

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Horry County

Honorable Deadra L. Jefferson, Circuit Court Judge

JOHN KEHBORN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-002166

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2020-GS-26-02911

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	
	)	February 14-16, 2022
JOHN KEHBORN, JR.,	)	
	)	
Defendant.	)	

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

9

1 **FEBRUARY 14, 2022 - DAY 1**

2 **ON THE RECORD - 9:32 A.M.**

3 BY THE COURT:

4 THE COURT: So, looking at the roster, it appears that
5 either through pleas, or dismissals, or continuances, or
6 whatever, there are two cases left on the roster. So, the
7 first one is John Kehborn or Kehborn, K-E-H-B-O-R-N, Jr.

8 MR. MARTIN: Yes, Your Honor.

9 MS. WILSON: Yes, sir, Your Honor.

10 THE COURT: The state ready to proceed?

11 MR. MARTIN: Yes, Your Honor.

12 THE COURT: And Defense?

13 MS. WILSON: Your Honor, I will be ready to proceed. I
14 am in the process of trying to locate my client.

15 THE COURT: So, I'm assuming that he's out on bond?

16 MS. WILSON: He is.

17 THE COURT: Okay. All right. My plan is -- even though
18 we have some court, we'll -- I'll qualify the jury downstairs,
19 we'll go ahead and see what needs Judge Seals has for civil
20 court, and how many jurors we got, and I assume we'll have
21 enough, and we'll bring up a panel upstairs. You know, on a
22 number of these cases like CSC and DUI and some others, I've
23 got those four questions that we normally ask.

24 MS. WILSON: Yes, sir.

25 THE COURT: So, we'll -- whoever the panel is that's

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

10

1 gonna come upstairs, we'll get that group to answer those four
2 questions, and see if there is any issues and talk to them one
3 by one, as we normally do.

4 I see that from the information y'all have sent to my
5 clerk, we have a *Jackson v. Denno* hearing necessary, correct?

6 MS. WILSON: Yes, sir.

7 THE COURT: And there is a motion regarding the Rape
8 Shield Statute by the state. It says a *Lyle* matter. What ---

9 MS. WILSON: So, Your Honor, there is -- well, I guess,
10 it will be the entire analysis, relevance, 404(b), and then
11 hit *Lyle* depending on how the Court perceives this issue, but
12 we're really talking about the potential for the alleged
13 victim in this case to say that he had assaulted her multiple
14 times over a period of time in different locations, including
15 back to when she was in Montana. I think Montana, correct?

16 MR. PINKERTON: Minnesota.

17 MS. WILSON: Minesota, I'm sorry. I knew it was an M.
18 And because of that, I think it's something that I'd like to
19 have the Court address on the front end if possible. I
20 considered asking the Court for a motion in limine about
21 specifically her testimony, because certainly, it was
22 approximately two years ago when she gave her statement and
23 when she talked to Officer Loar in particular, but I don't
24 really know how or if anything has changed or been added to in
25 the intervening two years. So, there's that issue.

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

11

1 In addition to that, I was also gonna ask the Court about
2 potentially holding an in camera hearing specifically on the
3 issue, and this is in addition to what I wrote.

4 THE COURT: Okay.

5 MS. WILSON: And, I'm sorry, I've been thinking about it
6 all weekend, of course.

7 THE COURT: Sure. Not a problem.

8 MR. WILSON: An in camera hearing for the testimony of
9 the counselor in this case that they may intend to call and
10 for who they sent a CV, particularly because I'm concerned
11 about the possibility of bolstering of the child's testimony.
12 If -- depending on what he's going to say, I need to be able
13 to address the potential for bolstering.

14 THE COURT: Okay.

15 MS. WILSON: Okay. And if he is not going to bolster,
16 obviously, then there is no issue.

17 THE COURT: Is that -- I'm just asking the state, is that
18 ---

19 MS. WILSON: Olszewski.

20 MR. MARTIN: Your Honor, I might be able to shed some
21 light on that. That's Ray Olszewski. Judge, he's not the
22 victim's counselor. He would be a blind expert.

23 THE COURT: Okay.

24 MR. MARTIN: The state -- if the state chooses to call
25 him would be calling him to talk about, as giving an expert

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

12

1 opinion on child victims who have been victims of sexual
2 assault and that nature. So, there would not be any -- he
3 wouldn't know anything about this particular case or any
4 specifics about this particular case.

5 THE COURT: And he's never interviewed the victim in this
6 matter?

7 MR. MARTIN: That's correct. That's correct, Judge.

8 THE COURT: Okay. All right.

9 MR. MARTIN: And if you need me to, I can address the
10 Lyle issue, too.

11 THE COURT: Okay.

12 MR. MARTIN: The state doesn't plan on asking the victim
13 anything about something that may've happened in Minnesota.
14 In fact, I'm not sure if it's ever been mentioned by the
15 victim of a sexual assault in Minnesota. I think the biggest
16 issue is the body camera by Office Loar.

17 THE COURT: Okay.

18 MR. MARTIN: The victim in that body camera makes a
19 statement that the defendant had done this before.

20 THE COURT: Okay.

21 MR. MARTIN: So, I think that is where we may have to
22 address our arguments. So, that, you know ---

23 THE COURT: So, that's -- so, y'all had some proposed
24 redactions and modifications regarding ---

25 MS. WILSON: Yes.

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

13

1 THE COURT: --- the body camera and the defense did, too.
2 So, we'll need to cover that.

3 So, we may spend this afternoon going over the various
4 motions and taking care of all that. If we started the actual
5 testimony on Tuesday morning, approximately when do you think
6 the state would finish?

7 MR. MARTIN: Judge, I believe the state would rest either
8 Wednesday afternoon or Thursday morning. I really believe
9 we'd be able to finish late Wednesday afternoon.

10 THE COURT: Okay.

11 MR. MARTIN: Question, if I may ask?

12 THE COURT: Yes, please.

13 MR. MARTIN: So, the *Jackson v. Denno* hearing is gonna
14 involve Officer Cotton's body camera.

15 THE COURT: Right.

16 MR. MARTIN: Because he's the one that the defendant made
17 the statements to.

18 THE COURT: Okay.

19 MR. MARTIN: Officer Loar's body camera is the one that
20 Ms. Wilson is referencing with the victim's statement. Would
21 you need Officer Loar here or can we just play the video?

22 THE COURT: It'd probably be best to have them both here
23 this afternoon.

24 MR. MARTIN: We'll get her here.

25 THE COURT: Just so that we ---

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

14

1 MR. MARTIN: Yes, sir.

2 THE COURT: If there are issues, we can take care of
3 them. And in looking at the indictment, it seems to be fairly
4 specific. It says that John Peter Kehborn, Jr. did in Horry
5 County, State of South Carolina, on or about May 26th, 2020,
6 willfully and unlawfully commit the crime of criminal sexual
7 conduct with a minor, second degree, by engaging in a sexual
8 manner with a minor who was at least 14 years or less, but was
9 at least 11 -- who was at least 14 -- okay -- a minor who was
10 at least 14 or less. Okay. I'm sorry. And -- but who was at
11 least 11 years of age, to wit, birthday is [REDACTED]. So,
12 you know, the indictment is fairly specific and particular as
13 to a time period, so, you know, that's what we would be
14 sticking to, that -- what's in the indictment. Okay?

15 All right. So, in general, that's what my intention is
16 regarding the, you know, approaching it. We'll -- you know,
17 we'll pick the jury, obviously not swear them. We'll, you
18 know, send them home until tomorrow morning, and then go on to
19 the motions. We'll see how long the qualification lasts and
20 what we can do this morning before we break for lunch.

21 MS. WILSON: And, Your Honor, I'm sorry.

22 THE COURT: That's all right.

23 MS. WILSON: Mr. Pinkerton is present as well. We will
24 have the issue of his being relieved for the Court to hear.

25 THE COURT: Okay.

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

15

1 MS. WILSON: I didn't know if the Court wanted to do that
2 now or ---

3 THE COURT: Is there a -- first, is there an objection
4 from the state?

5 MR. MARTIN: No, Your Honor.

6 THE COURT: Okay. And just trying to remember, Ms.
7 Wilson, this basically was your case ---

8 MS. WILSON: No, sir.

9 THE COURT: Not?

10 MS. WILSON: It was not. This was Mr. Pinkerton's case,
11 and -- Mr. Pinkerton was originally assigned, and Mr. Galmore
12 was assigned to assist him on the trial. When Mr. Galmore
13 became unavailable to do so, due to his issues -- his medical
14 issues, Mr. Pinkerton -- and it was rather late in the
15 process. I was asked to sit him. This was right immediately
16 before trial. At that point ---

17 MR. PINKERTON: Back in September, Your Honor.

18 THE COURT: Okay.

19 MS. WILSON: Right. At that point, Mr. Pinkerton
20 actually was sick, I think, at the time of trial in front of
21 Judge Nettles.

22 THE COURT: Okay.

23 MS. WILSON: The case was continued. And shortly
24 thereafter, I was asked for various reasons to assume ---

25 THE COURT: Just take responsibility.

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

16

1 MS. WILSON: Yes, for the case.

2 THE COURT: Okay.

3 MS. WILSON: Which is what I did.

4 THE COURT: And I understand that Mr. Kehborn is not here
5 now. Was he -- were you able to talk to him about that at any
6 point in time?

7 MS. WILSON: About ---

8 THE COURT: Taking over the case.

9 MS. WILSON: Yes. He is well aware that I am now his
10 sole attorney of record. In addition to that, I don't know if
11 I should ---

12 MR. PINKERTON: And, Your Honor, I will say, Mr. Kehborn
13 does have a pending grievance against me. I have answered but
14 we're waiting on a response.

15 THE COURT: Okay.

16 MR. PINKERTON: I believe staying on this case would be
17 an immediate PCR issue.

18 THE COURT: All right. So, well, even without that, I
19 don't see any reason to have both of y'all. As long as Mr.
20 Kehborn is -- is it Kehborn or Kehborn?

21 MS. WILSON: I say Kehborn.

22 MR. MARTIN: The victim's family said it's pronounced
23 Kehborn.

24 THE COURT: Kehborn, all right.

25 MR. MARTIN: But, I mean, we've been using it kind of

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

17

1 interchangeably, so ---

2 THE COURT: Okay. All right. Well, assuming he shows
3 up, we'll ask him. But with that, I'm going to relieve Mr.
4 Pinkerton of his duties ---

5 MS. WILSON: Thank you, Your Honor.

6 THE COURT: --- and responsibilities in this matter.

7 MR. PINKERTON: Thank you, sir,

8 THE COURT: All right. Thank you.

9 MS. WILSON: And, Your Honor, my final thing is I -- the
10 only other potential issue I can see is if my client does not
11 show, I may have to make another motion just so that ---

12 THE COURT: Understand. I, you know, I realize that and
13 understand that, but ---

14 MS. WILSON: Yes, sir. Thank you.

15 THE COURT: You know, as ---

16 MS. WILSON: We are trying to find him.

17 THE COURT: As presently dealing with it right now, this
18 is the plan, and then we'll go from there.

19 MS. WILSON: Yes, sir. Thank you, Your Honor.

20 THE COURT: Okay. All right.

21 **RECESS - 9:43 A.M.**

22 *******OFF THE RECORD*******

23 **ON THE RECORD - 11:58 A.M.**

24 MS. WILSON: My client has not arrived, Your Honor. We
25 have sent one of our office investigators to his residence to

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

18

1 locate him and he was not there.

2 THE COURT: Okay. All right. So, do y'all have the
3 information about the -- or is there a request by the state
4 regarding this particular matter?

5 MR. MARTIN: Yes, Your Honor. We are obviously moving
6 and asking the Court to determine that we can proceed and try
7 the case in his absence. Ms. Andrew is in the process of
8 making copies for Your Honor. We're making copies of his bond
9 paperwork. Judge, we're making copies of his arraignment
10 paperwork. Also, I do have a copy of his subpoena, and my
11 administrative assistant, Ms. Salemno (spelled phonetically),
12 is on her way up here if Your Honor wishes to hear from her.
13 Additionally, I can speak to the Court about what Judge
14 Culbertson advised the defendant on June 15th when he was
15 arraigned.

16 THE COURT: All right. So, let's just take a very short
17 break. Y'all get all that paperwork organized, get the
18 exhibits marked by the court reporter, and then -- so, we'll
19 just take a couple of minutes and y'all get organized, and
20 I'll come back in and we'll ---

21 MR. MARTIN: One thing I failed to put on the record,
22 Your Honor, we have notified his bondsman. We told them they
23 would likely need to be here, so we told them to come, but I
24 haven't seen the bondsman yet, Your Honor.

25 THE COURT: All right. Thank you.

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

19

1 MR. MARTIN: Thank you.

2 **RECESS - 11:59 A.M.**

3 *******OFF THE RECORD*******

4 **ON THE RECORD - 12:08 P.M.**

5 THE COURT: I'm assuming the state is requesting a bench
6 warrant for the -- Mr. Kehborn, first.

7 MR. MARTIN: Yes, Your Honor.

8 THE COURT: All right. So, any objection to the bench
9 warrant being issued by the Court?

10 MS. WILSON: No objection, I guess, Your Honor. No
11 objection.

12 THE COURT: All right. So, I'm going to issue a bench
13 warrant for his arrest. I want you to get that paperwork
14 started and get that going so that -- give law enforcement
15 time to see if they might locate him and be here tomorrow when
16 we actually start the trial. Okay?

17 Regarding the request for a trial in absence, what I'll
18 do is -- we're doing all the motions this afternoon. We'll
19 deal with that first. And then we'll go into the motions, but
20 what I want to do now is go ahead and get started with picking
21 the jury. And as I told y'all, we're not going to -- not
22 going to swear the jury until tomorrow.

23 So, if you would -- would y'all send word to send the
24 jury panel upstairs?

25 THE CLERK: Yes, sir.

STATE V. KEHBORN - 2020-GS-26-02911
VOIR DIRE

20

1 **OFF THE RECORD - 12:08 P.M.**

2 *******OFF THE RECORD*******

3 **ON THE RECORD - 12:17 P.M.**

4 (REPORTER'S NOTE: Jury enters courtroom @ 12:17 p.m.)

5 VOIR DIRE:

6 THE COURT: All right. Ladies and gentlemen, we're going
7 to pick the jury in the case of the State of South Carolina
8 versus John Peter Kehborn. And that's spelled K-E-H-B-O-R-N,
9 Jr.

10 The first thing that I'm gonna do is go over the
11 questionnaires. We'll do that individual regarding
12 individuals that indicated some information. And what I'll do
13 is I'll call you up one-by-one, and we'll go over that and see
14 if the juror remains or not.

15 All right. So -- well, I probably ought to tell you the
16 indictment first. Let me do that.

17 Now, in the indictment, the indictment is the charging
18 document which brings the matter to court. It is not evidence
19 and cannot be considered by anyone as evidence in the case.
20 The reason I'm reading the indictment, the charging document,
21 to you is to -- so that you understand the allegations, the
22 charge against the defendant before I ask you any questions.
23 So, the State of South Carolina has charged that the
24 defendant, John Peter Kehborn, Jr., did in Horry County, State
25 of South Carolina, on or about May 26th, 2020, willfully and

STATE V. KEHBORN - 2020-GS-26-02911
VOIR DIRE

21

1 unlawfully commit the crime of criminal sexual conduct with
2 minor in the second degree, by engaging in a sexual battery
3 with that minor who was at least 14 years of age or less, but
4 who was at least 11 years of age, so 11 to 14, to wit: The
5 date of birth being [REDACTED] this being in
6 violation of the Code of Laws of the State of South Carolina,
7 1976, as amended.

8 So, Juror Number 12, could you come forward, please.

9 Juror Number 12. Do I need to call out the name? No? Okay.
10 Hopefully y'all know your numbers.

11 (REPORTER'S NOTE: Bench conference with Juror 12 is held on
12 the record in the presence but outside the hearing of the jury
13 venire.)

14 THE COURT: Just come right here. And you are Susan
15 Aubry?

16 JUROR 12: Yes, sir.

17 THE COURT: All right. Very good. Now, Ms. Aubry, you
18 answered yes to Question 4. All right. So, let's start off
19 with the basic job of a juror. If you are a juror on this
20 case, you're asked to listen to the facts and evidence of this
21 case and make your decision based upon those facts and the law
22 that the Court will give to you at the end. You can't let any
23 personal feelings, emotions, however you might feel about the
24 situation, you have to pay attention to the law and apply the
25 law to the facts. Okay?

STATE V. KEHBORN - 2020-GS-26-02911
VOIR DIRE

22

1 So, you indicated you had some -- you answered yes to
2 strong beliefs. You understand your personal opinion can't
3 outweigh whatever the law is that the Court will tell you.
4 Now, it'll be the jury's job to listen to all the facts and
5 you apply those facts to the law. So, you understand that?

6 JUROR 12: I understand it.

7 THE COURT: Okay. So, let me ask you the qualification
8 question, and again to that it has to be an absolute, yes, I
9 can. If you've got any doubt in your mind, you need to tell
10 me, no, I can't. Okay? All right. So, can you give to the
11 State of South Carolina and to the defendant a fair and
12 impartial trial? Can you be a fair and impartial juror in
13 this case?

14 JUROR 12: I don't think so. I have two young daughters,
15 and I don't ---

16 THE COURT: Okay. And I appreciate that, and that's the
17 purpose of this, and I appreciate your being straightforward
18 and honest with me.

19 JUROR 12: Uh-huh, (affirmative response).

20 THE COURT: So, what I'm gonna do is set you aside for
21 this particular case only.

22 JUROR 12: Uh-huh, (affirmative response).

23 THE COURT: You can go back and have a seat. You don't
24 have to answer any other questions that I'll be asking. Okay?

25 JUROR 12: Okay.

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1 THE COURT: All right?

2 JUROR 12: Thank you.

3 (REPORTER'S NOTE: End of bench conference with Juror 12.)

4 THE COURT: All right. Juror Number 24.

5 (REPORTER'S NOTE: Bench conference with Juror 24 is held on
6 the record in the presence but outside the hearing of the
7 jury.)

8 JUROR 24: Hi.

9 THE COURT: How are you doing, ma'am? You are Ms. Linda
10 Beasley?

11 JUROR 24: Linda Beasley; uh-huh, (affirmative response).

12 THE COURT: All right, ma'am. All right. So, you
13 answered yes to Questions 3 and 4.

14 JUROR 24: Yes.

15 THE COURT: Okay. The job of a juror is to listen to the
16 facts and evidence in this case, apply the law that the Court
17 will tell you at the very end. You can't let personal
18 feelings, beliefs, something happened to somebody you know,
19 you can't let any of that affect your decision. It has to be
20 based upon the facts of this case and then the law that the
21 Court gives you. You understand that?

22 JUROR 24: I do.

23 THE COURT: All right. So, let me ask you the
24 qualification question. And again, to that, you have to tell
25 me, yes, I can; or if you have any doubt in your mind, you

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1 tell me, no, I can't.

2 JUROR 24: Okay.

3 THE COURT: Can you give to the State of South Carolina
4 and to the defendant a fair and impartial trial? Can you be a
5 fair and impartial juror in this case?

6 JUROR 24: Probably not.

7 THE COURT: Okay. All right. And I appreciate that ---

8 JUROR 24: Because the ---

9 THE COURT: And that's the purpose of these questions.

10 JUROR 24: Yeah.

11 THE COURT: And I appreciate that. What I'm gonna have
12 you to do is go back and have a seat.

13 JUROR 24: Okay.

14 THE COURT: You do not have to answer any other questions
15 that I ask, but go back and have a seat, please.

16 JUROR 24: Okay. Thank you.

17 (REPORTER'S NOTE: End of bench conference with Juror 24.)

18 THE COURT: Juror Number 26.

19 (REPORTER'S NOTE: Bench conference with Juror 26 is held on
20 the record in the presence but outside the hearing of the jury
21 venire.)

22 THE COURT: All right, ma'am. You are Ms. Patrice
23 Becker?

24 JUROR 26: Right.

25 THE COURT: All right, ma'am. So, you answered yes to

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1 Question Number 3.

2 JUROR 26: Yes, sir.

3 THE COURT: All right. And you indicated it was ---

4 JUROR 26: Right.

5 THE COURT: Now, this -- the situation if you are a juror
6 on this case, you have to determine the case based upon the
7 facts and evidence of this case and the law that the Court
8 will tell you at the end. The jury puts the two together and
9 reaches their unanimous decision. You can't let personal
10 beliefs, feelings, something happened to somebody you know,
11 you can't let that affect you in this matter; you understand
12 that?

13 JUROR 26: I understand that.

14 THE COURT: All right. So, understanding this, can you
15 give to the State of South Carolina and to the defendant a
16 fair and impartial trial? Can you be a fair and impartial
17 juror in this case?

18 JUROR 26: I believe I can.

19 THE COURT: Thank you, ma'am. I appreciate it very much.
20 (REPORTER'S NOTE: End of bench conference with Juror 26.)

21 THE COURT: All right. Juror Number 33.

22 (REPORTER'S NOTE: Bench conference with Juror 33 is held on
23 the record in the presence but outside the hearing of the jury
24 venire.)

25 JUROR 33: Your Honor.

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1 THE COURT: Yes, ma'am. You are Ms. Brenda Bergholt?

2 JUROR 33: Bergholt, yes.

3 THE COURT: All right. Very good. All right. So,
4 ma'am, you answered yes to Question Number 4. So, let's talk
5 first about the job of a juror. If you are a juror on this
6 case, you have to decide the case only on the facts and
7 evidence of this case and then the law that the Court will
8 tell you at the very end. All right? You can't let personal
9 feelings, beliefs, somebody happened to somebody you know; you
10 can't let any of that affect your decision. So, you
11 understand that?

12 JUROR 33: I understand.

13 THE COURT: Now, what I'm gonna do now is ask you the
14 jury qualification question. If -- your answer has to be
15 either yes, I can; or if you've got any question in your mind,
16 it has to be, no, I can't. Okay? Can you give to the State
17 of South Carolina and to the defendant a fair and impartial
18 trial? Can you be a fair and impartial juror in this case?

19 JUROR 33: Not concerning a child.

20 THE COURT: All right. Thank you, ma'am, and I
21 appreciate it very much. What I'm gonna have you do is go
22 back and have a seat. You do not have to answer any other
23 questions that I ask. Okay?

24 JUROR 33: Thank you, sir.

25 THE COURT: Thank you.

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1 (REPORTER'S NOTE: End of bench conference with Juror 33.)

2 THE COURT: All right. Juror Number 54, please.

3 (REPORTER'S NOTE: Bench conference with Juror Number 54 is
4 held on the record in the presence but outside the hearing of
5 the jury venire.)

6 JUROR 54: Hi.

7 THE COURT: All right, ma'am. You are Ms. Katherine
8 Brown?

9 JUROR 54: Correct.

10 THE COURT: All right. Ms. Brown, you answered yes to
11 Question Number 3. All right?

12 JUROR 54: Yes.

13 THE COURT: So, let's talk about the job of a juror. If
14 you are a juror on a case, you have to decide the case only on
15 the facts and evidence presented in the courtroom, and the
16 Court will give you the law at the end, so the jury as a whole
17 puts those two together; you understand that?

18 JUROR 54: Correct.

19 THE COURT: All right. So, I'm gonna ask you the juror
20 qualification question. Your answer has to be yes, I can; or
21 if you have any doubt in your mind, you have to tell me, no, I
22 can't. Okay? Can you give to the State of South Carolina and
23 to the defendant a fair and impartial trial? Can you be a
24 fair and impartial juror in this case?

25 JUROR 54: Yes.

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1 THE COURT: Thank you very much, ma'am.

2 (REPORTER'S NOTE: End of bench conference with Juror Number
3 54.)

4 THE COURT: Juror Number 78, please.

5 (REPORTER'S NOTE: Bench conference with Juror 78 is held on
6 the record in the presence but outside the hearing of the jury
7 venire.)

8 THE COURT: You are Mr. Patrick Conway?

9 JUROR 78: Yes, sir.

10 THE COURT: All right, sir. So, you answered yes to all
11 four questions, right?

12 JUROR 78: Yes.

13 THE COURT: Now, your job as a juror, if you're a juror
14 on this case, is you have to listen to the facts and evidence
15 presented in this case and then apply the law that the Court
16 will give to you at the end of the case. So, the jury, as a
17 whole, puts those two together to make their decision. All
18 right?

19 JUROR 78: I understand that.

20 THE COURT: All right. So, well, let me ask the
21 qualification question, because I have to.

22 JUROR 78: All right.

23 THE COURT: Can you give to the State of South Carolina
24 and to the defendant a fair and impartial trial? Can you be a
25 fair and impartial juror in this case?

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1 JUROR 78: Yeah. So, does it have to do with sexual
2 abuse?

3 THE COURT: Well, that's what this case is about. Okay.

4 JUROR 78: I'm very -- that caused me to be homeless.

5 THE COURT: Okay. So, then you would not want to sit on
6 this case?

7 JUROR 78: No.

8 THE COURT: All right, sir. Thank you very much.
9 Appreciate it.

10 (REPORTER'S NOTE: End of bench conference with Juror 78.)

11 (REPORTER'S NOTE: Bench conference is held on the record in
12 the presence but outside the hearing of the jury venire.)

13 THE COURT: Counsel, just so that y'all understand, he
14 answers were that he had been abused by a family member. So,
15 I'm just not gonna let him sit on this one.

16 MS. WILSON: Okay. Thank you, sir.

17 (REPORTER'S NOTE: End of bench conference.)

18 THE COURT: Juror Number 81, please, 81.

19 (REPORTER'S NOTE: Bench conference with Juror Number 81 is
20 held on the record in the presence but outside the hearing of
21 the jury venire.)

22 THE COURT: Yes, ma'am. You are Crystal Corley?

23 JUROR 81: Uh-huh, (affirmative response).

24 THE COURT: All right, ma'am. You answered yes to
25 Question Number 4. All right? Let's go over the job of a

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1 juror. If you are a juror on this case, you have to decide
2 this case only on the facts and evidence presented in the
3 courtroom, and then apply the law that the Court will tell the
4 jurors at the end of the case. Okay?

5 JUROR 81: Uh-huh, (affirmative response).

6 THE COURT: The jury puts those two together, the facts
7 they've heard and then then the law that the Court tells them.
8 Okay?

9 JUROR 81: Uh-huh, (affirmative response).

10 THE COURT: You can't let any personal feelings, beliefs,
11 opinions, something happened to somebody you know, you can't
12 let any of that affect your decision. Okay?

13 JUROR 81: Uh-huh, (affirmative response).

14 THE COURT: Okay. So, I'm gonna ask you the jury
15 qualification question. It would either be, yes, I can; or if
16 you have any doubt in your mind, you would need to tell me,
17 no, I can't.

18 JUROR 81: Uh-huh, (affirmative response).

19 THE COURT: Can you give to the State of South Carolina
20 and to the defendant a fair and impartial trial? Can you be a
21 fair and impartial juror in this case?

22 JUROR 81: I don't think I can.

23 THE COURT: All right. Okay. All right, ma'am. I
24 appreciate that, and so I'm gonna set you aside from this
25 case. Now, you don't have to answer any other questions, just

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1 go back and have a seat.

2 JUROR 81: Okay. Thank you, Your Honor.

3 (REPORTER'S NOTE: End of bench conference with Juror 81.)

4 THE COURT: All right. Juror Number 84.

5 (REPORTER'S NOTE: Bench conference with Juror 84 is held on
6 the record in the presence but outside the hearing of the jury
7 venire.)

8 THE COURT: All right. You are Ms. Diane Cristina?

9 JUROR 84: Uh-huh, (affirmative response).

10 THE COURT: All right, ma'am. You answered yes to
11 Question Number 4.

12 JUROR 84: Uh-huh, (affirmative response).

13 THE COURT: All right. So, if you are a juror on this
14 case, you have to decide the case only on the facts and
15 evidence presented in the courtroom, and apply the law that
16 the Court will tell you at the very end.

17 JUROR 84: Uh-huh, (affirmative response).

18 THE COURT: Opinions, beliefs, something happened to
19 somebody you know, none of that can affect your decision in
20 any way. You have to set all that completely aside and just
21 decide it on the facts of this case and the law that the Court
22 will tell you.

23 JUROR 84: Uh-huh, (affirmative response).

24 THE COURT: All right. So, understanding that, I'm gonna
25 ask you the qualification question. And to that, the answer

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1 either needs to be, yes, I can; or if you have any doubt in
2 your mind, you need to tell me, no, I can't.

3 JUROR 84: Okay.

4 THE COURT: Okay? Can you give to the State of South
5 Carolina and to the defendant a fair and impartial trial? Can
6 you be a fair and impartial juror in this case?

7 JUROR 84: No.

8 THE COURT: All right. Based upon the information you
9 provided, what I'm gonna do is set you aside from this case.
10 You don't have to answer any other questions, just go back and
11 have a seat, please.

12 JUROR 84: Okay.

13 THE COURT: Thank you, ma'am.

14 (REPORTER'S NOTE: End of bench conference with Juror 84.)

15 THE COURT: Juror Number 134.

16 (REPORTER'S NOTE: Bench conference with Juror 134 is held on
17 the record in the presence but outside the hearing of the jury
18 venire.)

19 THE COURT: How are you doing, ma'am? You are Ms.
20 Marilyn Galloway?

21 JUROR 134: Yes.

22 THE COURT: All right, ma'am. So, you answered yes to 3
23 and 4. All right. Now, let me just tell you very briefly
24 what the job of a juror is. If you were a juror on this case,
25 you have to decide the case only on the facts and evidence of

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1 this case and the law that the Court will tell you at the end.
2 You can't let opinions, beliefs, something happened to
3 somebody you know or whatever that situation is, you can't let
4 that affect the decision you make. Now, what I'm gonna do is
5 ask you the jury qualification question.

6 JUROR 134: Okay.

7 THE COURT: Your answer either has to be, yes, I can; or
8 if you have any doubt in your mind, you need to tell me, no, I
9 can't. Okay? Can you give to the State of South Carolina and
10 to the defendant a fair and impartial trial? Can you be a
11 fair and impartial juror in this case?

12 JUROR 134: I don't really think so.

13 THE COURT: And I appreciate that, ma'am, and that's the
14 purpose of this. So, I'm gonna set you aside from the case,
15 and you don't have to answer any other questions. You just go
16 back and have a seat. Okay?

17 JUROR 134: Okay. Thank you.

18 THE COURT: Thank you, ma'am.

19 (REPORTER'S NOTE: End of bench conference with Juror 134.)

20 THE COURT: Juror Number 178.

21 (REPORTER'S NOTE: Bench conference with Juror 178 is held on
22 the record in the presence but outside the hearing of the jury
23 venire.)

24 THE COURT: All right, sir. You are Gary Hoover?

25 JUROR 178: Yes, sir.

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1 THE COURT: All right, sir. So, you answered yes to
2 Question Number 4.

3 JUROR 178: Yes, sir.

4 THE COURT: All right, sir. Now, let me -- let's just go
5 over very briefly what the job of a juror is. If you're a
6 juror on the case, you have to decide the case only on the
7 facts and evidence you hear in this courtroom.

8 JUROR 178: Yes, sir.

9 THE COURT: And then apply the law that the Court will
10 tell you at the end. You can't let opinions, beliefs,
11 something happened to somebody you know, you can't let any of
12 that affect your decision in any way. It has to be what
13 happened in this case. You understand that?

14 JUROR 178: I understand.

15 THE COURT: All right. So, what I'm gonna do is let me
16 ask you the qualification question.

17 JUROR 178: Okay.

18 THE COURT: And your answer to me either be -- is either
19 yes, I can; or if you have any doubt in your mind, you need to
20 tell me, no, I can't.

21 JUROR 178: Yes, sir.

22 THE COURT: Can you give to the State of South Carolina
23 and to the defendant a fair and impartial trial? Can you be a
24 fair and impartial juror in this case?

25 JUROR 178: Not to the case you described.

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1 THE COURT: All right, sir. Very good. And I appreciate
2 that and that's the purpose of this. What I'm gonna have you
3 do is go back and have a seat, and you don't have to answer
4 any other questions.

5 JUROR 178: Thank you, sir.

6 THE COURT: Thank you, sir.

7 (REPORTER'S NOTE: End of bench conference with Juror 178.)

8 THE COURT: Juror Number 180.

9 (REPORTER'S NOTE: Bench conference with Juror 180 is held on
10 the record in the presence but outside the hearing of the jury
11 venire.)

12 THE COURT: All right. Ma'am, you are Ms. Jenna -- and
13 is it Hottel?

14 JUROR 180: Yes, sir.

15 THE COURT: All right. So, you answered yes to
16 Questions 3 and 4. All right. So, with that, let's go over
17 very briefly what the job of a juror is. If you're a juror on
18 the case, you have to decide the case only on the facts and
19 evidence of this particular case. The Court will give you the
20 law at the end and the jury puts the two together. Now, you
21 can't let opinions, beliefs, anything happened to somebody you
22 know, anything like that, and that can't affect your decision
23 in any way. All right?

24 JUROR 180: Okay.

25 THE COURT: So, what I'm gonna do is I'm gonna ask you

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1 the jury qualification question. At the end of it, you need
2 to either tell me, yes, I can; or if you have any doubt in
3 your mind, you need to tell me, no, I can't.

4 JUROR 180: Okay.

5 THE COURT: All right. So, can you give to the State of
6 South Carolina and to the defendant a fair and impartial
7 trial? Can you be a fair and impartial juror in this case?

8 JUROR 180: No.

9 THE COURT: All right. I appreciate that and that's the
10 purpose of this. I'm going to set you aside. You can go back
11 and have a seat. Thank you.

12 JUROR 180: Thank you, sir.

13 (REPORTER'S NOTE: End of bench conference with Juror 180.)

14 THE COURT: Juror Number 223.

15 (REPORTER'S NOTE: Bench conference with Juror 223 is held on
16 the record in the presence but outside the hearing of the jury
17 venire.)

18 THE COURT: All right, ma'am. You are Ms. Denise Lewis-
19 Prothro?

20 JUROR 223: Yes, sir.

21 THE COURT: All right, ma'am. So, you answered yes to
22 Questions 1 and 2.

23 JUROR 223: Yes, sir.

24 THE COURT: Now, let's just go over very briefly the job
25 of a juror. If you are a juror on this case, you have to

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1 decide the case only on the facts and evidence you hear in the
2 courtroom on this case, and then you apply the law at the end
3 that the Court tells you. So, that's what the jury does, puts
4 the two together. You can't let opinions, beliefs, something
5 happened to somebody you know, whatever that situation is.
6 You can't let that affect the decision; you understand that?

7 JUROR 223: Yes, sir.

8 THE COURT: What I'm gonna do is ask you the jury
9 qualification question. At the end of it, your answer needs
10 to be either, yes, I can; or if you have any doubt in your
11 mind, you need to tell me, no, I can't. Okay?

12 JUROR 223: Okay.

13 THE COURT: Can you give to the State of South Carolina
14 and to the defendant a fair and impartial trial? Can you be a
15 fair and impartial juror in this case?

16 JUROR 223: Yes, sir.

17 THE COURT: Thank you very much.

18 JUROR 223: Thank you.

19 THE COURT: Thank you very much.

20 (REPORTER'S NOTE: End of bench conference with Juror 223)

21 THE COURT: Number 284.

22 (REPORTER'S NOTE: Bench conference with Juror 284 is held on
23 the record in the presence but outside the hearing of the jury
24 venire.)

25 THE COURT: You are Mr. Todd Pascoe?

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1 JUROR 284: Yes, sir.

2 THE COURT: All right, sir. Now, you answered yes to the
3 last question.

4 JUROR 284: Yes, sir.

5 THE COURT: All right. So, what I'm gonna do is go over
6 very briefly what the job of a juror is. If you're a juror on
7 the case, you decide the case only on the facts and evidence
8 of this particular case. The Court will tell you the law at
9 the end, and that's what the jury panel does is put the two
10 together, the facts of the case and the law that the Court
11 tell them. Okay?

12 JUROR 284: Uh-huh, (affirmative response).

13 THE COURT: What I'm gonna do is ask you the jury
14 qualification question. Now, you can't let your opinions,
15 beliefs, something happened to somebody you know, you can't
16 let any of that affect your decision in any way. All right?
17 So, the jury qualification has two answers. Yes, I can; or if
18 you have any doubt in your mind, you say, no, I can't. All
19 right? So, can you give to the State of South Carolina and to
20 the defendant a fair and impartial trial? Can you be a fair
21 and impartial juror in this case?

22 JUROR 284: No, I can't.

23 THE COURT: All right, sir. Very good. What I'm gonna
24 do is set you aside from this case. You can go back and have
25 a seat.

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1 JUROR 284: Thank you.

2 THE COURT: Thank you, sir.

3 (REPORTER'S NOTE: End of bench conference with Juror 284.)

4 THE COURT: Juror Number 312.

5 (REPORTER'S NOTE: Bench conference with Juror 312 is held on
6 the record in the presence but outside the hearing of the jury
7 venire.)

8 THE COURT: All right, sir. You are Mr. Timothy Ryan?

9 JUROR 312: Yes, sir.

10 THE COURT: All right, sir. Mr. Ryan, you answered yes
11 to Question Number 4. Let's go over very briefly what the job
12 of a juror is. If you're a juror on this case, you have to
13 decide the case only on the facts and evidence of this
14 particular case.

15 JUROR 312: Uh-huh, (affirmative response).

16 THE COURT: At the end of the case, the Court will give
17 the law to the jury, and basically the panel puts the two
18 together, the facts in the case and the law. Now, you can't
19 let opinions, beliefs, something happened to somebody you
20 know, you can't let any of that affect the decision. It has
21 to be what happened in this case. Okay?

22 JUROR 312: Okay.

23 THE COURT: So, what I'm gonna do is ask you the jury
24 qualification question, and there's two responses. Yes, I
25 can; or if you have any doubt in your mind, you tell me, no, I

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1 can't. Okay?

2 JUROR 312: Uh-huh, (affirmative response).

3 THE COURT: Can you give to the State of South Carolina
4 and to the defendant a fair and impartial trial? Can you be a
5 fair and impartial juror in this case?

6 JUROR 312: Uh-huh, (affirmative response).

7 THE COURT: Can you give to the State of South Carolina
8 and to the defendant a fair and impartial trial? Can you be a
9 fair and impartial juror in this case?

10 JUROR 312: I can.

11 THE COURT: Thank you very much, sir. Go back and have a
12 seat.

13 (REPORTER'S NOTE: End of bench conference with Juror 312.)

14 THE COURT: All right. Juror Number 315.

15 (REPORTER'S NOTE: Bench conference with Juror 315 is held on
16 the record in the presence but outside the hearing of the jury
17 venire.)

18 THE COURT: All right, ma'am. You are Ms. Cynthia
19 Sample?

20 JUROR 315: Yes, sir.

21 THE COURT: All right. Very good, ma'am. You answered
22 yes to all the questions. Okay?

23 JUROR 315: It broke my heart to do that.

24 THE COURT: Well, no, ma'am, this is what we're supposed
25 to be doing. So, you're doing the exact right thing. Now,

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1 the job of a juror is to decide the case only on the facts of
2 this case. You can't let opinions, beliefs, something
3 happened to somebody, whatever those -- whatever that
4 situation is, you can't let that affect the decision in this
5 case. You've got to listen to the facts of this case and then
6 apply the law that the Court will tell the jury at the end, so
7 the jury puts the two together. What I'm gonna ask you is the
8 jury qualification question. Now, there's only two answers.
9 Yes, I can; or if you have any question in your mind, you tell
10 me, no, I can't. All right? Can you give to the State of
11 South Carolina and to the defendant a fair and impartial
12 trial? Can you be a fair and impartial juror in this case?

13 JUROR 315: That's the \$2,000 question. To the best of
14 my ability, I will.

15 THE COURT: Okay. And I appreciate that. And I know
16 that you will approach that, you know, in the proper fashion.
17 You know, I need to be ---

18 JUROR 315: When this happens ---

19 THE COURT: I don't want to subject you to any ---

20 JUROR 315: Duress.

21 THE COURT: Duress or emotional, you know, duress. So,
22 do you think this case would affect you in that fashion?

23 JUROR 315: Not -- not, not -- I'm over this hurdle of
24 having to answer that questionnaire.

25 THE COURT: All right. So, you think you could be fair

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1 to both sides?

2 JUROR 315: Yes.

3 THE COURT: Thank you, ma'am. I appreciate it very much.

4 JUROR 315: Thank you.

5 THE COURT: You can go back and have a seat.

6 (REPORTER'S NOTE: End of bench conference with Juror 315.)

7 THE COURT: 372.

8 (REPORTER'S NOTE: Bench conference with Juror 372 is held on
9 the record in the presence but outside the hearing of the jury
10 venire.)

11 THE COURT: All right. And you are Ms. Marianne ---

12 JUROR 372: Twiss.

13 THE COURT: Okay. Very good. All right. So, ma'am, you
14 answered yes to Question Number 3. Let's go over very briefly
15 the job of a juror. If you are a juror on this case, you have
16 to decide the case only on the facts and evidence of this
17 case. You can't let opinions, beliefs, something happened to
18 somebody you know, you can't let any of that affect your
19 decision. At the end of the case, I will give the jury the
20 law and then the jury puts the two together, the facts they've
21 heard and the law that the Court gives them. Okay?

22 JUROR 372: Okay.

23 THE COURT: Now, what I'm gonna do is ask you the
24 qualification question, the jury qualification question.

25 There is either two answers. Yes, I can; or if you've got any

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1 doubt in your mind, you say, no, I can't.

2 JUROR 372: Okay.

3 THE COURT: Can you give to the State of South Carolina
4 and to the defendant a fair and impartial trial? Can you be a
5 fair and impartial juror in this case?

6 JUROR 372: Yes, I can.

7 THE COURT: Thank you very much.

8 (REPORTER'S NOTE: End of bench conference with Juror 372.)

9 THE COURT: All right. And last one, 396.

10 (REPORTER'S NOTE: Bench conference with Juror 396 is held on
11 the record in the presence but outside the hearing of the jury
12 venire.)

13 THE COURT: All right. You are Ms. Natasha Wetzel?

14 JUROR 372: Yes.

15 THE COURT: All right. So, you answered Question -- yes
16 to Question 3. So, let's talk very briefly about what the job
17 of a juror is. If you are a juror on this case, you have to
18 decide the case only on the facts and evidence of this
19 particular case. You can't let opinions, beliefs, something
20 happened to somebody you know, you can't let any of that
21 affect the decision. Okay?

22 JUROR 372: Okay.

23 THE COURT: Now, what I'm gonna do is ask you the jury
24 qualification question. There's only two answers. Yes, I
25 can; or if you've got any doubt in your mind, you need to tell

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1 me, no, I can't.

2 JUROR 372: Okay.

3 THE COURT: Can you give to the State of South Carolina
4 and to the defendant a fair and impartial trial? Can you be a
5 fair and impartial juror in this case?

6 JUROR 372: Yes.

7 THE COURT: Thank you very much, ma'am.

8 (REPORTER'S NOTE: End of bench conference with Juror 372.)

9 (REPORTER'S NOTE: Bench conference is held on the record in
10 the presence but outside the hearing of the jury venire.)

11 THE COURT: Counsel, I'm assuming you want to raise an
12 objection 315?

13 MS. WILSON: Yes, sir. She was tearing up.

14 THE COURT: And I appreciate that, and I understand that
15 she was emotional. That's why I asked her some additional
16 questions. She said on more than one occasion she could be
17 fair and impartial, and so I'm gonna leave her, but you
18 obviously have the information now.

19 So that we're clear, and we're all on the same page, five
20 for the state and 10 for the defense.

21 MR. MARTIN: Yes, sir.

22 MS. WILSON: Yes, sir.

23 THE COURT: And there's 35 left, so -- we'll see.

24 MS. WILSON: Okay. Thank you.

25 MS. ANDREW: Okay. Thank you, Your Honor.

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1 (REPORTER'S NOTE: End of bench conference.)

2 THE COURT: All right. Ladies and gentlemen, what we're
3 gonna do now is I'm gonna ask you the questions that we would
4 ask in any criminal case. Obviously, we had these other
5 questions because of the nature of this particular matter, but
6 these are the questions we ask in every single criminal case
7 that's tried.

8 First thing is, I'm gonna read to you a list of the
9 possible or potential witnesses in this case. Just because I
10 read out a name doesn't mean that that person is actually
11 gonna be called or all these people are gonna be called, but
12 I'm gonna read to the names. At the end of it, I'll ask you
13 if you know any of them.

14 Dianne Nordeen; Carol Rahter; C. Kehborn Tonya
15 Kehborn; Andrew Price; Minor Minor ; L. Price
16 From the Horry County Police Department: Jim Chatfield; Brian
17 Church; Steve Cotton; Lori Dudley; Merrell Hawkins; Amanda
18 Loar, L-O-A-R; Tysheena May; Adam Skellet; Alex Smith; John
19 Sotile, S-O-T-I-L-E; Heather Wilson.

20 From the Medical University of South Carolina: Frederick
21 Thornton; Karen Drozd, D-R-O-Z-D; Daniel Schultz.

22 From the Metropolitan Children's Advocacy Center, Ray
23 Olszewski, O-L-S-Z-E-W-S-K-I.

24 And from the South Carolina Law Enforcement Division,
25 commonly known as SLED: Julia Begeman; Olivia Cartwright;

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1 Bethany Davidson; Jackie Davis; Brooklynn Gonzalez; Bailey
2 Haynes; Matthew Hogue; Lauren Holliday; Vera Martinez; Donna
3 Mooney; Dustin Smith; Rachel Nguyen, N-G-U-Y-E-N; Sarah
4 Preston. John Peter Kehborn.

5 Any member of the jury panel related by blood or
6 marriage, close personal friends, acquaintances of, know any
7 of these possible or potential witnesses? If so, please
8 stand.

9 Yes, sir. Your name and juror number, please?

10 JUROR 25: Richard Beatty, 25.

11 THE COURT: All right. And who is it that you might
12 know?

13 JUROR 25: The Horry County officers, Jim Chatfield.

14 THE COURT: Okay. All right, sir. Assuming that person
15 to be a witness -- as I said, not all these people are
16 actually gonna be witnesses, but assuming that person be a
17 witness in this case, can you give to the State of South
18 Carolina and to the defendant a fair and impartial trial? Can
19 you be a fair and impartial juror in this case?

20 JUROR 25: Absolutely.

21 THE COURT: All right. Very good. Thank you.

22 And, yes, ma'am, your name and jury number, please,
23 ma'am?

24 JUROR 81: Crystal Corley, 81.

25 THE COURT: All right. Ma'am, who do you ---

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1 JUROR 81: Tysheena May.

2 THE COURT: I'm sorry?

3 JUROR 81: Tysheena May.

4 THE COURT: All right. Very good. Assuming that person
5 to be a witness in this case, can you give to the State of
6 South Carolina and to the defendant a fair and impartial
7 trial? Can you be a fair and impartial juror in this case?

8 JUROR 81: I'll try, Your Honor.

9 THE COURT: All right. Could you come up ---

10 MR. MARTIN: Juror Number 81 was already struck, Your
11 Honor.

12 THE COURT: All right. And I'm sorry, if I didn't say
13 this to anyone, if I already excused you from this case, you
14 don't have to answer any other questions. You just -- you
15 have to stay with us in the courtroom. Okay?

16 All right. So, she was already excused. Thank you.

17 All right. So, any member of the jury panel, either you
18 or a member of your immediate family, ever had any matters
19 handled by the Fifteenth Circuit Solicitor's Office, that's
20 the prosecuting office that covers Horry and Georgetown
21 Counties? If so, please stand.

22 (REPORTER'S NOTE: No response.)

23 THE COURT: Any member of the jury panel that's related
24 by blood or marriage, close personal friends, acquaintances of
25 anybody employed at the Fifteenth Circuit Solicitor's Office,

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1 either in Horry County or Georgetown County? If so, please
2 stand.

3 (REPORTER'S NOTE: No response.)

4 THE COURT: All right. Is any member of the jury or
5 member of your immediate family ever had any matters handled
6 by the Horry -- I'm sorry -- the Fifteenth Circuit Public
7 Defender's Office? If so, please stand.

8 (REPORTER'S NOTE: No response.)

9 THE COURT: Is anybody related by blood or marriage,
10 close personal friends, acquaintances or anybody employed at
11 the Fifteenth Circuit Public Defender's Office in Horry or
12 Georgetown Counties?

13 THE COURT: Other -- yes, sir?

14 JUROR 25: Your Honor, I know Ron Hazzard.

15 THE COURT: All right, sir. Again, you need to -- you
16 have to tell me your name and juror number every time, sorry.

17 JUROR 25: Richard Beatty, 25.

18 THE COURT: Can you give to the State of South Carolina
19 and to the defendant a fair and impartial trial? Can you be a
20 fair and impartial juror in this case?

21 JUROR 25: Yes, sir

22 THE COURT: Thank you very much.

23 Other than the questions we have already gone over, is
24 there any member of the jury panel that you believe you have
25 any type of personal, political, religious, philosophical

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1 belief that you believe would prevent you from being a fair
2 and impartial juror? If so, please stand.

3 (REPORTER'S NOTE: No response.)

4 THE COURT: All right. This next question deals with
5 contact with law enforcement or employment. Is there any
6 member of the jury panel who is a former law enforcement
7 officer, or you have a current family member who was -- is in
8 law enforcement or was in the past in law enforcement. So,
9 it's yourself or a family member currently or in the past.

10 All right. Very good.

11 All right. So, we'll just start right here.

12 Yes, ma'am. Your name and jury number?

13 JUROR 84: Diane Cristina, 84.

14 THE COURT: Okay. And who was it?

15 JUROR 84: My husband is a retired police officer.

16 THE COURT: From where, please, ma'am?

17 JUROR 84: Ottawa, Canda.

18 THE COURT: All right.

19 MS. ANDREW: She was previously struck, Your Honor.

20 THE COURT: Okay. I'm sorry. Again -- I'm sorry, and I
21 probably neglected to say that every time. If I already told
22 you you're excused, don't answer any other questions. Okay?

23 All right. Again, name and juror number?

24 JUROR 25: Richard Beatty, 25.

25 THE COURT: Yes, sir. And who might it be?

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1 JUROR 25: I was employed by Horry County Police
2 Department when the old jail was across the street.

3 THE COURT: Okay.

4 JUROR 25: And I'm a retired Myrtle Beach police officer
5 of 26 years.

6 THE COURT: I'm probably the one in this courtroom that
7 knows where that was, and it was actually -- had the occasion
8 to see people that were housed there. So, that was a long,
9 long time ago. The building no longer exists, so anyway.

10 All right, sir. Can you give to the State of South
11 Carolina and to the defendant a fair and impartial trial? Can
12 you be a fair and impartial juror in this case?

13 JUROR 25: Yes, sir.

14 THE COURT: Thank you very much.

15 Yes, ma'am? Name and juror number?

16 JUROR 315: Cynthia Sample, 315. My nephew is a police
17 officer.

18 THE COURT: All right. Can you give to the State of
19 South Carolina and to the defendant a fair and impartial
20 trial? Can you be a fair and impartial juror in this case?

21 JUROR 315: Yes, sir.

22 THE COURT: Thank you very much.

23 Yes, ma'am?

24 JUROR 26: Patrice Becker, Juror 26. My nephew is a
25 police officer in Missouri.

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1 THE COURT: Can you give to the State of South Carolina
2 and to the defendant a fair and impartial trial? Can you be a
3 fair and impartial juror in this case?

4 JUROR 26: Yes, Your Honor.

5 THE COURT: Thank you very much.

6 Yes, ma'am?

7 JUROR 111: 111, Kristi Eggerling. My brother is a
8 lieutenant with North Myrtle Beach Police Department.

9 THE COURT: All right, ma'am. Can you give to the State
10 of South Carolina and to the defendant a fair and impartial
11 trial? Can you be a fair and impartial juror in this case?

12 JUROR 111: Yes.

13 THE COURT: Thank you very much.

14 All right. Yes, sir, on the end?

15 JUROR 165: Bernard Hart, Juror Number 165. I'm a
16 retired New Jersey police officer. My two partners are
17 retired New Jersey police officers; my son is disabled retired
18 from the sheriff's office.

19 THE COURT: All right, sir. Can you give to the State of
20 South Carolina and to the defendant a fair and impartial
21 trial? Can you be a fair and impartial juror in this case?

22 JUROR 165: Yes, Your Honor.

23 THE COURT: Thank you very much.

24 Yes, ma'am? Name and juror number:

25 JUROR 117: Juror 117, Lauren Farrar. I am currently

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1 employed with the North Myrtle Beach Police Department. I'm a
2 communications officer. I work in dispatch.

3 THE COURT: In dispatch. All right. Can you give to the
4 State of South Carolina and to the defendant a fair and
5 impartial trial? Can you be a fair and impartial juror in
6 this case?

7 JUROR 117: Yes, sir.

8 THE COURT: Thank you very much, ma'am.

9 And, yes, sir?

10 JUROR 133: William Furlong, Juror 133. My father was a
11 -- is a retired police officer for Myrtle Beach City.

12 THE COURT: All right, sir. Can you give to the State
13 of South Carolina and to the defendant a fair and impartial
14 trial? Can you be a fair and impartial juror in this case?

15 JUROR 133: Yes, sir.

16 THE COURT: Thank you very much.

17 All right. Ladies and gentlemen, I'm going to ask
18 whether or not you, yourself, or a member of your immediate
19 family have ever been a member of any kind of victim's rights
20 or law enforcement organizations. I'm gonna give you a couple
21 of examples, not an exhaustive list of any kind, Mothers
22 Against Drunk Driving, Citizens Against Violent Crimes, South
23 Carolina Law Enforcement Officers Association, South Carolina
24 Sheriffs Association, just some kind of victim's rights or law
25 enforcement support organization, yourself or a family member

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1 a member.

2 (REPORTER'S NOTE: No response.)

3 THE COURT: All right. Next question I'm gonna ask is
4 whether you yourself or a member of your immediate family has
5 ever been the victim of a crime. Now, I am not going to ask
6 you what occurred. I do not want you to volunteer any
7 information to me about what occurred. The question is gonna
8 be straightforward, was it yourself or a family member, and
9 then I'll ask the jury qualification question. So, is there
10 any member of the jury panel, either you yourself, or a member
11 of your immediate family ever been the victim of a crime? If
12 so, please stand.

13 All right. Start here.

14 Yes, ma'am. Your name and juror number, please.

15 JUROR 134: Marilyn Galloway, 134.

16 THE COURT: All right, ma'am. And yourself or a family
17 member or both?

18 JUROR 134: Myself and a family member.

19 THE COURT: All right, ma'am. Can you give to the State
20 of South Carolina and to the defendant a fair and impartial
21 trial? Can you be a fair and impartial juror in this case?

22 JUROR 134: I don't think so.

23 THE COURT: You were excused earlier, ma'am.

24 JUROR 134: Thank you. Oh, I didn't know. Thank you.

25 THE COURT: Okay. You still have to stay with us. Okay.

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1 All right. Yes, ma'am. Your name and juror number?
2 Yes, ma'am.
3 JUROR 306: Carmen Rogers, 306, and myself.
4 THE COURT: Yourself, okay. Can you give to the State of
5 South Carolina and to the defendant a fair and impartial
6 trial? Can you be a fair and impartial juror in this case?
7 JUROR 306: (Indicates affirmatively.)
8 THE COURT: Was that a yes?
9 JUROR 306: Yes.
10 THE COURT: All right. Very good. Thank you.
11 I have to ask these questions.
12 All right. Yes, ma'am, your name and juror number,
13 please.
14 JUROR 117: Lauren Farrar, Juror Number 117.
15 THE COURT: Yourself or a family member?
16 JUROR 117: A family member.
17 THE COURT: Can you give to the State of South Carolina
18 and to the defendant a fair and impartial trial? Can you be a
19 fair and impartial juror in this case?
20 JUROR 117: Yes, sir.
21 THE COURT: Thank you very much, ma'am.
22 All right. Yes, ma'am. Name and juror number, please?
23 JUROR 26: Patrice Becker, Juror 26.
24 THE COURT: Yourself or a family member?
25 JUROR 26: Myself.

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1 THE COURT: Can you give to the State of South Carolina
2 and to the defendant a fair and impartial trial? Can you be a
3 fair and impartial juror in this case?
4 JUROR 26: Yes, sir.
5 THE COURT: Thank you very much.
6 All right. Yes, ma'am?
7 JUROR 315: Cynthia Sample, 315, family member.
8 THE COURT: Can you give to the State of South Carolina
9 and to the defendant a fair and impartial trial? Can you be a
10 fair and impartial juror in this case?
11 JUROR 315: Yes, sir
12 THE COURT: Thank you very much.
13 All right. Yes, sir?
14 JUROR 78: Patrick Conway, Number 78.
15 THE COURT: You were already excused. Thank you, sir.
16 JUROR 25: Richard Beatty, 25.
17 THE COURT: All right, sir.
18 JUROR 25: Myself.
19 THE COURT: And yourself?
20 JUROR 25: Yes, sir.
21 THE COURT: Can you give to the State of South Carolina
22 and to the defendant a fair and impartial trial? Can you be a
23 fair and impartial juror in this case?
24 JUROR 25: Yes, sir.
25 THE COURT: Thank you very much.

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1 All right. I'm gonna ask you my general or catchall
2 question. Do you know of any reason, have any question in
3 your mind that you believe you cannot be a fair and impartial
4 juror in this case? That is you do not believe you can give
5 to the State of South Carolina and to the defendant a fair and
6 impartial trial? If so, please stand.

7 (REPORTER'S NOTE: No response.)

8 THE COURT: Further questions from the state?

9 MR. MARTIN: No, Your Honor.

10 THE COURT: From the defense?

11 MS. WILSON: Nothing else, Your Honor.

12 THE COURT: All right.

13 All right. So, what we're gonna do is -- your names have
14 been put in a random order, not alphabetical, numerical,
15 anything like that. The clerk of court is gonna call out a
16 name. If and when your name is called, you will stand up,
17 you'll come forward. You will come to a place right before
18 Ms. Kay, the court reporter here. You'll turn and face to the
19 back of the courtroom. At that point in time, the clerk will
20 inquire, ask of the state to present or excuse the juror. If
21 you are presented by the state, she will ask the defense to
22 seat or excuse the juror. If you're excused by either the
23 state or the defense, you go back and have a seat from whence
24 you came. If you are presented by the state and seated by the
25 defense, you will be instructed to go to the jury box and have

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1 a seat as a member of this jury.

2 With that, if you have any personal items, please bring
3 them along with you in case you are seated, you will go
4 directly to the jury box.

5 All right, Madame Clerk.

6 JURY SELECTION:

7 THE CLERK: Number 111, Kristi Eggerling.

8 What say the state?

9 MR. MARTIN: Please present Ms. Eggerling.

10 THE COURT: Defense?

11 MS. WILSON: Court's indulgence.

12 Please seat this juror.

13 THE CLERK: Please be seated in the jury box.

14 Number 312, Timothy Ryan.

15 What say the state?

16 MR. MARTIN: Please present Mr. Ryan.

17 THE CLERK: Defense?

18 MS. WILSON: Please excuse this juror.

19 THE CLERK: You are excused from this particular case.

20 Number 366, Lorraine Tran.

21 What say the state?

22 MR. MARTIN: Please present Ms. Tran.

23 THE CLERK: Defense?

24 MS. WILSON: Please seat this juror.

25 THE CLERK: Please be seated in the jury box.

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JURY SELECTION

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1 Number 25, Richard Beatty.
2 What say the state?
3 MR. MARTIN: Please present Mr. Beatty.
4 THE CLERK: Defense?
5 MS. WILSON: Please excuse this juror.
6 THE CLERK: You are excused from this particular case.
7 Number 306, Carmen Rogers.
8 What say the state?
9 MR. MARTIN: Please present Ms. Rogers.
10 THE CLERK: Defense?
11 MS. WILSON: Please excuse Mr. Rogers.
12 THE CLERK: You are excused from this particular case.
13 Number 165, Bernard Hart.
14 What say the state?
15 MR. MARTIN: Please present Mr. Hart.
16 THE CLERK: Defense?
17 MS. WILSON: Please excuse this juror.
18 THE CLERK: You are excused in this particular case.
19 Number 161, Jeana Harrelson.
20 What say the state?
21 MR. MARTIN: Please present Ms. Harrelson.
22 THE CLERK: Defense?
23 MS. WILSON: Court's indulgence?
24 THE COURT: Yes, ma'am.
25 MS. WILSON: Please excuse this juror.

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JURY SELECTION

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1 THE CLERK: You are excused from this particular case.
2 Number 79, Brendan Coons.
3 What say the state?
4 MR. MARTIN: Please present Mr. Coons.
5 THE CLERK: Defense?
6 MS. WILSON: Please seat this juror.
7 THE CLERK: Please be seated in the jury box.
8 Number 396, Natasha Wetzel.
9 What say the state?
10 MR. MARTIN: Please present Ms. Wetzel.
11 THE CLERK: Defense?
12 MS. WILSON: Please excuse this juror.
13 THE CLERK: You are excused in this particular case.
14 Number 26, Patrice Becker.
15 What say the state?
16 MR. MARTIN: Please present Ms. Becker.
17 THE CLERK: Defense?
18 MS. WILSON: Please excuse Ms. Becker.
19 THE CLERK: You are excused from this particular case.
20 Number 291, Billy Phipps.
21 What say the state?
22 MR. MARTIN: Please present Mr. Phipps.
23 THE CLERK: Defense?
24 MS. WILSON: Please seat this juror.
25 THE CLERK: Please be seated in the jury box.

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1 Number 117, Lauren Farrar.
2 What say the state?
3 MR. MARTIN: Please present Ms. Farrar.
4 THE CLERK: Defense?
5 MS. WILSON: Court's indulgence, please.
6 THE COURT: Yes, ma'am.
7 MS. WILSON: Please excuse this juror.
8 THE CLERK: You are excused in this particular case.
9 Number 89, Lonnie Daniels.
10 What say the state?
11 MR. MARTIN: Please present Mr. Daniels.
12 THE CLERK: Defense?
13 MS. WILSON: Please seat this juror.
14 THE CLERK: Please be seated in the jury box.
15 Number 360, Kimalynn Swayne.
16 What say the state?
17 MR. MARTIN: Please present Ms. Swayne.
18 THE CLERK: Defense?
19 MS. WILSON: Please seat this juror.
20 THE CLERK: Please be seated in the jury box.
21 Number 315, Cynthia Sample.
22 What say the state?
23 MR. MARTIN: Please present Ms. Sample.
24 THE CLERK: Defense?
25 MS. WILSON: Please excuse this juror.

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JURY SELECTION

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1 THE CLERK: You are excused from this particular case.
2 Number 92, Sherry Davis.
3 What say the state?
4 MR. MARTIN: Please present Ms. Davis.
5 THE CLERK: Defense?
6 MS. WILSON: Please seat this juror.
7 THE CLERK: Please be seated in the jury box.
8 Number 383, Felice Walker.
9 What say the state?
10 MR. MARTIN: Please present Ms. Walker.
11 THE CLERK: Defense?
12 MS. WILSON: Please seat this juror.
13 THE CLERK: Please be seated in the jury box.
14 Number 223, Denise Lewis-Prothro.
15 What say the state?
16 MR. MARTIN: Please excuse Ms. Lewis-Prothro.
17 THE CLERK: You are excused from this particular case.
18 Number 307, Stephen Rose.
19 What say the state?
20 MR. MARTIN: Court's indulgence, Your Honor.
21 THE COURT: Yes, sir.
22 MR. MARTIN: Please present Mr. Rose.
23 THE CLERK: Defense?
24 MS. WILSON: Court's indulgence.
25 THE COURT: Yes, ma'am.

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JURY SELECTION

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1 MS. WILSON: Please seat this juror.

2 THE CLERK: Please be seated in the jury box.

3 Number 167, Kristen Haught.

4 What say the state?

5 MR. MARTIN: Please present Ms. Haught.

6 THE CLERK: Defense?

7 MS. WILSON: Please seat this juror.

8 THE CLERK: Please be seated in the jury box.

9 Number 221, Alanda Lewis.

10 What say the state?

11 MR. MARTIN: Please present Ms. Lewis.

12 THE CLERK: Defense?

13 MS. WILSON: Court's indulgence.

14 THE COURT: Yes, ma'am.

15 MS. WILSON: Please seat this juror.

16 THE CLERK: Please be seated in the jury box.

17 Number 387, Kimi Walters.

18 What say the state?

19 MR. MARTIN: Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. MARTIN: Please present Ms. Walters.

22 THE CLERK: Defense?

23 MS. WILSON: Court's indulgence.

24 THE COURT: Yes, ma'am.

25 MS. WILSON: Please seat this juror.

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1 THE CLERK: Please be seated in the jury box.

2 THE COURT: All right. So, we're gonna need two
3 alternates. On each alternate, it will be one and two on each
4 alternate. Go ahead.

5 THE CLERK: Number 372, Marianne Twiss.

6 What say the state?

7 MR. MARTIN: Please present Ms. Twiss.

8 THE CLERK: Defense?

9 MS. WILSON: Please excuse this juror.

10 THE CLERK: You are excused on this particular case.

11 Number 15, Tamala Baker.

12 What say the state?

13 MR. MARTIN: Please present Ms. Baker.

14 THE CLERK: Defense?

15 MS. WILSON: Please seat this juror.

16 THE CLERK: Please be seated in the jury box.

17 THE COURT: All right. Ms. Baker, you are one of the
18 alternates, please.

19 THE CLERK: Number 35, Thomas Burmingham.

20 What say the state?

21 MR. MARTIN: Please present Mr. Birmingham.

22 THE CLERK: Defense?

23 MS. WILSON: Please excuse this juror.

24 THE CLERK: You are excused from this particular case.

25 Number 124, John Flaherty.

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BY THE COURT

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1 What say the state?

2 MR. MARTIN: Please present Mr. Flaherty.

3 THE CLERK: Defense?

4 MS. WILSON: Please seat this juror.

5 THE CLERK: Please be seated in the jury box.

6 THE COURT: All right. Mr. Flaherty, you are the other
7 alternate. Thank you.

8 All right. Is there any objections to the jury as a
9 panel from the state?

10 MR. MARTIN: No, Your Honor.

11 THE COURT: From the defense?

12 MS. WILSON: Nothing, Your Honor.

13 THE COURT: All right. Very good. I find the jury
14 properly empaneled pursuant to *Batson v. Kentucky* and *JEB v.*
15 *Alabama*.

16 BY THE COURT:

17 THE COURT: All right, ladies and gentlemen. At this
18 state, what I'm gonna do is I'm gonna ask that you go into
19 your jury room and do one thing for the Court, and that's
20 going to be pick your foreperson. So, let me tell you very
21 briefly what the foreperson's duties and responsibilities are.
22 If we're here in the courtroom, and you need attention to some
23 matter, the witness needs to speak up or the lawyers whatever
24 it is, the foreperson would raise their hand and get the
25 Court's attention and we'll handle the matter whatever it is.

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BY THE COURT

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1 If you're back in the jury room, there will be a pad and pen
2 provided to you, you write out a note, sign it, and give it to
3 the bailiff, it'll come to the Court, and we'll handle that
4 matter whatever it is.

5 When we have gone through the evidentiary portion of the
6 trial, we've heard all the witnesses, we've heard the closing
7 arguments of the attorneys, and I have given you the law that
8 you will apply to the facts and evidence you've heard in this
9 particular case, at that point in time I'm submitting the
10 case, giving the case to the jury for their unanimous
11 decision, for consideration and unanimous decision. In that
12 process, the foreperson's duties change in this regard.
13 You're gonna act like the chairperson at a meeting, guide the
14 discussions if necessary. Now, the foreperson's voice and
15 vote carries no more weight than any other member of the jury.
16 Everybody is equal in that regard, but somebody needs to
17 remain in charge. If there's a question, again, write out the
18 note and give it to the bailiff, and we'll handle it whatever
19 it is. The final duty and responsibility of the foreperson is
20 once the jury has well and truly deliberated, you have reached
21 your unanimous decision in this particular matter, the
22 foreperson is gonna take the verdict form that the Court is
23 gonna provide to you, you're gonna check the appropriate block
24 or write out the appropriate words, thereafter, sign your name
25 as the foreperson indicating that that verdict is indeed the

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1 unanimous verdict from each and every member of the jury.

2 So, understanding that, I'm gonna ask that you go back to
3 your jury room, select your foreperson, knock on the door and
4 let the bailiff know who that is, please.

5 Thank you.

6 (REPORTER'S NOTE: Jury exits courtroom @ 1:15 p.m.)

7 THE COURT: All right. Ladies and gentlemen of the jury
8 panel that were not selected for this particular case, what
9 I'm gonna do is excuse you for the balance of today. Call
10 back that juror information line tonight after 6 o'clock.
11 Remember, Judge Seals is doing some work in civil court, so
12 you might be called back by Judge Seals. So, call that number
13 after 6:00, follow the instructions, whatever they are, it
14 might very well because that it says call back tomorrow at
15 some time; whatever it is, just follow those instructions.
16 With that, you are now excused. Thank you very much.

17 (REPORTER'S NOTE: Remaining jury venire exits courtroom @
18 1:16 p.m. The following takes place outside the presence of
19 the jury.)

20 THE COURT: All right. Counsel, what we're gonna do is
21 break for lunch. Let's come back at 2:30. The first thing
22 we'll do is handle the matter about the trial in the absence,
23 so that we cover that, first. Okay?

24 MR. MARTIN: May I approach with the bench warrant, Your
25 Honor.

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1 THE COURT: Yes, sir.

2 MR. MARTIN: And I did show it to Ms. Wilson.

3 THE COURT: All right. I was gonna ask you about that.

4 Let's get that squared away.

5 I'll see y'all at 2:30 then.

6 MR. MARTIN: Thank you.

7 MS. WILSON: Yes, sir.

8 MS. ANDREW: Thank you, Your Honor.

9 THE COURT: Counsel, for your information, all those
10 responses by the jurors, I've given all of those to the clerk
11 of court for filing in the clerk of court files. They're all
12 there. Okay?

13 MS. ANDREW: Thank you.

14 MS. WILSON: Thank you, Your Honor.

15 THE COURT: Thank you.

16 **RECESS - 1:20 P.M.**

17 *******OFF THE RECORD*******

18 **ON THE RECORD - 2:34 P.M.**

19 (REPORTER'S NOTE: The following takes place outside the
20 presence of the jury.)

21 MOTIONS:

22 THE COURT: All right. Solicitor, you wanted to proceed
23 on the request for your trial in absence?

24 MR. MARTIN: Yes, Your Honor.

25 Your Honor, as the Court is aware in order to proceed in

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1 the defendant's absence with a trial, the defendant must
2 voluntarily waive his right to be present. One way a
3 defendant does that is if the trial is set and sufficient notice
4 has been mailed to the defendant. Additionally, Your Honor
5 must find that not only as the defendant received notice, but
6 also that he's received notice of his right to be present, and
7 that he was warned that a trial could proceed in his absence
8 if he failed to attend.

9 I don't know how Your Honor wishes to proceed, if you
10 would witness testimony or for the state to produce
11 documentation to Your Honor as to sufficient notice and as to
12 his ---

13 THE COURT: Well, whatever documents you have regarding
14 the -- I'm sure that he signed it, his initial bond hearing,
15 and then you may need to call someone regarding mailing of the
16 notification.

17 MR. MARTIN: Yes, Your Honor.

18 May I approach.

19 THE COURT: Yes, sir, please.

20 MR. MARTIN: I showed this to Ms. Wilson earlier. These
21 are just, of course, exhibits from the documents we talked
22 about.

23 COURT'S EXHIBIT NUMBER 1

24 MARKED FOR IDENTIFICATION

25 MR. MARTIN: Your Honor, Court's Exhibit 1 is the mailed

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1 proceeding form that the defendant did sign on August the
2 21st, 2020, when his bond was ordered in the amount of \$20,000
3 cash or surety. Your Honor, there was a checklist that the
4 magistrate or the municipal judges fill out. Your Honor, on
5 that checklist the defendant did initial beside all of these
6 different items. The main -- the main one for which is
7 relevant here is Number 2 for cases in which bond was set, the
8 defendant was informed, and Your Honor, it is -- goes into
9 quite some detail, but it notifies the defendant that a
10 warrant for his arrest may be issued, obviously, for any
11 violation of his bond order. In addition to that, Judge, the
12 defendant, if he fails to appear, he may be prosecuted in his
13 absence. May I approach?

14 THE COURT: Yes, sir, please.

15 COURT'S EXHIBIT NUMBER 2

16 MARKED FOR IDENTIFICATION

17 MR. MARTIN: Your Honor, the next matter for the Court,
18 is Court's Exhibit 2. Court's Exhibit 2 is a bond
19 modification order. Judge, it's ordering -- altering the
20 terms of the defendant's bond. I feel like I should hand that
21 up to Your Honor just because that does obviously go with the
22 bond issue that you have.

23 THE COURT: All right.

24 MR. MARTIN: It just doesn't specifically state in there
25 -- it just says that all -- it modifies one brief part of the

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1 bond and says all the other terms of bond remain the same.
2 State's argument would be the part about the defendant needing
3 to appear at the call of his case, that part remained the same
4 with his bond.

5 THE COURT: All right.

6 COURT'S EXHIBIT NUMBER 3

7 MARKED FOR IDENTIFICATION

8 MR. MARTIN: The next matter is Court's Exhibit Number 3.
9 This is the clocked arraignment findings. Judge, the
10 defendant was arraigned on or about -- excuse me -- on June
11 15th, 2021, in front of Judge Culbertson. Judge, I was the
12 prosecutor present at that hearing. I know we stated earlier
13 that Ms. Wilson was not representing the defendant at that
14 time; Mr. Pinkerton was. However, Judge Culbertson did advise
15 the defendant on that date that a trial could proceed in his
16 absence if he failed to appear. I notated that on my file and
17 asked the Court to address that with the defendant.

18 May I approach?

19 THE COURT: Please.

20 MR. MARTIN: Now, the arraignment findings checklist,
21 Your Honor, does not specifically state the part about how the
22 state may proceed with a trial in the defendant's absence, but
23 Your Honor, as an officer of the Court, I can state to this
24 Court that Judge Culbertson did advise him of that.

25 THE COURT: All right. Very good.

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1 COURT'S EXHIBIT NUMBER 4

2 MARKED FOR IDENTIFICATION

3 MR. MARTIN: And lastly, Your Honor, is Court's Exhibit
4 Number 4, this is a copy of the subpoena sent to the
5 defendant. May I approach?

6 THE COURT: Yes, please.

7 MR. MARTIN: And that subpoena is for this week of trial
8 beginning today, February 14th, 2022. And, Court's
9 indulgence, I failed to get one thing -- this is his change of
10 address. Sorry, Your Honor.

11 THE COURT: I was gonna ask.

12 MR. MARTIN: I had it in front of me and forgot to give
13 it to Ms. Kay. I'm sorry.

14 THE COURT: That's all right.

15 COURT'S EXHIBIT NUMBER 5

16 MARKED FOR IDENTIFICATION

17 MR. MARTIN: This is Court's Exhibit Number 5. May I
18 approach?

19 THE COURT: Please.

20 MR. MARTIN: That is the document notifying the Court and
21 everyone that the defendant's address had been changed, and
22 that is the address that the state mailed notice to, Your
23 Honor.

24 THE COURT: All right. All right. Yes, ma'am, Ms.
25 Wilson?

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1 MS. WILSON: Your Honor, as the Court is well aware, I
2 was not the original counsel of record here. Certainly, as
3 Mr. George Henry Martin has stated to the Court, I was not
4 present for the arraignment. And I was not the attorney that
5 counseled him at that time. That being said, I understand
6 that the Court is hearing objections or issues that would
7 prevent or require that this case be continued, and of course
8 I am requesting a continuance for a number of reasons.

9 Number one, given the nature of this case, the
10 circumstances of this particular charge, and the fact that --
11 I mean, and I'm just gonna be frank.

12 THE COURT: Yes, ma'am, please.

13 MS. WILSON: If he is not here for this trial, what
14 already is a terrible case for the defense becomes impossible,
15 and apparently it is possible, becomes even worse because he
16 is not present. And I do believe that the jury would take his
17 absence as him fleeing or running away to avoid justice.
18 Frankly, I don't know where he is, but I don't know if his
19 absence is willful or willing or not. We don't know where he
20 is or why he's not present. I spoke to him on Friday, he
21 indicated he would be here. I asked him to be here at 9
22 o'clock in the morning. And this was late Friday evening
23 around 7 o'clock. With that being said, I certainly feel that
24 there is nothing that will prevent the jury from, from deeming
25 his absence as a negative in this case, and I do believe that

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1 ultimately they would hold that absence against my client. In
2 addition to that, Your Honor, I would also have to say to the
3 Court that I think that his presence would be necessary for me
4 in this trial. Given the fact that I have been substituted as
5 counsel since late -- well, let me correct that statement.
6 Not substituted as counsel, but told to prepare and ready this
7 case as recently as November of 2021. It may've been late
8 October; I'm not a hundred percent certain about the date.
9 But at any rate, I feel that his presence would be integral to
10 me trying this case in the most effective manner possible.
11 And in his absence, I feel that, yes, I -- my presentation
12 might suffer a deficit.

13 At this time, Your Honor, I would just ask the Court to
14 grant a continuance, allow -- one final statement.

15 THE COURT: Yes, ma'am.

16 MS. WILSON: I do not believe that justice would be
17 better served by trying him in his absence. I believe that he
18 would be able to be brought before the Court, even if it's at
19 a later date and time. And this case could go forward then
20 with him present at this trial. I don't believe that there is
21 any -- anything that would necessarily prevent him being
22 brought to justice at a later date as opposed to today or this
23 week. Thank you.

24 THE COURT: All right. Solicitor, let me hear from you
25 regarding the arguments of defense for a continuance until the

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1 defendant can be brought before the Court.

2 MR. MARTIN: Your Honor, by way of background, and
3 obviously Ms. Wilson has not been the attorney of record
4 throughout the whole process, so I think it'd be fair I should
5 put some things on the record. October 15th, 2020, the
6 defendant failed to appear for a court date. At that time, I
7 told Mr. Pinkerton if he appeared by 5:00 -- no later than
8 5:00 p.m. we would not ask the Court for a bench warrant. Ms.
9 Kehborn did appear, and it's my understanding that at that
10 point, Mr. Pinkerton spoke with him about the fact that how
11 important it is to appear for these dates.

12 Judge, this is not the first time the defendant, as this
13 Court knows, has been placed on the trial roster. This is now
14 the fourth time the case has been on the roster. Through
15 things that were beyond my control and Ms. Wilson's control,
16 it certainly was continued various different times. The
17 defendant was aware of all those dates and the need to be
18 present.

19 Judge, I've handed up the documents that support the
20 state's motion to proceed in the defendant's absence.
21 Clearly, the defendant has been made aware of his right to be
22 present but also the fact that the state may proceed if he
23 chooses not to be present. He signed his bond paperwork or
24 initialed the form. Judge, he was advised by Judge Culbertson
25 on June 15th, 2021 that the state could proceed in his

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1 absence. Additionally, Your Honor, the state did provide the
2 defendant notice to be here today as I handed up to the Court
3 at the approved change of address. And the defendant has
4 appeared before from notices sent to that address. So, I
5 don't believe there is any disconnect there, Judge.

6 THE COURT: All right, sir. Thank you very much.

7 Yes, ma'am?

8 MS. WILSON: And just very briefly, Your Honor, in
9 rebuttal, to be fair, most clients don't understand most of
10 what's happening when they're in court, even when they are
11 standing directly in front of the Judge, it's very often that
12 I have to go outside with my client and explain to them what
13 just happened in the proceeding, even though they're standing
14 there beside me. I am not suggesting to this Court that the
15 state is misstating anything. I was not there, and I entrust
16 that they are being truthful. I will say, though, that that
17 was over six months ago when Mr. Kehborn would've been
18 arraigned. And frankly, I don't know what he recalled. But,
19 again, I'm not even conceding that his absence is willful,
20 because as the solicitor just stated, he has shown up every
21 single time, even when he missed something, and he was
22 notified to be present, he still showed up. And again, I
23 wasn't here for most of that, but in my experience, he has
24 always come, and he's always been in contact with my office,
25 almost too much at times. So, I don't know what's going on,

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1 but certainly, I would renew my position and just restate that
2 I would ask for a continuance.

3 Thank you.

4 THE COURT: All right. Thank you.

5 Yes, sir?

6 MR. MARTIN: Your Honor, one more thing I'd bring to the
7 Court's attention. Judge, the last time the defendant was on
8 the trial roster, he actually did not appear at the
9 courthouse. The deputy had to go get him due to the defendant
10 saying that there may be some COVID exposure. And it was not
11 until the deputy went and got him and he was retested at the
12 courthouse that he appeared. So, I understand what she's
13 saying. I just want the Court aware that he certainly hasn't
14 always shown up like he was supposed to.

15 MS. WILSON: And I just want to offer a little clarity on
16 that point. I was present for that. And it's my
17 understanding that he was informed that he should not be in
18 the courtroom until we had told the Court that he was --
19 thought he might have COVID and that he had a negative test,
20 and he had been instructed to go get that test prior to coming
21 to the courthouse. Because we certainly wouldn't just tell
22 somebody who is claiming to have COVID to show up and be
23 around all of us. So, I don't know that his absence was
24 something that he intentionally just said I'm gonna flaunt the
25 rules and not show up. He was in contact, I know, with Clay

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1 about the fact that he might be sick.

2 Thank you.

3 THE COURT: All right. Thank you, ma'am.

4 All right. Thank y'all.

5 MR. MARTIN: Thank you, Judge.

6 RULING OF THE COURT:

7 THE COURT: All right. Regarding the trial in absence,
8 although the Sixth Amendment to the Constitution guarantees
9 the right of an accused to be present at every stage of his
10 trial, that right can be waived. A person indicted for
11 misdemeanors and/or felonies may voluntarily waive their right
12 to be present and may be tried in their absence upon a finding
13 by the Court that such person has received notice of his right
14 to be present, and that a warning was given to him that the
15 trial would proceed in his absence upon failure to attend
16 court. Therefore, a defendant can be tried in absentia with
17 the Trial Court determining that the defendant voluntarily
18 waived his right to be present at trial if the record is clear
19 that the defendant received notice of his right to be present
20 and was warned that the trial would proceed in his absence.
21 Caselaw indicates that a bond form that provides notice that a
22 defendant can be tried in absentia can serve as the requisite
23 notice. An acknowledgment signed by the defendant does serve
24 as a warning that he could be tried in his absence. The
25 documentation before the Court as previously referenced by the

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1 state, the defendant on the initial bond paperwork right above
2 his signature states that he understands and has been informed
3 that he has a right and obligation to be present at trial, and
4 should I fail to attend court, the trial will proceed in my
5 absence. It has been explained to me that if I fail to appear
6 before the Court, a warrant for my arrest will be issued.
7 Right below that is the signature of the defendant. Further,
8 there was an arraignment of the defendant, and taking
9 counsel's statement as an officer of the Court, the defendant
10 was warned by Judge Culbertson at that time that the trial
11 could proceed in his absence if he did not appear when the
12 case was called. Pursuant to a proper notice, change of
13 address as filed with the clerk of court by the public
14 defender's office, notice was sent to Mr. Kehborn at the
15 address set forth on the filed notice of change of address
16 indicating to him that he needed to be present starting this
17 morning at 9:00 a.m. Further, counsel for the defense has had
18 at least oral communication with the defendant prior
19 indicating that he needed to be here on this morning at 9:00
20 a.m.

21 The defendant, having failed to appear, the Court does
22 find that the requisite and proper notice to him of his
23 constitutional rights and what would occur was given to him.
24 He acknowledged that, he was warned on more than one occasion
25 of the consequences, and I do find that he has voluntarily

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1 waived his right to be present at the trial. The Court has
2 already issued a bench warrant for his arrest. Obviously, if
3 the defendant is found at any point in time before trial is
4 over with, he will be afforded an opportunity to be present,
5 but I do find that defendant can be tried in absentia or in
6 his absence, again having received notice of his right to be
7 present and having been warned that the trial would proceed in
8 his absence.

9 All right. So, with that, again, the jury is not sworn
10 yet, so, you know, the jury has no notice of the issues
11 regarding the defendant at this point in time. I will -- if
12 he is not present by the time we start the trial tomorrow, I
13 will give a preliminary instruction to the jury to instruct
14 them and emphasize to them that the fact that the defendant is
15 not present is not a factor to be considered by them in any
16 way in their consideration of the facts in this case, cannot
17 be considered by them in any manner, that they are to draw no
18 conclusions whatsoever from that fact, and it should not be
19 discussed by the jurors at any point in time, reminding them
20 of the state's burden of proof to prove the defendant guilty
21 beyond a reasonable doubt based upon the facts of the case.

22 BY THE COURT:

23 THE COURT: All right. So, with that, how about the --
24 did y'all discuss about the video redactions at all or have
25 y'all come to any agreement, or are there still issues about

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1 that or where are we with that?

2 MR. MARTIN: Your Honor, I spoke with Ms. Wilson. She
3 had emailed those redactions to me on Friday, for whatever
4 reason, two of her emails came through and that one didn't. I
5 rebooted by email at lunch, and I printed it off.

6 THE COURT: Okay.

7 MR. MARTIN: So, Ms. Wilson and I have not had a chance
8 to talk in detail on each particular issue. I do think there
9 are some that we can agree to, and I think there are some that
10 we're not gonna be able to agree to, Judge.

11 THE COURT: All right. Well, I really would like y'all
12 to have an opportunity to talk about that and narrow it down
13 to the things that you can't agree on. Okay? Rather than
14 having to go through all of it. Y'all want to start off with
15 the *Jackson v. Denno* hearing? Will that be helpful?

16 MR. MARTIN: Judge, we'll take it in whatever order Your
17 Honor wishes to take it.

18 THE COURT: Why don't we just go ahead and start off with
19 the *Jackson v. Denno* hearing.

20 MS. WILSON: Okay.

21 (REPORTER'S NOTE: Brief break in the record to set up video
22 equipment.)

23 JACKSON V. DENNO HEARING:

24 MR. MARTIN: Your Honor, the state calls Detective Steven
25 Cotton.

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JACKSON V. DENNO - STEVEN COTTON - DIRECT BY MARTIN

1 THE COURT: All right, sir.

2 Please come around, sir.

3 MR. COTTON: Yes, Your Honor.

4 MR. MARTIN: Oh, Judge, Ms. Wilson, I think emailed about
5 a motion for sequestration.

6 MS. WILSON: Yes.

7 MR. MARTIN: Because we do have Office Loar here, too,
8 and she'll have a body camera, so I don't ---

9 MS. WILSON: I'm sorry. And I did, I forgot to mention
10 it earlier, I thought I had listed it. But I do have a
11 request for sequestration of the witnesses.

12 THE COURT: That's fine. So...

13 MR. MARTIN: We have no objection. We would ask that
14 Detective Skellet be present since he is the lead agent, but
15 that would be the only officer we ask to be present.

16 MS. WILSON: I have no objection to that.

17 THE COURT: All right. Very good.

18 All right. Go ahead.

19 DETECTIVE STEVEN COTTON, HAVING BEEN

20 SWORN, TESTIFIED AS FOLLOWS:

21 MR. COTTON: My name is Detective Steven Cotton, S-T-E-V-
22 E-N, C-O-T-T-O-N.

23 THE COURT: Go ahead, Solicitor.

24 DIRECT EXAMINATION OF DETECTIVE STEVEN COTTON BY MR. MARTIN:

25 Q: Detective Cotton, where are you currently employed?

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JACKSON V. DENNO - STEVEN COTTON - DIRECT BY MARTIN

1 A: I'm assigned with Horry County Police Department in the
2 Narcotics Division.

3 Q: Were you employed with Horry County Police back on May
4 the 26th, 2020?

5 A: Yes, I was.

6 Q: What were your current duties then?

7 A: I was a patrolman assigned to the North Precinct, which I
8 was assigned to Sector 9, which was cover a good portion of
9 Longs and all of Little River.

10 Q: And on that date, did you respond to a call for service
11 at [REDACTED] in the Longs section of Horry County?

12 A: I did.

13 Q: What was the nature of that call?

14 A: It was a -- respond to an assault that had just taken
15 place involving a minor.

16 Q: When you arrived on scene, what happened?

17 A: Essentially, when I arrived on scene in my patrol
18 vehicle, Officer Loar arrived shortly after me, and I got out
19 of my vehicle, and immediately the victim's mother came
20 running up to me, who I noticed to be excited and nervous and
21 crying and stating that her daughter was inside the house.

22 Q: Did you go inside the house?

23 A: I did.

24 Q: When you went inside the house, did you make contact with
25 the defendant?

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JACKSON V. DENNO - STEVEN COTTON - DIRECT BY MARTIN

1 A: When I got to the door, I was given a code from the
2 victim's mom, and when I got to the door, I put in the code
3 and I opened the door, and I announced his name, the
4 defendant's name quite a few times, to which at that time he
5 came across the hallway, and I entered the house, yes.

6 Q: When you made contact with the defendant tell me again
7 where he was?

8 A: When you enter the house, looking from the doorway,
9 there's a little bit of a hallway, it's a skinny hallway, and
10 then behind -- at the end of that hallway is kind of a common
11 area, and to the left is a kitchen, he kind of crossed the
12 threshold of the end of that hallway. So, I was at the
13 beginning of the hallway, he was at the end of the hallway.

14 Q: What was he wearing?

15 A: He was in shorts and no shirt, and he had a cigarette in
16 his mouth.

17 Q: What happened next?

18 A: Essentially at that time, once I made contact with him, I
19 went and approached him, and he asked if we could speak in the
20 garage.

21 Q: Did you guys go in the garage?

22 A: Yeah. As we were entering the garage, I asked him where
23 the victim was, and he stated they were upstairs. And as
24 Officer Loar was going upstairs, I was going into the garage
25 with him, yes.

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JACKSON V. DENNO - STEVEN COTTON - DIRECT BY MARTIN

1 Q: What happened next in the garage?

2 A: Once we entered the garage, I asked him if there was any
3 -- being that it was a garage, and you know, those usually
4 have tools and stuff of that nature, I asked if there was any
5 weapons inside the garage, and he stated no. And essentially,
6 he turned -- I patted him down real quick, and he turned
7 around.

8 Q: Are you familiar with what's commonly referred to as
9 Miranda warnings?

10 A: Yes.

11 Q: Did you administer those warnings in this case?

12 A: I did. Once he turned around, I asked him what was going
13 on, and I noticed his skin to be clammy and him to be kind of
14 pale and kind of flustered. So, at that point, I read him his
15 Miranda rights.

16 Q: Let me back up. What are the Miranda warnings or Miranda
17 rights?

18 A: It's his rights.

19 Q: And how do you typically administer someone their rights?

20 A: I have a card that I hold at all times when I'm on
21 patrol.

22 Q: Is that what you used here?

23 A: Yes.

24 Q: Do you have it with you?

25 A: I do.

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JACKSON V. DENNO - STEVEN COTTON - DIRECT BY MARTIN

1 Q: Would you mind reading off of that card?

2 A: Yes. It states the following -- says, you have the right
3 to remain silent; anything you say can and will be used
4 against you in a court of law. You have the right to talk to
5 a lawyer, have him or her present while you are being
6 questioned. If you cannot afford to hire a lawyer, one will
7 be appointed to represent you before any questioning if you
8 wish. If you decide at any time to exercise these rights and
9 not answer any questions or make any statements.

10 Q: Is that what you read that day?

11 A: Yes.

12 Q: Did he invoke his right to remain silent?

13 A: Yes.

14 Q: When you talked with the defendant, did he appear to be
15 under the influence of anything?

16 A: No, he did not.

17 Q: As an officer, have you come into contact with people who
18 are under the influence of, say, alcohol or drugs?

19 A: Yes.

20 Q: And what kind of characteristics would someone under the
21 influence of a substance display?

22 A: Usually they have -- usually their pupils are dialated or
23 they are changed than a normal pupil size. And they also are
24 disoriented most of the time. And you can also smell an odor
25 if they're intoxicated.

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JACKSON V. DENNO - STEVEN COTTON - DIRECT BY MARTIN

- 1 Q: Sorry to interrupt.
- 2 A: That's all right.
- 3 Q: Did he display any of those characteristics?
- 4 A: No, he did not.
- 5 Q: All right. My next question is gonna sound kind of
- 6 silly, but did he appear to understand the English language?
- 7 A: Yes, he did.
- 8 Q: Did he appear to understand what you were saying to him?
- 9 A: Yes, he did.
- 10 Q: Did his responses to you seem appropriate to what you
- 11 were asking?
- 12 A: Yes, they were.
- 13 Q: After reading him his Miranda rights, what happened next?
- 14 A: Essentially, I brought him back into the living room to
- 15 -- at which point, I decided that I was going to exit out the
- 16 back door with him. I placed him in custody, and I knew I was
- 17 gonna take him to my patrol vehicle, so I decided to go out
- 18 the back door and not back towards the victim nor her mother.
- 19 Q: Once you got him outside, was he still shirtless?
- 20 A: Yes. We -- while we were inside, I assisted him in
- 21 trying to help him find a shirt, and then once we got outside,
- 22 I tried to help him put his shirt on while he was still in
- 23 cuffs.
- 24 Q: While you were helping him put his shirt on, did he say
- 25 anything?

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- 1 A: Yes, he did.
- 2 Q: Now, let me back up a little bit. Did you ask him any
3 questions?
- 4 A: No, I did not.
- 5 Q: Did you say anything to him that would prompt a response
6 from him?
- 7 A: No, I did not.
- 8 Q: Did you say anything to him whatsoever with regards to
9 any sort of questions?
- 10 A: No, I did not.
- 11 Q: Did he say anything to you?
- 12 A: Yes, he did.
- 13 Q: To the best of your recollection, what did he say?
- 14 A: To the best of my recollection, and pardon my language,
15 but he said, I don't even want to see them. I'm so fucking
16 ashamed. I'm a piece of shit, and I'm not right in the
17 fucking head.
- 18 Q: Officer Cotton, what happened next?
- 19 A: At that point, I escorted him to my patrol vehicle, and I
20 placed him in the car, and I -- at that time, my sergeant
21 arrived on scene, and I notified him what was going on.
- 22 Q: I apologize for calling you officer instead of detective.
23 Detective Cotton, were you wearing body camera that night?
- 24 A: I was.
- 25 Q: So, explain to the Court a little bit about how a body

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1 camera works.

2 A: It's essentially a camera that's departmental issued,
3 that is activated at all times, but it doesn't actually record
4 until it's placed on by pressing it twice. And once it's
5 placed on it does a 30-second back feed with no -- with no
6 sound.

7 Q: How does the process of uploading your bodycam video
8 work?

9 A: It goes to a program that's online. So, essentially it
10 goes -- you would then at the end of the shift, you would take
11 your body camera and you would place it on what's called a
12 dock, and that dock would then load those onto a program
13 called Evidence.com.

14 Q: Do you have the ability to alter, or to change, or modify
15 anything recorded in that video?

16 A: No, I do not.

17 MR. MARTIN: Court's indulgence. Your Honor, may I
18 approach Ms. Kay?

19 THE COURT: Yes, sir.

20 BY MR. MARTIN:

21 Q: Detective Cotton ---

22 THE COURT: Before you do that, let me ask one question
23 to make sure I understand the answer, because I'm not sure I
24 did hear it.

25 The solicitor asked you, after you'd read him the Miranda

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1 rights from the card, and he asked a question did he invoke
2 his rights. I didn't hear your answer.

3 A: Yes, Your Honor. He didn't want to speak to us.

4 THE COURT: He did invoke his rights and did not want to
5 speak with you?

6 A: Correct.

7 THE COURT: All right. Very good. Thank you.

8 MR. MARTIN: May it please the Court, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. MARTIN:

11 Q: Detective Cotton, have you since viewed your body camera?

12 A: Yes, I have.

13 MR. MARTIN: May I approach, Judge?

14 THE COURT: Please.

15 BY MR. MARTIN:

16 Q: I'm showing you what's been marked as State's Exhibit 1.

17 You can take it out of the cover if you need to. Are you able
18 to identify that?

19 A: Yes, I am.

20 Q: And what does that appear to be?

21 A: Video footage of my body camera.

22 Q: Is that your initials?

23 A: Yes, it is.

24 Q: Are those initials indicating you have previously viewed
25 this?

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1 A: Yes, I have.

2 Q: Now, when you previously viewed this footage, did it
3 appear to be a fair and accurate representation of the events
4 that occurred that night?

5 A: Yes, it was.

6 Q: Did it appear that anything was materially altered or
7 substantially changed or modified?

8 A: No.

9 Q: And those images or videos that we'll review, they are an
10 accurate depiction?

11 A: Yes, they are.

12 MR. MARTIN: Judge, at this time, the state would move to
13 put Detective Cotton's body camera into evidence as State's
14 Exhibit 1.

15 THE COURT: All right. Any objection?

16 MS. WILSON: Your Honor ---

17 THE COURT: For the purposes of the motion.

18 MS. WILSON: Well, subject to my questions, no.

19 THE COURT: Okay. No, I understand you're going to be
20 able to ask him questions. But just for the purposes of the
21 motion, any problem with the Court viewing the video?

22 MS. WILSON: No, sir.

23 THE COURT: All right. Very good.

24 STATE'S EXHIBIT NUMBER 1

25 ADMITTED INTO EVIDENCE FOR PRETRIAL ONLY

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1 Go ahead.

2 MR. MARTIN: May I approach the witness?

3 THE COURT: Please.

4 MR. MARTIN: Your Honor, would it be appropriate to go
5 ahead and publish the video at this time?

6 THE COURT: Yes, sir, please.

7 MR. MARTIN: And, Your Honor, this -- Ms. Wilson knows
8 this, this is the complete unredacted version. This would not
9 have any of the proposed modifications or redactions in it.

10 THE COURT: Okay.

11 (REPORTER'S NOTE: State's 1 published for the Court. Audio
12 not transcribed herein.)

13 MR. MARTIN: Your Honor, this may speed things along, of
14 course, we'll do whatever Your Honor wishes, both Ms. Wilson
15 and I do agree that we don't wish for any more of the body
16 camera to be played at trial. It is essentially just the
17 defendant -- it's Officer Cotton sort of surveying the scene
18 and waiting on the ambulance to arrive. If Your Honor wishes
19 to watch it, that's fine, but I believe it's about 50 more
20 minutes.

21 THE COURT: All right. So, Ms. Wilson?

22 MS. WILSON: Your Honor, I agree, I do wish -- I have
23 some other changes, some minor changes, but I agree that this
24 -- it definitely shouldn't go any farther than this. I think
25 this will do.

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1 THE COURT: Okay. All right. Fine; that's good. Is
2 there some marker on there that we can ---

3 MR. MARTIN: We've been going off the time at the top
4 right-hand corner.

5 MS. WILSON: Yes, sir.

6 MR. MARTIN: To save the Court a little bit of headache,
7 I had suggested in my motion to end the video at 4:43:16,
8 which is where he and the defendant arrive at the vehicle.
9 Ms. Wilson suggests ending it about a minute earlier at
10 4:41:47, where the defendant is dressed in the front yard and
11 they're about to walk off. I don't really have an issue with
12 that, Your Honor. I mean, literally, the only part we'd be
13 taking out is him walking to the patrol car. But I mean,
14 obviously, as long as -- I mean, I know we're gonna argue
15 about the statements, but as long as -- I'm not consenting to
16 the statements coming out, but ---

17 THE COURT: Right. All right. Well, that seems to be an
18 appropriate time to stop. There's no more conversations or
19 anything else taking place.

20 MR. MARTIN: Correct.

21 THE COURT: He's clearly under arrest and in the custody
22 and control, so we can stop it, you know, basically at some
23 point in time when they're in the yard, just somewhere in
24 there.

25 MS. WILSON: That's -- thank you.

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1 MR. MARTIN: I'll just stop it at the time she put in her
2 request.

3 MS. WILSON: Okay.

4 THE COURT: Okay. All right. Thanks.

5 Any further questions by the state of the witness?

6 MR. MARTIN: Not at this time, Your Honor.

7 THE COURT: All right.

8 Ms. Wilson?

9 MS. WILSON: Thank you, Your Honor.

10 CROSS-EXAMINATION OF DETECTIVE STEVEN COTTON BY MS. WILSON:

11 Q: Detective Cotton, you said that he -- Mr. Kehborn
12 specifically declined to speak to you, correct?

13 A: Yes, ma'am. Yes, ma'am.

14 Q: And when you walked in and you saw him in the garage, you
15 followed him around to the garage, based on what we saw on the
16 video, your initial comment to the state's line of questioning
17 was that he seemed clammy?

18 A: Yes.

19 Q: And I guess I'm trying to understand. Did you take that
20 to mean that he was somehow concerned about something or
21 worried, or you just thought he seemed uncomfortable?

22 A: He seemed distraught over, over something. That's what I
23 mean by that.

24 Q: You say distraught?

25 A: Uh-huh, (affirmative response).

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1 Q: Okay. And he could've been concerned that you were
2 questioning him and that you'd shown up for him, correct?

3 A: Perhaps

4 Q: Now, when you questioned him prior to the Miranda, you
5 stated to him something along the lines of what's going on, or
6 what's happening?

7 A: Correct.

8 Q: And you -- after he makes some comment, and it's not
9 clearly audible. He makes some comment, and then you
10 immediately decide you need to stop him and Mirandize.

11 A: Correct.

12 Q: So, there's no question that you asked a question prior
13 to asking him or advising him of his rights at that point?

14 A: Correct.

15 Q: So, anything that follows the Miranda, you are saying
16 that you -- he knew everything that he should know, but prior
17 to that you admit that you questioned him and whatever he says
18 was not under Miranda?

19 A: Correct.

20 Q: So, when you said that he's clammy and he seemed
21 distraught, you obviously can't know what's actually going on
22 in his mind, right?

23 A: Inside his mind, no, ma'am.

24 Q: So, it could very well be that he was in a mental place
25 that you don't know about, and you don't know exactly what his

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1 mindset was or what was wrong with him?

2 A: Correct.

3 Q: Is it fair to say then that you don't know if he had any
4 emotional disability?

5 A: I would not know if he had any emotional disability at
6 that time, no.

7 Q: And you never inquired about that, correct?

8 A: No, ma'am.

9 MS. WILSON: Court's indulgence.

10 THE COURT: Yes, ma'am.

11 BY MS. WILSON:

12 Q: At the point that you were at the scene to, I guess, talk
13 to Mr. Kehborn, at no point in time was he not going to be
14 arrested, correct?

15 A: I can't say that, ma'am. I don't understand that
16 question. Could you repeat that?

17 Q: Okay. So, I guess I'm just asking, when you went out to
18 that location, you detained him and -- by cuffing him.

19 A: Uh-huh, (affirmative response).

20 Q: And then you put him into the car. At any point in time,
21 were you not going to place him in detention or under arrest?

22 A: I was -- essentially, as in the majority of the calls you
23 respond to, you know, you typically go through an interview
24 process. So, I would not say that he was under arrest at the
25 time of my -- I mean, arrival, it's more so based off of

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1 information that I received after I arrived, if I -- did that
2 answer your question.

3 Q: I think so.

4 A: Okay.

5 MS. WILSON: Court's indulgence for one more second.

6 THE COURT: Yes, ma'am.

7 BY MS. WILSON:

8 Q: It was chilly this night?

9 A: I don't recall, ma'am.

10 Q: You put a shirt on him just out of a sense of modesty for
11 him?

12 A: Correct, ma'am.

13 Q: But you don't remember what the weather was? Do you
14 remember seeing your breath?

15 A: No, ma'am, I don't.

16 Q: But this was about 4:00 in the morning, 4:00 or 4:30 in
17 the morning, right?

18 A: I don't recall the exact time. I know it was early in
19 the morning.

20 Q: Would the timestamp on here be correct?

21 A: I'd have to have my glasses on, ma'am, I'm sorry.

22 Q: Well, if I tell you that it says 4:43:43 on the 26th of
23 -- is that May, 2020?

24 A: Yes, ma'am.

25 Q: So, it's early in the morning. So, it's probably

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1 somewhat cool. You left the garage to go outside. I'm not
2 really clear about why you would leave the garage since you're
3 inside, you're outside -- you're not in the elements, he's
4 undressed, at least no shirt. Is there -- I mean, was there
5 some reason that you felt you needed to leave the garage?

6 A: I felt that it was best for me to get him inside the
7 patrol vehicle, yes.

8 Q: But you stood outside then for a few minutes before you
9 actually made it to the patrol vehicle, correct?

10 A: When I was helping him with his shirt, yes.

11 Q: So, the only reason then you're saying that you were
12 still outside after you left the garage was because of the
13 shirt?

14 A: No, ma'am. I also waited to make sure -- I needed -- I
15 can elaborate. Officer Loar was a fairly new officer. So,
16 one of my responsibilities is to essentially ensure that she
17 is good to go where she's at, too, with what she was doing.
18 So, now that it was kind of a lot of things taking place.

19 One, I was being -- making sure that she was good to go.
20 You'll hear me earlier ask if she was good to go, too, when I
21 was inside the residence. Also, I did not -- due to the
22 nature and the excitement of the victim's mother, I wanted to
23 ensure that all the occupants that were on-scene were inside
24 the residence for both parties, both for the defendant and for
25 the victim.

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JACKSON V. DENNO - STEVEN COTTON - REDIRECT BY MARTIN

1 Q: Okay.

2 MS. WILSON: I don't think I have any further questions

3 Your Honor.

4 THE COURT: Any redirect?

5 MR. MARTIN: Very briefly, Your Honor, not to beat a dead
6 horse.

7 REDIRECT EXAMINATION OF DETECTIVE STEVEN COTTON BY MR. MARTIN:

8 Q: Detective Cotton, you read the defendant his Miranda
9 rights?

10 A: Yes.

11 Q: After reading him those rights, did you at any point ask
12 him any questions?

13 A: No.

14 Q: Did you make any comments? Let me rephrase ---

15 A: None related to this -- to the incident that took place.

16 Q: Did you do anything in any way to coerce the defendant to
17 talk to you?

18 A: No.

19 MR. MARTIN: No further questions, Your Honor.

20 THE COURT: All right.

21 MS. WILSON: No redirect, Your Honor.

22 THE COURT: All right. Thank you.

23 All right, sir. You can step down.

24 A: Thank you, Your Honor.

25 THE COURT: All right. So, Officer Loar has a different

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1 video, correct?

2 MR. MARTIN: That's correct, Your Honor. Officer Loar
3 will be the officer that spoke with the victim.

4 THE COURT: All right. So, let's deal with this one now
5 then.

6 MOTIONS:

7 Ms. Wilson, what is it that you would want redacted out
8 of the video we just saw?

9 MS. WILSON: Your Honor, I'd like it to -- from the video
10 start to about 4:36:36 where Detective -- now, Detective
11 Cotton addresses Tonya, who is Mr. Kehborn's estranged wife at
12 this point, she's kind of wailing in the background. Cotton
13 goes into the house, calls for John, and asks about the
14 weapons. I honestly don't have a problem with even the keypad
15 part of the opening of the door, but I kind of think that the
16 substantial portion of what is happening here and what is
17 relevant for our case happens at the point that Cotton is
18 walking into the garage or walking into the garage with Mr.
19 Kehborn, and they have the exchange in there. I don't think
20 that all of the walking up to the house, talking to Tonya, her
21 cries, him getting the keypad combination is helpful or
22 necessary for anything.

23 THE COURT: All right. Solicitor?

24 MR. MARTIN: Judge, I'm reviewing my notes from the
25 video. I believe what we just saw was Officer Cotton

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1 approaching, Ms. Kehborn being upset, him asking about what
2 she said about the weapons, and then asking what's the
3 defendant's name, and getting the keypad. I -- the state
4 feels that that is something that -- it needs to come in for a
5 couple of reasons. One, it sort of sets the stage and what
6 Detective Cotton has testified about, what he's coming into
7 with the call. Also, he asked her about weapons, it explains
8 why a weapon is drawn and he's entering in the house. I'm
9 just not sure what the reason would be that we would keep that
10 out. I mean, I know that there's nothing really being said
11 one way or another, but I -- that's helpful or hurtful. I
12 just feel like it helps set the stage for the jury as to what
13 is going on when he arrives on scene.

14 THE COURT: All right. First, I'd say I don't find
15 anything in that portion of the video that is prejudicial to
16 the defendant in any way. I do believe that it is probative.
17 It allows the jury to -- helps them understand the situation,
18 what the process is and how he gets to the defendant in this
19 matter. So, I'm gonna allow that.

20 What's the next part that you would like redacted?

21 MS. WILSON: The next part, Your Honor, is 4:37:19 to
22 4:37:27, where Detective Cotton says, wait a second, this is
23 after he walks into the garage, has -- my client has -- I
24 think he's already asked him at this point, you know, what's
25 going on, and my client kind of makes some -- I don't even

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1 know what the response is that he makes, but he kind of, you
2 know, sighs, and does some other stuff, not really a comment
3 exactly but I think he's trying to say something, which is
4 completely inaudible, at least to me. And the part where
5 Cotton then tells him, wait a second, and tells my client to
6 take a deep breath, almost as if, you know, he's trying to
7 telegraph that he feels that the client is, I guess, as he
8 said from the stand, distraught or -- I think that that's
9 something that the jury could look at and see for themselves,
10 without the commentary. But I think that the commentary kind
11 of leads the jury down a different path, maybe one they might
12 not automatically take if they were just looking at it
13 themselves and drawing a conclusion. That's my take.

14 THE COURT: All right.

15 Solicitor?

16 MR. MARTIN: Your Honor, according to my notes, 4:37:07
17 to 4:37:13, which might be the part Ms. Wilson is referencing,
18 Detective Cotton asks, what's going on today? The defendant
19 says -- and I apologize for cursing -- but he says, I don't
20 know. I'm fucking -- and then puts his hands on his face.
21 And then that's when Detective Cotton reads Miranda. So,
22 assuming that that is the part that you're talking about --
23 Your Honor, again, it's sort of the same argument the state
24 made with the previous part. I don't see how this is too
25 prejudicial for the jury to see. It's showing that Officer

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1 Cotton immediately is making contact with the defendant and
2 initiating conversation with him, and then also reading him
3 Miranda. Again, I don't know if it hurts or helps, but I just
4 feel like it, again, paints the entire picture. The
5 defendant's body language is certainly relevant. His demeanor
6 is certainly relevant. And that is something the jury needs
7 to weigh if they're going to be considering the statements
8 that he makes later on.

9 MS. WILSON: And to be clear, Your Honor, number one,
10 that statement in particular, if it could be counted as one,
11 and I would have to argue that it would be a statement, is not
12 one under Miranda. But secondly, my issue is not just about
13 his statement, that was gonna come next. It's specifically
14 about the commentary from Detective Cotton. I'm not saying to
15 the Court that the demeanor is not important for the jury to
16 see. I'm saying the commentary is -- I'm trying to think of
17 the right word. The commentary might be suggestive to the
18 jury. It might be more prejudicial. That's what I'm getting
19 after specifically.

20 THE COURT: Can we -- can we play that again starting ---

21 MS. ANDREW: Yes, sir.

22 MS. WILSON: And I'm sorry, Your Honor, if I ---

23 MR. MARTIN: Your Honor, I believe where we need to start
24 it is about 4:37:07.

25 THE COURT: I was gonna say 4:37; so, go ahead.

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1 MR. MARTIN: Yeah, we'll just do 4:37.

2 (REPORTER'S NOTE: State's 1 published for the Court. Audio
3 not transcribed herein.)

4 THE COURT: All right. What I'm gonna do is where ever
5 he says, what's going on and mumbling by the defendant, we can
6 just mute the sound, we're not eliminating it, but just for
7 that little, basically a few seconds, what's going on, and the
8 immediate mumbling by the defendant thereafter, we'll just
9 mute it for that, but keep showing it, and it's basically he's
10 stopping mumbling when he's putting his hands to his face, you
11 can put the sound back on at that point in time.

12 MS. WILSON: And, Your Honor ---

13 THE COURT: Cause then -- then it is and I think it's
14 instructive and not prejudicial to the defendant that from
15 what the officer observes, he immediately decides, I need to
16 read him his Miranda warnings and place him under arrest, and
17 so I'm gonna allow that.

18 MS. WILSON: Your Honor ---

19 THE COURT: Ms. Wilson?

20 MS. WILSON: I'm sorry. And I want to make sure I'm
21 getting a ruling specifically though on the language that I
22 was talking about. I don't have a problem with the Miranda
23 part. I'm specifically talking about when he says -- he's
24 telling him -- he's got the flashlight up. It's after he's
25 asked the question, after the client mumbles something, he did

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1 start saying, you know, wait a second, hold on, you know, deep
2 breath, calm down, or something to that effect. That's what I
3 see.

4 THE COURT: I don't see that as prejudicial to the
5 defendant.

6 MS. WILSON: Okay.

7 THE COURT: And if there is any prejudice to the
8 defendant, the probative value outweighs it and will allow the
9 jury to understand the situation, because it's clear to me
10 he's basically indicating to the defendant to be quiet because
11 I'm gonna read you your Miranda warnings. So, I'm gonna allow
12 that.

13 MS. WILSON: Yes, sir.

14 THE COURT: The other part, you know, what's going on,
15 and then the mumbling.

16 MR. MARTIN: And, Your Honor, just to make sure we're on
17 the same page, when I'm preparing these redactions, mute the
18 sound when it starts what's going on today, and then put the
19 sound back on once the defendant is done mumbling and has his
20 hands on his head.

21 THE COURT: His head, right.

22 MR. MARTIN: Thank you.

23 THE COURT: Just as soon as he stops mumbling and he's
24 got his -- he's putting his hands to his head, then you can
25 just put the sound back on. Okay?

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1 All right. So, after that, a couple of minutes after
2 that, I believe we've got a question. Ms. Wilson?

3 MS. WILSON: Yes, sir. So, at around 4:40 ---

4 THE COURT: Skip to that. Go ahead.

5 MS. WILSON: I think it's 4:42, if my timestamp is right,
6 and I'm not certain it is, to about 4:40-55, of course, I am
7 seeking to eliminate Mr. Kehborn's statements.

8 THE COURT: Okay. So, let's start it -- where do you
9 have it right now?

10 MS. ANDREWS: 4:40:35, Your Honor.

11 THE COURT: Why don't you just start it from there and
12 let's see.

13 (REPORTER'S NOTE: State's 1 published for the Court. Audio
14 not transcribed herein.)

15 THE COURT: All right. So, what's your argument right
16 there, Ms. Wilson, about that part?

17 MS. WILSON: Your Honor, I am going to argue that my
18 client clearly was, you know, not in the state of mind that he
19 would -- he was obviously being taken into custody, even if
20 it's just a detention, he probably didn't really understand
21 everything that was going on at that moment. And here he was
22 being cuffed out in the open. Neighbors could've seen him,
23 might have actually seen him. I'm sure that the lights and
24 the cars and the action over there did not go unnoticed. I'm
25 concerned that certainly it might be deemed a confession of

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1 sorts, and you know, especially given that I'm looking at a
2 TIA without a client here to even potentially take the stand
3 to explain what's going on, certainly the Court can see where
4 the prejudice -- where prejudice might result. So, I feel
5 that these statements coming in certainly cast a pall over the
6 entire case for me with my client, especially without him
7 being present. I think that it's definitely more prejudicial
8 than anything else, and I don't see how any of it can be
9 probative when I don't even have a defendant here who could
10 potentially rebut it by testifying.

11 THE COURT: All right. Solicitor?

12 MR. MARTIN: Your Honor, just to keep a clean record,
13 I'll be as brief as I can. This is essentially a two-part
14 argument. As the Court knows, first, you have to determine
15 whether or not the statement is given freely and voluntarily.
16 Here, Judge, it's not in dispute. The defendant is in
17 handcuffs, but Detective Cotton did read him Miranda. But as
18 you heard from testimony and heard from the body camera, once
19 the defendant invokes his right to remain silent, Detective
20 Cotton asks him no more questions regarding this case and
21 makes no comments. This is essentially no different than if
22 the defendant were in a police car by himself making
23 statements to himself. The statement clearly is voluntary.
24 So, I think what becomes more pertinent to our argument is
25 whether or not -- is the second part, whether or not this is

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1 admissible under the rules of evidence. And here, Your Honor,
2 it's essentially admissible for three reasons. Most
3 importantly, Rule 801(d)(2) admission by a party opponent, a
4 statement is not hearsay if the statement is offered as the
5 defendant's own statement. Clearly, that implies here. Your
6 Honor, even if this were hearsay, which it's not, it was still
7 come in under 803(2), excited utterance, and 803(3), then
8 existing mental, emotional, or physical condition.

9 THE COURT: All right. Certainly, the defendant is in
10 custody, and Miranda warnings were required. No question
11 about that. The statements, whatever they are, were not in
12 response to any type of interrogation or questioning by the
13 state through the police agency. They were clearly voluntary
14 statements by the defendant. He had invoked his right to
15 remain silent before. So, he understood the rights. And at
16 this point in time, he on his own made the decision to make
17 comments. Certainly, they are comments that are made by a
18 party opponent, they again are not in reference to any
19 questioning. They are clear statements of the defendant, and
20 under 803, I think they would be proper, also.

21 Now, as I understand the -- maybe I'm not, but does the
22 state -- is there some request of the state to make this video
23 more clear?

24 MR. MARTIN: Yes, Your Honor. So, I do have ---

25 THE COURT: Let's hear about that. That to me is the

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1 more ---

2 MR. MARTIN: So, I do have a copy here of my proposed
3 redactions. We could go straight to the portion where we've
4 had an enhancement. So, what the -- what the lady in our
5 office did was she took the audio that's in question, and has
6 just upped the volume. That is it. It's the opinion of the
7 state that it is clearer that way, and we are asking that that
8 be an approved modification by the Court.

9 Would Your Honor wish for me to go ahead and play that
10 enhanced as we have it prepared?

11 THE COURT: Well, let me hear, first, an argument from
12 defense counsel.

13 MS. WILSON: Your Honor, certainly we would object to any
14 modification of the video. Officer -- Detective Cotton seemed
15 to feel that he could hear it quite clearly, and even stated
16 it for the record. So, I believe that if he could hear it,
17 when he watched his video, and if that's what he thought was
18 said to him at the time, through the video being, I guess,
19 shared with the jury, they will be able to hear it as well.
20 And I think if they have a question about it, then a request
21 to hear it or to amplify it would be -- I think it would be
22 reasonable to provide that. But otherwise, I think they
23 should hear it in its original form.

24 THE COURT: We're gonna play it in its original form, but
25 obviously at a volume loud enough for the jury to hear it. I

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1 mean, we're not gonna blast them, but in a form -- you know,
2 such volume that every member of the jury can hear it. But
3 I'm not of a mind to artificially enhance anything that would
4 be out of the realm of what actually occurred right then or
5 what the recording is of the occurrence at that time. So,
6 you'll have the testimony of Detective Cotton, and you know
7 he'll be able to relay what the defendant -- what he believes
8 the defendant said. And when ultimately, when the video goes
9 into the jury with the computer to be able to play it, they
10 can turn it up or turn it down or whatever they want to do
11 with it. And, you know, if you -- and I don't, you know, I'll
12 hear about it later as far as any closing arguments, but I
13 don't know about any reason that you can't suggest to them,
14 you know, if you're having a hard time understanding it, turn
15 the volume up or whatever, you know. Okay? I'd rather have
16 it in its natural -- especially in the state's case in chief,
17 play it in its natural condition. Okay?

18 All right. So, anything else on Officer Cotton's
19 bodycam?

20 MS. WILSON: Nothing from me.

21 MR. MARTIN: Yes, one thing with the state, Your Honor.

22 THE COURT: Yes, sir?

23 MR. MARTIN: If you look at our proposed redactions
24 Number 3 under Officer Steven Cotton.

25 THE COURT: Yes, sir.

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1 MR. MARTIN: So, this is merely the state acting out of a
2 great abundance of caution, but Officer Cotton says with that
3 in mind, do you wish to speak to me? The defendant shakes his
4 head indicating no, and Detective Cotton says, no, no, you
5 don't? The concern is, as the Court knows, it's improper to
6 comment directly or indirectly on the defendant's right to
7 counsel. I'm fearful that if they hear him say, no, I don't
8 want to talk with you, it might in some weird way imply guilt.
9 And I don't know and that's why we're ---

10 THE COURT: Well, I mean, certainly, he's allowed to ask
11 the question, with that in mind, do you wish to speak to me,
12 and the defendant's reaction to that. I think the only thing
13 that could be called into question, if the defense wants to,
14 is him reemphasizing what the defendant has indicated. Other
15 than that, I don't see any problem.

16 Ms. Wilson, do you want it redacted out where he says,
17 no, no, you don't?

18 MS. WILSON: I -- I was not really clear from the outset
19 why he wanted it out. So, of course, that made me want to
20 say, no, we want it in. However, I still really don't see
21 where it's a problem for my client or for the state, so I ---

22 THE COURT: Well, I mean, I don't either, but -- you
23 know, that's the only part, but if you don't wish to have it
24 redacted, then we're not going to. It's clearly -- you know,
25 clearly the question has to be asked after the reading of the

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1 Miranda rights. Do you wish to waive those rights and speak?
2 And whatever the response is is, you know, proper. You know,
3 so -- and it makes it clear then with Detective Cotton saying
4 no, no, you don't, and he doesn't ask any more questions.

5 MS. WILSON: Right.

6 THE COURT: So, we'll just leave that in.

7 MR. MARTIN: Thank you, Your Honor. Sorry if I threw a
8 monkey wrench into that.

9 THE COURT: That's all right. That's all right. Not a
10 problem.

11 MR. MARTIN: And then we're going to end the video where
12 Ms. Wilson suggested at 4:41:47 where they're still standing
13 on the lawn.

14 THE COURT: That's fine.

15 MR. MARTIN: Okay.

16 THE COURT: Somewhere in that timeframe where they're --
17 you know, where they're in the lawn before going off to the
18 vehicle; that's fine, somewhere in there.

19 THE COURT: All right. So, then we need to call Officer
20 Loar then?

21 MS. ANDREW: Yes, sir, Your Honor.

22 THE COURT: All right. Please?

23 MS. ANDREW: Your Honor, the state calls Officer Amanda
24 Loar.

25 MR. MARTIN: Your Honor, is Detective Cotton good to go

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JACKSON V. DENNO - AMANDA LOAR - DIRECT BY ANDREW

1 for today?

2 MS. WILSON: I have no further questions for him today.

3 THE COURT: All right. Tomorrow morning.

4 AMANDA LOAR, HAVING BEEN SWORN, TESTIFIED

5 AS FOLLOWS:

6 THE CLERK: Please state your name and spell it, please,
7 ma'am.

8 MS. LOAR: My first name is Amanda, A-M-A-N-D-A; my last
9 name is Loar, L-O-A-R.

10 THE COURT: Go ahead.

11 MS. ANDREW: Thank you, Your Honor.

12 DIRECT EXAMINATION OF AMANDA LOAR BY MS. ANDREW:

13 Q: Officer Loar, where are you currently employed?

14 A: I'm currently employed with the Horry County Police
15 Department.

16 Q: How long have you worked there?

17 A: A little over three years.

18 Q: So, what is your current assignment?

19 A: I currently work for the Beach Patrol Division.

20 Q: And what are you some your duties and responsibilities
21 with the Beach Patrol Division?

22 A: Currently, I'm responsible for the beachfront, enforcing
23 the county ordinances. I also am call responsive, so I
24 respond to calls ranging from larceny, domestic, assaults,
25 mainly misdemeanor crimes and felony crimes.

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JACKSON V. DENNO - AMANDA LOAR - DIRECT BY ANDREW

1 Q: Okay. What was your assignment back in May 2020?

2 A: I worked in the Little River/Longs section of Horry
3 County where I was a regular patrol officer, so my primary
4 function was responding to calls.

5 Q: Okay. Did you have occasion to respond to a call on May
6 26th, 2020 in the Little River/Longs area of Horry County?

7 A: Yes, I did.

8 Q: And can you tell me the nature of that call?

9 A: The call for service was in reference to a possible CSC,
10 which is criminal sexual conduct.

11 Q: Okay. Were you wearing a body camera on that date?

12 A: Yes.

13 Q: Did you activate your body camera when you arrived at the
14 call?

15 A: Yes.

16 Q: Okay. I'm gonna -- May I approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 Q: I'm gonna show you what's been marked as State's Exhibit
19 Number 2, can you identify this for me? You can take it out
20 if you need to.

21 A: This is a copy of my body camera from that incident.

22 Q: And did you previously view this copy of your bodycam?

23 A: Yes, I did.

24 Q: And how can you tell?

25 A: My signature at the bottom.

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1 Q: Okay. And as far as you saw, was this a true and
2 accurate copy of what actually occurred that night when you
3 were there on scene?

4 A: Yes.

5 MS. ANDREW: Your Honor, the state would like to admit
6 Exhibit Number 2 for the purpose of this hearing.

7 THE COURT: For the purpose of the motion, any problem
8 with the Court hearing it?

9 MS. WILSON: None, Your Honor.

10 THE COURT: All right. Very good.

11 STATE'S EXHIBIT NUMBER 2

12 ADMITTED INTO EVIDENCE FOR PRETRIAL ONLY

13 THE COURT: Go ahead.

14 (REPORTER'S NOTE: State's 2 published for the Court. Audio
15 not transcribed herein.)

16 THE COURT: Yes, sir?

17 MOTIONS:

18 MR. MARTIN: Your Honor, I have something to put on the
19 record. There is obviously more bodycam, but this is the
20 point at which we kind of agree that it's no longer necessary
21 to keep playing.

22 THE COURT: Okay. Is that correct, Ms. Wilson?

23 MS. WILSON: Yes, sir. Even though I do have a request
24 that it end earlier than this, but, yes, that's correct.

25 MR. MARTIN: That's absolutely correct. We'll probably

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1 stipulate to that.

2 MS. WILSON: Okay.

3 THE COURT: Okay. All right. So, Ms. Wilson, what is it
4 that you want to take out?

5 MS. WILSON: All right. Starting with Number 1, Your
6 Honor, video start to up to 4:37:55. Since I believe it is in
7 on at least in part on Cotton's video, I was trying to cut out
8 all of the conversation and the same thing that I wanted out
9 on Cotton -- on the Cotton video bodycam where they're walking
10 into the house. There's discussion about where to go and
11 then, of course, the most prejudicial part for me and my
12 client, of course, is **Minor** calling for her mommy from the top
13 of the stairs. Certainly, the Court understands why I would
14 want it out. In addition to that -- oh, I guess, I'll let the
15 Court ---

16 THE COURT: Okay. Well, how about that, Solicitor?

17 MS. ANDREW: Your Honor, those conversations at the
18 beginning were inaudible as far as I could tell, and again it
19 has -- it is already in on Officer Cotton's bodycam. We think
20 it just kind of sets the scene on how they entered and what
21 they saw when they got there. As far as **Minor** crying at the
22 top of the stairs, I think that's her present sense
23 perception. I think it shows her demeanor. She's clearly
24 upset. That also sets the scene. I don't think that it's
25 probative value is outweighed by the prejudice to the

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1 defendant. You're gonna see her crying and upset the whole
2 time.

3 THE COURT: All right. I'm gonna leave that -- that
4 initial part in. I do find that the probative value outweighs
5 any prejudice to the defendant. It explains the situation how
6 the officers divided out the places where to go so the jury is
7 not confused as to how that took place or what occurred. And
8 clearly, it shows the alleged victim's state of mind at the
9 time that the officers arrived, and I'm gonna allow that.

10 MS. WILSON: Thank you, Your Honor. The next part, I
11 think my timestamp is wrong. Based on what I just watched, it
12 actually starts at around 4:39:40. I'm not seeking to keep
13 out the portion where **Minor** says that her stomach hurts. I do
14 want to keep out the part about her not having her period.
15 And the main reason is because at that point, Officer Loar
16 questions her about has this happened before or either that or
17 **Minor** makes a statement that it has happened before. And, of
18 course, that's at the heart of -- of what I don't want coming
19 in to the trial. And I know that we have not had a -- but
20 that's where I'm going with that.

21 THE COURT: Okay. Solicitor?

22 MS. ANDREW: Your Honor, the state doesn't mind
23 stipulating that we'll take out the part about her period and
24 where she says it's happened before. As long as no party to
25 the case intends to address whether this has happened before

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1 in any way, we won't do it either.

2 THE COURT: All right. Very good.

3 All right. So, let's go to the next one, Ms. Wilson.

4 MS. WILSON: Thank you, Your Honor. 4:40:47 to 4:42:06,

5 Loar asked -- again, it was the part about her asking if it

6 happened before ---

7 MS. ANDREW: We're okay with taking that part out in that

8 side conversation with the mother, we'll take all that out.

9 THE COURT: Okay. Very good.

10 MS. ANDREW: And the last ---

11 MS. WILSON: Then there's 4:47:30 to 4:50:35, so

12 basically ---

13 MS. ANDREW: That's fine, too, with us.

14 MS. WILSON: Okay.

15 THE COURT: Okay. So, basically, ---

16 MS. ANDREW: We're not gonna argue about that.

17 THE COURT: --- you're gonna stop it basically when they

18 come down the stairs, somewhere in that timeframe, when the

19 officer and the victim come down ---

20 MS. ANDREW: There's about ---

21 THE COURT: Where in there are we stopping it?

22 MS. ANDREW: Well, I was gonna cut after that, Your

23 Honor, and then there's about a minute just showing the victim

24 kind of sitting there crying that we were gonna leave in, and

25 it goes from around 4:50:35 -- well, I guess I'd need to look.

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1 It's only 35 seconds. I don't how much value it has. We can
2 look at that.

3 THE COURT: All right. So, why don't y'all look at that
4 and see if you absolutely need to keep it in, and then ---

5 MS. ANDREW: Yes, sir.

6 THE COURT: And then we'll address it tomorrow.

7 MS. ANDREW: Yes, sir. And, Your Honor, just for the
8 record, the part where she talks about her period is a really
9 kind of short little segment, so I'll mute that ---

10 THE COURT: I think that'd probably be the best way to do
11 that ---

12 MS. WILSON: Okay.

13 THE COURT: --- is just to mute it. I think cutting it
14 out because -- you know, I was looking for it and it seemed to
15 be fairly brief, and so it can most easily done by muting it
16 rather than trying to cut and paste, that kind of thing.

17 MS. ANDREW: Yes, sir.

18 THE COURT: Okay. All right. So, obviously, how you get
19 it to its final condition, on both Detective Cotton and for
20 Officer Loar, obviously show it to Ms. Wilson and y'all look
21 at it and make sure you don't have any other issues. Okay?

22 MS. ANDREW: Yes, sir, Your Honor.

23 MS. WILSON: Yes, sir.

24 BY THE COURT:

25 THE COURT: All right. How about we -- is there any more

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1 questions for the officer?

2 MS. ANDREW: Not from the state, Your Honor.

3 MS. WILSON: I won't have any for her, Your Honor. Thank
4 you.

5 MS. ANDREW: Thank you, Your Honor.

6 THE COURT: And let's take a short break for about five
7 minutes and then we'll come back and address the other issues.

8 MS. WILSON: Thank you, Your Honor.

9 **RECESS - 4:14 P.M.**

10 *******OFF THE RECORD*******

11 **ON THE RECORD - 4:21 P.M.**

12 THE COURT: All right. So, any other issues about the
13 *Jackson v. Denno* or the video redactions, either one?

14 MS. ANDREW: Your Honor, for the Court's information,
15 we've queued it up. There is small portion where the girl who
16 is 13, the victim **Minor** you can see her undressing in the
17 bathroom. We've put this black modesty box kind of over her
18 for the purposes of playing the tape to the jury.

19 THE COURT: All right. How about -- how about play it.
20 I mean, I'll be frank with you, I ---

21 MS. ANDREW: You didn't see anything?

22 THE COURT: There wasn't anything that I thought, you
23 know, just caught my attention, said, well, you know, boy, we
24 need to redact this or something. So, play it and let me see.

25 MS. ANDREW: Yes, sir.

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1 MR. MARTIN: You ready, Your Honor?

2 THE COURT: Go ahead.

3 (REPORTER'S NOTE: State's 2 is published for the Court.

4 Audio not transcribed herein.)

5 THE COURT: I'm gonna be frank with you, I think it makes
6 it a lot worse than what the video actually shows. Okay.
7 It's -- to me there was nothing there that caused me any kind
8 of concern or questions. Nothing that I think would inflame
9 the prejudice of the jury or offend their sensibilities in any
10 way. So, I'd rather we not do the box. I just -- that's --
11 let's just ---

12 MS. ANDREW: Yes, sir. Okay.

13 THE COURT: All right. So, what do we have left that we
14 need to resolve?

15 MS. WILSON: Your Honor, it was just my additional -- two
16 additional matters.

17 THE COURT: Okay. What are those?

18 MS. WILSON: One was the request for a hearing on **Minor's**
19 testimony. Mainly because, as I stated previously, she was 13
20 at the time of this incident. I believe that she's now 15 or
21 16. She might've already turned 16.

22 MR. MARTIN: She's 15, Your Honor.

23 MS. WILSON: 15 now.

24 THE COURT: Okay.

25 MS. WILSON: And my concern is, you know, it's not in the

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1 case of children where she's actually locked into anything. I
2 don't know what may or may not have been added. I will say
3 that to some degree, my concerns are alleviated because we are
4 stipulating to not talking about prior incidents.

5 THE COURT: Right.

6 MS. WILSON: So, I guess then I don't know that it's
7 truly necessary at this point if, you know, I guess it's just
8 incumbent on the state to ---

9 THE COURT: Well, yeah, I don't really see the necessity
10 of having her testify, you know, outside the presence of the
11 jury. Obviously, if you hear a question from the state, or
12 even not in response to a question from the state, you hear
13 the start of something from the witness that causes you
14 concern, then I'll expect you to, you know, bring it to the
15 attention of the Court, and we'll stop it. But I'm sure the
16 state will talk to her about that.

17 MS. WILSON: Yes, sir.

18 THE COURT: Okay?

19 MR. MARTIN: I'll do that, Judge.

20 THE COURT: All right. Very good.

21 MS. WILSON: And my only other issue, Your Honor, this is
22 about the counselor, Olszewski.

23 MS. ANDREW: Olszewski.

24 MR. MARTIN: Ray Olszewski.

25 MS. WILSON: I'm gonna get it right.

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1 THE COURT: The guy from Metropolitan Children's Advocacy
2 Center?

3 MS. WILSON: Yes, sir.

4 THE COURT: All right. Very good.

5 MS. WILSON: Now, I understand that the state intends to
6 call him. I don't know if they're actually going to, but if
7 they do, I would ask for an in camera on his testimony,
8 because I am concerned about bolstering. Now, I understand
9 that he -- they have the right to use him. Whether or not
10 he's qualified as an expert, I know we'll reach that issue,
11 but ---

12 THE COURT: Sure.

13 MS. WILSON: --- my concern here is about the bolstering.
14 I figure, you know, part of the reason they want his testimony
15 is to smooth out some edges on something **Minor** is gonna testify
16 to. I could be wrong. But it suggests that it might lead to
17 some bolstering statements, and that's the only reason. And I
18 get, you know, that it's their right, I just -- I'm just
19 concerned about what may happen. And I'm not saying he's
20 gonna bolster, I just want to make sure he doesn't.

21 THE COURT: Okay. Well, I'm sure the state has talked to
22 him about that. You know, the caselaw indicates they have the
23 right to call the witness to, you know, explain in general how
24 children react, and in the studies that have been conducted
25 and the writings that indicate general information that is

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1 beneficial to the jury in understanding the situation. Again,
2 I think it's better left to you objecting to a question posed
3 by the state. I'm sure -- I don't have any question the state
4 is aware of the caselaw, and they've talked to the witness
5 about that. And I don't -- personally, I don't anticipate any
6 problems, but if there -- you know, if you see some matters
7 objectionable, please raise it to me. Okay?

8 MS. WILSON: Yes, sir. So, in camera hearing denied ---

9 THE COURT: I'm not gonna have an in camera hearing ---

10 MS. WILSON: Thank you.

11 THE COURT: --- because I honestly I just don't think
12 it's necessary. I think both sides are pretty familiar with
13 the case that allows this kind of testimony, and I think we'll
14 stick to those parameters.

15 MS. WILSON: Yes, sir.

16 THE COURT: And we won't go outside of that.

17 MS. WILSON: Yes, sir.

18 THE COURT: All right. But, you know, if you hear
19 something, you bring it to my attention.

20 MS. WILSON: Yes, sir; will do.

21 THE COURT: All right?

22 MS. WILSON: That's it for me, then.

23 THE COURT: Very good.

24 Yes, sir?

25 MR. MARTIN: I think the only matter that we have not

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1 addressed yet is the state's motion for notice of compliance
2 with the Rape Sheild Statute. As I said in my email, Your
3 Honor, to Ms. Wilson and your law clerk, this is just a brief
4 motion that's been filed out of an abundance of caution.
5 There is nothing that has been said or mentioned to me or come
6 to my attention that would be anything that we're aware of or
7 any outside sexual conduct by the victim. But if for some
8 reason there would be, we'd ask that the defense comply with
9 that statute.

10 THE COURT: Do you anticipate any issues in that regard,
11 Ms. Wilson?

12 MS. WILSON: Your Honor ---

13 THE COURT: I mean, obviously, not knowing what the
14 witness is going to say.

15 MS. WILSON: Yes.

16 THE COURT: I understand we're talking kind of in a
17 vacuum or trying to predict in the future, but ---

18 MS. WILSON: Right. I have no reason to believe that I
19 will not be able to comply. I don't even have a defendant.

20 THE COURT: I understand. I understand. So, honestly,
21 presently, I just don't see it as an issue, but again
22 depending on, you know, an answer to a question, either side
23 feels it necessary to bring something to my attention, please
24 do so.

25 MS. WILSON: Yes, sir.

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1 MR. MARTIN: Yes, sir. I filed that in July out of an
2 abundance of caution.

3 THE COURT: No, no, and I understand that. That's not a
4 problem. So, we'll try to start tomorrow morning at 9:30.
5 The jury will be here by that time. And so, I'd like to as
6 close as we could get started at 9:30, so y'all be here a
7 little bit earlier than that.

8 MS. WILSON: Yes, sir.

9 THE COURT: And, you know, obviously, if the state gets
10 some information that Mr. Kehborn has been located, you know,
11 you communicate that to Ms. Wilson, and y'all try to figure
12 out some kind of clothes and stuff for the ---

13 MR. MARTIN: We've emailed the sheriff's office Your
14 Honor's bench warrant, and he's been entered into NCIC.

15 THE COURT: All right. Good deal. Well, we'll just see
16 how that goes.

17 MS. WILSON: Thank you, Your Honor.

18 THE COURT: All right. Thank y'all.

19 **RECESS - 4:29 P.M. - END OF DAY ONE.**

20 *******OFF THE RECORD*******

21 **FEBRUARY 15, 2022 - DAY TWO**

22 **ON THE RECORD - 9:38 A.M.**

23 (REPORTER'S NOTE: The following takes place outside the
24 presence of the jury.)

25 BY THE COURT:

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1 THE COURT: The jury has asked about taking notes in this
2 case. You know, there are a number of witnesses that are
3 going to testify in this matter. I know it's not gonna be
4 extremely long, but tell me how you feel about that, Ms.
5 Wilson?

6 MS. WILSON: Your Honor, I am opposed to it. And it's
7 really just a matter of when people are taking notes, they're
8 not always focused on what's coming next. If they hear what
9 they feel is a salient point, what comes next may be lost, and
10 I'm just concerned about the possibility of that happening
11 here. I feel that if they are not taking notes, then they are
12 just keyed into everything that's being said, and I think it's
13 important that they not miss anything.

14 THE COURT: Okay. All right.
15 State's position?

16 MR. MARTIN: Your Honor, we're okay with notetaking.
17 However, we're fine either way and we'll leave it in the
18 Court's discretion.

19 THE COURT: All right. Very good. With that is the
20 state ready for the jury to come back in or come in?

21 MR. MARTIN: We are. One matter I'd like to address. I
22 know we have a sequestration order.

23 THE COURT: Yes.

24 MR. MARTIN: The child victim is present. She's also
25 present with one parent, which is her father. He is going to

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1 testify. I know Your Honor typically allows a minor victim to
2 be present with one parent. I just wanted to check that with
3 Your Honor first.

4 THE COURT: Ms. Wilson? What in ---

5 MR. MARTIN: And I say that, Judge, that's just because
6 the last trial I did with you ---

7 THE COURT: No. I understand that. What I'm saying is
8 the purpose of -- or the general purpose of the father's
9 testimony, what is that? Since I didn't see him in any of the
10 videos ---

11 MR. MARTIN: He's outcry witness, Judge. You'll hear
12 testimony that the victim calls both parents immediately after
13 it happened. He's an outcry witness. He accompanied her to
14 the hospital, and he sort of sets the stage for the family
15 dynamic and how who lives with who now.

16 THE COURT: Okay.

17 Ms. Wilson?

18 MS. WILSON: And I'm sorry. I was not aware that this
19 would be an issue. I hadn't really considered it. I will say
20 this, as far as him being an outcry witness, he was not
21 present for anything that I feel is really critical. However,
22 he didn't accompany her to the hospital. I mean, he may've
23 met her there.

24 MS. ANDREW: That's correct.

25 MR. MARTIN: That's correct. He met her at Seacoast, and

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1 then followed them to MUSC. So, you're right. He was present
2 at some point in time at the hospital, but he met her there.

3 THE COURT: Okay.

4 MS. WILSON: I don't -- I don't really have an objection
5 to that. I -- I'm trying to really reason out why it should
6 be a problem if it's going to be one, but given what he's
7 going to talk about, what he should be talking about, as long
8 as we're limited to just what he -- I mean, what he's ---

9 MR. MARTIN: And Ms. Andrew just made a good point,
10 Judge. He's actually not going to be present during the
11 victim's testimony. The only testimony he would be present
12 for is our first witness, which will be Officer Loar.

13 THE COURT: Okay.

14 MR. MARTIN: And potentially the mother as well. We plan
15 on calling him extremely early, but he will not be present for
16 the victim's testimony, if that helps.

17 MS. WILSON: I don't think it really does, but that's
18 fine. I'm not gonna object to him being in here. I don't
19 think he has any information -- firsthand information about
20 anybody else that he would even be testifying about; that's
21 fine.

22 THE COURT: All right. Thank you.

23 MS. WILSON: Thank you.

24 MR. MARTIN: Thank you, Your Honor.

25 THE COURT: All right. So, with that, ask the jury to

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1 come in, please.

2 MS. WILSON: And, Your Honor, I didn't mention before --
3 I'm sorry.

4 THE COURT: Yes, ma'am.

5 MS. WILSON: This is Brian Wallborn (spelled
6 phonetically). He's an investigator from our office in case I
7 have technological difficulties.

8 THE COURT: And that's fine. What I would ask, probably,
9 can he sit behind you or to the other side of you, because
10 that's normally the seat reserved for the defendant, and I
11 don't want the jury ---

12 MS. WILSON: Thank you, Your Honor. That's fine.
13 (REPORTER'S NOTE: Jury enters courtroom @ 9:43 a.m.)

14 THE COURT: There's gonna be no saved seats except for
15 the foreperson and the two alternates. Other than that, y'all
16 can just sit wherever you want to sit. So, the two alternates
17 have to be in the end seats. Who are the alternates? There
18 we go. All right. That's good. Okay.

19 All right. Ladies and gentlemen, the very first thing
20 that's going to happen in this matter is the clerk's
21 representative is going to administer your oath to you. So,
22 if you would all please stand at this time.

23 (REPORTER'S NOTE: Jury is duly sworn.)

24 THE COURT: All right. First, is there any member of the
25 jury that did not just affirmatively take the oath as given by

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1 the clerk's representative? If so, please stand. No jury
2 having stood, I find the jury properly sworn in this matter.

3 A couple of preliminary things. You did ask about taking
4 notes. We're not going to do that in this particular case,
5 and normally we don't, except if it's going to be an
6 exceptionally long trial that's gonna last, you know, the
7 entirety of a week or go on for weeks. We just normally don't
8 do that, and one of the reasons is that -- well, there's a
9 couple. Some people are better notetakers than others. And
10 the other reason is sometimes when people are taking notes,
11 they have a tendency of concentrating on what they're writing
12 down on the piece of paper. And the very next question and
13 answer might be significantly more important than what they're
14 writing down, and their attention has now been diverted from
15 that, and they're not paying attention to the next question
16 and answer. So, it's a normal procedure for us not to allow
17 notes, except in again exceptionally long trials. And we rely
18 on the common wisdom and memory of the jury in the matter.

19 The other matter I want to impress to you is the
20 defendant is not present for the proceeding. And I'll tell
21 you this when I give you my instructions to you at the end
22 again. The fact that the defendant is not present is not and
23 cannot in any way be a factor in your consideration of this
24 case. I tell juries all the time, and it's a fact, the
25 defendant need not appear for trial. They have constitutional

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1 right to be silent and, honestly, not participate if they
2 choose to do so, and that cannot be held against them. The
3 burden of proof in this case is on and is always on the state
4 of South Carolina to prove the defendant guilty beyond a
5 reasonable doubt. No defendant in any criminal case has any
6 kind of burden to show or prove anything to you. It is the
7 state's burden, the state's responsibility to prove a
8 defendant they charge with a crime that that defendant, if
9 they can, is guilty of that crime beyond a reasonable doubt.
10 So, you will not consider the defendant not appearing in any
11 way.

12 You're probably sitting there, again, wondering what's
13 your job. What's my job here? Your job is to be the judges
14 of the facts of this case. I will not indicate to you in any
15 fashion what I think the facts of this case are. My job is to
16 govern the law, the proceeding, respond to any motions or
17 matters brought to the Court's attention by counsel. You
18 collectively are the judges of the facts. It's your
19 responsibility to listen to the facts and evidence presented
20 in this case, and at the end listen to the law that the Court
21 will charge you and put the two together and decide did the
22 state prove the defendant guilty beyond a reasonable doubt.
23 Again, the defendant is always presumed innocent of the crime,
24 when they're charged with the crime, when the trial starts,
25 when it ends. Until you reach a unanimous decision, that

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1 presumption of innocence stays with the defendant because it's
2 the state's burden to prove the defendant guilty beyond a
3 reasonable doubt.

4 Now, how the case will proceed, after my brief comments
5 to you, we'll have the opening statements of counsel. Then
6 we'll hear from the fact witnesses, witnesses that have
7 information to give to you regarding this particular matter,
8 and we'll proceed with all of those. After that, we'll hear
9 the closing arguments of the attorneys. I will then give you
10 the law that you will apply to the facts and evidence you've
11 heard in this case.

12 In regard to the opening statements and the closing
13 arguments, opening statements are each side's initial
14 presentation to you of what they believe the evidence will
15 show to you. Their closing arguments are their comments on
16 the evidence that's already been presented to you. But
17 neither the opening statements or the closing arguments are
18 evidence. You cannot base your decision on the -- or use
19 those as facts to make your decision on. Obviously, you need
20 to listen, and you need to pay attention to what the attorneys
21 are telling you, but that's not evidence. That comes to you
22 from this witness stand. People coming and testifying to you
23 under oath, and if there's some kind of documentary evidence
24 that might be introduced in this matter, that's -- and those
25 are the facts that you make your decision on combined with the

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1 law that I will give to you at the very end.

2 Again, I'm not gonna indicate to you what I think the
3 facts of the case are. If there are some matters that the
4 attorneys bring to the Court's attention and I rule on those,
5 those are basically decisions as to whether or not something
6 is proper for you to hear or not. It's not commenting on the
7 issues at all, it's just whether or not you should receive it.
8 If I do that in your presence, that's what I'm doing, I may
9 have to send you out to the jury room to more fully discuss it
10 with the attorneys, but that's what we're doing there.

11 One final thing, in your job as judges of the facts, one
12 of the important duties you'll have is judging credibility and
13 believability, basically the same thing, credibility and
14 believability. When people testify before you under oath,
15 you're gonna be judges of their credibility and believability.
16 And I know you're thinking, well, how do I do that? You do it
17 every single day of your life. When somebody tells you
18 something, you're automatically judging in your own mind
19 whether you believe it or not. You're using your good common
20 sense. You're using your good judgment that you use in
21 conducting your own affairs. So, that's part of your duties
22 and responsibilities in evaluating the facts and evidence in
23 this case.

24 All right. With that, from the state?

25 MS. ANDREW: Yes, Your Honor. May it please the Court?

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1 THE COURT: Yes, ma'am.

2 OPENING BY MS. ANDREW:

3 MS. ANDREW: Good morning. This morning you guys, the
4 jury, are gonna meet a young girl. That young girl is sitting
5 right over there with her father. Her name is Minor [REDACTED]
6 And in many ways, as she sits here today, she's a typical
7 young girl. She's 15 years old. She's in high school. She
8 likes to do the things that typical 15-year-old girls do. She
9 likes her dad to take her shopping, even though he says it
10 takes her four hours to pick out a pair of jeans. She's
11 looking forward to her Sweet Sixteen this December. She's
12 looking forward to picking out a fancy dress, and fancy shoes,
13 and having a party.

14 But that typical 15-year-old girl is about to do
15 something that's not at all typical for a 15-year-old girl.
16 She's gonna come and sit on this witness stand, and she's
17 gonna tell you about the worst thing that ever happened to
18 her. And it happened to her when she was 13.

19 Back when she was 13 years old, she was living kind of a
20 typical life. She lived with her mom, Tonya, who you'll hear
21 from; her little brother, L. Price [REDACTED] he was 11 at the time; and
22 her other little brother CK [REDACTED], who was only 6.

23 Minor's [REDACTED] parents, Tonya and Andrew, sitting there with her,
24 were divorced, but they're united in their care for their
25 children. So, they take good care of them together. She also

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1 lived at that time with her stepfather. Her stepfather's name
2 is John Kehborn. You've heard his name throughout
3 qualification. He's the defendant in this case.

4 So, what **Minor** is gonna come up here and tell you and what
5 you're gonna hear from other family members are kind of what
6 went on on the night of May 26th, 2020. It kind of started
7 like any other night. Her mom has a job where sometimes she
8 gets called into work overnight shifts, and that's what
9 happened that night. So, her mom went to work and was working
10 that night. And that left **Minor** **L. Price** and **CK** home with
11 their stepfather, John Kehborn, which was kind of a typical
12 occurrence. They had a rather typical night in a night of
13 their life or any family's life, really. The boys were
14 playing video games in their room. The defendant was helping
15 them fix their PlayStation. **Minor** and her stepfather were
16 actually putting Halloween on each other just because they had
17 it and it was kind of fun thing to do and sending pictures and
18 Snapchats to her mom who as at work. So, everything appeared
19 to be fine. Sometime that night, **Minor** went to bed. About
20 4:00 a.m., her stepfather, John Kehborn, came into her
21 bedroom, turned her on her stomach. He took off her pants,
22 and he raped her. And that's what she's gonna tell you today.

23 It was her first sexual experience. She didn't really
24 know what was going on. She'll tell you that afterwards it
25 felt wet and weird. She immediately went into the bathroom,

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1 she locked the door, and was texting her little brother L. Price
2 who she was very close to. So, L. Price heard her crying, and
3 he got these texts to get woken up. He came in the bathroom
4 where she was, and she was -- he'll tell you because he's
5 gonna also testify, she was extremely upset. She had her
6 cellphone, so she was calling her mom and her dad.

7 The defendant was trying to get in the bathroom, and
8 L. Price not knowing what was going on and having lived with
9 this man for 10 years just kind of let him in but, luckily, he
10 went away, and Minor was able to call her mom. You're gonna
11 hear from her mom today, too, probably this morning. Her mom
12 is gonna tell you that she was at work, thinking everything
13 was fine with her family, having gotten the Snapchat videos
14 and everything looked normal. When she got this call at 4:00
15 a.m. from her daughter who was extremely upset, because she
16 said I don't feel safe. I've been raped.

17 We can't tell you, and you'll find this out, too, from --
18 her mom can't tell you who she said did it because of our
19 court rules, but Minor can tell you who she said raped her.
20 So, her mom, can you imagine, got this call at 4:00 a.m.
21 saying her daughter has been raped by her husband of 10 years,
22 who has raised Minor from the time she was four years old. And
23 she, of course, is hysterical. She calls 911 and heads home.
24 At the same time, Minor calls her father Andrew, who is sitting
25 there. He was at work, working overnight at Walmart, and

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1 he'll tell you that he got a call and knew something was wrong
2 because of the time. And when he heard his daughter just say
3 he raped me, he just hit the floor because he was so upset.
4 He, too, headed to the house.

5 You'll hear what not only about the worst night in **Minor's**
6 life, you're hearing about the worst night in all their lives,
7 **L. Price** Tonya, Andrew. You're gonna hear from all them.
8 Tonya and Andrew will tell you how they accompanied **Minor** to
9 the hospital. She ended up going to MUSC, which is the
10 Medical University of South Carolina. She went there to have
11 what's called a pediatric rape kit done or a forensic
12 examination, and that's where evidence is collected. Her
13 father followed, and he'll tell you that part of the most
14 heartbreaking part for him was seeing his little girl laying
15 in the hospital bed asking for a hug and he couldn't give her
16 one. The reason he couldn't get a hug is because the nurse --
17 they're called sexual assault nurse examiners, they're a
18 forensic nurse. They're specially trained to collect evidence
19 from sexual assault victims. And what they were doing was
20 trying to protect the evidence and trying to make sure that
21 nothing was contaminated. In this case you're gonna hear
22 about DNA, and we don't have this type of DNA in the case, but
23 if I were to touch this chair, there is the potential that I
24 could leave DNA behind that could be -- if you touched it
25 behind me, both of our DNA would be there. So, they didn't

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1 want him to touch her for that purpose, because they wanted to
2 try to collect evidence. Luckily, they did collect evidence.
3 That nurse, who you're gonna hear from, Karen Drozd, performed
4 the exam on **Minor**. They take swabs, which are like Q-tips, and
5 they swab intimate areas, like her vagina, her rectum. They
6 collect her underwear, and all of those items are packaged and
7 sent to SLED, which is our State Law Enforcement Division,
8 where they performed DNA analysis. You're gonna hear from
9 SLED. SLED is gonna tell you that they performed DNA analysis
10 on some of these items collected from **Minor** like her
11 underwear, and they found DNA, which they will indicate to you
12 is the defendant's DNA in the crotch of her underwear, which
13 corroborates what she said happened to her.

14 You're also gonna hear from a child abuse pediatrician
15 expert. He's gonna kind of explain to you some of what occurs
16 on that sexual assault kit, how -- what certain injuries may
17 indicate or not indicate. And kind of just how the mechanics
18 of how a sexual assault work.

19 So, that's kind of the evidence you're gonna hear in this
20 case. It's not gonna take that long. It'll probably take a
21 couple of days. But, if you listen closely, I think you'll
22 hear enough to understand what happened to **Minor**.

23 Now, at the end of the trial, the Judge is gonna tell you
24 what the law is. And he's the judge of the law, he's gonna
25 explain it to you. But I'm gonna tell you a little bit about

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1 it right now. The charge in this case is criminal sexual
2 conduct with a minor in the second degree. Criminal sexual
3 conduct in our law is basically exactly what it sounds like.
4 It means rape. It's a sexual battery of minor. In this case,
5 someone between the ages of 11 and 14 years old.

6 A sexual battery is defined as a penetration, however
7 slight, of someone's private parts. So, you know, I know that
8 this subject matter can be a little difficult, but that could
9 mean labial penetration, which is the penetration of someone's
10 penis between someone's labia. It could be vaginal/penile
11 penetration as well. And we're gonna talk about that as well.
12 But under our law, both crimes are kind of the same crime.

13 So, I feel confident that when you've heard from Andrew,
14 **Minor** **L. Price** and Tonya, from the SLED DNA analyst, and
15 importantly from the two officers who responded to the scene.
16 The reason I say that's important is because you're not only
17 gonna hear from these witnesses and see them as they are
18 today. Our officers now wear body cameras on their chest,
19 which are activated when they respond to a call, so there's
20 actually some video footage of them responding to the home
21 that night. So, you'll see what **Minor** looked like that night,
22 how she reacted, and what the aftermath of that was. You'll
23 also see the defendant in that video and kind of hear some of
24 his comments as well.

25 The reason I'm telling you all this is so you'll know

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1 what to expect. And what I expect is that at the end of this
2 trial, after hearing all of this evidence, you'll go back to
3 your jury room, and you'll determine that the defendant is
4 guilty.

5 THE COURT: All right. For the defense?

6 MS. WILSON: Thank you, Your Honor.

7 OPENING BY MS. WILSON:

8 MS. WILSON: Good morning, ladies and gentlemen. My name
9 is Kia Wilson, and I represent Mr. John Kehborn. He is not
10 here, and he doesn't have to be. And I want you to keep that
11 in mind throughout this trial. He doesn't have to be here.
12 The Judge has already explained it to you, but I feel it's
13 important to reiterate that fact. He has nothing to prove.
14 Everything that has to be proved to you has to come from the
15 state. He is innocent until you are given instructions to
16 deliberate, and you decide that he is or is not, but he's
17 innocent until that point.

18 Now, with that being said, you heard a lot from the
19 state. They're gonna present lots of witnesses, and that's
20 their job. They should present witnesses. But part of my job
21 is to make sure that the state does what they're supposed to
22 do when they present those witnesses, and I'm gonna do that.
23 But, in that sense, we are aligned similarly. It's also your
24 job to make sure that the state does what they're supposed to
25 do. It should not be a simple task to take away someone's

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1 freedom, to take away someone's life. It shouldn't be easy.

2 Beyond a reasonable doubt is a high burden of proof, as
3 it should be. So, when you are listening to the multitude of
4 witnesses and you're hearing the questions that are being
5 asked and you're listening to the answers, I will be listening
6 critically. You hear it, you see the reactions, but you're
7 listening to what is being said, and in some instances to what
8 is not being said.

9 Now, I don't want to hold you here and belabor, you know,
10 what's going to happen in this case. I think you've heard
11 that from the state. I have nothing that I have to do here to
12 convince you of anything. I will still try, but I have
13 nothing to prove. My client has nothing to prove. But the
14 state does have a lot to prove, and it's incumbent upon you to
15 be, if you will, the arbiters of justice. You've got to be
16 the line of defense for justice, and that's all I'm asking you
17 to do is to listen carefully and to be critical in your
18 thought process about what you hear and what you see here on
19 the stand.

20 Thank you.

21 THE COURT: All right. First witness from the state.

22 MS. ANDREW: Your Honor, the state calls Amanda Loar.

23 THE COURT: All right, ma'am. Just come all the way
24 around up front and meet the clerk's representative, please.

25 AMANDA LOAR, HAVING BEEN SWORN,

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1 TESTIFIED AS FOLLOWS:

2 THE CLERK: Please be seated. Please state your name and
3 spell it for the Court.

4 MS. LOAR: My first name is Amanda, A-M-A-N-D-A; my last
5 name is Loar, L-O-A-R.

6 THE COURT: Go ahead, Solicitor.

7 DIRECT EXAMINATION OF AMANDA LOAR BY MS. ANDREW:

8 Q: Officer Loar, where are you currently employed?

9 A: I am currently employed with the Horry County Police
10 Department.

11 Q: What's your current job assignment at the Horry County
12 Police Department?

13 A: Currently, I'm working for our Beach Patrol Division.

14 Q: What are some of your duties working the Beach Patrol
15 Division?

16 A: I'm responsible on the oceanfront. We enforce the county
17 ordinances. I'm also lifeguard certified; so, I respond to
18 any emergencies in the water. I'm also responsible for
19 responding to calls for service, which can be anything from
20 larcenies to assaults, domestic violence; mainly misdemeanor
21 crimes, but also felonies.

22 Q: Back in May of 2020, were you employed at the Horry
23 County Police Department?

24 A: Yes.

25 Q: What was your assignment at that time?

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1 A: At that time, I was working the Little River/Longs
2 section of Horry County where my primary focus was responding
3 to calls for service.

4 Q: And at that time, did you work with a partner, or did you
5 work alone?

6 A: I rode in my vehicle alone, but I worked closely with the
7 officer who was in the area next to me, which was Officer
8 Cotton at the time.

9 Q: Okay. Turning your attention to May 26th, 2020, the
10 night that brings us into court today, were you working that
11 night?

12 A: Yes, I was.

13 Q: Did you receive a call for service?

14 A: Yes.

15 Q: And were you working the nightshift that night or the day
16 shift?

17 A: Night shift.

18 Q: So, do you recall around when the call came in?

19 A: This call for service came in around 4:00 a.m.

20 Q: Okay. And where -- what location were you responding to
21 at that time?

22 A: It was in the Longs section of Horry County.

23 Q: [REDACTED] in Longs?

24 A: Yes.

25 Q: Okay. What was the nature of the call that you received?

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1 A: The nature of the call was an alleged criminal sexual
2 conduct with a minor that had just occurred.

3 Q: And did you respond to that call alone?

4 A: No. I responded with Officer Cotton, and our sergeant
5 did end up coming to the call.

6 Q: Okay. So, let's talk about when you first got to

7 [REDACTED] What did you see when you arrived?

8 A: When we first got to the call, Officer Cotton, he
9 responded there before me. So, we entered the home. He
10 located the defendant, and he asked me to go locate the
11 victim.

12 Q: Do you recall where the victim was when you entered the
13 home?

14 A: Yes. She was at the top of the stairs when I entered the
15 home. I had announced myself as the police department, and I
16 could hear her crying at the top of the stairs. It was loud,
17 and she was obviously in distress.

18 Q: Did you make contact with her at that time?

19 A: Yes.

20 Q: Do you recall what she was wearing when you first saw
21 her?

22 A: If I can recall correctly, she had shorts and a
23 sweatshirt on.

24 Q: Okay. Did she tell you -- without saying who she said
25 did it, did she tell you what happened to her?

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1 A: Yes. After I made contact with her at the top of the
2 stairs, we did end up moving outside so she could see her
3 mother. And I did ask her what happened. She told me ---

4 MS. WILSON: Objection.

5 THE COURT: I haven't heard anything objectionable yet.
6 I mean, the question was, did she tell you what happened, and
7 the officer responded she did. I didn't hear her say what
8 occurred, which she cannot say.

9 Go ahead.

10 MS. ANDREW: Your Honor, may I approach?

11 THE COURT: Other than in general terms.

12 MS. ANDREW: In general, yes, sir; yes, sir.

13 BY MS. ANDREW:

14 Q: So, without saying who she said, did she say she was
15 sexually assaulted?

16 A: Yes.

17 Q: Did she tell you where that assault occurred?

18 A: Yes.

19 Q: Did she tell you when it happened?

20 A: Yes. She told me it occurred in her bedroom around 4:00
21 a.m.

22 MS. WILSON: Objection.

23 THE COURT: Time and place is allowed.

24 MS. ANDREW: Thank you, Your Honor.

25 BY MS. ANDREW:

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1 Q: So, what did you do at that point?

2 A: As a patrol officer, in a call of this nature, we're only
3 supposed to gather enough to establish that a crime occurred.
4 So, I really just got the bare minimum of what happened. I
5 collected basic information, name, date of birth, address; I
6 got all that information from mom as well. We did end up
7 going back inside.

8 Q: Okay. At that time, were you wearing your patrol
9 uniform, which included a bodycam?

10 A: Yes.

11 Q: Can you explain to the jury what a body camera looks
12 like, where you wear it, and kind of how it works?

13 A: Here at Horry County, we are required to wear a body-worn
14 camera. It attaches to our outer vest. It's just like this
15 little black box with a camera on it. The body camera can be
16 turned on and off, but it also has to be activated. We're
17 required to have it on when we're dealing with anyone in the
18 public. So, you double tap it, so it starts recording. And
19 then you hold it for five seconds, and it stops recording. It
20 does rewind 30 seconds where there's video but no audio.

21 Q: So, when you first turn it on, what you first see is 30
22 seconds of silence, but you can see video at that time?

23 A: Yeah; that's correct.

24 Q: And did you activate your body camera when you responded
25 to [REDACTED] on May 26, 2020?

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AMANDA LOAR - DIRECT BY ANDREW

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1 A: Yes.

2 Q: Okay.

3 MS. ANDREW: May I approach, Your Honor?

4 THE COURT: Yes, ma'am, please.

5 BY MS. ANDREW:

6 Q: I'm gonna show you what's been marked as State's Exhibit
7 Number 27. And this is a copy of your body camera. Can you
8 identify that as a copy of your body camera?

9 A: Yes.

10 Q: And how can you identify it?

11 A: I signed it; it's my signature at the bottom.

12 Q: Okay. And minus some redactions made pursuant to our
13 court rules, is that a true and accurate copy of what actually
14 occurred that you made?

15 A: Yes, with the redactions.

16 MS. ANDREW: Your Honor, at this time, the state moves to
17 enter Exhibit Number 27 into evidence and publish it to the
18 jury.

19 THE COURT: Any objection?

20 MS. WILSON: No objection, Your Honor.

21 THE COURT: It's in evidence. You may show it to the
22 jury.

23 MS. ANDREW: Thank you.

24 STATE'S EXHIBIT NUMBER 27

25 ADMITTED INTO EVIDENCE

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1 (REPORTER'S NOTE: State's 27 published to the jury. Audio
2 not transcribed herein.)

3 BY MS. ANDREW:

4 Q: Officer Loar, we just watched that body camera footage
5 that we talked about, minus as I mentioned those redactions
6 that we made pursuant to our rules, was that a true and
7 accurate copy of what occurred that night?

8 A: Yes.

9 Q: On the bodycam, there's one portion where you allow **Minor**
10 to change clothes, and then at some point you change your
11 mind. Can you tell me why that occurred?

12 A: Yes. As you could hear, she says repeatedly that she's
13 shaking and that she's cold. So, I wanted to do what I could
14 to make her more comfortable. She ends up finding this pair
15 of like ripped jeans. Then pretty shortly after that, I
16 realized that if her allegations are true and what she's
17 saying had occurred, recently, there was most likely physical
18 evidence on the clothing that she was wearing. So, I
19 apologized, I said, that was my mistake. I actually need you
20 to leave those clothes on just for now for them to be
21 collected and processed later.

22 Q: Okay. And did she put those clothes back on?

23 A: Yes. She -- I believe she never took her underwear off
24 and that she put the shorts back on.

25 Q: Okay. And those were the same shorts she was wearing

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AMANDA LOAR - CROSS BY WILSON

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1 when you arrived that day; is that correct?

2 A: Yes.

3 Q: And your bodycam camera footage stopped, it looks like
4 when she got in the ambulance and left the scene. Did you
5 turn it off at that point?

6 A: I believe it was redacted a little bit. I did walk back
7 to my car and speak with the other officer, and then I believe
8 I took it off after that.

9 Q: Okay. Did anything else -- after you see the end of this
10 bodycam, anything of substance of her after she got in the
11 ambulance and left?

12 A: No.

13 Q: Okay. Other than testifying here today, did you have any
14 further involvement in the investigation of this case?

15 A: No, I watched my body camera a few times to prepare, but
16 other than that, no.

17 Q: Okay. Thank you. Please answer any questions Ms. Wilson
18 has.

19 THE COURT: Cross-examination?

20 MS. WILSON: Thank you, Your Honor.

21 CROSS-EXAMINATION OF AMANDA LOAR BY MS. WILSON:

22 Q: Officer Loar, you acknowledge the importance of the
23 collection of evidence, right?

24 A: Yes.

25 Q: So, that's why you wanted to make sure that she didn't

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AMANDA LOAR - CROSS BY WILSON

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- 1 wear the jeans, correct?
- 2 A: Yes.
- 3 Q: And you knew that any adjustment or changes, anything
- 4 could happen that could affect the evidence, and you wanted to
- 5 try to preserve that, right?
- 6 A: Correct.
- 7 Q: Now, you don't have any firsthand knowledge about
- 8 anything that happened in this case, do you?
- 9 A: Could you repeat the question?
- 10 Q: In this particular instance, you don't know what actually
- 11 happened in that room or in the bathroom or wherever? You
- 12 don't know what happened during the assault, if there was one,
- 13 correct?
- 14 A: I only know what the victim told me.
- 15 Q: And all of your information has come from what was told
- 16 to you, correct, after the fact? Is that right?
- 17 A: Yes, the victim's statement.
- 18 Q: Yes. Okay. No further questions.
- 19 THE COURT: All right. Any redirect?
- 20 MS. ANDREW: No, sir, Your Honor.
- 21 THE COURT: All right. Ma'am, you may step down.
- 22 Do you wish the witness to be excused?
- 23 MS. ANDREW: Yes, sir, Your Honor.
- 24 THE COURT: Any objection?
- 25 MS. WILSON: No objections, Your Honor.

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COURT TO JURY

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1 THE COURT: All right. Ma'am, you are released from your
2 subpoena to go back to your regular duties.

3 MS. LOAR: Thank you, Your Honor.

4 THE COURT: Thank you.

5 Your next witness?

6 MR. MARTIN: Your Honor, the state calls Minor

7 THE COURT: Okay.

8 The current age of the ---

9 MR. MARTIN: She's fifteen, Your Honor.

10 THE COURT: I'm sorry?

11 MR. MARTIN: She's currently 15, Your Honor.

12 THE COURT: Fifteen, okay.

13 Let the witness identify herself. Before you start
14 questioning, I'll have to address a matter to the jury.

15 MR. MARTIN: Yes, Your Honor.

16 Minor HAVING BEEN SWORN,

17 TESTIFIED AS FOLLOWS:

18 THE CLERK: State your name for the Court and then spell
19 it.

20 Minor Minor Minor

21 THE COURT: Minor could you move the microphone a
22 little bit closer to you and sit right behind it. Okay?
23 Thank you.

24 COURT TO JURY:

25 THE COURT: All right. Ladies and gentlemen, as you

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COURT TO JURY

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1 understand the witness is currently 15 years of age.
2 Obviously, that makes her a minor. In your job as the judges
3 of the facts, when you have a witness who is a minor, and with
4 all witnesses, you judge credibility and believability, but I
5 must instruct you that with a minor, you have to also consider
6 the age of the witness, their ability to observe and remember,
7 answer and respond to the questions. Certainly, children can,
8 but depending upon the facts, may not fully understand what
9 the situation is and what is occurring in court. Now, it will
10 be part of your job and responsibility to look at that. You
11 have to decide whether or not the minor understands the
12 seriousness of appearing as a witness in a criminal trial,
13 whether they understood the questions, responded to the
14 questions asked, whether or not they have a good memory and
15 understand obviously the difference between lying and telling
16 the truth. So, it will be you -- your job obviously as with
17 all witnesses to decide whether or not the witness understands
18 the questions and answers the questions truthfully.

19 Solicitor?

20 MR. MARTIN: Thank you, Your Honor.

21 DIRECT EXAMINATION OF Minor BY MR. MARTIN:

22 Q: Minor how old are you?

23 A: Fifteen.

24 Q: Where do you go to school?

25 A: North Myrtle Beach High.

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Minor [REDACTED] - DIRECT BY MARTIN

- 1 Q: Fifteen, what grade would you be in?
- 2 A: Ninth.
- 3 Q: What's your favorite subject?
- 4 A: Law.
- 5 Q: Why is that?
- 6 A: Learning about the different courts.
- 7 Q: Remember to speak up into the microphone. So, say your
- 8 answer again.
- 9 A: Learning about like the other courts.
- 10 Q: What would you like to be when you grow up?
- 11 A: A lawyer.
- 12 Q: I think you've got the interest of everyone in the room.
- 13 What are your favorite hobbies?
- 14 A: Shopping.
- 15 COURT REPORTER: Mr. Martin, excuse me just a second.
- 16 MR. MARTIN: Court's indulgence, Your Honor.
- 17 THE COURT: Yes, sir.
- 18 Thank you, ma'am.
- 19 BY MR. MARTIN:
- 20 Q: I'll ask you again. What are your favorite hobbies?
- 21 A: Shopping.
- 22 Q: Where do you like to shop?
- 23 A: American Eagle.
- 24 Q: Who are your brothers and sisters?
- 25 A: C. Kehborn L. Price Minor Buckles (spelled

Minor [REDACTED] - DIRECT BY MARTIN

- 1 phonetically).
- 2 Q: Repeat that last one and remember you have to speak up
- 3 into the microphone.
- 4 A: Minor [REDACTED] Buckles.
- 5 Q: Who are your parents?
- 6 A: Tonya Kehborn and Andrew Price.
- 7 Q: And who do you live with right now?
- 8 A: My mom.
- 9 Q: And where do you live?
- 10 A: In Longs.
- 11 Q: Do you live in the same house now that you were living in
- 12 back on May 26th, 2020?
- 13 A: Yes.
- 14 MR. MARTIN: Your Honor, may I approach the witness and
- 15 try to adjust the microphone?
- 16 THE COURT: Yes, sir.
- 17 As best you can, just please try to speak up, okay, just
- 18 so -- I know you're really close, but get as close as you can
- 19 to the microphone. Okay? Thank you.
- 20 Go ahead.
- 21 BY MR. MARTIN:
- 22 Q: I know you're uncomfortable, but just remember to try to
- 23 speak up as best you can so everybody can hear you. Okay?
- 24 A: So, back then, were you living at [REDACTED]
- 25 Longs?

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Minor [REDACTED] - DIRECT BY MARTIN

- 1 A: Yes.
- 2 Q: And at that time, who were you living with; do you
- 3 remember?
- 4 A: My mom and my stepdad.
- 5 Q: Okay. Who is your stepdad?
- 6 A: John Kehborn.
- 7 Q: Do you remember how old you were when you first met the
- 8 defendant?
- 9 A: I don't remember.
- 10 Q: Let me ask it to you this way. Were you really small?
- 11 A: Yes.
- 12 Q: Who else was living in the house in addition to your mom
- 13 and the defendant?
- 14 A: My two brothers.
- 15 Q: Where was your dad living then?
- 16 A: In Carolina Forest.
- 17 Q: And who is your dad married to?
- 18 A: Haley.
- 19 Q: And do you visit your dad a lot?
- 20 A: Uh-huh, (affirmative response).
- 21 Q: Do you remember the night back in 2020 is the reason why
- 22 you're here today?
- 23 A: Yes.
- 24 Q: Who was in the house that night?
- 25 A: My stepdad and my two brothers.

- 1 Q: Where was your mother?
- 2 A: At work.
- 3 Q: So, help me a little bit, walk me through that night.
- 4 What was going on that night after your mom left to go to
- 5 work?
- 6 A: The boys were on their games. We were just like doing
- 7 Halloween makeup.
- 8 Q: Do they play games a lot?
- 9 A: Uh-huh, (affirmative response).
- 10 Q: And what were you and the defendant doing; do you
- 11 remember?
- 12 A: We were playing with Halloween makeup.
- 13 Q: What kind of makeup?
- 14 A: It was kind of like vampire makeup, kind of.
- 15 Q: Vampire makeup?
- 16 A: (Indicates affirmatively.)
- 17 Q: What happened once you were done playing makeup?
- 18 A: I sent pictures of it to my mom, and then I went upstairs
- 19 to go wash it off.
- 20 Q: When you went upstairs to wash off your makeup, where
- 21 were your brothers?
- 22 A: On their games.
- 23 Q: And where are they playing games?
- 24 A: In their rooms.
- 25 Q: And then where was your stepdad?

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Minor [REDACTED] - DIRECT BY MARTIN

- 1 A: Downstairs.
- 2 Q: At some point that night, did you go to bed?
- 3 A: Yes.
- 4 Q: And what were you wearing when you went to bed?
- 5 A: Shorts and a hoodie.
- 6 Q: Do you remember about what time it was you went to bed?
- 7 A: Between 2:00 and 3:00.
- 8 Q: Still dark outside?
- 9 A: Uh-huh, (affirmative response).
- 10 Q: And you went to bed, again, where were your brothers?
- 11 A: In their rooms.
- 12 Q: And do you know where the defendant was when you went to
- 13 bed?
- 14 A: He was upstairs.
- 15 Q: Now, when you go to bed, do you normally leave the door
- 16 open, or do you leave it closed?
- 17 A: Closed.
- 18 Q: Do you remember if it was open or closed that night?
- 19 A: I want to say it was cracked.
- 20 Q: Okay. Were the lights on or off?
- 21 A: Off.
- 22 Q: Now, at any point that night, did something happen that
- 23 made you uncomfortable?
- 24 A: Yes.
- 25 Q: At some point, did your stepdad come into your bedroom?

- 1 A: Yes.
- 2 Q: Was anybody else or anything else in the bedroom with
- 3 you?
- 4 A: My dog.
- 5 Q: Your dog? What's your dog's name?
- 6 A: Rakita (spelled phonetically).
- 7 Q: What kind of dog you got?
- 8 A: Miniature German Shepherd.
- 9 Q: How old is she?
- 10 A: She's gonna be two years in April.
- 11 Q: So, other than you and Rakita, and the defendant, was
- 12 anybody else in your bedroom?
- 13 A: No.
- 14 Q: Do you have any recollection about what time that
- 15 would've been?
- 16 A: 2:00, 3:00, 4:00.
- 17 Q: Okay. When the defendant came into your bedroom, did he
- 18 say anything?
- 19 A: He asked me if I was going to sleep.
- 20 Q: What did you say?
- 21 A: Yes.
- 22 Q: What did he do next?
- 23 A: He walked out and went to the boys' rooms and started
- 24 shutting their door.
- 25 Q: Did he at any point come back to your bedroom?

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Minor [REDACTED] - DIRECT BY MARTIN

1 A: Yes.

2 Q: When he came in, were the lights on or off?

3 A: Off.

4 Q: What about the door, did he shut the door behind him or
5 leave it open?

6 A: He shut it.

7 Q: And I know you're uncomfortable, but what happened next?
8 Take your time.

9 A: Can you repeat the question?

10 Q: Sure. You said he came back into your room, right?

11 A: Uh-huh, (affirmative response).

12 Q: When he came back into your room and shut the door, did
13 he come over to you where you were on the bed?

14 A: Yes.

15 Q: Did he sit on the bed next to you?

16 A: Yes.

17 Q: Did he touch you anywhere that made you feel
18 uncomfortable?

19 MS. WILSON: Your Honor, can we approach?

20 THE COURT: Yes, sir.

21 (REPORTER'S NOTE: Bench conference is held off the record in
22 the presence but outside the hearing of the jury.)

23 JUROR: Your Honor, we're having a hard time hearing.

24 THE COURT: Yes, ma'am. And I appreciate that, and I
25 understand that.

Minor [REDACTED] - DIRECT BY MARTIN

1 I understand, ma'am, you just need to speak up because
2 the jury has to hear what you have to say. Okay? So, as best
3 you can just try to keep your voice up. Okay? And we've
4 turned the volume up as much as we can. So, that's why we
5 have to rely on you to speak up. Okay? Thank you.

6 MR. MARTIN: Your Honor, may I approach?

7 THE COURT: Sure.

8 MR. MARTIN: I'll just instruct the witness, maybe when I
9 ask a question, if she could just lean into the microphone and
10 grab it, you know, talk into it that way.

11 THE COURT: All right. I don't know about grabbing it
12 because then we'll have extraneous noise, but do lean into it
13 probably would be a good advice. Okay? Thank you.

14 BY MR. MARTIN:

15 Q: So, I'm gonna repeat my last question, which was did
16 something happen that made you uncomfortable?

17 A: Yes.

18 Q: And what was that?

19 A: He started touching me.

20 Q: Where did he touch you?

21 A: On my private parts.

22 Q: And what do you call your private parts?

23 A: (No audible response.)

24 Q: Let me ask it this way. When you go to the beach or the
25 pool, do you wear a swimsuit?

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Minor [REDACTED] - DIRECT BY MARTIN

- 1 A: Yes.
- 2 Q: Do you wear a top part?
- 3 A: Yes.
- 4 Q: Do you wear a bottom part?
- 5 A: Yes.
- 6 Q: The part that covers the top, what do you call that?
- 7 A: Your breasts.
- 8 Q: Okay. And then the two parts that cover the bottom, what
- 9 do you call that?
- 10 A: Your vagina.
- 11 Q: Okay. And then what's the other part?
- 12 A: Your butt.
- 13 Q: Okay. So, when you say private parts, where did he touch
- 14 you?
- 15 A: My vagina.
- 16 Q: Okay. Where were clothes on or off at this point?
- 17 A: (No audible response.)
- 18 Q: I'll ask it to you like this. Did at some point the
- 19 defendant take off your clothes?
- 20 A: Yes.
- 21 Q: Do you remember what happened next?
- 22 A: (No audible response.)
- 23 Q: Were you facing the defendant or were you looking away
- 24 from the defendant?
- 25 A: Looking away.

- 1 Q: Were you on your stomach or your back; do you remember?
- 2 A: My stomach.
- 3 Q: Did any part of the defendant's body touch your vagina?
- 4 A: Yes.
- 5 Q: What part?
- 6 A: His penis.
- 7 Q: Did his penis go inside your vagina?
- 8 A: Yes.
- 9 Q: How did that feel?
- 10 A: Weird.
- 11 Q: Do you remember what happened next?
- 12 A: Can you ask it a different way?
- 13 Q: Just lean into the microphone and repeat that again?
- 14 A: Can you ask it like a different way?
- 15 Q: Was -- you previously testified that Rakita was in the
- 16 room. Where was she?
- 17 A: She got pushed to the edge of my bed.
- 18 Q: At some point, did the defendant leave the room?
- 19 A: Yes.
- 20 Q: Okay. What did you do once he left the room?
- 21 A: I put my shorts and stuff back on and ran to the
- 22 bathroom.
- 23 Q: What did you do next?
- 24 A: I called my mom.
- 25 Q: Did she answer?

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Minor [REDACTED] - DIRECT BY MARTIN

- 1 A: Yes.
- 2 Q: Did you call anybody else?
- 3 A: I called my dad.
- 4 Q: Okay. Did you talk to anybody else in the house?
- 5 A: Yes.
- 6 Q: Who was that?
- 7 A: L. Price [REDACTED]
- 8 Q: Did you -- how did you contact L. Price [REDACTED]
- 9 A: I was texting him and told him to come to the bathroom.
- 10 Q: Would you mind repeating that, the last part, again; I
- 11 think a couple of people didn't hear it.
- 12 A: I texted him and told him to come to the bathroom.
- 13 Q: Did he come to the bathroom?
- 14 A: Yes.
- 15 Q: What happened in the bathroom with L. Price [REDACTED]
- 16 A: I told him that I think I needed to go stay with dad for
- 17 a while, because I didn't feel safe at home.
- 18 Q: Did the defendant at any point come to the bathroom?
- 19 A: Yes.
- 20 Q: What happened then?
- 21 A: He like barged in and told L. Price [REDACTED] to leave. He told me
- 22 not to call anyone because if I did, we were gonna lose
- 23 everything.
- 24 Q: What did you say?
- 25 A: I told him that I called Mom.

- 1 Q: Do you remember who arrived at the house next?
- 2 A: (No audible response.)
- 3 Q: Do you remember anybody else showing up to the house
- 4 after the bathroom?
- 5 A: Yes.
- 6 Q: Do you remember speaking with Officer Loar?
- 7 A: Yes.
- 8 Q: Do you remember changing clothes in the bathroom?
- 9 A: Yes.
- 10 Q: When you changed your clothes, did you put your same
- 11 panties back on?
- 12 A: Yes.
- 13 Q: And were those the same panties that you wore to the
- 14 hospital?
- 15 A: Yes.
- 16 Q: Which hospitals did you go to?
- 17 A: Seacoast; and I don't remember the second one.
- 18 Q: But you went to a second hospital?
- 19 A: (Indicates affirmatively.)
- 20 Q: When you got to the hospital, do you remember having an
- 21 exam?
- 22 A: Yes.
- 23 Q: With a nurse?
- 24 A: Yes.
- 25 Q: Now, before this incident happened, did you know what sex

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Minor - CROSS BY WILSON

1 was?

2 A: Not really.

3 MR. MARTIN: Court's indulgence, Your Honor.

4 THE COURT: Yes, sir.

5 BY MR. MARTIN:

6 Q: All right. Minor I don't have any more questions for you
7 at the moment. So, answer any questions Ms. Wilson might
8 have.

9 THE COURT: Cross-examination.

10 MS. WILSON: Thank you, Your Honor.

11 CROSS-EXAMINATION OF Minor BY MS. WILSON:

12 Q: Helly, Minor

13 A: Hi.

14 Q: My questions are gonna be really short; I'm promise.

15 Okay? Now, on May 26th, 2020, you said you were lying in the
16 bed on your stomach?

17 A: Yes, ma'am.

18 Q: Okay. And you were asleep?

19 A: Yes, ma'am.

20 Q: And you woke up when you when you say he finished
21 assaulting you? Is that correct?

22 A: Yes, ma'am.

23 MS. WILSON: Court's indulgence one second.

24 THE COURT: Yes, ma'am.

25 MS. WILSON: Okay. No further questions. Thank you.

Minor [REDACTED] - REDIRECT BY MARTIN

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION OF Minor [REDACTED] BY MR. MARTIN:

3 Q: Just want to clear something up. I believe you said that
4 you woke up when he came in the first time; is that correct?

5 A: Yes.

6 Q: So, you were awake when the defendant, your stepdad, came
7 into the bedroom?

8 A: Not like -- not really.

9 Q: Okay. Once you got -- once he came into the room, were
10 you able to wake up at that point?

11 A: I was too scared to.

12 Q: I'm sorry. Would you say that last part again?

13 A: I was too scared to.

14 Q: But you remember what was going on?

15 A: (Indicates affirmatively.)

16 Q: You got to say yes or no.

17 A: Yes.

18 MR. MARTIN: Judge, no further questions.

19 THE COURT: All right. Anything on those questions just
20 asked?

21 MS. WILSON: No further questions, Your Honor. Thank
22 you.

23 THE COURT: All right, ma'am, you can step down. Thank
24 you very much.

25 Who is your next witness?

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TONYA KEHBORN - DIRECT BY ANDREW

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1 MS. ANDREW: Tonya Kehborn.

2 THE COURT: If you'll come around all the way up front,
3 ma'am, please.

4 TONYA KEHBORN, HAVING BEEN SWORN,
5 TESTIFIED AS FOLLOWS:

6 THE CLERK: Please be seated. State your name and spell
7 it for the Court.

8 MS. KEHBORN: Tonya Kehborn, T-O-N-Y-A, K-E-H-B-O-R-N.

9 DIRECT EXAMINATION OF TONYA KEHBORN BY MS. ANDREW:

10 Q: Ms. Kehborn, what's your relation to Minor

11 A: She's my daughter.

12 Q: And who is Minor's biological father?

13 A: Andrew Price.

14 Q: Were you and Andrew married at some point?

15 A: Yes, ma'am.

16 Q: Do you have any other children between you and Andrew?

17 A: Yes, ma'am.

18 Q: And who is that?

19 A: L. Price

20 Q: How old is L. Price

21 A: He's 12.

22 Q: So, is he approximately two to three years younger than
23 Minor

24 A: Yes.

25 Q: What's the age difference?

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TONYA KEHBORN - DIRECT BY ANDREW

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- 1 A: About two and a half years.
- 2 Q: Okay. At some point, did you and Andrew get divorced?
- 3 A: Yes, ma'am.
- 4 Q: Can you remember when that was?
- 5 A: Around 2012.
- 6 Q: Okay. And where were you living when you and Andrew
- 7 divorced?
- 8 A: Minnesota.
- 9 Q: Did you at some point meet the defendant, John Kehborn?
- 10 A: Yes, ma'am.
- 11 Q: How did you meet him?
- 12 A: Through Andrew. They were in the military together.
- 13 Q: Okay. And when you first met John Kehborn, about how old
- 14 was **Minor**
- 15 A: She was three or four.
- 16 Q: Okay. Did you and John Kehborn get married at some
- 17 point?
- 18 A: Yes, ma'am.
- 19 Q: How long ago was that?
- 20 A: In 2014, so almost ten years ago.
- 21 Q: Okay. And when did you first begin a relationship? Do
- 22 you remember what year that was?
- 23 A: 2011.
- 24 Q: So, when **Minor** and -- when **Minor** first met the defendant,
- 25 John Kehborn, did they get along well?

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TONYA KEHBORN - DIRECT BY ANDREW

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- 1 A: Yes, ma'am.
- 2 Q: Okay. Do you and the defendant, John Kehborn, have any
3 children together?
- 4 A: Yes, ma'am.
- 5 Q: And who is that child?
- 6 A: C. Kehborn
- 7 Q: And how old is CK today?
- 8 A: He is nine.
- 9 Q: So, back on May 26th, 2020, how old would he have been?
- 10 A: Seven.
- 11 Q: Did he live at the house with you?
- 12 A: Yes, ma'am.
- 13 Q: Who else lived at the house back then in 2020?
- 14 A: Minor L. Price myself, CK, and John.
- 15 Q: What was the address of that house?
- 16 A: in Longs.
- 17 Q: Okay. How long had you been living there?
- 18 A: We had moved in there on March 17th of 2020, so, a month.
- 19 Q: Okay. At some point after you had CK, did you and
20 defendant decide that you didn't want to have any further
21 children?
- 22 A: Yes, ma'am.
- 23 Q: What did you do as a result of that decision?
- 24 A: He had a vasectomy.
- 25 Q: Okay. Do you still live at the address?

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- 1 A: Yes, ma'am.
- 2 Q: Are you planning to move soon?
- 3 A: Yes, ma'am.
- 4 Q: All right. Let's go back to May of 2020. How many
- 5 bedrooms were in the house at [REDACTED]
- 6 A: There's four full bedrooms, and then an empty room
- 7 downstairs that does not have a closet.
- 8 Q: Okay. Did everyone who lived in the house have their own
- 9 bedroom in that home?
- 10 A: Yes, ma'am.
- 11 Q: So, [REDACTED] had here own room?
- 12 A: Yes, ma'am.
- 13 Q: And each of the boys had their own room?
- 14 A: Yes, ma'am.
- 15 Q: Okay. Did pretty much everyone in the house get along at
- 16 that point?
- 17 A: Yes, ma'am.
- 18 Q: Did you ever notice any particular problems between [REDACTED]
- 19 and the defendant, John Kehborn?
- 20 A: No, ma'am.
- 21 Q: What was their relationship like?
- 22 A: It was-- they were pretty close, you know. I mean, it
- 23 was like a typical father/daughter relationship.
- 24 Q: Okay. Were you working back in May of 2020?
- 25 A: Yes, ma'am.

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- 1 Q: Where did you work at that time?
- 2 A: Summitt Place of North Myrtle Beach Assisted Living.
- 3 Q: Okay. And what did you do there?
- 4 A: I did several different roles there. I was the
- 5 receptionist, med tech, I ran the Memory Care Unit.
- 6 Q: What kind of hours did you work when you worked there?
- 7 A: My main hours were 10:30 a.m. to 7:00 p.m., but if we had
- 8 call outs or people didn't show up or needed staff, I did work
- 9 3:00 to 11:00, or 11:00 at night till 7:00 in the morning.
- 10 Q: Okay. About how far is it -- how much time would take to
- 11 go from Summitt Place to your house at [REDACTED]
- 12 A: Ten to 12 minutes.
- 13 Q: Okay. Was the defendant, John Kehborn, working back
- 14 then?
- 15 A: Yes, ma'am.
- 16 Q: Where did he work?
- 17 A: Coastal Association Management.
- 18 Q: And what kind of hours did he work?
- 19 A: 8:00 to 4:30-5:00ish.
- 20 Q: Okay. So, who would watch the kids while you were both
- 21 at work?
- 22 A: I would come home on my lunchbreak to make sure the boys
- 23 and everybody got off the bus. And then he would come home
- 24 shortly after. If one of us couldn't be able to meet with
- 25 each other, [REDACTED] Minor would watch them or depending on if we had

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- 1 family down, they would be there.
- 2 Q: Okay. You said when they got off the bus. It sounds
- 3 like they were at least part of time, they were school?
- 4 A: Yes, ma'am.
- 5 Q: And was it typical for John Kehborn to stay with the
- 6 children when you were called into work those nightshifts?
- 7 A: Yes, ma'am.
- 8 Q: Okay. All right. Back on May 26th, 2020, do you
- 9 remember what your work schedule was like on that day?
- 10 A: Yes, ma'am.
- 11 Q: Can you tell me what that was, please?
- 12 A: I worked in the morning. I did my typical 10:30 to 7:00
- 13 shift. I got off a little bit earlier than 7:00 because I was
- 14 coming back to do an 11:00-7:00 because we didn't have anybody
- 15 to work the overnight, and I went back to work at 11 o'clock
- 16 that night.
- 17 Q: So, you went to work and then you went home for a while
- 18 and went back out is what I just heard you say; that's
- 19 correct?
- 20 A: Uh-huh, (affirmative response).
- 21 Q: Tell me about those hours that you were home. Who was
- 22 home at that point?
- 23 A: Everybody; me, Minor CK, L. Price and John.
- 24 Q: What were you doing at home?
- 25 A: We ate supper. We talked about making a beach trip for

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1 the next day, since I was allowed to be off, and he was off.
2 And then I tried to take a nap before I went back to work,
3 because in the last 48 hours, I had probably four hours of
4 sleep.

5 Q: Okay. Who was at home when you left and went back to
6 work?

7 A: John, Minor CK, and L. Price

8 Q: Do you remember what anyone was doing when you left?

9 A: The boys were supposed to be in bed. John was supposedly
10 fixing CK's PlayStation.

11 Q: Okay.

12 A: And Minor was in her room, messing with her phone.

13 Q: Okay. Is that a pretty typical night for your family at
14 that time?

15 A: Yes, ma'am.

16 Q: Did you hear from Minor at any point while you were
17 working the overnight shift?

18 A: Yes, ma'am.

19 Q: What kind of contact did she make?

20 A: She was texting me throughout the night, early on. She
21 sent me a picture of her Halloween makeup being done around
22 probably midnight. And then at 4 o'clock in the morning, she
23 called me frantic, telling me she was scared to be home, she
24 didn't feel safe, she asked if I could come home.

25 Q: Okay. I'm gonna back you up a bit and just start with

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1 that first contact where she's texting you back and forth.

2 So, we're gonna start there if that's okay.

3 Okay. How did she seem at that point during those first
4 contacts before she called you at 4:00 a.m.?

5 A: She seemed okay. She seemed like her normal self.

6 Q: Okay. Did the defendant contact you at any point during
7 the night?

8 A: Yes, ma'am.

9 Q: Okay. And what kind of contact was that?

10 A: He had told me he was finishing up working on **CK**'s
11 PlayStation, and then he was going to bed.

12 Q: Okay. And was -- did everything appear normal at that
13 point?

14 A: Yes, ma'am.

15 Q: Okay. And now you testified a few minutes ago that **Minor**
16 called you at 4 a.m. Let's talk about that call. What
17 happened with that call?

18 A: It's out of the blue for **Minor** to call me especially in
19 the middle of the night, especially when she knows I'm
20 working. So, when I answered it, she was kind of crying and
21 frantic. And I asked her what's wrong, and she said, can you
22 come home? And I asked her, I said, no, I'm working. I said,
23 why? And she told me that she ---

24 MS. WILSON: Objection.

25 Q: Let me stop you there. I'm sorry. I just want to make

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1 sure that if you say something about what she said, you don't
2 say who she said did it. Okay?

3 A: Yes, ma'am.

4 Q: So, just in generic terms what she said happened to her.

5 A: She told me she had been raped.

6 Q: Did she tell you where that occurred?

7 A: She told me she was in the bathroom, and it had happened
8 in her room.

9 Q: Okay. What did you do?

10 A: I told her I was on my way. And the next thing I
11 remember, I made it from the back of the building to the front
12 of the building just screaming and crying and had to have my
13 kitchen manager go out to my car with me.

14 Q: Okay. So, when you got the car, did you drive home?

15 A: Yes, ma'am.

16 Q: When you got home, tell me what you saw when you arrived
17 there.

18 A: Well, I was on the phone with 911, so I don't really
19 remember what I saw. I just know I was driving around because
20 they told me not to enter the house due to the fact we had
21 guns. So, I just drove around my neighborhood until the cops
22 showed up.

23 Q: Okay. And when the police officer showed up, what did
24 you do?

25 A: I gave them the code to enter my house.

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- 1 Q: Okay. Did they go inside?
- 2 A: Yes, ma'am.
- 3 Q: Do you know where **Minor** was at that point?
- 4 A: Upstairs.
- 5 Q: At some point, did she come out of the house?
- 6 A: Yes, ma'am.
- 7 Q: Do you recall what she was wearing when she came out of
- 8 the house?
- 9 A: She had a T-shirt on and some shorts.
- 10 Q: Okay. Can you tell me what her demeanor was like; how
- 11 she acted at that point?
- 12 A: You know, it changed. She was frantic, and then it was
- 13 like a period where she was in so much shock she couldn't cry.
- 14 Q: Had you ever seen her like that before?
- 15 A: No.
- 16 Q: Okay. At some point, did **Minor** go to the hospital?
- 17 A: Yes, ma'am.
- 18 Q: How did she -- how was she transported to the hospital?
- 19 A: EMT.
- 20 Q: And did you go to the hospital with her?
- 21 A: Yes, ma'am.
- 22 Q: What hospital did you first go to?
- 23 A: Seacoast.
- 24 Q: And where is that?
- 25 A: Little River.

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1 Q: What happened at Seacoast?

2 A: Seacoast told us that they did not have anybody that
3 could treat her there, that we needed to go to MUSC. And they
4 gave us the choice of them transporting her or I taking her,
5 and me and my stepmom took her.

6 Q: So, you transported her -- and by MUSC, you mean the
7 Medical University of South Carolina at Charleston?

8 A: Yes.

9 Q: Okay. When you got to MUSC, what happened there?

10 A: They took us back to a room, and we waited for the --
11 somebody to come in and do her rape kit, and they did a bunch
12 of tests on her, and we just sat there.

13 Q: Do you know how long you were at the hospital?

14 A: A good eight hours.

15 Q: Okay. What did you do after you left the hospital?

16 A: We came home.

17 Q: And when -- once you got home, did you notice any changes
18 in **Minor** in her behavior or demeanor after this night?

19 A: Yes.

20 Q: What kind of changes did you notice?

21 A: She wasn't eating, she wasn't showering, she was very
22 clingy, she wouldn't go in her room, she wouldn't go upstairs.
23 She was not her normal self. She was -- she wasn't who she
24 is.

25 MS. ANDREW: Court's indulgence one moment, Your Honor.

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1 BY MS. ANDREW:

2 Q: I don't have any further questions at this time. Please
3 answer any questions Ms. Wilson has.

4 THE COURT: All right. Cross-examination.

5 MS. WILSON: Thank you, Your Honor.

6 Court's indulgence; I'm sorry.

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION OF TONYA KEHBORN BY MS. WILSON:

9 Q: Ms. Kehborn, you said you were at work that evening?

10 A: Yes, ma'am.

11 Q: And, of course, you came when you were called, correct?

12 A: Yes, ma'am.

13 Q: And when you got there, you were outside?

14 A: Yes, ma'am.

15 Q: And eventually, you all ended up inside the house prior
16 to EMS, correct?

17 A: Yes, ma'am.

18 Q: All right. And at no point in time were you at the house
19 during the allegation of the sexual assault, correct?

20 A: No, ma'am.

21 Q: So, you wouldn't have been there to hear anything, see
22 anything?

23 A: No, ma'am.

24 Q: All right. No further questions.

25 THE COURT: Any redirect?

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1 MS. ANDREW: No, Your Honor. We ask that this witness be
2 excused and released from subpoena.

3 MS. WILSON: Without objection.

4 THE COURT: All right. Ma'am, you are released from your
5 subpoena. You're released to go leave if you wish.

6 All right. Y'all come up for just one second, please.

7 (REPORTER'S NOTE: Bench conference is held off the record in
8 the presence but outside the hearing of the jury.)

9 BY THE COURT:

10 THE COURT: All right. Ladies and gentlemen, we're gonna
11 take a short break at this time. Now, this is going to be a
12 continuing instruction to you. I don't want you to talk about
13 the case when you are together in your jury room until I give
14 it to you at the very end. And obviously, when you leave, you
15 can't talk about it with anybody, because they're not on the
16 jury. I'll tell you that when I excuse you today. The reason
17 for this is you haven't heard all of the testimony. And if
18 you make a comment, some people find it hard when they take a
19 position to change it in some way if something later one might
20 change their mind. So, do not talk about the case until I
21 give it to you at the very end. All right?

22 So, with that, we'll take a short break for about 10
23 minutes. Thank you very much.

24 (REPORTER'S NOTE: Jury exits courtroom @ 11:05 a.m.)

25 THE COURT: Anything before we take a short break?

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BY THE COURT

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1 MR. MARTIN: None from the state, Judge.

2 MS. WILSON: Nothing, Your Honor.

3 THE COURT: All right. So, we'll be back in about ten
4 minutes.

5 MS. ANDREW: Thank you, Your Honor.

6 THE COURT: Thank you very much.

7 **RECESS - 11:06 A.M.**

8 *******OFF THE RECORD*******

9 **ON THE RECORD - 11:17 A.M.**

10 THE COURT: You previously indicated that Andrew Price is
11 in the next witness?

12 MR. MARTIN: That's correct, Judge.

13 THE COURT: Okay. I mean, if y'all wanted to bring him
14 him. Who is next after that?

15 MR. MARTIN: Our intention was to call her brother **L. Price**
16 after that.

17 THE COURT: Okay.

18 MR. MARTIN: And I'm pretty sure that'll take us to
19 lunch, Judge.

20 THE COURT: Okay. All right. Very good.

21 So, if you wanted to get him in the courtroom.

22 They're all ready. Why don't ask them to come in,
23 please, sir.

24 (REPORTER'S NOTE: Jury enters courtroom @ 11:20 a.m.)

25 THE COURT: All right. Solicitor, your next witness,

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1 please.

2 MR. MARTIN: Thank you, Your Honor. The state calls
3 Andrew Price.

4 THE COURT: All right. Please come around, sir, and meet
5 the clerk's representative at the corner.

6 ANDREW PRICE, HAVING BEEN SWORN, TESTIFIED
7 AS FOLLOWS:

8 THE CLERK: Please sit right here, and state your name
9 and spell for the Court.

10 MR. PRICE: My name is Andrew Price, A-N-D-R-E-W, last
11 name is spelled as P-R-I-C-E.

12 THE COURT: Go ahead, Solicitor.

13 MR. MARTIN: Thank you, Your Honor.

14 DIRECT EXAMINATION OF ANDREW PRICE BY MR. MARTIN:

15 Q: Mr. Price, where do you currently live?

16 A: 623 Eash Flint Lane Court, Apartment F, Myrtle Beach,
17 South Carolina.

18 Q: Were you living in South Carolina -- were you living in
19 Horry County on or about May 26th, 2020?

20 A: Yes.

21 Q: What is your relationship to the victim in this case,

22 Minor [REDACTED]

23 A: That's my daughter.

24 Q: And what's your relationship with Tonya?

25 A: That's my ex-wife.

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1 Q: And who are your children, other than Minor

2 A: I got L. Price with her, last name Price; I have two

3 stepkids with my current wife, their name is A. Walters

4 and A. Caperton

5 Q: And who is your current wife?

6 A: Haley Price.

7 Q: And what would her -- silly question, but what would her
8 relationship be to Minor

9 A: Be her stepmother.

10 Q: What was your relationship like with Minor prior to this
11 incident?

12 A: I mean, we were good. We used to go shopping, you know,
13 at least once a week when I picked them up, we'd go out to eat
14 either on a Friday or when I take them home on Sunday. But
15 normally, you know, we -- the thing that we used to do was,
16 you know, go shopping together. I like, you know, Jordans. I
17 got about 130 pairs of shoes, so, I like, you know, shoes.
18 So, it was something we did as quality time as a father and
19 daughter, you know. Unfortunately, I'd walk around American
20 Eagle for four hours looking at the same pair of pants.

21 Q: What was Minor's personality like prior to this incident?

22 A: Prior to the incident? I mean, she was energetic, she
23 was happy, she was spontaneous like just -- just a normal
24 child, just, you know, ecstatic to do things. You know, when
25 we spent quality family time together it was always good, it

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1 was always happy.

2 Q: You said you and Tonya are divorced. What is your
3 current agreement with regards to the children?

4 A: Every other weekend, we split holidays. Christmas, she
5 has them on Christmas Eve, and then I normally pick them up on
6 Christmas day, Christmas morning. Birthdays, we kind of share
7 depending on, you know, if it falls on her week, then I'll
8 celebrate their birthdays on my week or we come to an
9 agreement of -- as far anything else, if it's my week and she
10 has something planned, you know, we work around that, and I
11 get them the following weekend. If I, you know am in the
12 neighborhood and want to take them to dinner, I could text her
13 and call her, hey, can I take the kids to dinner, that's no
14 problem. You know, if it's something, you know, I got planned
15 like a three-day trip to Florida, I can ask her, and normally
16 we come to an agreement and understanding. There's never been
17 an issue between us.

18 Q: So, is it safe to say you're very involved in your kids'
19 lives?

20 A: Yes.

21 Q: How do you know the defendant, John Kehborn?

22 A: We served in the military together.

23 Q: When did you move to South Carolina?

24 A: Roughly 2018.

25 Q: And do you remember roughly when you moved to Horry

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ANDREW PRICE - DIRECT BY MARTIN

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1 County specifically?

2 A: Let's see. Almost three years ago, give or take. I know
3 this is -- we renewed the lease for a third time in January of
4 this year.

5 Q: And I believe you already answered this but were you
6 living here on or about May 26th, 2020?

7 A: Yes.

8 Q: And do you remember an incident that occurred that day
9 that brings you to Court here today?

10 A: Yes.

11 Q: Where were you that night or early morning?

12 A: I was at work. I work at Walmart in Garden City.

13 Q: Did at any point that evening you get a phone call?

14 A: It was a -- you know, late in the morning, around 4:00
15 between 4:00 and 5:00, I don't know the precise time. I know
16 when I got the phone call that it -- it would seem odd because
17 my daughter doesn't call, you know, at that early hour or late
18 however you take it. I work over night, so it's late to me.
19 Y'all that work in the morning, it would be very early to
20 y'all.

21 Q: Without saying any names, what did your daughter tell you
22 on the phone?

23 A: At first, I couldn't understand her. She was crying.
24 She was very, you know, hardly breathing like it was a panic
25 attack like she was, you know, breathing heavy. She couldn't

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- 1 really -- I couldn't understand, so I told her to calm down.
2 You know, at first, all I got out was Dad, Dad. So, I told
3 her, I said, Baby, I can't hear you. I need you to calm down
4 and breathe. What's wrong? When I finally got her to calm
5 down a couple of minutes afterwards and I could understand
6 her, she said, he raped me. She didn't specify who, but her
7 exact words, Dad, she [sic] raped me. My response to that, as
8 a father, as a parent was, are you serious?
- 9 Q: And I want to make sure I heard it correctly. Did you
10 say he or she?
- 11 A: She said he.
- 12 Q: She said he, okay. What did you do after you got the
13 phone call?
- 14 A: Well, at first, I mean, it hit me. I mean, I just --
15 it's hard to explain exactly how I felt, you know. But I was
16 standing there in front of the jewelry counter. If you've
17 ever been in Walmart, you know where the jewelry counter is,
18 setting it up. And I immediately just dropped. My wife
19 looked at me and she knew something was wrong. And I told her
20 we had to go. So, she went and she found -- she ran and found
21 our overnight boss and told him we needed to leave, that it
22 was a family matter, that we'd explain everything later.
- 23 Q: **Minor's** stepmom worked with you?
- 24 A: Yes.
- 25 Q: Okay. Did you at any point that evening see **Minor**

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- 1 A: No. As far as before or are we talking like after ---
- 2 Q: After the phone call.
- 3 A: Yes.
- 4 Q: Okay. Where did you see her?
- 5 A: I met her mother at Seacoast. I couldn't go in because
- 6 they said the hospital was on lockdown due to they
- 7 circumstances, you know, they had to the procedures and
- 8 protocols. So, I seen her for a second when she was in
- 9 Tonya's mother's -- stepmom's vehicle, and we had to go down
- 10 to MUSC. So, I followed them down to MUSC.
- 11 Q: Were you allowed to go in with her at MUSC?
- 12 A: At first, no. You know, they had to take her back. They
- 13 had to do what they needed to do, examine her or whatever, and
- 14 then I was allowed to go back there, yes. It wasn't but a few
- 15 hours afterwards I was allowed to go back.
- 16 Q: How'd that make you feel not being able to see her?
- 17 A: It hurt, you know. I felt like, you know, like I let her
- 18 down. As a parent as a father, your job is to protect. Your
- 19 job is supposed to be there. The mother's role is, you know,
- 20 to help mold and, you know, pick up the hearts when they get
- 21 broke by boys. You know, but as a father, you're supposed to
- 22 be the protector. You're supposed to be the one that, you
- 23 know, they can call on any time.
- 24 Q: After the incident that brings you to Court here today,
- 25 have you noticed any personality changes in Minor

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ANDREW PRICE - CROSS BY WILSON

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1 A: Yes.

2 Q: What?

3 A: For -- for a while, she didn't, you know, want to leave
4 the house. She didn't want to go out, and she didn't want to
5 shop. For a little bit after it first happened, I had to
6 physically go over there and, you know, bribe her to take a
7 shower, to eat something. She didn't want to do anything.
8 So, her mother asked me if I'd come over and try to get her,
9 at least, to take a shower, or, you know, eat something. So,
10 I would bribe her and be like, Baby, if you eat, you know, we
11 can go shopping, you know, whatever you want, but you've got
12 to eat, you know. I would say that her demeanor, her
13 attitude, and everything was just down. She was -- you could
14 tell, not the same child.

15 MR. MARTIN: Court's indulgence, Your Honor.

16 THE COURT: Yes, sir.

17 BY MR. MARTIN:

18 Q: No further questions at the moment. Answer any Ms.
19 Wilson might ask.

20 THE COURT: Cross-examination?

21 MS. WILSON: Thank you, Your Honor.

22 CROSS-EXAMINATION OF ANDREW PRICE BY MS. WILSON:

23 Q: Mr. Price ---

24 A: Yes, ma'am.

25 Q: You don't have any knowledge about anything that happened

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BY THE COURT

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1 prior to that phone call, do you? Not firsthand knowledge,
2 correct?

3 A: No.

4 Q: Because you weren't there that night?

5 A: No. I mean, why would I be? I mean that's my ex-wife's
6 house; that's not my house.

7 Q: I understand. And my question was you were not there
8 that night, correct?

9 A: No.

10 Q: Okay. And the beginning of any knowledge you have about
11 that night happened when you talked to your child, correct?

12 A: When I received the phone call, correct.

13 Q: Okay. No further questions.

14 THE COURT: Any redirect?

15 MR. MARTIN: No, Your Honor.

16 THE COURT: All right. You're released from your
17 subpoena and you can -- you're free to stay in the courtroom
18 if you choose.

19 MR. PRICE: Yes, sir.

20 THE COURT: All right. Your next witness, please.

21 MS. ANDREW: Your Honor, the state calls L. Price

22 He's 13 years old.

23 THE COURT: All right. Very good. Thank you.

24 BY THE COURT:

25 THE COURT: Again, ladies and gentlemen, I'm not gonna

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BY THE COURT

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1 repeat everything I told you about the testimony of a child,
2 but you obviously have to take into consideration the age of
3 the child, whether or not the witness responds properly to the
4 question and the answers, knows the difference between lying
5 and telling the truth. So, the age does mean that y'all have
6 to look at it more closely. All right?

7 Thank you.

8 L. Price HAVING BEEN SWORN, TESTIFIED
9 AS FOLLOWS:

10 THE CLERK: Okay. You can sit right here. State your
11 name and then spell it for the Court, please.

12 MR. L. Price First and last name?

13 THE CLERK: Yes.

14 MR. L. Price L. Price

15 THE COURT: And L. Price if you don't mind, just so those
16 people over there are the ones that need to hear you. Okay?
17 So, ---

18 MR. L. Price Yes, sir.

19 THE COURT: You just -- like you just did. Just lean
20 into the microphone when you're answering questions. Okay?

21 MR. L. Price Yes, sir.

22 THE COURT: Thank you very much.

23 Go ahead, ma'am.

24 MS. ANDREW: Thank you, Your Honor.

25 DIRECT EXAMINATION OF L. Price BY MS. ANDREW:

L. Price [REDACTED] - DIRECT BY ANDREW

- 1 Q: L. Price [REDACTED] how old are you right now?
- 2 A: Twelve.
- 3 Q: What grade are you in?
- 4 A: Seventh.
- 5 Q: Are you a little nervous about being here today?
- 6 A: Yes, ma'am.
- 7 Q: Okay. So, where do you currently live?
- 8 A: Like give the address?
- 9 Q: You can just tell me what city, how about that.
- 10 A: Longs.
- 11 Q: Longs. And who lives in your house with you?
- 12 A: My mom, my sister, my brother, her boyfriend, and his two
- 13 kids, and our baby sister.
- 14 Q: Okay. And when you say your sister, what's her name?
- 15 A: Minor [REDACTED]
- 16 Q: And when you said her boyfriend, is that your mom's
- 17 boyfriend?
- 18 A: Yes, ma'am.
- 19 Q: Okay. And do you have a little brother named CK [REDACTED]?
- 20 A: Yes, ma'am.
- 21 Q: Does he live with you, too?
- 22 A: Yes, ma'am.
- 23 Q: Okay. I'm gonna ask you about the night that brings you
- 24 into court today. Do you remember that night?
- 25 A: Yes, ma'am.

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L. Price [REDACTED] - DIRECT BY ANDREW

1 Q: Okay. Was that around May of 2020?

2 A: Yes, ma'am.

3 Q: Were you living at the house you live in right now, the
4 same house?

5 A: Yes, ma'am.

6 Q: Okay. And tell me about what you were doing that night?

7 A: It was around 3:00 in the morning, and John was helping
8 me with my PlayStation, and he told me to go to bed and he'll
9 help me with it in the next day. So, then I went to bed. And
10 then it was around 4:00 in the morning. I wake up to calls
11 and texts by my sister telling me to meet her in the bathroom.
12 And then I go in the bathroom, and she's like in tears. And
13 then John comes out and knocked on the door asking us to
14 unlock it. And she told me not to, but I did, because I
15 didn't know what happened at that point. And then she started
16 yelling at him, and then she called -- and then he went
17 downstairs to go smoke a cigarette in the garage. And then
18 [REDACTED] Minor called Mom and told her what happened. And a few minutes
19 later, the police were here, and Mom was here.

20 Q: Okay. Thank you for telling us so much. And you said
21 John, do you mean John Kehborn?

22 A: Yes, ma'am.

23 Q: And who is he to you, or who did he used to be to you?

24 A: My stepdad.

25 Q: Okay. Was he married to your mom?

L. Price [REDACTED] - DIRECT BY ANDREW

- 1 A: Yes, ma'am.
- 2 Q: Did you live with him before?
- 3 A: Yes, ma'am.
- 4 Q: Do you know how long you lived with him?
- 5 A: No, ma'am.
- 6 Q: Do you remember when you first moved in or was he just
- 7 kind of there your whole life?
- 8 A: I don't remember.
- 9 Q: Okay. Fair enough.
- 10 You said you were playing video games, I think?
- 11 A: He was helping me set my PlayStation up because something
- 12 happened to it. So, we had to reset it, and he told me to go
- 13 to bed.
- 14 Q: Okay. And you said you went in the bathroom with your
- 15 sister [REDACTED] Minor [REDACTED]
- 16 A: Yes, ma'am.
- 17 Q: What was she doing when you got in the bathroom?
- 18 A: She was -- we have a closet, and then near there is a
- 19 window, and she was sitting in that corner breaking down in
- 20 tears.
- 21 Q: Okay. And I think you said that she called your mom and
- 22 told her with happened?
- 23 A: Yes, ma'am.
- 24 Q: And so, I don't want you to tell me at all who she said
- 25 did anything to her. Okay? But I want you to tell me what

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L. Price ██████████ - CROSS BY WILSON

- 1 she said happened to her.
- 2 A: That she was forced to have sex.
- 3 Q: Did she tell you where it happened?
- 4 A: I'm pretty -- I think it was in her room.
- 5 Q: Okay. And do you know when it had happened?
- 6 A: It was that night after I went to bed sometime.
- 7 Q: Okay. And after that, did you -- after the police came,
- 8 did you talk to the police that night?
- 9 A: Yes, ma'am. She asked me where he was at. I said he was
- 10 in the garage smoking a cigarette, and then they escorted him
- 11 out of the garage.
- 12 Q: Okay. And when you say he, do you mean the defendant
- 13 John Kehborn?
- 14 A: Yes, ma'am.
- 15 Q: Okay. After that, did you go stay with a relative?
- 16 A: My mom's parents came over, and they stayed with me and
- 17 CK ██████ for overnight, and in the morning until Mom and Minor ██████ and
- 18 -- Mom and Minor ██████ and Grandma came home.
- 19 Q: Okay. Thank you. I don't have any more questions.
- 20 Please answer any questions Ms. Wilson has. Okay?
- 21 A: Okay. Yes, ma'am.
- 22 THE COURT: Ms. Wilson?
- 23 MS. WILSON: Thank you, Your Honor.
- 24 CROSS-EXAMINATION OF L. Price ██████████ BY MS. WILSON:
- 25 Q: L. Price ██████ right?

- 1 A: Yes, ma'am.
- 2 Q: Just a couple of quick questions for you.
- 3 A: Yes, ma'am.
- 4 Q: That night after you say you were told to go bed, you
- 5 went to bed, correct?
- 6 A: Yes, ma'am.
- 7 Q: And you don't know anything until you get -- you wake up
- 8 and you get the text messages from your sister, correct?
- 9 A: Yes, ma'am.
- 10 Q: So, I between that time, you were asleep?
- 11 A: I'm -- that's what I'm guessing, yes, because when I was
- 12 sleeping, and then I woke up; and then I find out it had
- 13 happened.
- 14 Q: But it was the text messages that you saw when you woke
- 15 up, correct?
- 16 A: Yeah. I woke up to her calling me and texting me.
- 17 Q: Okay. All right.
- 18 MS. WILSON: No further questions, Your Honor.
- 19 THE COURT: Any redirect?
- 20 MS. ANDREW: No, sir, Your Honor. We'd ask this witness
- 21 be excused and released from his subpoena.
- 22 MS. WILSON: Without objection.
- 23 THE COURT: All right. Very good. All right. You can
- 24 step down. Where is he gonna go?
- 25 MR. MARTIN: Just next to his parents, Your Honor.

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ADAM SKELLETT - DIRECT BY MARTIN

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1 MS. ANDREW: He's sitting with his father.

2 THE COURT: Yeah. You can go sit right over there next
3 to his parents. Okay?

4 MR. L. Price Yes, sir.

5 THE COURT: Thank you.

6 All right. Who is next?

7 MR. MARTIN: Your Honor, we can call Detective Skellet to
8 the stand.

9 THE COURT: All right. Very good.

10 Just meet the clerk's representative right there at the
11 corner, please, sir.

12 DETECTIVE ADAM SKELLETT, HAVING BEEN
13 SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: State your name and spell it for the Court.

15 DETECTIVE SKELLET: Surel. Detective Adam Skellett, A-D-
16 A-M, S-K-E-L-L-E-T-T.

17 THE COURT: Go ahead, Solicitor.

18 MR. MARTIN: Thank you, Your Honor.

19 DIRECT EXAMINATION OF ADAM SKELLETT BY MR. MARTIN:

20 Q: Detective Skellett, where are you currently employed?

21 A: With the Horry County Police Department.

22 Q: And what are your current duties with the Horry County
23 Police Department?

24 A: Currently, I'm with the Violent Crimes Homicide Unit.

25 Q: How long have you been with Horry County?

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ADAM SKELLETT - DIRECT BY MARTIN

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- 1 A: Horry County, this will be -- May will be 11 years, about
2 10-and-a-half years now.
- 3 Q: So, you were employed with the Horry County Police
4 Department back in May of 2020?
- 5 A: Yes, sir.
- 6 Q: What were your roles or duties back then?
- 7 A: At that time, I was part of the Special Victims Unit.
- 8 Q: Were you involved in the investigation of a case that
9 brings you here to court today?
- 10 A: Yes, sir.
- 11 Q: Involving the defendant, John Kehborn?
- 12 A: Yes, sir.
- 13 Q: Briefly explain to the jury what your role was when you
14 came onto that case?
- 15 A: Sure. It would've actually been the morning of May 27th.
16 As I came into work, my supervisor had notified me about the
17 arrest of the defendant from this case. At that time, the
18 case report was looked over. A warrant was then obtained for
19 the charge of criminal sexual conduct in the second degree
20 with a minor. And also a search warrant for the defendant's
21 DNA. At that time, the local magistrate at J. Reuben
22 Detention Center, he was then advised of the case, who at that
23 time found probable cause to sign that warrant, and also the
24 search warrant. At that time, I met with the defendant inside
25 of the jail at J. Reuben Long Detention Center where he was

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1 served his warrant -- I'm sorry -- the arrest warrant, and
2 also at that time, the DNA warrant was served on him as well.

3 Q: I'm gonna break that down just a little bit. What's a
4 search warrant?

5 A: A search warrant at this time, would've actually been for
6 his DNA, which we call buccal swabs or buccal swabs. At that
7 time, it's actually asking the Judge inside the warrant to say
8 that we would like to have two sets of Q-tips rubbed in the
9 inner circles of the inner cheeks of the defendant's mouth.
10 At that time, they are packaged and sent off evidence at that
11 time.

12 Q: And is that what you did here?

13 A: Yes. Yes, sir.

14 Q: And go into a little more detail, if you will, about what
15 happened when you said you took the buccal swabs on the cheek
16 of the defendant.

17 A: Sure. The Q-tips, they come in packages of two. Take a
18 Q-tip that we'd use the bathroom, but they're gonna be, of
19 course, a little bit longer at this point. They're in plastic
20 wraps and you unwrap those with gloves on. That that time,
21 you would actually ask the person, whoever you're
22 administering that to, just to open wide at that point. You
23 would rub on in the inner side of one cheek, and then on the
24 other side of the cheek.

25 At that time, there's a cardboard box that you would just

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1 put the Q-tips in, and then you would seal at that time, and
2 you would do this twice.

3 Q: What did you do with the Q-tips or buccal swaps once you
4 took that.?

5 A: Sure. This is some information that you fill out on
6 these cardboard boxes, such as the case number, location,
7 date, and time of where you took the DNA at that time.

8 Once getting back to the police department, you would
9 take the -- what they would call little red evidence stickers.
10 You would put them on both sides of the cardboard boxes and
11 then you initial on top, and that would seal them shut at that
12 time.

13 Q: Where do you put these items of evidence once you take
14 them to the police department?

15 A: After they are sealed on the sides of the boxes, put them
16 inside of an evidence bag with the case number, and then turn
17 them into evidence at that time. And then you'd also email
18 evidence to let them know the evidence has been turned into
19 them, also. Plus, a chain of custody is also filled out at
20 that time as well.

21 Q: What's a chain of custody?

22 A: Basically saying, it's a piece of paper that says in this
23 case, I, Detective Skellett, at this time took the DNA or in
24 this case the buccal swabs from this person and then
25 transferred them over to evidence. So, what they call the

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1 chain of custody showing that I took the evidence, I then
2 turned it over to our evidence section after that.

3 Q: During this process, did you do anything to tamper with
4 or alter these buccal swabs?

5 A: No, sir.

6 Q: And did you in fact fill out an evidence log in this
7 case?

8 A: Yes, sir.

9 MR. MARTIN: Your Honor, may I approach for an item of
10 evidence?

11 THE COURT: Yes, sir.

12 MR. MARTIN: Your Honor, may I approach the witness?

13 THE COURT: Yes, sir.

14 BY MR. MARTIN:

15 Q: Detective Skellett, I'm showing you what's been marked as
16 State's Exhibit 17 for identification. Could you pls tell me
17 if you can identify that?

18 A: Yes, sir. This is the evidence record that I filled out.

19 Q: And did you list on that evidence record what those items
20 of evidence are?

21 A: Yes.

22 Q: And did you sign that evidence record?

23 A: Yes, sir; I did.

24 Q: And in this process, are these records kept during the
25 normal course of business?

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1 A: Yes, in this case yes.

2 Q: And are you a custodian of those records for the purposes
3 of filling out this form?

4 A: Yes, sir.

5 MR. MARTIN: Your Honor, at this time, the state would
6 ask that we move Number 17 into evidence.

7 THE COURT: Any objection?

8 MS. WILSON: No objection, Your Honor.

9 THE COURT: All right. So, State's 17 is in evidence
10 without objection.

11 STATE'S EXHIBIT NUMBER 17

12 ADMITTED INTO EVIDENCE

13 BY MR. MARTIN:

14 Q: Detective Skellett, I'm now approaching with what's been
15 marked for identification purposes State's Exhibit 16. It's
16 in a clear packaging. Take a moment and let me know if you're
17 able to identify that.

18 A: I can feel from the texture of the bag, I'm assuming this
19 is feels like on the buccal swab evidence packages.

20 MR. MARTIN: Your Honor, would it be okay to have the
21 witness open that on the stand if I hand him a knife and
22 gloves?

23 THE COURT: Yes, sir.

24 A: There's gloves up here.

25 Q: Okay.

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1 MS. WILSON: No objection.

2 COURT REPORTER: There's some scissors right there.

3 MR. MARTIN: Scissors, that's even better. Thank you.

4 It is Horry County, Your Honor.

5 THE COURT: I understand that.

6 (REPORTER'S NOTE: Witness opens State's 17.)

7 BY MR. MARTIN:

8 Q: So, what does that appear to be?

9 A: This would be the swab carton that I was explaining prior
10 before with my handwriting on there, and information, and it
11 also appears that one of the sides has been opened for the
12 stickers that we usually take to seal.

13 Q: And again, during this process, did you do anything to
14 tamper with those swabs?

15 A: No. And I don't know if this is hard to see or not. On
16 this side, the unopened side, you can tell where the tape is
17 still on there with my initials. And this is the side where
18 it had been opened up, not by me.

19 MR. MARTIN: Your Honor, we'd ask at this time if State's
20 16 be admitted into evidence.

21 THE COURT: Any objection? Do you want the custody
22 completely presented before it comes into evidence?

23 MS. WILSON: I would like that, Your Honor. I think it's
24 appropriate.

25 MR. MARTIN: That's fine, Your Honor.

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1 THE COURT: That's fine. It's for identification now,
2 and --

3 MR. MARTIN: Yes, Your Honor.

4 THE COURT: We'll address it coming in through another
5 witness.

6 STATE'S EXHIBIT NUMBER 16

7 MARKED FOR IDENTIFICATION

8 BY MR. MARTIN:

9 Q: Now, Detective Skellett, other than you testifying here
10 today, did that conclude your involvement in this case?

11 A: The only other things I'm in charge of, that being as the
12 case agent, one, is of course compiling all of the information
13 that was obtained throughout this case. What we do after
14 cases with children involving a sex crime, we do called --
15 it's called the Child Recovery Center, or the CRC. They have
16 forensic therapist there who actually speak to the children,
17 document what they say, and also report what they say, too.
18 And then we use those kind of as our notes also to see what
19 the children have said during that incident.

20 Q: Other than that, did that conclude all your involvement
21 other than testifying here in court today?

22 A: Yes, sir.

23 MR. MARTIN: Your Honor the state has no further
24 questions at this time of this witness.

25 THE COURT: All right. Very good.

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ADAM SKELLETT - CROSS BY WILSON

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1 Cross-examination?

2 MS. WILSON: Thank you, Your Honor.

3 CROSS-EXAMINATION OF DETECTIVE ADAM SKELLETT BY MS. WILSON:

4 Q: Detective Skellett, you would agree that evidence
5 collection is important?

6 A: Yes, ma'am.

7 Q: And you had special training in order to take buccal
8 swabs?

9 A: Yes, ma'am.

10 Q: So, you would agree that how it is taken, and the
11 conditions under which it is taken, and what happens to it
12 after it's taken are extremely important?

13 A: Yes, ma'am.

14 Q: And in this instance, of course, you're saying that you
15 did everything the way you were supposed to, and there's no
16 issue with the buccal swab, correct?

17 A: Yes, ma'am

18 Q: And I know there was some conversation about the chain,
19 but you even said that the chain of custody is critical
20 because that's how you log who came into contact with what you
21 took, correct?

22 A: Yes, ma'am.

23 Q: So, you would agree then that keeping track of everybody
24 that's come into contact with it is the whole -- is the entire
25 purpose for the chain of custody?

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BY THE COURT

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1 A: Yes, ma'am.

2 Q: All right. And other than your stated involvement, you
3 didn't have any other participation in this case?

4 A: No, ma'am.

5 Q: And you weren't there the night of the 26th, were you?

6 A: No, ma'am.

7 Q: All right. No further questions.

8 THE COURT: Any redirect?

9 MR. MARTIN: No, Your Honor.

10 THE COURT: You may step down, sir.

11 DETECTIVE SKELLETT: Thank you, sir.

12 THE COURT: Y'all come up and talk to me just for a
13 second.

14 (REPORTER'S NOTE: Bench conference is held off the record in
15 the presence but outside the hearing of the jury.)

16 BY THE COURT:

17 THE COURT: All right. Ladies and gentlemen, the next
18 witness is coming to us from MUSC in Charleston, and is on the
19 way. Things have moved a little bit faster than the state
20 anticipated. So, what we're gonna do is break early for
21 lunch, at this point in time, and give that witness time to
22 get here. Y'all be back in your jury room so that we can come
23 in by 1:30, by 1:30. All right?

24 And remember, don't talk about the case, don't allow
25 anybody to talk to you about it.

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BY THE COURT

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1 Thank you.

2 (REPORTER'S NOTE: Jury exits courtroom @ 11:51 a.m.)

3 THE COURT: All right. Anything from the state before we
4 break?

5 MR. MARTIN: No, Your Honor.

6 THE COURT: From the defense?

7 MS. WILSON: Nothing, Your Honor.

8 THE COURT: All right. Very good. We'll resume back at
9 1:30.

10 MS. WILSON: Thank you.

11 MS. ANDREW: Thank you, Your Honor.

12 THE COURT: Thank you very much.

13 **RECESS - 11:52 A.M.**

14 *******OFF THE RECORD*******

15 **ON THE RECORD - 1:35 P.M.**

16 THE COURT: All right. State ready for the jury to come
17 in?

18 MR. MARTIN: Yes, Your Honor. We're sequestering our
19 witnesses now.

20 THE COURT: Okay. And the next witness, whoever it's
21 going to be, you've got them in the courtroom?

22 MR. MARTIN: She's seated in the back, Judge.

23 THE COURT: All right. Great.

24 Ms. Wilson ready for the jury?

25 MS. WILSON: I am, Your Honor, with the exception of one

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BY THE COURT

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1 issue that I wanted just to make the Court aware of.

2 THE COURT: Sure.

3 MS. WILSON: It's about the counselor that the state has
4 provided a CV for and may call. This person is on their
5 witness list. I just feel that out of -- that I need to
6 object on the record again. And I know the Court declined to
7 have a in camera hearing on yesterday, about his potential
8 testimony.

9 THE COURT: Yes, ma'am.

10 MS. WILSON: But I would go ahead and -- let me just be
11 clear. I have spoken with the state as well. They've
12 indicated they may not actually call him. However, I feel the
13 need to put on the record that an objection relating to
14 relevance. It's my understanding that he has not actually had
15 any contact with **Minor** has not actually counseled her
16 specifically. So, any information he offered would be, I
17 assume, of a more general nature, which is, of course, still
18 where my concern about potential bolstering comes in.

19 With that being said, I certainly ---

20 THE COURT: Well, I guess, let's wait until the state
21 calls him.

22 MS. WILSON: Yes, sir.

23 THE COURT: And in the interim what I would like, I guess
24 both from the state and the defense if there is gonna be an
25 objection. I want y'all to go to the case that the Supreme

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KAREN LYNNE DROZD - DIRECT BY ANDREW

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1 Court allowed general testimony by an expert. And tell me why
2 you think it falls without those parameters set by the Supreme
3 Court in that case.

4 MS. WILSON: Yes, sir.

5 THE COURT: Okay?

6 MS. WILSON: Will do. Thank you.

7 THE COURT: That would be helpful.

8 All right. Ask the jury to come in, please.

9 (REPORTER'S NOTE: Jury enters courtroom @ 1:39 p.m.)

10 THE COURT: All right. Solicitor, your next witness,
11 please?

12 MS. ANDREW: Your Honor, the state calls Karen Drozd.

13 THE COURT: All right. Ma'am, you need to come all the
14 way around up to the corner and meet the clerk's
15 representative.

16 KAREN DROZD, HAVING BEEN SWORN, TESTIFIED
17 AS FOLLOWS:

18 THE CLERK: State your name and spell it for the Court.

19 MS. DROZD: Karen Lynne Drozd, K-A-R-E-N, L-Y-N-N-E, D-R-
20 O-Z-D.

21 THE COURT: All right, Solicitor.

22 MS. ANDREW: Thank you, Your Honor.

23 DIRECT EXAMINATION OF KAREN LYNNE DROZD BY MS. ANDREW:

24 Q: Ms. Drozd, what do you do for a living?

25 A: I'm a master's prepared nurse.

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KAREN LYNNE DROZD - DIRECT BY ANDREW

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- 1 Q: Do you sometimes work as what's called a PSANE, or
2 Pediatric Sexual Assault Nurse Examiner?
- 3 A: Yes. I did for eight years.
- 4 Q: You did for eight years. Are you currently doing that
5 job, or have you moved on to something else?
- 6 A: I actually just switched positions three-and-a-half weeks
7 ago.
- 8 Q: So, up until three-and-a-half weeks ago, you worked --
9 I'm just gonna call it PSANE nurse?
- 10 A: Yes.
- 11 Q: Okay. And up until three-and-a-half weeks ago, where did
12 you work -- where did you work as a PSANE nurse?
- 13 A: Medical University of South Carolina.
- 14 Q: And how long had you been at the Medical University of
15 South Carolina?
- 16 A: Ten years now.
- 17 Q: Ten years. Okay. So, is your current job still at MUSC?
- 18 A: Yes.
- 19 Q: Okay. So, back on May -- approximately May 26th, 2020,
20 do you remember what your assignment was at the University?
- 21 A: I was on call as a Pediatric Sexual Assault Nurse
22 Examiner.
- 23 Q: Okay. Can you tell me what a Pediatric Sexual Assault
24 Nurse examiner does?
- 25 A: Sure. We're specifically trained in a very specialized

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KAREN LYNNE DROZD - DIRECT BY ANDREW

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1 area of nursing to be able to evaluate patients that come in
2 for an alleged sexual assault. We are trained on methodically
3 collecting evidence and conducting a very specialized focused
4 exam that looks for -- to identify if there are any injuries.

5 Q: Okay. And what kind of education do you have that allows
6 you to do that job?

7 A: So, my full education is I've got a bachelor's in
8 psychology, and then I went back to school for nursing, and an
9 associate's degree in nursing, and I've also gone on for a
10 master's degree of nursing leadership. To train for PSANE, we
11 spend -- we sit for a 43-hour online didactic course, and
12 that's the full educational piece behind training for this
13 position. And then there's a preceptorship where you take
14 call. You learn tons about the actual specifics of collecting
15 evidence, and conducting exams. Their -- we have models that
16 we practice on. We have to be able to conduct these exams.
17 There are -- you have to conduct a certain amount of exams
18 before you're considered qualified to do this on your own.

19 Q: Okay. Is there specialized training specifically related
20 to pediatrics, children who come in for sexual assault?

21 A: Yeah. This training is just -- there's a separate
22 pediatric and adolescent that is independent of adult. The
23 pediatric body is different, and so there is the specialized
24 training helps to be able to identify structures that you'll
25 see that are different in pediatric patient than an adult.

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KAREN LYNNE DROZD - DIRECT BY ANDREW

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1 Q: Okay. And is MUSC a place where child victims of sexual
2 assault can to receive these types of exams?

3 A: Yes.

4 Q: So, you have people from kind of all over the state
5 coming to MUSC for that?

6 A: About a third of the state comes to MUSC.

7 Q: Okay. Thank you.

8 So, do you have any special duties or responsibilities
9 that you have to perform on someone for a sexual assault exam?

10 A: Yes.

11 Q: Okay. What are those?

12 A: So, it begins just with the consent process, a full
13 explanation of what we do, and what the exam will be like,
14 because it is very different than a typical checkup or a
15 typical emergency room visit. So, we talk all about that. We
16 have a very different set of medications that we give. It all
17 depends on what has happened, what's transpired that brought
18 the patient in to see us. So, in order to figure out what to
19 do and where to look, we take a very specific history that is
20 specialized to, you know, like a full medical history but also
21 very specialized asking questions that help us to determine
22 what part of the body we need to evaluate, what kind of meds
23 we're gonna give. There's a whole decision tree that is based
24 on the questions that we ask. We do that and then it's a very
25 methodical task-oriented position. And so, you do the same

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1 thing every single time. And so, it's collecting evidence,
2 and then ordering specialized labs, and ordering specialized
3 meds, and then conducting the exam, collecting evidence, you
4 know, doing a head-to-toe skin assessment, collect evidence in
5 a very specific order, label them in a specific way. And then
6 package all of that up, all of the documentation. It takes
7 about -- it takes anywhere from -- four hours is probably a
8 short, to six to eight sometimes.

9 Q: Okay. And how do you document your findings for those
10 types of exams?

11 A: So, South Carolina has -- South Carolina Law Enforcement
12 Division has put together evidence collection kits. And there
13 is very specific paperwork that goes into that. Now, it's
14 become very electronic, and MUSC has an electronic medical
15 records system, and all of that had been -- has been updated
16 so that it is -- specifically asks those questions that are
17 needed for the SLED documentation.

18 Q: Okay. And directing your attention back to May 26th,
19 2020, did you perform an exam like you just described on the
20 victim in this case, Minor

21 A: Yes.

22 Q: Did you document those findings?

23 A: Yes.

24 MS. ANDREW: Your Honor, may I approach?

25 THE COURT: Please.

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1 PLAINTIFF'S EXHIBIT NUMBER 11

2 MARKED FOR IDENTIFICATION

3 BY MS. ANDREW:

4 Q: I'm gonna show you what's been marked for identification
5 purposes only as State's Exhibit Number 11. Can you identify
6 this document?

7 A: Yes. This is the pediatric sexual assault examination
8 protocol, which was basically MUSC's uploaded version of the
9 SLED documentation.

10 Q: Okay. Did you fill that documentation out?

11 A: Yes.

12 Q: Is that a true and accurate copy of the paperwork you
13 completed that night?

14 A: Yes.

15 Q: Okay. I'm gonna ask you some specific questions about
16 what occurred. You can keep that in front of you, just turn
17 it upside down and if you need to refresh your recollection,
18 let me know. Okay? Okay; thank you.

19 Okay. So, how did you come to treat Minor that
20 night?

21 A: We actually don't put the triaging piece in our
22 documentation note, but basically, we get paged, so we -- I
23 cannot recall if law enforcement paged us first, or if the
24 emergency room paged me. But since we're on call, they page,
25 and they say, hey, a patient is here ready to go, and then we

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- 1 respond to the ED.
- 2 Q: Do you have any recollection of around what time that was
- 3 when you saw **Minor**
- 4 A: I would need to ---
- 5 Q: Okay. If you need to refresh your recollection, just
- 6 review it and then turn it back over.
- 7 A: Yes. I do remember them saying that she was coming in.
- 8 I don't know what time she arrived, but I arrived at 11:00
- 9 a.m.
- 10 Q: Okay. And when you arrived at 11:00 a.m., did you speak
- 11 to **Minor** before you began that exam?
- 12 A: Yes. I always do.
- 13 Q: Okay. Without identifying who she said may have
- 14 assaulted her, can you tell me what she said happened?
- 15 A: So, she recalled events from the night before saying that
- 16 she was -- had been in her room ---
- 17 MS. WILSON: Objection, Your Honor.
- 18 MS. ANDREW: Your Honor, I can rephrase that.
- 19 THE COURT: All right.
- 20 BY MS. ANDREW:
- 21 Q: So, in a very general term, did she say she was sexually
- 22 assaulted?
- 23 A: Yes.
- 24 Q: Did she say where that occurred?
- 25 A: In her room.

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- 1 Q: Did she say when that assault occurred?
- 2 A: In -- somewhere between -- I believe it was 2:00 and 4:00
- 3 a.m.
- 4 Q: So, the night -- I guess early that morning the same day
- 5 she was at MUSC; would that be correct?
- 6 A: Yes. I saw her hours later.
- 7 Q: That's fine. And is that -- that immediate reporting
- 8 what you would call an acute case?
- 9 A: Yes. Anything within the first -- for this age group,
- 10 anything within the first 96 hours.
- 11 Q: Okay. And why is that important to you?
- 12 A: Though, our protocol then, I think, was 72 hours. We
- 13 switched over, like, maybe a month later.
- 14 Q: Okay. So, what was that 72-hour window, what is that
- 15 for? What is the purpose?
- 16 A: So, evidence shows us that there's a -- there had been a
- 17 lot of studies done that demonstrate that the prime time to
- 18 collect evidence is in what we consider the acute phase. And
- 19 that is right after an event has happened. So, for our
- 20 purposes, acute is the first really 72 to 96 hours -- between
- 21 the time the event happened up to 72 or 96 hours. And I
- 22 believe our protocol at that time was 72 hours.
- 23 Q: Okay. So, that's the ideal time for collection of
- 24 evidence from child abuse?
- 25 A: Yes. DNA degrades over time, so the sooner the better.

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- 1 Q: Okay.
- 2 A: And honestly, this was like a picture perfect time to
3 collect, just a few hours later is ideal.
- 4 Q: Okay. So, after you spoke to her, did you take a medical
5 history of her as well?
- 6 A: Yes.
- 7 Q: Was there anything that she revealed in that medical
8 history that impacted your exam that you were about to
9 perform?
- 10 A: I would need to look.
- 11 Q: That's fine. Just refresh your recollection.
- 12 A: So, standardly, the idea of collecting the history is
13 where on the body to look for, number one, injuries; number
14 two, any kind of bodily fluids or saliva that might be on the
15 body. So, yes, the -- she did report penetration, vaginal
16 penetration. So, very specifically in that area, I would be
17 looking for -- at the vaginal entrance, I would be looking for
18 injuries and any kind of fluids, and kind of secretions or
19 discharge, that would potentially be areas that I would
20 definitely need to swab.
- 21 Q: Okay. And I'm gonna show you some exhibits and we'll
22 kind of get into how the exam worked. Okay? I think it's
23 easier if we do it at the same time.
- 24 A: Okay.
- 25 Q: I'm gonna show you what's been marked as State's Exhibit

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1 Number 12.

2 MS. ANDREW: May I approach the witness, Your Honor?

3 THE COURT: Yes, ma'am.

4 BY MS. ANDREW:

5 Q: Can you identify this -- you may have to -- if we need to
6 open it, we can.

7 A: I'd like to open it.

8 Q: Okay. Let me get you some scissors.

9 A: So, this outer bag is something that is added later by
10 SLED. So, this is not -- this is not part of our protocol.

11 Q: Okay. And you can open that package up.

12 A: Inside it's all ---

13 THE COURT: You'll have to cut it. So, you've got to be
14 careful.

15 A: So, most definitely, this is my handwriting, I can see
16 inside.

17 Q: Okay.

18 A: And this is my bag. But, you know, one of the bags that
19 I would've used to collect underwear. I did label what ---

20 Q: We can cut them open. We need to label them individually
21 anyway, so we can cut that open.

22 A: Okay.

23 THE COURT: So, just be careful ---

24 A: Not to cut any evidence.

25 THE COURT: That and ---

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- 1 Q: And yourself.
- 2 THE COURT: Well, that, and more importantly ---
- 3 A: I am well versed in these.
- 4 THE COURT: Very good.
- 5 Q: So, while you're doing that, are the items contained in
- 6 that envelope components of what you would call the rape kit
- 7 that you got from SLED that you described earlier?
- 8 A: Evidence collection kit.
- 9 Q: Okay.
- 10 A: Sorry. We're very fussy about that.
- 11 Q: Yeah, that's fine.
- 12 A: Yes.
- 13 Q: Okay.
- 14 THE COURT: And what exhibit was that that showed ---
- 15 MS. ANDREW: That's Number 12. I'm gonna mark these as
- 16 we go through them.
- 17 THE COURT: All right.
- 18 BY MS. ANDREW:
- 19 Q: So, what's this first envelope?
- 20 A: So, this is actually an envelope for -- this is the DNA
- 21 envelope. And this holds sub envelopes that have all of the
- 22 ---
- 23 Q: Let me mark that one first.
- 24 A: That have all of the -- it contains all of the swabs.
- 25 They each go into individual envelopes labeled individually,

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1 and then go into the main envelope.

2 MS. ANDREW: Okay. For the Court's information, we've
3 just -- I've marked this white outer envelope as Exhibit 12A.

4 THE COURT: All right. Thank you.

5 BY MS. ANDREW:

6 Q: All right. Now, you can open it up and see what's
7 inside.

8 A: So, I know this was from Minor because I do put a
9 sticker and label it.

10 Q: Okay.

11 A: That's my handwriting. And then the seal, those are my
12 initials.

13 Q: Okay.

14 A: So, I know that this was sealed -- whatever was in here
15 before was sealed up by me. This is -- that was not part of
16 what had originally been in there.

17 Q: So, we'll -- do you want to go ahead and label this?

18 A: That's probably a SLED envelope.

19 Q: It's the cutting from her underwear. We'll get it
20 labeled. This is 23, I think.

21 STATE'S EXHIBIT NUMBER 23

22 MARKED FOR IDENTIFICATION

23 Q: I've just marked this as State's Exhibit 23. We'll talk
24 about this with a different witness. I'm just gonna put it
25 here.

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- 1 A: So, there are four envelopes in here, all again labeled
2 with **Minors** patient stickers, and they were labeled by me, and
3 each one is addressed by me. So, I collected these swabs at
4 3:00 p.m., and they're for -- do you want me to tell you what
5 each one is.
- 6 Q: Let me mark them and then we'll do that.
- 7 A: Can I look at this to see if -- make sure those four are
8 everything that I put in here.
- 9 Q: Of course, yes.
- 10 A: I mean the documentation. I'm almost positive that it
11 was just those four.
- 12 Q: So, I'm gonna show you these individually and you can
13 tell what each was and where you collected it. The first is
14 State's Exhibit Number 12C. It says vaginal collection at the
15 top.
- 16 A: Uh-huh, (affirmative response). These are -- these are
17 vaginal -- it's Q-tip swabs. Do you want me to take them out?
- 18 Q: Okay. You can take them out, yes.
- 19 A: They're -- they're for this age group inserted into the
20 vaginal canal, and do a high vaginal swab where you're likely
21 to get the most DNA evidence.
- 22 Q: Okay.
- 23 A: And then they're labeled with -- those are my ---
- 24 Q: Your initials on there, again?
- 25 A: My handwriting, it says vaginal. So, it's labeled for

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1 the specific one and then it goes into the envelope. So, I
2 know that those came from that site.

3 Q: Okay. And did you then seal that envelope?

4 A: So, we -- I seal it with -- after they're placed in here
5 with the patient sticker, and then they go in with the
6 evidence sticker when all of the envelopes go into the bigger
7 ---

8 Q: Okay. And there's a yellow sticker on there. Did you
9 place that on there?

10 A: I did not.

11 Q: Okay. We'll talk about that later. Is there anything
12 else you need to tell us about that particular exhibit?

13 A: Nope.

14 Q: Okay. I'm gonna show you what's been marked as State's
15 Exhibit 12D, it says oral swabs.

16 A: Yes. So, there are two sets of swabs that go in the
17 mouth. This one is the oral swab that goes in -- down in like
18 the pockets in the cheeks called the salsi (spelled
19 phonetically), around the teeth, just in case there's any DNA
20 in the mouth. And we do this before swishing, and this again
21 is -- that's my handwriting, and it says oral, and it went
22 into the oral envelope.

23 Q: Okay.

24 A: After swishing, there's another set. The buccal that
25 comes at the end of the exam. And those are cheek swabs.

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1 Q: So, I'll go ahead and hand you that. That's State's
2 Exhibit 12D.

3 A: Same thing, my handwriting, says buccal. And that's for
4 known DNA because basically when you're swabbing you want your
5 -- you expect to find one person's DNA, and that would be the
6 patient's, but what, you know, the intention is to see if you
7 find anything else.

8 Q: Okay.

9 A: So, that's the known DNA, that's like your control.

10 Q: That's the patient's DNA sample that you send with the
11 kit?

12 A: Uh-huh, (affirmative response), exactly.

13 Q: Okay. I'm gonna show you what's been marked as State's
14 Exhibit 12E, those rectal swabs.

15 A: Yes. So, these are -- these go around -- yep, there's my
16 handwriting. That says rectal, and that went into the correct
17 envelope. The rectal swab is taken around the rectum. There
18 -- we do what we call a wet to dry, which is where you wet one
19 swab in order to loosen tissue -- in order to loosen any loose
20 cells, and then you do a dry swab after, and that's the
21 process that we do for rectal.

22 Q: Okay. And then all of those envelopes get sealed in this
23 white envelope?

24 A: With an evidence sticker, and that has my initials on it.

25 Q: Okay. Is there anything else in this particular

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1 container?

2 A: So, I know I sent toxicology urine. That was the other,
3 and her underwear.

4 Q: Okay. So, let me mark that real quick.

5 Okay. I'm gonna show you what the last item we pulled
6 from this. It's 12 -- State's Exhibit 12B, it says victim's
7 underwear. Can you tell me what this is?

8 A: Yeah. So, we separate the underwear. First, make sure
9 it's dry and then separate it into -- it's packaged up.

10 Q: That's fine. You don't have to take it out, as long as
11 you can identify it.

12 A: And then seal it with an evidence sticker, which -- I got
13 to match it up. Yep. Those are my initials.

14 Q: Okay. Is that the victim's underwear from that evening?

15 A: Yes.

16 Q: You -- I think you said, and correct me if I'm wrong,
17 that she said it occurred just a few hours before she got
18 there. So, would that be the underwear she was wearing those
19 immediate few hours between when she was assaulted and when
20 she arrived at MUSC?

21 A: Yes.

22 Q: Okay. And why is that important?

23 A: Because the body tends to expel some -- expel fluid. So,
24 any -- in addition to anything that you'd swab, you
25 potentially could have just from fabric touching the body, it

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1 can pick up DNA. So, it can pick up any discharge, any fluids
2 that come out of the vagina. You know, it's good to get the
3 underwear just in case, dry it, and then send it off.

4 Q: So, it's to collect any evidence that may've come out of
5 her body after the attack occurred?

6 A: Yes.

7 Q: Okay. Did you conduct a pelvic exam of Minor [REDACTED]

8 A: External.

9 Q: Externally. So, by external ---

10 A: Pelvic exam is really -- we don't like -- different
11 facilities have different practices, but we don't like to use
12 speculums. In a true pelvic exam, you use a speculum to open
13 the vagina. And we don't do that for children.

14 Q: So, you didn't do that. So, tell me what you did do to
15 examine the external portion of her vagina.

16 A: So, part of the training is techniques and how to handle
17 genitalia in order to best visualize for any injuries, any
18 problems. And you want me to specifically describe how ---

19 Q: Yeah. I'm gonna actually show you an exhibit that I
20 think will assist us. It's just for demonstrational purposes.
21 Did you mark your visual findings on your examination report?

22 A: Yes.

23 Q: So, on that report is there a diagram of the vagina that
24 allows you to specifically notate where you find different
25 things that you may be looking for?

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1 A: Yes.

2 Q: Okay. Did you notate findings like that in this case?

3 A: Yes.

4 STATE'S EXHIBIT NUMBER 13

5 MARKED FOR IDENTIFICATION

6 Q: Okay. I'm gonna show you what's been marked for
7 identification purposes only as State's Exhibit Number 13.

8 Can you identify this diagram?

9 A: That's a blowup of our blank diagram. It's female
10 genitalia with legs open. The top part is you'd be looking at
11 the stomach, and the bottom part you'd be looking at the
12 rectum, the rearend.

13 MS. ANDREW: Your Honor, I'm gonna show this to the jury
14 to aid in her explaining what ---

15 THE COURT: Any objection?

16 MS. WILSON: Your Honor, I would object. If we could
17 approach?

18 THE COURT: Sure.

19 (REPORTER'S NOTE: Bench conference is held off the record in
20 the presence but outside the hearing of the jury.)

21 THE COURT: All right. I note your objection, Counsel.

22 MS. WILSON: Yes, sir.

23 THE COURT: But I believe it to be a proper exhibit. It
24 does not appear to be any different than what is contained in
25 State's 11 to the Court, of the witness, and I just find that

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1 this Exhibit 13 will aid the jury in understanding her report
2 and her findings. 13 is just for identification and will not
3 go in as is.

4 MS. WILSON: Thank you.

5 MS. ANDREW: Thank you, Your Honor.

6 BY MS. ANDREW:

7 Q: Okay. I'm gonna show you State's Exhibit 13 again. If
8 you need to refer to your report. So, this is a blowup of
9 what is indicated in the report; is that correct?

10 A: Yes.

11 Q: Okay. And there are numbers on here. Did you put those
12 numbers on there?

13 A: Yes.

14 Q: Okay. Let's show this to the jury so we can talk about
15 it while we ---

16 A: You want me to describe the structures?

17 Q: Yes. Can you tell me, and describe the structures, and
18 tell me what each of these numbers is indicative of what you
19 saw that night?

20 A: They do actually -- the computer system blocks -- when it
21 inserts a number, it blocks some of the structures. So, if
22 you start from above, these would be thighs, this is the right
23 side of the body and the left side of the body, which is
24 backwards because when you're looking at a patient, their
25 right side appears on your left. This portion up here is

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1 called the mons pubis, and that's where you often see pubic
2 hair. You come down to here and, neat pointer, this is labia,
3 this here would be considered the labia majora, or the outer
4 tissues, outer folds of tissues that protect the more inner
5 structures. This is considered the labia minora, which is the
6 more inner tissues, that is then protected by the outer tissue
7 of labia majora. This is a clitoral hood and the clitoris.
8 This here, that opening, that dark dot under the 3 is urethra,
9 and then there is vaginal opening here, which is rimmed by the
10 hymen. What you can't see in both pictures and diagrams is
11 that there is a depth to the body that you don't -- you can't
12 see in the flat structures. So, everybody is a little bit
13 different, but this area between the vagina and the rectum is
14 called the perineum, this is the rectum. And behind -- when
15 you get to the perineum, if you were to close the outer
16 tissue, there is actually a depth behind that outer tissue.
17 So, when you open the outer tissue, this piece right here
18 called the posterior fourchette is actually this edge that
19 opens up. And then the depth from the posterior fourchette
20 back to the vagina -- oh, I'm sorry, from -- yeah, from the
21 posterior fourchette back to the vagina is called the fossa
22 navicularis. And those are the main structures that I
23 would've been -- that I standardly document on.
24 Q: Okay. So, you've got a little number 1 here. What is
25 that number? Why is that note on this document?

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1 A: I need to look back, but that is definitely the rectum.

2 Okay. Yeah. So, 1 was just identifying that I actually had

3 accessed the rectum, which had normal anal folds and no issues

4 noted. No problems, no bleeding, no ---

5 Q: What about Number 2; what was that?

6 A: Number 2 represents the hymen. And so, there's a very

7 large misnomer that the hymen is actually closed at birth.

8 The hymen is never closed. That tissue is actually open, but

9 it changes when a child is entering puberty. It changes from

10 a very tight vascular tissue to one that is very stretchy, as

11 the hymen becomes what we call estrogenized. So, as the body

12 is going through changes to become a woman, the female

13 structures change, too. And the estrogen makes it very

14 redundant, very stretchy. It makes it so that it's easier to

15 have a baby. And so, that represents the hymen, and I did

16 note that she had what's considered a normal redundant hymen,

17 with lots of folds.

18 Q: Okay. And what about this Number 3 here?

19 A: So, under 3, 3 is noting that between those two layers

20 that I was mentioning the labia majora and the labia minora,

21 there was some skin breakdown there.

22 Q: Okay. And by skin breakdown, what do you mean?

23 A: So, it's hard -- it's a deterioration in the skin, and

24 whether that was from injury or -- you know, it's not

25 something that we can determine if it's from injury or it's

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1 from just moisture and just normal skin breakdown, but I did
2 note it because that was a finding.

3 Q: Okay. And what about this Number 4; what does that
4 denote?

5 A: So, Number 4 is that area that I was talking about that
6 has the depth. So, if you can see this in 3D, that here's the
7 perineum, and then this -- there's a line here that's the
8 posterior fourchette, and that space that goes back, there's
9 the depth between the posterior fourchette and the vagina.
10 That's the fossa navicularis. I did note that there was skin
11 breakdown there, too.

12 Q: Okay. So, you noted two areas of skin broken down on the
13 -- that's fine. Do you need to look at that?

14 A: I just want to look at exactly what I wrote. Erythema
15 which means redness at 6 o'clock, so we look at it as a clock
16 face. So, this was directly at the 6 o'clock area. On that
17 fossa lymph navicularis, which is like a horizontal piece --
18 and it had an abrasion-like appearance.

19 Q: Did you note any other findings on this document?

20 A: Yeah. So, there was a good deal in the urine that I did
21 note on this report. There was a good deal of mucus-like
22 material in the urine.

23 Q: Do you have any way to identify that material during your
24 exam?

25 A: When you say identify, is ---

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1 Q: Did you know what it was? Do you have any ---

2 A: I, you know -- I mean, I can guess but it's not a typical
3 amount ---

4 MS. WILSON: Objection, Your Honor.

5 THE COURT: You can't guess, you know, you have to -- as
6 a result of any tests or anything like that, do you know what
7 it is?

8 A: No.

9 BY MS. ANDREW:

10 Q: Okay. That's good. Fair enough. Thank you.

11 A: Just that it was an abundant amount of fluid.

12 Q: Okay. And, when you did this examination, did you
13 document, other than this diagram in your notes, did you
14 document any of these things in any other manner?

15 A: I might have put documentation in the -- in the actual
16 patient chart, but it would not have been anything regarding
17 evidence. Just if we do some kind of different follow-up or
18 we recommend something different.

19 Q: Okay.

20 A: There is -- we do give medications, and that is
21 documented on this as well.

22 Q: Okay.

23 MS. ANDREW: Court's indulgence?

24 THE COURT: Yes, ma'am.

25 BY MS. ANDREW:

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1 Q: Did you, when you examined her external genitalia, her
2 vagina, did you photograph it in anyway or document it in that
3 manner?

4 A: Yeah. So, we do photograph. There are two reasons for
5 that. This is a very independent position for a nurse, and
6 afterwards our physician then reviews them and makes sure that
7 they agree with the documentation versus, you know, what we
8 documented. The other thing is that the other pieces, like
9 for follow-up, when they follow up two weeks later, if there
10 were any findings like what I had in that Number 3 and Number
11 4, then they can look at the images, see what things looked
12 like, you know, at the time of the event, and then two weeks
13 later make sure that's healed or they can determine that it
14 hasn't healed, and that's just what we consider a normal
15 variant or difference in the body.

16 Q: Okay. And after you did all of this, did you -- what did
17 you do with the evidence you collected?

18 A: So, the evidence gets packaged up, maintaining chain of
19 custody, and then MUSC Public Safety, or law enforcement -- I
20 believe it was MUSC -- if I can look at this?

21 Q: Yeah. You get to refresh your memory.

22 A: I believe it was MUSC Public Safety that picked it up and
23 put it into their -- yep, put it in ---

24 Q: Is there an officer's name on there? If it doesn't,
25 that's okay.

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- 1 A: It does. I think it says Thornton.
- 2 Q: Okay.
- 3 A: But we actually keep the records separately if you need
- 4 the actual ---
- 5 Q: We don't. I just need you to identify who the person who
- 6 then picked it up.
- 7 A: Hard to read the writing. It looks like Thornton.
- 8 Q: That's good enough. Other than testifying here today,
- 9 did you have any other involvement in this case?
- 10 A: So, my position was actually as the program coordinator
- 11 for six years. And so, part of that is reviewing all of the
- 12 cases. So, you know, in addition to 150 cases, I reviewed
- 13 like 500 others over the six or seven-year period. And part
- 14 of that is to process all of the paperwork afterwards, make
- 15 referrals for follow-up. So, I did refer for follow-up at
- 16 Children's Recovery Center in Myrtle Beach.
- 17 Q: Okay. Thank you. And so, does that conclude your
- 18 involvement in this case?
- 19 A: Yes.
- 20 Q: Thank you. I don't have any further questions. Please
- 21 answer any questions Ms. Wilson may have.
- 22 THE COURT: Cross-examination?
- 23 MS. WILSON: Thank you, Your Honor.
- 24 CROSS-EXAMINATION OF KAREN LYNNE DROZD BY MS. WILSON:
- 25 Q: So, I'm -- I should call you Nurse Drozd?

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1 A: Or Mrs. Drozd, or Karen, just Karen is fine.

2 Q: Ms. Drozd, Mrs. Drozd, okay. I don't want to mess up
3 your title.

4 Now, it's my understanding that based on what you said,
5 your task is to remain unbiased, right?

6 A: Yes.

7 Q: And your job is in evidence collection?

8 A: It's twofold. It's evidence collection, but it's also
9 because I am a nurse for MUSC, and the patient is an MUSC
10 patient, there's everything that -- first and foremost, we
11 take care of their body. So, you know, helping anything --
12 anything associated with the care of her at that day of
13 service, we're involved in that, too; so, it's kind of
14 twofold.

15 Q: But the thing I want to focus on, I guess, is about the
16 evidence collection, because you're saying that you took
17 evidence, and you took a lot of time to explain that you were
18 very methodical and very purposeful in how you collected all
19 the evidence, correct?

20 A: Yes.

21 Q: And in taking that evidence, you're not trying to take a
22 side. You're just saying this is what I did, when I did it,
23 and how I did it, correct?

24 A: Exactly.

25 Q: You're just documenting what you observed and what you

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- 1 collected?
- 2 A: Yes.
- 3 Q: And you examined something that you document and document
4 something that you thought could be an injury, correct? Could
5 be?
- 6 A: Potentially.
- 7 Q: Potentially. And you didn't document any tears, did you?
- 8 A: There were no tears that were noted that I could see
9 externally.
- 10 Q: And you didn't document any cuts?
- 11 A: No.
- 12 Q: And no scrapes?
- 13 A: No.
- 14 Q: You did talk about skin breakdown.
- 15 A: Yes.
- 16 Q: And skin breakdown is like an abrasion, maybe?
- 17 A: It can be several different things.
- 18 Q: But, it could also be, as you said earlier, not an
19 abrasion. It could be -- I think you said skin breakdown
20 could be just from dampness or maybe ---
- 21 A: That was for the folds. That was for Number 3 on the
22 diagram. So, it's in -- within folds within a moist area,
23 yes. That did not have -- that did not have the notation of
24 abrasion-like appearance. That was on Number 4 in the
25 posterior fourchette.

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- 1 Q: Thank you so much. Thank you. And I really appreciate
2 that, because I want to make sure I'm being clear in -- about
3 what I'm talking about. And I know you used some terms that I
4 wasn't really familiar with, so the fossa navicularis -- did I
5 say that correctly -- is one of the areas where I think you
6 noted something that you said was skin breakdown or might be
7 an abrasion? Which one did you say?
- 8 A: That was for the other area that's between the labia that
9 -- I think it was labeled Number 3. May I look at the ---
- 10 Q: Okay. Absolutely.
- 11 A: I'm pretty sure that was labeled Number 3.
- 12 Q: Okay. And -- I'm sorry. I don't want to talk over you.
- 13 A: Yes. I did say skin breakdown versus abrasion. The
14 other area, the fossa navicularis was -- had an abrasion-like
15 appearance. They look different. And when you look at
16 wounds, they can have a different appearance.
- 17 Q: Okay. And when you document that you see something that
18 you think looks like an abrasion or has some kind of skin
19 breakdown, either one, and I'm not trying to use them
20 interchangeably, but just for the conversation here. When you
21 document something like that, you don't know how it was
22 caused, do you? You don't?
- 23 A: Part of my scope of practice is -- does not include
24 linking towards causes or diagnosis.
- 25 Q: Understand. And so, then, if we are talking about how

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1 injuries can occur to the vagina, for example, could self-
2 stimulation potentially cause that, cause some kind of an
3 abrasion or some kind of injury or a mark; could that happen?

4 A: So, again, linking -- linking together a cause with a
5 finding is not in my scope of practice.

6 Q: Okay. So, you have no idea how it was caused, you just
7 know that it was there?

8 A: Well, I can tell you that statistically the most common
9 place for ---

10 Q: No. I'm not asking -- I'm sorry -- I'm not asking you to
11 guess at it. I'm specifically asking you, you don't know how
12 it was caused, and you couldn't put that in the report,
13 correct?

14 A: Right. I wouldn't put it in a report. That's not part
15 of my role.

16 Q: And your experience here, your involvement here, is
17 limited to what you observed and documented after **Minor** was at
18 the hospital; you were not present for anything that happened
19 prior to that, correct?

20 A: Correct.

21 Q: So, you don't have any firsthand knowledge about anything
22 that occurred in this case prior to your seeing her at the
23 hospital, correct?

24 A: Only from my history, the history that was given.

25 Q: No. I'm talking about -- and I'm sorry, I'm not trying

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1 to cut you off, but my question is really pointed. You don't
2 have any firsthand knowledge meaning you weren't present prior
3 to your time with her at the hospital, correct?

4 A: Correct.

5 Q: No further questions.

6 THE COURT: Redirect?

7 MS. ANDREW: Court's indulgence, Your Honor?

8 THE COURT: Yes, ma'am.

9 MS. ANDREW: Your Honor, we have no further questions for
10 this witness.

11 THE COURT: All right. Do you wish the witness to be
12 excused?

13 MS. ANDREW: Yes, sir, Your Honor.

14 THE COURT: Any objection?

15 MS. WILSON: Without objection, Your Honor.

16 THE COURT: All right. Ma'am, you're released from your
17 subpoena and may go back to your regular duties.

18 Do you have any exhibits up there?

19 MS. ANDREW: I can get them. I have gloves on, Your
20 Honor.

21 THE COURT: Just hand them to the court reporter when you
22 walk by.

23 MS. DROZD: Do you want me to grab this?

24 MS. ANDREW: Yeah. I can pick them up and put them back
25 in.

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1 THE COURT: All right. Solicitor, who is next?

2 MS. ANDREW: Your Honor, the state calls Dr. Carol
3 Rahter.

4 THE COURT: Please come all the way around up front and
5 meet the clerk's representative.

6 CAROL RAHTER, D.O., HAVING BEEN SWORN,
7 TESTIFIED AS FOLLOWS:

8 THE CLERK: Please state your name and spell it for the
9 Court.

10 DR. RAHTER: Carol Rahter, R-A-H-T-E-R.

11 DIRECT EXAMINATION OF CAROL RAHTER, D.O. BY MS. ANDREW:

12 Q: Dr. Rahter, what's your occupation or profession?

13 A: I am a physician.

14 Q: Are you licensed in South Carolina?

15 A: I am.

16 Q: What licenses do you hold?

17 A: Just South Carolina.

18 Q: Okay. How long have you been licensed here in South
19 Carolina?

20 A: Since 1990.

21 Q: Where did you go to medical school?

22 A: In Kansas City, Missouri.

23 Q: And what degree did you receive?

24 A: Doctor of osteopathic medicine.

25 Q: Did you have an internship somewhere?

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- 1 A: I did; in Dallas, Texas.
- 2 Q: Okay. And since that time, where have you practiced?
- 3 A: Well, then I did a residency in Pontiac, Michigan. And
4 then I came to Conway Hospital in 1990, and became board-
5 certified in emergency medicine in 1993.
- 6 Q: In addition to emergency medicine, what other kinds of
7 medicine do you practice?
- 8 A: I became the medical director of the Children's Recovery
9 Center 27 years ago. So, I perform all of the forensic
10 medical exams of all the kids in Horry/Georgetown County that
11 get referred to the Children's Recovery Center.
- 12 Q: And have you had any specialized or additional training
13 that relates to your job as the medical director of the
14 Children's Recovery Center?
- 15 A: Yes, I have.
- 16 Q: Can you tell me about that, please?
- 17 A: So, every year there is APSAC, which is multidisciplinary
18 training that teaches you how to do forensic interviews,
19 forensic medical exams, identifying different types of abuse
20 in children, so I try to hit one of those trainings every
21 year, sometimes to a year, but it's 40 hours of training a
22 year. Sometimes, I get the chance to do 80 hours of training
23 a year.
- 24 Q: And so, you said you're the medical director of the
25 Children's Recovery Center. Can you tell me what the

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1 Children's Recovery Center does? What is it?

2 A: Yes. So, it's a child advocacy center. Children are
3 referred either by medical doctors, when they have a concern
4 in their office, or by law enforcement or DSS and they we
5 provide a forensic medical exam and a forensic interview.

6 Q: Okay. Do you perform those forensic medical exams?

7 A: I do.

8 Q: Approximately, how many forensic medical exams have you
9 performed over years as the medical director of the Children's
10 Recovery Center?

11 A: More than 6,000.

12 Q: Okay. In your time as a board-certified ER physician,
13 did you also an occasion to diagnose and treat different forms
14 of child maltreatment, including physical abuse, neglect, and
15 sexual abuse?

16 A: Yes.

17 Q: And did you also during your time performing those 6,000
18 exams at the Children's Recovery Center, have an occasion to
19 treat and diagnose all forms of child maltreatment including
20 physical neglect and sexual abuse?

21 A: Physical abuse, neglect, and sexual abuse.

22 Q: Okay. Is the Children's Recovery Center a private entity
23 or a nonprofit corporation; what's the nature of that?

24 A: It's a 501(3)(C) [sic] nonprofit organization.

25 Q: Okay. Have you ever been qualified as a medical expert

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1 in all forms of child maltreatment, including the diagnoses
2 and treatment of neglect, and physical and sexual abuse in any
3 courts in South Carolina?

4 A: Yes, I have.

5 Q: Approximately how many times?

6 A: Probably around 100.

7 Q: Okay. Have any of those times or many of those times
8 been in Courts of General Sessions in South Carolina?

9 A: General Sessions, Family Court, Federal Court, and
10 Military Court.

11 Q: Okay.

12 MS. ANDREW: Your Honor, at this time, the state would
13 like to offer Dr. Carol Rahter as an expert in all forms of
14 diagnosis and treatment of child maltreatment, of physical --
15 I'm sorry -- of neglect, and physical, and sexual abuse.

16 THE COURT: All right. Do you wish to voir dire the
17 witness or challenge her qualifications?

18 MS. WILSON: No, sir, Your Honor.

19 THE COURT: Very good. All right. I am going to qualify
20 her to give her opinion in the field of physical abuse,
21 neglect, and sex abuse cases regarding children's
22 maltreatment.

23 MS. ANDREW: Thank you, Your Honor.

24 BY MS. ANDREW:

25 Q: Okay. Can you tell me what's the standard procedure for

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- 1 how you conduct an exam with a diagnosis and treatment of --
2 we'll just say child sex abuse since that's what we're here
3 for today -- at the Children's Recovery Center or in general?
4 A: So, a forensic medical exam that I perform at the
5 Children's Recovery Center is a head-to-toe exam. We get
6 their blood pressure. I listen to their heart, their lungs.
7 We look all over their body for any scars of any type. The
8 last part of the exam is the genital exam, of which I have a
9 great piece of equipment called a colposcope, which is kind of
10 like a microscope hooked to a TV, so it can magnify up to 15
11 times what you're looking at. And so, we use that for the
12 genital exam. I also use it for other scars and so forth.
13 So, it's a head-to-toe exam. The final part being the genital
14 exam.
15 Q: Okay. And as a part of your exam, do you get medical
16 records from other treating physicians or facilities?
17 A: Yes, sir. So, we do an intake on the child's prior to
18 the medical exam where I get their past surgical history,
19 medical history, allergies any medicines they're on. We also
20 get the referring agency documents, whether it's DSS documents
21 or law enforcement police reports. And, if they have
22 previously been seen at another medical facility prior to me
23 seeing them, we get those medical records also.
24 Q: As a part of the exam, do you take a patient history from
25 a patient?

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- 1 A: Yes, I do.
- 2 Q: Okay. So, part of your review is what the patient says
3 happened?
- 4 A: I'm sorry. Say that again.
- 5 Q: So, part of your -- kind of before you start the exam,
6 you take a patient history where they kind of tell you what
7 happened?
- 8 A: Correct.
- 9 Q: Do you review those medical records or charts prior to
10 conducting the exam?
- 11 A: I do.
- 12 Q: All right. Back -- I'm gonna direct your attention back
13 to 2020. Did you have an occasion back in July 2000 to get a
14 referral to examine **Minor** the victim in this case?
- 15 A: I saw her on June 5, 2020.
- 16 Q: Okay. Do you know how that referral came in?
- 17 A: I can tell you. It was referred from the Horry County
18 Police Department, Detective Skellett.
- 19 Q: Okay. Do you know how old **Minor** was when you conducted
20 that exam?
- 21 A: She was 13.
- 22 Q: Okay. Will you tell me -- how did you conduct her
23 specific exam? Did you speak to her and take a patient
24 history?
- 25 A: I did.

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1 Q: And, you know, without -- doing your testimony without
2 her saying who she said assaulted her, can you tell me what
3 you found out from her relating to her medical history that
4 aided you in your treatment and diagnosis of her that day?

5 A: Yeah. She told me that on several occasions ---

6 MS. WILSON: Objection. Objection, Your Honor.

7 MS. ANDREW: I'll rephrase that question.

8 THE COURT: The jury is gonna disregard that last
9 statement made by the witness, and it is not part of this
10 case.

11 You need to be specific in your questions, ma'am.

12 MS. ANDREW: Yes, sir, Your Honor.

13 BY MS. ANDREW:

14 Q: Dr. Rahter, did she disclose the sexual assault that
15 occurred on May 26, 2020?

16 A: She did.

17 Q: Okay. Did she say when and where that assault occurred?

18 A: She said it occurred at her house.

19 Q: Okay. Did she give you any other indications about the
20 manner of the assault that aided you in your diagnosis and
21 treatment of her?

22 A: Yeah. She said that his penis went in her vagina.

23 Q: Okay. Approximately how long after that assault on May
24 26th, 2020, did you examine Minor I think you said June 5th?

25 A: June 5th, so approximately 10 days, maybe.

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1 Q: Okay. When you examined [Minor] did you note any physical
2 injuries to her vagina during your exam?

3 A: No. Her exam was normal when I saw her.

4 Q: Okay. Is it typical for child to have a physical injury
5 to their vagina after a sexual assault? Why or why not?

6 A: So, what the studies show is that if you see a child
7 within 72 hours of the sexual assault, there is less than 20
8 percent chance you're gonna find any injury at all. If it's
9 greater than 72 hours that you examine that child, that tissue
10 heals really rapidly, so there's a less than five percent
11 chance that you're gonna find any abnormalities.

12 Q: Okay. And I think the previous witness discussed the
13 child's hymen. Did you examine [Minor's] hymen in this case?

14 A: I did.

15 Q: And what did you note about that?

16 A: That it was annular, redundant, and estrogenized. And
17 what that means, those big words, is that it's kind of like a
18 scrunchie you put in your hair. When a child has puberty,
19 their hymen becomes very estrogenized, stretchy, so you know
20 how like a scrunchie, if you don't have it pulled apart it's
21 kind of redundant, on top of each other, but if you stretch it
22 out it becomes a circle. Well, that's what her hymen was,
23 which is typical of a child that's already gone through
24 puberty.

25 Q: So, if the child has already gone through puberty, is it

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1 more or less likely that they would receive an injury to their
2 hymen if they were sexually assaulted and penetrated?

3 A: There is less a chance once it is estrogenized that you
4 would have an injury.

5 Q: Okay. And I think you just testified that those injuries
6 heal very quickly. Can you explain that to us as well?

7 A: Yes. That tissue is very similar to the type of tissue
8 on the inside of your cheek. This is called buccal mucosa.
9 And I'm sure you've all done it where you bite your cheek and
10 it hurts really bad, and you get like a ridge there. Two days
11 later it's completely gone. You can't see anything, you can't
12 feel anything, there's nothing painful there. The tissue the
13 hymenal tissue and the tissue down in the vaginal area heals
14 within 72 hours.

15 Q: Okay.

16 A: Just like the inside of your mouth.

17 Q: So, if you were gonna find an injury to a child, I think
18 you testified that that's typically 72 hours earlier?

19 A: Correct.

20 Q: And is that also for other types of evidence like bodily
21 fluids that may be present in a child's vagina?

22 A: Typically, we don't do exams if it's been greater than 72
23 hours after the assault to try to collect DNA. Some of the
24 studies now say you should do it up to 96 hours. They can
25 find sometimes DNA up to 96 hours.

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1 Q: In your experience as a medical doctor and in your review
2 of literature, can you tell me where you are most likely to
3 find evidence, DNA evidence, of a child sexual assault?

4 A: Yes. In an adolescent or child, the most common place to
5 find DNA evidence is in their underwear.

6 Q: Can you tell me why that's the case?

7 A: Well, we are upright people. So, gravity let's vaginal
8 secretions and anything in the vagina go down into the
9 underwear. So, that's why you find it in the underwear. So,
10 when I train detectives and police officers, I always say,
11 even if you cannot get that child examined, collect their
12 underwear. I think I was just reading today, I think, the
13 last study showed that 61 percent of the cases that they did
14 on adolescent sexual assault, they found DNA in the underwear.

15 Q: So, you said you also reviewed **Minor's** medical records as
16 a part of your exam. Can you tell me, did you review medical
17 records from the Medical University of South Carolina?

18 A: I did.

19 Q: Okay. And I'm going to show you what was previously
20 marked as State's Exhibit 11 for identification purposes only,
21 which is a pediatric sexual assault examination protocol. Did
22 you review that document as part of your exam on **Minor**

23 A: I did.

24 Q: Okay. I'm gonna ask you to look at the vaginal diagram
25 in the notes on this.

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- 1 A: Okay.
- 2 Q: And I'm gonna show you what's been previously marked for
3 identification purposes only as State's Exhibit 13, which is a
4 blowup of that vaginal area.
- 5 A: Okay.
- 6 Q: Okay. And you've reviewed these medical records as a
7 physician. So, let's look at area number -- I'm sorry -- so,
8 Number 3. What is the notation for this area?
- 9 A: So, the notation that coordinates with Number 3 is the
10 left side between the labia majora and labia minora, meaning
11 the large lips and the small lip, it is erythema, which means
12 redness, and an appearance of skin breakdown versus abrasion.
- 13 Q: Okay. And did you review the complete medical records
14 including a photograph of that injury?
- 15 A: I did.
- 16 Q: And let's look at Number 4; what is that?
- 17 A: Number 4 is erythema meaning redness of the fossa
18 navicularis, also known as the posterior fourchette, at 6
19 o'clock -- we look at everything is clock; so, 6 o'clock is
20 down at the bottom -- an abrasion-like appearance.
- 21 Q: Okay. And what does abrasion-like appearance -- did you
22 review that photograph as well?
- 23 A: I did.
- 24 Q: So, what is your medical opinion of what those areas are
25 that are noted on this diagram?

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1 A: They are injuries that occurred from penetrating injury.

2 Q: And what information do you use to determine that those
3 injuries are specifically caused by a penetrating injury and
4 not something else?

5 A: Okay. So, can you get an abrasion down in that area from
6 something else? We see it sometimes in developmentally
7 delayed adults that got like a yeast infection, and they are
8 scratching a lot because they don't know not to. I've seen
9 abrasions from that. But in lieu of the history of what
10 occurred, those abrasions are consistent with a penetrating
11 injury.

12 Q: Okay. So, is it your opinion as a medical doctor and an
13 expert in the field of child -- diagnosis and treatment of
14 child sexual assault, that those injuries were caused by
15 sexual assault?

16 A: I do believe they were.

17 Q: Okay. Thank you, Dr. Rahter. I don't have any further
18 questions. Please answer any questions Ms. Wilson has.

19 A: Thank you.

20 THE COURT: Cross-examination.

21 MS. WILSON: Thank you, Your Honor.

22 CROSS-EXAMINATION OF CAROL RAHTER, D.O., BY MS. WILSON:

23 Q: Dr. Rahter.

24 A: Hi.

25 Q: Hi. Now, you're saying that you believe that injury is

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1 the result of penetration, correct?

2 A: Yes.

3 Q: But you don't have any way to know that for certain,
4 correct?

5 A: It's consistent with her medical history and what she
6 told me happened.

7 Q: And I understand that in your practice with the CRC,
8 correct, you're not what -- well, you said you are advocates
9 for children -- if I'm putting words in your mouth, please
10 correct me -- you said that you are definitely there for the
11 children, correct?

12 A: It's a child advocacy center.

13 Q: So, it's not an unbiased collection or -- of evidence or
14 investigation, is it?

15 A: No; that's not true. We have about 21 percent of our
16 cases that we evaluate each year that are considered
17 undetermined or not indicated. So, we do look at --
18 forensically, we look at the forensic interview and the
19 medical exam to determine if it's founded or unfounded however
20 -- everybody kind of says it different. We say undetermined,
21 not indicated, or indicated.

22 Q: So, I guess my question is, I think previously you said
23 -- I don't want to get the number wrong -- I think you said 61
24 percent of cases where there is DNA on the panties, you feel
25 that that's really critical for evidence collection, correct?

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1 A: Yes.

2 Q: And in the other 39 percent, would that mean that it's
3 not evidence of sexual assault, or what would that other 39
4 percent be? And I'm just asking the question.

5 A: Well, actually, I just read the study this morning. What
6 they were doing was comparing adolescent girls who have been
7 sexually assaulted with adult females who had been sexually
8 assaulted, and the difference was 61 percent in the underwear
9 versus 51 percent with the adults in the underwear. That does
10 not mean that there was not swabs from other areas that also
11 had DNA. So, I don't remember all those stats, the ones that
12 were intervaginal or cervical or anal, I'm just -- it was an
13 interesting statistic as far as how much is found in the
14 underwear. Which makes sense, you're upright people.

15 Q: It would make sense unless there are other possibilities
16 for how it got there, correct? Because, as a doctor, I'm sure
17 that you would acknowledge the possibility that it's on the
18 panties, but you don't know how it got on the panties,
19 correct?

20 A: Yeah. I wasn't there when it occurred, so, no.

21 Q: All right. No further questions, thank you.

22 THE COURT: Redirect?

23 MS. ANDREW: Your Honor, I have no further questions for
24 this witness. I'd ask that she be released from her subpoena
25 and excused.

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BY THE COURT

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1 THE COURT: Any objection?

2 MS. WILSON: No objection, Your Honor.

3 THE COURT: All right. Ma'am, you are released from your
4 subpoena and may go back to your regular duties. Thank you.

5 DR. RAHTER: Thank you.

6 BY THE COURT:

7 THE COURT: All right. We'll take a short break for
8 about 10 minutes.

9 Ladies and gentlemen of the jury, go to your jury room.
10 Don't talk about the case, and we'll come back and will
11 continue.

12 Thank you very much.

13 (REPORTER'S NOTE: Jury exits courtroom @ 2:43 p.m. The
14 following takes place outside the presence of the jury.)

15 THE COURT: All right. Anything else from the state at
16 this time?

17 MS. ANDREW: Nothing from the state, Your Honor.

18 THE COURT: From the defense?

19 MS. WILSON: Nothing, Your Honor.

20 THE COURT: All right. Very good. We'll be back in 10
21 minutes.

22 Thank you.

23 **RECESS - 2:44 P.M.**

24 *******OFF THE RECORD*******

25 **ON THE RECORD - 2:45 P.M.**

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MOTION FOR MISTRIAL

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1 (REPORTER'S NOTE: The following takes place outside the
2 presence of the jury.)

3 MOTION FOR MISTRIAL:

4 MS. WILSON: Your Honor, concerning the testimony of Dr.
5 Rahter, I guess I need to put on the record, I know the Court
6 gave a curative instruction to the jury after -- and I'm
7 sorry, when you said it, it made me think about it again -- a
8 curative instruction after the testimony of Dr. Rahter where
9 she is beginning to indicate, and it sounded as if she had
10 said before she was -- before the objection, that -- I wrote
11 it down -- that on several occasions in response to the
12 state's questioning, which I think was clearly within the
13 jury's hearing, after -- and I can't remember the exact nature
14 of your question to her, but I think it was a historical
15 question about her experience and what she relayed, and that's
16 where it was coming from, which is why I objected because I
17 immediately thought that she was about to go into prior
18 allegations. And I guess I feel the need to just put on the
19 record my concern that a curative instruction might not be
20 enough to resolve that being in the jury's hearing.

21 THE COURT: All right. What is it that you want me to
22 do?

23 MS. WILSON: I -- at this time, Your Honor, I guess I
24 would ask the Court for a mistrial, because I feel that that's
25 probably the only way to cure the error. I can't say that

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1 that's what I want, but I think that it's the appropriate
2 thing to request.

3 THE COURT: All right. Very good.

4 MS. ANDREW: Your Honor, the state would oppose the
5 motion for a mistrial. Dr. Rahter's testimony was much longer
6 than that brief little moment she was interrupted in mid-
7 statement. I don't think that the jury could take from that
8 moment that many other events occurred. I don't think that
9 rises to the level that would call for a mistrial. I think
10 Your Honor's curative instruction asking the jury to disregard
11 that statement, whatever portion of it they heard, is
12 sufficient to protect the record. I think it was very clear
13 after that that Dr. Rahter was referring to the incident that
14 we've been here talking about all day. She reviewed medical
15 records specifically relating to this incident. She talked
16 specifically about that incident, directed all of her comments
17 to the incident on May 26th.

18 RULING OF THE COURT:

19 THE COURT: All right. First, it's not clear what she
20 was talking about on several occasions. I mean, it could be
21 anything. So, it's pure speculation as to what it was that
22 she was referring to. There's no evidence in the record that
23 would indicate that.

24 Further, the Court on its own gave a curative instruction
25 to the jury to disregard that, and it's not part of the case.

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1 And nothing else was requested at that time.

2 As to a motion for a mistrial, I do not find that there
3 is manifest necessity for that extreme type of action. I
4 don't find that it's clear in any way that any prejudicial
5 statement to the defendant occurred. Combining the question
6 with the extremely limited answer, I don't see how the jury
7 could come up with anything that would be prejudicial to the
8 defendant. And again, trying to decipher what that means
9 would be to engage in complete speculation as to what she
10 might have been referring to. So, I am going to deny the
11 motion for a mistrial, finding it is not the proper recourse.
12 The Court gave a curative instruction, and I believe that was
13 the proper action to protect the defendant's rights in this
14 matter.

15 MS. WILSON: Thank you, Your Honor.

16 MS. ANDREW: Thank you, Your Honor.

17 THE COURT: Thank you very much.

18 **RECESS - 2:49 P.M.**

19 *******OFF THE RECORD*******

20 **ON THE RECORD - 3:01 P.M.**

21 THE COURT: State ready to proceed?

22 MR. MARTIN: Yes, Your Honor; we are.

23 THE COURT: Defense?

24 MS. WILSON: Yes, sir.

25 THE COURT: All right. Ask the jury to come in, please.

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1 (REPORTER'S NOTE: Jury enters courtroom @ 3:02 p.m.)

2 THE COURT: All right. Solicitor, your next witness,
3 please.

4 MR. MARTIN: Your Honor, the state calls Detective Steve
5 Cotton.

6 THE COURT: All right, sir. Please come around and be
7 sworn.

8 STEVEN COTTON, HAVING BEEN SWORN,
9 TESTIFIED AS FOLLOWS:

10 MR. COTTON: Good afternoon, Your Honor.

11 THE COURT: Good afternoon, sir.

12 THE CLERK: State your name and spell it for the Court.

13 MR. COTTON: My name is Detective Steven Cotton, S-T-E-V-
14 E-N, C-O-T-T-O-N.

15 THE COURT: Go ahead, Solicitor.

16 MR. MARTIN: Thank you, Your Honor.

17 DIRECT EXAMINATION OF STEVEN COTTON BY MR. MARTIN:

18 Q: Detective Cotton, with whom are you currently employed?

19 A: I'm employed with the Horry County Police Department, and
20 I am assigned to the Narcotics Division.

21 Q: And were you employed with the Horry County Police
22 Department back on May 26th, 2020?

23 A: I was.

24 Q: How long have you been with Horry County Police
25 Department?

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1 A: Currently, I have been with Horry County for six-and-a-
2 half years.

3 Q: Back in May 2020, did you have the same duties then or
4 were they different?

5 A: I was a patrol officer.

6 Q: And what does a patrol officer do?

7 A: I was assigned to the North Precinct, and I was assigned
8 to a specific sector, which would cover a good portion of
9 Longs and Little River, and I would respond for calls of
10 service that would range anywhere from your civil complaints
11 to your crimes in progress, such as domestic violence is,
12 armed robberies, stuff of that nature, 911 calls.

13 Q: Did you often work alongside a partner?

14 A: I did.

15 Q: And that night, do you remember were you working with
16 another officer?

17 A: I was.

18 Q: Who was that?

19 A: My sector partner, Officer Loar.

20 Q: Do you remember an incident that evening that -- or early
21 that morning that brings you here to court today?

22 A: I do.

23 Q: Involving the defendant, John Kehborn?

24 A: I do.

25 Q: Were you called to the residence of [REDACTED]

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1 in Longs?

2 A: I was.

3 Q: And what was the nature of that call out?

4 A: I was dispatched to an assault involving a minor child.

5 Q: About how long did it take you from the time you were
6 called until you arrived on scene?

7 A: Only a few minutes.

8 Q: Once you arrived on scene, can you sort of explain to the
9 jury what you saw?

10 A: Yes. When I arrived on scene, myself and Officer Loar
11 arrived relatively at the same time. I exited my patrol
12 vehicle, and upon exiting my patrol vehicle I was approached
13 rapidly by the victim's mother, who I immediately observed to
14 be in an excited state, and she was crying hysterically, and
15 kind of mumbling her words. And at that time, I asked her for
16 a key to the residence, and if there was any weapons inside
17 the house.

18 Q: Did you go inside the house?

19 A: I did. While approaching with her, I asked her if she
20 had the keys, and she provided a code to me. And then I asked
21 for his name, and then I approached the door. I entered the
22 code, I opened the door, and I announced his name several
23 times. I can't recall many times.

24 Q: Did Officer Loar go in the house, too?

25 A: Yes.

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1 Q: So, once you went in the house, what did you do next?

2 A: Once I opened the door and I announced his name, the way
3 the house is there is a hallway, kind of a skinny hallway,
4 which leads into a common area, like a living room, and then a
5 kitchen to the side. So, once I announced his name, he came
6 across the backside towards the -- where the hallway ends.
7 And once I observed him, I approached him.

8 Q: What was he wearing?

9 A: At the time, he was wearing shorts and no shirt, and he
10 had a cigarette in his mouth.

11 Q: Once you made contact with the defendant, where did you
12 guys go?

13 A: He requested that we speak in the garage.

14 Q: Did you go into the garage?

15 A: We did enter the garage. And as we were entering into
16 the garage, I asked him -- I inquired where the victim was
17 located, and I sent Officer Loar upstairs.

18 Q: At any point did you -- well, let me back up. What were
19 the defendant's demeanor like at that point in time in the
20 garage?

21 A: Once we entered the garage, I asked him if there were any
22 weapons inside the garage or on his person. I patted him
23 down. Once I patted him down and had him turn around to me, I
24 noticed him to be kind of pale skinned and kind of flustered.

25 Q: Are you familiar with what's called Miranda warnings or

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- 1 Miranda rights?
- 2 A: I am.
- 3 Q: What is that?
- 4 A: It's the defendant's rights.
- 5 Q: Did you make him aware of his rights that evening?
- 6 A: I did.
- 7 Q: And how do you typically read someone or administer
- 8 someone their rights?
- 9 A: I carry a Miranda rights card on me.
- 10 Q: Do you happen to have that card on you today?
- 11 A: I do.
- 12 Q: Would you mind reading off the card?
- 13 A: It states the following: You have the right to remain
- 14 silent. Anything you say can and will be used against you in
- 15 a court of law. You have the right to talk to a lawyer and
- 16 have him or her present with you while you are being
- 17 questioned. If you cannot afford to hire a lawyer, one will
- 18 be appointed to represent you for any questions if you wish.
- 19 If you decide at any time to exercise these rights, do not
- 20 answer any questions or make any statements. Do you
- 21 understand these rights as I have explained them to you?
- 22 Having these rights in mind, do you wish to speak to me.
- 23 Q: Is that what you read to him the night?
- 24 A: Yes, it was.
- 25 Q: Now, did he seem to understand what you were saying?

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- 1 A: Yes, he did.
- 2 Q: As an officer, a detective, in law enforcement for quite
3 a while, have you come into contact with people who appeared
4 to be under the influence of something?
- 5 A: Yes.
- 6 Q: Describe what someone who may be under the influence of
7 alcohol or drugs, describe how they may be acting.
- 8 A: If there was alcohol, there obviously would be an odor of
9 some sort of alcohol. But typically, they would be
10 disoriented.
- 11 Q: Did the defendant appear disoriented?
- 12 A: No, he did not.
- 13 Q: Did he appear to display any characteristics common of
14 someone who is under the influence of something?
- 15 A: No, he did not.
- 16 Q: Did he appear to understand the English language?
- 17 A: Yes, he did.
- 18 Q: And where his reactions to you appropriate with what was
19 being asked of him?
- 20 A: Yes.
- 21 Q: After you read the defendant his Miranda rights, what
22 happened next?
- 23 A: At that time, he essentially advised he didn't ---
- 24 MS. WILSON: Objection.
- 25 THE COURT: All right.

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1 MS. WILSON: Do we need to approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 (REPORTER'S NOTE: Bench conference is held off the record in
4 the presence but outside the hearing of the jury.)

5 BY MR. MARTIN:

6 Q: Detective Cotton, was the defendant detained at this
7 point?

8 A: At the time of Miranda?

9 Q: Yes.

10 A: No.

11 Q: Was the defendant in handcuffs?

12 A: No.

13 Q: When did you -- did you place the defendant in handcuffs?

14 A: On concluding reading Miranda, I detained him.

15 Q: At that point, did the defendant wish to speak with you?

16 A: No.

17 Q: At any point, did you take the defendant outside of the
18 garage?

19 A: Yes. At that time, after he was detained, I think he was
20 permitted to have one or two more inhales of his cigarette,
21 and then I escorted him outside. And while I was escorting
22 him outside, he did not have a shirt on, so I attempted to
23 help him find a shirt. And once we found a shirt, we exited
24 the residence.

25 Q: At this point, did you ask him any questions?

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1 A: No, I did not.

2 Q: Did you make any statement to him related to the incident
3 that the victim had said had taken place?

4 A: No, I did not.

5 Q: Did the defendant make any comments?

6 A: Yes, he did.

7 Q: What did he say?

8 MS. WILSON: Objection.

9 THE COURT: Overruled. Based on the Court's prior
10 ruling, I'm gonna allow the answer.

11 MS. WILSON: Thank you, Your Honor.

12 A: Pardon my language, but the statements, to the best of my
13 knowledge, were: I don't even want to see them. I'm so
14 fucking ashamed. I'm a piece of shit. I ain't right in the
15 fucking head.

16 BY MR. MARTIN:

17 Q: At that point, where did you and the defendant go?

18 A: At that point, I radioed to Officer Loar to ensure that
19 the mother of the victim, as well as the victim in any other
20 people outside of the residence would go inside, so I didn't
21 have to cross them with the defendant. And then, I brought
22 him to my patrol car.

23 Q: Detective Cotton, are you familiar with body camera?

24 A: I am.

25 Q: Were you wearing body camera that evening?

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1 A: I was.

2 Q: That morning, excuse me. Could you explain to the jury
3 briefly how body camera works?

4 A: It's an issued body-worn camera from the department,
5 which you are required to wear and have activated whenever you
6 are interacting with the public. And the way it works is
7 essentially it is always on, and it has 30-second replay.
8 Once you hit it -- once you double tap on the center of the
9 button, it will activate it, and for 30 seconds it will have
10 no sound but then it will pick up sound; so, it's a constant
11 feed.

12 Q: Do you upload your body camera somewhere at the end of
13 the night with the end of the shift?

14 A: I do.

15 Q: How does that work?

16 A: You place it on a dock, which is connected to a router,
17 and it goes into the program of Evidence.com, which will
18 upload your videos.

19 Q: When you do this, or when you did this at night, did you
20 alter that video in any way?

21 A: I did not.

22 Q: Did you change anything of that video?

23 A: I did not.

24 MR. MARTIN: Your Honor, may I approach the witness?

25 THE COURT: Yes, sir.

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1 BY MR. MARTIN:

2 Q: Detective Cotton, I'm showing you what's been marked for
3 identification purposes as State's Exhibit 28. Do you
4 recognize that?

5 A: I do.

6 Q: And do you know what that is?

7 A: It is a thumb drive of a copy of my bodycam.

8 Q: And are those your initials on the thumb drive?

9 A: Yes, it is.

10 Q: Does that indicate you have watched this before?

11 A: Yes, I have.

12 Q: And other than the court-ordered redactions and
13 modifications, does everything on this video appear to be an
14 accurate representation of what happened that morning with the
15 defendant?

16 A: Yes, it is.

17 MR. MARTIN: Your Honor, at this time, the state would
18 move to enter Exhibit 28 into evidence and publish for the
19 jury.

20 THE COURT: Any objection?

21 MS. WILSON: Without objection, Your Honor.

22 THE COURT: You may do so.

23 STATE'S EXHIBIT NUMBER 28

24 ADMITTED INTO EVIDENCE

25 (REPORTER'S NOTE: State's 28 published for the jury. Audio

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- 1 not transcribed herein.)
- 2 BY MR. MARTIN:
- 3 Q: Again, Detective Cotton, you watched the tape, correct?
- 4 A: Yes.
- 5 Q: And again, what was it the defendant said to you while in
- 6 the yard?
- 7 A: He stated, I don't even want to see them. I'm so fucking
- 8 ashamed. He said, I'm a piece of shit. And I ain't right in
- 9 the fucking head.
- 10 Q: After your previous testimony before watching the video,
- 11 as you went to the car with the defendant, did you ever return
- 12 to the house again?
- 13 A: I did.
- 14 Q: And when would that have been?
- 15 A: The following shift when I signed on duty.
- 16 Q: Was that later that day? Do you remember?
- 17 A: It would have been later that day, yes.
- 18 Q: And what was the purpose for returning to the home?
- 19 A: To collect evidence.
- 20 Q: And where specifically in the home did you go to collect
- 21 evidence?
- 22 A: The victim's bedroom.
- 23 Q: When you went to the victim's bedroom, did you take any
- 24 pictures?
- 25 A: I took several photos.

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1 Q: And you say several photos. Can you explain?

2 A: I took several -- a lot of times when I'm on a crime
3 scene, I'll take several photos. In that particular one, I
4 only actually ended up keeping one of them because they were
5 poor quality. You couldn't even see anything; they were
6 blurred. So, I actually only submitted one into evidence.

7 MR. MARTIN: Your Honor, may we approach?

8 THE COURT: Certainly.

9 (REPORTER'S NOTE: Bench conference is held off the record in
10 the presence but outside the hearing of the jury.)

11 BY MR. MARTIN:

12 Q: Detective Cotton, I'm going to be showing you what has
13 been marked for identification purposes as State's Exhibit 3.
14 Are you able to identify Exhibit 3?

15 A: Yes, I am.

16 Q: And what is it?

17 A: A photo of the victim's bed and bed sheets.

18 Q: And is that photo a fair and accurate depiction of the
19 bedroom as you saw it when you went up there?

20 A: Yes, it is.

21 Q: Been altered in any way?

22 A: No.

23 Q: Changed in any way?

24 A: No.

25 MR. MARTIN: Your Honor, at this time, the state would

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1 ask that Exhibit 3 be admitted into evidence.

2 THE COURT: All right. Over the objection of the
3 defense, I'm going to allow it. I do find that it is
4 probative, and if there is any prejudice to the defendant, the
5 probative value outweighs the prejudicial value. So, I'm
6 gonna allow it.

7 STATE'S EXHIBIT NUMBER 3

8 ADMITTED INTO EVIDENCE

9 MR. MARTIN: Thank you, Your Honor. May I publish it
10 very briefly to the jury?

11 THE COURT: Yes, sir.

12 BY MR. MARTIN:

13 Q: Detective Cotton, as a law enforcement officer, do you
14 often -- do you sometimes take pictures?

15 A: Yes.

16 Q: Do you sometimes collect evidence?

17 A: I do.

18 Q: When you collect an item of evidence, what do you do with
19 it?

20 A: We have a departmental issued form, is called a chain of
21 custody. And essentially what that does is keeps track of
22 whose hands up and on the evidence. And when you are
23 collecting the evidence, I used a --, in this particular case,
24 I used evidence bags, large brown bags, as well as filled out
25 that chain of custody. And I number the bags as well as the

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1 chain of custody so that they correlate with one another.

2 Q: Did you collect items of evidence in this case?

3 A: I did.

4 Q: And did you create this evidence log that you're talking
5 about here in this case?

6 A: I did.

7 Q: And when you create that evidence log, is that something
8 that's kept in the normal, ordinary course of business at
9 Horry County Police Department?

10 A: It is.

11 Q: And for purposes of making that log, are you a custodian
12 of that record?

13 A: I am.

14 MR. MARTIN: Your Honor, may I approach the witness?

15 THE COURT: Yes, sir.

16 BY MR. MARTIN:

17 Q: I'm showing you what's been marked as State's Exhibit
18 Number 26 for identification purposes. Does that appear to be
19 the evidence log you are referring to?

20 A: Yes, it is.

21 Q: And drawing your attention to that evidence log, is your
22 signature notated on there?

23 A: Yes, it is.

24 Q: Okay. And is it itemized in the items of evidence that
25 you took into evidence?

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1 A: Yes, it is.

2 Q: And does it appear to be a fair and accurate copy of the
3 evidence record that you are referring to?

4 A: Yes, it is.

5 MR. MARTIN: Your Honor, at this time, the state would
6 move to enter this into evidence.

7 THE COURT: Any objection?

8 MS. WILSON: Your Honor, I would just -- the same
9 objection as previously stated.

10 THE COURT: All right. I'm gonna allow it as a record
11 that is ordinarily kept in the business as indicated. I'm
12 going to allow it into evidence

13 MS. WILSON: Thank you, Your Honor.

14 STATE'S EXHIBIT NUMBER 26

15 ADMITTED INTO EVIDENCE

16 BY MR. MARTIN:

17 Q: Now, Detective Cotton, you testified that you took items
18 into evidence; is that correct?

19 A: Yes, sir.

20 Q: And again, describe for the jury what you did with these
21 items when you collected them?

22 A: Essentially, I would take one item of evidence, and I
23 would place out in the bag, in whatever bag it's in. I
24 would then itemize that bag, and then I would place on the
25 evidence sheet and that would correlate. So, if it was Number

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1 1, a bed sheet, then it would say Number 1, a bed sheet on the
2 evidence form, so that they relate to one another.

3 Q: And if I were to show you that bag of evidence that
4 you're talking about, would you be able to identify it?

5 A: Yes.

6 Q: Detective Cotton ---

7 MR. MARTIN: May I approach the witness, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. MARTIN:

10 Q: I'm showing you what's been marked for identification
11 purposes as State's Exhibit 3A. I don't need you to open it,
12 but are you able to identify that?

13 A: Yes. That's my handwriting.

14 Q: Okay. And what does it appear to be?

15 A: Item 1 that I collected.

16 Q: Which is?

17 A: It'd be one white-in-color blanket with a Halloween
18 theme.

19 Q: And where did you recover that from?

20 A: The bed.

21 Q: And once you collected that item of evidence, packaged it
22 up, where did you take it?

23 A: I take it to the Central Precinct where they have
24 evidence lockers.

25 Q: And how does the evidence locker work?

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1 A: They are a set of lockers that have a key that's already
2 placed in them. Once you open the locker, you place the
3 evidence inside the locker, and then the key gets taken out
4 and it's placed in a hole inside the locker so that it's
5 unable to be opened once it's dropped.

6 Q: And once you put that item of evidence in there, are you
7 able to get it back and change or do anything to it?

8 A: No, you're not.

9 Q: Did you alter this evidence in any way?

10 A: No, I did not.

11 MR. MARTIN: Your Honor, at this time, the state would
12 ask that this be moved into evidence, Item 3A.

13 THE COURT: Any objection?

14 MS. WILSON: I'm just restating my objection, Your Honor.

15 THE COURT: All right. I'm gonna allow State's 3A in
16 evidence over the objection of the defense.

17 STATE'S EXHIBIT NUMBER 3A

18 ADMITTED INTO EVIDENCE

19 MR. MARTIN: Thank you, Your Honor. I'll get this out of
20 his way and move to the next one.

21 BY MR. MARTIN:

22 Q: Detective Cotton, I'm showing you what's been marked for
23 identification purposes as State's Exhibit Number 4. And
24 again, I have the same question as before. Are you able to
25 identify that?

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- 1 A: Yes, that's my handwriting.
- 2 Q: Again, and for the record, what does it appear to be?
- 3 A: It'd be Item Number 2 collected.
- 4 Q: And did you do the same thing with this item as the
- 5 previous item?
- 6 A: Correct.
- 7 Q: And after dropping it off into evidence, did you have any
- 8 access to this item?
- 9 A: I did not.
- 10 Q: And what, if anything, did you alter it anyway -- did
- 11 have any access to this item, tamper with this item?
- 12 A: I did not.
- 13 MR. MARTIN: Your Honor, the state moves to enter Exhibit
- 14 Number 4 into evidence.
- 15 THE COURT: I'm sorry. I didn't hear. What is the item?
- 16 MR. MARTIN: I apologize, Your Honor.
- 17 BY MR. MARTIN:
- 18 Q: If you could, identify what that item is to the Court and
- 19 the jury.
- 20 A: Your Honor, this would be Item Number 2, one green and
- 21 multicolored checkered comforter.
- 22 THE COURT: Objection?
- 23 MS. WILSON: As before -- as stated before, Your Honor,
- 24 yes.
- 25 THE COURT: All right. Very good.

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1 MS. WILSON: Thank you.

2 THE COURT: So, I'm gonna allow it in evidence over the
3 objection of the defense.

4 STATE'S EXHIBIT NUMBER 4

5 ADMITTED INTO EVIDENCE

6 THE COURT: You may proceed.

7 BY MR. MARTIN:

8 Q: Detective Cotton, I'm gonna hand you what's been marked
9 for identification purposes as State's Exhibit 5. And again,
10 take a second and look at it, and let us know if you were able
11 to identify Exhibit Number 5.

12 A: Yes, that's my handwriting.

13 Q: Okay. And again, same question, can you identify what's
14 in that bag?

15 A: That would be Item Number 3 collected, which would be one
16 black, red, white, and green comforter with snake design.

17 Q: And again, what did you do with this item once you bagged
18 it and collected it?

19 A: Once it was bagged and collected, it was transported to
20 Central Precinct, where it was dropped in the locker.

21 Q: Did you do anything to tamper with it?

22 A: I did not.

23 MR. MARTIN: Judge, the state moves to enter this exhibit
24 into evidence.

25 THE COURT: Any objection?

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1 MS. WILSON: Yes, sir, Your Honor. Same objection as
2 previously stated.

3 THE COURT: All right. Very good.

4 With that, I'm gonna allow it in evidence over the
5 objection of the defense. Thank you.

6 STATE'S EXHIBIT NUMBER 5

7 ADMITTED INTO EVIDENCE

8 BY MR. MARTIN:

9 Q: Detective Cotton, I'm approaching with what's been marked
10 as State's Exhibit 6. Again, same question, are you able to
11 identify State's Exhibit 6?

12 A: Yes, I am.

13 Q: What is it?

14 A: Item Number 4 that was collected, a pink-and-white
15 blanket.

16 Q: And again, did you do the same thing with this item that
17 you did with all the others?

18 A: Yes, I did.

19 Q: Did you tamper with it in any way?

20 A: No, I did not.

21 MR. MARTIN: Judge, the state would ask that this item as
22 well be moved into evidence.

23 THE COURT: Objection?

24 MS. WILSON: Yes, sir, Your Honor.

25 THE COURT: All right. I'm gonna allow State's 6 in

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STEVEN COTTON - DIRECT BY MARTIN

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1 evidence over the objection of the defense.

2 STATE'S EXHIBIT NUMBER 6

3 ADMITTED INTO EVIDENCE

4 THE COURT: You may proceed.

5 BY MR. MARTIN:

6 Q: Detective Cotton, I am approaching with State's Exhibit

7 7. Again, the same question, are you able to identify what

8 State's Exhibit 7 is?

9 A: Yes, I am.

10 Q: And what is it?

11 A: It's Item Number 5 collected, a black, red, white, and
12 green pillowcase with snake design.

13 Q: Did you do the same thing with this item as with the
14 previous items?

15 A: Yes, I did.

16 Q: Did you tamper with it in any way?

17 A: No, I did not.

18 MR. MARTIN: Your Honor, State moves to enter State's
19 Exhibit Number 7 into evidence.

20 THE COURT: Objection?

21 MS. WILSON: Yes, sir, Your Honor.

22 THE COURT: All right. I'm gonna allow it into evidence
23 over the objection of the defense.

24 STATE'S EXHIBIT NUMBER 7

25 ADMITTED INTO EVIDENCE

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1 THE COURT: You may proceed.

2 MR. MARTIN: Thank you, Your Honor.

3 BY MR. MARTIN:

4 Q: State's Exhibit Number 8, are you able to identify that?

5 A: Yes, I am.

6 Q: And what is that?

7 A: It's Item Number 6, black, red, and white, green
8 pillowcase with snake design.

9 Q: Did you do anything to tamper with this item?

10 A: No, I did not.

11 Q: And did you do the same thing with this item regarding
12 taking it to the police station as with the other items?

13 A: Yes.

14 MR. MARTIN: Judge, the state moves to enter State's
15 Exhibit Number 8 into evidence.

16 THE COURT: Objection?

17 MS. WILSON: Yes, sir.

18 THE COURT: And I'm gonna allow it into evidence over the
19 objection of the defense.

20 STATE'S EXHIBIT NUMBER 8

21 ADMITTED INTO EVIDENCE

22 THE COURT: You may proceed.

23 MR. MARTIN: Thank you, Your Honor.

24 BY MR. MARTIN:

25 Q: State's Exhibit 9, again could you identify that?

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- 1 A: Yes, I can.
- 2 Q: And what is it?
- 3 A: That's Item Number 7 collected, which is the white
- 4 pillowcase with emoticon design.
- 5 Q: Did you do anything to tamper with this?
- 6 A: No, I did not.
- 7 Q: Did you do the same thing with this piece of evidence as
- 8 with all the previous pieces of evidence we have discussed?
- 9 A: Yes, sir, I did.
- 10 MR. MARTIN: Again, Your Honor, the state would move to
- 11 enter State's Exhibit Number 9 into evidence.
- 12 THE COURT: Objection?
- 13 MS. WILSON: Yes, sir, Your Honor.
- 14 THE COURT: I'm gonna allow State's 9 in evidence over
- 15 the objection of the defense.
- 16 STATE'S EXHIBIT NUMBER 9
- 17 ADMITTED INTO EVIDENCE
- 18 THE COURT: You may proceed.
- 19 MR. MARTIN: Thank you, Your Honor.
- 20 BY MR. MARTIN:
- 21 Q: I know I sound like a broken record, but State's Exhibit
- 22 Number 10 for identification purposes. Are you able to
- 23 identify this piece of evidence? Take your time.
- 24 A: Yes, I am.
- 25 Q: And what is it?

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STEVEN COTTON - DIRECT BY MARTIN

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1 A: It's Item Number 8 collected, which is a white-in-color
2 fitted bed sheet.

3 Q: And did you tamper with this item in any way?

4 A: No, I did not.

5 Q: And did you do the same thing with this item as with all
6 the other previous items of evidence we have discussed?

7 A: Yes, I did.

8 MR. MARTIN: Your Honor, State moves to enter Item Number
9 -- excuse me -- Item Number 10 into evidence.

10 THE COURT: Objection?

11 MS. WILSON: Yes, sir, Your Honor.

12 THE COURT: All right. With that, I'm gonna allow it in
13 evidence over the objection of the defense.

14 STATE'S EXHIBIT NUMBER 10

15 ADMITTED INTO EVIDENCE

16 THE COURT: You may proceed.

17 BY MR. MARTIN:

18 Q: And specifically relating to that item, where did you get
19 it?

20 A: From the victim's bed.

21 MR. MARTIN: Court's indulgence, Your Honor.

22 THE COURT: Yes, sir.

23 BY MR. MARTIN:

24 Q: Detective Cotton, during your involvement in this case,
25 did you determine whether or not the defendant was over the

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STEVEN COTTON - CROSS BY WILSON

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1 age of 18 and an adult?

2 A: Yes, I did. He's older than me.

3 Q: Now, as a law enforcement officer, a detective,
4 someone who has been with the County for a while, do you
5 receive training in how to -- how to gather and process
6 evidence?

7 A: We do. When you are initially hired through the FTO
8 program, you are supposed to meet with evidence and go through
9 a training process there. And obviously, over the course of
10 years of being in law enforcement, you gain the knowledge on
11 better ways to do that.

12 MR. MARTIN: Your Honor, no further questions from the
13 state at this time.

14 THE COURT: All right. Cross-examination?

15 MS. WILSON: Thank you, Your Honor.

16 CROSS-EXAMINATION OF STEVEN COTTON BY MS. WILSON:

17 Q: Detective Cotton.

18 A: Yes, ma'am.

19 Q: At the time, you were Officer Cotton, correct?

20 A: Yes, ma'am.

21 Q: Now, I know you said you had some training. The training
22 you had at the beginning of, I guess, your hire?

23 A: Yes, ma'am.

24 Q: How long ago was that at the time of this incident?

25 A: At the time of that incident, it would've been ---

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STEVEN COTTON - CROSS BY WILSON

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- 1 Q: It was 2020.
- 2 A: I was in law enforcement at the time for four-and-a-half
3 years. So, I would say that about five months into my
4 training, so ---
- 5 Q: Sometime in '15 or '16, approximately?
- 6 A: Correct. It would've been -- probably would have been
7 January of '16.
- 8 Q: Okay. All right. Thank you for that.
- 9 A: No problem.
- 10 Q: So, is that a repeated training each year?
- 11 A: No, ma'am; it's not.
- 12 Q: So, you have a training at the beginning of your hire.
13 And in your particular case, it had been approximately four-
14 and-a-half to five years prior to this night?
- 15 A: Yes, ma'am.
- 16 Q: Or the next day, actually, correct?
- 17 A: Yes, ma'am.
- 18 Q: All right. And so, no follow-up, no additional training,
19 no -- did you have any -- there was no guidance, was there,
20 for the bed sheets that you took that night, correct -- or
21 that morning, the next day?
- 22 A: No, ma'am. It wasn't the first time I've collected
23 evidence.
- 24 Q: It wasn't the first time you collected evidence. But my
25 question was, was there any guidance?

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- 1 A: No, ma'am.
- 2 Q: There was no guidance from anyone ---
- 3 A: No, no.
- 4 Q: --- who maybe was a crime scene specialist, because as do
5 exist, right?
- 6 A: Yes, ma'am.
- 7 Q: And in this particular incident, there was no crime scene
8 specialist to showed up to take this evidence, correct?
- 9 A: No, ma'am.
- 10 Q: And crime scene specialists are people who are actually
11 trained in collecting evidence, correct?
- 12 A: Yes, ma'am.
- 13 Q: And they have more extensive training and probably have
14 to do continuing, like, educational type things to keep their
15 -- I don't know -- qualifications current, right?
- 16 A: I would imagine they have more extensive training; yes,
17 ma'am.
- 18 Q: So, in this particular instance, you took the sheets ---
- 19 A: Yes, ma'am.
- 20 Q: --- for the bed? And you didn't take them the night of
21 the incident, correct, or the morning of?
- 22 A: No, ma'am.
- 23 Q: So, you actually went back the next day, correct?
- 24 A: Yes, ma'am.
- 25 Q: That would've been the 27th?

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- 1 A: Yes, ma'am.
- 2 Q: And on the 27th, about approximately what time did you
3 get there? Maybe around noon or was it early in the morning?
- 4 A: No. It -- correct me -- it would've been the 26th,
5 ma'am, because I was on -- so the morning of -- I'm on
6 nightshifts, so it happened earlier that morning. So, I
7 actually returned to work that evening shift. And when I
8 returned to work, I was called to return to that location.
- 9 Q: Okay. So, it wasn't 24 hours later. So, you actually
10 were out there that morning, and then that evening --
11 approximately what time would you have started your evening
12 shift that day?
- 13 A: As soon as I signed on, I was advised to go to the house.
- 14 Q: So, it would've been approximately what time do you think
15 or do you remember?
- 16 A: I'm going to say between -- between the hours of 6:00 and
17 8:00, I would've ---
- 18 Q: In the evening? Okay. And so, in the intervening time
19 between the time that you actually were at the house for the
20 original call and the time you went back, approximately how
21 many hours later was that? Over 12 hours?
- 22 A: Yes, ma'am.
- 23 Q: And in that intervening time, who was in the house when
24 you were not there; are you aware of that?
- 25 A: I wouldn't be aware.

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- 1 Q: Did you -- well, you didn't actually leave anybody there
2 to make sure nobody went into the house, did you?
- 3 A: No, ma'am.
- 4 Q: So, it's possible then that people were actually inside
5 the house with the evidence that you collected subsequently,
6 right?
- 7 A: Possibly.
- 8 Q: And if they were inside with the evidence, potentially
9 somebody could have tampered with, correct?
- 10 A: Possibly.
- 11 Q: But you don't know that?
- 12 A: No, ma'am.
- 13 Q: And you can't know that?
- 14 A: No, ma'am.
- 15 Q: Because you didn't actually secure that crime scene,
16 right?
- 17 A: No, ma'am.
- 18 Q: Okay. When you collected the sheets, and you are bagging
19 all this evidence, did you check to see if there was anything
20 on sheets?
- 21 A: No, ma'am.
- 22 Q: So, you just literally take the sheets off the bed, put
23 the things in bags and put a new label on it in time?
- 24 A: I couldn't hear you, ma'am.
- 25 Q: I'm so sorry. I said, you were literally taking sheets

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STEVEN COTTON - CROSS BY WILSON

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1 off the bed, without taking for debris or anything like that
2 and putting it in bags, labeling it and then signing it,
3 correct?

4 A: Yes, ma'am.

5 MS. WILSON: Court's indulgence one second.

6 THE COURT: Yes, ma'am.

7 BY MS. WILSON:

8 Q: So, you don't know if the bedding was changed?

9 A: No, ma'am.

10 Q: No other questions.

11 THE COURT: Redirect?

12 MR. MARTIN: Court's indulgence?

13 THE COURT: Yes, sir.

14 MR. MARTIN: No further questions, Your Honor.

15 THE COURT: All right. Do you wish the witness to be
16 excused?

17 MR. MARTIN: Yes, Your Honor.

18 MS. WILSON: Without objection.

19 THE COURT: All right, sir. You are released from your
20 subpoena and may go back to your regular duties.

21 MR. COTTON: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 All right. Next witness, please.

24 MR. MARTIN: Your Honor, the state would call Detective
25 John Sotile.

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JOHN SOTILE - DIRECT BY MARTIN

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1 THE COURT: All right.

2 JOHN SOTILE, HAVING BEEN SWORN, TESTIFIED

3 AS FOLLOWS:

4 THE CLERK: State your name for the Court and spell it.

5 MR. SOTILE: John Sotile.

6 THE COURT REPORTER: Spell your last name, please.

7 MR. SOTILE: S-O-T-I-L-E.

8 THE COURT: Go ahead, Solicitor.

9 DIRECT EXAMINATION OF JOHN SOTILE BY MR. MARTIN:

10 Q: Detective Sotile, with whom are you currently employed?

11 A: The Horry County Police Department.

12 Q: How long have you been with Horry County Police
13 Department?

14 A: Roughly around eight years now.

15 Q: And what are your current duties with the police
16 department?

17 A: I'm part of the criminal investigation division

18 Q: Back in May of 2020 to any what were your roles with very
19 County Police Department?

20 A: I worked for the -- I was in the Special Victims Unit.

21 Q: During the month of May 2020, were you involved in the
22 case against the defendant John Kehborn?

23 A: Yes.

24 Q: And your involvement, did that include collecting or
25 delivering evidence?

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JOHN SOTILE - DIRECT BY MARTIN

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1 A: Yes.

2 Q: Now, when you collect evidence, do you keep some sort of
3 a log, or a record, or a chain of custody for that evidence?

4 A: Yes.

5 Q: And sort of describe for the jury what that is?

6 A: It's the form that has a suspect and if that is suspect
7 is known, has his or her name on it, and possibly the victim's
8 name. And whatever items you collect it's on their, and each
9 item is labeled. And another section of its, it's the chain,
10 where they property came from, and where it goes.

11 Q: Did you make a record or a chain of custody for in this
12 case?

13 A: Yes.

14 MR. MARTIN: Your Honor, may I approach the witness?

15 THE COURT: Yes, sir.

16 BY MR. MARTIN:

17 Q: Detective Sotile, I'm showing you what's been marked as
18 State's Number 14 for identification. Take a second, look at
19 it, and tell me if you can identify what that is?

20 Q: With regards to this case, what evidence if any did you
21 receive in this case?

22 A: It was a sealed sexual assault evidence collection kit.

23 Q: Where did you get it from?

24 A: We went down the MUSC in Charleston at the public safety
25 building there.

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JOHN SOTILE - DIRECT BY MARTIN

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- 1 A: Yes.
- 2 Q: And when you went to the public safety building, does
3 your evidence records say from whom you got the item of
4 evidence?
- 5 A: Yes.
- 6 Q: Who is it?
- 7 A: Danielle Schultz.
- 8 Q: And when you got that item of evidence, what did you do?
- 9 A: We returned it to the Horry County Police Department, and
10 turned it over to the evidence section here.
- 11 Q: When you turned it over to the evidence section, what
12 does that mean? Who did you give it to?
- 13 A: One of the evidence, I guess you call her, clerk,
14 custodian, she -- we submit it to them, and ask them to either
15 submit for testing or to hold it, whatever.
- 16 Q: During this process, did you tamper with the evidence
17 whatsoever?
- 18 A: No.
- 19 Q: And is your signature indicated on that form?
- 20 A: Yes.
- 21 Q: And is that form something that the County keeps during
22 the ordinary course of business?
- 23 A: Yes.
- 24 Q: And for purposes of creating this log, are you a
25 custodian of that record?

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JOHN SOTILE - DIRECT BY MARTIN

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1 A: Yeah. It's on our computer system.

2 MR. MARTIN: Your Honor, the state would ask that the
3 chain of custody form be moved into evidence.

4 THE COURT: Objection?

5 MS. WILSON: Without objection.

6 THE COURT: In evidence without objection.

7 STATE'S EXHIBIT NUMBER 14

8 ADMITTED INTO EVIDENCE

9 MR. MARTIN: Court's indulgence.

10 And, Your Honor, I believe the form I handed you has the
11 incorrect number. It should be Number 14, not 15 on Your
12 Honor's form.

13 THE COURT: Okay. I wrote it down as 14.

14 MR. MARTIN: That's correct.

15 THE COURT: What does the court reporter have?

16 THE COURT REPORTER: It's 14, but on your list, we had
17 them switched. We just need to correct that.

18 THE COURT: All right. Very good. So, it's State's 14.
19 All right. It's in evidence.

20 MR. MARTIN: Thank you, Your Honor. No further
21 questions.

22 THE COURT: All right. Cross-examination?

23 MS. WILSON: Nothing from the defense, Your Honor.

24 THE COURT: All right. Your next witness, please.

25 MS. ANDREW: Your Honor, the state calls Lori Dudley.

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LORI DUDLEY - DIRECT BY MARTIN

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1 LORI DUDLEY, HAVING BEEN SWORN, TESTIFIED
2 AS FOLLOWS:
3 THE CLERK: State your name and spell it for the Court.
4 MS. DUDLEY: Lori Dudley, D-U-D-L-E-Y.
5 DIRECT EXAMINATION OF LORI DUDLEY BY MS. ANDREW:
6 Q: Ms. Dudley, where are you currently employed?
7 A: Horry County Police Department.
8 Q: How long have you been employed by the Horry County
9 Police Department?
10 A: Twenty-four years.
11 Q: What's your current job at the Horry County Police
12 Department?
13 A: I'm the evidence supervisor.
14 Q: And as evidence supervisor, what are your duties?
15 A: To prepare evidence for testing, to prepare evidence for
16 trial, to account for evidence. All property and evidence
17 that comes into our facility, I'm responsible for it.
18 Q: Do you sometimes also transport evidence to the State Law
19 Enforcement Division?
20 A: I do.
21 Q: Okay. And were your duties essentially the same back in
22 May of 2020 as they are today?
23 A: Yes.
24 Q: Okay. Did you have occasion to become involved in the
25 case by transporting evidence?

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LORI DUDLEY - DIRECT BY MARTIN

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1 A: Yes, I did.

2 Q: Okay. Can you tell me the standard procedure for Horry
3 County Police Department to submit evidence to SLED?

4 A: Once we get a request for evidence to be transported to
5 SLED for further analysis, we pick up the evidence from our
6 office and transport it by driving it to Columbia. Once we
7 get it to Columbia, we sign the chain of custody, which is
8 basically a paper saying that it was in our custody, and we're
9 transferring it to the custody of another agency.

10 Q: And did you do that in this case?

11 A: Yes, I did.

12 Q: Okay.

13 MS. ANDREW: May I approach the witness, Your Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. ANDREW:

16 Q: I'm gonna show you what's been marked at this time for
17 identification purposes as State's Exhibit Number 24. Can you
18 examine that document and tell me what that is?

19 A: This is a chain of custody from State Law Enforcement
20 Division.

21 Q: Okay. And is that something that you routinely see as a
22 part of your job at Horry County Police Department?

23 A: Yes. This also has signatures on it where we deliver
24 evidence, we sign for it.

25 Q: And so, can you find on this form where you have signed

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LORI DUDLEY - DIRECT BY MARTIN

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1 to deliver or submit evidence to SLED? And I'll ask you about
2 each one individually, so I have to do that.

3 A: Yes. I see my signature.

4 Q: Okay. I'm going to show you what was previously marked
5 as State's Exhibit Number 16. This is SLED Item Number 1.

6 Can you identify that? And you can just -- the SLED Item
7 Number 1, is it depicted on your chain of custody? It should
8 be the very first one.

9 A: Yes.

10 Q: And that's described as the buccal swabs of the
11 defendant, John Kehborn. Did you deliver that item to SLED?

12 A: Yes, I did. My signature -- my name is on the front.

13 Q: Your name is on the front. Thank you.

14 A: Uh-huh, (affirmative response).

15 Q: So, when you submit it to SLED, do you put it in this
16 packaging and put your name on the front?

17 A: Yes, we do.

18 Q: Okay. I'm gonna show you what's previously marked as
19 State's Exhibit Number 12. This is SLED Item Number 2 on your
20 chain of custody. That's described as the rape kit for the
21 victim. Did you submit that item to SLED?

22 A: Yes, I did. My signature is on the chain.

23 Q: Thank you. I'm gonna show you one more exhibit. We
24 haven't marked this one, so I'm gonna have you open it so we
25 can mark it.

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LORI DUDLEY - DIRECT BY MARTIN

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1 Okay. I'm gonna hand you what we're gonna mark as
2 State's Exhibit -- could you open this up and pull out the
3 three components of the envelope?

4 A: (Witness complies.)

5 Q: Okay. We're gonna mark these.

6 STATE'S EXHIBIT NUMBER 18, 19, AND 20

7 MARKED FOR IDENTIFICATION

8 Q: Okay. I'm gonna show you what's been marked as State's
9 Exhibits 18, 19, and 20. These are DNA swabs from bedsheets.

10 A: Okay.

11 Q: Those are SLED Items 22, 23, and 24. Did you deliver
12 those items to SLED as well?

13 A: Yes, I did. My signature is there.

14 Q: Thank you. So, did you also at some point possibly take
15 up some of these items and return them to the Horry County
16 Police Department?

17 A: Yes, ma'am.

18 Q: Okay. Other than these items that are noted on the chain
19 of custody you just testified about, did you have any other
20 involvement in this case other than testifying here today?

21 A: No, ma'am.

22 Q: I have no further questions. Please answer any questions
23 that Ms. Wilson has.

24 THE COURT: Cross-examination?

25 MS. WILSON: Nothing from the defense, Your Honor.

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BY THE COURT

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1 THE COURT: All right. Do you wish the witness to be
2 excused?

3 MS. ANDREW: Yes, sir; Your Honor.

4 THE COURT: Any objection?

5 MS. WILSON: Without objection.

6 THE COURT: All right. Ma'am, you are released from your
7 subpoena and may go about your regular duties.

8 MS. DUDLEY: Thank you.

9 THE COURT: Y'all come up and talk to me for one second.

10 (REPORTER'S NOTE: Bench conference is held off the record in
11 the presence but outside the hearing of the jury.)

12 BY THE COURT:

13 THE COURT: All right. Ladies and gentlemen, we're going
14 to break for the evening. The state's remaining witnesses,
15 we'll cover those in the morning. So, we are going to let you
16 go at this point in time.

17 Now, remember when you go home, you see your husband,
18 wife, boyfriend, girlfriend, person down the street, you can't
19 talk about the case until it's over. Once you're done with
20 your duties, you can tell them as much or as little as you
21 want to, but until then, you can't talk about it because
22 somebody would give you their opinion, and they're not on the
23 jury. Besides the fact, you shouldn't have an opinion at this
24 point in time because you haven't heard all the evidence.
25 Further, you don't know the law that you have to apply to the

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BY THE COURT

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1 facts and evidence you've heard in this case. So again, don't
2 talk about the case, don't allow anybody to talk to you about
3 it. And again, Bobby will tell you when to come in the
4 morning so that we can get into the courtroom at 9:30. Again,
5 the clerk's office will have something for you in the jury
6 room.

7 So, with that, you are now excused. Thank you very much.

8 (REPORTER'S NOTE: Jury exits courtroom @ 4:00 p.m. The
9 following takes place outside the presence of the jury.)

10 THE COURT: All right. Anything further from the state
11 at this point in time?

12 MR. MARTIN: No, Judge.

13 THE COURT: From the defense?

14 MS. WILSON: Nothing, Your Honor.

15 THE COURT: So, y'all be here approximately about 9:15,
16 so we can get started at 9:30 in the morning.

17 All right?

18 MS. WILSON: Yes, sir.

19 MS. ANDREW: Thank you.

20 MR. MARTIN: Yes, Your Honor.

21 THE COURT: With that, see you in the morning.

22 Thank you very much.

23 **RECESS - 4:02 P.M. - END OF DAY TWO.**

24 *******OFF THE RECORD*******

25 **FEBRUARY 16, 2022 - DAY THREE**

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HEATHER WILSON - DIRECT BY ANDREW

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1 **ON THE RECORD - 9:32 A.M.**

2 THE COURT: All right. Is the state ready for the jury
3 to come in?

4 MR. MARTIN: Yes, Your Honor.

5 THE COURT: And defense?

6 MS. WILSON: Yes, sir; Your Honor.

7 THE COURT: All right. Ask the jury to come in, please,
8 ma'am.

9 (REPORTER'S NOTE: Jury enters courtroom @ 9:33 a.m.)

10 THE COURT: All right, Solicitor, your next witness,
11 please.

12 MS. ANDREW: Your Honor, the state calls Heather Wilson.

13 THE COURT: Please come around to be sworn, ma'am. Just
14 meet the clerk's representative right there at the corner,
15 ma'am.

16 HEATHER WILSON, HAVING BEEN SWORN,
17 TESTIFIED AS FOLLOWS:

18 THE CLERK: State your name and spell it for the Court.

19 MS. HEATHER WILSON: Heather Wilson, H-E-A-T-H-E-R, W-I-
20 L-S-O-N.

21 THE COURT: Go ahead.

22 DIRECT EXAMINATION OF HEATHER WILSON BY MS. ANDREW:

23 Q: Lieutenant Wilson?

24 A: Yes, ma'am.

25 Q: Okay. Lieutenant Wilson, what is your occupation?

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HEATHER WILSON - DIRECT BY ANDREW

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1 A: I am a lieutenant in the Crime Scene Unit for Horry
2 County Police Department.

3 Q: And how long have you been employed by the Horry County
4 Police Department?

5 A: It's going on 18 years.

6 Q: What's your present duty assignment there?

7 A: So, as they lieutenant in the Crime Scene Unit, I oversee
8 the unit. Also respond to assist, I train, I handle all
9 budgetary stuff. Again, all the training for the new hires
10 and run back up, as well as work my own cases, and all the
11 fingerprints for the County.

12 Q: So, when you say work your own cases, what kind of things
13 would you do in Crime Scene to work those cases?

14 A: So, we respond to call outs, you know, if someone passes,
15 if there is a crime that occurs that's violent in nature. We
16 also process evidence. So, when items come in from patrol
17 officers or detectives, we'll be assigned those cases, and we
18 process those items. It could be from anything from
19 fingerprints to looking for bodily fluids, to DNA collection.

20 Q: And were those -- do you receive any specialized training
21 related to those duties?

22 A: I did. So, I started in crime scene in 2006. And at the
23 time, we did an internship with SLED. So, I went to SLED,
24 which is South Carolina Law Enforcement Division for three
25 weeks where we responded to calls for service with SLED. And

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1 then we also went to all the divisions in SLED, so they could
2 show us how to properly process, according to their standards,
3 and then what they could do with what items we send to them.
4 And then I've had many training courses over the years from
5 crime scene experience, processing fingerprints, several.

6 Q: And you described your duties just a minute ago. Were
7 your duties back in July of 2020 essentially the same as they
8 are today?

9 A: Yes, ma'am.

10 Q: So, did you have an occasion to become involved in the
11 case we're here for today?

12 A: Yes, ma'am; I did.

13 Q: Okay. Were you asked to examine some bedding that was
14 seized as evidence in the case?

15 A: I was.

16 Q: Did you have any involvement in seizing the evidence?

17 A: I did not have any involvement with seizing the evidence.

18 Q: Do you have any knowledge about how it was seized, or
19 where it came from, or anything like that?

20 A: No. I would just have to refer back to the report and
21 read, but I have no knowledge of it.

22 Q: So, essentially, you're just testing the evidence?

23 A: Correct.

24 Q: And what kind of testing did you perform on those items
25 taken from the house, those bedsheets?

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1 A: So, anytime we receive bedsheets or clothing that's
2 involved in a possible CSC, then what we do is we photograph
3 that evidence, and then we use an alternate light source. We
4 call it an ALS. And it has a kind of like a blue light, like
5 you've seen on television, and orange goggles. We turn the
6 lights off, and then we look for anything that may fluoresce
7 on blankets. If anything fluoresces on the blankets, we use a
8 sterile marker and we mark the area that fluoresces. After we
9 are done with that side of the blanket, will turn the lights
10 on. We'll collect a sample from that area. We use one wet
11 swab, one dry swab, and then we package that. We take another
12 swab, swab the exact same area and do a presumptive test.
13 It's called forensi-stick (spelled phonetically). It picks up
14 the acid phosphatase in the semen. It's an enzyme that's in
15 semen. If it's presumptive positive, then we mark -- we
16 document that. If it's presumptive negative, we document
17 that. But it is just a presumptive.

18 Q: Okay. So, in order to determine -- to see if the
19 evidence that you have swabbed actually is semen, you have to
20 send it off to the State Law Enforcement Division for further
21 testing to find out for sure. Is that correct?

22 A: Correct. It's not definite until the lab itself tests
23 the evidence.

24 Q: And why do you do that part of the test at the police
25 department rather than going ahead and sending the evidence as

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1 it is to SLED?

2 A: So, like I stated, we received the internship with the
3 SLED. So, SLED trained us on how to properly process that
4 evidence. It cuts down on the timeframe that our victims have
5 to wait for an answer if we process it in-house. If we send
6 it to SLED, then it has to go through their processing
7 division before it can go to the DNA division. So, if we
8 process it in-house, it goes straight to the DNA division.

9 Q: And when you did those tests did you document what you
10 did on your chain of custody form?

11 A: I did.

12 Q: Okay.

13 MS. ANDREW: May I approach, Your Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. ANDREW:

16 Q: I'm gonna show you what's been marked as State's Exhibit
17 Number 21. Can you tell me what that document is?

18 A: This is a copy of my evidence record in reference to this
19 case from July of 2020.

20 Q: Okay. And does that show your -- that you had control of
21 that evidence, and that you did the testing that you just
22 described?

23 A: Yes, it does.

24 Q: I think you also said that you packaged some of the
25 swabs, the wet and the dry that you mentioned. What did you

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1 do with those packages?

2 A: Those are also on the chain of custody. They are on the
3 second page, and they are listed as well as if they were
4 presumptive positive or negative.

5 Q: And you said a swab, and just so the jury knows, you mean
6 -- it looks like a Q-tip, kind of.

7 A: It is like a Q-tip you would clean your ears with. There
8 is a set of two, they come individually packaged. There's a
9 -- we have a box as well, so of course you are wearing gloves
10 and both swabs go in the same box. So, the wet swab and the
11 dry swab both go in a box together.

12 MS. ANDREW: Your Honor, at this time, the state seeks to
13 admit Exhibit Number 21 into evidence.

14 THE COURT: Any objection?

15 MS. WILSON: Without objection.

16 THE COURT: It's in evidence without objection.

17 STATE'S EXHIBIT NUMBER 21

18 ADMITTED INTO EVIDENCE

19 THE COURT: You may proceed.

20 BY MS. ANDREW:

21 Q: If you need to refer to that to refresh your
22 recollection, you can. Just turn it -- look at it and turn it
23 around when you're finished. Okay?

24 A: Okay.

25 Q: Okay. I'm gonna now show you what's been marked as

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1 State's Exhibit 10. I'm gonna hand you what's been marked and
2 admitted into evidence as State's Exhibit Number 10. Can you
3 identify what that is for the packaging?

4 A: So, this is a white-in-color fitted bed sheet, and it has
5 the seal on it with my initials and the date, July 27th.

6 Q: And did you examine that item and perform the test you
7 described?

8 A: I did.

9 Q: Okay. We're gonna open it up. There should be some
10 gloves up there.

11 A: May I stand Your Honor?

12 Q: I can kind of assist you.

13 Okay. Is this the white fitted sheet you examined?

14 A: Yes.

15 Q: All right. And you can see -- I don't know if they can
16 see, but you can see you've done what you said. There's some
17 Sharpie markings, are those the sterile Sharpie markings that
18 you were talking about?

19 A: Yes. And they're also labeled with a letter, and just so
20 that we can differentiate which swab came from which circle.

21 Q: Okay. And if you -- so, the ones at the bottom are E, F,
22 and G, and the top is A, B, C, D, E, can you tell us which
23 ones you examined that were presumptively positive?

24 A: If I can refer back to my notes?

25 Q: Sure.

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- 1 A: Okay. So, 8A, Alpha, was negative, presumptive negative;
2 B, Bravo, was presumptive negative; C, Charlie, was
3 presumptive negative; D, Delta, was presumptive negative; E,
4 Echo, was presumptive positive for semen; F, Foxtrot, was
5 presumptive positive for semen; and G, Golf, was presumptive
6 positive for semen.
- 7 Q: Okay. On the sheet we just looked at where the letters
8 E, F, and G were the ones at the bottom?
- 9 A: Correct.
- 10 Q: And after you found that those were presumptive positives
11 for semen, what did you do with the swabs you took from that
12 sheet?
- 13 A: So, the presumptive negative swabs and the presumptive
14 positive swabs were all packaged individually and then put on
15 the chain of custody and turned into the evidence division.
16 And then I requested for the positive presumptive swabs to be
17 sent to SLED for further testing.
- 18 Q: Okay. I'm gonna show you -- this is actually three
19 separate exhibits even though it's together. It's State's
20 Exhibit 18, 19, and 20. Are those the swabs that you took
21 from those presumptive positive areas of that fitted bed
22 sheet?
- 23 A: Yes, it is.
- 24 Q: Okay. And so those are the items that you took to SLED
25 or someone took to SLED on your behalf?

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1 A: Correct, that I requested to go to SLED, yes.

2 Q: Okay. And do you know why the SLED would elect or
3 decline to test a specific item of evidence in a CSC case?

4 A: So, SLED's policy is, first, they test the CSC kit, which
5 is the sexual assault kit. If they get a positive hit from
6 that, they do not usually do any further testing. If they get
7 a negative hit from the sexual assault kit, then they do
8 further testing.

9 Q: Do you know if that is done for efficiency purposes?

10 A: I wouldn't be able to testify to that.

11 Q: We'll ask SLED about that. Does the Horry County Police
12 Department or you in particular have any kind of decision-
13 making ability over whether or not they test those items that
14 you send?

15 A: No, we do not.

16 Q: Did you also test some other items of bedding in the
17 case?

18 A: I did.

19 Q: Okay. I'm gonna show you those items.

20 I'm gonna show you what's been previously marked and
21 admitted into evidence as State's Exhibit Number 5. Can you
22 tell me what that item is?

23 A: So, this is marked as Item Number 3, a black, red, white,
24 and green comforter with a snake design. And this, too, has
25 my initials and date, July 27th, with the seal on top.

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1 Q: And did you test that item in the same manner that you
2 previously described?

3 A: I did.

4 Q: Did you receive any presumptive positive results from
5 that item?

6 A: No presumptive positives from this item.

7 Q: Okay. I'm gonna show you what's been marked as State's
8 Exhibit Number 6 that was previously admitted into evidence.
9 Can you tell me what that item is?

10 A: This is our Item Number 4, a pink-and-white blanket, and
11 it, too, has my initials and the date, July 27th, '20, with
12 the seal.

13 Q: Okay. And did you test that item in exactly the same way
14 that you previously described?

15 A: I did.

16 Q: Did you receive any presumptive positive results from
17 that item?

18 A: I did not.

19 Q: Thank you. And lastly, this is State's Exhibit Number 9,
20 which was previously entered into evidence. Did you -- can
21 you tell me what that is, first?

22 A: This is marked as Item Number 7. It's a white pillowcase
23 with emoji design, and it, too, has my initials, with the date
24 7/27/20. I did test this in the same manner that I tested the
25 other items, and presumptive negative for anything on this

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1 item.

2 Q: Okay. Thank you. Other than doing the evidence
3 collection and sent to SLED, and the presumptive testing on
4 the items that we just described, did you perform any other
5 duties in this case?

6 A: No, just requested for those items to go to SLED, took
7 the photographs, completed the evidence record.

8 Q: And clearly, you didn't request that SLED tested the
9 items that tested negative, presumptively negative?

10 A: Correct. I only request for the three that were
11 presumptive positive.

12 Q: Okay. And other than testifying here today, did you
13 perform any other duties in this case at all?

14 A: I have not.

15 Q: Okay.

16 MS. ANDREW: Your Honor, the state at this time would
17 seek to admit Items 18, 19, and 20 into evidence.

18 THE COURT: Any objection?

19 MS. WILSON: Yes, sir; Your Honor. Could we approach?

20 THE COURT: Sure.

21 (REPORTER'S NOTE: Bench conference is held off the record in
22 the presence but outside the hearing of the jury.)

23 THE COURT: All right. We'll await another witness
24 regarding 18, 19, and 20.

25 MS. ANDREW: Your Honor, I have no further questions for

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1 this witness.

2 Please answer any questions Ms. Wilson might have for
3 you.

4 THE COURT: Cross-examination?

5 MS. WILSON: Thank you, Your Honor.

6 CROSS-EXAMINATION OF HEATHER WILSON BY MS. WILSON:

7 Q: Lieutenant Wilson, you said that this -- these tests were
8 presumptions, correct?

9 A: Yes, ma'am. That's correct.

10 Q: So, that means that it's not definitively attributable to
11 anyone, correct, because you wouldn't have been able to test
12 for that?

13 A: Correct, only the lab can do that.

14 Q: So, when you are testing and you're looking for
15 something, you are looking for anything that might be maybe
16 some form of bodily fluid?

17 A: Correct. So, we mark all bodily fluids, and then that's
18 why we do the presumptive test to determine if it is
19 presumptive positive for semen or not, but we cannot tell you
20 if in fact it is semen. A lab would have to do that.

21 Q: So, a presumption just means you found something that you
22 think needs to be tested by SLED?

23 A: Based on the presumption test, yes.

24 Q: And furthermore, when you find that something, you don't
25 have any way of knowing who might've put it there?

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1 A: Correct.

2 MS. WILSON: Court's indulgence for one second.

3 THE COURT: Thank you, ma'am.

4 BY MS. WILSON:

5 Q: You don't know anything about how -- and I remember the
6 state asked you, but I feel the need to recover that ground.
7 You don't know anything about how this evidence was collected,
8 do you?

9 A: Could you -- which evidence?

10 Q: The sheet that you held up previously.

11 A: Correct; I do not.

12 Q: So, if that evidence, for example, was taken in the
13 manner that might not have been secure, would that potentially
14 affect the results of what you have here? Would it have
15 contaminated or possibly changed what you were able to take
16 when you swabbed?

17 A: In this particular case, I don't think it would unless
18 they released semen.

19 Q: Okay. I guess my question is this then, because if
20 someone is got -- if there are sheets on the bed, okay, and in
21 that timeframe, there is an eight to 12, 12-plus hour
22 timeframe where that room is unsecured, okay, you don't know
23 who's been in there. You can't say anything about how the
24 circumstances occurred that allowed the seminal fluid to be
25 there, correct?

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1 A: Correct. I can only tell you that it was presumptive
2 positive for semen. I cannot tell you whose it was.

3 Q: And you are saying that how it is collected, the
4 circumstances under which it's collected would not affect the
5 findings or the presumption that you're able to make at the
6 time you receive the sheets?

7 A: From the officer collecting that, that is correct. I
8 can't testify as to how it was collected, when it was
9 collected, when the incident occurred, how much time passed
10 through. But I can say like based on the officer's
11 collection, there would've been semen present on that bedsheet
12 at the time of collection.

13 Q: Okay. But you don't know anything about how it got
14 there?

15 A: Correct.

16 MS. WILSON: Okay. No further questions, Your Honor.

17 THE COURT: Redirect?

18 MS. ANDREW: No, sir, Your Honor. We'd ask that this
19 witness be excused and released from her subpoena?

20 THE COURT: Any objection?

21 MS. WILSON: No objection, Your Honor. Thank you.

22 THE COURT: All right, ma'am. You are released from your
23 subpoena and may go back to your regular duties. Thank you.

24 MS. HEATHER WILSON: Thank you, Your Honor.

25 THE COURT: All right, Solicitor. Your next witness,

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FREDERICK RAYMOND THORNTON - DIRECT BY ANDREW

1 please.

2 MS. ANDREW: Your Honor, the state calls Fred Thorton.

3 THE COURT: All right.

4 All right. Mr. Thornton, come all the way around up
5 front and meet the clerk's representative up here, please.

6 FREDERICK RAYMOND THORNTON, HAVING BEEN
7 SWORN, TESTIFIED AS FOLLOWS:

8 THE CLERK: State your name and spell it for the Court.

9 MR. THORNTON: Frederick Raymond Thornton, F-R-E-D-E-R-I-
10 C-K, R-A-Y-M-O-N-D, T-H-O-R-N-T-O-N.

11 THE COURT: Go ahead.

12 DIRECT EXAMINATION OF FREDERICK RAYMOND THORNTON BY MS.

13 ANDREW:

14 Q: Officer Thorton, what's your occupation?

15 A: Public safety officer at the Medical University of South
16 Carolina.

17 Q: How long have you been a public safety officer at the
18 Medical University of South Carolina?

19 A: June of 19 -- correction, June of '18.

20 THE COURT: Could you move a little closer to the
21 microphone and speak up a little?

22 A: June, 2018.

23 Q: Thank you. That's much better.

24 Before that date, were you employed in law enforcement?

25 A: I've been a law enforcement officer since 1985.

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1 Q: So, quite a long time?

2 A: Yes, ma'am.

3 Q: Were you employed by MUSC Department of Public Safety
4 back on May 26th, 2020?

5 A: Yes, ma'am.

6 Q: And what were your duties back then?

7 A: Regular police officer's duties, assisting the public,
8 handling complaints that's an issue.

9 Q: Were part of your duties to sometimes retrieve evidence
10 from MUSC, specifically in this case, it's a rape kit.

11 A: Yes, ma'am.

12 Q: Would that be something you do?

13 A: Yes, ma'am.

14 Q: Okay. And when you retrieve something like a rape kit
15 from MUSC, would you document that on the chain of custody
16 form?

17 A: Yes, ma'am.

18 Q: Okay. I'm gonna show you what's been marked as State's
19 Exhibit Number 15. Can you identify the document?

20 A: Chain of custody -- chain of custody evidence from MUSC.

21 Q: Okay. Is that a document kept in the regular course of
22 business?

23 A: Yes, ma'am.

24 MS. ANDREW: Your Honor, at this time, the state would
25 seek to admit the chain of custody from MUSC, State's Exhibit

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1 15.

2 THE COURT: Any objection?

3 MS. WILSON: No objection, Your Honor.

4 THE COURT: It's in evidence without objection.

5 STATE'S EXHIBIT NUMBER 15

6 ADMITTED INTO EVIDENCE

7 THE COURT: You may proceed.

8 MS. ANDREW: Okay.

9 BY MS. ANDREW:

10 Q: If you need to refresh your recollection, you can refer
11 to that document. Just review it and turn it over when you're
12 finished.

13 Okay. Were you asked to retrieve a sexual assault
14 examination kit in this case from MUSC?

15 A: Shawn Jenkins, yes, ma'am.

16 Q: Okay. And where did -- what did you do? Did you go pick
17 it up from the hospital?

18 A: Go to the particular place that it's at, which in this
19 case would be Peds ER, met with the nurse -- the SANE nurse,
20 which is the nurse who does the -- gathers the evidence.

21 Collect it from her, fill out her chain of custody, put the
22 date, time that I picked it up. Take it back to Public Safety
23 headquarters and do a chain of custody and submit the
24 evidence.

25 Q: Okay. And did you do that in this case?

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- 1 A: Yes, ma'am.
- 2 Q: Does that document show you picked that up from MUSC,
3 from the SANE nurse?
- 4 A: Yes, ma'am. Yes, ma'am.
- 5 Q: And when you took it back to evidence that the police
6 department, what did you do with that?
- 7 A: I fill out another chain of custody form, and then the
8 evidence is submitted into the evidence -- secured evidence
9 refrigerator.
- 10 Q: Okay. And at that point were you able to access that
11 evidence any further?
- 12 A: No, ma'am.
- 13 Q: Okay. After you did that with this evidence, did you at
14 some point relinquish it to the Horry County Police
15 Department, you or another officer in your department?
- 16 A: Yes, ma'am.
- 17 Q: Can you tell me who relinquished it to the Horry County
18 Police Department?
- 19 A: It would be our CID. I believe it was Lieutenant
20 Schultz.
- 21 Q: Schultz, okay. And at that point, did your office, the
22 MUSC Department of Public Safety have any further involvement
23 with that evidence?
- 24 A: No, ma'am.
- 25 Q: Okay. Other than testifying here today, did you have any

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FREDERICK RAYMOND THORNTON - DIRECT BY ANDREW

1 further involvement in this case?

2 A: No, ma'am.

3 Q: Thank you. Please answer any questions Ms. Wilson has.

4 A: Yes, ma'am.

5 THE COURT: Cross-examination?

6 MS. WILSON: No questions, Your Honor.

7 THE COURT: All right. Do you wish the witness to be
8 excused?

9 MS. ANDREW: Yes, Your Honor.

10 THE COURT: Any objection?

11 MS. WILSON: No objection.

12 THE COURT: All right. Sir, you are released from your
13 subpoena. You may go back to your regular duties. Thank you.

14 MR. THORNTON: Thank you.

15 MS. ANDREW: Your Honor, may we approach?

16 THE COURT: Please.

17 (REPORTER'S NOTE: Bench conference is held off the record in
18 the presence but outside the hearing of the jury.)

19 THE COURT: Next witness, please.

20 MR. MARTIN: Your Honor, the state calls Rachel Nguyen,
21 from SLED, South Carolina Law Enforcement Division.

22 THE COURT: All right.

23 Yes, ma'am. Just come all the way up front to the
24 clerk's representative, please. Thank you.

25 RACHEL NGUYEN, HAVING BEEN SWORN,

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1 TESTIFIED AS FOLLOWS:

2 THE CLERK: State your name and spell it for the Court.

3 MS. NGUYEN: My name is Rachel Nguyen, N-G-U-Y-E-N.

4 THE COURT: Go ahead, Solicitor.

5 MR. MARTIN: Thank you, Your Honor.

6 DIRECT EXAMINATION OF RACHEL NGUYEN BY MR. MARTIN:

7 Q: Ms. Nguyen, where do you work?

8 A: I work at the South Carolina Law Enforcement Division,
9 most commonly known as SLED.

10 Q: And how long have you worked there?

11 A: I've worked there for seven-and-a-half years.

12 Q: And what is your current position with SLED?

13 A: I am currently a forensic scientist within the DNA
14 casework department, within the forensics lab.

15 Q: And what does a forensic scientist do?

16 A: Well, as pertaining to this case, I was -- I have the
17 title of forensic serologist. A forensic serologist basically
18 is looking for body fluids. So, we do body fluid
19 identification on the blood, semen, saliva. We process items
20 of evidence indicate any of those bodily fluids primarily.

21 Q: So, back when you were involved in the case that brings
22 you to Court here today, you are a forensic serologist you
23 said?

24 A: That's correct.

25 Q: And what's your educational background?

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RACHEL NGUYEN - DIRECT BY MARTIN

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1 A: I have two Bachelor's of Science degrees from the
2 University of New Haven; one in forensic science and one in
3 biology.

4 Q: Did you receive any specialized training in order to be a
5 forensic serologist?

6 A: Yes. So, after being employed as a forensic serologist,
7 you go through a year-long training program within that area.
8 So, I -- it's under a court qualified senior forensic
9 serologist. During that time, I observe all the different
10 types of analysis, as I mentioned the body fluid
11 identification, processing evidence for Perhaps touch DNA.
12 And then after a period, I am able to practice those types of
13 analysis and processing myself. At the end of my training
14 program, I enter what's called the competency phase. So,
15 that's testing my knowledge and abilities to perform these
16 various tasks and testing independently. This competency
17 phase includes a written exam, an oral exam, a mock case,
18 which is a pretend case to do analysis on, and then finally a
19 mock court. Once all those components are successfully
20 completed, I am then deemed competent to do independent
21 casework within that field.

22 Q: So, you have to undergo proficiency testing?

23 A: Yes. So, proficiency testing would be an annual testing
24 to -- similar to the competency test, check my knowledge and
25 abilities on an annual basis.

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- 1 Q: And have you always passed that proficiency testing?
- 2 A: I have always passed the proficiency testing.
- 3 Q: Have you ever been qualified as an expert in the field of
- 4 forensic serology?
- 5 A: I have been qualified as an expert in the field of
- 6 forensic serology.
- 7 Q: Do you have any idea how many times?
- 8 A: Six times.
- 9 Q: And in South Carolina have you been qualified as an
- 10 expert in forensic serology, specifically in General Sessions
- 11 Court?
- 12 A: Yes.
- 13 Q: Has a Court ever refused to qualify you as an expert?
- 14 A: No. Every time I have been offered as an expert in
- 15 forensic serology, I have been approved.
- 16 MR. MARTIN: Your Honor, at this time, the state would
- 17 offer the witness as an expert in the field of forensic
- 18 serology.
- 19 THE COURT: All right. Ms. Wilson, do you wish to voir
- 20 dire the witness or challenge your qualifications?
- 21 MS. WILSON: I'm gonna do both, Your Honor.
- 22 THE COURT: Very good.
- 23 VOIR DIRE EXAMINATION OF RACHEL NGUYEN BY MS. WILSON:
- 24 Q: Should I call -- are you -- I don't know what your title
- 25 is?

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1 A: You can call me Agent Nguyen sometimes, or Ms. Nguyen,
2 whatever is comfortable for you.

3 Q: Okay. All right. So, Ms. Nguyen, you don't have any
4 kind of doctorate or anything?

5 A: I do not have a doctorate.

6 Q: All right. And your highest level of education would be
7 what?

8 A: My two bachelor's degrees.

9 Q: Is there a higher level of education in your field,
10 meaning master's level, doctorate level; is there something
11 beyond the bachelor's?

12 A: I would -- to my knowledge, there is nothing specific to
13 forensic serology. I mean, you can get a general degree in
14 biology as a master's, I believe.

15 Q: Okay. So, there is some level of master's level
16 available in this field?

17 A: To my knowledge, its potentially a general biology
18 degree.

19 Q: Okay. And you said you testified six times in around
20 seven years with SLED?

21 A: I have been a forensic serologist for about four years.
22 Prior to being a forensic serologist, I worked in the
23 toxicology department. So, in total, I have testified in
24 South Carolina 12 times.

25 Q: 12 times total? I'm sorry. You said six times you were

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- 1 qualified as an expert ---
- 2 A: So, six -- sorry. I didn't mean to cut you off.
- 3 Q: No, no.
- 4 A: Six times I've testified as a forensic serologist, and
- 5 six times I have testified in the area of toxicology.
- 6 Q: Okay. So, in four years, you have testified 12 times
- 7 total but only six times where you qualified as an expert?
- 8 A: No. The ---
- 9 Q: I'm sorry, if I'm not understanding.
- 10 A: So, in seven-and-a-half years, I have testified 12 times.
- 11 Q: Uh-huh, (affirmative response).
- 12 A: In the four years I've been in serology, I have testified
- 13 six times in forensic serology.
- 14 Q: Okay. I'm caught up. So, six times as a forensic
- 15 serologist?
- 16 A: That is correct.
- 17 Q: Okay. And in -- I know you talked about your continuing
- 18 education classes, and you said that you are current on those
- 19 in the field of serology?
- 20 A: So, we don't have per se continuing education. I believe
- 21 we discussed proficiency testing. Is that -- yes. So, yes, I
- 22 am current on proficiency testing.
- 23 Q: And how often do you do proficiency tests?
- 24 A: For serology, is annually.
- 25 Q: So, once a year?

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1 A: Yes.

2 Q: And in between, there are classes or no classes?

3 A: No classes.

4 Q: There's no follow-up just to make sure that you're still
5 abreast of what's current?

6 A: That is correct.

7 Q: And you -- is that like independent study or reading of
8 any new material or information that may come out in serology
9 that would prepare you for the test, or is the test simply
10 retesting what you have previously taken?

11 A: So, the proficiency testing that we have, it comes from
12 an outside vendor, not related SLED. They'll submit a case,
13 and then I have to perform the proper analysis. I will
14 perform those analysis, write up a report. It goes through my
15 supervisor afterwards and then through our quality department.
16 Our quality department will then submit that, my test results,
17 to the outside vendor. And then they -- I'm not exactly sure
18 what happens after that, but they will then tell you if you
19 have passed or not.

20 MS. WILSON: Court's indulgence?

21 THE COURT: Yes, ma'am.

22 MS. WILSON: I don't think I have any further questions,
23 Your Honor, I do need -- I have a matter for the Court.

24 THE COURT: Okay. All right.

25 BY THE COURT:

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1 THE COURT: Madame Forelady, ladies and gentlemen of the
2 jury, if you would go to your jury room for a few minutes and
3 I will call you back just as soon as I can. Thank you very
4 much.

5 Remember, don't talk about the case.

6 (REPORTER'S NOTE: Jury exits courtroom @ 10:10 a.m. The
7 following takes place outside the presence of the jury.)

8 THE COURT: All right, Ms. Wilson. Be glad to hear from
9 you, ma'am.

10 MS. WILSON: Thank you, Your Honor.

11 Your Honor, certainly in cases where experts are
12 qualified as experts, it takes more than just a general
13 knowledge or a practice in a particular field or area.
14 Certainly, I'm not saying that Ms. Nguyen is not doing a great
15 job at her job. But certainly, something more, I think would
16 be necessary to qualify her as an expert. She's testified six
17 times in serology, and has been practicing, I think, she said
18 four years in serology, and I -- I'm so sorry, I'm having
19 trouble keeping these numbers together. But that's not an
20 extensive period of practice. She is relatively new in the
21 field, and I would object to her qualification as an expert.
22 I certainly don't have a problem with her testifying about
23 what she did and what she knows, but I think that as an expert
24 to be able to offer certain opinions, I think it's problematic
25 under the circumstances.

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1 THE COURT: All right. Solicitor, be glad to hear from
2 you.

3 MR. MARTIN: Thank you, Your Honor.

4 We always harp on the number of times someone has been
5 qualified as an expert. And certainly, it is important and
6 the Court can take that into consideration. But even -- every
7 expert had to start somewhere. But here, Ms. Nguyen has been
8 qualified as an expert in forensic serology six times. She's
9 testified that she's been analyzing cases as a serologist, as
10 it pertains to serology, for four years. She -- her
11 educational background is extensive; we've heard that. Her
12 training, Your Honor, is extensive as required by SLED. She's
13 never failed proficiency testing. And I think what's also
14 important is her knowledge is something that is outside the
15 scope of what a normal person would know. It is certainly
16 outside of the scope of what a reasonable juror would
17 understand or know about the case. And so, the state would
18 ask that she be qualified as an expert in the area of forensic
19 serology now for a seventh time in General Sessions Court,
20 Judge.

21 MS. WILSON: And, Your Honor, ---

22 THE COURT: Yes, ma'am.

23 MS. WILSON: I'm so sorry, if I could, just to rebut some
24 of that. The fact that she's been qualified before is
25 important, but only to an extent. I don't know if maybe no

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1 one objected before. I don't know what happened in the prior
2 cases. What I am saying in this one is that given the fact
3 that she has trained and has passed her proficiency tests does
4 not mean that she is as experienced as say some others in her
5 field. It sounds like everyone would have the same basic
6 training, that there is nothing particular to her experience
7 and education that would put -- set her apart from say someone
8 who has published papers, or who has done some extensive
9 research in some other area. None of that's been presented
10 here. I don't believe that the fact that she has been
11 qualified before is an insurmountable, you know, reason that
12 she should be qualified or not be qualified here today.

13 THE COURT: All right. Thank you.

14 Under Rule 702, Rules of Evidence, it basically says that
15 scientific, technical, or specialized knowledge that would
16 assist the trier of fact, the jury, to understand evidence or
17 determine a fact or issue, I can allow a witness who -- to be
18 qualified as an expert by either knowledge, or skill, or
19 experience, or training, or education, and then they can
20 testify in the form of an opinion or otherwise. Now, I do
21 have to find that the evidence that is proposed would assist
22 the trier of fact, and I do so find that. I don't think
23 there's any question it's outside the scope or normal
24 understanding and certainly the jury, for them to understand
25 it, would need this type of testimony.

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1 The second part is the expert witness is qualified, and
2 the third part is the underlying science is reliable. I do
3 think that some further questioning of the witness as to what
4 she does to keep up with the knowledge in the area as to the
5 acceptable -- acceptance in the scientific community of
6 methods that she uses, that you know it's recognized, you
7 know, in the scientific community as, you know, a proper way
8 of analysis and the proper way of procedure that's been used,
9 you know, extensively and for a long period of time for, you
10 know, by various police agencies. The quality control that
11 they exercise to ensure reliability, and is there any peer
12 review of her work when it is done. Does she send her work
13 back immediately? Is it reviewed by anyone? That sort of
14 thing. So, I do think those questions would aid the Court in
15 reaching a decision. All right?

16 So, with that, we'll call the jury back in.

17 (REPORTER'S NOTE: Jury enters courtroom @ 10:19 a.m.)

18 THE COURT: Solicitor, you may continue.

19 MR. MARTIN: Thank you, Your Honor. I'm gonna move this
20 out of the way just for a second.

21 CONTINUATION OF DIRECT EXAMINATION OF RACHEL NGUYEN BY MR.
22 MARTIN:

23 Q: Agent Nguyen, can you briefly describe the process,
24 generally speaking, for forensic serology testing?

25 A: You -- can you rephrase that question?

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1 Q: Okay. Could you describe the process that you use when
2 you test an item for serology?

3 A: In like a general sense?

4 Q: Yes.

5 A: So, items of evidence will be submitted to SLED for
6 analysis. As I mentioned, the different types of body fluids
7 we look for are blood, semen, and saliva. The testing that
8 that item of evidence will go through is dependent on the body
9 fluid that is suspected. So, each body fluid has a different
10 process. Some have presumptive testing, such as blood and
11 semen, where that is trying to narrow down a stain on a larger
12 piece of evidence looking for that body fluid.

13 Another type of analysis that we have at SLED is card
14 testing. It's very similar to rapid COVID tests or pregnancy
15 tests. You'll put some of the sample on a card and it will
16 read whether it is positive or negative for the targeted
17 element you're looking for, which is usually either like a
18 protein within the blood, semen, or saliva.

19 Furthermore, for semen, there is a third level of testing
20 that occurs, which we consider a confirmation test. A
21 confirmation test is more specific than presumptive. It's
22 saying that that is in fact there. For semen, that would be
23 looking under a microscope for sperm cells.

24 Q: These procedures that you use, are they also used in
25 other labs across the country?

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1 A: Yes. So, these are widely used testing. Some of them
2 are -- have been used for several years. For example, being
3 testing for blood. That is widely used and has been used for
4 quite some time. To my knowledge, none of these items are new
5 to the field, and they are widely accepted.

6 Q: And is it recognized in the scientific community?

7 A: Yes.

8 Q: Is your lab accredited by national organizations?

9 A: Yes. So, the SLED lab is accredited by ANAB, which
10 stands for the American National Accreditation Board -- or,
11 I'm sorry, excuse me -- the ANSI National Accreditation Board.
12 In addition to that, the DNA Department is accredited by the
13 FBI, QUAS. QUAS stands for the Quality Assurance Standards.
14 To be specific, although our department is accredited by the
15 FBI, the serology department doesn't fall under FBI
16 qualifications. It's specific to DNA profiles.

17 Q: And when you follow these methods to reach certain
18 findings, are these typically peer reviewed?

19 A: Yes. So, after I perform analysis, I write a report with
20 my finding on the different elements, of whether I found
21 something or whether something was not present. That is -- it
22 goes under a dual review process. So, there's a technical
23 review, which is performed by another forensic serologist, and
24 then an administrative review, which is performed either by
25 another serologist or a DNA analyst. During the review

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1 process, it's two separate people, not one person will do both
2 the technical or the administrative review.

3 MR. MARTIN: Court's indulgence, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. MARTIN:

6 Q: In order for SLED to maintain its accreditation, does it
7 have to stay abreast of what goes on within the scientific
8 community?

9 A: So, how our accreditation works for SLED, it is an
10 outside agency will come in every four years, I believe, and
11 review all our case files, our manuals, our current policies
12 and procedures to make sure that they fit to the current
13 standards within the scientific community. With that being
14 said, we do our own internal audits on an annual basis to make
15 sure that we are ready for when the outside agency comes to
16 check our work. And then the FBI, as I mentioned, will
17 perform an audit on the DNA casework department annually.

18 MR. MARTIN: Your Honor, at this time, the state would
19 move again to offer Agent Nguyen as an expert in the field of
20 forensic serology.

21 THE COURT: All right. Ms. Wilson, do you maintain your
22 objection to this witness?

23 MS. WILSON: I do. I would like to ask another question,
24 Your Honor, if I could?

25 THE COURT: Certainly.

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1 MS. WILSON: Thank you.

2 VOIR DIRE EXAMINATION OF RACHEL NGUYEN BY MS. WILSON:

3 Q: Just very briefly, have you ever lost accreditation in
4 the timeframe that you've been there?

5 A: From my knowledge, no; we have never lost accreditation
6 in the timeframe that I have been at SLED.

7 Q: Okay. And that's been the seven years, correct?

8 A: That's correct.

9 Q: Of the four years in serology?

10 A: That's correct.

11 Q: And at no point in time -- I know you said you submit
12 your findings to a supervisor. Is that what you mean when you
13 say peer review, or do you mean that you submit it directly to
14 a supervisor prior to peer review?

15 A: I am not sure exactly what you are asking.

16 Q: Previously, you stated, and I'm certain I heard you say
17 that it goes to your supervisor after you, I guess, do your
18 preliminary testing or you make your preliminary findings, it
19 goes to your supervisor, and I'm asking if that situation
20 where you submit it to your supervisor is the peer review
21 process or part of the peer review process that you just
22 mentioned?

23 A: So, I believe what you are specifically asking is when I
24 mentioned the supervisor will review the proficiency testing.

25 Q: Okay.

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- 1 A: Yeah.
- 2 Q: So, it's something completely different then?
- 3 A: Yes.
- 4 Q: So, your supervisor reviews your proficiency testing, but
- 5 for anything that you test in the lab, you're saying that it
- 6 goes to a technical review and then an administrative person?
- 7 A: Yes.
- 8 Q: And each of those is an individual person or is it a
- 9 group?
- 10 A: So, if I'm understanding your question correctly, every
- 11 -- how we do the review is we cycle through people, so I'm not
- 12 picking the same person -- the same person does not do all the
- 13 technical reviews, and the same person does not do all the
- 14 administrative reviews. We essentially have a spreadsheet
- 15 with all the names, and you just pick the next person who is
- 16 up for review. So, it cycles through everybody in the
- 17 department.
- 18 Q: Gotcha. So, it's never any one set person.
- 19 Are you published?
- 20 A: I am not published.
- 21 Q: Have you participated in any studies of any sort or, I
- 22 guess, maybe been at the helm of any research type matters ---
- 23 A: I have not done -- I'm sorry. I have not done any
- 24 research in the field.
- 25 Q: Okay.

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1 MS. WILSON: No further questions at this time, Your
2 Honor.

3 THE COURT: All right. And again, do you maintain your
4 objection to the witness?

5 MS. WILSON: Yes, sir; I do.

6 THE COURT: All right. Very good.

7 I am going to qualify the witness to give her opinion in
8 the field of forensic serology over the objection of the
9 defense. I do believe that she is qualified pursuant to Rule
10 702, and the caselaw that has come from the Appellate Courts
11 in their examination of Rule 702.

12 Thank you very much.

13 MS. WILSON: Thank you, Your Honor.

14 MR. MARTIN: May it please the Court?

15 THE COURT: Yes, sir.

16 CONTINUATION OF DIRECT EXAMINATION OF RACHEL NGUYEN BY MR.
17 MARTIN:

18 Q: Agent Nguyen, just to make sure we're all of the same
19 page here, were you a forensic serologist back in roughly July
20 of 2020?

21 A: I was.

22 Q: And during that time, were you assigned to process
23 evidence in the case you're here for today, specifically SLED
24 Lab Number L20-06579?

25 A: May I review my notes?

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1 Q: Please.

2 A: Could you repeat that case number?

3 Q: Yeah. The case number is SLED Lab Number L20-06579, in
4 the case of John Kehborn.

5 A: I did.

6 Q: And when you did this, did you create a report detailing
7 the conclusions of your examination?

8 A: I did.

9 MR. MARTIN: Your Honor, may I approach the witness?

10 THE COURT: Please.

11 BY MR. MARTIN:

12 Q: I'm showing you what's been marked for identification
13 purposes as State's Exhibit 22. Does that appear to be a fair
14 and accurate copy of the report you created in this case?

15 A: Yes.

16 MR. MARTIN: Your Honor, at this time, the state would
17 ask that the report, Item Number 22, be submitted into
18 evidence.

19 THE COURT: Any objection?

20 MS. WILSON: Without objection, Your Honor.

21 THE COURT: It's in evidence without objection.

22 STATE'S EXHIBIT NUMBER 22

23 ADMITTED INTO EVIDENCE

24 BY MR. MARTIN:

25 Q: So, I think we've briefly touched on this, but again I

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1 want to make sure everybody is on the same page. What is the
2 process you do once you receive evidence in a case to test it
3 for serology?

4 A: So, I am going to answer that specifically for this case,
5 if that's okay?

6 Q: Perfect.

7 A: So, I would go to our evidence control department, I
8 would request this -- items of evidence. I would receive them
9 and take them into my custody. After that, I would review all
10 the documentation, you know, as I mentioned to see what kind
11 of analysis the submitting agency is requesting. In this
12 event, it would be semen analysis.

13 Do you want me to go further?

14 Q: Please.

15 A: Okay. So, what was submitted has multiple items of
16 evidence. I am gonna do all three of the previous testing
17 that I mentioned. So, there's an item of evidence that would
18 get the presumptive testing for semen. So, more specifically
19 it's underwear that I'm going to be looking for stains on.
20 There were various sets of swabs that were submitted. Swabs
21 as they are concentrated in their collection would not get the
22 presumptive testing. Those would go straight to, as I
23 previously mentioned, our card analysis. And then further on
24 to the microscopic examination.

25 Q: So, I'm gonna break down your report a little bit. I see

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- 1 that you mentioned various terms. So, let's go over them.
- 2 First of all, what is acid phosphatase?
- 3 A: Acid phosphatase is an enzyme that is found in high
- 4 concentrations within male seminal fluid.
- 5 Q: What would it mean if your examination is positive for
- 6 acid phosphatase?
- 7 A: So, while I'm screening an item of evidence for acid
- 8 phosphatase, if it was positive, that would indicate the
- 9 possible presence of semen on that item. And then, therefore,
- 10 if -- it would get further testing.
- 11 Q: What about -- I see P30. What's P30?
- 12 A: P30 is a protein that is found in high concentrations
- 13 within male seminal fluid.
- 14 Q: And lastly, I see spermatozoa or sperm, what is that?
- 15 A: Spermatozoa is the sperm cell.
- 16 Q: So, looking at your report and going to Item 2.1, the
- 17 underwear. What if anything did you do with this item?
- 18 A: So, the underwear got all three levels of testing. The
- 19 results for the underwear, I took a cutting from the crotch of
- 20 the underwear because examinations for components of semen,
- 21 acid phosphatase, and P30 were positive. No spermatozoa was
- 22 identified, and then this item was forwarded to the DNA
- 23 section for further analysis.
- 24 Q: I'm going to show you what's been marked and placed --
- 25 no, not into evidence yet -- what's been marked for

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1 identification purposes as State's 23. It is SLED Item 2.1.1,
2 cutting from the crotch of the underwear. Let me know if you
3 can look at this, and if you can identify what you're looking
4 at. And you feel free to use the gloves if you need to.

5 A: So, yes, I do recognize this. It has the unique case
6 number L20-06579. It also has the item number, which is
7 2.1.1, which I have described as cutting from crotch of
8 underwear. In addition to those things, I also have a seal on
9 the back of the envelope which has my initials and date.

10 Q: With regards to that item of evidence, what if anything
11 did your examination reveal?

12 A: The examination for Item 2.1.1 was examinations for
13 components of semen, acid phosphatase, and P30 were positive.
14 No spermatozoa identified, item forwarded to the DNA section.

15 Q: Why wouldn't you find spermatozoa?

16 A: There is many reasons you might not find sperm on a
17 sample that screen positive for the other elements of seminal
18 fluid. This includes if the person had a vasectomy; if they
19 just have a low sperm count; if they azoospermic, which means
20 that they don't produce sperm; there could've been use of a
21 spermicide; various reasons why there might not be sperm but
22 the component of semen.

23 Q: But if someone had a vasectomy, would you expect to find
24 the spermatozoa?

25 A: No, because there might not be sperm cells present.

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1 Q: Now, you said once you finished your examination, you
2 testified that you forwarded it to the DNA section. How do
3 you prepare it for DNA analysis?

4 A: So, if an item is being forwarded to the DNA section, I'm
5 going to take a small cutting from that item. I'll put it in
6 a small tube. That will be sealed in a plastic pouch, which
7 will then be put within a larger pouch that has all the other
8 items of evidence and sealed. I will then bring that pouch to
9 our evidence control department for a DNA analyst to retrieve
10 whenever it is time for that to be processed.

11 Q: Directing your attention to your report, on Item 2.2
12 vaginal swabs. What did your examination reveal with that, if
13 anything?

14 A: Per Item 2.2 the vaginal swabs, examination for a
15 component of semen P30 was positive. No spermatozoa was
16 identified. The item was forwarded to the DNA section.

17 Q: Now, let me ask you a couple of things about that really
18 quickly. There is no notation regarding an examination for
19 acid phosphatase. Why might that be?

20 A: So, that acid phosphatase is a screening tool to -- for
21 larger items of evidence, your -- the underwear I used it on
22 to locate a stain where swabs are sterile Q-tips. So, the
23 collection is already concentrated within the cotton portion
24 of the swab. So, therefore, I don't need to screen to find a
25 potential stain because the item is already small.

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- 1 Q: I'm gonna approach with what's been marked as Item 12A.
2 Does this appear to be the evidence envelope that you would've
3 received that contained some of the items that you tested?
4 A: Yes. So, this would be the -- an outer envelope which
5 would contain all the envelopes for the swabs. This is a
6 envelope for the CSC kit, and I can identify it by the unique
7 case number, item number, my initials, and the day I opened
8 it.
9 Q: And again, directing your attention specifically to what
10 you just talked about, SLED Item 2.2, which is State's Exhibit
11 -- item for identification 12C. Can you identify this? Take
12 your time. You can just keep your gloves on because I'll have
13 several more.
14 A: Okay.
15 Q: Thanks.
16 A: So, this is in fact Item 2. -- SLED Item 2.2, it has the
17 unique case number, the unique item number, my initials, the
18 date I opened it, and it -- the name correlates to the
19 exterior packaging for the kit.
20 Q: And you may've already said this, but did you prepare
21 this item for the DNA section?
22 A: I did prepare this item for the DNA section.
23 Q: And again, how did you prepare it?
24 A: So, for the swabs, I'll take a cutting off of the Q-tip
25 portion of the swab, put it in a small tube, and then seal it

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1 within the package -- we call it a container, a container
2 contains multiple items of evidence. So, this container would
3 have the cutting of the underwear and all the swabs.

4 Q: Directing your attention to your report, Item 2.3 oral
5 swabs, and for identification purposes it is State's 12D, did
6 you examine that, and can you identify this?

7 A: Yes, I can identify this. For the same reasons as
8 before, it has the unique case -- SLED case number, item
9 number, my initials, and the date. And on my report, the
10 results for Item 2.3, oral swabs, is examinations for
11 components of semen P30 and spermatozoa were negative, no
12 semen identified, item forwarded to the DNA section.

13 Q: And do you prepare that for the DNA section the same as
14 the others?

15 A: That is correct.

16 Q: Okay. Directing your attention to Item 2.4, rectal
17 swabs, which would be State's 12E, did you examine that? And
18 I'm gonna approach with this. Again, if you can identify
19 this?

20 A: Uh-huh, (affirmative response). So, yes, I can identify
21 this item. It has the unique case number, the unique item
22 number, my initials, and the date I opened it. And it says
23 rectal swabs on it, which correlates with the results Item
24 2.4, rectal swabs, examination for a component of semen P30
25 was positive. No spermatozoa identified. Item forwarded to

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1 the DNA section.

2 Q: And same question, prepared in the same manner as the
3 others when you sent it to DNA?

4 A: Yes. This was prepared in the same manner.

5 Q: And then lastly, with regards to your report, 2.5, victim
6 buccal swabs, State's 12F. Can you identify this?

7 A: Yes. So, it has the unique SLED case number, the unique
8 SLED item number, my initials, and the date I opened it, as
9 the victim buccal swabs, which is my Item 2.5. Buccal swabs
10 are your known standard. So, it's a swab that is rubbed
11 against the inner cheek to collect DNA as a known DNA profile
12 to compare the evidence to. And my results for that are just
13 item forwarded to the DNA section.

14 Q: Circling back to Item 1, which is State's 16, I believe,
15 buccal swabs from John Kehborn. Are you able to recognize
16 that? And I'm sorry I've got so much stuff up there in front
17 of you.

18 A: That's okay. Yeah. So, both the outer packaging and
19 then the envelope inside have the unique case number, item
20 number, my initials, and the date, as well as there is an
21 outer seal that has my initials and date on it.

22 Q: And again, what did you do with that once you got it?

23 A: So, Item 1, buccal swabs from John Kehborn, item
24 forwarded to the DNA section.

25 Q: Lastly, you mentioned several times today about bringing

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1 in evidence. When someone collects evidence or handles
2 evidence at SLED, is there a report or a log that you use to
3 document that?

4 A: Yes. So, once evidence is submitted to our lab, it'll
5 get a unique case number. And then what we call a chain of
6 custody will begin electronically. A chain of custody is just
7 logging who has the evidence, or maybe it's possibly in a
8 location, what time it was put there, or what time I received
9 it from someone. And our system is electronic, so we just get
10 a barcode for a location or for our persons to take it into
11 our custody.

12 Q: And did SLED maintain a chain of custody report here in
13 this case?

14 A: They did.

15 Q: And is that report kept in the ordinary course of
16 business at SLED?

17 A: Yes.

18 Q: And as someone who has the ability to log on that report,
19 are you a custodian of that record?

20 A: So, yes, I would be found within the chain of custody. I
21 would have access to the chain of custody.

22 Q: I'm gonna approach with State's Number 24 for
23 identification purposes. Does this appear to be taken -- does
24 it appear to be the chain of custody report that you're
25 referring to for this case? I know it's lengthy. So, you can

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1 take a moment; that is totally fine.

2 A: Okay. Yes. This is an accurate reflection of the chain
3 of custody for this case.

4 MR. MARTIN: Your Honor, at this time, the state would
5 ask to move this into evidence.

6 THE COURT: Any objection?

7 MS. WILSON: Without objection, Your Honor.

8 THE COURT: It's in evidence without objection.

9 STATE'S EXHIBIT NUMBER 24

10 ADMITTED INTO EVIDENCE

11 BY MR. MARTIN:

12 Q: Last question, I promise. Other than testifying here
13 today, did that conclude your involvement with this case?

14 A: Yes.

15 MR. MARTIN: Your Honor, the state has no further
16 questions at this time of this witness.

17 Does Your Honor wish for me to move this out of the way
18 or ---

19 THE COURT: Why don't we collect the evidence and bring
20 it back to the court reporter. And if Ms. Wilson needs it,
21 we'll separate them out.

22 All right, Ms. Wilson, cross-examination.

23 MS. WILSON: Thank you, Your Honor.

24 CROSS-EXAMINATION OF RACHEL NGUYEN BY MS. WILSON:

25 Q: Ms. Nguyen, your report says components of semen. I

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- 1 assume it says that because you can't conclusively or
2 definitively say that it is semen, but that -- I think you
3 mentioned before that there are components there or the
4 elements there that you are able to identify, and so you then
5 mark it and send it for further testing. Is that right?
- 6 A: So, as the report reads, examinations of components of
7 semen, in parentheses, is the acid phosphatase and the P30.
8 So, that's just indicating that those are the components that
9 correlate to whichever result follows.
- 10 Q: I got you. Okay. And you say that your test was
11 positive for the cutting from the crotch of the underwear for
12 what -- components of semen, and in parentheses, you have the
13 acid phosphatase and the P30.
- 14 A: Correct.
- 15 Q: But no sperm?
- 16 A: No. No spermatozoa was identified for that item.
- 17 Q: And then the same for the vaginal swab?
- 18 A: The vaginal swab had the component of P30 as positive,
19 and then no spermatozoa was identified.
- 20 Q: And no acid phosphatase?
- 21 A: The acid phosphatase is the general screening tool, so
22 it's not done on swabs.
- 23 Q: Gotcha. And I think you stated that before. And the
24 oral swab, you have as negative for P30 and spermatozoa?
- 25 A: Yes. For the oral swabs, the components of semen, P30

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1 and spermatozoa were negative.

2 Q: But you do have that it's positive for P30 on the rectal
3 swab, correct?

4 A: For the rectal swabs, yes. The component of semen, P30,
5 was positive.

6 Q: And there also would not have been an acid phosphatase
7 done on the rectal swab?

8 A: That's correct.

9 Q: Okay. And then, of course, the victim buccal swab you
10 said you sent off as well for testing, as well as Mr.
11 Kehborn's?

12 A: Yes. Both buccal swabs were forwarded to the DNA
13 section.

14 Q: So, specifically on the rectal swab, it says that there
15 is a component of semen there that's positive. You don't know
16 anything about how any of the semen in this case was actually
17 found or if it actually is definitively semen, correct?

18 A: So, because of the absence of the sperm cells, due to our
19 reported criteria, we cannot say that semen has been
20 identified for the items.

21 Q: Okay. No further questions.

22 THE COURT: All right. Any redirect?

23 MR. MARTIN: Yes, Your Honor, very briefly.

24 REDIRECT EXAMINATION OF RACHEL NGUYEN BY MR. MARTIN:

25 Q: Is P30 only found in semen?

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1 A: So, P30 is found in very high concentration within male
2 seminal fluid. P30 is also found in much significantly lower
3 levels in breast milk, amniotic fluid, and female urine.

4 MR. MARTIN: Thank you, Your Honor.

5 THE COURT: Anything on those questions just asked?

6 MS. WILSON: Court's indulgence.

7 THE COURT: Yes, ma'am.

8 MS. WILSON: Just briefly.

9 RECROSS EXAMINATION OF RACHEL NGUYEN BY MS. WILSON:

10 Q: You said it's found in female urine, correct?

11 A: In very low levels.

12 Q: Okay. No further questions.

13 THE COURT: All right. Do you wish the witness to be
14 excused?

15 MR. MARTIN: Yes, Your Honor.

16 MS. WILSON: Without objection.

17 THE COURT: All right. Ma'am, you are released from your
18 subpoena and may go back to your regular duties.

19 BY THE COURT:

20 All right. Why don't we take a short break. Ladies and
21 gentlemen, Madame Forelady, y'all go to the jury room. We'll
22 take a short break. We'll come back in about 10 minutes.

23 All right? Thank you very much. Don't talk about the
24 case. Thank you.

25 (REPORTER'S NOTE: Jury exits courtroom @ 10:49 a.m. The

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1 following takes place outside the presence of the jury.)

2 THE COURT: All right. Anything from the state before we
3 take a break?

4 MR. MARTIN: No, Your Honor.

5 THE COURT: And from the defense?

6 MS. WILSON: Nothing, Your Honor.

7 THE COURT: All right. Thank you very much. Ten
8 minutes. Thank you.

9 **RECESS - 10:50 A.M.**

10 *******OFF THE RECORD*******

11 **ON THE RECORD - 11:04 A.M.**

12 THE COURT: All right. Is the state ready for the jury?

13 MR. MARTIN: Yes, Your Honor.

14 THE COURT: And defense?

15 MS. WILSON: Yes, sir, Your Honor.

16 THE COURT: Ask the jury to come in, please.

17 (REPORTER'S NOTE: Jury enters courtroom @ 11:05 a.m.)

18 THE COURT: All right. Solicitor, your next witness,
19 please.

20 MR. MARTIN: Your Honor, the state calls SLED agent Donna
21 Money.

22 THE COURT: All right. Please come around to be sworn.

23 DONNA MONEY, HAVING BEEN SWORN, TESTIFIED

24 AS FOLLOWS:

25 THE CLERK: State your name and spell it for the Court.

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1 MS. MONEY: Donna Money, D-O-N-N-A, M-O-N-E-Y.

2 THE COURT: Go ahead, Solicitor.

3 MR. MARTIN: Thank you, Your Honor.

4 DIRECT EXAMINATION OF DONNA MONEY BY MR. MARTIN:

5 Q: Agent Money, where do you currently work?

6 A: I currently work at the South Carolina Law Enforcement
7 Division forensic laboratory.

8 Q: And how long have you been with the South Carolina Law
9 Enforcement Division?

10 A: Approximately, nine-and-a-half years.

11 Q: And what's your current position -- I'm just gonna call
12 it SLED for shorthand -- but what's your current position at
13 SLED?

14 A: I am a forensic scientist in the DNA casework department.

15 Q: And does that mean you conduct DNA analysis would you
16 say?

17 A: Yes. We're also commonly referred to as DNA analysts.

18 Q: So, what does a forensic DNA analyst, you said, what does
19 a forensic DNA analyst essentially do?

20 A: Essentially, I perform DNA analysis on submitted evidence
21 items and known standards, conduct comparisons, calculate
22 statistics, issue reports, and testify in court.

23 Q: What's your educational background?

24 A: I have a Bachelor's of Science degree in forensic science
25 from the Pennsylvania State University.

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- 1 Q: In addition to your educational background, do you
2 receive any specialized training to become a DNA analyst?
- 3 A: Yes. Once I started my employment at SLED, I underwent a
4 year-and-a-half long training program under a court qualified
5 analyst within the department. This training program included
6 but was not limited to practice, training, and competency
7 samples, which a competence is a practical exam. There were
8 written exams, oral exams, mock court, a period of supervised
9 casework, and then I was authorized to perform independent
10 casework.
- 11 Q: Do you have to conduct or pass any proficiency
12 examinations -- so, I guess it wouldn't be conducting. Do you
13 have to take and pass proficiency examinations?
- 14 A: Yes. I participate in a proficiency testing program that
15 is required by the FBI in order to maintain my certification,
16 and I take two a year.
- 17 Q: And when you take these, have you always passed?
- 18 A: Yes.
- 19 Q: Have you ever been qualified as an expert in the area of
20 forensic DNA analysis?
- 21 A: Yes.
- 22 Q: And how many times?
- 23 A: Approximately 40.
- 24 Q: And have any of those times been in General Sessions
25 Court?

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1 A: Yes.

2 Q: And has a Court ever declined to recognize you as an
3 expert in forensic DNA analysis?

4 A: No.

5 Q: Can you briefly describe what the process is for DNA
6 testing.

7 A: DNA analysis is essentially a four-step process. The
8 first step is extracting or breaking open cells to gain access
9 to the DNA that's found within the cells. The next step is
10 quantifying or determining how much DNA is present. The step
11 after that is amplifying or making copies of the DNA to have
12 more to work with. And the final step is placing the sample
13 through an instrument where it is separated based on size, and
14 that information is translated into what is commonly referred
15 to as a DNA profile.

16 Q: And this four-step process and everything else you just
17 testified to, are these procedures used in other labs?

18 A: Yes.

19 Q: And is this recognized within the scientific community?

20 A: Yes.

21 Q: And is your lab specifically accredited -- I think you
22 may have said this already, but is your lab accredited by any
23 national organizations?

24 A: The SLED forensics laboratory is accredited by the ANAB,
25 which is the ANSI National Accreditation Board, and ANSI

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1 stands for the American National Standards Institute. In
2 addition to that, the DNA casework department must follow the
3 quality assurance standards that are regulated by the FBI.

4 MR. MARTIN: Your Honor, at this time, the state would
5 offer Agent Money as an expert in forensic DNA analysis.

6 THE COURT: Do you wish to voir dire the witness or
7 challenge your qualifications?

8 MS. WILSON: I wish to voir dire, Your Honor.

9 THE COURT: All right. Very good.

10 MS. WILSON: Thank you.

11 VOIR DIRE EXAMINATION OF DONNA MONEY BY MS. WILSON:

12 Q: Agent Money, how many years have you worked at SLED? I'm
13 sorry. You mentioned it before and I missed that.

14 A: Approximately, nine-and-a-half.

15 Q: Nine-and-a-half years. And you said during that time
16 you've been qualified approximately 40 times?

17 A: Yes.

18 Q: All right. And always about DNA or was there some
19 additional field or area of study or practice?

20 A: It's been forensic DNA analysis.

21 Q: Each time?

22 A: Uh-huh, (affirmative response).

23 MS. WILSON: Court's indulgence.

24 THE COURT: Yes, ma'am.

25 BY MS. WILSON:

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1 Q: Has your agency ever lost accreditation during the
2 timeframe that you've been there?

3 A: During my timeframe, no.

4 Q: Have you -- was there a timeframe prior to that? Were
5 you aware that accreditation had been lost either through the
6 FBI or through -- I think it's ANSI?

7 A: Not to my knowledge.

8 Q: Okay. I know you said that you are FBI certified twice a
9 year. Does that involve testing, or do they come in?

10 A: The proficiency testing is a test that we receive
11 externally, and then I perform DNA analysis on the samples,
12 and then my results are submitted in for essentially grading.

13 Q: I understand. And do you -- your findings undergo some
14 kind of a peer review process, or is it just your findings?

15 A: Are you referring to the proficiency testing or casework?

16 Q: I mean, after -- I'm sorry. We're talking about casework
17 specifically? Thank you.

18 A: For casework, before a report is issued for a case, the
19 case file and the report is reviewed by two individuals, two
20 analysts within the department.

21 MS. WILSON: No further questions, Your Honor.

22 THE COURT: Do you object to the offer by the state?

23 MS. WILSON: I do not.

24 THE COURT: All right. She's qualified to give her
25 opinion in the field of forensic DNA analysis.

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1 You may proceed, sir.

2 MR. MARTIN: Thank you, Your Honor.

3 CONTINUATION OF DIRECT EXAMINATION OF DONNA MONEY BY MR.

4 MARTIN:

5 Q: Now, Agent Money, I'm gonna direct your attention to the
6 case which is the reason why you are here in court to testify
7 today, John B. Kehbon, SLED Lab ID L20-06579. Were you
8 assigned to perform DNA analysis in that case?

9 A: Yes.

10 Q: So, you sort of touched on this already, but what did you
11 do specifically when this case was assigned to you?

12 A: When I was assigned this case, the first step was to see
13 if any serology testing was performed on the sexual assault
14 kit that was submitted by Horry County PD. Serology analysis
15 was performed, so I reviewed the report to see what results
16 were reported, because those results would dictate what
17 process workflow I would take in this case.

18 Q: When you do your examination -- and you mentioned with
19 Ms. Wilson about a report. Did you write a report in this
20 case?

21 A: Yes.

22 MR. MARTIN: Your Honor, may I approach the witness?

23 THE COURT: Please.

24 BY MR. MARTIN:

25 Q: Agent Money, I'm approaching you with State's Number 25.

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1 Does this appear to be a fair and accurate copy of the report
2 that you compiled in this case?

3 A: Yes.

4 Q: And again, is it a true and accurate copy of the report?

5 A: Yes.

6 MR. MARTIN: Your Honor, at this time, the state moves to
7 admit the report into evidence, which I believe I said was
8 State's 25.

9 THE COURT: Any objection?

10 MS. WILSON: Without objection.

11 THE COURT: It's in evidence without objection.

12 STATE'S EXHIBIT NUMBER 25

13 ADMITTED INTO EVIDENCE

14 THE COURT: You may proceed.

15 BY MR. MARTIN:

16 Q: You mentioned the four-step process previously. Is that
17 the same step process you used here in this case?

18 A: Yes.

19 Q: Can you -- I see your report mentions what's called a DNA
20 standard. Can you explain what that is?

21 A: A DNA standard is one taken directly from an individual,
22 so we know the source of the profile. Typically, they're
23 collected using a buccal swab, just a cotton swab, rubbed on
24 the inside of a person's cheek, or sometimes it can be taken
25 via a blood standard.

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1 Q: And why really do you need one?

2 A: If we develop a profile from evidence in order to
3 determine if an individual is contributing to that profile, we
4 need a known standard from that individual.

5 MR. MARTIN: Your Honor, I'm gonna put gloves on this
6 time, and if I fail to do that ---

7 BY MR. MARTIN:

8 Q: And Agent Money --- I see you're already doing it. Agent
9 Money, I'm approaching with State's 16, buccal swabs of the
10 defendant. Could you take a moment and look at that and see
11 if that is in fact what you used in this case?

12 A: Yeah. So, on the outside of the heat-sealed pouch is the
13 SLED barcode identifier, which has the lab number and then the
14 item number that is assigned to the item when it is submitted
15 to SLED. And then on the item itself, it has my initials and
16 the date when I received it. In addition, there is a sticker
17 indicating the identification of the individual it was
18 collected from. And then my initials and date can be found on
19 the seal on the side.

20 Q: And other than using it for your testing, did you tamper
21 with it in any way?

22 A: No.

23 MR. MARTIN: Your Honor, at this time, the state would
24 move to admit the buccal swabs of the defendant into evidence.

25 THE COURT: And that exhibit number again is ---

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1 MR. MARTIN: Your Honor, that is Exhibit 16, State's 16.

2 THE COURT: All right.

3 Any objection?

4 MS. WILSON: Without objection.

5 THE COURT: In evidence without objection.

6 STATE'S EXHIBIT NUMBER 16

7 ADMITTED INTO EVIDENCE

8 THE COURT: You may proceed.

9 BY MR. MARTIN:

10 Q: Agent Money, I'm approaching with State's Exhibit 12.

11 It's an envelope containing various items. The envelope
12 itself, are you able to look at that and tell what that is?

13 A: Are you referring to this envelope?

14 Q: So, the actual clear envelope first, which is 12, that
15 everything is packaged in. Sort of -- let me back up. Sort
16 of explain how it arrives to you in that package, if you will.

17 A: Again, I recognize this item. The SLED lab number, and
18 then the initial item number, and then the container letter
19 that it was placed into can be found on this barcode. When
20 evidence is received at SLED, it will get packaged into what
21 we call a heat-sealed pouch by individuals at SLED, and then
22 evidence will travel throughout the laboratory within this
23 heat-sealed pouch, that way we can see when an individual cuts
24 into and seals along the edges. And when it gets returned to
25 an agency it will be returned in this pouch.

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1 MR. MARTIN: And, Your Honor, the state has each
2 individual item inside of that marked. For purposes of just
3 the outer clear envelope, which is 12, we'd ask that that
4 envelope be entered into evidence.

5 THE COURT: Any objection?

6 MR. MARTIN: We're not addressing the items inside the
7 envelope yet.

8 MS. WILSON: Without objection for the clear plastic
9 outside.

10 THE COURT: In evidence without objection.

11 STATE'S EXHIBIT NUMBER 12

12 ADMITTED INTO EVIDENCE

13 BY MR. MARTIN:

14 Q: Now, Agent Money, I see on your report -- you can hold on
15 to that for just a second. I can see on your report you
16 reference 2.5 buccal swabs of the victim, Minor Is that
17 contained within that sealed envelope?

18 A: Yes. It was received within this sealed envelope because
19 it was part of the evidence that was packaged in here.

20 Q: And would you mind taking out the envelope? Yes. Thank
21 you.

22 MR. MARTIN: And Your Honor, this would be State's 12A.
23 May I approach?

24 THE COURT: Please.

25 BY MR. MARTIN:

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1 Q: Now, are you able to identify 12A?

2 A: Yes. This is the DNA evidence envelope from the sexual
3 assault kit collected from Minor The SLED lab number
4 and item number was handwritten on the outside of the envelope
5 with the serologist's initial and the date that she did this.
6 And then my initials and the date that I received it are
7 written on it as well.

8 MR. MARTIN: And, Your Honor, the state at this time
9 would move to enter the white envelope, which is State's 12A,
10 the white envelope labeled DNA section into evidence.

11 THE COURT: Any objection?

12 MS. WILSON: Without objection, Your Honor.

13 THE COURT: It's in evidence without objection.

14 STATE'S EXHIBIT NUMBER 12A

15 ADMITTED INTO EVIDENCE

16 BY MR. MARTIN:

17 Q: Now, Agent Money, with regards to the -- what's inside
18 the white envelope itself, directing your attention to 2.1.1
19 SLED Item, cutting from the crotch of the underwear. That
20 would be State's 23. Can you see if that item is inside of
21 the envelope? And if it is, are you able to identify that?

22 A: Yes. So, this envelope is labeled with the lab number
23 and then the item number, which is 2.1.1. In the individual
24 that collected this item has her initials and the date that
25 she sealed it on this side, and then my initials and the date

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1 I received it on this side.

2 Q: Now, did you perform any DNA analysis on that specific
3 item?

4 A: Yes.

5 Q: If you want you can set that down. Sorry, I know we are
6 awkwardly -- we don't have a lot of space to work with.

7 What if any were your results from analyzing that item?

8 A: May I refer to my report?

9 Q: Please do. And once you do, just turn it back over. So,
10 look at your report, and then once you've reviewed it you can
11 turn it back over.

12 A: For SLED Item 2.1.1, cutting from crotch of the
13 underwear, the non-sperm fraction, a DNA profile suitable for
14 comparison was developed. Likelihood ratios for this profile
15 were calculated using STRmix. A proposition set was put
16 forward, the DNA profile was interpreted as a mixture
17 originating from two individuals. [Minor] is contributing
18 to the mixture. The two possible explanations for the DNA
19 profile are [Minor] and John Kehborn contributed to the
20 mixture, or [Minor] and an unidentified unrelated
21 individual contributed to the mixture. The DNA profile is
22 approximately 60 quintillion times more likely if [Minor]
23 and John Kehborn contributed to the mixture than if [Minor]
24 and an unidentified unrelated individual contributed to the
25 mixture.

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1 Q: So, you mentioned what's called a non-sperm fraction and
2 a sperm fraction. What do you mean by that?

3 A: The terms of non-sperm fraction and sperm fraction are
4 used to denote that two samples were created from a parent
5 sample during the extraction process.

6 Q: And you analyzed the non-sperm fraction?

7 A: Yes.

8 Q: And why essentially do you do that?

9 A: According to the serology results, there was an
10 indication that semen may be present on an item. In that
11 case, the type of extraction performed is referred to as a
12 differential extraction where you separate non-sperm cells
13 from any potential sperm cells that may be present.

14 Q: I believe you mentioned STRmix when you are reading from
15 your report. What method did you use to analyze the data you
16 generated?

17 A: STRmix is a computer software program utilized at SLED to
18 perform statistical calculations. It is a tool that analysts
19 may use to aid in mixture interpretation.

20 Q: And with STRmix itself, is that used by other labs
21 throughout the country?

22 A: Yes.

23 Q: Any idea how many?

24 A: Approximately, there's 69 right now. The FBI, the ATF,
25 and the US Army lab are included in that number.

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1 Q: And without STRmix, would you be able to calculate these
2 statistics on your own?

3 A: We have the capability of calculating the statistic a
4 likelihood ratio by hand, but it is just highly time-
5 consuming.

6 Q: So, you mentioned what you said I believe was the
7 likelihood ratio; what's that?

8 A: A likelihood ratio is comparing two possible explanations
9 for an event. So, an example could be the event is that I win
10 a marathon, and the two at possible explanations are I train
11 for the marathon, or I stay at home and I eat cookies all day.
12 And the likelihood ratio would be which explanation better
13 explains the events of me winning the marathon. So, when it
14 comes to forensic DNA analysis, the DNA profile is the event.
15 And then, the two possible explanations are which one fits
16 better for explaining the DNA profile that was developed from
17 the evidence.

18 MR. MARTIN: Court's indulgence.

19 THE COURT: Yes, sir.

20 BY MR. MARTIN:

21 Q: Now, you testified to the statistic that you assigned
22 here. Again, how much is 60 quintillion you said; how much is
23 60 quintillion?

24 A: It has 19 zeros. It is several earth's worth of people
25 to put in a perspective.

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1 Q: Okay. Did you analyze the sperm fraction in this case?

2 A: Yes.

3 Q: And what was your conclusion, or what was the result of
4 the sperm fraction?

5 A: The partial DNA profile developed was insufficient for
6 interpretation.

7 Q: What does that mean?

8 A: There was just not enough information developed to make
9 any type of comparison.

10 MR MARTIN: Your Honor, at this time, the state would ask
11 that the SLED Item 2.1.1, cutting from the crotch of the
12 underwear, which is State's 23 be admitted into evidence.

13 THE COURT: Any objection?

14 MS. WILSON: Without objection, Your Honor.

15 THE COURT: In evidence without objection.

16 STATE'S EXHIBIT NUMBER 23

17 ADMITTED INTO EVIDENCE

18 BY MR. MARTIN:

19 Q: Agent Money, directing your attention to Item 2.2,
20 vaginal swabs, would those be located in the envelope as well?

21 A: Yes.

22 Q: Would you mind seeing if they are in there, and if you
23 can identify it? And I'll go ahead and tell you, you may want
24 to leave your gloves on because we do have a couple of more.

25 THE COURT: What exhibit number?

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1 MR. MARTIN: Oh, I apologize, Your Honor. That would be
2 Exhibit Number 12C, vaginal swabs, I believe, 12C.

3 THE COURT: All right. Very good.

4 A: Yes. This item was located in the larger white envelope.
5 Again, the SLED lab number, and Item Number 2.2 can be found
6 on this barcode, the initials and date of the individual that
7 marked this envelope, and then my initials and the date that I
8 received it.

9 BY MR. MARTIN:

10 Q: Okay. And I'm gonna back up. I failed to have you
11 identify 2.1, which is State's 12B, just the victim's
12 underwear. Can you see if that's in there, and then we'll
13 come back to it as well.

14 A: Yes. So, the underwear is found in a white paper bag
15 with the SLED barcode containing the lab number, Item Number
16 2.1, the initials and date of the individual that marked it,
17 and then my initials and date when I received it.

18 MR. MARTIN: Your Honor, the state would ask that State's
19 12B, which is SLED Item 2.1 be admitted into evidence.

20 THE COURT: Any objection?

21 MS. WILSON: Without objection, Your Honor.

22 THE COURT: In evidence without objection.

23 STATE'S EXHIBIT NUMBER 12B

24 ADMITTED INTO EVIDENCE

25 BY MR. MARTIN:

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1 Q: Directing your attention back to the vaginal swabs, SLED
2 2.2, did you test this item?

3 A: Yes.

4 Q: And what conclusions, if any, were you able to draw from
5 your analysis?

6 A: Again, with this item, I performed the differential
7 extraction based on the results from the serology report. For
8 the non-sperm fraction, the DNA profile developed was
9 attributable to **Minor** The Y-STR DNA profile developed
10 matched the Y-STR DNA profile of John Kehborn. The
11 probability of randomly selecting an unrelated male individual
12 having a Y-STR DNA profile matching this item is approximately
13 one in 6,100. Fraternal male relatives of John Kehborn may
14 not be excluded as a contributor of this profile. And then
15 for the sperm fraction, the DNA profile developed was
16 attributable to **Minor**

17 Q: So, let's back up. With regards to the non-sperm
18 fraction, how did you calculate this statistic?

19 A: For this item, because the DNA profile developed, the STR
20 profile developed was attributable to **Minor** I went back
21 and performed a male specific testing, which is the Y-STR to
22 target the male DNA that was present. From there, it used a
23 different software program. It's a public website known as
24 YHRD or the Y chromosome Haplotype Reference Database. It's
25 comprised of several different databases containing several

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1 thousand Y-STR profiles, and that is what is used to calculate
2 the statistic.

3 Q: You mentioned with regards to Y-STR -- let me back up.
4 With regards to Y-STR, again one more time, what essentially
5 is that?

6 A: Y-STR is a male-specific type of testing. It's found on
7 the Y chromosome. It's passed down through a paternal lineage
8 father to son, grandfather to son, brother to brother. And
9 since it is passed directly down through the Y chromosome,
10 each male individual and that paternal lineage will have the
11 same profile barring any mutations.

12 Q: So, the paternal lineage has the same profile is what
13 you're saying?

14 A: The same Y-STR profile.

15 Q: Now, it seems that the statistic you just quoted, which I
16 believe you said was one in 6,100, that seems much lower than
17 the previous one you mentioned, which was I think 60
18 quintillion. Is there a reason why Y-STR profiles are so much
19 lower than DNA profiles?

20 A: Typically, one will not see a Y-STR profile in the
21 trillions/quadrillions, because you are taking into account
22 that there will be several individuals in the population
23 having the same profile. And also, since this is a different
24 -- it's not using STRmix, you're not calculating a likelihood
25 ratio. The database that's comprised in a lot of the

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1 different DNA types in a Y-STR profile are very common
2 throughout the male population.

3 Q: And again, the statistic you stated was one in 6,100.
4 What's the highest number you've seen as a forensic DNA
5 analyst?

6 A: One in 9,700.

7 Q: And with regards to the sperm fraction -- so, we just
8 talked about the non-sperm fraction. With regards to the
9 sperm fraction how is it possible that the DNA profile
10 developed is attributable to the victim Minor

11 A: Vaginal swabs are being collected directly from an
12 individual's body. It is not uncommon for their DNA to be
13 found in the non-sperm and sperm fractions. It's -- it could
14 essentially just be carryover because of the abundance of
15 cells that are present.

16 MR. MARTIN: Your Honor, at this time, the state would
17 ask to move 12C, which is SLED Item 2.2, vaginal swabs into
18 evidence.

19 THE COURT: Any objection?

20 Ms. Wilson, any objection to 12C?

21 MS. WILSON: I'm sorry, Your Honor. I just have a
22 quick question.

23 THE COURT: Yes, ma'am.

24 BY MR. MARTIN:

25 Q: Just for clarification, Agent Money, that item that I'm

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1 talking about, the vaginal swabs, would you mind holding that
2 up again?

3 A: (Witness complies.)

4 Q: And that is the item that you analyzed?

5 A: Yes.

6 MR. MARTIN: Again, Your Honor, the state would move to
7 ask that be entered into evidence?

8 MS. WILSON: And that's without objection. Thank you.

9 THE COURT: It's in evidence without objection.

10 STATE'S EXHIBIT NUMBER 12C

11 ADMITTED INTO EVIDENCE

12 THE COURT: You may proceed.

13 BY MR. MARTIN:

14 Q: Directing your attention now to the oral swabs, which is
15 SLED Item 2.3, which would be State's Item 12D. Do you have
16 that in front of you? And if you do, would you mind holding
17 it up?

18 A: Yes. These are the oral swabs. And again, SLED lab
19 number and Item Number 2.3 is on the barcode, initials, and
20 date of the individual marked it, and then my initials and
21 date when I received it.

22 Q: And what were your results, if any, when examining or
23 analyzing this item?

24 A: The DNA profile developed from this item was attributable
25 to Minor [REDACTED]

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1 Q: And why would that be?

2 A: Again, this was an item collected directly from the
3 individual, so it is expected to develop a profile from that
4 individual.

5 Q: Now, directing ---

6 MR. MARTIN: well, Your Honor, at this time, the state
7 would ask that that item be moved into evidence, which is
8 State's 12D, SLED Item 2.3, oral swabs.

9 THE COURT: Any objection?

10 MS. WILSON: No objection, Your Honor.

11 THE COURT: It's in evidence without objection.

12 STATE'S EXHIBIT NUMBER 12D

13 ADMITTED INTO EVIDENCE

14 BY MR. MARTIN:

15 Q: And moving right along, Agent Money, to the rectal swabs,
16 which is SLED Item 2.4, and it would be State's Item 12E. Do
17 you see that there?

18 A: Yes.

19 Q: And are you able to recognize it?

20 A: Yes. So, this envelope, rectal swabs, with the SLED
21 barcode, lab number, Item Number 2.4, again the initials and
22 date of the individual who marked it, and then my initials and
23 the date when I received it.

24 Q: And what were your results, if any, when examining or
25 analyzing that item?

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1 A: This item, the rectal swabs, SLED Item 2.4, also on a
2 differential extraction. So, for the non-sperm fraction, a
3 DNA profile suitable for comparison was developed. Likelihood
4 ratios for this profile were calculated using STRmix. And
5 this is the proposition set for this item, the DNA profile was
6 interpreted as a mixture originating from two individuals.
7 [Minor] is contributing to the mixture. The two possible
8 explanations are [Minor] and John Kehborn contributed to
9 the mixture; [Minor] and an unidentified unrelated
10 individual contributed to the mixture. The DNA profile is
11 approximately four times more likely if [Minor] and an
12 unidentified unrelated individual contributed to the mixture
13 than if [Minor] and John Kehborn contributed to the
14 mixture. And for the sperm fraction, the partial DNA profile
15 developed was insufficient for interpretation.

16 Q: I want to make sure I get that right. Regarding the
17 sperm fraction, I believe you said is approximately four times
18 more likely the victim and an unidentified unrelated
19 individual contributed to the mixture than the victim and the
20 defendant. That's such a low number. Why is that?

21 A: So, that likelihood ratio for the non-sperm fraction is
22 in favor of that second explanation, which was [Minor] and
23 an unidentified unrelated individual contributed to the
24 mixture. The foreign DNA that was developed from this profile
25 was partial. It was only at two locations for a 24-location

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1 profile.

2 Q: Could you say that last part again? It was two
3 locations?

4 A: Uh-huh, (affirmative response), out of the 24.

5 Q: Is there an explanation for how you got this result?

6 A: I mean, it's the profile that was developed from the
7 evidence. Collection could've been a factor; contact could've
8 a been a factor. Typically, part of my -- not typically, but
9 as far as how DNA gets somewhere is not part of my job duties.

10 Q: I understand. And when you said collection, what did you
11 mean by that?

12 A: Collection of the sexual assault kit.

13 Q: Okay. Thank you. And then regarding the sperm fraction
14 for this item, you said the partial DNA profile, I believe you
15 said, is insufficient for interpretation. Again, what do you
16 mean by that?

17 A: There's just not enough information present to make any
18 comparisons.

19 MR. MARTIN: Your Honor, at this time, the state would
20 ask that 12E, which is SLED Item 2.4, rectal swabs be admitted
21 into evidence.

22 THE COURT: Any objection?

23 MS. WILSON: Without objection.

24 THE COURT: In evidence without objection.

25 STATE'S EXHIBIT NUMBER 12E

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1 ADMITTED INTO EVIDENCE

2 BY MR. MARTIN:

3 Q: And then, Agent Money, again I failed to ask about the
4 buccal swabs of the victim, which is SLED Item 2.5, State's
5 12F. We talked about that, but would you mind holding that
6 up? And does that appear to be what you analyzed?

7 A: Yes. So, it is marked known DNA standard, buccal swabs,
8 SLED barcode with the lab number, Item Number 2.5, initials
9 and date for the individual who marked it, and then my
10 initials and the date when I received it.

11 Q: Thank you.

12 MR. MARTIN: Your Honor, the state would ask that State's
13 Item for identification 12F, the victim's buccal swabs, be
14 admitted into evidence.

15 THE COURT: Any objection?

16 MS. WILSON: Without objection, Your Honor.

17 THE COURT: In evidence without objection.

18 STATE'S EXHIBIT NUMBER 12F

19 ADMITTED INTO EVIDENCE

20 BY MR. MARTIN:

21 Q: Now, lastly -- moving right along on your report, drawing
22 your attention to SLED Items 4, 5, and 6, which are State's
23 Items 18, 19, and 20 -- I'm gonna approach. Can you identify
24 that? Is that what that is?

25 A: I cannot -- it does not appear that it was packaged in a

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1 SLED heat-sealed pouch.

2 MR. MARTIN: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 MR. MARTIN: This is just the heat-sealed pack that it
5 went in that she used.

6 MS. WILSON: Okay.

7 BY MR. MARTIN:

8 A: I recognize that this was submitted to SLED; however,
9 this was never in my custody.

10 Q: Now, by not in your custody, do you mean you did not test
11 that item?

12 A: Correct.

13 Q: But was that item in the custody of SLED?

14 A: Yes.

15 Q: And when SLED takes items into its custody, is there a
16 chain of custody form or a log that it used to notate that
17 evidence?

18 A: Yes. We utilize an electronic chain of custody to track
19 where an item of evidence is at any time within the
20 laboratory.

21 Q: And as an agent of SLED, do you notate items on that
22 chain of custody form?

23 A: There will be entries for when items of evidence are in
24 my custody.

25 Q: And as someone who has access to this form, are you a

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1 custodian of the records for the purposes of keeping this
2 form? Let me ---

3 A: I'm not entirely sure.

4 Q: This item -- disregard that question.

5 MR. MARTIN: Your Honor, I'd like to approach the witness
6 with State's Exhibit Number 24, which is already in evidence.

7 THE COURT: All right. Very good.

8 MR. MARTIN: Court's indulgence.

9 THE COURT: Yes, sir.

10 MS. WILSON: I'm sorry. Court's indulgence, Your Honor.

11 THE COURT: Yes, ma'am.

12 BY MR. MARTIN:

13 Q: In your review of this record, can you see if those items
14 were submitted to SLED? And I know it's a lengthy document,
15 so you can take your time. It would be SLED Items 4, 5, and
16 6.

17 MS. WILSON: Your Honor, I would -- could I -- could we
18 approach?

19 THE COURT: Yes, please.

20 (REPORTER'S NOTE: Bench conference is held off the record in
21 the presence but outside the hearing of the jury.)

22 BY MR. MARTIN:

23 Q: So, redirecting your attention to those Items 4, 5, and 6.
24 Again, you already started to touch on this. Did you test
25 those items?

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1 A: No.

2 Q: And why didn't you test those items?

3 A: In sexual assault cases, the first item that will be
4 analyzed is a sexual assault kit, if one is submitted. If
5 positive association is made between the evidence that was
6 collected and submitted in the sexual assault kit and any
7 submitted known standards from subjects, then any additional
8 evidence in that case will be sent back without analysis.

9 Q: Thank you.

10 Court's indulgence.

11 Now, other than you testifying here today, did that
12 conclude your involvement and your work on this case?

13 A: Yes.

14 Q: I have no further questions at the moment. Answer any
15 questions, please, that Ms. Wilson may have.

16 THE COURT: Cross-examination.

17 MS. WILSON: Thank you, Your Honor.

18 CROSS-EXAMINATION OF DONNA MONEY BY MS. WILSON:

19 Q: It's Lieutenant Mooney, right -- Money, Lieutenant Money?

20 A: It's just agent.

21 Q: Agent Money, I'm sorry.

22 Evidence collection is important in what you do, correct?

23 A: Yes.

24 Q: If there is some tampering with, if the methods used for
25 collection are not proper, that can affect and skew results,

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1 correct?

2 A: Yes.

3 Q: And it's my understanding that ultimately you tested the
4 cutting of the underwear, which I think you've already
5 attested to?

6 A: Yes.

7 Q: And the rectal swab and the vaginal swab?

8 A: Yes.

9 Q: In two of the instances, your results found what would be
10 DNA matching John Kehborn, but -- would that be correct?

11 A: There was associations made between the evidence profiles
12 and the DNA profile developed from John Kehborn.

13 Q: But in the rectal swab, you've got something completely
14 different that's not John Kehborn, correct?

15 A: The likelihood ratio is that it is four times more likely
16 that that DNA profile is **Minor** and an unidentified
17 unrelated individual.

18 Q: Okay. And we don't have any idea about who that
19 individual might be or could be, correct?

20 A: Right.

21 Q: Now, and you correct me if this is not within your
22 wheelhouse. Is it reasonable to say that there is a multitude
23 of ways that evidence, the evidence you end up testing ends up
24 on the location where you find it? If that's not clear, let
25 me rephrase it. Is it unclear? Because I can rephrase it.

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- 1 A: Please rephrase it.
- 2 Q: Okay. You don't have any way of knowing how any of the
3 material that you test gets to the location where you find it,
4 correct?
- 5 A: Correct.
- 6 Q: So, you can't say how this unidentified DNA ends up in
7 the rectal swab, correct?
- 8 A: Correct.
- 9 Q: You can't say how the DNA ends up on the back of the
10 swab?
- 11 A: Correct.
- 12 Q: You don't know how any DNA or any -- I'm sorry, I'm
13 trying to think of the word you just used, but how anything is
14 found either on the crotch of the panties, correct?
- 15 A: Correct.
- 16 Q: So, in reality, we are talking about components and DNA
17 being located, but no real way to ascertain how it was
18 actually placed there or how it got there?
- 19 A: Correct. For us, it's just DNA is present, yes or no;
20 how the DNA is on an item is outside of our department.
- 21 Q: Is transfer DNA something that you come across?
- 22 A: Yes.
- 23 Q: And transfer DNA is basically DNA from -- for example,
24 I'm wearing my pants. So, I would arguably transfer DNA from
25 myself to these pants when I put them on, correct?

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- 1 A: Yes.
- 2 Q: And if someone else were to come along and put on my
3 pants after I have worn them, my DNA would then potentially
4 transfer to them, correct?
- 5 A: It's possible, yes.
- 6 Q: So, if I'm wearing my underwear -- and this may sound
7 gross -- but someone else has worn my underwear prior to me
8 wearing it, there could potentially be a transfer of DNA in
9 that instance from the other person to me?
- 10 A: It's possible, yes.
- 11 Q: You would inspect to find your own DNA on your own socks?
- 12 A: Yes.
- 13 Q: Skin cells contain DNA?
- 14 A: Yes.
- 15 Q: So, in the -- for example -- and this is just me asking a
16 question -- in the absence of sperm, which would contain DNA
17 otherwise, correct?
- 18 A: Yes.
- 19 Q: You might have DNA from skin that would be present in
20 other locations?
- 21 A: That's possible, yes.
- 22 Q: In your report, I think it says more than one DNA profile
23 was found?
- 24 A: Which item are you referring to?
- 25 Q: Let me, if you don't mind ---

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DONNA MONEY - REDIRECT BY MARTIN

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1 Court's indulgence?

2 THE COURT: Yes, ma'am.

3 BY MS. WILSON:

4 Q: I think on -- particularly on 2.4 on the rectal swab, it
5 says that it was a mixture originating from two individuals in
6 the proposition set.

7 A: Yes.

8 Q: Okay. And so that -- all that really just means, and I
9 just want to make sure I'm clear about it, all that means is
10 that two people's information, DNA information, was found.
11 One of them being **Minor's** and other one being somebody that is
12 unknown or something that is unknown?

13 A: Yes.

14 Q: Okay.

15 MS. WILSON: No further questions, Your Honor.

16 THE COURT: Redirect?

17 MR. MARTIN: Thank you, Your Honor.

18 REDIRECT EXAMINATION OF DONNA MONEY BY MR. MARTIN:

19 Q: Agent Money, since it was brought up, directing your
20 attention back to the cutting of the crotch of the underwear.
21 Could you again, for the jury, read your conclusions from the
22 proposition set?

23 A: For the non-sperm fraction?

24 Q: Please.

25 A: For the non-sperm fraction of this item, the DNA profile

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1 was interpreted as a mixture originating from two individuals.
2 [Minor] is contributing to the mixture. The two possible
3 explanations are [Minor] and John Kehborn contributed to
4 the mixture, or [Minor] and an unidentified unrelated
5 individual contributed to the mixture. The DNA profile is
6 approximately 60 quintillion times more likely if [Minor]
7 and John Kehborn contributed to the mixture than if [Minor]
8 and an unidentified unrelated individual contributed to the
9 mixture.

10 Q: And in this situation are we dealing with a transfer of
11 DNA?

12 A: I don't -- I can't say.

13 Q: And directing your attention to the vaginal swabs. Could
14 you again read your conclusion for the non-sperm fraction?

15 A: The DNA profile developed is attributable to [Minor]
16 The Y-STR profile DNA profile developed matches the Y-STR DNA
17 profile of John Kehborn. The probability of randomly
18 selecting an unrelated male individual having a Y-STR DNA
19 profile matching this item is approximately 6,100. Fraternal
20 male relatives of John Kehborn may not be excluded as a
21 contributor of this profile.

22 Q: And again, what's the highest statistic you have seen?

23 A: One in 9,700.

24 MR. MARTIN: Judge, nothing further.

25 THE COURT: Any further questions on those questions just

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1 asked?

2 MS. WILSON: Yes, just very briefly.

3 RECROSS-EXAMINATION OF DONNA MONEY BY MS. WILSON:

4 Q: And I just want to reiterate, you cannot say how any of
5 the DNA that is tested or found here actually got there; you
6 don't know the means or the method or the vehicle by which
7 they got to where they were, correct?

8 A: That's correct. Part of our job is not determining how a
9 DNA arrives on an item.

10 Q: Thank you. No further questions.

11 THE COURT: Do you wish the witness be excused?

12 MR. MARTIN: We do, Your Honor.

13 THE COURT: Any objection?

14 MS. WILSON: No objection, Your Honor.

15 THE COURT: All right. Ma'am, you are released from you
16 subpoena and may go back to your regular duties. Thank you.

17 BY THE COURT:

18 THE COURT: All right. Further witnesses from the state?

19 MR. MARTIN: Your Honor, the state rests.

20 THE COURT: All right. Very good.

21 All right. Ladies and gentlemen, we've concluded the
22 evidentiary portion as presented by the state, direct evidence
23 of the state. So, at this point in time in every criminal
24 case, there are matters of the law that the Court must take up
25 outside your presence. I'm gonna need to go over those with

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BY THE COURT

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1 your attorney. I did have the clerk's office order lunch for
2 you. I'm not sure that it's -- it hasn't gotten here just yet
3 because we told them 12:00, so it's a little bit before 12:00.
4 What we'll do is I'm just gonna send you to the jury room.
5 When lunch arrives, they will bring it into you.

6 We're gonna decide where we are. I anticipate that I'll
7 need to go over the closing matters with the attorneys, that
8 is the charge on the law that the court is going to give to
9 you. I need to go over that with them and hear some matters
10 that the attorneys always raise at this point in time and the
11 proceedings. So, all that to say we'll start the trial back
12 at 1:30. And with that, please go to your jury room.

13 Thank you very much.

14 And remember, don't talk about the case.

15 Thank you.

16 (REPORTER'S NOTE: Jury exits courtroom @ 11:54 a.m. The
17 following takes place outside the presence of the jury.)

18 THE COURT: All right. Ms. Wilson, motions by the
19 defense?

20 MS. WILSON: Yes, sir, Your Honor.

21 MS. ANDREW: Your Honor, I have a ---

22 THE COURT: I'm sorry.

23 MS. ANDREW: I have a brief matter I'd like to bring up
24 to the Court before we get to her motions.

25 THE COURT: Sure.

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BY THE COURT

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1 MS. ANDREW: We premarked Exhibits 18, 19, and 20, which
2 were the DNA swabs from the fitted sheets that Heather Wilson
3 took, which was an earlier witness today. At the time, the
4 state moved to enter those items into evidence when Lieutenant
5 Wilson was testifying, there was an objection from the
6 defense. And I think the indication was that we needed to
7 complete the SLED chain before we could enter those -- before
8 we can enter that into evidence, so we waited. Upon
9 reflection and after just seeing kind of what happened and how
10 that played out, it occurred to me that Lieutenant Wilson was
11 the proper witness to enter that evidence, because even though
12 that evidence was sent to SLED, there was no further testing
13 after Lieutenant Wilson tested. So, the chain actually ended
14 with her for the purposes of ---

15 THE COURT: Well, and I appreciate that. It did go to
16 SLED and the doc -- you know, matters in evidence showed that
17 it got to SLED. We never did say -- and I don't know that
18 it's necessary, but we never did say how the item got back
19 from SLED to ---

20 MS. ANDREW: Your Honor, we don't -- we usually end the
21 chain at the point of testing. We don't go into anything that
22 happens after the tests, we usually don't bring those chain
23 witnesses in. It's just -- when I was thinking through it, I
24 was thinking any time a testing occurred, that's where we in
25 the chain for the state.

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BY THE COURT

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1 THE COURT: So, you are again offering 18, 19, and 20?

2 MS. ANDREW: Yes, sir, Your Honor.

3 THE COURT: All right. Let me hear from you, Ms. Wilson?

4 MS. WILSON: Your Honor, I hear what the state is saying.
5 However, I would still object to them coming in through
6 Wilson. Ultimately, it wasn't brought in through her. This
7 witness was obviously reluctant. And when I say this witness,
8 I mean Ms. -- Agent Money was obviously reluctant to take on
9 the role of records custodian, if you will, so that she could
10 identify and confirm that these things were in the custody of
11 SLED. I would still object at this point to them coming in.

12 THE COURT: All right. Thank you, ma'am.

13 The evidence shows that they were submitted to SLED.
14 Clearly, in their current condition as you can see, they are
15 sealed. They have not -- and the agent -- not the agent --
16 the officer testified what they did to put them in that
17 condition. But, the evidence you chose, it was not tested by
18 SLED, the agent said they didn't test it. It's in the
19 condition that it was submitted to SLED. There's no apparent
20 tampering. There's no indication from the evidence that
21 anything was done with it from SLED. I'm gonna allow it into
22 evidence over the objection of the defense. Thank you.

23 MS. WILSON: Thank you, Your Honor.

24 MS. ANDREW: Thank you, Your Honor.

25 STATE'S EXHIBIT NUMBER 18, 19, AND 20

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MOTIONS

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1 ADMITTED INTO EVIDENCE

2 THE COURT: Your motions?

3 MS. WILSON: Yes, sir. I'm sorry. Thank you.

4 MOTIONS:

5 MS. WILSON: Your Honor, at this time we would, the
6 defense would move for a directed verdict on the basis that
7 the evidence the state is presented is not direct. The
8 circumstantial evidence does not reasonably tend to prove the
9 defendant's guilt. I certainly understand that there is, you
10 know, the DNA evidence that has been presented through the
11 SLED witnesses, and I certainly understand that the Court
12 might find that along might be persuasive as far as not
13 granting the directed verdict. But I would argue to the Court
14 that certainly, through my questioning of the SLED witnesses,
15 there are certainly arguments to be made for why it may not be
16 what it appears to be. And on that basis, I am asking the
17 Court for a directed verdict.

18 THE COURT: All right. Thank you, ma'am.

19 MS. WILSON: And, Your Honor, in addition, I would renew
20 all objections that we made thus far during the state's case.

21 RULING OF THE COURT:

22 THE COURT: All right. As to any other motions besides
23 the directed verdict, the Court reaffirms the prior rulings of
24 the court.

25 Regarding directed verdict motion, the Court is concerned

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1 with the existence or nonexistence of evidence, not its
2 credibility, not its believability, not its weight. The Court
3 could grant a directed verdict motion when the evidence merely
4 raises a suspicion that the accused is guilty. The Court has
5 to view the evidence in the light most favorable to the
6 nonmoving party, that here is the state. And a case should be
7 submitted to the jury when the -- there is substantial
8 evidence that reasonably tends to prove the guilt of the
9 accused or from which the guilt may be fairly and logically
10 deduced. Very briefly -- and again, I'm relying on all the
11 evidence and testimony presented. I'm just gonna highlight a
12 couple of things. Amanda Loar, through her, Horry County
13 Police Department gave information that verified the time and
14 place of the assault as testified to by Minor [REDACTED] She
15 clearly testified as to the actions of the defendant, the
16 assault upon her that would cover the requirements regarding
17 criminal sexual conduct with a minor. Obviously, including
18 the details of the assault and the ages of the -- her age, the
19 time and place again was verified by Tonya Kehborn, again by
20 L. Price [REDACTED] the other witnesses that testified, the Court
21 finds was again substantial evidence regarding the physical
22 evidence that was collected, how it was collected, how it was
23 tested, and the results therefrom that tend to substantiate
24 the testimony of the victim in this matter. Again, it's not
25 the Court's job to judge credibility and believability, just

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1 whether or not the evidence exists. Certainly, there is more
2 than sufficient evidence in the record if that evidence is
3 believed by the jury to convict the defendant beyond a
4 reasonable doubt of the crime of criminal sexual conduct with
5 a minor, second degree. And respectfully then, your motion
6 for directed verdict is denied.

7 MS. WILSON: Thank you, Your Honor.

8 THE COURT: Any further motions?

9 BY THE COURT:

10 MS. ANDREW: Nothing from the state, Your Honor.

11 MS. WILSON: Nothing else from the defense, Your Honor.

12 THE COURT: All right. So, why don't we take care of
13 this. Is there testimony to be presented by the defense or
14 evidence to be presented by the defense?

15 MS. WILSON: Your Honor, I do not have anything.

16 THE COURT: All right. So, with that, the defense would
17 rest; is that correct?

18 MS. WILSON: That is correct, Your Honor.

19 THE COURT: All right. So, I'm assuming at this point in
20 time you renew all of the objections you just made to the
21 Court?

22 MS. WILSON: Yes, sir.

23 THE COURT: All right. And the Court would reaffirm the
24 rulings I just made regarding all those matters, respectfully
25 denying your previous motions based upon what's in the record,

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1 and the denial of the directed verdict.

2 MS. WILSON: Yes, sir. Thank you.

3 CHARGE CONFERENCE:

4 THE COURT: So, with that, let me go over briefly my
5 intentions regarding the charge in this matter, so that y'all
6 have that.

7 We'll talk about things we always talk about in every
8 criminal case, which is the job of the jury, the factual
9 decisions; regarding how they can judge credibility and
10 believability, believe one witness against several, several
11 against one, a portion of what a witness says, disregard the
12 remaining portion, if they've got a good sound reason for
13 doing so you can disregard the entirety of the testimony of a
14 witness.

15 Direct and circumstantial evidence, obviously. And just
16 in regards to circumstantial evidence, I will make the point
17 of saying that the law makes no distinction between the weight
18 or value to be given to either direct or circumstantial
19 evidence. To the extent the state relies on circumstantial
20 evidence, the circumstances must be consistent with each
21 other, and when taken together point conclusively to the guilt
22 of the accused beyond a reasonable doubt. The state has the
23 burden of proving the defendant guilty beyond a reasonable
24 doubt, whether or not they rely on direct or circumstantial
25 evidence.

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1 Expert witness, I'll talk to them about that. Again,
2 reiterate the short statement I made to the jury about
3 testimony of children. I will reiterate that to them.

4 Statement of the defendant. The statement alleged to
5 have been made by the defendant was admitted into evidence,
6 and obviously their job to judge credibility and
7 believability. Obviously, whether or not the statement was
8 made voluntarily as a result of freewill, and you know not
9 caused by pressure, force, coercion, intimidation, as well as
10 the knowledge of his Miranda rights, and I'll go over that
11 with them.

12 I will talk to them about, as I told them at the very
13 beginning, about the defendant not appearing and instructing
14 them and telling them it is not accurate and they can consider
15 it, you can't talk about it, they can't use it in making their
16 determination.

17 The presumption of innocence, that's rests with the
18 defendant always up until the time if the jury finds him
19 guilty beyond a reasonable doubt. I'll talk to them about
20 that.

21 Reasonable doubt is the kind of doubt that would cause an
22 ordinary, reasonable person to hesitate to act.

23 And then define criminal sexual conduct with a minor
24 second degree. And I'll just read it to you; it's fairly
25 short. The defendant is charged with second-degree sexual

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1 conduct with a minor. The state must prove beyond a
2 reasonable doubt that the defendant engaged in a sexual
3 battery with the victim.

4 Sexual battery is sexual intercourse, cunnilingus,
5 fellatio, anal intercourse or any intrusion, however slight,
6 of any part of a person's body or of any object into the
7 genital or anal openings of another person, except when
8 medically necessary. The state must then prove beyond a
9 reasonable doubt that the victim was 14 years old or less, but
10 at least 11 years old at the time of the assault. So, the
11 timeframe 11 to 14. Consent, willingness, or indifference on
12 the part of the minor if any as to what was taking place, does
13 not in any way affect the charge of criminal sexual conduct
14 with a minor, because an unmarried woman under the age of 16
15 cannot legally consent to sexual intercourse.

16 So, that's my intention. I think my clerk gave to you --
17 did you give them a copy of the verdict form? So, did y'all
18 look at it?

19 MR. MARTIN: We did, Your Honor.

20 THE COURT: Any problems from the state?

21 MR. MARTIN: None from the state.

22 THE COURT: From the defense?

23 MS. WILSON: None from the defense, Your Honor.

24 THE COURT: All right. So, that's my intention as to the
25 charge. Anything else that the state would like to suggest or

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1 modify?

2 MR. MARTIN: No, Your Honor.

3 THE COURT: From the defense?

4 MS. WILSON: Nothing, Your Honor.

5 THE COURT: All right. Very good.

6 All right. So, we'll come back at 1:30, and we'll then
7 start with the arguments. Since the defense did not offer
8 evidence, obviously they have the final argument. So, the
9 state must give the it's full and complete argument to the
10 jury. Defense will give their arguments. And then I'll
11 charge them the law.

12 MR. MARTIN: That's correct, Your Honor.

13 THE COURT: All right. Very good.

14 MS. WILSON: Thank you, Your Honor.

15 MS. ANDREW: Thank you, Your Honor.

16 **RECESS - 12:08 P.M.**

17 *******OFF THE RECORD*******

18 **ON THE RECORD - 1:29 P.M.**

19 BY THE COURT:

20 THE COURT: Is the state ready for the jury to come in?

21 MR. MARTIN: We are, Your Honor.

22 THE COURT: And Defense?

23 MS. WILSON: Yes, sir; Your Honor.

24 THE COURT: All right. So, when the jury comes in, so
25 we've got it -- I know we covered it on the record, but in

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1 front of the jury, I'll ask the -- ask you, Ms. Wilson, what's
2 the defense's position, you can tell me the defense rests, and
3 then we'll go into the closing arguments.

4 MS. WILSON: Yes, sir.

5 THE COURT: Okay. Please bring the jury in.

6 (REPORTER'S NOTE: Jury enters courtroom @ 1:32 p.m.)

7 THE COURT: All right. Ms. Wilson, what's the position
8 of the defense?

9 MS. WILSON: Defense rests, Your Honor.

10 THE COURT: All right. Very good.

11 All right. At this point in time, ladies and gentlemen,
12 you have received all the evidence that you are going to
13 receive in this particular case. Where we are now is we are
14 going to proceed with the closing arguments by counsel, and
15 after that, I will give you the law that you will apply to the
16 facts and evidence you've heard, and then I'll submit the case
17 to you, give you the case for your deliberations and unanimous
18 decision in this particular matter.

19 So, with that, from the state?

20 MR. MARTIN: May it please the Court, Your Honor?

21 THE COURT: Yes, sir.

22 CLOSING BY MR. MARTIN:

23 MR. MARTIN: I don't want to see them. I'm so fucking
24 ashamed. Piece of shit. Not right in the fucking head.

25 Those aren't my words. They're not **Minor's** words. They're not

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1 her family's words, or Doctor Rahter, the DNA analyst.
2 They're the words of a man who that same day had just raped a
3 child, his stepdaughter. She was 13. John Kehborn is why
4 we're here today.

5 Ladies and gentlemen, we're at the point of the trial, as
6 does Judge John just said that we give you the closing
7 arguments. And what I would usually tell the juries is it's
8 the attorneys opportunity to talk with you about what you've
9 just seen unfold at trial. Opening statements is a roadmap.
10 It is an outline of what we think you're gonna hear. Closing
11 arguments is a recap of what you did hear.

12 The Judge is gonna tell you the law after we're done.
13 And I want you to understand that what the Judge says is the
14 law. And if I say anything different from that, or Ms.
15 Andrew, or Ms. Wilson, you got to go with what the Judge says.
16 But it's hard for us to be able to talk with you guys about
17 what you've seen without also talking about the law, right?

18 So, what's he been charged with? As you've heard several
19 times, the defendant has been charged with criminal sexual
20 conduct with a minor in the second degree. What does that
21 mean? It means the defendant, while in Horry County -- you've
22 heard where the house was located in Horry County -- committed
23 a sexual battery upon a minor, and that that minor is between
24 the ages of 11 and 14 years old. It's not really in
25 contention, nobody is really arguing about how old **Minor** was.

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1 You've heard from her mom, you heard from the doctor; she was
2 13. You heard from Officer Cotton, Detective Cotton now, that
3 the defendant was well over the age of 18. So, the really the
4 issue of all of this is did a sexual battery occurred, right?

5 And what's a sexual battery? The Judge is gonna tell you
6 that sexual battery is any penetration of Atlas private parts,
7 no matter how slight. Even labial penetration is penetration.

8 The Judge is also gonna tell you that the burden of proof
9 in proving a defendant guilty rests completely with us; not
10 with Ms. Wilson, with us. And it's our burden to prove, and
11 that we have to prove John Kehborn guilty beyond a reasonable
12 doubt.

13 What the heck is reasonable doubt? Well, in civil court
14 you often hear preponderance of the evidence. Preponderance
15 of the evidence is tipping the scales of justice ever so
16 slightly in the favor of one party. And if you do that, you
17 have to rule in the favor of that party. So, think 51
18 percent, 49 percent; you gotta go 51 percent. Reasonable
19 doubt is -- excuse me -- truth beyond a reasonable doubt is a
20 much higher burden. In fact, a little law school lesson here,
21 it's the highest burden we have in the United States. Now, it
22 is not proof beyond any possible doubt. It is the fact that
23 the evidence in this trial leaves you so firmly convinced that
24 the defendant is guilty you find him guilty. You see, very
25 few things in life are certain. Very few things in life will

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1 leave you 110 percent convinced. It's safe to say the sun is
2 gonna come up tomorrow, and it's safe to say I'm gonna die one
3 day. But outside of that, there's not a lot of certainty.
4 So, it is what a reasonable person would think from the
5 evidence as to whether or not that person is guilty. And if
6 you believe they're guilty beyond a reasonable doubt, you must
7 find him guilty.

8 The other thing the Judge is gonna talk with you about is
9 the evidence. You find someone guilty or not guilty based off
10 of the evidence you see and you hear from that witness stand,
11 and that's it. People you heard talk to you the last two
12 days, the videos you saw played, et cetera. That's what you
13 consider. So, one of the jobs we do in closing arguments is
14 obviously talk about the law, talk about the evidence.

15 Minor you heard her, you saw her, typical 15-year-
16 old girl. She likes to shop. She likes her dog, Rakita. She
17 likes her friends. For some crazy reason, she wants to be a
18 lawyer one day. Other than that part, she seems to be a
19 pretty normal girl. I'm 32 years old, all right, and it's
20 hard for me to talk with my mama about my sex life. When
21 you're a child, you're in a courtroom full of strangers,
22 talking about your first sexual experience at the age of 13
23 that you didn't want; it's not easy to do. And it's
24 understandable why she maybe didn't go into every graphic
25 detail that happened that day. And maybe why she didn't paint

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1 a full picture of what happened that day. But, guess what,
2 she didn't have to. The rape kit does it for her. Her family
3 did it for her. The officers did it for her. Nurse Drozd,
4 Dr. Rahter, the DNA analyst. She said the defendant's penis
5 went into her vagina and a sexual battery occurred. You heard
6 from her family. You heard from her parents, Tonya and
7 Andrew. By all accounts, good relationship, good parenting.
8 You heard from her brother, L. Price These were the first
9 three people that saw her, other than the defendant, after the
10 worst thing happened to her and all of their lives. L. Price
11 said he woke up at 4:00 a.m. to texts and phone calls from his
12 sister. What does he do? He goes into the bathroom. And
13 what did he say he saw? He probably had the most thorough
14 testimony of anybody we saw. What did he say he saw? His
15 sister next to the window on the floor crying. He didn't know
16 what happened. He unlocked the door. The defendant comes in.
17 She tells him to get out. What did Minor say he said? Don't
18 tell anybody. You're going to ruin things for us, or
19 something along those lines. He heard the phone call to their
20 mama. She'd been raped. Tonya said that. Andrew said she
21 called him, that she'd been raped.

22 Who else do we hear from? Nurse Drozd, right? Nurse
23 Drozd is what we call a PSANE, pediatric sexual assault nurse
24 examiner. She testified to a lot of things. I like to think
25 she kind of took us to biology class, and that it was

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1 detailed. But focus on what is important from what she said.
2 What did she find? What did she do? She examined **Minor's**
3 vagina. What did she see? Erythema, that's redness. She saw
4 abrasions. She did a report. She took pictures. Also,
5 importantly, she collected underwear. And why did she say
6 that was important? Because **Minor** had reported within 72
7 hours. And when children report within 72 hours, you have a
8 greater chance of collecting DNA, right? And typically, when
9 you find DNA, according to Nurse Drozd and Dr. Rahter, when
10 you find them in children, you find them in underwear.

11 So, then there's Dr. Rahter. Dr. Rahter is an expert in
12 child abuse and neglect, and sexual assault. As the Director
13 of the Children's Recovery Center, she's done over 6,000
14 medical examinations. That's just at the Children's Recovery
15 Center; that's not the emergency room and everywhere else.

16 Dr. Rahter reviewed these findings; what did she say?
17 The injuries that she observed were consistent with what? A
18 penetrating injury ---

19 MS. WILSON: Objection.

20 THE COURT: Y'all come up and talk with me, please.

21 (REPORTER'S NOTE: Bench conference is held off the record in
22 the presence but outside the hearing of the jury.)

23 THE COURT: Go ahead, Solicitor.

24 MR. MARTIN: Thank you.

25 Dr. Rahter's review of what -- the patient history and

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1 the MUSC records, photographs, and everything else she talked
2 about, it was her medical diagnosis that this was consistent
3 with sexual assault.

4 How about law enforcement? You guys heard from a lot of
5 law enforcement, I get that. And in order for us to meet our
6 burden, we have to show you guys that the evidence in this
7 case was properly documented, properly handled, and wasn't
8 tampered with. So, a lot of the witnesses you heard from are
9 merely chain witnesses, but they're still important. What
10 about the other officers you heard from? You heard from
11 Detective Skellett, who was the lead agent in this case. He
12 talked to you guys about the search warrant process, how to
13 administer a buccal swab, when that what he did with this case
14 in collecting the defendant's swabs. You heard from Officer
15 Loar, remember she was the first one, with her body camera.
16 You heard from Detective Cotton who was a patrol officer at
17 the time, and you saw his body camera. And they're important
18 because the two people there that night are on the body
19 cameras. What was their demeanor like? You saw Minor You
20 say John Kehborn's. I don't want to see them. I'm so fucking
21 ashamed. Piece of shit. I'm not right in the fucking head.

22 You heard from Heather Wilson. Even though Heather's
23 presumptive positive swabs of the bedsheets were not tested at
24 SLED, she told you why. And I wrote it down so that I'd get
25 it right. If SLED gets positive -- if SLED gets a positive

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1 hit from the rape kit, what'd she say, they don't usually test
2 the sheets.

3 That brings us to Rachel Nguyen, who was the forensic
4 serologist. And you heard her, she talked about the SLED
5 chain, how evidence is kept, what her findings were, and how
6 she prepares these items to go to DNA, so that Donna Money can
7 test it. And you heard from Donna Money. And her testimony,
8 a lot of it was sort convoluted and big words, and she broke
9 everything down. What are the big takeaways from that?
10 You've got the rectal swabs. Donna said with regards to every
11 bit of evidence that she gets, her job is not to figure out
12 how it got there, her job is just to tell you guys what was
13 there. The collection process could explain things.

14 Let's focus on the two pieces of evidence that are the
15 most important with regards to her testimony. And what was
16 that? The cutting of the crotch from the underwear. And I
17 wrote this down so that I made sure I used the right language
18 that was used in her testimony. But the likelihood ratio with
19 STRmix that she testified to, DNA profile is approximately 60
20 quintillion times more likely if **Minor** and the defendant
21 contributed to the mixture. In Horry County, we have a
22 saying, if you can't spell the number, you certainly can't
23 count to it. Nineteen zeros?

24 Vaginal swabs, that's the Y-STR part that she was talking
25 about. And her statistic that she cited in there, I wrote it

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1 down again, is approximately one in 6,100. And the highest
2 number she's ever seen in all of her years is one in 9,700.

3 A cardinal sin with attorneys is doing what we call
4 beating a dead horse. And when I first started, I was in
5 front of a judge and I probably had already given her enough
6 to do what she needed to do, being young and being gung-ho, I
7 kept going. And I said, well, Judge, not to beat a dead
8 horse, but issue one, issue two, issue three, issue four, yada
9 yada yada boom, she's like, Solicitor, if the horse is dead,
10 it's time to dismount. So, that's what I'm gonna do, but I'm
11 gonna leave you guys with one final thing. In her opening,
12 Ms. Wilson told you guys that the jury is the last line of
13 defense for justice. And she's right. Ms. Wilson is a great
14 attorney, and she's been doing this a long time. But the
15 truth is, there's only one way to administer justice here
16 today, and that's by returning a verdict of guilty.

17 THE COURT: Ms. Wilson?

18 MS. WILSON: Thank you, Your Honor.

19 CLOSING BY MS. WILSON:

20 MS. WILSON: Ladies and gentlemen of the jury, the state
21 is right, you've heard from lots of people about lots of
22 different things related to this case. You've heard from the
23 police officers. You've heard from family members. You've
24 heard from **Minor** You've heard from her brother. In
25 particular, both I personally thought endearing witnesses on

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1 the stand. What's not to like about two precious children.
2 There's nothing not to like, and the state is aware of that.
3 There is a reason that their case is the way their case is.
4 Now, I'm not telling you that -- what to believe; I'm
5 not. I'm going to point out to you the problems with the
6 state's case. They've told you the things that they think are
7 great about their presentation. I'm gonna talk to you about
8 the things that I think are problematic with their
9 presentation. How you interpret that is gonna be up to you.
10 And certainly, just like the state hopes you return a verdict
11 in their favor; obviously, I'm here because I hope you return
12 a verdict in favor of my client, and I don't mind telling you
13 that. That's my function. That's my job, just like they have
14 a job. It's my job, too.
15 You heard from a number of people, so let's just take
16 them kind of the way the state did, one by one. Officer Loar
17 took the stand first, a nice lady, took the stand told you
18 what she observed, what she saw. Everything that she told you
19 was based on what she was told. And that's a consistent theme
20 in this case. Everybody's testimony is based on what
21 everybody's says that they were told about the case. All
22 right? She admitted she had no firsthand knowledge about
23 anything that took place during this situation. She doesn't
24 know what happened in that bedroom, if it happened there; she
25 doesn't know what happened in that bathroom, if it happened

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1 there; she doesn't know any of those things because she
2 witnessed it herself. But she was told what happened, and
3 that's what she shared with you.

4 Tonya Kehborn and Andrew Price, the parents who obviously
5 love their child, took the stand, told you about the things
6 that they observed after the fact, what they did as a result
7 of their child calling them. They heeded a call. There's
8 nothing that's not admirable about that. But again, they
9 weren't there. They can't tell you any details or be a
10 witness to something that they don't know anything about
11 firsthand. And it's not magical, it's not rocket science.
12 They were not present at that time.

13 L. Price kid brother, also adorable, said he was
14 asleep, and he awoke to text messages from his sister, who he
15 said was in distress when he went to her in the bathroom. I'm
16 not seeking to change that testimony. But I also told you
17 when I did my opening that I wanted you to think critically,
18 not just about what you heard, but what you didn't hear. And
19 what you also didn't hear was that L. Price awoke to screams or
20 yells or cries for help. He awoke to text messages, missed
21 calls.

22 Detective Skellett took the stand. Detective Skellett
23 testified about transporting evidence. He was nowhere on
24 scene, admittedly, the night or morning of May 26th, 2020. He
25 has no firsthand knowledge about anything that happened in

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1 this case. He was not even at the house that night or, I
2 should say, first thing that morning when the call came in.
3 He wasn't there. He took the stand to tell you about
4 transporting evidence. And as the state says, yes, those
5 things are important, but again nothing dispositive on the
6 issues in this case.

7 Nurse Dozd, obviously very intelligent and loves her
8 craft, told you that she didn't observe any tears, any cuts,
9 any scrapes. And unlike the state's statement in their
10 closing that there were abrasions, she said she observed an
11 abrasion, one, the origin of which she could not confirm.
12 Yes. She did say that she has seen those kind of abrasions
13 before in cases of sexual assault. She doesn't know how it
14 happened. She can't tell you that that's how it happened
15 here. And she admitted that she couldn't. In addition to
16 that, she said there was no independent way of knowing, and
17 that's not her function I believe is what she also said.

18 Dr. Rahter, Dr. Rahter, the child advocate center doctor,
19 who has done as I think the state said 6,000 exams, based on
20 what she testified to, at least for the children's advocacy
21 center, said that there was nothing irregular found when she
22 did her examination of Minor I think her words were that the
23 hymen was estrogenized, and I want to say annular in shape,
24 but I could be wrong about that part. Some of those words and
25 phrases, the medical phrases have alluded me. But that's

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1 okay, I'm not a medical doctor; I'm a lawyer. And she is
2 saying that the hymen -- and I think we can all trust and
3 believe that if Dr. Rahter had found anything that she could
4 point out to you as evidence of a physical assault, she
5 definitely would've brought that to all of our attention.
6 That's kind of her function. And she had nothing to bring to
7 your attention. And reluctantly, she admitted she didn't know
8 the means by which the DNA ended up on the crotch of the
9 panties, and that she couldn't do that. And she didn't want
10 to admit that, but the truth is the truth, and she did tell
11 it.

12 Detective Cotton told you that he heard John Kehborn say
13 he was -- and I think the quote, so Fing ashamed, and that he
14 didn't want to see them. Obviously, that statement is offered
15 for a particular purpose. Now, I don't know what Mr. Kehborn
16 was thinking when he said that. I know Officer Cotton can't
17 know, unless he's a mind reader; I'm certainly not. And the
18 state can't know it. Now, they've offered it because they
19 want you to believe that that's an admission of guilt somehow.
20 It could also just be that he's getting arrested in his own
21 yard, in the open, at 4 o'clock in the morning. Lights are on
22 cars, police vehicles are out in front, and he's being taken
23 into custody. He's handcuffed. He's about to go to jail.
24 I'd be kind of -- and pardon me for saying it -- Fing ashamed
25 as well at that moment.

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1 Now, Detective Cotton also collected some evidence in
2 this case, not a crime scene analyst, not a crime scene
3 specialist. He said his training by his own admission was
4 like four or five years prior when he first became an officer.
5 He's taking up sheets, taking up things being sent for
6 testing. And it doesn't get tested, but there's a reason for
7 that, so we'll come back to that in a minute. But bottom line
8 is he's taking up evidence that's important to the case. Do
9 we know how he took those things out of the house and put them
10 in those bags? He says he did them according to what he was
11 taught. But we know that the house was unsecured, because he
12 said it was unsecured for a period of close to 12 hours, I
13 think, if not maybe a little bit more. And we don't know who
14 was in that room, if they're even the right sheets. We don't
15 know where he got that stuff from, and he doesn't know, and he
16 said he didn't know on the stand.

17 Now, **Minor** told you what happened to her. She told you
18 her story about what happened. Okay? And this is what I have
19 to say about that. I'm not here to tell you her story isn't
20 accurate. I'm not here to tell you that that is not her
21 belief or understanding about her experience. I can't tell
22 you that, just like you can't know it, I can't know it. What
23 I will tell you is that **Minor** said that she was asleep. You
24 heard me ask her. You also heard me ask her when she woke up,
25 and she said she woke up after.

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CLOSING BY WILSON

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1 Now, we had the SLED forensic serologist, Rachel Nguyen,
2 who took the stand. She told you -- and the state wants to
3 say semen is everywhere, semen is here, semen is on the
4 panties, semen is on the bed, blah, blah, blah. Okay. I'm
5 not going to pretend that I think that's completely accurate
6 because I don't. Ms. Nguyen said that there were components
7 of semen, and that they don't call it semen for a reason,
8 because they can't. They can't say definitively that it is
9 seminal fluid. Okay? There was no semen. So, that begs to
10 question about what is it? What is it that is actually there?
11 And we kind of get that answer when we talk to the DNA expert
12 because we know that Nguyen said that they can't call it
13 seminal fluid, but that they performed tests, and that there
14 were large quantities of a substance that apparently had the
15 P30, and in one instance the acid phosphatase. But she also
16 said that those very same substances are present in other
17 forms, in other fluids that are bodily fluids that would also
18 react to the test. Mainly, the one I'd like to focus on, and
19 I'd ask you to join me, is female urine. Urine on the bottom
20 or on a pair of female panties, not so shocking.

21 Then we got SLED DNA analyst, Donna Money. Ms. Money
22 took the stand, and she talked to us about what she did to
23 procure results in this case, to get the information that the
24 state presented to you and were provided. Now, she says she
25 found DNA. What she didn't say she found was sperm. And at

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1 the end of the day, she admittedly said that the DNA could be
2 epithelial cells, skin. And that she even went so far as to
3 agree when I said if I were to -- the grotesque way of wearing
4 someone else's underwear, their DNA would be their underwear,
5 and that same DNA would transfer to me when I put on the
6 underwear. That's transfer. That's how it gets to places
7 here it might not ordinarily be. Does it mean somebody had to
8 penetrate? Does it mean somebody had to do anything?

9 And I want to make this point at the risk of doing what
10 Mr. Martin just suggested to you all about beating the dead
11 horse. I'm gonna suggest to you that if you are willing to
12 acknowledge that the DNA in the rectum -- the state told you,
13 no sexual activity on **Minor's** part. So, if you're willing to
14 acknowledge that the DNA that's there in her rectum is from
15 some outside source somehow, then how can you not at least be
16 willing to seriously consider that the DNA that was found
17 inside of her and on her panties is not transfer DNA?

18 Now, I'm gonna start wrapping it up; I promise.

19 I stated in my opening that -- and the Judge has also
20 told you, Mr. Kehborn is innocent until proven guilty. And as
21 the state said, it is a high burden, and I told you that in my
22 opening. It shouldn't take an allegation without a lot more
23 that leaves you firmly convinced of his guilt to convict him.
24 It should take a lot to take away freedom.

25 Now, everything I've brought to your attention this

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CHARGE TO JURY

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1 morning -- I say this morning -- this afternoon, and even
2 during this trial the things I've tried to point out, all of
3 those things are reasonable doubt. Every single thing that I
4 point out to you is reasonable doubt. If you find any one of
5 them persuasive, that's reason enough to hold firm to your
6 conviction that he is not guilty of this.

7 You're called to deliberate as a group, but your personal
8 beliefs are very much an individual thing, and you're entitled
9 to it. And I mean that even if it's not a decision or a
10 belief that's in my favor. You're entitled to what you think
11 about the evidence once the Judge gives this case to you. You
12 don't have a duty to bend your will to someone else's.

13 So, for these reasons that I point out in my closing, I
14 ask you to return a verdict of not guilty.

15 Thank you so much for your time.

16 CHARGE TO JURY:

17 THE COURT: All right. Ladies and gentlemen, it's now my
18 duty and obligation to give you the law that you will apply to
19 the facts and evidence you've heard in this case. And I told
20 you at the very beginning, you're the judges of the facts. I
21 would not indicate to you in any way what I thought the facts
22 of the case are, and I believe I've stuck with that. If you
23 came into this courtroom with any preconceived ideas of what
24 the law is, what it ought to be, what it should be, what you
25 hoped it would be, you'll disregard that. You would take the

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1 law as I now give it to you and apply it to the facts and
2 evidence you've heard in this case.

3 I will remind you again one of your jobs, duties, and
4 responsibilities, judging the credibility and the
5 believability of the witnesses that have come before you and
6 testified under oath. In doing this, you can believe one
7 witness against several, several against one. You can believe
8 a portion of what a witness says and disregard the remaining
9 portion of it. If you've got a good and sound reason for
10 doing so, you can disregard in its entirety the testimony of a
11 particular witness. You consider whether or not that witness
12 has exhibited to you any kind of interest, motive, bias,
13 prejudice they may have in giving you that testimony. You can
14 consider their demeanor, how did they appear when they gave
15 you that testimony. Obviously, you consider the opportunity
16 for knowledge. How did they come about that information that
17 they gave to you.

18 This is a mental process, and the law requires that you
19 exercise your good common sense and your good judgment in
20 looking at the facts and the evidence. You have heard it
21 can't be the result of any kind of passion, prejudice, or
22 sympathy. You don't have any friends to reward or any enemies
23 to punish. It's got to be an examination of the facts and
24 evidence presented to you.

25 In this case and virtually every criminal case that is

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1 presented, there is two varieties of evidence presented.
2 Direct evidence, that's somebody telling you something, this
3 is what I saw or heard, this is what took place in my
4 presence. Circumstantial evidence is a chain of facts
5 indicating the existence of a fact. The law doesn't make any
6 distinction between the two, but if the state is gonna rely on
7 any kind of circumstantial evidence, those circumstances have
8 to be consistent with each other and when taken together point
9 conclusively to the guilt of the accused beyond a reasonable
10 doubt, because the state always has that burden of proving the
11 defendant guilty beyond a reasonable doubt.

12 I qualified two witnesses to give their opinions;
13 sometimes they're called expert witnesses. But what we're
14 really allowing them to do is give their opinion. Normally,
15 we don't allow people to give their opinion. They've got to
16 say this is what I saw, this is what I heard, this is what
17 took place in my presence. But some witnesses, by reason of
18 their training, education, experience, will allow them to give
19 their opinion but it doesn't give them any special status.
20 You judge all the witnesses the same. You judge everybody's
21 credibility and believability the same.

22 I'll remind you about testimony of children. When you
23 have a minor testifying, you're obviously judging credibility
24 and believability just like you do with all witnesses that
25 come before you. But, in the cases of minors testifying, you

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1 do have to also consider the age of the child; the child's
2 ability to observe, remember facts; the child's ability to
3 understand and answer the questions; and obviously, whether or
4 not you believe the child understood the seriousness of
5 appearing as a witness in a criminal trial; and whether or not
6 they understood the difference between lying and telling the
7 truth. It's up to you to make those decisions and that
8 evaluation and decide whether the minor understood the
9 questions and answers the questions truthfully.

10 A statement alleged to have been made by the defendant
11 was admitted into evidence by the Court. While I determined
12 it was admissible, meaning you could hear it, you again are
13 the judges of the facts. So, in that, a number of things you
14 have to determine. Did the defendant make the statement? If
15 he did, was it made by the defendant voluntarily, of his own
16 freewill? Was the statement caused by any kind of pressure,
17 force, fear, threats, coercion, or intimidation, hope or
18 promise of leniency or reward of any kind? You consider the
19 characteristics of the defendant, the details of the
20 statement. You also can consider age, education, or lack
21 thereof, mental ability, capacity, and the advice or lack
22 thereof regarding their constitutional rights, commonly called
23 the Miranda warnings. Regarding limiting or making a
24 statement that if you make a statement, any statement that you
25 make can be used against you in a court of law. You have the

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1 right to have a lawyer present. If you cannot afford one, one
2 will be appointed to represent you. You can stop making a
3 statement at any time, and there has to be some affirmative
4 recognition of an understanding of the Miranda warnings. As
5 with anything else, the state has the burden of proof, to
6 prove to you beyond a reasonable doubt it was an affirmative
7 statement of the defendant and in consideration of all these
8 matters.

9 I told you at the beginning, the defendant did not
10 appear. This is not a factor for you to consider at all. You
11 may not talk about it, you may not use it mentally in making
12 your decision. And why is that? The defendant hasn't
13 anything to prove to you. As I said, I tell juries all the
14 time they don't have to show up. The state has the burden of
15 proof. The defendant has nothing to show to you at all.

16 The presumption of innocence that every defendant in
17 every criminal case that's comes upon the defendant at the
18 time and charges levied or brought against them when they're
19 charged with a crime. It stays with that person unless and
20 until a jury says you are guilty of that crime beyond a
21 reasonable doubt. So, this presumption of innocence is with
22 the defendant now, and again stays with him unless and until
23 you decide he's guilty of the crime beyond a reasonable doubt.
24 By way of example, we liken this to the right to a robe of
25 righteousness. It is placed upon the shoulders of the

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1 defendant, and it stays on the shoulders of the defendant
2 unless and until the state rips that robe of righteousness
3 from the shoulders of the defendant by evidence that convinces
4 you of the guilt of the defendant beyond a reasonable doubt.

5 So, what's reasonable doubt? The kind of doubt that
6 would cause an ordinary, reasonable person to hesitate to act.
7 Proof beyond a reasonable doubt is proof that leaves you
8 firmly convinced of the defendant's guilt. Now, there are
9 very few things that we can know with absolute certainty. The
10 law doesn't require the state of South Carolina to give you
11 that kind of proof. But, what is required is, if based upon
12 your consideration of the facts and evidence presented, you
13 are firmly convinced that the defendant is guilty of the crime
14 charged, you must find the defendant guilty. On the other
15 hand, based upon the facts and evidence presented in this
16 matter you are not firmly convinced the defendant is guilty of
17 the crime charged, you must give the defendant the benefit of
18 the doubt and find him not guilty.

19 What's the crime the defendant is charged with, and what
20 does the state have to show to you beyond a reasonable doubt?
21 The defendant is charged with criminal sexual conduct with a
22 minor, second degree. The state has to prove to you beyond a
23 reasonable doubt that the defendant engaged in a sexual
24 battery with the victim.

25 A sexual battery is sexual intercourse, cunnilingus,

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1 fellatio, anal intercourse, or any intrusion however slight of
2 any part of a person's body or of any object into the genital
3 or anal openings of another person, except when medically
4 authorized.

5 The state then has to prove to you beyond a reasonable
6 doubt that the victim was 14 years of age or less but at least
7 11, in that timeframe, 11 to 14, and that the defendant was of
8 age, not a minor.

9 Consent, willingness, indifference, or ignorance on the
10 part of the minor victim, if any, as to what was taking place
11 does not affect the charge of criminal sexual conduct with a
12 minor in the second degree, because an unmarried woman under
13 the age of 16 cannot legally consent to sexual intercourse.

14 That, ladies and gentlemen, is the law. That's the law
15 you have to apply to the facts and evidence you have heard in
16 this case.

17 I'm gonna go over the verdict form with you. Very
18 straightforward, it's got the caption of the case, the state
19 of South Carolina versus John Peter Kehborn, Jr., criminal
20 sexual conduct with a minor, second degree, sexual battery.
21 On the charge of criminal sexual conduct with a minor second
22 degree, we, the jury, by unanimous consent find the defendant
23 -- and there's two choices. I had to put one before the
24 other; don't assign anything to that. Not guilty or guilty.
25 A place for the foreperson's signature. Today's date.

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BY THE COURT

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1 Unanimous, unanimous means exactly what you think it
2 means. It means 12/0; not 11/1, 10/2, any combination
3 thereof.

4 So, Madame Forelady, you take this verdict form, and you
5 check that appropriate block, and you sign your name and put
6 today's date or the proper date on there, you are telling the
7 Court every single member of the jury agrees that's their
8 verdict. So, after the clerk's representative reads the
9 verdict and asks the jury to affirm that that is their
10 verdict, every member of the jury will be able to raise their
11 right hand and say, yes, that is my verdict.

12 What I'm gonna ask that you do is I'm gonna ask the two
13 alternates to stay with us.

14 Madame Forelady, I'm gonna ask that you take the jury to
15 the jury room, do not, do not begin your deliberations until
16 the bailiff or the deputy brings into the jury room all of the
17 exhibits and the verdict form. Once that is done, you may
18 begin your deliberations.

19 Madame Forelady, take your jury to the jury room, please.

20 The two alternates, please stay with us.

21 (REPORTER'S NOTE: Jury exits courtroom @ 2:19 p.m. The
22 following takes place outside the presence of the jury.)

23 BY THE COURT:

24 THE COURT: All right. At this time is there any reason
25 from the state that the Court should not excuse the alternates

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BY THE COURT

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1 from their duties and responsibilities?

2 MR. MARTIN: No, Your Honor.

3 THE COURT: From the defense?

4 MS. WILSON: Nothing, Your Honor.

5 THE COURT: All right. Ms. Baker and Mr. Flaherty, I
6 want to thank you for your service in this particular case.
7 You might be surprised that we have to use alternates,
8 honestly, a lot. Somebody gets sick, something happens,
9 whatever, and we have to replace a juror. It just didn't
10 happen in this case, but that's why we have alternates,
11 because it happens on a regular basis. So, for us to be able
12 to proceed with the trial, we need 12, and that's why we have
13 alternates, and that's why we had to have y'all here in this.
14 Now, I'm going to excuse you from your jury service for
15 this week. You have earned your exemption from coming back to
16 Circuit Court jury duty for three years. So, if the fine
17 clerk of court sends you a notice, you tell you know when you
18 served and you get that exemption. Now, if your local City
19 Judge or County Magistrate or Federal Judge sends you a
20 summons, you got to go see them, you just don't have to come
21 see us. All right?

22 Thank you. You are now excused. Thank you.

23 (REPORTER'S NOTE: Alternate jurors exit courtroom @ 2:20
24 p.m.)

25 THE COURT: All right. Exceptions, deletions, additions

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VERDICT OF THE JURY

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1 to the charge from the state?

2 MS. ANDREW: Nothing, Your Honor.

3 THE COURT: From the defense?

4 MS. WILSON: Nothing, Your Honor.

5 THE COURT: All right. First, Counsel, I want to tell
6 you I want to thank both -- all three of you, obviously. I
7 was gonna say both sides, but anyway, all three of you for the
8 way you presented the case. You did everything that the Court
9 would expect you to do to present the matter to the jury in a
10 proper fashion, and I want to thank you for that.

11 And the final thing, please come up and make sure we've
12 got all the proper exhibits going to the jury, please.

13 Thank you.

14 MS. ANDREW: Thank you, Your Honor.

15 MS. WILSON: Thank you, Your Honor.

16 (REPORTER'S NOTE: Counsel reviews and consents to exhibits to
17 be presented to jurors. Exhibits delivered to jury @ 2:28
18 p.m. Deliberations commence @ 2:30 p.m.)

19 **RECESS - 2:29 P.M.**

20 *******OFF THE RECORD*******

21 **ON THE RECORD - 3:46 P.M.**

22 VERDICT OF THE JURY:

23 THE COURT: All right. Counsel, I understand that the
24 jury has returned a verdict in this matter. Is the state
25 ready to receive it?

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VERDICT OF THE JURY

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1 MR. MARTIN: We are, Your Honor.

2 THE COURT: And the defense?

3 MS. WILSON: Yes, sir.

4 THE COURT: All right. I'll just give my statement that
5 I always give at the time that we've received a verdict. I
6 don't know what the verdict is. We'll all receive it at the
7 same time. It will be received by everyone with respect and
8 silence. Thank you very much.

9 Ask the jury to come in, please.

10 (REPORTER'S NOTE: Jury enters courtroom @ 3:48 p.m.)

11 THE COURT: All right. Madame Forelady, has the jury
12 reached a verdict in this matter?

13 JUROR 221: Yes, Your Honor

14 THE COURT: All right. Very good. Could you hand the
15 verdict form to the clerk's representative, please, ma'am.

16 All right. Ma'am, you may publish the verdict.

17 THE CLERK: Indictment Number 2020-GS-26-02911, the State
18 of South Carolina, County of Horry versus John Peter Kehborn,
19 Jr. On the charge of criminal sexual conduct with a minor,
20 second degree, we, the jury, by unanimous consent find the
21 defendant guilty. Signed by Foreperson Alanda Lewis, dated
22 February the 16th, 2022.

23 Ladies and gentlemen of the jury, if this is your
24 verdict, please signify by raising your right hand.

25 (REPORTER'S NOTE: All jurors comply.)

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POLLING OF THE JURY

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1 THE CLERK: Thank you.

2 THE COURT: Thank you.

3 The jurors having confirmed their verdict by the raising
4 of their right hand.

5 Does the state wish the jury polled?

6 MR. MARTIN: No, Your Honor.

7 THE COURT: Does the defense wish the jury polled?

8 MS. WILSON: Yes, sir; Your Honor.

9 THE COURT: All right. Madame Clerk, you'll poll the
10 jury by their juror number only.

11 POLLING OF THE JURY:

12 THE CLERK: Please stand when I call your number. I will
13 ask you two questions. Once you answer them, you may be
14 seated.

15 Number 221. Is this your verdict?

16 JUROR 221: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR 221: Yes.

19 THE CLERK: Thank you.

20 Number 111. Is this your verdict?

21 JUROR 111: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR 111: Yes.

24 THE CLERK: Number 366. Is this your verdict?

25 JUROR 366: Yes.

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POLLING OF THE JURY

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1 THE CLERK: Is it still your verdict?
2 JUROR 366: Yes.
3 THE CLERK: Number 79. Is this your verdict?
4 JUROR 79: Yes, ma'am.
5 THE CLERK: Is it still your verdict?
6 JUROR 79: Yes.
7 THE CLERK: Number 291. Is this your verdict?
8 JUROR 291: Yes.
9 THE CLERK: Is it still your verdict?
10 JUROR 291: Yes.
11 THE CLERK: Number 89. Is this your verdict?
12 JUROR 89: Yes, ma'am.
13 THE CLERK: Is it still your verdict?
14 JUROR 89: Yes.
15 THE CLERK: Number 360. Is this your verdict?
16 JUROR 360: Yes.
17 THE CLERK: Is it still your verdict?
18 JUROR 360: Yes.
19 THE CLERK: Thank you.
20 Number 92. Is this your verdict?
21 JUROR 92: Yes.
22 THE CLERK: Is it still your verdict?
23 JUROR 92: Yes.
24 THE CLERK: 383. Is this your verdict?
25 JUROR 383: Yes.

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BY THE COURT

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1 THE CLERK: Is it still your verdict?
2 JUROR 383: Yes.
3 THE CLERK: Number 307. Is this your verdict?
4 JUROR 307: Yes, ma'am.
5 THE CLERK: Is it still your verdict?
6 JUROR 307: Yes, ma'am.
7 THE CLERK: Number 167. Is this your verdict?
8 JUROR 307: Yes.
9 THE CLERK: Is it still your verdict?
10 JUROR 307: Yes.
11 THE CLERK: Number 387. Is this your verdict?
12 JUROR 387: Yes, ma'am.
13 THE CLERK: Is it still your verdict?
14 JUROR 387: Yes, ma'am.
15 THE CLERK: Thank you.
16 THE COURT: The jury having affirmed their verdict after
17 being polled, anything else as to the jury from the state?
18 MR. MARTIN: No, Your Honor.
19 THE COURT: From the defense?
20 MS. WILSON: No, Your Honor.
21 BY THE COURT:
22 THE COURT: Ladies and gentlemen, I want to thank you for
23 your service in this particular matter. You did everything
24 that the Court asked you to do, that is to listen to all the
25 facts and evidence attentively and reach a unanimous verdict

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MOTIONS

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1 in this matter. I appreciate your service.

2 I am going to excuse you from your service for this week.
3 You have earned an exemption from coming back to Circuit Court
4 jury duty for three years. Now, so if you're fine clerk of
5 court sends you a jury notice, you can tell her that you did
6 serve within that three-year period of time. If you do get a
7 jury summons from your City Judge, County Magistrate, or
8 Federal Judge, you've got to go see them; you just don't have
9 to come see us.

10 So, with that, you are now excused.

11 Thank you very much.

12 (REPORTER'S NOTE: Jury exits courtroom @ 3:52 p.m.)

13 THE COURT: All right. Ms. Wilson, motion from the
14 defense?

15 MS. WILSON: Yes, sir, Your Honor.

16 MOTIONS:

17 MS. WILSON: At this time, Your Honor, I would make a
18 motion for a judgment in arrest of verdict. Just the basic
19 allegation or, I guess, statement that the jury's verdict is
20 against the greater weight of the evidence that has been
21 presented at trial.

22 THE COURT: Thank you, ma'am.

23 All right. After a finding of guilty by a jury, after
24 the Court having declined a motion for a directed verdict, the
25 motion to test the sufficiency of the evidence, motion for new

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MOTIONS

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1 trial. In this particular matter, I do find that there is
2 competent evidence to sustain a jury's verdict and, therefore,
3 respectfully decline to grant the motion for a new trial.

4 MS. WILSON: Thank you, Your Honor.

5 At this time, I would also, of course, again renew all
6 objections that I have made previously during trial.

7 THE COURT: Yes, ma'am.

8 And regarding all the renewed objections, the Court
9 reaffirms and reiterates all the rulings the Court previously
10 made, and those motions are again denied.

11 MS. WILSON: Thank you, Your Honor.

12 THE COURT: All right. This matter having been a trial
13 in absentia, or the defendant's absence, what the Court will
14 do is impose a sentence in this matter, and -- where is the --
15 right there. Very good.

16 MR. MARTIN: Court's indulgence, Your Honor.

17 THE COURT: Yes, sir.

18 All right. Be glad to hear ---

19 MR. MARTIN: May I approach, Your Honor?

20 THE COURT: Yes, sir, please.

21 I'll be glad to hear arguments from the state and the
22 defense before the Court imposes a sentence. Obviously, that
23 sentence will be sealed and will not be published until the
24 defendant is brought before the Court for a announcement of
25 the sentence.

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1 Now, and obviously again, at that point in time, whatever
2 the sentence is that the Court imposes, Ms. Wilson, you
3 obviously know that you have the right to argue against that
4 at that time again.

5 MS. WILSON: Yes, sir.

6 THE COURT: But I'll be glad to hear from the state at
7 this time.

8 MR. MARTIN: Your Honor, would you wish to hear from the
9 victim in this matter first?

10 THE COURT: However you would like to proceed, Solicitor.
11 And, yes, ma'am. I know that you have already testified
12 in this, but you must state your name for the record, please.

13 MS. Minor [REDACTED] [REDACTED]

14 THE COURT: Yes, ma'am. I'll be glad to hear from you.

15 MS. Minor [REDACTED] I feel as he should get as the most he
16 can get because of everything that he has done and all the
17 pain he's caused us.

18 THE COURT: Yes, ma'am. Thank you very much.

19 Yes, sir.

20 MR. MARTIN: I'll be brief, Your Honor.

21 As I placed on the record on Monday, the defendant was
22 arraigned on an offer of 12 to 15 years, that was actually his
23 second offer. He was first offered 10 years on a parole
24 eligible offense of criminal sexual conduct with a minor in
25 the third degree. Judge, you have heard from the victim.

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1 Obviously, her words are more powerful than mine will ever be.

2 We ask that Your Honor sentence the defendant accordingly.

3 THE COURT: Thank you.

4 Yes, ma'am, Ms. Wilson?

5 MS. WILSON: Thank you, Your Honor.

6 Your Honor, I don't know that there is much more of a
7 difficult case than one of this type. And in saying that, I
8 know the Court has a lot to balance here. What is justice?
9 Certainly, the jury has decided that Mr. Kehborn is guilty of
10 this offense. And in deciding that, he obviously has to pay
11 the price for being convicted and being found responsible for
12 this act against **Minor** And I would say to the Court
13 that there is a range on this offense of zero to 20 years. I
14 covered with Mr. Kehborn myself -- despite coming into this
15 case at a later point, I discussed with him myself the
16 collateral consequences associated with the conviction on this
17 charge, and I hope that I was clear to him. I try to be. But
18 this is a violent offense that is a most serious strike, no
19 suspended sentence, it's non-parolable, electronic monitoring
20 may be required, cannot foster or adopt a child, is required
21 to be on the sex offender registry. This is considered a
22 sexually violent offense. It's also a case that is required,
23 I think, to be on the child abuse registry. He is not of an
24 age to be YOA eligible, but it would not be eligible for that
25 program. And of course, he would not be PTI eligible, and DNA

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

421

1 would be required as is required of any felony in the state of
2 South Carolina. We discussed these things. He was aware of
3 these things.

4 With that being said, I still believe that somebody who
5 does not have a criminal history, who has never been accused
6 of or convicted before of harming another person should not
7 receive the maximum on this offense.

8 Now, I certainly understand why it might seem
9 appropriate, but I am proposing to the Court that there is a
10 range for a reason. I'm not saying to this Court that a
11 substantial sentence is inappropriate, although I think that
12 anyone would ask for less. But I think in light of his lack
13 of criminal history, the fact that there are no other such
14 allegations in -- on his record, that a less than the full
15 amount would not be unreasonable, and we are asking the Court
16 to consider something less than the full 20. This still is an
17 85 percent offense, and it is non-parolable. So, whatever he
18 does, he's doing the bulk of whatever the Court's sentence is.
19 And I am asking the Court for any -- I don't know if leniency
20 is the right word, but I would definitely say mercy that the
21 Court might be able to provide in this case.

22 Thank you.

23 THE COURT: Thank you, ma'am.

24 BY THE COURT:

25 THE COURT: All right. The Court has issued a sentence.

STATE V. KEHBORN - 2020-GS-26-02911
BY THE COURT

422

1 I have sealed the sentence, and the sentence is to be filed
2 with the clerk of court and only opened in the presence of the
3 defendant after he is brought to the Court.

4 Thank you very much.

5 MS. WILSON: Thank you, Your Honor.

6 MS. ANDREW: Thank you, Your Honor.

7 MR. MARTIN: Thank you, Your Honor.

8 THE COURT: And again, Counsel, I'll reiterate, I
9 appreciate how -- everything that y'all did in the
10 presentation of this case. Y'all both did and represented
11 your respective interests very well. Thank you.

12 MS. WILSON: Thank you, Your Honor.

13 MR. MARTIN: Thank you, Your Honor.

14 **ADJOURNED @ 4:03 P.M.**

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STATE V. KEHBORN - 2020-GS-26-02911
CERTIFICATE OF COURT REPORTER

423

1 C E R T I F I C A T E

2

3 I, the undersigned, Kay H. Richardson, Official Court
4 Reporter for the State of South Carolina, do hereby certify
5 that the foregoing is a true, accurate and complete Transcript
6 of Record of the hearing held in the case of State of South
7 Carolina John Kehborn, Jr., held in the Court of General
8 Sessions for Horry County, Horry County Courthouse, Conway,
9 South Carolina, on February 14-16, 2022.

10 I do hereby certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

12

13

14

15

16

Kay H. Richardson

17

Official Court Reporter

18

19

20

21 March 22, 2024.

22

23

24

25

March 22, 2024.

WITNESSES

Adam R Skellett Horry County Police Department

N. Gasque

ARREST WARRANT NUMBER

2020A2610201187

CDR: 0396 16-03-0655(B)

DOA: 5/27/2020

ACTION OF GRAND JURY

TRUE BILL

M. Boyd

AUG 12 2020

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2020GS2602911

The State of South Carolina

County of Horry

Mary-Ellen Walter

20H02447

COURT OF GENERAL SESSIONS

AUGUST, 2020 TERM

THE STATE

vs.

John Peter Kehborn Jr

W/ M

Longs, SC 29568

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: Clay Pinkerton

Indictment for

**CRIMINAL SEXUAL CONDUCT W/ A MINOR,
2ND DEGREE**

Jimmy A. Richardson, II, Solicitor

ORIGINAL

2020 AUG 13 PM 2:29
RENEE M. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
DATE RECEIVED FROM
GRAND JURY

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

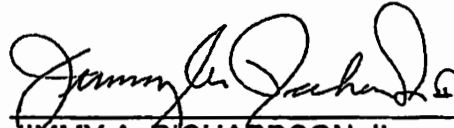
At a Court of General Sessions, convened on AUGUST 12, 2020, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE

CDR: 0396 16-03-0655(B)

That John Peter Kehborn Jr did, in Horry County, State of South Carolina, on or about May 26, 2020, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree by engaging in sexual battery with a minor who was at least fourteen (14) years or less but who was at least eleven (11) years of age, to wit: Minor Victim whose date of birth is [REDACTED], in violation of Section 16-3-655(B), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Horry

STATE

VS.

John Peter Kehborn Jr

AKA:

Race: WHITE Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020GS2602911A/W#: 2020A2610201187Date of Offense: 5/26/2020S.C. Code §: 16-03-0655(B)CDR Code #: 0396

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Criminal Sexual Conduct w/ Minor 2nd Degree, 11-14 (0-20)in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] SC101799
Marin, III, George Henry SC Bar # DefendantWilson, Kia T. SC Bar#
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Correction, ☐ County Detention Center,for a determinate term of 20 ~~days~~ ~~months~~ ~~years~~ ~~Time Served~~ ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years/Time Served and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. _____ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition

N. ELVIS
CLERK OF COURT
Horry County, SC

JUN 15 P 2:13

FILED
Horry County*Sex Offender Registry Required.*
*Child Abuse Registry Required.**Credit for time on ankle monitor.*
Credit Only to Pre-Trial Detention.
Credit for time in house arrest.

STATE VS. John Peter Kehborn Jr INDICTMENT/CASE#: 2020GS2602911

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment 0 _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 Beginning 7/15/42

§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$
☒ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ 40.00
	TOTAL	\$ 108.75

Clerk of Court/ Deputy Clerk: Renee Elvis
Court Reporter: Kay RichardsonPresiding Judge: _____
Judge Code: _____
Sentence Date: 2/16/22

Criminal Charging Document No. _____

**BAIL PROCEEDING
FORM II**STATE OF SOUTH CAROLINA
COUNTY OF Horry

IN THE General Sessions

STATE OF SOUTH CAROLINA

v.

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Kehborn, John Peter Jr

NAME OF DEFENDANT

Offense Charged: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg. -
[2020A2610201187]

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
- ☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: _____

Nature of Circumstances of Offense; Must Notify Court Immediately of Change of Address _____

(Considerations: Nature and Circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.)

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.

2. That the above named defendant be released from custody provided as follows (check all that apply):

CASH IN LIEU OF BOND☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of \$ _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.**CASH PERCENTAGE IN LIEU OF BOND**☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of \$ _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits \$ _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the state.**APPEARANCE RECOGNIZANCE WITH SURETY**☒ The defendant will provide good and sufficient Surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of \$ 20,000.

3. That the defendant shall appear at (check one):

☒ the term of COURT OF GENERAL SESSIONS beginning on August 21, 2020 at 8:30 o'clock, A.M.
at General Sessions - PO Box 677/1301 2nd Avenue/Conway, SC 29528 / (843) 915-5080
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on _____ at _____ o'clock, _____
at _____
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.Bond Amount(s): \$20,000.00 (CS) or \$20,000.00 (SB)

INITIALS OF DEFENDANT _____

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

SIGNATURE OF JUDGE _____

05/27/2020

DATE

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED

SCCA/511A (Revised 3/2012)

Original Copy For The Trial Court - Copy For The Defendant

PENGAD 800-631-6989	COURT'S
	EXHIBIT NO. <u>1</u>
	IDENTIFICATION/EVIDENCE
	DKT.# <u>K44</u>
DATE: _____	

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

ADDRESS		SIGNATURE OF DEFENDANT
CITY/STATE/ZIP	TELEPHONE	DATE
SOCIAL SECURITY NUMBER	DRIVER'S LICENSE OR ID NUMBER	ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

- a. ☐ Placement in custody. The defendant is placed in the custody of: _____
NAME OF PERSON OR ORGANIZATION
- ADDRESS _____ CITY/STATE _____ ZIP _____ TELEPHONE _____
- who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.
- SIGNATURE OF CUSTODIAN (IF APPROVED) _____ DATE _____
- b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions: _____
- c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ AM/PM to _____ o'clock, _____ AM/PM
on _____ DATE(S) on condition that he return to the custody of _____ NAME OF PERSON OR ORGANIZATION
at _____ LOCATION as designated.
- d. ☐ Other conditions. The defendant will comply with the following other conditions of release: _____

APPEARANCE RECOGNIZANCE WITH SURETY

On the 10 day of 9, 2010, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$ 20,000, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

Browder Bail Bonds	
NAME OF SURETY BONDSMAN COMPANY	TELEPHONE
401 Moss Pond Rd.	
Myrtle Beach, SC	
843-318-9368	
CITY/STATE/ZIP	
Palmetto Surety Corp. 75	
Port City Landing Suite 130	
Mt. Pleasant, SC 29464	
NAME OF INSURANCE COMPANY	
ADDRESS OF INSURANCE COMPANY	
CITY/STATE/ZIP	

SIGNATURE OF SURETY BONDSMAN
SIGNATURE OF JUDGE
DATE

POWER AMOUNT

\$25,000.00

POWER OF ATTORNEY

PALMETTO SURETY CORPORATION

PSC

25-880343

75 Port City Landing, Suite 130, Mount Pleasant, SC 29464

KNOW ALL MEN BY THESE PRESENTS: that PALMETTO SURETY CORPORATION, a corporation duly authorized and existing under the laws of the State of South Carolina, does constitute and appoint the below named agent its true and lawful Attorney-In-Fact for it and in its name, place and stead, to execute, and deliver for and on its behalf, as surety, a bail bond only.

Authority of such Attorney-In-Fact is limited to appearance bonds. No authority is provided herein for the execution of surety immigration bonds or to guarantee alimony payments, fines, wage law claims or other payments of any kind on behalf of below named defendant. The named agent is appointed only to execute the bond consistent with the terms of this power of attorney. The agent is not authorized to act as agent for receipt of service of process in any criminal or civil action.

This power is void if altered or erased or used in any combination with other powers of attorney of this company or any other company to obtain the release of the defendant named below or to satisfy any bond requirement in excess of the stated face amount of this power. This power can only be used once. The obligation of the company shall not exceed the sum of

Twenty Five Thousand Dollars and Zero Cents

and provided this Power-Of-Attorney is filed with the bond and retained as a part of the court records. The said Attorney-In-Fact is hereby authorized to insert in this Power-Of-Attorney the name of the person on whose behalf this bond was given.

IN WITNESS WHEREOF, PALMETTO SURETY CORPORATION has caused these presents to be signed by its duly authorized officer, proper for the purpose and its corporate seal to be hereunto affixed this 10 day of Sept 2020

Bond Amount \$ 20,000.00 Appearance Date Call the at

Defendant: John Peter Rehborn Jr

Court GS

Case # 2020A2610201187

Case # _____

Case # _____

County Horry City CW St. SC Zip 29528

Offense Sex IVP

Offense _____ IVP

Executing Agent Josh Art Brown IVP

Premium \$ _____

2020 SEP 18 PM 5:00
CLERK OF COURT
Horry County SC

PALMETTO SURETY CORPORATION



James B. Miller

Chief Executive Officer

2020A2610201187 / Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive
- Second deg.

John Peter Kehborn Jr

May 27, 2020

INFORMATION REGARDING YOUR RIGHTS

You have been charged with a criminal offense and if you are found guilty, you are facing serious consequences which may include payment of a fine, loss of your driver's license, and the possibility of a jail sentence. In addition, you may face increased penalties for later convictions, the loss of your right to possess firearms and/or ammunition, and your immigration status will be affected. You have important constitutional rights, including the right to representation by an attorney, but you may lose these rights or waive them if you do not act to protect these rights.

You have the right to hire an attorney to represent you in every case. If you cannot afford an attorney, you may be eligible for a free attorney. If you want a determination made as to whether you are qualified for a free lawyer, then it is your obligation to be screened at the location identified in Paragraph 5(c) of the Bond Checklist Form that you received after your Bond Hearing. If you do not hire an attorney or go to be screened, then you may be found to have waived your right to an attorney at your trial.

You also have the right to represent yourself. However, you should be aware that self-representation can be dangerous. For example, there may be certain factual or legal defenses to your charge that you are not aware of or legal issues related to the conduct of your trial or guilty plea that an attorney would know how to preserve for an appeal. If you exercise your right to proceed without a lawyer, then you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.

If convicted on the charge(s) filed against you and ordered to pay a fine, you may request a reasonable scheduled payment plan to pay the fine.

It is your obligation to keep up with your trial date and to obtain an attorney, either by hiring one or by being screened and found eligible for a court-appointed attorney prior to your trial date. If you do not appear at your trial with your attorney, you may be deemed to have waived your right to have an attorney represent you.

You are required to keep the court notified of any change of address until the completion of the case.

Signature of Defendant 

☐ Defendant Refused to Sign

John Peter Kehborn Jr

County Of Horry

Case Number/Charge: 2020A2610201187/Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.	Trial Court: General Sessions Initial Appearance July 31, 2020 @1PM

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND IS SET BY A JUDGE. Magistrates and municipal judges must also use the Checklist on those offenses, for which bond cannot be set by a summary court judge ("non-bailable"), that are GENERAL SESSIONS OFFENSES IN WHICH THEY ARE CONDUCTING FIRST APPEARANCES. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. **Defendant must initial where indicated, sign, and be provided a completed copy of this form.**

☒ BAIL PROCEEDING/☐ FIRST APPEARANCE BEFORE A MAGISTRATE OR MUNICIPAL JUDGE
OFFENSES THAT ARE NON-BAILABLE BY A SUMMARY COURT JUDGE)

1. Form used at bail proceeding ☐ Bond Form I (personal recognizance) ☒ Bond Form II (surety, cash, percentage)
☐ None (Non-Bailable Offense) because ☐ charge carries penalty of life or death; or
☐ defendant charged with violent offense while bonded out

on violent offense

2. JP (Def. Initials) For cases in which bond was set, defendant was informed:
☒ a. Warrant for arrest may be issued for violation of any condition of bail bond order.
☐ b. His right and obligation to be present at trial and that trial may proceed in his absence if he fails to attend.
☒ c. Failure to appear in court as required may result in institution of additional criminal charges. S.C. Code Ann. § 17-15-90 (2014). Failure to appear in connection with a felony, or while awaiting sentence after conviction, carries an additional penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, carries an additional penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above may result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.

3. JP (Def. Initials) For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

☐ Orally ☒ In writing {NOTE: Defendant must be informed of right both orally and in writing.}

- ☒ 4. JP (Def. Initials) Defendant was informed of the right to trial by jury.

5. JP (Def. Initials) In all general sessions cases, in all domestic violence cases, and in all magistrate or municipal cases in which the defendant is subject to a prison sentence, defendant was informed of the following:

- ☒ a. Charges against defendant and nature of the charges.
☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.

John Peter Kehborn Jr

BC35

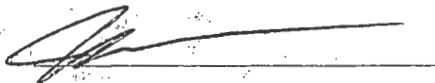
SCCA/507A (Rev. 11/2017)

- ☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court-appointed counsel if indigent (must meet guidelines set forth in Rule 602(b), SCACR) and instructions on how to obtain court-appointed counsel. In order to apply for court-appointed counsel, defendant is required to appear before Office of Public Defender located at 114 Laurel Street Conway SC 29526 for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening unless that fee is waived or reduced pursuant to §17-3-30(B).
- ☒ 6. (Def. Initials) In all domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
- ☒ 7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.
- ☒ 8. Defendant is required to keep court notified of any change of address until final disposition of charge(s).

First
 Appearance or August 21, 2020
 Bond Hearing 8:30 AM
 Date



Judge's Signature



Defendant's Signature

May 27, 2020

☐ Defendant refused to sign.

FILED
 2020 SEP 18 PM 3:01
 RENEE N. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

**J. REUBEN LONG DETENTION CENTER
HOME DETENTION SECTION**

4150 J. Reuben Long Avenue
Conway, South Carolina



Office: 843-915-6903
Fax: 843-915-6146

Phillip E. Thompson, Sheriff
Marcus Rhodes, Director

ORDER FOR HOME DETENTION

Please complete this form and fax to the Home Detention Section at 843-915-6146

FILED
 2020 SEP 18 PM 3:01
 RENEE R. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

Court Ordering Home Detention: Summary ☒ Circuit ☐ Family ☐

Defendant's Name: John Peter Kohborn Jr

Warrant Number(s): 2020A2610201187

Type of Monitoring Ordered: Home Detention ☒ Alcohol Monitoring ☐

Please list **special conditions**: (Home Detention standard conditions apply as per SC Home Detention Act):

Note: All special conditions of bond must be documented below.

No Contact w/ Minors except 7 year
old son w/ Supercasa

☐ GPS Monitoring (Private Agencies) if the defendant will be residing outside of Horry County or if the court requires GPS Monitoring, this option should be used.

The defendant shall be monitored by a private GPS Monitoring Company selected and/or approved by the Horry County Sheriff's Office Home Detention Section.

For the purposes of "Escape" under the South Carolina Code of Law 24-13-410, "custody" of the defendant shall remain with the J. Reuben Long Detention Center/Horry County Sheriff's Office, Home Detention Section, while being monitored/supervised through agents of the monitoring company ordered by the court.

Presiding Judge/Solicitor: [Signature] Date: May 27, 2020

(Note: Any violation of the Home detention Agreement may result in incarceration of the participant pending a Hearing in the Court of Record.)

Monitoring cost reference

Horry County Sheriff's Office/ J. Reuben Long Detention Center requires one month (4 Weeks) prepayment of fees which include the first month's participation in the Home Detention Program, as well as a one-time administrative fee of \$25.00.

Home Detention: \$280.00 per month

Alcohol Monitoring: \$336.00 per month

Private GPS Monitoring Fees: Shall be determined and set by the respective Private Monitoring Agency.

Participant Signature: [Signature] Date: 5-27-2020

Revised May 2020

STATE OF SOUTH CAROLINA)

IN THE SUMARRY COURT

COUNTY/CITY OF HORRY)

State of South Carolina)

ORDER

VS)

SPECIAL CONDITIONS OF BOND

John Peter Kehborn Jr)

Defendant)

2020 SEP 18 PM 3:01
 FILED
 RENEE N. LAVIS
 CLERK OF COURT
 HORRY COUNTY, SC

This matter is before me to add Special Conditions to the Defendant's Bond. The Defendant is before me at this time for the purpose of setting Bond on his/her arrest for the crime(s) of:

CASE NUMBER:

OFFENSE:

2020A2610201187

Sex/Criminal sexual conduct with minor, or Attempt-victim 11 to 14 yrs of age

The alleged victim in this case is:

Ayla Price (minor)

Due to the nature of the charges against the Defendant, the Court hereby Orders the following Special Conditions of the Bond in addition to those noted on the initial Bond Order:

☐ The Defendant is to undergo substance abuse counseling and treatment. The Defendant is to notify the Court of the program he/she is participating in and agree to report on his/her attendance and completion status.

☐ The Defendant cannot have any firearms in his/her possession; and is to immediately turn over to law enforcement any and all firearms within his/her possession or under his/her control.

☒ The Defendant is not to go near the victim's home or workplace or _____; and is not to have or attempt to have any contact with the victim either directly or indirectly (thought mail, by telephone, though the delivery of any message or item by any means, etc.)

☐ It is further Ordered: _____

I acknowledge these conditions of bond and understand that if I am found in violation of any condition I will be subject to immediate arrest, and /or additional criminal charges, and will be brought before this court for a bond revocation or contempt hearing. I understand any possession or attempt to posse a weapon during the term of his order will be in violation of Federal Law reference in 18 USC922 (g). I also understand that if I violate the no trespass notice, will be subject to immediate arrest for trespass after notice.

**I ACKNOWLEDGE THESE ADDITIONAL
 CONDITION OF BOND:**

[Signature]

Judge
 Bond Court

[Signature]
 Signature of Defendant

ORDER

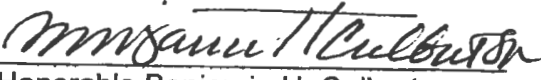
ref

5
2

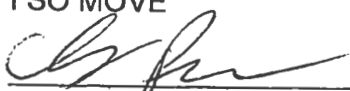
KAM

AND IT IS SO ORDERED

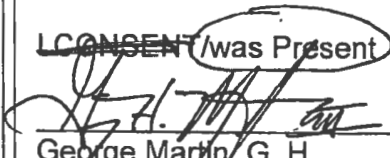
DATED: June 16, 2021
CONWAY, SC


Honorable Benjamin H. Culbertson
PRESIDING JUDGE OF GENERAL
SESSIONS FIFTEENTH JUDICIAL CIRCUIT

I SO MOVE


Clay Pinkerton
PUBLIC DEFENDER FOR THE DEFENDANT
203 LAUREL STREET
CONWAY, SC 29526
843-915-5385

~~LCONSENT~~ was Present


George Martin G. H.
ASSISTANT SOLICITOR

FILED
HORRY COUNTY
JUN 18 A 9:02
RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY)
INDICTMENT: 2020GS2602911
WARRANT: 2020A2610201187
STATE OF SOUTH CAROLINA)
VS.) ARRAIGNMENT FINDINGS
JOHN PETER KEHBORN JR)
DEFENDANT)

FILED
HORRY COUNTY
RENEE N. LEVINSKY
CLERK OF COURT
HORRY COUNTY, SC
JUN 15 2021

THIS MATTER comes before the Court on motion of George Henry Martin, III, on behalf of the Solicitor for the Fifteenth Judicial Circuit, to determine if the defendant intends to plead guilty or not guilty to the charges above-referenced, and to assist in scheduling a proposed trial date should the defendant wish to exercise his or her right to a trial. The defendant and his or her attorney, Clay Pinkerton, are present before the Court.

Based upon the inquiry of the Court and the representations of the defendant, defense counsel, and counsel for the state, the Court makes the following findings and conclusions:

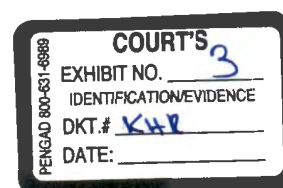
1. That the defendant has been fully informed of the State's plea offer.
2. That the defendant has had adequate time to discuss the State's plea offer with defense counsel and that after careful consideration, the defendant has rejected the plea offer of the state.
3. That the defendant understands and acknowledges that the State has withdrawn its plea offer, and that the State will not re-offer the plea on some future date.
4. That the defendant and defense counsel have considered possible conflicts of interest and have determined that none are known at this time.
5. That there are no unusual or exceptional circumstances known to the defense or the State at this time that would cause unreasonable delay in the trial of this case.
6. That the State and the defense have indicated both parties intend to be ready for trial during the AUGUST, 2021 terms of Court.

THE ABOVE FINDINGS AND CONCLUSIONS are made this 15 day of June, 2021.

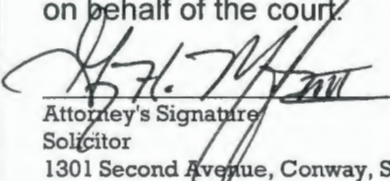
Margaret T. Culbertson

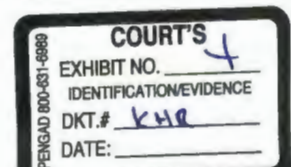
Presiding Judge of the Circuit Court
Fifteenth Judicial Circuit

Conway, South Carolina



SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA COURT OF GENERAL SESSIONS The State of South Carolina -v- John Peter Kehborn Jr	COUNTY: HORRY CASE #: 20H02447 WARRANT #: 2020A2610201187 INDICTMENT #: 2020GS2602911 SUBPOENA FOR ☒ PERSON ☐ DOCUMENT(S) OR OBJECT(S)
TO: JOHN PETER KEHBORN JR 	
☒ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.	
PLACE Horry County Judicial Building 1301 Second Avenue Conway, SC 29526	COURTROOM GENERAL SESSIONS THIRD FLOOR DATE AND TIME: FEBRUARY 14, 2022 THRU FEBRUARY 18, 2022 AT 9:00AM Each Day This Term of Court or Until Disposition of Case
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).	
LIST DOCUMENT(S) or OBJECT(S): **PLEASE DO NOT BRING CELL PHONES, PAGERS, OR WEAPONS OF ANY TYPE (i.e. KNIVES) TO COURT.**	
This subpoena shall remain in effect until you are granted leave by the court or by an officer acting on behalf of the court.	
 Attorney's Signature Solicitor 1301 Second Avenue, Conway, SC 29526 (843) 915-8662 or (843) 915-5460	<u>12/7/21</u> Date <u>George Henry Martin, III, Assistant Solicitor</u> Print Name
Clerk of Court or (By) Deputy Clerk	DATE DECEMBER 7, 2021
Pro Se Defendant's Name, Address and Telephone Number (If Issued by Clerk for Pro Se Defendant)	



204024476#m

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
 STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS
 OF THE FIFTEENTH JUDICIAL CIRCUIT
 NOTICE OF DEFENDANT'S
 CHANGE OF ADDRESS

-VS-

ATTORNEY: CLAY PINKERTON

JOHN KEHBORN
 DEFENDANT

FILE NO: 26A20-00002060

SSN: [REDACTED]

TO: SOLICITOR FOR THE FIFTEENTH JUDICIAL CIRCUIT

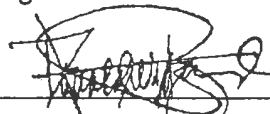
PLEASE TAKE NOTICE that the above named Defendant has changed his/her mailing address and hereby notifies you as is required pursuant to his/her bond and requests that all further notices be sent to the following address:

✓ John Kehborn
 [REDACTED]
 [REDACTED]

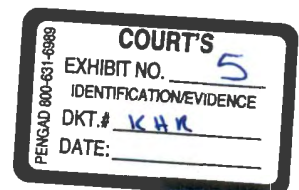
FILED
 2020 DEC 14 PM 12:43
 CLERK OF COURT
 15th JUDICIAL CIRCUIT
 CONWAY, SC

The Defendant has the following pending charges:

2020A2610201187 Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.


 RONALD W. HAZZARD
 15th CIRCUIT PUBLIC DEFENDER
 203 LAUREL STREET
 P.O. BOX 1666
 CONWAY, SC 29528

DATED: December 04, 2020



FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

John Kehborn 388160
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2023CP2603861

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS--READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention SCDC Allendale Correctional Institute
2. Name and location of Court which imposed sentence Horry County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) ~~Not known~~ 20-GS-2602911
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 6-11-22
 - (b) 20 Years

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. NA
- ii. _____
- iii. NA
- (c) the date of each such result:
- i. NA
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I requested for my attorney to file
- (b) my appeal and she did not.
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

FILED
Horry County
2023 JUN 20 P 3:58
RENEE M. ELVIS
CLERK OF COURT
Horry County, SC

(a) See Attachment

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Attachment

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. NA

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. NA

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. NA

ii. _____

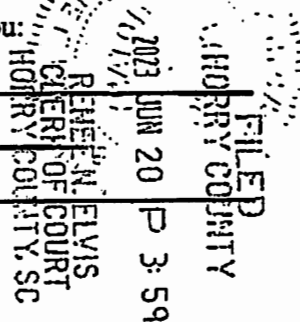
iii. _____

FILED
JERRY COUNTY
MAR 20 P 3:58
KIMBERLY H. ELYS
CLERK OF COURT
JERRY COUNTY, SC

- iv. _____
- (d) the date of each such disposition:
- i. NA
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NA
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. NA
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. NA
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) NA
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

FILED
Horry County
2023 JUN 20 P 3:59
CLERK OF COURT
Horry County, SC

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Kia Wilson
- ii. Clay Pinkerton - Fired and turned into Bar Assoc.
- iii. 203 Laurel St, Conway, SC 29526
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Conviction overturned - New Trial
20. Are you now under sentence from any other court that you have not challenged?
NO



2023CP2603861

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

I, John Kehborn, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature] 388760

SWORN to and subscribed before me this 16th
day of June, 2023

Dustin Phillips (L.S.)
Notary Public

My Commission Expires: 7-10-24

FILED
HORRY COUNTY
2023 JUN 20 P 3:59
RENEE H. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

2023CP260 3861

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, John Kehborn, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

John Kehborn 388160
Applicant

SWORN or affirmed to and subscribed before me this
15th day of June, 2023

Debbie Phillips
Notary Public

My Commission Expires: 7-10-2024

FILED
HORRY COUNTY
2023 JUN 20 P 3:59
RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, SC

State of South Carolina

John Kehborn 388160
applicant,

IN THE COURT
OF COMMON PLEAS
2023CP2603861

VS

7

State of South Carolina

7 Allegations For
Post Conviction Relief

This matter comes before the Court pursuant to title [17-27-80-90] of the Uniform Post Conviction Relief Act.

Allegations of relief is sought in concerns of questions 10-11 see [Attachment].

From the below allegations the Applicant respectfully request for ineffective assistance of trial counsel.

10A I was denied effective assistance of counsel after trial due to my attorney not filing my direct appeal after I requested her to do so.

10B Violation of the Sixth (6) to the United States Constitution. Ineffective Assistance of Counsel.

John Kehborn 388160

10C Violation of the Fourteenth (14th) Amendment
Due Process of Law

11A I told my attorney [Kia Wilson] face to face to file my direct appeal. She immediately told me to call her office as soon as I was back at the jail as a reminder to her. I called my attorney per her request using the inmate phone system. This call should be logged in both the inmate phone system and the public defender front desk computer as well as the public defender phone log. In April of 2023 it was discovered by my brother that the notice to appeal was never filed.

The Public Defender's failure to file notice of appeal prejudiced me by denying my right to appeal.

John KH 388160

On the 15th day of June 2023,

Notary - Debbie Phillips

Notary Expires 7-10-2024

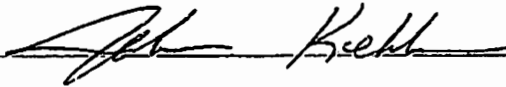
Horry County, Clerk of Courts, Renee N. Elv's

Reference: Post-Conviction Relief Application

Dear Honorable Clerk: Renee N. Elv's

I am requesting that this (PCR) application be filed within your office, Please send me a copy of proof of service. Thank you for your time and assistance.

Respectfully Submitted,
John Kuhn 388160

 Kuhn

On the 15th day of June 2023

Notary - Debra Phillips

Expiration - 7-10-2024

FILED
HORRY COUNTY
2023 JUL 20 P 3:59
RENEE N. ELV'S
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

John Kehborn, Jr., #388160,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2023-CP-26-03861

**RETURN AND
PARTIAL MOTION TO DISMISS**

(Counsel Appointed)

FILED
HORRY COUNTY
APR 15 2023 4:07
RENEE S. SLYVINSKY
CLERK OF COURT
HORRY COUNTY

The State of South Carolina (“Respondent” or “the State”) hereby makes its Return¹ to the post-conviction relief (“PCR”) action filed by John Kehborn Jr. (“Applicant”) on June 20, 2023. Respondent would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined to the South Carolina Department of Corrections (“SCDC”), serving a twenty (20) year sentence. On August 12, 2020, the Horry County Grand Jury indicted Applicant for criminal sexual conduct with a minor – second degree (victim aged 11 to 14) (2020-GS-26-02911). On February 14-16, 2022, Applicant proceeded to a jury trial before the Honorable Steven H. John. Assistant Solicitors George H. Martin, III, and Leigh A. Waller prosecuted the case. Applicant was represented by Kia T. Wilson, Esq. (“Counsel”).

Applicant was convicted as indicted. Judge John sentenced Applicant to twenty (20) years for criminal sexual conduct with a minor – second degree. Applicant did not appeal.

¹ Respondent’s Return was due to be filed within ninety days of receipt. *See* Rule 12(a), SCRPC (“[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.”) Now, having completed the Return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this Return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that “respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application”); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court).

II. CURRENT APPLICATION

In his current PCR application, Applicant alleges he is being held unlawfully based on the following:²

- I. Belated Appeal: Counsel failed to file an appeal when Applicant requested.
- II. Ineffective Assistance of Counsel: Counsel did not file a direct appeal after Applicant requested.

Applicant requests relief as follows: new trial.³

Attached to this Return and incorporated herein are the records of the Horry County Clerk of Court records regarding the subject convictions, Applicant's records from SCDC, and the PCR application. The State reserves the right to amend this Return upon receipt of any relevant materials.

III. MOTION TO DISMISS ALL CLAIMS EXCEPT BELATED APPEAL ALLEGATION

The State moves to dismiss all of Applicant's PCR claims, except the allegation regarding a belated appeal, for failure to comply with the Statute of limitations. Summary dismissal of an application [or claim] is appropriate if (1) it is apparent on the face of the application that there is no need for a hearing to develop facts, and (2) the applicant is not entitled to post-conviction relief. S.C. Code Ann. § 17-27-70(b)-(c) (2014); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). When considering the State's motion for summary dismissal, the court must assume the facts presented in the application are true and view those facts in the light most favorable to the Applicant. *Leamon*, 363 S.C. at 434, 611 S.E.2d at 495.

² Unless quoted, Applicant's allegations have been summarized for brevity and clarity.

³ If this Court finds Applicant did not voluntarily waive his right to a direct appeal, the appropriate remedy is to grant a belated appeal. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). If this Court finds a defect in the original proceedings, the appropriate remedy is to grant a new trial on the original indictments. *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating the relief to be granted is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) ("We now clarify the proper remedy is a new trial").

A PCR application must be filed within one (1) year of the conviction or within one (1) year of the remittitur to the lower court from an appeal, whichever is later. S.C. Code Ann. § 17-27-45(A) (2014). The statute of limitations applies to PCR applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). Ignorance of the statute of limitations for filing a PCR application is not an excuse for late filing. *Leamon*, 363 S.C. at 435, 611 S.E.2d at 496. There is an exception to the statute of limitations where an Applicant did not knowingly and voluntarily waive his right to appeal his trial conviction. *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002).

Applicant filed this PCR application untimely. Applicant was convicted on February 16, 2022. To be timely, Applicant's PCR was due by February 16, 2023. Applicant filed his application on June 20, 2023, outside of the one (1) year statute of limitations. As a result, this application is barred by the statute of limitations. However, the statute of limitations does not bar Applicant's allegation that he did not knowingly and voluntarily waive his right to a direct appeal. Thus, all other claims should be dismissed for failure to comply with the statute of limitations, and Applicant is entitled to an evidentiary hearing solely on the belated appeal issue.

IV. RESPONSE TO APPLICANT'S BELATED APPEAL ALLEGATION

Applicant alleges he did not knowingly and voluntarily waive his right to a direct appeal from his trial conviction. Following a trial, counsel is required to inform a defendant of their right to an appeal. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). Absent an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedures of *Anders v. California*, 386 U.S. 738 (1967). *Turner v. State*, 380 S.E.2d 223 (2008). Where the PCR judge determines that Applicant did not knowingly and voluntarily waive his right to a direct appeal from his trial, Applicant may be allowed a belated appeal of trial errors. *White*, 263 S.C. 110, 208 S.E.2d

35; *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988).

V. REQUEST FOR AN EVIDENTIARY HEARING

Because the record likely does not refute or disprove Applicant's belated appeal allegation, additional testimony is likely needed to resolve the issue. Therefore, the State requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

VI. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Applicant's attorney is required to file amendments to this application, as necessary. Rule 71.1(a), SCRCPP; *see* Rule 11, SCRCPP. *Pro se* filings should not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State, or alternatively, the State will request a continuance in the matter.⁴ If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss any claim(s) or allegation(s). S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCPP; *see also* Rules 15(a)-(b), SCRCPP.

Pursuant to S.C. Code Ann. § 17-27-150 (2014), Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all

⁴ *See Love v. State*, 428 S.C. 231, 245, 834 S.E.2d 196, 203 (2019) (Kittredge, J., dissenting) ("If, however, the proposed amendment... would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments").

potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing.

VII. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its partial motion for summary dismissal as set forth in section IV, and thereafter, convene an evidentiary hearing on the belated appeal issue pursuant to *White v. State*.

Respectfully submitted,

ALAN WILSON
Attorney General

DON ZELENKA
Deputy Attorney General

BRYAN T. HALL
Assistant Attorney General

By:



ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29212

April 11, 2024

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

John Kehborn, Jr.
SCDC No. 388160

Applicant,

v.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2023-CP-26-03861

Certificate of Service by Mail

FILED
HORRY COUNTY
2024 APR 15 P 4: 08
RENEE M. ELYS
CLERK OF COURT
HORRY COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Partial Motion to Dismiss for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Steven W. Fowler, Esquire
730 Main Street, Unit 237
North Myrtle Beach, SC 29582

DATED this 11th day of April 2024.


Dellene Lizama, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2023-CP-26-03861
John P. Kehborn, Jr.,	)	
	)	
Applicant,	)	Transcript of Record
	)	
vs.	)	
	)	JULY 31, 2024
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

B E F O R E:

Honorable Deadra L. Jefferson
Horry County Courthouse
Conway, South Carolina

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

Steven W. Fowler, Esquire
Attorney for Applicant

Bryan T. Hall, Esquire
Attorney for Respondent State

Sallie Beth Todd
Official Court Reporter

1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	JOHN P. KEHBORN, JR.				
4	By Mr. Fowler	6		25	
5	By Mr. Hall		22		
6					
7	KIA T. WILSON				
8	By Mr. Hall	29			
9	By Mr. Fowler		37		
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14	Certificate of Court Reporter.....				57
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16	<u>E X H I B I T S</u>				
17	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>
18	(THERE WERE NO EXHIBITS OFFERED DURING THIS HEARING)				
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1 **THE COURT:** This is the State -- John P. Kehborn, K-E-H-
2 B-O-R-N, Jr. versus the State, 2023-CP-26-3861. Mr. Fowler
3 represents the applicant; the state is represented by Mr.
4 Hall.

5 Mr. Fowler was appointed on July 25th of 2023. Post
6 Conviction Relief Application was filed on 6/20 of 2023. I
7 have a transcript of the trial which took place on February
8 14th through 16th of 2022. The state has filed a return and
9 partial motion to dismiss 4/15/2024.

10 At trial Mr. -- the applicant was represented by Ms. Kia
11 Wilson of the public defender's office. Basically his claim
12 is that a direct appeal was not filed after request. He makes
13 some generalized allegations about the 6th and 14th Amendment,
14 and again reiterates about the filing of an appeal.

15 He was convicted on Criminal Sexual Conduct with a Minor
16 Second Degree, Age 11 to 14. He was sentenced to 20 years in
17 the State Department of Corrections. Of course registry is
18 required and he will be subject to civil commitment at the
19 time of his potential release, as well as the Judge required
20 child abuse registry. He also got credit for pretrial
21 detention while on GPS, as well as credit pursuant to 24-13-
22 40.

23 The indictment was true billed August 12th of 2020. It
24 appears that he was tried in his absence and the sentence was
25 sealed by Judge John. And that sentence was pronounced on

1 2/16/2022. The State was represented by George Henry Martin,
2 III and Leigh Andrew Waller.

3 When was Mr. Kehborn picked up and his sentence imposed?

4 **MR. HALL:** One moment, Your Honor. Your Honor, it's my
5 understanding that Mr. Kehborn was picked up in June of 2022,
6 yes, June of 2022.

7 **THE COURT:** Do we know what date in June of 2022?

8 **MR. HALL:** Your Honor, I'm not sure, but the sentence was
9 unsealed on June 22nd of 2022.

10 **THE COURT:** Mr. Fowler, do you know when your client was
11 picked up on the bench warrant as a result?

12 **MR. FOWLER:** No, I do not, Your Honor. I can ask him.

13 **THE COURT:** That would be helpful.

14 **MR. FOWLER:** Your Honor, he indicates that he does not
15 know.

16 **THE COURT:** CMS says the bench warrant was served on June
17 28th of 2022, so I don't think the sentence could have been
18 unsealed and imposed before that date because they would have
19 had to have picked him up on the bench warrant to impose the
20 sentence. So tell me -- and this PCR is on the limited issue
21 of whether Mr. Kehborn is entitled to a belated appeal; is
22 that accurate?

23 **MR. HALL:** Yes, Your Honor. The State is moving to
24 dismiss all other claims and allegations for ---

25 **THE COURT:** I didn't see any in his application other

1 than the appeal.

2 **MR. HALL:** Your Honor, we just made the motion just in
3 case we got here at the hearing and Mr. Kehborn decided to
4 amend or raise any new allegations.

5 **THE COURT:** Okay. This is for the limited purpose of the
6 failure to file the appeal, correct?

7 **MR. FOWLER:** Yes, Your Honor, that's my understanding,
8 and that's the scope of what we plan to present ---

9 **THE COURT:** Okay.

10 **MR. FOWLER:** --- to your Court today. So we're not going
11 to go into his full application. My understanding is that
12 this is on, like you said Your Honor, the limited scope of
13 filing or not filing the direct appeal and his communications
14 with his attorney on that issue. So that's our plan today,
15 Your Honor.

16 **THE COURT:** All right. Is the applicant ready to
17 proceed?

18 **MR. FOWLER:** Your Honor, he's asking me a question.

19 **THE COURT:** Sure.

20 **MR. FOWLER:** If I can speak with him briefly. Your
21 Honor, my understanding is that my -- that the applicant, Mr.
22 Kehborn, is ready to take the stand, Your Honor.

23 **THE COURT:** Okay. Call your witness.

24 **MR. FOWLER:** I'd like to call Mr. John P. Kehborn, Jr.
25 number 388160 to the stand, Your Honor.

1 JOHN P. KEHBORN, JR., HAVING BEEN DULY SWORN TESTIFIES AS
2 FOLLOWS:

3 **THE CLERK:** Please have a seat. Speak into the mic,
4 state your name and spell your last name for the Court. Thank
5 you.

6 **MR. KEHBORN:** John Kehborn, K-E-H-B-O-R-N.

7 **THE COURT:** You may proceed.

8 **MR. FOWLER:** Thank you, Your Honor.

9 **THE COURT:** You're welcome.

10 DIRECT EXAMINATION OF MR. KEHBORN BY MR. FOWLER:

11 Q: Mr. Kehborn, you and I have spoken previously by
12 telephone on July the 9th, correct?

13 A: Yes, sir.

14 Q: And that was at your facility at Allendale Correctional,
15 correct?

16 A: Yes, sir.

17 Q: And you and I spoke this morning, correct?

18 A: Yes, sir.

19 Q: Okay. And you provided me some notes and some
20 information about the topic of today's hearing, correct?

21 A: Yes.

22 Q: Okay. And you understand what the topic, what the
23 limited scope of today's hearing is?

24 A: Yes, the failure to file the direct appeal.

25 Q: And you heard the Judge's instruction a few moments ago -

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1 --

2 A: Yes.

3 Q: --- on that, correct? Say that one more time.

4 A: Yes.

5 Q: Okay. And just to be clear, the court reporter is trying
6 to take notes on this so to speak, so if I ask a question,
7 wait until I get to the end of the question and then answer,
8 okay. And I know this is new for you probably, but just wait
9 until I finish my question to respond, okay.

10 A: Yes, sir.

11 Q: Thank you, sir. I appreciate that.

12 Okay. You have mentioned several -- and you're ready to
13 proceed today, correct?

14 A: Yes.

15 Q: Okay. Who was your attorney on the underlying case
16 that's the subject of this PCR?

17 A: Kia Wilson.

18 Q: Okay. Is she in the courtroom today?

19 A: Yes.

20 Q: Okay. Very good. I remember the question I was going to
21 ask you before I got started. You indicated to me that you
22 suffer from some form of anxiety; is that correct?

23 A: Yes.

24 Q: Okay. Tell me about that.

25 A: I'm a combat veteran. I have PTSD, severe anxiety, and

1 severe depression.

2 Q: But you feel comfortable going forward with testimony
3 today, correct?

4 A: As of right now, yes.

5 Q: Okay. Well this is the Judge's courtroom, but if you
6 feel anxious or if there's any issues, please let the Court
7 know, okay.

8 A: Yes, sir.

9 Q: Okay. Thank you.

10 Once again, you stated Kia Wilson was your attorney on
11 the underlying case, correct?

12 A: Yes, sir.

13 Q: What were the charges on the underlying case?

14 A: That ---

15 Q: What do you understand your underlying general sessions
16 case to be?

17 A: Sexual misconduct with a minor.

18 Q: Okay. And what happened at your trial with this? Was it
19 a trial or a plea? Tell me in your own words.

20 A: No, it was supposed to be a trial. I did not feel like I
21 was being represented, so I just ---

22 **MR. HALL:** Objection.

23 **THE COURT:** State your cause.

24 **MR. HALL:** Relevance.

25 **THE COURT:** Please repeat your question and make sure he

1 understands it so that he can be responsive.

2 **MR. FOWLER:** The question was ---

3 **THE COURT:** Just restate it.

4 **MR. FOWLER:** Okay.

5 **BY MR. FOWLER:**

6 Q: The question was Kia Wilson was your attorney, correct?

7 A: Yes.

8 Q: All right. And I think you were going into what happened
9 at your court hearing, correct?

10 A: Yes.

11 Q: Okay. And I threw out several items. Was it scheduled
12 to be a plea; was it scheduled to be a trial; was it scheduled
13 to be something else? What's your understanding of what Ms.
14 Wilson's representation of you was?

15 A: It was supposed to be a trial.

16 Q: So what happened with the trial?

17 A: I was not there.

18 Q: Okay. Do you remember what happened?

19 A: I was found guilty.

20 Q: Okay. Well you were found guilty, but why were you not
21 there?

22 A: Because of what I just stated.

23 Q: Okay. And when you say just stated, are you referring to
24 your anxiety?

25 A: No, not my anxiety. The fact that I did not feel

1 represented.

2 **MR. HALL:** Objection, relevance.

3 **MR. FOWLER:** Well, Your Honor, I think once again if he
4 felt like he wasn't being represented by Kia Wilson ---

5 **THE COURT:** That has no bearing on the appeal. And as
6 you know his voluntary absence, the remedy would not be not
7 showing up. You would then be the architect of your own
8 dilemma. You show up and say I don't feel represented, you
9 don't just not show up. And I'm looking at pages ---
10 beginning at Page 67 where the Court makes a record regarding
11 their right to proceed in his absence, and verifying that he
12 did have notice in fact that he would be tried in his absence
13 if he did not appear. The purpose of this hearing is whether
14 Mr. Kehborn asked his lawyer to file a direct appeal.

15 **MR. FOWLER:** And I guess the question -- the basis of the
16 question I was asking was he has indicated that he did not
17 feel comfortable with her care as his attorney.

18 **THE COURT:** Yeah, but that doesn't have anything to do
19 with whether -- that's not -- that's not an excuse for his
20 absence from showing up when he had a legitimate court
21 proceeding. That's not logical or rational.

22 **MR. FOWLER:** Thank you, Your Honor.

23 **THE COURT:** You're welcome.

24 **BY MR. FOWLER:**

25 Q: So but you did understand that she was your attorney,

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1 correct?

2 A: Yes, sir.

3 Q: What was your relationship with her professionally before
4 that? What was your communication with her in this matter,
5 the underlying general sessions matter?

6 A: There wasn't a lot of communication except for like right
7 before court.

8 Q: Okay. Well let's break that down. When you say there
9 wasn't a lot of communication, do mean live person face to
10 face?

11 A: Face to face, I emailed a lot but there wasn't a whole
12 lot of responses.

13 Q: Well did she ever respond to you?

14 A: Occasionally, yes.

15 Q: Okay. Well I'm not asking you for your reasons, but I
16 mean did that expire your confidence in her representation of
17 you?

18 **MR. HALL:** Objection, leading.

19 **THE COURT:** Sustained, leading. Rephrase.

20 **BY MR. FOWLER:**

21 Q: How do you feel her representation of you was before that
22 scheduled court date?

23 A: I really do not feel like I was represented at all.

24 Q: Why?

25 A: Lack of communication ---

1 **MR. HALL:** Objection.

2 **THE COURT:** What was the basis of your objection.

3 **MR. HALL:** Relevance.

4 **THE COURT:** Yeah, none of this is relevant to whether a
5 belated appeal should have been filed or not.

6 **BY MR. FOWLER:**

7 Q: But you understand ---

8 **MR. FOWLER:** Thank you, Your Honor.

9 **THE COURT:** You're welcome.

10 **BY MR. FOWLER:**

11 Q: But you understand she was your attorney?

12 A: Yes.

13 Q: Okay. And you did not show up that day, correct?

14 A: Right.

15 Q: Okay. Did you ask her to file an appeal in the case?

16 A: I asked her immediately, the day I was sentenced, to file
17 a direct appeal. When I told her that face to face, she told
18 me to call the office and remind her. I called the office
19 over the inmate caller phone system and notified her clerk.
20 And not only is it recorded in the phone system, but it should
21 be annotated in their call logs.

22 Q: Well let me ask you this question. I believe you just
23 stated that you spoke with her after the hearing date.

24 A: Yes, yes, whenever ---

25 Q: How long after that hearing date did you speak with her?

1 A: It was immediately after.

2 Q: Okay. When you say immediately do you mean the day of or
3 several days after?

4 A: No, the day of.

5 Q: Okay.

6 A: Yes.

7 Q: Okay. How did you contact -- well, I think you may have
8 stated it, but you spoke to her face to face.

9 A: Face to face. Yes, sir.

10 Q: All right. So how did you -- if you were not at the
11 hearing where you were -- were you were tried or supposed to
12 be tried, did you go to her office afterwards?

13 A: No. This was when they read me what my sentencing was.

14 Q: Okay. So it was on the sentencing?

15 A: Yes, the sentencing day.

16 Q: Okay. All right. So just to be clear on the timeline,
17 on the sentencing date you were with Ms. Wilson as your
18 attorney, correct?

19 A: Yes.

20 Q: All right. Did you talk to her, you say immediately
21 afterwards, while you were in court? Kind of like the
22 situation today, you immediately told her then; is that
23 correct?

24 A: Yes.

25 Q: All right. And she said call her after, right?

1 A: She told me to call me as soon as I got back to the jail
2 and notify her through the phone system as a reminder.

3 Q: All right. And I don't want to be duplicative, but I do
4 want to be clear. Okay. All right. So you called her, what
5 the following Monday; is that correct?

6 A: The very same day I called her.

7 Q: Okay. To remind her, correct?

8 A: Yes.

9 Q: Okay. So after that telephone call, when did you contact
10 her again?

11 A: At that point I was under the assumption that my direct
12 appeal was going to be, you know, going through being that
13 that's what she stated that she was going to do. So I waited
14 it out. I'd been told that it could be a year or longer
15 before that could actually happen so, you know, it'd been a
16 while. Then I had my brother call and speak with her, which
17 she told him that it had not been filed.

18 Q: So as to the issue today of filing a direct appeal, it's
19 my understanding from your testimony today is that you spoke
20 to her in court asking for direct appeal/

21 A: Yes, sir.

22 Q: And you personally called her office that day, correct?

23 A: Yes, sir.

24 Q: And then, I just want to be clear on the timeline here,
25 you said you waited it out? When did you -- then you

1 mentioned it could be a year or something like that.

2 A: Right.

3 Q: When was the next discussion with her on this direct
4 appeal issue?

5 A: I didn't talk to her directly. We -- our phone systems
6 are recorded and I don't really talk over the -- it's
7 attorney/client privileged, but it's not really. So I had my
8 brother call her before the year's notice. When he had spoke
9 to her, I can't give an exact date, all of my notes are gone.

10 Q: Why did you not call her back, because of that reason you
11 provided?

12 A: Right.

13 Q: Okay. So to be clear, she set out something for you to
14 do to follow up with her in your conversation with her that
15 day, correct?

16 A: To call her, yes.

17 Q: And you did that?

18 A: Yes.

19 Q: Okay. Did she set out any other qualifications for you
20 to say hypothetically call her back, write her, do anything
21 proactive?

22 A: Just to call her and remind her.

23 Q: Okay. So in your view you met the qualifications she set
24 out for you to have a direct appeal?

25 A: Yes.

1 Q: All right. Why is that?

2 A: I did exactly what she told me to. After that I was just
3 waiting on getting a letter from the county stating that my
4 appeal was ready.

5 Q: Okay. So in summary on that issue, you're saying that
6 she sat out some qualifications for you; is that correct?

7 A: Yes.

8 Q: And you met those qualifications, right?

9 A: Yes.

10 Q: Okay.

11 **MR. FOWLER:** If I may have just one moment, Your Honor.

12 **THE COURT:** Uh-huh. (Affirmative response)

13 **BY MR. FOWLER:**

14 Q: And based on your recollection, your testimony today
15 matches what you included in your PCR application, correct?

16 A: Yes.

17 Q: Do you feel like it prejudiced ---

18 **MR. HALL:** Objection, leading.

19 **THE COURT:** Sustained, leading.

20 **BY MR. FOWLER:**

21 Q: What's your feeling about what she did in your
22 representation afterwards, after you called her?

23 A: I guess my expectations were already somewhat low, so it
24 couldn't have gotten any lower than that.

25 Q: Did she -- okay, so so far based on your testimony today

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1 you've indicated you turned to her and she said call my office
2 and I'll file a direct appeal; is that what you're saying?

3 A: Yes.

4 Q: So when you got back to the correctional facility you
5 called her and left a message to remind her about the direct
6 appeal, correct?

7 A: Yes, sir.

8 Q: Okay. Did anybody else -- did you contact any other
9 family members or anything to tell them to stay in touch with
10 her or not?

11 A: Not immediately. I would ask -- I believe -- I'm not --
12 I can't say for sure though, but I believe that my brother
13 called previously, but that I cannot say for sure.

14 Q: To your knowledge did anybody else call Kia Wilson to
15 follow up on it?

16 A: Not that I know of.

17 Q: All right.

18 **MR. FOWLER:** If I can have just a moment, please.

19 **THE COURT:** Yes, sir.

20 **BY MR. FOWLER:**

21 Q: Now, you mentioned in our conversations, and I hope it's
22 okay, that you said she mentioned something about taking the
23 weekend to review it or something. What was that?

24 A: Oh, yes. Prior to court she had discussed changing my
25 statement or whatever, give me time over the weekend to change

1 it and I was not going to get up there and lie so nothing
2 changed.

3 **MR. HALL:** Objection, relevance.

4 **THE COURT:** What's the relevance of this question, as
5 well as the response? What does it make more or less
6 probable?

7 **MR. FOWLER:** The thing that I am asking about is he had
8 mentioned to me in our conversations that she had mentioned
9 for him to take the weekend to review this, but he's setting
10 kind of a short parameter on his timeline. He said she said
11 call my office, then he called her office apparently. But she
12 also mentioned something about taking the weekend to think
13 about it or something and I'm just trying to get a
14 clarification on if she said well call me after several days
15 or anything else that she mentioned to him about filing a
16 direct appeal.

17 **MR. HALL:** Your Honor, his response goes into statements
18 that he made that's pertinent to the trial itself. This has
19 no bearing on the direct appeal which would have been after
20 the trial.

21 **THE COURT:** I think he's trying to clarify when he was
22 supposed to call. I'm going to give him some latitude.
23 Overruled.

24 You may need to ask the question more succinctly so that
25 he understands what you're trying to illicit from him.

1 **BY MR. FOWLER:**

2 Q: In our conversations you have mentioned to me about
3 Attorney Wilson apparently saying something about you needed a
4 weekend to take the time to think about it; is that correct?

5 A: Yes.

6 Q: Okay. When that -- you said that you talked to her about
7 it in court, and in your testimony today, you called her
8 immediately when you got to the correctional facility.

9 A: Right.

10 Q: So what relation does that weekend have to do with
11 anything if you feel like you've met the standard for her
12 filing a direct appeal?

13 A: I think that was previously when we were supposed to go
14 to the original trial date. She wanted me to go home and
15 think about it and possibly, I want say ---

16 Q: So that's not after the court date?

17 A: No, it's not.

18 Q: It was before.

19 A: That's before.

20 Q: Okay. And that was about your original situation in
21 court, correct?

22 A: Yes.

23 Q: Okay. That doesn't relate to the direct appeal, does it?

24 A: No.

25 Q: The weekend, taking the weekend to think about that? I

1 just wanted to be clear on that.

2 Q: Okay. Is there anything else that you can think of that
3 relates to this? From your testimony today it sounds like
4 that you did what she told you to do. Do you feel that way?

5 A: Yes.

6 Q: Did you understand when an appeal needed to be filed in
7 terms of the timeline?

8 A: Well it was supposed to be within a year given that the
9 direct appeal was applied or filed.

10 Q: So you understood it to be a year after that court date
11 that it needed to be filed, correct?

12 A: Once the year was given up or passed, then you go into
13 the -- I'm looking at my notes here, I'm sorry, I can't
14 remember all of this. The Wilson vs State ordered that if the
15 direct appeal is not filed because of ineffective counsel,
16 then it gives you an unlimited amount of time to file a PCR.
17 That's Wilson versus State.

18 Q: Okay. So you're -- do due to your testimony just there,
19 you feel like that because you did what she was --- she
20 requested you to do, and she apparently did not do it, you
21 feel like you have a more unlimited timeline to file the
22 direct appeal, correct?

23 A: Yes, sir.

24 Q: Okay. And you mentioned Wilson vs State, and you're
25 saying that that's a case that state's that, correct?

1 A: Yes, sir.

2 Q: Okay.

3 **MR. FOWLER:** If I may just have a moment, Your Honor.

4 **THE COURT:** Uh-huh. (Affirmative response)

5 **BY MR. FOWLER:**

6 Q: Okay. So you told her --- just to summarize any
7 conclusion --- you told her to file a direct appeal; correct?

8 A: Yes, sir.

9 Q: She said call me from your correctional facility,
10 correct?

11 A: Yes.

12 Q: And you did that, correct?

13 A: I did.

14 Q: And you felt like there was no other qualifications that
15 you needed to do, right?

16 A: That's all she told me to do.

17 Q: And you followed her instructions on that, correct?

18 A: Yes, sir.

19 Q: Okay. Is there anything else about this that you feel
20 like needs to be brought to the Court's attention?

21 A: That's it for now. Everything else I can't bring into
22 it, so that's it.

23 Q: Could you repeat that, please? I did not hear you.

24 A: I said everything else I cannot say, so that's it for the
25 direct appeal.

1 Q: And why can't you say it?

2 A: Because it's not relevant to this particular ---

3 **MR. FOWLER:** Your Honor, I have no further questions.

4 **THE COURT:** Any questions for the witness?

5 **MR. HALL:** Briefly, Your Honor. I beg the Court's
6 indulgence.

7 **THE COURT:** Take your time.

8 **CROSS EXAMINATION OF MR. KEHBORN BY MR. HALL:**

9 Q: Mr. Kehborn, you said that you told Ms. Wilson on the day
10 of the sentencing that you wanted an appeal, right?

11 A: Yes, sir.

12 Q: Okay. And you said that she told you to call her the
13 following week and remind her, right?

14 A: When I got back to the jailhouse.

15 Q: Okay. And your testimony is that you called her, right?

16 A: Yes, I did.

17 Q: And didn't you testify on direct that those conversations
18 are recorded?

19 A: Yes.

20 Q: Okay. And didn't you testify on direct that those calls
21 are annotated in the call system?

22 A: They should be. I mean that's how they're supposed to
23 log it, aren't they?

24 Q: I'm asking you.

25 A: Well that's my knowledge, you know.

1 Q: But you're here today and you don't have any
2 documentation about that call, do you?

3 A: I do not.

4 Q: Okay.

5 A: I don't have access to it.

6 Q: You could have gotten it if you had requested it,
7 couldn't you?

8 A: I don't know that.

9 Q: Okay. And you don't have any recordings of you asking
10 her to do that, do you?

11 A: No, just through the phone system.

12 Q: But you testified that ---

13 A: Oh, the direct contact? No, I don't.

14 Q: Okay. And so essentially you're just asking this Court
15 to take your word for it?

16 A: Usually when you ask a lawyer to do something, that's
17 kind of -- it's not recorded.

18 Q: But again, you testified on direct that those jail calls
19 were recorded, right?

20 A: They are supposed to be.

21 Q: Okay. And you have no documentation?

22 A: I don't.

23 Q: Okay. Do you know the exact date when you asked her to
24 file a direct appeal?

25 A: It was the date of my sentencing.

1 Q: Okay.

2 A: I don't have the exact date.

3 Q: Okay. Now Ms. Wilson was your attorney, wasn't she?

4 A: Yes.

5 Q: Okay. And so because Ms. Wilson was your attorney, you
6 communicate with Ms. Wilson, don't you?

7 A: Yes.

8 Q: Okay. And Ms. Wilson doesn't represent your brother,
9 does she?

10 A: No.

11 Q: Okay.

12 **MR. HALL:** I beg the Court's indulgence.

13 **THE COURT:** Yes, sir.

14 **BY MR. HALL:**

15 Q: Mr. Kehborn, do you recall when you had your brother
16 follow up with Ms. Wilson by phone?

17 A: It was less than a year's timeframe, I know that. I
18 can't remember the exact date. I'm not good with dates. I've
19 lost most of my notes, other than what I had to rewrite.

20 Q: But again, Ms. Wilson was your attorney, not your
21 brother's attorney?

22 A: Right, yes.

23 **MR. HALL:** No further questions, Your Honor.

24 **THE COURT:** Any redirect?

25 **MR. FOWLER:** Yes, Your Honor.

1 **THE COURT:** You may proceed.

2 **REDIRECT EXAMINATION OF MR. KEHBORN BY MR. FOWLER:**

3 Q: You mentioned something about calls being recorded; is
4 that correct?

5 A: Yes.

6 Q: All right. But you don't work for the prison system, do
7 you?

8 A: No, I don't.

9 Q: You don't have any knowledge about what their system is
10 of recording calls, do you?

11 A: I do not.

12 **MR. HALL:** Objection, leading.

13 **THE COURT:** Sustained, leading. Rephrase.

14 **BY MR. FOWLER:**

15 Q: Do you work for the prison system?

16 A: No, sir.

17 Q: Do you work with the records department at the prison
18 system?

19 A: No, sir.

20 Q: So would you know anything officially about how they keep
21 records for their prison system?

22 A: No, sir. No.

23 Q: So your discussion about the recorded calls is
24 speculation then, correct?

25 **MR. HALL:** Objection, leading.

1 **THE COURT:** Sustained, leading. Rephrase. I think it's
2 common knowledge that all phone calls in and out of an
3 institution are recorded. They give you a notice when you're
4 checked in. They make you sign, they tell you what the system
5 is, they give you a pin. I think we can -- I think they we
6 all know that's how it works. It works that way at county
7 detention centers, it works that way at the State Department
8 of Corrections, and your client's already testified on direct
9 that he had limited conversations because he knew his phone
10 calls were being recorded. I think we can move on from that.

11 **MR. FOWLER:** Thank you, Your Honor.

12 **THE COURT:** You're welcome.

13 **BY MR. FOWLER:**

14 Q: The second issue that you brought us was about you said
15 that the public defender's log in their calls.

16 A: That's what I was told.

17 Q: Okay. By who?

18 A: I guess when I first spoke to -- I don't even know
19 exactly who it was, but it was somebody within the office.
20 They said everything was logged.

21 **MR. HALL:** Objection, hearsay.

22 **THE COURT:** Sustained, hearsay.

23 **BY MR. FOWLER:**

24 Q: Did Ms. Wilson tell you that the calls were logged in?

25 A: That part I don't recall, I just know what I heard.

1 Q: Okay.

2 A: And it's a business, I would -- especially dealing with
3 clients, I would have to imagine so.

4 Q: What did you understand the ethical obligation of the
5 attorney to you to be?

6 MR. HALL: Ob ---

7 THE COURT: Basis?

8 MR. FOWLER: Well, Your Honor, on cross examination he
9 talked about ---

10 THE COURT: Ethics wouldn't be his concern. It's about
11 whether he asked and whether she did it; whether it was
12 communicated and whether there was follow-through. He's not
13 an arbiter for ethics, that's a whole different tribunal.
14 It's not appropriate, move on. Sustained, it's not
15 appropriate.

16 BY MR. FOWLER:

17 Q: Do you feel like a lawyer that represents you has a duty
18 to do what you ask them to do?

19 THE COURT: Basis?

20 MR. HALL: Objection, leading.

21 THE COURT: Sustained, leading.

22 BY MR. FOWLER:

23 Q: During the course of her representation if you asked her
24 to do something legally in your case did you expect her to do
25 it?

1 A: Yes, I did.

2 Q: Why?

3 A: That's her job.

4 Q: What do you mean?

5 A: She's supposed to represent her client. Most people like
6 myself aren't too good with law, you know, the legal system
7 and she specifically went to school for that so I expect her
8 to, you know, have my back when it comes down to, you know,
9 being -- going to court or whether it be calling character
10 witnesses or anybody like that. I expect her to do her job.

11 Q: Do you feel like she had your back on this direct appeal?

12 **MR. HALL:** Objection, leading.

13 **THE COURT:** Sustained, leading. Rephrase.

14 **BY MR. FOWLER:**

15 Q: What was your opinion of her based on your previous
16 testimony of her representing you filing this direct appeal?

17 A: I definitely did not think she represented my best
18 interests.

19 Q: You mentioned that you lost your notes.

20 A: Yes.

21 Q: What notes did you lose?

22 A: A lot of my notes that I had written coming from Texas to
23 Horry County, and then being transferred from Kershaw to where
24 I'm at now. I had to ship some of them back because they
25 wouldn't let me bring them with me.

1 Q: Are those hard copies that you're talking about?

2 A: Yeah, hard copies.

3 Q: Okay.

4 MR. FOWLER: No further questions, Your Honor.

5 THE COURT: Sir, you may step down.

6 Do you have any further witnesses?

7 MR. FOWLER: Your Honor, may I speak with my client for a
8 moment?

9 THE COURT: Sure.

10 MR. FOWLER: Thank you. Your Honor, after speaking with
11 my client, the applicant, we have no further witnesses.

12 THE COURT: Okay.

13 The State may proceed.

14 MR. HALL: Your Honor, the State calls Kia Wilson to the
15 stand.

16 KIA WILSON, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

17 THE CLERK: Have a seat, state your name and spell your
18 last name. Thank you.

19 MS. WILSON: Kia Wilson, W-I-L-S-O-N.

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION OF MS. WILSON BY MR. HALL:

22 Q: How are you doing, Ms. Wilson?

23 A: I'm good. Thank you.

24 Q: Ms. Wilson, how long have you been practicing law?

25 A: April of this year was 20 years.

1 Q: Okay. How much of that time has been devoted to criminal
2 law?

3 A: All of it.

4 Q: And where are you currently employed?

5 A: I'm a senior trial attorney with the 15th Circuit Public
6 Defender here in Horry County.

7 Q: Okay. And were you working at the Horry County Public
8 Defender's Office in February of 2022?

9 A: Yes.

10 Q: Can you tell the Court about how you got involved in this
11 case?

12 A: Yes. So this case originally was a Clay Pinkerton file.
13 Clay is another attorney in the office, a younger attorney.
14 He was originally assigned -- well he was originally supposed
15 to be assisted by our deputy of the office, James Galmore.
16 Mr. Galmore became ill, and as a result I was asked to step in
17 probably about two months before this trial actually was
18 scheduled to go the first time.

19 At that point I'm a part of the preparation; I'm sitting
20 in; I actually met with Mr. Kehborn, I think, one time at that
21 point. But I was not the actual attorney who would actually
22 be trying the case at that time. The day of trial Clay
23 Pinkerton was sick. Judge Nettles decided to let Clay go home
24 and then wanted me to try the case. I explained to him that I
25 could not do so. I had been literally two months maybe, one

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1 meeting, just not enough time to go into a trial for somebody
2 facing the charges that Mr. Kehborn was. My boss came, spoke
3 to Judge Nettles, and at that point I was allowed a
4 continuance. Mr. Kehborn was sent home.

5 Fast forward, I think this week of this trial it was
6 February 14th through, I want to say the 16th, that's what I
7 have in my notes. We tried -- I tried this case without Clay
8 who was ultimately removed from the case for other reasons and
9 then I was the attorney of record. I tried this case in front
10 of Judge John without my client.

11 Q: All right. And ---

12 MR. HALL: I beg the Court's indulgence.

13 BY MR. HALL:

14 Q: And Mr. Kehborn was sentenced, excuse me, I'll withdraw
15 that.

16 Mr. Kehborn was convicted in this case?

17 A: He was convicted. The sentence was sealed, which is
18 customary, and we actually had to wait a while to get him back
19 here. Apparently he had fled ---

20 MR. FOWLER: Objection, Your Honor, relevance.

21 THE COURT: Overruled.

22 BY MR. HALL:

23 A: Apparently he fled. I tried reaching him for trial the
24 day before. So we had spoken; we had been speaking up until
25 the time of trial. We had actually been in pretty constant

1 communication, whether by phone, in person meetings, or
2 emails. As a matter of fact, my notes show that there was an
3 email that he sent to me the weekend before the trial was
4 supposed to start. Basically, as most clients due, having
5 this last minute panic about what was going to happen during
6 trial ---

7 **MR. FOWLER:** Objection, Your Honor. She has no basis.

8 **THE COURT:** I think she does. She has an email. She's
9 articulating what your client communicated to her that's not
10 privileged. He filed a PCR against her.

11 It also goes to their level of communication. He
12 testified that he rarely, if ever, had any communication with
13 her, that it was difficult and he had no confidence in her
14 ability to represent him. I'm going to give him some
15 latitude. Overruled, it's relevant.

16 Do you need to finish your answer?

17 **MS. WILSON:** I don't know where I was, I'm sorry.

18 **THE COURT:** That's okay.

19 Restate the question.

20 You said he panicked, as most clients due.

21 **MS. WILSON:** Yes, ma'am. He was panicking in the email,
22 but that had kind of been the tone of most of the
23 communications since, really since Clay was actually the
24 actual assigned attorney.

25 When I came onto the case there were things that I felt

1 needed to be done that weren't already done. And again, I'm
2 not pointing fingers or assigning blame to either of the prior
3 attorneys associated with the case, but I wanted to have an
4 expert.

5 **BY MR. HALL:**

6 Q: Well, Ms. Wilson, I won't get into ---

7 A: Okay.

8 Q: --- specifics of trial representation.

9 A: Okay.

10 Q: After he was convicted, when was he sentenced?

11 A: My notes reflect, so I put in here, it looks like on
12 2/17/22 the trial of the case, the return of a verdict of
13 guilty and Judge John issuing a bench warrant. Then I have in
14 my notes that on 6/15, and it could have been on 6/14, but my
15 note is entered on 6/15 and I have it at 7:45a.m. that the
16 sentence was unsealed and read into the Court's hearing. That
17 Mr. Kehborn was sentenced to have 20 years, sec offender
18 registry, child abuse registry, he was given credit for
19 pretrial time served incarcerated, and no credit for time
20 after issuance of sentence, and that the Court declined to
21 reduce the amount of the sentence.

22 Q: Okay. And I want to ask you, was Mr. Kehborn present at
23 that hearing?

24 A: He was present.

25 Q: Okay. And after he was sentenced ---

1 **MR. HALL:** I beg the Court's indulgence.

2 **THE COURT:** Uh huh. (Affirmative response)

3 **BY MR. HALL:**

4 Q: After he was sentenced did Mr. Kehborn ever ask you to
5 file a direct appeal?

6 A: He did not. As a matter of fact, I spoke to Mr. Kehborn
7 about what was going to happen prior to the unsealing of the
8 sentence which was my first time seeing him since trial, or
9 rather before trial. After trial I don't recall us speaking
10 after he was sentenced and taken to the back. I don't recall
11 there being a communication after that. At no point in time
12 after we finished in court that day and the sentence was read
13 into the record did he contact our office. And we do keep a
14 log of calls that come in. If he called the staff would note
15 in the system that there was a call that came in to me. At
16 no point in time did he tell me that he wanted an appeal. And
17 to further support that point, on ---

18 **MR. FOWLER:** Objection, Your Honor. She's answered his
19 question.

20 **THE COURT:** She's explaining her answer. Overruled.

21 You may continue.

22 **BY MR. HALL:**

23 A: On February 28th of 2023, so approximately eight months
24 later, the staff notes a call from defendant's brother
25 stating, and this is what the note reads specifically: "Client

1 brother (Ben) called saying his brother wanted to do an appeal
2 on his case but didn't know how to get in touch with
3 attorney." And left a phone number.

4 **MR. FOWLER:** Objection, Your Honor. That's hearsay;
5 that's a record that's not been entered into evidence properly
6 and she read directly from it, so I ---

7 **THE COURT:** It's a business record kept in the ordinary
8 course of business. It's a record kept in their office about
9 whether calls are recorded, whether they're logged, and what
10 was communicated to her, which is in direct response and
11 corroborates his testimony that his brother called them.
12 Overruled. Thank you. You're still standing for a reason?
13 Did you want to say something else?

14 **MR. FOWLER:** I was just wondering if he's laid a
15 foundation for that business record.

16 **THE COURT:** I've already ruled on it. Overruled.

17 **MR. FOWLER:** Thank you.

18 **THE COURT:** Proceed.

19 **BY MR. HALL:**

20 Q: Ms. Wilson, you indicated that Mr. Kehborn's brother
21 contacted your office. When was that contact made with your
22 office?

23 A: It says that the call was made 2/28/2023 at 10:54a.m.

24 Q: And how many months was that after the sentencing?

25 A: Approximately eight.

1 Q: Okay. And Ms. Wilson, do you know the time period for
2 filing an appeal after a conviction?

3 A: It's ten days.

4 Q: Ten days. Would you in advising -- I'll withdraw. Did
5 you advise him that he had a right to an appeal after his
6 sentencing?

7 A: Yes.

8 Q: Okay.

9 A: Before the sentence, before the unsealing I advised him.

10 Q: Okay. And did you advise him that the time period for
11 filing an appeal was ten days?

12 A: Yes.

13 Q: Okay. Would you have told him that the time for filing
14 an appeal was a year?

15 A: No. I've never -- I don't know what that's about.

16 Q: Okay. And is it your standard practice if your clients
17 ask you to file an appeal to do so?

18 A: Absolutely.

19 Q: And after you advise clients that they have a right to an
20 appeal if your clients don't indicate that they wish to file
21 an appeal do you typically file one?

22 A: We do not. In some instances, maybe for like murders,
23 they might do that automatically. But generally I have never
24 automatically filed an appeal for a client who did not call me
25 and say that they wanted it.

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1 Q: And this would be after you advised them of their right
2 to appeal, or excuse me, let me rephrase. After you advise
3 your client of their right to an appeal, if the client after
4 you advise them does not indicate to you their desire to file
5 an appeal, do you typically file an appeal?

6 A: No. No.

7 **MR. HALL:** I beg the Court's indulgence.

8 **THE COURT:** Uh-huh. (Affirmative response)

9 **BY MR. HALL:**

10 Q: One last question, Ms. Wilson. After you advised Mr.
11 Kehborn to his right to an appeal, if he had indicated to you
12 his desire to file an appeal would you have filed one?

13 A: Yes.

14 Q: Okay.

15 **MR. HALL:** No further questions, Your Honor.

16 Please answer anything opposing counsel has.

17 **THE COURT:** Any questions for the witness?

18 **MR. FOWLER:** Yes, Your Honor.

19 **THE COURT:** You may proceed.

20 **CROSS EXAMINATION OF MS. WILSON BY MR. FOWLER:**

21 Q: You mentioned that Clay Pinkerton was the attorney in
22 charge of this; is that correct?

23 A: Initially, yes.

24 Q: Okay. And that he was with you -- no, he was dismissed
25 at the original trial date; what was that again, please?

1 A: So Clay Pinkerton was the original assigned attorney to
2 represent Mr. Kehborn, and had done so since the start of the
3 case, which I believe was a 2020 case. Galmore, James
4 Galmore, from our office was assigned to sit with Mr.
5 Pinkerton for the trial of the case, so to help him in
6 preparation. When ---

7 Q: Mr. Galmore?

8 A: James Galmore.

9 Q: Okay.

10 A: When Mr. Galmore became ill, I was asked to sit with Mr.
11 Pinkerton.

12 Q: Okay.

13 A: So this was about two months before the actual trial.
14 The day of trial Mr. Pinkerton was ill. The Judge allowed Mr.
15 Pinkerton to go home; he was visibly not well and tried to
16 have me try the case. And I objected to doing so because I
17 had not spent sufficient time with Mr. Kehborn in preparation
18 for a trial, not to be the lead trier on the case. With that
19 being said, my boss came, Eric Fox, and spoke to Judge Nettles
20 and then Judge Nettles agreed to continue this case. At some
21 point Mr. Pinkerton became unable to try this case and after
22 some communication between my boss, and I think Judge John who
23 I believe was our Chief Admin. at the time, I was then
24 substituted as counsel for this case.

25 Q: Did you have a second -- okay, so Mr. Galmore was Clay

1 Pinkerton's second chair; is that the proper term?

2 A: I guess that would be correct, yes.

3 Q: Okay. So did you have a second chair in this?

4 A: I did not.

5 Q: Why did you not have a second chair?

6 **MR. HALL:** Objection, relevance.

7 **THE COURT:** I'm going to give him a little latitude.

8 You may answer the question.

9 **BY MR. FOWLER:**

10 A: At this point I'm a senior trial attorney. I don't know
11 that I need anyone. I think Mr. Pinkerton had a second chair
12 because he was not a senior trial attorney. He was a
13 relatively new attorney in our office.

14 Q: Did you ask for a second chair?

15 A: I did not think that I would need one.

16 Q: Just to be clear on the timeline, you mentioned that -- I
17 guess the thing about it is Clay Pinkerton was relieved, Judge
18 John said that -- a ruling was that you were going to be the
19 trial attorney on this case. How long after the original
20 trial date to when it went to trial; how long was that time
21 span?

22 A: Give me one second. I'm sorry, just bear with me,
23 there's a lot of notes here.

24 Okay. So it looks like on 9/22/2021 my notes reflect
25 that we were in court. That Mr. Kehborn's case was continued

1 on today after Lead Counsel Pinkerton became ill. Judge
2 initially refused to continue trial, wanted me to try it
3 despite limited time on the case and despite me having spoken
4 with the defendant or met with the defendant once. After Eric
5 Fox spoke with Judge Nettles he did agree to continue the
6 trial.

7 Let's see, I think at that time, and this is not really
8 on point, but my notes reflect that Mr. Kehborn was taken into
9 temporary custody to be tested for Covid. At that time was
10 negative and then was released.

11 Q: Well I guess my question is you're saying initially it
12 was set for trial with Pinkerton on 9/22/21, correct?

13 A: Yes.

14 Q: When did it go to trial? What date was the trial date?

15 A: The actual trial date was February 14th, I want to say
16 through February 16th of 2022.

17 Q: Well is it that date?

18 A: Those are the two dates that I have in my notes, so I
19 believe that those are correct.

20 Q: So you said that in like September of '22, '21 you felt
21 like you did not have enough time to prepare, right?

22 A: Yes, after two months ---

23 **MR. HALL:** Objection.

24 **THE COURT:** Basis.

25 **MR. HALL:** Relevance.

1 **THE COURT:** How is this relevant, Mr. Fowler?

2 **MR. FOWLER:** Because she said it on direct examination,
3 Your Honor.

4 **THE COURT:** I don't ---

5 **MR. FOWLER:** And she just said it again, I think.

6 **THE COURT:** Yeah, but I'm just trying to figure out how
7 is that relevant to her filing an appeal. I took it as
8 background, her involvement ---

9 **MR. FOWLER:** I didn't know how you took it, Your Honor.
10 I'm just saying if she is his appointed attorney or his
11 attorney general and she says that she didn't feel confident
12 enough to take the case in September, why not?

13 **THE COURT:** How is that relevant to whether she filed an
14 appeal?

15 **MR. FOWLER:** Well she may not know him. She said there
16 was constant communication, and I'm just trying to dig into
17 what constant communication there was. And also if she didn't
18 ---

19 **THE COURT:** Then you need to ask that question directly.

20 **BY MR. FOWLER:**

21 Q: Were you -- did you say you were a senior ---

22 A: Trial attorney.

23 Q: --- trial attorney. Were you a senior trial attorney at
24 the initial date of 9/22?

25 A: Yes.

1 Q: You were?

2 A: Yes, I was.

3 Q: Okay. And yet you did not feel comfortable enough to try
4 this case?

5 **MR. HALL:** Objection, relevance.

6 **THE COURT:** You may answer the question.

7 Overruled.

8 **BY MR. FOWLER:**

9 A: To be clear, Mr. Kehborn is acting as if he is not -- or
10 he stated from the stand today that he didn't have sufficient
11 communication with me when there were multiple ---

12 Q: I ---

13 A: --- I'm sorry, when there were multiple meetings,
14 multiple communications. I understood at the time of this
15 trial that he was looking at a serious amount of time. And
16 under no circumstances, because I am not new to this process,
17 and I know what happens when clients get convicted, and I know
18 how his case looked, just the snapshot of it, at the time of
19 the original trial date. At no point in time did I feel
20 comfortable staking my reputation and putting my energy into a
21 case where I had met with this client one time, just one time.
22 I think that that would have been inappropriate, and frankly I
23 think he should be glad that I wasn't willing to stand in
24 after one meeting.

25 Q: So you did mention on direct examination that there was