanted
20 to bring up before we bring the jury in.

21 MR. KIRKLAND: I do, Your Honor.

22 THE COURT: Okay. Mr. Kirkland.

23 MR. KIRKLAND: So we have Sergeant Ormica Thomas
24 at -- that's how she signs her name. So she testified
25 on Monday and this is the issue that you'll probably

1 remember. It became a big deal. Exactly -- she was
2 pulling Jason Otero out of a cell and she said originally
3 on direct evidence that he said he didn't mean to hurt
4 her. I have it written down. This may not be exact.

5 THE COURT: He apologized. I'm looking at my notes.
6 He didn't mean to hurt her, she didn't deserve, it wasn't
7 her fault --

8 MR. KIRKLAND: Right.

9 THE COURT: -- and then you-all cross-examined her
10 on the statement itself.

11 MR. KIRKLAND: Yeah, on the statement itself.

12 Now what I would like to do because there's some
13 context, and I think we read the statement, but here's the
14 -- here's the rest of it. Oh, yeah. There's already --
15 we made it a Court exhibit, but it said I informed him that
16 he would be rehoused at Alpha pod with cameras due to his
17 prior attempts of self-harm. I also informed him that if
18 he attempted to do anything that would be -- he would be
19 returned to the cell in booking for the remainder of his
20 incarceration at the Lexington County Detention Bureau.
21 I never heard bureau before. But during the conversation
22 Inmate Otero expressed he felt terrible for what he did
23 and he stated the person I did it to is a good person and
24 did not deserve it. He continued with I had a long time
25 to think about it and ended with I was wrong. At no point

1 did I ever solicit information and so on.

2 Now the context of this information -- the context
3 of this conversation of him being removed from the cell
4 and being taken back into general population and the
5 reason for him being in the cell in the first place, that
6 particular context in particular, him being in the cell
7 in the first place, what we're going to try to establish,
8 and I'll just lay it out for you, Judge, is that he was
9 not talking about the little girl, he was talking about
10 the -- the correctional officer that was on duty because
11 these correctional officers that are on duty they can get
12 in trouble whenever something happens during their watch.

13 So our intention is to instead of use self-harm
14 because the Supreme Court of South Carolina and the
15 United States and the Fourth Circuit Court of Appeal they
16 do not like mentions of suicide, so what I've asked --
17 what I'm asking to do, and I don't know if the State is
18 going to oppose it, they indicated they were okay with it,
19 but we'll see, I was gonna ask so that we didn't bring up
20 suicide -- because I just want to bring up the context of
21 the conversation because the conversation never went into
22 anything about this little girl and there was a reason
23 for saying what he said that we believe that makes sense.
24 Obviously this witness will not be able to confirm or
25 deny that. I just want to bring up the context and in

1 doing so rather than his prior attempts at self-harm, I
2 would like to say due to the prior incident that occurred,
3 and that's what I'm asking.

4 THE COURT: I got it.

5 Let me hear from you, Ms. Wellman. He's saying he
6 made that statement concerning something totally different
7 and not confessing and --

8 MS. WELLMAN: I guess we were not intending to bring
9 in any kind of evidence regarding self-harm at all. I
10 think it's just -- as Mr. Kirkland said, courts don't
11 like it, at least not when the State does it because it
12 is -- it's limited and there's sort of a strict standard
13 that we have to meet and we just thought it was too touchy.

14 I guess my concern based on what Mr. Kirkland just
15 said is he now -- if he's trying to argue that it was a
16 statement --

17 THE COURT: Concerning something else.

18 MS. WELLMAN: -- concerning something else, I think
19 -- yeah. I don't want to cross the line into like a
20 prior bad act where the jury's thinking he might have
21 started a jail riot or something like that, but I'm also
22 concerned a little bit -- if they want to argue his
23 statement was about getting one of the CO's in trouble,
24 I don't think they can bring that out through Sergeant
25 Thomas. I think that would be --

1 THE COURT: Well, we won't know until he asks her,
2 but he has the right to cross-examine her on it.

3 Do you not think so?

4 MS. WELLMAN: He absolutely has the right to
5 cross-examine her. I guess I'm just saying I don't
6 want to get in the situation where he's trying to get
7 Sergeant Thomas to say it was about getting this CO in
8 trouble because she doesn't know that and I think --

9 THE COURT: Well, we don't know what she knows.

10 MR. KIRKLAND: Yeah. I mean, any questioning would
11 be something to the effect of -- I don't know how I would
12 put it and I don't even know that I would even go there
13 yet. That's what I'm saying.

14 THE COURT: Well, we'll take it up when you get
15 there. I mean, you can certainly -- you have every right
16 to cross-examine.

17 MR. KIRKLAND: It's the context that we're interested
18 in. That's it.

19 THE COURT: Right. On the context of what she told
20 him and see if he knows. I think you have every right to
21 cross-examine and as you see fit.

22 MS. WELLMAN: I don't have a problem with that at
23 all. I guess I don't want to get in a situation where it
24 sounds like he was trying to get -- like where it looks
25 like it was a prior bad act. That -- I guess that's my

1 only concern. I just want to be careful with it.

2 MR. KIRKLAND: To explain the statement, we have
3 no other choice than to call it an incident. Otherwise,
4 just the words coming in, nothing else with no context,
5 and I'm afraid this is a strategic decision we have to
6 make. I've talked with my client about it. He agrees
7 with it. I've talked with Mr. Snell about it. He's
8 okay with it as a strategy. So if the jury may make some
9 assumptions, then I'm afraid we're gonna have --

10 THE COURT: Well, now I think the jury can decide
11 what they want to believe. They're the decider of the
12 facts in this case.

13 MR. KIRKLAND: I mean, if they assume that he caused
14 a riot, I'm afraid we've -- our strategic decision failed.

15 THE COURT: Well, I'm not telling anybody how to try
16 their case. I'm telling them he can cross-examine her.
17 He has every right to on the statement.

18 MS. WELLMAN: Sounds good.

19 THE COURT: All right. With that out of the way,
20 are we ready to proceed?

21 MS. WELLMAN: Yes, Your Honor.

22 THE COURT: Thank you.

23 Mr. Snell, are you ready?

24 MR. SNELL: We're ready, Your Honor.

25 THE COURT: All right. Let's bring the jury in.

1 (Whereupon, the jury enter the courtroom at
2 9:46 AM.)

3 THE COURT: Madam Forelady, the jury ready?

4 FOREPERSON: Yes, Your Honor.

5 THE COURT: Please be seated.

6 Let me ask the jury panel, have you talked to anyone
7 about this case? Has anyone tried to talk to you about
8 this case? Or have you done any research on this case,
9 on any of the parties, the court officials or the lawyers?
10 If so, please raise your hand. Perfect.

11 You may call your next witness.

12 MS. WELLMAN: Thank you, Your Honor. May it please
13 the Court? At this time the State would call Sergeant
14 Adam Creech.

15 (Whereupon, Anthony Adam Creech was duly sworn by
16 the Clerk of Court.)

17 THE CLERK: If you would have a seat in the witness
18 box. State your full name and spell your last for the
19 record.

20 THE WITNESS: Sergeant Anthony Adam Creech. Creech
21 is C-R-E-E-C-H.

22 ANTHONY ADAM CREECH,
23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. WELLMAN:

1 Q. Good morning. Can you please tell the jury where you
2 work?

3 A. Yes, ma'am. I work for the Lexington County Sheriff's
4 Department where I've been employed since August 24th of
5 2009.

6 Q. And what is your role at the Lexington County
7 Sheriff's Department?

8 A. Currently a sergeant in criminal investigations. I
9 supervise the special victim's unit. I've been in criminal
10 investigations since July of 2014, I've been in the special
11 victim's unit since March of 2015, and I've supervised that
12 unit since October of 2017.

13 Q. Can you briefly explain to the jury sort of the
14 training you went through in order to become a law
15 enforcement officer?

16 A. Certainly. Back in 2009, it was a nine-week in-house
17 academy program at the South Carolina Criminal Justice
18 Academy. Following that, it was a month long field
19 training officer process alternating between two field
20 training officers and then on-going it's approximately
21 forty or so hours of continuing education training that's
22 performed that is mandatory training every year.

23 Q. You mentioned that you were the supervisor of the
24 special victims unit. Can you, please, explain to the jury
25 what the special victims unit is.

1 A. Yes. The special victims unit specializes in
2 child abuse and vulnerable adult investigations. It
3 also encompasses Internet crimes against children
4 investigations, which was my prior specialty within the
5 unit.

6 Q. And with regards to like Internet crimes against
7 children and other crimes against children, can you explain
8 -- you mentioned specialty -- explain the training you
9 received in addition to sort of the standard training
10 specifically with regards to child sexual assault or abuse
11 cases and Internet crimes against children?

12 A. Certainly. I received approximately 170 hours in
13 assorted training in child abuse investigation, anything
14 from physical abuse, sexual abuse to even child homicide
15 investigations. Comparably, approximately 350 hours or so
16 of training related to Internet crimes against children
17 investigations and within that specialty I've probably
18 directly investigated approximately 500 cases of Internet
19 crimes against children, probably 150 to 200 cases of child
20 physical or sexual abuse investigations, and then I've
21 supervised a rotating team of four detectives over the last
22 six years and probably directly supervised approximately a
23 thousand or so investigations of those types.

24 Q. And just so we all understand, Internet crimes against
25 children, what do you mean?

1 A. So Internet crimes against children would be -- is
2 effectively sexual abuse investigations against children
3 that involves some kind of technological component, so
4 either minors who've been solicited for sexual activity
5 over the Internet or they've been abused in the form of
6 photos or videos that have been taken of either the minors
7 in sexually explicit states of nudity or documenting
8 sexual abuse that's occurred on the children, as well as
9 displaying sexually explicit material to minors via
10 electronic means.

11 Q. And are you a member of any special task force or
12 organizations?

13 A. Yes. I've been a member of the South Carolina
14 Internet Crimes Against Children Task Force since March of
15 2015, so I think that's going on about eight years or so,
16 and since November of -- I believe it was '21 I've also
17 been a participating member of the Secret Service Cyber
18 Crimes Task Force, which does overlap heavily with the
19 ICAC Task Force.

20 Q. Have you ever testified in general sessions court
21 regarding these types of investigations?

22 A. I have.

23 Q. And have you ever been recognized by the Court as an
24 expert in these types of cases?

25 A. I have. In January of 2023, I was recognized in this

1 court as an expert in an Internet Crimes Against Children
2 investigation.

3 Q. And was that in this court?

4 A. Yes, it was.

5 MS. WELLMAN: Your Honor, at this time the State
6 would move to offer Sergeant Creech as expert in Internet
7 Crimes Against Children and child sexual assault or abuse
8 cases.

9 THE COURT: Any objection?

10 MR. SNELL: Yes, Your Honor.

11 I object to any categorization of this witness as
12 an expert and any designation of expert in those fields.
13 I believe it's improper for a variety of reasons and
14 would object.

15 THE COURT: All right. Well, let me talk to the
16 lawyers. I need to know what the variety of reasons
17 are.

18 (Proceedings held at the bench; not reported.)

19 THE COURT: All right. Ms. Wellman, I'm gonna let
20 you continue now.

21 MS. WELLMAN: Yes, Your Honor.

22 BY MS. WELLMAN:

23 Q. Sergeant Creech, you mentioned the Internet Crimes
24 Against Children cases require some extra technical
25 knowledge?

1 A. They do.

2 Q. Okay. I want to go ahead and talk about your
3 technical training, sort of digital training. Do you have
4 any specialized training with regards to cellular forensic
5 analysis, digital forensic analysis and/or computer
6 forensic analysis?

7 A. I do. As part of working internet crimes against
8 children, it's really common for investigators to kind of
9 end up in a lot of dual trainings. When you end up doing
10 investigative work, you end up doing a lot of your own
11 digital forensic examinations. I've been a Cellebrite
12 certified operator and physical analyst since 2019, and
13 that -- those certifications are current. Cellebrite is
14 an Israeli company who is the industry leader in cell
15 phone analytics when it comes to extraction and analyzing
16 that data. I'm also probably -- if I had to guess, it's
17 probably about 300 hours or so hours of specific training
18 relating to digital forensics that involves cell phones,
19 hard drives, removable storage media, as well as digital
20 records in general which you might obtain from like cloud
21 storage providers, e-mail providers or social media, and
22 I'm currently undertaking part two of a three part set of
23 course work with SANS Digital Forensics, which has been the
24 industry leader since 1989 in cyber security and digital
25 forensics investigations worldwide.

1 Q. Do you assist other officers under sort of your unit
2 with regards to any kind of digital forensic or cellular
3 -- excuse me -- digital, computer or cellular forensic
4 analysis?

5 A. I do. I conduct a lot of my examinations or at least
6 partial examinations to the point that the equipment I
7 have access to allows me to do, but I also assist other
8 investigators either under the umbrella of the major crimes
9 division that I work in. They'll send me over analysis or
10 help them interpret any of kind of digital records. I've
11 probably examined about 500 or so devices, you know, mostly
12 cell phones, but also hard drives, USB devices and just
13 general storage media.

14 This year the stats just came out with the U.S.
15 Secret Service Cyber Task Force and I reported 140 device
16 examinations within the last Federal fiscal year, which
17 ends here in a couple of weeks.

18 Q. And have you ever been qualified as an expert in a
19 General Sessions trial with regards to this type of
20 information?

21 A. I have. Three times in this courtroom.

22 Q. Okay. That would be Lexington County?

23 A. Yes, ma'am. That's correct.

24 Q. All right.

25 MS. WELLMAN: Your Honor, at this time the State

1 would tender Sergeant Creech as an expert computer,
2 cellular and forensic -- excuse me -- computer, cellular
3 and digital analysis.

4 THE COURT: Any objection?

5 MR. SNELL: No objection.

6 THE COURT: All right. Let me tell the jury because
7 we've had several experts testify in this trial and I want
8 to remind you that normally a witness cannot offer their
9 opinion. They must testify to what they've seen, heard
10 or did. In this case, due to education and experience,
11 Sergeant Creech is going to be an expert in computer,
12 cellular and digital forensic analysis, and he may offer
13 his opinion in those three subjects. You can give it
14 the weight that you deem it.

15 MS. WELLMAN: Thank you, Your Honor.

16 BY MS. WELLMAN:

17 Q. Sergeant Creech, in sort of general terms, can you
18 walk the jury through the sort of standard steps or the
19 process of investigating cases involving child sexual
20 abuse?

21 A. Certainly. Would it be okay to just use this specific
22 case?

23 Q. Sure.

24 A. Okay. So in this instance, this was a Monday morning.
25 I received a phone call from the school resource officer,

1 who happened to be my brother as you guys heard from
2 earlier testimony, he was a school resource officer with
3 the sheriff's department at the time. He was calling me
4 because I'm over the special victims unit and we were also
5 the day on-call major crimes unit team at the time.

6 So he informed me that there had been a disclosure
7 from a six-year-old student at his school, so I got some
8 basic information from him, and I did two things. One,
9 I contacted Senior Detective Sherban and ask him and
10 Detective Gilliam, who was new to the team, to both
11 respond to the school so that they could get a lot of
12 this information directly just because I always -- we
13 prefer a detective to do a lot of this initial factfinding
14 over a school resource officer who doesn't typically handle
15 these kind of cases.

16 And, meanwhile, just based on the information that
17 had been given to me that there was a last reported event
18 day before, and that's pretty recent where these kind of
19 disclosures are concerned, so I -- and then I'd been told
20 there was a cell phone involved in the activity, so I began
21 working on a search warrant for the incident location,
22 which was provided as [REDACTED] Kobuk Valley Court, which is
23 in Lexington or Red Bank area of Lexington County, South
24 Carolina.

25 Q. So you talked about getting some information

1 firsthand. All right. When your officers go and sort of
2 just get that firsthand information, are you-all looking
3 for every single possible detail of the alleged assault or
4 abuse?

5 A. No, because of the victim age in this case, I was
6 told she was six, I know that she's going to require an
7 investigative interview, and that's not something we're
8 gonna be able to conduct. In this case, it was May 3,
9 2021. We knew we weren't gonna get an investigative
10 interview that day, so we knew we were gonna have to rely
11 on some limited factfinding and limited details of the
12 disclosure that was made at the school.

13 Q. So just to be clear, based on that limited
14 disclosure, and you talked about getting the search
15 warrant, specifically what were you looking for in that
16 search warrant on May 3rd?

17 A. So based on the initial disclosure that was made to
18 the school, we knew that a cell phone was gonna be of key
19 interest in this case and that was we believed to be
20 located at [REDACTED] Kobuk Valley Court.

21 Q. In addition to the cell phone, okay, did you -- were
22 you looking for any other types of devices or any other
23 types of evidence, I guess, on May 3rd?

24 A. Certainly. So we know we're dealing with a cell phone
25 and just by a logical extension there could be computers or

1 other devices capable of interacting with a cell phone that
2 would also be of potential investigative relevance to a
3 case like this.

4 Q. Does that include like a desktop computer or any kind
5 of hard drives, USB drives, anything like that?

6 A. It could include hard drives, USB drives, desktop
7 computers, laptop computers, tablets. Any kind of Internet
8 connected device capable of exchanging or deleting data.

9 Q. And why would those additional devices potentially be
10 relevant to your investigation?

11 A. Because we -- we don't know exactly what's taken place
12 with the cell phone. We just know that it was reported
13 that material had been shown on a cell phone, so whatever
14 devices could have material that could have crossed over
15 with material that could be on the cell phone or material
16 that could have been produced with said cell phone.

17 Q. Sergeant Creech, did you, in fact, obtain that search
18 warrant?

19 A. I did.

20 Q. And on May 3, 2021, did you go to [REDACTED] Kobuk Valley
21 Court and execute that search warrant?

22 A. I did. I responded to that location and executed the
23 search warrant while Senior Detective Sherban and Detective
24 Gilliam were still at the elementary school.

25 Q. I am not an expert in computers, so I apologize.

1 Is this the house? This is State's Exhibit 4 already
2 in evidence. Is that the house that you went to on May 3,
3 2023?

4 A. Yes, it is. That would be [REDACTED] Kobuk Valley Court.

5 Q. Okay. Were there any other officers present with you
6 when you arrived at this home?

7 A. There were.

8 Q. Was there one, more than one?

9 A. It was more than one. I don't remember exactly who
10 all was with me, but we had a handful of officers, which
11 would be standard procedure when executing a search
12 warrant. That's never something you want to do with jus
13 one, two or even three people for safety concerns.

14 Q. And before you arrived, did you identify any adult
15 males living at this residence?

16 A. I was informed that the adult male living in the home
17 should have been a Jason Javier Otero.

18 Q. Okay. And during the course of your investigation,
19 did you identify any -- did you identify who MINOR [REDACTED] 's --
20 MINOR [REDACTED] 's father?

21 A. I did.

22 Q. And did you make contact with MINOR [REDACTED] 's father?

23 A. I did.

24 Q. Okay.

25 MS. WELLMAN: May I approach the witness?

1 THE COURT: You may.

2 BY MS. WELLMAN:

3 Q. Sergeant Creech, this is what we have marked as
4 State's Exhibit 12. Do you recognize that?

5 A. I do.

6 Q. Can you, please, tell the jury what we see in State's
7 Exhibit 12.

8 A. This would be my initial contact with Jason Otero when
9 we arrived at the home to execute the search warrant.

10 Q. Okay. And is that a fair and accurate depiction of
11 your initial encounter?

12 A. Yes, it is.

13 Q. And will it help illustrate some of your testimony
14 today?

15 A. It will.

16 MS. WELLMAN: State would move to introduce State's
17 Exhibit 12 into evidence and publish to the jury.

18 THE COURT: Any objection?

19 MR. SNELL: No objection.

20 THE COURT: It's admitted. You may publish.

21 (State's Exhibit Number 12, a photograph, was
22 admitted into evidence.)

23 BY MS. WELLMAN:

24 Q. Sergeant Creech, this is a little dark, but let's zoom
25 in. Is this Jason Otero standing right text next to the

1 house?

2 A. Yes. To the right in the photo, that would be Jason
3 Otero.

4 Q. Okay. Looking at State's Exhibit 12 and Mr. Jason
5 Otero as he appeared on May 3rd of 2021, do you see
6 Mr. Otero in the courtroom today?

7 A. I do.

8 Q. Okay. Can you, please, identify him?

9 A. Yes. Mr. Otero would be seated on the end of the
10 table over there in the white shirt.

11 Q. All right. Does he appear different to you today?

12 A. I would say his appearance has changed rather
13 dramatically over the years.

14 Q. Okay. Sergeant Creech, at some point while you were
15 on-scene that day, did representatives from DSS arrive?

16 A. They did.

17 Q. To your knowledge, was a safety plan put in place?

18 A. A safety plan was enacted, which to explain a safety
19 plan, that would be a very standard procedure with this
20 kind of allegation. It's simply ensuring that while law
21 enforcement's conducting an investigation, Department of
22 Social Services is conducting their own investigation. We
23 know that there's not gonna be an investigative interview
24 right away. Hopefully in the near future, but certainly
25 not that day, so a safety plan is just an agreement amongst

1 the parents to take the children. In this case, the victim
2 child, MINOR [REDACTED]. She had a younger brother in the
3 home who was also a minor, L.O. [REDACTED], but just to ensure
4 that while the investigation's taking place they stay
5 somewhere other than where the alleged perpetrator lives.

6 Q. Okay. Sergeant Creech, while you were on-scene, okay,
7 so you make contact with MINOR [REDACTED]'s dad, and did you have
8 an opportunity to actually go in the home and sort of walk
9 around the home?

10 A. I did. You know, I had other officers assisting me,
11 but since I was at this point deciding to take lead on the
12 investigation I did make a point to at least perform a
13 cursory review of the entire residence.

14 Q. Sergeant Creech, when you arrived and made contact
15 with the defendant, did you tell him why you were there?

16 A. I did.

17 Q. Okay. And without telling me anything the defendant
18 said, what did you say?

19 A. I explained the nature of the disclosure that had been
20 made and that we had a search warrant for the home and upon
21 our conclusion he was also provided with a copy of that
22 search warrant detailing why we were there.

23 MS. WELLMAN: May I approach the witness?

24 THE COURT: You may.

25 MS. WELLMAN: I beg the Court's indulgence for one

1 moment.

2 THE COURT: No, you take your time.

3 MS. WELLMAN: Your Honor, may we approach?

4 THE COURT: Sure.

5 (Proceedings held at the bench; not reported.)

6 THE COURT: All right. Continue on.

7 MS. WELLMAN: Thank you, Your Honor. Let me make
8 sure I get things back in order.

9 BY MS. WELLMAN:

10 Q. All right. Sergeant Creech, this is State's
11 Exhibit 5, 16, 6, 18, 17, 19, 14 and 13.

12 MS. WELLMAN: Do I need to repeat those numbers?

13 THE COURT: Please.

14 MS. WELLMAN: Okay. 5, which is already in evidence.

15 THE COURT: I've got it in.

16 MS. WELLMAN: Okay. State's Exhibit 16.

17 THE COURT: Okay.

18 MS. WELLMAN: State's Exhibit 6, which is already in
19 evidence.

20 THE COURT: Okay.

21 MS. WELLMAN: State's Exhibit 17 and 18.

22 THE COURT: All right.

23 MS. WELLMAN: State's Exhibit 19.

24 THE COURT: Okay.

25 MS. WELLMAN: State's Exhibit 14.

1 THE COURT: All right. Let me ask the defense.

2 Any objection to 14, 16, 17, 18 and 19? Other than
3 the one photograph that we talked about and we'll put on
4 the record.

5 MS. WELLMAN: That would be State's Exhibit 17.

6 THE COURT: Number 17.

7 MR. SNELL: We do have an objection to State's 17,
8 but we can memorialize the discussion at the appropriate
9 time.

10 THE COURT: Do you have the number?

11 MR. SNELL: 17.

12 THE COURT: And that's it. There's no objections
13 to the others?

14 MR. SNELL: No objection.

15 THE COURT: Okay. They're admitted.

16 (State's Exhibit Number 14, 16, 17, 18 and 19,
17 photographs, were admitted into evidence.)

18 BY MS. WELLMAN:

19 Q. Sergeant Creech, if you could just look through those
20 and just -- are these photographs of the home as you
21 observed it on May 3rd of 2021?

22 A. Yes. These photos all would all be reflective of the
23 home on May 3, 2021.

24 Q. Would these help sort of explain to the jury what you
25 saw and illustrate to the jury what you saw that day?

1 A. They would.

2 Q. All right. If I already asked you this, I apologize.
3 I sometimes forget where I am at. But generally as you
4 walked through the home, can you describe, you know, in
5 general terms the condition you found the home?

6 A. I would say the home was -- was a bit messy. As
7 mentioned, there were nineteen cats. As you can see in the
8 photos, it's hard to even take a picture without there
9 being an animal present in a lot of the photos. Probably
10 not near enough liter boxes for the number of cats. So I
11 would just -- I would say just generally a fairly messy
12 home.

13 Q. Did you have an opportunity to view specifically the
14 master bedroom or the defendant's bedroom?

15 A. I did.

16 Q. This is State's Exhibit 5. Is that how you saw it
17 that day?

18 A. That is consistent with how the master bedroom
19 appeared that day.

20 Q. Okay. And how about State's Exhibit 16? Is that
21 still the master bedroom?

22 A. It is. And I believe the last answer I said
23 consistent, but basically the same as the master bedroom
24 was that day. These photos would have been taken before
25 any kind of search was conducted.

1 Q. How about MINOR 's room? Did you have a chance to
2 sort of walk through MINOR 's room?

3 A. I did.

4 Q. Okay. State's Exhibit 6. Is this how you saw her
5 room?

6 A. Yes, that's how MINOR 's room was.

7 Q. Can you describe her bed for us?

8 Let me kind of zoom in a little bit right there. What
9 do you see?

10 A. It's rather messy. It's unmade. There's some stuff
11 animals strewn across it.

12 Q. And this is State's Exhibit 18 is. That still
13 MINOR 's room?

14 A. It is. Just from a different angle.

15 Q. All right. And State's Exhibit 17. Where is this?

16 A. That is also MINOR 's bedroom. That would be the
17 opposite direction from the previous photo.

18 Q. So would this be sort of the wall that the door is on?

19 A. To the left of the door, yes.

20 Q. Okay. How about L.O. 's room? Did you see L.O. 's room?

21 A. I did.

22 Q. This is State's Exhibit 19. I think we see another
23 cat, but is that sort of how you found L.O. 's bed?

24 A. Yes. His bed was also unmade and fairly unkept.

25 Q. Okay. Pursuant to your search warrant, what, if

1 anything, did you actually seize?

2 A. If you don't mind just giving me a moment. We seized
3 a number of hard drives, a USB drive and then a cell phone.

4 Q. Okay. Let's start with -- you said a number of hard
5 drivers. This is State's Exhibit 14. Are those some of
6 the hard drives that you seized that day?

7 A. They would be -- or they are. I'm sorry.

8 Q. Okay. And State's Exhibit 13, what are we seeing
9 there?

10 A. That's an operable desktop computer that was in a room
11 I guess you'd best consider an office and you can see the
12 side panel's opened up and you can see that it's got a hard
13 drive inside. Again, it was operable computer.

14 Q. Okay. And did you seize that hard drive?

15 A. We did.

16 Q. Sergeant Creech we heard from Detective Sherban that
17 Ms. Otero came to the home and gather some belongings so
18 she could leave during the -- part of the -- or the
19 pendency of the investigation, and did you know where they
20 were going?

21 A. I didn't know where they were knowing. I just -- at
22 the time I knew that they were coming to get some property
23 and personal items to then go stay somewhere else.

24 Q. And would that be throughout the pendency of the
25 investigation?

1 A. Correct.

2 Q. We're gonna talk a little bit more about the phone
3 later, but you mentioned that you seized a phone?

4 A. We did.

5 MS. WELLMAN: May I approach the witness?

6 THE COURT: You may.

7 BY MS. WELLMAN:

8 Q. Sergeant Creech, this is what is marked as State's
9 Exhibit 15, and here are some gloves and a pair of
10 scissors.

11 As I recall, the information you had was there was
12 some sexually explicit videos being shown on a phone?

13 A. Correct.

14 Q. And from where did you -- let me ask it this way.
15 When you arrived at the home and you're executing your
16 search warrant, did the defendant have a phone on him?

17 A. He did.

18 Q. Okay. Sergeant Creech, if you could sort of look at
19 State's Exhibit 15. Do you recognize that?

20 A. I do.

21 Q. Please tell the jury what it is.

22 A. This would be the defendant's cell phone that he had
23 on his person when we arrived and executed the search
24 warrant.

25 Q. Okay. And when you seized that cell phone, did you

1 tell the defendant that you would be searching it?

2 A. I did.

3 Q. Okay. And what color is that phone?

4 A. It's what I'd call maybe a gunmetal gray, almost a
5 blackish gray in a black case.

6 Q. And you said a black case?

7 A. Yes. That's correct.

8 Q. And would that be consistent with MINOR 's
9 description of the phone?

10 A. It would be.

11 Q. Okay.

12 Your Honor, the State would -- is this phone in the
13 same or substantially the same condition today as it was
14 when you last saw it?

15 A. It is.

16 MS. WELLMAN: Your Honor, the State would move to
17 introduce State's Exhibit 15 into evidence.

18 THE COURT: Any objection?

19 MR. SNELL: No objection.

20 THE COURT: It's admitted.

21 (State's Exhibit Number 15, a cell phone, was
22 admitted into evidence.)

23 BY MS. WELLMAN:

24 Q. And, again, we'll talk more about the phone later,
25 but after you seized the phone from the defendant, what,

1 if anything, did you do with it?

2 A. Following the conclusion of the search warrant, I
3 took all the evidence back and secured it in my office and
4 I put the phone, which was on, to a charger so that it
5 wouldn't lose power until I could come back to resume my
6 investigation of the device.

7 Q. Okay. And let me back up. Is this an Android, a
8 Samsung, and iPhone? What type of phone is this?

9 A. It's an android-based operating system cell phone.
10 It was a OnePlus.

11 Q. Okay. And did you have the appropriate charging cord
12 for that?

13 A. I did.

14 Q. You mentioned that you secured it in your office.
15 When you left your office, did you lock the door?

16 A. I did.

17 Q. Does anyone else have a key to your office?

18 A. Well, my supervisor, and that's it.

19 Q. Okay. Did you complete your search of the defendant's
20 cell phone that day?

21 A. I did not. It was fairly late in the day. By the
22 time I secured it, it was after 6:00 PM, and I had a very
23 early long day of mandatory training the next day.

24 Q. But was that cell phone safely and securely secured
25 in your office?

1 A. It was.

2 Q. And to your knowledge, no one else would have had
3 access to it?

4 A. Yeah, to my knowledge nobody else had access to it
5 during that timeframe between May 3rd and the morning of
6 May 5th when I came back to my office.

7 Q. Sergeant Creech, we heard from MINOR yesterday that
8 the abuse occurred while her mom, Mellixa, was working at
9 Instacart. Did you have that information during the course
10 of your investigation?

11 A. I did.

12 MS. WELLMAN: May I approach?

13 THE COURT: You may.

14 BY MS. WELLMAN:

15 Q. Sergeant Creech, this is State's Exhibit 2. Do you
16 recognize that document?

17 A. I do.

18 Q. As part of your investigation did you reach out to
19 Instacart to confirm whether or not MINOR's mother,
20 Mellixa Otero, did, in fact, work for Instacart?

21 A. I did.

22 Q. And were you able to confirm that?

23 A. I was able to confirm that --

24 MR. SNELL: We object.

25 THE COURT: What's the objection?

1 MR. SNELL: Again, we renew all objections made
2 pre-trial, including Sixth Amendment confrontation clause,
3 and hearsay.

4 MR. KIRKLAND: A contemporaneous objection.

5 MR. SNELL: Contemporaneous objection. But it's a
6 -- it's a document where -- again, they have an affidavit,
7 I believe my understanding is, regarding the authenticity,
8 and we'd object.

9 THE COURT: I think you noted this in pre-trial.
10 It's noted for the record.

11 You can proceed.

12 MS. WELLMAN: Thank you, Your Honor.

13 The State would at this time move to introduce
14 State's Exhibit 2 pursuant to business record affidavits.

15 THE COURT: And subsequent to your objection, so
16 noted for the record. It admitted.

17 (State's Exhibit Number 2, Instacart records, were
18 admitted into evidence.)

19 BY MS. WELLMAN:

20 Q. Okay. Sergeant Creech, are these the records you
21 received from Instacart?

22 A. They are.

23 Q. Do these records indicate the date Mellixa Otero began
24 working for Instacart?

25 A. Yes, the records indicate she began working for

1 Instacart on February 3rd of 2021.

2 Q. Okay. Do these records also tell you like -- let me
3 back up. Ms. Hall reported to us that MINOR said the
4 last incident was May 2nd of 2021. Do these records
5 indicate whether or not Ms. Otero provided services to
6 Instacart on that date?

7 A. Yes, the records do indicate that she provided
8 services to Instacart on May 2nd of 2021.

9 Q. Okay.

10 MS. WELLMAN: If I could just have one moment, Your
11 Honor.

12 THE COURT: Take your time.

13 BY MS. WELLMAN:

14 Q. This is sort of the timeline that we were working
15 with. You said February 3rd? You said February 3rd?

16 A. Yes, ma'am. That's correct.

17 Q. Okay. So we've got February 3rd she starts working
18 and then May 2nd she did provide the services?

19 A. Correct. You mean May 2nd she provided the services?

20 Q. Thank you.

21 Sergeant Creech, you talked about the investigative
22 interview. Did you, in fact, refer MINOR to that
23 investigative interview?

24 A. I did. Once I was back in the office on May 5th, I
25 did submit paperwork to schedule her for an investigative

1 interview at the Dickerson Child Advocacy Center.
2 Unfortunately, it was when COVID was beginning to become
3 an issue. I learned on the 7th that the Dickerson Child
4 Advocacy Center wouldn't be able to see her until June 1st.
5 I had concerns over that because the allegation was so
6 recent and she's such a young child, so I then made effort
7 to contact Special Agent Sykes with SLED, who I'd worked
8 with frequently over the years and performed investigative
9 interviews for me in the past on cases, and I discussed
10 with her if she could do it sooner and obviously we had to
11 use our facility because the Dickerson Center was really
12 restricted in their facilities and so we originally were
13 able to schedule -- I believe I talked to her on the 7th,
14 we were originally scheduled for the 12th. She got sick at
15 the last minute and we had to reschedule it for the 14th,
16 and we were able to conduct the interview on the 14th.

17 Q. You said May 14th?

18 A. Yes, ma'am. That's correct.

19 Q. So I want to talk about -- you said you had to use
20 your facilities?

21 A. We did.

22 Q. Okay. Can you talk about just sort of some of the
23 audio problems or issues that you faced?

24 A. Certainly. We've only had audio video recording in
25 those interview rooms -- it's an old building, but there's

1 only been audio video recording in there for maybe five or
2 six years. It hasn't been real long. Since they've put
3 that equipment in, we've constantly complained to IT that
4 there were significant issues with the volume of what's
5 being said in the rooms being recorded and not get drowned
6 out by outside noise. It's common to hear air-conditioning
7 ducts running or to hear voices in the hallway or in the
8 adjoining interview rooms. There's actually an office next
9 to one of the interview rooms, which was actually my former
10 office. It was very frequent that I would hear interview
11 taking place and the interviews taking place could hear me
12 making phone calls. They was just a lot of -- they're just
13 not real attune to recording and it's been an issue that
14 we've constantly had to grapple with.

15 Q. At the same time, does your recording system work
16 properly?

17 A. It does work and other than it's just not as crisp of
18 a recording in terms of audio that you'd like and you can
19 generally speaking still hear what's going on and make do
20 with it.

21 Q. So we've got the interview on the 14th. Did you
22 actually observe that interview in realtime?

23 A. I did. While it's not a required practice for an
24 investigator to observe the investigative interview in a
25 case they're working, it's ideal that they should. In this

1 cases, especially because of all the logistics and hoops
2 we were jumping through to ensure that this happened in a
3 timely fashion, I made it a point to be there and observe
4 the interview as it took place.

5 Q. Okay. So did you read the Lieutenant Sykes sort of
6 summary of the interview as part of the investigation?

7 A. I know she prepared a summary. I never read it
8 because I observed the interview in realtime. So whether
9 it's her doing the investigative interview or if we had it
10 done at the Dickerson Child Advocacy Center, they also
11 prepare summaries, but we never make any case decision
12 based on the summary provided by the interviewer because we
13 want to make sure that we're capturing all of the relevant
14 facts that we need to be aware of and the only way we're
15 gonna do that is observing it directly. In this case, I
16 was able to observe it as it took place.

17 Q. Okay. So based on the forensic interview, and we all
18 watched it yesterday --

19 MR. SNELL: I'll object, Your Honor.

20 THE COURT: What's the objection?

21 MR. SNELL: If we may approach?

22 THE COURT: Sure.

23 (Proceedings held at the bench; not reported.)

24 THE COURT: All right. Ms. Wellman, if you could
25 clarify, please.

1 MS. WELLMAN: Okay.

2 BY MS. WELLMAN:

3 Q. I think I just said forensic interview. That's not
4 what I meant. I meant that investigative interview that we
5 talked about. You said that you observed it in realtime?

6 A. I did.

7 Q. So did you gather some additional information?

8 A. I did. It was an expanded disclosure. It had a lot
9 more information than what we were originally operating on
10 on May 3rd.

11 Q. And May 3rd was the day you did your first search,
12 right?

13 A. Correct.

14 Q. Okay. So based on that expanded disclosure -- that
15 fragmented disclosure that we learned about yesterday,
16 what, if anything, did you do?

17 A. We obtained a follow-up search warrant for the
18 incident location.

19 Q. Okay. And in this follow-up search warrant, what were
20 you looking for?

21 A. We were looking because there were more details in the
22 disclosure. We were looking for things like bedding. We
23 had reason to believe there could be additional electronic
24 devices present that we may have missed the first time.
25 There were some sex toys mentioned in the disclosure that

1 we observed during the first search warrant, but at the
2 time didn't realize were relevant, so since we knew those
3 were there, we also knew we needed to go back and collect
4 those types of items.

5 Q. Okay. When did you go and execute -- or did you go
6 and actually execute that warrant?

7 A. I did. We executed that warrant on May 17th, just a
8 few days later.

9 Q. On May 17th you've got the second search. Okay. And
10 did you go to that same home, [REDACTED] --

11 A. Kobuk Valley Court.

12 Q. -- Kobuk Valley Court with other officers or were you
13 alone?

14 A. I did. I went with other officers.

15 Q. Okay. Was anyone at the home that day?

16 A. Yes, Jason Otero was present at the home again.

17 Q. Okay. So when you arrived back at the home on the
18 17th, did you have an opportunity to walk around the home
19 and observe some of the rooms that we talked about before?

20 A. I did. Since this was our second time and we knew
21 that -- it wasn't that we missed things the first time, but
22 we just weren't aware of that there were things we should
23 be looking for the first time. I would say we conducted
24 -- we made effort to conduct a much more thorough search
25 during the second search warrant.

1 MS. WELLMAN: If I could just have one second, Your
2 Honor.

3 THE COURT: Take your time.

4 MS. WELLMAN: May we approach?

5 THE COURT: You may.

6 (Proceedings held at the bench; not reported.)

7 MS. WELLMAN: May I approach the witness?

8 THE COURT: You may.

9 MS. WELLMAN: All right. Sergeant Creech, this is
10 State's Exhibit 22, 20, 23, 24, 25, 26, which I believe
11 the defense has an objection to.

12 THE COURT: And it's noted.

13 MS. WELLMAN: -- 27 and 28.

14 BY MS. WELLMAN:

15 Q. Sergeant Creech, could you look at those and tell the
16 jury if you recognize them and what they are?

17 A. Yes. These would be photos taken from the second
18 search on 5-17 of '21 of the master bedroom, MINOR's
19 bedroom and L.O.'s bedroom.

20 Q. Are they fair and accurate depictions of how those
21 rooms looks on May 17th?

22 A. They are.

23 Q. Okay. Will they help illustrate your testimony?

24 A. They would.

25 MS. WELLMAN: The State would move to introduces

1 these images -- or these pictures into evidence and
2 publish to the jury.

3 THE COURT: They're admitted with the objection so
4 noted for Photograph 26.

5 (State's Exhibit Number 20, 22, 23, 24, 25, 26, 27
6 and 28, photographs, were admitted into evidence.)

7 BY MS. WELLMAN:

8 Q. So when you arrived back on May 17th, in general, how
9 would you describe the home?

10 A. I would say it was largely the same as it was on
11 May 3rd, so it was a home I would describe as fairly
12 messy.

13 Q. Okay. Did you notice any differences like
14 specifically maybe with the defendant's bedroom?

15 A. The defendant's bedroom actually appeared a little
16 bit more unkept than it was on the 3rd.

17 Q. So is this is State's Exhibit 22. Is this how the
18 defendant's bedroom appeared that day?

19 A. It is.

20 Q. Okay. And let's talk about -- let's compare that,
21 okay, to the defendant's bedroom on May 3rd, okay? What
22 are we seeing right here? I see one difference? What is
23 that?

24 A. There's a -- it's hard for me to tell at this angle.
25 If you could actually bring me that photo real quick.

1 Q. Yes.

2 MS. WELLMAN: May I approach?

3 THE COURT: You may.

4 THE WITNESS: There's a gray backpack in that corner
5 of that frame that's not present in the first picture.

6 BY MS. WELLMAN:

7 Q. Okay.

8 A. It's just above the clothes basket in the photo on the
9 left.

10 Q. Right here?

11 A. Yes.

12 Q. Okay. And also just something else, without saying
13 what this is, is that a difference between this box? Is
14 there something different about it?

15 A. There is. There's a piece of paper on top on the 17th
16 that wasn't there on the 3rd.

17 Q. Okay. That bookbag. Let's talk about that a little
18 bit. Is that a close-up shot of that piece of paper?

19 A. It is.

20 Q. As part of your search warrant, did you guys look in
21 that bookbag?

22 A. We did.

23 Q. This is State's Exhibit 23. Is that -- did you see
24 this?

25 A. I did. I was there when the backpack was unpacked.

1 Q. State's Exhibit 24. Is this one of the items that you
2 found in the backpack?

3 A. It is.

4 Q. Did you seize this laptop computer?

5 A. We did.

6 Q. Okay. And we'll talk more about that later. How
7 about MINOR 's room? Did MINOR 's room appear changed?

8 A. It did.

9 Q. Okay. So let's start with State's Exhibit 6, which we
10 talked about earlier. This ws MINOR 's room on May 3rd,
11 correct?

12 A. Correct.

13 Q. And then here that's sort of -- that's a picture of
14 her bed from May 17th; is that correct?

15 A. That's correct.

16 Q. What, if anything, do we see different?

17 A. There's some bedding missing. The bed has been made.
18 You can see the room's been picked up a little bit.

19 There's actually a full -- mostly full garbage bag in the
20 photo on the 17th down near the bottom corner near the
21 floor.

22 Q. Okay. Let's talk about the bedding a little bit.
23 What color are the sheets on May 3rd?

24 MS. WELLMAN: Would it help if we turned the lights
25 down? That might make things a little easier.

1 THE COURT: The bailiff will take care of that.

2 BY MS. WELLMAN:

3 Q. Does that help a little bit? Let's see if I can zoom
4 in.

5 A. Yes. They appear to be a different set of -- even
6 the comforter is different. It appears the entire bed's
7 been changed.

8 Q. Okay. So when you say entire bed, you see solid
9 sheets on May 3rd?

10 A. Correct. And you can see some kind of pattern sheet.

11 Q. That right here?

12 A. Yes. The top blanket is different. They're both
13 pink, but the one on the 17th -- well, actually that could
14 be the same blanket.

15 Q. Okay. How about that gray blanket?

16 A. That gray --

17 Q. Did you find -- or that gray comforter. Did you find
18 that during your second search warrant?

19 A. We did not.

20 Q. You said you did a more thorough search on the 17th;
21 is that correct?

22 A. That's correct.

23 Q. To your knowledge was that comforter ever found?

24 A. It was not.

25 Q. How about that pillow? To your knowledge was that

1 pillow ever found?

2 A. It was not.

3 Q. How about those solid sheets? Were those ever
4 recovered?

5 A. They were not.

6 Q. Okay. And this is State's Exhibit 26. Did this
7 appear very different from MINOR 's room on the 3rd?

8 A. It did. You can see there were --

9 Q. Is that another cat?

10 A. You can see some water bottles had been cleaned up.
11 You can see a broom right there in the frame and then
12 another garbage bag that's partially full.

13 Q. Okay. And then this is State's Exhibit 27. What are
14 we seeing there?

15 A. It's a different angle to the right of the bed that
16 gives you a better view of that garbage bag closest to the
17 door of the storage bin furniture that's next to the bed.

18 Q. So let's compare this photograph to how you saw
19 MINOR 's bedroom on May 3rd. Specifically -- let's go
20 back to the 3rd. Yesterday MINOR told us about the
21 pee pads and that her dad pushed them under a piece of
22 furniture. Were you present for that?

23 A. I was.

24 Q. What, if anything, stands out to you in State's
25 Exhibit 18 if we look under the furniture?

1 A. There appears to be the corner of a blue pee pad
2 sticking out from underneath that piece of furniture.

3 Q. And this is from May 3rd?

4 A. That would be from May 3rd.

5 Q. To your knowledge, on May 17th was a pee pad found in
6 MINOR 's room?

7 A. Yes, in the garbage bag that can be seen in the photo
8 on the 17th.

9 Q. This garbage bag?

10 A. Yes, ma'am. I believe you can actually see the blue
11 material.

12 Q. Sort of right here?

13 A. Yes.

14 Q. Did you have a chance to go into L.O.'s room?

15 A. I did.

16 Q. Okay. This is State's Exhibit 28. Did L.O.'s room
17 really appear to be changed at all?

18 A. No, it appeared to be almost completely unchanged from
19 the way it was on the 3rd.

20 Q. Were the sheets changed?

21 A. They were not.

22 Q. Comforter?

23 A. It was just like it was.

24 Q. Okay. You mentioned that the defendant was present on
25 May 17th. Was he arrested that day?

1 A. He was.

2 MS. WELLMAN: Nothing further, but we would reserve
3 the right to recall Sergeant Creech at a later point.

4 THE COURT: Thank you, Ms. Wellman.

5 Mr. Snell.

6 MR. SNELL: May we approach?

7 THE COURT: Sure.

8 (Proceedings held at the bench; not reported.)

9 THE COURT: Madam Forelady, I'm gonna give the jury a
10 break right quick. I think when you come back it's gonna
11 be rather lengthy, so this would be a good stopping point
12 for us.

13 So, remember, do not talk about this case amongst
14 yourselves. It's not time yet. So let's take a quick
15 break and we can come back and resume.

16 (Whereupon, the jury retires to the jury room at
17 11:03 AM.)

18 THE COURT: All right. Sergeant Creech, you know
19 the drill. You can't talk to anybody. You're still
20 under oath, but you're welcome to do what you have to
21 do.

22 THE WITNESS: Yes, ma'am. Sounds great.

23 THE COURT: Just don't talk about the case.

24 MS. WELLMAN: For the next two witnesses can he sit
25 with us if we don't talk about it because he's normally

1 sitting at our table.

2 MR. KIRKLAND: What's the question?

3 THE COURT: Because -- now I'm just telling him
4 right now that he hasn't been crossed yet. He's under oath
5 and he can't speak to anyone.

6 MS. WELLMAN: Oh, sorry.

7 MR. KIRKLAND: Here's -- here's what we would prefer
8 on this. He obviously has a right to stay in the courtroom
9 because he's the lead investigator, but they are gonna be
10 having conversations about strategy and various other
11 things at the table. If he can just segregate himself in
12 between testimony, that's fine.

13 THE COURT: Yeah, he can't talk to the --

14 MR. KIRKLAND: Or listen to.

15 THE COURT: -- or listen, okay? You make sure that
16 he knows that.

17 MS. WELLMAN: Yes.

18 THE COURT: Yes.

19 MR. KIRKLAND: I mean, he can be in the room
20 obviously, but...

21 (Recess taken at 11:05 AM.)

22 (Back on the record at 11:22 AM.)

23 BAILIFF: Court will come to order. Stay seated,
24 please.

25 THE COURT: Is the State ready?

1 MS. WELLMAN: Yes, Your Honor.

2 I do think Mr. Snell wanted to put on the record his
3 objection to those two photos, 17 and 26.

4 THE COURT: Sure.

5 Okay. I'll be glad to hear from you.

6 MR. SNELL: So, Judge, specifically with the two
7 photos, you know, and, again, those are the State's 17
8 and State's 26, which are of the child's bedroom, but
9 they don't show areas that were involved in any of the
10 prior testimony from the child or other circumstances,
11 the allegation. They apparently show a different side
12 of the room, which is primarily toys and children's
13 objects. So basically the objection was, again, on
14 relevancy, prejudicial without potentially probative,
15 and we'd just object on those grounds.

16 THE COURT: Okay. I'm glad to hear from you,
17 Ms. Wellman.

18 MS. WELLMAN: Your Honor, going back to the -- well,
19 first, I would argue they are highly probative. They
20 are, one, images of a crime scene; two, they show efforts
21 made to clean up that crime scene. And, again, I think
22 -- we seem to be missing the correct language of Rule 403.
23 The issue is not whether they are more probative -- or,
24 excuse me, more prejudicial than probative. The issue is
25 whether the probative value is substantially outweighed by

1 any unfair prejudice.

2 So I want to get that language back in here to all
3 of what we're talking about. The issue is, is it
4 substantially outweighed, and I think that those photos
5 are very admissible under 401 and 403.

6 THE COURT: We discussed this during a bench
7 conference and the Court decided to allow those photos
8 in. They are the scene as he searched it, as he found
9 it, on those two days, so the Court allowed them in.
10 We're just putting this objection on the record.

11 MS. WELLMAN: Thank you, Your Honor.

12 THE COURT: Okay. Now let me ask the defense --
13 because I've read -- also this was another bench
14 conference that I'd like to put on the record about
15 the polygraph. It was brought to my attention there
16 were some searches on done on the Internet on how to
17 pass a polygraph.

18 Did you have time to look at any case law, Mr. Snell
19 or Mr. Kirkland?

20 MR. KIRKLAND: We're doing that. We're almost done.
21 If we can do it in like three minutes.

22 THE COURT: Then I'll -- I'll wait until after the
23 testimony of this -- are we bringing it up -- not on this
24 witness but later on?

25 MS. WELLMAN: This witness, yes, but when we recall

1 him. So, you know, we're done for this -- I guess if
2 they bring it up, but...

3 THE COURT: All right. Well, then I'll give you a
4 little while more time, Mr. Kirkland.

5 MR. KIRKLAND: All we need is three minutes. We
6 made some notes. We just have to organize them.

7 THE COURT: Okay.

8 MS. WELLMAN: I can be quiet or I can highlight the
9 key --

10 THE COURT: You passed up your case law. The Court
11 has reviewed it.

12 MS. WELLMAN: It's exactly on point.

13 THE COURT: Your argument is that it is admissible --

14 MS. WELLMAN: Yes.

15 THE COURT: -- under State v. McDowell and also
16 State v. Moore, which the Court has read both of those
17 cases.

18 MS. WELLMAN: And, again, I want to be clear. The
19 searches we're talking about are the searches that the
20 defendant made on his laptop, not searches by Sergeant
21 Creech. And these are all contained in the summary that
22 we provided to the defense last week and updated a copy
23 on Monday where we took out the reference to the Tor
24 Browser following the Court's ruling.

25 And, again, it's just -- these are -- this is

1 evidence that the defendant was trying to beat or cheat
2 a lie detector test. I think that and the fact that he,
3 you know, was trying to find countermeasures, both
4 pharmacological and physiological.

5 McDowell is 100 percent on point and says that that
6 evidence is admissible despite any inference that he
7 might have, you know, failed the polygraph or he might
8 have been offered one and refused to take it.

9 THE COURT: Which is not the case here.

10 MS. WELLMAN: Not at all. I don't know if he went
11 and got one himself, but we don't intend to bring that
12 out at all.

13 MR. KIRKLAND: All right. Ready.

14 THE COURT: Okay. Go ahead, Mr. Kirkland.

15 MR. KIRKLAND: So we have looked through this case
16 law very carefully and the case law is not in our favor
17 on this issue unfortunately.

18 THE COURT: I like honesty, Mr. Kirkland.

19 MR. KIRKLAND: However, we would maintain our
20 objection. There's always gonna be changes in the law
21 and we would ask you to consider ruling against it on
22 the basis that the courts have ruled that -- that it
23 does not -- that it doesn't violate any of the rules of
24 evidence because it does go to what the prosecutors are
25 trying to admit it for, potential sort of -- sort of an

1 admission -- potential admission of guilt or at least
2 some evidence of -- of guilt and that's what the law says
3 right now. However, our position is let's make some new
4 law because that's bad law. So we would like you to rule
5 against the Court of Appeals and Supreme Court and find
6 that this is not admissible and let's send it up there
7 and give it another chance.

8 THE COURT: Thank you, Mr. Kirkland.

9 MR. KIRKLAND: And we'll add to that, that -- which
10 is -- it's a fascinating way to think about it, but when
11 people search it's basically an extension of their --
12 of their thoughts and should not be allowed to be
13 considered evidence under the rules of evidence.

14 So what we're doing is I'm covering all of this
15 and asking you to just overturn the law and see what the
16 Court of Appeals does with it.

17 THE COURT: Thank you. And the Court refuses to do
18 that. I've read State v. McDowell. I do think it is
19 right on point. There are Internet searches on how to
20 beat the polygraph and as an expansion as you would say
21 of his thoughts, he was gonna use the results to hide his
22 guilt, which is exactly -- it's not that he refused to
23 take a polygraph, but rather could he beat the test and
24 use the results to hide his guilt or, you know, guilt
25 could be avoided.

1 I understand your argument that it's prejudicial.

2 MR. KIRKLAND: And the Court talks about -- the
3 Court does -- to be fair they, weigh the prejudicial
4 nature of it versus the probative nature of it and sadly
5 they did not come down on our side.

6 THE COURT: Exactly. Because they stated as a
7 general rule any guilty act conduct or statements on the
8 part of the accused are admissible as some evidence of
9 consciousness of guilt.

10 MR. KIRKLAND: Yes.

11 THE COURT: And in this case, his Internet searches
12 to try to beat the polygraph is -- at least the inference
13 that he was gonna try to hide his guilt.

14 Okay. The Court's gonna allow it.

15 Anything else I need to take up?

16 MS. WELLMAN: Just while we're on this subject, I
17 -- so we can just sort of roll with it later, I want to
18 make sure I understand any limitation. Because we've
19 talked about a couple of things that -- you know, we're
20 gonna relate some things back -- like as we're going
21 through that summary that I provided, for example, on
22 -- like Sergeant Creech has taken a polygraph himself as
23 part of when he became a law enforcement officer and I
24 guess I'm wanting to know like the search "Can you burn
25 sweat glands with an iron?", I'm just curious about

1 whether the Court will allow Sergeant Creech to say that
2 sweating is part of -- one of the things that these test
3 or that they check your blood pressure. I guess that's
4 just sort of what I want to know. Like where -- are
5 there any limitations?

6 MR. SNELL: Yeah, because I was gonna say --

7 THE COURT: I thought we were dealing with the
8 searches on the polygraph.

9 MS. WELLMAN: We are, but as we're talking about
10 the -- because Sergeant Creech will be talking about the
11 searches.

12 THE COURT: Are there searches in there about sweat
13 glands?

14 MS. WELLMAN: Yes, sir.

15 THE COURT: Okay. That's where I'm getting confused.

16 MR. KIRKLAND: Yeah. Me, too.

17 MS. WELLMAN: Like, for example, on --

18 MR. KIRKLAND: If we could -- let's try to look
19 together at what you -- what it is you that are wanting
20 to bring in.

21 MS. WELLMAN: I provided the whole thing.

22 MR. KIRKLAND: I understand, but the judge has to
23 see this stuff, too.

24 MS. WELLMAN: I provided that on Monday as well.

25 But, for example, on May 8th at 12:16 in the

1 afternoon, the defendant's word for word Internet search
2 "Can you burn sweat glands with iron?", and that is in
3 with a bunch of other searches about cheap polygraph
4 tests near me, fingertip sweat glands, can you burn sweat
5 glands, talcum powder clogs sweat glands.

6 So just the one about burning sweat glands with an
7 iron, I guess I'm just asking would the Court allow
8 Sergeant Creech to say sweating is something that is
9 relevant in polygraphs just to tie it back to sort of
10 the search or do you want to limit any of that?

11 MR. KIRKLAND: That goes beyond what those cases
12 are talking about. They're talking about mentioning --
13 a client mentioning beating a polygraph as evidence of
14 consciousness of guilt. When we start getting into what
15 a polygraph is, the fundamental -- they're making their
16 point by saying that there was a search for a polygraph.
17 When you start getting into the fundamentals of polygraph
18 and, quite frankly, I don't even know how true some of
19 those -- that stuff is, but that's -- that's irrelevant.

20 THE COURT: Well, I think we're just kind of muddying
21 the waters.

22 MS. WELLMAN: Okay. I just wanted to clarify before
23 we got through that.

24 THE COURT: I think I'd have to see exactly what
25 it is. I'm all for the polygraph. I've ruled on that.

1 There was another thing that you mentioned. The
2 polygraph and --

3 MS. WELLMAN: Would you like another copy of the
4 summary?

5 THE COURT: Sure. Thank you.

6 MR. KIRKLAND: This is a Court's exhibit; is it not?
7 Or am I mistaken?

8 THE COURT: I don't think it is.

9 MS. WELLMAN: I don't know if the copy is where we
10 took out the reference to the Tor Browser is in there.

11 THE COURT: All right. Well, how about you-all
12 pick it up and let's go through it.

13 MR. KIRKLAND: We're trying to find our copy of it,
14 Judge. We've got a stack of stuff they handed us.

15 MS. WELLMAN: You can have another copy.

16 THE COURT: Can police recover deleted e-mails? Wipe
17 phone. Can the cops copy your phone? Wipe through phone
18 -- wipe phone through Faraday. Child testifying in court
19 molestation cases.

20 I think all that comes in.

21 Can the FBI crack Photo Vault?

22 MR. KIRKLAND: Which date are we on, Judge?

23 THE COURT: I'm on May 4th, 5th --

24 MR. KIRKLAND: May 4th? Okay. May 4th, we're
25 looking at it, and you're saying that you think all of

1 May 4th comes in?

2 THE COURT: Yeah, I don't see why it doesn't.

3 Is there any objection?

4 MR. KIRKLAND: I'm reading it right now.

5 THE COURT: It goes to her -- also her obstruction.

6 MR. KIRKLAND: No, no, no, no. This is definitely
7 -- we'll maintain any objections that we -- we made
8 previously, but nothing in addition to that. I don't
9 even remember if we objected. I think we objected
10 entirely to search history.

11 Isn't that what we objected to?

12 MS. WELLMAN: And Your Honor ruled Monday that all
13 of the searches can come in.

14 MR. KIRKLAND: Right. So I don't think we
15 specifically objected to any one entry. We didn't go
16 line by line. So we'll maintain our objection to the
17 whole thing and then we can go line by line and figure
18 out now that we have some issues --

19 THE COURT: Well, how about you-all tell me what it
20 is in here that doesn't deal with wiping the phone, which
21 is the obstruction of justice charge. Correct me if I'm
22 wrong, Ms. Wellman, and the polygraph.

23 MS. WELLMAN: There's also some other searches in
24 here that are also relevant. I mean, for example, like
25 can a child testify in court child molestation --

1 THE COURT: I find all of that relevant to this case.

2 MS. WELLMAN: Yes, Your Honor.

3 So we took out everything -- like there were some
4 searches about --

5 THE COURT: You know, it's going -- I read your
6 Moore case about Internet searches.

7 MS. WELLMAN: We took out all of the searches about
8 -- like the suicide ones or some of just the other searches
9 that were not relevant to this case. Like there was some
10 searches for a band called Infant Annihilator. We didn't
11 believe that was relevant at all, but I think just the way
12 in which he's searching tells a lot about the defendant's
13 mind. What we do have in here --

14 MR. KIRKLAND: So, Your Honor, what -- what we can
15 do is this. So we start on May 6th at the top. So we
16 have pass polygraph, pass polygraph, pass polygraph and
17 then we have "Can you get convicted on search history?",
18 then we have Harvey polygraph, Harvey -- Lexington Harvey
19 Polygraph. Now the issues that we have with this is this
20 is of Johnny -- Johnny Hartley is who he is apparently
21 looking up, that's who he's trying to find, and that is a
22 local polygrapher, and we have not asked any of the jurors
23 if they know who this person is.

24 And I'm sitting -- I hate to sit down when I'm
25 arguing, Judge, but I'm going blind. I genuinely cannot

1 see. So we would object to anything referring to a name
2 because we haven't -- we're down to one alternate now.
3 If somebody knows Johnny Hartley, that's -- that's a
4 potential issue. We would object to 3:41, reduce galvanic
5 skin response because that goes -- in our opinion that
6 goes beyond --

7 THE COURT: I even know what that is. That's trying
8 how to beat a polygraph.

9 MR. KIRKLAND: Yeah. I mean, it is definitely a
10 reference to how to beat a polygraph, so you'll have to
11 just decided -- what I'm saying is we're gonna object to
12 that and you decide how you want to rule on that.

13 THE COURT: I'm allowing it.

14 MR. KIRKLAND: Okay. How to steam the polygraph. I
15 don't even know --

16 THE COURT: I'm gonna allow it.

17 MR. KIRKLAND: You'll allow it?

18 THE COURT: I'm allowing it.

19 MR. KIRKLAND: Okay. Superglue polygraph we object
20 to that.

21 THE COURT: I'm allowing it.

22 MR. KIRKLAND: Cheat polygraph we object to.

23 THE COURT: I'm allowing it.

24 MR. KIRKLAND: Cheat polygraph we object to. Next
25 one, 5:42, which is --

1 THE COURT: I'm allowing it.

2 MR. KIRKLAND: Okay. We'll get through all of these
3 real fast.

4 THE COURT: I haven't ruled on the Johnny Hartley.
5 I'm gonna think about that.

6 MR. KIRKLAND: Right. Right. Right.

7 Okay. So we have -- oh, goodness. I'm gonna try
8 to get through this page quickly. So on May 7th, if
9 you flip all the way to the end until you get to a
10 three-quarter of a page -- so you start at May 7th, flip
11 two pages and then you've got a three-quarter of a page.

12 MS. WELLMAN: What time?

13 MR. KIRKLAND: Oh, okay. 5:04.

14 THE COURT: Okay.

15 MR. KIRKLAND: We're gonna object to all of the
16 systolic, diastolic down to 5:17.

17 THE COURT: I'm allowing it.

18 MR. KIRKLAND: We don't object to the 5:18 and 5:19.
19 5:39, 5:41 we're objecting to that.

20 THE COURT: That is "What does a lie look like on a
21 polygraph?". I'm allowing it.

22 MR. KIRKLAND: Okay. And both of those are the
23 same. 5:39 and 5:41 are the same thing. 5:33, the
24 blocked skin, we think it goes beyond the case. We're
25 objecting to that.

1 THE COURT: Blocked skin on a poly graph. I'm
2 allowing it.

3 MR. KIRKLAND: Okay. What does a lie look like, which
4 is the same one you've already ruled on. Same objection,
5 same ruling.

6 What I'm saying with 5:55, and Jim just pointed this
7 out to me, 5:55 we accept the ruling you already made. We
8 maintain our objection.

9 THE COURT: Okay.

10 MR. KIRKLAND: The 5:56, "Can you fail a polygraph
11 with electrode?". We object to that. And you are --

12 THE COURT: I'm allowing it.

13 MR. KIRKLAND: Okay. 5:57, "Can you fail a
14 polygraph if skin?". That doesn't make sense. We're
15 objecting to that.

16 THE COURT: I'm allowing it. Go ahead.

17 MR. KIRKLAND: Okay.

18 MS. WELLMAN: As we're going line by line, there
19 are some typos in here, and I want to make it clear to
20 the Court this is a copy and paste. How they appear on
21 this summary are how the defendant typed them on the
22 computer.

23 THE COURT: Okay.

24 MS. WELLMAN: So it's word for word.

25 MR. KIRKLAND: Okay. Here's what I'm gonna do to

1 speed this up because it's getting ridiculous. So 6:16
2 through 9:10 all refer to various ways of beating a
3 polygraph. We're objecting to all of those.

4 THE COURT: And I'm allowing it.

5 MR. KIRKLAND: Okay. Got it.

6 Then we go to May 8th. The entire page of May 8th,
7 we -- the first page, which is 10:19 through 10:57,
8 objecting to. It goes beyond the case.

9 THE COURT: It looks to me from looking at this is
10 that he has probably Googled every kind of polygraph there
11 is whether it's a chest polygraph, DXM polygraph, and
12 then he goes onto -- even when he's talking about
13 sweating, he's talking -- he's searching the polygraph
14 on how to stop it.

15 MR. KIRKLAND: Right.

16 THE COURT: All of this, I'm just telling you,
17 stands by my previous ruling that I'm going to allow it.

18 MR. KIRKLAND: Well, and we'll also -- and I know
19 what your ruling's gonna be, but we'll also object on the
20 basis that at some point this becomes cumulative. It's --

21 THE COURT: Well, I -- I agree with that.

22 MR. KIRKLAND: So --

23 THE COURT: I mean, it is search after search.

24 MS. WELLMAN: To be clear, each of these are
25 individual searches, individual separate searches.

1 Yes, some of them are the same, but, again, it goes to
2 consciousness of guilt and the defendant's state of mind.
3 And, please, trust I am not gonna have Sergeant Creech
4 read every single one of these. That is not how this is
5 gonna work. This is a summary that we intend to put up on
6 the projector so the jury can see the searches and then
7 we'll highlight a few of them. And if the jury -- if they
8 would like to see the summary, you know, that's up to them,
9 but I am not gonna have Sergeant Creech say 12:54, how to
10 meditate, 12:55, how to meditate; 12:57, how to meditate.
11 I'm not doing that.

12 MR. KIRKLAND: This is what I propose, Judge.

13 So starting with May 6th, May 7th, May 8th, there's
14 got to be a hundred and fifty, two hundred searches, if
15 not more. We understand your ruling and we're going to
16 maintain our objection, but is it necessary from a
17 cumulative nature to put absolutely every single result?
18 I mean, there's two hundred results. I mean, cumulative --
19 cumulative, the foundation behind cumulative, is that at
20 some point reintroducing a particular piece of evidence
21 over and over and over and over again ceases to be
22 probative and starts to become prejudicial. That is the
23 concept behind cumulative evidence. That is the foundation
24 behind cumulative evidence. That eventually it will not --
25 it will no longer have the same relevancy and it will

1 become more prejudicial than probative. That making a
2 particular point, you don't have to make the point two
3 hundred and fifty times.

4 MS. WELLMAN: Would you like me to move this?

5 THE COURT: No, I was looking at that last date.
6 Okay.

7 MR. KIRKLAND: That last what?

8 MS. WELLMAN: Date.

9 THE COURT: The date on that.

10 MR. KIRKLAND: Okay. On the thing.

11 So, anyway, that's gonna be our position. We object
12 to all of it from Monday and we object to the Harvey thing
13 because that's a real person and a -- whatever his name is
14 and if -- since you have already ruled that you're allowing
15 it all in, we're gonna make a -- over our objection we're
16 gonna make a second objection that if they want to do this
17 why don't we have -- pick out ten or fifteen examples per
18 day. We'll still end up with seventy or so instead of two
19 fifty or whatever it is now because at some point it
20 becomes more prejudicial than probative and not even
21 relevant. This fact has been established.

22 THE COURT: Okay.

23 MR. KIRKLAND: That's all. We're not gonna make any
24 more argument.

25 THE COURT: Ms. Wellman, let me ask you about the

1 Johnny Hartley polygraph. They're saying that's a
2 polygrapher. Can you-all take that out?

3 MS. WELLMAN: Yes, I can, Your Honor, but the
4 defense has had this since Friday. We have printed
5 multiple copies. I didn't see -- you know, it's just --
6 at some point if there's anything else that they are
7 gonna argue that needs to come out, can we just do that
8 now? Because -- and I gave them a new copy on Monday.
9 We're printing so many copies --

10 THE COURT: I understand, but, you know, this is
11 how trials go.

12 MS. WELLMAN: Sure. Sure. I'm just asking them to
13 actually look at it.

14 MR. KIRKLAND: Yeah. Yeah.

15 THE COURT: So I'm asking you, can you just out of
16 an abundance of caution take out the Johnny Hartley
17 polygraph if he is truly a polygrapher that somebody
18 might know.

19 MS. WELLMAN: That's fine, Your Honor. And I guess
20 with regards just to answer the cumulative nature because
21 I figured you were gonna go there, Your Honor, please
22 let plea tell you that when we first transferred this to
23 make a document for court purposes, we were in the
24 thousands on an Excel spreadsheet, okay? We took out a
25 bunch, but I think we have reduced this to a manageable

1 number of searches for each individual day. I think it
2 shows a very clear progression of this defendant's state
3 of mind and particularly, you know, by the close of this
4 case when we talk about what happened after the arrest,
5 it all comes into play.

6 So this is already down. I think, you know, Chief
7 Investigator Sullivan spent a long time taking out some
8 extras and duplicates. So I think we've already addressed
9 that.

10 THE COURT: All right. I agree with you,
11 Ms. Wellman. It really is a short period of time. It's
12 from May 3rd to May 17th, which was his arrest date, is
13 my understanding. And I -- I think you're right, it does
14 go to his state of mind and we'll let the jury decide.

15 I don't find it cumulative and it's certainly not
16 burdensome to look at. It's in a chart. It's pretty
17 straightforward. Most of them are the same thing over
18 and over again about a polygraph, but at different times.

19 So if you would take out the Hartley just out of an
20 abundance of caution. I am noting the defense's objection
21 for the record and I'm gonna allow it in.

22 MS. WELLMAN: Thank you, Your Honor.

23 THE COURT: Thank you.

24 Anything else that we need to take up?

25 MR. KIRKLAND: Okay. Two more things.

1 May 16, 2021, 11:10, 11:41, anesthesia stimulates
2 death, how to fake your death. That's -- that's weird
3 and I'm not sure how it's relevant to this case and --

4 MS. WELLMAN: Your Honor, let's talk about the
5 progression of the searches on that day.

6 THE COURT: Okay. I'm not -- I've looked at them.

7 MR. KIRKLAND: Right.

8 THE COURT: I've made my ruling and I'm allowing it,
9 but if will you, please, take out the Hartley. I do
10 believe it goes to his state of mind. It is a short
11 period of time from the day the incident was disclosed
12 to the date of his arrest, which is May 3rd to May 17h.
13 It is not cumbersome. It is in a chart and pretty
14 straightforward. The Court is allowing it. The jury
15 can make up their own mind.

16 MR. KIRKLAND: And to be clear about the Harvey,
17 thing he misspelled it once or twice and then spelled it
18 correctly.

19 MS. WELLMAN: We got it.

20 THE COURT: Okay. Thank you.

21 All right. Can I bring the jury in?

22 MS. WELLMAN: Yes, please.

23 THE COURT: I'd like to go till 1:00.

24 MS. WELLMAN: Okay. We are we good for lunch?

25 THE CLERK: Yes.

1 THE COURT: Okay. I'm gonna bring the jury in
2 lunch.

3 Go ahead and bring them in. So maybe we can pick
4 right back up at two and continue on, okay?

5 MS. WELLMAN: Sounds good.

6 THE COURT: Does that suit everybody?

7 MS. WELLMAN: Yes, Your Honor.

8 (Whereupon, the jury return to the courtroom at
9 11:57 AM.)

10 THE COURT: All right. Madam Forelady, the jury
11 ready?

12 FOREPERSON: Yes, Your Honor.

13 THE COURT: Okay. Please be seated.

14 Madam Forelady, I'm gonna tell you I'm bringing in
15 lunch for you-all today. Pizza is on the menu. That
16 way maybe we can have just an hour lunch and pick right
17 back up so we can stay on schedule, okay?

18 FOREPERSON: Okay.

19 THE COURT: All right. Mr. Snell.

20 MR. SNELL: Thank you, Your Honor.

21 THE COURT: And let me remind -- Sergeant Creech,
22 you're still under oath.

23 THE WITNESS: Yes, ma'am.

24 THE COURT: You haven't talked to anybody about this
25 case?

1 THE WITNESS: Nobody.

2 THE COURT: Thank you.

3 Go ahead.

4 CROSS-EXAMINATION

5 BY MR. SNELL:

6 Q. So I understand your role in this matter was you were
7 the primary or lead investigator?

8 A. That is correct.

9 Q. And so you -- your involvement began with this case
10 back on May 3rd of 2021; is that correct?

11 A. That is correct.

12 Q. Okay. Are all the -- and I know you prepared a pretty
13 extensive report; is that correct?

14 A. That's correct.

15 Q. Okay. And that report would contain -- should contain
16 all of the highlights or the important information from the
17 investigation?

18 A. That's correct.

19 Q. And so on May 3rd, who -- who all did you interview
20 regarding this case? Well, let me -- you probably talked
21 to your brother, the school -- who worked at the school?

22 A. Correct.

23 Q. And did you talk to Ms. Hall, who was the guidance
24 counselor?

25 A. I did not. I relied on the information provided by my

1 detectives who -- who actually went to the school and spoke
2 with them.

3 Q. Okay. Who else did you speak with? I guess as part
4 of the investigation, who else did you speak with on
5 May 3rd?

6 MS. WELLMAN: Objection, Your Honor.

7 Can we approach briefly?

8 THE COURT: You can.

9 (Proceedings held at the bench; not reported.)

10 THE COURT: Continue on, Mr. Snell.

11 MR. SNELL: Thank you.

12 BY MR. SNELL:

13 Q. And so just to repeat the question, who else did you
14 speak with on May 3rd?

15 A. I spoke with Jason Otero on May 3rd and I later spoke
16 to Mellixa Otero by phone.

17 Q. Okay. And so those -- those three -- and you also
18 would have spoken to, I guess, Investigator Sherban from
19 your officer?

20 A. Yes. Senior Investigator Sherban. I would have
21 discussed his findings at the school.

22 Q. But as far as folks who are not law enforcement, that
23 would be Jason Otero and Mellixa Otero?

24 A. Correct.

25 Q. Anyone else?

1 A. Nobody else.

2 Q. In between May 3rd -- and I heard you were involved in
3 contemporaneously watching the investigative interview on
4 May 14th?

5 A. That's correct.

6 Q. And that occurred at the sheriff's department?

7 A. Yes, it was at the sheriff's department.

8 Q. And you'd agree with me that's eleven days difference?

9 A. Yes.

10 Q. In between those two dates, other than law enforcement
11 and potentially Mellixa or Jason Otero, did you interview
12 or speak with anyone else?

13 A. I did not.

14 Q. Do you know during those eleven days where MINOR
15 was living?

16 A. I believe it was brought to my attention that she was
17 staying with her grandparents.

18 Q. Okay. Is it your understanding that she was staying
19 with the grandparents for the full duration of that time?

20 A. Yes, that would be my understanding.

21 Q. And then I know you were involved with the second
22 search on May 17th?

23 A. That is correct.

24 Q. And the same thing. Other than potentially, you know,
25 the -- Jason and Mellixa Otero and law enforcement, have

1 you interviewed or spoke with anyone else?

2 A. I have not.

3 Q. Okay. Since May 17h other than, again, the same
4 names we've discussed, have you interviewed or spoken to
5 anybody else as part of the investigation?

6 A. Outside of law enforcement, no.

7 Q. All right. So -- and I know that you got specific
8 experience in investigating these type of cases and this
9 is part of your normal -- this is a normal type of case you
10 would encounter at the sheriff's department?

11 A. Correct. It is.

12 Q. And if I understand correctly from the -- what I
13 understand so far, the allegation in this case apparently
14 was made first to -- from MINOR allegedly to another
15 child?

16 A. Correct.

17 Q. And then from that child to the child's parent?

18 A. Correct.

19 Q. And then from that parent to someone at the school?

20 A. That is correct.

21 Q. Okay. Do we know who that child is?

22 A. I don't.

23 Q. Do we know the name of that child?

24 A. We don't.

25 Q. Do we know if that child even attends school with

1 MINOR ?

2 A. We don't because the fact that she ultimately
3 disclosed to a mandatory reporter, that would be where
4 our relevant -- again, for our investigation would have
5 taken place.

6 Q. So you don't consider relevant the -- the initial
7 other child that the disclosure was allegedly made to? As
8 far as who that child is, that's not -- you don't consider
9 that relevant to the investigation?

10 A. Well, ultimately all of our case decisions are gonna
11 be based on MINOR 's actual testimony based on her
12 investigative interview on the 14th. Everything else is
13 just kind of a guide to the initial disclosure, but the
14 investigative interview is where we're going to place all
15 of our primary weight with what she says happened to her.

16 Q. And -- so as far as what the circumstances of why she
17 allegedly made that disclosure to the other child, that was
18 not deemed relevant as part of your investigation?

19 A. It wouldn't have come up in this courtroom, so, no, it
20 was not relevant.

21 Q. So the actual -- okay. So what actually was discussed
22 between those -- the two children involved, right, which
23 started this, you did not deem that relevant to the
24 investigation?

25 A. The other child was not a reported victim in this

1 case, so, no, it was not relevant.

2 Q. What about the conversation between that child and
3 that child's parent? Was that deemed relevant to the
4 investigation?

5 A. It was not other than the child's parent alerted
6 school counselor that there was a concern and the school
7 counselor took it upon herself to speak with the victim and
8 get the information firsthand. If we made any case
9 decisions based on what the other child was told or what
10 the other child told their parent, it might be a different
11 scenario, but we made all of our initial case decisions
12 based on the information from the school counselor as we
13 should have.

14 Q. Okay. And so -- so basically did not deem it
15 important to even ascertain whether or not that other
16 child actually existed?

17 A. It wasn't relevant to what MINOR 's ultimate
18 disclosure was in her investigative interview on May 14th.

19 Q. And then, I guess -- and, again, the same thing, as
20 far as the grandparents that MINOR would have been
21 living with during this time, you did not interview or
22 speak with them?

23 A. I didn't. There was no reason to. They were not
24 identified as potential witnesses in this case or involved
25 parties other than the fact that they were family and DSS

1 had deemed them appropriate for placement during the safety
2 plan.

3 Q. And I know you didn't speak or -- basically you didn't
4 talk to them at all?

5 A. I believe I may have spoken to the father at some
6 point in passing, but I don't recall any substantial
7 discussion.

8 Q. Did anybody -- to the best of your knowledge, did
9 anybody with law enforcement have a substantial discussion
10 with either of the grandparents?

11 A. I believe Senior Detective Sherban spoke with
12 Mellixa's father over the phone when he was originally
13 notified of the allegations.

14 Q. And that was at that meeting in the conference room
15 at the school?

16 A. Yes, that would be my understanding.

17 Q. Okay. And other than that, you're not aware of any
18 other interaction that they would have had?

19 A. No. I never had a reason to interact with them, so I
20 can't speak on anybody else's behalf there.

21 Q. All right. So I know -- so that was -- so basically
22 your -- after May 3rd you get this -- this -- hear the
23 allegation. At that point that's when you obtained the
24 initial search warrant?

25 A. Correct.

1 Q. And you begin looking at physical -- physical items or
2 any electronic items in this case?

3 A. Correct.

4 Q. And that's something you also have -- that's been a
5 significant area of emphasis in your practice as an
6 investigator?

7 A. Correct, it has been.

8 Q. Okay. So we go -- we step up next to May 14th. You
9 were able to observe the interview?

10 A. I was.

11 Q. Is there -- what do you -- when you're doing a -- when
12 you're contemporaneously observing, where do you do that
13 from?

14 A. So it's -- at the sheriff's department we have three
15 audio video recorded interview rooms. They're all side by
16 side by side and that interview hallway runs adjacent to
17 our -- what we refer to as our major crimes suite where
18 our detective division is housed for major crimes at
19 headquarters. There's a door that leads to a set of
20 three computer terminals that log into a system called
21 evidencedotcom, which we use for all of your body camera
22 footage, interview recordings, crime scene photos.
23 Basically any digital evidence storage we use that system.
24 The terminals are numbered based on the interview rooms.
25 You log into a terminal. In this case, I would have had to

1 have used my login credentials and I would have logged into
2 the appropriate interview room and started -- and mainly
3 started and ended the recording.

4 Q. And you had -- did I understand correctly that other
5 than observing it contemporaneously, have you watched -- I
6 know you watched it in court yesterday, right? Did you
7 watch the actual record of that interview in between?

8 A. I did. I watched it contemporaneously, but, again,
9 before I make any decisions, I went back and watch it again
10 after it occurred. I don't remember if it was that same
11 day or the following day. It was -- it was very close in
12 time, but I would have reviewed it to make sure that my
13 present tense impressions were accurate.

14 Q. And I know -- I know part of your report you -- again,
15 you include your notes from watching the video?

16 A. That is correct.

17 Q. And that would be the highlights?

18 A. Correct.

19 Q. And I noticed there was a portion of the video -- do
20 you recall -- do you have your report with you?

21 A. Yes, I do.

22 Q. Okay. And I know there was a portion of the video
23 that got brought up in court yesterday where MINOR's
24 mother was -- was asking about her peeing the bed and

25 MINOR told her that she -- that it was because of the

1 pink toy?

2 A. Correct.

3 Q. And the examiner asked her if she told her mother
4 about the pink toy?

5 A. Correct.

6 Q. And I didn't see any reference to that in your report,
7 to that particular colloquy or exchange.

8 A. If you'll give me a moment, I'll -- so for starters,
9 my summary of my observations are based on key observations
10 that go to the charging decision, it is not a word for word
11 transcription of the interview. That would be have a
12 very, very lengthy process to undergo. I am aware of the
13 incident you're referring to and I did -- the interview is
14 clarified where the child at that point in the case that
15 she disclosed to the school counselor first and I had
16 follow-up discussions with Ms. Otero as well where she
17 clarified that that was all information that was brought to
18 her attention after May 3rd when the original allegations
19 came out.

20 Q. Okay. So you'd agree with me that exchange about the
21 pink toy, that's not in your report?

22 A. Correct. It's not in my report, but it's in the
23 video. There was never any concern that that was anything
24 to do -- nobody was hiding from.

25 Q. And then, again, there was a second -- a portion of

1 the video after the pink toy about MINOR disclosing to
2 her mother about seeing the video of her -- I called it the
3 orgasm video?

4 A. Correct.

5 Q. And that also was not in your report?

6 A. I know that was a relevant issue in the report. If
7 it was left out, it would not have been intentional. I
8 could sit here and go through it if you want to be sure.
9 Actually my report does note MINOR describing those
10 videos in the forensic interview.

11 Q. And is that the -- is that the portion of the
12 interview after she -- and I just want to make sure after
13 looking through your report -- and is that after the
14 colloquy about the pink toy occurred or was that the -- the
15 previous instance?

16 A. I believe if my report's accurate, it's fairly early
17 in the interview.

18 Q. Yeah. Okay. And so -- and that was kind of my
19 question. I know at the -- at the tail end, and I think we
20 actually watched it in court yesterday twice, the last
21 seven or eight minutes of the video?

22 A. Something like that.

23 Q. Okay. And then I know -- if I understand correctly,
24 you -- although you had watched the video contemporaneously
25 and the recording at least once, correct, prior to doing

1 your report?

2 A. Yes. It would have been at least once prior to my
3 report, if not twice.

4 Q. I think you testified you actually didn't review or
5 read Agent Sykes's, her report?

6 A. No. Because, again, investigative interviews, whether
7 they're being done through SLED or at the Dickerson Child
8 Advocacy Center, interviewers are required to create a
9 summary report. The problem is they're not the
10 investigating officer, so you never want to rely on a
11 summary report to potentially misconstrue their
12 interpretation of the interview, which is why, again, I'm
13 watching in realtime and then to, again, confirm my present
14 sense impressions going back and watching it at least once,
15 if not twice.

16 MR. SNELL: I'm gonna object to going beyond the
17 scope of the question.

18 MS. WELLMAN: Your Honor, Sergeant Creech can answer
19 the question as he see fit. He doesn't get to choose how
20 Sergeant answers the question.

21 THE COURT: I agree. You're stuck with his answer.
22 Go ahead.

23 THE WITNESS: So in the end, while Special Agent
24 Sykes did prepare a summary report, that summary report
25 would have had zero bearing on my case actions at that

1 point, so that it would have been included in the case
2 file, but I had no reason to review it because I was there
3 when the interview took place and I was able to review the
4 interview in addition afterwards, so I didn't rely on any
5 details of her report going forward for our investigation.

6 Q. All right. So now skipping after the interview, you
7 were involved I know in the -- I think you testified to the
8 second search of the Otero home on May 17th?

9 A. Correct.

10 Q. Who was -- who was residing at that home on May 17th?

11 A. Jason Otero.

12 Q. Was he the -- to the best of your knowledge, was he
13 the only one living there at the time?

14 A. To the best about of my knowledge, he was the only
15 occupant at the time.

16 Q. I guess, do you -- did you know or did you -- were
17 you aware that Ms. Otero, Mellixa, the mother and his wife,
18 had been at the house on at least -- I know a couple of
19 occasions between May 3rd and May 17h?

20 A. I can't speak for a number of events, but I do believe
21 they did go get some property at some point after the 3rd,
22 but I couldn't say that with any absolute certainty.

23 Q. Okay. Do you know whether or not they were at the --
24 did Mellixa still have a key to the house?

25 A. I'm sure she did.

1 Q. Do you know if she was -- so, again, as far as the --
2 the dates or times that she was at the house, you don't
3 have a specific record and keep track of it?

4 A. No, because that wouldn't have been relevant. She was
5 aware of the allegations, all their property was at the
6 home. It would not be unreasonable for her to have had to
7 have had some contact with the defendant or go into the
8 home to get property or personal items.

9 Q. All right. And then I know on May 17th -- so Jason
10 was still -- Mr. Otero was still there?

11 A. He was.

12 Q. And he actually was -- he present with you during that
13 search?

14 A. Not during the search, but he was at the home when we
15 executed the search.

16 Q. He was home when you-all got there?

17 A. He was. Well, actually our officers observed him
18 driving up into the driveway as we executed the search
19 warrant.

20 Q. Okay. And I think there were --

21 MR. SNELL: I beg the Court's indulgence.

22 THE COURT: Take your time.

23 BY MR. SNELL:

24 Q. Sir, I'm showing you what's been marked as State's
25 Exhibit 22. And, again, it's already in evidence and

1 you've seen that picture I know --

2 A. Yes.

3 Q. -- and that scene? And my understanding is this is
4 from the May 17th search at the Otero home?

5 A. Correct. It is.

6 Q. And if I understand, that shoebox under the -- the
7 table, what was the relevancy to that shoebox?

8 A. There were two vibrating sex toys located in that
9 shoebox.

10 Q. Okay. Are one of those the pink toy?

11 A. Yes, one of them would be the pink toy identified
12 yesterday by MINOR .

13 Q. Okay. So that pink toy remained in the house, I
14 guess, between May 3rd and May 17h?

15 A. It did.

16 Q. With Jason being the occupant?

17 A. Correct.

18 Q. Okay. And then I know -- I think you also testified
19 you found a bag also in the bedroom?

20 A. Correct, a gray backpack.

21 Q. Could that have been a diaper bag?

22 A. I mean, it could have been. Diaper bags are basically
23 glorified backpacks.

24 Q. And, again, that laptop, I guess, was still present
25 during this -- I guess to the best of your knowledge may

1 have been there -- first of all, you don't know when that
2 laptop got there?

3 A. We didn't identify it on May 3rd, but we know from the
4 subsequent review he had it prior to May 3rd.

5 Q. Okay. And so that laptop -- so that laptop stayed
6 in the home during this fourteen day period? That's two
7 weeks?

8 A. Yeah, about two weeks.

9 Q. Okay.

10 A. If we had identified it on the 3rd, we would have
11 seized it, but officers didn't find it on the 3rd.

12 Q. And I know when you you-all seized the electronic
13 equipment, those are things that I think you want to take
14 a look at?

15 A. Correct.

16 Q. And these -- this pink toy, was that -- that item you
17 took possession of?

18 A. On the 17th we did collect it, yes.

19 Q. Okay. And at some point that was submitted off to
20 SLED for DNA analysis?

21 A. Swabs from that were submitted for DNA analysis, yes.

22 MR. SNELL: I beg the Court's indulgence.

23 THE COURT: Take your time.

24 MR. SNELL: No other questions. Thank you so much.

25 THE COURT: Thank you.

1 Any redirect, Ms. Wellman?

2 MS. WELLMAN: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. WELLMAN:

5 Q. Sergeant Creech, speaking of that box in the
6 defendant's bedroom, is it possible there were three toys
7 or three vibrating toys?

8 A. There may have been. Without reviewing the interior
9 of the box, from memory I know there were at least two that
10 -- I do believe there was a third, yes.

11 Q. Was there one that was consistent with MINOR's
12 disclosure?

13 A. Yes.

14 Q. All right. And that would be the pink toy that
15 Mr. Snell referenced?

16 A. Yes, it is.

17 Q. Okay. And Mr. Snell also talked a lot about your
18 report and what you decided to put in your report, okay?

19 A. Correct.

20 Q. Is your report a word for word transcript of that
21 interview?

22 A. Absolutely not.

23 Q. So you said you keep, I think -- or you put like key
24 points?

25 A. Correct, key points. Because I know ultimately the

1 interview itself is what's gonna be relied on.

2 Q. So in terms of sort of key points, did you put -- like
3 when MINOR said dad told me orgasms are better than
4 candy, did that go into your report?

5 A. It did.

6 Q. How about some of the other statements about the
7 defendant licking MINOR's private parts? Did that go
8 in your report?

9 A. Yes, it did.

10 Q. How about where the defendant made MINOR lick his
11 pee-pee or his private part?

12 A. Yes.

13 Q. Are these the type of highlights that you'd put in
14 your report?

15 A. Yes, these would be highlights that would be actual
16 element we'd be concerned with that would impact a charging
17 decision.

18 Q. So -- and, again, like using the toy on her bare
19 genitals, is that something that's, again, a highlight?

20 A. Correct.

21 Q. Okay. The fact that she said he put his private part
22 on her private part, is that one of those highlights that
23 went in your report?

24 A. Correct. That was certainly something that was noted
25 as considerable.

1 Q. And then a description of some of the videos that she
2 described, is that a highlight?

3 A. It is.

4 Q. Okay. So I just wanted it make sure we understood the
5 highlights that we're talking about here.

6 MS. WELLMAN: Nothing further.

7 THE COURT: Thank you. Mr. Snell?

8 MR. SNELL: Nothing further.

9 THE COURT: All right. May I excuse Sergeant
10 Creech?

11 MS. WELLMAN: Subject to our recall.

12 THE COURT: Sergeant Creech, you may step down, but
13 you're subject to recall.

14 MR. KIRKLAND: And to be clear, the rules set out --
15 the jury wasn't in here, but as to him being segregated
16 from the prosecution during this period of time is still
17 in place since he's being recalled?

18 THE COURT: Yes.

19 MR. KIRKLAND: Okay.

20 THE COURT: Thank you, Sergeant Creech.

21 THE WITNESS: Thank you, ma'am.

22 (Witness excused.)

23 THE COURT: You can call your next witness.

24 MS. PATTERSON: Thank you, Your Honor.

25 The State calls Investigator Brenda Snelgrove.

1 THE CLERK: Would you raise your right hand and put
2 your left on the Bible.

3 (Whereupon, Brenda Snelgrove was duly sworn by the
4 Clerk of Court.)

5 THE CLERK: Would you, please, have a seat in the
6 witness box. State your full name and spell your last
7 for the record.

8 THE WITNESS: I'm Sergeant Brenda Snelgrove.
9 S-N-E-L-G-R-O-V-E.

10 BREND A SNE LGROVE,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. PATTERSON:

14 Q. Sergeant Snelgrove, where are you employed?

15 A. Lexington County Sheriff's Department.

16 Q. And in what capacity are you employed at the Lexington
17 County Sheriff's Department?

18 A. I am the sergeant over the crime scene unit.

19 Q. And can you explain to the jury what are some of the
20 your duties as the sergeant of the crime scene unit?

21 A. Besides the administration work of it, I also respond
22 and document and process scenes.

23 Q. Okay. And can you tell us a little bit about -- well,
24 how long have you worked there?

25 A. I've been there since July of 2015, so I think I'm

1 going on about eight years.

2 Q. And as part of the sergeant of the crime scene unit at
3 the sheriff's department, are you routinely called out to
4 scenes to help execute search warrants?

5 A. Yes, ma'am.

6 Q. And were you called out on May 17th of 2021 to assist
7 in the execution of a search warrant at [REDACTED] Kobuk Valley
8 Court in Lexington County?

9 A. Yes, ma'am.

10 Q. And do you remember about what time you arrived there?

11 A. I arrived approximately at 10:44 --

12 Q. And when you -- I'm sorry.

13 A. So sorry. AM.

14 Q. 10:44 AM. And when you got there, were you assisted
15 by other officers?

16 A. Yes, ma'am.

17 Q. And would that have included Sergeant Adam Creech?

18 A. Yes, ma'am.

19 Q. And this residence, as we already have heard and seen
20 in State's Exhibit Number 4, is a residential two-story
21 home?

22 A. Yes, ma'am.

23 Q. And what parts of this home did you-all execute the
24 search warrant?

25 A. The entire house.

1 Q. The entire house. And that would have included the
2 master bedroom?

3 A. Yes, ma'am.

4 MS. PATTERSON: I beg the Court's indulgence.

5 THE COURT: Take your time.

6 BY MS. PATTERSON:

7 Q. And upon entering the master bedroom, was anything
8 recovered pertaining to this investigation?

9 A. Yes, ma'am. There was.

10 Q. And do you recall what that was in particular?

11 A. Everything that we collected out of there?

12 Q. Well, let's back up. If I can just find my picture.
13 State's 23, that's already been admitted into evidence, do
14 you remember what's depicted in that photograph?

15 A. Yes, ma'am.

16 Q. And can you explain what we're looking at in
17 State's 23?

18 A. We're looking at the bedroom of the master bedroom,
19 the bed is in there and then on top of it is that gray
20 bookbag that we talked about earlier.

21 Q. Okay. And what were the contents of that gray
22 bookbag?

23 A. Upon opening it, a silver in color laptop was
24 observed.

25 Q. Okay.

1 MS. PATTERSON: I beg the Court's indulgence.

2 I'm just gonna go ahead and let them look at these.

3 THE COURT: Sure. You take your time.

4 BY MS. PATTERSON:

5 Q. Sergeant Snelgrove, I'm gonna show you what's been
6 marked as State's Exhibit Number 30 and ask you if you can
7 identify what's in this picture?

8 A. Yes, ma'am. That's gonna be that laptop I spoke about
9 that came out of the bookbag.

10 Q. Okay. And did you-all collect this laptop?

11 A. Yes, ma'am.

12 Q. But before -- prior to collection, did you photograph
13 the laptop?

14 A. Yes, ma'am.

15 Q. And did you place this placard?

16 A. (Nods head.)

17 Q. What's the purpose of placing a placard in front of
18 the laptop?

19 A. That's gonna be my evidence placard and that just
20 shows that I collected it as Item Number 1.

21 Q. And does this fairly and accurately represent the way
22 the laptop was photographed on May 17th of 2021?

23 A. Yes, ma'am.

24 MS. PATTERSON: Your Honor, at this time we move
25 State's Exhibit 30 into evidence?

1 THE COURT: Any objection?

2 MR. SNELL: No objection.

3 THE COURT: It's admitted.

4 (State's Exhibit Number 30, a photograph, was
5 admitted into evidence.)

6 BY MS. PATTERSON:

7 Q. And, again, in State's 23 is this what we see, the
8 laptop, and this is just the photograph accompanied with
9 the placard?

10 A. Yes, ma'am.

11 Q. And you said that was collected as Item 1?

12 A. Yes, ma'am.

13 Q. And I'm gonna show you what's been marked as State's
14 Exhibit 31 and ask you if you can open this and take a look
15 at this.

16 A. (Witness complies.)

17 Q. Okay. And do you recognize that laptop?

18 A. Yes, ma'am.

19 Q. And what do you recognize that laptop to be recovered
20 from?

21 A. That gray bookbag from the master bedroom.

22 Q. And does this fairly and accurately represent the
23 laptop as it was recovered on May 17th of 2021?

24 A. Yes, ma'am.

25 Q. And has it been properly sealed in the evidence room

1 at the sheriff's department?

2 A. Yes, ma'am, it was.

3 MS. PATTERSON: Your Honor, at this time we move
4 State's Exhibit 31 into evidence.

5 THE COURT: Any objection to the laptop itself?

6 MR. SNELL: No objection.

7 THE COURT: It's admitted.

8 (State's Exhibit Number 31, a laptop, was admitted
9 into evidence.)

10 BY MS. PATTERSON:

11 Q. Was anything in addition to the laptop recovered from
12 that bookbag?

13 A. Yes, ma'am. There was a pair of girls underwear, a
14 size small, 6 slash 7.

15 Q. Let me show you State's Exhibit 32 and 33.

16 A. Yes, ma'am.

17 Q. And what's depicted in these photographs?

18 A. It's gonna be the girls underwear. I've taken a
19 picture of it with the placard as I collected it as
20 Item Number 3 and I also took a photo of -- showing the
21 size of the girls underwear.

22 Q. And, again, what size were they?

23 A. Size small and then it has in parentheses 6 slash 7.

24 Q. And do they fairly and accurately represent the
25 photographs that you took on May 17, 2021, during the

1 execution of the search warrant?

2 A. Yes, ma'am.

3 MS. PATTERSON: Your Honor, at this time we move
4 State's Exhibit 32 and 33 into evidence.

5 THE COURT: Any objection?

6 MR. SNELL: No objection.

7 THE COURT: They're admitted.

8 (State's Exhibit Number 32 and 33, photographs,
9 were admitted into evidence.)

10 BY MS. PATTERSON:

11 Q. And in State's 33, of course, we're looking at the
12 little girls panties?

13 A. Yes, ma'am.

14 Q. And what else is depicted in that photograph?

15 A. It appears to be a blood pressure monitor with a cuff.

16 Q. Okay. Was that item collected?

17 A. No, ma'am, it was not.

18 Q. And 33 is just a closer up view of State's 32?

19 A. Yes, ma'am.

20 Q. And I know it's kind of hard to see, so I'm gonna
21 bring State's Exhibit Number 23 back up to you. Were you
22 able to identify anything else within that bookbag?

23 A. Oh, there were some men clothing items that was
24 located also in the bag.

25 Q. Also in the bookbag. Do you remember specifically

1 what type of clothing items those were?

2 A. Not off the top of my head. I can refer to my report
3 and see if it's possibly in there.

4 Q. Okay.

5 A. And so I have in my report a pair of jeans.

6 Q. They were identified as male jeans?

7 A. Yes, ma'am.

8 Q. Did you collect those as items of evidence?

9 A. No, ma'am, I did not.

10 Q. Okay. And is that what we see in this photograph?

11 A. Yes, ma'am.

12 Q. And still paying particular attention to the master
13 bedroom, was any other items collected?

14 A. Yes, ma'am. There were three adult devices in a
15 shoebox under a side table.

16 Q. And I'm gonna show you what's been marked -- what's
17 already been admitted as State's 20. Does this photograph
18 identify the location of that shoebox that you just
19 described?

20 A. Yes, ma'am. You see the side table beside the master
21 bed and under it is that shoebox.

22 Q. Would that be correct where I am pointing to?

23 A. Yes, ma'am.

24 Q. Okay. And were you able to identify what type of
25 shoebox that was?

1 A. My report stated that it was a work boot, I believe.

2 A Sketcher's work shoebox.

3 Q. Okay. Do you know if it was male or female?

4 A. I remember it being male, but I cannot positively say
5 that with 100 percent.

6 Q. Okay. So you collected that box and you looked in the
7 box and that's where you found --

8 A. We opened -- the box was open and that's where we
9 located the adult devices.

10 Q. Adult devices. And I'm gonna show you State's 34. Do
11 you recognize what's depicted in that photograph?

12 A. Yes, ma'am. It's the three adult devices.

13 Q. That was found in the box that you described?

14 A. Yes, ma'am.

15 Q. And is that the way they were located when you
16 recovered them?

17 A. Yes, ma'am.

18 Q. And you placed that Number 2 placard there?

19 A. Yes, ma'am.

20 MS. PATTERSON: Your Honor, at this time we move
21 State's Exhibit 34 into evidence.

22 THE COURT: Any objection?

23 MR. SNELL: Let me just double-check the -- no
24 objection.

25 THE COURT: It's admitted.

1 (State's Exhibit Number 34, a photograph, was
2 admitted into evidence.)

3 BY MS. PATTERSON:

4 Q. And in State's 34, are those items that you previously
5 described?

6 A. Yes, ma'am.

7 Q. And all three items were collected in evidence?

8 A. Yes, ma'am.

9 Q. Detective Snelgrove, I'm gonna show you State's
10 Exhibit Number 7. Do you still have your gloves?

11 Do you recognize State's 7?

12 A. Yes, ma'am. This is one of the adult devices I
13 collected.

14 Q. And is that the way it was bagged?

15 A. Yes, ma'am. I separated them from each other and then
16 packaged them in another bag and sealed that bag.

17 Q. Okay. So does this item fairly and accurately
18 represent what was recovered on May 17, 2021, during the
19 execution of the search warrant?

20 A. Yes, ma'am. There has been an addition of fingerprint
21 powder where it was processed for possible latent prints.

22 Q. Okay. And does it fairly and accurately, again,
23 represent what you collected and how you collected it?

24 A. Yes, ma'am.

25 MS. PATTERSON: Your Honor, we move State's Exhibit

1 Number 7 into evidence.

2 THE COURT: Any objection?

3 MR. SNELL: No objection.

4 THE COURT: It's admitted.

5 (State's Exhibit Number 7, a vibrator, was
6 admitted into evidence.)

7 BY MS. PATTERSON:

8 Q. And, Sergeant Snelgrove, just looking at this item,
9 are there any buttons or any other items located on this
10 item?

11 A. Yes, ma'am. It appears that there's three buttons
12 on here, on the side here. The one looks like it has the
13 power symbol you see a lot of time on electronic devices.
14 I'm not quite sure on the other two what they would -- I
15 would have to get a magnifying glass.

16 Q. Okay. But, again, this was one of the items received
17 in the shoebox -- the male shoebox in the master bedroom?

18 A. Yes, ma'am, in the shoebox.

19 MS. PATTERSON: I beg the Court's indulgence. Let
20 me just check real quick.

21 THE COURT: Take your time.

22 MS. PATTERSON: And, Your Honor, may we approach?
23 Because I think we're gonna have an objection on one of
24 the photographs.

25 THE COURT: Sure.

1 (Proceedings held at the bench; not reported.)

2 THE COURT: Okay. Go ahead.

3 BY MS. PATTERSON:

4 Q. Sergeant Snelgrove, did you also search a room that
5 was identifiable as a little girl's room?

6 A. Yes, ma'am. I assisted with the search in it.

7 Q. Okay. And I'm gonna show you some pictures.

8 State's 35, 37, 38, 39 and 40. Do you recognize what's
9 depicted in these photographs?

10 A. Yes, ma'am.

11 Q. And what's in State's 35 and 37?

12 A. 35 and 37 shows a little girl's bed. With it looks
13 like a princess fairy comforter and then also a fitted
14 sheet with hearts on it.

15 Q. Okay. And are those -- any of those items did you
16 collect pursuant to the execution of this search warrant?

17 A. Yes, ma'am. I collected the comforter and the fitted
18 sheet.

19 Q. Okay. And do those pictures fairly and accurately
20 represent what you saw and what you collected during the
21 execution of this search warrant?

22 A. Yes, ma'am.

23 MS. PATTERSON: Your Honor, at this time we move
24 State's Exhibit 35 and 37 into evidence.

25 THE COURT: No objection?

1 MR. SNELL: No objection.

2 THE COURT: They're admitted.

3 (State's Exhibit Number 35 and 37, photographs,
4 were admitted into evidence.)

5 BY MS. PATTERSON:

6 Q. And, again, 35 and 37. In 37, again, did you place
7 that Number 5 placard on this item of evidence?

8 A. I did.

9 Q. And, again, is that so you can identify what items
10 were collected?

11 A. Yes, ma'am.

12 Q. And during your search of that room -- I'm gonna show
13 you what's already been admitted as State's 27. Do you
14 recognize -- do you remember this trash bag being in that
15 room?

16 A. Yes, ma'am.

17 Q. And were there any items that you were able to locate
18 in the trash bag that you collected pursuant to the search
19 warrant?

20 A. Yes, ma'am. There was a Reebok girls underwear
21 package that was located in there. There were also some
22 pee pads and some what appeared to be wipes -- dried out
23 wipes.

24 Q. And did you take them out of that trash bag?

25 A. There were actually two trash bags in -- in the room

1 and I went through both bags of trash bags and looked at
2 items with an alternative light source.

3 Q. And I'm gonna show you State's Exhibit 38 through 40
4 and ask you to take a look at those pictures.

5 A. 38 and 39 shows the pee pads and the wipes that I
6 collected as Number 4. My evidence placard was placed
7 beside them. State's Exhibit 40 is showing the Reebok
8 girls underwear package that I collected as well.

9 Q. Okay. And do they fairly and accurately represent the
10 pictures that you took during the execution of the search
11 warrant on May 17th of 2021?

12 A. Yes, ma'am.

13 MS. PATTERSON: Your Honor, at this time we'd move
14 State's Exhibit 38 through 40 into evidence.

15 THE COURT: Any objection?

16 MR. SNELL: No objection.

17 THE COURT: They're admitted.

18 (State's Exhibit Number 38, 39 and 40, photographs,
19 were admitted into evidence.)

20 BY MS. PATTERSON:

21 Q. And, again, just Number 4 its showing the placard and
22 what else does it show in this picture?

23 A. Pee pads and some -- what I call wipes that I
24 collected.

25 Q. And is 39 just another photograph of that?

1 A. Yes, ma'am.

2 Q. And 40, were those -- is that the package that you
3 collected out of that trash bag as well?

4 A. Yes, ma'am.

5 Q. I'm gonna show you what's already been admitted as
6 State's 18 from the search -- from the execution of the
7 search warrant on May 3rd. You were not a part of that
8 execution, were you?

9 A. No, ma'am, I was not.

10 Q. And when you went back on the 17th, did you collect
11 this bedding?

12 A. No, ma'am.

13 Q. Okay. Was that something that you saw in the bedroom
14 on May 17th?

15 A. No, ma'am.

16 MS. PATTERSON: I beg the Court's indulgence.

17 Thank you, Sergeant Snelgrove. Please answer any
18 questions the defense may have.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Mr. Snell.

21 MR. SNELL: Thank you very much, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. SNELL:

24 Q. Sergeant Snelgrove, so tell me again what is your job
25 at the sheriff's department.

1 A. I'm the crime -- I'm the sergeant of the crime scene
2 unit. So what I do is on top of my sergeant duties I'm
3 also a working sergeant where I respond to crime scenes or
4 places and document and process it.

5 Q. Okay. Are you a -- just so I know, did you begin as
6 like a uniformed like patrol deputy?

7 A. Yes. Yes, sir. I started in another county as an
8 LE1 class officer, which I still am to this day. I worked
9 approximately four years on the road and then I came over
10 to Lexington County to be a crime scene investigator.

11 Q. Okay. And when you say an LE1, what does that mean?

12 A. A Law Enforcement Class 1.

13 Q. What is that?

14 A. So I am a gun-toting, badge-holding cop.

15 Q. Excellent. And so now you're the sergeant -- so
16 you're a sergeant and you said you have sergeant duties and
17 you have crime scene duties?

18 A. Yes, ma'am -- yes, sir. Sorry.

19 Q. Can you tell us kind of what are sergeant duties?

20 A. So I have -- I have five people under me mostly
21 encompassing crime scene investigators and a digital
22 forensic examiner, so I have to make sure they have their
23 training, make sure they have equipment. I order
24 equipment, do evaluations on them. I'm trying to think of
25 what else. Just taking care of making sure they do their

1 jobs.

2 Q. And now what are crime scene duties?

3 A. So like I previously said, I respond to scenes to
4 document and process them.

5 Q. And obviously that's important?

6 A. Yes, sir.

7 Q. Okay. And so let's -- so is -- what kind of special
8 training do you have as far as crime scene?

9 A. On top of my degree, I have a chemistry agree with a
10 concentration in forensic science, so it was geared to
11 those that wanted to be a crime scene investigator or work
12 in a forensics lab, so we had a lot of mock scenes and
13 studying of how to process scenes and what you would do
14 with evidence. With that, I also -- when I came over to
15 Lexington County, I also attended some classes like crime
16 scene for new investigators and then on top of that
17 multiple classes on processing and more individual fields
18 such as arsons and body recovery, computer -- well,
19 Cellebrite for cell phones, child death investigations.
20 I mean, I can go on. I have an extensive background of
21 training.

22 Q. What were your degrees in you said?

23 A. I said chemistry with a concentration of forensic
24 science.

25 Q. Where's that from?

1 A. From Newberry College.

2 Q. Okay. And is that a BA or a BS?

3 A. BS.

4 Q. Okay. And you've been doing crime scene for how long
5 now?

6 A. For eight years.

7 Q. Okay. And I guess I'm -- and obviously we've
8 established that's important, right?

9 A. Uh-huh.

10 Q. And so part of that is you would -- you go out and you
11 -- what do you do on a crime scene?

12 A. I take photos, take notes, do a sketch if I need a
13 sketch, collect evidence, as far as collecting physical
14 items or swabbing items for different types of DNA, such as
15 saliva DNA, biological fluids, blood DNA or touch DNA.

16 Q. And your -- and I guess you do this because, first of
17 all, you take photographs to because it's important to
18 memorialize what the scene looked like?

19 A. Yes, sir.

20 Q. And like where physical items of evidence were and
21 just generally what the conditions were?

22 A. Yes, sir.

23 Q. And I know in some of the pictures -- if I may find
24 one. As an example, that's got that yellow tag in the
25 middle?

1 A. Yes, sir.

2 Q. And that's -- can just tell the jury what that is.

3 A. That is my evidence placard.

4 Q. And that just documents that -- is that how you would
5 make a log and record what that's a picture of?

6 A. You can say that. Yes, sir.

7 Q. I mean, you would have a list where picture 5 is that?

8 A. Not picture 5, but it would be Item Number 5 is that.

9 Q. Okay. Thank you. And then you also -- you also -- I
10 heard you take custody of physical items, right?

11 A. Uh-huh.

12 Q. And you've done that in various types of crime scenes?

13 A. Yes, sir.

14 Q. What are the things you have to be mindful of or have
15 to consider when taking physical position of an item?

16 A. Making sure I'm wearing my gloves and I'm putting it
17 in the proper packaging. For example, you don't want to
18 put something wet in plastic and let it sit there because
19 we all know what the result of that is. Mildew. Just
20 making sure it's properly taken care of to being packaged
21 and then turning it into evidence.

22 Q. Why is it important to properly collect physical
23 items?

24 A. For contamination.

25 Q. And what do you mean by contamination?

1 A. So if I'm just using my hands, I have touched several
2 surfaces from my movement from there to up here. I touched
3 the Bible, I've touched these gloves, this mic, this table,
4 the chairs, and Locard's Exchange Principle states that
5 when an item comes in touch with another item it takes --
6 it leaves part of itself behind and takes part of it with
7 it as well. So --

8 Q. So it's -- I'm sorry.

9 A. So like if Sergeant Creech shed some skin cells, some
10 hair, I'm liable to have it on me. Also my hair -- I mean,
11 I don't know about you-all with long hair, it falls out all
12 over the places and it's very likely to be on anybody's
13 clothes after we move a place.

14 Q. So contamination is something that can easily happen?

15 A. Yes, sir.

16 Q. And, I guess, how important is it to -- to not only
17 avoid contamination, but just to preserve the condition of
18 the item?

19 A. It's very important.

20 Q. Why is that important?

21 A. Because for further processing at another time of it.

22 Q. How mindful -- when you're at a scene, what -- well,
23 you were at the Otero scene, right?

24 A. Uh-huh.

25 Q. How mindful were you of the -- the necessity to avoid

1 contamination and to preserve the items?

2 A. So, for example, not using the same gloves that I
3 touched to collect the adult devices and the same gloves of
4 touching the bed clothes.

5 Q. And I know scientists -- I know this field or this
6 area has probably progressed rapidly with technology?

7 A. Yes, sir.

8 Q. But the practices you're still describing today,
9 that's how you treated this scene back in May of 2021?

10 A. Yes, sir.

11 Q. Now I understand you're not -- part of crime scene,
12 and to make sure, you're not an investigator per se; is
13 that fair?

14 A. That's fair to say.

15 Q. Right. And when you're at a scene I know if you see
16 something that you think is obviously relevant, do you go
17 ahead and document that on your own?

18 A. Yes, sir.

19 Q. I mean -- right. And then otherwise do you take
20 direction from the investigator or investigators about what
21 to specifically look for to catalog?

22 A. Yes, sir.

23 Q. And I know we had a discussion -- I'm showing you
24 something marked as Defendant's 18 -- or, excuse me,
25 State's 18, I apologize, and it was about this -- those

1 sheets or that comforter or blanket on the bed?

2 A. I believe it's an off gray or tan comforter.

3 Q. Is that the item that you testified previously that
4 you did not actually collect?

5 A. No, sir. Because I was not there on that day.

6 Q. And then -- and then when you went back on -- so you
7 were not there on the 3rd. You were there only one time on
8 the 17th?

9 A. Yes, sir.

10 Q. When you were there on the 17th, you did not collect
11 that particular item?

12 A. Correct.

13 Q. Did anyone tell you to collect that item?

14 A. No, sir.

15 Q. Did anyone tell you to look for that item?

16 A. No, sir.

17 Q. Did you have any idea that that item had any relevancy
18 or would be significant at all?

19 A. I didn't even know it existed.

20 Q. And that's because nobody told you?

21 A. Correct.

22 MR. SNELL: If I may I beg the Court's indulgence.

23 THE COURT: Take your time.

24 MR. SNELL: No other questions. Thank you so much.

25 THE WITNESS: Yes, sir.

1 THE COURT: Thank you. Is there any redirect?

2 MS. PATTERSON: No, ma'am. Thank you.

3 We ask that this witness be excused, Your Honor.

4 THE COURT: Thank you.

5 (Witness excused.)

6 THE COURT: All right. I think the jury's lunch
7 is here. If not, they tell me it should be here shortly.
8 So I'm gonna let you break for lunch. If you-all need
9 to walk around, please feel free. You're welcome to
10 walk around. We just brought your lunch in so we can
11 keep you close by because I'm gonna do right on the hour.
12 We'll be back here at 2:00, okay?

13 Thank you. Remember, no talking about this case
14 just yet.

15 (Whereupon, the jury was excused for lunch at
16 1:01 PM.)

17 THE COURT: Okay. Anything else from the State?

18 MS. WELLMAN: No, Your Honor.

19 THE COURT: Anything else from the defense?

20 MR. SNELL: We come back at -- did you say 2:00?

21 THE COURT: 2:00.

22 Are we still on our schedule?

23 MS. WELLMAN: Yes. Absolutely.

24 THE COURT: Okay. We've got, what, two more
25 witnesses?

1 MS. WELLMAN: Yes, Your Honor.

2 THE COURT: Perfect.

3 MR. KIRKLAND: We have Creech and we have --

4 MS. WELLMAN: Mike Phipps.

5 MR. KIRKLAND: -- oh, the -- the shawshank, so
6 three.

7 MS. WELLMAN: I'm sorry, three. Ormica Thomas,
8 too, regarding the defendant's statement.

9 THE COURT: Okay. So --

10 MR. KIRKLAND: And we're gonna have to make a
11 contemporaneous objection to that because I think we
12 raised that at pre-trial. So, anyway, when somebody
13 stands up and says contemporaneous objection, that's...

14 THE COURT: All right. We're in recess until 2:00.
15 (Whereupon, a luncheon recess was taken at 1:03 PM.)

16 (Back on the record at 1:57 PM.)

17 BAILIFF: Come to order.

18 All right. The Honorable Deborah R. McCaslin
19 presiding.

20 THE COURT: Please be seated.

21 All right. Are we ready to pick up?

22 MS. WELLMAN: Your Honor, would you like a clean
23 copy of the new summary?

24 THE COURT: Yes, please.

25 MS. WELLMAN: And I --

1 THE COURT: And since there were so many objections
2 to it, we'll make it -- I think they objected to just
3 about every line.

4 MS. WELLMAN: They did.

5 MR. KIRKLAND: We did.

6 THE COURT: Let's make one a Court's exhibit.

7 MS. WELLMAN: This is the one with the name on it,
8 I think.

9 THE COURT: Yes.

10 MS. WELLMAN: Okay. Do you want to -- because you
11 made some notes -- make that a Court's exhibit, too? I
12 just don't want to confuse everybody.

13 MR. KIRKLAND: Honestly, the more things that are
14 in the Court's record, the better.

15 THE COURT: Well, I think so, too.

16 If we could have the original and the redacted in
17 for a Court's Exhibit Number 7 I believe is what we're
18 up to.

19 Aren't we, Stacy?

20 THE COURT REPORTER: That's right.

21 THE COURT: Any objection to that?

22 MR. KIRKLAND: I want everything in the Court's
23 exhibit. Every change we made.

24 THE COURT: Well, the Court agrees with you and her.

25 MR. KIRKLAND: Yes.

1 (Court's Exhibit Number 7 was marked for
2 identification.)

3 MS. WELLMAN: One other thing that I just want to
4 put on the record before the jury gets in here regarding
5 Mr. Kirkland's -- we talked this morning with Sergeant
6 Thomas calling the self-harm an incident.

7 MR. KIRKLAND: Yes.

8 MS. WELLMAN: And I'm trying to -- I was talking to
9 him a few minutes ago just about how we go about doing
10 this because I don't know -- obviously I don't know what
11 to tell her because I don't know what Mr. Kirkland's
12 gonna ask. I can tell her that we're gonna refer to it
13 as an incident, but I don't want to limit her testimony
14 further.

15 THE COURT: We're just not gonna talk about
16 suicide --

17 MR. KIRKLAND: Or self-harm.

18 THE COURT: -- or self-harm I thought was what
19 you-all agreed to.

20 MS. WELLMAN: Correct. I guess -- but what I don't
21 want is for -- you know, I don't think it's fair for them
22 to, you know, essentially to really mislead the jury and
23 suggest that this is an incident where he hurt another
24 person or there was another person involved. I think
25 that's -- if he starts to go down that road that another

1 person is involved, I think that's very misleading.

2 MR. KIRKLAND: Oh, I'm not -- I'm not going down
3 the road that another person was involved in the incident
4 itself.

5 THE COURT: You're talking about a totally different
6 incident.

7 MR. KIRKLAND: Yes.

8 THE COURT: And you're stuck on self-harm. He's
9 talking about something totally different.

10 MR. KIRKLAND: Here's the -- here's the problem that
11 we have. In the end, I'm probably not gonna be able to
12 get out of her what it is that I want anyway.

13 THE COURT: I think you need to see what she's gonna
14 testify to and then you-all can object.

15 MR. KIRKLAND: Well, but my point is I think I'm
16 gonna stop so well short of what she's worried about I
17 might say that in order for us to complete this, then
18 Jason's gonna have to decide whether or not he's gonna
19 testify or not. What I'm saying is I'm setting up -- I
20 just want her to agree that there was -- that there was
21 an incident, he was put into the tank, she came by and
22 she told him I'm gonna let you out of the tank and then
23 she's gonna say that he said this stuff, and I think I'm
24 kind of done at that point.

25 MS. WELLMAN: I just -- I don't want it alleged --

1 I think it's unfair to allege that someone else was
2 involved.

3 MR. KIRKLAND: That's not -- that's not what I'm
4 telling you. If Jason --

5 THE COURT: Okay. We're gonna wait and see what
6 the testimony is and if you feel like you need to object,
7 object for the record, okay?

8 MS. WELLMAN: Okay.

9 THE COURT: All right. Are we ready to bring the
10 jury in?

11 MR. KIRKLAND: We are. And I'll say one more quick
12 thing. I'm going to stop -- I'm not going to ask her a
13 question -- I won't ask her a question, and me and Jim
14 will talk about this and they can object if they want to,
15 but I'm not planning on asking her if she knew who he
16 was talking about because the inference that they're
17 making -- I mean, we'll just let it go and see if
18 somebody objects.

19 THE COURT: Okay. Let's see what the testimony is.

20 MS. WELLMAN: Okay.

21 THE COURT: All right. Let's bring the jury in.

22 (Whereupon, the jury returns to the courtroom at
23 2:10 PM.)

24 THE COURT: Madam Forelady, is the jury ready?

25 FOREPERSON: Yes.

1 THE COURT: Please be seated.

2 All right. Let me go back to what we were talking
3 about just a second, okay? This is one that -- a copy
4 that you sent to my office that I reviewed --

5 MS. WELLMAN: On Friday.

6 THE COURT: -- on Friday.

7 MS. WELLMAN: That would have been number one.

8 THE COURT: And this is the unredacted.

9 All right. That's gonna be Court's Exhibit
10 Number 7.

11 THE COURT: All right. The State ready to call
12 their next witness.

13 MS. WELLMAN: Yes, Your Honor. At this time the
14 State would call Investigator Michael Phipps.

15 (Whereupon, Michael Phipps was duly sworn by the
16 Clerk of Court.)

17 THE CLERK: Would you, please, have a seat in the
18 witness box. State your full name and spell your last
19 for the record.

20 THE WITNESS: Michael Phipps. P-H-I-P-P-S.

21 MICHAEL PHIPPS,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. WELLMAN:

25 Q. And where do you work?

1 A. I work for the Lexington County Sheriff's Department.

2 Q. What is your role there?

3 A. I'm forensic technology examiner or forensic examiner.

4 Q. How long have you worked for the sheriff's department?

5 A. Twenty-six years.

6 Q. And you said you were a forensic examiner. Can you
7 tell the jury what do you do?

8 A. My current job is to examine digital items,
9 electronic items, that are involved in criminal
10 investigations to extract any data that may be relevant
11 to that investigation.

12 Q. And can you describe your training and experience
13 with regards to digital forensic examination?

14 A. I started in our crime scene unit. I'm still assigned
15 to the crime scene unit. I had thirteen years full-time
16 as a crime scene investigator. During that thirteen years
17 as a collateral duty to the crime scene investigation
18 aspect of it, the whole concept of looking at phones and
19 other digital items sort of came into being, and I started
20 -- I received my first training in digital investigations
21 back in 2005. Since then I've received over 800 hours of
22 training in various areas of digital forensics.

23 Q. I'm sorry, did you say 800?

24 A. Over 800.

25 Q. When you say -- like what types of things do you

1 examine?

2 A. Well, obviously cell phones and then computers,
3 things you might not think of such as GPS devices, and now
4 with advanced vehicles the infoentertainment systems that
5 are in vehicles, DVR systems. Internet of Thinking devices
6 are starting to become a thing. So there's actual case
7 records of even a refrigerator being involved in a criminal
8 investigation.

9 Q. Have you ever testified as an expert in this field?

10 A. I have.

11 Q. Approximately how many times?

12 A. Twenty-eight times.

13 Q. Would that be in general sessions court?

14 A. Yes.

15 Q. That be sometimes here in Lexington County?

16 A. Here and in Orangeburg, both.

17 Q. Are you part of any special task forces or, you know,
18 do you work with any other agencies?

19 A. Yeah, currently since 2018 I've been a full-time task
20 force officer with the Secret Service and I report to their
21 lab every day. I work Monday 9 to 5 in the Secret Service
22 lab.

23 Q. That's the United States Secret Service?

24 A. Yes, ma'am.

25 Q. What types of things do you do for them?

1 A. In addition to doing casework for my own agency, we
2 do casework for local partners, other jurisdictions that
3 don't have their own examiners, other Federal agencies,
4 DEA, ATF, things like that.

5 MS. WELLMAN: Your Honor, at this time the State
6 would offer Mike Phipps as an expert in the field of
7 computer, cellular and digital forensic analysis.

8 THE COURT: Computer, cellular and digital?

9 MS. WELLMAN: Yes, Your Honor.

10 MR. SNELL: No objection.

11 THE COURT: Okay. Again, I'm gonna tell the jury
12 this is an expert witness and you may give his opinion
13 the weight that you think it deserves.

14 Go ahead.

15 BY MS. WELLMAN:

16 Q. So as a sort of computer forensic -- if you're gonna
17 get started with an analysis of a computer, for example,
18 can you tell the jury sort of the process and the steps you
19 take?

20 A. Usually I receive a search warrant for the device.
21 In this case, the search warrant was turned over to me.
22 I went to our evidence unit at the sheriff's department,
23 signed that piece of evidence out and then the first thing
24 is just to document the evidence, so I photographed it, the
25 packaging, that type of thing.

1 Q. I think there's a box of gloves behind you. This is
2 State's Exhibit 31. It is already in evidence. When you
3 get settled, if you could just open that item and see if
4 you recognize it.

5 A. Yes, I do.

6 Q. Please tell the jury how you recognize State's
7 Exhibit 31.

8 A. So the packaging has the proper case number, the PR
9 number, which is our item number. The seal actually has
10 my initials on it when I resealed it when I finished the
11 examination and this is the laptop that I took apart to
12 image.

13 Q. And was that a part of the investigation into
14 allegations involving -- or against Jason Otero?

15 A. It was.

16 Q. And does this computer appear to be sort of in the
17 same or substantially the same condition as when you
18 received it?

19 A. Yes, ma'am.

20 Q. Okay. Can you please tell the jury when you received
21 this item?

22 A. I'd have to look at the chain of custody to know
23 exactly when I signed it out. I know I performed the
24 extraction on November 3rd of 2021.

25 Q. Okay. So let's start about the specific process with

1 regards to this computer. Specifically as it relates to
2 web activity or types of things like that, how is that
3 information stored on a device such as this laptop?

4 A. Well, this being a Windows-based system, depending on
5 the web browser, so obviously you can install different
6 browsers, Microsoft Edge, Chrome, Internet Explorer, some
7 of the older ones, they usually store most of their data in
8 a SQLite database and it's under the particular user's
9 profile in the operating system.

10 Q. Would that include things like documenting Internet
11 searches such as a Google search?

12 A. It would.

13 Q. Would that also include things -- other types of web
14 activity like watching a YouTube video for example?

15 A. It can.

16 Q. How about if someone enters a URL or types in a
17 website? Would that be recorded?

18 A. Yes, browser activity would be tracked as well, yes.

19 Q. Okay. And specifically is it possible to recover
20 some of that web activity if it's been deleted like a web
21 history search?

22 A. Sometimes. Because the data is stored in a database,
23 when you or the computer decides to delete something, it's
24 not always initially overwritten. So it's just flagged
25 within the database to be deleted and that that space

1 physically on the drive is available to be overwritten. So
2 dependent upon when the deletion's made and what kind of
3 activity occurs after that, there's a chance that it could
4 be recovered, yes.

5 Q. Can you walk the jury through sort of the steps you
6 took with regards to this item and the steps you took to
7 conduct I think you said this extraction?

8 A. Correct. So obviously I take the package, photograph
9 it, take it out of the packaging, photograph it again.
10 In this case, when we -- we go through a process called
11 imaging, so we don't just turn the computer on. We
12 physically take the computer apart to gain access to
13 whatever storage media is within the computer, if it's
14 solid state or a spinning hard drive, then we photograph
15 that and then remove the storage, and we use a write
16 blocking piece of hardware. And write blocking just means
17 that when we connect it to our software that we do the
18 analysis we know that only data is flowing away from the
19 device but nothing is being changed on the original
20 evidence, nothing can be written back to or deleted from
21 that original evidence.

22 And so in this case we used a piece of hardware
23 called a TX1. It's made by a company called Tableau.
24 So it's almost a toaster size piece of hardware that's
25 purposefully engineered so that when we connect items of

1 evidence to it we can testify that nothing is changed on
2 the original evidence and we get a copy. It's called a
3 bitstream copy. So what's stored on a computer is in
4 binary form, ones and zeros, so it creates that duplicate
5 onto other media and it creates a file called an E01 in
6 this case, and it's a forensic image and that image has
7 additional data baked into it such as when you enter the
8 TX1 with the case number, whose doing the extraction, all
9 of that gets transferred over so that if anyone ever looks
10 at the E01 image later they can see exactly what process
11 it went through, when it occurred, who did it, and it
12 goes through a process of hashing. And hashing is a
13 mathematical algorithm that runs on the original drive
14 and then runs on the image to show that nothing changed
15 from the original drive to the duplicate image that we
16 created and that's logged within the E01 image.

17 Q. So is it safe to say sort of the E01 image is like a
18 photograph of the hard drive?

19 A. Correct. It's a snapshot, a duplicate, of the
20 original image.

21 Q. And I believe you said there's no way to delete parts
22 or add things?

23 A. Correct. So the write blocking portion of the
24 hardware ensures that we don't unintentionally alter the
25 original evidence and then the image that's created from

1 that original evidence is hashed, so that hash value if
2 something were to change in the duplicate that we're
3 working off of, the hashes would not match.

4 Q. Did you generate a report of that E01 image that you
5 took of this laptop?

6 A. Sure. With the E01, we're still in the problem of
7 it's basically ones and zeros, so we have to process that
8 with a tool to make it humanly readable. So we used
9 Magnet AXIOM. It's a forensic platform that we process the
10 image in, it goes through a process called parsing and it
11 identifies the various files on your computer, whether it's
12 an image file, a document file, a log file, and it creates
13 a human readable view of those files that we can then go in
14 and selectively bookmark and choose to export out in the
15 form of a report.

16 Q. So you've talked about some hardware and some software
17 that you used to do this. Are those sort of industry
18 standard tools?

19 A. They are.

20 MS. WELLMAN: May I approach the witness?

21 THE COURT: You may.

22 BY MS. WELLMAN:

23 Q. Investigator Phipps, this is what we have marked as
24 State's Exhibit 41. If you could look at that and tell the
25 jury if you recognize it.

1 A. It's a disk that contains the reports that were
2 generated in this case.

3 Q. The reports that you just told us about?

4 A. Yes, ma'am.

5 Q. Did you have an opportunity to review the reports to
6 confirm whether they were true and accurate copies?

7 A. I did.

8 Q. Okay. And did you put your initials on this CD to
9 confirm they were true and accurate copies?

10 A. I did. My initials are right here with the date.

11 MS. WELLMAN: Your Honor, at this time the State
12 would move to introduce State's Exhibit 41.

13 MR. SNELL: Your Honor, we'd make a contemporaneous
14 objection, again, to the reports.

15 Just so I understand, is that the image or is that
16 the --

17 MS. WELLMAN: The readable reports.

18 MR. SNELL: Yes. We would make an objection
19 contemporaneously based on the same objections made
20 pre-trial.

21 THE COURT: So noted for the record and I'm allowing
22 it. It's entered.

23 (State's Exhibit Number 41, CD laptop extraction
24 report, was admitted into evidence.)

25 MS. WELLMAN: Your Honor, at this time the State

1 has no further questions.

2 THE COURT: Okay.

3 Mr. Snell or Mr. Kirkland?

4 MR. SNELL: No questions.

5 THE COURT: May I excuse the witness?

6 MS. WELLMAN: Yes, Your Honor.

7 THE COURT: Thank you so much for coming.

8 (Witness excused.)

9 THE COURT: All right. Call your next witness.

10 MS. WELLMAN: Your Honor, at this time the State
11 would recall Sergeant Adam Creech.

12 (Whereupon, Anthony Adam Creech was duly sworn by
13 the Clerk of Court.)

14 THE CLERK: Would you, please, have a seat in the
15 witness box. State your full name and spell your last
16 for the record.

17 THE WITNESS: Sergeant Anthony Adam Creech. Creech,
18 C-R-E-E-C-H.

19 ANTHONY ADAM CREECH,
20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. WELLMAN:

23 Q. Sergeant Creech, you earlier -- you told us all about
24 the training and experience you have with regards to some,
25 you know, cellular and digital forensic analysis and you

1 were offered as an expert. So I want to go back and let's
2 talk about some of the items of evidence and some of the
3 additional parts of your investigation. So let's go back
4 to those hard drives that you seized on May 3rd.

5 MS. WELLMAN: Just one moment, Your Honor.

6 THE COURT: Take your time.

7 BY MS. WELLMAN:

8 Q. Based on your training and experience and all of the
9 cases that you've worked on -- well, backing up, you said
10 there were several hard drives, correct?

11 A. Yes, I believe there was one in the desktop computer
12 and then I believe there were ten additional.

13 Q. And this would be State's Exhibit 14. Is that -- are
14 those some of the hard drives?

15 A. Correct. That was six of them in the desk drawer.

16 Q. What, if anything, about the just basic number of hard
17 drives. Did that suggest anything to you?

18 A. To me it suggested somebody who was fairly competent
19 with technology, probably above average, if they're
20 comfortable enough to have loose hard drives that they
21 possibly connect and disconnect from a computer.

22 Q. And as part of that investigation in this case, did
23 you attempt to review these hard drives?

24 A. I did.

25 Q. Okay. What, if anything, did you find? Anything that

1 was investigatively relevant?

2 A. Most of the drivers were inoperable or had data that
3 well predated this investigation.

4 Q. And then let's go back to -- this is State's
5 Exhibit 13. That's the desktop computer. And you told us
6 earlier that you seized the hard drive from this computer;
7 is that correct?

8 A. I did.

9 Q. Did you have an opportunity to sort of search that
10 hard drive?

11 A. I did. We initially were trying to search it on the
12 3rd, on May 3rd, during search warrant using some software
13 called FTK Imager, which allows us to do what we call a
14 file system preview of that drive.

15 Q. Is that standard -- sort of industry standard
16 equipment?

17 A. Yes, it is. It would allow us to basically review
18 what's there at a cursory user level, so it's a good way
19 to just quick and dirty identify photos, videos, documents
20 and any major user files of interest. The problem with
21 doing that in a search warrant environment like this is it
22 is a little bit of a clunky and obtuse process because it
23 involves us having to bring in a computer and hook up some
24 equipment and while we're coordinating other elements of
25 the investigation it's hard to do a real thorough search.

1 So I did kind of a quick preview with the FTK Imager and
2 then I conducted a more involved search of that drive at a
3 later date.

4 Q. So when you really looked at the data on this hard
5 drive, what, if anything, did you notice?

6 A. When I looked at it in more detail on the 5th, what I
7 ended up noting -- making particular note of is that he
8 backed up several past cell phones and what I mean by that
9 is if you take an Android cell phone it's formatted --
10 without getting too technical -- in a file format called
11 FAT32 and all that means is if you've got a Windows
12 computer or an Apple computer and you hook your Android
13 phone in, it's gonna -- that computer is gonna recognize it
14 as an external storage device. That means you can collect
15 on it like you can click on an USB or an external hard
16 drive and you can go in and you can pull any files that are
17 in the file system on the phone. In this case, you can
18 also just copy that -- that main directory that shows up as
19 your phone and you can copy that to your computer and it
20 basically makes just kind of a quick and dirty backup of
21 your phone data. Most of that is not gonna be useable to a
22 user, but it is a lazy way to copy like photo and video
23 directories and media files and documents you have on the
24 device.

25 Q. Sort of a quick and dirty picture of the phone backup

1 and earlier this morning you told us about like photo vault
2 applications. Would that sort of transfer from the phone
3 to these files on a hard drive when you hook up an Android?

4 A. I don't believe we got a chance to speak about Photo
5 Vault earlier.

6 Q. Oh, okay. Sorry. We'll come back to that. You said
7 you found multiple copies of cell phone backups?

8 A. I did.

9 Q. Was there any clear organization to these backups?

10 A. There were, and also there were -- contained a number
11 of personal videos and photos that were in those backups
12 and they copied onto the file system of the hard drive in
13 other places in duplicate and triplicate. I mean, they
14 were -- it was fairly disorganized the way it was all kept.

15 Q. Did it -- did it appear that anything was, you know,
16 particularly hidden on this device?

17 A. No, it was all pretty easy to locate once I had more
18 time to spend when we weren't conducting a search of the
19 home or doing other investigative duties.

20 Q. Based on your review of the hard drives, were you able
21 to determine whether or not there were any recent phone
22 backups?

23 A. Hold on one second. I do have that noted. So in
24 particular there was a folder labeled phone 2019 and
25 Samsung S8. Those were located on the desktop in the

1 Windows directory. There was nothing that appeared to be
2 relatively concurrent with 2021.

3 Q. Okay.

4 MS. WELLMAN: Your Honor, may we approach?

5 THE COURT: You may.

6 (Proceedings held at the bench; not reported.)

7 THE COURT: Go ahead.

8 BY MS. WELLMAN:

9 Q. You mentioned some personal files?

10 A. Yes.

11 Q. Can you expand a little bit about that?

12 A. Yes. So there were numerous copies of a number of
13 photos -- sexually explicit photos and videos depicting
14 Jason Otero and his then wife Mellixa Otero. Based on
15 metadata associated with the files, they were probably
16 going back eight, nine, ten years. They were taken in a
17 location different than [REDACTED] Kobuk Valley Court and some
18 of them were videos of Ms. Otero nude and masturbating
19 with a sex toy similar to what MINOR [REDACTED] described in her
20 investigative interview on May 14th.

21 Q. Okay. Thank you. So let's go back and talk about
22 another item that you seized that day. That would be the
23 cell phone?

24 A. Yes, ma'am.

25 Q. Okay.

1 MS. WELLMAN: May I approach the witness?

2 THE COURT: You may.

3 BY MS. WELLMAN:

4 Q. So you told us that you seized that phone. Did you
5 seize the phone directly from the defendant's person?

6 A. I did.

7 Q. Okay. And while you were on-scene at the defendant's
8 home on May 3rd, did you have a chance to sort of conduct
9 a manual sort of quick search of that device?

10 A. I did. So ideally we ultimately would want to do a
11 forensic acquisition of the cell phone using our Cellebrite
12 tool. It is kind of like doing the hardware preview of the
13 hard drive. It's kind of clunky to do in the field. It
14 involves us bringing the additional hardware out to extract
15 the phone, which can sometimes take upwards of several
16 hours, which in and of itself makes it impractical to do
17 in the field. You've got to take that data and you've got
18 to load it into some computer software and typically our
19 laptops that were issued are not real equipped to run that
20 software real effectively, so that ends up -- we've learned
21 over the years it's just far more practical to conduct what
22 we would call a manual preview and all that means is just
23 I get the phone and I have access to it. In this case, we
24 had the passcode to the device and then what I'm doing is
25 I'm just opening the device and I'm going to key areas of

1 the device and making direct observations that would be
2 user level data that anybody with access to the phone could
3 observe.

4 Q. So was there anything about this exhibit during that
5 manual preview other than the fact that you seized it
6 directly from the defendant that suggested to you this was
7 his phone?

8 A. Yes, there were some personal photos on the device,
9 communications. There was an e-mail account, a Google
10 Gmail account, Jason J. Otero, that was associated with
11 the defendant linked to the device.

12 Q. And you made note of that Gmail account?

13 A. I did.

14 Q. And based on your training and experience as an
15 Internet crimes against children investigator, all of the
16 cases that you handle involving child sexual abuse, what,
17 if anything, stood out as investigatively relevant to you
18 during your manual preview of the phone?

19 A. So looking at the phone right off the bat I noticed
20 that it didn't have a great deal of pictures and videos.
21 I just went into the media gallery. And while checking
22 the installed applications, and that's another major thing,
23 is we're looking for any applications that stand out.
24 I noticed on the home application screen there was an
25 application called Photo Vault that was present on the

1 devise.

2 MR. SNELL: Your Honor, objection. We do make a
3 contemporaneous objection to the same matter raised
4 pre-trial to this line of testimony or questioning.

5 MR. KIRKLAND: Do you want us to approach and
6 explain?

7 THE COURT: Yeah, I do.

8 MR. KIRKLAND: I know it's confusing.

9 (Proceedings held at the bench; not reported.)

10 THE COURT: Objection noted for the record and we
11 can continue on.

12 MR. SNELL: Thank you, Your Honor.

13 MS. WELLMAN: Thank you, Your Honor.

14 BY MS. WELLMAN:

15 Q. Okay. So, Sergeant Creech, going back, you said you
16 saw something on that home screen?

17 A. Correct. I saw an application called Photo Vault.
18 It looked like little door symbol with a key indicating --
19 I mean, I'm familiar enough that Photo Vault is one of,
20 gosh probably, dozens of free software programs you can
21 download. In this case, you would have gotten it off of
22 Google Play Store. What Photo Vault is, and we would
23 consider it a type of forensic tool because what its
24 purpose is, is it's a -- what we would call an encryption
25 program that allows a user to take data and basically lock

1 it up within that software so that if you don't have -- it
2 requires its own passcode. In this case, it required a
3 four digit numerical passcode and without that four digit
4 passcode you can't access whatever data it's got encrypted.
5 I was able to go into the storage settings of the device
6 and see where there was a category for media information
7 and upon expanding the media category under storage, it
8 listed three distinct categories; photos, videos and Photo
9 Vault, which counted for approximately one and a half
10 gigabytes of data hidden on the device, which right there
11 indicated to me that it was a fair -- we're talking one and
12 a half gigabytes. That can be a fairly substantial amount
13 of pictures or videos depending on the nature of either,
14 but it indicated to me that there was that media locked up
15 within the Photo Vault application.

16 Q. You stated like a four digit passcode. Did you have
17 access to the passcode for the Photo Vault?

18 A. I did not.

19 Q. And we'll talk more about that in a little bit, but
20 just based on your training and experience, what did that
21 suggest to you?

22 A. It suggested to me that the phone's user had certain
23 files they didn't want other people to access or know were
24 there.

25 Q. Okay. What, if anything, did you do next during that

1 manual preview?

2 A. I also went to the Google Play Store and just clicked
3 on the search box. It's kind of like when you're on your
4 computer and you go to Google and you click on Google and
5 it drops down and lists a bunch of your recent searches
6 to try to help you out or finding what the next thing you
7 might want to do, well, Google Play will do the same thing.
8 And so in this case, I clicked on the search bar of Google
9 Play and it did drop down several terms and I noted that
10 those terms were stock, Vikings, file encryptor, file hire,
11 and obviously I took the later two entries of particular
12 note since we'd already identified the Photo Vault
13 application.

14 Q. So let me ask you this. I don't have an Android. I
15 know a lot of people have iPhones. The Google Play Store,
16 is that sort of the equivalent based on just what you said
17 of like the iTunes App Store on an iPhone?

18 A. It's the Android equivalent of the App Store.

19 Q. Okay. What, if anything, did you do next with that
20 phone?

21 A. So following our ultimate conclusion of the search
22 warrant, obviously I had concerns over doing further
23 analysis of the phone, I went and secured it in my office.
24 As I testified to earlier, it was powered off, it was
25 locked. I did some research. I took my County-issued cell

1 phone and I found the same Photo Vault application and I
2 installed it and set it up with a four-digit passcode and I
3 did some practice attempts to see if it had any kind of
4 time outs or restricted you on how much you could do it
5 because at that point I'm weighing options. The worse
6 case scenario, zero to nine, that's ten thousand possible
7 combinations for a passcode, but it doesn't time you out
8 and you can just sit and run through a list and it would
9 be tedious and it would take a while, but eventually we'd
10 access through that method. Best case scenario we'd be
11 able to extract it via some hardware like Cellebrite and
12 hopefully extract and identify the encrypted vault
13 forensically and potentially run some external software to
14 brute force and download the extraction. So it was kind of
15 two -- two possibilities there.

16 Q. Let me stop you right there for just a second. You
17 said brute force. Can you just explain a little bit what
18 you mean by that?

19 A. Yeah, just basically run some kind of software to
20 crack the password and all it's gonna do is just keep
21 running variations. And, again, you're talking ten
22 thousand possible combination passwords and if you've got
23 software chugging that out, that's nothing in the grand
24 scheme of things.

25 Q. Is that an industry standard software, the Cellebrite?

1 A. Cellebrite, yes. Cellebrite, as testified to earlier,
2 is pretty much the industry leader when it comes to cell
3 phone and mobile device forensics.

4 Q. So you told us earlier that you told the defendant you
5 would be searching his phone?

6 A. That is correct.

7 Q. Did you also tell the defendant that you would be
8 searching that Photo Vault?

9 A. Yes, I did.

10 Q. Okay. And did you, in fact, have the software to
11 conduct that search?

12 A. Yes.

13 Q. Okay. So I believe you told us that you hooked it up
14 to a charger, it was on and it was locked in your office
15 and no one else had access, correct?

16 A. Correct.

17 Q. Okay. Did you put that phone in airplane mode?

18 A. I did, and that's one place where I kind of misstepped
19 in all this. It's very common knowledge for a long time
20 that, you know, in terms of law enforcement investigations
21 if you seize an iPhone, iTunes has had a feature for a long
22 time where you can easily remote reset an iPhone that's not
23 in your possession. It's been -- it's a thing with Android
24 phones, too. It's just not as kind of on the forefront of
25 what you can do with an Android phone, but it is something

1 that can be done.

2 Q. Hold up really quick. So what is airplane mode?

3 A. So airplane mode is a setting on your device that
4 basically slates it from your mobile carrier networks or
5 wi-fi or Internet. Basically just shuts the phone off to
6 the outside word.

7 Q. So -- sorry. Please continue sort of what you were
8 saying about Androids.

9 A. So it's kind of drilled in our heads with iPhones
10 you always want to put those in airplane mode. The best
11 practice would be to then you should have done it with
12 Android phones as well. In this case, I neglected to do
13 so because, to be honest, I was preoccupied with other
14 elements of the investigation and the search and what we
15 dealing with and I got kind of tunnel vision with the
16 Photo Vault application and neglected to put the phone in
17 airplane mode.

18 Q. I think you said, if I remember from earlier, it was
19 pretty late in the day when you finished?

20 A. Yes, it was after 6:00 PM, I believe.

21 Q. Did you attempt to actually search that phone using
22 that technology that you talked about earlier at a later
23 date?

24 A. I did. So I was unavailable the following day, which
25 was May 4th. I had a reschedule for mandatory training and

1 since it was a reschedule, I pretty much needed to go to
2 it and so my plan was to come back the following day, that
3 was the morning of the 5th, and start first thing with the
4 phone. The first thing I did though was to go in and I
5 bee lined straight for the phone because it had all been
6 -- been all I had been thinking about for almost two days,
7 was what our plan of attack was gonna be to analyze this
8 device.

9 Q. Was it in the same spot?

10 A. It was in the same spot, but I noticed it was off,
11 which immediately threw up some red flags for me, and when
12 I turned the device back on it started up in a reformatted
13 state.

14 MR. SNELL: Judge, I'm gonna, again, object and
15 make a contemporaneous objection to same matters made in
16 pre-trial.

17 THE COURT: So noted for the record.

18 Continue on.

19 MS. WELLMAN: Thank you, Your Honor.

20 THE WITNESS: So the phone reset as if it was a user
21 setting the device up for the first time which told me at
22 some point over the preceding day and half that the phone
23 did a factory reset.

24 BY MS. WELLMAN:

25 Q. I think we did this earlier, but just in case, is this

1 an Android device?

2 A. It is an Android device.

3 Q. Okay. After you realized that this phone had been
4 factory reset, what, if anything, did you do with the
5 phone?

6 A. There wasn't a whole lot more I could do with the
7 phone at that stage. Even if you hooked the phone -- well,
8 for starters, you'd have to go in and reset the phone up
9 with new accounts and setup information. So right there
10 you're not maintaining a forensically sound environment to
11 do that, but even if, let's say, it had been set back up
12 somehow if you were to perform an acquisition of that
13 device though you're not gonna recover any of that prior
14 exiting data because it's all been formatted over and
15 you're not gonna recover anything through a subsequent
16 examination.

17 Q. Is it ever possible to recover data after a cellular
18 device has been factory reset?

19 A. Not with the tools available to us now.

20 Q. Okay. Was your office door still locked when you got
21 there?

22 A. It was. My office was exactly as I left it.

23 Q. As far as you know, did you or anyone else at the
24 sheriff's department do anything with that phone on the
25 4th?

1 A. No.

2 Q. Now you did tell us that on May 3rd when you were
3 doing your manual preview of the phone you were able to
4 see a Gmail or a Google account on that phone associated
5 with the defendant?

6 A. I did.

7 Q. And you said that you took note of those accounts?

8 A. Yes, it was easy because it was his name, so it wasn't
9 something really hard to remember.

10 Q. As part of your investigation, did you prepare a
11 search warrant for -- to obtain Google subscriber
12 information for those accounts that you noted?

13 A. I did.

14 MS. WELLMAN: May I approach the witness?

15 THE COURT: You may.

16 BY MS. WELLMAN:

17 Q. Sergeant Creech, this is what we have marked as
18 State's Exhibit 3. If you could tell the jury if you
19 recognize that exhibit.

20 A. I do.

21 Q. Please tell the jury what State's Exhibit 3 is.

22 A. What this would be, this would be the Google
23 subscriber information that's part of the overall Google
24 records that were requested. If you serve a search warrant
25 on Google, they're gonna give you everything available

1 for the account, which can be a lot of data, but this in
2 particular is just the subscriber information which
3 consists of showing an e-mail, showing a recovery e-mail,
4 which in this case was JJ0tero019@gmail.com, a recovery
5 phone number. Those were up to date. Then what it does
6 is it gives you a list of logins to the account and IP
7 address information associated with his logins.

8 Q. Is this a true and accurate copy of the Google
9 subscriber information that you obtained?

10 A. It is.

11 MS. WELLMAN: The State would move at this time to
12 introduce State's Exhibit 3 pursuant to --

13 THE COURT: 3?

14 MS. WELLMAN: Yes, we're back at 3.

15 THE COURT: Any objection?

16 MR. SNELL: We do object and we make a
17 contemporaneous objection based on the same matters
18 raised pre-trial.

19 THE COURT: Okay. It's admitted. Objection noted
20 for the record.

21 (State's Exhibit Number 3, Google Subscriber
22 Records, was admitted into evidence.)

23 MS. WELLMAN: Your Honor, the defense already has
24 a copy. Would the Court like a copy?

25 THE COURT: Don't I have one?

1 MS. WELLMAN: You do not.

2 THE COURT: Then I want one.

3 MS. WELLMAN: May I approach?

4 THE COURT: Yes, please.

5 BY MS. WELLMAN:

6 Q. Just so we know that we're all taking about the same
7 thing, let's just look at this first page. This is State's
8 Exhibit 3. Is this the Google subscriber information?

9 A. It is.

10 Q. Associated with this defendant, Jason Otero?

11 A. It is.

12 Q. Okay. And what are -- is there anything really
13 investigatively relevant on the rest of this page?

14 A. Not really other than notably missing is a lot of
15 times it will show a category for associated linked devices
16 and in this case there's not a linked device present.

17 Q. But I do see under the bullet point services, okay, on
18 that third line --

19 A. Yes.

20 Q. -- does that reference an Android, like an Android
21 cell phone?

22 A. Yes, because Android's owned by Google, so that's
23 gonna be a default category with most Google services that
24 would indicate were Android services associated with that
25 account at some point.

1 Q. Looking at page 2, sort of the account recovery, based
2 on your training and experience with all of the cases that
3 you've worked on, do you see is -- is there anything that
4 stands out to you about that? Is there anything missing?

5 A. There's no device information.

6 Q. And based on your training and experience, should
7 there be some device information?

8 A. If this had been linked to a Google -- a device with
9 a linked Google account, which in this case we identified
10 it on the 3rd as the associated account, Jason Otero's
11 cell phone should have still been linked under the Google
12 subscriber information.

13 Q. So what, if anything, does that suggest to you that
14 it's not there?

15 A. That at some point that information had been removed
16 from the Google account.

17 Q. Okay. And then you mentioned sort of some login
18 stuff. Is that what we're seeing here?

19 A. YEF.

20 Q. Like I'm seeing here 5-17-2021 at 12:12 UTC. What is
21 UTC?

22 A. UTC is -- I don't remember what UTC stands for
23 technically. All of your records are gonna come in in
24 UTC time, and what it is, is to convert that to Eastern
25 Standard Time for this time of year you've got to, I

1 believe, it's subtract four.

2 Q. This time of year or back in May?

3 A. Back in May of -- when these records would have been
4 relevant.

5 Q. Okay. So like 12:12, you would have subtracted for?

6 A. And that actually would have been 8:12 in the morning.

7 Q. Okay. So we'll come back to this. Let's talk about
8 the laptop, okay, and that was State's Exhibit 31. I
9 believe you identified a photograph of this earlier?

10 MS. WELLMAN: May I approach the witness?

11 THE COURT: Uh-huh.

12 BY MS. WELLMAN:

13 Q. State's Exhibit 31. Is that the same laptop that you
14 observed at the defendant's home on your second search
15 warrant on May 17th?

16 A. It is.

17 Q. Okay. Did you yourself try to look at the data or the
18 information on this phone or the computer?

19 A. I did. So in this case, this laptop was good for us
20 because in my training and experience my immediate concern
21 over the -- discovering the phone being reset on the 5th
22 was there had been some kind of remote reset and so what
23 that told me is that somebody with access to the Google
24 account associated with that device would have used some
25 other external device capable of accessing the Internet

1 to access that Google account and issue that remote wipe
2 commend and so when we went back on May 17th for the
3 second search warrant, that was our -- you know, we kind
4 of had two prongs. The initial prong was the additional
5 information that MINOR disclosed in her forensic -- or
6 her investigative interview on May 14th and the second
7 prong was I had strong reason to believe that we were gonna
8 find some other computer, cell phone, tablet capable of
9 accessing Google services in the home and so in this case
10 we located the laptop in question and I did conduct a basic
11 file system preview of the device after being recovered.

12 Q. And what, if anything, did you learn during that basic
13 preview?

14 A. So the basic preview could only give me so much in
15 this context. Again, it let me observe any notable photos,
16 pictures, documents, things like that, there were some,
17 but as far as doing a more deeper dive with the data
18 reconstituting things like Internet search history, web
19 activity, more of your behind the scenes data, that would
20 have required the device to have been imaged and parsed
21 through some other software that I didn't have access to.

22 Q. For that reason is that why you asked Investigator
23 Phipps to assist?

24 A. And that's why I would have had CSI Phipps assist
25 further because I know he's got all of that equipment and

1 the ability to then go further to assist us with more of
2 that data that we know we were gonna be looking for.

3 Q. As an expert in, you know, cellular, digital and
4 computer forensic analysis, did you review a copy of CSI
5 Investigator Phipps's report?

6 A. I did.

7 Q. And is that State's Exhibit 41 that is already in
8 evidence?

9 A. It is.

10 Q. Let me ask you this. In general, what Type of records
11 or data was really relevant to you as part of this -- or
12 from this report?

13 A. So we were looking for anything that showed any kind
14 of association with activity related to the remote reset of
15 the device. So in this case our key information we were
16 hoping to recover would have been web activity, whether
17 that's instructional websites, video tutorials, anything
18 that could instruct a user on steps to take, as well as
19 actual steps taken and, you know, as part of that we're
20 gonna recover website visits as well as Internet searches
21 related to basically that research activity.

22 Q. Is that what you were really looking for when you were
23 asking, you know, Investigator Phipps to step in?

24 A. Yes.

25 Q. Okay. And are Internet search histories that were

1 done on this device that was found to be in the defendant's
2 possession, were those search histories on the report?

3 A. They were.

4 Q. Would you say they would be a particularly voluminous
5 list of search his histories?

6 A. It was a very -- very long list of searches.

7 Q. Was any web activity was included on this report?

8 A. Yes, it was.

9 Q. How about any like YouTube videos he might have
10 visited?

11 A. Yes, there were.

12 Q. Were you able to see websites or you URL's that the
13 defendant had entered?

14 A. We were, and there were also some indications of
15 documents that had been downloaded in the information.

16 Q. Let's talk about the individual searches, okay? And
17 just sort of the limitations of this software. Were you
18 able to see every single search and the date and time of
19 these searches in this report?

20 A. For the searches, yes, we were.

21 Q. Okay. What about for like if someone like the
22 defendant entered a website, okay, or entered, you know,
23 www.Gmail.com or something like that?

24 A. Google.com or Gmail.com or frequently visited websites
25 it would be this kind of data and when it's parsed it's

1 gonna yield the last visited date and time. That doesn't
2 mean that's the only time it was visited, but if it's a
3 frequently visited site, you're not gonna have entries
4 necessarily for the fifty or five hundred previous times
5 that site was visited. It's just gonna show you the most
6 recently accessed.

7 Q. Okay. As part of your preparation for this trial, did
8 you prepare a summary of these records to aid the jury in
9 understanding that report and what you found?

10 A. I did.

11 MS. WELLMAN: May I approach?

12 THE COURT: You may.

13 BY MS. WELLMAN:

14 Q. Sergeant Creech, this is State's Exhibit 42. Would
15 that be the summary that you were just talking about?

16 A. It is.

17 Q. Is this a true and accurate copy of the summary that
18 was created in preparation for this trial?

19 A. It is.

20 Q. And would that help you illustrate and explain to the
21 jury what you found on this laptop?

22 A. It will.

23 MS. WELLMAN: The State would move to introduce
24 State's Exhibit 42.

25 MR. SNELL: And, again, Your Honor, we'd object.

1 Again, a contemporaneous objection on the same basis
2 during pre-trial.

3 THE COURT: So noted for the record, but it's
4 admitted into evidence.

5 MR. SNELL: And, Your Honor, just be clear,
6 pre-trial and again kind of mid-trial.

7 THE COURT: Yes. All of your objections on the
8 record that we made are noted for the record.

9 (State's Exhibit Number 42, Internet Search
10 Summary, was admitted into evidence.)

11 BY MS. WELLMAN:

12 Q. Sergeant Creech, you stated that the defendant learned
13 of these allegations on May 3rd, I believe?

14 A. Correct.

15 Q. And I think you said you completed your search of the
16 residence that day about 6:00?

17 A. It was probably about 6, 6:30.

18 Q. Okay. This is page one of your summary. Talking
19 about May 3rd, okay, we see a search at 9:41 PM. What
20 search was that?

21 A. So at 9:41 PM -- again, these were all -- or a lot of
22 this is -- most of these entries are Internet searches, and
23 we'll distinguish the ones that are not. In this case, at
24 9:41 PM, there was -- which was just hours after the search
25 warrant, there was a search for "wipe Android phone

1 remotely", and this correlates with a 9:44 PM login with
2 the Google account.

3 Q. Sergeant Creech, would a laser pointer help?

4 A. It would.

5 MS. WELLMAN: May I approach?

6 THE COURT: You may.

7 MS. WELLMAN: I just don't use these well.

8 BY MS. WELLMAN:

9 Q. But that top entry is what we're talking about,
10 correct?

11 A. Correct.

12 Q. Sergeant Creech, can you explain to the jury the steps
13 that are required for you to remote factory reset an
14 Android phone?

15 A. Yes. There's a find my Android website. It's a
16 Google site. Basically what it does is it logs you into
17 your Google account and then it provides you with a series
18 of prompts on -- a pretty much step by step process for how
19 you would then identify your linked Google account as long
20 as you had your e-mail credentials that are linked with the
21 account and it allows you step by step -- if you follow the
22 process, it will allow you to issue a remote reset on the
23 linked device.

24 Q. And you said Step 1 is logging into a Google account?

25 A. Correct.

1 Q. That would be associated with the device you're trying
2 to factory reset?

3 A. Correct.

4 Q. I see a note under there. 9:44 PM. It says Google
5 account login. If we compare the searches on the laptop
6 to the Google records, which if we look -- again, this is
7 State's Exhibit 3, right here we subtract four; is that
8 correct?

9 A. Correct.

10 Q. So May 4, 2021, subtract four hours, what time -- is
11 that 9:44 on the night of the 3rd?

12 A. Yes, that's correct.

13 Q. And what do these record indicate?

14 A. Okay. So that would correlate with this time here,
15 which is 0:44 UTC, but if you subtract four that's actually
16 gonna end up being May 3rd at about 9:44 PM.

17 Q. Okay. And what do the Google records show was going
18 on with the defendant's Gmail account?

19 A. It shows there was successful login to the account at
20 that time.

21 Q. So Step 1 of the remote wiping the phone?

22 A. Correct.

23 Q. So let's go to May 4th, okay? What are we seeing? If
24 you could just sort of tell us what we're -- what was going
25 on on the 4th.

1 A. Certainly. At the 11:11 AM we had a search query "Can
2 police recover deleted e-mails?". At 12:40 PM we have
3 "Wipe phone through Faraday".

4 Q. Let me pause right there. What is -- do you know
5 what Faraday is?

6 A. I do. So Faraday is a type of technology we
7 frequently employ. We didn't have access to as many
8 Faraday containers back then as we do now, but, you know,
9 commonly they're either bags or a box and what it does is
10 it -- independent of whether or not a phone can be placed
11 -- is in airplane mode or not because we often get devices
12 where we can't even get to the settings to put it in
13 airplane mode, what a Faraday bag or box will do is it's
14 basically a secure container you can insert that device in
15 and it then shuts it off from outside signals independent
16 on whether or not it can be main manually placed in
17 airplane mode.

18 Q. And so -- okay. So where are we going next, I guess?

19 A. So following "Wipe phone through Faraday", at
20 12:43 PM we have "Can cops copy your phone?", 12:49 PM,
21 "Send message through Faraday", and 12:52 PM, "Child
22 testify in court molestation".

23 Q. So as you're looking through the searches so far, what
24 are you thinking?

25 A. Well, I certainly can see where somebody's state of

1 mind is going through the steps to reset a phone and then
2 it looks like they're making --

3 MR. SNELL: Objection, Your Honor. Any testimony
4 as to anybody's state of mind is beyond the scope of his
5 expertise.

6 MS. WELLMAN: I'll move on.

7 THE COURT: Thank you, Ms. Wellman.

8 BY MS. WELLMAN:

9 Q. So let's go to May 5th.

10 A. Certainly.

11 Q. Okay. So at 7:14 AM it says "PDF download". I think
12 you mentioned the report included some PDF downloads?

13 A. Correct. It did. And this is one file I'd observed.
14 Prior to CSI Phipps and his more involved analysis, I'd see
15 this in the downloads folder because it was a document, so
16 it was pretty easy to review in the file system preview,
17 but what it is, is a PDF file "Breaking into the vault,
18 privacy, security, forensic analysis of Android vault
19 applications". What that ended up being was an academic
20 article specifically discussing a number of common Android
21 Photo Vault applications, the same application in this --
22 that we identified in this case wasn't present, but
23 probably a half a dozen or more similar ones were, and what
24 it was, it was discussing the nature of these applications
25 as anti-forensic tools and it was discussing various

1 methods that law enforcement or forensic investigators can
2 implement to try to bypass encryption of these kind of
3 applications.

4 Q. And then -- so when you talk about Android vault
5 applications and then I see -- at 6:09, what do we see
6 there?

7 A. Well, right after the download, you've got a 7:56 AM
8 search "erase my device remotely" and at 6:09 PM, "Can FBI
9 crack Photo Vault?".

10 Q. Is that consistent with the type of photo vault you
11 saw on the defendant's phone?

12 A. Yes. It was actually called Photo Vault.

13 Q. Okay. So let's just switch and go to May 6th. In
14 general, can you just sort of describe the searches that
15 were going on on May 6th?

16 A. Yes. He makes a series of inquiries about passing
17 polygraphs. He asks -- he searches "Can you get convicted
18 on search history?". After searching information about
19 polygraphs, he searches "Reduce galvanic skin response,
20 superglue, How to stain the polygraph, Superglue polygraph,
21 Cheat polygraph", and then it goes back into searches a
22 few hours -- about five hours later "Bipolar child
23 molestation, bipolar child molestation charges, bipolar
24 child molestation trial".

25 Q. Let me pause right there, okay? At that 10:33, the

1 child molestation trial that you read --

2 A. Yes.

3 Q. -- there's a "Y" in there. Is this summary, I mean,
4 word for word, typo from typo, from the defendant's search?

5 A. Yes. These are copied directly from the parsed search
6 terms which are gonna be exactly how he inputted them or
7 anybody that uses --

8 MR. SNELL: We'd just object, Your Honor, to any
9 reference to the defendant entering this. He can testify
10 to -- to the data, but as far as who actually typed the
11 data in he can't offer any opinion or testify to that.

12 THE COURT: I agree, Mr. Snell.

13 Rephrase that, Ms. Wellman.

14 BY MS. WELLMAN:

15 Q. So the way we see the searches up here, is that
16 exactly how the person who was possessing the computer
17 typed the searches?

18 A. Yes, it would be reflective of how the user conducted
19 the searches on the device.

20 Q. Okay. Thank you.

21 So at the end of the day -- we've talked about some
22 polygraphs or whatever and cheating a polygraph and what
23 are we searching at the end of the day?

24 A. It's -- let's see. One, two three --

25 Q. Sort of like 10:45, 10:44, something like that?

1 A. It's about fifteen searches on child molestation
2 charges.

3 Q. Okay.

4 All right. Let's go to the 7th. We've looked at the
5 6th for a little bit and it looks --what are we seeing
6 here?

7 A. About seven searches right off the bat starting at
8 7:05 AM. "Can police tap your phone number" and variations
9 of that search leading up to at 8:54 AM "Can police search
10 camera history?". Followed by, "Can police find camera
11 history?". "Do phones have camera history?". "Do cell
12 phones have a history for photos taken?". "Can police get
13 camera information?". "Is there a timestamp for phone
14 cameras?". "Is there a timestamp for pictures taken?".
15 "Is camera metadata stored on phone?". "Are photo
16 thumbnails deleted?". "Will deleting pictures delete
17 thumbnails?". "Are thumbnails stored after deleting
18 pictures?". Several variations of that. "Do cops do wi-fi
19 seizure?". Another repeat of the deleted thumbnails.

20 Q. So we've just got lot of searches about whether the
21 police can see some deleted photos, right?

22 A. Correct.

23 Q. So that page ends at -- now let me ask you this. This
24 page that we're looking at, it starts at 7:05 AM and goes
25 to 10:58. Are these -- each entry on this table, are those

1 an individual separate distinct search that was done on the
2 computer in the defendant's possession?

3 A. Yes, they are.

4 Q. Okay. So when we see, you know, at 8:57 AM, do cell
5 phones have a history for photos taken, and then at 9:03
6 do cell phones have a history of photos taken, those are --
7 even though they're the same, it was a search --

8 A. It's just a repeat of the previous search.

9 Q. Okay. So is this a continuation of May 7th?

10 A. It is.

11 Q. Let me back up a second. I know we're on May 7th, but
12 by May 7th you already know that the Android phone has been
13 factory reset; is that correct?

14 A. That's correct. I learned that on the morning of the
15 5th.

16 Q. On May 5th. Okay.

17 All right. So what's being searched here? Tell us
18 what we see.

19 A. So we have "How to delete wi-fi browsing history?".
20 Several variations of that. "Wi-fi history viewer".
21 "Wi-fi browser history Spectrum". A login to the Google
22 account and it shows some activity controls on the account.
23 It goes back to "Wi-fi history viewer", "What is ISP?",
24 which should be Internet service provider. "How to see
25 browser activity through wi-fi?". And then at 1:20 PM, it

1 comes back to "Erase my device asleep". "Erase my device
2 remotely sleep". That's repeated. And then a variation of
3 "Erase my phone remotely Y Android sleep". And then that's
4 repeated several times. "Erase my phone remotely Y Android
5 hibernation". That's repeated.

6 Q. Let me pause you real quick just while we're talking
7 about that. Had you given the defendant his phone back at
8 this time?

9 A. I had not. It remained in law enforcement custody.

10 Q. Had you told the defendant that the phone had been
11 remote factory reset?

12 A. No. That was knowledge only known by law enforcement.

13 Q. Okay.

14 All right. So after we're talking -- and I guess
15 another question. As you're, you know, reviewing the
16 report and we see all of these search histories and these
17 search entries that were done on the computer in the
18 defendant's possession, could you tell whether or not the
19 person doing these searches was actually interacting with
20 the search results?

21 A. Yes.

22 Q. Yes, you could tell or yes --

23 A. Yes, you could tell based on the web activity that
24 correlated with the searches.

25 Q. Okay. And on this summary, did you -- again, it's a

1 summary. Did you include every single sort of interaction
2 with those results?

3 A. No, that would have taken a lot of information and
4 made it even more overwhelming.

5 Q. Okay. So then after the searches about, you know,
6 erase the android while asleep or hibernation, what's being
7 searched?

8 A. Then it changes over and says at 2:28 PM "How long
9 until police interrogate a child?". "How long until police
10 forensic psychologist a child?". "If a child says you
11 molested them are you detained?". "Can you go to jail
12 based on a child's word?". "Is a child's word enough to
13 convict you?". "Is a child's word probable cause?".

14 Q. Okay. Probable cause, is that sort of like a legal
15 standard word for like getting a search warrant or
16 something like that?

17 A. Yes, or obtaining an arrest warrant.

18 Q. Okay. This page 3, are we still on May 7th of these
19 searches? Is there a new heading yet?

20 A. Yes, we're still on May 7th.

21 Q. Okay. So then at 5:04, what are we looking at?

22 A. We've got another series of searches relating to
23 polygraphs and then it says "What does a lie look like on a
24 polygraph?". Heading towards the middle, "Block skin
25 conductivity polygraph". "What does a lie look like on

1 polygraph?". "Can you fail a polygraph with electrode?".
2 And then it's a word that's not completed. "Can you fail
3 a polygraph if skin?". Again, that terms doesn't appear
4 to be completed. "Galvanic skin response device". "Full
5 galvanic skin response". "Full galvanic skin response
6 polygraph".

7 My eyes are failing me on this next one, but it's a
8 word that starts with an "A". "Galvanic skin response".
9 "Stop galvanic skin response." That's repeated again and
10 then there's a Chrome media history that shows a YouTube
11 visit to a vide titled "Polygraph Expert Shows How to Beat
12 a Lie Detector Test".

13 Q. Let's go back up to the top. Like at 5:04, 5:06,
14 5:17. Systolic versus diastolic polygraph. With that
15 search in mind, going back to some items that you found --
16 maybe you didn't seize them, but items you found when you
17 were searching the defendant's bedroom, this is State's
18 Exhibit 32 already in evidence, does this blood pressure
19 cuff have a little more investigative relevance at this
20 point?

21 A. It does.

22 Q. So if you could summarize sort of some of these
23 searches that we see here, what would you -- how would you
24 summarize that page?

25 A. This entire page appears to relate to searches for how

1 to fool a polygraph.

2 Q. All right. And I guess -- I think we ended talking
3 about the YouTube video about expert shows you how to beat
4 a polygraph and then the next search is what?

5 A. "How to meditate for polygraph" and "Have you ever
6 passed a polygraph?".

7 Q. That was about 9:10 PM. If we go over to May 8th,
8 sort of what are we seeing?

9 A. So the searches start about 10:19 AM. It's, again, a
10 number of searches relating to DMX -- "DXM polygraph",
11 which leads into "Topical Benadryl sweating", "Stop hand
12 sweating", "Stop hand sweating galvanic". There's several
13 variations of that. "GKT polygraph", "O-meter polygraph",
14 "Stop finger sweating galvanic polygraph" again. "Least
15 conductive liquids". "Why is sweat conductive?". "Is talc
16 conductive?". "Is baking soda conductive?".

17 Q. In summary of just this page, again, what are we
18 looking at?

19 A. Again, it looks like methods to beat a polygraph.

20 Q. Okay. So still on May 8th, it looks like the search
21 is about how to beat a poly graph or I think earlier the
22 search was cheat a polygraph?

23 A. Yes. This entire page is continuing to relate to ways
24 to beat a polygraph examination.

25 Q. Okay. And let's just pick a few. They're all pretty

1 much the same.

2 A. We've got --

3 Q. What if we go to 12:16. What's --

4 A. "Can you burn sweat glands with iron?".

5 Q. Okay. And I think at 11:38 that tells you what you
6 said earlier, right?

7 A. "Cheat GRS polygraph" and before that is "Cheat
8 galvanic polygraph".

9 Q. And this looks like scopolamine, meclizine polygraph.
10 Is that just -- in your law enforcement experience, have
11 you heard of those, meclizine and scopolamine? Have you
12 heard of those?

13 A. I've never heard of those.

14 Q. Okay. Continuing on, still on May 8th, let's just go
15 through some of these.

16 A. This continues to be polygraph searches up through
17 about here. It's "How to meditate for a polygraph?",
18 "Polygraph saying the truth in your head", "How to meditate
19 for a polygraph?" again. "Polygraph saying yes in your
20 head". And then that transitions into about an hour later
21 "Are arrests made on Sunday?". "Can lawyers tell police
22 where you live?". There's more Chrome media history,
23 YouTube videos, "How to Pass Lie Detector Test and Prepare
24 for It". At 3:14 and 3:28, there's a YouTube video,
25 "Polygraph Tests and How to Test Them", followed by "What

1 lowers adrenaline?". Another YouTube visit, "Fooling a lie
2 detector". Some more searches about adrenaline and how to
3 stop sweat and then a bunch of searches about Baclofen
4 polygraph.

5 Q. And if you could sum up this page in a couple of
6 words?

7 A. How to beat a polygraph.

8 Q. Continuing on. Again, May 8th.

9 A. Starting at 6:30, we have "Induced amnesia polygraph"
10 several times. "Polygraph imaging the correct answer".

11 Q. Are these consistent searches?

12 A. They are.

13 Q. Okay.

14 All right. On May 9th, what's the first search that
15 you see?

16 A. 7:31 AM it's "Can a polygraph test stop an
17 investigation?".

18 Q. And then if you could summarize the next few searches,
19 what do we see?

20 A. All these relate to cheating a polygraph.

21 Q. And then --

22 A. Until 8:21 AM it says "I still see device on find lost
23 device".

24 Q. Okay. And then let's talk about sort of the searches
25 at 9:14, 9:16, 9:21. What's being searched?

1 A. So we have "Can a polygraph test stop an
2 investigation?".

3 Q. Sorry. I meant --

4 A. Starting at 9:16?

5 Q. 9:16. Sorry.

6 A. We've got "Remote erase phone still in Google
7 account", which is consistent with that 8:21 search where
8 "I still see device on find lost device". "Remote erase
9 phone still in Google account". "Google find my device
10 can't find my device". "Google find my device can't find
11 my device". And then there's a media -- another media
12 record of a YouTube video "How to use Google find my
13 device?", two, "How to find lost device?". There's a URL
14 we identified at 9:23 AM, which is sign in to --

15 Q. So let me ask you this. As you were reviewing the
16 search history and you compared that to the Google records
17 that showed the logins, whoever's possessing the computer
18 that was found in the defendant's possession, whoever was
19 searching that, was there a corresponding login to Goggle
20 accounts when the person was researching how to remote
21 reset a phone?

22 A. Yes.

23 Q. Okay. And then specifically at 9:45 AM, tell us about
24 that.

25 A. Yes. So immediately -- so shortly after 9:26, "Remote

1 phone wipe didn't work", at 9:45 is the last visited web
2 entry for the Find My Android website and that correlates
3 with a Google account login that's in the Google subscriber
4 records showing somebody did log into the account at that
5 time and then on the device itself there's a URL we
6 identified that actually is interacting with that Find My
7 Android website and is issuing a wipe command on an Android
8 device and you can actually see it in the URL. It's giving
9 a device identifier with a wipe in the URL.

10 Q. When we say URL, do you mean like a website?

11 A. Yes, like a web link.

12 Q. Okay. And when you say wipe command, I just want to
13 be clear, can you explain to the jury what you mean by a
14 wipe command?

15 A. It would be a signal you're sending through the Find
16 My Android website to a device to factory reset that device
17 remotely.

18 Q. Okay. And, again, you said -- did the defendant have
19 his phone back at that time?

20 A. He did not.

21 Q. Had you told him that the phone had been remote
22 factory reset?

23 A. No. The only way somebody would have known that -- I
24 mean, if you remote reset a device the only way you're
25 going to be absolutely sure that that's been successful is

1 if you physically are able to regain control of that device
2 somehow and see for yourself that yes, it's been reset
3 remotely.

4 Q. Again, I just -- I just want to, again, go back to the
5 Google records as opposed to just the summary?

6 All right. So 9:45 AM is when that remote factory
7 reset wipe command was?

8 A. Correct.

9 Q. Do we see that corresponding login on the Google
10 records?

11 A. I've got to find it. Minus four --

12 Q. Here's May 5th and at 9:45.

13 A. Yes, that would be it right there. Minus four would
14 put that at 9:45 Eastern standard time and that does show a
15 successful login to the Google account.

16 Q. Again, a login to the defendant's Google account?

17 A. Correct. JasonJOtero@Gmail.com.

18 Q. Okay.

19 A. And, again, to note this would be the last visited
20 entry for this website, but it doesn't mean that that
21 website had not been visited multiple times prior to this
22 date.

23 Q. But just very last time it was May 9th at --

24 A. That it was captured on this computer that he visited
25 it, yes.

1 Q. All right. So then I think at -- then it looks like
2 it transitions to sort of -- what does it transition to,
3 the searches?

4 A. "How to get child molestation case dismissed?" and
5 "Psychosexual exam".

6 Q. And then, again, if you could just quickly sum up this
7 top part, the remaining searches on the 9th?

8 A. It's a mixture of searches about police seizing phone
9 information, planting evidence during search warrants,
10 exams -- psychosexual exams again, hypnosis polygraph,
11 remote phone wipe didn't work again, and that's repeated,
12 and then it goes back to more ways to beat a polygraph.

13 Q. Okay. Moving to May 10th. I think we're sort of
14 getting a lot of searches because they're a lot of the
15 same?

16 A. Starting at 6:45 AM to 6:30 PM on this date it's all
17 polygraph. Well, not all. There's another search in the
18 middle of the day for remote wipe phone didn't work, but
19 the rest of those are ways to beat a polygraph.

20 Q. Okay. May 11th, really quickly, what's the search
21 that was being done?

22 A. All searches relating to beating a polygraph.

23 Q. Okay. May 12th.

24 A. There's only one entry on the 12th of relevance and
25 that was "View Google account login history".

1 Q. Okay. How about May 16th?

2 A. So May 16th, the first search we have, is "My daughter
3 accused me of sexual abuse". Later that day, "What if
4 you're not home when the police come to arrest you?", and
5 that's repeated, followed shortly by "Can you have a laptop
6 in prison?". "How can you get a laptop in prison?". "Bail
7 cost for child sex abuse", "Bail cost for child sex abuse
8 SC", "Anesthesia simulates death", and then the last search
9 on this date at 11:41 PM is "How to fake your death".

10 Q. And then really quickly, May 17th, on the morning that
11 the defendant was arrested, just some quick things about
12 what you guys can do?

13 A. Certainly. "Do police plant after they search your
14 home police listening device?". "Police put listening bugs
15 in house".

16 Q. Okay. Sergeant Creech, as part of your investigation
17 as you're reviewing the report of all of the searches, all
18 of the Google searches -- or Internet searches, all of the
19 web activity, all of the PDF downloads, did you find any
20 searches, any videos about false allegations?

21 A. No there was nothing of the sort.

22 Q. False allegations of child abuse I mean?

23 A. No, we didn't have any searches or web visits relating
24 to that.

25 MR. SNELL: Objection, Your Honor.

1 THE COURT: And --

2 MR. SNELL: It's burden shifting. It's that
3 whole --

4 MS. WELLMAN: I'm asking -- he was -- may we
5 approach?

6 THE COURT: Yeah, you may. Come on.

7 (Proceedings held at the bench; not reported.)

8 THE COURT: All right. Ladies and gentlemen, I'm
9 gonna ask you to disregard that last question. In fact,
10 I'm going to strike it from the record. You are to give
11 absolutely no thought to it in your deliberations at all.

12 Thank you.

13 All right. Go ahead.

14 BY MS. WELLMAN:

15 Q. Sergeant Creech, you told us that the defendant was
16 arrested on May 17th. Turning to November 28th of 2021 --

17 A. Yes.

18 Q. -- to your knowledge, was the defendant still in
19 custody on that date?

20 A. He was.

21 Q. Were you contacted by the -- and, excuse me, I say in
22 custody. Was that with the Lexington County Sheriff's
23 Department, the detention center?

24 A. Yes.

25 Q. Were you contacted from the detention center regarding

1 this defendant?

2 A. Actually I was scheduled to work the jail that night
3 and I reporting for my jail shift when I was notified of an
4 incident concerning the defendant.

5 Q. Okay. Can you tell us what was that incident?

6 A. Upon my arrival, I was notified that there had been an
7 incident with some inmates on what they refer to as the
8 second floor and I believe -- I don't remember -- in which
9 involved --

10 MR. SNELL: Object to -- Your Honor, we make an
11 objection to hearsay.

12 MS. WELLMAN: He's explaining why he went there.

13 MR. SNELL: He's going into more detail. He said
14 there was an incident, he's responding, but as far as
15 details, that's hearsay.

16 THE COURT: Sergeant Creech, don't say -- tell
17 anything that somebody told you, okay?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: All right.

20 BY MS. WELLMAN:

21 Q. How about this? Did you go to the end -- or the
22 defendant's cell at the detention center?

23 A. I did. I was asked to -- while working in booking
24 because I'm a major crimes investigator, I was asked to
25 assist in investigating an alleged escape incident.

1 MS. WELLMAN: And if I could just have one second,
2 I'm showing...

3 Your Honor, may we approach?

4 THE COURT: Sure.

5 (Proceedings held at the bench; not reported.)

6 THE COURT: Okay. We're gonna continue on.

7 MS. WELLMAN: May I approach the witness?

8 THE COURT: You sure may.

9 MS. WELLMAN: All right. Sergeant Creech, these
10 are a little out of order, so I'm gonna call them out and
11 make sure that the Court and the court reporter know all
12 the numbers.

13 This is State's Exhibit 45 through -- okay.

14 Sergeant Creech, this is State's Exhibit 45 through
15 58. We also have State's Exhibit 36, 21 and 29.

16 THE COURT: Now tell me -- I'm sorry.

17 MS. WELLMAN: Hold on. Let's see. Okay. It was
18 45 through 58.

19 THE COURT: I got that.

20 MS. WELLMAN: 36.

21 THE COURT: Okay.

22 MS. WELLMAN: 21 and 29.

23 THE COURT: Okay. Let me ask you about 21. 21 was
24 one you-all had marked that I didn't allow in and you just
25 substituted the number?

1 MS. WELLMAN: Yes, Your Honor.

2 THE COURT: Okay. I just wanted to make sure my
3 records were right.

4 Okay.

5 BY MS. WELLMAN:

6 Q. Sergeant Creech, do you recognize these?

7 A. I do.

8 Q. Please tell the jury what these exhibits are.

9 A. These were a series of photos that were taken from
10 Jason Otero's cell and from his items recovered from his
11 jail property on the night in question.

12 Q. And are they fair and accurate photos of the
13 defendant's cell on November 28th?

14 A. They are.

15 Q. Will they help illustrate your testimony to the jury?

16 A. They would.

17 MS. WELLMAN: The State would move to introduce
18 these exhibits into evidence.

19 THE COURT: Any objection?

20 MR. SNELL: Again, Your Honor, we'd make the
21 objections under relevancy, prejudicial, probative and,
22 again, I'm not -- and, again, we'd also object we don't
23 believe the proper foundation has been offered for these
24 photographs.

25 MS. WELLMAN: They're illustrative, Your Honor.

1 THE COURT: I'll be glad to hear from you,
2 Ms. Wellman. Did he -- I hear him say he took these
3 photos himself?

4 BY MS. WELLMAN:

5 Q. Did you take these photos yourself?

6 A. I don't believe I testified to that, but, yes, I did
7 take all of those photos myself.

8 Q. Okay. And they fairly and accurately represent the
9 defendant's cell and items you found in that cell on the
10 date we're speaking of?

11 A. They do.

12 Q. And will they help illustrate your testimony?

13 A. They would.

14 THE COURT: I think that's a proper foundation.

15 Now how about admittance? Any argument there over
16 his objection?

17 MS. WELLMAN: Your Honor, I think they're highly
18 relevant based on the conversation we had in the back.

19 THE COURT: Based on the conversation we had in
20 the back, I do think they're highly relevant and there's
21 case law to support it.

22 So I'm going to allow it and I'll note your objection
23 for the record, Mr. Snell, on all of these exhibits.

24 (State's Exhibit Number 21, 29, 36, 45, 46, 47, 48,
25 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58, photographs,

1 were admitted into evidence.)

2 BY MS. WELLMAN:

3 Q. All right. Sergeant Creech, State's Exhibit 45, what
4 are we seeing?

5 A. So this is one of the -- so this is a cinderblock
6 exterior wall of the jail, which you have, I believe --
7 is the photo upside down? I think -- yeah, I think the
8 sicker is put on wrong. You can see where there had been
9 a cinderblock that was scored on the outside and some
10 holes been made underneath and there was actually some
11 areas where it had been previously scored and there had
12 been paint pulled from an opposite wall where it was
13 flaking, an interior wall, and with -- some kind of wet
14 material had been adhesed over some of these impressions.

15 Q. Okay. But, again, we're just carving out the
16 cinderblock? Is that --

17 A. Correct.

18 Q. Okay. State's Exhibit 48. What are we looking at?

19 A. So this is the exterior cell window. It's a pretty
20 narrow window. In this case, my hand is actually holding
21 the -- the transparent pane that's in the window. It's
22 collapsed outward and it's just kind of barely hanging in
23 the window and you can see -- it's kind of hard to see in
24 this photo, but that's the roof over what we call -- refer
25 to as the bond court area, and it's just a short distance

1 from the front parking lot of the sheriff's department,
2 which is a non-fenced in area.

3 Q. State's Exhibit 47.

4 A. So the previous photo didn't illustrate it, but
5 there's a piece metal that had been cleanly cut and could
6 be put in place and removed and you could see where in
7 addition there had been work done scouring out that border
8 in concrete underneath that window and on the opposing side
9 it's hard to depict in the photos, the metal was so brittle
10 that you could just break it further with your hand on the
11 exterior side.

12 Q. State's Exhibit 48.

13 A. This was some metal that was also found underneath
14 that opening.

15 Q. State's Exhibit 49.

16 A. This is just a more up close shot so you can see the
17 -- kind of like the side angle of the window's pane, but
18 that's the area. This would have lead to -- that's about a
19 maybe 15-foot drop over here and you're in the front
20 parking lot of the sheriff's department, the same area
21 where inmates get released or people come to bond court or
22 the front lobby of the sheriff's department. It's a public
23 parking lot.

24 Q. This is State's Exhibit 52. What are we looking at
25 there?

1 A. So this is an external view of that same window just
2 showing you can see that rusty brittle metal and you can
3 see the window lying down. This was taken a subsequent
4 date because this is during daylight.

5 Q. Now you talked about that rusted metal. Was that
6 brittle?

7 A. It was very brittle. You could take your hands and
8 break it up.

9 Q. And if you had done that, what --

10 A. So it's a pretty -- the window itself is pretty narrow
11 thing, but if you factor in the metal removal you could
12 certainly make an opening about like that and you could
13 certainly make it about like that.

14 Q. State's Exhibit 53.

15 A. So within the cell, this was an interior wall. This
16 was for an air vent. It was affix in place with some
17 sporks and some spoons and we were able to remove that
18 panel.

19 Q. Did you look inside that panel?

20 A. I did.

21 Q. State's Exhibit 54.

22 A. One of the first things I removed is what appeared to
23 have been a fashioned -- some kind of digging implement is
24 the best way I could describe that.

25 Q. State's Exhibit 55.

1 A. There's a bunch of -- it will be clear in subsequent
2 photos, but you could see pieces of metal were removed
3 along the air-conditioning vent. There's a lot of scrap
4 metal and just assorted material inside the vent we pulled
5 out.

6 Q. State's Exhibit 56.

7 A. These were some of the pieces of metal we pulled out
8 of that vent.

9 Q. Specifically --

10 A. This is a --

11 Q. Sorry. Go ahead.

12 A. No, go ahead. I'm sorry.

13 Q. Specifically looking at this item right here, is that
14 a piece of metal?

15 A. It is. It's a piece metal kind of like the previous
16 one that was depicted that's wrapped in some kind of cloth
17 type material almost like it's creating a handle.

18 Q. State's Exhibit 57.

19 A. This was all additional metal that was pulled out of
20 that vent area.

21 Q. Are there some additional handles or like fabric
22 handles?

23 A. Yes, there are. So that's some kind of screw and it's
24 got some kind of fabric type material wrapped around one
25 end as if to make a handle. The same here. It's a piece

1 metal and it's got some fabric material around it.

2 Q. Okay.

3 A. And that's the same for this piece here.

4 Q. State's Exhibit 58.

5 A. And this piece -- this is also an implement that was
6 of note. It's got a little screw. There's a hole here in
7 the end of the screw that could be pushed out. This was
8 found in Jason Otero's property bag.

9 Q. Did you find any other items in Jason Otero's property
10 bag that were relevant to the nature of this call?

11 A. I did.

12 Q. This is State's Exhibit 36.

13 A. This is what appears to be a map of Mexico.

14 Q. State's Exhibit 21.

15 A. This appears to be a series of Spanish -- basic
16 Spanish statements.

17 Q. State's Exhibit 29.

18 A. This is, again, similar to the previous. It's a
19 series of common words English to Spanish.

20 Q. Okay. Do you know anything about any cellmate?

21 A. I do.

22 Q. Were any of them Spanish speaking to your knowledge?

23 A. Yes, he had a cellmate, Miguel Acosta, who is, I
24 believe, a Mexican national or he was Hispanic.

25 MS. WELLMAN: Thank you, Your Honor.

1 If I could just have one moment.

2 No further questions, Your Honor.

3 THE COURT: Mr. Snell.

4 Let me ask you, Madam Forelady, would you-all like
5 a break? We've been at it a good little while. Just
6 maybe a ten, fifteen minute break and we'll come back
7 and I'll let them do cross, okay?

8 Remember, no talking about the case.

9 (Whereupon, the jury retires to the jury room at
10 3:51 PM.)

11 THE COURT: All right. No talking to anybody and
12 you're still under oath.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: All right. Just to kind of clarify the
15 record just for a moment, as I understood out in the hall,
16 the evidence of flight or escape is -- under case law is a
17 sign of guilty conscious. I did not think the defense had
18 -- was objecting out in the hall to the photos is my
19 understanding.

20 But is that right, Mr. Kirkland?

21 MR. KIRKLAND: We'll -- we'll go ahead for the
22 record and object to the --

23 THE COURT: But now they're gonna object, so I'm
24 gonna note it for the record and I'm going to say --

25 MR. KIRKLAND: Right.

1 THE COURT: -- and rule that it was the evidence of
2 flight.

3 MS. WELLMAN: There's very strong nexus there.

4 THE COURT: Yes, a strong nexus to a guilty
5 conscience. I cannot quote the case law right off the
6 top of my head.

7 MS. WELLMAN: The most recent one is Middleton,
8 Your Honor.

9 THE COURT: Thank you.

10 The Middleton case sets it out and says it is
11 admissible and I allowed it in.

12 I just wanted to put that on the record for
13 everybody since we discussed it out in the hall and
14 that's why it came in.

15 We're gonna be in recess for fifteen minutes.

16 (Recess taken at 3:53 PM.)

17 (Back on the record at 4:08 PM.)

18 THE COURT: Okay. Are we ready?

19 MS. WELLMAN: Yes, Your Honor.

20 THE COURT: Is the defense ready?

21 MR. SNELL: We're ready.

22 THE COURT: Let's bring them in.

23 (Whereupon, the jury returns to the courtroom at
24 4:09 PM.)

25 THE COURT: Madam Forelady, the jury ready?

1 FOREPERSON: Yes, Your Honor.

2 THE COURT: Thank you. Please be seated.

3 All right, Mr. Snell.

4 MR. SNELL: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. SNELL:

7 Q. I wanted to ask you a question regarding -- going back
8 to your prior testimony regarding your review of the Google
9 information --

10 A. Yes, sir.

11 Q. -- and just one thing I wanted to ask, that looks like
12 that was pretty thorough, were you able to get access to
13 Google location history?

14 A. No, I didn't get Google location history in this case.

15 Q. Are you familiar -- do you know what I'm talking about
16 where you go on and it will show -- Google will show you
17 down to almost the minute where that device is at all
18 times?

19 A. Uh-huh.

20 Q. It will show it driving down the road or going to
21 different places?

22 A. Regarding a cell phone for example.

23 Q. Yes, sir.

24 A. Yes, I am aware, but we didn't request that in this
25 case because we had the cell phone in law enforcement

1 custody.

2 Q. So just -- and, again, I'm just curious. I know I
3 heard -- I think you had testified about having gotten
4 information about the mother's whereabouts on May 2nd?

5 A. Correct.

6 Q. But as far as that location service, that would have
7 shown where Mr. Otero's phone was on the 2nd? And just --
8 I didn't hear you, so that's not something that's part of
9 your investigation?

10 A. No, it's not.

11 Q. Even if it would have confirmed that he was at the
12 house at the time that this allegedly occurred?

13 A. We can confirm he was at the house because of a Ring
14 video that shows him in the house at the time.

15 MR. SNELL: Okay. I'm gonna object, Your Honor.
16 Again, I'm gonna make an objection.

17 THE COURT: Are you making an objection to your own
18 question?

19 MR. SNELL: To the answer. To the Ring video.
20 Can we approach?

21 THE COURT: Yeah.

22 (Proceedings held at the bench; not reported.)

23 THE COURT: All right. Mr. Snell, I'm gonna let you
24 rephrase that question.

25 BY MR. SNELL:

1 Q. Would Google services have shown the whereabouts of --
2 the physical whereabouts of Mr. Otero's phone on May 2nd?

3 A. It could have, yes.

4 Q. All right. Going --

5 A. But the caveat to that being by the time we got the
6 Google records, the device information had been divorced
7 from the Google account, so I don't believe we would have
8 obtained it regardless even if we'd asked for it.

9 Q. You know Google keeps that for years.

10 A. Yes, but the device is no longer linked to the
11 account.

12 Q. All right. Now if I understand correctly, in addition
13 to being the lead investigator in the case and an IT expert
14 -- or forensic -- or technology expert as previously
15 qualified, you also have jail duty?

16 A. We all do. It's because of monitoring shortages at
17 the Lexington County Detention Center for about five years
18 now we all do our time every month working usually in
19 booking.

20 Q. And I understand that as part of what your testimony
21 is you respond to this incident in Mr. Otero's -- what, his
22 cell?

23 A. Yes.

24 Q. Okay. And that's in the old part of the jail or
25 what's referred to as the old part?

1 A. I believe that's considered the old jail, yes, sir.

2 Q. And when I say "old", I mean, what, built back in the
3 seventies?

4 A. I'm not sure exactly when. I know it predates my
5 time.

6 Q. It's old?

7 A. Yeah.

8 Q. That was -- those cells -- so you're -- first of all,
9 you're familiar with just generally with that part of the
10 jail and how that area operates?

11 A. Not so much in how it operates because even though we
12 assist in the jail because we aren't trained dollar
13 corrections officers usually were' limited to just working
14 booking. We kind of end up being just general go-fers with
15 basic tasks or in the case of being an investigator coming
16 into work hey, we're gonna have you come do some
17 investigative work while you're here.

18 Q. Okay. So let me show you what's been marked as
19 State's Exhibit 47.

20 All right. So the first thing regarding this, and
21 this is the -- I don't call it a window, but it's like a
22 slit in the wall?

23 A. I mean, it's a window. It a narrow window, but it's a
24 window.

25 Q. And you agree with me that's about four inches wide

1 thereabouts?

2 A. I mean, I think it's probably about that. I think
3 that's probably a little bit more than four inches, but
4 it's not a very wide opening.

5 Q. Okay. Have you -- so this is a picture that you took
6 -- if I understand correctly, you took this picture?

7 A. I did.

8 Q. Okay. Do you have any information as to what the
9 condition was or what the cell looked like a week, a month,
10 a year or a decade prior to you coming in on that date?

11 A. I don't, but if it had been in that condition it would
12 have -- I can be certain it would have been noted a lot
13 sooner.

14 Q. You would assume, but you don't know for a fact?

15 A. I believe that would be hard to miss.

16 Q. Now on that -- I know we see it looks like kind of --
17 we can't really see through the slit or the opening there?

18 A. It's hard in the light there, yes.

19 Q. I'll show you another picture. This is State's 46.
20 And that's the same opening?

21 A. Yes, it is.

22 Q. Okay. And there's a piece of plexiglas or some kind
23 of --

24 A. Yes, and what's it's done is it's flipped from being
25 vertical to being horizontal and it just needs just a

1 little bit more of a push to get it shut down in that
2 frame.

3 Q. Okay. So here -- right here that's where the
4 plexiglas -- it's not glass, but it's like a plastic?

5 A. Yeah, you can see it's -- here. You can see the top
6 of it right there, that straight line, it's kind of hanging
7 down and sideways.

8 Q. And that's actually what's blocking the view from
9 being able to see clearly outside?

10 A. Yes.

11 Q. Okay. Let me show you State's 49. Is that the same
12 -- that's the view out of the same opening without the
13 plexiglas in place?

14 A. But it's just folded down a little bit more, yes.

15 Q. Well, what we're looking through right now is not
16 looking through plexiglas?

17 A. No, it's not. That's just wide open space.

18 Q. And, again, showing you what's been marked as
19 State's 52, and that's a view of this opening from the
20 other side?

21 A. Correct.

22 Q. Now the cell we're talking about in question, that's
23 got one bed?

24 A. Not, it's got two beds and a pallet -- or, no, I'm
25 sorry. Let me rephrase that. I believe it's got one bed.

1 Three occupants, but one bed and I believe the other two
2 have to sleep on pallets on the floor.

3 Q. Yeah. And you'd agree with me that cell was designed
4 to have one occupant when they built it?

5 A. I don't know how it was designed, but it was built
6 with one bed.

7 Q. All right. And during the time in questions here
8 involving Mr. Otero, there were three occupants?

9 A. Correct.

10 Q. Okay. And at the time that these photographs were
11 taken, I think he had two roommates or cellmates, including
12 a Miguel and a Joey?

13 A. Yes, Miguel Acosta.

14 Q. And that's a Hispanic speaker?

15 A. Yes.

16 Q. Okay. He was in on some kind of child sexual abuse or
17 child molestation charge?

18 A. Yes, he also had --

19 MS. WELLMAN: Objection.

20 A. -- CSC with a minor charges.

21 THE COURT: Okay. Hold on. She's objected.

22 MS. WELLMAN: Anything about Miguel Acosta, that's
23 specifically irrelevant.

24 THE COURT: I'll be glad to hear from you, Mr. Snell.

25 MR. SNELL: And, Your Honor, basically we've got this

1 -- these Spanish words and all this Spanish -- we have this
2 other cellmate who's a Spanish speaker, he's in on child
3 molestation or child sexual abuse charges, so I do think
4 it's relevant.

5 MS. WELLMAN: Again, what someone else is in jail
6 for is irrelevant to this trial.

7 THE COURT: I tend to agree.

8 I'm gonna ask the jury to please disregard that. If
9 you want to ask him whether he's Hispanic or not, that's
10 fine, but I don't see any need to go into the charges.

11 Continue on.

12 BY MR. SNELL:

13 Q. Other than -- other than the bed, right, in the cell
14 -- I know we don't have a -- I know we don't have a picture
15 of the whole cell, but there's a cell and then there's like
16 a toilet facility or toilet unit?

17 A. There's a toilet in the room, yes.

18 Q. And there's no other furniture?

19 A. No, there's not.

20 Q. And there's no, like, lockers or anything else?

21 A. No, they've got mesh property bags that they're
22 allowed to keep their personal items in.

23 Q. And obviously those aren't secured in any way?

24 A. No, they're just mesh bags with draw strings on them,
25 I believe.

1 Q. I guess so we have -- and prior to Miguel are you
2 familiar with the previous roommate in that same cell was
3 Israel, who's also a Hispanic?

4 A. I don't. I'm not familiar with Israel.

5 Q. When Mr. Otero is in that cell, and he's got two other
6 roommates, when he leaves the cell for any reason, right, I
7 know at some point they would have -- they're locked in for
8 twenty-three hours a day and they only get out one hour
9 thereabouts?

10 A. I'll take your word for it.

11 Q. But you know -- you'd agree with me that when one
12 inmate leaves for medical or for legal or any other
13 specific purpose for that inmate, that the other two
14 occupants of the cell would typically remain in place?

15 MS. WELLMAN: Objection. Speculation. We don't
16 know if the other two were still there or anything like
17 that.

18 THE COURT: There's no way of knowing.

19 I think it is speculation, but see if you can't
20 reword that another way, Mr. Snell.

21 BY MR. SNELL:

22 Q. When you remove -- when one's in the jail and when one
23 inmate is removed for a purpose specific to that inmate, is
24 there any reason to remove any other cellmates?

25 A. I'm sorry. Repeat the last part of that question.

1 Q. When one inmate is removed from a cell for a purpose
2 specific to that inmate, is there any -- any need to remove
3 the other cellmates at that time?

4 MS. WELLMAN: Objection. Your Honor, he can't --

5 A. I wouldn't know. It's --

6 THE COURT: Wait a minute. She's objected.

7 MS. WELLMAN: There's an infinite possibility of
8 options here. I think, again, it's just very speculative.

9 (Proceedings held at the bench; not reported.)

10 THE COURT: All right. I'm gonna ask you to rephrase
11 your question, Mr. Snell.

12 BY MR. SNELL:

13 Q. So, again, just to make sure I've got it, this isn't
14 a part of the jail that you are routinely involved with
15 or know much about and just responded for this specific
16 incident?

17 A. That is correct.

18 MR. SNELL: No other questions.

19 THE COURT: Any redirect?

20 MS. WELLMAN: No, Your Honor.

21 THE COURT: May I please excuse Sergeant Creech?

22 MS. WELLMAN: Yes, Your Honor.

23 THE COURT: Sergeant, thank you.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 THE COURT: Call your next witness.

2 MS. WELLMAN: The State would call Sergeant Ormica
3 Thomas.

4 (Whereupon, Ormica Thomas was duly sworn by the
5 Clerk of Court.)

6 THE CLERK: Would you, please, have a seat in the
7 witness box. State your full name and spell is your
8 last for the record.

9 THE WITNESS: Ormica Thomas. T-H-O-M-A-S.

10 THE COURT: Will you pull that mic down.
11 Thank you. So everybody can hear you.

12 ORMICA THOMAS,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. WELLMAN:

16 Q. If you could, please, tell us where you work, what
17 your rank is and what your duties and responsibility are.

18 A. I work at Lexington County Sheriff's Department. I
19 work with --

20 Q. Speak up a little bit for me.

21 A. I work at Lexington County Sheriff's Department. I
22 work in detention. I am the administrative sergeant there.
23 I work in classification.

24 Q. Okay. So, Sergeant Thomas, were you working at the
25 Lexington County Detention Center on Friday, September 23rd

1 of 2022?

2 A. Yes.

3 Q. Okay. And when you were working that day, did you
4 have an occasion to come in contact with the defendant,
5 Jason Otero?

6 A. Yes.

7 Q. Okay. In general terms, for what reason did you come
8 in contact with him?

9 A. He was being rehoused and I came in contact with him
10 to speak with him about him receiving canteen and being
11 rehoused to another location.

12 Q. Okay. Does that mean like switching cells?

13 A. Yes, ma'am.

14 Q. Okay. Did you initiate any part of like -- or did you
15 have any knowledge of this case?

16 A. I did not.

17 Q. Okay. Did you ask him any questions about this case?

18 A. I did not.

19 Q. But during the course of your conversation with the
20 defendant, did he make any statements to you?

21 A. He did.

22 Q. What were those statements?

23 A. He said that he felt terrible for what he did, that
24 the person that he did it to was a good person and did not
25 deserve it. He said that he had a long -- he's had a long

1 time to think about it and that he was wrong.

2 MS. WELLMAN: Nothing further.

3 THE COURT: Thank you.

4 Mr. Kirkland.

5 MR. KIRKLAND: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. KIRKLAND:

8 Q. Sergeant Thomas, let me ask you something before we
9 get started on what you just testified to. Are you
10 familiar with -- how long have you worked at the jail?

11 A. Nine years.

12 Q. Nine years. So as far as the -- the layout of the
13 jail, are you familiar with that there is the sheriff's
14 department building and part of the sheriff's department
15 building contains the first, second and third floor, which
16 is considered part of what people call the old jail? Are
17 you familiar with that?

18 A. Yes, I am.

19 Q. Okay. And then across a little ways is called the
20 annex. I assume they still call that the annex over there
21 over by the baseball fields on the other side?

22 A. A separate building?

23 Q. Yeah, it's a separate building.

24 A. It's the annex.

25 Q. And you wouldn't remember this, but attorneys used to