

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Pickens County

Honorable B. Alex Hyman, Circuit Court Judge

JOSE R. REYES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002118

APPENDIX

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF PICKENS	)	Case No(s) : 2013GS3903217
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Jose Reyes Reyes,	)	Day 1
	)	
Defendant.	)	
	)	

December 12, 2016
Pickens, South Carolina

B E F O R E:

HONORABLE PERRY H. GRAVELY, Judge.

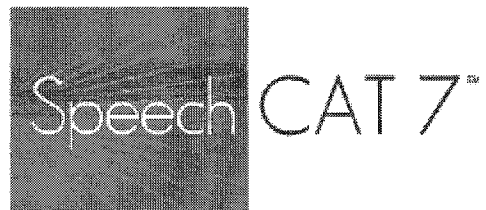
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PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(Proceedings begin on the 12th day of December,
2016 at approximately 10:46 a.m.)

THE COURT: All right. Ladies and
Gentlemen, we're getting ready -- we are
getting ready to select a jury for the case of
Jose Reyes Reyes. At this time, I'm going to
ask that the clerk swear you in for this
particular qualification. All right. (Pause.)

We'll dispense with the swearing since
y'all are already sworn in. I guess I said that
loudly, didn't I?

Again, this is the case of Jose Reyes
Reyes. It's an indictment for Criminal Sexual
Conduct with a Minor first degree. I want to
express right off the bat that you realize that
everybody that comes into this courtroom is
presumed innocent. If you are selected for the
jury, I will go into that in more detail. The
fact that someone is indicted should not be
considered by in any way. That's merely the
charging paper that brings it before the Court.

But under this indictment, it indicates
that the defendant, between the dates of
January 1st, 2013 and June 30th committed the

1 sexual battery on a minor less than 11 years
2 old. Again, more detail there, and the fact
3 that it is indictment is not to be considered
4 by you in any way.

5 All right. First of all, I need to make
6 sure that anyone -- is anyone related by blood
7 or marriage or have any social connection or
8 business connection to the defendant, Jose
9 Reyes Reyes. Am I pronouncing that right?

10 **MR. REYES:** Reyes.

11 **THE COURT:** Yes, Reyes? Okay. If you
12 would, stand, Mr. Reyes.

13 **(WHEREUPON, the defendant complies.)**

14 **THE COURT:** All right. Thank you.

15 Is anybody related by blood or marriage to
16 the defendant or have any social or business
17 relationship with him? If so, please stand.

18 (No audible response.)

19 All right. No response.

20 All right. The attorneys in this matter, if
21 you would, please stand and introduce yourself
22 to the jury panel.

23 **MS. HINTON:** Thank you, Your Honor. Good
24 morning. My name is Brandi Hinson. I'm an
25 Assistant Solicitor here in Pickens County.

1 Seated with me is Britni McCall. She is also an
2 assistant solicitor.

3 **THE COURT:** Okay.

4 **MR. WARDER:** I'm Richard Warder. I
5 practice law here in Pickens. Seated with me is
6 Wayne Christie. He's my investigator. We're
7 representing the defendant.

8 **THE COURT:** All right. I need to know if
9 anybody is related by blood or marriage to any
10 of the attorneys involved in this matter. If
11 so, please stand.

12 (No audible response.)

13 Okay. I also need to know if you have any
14 social or business relationship with the
15 attorneys or if you've been represented by the
16 attorneys or if they've been on a case on the
17 other side of you. If so, please stand.

18 (No audible response.)

19 All right. No response.

20 All right. I'm going to leave -- I'm going
21 to list the potential witnesses in this case.
22 Listen carefully. If you know any of these
23 witnesses, then you will need to stand. At that
24 point, I'll ask you some further questions. We
25 have Shauna Galloway-Williams; Billy Trotter,

1 Pickens County Sheriff's Office; Marvin Nix of
2 the Pickens County Sheriff's Office; **Minor**
3 **██████**; Mary Couch; Casey Couch; Sarah Davis;
4 Victoria Tate; Dr. Mary-Fran Crosswell; Ivery
5 Hallums Cohen; Jerry Harper; Dawn Stewart;
6 Megan Corture; and Jamie Elrod. Does anybody
7 know any of these individuals or related by
8 blood or marriage to these individuals? If so,
9 please stand.

10 Hold on just a minute.

11 All right. We will start with the gentleman
12 here. Please state your --

13 **THE JUROR:** Juror number 137, Mark Segee.
14 I'm friends with Marvin Nix.

15 **THE COURT:** Okay. Is Mr. Nix with the
16 Pickens County Sheriff's Department?

17 **THE JUROR:** Yes, he is.

18 **THE COURT:** All right. The fact that
19 you're friends with him, could you still listen
20 to the evidence in this case and do you think
21 you could still give a fair and impartial trial
22 to both the State and the defendant in this
23 matter?

24 **THE JUROR:** Yes, I could.

25 **THE COURT:** All right. Thank you. What was

Jury Qualification

9

1 your number again? I'm sorry.

2 THE JUROR: 137.

3 THE COURT: 137.

4 All right. And you stood up. We'll ---

5 THE JUROR: I did.

6 THE COURT: --- go ahead to you.

7 THE JUROR: I --

8 THE COURT: What's your name and number
9 first?

10 THE JUROR: Gennie Link, 89. And I just
11 know a few of the officers. I know Marvin Nix
12 and maybe one more.

13 THE COURT: All right. And the other one,
14 Billy Trotter?

15 THE JUROR: Yes.

16 THE COURT: All right. The fact that you
17 know these two individuals and if you were
18 selected on this jury, do you still think you
19 could give a fair and impartial trial to both
20 the State and the defendant in this matter?

21 THE JUROR: Yes, I do.

22 THE COURT: All right. Thank you.

23 All right. Mr. McClain, number 97. All
24 right.

25 THE JUROR: I used to work with Marvin

1 Nix and am a good friend with Marvin.

2 **THE COURT:** All right. In what capacity
3 did you work with Marvin?

4 **THE JUROR:** I was a deputy sheriff.

5 **THE COURT:** Okay. Would that fact keep you
6 from being able to be fair and impartial in the
7 case against the State and the defendant?

8 **THE JUROR:** No, sir.

9 **THE COURT:** All right. All right. As far
10 as this question, I will allow you to remain on
11 the panel. All right. Anybody else?

12 (No audible response.)

13 **THE COURT:** All right. I realize that some
14 of these questions may be very personal in
15 nature. It may be that we have to address some
16 of those more privately. Has anyone been --
17 wait a minute. I'm sorry. We had somebody over
18 here that wanted to -- okay. Has anyone been
19 accused, charged or convicted or does anyone
20 have a family member, close friend that's been
21 accused, charged and convicted of a crime
22 against a child or a sex crime? If so, please
23 stand.

24 I'm sorry. Your name and number.

25 **THE JUROR:** 61, Heather Green.

1 **THE COURT:** All right. Okay.

2 **THE JUROR:** My father.

3 **THE COURT:** Your father was?

4 **THE JUROR:** Convicted.

5 **THE COURT:** Was convicted. You think that
6 that fact would keep you from being able to be
7 fair and impartial in a trial against the State
8 and the defendant in the -- on those type
9 charges?

10 **THE JUROR:** Yes.

11 **THE COURT:** All right. Thank you.

12 Anyone else?

13 (No audible response.)

14 Has anyone been a victim or does anyone
15 have any family member or close friend that has
16 been a victim of a crime against a child or sex
17 crime? If so, please stand.

18 All right. And your name and number?

19 **THE JUROR:** I'm Patricia Cole, 26. I had
20 a granddaughter --

21 **THE COURT:** Hold on. Let everybody find
22 it. (Pause.)

23 All right. Sorry.

24 **THE JUROR:** I had a granddaughter that
25 was assaulted.

1 **THE COURT:** All right. And would that fact
2 keep you from being able to give a -- you don't
3 think you could be fair in this case?

4 **THE JUROR:** No.

5 **THE COURT:** All right. I'm going to excuse
6 you then from this case. If you will, just
7 remain seated though.

8 **THE JUROR:** Okay.

9 **THE COURT:** All right. And your name and
10 number?

11 **THE JUROR:** Reba Drummond, 41.

12 **THE COURT:** All right. Ms. Drummond.

13 **THE JUROR:** I'd prefer to come up.

14 **THE COURT:** All right. If you want to,
15 just come up here.

16 (WHEREUPON, the following bench conference is
17 held with Juror number 41, Reba Drummond.)

18 **THE COURT:** Why don't you just stand right
19 here so the court reporter can -- you alright?

20 **THE JUROR:** I've been a victim all my
21 life.

22 **THE COURT:** Okay. You think you could be
23 fair and impartial?

24 **THE JUROR:** No.

25 **THE COURT:** All right. I'm going to excuse

1 you from the trial of this case. If you would
2 just remain seated for just a few more minutes,
3 you think you'll be okay? If you need to step
4 out and come back in when we take a break, I'll
5 let you do that.

6 **THE JUROR:** Okay.

7 **THE COURT:** All right. 41 is excused.

8 (WHEREUPON, the bench conference is concluded.)

9 **THE COURT:** All right. All right. Next
10 question, would any juror feel that a person
11 with Hispanic heritage would be more likely to
12 commit a sex crime than a non-Hispanic? If so,
13 please stand.

14 (No audible response.)

15 All right. Would any juror -- next
16 question, would any juror feel that a Hispanic
17 immigrant is more likely to commit sex crimes
18 than non-Hispanic people in the United States?
19 If so, please stand.

20 (No audible response.)

21 All right. As the jury panel will be
22 instructed is one of the foundations of our
23 criminal system, every person that comes in the
24 courtroom is presumed innocent until proven
25 guilty beyond a reasonable doubt by the State.

1 Is there any jury that can not accept this
2 because the defendant may be of Hispanic
3 origin? If so, please stand.

4 (No audible response.)

5 All right. Would any jury have such strong
6 feelings against these charges that they can
7 not give a person accused of these crimes a
8 fair and impartial trial? If so, please stand.

9 (No audible response.)

10 All right. Has any member of the jury panel
11 formed or expressed any opinion about any issue
12 or matter involved in this case? If so, please
13 stand.

14 (No audible response.)

15 All right. No response.

16 Is any member of the jury panel aware of
17 any bias or prejudice towards either the State
18 or the defendant in this matter? If so, please
19 stand.

20 (No audible response.)

21 All right. No response.

22 Is there any member of the jury panel that
23 for any reason does not feel that they can give
24 a fair and impartial trial to both the State
25 and the defendant in this matter? If so, please

1 stand.

2 (No audible response.)

3 All right. No response.

4 Any other questions from the State?

5 **MS. HINTON:** No, Your Honor.

6 **THE COURT:** Anything else from the
7 defendant?

8 **MR. WARDER:** No, Your Honor.

9 **THE COURT:** All right. We will select a
10 pros -- we will begin the selection process.
11 (Pause.) If the attorneys could approach. Just
12 one question.

13 (WHEREUPON, a bench conference is held off the
14 record.)

15 **THE COURT:** All right. Ladies and
16 Gentlemen, if you will bear with us, we will
17 now have to select the list from which we will
18 be drawing from.

19 (WHEREUPON, there is a pause.)

20 **THE COURT:** All right. You may proceed.

21 **THE CLERK:** You want them to stand in
22 place?

23 **THE COURT:** Yeah, stand in place.

24 **THE CLERK:** As I call your name, if you
25 would, please stand where the attorneys can see

1 you.

2 Juror number 170, Gary S. Whitmire.

3 What says the State?

4 **MS. HINTON:** Please present Mr. Whitmire.

5 **THE CLERK:** And the defense?

6 **MR. WARDER:** Please swear the juror.

7 **THE CLERK:** If you would, come forward
8 please, sir, and have a seat in the jury box.

9 Juror number 153, Thomas L. Stephens.

10 What says the State?

11 **MS. HINTON:** Please present Mr. Stephens.

12 **THE CLERK:** And the defense?

13 **MR. WARDER:** Please swear the juror.

14 **THE CLERK:** If you would, come forward
15 please, sir, and have a seat in the jury box.

16 Sir, here. (Indicating.)

17 Juror number 99, Deborah S. McKinney.

18 What says the State?

19 **MS. HINTON:** Please present Ms. McKinney.

20 **THE CLERK:** And the defense?

21 **MR. WARDER:** Please excuse the juror from
22 the trial of this matter.

23 **THE CLERK:** If you would, return to your
24 seat please, ma'am.

25 Juror number 128, Jesse D. Ridge.

1 What says the State?

2 **MS. HINTON:** Please present Mr. Ridge.

3 **THE CLERK:** And the defense?

4 **MR. WARDER:** Please swear the juror.

5 **THE CLERK:** If you would, come forward
6 please, sir, and have a seat in the jury box.

7 Juror number 6, Eric L. Black.

8 What says the State?

9 **MS. HINTON:** Please present Mr. Black.

10 **THE CLERK:** And the defense?

11 **MR. WARDER:** Please swear the juror.

12 **THE CLERK:** If you would, come forward
13 please, sir, and have a seat in the jury box.

14 Juror number 168, Marion B. Welch.

15 What says the State?

16 **MS. HINTON:** Please present Ms. Welch.

17 **THE CLERK:** And the defense?

18 **MR. WARDER:** Please swear the juror.

19 **THE CLERK:** If you would, come forward
20 please, ma'am, and have a seat in the jury box.

21 Juror number 78, Rhonda M. Johnson.

22 What says the State?

23 **MS. HINTON:** Please present Ms. Johnson.

24 **THE CLERK:** And the defense?

25 **MR. WARDER:** Please excuse the juror from

1 the trial of this matter.

2 **THE CLERK:** If you would, return to your
3 seat please, ma'am.

4 Juror number 159, Stephen E. Talley.

5 What says the State?

6 **MS. HINTON:** Please present Mr. Talley.

7 **THE CLERK:** And the defense?

8 **MR. WARDER:** Please swear the juror.

9 **THE CLERK:** If you would, come forward
10 please, sir, and have a seat in the jury box.

11 Juror number 5, Walter C. Baker.

12 What says the State?

13 **MS. HINTON:** Please present Mr. Baker.

14 **THE CLERK:** And the defense?

15 **MR. WARDER:** Please swear the juror.

16 **THE CLERK:** If you would, come forward
17 please, sir, and have a seat in the jury box.

18 Juror number 156, Nathan M. Stracener.

19 What says the State?

20 **MS. HINTON:** Please present Mr. Stacener.

21 **THE CLERK:** And the defense?

22 **MR. WARDER:** Please swear the juror.

23 **THE CLERK:** If you would, come forward
24 please, sir, and have a seat in the jury box.

25 Juror number 173, Crystal G. Williamson.

1 What says the State?

2 **MS. HINTON:** Please present Ms. Williamson.

3 **THE CLERK:** And the defense?

4 **MR. WARDER:** Please excuse the juror from
5 the trial of this matter.

6 **THE CLERK:** If you would, return to your
7 seat please, ma'am.

8 Juror number 83, Michael E. Kern.

9 What says the State?

10 **MS. HINTON:** Please present Mr. Kern.

11 **THE CLERK:** And the defense?

12 **MR. WARDER:** Please swear the juror.

13 **THE CLERK:** If you would, come forward
14 please, sir, and have a seat in the jury box.

15 Juror number 47, William B. Ervin.

16 What says the State?

17 **MS. HINTON:** Please present Mr. Ervin.

18 **THE CLERK:** And the defense?

19 **MR. WARDER:** Please swear the juror.

20 **THE CLERK:** If you would, come forward
21 please, sir, and have a seat in the jury box.

22 Juror number 28, Diana C. Costello.

23 What says the State?

24 **MS. HINTON:** Please excuse Ms. Costello.

25 **THE CLERK:** If you would, return to your

1 seat please, ma'am.

2 Juror number 89, Gennie S. Link.

3 What says the State?

4 **MS. HINTON:** Please present Ms. Link.

5 **THE CLERK:** And the defense?

6 **MR. WARDER:** Please excuse the juror from
7 the trial of this matter.

8 **THE CLERK:** If you would, return to your
9 seat please, ma'am.

10 Juror number 24, William L. Coates, Jr.

11 What says the State?

12 **MS. HINTON:** Please present Mr. Coates.

13 **THE CLERK:** And the defense?

14 **MR. WARDER:** Please swear the juror.

15 **THE CLERK:** If you would, come forward
16 please, sir, and have a seat in the jury box.

17 Juror number 135, Dana Sayers.

18 What says the State?

19 **MS. HINTON:** Please present Ms. Sayers.

20 **THE CLERK:** And the defense?

21 **MR. WARDER:** Please excuse the juror from
22 the trial of this matter.

23 **THE CLERK:** If you would, return to your
24 seat please, ma'am.

25 Jannelle Raymond.

1 What says the State?

2 **MS. HINTON:** Please present Ms. Raymond.

3 **THE CLERK:** And the defense?

4 **MR. WARDER:** What's her number?

5 **THE CLERK:** She doesn't have a juror
6 number, sir. She was the last one on the list
7 that we called at roll call, if that helps you
8 any.

9 **MR. WARDER:** Please excuse the juror from
10 the trial of this matter.

11 **THE CLERK:** If you would, return to your
12 seat please, ma'am.

13 Juror number 115, Patricia E. Penson.

14 What says the State?

15 **MS. HINTON:** Please excuse Ms. Penson.

16 **THE CLERK:** If you would, return to your
17 seat please, ma'am.

18 Juror number 154, Jacob D. Stewart.

19 What says the State?

20 **MS. HINTON:** Please present Mr. Stewart.

21 **THE CLERK:** And the defense?

22 **MR. WARDER:** Please swear the juror.

23 **THE CLERK:** If you would, come forward
24 please, sir, and have a seat in the jury box.

25 **THE COURT:** All right. We're going to have

1 two alternates.

2 **THE CLERK:** This will be for the first
3 alternate, Juror number 22, Jan E. Childs.

4 What says the State?

5 **MS. HINTON:** Please excuse Ms. Childs.

6 **THE CLERK:** If you would, return to your
7 seat please, ma'am.

8 Juror number 172, Laura J. Williams.

9 What says the State?

10 **MS. HINTON:** Please present Ms. Williams.

11 **THE CLERK:** And the defense?

12 **MR. WARDER:** Please excuse the juror from
13 the trial of this matter.

14 **THE CLERK:** If you would, return to your
15 seat please, ma'am.

16 Juror number 52, Norma B. Fortner.

17 What says the State?

18 **MS. HINTON:** Please present Ms. Fortner.

19 **THE CLERK:** And the defense?

20 **MR. WARDER:** Please excuse the juror from
21 the trial of this matter.

22 **THE CLERK:** If you would, return to your
23 seat please, ma'am.

24 Juror number 61, Heather M. Green.

25 What says the State?

1 **MS. HINTON:** Please present Ms. Green.

2 **THE CLERK:** And the defense?

3 **MR. WARDER:** Please swear the juror.

4 **THE CLERK:** If you would, come forward
5 please, ma'am, and have a seat in the jury box.

6 **THE COURT:** All right. Second alternate.

7 **THE CLERK:** Juror number 120, Kenneth M.
8 Porter.

9 What says the State?

10 **MS. HINTON:** Please present Mr. Porter.

11 **THE CLERK:** And the defense?

12 **MR. WARDER:** Please swear the juror.

13 **THE CLERK:** If you would, come forward
14 please, sir, and have a seat in the jury box.

15 **THE COURT:** All right. Any objection on
16 the selection process on behalf of the State?

17 **MS. HINTON:** None from the State, Your
18 Honor.

19 **THE COURT:** Anything from the defendant?

20 **MR. WARDER:** No, Your Honor.

21 **THE COURT:** All right. Ladies and
22 Gentlemen, I'm going to ask that y'all go back
23 into the jury room for now for just a few
24 minutes. We have another matter that we have to
25 take up on another case, then we'll have you

1 come back here and we'll start the case. I'll
2 give you more directions at that point.

3 But I will tell you and I will tell you
4 this every time you have a break, and that is,
5 at no point are you to discuss the case until I
6 tell you that it's appropriate to do so. You
7 need to make sure you get all the evidence and
8 all the law that applies to the case before you
9 have any discussions about it whatsoever. You
10 also do not need to do any separate research
11 about the case. All of the information that you
12 get is supposed to be from the actual evidence
13 that is admitted.

14 At this time, if you will, step back into
15 the jury room. Then we'll bring you back out as
16 soon as we conclude the other matter.

17 **(WHEREUPON,** the jury exits at approximately
18 11:20 a.m.)

19 **(WHEREUPON,** the Court goes off the record at
20 approximately 11:20 a.m.)

21 **(WHEREUPON,** the Court goes on the record at
22 approximately 11:22 a.m.)

23 **THE COURT:** Let me bring the -- I'm going
24 to bring the jury back in and let them know
25 what we're doing.

1 **(WHEREUPON,** the jury enters at approximately
2 11:23 a.m.)

3 **THE COURT:** All right. This is a form of
4 calisthenics, you know. You get up, you go in,
5 sit down, get up, and all that, you know. But
6 after discussion with the attorneys, I realized
7 it made more sense to go ahead and break a
8 little bit early for lunch because we've got
9 another matter that's going to take us 20
10 minutes or so. Then we'll just be bringing you
11 right back out for a very short duration and
12 then start the trial after lunch.

13 So it just made sense from a timing
14 standpoint for us just to go ahead and break
15 for lunch. We're going to have you come back in
16 at 1:15. All right. Be back in your jury room
17 at 1:15.

18 Again, I'm going to give you your four
19 rules: Again, you are not to discuss the case,
20 not only among yourselves, but with anybody.
21 You know, if you go home for lunch or see --
22 run into your friends, you are not to discuss
23 the case. I realize you don't have a lot of
24 information at this point, but again, you
25 should not discuss the case in any way.

1 You should also not do any type of research
2 about any of the parties or any of the charges,
3 anything whatsoever. Again, all of the
4 information that you are to be considering is
5 to be the information you received as
6 admissible evidence in this courtroom. I don't
7 -- at this point, I'm not aware of any media
8 coverage, but do not pay any attention to any
9 media coverages. If there is coverage about
10 this case, news, newspaper, radio, TV and now,
11 more importantly, any social media, if you see
12 any social media about this case whatsoever,
13 please disregard that and do not pay any
14 attention to it.

15 And finally, again, I don't expect that
16 anyone will be contacted, but the only people
17 that you should be contacted would be somebody
18 from the clerk's office. If you are contacted
19 by anyone else, just give as much descriptive
20 information that you have of that person making
21 the contact and just present that to the
22 bailiff when you return.

23 Again, your bailiff is going to be your
24 main contact person. If you do have any
25 questions or comments, please indicate to one

1 of the bailiffs. The bailiffs are the nice-
2 looking gentlemen with the coats. All of them
3 have a badge on there. Those are your main
4 contacts with the court. Any questions or
5 comments, y'all just let them know.

6 So at this point, I'm going to let you go
7 back to your jury room. The bailiff will
8 release you back there. But we will see you at
9 1:15 after lunch. I hope everybody has a good
10 lunch.

11 **(WHEREUPON, the jury exits at approximately**
12 **11:26 a.m.)**

13 **THE COURT:** All right. This case will be
14 at ease until -- y'all be ready -- be back in
15 here a little after 1:00. Right at -- well,
16 let's just say one o'clock. That way, if we
17 need to go over anything. The jury will be back
18 at 1:15.

19 **(WHEREUPON, the Court goes off the record at**
20 **approximately 11:27 a.m.)**

21 **(WHEREUPON, the Court goes on the record at**
22 **approximately 1:24 p.m.)**

23 **THE COURT:** All right. Anything before we
24 bring the jury in, from the State?

25 **MS. HINTON:** Just briefly, Your Honor. The

1 first witness will be our child. I would ask
2 for permission to bring her down the back
3 hallway.

4 **THE COURT:** Okay. And how old -- how old
5 is she at this time?

6 **MS. HINTON:** She's 10 now, Your Honor.

7 **UNIDENTIFIED SPEAKER:** 9.

8 **THE COURT:** 9. Do we need to go over
9 anything with her before we -- outside the
10 presence of the jury?

11 **MS. HINTON:** Your Honor, I'll leave that
12 in your discretion. I'm happy to go through
13 kind of a series of the difference between the
14 truth and a lie, but if you would like to do it
15 prior to --

16 **THE COURT:** Is she avail -- let's -- let
17 me -- I think -- let's do it when the jury's
18 here.

19 **MS. HINTON:** Okay.

20 **THE COURT:** Okay. Anything else from the
21 defendant before we bring the jury in?

22 **MR. WARDER:** No. Are you going to -- are
23 you going to try and go through the
24 qualification of whether she's able to testify
25 in the presence of the jury?

1 **THE COURT:** That's what my intent was. Do
2 you --

3 **MR. WARDER:** I object. That's just
4 bolstering just like a forensic interview.

5 **THE COURT:** Well, I mean, it's a little
6 bit different because it's the difference in
7 the truth and a lie on the stand. I mean, I
8 note your objection. I mean --

9 **MR. WARDER:** Yes, sir.

10 **THE COURT:** All right. We'll bring the
11 jury in.

12 (WHEREUPON, the jury enters at approximately
13 1:24 p.m.)

14 **THE COURT:** All right. I hope everybody
15 had a good lunch. We are -- as I indicated, we
16 are getting ready to start the trial of this
17 case.

18 At this time, I'm going to ask the Clerk of
19 Court, Mr. Welborn, if he would administer the
20 oath as it relates to this case.

21 **THE CLERK:** If you would, please stand.
22 Again, after the oath is administered, answer
23 by saying, "I will." Raise your right hand.

24 You shall well and truly try the issue
25 joined in this case of the State versus Jose

1 Reyes Reyes and a true verdict render according
2 to the law and evidence so help you God.

3 (WHEREUPON, each juror responds.)

4 **THE CLERK:** Thank you. You may be seated.

5 **THE COURT:** All right. I'm going to give
6 you some preliminary remarks just to kind of --
7 just for introduction purposes. We're getting
8 ready to start the trial of this case. Based on
9 what the attorneys tell me, this case will go
10 into tomorrow. We don't expect it to go into
11 Wednesday, but if it does, we will make sure
12 that you have that information in advance.

13 Now, we're going to be -- let me tell you a
14 little bit about our time table, as far as we
15 will be working everyday. We'll probably start
16 -- it kind of depends on where the witnesses
17 are, we take breaks about every hour to an hour
18 and a half. That will be kind of -- it depends
19 on where we are in the trial. But that's what
20 we look for. So if anybody needs to take a
21 break prior to that point, just indicate and
22 we'll take a break at the earliest opportunity.
23 Normally, we work until about 5:00 or 5:30. If
24 we have to go beyond that, then we will give
25 you sufficient notice so that you can make any

1 calls or make any arrangements. Sometimes, we
2 have to go a little -- cut off a little bit
3 earlier just because of where the witnesses
4 are. Everybody has to be flexible in a trial
5 just because you don't know until it goes along
6 as to when you're going to be breaking and
7 stuff like that, but we want to try to make
8 y'all as comfortable as possible and try to
9 disrupt your regular life as little as
10 possible. But it is a very important trial for
11 both sides of this case. So -- and again, lunch
12 will be about like what we did today. It kind
13 of depends on where we are in the case as to
14 when we break for lunch.

15 As indicated before, this is a case of
16 criminal sexual conduct, an indictment for
17 Criminal Sexual Conduct with a Minor, and the
18 defendant Jose Reyes Reyes. Now, as I told you
19 initially when we were talking before in the
20 jury qualifications, the fact that Mr. Reyes
21 has been indicted should not be considered by
22 you at all. That is merely the charging paper
23 which brings him into this court.

24 But as I will go into more detail later,
25 every defendant is presumed innocent when they

1 come into this courtroom. Mr. Reyes has pled
2 not guilty to this charge. It's up to the State
3 to prove beyond a reasonable doubt that he is
4 guilty. So you are to make a decision based on
5 the evidence which you hear in this courtroom.

6 Now, just to kind of let you know a little
7 bit about who some of the people in the
8 courtroom are, of course, you -- I've already
9 introduced the bailiffs to you. That's your
10 primary contact person with the Court. If you
11 have any questions, if you have any issues
12 whatsoever, please let one of the bailiffs know
13 that.

14 Seated right in front of me is Ms. Johnson.
15 She is the court reporter. She is the one that
16 takes all of the testimony and all the
17 questions, all information in this courtroom.
18 That's what she is taking down verbatim.

19 We also have the Clerk of Court, Mr. Pat
20 Welborn. He is the clerk over all the records
21 for Pickens County. Basically, he charges the
22 courthouse.

23 And seated to my left is my law clerk.
24 She's actually a law school graduate that's
25 assisting me in the trial of this case.

1 And I just wanted to let you know some of
2 that because a lot of times after trial, people
3 say, well, now who are these different people
4 there. I just kind of want to give you a brief
5 idea of that.

6 This is a very important job that you're
7 doing, very important duty. I've got to let you
8 know we each have different responsibilities.
9 I'm the judge of the law and rule on evidence
10 throughout the case. At the end of the case, I
11 will tell you what the law is for this state.

12 You are the judge of the facts. Anything I
13 say that might infer that I have a belief or an
14 opinion as to the facts, disregard that because
15 the facts are up to you as you determine them.
16 And in making that determination, you will have
17 the charge on the law, but if it's law that --
18 not what you think it should be or what it
19 ought to be or what you heard it might be; it's
20 what the law that I tell you it is. That's the
21 law that you're going to apply. But you also
22 have to apply your own common sense in your
23 day-to-day activities as a group. Part of that
24 is going to be to determine the credibility of
25 witnesses or the believability of all the

1 witnesses that are presented.

2 The procedure for the trial will begin with
3 a -- opening statements by the attorneys, that
4 is not evidence. That is their argument, their
5 summary of what the case is going to be
6 presented.

7 Then the State will present -- then we'll
8 have the evidentiary phase where evidence will
9 be presented. Evidence is in two forms: live
10 witnesses and there may also be documentary
11 evidence -- documents. Those are the evidence
12 that you will be considering.

13 Sometimes we need to take a break to
14 discuss -- we have very detailed and very
15 intricate rules of evidence. It's important
16 that we follow those rules. Sometimes, it's
17 easy or more efficient if we consider some of
18 these objections. You will hear objections.
19 It's not the party trying to keep anything out.
20 It's to make sure that the rules are properly
21 followed. Then the evidence that's admitted is
22 properly admitted. Like I said, sometimes, it's
23 more efficient if we send you back to your jury
24 room, not to hide things from you, but just so
25 that we can go through -- discuss the

1 evidentiary issues there.

2 Again, it's not your -- as I told you
3 before, you don't need to deliberate -- you are
4 not allowed to deliberate or discuss the case
5 until it's time to, and that's after you hear
6 all the evidence and the rules of the case.

7 The attorneys -- you know, no one indicated
8 they knew any of them, but it's not permissible
9 for the attorneys to have any discussions with
10 you or you with them. I know sometimes in the
11 courthouse setting, sometimes you may end up
12 coming in and when you're going out, you may
13 end up, like, well, that's the attorney on that
14 case or that's the prosecuting attorney. They
15 are not being rude by not talking with you, but
16 that is just -- that's our rules. They should
17 not have any discussions with you. So if you
18 find yourself in that position, just continue
19 walking and do not have any discussions about
20 that.

21 When -- when you take your first break, I
22 will ask that y'all select a foreperson. That's
23 between the initial 12. That's just the person
24 that's responsible for directing communications
25 to the Court and leading any discussions. As I

1 always say, that person does not get paid any
2 more than the rest of you, but that's something
3 y'all can select on your first break.

4 Anything else from the State?

5 **MS. HINTON:** No, Your Honor.

6 **THE COURT:** Defendant?

7 **MR. WARDER:** No.

8 **THE COURT:** All right. All right. At this
9 time, we'll hear opening statements.

10 **MS. HINTON:** Thank you, Your Honor. May it
11 please the Court?

12 **THE COURT:** Yes.

13 **MS. HINTON:** Mr. Warder.

14 Ladies and Gentlemen of the jury, good
15 afternoon. As I told you before, my name is
16 Brandi Hinton. I'm an assistant solicitor here
17 in Pickens County. My job is to prosecute cases
18 that come before you and that occur in Pickens
19 County.

20 As the judge told you before, we're here on
21 a Criminal Sexual Conduct with a Minor case.
22 The allegations in this case are that six-year-
23 old **Minor** was sexually assaulted
24 by Jose Reyes. **Minor** is nine. You will meet her
25 today. She was identified by her initials for a

1 long time, but today, **Minor** gets to have her
2 own identity and she will sit up there on that
3 witness stand and she will tell you her story.

4 These are not the type of cases that you
5 talk about at Christmas parties. These are
6 cases that occurred in secret, in the dark of
7 night. They are not fun. You probably have gone
8 your entire life without hearing what you're
9 going to hear in this courtroom this week. But
10 it's the reality of what we have to present to
11 you as evidence in this case.

12 We are charged, as the State, with having
13 the burden of proving this case, and that's
14 beyond a reasonable doubt. And that is a burden
15 that we, as the State, gladly accept. It's the
16 same burden that is in this courtroom every day
17 when we try criminal cases and it's the same
18 burden in every courtroom of criminal court
19 across the country.

20 There are very few things in life that we
21 know with 100 percent certainty. We're not
22 required to prove this case with 100 percent
23 certainty. What we are required is to leave you
24 firmly convinced that Jose Reyes caused a
25 sexual battery on **Minor** who was under the

1 age of 11 at the time. The judge will charge
2 you fully on the law and when I get back up and
3 do my closing argument, we'll talk in more
4 detail about it.

5 I do want you to keep in mind throughout
6 this case of one very important thing, is that
7 people lie for two reasons. They lie to get
8 what want they want and they lie to get out of
9 trouble. So I ask you, as the witnesses take
10 the stand, and we will have several, keep in
11 mind what motive do these people have to lie,
12 what do they have to gain, what do they have to
13 lose.

14 I'd also ask you to keep in mind that this
15 is a really embarrassing-type case. You may get
16 embarrassed. The witnesses may get embarrassed
17 because -- I'm a married woman. I've been
18 married for four years and it would be
19 embarrassing for me to get up and tell you
20 about a normal sexual experience that I've had
21 with my husband. So I want you to keep that in
22 mind as this case progresses. These are
23 difficult matters for all of us.

24 At the end of the case, I will be back in
25 front of you and I'm going to ask that you find

1 Mr. Reyes guilty beyond a reasonable doubt of
2 Criminal Sexual Conduct with a Minor. Thank
3 you.

4 **THE COURT:** Mr. Warder?

5 **MR. WARDER:** Thank you, Your Honor.

6 We are about to begin a case of false
7 allegation of criminal sexual conduct. This is
8 a case where my client is accused of about as
9 bad of a thing as anybody could be accused of.
10 My client is accused by a young child of
11 committing criminal sexual conduct.

12 I take it that the State feels the need to
13 minimize their burden of proof when she says I
14 can't prove it to 100 percent. His Honor will
15 tell you about reasonable doubt, that
16 reasonable doubt is the highest doubt. It's got
17 to be proven beyond all reasonable doubt, all
18 reasonable doubt. That will come at the end of
19 the case. Like many things in life,
20 (Indiscernible.) The judge is going to give you
21 the law.

22 The facts that are going to develop in this
23 case to show that the victim was living or
24 staying part-time with my client and his
25 girlfriend; the victim's mother was the sister

1 of my client's girlfriend; the young girl's
2 father had been deported and my client provided
3 part of the financial assistance for the
4 family; that he stopped that and then these
5 allegations arose.

6 The Solicitor's told you that CSC is one of
7 those things that happens not in the light,
8 that it happens in secret and in private.
9 That's the same thing when lies are made up and
10 plans to lie are done in secret, like they were
11 done in this case. The State is always required
12 to prove their case beyond all reasonable
13 doubt. The defendant is never required to
14 prove.

15 Oftentimes, you have a suspicion of what
16 reason might motivate someone to do something.
17 Sometimes, you don't have one. Sometimes, you
18 never know why people do some things.

19 (Indiscernible.) This is a case where my client
20 is accused of an act occurring during a six-
21 month period. We were given no date or time. So
22 it makes it impossible to prove where you were
23 on a particular day when you don't know what it
24 is, when you don't know exactly if you were
25 there or not. The only thing my client can tell

1 you with absolute certainty is that he did not
2 commit this crime. You will hear him testify
3 about that.

4 I ask you to keep an open mind, cause this
5 proceeding has started out with opening
6 statement by the State. We can not present
7 evidence until the State is finished. There are
8 jury studies that have been done that show that
9 jurors have a natural tendency, like most
10 people, to make up their minds rather quickly.
11 You hear testimony and you have made up your
12 mind. You start to feel that one side is right.
13 If you do that in this case, you would have
14 done that only when the State has presented
15 evidence.

16 The second half of those studies is even
17 more disturbing. It shows that once people make
18 up their minds, they seldom, if ever, change
19 them. I ask you, in this case, to consciously
20 force yourself to keep an open mind until
21 you've heard both sides.

22 There used to be a guy on the radio who
23 would tell you about an event. Then he would
24 take a break for the advertising. Then they
25 would come back for the rest of the story. They

1 always change or explain it. Well, I'm not
2 sure that I'm as good of a storyteller or as
3 good a reporter as that fellow was. When you
4 hear the whole story, it is different. So I ask
5 you to keep an open mind until you've heard the
6 whole story and until you see all of the
7 evidence, so you can clearly make up your mind
8 based upon that evidence.

9 Your job in this case will be to weigh the
10 evidence. And when the trial is over, then
11 you'll have the law. And you will see that this
12 evidence does not fit in this case
13 (Indiscernible.) I will be asking you at the
14 end of this case to return a fair, just and
15 proper verdict, a verdict of not guilty. Thank
16 you very much.

17 **THE COURT:** Thank you.

18 All right. The State may call its first
19 witness.

20 **MS. HINTON:** Thank you, Your Honor. The
21 State will call **Minor**.

22 **THE CLERK:** Raise your hand first. Raise
23 your right hand. Okay.

24 **Minor**
25 having first been duly sworn, testifies as follows:

1 **THE CLERK:** You're going to have to speak
2 up. If you would, tell us what your name is.

3 **THE WITNESS:** **Minor** .

4 **THE CLERK:** Okay. Very good.

5 **DIRECT EXAMINATION**

6 **BY MS. HINTON:**

7 **Q** Let's slide up just a little bit. Okay. So
8 we can make sure that everyone can hear. Speak
9 straight into that microphone. All right. **Minor** , can
10 you tell me what your full name is?

11 **A** **Minor** .

12 **Q** Okay. And how old are you, **Minor** ?

13 **A** Nine.

14 **Q** Okay. Do you know why you're here today?

15 **A** Yeah.

16 **Q** Okay. Do you know that while you're here,
17 we only talk about things that are the truth?

18 **A** Yeah.

19 **MR. WARDER:** Your Honor, just for the
20 record, I want to preserve my objection.

21 **THE COURT:** All right. As to the
22 bolstering. Yeah, I think that the person can
23 testify on their own behalf, just not another
24 party.

25 **BY MS. HINTON:**

1 Q Minor, do you know the difference between
2 the truth and a lie?

3 A (Nods head.)

4 Q Do you know what a lie is?

5 A Yeah.

6 Q What'd you say?

7 A Yes.

8 Q Okay. What happens when you tell a lie?

9 A That he can't -- he won't -- he will not go
10 to jail.

11 Q What happens if you tell a lie?

12 A (No audible response.)

13 Q If you go to school and you tell a lie,
14 what happens?

15 A (No audible response.)

16 Q Let me ask you another --

17 MR. WARDER: Objection. Let the witness
18 answer.

19 THE COURT: All right.

20 MS. HINTON: Can I rephrase, Judge?

21 THE COURT: Yeah, you may rephrase.

22 BY MS. HINTON:

23 Q Minor, is it a good thing or a bad thing to
24 tell a lie?

25 A Bad thing.

1 Q Okay. And if you get -- if you tell a lie,
2 do you get in trouble for that lie?

3 A Yes.

4 Q Okay. And is telling the truth a good thing
5 or a bad thing?

6 A Good thing.

7 Q Okay. Do you know what it means to tell the
8 truth?

9 A No.

10 Q Do you know what the word truth means?

11 A (No audible response.)

12 Q Do you know what it means to be honest
13 about something?

14 A (Nods head.)

15 Q Is that a yes?

16 A Yes.

17 Q Is it good to be honest about things?

18 A Yes.

19 MR. WARDER: Your Honor, this is too
20 lenient. This is --

21 MS. HINTON: Judge, she's a child witness.
22 I get a little bit of leeway.

23 THE COURT: I'm going to give -- I'm going
24 to give her some latitude.

25 BY MS. HINTON:

1 Q Minor, let me ask you this, if I told you
2 that my shirt was red, would that be the truth or a
3 lie?

4 A Lie.

5 Q Okay. And if I told you that your shirt had
6 pink in it, would that be the truth or a lie?

7 A Truth.

8 Q Okay. And if I told you that I was a boy,
9 would that be the truth or a lie?

10 A Lie.

11 Q Okay. So you understand that when we're in
12 here, we're going to talk about the truth. Do you
13 understand that?

14 A (Nods head.)

15 Q Is that a yes?

16 A Yes.

17 MS. HINTON: Okay. Judge, at this time, I
18 would move her as qualified to testify.

19 THE COURT: Any -- any comments on -- I
20 think, under Rule 601, she is competent unless
21 otherwise disqualified.

22 MR. WARDER: No objection.

23 THE COURT: All right.

24 MS. HINTON: Thank you.

25 BY MS. HINTON:

- 1 Q All right. Minor, how old are you?
- 2 A Nine.
- 3 Q Okay. And where do you go to school?
- 4 A Ambler.
- 5 Q All right. What grade are you in?
- 6 A Third.
- 7 Q What do you like about school?
- 8 A Math.
- 9 Q Okay. Are you good at math?
- 10 A Yeah.
- 11 Q Is that a yes?
- 12 A Yes.
- 13 Q Make sure you speak up for me. Okay. Who do
- 14 you live with, Minor?
- 15 A My mom and my dad.
- 16 Q What's your mom's name?
- 17 A Diane.
- 18 Q And what's your dad's name?
- 19 A (Indiscernible.)
- 20 Q Okay. And do you have any brothers or
- 21 sisters?
- 22 A I have a brother.
- 23 Q What's your brother's name?
- 24 A Christian.
- 25 Q Is he older or younger than you?

1 **A** Older.

2 **Q** Okay. Do you know Megan?

3 **A** Yes.

4 **Q** How do you know Megan?

5 **A** Because she's related to me.

6 **Q** She's related to you. Okay. Did you ever go
7 over to Megan's house?

8 **A** Yes.

9 **Q** Would you go over there one time or did you
10 go over there a lot of times?

11 **A** Lots.

12 **Q** Okay. And when you would go over there,
13 what would you do?

14 **A** Play with her kids.

15 **Q** Okay. How many kids does she have?

16 **A** Two.

17 **Q** All right. Boys or girls?

18 **A** Girls.

19 **Q** And did you like going over there?

20 **A** Yes.

21 **Q** Did anybody else live with Megan other than
22 her two girls?

23 **A** No.

24 **Q** Okay. Do you know somebody named Fernando?

25 **A** Yes.

1 Q Did Fernando ever live at Megan's house?

2 A Yes.

3 Q Okay. When you would go to Megan's house,
4 would you ever spend the night?

5 A Yes.

6 Q Would you spend the night one time or a lot
7 of times?

8 A Lot.

9 Q Okay. And when you would spend the night,
10 where would you sleep?

11 A On the couch.

12 Q And where's the couch? What room?

13 A Living room.

14 Q Okay. And when you would be at Megan's
15 house, would Fernando be there?

16 A Yes.

17 Q Has anybody ever touched you in a way that
18 you did not like?

19 A Yeah.

20 Q Who's done that to you?

21 A Fernando.

22 Q Okay. Can you tell me about what Fernando
23 did to you?

24 A He touched my private.

25 Q Okay. And where is your private?

- 1 **A** (No audible response.)
- 2 **Q** Can you point to it?
- 3 **A** Right here. (Indicating.)
- 4 **Q** And how many times did that happen? One
- 5 time or more than one time?
- 6 **A** More.
- 7 **Q** Okay. How often would that happen to you?
- 8 **A** Every day I could go.
- 9 **Q** Every day what?
- 10 **A** Every day when I'd go.
- 11 **Q** When you go where?
- 12 **A** To Megan's house.
- 13 **Q** And would it happen during the daytime or
- 14 at nighttime?
- 15 **A** Night.
- 16 **Q** And where would you be when it would
- 17 happen?
- 18 **A** On the couch.
- 19 **Q** And when you say, touched your private,
- 20 what did he touch your private with?
- 21 **A** His hand.
- 22 **Q** Okay. And was it on top of your clothes or
- 23 under your clothes?
- 24 **A** Under.
- 25 **Q** Okay. And was it on the outside or on the

1 inside of your private?

2 A In.

3 Q Okay. Did he ever touch you with anything
4 other than his hand?

5 A No.

6 Q Okay. Did he ever touch you with his mouth?

7

8 A No.

9 Q He never did anything to you with his
10 mouth?

11 A Yes.

12 Q Okay. What did he do to you with his mouth?

13 A He kissed me.

14 Q Okay. Where would he kiss you?

15 A My lips.

16 Q Okay. Did anything go into your mouth when
17 he would kiss you?

18 A No.

19 Q Okay. When he put his hand in your private,
20 was that one time or more than one time?

21 A More.

22 Q What'd you say?

23 A More.

24 Q More. Okay. And how old were you when this
25 would happen to you?

1 **A** Two.

2 **Q** You were two?

3 **A** No, about six.

4 **Q** You were six? Okay. Did he ever touch you
5 with any other part of his body?

6 **A** Yes.

7 **Q** What else would he touch you with?

8 **A** His private.

9 **Q** His private. Okay. Did he touch you on top
10 of your clothes or under your clothes with his
11 private?

12 **A** Under.

13 **Q** Okay. And did he touch you -- where did he
14 touch you with his private?

15 **A** On my private.

16 **Q** On your private? Okay. Did his private ever
17 go in your private?

18 **A** (Shakes head.)

19 **Q** No? Okay. He just touched you on top with
20 your private -- with his private?

21 **A** (Nods head.)

22 **Q** Did that happen time one time or more than
23 one time?

24 **A** More.

25 **Q** Okay. Did you ever tell anybody what

1 happened to you?

2 **A** Yes.

3 **Q** Who did you tell first what happened to
4 you?

5 **A** Beth.

6 **Q** Who is Beth?

7 **A** My aunt.

8 **Q** Okay. Did you ever tell your mom what
9 happened?

10 **A** Yes.

11 **Q** Okay. Do you know if -- well, when -- when
12 Fernando would do this to you, would you be awake or
13 sleep? Tell me how that would happen.

14 **A** I would be asleep.

15 **Q** Okay. And what would be the first thing
16 that he would do? Where would he be when this would
17 happen?

18 **A** On top of me.

19 **Q** Okay. And would his -- would he say
20 anything to you?

21 **A** Yes.

22 **Q** What would he say to you?

23 **A** Do you like it?

24 **Q** And what would you say?

25 **A** No.

1 Q Okay. Minor, do you know if Fernando has
2 any other names? Does he go by any other names?

3 A (Shakes head.)

4 Q You don't know?

5 A (Shakes head.)

6 Q Is Fernando here?

7 A Yes.

8 Q Okay. Can you point to where he is?

9 A (Indicating.)

10 Q Okay. Minor, those are all the questions I
11 have. Okay? But answer anything that Mr. Warder asks
12 you. Okay?

13 **CROSS-EXAMINATION**

14 **BY MR. WARDER:**

15 Q Minor, how long have you known Fernando?

16 A A lot.

17 Q How many times have you spent the night at
18 his house? Do you have any idea?

19 A Huh-uh.

20 Q Now, you said that Fernando touched your
21 private?

22 A Yes.

23 Q How many times?

24 A A lot of times.

25 Q You don't know how many?

1 **A** About five or something.

2 **Q** Pardon?

3 **A** About five times.

4 **Q** Five times? Do you know when that occurred?

5 What month? What year?

6 **A** About -- around --

7 **Q** What grade in school are you in?

8 **A** Third, and I go to Ambler.

9 **Q** And you said he kissed you on the mouth?

10 **A** Yes.

11 **Q** And you said you felt his tongue?

12 **A** Yes.

13 **Q** How many times was that?

14 **A** Six times.

15 **Q** Six times? Is this the first time that you

16 went over these questions with the Solicitor?

17 **A** Huh-uh.

18 **Q** How many times have you gone over these

19 same questions?

20 **A** Two times.

21 **Q** Was your mother present when you went over

22 them with her?

23 **A** No.

24 **Q** Was your mother there when you practiced

25 the questions?

1 **A** Yeah.

2 **Q** Your father is back in Mexico?

3 **A** Yes.

4 **Q** You know whether Jose helped provide
5 support to your family after your father went back to
6 Mexico?

7 **A** Huh-uh.

8 **Q** You don't know?

9 **A** (Shakes head.)

10 **Q** Thank you.

11 **THE COURT:** Anything?

12 **MS. HINTON:** Nothing further, Your Honor.
13 May she be excused?

14 **THE COURT:** All right. Yes, she may
15 Thank you very much.

16 **MS. HINTON:** Your Honor, I do have a
17 matter that I would like to take up outside the
18 jury's presence.

19 **THE COURT:** Okay.

20 All right. Again, as I said, a couple of
21 times, we'd have to break outside of your
22 presence to go over some matters. But this will
23 be the chance for y'all to select your
24 foreperson. You can decide between the initial
25 12. When you've made that decision, just write

1 it down and give that to the bailiff and we'll
2 be -- we'll be ready for you to come back out
3 here in just a few minutes.

4 **(WHEREUPON, the jury exits at approximately**
5 1:56 p.m.)

6 **THE BAILIFF:** The jury is secure, Your
7 Honor.

8 **THE COURT:** All right. Yes?

9 **MS. HINTON:** Thank you, Your Honor. I
10 apologize. I'm trying to put my hands on the
11 case. I will continue to do so as I talk. But in
12 Mr. Warder's cross-examination of the witness, I
13 believe that he attempted to allude or did
14 allude to improper coaching. My notes reflect
15 that he asked her how many times did you go over
16 these questions; how many times did you
17 practice; was your mother present -- I believe
18 he asked that twice -- was she present when --
19 when that took place. Your Honor, I believe that
20 there is case law that says when the defense
21 tries to allude to improper coaching that the
22 State may submit evidence of the full statement,
23 not limited to time and place disclosure any
24 longer, but the full disclosure by the victim of
25 anyone that she disclosed to prior to that

1 alleged coaching. In this case, that alleged
2 coaching would have been when she began meeting
3 with me at the Solicitor's office sometime in
4 preparation for this case, which would have been
5 September or October of this year. So I think
6 any statements that she has given prior to that,
7 the State can now elicit the full extent of
8 those statements.

9 **THE COURT:** All right. Mr. Warder?

10 **MR. WARDER:** I don't know what she's
11 trying to allude is admissible. I asked her had
12 those questions been -- if she went over them
13 because she was having trouble answering. I was
14 trying to find out if those were the same
15 questions that she should have been able to
16 answer.

17 **THE COURT:** You need this for your current
18 -- for your next witness?

19 **MS. HINTON:** Well, Your Honor, I mean, she
20 would be one of the ones. Really, pretty much
21 every witness I have today would have been a
22 disclosure prior to that. I apologize, Judge. I
23 know I have this case somewhere in my binder. I
24 did not --

25 **THE COURT:** Yeah, I'm not -- I'm not

1 familiar with that case. I'm going to hear that
2 case before I --

3 MS. HINTON: If the Court will indulge me
4 for one moment, I --

5 THE COURT: All right.

6 MS. HINTON: -- I will find it.

7 (WHEREUPON, there is a pause.)

8 THE COURT: The jury has sent a note that
9 the foreperson is Stephen Talley.

10 MS. HINTON: Judge, may I just go to my
11 office and look?

12 THE COURT: Yeah, let's take a five-minute
13 break.

14 (WHEREUPON, the Court goes off the record at
15 approximately 2:01 p.m.)

16 (WHEREUPON, the Court goes on the record at
17 approximately 2:08 p.m.)

18 THE COURT: All right. I have reviewed the
19 case presented. I'll be glad to hear from you.
20 My -- my initial reaction, I don't think what --
21 his questioning goes to the level as they've
22 indicated here, but I'll be glad to hear your
23 argument after you went through all the trouble
24 getting this case.

25 MS. HINTON: Thank you, Your Honor. I

1 think it's statutory. It's 801(d)(1)(d). And I
2 think that it's any -- or specific references by
3 defense counsel as to coaching and whether the
4 victim has practiced before testifying. And in
5 -- the case that I'm relying on is State v.
6 Jeffcoat, which is 350 S.C. 392. Essentially,
7 the State elicited the entirety of a statement
8 from the remaining witnesses. The Court allowed
9 that to go beyond the time and place exception
10 because they felt that the defense counsel had
11 raised the issue of improper influence or
12 coaching by asking the victim whether she
13 practiced. I understand the Court's ruling. I
14 won't beat a dead horse, Judge, but I would ask
15 this, in light of the case, I would ask that he
16 be cautioned to go any further into that,
17 because if he does, I would ask the Court
18 revisit the Jeffcoat case.

19 **THE COURT:** Well, he does so at his own
20 peril. I think the next thing does say counsel
21 inquired whether the victim had talked to the
22 mother, whether the Solicitor told the victim
23 what things to say. I think that kind of pushes
24 it a little beyond. So I'm going to deny your
25 motion based on information presented at this

1 point. And if we need to revisit it at any point
2 in the future, then, of course, I'll be glad to
3 do so.

4 **MS. HINTON:** Thank you, Your Honor.

5 **THE COURT:** All right. Anything further
6 before we bring the jury back?

7 **MS. HINTON:** No, I do want to make sure
8 that my next witnesses understand that they are
9 -- that the Court is ruling that they are
10 limited to the time and place exceptions.

11 **THE COURT:** Yes. All right. For all the
12 witnesses coming up, what the Solicitor said is
13 correct. You are limited to time and place. I'm
14 sure y'all have discussed this. All right.

15 Bring the --

16 Ready to bring the jury back in?

17 **MS. HINTON:** Yes, Your Honor.

18 **THE COURT:** All right.

19 (WHEREUPON, the jury enters at approximately
20 2:10 p.m.)

21 **THE COURT:** All right. I believe Mr.
22 Talley has been elected as the foreperson, or
23 appointed or volunteered, whatever. We've got
24 you as the foreperson. All right.

25 The State may proceed.

1 **MS. HINTON:** Thank you, Your Honor. The
2 State will call Mary Elizabeth Couch.

3 **THE CLERK:** Place your left hand on the
4 Bible and raise your right.

5 **MARY COUCH**
6 having first been duly sworn, testifies as follows:

7 **THE CLERK:** If you would, have a seat and
8 state your name for the record please.

9 **THE WITNESS:** Mary Elizabeth Couch.

10 **DIRECT EXAMINATION**

11 **BY MS. HINTON:**

12 **Q** All right. And you might have to speak up
13 for me. All right. Mary, what does **Minor** call you?

14 **A** Beth.

15 **Q** Okay. And how are you related to **Minor** ?

16 **A** That's my niece.

17 **Q** All right. Are you guys close?

18 **A** Uh-huh.

19 **Q** Is that a yes?

20 **A** Yes.

21 **Q** Okay. You've got to say yes or no, not Uh-
22 huh or Huh-uh. Are you involved -- have you been
23 involved in **Minor's** life since her birth?

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

25 **Q** And did **Minor** ever make a disclosure of

1 sexual abuse to you?

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

3 **Q** Did you say yes?

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

5 **Q** Did she tell you where it had happened to
6 her?

7 **A** At Megan's house.

8 **Q** Okay. Did she tell you where in Megan's
9 house it had happened?

10 **A** On the couch.

11 **Q** Okay. Did she tell you when it happened to
12 her?

13 **A** She didn't tell me an exact day.

14 **Q** Did she give you any context as to when?

15 **A** I don't --

16 **Q** If the answer's no, that's okay.

17 **A** I mean, I don't -- when she told me, it was
18 when her mama had took her to the doctor.

19 **Q** Okay. All right. What were you guys doing
20 when **Minor** told you what had happened to her?

21 **A** Watching a movie.

22 **Q** And where were you?

23 **A** At Diane's house.

24 **Q** Okay. And who is Diane to you?

25 **A** My sister.

1 Q Okay. And is that **Minor's** mom?

2 A **Minor's** mom.

3 Q Who was in the room when she told you what
4 had happened?

5 A Me, a friend of mine, Christie, **Minor**.

6 Q Okay. And when she told you what happened,
7 how was she acting?

8 A I mean, she was nonstop. She was running
9 around the room just like she -- just -- I don't
10 know, just like running in circles like she couldn't
11 get it out, you know?

12 Q Okay. What prompted **Minor** to tell you what
13 happened?

14 A I have no idea.

15 **MR. WARDER:** Objection, Your Honor. The
16 witness couldn't possibly know that.

17 **MS. HINTON:** She said I don't know.

18 **THE COURT:** All right. Let me --

19 **MS. HINTON:** Her answer was I have no
20 idea, so I think that was appropriate given --

21 **THE COURT:** All right. Sustained.

22 **BY MS. HINTON:**

23 Q What's **Minor** like compared to what she was
24 like before? Have you seen any changes in **Minor**?

25 A Yes.

1 Q Okay. Can you tell me what those changes
2 are?

3 A She don't -- she would flip out, just as in
4 just show out.

5 MR. WARDER: Specific feelings and stuff,
6 she don't -- I don't think --

7 THE COURT: I'm not sure that's -- I'm
8 going to overrule. I think what she's stating is
9 not a feeling.

10 BY MS. HINTON:

11 Q Tell me some of the differences that you
12 observed in Minor .

13 A She's calm. She's a lot calmer. That's --
14 for the most part, that's -- I mean, the way she can
15 talk to somebody is different.

16 Q In response to what Minor told you, what
17 did you do?

18 A I got my sister ---

19 Q Okay.

20 A --- Diane.

21 Q All right. And after you got your sister,
22 what did you do?

23 A We listened to her.

24 Q After that, what did you do?

25 A Called the police.

1 **Q** Okay. When you called the police, what was
2 **Minor's** reaction?

3 **A** She went in her room and told us she hated
4 us and that she wouldn't never tell us nothing again
5 because somebody was going to be mad at her.

6 **Q** Beth, that's all I have. Answer any
7 questions Mr. Warder has. Okay.

8 **MR. WARDER:** Your Honor, if it pleases the
9 Court, I don't have any questions.

10 **THE COURT:** All right.

11 **MS. HINTON:** Thank you, Your Honor. May
12 she be excused?

13 **THE COURT:** Yes. Next witness.

14 **MS. HINTON:** Yes, Your Honor. The case --
15 sorry. The State would call Casey Diane Couch.

16 **THE CLERK:** If you would, place your left
17 hand on the Bible and raise your right.

18 **CASEY COUCH**
19 having first been duly sworn, testifies as follows:

20 **THE CLERK:** Thank you, ma'am. If you
21 would, have a seat and state your name for the
22 record please.

23 **THE WITNESS:** Casey Couch.

24 **DIRECT EXAMINATION**

25 **BY MS. HINTON:**

1 Q Casey, do you go by Diane?

2 A I do.

3 Q Okay. How do you know Minor ?

4 A She's my daughter.

5 Q Okay. When was Minor born?

6 A [REDACTED].

7 Q Okay. Speak up just a little bit for me.

8 Okay?

9 A [REDACTED].

10 Q Okay. So how old is Minor now?

11 A She's nine.

12 Q All right. Do you know Megan?

13 A I do.

14 Q How do you know Megan?

15 A She's a cousin.

16 Q All right. What's Megan's last name?

17 A (Indiscernible.)

18 Q Okay. Is she your cousin?

19 A Yes.

20 Q Did Minor ever spend any time at Megan's
21 house?

22 A She did.

23 Q All right. Do you know the time frame that
24 she was going over there?

25 A In 2013 and 2014.

1 Q And why was she going over there?

2 A When her father was deported, it was -- it
3 was hard. I was trying to get a job.

4 Q Would **Minor** ever spend the night over
5 there?

6 A She did.

7 Q Okay. When **Minor** first started going over
8 to Megan's house, did she like going over there?

9 A She did.

10 Q Okay. Was there a time when **Minor's**
11 attitude about going over there changed?

12 A Yes.

13 Q Okay. Can you tell me about that?

14 A Every once in a while, it was kind of like
15 a meltdown.

16 Q Okay. Did she ever disclose sexual abuse to
17 you?

18 A She did.

19 Q Okay. Did she tell you where it had
20 happened?

21 A On the couch at Megan's house.

22 Q Okay. Did she tell you when it had
23 happened?

24 A She couldn't give me an exact date.

25 Q Okay. In response to what **Minor** told you,

1 what did you do?

2 **A** I went on the back porch and I called the
3 police.

4 **Q** Okay. And did they come to your house?

5 **A** They did.

6 **Q** Did they speak to you?

7 **A** They did.

8 **Q** Okay. And did they also speak to **Minor** ?

9 **A** They did.

10 **Q** Prior to **Minor** disclosing sexual abuse to
11 you, had she been sick at all?

12 **A** She had complained when she peed that it
13 burned.

14 **Q** Okay. And in response to her complaining
15 that when she peed that it burned, what did y'all do?

16 **A** She went to Cannon ---

17 **Q** Okay.

18 **A** --- ER.

19 **Q** All right. And do you have any idea when
20 she went to Cannon ER?

21 **A** It was in August.

22 **Q** Of what year?

23 **A** 2014.

24 **Q** Okay.

25 **A** 2015.

1 Q Okay. How long after that visit did Minor
2 disclose sexual abuse to you?

3 A That was in August, so just a few weeks
4 later.

5 Q Okay. Have you seen any changes in Minor?

6 A From then, yes. At first, it was -- the
7 behavior was like throwing stuff, just screaming. But
8 now, she'll talk to you. You know, she can say "I'm
9 mad at you."

10 Q Okay.

11 A She can go in her room and close the door
12 and then come out and be okay with you.

13 Q Okay. Is Minor in counseling?

14 A She is.

15 Q How long has she been in counseling?

16 A She's been in mental health counseling for
17 a year and a half. She's been in Julie Valentine
18 counseling for a year.

19 Q Diane, that's all I have. Please answer any
20 questions Mr. Warder may have.

21 **THE COURT:** Mr. Warder.

22 **CROSS-EXAMINATION**

23 **BY MR. WARDER:**

24 Q You told us that she went to the doctor for
25 irritating pain when she urinated?

1 **A** Uh-huh.

2 **Q** And that was in August of 2014?

3 **A** Uh-huh.

4 **Q** And she disclosed this to you a few weeks
5 after August, so it would have been about September
6 of 2014?

7 **A** Uh-huh.

8 **Q** Thank you.

9 **MS. HINTON:** Nothing further, Judge. May
10 she be excused?

11 **THE COURT:** All right. Step down. Any
12 objection to her being excused?

13 (No audible response.)

14 Any objection to her being excused?

15 **MR. WARDER:** I'm sorry, Your Honor. I
16 couldn't hear.

17 **THE COURT:** That's fine. I mumbled.

18 **MS. HINTON:** You ready for our next --

19 **THE COURT:** Yes.

20 **MS. HINTON:** Thank you, Your Honor. The
21 State would call Billy Trotter.

22 **BILLY TROTTER**

23 having first been duly sworn, testifies as follows:

24 **THE CLERK:** Sir, if you would, have a seat
25 and state your name for the record please.

1 **THE WITNESS:** My name is Billy Trotter.

2 **DIRECT EXAMINATION**

3 **BY MS. HINTON:**

4 **Q** Okay. Deputy Trotter, where are you
5 employed?

6 **A** I'm employed with the Pickens County
7 Sheriff's Office.

8 **Q** How long have you been there?

9 **A** Seven years.

10 **Q** Okay. In what capacity are you employed
11 there?

12 **A** I am currently a deputy sheriff.

13 **Q** And did you have occasion to respond to
14 **Minor's** residence?

15 **A** I did.

16 **Q** Do you know when you responded to her
17 residence?

18 **A** Yes, ma'am. I do. I responded there on --
19 let me get my eyes out here -- on August 29th, 2013
20 at approximately 7:30 in the afternoon.

21 **Q** Okay. And when you responded, what type of
22 call were you responding to?

23 **A** It was dispatched as a call involving a
24 sexual assault.

25 **Q** Okay. And when you got there, what's the

1 first thing that you did?

2 **A** I spoke with the mother, who was the
3 complainant.

4 **Q** Okay. And when you spoke to the mother, was
5 the young child with her?

6 **A** She was in another room at the time.

7 **Q** Okay. Why is it important for you to speak
8 to the mother without the child there?

9 **A** Well, the mother was my complainant and I
10 needed to determine what I -- what kind of situation
11 I had that I was facing.

12 **Q** Okay. And after you spoke to the mother,
13 did you ever have an opportunity to talk to the
14 child?

15 **A** Yes, ma'am. I do.

16 **Q** Okay. And what was that child's name?

17 **A** That child's name was **Minor**.

18 **Q** Okay. And how old was she at the time?

19 **A** She was six.

20 **Q** Okay. And did **Minor** disclose sexual abuse
21 to you?

22 **A** Yes, ma'am. She did.

23 **Q** Did she tell you where that sexual abuse
24 happened?

25 **A** She did.

1 Q Okay. And was that within Pickens County?

2 A Yes, ma'am. It was at [REDACTED] Market Road.

3 Q Okay. Do you know who lived at that
4 address?

5 A At that time --

6 Q Actually, let me strike that question. When
7 **Minor** disclosed sexual abuse to you, how was she
8 acting when she disclosed to you?

9 A She was very embarrassed, did not want to
10 speak, really. It was like it was traumatic for her
11 to tell me what happened.

12 Q Okay. When you get these types of cases,
13 generally, what's the next step in your
14 investigation?

15 A I take the initial report and then I turn
16 it over to investigations for further investigating.

17 Q Okay. Is that what you did in this case?

18 A Yes, ma'am.

19 Q Do you know who took over after you?

20 A Captain Nix did. The case was assigned to
21 him.

22 Q Okay. Deputy Trotter, that's all I have.
23 Please answer any questions Mr. Warder may have.

24 A Okay.

25 **MR. WARDER:** Your Honor, I have no

1 questions.

2 **THE COURT:** All right.

3 **MS. HINTON:** Thank you, Your Honor. May he
4 be excused?

5 **THE COURT:** Yes, he may. Any objection to
6 him being excused?

7 **MR. WARDER:** No, sir.

8 **MS. HINTON:** Ready, Your Honor?

9 **THE COURT:** Yes.

10 **MS. HINTON:** Thank you. The State would
11 call Detective or Captain Marvin Nix please.

12 **MARVIN NIX**

13 having first been duly sworn, testifies as follows:

14 **THE CLERK:** Thank you, sir. If you would,
15 have a seat. State your name for the record
16 please.

17 **THE WITNESS:** Marvin Nix.

18 **DIRECT EXAMINATION**

19 **BY MS. HINTON:**

20 **Q** Captain Nix, where are you employed?

21 **A** Pickens County Sheriff's Office.

22 **Q** How long have you been employed there?

23 **A** 25 years.

24 **Q** Okay. Prior to becoming a captain, were you
25 a detective over there?

1 **A** I was.

2 **Q** Do you recall what years you were
3 detective?

4 **A** I was actually a detective from 2005 to
5 probably 2014.

6 **Q** Did you have occasion to become involved in
7 the case with **Minor** ?

8 **A** I did.

9 **Q** And how did you get that case?

10 **A** Normal procedure, any type of those cases,
11 initially, a road unit goes and takes the initial
12 report, gets the information. It comes to us in the
13 detective division for follow-up.

14 **Q** Okay. And did you determine through this
15 case the age of the victim at the time of the abuse?

16 **A** I did.

17 **Q** Okay. What was her age?

18 **A** She was six.

19 **Q** And what was the age of the defendant?

20 **A** 25 or 27.

21 **Q** Okay. And who was the defendant in this
22 case?

23 **A** I determined it to be Jose Reyes Reyes.

24 **Q** Okay. Now, let's back up a little bit. When
25 you got the case, was that the name that was given to

1 you as the offender?

2 A No, ma'am.

3 Q Okay. What was the name that was given to
4 you?

5 A Fernando.

6 Q Okay. And how did you determine that
7 Fernando was also Jose Reyes Reyes?

8 A Initially, I went out to the residence to
9 try to make contact with him. I met with his wife or
10 live-in girlfriend, Megan, and she actually gave me
11 the information.

12 Q Okay. All right. Did you attempt to speak
13 to **Minor** about this case?

14 A I did.

15 Q And where was that?

16 A Pickens Elementary.

17 Q And tell me what happened when you tried to
18 speak with her?

19 A I initially went to try and speak with her
20 and she became so upset I really couldn't speak with
21 her.

22 Q Okay.

23 A But I did get out of her that Fernando was
24 the person that lived with Megan.

25 Q Okay. Captain Nix, that's all I have at

1 this time. Please answer anything Mr. Warder may
2 have.

3 **MR. WARDER:** Your Honor, if it pleases the
4 Court, I have no questions.

5 **THE COURT:** All right.

6 **MS. HINTON:** Your Honor, may he be -- he's
7 going to hang around anyway.

8 **THE COURT:** All right.

9 **MS. HINTON:** And Judge, may we approach
10 real quick on scheduling?

11 **THE COURT:** Yes.

12 **(WHEREUPON, a bench conference is held off the**
13 **record.)**

14 **THE COURT:** All right. Sometimes -- this
15 is that part where you have to be flexible.
16 Sometimes it's difficult to know exactly what
17 the schedule is going to be, so we're going to
18 ask you to take a break. Go back to the jury
19 room. Again, do not discuss the case at all.
20 Just take a break and enjoy all the little
21 snacks. All right. Head back to your jury room.

22 **(WHEREUPON, the jury exits at approximately**
23 **2:28 p.m.)**

24 **THE COURT:** All right. We'll be at ease
25 for about 10 minutes, if not longer. So just let

1 us know.

2 MS. HINTON: I will. Thank you, Your
3 Honor.

4 (WHEREUPON, the Court goes off the record at
5 approximately 2:28 p.m.)

6 (WHEREUPON, the Court goes on the record at
7 approximately 3:01 p.m.)

8 (WHEREUPON, the jury enters at approximately
9 3:01 p.m.)

10 THE COURT: All right. Okay. We'll
11 proceed. Hope everybody had a good break. You
12 can proceed.

13 MS. HINTON: Thank you, Your Honor. The
14 State would briefly re-call Captain Nix.

15 MARVIN NIX
16 previously sworn, testifies as follows:

17 THE COURT: And I will remind you you are
18 under oath.

19 THE WITNESS: Yes, sir.

20 DIRECT EXAMINATION

21 BY MS. HINTON:

22 Q Captain Nix, I failed to ask you when you
23 were on the stand before, as part of your
24 investigation, did you determine a time frame of when
25 this event occurred?

1 **A** Yes.

2 **Q** Okay. And what was that time frame?

3 **A** The best I can figure through my
4 investigation was sometime between January, 2013 and
5 June, 2013.

6 **MS. HINTON:** That's all I have. Thank you.

7 **THE COURT:** Cross-examination?

8 **MR. WARDER:** Your Honor, if it pleases the
9 Court, I have no questions for this witness.

10 **THE COURT:** Okay.

11 **MS. HINTON:** Thank you, Your Honor. The
12 State would call Victoria Tate.

13 **THE CLERK:** If you would, place your left
14 hand on the Bible and raise your right.

15 **VICTORIA TATE**
16 having first been duly sworn, testifies as follows:

17 **THE CLERK:** Thank you, ma'am. If you
18 would, have a seat and state your name for the
19 record please.

20 **THE WITNESS:** My name is Victoria Tate.

21 **DIRECT EXAMINATION**

22 **BY MS. HINTON:**

23 **Q** Ms. Tate, where are you employed?

24 **A** I'm employed at Julie Valentine Center.

25 **Q** Okay. In what capacity are you employed?

1 **A** I'm employed as a child therapist.

2 **Q** Okay. Can you tell the Court a little bit
3 about your educational background?

4 **A** Yes, I have a Masters of Arts in counseling
5 from Webster University and I'm a licensed
6 professional counselor through the state of South
7 Carolina.

8 **Q** Okay. Do you serve on any -- or coordinate
9 any training or attend any training as part of your
10 job?

11 **A** Yes, I do.

12 **Q** Can you tell the Court about that?

13 **A** Yes. I'm trained and rostered as a
14 therapist to use Trauma-Focused Cognitive Behavioral
15 Therapy through the Medical University of South
16 Carolina. I have attended South Carolina Network of
17 Children Advocacy Centers trainings on child abuse,
18 physical abuse, domestic violence and treatment.

19 **Q** Okay. And how long have you been a licensed
20 counselor in South Carolina?

21 **A** I've been a licensed counselor since 1998.

22 **MS. HINTON:** Your Honor, at this time, the
23 State would move to have her admitted as an
24 expert in child abuse counseling.

25 **THE COURT:** Mr. Warder, any objection?

1 **MR. WARDER:** No, Your Honor.

2 **THE COURT:** All right. Then we will admit
3 her as an expert in child abuse counseling.
4 Ladies and Gentlemen, let me give you a little
5 bit of information. Normally, a witness can not
6 testify except about things that they directly
7 observed through their senses. When somebody has
8 been designated as an expert, then they can
9 testify about their opinions in their respective
10 fields. This can -- this is based on their
11 education, training and background. But when you
12 consider this testimony at the conclusion of the
13 trial, you are to give it the weight that you
14 feel is appropriate. Okay.

15 You may proceed.

16 **MS. HINTON:** Thank you, Your Honor.

17 **BY MS. HINTON:**

18 **Q** Ms. Tate, do you counsel **Minor** ?

19 **A** Yes, I do.

20 **Q** And how long have you been counseling her?

21 **A** I've been counseling **Minor** since March 10th
22 of 2016.

23 **Q** Okay. Are you still currently counseling
24 her?

25 **A** Yes, I am.

1 Q Did **Minor** ever make a disclosure of sexual
2 abuse to you during your counseling?

3 A Yes, she did.

4 Q Okay. Did she tell you where that abuse had
5 happened?

6 A She told me the abuse happened at Megan's
7 house.

8 Q Okay. Can you please tell me some of the
9 observations that you have made throughout your
10 sessions with **Minor** ?

11 A Yes. **Minor** appears embarrassed. She appears
12 ashamed. She blames herself for what happened. She's
13 very anxious. She, at times, is aggressive. She also
14 wants to avoid talking about things that have
15 happened to her.

16 Q Okay. When you say she's embarrassed and
17 ashamed, is there anything in particular that she's
18 embarrassed or ashamed about?

19 A She's embarrassed and ashamed that she
20 couldn't stop the abuse.

21 Q Ms. Tate, that's all I have. Please answer
22 any questions that Mr. Warder may have.

23 **THE COURT:** Mr. Warder?

24 **CROSS-EXAMINATION**

25 **BY MR. WARDER:**

1 **Q** If children are -- if children make a small
2 -- tell a lie, does that sometime make them
3 embarrassed and ashamed?

4 **A** It could.

5 **Q** And if they told a very important lie to
6 the police or somebody like that, does that make them
7 more ashamed and embarrassed?

8 **A** It would depend on who the child is.

9 **Q** Thank you.

10 **MS. HINTON:** No further questions. May she
11 be excused?

12 **THE COURT:** Thank you. Any objection to
13 her being excused?

14 **MR. WARDER:** No, Your Honor.

15 **THE COURT:** All right. Thank you.

16 **MS. HINTON:** Thank you, Your Honor. The
17 State would call Dr. Mary Fran Crosswell to the
18 stand.

19 **MARY-FRAN CROSSWELL**

20 having first been duly sworn, testifies as follows:

21 **THE CLERK:** Thank you, ma'am. If you
22 would, have a seat and state your name for the
23 record please.

24 **THE WITNESS:** My name is Mary Fran
25 Ratchford Crosswell.

DIRECT EXAMINATION**BY MS. HINTON:**

Q Dr. Crosswell, where are you employed?

A I'm employed by the Greenville Health System.

Q Okay. And do you hold a title over there? Are you a part of a team?

A Yes, I'm employed within the Division of Forensic Pediatrics Child Abuse and Neglect. I am a child abuse pediatrician at the hospital.

Q Okay. And can you tell the Court a little bit about your educational background?

A Yes, I received my undergraduate degree from Wake Forest University, my medical degree from the University of Louisville School of Medicine. I completed a pediatric residency at the Greenville Hospital System, and I am board certified in both General Pediatrics and in Child Abuse Pediatrics.

Q And how long have you been board certified in those areas?

A I was board certified in General Pediatrics in the year 2003 and in the Child Abuse Pediatrics in 2011.

Q 2000 and? I'm sorry.

A 11.

1 Q 11. And as part of your job, do you attend
2 any trainings or are you involved in any trainings?

3 A Yes. I annually am required to attend
4 continuing medical education courses in my field.

5 Q Okay. And have you ever test by --
6 testified as an expert before?

7 A Yes, I have.

8 Q Okay. And was that in criminal court?

9 A Both in criminal and in family court.

10 Q Okay. Do you have any idea of the number of
11 times that you testified as an expert?

12 A I would estimate 40 times.

13 Q Okay. Are you here because you are under a
14 subpoena?

15 A Yes, I am.

16 Q Are you being paid by the State to be here?

17 A No, I'm not.

18 **MS. HINTON:** Your Honor, at this time, we
19 would move Dr. Crosswell as an expert in Child
20 Abuse Pediatrics.

21 **THE COURT:** All right. Any questions, Mr.
22 Warder?

23 **MR. WARDER:** No, Your Honor.

24 **THE COURT:** All right. Any objection to
25 the motion for qualification?

1 **MR. WARDER:** I'm not sure what Child Abuse
2 Pediatrics -- whether that's special expertise
3 or not.

4 **THE COURT:** Well, other than that, any
5 other?

6 **MR. WARDER:** No.

7 **THE COURT:** All right. Well, then I will
8 grant the State's motion. Again, as I just told
9 you, an expert -- you know, normally, a person
10 can't testify about anything that's not within
11 their direct knowledge. But somebody that's been
12 qualified as an expert, in this case, in Child
13 Abuse Pediatrics, is able to give their
14 testimony in their particular field. This does
15 not mean that you have to accept the opinion,
16 but you are still just to give it the weight
17 that you feel is appropriate, just like all the
18 other evidence before you.

19 So you may proceed.

20 **MS. HINTON:** Thank you, Your Honor.

21 **BY MS. HINTON:**

22 **Q** Dr. Crosswell, did you have the opportunity
23 to meet with **Minor** ?

24 **A** Yes, I did.

25 **Q** Okay. And where did you meet with her?

1 **A** At the Julie Valentine Center.

2 **Q** Okay. And on what date did you meet with
3 her?

4 **A** September 18th, 2013.

5 **Q** Okay. And when you meet with children at
6 the Julie Valentine Center, as part of your
7 examination, do you go through a question and answer
8 session with the children?

9 **A** Yes, as a pediatrician, I take a detailed
10 history from both the caregiver and the patient, if
11 possible.

12 **Q** Okay. And did you do that in this case?

13 **A** Yes, I did.

14 **Q** And when you say that you take it from both
15 the caregiver and the patient themselves, is the
16 patient present when you're speaking with the
17 caregiver?

18 **A** No.

19 **Q** Okay. And why not?

20 **A** Well, typically, I like for both the parent
21 and the patient to be able to speak freely without
22 being concerned about the other person hearing it or
23 being affected by it. And much of the information
24 that I'm obtaining can be sensitive in nature. I want
25 the parent to be able to share any concerns that they

1 have about their child without their child being
2 present to hear those concerns.

3 Q And does that work the other way as well?

4 A Yes, it does.

5 Q So when you spoke to Minor in this
6 instance, was her mother present?

7 A No, she was not.

8 Q Were any family members present?

9 A No family members. The only person present
10 was a Child Life Specialist who works with me and who
11 is present with me throughout the entire evaluation.

12 Q Okay. As part of your medical examination
13 of Minor, did she disclose information that was
14 pertinent to your medical examination and diagnosis?

15 A Yes, she did.

16 Q And what was that disclosure?

17 A She described being touched in her vaginal
18 area by both a hand and a penis.

19 Q Okay. And was that on top of her clothes or
20 under her clothes?

21 A Underneath her clothes.

22 Q Now, describe to the court a little bit
23 about what your overall examination is, physical
24 examination.

25 A So it starts off as a general pediatric

1 exam from head to toe, so looking at the eyes, ears,
2 nose, mouth, working the way down, listening to the
3 heart, lungs, feeling the abdomen, uh, stomach. The
4 last piece of the examination is a genital exam. It's
5 performed with the use of a colposcope, which is a
6 piece of medical equipment that allows a good light
7 source, the ability for magnification and the ability
8 to photo document any physical findings that might be
9 seen.

10 Q Okay. And did you do that vaginal
11 examination of Minor ?

12 A Yes, I did.

13 Q And did you have any specific findings on
14 her vaginal examination?

15 A No, there were no acute or chronic findings
16 on her genital exam or vaginal exam.

17 Q Okay. So would it be safe to say that her
18 vaginal examination was normal?

19 A Yes, it was.

20 Q Okay. In your field and your expertise,
21 having a normal vaginal exam, is that, for lack of a
22 better term, normal?

23 A It is normal to have a normal exam. Most --
24 up to a little over 97 percent of physical exams in
25 children who are being evaluated for sexual abuse are

1 normal. In many cases, it's because the nature of the
2 abuse didn't leave an injury and in other cases, the
3 injury can heal very rapidly without leaving any
4 scarring or signs that it was present.

5 Q Okay. So is a normal exam indicative of
6 sexual abuse not happening?

7 A It is -- it is -- no, it is not indicative
8 of it not happening.

9 Q Now, as part of your evaluation, do you
10 also evaluate for potential sexually transmitted
11 diseases?

12 A Yes, I do.

13 Q Okay. And did you do that in **Minor's**
14 case?

15 A Yes, I did.

16 Q And as part of that, do you also review any
17 prior medical history that might be relevant?

18 A Yes, I do.

19 Q And in your review of that history, did you
20 determine whether or not **Minor** had been diagnosed
21 with a potential sexually transmitted disease?

22 A Yes, she had been diagnosed with -- on a
23 visit to the emergency room --

24 MR. WARDER: Objection. This is hearsay.

25 THE COURT: I mean, this is part of her

1 evaluation.

2 **MR. WARDER:** Your Honor, before the --
3 whether she had a physical condition that was --
4 for example, a tumor or something, someone would
5 have to examine her and come and testify she has
6 a tumor. You can't say out of written records.

7 **THE COURT:** All right. Well, let me -- I'm
8 going to ask y'all to step out in your jury room
9 for just a minute. I'll let you come back in in
10 just a moment.

11 **(WHEREUPON, the jury exits at approximately**
12 **3:17 p.m.)**

13 **THE BAILIFF:** The jury is secure, Your
14 Honor.

15 **THE COURT:** All right. I guess before I
16 hear argument, what is the nature of -- what's
17 the -- I'm going to allow you to proffer her
18 testimony.

19 **MS. HINTON:** Okay. Would you -- you want
20 me to proffer?

21 **THE COURT:** Yes, I want to hear this
22 outside of the presence of the jury then I will
23 hear any argument.

24 **MS. HINTON:** Okay.

25 **BY MS. HINTON:**

1 **Q** Dr. Crosswell, as part of your examination,
2 do you review prior medical visits as part of the
3 examination?

4 **A** Yes, I do.

5 **Q** Okay. Did you do that in this case?

6 **A** Yes, I did.

7 **Q** And as part of your review of the records,
8 did you determine whether or not she had been
9 diagnosed with a potential sexually transmitted
10 disease?

11 **A** Yes, I did.

12 **Q** Okay. And when did that diagnosis happen?

13 **A** The diagnosis of the potential --

14 **Q** Yes.

15 **A** It occurred when she was seen at Cannon
16 Emergency Room, the record's dated August 24th, 2013.

17 **Q** Okay. And what was that potential sexually
18 transmitted disease that she was diagnosed with?

19 **A** Herpes Simplex Type 1 in the genital area.

20 **THE COURT:** Was she diagnosed with it or
21 was --

22 **THE WITNESS:** There -- can I answer that?

23 **THE COURT:** Yeah.

24 **THE WITNESS:** There was a lab report --
25 there was a lab that confirmed she had HSV. The

1 doctor made the diagnosis, but confirmed it with
2 the laboratory result, which I was relying on.

3 **THE COURT:** All right. And how is she
4 going to be using this in her testimony,
5 ultimately?

6 **MS. HINTON:** That's it, Judge. Just that
7 there was a prior diagnosis of it. She did not -
8 - so she did not test for that STD specifically
9 after that because there was already a prior
10 diagnosis of that, but tested for others, which
11 was negative.

12 **THE COURT:** I mean, is she going to be
13 using this as the basis of her overall opinion?

14 **MS. HINTON:** No, Judge. Just frankly, the
15 allegations that are in this case is that she
16 has herpes and so does he. I think, as an
17 expert, she can rely on the works of other
18 experts.

19 **THE COURT:** That's what I'm saying,
20 towards her ultimate -- opinion that she's going
21 to ultimately give.

22 **MS. HINTON:** Is that **Minor** is positive for
23 HSV-1.

24 **THE COURT:** Mr. Warder?

25 **MR. WARDER:** Of course, all it does is

1 defeat my right to cross-examine the doctor that
2 made the diagnosis. She's -- she's just, by
3 hearsay, putting into the record that she looked
4 at the record and this is what it indicates.
5 That's not the proper way, I would submit that
6 if they are going to put in the records of a
7 doctor that diagnosed her with herpes, then they
8 need to bring the doctor.

9 **THE COURT:** Well, I mean, if she's going
10 to testify that as a child abuse -- as an expert
11 in Child Abuse Pediatrics and --

12 **MR. WARDER:** This wouldn't be either a
13 test she ran or that was in her area of
14 expertise.

15 **THE COURT:** But it's in her evaluation.
16 Would it not be a -- something that she relied
17 on in making her evaluation in this matter?
18 What's the next step that she does because of
19 her forensic testing?

20 **MS. HINTON:** Well, what she ends up doing
21 is, you know, she goes to her forensic
22 interview, which we are not seeking to admit, so
23 I wouldn't elicit that testimony. But the
24 purpose is -- she would testify, I believe --
25 and I don't want to put in the doctor -- doctor

1 -- words in the doctor's mouth, is that it is
2 concerning, given the disclosure and the fact
3 that she has herpes in her vaginal area. That is
4 concerning to her as a medical expert.

5 **THE COURT:** I guess, then, what is her
6 ultimate opinion though?

7 **MS. HINTON:** Is that she's positive for
8 HSV-1. I mean, that's her medical diagnosis is
9 that she has an STD. And Judge, if I may, the
10 rule is Rule 43(m)(2) that allows experts to
11 give opinions based on facts or data, which
12 would otherwise not be admissible provided that
13 the facts or data are the type reasonably relied
14 upon by experts in a particular field informing
15 opinions or inferences in the subject matter. So
16 I think it's well within the rule.

17 **THE COURT:** Anything else?

18 **MR. WARDER:** Judge, it's like if there's
19 someplace in the medical records that said she
20 had cancer, it would be like the doctor is now
21 giving the diagnosis of cancer, not as part of
22 some other bigger larger thing. It just is a way
23 to avoid bringing that doctor and getting that
24 hearsay in, than bringing an expert that's read
25 some other doctor's, and it isn't part of the

1 ultimate opinion she's giving.

2 MS. HINTON: Judge, I have a case on
3 point, too, from the Supreme Court of South
4 Carolina, Creed versus Columbia, 310 S.C. 342.
5 The Supreme Court said that a general
6 practitioner can testify as to the neurological
7 results of a junior high schooler after an
8 accident and ---

9 THE COURT: Let me see that.

10 MS. HINTON: --- and cited that rule.

11 MR. WARDER: Of course, this isn't a
12 general -- this is an expert who's not giving an
13 opinion outside of reading that her record has
14 some hearsay in it.

15 (WHEREUPON, there is a pause.)

16 THE COURT: All right. In light -- I think
17 that Creed v. Columbia is definitely on point
18 and I think it allows for the testimony to come
19 in over the objection of the defendant.

20 MS. HINTON: Thank you, Your Honor.

21 THE COURT: All right. Anything else
22 before we bring the jury back?

23 MS. HINTON: No, Your Honor.

24 THE COURT: Bring them back.

25 (WHEREUPON, the jury enters at approximately

1 3:24 p.m.)

2 **THE COURT:** All right. You may proceed.

3 **MS. HINTON:** Thank you, Your Honor.

4 **BY MS. HINTON:**

5 **Q** Dr. Crosswell, I think when we left off, I
6 was asking you, in your evaluation, to determine
7 whether or not **Minor** had any potential STDs, did you
8 review any prior medical records?

9 **A** Yes, I did.

10 **Q** And did any of those records indicate that
11 **Minor** had been diagnosed with a potential STD?

12 **A** She had been diagnosed with a potential
13 STD.

14 **Q** Okay. And where did that diagnosis come
15 from?

16 **A** It came from a lab -- a lab report that was
17 done at Cannon Memorial Emergency Room.

18 **Q** Okay. And do you know the date of that lab?

19 **A** August -- the date she went to the
20 emergency room was August 24th, 2013.

21 **Q** Okay. And remind me again, what was the
22 date that you met with her?

23 **A** September 18th, 2013.

24 **Q** Okay. And the lab indicated that she had
25 what potential STD?

1 **A** Herpes Simplex Virus, Type 1.

2 **Q** In your expertise as a child abuse
3 pediatrician, is it, given **Minor's** disclosure and the
4 diagnosis -- well, let me back up. The diagnosis of
5 Herpes Simplex Virus 1, what area of her body was she
6 diagnosed with having it?

7 **A** In her genital area.

8 **Q** So given the fact that **Minor** had made the
9 disclosure to you and she had Herpes Simplex Virus 1
10 in her vaginal area, is that concerning to you as a
11 child abuse pediatrician?

12 **A** It is concerning. I had taken a detailed
13 medical history and I knew that she had had previous
14 cold sores around her mouth a couple of years prior
15 to me seeing her, based on the history from her mom.
16 With Herpes Simplex Virus, it can go away, but it
17 remains in the body in a latent form, usually at the
18 site of the infection. So she had had no recurrence
19 in that couple of years since her first diagnosis of
20 a cold sore. It wasn't typed -- she wasn't seen by a
21 doctor for that. Mom just gave a history that she had
22 a cold sore, which, from my medical training, is most
23 likely due to Herpes Simplex Type 1.

24 The fact that she did not have another
25 recurrence at that site and had a second occurrence

1 at her genital area was concerning. I can't say
2 definitively that it was caused from sexual contact
3 because it can be transmitted from hand to genital
4 area. I would have expected a recurrence at the site
5 prior to that happening, but I can't exclude that
6 that is the way that she obtained that infection.

7 Q But it is your testimony that a six-year-
8 old who makes that type of disclosure to you and is
9 also positive in her genital area for Herpes Type 1
10 is concerning?

11 A It is concerning.

12 Q That's all I have, Dr. Crosswell. Please
13 answer any questions Mr. Warder may have.

14 **CROSS-EXAMINATION**

15 **BY MR. WARDER:**

16 Q Dr. Crosswell, Herpes Simplex Type 1 is
17 usually oral, is that right?

18 A It's not necessarily usually oral anymore.
19 In fact, more than half of the genital herpes can be
20 caused by Type 1.

21 Q Okay. And you can give yourself vaginal
22 herpes by picking up the virus on paper, cloth, your
23 hands and transferring it to the vaginal area?

24 A Correct.

25 Q Okay. And how did you determine that the

1 child hadn't had another cold sore in the last two
2 years?

3 **A** I had to base that on the history that I
4 had from --

5 **Q** Do you have notes in there of when you
6 asked the child when her last cold sore was?

7 **A** I asked the mom about the cold sore cause
8 she was six.

9 **Q** Now, let me see. There was no firsthand
10 information from the child that the cold sore has
11 even stopped, is that true?

12 **A** No. I don't typically take that type of
13 history from a six-year-old.

14 **Q** Okay. So you made this diagnosis from the
15 stopping of the cold sores. That's what concerned
16 you? Another cold sore?

17 **A** No, the fact that the second recurrence was
18 at the genital site.

19 **Q** Are you telling me that -- that she -- the
20 mother gave you a history of repeated oral herpes, is
21 that right?

22 **A** I'm sorry. Can you repeat that question?

23 **Q** It was repeated oral herpes or just one
24 instance of oral herpes in this whole child's life?

25 **A** She described that she first had a cold

1 sore two years ago and had not had a recurrence of
2 the cold sores.

3 Q And she knew that by talking to her
4 daughter, I take it?

5 A Cause she takes care of her daughter, and
6 they're painful, so the child would have --

7 Q Well, now, we've all had cold sores. We
8 don't go to the doctor with cold sores?

9 A No.

10 Q We don't always go to our moms and our dads
11 with our cold sores.

12 A No.

13 Q And it wouldn't be usual for a child not to
14 say, Mom, I have that cold sore back again.

15 A You're right. Excuse me. You're right. I'm
16 relying on mom observing and getting feedback from
17 her daughter.

18 Q Okay. You wouldn't know if she had a cold
19 sore unless you saw -- actually saw it -- unless the
20 child showed it to you, would you?

21 A Would I know that?

22 Q Would any parent know their child had a
23 cold sore if the child didn't point it out? They
24 can't see it.

25 MS. HINTON: Objection, Your Honor. I

1 mean, I don't know where he's going with this,
2 but would any parent know, I think, is way
3 outside the scope.

4 **THE COURT:** I'm going to allow it.
5 Overruled.

6 **THE WITNESS:** I can't tell you that yes or
7 no. I can tell you that many times, they are
8 painful, many times, they are visible, and
9 that's how parents become aware that their child
10 has a cold sore.

11 **BY MR. WARDER:**

12 **Q** Many times, they are not that painful.

13 **A** I can't comment on that.

14 **Q** You had a cold sore?

15 **A** I have not had a cold sore.

16 **Q** And so, anyway, this child had -- the
17 transformation could actually go the other way. I
18 guess if she had vaginal herpes, somehow it could go
19 to your mouth, is that right?

20 **A** It could.

21 **Q** Thank you.

22 **REDIRECT EXAMINATION**

23 **BY MS. HINTON:**

24 **Q** Dr. Crosswell, Mr. Warder asked you if you
25 could get vaginal herpes from paper or touching or --

1 he gave several reasons. Can you also get HSV-1 in
2 your vagina area if someone has HSV-1 and then
3 touches you in your vaginal area?

4 A Yes, you can.

5 MS. HINTON: That's all I have.

6 THE COURT: Anything further?

7 **RECROSS EXAMINATION**

8 **BY MR. WARDER:**

9 Q Nothing you can say makes it any more
10 likely whether it was by somebody else touching her
11 or somebody bringing an arm down from her mouth,
12 could you?

13 A No.

14 Q It's just kind of 50/50?

15 A I wouldn't even -- I couldn't put odds on
16 that.

17 Q Thank you.

18 MS. HINTON: Can she be excused, Your
19 Honor?

20 THE COURT: Any objection to her being
21 excused?

22 MR. WARDER: No, Your Honor.

23 THE COURT: All right. You may be excused.
24 All right. I think --

25 MS. HINTON: Your Honor, those are all the

1 witnesses that the State has for today.

2 **THE COURT:** All right. Ladies and
3 Gentlemen, this is being flexible, so you get an
4 early day off just because the witnesses or the
5 next witness, as I understand, is very lengthy
6 and was not able to make it until in the
7 morning. We'll go ahead and break for the day.

8 Again, I'm going to give you my four
9 warnings: Do not discuss the case among
10 yourselves or with anyone else. That would not
11 be appropriate in any way. Do not do any
12 independent investigation of the case. That
13 includes the elements of the crime or any type
14 of investigation whatsoever or about any of the
15 parties. Do not pay any attention to any media
16 if you should see any media about this event,
17 social media, newspaper, anything like that. And
18 lastly, if you are contacted by anyone outside
19 of the clerk's office, then please let the
20 bailiffs know. Give as much information as you
21 can about that contact.

22 With that being said, we'll start back at
23 9:30 in the morning. So be back in your jury
24 room by 9:30. Thank you.

25 **(WHEREUPON,** the jury exits at approximately

1 3:33 p.m.)

2 **MS. HINTON:** Judge, I believe Mr. Warder
3 wants to address you on scheduling and I'd like
4 to address you on the defendant's bond.

5 **THE COURT:** Oh, okay.

6 **MS. HINTON:** I don't know which matter you
7 want to take up first.

8 **THE COURT:** Scheduling.

9 **MR. WARDER:** Your Honor, I may be very
10 short. We may have testimony in before noon
11 tomorrow.

12 **THE COURT:** Okay.

13 **MR. WARDER:** I didn't want you -- we
14 wanted to make the most efficient use of your
15 time.

16 **THE COURT:** Okay. We'll have a jury charge
17 ready in the morning. I'm not sure what you're
18 asking.

19 **MR. WARDER:** I just wanted you to know if
20 they are calling back or not.

21 **THE COURT:** Oh, as far as the jury. We
22 told them we're going to leave a message.
23 They're going to call back at noon.

24 **MR. WARDER:** I didn't want you thinking I
25 was going to run --

1 **THE COURT:** I got you. I appreciate your
2 letting the court know that. That's an issue --
3 I'll be glad to hear from you.

4 **MS. HINTON:** Thank you, Your Honor. As you
5 know, the jury has been sworn. The defendant is
6 now off bond. I would ask that he be taken into
7 custody. As you know, this charge carries a
8 mandatory minimum of 25 years up to life in
9 prison. I mean no offense by this and I'm going
10 strictly off what the investigation revealed was
11 the potential that Mr. Reyes was not a legal
12 documented citizen. So that obviously causes us
13 some concern. I would ask Your Honor to take him
14 into custody.

15 **THE COURT:** All right. Mr. Warder?

16 **MR. WARDER:** Your Honor, my client has
17 shown up like clockwork for this case. It's
18 unimaginable that he does not want to come to
19 court and participate in the finishing of this
20 so he can get -- he's been concerned about
21 clearing his name and that's why he's here. He's
22 always known about the penalty. I've always told
23 him it was 25 years to life. He just doesn't
24 represent a flight risk, Your Honor. He has
25 family support. He's got a work history here.

1 His employer is here. They've worked together
2 for years. He's not going anywhere. My country
3 loves illegals. It's the policy of our
4 president.

5 **THE COURT:** Talk to him before you say
6 anything.

7 **(WHEREUPON, Mr. Reyes consults with Mr. Warder.)**

8 **MR. WARDER:** My client tells me that if he
9 had planned to run, he would have already done
10 it.

11 **THE COURT:** Well, and I appreciate that,
12 but my routine is a charge carrying this amount,
13 unless you give me good reason otherwise, which
14 I think we were just talking about that we're
15 going to finish the trial obviously tomorrow,
16 then we're just talking about one evening. So
17 I'm going to -- his bond has been revoked or
18 expired with the swearing of the jury. I'm going
19 to require that he be in custody.

20 All right. 9:30 in the morning.

21 **(WHEREUPON, the Court recesses for the day at**
22 approximately 3:38 p.m.)
23

CERTIFICATE

109

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens, South Carolina, on this 25th day of April, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF PICKENS) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Jose Reyes Reyes,) 2013-GS-39-03217
7) December 13, 2016
8) Pickens, South Carolina
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B E F O R E:

HONORABLE PERRY H. GRAVELY, JUDGE; and a jury

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

BRANDI B. HINTON, ESQUIRE
Attorney for the State

RICHARD H. WARDER, ESQUIRE
Attorney for the Defendant

Margaret A. Woods
Circuit Court Reporter

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1 THE COURT: All right, uh, are we ready to bring the jury
2 in?

3 MS. HINTON: Yes, Your Honor.

4 THE COURT: Mr Warder, are we, are we ready?

5 MR. WARDER: Yes, sir.

6 THE COURT: All right, bring the jury in.

7 (The following takes place in the presence of the jury.)

8 THE COURT: Good morning, I hope everybody had a pleasant
9 evening. I I appreciate your patience, uh, uh, sometimes, uh,
10 you have other matters to attend to, other hearings when
11 you're the only court in town so we had, uh, another matter,
12 uh, outside a this case, uh, to deal with and, uh, so that's
13 what we handled and at this point we will continue, uh, with
14 the State's case. Ms. Hinton.

15 MS. HINTON: Thank Your Honor, the State would call Ivery
16 Cohen to the stand.

17 (Whereupon, the witness came forward.)

18 THE BAILIFF: Good mornin', you will place your left hand
19 on the Bible, raise your right.

20 IVERY COHEN, having been first
21 duly sworn, testified as follows:

22 THE BAILIFF: Thank you, ma'am, you will have a seat and
23 state your name for the record, please.

24 THE WITNESS: My name is Ivery Cohen.

25 DIRECT EXAMINATION BY MS. HINTON:

IVERY COHEN - DIRECT EXAMINATION BY MS. HINTON

1 Q. Ms. Cohen, uh, can you tell the Court a little bit about
2 your educational background.

3 A. Yes, um, I went to Brown Mackie for medical
4 assisting, ---

5 Q. Okay.

6 A. --- um, I graduated from there in 2014.

7 Q. Okay, and what are you currently doing?

8 A. I'm currently in nursing school at ECPI University.

9 Q. Okay, and, uh, prior to going into nursing school, were
10 you employed anywhere?

11 A. At Any Lab Test Now, Woodruff Road.

12 Q. Okay. Can you tell me a little bit about what you do at
13 Any Lab Testing Now.

14 A. Yes. Um, while I was there I worked as a medical
15 assistant, um, we do a lotta lab work, um, and drug testing,
16 uh, TB testin', things like that.

17 Q. Okay. Is it safe to say that the name a the place is
18 true, that you'll do pretty much any sorta lab testing?

19 A. Um, pretty much, ---

20 Q. Okay.

21 A. --- yeah.

22 Q. Um, part a that do you test for sexually transmitted
23 diseases?

24 A. We do.

25 Q. Okay. Uh, did Jose Reyes Reyes come to your facility for

IVERY COHEN - DIRECT EXAMINATION BY MS. HINTON

1 testing?

2 A. Yes.

3 Q. Okay, and uh, did you, um, draw blood from ---

4 A. Yes.

5 Q. --- him? Okay, and tell me about just in general the
6 procedures of when you draw blood from someone, um, how you
7 make sure that that blood is associated with that person.

8 A. Okay, when they first come in, um, they have to fill out
9 paperwork giving their name, date a birth, address, um,
10 contact information. Uh, when we have someone that does, um,
11 any type a STD testin', they have to show us a ID, um, so that
12 when they come back and pick it up that we know it's them, um,
13 so once they get all the paperwork done it's keyed into a
14 computer, um, we have a system that is linked to the lab that
15 we use, um, so once we put in all of the information it prints
16 out a label that we put on their blood tubes and, uh, it'd
17 state their first and last name, um, a middle name if they
18 gave one and, um, their date of birth and it also give them a
19 number so that when that label is scanned by a lab they match
20 it up with, make sure it's who the tube says it is.

21 Q. Okay, and did you al -- do all that in Mr. Reyes's case?

22 A. Yes.

23 Q. Okay. When you draw blood do you use gloves?

24 A. Yes.

25 Q. Okay, um, and once you the draw the blood do you seal it

IVERY COHEN - DIRECT EXAMINATION BY MS. HINTON

1 in any manner?

2 A. Um, the tubes are already sealed, uh, we do make sure
3 that we make the patient, um, verify that their name and date
4 of birth are correct before it's sent off.

5 Q. Okay, so is that after you draw the blood you make them
6 verify ---

7 A. Yes.

8 Q. --- that? Okay. Um, do you test in-house?

9 A. Um, no.

10 Q. Okay, and and where do you generally send or where did
11 you generally send your stuff for testing?

12 A. Labtech Diagnostics in Anderson.

13 Q. Okay, and how would the vials get to Labtech Diagnostics?

14 A. We have a courier.

15 Q. Okay. Ms. Cohen, that's all the questions I have, please
16 answer anything Mr. Warder may have.

17 A. Okay.

18 THE COURT: Mr. Warder.

19 MR. WARDER: We have no questions, Your Honor.

20 THE COURT: All right, thank you.

21 MS. HINTON: May she be excused, Your Honor?

22 THE COURT: She may be excused.

23 (Whereupon, the witness left the stand.)

24 MS. HINTON: You're free to go.

25 THE WITNESS: Thank you.

DAWN MARIE STEWART - DIRECT EXAMINATION BY MS. HINTON

1 THE COURT: Oh, I'm sorry, yeah, next witness.

2 MS. HINTON: Thank Your Honor. Uh, State would call Dawn
3 Stewart to the stand.

4 (Whereupon, the witness came forward.)

5 THE BAILIFF: If you would place your left hand on the
6 Bible, raise your right.

7 DAWN MARIE STEWART, having been
8 first duly sworn, testified as follows:

9 THE BAILIFF: You will have a seat, state your name for
10 the record, please.

11 THE WITNESS: Dawn Marie Stewart.

12 DIRECT EXAMINATION BY MS. HINTON:

13 Q. Ms. Stewart, can you tell the Court a little bit about
14 your educational background.

15 A. Um, I went to Tri-County Tech and took medical assisting
16 and I worked at, uh, Anderson Family Care for nine and a half
17 years and have been at Labtech Diagnostics for the last five
18 years.

19 Q. Okay, and at Labtech Diagnostics what is your role over
20 there?

21 A. I'm the lab supervisor.

22 Q. Okay, and tell me a little bit about your day-to-day
23 duties as a lab supervisor.

24 A. Uh, make sure all the phlebotomists are, um, performin'
25 their jobs correctly, I make sure all the specimens comin' in

DAWN MARIE STEWART - DIRECT EXAMINATION BY MS. HINTON

1 are accession correctly, labeled correctly, any issues they're
2 put to the side to be noted and called and call any critical
3 labs and make sure the back laboratory where the tests are
4 bein' performed is goin' smoothly.

5 Q. Okay, uh, would it be safe to say that you're in charge
6 of quality control?

7 A. Yes.

8 Q. Okay, and as part of your job do you also run tests?

9 A. Yes, ma'am.

10 Q. Okay, uh, and as part of your job and your background as
11 a medical assistant do you also read tests?

12 A. Yes, ma'am.

13 Q. Okay. Um, Your Honor, at this time the State would move
14 to qualify her as an expert in laboratory testing and
15 diagnosis.

16 THE COURT: Any additional questions or objections?

17 MR. WARDER: Just a couple.

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION BY MR. WARDER:

20 Q. You're not a doctor, are you?

21 A. Correct.

22 Q. And, uh, you operate, uh, lab equipment to test and
23 analyze?

24 A. Yes, sir.

25 Q. Okay, and what training do ya have at -- on that

DAWN MARIE STEWART - DIRECT EXAMINATION BY MS. HINTON

1 equipment, is it ---

2 A. I have certificates from the actual manufacturers that
3 came and trained on those equi -- that equipment.

4 Q. Do, uh, uh, you haven't done any peer reveve -- view the
5 work or anything like that for written mag -- for articles or
6 anything?

7 A. No, sir.

8 Q. Thank you.

9 A. Thank you.

10 THE COURT: All right, um, any objection or ---

11 MR. WARDER: Well, I'm I'm just not sure she'd she meet,
12 that she'd meet the standard be qualified as an expert in
13 laboratory tech -- technique, she has training to run the
14 equipment I guess but but certainly no expertise in the area.

15 THE COURT: And, uh, well I believe based on the
16 information that has been provided that she can qualify as a
17 lab -- what your actual request was ---

18 MS. HINTON: Um, laboratory testing and diagnosis.

19 THE COURT: Okay, I believe she falls under that category
20 and, ladies and gentlemen, as I, uh, mentioned to you
21 yesterday, uh, when someone is qualified as an expert, uh,
22 then they can go beyond, uh, uh, the scope of what a normal
23 person can testify, they can testify, uh, as to their opinion,
24 uh, based on their, uh, training and background, uh, but
25 you're to consider this the same way as you feel appropriate,

DAWN MARIE STEWART - DIRECT EXAMINATION BY MS. HINTON

1 uh, as as you do any other testimony. All right, you may
2 proceed.

3 MS. HINTON: Thank you, s ---

4 BY MS. HINTON:

5 Q. Uh, Ms. Stewart, can you tell me, uh, how do you receive,
6 um, samples into your lab, how do they get there?

7 A. We have, uh, couriers who go around to all of our
8 facilities, excuse me, and, uh, pick up specimens, they bring
9 them back to the lab and they're all sorted individually and
10 matched, um, we have about, uh, four or five couriers at at
11 this time.

12 Q. Okay. Tell me you said they're sorted and matched, can
13 you tell me what that means.

14 A. Once the specimens come in from the courier, um, we have
15 a labelin' system in the back, everything's separated per
16 facility. Once every specimen comes in, it is placed out on
17 the table and it is matched with each individual label and
18 every tube is analyzed and made sure that there's been no
19 tamperin' with or hasn't been compromised.

20 Q. Okay, if a tube was tampered with or compromised, what
21 would you do with that tube?

22 A. It's immediate rejection.

23 Q. Okay. Does that mean you would not test it?

24 A. We would not test it, we would call the facility and
25 reject it.

1 Q. Okay. Uh, do you do anything on a daily basis to ensure
2 the quality in your lab?

3 A. We run, uh, controls every single day. Before any
4 patient specimens are ran by law we have to run controls and
5 they have to be within normal limits or we cannot report or
6 run patient specimens.

7 Q. Okay. Uh, and would you have done that prior to, um,
8 testing any samples?

9 A. Yes.

10 Q. Okay. Did you receive a sample from Jose Reyes Reyes in
11 your lab?

12 A. Yes, ma'am.

13 Q. Okay, was it, um, sufficient for testing?

14 A. Yes, ma'am.

15 Q. Had it been tampered with in any way?

16 A. No, ma'am.

17 Q. Okay. Um, were you the actual one who ran that lab?

18 A. Yes, ma'am.

19 Q. Okay. Can you tell me what kind of machine you ran that
20 lab on.

21 A. The cobas e411.

22 Q. Okay, tell me a little bit about that machine in layman's
23 terms.

24 A. It's made, uh, the manufacturer's Roche. Um, we run, uh,
25 hepatitis panels, also as well on that machine vitamin D, um,

1 it's, you can run a lot of STDs off of that machine, that's
2 our main one.

3 Q. Okay. Do you send in a bunch a samples at once or is it
4 one at a time, how's that machine run?

5 A. It -- there's, uh, five tubes can fit on a rack at a time
6 and each tube has a barcode with that patient's name on it
7 that we, it r -- it comes already with a barcode on it and the
8 patient's name from the facilities outside. Once it gets
9 there we match our barcode with a barcode that's on it with
10 the patient's name and that's what the machine reads.

11 Q. Okay. Are you hooked to the same computer ses -- system
12 as Any Lab Test Now?

13 A. Correct, it's oh, it's a online, uh, lab web portal.

14 Q. Okay. Um, when you ran the tests for Mr. Reyes Reyes,
15 did you receive any results on that test?

16 A. Yes.

17 Q. Okay, um, and what specifically were you testing for?

18 A. Uh, HSV-1 and 2.

19 Q. Okay, and HSV-1 and 2 what in in layman's terms what's
20 that called?

21 A. It's herpes.

22 Q. Okay. Uh, so are there two types of herpes?

23 A. Correct.

24 Q. Okay, and was Mr. Reyes Reyes positive for either type of
25 herpes?

DAWN MARIE STEWART - DIRECT EXAMINATION BY MS. HINTON

1 A. HSV-1.

2 Q. Can you do, um, a urine test for herpes?

3 A. No, ma'am.

4 Q. All right, so how do you have to check for herpes?

5 A. Either through blood or through a VCN which is a vaginal
6 swab or a urethral swab, it swabs the lesion.

7 Q. Ms. Stewart, that's all I have, please answer any
8 questions Mr. Warder may have.

9 THE COURT: Mr. Warder.

10 MR. WARDER: I have no questions, Your Honor.

11 THE COURT: All right.

12 MS. HINTON: Thank Your Honor, may she be excused?

13 THE COURT: Yes, you may. Thank you.

14 THE WITNESS: Thank you.

15 (Whereupon, the witness left the stand.)

16 THE COURT: All right.

17 MS. HINTON: Thank Your Honor, the State would call
18 Shauna Galloway-Williams.

19 (Whereupon, the witness came forward.)

20 THE BAILIFF: Mornin'.

21 SHAUNA GALLOWAY-WILLIAMS,
22 having been first duly sworn, testified as follows:

23 THE BAILIFF: Thank you, ma'am, if you would have a seat,
24 state your name for the record, please.

25 THE WITNESS: Shauna Galloway-Williams.

1 DIRECT EXAMINATION BY MS. HINTON:

2 Q. Ms. Galloway-Williams, where are you currently employed?

3 A. At the Julie Valentine Center.

4 Q. Okay. What is your, uh, title over there?

5 A. I'm the executive director.

6 Q. Okay. Can you tell the Court a little bit about what the
7 Julie Valentine Center is.

8 A. We are the child abuse and sexual assault recovery
9 center, we serve Greenville and Pickens County, we provide
10 prevention, investigation and assessment, advocacy and
11 treatment services to, um, anyone who's been impacted by child
12 abuse or sexual assault.

13 Q. Okay. Can you tell the Court a little bit about your
14 educational background.

15 A. I have a bachelor's degree in psychology from Winthrop
16 University and a master's degree in counseling from Clemson
17 University.

18 Q. Okay, and how long have you been with the Julie Valentine
19 Center?

20 A. Um, I've been employed with the Julie Valentine Center
21 for nine years.

22 Q. Okay, how long have you served as executive director?

23 A. I've been executive director for seven of those years.

24 Q. Okay, and what type of of training do you do? Do you do
25 training to to keep up with ---

1 A. Um, ---

2 Q. --- research?

3 A. --- yes. Um, so I participate in training, I'm a
4 licensed professional counselor in the State of South Carolina
5 so I'm required to, um, obtain continue education requirements
6 on a regular basis so, uh, most of my training has been in the
7 area of child maltreatment, child abuse and sexual assault,
8 um, I have over a hundred and fifty skills-based hours
9 specifically related to assessing, uh, children when there are
10 allegations of abuse or neglect, um, I also conduct training.
11 Um, I provide training for, uh, professionals in the field as
12 well as, um, uh, the general public in in an awareness, um,
13 uh, capacity and I also am a, uh, adjunct faculty member for
14 USC Upstate in their Child Advocacy Studies program.

15 Q. Okay, and have you ever testified as an expert before?

16 A. I have.

17 Q. Okay. Have you done that in both family court and
18 general sessions court?

19 A. I have.

20 Q. Do you know how many times you've been qualified as an
21 expert?

22 A. Um, in in general sessions over thirty-six times.

23 Q. Okay. Your Honor, at this time the State would move
24 Shauna Galloway-Williams as a blind expert in child abuse
25 dynamics and disclosure.

1 THE COURT: All right, any questions certify?

2 MR. WARDER: No, Your Honor.

3 THE COURT: All right, any objections?

4 MR. WARDER: No, sir.

5 THE COURT: All right, then she is so qualified, uh, and
6 again, uh, ladies and gentlemen, this is, uh, again that
7 expert category, uh, so, uh, she can testify beyond the scope
8 of a normal witness, a normal lay witness and you are to, uh,
9 to give it the weight that you deem appropriate.

10 BY MS. HINTON:

11 Q. Ms. Galloway-Williams, uh, to be clear have you ever met
12 Minor [REDACTED], the victim in this case?

13 A. I have not.

14 Q. Okay. Um, do you know anything about the specifics of
15 her case?

16 A. I don't.

17 Q. Okay, and, uh, even if a child receives services at your
18 center, um, how do you ensure that you don't, you are not
19 familiar with the details of their case?

20 A. Well we serve somewhere between eight or nine hundred
21 children each year, ---

22 Q. Um-hum.

23 A. --- um, if I'm not directly involved in that case in some
24 capacity then it's very likely that I don't have any knowledge
25 of the case specifics.

1 Q. Okay, and were you directly involved in Minor's
2 case?

3 A. I was not.

4 Q. Okay. All right, so I wanna talk about, uh, just child
5 abuse in in general, in general terms. What does it mean, uh,
6 for a child to have a delayed disclosure?

7 A. Um, well "delayed disclosure" is the term that, uh, we
8 use to refer to a child not disclosing abuse right away, um,
9 not telling someone as soon as it happens, um, it is a common
10 occurrence among, um, those who have been abused: sexual
11 abused, physically abused or neglected, uh, for many different
12 reasons.

13 Q. Okay, and what are some a the reasons that you would see
14 delayed disclosure in a case?

15 A. Um, well one of the most common reasons for delaying
16 disclosure is that most children are abused by someone that
17 they know, they love and they trust, uh, so they often have a
18 relationship with the person that has abused them, um, that
19 can make it very difficult for them to tell someone about
20 what's happened, there may be aspects of that relationship
21 that are positive, um, in addition to the fact that they were
22 also abused and that makes it very difficult for them to make
23 a disclosure, uh, this may also be someone who has some sort
24 of power or authority in, um, in their world or in their life
25 which may also influence their ability to tell. Uh, many

1 children are afraid, they're afraid of what will happen to
2 them or someone else if they tell, they may have been
3 threatened, uh, these threats coulda been direct threats where
4 they were told that if they tell something will happen to them
5 or they may be indirect, um, whereas they may be seen and the
6 person that has harmed them harmed other people and they
7 internalize that that may happen to them. Um, sometimes
8 children, uh, don't have the words to describe what's happened
9 to them, if it's a very young child they may not have the
10 language or cognitive abilities to describe what's happened,
11 they just may know that something was wrong, um, and
12 sometimes, um, children may feel responsible or guilty for
13 what's happened, um, there's a lot of shame and, um,
14 embarrassment associated with, uh, with sexual abuse in
15 particular and a lot of times children feel responsible in
16 some way or they're embarrassed to talk about that with
17 others.

18 Q. Okay. Um, and can you talk about, uh, whether or not
19 children disclose everything at once or how that generally
20 happens.

21 A. Well we refer to disclosure as being a process, uh,
22 meaning that we don't expect that the first time that a child
23 tells that they are going to tell every every single detail
24 about every experience of abuse that they've had. Um,
25 sometimes they disclose one piece of information, wait to see

1 how others are gonna respond to that or what happens next and
2 then they may tell additional pieces of information, um, their
3 contact with the person that has, um, abused them may also
4 impact how much information they share or don't share, um,
5 really the response that they receive once they have disclosed
6 will impact a lot of times whether or not they tell. The
7 other thing that, uh, influences that is the questions that
8 they're being asked so, for instance, um, the questions that,
9 uh, law enforcement investigator is asking the child or a DSS
10 worker is asking the child or a mother is asking a child may
11 be different from the questions that, um, someone in my
12 capacity may be asking them and so for different reasons, um,
13 or because of those questions the child may disclose different
14 pieces of information, children answer questions based on, uh,
15 you know, what they're being ask.

16 Q. Okay, and do you expect when a child discloses that
17 they're able to pinpoint a specific date and time?

18 A. Um, most children have a really hard time with, um, dates
19 and time, it's an abstract concept, um, we tend to be -- say
20 that until a child is 12 or older they really have a hard time
21 grasping what that is so, uh, they may not be able to tell us
22 the exact date, time, uh, month and year that something
23 happened and so we often ask them questions about other things
24 that might, um, connect events, uh, maybe to when they were in
25 school, what grade they were in, what house they were living

1 in at the time, uh, what season it is, if it's a holiday
2 season when it happened or not, uh, we may ask them questions
3 about daytime or nighttime, things that, um, uh, that they're
4 better able to, uh, identify and connect with events in their
5 life.

6 Q. Okay, and can you tell the Court how that is affected by
7 chronic abuse.

8 A. Certainly. Um, if a child is abused repeatedly or or
9 over, uh, the course of time or numerous times, they may have
10 a hard time describing, um, dates and times of each incident
11 that happened, um, again, they may be able to pinpoint, um,
12 certain locations or they may be able to attach that to a
13 grade or a season, um, if the abuse, uh, happened the same way
14 every time, uh, they may have a hard time distinguishing which
15 time, uh, happened when, uh, it's, it in many ways is like,
16 uh, if we repeat an event or a scenario, you know, if we go to
17 the grocery store the same day every week, uh, we go down the
18 same aisles, we park in the same parking spot but if you ask
19 me to tell you exactly what I bought on a particular date or
20 time I may not be able to give you every single item in that
21 list, that's sort of what that's like, if there's a repeated
22 incident, they may be able to tell you the generalities of it
23 but may not be able to give you all of those specific details.

24 Q. And is it co -- or in children who are sexually abused,
25 do you often see changes in behavior?

1 A. You can. Um, you know, with some children you may see no
2 changes at all, with some children you may see, um, a complete
3 behavior change: A child who, um, has normally been very
4 social and very active becoming more isolated and withdrawn,
5 uh, you may see a child's grades, uh, deteriorate in school or
6 their performance in school deteriorate, uh, you may see
7 acting out behaviors, you may see, um, self-harming behaviors
8 and again, on the other extreme of that you may see no
9 behavior changes at all.

10 Q. Okay, and I think I just have one final question: When
11 talking about child abuse in general, what is grooming?

12 A. Um, grooming's what we refer to as, um, really sort of
13 developing a trusting relationship with a child and really
14 testing the waters, uh, for abuse so, uh, maybe introducing a
15 child to sexual behavior in a casual way leading up to more,
16 uh, more progressive, uh, or in a more progressive way so; for
17 example, um, maybe touching a child on on their arm or their
18 stomach, um, or their their bottom and then later touching
19 them under their clothes, um, and then on their private areas,
20 um, it may mean exposing a child to sexual materials so maybe
21 showing them pictures or books or movies in a s -- in a way to
22 normalize sexual behavior for the child, um, and to later
23 develop a trusting relationship with them.

24 Q. Are you paid to be here today?

25 A. I'm not?

SHAUNA GALLOWAY-WILLIAMS - CROSS-EXAMINATION BY MR. WARDER

1 Q. All right, are you here because I served you with a
2 subpoena?

3 A. That is correct.

4 Q. Ms. Galloway-Williams, that's all I have, please answer
5 any questions Mr. Warder may have.

6 THE COURT: Mr. Warder.

7 CROSS-EXAMINATION BY MR. WARDER:

8 Q. Ms. Galloway, are you on a salary from, uh, the people
9 that employ you?

10 A. Yes, I'm paid by the Julie Valentine Center.

11 Q. Okay, and you're still gettin' that salary today.

12 A. Yes.

13 Q. So when you say you're not paid, uh, you mean you're not
14 gettin' any extra money outside a your regular salary for you
15 regular job.

16 A. It means I'm not being paid by anyone here to be here,
17 I'm paid just like I would be if I were at the center behind
18 my desk or, um, in a counseling room.

19 Q. Is that state-funded or ---

20 A. We are not state-funded, no. We are a non-profit
21 organization, we're a 501 C3 so, um, about a third of our
22 funding comes from United Way agencies, both Greenville and
23 Pickens County United Way, we also have grants, um, federal
24 grants through the Victims of Crime Act, Violence Against
25 Women Act and another third of our funding comes from fund

1 raising and, uh, private donations or foundations.

2 Q. Okay, so you're really gettin' paid today, you're just
3 getting' your regular salary today.

4 A. That's correct, um-hum.

5 Q. Okay, and you haven't, uh, uh, ever seen this child as
6 far as you know, is that right?

7 A. That is correct.

8 Q. And, uh, you don't know anything about the particulars
9 of this case.

10 A. No.

11 Q. Have you studied false allegations of child abuse?

12 A. Uh, yes.

13 Q. What's some a the reasons that children give false
14 allegations of child abuse?

15 A. Some a the reasons why children would give a false
16 allegation?

17 Q. Sure.

18 A. Uh, what we tend to see more than false allegations are
19 false denials of disclosures so, ---

20 Q. Okay, ---

21 A. --- uh, ---

22 Q. --- you don't know anything about false allegations? I
23 asked you about false allegations.

24 A. Certainly, so, uh, statistically about 2 to 4 percent of
25 allegations of child sexual abuse are determined to be false

1 allegations and sometimes those allegations, um, are not
2 necessarily that the child has made a false statement but that
3 someone else has made a false statement instead.

4 Q. So you don't know anything about a child that would make
5 a false allegation.

6 A. No, I'm sa -- there are certainly false allegations that
7 I guess at 2 to 4 percent statistically are the false
8 allegations of disclosure.

9 Q. Have you, uh, uh, have you done any studies on that?

10 A. Have I myself done any studies?

11 Q. Yeah.

12 A. I don't do any research.

13 Q. You you just read and then, uh, uh, uh, tell us about
14 what you read?

15 A. Um, well I read and I practice and I teach and attend
16 training as well.

17 Q. All of that's from somebody else's research or ---

18 A. That's correct, I'm not a researcher.

19 Q. Thank you.

20 THE COURT: All right, any redirect?

21 MS. HINTON: No, Your Honor, may she be excused?

22 THE COURT: Yes, any objection her being excused?

23 MR. WARDER: No.

24 THE COURT: All right, thank ---

25 THE WITNESS: Yes, sir.

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1 THE COURT: --- you very much.

2 (Whereupon, the witness left the stand.)

3 THE COURT: All right.

4 MS. HINTON: Thank Your Honor, at this time the State
5 rests.

6 THE COURT: All right, uh, ladies and gentlemen, uh, that
7 the State has rested means that they have, uh, put in all the
8 evidence in their case in chief, uh, so this is a point where
9 we need to take a a break, uh, to discuss some some other
10 issues, uh, so it, I'm gonna ask you get back to your, uh,
11 jury room at this time, uh, and this is may be a little bit
12 longer break than just a short break so, uh, just, uh, you
13 know, we'll we'll call ya back as soon as possible. Again,
14 this is not the time to discuss the case among yourselves or,
15 uh, you know, we'll that you'll begin deliberation at the
16 conclusion of the trial so after you've received all the
17 evidence and all of the the law of the case but this time if
18 you'll go return to your jury room and we'll call ya right
19 back out when we get things started.

20 (The following takes place outside the presence of the
21 jury.)

22 THE BAILIFF: Jury is secure, Your Honor.

23 THE COURT: Thank you. All right, anything from the
24 defendant?

25 MR. WARDER: Your Honor, at this time of course we would

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1 move for a directed verdict. Uh, Your Honor, uh, taking the
2 evidence most favorable to the State there's certainly
3 insufficient evidence that a a jury could conclude that there
4 was a a crime of first degree criminally sexual conduct
5 occurred, uh, the victim has testified that she was, uh,
6 touched, I don't think there's sufficient proof of of either
7 penetration or a a touching in a fashion that would constitute
8 first degree, sorry, uh, criminal sexual conduct.

9 THE COURT: Okay. Ms. Hinton.

10 MS. HINTON: Thank Your Honor. As you know the standard
11 is if there's any evidence it is to be submitted to the jury,
12 I certainly think there's sufficient evidence. **Minor**
13 testified on Monday that he put his finger in her private and
14 also put his tongue in her mouth, I think that qualifies as
15 penetration under the law, um, I think there's been ample
16 evidence, if Your Honor would like me to go more specifically
17 into it, I'm happy to but I don't wanna belabor the point.

18 THE COURT: Right. I mean, I I think in looking at the
19 statute, uh, under which he's charged it's a sexual battery
20 and a sexual battery, uh, think under the definition, I'm
21 looking up sexual battery that, uh, there is sufficient
22 evidence for it to be a jury question so I'm gonna deny your
23 motion. Anything else from the defendant? Ya'll --
24 anybody -- I'm sorry.

25 MR. WARDER: Other than, Your Honor, I need probly a few

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1 minutes, uh, recess here to talk to my client.

2 THE COURT: Right, I was gonna look into, uh, what do you
3 antic -- do ya'll have any, uh, proposed jury charges?

4 MS. HINTON: Um, the only thing I would ask Your Honor
5 and it's probly already included is that you use the firmly
6 convinced language, if you wanna use both and reasonable
7 doubt, that's fine but since I use that in my opening I would
8 ask that that be included but absent that I don't have
9 anything specific.

10 THE COURT: All right, Mr. Warder.

11 MR. WARDER: Judge, I don't have anything that wouldn't
12 be in your your regular charge.

13 THE COURT: Oh, all right. Uh, then any propo -- I know
14 there's a little bit difference sometimes on these CSCs, any,
15 uh, any discussion on the, uh, verdict form?

16 MS. HINTON: Not from the State, Your Honor.

17 THE COURT: All right. All right, we'll take, uh, 'cause
18 I need to review a couple things as well, let's take a 15-
19 minute break, that'll give you sufficient time, we'll come
20 back out, you can let me know what ya'll need to do.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right, uh, all right, Mr. Warder, what
23 is, uh, what is the intent of your client as far as testifying
24 or present any type of defense?

25 MR. WARDER: Your Honor, uh, uh, I think my client will

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1 take the stand here ---

2 THE COURT: All right.

3 MR. WARDER: --- today ---

4 THE COURT: Um, I guess if you will, uh, you'll stand and
5 do we wanna have an interpreter for this, it's just to make
6 sure he understands all my questions?

7 MR. WARDER: Uh, yes, sir, we've handed up the
8 interpreter.

9 THE COURT: All right, uh, Mr. Reyes, uh, if you don't
10 understand my questions like, I mean, you unders -- you're
11 able to understand me now, right?

12 THE DEFENDANT: Yeah.

13 THE COURT: Okay. If you don't understand any a my
14 questions then then let me know so we can involve the
15 interpret, I just wanna make sure you totally understand, uh,
16 uh, these questions. It's my understanding from, uh, your
17 attorney that you, uh, plan to testify, is that correct?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Now, um, just before you, uh, do
20 that I wanna make sure, uh, first of all, have you had
21 sufficient time to talk with your attorney about whether
22 you're gonna testify or not, have you?

23 THE DEFENDANT: Yeah.

24 THE COURT: All right, and you understand there are
25 certain strategic, uh, or or there certain strategies that you

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1 have for not testifying which will allow him to to make a a
2 closing argument, it'll affect that he -- he'll have the last
3 closing argument, stuff like that, ya'll talked about those
4 strategies?

5 THE DEFENDANT: Yes.

6 THE COURT: All right, is any criminal record that will
7 be ---

8 MS. HINTON: Uh, no, Your Honor, the only criminal
9 offense he has is a June 2015 CDV first offense, uh,
10 conviction.

11 THE COURT: All right, uh, do you plan to introduce that?

12 MS. HINTON: Not unless the door is open.

13 THE COURT: Okay, uh, you have, uh, and you've discussed
14 with your attorney that, uh, uh, generally that would not, uh,
15 be allowed but under certain circumstances, uh, uh, the
16 prosecutor could bring that, uh, prior conviction up, do ya
17 understand that?

18 (Attorney/client discussion held off the record.)

19 THE COURT: All right, do you understand the question
20 then?

21 THE DEFENDANT: Yes.

22 THE COURT: All right, uh, and, uh, you realize that you,
23 uh, you have the absolute constitutional right that you don't
24 have to testify?

25 THE INTERPRETER: Yes.

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1 THE COURT: Okay. Did -- all right, I guess if we're
2 gonna do the interpreting role then you need -- you need, all
3 right, I I guess let's go into interpreter mode on this then
4 'cause I'm gonna ask you the question, you ask him then he's
5 gotta give you the response to respond back so that I know
6 he's responded, okay?

7 THE INTERPRETER: Okay, yes, sir.

8 THE COURT: All right, do you realize you do have the,
9 uh, the right to remain silent, that nobody can make you
10 testify?

11 THE INTERPRETER: Yes.

12 THE COURT: All right, and that, uh, if you decide not to
13 testify then that cannot be used against you in any way and I
14 would, uh, ... all right, and that the -- I would instruct the
15 jury that they could not consider that, uh, uh, in their
16 deliberation, okay, because the State would still have the
17 burden of proof beyond a reasonable doubt. All right. Okay,
18 you understand this, right?

19 THE INTERPRETER: Yes.

20 THE COURT: And and based on your discussions with your
21 attorney, uh, and the information that I've given you, do you
22 wish to testify?

23 THE INTERPRETER: Yes, Your Honor, ---

24 THE COURT: All right.

25 THE INTERPRETER: --- testify.

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1 THE COURT: Uh, all right then, uh, anything else that
2 you wanna ask while on the record on this?

3 MR. WARDER: No, Your Honor.

4 THE COURT: All right. All right, and we thank you. Are
5 we ready to proceed then?

6 MR. WARDER: Yes, sir.

7 THE COURT: All right.

8 MS. HINTON: Yes, Your Honor.

9 THE COURT: All right, bring the jury out. Um, are we
10 gonna use the interpreter at all for this questioning?

11 MR. WARDER: I don't think so but ---

12 THE COURT: She was sworn yesterday so . . .

13 THE CLERK: Correct.

14 (Whereupon, a discussion was held off the record.)

15 (The following takes place in the presence of the jury.)

16 THE COURT: All right, ladies and gentlemen, uh, thank
17 you for your patience, uh, and at this point, uh, that as I
18 indicated the State rested and now the defendant will present
19 any, uh, evidence that they feel appropriate. Mr. Warder.

20 MR. WARDER: Your Honor, if it please the Court, we call
21 Megan Corcher.

22 (Whereupon, the witness came forward.)

23 THE BAILIFF: You'll place your left hand on the Bible,
24 raise your right.

25 MEGAN RENE MOLINA, having been

MEGAN RENEE MOLINA - DIRECT EXAMINATION BY MR. WARDER

1 first duly sworn, testified as follows:

2 THE COURT: Now if you would have a seat, state your name
3 for the record, please.

4 THE WITNESS: Megan Renee Molina.

5 DIRECT EXAMINATION BY MR. WARDER:

6 Q. Megan, how long have you known Jose?

7 A. Since I was 17.

8 Q. Okay. How did you meet Jose?

9 A. We met at a social gathering and we ended up meetin' up
10 and I ended up gettin' pregnant with our first daughter.

11 Q. Okay. Where did you and Jose live at?

12 A. In Hendersonville, North Carolina with his cousin.

13 Q. How long did you and Jose live in Hendersonville?

14 A. Uh, about two to three yea -- about two to three years
15 and then I moved to Pickens with my mama and her husband and
16 me and him and our daughter lived with my parents.

17 Q. Okay. You lived in Hendersonville for a couple years, is
18 that right?

19 A. Yes, sir, 'cause he had family up there and we had a
20 mobile home.

21 Q. Okay, Jose had family in Hendersonville, uh, and he had a
22 job up there.

23 A. Yes, sir, he did.

24 Q. Okay. Did that job end before you moved to Pickens?

25 A. Uh, yes, sir and he come down to work and he's been

1 workin' with Mr. Elrod ever since.

2 Q. Okay, so you and him moved from Hendersonville down here
3 and where did you pick to live down here?

4 A. With my mother and my stepdad Charlie Sanchez.

5 Q. Okay, and what type of residence was that?

6 A. It was a house, 2-bedroom and one bath and, uh, it was a
7 white house in Pickens not far from here.

8 Q. Okay. Did there come a time that you moved out and got a
9 place a your own?

10 A. Yes, sir, uh, my grandpa passed away and I moved in his
11 trailer, it was he felt that, my mom owns the mobile home, so
12 he felt that I needed a place to stay for me and my daughter
13 before he passed away.

14 Q. Okay, and is that the mobile home you were living in in
15 2013?

16 A. Yes, sir, ---

17 Q. Okay.

18 A. --- we was actually remodelin' the mobile home at the
19 time because, uh, it needed a lotta work done and I had lived
20 with my mother, she moved to Six Mile in a mobile home that my
21 uncle had owned for years and it went back 'cause the taxes
22 got, you know, back and he co -- we couldn't afford to pay it
23 and so I was livin', my mom was involved in helpin' me get my
24 grandpa's house situated so we would have a stable home for
25 our kids.

MEGAN RENEE MOLINA - DIRECT EXAMINATION BY MR. WARDER

1 Q. Okay. Now the mobile home that you and Jose occupied
2 that was your grandfather's, is it a singlewide?

3 A. Yes, sir, it's a small one, it's only a 2-bedroom and
4 1 bath, it's it's really really small and, uh, I mean, it's
5 not that big at all.

6 Q. Okay, wanna turn your attention to the time period of
7 January to June of 2013, were you living in that home?

8 A. I'm sorry, Richard, can you ---

9 Q. Were you ---

10 A. --- ask me ---

11 Q. --- living ---

12 A. --- again ---

13 Q. --- there there int -- between January and June of 2013?

14 A. Yes, sir, I was.

15 Q. Okay, and who was living with you?

16 A. My sister Tammy Lynn Valencia, her husband Jose Luis
17 Gravada (phonetic), her daughter, she had her daughter in
18 February and, uh, we all lived together, it was crowded but we
19 managed because we needed, my sister needed a place to go, she
20 was stressed 'cause her and her old man couldn't meet ends
21 meet and her old man worked for Jamie Elrod too and they're
22 best friends my sister's old man and my old man, my ex,
23 which---

24 Q. Oh ---

25 A. --- is my daughter's daddy.

1 Q. --- okay, your daughter's ex and your first ---

2 A. I mean, ---

3 Q. --- your old man ---

4 A. --- my sister's ex.

5 Q. Jose is your old man.

6 A. Yeah (laughed).

7 Q. Okay. Uh, and they both work for for Jamie Corcher.

8 A. Yeah, ---

9 UNIDENTIFIED MAN: Elrod.

10 A. --- for Jamie Elrod.

11 UNIDENTIFIED MAN: Cor ---

12 Q. Cor -- Elrod.

13 A. Yeah, ---

14 Q. Okay.

15 A. --- he owns a big concrete company, him and his dad.

16 Q. Okay, and, uh, **Minor** would come over and stay with
17 you?

18 A. Yes, sir, she's been comin' to my house since 2010. I've
19 been keepin' her, uh, she would get dropped off and she would
20 even scream even then. **Minor**, um, she's always been the child
21 that ne -- she's always liked to stay with her mama but when
22 she got dropped off with people she would scream like that any
23 time, it was not just beca -- when this incident happened,
24 this was before the incident supposedly happened and **Minor**
25 would stay with me at times, that's why she said when she

1 stayed with me she liked stayin' with me because, you know.

2 Q. How often would **Minor** come and stay with you?

3 A. She would ask to come and stay with me all the time and I
4 would sometimes, me and Jose and my daughters would go stay
5 with Dianne and Ismael Sanchez which is **Minor's** father.

6 Q. Okay, they would stay there too sometime?

7 A. Yeah, we would stay over there, we stayed over there
8 quite a few times.

9 Q. Okay. When they stayed with you and Jose at the trailer,
10 how many people would be at the trailer then? There'd be you,
11 Jose ---

12 A. Uh, it it was, we've had a lotta people, mean, my sister,
13 I mean, her her baby which is only a baby but now she's not a
14 baby no more and my two babies which is 7 and 5 now.

15 Q. Okay.

16 A. --- and, uh, me and him ---

17 Q. Okay.

18 A. --- and, uh, Jose Luis Gravado which is in Mexico right
19 now, he got deported.

20 Q. Okay, so there's least seven or eight people there?

21 A. Yeah, it was crowded but we made it work.

22 Q. Okay. What were the sleeping arrangements?

23 A. Uh, me and him slept in our bedroom which is in my
24 grandpa's bedroom, my girls slept in the room that my papa
25 slept in before he died ---

1 Q. Okay, you ---

2 A. --- and ---

3 Q. --- have your bedroom?

4 A. Yes, sir, and, uh, **Minor** slept with my girls. She's
5 never ever ever slept on my couch and I never got the couch
6 until August of 2013 and they're sayin' this happened in
7 January.

8 Q. Okay, when you're sayin' that that they slept with your
9 girls, where would your girls sleep at ---

10 A. In ---

11 Q. --- visibly ---

12 A. --- the room that my grandpa passed away in which is on
13 the other side a the house where my front door is.

14 Q. Okay, and who'd sleep in the other bedroom?

15 A. Me and Jose ---

16 Q. Okay.

17 A. --- and my sister and them would sleep on the couch
18 because we didn't have no room in the house, I mean, and her
19 daughter slept in my bedroom in the crib 'cause I helped my
20 sister 'cause she di -- she was sick, they cut her extra when
21 she had her cesarean and I had to help my sister take care of
22 the baby which is ---

23 Q. Okay, ---

24 A. --- my niece.

25 Q. --- that was in the period there between ---

1 A. Yes, it's been in that period a time and 'cause my sister
2 had her baby in February of 2013.

3 Q. Okay. Uh, in that period did anything, did anybody
4 complain or tell you that anything had happened, there was
5 anything wrong in the house?

6 A. N -- in -- sir?

7 Q. Did ---

8 A. I'm sorry, Richard.

9 Q. --- did **Minor** complain or did she say anything ---

10 A. No, sir, ---

11 Q. --- had ha ---

12 A. --- **Minor's** never, **Minor's** never complained to me, I
13 mean, me and her -- she stayed with me, she liked stayin' with
14 the girls, the girls enjoyed havin' **Minor** over, I mean, I miss
15 **Minor** till today. I mean, I've seen **Minor** recently since the
16 case.

17 Q. Well that ---

18 A. **Minor** ---

19 Q. --- and ---

20 A. --- come to, um, my mother's house over there and, uh,
21 over here in Pickens next to, close to Cannon, not far from
22 Canno's Trailer Park and I've seen a, she come to Judidia's
23 (phonetic) birthday party and I seen **Minor** ever since, I --
24 and Christian's been to my mama's house which she lives in
25 since my now that this supposedly happened at.

1 Q. Okay. Was there ever a a time of privacy or when when
2 this coulda happened during that that time?

3 A. No, sir, and I don't really take naps during the day, I
4 don't leave my kids up because I'm a good mother and I like to
5 make sure that my kids are not gettin' into anything, they're
6 only 7 and 5, if I leave 'em up then they could get hurt or
7 anything.

8 Q. Okay. Did did Jose get up and and roam around the house
9 at night or anything?

10 A. No, he's he's a heavy sleeper, ---

11 Q. And he ---

12 A. --- he doesn't get up that easy, I mean, but trust me, I
13 know because his boss has had plenty a times where he's had to
14 knock on my door to wake him up.

15 Q. And how many hours a week does Jose work?

16 A. Oh, he worked all the time, I never seen him, I mean, I
17 missed him a lot but I knew he had to work 'cause, I mean, we
18 have ---

19 Q. Would ---

20 A. --- bills and stuff.

21 Q. --- would he work more than a 40-hour week?

22 A. Oh, he worked more than that sometimes, they worked outta
23 town sometimes too, they didn't come in for days or weeks or
24 maybe a month or two.

25 Q. Thank you, you answer any question the State might have.

MEGAN RENEE MOLINA - CROSS-EXAMINATION BY MS. HINTON

1 A. Yes, sir.

2 THE COURT: Cross-examination.

3 MS. HINTON: Thank Your Honor.

4 CROSS-EXAMINATION BY MS. HINTON:

5 Q. Mornin', Megan.

6 A. Good mornin', Brandi.

7 Q. How are ya?

8 A. I'm good, how are you?

9 Q. I'm good. Um, so you said that your sister lived with
10 you after she had her baby in February of 2013, correct, ---

11 A. Yes.

12 Q. --- that was your testimony?

13 A. Yes, ma'am.

14 Q. Okay, um, and it's true that she lived with you briefly,
15 isn't that correct?

16 A. No, briefly 'cause me and Jose's been split up.

17 Q. So my question was she lived with you for a brief period
18 of time, isn't that correct?

19 A. Yeah, my sister lived with me for a brief period, that
20 she lived with me because she didn't have no one to help her
21 with her daughter ---

22 Q. Sure.

23 A. --- and her husband worked all the time and my sister was
24 sick when she had the baby, she stayed with me and, uh, me
25 and, uh, my daughters had stayed with her at the hospital ---

- 1 Q. Okay.
- 2 A. --- when she had her daughter ---
- 3 Q. Okay, ---
- 4 A. --- and ---
- 5 Q. --- an -- I'm sorry, I didn't mean ---
- 6 A. Sorry.
- 7 Q. --- to cut you off, ---
- 8 A. --- that's, hah, ---
- 9 Q. --- go ahead.
- 10 A. She come back and she stayed with me and her husband's
- 11 been stayin' with, her and her husband's been stayin' with us
- 12 'cause he's been workin' with Mr. Elrod, ---
- 13 Q. Okay.
- 14 A. --- her, well her husband works with Mr. Elrod too, ---
- 15 Q. Okay, ---
- 16 A. --- he used to.
- 17 Q. --- and she was staying with you in February 2013,
- 18 correct?
- 19 A. Yes, ma'am, she'll stay with me in January or at least
- 20 the end a December because I remember right after Christmas
- 21 she moved in 'cause she didn't have nowhere to go.
- 22 Q. Okay, and when she would stay she would sleep on your
- 23 couch, is that correct?
- 24 A. Uh, my sister, ---
- 25 Q. Yes.

1 A. --- yes, ma'am, 'cause ---

2 Q. Okay.

3 A. --- we had a little trailer.

4 Q. Okay, ---

5 A. I mean, ---

6 Q. --- and ---

7 A. --- I didn't have the sectional at the time, I had the
8 sectional, uh, I went and found out I did not get my sectional
9 till August of 2013.

10 Q. Okay, but your testimony's not that you didn't have a
11 couch in 2013 ---

12 A. No, I didn't, I didn't really have a cou -- it wasn't
13 what you call a couch but my sister's boyfriend slept on the
14 floor, it was more like a a love seat thing. My sister slept
15 on the love seat thing and he slept on the floor beside her.

16 Q. Okay. I met your sister, correct?

17 A. Yeah, Tammy.

18 Q. Okay. Okay, and how tall is your sister? She's pretty
19 tall, isn't she?

20 A. Lord, probly about 5 somethin', probly 'bout si -- I
21 don't know.

22 Q. I mean, she's close to 6 feet tall, is that a fair
23 estimate?

24 A. Yeah, that's fair.

25 Q. Okay, uh, and she slept on that couch.

1 A. Yeah, my sister slept on there.

2 Q. Okay, uh, you are a full-time stay-at-home mom,
3 correct?

4 A. Yeah, I stay at home with my girls, ---

5 Q. Okay.

6 A. --- um, because, I mean, when they're not in school,
7 yeah, I stay home with them. The only places they would go is
8 my mama's and I don't let my girls just go just anywhere, I
9 mean, they -- Emilda, she's went to her friends house but I
10 don't let my girls just go anywhere.

11 Q. Okay, and you have two children with Mr. Reyes, correct?

12 A. Yes, they're his.

13 Q. Okay, two girls, correct?

14 A. (Nodded in the affirmative.)

15 Q. Is that a yes?

16 A. Yeah, I'm ---

17 Q. Okay.

18 A. --- sorry.

19 Q. That's okay. Um, and so Jose is the one who works, is
20 that correct, not that stayin' stayin' home isn't work but ---

21 A. No, ---

22 Q. --- he's the one who goes ---

23 A. --- hah.

24 Q. --- out to a job, correct?

25 A. Yes, ma'am.

1 Q. And he is the sole income, correct?

2 A. Yes, ma'am.

3 Q. Okay, and you guys are no longer together, is that
4 correct?

5 A. No, ma'am.

6 Q. Ya'll are are together or not?

7 A. Mean, no, we we are, we have become friends because we
8 have two kids, we need to work out our problems and our issues
9 because it's not healthy for our kids.

10 Q. Sure, and you need his financial support, correct?

11 A. Yes, I do.

12 Q. Okay, and, um, he's gotta work for you to have financial
13 support, correct?

14 A. Yes, ma'am.

15 Q. Okay. Um, in fact, Jose's been known to be a little
16 tight with his money, is that fair to say?

17 A. I mean, he has but what what what man isn't.

18 Q. Okay. Um, and in fact, in March of 2015 you guys had got
19 into an altercation over him not giving you money for the
20 kids, is that correct?

21 A. Yes, I mean, we have but we, I mean, that has nothin' to
22 do with my anything, I mean, with my girls or anything, he's,
23 I mean, he's always been a good father and he's never harmed
24 them.

25 Q. I'm not asking you that, I'm asking ---

- 1 A. Oh.
- 2 Q. --- if you guys got into an altercation ---
- 3 A. Yes, ---
- 4 Q. --- in ---
- 5 A. --- we did.
- 6 Q. --- March of 2015 ---
- 7 A. Yes, ma'am.
- 8 Q. --- over money.
- 9 A. Yes, ma'am.
- 10 Q. Okay, and that was because he wouldn't share his tax
- 11 return with you, correct?
- 12 A. Yes.
- 13 Q. Okay, and so you took some of that money so that you could
- 14 buy food for your children, is that correct?
- 15 A. I did.
- 16 Q. Okay, and he accused you of stealing that money, is that
- 17 correct?
- 18 A. Yes.
- 19 Q. Okay. You said that there was never any privacy, um, in
- 20 that trailer but you slept, correct? You ---
- 21 A. Yes, ---
- 22 Q. --- you sleep.
- 23 A. --- I slept but me and him a -- he's always slept with
- 24 his arms around me and he's a, he's not a light sleeper, he
- 25 don't get up just all night and I know when he gets up and ---

1 Q. Okay.

2 A. --- and he's a hard sleeper, I mean, it's not easy for
3 him to even get up for work in the mornin' but he still does
4 it, I mean, somebody has to actually wake him up, ---

5 Q. Well ---

6 A. --- mean, there's been times his boss mans' come down
7 there and woke both of us up.

8 Q. --- and you're hard to wake up when you're tired, aren't
9 you?

10 A. Well, yeah, but not not like that. I mean, when I've
11 had, mean, when I've had kids I'm up at six o'clock in the
12 mornin', I'm up with my girls every mornin' no matter how
13 tired I am because I'm a mother, that's my job.

14 Q. Okay, but you sleep, is that correct?

15 A. Yeah, I mean, I sleep, yeah.

16 Q. Okay, and you shower.

17 A. Yeah.

18 Q. Okay, and the bathroom, isn't it true the, in the trailer
19 in your house the bathroom is o -- actually located off of
20 where your and Jose bed bedroom was, correct?

21 A. Yes, but me and him took showers together.

22 Q. Okay, but all -- every day?

23 A. Yeah, I mean, ---

24 Q. Okay, so ---

25 A. --- that's where, ---

MEGAN RENEE MOLINA - CROSS-EXAMINATION BY MS. HINTON

1 Q. --- you wouldn't ---

2 A. --- I mean, ---

3 Q. --- you would leave your children alone then, correct?

4 A. Yes, but technically I would know where he's -- I mean,
5 by the designation of where he's at, he's in the shower with
6 me when I take a shower.

7 Q. Every time he showered, you took a shower.

8 A. Yeah, 'cause that's what we, I mean, we used to do
9 that.

10 Q. On March the 25th a 2015 when ya'll got into that
11 altercation, was Jose in the shower with you?

12 A. He wa -- he come in from work.

13 Q. I'm asking you was Jose in the shower with you when you
14 got into that altercation ---

15 A. No, I was in the shower 'cause he was comin' in from work
16 late.

17 MS. HINTON: That's all I have, Judge.

18 THE COURT: Any redirect?

19 MR. WARDER: No, Your Honor.

20 THE COURT: All right, you may step down.

21 (Whereupon, the witness left the stand.)

22 MR. WARDER: Call Jamie Elrod.

23 (Whereupon, the witness came forward.)

24 THE BAILIFF: You'll place your left hand on the Bible,
25 raise your right.

JAMIE ELROD - DIRECT EXAMINATION BY MR. WARDER

1 JAMIE ELROD, having been
2 first duly sworn, testified as follows:

3 THE COURT: Thank you, sir, if you would have a seat,
4 state your name for the record, please.

5 THE WITNESS: Uh, my name's Jamie Elrod.

6 DIRECT EXAMINATION BY MR. WARDER:

7 Q. Jamie, what type business do you have?

8 A. Concrete.

9 Q. What's the name of it?

10 A. Tri State Concrete.

11 Q. Where's it located?

12 A. Uh, well, we mostly work in Greenville, Spartanburg,
13 there's really no office. Uh, my actual boss is here today,
14 he mainly does the paperwork his house.

15 Q. Okay, and, uh, tell me about how you know Jose.

16 A. Well, uh, I met Jose 'cause their neighbor and they come
17 up sayin' he needed a job so I hired him.

18 Q. Okay. You live how far from Jose?

19 A. A hundred yards, hundred and fifty yards.

20 Q. Okay. You see him on a regular basis?

21 A. Yes, every day when he lived down there.

22 Q. Okay. You've been to his house?

23 A. Many times.

24 Q. And what kind employee is Jose?

25 A. Uh, he's he's a really good employee, uh, he's a hard

JAMIE ELROD - DIRECT EXAMINATION BY MR. WARDER

1 worker, fast learner, smart.

2 Q. Work a lotta hours?

3 A. Yeah, we worked a lotta hours.

4 Q. What would a, what would a a busy week, how many hours
5 would you work on?

6 A. Um, durin' the summer we work 60, 70 hours, in the winter
7 sometimes little slower, it could be 30 to 50 hours, just
8 depending.

9 Q. Okay. Do ya travel when you work?

10 A. Yeah, sometimes.

11 Q. And when you say concrete work, you mean like pourin'
12 driveways and floors and that type a thing?

13 A. Commercial stuff, large stuff.

14 Q. Okay, and did you, did you employ anybody else that lived
15 at that house?

16 A. Yes.

17 Q. Who was that?

18 A. Taleka (phonetic) which is, uh, Meg -- not Megan buth,
19 uh, Tammy's I guess ex-boyfriend I guess.

20 Q. Okay. Uh, the house was a, was it a lotta people in the
21 house?

22 A. Well the four lived there plus the kids.

23 Q. Okay, so the four adults and and four kids?

24 A. Well well I guess when her daughter was born I guess
25 three kids so, yeah.

JAMIE ELROD - CROSS-EXAMINATION BY MS. HINTON

1 Q. Okay, so it'll be seven people all the time?

2 A. Correct.

3 Q. And then would there be some people that they would come
4 over and stay short period?

5 A. Yeah, occasionally yes.

6 Q. So there'd be eight or nine people.

7 A. Occasionally.

8 Q. Thank you, answer any questions the solicitor might have.

9 THE COURT: Cross-examination.

10 MS. HINTON: Thank Your Honor.

11 CROSS-EXAMINATION BY MS. HINTON:

12 Q. Mr. Elrod, you live in that house?

13 A. No.

14 Q. So you have no idea what went on inside that house,
15 correct?

16 A. No, ma'am.

17 MS. HINTON: That's all I have, Judge.

18 THE COURT: All right, any redirect?

19 MR. WARDER: No.

20 THE COURT: All right, thank you may step down.

21 (Whereupon, the witness left the stand.)

22 MR. WARDER: Jose.

23 (Whereupon, the defendant came forward.)

24 THE BAILIFF: Please place your left hand on the Bible,
25 raise your right.

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 JOSE REYES, having been first duly
2 sworn, testified as follows:

3 THE BAILIFF: Thank you. Have a seat, state your name
4 please for the record.

5 THE DEFENDANT: My name is Jose Reyes.

6 DIRECT EXAMINATION BY MR. WARDER:

7 Q. Jose, when did you, uh, move to South Carolina?

8 A. Around 2016, uh, two thou -- 2006, sorry.

9 Q. Okay, in 2006 where in South Carolina did you start to
10 live?

11 A. And for then I moved to Hendersonville, North Carolina, I
12 do fram'in' over there for about three or four years.

13 Q. Okay, and where's that located at? in Columbia?

14 A. No in so -- uh, Hendersonville, North ---

15 Q. Okay.

16 A. --- Carolina.

17 Q. Okay, you went to Hendersonville. You came -- you had
18 family in Columbia.

19 A. Yes, ---

20 Q. Okay, ---

21 A. --- I come ---

22 Q. --- and ---

23 A. --- to Greenville, South Carolina where I first come here
24 for then I moved, I found a job in Hendersonville, North
25 Carolina so I move over there.

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 Q. Okay, and then how long did you work in Hendersonville?

2 THE COURT: You ---

3 A. About three or four years.

4 THE COURT: You've got to ---

5 Q. Jose, can ya ---

6 THE COURT: --- speak into the microphone just so I

7 can ---

8 THE DEFENDANT: Okay.

9 THE COURT: --- make sure everybody hear.

10 BY MR. WARDER:

11 Q. Uh, what type a work did ya do up there in Hen ---

12 A. Framin'.

13 Q. Okay, how long did ya have that job?

14 A. 'bout three or four years.

15 Q. 'kay, and who did you work for?

16 A. I worked for, uh, I don't exactly remember the company,
17 it was a Hart (phonetic) Construction, somethin' like that.

18 Q. Okay, and when did ya meet Megan?

19 A. I met Megan, uh, around 2009 -- 2008.

20 Q. And where did you meet her at?

21 A. I met, uh, within a friend's house in Greenville.

22 Q. Okay, met her in Greenville?

23 A. Um-hum.

24 Q. Okay. Did there come occasion, a time when she moved
25 with her -- with you to where you were workin'?

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 A. 'scuse me?

2 Q. Did she move to where you were working?

3 A. Yeah, di --

4 Q. Okay.

5 A. Yeah, we date probly about two months and for that when
6 she move over there with me.

7 Q. Okay, and that was in Hendersonville.

8 A. Yes.

9 Q. How long did you and her live in Hendersonville?

10 A. Uh, probly two years, two years and a half.

11 Q. Okay, and how'd ya get to Pickens?

12 A. Uh, I I quit my job over there, well I no, I no have no
13 more job over there so I move over here 'cause I was gonna
14 start workin' over here in Pickens ---

15 Q. Okay, and who ---

16 A. --- so ---

17 Q. --- did ya start workin' for?

18 A. I started working' for, uh, well I I worked a couple
19 weeks, uh, doin' framin' for some other guy and for then I
20 meet Jamie is he give me a job.

21 Q. And that was in 2008?

22 A. It's around 2010 the start or somethin' like that.

23 Q. Okay, and so you workin' for him since 2010.

24 A. Um-hum.

25 Q. And where do ya live at? Where did you live at?

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 A. When I moved for, uh, for Hendersonville I move with my
2 mother-in-law.

3 Q. Okay, how long did you stay with your mother-in-law?

4 A. Uh, probly two years till somethin'.

5 Q. Okay, and then you got the house that that you and Megan,
6 uh, occupied together?

7 A. Yes.

8 Q. And how long did ya live in that house?

9 A. I live probly three to four years ---

10 Q. Okay, ---

11 A. --- in ---

12 Q. --- in 2013 is that's where you were livin'?

13 A. Yes.

14 Q. And the first six months you and Megan live there?

15 A. Excuse me?

16 Q. The first six months of 2013 you and Megan live ---

17 A. Yes.

18 Q. --- in that ---

19 A. Yes.

20 Q. And who else was living in?

21 A. Uh, Megan's sister and her boyfriend, ---

22 Q. Okay, who's ---

23 A. --- my ---

24 Q. --- that?

25 A. Jose Luis Guevara.

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

- 1 Q. What's his name?
- 2 A. Jose Luis Guevara.
- 3 Q. And what was her sister's name?
- 4 A. Tammy Corcher ---
- 5 Q. Did anybody else stay there besides, uh, ---
- 6 A. --- and my my two children.
- 7 Q. Okay. Did they have children with them?
- 8 A. Yeah, she, uh, at the time she she have a little child.
- 9 Q. Okay. Now how did -- di **Minor** come and stay at the
- 10 house?
- 11 A. Yes, yes, sometimes, yes.
- 12 Q. Okay, and how was **Minor** related to everybody?
- 13 A. Well they are family.
- 14 Q. Okay. Megan and **Minor's** family?
- 15 A. Yeah.
- 16 Q. How are they related, do you know?
- 17 A. Think they are cousins or somethin'.
- 18 Q. And would **Minor** spend just one night or would she come
- 19 and spend longer periods a time?
- 20 A. Yeah, she spend a night. Yeah, she spend a night.
- 21 Q. 'kay, did, uh, her parents ever stay there?
- 22 A. No.
- 23 Q. 'kay. Well did did you know **Minor's** parents?
- 24 A. Yes, I know them.
- 25 Q. Okay. Did ya know her father?

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 A. Yes, we was pretty good friends, I used to hangin' a lot
2 with him and, uh, her, uh, and his, uh, wife or girlfriend.

3 Q. Okay. Uh, did you, did you hol -- loan money or did you
4 help support ---

5 A. Yes, I, sometimes he he asked me, uh, to let him borrow
6 money to help him pay the bills and the stuff so I let him
7 borrow money and stuff.

8 Q. Okay. Did, uh, uh, the, did givin' the money to to, um,
9 **Minor's** parents that cause any problems with you and Megan?

10 A. Um, sometimes she say why I was gonna he -- why I was
11 helpin' them and yeah, sometimes she got mad but . . .

12 Q. Okay, she got mad 'cause you were givin' money to help
13 support?

14 A. Um-hum.

15 Q. What do ya do about that? quit?

16 A. No, no. No, I would let her borrow money because he was
17 my friend, you know, and I knew I's gonna help him.

18 Q. And, uh, uh, did, uh, uh, **Minor's** father did there come a
19 time that he got, uh, uh, sent back to Mexico?

20 A. Yeah, yeah.

21 Q. When was that? you don't remember?

22 A. I no remember the, uh, but, uh, he was drivin' and think
23 he got, he on, some think it's his wife that send him to, uh,
24 back to Mexico.

25 Q. Okay, did you provide any for -- more money for, uh,

1 **Minor's** mother after that?

2 A. No.

3 Q. Okay, and did they, then subsequently this event they,
4 uh, they reported this?

5 A. Um-hum, yes.

6 Q. Now you've been accused a this this indictment of having
7 criminal sexual contact with **Minor**, ---

8 A. No.

9 Q. --- she testified here, you heard her, ---

10 A. Um-hum.

11 Q. --- she said you touched her, did ya do that?

12 A. No.

13 Q. She said that, uh, uh, you fondled her private areas, did
14 ya do ---

15 A. No.

16 Q. --- that? She said you got on top of her and and, uh,
17 touched her with your penis, ---

18 A. No.

19 Q. --- did ya ever do any of those things?

20 A. No.

21 Q. Uh, what were the the sleeping arrangements there, uh,
22 where'd **Minor** sleep at?

23 A. Well she sleep in the other room with my childs, in the
24 living room she sleep, uh, in the living room asleep, um,
25 Tammy and her boyfriend.

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 Q. Okay. Were there always other people in the room with
2 her?

3 A. Yeah, so there was, uh, my two child's was when, uh, with
4 **Minor**.

5 Q. Now when you heard about these charges, what did you
6 do?

7 A. I di -- when I heard about this, I I just, uh, you know,
8 no give any im -- importation, you know, I, or I don't know
9 how you say because the people, there's a bunch a time I back
10 and forth so, uh, uh, there's no ti, uh, period a time, you
11 know, there was that serious but when, uh, when somebody tell
12 me there was the, I was having, uh, arrest to the casa -- como
13 se dice?

14 THE COURT: All right, uh, let me tell the jury we have,
15 uh, an interpreter that has already been sworn in, uh, for
16 purposes make sure that, uh, everything's understood, it's my
17 understanding that, uh, uh, he needs an interpreter this time
18 and that we've got her on standby so that's her purpose is,
19 all right.

20 (Whereupon, the interpreter approached the witness
21 stand.)

22 MS. HINTON: Judge, you know ---

23 THE COURT: Again, hold ---

24 MS. HINTON: --- I ju ---

25 THE COURT: --- on. We we, uh, if he's sayin' somethin',

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 you need to be interpreting ---

2 THE INTERPRETER: Yeah, ---

3 THE COURT: --- it I I ---

4 THE INTERPRETER: --- what when when the detective came
5 to the house, uh, go ahead, please sir, he went, he came over
6 for an interview, that he had a warrant for his arrest, that
7 he turned himself in because he says he knew he had not
8 committed anything.

9 BY MR. WARDER:

10 Q. After they -- you turned yourself in sometime later you
11 learn that they said that, uh, uh, the the child had a
12 sexually transmitted disease, is that right?

13 A. Yes.

14 Q. 'kay, did you do anything when they -- you heard that?
15 Did you go get a test?

16 A. Yes, I went get a test.

17 Q. Why did ya do that?

18 A. Because, uh, I was trying to prove that I don't have
19 anything, they whatever she said she have some kinda sickness
20 or whatever so was trying to prove that I, uh, I no have
21 a noth -- nothin', it wasn't me or whatever.

22 Q. 'kay. Have you ever had a a a disease sexually
23 transmitted?

24 A. No, no.

25 Q. Do ya today have a sexually transmitted disease?

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 A. No.

2 Q. Have ya ever had a cold sore in your life?

3 A. Yeah, sometime.

4 Q. And that's a cold sore in your mouth.

5 A. Um-hum.

6 Q. Not very often?

7 A. No.

8 Q. So the first thing you did when you you learned that the
9 child had a sexual and transmitted disease was you tried go
10 down and get the documents that would prove you didn't have
11 a ---

12 A. Yeah, I, yeah, I I went to get a test and when I got a
13 test I went to get it and give it, uh, to whatever they
14 needed.

15 Q. Okay. Did ya take one test or did you take more?

16 A. I take 'bout three tests, blood tests, all kinds a test.

17 Q. Okay, you took every kinda test they had?

18 A. Yeah, yeah.

19 Q. Oh. And they told you you had, uh, uh, herpes simplex
20 virus 1 from cold ---

21 A. Um-hum.

22 Q. --- sores?

23 A. Yeah, I ask the doc, the doctor, uh, what what it was,
24 what I mean, what they think it means, she said ---

25 MS. HINTON: Objection, Judge, ---

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 THE COURT: Yeah, you ---

2 MS. HINTON: --- can't testify ---

3 THE COURT: --- can't ---

4 MS. HINTON: --- to what the doctor said.

5 THE COURT: All right, I'm gonna object to the hearsay, I
6 mean, I'm gonna sustain objection, hearsay, sorry.

7 BY MR. WARDER:

8 Q. Okay, so you never did any a the things she accused you
9 of ---

10 A. No, sir.

11 Q. --- and you've done all you can prove that you didn't.

12 A. Yes, sir, it's it's what I am here to trying to prove.

13 Q. Okay, and here today you're trying to tell the jury ---

14 A. Yes, sir, ---

15 Q. (Indiscernible cross-talk.)

16 A. --- I I stand here. If if if I feel like I was, uh, ---

17 (Whereupon, the defendant began to speak in Spanish.)

18 If I feel like I -- you -- I was guilty, I know on otro
19 days GPS to pagin' ---

20 MS. HINTON: Judge, ---

21 A. --- you all that morning ---

22 MS. HINTON: --- I'm gonna object ---

23 MR. WARDER: I'm gonna ---

24 MS. HINTON: --- to this, can we approach?

25 THE COURT: Yes.

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 (Whereupon, a bench conference was held off the record.)

2 THE COURT: All right, and let me make sure too on this,
3 interpreter, if he a -- if he a -- I mean, a real, if he asks
4 you a question, I think right then he asked you how to say
5 somethin' in English sound like, but when he asks you a
6 question, you have to interpret exactly, say exactly what he
7 says and you can get back to him just so we have the record
8 complete, all right? Okay.

9 BY MR. WARDER:

10 Q. Okay. You still workin'?

11 A. Yes.

12 Q. You still work work for Mr. Elrod?

13 A. Yes.

14 Q. You set up a life here in the community?

15 A. Excuse me?

16 Q. Are you involved in the community in any other way?

17 A. Yes.

18 Q. Uh, go to church here?

19 A. Yes.

20 Q. Your minister here with ya?

21 A. Um-hum.

22 Q. Answer any questions the solicitor might have.

23 THE COURT: And you'll just stay here in case there's any
24 issues, thanks.

25 THE INTERPRETER: (Nodded in the affirmative.)

JOSE REYES REYES - CROSS-EXAMINATION BY MS. HINTON

1 CROSS-EXAMINATION BY MS. HINTON:

2 Q. Jose, how tall are you?

3 A. About 5'6.

4 Q. 5'6. You still pay for your children? You still provide
5 financial support to them?

6 A. Yes.

7 Q. Okay. Are you the sole financial support for them?

8 A. Yes.

9 Q. And you testified that you went and got tested for STDs
10 when you were asked by the detective whether or not you had
11 one, is that correct, was that your testimony?

12 A. Yes.

13 Q. Okay, and i -- isn't it correct that you went to Cannon
14 Hospital on August the 30th of 2013 and got tested for STDs,
15 is that ---

16 A. Um-hum, ---

17 Q. --- correct?

18 A. --- yes.

19 Q. And isn't it true that you got tested for everything but
20 herpes, isn't that correct?

21 A. Yes.

22 Q. Okay, so you didn't in fact do what they asked for,
23 instead you went and got tested for STDs but not herpes,
24 correct?

25 A. Yeah, because over there they no do that kinda test.

JOSE REYES REYES - CROSS-EXAMINATION BY MS. HINTON

1 Q. I'm sorry?

2 A. That they tell me over over there they no do the kinda
3 test, I have to go into different doctor.

4 Q. So your testimony is that a hospital does not perform ---

5 A. Um-hum.

6 Q. --- a test for herpes but they ---

7 A. Um-hum.

8 Q. --- perform tests for other STDs, is that your
9 testimony?

10 A. Yeah, yes.

11 Q. And you are in fact positive for herpes simplex virus 1,
12 correct?

13 A. Yeah.

14 Q. That's all I have.

15 THE COURT: All right, any redirect?

16 THE DEFENDANT: No.

17 MR. WARDER: No redirect.

18 THE COURT: All right, you may step down.

19 THE INTERPRETER: Thank you, take care.

20 THE COURT: And thank you.

21 (Whereupon, the defendant left the stand.)

22 MR. WARDER: Your Honor, that be the defendant's case.

23 THE COURT: All right. You anticipate any additional ---

24 MS. HINTON: No, Your Honor.

25 THE COURT: All right. Uh, all right, ladies and

MOTIONS AND MATTERS

1 gentlemen, it's 11:30, the problem is we have, uh, quite a bit
2 of information to go over, uh, and then we'll go into
3 the, both sides have indicated they've completed any testimony
4 so what we have left is closing arguments by the attorneys and
5 then the, uh, the argument and charge, I mean, well the charge
6 which I'll tell you what the law is. Uh, first we've got to
7 go over some things and I've got to make sure everything's
8 ready to go for that so it doesn't make any sense for us to
9 bring you back and then take another break for lunch at that
10 point so we're gon -- I'm gonna have to let you go to what I
11 call the "kindergarten lunch" which is 11:30, um, and I'm
12 gonna ask that you be back at 1:15, all right, and then at
13 that point we will, uh, continue with the case, so again,
14 don't talk about the ca -- you're gonna be on your own for
15 lunch but do not discuss the case among yourselves or with
16 anyone else, do not pay any attention any, uh, media whether
17 it's social media, uh, newspaper, radio, TV, uh, do not do any
18 independent investigation whatsoever, if anybody contacts you
19 any way, uh, then please let the bailiffs know so other than
20 that please have a good lunch, be back in your jury room at
21 1:15.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Okay, a housekeeping matter, madam
25 interpreter, 'cause I never done that, make sure, we have a

MOTIONS AND MATTERS

1 different court reporter today, uh, make sure you give her
2 your information, your name ---

3 THE INTERPRETER: Yes, Your Honor.

4 THE COURT: --- and do come 'fore we take -- all right,
5 uh, any additional motions or anything to bring up from the
6 State?

7 MS. HINTON: No, Your Honor.

8 THE COURT: Anything else from the defendant?

9 MR. WARDER: Uh, no, Your Honor, course I renew my motion
10 for directed verdict ---

11 THE COURT: All right, ---

12 MR. WARDER: --- on the same ---

13 THE COURT: --- uh, ---

14 MR. WARDER: --- ground.

15 THE COURT: --- and I I'm go -- I feel like it is a jury
16 question on that and will deny on the same basis. Uh, let's,
17 uh, the attorneys, uh, step back and let's kinda go over the
18 charge, verdict forms and so forth, uh, and then we'll be at
19 break till till 1:15. Anything else before we we break?

20 MR. WARDER: No, sir.

21 MS. HINTON: No.

22 THE COURT: All right.

23 (Whereupon, a recess was taken.)

24 THE COURT: All right, ya'll wanna look at the verdict
25 forms fine, yes, very basic, I know I've got a copy.

MOTIONS AND MATTERS

1 MS. HINTON: Oh, do we ---

2 (Whereupon, the attorneys approached the bench.)

3 MR. WARDER: Kinda short, to the point.

4 MS. HINTON: Judge, the only thing I will say and it's
5 not a problem for me but on the indictment it reads a [REDACTED]
6 cause she was Minor [REDACTED], I don't know if you wanted
7 to change that, I don't -- it doesn't matter ---

8 THE COURT: All right.

9 MR. HINTON: --- to me either way but I just didn't want
10 there to be any confusion.

11 THE COURT: Okay, now wait, let's, we wanna be exact,
12 time to do.

13 MS. HINTON: Thank you.

14 (Pause.)

15 THE COURT: All right, we have made that change to
16 initial [REDACTED], little more involved than we thought.

17 MS. HINTON: Oh, I apologize, thank you.

18 THE COURT: No, I'm, no, I'm glad you caught that, so,
19 uh, all right, anything before we bring the jury in?

20 MS. HINTON: Not from the State, Your Honor.

21 MR. WARDER: No, Your Honor.

22 THE COURT: All right, bring the jury in.

23 (Whereupon, a discussion was held off the record.)

24 (The following takes place in the presence of the jury.)

25 THE COURT: All right, ladies and gentlemen, uh, we are

CLOSING ARGUMENTS

1 now, uh, to kinda the final stage a the trial, I guess next to
2 final stage, the final stage will be deliberation, but that's
3 when we have closing arguments by the attorneys and this is
4 their, it's, again, this is not evidence but this is their
5 summary a their argument about, uh, about what they believe,
6 uh, case is about, uh, and then after that I will give you
7 the, uh, what the law of the case is, the the jury charge and
8 at that point I can finally send you back and say you can
9 begin deliberations but this time if you'll devote your
10 attention, uh, to the attorneys argument. All right, may
11 proceed.

12 MR. WARDER: Gentlemen and ladies of the jury, I confess
13 to you that I'm here today in a situation I never thought I
14 would be in after we've completed a political election where
15 people talked about the Constitution for years, I'm gonna tell
16 you that today the protections in that Constitution come from
17 a literal reading of it, not from some social interpretation
18 or the fact that it's a breathing, living, breathing document
19 that says different things in the document. His Honor will
20 tell you the law, your rights from the Constitution and the
21 effect and he will tell that you should apply that law like it
22 was written, like the law says it is, like it means. I guess
23 the second thing is that the presumption of innocence attaches
24 to anybody accused of a crime, perhaps it's when you're you're
25 accused and it derives from the Constitution itself and from

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1 the presumption of innocence comes the other things that we
2 will talk about: the burden of proof what it is, what it takes
3 to get a conviction against a citizen that is presumed to be
4 innocent.

5 The difficulty of this crime particularly arises that
6 it's difficult to prove it didn't happen, it's like anything
7 when you've got to prove a negative, that you didn't do
8 somethin'. If you just would imagine maybe that there a
9 situation where there was a a a room at night and the the
10 lights went off, nobody went to the door and the next morning
11 the police came and said somebody said you groped her as you
12 walk in and out of a room, that's how do ya disprove? how do
13 ya prove your innocence? This is part of the burden my client
14 faces and he must rely upon the Constitution and the
15 presumption of innocence. If you shift and try and make me
16 prove I didn't do it, it will be impossible. This is a case
17 where one young victim says my client did something without
18 any other witness. My client relies upon the presumption of
19 innocence.

20 Now the second thing about this case that I never thought
21 I would hear the candidates have dwelled over the last year
22 about clients and my clients, clients and my, excuse me, they
23 dwelled against persons that are in my client's position, my
24 client's that anyway now and he's here accused of a sex crime,
25 this is what one of the candidates that we build a wall for so

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1 my client has been affected by two years of polarized legal
2 speech and you've gotta put that outta your mind and say this
3 case the presumption of innocence, what is right in this case.

4 The testimony shows that this was alleged to have
5 happened in the in living room of a small trailer where my
6 client lived. My client says to that first of all the trailer
7 was crowded, there's a number of us live there, there were
8 were people sleeping on the floor, people sleeping in both
9 bedrooms in a 14-foot wide trailer, that, uh, uh, we have
10 different people sleeping on the couch, the victim sometimes
11 slept with his children, does this prove he didn't do it, it
12 makes it less likely but it doesn't prove it. The times not
13 defined, it's someplace in a 6-month period a time, that I
14 can't prove where my client was every minute, I can prove and
15 the testimony shows he worked a lot, a lot of hours he was
16 out, that doesn't prove it couldn't have happened, it makes it
17 somewhat less likely that he wasn't there, that, uh, my client
18 told you the only thing that he could that he knew for sure he
19 didn't do it. In his mind there's not much else he can say
20 about it after he says it didn't happen like an imaginary
21 situation where somebody says you groped 'cause all you can do
22 is say it didn't happen, somebody will either believe you or
23 won't believe you but you can't offer any other evidence,
24 there's no other evidence to offer, that's the position my
25 client finds himself in this case and that doesn't mean he

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1 should be convicted, it means presumes to be innocent.

2 Now my client thrust alone into this allegation and he
3 decided that when they told him that the child had contracted
4 a sexually transmitted disease he went and got tested and he
5 got tested three times and the first time he got tested he
6 didn't know what the the disease was and so he took a test
7 that didn't identify it, he later took a test that showed he
8 had, if it's a sexually transmitted disease he has herpes
9 type-1 which is a cold sore, most of us wouldn't even consider
10 that a sexual disease, many of you or part of you might have
11 had a cold sore, I'm sure you didn't regard yourself as having
12 a sexually transmitted disease. that the testimony of a, one
13 of the doctors, Dr. Mary Crosswell, said that she came, she
14 learned the child had a cold sore two years before that,
15 hadn't broke out again and then, uh, had a cold sore now, that
16 sexually transmitted disease? think of what she told you. You
17 have a, you have HV-1 for life, that it periodically breaks
18 out, it, uh, her mother didn't know of another incident of it
19 before this. My client had that same virus, he denies any
20 contact. Does the fact that the child had another outbreak of
21 her HVS-1 does that prove that my client was involved, I say
22 that it doesn't, it has no probative value, it's a, it's a red
23 herring. My client has done everything and in the world reach
24 a way to prove what he knows to be true and the only thing he
25 can do is rely upon the the presumption of innocence and the

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1 fact that in our system the State is always required to prove
2 who one guilty beyond all reasonable doubt and that's the crux
3 of this case is the strength of the State's case. The crux of
4 this case is that the State cannot prove my client guilty
5 beyond a reasonable doubt when you can't give the presumption
6 of innocence. His Honor will tell you what a reasonable doubt
7 is. Reasonable doubt is a doubt that would make you hesitate
8 to act, is the one where it's involved so if you consider
9 everything you'd hesitate to act on it then that's a
10 reasonable doubt. Another way of putting it is if you
11 considering all the evidence there's a real possibility for
12 the defendant's innocence, not a and you feel like he might
13 have done it but is there real possibility that he didn't.
14 Evidence that carries guilt beyond a fir -- a reasonable doubt
15 would leave you firmly convinced, not convinced, firmly
16 convinced and I submit to you there's not that category, not
17 that type, not that evidence. This is a case in in its
18 simplest form where one person is saying, He touched me. Now
19 they said he touched me with his finger, uh, she says he
20 touched her with his penis, he says it all happened the living
21 room in the house with all these people, I submit to you the
22 State's not carried it's burden. If you listen to that law as
23 the judge will tell you, the law that the oath requires you,
24 you will find out that the presumption of innocence protects
25 my client until unless the quality of the evidence is such

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1 that it proves guilt beyond all reasonable doubt.

2 This is a case that my client is faced trying to prove
3 the negative, that he didn't do something and I think you
4 should fairly analyze that. I'd ask you to do the hard thing:
5 to sit and to to apply the law as you will hear it to the
6 facts as you find them to be, you are the whole judge of the
7 facts, you can give each fact the weight you think it
8 deserves. The judge is the ultimate lawyer authority on the
9 law, you have to apply the law as he gives it. I ask you in
10 this case when you accept, analyze the facts as you find them
11 and the law as it's given then it will become apparent the
12 only right thing is the verdict of not guilty, not guilty
13 because there's insufficient evidence. You know, uh, in the
14 United States we use the words "guilty" and "not guilty" for
15 the jury with this and even where our common law came from
16 they use the form of verdict proven or not proven and I think
17 that is a better term to convey or to task that a jury use.
18 You're to decide if this is a proven case; in other words,
19 whether the State has proven it beyond all reasonable doubt or
20 whether it's an unproven case, whether it's against
21 ask you to analyze all of the testimony and all of the
22 evidence you say that there still remains a reasonable doubt,
23 of course an unproven case is a case where the verdict is not
24 guilty. I ask you in this case give the fair, the right and
25 just thing and find the verdict not guilty. Thank you very

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1 much.

2 THE COURT: Ms. Hinton.

3 MS. HINTON: Thank you. Thank Your Honor. This case is
4 not about politics, it is not about Hillary Clinton or Donald
5 Trump or a wall, this case is about Minor [REDACTED] who's
6 6-years-old. Between January and June of 2013 Minor [REDACTED]
7 suffered the emotional trauma of being sexually abused at the
8 hands of Jose Reyes. On August the 24th of 2013 Minor [REDACTED]
9 suffered the outward physical signs of being abused by Jose
10 Reyes, a physical sign that she will live with for the rest of
11 her life, emotional scars that she will live at -- with for
12 the rest of her life.

13 On August 24th 2013 Minor [REDACTED] went to the Cannon
14 Emergency Room and was tested for herpes, she was positive for
15 HSV-1. On August the 29th of 2013 Deputy Trotter testified
16 that he arrived at Minor's [REDACTED] residence and that is when
17 she disclosed sexual abuse to him. On August the 30th of 2013
18 the defendant is tested for STDs at that same emergency room,
19 Cannon Memorial Emergency Room, same emergency room that Minor [REDACTED]
20 [REDACTED] was tested at six days earlier and the defendant was
21 very clear on the stand he was tested for STDs but he was not
22 tested for herpes, not because as Mr. Warder would tell you he
23 didn't know what he was supposed to be tested for but because
24 the hospital couldn't perform that type of test, that was his
25 testimony and I asked him twice and that was his answer twice,

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1 that he couldn't get tested for herpes because the emergency
2 room didn't test for it, the same emergency room that had
3 tested Minor six days earlier. I submit to you Jose
4 Reyes was not doing everything that he could to prove his
5 innocence, he was doing everything he could to try to deceive
6 law enforcement. As we know Jose Reyes tested positive for
7 HSV-1 and I wanna focus real quick on that August 24th
8 diagnosis. This was not a cold sore on Minor's lips, this was
9 genital herpes, this was HSV-1 in her vaginal area.

10 Now the defense has done what I would call a "kitchen
11 sink case," they have thrown a bunch of things at you just to
12 see what's gonna stick. Mr. Warder first got up in front of
13 you during opening arguments, he told you that this was
14 financially motivated, I heard absolutely no evidence in this
15 case that this is financially motivated. The State made Minor's
16 mother Diane available for cross-examination and not
17 once was she asked about whether or not Jose Reyes financially
18 supported her so I submit to you that's not a valid argument.
19 I told you also at the beginning of this case that people lie
20 for two reasons: they lie to get outta trouble and they lie to
21 get what they want and I want you to think about that, think
22 about the State's witnesses and think about the defense
23 witnesses and what motive they have to lie. I wanna first
24 focus on the defense witnesses, I'm gonna start with Megan.
25 Megan has two children by Jose, she's a stay-at-home mother,

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1 there is absolutely nothing wrong with that, I'm a mother
2 myself, I highly respect stay-at-home mothers, but Megan
3 doesn't work and kids aren't free, they're very expensive and
4 Megan needs the financial support of Jose so of course she has
5 a motive to get up here and lie to you. Megan could not even
6 keep her own story straight. Her first testimony was that
7 they didn't have a couch until August of 2013 but then she
8 made a mistake, she said that her sister had stayed there and
9 for quite sometime and because it's a 2-bedroom her sister
10 slept on the couch so then it was, Oh, no, we did have a couch
11 in February 2013, we just didn't have a specific type of couch
12 which was of absolute n -- absolutely no relevance to this
13 case, she also said that her sister briefly stayed with them
14 meaning that there was ample time for Jose Reyes to sexually
15 assault **Minor** on that couch. She also told you that
16 couch was really small but her almost 6-foot sister who had
17 just had serious complications with a C-section delivery was
18 able to sleep on it so I submit to you that the 5'6 Jose Reyes
19 and 6-year-old **Minor** could be on that couch together.
20 **Minor** -- she also told you that she always showers with Jose
21 and and this is the problem with Megan's testimony, she talks
22 in extremes because she's trying to cover for him, she never
23 showered without him except for that one time where she has to
24 admit that she showered without him because they had an
25 altercation so when it works in her advantage she's always

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1 with him but when confronted with the facts of things that
2 have actually happened like their altercation in March of 2015
3 she has to admit that she doesn't always shower with him.
4 Jamie Elrod came up here, he offered nothing to the defense's
5 case: he doesn't live there, he doesn't know what goes on
6 there, he testified that Jose was a good worker, maybe he, is
7 maybe he isn't but he is of no relevance to this case, then
8 Mr. Reyes took the stand. He admitted that the victim would
9 come over, that the victim would spend the night, the defense
10 asked if she would come with her parents, no she wouldn't, she
11 would come on her own and she would stay over there which is
12 exactly what **Minor** told you: that she would go over there and
13 spend the night without her parents. He also admitted that he
14 is a sole support for those children and he told you that he
15 was tested for everything but herpes but admitted that later
16 when he was tested again that he was positive for HSV-1 and
17 that's important because there are two strands of herpes as
18 you heard, there's HSV-1 and there's HSV-2, and I'll get to
19 the doctor's testimony in full in in a little bit but I want
20 you to remember that that is a a significant distinction, that
21 **Minor** had HSV-1 in her vaginal area which is not the common
22 form of herpes in the vaginal area, this is cold sore herpes
23 in her vagina.

24 Now our case first was **Minor**, she took the stand at
25 9-years old and she told you that she would go spend the night

CLOSING ARGUMENTS

1 at Megan and Jose's house, Fernando as she calls him, and that
2 Fernando would lay on top of her when she was asleep and night
3 on the couch and he would kiss her and his tongue would go in
4 her mouth and that he would put his fingers in her vagina and
5 that he would put his penis on her privates, she also told you
6 when I asked her if he had said anything to her, she said he
7 said, Do you like it, that's significant because this is a
8 9-year-old who's not exposed to the same sexual things that
9 adults are yet she knows that he told her, Do you like it,
10 which is something that someone would say in a sexual
11 scenario.

12 One thing I thought was significant is that **Minor**
13 testified this has happened repeatedly but the defense never
14 questioned her on her not maintaining the same story. It has
15 been 1,263 days since June the 30th of 2013 when this abuse
16 ended and for 1,263 days **Minor** has maintained the same
17 story and that is significant because for 1,263 days that the
18 defense wants you to think that she made that up, that's a
19 long time for a kid to keep the same story straight and along
20 the way she met with different people and along the way she
21 made the same disclosures to them.

22 Mary and Dianne both got up here, they said that **Minor**
23 disclosed sexual abuse to them, she told them that it happened
24 at Megan's house on the couch and they said when they told her
25 that they were gonna call the police Mary's testimony was that

CLOSING ARGUMENTS

1 **Minor** flipped out, she was upset because someone was gonna be
2 mad at her and she told 'em that she hated them, those are
3 real emotions, those are emotions that can't be faked.

4 Deputy Trotter and Detective Marvin Nix took the stand,
5 Deputy Trotter told you that when he spoke with **Minor** she's
6 very embarrassed, that she was shy, those are emotions that
7 can't be faked. Importantly, he spoke to her outside the
8 presence of her mother and spoke to her mother outside of her
9 presence and the reason that is important and the reason that
10 that's significant is it's real hard to influence somebody if
11 you're not in the room with 'em and that is consistent
12 throughout this case.

13 Detective Nix attempted to talk to **Minor** about the
14 incident and what happened and she couldn't, she broke down,
15 those are real emotions, those can't be faked.

16 Victoria Tate testified, she's **Minor's** counselor and has
17 been since March of 2016 and her significant testimony was
18 that **Minor** is embarrassed and she's ashamed that she couldn't
19 stop it, that's a real reaction that can't be faked.

20 Dr. Crosswell testified, uh, that normal is normal, she
21 doesn't ex -- expect, uh, always that there will be any
22 outward signs of abuse but **Minor's** case is unique and it's
23 concerning to her that **Minor** had a cold sore 2000 on her mouth
24 which may or may not have been herpes, the ju -- the doctor
25 said it could be, could not be, but the significant part the

CLOSING ARGUMENTS

1 doctor said and she's the expert is that when the infection
2 manifested itself again it was in her vaginal area and that
3 along with Minor's disclosure that he touched her in her
4 vagina under her clothes is significant and it's concerning.
5 The lab confirmed that Jose Reyes has HSV-1, same type of
6 herpes that Minor has.

7 Finally, Shauna Galloway-Williams testified and she
8 testified as a blind expert, what that means is that she has
9 never met Minor, she doesn't know anything about Minor's case,
10 she's testifying as to symptoms of child abuse in general and
11 what's significant about that is that the symptoms and things
12 that she's talking about are things that happened to Minor, it
13 was by someone she knew, love, and trusted, she liked going
14 over there, she trusted Megan and she trusted Jose and they
15 violated her trust. She told you that delayed disclosure is
16 common. Minor didn't disclose until after she told her mom it
17 hurt when she peed, they go and she's got a herpes diagnosis,
18 that's when Minor disclosed. She told you that with chronic
19 abuse time is really hard, especially for children, I submit
20 to you that's why Minor can only tell you that it happened
21 when she was 6 but for 1,263 days and throughout that timeline
22 and up until yesterday when she came in here and testified,
23 she's maintained the same story.

24 The elements of criminal sexual conduct in -- with a
25 minor in the first degree are this: that the child has to be

CLOSING ARGUMENTS

1 under the age of 11, we know that to be true because we know
2 **Minor's** only 9-years-old, and there has to be any intrusion
3 into the genital or anal area no matter how slight, **Minor's**
4 testimony, it has not been rebutted, is that Jose Reyes put
5 his finger in her vagina on multiple occasions, that is
6 criminal sexual conduct with a minor in the first degree.

7 I don't know if the defense wants you to think that I put
8 **Minor** up to it or that her mom put her up to it but what the
9 defense cannot get around is that **Minor** has had the same story
10 throughout time, she met with Deputy Trotter alone, she met
11 with Dr. Crosswell alone and she came in here and told you her
12 story yesterday, what they cannot deny is that **Minor's** has has
13 herpes and so does Jose Reyes, that is a crazy coincidence
14 that the man that **Minor** alleges sexually assaulted her would
15 subsequently test positive for the same STD that **Minor** has. I
16 submit to you that between January 2013 and June of 2013 Jose
17 Reyes repeatedly sexually assaulted **Minor**, did it at his
18 home in Pickens County on his couch and you saw yesterday how
19 hard it is for **Minor** to get up here and tell you what
20 happened, how embarrassed she was to tell you what happened,
21 that's not a vindictive child, that's a child who has the
22 emotional, physical scars of Jose Reyes.

23 The State has the burden of proof in this case and I told
24 you that and that's a burden that we gladly accept and I told
25 you that at the end of this case I had to leave you firmly

JURY CHARGE

1 convinced of his guilt. Jose Reyes walked into this courtroom
2 an innocent man but that does not mean that he leaves here one
3 because if you twelve jurors decide that the State has proven
4 its case beyond a reasonable doubt then he is no longer an
5 innocent man. I submit to you that people lie to get outta
6 trouble and to get what they want and Jose Reyes is in a whole
7 lot of trouble. It has been 1,263 days that Minor has
8 lived with this, today is Jose Reyes's day in court but it's
9 also Minor's and I would ask that you return the only
10 just verdict for this case and that is guilty, thank you.

11 THE COURT: All right, ladies and gentlemen, um, now
12 comes the, uh, part where I charge you on the law. Uh, as I
13 told ya in the very beginning of this case, uh, you've heard
14 the reference to an indictment, uh, the indictment is merely a
15 charging paper and the defendant is just for the fact that he
16 was arrested, charged and indicted on this charge is not to be
17 considered by you, uh, in the least because he comes in this
18 court, uh, not guilty, innocent until proven guilty, uh, and
19 it's up to you to make the determination of, uh, his innocence
20 or his guilt by the testimony that has been presented that
21 you've heard. Uh, as indicated you've heard a a a a lot of
22 reference and probly, uh, throughout, uh, your life and
23 watching TV you've heard a, probly heard the phrase
24 "presumption of innocence" and that's more than just a TV
25 term, that's more than just a legal term, that is the

JURY CHARGE

1 foundation of our criminal, uh, system, uh, and and by
2 Mr. Reyes pleading not guilty that mean, that puts the burden
3 totally on the State to prove the defendant guilty. Uh, a
4 person charged with committing a criminal offense in this
5 state is not required to prove himself innocent, it's
6 important rule of law that defendant in a criminal trial no
7 matter what the seriousness of the charge is will always be
8 presumed innocent, uh, unless and until, uh, the State has
9 proven him guilty beyond a reasonable doubt, this does not end
10 when a person comes into the courtroom or when the testimony
11 begins, it's only, uh, when the State has met its burden and
12 you've made a determination that, uh, that the State has met
13 their burden.

14 Uh, "reasonable doubt," you've heard that phrase said it
15 lotta times as well. A reasonable doubt is the kind of doubt
16 that would cause a reasonable person to hesitate to act.
17 Proof beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the defendant's guilt. There are very few
19 things in this world that we know with absolute certainty and
20 in criminal cases the law does not require, uh, that, uh,
21 proof overcome every possible doubt and based on your
22 consideration of the evidence you're firmly convinced that the
23 defendant is guilty of the crime charged, you must find the
24 defendant guilty; the other hand, you think there's a real
25 possibility that defendant is not guilty, you must give the

JURY CHARGE

1 defendant the benefit of doubt and find him not guilty.

2 Uh, I remind you that during this trial you all have had
3 different duties to perform, as the trial judge it's my
4 responsibility is to preside over the trial and I have the
5 duty to ru -- rule on admissibility of evidence offered during
6 the trial, you're only to consider competent evidence, uh,
7 that was received in the process of this trial, there's any
8 testimony that's ordered stricken from the record then you
9 must disregard that testimony. You are, you are to consider
10 only the testimony which has been presented from the witness
11 stand, uh, and any exhibits which been made part a the record
12 and any stipulations of counsel.

13 I have a du -- the additional duty to charge you on the
14 law. As the presiding judge I'm the sole judge of the law,
15 it's your duty to accept the law as I give it to ya; 'nother
16 words, you're to disregard, uh, if you feel like the law
17 should be something different, you feel like it is something
18 different or, uh, you previously understood it to be something
19 different that is, uh, not your prerogative. As a, as a jury
20 taking the oath of a juror, you have, uh, agreed to administer
21 the law as I give it to ya at this point, uh, but you're the
22 sole exclusive judge of the facts of this case. As a judge I
23 cannot intimate, I cannot infer anything about the facts of
24 this case because that's totally your province as a jury to
25 decide what the facts are. If anything I've done or anything

JURY CHARGE

1 I've said made you think that I have an opinion on those
2 facts, gonna ask you to disregard that because that would be
3 invading your province and you're the ones that determine what
4 the facts are of this case.

5 There's two types of evidence which you have to consider,
6 that's direct and circumstantial evidence, um, there's no
7 difference about the weight of these but the two, let me
8 explain what these two type are. Direct evidence is the
9 testimony of a person who claims to have actual knowledge of a
10 fact such as an eyewitness of what they observed and that
11 testimony or that evidence immediately establishes the main
12 fact to be proved. Circumstantial evidence is a little
13 different, it's when, uh, you have to prove a chain of e -- of
14 facts or chain of circumstances to prove a particular fact, it
15 is evidence which immediately establishes collateral facts
16 which the main fact may be inferred so circumstantial evidence
17 is based on inference and not necessarily on personal
18 knowledge or observation. Our law makes no distinction
19 between the weight or value to be given to either direct or
20 circumstantial evidence nor is there a greater degree of
21 certainty required for circumstantial evidence over direct
22 evidence, you should weigh all the evidence in the case as you
23 feel is appropriate and after weighing all the evidence if
24 you're not convinced of the guilt of the defendant beyond a
25 reasonable doubt then you're to find the defendant not guilty.

JURY CHARGE

1 In making your determination in, uh, determining what the
2 facts are, you have to determine the credibility of witnesses
3 who've testified in the case and credibility mainly -- merely
4 means believability, it, uh, becomes your duty as a jury to
5 analyze and to evaluate the evidence and determine which
6 evidence convinces you of its truth. In determining the
7 believability of witnesses who've testified, you may believe
8 one witness over several witnesses or several witness over one
9 witness, you may believe part of a witness's testimony,
10 disregard, uh, the the remaining part or you may disregard the
11 testimony its entirety or accepting its in its entirety,
12 that's totally up to you to determine, uh, what that, uh,
13 weight should be considered and when you consider what a, uh,
14 whether a witness has exhibited, uh, any interest, bias,
15 prejudice or other motive in the case that's to be considered
16 by you, you may also consider the appearance of the witnesses
17 while they're on the stand.

18 All right, there's been several witnesses and as I've,
19 that have been -- were designated as experts, as I told ya at
20 that time our rules of evidence don't normally permit a
21 witness to testify about opinions or conclusions, uh, unless
22 they're, uh, been, uh, qualified as an expert witness. A
23 witness who by education, experience, has become expert in a
24 certain field, science or profession, they can, uh, state
25 their opinion which is relevant and material and on material

JURY CHARGE

1 matters, uh, based on their training of -- and their
2 qualifications as an expert. You should consider any expert
3 opinion received in evidence in this case like any other
4 evidence, you give it the weight that you think it deserves.
5 If you decide that the opinion of an expert witness is not
6 based on sufficient education or experience or if you
7 conclude that the reason given in support that opinion are not
8 sound or that the opinion is outweighed by other evidence then
9 you may disregard that opinion in, opinion in its entirety.
10 Expert witness's testimony is to be giving no greater weight
11 than that of other witnesses simply because the witness is an
12 expert; further, you're not required to accept an expert's
13 opinion even though it is not contradicted, again, you need to
14 give it the weight which you feel is appropriate.

15 Now this case we've had testimony, uh, of a child, uh,
16 during the, you've heard the testimony from, well from a child
17 and where witness is a child you must determine as with any
18 other witnesses whether that testimony is believable. In
19 deciding believability you may consider not only matters that
20 I have already discussed with you but you may also consider
21 the age of the child, the child's ability to observe and
22 remember facts and the child's ability understand and answer
23 questions because young children may not fully understand what
24 is happening here, it's up to you to decide whether the child
25 or children understood the seriousness of appearing as a

JURY CHARGE

1 witness at this criminal trial, whether the child or, uh,
2 understood the questions, whether the child has a good memory
3 and whether child understands the difference between lying and
4 telling the truth; in addition, young children may be
5 influenced by the way questions are asked, is up to you as the
6 jury to decide whether child understood the questions asked.

7 Now in this case the defendant is charged with criminal
8 sexual conduct with a minor in the first degree, now I'm gonna
9 define with you what our state law, uh, says is are the
10 elements, that's found in Section 16-3-655, subsection (A),
11 that's the official designation for it, it requires, uh, that
12 the State prove beyond a reasonable doubt that the defendant
13 engaged in a sexual battery with a victim who is less than
14 11-years-old, all right, uh, a sexual battery with a victim
15 who's less than 11-years-old. All right, a sexual battery,
16 let me define that for you because that's a term that's
17 specifically unique to find, uh, if you find based on the law,
18 if you, if you determine that the defendant is guilty of this
19 charge. Uh, a sexual battery is a sexual intercourse,
20 cunnilingus, fellatio, anal intercourse, or any intrusion,
21 however slight, of any part of a person's body or any object
22 into the genital or anal openings of another person's body
23 except when intrusion is co -- accomplished for medically
24 recognized treatment or diagnosis purposes. The State must
25 also prove beyond a reasonable doubt that the victim was less

JURY CHARGE

1 than 11-years-old at the time of the sexual battery. Uh,
2 consent, willingness, indifference or ignorance on the part of
3 a minor, if any, as to what was taking place does not in any
4 way affect the charge of criminal sexual conduct with a minor.

5 All right, hand this to, I'm gonna, Mr. Foreman, I'm
6 gonna hand you a jury verdict form, I'm gonna go over it with
7 you so you'll know what you're having to do. All right, so
8 you'll, this (indicating) is the verdict form, this is what
9 you will have back in your jury room and what you're gonna
10 have to complete when you finish your deliberations. The
11 first, the top part is merely the caption of a case, uh, and
12 then it's if you'll see down there it says, "As to the charge
13 of first degree criminal sexual conduct with a minor," uh,
14 "with" initial, "CS," uh, indictment, and that's the
15 indictment number, "We, the jury, unanimously find the
16 defendant Jose Reyes Reyes," and then you have to chip --
17 check one or the other and there's no particular, uh, you
18 don't don't pay any attention to the order of 'em, we have to
19 put 'em in some order, if you find that the State has met it's
20 burden, uh, beyond a reasonable doubt of this charge then you
21 will check the blank where it says guilty, if you find that
22 the State has not met its burden beyond a reasonable doubt
23 then you will check not guilty, so you need to check one or
24 the other. Once you have completed, uh, uh, the verdict form
25 then you will sign your name and you will date it, so that's

JURY CHARGE

1 the, uh, this it's very, uh, simple but very serious form.
2 Uh, now there's two, there's two possible verdicts on that but
3 you, now, I mean, ladies and gentlemen, your verdict must be
4 unanimous and again, that that means all twelve of you must
5 decide on what the verdict is, uh, this is not majority rule,
6 but it's all twelve of you, uh, so what will take place is
7 we'll, uh, once you have reached a verdict then you will knock
8 on the door, let the, uh, and the, let the bailiff know that
9 you reached a verdict and then we will, uh, further instruct
10 you what you need to do but, uh, and at any point when you get
11 back there you have any questions, uh, Mr. Foreman, what you
12 will do there's, you should have some pen and paper back
13 there, you will make a note, you're to write out a note, write
14 out a question or any comments you want to direct to the
15 Court, you will write that out, uh, sign your name at the
16 bottom and date it, knock on the door and give it to the
17 bailiff and the bailiff will bring it to me and then we'll,
18 uh, respond however is appropriate.

19 Uh, now I'm gonna send you, you can put that on the bar
20 right now, I'm a, I'm a send you back to your jury room but
21 this is not the time to actually begin your deliberations
22 because; one, I've got to discuss with the attorneys that we
23 have gone over everything, okay, if I missed anything or I've
24 stated anything incorrectly then I will bring you back out,
25 uh, and give you some additional, uh, charge, if we, uh, do

JURY CHARGE

1 not, uh, if it, if it, if it is appropriate begin
2 deliberation, your signal is I will have the bailiff bring the
3 verdict form in to ya and at that point, uh, the, uh,
4 alternates will have to step out because the alternates
5 cannot, uh, participate in the deliberation and you say, Well
6 I've sat here till two days, I, you know, but what your your
7 role has been very important, uh, if something would've
8 happened to any of the the jurors or, uh, there'd been a
9 conflict which it has happens more times than you'll believe
10 then you're, it's very important that you're there and ready,
11 you've heard testimony, uh, to proceed with deliberation so I
12 don't want you to think that, uh, because you're not involved
13 in the final stage that your role has not been important
14 because it has been very important and it has, uh, allowed us
15 to go forward if something would have happened so, uh, you
16 know, that happens like I said quite frequently so I do, I
17 want you to let you know that I do appreciate it but at this
18 point, uh, again, if you'll go back in your jury room, do not
19 beli -- begin deliberations until I've, uh, have gotten the
20 two, uh, alternates have moved out and you've gotten the
21 verdict form so at this time you'll go back to your jury room.

22 (The following takes place outside the presence of the
23 jury.)

24 THE BAILIFF: Jury is secure, Your Honor.

25 THE COURT: All right, any exception or objections of of

JURY CHARGE

1 the charge on behalf of the State?

2 MS. HINTON: No, Your Honor.

3 THE COURT: On behalf of the defendant?

4 MR. WARDER: No, Your Honor.

5 THE COURT: All right, well if you will trade that piece
6 a paper for the two alternates, tell them they can begin
7 deliberations.

8 (Whereupon, the jury began deliberations at 2:15 p.m.)

9 THE COURT: All right, we'll be at ease until further
10 notice.

11 (Whereupon, a recess was taken.)

12 (Whereupon, a verdict was reached at 2:49 p.m.)

13 THE COURT: My understanding we have a verdict on the
14 case. All right, uh, are we ready to the jury bring the
15 verdict back the ---

16 MS. HINTON: Yes, ---

17 THE COURT: --- State?

18 MS. HINTON: --- Your Honor.

19 THE COURT: The defendant?

20 MR. WARDER: Yes, sir.

21 THE COURT: Uh, and I would direct, uh, I know that
22 there's numerous people on both sides this case in the
23 courtroom, uh, I will, uh, require that there'll be complete
24 composure regardless of what the verdict is. Uh, you see
25 these gentlemen here (indicating), I will not hesitate to have

VERDICT

1 them take you out with any disruption whatsoever, uh, this is
2 not the time or the place for that so I just remind everybody
3 that you're in courtroom and I want complete composure so
4 bring the jury in.

5 (The following takes place in the presence of the jury.)

6 THE COURT: All right, Mr. Foreman, I understand you've
7 reached a verdict.

8 JURY FOREMAN: We have, Your Honor.

9 THE COURT: You can hand it to the bailiff.

10 (Whereupon, the jury foreman complied.)

11 THE COURT: All right, appears in proper format, if
12 you'll publish the verdict.

13 THE CLERK: Thank Your Honor. This is Indictment Number
14 2013-GS-39-3217 the State vs. Jose Reyes Reyes, as to the
15 charge of first degree cri -- criminal sexual conduct with a
16 minor C.S. indi -- we, the jury, unanimously find the
17 defendant guilty. Is this your verdict and still your
18 verdict, so say you all by raising your right hand. Thank you
19 very much. Your Honor.

20 (Whereupon, a discussion was held off the record.)

21 THE COURT: All right, anything else from the jury before
22 release 'em from the State?

23 MS. HINTON: No, Your Honor.

24 THE COURT: Anything else from the defendant?

25 MR. WARDER: No, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: All right, uh, I wanna thank you for your
2 services, I know this has been a very difficult case, I
3 appreciate your attention, uh, to this, uh, matter, uh, we
4 have, uh, that will conclude your jury service for the week,
5 uh, we've released the term, we are now going into "plea
6 court" as they call it, uh, but again, thank you, this a very
7 important, uh, role that you've played. Uh, if you'll go back
8 to your jury room and I will when, uh, I will be glad to come
9 back there and answer any questions in just a few minutes if
10 ya'll have any so, uh, you'll follow the bailiff back to the
11 jury room, thank you. Oh, and that the foreperson you need to
12 sign somethin'.

13 THE CLERK: I'll I'll go over that with ya.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: All right, are ya'll ready proceed with
17 sentencing or do you need a minute?

18 MS. HINTON: Uh, your Honor, if I may, um, ---

19 THE COURT: Well I guess we hear -- any ---

20 MS. HINTON: I'm sorry.

21 THE COURT: Be glad to hear from the defendant.

22 THE BAILIFF: Jurors secure, Your Honor.

23 THE COURT: Right, it's not on sentencing but I've
24 I've -- any motions from the defendant?

25 MR. WARDER: No.

MOTIONS AND MATTERS

1 THE COURT: Okay.

2 MS. HINTON: Your Honor, the victim **Minor** did wanna be
3 present for sentencing, do you have any objection to her being
4 present?

5 THE COURT: That's fine and conti ---

6 (Pause.)

7 THE COURT: Is she close by?

8 MS. HINTON: She is, she's in our office, Judge.

9 (Pause.)

10 THE COURT: Do you have the sentencing sheet?

11 MS. HINTON: I do, Your Honor.

12 THE COURT: All right, uh, in State vs. Jose Reyes Reyes
13 Reyes sexual, criminal sexual conduct first degree with a
14 minor less than 11-years-old, uh, jury has found you guilty,
15 I'll be glad to hear from ya although, uh, my reading of the
16 statute is -- is there any discretion?

17 MS. HINTON: Your Honor, it's ---

18 MR. WARDER: Yes, ---

19 MS. HINTON: --- a man -- I'm sorry.

20 MR. WARDER: --- that there is discretion.

21 MS. HINTON: It is a mandatory minimum of 25 years that
22 I do not think it's discretionary or suspendible, uh, but
23 anywhere from 25 up to life in prison.

24 THE COURT: Yes, but I'll be glad to hear from ya as far
25 as the mandatory minimum, anyway I'll be glad to hear whatever

SENTENCE

1 you want.

2 MR. WARDER: Your Honor, uh, he, my client has, uh, no
3 significant criminal record real old, uh, no no aggravators,
4 no no priors, uh, I would certainly urge that, uh, I I
5 consider the minimum to be very harsh and I certainly would
6 urge the Court impose the minimum sentence on this.

7 THE COURT: Anything else from the victim?

8 MS. HINTON: Yes, Your Honor, the victim did ask me to
9 address the Court on behalf. Uh, first, they appreciate the
10 Court's time and; second, uh, **Minor's** mother wanted me to
11 reiterate to the Court that she doesn't feel as Mr. Reyes
12 showed any mercy on her child, uh, and would ask that you take
13 that into consideration in imposing your sentence.

14 THE COURT: And I'll I I wanna make sure ya'll have
15 the last word, I don't -- anything else you wanna tell me,
16 Mr. Reyes, anything you wanna tell me?

17 THE DEFENDANT: No.

18 THE COURT: All right, the sentence the Court is you be
19 confined to State Department of Correction for 28 years.

20 MS. HINTON: Thank Your Honor.

21 (Note from the jury marked Court's Exhibit No. 1 for
22 identification.)

23

24

25

1 CERTIFICATE OF REPORTER
2

3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on December 13, 2016 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 5 through 98, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel
10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 April 9, 2017

14
15 

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
18
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20
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25

FORM 5

STATE OF SOUTH CAROLINA

County of PICKENSJose Reyes Reyes, #370793

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2021 MAR -3 P 4: 15

2021-CP-39- 245CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
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 Lee Correctional
Bishopville, SC
2. Name and location of Court which imposed sentence General Sessions Court
Pickens, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-3217
 - (b) N/A

- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) December 13, 2016 ... 28 years
- (b) N/A
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) - the name of each Court to which you appealed:
- i. The Court of Appeals
- ii. The Supreme Court
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. Rehearing Denied
- ii. Conviction Affirmed by 3 of the 5 justices
- iii. N/A
- (c) the date of each such result:
- i. September 16, 2020
- ii. December 16, 2020
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. JUSTICE HEARN J., dissenting in a separate opinion in which BEATTY, C.J., concurs - Filed December 16, 2020
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel
- (b) Prosecutorial Misconduct
- (c) Judicial Misconduct
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Did not object to preserve for the record.
- (b) Gave in appropriate information.
- (c) Abuse of discretion
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. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. Abuse of Discretion

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. Certiorati to the Court of Appeals and new grounds....

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) Post-conviction-relief hearing is the first opportunity.
- (b) Post-conviction-relief hearing is the first opportunity.
- (c) Post-conviction-relief hearing is the first opportunity.
17. Were you represented by an attorney at any time during the course of:
- (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? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes
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. Richard Warder, Esq.
P. O. Box 26133 • Greenville, SC 29616-6133
- ii. Kathrine H. Hudgins, Appellate Defender
P.O. Box 11589 • Columbia, SC 29201-1589
- iii. Kathrine H. Hudgins, Appellate Defender
P.O. Box 11589 • Columbia, SC 29201-1589
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment • Trial • Sentencing
- ii. Direct Appeal
- iii. Certiorari to the Court of Appeals

19. State clearly the relief you seek in filing this application:

Remand for a new trial.

20. Are you now under sentence from any other court that you have not satisfied?

No

2021 MAR -3 P 4:15
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

County of KERSHAW)

VERIFICATION

I, Jose Reyes Reyes, 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.

J. R. R.

Jose Reyes Reyes, 370793
Lee C.I. - F6 2223
990 Wisacky Hwy.
Bishopville, SC 29010

SWORN to and subscribed before me this 18
day of Feb 2021.

Debra Eastridge (L.S.)
Notary Public

My Commission Expires: 3/3/2026

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2021 MAR -3 P 4: 15

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

I, Jose Reyes Reyes, 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.

J.R.R.

Applicant

Jose Reyes Reyes, 370793
Lee C.I. - F6 2223
990 Wisacky Hwy.
Bishopville, SC 29010

SWORN or affirmed to and subscribed before me this
18 day of Feb, 2021.

Debra Anthony
Notary Public

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
Jose Reyes Reyes, #210793,	)	Case No.: 2021-CP-39-245
	)	
	)	
	)	
v.	)	RETURN, PARTIAL MOTION TO
	)	DISMISS, AND MOTION FOR A
State of South Carolina,	)	A MORE DEFINITE STATEMENT
	)	
Respondent.	)	

The State of South Carolina (“Respondent”), making its return to the application for post-conviction relief filed by Jose Reyes Reyes (“Applicant”) on March 3, 2021, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its March of 2015 term, the Pickens County Grand Jury indicted Applicant for first-degree criminal sexual conduct with a minor (2013-GS-39-3217). On December 12-13, 2016, Applicant proceeded to a jury trial with the Honorable Perry H. Gravely presiding. Applicant was represented by Richard Harold Warder (“trial counsel”), Esquire, and then-Assistant Solicitor Brandi Batson Hinton of the Thirteenth Circuit Solicitor’s Office prosecuted the case. At the conclusion of trial, the jury found Applicant guilty as indicted. Judge Gravely sentenced Applicant to imprisonment for twenty-eight years.

Trial counsel filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins (“appellate counsel”) of the South Carolina Commission on Indigent Defense represented Applicant on appeal. Appellate counsel argued that Judge Gravely erred in allowing the competency inquiry and determination to be made in the jury’s presence, which improperly bolstered the victim’s credibility. The South Carolina Court of Appeals affirmed in an unpublished

opinion, finding that Judge Gravely did not abuse his discretion. State v. Reyes, Op. No. 2019-UP-214 (S.C. Ct. App. Order filed June 12, 2019) (per curiam), reh'g denied, State v. Reyes, S.C. Ct. App. Order filed August 22, 2019. Appellate counsel filed a petition for a writ of certiorari in the South Carolina Supreme Court, arguing that the Court of Appeals erred in finding that Judge Gravely's conducting the hearing and issuing a ruling regarding the victim's competency to testify in the jury's presence did not result in improper vouching and improper bolstering of the victim's testimony. The Supreme Court granted the petition. State v. Reyes, S.C. Sup. Ct. Order filed February 12, 2020. The Supreme Court addressed two questions: (1) whether it was improper for Judge Gravely to issue a ruling on the minor victim's competency to testify in the presence of the jury and (2) did the assistant solicitor improperly bolster the victim's credibility by phrasing her questions to the victim in the first person. State v. Reyes, 432 S.C. 394, 399, 853 S.E.2d 334, 336 (2020).

The Court instructed that the "better practice" is for a trial court to conduct a competency hearing outside the presence of a jury. Id. at 402, 853 S.E.2d at 338. The Court cautioned, though, that a trial court's "failure to do so is not automatic reversible error" Id., n.2 (citations omitted). The Court held that a reasonable juror could not have considered Judge Gravely's comment about the victim's competency and reference to Rule 601(a), SCRE, as an indication that the trial court believed the victim to be credible. Id. at 403, 853 S.E.2d at 339. While the assistant solicitor questioned the victim in the presence of the jury about whether the victim understood the difference between a truth and a lie, the solicitor asked, "Do you know that while you're here, we only talk about things that are the truth?," and also asked, "So you understand that when we're in here, we're going to talk about the truth." Id. at 400, 853 S.E.2d at 337. The Supreme Court found that Judge Gravely erred in allowing the assistant solicitor to phrase the questions in the first person because the phrasing "improperly bolstered [the victim's] credibility because it signaled to the jury

the solicitor believed [the victim] was testifying truthfully.” Id. at 404-05, 853 S.E.2d at 339-40. The Court could not conclude that there was overwhelming evidence of Applicant’s guilt; however, the Court concluded that Judge Gravely’s error was harmless beyond a reasonable doubt because Judge Gravely’s instruction to the jury that it had to assess the victim’s credibility “through a more suspect lens” removed any improper influence on the jury resulting from the way that the assistant solicitor phrased her questions of the victim. Id. at 405-09, 853 S.E.2d at 340-42. The remittitur was issued on January 5, 2021.

II. Current Application

In his application for post-conviction relief, filed on March 3, 2021, Applicant argues he is entitled to relief based upon multiple claims, which Respondent summarizes as follows: (1) trial counsel was constitutionally ineffective for failing to preserve objections for direct appellate review, (2) the assistant solicitor committed prosecutorial misconduct by giving “in appropriate [sic] information”, and (3) Judge Gravely abused his discretion. The relief that Applicant prays for is a new trial.

Attached to this return and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding Applicant’s conviction and sentence; Applicant’s records from the South Carolina Department of Corrections; Applicant’s appellate records, including the notice of appeal, the record on appeal, the parties’ briefs before the Court of Appeals, the Court of Appeals’ opinion, the petition for rehearing, the Court of Appeals’ order denying the petition for rehearing, the petition for a writ of certiorari to the Court of Appeals, the return to the petition for a writ of certiorari, the appendix, the Supreme Court’s order granting a writ of certiorari, the parties’ briefs before the Supreme Court, the Supreme Court’s dispositive opinion (corrected), and the remittitur; and the transcript from Applicant’s trial. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Partial Motion for Summary Dismissal

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the “pleadings, depositions and admissions and agreements of fact” and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the face of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view them in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

Applicant’s claim that Judge Gravely abused his discretion should be dismissed summarily because it is not properly before this Court. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A). Because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the overwhelming majority of cognizable claims fall

under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (“Allegations of trial court error are not cognizable on PCR.”) (citing State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997)). Errors that could have been reviewed on direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) (citing Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975)). Post-conviction relief is proper only when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). The claim referenced herein does not support a cognizable claim for post-conviction relief under any of the statutory grounds. Even if the facts alleged by Applicant are true, Respondent is entitled to judgment as a matter of law because the issue is one that Applicant should have raised on direct appeal. Therefore, this Court should summarily dismiss these claims of trial court error pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

IV. Motion for a More Definite Statement

Applicant raises a claim that trial counsel was constitutionally ineffective for failing to preserve objections for direct appellate review and that the assistant solicitor committed prosecutorial misconduct by giving “in appropriate [sic] information”. Respondent moves for a more definite statement as to these claims. The Uniform Post-Conviction Procedure Act requires that an applicant “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976) (emphasis added). In an application for post-conviction relief, it is incumbent upon an applicant to make at least a prima facie showing that would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d

784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.”

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

In the application, Applicant fails to set forth with specificity the facts and circumstances upon which some of his claims are based. For example, Applicant does not identify what objections trial counsel failed to preserve for direct appellate review and does not explain how there is a reasonable likelihood that the outcome of his appeal would have been different had some objections been preserved. Applicant does not identify the allegedly in-appropriate information given the assistant solicitor or identify to whom the information was allegedly given. Applicant has failed to state with any specificity the specific facts giving rise to these claims. Additionally, these claims are not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his claims through the filing of an amended application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V. Denial of All Other Claims

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VI. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief

evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“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.”).

Pursuant to S.C. Code Ann. § 17-27-150(a) (2008), an applicant in a non-capital post-conviction relief action may invoke discovery under the South Carolina Rules of Civil Procedure only if granted leave to do so by a court upon a showing of good cause. If Applicant attempts to invoke discovery powers without first obtaining leave to do so by a court upon a showing of good cause, Respondent will oppose those attempts.

VII. Conclusion

WHEREFORE, Respondent requests that the Court dismiss the claim that Judge Gravely abused his discretion as non-cognizable under the Uniform Post-Conviction Procedure Act and

require Applicant to file a more definite statement as to his other two claims.

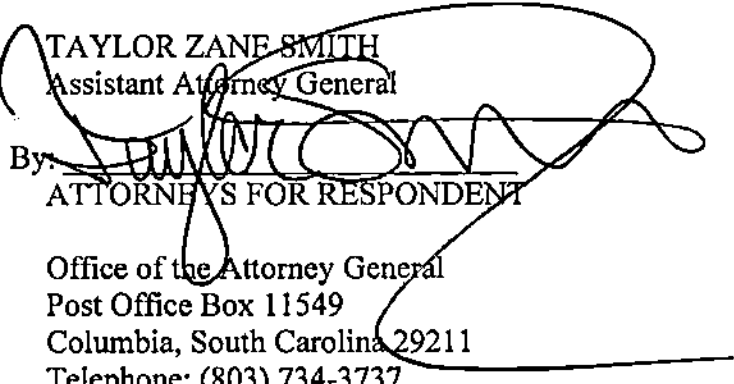
Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG
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By: 
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May 26, 2021

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

2021 MAY 28 P 12:09

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

JOSE R. REYES, #370793

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2021-CP-39-2455

CERTIFICATE OF SERVICE BY MAIL

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, Partial Motion to Dismiss, and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Sarah M. Henry, Esquire
406 Pettigru Street
Greenville, SC 29601

DATED this 26th day of May, 2021.


Hannah M. Bradham, Legal Assistant
For Respondent

CLERK OF COURT
 PICKENS COUNTY, IN THE COURT OF
 SOUTH CAROLINA
 COMMON PLEAS THIRTEENTH
 JUDICIAL CIRCUIT
 2024 MAY -8 P 3:21
 DOCKET NO: 2021-CP-39-2459
AMENDED APPLICATION FOR POST
 CONVICTION RELIEF

STATE OF SOUTH CAROLINA
 COUNTY OF PICKENS

JOSE R. REYES (370793),
 PLAINTIFF,

VS.

STATE OF SOUTH CAROLINA,
 DEFENDANT.

The application is being brought pursuant to South Carolina Code of Laws Sec 17-27-10 et seq. and should be considered along with the original application filed on March 03, 2021.

1. The applicant is presently being held as an inmate with the South Carolina Department of Corrections.
2. Applicant was tried in Greenville County Court of General Session from December 12-13, 2016 before Judge Gravely on CC1st with a minor.
3. Applicant was found guilty, and sentenced to 28 years in prison.
4. Applicant did file a direct appeal from his convictions and the remittitur was issued on January 5, 2021.
5. The applicant filed the post-conviction relief application in a timely manner.
6. The applicant has filed no action in federal court challenging his convictions.
7. Attorney Richard Harold Warder represented the applicant at trial on these charges.
8. In this application the applicant seeks an order vacating his sentence and remanding him for a new trial.
9. The applicant is amending his post-conviction relief petition to clarify his prior allegations, and respond to the state's motion for a more definite statement.
10. The applicant alleges that he was denied effective assistance of counsel on the above charge, that the denial of effective assistance prejudiced him, and submits the following facts to support his allegations:
11. Applicant alleges that trial counsel failed to object to the admission of inadmissible hearsay that improperly bolstered child's testimony, allowed child's counselor, Victoria Tate, to vouch for the credibility of the child, and that these admissions were not harmless and prejudiced the applicant.

12. Trial counsel failed to object to the testimony of “child abuse pediatrics” expert Dr. Mary Fran Crosswell which improperly vouched for the credibility of the child, and that these statements were not harmless and prejudiced the applicant.
13. Applicant alleges that trial counsel failed to adequately cross examine expert witnesses Shauna Galloway Williams, Victoria Tate, and Mary Fran Crosswell regarding bias, the reliability and sources of testimony, among other issues, and that these failures were not harmless and prejudiced the applicant.

Respectfully Submitted,

s/Sarah M. Henry
SC Bar #77907
406 Pettigru St.
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478-8324/232-9555 (fax)
sarah@sarahmhenrylaw.com
Attorney for Applicant

May 08, 2024

CLERK OF COURT
RICKENS COUNTY
SOUTH CAROLINA

PROOF OF SERVICE

2024 MAY -8 P 3:21

ON THIS DATE, a copy of this document, Amended Application for Post Conviction Relief, was served by email upon counsel for the State of South Carolina at the following address:

S.C. Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211
Office: 803-734-0964
JEdwards@scag.gov

s/Sarah M. Henry
Date: May 08, 2024

1 State of South Carolina) Court of Common Pleas
2 County of Pickens) Thirteenth Judicial Circuit
3
4 Jose Reyes,) Transcript of Record
5 Applicant/Petitioner,) 2021-CP-39-00245
6 vs.)
7 State of South Carolina.)

8
9 May 13, 2024
10 Greenville, South Carolina
11

12 B E F O R E:

13 The Honorable B. Alex Hyman, Judge

14
15 A P P E A R A N C E S:

16 Sarah Morrison Henry, Esquire
17 On behalf of the Applicant/Petitioner

18 Joshua A. Edwards, Assistant Attorney General
19 On behalf of the State of South Carolina

20 Stacy S. Johnson, RPR
21 Circuit Court Reporter
22
23
24
25

1	I N D E X	
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
A/P-1			

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	Court's 1	Post-Conviction Packet		
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1 (The following proceedings were held May 13,
2 2024, beginning at 2:35 PM.)

3 BAILIFF: All rise. The Honorable Judge Alex
4 Hyman presiding.

5 THE COURT: Thank you. Be seated.

6 Yes, sir.

7 MR. EDWARDS: Thank you, Your Honor. May it
8 please the Court? My name is Josh Edwards
9 representing the State in this hearing.

10 We're gonna go forward first on Mr. Jose Reyes.
11 It's 2021-CP-39-245. I have a copy of the packet.

12 May I approach?

13 THE COURT: Yes, please.

14 Good afternoon, Ms. Henry.

15 MS. HENRY: Good afternoon, Your Honor. How are
16 you?

17 THE COURT: I'm good.

18 MS. HENRY: Good.

19 And, Your Honor, I think that opposing counsel
20 and I have discussed this. I'm not planning on having
21 Mr. Reyes testify at this hearing.

22 THE COURT: Okay.

23 MS. HENRY: And I think that we've agreed to make
24 the packet a court exhibit since he testified at
25 trial.

1 THE COURT: Okay. If that's the case, I can mark
2 it as Court's No. 1 for purposes -- is that fine with
3 you-all?

4 MS. HENRY: That's fine.

5 MR. EDWARDS: That's fine with me. And I also
6 have an extra copy, if you'd --

7 THE COURT: Yeah, if you have an extra copy, that
8 way we can deposit that with the Court and I'll just
9 keep this one.

10 MR. EDWARDS: Okay.

11 Is it all right if I keep it for my own reference
12 during the hearing?

13 THE COURT: That's perfect.

14 (Court's Exhibit No. 1, Post-Conviction Packet,
15 was marked and admitted into evidence.)

16 THE COURT: Yes, ma'am.

17 MS. HENRY: Thank you, Your Honor. If the
18 Court's ready, we call Dick Warder.

19 THE COURT: Yes, please. Unless either one of
20 you-all want to make any kind of a brief opening.

21 MS. HENRY: Your Honor, I'm happy to give the
22 Court a summary of what our allegations are.

23 THE COURT: That will be fine.

24 MS. HENRY: Okay. Have you got the amended
25 application?

1 THE COURT: Is this on Scowcroft? Let's see if
2 I've got --

3 MR. EDWARDS: I have a copy right here, Your
4 Honor.

5 THE COURT: If you don't mind.

6 THE CLERK: And that's a Pickens case, Judge, so
7 I won't have it.

8 THE COURT: All right.

9 MS. HENRY: And, Your Honor, we do have an
10 interpreter in this case, but I don't know if you need
11 to place her under oath or --

12 THE COURT: I'll allow the clerk to do that.

13 (Whereupon, Paula Butori was duly sworn as the
14 interpreter by the Clerk of Court.)

15 THE COURT: Thank you.

16 And, Ms. Henry, either you or Mr. Edwards, if
17 you-all could give me just a brief rundown of the
18 procedural history.

19 MR. EDWARDS: Your Honor, Mr. Reyes was convicted
20 of one count of criminal sexual conduct with a minor
21 in the first degree.

22 THE COURT: Okay.

23 MR. EDWARDS: That was a Pickens County case.
24 There was a jury trial in December, 2016. The
25 indictment number of that case was 2013-GS-39-3217.

1 Mr. Reyes was convicted as charged and sentenced to
2 28 years. He appealed. The Court of Appeals affirmed
3 his conviction in an unpublished opinion. He then
4 petitioned for cert to the Supreme Court, which was
5 granted, and the Supreme Court affirmed in a published
6 opinion.

7 The issue in that case was the fact that the
8 competency hearing for the victim -- the minor victim
9 was done in front of the jury in the jury's presence.

10 THE COURT: All right.

11 Yes, Ms. Henry.

12 MS. HENRY: Thank you, Your Honor.

13 And I'm gonna be speaking probably a little oddly
14 for the interpreter. I'm gonna go a little slow.

15 THE COURT: I understand. Thank you though.

16 MS. HENRY: I'm naturally a fast-talker, so.

17 THE COURT: I'm kind of with you there.

18 MS. HENRY: Okay.

19 Your Honor, the thrust of our -- the conversation
20 we're gonna have today and the testimony that I'm
21 gonna try to elicit today is gonna be related to the
22 three expert -- three expert witnesses that testified
23 at his trial for the State. One was Victoria Tate.
24 She was qualified as a child abuse counselor expert
25 and our allegations are that she vouched for the

1 credibility of the child in her testimony, that she
2 was allowed to testify to hearsay, and that these
3 admissions were not harmless and severely prejudiced
4 the defendant.

5 We're also gonna be asking questions about
6 Dr. Mary Fran Croswell. We're alleging that she
7 improperly vouched for the child's credibility as part
8 of her testimony, that trial counsel failed to object,
9 and that the admission of this testimony was not
10 harmless and severely affected the client and it was
11 ineffective assistance of counsel.

12 And then finally regarding all three of the
13 expert witnesses, Shauna Galloway Williams, who was a
14 blind child abuse expert; Victoria Tate, the child's
15 counselor who was qualified as a child abuse expert --
16 counseling expert, and then Mary Fran Croswell, who
17 was qualified as a child abuse pediatrics expert, that
18 they all had independent bias. They all had
19 reliability and source testimony issues and that at
20 least two of them also had hearsay issues elicited in
21 their testimony all of which severely impacted my
22 client's -- my client's ability to get a fair trial.

23 THE COURT: Thank you, Ms. Henry.

24 MS. HENRY: All right. And then that's it for
25 me.

1 Josh?

2 MR. EDWARDS: I have nothing to add.

3 THE COURT: Okay. Ms. Henry, you can call your
4 first witness.

5 MS. HENRY: Thank you. Dick Warder.

6 (Whereupon, Richard Warder was duly sworn by the
7 Clerk of Court.)

8 THE CLERK: Thank you. You may be seated.
9 Please state your full name for the record.

10 THE WITNESS: Richard Warder.

11 THE COURT: All right. Yes, ma'am.

12 MS. HENRY: Thank you, Your Honor.

13 RICHARD WARDER,
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. HENRY:

17 Q. All right. Mr. Warder, can you tell us a little bit
18 about how long you've been practicing law?

19 A. I've been practicing law since '74.

20 Q. Has it always been criminal?

21 A. Yes, exclusively.

22 Q. Do you remember representing Mr. Reyes?

23 A. Yes.

24 Q. All right. Do you remember what he was charged with?

25 A. He was charged with criminal sexual conduct with his

1 daughter I think.

2 Q. Do you have your file with you, Mr. Warder?

3 A. Yes.

4 Q. Okay. Have you had a chance to review it?

5 A. Pardon?

6 Q. Have you had a chance to review it?

7 A. I looked over it.

8 Q. You did. Okay. Would it -- so your understanding is
9 that Mr. Reyes was on trial for having criminal sexual
10 conduct with his daughter?

11 A. Yes, I believe it was his daughter.

12 Q. Okay. Could it --

13 A. It could have been a stepchild.

14 Q. All right. Well, let's move on from that. Would it
15 surprise you to find out that it was not with his daughter,
16 that it was with an unrelated -- the allegations were from
17 an unrelated child?

18 A. I don't remember very clearly. I know it wouldn't
19 surprise me.

20 Q. Okay. And do you have a good recollection of the
21 trial and what occurred during the trial?

22 A. I mean, it's been a long time ago.

23 Q. That's true. I think this was tried in --

24 A. That means it isn't -- I don't remember everything
25 about the trial.

1 Q. That's okay. Do you remember trying the case?

2 A. Yes.

3 Q. All right. And you've retained a copy of the file I
4 see.

5 A. (Nods head.)

6 Q. All right. Do you remember whether or not anyone
7 testified to any physical evidence of rape or molestation
8 in the case?

9 A. I think that it centered around his herpes. He
10 had herpes. The victim -- the young victim had herpes.
11 There was some issue as to whether or not herpes -- that
12 particular herpes could be transmitted in some way other
13 than sexual contact. I think the testimony was that cold
14 sores produced the same exact herpes condition as sexually
15 transmitted. That's kind of the -- the gist of what I
16 remember. And, again, then the facts aren't exact, but
17 that was what the case centered around.

18 Q. Okay. And do you remember whether or not the -- the
19 doctor that performed the physical exam testified that
20 the child's physical exam was normal, that there was no
21 physical evidence of rape or molestation or anything else?

22 A. I think -- I think that one of the -- the child's
23 allegations actually centered on oral contact with the
24 vagina. I'm not sure.

25 Q. Well, the CSC first requires some sort of penetration,

1 so there had to have been some sort of testimony on that.

2 Do you remember any of that testimony?

3 A. Well, I think you can penetrate with your fingers or
4 your tongue or --

5 Q. So you -- okay. So you don't remember any of that
6 testimony?

7 A. I don't remember any.

8 Q. Okay. Would you say that this case -- what was your
9 analysis of this case? What was your -- can you describe
10 to me at least what the theory of your case was?

11 A. My client's denial he didn't do it and the fact that
12 it could be transmitted by other ways; that that wasn't no
13 proof that he did it.

14 Q. Okay. And the minor child testified in this case,
15 correct?

16 A. I think so.

17 Q. Okay. As part of the minor child's testimony, did she
18 ever testify that there was anybody else present other than
19 herself and the defendant during any of this activity that
20 she claimed to have?

21 A. I don't remember if she said anybody else was present
22 or not.

23 Q. Okay. Would it help to review her testimony?

24 A. Pardon?

25 Q. Do you want to review it?

1 A. If you want to, I will. I mean, if you tell me, of
2 course, to look, I will.

3 Q. Okay. So you don't remember?

4 A. That's what I said.

5 Q. So your client, Mr. Reyes, testified during the trial?

6 A. Yes.

7 Q. Okay. And the victim testified. Do you feel like
8 credibility -- Mr. Reyes's story was obviously that he
9 didn't do it, right?

10 A. You know, if you want me to look at the transcript,
11 I'll do that. Mr. Reyes denied the allegation.

12 Q. Okay. Do you feel like credibility -- the credibility
13 of either himself or the minor was important in this case?

14 A. Of course it was.

15 Q. Okay. The State called three separate experts or had
16 three separate individuals qualified as experts during this
17 trial. Do you remember any of their testimony?

18 A. Not -- not outside of reading how they testified. I
19 think they determined that herpes could come from cold
20 sores as well as --

21 Q. Okay. I want to talk to you briefly about each one of
22 these experts. I want to start with Victoria Tate. Do you
23 remember any of her testimony? She was qualified as a
24 child abuse counseling expert and counseled the victim in
25 this case. Do you remember any of her testimony?

1 A. No.

2 Q. All right.

3 MS. HENRY: Your Honor, may I approach?

4 THE COURT: Yes, you may.

5 MS. HENRY: And then I'm going to refer the Court
6 to -- I'm not sure whether it's gonna be in the
7 packet, Your Honor. It's 51 and page 80 from the
8 original transcript.

9 THE COURT: Ms. Henry, can I ask you a quick
10 question?

11 MS. HENRY: Yes, sir.

12 THE COURT: I see that this is a Pickens County
13 case, but it says in the amended application that it
14 was tried here in Greenville. Was there some type of
15 conflict; do you know?

16 MS. HENRY: I do not know, Your Honor.

17 And, Your Honor, may I approach? Yes.

18 THE COURT: Yes.

19 BY MS. HENRY:

20 Q. And I'm just gonna show you -- this it just an
21 excerpt from the transcript to help refresh your memory,
22 Mr. Warder.

23 All right. Now, Mr. Warder, I've handed you --
24 and please take a minute to review it if you need to.
25 Did I hand you up more than I meant to?

1 A. You handed me some testimony from the lady at the
2 Julie Valentine Center.

3 Q. Yes, I sure did. Is her name Victoria Tate?

4 A. Pardon?

5 Q. Is the testimony you're looking at for Victoria Tate?

6 A. Yes.

7 Q. Okay. Thank you.

8 All right. So I want to -- I want to run through
9 what you remember from -- I want to run through
10 Ms. Tate's testimony with you. It looks like Ms. Tate
11 testified that -- let me point you to page 53 slash 82
12 and I'm gonna begin on line 18 and ask you about that
13 testimony. Specifically Ms. Hinton elicited testimony
14 from Ms. Tate where she testified that she currently
15 counsels the victim.

16 Are you seeing that?

17 A. The question is how long she'd currently testified --

18 Q. I'm curious. Let's back this up, Mr. Warder.

19 Did you interview or attempt to interview Ms.
20 Tate before this trial?

21 A. Did I attempt to interview her?

22 Q. Yes.

23 A. No, I don't think so.

24 Q. Okay. All right. So were you aware that she was
25 currently counseling the child before she testified?

1 A. I don't know whether I was or not.

2 Q. Okay. And do you know when -- let's back this up
3 entirely then. Do you know when the child alleges the
4 abuse ended? Would June 30, 2013, ring a bell or make
5 sense?

6 A. The child was what?

7 Q. Do you remember when the child alleged the abuse
8 ended?

9 A. No.

10 Q. Would June 30, 2013, make sense?

11 A. No.

12 Q. No?

13 Okay. And do you remember when she first
14 reported? Would August 29, 2013, make sense to you
15 or --

16 A. No, I don't remember that.

17 Q. Okay. And you can see from the testimony there that
18 was elicited from Ms. Tate that she claimed that she had
19 been counseling the minor since March 10, 2016, and was
20 still counseling her on the date of the trial, December 12,
21 2016.

22 A. I don't remember that. I don't remember the dates of
23 testimony. I don't remember a whole lot about it.

24 Q. Okay.

25 MS. HENRY: Your Honor, if you'd just give me a

1 second.

2 THE COURT: Take your time.

3 MS. HENRY: I had expected Mr. Warder to remember
4 a little more, so let me try to cull this for
5 everyone's relief.

6 THE COURT: Okay.

7 BY MS. HENRY:

8 Q. All right, Mr. Warder. So I'm just gonna summarize
9 this and I'm gonna ask you a question about it and I'm just
10 really interested in what your legal opinion would have
11 been on it.

12 So it looks like she was -- she didn't start
13 counseling the child until about two and a half -- two
14 years and eight months, almost three years after this
15 incident occurred. It looks like she was still
16 counseling her and told the jury she was counseling
17 her in her capacity as a child abuse counselling
18 expert. Did you see anything worth objecting to in
19 that series of events?

20 A. I have no recollection of this, so I don't know if
21 there was anything worth objecting to or not.

22 Q. Okay. What about now?

23 A. No, this -- that case has been -- it's been about four
24 years. I don't particularly remember much about it.

25 Q. Do you know whether Ms. Tate was used -- her testimony

1 was used to introduce any additional evidence? Do you know
2 if they used her to introduce videos, drawings, anything
3 else in evidence?

4 A. It would be in the record if it was.

5 Q. I'm assuming the answer is no. That's okay.

6 A. Pardon?

7 Q. Is that a no?

8 A. No, it's neither one. It's -- I don't remember much
9 independently about it.

10 Q. All right. Let's take this from a different angle,
11 Mr. Warder. Do you agree that for an expert, any expert,
12 to comment or testify about the veracity or the truth of a
13 child's accusation of sexual abuse is improper? Do you
14 think that's true?

15 A. Their -- their belief of it. Not their findings, but
16 their belief wouldn't be admissible.

17 Q. Okay. And do you believe that that should be objected
18 to?

19 A. That that what?

20 Q. That that should be objected to.

21 A. I think that there's some special provisions that
22 because they're treating they can give a medical opinion.

23 Q. What would those special provisions be?

24 A. I think -- as a doctor I think there's some exceptions
25 about -- that they can give information from their

1 treatment.

2 Q. So are you -- and I'm just gonna run through a couple
3 of cases that deal with those and ask you if you're
4 familiar with them. Are you familiar with State v.
5 Dawkins? It's a 1989 case.

6 A. No, I'm not familiar with State v. Dawkins.

7 Q. Okay. Are you familiar with State v. Jenkins? These
8 are both about vouching and bolstering.

9 A. No, I'm not familiar with that.

10 Q. Okay. That's a 2011 case. Those would both have been
11 the law when you tried this case or were not familiar with
12 those.

13 All right. Are you aware that a witness, any
14 witness, cannot give an opinion for the purpose of
15 conveying to the jury directly or indirectly that he
16 or she believes the victim?

17 A. Right. I would think most people's testimony about
18 who they believe would not be admissible.

19 Q. Okay. And you also feel like that that should be
20 objected to if that gets brought up during testimony?

21 A. You'll have to repeat that question. I don't
22 understand it.

23 Q. Okay. And I'm gonna ask this. Is this -- you know,
24 did you receive a witness list from the State, do you
25 remember, before this trial?

1 A. I do not.

2 Q. Okay. Do you remember whether or not you -- do you
3 know whether or not you were expecting there to be expert
4 testimony?

5 A. I would assume I did.

6 Q. Okay. Can you tell us what you did to prepare for the
7 expert testimony for bolstering, vouching, hearsay? I
8 mean, what was -- what was your normal -- certainly for
9 this case, what would your normal preparation have looked
10 like?

11 A. Well, at that time we were going on the facts that we
12 had out of discovery. When we would decide what we were
13 gonna do, then we'd go ahead and put that forward, but that
14 was back then.

15 Q. Okay.

16 MS. HENRY: Your Honor, the interpreter is having
17 a hard time of hearing Mr. Warder. I'm not sure what
18 we can do? Can we turn him up or --

19 THE COURT: Let see if I can turn him up.

20 Let's try that.

21 MS. HENRY: All right, Mr. Warder. I'm gonna
22 bring your attention back to the -- back to the
23 transcript.

24 All right. This is page 82 slash 53 of the
25 packet, Your Honor, and I'm gonna read this into the

1 record and then I'm gonna ask, as long as there's no
2 objection -- this should be an exhibit already. A
3 court exhibit.

4 THE COURT: It's already a court exhibit.

5 MS. HENRY: Any objection to reading this into
6 the record and asking Mr. Warder questions about it?

7 MR. EDWARDS: I don't object to that.

8 MS. HENRY: Thank you. I'll be as brief as I
9 possibly can.

10 THE COURT: That's okay.

11 BY MS. HENRY:

12 Q. All right. So Victoria Tate was qualified as a
13 child abuse counseling expert. Beginning on page 82 slash
14 53 of the packet, Ms. Tate testified that she currently
15 counselled the minor, that she has been counseling her
16 since March 10th of 2016, and that she is actively and
17 currently counseling her when the trial began.

18 Ms. Tate then also testified that the child did
19 make a disclosure of sexual abuse to her during the
20 counselling and that she disclosed where the abuse
21 happened.

22 After that, the State then begins to elicit
23 different testimony from the expert asking can you
24 please tell me some of your observations that you've
25 made. Ms. Tate then testifies -- initially about her

1 observations, she says yes, minor appears embarrassed,
2 she appears ashamed, then she changes her testimony.
3 She then testifies she also wants to avoid talking
4 about things that have happened to her. She's
5 embarrassed and ashamed that she couldn't stop the
6 abuse. She blames herself for what happened.

7 Mr. Warder, the testimony of this woman, of
8 Ms. Tate, as a child abuse counseling expert is
9 that she's currently counseling the child, has been
10 counseling the child for the past nine months prior to
11 this trial, that the child has disclosed abuse to her
12 and that she's an expert in child abuse counseling and
13 that her statements -- and she is also testifying in
14 making statements implying that she believes the abuse
15 happened, including the child is embarrassed because
16 she couldn't stop the abuse, she blames herself for
17 what happened, she also wants to avoid talking about
18 the things that have happened to her.

19 This directly contradicts what the Court had
20 said is allowable in State v. Dawkins and State v.
21 Jennings, both of which were available when this trial
22 was tried. Do you know or can you give any testimony
23 as to why you did not make any objection to any of
24 this testimony?

25 A. I don't know. The answer might be that I didn't find

1 it objectionable. I'm not sure I would even read every
2 case, but I objected to what I found objectionable and I
3 didn't object to what I didn't find objectionable.

4 Q. Okay. Do you remember -- Mr. Warder, do you remember
5 whether or not you obtained a copy of Ms. Tate's resume
6 before the trial?

7 A. I don't know whether I was furnished one or not.

8 Q. I want to talk to you a little bit about bias as it
9 relates to Ms. Tate. So Ms. Tate at least according to
10 her testimony worked for the Julie Valentine Center. Do
11 you know whether or not -- did you ask her any questions
12 about whether or not she had been qualified as an expert
13 in any other trial as a child abuse counseling expert?

14 A. I don't know what we -- she had been an expert before
15 I think in my mind.

16 Q. Did you ask her how many times she had been qualified?
17 I didn't see it in there.

18 A. If I did, it would be in the record. If I didn't, it
19 wouldn't be in the record.

20 Q. Why didn't you ask her whether or not she'd ever been
21 qualified as an expert before or fail to qualify as an
22 expert?

23 A. Well, I honestly don't remember what I was thinking
24 at -- at that time. You know, if she had been qualified
25 and I ask did it bolster or some -- if there was some

1 question of her real credibility, you know, I would have
2 asked what I thought would attack that credibility, but
3 I wouldn't want to bring out questions that said how
4 qualified she was.

5 Q. Okay. Do you know why you didn't ask her whether or
6 not she'd ever testified in support of the defense before?

7 A. No, I don't know why I didn't ask her that. I don't
8 know if that would have been particularly appropriate in
9 the way the facts --

10 Q. Well, she had been qualified as an expert in child
11 abuse counseling. I feel like it would have been
12 interesting and helpful to the jury to know whether or not
13 she was unbiased or whether or not all of her findings,
14 all of her observations were only -- only ever in support
15 of the person alleging the abuse or whether she was a true
16 professional and she had occasionally found that maybe the
17 abuse hadn't happened.

18 A. She was from the Julie Valentine Center. I would
19 assume that she testified in all kinds of cases. Her job
20 was to do that.

21 Q. So the juvenile -- I wanted to ask you about the Julie
22 Valentine Center. Have you ever read their agency's
23 mission statement?

24 A. Have I what?

25 Q. Have your ever read their mission statement?

1 A. The mission statement of the Julie Valentine Center?

2 Q. Yes.

3 A. I don't believe I have.

4 Q. Okay. The agency's mission is to stop sexual violence
5 and child abuse and the impact of these crimes through
6 investigation, collaboration, treatment and advocacy.

7 Do you consider the Julie Valentine Center to be
8 an impartial agency?

9 A. I think that they're a State agency or they're
10 State-funded. It's like a police department. Did I view
11 that as being impartial? I'm assuming sometimes I think
12 they're partial and the rest of the times -- a lot of times
13 the individual's trying to do the right thing.

14 Q. And you're aware that the Julie Valentine Center is a
15 501(c)(3), I think, and a nonprofit, not a part of the
16 State? They're completely --

17 A. I don't know how they're financed. I know that
18 they're in DSS cases and also family court cases involving
19 -- sexual abuse of children that are involved, and they
20 counsel -- not counsel, they diagnose and prescribe
21 treatment for people of sexual abuse.

22 Q. Okay. Why didn't you ask her whether or not she
23 treated people outside of referrals to Julie Valentine or
24 if she only worked for Julie Valentine as a child abuse
25 therapist?

1 A. Would you repeat that question, please?

2 Q. Of course. Why didn't you ask her about whether or
3 not she treated anyone other than child abuse victims?

4 A. I didn't think that that -- I don't know. It was a
5 line of questioning and obviously a part of my strategy
6 would have been to keep out as much bad or as much
7 bolstering of credibility, and it's all in there.

8 Q. All right. I'd like to move away from Ms. Tate
9 and like to talk to you about Ms. Croswell. She was the
10 second expert that testified for the State in this trial.

11 MS. HENRY: And, Your Honor, I'd like to do the
12 same thing and approach with page 60 and 89 of Mary
13 Fran Croswell's testimony and page 70 slash 99 and 71
14 slash 100, and I'm just gonna hand these to Mr.
15 Warder. I've kept it short for you this time.

16 BY MS. HENRY:

17 Q. All right. And, again, I'm referencing Court
18 Exhibit 1, the testimony from the trial; specifically the
19 testimony of Mary Fran Croswell, a State's witness who was
20 qualified as a child abuse pediatrics expert.

21 So Dr. Croswell testified that the minor made the
22 following disclosures to her. This is page 89,
23 line 17 through 18. Quote: She described being
24 touched in her vagina area by both the hand and the
25 penis. And then page 89 line 21, underneath her

1 clothes.

2 Mr. Warder, did you object to this testimony?

3 Why did you not object to this testimony as

4 impermissible hearsay? Did you have a theory?

5 A. Well, it was part of the medical examination of a
6 minor from what I see and the disclosure -- what she
7 disclosed during that examination would be a part of the
8 doctor's diagnosis.

9 Q. So let me just make sure I'm really clear here.
10 The information -- what she described was not -- it was
11 specifically a disclosure from the victim. It was a
12 re-statement of what the victim told her and not part of
13 the diagnosis. Does that change your feelings on why you
14 didn't object to it or whether that was relevant or should
15 have been objected to?

16 A. No, I'm sure it was that the herpes came -- did not
17 come from my client's condition of herpes. There was other
18 places that could be.

19 Q. Okay. I'm not sure -- maybe I'm misunderstanding
20 here. I'm not asking you about herpes yet. I'm asking you
21 about whether or not you feel like you should have objected
22 or there was some sort of strategy or other reason why you
23 didn't object to this hearsay?

24 A. I don't know why.

25 Q. Okay. And that's -- I mean, you know, as hearsay

1 that's pretty damaging hearsay. Do you know why you didn't
2 request a mistrial?

3 A. You'll have to repeat that.

4 Q. I just said it was pretty damning -- it's pretty
5 upsetting or damaging hearsay. Do you know why you didn't
6 request a mistrial?

7 A. I guess I didn't consider it particularly damaging
8 hearsay.

9 Q. Okay. All right. So the Court qualified Ms. Croswell
10 as an expert in child abuse pediatrics. That appears on
11 page 57 of the transcript at the State's request. So
12 during her testimony the State asked her twice, and this
13 is on the second part of the packet, this is on page
14 70 slash 99 of the transcript, and 71 slash 100. The
15 State asked her twice. First -- the first time, this is
16 on page 70, lines 8 through 11, so the fact that a minor
17 had made disclosures to you and she had herpes simplex
18 virus one in her vagina area, is that concerning to you as
19 a pediatrician? She asks it again on page -- the State
20 asked it again on page 71, line 7 through 10, but it is
21 your testimony that a 6-year-old who makes that type of
22 disclosure to you and is also positive in her genital area
23 for herpes type one is concerning, and she responded it is
24 concerning.

25 Why did you not object to this testimony as

1 improper vouching or bolstering?

2 A. I guess I didn't feel that particular --

3 Q. I'm sorry?

4 A. I didn't see that as -- as particularly objectionable
5 in light of the defense and the testimony.

6 Q. Did you interview Dr. Croswell prior to trial?

7 A. Did I interview who?

8 Q. Dr. Croswell, this witness.

9 A. No, I didn't interview her before the trial. No.

10 Q. Okay.

11 A. I think we had a report from her.

12 Q. All right. And now I'm gonna ask you similar
13 questions about what you -- about your dealing with her as
14 an expert. So she testified that she had been qualified
15 forty times as an expert in family and general sessions
16 court. Why did you not ask her whether or not she'd ever
17 testified in support of the defendant in any of those -- at
18 any of those attempts at testimony?

19 A. It was our strategy that it was -- that the herpes --
20 that proving that, you know, and I didn't want to bolster
21 her credentials and -- I assume, though I have no clear
22 recollection of that, why I did ask or didn't ask questions
23 four years ago.

24 Q. Okay. So you didn't think it was important -- or you
25 thought it would be bolstering her qualifications as an

1 expert to ask whether or not she had ever testified for the
2 defense or whether she'd only ever been an expert witness
3 for the prosecution?

4 A. I was interested in where the herpes came from, not
5 whether she had herpes.

6 Q. Okay. So let's talk about your interest in the
7 herpes and how important that was to the case. So why --
8 why did you not -- what kind of research did you do about
9 herpes before this? Like how did you prepare for your
10 cross-examination of Dr. Croswell on this pivotal issue
11 of how herpes is contracted, how many people have herpes,
12 what's happening with it? What did you do?

13 A. I would assume like we usually look at our computers
14 or a website find out something about it, what we needed to
15 know, if there's anything that helps us there, and, of
16 course, how it's transmitted helped.

17 Q. Okay. Do you think that it would have been helpful to
18 the jury to know that a significant portion of the
19 population has herpes simplex one?

20 A. You said do you think it would help the jury to
21 statistically know what percentage of the people have
22 herpes?

23 Q. I guess what I'm asking is, is that Mr. Reyes, your
24 client, did have herpes, the child had herpes, and the
25 State was trying to make that a link between the two. Do

1 you think that it would have helped the jury have a better
2 perspective on this if they had known that at least 67
3 percent of the population has got herpes and it is
4 statistically meaningless that the two of them both got
5 herpes simplex one? Do you think that that would have been
6 a helpful cross-examination question concerning herpes?

7 A. I think there was testimony that Mr. Reyes had cold
8 sores, that it could come off of cold sores -- could come
9 off of cold sores if he was scratching a cold sore and
10 could be transported to another location. It could have
11 came any way that came on that open cold sore or cold sore
12 he had or a cold sore the child or anyone else had.

13 Q. Yes. Do you not think that that is different
14 testimony, how Mr. Reyes, you know, had herpes or how the
15 child got herpes versus actually eliciting testimony about
16 whether or not the link between the two made sense given
17 the statistics of the existence of herpes in the
18 population? Do you think that would have helped?

19 A. Your question was did I think it would help to start
20 it off that 67 percent, if that's the last number, I felt
21 at the time cold sores would be probably as good as
22 anything else. It seems now cold sores are a common thing
23 and the jury knows people have cold sores.

24 Q. Okay. What is a cold sore? Is it different than
25 herpes? I did not see that testimony. Are cold sores not

1 herpes simplex one?

2 A. It is herpes type one.

3 Q. Okay. So you thought that linking it to itself would
4 be better testimony?

5 A. I don't know what I thought back then.

6 Q. Okay.

7 All right. I'm gonna move away from Ms.

8 Croswell. I want to talk to you about Ms. Shauna

9 Galloway Williams. She was qualified by the State as

10 a blind expert in child abuse dynamics and disclosure.

11 Did you interview Ms. Galloway Williams prior to

12 trial?

13 A. No.

14 Q. Okay. Did you a obtain a copy of her resume or her
15 CV?

16 A. I don't know that we got one or not.

17 Q. Okay.

18 All right. So she testified at one point during

19 her direct that she had been qualified thirty-six

20 times as an expert in general sessions cases.

21 A. I don't know. I can look that up if you need me to.

22 Q. No, no. That's okay. I'll -- she was, in fact. She

23 did testify that she qualified thirty-six times as an

24 expert in general sessions cases. Did you ask her -- or

25 why did you not ask her if she had ever been objected to as

1 an expert?

2 A. I truly don't remember why we didn't -- why we didn't
3 do things now.

4 Q. Okay. Why did you not ask her if she had ever
5 testified in the past for the defense?

6 A. The same thing, you know. I have --

7 Q. Okay. Why did you not ask her if she had ever been
8 found to improperly testify by any court in South Carolina?
9 Specifically State v. Jennings, the 2011 case, where Shauna
10 Galloway Williams was found -- where she was the key
11 witness, the case was overturned and sent back to get
12 retried based on her improper testimony. Why was that not
13 raised during cross-examination?

14 A. I don't know that those are the facts, but I -- and I
15 don't know why it wasn't raised except we didn't.

16 Q. Okay. So why did you not ask whether or not Ms.
17 Galloway Williams ever produced or published any reports or
18 studies? She certainly referenced quite a few or says she
19 does, but it sounds like -- there's no testimony in there
20 about whether she actually produced any studies or reports
21 on child abuse dynamics.

22 A. I don't know. You know, the same thing. You said she
23 was qualified thirty-six times if that's true.

24 Q. All right. She testified on page 105, this is line 24
25 through 25 of the transcript, that statistically two to

1 four percent of allegations of child sexual abuse are
2 determined to be false allegations and sometimes those
3 allegations are not necessarily the child has made a false
4 statement, but that someone else has made a false statement
5 instead. Why did you not question her about the
6 reliability and the origination of those statistics? Where
7 did she get those?

8 A. I don't know.

9 Q. So Ms. Galloway Williams testified as a blind witness
10 or a blind expert. I apologize. She testified generally
11 about the late disclosure, the inability of the child to
12 pinpoint date and time, and grooming. Why did you not ask
13 her to produce or provide any support for any of the
14 statements, the studies, the research or any peer reviewed
15 papers that she referenced in that testimony that she said
16 supported those general statements about grooming,
17 disclosures and why children don't know when things
18 happened and testify a lot?

19 A. I didn't think it was in controversy. I didn't think
20 that would help us.

21 Q. Okay.

22 All right. Your Honor, I don't have any other
23 questions.

24 THE COURT: All right.

25 MS. HENRY: Thank you.

1 THE COURT: Yes, sir.

2 MR. EDWARDS: Your Honor, I just have a handful.

3 CROSS-EXAMINATION

4 BY MR. EDWARDS:

5 Q. Hey, Mr. Warder. How are you?

6 So you were asked several times about whether you
7 interviewed these expert witnesses before trial.

8 A. Yes, sir.

9 Q. Are there legitimate reasons why you would choose not
10 to interview a State's witness before trial?

11 A. Well, most of it was not consistent with the defense
12 that the virus came from -- not from some sexual contact,
13 but from some common disease.

14 Q. Well, let me back up a little bit. Before this case
15 had you ever defended a criminal sexual conduct case?

16 A. Yes.

17 Q. More than once?

18 A. Yes.

19 Q. Can you maybe estimate how many of these cases you've
20 handled in your career?

21 A. I probably couldn't give you an accurate -- several.

22 Q. Okay. And are you familiar with the case law that's
23 gone around with CSC with a minor cases about bolstering
24 and vouching? Do you generally keep track of the law?

25 A. Yes.

1 Q. Okay. But going back to the interviews, and this
2 doesn't necessarily have to be for an expert, but when
3 you're preparing for trial and you know there are certain
4 witnesses that the State may call, are there legitimate
5 reasons why you would choose not to interview them before
6 trial and instead wait for cross-examine to interview that
7 witness?

8 A. On occasion we would do that. We didn't want to
9 overload them if we had some specific area that we thought
10 would be better at trial than having the witness get
11 prepared to.

12 Q. So if I understood you just now, you could alert the
13 witness to the questions you might ask in order to prepare
14 testimony and anticipate cross-examination, correct?

15 A. Yes.

16 Q. Okay. You were asked a lot of questions just now
17 about questions that you didn't ask at trial. You know
18 there were dozens of questions that maybe you could have
19 asked but then chose not to.

20 A. Probably thousands.

21 Q. Right. But do you have a philosophy on that as far as
22 the volume of questions you might choose to ask a witness?
23 Is there reasons why you might want to ask a lower number
24 of questions rather than a great number of questions?

25 A. Sometimes the questions serve to only bolster the

1 witness, you know, so we don't -- we don't want to take a
2 lot of time doing that.

3 Q. And taking time, what would be your concern there?

4 A. That the jury -- the longer the witness gets up to say
5 he has qualifications and are qualified the more
6 believability or credibility.

7 Q. Let me ask you this. Do you ever use
8 cross-examination to make points to the jury?

9 A. Yes.

10 Q. And do you think it's helpful to have a focussed
11 cross-examination so that the jury can focus on the
12 questions that you ask?

13 A. You want to focus on the area that you want to
14 emphasize.

15 Q. Well, in your experience does that help the jury know
16 what you think is important in the case?

17 A. Yes.

18 Q. Okay. And as far as the materials that Ms. Galloway
19 Williams relied on -- and, first of all, Ms. Galloway
20 Williams, you were familiar with her before this trial?

21 A. Yes.

22 Q. And you've seen her name in numerous appellate court
23 decisions that she testifies in these cases all the time?

24 A. Yes.

25 Q. Okay. As far as asking her to produce the materials

1 that she relied on to give her expert opinion, did you
2 believe that would be fruitful? Did you think that was
3 likely to benefit your client?

4 A. No, maybe it hurt my client.

5 Q. All right. And the question about whether you've ever
6 asked -- whether you asked these witnesses if they've ever
7 testified for a defendant, is there a reason why maybe you
8 thought that would not land with the jury?

9 A. I don't think that the people from the Julie Valentine
10 Center generally work and are available to private lawyers.
11 I think that number would be -- wouldn't be of any
12 significance.

13 MR. EDWARDS: That's all I have, Your Honor.

14 THE COURT: All right. Any redirect?

15 MS. HENRY: No, Your Honor.

16 THE COURT: You may step down.

17 (Witness excused.)

18 THE COURT: All right. Ms. Henry, your next
19 witness.

20 MS. HENRY: Your Honor, we rest. That was our
21 only witness.

22 THE COURT: All right. Mr. Edwards, anything?

23 MR. EDWARDS: I have no witnesses, Your Honor.

24 THE COURT: Any closing arguments?

25 MS. HENRY: Yes, Your Honor, but just really

1 briefly and I can pass the -- I think I can pass the
2 case law up for you --

3 THE COURT: Okay.

4 MS. HENRY: -- or I can give you this.

5 On the first allegation related to Victoria Tate
6 regarding bolstering, we're relying on State v.
7 Dawkins, State v. Jenkins and State v. Ellis. In
8 particular, that for an expert to comment on the
9 veracity of the child's accusations is improper.
10 State v. Dawkins.

11 There's no other way to interpret the language
12 used in this testimony other than that the testifier
13 believes that the children were being truthful, and
14 that's State v. Jenkins.

15 And then State v. Jenkins and State v. Ellis,
16 there was no physical evidence present in the case,
17 the child came back with a normal exam, which is part
18 of the record. Because the child's credibility is the
19 most critical determination in this case, in State v.
20 Ellis and State v. Jenkins, that's 2001 and 2011, both
21 of which was available at the time, we find the
22 admissions of this information was not harmless.

23 I'm also referencing State v. Makins. Now this
24 is a 2021 case, so this would have been after this
25 decision was rendered, but it deals with almost the --

1 the South Carolina Supreme Court dealt with almost
2 this exact same issue and found that the testimony --
3 and I believe that they distinguished this, and I just
4 want to run through that really quick because I think
5 it's very on point.

6 In that case you have Kristin Rich. She was a
7 counselor to the child and she testified at trial
8 about the time and place of the disclosure. She also
9 testified very briefly. I think she just gave a yes
10 when she was asked if she also was currently treating
11 the child, right? They -- they appealed that as to
12 whether Rich testifying that she was an expert in
13 child abuse and was also the -- treating the child as
14 a therapist would by itself imply that she believed
15 there was abuse and, thus, was bolstering and should
16 have been objected to or should not have been allowed.
17 The Court called it a close call whether this was
18 improper bolstering. Ultimately they ruled that this
19 specifically was not, but this is the language they
20 used, but said in this specific context Rich's yes
21 alone without more did not convey to the jury that
22 Rich believed the minor.

23 This case is different. Here the witness was
24 also qualified as an expert. She testified she
25 treated the child, was still treating the child,

1 worked for the Julie Valentine Center -- Child Abuse
2 Treatment Center and also gave her opinion that, one,
3 the child was experiencing trauma, described the
4 shame, anxiety, et cetera, that this was due to the
5 child experiencing abuse, and then the language was,
6 again, embarrassed because she could not stop the
7 abuse, you know, and doesn't want to talk about what
8 happened to her. That was the language.

9 And then finally this witness was not used for
10 any other purpose that was not cumulative. She did
11 discuss time and place of disclosures, but there had
12 been two previous witnesses that were the initial
13 contemporaneous disclosures, and the reason that I'm
14 bringing this up is because this witness didn't even
15 start treating this girl until almost three years
16 after the incident, so this could not have been a
17 contemporaneous disclosure. This was after she had
18 already been interviewed by police, the solicitor's
19 officer and everybody else, so her testimony regarding
20 time and place of disclosure was the only other thing
21 she testified to that wasn't bolstering and that was
22 cumulative, so she shouldn't have been -- this is
23 improper corroboration testimony, it's cumulative.
24 And that's also in State v. Jennings.

25 And, again, because credibility was the major

1 issue here in Jennings, they had very strong wording
2 which says improper corroboration is never harmless
3 because it is precisely this cumulative effect which
4 enhances the devastating impact of improper
5 corroboration.

6 Okay. That's on Victoria Tate. Those are the
7 cases that we're relying on.

8 We're relying on -- for the expert, Dr. Mary
9 Fran Croswell, we're relying on the same case law.
10 It's the same -- it's a very similar issue as State
11 v. Jennings.

12 And then in the third allegation regarding
13 after cross-examination with Galloway Williams,
14 Tate and Croswell, you know, we're alleging that
15 there was improper hearsay with Croswell when Croswell
16 describing her -- when Croswell essentially repeated
17 the disclosures, not including time and place, which
18 would have been allowed and would not have been
19 hearsay, she repeated specific disclosures related to
20 the act in her testimony, which was not allowed under
21 South Carolina Rules of Evidence 801(d)(1)(D).

22 And we're citing Thomas v. State, and that's
23 423 S.C. 235, 2018. It's another PCR case where the
24 witness testified that the victim disclosed she was
25 being sexually abused by the defendant. The fact

1 that the key witness used the word "defendant" in the
2 testimony, that was enough that this case demanded a
3 new trial. The Court found that counsel's failure to
4 object to that testimony as hearsay and bolstering was
5 insufficient performance. The same case law related
6 to Victoria Tate.

7 And then as far as Shauna Galloway Williams, she
8 had an existing case in 2011 where she was overturned
9 and she also works exclusively for the Julie Valentine
10 Center. She has a history of only testifying for the
11 State, she is not a neutral expert, and I think that
12 given the credibility issues in this case, the number
13 of experts, and then it's basically a "he said, she
14 said" situation, that failing to cross her on her bias
15 is ineffective assistance and could certainly have
16 turned the tide in this case, and that's what we're
17 relying on along with the testimony and the record.

18 Thank you, Your Honor.

19 THE COURT: Just a quick question before I hear
20 from Mr. Edwards.

21 Ms. Henry, he discussed a couple of times about
22 this theory that herpes simplex one came from another
23 manner. Did he ever call any witnesses to testify to
24 that, any experts of his own?

25 MS. HENRY: He didn't call any experts. He did

1 elicit testimony from Dr. Croswell, I believe, the
2 child had -- and just -- can I do this?

3 THE COURT: Yes, please. I'm asking you.

4 MS. HENRY: The child had herpes in the form of
5 cold sores before she alleged that this abuse ever
6 happened, so when she was much younger she had herpes
7 and it had been identified in her medical record and
8 Dr. Croswell testified that the child under her direct
9 from the State that the child in her medical record
10 had herpes simplex one orally before the alleged
11 abuse.

12 So then it became a question of did she -- she
13 ended up with it genitally, how did that happen, and
14 the State obviously was saying that it came from
15 Mr. Reyes and the doctor did admit that it also could
16 have been transferred from the child touching her own
17 face and own cold sore and scratching or touching
18 cloth or something like that, something typical that a
19 child would do, so there was testimony that the child
20 could have gotten -- or transferred her own existing
21 herpes simplex to herself, to a different location.

22 THE COURT: Thank you, Ms. Henry.

23 MS. HENRY: Thank you, Your Honor.

24 THE COURT: All right. Mr. Edwards.

25 MR. EDWARDS: Thank you, Your Honor. I'll start

1 where we left off with the herpes.

2 THE COURT: I don't think I've ever had that
3 conversation.

4 MS. HENRY: Right? What a day.

5 MR. EDWARDS: Here we are.

6 As Ms. Henry just told you, the jury found out
7 that information because of the effective
8 cross-examination that Mr. Warder conducted. So on
9 page 72, 73 of the record, Mr. Warder goes -- he asks
10 a series of questions, and I think very effectively
11 without beating a dead horse, he elicits all the
12 information that the child did have the oral herpes
13 before and the fact that it could be transferred
14 in a different way than the way the State alleged,
15 it could be transferred by hand, and I think
16 Ms. Croswell agreed with most of what was said,
17 specifically on page 73, that cold sores are common
18 and do not necessarily indicate that there was sexual
19 activity involved.

20 THE COURT: When you're saying 73, are you
21 referring to the top right?

22 MR. EDWARDS: The top number. Yes, sir.

23 THE COURT: Okay.

24 MR. EDWARDS: And I would just refer to the
25 record, 71 through 74, and Your Honor can review that

1 on your own, but my argument on that is basically that
2 Mr. Warder conducted effective cross-examination and
3 also the State elicited all of this on direct
4 examination, too, about what herpes is and that there
5 are two types of herpes and that it is not necessarily
6 indicative that Mr. Reyes raped this child, and so all
7 of that was before the jury and the State would submit
8 that there's no prejudice.

9 Staying on Dr. Croswell, she was basically a
10 medical expert. She was not offered as a behavioral
11 expert. She was not a delayed disclosure-type expert.
12 She did a medical examination on this child and that's
13 why she was allowed to go into more than just time
14 and place disclosure because as Mr. Warder testified
15 to, Rule 803(4), there's an exception to the hearsay
16 rule which allows statements made for the purpose
17 of medical diagnosis, which was the exact purpose
18 that Dr. Croswell was there for, so it was not
19 objectionable and, therefore, there can be no
20 deficiency. I also think under Rule 702 on the
21 basis of Dr. Croswell's opinion, so it's admissible
22 under that rule as well.

23 There was a line that Ms. Henry focussed on on
24 page 71, that Dr. Croswell, she testified that it was
25 concerning for a six-year-old child to have genital

1 herpes. I think we can all agree that that is
2 concerning and that does not rise to the level of
3 bolstering. She never indicated that she believed the
4 child. It was a question that was -- basically in her
5 medical opinion, was -- was something that was causing
6 concern for her as a doctor, and so it's not
7 bolstering. Again, she's a medical expert. She's not
8 a behavioral expert.

9 Backing up to Victoria Tate, as Your Honor can
10 see in the record, so Ms. Tate was qualified as an
11 expert. I will say she probably did not need to be
12 qualified as an expert because she was essentially a
13 fact witness, but she is qualified as an expert and
14 she testifies starting on page 53, line 18, and her
15 testimony concludes onto the next page. That's how
16 brief her testimony was. And she's a fact witness.
17 She gave appropriate time and place information about
18 the disclosure, which is allowed under the rules, and
19 then she gave allowable behavioral evidence.

20 And I will cite this Court to State versus
21 Alexander. This is kind of the original CSC with a
22 minor case from 1991 that talks about the
23 admissibility of behavioral evidence and it talks
24 about rape trauma and that sometimes victims of a rape
25 will develop after rape is admissible to prove that

1 the rape occurred. So that's 303 S.C. 377, and it's
2 cited in many, many cases after that, but I would just
3 go directly to that one.

4 THE COURT: Do you have a copy of that?

5 MR. EDWARDS: Yes, Your Honor.

6 THE COURT: I know, Ms. Henry, you had mentioned
7 you had some case law, too. I don't have a printer
8 here, so that may be easier if you guys have a copy.
9 And my law clerk has written them down, but --

10 MR. EDWARDS: If I may approach?

11 THE COURT: Yes.

12 MR. EDWARDS: That's Alexander.

13 THE COURT: Yes, sir.

14 MR. EDWARDS: Thank you.

15 And finally as to --

16 THE COURT: Ms. Henry, you can come on up.

17 MS. HENRY: Okay. I'm so sorry and I only have a
18 copy of Makins and Jennings, but they're the primary
19 ones we relied on.

20 THE COURT: Thank you.

21 MS. HENRY: Thank you.

22 MR. EDWARDS: That actually does remind me I
23 wanted to cite Makins as well because Makins said that
24 it's not reversible error for a fact witness to also
25 be an expert witness. And, again, this is one page of

1 testimony where Ms. Tate -- it's hard to say that
2 anything in there could be interpreted as her saying
3 that she believes the victim.

4 Finally, Shauna Galloway Williams. She was a
5 blind expert in delayed disclosure. There's case
6 after case where the Supreme Court has found that
7 blind expert testimony, behavioral evidence, delayed
8 disclosure and the like, is admissible in these
9 trials. We see it in every single CSC with a minor
10 case. We think that was proper testimony.

11 As far as questioning her bias, I think
12 Mr. Warder testified to a little bit of a different
13 trial strategy, which is entitled to an extreme degree
14 of deference from this Court. I would cite the Court
15 to Dunn versus Reeves, which is a United States
16 Supreme Court case I'm sure you're familiar with that
17 says that a lawyer's strategic decisions are entitled
18 to deference unless it's an action that no competent
19 lawyer would have taken and I think there are plenty
20 competent lawyers that would choose to have a more
21 focussed cross-examination and not ask questions that
22 they think might not really accomplish too much.

23 And as to bias, I will direct this Court to
24 page 105 of the record where counsel effectively
25 cross-examines Ms. Galloway Williams about her bias.

1 She had already explained earlier in her testimony
2 that she works for the Julie Valentine Center and she
3 explained what that is. He questions her about that
4 on the previous page and then really on 105 is the
5 meat of it where he points out to the jury that she
6 hadn't testified about false allegations at all and
7 she sort of resisted those questions if you read that
8 page, and it's not too hard to read between the lines
9 that Ms. Galloway William was being evasive and not
10 wanting to talk about those things, and I think that
11 shows, once again, effective cross-examination by
12 Mr. Warder.

13 So I think in summary the State would argue that
14 Mr. Warder gave a strategic reason why he did not
15 object to each of these allegations and that even if
16 you find there's a deficiency on any of these it's not
17 prejudicial and that it would not change the result of
18 the trial.

19 THE COURT: All right. Thank you.

20 MR. EDWARDS: Thank you, Your Honor.

21 THE COURT: What I'm gonna do, Ms. Henry and
22 Mr. Edwards, I'm gonna take a look over some of this
23 testimony, as well as the cases that you provided,
24 and I'm gonna take it under advisement. I should
25 have something for you by the end of the week, okay?

1 MR. EDWARDS: Thank you, Your Honor.

2 MS. HENRY: And I found Thomas.

3 THE COURT: Great. Thank you.

4 (Whereupon, the proceedings were concluded at

5 3:42 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
on the 13th day of May, 2024.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

December 22, 2025

/s/ Stacy S. Johnson
STACY S. JOHNSON, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	Clerk of Court Pickens County, SC SEP 19 125 PM 12:41
COUNTY OF PICKENS	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT	
Jose R. Reyes,	)	Case No.: 2021-CP-39-0245X	
S.C.D.C. No. 370793,	)		
Applicant,	)		
	)	ORDER OF DISMISSAL	
v.	)		
State of South Carolina,	)		
Respondent.	)		
_____	)		

This matter comes before the Court by way of an application for post-conviction relief filed by the applicant, Jose Reyes, on March, 2021. Respondent made its return on May 26, 2021. Reyes filed an amended application on May 8, 2024, through counsel Sarah M. Henry, Esq. The Court convened an evidentiary hearing into the matter on May 13, 2024, at the Greenville County Courthouse in Greenville, South Carolina. Reyes was present at the hearing and represented by Ms. Henry, and Joshua A. Edwards, Esq., of the South Carolina Attorney General's Office, represented Respondent. An interpreter was present to translate for Reyes.

Reyes did not testify. The sole witness was Reyes's trial counsel, Richard Warder, Esq. The Court had before it Reyes's records from the South Carolina Department of Corrections, a copy of the trial transcript, the records of the Pickens County Clerk of Court regarding the subject convictions, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Reyes is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. Reyes was indicted at the March 2015 term of the Pickens County Grand Jury for first-degree criminal sexual conduct with a minor (2013-

GS-39-003217).¹ Richard Warder represented Reyes. Brandi Hinton, Esq., prosecuted the case. Reyes proceeded to jury trial before the Honorable Perry H. Gravely, Circuit Court Judge, on December 12, 2016. The State alleged Reyes performed oral sex and digitally penetrated the nine-year-old victim. The child contracted genital herpes, which the States theorized was spread by Reyes, who also tested positive for HSV-type 1. The victim testified at trial, as did expert witnesses who offered medical and behavioral evidence.

Reyes was convicted as charged and sentenced to 28 years' incarceration. Reyes appealed. Through appellate counsel Kathrine H. Huggins, Esq., Reyes raised one issue; that the trial court erred by finding the minor victim competent to testify in the presence of the jury. His convictions were affirmed in an unpublished opinion by the court of appeals. State v. Reyes, Op. No. 2019-UP-214 (S.C. Ct. App. filed June 12, 2019) (per curiam). The supreme court granted Reyes's petition for writ of certiorari and affirmed in a published opinion. State v. Reyes, 432 S.C. 394, 853 S.E.2d 334 (2020). The remittitur was issued on January 5, 2021.

Present Application

At the evidentiary hearing, Reyes pursued only the three claims of ineffective assistance of counsel identified in his amended application:

1. "Applicant alleges that trial counsel failed to object to the admission of inadmissible hearsay that improperly bolstered child's testimony, allowed child's counselor, Victoria Tate, to vouch for the credibility of the child, and the these admissions were not harmless and prejudiced the applicant."
2. "Trial counsel failed to object to the testimony of 'child abuse pediatrics' expert Dr. Mary Fran Crosswell which improperly vouched for the credibility of the child, and that these statements were not harmless and prejudiced the applicant."
3. "Applicant alleges that trial counsel failed to adequately cross examine expert witnesses Shauna Galloway Williams, Victoria Tate, and Mary Fran Crosswell

¹ As noted in the brief of Respondent filed in Reyes' direct appeal, it is unclear why the indictment number does not match the grand jury term.

regarding bias, the reliability and sources of testimony, among other issues, and that these failures were not harmless and prejudiced the applicant.”

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony and exhibits presented at the evidentiary hearing, observed the witnesses and passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based on the evidence presented.

Applicable law: ineffective assistance of counsel.

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel’s performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466

U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

1. Failure to object to hearsay/ vouching by Victoria Tate.

Reyes alleges trial counsel provided ineffective assistance by failing to object to testimony by Victoria Tate. Tate was a licensed professional counselor employed at the Julie Valentine Center in Greenville. The Valentine Center provides counseling services to sex abuse victims. Tate was qualified as an expert in child abuse counseling. Tate counseled the victim in this case, and gave "time and place" corroboration testimony at trial. *See* Rule 801(d)(1)(D), SCRE (providing statement is not hearsay if victim testifies and is subject to cross-examination at trial and statement is "consistent with the declarant's testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the declarant is the alleged victim and the statement is limited to the time and place of the incident"). Tate testified the victim "made a disclosure of abuse" and stated she was sexually abused "at Megan's house." Tate further testified that the victim "appears embarrassed. She appears ashamed. She blames herself for what happened. She's very anxious. She, at times, is aggressive. She also wants to avoid talking about things that have happened to her." (Dec. 12, 2016 Tr.p.83). Defense counsel, on cross-examination, asked whether a child could be ashamed and embarrassed due to telling a lie, and Tate responded that it was possible.

The testimony regarding victim's disclosure of the time and place of abuse was not hearsay. *See* Rule 801(d)(1)(D), SCRE. Tate's subsequent testimony regarding victim's behavior was permissible behavioral evidence. *See State v. Alexander*, 303 S.C. 377, 381, 401

S.E.2d 146, 149 (1991) (explaining testimony of mental trauma is “relevant to prove the elements of criminal sexual conduct, including the lack of consent. Evidence of behavioral and personality changes tends to establish or make more or less probable that the offense occurred.”). Regarding bolstering, Tate did not offer an opinion on the victim’s veracity, and thus did not impermissibly bolster her testimony. See State v. Chavis, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015) (explaining “it is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter”). Reyes further alleges this testimony should have been excluded under Rule 403, SCRE, in that its probative value was substantially outweighed by the danger of unfair prejudice. The court finds this objection would not have been successful because the testimony had high probative value to show the circumstances the victim’s disclosure. Counsel did not provide ineffective assistance by choosing not to object to this testimony.

The Court notes Tate was primarily a fact witness who testified to her personal observations of the victim. Only on cross-examination did Tate give any opinion testimony, which was favorable to Reyes. Tate testified that children can be ashamed and embarrassed due to telling lies. Regardless, the Court notes it is not impermissible for a fact witness to also testify as an expert. State v. Makins, 433 S.C. 494, 504, 860 S.E.2d 666, 672 (2021). The Court further notes the brevity of Tate’s testimony. The Court finds there is not a reasonable probability of a different outcome had counsel objected to Tate’s testimony on the basis of bolstering. For these reasons, this Court finds Applicant has failed to show deficiency or prejudice regarding counsel’s failure to object to Tate’s testimony, and accordingly his request for relief on this allegation is **DENIED**.

2. Failure to object to vouching testimony by Dr. Crosswell.

Applicant alleges counsel provided ineffective assistance by failing to object to the testimony of Dr. Mary Fran Crosswell on the grounds of hearsay and bolstering. Dr. Crosswell is a medical doctor and treated victim at the Julie Vallentine Center in September of 2013. She was qualified as an expert in child abuse pediatrics. (Dec. 12, 2016 Tr.p.86–88). Dr. Crosswell explained she treated victim in her capacity as a medical doctor and performed a “medical examination” of victim. She testified victim “described being touched in her vaginal area by both a hand and a penis” underneath her clothes. Dr. Crosswell further testified about victim’s positive test for herpes, and that this diagnosis was “concerning” to her.

The Court finds this testimony was not objectionable. The victim’s statements about the sexual abuse were made for the purpose of medical diagnosis or treatment, and thus were not hearsay. See Rule 803(4), SCRE (providing “[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment” are admissible). Likewise, the herpes lab test was done in order to diagnose the victim’s symptoms. Dr. Crosswell relied on this test in her diagnosis of victim. See Rule 703, SCRE (“The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing.”). Defense counsel objected to Dr. Crosswell’s testimony regarding the test results at trial. (Dec. 12, 2016 Tr.p.94–95). The evidence was admitted over his objection, with the Court citing Creed v. City of Columbia, 310 S.C. 342, 426 S.E.2d 785 (1993).

This Court finds defense counsel provided effective assistance in this regard. Counsel objected at trial, but the trial court correctly held the testimony was not hearsay. Further, counsel

effectively cross-examined Dr. Croswell to show the State could not prove causation between Reyes's positive test for herpes and the victim's. Reyes has not shown deficiency or prejudice.

Nor was this testimony impermissible bolstering. Dr. Croswell's statement that it was "concerning" to her that victim tested positive for genital herpes was not a comment on the victim's veracity. Rather, it was a reasonable factual deduction relevant to her medical diagnosis. Further, the Court does not believe Reyes has established prejudice in that there is no reasonable probability of a different result based on counsel's decision not to object to this comment. Accordingly, Applicant's request for relief on this allegation is **DENIED**.

3. Failure to adequately cross-examine State's expert witnesses.

Applicant alleges counsel provided ineffective assistance by failing to adequately cross-examine the State's expert witnesses. Reyes poses numerous questions counsel could have asked of the State's witnesses, particularly Dr. Shauna Galloway-Williams. In particular, Reyes alleges counsel should have asked questions to contest Galloway-Williams's testimony about the prevalence of false accusations in CSC cases, and the fact that several cases where Galloway-Williams testified have been overturned on appeal. Reyes alleged counsel should have interviewed Galloway-Williams and Dr. Croswell prior to trial. Finally, Reyes alleges counsel did not sufficiently elicit evidence of bias based on the witnesses' association with the Julie Vallentine Center.

The Court finds Reyes has not established deficiency or prejudice. There is an almost infinite amount of questions that could conceivably be used to impeach witnesses. Counsel is entitled to great deference as to which questions he chooses to ask of a witness for impeachment purposes. As defense counsel testified, there are valid strategic reasons to be succinct in cross-examination, such as the ability to focus the jury on testimony counsel believes to be most

important. Counsel further testified he did not believe it would be beneficial to interview the witnesses ahead of time, and doing so could have alerted the witnesses to defense theories and potential cross-examination topics. Finally, the Court notes counsel did effectively cross-examine Galloway-Williams about her association with the Julie Vallentine Center and the phenomenon of false reports of abuse. (Dec. 13, 2016 Tr.p. 24–26). Giving counsel the great deference owed pursuant to Strickland, this Court finds Reyes has failed to establish deficiency. Further, this Court does not believe the questions Reyes suggests counsel should have asked would have been reasonably likely to have had any effect on the outcome of trial. Applicant's request for relief on this allegation is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

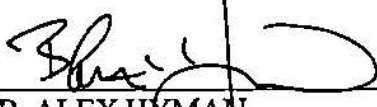
Based on all the foregoing, this court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15 day of Sept., 2025.


 B. ALEX HYMAN
 Presiding Judge
 Thirteenth Judicial Circuit

Conway, South Carolina

WITNESSES

Terry Marvin Nix

Pickens County Sheriff's Office

10/24/2013

ARREST WARRANT NUMBER

2013A3910300636

ACTION OF GRAND JURY

TRUE BILL

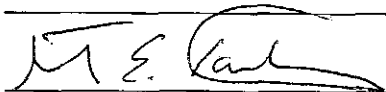
MAR 17 2015



Foreperson of Grand Jury

VERDICT

Guilty



Foreperson of Petit Jury

Date:

12/13/2016

DOCKET NO. 2013-GS-39-3217

CCL

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 17 2015

TERM 2013

THE STATE

vs.

JOSE REYES REYES

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on **MAR 17 2015** the Grand Jurors of Pickens
County present upon their oath:

That JOSE REYES REYES did in Pickens County, between the dates of January 1, 2013 and June 30,
2013, commit a sexual battery on **Minor**, who was less than eleven years of age. This is in violation of
§16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina 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.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Pickens

STATE VS.

Jose Reyes Reyes

AKA:

Race: HISPANIC Sex: M Age: 29

DOB: SS#:

Address:

City, State, Z

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

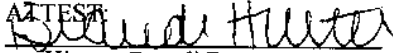
In disposition of the said indictment comes now the Defendant who was

TO: Sex, Crim Sex Cond, 1st Deg W/Min <11 Yr

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

 77844
 Hinton, Brandi Batson SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 28 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years 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.

☐ 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 the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 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	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$ 3.75
TOTAL		\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS 293

INDICTMENT/CASE#: 2013GS3903217

A/W#: 2013A3910300636

Date of Offense: 1/1/2013

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

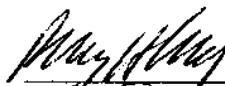
Other:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code:

Sentence Date:


 2755
 12/13/14